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24 RCNY 101.11

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PART A FOOD AND DRUGS

ARTICLE 101 SHELLFISH AND FISH

§101.11 Bacterial standards; procedure governing enforcement.

(a) The Department, periodically, may take samples of shellfish without payment therefor for purposes of laboratory examinations. The results of such examinations shall be interpreted in accordance with the numerical system established by the American Public Health Association method of rating shellfish for coliform organisms, and when the total MPN rating for fecal coliform organisms exceeds 230 per 100 grams and total plate count of 500,000 colonies per gram, the shellfish shall be deemed contaminated.

(b) When the bacteriological examination reveals that the shellfish do not conform to the bacterial standards prescribed, and the bacterial content is in excess of such standards, the persons shipping such shellfish shall be notified in writing. Thereafter and within the time specified in the notice, the Department shall examine additional samples. If the bacterial content is found again to be in excess of the prescribed standards, and the cause thereof has not been removed, a second written notification shall be sent to the shippers. It shall specify that further samples shall be examined within a given time and, if the bacterial content is again found to be in excess of the bacterial standards, all

shipments from the same source may be excluded from the City.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived from S.C. §164 Reg. 5. The standards prescribed by this subsection do not differ to any great extent from those in the former Sanitary Code. They offer, however, a more accurate method for evaluation of examination results. The Department of Health is cognizant of the adoption by the National Shellfish Sanitation Workshop, in August, 1958, of E. Coli and Standard Plate Count standards for shellfish control purposes, but in view of the interim nature of these standards, adopted by the Workshop pending the results of a study by the N.S.S.W. to be conducted during two oyster harvesting seasons, it has been decided to retain for the present the tests and the standards hitherto used by the Department.

Subsection (a) was amended by resolution adopted on May 16, 1968 which eliminated the phrase "equals 2400 per 100 ml. or more" and added the word "fecal" and the language "exceeds 230 per 100 grams and total plate count of 500,000 colonies per gram."

Subsection (b) is derived without substantive change from S.C. §164 Reg. 6(part). The last sentence in Reg. 6 on the power of the Department to exclude shellfish which have been suspected of containing pathogenic bacteria or which have been found adulterated or misbranded has been omitted here because the subject matter has been adequately covered by §§71.05, 3.03; 73.03, 73.05 and 101.09.

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ARTICLE 101 SHELLFISH AND FISH

§101.13 Dealers in shellfish, permits; exception.

(a) No person shall keep, sell or offer for sale fresh shellfish whether at retail or at wholesale without a retail or wholesale shellfish dealer's permit, respectively, issued by the Commissioner. No permit is required, however, of restaurants or other eating places selling shellfish for consumption on the premises.

(b) As used in this section, at wholesale means a sale other than a sale direct to the consumer.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §§164(2)(part) and (3)(part) and §164 Reg. 13(part). The two categories of

wholesale dealers in shellfish established by the Sanitary Code on the basis of quantities sold per week have been omitted here, but are covered in Article 5 in the section dealing with permit fees. Retailers selling less than 50 lbs. of shellfish per week, are no longer exempted from the permit requirement. See Article 5 on General Permit Provisions.

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§101.15 Sale of shellfish from pushcarts or other vehicles prohibited.

No shellfish shall be held, sold or offered for sale from a pushcart or other vehicle in any street or public place.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §150a(paragraph 3). As revised, the section prohibits the sale of shellfish from pushcarts or other vehicles without excepting those stationed in designated public markets. This change reflects the actual practice of the Department; for some time no applications have been taken for permits to sell shellfish from vehicles. In view of this prohibition, S.C. §150a Regs. 1-7 have been omitted as unnecessary. S.C. §150a(paragraphs 1 and 2) providing for the sale of fish on the streets in such a manner as not to create a nuisance, has been omitted as

unnecessary; the problem is dealt with in section 3.11 of this Code.

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§101.17 Sale of shellfish from unapproved or excluded sources or from unauthorized suppliers or of shellfish containing antiseptics or preservatives prohibited.

No dealer in shellfish or other foods shall purchase or have in his possession, sell or offer for sale (1) shellfish taken from unapproved or excluded sources or (2) shellfish which contain antiseptics or preservatives or (3) shellfish received from a person other than a holder of a wholesale shellfish dealer's permit or a shipper registered pursuant to §101.03. A holder of a wholesale dealer's permit for a place of business located in the Borough of Richmond may, however, purchase or otherwise receive shellfish taken by a bayman pursuant to §§101.53 through 101.61.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §§164(5), 165 Reg. 7(part), 164a Regs. 3(b) and 171(part). Mere receipt of shellfish into a dealer's premises has been held to constitute "possession" within the meaning of S.C. §164(5) (formerly S.C. §164(2)). **People v. Thompson and Potter Inc.,** 289 N.Y. 259, 45 N.E. 2d 432 (1942). "A contrary holding," said the court, "would render the enforcement of the Sanitary Code almost impossible and expose the consuming public to the dangers from which the Legislature sought to protect it."

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§101.19 Tagging generally.

No shipper shall ship or cause to be shipped into the City, nor shall any person sell, offer for sale or cause to be sold any shellfish, unless each shipping container is properly tagged in compliance with §§101.21, 101.23 and 101.25, and in the case of processed shellfish, unless each shipping container or receptacle is marked in compliance with §101.69.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §164 Regs. 8(part), 11 and 16(part). See §§101.31 and 101.33 on requirements for the labeling or marking of individual receptacles of shucked and frozen shellfish, respectively, when shipped inside

a shipping container, and §101.69 on requirements for processed shellfish. Wholesale dealers who purchase from bayman are to comply with the requirements of §101.61(a).

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§101.21 Tagging; shipper's tag.

(a) Every shipper shall affix to each shellfish shipping container a white or manila colored tag of waterproof quality, not less than two and five eighths inches by five and one half inches in size, made up in the printed form and setting forth the information as follows:

(b) On the front of the tag, the shipper shall insert in the blank spaces provided therefor:

(1) His state or province certificate or permit number preceded by the state abbreviation;

(2) The consignee's name and address;

(3) The contents together with the size and type of container;

(4) The date of shipment; and,

(5) In case of shell stock, the waters where taken and the bed number if any.

(c) On the back of the tag, the shipper shall insert his name and address.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §164 Reg. 8(part). Information as to waters where taken and the bed number is not required in case of shucked stock, as it is impractical in view of the practice of shucking establishments to blend stocks dredged from various grounds. For information to be supplied by wholesale dealers located in the City, see §101.23.

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§101.23 Tagging; wholesale dealer's duties; split lot tags.

(a) When a wholesale dealer in the City receives a container of shellfish, he shall immediately stamp, in the space provided therefor on the back of the detachable part of the shipper's tag, the date the shipment was received and enter the lot number he assigns to the shipment and the contents of the lot. When he sells such container, the wholesaler shall detach the detachable part of the shipper's tag and shall enter in the space provided on the stub remaining on the container his state of New York reshipper's permit number, or, if the reshipment is within the county where his place of business is located and no state of New York reshipper's permit is required, a code symbol which shall be assigned by the Department and the date of reshipment. The detached part of the shipper's tag shall be kept on file at the wholesale dealer's place of business for 60 days. The wholesale dealer need retain only one detachable part of the tags from any shipment consisting of several containers received on the same date from the same shipper and containing shellfish from the same source, if he assigns one lot number to the entire shipment and the detachable part of the tag retained by him shows the makeup of the entire lot. Every subsequent wholesaler who sells such container of shellfish shall enter his reshipper's State permit number or, if the reshipment is within the same county and no State permit is required, a

code symbol assigned by the Department, and the date of his reshipment in the space provided therefor on the remaining stub of the original shipper's tag.

(b) If a wholesale dealer divides the shellfish received in a single container into two or more containers, he shall also remove the stub of the original tag, stamp on the back thereof the date of splitting and keep it on file for 60 days as provided in subsection (a) of this section. Each split lot shall thereupon be provided with a split lot tag. The tag shall be securely attached. It shall be white or manila colored, of waterproof quality, two and one half inches by four and one fourth inches in size, made up in the printed form and set forth clearly and legibly the information as follows:

Form of front of split lot tag -

Form of back of split lot tag -

(c) The following information shall be inserted in the spaces provided therefor:

(1) The data appearing on the stub of the original tag;

(2) The contents, together with the size and type of container to which such split lot tag is attached; and,

(3) The name and address of the wholesale dealer splitting the container, in the space following words, "Original tag on file at premises of."

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived without substantive change from S.C. §164 Regs. 9(a) and 10(part).

Subsection (b) and (c) are derived without substantive change from S.C. §164 Reg. 9(b).

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§101.25 Tagging; retail dealer's duties.

No retail dealer shall remove the tag attached to the container until its contents have been sold or otherwise disposed of. He shall thereupon remove the tag and keep it on file in his place of business for a period of 60 days.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §164 Reg. 12. The requirement that the retailer attach his own tag to the container, other than the original container, in which the shellfish is exposed for sale is omitted as unnecessary.

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§101.27 Records.

Every wholesale dealer shall keep an accurate daily record showing the source of supply, the bed number if any, the name and address of the shipper, the date of receipt and the quantity and kind of every shipment of shellfish he receives. He shall also keep an accurate daily record showing how the shipments received by him were disposed of by giving the names and addresses of the buyers and quantities and kinds of shellfish sold to each. If the wholesale dealer splits the contents of a container into two or more parts, his record shall indicate how the shellfish have been split. All the records here required shall be clear and legible. They shall be kept on file in the place of business for a period of six months, separate and apart from any other records.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §164 Reg. 10(part).

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§101.29 Statistical data.

Every wholesale dealer shall prepare, on appropriate forms, monthly statements showing the amount of each kind of shellfish received by him during the period. The statements shall be kept on file on the premises.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §164 Reg. 15. Submission of monthly reports to the Department is no longer necessary. All that is henceforth required is that monthly data be kept on file. Under Article 3 of this Code, all records required to be kept pursuant to this Code may be inspected by the Department.

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24 RCNY 101.31

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§101.31 Shucked shellfish; information required on individual receptacles.

Individual receptacles of shucked shellfish, when shipped inside a shipping container, shall have permanently recorded thereon the shucker's name and address or his state or province certificate or permit number preceded by abbreviation of the name of the state or province.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new. Note that the receptacles when shipped individually and not packed into a shipping container are to be tagged pursuant to the provisions of §§101.19 through 101.25. Shucked shellfish which have been frozen are covered by §101.33. This section was amended by resolution of June 15, 1959, filed with the City Clerk on June 23,

1959, by substituting the word "or" for "and" before the words "his state or province certificate", thus providing for alternative means of marking the receptacles.

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§101.33 Frozen shellfish; labeling of individual receptacles.

Individual receptacles of frozen shellfish when shipped inside a shipping container shall be labeled or marked with the shipper's name, address, his state or province certificate or permit number preceded by the state or province abbreviation and the date of freezing. A code number which shall be filed with the Department may be used in lieu of the date.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §164 Reg. 16(part). Note that the receptacles when shipped individually and not packed into a shipping container are to be tagged pursuant to §§101.09 through 101.25.

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24 RCNY 101.35

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§101.35 Restaurants and other eating places to comply with article.

Restaurants or other eating places selling shellfish for consumption on the premises shall comply with the provisions governing the retail sale of shellfish. They shall not, however, be required to obtain a retail shellfish dealer's permit.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §164 Reg. 13.

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§101.37 Handling and shipping of shell stock; temperature; condition of con- tainers.

Shell stock shall be handled and shipped under such temperature conditions as will keep them alive. They shall be shipped only in thoroughly clean containers which are free of odors and from evidence of chemical or other materials remaining therein from previous use.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §164 Reg. 20(a).

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§101.39 Handling and shipping of shucked stock; temperature; separate containers for ice.

Shucked stock shall be continuously refrigerated at not less than 32°F nor more than 40°F. Outside containers shall be provided for ice and no ice or other foreign substance shall be allowed to come in contact with the shucked stock. All containers in which the shucked stock is packed shall be of metal or other material satisfactory to the Department. Containers intended for sale to the consumer shall be clean, new and adequately sealed. All other containers shall be reused only after they have been cleaned and sterilized. The fastening of a lid by means of nails is prohibited.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §164 Reg. 20(b). The maximum temperature at which shucked stock may be kept

is changed from 50°F to 40°F. This section permits the use of multi-use shipping containers if they are cleaned and sterilized before each reuse.

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24 RCNY 101.41

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§101.41 Handling and shipping of shucked stock; opening of container in transit.

No container of shucked stock shall be opened from the time it leaves the original shipper until it reaches the retail purchaser. A wholesale dealer, however, may remove the lid or cover for the purpose of exhibiting the contents to a customer, but in such case the contents shall not be disturbed, nor shall human hands be allowed to come in contact with the shucked stock. Repacking by an intermediate shipper is prohibited unless it is done in a shucking plant.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §164 Reg. 21.

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§101.43 Shucking plants; premises; separate rooms required.

A shucking plant shall consist of at least one room for the shucking of shellfish and a separate room or rooms for washing the shucked stock. The rooms shall not be used for any other purpose.

Notes:

This section is derived without substantive change from S.C. §164 Reg. 24.

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§101.45 Shucking plants; physical facilities.

(a) All benches upon which shellfish are opened or shucked shall be of smooth, hard, impervious and easily washable material and shall be kept in a clean and sanitary condition. When the benches are placed against a wall, they shall be provided with backs of monolithic construction or with tight joints extending at least 24 inches above the benches. The surface of the benches and backs shall be thoroughly cleansed with a suitable detergent and scalded with hot water or steam after each day's work or more frequently when necessary. The placing of shelves, boxes, lockers, hooks, nails or other devices for storing clothes or other articles above the work benches is prohibited.

(b) Shucking blocks shall be constructed of one solid piece, free from cracks or crevices.

(c) The use of wooden pails or buckets is prohibited.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsections (a) and (b) are derived without major substantive change from S.C. §164 Reg. 26. The words with "a suitable detergent" as well as "or more frequently when necessary" in subsection (a) are newly added.

Subsection (c) is derived without substantive change from S.C. §164 Reg. 34.

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§101.47 Shucking plants; operations; condition of oysters used for shucking.

No oysters with broken shells or dead oysters shall be used for shucking. Before oysters are placed on the opener's bench, the shells shall be cleansed of all foreign matter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §164 Reg. 30(part). The requirement that the cleaning be accomplished by dousing is omitted as obsolete.

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§101.49 Shucking plants; operations; blowing.

The apparatus used in blowing operations shall be clean and sanitary and of approved design and construction. Sediment shall be removed therefrom after each blow, which must not last longer than three minutes. The water used shall be taken directly from the pipe connected with the public water supply system and shall not be applied from tubs or other containers. A fresh supply of clean water shall be used for each blow.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §164 Reg. 31. The apparatus must be of a design and construction which shall meet the standards of Article 81 (See §81.33). The requirement that the water be of a certain degree of salinity is

omitted as obsolete.

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§101.51 Shucking plants; operations; human handling prohibited.

Oysters that have been opened and prepared for packing and shipping shall not be touched by human hands.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §164 Reg. 30(part).

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§101.53 Shellfish from City waters; general provisions.

Except as otherwise provided in, §§101.55 through 101.65, no person shall dig, rake, tong, dredge or otherwise remove any oysters, clams or mussels from the waters located in the City, nor shall any person deal in, have, keep, offer for sale, sell, give away or deliver any shellfish from such source for any purpose.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §164a(1). The power of the Board to regulate the taking of hard clams from waters located in the City has been upheld under Charter §556 which authorizes the Department to regulate all matters affecting health in the City. **DeRoche v. Osborne,** 179 Misc. 589, 37 N.Y.S. 2d 348

(Sup. Ct. Richmond Cty. 1942).

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24 RCNY 101.55

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§101.55 Shellfish from City waters; taking of hard clams from approved areas.

(a) A bayman may dig, rake, tong or otherwise remove and sell for food purposes, hard clams from the approved area of Raritan Bay, and Princess Bay, New York shown on the United States Coast Geodetic Chart Number 369, dated July 5, 1954, and bounded and described as follows:

(1) East of a line from the "Cupola" at Red Bank (Staten Island) passing through Black Buoy "39" and through Conaskonk Point to the "Tank" at Union Beach (New Jersey);

(2) South of a line from channel monument "42" to red bell "30" thence to the end of the bulkhead or breakwater at the southerly tip of Crooks Point;

(3) West of a line from the end of the bulkhead or breakwater at the southerly tip of Crooks Point through red bell "14" (Flashing Red) to the State line; and,

(4) North of the New York-New Jersey state boundary line.

(b) All hard clams from the approved area of Raritan Bay and Princess Bay must be taken only during daylight hours.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived from S.C. §164a(2)(part). Note that a bayman must hold a permit from the State Conservation Department. See §101.01(f). The boundaries of the approved areas are those prescribed by the Notice of June 9, 1955 of the State Conservation Department (Bureau of Marine Fisheries; Shellfisheries Management Unit); they are wider than those found in S.C. §164a(2)(part).

Subsection (b) is derived without substantive change from S.C. §164a Reg. 1.

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§101.57 Shellfish from City waters; taking of hard clams; requirements on boats.

(a) All boats, utensils, equipment and containers used for the taking and transportation of hard clams shall be kept clean at all times.

(b) Decks, holds or bins used for the storage of clams on boats shall not be washed with polluted water.

(c) Clams shall be stored on board a boat in such a manner that they will not be contaminated with drainage, bilge water or polluted water.

(d) Employees or other persons on such boats shall not discharge human bodily waste into the waters over shellfish areas.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §164a Reg. 4.

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24 RCNY 101.59

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§101.59 Shellfish from City waters; tagging of hard clam containers.

Baymen shall fill out a bayman's identification tag which shall be attached to each bag or container of hard clams taken from the approved area of Raritan Bay and Princess Bay immediately upon bringing the hard clams inshore. The tag shall state the name, address and the number of the permit issued by the State Conservation Department, the contents, the source of supply and the date of removal from the water.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §164a Reg. 2. Baymen are to supply their own tags; the State Conservation Department no longer furnishes them.

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24 RCNY 101.61

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TITLE IV ENVIRONMENTAL SANITATION

PART A FOOD AND DRUGS

ARTICLE 101 SHELLFISH AND FISH

§101.61 Shellfish from City waters; sale and shipment of hard clams.

(a) No bayman shall sell, deliver or ship hard clams from the approved area of Raritan Bay and Princess Bay, nor shall any person sell, offer for sale or cause to be sold such shellfish unless the bag or container thereof shall be tagged pursuant to the requirements of §101.59.

(b) No bayman shall sell, ship or deliver such hard clams except to a holder of a wholesale shellfish dealer's permit for a place of business located in the Borough of Richmond.

(c) A bayman who is a holder of a wholesale shellfish dealer's permit for a place of business located in the Borough of Richmond may sell, ship and deliver such hard clams to points outside the Borough of Richmond.

(d) A bayman who is a holder of a retail shellfish dealer's permit for a place of business located in the Borough of Richmond may sell such hard clams at retail from his place of business.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §164a Reg. 3.

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§101.63 Shellfish from City waters; transplanting of shellfish from non-approved areas of Raritan Bay and Jamaica Bay.

(a) Upon written permission of the Commissioner, a holder of a State Conservation Transplanting permit may remove oysters and hard clams for purification purposes from the non-approved areas of Raritan Bay, Princess Bay and Jamaica Bay, for transplanting in approved beds or grounds outside the City.

(b) Application for permission to transplant oysters and hard clams shall be made on a form furnished by the Department. The application shall contain the location of the beds or grounds from which the oysters or hard clams are to be taken, the time when they will be taken, the location of the approved bed or grounds in which they will be transplanted, the name of the boat or boats engaged in the operation and the name of the person in charge of the operation. The applicant shall submit together with the application a certified copy of his State Conservation Transplanting permit.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived without substantive change from S.C. §164a(3). Permission for transplanting is to be given by the Commissioner and not as hitherto by the Director of the Bureau of Food and Drugs.

Subsection (b) is derived without substantive change from S.C. §164a Reg. 5.

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ARTICLE 101 SHELLFISH AND FISH

§101.65 Shellfish from City waters; transplanting of shellfish from non-approved areas of Raritan Bay and Jamaica Bay; reports.

Every person engaged in removing hard clams and oysters pursuant to §101.63 shall file with the Department, within five days after the completion of the operation, a signed report showing in detail the operation for each day, the location of the beds or grounds from which the oysters or hard clams were taken, the quantity taken, and the location of the approved beds or grounds where the oysters or hard clams were transplanted.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §164a Reg. 7.

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24 RCNY 101.67

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ARTICLE 101 SHELLFISH AND FISH

§101.67 Processed shellfish regulated; registration of plants.

(a) No processed shellfish shall be held or offered for sale or sold unless the plant in which such processed shellfish has been prepared and packed is registered with the Department. Only a plant which has been approved by a state inspection service shall be eligible for registration.

(b) The Commissioner may refuse to accept the registration of any plant if its past observance of regulations pertaining to processed shellfish has not been satisfactory.

(c) Every registration, unless sooner revoked, shall terminate when the state inspection service withdraws its approval of the plant.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new.

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24 RCNY 101.69

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PART A FOOD AND DRUGS

ARTICLE 101 SHELLFISH AND FISH

§101.69 Processed shellfish; labeling requirements.

Shipping containers of processed shellfish as well as the individual cartons or packages in such containers shall be marked or bear a label stating the name and address of the packer or distributor, the contents, the lot number and the date of packing. A code symbol which shall be filed with the Department may be used in lieu of the date.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new. The lot number and the date of packing might facilitate tracing the product to its source in case of a health emergency.

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24 RCNY 101.71

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PART A FOOD AND DRUGS

ARTICLE 101 SHELLFISH AND FISH

§101.71 Dealers in fish; permits; exception.

(a) No person shall keep, sell or offer for sale fresh fish whether at retail or at wholesale without a retail or wholesale permit, respectively, issued by the Commissioner. No permit is required of persons selling less than 50 pounds of fish per week at retail or for wholesale dealers in other foods selling less than 200 pounds of fish per week.

(b) As used in this section, at wholesale means a sale other than a sale direct to the consumer.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §164(2)(part); see notes to section 101.13 **supra.**

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24 RCNY 101.73

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ARTICLE 101 SHELLFISH AND FISH

§101.73 Crab meat regulated.

No crab meat, other than crab meat which has been sterilized in a hermetically sealed package, shall be held or offered for sale or sold for human consumption unless the crab meat has been prepared, processed and packed in a plant that is under permit or approval of a federal inspection service or of a state inspection service approved by the Department. The certificate or permit number issued to the plant by the approved inspection service or the name and address of the packer or a code symbol acceptable to the Department, which will identify the packer, shall appear on each package. The Department may exclude, however, crab meat produced in a plant under permit or approval of an inspection service as herein provided, if such crab meat is suspected of containing pathogenic organisms or contains bacteria in excess of the following standards:

(1) More than 100 per gram of hemolytic staphylococcus taureus; or,

(2) More than 100 per gram of coliform organisms; or,

(3) More than 1,000 per gram of enterococci; or,

(4) More than 100,000 per gram in the total bacteria plate count.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §163a.

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24 RCNY Health Code Reg. 103.00

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ARTICLE 103 ESTABLISHMENTS ENGAGED IN PREPARING, PRESERVING OR SMOKING FISH

Health Code Reg. § 103.00 INTRODUCTORY NOTES

Article 103 contains provisions specifically applicable to establishments engaged in preparing, preserving or smoking of fish. These provisions apply in addition to, and are to be read together with, the provisions of Articles 71, 73 and 81 which apply to the food industry generally, and the provisions of Articles 131 and 135 which govern respectively buildings generally and commercial premises. The establishments regulated under this article require permits as wholesale food establishments or retail food establishments, pursuant to Articles 83 and 85 respectively.

Certain provisions concerning food establishments in the former Sanitary Code have been omitted. Separation of processing rooms required by S.C. §148 Reg. 86(1st paragraph) is no longer necessary; neither are the requirements formerly contained in S.C. §148 Regs. 96 and 97 that each smoked fish be labeled and that vehicles used in transportation of fish be marked.

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24 RCNY 103.01

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ARTICLE 103 ESTABLISHMENTS ENGAGED IN PREPARING, PRESERVING OR SMOKING FISH

§103.01 Facilities; metal drip pans.

In an establishment engaged in preparing, preserving or smoking fish, metal drip pans shall be provided and placed under racks of smoked fish in order to catch the drippings. The pans shall be kept clean and in good repair.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §148 Reg. 89.

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24 RCNY 103.03

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ARTICLE 103 ESTABLISHMENTS ENGAGED IN PREPARING, PRESERVING OR SMOKING FISH

§103.03 Cleaning of fish after gutting.

After gutting, fish shall be cleaned under a stream or flow of clean potable water.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §148 Reg. 90.

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24 RCNY 103.05

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§103.05 Brining of fish.

Only clean refined salt, or filtered brine of a temperature not exceeding 38 degrees Fahrenheit, shall be used in the brining of fish.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §148, Reg. 92. This section was amended by resolution adopted on April 13, 1971 to conform its refrigerated temperature standard for the brining of fish with Title 21-Food and Drugs, Part 121, Code of Federal Regulations.

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24 RCNY 103.07

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ARTICLE 103 ESTABLISHMENTS ENGAGED IN PREPARING, PRESERVING OR SMOKING FISH

§103.07 Refrigeration of fish.

Smoked whitefish, smoked butterfish, smoked carp or fish similarly salted and lightly smoked shall be cooled to a temperature of 38 degrees Fahrenheit or below within three hours after smoking, and shall be kept thereafter at a temperature not exceeding 38 degrees Fahrenheit at all times while being stored, transported or held for sale. The words "KEEP REFRIGERATED AT 38 DEGREES FAHRENHEIT OR BELOW UNTIL CONSUMED" shall appear clearly and conspicuously on all shipping containers, retail packages and shipping invoices.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §148 Regs. 93 and 97(part). It was amended by resolution adopted on November

19, 1970, which changed the cooling temperature from 50 degrees Fahrenheit to 38 degrees Fahrenheit and added the last sentence. As thus amended the section conforms with Title 21, Food and Drugs, Part 121, Code of Federal Regulations.

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24 RCNY 103.09

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PART A FOOD AND DRUGS

ARTICLE 103 ESTABLISHMENTS ENGAGED IN PREPARING, PRESERVING OR SMOKING FISH

§103.09 Use of preservatives for fish restricted.

Except as otherwise provided in §103.10, only salt, sugar, wood smoke, vinegar, pure spices, spice flavorings and sodium benzoate may be used as fish preservatives. The quantity of sodium benzoate shall not exceed one-tenth of one per cent by weight of the product.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §148 Reg. 95. Sodium benzoate in the quantities mentioned may be used henceforth as a preservative. Sodium and potassium nitrates and nitrites, previously listed as permissible preservatives, were deleted from this section by resolution dated June 15, 1959, filed with the City Clerk June 22, 1959. The section

was amended by resolution adopted on November 19, 1970, which added the phrase "Except as otherwise provided in §103.10." Section 103.10 which was amended concurrently permits the limited use of nitrates and nitrites.

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24 RCNY 103.10

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ARTICLE 103 ESTABLISHMENTS ENGAGED IN PREPARING, PRESERVING OR SMOKING FISH

§103.10 Use of nitrates and nitrites in fish prohibited; exception.

(a) Except as otherwise provided in subsections (b) and (c) of this section the use of the salts of nitrate and the salts of nitrite in fish for any purpose is prohibited.

(b) In processing smoked chub the food additive sodium nitrite may be used in combination with salt (NACI). The brining procedure shall be controlled in such a manner that the water phase portion of the edible portion of the finished smoked product has a salt (NACI) content of not less than 3.5 per cent, as measured in the loin muscle, and the sodium nitrite content of the edible portion of the finished smoked product as not less than 100 parts per million and not greater than 200 parts per million, as measured in the loin muscle.

(c) The food additive sodium nitrate may be used with or without sodium nitrite and/or sodium chloride, in smoked, cured sable fish, smoked, cured salmon, and smoked, cured shad. However, the level of sodium nitrate shall not exceed 500 parts per million and the level of sodium nitrite shall not exceed 200 parts per million, in the finished

product.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section was added by resolution of June 15, 1959, filed with the City Clerk, June 22, 1959 (also adopted as S.C. §148 Reg. 95a). It was amended by resolution adopted on November 19, 1970, which added the words "Except as otherwise provided in subsections (b) and (c) of this section" to subsection (a) and added subsections (b) and (c). The section as thus amended conforms with Title 21, Food and Drugs, Part 121, Code of Federal Regulations.

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24 RCNY 103.11

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ARTICLE 103 ESTABLISHMENTS ENGAGED IN PREPARING, PRESERVING OR SMOKING FISH

§103.11 Use of coloring matter on fish prohibited.

The use of any matter which imparts color to fish is prohibited.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §148 Reg. 94.

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24 RCNY Health Code Reg. 111.00

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TITLE IV ENVIRONMENTAL SANITATION

PART A FOOD AND DRUGS

ARTICLE 111 MILK AND MILK PRODUCTS

Health Code Reg. § 111.00 INTRODUCTORY NOTES

Article 111 dealing with milk and milk products and certain dairy products, and the related articles in this field, Article 113, Frozen Desserts, and Article 115, Formula Milk for Infants, constitute a revision of approximately one-fifth of the former Sanitary Code.

Article 111 is derived from S.C. §§2(31) through (50), 151 151a, 151c, 152, 153, 154, 155, 155a and Regulations, 155b, 155c and Regulations, 155d, 155e, 156 and Regulations, 157a, 158, 159, 159a, 159b and Regulations, 159c and 179.

The problem of milk control for New York City is one of tremendous magnitude. Every day New Yorkers consume about 3,200,000 quarts of fluid milk and, as noted in the Department's 1955-56 Annual Report, "the City's milk comes from 1,000,000 cows on 47,000 dairy farms scattered over New York, New Jersey, Vermont and parts of Pennsylvania. I t flows through 380 country milk stations and 35 bottling-pasteurizing plants within the City."

The New York City Board of Health has long played a pioneering role in protecting the public from bad milk and in assuring a continued supply of safe and wholesome fluid milk and milk products. The prevalence of milk-borne diseases, particularly infant diarrhea, was largely responsible for the inauguration of farm inspections in 1912. The success of the milk control program for New York City is demonstrated by the changed epidemiological picture; there have been no milk-borne diseases in New York City for more than a quarter of a century. As a result of this improvement of conditions, however, the regulations contained in this article of the revised Code are more restrictive than is realistically required by current needs. New technological advances, such as the almost universal use of mechanical refrigeration in retail stores and in the home, the development of effective means of in-place cleaning of equipment, and the more recent use of bulk holding tanks on dairy farms, and its concomitant effects on marketing practices and inspection of the raw milk supply, make appropriate further revision, along the lines outlined in a preliminary draft of this article. (Second Draft of Article 101 of the revision of New York City Sanitary Code, Milk and Milk Products, dated April, 1958). It is the goal of the Board of Health to assure a continued supply of safe and wholesome milk and milk products, produced under modern standards of sanitary science, without, at the same time, imposing restrictions on the farmer, the milk processor, and the distributor of milk and milk products, which may inhibit the further technological development of dairy science. This was emphasized in an official statement of the Board of Health of February 23, 1959 which reads in part:

"The Board has agreed that they will give further study to a number of Code requirements, which in the light of current knowledge and the best modern public health practices, may no longer be necessary. Elimination of such provisions now, the Board agreed, may substantially affect economic, trade and labor practices in the milk industry. For that reason, the Board was not willing to eliminate them without further study and consideration. Therefore, after adoption of the revised Code, the Board plans to review again, in detail, within the next year, those regulations of the milk and ice cream sections that do not appear to be necessary for public health protection."

Article 111 is concerned with virtually every health aspect of milk control, from the dairy cow on the farm through wholesale distribution of the finished product. In addition, there are specific requirements on containers and methods of dispensing milk and milk products to the consumer. The materials have been arranged so as to facilitate their use by Department personnel and the general public, including the dairy industry. The article is divided into three components: (1) general and administrative control, (2) standards for the product, and (3) control of the process of milk production.

Article 111 was substantially revised by resolutions of the Board of Health adopted on January 16, 1969 to provide greater uniformity with the United States Public Health Service Grade A Pasteurized Milk Ordinance of 1965 add with Part 3 of the New York State Sanitary Code (as revised concurrently with this resolution). Such revision will also facilitate reciprocity agreements between States and between the City and State of New York to reduce duplication of inspection, remove trade barriers and permit freer flow ofmilk and milk products which meet the uniformly high standards prescribed by this Code, the State Sanitary Code and the 1965 Public Health Service Grade A Pasteurized Milk Ordinance. These resolutions, therefore, go far in implementing the intent of the Board as hereinabove expressed.

Applicable sections of Article 111 were amended by resolution adopted on January 16, 1975 to provide standards for and permit the sale of ultra-pasteurized milk and milk products in conformance with the recently promulgated Federal standards of identity and quality therefore (21 CFR Part 18, revised September 18, 1973).

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24 RCNY 111.01

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PART A FOOD AND DRUGS

ARTICLE 111 MILK AND MILK PRODUCTS

§111.01 Scope.

(a) In addition to the provisions of this article, Articles 81, 131, 135, 143 and 151 of this Code apply to places in which milk or milk products are produced, handled, kept or stored, including but not limited to a dairy farm, transfer station, receiving station or milk processing plant, and Articles 71 and 73 of this Code apply to milk, milk products and food used in the production of milk products.

(b) Except as otherwise provided in §111.21, this article does not apply to the processing of (1) milk, cream, half and half, condensed milk, condensed skimmed milk, flavored milk drink or ice cream mix which has been sterilized and packed in hermetically-sealed containers of (2) sweetened condensed milk or sweetened condensed skimmed milk to be used for manufacturing purposes only, other than for manufacture of ice cream mix, frozen desserts or milk products, which is kept in containers of not less than ten gallons and which during manufacture is heated to at least 200°F for at least 15 seconds or its equivalent.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is new. The sanitary condition of places in which mild and mild products are sold, offered for sale, served or stored are governed also by the general food establishment provisions of this article (Article 81). Thus, S.C. §156 Regs. 140, 141, 142, 143,145(last sentence) and 149 are here omitted but are covered in the cited articles. See comparison, on the question of State control of milk sanitation, Public Health Law §1400. The subsection was amended by resolution adopted on January 16, 1969 to additionally apply its provisions to transfer stations.

Subsection (b) was derived without substantive change from S.C. §155(2) and §156 Reg. 5(3). Some detail regarding the type and color of containers of the named products for manufacturing purposes is omitted. The subsection was amended by resolution adopted on October 18, 1966 by adding milk, cream and half and half to the list or products to which Article 111 is not applicable. The subsection was further amended by resolution adopted on January 16, 1969 to amend the list of products to which Article 111 is not applicable by changing "flavored drink" to "flavored milk drink" in such list.

In People ex rel Cox v. Justices of the Court of Special Sessions, 7 Hun. 214 (Sup. Ct. General Term 1876), a conviction under the Sanitary Code for selling adulterated milk was upheld against constitutional objections. The court held that the Legislature had validly delegated to the Board of Health the power to enact such ordinances. Then in **Polinsky v. People,** 11 Hun. 390 (Sup. Ct. General Term 1877) **aff'd.,** 73 N.Y. 65 (1878) the ordinances were upheld notwithstanding the existence of a State statute covering the same offenses but prescribing a lesser penalty.

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PART A FOOD AND DRUGS

ARTICLE 111 MILK AND MILK PRODUCTS

§111.03 Definitions.

When used in this title:

(a) Dairy farm means any place or premises where one or more cows or goats are kept and from which a part or all of the milk or milk products is provided, offered for sale or sold to a transfer station, receiving station or milk processing plant.

(b) Milk means the lacteal secretion of a cow or goat. Milk is not considered fit for human consumption unless (1) it is whole, fresh and clean, (2) is obtained by the complete milking of healthy cows which have been properly fed and kept as required by this Code or other applicable law or regulation, (3) is practically colostrum free and has not been obtained 15 days before and five days after calving, and (4) meets all other requirements of this Code.

(c) Prepasteurized milk means milk to be pasteurized or sterilized before sale to consumers.

(d) Milk product means cream, sour cream, cultured milk, cultured milk products, sterilized milk, sterilized milk products, enzyme milk, flavored milk drink, half and half, low sodium milk, modified milk, skimmed milk, modified skimmed milk, low fat milk or modified low fat milk. The term includes such products (1) whether sold or distributed as Approved, Certified or Certified Raw pursuant to this article or (2) whether manufactured as condensed, evaporated or concentrated or as sweetened condensed, sweetened evaporated or sweetened concentrated, but does not include any product to which this article does not apply as specified in §11.01 (b).

(e) Receiving station means any place, premises or establishment, other than a bulk processing plant, to which prepasteurized milk is brought from one or more dairy farms for the purpose of collecting the same for transportation to a transfer station, milk processing plant or frozen desserts plant.

(f) Transfer station means any place, premises or establishment, other than a receiving station, where milk or a milk product is transferred directly from one transport tank to another.

(g) Milk processing plant or processing plant means any place, premises or establishment, other than a frozen desserts plant, in which milk or a milk product is pasteurized, sterilized or otherwise processed.

(h) Pasteurization means the process of heating every particle of milk or a milk product continuously for the time and at the temperature specified in § 111.25 and cooling as required by such section; and pasteurized means, when applied to milk or a milk product, that the same has been subjected to this process.

(i) Ultra-pasteurization means the process of heating every particle of milk or milk product continuously for the time and at the temperature specified in §111.25 and cooling as required by this section; and ultra-pasteurization means, when applied to milk or a milk product, that the same has been subjected to this process.

(j) Sterilization means the process of heating milk or a milk product sufficiently to destroy the microorganisms present and packaging in a hermetically sealed container; and sterilized means, when applied to milk or a milk product, that the same has been subjected to this process.

(k) Hermetically-sealed means sealed air-tight by a process of fusion, wedging or crimping, or by any other method approved by the Department.

(l) Sanitization means the process of applying any effective method or substance acceptable to the Department to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable, provided such treatment does not adversely affect the milk or milk product, the health of the consumer, or the equipment, utensil or container to which it is applied.

(m) Misbranded milk and milk products means milk and milk products (1) the labeling of which is false or misleading in any particular; or (2) which do not conform to their definitions as contained in this Code; or (3) which are not labeled in accordance with §111.61 of this article; or (4) which do not comply with §73.05 of this Code.

(n) Milk producer means any person who operates a dairy farm and supplies, offers for sale or sells milk or a milk product to a transfer station, receiving station or milk processing plant.

(o) Milk distributor means any person holding a permit to sell milk or a milk product to consumers, storekeepers or other distributors.

(p) Official laboratory means a laboratory operated by a governmental agency which performs biological, chemical or physical examinations of milk or milk products.

(p) Officially designated laboratory means a commercial laboratory, or milk industry laboratory authorized by the supervising state agency to perform examinations on samples of milk or milk products submitted by or for such agency.

(q) Person means any individual, partnership, corporation, company, firm, trustee or association.

(r) Qualified inspector means a person who holds a certificate issued by the State Commission or his duly designated representative qualifying such person to perform inspections of dairy farms for operators of transfer stations, receiving stations or milk processing plants.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section was revised and renumbered by resolution adopted January 16, 1969 to provide greater uniformity with related definitions of the State Sanitary Code and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance.

Subsection (a), dairy farm, was amended by the resolution adopted January 16, 1969.

Subsection (b), milk is derived without substantive change from S.C. §2(31) and S.C. §156(2).

Subsection (c), prepasteurized milk, is new and has been substituted for the former term, raw milk, in this Article.

Subsection (d), milk products, is derived from S.C. §2(44). Homogenized milk is milk, not a milk product; the same is true of Vitamin D milk. Both terms are omitted. The term "Vitamin D milk products" is omitted. Formula milk is here omitted but is covered by Article 115. Definitions of dried milk (S.C. §2(36)) and dried skimmed milk (S.C. §2(37)) are omitted. Dried milk products are not regulated by this article but are subject to the general food provisions of this title. S.C. §2(34) and (35), definitions of condensed milk and condensed skimmed milk are covered by the instant definition and are omitted as separate definitions. Cultured milk, sterilized milk products, low fat milk and modified low fat milk were added and flavored drink was amended to flavored milk drink by the resolution adopted January 16, 1969.

Subsection (e), receiving station, was amended by the resolution adopted January 16, 1969.

Subsection (f), transfer station, is new.

Subsection (g), milk processing plant or processing plant, was derived from former subsection (c) and amended by the resolution adopted January 16, 1969.

Subsection (h), pasteurization, is new.

Subsection (i), sterilization, is new.

A new subsection (i) was added and former subsections (i) through (r) were relettered to be subsections (j) through (s) by resolution adopted on January 16, 1975 to provide standards for and permit the sale of ultra-pasteurized milk or milk products in conformance with the recently promulgated Federal standards of identity and quality therefor (21 CFR Part 18, revised September 28, 1973).

Subsection (j), hermetically-sealed, was added as subsection (f) by resolution adopted on October 18, 1966 and renumbered by resolution adopted January 16, 1969.

Subsection (k), sanitization, is new.

Subsection (l), misbranded milk, is new.

Subsection (m), milk producer, is new.

Subsection (n), milk distributor, is new.

Subsection (o), official laboratory, is new.

Subsection (p), officially designated laboratory, is new.

Subsection (q), person, is new.

Subsection (r), qualified inspector, is new.

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24 RCNY 111.05

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TITLE IV ENVIRONMENTAL SANITATION

PART A FOOD AND DRUGS

ARTICLE 111 MILK AND MILK PRODUCTS

§111.05 Transfer stations, receiving stations and milk processing plants; Class A permits.

(a) No person shall operate a transfer station, receiving station or milk processing plant without a permit issued by the Commissioner, and no person shall ship milk or a milk product into the City unless the transfer station, receiving station or milk processing plant from which the milk or milk product was obtained operates pursuant to such a permit issued by the Commissioner. Permits issued pursuant to this section shall be known as Class A permits. A Class A permit shall not entitle the holder thereof to sell, transport or distribute milk or milk products, other than prepasteurized milk or prepasteurized milk products, in the City of New York, unless he shall hold in addition, a Class B permit issued under §111.07.

(b) No Class A permit shall be issued until the Department is satisfied, after inspection, that the transfer station, receiving station or milk processing plant will be operated in accordance with the requirements of this code or unless the New York State Department of Health has certified that such stations or plants are and will continue to be operated in accordance with the requirements equivalent to those prescribed in this code and that the milk or milk products are

obtained from dairy farms approved as a source of supply pursuant to §111.13.

(c) Upon receipt of laboratory or inspection report or other findings that milk or milk products shipped into the City fail to meet the standards of this code, or where milk or milk products are shipped into the City during any emergency situation which may affect the sanitary quality of such milk or milk products, the Commissioner may authorize such inspections of the transfer station, receiving station or milk processing plant involved as, in his opinion, are necessary. The permittee shall bear the costs of such inspections as specified in §5.07 of this code.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. § 155(1) through (3)(part) and S.C. § 156 Regs. 1, 2(c)(part) and 166(part). It sets forth Class A permit requirements for receiving stations and milk processing plants.

Agriculture and Market Laws Article 21 requires all "milk dealer's" to obtain a State license. The quoted term is defined in Agriculture and Markets Law §2 53. On other required State licenses for persons in charge of receiving stations, milk plants and testing operations, see Agriculture and Markets Law §§57 and 57-a. The Public Health Law §1420 requires a permit to import milk and cream into New York State.

In **People v. Borden's Condensed Milk Co.,** 165 App. Div. 711,151 N.Y.S. 547 (2d Dept. 1915), **aff'd** 216 N.Y. 658, 110 N.E. 1046 1915), it was held that a permit issued by the Department of Health to operate a pasteurizing plant did not make lawful the public nuisances created by noisy processes.

Penalties for failure to obtain a license to operate a milk gathering station as required by the Agriculture and Markets Law were imposed in: **People v. Perretta,** 253 N.Y. 305,171 N.E. 72, 84 A.L.R. 636 (1930); **People v. Beakes Dairy Co.,** 222 N.Y. 416, 119 N.E. 115, 3 A.L.R. 1260 (1918); **People v. Shoemaker,** 228 App. Div. 314,239 N.Y.S. 71 (4th Dept. 1930), aff'd, without opinion 254 N.Y. 567, 173 N.E. 869 (1930); also see **Baldwin v. Burdick,** 243 App. Div. 250, 276 N.Y.S. 675 (3rd Dept. 1935).

For cases dealing with the power of the Commissioner of Agriculture to issue, deny the issuance of, or revoke a license to operate a receiving station see: **Application of Dairymen's League Co-Operative Assn. Inc.,** 282 App. Div. 69, 121 N.Y.S. 2d 857 (3d Dept. 1953), appeal dismissed, 306 N.Y. 595, 115 N.E. 2d 825 (1953); **Friendship Dairies, Inc. v. DuMond,** 284 App. Div. 147, 131 N.Y.S. 2d 51 (3rd Dept. 1954).

Subsection (a) was amended by resolution adopted on October 19, 1967, which added the last sentence.

Subsection (a) was further oriented by resolution adopted January 16, 1969 to additionally apply its provisions to transfer stations and to change the term raw milk to prepasteurized milk.

Subsection (b) was amended by resolution adopted January 16, 1969 to authorize the Commissioner to accept certification from the State Health Department that an applicant for a Class A permit complies with equivalent requirements in lieu of Department inspection for compliance with this code. This will enable the Department to phase out its country milk inspection program. Such amendment additionally applied the provisions of this subsection to transfer stations. It was further amended by resolution adopted on October 22, 1970, which deleted the phrase "Except as provided in subsection (c) of this section."

Subsection (c) was amended by resolution adopted on October 22, 1970, which eliminated the provisions relating to acceptance of certification by local health authorities of milk processing plants located outside the City shipping milk or milk products into the City for manufacturing purposes. The resolution also added the present provisions relating to

inspections of transfer stations, receiving stations and milk processing plants located outside the City.

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PART A FOOD AND DRUGS

ARTICLE 111 MILK AND MILK PRODUCTS

§111.07 Distribution of milk and milk products; Class B permit.

(a) No person shall possess, offer for sale, sell, give away, transport, whether for himself or others, deliver or distribute milk or a milk product without a Class V permit issued by the Commissioner pursuant to subsection (b) of this section. No such permit is required, however, for the sale or distribution of milk or a milk product directly to the consumer at a retail establishment.

(b) The Commissioner may issue a Class B permit to a person meeting the following requirements and under the following conditions and limitations:

(1) The Department is satisfied that the operations for which the permit is to be issued will be carried out in the manner required by this Code;

(2) The permittee will maintain or operate a depot which meets the requirements of §111.09, or use the facilities of

a milk processing plant or depot under a Class A or Class B permit, respectively, issued pursuant to this article as evidenced by a written authorization, which shall accompany his application, to use such facilities;

(3) He shall transfer milk or milk products only at the milk processing plant or depot concerned; and,

(4) He shall keep separate daily records of the type, quantity and source of all products purchased, stored or returned to the milk processing plant or depot concerned.

(c) A Class A or Class B permittee shall immediately notify the Department when a Class B permittee no longer uses facilities of the milk processing plant or depot operated by such Class A or B permittee. A Class A or Class B permittee who has authorized a Class B permittee to use his facilities and the person so authorized shall be jointly and severally responsible for all violations of this Code occurring at such facilities.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §155 (1) through (3)(part) and S.C. §156 Reg. 3(part). Some unnecessary detail is eliminated. This section and the preceding and following sections continue the Class A, B and C permit structure and depot requirement of the former code.

The right of the Board of Health to require a permit for the sale of milk was upheld in **People ex rel Lieberman v. Vandecarr,** 199 U.S. 552,26 Sup. Ct. 144,50 L. Ed. 305 (1905), affirming 175 N.Y. 440, 67 N.E. 913 (1903). On the right of the Commissioner or Board to revoke a permit issued under this section see: **Stracquadanio v. Dept. of Health,** 285 N.Y. 93, 32 N.E. 2d 806 (1941) (also holding constitutional the limitation on the number of Class C permittees); **People, ex rel Lodes v Dept. of Health,** 189 N.Y. 187, 82 N.E. 187 (1907); **Metropolitan Milk and Cream Co. v. City of New York, et al.,** 113 App. Div. 377, 98 N.Y.S. 894 (1st Dept. 1906), **aff'd** without opinion 186 N.Y. 533, 78 N.E. 1107 (1906); **Silverman v. Dept. of Health,** 252 App. Div. 678, 300 N.Y.S. 979 (1st Dept. 1937); **Henry Morris Inc. v. Dept. of Health,** 234 App. Div. 99, 254 N.Y.S. 99 (1st Dept. 1931), appeal dismissed 260 N.Y. 660, 184 N.E. 135 (1931); **People ex rel Agins and Klugerman, Inc. v. Board of Health Of New York City,** 197 App. Div. 562, 189 N.Y.S. 507 (1st Dept. 1921); **In re Morris,** 128 Misc. 280,219 N.Y.S. 143 (Sup. Ct. N.Y. Co. 1926), **aff'd** without opinion 219 App. Div. 810, 220 N.Y.S. 890 (1st Dept. 1927).

For cases dealing with the power of the Commissioner of Agriculture and Markets to revoke a license to sell milk issued under the Agriculture and Markets law or to deny an application for such license see: **Elite Dairy Products Inc. v. Ten Eych,** 271 N.Y. 488, 3 N.E. 2d 606 (1936); **Application of Eckelman,** 283 App. Div. 276, 127 N.Y.S. 2d 287 (3d Dept. 1954); **Application of Williams,** 282 App. Div. 76, 121 N.Y.S. 2d 830 (3d Dept. 1953); **Application of Kraft Cheese Co., Inc.,** 263 App. Div. 761, 30 N.Y.S. 2d 920 (3d Dept. 1941); **Application of Linden Farms Milk and Cream Co. Inc.,** 257 App. Div. 737, 15 N.Y.S. 2d 658 (3d Dept. 1939); **People ex rel Levy Dairy Co. v. Wilson,** 179 App. Div. 416, 166 N.Y.S. 211 (3d Dept. 1917); **Dellwood Dairy Co., Inc. v. Brown,** 106 N.Y.S. 2d 749 (Sup. Ct. Nassau Co. 1951).

For cases dealing with license requirements governing milk dealers imposed by other cities and towns in the state of New York see: **Langs Creamery, Inc. v. City of Niagara Falls,** 251 N.Y. 343, 167 N.E. 464 **(1929); People ex rel Larrabee v. Mulholland,** 82 N.Y. 324, 37 A.R. 568 (1880); **People ex rel Schulz v. Hamilton,** 188 App. Div. 783, 177 N.Y.S. 222 (4th Dept. 1919); **Village of Herkimer v. Potter,** 124 Misc. 57, 207 N.Y.S. 35 (Sup. Ct. Herkimer Co. 1924); **People ex rel Shelter v. Dwen et al.,** 66 Misc. 24, 116 N.Y.S. 502 (Sup. Ct. Monroe Co. 1909); **People ex rel Staub v. Gilman,** 103 N.Y.S. 954 (Sup. Ct. Monroe Co. 1907).

Subsection (a) was amended by resolution adopted on October 19, 1967 which added the word "possess' and the

phrase "transport deliver." The resolution also eliminated the reference to Class A and Class C permits.

Subsection (b) was amended by resolution adopted on February 26, 1962 to make it optional for a Class B permittee to use his own depot or the facilities of a Class A permittee or another Class B permittee. The resolution also added paragraphs 3 and 4. Milk permit holders are required to comply with federal, state and other city laws. An executive order of the Commissioner makes it mandatory for an applicant for a milk permit to submit with the application proof that he has obtained a license from the State Department of Agriculture and Markets.

Subsection (c) was repealed by resolution adopted on October 19, 1967.

Subsection (d) was amended by said resolution to require a Class A or Class B permittee to notify the Department when a Class B permittee no longer uses the facilities of such Class A or Class B permittee. It also added the provision that joint occupants of a milk processing plant or depot shall be jointly and severally responsible for violations occurring at such facilities.

Subsection (d) was relettered subsection (c) and as so relettered was amended by resolution adopted on October 19, 1967 which eliminated reference to Class C permits.

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PART A FOOD AND DRUGS

ARTICLE 111 MILK AND MILK PRODUCTS

§111.09 Distribution of milk and milk products; depots.

A depot, whether or not part of a milk processing plant, shall have a properly constructed refrigerating room with a floor area and height sufficient to store products in a sanitary manner satisfactory to the Department. A refrigerating room constructed after August 1, 1939, shall be of such larger floor area as will permit all milk or milk products stored in the depot to be placed in the room as to allow for at least a two foot passageway between each four rows of stacked cases or cans but in no event shall the room have less than 100 square feet of floor space. If milk or milk products are handled in bulk, the depot shall have a washroom and, if splitting of milk, or splitting, standardization or bottling of milk products, or dumping of such products from bottles is performed, it shall have a milk handling room. A depot shall meet all additional applicable requirements of this Code. Class A and Class B permittees shall store all milk and milk products, except when transported for sale or distribution, at such depot under proper refrigeration and at no other place.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §156 Reg. 3(2), (3) and (4)(a) and (b). Some of the detail has been eliminated. See also §111.07 concerning Class B and C permits.

This section was amended by resolution adopted on February 26, 1962 by adding the requirement that all milk and milk products, except when transported, shall be stored only at depots under proper refrigeration. The resolution also eliminated the restriction against joint occupancy.

This section was further amended by resolution adopted on October 19, 1967 which eliminated the reference to Class C permittees.

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PART A FOOD AND DRUGS

ARTICLE 111 MILK AND MILK PRODUCTS

§111.11 Distribution of milk and milk products; vehicles; vehicle identification.

(a) All vehicles used for transportation of pasteurized milk and milk products shall be constructed and operated so that the milk and milk products are maintained at 50°F or less and are protected from sun, freezing, and contamination.

(b) No vehicle, other than a tank truck, shall be used in the transportation or delivery of milk or a milk product unless an identifying plate has been issued by the Department. The plate shall be securely attached to the right side of the vehicle and shall be visible at all times. Plates shall be issued only for vehicles operated by permittees under this article. The issuance of identifying plates pursuant to this section shall be subject to applicable provisions of Article 5 of this Code relating to permits.

(c) No milk producer or milk distributor shall transfer, dip or ladle milk or milk products from one container or tank truck to another on the street, in any vehicle, store, or in any place except a milk processing plant, receiving station, transfer station or milk-house especially used for that purpose.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is new.

Subsection (b) is derived without substantive change from S.C. §155(4) and §156 Reg. 7(2). Details relating to expiration and revocation are here omitted but are covered by Article 5.

Subsection (c) is new.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.13 General requirements; approval and supervision of dairy farms.

(a) No Class A permittee shall receive prepasteurized milk directly from a dairy farm unless the Department has approved the dairy farm as a source of supply. No such approval shall be given unless the Department is satisfied that such dairy farm meets the standards of §161.25, if located within the City, or §§111.63 through 111.73, if located outside the City or unless the New York State Department of Health has certified that such dairy farm is and will continue to be operated in accordance with requirements equivalent to those prescribed in this Code.

(b) A Class A permittee shall reinspect a dairy farm which has been approved as a source of supply by the Department and which ships prepasteurized milk directly to the plant or station concerned. Re-inspections shall be made by a qualified inspector designated or employed by such plant or station at least once every six months. The qualified inspector shall file with the Class A permittee concerned an inspection report containing such information on the operation and sanitary condition of the dairy farm as the Department may require.

(c) When a Class A permittee receives an inspection report from one of its qualified inspectors, which reveals that the milk from a dairy farm does not meet the standards of this Code, or that the dairy farm is operating in violation of the Code, the permittee shall immediately cease to accept milk from such dairy farm until further inspection by a qualified inspector designated by the permittee and receipt of an inspection report reveals that the milk meets the standards of this Code or that the dairy farm is again operating in accordance with the Code. Inspection reports, a record of every dairy farm from which milk is obtained and a record of rejection of milk shall be maintained by the milk processing plant, receiving station or transfer station concerned for at least two years.

(d) When, in the opinion of the Department, a dairy farm fails to meet applicable requirements of this Code, the Department may withdraw its approval of the dairy farm as a source of supply. No Class A permittee shall thereafter receive milk from such dairy farm until the Department again approves it as a source of supply.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §156 Regs. 2, 5(1) and 8. Dairy farms are to be reinspected at least twice a year. The former code required industry inspection of dairy farms on an annual basis only. The usual "deck inspection" of milk from each dairy farm is not practicable under the newer bulk holding tank and pick-up arrangements, so that the extra reinspections are necessary to insure a good supply of milk. If, as a result of a reinspection, it is ascertained that the dairy farm is not meeting the standards of this Code, acceptance of milk therefrom must cease until such time as further reinspection shows effective compliance with Code standards.

The right of a Department inspector to order a receiving station or processing plant not to accept milk from an unapproved farm was upheld in **Bellows v. Raynor,** 207 N.Y. 389, N.E. 181 (1913).

This section was amended by resolution adopted on January 16, 1969 to delete former subdivision (d) thereof and to conform its provisions to other amendments of this article adopted on the same date and designed to provide greater uniformity with the State Department of Health requirements and those of the 1965 U.S. Public Health Grade A Pasteurized Milk Ordinance and to authorize the Department to approve a dairy farm on the basis of certification by the State Health Department that such farm complies with requirements equivalent to those prescribed in this Code.

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PART A FOOD AND DRUGS

ARTICLE 111 MILK AND MILK PRODUCTS

§111.15 General requirements; exclusion of unfit milk and milk products or milk or milk products obtained from unapproved sources.

(a) No person shall possess, offer for sale, sell, give away or distribute milk or a milk product if it is obtained from a transfer station, receiving station or milk processing plant or other source for which no permit has been issued pursuant to §§111.05 or 111.07 or if it is excluded from sale or distribution pursuant to this article.

(b) The Department may order that milk or a milk product be excluded from sale or distribution in the City if:

(1) Investigation, bacteriological or other sampling by the Department or by a local public health department or other government agency, reveals that milk or a milk product, whether raw or pasteurized, or a food ingredient used in the production of a milk product fails to meet the standards imposed by this title or that the sale or distribution of such milk or milk product may otherwise adversely affect the public health; or,

(2) Inspection or investigation by the Department or by a local public health department or other governmental agency reveals that the requirements of this title relating to physical facilities and layout, equipment or sanitary condition of a dairy farm, transfer station, receiving station, milk processing plant or vehicle or carrier used to transport milk or a milk product are not being complied with.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived in part from S.C. §151 and § 156 Reg. 5(2). It is a broad prohibition against the sale or distribution of unfit milk or milk products or the sale or distribution of milk or milk products obtained from unapproved sources. On State prohibitions of delivery of certain milk and milk products to milk plants and manufacturing establishments, see Agriculture and Markets Law

Subsection (b) is derived from S.C. §156 Regs. 4, 5(4) and 6. The Department is given broad authority to order that milk or milk products be excluded when the standards of this article are not being met. In addition to the authority here granted, the Department, by virtue of Title 1, has broad power to seize and condemn, suspend or revoke a permit and to inspect. S.C. § 153 relating to seizure and condemnation of adulterated milk or milk products is here omitted; it is covered by section 3.03.

This section is intended as a further means of protecting the public from unfit milk or milk products and is in addition to the provisions of Articles 71 and 73. It thus replaces part of S.C. §152 and §154 without creating a substantive change.

For early cases upholding the Departmental inspectors' methods of testing milk for adulteration, see: **People v. Butler,** 140 App. Div. 705, 125 N.Y.S. 556 (4th Dept. 1910); **People v. Bailey,** 136 App. Div. 130, 120 N.Y.S. 618 (3d Dept. 1909). In **People v. Kehoe,** 246 N.Y. 592, 159 N.E. 664 (1927), the defendants were convicted under the Penal Law of conspiring to bring into the City of New York cream from unapproved sources and the provisions of S.C. §156 Reg. 5 were held constitutional.

This section was amended by resolution adopted on January 16, 1969 to additionally apply its provisions to transfer stations and to milk or milk products found in the possession of a person.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.17 Standards generally; milk and milk products to meet requirements of Code.

(a) No person shall possess, offer for sale, give away or distribute milk if any substance has been added thereto except Vitamin D when added pursuant to §111.31.

(b) No person shall possess, offer for sale, sell, give away or distribute a milk product unless it meets applicable standards imposed for such milk product by this article.

(c) No ingredient shall be added to a milk product unless it is expressly authorized by this article or is acceptable to the Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §155(1) (part). It is designed primarily to differentiate between milk and milk products. Milk is the lacteal secretion of a cow or goat. Nothing may be added to it except Vitamin D. It must be pasteurized except when sold as raw certified milk pursuant to §111.57. It may be homogenized. Note that §111.19 prohibits the sale of various types of milk, **e.g.,** Grade A or Grade B milk. S.C.§ 152 contained certain provisions governing adulteration of milk; these provisions are incorporated in specific requirements of this article as well as provisions of Articles 71 and 73.

Subsection (b) relates to milk products. The term is defined in §111.03 and there are specific standards or definitions in this Code for each authorized milk product.

S.C. §156 Reg. 57 which contained cross-references to certain regulations of the former code is omitted as no longer necessary in view of the format of the revised Code. This section replaces and covers the substance of S.C. §179, prohibition on the manufacture of imitation milk, cream or half and half. Agriculture and Markets Law §50 prohibits imitation or adulterated milk, cream or milk and cream.

For cases dealing with adulteration of milk, either by the addition of water or by the skimming of cream, under former sections of the Sanitary Code or State law see: **People v. Abramson,** 208 N.Y. 138, 101 N.E. 849 (1913); **People v. West,** 106 N.Y. 293, 12 N.E. 610 (1887); **People v. Kibler,** 106 N.Y. 321, 12 N.E. 795 (1887); **Verona Central Cheese Co. v. Murtagh,** 50 N.Y. 314 (1872); **People v. Timmerman,** 79 App. Div. 565, 80 N.Y.S. 285 (1st Dept. 1903), **aff'd,** 179 N.Y. 550, 71 N.E. 1136 (1904); **People v. Koster,** 121 App. Div. 852, 106 N.Y.S. 793 (1st Dept. 1907).

The Court of Appeals held constitutional a State statute similar to S.C. §§151 and 152 in a case involving the offer for sale of three cans of milk containing a foreign substance, formaldehyde. Although it was neither alleged nor proved by the State that formaldehyde is unwholesome or that it renders the milk less wholesome, or that fraud was involved, the court upheld the judgment for the plaintiff holding that the Legislature has the power to prevent the sale of impure milk. **People v. Bowen,** 182 N.Y. 1, 74 N.E. 489 (1905). **In People v. Hart,** 110 Misc. 714, 181 N.Y.S. 796 (Sup. Ct. 1920), it was held that the defendant violated the Agriculture and Markets Law by selling watered milk to a cheese factory even though the water was added accidentally and its was represented as "milk with an excess

Subsections (a) and (b) were amended by resolution adopted on January 16, 1969 to additionally apply their provisions to milk or a milk product found in the possession of a person.

Subsection (c) was added by resolution adopted on January 16, 1969 to effect the intent of the Board to maintain the identity of a milk product for the benefit of the consumer by limiting the ingredients which may be added thereto.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.19 Standards generally; designation of milk and milk products as Grade A, Certified or Certified Raw; other designations or grades prohibited.

No person shall possess, offer for sale, sell, give away or distribute milk or a milk product except under the designation of Grade A or, if the milk or milk product is produced in accordance with and meets the requirements of §111.57, under the designation of Certified or Certified Raw. No other designations or grades shall be used.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §156(1). It has been reworded as a general requirement that all milk or milk products sold or distributed in this City be designated Approved or Certified or Certified Raw. On labeling of

containers, see §111.61. Adulterated milk cannot be called by a different name or represented as something else so as to avoid prosecution **People v. Hart,** 110 Misc. 714, 181 N.Y.S. 796 (Sup. Ct. 1920). Also see: **Defiance Milk Products Co. v. DuMond,** 309 N.Y. 537, 132 N.E. 2d 829 (1956).

This section was amended by resolution adopted on January 16, 1969 to additionally apply its provision to milk or a milk product found in the possession of a person.

Section 111.19 was amended by resolution adopted on June 27, 1985 to allow the words "Grade A" to appear on milk and milk product labels. The U.S. Public Health Service requires milk plants selling interstate or supplying interstate carriers to use this designation.

The Schedule of Section Headings of Article 111 was further amended by resolution adopted on June 27, 1985 to amend the heading for §111.19.

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§111.20 Standards generally; sediment testing.

Transfer stations, receiving stations and milk processing plants shall test the milk received thereat from producers at least once each month with a sediment tester and a testing procedure, approved by the Department. The results of such tests shall be posted in a conspicuous place at such establishment and, in the case of unsatisfactory results, the producer involved shall be notified of such results immediately. Prepasteurized milk shall not contain sediment in excess of the tolerances established by the Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new. It was added by resolution adopted on January 16, 1969 to require sediment testing of

repasteurized milk by transfer and receiving stations and processing plants.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.21 Standards generally; bacteria standards; sampling.

(a) Prepasteurized milk shall not contain more than 100,000 bacteria per cubic centimeter; however, prepasteurized milk which is shipped from a receiving station to a milk processing plant may contain not more than 300,000 bacteria per cubic centimeter after shipment and until pasteurized. Prepasteurized skimmed milk shall contain not more than 300,000 bacteria per cubic centimeter until pasteurized.

(b) Prepasteurized cream shall not contain more than 300,000 bacteria per cubic centimeter.

(c) Milk, skimmed milk, modified skimmed milk, flavored milk, flavored milk drink, low sodium milk, low fat milk, modified low fat milk, half and half and enzyme milk shall not contain more than 20,000 bacteria per cubic centimeter or more than 10 coliform organisms per cubic centimeter at any time after pasteurization and until delivered to the consumer.

(d) Cream shall not contain more than 50,000 bacteria per cubic centimeter or more than 10 coliform organisms per cubic centimeter at any time after pasteurization and until it reaches the consumer.

(e) Ultra-pasteurized milk, skimmed milk, modified skimmed milk, flavored milk, flavored milk drink, low sodium milk, low fat milk, modified low fat milk, half & half, enzyme milk, light cream, medium cream, and heavy cream shall not contain more than 1,000 bacteria per cubic centimeter, or more than (1) coliform organism per cubic centimeter at any time after ultra-pasteurization and until delivery to the consumer.

(f) Cultured milk and milk products shall not contain more than 10 coliform organisms per cubic centimeter at any time after pasteurization and before they reach the consumer.

(g) Sterilized milk and milk products shall be free of all micro-organisms when stored at room temperature (70-100°F) for a period of 60 days.

(h) Milk or a milk product which does not meet the bacterial standards of subsections (a) through (f), of this section shall not be possessed, sold or distributed. A permittee shall make bacteria counts of samples of milk or milk products for the purpose of determining whether the applicable bacteria standards have been met. Such bacteria counts shall be made in accordance with the latest edition of the publication, Standard Methods For the Examination of Dairy Products, issued by the American Public Health Association.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §156 Reg. 50 although some clarifying changes have been made in the bacteria standards to conform to current practice.

This section was amended by resolution adopted on January 16, 1969 to provide bacteria standards of greater uniformity with the requirements of the State Health Department and the 1965 Public Health Service Grade A Pasteurized Milk Ordinance.

A new subsection (e) was added and former subsections (e) through (g) were relettered to be subsections (i) through (h) by resolution adopted on January 16, 1975 to provide bacterial standards for ultra-pasteurized milk and milk products for which Federal standards of identity and quality were recently promulgated (21 CFR Part 18, revised September 28, 1973).

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§111.23 Standards generally; temperature of prepasteurized, pasteurized and ultra-pasteurized milk and milk products.

Except as otherwise provided in §111.71, prepasteurized milk and milk products shall be maintained at 50 degrees Fahrenheit or less until processed. All pasteurized and ultra-pasteurized milk and milk products, except those to be cultured, shall be cooled immediately after pasteurization in approved equipment and shall be kept at a temperature of 45 degrees Fahrenheit or less. Every room in which milk or milk products are stored shall be equipped with an accurate thermometer. On delivery vehicles the temperature of milk and milk products shall not exceed 50 degrees Fahrenheit.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §156 Reg. 216(part) and replaces S.C.§ 156 Reg. 127

and 70(part). Section 111.71 contains a requirement for cooling of milk at the dairy farm and provides that certain mornings and evenings milk need not be so cooled if delivered to a receiving station or milk processing plant within specified number of hours after milking. Section 111.25 contains the pasteurization requirement, and provides that the immediate cooling of the products, after holding at the required temperature, does not apply to sour cream or cultured milk products. The section replaces S.C. §156 Reg. 145 (first sentence) which required that "vessels in which milk or milk products are held for sale ... be kept in a tub, properly iced, or in an ice box or refrigerator .... It also replaces S.C. §152 (9th para.).

This section was amended by resolution adopted on January 16, 1969 to provide improved refrigeration temperature standards currently practicable by virtue of available mechanical refrigeration facilities and to provide greater uniformity with such standards as required by the State Health Department and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance.

This section was further amended on January 16, 1975 to additionally apply its refrigeration temperature requirements to ultra-pasteurized milk and milk products for which Federal standards of identity and quality were recently promulgated (21 CFR Part 18, revised September 18, 1973).

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§111.25 Standards generally; pasteurization or ultra-pasteurization of milk and milk products required.

(a) No milk or milk product shall be possessed, offered for sale, sold, given away, distributed or used in the manufacture of food unless (1) the milk or milk product has been pasteurized or ultra-pasteurized pursuant to this section or (2) it meets the requirements for certified raw milk or a certified raw milk product pursuant to §111.57. No person shall ship prepasteurized milk or a prepasteurized milk product into the City unless it is to be pasteurized at a milk processing plant operating pursuant to §111.05 or a frozen desserts plant operating under a permit issued pursuant to Article 113, or unless it is certified raw milk or a certified raw milk product to be sold or distributed as such.

(b) Except as otherwise provided in subsection (c) or (d) of this section, milk or a milk product shall be pasteurized by one of the following methods or by some other equally effective method approved by the Department:

(1) Every particle is heated to a temperature of at least 145 degrees Fahrenheit and held at such temperature for at least 30 minutes; or

(2) Every particle is heated to a temperature of at least 161 degrees Fahrenheit and held at such temperature for at least 15 seconds.

(c) Milk products which have a higher milk fat content than milk and/or contain added sweeteners shall be pasteurized by one of the following methods or by some other equally effective method approved by the Department:

(1) Every particle is heated to a temperature of at least 150 degrees Fahrenheit and held continuously at or above such temperature for at least 30 minutes; or,

(2) Every particle is heated to a temperature of at least 166 degrees Fahrenheit and held continuously at or above such temperature for at least 15 seconds.

(d) Milk or a milk product designated and labeled as ultra-pasteurized shall be so processed that every particle thereof is heated to a temperature of at least 280 degrees Fahrenheit and held at such temperature for at least two (2) seconds either before or after packaging.

(e) Immediately after the required holding period, the milk or milk product, other than sour cream or a cultured milk product, shall be cooled to a temperature no higher than 45 degrees Fahrenheit as required pursuant to §111.23.

(f) Immediately after pasteurization, milk or a milk product shall be subjected to a phosphatase test in accordance with the latest edition of the publication, Standard Methods for the Examination of Dairy Products, issued by the American Public Health Association. Milk or a milk product which does not show a negative phosphatase shall be excluded from sale or distribution in the city.

(g) Ingredients other than lactic acid culture or flavoring shall be added to a cultured milk product prior to pasteurization.

(h) If milk or a milk product is to be homogenized, such processing shall take place prior to pasteurization and by a method acceptable to the Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is new in part although it is included by implication in the prior regulations. As to skimmed milk, it is derived without substantive change from S.C. §§156 Reg. 72(a) and (b)(part). It replaces S.C. §155c Reg. 3 which prohibited the sale of raw low sodium milk; raw low sodium milk is also prohibited even as a certified raw milk product (see §111.57). A requirement for pasteurization was held a valid exercise of the police power to protect public health, **People ex rel Ogden v. McGowan,** 118 Misc. 828, 195 N.Y.S. 286 (Sup. Ct. 1921), **aff'd** no opinion, 200 App. Div. 836, 191 N.Y.S. 946 (2d Dept. 1921).

Subsection (a) was amended by resolution adopted on January 16, 1969 to change the term raw milk to prepasteurized milk and to additionally apply its provisions to milk or a milk product found in the possession of a person.

Subsection (b) is derived from S.C. §156 Reg. 54(1). The requirement is stated as a substantive provision rather than as a definition. The temperature requirement during pasteurization is raised from 143°F to 145°F when held for 30 minutes and from 160°F to 161°F when held for 15 seconds, as a means of destroying Q fever organisms. This subsection was amended by resolution adopted on January 16, 1969 to except from its provisions those milk products covered by the new subsection (c) added by resolution on the same date.

Subsection (c) is new. It was added by resolution adopted on January 16, 1969.

Subsection (d) is also derived from §156 Reg. 54(1). It was formerly subsection (c) renumbered by resolution adopted on January 16, 1969.

Subsection (e) was formerly subsection (d) and was renumbered by resolution adopted on January 16, 1969.

Subsection (f) is derived without substantive change from S.C. §155d(5). It was formerly subsection (c) and was renumbered by resolution adopted on January 16, 1969.

Subsection (g) is derived without substantive change from S.C. §155b(1) but is broadened to include all milk products which may be homogenized. It was formerly subsection (f) and was renumbered by resolution adopted on January 16, 1969.

Subsections (a) and (b) were amended, a new subsection (d) was added and former subsections (d) through (g) were relettered to be subsections (c) through (h) by resolution adopted on January 16, 1975 to provide a pasteurization standard for ultra-pasteurized milk or milk products in conformance with recently promulgated Federal standards of identity and quality therefor (21 CFR Part 18, revised September 28, 1973).

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§111.27 Standards generally; definition of homogenization.

Homogenized milk is milk which has been subjected to a treatment so that after 48 hours of quiescent storage, the percent of butter fat in the upper one tenth portion of a container will not exceed by more than ten percent the percentage of butter fat in the remaining portion of the container.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §2(42).

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§111.29 Standards generally; reuse of milk and milk products for manufacturing purposes.

No milk or milk product shall be dumped for reprocessing from bottles or single service containers unless it is wholesome. After dumping, such milk or milk product shall not be offered for sale, sold, given away or distributed as milk or as sweet cream but may be reprocessed for manufacturing purposes, as follows:

(1) Milk may be reprocessed for flavored milk or flavored milk drink if such product is repasteurized after manufacture in the manner established pursuant to §11.25. Containers holding milk to be used for such purchase shall bear a label containing the words "MILK DUMPED AT" followed by the name and address of the place where dumping took place, and the words, "FOR MANUFACTURE OF FLAVORED MILK OR FLAVORED MILK DRINK"; or,

(2) Milk or a milk product may be repasteurized for reprocessing into sour cream, cultured milk products, frozen desserts, ice cream mix or for manufacturing purposes. Containers holding such milk or milk product shall bear a label containing the word, "MILK" or the .sine of the milk product followed by, "DUMPED AT," the name and address of

the place where dumping took place and the word, "FOR MANUFACTURING PURPOSES ONLY."

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §156 Reg. 153. The reference to time of distribution in Reg. 153(3)(b) is omitted. The provisions of Reg. 153(1) relating to sanitary dumping operations are here omitted as a specific requirement; sanitary operations are required in all food establishments under Article 81 of this Code.

Subparagraph (1) of this section was amended by resolution adopted on January 16, 1969 to change the term flavored drink to flavored milk drink.

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§111.31 Standards generally; addition of Vitamin D to milk and milk products.

(a) No person shall produce, possess, offer for sale, sell, give away or distribute milk or a milk product as Vitamin D milk, as a Vitamin D milk product or as possessing anti-rachitic quality or potency unless concentrate of Vitamin D has been added to the milk or milk product so that the Vitamin D content or potency is increased to at least 400 units for each quart. Vitamin D shall not, however, be added to skimmed milk. Except as to raw certified milk products, concentrate shall be added at the place of and prior to pasteurization.

(b) The Department may require that samples of Vitamin D milk or a Vitamin D milk product be tested or assayed for Vitamin D potency at the expense of the permittee at such times as the Department may require.

(c) As used in this section, unit means the International Unit of Vitamin D as set forth in the latest edition of the official United States Pharmacopoeia or supplement thereto.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §155a and Regulations. The section omits the Vitamin D processing permit and the Vitamin D transportation permit requirement. S.C. §155a (1) specified three means of increasing Vitamin D content: Feeding irradiated yeast to cows; direct irradiation of milk or a milk product with ultra-violet light or carbon arc lamp rays; and addition of concentrate of Vitamin D to milk or a milk product. The first two means are no longer practiced and, therefore, have been omitted. The requirement that samples be taken and tested, contained in Reg. 5, is retained but is restated in more general terms. Regs. 1, 6 and 7 are omitted. This section also replaces S.C. §152(16th para.). The labeling requirements of S.C. §155a Regs. 4(2) and (3) are included in §111.61. Note the prohibition on addition of Vitamin D to skimmed milk (see, also, §111.55).

Subsection (a) was amended by resolution adopted on January 16, 1969 to additionally apply its provisions to milk or a milk product found in the possession of a person as Vitamin D milk or milk product.

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§111.33 Standards generally; time of delivery.

No person shall possess, store, offer for sale, sell, give away or distribute milk, low sodium milk, low fat milk, skimmed milk, modified skimmed milk, cream or half and half after the expiration date indicated on the label required pursuant to §111.61. No person shall possess, store, offer for sale, sell, give away or distribute any such product the label of which bears an expiration date beyond the period specified in this section. The expiration date shall not be more than nine (9) calendar days following the date of pasteurization. However, in the case of such milk and milk products which have been ultra-pasteurized pursuant to subsection (d) of §111.25, the expiration date shall not be more than forty-five calendar days following the date of ultra-pasteurization. This section does not apply to cans of milk or cream to be used for manufacturing purposes or to milk and milk products which are not to be sold in the City of New York.

HISTORICAL NOTE

Section amended City Record July 9, 1999 eff. Aug. 8, 1999. [See Vol. 8 Statements of Basis and

Purpose No. 26]

Section in original publication July 1, 1991.

Notes:

This section was originally derived from S.C. §156 Regs. 51 and 155(4). The new Health Code which became effective on October 1, 1959 contained a §111.33 which read the same as it did prior to the amendment hereafter referred to which was adopted on June 14, 1966. That section was repealed by resolution adopted on May 20, 1960 after §1400 of the Public Health Law was amended by the State Legislature so as to prohibit local boards of health from adopting and enforcing milk dating regulations. When that section was again amended by the State Legislature during the 1962 session by removing such prohibition this section was reenacted by resolution adopted on March 6, 1962.

The section was amended by resolution adopted on June 14, 1966 which changed the dating requirement in relation to the period beyond which milk and other milk products may not be possessed or sold. Formerly such period was 54 hours after the day of distribution in the case of milk and 72 hours after distribution in the case of cream and half and half. Under the section as amended such period is 66 hours from the day of pasteurization and the former distinction in this respect between milk, cream and half and half was eliminated. In addition, the dating requirement was made inapplicable to the products enzyme milk, flavored milk and flavored drink.

This section was further amended by resolution adopted on January 16, 1969 to additionally apply its milk dating requirements to low fat milk and modified low fat milk.

This section was further amended by resolution adopted on January 16, 1975 to add a dating requirement for ultra-pasteurized milk and milk products for which Federal standards of identity and quality were recently promulgated (21 CFR Part 18, revised September 28, 1973).

This section was further amended by resolution adopted on November 16, 1978 to extend the period from 66 hours to 96 hours from the day of pasteurization in which milk and milk products may be possessed or sold.

Section 111.33 was amended by resolution adopted on June 18, 1987 to extend the time in which milk and milk products may be sold in the City due to improved sanitation and processing standards.

This section was further amended on June 29, 1999 to extend the period that ultra-pasteurized milk and ultra-pasteurized milk products may be possessed or sold from thirty to forty-five days after the date of ultra-pasteurization.

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§111.35 Milk.

(a) No person shall possess, offer for sale, sell, give away or distribute pasteurized milk if it contains (1) more than 88 and three tenths percent of water or fluids or (2) less than 11 and seven tenths percent by weight of milk solids or (3) less than three and four tenths percent by weight

(b) Milk packaged for sale outside the State may contain the minimum milk fat and milk solids which meets the standards of the State into which it is to be sold, provided that no label shall be used thereon unless approved in advance by the Department.

(c) Fresh cream or fresh skimmed milk may be added to or subtracted from fresh milk which meets the standards for milk prescribed by this Code, for purposes of standardization. Such standardization shall be performed at the place of pasteurization only.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §152 (1st, 2nd and 4th paragraphs). Paragraphs 3, 8, 10 and the first and third unnumbered subsections of S.C. §152 are omitted as covered by specific prohibitions in this article or by the general pure food provisions of Articles 71 and 73. Note that Agriculture and Markets Law §46 defines the term "adulterated milk" as, **inter alia,** "Milk containing less than three per centum of fats." The issue of possible conflict between the State 3% butterfat standard and the City Sanitary Code's 3.3% butterfat standard has not been raised in the courts, although from the holding of the Appellate Division in **Kansas Packing Co., Inc. v. City of New York,** 284 App. Div. 398, 131 N.Y.S. 2d 351(1st Dept. 1954)aff'd 309 N.Y. 696, 128 N.E. 2d 411 (1955) in respect of former S.C. §140(a), such a question does exist.

This section was amended by resolution adopted on October 18, 1966, which revised the standards relating to fluids, milk solids and butter fat from 88.5%, 11.5% and 3.3%, respectively to 88.3%, 11.7% and 3.4%, respectively. The resolution also added subsections (b) and (c). These amendments were enacted to conform the New York City Health Code with §46 of the Agriculture and Markets Law as amended by Chapter 876 of the Laws of 1966.

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§111.37 Butter.

No person shall offer for sale, sell, give away or distribute butter if it contains less than 80 percent by weight of butter fat.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §152 (11th para.). The definition of butter in the second unnumbered subsection of S.C. §152 is omitted as unnecessary as the provisions of Articles 71 and 73 cover the question of adulteration generally.

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§111.39 Cream and sour cream.

(a) No person shall possess, offer for sale, sell, give away or distribute cream or sour cream which contains less than 18 percent by weight of butter fat.

(b) No person shall possess, offer for sale, sell, give away or distribute sour cream which contains an acidity of less than two tenths of one per cent expressed as lactic acid after processing.

(c) Cream or sour cream shall be sold, respectively, either as light cream or light sour cream if it contains at least 18 percent by weight of butter fat, as medium cream or medium sour cream if it contains at least 25 percent by weight of butter at, or as heavy cream or heavy sour cream if it contains at least 36 percent by weight of butter fat.

(d) Cream is that portion of milk, rich in milk fat, which rises to the surface of milk on standing or is separated from it by centrifugal force and to which no substance has been added other than milk or skimmed milk for purposes of

standardization.

(e) Sour cream is cream which has been fermented by means of a lactic acid or other harmless milk culture.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived without substantive change from S.C. §152 (5th para.) except that it includes sour cream.

Subsection (a) was amended by resolution adopted on January 16, 1969 to additionally apply its provisions to cream or sour cream found in the possession of a person.

Subsection (b) is derived without substantive change from S.C. §§2(46) (part) and 152(14th para.).

Subsection (b) was amended by resolution adopted on January 16, 1969 to additionally apply its provisions to cream or sour cream found in the possession of a person.

Subsection (c) is derived without substantive change from S.C. §156 Reg. 52.

Subsection (d) is derived without substantive change from S.C. §2(33). The language "clean, pure, wholesome and unadulterated" which modified "milk" is here omitted but is covered in the definition of that term in §111.03 and in the general standards for milk and for all foods set forth in this title.

Subsection (e) is derived without substantive change from S.C. §2(46). The language "pure, clean, wholesome and unadulterated" modifying "cream" is here omitted as covered by the general pure food standards of Articles 71 and 73.

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§111.41 Cultured milk and milk products.

No person shall possess, offer for sale, sell, give away or distribute a cultured milk or milk product unless it is sold or distributed:

(1) As fat free cultured buttermilk if it contains not more than three tenths of one percent of butter fat. Ingredients which may be added are condensed skimmed milk, skimmed milk, skimmed milk powder, harmless lactic culture, water, sugar, fruit flavoring or certified colors; or

(2) As cultured buttermilk if it contains between two fifths of one and two and nine tenths percent of butter fat. Ingredients which may be added are condensed skimmed milk, skimmed milk, skimmed milk powder, harmless lactic culture, water, sugar, fruit flavoring, milk, cream, condensed milk, milk powder, butter oil or certified colors; or,

(3) As fat partially removed cultured milk if it contains between two fifths of one and two and nine tenths percent

of butter fat. Ingredients which may be added are condensed skimmed milk, skimmed milk, skimmed milk powder, harmless lactic culture, water, sugar, fruit flavoring, milk, cream, condensed milk, milk powder, butter oil or certified colors; or,

(4) As cultured milk if it contains not less than three percent of butter fat. Ingredients which may be added are condensed milk, condensed skimmed milk, milk powder, skimmed milk, skimmed milk powder, butter oil, harmless lactic culture, water, sugar, fruit flavoring or certified colors.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §155d (1), (2), (3) and (4). The name "cultured buttermilk-fat added" is modified to read simply, "cultured buttermilk." There has been some modification of the permitted ingredients for fat free cultured buttermilk. The labeling requirements are included in §111.63,. Section 73.05(2) contains a provision on foods sold for dietary purposes, so that the listing of calories on the label formerly in S.C. §152 (15th para.) is here omitted.

The first paragraph of this section was amended by resolution adopted on January 16, 1969 to additionally apply its provisions to cultured milk and to cultured milk or milk products found in the possession of a person.

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§111.43 Enzyme milk.

No person shall possess, offer for sale, sell, give away or distribute enzyme milk unless, prior to pasteurization, harmless enzyme have been added thereto so that the curd tension of the milk is reduced to less than 20 grams. A permittee shall test each milk product for curd tension on a regular basis and keep records of such tests on file for at least six months.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §155e(1) and (3). S.C. §155e(2) and (4) are here omitted but are covered in other sections applicable to all milk products. Note that "modified" has been omitted from

the name of the milk product.

This section was amended by resolution adopted January 16, 1969 to additionally apply its provisions to enzyme milk found in the possession of a person.

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§111.45 Flavored milk and flavored milk drink.

(a) Flavored milk is the product obtained by the addition to milk of wholesome flavoring material and which product by its color is distinguishable from and is not an imitation or semblance of milk or cream. It shall contain not less than three per cent butter fat.

(b) Flavored milk drink is the product obtained by the addition to skimmed milk, to water and powdered milk or powdered skimmed milk, or to water and condensed milk or condensed skimmed milk, of wholesome flavoring material, which product by its color is distinguishable from and is not an imitation or semblance of milk or cream.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §2(39) and (40).

This section was amended by resolution adopted on January 16, 1969 to change the term flavored drink to flavored milk drink and to broaden the standard by permitting the use of any wholesome flavoring material.

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§111.47 Half and half.

(a) No person shall possess, offer for sale, sell, give away or distribute half and half which contains less than ten percent by weight of butter fat.

(b) Half and half is a mixture of sweet cream and milk or skimmed milk and includes the product resulting from centrifugal separation of milk. It may also contain added non fat milk solids derived from concentrated skimmed milk or from skimmed milk powder or both.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §2(47) and §152 (13th para.).

Subsection (a) was amended by resolution adopted on January 16, 1969 to additionally apply its provisions to half and half found in the possession of a person.

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§111.49 Low sodium milk.

No person shall possess, offer for sale, sell, give away or distribute low sodium milk unless, immediately prior to pasteurization, the milk is treated in a manner acceptable to the Department so that its sodium content is reduced to less than 50 milligrams of sodium for each quart. The Department may require the permittee producing the low sodium milk to submit samples to a laboratory approved by the Department for the purpose of determining the sodium content thereof.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §2 (41), §152 (12 para.), § 155c and Regs. 1 and 2.

Specific reference to "certified" low sodium milk is omitted but is included within §111.57 governing certified milk and milk products. S.C. §155c Reg. 3, prohibiting the sale of raw low sodium milk is here omitted, but is covered by §111.57 which prohibits the sale of any raw milk product other than raw certified cream, skimmed milk or modified skimmed milk. S.C. §155c Reg. 4 is omitted; it required that certified low sodium milk be sold only on a physician's prescription.

This section was amended by resolution adopted January 16, 1969 to additionally apply its provisions to low sodium milk found in the possession of a person.

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§111.51 Malted milk.

Malted milk is a product made by combining milk with the liquid separated from a mash of ground barley, malt and wheat flour, with or without the addition of sodium chloride, sodium bicarbonate and potassium bicarbonate, in such manner as to secure the full enzymic action of the malt extract and by removing water.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from the definition of malted milk in S.C. §2(43). The language "clean, pure, wholesome and unadulterated" before "milk" is here omitted as covered in other parts of the article dealing with milk as well as the provisions of Articles 71 and 73.

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§111.53 Modified milk.

Modified milk is milk which has been changed by the addition of water, milk sugar, or other substance intended to render the milk suitable for infant feeding.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §2(38). The words, "clean, pure, wholesome and unadulterated" modifying "milk" is here omitted but is covered in the definition of that term in §111.03 and the standards generally for milk and for foods in this title.

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§111.55 Skimmed milk and modified skimmed milk.

(a) No person shall possess, offer for sale, sell, give away or distribute skimmed milk which contains more than three tenths of one per cent of butter fat.

(b) A food, other than a milk product or frozen dessert which is manufactured with skimmed milk obtained from milk which has been pasteurized, shall be repasteurized during the manufacturing process or shall be heated in a manner which affords protection at least equivalent to that afforded by pasteurization.

(c) No skimmed milk shall have Vitamin A or Vitamin D added thereto. No modified skimmed milk shall be offered for sale, sold, given away or distributed as being fortified with Vitamin A or Vitamin D unless:

(1) The requirements of §111.31 are met; and,

(2) At least 2,000 International Units of Vitamin A as set forth in the latest edition of the official United States

Pharmacopoeia or supplement thereto are added to each quart of the modified skimmed milk.

(d) Modified skimmed milk shall not be sold or distributed if the fortification with Vitamin A or Vitamin D causes a change of color of the product.

(e) Modified skimmed milk is the product made by adding milk solids not fat to skimmed milk. It shall contain not less than ten percent of milk solids not fat and not more than one half of one percent of milk fat.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section contains the particular requirements governing skimmed milk and modified skimmed milk. S.C. §156 Regs. 70 (part), 71, 72(c)(part) and (e), 75(d) and S.C. §158 are here omitted but are covered in other parts of this article governing milk products generally.

Subsection (a) is derived from S.C. §156 Reg. 73 and §2(32) (definitions of skimmed milk). The reference to State law is here unnecessary. That portion of S.C. §158 Reg. 72(b) which required skimmed milk to be maintained at 50°F until delivery to the consumer is omitted here, but is covered by the general temperature requirement of § 111.23.

Subsection (a) was amended by resolution adopted on January 16, 1969 to additionally apply its provisions to skimmed milk found in the possession of a person.

Subsection (b) is derived without substantive change from S.C. §156 Reg. 72(d). Reg. 72(a) and (b)(part) are here omitted but are covered by §111.25.

Subsection (c) is derived from S.C. §152(17th para.), §156 Reg. 75(c) and §2(50)(part) (definition). The Vitamin D requirements are included by a reference to §111.31.

Subsection (d) is derived without substantive change from S.C. §2(50) (part).

Subsection (e) is derived without substantive change from S.C. §2(50)(part).

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§111.56 Low fat milk and modified low fat milk.

(a) No person shall possess, offer for sale, sell, give away or distribute low fat milk which contains less than five tenths of one percent of weight of butter fat or more than two percent by weight of butter fat. No low fat milk shall have Vitamin A or Vitamin D added thereto.

(b) Modified low fat milk is the product made by adding milk solids not fat to low fat milk. It shall contain not less than ten percent by weight of milk solids and shall conform to the butter fat standard for low fat milk as provided in subsection (a) of this section.

(c) No modified low fat milk shall be possessed, offered for sale, sold, given away or distributed as being fortified with Vitamin A or Vitamin D unless:

(1) The requirements of §111.31 are met; and,

(2) At least 2,000 International Units of Vitamin A, as set forth in the latest edition of the official United States Pharmacopoeia or supplement thereto, are added to each quart of modified low fat milk.

(d) Modified low fat milk shall not be possessed, sold or distributed if the fortification with Vitamin A or Vitamin D causes a change of color of the product.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section was added by resolution adopted on January 16, 1969 to authorize the sale of low fat milk and milk products, in current demand among many consumers who desire to limit fat intake or reduce obesity by ingesting foods of lower calorie value.

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§111.57 Certified milk and certified milk products.

(a) No person shall possess, offer for sale, sell, give away or distribute milk as certified milk or as certified raw milk, or a milk product as a certified milk product or as a certified raw milk product unless the milk or milk product is approved by a milk commission which is recognized by the Board pursuant to subsection (b) of this section. Such milk commission shall not approve the milk or milk product concerned unless it meets the standards el, and is produced, manufactured, handled, transported, sold or distributed in accordance with this Code and with additional regulations of the milk commission filed with the Department pursuant to subsections (b)(3) and (c) of this section.

(b) The Board may extend recognition to a milk commission which meets the following requirements:

(1) It is appointed by a medical society chartered by the State Medical Society;

(2) It submits to the Department a written statement signed by an official of the milk commission signifying the

intention of such commission to enforce the provisions of this Code and its own regulations governing the standards, source, production or manufacture, handling, transportation, sale and distribution of milk and milk products to be offered for sale, sold, given away or distributed as certified or as certified raw by such milk commission; and,

(3) It files with the Department a copy of the regulations adopted by such commission governing standards for good production or manufacture, handling, transportation and distribution of certified milk, certified raw milk, certified milk products and certified raw milk products.

(c) A milk commission which is recognized by the Board shall file with the Department a copy of any amendment to the regulations filed pursuant to subsection (b)(3) of this section. Such amendment shall not take effect until approved by the Board.

(d) Recognition of a milk commission shall be automatically suspended and may be withdrawn by the Board if:

(1) The milk commission fails to enforce applicable provisions of this Code or its own regulations as signified by such commission pursuant to subsection (b)(2) of this section; or,

(2) The medical society which appointed the milk commission revokes or suspends such appointment.

(e) A milk commission may by regulation or other control of the milk and milk products it supervises set standards which exceed the standards of this Code.

(f) The requirements governing labeling of containers set forth in §111.61 shall apply to certified milk, certified raw milk, certified milk products and certified raw milk products with the following modifications:

(1) Immediately preceding the word "MILK" or the name of the milk product, the word or words "CERTIFIED" or "CERTIFIED RAW" shall be appropriately included; and,

(2) The name and insignia or seal of the milk commission certifying the milk or milk products shall be included.

(g) No person shall possess, store, offer for sale, sell, give away, or distribute certified raw milk after the expiration date indicated on the label required pursuant to §111.61. No person shall possess, store, offer for sale, sell, give away or distribute any such product the label of which bears an expiration date beyond the period specified in this section. The expiration date shall not be more than 94 hours after six a.m. following packaging.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived from S.C. §156 Reg. 10(part). Compliance with the Code is made a condition of approval by the milk commission. That portion of subdivision (c) of Reg. 10 concerning appointment of the milk commission is included in subsection (b). The last paragraph of Reg. 10 is contained in subsection (e). Moreover, the filing and approval of regulations (part of subdivision (c)) is restated as a positive condition of recognition by the Board of a milk commission in subsection (b). Throughout this section the various types of certified milk and milk products are referred to generally, **ie.** the section would permit sale of any certified milk product. Agriculture and Markets Law §50a in effect requires a milk commission to follow standards of the American Association of Medical Milk Commissions.

Subsection (a) was amended by resolution adopted on January 16, 1969 to additionally apply its provisions to certified or certified raw milk and milk products found in the possession of a person.

Subsection (b) is derived without substantive change from S.C. §156 Reg. 10(part) and Reg. 11.

Subsection (c) restates the requirement of filing and approval of amendments to the regulations of the milk commission presently contained in Reg. 11 (last sentence).

Subsection (d) is new.

Subsection (e) is derived without substantive change from S.C.§156 Reg. 10 (last para.) but is stated in more affirmative language. S.C. §156 Reg. 12 is omitted.

Subsection (f) is derived from S.C. §156 Reg. 13. The labeling requirements of are made applicable with stated changes. The reference to section 111.61 eliminates the necessity for specific inclusion of subdivisions (a), (b), (c), (f), (g), (h) and the final paragraph of S.C. §156 Reg. 13.

Subsection (g) is derived from S.C.§156 Reg. 15. The last sentence of the regulation is here omitted but is covered in Article 3. S.C. §156 Reg. 14 is here omitted but is covered in §111.91, governing use of containers generally.

Subsection (g) was repealed and reenacted by resolution adopted on September 17, 1981 to remove the requirement for obtaining and retaining a physician's prescription before selling or distributing raw certified milk. Enacted in its place are provisions regulating the dating, storage, sale or distribution of raw certified milk. The substitution is considered to be a more effective and practical method of protecting the public. References to raw certified cream, raw certified skimmed milk, and raw certified modified skimmed milk have been deleted since these products are not, and have never been produced.

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§111.59 Cheddar, processed and soft cheese.

(a) No person shall produce, manufacture, offer for sale, sell, give away or distribute cheddar, processed or soft cheese unless:

(1) The milk or milk product from which the cheese is manufactured has been pasteurized pursuant to §111.25; or,

(2) The cheese, during the manufacturing process, is subjected to a heat treatment which, in the opinion of the Department, is equivalent to pasteurization; or,

(3) The cheese, after manufacturing, is subjected to an aging process by keeping it at a temperature of not lower than 35°F for at least 60 days.

(b) Each package of cheddar, processed or soft cheese shall bear a label, printed legibly in English, with the following information: (1) The name and address of the manufacturer, wholesale dealer, or distributor, retail seller or

packager of the cheese or, in lieu of such name and address, an identifying trademark, trade name or other identifying designation;

(2) The common name of the cheese concerned;

(3) If the cheese has been subjected to a heat treatment equivalent to pasteurization pursuant to §111.25 or if it is manufactured from milk or a milk product which has been pasteurized pursuant to §111.25, the word, "PASTEURIZED"; and,

(4) If the cheese has been aged pursuant to subsection (a)(3) of this section, a statement that the cheese has been aged for at least 60 days.

(c) When a trademark, trade name or other identifying designation is used pursuant to subsection (b)(1) of this section, the manufacturer, wholesaler or other person labeling the package of cheese shall file with the Department a statement which contains the trademark or other identifying designation used and the actual name and address of the manufacturer or wholesaler.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §151a. The definitions of cheddar cheese, processed cheese, soft cheese in that section and cheese in S.C.§2(48) have been omitted as unnecessary in that these terms have a generally accepted meaning, both to the general public as well as the trade.

Subsection (b) of this section was amended by resolution of June 15, 1959, filed with the City Clerk, June 22, 1959, as follows: In subdivision (4), the requirement that the labeling of cheese processed by aging bear a statement that it was aged at least 60 days, was substituted for the date of manufacture; subdivision (5) (as well as the former S.C. §151a), which dealt separately with blended cheese of the cheddar type, was eliminated as unnecessary.

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§111.61 Labeling of containers.

(a) No milk or milk product shall be possessed, stored, offered for sale, sold, given away or distributed unless its container or bottle bears a label which meets the requirements of this section. Proof prints or drawings of each label shall be submitted to the Department prior to use and no label shall be used until approved by the Department as being in compliance with this Code.

(b) The label shall be located on the container or the outer cap of a bottle and shall be in the form of a circle, rectangle or other design. The label shall not, however, be located on the bottom of the container and shall be printed in dear and legible type which shall be in contrast to other printed or pictorial matter thereon by topography, layout or color. The label for cans used to hold milk and milk products for sale or distribution to food establishments, institutions or persons other than consumers as authorized pursuant to §111.91 may be printed on a tag which is securely attached to the can. Labels shall contain only the following information:

(1) The words "Grade A";

(2) The word "MILK" or the appropriate name of the milk product;

(3) The word "PASTEURIZED" or "ULTRA-PASTEURIZED" as the case may be except in the case of certified raw milk or a certified raw milk product;

(4) If the milk or milk product is homogenized, the word "HOMOGENIZED";

(5) The actual name of the Class A permittee processing the milk or milk product or, in lieu of such name, the name and address of the Class A or Class B permittee distributing the milk or milk product. The additional use of any trademark, trade name or other identifying designation is not precluded.

(6) The address of the milk processing plant where the milk or milk product is pasteurized or ultra-pasteurized. If a Class A permittee operates more than one plant, a symbol, known and satisfactory to the Department, indicating the address or location where pasteurization or ultra-pasteurization takes place may be used instead of the actual address. Such symbol may appear on the outer cap or on the top or other equally prominent place on the container provided it is clearly, legibly and conspicuously debossed and inked, branded or printed. However, if the Department finds such symbol unsatisfactory, then the address of the processing plant shall be printed on the label of the container;

(7) If Vitamin D has been added pursuant to §111.31, the words, "VITAMIN D ADDED";

(8) If Vitamin A has been added to modified skimmed milk pursuant to §111.55, the words, "VITAMIN A ADDED";

(9) If the milk or milk product is intended for manufacturing purposes, the words, "FOR MANUFACTURING PURPOSES ONLY-TO BE REPASTEURIZED OR ADEQUATELY HEAT TREATED";

(10) Such additional information as is required pursuant to subsections (c) through (1) of this section;

(11) In the case of milk, low sodium milk, skimmed milk, modified skimmed milk, low fat milk, modified low fat milk, certified raw milk, cream or half and half, the words "MAY BE SOLD UNTIL MIDNIGHT OF" shall be printed on the outer cap of glass or plastic bottles followed by expiration date which shall be placed in a space expressly reserved therefor on the label, or on the rim of the outer cap, provided the location thereof is satisfactory to the Department. In the case of containers other than glass or plastic bottles, the words, "MAY BE SOLD UNTIL MIDNIGHT OF THE DATE INDICATED ON TOP" shall be printed on the label and the expiration date shall be placed in a space expressly reserve therefor on the top of the container. The expiration date shall be as specified pursuant to §§111.33 or 111.37 and shall be expressed by the first three letters of the month followed by the numeral or numerals constituting the appropriate calendar date. Such date shall be dearly, legibly and conspicuously debossed and inked, branded or, where the date is placed on the rim of an outer cap, stamped in indelible ink, in a manner satisfactory to the Department, except that it may be deeply embossed without inking on aluminum outer cap of glass or plastic bottles. This subdivision does not apply to milk or milk products which are not to be sold in the City of New York.

(c) The label for a container holding goats' milk or a milk product produced from goats' milk shall be appropriately marked, "GOAT'S MILK" or "MADE FROM GOAT'S MILK" or with similar wording.

(d) The label for a container holding skimmed milk obtained from pasteurized milk shall contain the words, "FOR MANUFACTURING PURPOSES

(e) In complying with subsection (b) (2) of this section, a term descriptive of flavored milk, such as "CHOCOLATE MILK" may be used instead of the term, "FLAVORED MILK."

(f) In complying with subsection (b) (2) of this section, a term descriptive of flavored milk drink such as

"CHOCOLATE MILK DRINK" may be used instead of the term "FLAVORED MILK DRINK."

(g) The label required for a container holding low sodium milk shall contain the words, "CONTAINS LESS THAN 50 MILLIGRAMS OF SODIUM PER QUART."

(h) In the event of an emergency which destroys or makes unavailable a supply of containers or labels, the Department, in its discretion, may authorize the temporary use of other containers or labels which do not reflect, in all particulars, the information required by this section.

(i) No information shall be placed on the label required to appear on containers of milk or milk products pursuant to this section which is false or misleading in any particular. No information indicating grading of milk or milk products, other than as specified in this article, shall appear on the label or on any part of the container.

(j) If artificial color is added to a cultured milk product, the label shall contain the words, "CONTAINS ARTIFICIAL COLOR."

(k) If non-nutritive and/or artificial sweeteners are added to a milk product, the label shall contain the words "ARTIFICIALLY SWEETENED."

(l) If stabilizers, distillates, and similar ingredients are added to a milk product, the label shall contain their common or usual names.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from and replaces the detailed labeling requirements in S.C. § 155a Reg. 4 155b (2) and §156 Regs. 154, 155 (1), (2), (3), (6), (7) and (8), 156 and 158 S.C. Reg. 55, concerning labels for milk containing high butterfat, is omitted. Reg. 160, requiring tags to be saved, is omitted. See Agriculture and Markets Law §71 on registering a designating mark with the State Commissioner of Agriculture and Markets. S.C. §156 Reg.(5) and (6), relating to standardization outside of milk processing plants and to splitting of cans of milk or cream or half and half outside of such plants, are omitted. These practices are no longer employed.

Subsection (a) was amended by resolution adopted June 14, 1966 which prohibited the possession and storage of improperly labeled milk in a plant, depot or milk vehicle and added the requirement for submission of label proof prints or drawings for approval prior to their use.

The first paragraph of subsection (b) was amended by resolution adopted on September 28, 1960 to permit required labeling information to be included in rectangles and other designs, in addition to circles. This paragraph was further amended by resolution adopted June 14, 1966 which added in the second sentence the clause "and shall be printed * * * thereon".

The first paragraph of subsection (b) was further amended by resolution adopted on January 16, 1969 to delete the minimum dimension requirement for labels on containers and bottle caps.

Subdivision (1) of subsection (b) was amended by resolution adopted on June 14, 1966 by deleting "N.Y.C. Dept. of Health Approved" as a permissible phrase on labels. Subdivisions (5) and (6) of the subsection were also amended to clearly provide for the name of the processor or the name and address of the distributor and the address or location of the processing plant. The resolution also amended subdivision (9) by including the requirement that the label of milk or milk products intended for manufacturing purposes bear the words "TO BE REPASTEURIZED OR ADEQUATELY HEAT TREATED".

Subdivision (1) of subsection (b) of §111.61 was amended by resolution adopted on June 27, 1985 to allow the words "Grade A" to appear on milk and milk product labels. The U.S. Public Health Service requires milk plants selling interstate or supplying interstate carriers to use this designation.

Subdivision (3) of subsection (b) was amended by resolution adopted on January 16, 1975 to include a labeling designation for ultrapasteurized milk and milk products for which Federal standards of identity and quality were recently promulgated (21 CFR Part 18, revised September 28, 1973).

Subdivision (6) of subsection (b) was further amended by resolution adopted on January 16, 1975 to additionally apply its labeling provisions to ultra-pasteurized milk and milk products for which Federal standards of identity and quality were recently promulgated (21 CFR Part 18, revised September 28, 1973).

Subdivision (10) of subsection (b) was amended by resolution adopted on January 16, 1969 to additionally apply the new subsection (k)(l) added by the same resolution.

Subdivision (11) of subsection (b) was added by resolution adopted on the 6th day of March, 1962 after the State Legislature restored the right of the City of New York to enact and enforce milk dating regulations. The provisions of subdivision (11) were contained in former subdivision (9) prior to its repeal on May 20, 19601 after the State Legislature had prohibited local boards of health from adopting and enforcing milk dating requirements. It was amended by resolution adopted on June 14, 1966 to clarify the dating requirements by substituting an expiration date based on the day of pasteurization in lieu of the former more complex method of dating based on the day of distribution. Milk and skimmed milk in smaller than one quart containers sold or distributed to restaurants and eating places were excepted from the dating requirement since patrons are served milk in a glass and do not see the container or the bulk dispenser used. The individual containers distributed to schools were also excepted since this milk is consumed on the same day it is delivered. The resolution also excepted milk and milk products to be sold outside the City of New York from the dating requirements.

The first sentence of subdivision (11) of subsection (b) was amended by resolution adopted on January 16, 1969 to additionally apply its dating provision to the labels on low fat milk and modified low fat milk containers and bottles.

Subdivision (11) of subsection (b) was amended by resolution adopted on May 17, 1979 to delete the exception of dating of containers less than quart size.

Subdivision (11) of subsection (b) was amended by resolution adopted on September 17, 1981, to add certified raw milk, and §111.57, which regulates the sale or distribution thereof.

Former subsection (c) was repealed by resolution adopted June 14, 1966 since the practice of mixing fresh cream and cold storage cream no longer prevails.

Former subsection (d) was relettered subsection (c) by resolution adopted on June 14, 1966 and is derived without substantive change from S.C. §156(2).

Subsection (e) was repealed by resolution adopted on January 16, 1969, since skimmed milk and modified skimmed milk have received wide acceptability and recognition and the distinctive color requirement of their container is no longer felt necessary for their identification by the consumer.

Former subsection (e) was relettered subsection (d) by resolution adopted June 14, 1966, and is derived from S.C. §156 Regs. 72 (c) (part). All that is required here is that skimmed milk obtained from pasteurized milk be labeled for manufacturing purposes. See also, in this connection, § 111.55. The requirement that cans used for transportation or storage be of 20 or 40 quart capacity is omitted (S.C. §156 Reg. 75 (part)).

Former subsections (f) and (g) were relettered (e) and (f) respectively by resolution adopted on January 16, 1969

and are derived from S.C. §156 Reg. 156 with omission of some detail.

Subsection (f) was amended by resolution adopted on January 16, 1969 to conform its label provision to the change of the term flavored drink to flavored milk drink adopted by resolution on the same date.

Former subsection (h) was relettered subsection (g) by resolution adopted on January 16, 1969, and is derived without substantive change from S.C. §156 Reg. 155 (l), (f) and (g).

Former subsection (i), adopted by resolution on June 14, 1966, was relettered subsection (h) by resolution adopted on January 16, 1969.

Former subsection (j), added by resolution June 14, 1966, was relettered subsection (i) by resolution adopted on January 16, 1969. It replaces and broadens the requirements of S.C. §156 Reg. 54 (2) which prohibited labeling a container of milk or a milk product as pasteurized unless it is in fact pasteurized.

Former subsection (k) was relettered subsection (j) by resolution adopted on January 16, 1969 and is derived without substantive change from Column C (part) of S.C. §155d (4). Other labeling requirements are incorporated in the general requirements of this section.

Subsections (k) and (l) were added by resolution adopted on January 16, 1969 to provide informative labeling for the consumer on harmless ingredients which have been approved for inclusion in some milk products.

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§111.63 Dairy farms; physical facilities and equipment.

(a) A milking barn, stable, or parlor shall be provided on a dairy farm in which the milking herd shall be housed during milking operations. The areas therein used for milking purposes shall (1) have floors constructed of concrete or equally impervious material; (2) have walls and ceilings which are dust-tight, smooth, painted or finished and in good repair; (3) have separate stalls or pens for cows, calves, and bulls; (4) be provided with natural and/or artificial light, well distributed for day and/or night milking; (5) be provided with sufficient air space and air circulation to prevent condensation and excessive odors; (6) not be overcrowded; and (7) have dust-tight covered boxes or bins, or separate storage facilities for ground, chopped or concentrated feed.

(b) A separate milkhouse shall be provided on a dairy farm which shall be used for no other purpose than milkhouse operations. There shall be no direct opening from the milkhouse into any barn, stable or any room used for domestic purposes, except that a direct opening between the milkhouse and the milking bar, stable or parlor is permitted when a tight-fitting, self-closing, solid door or doors, hinged to be single or double acting is provided for such opening.

The milkhouse shall (1) be provided with a smooth floor constructed of concrete or equally impervious material, graded to drain, and maintained in good repair; (2) have facilities for the disposal of liquid waste in a sanitary manner; (3) have accessible floor drains which shall be trapped if connected to a sanitary sewer system; (4) have walls and ceilings which shall be constructed of smooth material, painted or finished and in good repair; (5) be provided with adequate natural and/or artificial light; (6) be well ventilated; (7) be provided with water under pressure which shall be piped into the milkhouse; and (8) be equipped with a two-compartment wash-vat and adequate hot water heating facilities.

(c) A transportation tank, when used for the cooling or storage of milk on a dairy farm, shall be provided with a suitable shelter for the receipt of milk. Such shelter shall be adjacent to, but not a part of, the milkhouse and shall comply with the requirements for a milkhouse with respect to construction, drainage, light, ventilation and general maintenance.

(d) One or more toilets shall be provided on a dairy farm, conveniently located and constructed, operated and maintained in a sanitary manner. The toilet waste shall be inaccessible to flies and shall not pollute the soil surface or contaminate any water supply.

(e) Adequate hand-washing facilities shall be provided in the milkhouse and in or convenient to the milking barn, stable or parlor of the dairy farm and such facilities shall include running water, soap or detergent, and individual sanitary towels.

(f) An adequate quantity of water of a safe, sanitary quality shall be provided for milkhouse and milking operations from a supply which is easily accessible and properly located, protected and operated.

(g) Multi-use containers, utensils, and equipment used in the handling, storage, or transportation of milk or a milk product shall be made of smooth, non-absorbent, corrosion-resistant, non-toxic materials and shall be so designed and constructed as to be easily cleaned. All such containers, utensils and equipment shall be kept in good repair. Milk pails used for hand milking and stripping shall be seamless. No multi-use woven material shall be used for straining milk.

(h) Single-service articles shall be safe for their intended use, transported, stored and handled in a sanitary manner, and shall not be reused.

(i) No milking barn, stable or parlor, milkhouse or transportation tank shelter shall be constructed, reconstructed or structurally altered unless plans drawn to scale and specifications have been submitted to and approved by the Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new. It was enacted by resolution adopted on January 16, 1969 to provide dairy farm standards of greater uniformity with those of the State Department of Health and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.65 Dairy farms; operations; sanitary requirements and conditions.

(a) The interior of a milking barn, stable or parlor, including its floors, walls, ceilings, windows, pipelines and equipment shall be maintained in a dean and sanitary manner, in good repair and free from any condition which may result in the contamination of the milk or the spread of disease among the animals. Swine, pigeons and fowl shall be kept out of the milking barns, stable or parlor. Cow drippings shall be removed at sufficiently frequent intervals and not less than once daily to prevent the soiling of the cows' udders and flanks. Soiled bedding shall be removed and dean bedding added as required. Manure packs shall be properly drained and shall provide a reasonably firm footing, and waste feed shall not be allowed to accumulate therein.

(b) Outdoor areas used for cows and goats and other areas surrounding the premises where dairy farm operations are conducted shall be graded and drained as to be free from standing water or other accumulations. Such areas shall be kept clean and free of conditions which might harbor or be conducive to the breeding of insects and rodents. Waste feed shall not be allowed to accumulate and swine shall be kept out of such areas.

(c) The interior of a milkhouse, including its floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, non-product contact surfaces of milk containers, utensils and equipment, and other milkhouse appurtenances shall be maintained in a clean and sanitary manner, in good repair and free from any condition which may result in the contamination of the milk. Only articles directly related to milkhouse activities shall be permitted in the milkhouse. The milkhouse shall be kept free of trash, animals, fowl or other birds, and vermin.

(d) Effective measures shall be taken on a dairy farm to prevent the contamination of milk, containers, utensils and equipment by insects and rodents and by chemicals used to control such vermin.

(e) The product-contact surfaces of all multi-use containers, utensils, and equipment used in the handling, storage, or transportation of milk shall be cleaned immediately after each use and sanitized before each reuse thereof in such a manner that it is free from dirt, bacterial or milk residue and presents no hazard to the milk supply.

(f) All containers, utensils, and equipment used in the handling, storage, or transportation of milk shall be (1) stored to assure complete drainage, unless stored in sanitizing solutions; (2) protected from contamination prior to use; and (3) handled in such manner after sanitization as to prevent the contamination of any product contact surfaces.

(g) Milking shall be done in the milk barn, stable or parlor. All brushing of milking cows shall be completed prior to milking. The flanks, udders, bellies and tails of all milking cows shall be free of visible dirt prior to milking. The udders and teats of milking cows shall be cleaned and treated with a sanitizing solution immediately prior to the time of milking, and shall be relatively dry before milking. Wet milking is prohibited. Surcingles, milk stools, and anti-kickers shall be kept clean and stored above the floor.

(h) Each pail or container of milk shall be transferred immediately from the milking barn, stable, or parlor to the milkhouse. No milk shall be strained, poured, transferred or stored unless it is properly protected from contamination.

(i) Hands of milkers, milkhandlers and milk haulers shall be washed clean and dried with an individual sanitary towel immediately following the use of the toilet, before milking, before performing any milkhouse or milkhandling functions, and immediately before resuming after the interruption of any milkhouse or milkhandling activity. Milkers, milkhandlers and milk haulers shall wear clean, washable outer garments while milking or handling milk, milk containers, utensils or equipment.

(j) Vehicles used to transport milk in cans from the dairy farm to the receiving station or milk processing plant shall be so constructed and operated as to protect their contents from sun, freezing and contamination. The interior and exterior of such vehicles shall be kept clean and no substance capable of contaminating milk shall be transported with milk.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section was enacted by resolution adopted January 16, 1969 to provide dairy farm standards of greater uniformity with those of the State Department of Health and the 1965 U.S. Public Health Service Grade A Milk Ordinance.

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PART A FOOD AND DRUGS

ARTICLE 111 MILK AND MILK PRODUCTS

§111.67 Dairy farms; operations; control of brucellosis, tuberculosis and mastitis in cows.

(a) No milk at a dairy farm shall be shipped to a transfer station, receiving station or to a milk processing plant or shall in any way be used in or as a food for human consumption unless:

(1) The cow from which the milk is obtained shall be from a herd which is located in a Modified Accredited Tuberculosis area as determined by the United States Department of Agriculture and the New York State Department of Agriculture and Markets; or, if the herd be located in an area which fails to maintain such accredited status, from a herd which has been accredited by the said Departments as tuberculosis free;

(2) The cow from which the milk is obtained shall be from a herd under a brucellosis eradication program which meets one of the following conditions: (aa) located in a Certified Brucellosis-Free Area as defined by the United States Department of Agriculture and enrolled in a testing program for such areas, or (bb) located in a Modified Certified Brucellosis-Free Area as defined by the United States Department of Agriculture and enrolled in the testing program for

such areas, or (cc) meeting United States Department of Agriculture and the New York State Department of Agriculture and Markets requirements for an individually certified herd, or (dd) participating in a milk ring testing program which is conducted on a continuing basis at intervals of not less than every three months or more than every six months, with individual blood tests performed on all animals in the herd showing suspicious reactions to the milk ring test, or (ee) having individual blood agglutination tests performed annually with an allowable maximum grace period not exceeding two months;

(3) The cow from which the milk is obtained has been given a physical examination, conducted by a veterinarian acceptable to the Department, when required under subsection (b) of this section; and,

(4) The cow from which the milk is obtained has been subjected to such physical, chemical or bacteriological tests and examination by a veterinarian acceptable to the Department as deemed necessary by the Department for the detection of any suspected disease in the cow or herd. Any diseased animal disclosed by such tests and diagnosis by such veterinarian shall be disposed of as the Department directs.

(b) No milk shipped by a dairy farm to a transfer station, receiving stations or to a milk processing plant shall in any way be used in or as food for human consumption unless an unfit milk screening test acceptable to the Department, such as the Whiteside Test, is made on such milk in accordance with the following requirements:

(1) The operator of the transfer station, receiving station or milk processing plant shall make such tests at intervals of not more than one month on the milk received by him from each dairy farm. The results of such tests shall be recorded, when made, in a manner acceptable to the Department and kept on file for a period of not less than one year.

(2) Where such screening tests shows evidence of abnormal milk, the operator shall immediately notify the dairy farm concerned to withhold all abnormal milk from delivery.

(3) A retest of all the milk from herds showing abnormal milk shall be made by the operator of the transfer station, receiving station or milk processing plant within seven days. When the retest shows that there is still evidence of abnormal milk, the operator may continue to receive milk from the dairy farm from which such abnormal milk originated but shall require such dairy farm to have a physical examination of its herd made by a veterinarian acceptable to the Department. Such physical examination shall be made within seven days after the retest. If not made within such period, the milk from such dairy farm shall not thereafter be accepted until such physical examination is made. Animals found on such examination to be producing abnormal milk shall be segregated. Results of such physical examination shall be recorded in a manner acceptable to the Department and filed with the operator within twenty-four hours after the examination.

(4) Notwithstanding that a physical examination of a herd has been made in accordance with subdivision (3) of this subsection, when more than two consecutive routine monthly screening tests of milk from a dairy farm show evidence of abnormal milk, the operator shall not accept milk from such farm unless the farm places its herd under an official New York State mastitis control program, or an equivalent program acceptable to the Department. The processor shall not accept milk from such farm longer than sixty days even if such farm's herd is under the supervision of an official New York State mastitis control program when unsatisfactory screening test results persist and an unsatisfactory test result at the end of sixty days shall have been confirmed by a direct microscopic count.

(5) Milk from dairy farms having a record of satisfactory monthly screening tests for a period of three consecutive months may be tested quarterly by the operator of the transfer station, receiving station or milk processing plant. When a quarterly test discloses evidence of abnormal milk the milk from such dairy farm shall again be tested on a monthly basis.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subdivision (1) of subsection (a) is derived from S.C. §156 regulation 56. The former reference to S.C. section 13 and regulations is changed to a reference to state tuberculin test requirements.

Subdivision (2) of subsection (a) is derived without substantive change from S.C. regulation 56a.

Subdivision (3) of subsection (a) originally derived from S.C. §156 regulation 202 was amended by resolution adopted September 22, 1965 which deleted the requirement for annual physical examination of cows and substituted the requirement that such examination be performed when necessary or required by subsection (b).

Subsection (b) was added by resolution adopted on September 22, 1965. The test procedure prescribed by such subsection is deemed a sounder program of mastitis and unfit milk control than annual herd examinations.

People v. Teuscher, 248 N.Y. 454, 162 N.E. 484 (1928), held constitutional a quarantine order imposed upon milk from cows which were not tuberculin tested. An ordinance of Milwaukee requiring milk coming into the city to be from tuberculin tested and TB free cows was held constitutional in **Adams v. City of Milwaukee,** 228 U.S. 572 (1913).

This section was amended by resolution adopted on January 16, 1969 to provide requirements for the control of disease in dairy cattle of greater uniformity with the requirements of the State Department of Health and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance and to additionally apply its provisions to transfer stations.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.68 Dairy farms, operations; exclusion of unfit milk.

No milk at a dairy farm shall be shipped to a transfer station, receiving station or to a milk processing plant or shall in any way be used in or as food for human consumption if:

(1) The milk is unclean; or,

(2) The milk contains blood, pus, manure, contamination from vermin or any other foreign or extraneous matter or substance; or,

(3) The animal from which the milk is obtained is not in a healthy condition; or,

(4) The milk is obtained from an animal 15 days or less before or up to and including five days after pasteurization or is otherwise not colostrum free; or,

(5) The teats or udder of the animal from which the milk is obtained is inflamed, diseased, or is in any way abnormal; or,

(6) Upon testing the milk by milking the first streams from each test through a fine metal mesh, dark colored cloth or on a dark plate, abnormal foremilk is discovered. All such foremilk, whether or not abnormal, shall be discarded; or,

(7) Abnormal foremilk is detected in any quarter of the udder. All of the milk from such animal shall be excluded; or,

(8) The milk contains penicillin or other antibiotics; or,

(9) The milk is in any other way abnormal or unfit for human consumption.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section requires that certain specified milk at a dairy be excluded. S.C. §152 (7th paragraph) is omitted.

Subdivision (1) is derived without substantive change from S.C. §2 (31) (part) and S.C. Reg. 203 (part).

Subdivision (2) is derived without substantive change from S.C. §156 Reg. 203 (first sentence) (part).

Subdivision (3) is derived without substantive change from S.C. §156 Reg. 203 (first sentence) (part).

Subdivision (4) is derived without substantive change from S.C. §2(31) (part), S.C. §152 (6th paragraph) and S.C. §156 Reg. 203 (first sentence) (part).

Subdivision (5) is derived without substantive change from S.C. §156 Reg. 206(1).

Subdivisions (6) and (7) are derived without substantive change from S.C. §156 Reg. 206(2).

Subdivision (8) is new.

Subdivision (9) is new. It is a general clause to insure exclusion of **any** abnormal milk.

This section was amended by resolution adopted on January 16, 1969 to delete the word "raw" therefrom, to additionally apply its provisions to transfer stations and thereby provide greater uniformity with related requirements of the State Department of Health and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance.

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PART A FOOD AND DRUGS

ARTICLE 111 MILK AND MILK PRODUCTS

§111.71 Dairy farm; operations; cooling of milk.

Milk at a dairy farm shall be cooled immediately after milking to a temperature of 50°F required pursuant to §111.23 except that (1) mornings milk may be delivered without cooling to a receiving station or milk processing plant prior to ten o'clock before noon and (2) night's milk may be delivered without cooling to a receiving station or milk processing plant within four hours after milking.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §156 Reg. 216. The requirement for temperature control is included in §111.23, so that the instant section is concerned with the exception for raw milk which need not be cooled to 60°F if delivered

within specified time to a receiving station or milk processing plant.

This section was amended by resolution adopted on January 16, 1969 to delete the word "raw" and to require milk at a farm to be cooled to 50°F, in lieu of the former temperature control of 60°F, thereby providing greater uniformity with related requirements of the State Department of Health and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.73 Dairy farms; operations, sanitary requirements and conditions-Repealed.

Notes:

This section was repealed by resolution adopted on January 16, 1969 since the substance of its provisions was combined with and incorporated in § 111.65 of this article as amended by resolution adopted on the same date to provide greater uniformity with the requirements of the State Department of Health and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.75 Transportation of milk and milk products.

(a) The outside of a vehicle or carrier used to transport milk or milk products shall be appropriately and clearly marked "MILK,"MILK AND MILK PRODUCTS" or "MILK PRODUCTS." This subsection does not apply to the transportation of prepasteurized milk in cans from a dairy farm to a receiving station or processing plant.

(b) The tank holding prepasteurized milk or prepasteurized milk products delivered from a dairy farm, transfer station or receiving station to a milk processing plant shall have attached thereto a pink colored tag containing the following information:

(1) The words "REPASTEURIZED MILK" or the word "PREPASTEURIZED" followed by the appropriate name of the milk product;

(2) The number of quarts of gallons in the tank;

(3) The name and address of the milk processing plant to which the tank is being delivered; and,

(4) The name and address of the person shipping the tank and the name and address of the transfer station or receiving station where the tank was filled.

(c) A person shipping prepasteurized milk or a prepasteurized milk product shall prepare in triplicate a manifest, bill of lading or bill of sale which states (1) an identifying number of the lot or shipment, (2) the number of quarts or gallons in each container, (3) the name and address of the shipper and consignee, and (4) the date. The shipper shall retain one copy, and two copies shall accompany the shipment. One copy shall be kept by the carrier, and the other by the consignee. Each copy shall be kept on file for at least six months.

(d) After a tank has been filled with pasteurized milk or a prepasteurized milk product at a transfer station or receiving station, and prior to transportation to a milk processing plant, it shall be effectively sealed so as to prevent any access to the contents without first breaking the seal. All seals of openings of tanks attached to trucks shall be outside the dust proof housing. If a tank is to be filled at more than one station so as to receive its full capacity, the seal may be broken and immediately resealed after further filling operations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived from S.C .§156 Reg. 7(1) and (3) but is limited to the requirement that the outside of the vehicle be appropriately marked. The last sentence is new. S.C. §156 Reg. 144 which prohibited transferring milk or milk products from one container to another on a public highway or ferryboat, Reg. 151 which prohibited dippers or similar utensils, untilled single service containers and detached tags or labels from being kept on a vehicle used to transfer milk or milk products, and Reg. 152 which prohibited water, preservatives or adulterants from being kept on such a vehicle are omitted. Article 81 contains a general sanitary standard for vehicles used to transport food.

Subsection (b) is derived from S.C. §156 Regs. 75(a) and 159(1). The subsection contains the labeling requirements for raw milk and raw milk products shipped to milk plants for pasteurization and other processing. Specific labeling requirements for milk brought into the City for manufacturing purposes, S.C. §156 Reg. 166(1) and (2) (c), are omitted; see, however, the general requirements for labeling in §111.61.

Subsection (c) is derived from S.C. §156 Reg. 76. It is made applicable to all raw milk or raw milk products; some detail has been omitted.

Subsection (d) is derived from S.C. §56 Reg. 159 (2) with elimination of some detail.

This section was amended by resolution adopted on January 16, 1969 to substitute the word "prepasteurized" for the word "raw" and to add the term "transfer station" to provide terminology of greater uniformity and related requirements of the State Health Department and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.77 Transfer stations, receiving stations and milk processing plants; physical facilities and equipment; general requirements.

A transfer station, receiving station and milk processing plant shall comply with the following requirements:

(a) The floors of all rooms in which milk or milk products are processed, handled, or stored, or in which milk containers, equipment and utensils are washed, shall be constructed of concrete or other equally impervious and easily cleaned material; and shall be smooth, properly sloped, provided with trapped drains and kept in good repair. Storage rooms for storing dry ingredients and/packaging material need not be provided with drains and the floors may be constructed of tightly joined wood and keep in good repair.

(b) Walls and ceilings of rooms in which milk or milk products are handled, processed, or stored, or in which milk containers, utensils, and equipment are washed, shall have smooth, washable, lightcolored surfaces and shall be in good repair.

(c) Effective means shall be provided to prevent the access of insects and rodents. All openings to the outer air shall have solid doors or glazed windows which shall be closed during dusty weather.

(d) All rooms in which milk and milk products are handled, processed or stored and/or in which milk containers, equipment, and utensils are washed shall be well lighted and well ventilated.

(e) In all processing plants, a separate room shall be provided for (1) pasteurizing, processing, cooling and packaging; and for (2) cleaning of milk cans and bottles, except where the general room shall be of such size, the equipment so located and the sequence of operations so arranged as to segregate the receiving, pasteurizing and bottling from the bottle washing and can washing operations in such manner as to effectively prevent contamination of the milk.

(f) In all establishments receiving or shipping milk in bulk transport tanks, a separate tank truck room for cleaning and sanitizing such tanks shall be provided in the plant or in a location acceptable to the Department.

(g) All transfer stations, receiving stations and milk processing plants shall be provided with toilet facilities which comply with the requirements of the New York State Department of Health or of this Code. Toilet rooms shall not open directly into any room in which milk and/or milk products are processed. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing doors. Toilet rooms, dressing rooms and their fixtures shall be kept clean and in good repair and such rooms shall be well lighted and ventilated.'

(h) Water for drinking and sanitary needs of the occupants and for the operation of such establishments shall be of potable quality and shall be supplied under adequate pressure and in sufficient quantities.

(1) Water supply for milk processing plants located in the City of New York shall be from public supply system, except that a well water supply may be used as a secondary source if such well water conforms to the applicable provisions of Article 14 1 of this Code.

(2) For transfer stations, receiving stations and milk processing plants located outside of the City of New York the water supply shall conform to the requirements of the New York State Department of Health.

(3) Non-potable water shall be used for permitted limited purposes only, such as condensers and evaporators in refrigeration and air conditioning systems not connected with the potable water supply. All non-potable water lines shall be clearly identified and shall not be cross-connected with the potable water supply.

(i) Convenient hand-washing facilities readily accessible to the workrooms and toilet rooms shall be provided in such establishments, including hot and cold running water, soap, and individual sanitary towels or other approved hand drying devices. Handwashing facilities shall be kept in a clean condition and in good repair.

(j) All plumbing in such establishments shall conform to the applicable requirements of this Code or the requirements of the New York State Department of Health. Sewage and other liquid wastes shall be disposed of in a sanitary manner and shall be prevented from contaminating the water supply and water-supplied fixtures.

(k) All rooms in which milk and milk products are handled, processed, or stored, and/or in which containers, utensils, or equipment are washed or stored, shall be kept Clean, neat, and free of insects and rodents. Pesticides shall be safely used and in accordance with the label directions. Only equipment directly related to processing operations or to handling of containers, utensils, and equipment shall be permitted in the pasteurizing, processing, cooling, packaging, and bulk milk storage rooms.

(l) All sanitary piping, fittings, and connections which are exposed to milk and milk products, or from which liquids may drip, drain, or be drawn into milk or milk products, shall consist of smooth, impervious, corrosion-resistant, non-toxic, easily cleanable material. All piping shall be in good repair. Pasteurized milk and milk products shall be conducted from one piece of equipment to another only through sanitary piping.

(m) All multi-use containers, utensils and equipment with which milk or milk products come into contact shall be of smooth, impervious, corrosion-resistant, non-toxic material; shall be constructed and designed for ease of cleaning; and shall be kept clean and in good repair. After cleaning, all such multi-use containers, utensils and equipment shall be stored in such manner as to assure complete drainage, and shall be protected from contamination before reuse.

(n) All single-service containers, closures, caps, cap stock, parchment paper, gaskets and other single service articles with which milk or milk products come into contact shall be non-toxic; purchased and kept in sanitary tubes, wrappings or cartons; stored in a clean, dry place until used; and handled in a sanitary manner.

(o) No transfer station, receiving station or milk processing plant shall be constructed, reconstructed or structurally altered unless plans drawn to scale and specifications have been submitted to and approved by the Department.

(p) No new equipment used in the handling, storing, processing, pasteurizing, cooling, filling or conveying of milk or milk products and in the mechanical washing of bottles and cans shall be installed unless plans drawn to scale including the layout for such equipment and specifications have been submitted to and approved by the Department. No changes shall thereafter be made in or of new equipment installed without prior approval of the Department.

(q) All transfer station, receiving station and milk processing plant operations shall be so conducted and their equipment and facilities shall be so located as to prevent any contamination of milk or milk products, ingredients, equipment, containers and utensils. All milk or milk products or their ingredients which have been spilled, overflowed or leaked shall be discarded. Any processing or handling of products other than milk and milk products shall be performed in such manner as to preclude the contamination of the milk and milk products.

(r) Areas surrounding the premises where milk and milk products are handled, processed or stored shall be kept clean, properly graded and drained and free from conditions which may attract, harbor or be conducive to the breeding of insects and rodents, or which may otherwise constitute a nuisance.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new. It was enacted by resolution adopted on January 16, 1969 to replace the former §111.77 repealed on the same date and to provide milk plant requirements of greater uniformity with those of the State Department of Health and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.79 Milk processing plants; physical facilities and equipment; pasteurization equipment.

A milk processing plant shall have all necessary equipment for the effective pasteurization of milk or milk products as required pursuant to § 111.25. Pasteurizing equipment shall include thermometers and automatic temperature recording devices. No pasteurizing equipment shall be installed or placed in operation until the Department approves the design, construction and location of such equipment. Approval of equipment by the Department may be conditional or temporary, and the Department may order that unsatisfactory equipment be repaired or replaced within a specified period of time.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §156 Reg. 129(a) but the method of approval by the Department is made more specific. S.C. §156 Reg. 129(b) and (c) (part) is omitted.

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§111.80 Transfer stations; receiving stations and milk processing plants; operations; personnel cleanliness.

Any person employed or engaged in the processing, pasteurization, sterilization, handling, storage or transportation of milk and milk products or in the handling, storage or transportation of milk containers, utensils or equipment which come into contact with milk and milk products shall thoroughly wash his hands before commencing such work and as often as may be required to remove soil and contamination. Such person shall not resume work after visiting the toilet without thoroughly washing his hands. Such person shall wear dean, washable outer garments at all times while engaged in such work. The use of tobacco or spitting by any person while engaged in such work is prohibited.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new. It was added by resolution adopted on January 16, 1969 to provide personnel cleanliness requirements of greater uniformity with those required by the State Department of Health and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.81 Transfer stations, receiving stations and milk processing plants; operations; emergency situations and reports of illness.

(a) When flooding, power failure, equipment breakdown or other emergency occurs which affects the operations of a milk processing plant, transfer station, or receiving station, the permittee shall immediately notify the Department.

(b) When a milk processing plant is notified of any illness of a person diagnosed by a physician which allegedly resulted from consuming milk or a milk product produced at such plant, the permittee shall immediately notify the Department. The Department may require the permittee, within 24 hours of the original report, to submit a written report giving such additional information concerning the illness as the Department may require. Reports shall not be subject to subpoena or inspection by persons other than the Commissioner or authorized personnel of the Department and shall not hi.; used as the basis for prosecution.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new.

S.C. §156 Reg. 121 dealing with protection of surface coolers, Reg. 123 dealing with oil cup pans for use under beatings for shafting, have been omitted, and Regs. 135, 136, 137, 138 and 139, dealing with dirt testers, are omitted. Requirements governing general cleanliness, sanitary maintenance and regulation of employees are omitted from this article but are included in Article 81. Specifically, S.C. §146(b), §156 Regs. 53, 58, 122, 125, 126(part), 126(a)(part) and 150 are omitted.

The section heading and subsection (a) were amended by resolution adopted on January 16, 1969 to additionally apply their provisions to transfer stations.

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24 RCNY 111.83

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PART A FOOD AND DRUGS

ARTICLE 111 MILK AND MILK PRODUCTS

§111.83 Transfer stations, receiving stations, and milk processing plants; operations; inspection of pre-pasteurized milk and cans holding prepasteurized milk.

(a) When prepasteurized milk is received directly from one or more dairy farms either at a transfer station, receiving station or at a milk processing plant, a check shall be made of the can, tank or other container holding the prepasteurized milk for rust, corrosion or other similar conditions. An examination shall be made of each quantity of prepasteurized milk from each dairy farm, or if the prepasteurized milk is delivered in bulk from more than one dairy farm, of each quantity of such commingled prepasteurized milk. Examination shall consist of a check for abnormalities including odor, flavor, appearance, physical condition, bacterial flora and temperature. Examination for bacterial flora shall be made as required pursuant to §111.21. Results of examination shall be recorded on forms satisfactory to the Department and shall be kept on file for at least two years.

(b) When examination reveals that prepasteurized milk is contaminated, abnormal, or does not meet the bacterial standards of §111.21, it shall be rejected and shall not be sold or distributed in the City. The transfer station, receiving

station or milk processing plant permittee shall notify the owner or person in charge of a dairy farm whose milk is found to be or is suspected of being abnormal. If such person does not take immediate action to prevent future abnormalities of his milk supply, the permittee shall refuse to accept milk from such dairy farm until further inspection of the dairy farm is made by the Department pursuant to §111.13(c).

(c) When a can, tank, or other container is found to be rusted, corroded or otherwise unfit for use, it shall not again be used to hold milk or milk product, whether prepasteurized or pasteurized, until it has been repaired or retinned.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new. It contains the requirements for "deck inspection" of raw milk at the receiving station or milk processing plant and is designed to insure that the milk is fit for eventual consumption. Agriculture and Markets Law §48 and §49 have detailed regulations on insanitary cans and receptacles.

This section was amended by resolution adopted on January 16, 1969 to change the term raw milk to prepasteurized milk and to additionally apply the provisions of this section to transfer stations for the purpose of achieving greater uniformity with related requirements of the State Department of Health and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance.

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PART A FOOD AND DRUGS

ARTICLE 111 MILK AND MILK PRODUCTS

§111.85 Transfer stations, receiving stations and milk processing plants; cleansing and sanitization; use of containers; solutions.

(a) Weigh cans, storage vats, mixing vats, coolers, filters, separators, pumps, pipes or other apparatus or equipment used in handling, storing, transporting or processing of milk or milk products shall be thoroughly cleaned immediately after use pursuant to subsection (b) of this section and shall be sanitized immediately prior to reuse pursuant to subsection (c) of this section.

(b) Cleansing shall be performed as follows:

(1) After use, each item shall be rinsed with water until all visible milk or milk products are removed;

(2) After rinsing, each item shall be washed in water at a temperature of not less than 110°F. A washing compound in concentration sufficient for removal of all dirt and grease detectable by sight or touch shall be used by scrubbing with

a brush or by spraying under effective pressure. Steel wool or similar materials shall not be used; and,

(3) After washing, each item shall be rinsed with warm water until all traces of the washing compound are removed and the item is clean.

(c) Sanitization shall be performed as follows:

(1) The item shall be exposed to live steam, under pressure, for at least two minutes; or,

(2) The item shall be exposed to water at a temperature of at least 180°F for a period of at least two minutes; or,

(3) The item shall have applied to it a sanitizing agent of such strength and in such manner as will effectively sanitize such item. The type, strength and manner of application of the sanitizing agent and the preparation and reuse of solutions of sanitizing agent shall be approved by the Department.

(d) No bottle shall be used to hold milk or milk product until it is cleansed sanitized as follows:

(1) It shall be cleansed by use of the soaker type of washer. Each bottle shall be submerged for at least five minutes in a solution of caustic alkali (sodium hydroxide of not less than three per cent concentration) or detergent and sanitizing agent acceptable as to type and strength by the Department. The solution shall be kept at a temperature of not less than 150°F during which time the bottle shall be brushed, sprayed or subjected to air water pressure spray in a manner acceptable to the Department. Each bottle shall then be rinsed with clean water and sanitized in the manner set forth in subsection (c) of this section or as otherwise acceptable to the Department; or,

(2) It shall be cleansed by hand or by some device other than soaker type of washer. Each bottle shall be soaked in or sprayed with water containing an alkali or other detergent acceptable to the Department at a temperature of at least 120°F, during which time the bottle shall be brushed, sprayed or subjected to air water pressure spray in a manner acceptable to the Department. Each bottle shall then be rinsed with clean water and sanitized in the manner set forth in subsection (c) of this section.

(e) If heat sanitization is used for the sanitization of bottles other than by steam jets projected into bottles, sanitizing apparatus shall be equipped with an automatic temperature recording device which will indicate and record the temperature at which the bottles are sanitized. Temperature records shall be kept on file for at least 60 days.

(f) Strengths of solutions and time of exposure required for chemical sanitization shall be as follows:

(1) For tanks, including those mounted on railroad and automobile trucks, where chlorine sanitization solution is applied by spraying, 250 parts of available chlorine by weight per million parts of water after application for not less than five minutes.

(2) For containers, apparatus and utensils other than tanks and bottles, where chlorine sanitization solution is pumped or allowed to flow over surfaces to be sanitized, and the contact therewith is continuous, at least 100 parts per million in solution after application for not less than two minutes; and,

(3) For bottles, if washed by hand or in "pressure type" washers, at least 50 parts per million for not less than 15 seconds. If previously cleansed and sanitized in a "soaker type" washer, at least 10 parts per million in solution, after application for not less than ten seconds.

(4) Where iodofor solutions are used as bactericides or sanitizers instead of chlorine solutions, the concentration of iodine shall not be less than 52.5 parts per gallon, after application for not less than two minutes, except that for bottles cleansed and sanitized in a "soaker type" washer, the concentration of iodine shall not be less than one part per million, after application for not less than 10 seconds. The concentration of iodine shall be determined by titration with sodium thiosulfate.

(g) Vessels or containers used for preparation or storage of chlorine solutions shall not be constructed of wood, metal or other substances readily affected by such solution. Chlorine solutions shall be prepared by dissolving in water sufficient liquid chlorine, calcium or sodium hypochlorite or similar chlorine compound to give at all times the content of available chlorine here prescribed as indicated by the orthotolidine test or starchiodine titration. Equipment and materials for the performance of the orthotolidine test or starchiodine titration shall be constantly available and used regularly. A chlorine solution shall not be used more than once in the sanitization of containers, apparatus or utensils used in the handling, storage or transportation of milk or milk products, except where the strength of available chlorine is maintained, as outlined above, but used or spent chlorine solution may be employed for treating floors, walls or other structural parts.

(h) Glass bottles or other containers used to hold milk and milk products, the cover caps for containers, plug caps, parchment paper used on cans and stock used in the manufacture of paper containers and cover caps shall be protected from contamination at all times. Before commencement of filling operations, the first plug cap or combined closure and plug cap from a package of such caps and the first sheet of parchment paper from a package of such paper shall be discarded. Containers shall be of such sanitary design and construction so as to prevent leakage, contamination or any other condition which may adversely affect the purity of the milk or milk products. A container shall be constructed so that it will withstand ordinary handling during its lifetime. If a waxed paper container is used, coating procedures shall be accomplished in such manner that excessive wax will not become detached from the inner surface of the container.

(i) Glass bottles and other containers used to hold milk and milk products shall be provided with a cover cap or closure which shall (5) protect the product from contamination, (2) cover the pouring lip of the containers and (3) be of such type that its removal and replacement can readily be detected. The requirements of clauses (2) and (3) shall not apply to a cap or closure on containers of sour cream and cultured milk products, proVided such cap or closure covers the lip of such containers to at least the widest outside diameter thereof.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C.§156 Regs. 120, 124(1), 126(part), 126(a)(part), 126(b), 126(c), 126(d)(part), 146, 148 and 154a. Subsection (2) of Reg. 124 is omitted. Reg. 147 is omitted. The portion of Reg. 148 requiring that unfit containers be marked and condemned is omitted.

Subsection (c)(3) was amended by resolution of September 18, 1959, filed with the City Clerk September 22, 1959, to permit the use of any sterilizing agent approved by the Department, rather than a chlorine solution only. The amendment obviates the need for Board action whenever a new, acceptable sanitizing agent is developed.

Subsection (h) of this section was amended and subsection (i) was added by resolution of June 15, 1959, filed with the City Clerk June 23, 1959, so as to restore the exception for sour cream and cultured milk products which originally appeared in S.C. §156 Reg. 154a.

The specific requirement in subsection (d)(1) of this section for a 2% caustic alkali solution was upheld in **Kemiko Mfg. Co. v. Dept. of Health,** N.Y.L.J.p. 1 (Sup. Ct. May 3, 1937).

This section was amended by resolution adopted on January 16, 1969 to provide requirements and terminology therein of greater uniformity with those of the State Department of Health and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.87 Milk processing plants; operations; pasteurization operations; filling of containers.

(a) A milk plant permittee shall notify the Department in writing of the normal daily period of pasteurization stating hours when pasteurization commences and the hours when pasteurization ends each day. Any change of pasteurization period shall be reported to the Department.

(b) Prior to daily commencement of pasteurization operation, a chart which bears the name and address of the milk processing plant, the date and an effective means of identifying the particular pasteurizing unit concerned shall be attached to the automatic temperature recording device for each pasteurizing unit in such a manner as will properly record temperature and time of processing. The following information shall be included on the chart:

(1) The word "MILK" or the appropriate name of the milk product;

(2) The quantity of milk or milk product pasteurized;

(3) The temperature as shown by a correct indicating thermometer at some designated time during the holding period of one pasteurization operation in the case of the holding method of pasteurization pursuant to §111.25 or during the forward flow in the case of the high-temperature, short-time method pursuant to such section;

(4) Explanation of any unusual occurrences;

(5) Signature of the person in charge of pasteurization operation; and,

(6) On at least one of the charts during a weekly period, a statement of the time accuracy of the recording device.

(c) Charts shall be kept on file at the plant for at least 60 days.

(d) Except as otherwise provided in this article, no milk or milk product shall be pasteurized a second time. This requirement does not apply, however, to cold storage cream or to milk or a milk product during the manufacture of a food other than another milk product.

(e) Immediately after pasteurization, milk or a milk product shall be placed by mechanical means in sterile containers which meet the requirements of §111.85. Containers shall be dosed immediately after filling, and filling operations shall be conducted so as to prevent contamination of the milk or milk product. Containers of light sour cream may be repacked at the depot of a Class B permittee if proper facilities are provided.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §156 Reg. 54(3) and Reg. 129(c)(part), (d), (e), (f), (g) and (h). The exception for cultured milk products to he filled at a depot is omitted but is retained for light sour cream.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.89 Transfer stations, receiving stations and milk processing plants; operations; records.

(a) A Class A permittee operating a transfer station or receiving station shall keep records for at least six months showing the receipt and disposition of all quantities of prepasteurized milk or milk products at the station concerned.

(b) A Class A permittee operating a milk processing plant shall keep records for at least six months showing the receipt of quantities of prepasteurized milk, prepasteurized milk products and food ingredients used in the processing of milk products and the quantities of milk or milk products processed at the plant.

(c) A Class A permittee operating a milk processing plant and a Class B Permittee shall keep daily records showing the quantities delivered and establishments to whom delivered. Such records shall be retained for at least two months.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §156 Regs. 77 (as to skimmed milk) and 161. The purpose of the requirement as here included is to facilitate a check on the source of milk, milk products and raw ingredients, to ascertain the freshness of such substances.

The section heading and subsections (a) and (b) of this section were amended by resolution adopted on January 16, 1969 to additionally apply their provisions to transfer stations and to change the term raw milk to prepasteurized milk to provide greater uniformity with the requirements of the State Department of Health and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance.

Subsection (c) was amended by resolution adopted on October 19, 1967 which eliminated the references to a Class C permittee.

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ARTICLE 111 MILK AND MILK PRODUCTS

§111.91 Sales and distribution.

(a) Except as provided in subsection (b), (c) and (d) of this section no milk or milk product shall be possessed, offered for sale, sold, given away or distributed unless it is in an individual container intended for consumer use which is filled in the manner prescribed pursuant to §111.87 at the milk processing plant where the milk or milk product is pasteurized. Such container shall not be opened until it comes into the control of the consumer or, if the milk or milk product is sold or distributed for consumption on the premises of a restaurant, until the milk or milk product is ready to be served to the consumer.

(b) Milk or milk products may be possessed, offered for sale, sold, given away or distributed in cans if it is to be used (1) by a wholesale milk dealer, (2) for manufacturing purposes at a food establishment, (3) for cooking purposes at a restaurant, or hospital or other institution giving care to persons or (4) at a hospital or other institution which is authorized to dispense loose milk pursuant to subsection (c) of this section.

(c) The Department may authorize a hospital or other institution giving care to persons to dispense milk or milk products from cans to glasses or other individual containers for consumption on the premises of such hospital or institution. No such authorization shall be given until the Department is satisfied that sanitary standards, equivalent to the standards set forth in applicable provisions of Article 81 of this Code are being met.

(d) A restaurant, hospital or other institution may dispense milk lowfat milk, modified lowfat milk, skimmed milk or modified skimmed milk from a special mechanical device, satisfactory to the Department, into glasses or other containers for consumer use on the premises of such establishment or institution. The special device shall be designed and constructed in such a manner that a container of the milk or milk product, which is filled and scaled at the milk processing plant where the milk or milk product is pasteurized, can be placed directly into the device and becomes part of the device so that the milk or milk product may be dispensed without necessity of pouring the milk or milk product into any other container. The device shall be so designed and constructed that milk or a milk product which is not homogenized will be kept mixed so as to insure that each portion of the fluid dispensed contains a proper proportion of the contents of the container. A multi-use container used as part of the special device shall be rinsed immediately after emptying and before its return to the milk processing plant. A single-service container used as part of the special device shall be discarded immediately after use and shall not be reused. The container shall be so designed that it cannot be opened or otherwise tampered with without breaking the seal affixed at the milk processing plant. The special device in addition to the requirements prescribed by this section, shall meet the requirements of §81.47.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §§159-b and 159-c. It has been reworded to avoid detailed standards and to relate to other relevant portions of the revised Code, particularly the cited section of Article 81. S.C. §§157a, emergency distribution of milk, 159, consumer use of certain containers, 158, on distribution and use of skimmed milk and modified skimmed milk (see also section 111.55), and 159a, on general limitations on insanitary use of containers, are omitted. Agriculture and Markets Law §70 prohibits the use of milk cans and other containers without the consent of the owner thereof.

An order of the Department of health of Albany prohibiting the sale of loose or dipped milk was upheld in **Mannix v. Frost,** 100 Misc. 36, 164 N.Y.S. 1050 (Sup. Ct. Albany Co.1917 aff'd without option, 181 App. Div, 961, 168 N.Y.S. 1118 (3d Dept. 1917).

Note that sanitary control of vending machines generally is covered by §81.47. See in this connection **Peoples Dairy v. City of Lackawanna,** 1 Misc, 2d 700, 149 N.Y.S. 2d 392 (Sup. Ct. Erie Co. 1956).

Subsections (a), (b) and (d) of this section were amended by resolution adopted on January 16, 1969 to additionally apply the provisions of subsections (a) and (b) to milk or milk products found in the possession of a person and to additionally apply the provisions of subsection (d) to lowfat milk or modified lowfat milk for the purpose of providing greater uniformity with the requirements of the State Department of Health and the 1965 U.S. Public Health Service Grade A Pasteurized Milk Ordinance.

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24 RCNY Health Code Reg. 113.00

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ARTICLE 113 FROZEN DESSERTS

Health Code Reg. § 113.00 INTRODUCTORY NOTES

Article 113 was repealed and reenacted by resolution adopted on April 20, 1978 to update its standards, conform its provisions with related provisions of the State Agriculture and Markets Law and the regulations promulgated thereunder, and to provide uniformity with the related provisions of Chapter 571 of the Laws of 1976. References to Health Code provisions in existence prior to the revision and reenactment of this Article are cited in the annotations as "H.C. §....."

Section 113.19 was repealed on June 10, 1996 to eliminate the requirement to label the contents of frozen desserts as such labeling is now preempted by federal law.

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24 RCNY 113.01

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ARTICLE 113 FROZEN DESSERTS

§113.01 Definitions.

Frozen desserts. Frozen desserts means ice cream, frozen custard, French ice cream, French custard ice cream, artificially sweetened ice milk, fruit sherbet, non-fruit sherbet, water ices, non-fruit water ices, confection frozen without stirring, dairy confection frozen without stirring, manufactured dessert mix, frozen confection, melorine frozen dessert, parevine, frozen yogurt, freezer made shakes, freezer made milk shakes, dietary frozen dessert, whipped cream confection and bisque tortoni together with any mix used in making such frozen desserts as such products are defined in the regulations contained in Part 39 entitled "Definitions and Standards for Frozen Desserts" promulgated pursuant to the provisions of Article 4-A of the State Agriculture and Markets Law. In addition, any products which are similar in appearance, odor or taste, or are prepared or frozen as frozen desserts are customarily prepared and frozen, whether made with dairy products or non-dairy products are included as frozen desserts in this definition. Any operation producing chips or flakes of ice made from water with or without additives, served to the consumer with or without flavoring added by the operator or consumer is included as a frozen dessert within this definition, such operation being commonly known as a slush operation.

Frozen desserts mix. Frozen desserts mix means any frozen dessert before being frozen.

Retail frozen desserts plant or retail plant. Retail frozen desserts plant or retail plant means any place, or premises, or any part thereof, including specific applicable areas in retail stores, stands, hotels, restaurants, mobile food units, and other retail service food operations whether temporary or permanent where frozen desserts are manufactured, processed, assembled, frozen and stored for distribution or sale at retail directly to the consumer and shall include rooms or space where utensils or equipment are stored or washed and sanitized, or where ingredients for use in manufacturing the frozen desserts are stored.

Wholesale frozen desserts plant or wholesale plant. Wholesale frozen desserts plant or wholesale plant means an establishment in which frozen desserts or frozen desserts mix are manufactured for sale or distribution otherwise than for retail sale directly to the consumer on the premises where manufactured.

C-I-P. C-I-P means a cleaning and sanitizing procedure by which equipment, pipe lines, and other facilities are cleaned-in-place in accordance with procedures approved by the Department for permanently installed sanitary product-pipelines and cleaning systems.

Dispensing freezer. Dispensing freezer means the type of equipment which freezes or partially freezes frozen desserts to be served for sale to the consumer.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived in part from H.C. §113.01 and is in part new.

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24 RCNY 113.03

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ARTICLE 113 FROZEN DESSERTS

§113.03 Permits, certificates of registration, identifying plates or insignias.

(a) No person shall operate a wholesale plant, or wholesale distributing establishment, or combined wholesale plant and distributing establishment located within the City without a Class A certificate of registration issued by the Commissioner.

(b) No person shall ship frozen desserts or frozen desserts mix into the City without a Class B certificate of registration issued by the Commissioner.

(c) (1) No person shall operate a retail frozen desserts manufacturing plant within the City without a frozen desserts manufacturing permit and, when required by the Department, an appropriate food establishment permit issued by the Commissioner.

(2) No person shall operate a retail frozen desserts manufacturing plant on a mobile food unit within the City

without a frozen desserts manufacturing permit, an appropriate mobile food unit permit, and an identifying plate or insignia for the mobile food unit as required by §89.03.

(d) The annual fees for frozen desserts permits and certificates of registration shall be paid in accordance with the provisions of §§5.07(a) and 5.09(i), respectively, except that the Department may collect such fees on a biennial renewal basis.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived in part from H.C. §113.03 and is in part new.

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24 RCNY 113.05

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§113.05 Statement on facilities and method of operation; equipment.

No retail frozen desserts manufacturing establishment shall be constructed, be extensively altered or have equipment installed unless the Department approves the sanitary design, construction and installation.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived in part from H.C. §113.07.

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24 RCNY 113.07

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§113.07 Source of frozen desserts.

No person shall manufacture, store, offer for sale, sell, give away or distribute frozen desserts or frozen desserts mix in the City unless such person is operating under such permits, certificates of registration, identifying plates, insignias, licenses, or badges as are required by this article and Article 89.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived in part from H.C. §113.09.

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§113.09 Prohibitions.

It shall be unlawful for any person to buy or sell any frozen desserts or frozen desserts mix for resale unless all the parties to such purchase or sale who are required to be under permit or certificate of registration under provisions of §113.03 are the holders of such permit or certificate of registration.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new.

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24 RCNY 113.11

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§113.11 Standards of identity.

It shall be unlawful for any person to buy or sell any frozen desserts or frozen desserts mix or a frozen desserts mix unless it conforms with the regulations contained in Part 39 entitled "Definitions and Standards for Frozen Desserts" promulgated pursuant to Article 4-A of the State Agriculture and Markets Law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new.

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24 RCNY 113.13

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§113.13 Standards; bacterial count.

(a) It shall be unlawful for any person to manufacture, produce, pack, possess, sell, offer for sale, deliver or give away any frozen dessert or frozen desserts mix which contains bacteria in excess of the following standards:

(1) More than 20 per gram of coliform organisms; or

(2) More than 100,000 per gram in the total bacteria plate count except for frozen desserts or frozen desserts mix manufactured from milk products to which a culture has been added after pasteurization.

(3) More than 50 per gram of yeast or molds, nor shall there be any pathogenic micro-organisms or their toxic products.

(b) Method of determination. Bacterial and other standards referred to herein shall be based on recognized standard methods of analysis as prescribed in the latest edition of "Standard Methods for the Examination of Dairy Products" of

the American Public Health Association.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new.

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24 RCNY 113.15

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§113.15 Standards; pasteurization of frozen desserts mix.

(a) Pasteurization. All frozen desserts mix with the exception of water ice mix and flavoring agents used in frozen desserts shall be pasteurized.

(b) Pasteurization temperatures. Pasteurization of frozen desserts mix as required in subdivision (a) of this section shall be done in a plant and with equipment conforming to the provisions of this article, by heating every particle:

(1) to a temperature of at least 155 degrees Fahrenheit and held at such temperature for at least 30 minutes, or

(2) to a temperature of at least 160 degrees Fahrenheit and held at such temperature for at least 15 minutes, or

(3) to a temperature of at least 165 degrees Fahrenheit and held at such temperature, for at least 10 minutes, or by short term pasteurization with controls approved by the Commissioner.

(4) to a temperature of at least 175 degrees Fahrenheit and held at such

(5) to a temperature of at least 180 degrees Fahrenheit and held at such temperature for at least 15 seconds, or

(6) to a temperature of at least 200 degrees Fahrenheit and held at such temperature for at least three seconds, or

(7) to a temperature of at least 210 degrees Fahrenheit with no holding time, or to such equivalent temperature and period of holding as the Commissioner shall approve in writing.

(8) in the case of ice milk mix, to a temperature of at least 166 degrees Fahrenheit for at least 15 seconds, or

(9) to a temperature of at least 161 degrees Fahrenheit for at least 25 seconds.

(c) High temperature short time pasteurizers shall have the thermal limit controller set and sealed so that forward flow of product cannot start unless the temperature at the controller sensor is above the appropriate required temperature, and so that forward flow of product cannot continue during descending temperatures when the temperature is below the appropriate required temperature. The seat shall be so applied after test, by the representative of the Commissioner, and shall not be removed without immediately notifying the Commissioner. The system shall be so designed that no product can be by-passed around the controller sensor which. shall not be removed from its proper position during the pasteurization process.

(d) Cooling. After pasteurization all mix shall be cooled immediately to a temperature of not more than 50 degrees Fahrenheit until subject to freezing. Any milk, cream, and other fluid milk products other than sterilized, evaporated or sweetened condensed milk in hermetically sealed containers, shall also be stored at temperatures of not more than 50 degrees Fahrenheit. This requirement shall be deemed:

(1) to require the use of refrigerated vehicles or approved insulated containers in transporting frozen desserts mix from the manufacturing or other plant to retail manufacturers, and

(2) to apply to conveying mix from coolers or refrigeration units in manufacturing plants to freezers by means of pipes, tubing, or other means.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new and provides uniformity with §240.9 of the regulations entitled "Frozen Desserts", promulgated pursuant to Article 4-A of the New York State Agriculture and Markets Law.

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24 RCNY 113.17

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§113.17 Standards; refreezing of certain melted frozen desserts.

A melted or partly melted frozen dessert which is dean, wholesome and unadulterated and whose container has not been broken or opened after it left the frozen dessert plant may be refrozen if it is repasteurized.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from H.C. §113.21.

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24 RCNY 113.19

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ARTICLE 113 FROZEN DESSERTS

§113.19 Standards; labeling; approval of labels and signs. [Repealed]

HISTORICAL NOTE

Section repealed City Record June 14, 1996 eff. July 14, 1996. [See Vol. 8 Statements of Basis and Purpose No. 12]

Section in original publication July 1, 1991.

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24 RCNY 113.21

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ARTICLE 113 FROZEN DESSERTS

§113.21 Physical facilities and equipment; general requirements.

(a) Equipment, apparatus and utensils used at a retail frozen desserts manufacturing establishment shall be made of stainless steel, or other impervious material which, in the opinion of the Department, will not rust, corrode or result in the contamination of the frozen desserts. Equipment and apparatus, including pipes, shall be constructed so as to be easily taken apart for cleaning, but stationary equipment and apparatus, of such design as will permit effective in-place cleaning, may be used. When, in the opinion of the Department, such stationary equipment and apparatus cannot be or is not being effectively cleaned in place, the Department may order the use of other appropriate equipment, apparatus and method of cleaning.

(b) All boiler and tool rooms shall be partitioned from rooms in which manufacturing, handling, or storing of frozen desserts take place.

(c) Storage of utensils and portable equipment used in processing, handling, or packaging of frozen desserts shall

be at least eight inches above the floor in dean, dry locations and in a self-draining position on racks constructed of impervious, corrosion-resistant material.

(d) All opened boxes of foods, ingredients, paper goods, utensils and other similar materials used in the manufacture or dispensing of frozen desserts shall be closed and protected against contamination when not in continuous use.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived in part from H.C. §113.25 and is in part new.

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24 RCNY 113.23

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ARTICLE 113 FROZEN DESSERTS

§113.23 Operations; general requirements; sanitization.

(a) Drainage from a washing room or washing area shall not be allowed to flow into any other room or area.

(b) No equipment or container shall be used if it is worn, rusted, corroded or is in such condition that it cannot be cleaned and sanitized.

(c) Cans used to store frozen desserts shall be used for no other purpose.

(d) Equipment, sanitary piping and utensils used in receiving, storing, processing, manufacturing, packaging and handling frozen desserts and ingredients thereof, and all product contact surfaces of pumps, and lines shall be kept clean. Packing glands on all agitators, pumps, and vats shall be inspected regularly and kept in good operating condition and dean. Before use, all equipment coming in contact with milk products or frozen desserts shall have an effective bactericidal and sanitizing treatment approved by the Department. Equipment not designed for C-I-P cleaning, shall be

disassembled, thoroughly cleaned and sanitized daily. Only cleaners, wetting agents, detergents, or other similar material that will not adversely affect or contaminate the frozen desserts or ingredients thereof may be used. Cleaning and sanitization shall be performed by a procedure approved by the Department. Steel wool, metal sponges or pads shall not be used. C-I-P cleaning shall be used only in the case of equipment and pipeline systems that are designed, constructed and installed with the approval of the Department for that type of cleaning and such equipment shall be cleaned daily.

(e) Sanitization shall be accomplished as follows:

(1) Immersion for at least one-half minute in clean, hot water at a temperature of a least 170 degrees Fahrenheit (or 77 degrees Centigrade)OF

(2) Immersion for at least one minute in a clean solution containing at all times at least 50 parts per million of available chlorine as a hypochlorite or 200 parts per million as an organic chlorine compound at a temperature of at least 75 degrees Fahrenheit (24 degrees Centigrade) or

(3) Immersion for at least one minute in a clean solution containing at all times at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75 degrees Fahrenheit (24 degrees Centigrade) or

(4) Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution in the case of equipment too large to sanitize by immersion. When chemicals are used for sanitization, a test kit or other device that accurately measures the parts per million concentration of the solution is to be provided and used. When hot water is used for sanitizing, an integral heating device to maintain the water temperature at a minimum of 170 degrees Fahrenheit (77 degrees Centigrade), and a numerically scaled indicating thermometer, accurate to plus or minus 2 degrees Fahrenheit (1.1 degrees Centigrade) for frequent checks of water temperature, are to be provided and used.

(5) Mechanical cleaning and sanitizing may be done by any type of machine or device approved by the Department. These machines and devices are to be properly installed, maintained in good repair, and operated to produce clean, sanitized equipment and utensils.

(f) Frozen desserts cabinets shall be kept dean, sanitary, neat, free from objectionable odor, and free from unnecessary utensils, dishes, or other material and products, other than the scoop necessary for dispensing the product. Such cabinets shall be kept closed except when necessary to dispense, remove or replenish supplies of products or during cleaning operations. The cabinet compartments or receptacles for frozen desserts shall not be used for any other purpose. Multi-use frozen desserts cans shall not be used for any purpose other than to store frozen desserts.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived in part from §113.29 and is new in part.

The unnumbered paragraph following paragraph (4) of subsection (e) of §113.23, was amended by resolution adopted on April 20, 1978 to indicate that the thermometer needed for checking the temperature of hot water used for sanitizing must be accurate to plus or minus 2 degrees Fahrenheit or 1.1 degrees Centigrade.

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§113.25 Operations; filling and packing procedures.

(a) Packaging: Frozen desserts shall be packed in approved containers and packaging material that will protect the quality of the product and protect it from possible contamination. The packaging, cutting, molding, dispensing, and other handling or preparation of frozen desserts and their ingredients shall be done in a sanitary manner.

(b) Containers: Multi-use containers for frozen desserts shall be rinsed immediately after emptying and properly washed and sanitized before reuse. Metal cans and containers shall be free from rust and corrosion. Paper and plastic containers, liners, covers and other materials coming in contact with frozen desserts shall be so kept, handled, stored, and used as to be free from dust, dirt and other contamination. Single service containers and utensils shall not be reused.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived in part from H.C. §113.33 and is in part new.

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24 RCNY 113.27

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ARTICLE 113 FROZEN DESSERTS

§113.27 Sale and distribution; retail sales.

(a) Frozen desserts may be dispensed from mobile food units only from the original package as manufactured and filled in an approved plant, or directly from an approved frozen desserts manufacturing machine.

(b) Mobile food units from which frozen desserts are dispensed from bulk containers or from frozen desserts manufacturing machines shall be so constructed as to protect the products from dust, dirt or other contamination.

(c) Frozen desserts dispensing utensils shall be stored in a dipper well provided with running potable water or in the bulk container, each flavor provided with its own utensil, with the dispensing utensils handle extended out of the product.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new.

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24 RCNY 113.29

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ARTICLE 113 FROZEN DESSERTS

§113.29 Mobile frozen desserts units, commissaries and depots.

Mobile frozen desserts units shall comply with all applicable provisions of the Health Code, except those which apply to boiler rooms, toilet facilities, and storage facilities.

(a) **Mobile frozen desserts manufacturing vehicles; minimum standards:**

(1) The interior shall be of sufficient size with equipment and fixtures conveniently located.

(2) A supply of potable water shall be provided. The capacity of the potable water supply tank shall be a minimum of 40 gallons. The tank(s) shall be tilted sufficiently to permit complete drainage and a suitable drain cock(s) shall be provided. Each water tank shall be so constructed as to be readily accessible for inspection and cleaning. The water inlet pipe shall be of removable flexible approved tubing, with the fitting for hose connections capped except when the tank(s) is being filled. Hose for connection to a potable water supply shall be provided and it shall be equipped with an

approved backflow prevention device.

(3) A double compartment sink with a swivel faucet, supplied with running hot and cold water shall be provided. It shall be large enough to accommodate the largest piece of equipment to be cleaned therein.

(4) Hand washing facilities, with running hot and cold water, soap and single service towels or mechanical hand dryer shall be provided.

(5) A suitable waste water tank with a capacity greater than the water supply tanks, shall be provided. The tank shall be tilted sufficiently to permit complete drainage and shall be provided with a drain cock. It shall be provided with a means of gauging the contents and shall be drained and flushed at least once each day and more frequently as may be necessary, and shall be maintained in a sanitary condition.

(6) A storage box or freezer, with refrigerated holding plate shall be provided for holding the various ingredients and frozen desserts. This box shall be of ample capacity, constructed of stainless steel or other approved non-corrosive material. It shall be provided with metal racks, platforms or shelves on which to store products or ingredients and equipped with an indicating thermometer. The floor shall be pitched towards a drain.

(7) Floors shall be of metal or other approved material and sloped to provide drainage. Junctures of floors, walls and adjoining fixtures shall be watertight and coved.

(8) The interior shall be adequately lighted. A minimum of 50 foot candles of light shall be provided on working surfaces.

(9) There shall be a partition or self-closing door between the driver's seat and the manufacturing and serving area, unless the vehicle is air conditioned.

(b) **Mobile frozen dessert units; minimum standards:**

(1) Mobile units shall be used only for the manufacture and sale of frozen desserts unless specified approval is applied for in writing and granted by the Department for the sale or storage of other food products. Such authorization shall appear on the permit granted to the operator of such mobile unit.

(2) A sufficient number of refuse and garbage cans, with covers, shall be provided. Cans or containers shall be so constructed and maintained, and located, as not to create a nuisance.

(3) Frozen desserts mix shall be in single service containers packed at the place of manufacture. Container capacity shall be sufficient, but not larger than needed for the manufacture of a single batch, unless some other satisfactory method of handling mix or some other size or type of container is approved by the Department.

(4) Flavors, syrups, fruits, and other ingredients used in making sundaes, shakes and other frozen desserts shall be kept in single service removable containers.

(5) Persons handling or manufacturing frozen desserts shall wear lightcolored, clean, washable outer garments, and head coverings.

(c) **Commissaries and depots:** All mobile units shall operate from a commissary or depot as authorized by permit. Such commissaries or depots shall have adequate facilities for cleaning and sanitizing of the mobile units they service. Instructions shall be posted in the commissary or depot service area as to proper cleaning of equipment, utensils and facilities. Commissaries or depots shall be maintained and operated in accordance with the following requirements:

(1) Walls shall be smooth, non-absorbent and clean.

(2) Premises shall be rodent and insect proof and free of harborages.

(3) The floor shall be constructed of concrete or other approved impervious material, shall be provided with a drain, sloped to such drain, and the juncture of the floor and walls shall be covered.

(4) There shall be provision for adequate ventilation. Ventilation facilities shall be screened or otherwise protected to prevent the entrance of insects, rodents, or other vermin.

(5) Adequate lighting, suitable toilet facilities, hand washing facilities equipped with hot and cold running water, soap and single service towels or air dryers, clothes lockers, and refuse containers shall be provided.

(6) A sufficient supply of hot and cold potable running water shall be provided and there shall be at least two large sinks, each of which is large enough to accommodate the largest piece of equipment to be washed. Drain beards of impervious material shall be provided.

(7) Hose and hose connections for supplying potable water to the mobile vehicles shall be provided. Water supply lines to hose connections shall be equipped with approved vacuum breakers or other devices to eliminate possible contamination from backflow. There shall be facilities for storing the hoses to achieve complete drainage and to avoid contamination.

(8) There shall be a metal pipe drying rack or its equivalent for utensils and equipment.

(9) There shall be suitable storage facilities or covered containers for all refuse and wastes.units are located and the area where food is stored.

(11) If frozen desserts, frozen desserts mix, flavors, syrups, fruit and other edible material are stored at a commissary, they shall be stored in rooms completely separated from rooms where cleaning and sanitizing is done, and such foods shall be kept at temperatures as will prevent spoilage and under conditions which will prevent contamination.

(12) Single service containers and other materials used in dispensing frozen desserts shall be stored in clean, dry rooms and shall be protected against contamination, dust and moisture.

(13) Prior approval shall be obtained from the Department for any change in a commissary or depot or for a change in location of the commissary or depot from which any mobile unit is to operate. The Department is to be notified whenever a mobile unit moves from one commissary or depot to another.

(14) Mobile units, before and after being cleaned and sanitized, may be stored outside of the commissary or depot, provided that electrical connections are provided for maintaining refrigeration, when necessary, and provided that the mobile units are not subjected to excessive smoke, dust, foul odors, or other possible contamination.

(15) A commissary or depot operator shall keep a daily record of the times during which each mobile vehicle serviced by him was cleaned and sanitized.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new.

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24 RCNY Health Code Reg. 115.00

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ARTICLE 115 PRESCRIPTION FORMULA PREPARATION FACILITIES

Health Code Reg. § 115.00 INTRODUCTORY NOTES

Article 115 was repealed and reenacted by resolution adopted on October 24, 2007 to modernize its provisions and eliminate requirements that are no longer applicable.

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24 RCNY 115.01

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ARTICLE 115 PRESCRIPTION FORMULA PREPARATION FACILITIES

§115.01 Scope.

This Article applies to the individual preparation of formula in accordance with a physician's or other health care practitioner's prescription in a non-retail food processing establishment, as defined in Article 81 of this Code. It shall not apply to preparation of such formula in (1) a maternity and newborn service operating pursuant to Article 28 of the Public Health Law, (2) any other institution giving care to children, or (3) a dwelling unit for the use of a person residing within the unit.

HISTORICAL NOTE

Section added City Record Oct. 30, 2007 eff. Nov. 29, 2007. [See Vol. 8 Statements of Basis and Purpose No. 60]

DERIVATION

Section in original publication July 1, 1991.

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24 RCNY 115.03

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ARTICLE 115 PRESCRIPTION FORMULA PREPARATION FACILITIES

§115.03 Definition.

When used in this Article, "prescription formula" means a food that is prepared for an individual, in accordance with the prescription of a physician or other health care practitioner, using a commercially manufactured powder or liquid food with a basic ingredient of milk, milk constituent, soy, or other liquid or powdered protein. This definition shall not limit the ingredients which may be added to any formula prepared pursuant to this Article.

HISTORICAL NOTE

Section added City Record Oct. 30, 2007 eff. Nov. 29, 2007. [See Vol. 8 Statements of Basis and Purpose No. 60]

DERIVATION

Section in original publication July 1, 1991.

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24 RCNY 115.05

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§115.05 Permit.

No person shall prepare prescription formula for sale or distribution or offer for sale, sell, give away or distribute prescription formula in or from a prescription formula preparation facility without a permit issued by the Commissioner.

HISTORICAL NOTE

Section added City Record Oct. 30, 2007 eff. Nov. 29, 2007. [See Vol. 8 Statements of Basis and Purpose No. 60]

DERIVATION

Section in original publication July 1, 1991.

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24 RCNY 115.07

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§115.07 Compliance with Code.

A prescription formula preparation facility shall be operated, constructed and maintained in the manner specified for non-retail food processing establishments by Article 81 and for buildings generally pursuant to applicable provisions of this Code.

HISTORICAL NOTE

Section added City Record Oct. 30, 2007 eff. Nov. 29, 2007. [See Vol. 8 Statements of Basis and Purpose No. 60]

DERIVATION

Section in original publication July 1, 1991.

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24 RCNY 115.09

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§115.09 Preparation and sale on physician's or other health care practitioner's order.

No prescription formula preparation facility permittee shall prepare, offer for sale, sell, give away or distribute prescription formula except on the order of a physician or other health care practitioner authorized by State law to prescribe therapeutic diets. The order may be transmitted to the permittee orally or in writing.

HISTORICAL NOTE

Section added City Record Oct. 30, 2007 eff. Nov. 29, 2007. [See Vol. 8 Statements of Basis and

Purpose No. 60]

DERIVATION

Section in original publication July 1, 1991.

Note:

10 NYCRR §405.23 (c)(1) provides that in a hospital, "therapeutic diets shall be prescribed by the practitioner or practitioners responsible for the care of the patients." Practitioners that are authorized by the State Education Law to prescribe medications include licensed physicians, registered physician's assistants; registered specialist's assistants; certified nurse practitioners and licensed midwives.

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24 RCNY 115.11

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§115.11 Standards; ingredients.

Food products used in the preparation of prescription formula shall be wholesome and obtained from sources approved in accordance with applicable federal and state law.

HISTORICAL NOTE

Section added City Record Oct. 30, 2007 eff. Nov. 29, 2007. [See Vol. 8 Statements of Basis and Purpose No. 60]

DERIVATION

Section in original publication July 1, 1991.

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24 RCNY 115.13

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§115.13 Standards; sterilization and purity of prescription formula preparations.

(a) Prescription formula preparations shall be safe for human consumption and produced under sanitary conditions using aseptic technique.

(b) Samples of prepared prescription formula shall be submitted to a certified laboratory for bacteriological and other microbiological analysis in accordance with a schedule established by the permittee and approved by the Department.

(c) When bacteriological sampling or other investigation reveals that the prescription formula preparation fails to meet the requirements of this Code, the Department may embargo and exclude such prescription formula from sale or distribution in accordance with Articles 3 and 71 of this Code.

HISTORICAL NOTE

Section added City Record Oct. 30, 2007 eff. Nov. 29, 2007. [See Vol. 8 Statements of Basis and Purpose No. 60]

DERIVATION

Section in original publication July 1, 1991.

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24 RCNY 115.15

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§115.15 Time of delivery.

Prescription formula preparations for infants made from a powder base or from a liquid base which have been amended shall be timely delivered to persons ordering such prescription formula so that such preparations may be consumed or discarded within 24 hours of preparation. All other formula preparations shall be consumed or discarded within 48 hours of preparation.

HISTORICAL NOTE

Section added City Record Oct. 30, 2007 eff. Nov. 29, 2007. [See Vol. 8 Statements of Basis and Purpose No. 60]

DERIVATION

Section in original publication July 1, 1991.

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24 RCNY 115.17

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§115.17 Labeling of containers.

Each container of prepared prescription formula for an individual shall be labeled with the following information:

(a) The name and telephone number of the prescription formula preparation facility;

(b) The words "INFANT FORMULA"; "CHILD FORMULA" OR "ADULT FORMULA" as applicable, or other words acceptable to the Department;

(c) The patient's name, medical record number or other institutional identification, and name of medical facility;

(d) If the prescription formula is prepared using commercially available infant formula, the infant formula brand name and additives, if any;

(e) Caloric density/volume;

(f) Expiration date and time;

(g) A statement that the prescription formula shall be kept under refrigeration at or below 40 degrees Fahrenheit (4.4 degrees Celsius);

(h) Prescription formulas for infants made from a powdered food base or a liquid base that has been modified shall be labeled to identify powder content, and shall include a statement that such prescription formulas shall be consumed or discarded no later than 24 hours after preparation. Other formula preparations shall include statement that such prescription formulas shall be discarded no later than 48 hours after preparation.

HISTORICAL NOTE

Section added City Record Oct. 30, 2007 eff. Nov. 29, 2007. [See Vol. 8 Statements of Basis and

Purpose No. 60]

Subd. (g) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 8 Statements of Basis

and Purpose No. 76]

DERIVATION

Section in original publication July 1, 1991, Subd. (d) amended City Record July 19, 2005, eff. Aug. 18, 2005. [See Vol. 8 Statements of Basis and Purpose No. 49]

Notes:

Subdivision (g) of §115.17 was amended by resolution adopted on Sept. 17, 2008 deleting the labeling requirement for holding prepared powdered formula at temperatures lower than other prepared formula.

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24 RCNY 115.19

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§115.19 Physical facilities, equipment and processing.

(a) Rooms and equipment used to prepare prescription formula shall be organized, cleaned and sanitized so as to prevent contamination, including cross-contamination by food substances, such as allergens, that the ordering physician or other health care practitioner has indicated may compromise an patient's health and safety.

(b) Facilities shall consist of separate rooms for preparation of infant and adult prescription formula and a separate room or rooms for washing and sanitizing containers and utensils. Such rooms shall not be used for any other purpose.

(c) During prescription formula preparation no other activities shall take place in the preparation room, doors leading to prescription formula preparation rooms shall be kept securely closed during preparation and only authorized personnel shall be allowed access to the prescription formula preparation room(s).

(d) Rooms shall be of such size as to prevent contamination of equipment and utensils.

(e) A preparation room shall have no exposed overhead water, steam or sewage piping and shall have an adequate number of conveniently located hand wash sinks operated by foot, knee or elbow controls.

(f) Floor drains of a washing room shall be separate from the drains of preparation rooms. A washing room shall have facilities and equipment and a supply of hot and cold running water adequate to enable proper cleaning and sterilization of containers and utensils. Racks shall be provided for the storing of clean containers and utensils.

(g) Equipment and apparatus used for preparation of prescription formula shall be of sanitary design and construction and allow effective cleaning and sanitizing. Equipment and apparatus shall be made of stainless steel or other impervious materials which will not rust, corrode or result in contamination. Sterilization equipment shall be equipped with recording and indicating thermometers.

HISTORICAL NOTE

Section added City Record Oct. 30, 2007 eff. Nov. 29, 2007. [See Vol. 8 Statements of Basis and

Purpose No. 60]

DERIVATION

Section in original publication July 1, 1991.

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24 RCNY 115.21

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ARTICLE 115 PRESCRIPTION FORMULA PREPARATION FACILITIES

§115.21 Packaging and sterilization.

(a) Prescription formula shall be packaged in individual single service food grade containers.

(b) Immediately after filling, a container shall be closed with a cover or cap which effectively seals and protects the mouth of the container. Containers with prepared infant prescription formula may be closed with new, unused, incised nipples which shall be protected with suitable outside fitted caps.

(c) Only sterile water shall be used in infant prescription formula preparation.

(d) Sterile water used to prepare infant prescription formula from a powder base shall be cooled to a temperature no lower than 158 degrees Fahrenheit (70 degrees Celsius) during preparation.

(e) Containers of prescription formula shall be sterilized in an autoclave unless the physician or other health care practitioner's order states that such formula shall not be sterilized, or if the label on a container of a commercially

manufactured infant formula base advises that such formula should not be sterilized after preparation.

(f) Prepared infant prescription formula shall be properly cooled to and maintained at or below 40 degrees Fahrenheit (4.4 degrees Celsius) within one hour of preparation, except that prescription infant formula prepared from a powdered food base shall be cooled to 37 degrees Fahrenheit (2.8 degrees Celsius) within one hour of preparation, and maintained at or below 40 degrees Fahrenheit (4.4 degrees Celsius).

(g) Formula intended for persons other than infants shall be cooled to and maintained at temperatures recommended by the manufacturer of the formula base product, or Article 81, whichever temperature is lower.

(h) All prescription infant formula prepared from a powder base, or liquid containing amendments, shall be used or discarded within 24 hours of preparation. All other formula preparations shall be consumed or discarded within 48 hours of preparation.

HISTORICAL NOTE

Section added City Record Oct. 30, 2007 eff. Nov. 29, 2007. [See Vol. 8 Statements of Basis and

Purpose No. 60]

Subd. (f) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 8 Statements of Basis

and Purpose No. 76]

DERIVATION

Former §§115.25 and 115.27 in original publication July 1, 1991.

Notes:

Subdivision (f) of §115.21 was amended by resolution adopted on Sept. 17, 2008 deleting the requirement for holding prepared powdered formula at temperatures lower than other prepared formula.

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24 RCNY 115.23

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ARTICLE 115 PRESCRIPTION FORMULA PREPARATION FACILITIES

§115.23 Records.

The following records, in a form provided or approved by the Department, shall be retained for at least three months:

(a) Orders received and prescription formulas prepared in accordance with such orders.

(b) For each sterilization procedure, equipment calibration readings, processing time and temperatures maintained during sterilization.

(c) Reports of bacteriological or other microbiological laboratory analyses conducted by or on behalf of the permittee.

HISTORICAL NOTE

Section added City Record Oct. 30, 2007 eff. Nov. 29, 2007. [See Vol. 8 Statements of Basis and Purpose No. 60]

DERIVATION

Section in original publication July 1, 1991.

Notes:

Article 115, formerly titled "Formula Milk for Infants," was repealed and reenacted by resolution adopted on October 24, 2007 to modernize its provisions, clarify its scope, and extend its applicability to formulas prepared for infants and others, and to formula products based on foods other than milk.

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24 RCNY Health Code Reg. 117.00

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TITLE IV ENVIRONMENTAL SANITATION

PART A FOOD AND DRUGS

ARTICLE 117 DAIRY FOOD PRODUCTS

Health Code Reg. § 117.00 INTRODUCTORY NOTES

Article 117, enacted by resolution adopted on January 16, 1969, contains provisions for the regulation of butter, malted milk, and cheddar, processed and soft cheese. These provisions have been transposed from Article 111 because they are dairy food products rather than milk products and therefore are subject to different environmental sanitation factors and are manufactured, distributed, and stored under different conditions.

Rules of the City of New York

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

24 RCNY 117.01

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART A FOOD AND DRUGS

ARTICLE 117 DAIRY FOOD PRODUCTS

§117.01 Butter.

No person shall offer for sale, sell, give away or distribute butter if it contains less than 80 percent by weight of butter fat.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section was transposed from former §111.37 which was repealed and reenacted as §117.01 by resolution adopted on January 16, 1969 because it relates to a dairy food product rather than a milk product and therefore is subject to different environmental sanitation factors and is manufactured, stored and distributed under somewhat different conditions. This section was derived without substantive change from S.C. §152 (11th para.). The definition of butter in

the second unnumbered subsection of S.C. §152 was omitted as unnecessary as the provisions of Articles 71 and 73 cover the question of adulteration generally.

Rules of the City of New York

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

24 RCNY 117.03

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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TITLE IV ENVIRONMENTAL SANITATION

PART A FOOD AND DRUGS

ARTICLE 117 DAIRY FOOD PRODUCTS

§117.03 Malted milk.

Malted milk is a product made by combining milk with the liquid separated from a mash of ground barley, malt and wheat flour, with or without the addition of sodium chloride, sodium bicarbonate and potassium bicarbonate, in such manner as to secure the full enzymic action of the malt extract and by removing water.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section has been transposed from §111.51 which was repealed and reenacted as 117.03 by resolution adopted on January 16, 1969, because it relates to a dairy food product rather than milk product and therefore is subject to different environmental sanitation factors and is manufactured, distributed and stored under somewhat different

conditions. This section was derived without substantive change from the definition of malted milk in S.C. §2(43). The language "clean, pure, wholesome and unadulterated" before "milk" was omitted as covered in other parts of the article dealing with milk as well as the provisions of Articles 71 and 73.

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

24 RCNY 117.05

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART A FOOD AND DRUGS

ARTICLE 117 DAIRY FOOD PRODUCTS

§117.05 Cheddar, processed and soft cheese.

(a) No person shall produce, manufacture, offer for sale, sell, give away or distribute cheddar, processed or soft cheese unless:

(1) The milk or milk product from which the cheese is manufactured has been pasteurized pursuant to §111.25; or,

(2) The cheese, during the manufacturing process, is subjected to a heat treatment which, in the opinion of the Department, is equivalent to pasteurization; or,

(3) The cheese, after manufacturing, is subjected to an aging process by keeping it at a temperature of not lower than 35°F for at least 60 days.

(b) Each package of cheddar, processed or soft cheese shall bear a label, printed legibly in English, with the following information:

(1) The name and address of the manufacturer, wholesale dealer, or distributor, retail seller or packager of the cheese, or, in lieu of such name and address, an identifying trademarker, trade name or other identifying designation;

(2) The common name of the cheese concerned;

(3) If the cheese has been subjected to a heat treatment equivalent to pasteurization pursuant to §111.25 or if it is manufactured from milk or a milk product which has been pasteurized pursuant to §111.25, the words, "PASTEURIZED"; and,

(4) If the cheese has been aged pursuant to subsection (a) (3) of this section, a statement that the cheese has been aged for at least 60 days.

(c) When a trademark, trade name or other identifying designation is used pursuant to subsection (b) (1) of this section, the manufacturer, wholesaler or other person labeling the package of cheese shall file with the Department a statement which contains the trademark or other identifying designation used and the actual name and address of the manufacturer or wholesaler.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section has been transposed from §111.59 which was repealed and reenacted as 117.05 by resolution adopted on January 16, 1969, because it relates to a dairy food product rather than milk product and therefore is subject to different environmental sanitation factors and is manufactured, distributed and stored under somewhat different conditions. This section was derived from S.C. §151a. The definitions of cheddar cheese, processed cheese, and soft cheese in that section and cheese in S.C. §2(48) have been omitted as unnecessary in that these terms have a generally accepted meaning, both to the general public as well as the trade.

Subsection (b) of this section was amended by resolution of June 15, 1959, filed with the City Clerk, June 22, 1959, as follows: In subdivision (4) the requirement that the labeling of cheese processed by aging bear a statement that it was aged at least 60 days was substituted for the date of manufacture; subdivision (5) (as well as the former S.C. §151a), which dealt separately with blended cheese of the cheddar type, was eliminated as unnecessary.

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24 RCNY Health Code Reg. 121.00

RULES OF THE CITY OF NEW YORK

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ARTICLE 121 OTHER FOOD ESTABLISHMENTS: DRY WAREHOUSES; EDIBLE EGG BREAKING; BAKERIES; MINERAL, SPRING AND OTHER WATERS; CARBONATED AND OTHER BEVERAGES

Health Code Reg. § 121.00 INTRODUCTORY NOTES

Article 121 contains provisions which apply specifically to dry warehouses, edible egg breaking establishments, bakeries, establishments importing, manufacturing or selling at wholesale mineral waters and establishments manufacturing carbonated and other beverages, respectively. As in the case of all other food establishments, the respective provisions in this article apply in addition to, and are to be read together with, the provisions of Articles 71, 73 and 81 which apply to the food industry generally, and the provisions of Article 131 and 135 which govern respectively buildings generally and commercial premises. The establishments regulated under this article with the exception of dry warehouses, require permits as wholesale food establishments or retail food establishments pursuant to Articles 83 and 85, respectively.

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24 RCNY 121.01

RULES OF THE CITY OF NEW YORK

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ARTICLE 121 OTHER FOOD ESTABLISHMENTS: DRY WAREHOUSES; EDIBLE EGG BREAKING; BAKERIES; MINERAL, SPRING AND OTHER WATERS; CARBONATED AND OTHER BEVERAGES

§121.01 Dry warehouses; permit.

(a) No person shall maintain or operate a dry warehouse without a permit issued by the Commissioner.

(b) As used in this section, dry warehouse means any place in which food is stored for hire other than a refrigerated warehouse.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. § 148c.

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

24 RCNY 121.03

RULES OF THE CITY OF NEW YORK

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ARTICLE 121 OTHER FOOD ESTABLISHMENTS: DRY WAREHOUSES; EDIBLE EGG BREAKING; BAKERIES; MINERAL, SPRING AND OTHER WATERS; CARBONATED AND OTHER BEVERAGES

§121.03 Dry warehouses; disposition of food unfit for human consumption.

Food in a dry warehouse which has become apparently unfit for human consumption shall be kept separate and apart from wholesome food. The owner or person in charge of the dry warehouse shall notify the Department and the owner of the affected food of the presence of such food. If the food is found unfit it shall be denatured, marked "condemned" and removed either upon the order of its owner or of the Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §148c Reg. 12(part). Affected food is to be marked "condemned" and removed

upon the order of the owner, as well as upon the order of the Department. S.C. §148c Reg. 2 requiting that owners of food stored in dry warehouses be notified where there is danger of spoilage has been omitted as being primarily a matter of warehouseman-customer relationship. S.C. §148c Reg. 13 on reconditioning of food in dry warehouses has been omitted as unnecessary. S.C. §148c Reg. 1 is omitted as unnecessary.

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24 RCNY 121.05

RULES OF THE CITY OF NEW YORK

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ARTICLE 121 OTHER FOOD ESTABLISHMENTS: DRY WAREHOUSES; EDIBLE EGG BREAKING; BAKERIES; MINERAL, SPRING AND OTHER WATERS; CARBONATED AND OTHER BEVERAGES

§121.05 Dry warehouses; records.

(a) The owner or person in charge of a dry warehouse shall maintain written records of the following information:

(1) The kind of food stored, its quantity in weight or count;

(2) The date of receipt and the name and address of the person for whom stored; and,

(3) The date of release, and the name and address of the person to whom released.

(b) The records shall be retained for a period of one year from the date of release.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §148c Reg. 14(a). The requirement in S.C. §148c Reg. 14(b) that the records be available for inspection by the Department is omitted here but is covered in §3.01(a).

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24 RCNY 121.07

RULES OF THE CITY OF NEW YORK

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ARTICLE 121 OTHER FOOD ESTABLISHMENTS: DRY WAREHOUSES; EDIBLE EGG BREAKING; BAKERIES; MINERAL, SPRING AND OTHER WATERS; CARBONATED AND OTHER BEVERAGES

§121.07 Edible egg breaking establishments; facilities.

An edible egg breaking establishment shall have the following special facilities:

(1) A portable rustproof metal table, metal shelf, or other device with two compartments, one for holding clean and sterilized egg cups, trays and knives and the other for receiving the same when soiled;

(2) Refrigeration facilities of adequate capacity; and,

(3) Adequate facilities for cleansing and sterilizing all equipment and utensils in contact with egg meats.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subdivision (1) is derived without substantive change from S.C. § 148 Reg. 66. Subdivision (2) is derived without substantive change from S.C. §148 Reg. 68(part). Subdivision (3) is derived without substantive change from S.C. §148 Reg. 64.

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24 RCNY 121.09

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ARTICLE 121 OTHER FOOD ESTABLISHMENTS: DRY WAREHOUSES; EDIBLE EGG BREAKING; BAKERIES; MINERAL, SPRING AND OTHER WATERS; CARBONATED AND OTHER BEVERAGES

§121.09 Edible egg breaking establishments; utensils and apparatus; cleaning and sterilizing.

The utensils and apparatus in an edible egg breaking establishment used in the breaking out of eggs shall be thoroughly cleaned and sterilized immediately before the beginning of the day's work and at the close of each four hour period of work. Utensils and apparatus which have become contaminated with unwholesome eggs shall not be used unless they have been properly cleansed and sterilized.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §148 Reg. 69(part).

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

24 RCNY 121.11

RULES OF THE CITY OF NEW YORK

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ARTICLE 121 OTHER FOOD ESTABLISHMENTS: DRY WAREHOUSES; EDIBLE EGG BREAKING; BAKERIES; MINERAL, SPRING AND OTHER WATERS; CARBONATED AND OTHER BEVERAGES

§121.11 Edible egg breaking establishments; condition of eggs before breaking from shell.

(a) Eggs brought into the breaking room of an edible egg breaking establishment shall be sound and wholesome. Edible eggs which are so broken that the shells are cracked and the membranes ruptured, commercially known as leakers, shall not be brought into or allowed to accumulate in the egg breaking establishment.

(b) Before entering the breaking room, eggs shall be cleaned so as to remove from their shells dirt and loosely adhering foreign material, and shall be removed from cases and fillers and packed into clean cans or other metal containers.

(c) The eggs shall at all times be maintained at a temperature not exceeding 45°F.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived without substantive change from S.C. §148 Regs. 72 (part) and 74. Subsection (b) is derived without substantive change from S.C. §148 Regs. 72 (part) and 73. Subsection (c) is derived without substantive change from S.C. §148 Regs. 68 and 72 (part).

Rules of the City of New York

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

24 RCNY 121.13

RULES OF THE CITY OF NEW YORK

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ARTICLE 121 OTHER FOOD ESTABLISHMENTS: DRY WAREHOUSES; EDIBLE EGG BREAKING; BAKERIES; MINERAL, SPRING AND OTHER WATERS; CARBONATED AND OTHER BEVERAGES

§121.13 Edible egg breaking establishments; protection of eggs after breaking from shell.

(a) Receptacles, in an edible egg breaking establishment, containing eggs broken from the shell shall be covered at all times, except when in the process of being filled. Drippings from the sides or bottoms of other receptacles shall not be collected in receptacles containing broken out eggs for edible purposes, and edible eggs broken out from the shell containing such drippings shall be deemed adulterated. Drippings from the egg breaking table may be caught only in refuse receptacles used for inedible eggs.

(b) Broken out eggs shall at all times be maintained at a temperature not exceeding 45°F.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived without substantive change from S.C. §148 Reg. 75. Subsection (b) is derived without substantive change from S.C. §148 Reg. 76. The reference to the adulterated condition of eggs when kept above 45°F is omitted as unnecessary in view of the provisions of the provisions of §3.03.

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24 RCNY 121.15

RULES OF THE CITY OF NEW YORK

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ARTICLE 121 OTHER FOOD ESTABLISHMENTS: DRY WAREHOUSES; EDIBLE EGG BREAKING; BAKERIES; MINERAL, SPRING AND OTHER WATERS; CARBONATED AND OTHER BEVERAGES

§121.15 Edible egg breaking establishments; labeling of containers.

(a) Cans or other containers of eggs broken from the shell and intended for food purposes in an edible egg breaking establishment, prior to being placed in a cooler or freezer, shall be labeled or marked with indelible ink to indicate the date when, and the place where the eggs were broken, together with the name of the owner of the egg breaking establishment or the name and address of the person for whom such eggs were broken out.

(b) No broken out eggs shall be brought into the City or shall be received in any food establishment in the City unless the container is labeled in accordance with the requirements of subsection (a).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §148 Regs. 37 and 78.

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

24 RCNY 121.17

RULES OF THE CITY OF NEW YORK

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ARTICLE 121 OTHER FOOD ESTABLISHMENTS: DRY WAREHOUSES; EDIBLE EGG BREAKING; BAKERIES; MINERAL, SPRING AND OTHER WATERS; CARBONATED AND OTHER BEVERAGES

§121.17 Bakeries; use of bread for "sour" prohibited.

The use of bread for the making of bread starter commonly known as "sour" is prohibited. "Sour" shall be made from wholesome flour in a container which shall be cleaned before use. The container shall be provided with a suitable cover.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §148 Reg. 43. S.C. Regs. 41 and 42 concerning sifting of ashes and storage of fuel have been omitted as obsolete.

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24 RCNY 121.19

RULES OF THE CITY OF NEW YORK

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PART A FOOD AND DRUGS

ARTICLE 121 OTHER FOOD ESTABLISHMENTS: DRY WAREHOUSES; EDIBLE EGG BREAKING; BAKERIES; MINERAL, SPRING AND OTHER WATERS; CARBONATED AND OTHER BEVERAGES

§121.19 Preparation of carbonated water where dispensed to consumer; direct connection to public water supply required.

When carbonated water is prepared at the place where dispensed to the consumer, the potable water used shall be conducted from the public water supply system through dosed pipes connected with the carbonating apparatus or carbonic acid gas tank from which it is dispensed to the consumer.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §165. The requirement that the statement be under

oath is omitted; §3.19 prohibits misstatements or forgeries in any papers or reports required to be prepared pursuant to the Code. This section was amended by resolution adopted on May 20, 1971 to repeal subsection (a) relating to artificial or natural, mineral, spring or other water for drinking purposes in light of its inclusion in the more complete regulation of such water provided in the new §141.04 added by the same resolution.

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

24 RCNY 121.21

RULES OF THE CITY OF NEW YORK

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ARTICLE 121 OTHER FOOD ESTABLISHMENTS: DRY WAREHOUSES; EDIBLE EGG BREAKING; BAKERIES; MINERAL, SPRING AND OTHER WATERS; CARBONATED AND OTHER BEVERAGES

§121.21 Establishments engaged in the manufacture of carbonated and other beverages; separate syrup room required.

Rooms used for the manufacture or preparation of syrup or the extraction of fruit juices shall be used for no other purpose.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §148 Reg. 125(part).

VOLUME 8

STATEMENTS OF BASIS AND PURPOSE

1. Statement of Basis and Purpose in City Record June 9, 1995:

Subsection 7.13(d) of the New York City Health Code requires the Review Board of the Administrative Tribunal to "promptly issue a written decision" on each appeal, and further requires an appeal to be deemed granted if the Board "does not act on an appeal within ninety days after the notice of appeal is filed. . . ." This provision has resulted in several violations being dismissed on this technical ground.

Subsection 7.13(d) was adopted by the Board of Health in 1971 at a time when the Administrative Tribunal heard and processed fewer than 5,000 violations. The Tribunal caseload, now numbering approximately 17,000 cases, is expected to grow to as many as 25,000 notices of violation annually. Restricting the time that an appeal may remain open, thereby placing the burden of prompt action on the Department's Review Board, was and is a laudable objective for the Department. However, the increased volume of appeals over the years has made the requirement that an appeal be decided within ninety days unduly restrictive. Furthermore, dismissal of a violation after an appeal has been pending for ninety days without a decision is unduly harsh and not in the interests of public health. Other comparable State and City Tribunals do not have such self-imposed restrictions on their appellate processes.

The proposal would not entirely remove the requirement that appeals be decided in a timely manner, but mandate automatic dismissal of a violation only where the matter can not be decided within 180 days rather than 90 days.

2. Statement of Basis and Purpose in City Record June 9, 1995:

This amendment of the Health Code would clarify the requirements for appointment of the non-agency member of the Administrative Tribunal Review Board, simplify the appointment process for appointment by eliminating the need for bar association approval, and allow for the temporary appointment of members during absences and vacancies of regular members. Bar Association approval has proven to be a cumbersome requirement for the Department that adds unnecessary delay to the appointment process. Because the Review Board consists of three members and a decision requires a majority, absence or vacancies disrupt the timely hearing of appeals. Authorizing the Commissioner to appoint a temporary member in such cases will assure that a three member Review Board will be available to hear and decide appeals whenever required. The temporary appointment would be effective until such time as the Board of Health reviews and approves a permanent member.

2-A. Statement of Basis and Purpose in City Record June 9, 1995:

Statutory Authority

These amendments to the New York City Health Code ("Health Code") are promulgated pursuant to §§558 and 1043 of the New York City Charter ("Charter") and amendments to Title V of Article 5 of the New York State Public Health Law, codified at Public Health Law §570 **et. seq.** [Chapter 436 of the Laws of 1993]. Section 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043 grants the Department of Health rulemaking powers. Pursuant to State legislation [Chapter 436 of the Laws of 1993] effective July 1, 1994, the New York City Commissioner of Health no longer serves as the permit issuing official for clinical laboratories and blood banks, nor does the Department regulate these entities. These responsibilities have been assumed by the New York State Department of Health.

Statement of Basis and Purpose

The Commissioner of Health of the City of New York and the New York City Department of Health have, for many years, been the permit issuing official and regulatory authority for clinical laboratories and blood banks in New York City. Effective July 1, 1994, pursuant to State law, codified at Public Health Law §570 **et seq.** (Chapter 436 of the Laws of 1993, amending Title V of Article 5 of the New York State Public Health Law), the New York State

Department of Health assumed these responsibilities. To reflect this State legislative change, the Department is proposing the repeal of various Articles and sections of the New York City Health Code governing clinical laboratories and blood banks. Although permit related activities are now reserved to the State, the Public Health Law as amended does explicitly preserve the Department's authority to promulgate rules for clinical laboratories and blood banks not inconsistent with State law, relating to the control, prevention or reporting of diseases or medical conditions, and to the control or abatement of public nuisances. Consequently, the Department is proposing the repeal and reenactment of Article 13 currently regulating clinical laboratories, to reflect the Department's continued authority in the area of clinical laboratories and blood banks.

Article 15 of the Health Code regulates the handling of live pathogenic organisms. Amendments are proposed to Article 15 to reflect the aforementioned changes in State law concerning the regulation of clinical laboratories, and to insure that all laboratories continue appropriate registration requirements related to live pathogens.

Article 16 of the Health Code is entitled "Handling of Recombinant DNA" and requires that individuals engaged in research, manufacture, use, storage, possession, or transportation of recombinant DNA obtain a certificate of registration issued by the New York City Health Commissioner. The Department is proposing the repeal of Article 16 because local regulation in the field has been pre-empted by virtue of New York State law. Specifically, New York State Public Health Law §3222(9) provides that, "No local authority shall enact or enforce any local law, ordinance, rule or regulation which would regulate or restrict recombinant DNA activity. Further, no local authority shall enact or duplicate any provision of this article as local law, ordinance, rule or regulation." Although this State law has been in effect for many years, Article 16 of the Health Code has never been formally repealed.

Article 17 of the Health Code is entitled "Blood Donations and Transfusions." This article addresses the qualifications of donors, the records that must be maintained when human blood and blood derivatives are drawn from blood donors, required laboratory tests to be performed on donors and recipients, and other such requirements related to blood donations and transfusions. Article 19 of the Health Code is entitled "Blood Banks" and requires blood banks to obtain a permit issued by the NYC Health Commissioner, specifies the qualifications of blood bank personnel, requires certain records to be maintained by a blood bank, and other similar requirements related to blood banks. As a result of State legislation amending Title V of Article 5 of the New York State Public Health Law, codified at §570 **et seq.** of the Public Health Law, the New York City Department of Health no longer regulates blood banking. Consequently, the Department is proposing the repeal of Articles 17 and 19. However, State law, as amended, does explicity preserve the Department's authority to promulgate rules for clinical laboratories and blood banks that are not inconsistent with State law, relating to the control, prevention or reporting of diseases or medical conditions, and to the control or abatement of public health nuisances. Therefore, the newly repealed and reenacted Article 13 is entitled Laboratories, defined to include clinical laboratories and blood banks and will embody requirements applicable to clinical laboratories and blood banks which continue to be within the Department of Health's authority.

Article 21 of the Health Code is entitled "Artificial Human Insemination." This article specifies who can perform artificial insemination, the testing required of the donor and the recipient, the bases for which to disqualify donors, and the records which must be maintained by the physician performing artificial insemination. The New York State Health Department, pursuant to §4360 of the Public Health Law regulates tissue banks. Tissue is defined to include human semen. [See also 10 N.Y.C.R.R. Part 52]. Facilities involved in artificial insemination are regulated in accordance with 10 N.Y.C.R.R. Subpart 52-B. For this reason and because the New York City Department of Health no longer regulates clinical laboratory testing (except as narrowly provided in Title V of Article 5 of the New York State Public Health Law) the Department is proposing the repeal of Article 21.

Amendments to Article 11 of the Health Code are proposed to reflect the fact that the Department no longer issues permits to clinical laboratories. In addition, various sections and/or subsections of Article 5 are repealed to reflect the fact that the Department no longer issues permits for clinical laboratories and blood banks.

3. Statement of Basis and Purpose in City Record Oct. 11, 1995:

Section 556 of the Charter grants the Department of Health jurisdiction to regulate all matters affecting health in the City of New York. Section 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043 of the Charter grants the Department of Health rulemaking powers.

The purpose of this proposal is to remove unnecessary mandates upon kindergartens operated by the Board of Education. In New York City, although kindergartens conducted as part of an elementary school by the Board of Education do not require a permit issued by the Commissioner of Health, such kindergartens are regulated as day care services and are subject to the requirements set forth in Article 47 of the Health Code, governing day care. The Department proposes to amend the Health Code so that a kindergarten conducted as part of an elementary school by the Board of Education will no longer be regulated as day care in accordance with Article 47 but rather as a school in accordance with Articles 45 and 49 of the Health Code. However, the Department is proposing that such kindergartens adhere to the same standards applicable to lead abatement which are being proposed for existing day care services.

The mandates imposed upon kindergartens operated by the Board of Education by virtue of Article 47 are, for the most part, unnecessary and burdensome. Generally, kindergartens operated by the Board of Education are more appropriately regulated as schools in accordance with Articles 45 and 49 of the Health Code, which set forth the fundamental criteria needed to assure the health and safety of kindergarten children. The only exception to this rationale relates to the abatement of hazardous lead paint conditions found in kindergartens. In this regard, the Department believes that the same lead standards that we propose (in another resolution) for existing day care services also apply to kindergartens in public schools.

Article 49 provides for clinical services in schools under the supervision of the Department of Health. Health and safety issues for the kindergarten program of the Board of Education will be addressed by the Department of Health as part of its school health program designed to monitor health status and provide medically appropriate assistance for the well-being of the students.

In addition, public schools are subject to a comprehensive statutory and regulatory framework beyond the requirements set forth in the Health Code. [See for example, Education Law Section 2590, et seq., 8 N.Y.C.R.R. Part 100]. Furthermore, the Chancellor of the Board of Education is statutorily authorized to promulgate rules and regulations as deemed necessary. [Education Law Section 2590-h(16)]. A collective bargaining agreement between the Board of Education and the United Federation of Teachers encompasses issues that are also addressed in Article 47 of the Health Code. For example, the contract limits the class size of kindergartens, while Article 47 contains provisions relating to child/staff ratios. New York City public school kindergarten programs have the facilities and staff of the entire school system available to them as the need arises. The support system afforded such schools consists of paraprofessionals, guidance counselors, custodial personnel and safety personnel. Furthermore, New York courts have "long recognized that a Board of Education has a duty, arising from the fact of its physical custody over students, to exercise the same degree of care and supervision which a reasonably prudent parent would employ in the given circumstances." [**Logan v. City of New York,** 148 A.D.2d 167, 543 N.Y.S.2d 661 (First Department, 1989)]. Therefore, the Department believes that there are appropriate safeguards to provide for the health, safety and educational development of kindergarten children without further mandating the requirements set forth in Article 47 of the Health Code.

The following is noteworthy. The New York State Social Services Law which regulates day care outside of New York City, specifies that:

Child day care shall not refer to child care provided in: . . . (D) a kindergarten, pre-kindergarten, or nursery school for children three years of age or older, or after-school program for children operated by a public school district or by a private school or academy which is providing elementary or secondary education or both, in accordance with the compulsory education requirements of the education law, provided that the kindergarten, pre-kindergarten, nursery school, or after school program is located on the premises or campus where the elementary or secondary education is

provided. . . .

[Social Services Law Section 390(1)(a)(ii)(D)].

The Department's proposal is consistent with the regulatory approach in the rest of the State insofar as kindergartens conducted as part of an elementary school by a public school system are not regulated as day care. The Department is however, continuing to regulate as day care, pre-kindergartens and nurseries in the public schools as well as kindergartens, pre-kindergarten and nurseries in non-public schools. The reasons for these distinctions are that:

1. The Department believes that pre-kindergarten children and below require greater oversight by reason of developmental and behavioral factors associated with children under 5 years of age. Therefore, this proposal will continue the Department's regulation of pre-kindergartens and nurseries in the public schools.

2. The Department's Bureau of School Children and Adolescent Health has developed a comprehensive program for the public schools which is consistent throughout the City. This is not the case with the non-public schools. Therefore, limiting this proposal to the Board of Education is reasonable.

These proposed rules were not included in the Health Department's Regulatory Agenda, nor anticipated, because it is the result of recent analysis by the Department directed toward eliminating costly and unnecessary mandates.

4. Statement of Basis and Purpose in City Record Dec. 5, 1995:

These rules are promulgated pursuant to New York City Charter Section 1043 granting rulemaking authority to the Commissioner and Department of Health, and Section 17-324 of the New York City Administrative Code authorizing the Commissioner of Health to "make such rules as deemed necessary for the proper implementation and enforcement of this subchapter. . . ." In addition, Section 17-307(b)(2)(b)(i) requires the Commissioner or Department to set aside/designate, without increasing the number of full-term mobile food unit permits that may be outstanding pursuant to Section 17-307(b)(2)(a), two hundred (200) full-term permits for vending exclusively in the four boroughs of the Bronx, Brooklyn, Queens and Staten Island. Section 17-307(b)(2)(b)(ii) then requires the Commissioner to "establish a separate waiting list for each of the relevant boroughs to be administered in accordance with procedures established by rules of the commissioner." Finally, Sections 17-307(b)(2)(e) and Section 17-307(f)(3)(d) require the Commissioner to establish and maintain separate waiting lists for those seeking full-term permits that are not geographically restricted as well as those seeking temporary permits.

Section 17-307(b)(2)(a) fixes the maximum number of full-term mobile food unit permits that may be outstanding at any one time at three thousand (3,000) and prohibits the Department from issuing any permit in excess of 3,000. The Department may not issue new full-term permits until the number of such permits, which includes borough-specific permits, falls below the 3,000 mark. Section 17-307(f)(3) fixes the maximum number of temporary mobile food unit permits that may be outstanding at any one time at one thousand (1,000) and prohibits the Department from issuing any temporary permits in excess of 1,000. The Department may not issue new temporary permits until the number of such permits falls below the 1,000 mark. New Section 17-307(b)(2)(b)(i) requires that on and after March 15, 1995, the Department shall designate two hundred full-term permits without increasing the number of full-term permits which may be in effect beyond the 3,000 limit, for use exclusively for vending in the four boroughs of the Bronx, Brooklyn, Queens and Staten Island. The 200 full-term permits are to be evenly distributed among the boroughs: 50 each for vending exclusively in the Bronx, Brooklyn, Queens and Staten Island, respectively. Section 17-307(b)(2)(b)(ii) then requires the Commissioner to "establish a separate waiting list for each of the relevant boroughs to be administered in accordance with procedures to be established by rules of the commissioner." Section 17-307(b)(2)(e) and Section 17-307(f)(3)(d) require that the Commissioner also establish and maintain separate waiting lists for the issuance of full-term mobile food unit permits and temporary mobile food unit permits, the usage of which is not limited by geography.

No eligible person is to be issued more than one mobile food unit permit of any kind. A person is to be limited to

either a full-term, temporary or a full-term borough-specific permit. The Permits Division reports that the number of outstanding full-term mobile food unit permits is now approximately 200 below the "cap" at about 2,800 in number. It is the Department's experience that the demand for the city-wide permits far exceeds the availability as determined by the statutory maximum. It is expected that the demand for the borough-specific full-term permits will also exceed their more limited availability. Accordingly, a fair, orderly and efficient procedure is needed for persons (including partnerships, corporations or other business entities) to communicate to the Department their interest in applying for full-term and temporary mobile unit permits as well as the borough-specific full-term mobile food unit permits.

Section 19-02 of the proposed rules directs the Department to establish the six separate waiting lists. Section 19-03 provides that only those persons holding valid mobile food vendor licenses issued by the Department of Health at least ten days prior to the date that the Department establishes a list would be eligible for a place on the list. Sections 19-04 through 19-06 describe the notice to be provided to prospective applicants for a position on any of the waiting lists and the procedures for requesting a place on a list. Proposed Section 19-07 provides the Department's Permit Division with direction to determine the specified number of waiting lists positions that will be created on each of the six lists to ensure that a reasonable number of eligible candidates are available to fill the currently available positions and those that develop as vacancies arise. The remaining provisions of the new Chapter 19 specify how the waiting lists are to be administered to select persons eligible to apply for the various full-term and temporary mobile food unit permits made available when their number falls below the relevant statutory maxima.

5. Statement of Basis and Purpose in City Record Feb. 1, 1996:

The purpose of this rule is to describe those adjudicatory hearings which shall be conducted within the Department of Health, and those which shall be conducted by the New York City Office of Administrative Trials and Hearings ("OATH") pursuant to City Charter Section 1048. Charter Section 558 and Health Code Article 7 provide that the Administrative Tribunal is authorized and intended to conduct adjudicatory hearings in and for the Department of Health with respect to allegations of violations of the Health Code, the Administrative Code, the Sanitary Code, and other laws and regulations which the Department has the authority to enforce.

In addition to hearings conducted under Article 7, the Administrative Tribunal has also conducted adjudicatory hearings where the Commissioner or Department of Health is required to find facts in the exercise of statutory enforcement powers. **See, e.g.,** Health Code Article 3; Charter Sections 555, 556 and 562; Administrative Code Section 17-114, **et seq.;** State Sanitary Code, 10 N.Y.C.R.R. Sections 2.9, 14-1.10.

This amendment to Chapter 7 of Title 24 of the Rules of the City, would continue the jurisdiction in the Administrative Tribunal over adjudicatory hearings conducted pursuant to Health Code Article 7. Adjudicatory hearings conducted in connection with the exercise of the Commissioner's or Department's fact finding powers related to the public health would be conducted by OATH pursuant to its authority under the Charter. With regard to hearings conducted pursuant to Article 7 by the Administrative Tribunal, this rule retains the current procedures followed as to the findings of the Hearing Examiners, whereby findings and conclusions of the Hearing Examiners, are final, subject only to an appeal to the Review Board of the Administrative Tribunal (Health Code Section 7.13). As to other enforcement hearings, findings and conclusions of an OATH Administrative Law Judge are proposed and recommended to the Commissioner or his designee, who may adopt, reject or modify such recommendations. In addition, certain procedural matters are clarified in order to conform with the requirements of City Charter Section 1046.

OATH will continue to conduct, for the Department of Health, all adjudicatory hearings held pursuant to the Civil Service Law with respect to the fitness and discipline of Department employees, and its Administrative Law Judges will make proposed and recommended findings and determinations.

6. Statement of Basis and Purpose in City Record Mar. 12, 1996:

The size and design standards for non-processing mobile food unit pushcarts are set forth in Section 6-01 of

Chapter 6 of Title 24 of the Rules of the City of New York. Subdivision (d) of Section 6-01 prohibits the Commissioner/Department from granting a permit to ". . . any mobile food non-processing unit in excess of six and one-half feet in length or three and one-half feet in width, including all handles, extensions or protuberances." This proposed amendment to this rule would bring a relatively new design of mobile food vending pushcart into compliance with the Department's size requirements. These new pushcarts are designed so that the vendor vends while standing within the cart. These pushcarts are non-processing, enclosed on all sides and generally are used for the sale of coffee, bread and pastries. The enclosed nature of these carts protects the vendors from the weather while also offering substantial protection of food from outside contamination (i.e. from the weather, dust and handling of food by customers). The problem presented by these pushcarts is that, while the bodies of these units meet both the length and width requirements of existing Section 6-01(d) of the Rules of the City of New York, the wheels of these pushcarts protrude an additional six inches on each side, thereby increasing the total width of the pushcarts including the wheels to four and one-half feet, or one foot beyond that allowed by existing Section 6-01(d). The extra foot of wheel base and wheels is considered necessary for safety reasons, specifically to give the unit balance so that it does not topple over when moved. Therefore, due to this safety consideration, the Department proposes to amend Section 6-01(d) to allow the issuance of permits to the above described enclosed pushcarts which have wheels extending an additional six inches on either side beyond the body of the unit. The maximum width of the bodies of these units will remain unchanged at three and one-half feet. However, the wheels of these enclosed carts would be allowed to extend the allowable width of the pushcart to four and one-half feet. To implement this change the proposed amendment will repeal existing Section 6-01(d) in its entirety and reenact it as subsection (1) and (3) of a new Section 6-01(d). An entirely new subsection (2) will be added and contain the limited exception to the three and one-half foot maximum width requirement. In addition, in response to concerns expressed at the public hearing that mobile food units that exceed the specified dimensions by an inch or two would not pass future Departmental inspections, an identical provision will be added to subsections (1) and (2). That provision provides that mobile food units that do not exceed the nominal dimensions by more than two inches shall be deemed to conform with the specified dimensions.

7. Statement of Basis and Purpose in City Record Apr. 4, 1996:

Lead poisoning continues to be a serious public health concern, particularly among young children. Scientific evidence continues to demonstrate that even very low blood lead levels are harmful to children. Thus, regulatory efforts continue to be directed to lowering the risk of exposure to environmental lead.

When Article 47, Day Care Services, was substantially revised in 1988, subsection (e) of section 47.31 was adopted to require day care centers to be "lead free". Since its adoption, subsection (e) insofar as it establishes an absolute standard, has proven to be an unrealistic requirement. The Bureau of Day Care in collaboration with the Lead Poisoning Prevention Program having studied the application of section 47.31(e), now propose a more feasible and appropriate regulatory program, that will be enforceable, will provide a safe environment for children, and with which day care services will be able to comply.

The proposal would require peeling lead based paint and peeling paint of unknown lead content to be immediately abated in a manner that comports with the safety requirements of the Code and prevents exposure. This provision gives day care service operators a choice of either treating a peeling surface as a lead paint abatement project, or establishing that it does not contain lead and simply restoring the surface to an intact condition.

Effective May 1, 1997, all existing sites would be required to abate window sills and wells accessible to children, and window friction surfaces, and, when determined by the Department, other chewable or friction surfaces, which contain or are covered with lead based paint or paint of unknown content. Such surfaces are considered to be the primary sources of potential lead poisoning in day care services. Other surfaces that might be required to be abated would include, for example, a mouthable chair railing or a built-in cabinet with sliding doors constituting a friction surface. Window wells are of particular concern as they may contain accumulated lead dust from window friction surfaces and the outside.

Effective May 1, 1997, no new day care service would be issued a permit and no new services for which no permit is required would be authorized to operate where surfaces contain lead-based paint as defined in Section 173.14.

This proposed amendment would promote a lead safe environment for children in day care services and would eliminate the unrealistic mandate that these services be lead-free.

8. Statement of Basis and Purpose in City Record Apr. 4, 1996:

These amendments to the New York City Health Code ("Health Code") are promulgated pursuant to sections 558(b) of the New York City Charter ("Charter") and Article 30 of the Public Health Law. Section 558(b) of the Charter empowers the Board of Health to amend and repeal regulations in regard to any matter contained in the Health Code.

Article 30 of the Public Health Law-EMERGENCY MEDICAL SERVICES, made applicable in New York City pursuant to section 3014 of the Public Health Law [Ch. 1053 of the Laws of 1974], became effective on or about April 1, 1975 and established a comprehensive State-wide regulatory scheme for the planning, organization and operation of all emergency medical services and transport of the sick and disabled.

Article 25 of the New York City Health Code had been adopted by the Board of Health in 1966 to implement an earlier version of Article 30 of the Public Health Law which "contains a legislative finding that the regulation of such services is necessary to protect the public health, safety and welfare." [Introductory Notes, Article 25] For a number of years following its adoption, Article 25 governed the operation of ambulance and invalid coach services in the City of New York. Permits were required for owners and operators of the services and for technical staff of the ambulances who were not licensed physicians or nurses.

Article 30 requires local ambulance services to be organized and provided in accordance with plans established by regional emergency medical services councils and requires that vehicles be certified or registered by the State Department of Health. The state law and regulations (the State Emergency Medical Services Code, Part 800 of 10 N.Y.C.R.R.) are considerably more extensive in their requirements than Article 25 of the Health Code. However, although Article 30 has effectively replaced Article 25, Article 25 has never been repealed.

Further, Article 30 and its implementing regulations establish a comprehensive program of training and certifying emergency medical technicians, replacing the requirements of section 25.05 of the Health Code that emergency medical technicians who are not licensed physicians or nurses obtain permits from the Commissioner of Health. Consistent with the repeal of Article 25 in its entirety, the Department also proposes to eliminate from Article 5 of the Health Code all references to all permits formerly required for owners and operators of ambulance services or for medical emergency technicians, the term which describes emergency medical technicians in the Health Code.

Repeal of Article 25 and amendment of Article 5 were inadvertently omitted from the Department's Regulatory Agenda.

9. Statement of Basis and Purpose in City Record Apr. 4, 1996:

Section 11.03(a) of the Health Code requires the reporting of certain specific diseases and conditions to the Department within 24 hours of diagnosis. Section 11.03(a) is an important tool for maintaining surveillance of the occurrence of certain diseases which may require intervention by the Department of Health to prevent greater risk to the public health. During the past few months, the public has been alarmed at what it perceives as an increased incidence and/or prevalence of illnesses and fatalities accompanied by necrotizing fasciitis, streptococcal toxic shock snydrome or other invasive infections in which group A streptococcus has been isolated from normally sterile body tissues and fluids. Concern has been expressed that prevalence of invasive infections caused by group A streptococcus may have increased during the past 10-15 years. Toxic shock syndrome has been a reportable condition since October, 1994, when this section of the Health Code was last amended. This amendment will result in the continued reporting of toxic shock syndrome as well as the additional reporting of invasive infections caused by group A streptoccocus.

The Commissioner of Health, by letter dated April 14, 1995, notified all physicians in the City of New York that they are required to report invasive infections caused by group A streptococcus to the Department within 24 hours of diagnosis, pursuant to §11.03(b) of the Health Code, as an "unusual manifestation of a disease in an individual", because so little is known of its epidemiology, and it is impossible to properly and responsibly respond to public concern without such knowledge.

For the same reason, the Board is amending the Health Code to include cases of invasive infections caused by group A streptococcus among the diseases and conditions reportable pursuant to §11.03(a). Inclusion in the printed list of specific reportable diseases will eliminate any future uncertainty as to whether to report such cases and the Department will be able to more accurately monitor prevalence. It should also be noted that effective November 8, 1995, Group A Streptococcal invasive disease was added to the list of communicable diseases set forth in the State Sanitary Code by the State Public Health Council.

Statement Pursuant to Charter §1042-Regulatory Agenda

Amendment of Article 11 was included in the Department's Regulatory Agenda for FY 1995. This additional proposed revision reflects a need for closer surveillance of a specific disease which has become a matter of public concern since the last amendment of Article 11 in October, 1994.

10. Statement of Basis and Purpose in City Record June 14, 1996:

Section 11.03(a) of the Health Code requires the reporting of certain specific diseases and conditions to the Department. Section 11.03(a) is a critical tool for maintaining surveillance of the occurrence of certain diseases which may require intervention by the Department of Health in order to prevent greater risk to the public health.

The State Sanitary Code having the force and effect of law within New York City requires the reporting of numerous conditions, which reports must be forwarded by the Department to the New York State Department of Health. Effective November 8, 1995, the Sanitary Code was amended to require the reporting of "invasive antibiotic-resistant Streptococcus pneumonia infections." The New York City Health Code was amended, effective December 11, 1994, to require reporting in New York City of all infections caused by antibiotic-resistant S. pneumonia, not just those deemed "invasive." However, at the present time, after one full year of reporting, the Department proposes to limit reporting only to invasive (i.e., systemic) infections because reporting of all such infections is burdensome to persons required to report; less effective in monitoring trends of primary concern to public health; as well as to permit consistent reporting of the same disease entities which must now be reported to the New York State Department of Health. Invasive cases include antibiotic-resistant S. pneumonia infections associated with the isolation of resistant bacteria from a sterile site (e.g., blood, cerebrospinal fluid, pleural fluid).

Also effective November 8, 1995, hantavirus disease was designated as a reportable disease pursuant to the New York State Sanitary Code. Including hantavirus to the list of conditions reportable under the Health Code will explicitly conform the Health Code to the State Sanitary Code.

In addition, New York State Department of Health has proposed to add Ehrlichiosis to the list of communicable diseases reportable in this State. The Department proposes to add this disease to the list of reportable diseases in §11.03(a) of the Health Code. Although this disease is most prevalent in the lower Hudson Valley and Long Island regions of the State, these areas are frequented by large numbers of City residents for recreational purposes.

It is therefore proposed that §11.03(a) of the Health Code be amended to add hantavirus disease and Ehrlichiosis to the list of diseases and conditions which must be reported and to limit reporting of cases of antibiotic-resistant S. pneumonia to invasive infections only. These amendments will enable the Department to obtain consistent reports of and to monitor the occurrence of possibly newly prevalent disease entities occurring in the City of New York, add to our present knowledge of their epidemiology, and more effectively respond to new public health concerns.

Statement Pursuant to Charter §1042-Regulatory Agenda

This proposal was not included in the Health Department's Regulatory Agenda nor anticipated because it is the result of recent action taken by the New York State Department of Health as set forth in the New York State Sanitary Code.

11. Statement of Basis and Purpose in City Record June 14, 1996:

Between 1981 and 1989, several voluntary screenings for tuberculosis infection were conducted among NYC students. The results of these studies suggested tuberculin skin test postivity rates of 4.0 to 6.8 percent in this population. Further, after several decades of decreasing tuberculosis rates, tuberculosis incidence was rising in New York City and nationally (in 1993 the Board of Health declared a tuberculosis epidemic in the City of New York). In 1990, the Board of Health adopted Section 49.06 to require all new school entrants in grades pre-kindergarten to 12 to have a tuberculin skin test by the Mantoux method.

This mandate was implemented to meet the following objectives:

1) Identify children with tuberculosis disease and provide medication, medical monitoring and surveillance;

2) Identify tuberculosis infected children and provide them with preventive therapy;

3) Identify tuberculosis disease through investigation of family contacts who may be the source of infection to children;

4) Collect valid data on the prevalence of infection in school children;

The first three objectives have not been met through screening of new school entrants. First, despite screening more than 500,000 students, fewer than ten cases of active tuberculosis were found and none of these was infectious. School age children are at substantially lower risk for active tuberculosis disease than are adults. In NYC between 1991 and 1994, the rate of tuberculosis for persons 5-19 years old was 8.9 per 100,000 persons, with the lowest rate seen in individuals 5-14 years old, 6.4 per 100,000 persons. In contrast, for the same time period, adults 20 years and older had a rate of 55.8 per 100,000 with the highest rate in individuals 35-44 years old, 93.7 per 100,000 persons. Further, children with active tuberculosis are rarely infectious because they seldom have cavitary disease in their lungs and they do not produce a cough strong enough to spread contagious acid fast bacilli.

Second, the great majority of new school entrants were at low risk for infection. As the prevalence of tuberculosis infection becomes rare, it is less likely that someone with a positive test is actually infected and more likely that he or she has a falsely positive test. Therefore, many children for whom the probability of infection was low underwent unnecessary and costly evaluation and treatment, missing several days of school in the process.

In September 1995, the Centers for Disease Control and Prevention issued the following statement:

"Because broad-based school testing involves screening large numbers of low-risk children and because the majority of children who have pediatric TB are preschool age, generalized school screening as a public health measure is an ineffective method of detecting or preventing cases of childhood TB and should be discontinued." Morbidity and Mortality Weekly Report, Volume 44, No. RR-11, at 31 (September 8, 1995)

An Expert Advisory Panel, composed of leading national experts on pediatric tuberculosis, convened by the Commissioner of Health to advise the Department on the prevention and control of pediatric tuberculosis, concluded, "The panel recommends that the Health Code be amended to discontinue the section requiring citywide testing of all new entrants." (Prevention and Control Advisory Panel, Winter 1995).

The American Academy of Pediatrics takes the position that, "Routine tuberculin testing, including school-based

programs that include populations at low risk, has either a low yield of positive results or a large number of false-positive results and represents an inefficient use of limited health care resources." **Pediatrics,** Volume 97, No. 2, Page 282 (February 1996).

Third, there were so few cases of active tuberculosis among the new entrants that a contact investigation was a rare event. Source case tracing for tuberculin skin test positive school children is rarely revealing, is unproductive and is not recommended by any national body. Ultimately, the first line of protection for children is to identify and treat all adults with active tuberculosis until they are cured. Contact investigation of active cases is a far more efficient means of finding infected individuals than are general screenings.

The last objective, however, was met and enabled evaluation of the collected data for the 1991-1993 school years. With mandatory screening among new school entrant cohorts, there was an overall prevalence of 2.0 percent tuberculin skin test positivity. Older new entrants had the highest prevalence, with children 12 years and older having a 10.7% positivity rate and children less than 12 years old having a 1.5% positivity rate. Thus, children 12 years and older were at almost eight times greater risk of tuberculin skin test positivity than children younger than 12 years old. Further, among foreign-born students, those younger than 12 years old with reported Bacille Calmette Guerin (BCG) vaccination, rarely used in the United States, were four times more likely to be tuberculin skin test positive than students who were not vaccinated with BCG. In contrast, BCG-vaccinated students twelve years and older were only twice as likely to be positive compared to unvaccinated students. This finding is consistent with waning tuberculin sensitivity ("false positive") after BCG vaccination.

Because of the greater accuracy of tuberculin skin testing in older children, the proposal would require screening only those students entering New York City secondary schools who have not previously been in the New York City school system. However, subsection (g) of Section 49.06 will be amended to continue to authorize the Commissioner of Health to require the administration of the tuberculosis examination to any or all children in any or all public, parochial, or private schools, or in any part thereof when the Commissioner deems it essential for the protection of the public health.

In addition, the Department proposes to amend the definition of "significant reaction" to reflect the medical and epidemiologic recommendations of the Department as well as national bodies such as the Centers for Disease Control and Prevention, regarding the interpretation of a PPD skin test. Current recommendations consider as "significant" reactions of greater than 5, 10, or 15 millimeters depending on characteristics of the patient and the epidemiologic context. For example, for persons with HIV infection, close contacts of persons with TB, and persons who have abnormal chest radiographs with fibrotic changes consistent with inactive TB, a reaction of > = 5 mm is considered positive. For persons who have other risk factors such as individuals with certain medical conditions that increase the risk for progression from latent TB infection to active TB, a reaction of > = 10 mm is positive. For persons who are not in a high risk category or who are not exposed to a high risk environment, a reaction of > = 15 mm is positive.

To summarize, this amendment is proposed for the following principal reasons:

To adhere to recommendations of the Expert Advisory Panel on the "Prevention and Control of Pediatric Tuberculosis in New York City," and from the Centers for Disease Control and Prevention and the American Thoracic Society, to limit tuberculin skin test screenings to high risk groups; To respond to current epidemiologic trends of low tuberculosis incidence and infectiousness in younger school age children compared to adults andd adolescents; To improve the provision and monitoring of preventive therapy to those who can benefit most from it, such as infected secondary school students. To minimize unnecessary evaluation and treatment of uninfected new entrants, including falsely positive BCG-vaccinated children; a greater proportion of positive tests will represent true tuberculosis infection among older BCG-vaccinated children. To account for current public health recommendations regarding the interpretation of a tuberculin test.

This proposal was not included in the Health Department's Regulatory Agenda, nor anticipated because it is the

result of recent analysis on the part of the Department directed toward eliminating costly and unnecessary mandates.

12. Statement of Basis and Purpose in City Record June 14, 1996:

Article 81 of the New York City Health Code regulates the operations of food establishments for the purpose of preventing public health hazards. Article 83 regulates wholesale food establishments, commissaries and food service commissaries. Article 85 regulates retail food processing establishments. Article 86 regulates retail non-processing food establishments. Article 87 regulates restaurants and other eating places and authorizes the issuance of permits to these establishments by the New York City Department of Health. It is proposed that Article 81 be amended and Articles 83, 85, 86 and 87 repealed, assimilating the essence of Articles 83, 85, 86 and 87 into the amended version of Article 81. The proposals would amend a variety of provisions dealing with the preparation of food and the operation of food establishments. Further, it is recommended that the current permit scheme be simplified by replacing it with two permit types: food service establishment and non-retail food processing establishment. The purpose of such proposed amendments is to modernize the Health Code, to make it consistent with federal recommendations on the control of public health hazards and to make it consistent with New York State law and regulations.

The proposal to amend these regulations is the result of a recent initiative from the Office of the Mayor to review existing laws, policies and procedures affecting the restaurant industry and to reform the relevant regulations. The effect of the proposed amendments would be to significantly alleviate unnecessary regulatory burdens on restaurant operators. Under current law, the New York State Sanitary Code is applicable in New York City and is enforced by the Department of Health along with the New York City Health Code. The amendments to the Department's rules, if adopted, would conform the rules contained in Article 81 of the New York City Health Code to the provisions of the New York State Sanitary Code dealing with food service establishments. [Title 10 New York Codes, Rules and Regulations, Section 14-1]. Some of the more significant amendments proposed are as follows:

The proposed amendments add to Section 81.03 definitions of "food service establishment" [replacing food establishment and service food establishment], "non-retail food processing establishment" [replacing food processing establishment], "contaminated", "imminent health hazard", "potentially hazardous food", "sanitization", "food vending machine", "food vending machine commissary", "food vending operation", "controlled-location vending machine", "food grade" and any other terms which will add clarity to their meaning as used in this Article.

It is proposed that Section 81.05(b) [formerly 81.04(c)] be amended to make the submission of sketches or plans showing the floor layout, equipment, plumbing, ventilation, refuse storage facilities, sewage disposal facilities, and similar information an option of the Department for first time locations and major renovations, rather than a mandatory submission with every permit application. This would make the application process simpler and less costly for the food service establishment owner, thereby creating an atmosphere which encourages compliance. Section 81.07 [replacing 81.05] would be revised to include comprehensive requirements for the sanitary preparation of food to protect against contamination. This includes regulations for the manufacture, display, preparation, processing, storage and packaging of foods, for the personal hygiene of foodhandlers, and for the sources from which food may be obtained.

The proposed amendments also include a revision of Section 81.09 [formerly 81.07] to outline detailed requirements for the storage, refrigeration, thawing and cooking of potentially hazardous foods. The numerical (quantitative) bacterial standards have been deleted because, among experts, there is no agreement as to acceptable microbiological levels, and thus no nationally recognized standards. Adhering to heating time and temperature requirements will, however, ensure that microbiological contamination will be minimized.

Old Section 81.23(c) required that operators of food service establishments employ or engage the services of a custom applicator or exterminator certified by the New York State Department of Environmental Conservation to provide extermination services in order to maintain establishments free from rodents, insects and other pests. In the New York State Sanitary Code this is not a requirement and it is proposed that the amended Section 81.23(c) merely require extermination and preventive measures against pest control. Additionally, the revised section indicates that

pesticides should be properly labeled and authorized for use in accordance with Title 6 of the New York Codes, Rules and Regulations [N.Y.C.R.R.], Part 325, or any successor regulation.

It is proposed that Section 81.29 be amended to delete the subsection (3) specifications for open clothes racks or metal lockers for the street and work clothes of employees. Simpler requirements that dressing and locker areas not be located as to present a contamination hazard would be moved to Section 81.29(d). The proposed revision of Section 81.29 adds the Public Health Law requirement which indicates that food service establishments with a seating capacity of 20 or more, except those in operation on or before December 5, 1977, should provide toilet facilities for patrons. Provisions regarding the supply of toilet tissue and waste receptacles in toilet rooms are also proposed.

The amended Article 81 as proposed, would contain more detailed instructions for the sanitization of equipment and utensils starting with the definition of "sanitization" which was added to Section 81.03. Section 81.37 which covers cleaning methods for premises, equipment and utensils would be expanded to indicate the necessity for the installation of a heating device or fixture to maintain the water at the required temperature for hot water sanitization. In addition, it is proposed that a numerically scaled, indicating thermometer accurate to plus or minus 2 degrees Fahrenheit (1.1 degrees Celsius) should be available at the sink for frequent checks of water temperature. When chemical sanitization is used, the concentrations used should not leave toxic residues on treated surfaces. The proposed amendments mandate that a test kit or other device be used to measure the concentration of the sanitizing solution used.

It is suggested that subsections (b), (c) and (d) be added to the new Section 81.39 [formerly 81.41] to outline penalties for operating without a valid permit, for serious, repealed or persistent violations of any of the provisions of the Code, for interference with Department personnel in the performance of their duties and for operating an establishment so as to create an imminent hazard to public health. In the face of such a hazard, the Department would suspend a permit and order immediate cessation of operations, thereafter providing the establishment with an opportunity to be heard pursuant to rule of the Department. Methods for serving orders or notices on owners or operators are authorized by Sections 17-141 or 17-148 of the New York City Administrative Code as outlined in Subsection (e). The old Section 81.43 [Sealing up of insanitary establishments on order of Commissioner] and the old Section 81.45 [Vehicles used to transport food; cleanliness] would be absorbed into the proposed Section 81.39.

Pursuant to Article 2 of the New York State Agriculture and Markets Law and a memorandum of understanding between the New York State Department of Health and the New York State Department of Agriculture and Markets, effective March 1, 1986, the New York City Department of Health no longer exercises jurisdiction over food manufacturing. Food manufacturing is now under the purview of the State Department of Agriculture and Markets. Therefore, it is proposed that the old sections dealing with the pasteurization and labeling requirements for broken out eggs, the denaturing of inedible eggs and the marking of candled case eggs [81.48, 81.49, 81.51, 81.53] be deleted. It is also proposed that the requirement that operators of food service establishments notify the Department about complaints of patrons' illness allegedly resulting from food served in the establishment be transferred from the repealed Article 87 to Section 81.43. The section would specify that operators of food service establishments (and non-retail food processing establishments) also report to the Department any emergency occurrence such as fire, power outage or flood which might result in contamination of food.

It is also proposed that those provisions relating to permits for the above mentioned regulated activities, including fees, be amended to simplify and consolidate the multiplicity of classes into two permit types, and to appropriately adjust fees and expiration dates. The fees proposed for the two (2) new types of permits represent a consolidation of the fees currently collected for the twenty (20) permit classes proposed to be repealed. Although the redistribution of program costs over different permit types results in fee changes on a case by case basis among permitees, the proposal does not represent an overall fee increase in that they are based upon the current fee schedule. The effective date of this Resolution is proposed to be September 1, 1996 so as to ensure that the renewal cycle for existing permits can be completed under the current permit and fee structure.

Article 113 regulates frozen desserts. It is proposed that Section 113.19 be deleted. Labeling of frozen dessert

containers, packages and wrappers is regulated by the New York State Department of Agriculture and Markets and by federal regulations. A sign bearing nutritional information about dietary frozen desserts is not required in the New York State Sanitary Code, and presents an unnecessary burden to the operator.

13. Statement of Basis and Purpose in City Record Mar. 7, 1997:

This rule is promulgated pursuant to New York City Charter Section 1043 granting rulemaking authority to the Commissioner and Department of Health, Section 17-324 of the New York City Administrative Code authorizing the Commissioner of Health to "make such rules as deemed necessary for the proper implementation and enforcement of this subchapter . . ." and Section 17-307(b)(3) of the New York City Administrative Code requiring the Commissioner of Health to establish by rule procedures to create a waiting list for persons qualified to apply for and hold permits in accordance with the preferences of Section 17-307(b)(3).

Section 17-307(b)(2) fixes the maximum number of full-term mobile food unit permits that may be outstanding at any one time at 3,000 and prohibits the Department from issuing any permits in excess of 3,000. The Department may not issue new full-term permits until the number of such permits falls below the 3,000 mark. Section 17-307(b)(3) of the Administrative Code creates a limited exception to the 3,000 numerical limitation or "cap" on full-term mobile food unit permits imposed by Section 17-307(b)(2) and authorizes the Commissioner to issue an additional one hundred full-term permits to "natural persons who at the time of application for a permit hereunder are not holders of a full-term permit issued pursuant to paragraph three of this subdivision and have not had a full-term permit revoked or suspended."

Preference in the initial issuance of these permits, as well as in placement on a preference and/or waiting list is to be given to disabled veterans who previously held general vendor licenses (as further specified in Section 17-307), disabled veterans, disabled persons, and veterans in the order specified in Section 17-307(b)(3)(b). Section 17-307(b)(3)(a) provides that "[s]such permits shall be issued in the order in which applications for such permits are received in accordance with the preferences specified in subparagraph (b) of this paragraph and the procedures established by the commissioner." The Permits Division of the Department has made these one-hundred permits available for the first preference category specified in Section 17-307(b)(3). It is expected that the demand for these permits by members of the various preference categories will far exceed their availability. Accordingly, a fair, orderly and efficient procedure is needed for eligible natural persons desiring to apply for permits as they become available. This rule will provide a mechanism for issuing permits in order of preference and waiting list position within preference, will provide a procedure for natural persons, who are not already holders of a mobile food unit permit and/or have not had a full-term permit revoked or suspended, to communicate to the Department their interest in applying for one of these full-term permits, and for identifying the preference category to which they belong. Section 20-01 is a "Definitions" section. Section 20-02 directs the Department to establish a preference and/or waiting list. Section 20-03 provides that only natural persons holding valid mobile food vendor licenses issued by the Department at least ten days prior to the date that the Department establishes a preference and/or waiting list who also belong to one of the four preference categories specified in Section 17-307(b)(3)(b) would be eligible for a place on the list. Sections 20-04 through 20-06 describe the notice to be provided to prospective applicants to the list and the procedure for requesting a place on the list. Section 20-07 provides the Department's Permit Division with discretion to determine the specified number of full-term preference and/or waiting list positions that will be created to ensure that a reasonable number of eligible candidates are available to fill the currently available positions and those that develop as vacancies arise. The remaining provisions of the new Chapter 20 specify how any preference and/or waiting list is to be administered to select persons eligible to apply for these additional permits authorized by Section 17-307(b)(3) of the Administrative Code, when their number falls below the statutory maximum.

14. Statement of Basis and Purpose in City Record June 23, 1997:

These rules are promulgated pursuant to New York City Charter Section 1043 granting rulemaking authority to the Commissioner and Department of Health and various provisions of the New York City Health Code, namely, subdivisions (a) and (c) of Section 81.15, subdivisions (h) and (k) of Section 161.09 and subdivisions (b) and (e) of

Section 165.21. Section 81.15(a) of the Health Code requires that supervisors of food service establishments and non-retail food processing establishments obtain a certificate "issued by the Department subsequent to successful completion of a course in food protection, and passage of an examination administered by the Department". Subdivision (c) of Section 81.15 authorizes the Department to "conduct such food protection courses, or any part thereof, or approve courses conducted by others" and provides further that those "electing to enroll in such courses conducted by the Department may be charged a reasonable fee to defray all or part of the costs incurred by the Department for course registration, materials, training, testing and certificate issuance." Section 161.09(h) requires that persons "charged with the supervision of a pet shop or business for the sale or offer for sale of dogs, cats or other small animals . . . or similar type of operations . . ." obtain a "certificate indicating the successful completion of a course, acceptable to the Department, in the care and handling of such animals." Subdivision (k) of Section 161.09 provides that the Department "may conduct such courses or approve courses conducted by educational institutions" and that persons enrolling in courses given by the Department "may be charged a reasonable enrollment fee to defray all or part of the costs incurred by the Department in their administration." Section 165.21(b) requires that persons "charged with the operation of a bathing establishment" must obtain a "certificate indicating successful completion of a course in pool operation technology acceptable to the Department." Subdivision (e) provides that the Department "may conduct such courses or approve courses conducted by educational institutions" and that those electing to enroll in courses conducted by the Department "may be charged a reasonable enrollment fee to defray all or part of the cost incurred by the Department in their administration of the course."

The Department's Bureau of Environmental Health Services, at its Health Academy, currently conducts a number of full/supplemental training courses and issues certificates evidencing the successful completion of these courses. These certificates are required to be obtained pursuant to the New York City Health Code in order to operate certain businesses for which Department of Health permits are required. For example, pursuant to Section 81.15(c) the Department conducts a food protection course and issues a certificate evidencing successful completion of this course. Subdivision (c) further authorizes the Department to charge a reasonable fee to "defray all or part of the costs incurred by the Department for course registration, materials, training, testing and certificate issuance." At the present time, the fee payable to the Department by those enrolling in the Department's Food Protection Course offered at the Health Academy is one hundred dollars ($100.00), which includes testing and issuance of the required certificate. Similarly, as provided in Section 165.21(b) and (e), the Department offers at its Health Academy a pool operation technology course. The completion of this course or an outside course deemed acceptable by the Department is required by Section 165.21(b). Subdivision (e) authorizes the Department to charge a "reasonable enrollment fee to defray all or part of the cost incurred by the Department in their administration of the course." Currently, the fee payable to the Department by those enrolled in this course is one hundred thirty dollars ($130.00). The Department is also authorized to conduct a training course, pursuant to Section 161.09(h) and (k), that is required to be taken by any person who is charged with "the supervision of a pet shop or business for the sale or offer for sale of dogs, cats or other small animals . . . or similar type of operations. . . ." The Department is authorized to charge a reasonable fee to defray the costs it incurred in the administration of this course and currently charges a fee of eighty-five dollars ($85.00) to those taking this course.

These rules will codify for the first time the fees to be charged by the Department to those enrolling in the full/supplemental required training courses administered by the Department's Health Academy. These proposed rules will revise the fees that are currently being charged as well as establish a fee for a newly instituted Supplementary Food Protection Course also to be given at the Health Academy. The new fees are based upon a fee analysis conducted by the Department. This Supplemental Food Protection Course is to be required of those taking an outside food protection course approved by the Department. The required course will include training in the New York City Health Code, State Sanitary Code, applicable local laws and Departmental procedures, the administering of a final examination and the awarding of the Food Protection Certificate upon its successful completion. Proposed Section 21-01(a) generally outlines the contents of the Food Protection Course given by the Health Academy. Section 21-01(b) provides the fee payable to the Department by those taking this full course. Section 21-02(a) describes the contents of a newly instituted Supplemental Food Protection Course for those individuals opting to take an outside Food Protection course approved by the Department. Subdivision (b) prescribes the fee to be payable to the Department by those taking this supplemental

course. Proposed Section 21-03(a) outlines the contents of the Swimming Pool Technology Course given at the Health Academy and subdivision (b) establishes the fee to be payable to the Department by those enrolling in this course. Section 21-04(a) outlines the contents of the Animal Care and Handling Techniques Course conducted by the Department and Subdivision (b) prescribes the fee to be paid by those taking this course. Finally, Section 21-05 establishes the fee payable to the Department for a replacement certificate.

The proposed rules prescribing fees to be charged by the Department for the Food Protection Course, the Animal Care and Handling Course and the Swimming Pool Technology Course were included in the Health Department's Regulatory Agenda. Those rules establishing fees for the issuance of a Replacement Certificate and for the Supplemental Food Protection Course were not included in the Regulatory Agenda. The rule setting a fee for the Replacement Certificate was inadvertently omitted and this fact was only realized during the performing of the fee analysis unertaken to establish the amounts of the other fees. The rule setting a fee for the Supplemental Food Protection Course was not included in the Regulatory Agenda because making such course available was a regulatory reform decision that was not made until after the publication of the Regulatory Agenda.

15. Statement of Basis and Purpose in City Record July 15, 1997:

This proposal to repeal Article 53 and to amend subsection (a) of Section 5.07 of the New York City Health Code ("Health Code") is promulgated pursuant to Sections 558 and 1043 of the New York City Charter (the "Charter") as well as Section 390 of the New York State Social Services Law. Section 558(b) of the Charter empowers the Board of Health to amend or repeal the Health Code. Section 1043 grants the Department rulemaking authority. Section 390 of the Social Services Law regulates family day care.

Article 53 of the New York City Health Code, entitled "Family Day Care" was repealed and reenacted by resolution adopted on October 17, 1988 to enact updated and comprehensive requirements for family day care services. Family Day Care is "the regular day time care of at least three children under the age of twelve in the home of an unrelated provider . . . for more than five hours per week." [New York City Health Code, Section 53.01(a)]. Article 53 consists of various sections of law. Such sections include requirements relating to certificates of approval to operate a family day care service, physical facilities and equipment, supervision, health and medical care and the closing of a family day care service.

In 1990, the New York State legislature adopted Section 390 of the Social Services Law. In the interest of improving the quality of child care in the state, the law replaced a system of licensure with a system of registration for family day care providers. The Governor's Memorandum in support of the law recognized that under the system of licensure very few providers in New York State did in fact hold licenses as was required under the old law, and as such "the system is to a large extent unregulated." The purpose of the new system was to shift "the focus of the State's involvement from enforcement to support of family child day care [and to] extend government oversight." [McKinney's 1990 Sessions Laws of New York, Executive Memorandum, c. 750].

More specifically, the law adopted in 1990 preempted localities from regulating family day care. Section 390(12)(a) of the New York State Social Services Law provides that, ". . . [N]o . . . city . . . shall adopt or enact any law, ordinance, rule or regulation which would impose, mandate or otherwise enforce standards for sanitation, health, fire safety or building construction on a one or two family dwelling or multiple dwelling used to provide group family day care or family day care than would be applicable were such child day care not provided on the premises." Therefore, the provisions of Article 53 are explicitly preempted by State law and have no force and effect. This proposal is in keeping with the Department of Health's continuing interest in modernizing the New York City Health Code and repealing ineffective provisions.

This proposed repeal was not included in the Health Department's Regulatory Agenda, nor anticipated because it is the result of recent analysis by the Department directed towards eliminating the Department's regulation of areas no longer appropriately regulated by the agency, and eliminating mandates which are duplicative or unenforceable.

16. Statement of Basis and Purpose in City Record Aug. 15, 1997:

This proposed rule is promulgated pursuant to Sections 555, 556 and 1043 of the New York City Charter. Section 555 of the Charter affords the Commissioner all the powers and duties vested in the Department of Health. Section 556 of the Charter grants the Department of Health jurisdiction to regulate all matters affecting health in the City of New York. Section 1043 of the Charter grants the Department of Health rulemaking powers. In addition, Local Law 12 of 1997 which added Subchapter 7 of Chapter 3 of Title 17 of the Administrative Code of the City of New York, the Tattoo Regulation Act, empowers the Commissioner to promulgate rules regarding such matters as proper sterilization of tattoo equipment.

Section 181.15 of the New York City Health Code prohibits all tattooing in NYC, except that performed for medical purposes by a person licensed or otherwise authorized pursuant to the Education Law to practice medicine or osteopathy. Simultaneously with the proposal of this rule, the Department is proposing that the Board of Health repeal §181.15, thereby allowing licensing and regulation of tattooing pursuant to the Administrative Code and this new Commissioner's rule.

On March 12, 1997, Local Law 12 was signed by the Mayor of the City of New York, legalizing tattooing. The legislative intent of the newly enacted Subchapter 7 of Chapter 3 of Title 17 of the New York City Administrative Code, entitled the "Tattoo Regulation Act" is to "ensure that tattooists practice basic health and safety procedures . . . [and] . . . to permit the Department of Health to enforce safety standards for tattooists and impose penalties . . . for violations of such standards." Local Law 12 of 1997 specifically authorizes the Commissioner to promulgate regulations regarding such matters as sterilization of tattoo equipment, safe tattooing practices, and written examination of candidates for licensure.

Therefore, the Commissioner of Health proposes the rule herein to ensure the safe practice of tattooing in New York City. The Tattoo Regulation Act requires the licensing of the individual tattoo artist, after completion of an infection control written examination that is specific to the practice of tattooing. Essential components of safe tattooing include the use of single-use, disposable needles and ink cups and the use of standard barrier precautions, such as latex gloves, and procedures for disinfection and sterilization of non-disposable equipment.

A lecture will be offered at the Department's Health Academy or a location approved by the Department and/or through a Department approved instructor. Each applicant must pass a written examination prescribed by the Department before a license will be issued. A license will expire two years from the date of issuance.

17. Statement of Basis and Purpose in City Record Apr. 23, 1998:

Pursuant to Section 2903(15)(a) of the New York City Charter, the Department of Transportation issues special vehicle identification parking permits ("SVIPP" and also referred to as Parking Permits for People with Disabilities or "PPPD") to persons applying for such permits who are certified as having a "permanent disability seriously impairing mobility". A vehicle bearing such a permit when parked shall not be deemed to be in violation, with certain specified exceptions, of the rules and regulations governing parking in the city. Prior to the recent enactment of Local Law No. 43 of 1995, those persons claiming eligibility for a SVIPP due to a physical disability were required to possess a driver's license in order to be eligible to apply for a special vehicle identification permit. More specifically, eligibility for a SVIPP required that the applicant possess an operator's or chauffeur's license "with any restrictions indicating special devices or equipment required for the operation of a motor vehicle noted thereon." The medical certification to qualify for a SVIPP, or the determination not to certify, was required to be made by the Department of Health.

Local Law No. 43 of 1995 amended Section 2903(15) of the Charter by changing both the procedure by which an SVIPP is obtained from the Department of Transportation as well as the procedure for certifying a person as having a "permanent disability seriously impairing mobility." Section 2903(15)(a) as amended by Local Law No. 43 provides, in pertinent part, as follows:

The commissioner shall issue a special vehicle identification parking permit to a New York City resident who requires the use of a private automobile for transportation and to a non-resident . . . when such person has been certified by the department of health **or a provider designated by the department or the department of health,** who shall make such certification in accordance with standards and guidelines prescribed by the department or the department of health. . . ." [New York City Charter, Section 2903(15)(a), emphasis added].

Section 2903(15)(a), as amended, further provides that:

"A permit shall be issued to such person upon his or her application. A permit **shall also be issued to such person upon application made on such person's behalf by a parent, spouse, guardian or other individual having legal responsibility** for the administration of such person's day to day affairs." [emphasis added].

Until now, the Department's Employees Health Services Program has carried out its responsibility in this area by allocating approximately twenty-five hours of physician time per month on these SVIPP certification applications. SVIPP evaluations involve an initial examination and sometimes as many as two appeals by the applicant from the original decision by the Department of Health physician. These SVIPP examinations, in accordance with Section 2903(15)(e) of the Charter, must be held in each of the boroughs. This has led to delays because space and staff constraints allow scheduling of SVIPP examinations only once per month in the outer boroughs. In addition, due to the nature of physician staffing at the Employees Health Services Program, physician specialists sought by many applicants were not available. The scheduling, tracking and holding of these SVIPP certification sessions has involved a significant expenditure of time by Employee Health Services Program staff.

The intent of Local Law No. 43 of 1995 is to make SVIPP's more widely available as they will now be obtainable by the non-driver having physical disabilities (for example, persons who would not be able to qualify for a driver's license at all by reason of a physical disability). SVIPP applications will now be able to be "made on such person's behalf by a parent, spouse, guardian or other individual having legal responsibility for the administration of such person's day to day affairs." That fact is expected to increase the SVIPP workload of both Departments of Transportation and Health as an increased volume of SVIPP applications and certifications is anticipated.

Prior to the enactment of Local Law No. 43, the Charter mandated that the Department of Health perform all medical certifications of SVIPP applications submitted to the Department of Transportation. This function cannot be said to be a purely public health function or part of the mission of the Department. The Office of Nursing and Quality Improvement, of which the Employees Health Services Program is a part, believes that the SVIPP applicants as well as the Department's employees, would be better served if physicians and other staff of the Department no longer perform the SVIPP certifications. Local Law No. 43, which amended Charter Section 2903(15) provides this agency with the legal authority and the opportunity to designate providers/physicians to make SVIPP certifications "in accordance with standards and guidelines prescribed by . . . the department of health." These guidelines are found in 24 R.C.N.Y. Chapter 16.

In light of this authority vested in the Department to designate providers to perform SVIPP certifications, the Office of Nursing and Quality Improvement is proposing a change in the rules of the Department (24 R.C.N.Y. Chapter 16) to authorize the use of city-employed physicians, made available by the Health & Hospitals Corporation pursuant to a contract entered into by the Department with the Health & Hospitals Corporation and the Department of Transportation, to perform medical certifications of Special Vehicle Identification Parking Permit applications submitted to the Department of Transportation. This group of physicians shall be composed of practitioners in appropriate fields of medical specialization who are to be appointed by the Department to a two year renewable term. Persons are to be directed to particular physicians based upon their claimed impairment.

Applicants who are denied certification may appeal such determination. Such request for appeal must be made within fifteen business days of service of the decision on a form furnished with the decision. Where the denial of certification is based upon a determination that the person's medical history does not support a finding of permanent

disability seriously impairing mobility, the Department shall provide a review of the person's file by a physician other than the physician who denied such certification. Where the denial was based upon clinical findings or where the findings were inconsistent with the person's medical history, the Department shall provide a second assessment, which may include a physical examination by a physician selected by the Department other than the one who denied certification. The applicant/appellant will not be precluded from engaging his (her) own expert or specialist whose findings would be received and considered in the appeal.

The certification of a person for a SVIPP, or denial thereof, shall constitute a final agency determination when it is adopted by the Department. The certification or denial thereof is to be adopted unless it is appealed from by the applicant within fifteen business days of service of the decision denying the certification upon the applicant on a form received with the decision. The result of any appeal shall be final when it is adopted by the Department. A final determination denying certification shall preclude the filing of an SVIPP application for the same condition by or on behalf of such person unless such person demonstrates that the condition has significantly worsened.

Physicians selected to perform an SVIPP certification would be required to complete a certification form which specifies which, if any, of the Department of Health medical standards, amounting to a "permanent disability seriously impairing mobility", are met by the person. The validity of physician certifications will be monitored by the Employees Health Services Program through a selective review of determinations. The providers will be certified by the Department for two year renewable terms. As a result of these proposed rule changes, the Department's daily role in the SVIPP program will be minimized.

18. Statement of Basis and Purpose in City Record July 1, 1998:

Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City housing authority and the department of housing preservation and development. By the end of 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55 percent of those registered domestic partners who reported demographic information were heterosexual couples, and less than 45 percent were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

Consistent with the intent of such orders, the proposal would extend to domestic partners the same right to retain the benefits of veteran permits and licenses as is now accorded to spouses.

This rule is proposed at the request of the Administration, in conjunction with a citywide review of policies and practices relating to spouses and domestic partners. Therefore, it did not appear in the 1997 Regulatory Agenda.

19. Statement of Basis and Purpose in City Record July 1, 1998:

Article 81 of the New York City Health Code regulates the operations of food establishments for the purpose of preventing public health hazards. This Article applies to all food service establishments and non-retail food processing establishments, except as otherwise provided in the Code. It is proposed that Article 81 be amended to revise a number of provisions dealing with the preparation of food and the prevention of contamination.

In 1996, at the request of the Office of the Mayor, the Department of Health reviewed the regulations and laws affecting the food service industry. By amending Articles 5, 81 and 113 and repealing Articles 83, 85, 86 and 87 of the New York City Health Code, the Department modernized the Code, making it consistent with federal recommendations on the control of public health hazards, and making it consistent with the provisions of the New York State Sanitary

Code dealing with food service establishments. [Title 10 New York Codes, Rules and Regulations, Subpart 14-1]. The changes became effective September 1, 1996.

The current proposal to amend these regulations is the result of having enforced the 1996 revisions of Article 81 for over one year and having conducted a review of the regulations contained therein. It is now proposed that certain sections of Article 81 be amended further to clarify their meaning, to eliminate redundancies, to maintain consistency with more recent revisions to the New York State Sanitary Code, and to adopt an additional recommendation from the FDA 1997 Food Code on the control of public health hazards. Some of the more significant amendments proposed are as follows:

It is proposed that the temperature at which cold foods are required to be cooled, held, displayed and stored, be amended throughout Article 81 from 45 degrees Fahrenheit (7.2 degrees Celsius) to 41 degrees Fahrenheit (5 degrees Celsius). This temperature requirement is recommended in the FDA 1997 Food Code, and would reduce the amount of growth of some bacteria that are known to grow at 45 degrees Fahrenheit, especially in ready-to-eat foods. However, the current refrigeration equipment in most food establishments is not capable of cooling foods to 41 degrees Fahrenheit. It is therefore proposed that parts of Section 3-501.16 of the FDA 1997 Food Code be incorporated into Article 81, allowing potentially hazardous foods to be maintained at 45 degrees Fahrenheit, or between 41 and 45 degrees Fahrenheit, in existing refrigeration equipment that is not capable of maintaining foods at 41 degrees Fahrenheit or less, but only when the equipment is in place and already in use in the establishment. It is proposed further, that food establishments be required to upgrade or replace existing equipment to maintain food at 41 degrees Fahrenheit or less within 5 years of the proposed adoption of the temperature requirements.

It is proposed that the definition of a food service establishment, as it now appears in Section 81.03(i) be expanded to clarify that Article 81 is applicable to mobile food carts. Although Article 81 was intended to be applicable to all food service establishments, the Code does not explicitly mention mobile food units.

It is also proposed that Section 81.07(a) be amended to require that raw fruits and raw vegetables be thoroughly washed with potable water before serving. Washing removes the majority of pathogenic organisms and chemicals which may be present on the exterior surfaces of raw fruits and vegetables. This is a requirement of Section 14-1.81 of the Sanitary Code.

The amended Article 81, as proposed, would include two additional subsections of Section 81.07. It is suggested that the expanded section include the requirement that food packages, including hermetically sealed containers, be in good condition to protect the contents from contamination. This is, in part, a requirement of Section 14-1.31(a) of the Sanitary Code. It is also proposed that this section be expanded to include the requirement that only clean, whole eggs with shells intact and without cracks or splits, or pasteurized liquid, frozen or dry eggs or pasteurized dry egg products may be used, and that all containers in which shell eggs are received must identify the source. This is a requirement of Section 14-1.33 of the Sanitary Code.

In order to further maintain the Health Code's consistency with the Sanitary Code, it is proposed that Section 81.09(a)(4) be amended to require that every part of ground meat or foods containing ground meat are to be heated to 158 degrees Fahrenheit, with no time requirement (except poultry which must be cooked to 165 degrees Fahrenheit for 15 seconds), unless a consumer requests preparation of a single order of ground meat which must be prepared at a temperature less than 158 degrees Fahrenheit in order to comply with the request. The Sanitary Code was revised effective January 1, 1997 to include this temperature requirement. It is also a requirement of the U.S.D.A. regulations that govern commercial establishments that pre-cook ground meat prior to the freezing and packaging process.

Section 14-1.85 of the Sanitary Code now requires that metal stem-type, numerically scaled, indicating thermometers accurate to plus or minus two degrees Fahrenheit (1.1 degrees Celsius), or other acceptable devices made from materials that will not subject the product to contamination or toxic materials, are to be provided and used to determine that the internal cooking, holding or refrigeration of all potentially hazardous foods is done at the proper

temperature. It is proposed that Section 81.09 of the Health Code be amended to include this requirement.

Section 81.13 outlines the requirements for the health and clothing of foodworkers to prevent contamination of foods and food contact surfaces. It is proposed that the section be expanded to prohibit the unnecessary traffic of unauthorized persons in the food preparation, storage or warewashing areas, except for brief authorized visits and tours, if steps are taken, during such visits or tours, to ensure that all foods and food contact surfaces are protected from contamination. The prohibition is a requirement of Section 14-1.180(c) of the Sanitary Code.

It is proposed that supervisors of mobile food non-processing units not be required to obtain a Food Protection Certificate. In Section 81.15, supervisors of all food service establishments and non-retail food processing establishments are required to complete courses in food protection. Since mobile food non-processing units are prohibited from preparing or processing foods and typically sell only fruits, candies, pretzels or boiled hot dogs, it is not necessary to require that operators of these units take a 15-hour food protection course.

Section 14-1.88(c) of the Sanitary Code requires that all artificial lighting fixtures located over, near or within food storage, preparation, service or display facilities, and facilities where utensils and equipment are cleaned and stored, must be covered with guards. Currently, Section 81.19(b) only requires such guards above food processing equipment or open containers of food. It is suggested that the section be amended to conform to the Sanitary Code requirements.

Section 81.21(d) of the Health Code deals with the proper discharge of waste water and condensation from refrigerators. It is proposed that this section be repealed and replaced by requirements which are more extensive and which apply not only to refrigerators but to other types of equipment that require the proper discharge of waste water and condensation.

It is proposed that Section 81.23 be amended to include requirements for the proper storage of poisonous and toxic materials including bactericides, cleaning compounds, insecticides and rodenticides. The section should be amended further to prohibit the spraying of insecticides in food preparation and service areas, while food is being processed, prepared or served, or where unprotected food, clean utensils or containers are displayed or stored. This is a requirement of Section 14-1.60 of the Sanitary Code.

Section 14-1.115 of the Sanitary Code requires that mechanical dishwashing machines be equipped with thermometers to check their operation. It is proposed that this requirement be added to Section 81.37(e) of the Health Code. It is also proposed that Section 81.37 be expanded to add the requirement that drainboards of adequate size be provided and used for the proper handling of soiled items prior to washing and of clean items following sanitization. This is a requirement of Section 14-1.114 of the Sanitary Code.

20. Statement of Basis and Purpose in City Record Dec. 30, 1998:

This amendment to the New York City Health Code is promulgated pursuant to Sections 558 and 1043 of the New York City Charter ("Charter"). Section 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043 grants the Department of Health rulemaking authority.

Environmental Health Services is responsible for supervising and regulating the public health aspects of the food supply that is commercially prepared, distributed, and served throughout New York City. This jurisdiction inclues the permitting and regulation of food services establishments.

Beginning October 12, 1995 the Department began making restaurant inspection reports more easily available to the general public. A person seeking the most recent inspection report for up to five restaurants needed only to make his or her request in writing to the Department. There is no charge for these reports. For those requests for more than five inspection reports, a charge of 25 cents per page continues to be assessed pursuant to the Freedom of Information Law.

In 1995, within the context of the administration's Regulatory Reform for the Restaurant Industry initiative, the Department was asked to review all laws, regulations, policies, and procedures under its purview that affect restaurants, and in the course of the review to identify regulations that were outdated or unnecessarily burdensome. Toward this end, the Department completed a thorough review of the New York City Health Code provisions relating to the restaurant industry, as well as the New York State Sanitary Code (10 N.Y.C.R.R. Subpart 14-1), identifying requirements that might be clarified, simplified, or eliminated without compromising our commitment to the protection of public health.

The revision of the food sections of the Code, which became effective on September 30, 1996 repealed Section 87.15, which had been added on October 28, 1971 and which read as follows:

(a) A restaurant or eating place shall make available for examination by any prospective patron or customer who requests it, the most recent inspection report of the Department.

(b) A restaurant or eating place shall post a sign in a conspicuous place near its public entrance or entrances advising that a copy of the most recent inspection report of the Department is available for examination by any prospective patron or customer who requests it. Such sign shall be printed in clear and legible type and in such manner as to be readily visible to patrons and customers.

There is no comparable requirement in the New York State Sanitary Code.

The rationale for repeal included the opinion that the requirements were ineffective and generally unenforceable in that a restaurant could, if it so chose, easily thwart the intent of the provisions by simply telling a patron that the inspection report could not be found at that particular point in time. The Department also felt that the procedure that had been established in 1995 for responding to requests for reports provided a more reliable way for the public to obtain the last report.

It has recently come to the attention of the Department that the public is unaware that these reports are easily available by mail. The Department has recently added an option to its 24-hour complaint and information line whereby a person can leave a message requesting the most recent inspection report for up to 5 food service establishments, and will receive them at no cost. To better inform the public, the Department is proposing that all food service establishments be required to post a sign informing the public of the telephone number to call to obtain the most recent inspection report.

Therefore, it is proposed that Article 81 be amended to require that food service establishments post a sign in a conspicuous place that is near its public entrance or entrances advising that a copy of the most recent inspection report may be obtained from the Department by calling a telephone number at the Department that will be printed on the sign, and providing the name and the address of the establishment, and that the sign must be printed in clear and legible type and in such a manner as to be readily visible to patrons and customers. It is also proposed that mobile food vending units be exempted from this requirement.

This proposal was not published in the Department's regulatory agenda because the need for wider notice of the availability of Department inspection report was unanticipated at the time Health Code §87.15 was repealed.

21. Statement of Basis and Purpose in City Record Dec. 30, 1998:

Introduction

It is proposed that the Health Code be amended to repeal provisions relating to veterinary public health which are no longer applicable in the City; clarify a recent Health Code amendment regarding licensing of dogs; deregulate private horse stables; and reflect current considerations in control of animal diseases that may be transmitted to humans.

Section 11.65

Rabies remains epizootic in New York City, and the Department erxpends considerable resources monitoring dogs' vaccination status and investigating dog bite incidents to prevent or rules out any risk to the public or an individual's health. Section 11.65 of Article 11 ("Reportable Diseases and Conditions") of the New York City Health Code prescribes requirements for reporting, observation and control of animals affected with or suspected of having various diseases communicable to humans. Sections 11.65(e) through (g) currently specify measures for isolation and observation of animals subject to rabies that have bitten a person. Animals "subject to rabies" inclue any animals capable of contracting or transmitting the disease. Section 11.65(e)(1) specifies that a person owning, possessing or controlling a dog or other animal that is subject to rabies and has bitten a person must confine and observe the animal for 10 days. No change is proposed with respect to the periods of observation applicable to dogs and cats.

However, rather than prescribing specific observation and isolation periods in the Code, it is proposed that the applicable Code sections referring to the period of observation be amended to reflect current veterinary practice and national and state regulatory requirements, particularly those in the State Sanitary Code, recognizing that rabies virus may follow a different course or progression in different animals. This will afford the Department flexibility and permit it to exercise its discretion in prescribing appropriate, varying peeriods of confinement and observation for different animals, and clarifying the instructions for notification to the Department of events observed during and at the conclusion of the period of confinement and isolation.

Section 11.03

It is further proposed that section 11.03(a), which includes "animal bite" as a condition reportable to the Department, be amended to require reporting of any exposure to an animal subject to rabies, not only bites of these animals. The State Sanitary Code, 10 N.Y.C.R.R. 2.14, defines "exposure" as "introduction of the rabies virus into the body of a human or animal" and includes a bite within that definition. It is proposed that all references to animal bites in section 11.65 be amended accordingly.

Article 161

The Department proposes to repeal various provisions of Article 161 ("Animals") which are no longer applicable or which presently serve no public health purpose, and to clarify the applicability of these and other provisions.

Private Horse Stables. It is proposed that private horse stables maintained by a natural person or a family on its own property to house horses for their own exclusive recreational, non-commercial use be removed from Health Code regulation. That is, a permit would no longer be required for these non-commercial stables. While the Department would no longer inspect these facilities on a regular basis the Department would retain its inspectorial authority in cases of complaints for example. In addition the sanitary requirements of Section 161.23, as well as certain specified provisions of Article 135, would continue to apply to these types of private horse stables. There are currently only a very small number of private family-owned stables maintained for recreational use in the City. While these stables would, in effect, be deregulated by the Department, all stables would continue to be subject to public nuisance and humane laws and regulations.

Cows. As the Board anticipated (see Notes, Health Code section 161.25), there are no longer any dairies in the City, nor are there likely to be any new dairies opening, and no cows are kept in the City for the sale of milk. Section 161.25 regulating the provision and maintenance of stables for cows should be repealed. Section 161.09(f), which prohibits keeping cows for production and sale of milk without a permit and the provision for issuance of permits for keeping cows contained in section 5.07(a) of the Code should be repealed accordingly.

Dog Licensing. In 1990, the American Society for the Prevention of Cruelty to Animals (the "ASPCA") ceased issuing ddog licenses in the City of New York pursuant to the New York City Dog Licensing Law, L. 1894, c. 115, as amended, and the Department assumed the licensing authority pursuant to section 161.04 of the Health Code, adopted by Board resolution on June 26, 1990. This section as adopted retained a provision that ASPCA-issued licenses in effect

on July 1, 1990 would remain in effect until their expiration date. Such licenses have long since expired. Inasmuch as their is no longer any need for any reference to the ASPCA's licensing authority, this section should be amended accordingly.

Dog licensing remains an indicator of responsible pet ownership. To increase the numbers of dogs licensed by the Department, section 161.15(b) of the Health Code was amended by Board resolution adopted in December, 1997, to require permittee pet shops and shelters to "transfer possession, title, ownership, control or custody of any dog to a prospective purchaser or adopter" only upon receipt of a license application and fees. State and City law clearly and explicitly require that every dog permanently owned, possessed or harbored in the City must be licensed. It is proposed that this subsection be further amended to include among such transfers those from a shelter to an owner reclaiming his/her unlicensed dog from the shelter.

Rabies Vaccination andd Parasite-Free Certification. In 1973, section 161.06 was adopted requiring "deworming" or providing veterinary certification that a dog or cat was free of intestinal helminths before the animal is offered for sale, sold, or given away to another person. It is proposed to expand this section to require treatment for, or certification that an animal tested free of any parasitic infection. It is also proposed that this section be amended to require that upon change of ownership of a dog or cat, certification of the animal's vaccination against rabies be provided to the new owner. This amendment would require no change in veterinary practice, or in the vaccination requirements of section 11.65 of the Code, but would require disclosure of vaccination status on transfer of ownership of dogs and cats.

Vicious or Dangerous Animals. It is proposed that section 161.07 ("Vicious or dangerous animals") be amended to correct a reference in the definition of a "vicious or dangerous animal" in section 161.07(a). This subsection presently excepts from the definition animals "properly registered under 161.09(a)" (trained guard or attack dog). The reference should be to section 161.09(k), as renumbered. A further amendment is proposed to section 161.07(d) which would subject dogs owned, kept, trained for, or engaging in dog fighting to the same control measures, i.e., examinations and seizures, and sanctions as other vicious or dangerous animals.

Individual Caging of Dogs and Cats. It is proposed that section 161.17 be amended to allow for the presence of more than one animal in a cage if a veterinarian determines that for medical or humane reasons it would benefit the animal(s) to be caged with one or more companions, or if the animals would be injured if separated from their companions. The original requirement for housing one animal in a cage was intended to be a rabies control measure. However, many animals, particularly those who have been raised and housed together for long periods of time, fail to thrive in such situations and if a veterinarian certifies that it is medically indicated for dogs to be caged together, determining the rabies vaccination status of each animal would be the responsibility of the veterinarian. It is further proposed that this section be amended to clearly state that nothing in the Health Code prohibits congregate "socialization" or play areas in permitted boarding facilities if all animals have been properly vaccinated against rabies, and certified as free of other illnesses which may be transmitted to humans or animals.

22. Statement of Basis and Purpose in City Record Feb. 16, 1999:

Section 6-03 of Chapter 6 of Title 24 of the Rules of the City of New York, as originally enacted by the Department of Health, exempted any "concessionaire" of a "governmental agency" from the numerical limitations on the total number of full-term and temporary mobile food unit permits that could be issued by the Department pursuant to the New York City Administrative Code. A 1996 amendment to §6-03 further exempted concessionaires from the limitation on the number of full-term and temporary mobile food permits that could be issued to any one person pursuant to Local Law 15 of 1995. In 1996, §17-307(g) of the Administrative Code, which provided rules to be followed in determining how a permit can be ascribed or attributed to a person not necessarily named as the permittee of record, was also added as a provision from which concessionaires of governmental agencies were exempt. A "concessionaire" was defined in §6-03(a) as "any person, partnership, corporation or other business entity which has been authorized by a governmental agency to operate one or more mobile food units in an area within the jurisdiction of

such governmental agency." A "governmental agency" was defined in this same provision as "any agency, board, bureau, commission, department or other similar entity of the City of New York." Only the Department of Parks and Recreation has utilized the "concessionaire" exemption from the numerical limitations or "cap" imposed on the total number of full-term and temporary mobile food unit permits and the exemption from the limitation on the issuance of multiple permits. Multiple full-term and temporary mobile food unit permits have been issued by the Department to concessionaires of the Department of Parks and Recreation operating in parks under the jurisdiction of that agency. Due to a 1998 Decision and Order of the Supreme Court, Appellate Division, First Department, however, §6-03 of the Rules of the City of New York must now be changed. In **Precision Carts Inc. v. The City of New York et al.,** 672 NYS2d 346 (1st Dept. 1998), the Appellate Division held that the concession agreements entered into by the Department of Parks and Recreation and a private for-profit mobile food vendor "to operate concessions at seven locations within a city park are illegal pursuant to Local Law 15 of 1995 . . .". It further provided that the Department of Health was "without authority" to adopt regulations exempting a "private for-profit corporation" from the one-permit-per-person limitation of Local Law No. 15. The City's motion for leave to appeal to the New York Court of Appeals was denied in late November of 1998.

In light of the above, §6-03 of Chapter 6 of Title 24 of the Rules of the City of New York must be changed to conform with the law as interpreted in the **Precision Carts** decision. This proposal will repeal the existing §6-03 of the Rules of the City of New York in its entirety and reenact it in a manner consistent with the literal meaning of the appropriate Administrative Code provision. As the Appellate Division has determined that the exemptions previously granted by the Department in §6-03 may not be granted to private for-profit corporations, such as those hitherto granted to concessionaires of the Department of Parks and Recreation, all references to concessionaires will be deleted in the proposed new §6-03. The Department will no longer issue mobile food unit permits, either full-term or temporary, to a "concessionaire" of a governmental agency as previously defined but, rather, will issue the permits directly to the governmental agency. Finally, the Department is also proposing to add a new §6-03(b)(4) specifying the Department's authority to exempt City agencies from the permit fee requirement.

Statement Pursuant to Charter §1042-Regulatory Agenda

The proposal to repeal and reenact §6-03 of Title 24 of the Rules of the City of New York to allow only governmental agencies, and not their concessionaires, to be exempt from §§17-307(b)(2), 17-307(f)(3), 17-307(g) and 17-308(c) of the New York City Administrative Code was not included in the regulatory agenda because it was not until a final court decision in late 1998 that the need to change §6-03 became apparent and necessary.

23. Statement of Basis and Purpose in City Record Apr. 14, 1999:

Local Law 15 of 1995 amended §17-307(b)(2)(c) of the Administrative Code to prohibit the issuance of more than one mobile food unit permit, whether full-term or temporary, to any "person", as that term is defined in §17-306. The intent in so restricting the issuance of mobile food unit permits was to prevent the accumulation of large numbers of permits by any one individual, corporation or other business entity as well as the illegal leasing or other transfer of such permits by some of these multiple permit holders. Local Law 27 of 1997 created a limited exception to the "one permit per person" rule by authorizing the issuance of multiple temporary mobile food unit permits to "exclusive distributors or manufacturers who held multiple temporary food vendor permits before local law 15 for the year 1995 divested them of their additional permits. . . ."

Pursuant to §17-307(f)(3)(a)(ii)(B), as added by Local Law 27, any person who is an exclusive distributor or manufacturer of a food product, as those terms are defined in §17-306 of the Administrative Code, "and who on February third, nineteen hundred ninety-five was an exclusive distributor or a manufacturer of such food product who held more than one temporary permit issued pursuant to this subchapter, may be issued the number of additional temporary permits such person held on February third, nineteen hundred ninety-five and, in addition, may continue to hold one full-term permit. . . ." These multiple temporary permittees may be issued up to a maximum of sixty temporary permits pursuant to Local Law 27. The purpose for creating this exception to the "one permit per person rule" of Local

Law 15 of 1995 was to correct what the City Council found was an "unintended effect" of the 1995 law; namely, the hardship the "one permit per person rule" had on multiple temporary permittees who are exclusive distributors or manufacturers of a food product such as ice cream sold on a seasonal basis. These exclusive distributors or manufacturers rely on their ability to maintain a certain number of pushcarts or vehicles that can legally sell their food products on the city streets during a limited season. Without more than one temporary permit, the City Council found that these exclusive distributors or manufacturers "cannot maintain the requisite number of pushcarts or vehicles they need during their limited vending season to stay in business. . . ."

Local Law 27 of 1997, specifically §17-314.1(d)(2) thereof, authorizes an exclusive distributor or a manufacturer issued more than one temporary mobile food unit permit to lease a vehicle or pushcart owned by such exclusive distributor or manufacturer with the Department of Health temporary permit affixed thereto to a licensed food vendor. The control and responsibilities attendant to the permit remain with the permittees. In order to lease a vehicle or pushcart, such exclusive distributor or manufacturer must submit proof of ownership for such vehicle or pushcart as well as the lease agreement which sets forth, among other things, the food product which may be primarily sold using such vehicle or pushcart. Such leasing is also contingent upon the approval of the lease agreement by the Department. Section 17-314.1(d)(2) requires that the Department promulgate rules establishing the standards by which the Department will evaluate such lease agreements. Even those leases that were entered into before these lease approval rules are promulgated must be submitted for review after these rules become finalized. Proposed §6-04 of Chapter 6 contains the requirements and standards to be used by the Department to evaluate the lease agreements submitted by multiple temporary permittees seeking to lease their carts or vehicles as authorized by Local Law 27 of 1997.

Statement Pursuant to Charter §1042-Regulatory Agenda

This proposal to promulgate this rule establishing standards to be used to evaluate lease agreements submitted for approval pursuant to Local Law 27 of 1997 by multiple temporary permittees and licensed food vendors was not included in the City Record because the law setting forth this Departmental requirement was not enacted until May 5, 1997.

24 Statement of Basis and Purpose in City Record May 18, 1999:

This amendment to the New York City Health Code ("Health Code") is promulgated pursuant to Sections 556, 558 and 1043 of the New York City Charter. Section 556 of the Charter grants the Department of Health jurisdiction to regulate all matters affecting health in the City of New York. Section 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043 of the Charter grants the Department of Health rulemaking powers.

The Department proposes the repeal and reenactment of Article 71 and the repeal of Articles 73, 75 and 77 of the New York City Health Code. Existing Article 71 consists of general provisions for food, drugs, devices and cosmetics. Existing Article 73 consists of more specific provisions governing food (for example, adulterated or misbranded food and food additives). Existing Article 75 consists of specific provisions governing drugs and devices (for example, adulterated or misbranded drugs and devices, and drugs dispensed by prescription). Existing Article 77 consists of specific provisions governing cosmetics (for example, adulterated or misbranded cosmetics). The consolidation of essential public health provisions in a new Article 71 governing food and drugs will simplify the Code, eliminate redundant provisions, particularly those that are within the jurisdiction of other agencies and retain provisions having a direct bearing on public health.

These amendments are proposed in furtherance of the Department's regulatory reform efforts, and the need to modernize archaic provisions of the Code. The substantive areas governed by the articles proposed to be repealed is comprehensively regulated by other levels of government (for example, the State Education Department, the State Department of Agriculture and Markets and the Federal Food and Drug Administration). It is no longer necessary or desirable for the Department to duplicate efforts in areas already extensively regulated, or to retain provisions which are

no longer enforced by the Department.

Devices and cosmetics are regulated by the New York State Education Department and the Federal Food and Drug Administration. Provisions governing devices and cosmetics currently in Articles 71, 75 and 77 are not enforced by the Department. Consequently, proposed new Article 71 does not govern devices or cosmetics. Similarly, the dispensing of drugs (covered in existing Article 75) is extensively regulated by the State Education Department, and the Board of Pharmacy in particular. Controlled substances (including the dispensing of such substances) are extensively regulated by the State and Federal government (Article 33 of the Public Health Law and 21 U.S.C. §801 **et seq.,** respectively). Further, the Board of Regents defines unprofessional conduct in the practice of pharmacy. [8 N.Y.C.R.R. Section 29.7].

25. Statement of Basis and Purpose in City Record July 9, 1999:

The Department of Health requires the reporting of 70 diseases and conditions pursuant to Article 11 of the New York City Health Code. Mandatory reporting enables the Department to detect outbreaks and describe disease trends over time.

Vibrio parahaemolyticus and other non-cholera **Vibrio species** are bacteria that can cause acute gastroenteritis, skin infections, and bacteremia in humans. In persons with underlying medical illness, such as alcoholics, diabetics, persons with liver disease, or compromised immune systems, infection can cause serious, potentially fatal illness.

Recent outbreaks of **V. parahaemolyticus** have been associated with consumption of contaminated shellfish from the Pacific Coast and the Gulf of Mexico. In August to September 1998, for the first time, consumption of molloscum shellfish from Long Island Sound was linked to an outbreak of **Vibrio parahaemolyticus.**

In light of the recent outbreak, and evidence of colonalization of Long Island waters, the Department proposes designating **Vibrio species** infections as a reportable disease pursuant to the New York City Health Code. By making **Vibrio species** infections reportable, the Department of Health will be able to monitor the occurrence of disease in the New York City population, provide baseline data relating to the epidemiology of the disease, and most importantly, detect outbreaks of **Vibrio species** infections in a timely fashion.

Statement Pursuant to Charter §1042-Regulatory Agenda

This proposal was not included in the Health Department's Regulatory Agenda nor anticipated because it is the result of a recent outbreak of **V. parahaemolyticus** and reflects a need for surveillance of **Vibrio species** infections.

26. Statement of Basis and Purpose in City Record July 9, 1999:

The Board of Health has been petitioned by Bruce W. Krupke, Executive Vice President, New York State Dairy Foods, Inc. to amend §111.33 of the New York City Health Code to remove any reference to ultra-pasteurized milk and ultra-pasteurized milk products. This petition further suggests the adoption of a voluntary dating system that would allow individual milk processors to apply an expiration date anywhere from forty-five (45) days to sixty (60) days after the date of ultra-pasteurization.

Section 111.33 of the New York City Health Code regulates the dating of milk and milk products to be sold in the City of New York. This provision currently states as follows:

"No person shall possess, store, offer for sale, sell, give away or distribute milk, low sodium milk, low fat milk, skimmed milk, modified skimmed milk, cream or half and half after the expiration date indicated on the label required pursuant to §111.61. No person shall possess, store, offer for sale, sell, give away or distribute any such product the label of which bears an expiration date beyond the period specified in this section. The expiration date shall not be more than nine (9) calendar days following the date of pasteurization. However, in the case of such milk and milk products which have been ultra-pasteurized pursuant to subsection (d) of §111.25, the expiration date shall not be more than

thirty calendar days following the date of ultra-pasteurization. This section does not apply to cans of milk or cream to be used for manufacturing purposes or to milk or milk products which are not to be sold in the City of New York."

In order to ensure the wholesomeness of milk and milk products, the New York City Health Code has required that milk processors provide an "expiration" date on containers. This date is defined as the last day that the particular milk and milk products may be sold or distributed in New York City. In 1987, the Health Code was revised to extend this time period from ninety-six (96) hours to nine (9) days for pasteurized milk and milk products, and from fifteen (15) days to thirty (30) days for ultra-pasteurized milk and ultra-pasteurized milk products.

After having completed a thorough review of information provided to the Department by the New York State Department of Agriculture and Markets, the University of Pennsylvania, Cornell University as well as documents provided to us by the New York State Dairy Association, and also surveying surrounding municipalities regarding their regulations, it is proposed that §111.33 of the New York City Health Code be amended to extend the expiration date of ultra-pasteurized milk and ultra-pasteurized milk products from thirty (30) calendar days following ultra-pasteurization to forty-five (45) days following ultra-pasteurization. The amendment would have a favorable fiscal impact on this City's dairy industry by making its product more competitive in interstate commerce and would impose no public health risk or have a fiscal impact upon the general public.

27. Statement of Basis and Purpose in City Record Apr. 5, 2000:

The Bureau of Inspections within the Department of Health is charged with the responsibility for ensuring the safety of food that is commercially prepared, distributed and served throughout the City, whether the food is sold or provided free of charge. The Bureau's jurisdiction includes food service establishments and non-retail food processing establishments. Article 81 of the Health Code sets forth requirements for the operation of food service establishments for the purpose of preventing public health hazards. Establishments, such as "soup kitchens", which are run by religious, fraternal or charitable organizations which provide prepared food free of charge to the needy, are required to satisfy the applicable requirements of Article 81. The Department proposes that provisions in Article 81 addressing the required food protection course be amended to include provisions which are relevant to the particular structure and functions of these establishments.

Since the 1980s, religious organizations and other community groups have set up emergency food programs to feed the hungry on a regular basis. These programs commonly referred to as "soup kitchens" typically serve cooked or prepared meals on-site at no cost to the patron. Some kitchens provide individual bags or packaged prepared meals to the individuals they serve. Many "soup kitchens" receive funding from federal, state and/or local government sources. These include the Federal Emergency Management Act and Shelter Program (FEMA), the New York State Department of Health Hunger Prevention and Nutrition Assistance Program (HPNAP), the New York City Human Resources Administration Office of Domestic Violence and Emergency Intervention Services and the Emergency Food Assistance Program (EFAP). Government agencies, through a contractual agreement, provide monies and other services to non-profit organizations whose main purpose is to feed the hungry. In addition, food may be received from the community, which may include food drives or donated food from local grocery stores and restaurants.

Currently, §81.15 of the Health Code specifies that supervisors of food service establishments and non-retail food processing establishments complete a course in food protection. Such course is a comprehensive five day course culminating in an examination. It is proposed that §81.15 be amended to exempt food service establishments operated by religious, fraternal or charitable organizations, that are open to the public for the purpose of providing prepared food free of charge to the needy from the standard five day food protection course. It is proposed that these establishments be subject to a modified version of the food protection course covering the basic principles of safe food preparation.

The proposed amendments to §81.15 seek to account for the special nature of food service establishments operated by religious, fraternal or charitable organizations, that are open to the public for the purpose of providing prepared food free of charge to the needy. "Soup kitchens", and other such establishments, operate with limited funding and consist of

staff who are mostly transient volunteer workers.

The proposed §81.15(a)(2) requires the person responsible for the supervision of the food preparation or processing in these food service establishments operated by religious, fraternal or charitable organizations to obtain a certificate issued by the Department after successfully completing the modified course in food protection which could either be offered by the Department or by others approved by the Department. These individuals would be exempt from the examination requirement and would not be charged a fee for taking the course conducted by the Department. In addition, these individuals would not be required to take the Department's supplemental food protection course required pursuant to §21-02 of Title 24 of the Rules of the City of New York, which course provides training regarding the New York City Health Code, the State Sanitary Code and other relevant laws. The certificate issued to an individual in a food establishment operated by religious, fraternal or charitable organizations may be used by the certificate holder while he or she works at any such establishment. In addition, a person holding the certificate must be on the premises during all hours of operation. However, any person who has obtained a food protection certificate to supervise a regular food service establishment or a non-retail food processing establishment would not be required to complete the modified "soup kitchen" course.

Under the current §81.15(d), "the Department may require the holder of . . . certificate to complete a refresher course when the Department finds continuing violations of the Code or when a food borne outbreak implicates food processed in the establishment . . ., or when the Department determines that such a course is necessary to acquaint a supervisor with current developments in food protection principles." It is proposed that the language in subsection (d) be amended to indicate that holders of any food protection certificate-either the comprehensive food protection course or the modified course-may be required to complete a refresher course in food protection. Further, it is proposed that the Department may when it deems necessary to protect the public require the holder of a certificate to take a refresher course in food protection.

Section 81.15(e) of the Code currently requires that upon registration or upon applying for a certificate, two full-face photographs be taken of the applicant, one of which will be affixed to the certificate and the other maintained in the Department's records. It is proposed that this subsection be amended to exempt individuals covered under §81.15(a)(2) from the photograph requirement in order that there be no cost incurred by these individuals.

28. Statement of Basis and Purpose in City Record Oct. 5, 2000:

It is proposed that §13.05 of the New York City Health Code be amended to require that, within 24 hours of identifying any culture or sub-culture as **Mycobacterium tuberculosis** complex, clinical laboratories forward such cultures to the New York City Department of Health (the Department) for deoxyribonucleic acid (DNA) or other molecular analysis.

In the 1990s, New York City experienced a dramatic epidemic of multidrug-resistant tuberculosis (TB). In response, the New York City Department of Health (the Department) developed what has become an internationally recognized program which focuses on interruption of transmission through active identification of all TB patients and emphasis on treatment completion with an appropriate medication regimen (e.g., directly observed therapy). Improved laboratory services, strengthened infection control, and increased knowledge among health care providers about TB treatment and prevention are other necessary components of the successful strategy. These efforts have resulted in a 61% decrease in cases between 1992, the height of the epidemic, and 1999, and a reduction in multidrug-resistant TB by over 90%, from 441 cases to 31 cases by 1999.

This period also witnessed the development of molecular analysis of the DNA of the organism causing TB. This innovative laboratory technique distinguishes between strains of **Mycobacterium tuberculosis,** the causative agents of TB, isolated from different patients. People who have disease with organisms that have the same DNA pattern are presumed to be infected with the same TB strain and are therefore linked to each other in some way. The availability of DNA analysis has increased the effectiveness of the Department's TB Control program on two levels: by identifying TB

cases with the same infecting organism (i.e., "clusters") which are presumed to be the result of recent transmission, and by verifying laboratory contamination (or "cross-contamination") of a patient's specimen which, once verified, allows for discontinuation of unnecessary treatment. Laboratory contamination in this context means that a positive tuberculosis culture result is not due to disease in a patient, but rather contamination from another specimen in the laboratory.

Localized outbreaks, or "clusters" of TB in New York City, have been validated and independently identified by means of DNA analysis. The use of this technology was essential in determination of the extent of recent and on-going transmission in TB outbreaks in residential facilities, extended family networks, prison settings, patients with HIV/AIDS, and patients with multidrug resistant TB. DNA analysis also allowed the Department to rule out outbreaks in settings such as residential facilities for persons with AIDS and schools. This knowledge allows the Department to avoid resource intensive outbreak investigations of suspected but, without DNA analysis, unconfirmed secondary cases in public settings, and to better direct resources to TB control efforts in areas of known transmission.

This technology also enables the Department to identify patients with false-positive **Mycobacterium tuberculosis** cultures where a "false-positive" laboratory culture is not the result of active tuberculosis disease in the person whose specimen is being examined, but inadvertent contamination from another specimen growing **Mycobacterium tuberculosis** in the laboratory. This phenomenon is not entirely unexpected, since some degree of cross-contamination can occur even with standardized procedures. A citywide survey conducted in 1991 documented that almost 3% of tuberculosis patients had falsely positive cultures. As a result of this survey, the Department's TB Control Program implemented a surveillance system to identify possible cross-contamination of specimens with retrospective reviews of cases to identify those that have the characteristics of potential cross-contamination. Cross-contamination may be suspected where the patient does not manifest clinical symptoms consistent with TB, or has had a negative smear with only one positive culture. When such cases are identified, the patient's physician is notified of the possibility of cross-contamination so that he or she can make a determination of patient's diagnosis based on the clinical picture. If the physician determines that the potentially contaminated specimen is consistent with the clinical picture, unnecessary treatment may be suspended.

Currently, the Department's TB Control Program reviews histories of patients with suspected contamination and cultures from these patients are requested retrospectively from the laboratories for DNA analysis. Once cross-contamination is verified, unnecessary treatment for tuberculosis may be discontinued. The TB Control Program also occasionally accompanies New York State Department of Health microbiology laboratory staff on visits to laboratories which report false-positive results, to assist in identifying deficiencies and recommending corrective action.

In 1999, investigations resulted in identification of 39 patients with a false positive culture and/or diagnosis based on review of laboratory and medical records and discussions with physicians. However, the time from the initial identification of a positive culture to confirmation of contamination was usually three to six months. During this period, most of these patients had already received many months of multidrug treatment for TB.

At present, DNA analysis of **Mycobacterium tuberculosis** is available only for evaluation of selected isolates, in about 10% of all TB cases in New York City. These include patients whose isolates are suspected of being contaminants, patients identified as part of outbreak investigations, and patients with multidrug-resistant TB strains. The Department's current program is further limited by delays in DNA analysis. This analysis is generally only requested after an outbreak investigation has been conducted and secondary cases are discovered or suspected or after contamination is suspected. Results are received on average four weeks (range 2-11 weeks) after the request; a delay reflecting unstandardized long term storage practices at different laboratories, and the need for the isolate to be thawed and regrown for DNA analysis. Most laboratories maintain for each patient one isolate of TB identified in their laboratory for one year, after which it is generally destroyed. If a patient is retrospectively suspected as a possible source case in an outbreak and more than a year has elapsed, it may be impossible to establish by laboratory examination any DNA link between the patient and more recent cases. Furthermore, isolates older than one year often become unviable for DNA analysis due to contamination by molds.

By finding the source or index case retrospectively, the Department has also learned that traditional contact investigations often fail to identify links among active TB patients. Traditional contact investigation relies on interviewing patients about persons they may have exposed and where these exposures could have taken place. Exposures occur in a wide number of settings and patients may not recall all the places they have been or all the people they were in contact with while they were infectious, despite extensive interviews. By performing DNA analysis on all culture-positive cases the Department will be able to clearly identify where TB is being transmitted in order to better target our control efforts.

The Department does not know the extent to which unidentified transmission occurs in health care facilities in the City to either health care workers or patients. TB acquired in health care facilities is often identified after patients are discharged, or after health care workers are no longer working at facilities. Epidemiologic links for transmission in such settings are often not made by routine interviews. The results of DNA analysis would allow the Department to identify transmission in health care facilities and determine where additional control measures are needed.

In view of these difficulties in verifying and identifying the sources of cases, the Department proposes that the Health Code be amended to require submission within 24 hours of positive TB cultures or subcultures by all clinical laboratories in the City to the Department, which will conduct DNA analysis on one isolate for each active case. This amendment will enable the Department to:

1. Identify laboratory cross-contamination so that clinicians can be notified of possible cross-contamination quickly to prevent unnecessary treatment of patients;

2. Assess recent tuberculosis transmission in outbreaks in order to redirect contact investigations;

3. Determine the extent and dynamics of on-going transmission to focus program epidemiologic investigations and interventions for specific geographic areas and populations; and

4. Identify nosocomial transmission not identifiable by conventional methods.

It is estimated that 1,400 new tuberculosis cases will be diagnosed each year; 1,000-1,100 of these will be culture-positive and will be eligible for DNA analysis.

Currently, approximately 60% of culture-positive TB patients identified in New York City have isolates referred from various laboratories to the Department's Public Health Laboratories-Mycobacteriology Unit, for routine susceptibility testing. Because many of these isolates may also be used for DNA analysis, laboratories submitting these isolates would not be required to submit additional isolates for DNA confirmation, and the additional burden on the laboratory community of submitting specimens is somewhat mitigated. However, universal DNA analysis, is not possible until **all** laboratories are required to send to the Department, within 24 hours of growth, the initial culture or subculture of every **Mycobacterium tuberculosis** culture-positive patient identified in the laboratory.

The current voluntary system for DNA analysis dramatically underestimates the extent of transmission in New York City and hampers the Department's ability to promptly respond to outbreaks and cross-contamination. By prospectively analyzing at least one isolate for every culture-positive TB patient in the City in a standardized fashion, results of DNA analysis could be available within two weeks of identification. The lapse in time between identification of clusters and in identifying contamination will be reduced substantially, by approximately 2 to 12 months. It is anticipated that DNA analysis of all patients' initial isolates will also increase the rate of detection of contamination and significantly reduce the duration of inappropriate treatment with anti-tuberculosis medications for these patients. By evaluating DNA fingerprints of all culture-positive TB patients, the Department will further limit the spread of TB by identifying specific areas of ongoing transmission and improving TB control efforts, reducing New Yorkers' exposure to infectious TB, decreasing patient care expenditures and, ultimately, reducing pain and suffering for New Yorkers.

Tuberculosis control programs in other jurisdictions have reported dramatic results after instituting universal DNA

analysis. As a result of a Centers for Disease Control (CDC) grant and participation in a national study sponsored by CDC, the State of Maryland currently prospectively conducts DNA analysis for all culture-positive TB patients. Due to this policy, public health authorities recently found an outbreak of TB among the transgender community that may not have otherwise been discovered since epidemiologic links were not disclosed in interviews. The investigation enabled the Department's TB Control Program to retrospectively identify related cases in New York City. Had the Department prospectively conducted DNA analysis, it could have directly discovered the outbreak in the City several months before notification by the CDC or Maryland public health authorities. Other successful TB control programs employing universal DNA analysis, such as that in the Netherlands, have demonstrated highly beneficial outcomes in cluster identification and containment of outbreaks.

The amendment further proposes that information obtained from DNA analysis receive the same degree of protection of confidentiality afforded other patient information maintained by the Department pursuant to Health Code §11.07.

In summary, the Department believes that universal DNA analysis for all culture-positive TB patients is necessary to render New York City's TB control activities more effective, to avoid administration of unnecessary anti-tuberculosis treatment to those New Yorkers diagnosed on the basis of a "false positive" **Mycobacterium tuberculosis** culture, prevent transmission in confirmed outbreak situations, and identify locations where additional screening and prevention are needed to interrupt TB transmission. Comments in support of the proposal were received from the State Department of Health and the U.S. Centers for Disease Control and Prevention.

29. Statement of Basis and Purpose in City Record Apr. 3, 2001:

Although the number and severity of childhood lead poisoning cases continues to decline, lead poisoning remains a problem in New York City. The goal of eliminating lead poisoning in New York City can be further served by clarifying and updating certain reporting requirements of the Health Code, and providing direct access to individual blood lead test information about New York City children to the health care providers responsible for lead poisoning screening and treatment. Article 11 of the Health Code would be amended to clarify New York City's blood lead test reporting requirements and to establish a children's blood lead registry authorizing direct access by children's health care providers. It is further proposed that §173.14 (Safety standards for lead abatement) be amended to permit the Department to charge a fee for issuing certificates to persons who complete dust wipe sampling courses offered by non-Department of Health training programs, so that the Department may recoup the costs incurred in approving such courses and issuing the necessary certificates.

Blood lead testing is a critical measure for helping to protect children's health. The longer an elevated blood lead level in a child is undetected, the greater the risk to that child of adverse health consequences. Mandated timely reporting of all blood lead levels provides the Department with surveillance data necessary to monitor blood lead levels of individual children, directing allocation of resources for prevention, environmental investigation and intervention and treatment in areas at greatest risk, and assisting in effective planning to improve screening rates. Although current New York State and City laws and regulations are designed to establish comprehensive requirements for reporting of children's blood lead test results, there are gaps in some reporting requirements.

1. **Amend Article 11 to include a new Health Code §11.06-Blood Lead Reporting and Children's Blood Lead Registry**

a. Reporting of blood lead levels below 10 micrograms/deciliter.

In accordance with §§11.03 and 11.05 of the New York City Health Code, physicians, administrators of health care facilities and clinical laboratories, must now report to the Department, in writing, within 24 hours, results of blood tests of 10 or more micrograms of lead per deciliter (mcg/dL) of whole blood. In addition, all clinical laboratories are required to report results of all blood lead tests to the New York State Department of Health (NYS DOH) and to the

local health officer in whose jurisdiction the subject of the test resides pursuant to 10 N.Y.C.R.R. Subpart 67-3. If the laboratory reports electronically to NYS DOH, NYS DOH is required to notify the local health officer of the test results and the laboratory is deemed to have satisfied NYS DOH requirements. State regulations do not explicitly require health care providers to report test results to the local health officer unless the blood lead test result is equal to or greater than 45 mcg/dL. The City Department of Health tracks children's blood lead levels and performs environmental investigations in accordance with Health Code §173.13 when there is a receipt of a report of one blood lead level of 20 mcg/dL or greater, or two reports at levels of 15-19 mcg/dL for specimens taken three months apart. The Department also notifies parents and providers of the need to repeat tests when it receives reports of children's blood lead levels at 10 mcg/dL and greater.

Reports of blood lead test results below 10 mcg/dL are used by the Department for planning, educational, outreach and surveillance purposes. Also, when matched to children who are known "cases," test results below the environmental intervention threshold become a factor in a decision by the Department to discontinue case and/or environmental follow-up. There is, however, no urgent need to receive such reports within 24 hours.

The new provisions in §11.06(a) are intended to clarify reporting requirements, and to capture the results of blood lead test results which are less than 10 mcg/dL which are not reported electronically to the State by clinical laboratories. They are also intended to clarify the intent of the original proposal by requiring that providers who analyze blood lead specimens without submitting the specimen to a clinical laboratory for analysis must report to the Department results less than 10 mcg/dL. Reports are required within five (5) business days.

Section 11.03 is amended to cross reference the additional blood lead test reporting requirements in §11.06.

b. Establishing a Children's Blood Lead Registry

State law requires children's primary health care providers to assess children between the ages of six months and six years at every well child visit, or at least annually, for "high dose lead exposure" using a risk assessment instrument, and to screen or refer their patients for lead screening as necessary. Such providers are also required to screen or refer each child for blood lead screening at or around one and two years of age. Non-primary health care providers, e.g., emergency care providers, must inquire whether children who seek their care have been appropriately assessed and tested, and if not, test or refer these children for lead testing. In addition, as managed care programs increase and more children are enrolled in managed care, the Department has been receiving requests from health care providers associated with managed care organizations for information about children's lead screening history, to assist such providers in assessing children's risks and needs for new or further testing.

To facilitate the exchange of such information, the Department is adding a new §11.06 authorizing establishment of a children's blood lead level registry, modeled on the Department's Citywide Immunization Registry ("CIR"), which will allow access by health care providers to their patients' blood lead test results, enabling providers to track their patients' blood lead testing history and provide appropriate follow-up blood lead tests and medical care as necessary.

Because many children in New York City may have no regular health care provider, it is imperative that individual health care providers have access to complete lead testing histories for their patients so that they may determine when testing is needed. The creation of a blood lead test registry that is accessible to health care providers, with appropriate security provisions, can help health care providers identify children who need lead testing, thereby increasing screening rates throughout the City. Direct access to lead test results will enable such health care providers to evaluate their patients' current lead testing status and order needed tests or provide appropriate medical care for their patients.

The Department originally proposed that the Board repeal provisions applicable to lead poisoning reporting in §11.03, incorporating provisions for reporting all blood lead test results in the new §11.06. The original proposal would have raised the blood lead level at which reporting within 24 hours is required from 10 mcg/dl to 15 mcg/dl. After the public hearing, review of the comments received, and a Board discussion at its meeting on December 13, 2000, the

proposal was amended to retain the requirement that blood lead test results of 10 mcg/dl or higher be reported to the Department within 24 hours and to clarify the reporting requirements pertaining to blood lead test results less than 10 mcg/dl. The lead poisoning reporting provisions in §11.03 are amended only to the extent of cross-referencing additional reporting requirements in §11.06.

2. **Amend Health Code §11.07(d) to assure confidentiality of blood lead test registry records.**

Records of children's blood lead tests maintained by the Department would be subject to the same confidentiality requirements as that afforded the immunization registry pursuant to Health Code §11.07(d), and this section is amended accordingly to include reference to the children's blood lead registry.

3. Amend Health Code §173.14(c) to prescribe fees for issuing dust wipe sampling course certificates for completion of non-Department of Health training courses.

This amendment authorizes the Department to charge an administrative fee for the costs incurred by the Department for evaluating the training of persons who complete approved courses for dust wipe sampling and for providing a certificate.

In December, 1999, the Board adopted amendments to Health Code §173.14 which authorized the Department to administer such dust wipe training courses, charge a fee for attendance, and issue certificates to persons who complete its courses successfully. Since the Department is also authorized to approve courses given by other trainers, it is proposed that the Health Code be further amended to prescribe fees to cover costs of issuing certificates to individuals who complete dust wipe sampling courses conducted by Department-approved training organizations.

The Department is currently conducting this dust wipe course for a fee ($52.00), as authorized by Health Code §173.14(c)(2)(cc), to defray any costs incurred for course registration, materials, training, and certification. The Department has been approached by various organizations requesting approval to offer the course. The Department is developing procedures for approving these courses and proposes to issue certificates to individuals who pass approved courses. The Department will maintain records of all individuals who receive these certificates and provide such information to D.H.P.D. or other persons on request.

The Department will charge a fee of $15.00 either for issuing certificates to individuals who have taken and passed approved courses, or for issuing replacement certificates to individuals whose certificates were either lost or destroyed.

30. Statement of Basis and Purpose in City Record June 28, 2001:

The New York City Department of Health currently requires the reporting of 72 diseases and conditions, pursuant to Article 11 of the New York City Health Code. Mandatory reporting enables the Department to identify unusual cases, detect outbreaks, and to recognize and describe trends over time.

The Department of Health jproposes to update §§11.03 and 11.49 of the New York City Health Code to (1) specify additional methods of reporting, including by facsimile or electronic transmission, (2) ensure compliance with additional reportable diseases mandated by the New York State Department of Health in the New York State Sanitary Code, (3) delete certain diseases that were recently removed from the Sanitary Code, (4) add additional human diseases and conditions of current public health importance, (5) modify the requirements for monitoring acute cases of typhoid fever and management of long-term typhoid carriers, and (6) modify the mandated reporting of poisonings to specifically address pesticide exposures.

Section 11.03 currently requires that healthcare providers, hospitals and laboratories report to the Department in writing within 24 hours of diagnosis. With the advent of the ability to send reports by telephone, facsimile or electronic transmission, the Department proposes to modernize this section of the Health Code to authorize such communications. In addition, §11.03(c) will be updated to specify additional diseases that require immediate notification by telephone,

including acute arboviral infections, botulism, brucellosis, diphtheria, measles, poliomyelitis, hantavirus, Q fever, smallpox and, tularemia.

It is proposed that the following diseases of increasing public health concern be added to §11.03(a) to ensure compliance with the recent modifications to the New York State Sanitary Code: **Streptococcal pneumoniae** invasive disease; and Group B streptococcal invasive disease. The State Sanitary Code is effective in New York City and the Health Code must be at least as stringent as the State Sanitary Code. [Public Health Law §228].

It is proposed that the following diseases of minimal public health concern be deleted from §11.03(a) in resonse to the recent modifications to the New York State Sanitary Code: histoplasmosis, Reye's syndrome, and typhus. Although the sporadic occurrence of these diseases will no longer be reportable, disease clusters or unusual manifestations of these illnesses would remain reportable under §11.03(a).

It is proposed that the following diseases of potential public health importance be added to §11.03(a): Q fever, smallpox, transmissible spongiform encephalopathies and acute arboviral infections. Reporting of Q fever and smallpox is proposed owing to the highly infectious nature of these diseases, although naturally occurring incidence is unlikely. For the purposes of public health readiness and surveillance, reporting is proposed. Arboviral infections have recently become of public health concern particularly in the form of the West Nile Virus. Spongiform encephalopathies such as Creutzfeldt-Jakob disease, have become a matter of concern because of recent outbreaks in Europe. Popularly characterized as mad-cow disease, no cases have been found in the United States.

Currently pesticide poisoning is reportable under §11.03(a) which provides that poisoning by drugs or other toxic agents is reportable to the Department. It is proposed that §11.03(a) be modified to specifically refer to pesticide poisoning and to clarify what must be reported with regard to suspected and confirmed cases. This modification will be consistent with the reporting requirement of the New York State Sanitary Code §22.11, **Reporting of pesticide poisoning,** and §22.12, Reportable laboratory tests for pesticide poisoning. In an effort to increase surveillance for pesticide poisonings, reporting of symptomology as well as laboratory results would be required.

It is further proposed that §11.49 concerning the isolation and exclusion for typhoid fever and long-term public health case management for typhoid carriers be amended. The proposed changes emphasize that the primary public health concern regarding convalescent typhoid cases and long-term carriers relate to the potential for transmission only in high risk settings, such as food establishments, healthcare institutions and child care settings. Further, the proposed changes with regard to typhoid are based on a standard of reasonable certainty in the absence of evidence-based research. The recommendation presented in subsection (e) to shorten the period of supervision necessary to certify a chronic carrier as non-contagious are consistent with guidelines published by the American Public Health Association and state health department codes. There exists very limited medical research concerning the duration required to certify a typhoid carrier as non-contagious. The discovery of the effectiveness of quinolone antibiotics in eradicating the typhoid carrier state and the experience of health departments suggests that three consecutive negative stool cultures, over a three-month period, is sufficient proof of non-contagion.

Chronic carriers who have not had their gall bladder removed nor have received an adequate course of antibacterial therapy are currently required to submit to supervision for a period of five years. Experience and reason suggest that this time period is excessive. There is limited available data to determine a more appropriate length of supervision. One health department review suggests that the probability of a positive culture after three consecutive, monthly negative cultures is low. As an added precaution due to the lack of evidence, this period for non-treated individuals has been extended to six negative stool specimens over a six-month period.

Statement Pursuant to Charter §1042-Regulatory Agenda

Although amendment of §11.03 was anticipated in the annual regulatory agenda, certain diseases have been added as a result of recent events, such as West Nile Virus and European outbreaks of transmissible spongiform

encephalopathies. Section 11.49 was not included on the Regulatory Agenda because analysis of these public health changes was undertaken during the analysis of §11.03.

31. Statement of Basis and Purpose in City Record June 28, 2001:

Article 41 of the New York City Health Code governs facilities that provide services for pregnant women and newborns. According to the Article, a "maternity or newborn service" includes facilities or a part of a hospital where "deliveries are performed as a regular" practice, where women receive obstetric care, and where newborn infants receive care. The definition excludes a pregnant woman's residence and physician's office where deliveries are not regularly performed. Article 41 was adopted by the Board of Health to provide clinical standards for medical practice, staff, equipment and facilities in all maternity or newborn services.

Maternity and newborn services are comprehensively regulated by the New York State Department of Health as indicated below and therefore, it is no longer appropriate for the Department to enforce Article 41 of the Health Code.

New York State law provides that New York State Department of Health . . . "shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services . . ." [Public Health Law §2800]. Pursuant to New York State Public Health Law §2812, the New York City Department of Health no longer regulates clinical facilities, including abortion facilities, hospitals and clinics. These responsibilities have been assumed by the New York State Department of Health. Specifically, Public Health Law §2812 provides the following:

Notwithstanding the provisions of any general, special or local law, or any city charter or administrative code to the contrary, no county, town, village or city shall enact and enforce regulations and standards for hospitals, except for hospitals maintained and operated by the health services administration of the City of New York or the New York City Health and Hospitals Corporation.

Article 28 of New York State Public Health Law regulates all aspects of hospital operations (including diagnostic and treatment centers). New York State Department of Health specifically regulates maternity and newborn services which are part of an inpatient hospital. [10 New York Codes Rules and Regulations (N.Y.C.R.R.) §405.21]. Further, birth center services which are diagnostic and treatment centers are also regulated by New York State Department of Health [10 N.Y.C.R.R. Part 754].

Further, in 1972, the New York Court of Appeals specifically held that the regulation of the practice of medicine was reserved to the State pursuant to the State Education Law, §6520. **Robin v. Incorporated Village of Hempstead,** 30 N.Y. 347; 334 N.Y.S.2d 129 (1972).

The Department does retain public health jurisdiction and nuisance abatement authority with regard to matters including vital records, access to information and records required for epidemiologic investigations and the investigation and abatement of health nuisances and enforcement of Health Code provisions including, but not limited to Articles 3, 11, 13 and Title V (Vital Statistics).

32. Statement of Basis and Purpose in City Record June 28, 2001:

The repeal of Article 42 of the New York City Health Code is promulgated pursuant to Sections 558 and 1043 of the New York City Charter. Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends section 1043 grants the Department of Health rulemaking powers.

Article 42 was enacted by the Board of Health in 1970, after the New York State Penal law decriminalized abortions performed within the first trimester of pregnancy. The Penal Law was amended to provide that an abortion performed by a physician with consent of the pregnant woman within twenty-four weeks of pregnancy is a "justifiable

abortional act", and therefore not subject to criminal prosecution.

Article 42 was adopted by the Board to provide clinical standards for physicians and facilities with regard to medical practice, staff, equipment and facilities where abortions are performed. Article 42 provides detailed rules governing the operation of "Abortion Services," including definitions of "qualified obstetrician", "qualified surgeon," and "registered professional nurse." Article 42 required registration of Abortion Services with the New York City Department of Health and specified both the physical and operational characteristics of such clinical services, including such matters as transportation facilities, elevators, admission rooms, examination and laboratory facilities, operating rooms and recovery rooms. Specification of equipment included anesthesia equipment, transfusion equipment and blood supply, sterilization equipment, and various rooms and environmental controls.

Article 42 is no longer enforceable because it is pre-empted by New York State law and regulations. New York State law provides that New York State Department of Health ". . . shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services . . ." [Public Health Law $2800].

Pursuant to New York State Public Health Law §2812, the New York City Department of Health no longer regulates clinical facilities, including abortion facilities, hospitals and clinics. These responsibilities have been assumed by the New York State Department of Health. Specifically, Public Health Law §2812 provides the following:

Notwithstanding the provisions of any general, special or local law, or any city charter or administrative code to the contrary, no county, town, village or city shall enact and enforce regulations and standards for hospitals, except for hospitals maintained and operated by the health services administration of the city of New York or the New York city health and hospitals corporation.

New York State Department of Health specifically regulates diagnostic and treatment centers providing abortion services. [10 New York Codes Rules and Regulations (N.Y.C.R.R.) Part 756]. New York State Department of Health regulations also govern inpatient hospitals performing abortions [10 N.Y.C.R.R. §405.12(c)]. Further, the State Sanitary Code, in effect in the City of New York, regulates induced termination of pregnancies. [10 N.Y.C.R.R. §12.20]. Further, the practice of medicine is regulated by New York State [Education Law, §6520 **et seq.**].

Also, in 1973, the U.S. Supreme Court decided **Roe v. Wade,** 410 U.S. 113, which set forth constitutional principles related to the State's authority to regulate abortions. More recently the Supreme Court reaffirmed Roe's recognition of a woman's right, ". . . to choose to have an abortion before viability and to obtain it without undue interference from the State." **Planned Parenthood v. Casey,** 505 U.S. 833, 846 (1992).

Further, in 1972, the New York Court of Appeals specifically ruled that the State's purpose and design [was] to pre-empt the subject of abortion legislation and occupy the entire field so as to prohibit additional regulation by local authorities in the same area. **Robin v. Incorporated Village of Hempstead,** 30 N.Y. 347, 350; 334 N.Y.S.2d 129, 131 (1972). Moreover, the **Robin** Court held that the regulation of the practice of medicine was also reserved to the State pursuant to the State Education Law, §6520. Insofar as Article 42 purports to regulate the practice of medicine, it is pre-empted by §6520. Therefore, Article 42 is obsolete, and the Department of Health is pre-empted from regulating or setting standards for abortions.

The Department does retain public health jurisdiction and nuisance abatement authority with regard to matters including vital records, access to information and records required for epidemiologic investigations and the investigation and abatement of health nuisances and enforcement of Health Code provisions including, but not limited to Articles 3, 11, 13 and Title V (Vital Statistics).

33. Statement of Basis and Purpose in City Record Dec. 27, 2001:

Article 11 of the New York City Health Code currently requires the reporting to the Department of Health

approximately 70 diseases and conditions occurring as human cases and three diseases of animals communicable to humans which have not yet affected any person. Such mandatory reporting enables the Department to identify unusual cases, detect outbreaks, and recognize and describe trends over time.

At its meeting on June 13, 2001, the Board approved a proposal to amend §11.03 of the Health Code to add to the list of reportable diseases several diseases of current public health importance, including Q fever, a disease of animals which is communicable to humans. Among the human diseases currently reportable to the Department are several which are animal diseases "communicable to humans." Section 11.65 of the Health Code currently requires reporting to the Department of only three animal diseases if the diseases affect only animals: anthrax, glanders and rabies. For the reasons stated below, it is proposed that a new §11.64 be adopted related to reporting and control of additional diseases of animals communicable to people; that §11.65, which currently provides for reporting of three animal diseases communicable to humans (rabies, anthrax and glanders) and control of animals exposed to or affected with rabies, be repealed and reenacted, and incorporate measures only for rabies control; and that both §11.65 and §11.66 reflect current pre- and post-exposure rabies control recommendations of the U.S. Centers for Disease Control and Prevention.

I. Adopt a new §11.64

Following the 1999 outbreak of West Nile virus in the northeastern United States, the U.S. General Accounting Office ("GAO") conducted a review of the outbreak and the public health response to it. The GAO listed in its key lessons that "links between public and animal health agencies are becoming more important. Many emerging diseases, including West Nile, affect both animals and humans. So do many viruses or other disease-causing agents that might be used in bioterrorist attacks. The length of time it took to connect the bird and human outbreaks of the West Nile virus signals a need for better coordination among public and animal health agencies."

The Department recognizes this need, and proposes to update and supplement the numbers of animal communicable diseases now reportable pursuant to §11.65 which are of public health concern because they can be transmitted to humans. A new §11.64 of the Health Code would establish additional requirements for veterinarians and others in New York City to report additional specific diseases of animals to the Department, some immediately upon diagnosis or suspicion that the disease is present and others within 24 hours of diagnosis, as well as requiring immediate reporting of any unusual disease manifestation or outbreak or suspected outbreak of any disease, of known or unknown etiology, occurring in three or more animals. Section 11.64 will also specify who should report, the information to be reported, the measures which may be implemented by the Department for investigation and control, and the confidentiality to be afforded the reports and records generated pursuant to these provisions.

A. Immediate reporting of suspected diseases requiring an acute response.

In accordance with the new §11.64(a)(1) the Department would receive immediate reports on either diagnosis or suspicion of certain diseases when the disease is suspected only in animals. Anthrax, brucellosis, glanders, plague, Q fever, and tularemia have been identified by the U.S. Centers for Disease Control and Prevention as diseases with a high potential as intentional infectious agents. Required reporting of suspect cases directly to the Department of Health when a diagnosis is first suspected: 1) provides an additional means of surveillance for these diseases of humans; 2) may provide the earliest warning of a natural or intentional outbreak with potential spread to humans and other animals; and 3) allows the Department to quickly evaluate the potential public health consequences of the infected animal(s) and take necessary measures to prevent further morbidity in animals or humans.

It is proposed that cases of rabies in animals currently reportable pursuant to §11.65 of the Code, be made reportable in accordance with the new §11.64, so that requirements for reporting of all animal diseases and conditions communicable to humans will be found in one section, to clarify and emphasize the importance of such reporting, and to allow for a rapid response to be implemented. If an animal is found to have rabies, it remains critical that all people having contact with the animal be identified as soon as possible and evaluated for possible post-exposure prophylaxis. Specific updated requirements for control and management of animals which may have been exposed to rabies would

continue to be found in the reenacted §11.65.

Experience with West Nile Virus in 1999 and 2000 has shown that not all disease entities can be accounted for in a reportable disease list. New and emerging diseases of public health significance occur in both animals and humans. The inclusion of a requirement to report unusual disease presentations in animals will establish a formal procedure for more rapidly identifying unusual diseases which may be a threat to public health.

B. Reporting of other animal diseases on diagnosis.

In addition to the diseases above which would be reported when a diagnosis is first suspected, the Department proposes that the Board require prompt reporting of the following diseases in animals, for the following reasons, but only when a diagnosis is confirmed:

-Arboviral encephalitis occurs most commonly among horses in this area, typically due to Eastern Equine or West Nile encephalitis. As we have learned from the West Nile virus experience, newly introduced viruses may affect species not previously recognized to be at risk. Making the occurrence of these diseases in animals reportable will aid in the detection of future introductions or outbreaks as early as possible.

-Outbreaks of avian chlamydiosis have been reported in aviaries and pet stores. Infected birds shed the causative agent, **Chlamydia psittaci,** in their feces. Aerosolized droplets containing the bacteria can infect people in close proximity to those infected birds. Infection in aviaries or pet stores poses a risk of infection to employees, as well as the public. By requiring reporting of any case of avian chlamydiosis, the Department will better be able to intervene when infected birds pose a risk of infection to people.

-Leptospirosis is difficult to detect in people because of the highly variable clinical presentation of the disease. Sporadic human cases and outbreaks do occur in the United States. In 2000, the Department confirmed the first human leptospirosis case in New York City in over 10 years. Outbreaks and sporadic cases also occur in dogs in New York City, including three dogs in 2000. It is assumed that the primary source for leptospirosis in urban environments is contaminated rat urine. Requiring veterinarians and other animal health professionals to report this disease directly to the Department provides an additional means to detect potential sources of infection for humans before human cases occur.

C. Measures to investigate and control animal diseases.

Section 11.64 would authorize the Department to initiate any investigation and control measures appropriate and necessary on receipt of reports of animal diseases of public health concern, similar to the measures required and authorized with respect to human cases in the State Sanitary Code (10 N.Y.C.R.R. §2.6). Although the Department's authority to take such measures is broadly delineated in applicable law (see, e.g., §556 of the New York City Charter: ". . . the department shall have jurisdiction to regulate all matters affecting health in the city of New York . . ."), and the State Sanitary Code requires the Commissioner and/or the Department (as the local health officer) to take certain measures in rabies control, no other provisions of applicable law specify the kinds of action the Department could take for investigation and control of a broad range of diseases initially reported only in animals.

II. Repeal and reenact §11.65 and amend §11.66 to incorporate current pre- and post-exposure rabies control recommendations.

It is proposed that, as reenacted, §11.65 not duplicate reporting requirements for rabies, anthrax and glanders, which will be included in the new §11.64; and that the reenacted §11.65 and amended §11.66 incorporate the most recent recommendations for rabies control and vaccination. See, U.S. CDC and National Association of State Public Health Veterinarians, Inc., **Compendium of Animal Rabies Prevention and Control,** Morbidity and Mortality Weekly Report, 50, No. RR-8, May 25, 2001.

As reenacted, §11.65 will apply current regulatory and professional veterinarian recommendations for control of animals capable of contracting rabies which are affected with or have been exposed to rabies; management requirements for such animals would continue to distinguish between animals for which there are U.S. Department of Agriculture approved vaccines and which are actively vaccinated, and those animals which are not actively vaccinated or for which no vaccine is currently approved. The reenacted §11.65 includes updated definitions of "actively" or "currently" vaccinated animals and "primary" and "booster" vaccinations. As in the existing section, the Department includes directions for management of animals which are either known to have been exposed to rabies or suspected of having been exposed to another animal with an unknown rabies history. To be "exposed" to rabies an animal must have been bitten, scratched or otherwise had contact with a rabid animal's saliva or infectious material. Based on current CDC recommendations for post exposure management of animals exposed to rabies, where the animal causing the exposure is not known or available for observation, but where the exposed animals are actively vaccinated, the reenacted §11.65 would enable owners to observe their animals for a period of 45 days, rather than surrender the animals to the Department for direct observation by the Department. The requirement that the owner "confine and observe" the animal has been replaced by the term "closely observe" since it is not necessary for an owner to keep the animal either confined to the owner's premises during such period of observation. Section 11.65 would also change the requirements for observation of animals which are not currently vaccinated against rabies in accordance with the above-cited recommendations. The reenacted §11.65 retains provisions which allow the Commissioner to take certain extraordinary measures to control the spread of rabies in the event that prevalence of rabies in specific areas of the City requires the declaration of a rabies "epizootic" (the animal equivalent of an epidemic).

It is further proposed that subsection (a) of §11.66 be amended to incorporate by reference the definitions of "actively" and "currently" vaccinated animals and "primary" and "booster" vaccination which will now be found in §11.65, and which do not need to be repeated in §11.66, and to amend subsection 11.66(d) to require that all dogs and cats in New York City regardless of the length of time the animals are in the City, including animals owned by non-residents, and animals in the City temporarily for exhibition purposes, be actively vaccinated against rabies. Upon adoption of the new §11.64, reenactment of §11.65 and the amendment of §11.66, the list of Section Headings in Article 11 would also be amended appropriately.

The only testimony and written comment received at the public hearing was submitted by a New York City veterinarian on behalf of the executive board of the Veterinary Medical Association of New York City. The Department does not believe that any amendments are required based on this comment. However one minor clarification was made in §11.65(b) based upon Department consideration. Specifically, the original proposal contained the phrase "capable of contracting and transmitting rabies." This phrase has been further amended to state "capable of transmitting rabies."

34. Statement of Basis and Purpose in City Record Apr. 4, 2002:

The Board of Health has amended Article 48 (Summer Day Camps, Children's Overnight Camps, Children's Traveling Summer Day Camps and Municipal Camps) of the New York City Health Code, to modernize and enhance the safety and well-being of the children attending camps in the City of New York, and to harmonize the Health Code with the current provisions of the New York State Sanitary Code, Subpart 7-2 (Children's camps).

In New York City, there are approximately 755 summer day camps, 12 traveling summer day camps, 4 overnight camps, and 5 camps where 20% of the campers are physically or mentally disabled, most of which are operated by the New York City Housing Authority, Board of Education and Department of Parks and Recreation, non-public schools and not-for-profit charitable organizations such as the Salvation Army, churches and synagogues.

The children's camps operating in New York City are permitted and regulated by the Department's Bureau of Regulatory and Environmental Health Services, Office of Field Operations/Inspections (OFO/I). The Bureau has the primary responsibility for enforcing Article 48 of the Health Code as well as Subpart 7-2 (Children's Camps) of the New York State Sanitary Code. These regulations prescribe standards of safety, services and operations designed to protect the health and well-being of children who attend and participate in children's camps.

The Department has been advised that the State Department of Health is planning to propose that the State Public Health Council further amend Subpart 7-2 of the Sanitary Code. When such amendments are adopted, the Department will again need to amend the Health Code. However, the proposals to amend the Health Code contained herein are deemed to be immediately necessary for the reasons stated.

Amend §48.07 Permit application; issuance and renewal

Each year the OFO/I permits and inspects all of the nearly 800 camps in New York City. Currently, Article 48 and Subpart 7-2 of the New York State Sanitary Code require an application for a permit to be submitted within thirty days of commencement of camp operation, or by June 1 for a camp which plans to begin operating on July 1. In addition to a pre-permit inspection, the application and permit process includes verification of address, ownership, tax exemption status and staff qualifications, including reports from the New York State Department of Social Services Central Register of Child Abuse and Maltreatment and of criminal convictions reported by the camp director, and the camp's written safety plan. A Fire Department inspection report is also required as part of the permitting process. Each year, however, many of the children's camps begin to operate without first obtaining a permit. To allow sufficient time for Department review, §48.07 (Permit; application, issuance and renewal) is being amended to require permit applications to be submitted within sixty days of commencement of operation, to allow for application by mail if the application is submitted to the Department at least ninety days before starting operation, and to require applications to be submitted **only** in person between sixty and ninety days before starting operation. In-person submission will enable OFOI staff to immediately identify all missing or erroneous materials and documentation in applications and written safety plans and expedite issuance of permits.

As part of the annual permit application process, prior to issuance of a permit, the Department is further amending this section to require camp directors to attend an annual orientation session offered by the Department to review the regulatory requirements pertaining to camps.

Repeal and reenact §48.09 Staff qualifications

Operators of children's camps in New York City have reported that they have had difficulty finding staff with the qualifications currently required by the Health Code, in a timely manner. In the event that a camp is unable to recruit sufficient qualified staff, the number of campers enrolled in the program must be reduced and/or the recreation program limited to passive activities. Children's camps operating in New York City provide an invaluable service and are heavily relied on by working parents. To enable camps to hire qualified staff and serve the maximum number of children safely and effectively, the Board is amending the Health Code by repealing §48.09, now titled "Personnel; qualifications; ratios; records" and replacing this section with a reenacted §48.09, "Staff qualifications" and a new §48.12, "Supervision" incorporating staff and counselor qualifications and counselor to camper ratios. These provisions will reflect and be consistent with staff qualifications and ratios required by Subpart 7-2 of the Sanitary Code. The Health Code title "waterfront supervisor" would be replaced with the Sanitary Code's "camp aquatics director."

Repeal and reenact §48.11 Written safety plan

A camp's written safety plan establishes a blueprint for safe operation of a camp, including staff qualifications and duties, facility operation and maintenance, fire safety, medical requirements, policies and procedures for general and activity-specific safety, staff training and camper orientation. The Department reviews plans for all new applicants and amended plans for established camps. Currently, §48.11 (Programs) requires creation of the written safety plan as well as staff training and camper orientation. The Board is repealing and reenacting §48.11 reflecting the more detailed and current requirements of the State Sanitary Code §7-2.5(m), and requiring a single written safety plan which covers all areas of camp operations, policies and procedures.

The Board is further amending existing provisions in §§48.07(a), 48.15(a)(6), and 48.19(p) and (q), which refer to portions of the written safety plan and which are inconsistent with the proposed provisions.

Adopt a new §48.12 Supervision

Currently, counselor to camper supervision ratios are included in §48.09 of the Code, with personnel qualifications and records requirements. The Board is adopting a new §48.12 which focuses only on counselor to camper supervision ratios. The new §48.12 incorporates the requirement that the camp operator provide adequate supervision and that a definition of "adequate supervision" as currently stated in §48.11(f) of the Code and in §7-2.5(n) of the State Sanitary Code, be included in this section. The section includes counselor to camper ratios for passive activities as defined in §7-2.5(b)(1) of the State Sanitary Code.

Repeal and reenact §48.13(a) Safety standards for activities: Swimming and Aquatic Activities

Section 48.13(a) (Safety standards for activities: Swimming) is being repealed and reenacted to create revised and expanded provisions intended to further safeguard children against accidental drowning. Pursuant to §§48.13(a)(1) and 165.37 of the Health Code and §6-1.7 of the State Sanitary Code, the Department of Health is required to investigate all drownings which occur at children's camps permitted by the Department, and to report the results of such investigations to the New York State Department of Health. The amendments incorporate measures to address the results of such investigations. The reenacted subsection outlines the safety standards for all swimming and aquatic activities including requirements for facilities and equipment, staff responsibilities, camper safety, and off-site aquatic activities. Foremost among the changes to the subsection is the requirement that a progressive swimming instructor [as defined in §48.09(g)] should assess the swimming ability of each camper prior to allowing the child to participate in aquatic activities in order to reduce the risk of non-swimmers being grouped with swimmers for such activities. The reenacted §48.13(a) outlines extensive requirements for the protection of non-swimmers.

Repeal and reenact §48.13(b) Safety standards for activities: Riflery

Currently §48.13(b) outlines safety standards for riflery. Mortality and morbidity reports demonstrate the alarming accessibility and incidence of firearm use by children. Therefore, all current provisions related to riflery are being repealed and the reenacted §48.13(b) specifically prohibits riflery as a camp activity in all children's camps operating in the City of New York. The Department has determined that allowing children to engage in any activity involving the use of firearms does not reflect a sound public health policy.

Amend §48.13(d) Safety standards for activities: Horseback Riding

The outdated standard for horseback riding headgear is being updated to require that such headgear meet the standards specified in §1265 of the New York State Vehicle and Traffic Law.

Repeal and reenact §48.15(f) Safety standards for facilities: Food Sanitation

Section 48.15(f) is being reenacted to incorporate all provisions of Article 81 (Food Preparation and Food Establishments) of the Code, with the specific exception of not requiring an additional permit to operate a food service establishment. Article 81 was amended in 1996 and again in 1998 to modernize its provisions, to reflect recommended federal guidelines on the control of public health hazards and to make them consistent with the New York State Sanitary Code. The current provisions for food safety outlined in §48.15(f) are vague, outdated and not consistent with Article 81. Supervisors of food operations at all camps will be required to successfully complete a food protection course approved by the Department and food which is prepared off the premises, brought from home, or which is carried off-site on trips, shall be subject to the holding and handling requirements outlined in Article 81.

Repeal and reenact §48.17(k) Health and medical care

The current §48.17(k) requires that all injuries, illnesses and reportable diseases are to be reported to the camp health director. The subsection is being updated to include requirements for reporting to the Department all injuries or illnesses currently reportable pursuant to the State Sanitary Code and to add a requirement for reporting instances which

require the administration of epinephrine.

A number of changes were made in the resolution after the public hearing based on testimony and written comments from the New York State Department of Health and the Children's Aid Society. In response to the State's comments changes were made to clarify requirements for aquatics safety, staff to camper ratios, staff responsibilities and qualifications, record keeping, reporting of diseases, incidents and conditions, and the written safety plan so that requirements of the Health Code are in harmony with those of the Sanitary Code. In response to the Children's Aid Society comment, the requirements for attending the Department's orientation session were amended so that not every camp director needs to attend a session annually before a permit is issued.

35. Statement of Basis and Purpose in City Record July 16, 2002:

Pursuant to §2903(a)(15)(a) of the New York City Charter, the Department of Transportation issues Special Vehicle Identification Parking Permits (SVIPP), also known as Parking Permits for People with Disabilities (PPPD), to persons applying for such permits who are certified as having a "permanent disability seriously impairing mobility". A vehicle bearing such a permit while parked shall not be deemed to be in violation, with certain specified exceptions, of the rules and regulations governing parking in the City. Prior to the enactment of Local Law No. 43 of 1995, which amended §2903(a)(15)(a) of the Charter, those persons seeking a SVIPP due to a physical disability had to possess a driver's license in order to be deemed eligible to apply. The determination certifying an applicant for a SVIPP, or the determination to not certify an applicant, was made by the Department of Health. Prior to 1998, the Department of Health's Employees' Health Program exclusively carried out these responsibilities, allocating a certain amount of physician time per month to these SVIPP certification applications. The medical criteria/standards followed by these physicians in determining eligibility for these permits were codified in 24 R.C.N.Y. Chapter 16.

Local Law No. 43 of 1995 made SVIPP permits more widely available as it made eligible for the first time the non-driver having physical disabilities (for example, children and persons who were not able to qualify for a driver's license by reason of their physical disability). This was expected to increase the workload of both the Departments of Transportation and Health due to an increase in the volume of SVIPP applications. At the same time as widening the availability of the SVIPP, Local Law No. 43 provided the Department of Health with the legal authority and opportunity to designate providers/physicians to make the SVIPP certifications "in accordance with standards and guidelines provided by . . . the department of health". These guidelines were found in 24 R.C.N.Y. Chapter 16, which prior to 1998 contained solely the medical criteria/standards referred to above.

In light of the authority vested in the Department of Health by Local Law No. 43 to designate providers to perform SVIPP certifications, the Department in 1998 amended the rules of the Department (24 R.C.N.Y. Chapter 16) to authorize the use of City-employed physicians made available by the Health and Hospitals Corporation, pursuant to a contract with the Health and Hospitals Corporation and the Department of Transportation, to perform medical certifications of Special Vehicle Identification Parking Permit applications submitted to the Department of Transportation. Other changes to the rules were enacted at this same time, including a provision specifying the "Form of Certification" to be made [24 R.C.N.Y. §16-03] and a separate provision establishing a formal appeal process for those applicants denied certification [24 R.C.N.Y. §16-05].

As noted above, these Department rules were last amended in 1998. In December of 1997, the Department of Health, in accordance with the authority granted to it by Local Law No. 43, designated a provider to perform the SVIPP certifications by entering into a contract with the Department of Transportation and the Bellevue Hospital Center (BHC), a Health and Hospitals Corporation facility. Pursuant to this contract, Bellevue agreed to assign physicians to perform SVIPP certifications in accordance with the Department's rules as specified in 24 R.C.N.Y. Chapter 16, as amended. Since entering into this agreement, BHC physicians have examined the majority of SVIPP applicants. The Department of Health's Employees' Health Program continues to monitor the validity of BHC physician certifications through a review of determinations and also holds clinics in each of the boroughs outside Manhattan for SVIPP applicants who choose not to be examined at the BHC.

Throughout the above period, since approximately 1997, a Task Force in the Mayor's Office of Operations has monitored the operations of the SVIPP program. The Task Force's mission is to ensure that the services provided to permit applicants is appropriate and prompt. It is composed of representatives from the Departments of Health and Transportation, the Bellevue Hospital Center, the Mayor's Office for People with Disabilities and is chaired by a member of the Mayor's Office of Operations. Over the past three years it has become apparent to the Task Force members that additional changes need to be made to the Department of Health's rules (24 R.C.N.Y. Chapter 16) in order to ensure that they are more consistent with effective management of the SVIPP program.

Based upon the recommendations of the Task Force, the Department's Bureau of Human Resources, of which the Employees' Health Services Program is a part, has proposed and is now adopting a number of changes to 24 R.C.N.Y. Chapter 16. First, §16-01 of Chapter 16 of Title 24 is amended to also refer to these SVIPP permits issued by the Department of Transportation as "Parking Permits for People with Disabilities" ("PPPD"). The Departments of Transportation and Health as well as the BHC have come to refer to Special Vehicle Identification Parking Permits by this alternate name, and as a result, the permits are more commonly known to the public as Parking Permits for People with Disabilities, or PPPD. Second, §16-02 is amended to update and add to those conditions deemed to constitute a permanent disability seriously impairing mobility. Third, §16-03 is modified to eliminate both the requirement that physicians in appropriate fields of specialization be appointed to two year renewable terms and the requirement that "persons shall be directed to particular physicians based upon their claimed impairment". An SVIPP applicant will not be automatically referred to a specialist for examination. Instead, specialists will be used for initial SVIPP assessments only in those cases where the examining physician/non-specialist deems it necessary. Fourth, §16-04 is amended to eliminate both the requirement that the Certification Form "include a complete applicant/patient medical history" and the requirement that it "specify clinical findings and a diagnosis that supports a determination of a permanent disability seriously impairing mobility". Instead, the Certification Form will state only whether or not the applicant has a "permanent disability seriously impairing mobility". Clinical findings and diagnoses may contain confidential medical information of applicants/patients that need not be disclosed to the Department of Transportation or elsewhere. Fifth, §16-04 is amended to indicate that certain certifications will require later re-evaluation by the Department of Health or BHC in order to determine whether the disabling condition has improved to the point that a SVIPP is no longer needed. With advances in medical therapy and technology, a disabling medical condition deemed "permanent" at the time of initial examination and certification may, after some future medical intervention, no longer exist to the point that a SVIPP is warranted. Section 16-05 is amended to extend the period for filing an appeal to a certification denial from fifteen to thirty business days, in order to allow applicants more time to gather additional information from their physicians to substantiate their claims. Finally, §16-05 is further amended to provide for the use of specialists to perform second assessments on behalf of the Department or provider if deemed necessary by the Department or provider.

36. Statement of Basis and Purpose in City Record Jan. 14, 2003:

Chapter 22 of the New York City Charter, as amended by the electorate in the General Election on November 6, 2001 (Questions 5 and 4), merged the New York City Department of Health and the City Department of Mental Health, Mental Retardation and Alcoholism Services into a single agency, the Department of Public Health. On July 29, 2002, the Mayor signed Local Law 22 of 2002 which further amended Chapter 22 and various other provisions of the Charter and the Administrative Code of the City of New York, changing the name of the merged agency to the "Department of Health and Mental Hygiene," retroactive to July 1, 2002. The Charter amendment necessitates amendment of various Health Code provisions which currently specifically identify the "Department" and "Commissioner" as the "Department of Health" and "Commissioner of Health," respectively.

Wherever the term "Department" is defined as "Department of Health" or "Commissioner" is defined as "Commissioner of Health" or where there is a requirement that signs or warnings be posted referring to the Department or Commissioner of Health or another government agency is mentioned in the same Health Code provision referring to the "Department," the provision has been amended making a specific reference to the Department (or Commissioner) of Health and Mental Hygiene. In other provisions, where there is a reference to the "Department of Health" or

"Commissioner of Health" the phrase has simply been shortened to the "Department" or "Commissioner" in accordance with the respective amended definitions in §1.03 of the Health Code.

In addition, where the change in Department name appears in a provision referring to another agency which no longer exists, or has been replaced by a successor agency, these references have been updated.

37. Statement of Basis and Purpose in City Record Jan. 14, 2003:

The New York City Department of Health and Mental Hygiene (the "Department") has proposed that the Board of Health amend section 81.05(c) of the New York City Health Code (the "Health Code") to prohibit operation of a food service establishment or non-retail food processing establishment ("food establishment") unless a request for a pre-permitting inspection is submitted to the Department not less than 21 days before the establishment commences operations.

The Department's Bureau of Food Safety and Community Sanitation (the "Bureau") is charged with the responsibility of monitoring the safety of food that is commercially prepared, distributed and served throughout New York City, whether the food is sold or provided free of charge. The Bureau's jurisdiction includes all food service establishments and non-retail food processing establishments, as defined in section 81.03(j) and (p) of the Health Code.

Among the Bureau's many responsibilities is to inspect food establishments prior to the issuance of a permit. **See** Health Code §81.05. The purpose of these "pre-permitting inspections" is to assess whether the condition of the establishment may present a danger to the health or safety of the consumer or to the public. Health Code §81.05(d). The demand for pre-permitting inspections is substantial, as the Bureau receives approximately 250 applications for food establishment permits each month. An operator of a food establishment currently must submit an application at least 21 days before starting operations. **See** Health Code §81.05(c). If the Department does not inspect the establishment during this 21-day period, the establishment may commence operations without a permit on the 22nd day and continue operating until the Department makes an inspection and issues a permit or issues an order to cease operations. **Id.**

Although Health Code §81.05(c) requires a food establishment operator to apply for a permit not less than 21 days before the start of operations, the operator is not required to notify the Department in advance of, or even subsequent to, the date he or she commences operations. Because the Bureau does not know when a food establishment intends to start operating, it must conduct all pre-permitting inspections within the 21-day period set forth in Health Code §81.05(c), or as soon as possible thereafter, in order to protect the public from exposure to unpermitted food establishments that may not be constructed, maintained, or operated in compliance with the Health Code.

The Bureau's experience is that food establishments frequently are not prepared to undergo inspection during the 21 days following submission of a permit application. Thus, multiple attempted inspections are required. A sampling of fiscal year 2002 data indicates that 73% of permit applicants required multiple pre-permitting inspections. Multiple incomplete inspections significantly deplete Department resources.

To remedy this problem, the Department has proposed that Health Code §81.05(c) be amended to prohibit operation of a food establishment unless a request for a pre-permitting inspection is submitted to the Department, after filing a permit application, and not less than 21 days before opening for business. This will allow the Bureau to conduct pre-permitting inspections on a date and time prearranged by the food establishment and the Bureau, which should reduce the incidence of multiple pre-permitting inspections.

No testimony or written comment on the merits of the proposal was received at the public hearing and no changes have been made to the proposal.

37-A. Statement of Basis and Purpose in City Record Jan. 14, 2003:

In the course of enforcing New York City Health Code (the "Health Code") provisions applicable to mobile food vending operations, the New York City Department of Health and Mental Hygiene (the "Department") has found that a significant percentage of food vendors lack an adequate understanding of basic food handling and sanitary practices, which may endanger public health. Requiring all mobile food vendors to successfully complete a food protection course that provides instruction on mobile food vending operations can minimize this public health risk.

Accordingly, sections 81.15(a) and 89.03(b) of the Health Code have been amended, to require all applicants for mobile food vendor licenses to successfully complete a food protection course. Health Code §81.15(d) has also been amended to clarify that the Department may require a certificate holder to take a food protection course for the listed reasons, as opposed to a "refresher" course.

Basis to Amend Health Code §§81.15(a)(1) and 89.03(b)

The Department's Bureau of Food Safety and Community Sanitation (the "Bureau") is charged with the responsibility of monitoring the safety of food that is commercially prepared, distributed and served throughout New York City, whether the food is sold or provided free of charge, in a food service establishment and non-retail food processing establishment. A food service establishment is "a place where food is provided for individual portion service directly to the consumer, whether such food is provided free of charge or sold and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle." Health Code §81.05(j). All mobile food vending, including commissaries, are either food service establishments or non-retail processing establishments, and thus fall within the scope of the Bureau's jurisdiction.

There are approximately 10,000 Department-licensed individual mobile food vendors currently operating in New York City, and the Department issues approximately 4,000 mobile food unit permits annually. A mobile food unit is "any food establishment which is readily movable, including, but not limited to, vehicles, pushcarts and stands, and on or in which food is prepared, stored, served, distributed, transported, offered for sale or sold at retail or given away without charge." Health Code §89.01(c). There are two types of mobile food units: processing and non-processing. A mobile food processing unit is "a mobile food unit on or in which foods are prepared or processed, or on or in which potentially hazardous foods are handled." Health Code §89.01(d). Foods typically sold from processing units include kebab, gyros, falafel, baked potatoes, soft ice cream, and roasted nuts. A mobile food non-processing unit, on the other hand, is "a mobile food unit on or in which foods other than potentially hazardous foods are handled and on or in which foods are not prepared or processed." Health Code §89.01(e). Foods typically sold from such units include fruit, candy, pretzels, bottled soft drinks, pre-packaged ice cream, and boiled hot dogs.

A licensed food vendor may operate both types of mobile food units described above. However, currently only a food vendor who operates a processing unit is required to successfully complete a food protection course pursuant to Health Code §81.15(a)(1), as are supervisors of all other food establishments. The Department conducts food protection courses at its Health Academy, and also approves courses conducted by others. The current curriculum is the same, or nearly the same, for every course. Among the topics covered are microbiology, harmful pathogens, epidemiology of food borne disease, and the principles and implementation of food safety procedures known as Hazard Analysis Critical Control Point (HACCP).

Although no food protection course in New York provides training on how to safely handle food on a mobile food vending unit, all mobile food vendors were required to complete a food protection course until June 16, 1998, when the Board of Health amended the Health Code to eliminate the requirement. The Department supported that amendment because the only food protection courses then available focused solely on activities that operators of mobile food non-processing units do not perform, namely, handling potentially hazardous foods and preparing or processing food. Thus, the benefits of the course were minimal and substantially outweighed by the costs to the Department and food vendors.

The Bureau has since found, however, that a significant percentage of mobile food vendors do not observe basic

food handling and sanitary practices, and that such lapses may endanger public health. Bureau data indicate that food vendors failed nearly 40 percent of operational inspections in fiscal year 2002. Food vendors fared only slightly better in fiscal years 2001, 2000, and 1999, when they failed 36, 35, and 36 percent of field operational inspections, respectively.

This high percentage of failed inspections is attributable, in part, to the fact that many supervisor/operators of mobile food processing units do not complete a food protection course. Since 1999, the Department has issued nearly 2,000 violations to licensed food vendors for handling potentially hazardous food or preparing or processing food without a food protection certificate. Eighty-eight percent of violations were issued to operators of processing units. The inspections data also suggest that the current food protection course is inadequate for mobile food vendors. Mobile food vending differs from conventional food establishment operations in several important respects, including lack of immediate direct access to sinks and toilets. Moreover, mobile food units generally are operated outdoors on crowded streets and exposed to rain, snow, and extreme heat and cold. The present food protection course does not account for such differences. The Department expects to remedy this problem by establishing a new curriculum for all mobile food vendors, in conjunction with these Health Code amendments.

Health Code §§81.15(a)(1) and 89.03(b) have accordingly been amended to require all mobile food vendors to complete a food protection course before receiving a license. The initial course to be offered will be specifically directed to food vendors, require attendance for two eight hour sessions, and will cover such topics as personal hygiene, cleaning of equipment and utensils, and principles of food safety and handling in a practical setting that simulates actual vending conditions.

Health Code §81.15(a)(1), which currently exempts operators of mobile food non-processing units from the list of food handlers who must successfully complete a food protection course, has been amended to eliminate this exemption.

Health Code §89.03(b) currently provides that "[n]o person shall act as a food vendor without first having obtained a license issued by the Commissioner and a badge issued by the Department." In the Department's initial proposal, Health Code §89.03(b) would have been amended to add that no licenses shall be issued to a mobile food vendor on or after July 1, 2003, unless the applicant submits a certificate showing that the applicant has successfully completed a food protection course approved by the Department. After the proposal was published, it became apparent that because of the City's fiscal constraints, it would be necessary to further amend this provision so that this requirement will not be effective until after January 1, 2004.

Basis to Amend Health Code §81.15(d)

This provision currently authorizes the Department to require certificate holders to complete a "refresher" food protection course in various circumstances, whenever "deemed necessary by the Department for the protection of public health." However, the meaning of the term "refresher" is ambiguous. For example, it is unclear whether a "refresher course" includes a course with a new or different curriculum, such as the proposed course for food vendors. The Department should have the discretion to determine what type of course must be completed in any of the circumstances specified in subsection (d). The word "refresher" has, accordingly, been deleted.

Two persons testified at the public hearing and one written comment was submitted, opposing reinstatement of the requirement that all food vendors have a food protection certificate. One person testified in favor of the requirement. For all the reasons already stated above, the Department does not believe that any further amendments are required based on the testimony or written comment. Clarifying changes have, however, been made in the Notes to subsection (a)(1) of §81.15 and subsection (b) of §89.03 based upon suggestions of the New York City Law Department, and the effective implementation date of these amendments has been changed from July 1, 2003 to January 1, 2004.

38. Statement of Basis and Purpose in City Record Mar. 25, 2003:

On December 30, 2002, the Mayor signed Local Law 47 of 2002 which substantially amended the New York City

Smoke-Free Air Act (Chapter 5 of Title 17 of the New York City Administrative Code) (hereinafter, the "Act"). The extensive changes require repeal and re-enactment, rather than amendment, of the applicable rules of the Department of Health and Mental Hygiene (the "Department") to enable the Department to implement and enforce the Act.

Under the Act, as amended, smoking is prohibited as of March 30, 2003 in nearly every indoor area in the City where people work. Smoking is now prohibited in all indoor areas of all restaurants, regardless of patron capacity, and in all bars, except for certain existing tobacco bars, owner operated bars and bars whose owners elect to construct separate smoking rooms with strict environmental controls to prevent indoor emission of smoke. The amended Act permits smoking in an enclosed room at tobacco promotion public events whose primary purpose is promoting use of tobacco products. However, such events may be held in a single facility on no more than five (5) days per calendar year. Smoking is prohibited in membership associations. However, not-for-profit membership associations which have no employees may register with the Department if they wish to allow smoking on premises they control. Smoking is prohibited in all but a small portion of outdoor dining areas of restaurants. The Act requires registration of tobacco bars, the above-referenced membership associations, and owner operated bars which wish to allow smoking; requires notice to be filed with the Department of tobacco promotion public events and for owners to file architectural or engineering plans for construction of separate smoking rooms in bars; and for the Department to promulgate rules related to enforcement of provisions applicable to such entities and events.

Accordingly, as repealed and reenacted, Chapter 10 of Title 24 of the Rules of the City of New York (R.C.N.Y.) defines and indicates the construction of words and terms used in the rules; establishes rules applicable to eligible owners or operators of entities who apply for the referenced registrations to allow smoking, and rules applicable to entities required to provide notice to the Department of tobacco promotion public events where smoking will be allowed. The rules specify requirements for separate smoking rooms in bars and the enclosed room in other facilities where smoking may be permitted pursuant to the Act.

Response to Public Comments

Written comments and oral testimony were received at the hearing from 17 individuals and organizations. Additional written comments were received from five organizations and from government agencies affected by the rules. Several comments objected to various provisions in the amended Act, without suggesting any changes in the proposed rules. Many comments expressed approval of the rules, without reservation, and others expressed either approval or disapproval and requested further changes or clarification in the rules as they apply to various entities. For the reasons stated, the following changes have been made in the rules:

Signs. Signs shall be posted indicating that smoking is permitted in any entity which has registered with the Department, or filed required notices. Such signage requirements now appear in §§10-04(a); 10-05(c); 10-06(f); 10-07(h); and 10-08(d). Because smoking will now be prohibited in every part of commercial buildings, there is no need for multiple "no-smoking" signs. Section 10-12(a) has been amended to require such postings only in the lobby and at such other locations deemed necessary by building owners.

Ashtrays. The Act allows ashtrays to be present in smoke-free areas only if ashtrays are offered for sale or, at elevators and entrances to hotels or motels, to provide a receptacle for extinguishing cigars and cigarettes. Several comments expressed concern that ashtrays may be "offered for sale" and then used impermissibly in places where smoking is prohibited. The current Act makes it a violation to have ashtrays in any area where smoking is prohibited except if they are being offered for sale. In view of the extensive applicability of the Act to premises previously permitting smoking, the Department believes it is appropriate to specify the conditions under which such ashtrays may be offered for sale. Accordingly, §10-11(a) has been amended to specify that ashtrays offered for sale in smoke-free areas, except in retail stores, shall be kept within a display case or another area visible to, but not accessible to patrons, and shall not be present or used in any smoke-free area. Section 10-11(b) has been further amended to specify that this subsection applies exclusively to ashtrays and signs posted in hotel and motel locations where ashtrays are permitted so that patrons may extinguish cigars, cigarettes and pipes prior to entry into the hotel or motel, or into elevators in hotels

and motels.

Separate smoking rooms in bars. The Act allows only bars to have these rooms, which must be constructed in compliance with requirements of the City's Building Code. An entity which is not a bar within the definition in the Act at §17-502(b) may not have or use such a room. Accordingly, the Department has added to §10-09(c) a requirement that the operator provide proof that the location in which such room shall be provided is a bar.

Restaurant bars. The amended Act retains the definition of a "restaurant bar." Accordingly, §10-09 has been amended to include explicit requirements for adding a separate smoking room to a restaurant with a restaurant bar.

Fees for processing applications for registrations of owner operated and tobacco bars and membership associations, and reviewing notices of tobacco promotion public events and plans for separate smoking rooms in bars. Although the number of such applications and filings is presently unknown, the Department anticipates expenditure of considerable staff and other scarce non-personnel resources in reviewing applications, notices and plans; maintaining correspondence and meeting with applicants whose filings are incomplete; and maintaining records and creating a public information data base to notify the public about which entities have complied with provisions of applicable law, and may allow smoking on their premises and at specified events. Accordingly, the rules applicable to each entity or event contain a provision for a maximum fee of $100.00 to be paid by any entity submitting an application for an initial or renewal registration as a tobacco bar, owner operated bar or a membership association or by any entity filing plans for a separate smoking room in a bar or by any person filing a notice of a tobacco promotion public event.

The Department received several comments and suggestions whose implementation it believes would not serve to further the intent of the Act, or which would excessively limit the Department's power to enforce the Act, or which would require the Department to exceed its enforcement powers. Such comments stated, e.g., that the Department should apply smoking prohibitions applicable to indoor areas of bars to any outdoor areas used by the bars (not authorized in the Act); revise the definition of "incidental" as it applies to the tobacco product public events and specify permissible foods and beverages; and make the effective date of the amended Act as applied to separate smoking rooms in bars September 26, 2003 (not authorized in the Act). Two comments were received stating the writers' opinion that the Commissioner lacks authority to revoke or suspend permits issued by the Commissioner when there has been willful or continuous violation of the Act and the rules. The Department does not agree with these comments. Although the Act states that the Department "shall seek to obtain voluntary compliance with this chapter by means of publicity and education programs, and the issuance of warnings where appropriate" [Act, §17-507(f)], the Act also provides that the monetary penalties for violations of the Act "shall be in addition to any other penalty imposed by any other provision of law or regulation thereunder." [Act, §17-508(k), as amended.] New York City Health Code §5.17(b) provides that "when . . . a permit is issued by the Commissioner, he may suspend or revoke such permit for willful or continued violation of this Code or for such other reason as he determines is sufficient grounds for suspension or revocation." In view of the intent of the Act, i.e., to minimize, if not eliminate the deadly effects of second-hand smoke, the Department believes it is appropriate and necessary to utilize the full range of the Department and Commissioner's regulatory and enforcement powers to further such intent. This provision serves to notify persons holding Department permits that these powers will be utilized to protect the non-smoking public from such effects in whatever manner may be authorized by applicable law.

Statement Pursuant to Charter Section 1042-Regulatory Agenda

The proposed rule change was not included in the Department's FY2003 Regulatory Agenda because the Local Law requiring the rule change was enacted after the Regulatory Agenda was promulgated.

March 20, 2003

I hereby find pursuant to §1043(e)(1)(c) of the New York City Charter that there is a substantial need for the simultaneous implementation of the rule repealing and reenacting Chapter 10 of Title 24 of the Rules of the City of New

York, Smoking Under the New York City Smoke-Free Air Act (the "rule") to enable such rule to take effect on March 30, 2003, the same day as the amendments to the New York City Smoke-Free Air Act (the "SFAA").

The implementation of the revised rule before the thirty-day post-publication period required by Charter §1043(e)(1)(c) is necessary to avoid any period of time in which the SFAA (Chapter 5 of Title 17 of the Administration Code of the City of New York) as amended by Local Law 47 of 2002 is in effect without implementing regulations. Most of the amendments to the SFAA become effective March 30, 2003 in accordance with §25 of the SFAA amendments, which also provides that "the department of health and mental hygiene may promulgate rules prior to such date necessary to carry out the provisions of this local law; . . ." Adherence to the thirty-day post-publication requirements set forth in §1043 of the Charter would mean that the rule would not take effect until at least some time in mid-April.

The amended SFAA prohibits smoking in nearly all workplaces in the City, including nearly all indoor areas where smoking was previously allowed, such as bars, offices, and premises and businesses offering bingo games, billiards and bowling. The rule that is being repealed is not consistent with the amended SFAA. Simultaneous implementation of the new rule and the amended SFAA on the same day will help avoid potential public and regulatory confusion, and simplify public education and understanding of the law and the rule.

Thomas R. Frieden, M.D., M.P.H. Commissioner Department of Health and Mental Hygiene

Approved by Michael R. Bloomberg, Mayor

38-A. Statement of Basis and Purpose in City Record Jan. 14, 2003:

In response to a proposal by the Department's Division of Environmental Health (DEH), subsection 3.12(a) of the Health Code has been amended to increase the minimum penalty for a violation of the Health Code from the current amount of one hundred dollars ($100) to two hundred dollars ($200); subsection 3.12(b) is amended to increase the minimum penalty for a person, corporation or entity engaging in an activity without a required license, permit or registration authorized by the Department from two hundred dollars ($200) to one thousand dollars ($1,000), and a new subsection 3.12(c) was adopted to provide that when a person duly served with a notice of violation of a provision of the Health Code fails to appear for a hearing and is found in default, the recommended penalty for such violation shall be doubled, but not above the applicable maximum.

These amendments originate in the DEH Bureau of Food Safety and Community Sanitation ("BFSCS") which is charged with the responsibility of monitoring the safety of food that is commercially prepared, distributed and served to the public throughout the City, whether food is sold or provided free of charge. The BFSCS's jurisdiction includes all food service establishments and non-retail food processing establishments. Ninety percent of the Notices of Violations heard annually at the Department's Administrative Tribunal have been issued by public health sanitarians employed in the BFSCS to food service establishments (restaurants and related businesses).

In June 1990, Section 3.12 of the NYCHC was amended to establish a minimum monetary penalty of $100 for all violations of the Health Code. In January 1994, Section 3.12(a) of the NYCHC was further amended to increase the maximum fine for violations of the Health Code from $1,000 to $2,000. Minimum penalties were not increased.

Hearing Examiners at the Administrative Tribunal determine, after a hearing, what fine should be assessed for each violation of the Health Code. Many Department programs submit recommended fine schedules to the Administrative Tribunal.

Recommended fines are based on Department program assessments of the seriousness of the violations of various provisions of law enforced by each program. For many respondents operating food service establishments, the BFSCS has noted, the current minimum penalty codified in the Health Code, which forms the basis for its recommended penalty schedule, is too low to result in any significant behavioral changes. To enhance the Department's ability to enforce the

Health Code, and increase the deterrent value of the fines assessed at the Administrative Tribunal, the minimum fine has been increased from $100 to $200 per violation sustained.

Civil penalties and consistent periodic inspections are intended to serve as a deterrent to violation of the Health Code by persons, corporations or other entities subject to the provisions of the Health Code. The range of fines for violations, therefore, must be set at levels which preclude their payment as an acceptable cost of doing business, with the expectation that such fines will be more effective in securing compliance with the laws, deterring repeat violations and therefore more protective of public health.

Since 1996, the BFSCS has noted a measurable increase in the compliance rate (percent of inspections passed) of food service establishments, an improvement attributable both to more stringent enforcement initiatives and to increases in recommended penalties for violations of the Health Code. In 1994, the BFSCS reorganized its food establishment inspection program, and at the same time recommended an increase in the minimum fine for certain "critical" violations from $100 to $200. In 1996, BFSCS recommended increasing the minimum fines for public health hazards from $200 to $300. The Department believes that increasing the mandatory minimum penalty in the Health Code, thereby establishing a higher minimum basis for this and other Department programs recommended penalty schedules, will have a further salutary effect.

For similar reasons, subsection (b) of Section 3.12 is being amended to increase from $200 to $1,000 (the current recommended minimum penalty), the mandatory codified minimum penalty for anyone engaging in or conducting a business without the permit, license or other authorization required by the Health Code. This penalty, too, is intended to deter violations of the Health Code which adversely affect the public health, by increasing the cost of engaging in an activity or business subject to a Department permit, license or authorization without the necessary authorization.

Finally, as noted above, the Department has historically recommended that all fines be doubled when respondents fail to appear and are found to be in default after proper service of the Notice of Violation, in accordance with Section 7.07(d) of the Health Code. Section 3.12 has been further amended to add a new subsection (c) to specify that failure to appear at a hearing will result in the doubling of penalties for violations sustained by Administrative Tribunal hearing examiners.

BFSCS programs rely on education, notices and warnings, as well as civil penalties imposed at the Administrative Tribunal to obtain voluntary compliance with applicable provisions of law. When such measures do not achieve Health Code compliance, harsher methods of enforcement may be resorted to, resulting in ordering non-compliant establishments to be closed and allowd to reopen only if they are able and willing to change their methods of operation to avoid the occurrence of further public health hazards.

These Health Code amendments, which would be applicable to all Health Code violations, would provide the most significant support for enforcement activities within the DEH. In addition to restaurant inspections (Article 81), the DEH enforces Health Code public health and safety requirements in bathing establishments (Article 165), summer day camps (Article 48), temporary food establishments (Article 88), mobile food vending (Article 89), veterinary public health (Article 161), pest control (Article 151), lead (Sections 173.13, 173.14 and 173.15), window guards (Section 131.15) and radiation (Article 175).

Three persons testified at the public hearing, stating that they were or represented mobile food vendors and that they opposed the increased minimum penalty in subsection 3.12(a), the increased penalty for not having a license or permit in subsection 3.12(b) and the new penalty for persons who default pursuant to subsection 3.12(c) because such provisions will create a hardship for food vendors cited for violations of Article 81, but will not deter the commission of violations by such vendors. For all of the reasons stated above, the Department does not agree with this conclusion, and believes that higher minimum penalties will discourage commission of the violations and will benefit the public health. Accordingly, the amendments have not been changed.

STATEMENT PURSUANT TO §1042-REGULATORY AGENDA

The proposed rule was not included in the Department's regulatory agenda, nor anticipated, because it is the result of recent analysis and conclusions by the Department concerning methods of improving enforcement of and compliance with the Health Code.

39. Statement of Basis and Purpose in City Record June 19, 2003:

In light of the tragic events of September 11, 2001, this country, and New York City in particular, has been at a heightened state of alert. Since September 11th, there has been an increasing concern that terrorists or nations hostile to the United States might intentionally release smallpox virus or other contagious microorganisms. In light of this concern the federal government for example, has established by federal law and regulations enhanced control of dangerous biological agents and toxins. (**See** 42 U.S.C. Section 262a and 42 C.F.R. Part 73).

In order for the Department to improve its ability to effectively control and contain potential catastrophic disease epidemics due to contagious microorganisms such as smallpox, there was a need to strengthen the Health Code provisions that address detention of patients with certain suspected or confirmed contagious diseases, as well as their potential contacts. For example, as laboratory confirmation for these diseases may take several hours or days, it is essential that these provisions clearly apply to not only suspect cases but, also to their potential contacts during the time period after the suspect case is first identified and evaluated, while awaiting the test results.

Smallpox is of great concern because 1) the virus is infectious via aerosol exposure; 2) it is rapidly transmissible from person to person; 3) worldwide immunity to the virus has waned; 4) it causes an illness with severe morbidity and mortality; and 5) it has the potential to cause outbreaks that could easily overwhelm the medical care and public health sectors. The ability to control a smallpox outbreak will depend on rapid isolation of suspect and confirmed cases, and the immediate identification and vaccination of their contacts.

However, smallpox is not the only contagious disease that can cause potentially catastrophic epidemics with an immediate threat to public health. A pneumonic plague outbreak also would require immediate isolation of suspected or confirmed cases and, in some circumstances, contacts of those cases. Moreover, today there also is a concern about the emergence of new diseases or the threat that a microbial pathogen could be bioengineered to be more rapidly transmissible from person to person and/or cause a more severe disease. Further, new molecular biology techniques may be used to alter naturally occurring organisms into even more virulent pathogens. For example, state-sponsored bioweapons programs could develop plague strains that were resistant to normally effective antibiotics, or novel viruses could be created that combined the typical mortality of Ebola infection with a highly communicable respiratory virus (e.g., influenza). A bioengineered virus like this would result in a public health emergency of enormous proportions, requiring rapid and effective public health responses in order to contain and control it. For certain diseases, there may be no effective treatment or preventive measures, so that isolation and detention of cases and contacts may be the only public health measures available to control the outbreak.

The Health Code amendments set forth herein (i.e., amendments to Sections 11.01 and 11.55 of the Health Code) enable the Department to take some of the necessary steps to face the imminent and severe threats to the public's health that would occur if smallpox or other highly contagious disease outbreaks, whether natural or intentional, occurred in New York City.

A suspected or confirmed smallpox outbreak will be used here to illustrate the rationale underlying these amendments to Section 11.55. However, it should be noted that the causes of infectious disease outbreaks, especially those resulting from previously unknown organisms, are not immediately determined after clusters of apparently related illnesses are first recognized. For example, West Nile virus was not identified immediately as the cause of the unusual 1999 encephalitis outbreak in New York City. If an unknown infectious disease outbreak occurred and it appeared to be contagious, (e.g., contacts of suspect cases were becoming ill with similar symptoms) and resulted in severe morbidity

and/or mortality, then conservative infection control measures would need to be implemented. These might include detention of individuals who have been or may have been exposed to suspected or confirmed cases until the cause of the illness was determined and appropriate preventive and treatment measures could be implemented, or until the case and/or contacts were deemed no longer infectious or potentially infectious.

It is important to realize that section 11.55 of the Health Code, prior to these amendments, authorized the detention of cases, contacts and carriers, as well as suspected cases, suspected contacts and suspected carriers who are endangering public health. Furthermore, the definition of "case" in the Health Code includes both a diagnosed instance of a reportable disease, as well as a person showing clinical signs of a reportable disease, but who may not yet be diagnosed as such (i.e., a likely or suspected case). Accordingly, a contact of a case includes a contact of an unconfirmed case. Similarly, a suspected contact of an unconfirmed case was, and will continue to be, within the ambit of section 11.55. The prior version of section 11.55 of the Health Code authorized the detention of these individuals only if there was a determination that the health of others "is" endangered. In situations such as the one described above, when it may be prudent to detain even those who may have been exposed to a catastrophic disease, it would be impossible to say that a particular individual "is" a present danger, at least until the medical situation was better determined. Therefore, the Department amended the Health Code to clarify that individuals who "may be" a danger can be detained. This particular class of individual would be a contact of a suspected case and would have to be released in accordance with the provisions of subdivision (c)(4).

I. DETECTION OF AND RESPONSE TO A SMALLPOX OUTBREAK:

Historically, smallpox was a disease that often was introduced to an area by one person, and then resulted in successively increasing waves of additional cases, as each person transmitted the disease to their close contacts. The second wave would then generate an even larger third wave, and so forth. To contain and control a smallpox outbreak, it was critical to identify as many of the patients in each wave as quickly as possible through active surveillance, and to promptly vaccinate each case's household, workplace, and social contacts, followed by the vaccination of the contacts' contacts (ring vaccination). If public health authorities achieved this successfully, the outbreak would be brought under control.

The Department has provided all acute care facilities in NYC with guidelines for the management of suspected smallpox patients in their facilities. They have been directed to establish effective triage procedures so that patients with fever and a rash (i.e., with signs of possible smallpox infection) would be identified promptly and placed rapidly in an appropriate isolation room. These maneuvers would minimize the likelihood that contagious patients would transmit their infections to patients, visitors, or hospital personnel.

Clinicians also have been asked to use a diagnostic algorithm developed by the federal Centers for Disease Control and Prevention (CDC) for evaluation of patients with suspected smallpox infection. Patients would be considered low, moderate, or high risk suspected smallpox patients, depending upon a distinct set of clinical criteria. All moderate and high risk patients would be evaluated immediately by Department medical personnel, who would collect clinical specimens and arrange for immediate transport to the CDC. Between 24 and 72 hours might be needed for the CDC to conduct the initial tests and report the results to the Department. During that time period, contacts of the suspect case might need to be detained, in order to ensure that they could be located and vaccinated if the suspect case was found to be infected with smallpox. In addition, if the case was confirmed, contacts who were not vaccinated would have to continue to be detained until they were determined not to be a potential danger to others. Such measures would be necessary in order to contain an outbreak of a devastating disease in its early stages.

II. RESPONSES TO OTHER COMMUNICABLE DISEASE WHICH MAY BE DISSEMINATED OR TRANSMITTED FROM PERSON TO PERSON, AND MAY POSE AN IMMINENT AND SIGNIFICANT THREAT TO THE PUBLIC HEALTH RESULTING IN SEVERE MORBIDITY OR HIGH MORTALITY:

The public health response needed to contain potentially catastrophic outbreaks caused by other contagious

pathogens would depend upon the nature of the organism involved. For example, if a strain of smallpox was used that was not prevented by the current vaccine, then isolation and detention could be the only control measure available to public health authorities. An antibiotic-resistant strain of pneumonic plague also would require rapid isolation and detention of all known or suspect cases and contacts, until a reliable antibiotic strategy could be identified and implemented to treat infected patients and to prevent infection in their contacts. Otherwise, the outbreak might continue to spread from person to person, resulting in higher mortality and significant social disruption, if not unrest. Finally, if New York City was attacked with a novel virus with which physicians and medical researchers had no prior experience, public health again would need to rely upon isolation and possibly detention to control the outbreak, pending characterization of the virus and elucidation of treatment and preventive measures that could prove effective in those infected and exposed, respectively.

The Department's authority with regard to the protection of public health is extremely broad. For example, Section 3.01(c) of the Health Code states that, "Subject to the provisions of this Code or other applicable law, the Department may take such action as may become necessary to assure the maintenance of public health, the prevention of disease, or the safety of the City and its residents." Also, Section 11.03(b) of the Health Code provides that, "The Department shall conduct such investigation as may be necessary to ascertain sources or causes of infection, to discover contacts and unreported cases, and shall take such steps as may be necessary to prevent morbidity and mortality." The prior version of Section 11.55 of the Health Code authorized the detention of individuals upon a determination that the health of others "is" endangered by such individuals. In the example of smallpox described above, it would be necessary to detain individuals who are not currently infectious, but who certainly would present a danger to others if the suspect case were to be confirmed. Therefore, the Department amended section 11.55 to include authority to detain when the health of others is "or may be" endangered by a contact of a suspected case. The Department also amended the definition of non-household contact in paragraph (i) of Section 11.01 to clarify that it includes an individual who may have been in close association with a case or carrier.

Mindful that the prior version of Section 11.55 of the Health Code authorized detention with regard to any communicable disease, the Department amended section 11.55 so as to authorize detention only with regard to smallpox, pneumonic plague, or any other communicable disease that, in the opinion of the Commissioner, may be disseminated or transmitted from person to person, and may pose an imminent and significant threat to the public health resulting in severe morbidity or high mortality. It should be noted that the Department will not treat HIV/AIDS as a communicable disease triggering this section. A decade ago there were attempts by medical organizations to compel the NYC Health Commissioner and State Public Health Council to add HIV infection to the list of communicable and sexually transmissible diseases. NYS refused to take such action and New York's highest court, the Court of Appeals, affirmed that decision. **New York State Society of Surgeons v. Axelrod,** 77 N.Y. 2d 677, 572 N.E.2d 605 (1991).

In order to provide the flexibility needed to act quickly, and in recognition of the fact that, for example, contacts of suspected cases may not need to be detained in a medical facility, the amendments allow the Commissioner, as opposed to the Board, to designate an appropriate medical facility, premises or other appropriate facility as the location where individuals may be detained. The amendments require, as appropriate, that the individual have his or her medical condition and needs assessed on a regular basis and be detained in a manner consistent with recognized isolation and infection control principles.

III. LEGAL CONSIDERATIONS ATTENDANT TO DETENTION:

It is well recognized that the main business of safeguarding the public health is done by local boards of health. **Grossman v. Baumgartner,** 17 N.Y.2d 345, 218 N.E.2d 259, 271 N.Y.S.2d 195 (1996). In the seminal United States Supreme Court decision **Jacobson v. Massachusetts,** which upheld the constitutionality of a regulation enacted by the board of health providing for mandatory smallpox vaccination, the Court states, "the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint." 197 U.S. 11, 26 (1905).

The Department adopted these amendments, appreciating that civil commitment is a deprivation of liberty requiring due process protection. **Addington v. Texas,** 441 U.S. 418, (1979). Courts have recognized that the same procedural safeguards provided, for example, in a criminal trial are not required when imposing a quarantine to protect the public against a highly communicable disease. **Morales v. Turman,** 562 F.2d 993 (1977). "[D]ue process is flexible and calls for such procedures and protections as the situation demands." **Morrissey v. Brewer,** 408 U.S. 471-481 (1972).

"The extent of the due process required depends on the nature and duration of the restraint." Lawrence O. Gostin, **Public Health Theory and Practice in the Constitutional Design,** 11 Health Matrix: Journal of Law-Medicine 265, 309 (2001). In considering the due process protections which are constitutionally required as a result of the proposed amendments, the Department considered and weighed the following:

(1) The private interest affected by the governmental action; (2) The risk of an erroneous deprivation of these interests through the procedures used, as well as the probable value, if any, of added or substitute procedural requirements; and (3) the government's interest and the fiscal and administrative burdens that the additional or substitute procedural requirement would involve. **Matthews v. Eldrige,** 424 U.S. 319, 335 (1976).

Accordingly, the Department has amended section 11.55 to add many procedural safeguards that comply with the due process requirements of the Constitution. For example, individuals who are detained for a period of less than three business days are provided with an opportunity to be heard and to have their individual circumstances assessed. Those detained for a longer period may require the Department to seek a court order within three business days. The Department then must obtain a court order within sixty days, even if the detained individual has not requested release. This does not mean that an individual would necessarily be detained for such periods. Amended subdivision 11.55(c) specifies the medical and epidemiologic circumstances under which an individual must be released.

Notice of the detainee's rights is provided to each detainee in writing. For individuals detained for more than three (3) business days, this includes the right to be represented by an attorney provided by the City of New York.

These procedural safeguards are similar to those applicable to the detention of non-adherent tuberculosis patients, found in section 11.47 of the Health Code, which Section has been upheld by the courts. **See City of New York v. Doe,** 205 A.D. 2d 469, 614 N.Y.S.2d 8 (1994); **See also, City of New York v. Antoinette R.,** 630 N.Y.S.2d 1008 (1995).

IV. POST PUBLICATION CHANGES:

After publication of the proposed rule, the Department suddenly had to react to cases of "suspect" and "probable" severe acute respiratory syndrome ("SARS"), a new emerging communicable disease. In an effort to prevent the transmission of SARS, the Department ordered one suspect case of SARS to be detained in a health facility and another person was ordered to remain at home. This experience underscored the need to clarify that not all of the same due process protections are required when an order to a person to remain at home is not being physically enforced, e.g., by guards outside the home. A new subdivision (l) was added which provides that when a person is ordered to remain at home, or at some other premises of his or her choosing which is acceptable to the Department, and the order is not being physically enforced, the Department is required to offer such a person an opportunity to be heard by the Department. The new subdivision also makes it clear that the other due process protections that are required for Section 11.55 custodial detention orders are not applicable to these non-custodial orders.

An additional change was made which eliminates the requirement that there be a separate statement of rights issued to a person who is served with an order of detention. The initial proposal to amend Section 11.55 already required the Department to incorporate within each individual order of detention a statement of the rights of any person detained. The Department determined, based on its experience in issuing similar orders, that the requirement for a separate statement of rights was redundant and served no useful purpose.

STATEMENT PURSUANT TO SECTION 1042-REGULATORY AGENDA

This proposal was not included in the Regulatory Agenda because it is the result of recent analysis by the Department as to the need to strengthen existing provisions to address the possibility of new, emerging diseases or of a terrorist act.

40. Statement of Basis and Purpose in City Record Sept. 11, 2003:

Until July 1, 1994, the New York City Department of Health and Mental Hygiene (the "Department") licensed and regulated clinical laboratories and blood banks in the City of New York. Effective July 1, 1994, the New York Public Health Law was amended and such functions were assumed in their entirety by the New York State Department of Health (the "SDOH"). The amended Public Health Law preserves the Department's authority to promulgate rules for clinical laboratories and blood banks, not inconsistent with State law, relating to control, prevention and reporting of diseases and medical conditions, and to control or abatement of public health nuisances. Public Health Law §580(3)(a). Following the enactment of the amended Public Health Law provisions, various provisions of the New York City Health Code regulating clinical laboratories (Article 13), blood donations and transfusions (Article 17) and blood and plasma banks (Article 19) were repealed (e.g., Articles 17 and 19) or repealed and reenacted (e.g., Article 13) in 1995 by the Board of Health. However, no action was taken at that time by the Department to repeal or amend related regulations in Title 24. Because all of the activities and entities subject to such regulations are now comprehensively regulated by SDOH, these regulations are no longer needed.

Accordingly, the following provisions of Title 24 are being repealed and the listing of Chapter headings in Title 24 amended as follows:

Chapter 2-"Method and Criteria for Approval of Clinical Laboratories for Training." This provision's criteria and standards for laboratory personnel qualifications and training are no longer needed since laboratory personnel qualifications are currently established and enforced by SDOH.

Chapter 3-"HIV/HTLV-III/LAV Antibody Testing." These provisions date from a period when the City comprehensively regulated clinical laboratories and blood banks and HIV testing had just become available. The SDOH now comprehensively regulates and licenses these entities, including required HIV testing procedures. Accordingly, these provisions are no longer needed.

Chapter 13-"Standards for Licensing Clinical Laboratories in Forensic Toxicology." As noted in the paragraph concerning Chapter 2, above, this provision is no longer needed in view of the SDOH's current regulation and licensing of clinical laboratories and establishment of qualifications of their staffs.

Chapter 14-"Required Decontamination Procedures." These provisions, specifying procedures for decontamination and disposal of infectious materials in clinical microbiology laboratories and in non-microbiology clinical laboratories and blood banks, have been replaced by federal standards for disposal of medical waste, incorporated into City and State law. See, e.g., New York Public Health Law §§1389-aa et seq., New York Environmental Conservation Law §§27-1501 et seq., Administrative Code of the City of New York §16-120.1.

Chapter 15-"Standards for Approval of a Blood Bank as a Training Facility," This provision, which specifies criteria for a blood bank training program, is no longer needed in view of the SDOH's comprehensive regulation and licensing of blood banks and their personnel.

The listing of Chapter headings is also being amended to reflect the repeal of these provisions, as well as the name of the Department which has been known as the "Department of Health and Mental Hygiene" since July 29, 2002, pursuant to Local Law 22 of 2002.

41. Statement of Basis and Purpose in City Record Dec. 17, 2003:

The Board of Health is amending Section 3.07 of the Health Code ("Orders of the Board, Commissioner or

Department") by adding a new subdivision (b) which clearly specifies that service by mail (first class, certified, or registered) of orders of the Commissioner and Department is a legally sufficient form of service. Such service may be made upon any person, officer, department or employee as specified in section 17-141 of the Administrative Code of the City of New York (the "Administrative Code"). The Department will be required to maintain records attesting to the form of service used and the identity of the person or entity served in each instance. Personal delivery of such orders will remain a legally acceptable alternative manner of service.

The Department issues many thousands of orders annually. Most of these orders are issued pursuant to the Commissioner's general authority to order the abatement of nuisances and/or compliancce with specific provisions of the Health Code. **See,** Charter Sections 555, 556 and 558 and Administrative Code Sections 17-113 and 17-114. Examples include orders to abate lead hazards or to install window guards in children's homes. Other orders are issued pursuant to existing Board of Health resolutions, historically dealing with the occurrence or presence of certain conditions or things that the Board deems to be public health nuisances. Examples are rat infested buildings, garbage strewn properties and vacant lots that create harborages conducive to vermin. In many cases where pest control orders of the Commissioner are issued, the premises subject to the orders are abandoned buildings and vacant lots where there is no landlord or managing agent on site. Service of orders by mail has been a legally accepted alternative form of service under such circumstances.

As amended, Section 3.07 of the Health Code explicitly authorizes service of all orders of the Commissioner or Department (but not orders of the Board) in a manner similar to that authorized by §5.19 of the Health Code for service of notices of orders of the Commissioner denying, suspending or revoking permits, and by §7.05 of the Health Code for service of notices of violation returnable to the Department's Administrative Tribunal. Pursuant to §5.19 of the Health Code, service of notices of orders of the Commissioner denying issuance of a permit or suspending or revoking permits may be made by mail. To initiate an action at the Administrative Tribunal, §7.05 of the Health Code authorizes service of notices of violation by certified or registered mail addressed to any person upon whom personal service could be made at the address of the alleged violation, or at the address of the permittee listed on the permit.

Pursuant to both the Administrative Code and their own rules, other City agencies are authorized to use service by mail as an alternative means of service of many of these agencies' orders and notices. Section 19-152(f) of the Administrative Code, for example, specifically authorizes the Department of Transportation to serve its notices or orders to property owners with respect to repairing sidewalks and lots, personally or by certified or registered mail, return receipt requested, addressed to the person whose name appears on city records as being the owner of the premises. If service is refused, ordinary mail service and posting on the premises is authorized. Section 27-2095(a)(3) of the Administrative Code authorizes the service of notices of violation and other notices and orders upon owners of dwellings or managing agents of dwellings by mail to their latest business or residence address. Pursuant to its rules, the Conflicts of Interest Board is authorized to serve notices, orders and other documents upon public servants, by personal delivery to the public servant or by first class mail to the public servant's last known residence or actual place of business. See, 53 R.C.N.Y. §2-05(d).

No comments were received following publication of and public hearing on the proposal and no changes have been made.

42. Statement of Basis and Purpose in City Record Mar. 24, 2004:

Statutory Authority

Amendment of Chapter 10 of Title 24 of the Rules of the City of New York is authorized by §§389(b) and 1043(a) of the New York City Charter (the "Charter"). Charter §389(b) provides that "heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law." Charter §1043(a) authorizes each agency to "adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law." These rules are further authorized pursuant to

Local Law 47 of 2002 which amends various provisions of Chapter 5 of Title 17 of the New York City Administrative Code (the "Administrative Code") (the "Smoke-Free Air Act") and which provides that "the department of health and mental hygiene may promulgate rules . . . necessary to carry out the provisions of this local law; . . ."

Statement of Basis and Purpose

Local Law 47 of 2002, most of which became effective on March 30, 2003, substantially amended the New York City Smoke-Free Air Act (Chapter 5 of Title 17 of the New York City Administrative Code) (hereinafter, the "SFAA" or the "Act"). These extensive changes required repeal and re-enactment of the applicable rules of the Department of Health and Mental Hygiene (the "Department") to enable the Department to implement and enforce the amended SFAA. On March 26, 2003, the Governor signed into law a bill substantially amending Article 13-E of the Public Health Law (hereinafter the "State law" or "PHL") pertaining to "Regulation of Smoking in Certain Public Places." The State law provisions on smoking became effective on July 24, 2003 statewide and apply to all jurisdictions within New York State. Remaining intact is §1399-r of the State law which states, in pertinent part, that

Nothing herein shall be construed to restrict the power of any . . . city . . . to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this article. Section §17-513.2 ("Construction") of the SFAA provides that The provisions of this chapter shall not be interpreted or construed to permit smoking where it is prohibited or otherwise restricted by other applicable laws, rules or regulations.

Under the amended SFAA, smoking has been prohibited since March 30, 2003 in nearly every indoor area in the City where people work or congregate. However, the Department (as the enforcement officer of the State law) finds that it is necessary to harmonize certain provisions of the rules implementing the SFAA with the amended State law to minimize confusion or uncertainty about how the Department will enforce these laws. The provisions of the rules to be addressed include:

I. Amendments related to the effective date of the State law. The SFAA permits smoking on the premises of certain entities, e.g., tobacco bars ["cigar" bars in the State law, essentially the same as the SFAA tobacco bars; under the SFAA such bars had to be in operation as of December 31, 2001, under the State law only since December 31, 2002; see, PHL §1399-q(5)], owner operated bars and not for profit membership associations, until September 26, 2003, if these entities held a good faith belief that they would qualify to register with the Department after September 26, 2003. The State law was effective July 224, 2003, and provides no grace periods for cigar bars and membership associations wishing to allow smoking on their premises. Since the operation of the State law makes grace periods moot after July 24, 2003, and the City SFAA provides that the grace periods expire on September 26, 2003, the rules postponing enforcement of these smoking prohibitions until September 26, 2003 have been repealed.

II. Waiver of the State law. The City's SFAA, as amended, repealed provisions authorizing the Commissioner to issue waivers. The State law, however, retains such a provision. Section 1399-u of the State law provides that the Department (as the enforcement officer of the State law) may grant a waiver from the application of a specific provision of the State law where the applicant for the waiver establishes that compliance would cause "undue financial hardship" or that "other factors . . . render compliance unreasonable." While the Department is not authorized to grant waivers of any provisions of the City SFAA, it will evaluate an application for a waiver of the State law prohibitions only if the granting of the waiver would not otherwise violate the City's SFAA. The Department is therefore amending Chapter 10 by adding a new §10-15, setting forth the Department's policy for granting such waivers. Incorporated in this new section is a provision that waivers would be automatically invalidated by changes in ownership, size or location of the entity, since waivers would only be granted to a specific entity which has demonstrated individual circumstances justifying a waiver.

The State law prohibits smoking in all bars but those it calls "owner operated" bars and/or in separate smoking rooms in any bars. Other exceptions in the City SFAA allowing smoking in enclosed rooms for patients of certain residential health care facilities and in buildings housing tobacco businesses were also not included in the stricter State

law. But see, PHL §1399-o (14) allowing smoking by patients in enclosed rooms in certain nursing homes and day treatment programs. The Department's rules implementing the City SFAA allowed smoking in such entities. Because of the State law prohibitions, the Department is amending §10-02(b) (tobacco businesses), §10-05 (enclosed rooms for patients of residential health care and day treatment facilities and programs), §10-06 (owner operated bars), and §10-09 (separate smoking rooms in bars) to provide that smoking may only be allowed in such entities if they have been granted a waiver of the State law. After obtaining a waiver, such entities may apply for registration or other approval for smoking under the SFAA. For example, a bar seeking either to register as an owner operated bar or approval for a separate smoking room would first need to submit evidence satisfactory to the Department to establish that undue financial hardship or other factors render compliance with the State law unreasonable, and request and receive a waiver of the State law, before any application for registration or approval to allow smoking will be considered.

III. Tobacco promotion public events. The State law allows such events to be held in any premises on two (2) days per calendar year, compared with the five (5) days in the City SFAA, and §10-04(d) of the rules has been amended accordingly. **See** PHL 1399-q(7). The rules have been further amended to allow persons in control of premises where such events are held to request a waiver to allow up to five (5) events to be held annually.

IV. Membership associations. Both the SFAA and the State law allow smoking in membership associations which have no employees. The Department has amended §10-08 of the rules applicable to membership associations to clarify that smoking may be allowed in premises owned or operated by membership associations when members and their guests are present, but that smoking may not be allowed when the public is invited to attend events, including, but not limited to, bingo games. While the City SFAA requires registration of these associations, the State law does not. Because the City law is more restrictive in this respect, the registration requirement is being retained. To enhance the Department's ability to enforce the limitations on smoking in such places, this section is being further amended to provide that where a membership association is found in violation of these rules three or more times within any two-year period, the association's registration may be subject to rescission.

V. Definitions. The State law includes outdoor seating areas in its definition of "bars" and the definition of "bars" in §10-01(b) has been amended accordingly. **See,** PHL 1399-n(1). A new definition has also been added for "State law" and the following subdivision re-lettered as well.

VI. Smoking Prohibited in Enclosed Areas. With some specific exceptions, the intent of the amended SFAA has been to prohibit smoking in "enclosed" areas where the public and/or employees may be exposed to second-hand smoke. In the amended SFAA, many exceptions allowing smoking under the earlier law were deleted, including, for example, those in sports arenas and stadiums. See, Administrative Code §17-503(a)(11). The amended SFAA, however, is silent as to the plain meaning of the word "enclosed" and since the law went into effect, the Department has received complaints of smoking in some partially enclosed areas where there would be a substantial likelihood of exposure of non-smokers to second-hand smoke if smoking were allowed. For clarification, therefore, and to provide notice as to how the Department will enforce the SFAA, the Department is amending subdivision (a) of §10-02 of these rules to provide that prohibitions on smoking shall be enforced in all regulated "enclosed" areas, including those which have a partial overhead covering, roofing or ceiling.

VII. Section headings. A listing of section headings, which was inadvertently omitted from earlier amendments, is included as section 1 of this proposal.

43. Statement of Basis and Purpose in City Record June 8, 2004:

Statutory Authority

This amendment to Chapter 21 of Title 24 of the Rules of the City of New York is authorized pursuant to Sections 389 and 1043 of the New York City Charter granting rulemaking authority to the Commissioner and Department of Health and Mental Hygiene as well various provisions of the New York City Health Code, specifically subsections (a)

and (c) of Section 81.15 and subsection (b) of Section 89.03. Subdivision (1) of subsection (a) of Section 81.15 provides that "no person who is charged with supervision of the operations of a food service stablishment . . . shall engage or be employed in such capacity unless he or she obtains a certificate issued by the Department subsequent to successful completion of a course in food protection, and passage of an examination administered by the Department." It provides further "no person required to have a license issued pursuant to Section 89.03(b) of this Code shall be issued such license unless he or she obtains such a certificate." Section 89.03(b) provides that no mobile food vendor license ". . . shall be issued to any person after January 1, 2004 unless such person submits proof satisfactory to the Department of successful completion of a food protection course in accordance with section 81.15 of this Code." Section 81.15(c) provides that persons enrolling in such food protection courses conducted by the Department "may be charged a reasonable fee to defray all or part of the costs incurred by the Department for course registration, materials, training, testing and certificate issuance."

Statement of Basis and Purpose

On December 12, 2002, the Board of Health adopted a resolution amending §§81.15(a) and 89.03(b) of the Health Code to require that all applicants for mobile food vendor licenses successfully complete a course in food protection. Specifically, §81.15(a) was amended to require that all mobile food vendors, including those operating non-processing units, must successfully complete a food protection course, pass an examination administered by the Department and obtain the certificate evidencing the course's successful completion in order to obtain a mobile food vendor license. Section 89.03(b) was also amended to specify that no food vendor license would be issued to any person after January 1, 2004 unless they submit proof satisfactory to the Department of successful completion of the food protection course (the certificate) in in accordance with §81.15.

Prior to these amendments, mobile food vendors operating processing units had been required to successfully complete a food protection course, as were all supervisors of other food establishments. Those operating mobile food non-processing units, however, were not so required. The Department conducts its general food protection course at the Health Academy but also has approved courses administered by others. The courses given, however, do not provide training on how to safely operate a mobile food unit. As licensed mobile food vendors may operate both processing and non-processing units, and due to Bureau of Food Safety and Community Sanitation data evidencing a high percentage of violations issued to food vendors and failed operational inspections by these vendors, it was decided that all mobile food vendor licensees would be required to successfully complete a food protection course.

The inspection data compiled by the Bureau suggested that the food protection course offered to supervisors of food establishments was inadequate for mobile food vendors. Mobile food vending differed from conventional food establishments in important respects. For example, unlike restaurants, mobile food vendors do not usually have access to facilities such as sinks and toilets. Mobile food units are also generally operated outdoors on crowded streets and in all kinds of weather. The general food protection course did not deal with how to cope with such circumstances.

As a result of the adoption of this amendment to Chapter 21 of Title 24 of the Rules of the City of New York, the Health Academy is authorized to provide more relevant instruction to mobile food vendors as part of a new food protection course tailored specifically to the mobile food vendor experience. The Department has prepared this course to last for eight hours and to be given over a two day period. The course will provide training/instruction to mobile food vendors in areas/principles deemed necessary by the Department to ensure compliance with the requirements of the New York City Health Code, the State Sanitary Code and other applicable laws and Departmental rules and procedures. For example, the course given is expected to cover such areas as personal hygiene, the cleaning of equipment and utensils and principles of food safety and food handling in a setting that simulates actual mobile food vending conditions.

Pursuant to §81.15(c) of the Health Code, the Department ". . . may conduct such food protection courses, or any part thereof. . . ." This provision also provides that those ". . . electing to enroll in such courses conducted by the Department may be charged a reasonable fee to defray all or part of the costs incurred by the Department for course

registration, materials, training, testing and certificate issuance." As a result of a fee analysis performed by the Department's Bureau of Financial Systems and Analysis, it has been determined that the cost per registrant to the Department in administering the newly instituted Food Vendor Food Protection Course is fifty-six dollars ($56.00).

As a result of the adoption of this amendment, Chapter 21 of Title 24 of the Rules of City of New York now codifies the fee to be charged for the new food protection course for mobile food vendors to be administered at the Health Academy. Section 21-06 entitled Mobile Food Vendor Food Protection Course has been added to Chapter 21. Subsection (a) of this section outlines the contents of the Food Protection Course for mobile food vendors. Subsection (b) prescribes the fee to be payable to the Department by those taking the course.

Statement Pursuant to Section 1042-Regulatory Agenda

The proposal to amend Section 81.15 of the Health Code to require that a food protection course be taken by every licensed food vendor, including those operating non-processing units, was included in the Fiscal Year 2003 Regulatory Agenda. The proposal to amend Chapter 21 of Title 24 of the Rules of the City of New York to codify a fee for the new food protection course was not included in the 2004 Regulatory Agenda because the necessity for this amendment was not realized until after the FY 2004 Regulatory Agenda was published.

44. Statement of Basis and Purpose in City Record July 30, 2004:

Introduction

The Board of Health has amended various provisions of the Health Code to harmonize current provisions of the Health Code, applicable to public and private lead poisoning prevention activities and safe lead-based paint work practices in child-occupied dwelling units and children's group day care and public kindergarten programs, with Local Law 1 of 2004 (Local Law 1) and current regulations of the U.S. Environmental Protection Agency ("EPA").

Over the past 30 years there has been a dramatic decline in childhood lead poisoning; however, childhood lead poisoning remains a significant public health concern. Elevated blood lead levels have been associated with intelligence deficiencies, reading and learning disabilities, reduced attention span, hyperactivity and behavior problems. The ingestion of household dust containing lead from deteriorating or abraded lead-based paint is believed to be a primary factor in lead poisoning occurring in children under six years of age.

In 1960, the Board of Health amended the Health Code to ban the use of lead-based paint on residential interior surfaces. In 1970, the Health Code was further amended to provide that the Department investigate a child's home for possible environmental lead hazards when there is a report of a child with an environmental intervention blood lead level ("EIBLL"). Local Law 1 of 1982, the City's first lead poisoning prevention law, amended the Housing Maintenance Code (Title 27 of the Administrative Code of the City of New York) to require owners to correct lead-based paint hazards in dwelling units in multiple dwellings where children under seven years of age resided, but was never fully implemented. Its provisions were interpreted as requiring abatement of all lead-based paint, not just deteriorating lead-based paint, despite the nearly universal consensus that requiring abatement of intact lead-based paint could result in increasing children's risk of lead poisoning. In 1999, after many years of litigation relating to implementation of Local 1 of 1982, the City Council enacted Local Law 38, repealing Local Law 1, to create a more pragmatic and workable approach to housing maintenance than was possible under Local Law 1 of 1982. However, on July 1, 2003, New York's highest court invalidated Local Law 38 on the grounds of inadequate review under the State and City environmental quality review laws and on February 5, 2004, the City Council, overriding the Mayor's veto, enacted Local Law 1 of 2004, repealing Local Law 1 of 1982 and Local Law 38 of 1999.

In 1992 the U.S. Congress enacted Title X-the Residential Lead-Based Paint Hazard Reduction Act (Title X), to develop a national strategy to build the infrastructure necessary to elimate lead-based paint hazards in federally assisted housing. Throughout the 1990's, federal agencies sponsored studies and assessments to help determine how to best prevent lead poisoning in young children. The U.S. Department of Housing and Urban Development ("HUD") initially

published guidelines for lead hazard assessment and remediation in 1995. Comprehensive HUD regulations did not become effective, however, until September 15, 2000, and are applicable to lead remediation in federally subsidized housing. It was not until March 1, 1999 that EPA's regulations for "abatement" of lead-based paint by certified workers and firms became effective in New York State.

Since 1993, Health Code §173.14 has specified procedures and methods for correcting lead-based paint hazards when ordered or directed by the Department, or, in some cases, when correcting violations placed by the City's Department of Housing Preservation and Development (HPD) pursuant to Title 27 of the Administrative Code of the City of New York (hereinafter "Administrative Code" or "Housing Maintenance Code"). Section 173.14 has been amended periodically by the Board to reflect prevailing safety standards and legal requirements. Methods and work practices for lead based paint abatement are specified in the Health Code and generally prohibited any person from performing an "abatement" if the person had not complied with applicable laws requiring training, licensing, certification, or other authorization. However, as noted, it is only since March 1, 1999 that EPA regulations have specified training, certification and work rules for firms and personnel performing various lead-based paint activities. See, e.g., EPA regulations at Title 40 Code of Federal Regulations Part 745 ("40 CFR 745").

EPA's rules now govern procedures and requirements for the certification of individuals and firms engaged in certain lead-based paint activities state-wide, and work practice standards for performing the activities defined in EPA's rules. These rules require certain changes in the Health Code. For example, EPA's rules define "abatement" as any measure or set of measures designed to permanently eliminate lead-based paint hazards, and any firm or individual performing abatement as defined by EPA must be EPA-trained and certified. EPA's definition of abatement excludes activities that are not designed to permanently correct lead-based paint hazards, such as renovation, remodeling, or repair activities that may incidentally result in a reduction or elimination of lead-based paint hazards or disturbing lead-based paint. Furthermore, EPA's certification requirements do not apply to interim controls or other operations and maintenance activities designed to temporarily, but not permanently, reduce lead-based paint hazards. EPA also does not regulate individuals or firms engaged in non-abatement activities.

Local Law 1 of 2004 requires owners of older multiple dwellings in which a child under seven resides to identify and remediate lead-based paint hazards. There is also a broad requirement for remediation of lead-based paint hazards whenever a tenant vacates a rental unit. Local Law 1 defines remediation as the "reduction or elimination of a lead-based paint hazard by wet scraping and repainting, removal, encapsulation, enclosure, or replacement . . . or other method approved by the commissioner of health and mental hygiene." Local Law 1 does not specify a preferred method to be utilized in remediation. Although the method of remediation is optional, Local Law 1 requires lead dust clearance testing after correction of HPD violations and after voluntary repairs by owners which disturb two or more square feet of lead-based paint per room in housing subject to the law. Local Law 1 also specifies minimum training and certification requirements for individuals and firms engaged in remediation and conducting final lead dust clearance testing.

Local Law 1 also provides that the work practices in HPD rules "shall be no less stringent than the safety standards required by the commissioner of health and mental hygiene whenever such commissioner shall order the abatement of lead-based paint hazards pursuant to §173.13 of the health code or a successor rule. . . ." See, e.g., Administrative Code §27-2056.11(a)(1). This and other requirements in Local Law 1 have resulted in parallel, nearly identical, work practices rules in both the amended Health Code and HPD rules.

There are differences between HPD's final rules and the Health Code, particularly pertaining to the use of wet scraping and repainting. This method was considered an "exclusive interim control" in Local Law 38, but is only one of several methods of remediation in the new Local Law 1 and in the proposed amended Health Code. While the amended Health Code no longer allows this as a method of "abatement" its limited use will be allowed in certain circumstances. Although EPA rules do not define wet scraping and repainting as a method of abatement, this method of lead-based paint hazard reduction will continue to be an acceptable way to correct violations, both pursuant to HPD rules and when ordered by the Department in certain circumstances. In the Notice of Intention to amend published for public comment,

the Department initially proposed that wherever the term "abatement" appears in the current Health Code with respect to lead-based paint and lead hazards, the term "remediation," a broader and more inclusive term, but used. In response to comments received objecting to this change in all cases, the final resolution retains the term "abatement" in §173.13(d)(2) with respect to children with environmental intervention blood lead levels. The work practices governing remediation of lead-based paint hazards incorporate the provisions of Local Law 1, EPA rules applicable to "abatements" and nearly all the current provisions of existing Health Code §173.14 are reorganized according to the magnitude and permanence of the remediation work. Local Law 1 adds a new Chapter 9 ("Lead-Based Paint in Day Care Facilities") to Title 17 of the Administrative Code, imposing some additional requirements are lead-based paint hazard remediation and inspections on group day care operators and the owners of the buildings in which day care is located, which will need to be have been harmonized with existing provisions in Article 47 of the Health Code. Although Local Law 1 imposes no new requirements for remediation of lead-based paint hazards in Department of Education-operated kindergartens, the Department has imposed in the past, and proposes that the Board continue to impose, the same requirements for preventing exposure of children under six in public kindergartens to lead-based paint hazards as may be applicable to day care, pre-kindergarten classes and non-public kindergartens. See, e.g., Health Code §§45.12 and 47.44.

Amend Health Code §173.13 ("Lead Paint")

1. Amend Health Code §173.13(a) by adding a provision to enhance enforcement of the prohibition in both Health Code §173.14 and Local Law 1 of dry sanding and scraping. This provision requires places of business selling paint or paint removal products to post a warning sign alerting consumers to the prohibition of this method in dwellings, day care centers and schools. This section is being further amended to authorize enforcement by the City's Department of Consumer Affairs, which currently inspects hardware and paint suppliers in the City to enforce laws restricting sales of box cutters and spray paints.

2. Amend Health Code §173.13(d)(1) to better reflect national recognition, federal guidelines, and the Department's experience in identifying and ordering remediation of lead hazards in housing, other buildings, and the areas surrounding such structures, in which children may reside or spend time, but which are not subject to the lead poisoning prevention provisions of the Housing Maintenance Code. Such premises include owner-occupied cooperative, condominium and one- and two-family homes, and commercial buildings in which children's institutions and programs are located, or to which children at risk may have access. While the Department has exercised its general nuisance abatement authority (see, e.g., Health Code §3.11), in ordering the abatement of lead hazards on building exteriors, from fire escapes or yard soil and even at a museum exhibition of soft lead tiles, Health Code §173.13(d)(1) is being amended to include a provision authorizing the Department to order the remediation of any leaded substances it finds which may present a hazard to children.

3. Amend §173.13(d)(1) to authorize the Department to order remediation of lead-contaminated dust in a dwelling unit where the source of the lead-contaminated dust is not a condition of the dwelling in which the unit is located.

4. Amend §173.13(d)(2) to change the mandatory environmental intervention action level for a lead poisoned child from a single 20 mcg/dL or greater blood lead level to a single 15 mcg/dL or greater. Local Law 1 amends Title 17 of the Administrative Code to provide for this intervention level.

5. Add a provision to §173.13 concerning the disposition of objections to Department orders to remediate lead hazards. From 1970 to 1997, the Department used X-ray fluorescent analysis (XRF) equipment for sampling lead-based paint. The particular model of the machine used became outdated in the early 1990's, because it was not able to adjust for composition of the substrate of building components in calculating the value of lead on surface paint. Because of these equipment limitations, the Department's orders to abate nuisance were subject to routine challenge by owners submitting contrary results of laboratory analysis of paint chip samples. The process of removing paint chips further damaged deteriorated lead painted surfaces and contestations delayed the correction of confirmed lead-based paint hazards in dwellings where children with an EIBLL resided. In 1997, the Department purchases XRF equipment that

self-adjusts for substrate composition. At the same time, a new Health Code definition of lead-based paint was adopted which incorporated federal definitions and the availability of federal calibration standards for XRF equipment. This has resulted in the Department generally rejecting the challenges of owners who simply submitted results that differed from the Department's. This Department practice was challenged in two suits, but upheld by the courts. See, e.g., 601 **Realty Corp. v. City of New York Department of Health,** 269 AD2d 268, 703 NY2d 458 (AD 1st Dept. 2000). Processing such contestations unacceptably delays remediation of surfaces in the home of a lead poisoned child and promotes the taking of paint chips from deteriorating surfaces, further endangering such children. Currently, objections to Department orders are considered only if the objector presents evidence that the Department's XRF equipment is not functioning or was not calibrated properly, not merely because the onwer's XRF or laboratory sampling results are different than the Department's. Two comments objecting to this amendment were received, but for the reasons already stated, no change has been made in the resolution.

Repeal and re-enact Health Code §173.14

1. Add definitions to Health Code §173.14(b). Define "abatement" as a set of measures specifically designed to permanently correct lead-based paint hazards, consistent with the federal definitions [24 CFR 35.110 (1999) and 40 CFR 745.223 (1997)]; "remediation" as the reduction or elimination of a lead-based paint hazard (Local Law 1, Administrative Code §27-2056.2); and "disturbance" as any action taken which breaks down, alters or changes lead-based paint (15 RCNY Chapter 1). Other applicable definitions of terms in the rules generally adopt the same definitions in Local Law 1 or in EPA rules.

2. Add provisions to Health Code §173.14(c), tracking Local Law 1 and EPA rules, differentiating training and credentialing requirements for abatement, other remediation of lead-based paint hazards, and disturbance of lead-based paint in the course of conducting other non-ordered repair and maintenance activities.

3. Amend the administrative requirements of Health Code §173.14(c).

(i) Notification of commencement of work requirements. Local Law 1 [§27-2056.11(a)(2)(ii) of the Administrative Code] requires building owners or their representatives to notify the Department prior to performing work that will disturb greater than 100 square feet of paint per room or involve removing two or more windows. Comments received from owner and housing rehabilitation organizations indicated that such requirements would be excessively bureaucratic and burdensome and served no useful purpose. Comments supporting the notice requirement stated that the notice requirement was not "unreasonable." No change has been made in the resolution.

(ii) Recordkeeping. Currently, Health Code §173.14(c)(3) requires building owners to maintain records for seven years; Local Law 1 [§27-2056.17 of the Administrative Code] requires building owners to maintain records for ten years.

4. Amend training and certification requirements in Health Code §173.14(c)(2) to harmonize EPA, Local Law 1 and Department remediation requirements. EPA regulations (40 CFR Part 745, Subpart L) specify that firms, inspectors, risk assessors, supervisors, project designers and workers performing abatements be EPA certified. Local Law 1 specifies that only the **firms** engaged to perform work to remediate HPD violations, or non-violation work that disturbs greater than 100 square feet of paint per room or which involves the removal of two or more windows must be certified to perform lead abatements in accordance with 40 CFR Part 745, Subpart L. See, §27-2056.11(a)(2)(ii) of the Administrative Code. The amended Health Code requires that all **abatement** activities be performed only by firms and personnel who are EPA certified, but that only the firms require EPA-certification to conduct other lead-based paint remediation activities regulated by Local Law 1 or the Health Code, and that their workers be HUD trained. However, all work ordered by the Department pursuant to Health Code §173.13(d)(2) to correct interior lead-based paint hazards where there is a child with an environmental intervention blood lead level will be termed "abatements" and will require use of EPA-certified workers.

5. Workers performing work other than abatement. Local Law 1 specifies that persons performing work that disturbs from two to 100 square feet of paint per room or does not involve the removal of two or more windows must have successfully completed a course on lead safe work practices offered or approved by HUD or the Department. See, §27-2056.11(a)(2)(i) of the Administrative Code. HUD regulations specify training requirements for persons performing interim control work (including remediation by the method of wet scraping and repainting) as defined in federal regulations. See, 24 CFR §35.1330(a)(4). The amended Health Code requires workers performing such remediation pursuant to Local Law 1 [see, §27-2056.11(a)(2)(i) of the Administrative Code] to be trained in accordance with these HUD regulations. Local Law 1 exempts from its worker training requirements any worker performing work that disturbs lead-based paint surfaces consisting of less than (a) two square feet of peeling lead-based paint per room or (b) ten percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame in a multiple dwelling unit or day care facility. See, §§27-2056.11(a)(2)(iii) and 17-912 of the Administrative Code.

6. The Department is conducting an ongoing public health education campaign to increase awareness of potential lead hazards to young children from exposure to leaded dust and debris resulting from even minimal home repairs and maintenance, and the Health Code requires that signs be posted at places where paints are sold and paint scrapers are sold or rented warning that dry scraping of lead-based paint is prohibited in the City in any building where children reside. The Health Code, Local Law 38, HPD rules and Local Law 1 contain provisions prohibiting dry scraping and sanding as a method of removal of lead-based paint, but the signage requirement is new and not mandated by any law. To enhance enforcement of this provision, Health Code §173.13(a) has been further amended to authorize enforcement by the City's Department of Consumer Affairs which already inspects hardware and paint stores to enforce laws restricting sales of box cutters and spray paints.

7. Workers remediating lead-based paint hazards violations pursuant to Department orders (other than when ordered to permanently abate lead-based paint), issued pursuant to Health Code §§45.12, 47.44 and 173.13(d)(1), HPD orders or violations issued under §27-2056.11(a)(1) of the Administrative Code, or where any work disturbs greater than 100 square feet of paint per room or involves the removal of two or more windows pursuant to §27-2056.11(a)(2)(ii) of the Administrative Code, will be required to be minimally trained in accordance with HUD regulations. See, 24 CFR §35.1330(a).

8. Add requirements in Health Code §173.14(c)(2)(bb) for qualifications of persons performing lead-contaminated clearance dust tests after the completion of non-abatement work that disturbs lead-based paint. Local Law 1 requires lead-contaminated dust clearance testing at the completion of all work performed in compliance with Department orders; to correct HPD violations pursuant to §27-2056.11(a)(1) of the Administrative Code; that disturbs areas consisting of (a) two or more square feet of peeling lead-based paint per room or (b) ten percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame, pursuant to §27-2056.11(a)(2)(i) and (ii) of the Administrative Code; on turnover, pursuant to §27-2056.8 of the Administrative Code; and in day care facilities, pursuant to §17-912 of the Administrative Code. Health Code §45.12 requires that lead-based paint work performed in kindergartens operated by the City Department of Education must be performed in accordance with Health Code §173.14, and dust wipe tests by similarly trained personnel will also be required after the completion of such work in these facilities.

9. As repealed and re-enacted, Health Code §173.14(e)(1)(I)(iii) specifies that no person shall perform a lead-contaminated dust clearance test unless such person is a third-party, who is independent of the owner and firm that performs the work. Section 27-2056.11(b) of the Administrative Code also specifies that no person shall perform a lead-contaminated dust clearance test unless such person has successfully completed a course approved or administered by the Department, EPA or HUD. HUD regulations specify training requirements and courses for persons performing clearance dust testing following work other than abatement. Health Code §173.14(c)(2)(A) requires all persons performing any abatement work, including dust test sampling, to be EPA certified. Health Code §173.14(c)(2)(B) specifies training of persons performing work disturbing lead-based paint, or paint of unknown lead content, in Department of Education kindergartens and work conducted in compliance with orders issued by the Department to

remediate lead-based paint hazards, when such work would not be considered an "abatement." See, HUD regulations 24 CFR 35.1340(b)(1). Although one comment requested that the requirement for dust testing to be conducted by an independent third party be deleted as economically burdensome, the Department does not believe that such a change would benefit the public health.

10. Revise work methods and occupant protection standards in Health Code §173.14(d) and (e). Local Law 1 specifies that the rules for an owner correcting HPD violations, or doing any work that disturbs more than 100 square feet of lead-based paint per room without a violation, shall be no less stringent than those utilized in complying with an order issued pursuant to Health Code §173.13. The Health Code amendments accordingly specify work methods and occupant protection practices in buildings constructed before January 1, 1960, where children under 7 reside, for various types of lead-based paint activities. Required preparation of the work area is categorized in subdivision (e) as follows: (1) work to remediate lead-based paint hazards pursuant to a Department order, an HPD violation or non-ordered work that disturbs over 100 square feet of lead-based paint per room; (2) work performed that disturbs small or moderate amounts, i.e., two to 100 square feet per room, of lead-based paint, and the same amounts of non-ordered work performed in a day care facility or a Department of Education kindergarten; and (3) work performed in a dwelling unit upon turnover.

11. Remediation work to comply with a Department order or correct an HPD violation, or non-ordered work that disturbs more than 100 square feet of lead-painted surfaces per room, shall require that floors be cleaned before commencing work. In conducting work that disturbs lead-based paint in accordance with §17-911 (day care services), §27-2056.11(a)(2)(i) of the Administrative Code, or §45.12 (kindergartens) of the Health Code additional requirements would include using multiple layers of plastic or equivalent sheeting as needed to prevent dust from contaminating the floor; and, where applicable, turning off forced air systems in the work area and sealing off any vent openings in the work area with polyethylene.

12. Work to remediate lead-based paint hazards on turnover would require preparation of the work area using the procedures described above. However, since the dwelling unit will not be occupied while work is in progress, clean-up procedures are only specified at completion of all work, followed by lead-contaminated clearance dust testing.

13. In response to public comments, additional provisions have been added to §173.14(d) and (e), reflecting HPD's final rules, to clarify under what conditions occupants of units undergoing work that disturbs lead-based paint must be relocated; and under what conditions occupants who do not relocate may have temporary access to work areas which have been adequately cleaned, but have not been cleared for "permanent re-occupancy" because work has not been completed, or where work has been completed and lead-contaminated dust test results have not been received.

Additional changes in subdivisions (d) and (e) have been made, deleting as unnecessary a provision which required a one hour delay after final cleaning before collecting lead-contaminated dust clearance test samples, and clarifying that only objects in the work area required pre-work cleaning, and that only doors and cabinets covered with lead-based paint or paint of unknown lead content require re-hanging or other treatment to avoid binding.

Subdivision (h) of §173.14 has been further amended to add that the Commissioner or designee may also issue modifications of the application of provisions in §173.13, when compliance with orders issued pursuant to such provisions present practical difficulties or unusual hardships. Articles 45 and 47 already contain a similar provision and do not require further amendment.

To facilitate use of this complex section, a new table of contents has been added to §173.14.

Repeal §173.15 ("Unsafe lead based paint work practices")

This section authorized the Department to respond to complaints of unsafe lead-based paint work practices, and its substantive provisions have been incorporated within §173.14 of the Health Code. The provision was originally adopted to implement Local Law 38 of 1999, and was modeled on the procedures in the repealed Health Code §173.14(c)(1)(cc).

Local Law 1 of 2004 includes such a provision in a new §17-185 of the Administrative Code, mandating that the Department respond to such complaints. It may be found in subdivision (f) of the Health Code §173.14, as re-enacted.

Amend §§47.44 and 45.12

Amend §47.44 ("Lead Based Paint Restricted") of Article 47 ("Day Care Services") to harmonize Health Code provisions for remediation of lead-based paint hazards in day care services with new provisions added to Title 17 of the Administrative Code (Chapter 9: "Lead-Based Paint in Day Care Facilities") and amend §45.12 ("Lead Based Paint Restricted: Kindergartens") to track §47.44. The amendments to §47.44 include a new declaration of nuisance, modeled on that in §173.14, which will enable the City to recover its costs in remediating lead-based paint hazards in day care services whenever the Department determines that the operator of the day care service or the owner of the building in which the service is located who was ordered to remediate lead hazards has failed to substantially comply with such order. The resolution as adopted contains a new provision, similar to the provision in HPD's rules, establishing a procedure for owners or operators of day care services to present evidence opposing Department orders to remediate peeling paint of unknown lead content, by demonstrating that such paint does not contain lead. Each of these sections has also been further amended by adding provisions referencing the definitions in §173.14 of the Code.

Statement of Need for Immediate Implementation

I hereby find, pursuant to §1043(e)(1)(c) of the New York City Charter, that there is a substantial need for the immediate implementation of amendments to Articles 45, 47 and 173 of the New York City Health Code ("amendments") adopted by the Board of Health (the "Board") harmonizing such provisions with Local Law 1 of 2004 ("New York City Childhood Lead Poisoning Prevention Act of 2003", hereinafter "LL 1") and with the rules of the New York City Department of Housing Preservation and Development ("HPD"), amending Chapter 11 of Title 28 of the Rules of the City of New York concerning lead-based paint, to enable such amendments to take effect on August 2, 2004, the day LL 1 and HPD's rules take effect.

The implementation of the amendments before the expiration of the thirty-day post-publication period required by Charter §1043(e)(1)(c) is necessary to avoid inconsistencies between the Health Code and LL 1 and the HPD rules for any period of time. Adoption of these amendments has required (a) an initial meeting of the Board on May 19, 2004 to approve the publication of the amendments in the City Register: (b) a public hearing held thirty days after the publication of the amendments; and (c) a second meeting of the Board to consider and adopt the amendments. The notice of intention to amend the Health Code was published in the City Record on May 21, 2004 and a public hearing held on June 23, 2004. The Board met to consider the public comments and adopted the final amendments on July 22, 2004. Adherence to the thirty-day post-publication requirements set forth in §1043 of the Charter would mean that these amendments would not take effect until some time in late August, after HPD's rules are in effect.

Local Law 1 and HPD's rules contain extensive and complex provisions for lead-based paint remediation in multiple dwellings occupied by children under seven years of age, and in day care services caring for children under six years of age. Local Law 1 requires that the work practices in HPD's rules be "no less stringent than the safety standards required by the commissioner of health and mental hygiene whenever such commissioner shall order the abatement of lead-based paint hazards pursuant to §173.13 of the health code or a successor rule. . . ." See, Administrative Code §27-2056.11(a)(1). HPD's rules were published in the City Record July 2, 2004, and will take effect on August 2, 2004. Simultaneous implementation of the amendments to the Health Code, the HPD rules and Local Law 1 on the same day will help avoid potential public and regulatory confusion.

Thomas R. Frieden, M.D., M.P.H. Commissioner Department of Health and Mental Hygiene

Approved by Michael Bloomberg, Mayor

45. Statement of Basis and Purpose in City Record Oct. 21, 2004:

Unintentional carbon monoxide poisonings may result from malfunctioning gas or fuel-burning equipment in homes (for example, furnace, oil burner, stove or hot water heater). Recently, carbon monoxide leaked from a building's heating system in the Murray Hill section of Manhattan, leading to two deaths and two critical cases of carbon monoxide poisoning.

The New York City Department of Health and Mental Hygiene currently requires that poisonings by drugs or other toxic agents be reported to the Department within 24 hours. [Health Code §11.03(a)]. Although not specifically identified in §11.03, carbon monoxide poisoning is currently required to be reported to the Department as a poisoning. The Department believes providers would be more aware of the requirement that carbon monoxide poisoning must be reported if carbon monoxide poisoning is specifically defined and identified in the Health Code as a reportable condition. Of course, the Department also intends to educate providers that carbon monoxide poisoning is reportable to the Department. Improvement in reporting carbon monoxide poisoning to the Department (to the Poison Control Center) by health care providers such as emergency room staff and laboratories, is critical in order to activate Fire Department emergency response and improve community safety. For these reasons, it is proposed that §11.03(a) be amended to specifically refer to and define carbon monoxide poisoning.

The Health Code is amended to require reporting of all carboxyhemoglobin greater than 10% for the following reason. There is a difference between the usual COHb levels of smokers and non-smokers. Smokers generally have a COHb level of about 5-10%, whereas non-smokers normally have less than 3% COHb. Setting the level to accommodate both groups at, for example, 15% would not be protective of non-smokers. However, an appropriate level for non-smokers, 3.5%, would result in too many false positives. Having two different levels for the two different populations would also be problematic because it would rely on self-reporting of smoking status and may differ by the magnitude and duration of a person's tobacco use as well as complicationg the reporting requirements medical personnel. A level of 10% COHb has been determined by the Department to be the action level because it is protective and should at the same time keep false positives to a minimum.

Section 11.03(c) of the Health Code is amended to require immediate telephone reporting of carbon monoxide poisoning to the Department. Similar to diseases such as acute arboviral infections, anthrax, botulism and plague, where immediate telephone reporting to the Department is required, immediate telephone reporting of carbon monoxide poisoning should benefit the public by enabling the swift investigation and appropriate preventative action, including rapid referral by the Department to the Fire Department. prompt identification of poisoned individuals and immediate reporting should result in immediate deployment and investigation by the New York City Fire Department to prevent any additional carbon monoxide exposure-related illnesses and/or deaths in the affected building or area.

46. Statement of Basis and Purpose in City Record Dec. 17, 2004:

Disease surveillance is a primary function of the Department and is a cornerstone to the overall health of New York City: without disease surveillance, it is difficult to determine the extent of disease and the need for intervention. Disease surveillance, and laboratory surveillance in particular, is a vital component of New York City's bioterrorism preparedness infrastructure. By closely monitoring clinical laboratory reports, the Department is able to observe and promptly investigate diseases and conditions required to be reported to the Department (including those potentially related to bioterrorism (BT) agents). To this end, it is essential that clinical laboratory reports be obtained as soon as possible once the result of the test is available. Electronic clinical laboratory submissions are critical for effective and timely interventions.

Electronic clinical laboratory reporting is of great benefit to the Department because: 1) Electronic clinical laboratory reporting enhances the Department's surveillance infrastructure and bioterrorism preparedness capabilities; 2) It brings the Department closer to the Centers for Disease Control and Prevention (CDC) electronic surveillance standards as defined in the Public Health Information Network (PHIN) initiatives; 3) It improves the completeness, timeliness, and accuracy of reports; 4) It provides an integrated system for the standardization of reporting methodologies for the reporting of mandatory reportable conditions; and 5) It allows for seamless delivery of electronic

data to the Department program area's databases. In contrast, paper reporting is, in general, slow and often incomplete, and reportable conditions are often underreported. In addition, paper reports require the additional step of data entry, which is eliminated when reports are received electronically.

The Department has been accepting clinical laboratory reports in electronic format for several years as part of the Electronic Clinical Laboratory Reporting System (ECLRS) project. The Electronic Clinical Laboratory Reporting System (ECLRS) is a web-based reporting system initially developed by the New York State Department of Health (NYSDOH) that provides laboratories with a uniform interface for reporting diseases and conditions such as tuberculosis (TB), sexually transmitted diseases (STD), communicable diseases (CD), HIV, lead, and cancer. ECLRS enables participating laboratories to use recognized standards to report positive test results over secure channels to the NYSDOH and the Department. Data confidentiality is ensured by the use of 128-bit encryption technology for both data transmission and data storage.

Both hospital-based and commercial clinical laboratories in New York City are targeted for full ECLRS implementation. Complete ECLRS implementation means that the clinical laboratory is electronically submitting every reportable condition testing in house at that laboratory. There are approximately 127 laboratories (including commercial laboratories and hospital-based laboratories) currently operating in New York City. Of the commercial laboratories in New York City, approximately 22% (14/65) have been enrolled in ECLRS; of the hospital-based laboratories, approximately 82% (51/62) have been enrolled in ECLRS. Of those facilities enrolled in ECLRS, few are submitting all reportable conditions electronically to the Department.

The Department is amending §13.03(c) of the New York City Health Code to require that effective July 1, 2006, clinical laboratories must report to the Department electronically test results that are associated with diseases and conditions required to be reported to the Department, in a format specified by the Department.

Clinical laboratories experiencing temporary equipment failure, prolonged inability to obtain access to the Internet, or other extenuating circumstances, may submit paper reports for a limited period of time, but only with the specific approval of the Department. In addition, the Department may on its own initiative allow paper reports in a particular circumstance as a result of a deficiency in the Department's electronic reporting system.

The Department also amended the definition of clinical laboratory in §13.01(b) to clarify that a clinical laboratory is defined as a regulated facility pursuant to State law, holding a permit issued by the New York State Department of Health and operating within New York City or testing specimens taken from New York City residents.

47. Statement of Basis and Purpose in City Record Feb. 18, 2005:

These rules incorporate inspection evaluation procedures used by the New York City Department of Health and Mental Hygiene ("DOHMH" or the "Department") Bureau of Food Safety and Community Sanitation ("BFSCS") in conducting food service establishment ("FSE") and non-retail processing establishment inspections, as those terms are defined in §81.03 of the New York City Health Code (the "Health Code"), but do not apply to inspections by BFSCS of mobile food vending units, or to its inspections of FSEs to determine compliance with the New York City Smoke-Free Air Act (Chapter 5, Title 17 of the Administrative Code of the City of New York).

In March 2003, in an attempt to reduce the incidence of food borne illness in New York City, particularly that occurring outside the home, the Department revised its inspection evaluation procedures. At the time, the Department reviewed results of studies conducted by the US Centers for Disease Control and Prevention ("CDC"). Such studies show that while most food borne illness results in several days of gastroenteritis with symptoms of abdominal pain, vomiting, diarrhea and fever, the impact to the United States economy is tremendous, costing over $6.5 billion a year. More importantly, for some, infections caused by bacteria such as Salmonella or Listeria, after eating contaminated food, can be fatal. The CDC estimates that each year in the United States more than 75 million people become ill after eating improperly handled or prepared food; 320,000 of these individuals require hospitalization and over 5,000 die

from food borne illness. DOHMH receives more than 4,000 reports annually of bacteria and viruses that cause food borne illness in New Yorkers. The best current scientific knowledge is that about half of food borne illness results from exposures outside of the home. In order to better protect the public's health DOHMH revised its restaurant inspection evaluation tool to more accurately reflect the overall safety of establishments and to facilitate further reductions in the risk of food borne illness when New Yorkers eat out.

The new rule provides that results of FSE inspections be expressed as a "score," using a point system. Although inspection procedures will remain essentially the same as they have been for at least the past 20 years, scoring the results of such inspections will better reflect the overall sanitary condition of FSEs and provide a more objective method of evaluating the public health risks presented by the operation of any particular FSE. DOHMH Public Health Sanitarians will continue to conduct a "critical control point" (CCP) inspection, a methodology recommended by the US Food and Drug Administration (FDA) for preventing food safety hazards or food borne illnesses from occurring. The rationale for the scoring system is consistent with current public health food safety trends and federal recommendations. See, e.g., US FDA **Food Code** (2001); **Report of the FDA Retail Food Program Database of Food Borne Illness Risk Factors** (August 10, 2000). A point value will be assessed for each violation. A total of 28 or more points in critical and/or general violations will be considered a "failed" inspection, which requires a compliance inspection by the DOHMH. Each violation will be assigned a base point value, with additional points added to a violation, as necessary, to reflect increasing severity or magnitude of the violation. The severity or magnitude measurement factor is called a **"Condition."** The more severe or pervasive the violation, the greater the point value for that violation.

Public Health Risk Factors

The scoring system weighs the points assessed for different categories of violations to reflect "risk factors" for food borne illnesses that have been identified in studies conducted by the federal Centers for Disease Control and Prevention (CDC). These risk factors have been determined to be the leading causes of food borne illness. A food service manager's knowledge of food safety principles is key to reducing illnesses caused by food. These risk factors are:

· Improper personal hygiene practices.

· Improper handwashing and bare hand contact with ready-to-eat foods.

· Improper cooking and holding temperatures.

· Food from an unapproved source.

· Cross contamination of food and food equipment.

The scoring system is designed to give food service operators a clearer understanding of what they must do to prevent disease and guide them in complying with the laws and rules that govern operation of an FSE in New York City. Table 1 in §23-06 summarizes the number of points that are assigned for a violation, and accounts for the severity of violations ("Conditions").

Most CDC "risk factors" are referred to as **Public Health Hazards (PHH)** by the DOHMH. These are violations that are known to contribute directly to food borne illness. **PHHs** are marked with an asterisk (*) on the **Inspection Work Sheet,** included in the rule as Appendix A of Chapter 23. Because of the risks these **Public Health Hazards** pose, they are assigned a greater initial point value than that assigned to other critical violations. **Public Health Hazards** must be corrected at the time of the inspection or the establishment may be ordered closed, in accordance with §23-06(b) of the rule and §81.39 of the Health Code. **Pre-Permit Serious Items** (identified with a "+" on the **Inspection Work Sheet**) must be corrected prior to approval for issuance of a new permit.

Critical violations continue to occur in large numbers in New York City, although the data show that things are

improving. Between April 2003 (when the scoring system was initiated) and October 2004, among the most commonly cited critical violations associated with risk factors for food borne illness was cross-contamination of food and food equipment, a violation which was cited on a significant percentage of food services establishment inspections. Other risk factors, such as improper personal hygiene practices of food workers, and improper handwashing and bare hand contact with ready-to-eat foods, were also common violations cited during this period. However, the Department's data show that in the year following implementation of the scoring system, the average number of all critical violations decreased significantly.

Conditions

Evaluating the severity of a violation and considering critical and individual general violations as part of the overall score offer a clearer picture of the sanitary condition of the establishment. The scoring system enables the DOHMH to monitor, report and deal with increases in the incidence and severity of violations at a food service establishment, and better prevent the occurrence of public health hazards. **Condition** levels provide the DOHMH and the FSE operator with a clearer picture of the overall sanitary condition of an establishment.

Determining the Score for an Inspection

Using Appendix B of Chapter 23 as a guide, the Department inspector will assign a numeric point value to each violation. The point value signifies the seriousness of each violation. In other words, the higher the condition number, the more serious the violation. **Conditions** range from **Condition I,** the least serious condition with the lowest point value, through **Condition IV,** the most serious condition with the highest point value. **Condition V** violations, in most instances, are reserved for a failure to correct any Public Health Hazard condition noted by the health inspector at the time of the inspection. When a **Condition V** violation is assigned 28 points, it is considered an automatic failure of the inspection. The DOHMH will schedule a compliance inspection following any failed inspection to determine if a food service establishment has made the necessary corrections to comply with the Health Code or other applicable law, and is operating in a sufficiently safe manner. A compliance inspection is a full sanitary inspection performed in the same way as an initial inspection.

Issuing Notices of Violation

On a full sanitary inspection, the DOHMH will issue a "notice of violation" when an FSE has one or more critical violations and/or more than 14 points of accumulated general violations. General violations are cited individually on the written report or notice of violation to encourage food service operators to better understand and correct less serious violations, as well as those that are more serious. A notice of violation will not be issued when an establishment has no critical violations, and has accumulated 14 or fewer general violation points on a full sanitary inspection. However, a notice of violation may be issued after a partial inspection conducted in response to a complaint, where the complaint is substantiated.

Response to Public Comment

The Department has reviewed the comments received and has made changes in the appendices with respect to the following violation categories:

Canned foods. If cans are only severely dented, the violation will be considered general (9A). If cans are swollen, leaking, or rusted, the violation will continue to be considered a critical violation (3D).

Milk products. Milk and milk products found past their stamped expiration date, in violation of Health Code §111.33, if being served or held for service in an FSE, will be considered a general violation (9B).

Thawing procedures. Improper thawing of frozen foods has been downgraded to a general violation (9C).

Facilities for washing, rinsing, and sanitizing dishes and utensils. Failure to install such facilities will be considered a pre-permit violation (5I+). However, lack of test kits, immersion baskets, or failure to maintain adequate concentration of sanitizing solution, and similar violations, will be downgraded to a general violation (see, e.g., 10K).

Food contact surfaces. Failure to clean and sanitize food preparation surfaces such as cutting boards after use where possible contamination may occur will continue to be considered a critical violation (6D). However, discolored, pitted, scratched, or deeply grooved cutting boards will be cited as a general violation (9D).

In addition, the category previously designated as "6H Other" at the end of the listing of critical violations in Appendix A, has been retitled "Other Criticals" and for statistical purposes is broken down into subcategories (7A through 7F).

The statement regarding the Scope of the Rules in §23-01 has been modified to indicate that the inspection procedures do not apply to inspections conducted to determine compliance with the New York City Smoke-Free Air Act.

Statement of Need for Immediate Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph (1), subparagraph (c) of the New York City Charter, that there is substantial need for the implementation of the new rule in Chapter 23 of Title 24 of the Rules of the City of New York, codifying the inspection procedures for food service establishments, upon publication of such rule in the **City Record.** As noted in the rule's Statement of Basis and Purpose, the Department of Health and Mental Hygiene (the "Department") will be better able to meet the public's expectation that food provided at food service establishments is wholesome and being prepared in sanitary surroundings. Additionally, the new rule enables the Department to return to the use of a handheld computer in the field for recording inspection results, which will make its inspection process more effective and efficient. The ability to transmit inspection results from the handheld computer software to the Department's Food Safety and Community Sanitation Tracking System will improve the Department's ability to track inspection results and perform compliance inspections when they are needed.

There is accordingly substantial need for the implementation of the inspection scoring system and attendant inspection procedures before the thirty day waiting period provided by New York City Charter §1043(e)(1)(c) because such scoring system is risk based, and therefore more protective of the public health, than the current inspection evaluation methodology being used by the Department.

Thomas R. Frieden, M.D., M.P.H. Commissioner of Health and Mental Hygiene

Michael Bloomberg, Mayor February 16, 2005

48. Statement of Basis and Purpose in City Record July 19, 2005:

The New York City Department of Health and Mental Hygiene's amendments will expand the current age range for required reporting of immunizations from age seven and under [see New York City Health Code §11.04(a)(1)] to age eighteen and under. The Department's amendments will also allow reporting of immunizations administered to persons age nineteen and over, with written consent of the person immunized [see New York City Health Code §11.04(a)(3)] or the person's legal guardian. The immunizations will be reported to the Department's existing Citywide Immunization Registry (CIR).

The Department's goals for collecting reports of immunizations to a broader age range is to reduce the rates of illness, disability and death from vaccine-preventable disease outbreaks, and to improve outreach and follow-up of adolescent and high-risk adult populations. Tracking immunizations through the CIR will help to improve immunization coverage in adolescent and high-risk adult populations, thereby preventing the spread of vaccine-preventable diseases such as hepatitis B. In addition, vaccine wastage will be avoided by preventing unnecessary "duplicate" vaccinations to

adolescents and high-risk adults because records are lost and no vaccination history is available.

These amendments will enable the Department to measure coverage in adolescent vaccination campaigns. Older children are now required to be up-to-date with immunizations such as hepatitis B and varicella for school entry. Many children receive these immunizations after they reach their eighth year of age. In addition, a large number of school-age children immigrate to New York City every year, and often arrive without an immunization record. The CIR will create a record of the immunizations given to these children and track their immunization status going forward. By capturing immunizations given to older children, the CIR will be able to assist schools with compliance, prevent children from being over-immunized, and assist in targeting the children that are lacking vaccinations, thus preventing the spread of vaccine-preventable disease.

Additionally, all post-secondary school institutions (colleges, professional schools, etc.) require compliance with certain vaccinations. For college, New York State law requires an MMR, and other professional schools require additional immunizations. CIR can hold and provide records for these adult populations to use in order to satisfy entrance requirements and avoid unnecessary, duplicate vaccinations. CIR will also work with the colleges and professional schools to identify and target those individuals that actually need vaccinations, thereby increasing immunization coverage in student populations and preventing the spread of vaccine-preventable diseases.

A registry is a useful tool, especially for individuals who have fragmented care and/or a disrupted family environment. These include individuals who are homeless, in foster care, or are living in shelters or correctional facilities. The CIR will help these individuals by keeping their immunization histories and making them available, as needed, to health care providers and agencies such as health plans, schools (i.e., elementary, middle, and high schools as well as colleges and professional schools), summer camps, and correctional facilities. By making these immunization histories available, CIR will help health care providers and agencies determine which vaccinations an individual needs, and avoid unnecessary vaccinations. Immunization coverage in these populations will increase, thereby preventing the spread of vaccine-preventable disease.

The registry can be a very helpful tool for capturing and tracking high-risk adolescent populations who get immunized with hepatitis A and B vaccines in adolescent clinics. By capturing those immunizations, the CIR will assist in preventing over-immunization as well as identifying and targeting those that lack immunizations, thereby increasing immunization rates and preventing the spread of vaccine preventable diseases.

The registry can be used as an accountability tool for doses administered under the Vaccines for Children program (VFC). A large proportion of children living in NYC (67%) are eligible for VFC. To use the CIR as a tool to account for VFC vaccine doses administered by providers, the reporting requirement must be expanded through 18 years. Improving accountability for VFC vaccine by using the CIR will help to reduce vaccine wastage and should ensure that providers receive an adequate supply of vaccine for their patients eligible to receive VFC vaccine.

These amendments will also enable the Department to monitor uptake of flu vaccine. This will help the Department to evaluate the impact of broader flu vaccine coverage on the prevention and control of influenza outbreaks.

The Department anticipates that expanding the age range for required reporting of immunizations administered through age eighteen will not impose a heavy additional burden on providers. The volume and frequency of immunizations administered to children age eight through eighteen is low in comparison with the high level of immunizing in the first two years of life. The majority of providers have already established a routine for reporting immunizations administered to children age seven and younger. While it will be necessary for providers to adjust this routine, the amount of additional effort is not considered to present a major barrier to compliance. An increasing number of immunization registries across the United States now collect reports of immunizations administered to persons of all ages.

The Department's amendment to allow for voluntary reporting of immunizations administered to adults, with

written consent, should be particularly helpful in facilitating the Department's plan to establish partnerships with providers and health plans to improve for example, flu, pneumococcal and/or hepatitis A or B vaccine coverage for various high risk individuals (for example, homeless, living in shelters, etc.)

49. Statement of Basis and Purpose in City Record July 19, 2005:

The Department of Health and Mental Hygiene (the "Department") enforces provisions of the New York City Health Code ("Health Code") and other applicable law intended to protect the wholesomeness of food served directly to the consumer throughout the City, including food that is commercially prepared, and sold or distributed for free, by food service establishments, a broad category which includes restaurants, caterers (non-retail food processing establishments), mobile food vending units, and mechanical food dispensing devices. This resolution amends various Health Code provisions regarding the storage temperature of potentially hazardous cold foods, and re-numbers a provision authorizing the Commissioner to impose more stringent requirements on a food service establishment to prevent the recurrence of imminent health hazards.

Holding potentially hazardous cold foods

On June 15, 1998, the Board of Health amended various provisions of Article 81 ("Food Preparation and Food Establishments") of the Health Code, adopting new, more stringent, temperature requirements for maintenance of potentially hazardous foods consistent with standards of the 1997 US FDA **Food Code.** For cold foods, the FDA-recommended maintenance standard of 41 degrees Fahrenheit (5 degrees Celsius) or lower was adopted in amendments to §§81.03(b) and 81.09(a), (c), (e), (f), (g), (h) and (k) of the Health Code, replacing 45 degrees Fahrenheit (7.2 degrees Celsius). This standard is intended to further retard the growth of some bacteria that are known to grow at 45 degrees Fahrenheit in ready-to-eat potentially hazardous foods. Through an oversight at the time, however, required maintenance temperatures for potentially hazardous cold foods in several other provisions of the Health Code were not amended. The amendments in this proposal substitute the more protective 41 degree Fahrenheit temperature requirement for refrigeration of potentially hazardous cold foods as follows: Health Code §47.37(d) (storage of milk for children in day care services); §81.09(b) (storage of intact shell eggs); §81.41(a)(3) (maintenance of potentially hazardous cold foods in dispensing devices); §88.09(a) (maintenance of potentially hazardous or perishable cold foods by temporary food service establishments, e.g., booths at street fairs); §115.17(d) (labeling of formula milk); and §115.27(a) (post-sterilization formula milk cooling and keeping). The temperature requirements in §111.23 (post-pasteurization milk cooling and keeping temperatures) are not being amended, since the Department will, in the near future, request that the Board repeal nearly all of Article 111 ("Milk and Milk Products"), with the possible exception of its dating provisions, since the Department no longer regulates dairy product processing.

Refrigerated holding equipment

In the resolution adopting the above-referenced refrigeration temperature requirements in 1998, the Board added a new subdivision (k) to §81.09 allowing food service establishment operators to continue to use existing refrigerated holding equipment, regardless of whether such equipment was able to maintain the more stringent cold holding temperature. This provision also states, however, that within five years, or by July 1, 2003, all refrigeration equipment in food service establishments must be able to maintain cold foods at the lower temperature. Since §81.09(k) has expired, and is no longer applicable, it is being repealed.

Renumber §81.09(j)

Subdivision (j) of §81.09, which was included in the repeal and re-enactment of Article 81, effective September 1, 1996, is being deleted from §81.09 and renumbered as a separate section of Article 81 of the Health Code. This subdivision authorizes the Department to impose additional requirements on a food establishment whenever necessary to prevent the occurrence of "public health hazards." This clarifies the Department's interpretation that notwithstanding the original placement of this provision in §81.09, "public health hazards" include not only conditions related to

handling of specific potentially hazardous foods, but hazards resulting from such other insanitary conditions as repeated and uncorrected infestations of pests, improper use of toxic chemicals (cleaning supplies and pesticides), poorly maintained, dirty or inoperative equipment, facilities and plumbing, which threaten the health or safety of the establishment's patrons. In addition, since the term "public health hazards" is not defined in either the Health Code or in Part 14 of the State Sanitary Code, the provision refers to prevention of recurrent "imminent health hazards," a term which is defined in both Article 81 and the Sanitary Code.

Changes made in response to public comments

The Department's original proposal to amend the Health Code included a new §81.10 allowing food service establishments to use time as the public health control for holding potentially hazardous ready-to-serve foods. At the public hearing, comments were received from food service establishment industry representatives raising questions concerning handling of ready-to-eat comminuted meat products, procedures in pizzerias, take out food items, and hanging poultry. The Department is currently reconsidering the appropriate approach to these issues. Therefore, the Department has asked the Board to withdraw consideration of the proposed addition of this new section until these issues can be resolved.

50. Statement of Basis and Purpose in City Record July 21, 2005:

NOTICE OF EMERGENCY ADOPTION, EFFECTIVE IMMEDIATELY,

OF AN AMENDMENT TO TITLE 24 OF THE RULES OF THE CITY OF

NEW YORK ADDING CHAPTER 25 ("SERVICE OF FINAL ORDERS

IN ASSISTED OUTPATIENT TREATMENT")

Statutory Authority

Amendment of Title 24 of the Rules of the City of New York is authorized by §389(b) and 1043(a) and (h) of the New York City Charter (the "Charter"). Charter §389(b) providews that "heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law." Charter §1043(a) authorizes each agency to "adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law." Section 1043(h) authorizes a City agency to engage in emergency rulemaking in order to address "an imminent threat to health, safety, property or a necessary service."

Statement of Basis and Purpose

Pursuant to Charter §552, the Division of Mental Hygiene of the Department of Health and Mental Hygiene is the "local governmental unit for purposes of the mental hygiene law," and the executive deputy commissioner heading that Division "has the powers of a director of community services of a local governmental unit" as set forth in the state mental hygiene law. Under MHL §9.60(b), which creates a program of "assisted outpatient treatment," the director of community services for the City of New York is responsible for the administration of the assisted outpatient treatment program in New York City, and is further defined as a "director" pursuant to MHL §9.60(a)(2).

Recent amendments to MHL §9.60(j)(6), §4 of Chapter 158 of the Laws of 2005 of New York State, provide as follows:

"The director shall cause a copy of any court order issued pursuant to this section to be served personally, or by mail, facsimile or electronic means, upon the assisted outpatient, the mental hygiene legal service or anyone acting on the assisted outpatient's behalf, the original petitioner, identified service providers, and all others entitled to notice under

subdivision (f) of this section."

This provision is effective June 30, 2005, see §11(a) of Chapter 158 of the Laws of 2005 of New York State.

In order to implement the requirement that the Department "cause" these court orders to be served, the Department is promulgating a rule that where the Department is not the petitioner, and the petitioner is an inpatient hospital, such hospital shall serve the order personally on the subject of the petition. This rule will ensure that the subject of the petition is timely served, and will facilitate service of the order either at the court hearing on the petition, if the order is available at that time, or prior to the time that the subject is discharged from the hospital. The provision of an affidavit of service to the Department will be evidence of service in the event that there are collateral attacks on the validity of the order due to non-service. Finally, requiring the petitioners to provide the Department with a copy of the order will ensure that the Department is notified about all orders so that it is able to perform its statutory duties under the assisted outpatient program to arrange for and monitor the delivery of a package of services consistent with the court order.

Finding of Immediate Threat

It is hereby certified that the immediate effectiveness of this emergency rule relating to assisted outpatient treatment is necessary to prevent an immediate threat to health, safety, property, and a necessary service. I hereby make the following finding of immediate threat to health, safety, property, and a necessary service necessary in order to establish that an emergency rulemaking is required.

Amendments to the New York State Assisted Outpatient Treatment (AOT) program statute, also known as Kendra's Law, are effective on June 30, 2005. The legislation resulting in those amendments was introduced in the New York State Assembly on June 20, 2005. Without provisions for service of AOT court orders in place as of the effective date of the new amended statute, AOT court orders may be subject to collateral attack and may not be effective. Those eligible for the AOT program constitute a high-risk group of the mentally ill.

It is therefore hereby certified that the immediate effectiveness of a rule relating to service of final orders in assisted outpatient treatment is necessary to address an immediate threat to health, safety, property, and a necessary service.

Thomas R. Frieden, M.D., M.P.H. Commissioner New York City Department of Health and Mental Hygiene

Michael R. Bloomberg, Mayor July 11, 2005

51. Statement of Basis and Purpose in City Record Oct. 6, 2005:

Statutory Authority

This rule is promulgated pursuant to New York City Charter §§389(b) and 1043(a) and §17-188(f) of the New York City Administrative Code. Section 1043(a) of the Charter provides that each "agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law". Section 389(b) similarly provides that the "heads of mayoral agencies shall have the powers to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law. Section 17-188(f) of Chapter 1 of Title 17 of the Administrative Code authorizes the Commissioner of the Department of Health and Mental Hygiene to "promulgate such rules as may be necessary for the purpose of implementing the provisions of this section, including, but not limited to, rules regarding the quantity and location of automated external defibrillators to be placed in a particular public place or general category of public place; the form of notice in which the availability of automated external defibrillators in a public place shall be made known to the public and any accompanying fee; and any information on the use of automated external defibrillators that must accompany and be kept with each automated external defibrillator. . . ."

Statement of Basis and Purpose

This rule is required to be promulgated pursuant to §17-188 of the Administrative Code, specifically subsections (b), (c), (f) and (j) thereof, and is necessary for that law's proper implementation and enforcement. The general purpose of §17-188 of the Administrative Code is to make "automated external defibrillators" available in the "publicly accessible areas" of certain "public places" in order to encourage persons to "voluntarily and without expectation of monetary compensation" provide first aid or emergency treatment using an automated external defibrillator that has been made available pursuant to this section, to a person who is unconscious, ill or injured. . . .". Section 24-01 of a new Chapter 24 of Title 24 of the Rules of the City of New York provides the meaning of specific words and terms used in this rule and in §17-188 of the Code and further provides that the meaning of other words and terms used in the rule are as specified in §17-188 of the Code. In response to a comment received, the definition of "publicly accessible areas" in §24-01(b)(3) has been modified. The revised version makes clearer that this definition was not intended to exclude employees but rather to clarify which areas within these public places are open to the public. The definition of "membership" in former §24-01(b)(4) has been deleted from the final version because §631 of the New York State General Business Law ("GBL") reflects the State Legislature's intent to preempt the area of automated external defibrillators in health clubs, as now set forth in §627-a of the "GBL". Section 627-a, which went into effect on July 20, 2005, establishes statewide requirements relating to the provision of automated external defibrillators in health clubs. Therefore, consistent with §631 of the "GBL", those provisions of Local Law 20 of 2005 as they relate to health clubs and related facilities defined in §17-188(a)(3)(vii) of the Code are of no force and effect. The definition of "membership" as it relates solely to health clubs and related facilities has been deleted.

Section 24-02 provides that those required to make automated external defibrillators available pursuant to §17-188 must in implementing this rule also comply with the requirements of §3000-b of the New York State Public Health Law in connection with the acquisition, possession and operation of automated external defibrillators. Section 24-03 provides necessary guidance as to the appropriate location and quantities of automated external defibrillators that must be maintained pursuant to the new law. According to §24-03(a), the owner or operator of a public place, as defined in §17-188(a)(3) of the Code and limited by §17-188(e) of the Code, must "place at least one automated external defibrillator(s) in a prominent location in that public place." Subsection (b) of this section provides that the automated external defibrillator(s) is to be "located or placed so that this equipment can be obtained in a timely manner". Section 24-04 entitled Required Notice: Signage Information, provides the information that is required to appear on the wall sign informing the public as to the availability of an automated external defibrillator at that location and specifies where that wall sign should be placed. It also identifies information that must be included on a second sign and provides that this second sign may be placed either on a wall or on the face of the storage container in which the automated external defibrillator is contained. In response to a comment, changes to §24-04 reducing the minimum height of the lettering on the required signage and allowing the use of the abbreviation "AED" have been made. The Department determined that the use of the abbreviation and the size reduction in lettering would not affect legibility and that these changes were necessary to ensure that the language could be accommodated on the signage. Upon further consideration, the Department has deleted paragraph (ii) of subsection (e) of §24-04 as unnecessary. The reference to a paragraph (i) has, accordingly, also been deleted. The content of former paragraph (i) remains as subsection (e) of §24-04. Section 24-05 specifies what must be contained in a required written Site-Specific Response Plan and provides that the Plan must be made available to the Department upon its request.

In response to a comment, the definition of "On A Regular Basis" in §24-01(b)(7) was modified to increase the number of senior centers that would be required to make an automated external defibrillator available by reducing the number of hours of services per week, including lunch, that a senior center has to provide before it is required to have an automated external defibrillator. A definition of "Advanced Life Support" [§24-01(b)(8)] and a section entitled "Nursing Homes" [§24-06] have been added as the Department determined that there existed a need to provide guidance to nursing homes as to which facilities would have to make automated external defibrillators available and the number of trained responders that must be specifically required in those facilities.

52. Statement of Basis and Purpose in City Record Dec. 16, 2005:

The New York City Department of Health and Mental Hygiene ("Department") is required by law to protect and promote the health of all New Yorkers. This requirement includes the prevention and control of chronic disease as well as communicable disease. The Bureau of Chronic Disease Prevention and Control, in the Division of Health Promotion and Disease Prevention, oversees the Diabetes Prevention and Control Program. Diabetes, a life-long disease, has recently become epidemic in New York City (NYC) and is a major public health problem. The prevalence of diabetes in NYC has doubled in the past ten years. The NYC 2003 Community Health Survey (CHS) estimates that 9% (530,000) of adult New Yorkers and 20% of adults over 65 have diagnosed diabetes. People may have diabetes an average of 4-7 years before being diagnosed, and it is estimated that another 265,000 may have diabetes and not yet know it. Diabetes is now the fourth leading cause of death in New York City, moving up from 6th in 2002. This epidemic condition requires similar or greater urgency in public health response to that traditionally accorded to infectious disease monitoring and control.

For infectious and non-infectious health conditions, including blood lead levels and communicable diseases, laboratory-based reporting has proven to be an efficient and reliable way to collect surveillance data. Other sources of surveillance data include New York State chronic disease registries, such as for cancer and the dementias, which are populated by case reports from clinicians. Of historical interest, Dr. Hermann Biggs, a prominent figure in public health, instituted a practice of requiring doctors to report all cases of tuberculosis (TB) to the city, provided free testing in the Department of Health laboratory and introduced methods for follow-up care in the 1890s. His approach provided the guideline to address the TB epidemic with the emergence of drug resistant forms of TB in NYC in the 1990s.

The laboratory reporting of Hemoglobin A1C (A1C), a measure of bloodglucose control reflecting average blood sugar levels over the past 3 months, can be used for public health surveillance and monitoring of trends of blood sugar control in people with diabetes. Evaluating these trends can be used to:

· Plan programs in the Diabetes Prevention and Control Program,

· Measure outcomes of diabetes care, and thereby

· * Direct more efficient interventions to health care institutions, health care providers and people with diabetes.

For example, the A1C registry can be used by the Department to report a roster of patients to clinicians, stratified by patient A1C levels, highlighting patients under poor control (e.g., A1C>9.0%) who may need intensified follow-up and therapy. The registry can also be used to direct resources to people with diabetes under poor control. This intervention approach has been used by the National Institute of Health funded Vermont Diabetes Information System (VDIS). The VDIS is a regional registry-based decision support and reminder system, targeted to primary care providers and their patients with diabetes. The registry is populated automatically by electronically submitted test results, including A1C, from clinical laboratories across Vermont. These results are reported back to clinicians daily and quarterly, and to patients when they have elevated values or are overdue for testing. The system is a promising approach to utilizing a registry to improve quality of care and clinical outcomes by focusing the attention of primary care providers on a population approach to delivering care.

The Department, consistent with the position of the national American Diabetes Association, recommends that people with diabetes have their A1C measured every 3-6 months. The goal for A1C is less than 7.0%, which is considered "good" blood sugar control (average blood sugar of 170 mg/dL). Despite many cost-effective treatments, diabetes care in the US remains sub-optimal. The 1999/2000 National Health and Nutrition Examination Survey (NHANES) estimates that only 37% of US adults with diabetes have an A1C < 7.0% and 20% have an A1C>9.0% ("poor" blood sugar control). In New York State, 31% of diabetic patients in commercial managed care and 42% in Medicaid Managed Care have an A1C>9.0%.

There is strong evidence that with tight blood sugar control (A1C < 7.0%), the small blood vessel complications (eye disease, kidney disease and peripheral nerve disorders) of diabetes can be reduced by over 25%. For every drop of

1% (e.g., from 9% to 8%), there is a 35% reduction in small blood vessel complications. Keeping the average blood sugar (A1C) under 7.0% can prevent many diabetes-related complications and deaths.

The Department has amended Article 13 of the NYC Health Code to address this epidemic. Amendment of current law to include the reporting of A1C will advance the public health approach to surveillance and management of the epidemic of diabetes. The reporting of all A1C test results is important for program planning, education, outreach, disease management and surveillance purposes. The Department has provided stringent confidentiality requirements that would prevent the sharing of diabetes diagnoses with anyone other than the patient or the treating medical providers. In the case of a minor, this information would be disclosed to the minor's parent or legal guardian. This information therefore, could not be used, for example, to make it more difficult for persons with diabetes to obtain or renew a driver's license, health insurance, life insurance, etc.

The Department requires that laboratories be mandated to report blood tests identified by the following terms:

a) For A1C and/or the appropriate LOINC codes **(www.loinc.org).**

Synonyms/Inclusions:

· HgbA1c

· HgbA1c by HPLC

· HbA1c

· Glycohemoglobin A1C

· Gycolhaemoglobin

· Glycohemoglobin

· Glycated Hgb

· Glyco-Hb

· GHb

· Ghb

Exclusions:

· Hgb

· Hemoglobin

· Hb

· Hb without reference to glycated or glycosylated or A1C

· Glycohemoglobin total

The Department requires that all laboratories that report through the Electronic Clinical Laboratory Reporting System (ECLRS) via file up-load method be required to report A1C in an electronic format defined by the Department's Bureau of Integrated Data Systems in cooperation with the Diabetes Prevention and Control Program. The provision of this data should represent a minor burden on laboratories already participating in electronic reporting, requiring minimal

one-time programming changes in order to submit the additional tests.

The creation of a clinical laboratory based A1C registry is a promising approach to guide the Department in achieving the goal of preventing diabetes-related complications and death by the improvement of blood glucose control in New Yorkers with diabetes. In addition, the Department has amended §13.03(a)(1) of the Health Code regarding what information must be reported by clinical laboratories for any and all reportable conditions. Specifically, the Department requires the reporting of the date of birth and address of the person from whom the specimen was taken. These elements are already required by the New York State Department of Health to be reported by laboratories to public health authorities. [**See** Laboratory Reporting of Communicable Diseases 2004, issued by New York State Department of Health].

For more information about diabetes and this proposal, see
http://www.nyc.gov/html/doh/downloads/pdf/diabetes/diabetes-presentation-a1c-registry.pdf

53. Statement of Basis and Purpose in City Record Dec. 16, 2005:

Section 11.03 of the Health Code identifies the various diseases and conditions, which are required to be reported to the Department. The Department amends §11.03(a) of the Health Code to designate as reportable certain diseases/conditions that have recently emerged, or have become of greater public health concern, and to remove certain diseases that are of diminished public health concern. A number of the diseases/conditions, which the Department has added to its list of reportable diseases/conditions are currently required to be reported to the Department pursuant to the New York State Sanitary Code, applicable in New York City [**See** Public Health Law §228]. In addition, §11.03 is amended to clarify the time frame and manner of reporting to the Department.

Furthermore, the Department amends §11.64 of the Health Code with regard to animal diseases. Specifically, certain animal diseases are being added to the list of those required to be reported to the Department immediately and modifications are made regarding the manner of reporting to the Department in relation to animal diseases.

Additions to §11.03(a)

· Hepatitis D, Hepatitis E and other suspected infectious viral hepatitides

The Department amends §11.03(a) of the Health Code such that "Hepatitis D" (also known as "Delta Hepatitis"), "Hepatitis E" and "other suspected infectious viral hepatitides" are added to the list of reportable diseases and conditions. Hepatitis D, or Delta Hepatitis, is clinically similar to Hepatitis B. It can be severe, and it is always associated with a coexistent Hepatitis B infection. Infection can be self-limited or may become chronic. Outbreaks of Hepatitis D have been documented in certain countries in Africa and South America, and have been most commonly linked to injecting drug use. Hepatitis D can be controlled through Hepatitis B vaccination efforts. Therefore, it is important for Hepatitis D to be reported in a timely fashion.

Hepatitis E is clinically similar to Hepatitis A; there is no evidence of a chronic form. Hepatitis E most often occurs in developing countries with inadequate sanitation. In 2003, two Hepatitis E outbreaks were documented in Japan, associated with consumption of raw meat. By adding Hepatitis E to the list of reportable diseases, the Department is able to more accurately describe the epidemiology of this infection, particularly in New York City residents returning from travel to developing countries, as well as to recognize local transmission. Given the continued recognition of new strains of viral hepatitides, the Department has added "other suspected infectious viral hepatitides" in order to facilitate the identification of new Hepatitis viruses.

· Influenza caused by novel influenza viral strain with pandemic potential

The Department amends §11.03(a) of the Health Code such that "Influenza caused by novel influenza viral strain with pandemic potential" is added to the list of reportable diseases and conditions.

This terminology would include influenza infections caused by novel or re-emergent animal or human influenza viruses that are causing, or have the potential to cause, a pandemic. Influenza viruses with pandemic potential are further defined as viruses that may or are causing increased morbidity and/or mortality in humans, and which either have, or may develop, the capacity to spread efficiently from person to person.

Widespread epizootics due to a highly pathogenic influenza virus, such as avian Influenza A (H5N1), have been intermittently reported among wild and domestic birds in Asia since 1997. The most recent epizootic began in early 2004 and has been difficult to eradicate. Countries that have had confirmed Influenza A (H5N1) include China, Thailand, Vietnam, Laos, Indonesia, Cambodia, South Korea and Japan. Large culling operations have taken place to prevent further spread of the virus among fowl, and to reduce the risk of transmission to humans, with variable success.

To date, there have been 108 confirmed cases of human Influenza A (H5N1) in Vietnam (87), Thailand (17) and Cambodia (4). Among these, 54 (50%) patients have died. There is still no definitive evidence of sustained person-to-person transmission of Influenza A (H5N1)-the prerequisite for any influenza strain demonstrating a pandemic potential-and it is believed that most human H5N1 cases have resulted from direct contact with infected birds or surfaces contaminated with excretions from infected birds. However, the concern remains regarding the potential for reassortment among avian and human influenza viruses. Such a reassortment could result in a new strain capable of sustained person-to-person transmission, with the potential to set off a global influenza pandemic.

· Influenza, laboratory-confirmed

The Department amends §11.03(a) of the Health Code such that "Influenza, laboratory-confirmed" is added to the list of reportable diseases and conditions. Influenza is a common cause of respiratory illness in the United States during the months of October through May. Influenza illness results in significant morbidity and mortality yearly among the very young, the elderly, and those persons with chronic illness. The Center for Disease Control and Prevention estimates national mortality from influenza illness is approximately 36,000 deaths per year. Outbreaks of influenza in long-term care facilities and in communities can also challenge an already burdened healthcare system. A pandemic of influenza would have the capability to cause substantial illness and death, disruption of healthcare and other social services, and widespread panic. The yearly impact of influenza illness and the possibility of a pandemic give impetus for enhancing current influenza surveillance systems for early detection of illness and implementation of control measures.

Influenza is currently reportable in many states, including New York. The Department requires only laboratories that electronically submit files through the Electronic Clinical Laboratory Reporting System (ECLRS) to report positive influenza laboratory test results. Laboratories that do not use the ECLRS reporting methods above may of course, report positive influenza test results but are not required to report. The addition of laboratory-confirmed influenza enhances influenza reporting and surveillance efforts and provides more comprehensive and complete information on influenza activity, including season-to-season comparisons of the number of cases and age groups affected. Adding laboratory confirmed influenza to the reportable disease list also brings the Health Code into compliance with the New York State Sanitary Code, which was amended to include laboratory-confirmed influenza on December 1, 2004.

· Influenza-related deaths of children less than 18 years of age

The Department amends §11.03(a) of the Health Code such that "Influenza-related deaths of children less than 18 years of age" is added to the list of reportable diseases and conditions. Influenza is a well-recognized cause of mortality in the elderly and individuals with preexisting health conditions. Pediatric deaths have been thought to account for a small fraction of overall annual influenza mortality. During the 2003-04 influenza season, reports of influenza-related deaths in children brought this problem into greater focus. More information on severe influenza in children is needed to understand the epidemiology and target appropriate prevention. There were 142 influenza-related pediatric deaths nationally, five of which occurred in New York City, from October 11, 2003 to March 22, 2004. Preliminary data suggests that previously well children over the age of 2 years were affected, a group not presently targeted for

vaccination. There were fewer cases of influenza-related pediatric deaths in 2004-05, with 33 cases in the United States and only 2 laboratory confirmed cases in New York City. More information is needed on the risk factors for infection, complications, therapeutics, causes of deaths and strain genetics in order to construct an effective prevention strategy.

· Monkeypox

The Department amends §11.03(a) of the Health Code such that "Monkeypox" is added to the list of reportable diseases and conditions. Monkeypox is a viral illness and a member of the **Orthopoxvirus** group. It is primarily an illness of rodents but can cause disease in primates including man. The illness manifests with pustular lesions that resemble smallpox and can be fatal in up to 10% of cases. Person-to-person transmission has been documented in outbreaks. In June of 2003, the first ever outbreak of human monkeypox occurred in the United States. An imported rodent from Africa infected domestic prairie dogs that then infected 72 humans in 6 Midwestern states. Adding monkeypox to the reportable disease list also brings the Health Code into compliance with the New York State Sanitary Code, which was amended to include monkeypox on July 11, 2003.

· Severe Acute Respiratory Syndrome

The Department amends §11.03(a) of the Health Code such that "Severe Acute Respiratory Syndrome (SARS)" is added to the list of reportable diseases and conditions. SARS emerged in the Guangdong Province of China in the fall of 2002 and rapidly gave rise to outbreaks in 29 countries, particularly in health care settings. After a non-specific viral prodrome, the disease can cause pneumonia and death particularly in the elderly or infirm. Evidence has shown that a coronavirus is the causative agent. In 2003, the United States had eight confirmed SARS cases; none were in New York City. Due to the explosive potential for nosocomial outbreaks should a single case of SARS occur, especially if the patient is not rapidly placed in isolation, it is necessary for the Department to immediately be notified of a suspect or confirmed case of SARS. Adding SARS to the reportable disease list also brings the Health Code into compliance with the New York State Sanitary Code, which was amended to include SARS on February 25, 2004.

· Shiga toxin-producing **Escherichia coli** (STEC)

The Department amends §11.03(a) of the Health Code such that "Shiga toxin producing **Escherichia coli** (STEC)" is added to the list of reportable diseases and conditions. The prior case definition and reporting for **E. coli** O157:H7 required modification to accommodate changes in clinical laboratory practice. This revision allows reporting of illness caused by other serotypes of pathogenic Shiga toxin-producing **E. coli** (STEC). **E. coli** O157:H7 infection was made reportable in October 1994 in recognition of its public health importance as a serious foodborne pathogen. Other serotypes of Shiga toxin-producing **E. coli** are also capable of causing diarrhea, hemorrhagic colitis, and hemolytic uremic syndrome (HUS). Non-O157 enterhemorrhagic E. coli (EHEC) have caused several outbreaks of diarrhea and HUS in the United States and, in small studies, have been isolated from diarrheal stool samples with similar frequency as **E. coli** O157:H7.

· **Staphylococcus aureus** with reduced susceptibility to Vancomycin (SARSV)

The Department amends §11.03(a) of the Health Code such that "**Staphylococcus aureus** with reduced susceptibility to Vancomycin (SARSV)" is added to the list of reportable diseases and conditions. **Staphylococcus aureus (S. aureus)** is an important source of nosocomial infections, causing diseases ranging from mild skin and soft tissue infections to potentially fatal systemic diseases like invasive necrotizing pneumonia, endocarditis and toxic shock syndrome. During the 1950s, widespread resistance to penicillin developed and in the 1970s, resistance developed to the newer class of semisynthetic pencillinase resistant antimicrobials (e.g., methicillin, oxacillin) leading to increasing use of vancomycin to treat methicillin resistant **S. aureus** (MRSA). By the late 1990s, resistance to vancomycin was beginning to be reported in a few locations around the world and in late 2002, the first two cases of vancomycin resistant **S. aureus** (VRSA) were documented in the United States. Vancomycin is ineffective in the treatment of VRSA, which is defined as having a Minimum Inhibitory Concentration (MIC) >32 ug/mL. However, we know that

there are **S. aureus** that have intermediate sensitivity to vancomycin, defined as VISA (vancomycin intermediate **S. aureus**), with MICs between 8-16 ug/mL, and vancomycin is less effective in treating these organisms.

Emerging resistance to one of the last remaining effective antimicrobials for **S. aureus** makes it critical to identify suspected resistant or intermediately susceptible organisms so that measures can be put in place rapidly to curtail its transmission within the health care setting. Since MRSA are known to be highly transmissible in health care settings, it is reasonable to assume that SARSV isolates would be no less transmissible given the opportunity. Identification of SARSV infection in a health care setting should prompt a thorough epidemiologic investigation and implementation of control measures to prevent transmission. By making **Staphylococcus aureus** with reduced susceptibility to Vancomycin (SARSV) reportable, the Department is better able to monitor the incidence of this emerging nosocomial pathogen. Tracking trends over time would allow the Department to monitor the effectiveness of these measures in limiting the spread of SARSV in health care settings.

· Vaccinia disease

The Department amends §11.03(a) of the Health Code such that vaccinia disease is added to the list of reportable diseases and conditions. In 2003, smallpox vaccination resumed, as part of bioterrorism preparedness planning in the event of a smallpox outbreak. Over 500,000 persons have been vaccinated in the United States, including 369 in New York City and although the rates of some adverse events were less than expected, adverse events that had not been previously recognized were also identified, such as myocarditis/pericarditis. Smallpox vaccination of health care and public health response teams is expected to continue in New York City to ensure sufficient staff capacity to respond to the initial patients affected by a smallpox outbreak, should one occur due to an intentional release of the virus. Continued surveillance of adverse events is necessary to ensure safe and proper usage of the vaccine and to expedite optimal treatment of individuals with more severe adverse events. By making vaccinia infections reportable, the Department is better able to monitor for complications of smallpox vaccination efforts among persons vaccinated as well as their contacts, and request on a timely basis vaccinia immune globulin and/or cidofovir to treat severe adverse reactions, when indicated.

The term "vaccinia disease" shall mean:

1. Persons with vaccinia infection due to contact transmission; and,

2. Persons with the following complications from vaccination: eczema vaccinatum, erythema multiforme major or Stevens-Johnson syndrome, fetal vaccinia, generalized vaccinia, inadvertent inoculation, myocarditis or pericarditis, ocular vaccinia, post-vaccinial encephalitis or encephalomyelitis, progressive vaccinia, pyogenic infection of the vaccination site, and any other serious adverse events (i.e., those resulting in hospitalization, permanent disability, life-threatening illness or death).

Adding vaccinia disease to §11.03(a) is consistent with the New York State Sanitary Code, which was amended to include vaccinia disease on December 17, 2003.

Deletions from §11.03(a)

· Hepatitis, Non-A, Non-B

The Department amends §11.03(a) of the Health Code such that "Hepatitis, Non-A, Non-B" is removed from the list of reportable diseases and conditions, since such terminology is no longer necessary. The term "Non-A, Non-B" hepatitis was coined some thirty years ago to describe hepatitis that was transmitted similarly to hepatitis B but failed to react on standard serological tests. Medical knowledge and technology have advanced such that numerous viruses (designated by the letters A, B, C, D, E, and G) have been found to cause hepatitis. The majority of hepatitis infections formerly classified as Non-A, Non-B are believed to be due to hepatitis C. The Department amends §11.03(a) such that the known types of hepatitis viruses are reportable as specified above.

· Visceral larva migrans (Toxocariasis)

The Department amends §11.03(a) of the Health Code such that visceral larva migrans (Toxocariasis) is removed from the list of reportable diseases and conditions. Visceral larva migrans (VLM) is a helminth infection caused by **Toxocara canis** and other species. Dogs are the normal host and infection in humans, particularly young children, can result in fever, liver enlargement and rarely death. Dog feces are the major environmental source and eggs can remain viable even under harsh conditions. In 1978, New York State passed a law banning the disposal of canine and feline waste on streets and parks in large cities, including New York City. [**See** Public Health Law §1310]. Three cases of VLM have been reported since 1989 and none since 1992.

Additions to §11.64

The Department amends §11.64 of the Health Code to add Influenza caused by novel influenza viral strain with pandemic potential; Monkeypox and Severe Acute Respiratory Syndrome (SARS) to the list of animal diseases required to be reported to the Department immediately by telephone. As discussed above, these diseases present an epidemic threat to public health. In light of the significant risk to public health, the Department also amends §11.64 of the Health Code to require acute arboviral encephalitis in animals to be reported to the Department immediately, instead of within 24 hours of diagnosis.

54. Statement of Basis and Purpose in City Record June 30, 2006:

The New York City Department of Health and Mental Hygiene is required by law to protect and promote the health of all New Yorkers. This requirement includes the prevention and control of chronic disease, as well as communicable disease. The Department's Bureau of Chronic Disease Prevention and Control, in the Division of Health Promotion and Disease Prevention, supports programs which promote increased physical activities and nutrition to prevent chronic diseases. The Bureau of Day Care, in the Division of Environmental Health, enforces Article 47 ("Day Care Services") of the Health Code, which regulates public and private group day care services operating within New York City. The Bureau of Tuberculosis Control in the Division of Disease Control supervises reporting, control and prevention of tuberculosis in the City.

The Department has requested the Board of Health to amend various provisions relating to operation of day care services regulated by Article 47 of the Health Code. The affected provisions include §47.27(d), which has been amended to update requirements for day care staff tuberculosis testing and followup; §47.35(b), which has been amended to require increased indoor and outdoor play; adding a new §47.36 to require structured and guided physical activities and establish limits on sedentary TV viewing; and §47.37(b) and (c), which have been amended to update requirements for nutritional standards.

Tuberculosis testing and followup

Currently, Health Code §47.27(d) requires new employees and volunteers who work in sites that provide day care services for children to be medically evaluated for tuberculosis infection at hire and annually thereafter. This requirement dates from a time when tuberculosis rates were considerably higher than they are currently. Tuberculosis rates in New York City are at an all-time low although rates of newly reported cases continue to be high in certain populations within New York City (e.g., immigrant communities), and new tuberculosis infections are increasingly uncommon. Day care and other teachers are not considered to be among the populations at high risk for tuberculosis disease and infection, and no national body recommends annual testing for this group. See, e.g., "Targeted tuberculin testing and treatment of latent tuberculosis infection," US Centers for Disease Control and Prevention ("CDC"), MMWR, June 9, 2000. In view of these circumstances, this provision has been amended to eliminate annual retesting of day care staff for tuberculosis infection.

It is still important to monitor tuberculosis infection in new day care staff because they will be working with children, a vulnerable population. Children are at high risk of progressing from latent tuberculosis infection to active

tuberculosis disease. The purpose of testing staff and volunteers at hire is to intervene when there is evidence of tuberculosis infection to prevent such individuals from progressing from latent tuberculosis infection to active tuberculosis disease. This can be achieved by testing all day care staff when they are initially hired, and requiring reporting only of those persons with latent infection to the Department.

The amended provision also requires day care operators to report to the Department the names of newly hired staff found to be infected with latent tuberculosis, so that the Department may determine whether such staff were placed on treatment, and, if treatment was started, what was the final outcome. The Bureau of Day Care currently receives calls from day care operators requesting guidance when staff tuberculosis testing is positive. Requiring a formal report to the Department's Bureau of Tuberculosis Control will facilitate this Bureau's ability to improve completion of preventive treatment. Reports received will be considered confidential, in accordance with Health Code §11.07, and staff testing positive will not be compelled to undergo treatment for latent tuberculosis infection. Examination forms and instructions for their completion will continue to be provided by the Department, and will be modified to include instructions on reporting positive test results.

The amended provision preserves the Department's authority to order further tuberculosis testing of day care services staff and children at any time if deemed necessary for epidemiological investigation.

Obesity prevention

Obesity is epidemic in New York City, and it begins early in life. Being obese in childhood increases the likelihood of adult obesity, which is associated with diabetes, high blood pressure, high cholesterol, heart disease, and cancer. Nationally, childhood obesity more than doubled over the past two decades, from 7% in 1980 to 16% in 2002. U.S. Department of Health and Human Services ("DHHS"), **The Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity,** 2001. In 2003, a joint Department and Department of Education survey found that as early as kindergarten, 21% of children were obese. DOHMH, Vital Signs, June 2003. A 2004 study of NYC children ages two to four enrolled in the Special Supplemental Nutrition Program for Women, Infants and Children ("WIC") found that 22% were obese. Nelson, et al., American Journal of Public Health, 94, 2004. This level is more than 50% higher than national data reported by the CDC Pediatric Nutrition Surveillance System that 14% of two- to four year-old children from low-income families were obese in 2000. Sherry, et al. Archives of Pediatric and Adolescent Medicine, 158, 2004.

Obesity increases risks of diabetes, heart disease, stroke, cancer and other health problems. Fortunately, obesity is preventable and if obesity rates decrease, so will chronic disease and associated mortality. This epidemic requires similar urgency in public health response to that traditionally accorded to infectious disease monitoring and control. Left unabated, the CDC estimates that among children born in 2000, one of three will develop diabetes during their lifetime; this applies to one of every two Hispanic children. Narayan, et al. JAMA, 290, 2003.

Enhanced outdoor and indoor physical activities

Section 47.35(b) of the Health Code currently provides only that "[a]dequate periods of outdoor play shall be provided daily for all children, except during inclement weather." This provision has been amended to require that children be appropriately dressed for outdoor play and that in inclement weather, safe, active indoor play be substituted. In addition, a new §47.36 has been added to establish a required minimum number of minutes of structured and guided physical activity daily. Both the CDC and the National Association for Sport and Physical Education ("NASPE") recommend that toddlers and preschoolers receive a total of at least 60 minutes of physical activity per day, and that young children not be sedentary for more than 60 minutes at a time, except when sleeping. U.S. Department of Health and Human Services ("DHHS"), **Healthy People, 2010,** 2000; DHHS, **Physical Activity and Health: A Report of the Surgeon General,** 1996; NASPE, **Active Start: A Statement of Physical Activity Guidelines for Children Birth to Five Years,** 2002. This requirement is reduced proportionately for children who spend less than a full day in a day care service.

Limits on television viewing

An additional challenge to obesity prevention is the increasing amount of passive, sedentary time that children spend in front of the television. Television viewing is positively associated with an increase in body-mass index ("BMI"). Among children in the longitudinal Framingham Children's Study, those who watched the most television had the greatest increase in body fat when followed from age four to age 11. Proctor, et al., Int'l Journal of Obesity, 27(7), 2003. A study of three- to four-year-od children found that television viewing was a significant predictor of BMI over three years, and that it became an even stronger predictor over time. Jago, et al., Int'l Journal of Obesity, 29(6), 2005. Evidence from the Institute of Medicine also indicates that food and beverage marketing targeted to children ages 12 and under leads them to request and consume high-calorie, low-nutrient products. Institute of Medicine, **Food Marketing to Children and Youth,** 2006.

Excessive television and other sedentary viewing undermine the establishment of healthy behaviors in early childhood. Consistent with the recommendations of the Amercian Academy of Pediatrics ("AAP"), this new Health Code provision sets limits on television viewing in the group day care environment. In order to address the negative impact of television on children, the AAP recommends against television viewing for children younger than two years of age. For older children, the AAP recommends no more than one to two hours per day of quality, educational screen time. AAP Position Statement, **Television's impact on children,** 2002. Section 47.36(b) limits passive sedentary activities such as television viewing in group day care services to no more than 60 minutes per day. The limitation on passive sedentary activities is also to be applied proportionately to children who spend less than a full day in a day care service.

Nutritional standards

Section 47.37(b) of the Health Code currently states that "Food shall be supplied to children which is . . . sufficient in amount, varied according to a diet approved by the Department . . ." This language was written during a time when insufficient amounts of food were the major concerns affecting nutritional health, and when the Department maintained a Bureau of Nutrition with many nutritionists to review and approve day care menus. This language has been updated in order to address the current environment of obesity and the need for guidance on appropriate kinds of foods and portion sizes for children. The updated language also now accurately reflects the role and capacity of the Department in establishing nutritional guidelines, but not directly approving each day care service's diet plan.

In accordance with this amended provision, the Department will establish and distribute, or approve, nutrition standards and guidelines. The amended provision also establishes limits on beverages served by day care services. In order to reduce energy imbalance and juice overconsumption, the proposed regulations would only allow juice to be provided to children over eight months of age, and only 100% juice would be permitted. In the original proposal, children over six months of age would have been limited to consuming no more than six ounces of 100% juice per day. As a result of a comment from the New York State Department of Health Division of Nutrition Child and Adult Care Food Program ("CACFP"), the age limit has been increased to eight months to be consistent with CACFP regulations. Beverages with added sweeteners would not be permitted. Since parents and caregivers rarely set limits on juice consumption and since juice can be consumed more quickly than its whole fruit equivalents, children are prone to over-consume juice. Although juice has some benefits, it offers no nutritional advantage over whole fruit. In fact, juice lacks the fiber of whole fruit, and is more concentrated with sugars and calories.

When milk is served, children ages two and older may receive only low-fat (1%) or non-fat (skim) milk, unless medically indicated. Although potable drinking water supplies are already required by §47.39, a new paragraph (iv) of §47.37(b) requires that water be made easily accessible to children throughout the day, including at meals.

These beverage standards are consistent with the AAP Position Statement, **The Use and Misuse of Fruit Juice in Pediatrics,** [Pediatrics, 107(5), 2001] and the American Heart Association's "Dietary Recommendations for Children and Adolescents: A Guide for Practitioners." Pediatrics, 117(2), 2006; USDA/DHHS, **U.S. Dietary Guidelines,** 2005.

In addition, §47.37(c), which applies to food provided by parents, has been similarly updated to provide guidance to parents, through materials provided or approved by the Department, regarding current nutritional standards.

Because of the addition of a new §47.36, the Table of Section Headings has also been amended.

55. Statement of Basis and Purpose in City Record June 21, 2006:

At its December 14th 2005 meeting, the Board of Health adopted various amendments to Article 11 of the Health Code. For example, various diseases/conditions were made reportable to the Department in §11.03(a). Section 11.03(c) amended the time frame for reporting the various diseases and conditions. Subsequently, the Department noticed an inadvertent omission in §11.03(a). That is, there were 4 diseases/conditions that were included in §11.03(c) regarding time frame for reporting but were inadvertently omitted from the actual list of reportable diseases/conditions in §11.03(a). These four diseases/conditions are the following: Glanders, Melioidosis, Staphylococcal enterotoxin B poisoning and Viral hemorrhagic fever. It is important to note that despite the absence of these specific diseases/conditions in §11.03(a), they are already required to be reported to the Department pursuant to the New York State Sanitary Code, which is applicable in New York City by virtue of Public Health Law §228. [**See** 10 NYCRR §§2.1 and 2.10.]

Therefore, the Department hereby amends §11.03(a) of the Health Code to include the following diseases/conditions:

· Glanders

· Melioidosis

· Staphylococcal enterotoxin B poisoning

· Viral hemorrhagic fever.

56. Statement of Basis and Purpose in City Record Dec. 11, 2006:

The Department of Health and Mental Hygiene (the "Department") enforces provisions of the New York City Health Code ("Health Code") and other applicable law relating to food served directly to the consumer throughout the City, including food that is commercially prepared, and sold or distributed for free, by food service establishments, a broad category which includes restaurants, caterers and mobile food vending units. The Department also regulates non-retail food processing establishments, such as mobile food vending commissaries, as defined in Health Code §89.01, which supply food for mobile vending units.

Background

Restaurants (the term is being used interchangeably with "food service establishments" or "FSEs") are an important source of daily food intake for New York City residents: an estimated one third of daily caloric intake comes from foods purchased in restaurants. Assuring safe and healthy dining options is a public health priority. The Department issues permits and inspects all New York City FSEs and non-retail food processing establishments, as defined in §81.03(j) and (p) of the Health Code. The public health concern addressed by this amendment is the presence of trans fat in foods served in restaurants, which represents a dangerous and entirely preventable health risk to restaurant goers. Yet New York City restaurant patrons currently have no practical way to avoid this harmful substance.

Accordingly, the Board of Health has amended Article 81 of the New York City Health Code to restrict the service of products containing artificial trans fats at all FSEs. The Department is charged with preventing and controlling diseases, including chronic disease, through approaches, that may address individual behavior or the community environment. By restricting FSEs from serving food that contains artificial trans fat, except for food served in the

manufacturer's original sealed package, we can reduce New Yorkers' exposure to an avoidable hazard in the food environment that is associated with increased heart disease risk.

Basis for restricting service of products containing artificial trans fat.

Heart disease is New York City's leading cause of death. In 2004, 23,000 New York City residents died from heart disease and nearly one-third of these individuals died before the age of 75. Scientific evidence demonstrates a clear association between increased trans fat intake and the risk of coronary heart disease. Most dietary trans fat is found in partially hydrogenated vegetable oil ("PHVO")-oil that has been chemically modified. Scientific studies which examine the change in cholesterol levels when trans fat is replaced with currently available heart healthy alternatives conservatively estimate a reduction of 6% in coronary heart disease events such as heart attacks. Even in the most conservative estimates, based on replacing trans fat primarily by saturated fat-an unlikely outcome given the widespread trend to healthier fats by food producers-a significant although smaller reduction in coronary heart disease events is still expected. Other scientific studies, based upon observing large groups of people over time estimate that up to 23% of coronary heart disease events could be avoided by replacing trans fat with healthy alternatives. Because an estimated one third of dietary trans fat comes from foods purchased in restaurants, the continued presence of PHVO in restaurant foods represents an important contribution to cardiovascular risk for New York City diners.

Dietary trans fat increases the risk of heart disease by elevating LDL ("bad") cholesterol, and lowering HDL ("good") cholesterol. Because of its negative effect on "good cholesterol", trans fat appears to be even worse than saturated fat. The Institute of Medicine ("IOM") reviewed the scientific evidence and concluded that there is "a positive linear trend between trans fatty acid intake and total and LDL concentration, and therefore increased risk of coronary heart disease". The 2005 Dietary Guidelines for Americans, issued by the United States Department of Agriculture ("USDA"), recommends that dietary intake of trans fat be "as low as possible" and the American Heart Association guidelines issued in June 2006 recommend that trans fat intake be kept below 1% of total energy intake. In January of 2006, the FDA's mandatory listing of trans fat content on the nutrition facts labels of packaged foods came into effect.

Approximately 80% of dietary trans fat is found in industrially-produced PHVO, which is used for frying and baking and is present in many processed foods. Approximately 20% is naturally occurring and is found in small amounts in dairy and meat products from ruminant animals.

The artificial trans fat found in PHVO is produced when hydrogen is added to vegetable oil in a process called hydrogenation. Common FSE sources of artificial trans fat include: foods fried in partially hydrogenated vegetable oils; margarine and vegetable shortening; prepared foods such as pre-fried French fries, fried chicken, taco shells and donuts; baked goods such as hamburger buns, pizza dough, crackers, cookies, and pies; and pre-mixed ingredients such as pancake and hot chocolate mix.

Figure 1. Sources of Trans Fat in the U.S. Diet

The major source of dietary trans fat, found in PHVO, can be replaced with currently available heart healthy alternatives. Denmark has recently successfully removed artificial trans fat by limiting industrially produced trans fat content in food to 2% of total calories from fat. In addition, in June 2006 the Canadian Trans Fat Task Force issued a report recommending that Canada limit trans fat in food service establishments to 2% of total fat content in margarines and vegetable oils and 5% of total fat content in all other food ingredients. "Zero grams" trans fat packaged foods in the US, both new products and those already in production, have been extensively marketed since the labeling requirement for packaged foods became effective in January of 2006. Many manufacturers have reformulated a number of their existing products that are now widely available as "zero grams" trans fat (defined by the FDA as < 0.5 grams per serving) on supermarket shelves. A recent **New England Journal of Medicine** article reports that industry and government representatives agreed that the restriction of trans fat in Denmark "did not appreciably affect the quality, cost or availability of food." This experience demonstrates that artificial trans fat can be replaced without consumers

noticing an effect. Acceptable healthier alternatives to PHVOs include traditional mono and poly unsaturated vegetable oils (e.g., canola, corn, olive, etc.) that have not been hydrogenated, as well as newly developed oils such as those made from specially cultivated varieties of soybeans, safflowers, and sunflowers. Further, many of the newer trans fat-free oils have long "fry lives"r and other favored characteristics of PHVOs. Educational and enforcement efforts will seek to promote a shift to healthier fats. In response to increased demand, US companies are expanding production of products that will increase the market supply of alternatives to hydrogenated oils.

Consumer trans fat consumption and the contribution of FSEs

National surveys show that Americans spend almost half (47%) of their food dollars eating out. One third of daily caloric intake comes from foods purchased in restaurants. The continued presence of artificial trans fat in restaurant foods needlessly increases the risk for heart disease for all of our city's residents.

Consumer concern about trans fat in food is evidenced by the increase in national sales of products labeled "no trans fat" by 12% to $6.4 billion for the 52 weeks ended October 2, 2004, compared with the previous 52-week period. Nutrition ranks second after taste as the factor most frequently influencing food puchases. Moreover, artificial trans fat can be replaced with heart-healthier oils and fats without changing the taste of foods.

Prevalence of use of partially hydrogenated vegetable oil in NYC FSEs

In June 2005, the Department launched the Trans Fat Education Campaign. The campaign called on all NYC FSEs to voluntarily remove FHVO from the foods they were serving. This was supported by extensive educational outreach to food suppliers, consumers and to every licensed restaurant in New York City.

To assess use of PHVO-containing products by FSEs, the Department conducted two surveys: one prior to the campaign (May 9 through June 10, 2005) and another nine months after the campaign (April 3 through May 5, 2006).

In both the 2005 and 2006 survey findings, the prevalence of PHVO-containing oils used for frying, baking or spreads was approximately 50% at FSEs where product content could be determined. While a lack of labeling or product identification of some products precludes a precise estimate of the prevalence of use, the data show that PHVO use remained common and has not declined substantially despite the Trans Fat Education Campaign.

Why focus on trans fat over other fats?

The IOM conclusion that there is no safe level of artificial trans fat consumption is in contrast to other dietary fats which, when consumed in moderation, are a natural part of a healthy diet. Artificially produced trans fat is relatively new to our food supply and confers no known health benefit. Because healthy, inexpensive alternatives exist for the most common source of trans fat, PHVO, their continued use by FSEs poses an unnecessary public health threat.

Why use 0.5 grams per serving of trans fat as a threshold?

Current FDA labeling regulations allow manufacturers of foods packaged for direct sale to consumers in retail markets to list trans fat content as "0 grams" if the product contains less than 0.5 grams per serving. This allows for the presence of naturally occurring trans fat in meat and dairy foods as well as newer "low trans fat" foods, which may have PHVO listed as an ingredient. The proposed provision intentionally allows for products that have less than 0.5 grams per serving (evidenced either on a Nutrition Facts label or in information provided by the manufacturer) in order to accommodate most of the newly formulated low trans fat margarines on the market, and allows for substitute spreads.

Response to comments

The Department received more than 2,200 written and oral comments in favor of the amendment, and 70 comments opposed to the proposed amendment. It was brought to the Department's attention that the term "margarine"

is found in some ingredients lists on labels of products, and that margarines may contain artificial trans fat. While only subdivision (d) of the original proposal included the term "margarine," the proposal has been amended to clarify that it is intended to restrict use of margarine that contains artificial trans fat. In addition, since some comments stated that in practice it could take longer to reformulate recipes to accommodate the restriction on artificial trans fat in baked goods and deep fried yeast dough and cake batter, the proposal has been amended. Accordingly, the effective date of the restriction on use of oils, margarines and vegetable shortenings containing artificial trans fats that are used for frying and as spreads will remain July 1, 2007, but the effective date for oils and shortenings used for deep frying yeast dough and cake batter and for all other foods containing artificial trans fat has been extended to July 1, 2008.

57. Statement of Basis and Purpose in City Record Dec. 11, 2006:

The Department of Health and Mental Hygiene (the "Department") enforces provisions of the New York City Health Code ("Health Code") and other applicable law relating to food served directly to the consumer throughout the City, including food that is commercially prepared, and sold or distributed for free, by food service establishments, a broad category which includes restaurants, caterers and mobile food vending units. The Department also regulates non-retail food processing establishments, such as mobile food vending commissaries, as defined in Health Code §89.01, which supply food for mobile vending units.

Background

Restaurants (the term is being used interchangeably with "food service establishments" or "FSEs") are an important source of daily food intake for New York City residents: an estimated one third of daily caloric intake comes from foods purchased outside of the home. Assuring safe and healthy dining options is a public health priority. The Department issues permits and inspects all New York City FSEs and non-retail food processing establishments, as defined in §81.03(j) and (p) of the Health Code. Although federally mandated nutrition labeling on food products for sale in supermarkets facilitates informed choice, consumers lack such essential information to make healthy choices when eating in restaurants. Calorie information, if provided at the time of food selection, would allow New Yorkers to make more informed choices. Accordingly, Article 81 of the New York City Health Code is being amended to require that information on calorie content values of menu items be available to patrons of FSEs at the time of ordering when such information is otherwise made publicly available by or on behalf of the FSEs.

The Department is charged with preventing and controlling diseases, including chronic disease, through approaches that may address individual behavior or the community environment. By requiring posting of available information concerning restaurant menu item calorie content, so that such information is accessible at the time of ordering, this Health Code amendment will allow individuals to make more informed choices that can decrease their risk for the negative health effects of overweight and obesity associated with excessive calorie intake.

Obesity is epidemic

According to measured height and weight data from the National Health and Nutrition Examination Survey (NHANES), the obesity rate among U.S. adults more than doubled over the past three decades from 14.5% in 1971-1974 to 32.2% in 2003-2004. In New York City, more than half of adults are overweight and one in six is obese. Obesity begins early-21% of New York City kindergarten children are obese. People who are overweight are at increased risk for diabetes, heart disease, stroke, high blood pressure, arthritis, and cancer. Diagnosed diabetes more than doubled over the past decade and now affects three quarters of a million New Yorkers.

If rates of obesity continue to rise unabated, it has been estimated that one in three children (and half of Hispanic children) born in 2000 will develop diabetes in his or her lifetime.

'Away from Home' food consumption increasingly fuels obestity and chronic illness

Americans are increasingly eating meals away from home. In 1970, Americans spent 26% of their food dollars on

foods prepared outside their homes while by 2006 they spent almost half (48%) of their food dollars eating out. As previously noted, the average American consumes about one third of calories from foods from restaurants. Children eat almost twice as many calories when they eat out than when they eat at home.

Nutrition labeling works and is supported by consumers and leading experts

Since 1994, the federal Nutrition Labeling and Education Act (NLEA) has made nutrition information available to consumers on packaged foods purchased in retail stores. This information is widely used. Three-quarters of American adults report using food labels, and about half (48%) report that nutrition information on food labels has caused them to change their food purchasing habits. However, NLEA explicitly exempts restaurants from nutrition labeling requirements, and at most restaurants, people can only guess the nutrient content of foods at the point of purchase. Current voluntary attempts by some food service establishments to make available nutrition information are inadequate particularly because the information is usually not displayed where consumers are making their choices and purchases. When FSEs' nutrition information is available on the internet, patrons need to have access to off-site websites. Such information may also be available in brochures, on placemats covered with food items, or on food wrappers, where the information is hard to find or difficult to read and only accessible after the purchase is made. Thus the information provided has little impact on choice.

Without calorie information, it is difficult for consumers to compare options and make informed decisions. People do not accurately guess the calorie content of foods and beverages, and calorie information will help guide food choices. Recent studies found that 9 out of 10 people underestimated the calorie content of less-healthy items by an average of more than 600 calories (almost 50% less than the actual calorie content). When calorie information was provided on food items, consumers chose high-calorie items 24% to 37% less often.

Additional marketing research has shown that providing nutrition information affects consumer attitudes and purchasing intentions. Consumers consistently underestimate the nutrient levels in food items and overestimate the healthfulness of restaurant items. When consumers are made aware of nutrition information at the point of purchase, disease risk perceptions increase, attitudes toward the product change, and purchasing intentions for unhealthy products decrease. Presenting nutrition information on restaurant menus empowers consumers and influences food choices.

Studies consistently show that consumers would like to have this information. Six nationally representative polls have found that between 62% to 87% of Americans support requiring restaurants to list nutrition information.

A key recommendation of a recent Food and Drug Administration-sponsored expert group report on obesity and eating away from the home was that, "Away-from-home food establishments should provide consumers with calorie information in a standard format that is easily accessible and easy to use. Participants believe that information should be provided in a manner that is easy for consumers to see and use a part of their purchasing and eating decisions. Information should be provided for any standard menu item offered on a regular and ongoing basis that is prepared from a standardized recipe, whether the item is an entire meal or a meal component. Non-standard items, including daily specials and experimental items, may be exempted. Information should be provided for the standard menu item as usually offered for sale (i.e., the base product, in the portion size as offered for sale), since most means of providing information cannot easily account for changes due to customization and special orders."

Changes to Health Code to require calorie labeling

New York City needs to address the rapidly growing twin epidemics of obesity and diabetes. Calorie labeling is a public health intervention to help address these problems. Providing simple, point-of-purchase calorie information would allow consumers to make more informed food choices in restaurants just as they currently can in supermarkets.

As amended, Health Code §81.50 requires FSEs that make calorie information for standardized menu items publicly available (published by or on behalf of the FSE) on or after March 1, 2007, to post such calorie (kcal)

information on menu boards and menus, next to each menu item (Figure 1). Of course, in order for the calorie information to be accurate, such a requirement can only be implemented for food items that are standardized with regard to portion size, formulation, and ingredients. Therefore, it is expected that the proposal would apply only to the approximately 10% of New York City food service establishments that serve food menu items in portions that are standardized for size and content and currently post calorie information on these items. Posting of calorie content information will be required for any menu items for which calorie content has been made publicly available. Calorie amounts shall be posted in a size and typeface at least as large as the price or name of the menu item. This provision does not require any FSE to engage in analysis of the nutrition content of its menu items, but does require restaurants that make such information publicly available to their customers to post it in plain sight, so it is available at the time of ordering. By doing so, these FSEs will enable New Yorkers to have the information they need to make more informed choices.

MENU Calories Price

HAMBURGER 280 .89

CHEESEBURGER 330 .99

FISH FILET 470 1.99

CRUNCHY CHICKEN 550 2.79

4 OZ HAMBURGER 430 2.29

EXTRA BIG HAMBURGER 540 2.29

BIG BIG BURGER 590 2.39

GRILLED CHICKEN 450 2.89

8 OZ BURGER 760 2.99

FIGURE 1: Example of Menu Board with Calorie Labeling

Only FSEs that make nutritional information publicly available on or after March 1, 2007, such as in brochures, signage, websites, or other means, will be required to post calorie information. Posted calorie content information will be calculated in accordance with 21 CFR §101.9(c)(1)(i) or its successor regulation. FSEs would not be precluded from providing additional nutrition information voluntarily.

The Department's restaurant inspectors would be responsible for enforcing the requirement that nutrition information is provided on menu boards and menus.

Changes made in response to public comments

Substantial support was received for the proposal in written comments and oral testimony. Of the approximately 2,200 written and oral comments received, all but 22 supported the amendment. The proposal has been further amended in response to the comments and for clarity. To clearly identify the number of calories displayed as in Figure 1, above, FSEs will be required to place the word "calories" or "cal" as a heading above the column listing the number of calories, or adjacent to the calorie content value for each menu item. In response to comments that requiring display of the median calorie content value for menu items offered in a range of flavors or varieties could be confusing, the proposal has been amended so that FSEs will now be required to display the range (minimum to maximum) of calories applicable to all flavors or varieties rather than calculating the median number of calories for the menu item. Finally, FSEs will also be allowed to exercise flexibility in how they display calorie information at the point of purchase, subject to the

Department's prior approval.

58. Statement of Basis and Purpose in City Record Dec. 11, 2006:

In the City of New York, the Department's Bureau of Tuberculosis Control is responsible for carrying out the Department's duties under the Public Health Law, Charter, Health Code and State Sanitary Code of preventing transmission of tuberculosis (TB) disease and securing treatment for persons who have or are suspected of having TB. While the Department has been highly successful during the past decade in controlling TB transmission, including transmission of disease caused by highly resistant strains of TB, the challenge for the Department is to identify and prevent further illness from developing in populations currently at highest risk for TB exposure and disease. A first step in such efforts is testing for TB infection and use of an accurate test is essential. When active disease is ruled out in a person with positive test results, the Department recommends that such persons receive treatment for latent TB infection (LTBI) to prevent future development of active disease.

The tuberculin skin test administered by the Mantoux method (TST) has been used to screen for **Mycobacterium tuberculosis** infection for over a century. However, the TST has several disadvantages and there has been much interest in developing a new test to better detect TB infection. Recently a new blood-based test, QuantiFERON;rM-TB Gold (QFT-G; Cellestis Limited, Carnegie, Victoria, Australia), was approved by the U.S. Food and Drug Administration (FDA). The U.S. Centers for Disease Control and Prevention (CDC) released guidelines in December 2005 that stated that QFT-G can be used in all settings in which the TST is used. QFT-G is an enzyme-linked immunosorbent assay (ELISA) that detects the release of interferon-gamma (IFN-**y**) in whole blood from sensitized persons when it is incubated with mixtures of synthetic peptides that simulate proteins present in **M. tuberculosis.** QFT-G has shown similar sensitivity and better specificity than the TST. Additionally, QFT-G results are not subjective like the TST and the test only requires one patient visit. Two other blood-based TB tests, including a new version of QFT-G, are currently being reviewed by the FDA and are expected to receive approval in the near future. There has been increasing demand for QFT-G in the community and soon it likely will be offered by many non-DOHMH providers. Blood-based tests are expected to become the standard means of detecting TB infection. Therefore, it is important that the Health Code reflect the availability of these tests and the change in TB control practice.

Accordingly, all provisions of the Health Code that pertain to tuberculosis testing, currently only referring to skin testing, are being amended to allow use of both tuberculin skin testing administered by the Mantoux method and the new FDA approved blood-based tuberculosis diagnostic test, or any other FDA approved blood-based test. The affected provisions include §11.03 ("Disease and conditions reportable") and §11.47 ("Tuberculosis; reporting, examination, exclusion, removal and detention") in Article 11 ("Reportable Diseases and Conditions"); §45.09 ("Staff") in Article 49 ("General Provisions Governing Schools and Children's Institutions") and §49.06 ("Mandatory tuberculosis examination") in Article 49 ("Schools"). Amendments to provisions relating to required tuberculosis examinations for day care services staff in Article 47 were adopted by the Board of Health at its June, 2006 meeting.

Additionally, the tuberculosis examination requirement for home employees in §11.48 ("Home Employees; testing for tuberculosis; referral.") has been repealed, as no longer serving any substantive public health purpose. Since 1974, this provision has required that home employees, working for eight or more hours weekly in a household occupied by children aged six and under have pre-employment and annual tuberculin skin tests. The tested employee is required to present to the employer a written certification from a physician indicating that he or she is "free of tuberculosis in a communicable form." Although §11.48(c) requires this certification to be retained by the employee and "exhibited to a duly designated representative of the Department on request," it is impossible to know if this testing requirement has been complied with in any regard. Moreover, the current view of the purpose of conducting screening for tuberculosis infection is to identify individuals with latent infection in order to provide treatment to prevent active tuberculosis disease. Although Department records show that there are, on average, four cases of active tuberculosis per year reported as occurring among private home employees, none of these cases were reported as a result of pre-employment or annual screening.

59. Statement of Basis and Purpose in City Record June 20, 2007:

The New York City Department of Health and Mental Hygiene (Department) is amending §11.03(a) of the New York City Health Code (Health Code) to remove "urethritis, non-gonococcal" (commonly referred to as "NGU") from the list of reportable diseases/conditions because there is no longer a public health value in having this reported to the Department.

NGU was made a reportable disease/condition with the intent that it serve as a surrogate measure of **Chlamydia trachomatis** infection in the male population. At the time NGU was made reportable, there were very limited diagnostic tests for **Chlamydia trachomatis,** and men were not routinely tested or screened for that infection. There are now highly sensitive and specific tests for **Chlamydia trachomatis** which may be performed on male urethral and urine specimens, and males are being tested and screened for this infection with increasing frequency, and reported to the Department. For this reason, reports of NGU are no longer likely to represent **Chlamydia trachomatis** infection, and in any event, monitoring reports of laboratory-confirmed **Chlamydia trachomatis** infection is the best means of measuring the burden of that disease in the population. Therefore, the Department hereby amends §11.03 of the Health Code by removing NGU from the list of reportable diseases/conditions.

60. Statement of Basis and Purpose in City Record Oct. 30, 2007:

The Commissioner received a petition from a permittee, Infant Formula Laboratory Services, Inc., to commence rule making under Article 9 of the New York City Health Code (Health Code) to amend Article 115 ("Formula Milk for Infants") of the Health Code. Richard Miller, President of the Infant Formula Laboratory Services, Inc., to amend Article 115 to allow for an exception in §115.27 ("Operations; sterilization of formula milk") that would allow a physician to ask that a specific formula be prepared under aseptic conditions and not be sterilized after preparation.

In response to the petition, the Department proposes that Article 115 be repealed and reenacted, to update all of its provisions, not just those pertaining to sterilization of prepared infant formula. As reenacted, Article 115 reflects and is consistent with current practices, and applies to other child and adult formula preparations.

In addition, the Board of Health is repealing in its entirety Article 116 ("Infant Formula in Hermetically Sealed Containers") as its provisions are outdated, and because production of infant food formula, including nutritional standards, labeling requirements and good manufacturing practices, are comprehensively regulated by the Federal Food and Drug Administration (FDA).

Background

There is only one formula preparation facility in the New York Metropolitan area. The Infant Formula Lab Service is a private family owned and operated business which prepares customized infant, toddler, child, and adult nutritional formulas and delivers the prepared formulas to medical facilities. These formulas are prepared from commercially manufactured formula preparations, that are modified, reconstituted and/or re-formulated upon the order of a physician or other authorized practitioners to meet individual nutrition needs of newborn, pediatric and adult hospitalized patients. Many hospitals, including those operated by the City's Health and Hospital Corporation, use the services of Infant Formula Lab Service because they no longer operate formula rooms in their own facilities. As an infant formula permittee in New York City, Infant Formula Lab Service is required to comply with Articles 115 and 81 ("Food Preparation and Food Establishment"), and other provisions of the Health Code, and under current rules must sterilize all infant milk products prepared. However, the manufacturers of some formulas, whether powdered or liquid, or made with milk or other protein-based food products may specify on their labels that no further sterilization or heat treatment be used following preparation, as sterilization reportedly destroys nutrients. The American Dietetic Association in its **Guidelines for Preparation of Formula and Breastmilk in Health Care Facilities** endorses the use of sterile water, hand antisepsis techniques, sanitization of equipment and utensils, and aseptic (clean or no-touch) technique. Thermal heating is not recommended as a routine method for preparation of infant formula.

The most recent 2004 guidelines of the American Dietetic Association (ADA) for institutional infant feeding preparation do not recommend terminal heating in all cases:

Terminal heating (pasteurization) is not recommended as a routine method for preparation of formulas for infants in health care facilities, because of potential alteration of the nutritive and physical characteristic of the prepared formula. Terminal heating is a method of heat processing formula used to kill vegetative forms of microorganisms where the formula is heated to a temperature of 180 degrees Fahrenheit (82 degrees Celsius) and then is rapidly cooled to a safe temperature. Most facilities are not able to pasteurize milk. Some formulas for infants, such as those containing free amino acids or small peptides, will be nutritionally compromised by terminal heating. Unless oxygen is eliminated from the head space of the bottles, the degradation of Vitamin C will slowly continue, even though the formula is refrigerated. Other potential problems include changes in the physical elegance of the product and other nutrient degradation with extreme and prolonged heating (greater than 212 degrees Fahrenheit).. .Some health care facilities have used autoclaves (steam under pressure) for terminal heating of infant formulas. This method frequently exposed the product to excessive heat, which may result in the carmelization of sugars, physical changes, chemical changes and nutrient loss. Manufacturers of formulas for infants recommend that autoclaves not be used to prepare formula in health care facilities. Autoclaves may be appropriately used only to sanitize empty bottles or equipment*.1

Article 115 is derived from §174 of the City Sanitary Code and Regulations. The original Sanitary Code provision was adopted in 1947, and revised without substantive change in 1959 when it was included in the first publication of the Health Code. It has been amended only twice since then, in 1971 and 2005. Article 115 is now substantially outdated, fails to recognize that infant formula is prepared with other than milk-based food products, and is not applicable, for example, to the following non-milk based preparations.

· Soy-based formulas, suitable for infants who cannot tolerate lactose in most milk-based formulas or who are allergic to the whole protein in cow milk and milk-based formulas. The soy protein is a specific protein isolate fortified with L-methionine, combinations of corn maltodextrin, sucrose, or corn syrup solids provide carbohydrate; and vegetable blends to provide fat. These formulas are marketed in powdered, liquid concentrate, and liquid ready-to-eat forms.

· Protein hydrolysate-based formulas, for infants with milk allergy or intolerance to intact protein. These formulas are marketed in powdered, liquid concentrate, and liquid ready-to-eat feed forms. Enzymatically hydrolyzed casein, fortified with selected amino acids, provides nitrogen; combinations of corn syrup solids, maltodextrin, or sucrose provide carbohydrate; and vegetable oil blends provide fat. One protein hydrolysate-based product also includes medium chain triglyceride (MCT) oils as a fat source.

· Amino acid-based formula, for infants who do not tolerate formulas based on cow milk proteins, soy protein isolate, or casein hydolysate. At least one amino acid-based formula currently marketed in the United States contains corn syrup solids, free amino acids, and a vegetable oil blend as sources of macronutrients. This amino acid-based formula is available only in powdered form, and loses nutrients if sterilized after being reconstituted.

New Provisions of Article 115

In addition to substituting the term "prescription formula" for the term "formula milk" throughout the article, Article 115 includes the following changes. Changes made in response to public comments are included.

The title has been changed from "Formula Milk for Infants" to "Prescription Formula Preparation Facilities" to reflect the new scope and applicability of the article. The listing of section headings has been amended accordingly to reflect the changes in the section headings of the article.

§115.01 Scope. Reflects the change in applicability from formula milk for infants to all kinds of prescription formulas; indicates that facilities regulated by the article are considered "non-retail food processing establishments" and thereby subject to all applicable provisions of Article 81 of the Code.

§115.03 Definition. The new definition of prescription formula includes not only milk-based formulas but other protein-based formula products such as soy protein-based formulas, protein hydrolysate-based formulas, and amino acid-based formulas. It includes powdered or liquid foods with a basic ingredient of milk, milk constituent, or other liquid or powdered protein-based food which is prepared for an individual infant, child, or adult in accordance with a prescription by a physician or other health care practitioner.

§115.05 Permit. This section has been changed to eliminate permission to operate before a permit has been issued.

§115.07 Compliance with Code. This section has been changed to eliminate reference to specific articles of the Code, and to require compliance with all applicable provisions of the Code.

§115.09 Preparation and sale on physician's or other health care practitioner's order. The original proposal reflected the fact that many orders for modifications of manufactured formula are transmitted by hospital dietitians, eliminating preparing formula in response to requests from nurses, or parents. In response to a comment from two State chapters of the American Academy of Pediatrics, however, that dietitians in hospitals may not lawfully prescribe therapeutic diets, this provision has been further amended to reflect current State law. 10 NYCRR §405.23(c)(1), e.g., provides that "therapeutic diets in a hospital shall be prescribed by the practitioner or practitioners responsible for the care of the patients." In a note to this section, the Department has listed practitioners who are authorized by law to prescribe medications for patients.

§115.11 Standards; ingredients. This section has been amended to eliminate references to milk produced pursuant to Article 111 ("Milk and Milk Products") of the Code. Except for milk dating, Article 111 is also considerably out of date and milk production standards are established and enforced by federal and state authorities.

§115.13 Standards; sterilization and purity of prescription formula preparations. This section has been amended to eliminate the requirement that all prescription formula preparations be sterilized, but continues to require that production facilities and equipment be maintained in sanitary, aseptic conditions, and that samples be periodically analyzed for microbiological contamination pursuant to a schedule approved by the Department. Products which fail such analysis are to be embargoed in accordance with applicable provisions of the Health Code.

§115.15 Time of delivery. Previously titled "Standards; time" this section originally required, instead of delivery on the day of the order, delivery of prepared prescription formula to the person ordering the formula within 24 hours of preparation, to preserve the safety and nutritional quality of the formula. However, in response to comments received referencing the World Health Organization's 2007 guidelines for "Safe preparation, storage and handling of powdered formula," this provision has been further amended to clarify that prescription infant formula preparations that are either prepared from a powder base, or a liquid base that has been amended, be timely delivered so that they may be consumed or destroyed within 24 hours of preparation. Other formula preparations may be consumed or discarded no later than within 48 hours of preparation.

§115.17 Labeling of containers. Previously titled "Standards; labeling" this section now requires labeling of the individual containers of prescription formula, rather than the cartons in which the containers are delivered, and requires labels to include information recommended by the ADA and U.S. Centers for Disease Control and Prevention. Reconstituted powdered infant formula, and liquid infant formula that has been amended must be labeled with a 24 hour use by or discard time, and if made from powder base, be clearly marked as reconstituted from "powdered" formula. To further clarify the labeling requirement in response to a comment, the Code will allow more than one label to be attached to the container if necessary, so that not all information needs to be included on a single label.

§115.19 Physical facilities, equipment and processing deletes provisions that are duplicative of those in Article 81 relating to sanitary conditions required for a non-retail food processing establishment, but retains those that are unique to a facility required to maintain aseptic conditions and to separate preparation and utility functions. A prescription formula preparation facility, as a non-retail food processing establishment, is required to have all food preparation

activities supervised by a holder of an approved food protection certificate, in accordance with §81.15 of this Code. Separate rooms are to be used for the preparation adult and children's formula. Preparation rooms must be organized to prevent unsanitary contamination of product and equipment, and to avoid possible allergic reactions and other adverse health effects that may be caused by cross-contamination from different kinds of formula bases.

§115.21 Packaging and sterilization. Lowers holding temperatures of prepared prescription formulas from the current 41° F to 40° F in accordance with ADA Guidelines for Preparation of Formula and Breast Milk in Health Care Facilities for control growth of **E. sakazakii** in manufactured powered infant formula. In response to a comment, attaching a 2007 version of the World Health Organization's guidelines for "Safe preparation, storage and handling of powdered infant," a new subdivision (d) has been added to require that sterile water used in preparation of infant powder based formula be cooled to a temperature no lower than 158° F (70°C) since such a practice was found to dramatically reduce the risk of bacterial infection. As initially published, subdivision (e) [relettered as subdivision (f)] of §115.21 requires that reconstituted powdered formula be cooled to 37° F (2°C to 4°C) within one hour of preparation. Relettered subdivision (f) of §115.21 is derived from ADA Guidelines for Preparation of Formula and Breast Milk in Health Care Facilities and the Food and Agriculture Organization of the United Nations and the World Health Organization's report on Enterobacter sakazakii and Other Microorganisms in Powdered Infant Formula recommended temperatures for cooling and maintaining reconstituted powdered infant formula to prevent infection with certain microorganisms, including, but not limited to, **E. sakazakii.** Prepared prescription formula must be packaged in individual single service food grade containers, and closed with a cover or cap that effectively seals and protects the mouth of the container. Containers may be closed with suitable, incised nipples protected with fitted outer caps. Containers of prescription formula shall be sterilized unless other processing is required by the physician or practitioner's order, or the manufacturer's label on the package for a specific formula.

§115.23 Records. This provision retains certain record keeping requirements of current §115.29 that are relevant to modern operations of the prescription formula preparation facility, but eliminates those that are no longer applicable.

Finally, Article 116 ("Infant Formula in Hermetically Sealed Containers") should be repealed in its entirety since the FDA now regulates manufacturing of all such formulas. See, 21 CFR Parts 106, 107.

References:

Infant Feedings: Guidelines for Preparation of Formula and Breastmilk in Health Care Facilities, Sandra T. Robbins and Leila T. Beker, editors; Pediatrics Nutrition Practice Group, American Dietetic Association, copyright 2004.

International Food Safety Authorities Network, INFOSAN **Information Note No. 1/2005-Enterobacter sakazakii, Enterobacter sakazakii in powdered infant milk formula**

Enterobacter sakazakii and Other Microorganisms in Powdered Infant Formula, Meeting Report 2004 FAO/WHO Microbiological Risk Assessment Series.

US Centers for Disease Control and Prevention, **MMWR,** April 12, 2002/51(14); 298-300: Enterobacter sakazakii Infections Associated with the Use of Powdered Infant Formula-Tennessee, 2001.

Safe preparation, storage and handling of powdered infant formula; guidelines, 2007, World Health Organization in collaboration with Food and Agriculture of the United Nations.

61. Statement of Basis and Purpose in City Record Nov. 13, 2007:

The Department of Health and Mental Hygiene is adopting two amendments to Chapter 6 ("Food Units") of Title 24 of the Rules of the City of New York ("RCNY"). First, the Department clarifies that the removal or transfer of a decal on a mobile food vending unit by persons other than employees of the Department shall constitute an illegal

transfer that will result in the revocation of such permit or decal. Second, the Department is codifying the current practice of distinguishing violations received by mobile food vendor licensees. Since 1986, applicants for new and renewal licenses and permits have been required to pay only the fines and penalties accumulated for serious violations classified as "A" violations as a prerequisite before renewing or receiving a new license or permit. Fines and penalties accumulated for other less serious "B" violations must still be paid, but the satisfaction of such fines and penalties was not a prerequisite for the renewal or receipt of a license or permit. This rule classifies all violations by mobile food vendors of any provisions of the New York City Health Code ("Health Code"), the State Sanitary Code [10 NYCRR Chapter 1] ("Sanitary Code"), and Chapter 6 of these rules as "A" violations for which fines and penalties must be paid before renewal or issuance of any mobile vending license or mobile vending unit permit. The rule also codifies certain violations of Title 17 of the Administrative Code issued for improper street placement of mobile food units and unlicensed mobile vending as "A" violations.

Applicable Law

Mobile food vending in New York City is regulated by Subchapter 2 ("Food Vendors") of Chapter 3 of Title 17 of the Administrative Code; Articles 5, 81 and 89 of the Health Code; Part 14 of the Sanitary Code and Chapters 6 and 20 of 24 RCNY. Pertinent to the rule change are the following provisions of these laws and rules applicable to renewal and issuance of mobile vending licenses and permits:

Administrative Code §17-317(b) provides that the Commissioner "shall not issue or renew a food vendor license . . . if the applicant, licensee, . . . failed to pay any fine, penalty or judgment duly imposed pursuant to the provisions of this subchapter or any rules promulgated thereunder."

Health Code §5.05(f) bars the Commissioner from issuing a license or permit unless "there are no fines, penalties or forfeitures imposed by the Administrative Tribunal established by Article 7 which are due and payable by the applicant or the permittee."

Notices of violations ("summonses" or "NOV's") for which civil penalties are sought are adjudicated at the Environmental Control Board ("ECB"), in accordance with Administrative Code §17-325(d). Criminal summonses are returnable to Criminal Court. ECB's penalties for Health Code, Administrative Code and Chapter 6 mobile vendor violations are now codified in ECB's rules. See, 15 RCNY §31-107 ("Food Vendor Administrative Code Penalty Schedule") and §31-110 ("Health Code and Miscellaneous Food Vendor Violations Penalty Schedule"). These fines and penalties will be unaffected by the rule change.

Basis for rule regarding "A" violations

In 1981 certain mobile food vendor licensees challenged the Administrative Code provision that requires vendors to pay all fines and penalties for violations of the Administrative Code and Health Code prior to receiving or renewing a license or permit. See, **George Iliopoulos v. Koch** (Sup. Ct. NY Co.), Index No. 9342/81. In 1986, the City and plaintiffs settled the action, the City agreeing that it would deny renewal or issuance of mobile vending licenses and permits only for non-payment of fines and penalties imposed for specific serious violations deemed "A" violations. Fines and penalties accumulated for other less-serious "B" violations would still need to be satisfied, but such satisfaction has not been a condition for the renewal or issuance of a mobile vending license or permit. **Iliopoulos** further distinguishes "A" and "B" violations for determining which violations may be predicates for denial, revocation or suspension of mobile vending licenses and permits pursuant to Administrative Code §17-317(a)(2). This provision authorizes the Commissioner, after due notice and an opportunity to be heard, to refuse to issue, suspend or revoke a mobile vending permit or license if an applicant, licensee, permittee, or their employees "have been found guilty of four or more violations of this subchapter or any rules promulgated pursuant thereto within a two-year period or have been found guilty of a violation of the provisions of part fourteen of the state sanitary code or of the New York city health code, . . ."

This rule maintains the original **Iliopoulos** "A" classification of certain Title 17 mobile vending violations, related to street placement of carts, pedestrian public safety and adds to the "A" list vending foods without a license or permit. The New York City Police Department, which is also authorized to enforce these provisions of the Administrative Code, supports continuing these distinctions.

The rule eliminates any classifications for violations of applicable provisions of the Health Code, State Sanitary Code and Department regulations for a number of reasons. The passage of time, the repeal and reenactment of Article 81, and the Department's experience with mobile vending enforcement have made it clear that categorizing Health Code and Sanitary Code violations as more or less serious serves no public health purpose, since the only purpose in issuing summonses and trying to collect fines and penalties for such violations is to secure compliance with these important public health safeguards. If some Health Code violations are not punishable, and fines and penalties for such violations are not payable, why should any vendor ever comply with those Health Code provisions? As noted above, §17-317(a)(2) of the Administrative Code athorizes the Commissioner to revoke a food vending license if the licensee has been found in violation of four violations of the Administrative Code in a two-year period, but only one violation of the Health Code or Sanitary Code during the same period, indicating that more weight is to be accorded compliance with the Health Code and Sanitary Code. Finally, when the Board of Health repealed and reenacted Article 81 of the Health Code in 1996, it eliminated, renumbered and combined many of the Health Code violations previously categorized in the **Iliopoulos** stipulation as "A" violations, and added important new provisions to protect the public health to that Article.

It should also be noted that, while Department rules that codify the Department's inspection procedures for food service establishments classify violations as critical and general, all fines and penalties imposed on fixed location food service establishments for all sustained or defaulted violations of the Health Code and Sanitary Code must be paid before any such establishment's operator may renew its permit. See, 24 RCNY Chapter 23; Health Code §5.05(f). Accordingly, the classification of all mobile vendor Health Code and Sanitary Code violations as "A" violations is consistent with the Department's rules, as well as with the intent of the Health Code and the Administrative Code.

Although a comment on the proposed change questioned the Commissioner's authority to make this rule change, the rule is clearly within the Commissioner's authority under the New York City Charter. Moreover, the Department continues to believe that the best interests of the public will be served by a rule which emphasizes the gravity of violations of Article 81 of the Health Code and the Sanitary Code.

Basis for rule to clarify "transfer" and "assignment" of decals and licenses

The rule further amends Chapter 6 by adding a provision to clarify which mobile vending industry practices will be regarded as prohibited transfers or assignments of vendor licenses, permits, and the decals or insignias that are affixed to mobile vending units. Health Code §5.11 provides that the "purported or attempted transfer of a permit to a person not named therein as permittee . . . automatically revokes such permit." Health Code §5.13 holds permittees accountable for complying with the conditions of the permit and the Health Code and makes them jointly and severally liable for violations committed by their agents or employees. The Department is not proposing to prevent permittees from employing or authorizing other licensed vendors from operating their carts. However, licenses, permits and decals shall be subject to immediate seizure by Department inspectors if, upon inspection, the Department observes evidence of a prohibited transfer of a license, permit or decal. Under this rule, a prohibited transfer of a decal will include the removal, for any reason, of a decal from the vending unit to which the decal was applied by the Department inspector at the time the unit passed inspection, and its reattachment to or use on the same or another vending unit, by anyone but a Department inspector. If a cart is in an accident, otherwise damaged, or requires repairs affecting the part of the cart unit to which the Department attached the decal, removal of the Department decal by anyone other than authorized Department inspectors is explicitly prohibited. Reinspection of the cart and attachment of a new decal by the Department will be required in every such instance. The rule is intended to enable the public, as much as possible, to buy food only from carts that have passed Department inspection. When the Department identifies an improper decal transfer, it will act to revoke both the mobile vending unit permit and the permittee's mobile vending license. This rule

provides further notice to vendors that such practices constitute illegal transfers and are prohibited.

Use by a person other than the licensee of a licensed vendor's blue paper license or badge is also prohibited and the rule authorizes the immediate seizure of a vendor's blue paper license or laminate badge when either is found being used unlawfully by a person to whom it was not issued. The Department's concern is that only a food vendor who has a required food protection course and complied with all other legal duties be authorized to prepare and sell food to the public.

62. Statement of Basis and Purpose in City Record Mar. 17, 2006:

Section 11.03 of the Health Code identifies the various diseases and conditions, which are required to be reported to the Department. Section 11.03(a) of the Health Code is being amended to designate as a reportable disease "herpes infections in infants aged 60 days or younger (neonatal)." Neonatal herpes is a serious, potentially life-threatening condition, and local data are needed to provide reliable measures of the incidence of this disease.

Neonatal herpes (herpes infection in the newborn period) is the most serious outcome of maternal genital herpes infection. Its complications include neurologic devastation of the infant, and neonatal death. In addition to its serious outcomes, neonatal herpes is also one of the most common among all congenital and perinatal infections. Estimates of the incidence of neonatal herpes vary widely across regions of the US, from approximately 1/1,500 to 1/3,200 live births each year. Given the number of live births in the United States each year, these rates correspond to approximately 1300 to 2800 cases per year nationwide, making neonatal herpes more common than other reportable congenital and perinatal infections including congenital syphilis, rubella syndrome, perinatal HIV infection and gonococcal ophthalmia. Neonatal herpes is currently a reportable condition in seven states (Connecticut, Florida, Louisiana, Massachusetts, Nebraska, South Dakota and Washington).

Local data are needed regarding the incidence of neonatal herpes to:

1) Identify missed opportunities for prevention, and permit systematic assessment of gaps in provider knowledge.

There is an increasing potential to prevent neonatal herpes. Type-specific serologic tests for herpes are commercially available, amplification tests such as PCR have increased the sensitivity of diagnostic testing, antiviral therapy can be used to reduce viral shedding; and Cesarean delivery of infants born to mothers presenting with genital lesions can reduce the likelihood of perinatal transmission.

For infected infants, early institution of antiviral therapy is critical to prevent disseminated disease, and death, yet multi-center studies of neonatal herpes show that delays in instituting appropriate therapy persist. Such delays are likely due to provider failure to include neonatal herpes in the differential diagnosis for a febrile neonate, or failure to recognize clinical signs.

By making neonatal herpes infections reportable, the Department will be able to investigate cases of neonatal herpes to determine whether gaps in provider recognition of cases, or knowledge of prevention or treatment strategies could have contributed to the outcome of neonatal herpes, and to address gaps in knowledge with provider education and training. Making neonatal herpes reportable may be expected to increase awareness of the condition among both providers and the public, and has been strongly advocated in the peer-reviewed public health literature.*10

2) Prepare for the availability of a herpes vaccine and monitoring the effectiveness of vaccine use.

A vaccine for herpes simplex type 2 is currently in phase III trials and will likely be available for use in the next 8-10 years. Measures of the burden of neonatal disease are needed to establish a baseline from which to monitor the population impact of herpes vaccines. A failure of vaccine to impact upon neonatal herpes infection rates would suggest that an appropriate target group(s) was not being vaccinated, and would permit re-targeting of vaccination strategies.

3) Provide a reliable and accurate means to measure of disease burden.

Currently available approaches to quantifying neonatal herpes are inadequate. Though neonatal herpes is usually-but not exclusively-managed on an in-patient basis, there is no ICD-9 code specific to neonatal herpes so it is not possible to accurately measure the burden of disease using hospital discharge data. While estimates of disease incidence from other regions of the US are useful, local data are paramount because neonatal herpes incidence is likely proportional to genital herpes in women of child-bearing age, and the epidemiology of genital herpes may be expected to differ from region to region as herpes simplex type 1 and type 2 seropositivity varies between different population subgroups in the US defined by race/ethnicity and age.

4) Identify outbreaks of disease

The Department has recently been involved in the investigation of multiple cases of post-natally acquired neonatal herpes, associated with out-of-hospital circumstances. These cases, not congenitally or perinatally acquired, came to the Department's attention because hospitals and providers considered these instances reportable as `unusual manifestations of disease.' Making neonatal herpes reportable would ensure that such instances are reported, and thus enable the Department to identify outbreaks of this disease in a timely fashion, identify the source, and intervene to prevent subsequent cases.

No oral testimony was received at a public hearing on this proposal, but four written comments supported the proposal. Although one comment suggested that the age of infants for whom reporting is required be extended to one year of age, the Department is requiring only reporting for infants 60 days or younger, as occurrence in this age group is of the greatest concern.

63. Statement of Basis and Purpose in City Record Dec. 27, 2007:

Chapter 23 was added to the Department's rules in 2005 to codify inspection procedures of the Bureau of Food Safety and Community Sanitation (BFSCS) of restaurants and other kinds of food service establishments operating pursuant to Department permits. These procedures are intended to result in objective evaluations of sanitary inspections, establishing a system of point values for sanitary violations of Article 81 of the New York City Health Code (the Health Code) and Subpart 14-1 of the New York State Sanitary Code (10 NYCRR Chapter 1).

In December 2006, the Board of Health amended Article 81 of the Health Code, adding a new §81.08 that restricts service of foods containing artificial trans fats in all food service establishments. This Health Code provision is intended to improve the health of patrons, but will not affect Department determinations regarding the cleanliness of an establishment and whether food is uncontaminated by filth or vermin, or cooked, cooled and otherwise held and processed at temperatures to control microbial growth, so that it may be eaten with minimal risk of pathogenic food borne illness, and the Department's policy will be to exclude trans fat violations in calculating the score on a sanitary inspection. These violations will not be considered in determining whether a food service establishment passes or fails a sanitary inspection, and will not be included in the charts of violations appended to Chapter 23.

Accordingly, the Department proposes to amend Chapter 23 to clarify that violations not specifically included in the charts of violations in Appendix 23-A and Appendix 23-B of this Chapter will be excluded from the Chapter 23 sanitary inspection scoring procedures. Other provisions of Chapter 23 are being amended for consistency, including addition of a new definition for the term sanitary inspection.

64. Statement of Basis and Purpose in City Record Jan. 28, 2008:

Section 11.03 of the Health Code is being amended to designate as electronically reportable laboratory test results for the following diseases/conditions that can cause widespread illness in the community, have recently emerged, or have become of greater public health concern:

· Rotavirus (RV),

· Norovirus (NV) (formerly the Norwalk agent),

· Respiratory Syncytial Virus (RSV),

· Varicella (VZV),

· Methicillin Resistant **Staphylococcus aureus** (MRSA).

Section 11.03 of the Health Code is being amended to require electronic laboratory reporting to the Department of positive rotavirus, norovirus, RSV, VZV and MRSA test results; separate reporting by healthcare providers will not be required for these diseases. Section 11.03 of the Health Code is also being amended to remove scarlet fever as a reportable disease/condition. In addition, §11.03 of the Health Code is being amended to create a new subdivision (d) to require electronic laboratory reporting of antibiotic susceptibility profiles for reportable bacterial infections. Finally, §11.03 of the Health Code is being amended to create a new subdivision (e) to describe the manner of laboratory reporting for any of the reportable diseases/conditions listed in §11.03(a).

Additions to §11.03

Section 11.03 of the Health Code is being amended to add the following diseases of increasing public health concern as reportable conditions:

· Viral infections that cause community-wide seasonal illness

Several viral agents cause seasonal outbreaks that affect many NYC residents. Some of the most common agents are rotavirus (RV) and norovirus (NV), both major causes of seasonal gastroenteritis; and respiratory syncytial virus (RSV), a major respiratory pathogen.

Rotavirus

Rotavirus is the leading cause of severe diarrheal illness in both the developed and the developing world. It is estimated to be responsible for over 400,000 physician visits, 200,000 emergency department visits and 50,000 hospitalizations with direct and indirect costs of approximately $1 billion in the US alone.

Seasonal epidemics occur in the late winter and can rapidly spread in day care and other group care settings. In 1998, a rotavirus vaccine was approved but was removed from the market a year later when a link between the vaccine and cases of infant intussusception were noted. A new live, oral viral reassortment vaccine (RotaTeq;ot) was licensed for use in the US in February 2006, and was recommended by the Advisory Committee for Immunization Practices for use in infants in August 2006.

Electronic laboratory reporting and surveillance for rotavirus is necessary in order to quantify the burden of illness in NYC, identify the onset of seasonal epidemics, track the age-specific attack rates and geographic distribution as well as quantify the magnitude and to monitor trends over time. When the new vaccine is in more widespread use, this data will be valuable in evaluating vaccine effectiveness. Knowledge of the seasonal appearance of rotavirus in NYC could additionally prove useful in crafting prevention messages.

Norovirus

The Norovirus family of viruses was first identified in 1972 during an outbreak of gastroenteritis in an elementary school in Norwalk, Ohio. Seasonal epidemics of gastroenteritis have been noted to occur in NYC through reports of outbreaks in schools, nursing homes and other institutional settings. Emergency department surveillance data suggests that large citywide outbreaks of diarrhea beginning every fall since 2001 are attributable to norovirus. In the past several

years, outbreaks on cruise ships have been a common and vexing problem.

Norovirus testing is not yet available in most commercial laboratories and in anticipation that this will become available in the near future, the Board of Health is amending the Health Code to include electronic reporting of positive norovirus laboratory tests. Tracking the appearance and severity of the illness through laboratory reports will help inform the medical community and support prevention messages.

Respiratory Syncytial Virus (RSV)

RSV can be a life-threatening illness in premature and low birth weight infants and is a major cause of pneumonia and lower respiratory track illness in young children. Infections in older children and adults are responsible for significant absences from school and work resulting in lost productivity.

Electronic laboratory reporting of RSV is necessary in order to quantify the burden of illness in NYC, identify the onset of seasonal epidemics, track the geographic spread, as well as quantifying the magnitude and to monitor trends over time. Knowledge of the seasonal appearance of RSV in NYC could additionally prove useful in alerting clinicians to suspected RSV in patients presenting with respiratory symptoms and implementing prevention efforts, as well as providing data to evaluate future vaccine initiatives.

Estimates from emergency department chief complaint surveillance suggest that norovirus and rotavirus combine for over 30,000 excess emergency department visits in NYC annually. RSV is increasingly recognized as a pathogen in adults resulting in hospitalizations in the elderly and absences from work. The seasonal appearance of these agents in the community is poorly understood and there is no data to assess trends and severity. Therefore, §11.03 of the Health Code is being amended to include and make reportable laboratory diagnosed (by rapid and culture methods), confirmed cases of rotavirus, norovirus and respiratory syncytial virus.

· Varicella

Varicella (chicken pox) is caused by primary infection with Varicella Zoster Virus (VZV). Primary infection with VZV is generally mild and self-limited, but complications occur and include: secondary skin infections, pneumonia, central nervous system manifestations, and Reye syndrome. In the pre-vaccine era, hospitalization rates were 2-3 per 1,000 cases and 1 death per 60,000 cases. Persons at greater risk for complications include children 1 year of age, persons 15 years of age, pregnant women, and those who are immunocompromised. Prior to the availability of an effective vaccine, nearly all children developed VZV infection in early childhood; the national number of annual cases was estimated to be approximately 4 million. With licensure of a live-attenuated varicella vaccine in 1995 and subsequent introduction into the routine immunization schedule in 1996, there has been an 83%-93% reduction in cases. In addition, significant reductions in varicella mortality and hospitalization have been demonstrated, including in NYC. In 2005, an estimated 87.5% (± 5.4%) of children 19-35 months of age had received varicella vaccine. In spite of these gains, outbreaks of varicella have continued, especially within the primary schools. Much of this disease is due to `break-through' disease, i.e., cases among previously vaccinated individuals. In 2006, the Advisory Committee on Immunization Practices recommended the implementation of a routine 2-dose varicella vaccination program for children, with the first dose administered at age 12 months and the second dose at age 4--6 years, with a second dose catch-up varicella vaccination for children, adolescents, and adults who previously had received 1 dose to further reduce the risk of infection. While previously, the diagnosis of varicella was most often based solely on clinical criteria, in the post-varicella vaccine era, there have been an increasing proportion of mild or atypical presentations, necessitating the increase use of varicella diagnostics.

Electronic laboratory surveillance for varicella will allow the Department to quantify the burden of illness in NYC, identify cases and outbreaks and institute control measures to prevent ongoing transmission, assess the completeness and effectiveness of vaccination, and help identify pockets of under-vaccination for intervention. Case-based reporting of varicella is recommended by both the Council of State and Territorial Epidemiologists and the Centers for Disease

Control and Prevention. While most varicella infections are clinically diagnosed, it is anticipated that as cases continue to decline, laboratory diagnosis will become increasingly more important and represent the majority of cases. Therefore, §11.03 of the Health Code is being amended to include and make reportable laboratory diagnosed, confirmed cases of varicella.

· Methicillin Resistant **Staphylococcus aureus** (MRSA)

Case reports and outbreaks have documented the emergence of community associated (CA) MRSA in the US over the past decade. While CA-MRSA predominately causes skin and soft tissue infections (such as furuncles and abscesses), reports of clusters of pediatric deaths and necrotizing pneumonia due to CA-MRSA highlight the seriousness of this disease. Although CA-MRSA has been generally assumed to be more susceptible to antibiotics, recent trends suggest a higher level of resistance is the norm.

CA-MRSA outbreaks have occurred in prisons, sports teams, among men who have sex with men (MSM) and intravenous drug users. In 2004, the Department began an investigation of risk factors for CA-MRSA transmission among patients diagnosed at one large commercial laboratory in NYC. Preliminary results indicate an increased risk in MSM, although risk factor data collection and analysis is not yet complete. Generalization of the results of this investigation is limited because the case reports are not representative of the entire NYC population, as it only includes patients who are diagnosed at one commercial laboratory. Little is known about the risk factors for sporadic cases, particularly those occurring in children and medically underserved populations. To better understand the epidemiology of CA-MRSA in New York City and to develop targeted prevention strategies, population based surveillance is necessary.

Therefore, §11.03 of the Health Code is being amended to require electronic reporting of laboratory-confirmed Methicillin Resistant **Staphylococcus aureus** (MRSA).

· Antibiotic sensitivity profiles for reportable bacterial diseases

The discovery and mass production of antibiotics in the last century is responsible for the reduction in mortality of many bacterial diseases. However, many bacteria have adapted by developing resistant mechanisms rendering many antibiotics useless against them. The time it takes for industry to discover, synthesize, test, receive approval, mass produce and market new drugs is falling behind the speed at which bacteria develop resistance. Newer approaches to reducing antibiotic resistance are needed. It is important to monitor susceptibility patterns of community acquired bacterial pathogens in order to inform clinicians of the current local antibiotic resistance rates. This information when updated on a regular basis can help physicians target empiric therapeutic regimens against specific pathogens pending final susceptibility results on their patients' specimens. Furthermore, tracking antibiotic susceptibility testing (AST) results is critical to support public health initiatives to reduce antibiotic resistance in community pathogens. The data is invaluable for both designing programs to target specific bacterial diseases with high rates of resistance and communities where prevalence rates are higher, as well as assessing the impact of such programs to promote appropriate and judicious antibiotic use.

As an example, gonorrhea (GC) is a common sexually transmitted bacterial which can cause urethritis in men, and cervicitis in women. The serious sequelae of GC infection include pelvic inflammatory disease and infertility in women. There were more than 11,000 cases of gonorrhea diagnosed and reported in NYC in 2006. Over the past decades, GC has developed resistance to several commonly used antibiotic treatments, with the result that fewer drugs can be used to treat the infection. Until very recently, there were two classes of antibiotics recommended for the oral treatment of GC infection, the fluoroquinolones and the cephalosporins. In April 2007, national data were published showing increases in fluoroquinolone (FQ) resistant GC. This has led the CDC to issue national recommendations that FQ be abandoned for treating GC. In NYC, recommendations were issued in 2004 that FQ be abandoned for treating GC in certain population subgroups. Cephalosporins are now the only remaining recommended oral treatment option for GC.

Monitoring AST patterns among GC is of public health importance because if GC develops increasing resistance to available antibiotics there will need to be public health action such as recommending increased dosage or combination regimens or changes in the mode of administration (e.g., that GC be treated with an injection, rather than oral regimen).

Section 11.03 of the Health Code is being amended to require electronic laboratory reporting of antibiotic susceptibility profiles for reportable bacterial infections on all bacterial organisms that are reportable under § 11.03 and for which laboratories perform, or refer for antibiotic susceptibility testing. This requirement includes both traditional broth and agar based methods of antibiotic susceptibility testing and newer molecular based methods that assay for the genetic determinants of antimicrobial resistance. When necessary for the protection of the public health, susceptibility data on other non-reportable organisms may be required to be reported at the discretion of the Department. Therefore, §11.03 of the Health Code is being amended by creating a new subdivision (d) to require electronic laboratory reporting of antibiotic susceptibility profiles for reportable bacterial infections.

Also, §11.03 of the Health Code is being amended to create a new subdivision (e) to describe the manner of laboratory reporting for any of the reportable diseases/conditions in §11.03(a). Clinical laboratories shall report to the Department in a manner specified by the Department, including through the use of the electronic reporting system utilized by the New York State Department of Health.

Deletion From §11.03

Section 11.03 of the Health Code is being amended to remove scarlet fever from the list of reportable diseases/conditions because of the absence of a laboratory confirmed diagnosis and diminished public health concern.

65. Statement of Basis and Purpose in City Record Jan. 28, 2008:

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I. Background

Regulation of food service establishments is a core public health function. The Health Department enforces

provisions of the Health Code, the State Sanitary Code, Public Health Law and other applicable laws relating to food served directly to consumers throughout the City. This includes regulation of food that is commercially prepared and sold by food service establishments, a broad category which includes restaurants.

Restaurants (the term is being used interchangeably with "food service establishments" or "FSEs") are an important source of food for New York City residents: an estimated one third of daily caloric intake comes from foods purchased and prepared outside of the home, and this proportion is increasing. Assuring safe and healthy dining options is a public health priority. The Department issues permits to and inspects all New York City FSEs, as defined in §81.03(j) and (p) of the Health Code.

The Department is charged with preventing and controlling disease, including chronic diseases. Obesity is epidemic in the United States and in New York City, and is an important risk factor for many chronic diseases including heart disease, stroke, diabetes, cancer, and asthma. Federally mandated nutrition labeling on standardized food products for sale in supermarkets facilitates informed choice: nearly three quarters of consumers report that they look at calorie information on the Nutrition Facts Panel, and about half indicate that nutrition information affects their food choices. However, consumers lack easily accessible information to make informed choices when eating in restaurants. Calorie information provided at the time of food selection in FSEs would enable New Yorkers to make more informed, healthier choices and can reasonably be expected to reduce obesity and the many related health problems which obesity causes.

On December 5, 2006, the Board of Health adopted a resolution amending Article 81 of the Health Code by adding a new §81.50. The regulation was to become effective on July 1, 2007 and mandated that any FSE that made calorie information publicly available on or after March 1, 2007 post such information on its menus and menu boards. The provision was challenged in a lawsuit brought by the New York State Restaurant Association. On September 11, 2007, a federal judge in the United States District Court for the Southern District of New York held that Health Code §81.50 as adopted was preempted by 21 U.S.C §343(r) because, to the extent it applied only to restaurants which had voluntarily provided calorie information, it regulated nutrient content claims and was therefore preempted by §343(r).

Although §81.50 was found to be preempted because of the specific way it was written, the Federal court clearly affirmed the authority of local governments to mandate that restaurants disclose nutritional information:

The majority of state or local regulations-those that simply require restaurants to provide nutrition information-therefore are not preempted. Such regulations impose a blanket mandatory duty on all restaurants meeting a standard definition such as operating ten or more restaurants under the same name . . . There is no voluntary aspect to such a disclosure requirement and no basis for arguing that the mandated disclosures are more properly considered the regulation of voluntary claims subject to [21 USC] § 343 (r). **New York State Restaurant Association v. New York City Board of Health, et al.,** 07 Civ. 5710 (RJH), USDC SDNY, 9/11/07.

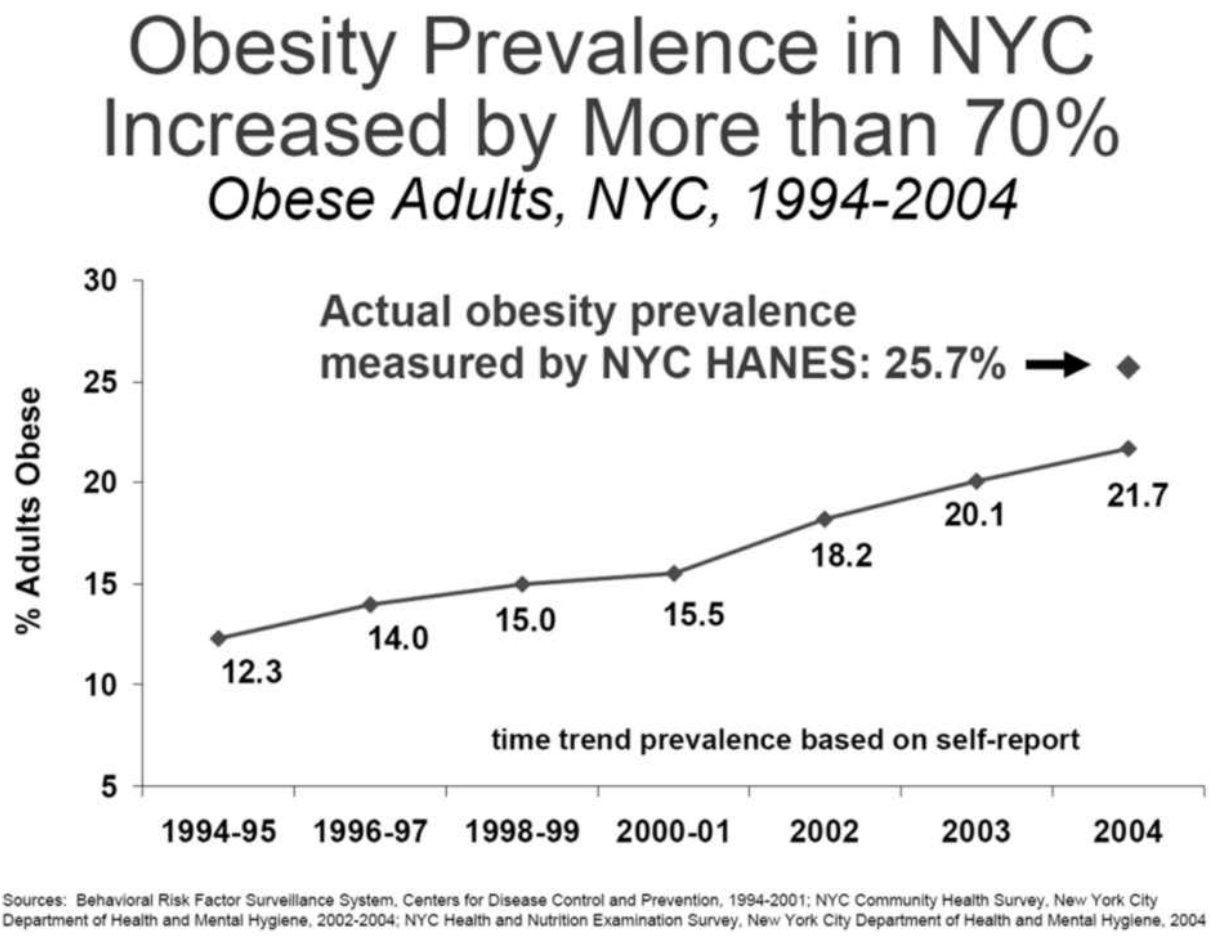
The Department proposed that the Board of Health repeal Health Code §81.50 and reenact a new §81.50, and notes that the Department has clear authority consistent with 21 U.S.C. §343(q) to mandate that restaurants disclose nutritional information. The new §81.50 requires that information on calorie content values of menu items be clearly visible to patrons of FSEs at the time of ordering for menu items that are served in portions, the size and content of which are standardized, at food service establishments in the City of New York which are one of a group of fifteen or more food service establishments doing business nationally under the same name, and offering for sale substantially the same menu items.

II. Obesity is epidemic and is a serious and increasing cause of disease

An obesity epidemic currently undermines the health of many Americans in general and New Yorkers specifically. According to measured height and weight data from the National Health and Nutrition Examination Survey (NHANES), the proportion of U.S. adults who are obese more than doubled over the past three decades. While 14.5% of Americans

were obese in 1971-1974, the proportion rose to 32.2% by 2003-2004.

In New York City, obesity prevalence has increased by more than 70% in the past decade. More than half (54%) of New York City adults are overweight or obese, and 1 in every 5 adults is obese; 43% of elementary school children are overweight or obese.



Sources: Behavioral Risk Factor Surveillance System, Centers for Disease Control and Prevention, 1994-2001; NYC Community Health Survey, New York City Department of Health and Mental Hygiene, 2002-2004; NYC Health and Nutrition Examination Survey, New York City Department of Health and Mental Hygiene, 2004

Obesity is a risk factor for heart disease, stroke, cancer and diabetes-4 of the 5 leading causes of death in New York City in 2005, with 40,771 deaths (more than 70% of all deaths). These conditions cause enormous and preventable human suffering and use more of society's resources than even the most prevalent communicable diseases. In fact, obesity, and, with it, diabetes, are the only widespread health problems in this country and in this City that are getting worse-and getting worse rapidly.

To illustrate just one aspect of obesity's toll, diabetes has more than doubled in New York City in the past decade, and hospitalizations for long-term complications of diabetes have been rising steadily. In 2004, there were 4,865 people on dialysis or receiving kidney transplants in New York City due to diabetes. There were 3,040 lower extremity amputations in 2005 due to diabetes. We estimate that approximately 9,000 New Yorkers have been blinded by diabetes, and that more than 100,000 New Yorkers have eye damage from diabetes. This burden of preventable diabetes complications is not evenly distributed across New York City residents: African-Americans, Latinos and the poor are disproportionately affected.

III. The obesity epidemic is mainly due to excess calorie consumption-often away from home

Weight gain occurs when more calories are consumed than are expended. Small calorie excesses over time have a cumulative effect. Eating out, and eating extra calories while eating out, contributes disproportionately to the excess calorie intake that fuels the obesity epidemic.

Today more people eat out, and they eat out more often. In 1970, Americans spent 26% of their food dollars on foods prepared outside their homes; by 2006 they spent almost half (48%). At present, one third of total calorie consumption is outside the home. A large, representative national survey (the Continuing Survey of Food Intake by Individuals) conducted over two decades, from 1977 to 1996, shows that calorie intake from restaurant/fast food doubled as a percentage of energy intake for Americans over the age of 2. Further, while eating out at restaurants, diners typically eat more than at home. In the same national survey, adult men who ate food away from home during the previous 24-hour period weighed 1 kg more than men of the same height who did not. Children eat almost twice (1.8 times) as many calories when eating out as compared to eating at home. In a cross-sectional study of boys and girls in three age groups, those aged 12-19 years who consumed foods away from home were more likely to have a higher Body Mass Index (BMI) percentile. In sum, this increase in calories, often consumed away from home, translates to an increase in body weight in both adults and children.

The increase in consumption of away-from-home foods has been facilitated by the expansion of restaurant chains, which serve food that is easily available, inexpensive, and high in calories. Nationally, restaurant chains-both fast food and casual dining chains-comprise a growing share of customer traffic. Between 2005 and 2009, the number of fast food establishments is projected to increase from 266,300 to 287,437 establishments.

Further, over time fast food and other chain restaurant food has been served in increasingly large portion sizes, an increase that parallels the obesity epidemic. For example, since the 1970s, the typical serving size for soft drinks increased by 49 calories, for French fries by 68 calories, and for hamburgers by 97 calories. Although these portion sizes are now considered "normal" by consumers, a single meal may have far more than a single meal's appropriate share of the total recommended daily calorie allowance.

To obtain more information about patterns of food consumption in New York City restaurant chains affected by the December 2006 Health Code amendment, the Department conducted a large survey in a representative sample of major restaurant chains in New York City. The survey, conducted in March through June 2007, collected information from 11,835 diners at a random sample of 275 restaurants, representing 13 restaurant chains. As patrons left the restaurant, they were asked to supply their restaurant receipt and to answer several brief questions, including details of the purchase not reported on the receipt, whether the purchase was only for themselves, whether they saw or used any available calorie information, and if so, whether this affected their purchase.

Using the receipts along with published calorie information, the Department was able to examine several issues, including the calorie content of food and beverage selections. For the 7,308 patrons who purchased one or more items, for themselves only, at one of 11 major restaurant chains surveyed on a weekday between 12 noon and 2 PM-a total of 168 locations across the five boroughs-the average calorie purchase was 824 calories (preliminary data). About one third (33.2%) of patrons purchased more than 1,000 calories; 8.7%, more than 1,400 calories. For reference, a woman over 25 years of age with average (i.e. little) physical activity is advised to consume 1,800 calories per day.

IV. Chain restaurants serve food that is associated with excess calorie consumption and weight gain

While eating at restaurants away from home in general is associated with increased calorie intake, most research has focused on fast food. About 90% of restaurant chains in New York City serve fast food. There is abundant data to show that people who eat at fast food establishments consume more calories. Two important analyses draw on the Continuing Surveys of Food Intakes conducted in the mid 1990's. The first, a 1994-1996 survey of 17,370 adults and children, found that adults who ate at fast food restaurants consumed 205 more calories per day than those who did not, and children ate 155 more calories. In the second survey of more than 9,000 adults, mean energy intake on days when fast food was consumed was 206 calories higher than on other days. This increase in calories would result in a three

pound weight gain each year if a consumer were to eat fast food only once each week. In the second survey, fast food contributed more than one third of consumers' daily calorie intake. Similarly, in a study of nearly 900 women, called Pound of Prevention, increased frequency of eating at fast food restaurants was associated with higher total energy intake. This association has also been shown among adolescents and children. A study of 4,746 students age 11-18 years found that regular fast food consumption was associated with 800 extra calories per week in boys and 660 extra calories per week in girls. Such a calorie excess could translate into a weight gain of 10 pounds or more per year. An increase of 129 calories per day among high versus low frequency consumers of fast food was also reported in a large national cohort of adolescent girls.

Many studies document that increased calorie intake observed with consumption of fast food results in weight gain. In a study of over 9,000 adults, eating fast food increased the prevalence of overweight by 27-31%; among 3,394 adults in the Coronary Artery Risk Development in Young Adults Study (CARDIA), fast food eating was positively associated with BMI, and higher levels of fast food consumption correlated with a higher BMI. This same association has been found in different contexts, for example among Mexican children in San Diego, where 4-7-year-old children were twice as likely to be obese if they ate in fast food restaurants, and among Minnesota secondary school students. Follow up studies further strengthen the evidence for a causal association between easting fast food and weight gain. In a study of 3,031 adults (part of CARDIA) who were followed up for 15 years, baseline fast food intake was directly associated with increases in body weight. Similarly, in a study of almost 10,000 adolescents, more days of fast food consumption at baseline predicted increases in BMI at 5 year follow-up.

Some studies specifically examine other settings and support the conclusion that sit-down chains, and not only fast food chains, serve food associated with increased caloric intake and weight gain. One study compared food selections made by adolescents who were asked to order a dinner meal from both sit-down chain restaurants and fast food restaurants. Meals selected at Chili's, Denny's and Outback Steakhouse had even higher calorie content than at comparison restaurants McDonald's and Taco Bell.

V. Calories in restaurant foods: distorted consumer perceptions and a misleading information gap lead to unhealthy food choices

Consumers neither know nor estimate accurately the calorie content of food purchased in restaurants. Furthermore, guesses typically underestimate calories. A recent poll asked 523 adults to identify which of the four breakfast choices from Denny's Restaurants had the fewest calories and which of the four menu items from McDonald's had the most calories. Only 11% gave correct answers. Respondents were more likely to guess that Denny's French toast and syrup (1,003 calories) had fewer calories than fried steak and eggs (464 calories). Similarly, a recent study found that 9 out of 10 people underestimated the calorie content of less-healthy items, and did so by an average of more than 600 calories (almost 50% lower than the actual calorie content). This is consistent with the other findings that consumers underestimate calories and overestimate the healthfulness of restaurant items.

Even experienced nutrition professionals have difficulty accurately estimating the calorie content of restaurant food. In one study, these professionals underestimated calories in restaurant food by 200 to 600 calories. For example, dietitians estimated on average that a typical diner hamburger with onion rings meal had 865 calories, when it actually had 1,550 calories. If even experienced professionals in the field of nutrition underestimate the calorie content of restaurant foods, consumers are even more likely to underestimate caloric content of menu choices. Without calorie information, it is difficult for consumers to compare options and make informed decisions.

The systematic underestimation of calories suggests that consumers have distorted perceptions of calorie content and **de facto** have been misled to view oversized, high-calorie portions as "normal" portions, containing acceptable numbers of calories. For example, a breakfast meal at MacDonald's offers the selection of a "Big Breakfast" (790 calories) or a "Deluxe Breakfast" (1,140 calories). In the absence of calorie information, how would a consumer know that a "Big Breakfast" contains slightly over half the calories of a "Deluxe Breakfast"? Or that a Deluxe Breakfast, when served with butter and syrup, as pictured and provided at no extra charge, comes to 1,400 calories. Add a large orange

juice (250 calories) and breakfast comes to 1,650 total calories. For most New Yorkers, this breakfast is close to their recommended calorie intake for the entire day.

Differences in calories among various options are not always intuitively obvious, and a far lower calorie option is often available within a group of similar products. For example, calories in cheeseburgers at Burger King vary more than three-fold, not even counting the fries and drinks: Cheeseburger-330 calories, Whopper Junior with cheese- 410 calories, Double Whopper with cheese- 990 calories, or a Triple Whopper with cheese-1,230 calories. The price differential for increasing a portion size often does not correlate with the resulting calorie difference. A McDonald's $1.79 order of medium fries has 380 calories; an 11% price increase to a $1.99 order of large fries is a 50% calorie increase. Increasing the serving size of a healthy-sounding Starbuck's Green Tea Frappuccino from its small $3.75 version to the 32% more expensive large version results in a 76% increase in calories, from 370 to 650 calories.

There is a calorie information gap. This gap is contributing to people choosing higher calorie items and to the obesity epidemic. Providing information about the calorie content of foods and beverages being served in chain restaurants in a time, place, and manner that can inform decisions will help bridge this gap. Provision of calorie information on menu and menu boards is an important way to accomplish this goal.

Children are particularly vulnerable to the promotion of fast foods, and have been specifically targeted for such promotion by restaurant chains. The major chains use marketing strategies directly aimed at children; children who view such television advertisements are about 50% more likely to eat fast food, and to eat the brand that is most popular. Given the epidemic of childhood obesity, it is reasonable to conclude that providing calorie information at these chains can help parents make more informed choices for their children, who lack the knowledge and experience to understand how promotional strategies affect their preferences.

Other marketing practices mislead consumers to unhealthy choices by using images to suggest healthfulness; by building the impression that oversized dishes constitute "normal" meals; and by pricing policies which increase price only slightly while vastly increasing portion sizes. This latter practice may contribute to the observation that fast food is consumed disproportionately by the poor.

VI. Point-of-decision calorie information helps consumers make informed, healthier food choices

Consumers notice and use nutrition information when it is made available at the point of purchase. Since 1994, the federal Nutrition Labeling and Education Act (NLEA) has made nutrition information available to consumers on packaged foods purchased in retail stores. Three quarters of American adults report using food labels, and about half (48%) report that nutrition information on food labels has caused them to change their food purchasing habits. The calorie section is both the most prominent, and the most frequently consulted part of the Nutrition Facts Panel on packaged foods, with 73% of consumers reporting that they look at calorie information on the Nutrition Facts Panel.

Food served in restaurants is not subject to federal nutrition labeling requirements. With nutrition information, consumers are 24%-37% less likely to select high-calorie items. In the previously mentioned DOHMH interview and receipt study, the Department was able to examine the impact of point of purchase calorie information at Subway sites, New York City's second largest chain with 315 locations. At the time of the study, undertaken before §81.50 became effective, Subway posted nutritional information for some of its products on a sticker placed on a display case near the cash register-a manner far less prominent than that mandated by §81.50. Nevertheless, among the 1,816 Subway patrons sampled at 47 randomly selected Subway locations, nearly one third (30.8%) reported seeing calorie information (preliminary data). Patrons who saw calorie information purchased items containing 48 fewer calories than those who did not see this information. Furthermore, patrons who said calorie information had affected their selection were correct-they chose items with 92 fewer calories. That their report matched the data from their receipts that documented lower-calorie choices is consistent with findings that when consumers say they will change choices based on calorie information, they often actually do so.

Based on the best estimates, if the reduction in calories in covered FSEs were similar to what occurred at Subway, over the next five years at least 150,000 fewer New Yorkers would be obese, resulting, among many other health benefits, in at least 30,000 fewer cases of diabetes, and possibly many more than that.

Point-of-decision prompts have proved effective in promoting other healthy activities. For example, signs placed near elevators or escalators to encourage people to "take the stairs" increase stair usage by approximately 54%.

Prominent posting of calorie information will make the calorie content of foods served in these settings much more apparent. Because of this, it is reasonable to anticipate that some restaurant chains will improve menu offerings to lower their caloric content. Starbucks, for example, which began providing calorie information, reformulated some of its baked goods with slightly reduced sizes and hence fewer calories. Analogously, in anticipation of, and following the effective date of the FDA's requirement for trans fat content on the Nutrition Facts Panel in 2006, manufacturers reformulated their products to contain less trans fat.

To change the trajectory of the obesity epidemic, which has been relentlessly upward for more than two decades, requires small, permanent calorie reductions across the population. If, as can reasonably be suggested, patrons of these establishments reduce their caloric intake by even 5-10% after seeing calorie information, there would be substantial reductions in obesity, diabetes, and obesity- and diabetes-related illnesses as a result of this measure.

VII. Voluntary activities by restaurants to supply calorie information fall woefully short

Some restaurants voluntarily provide nutrition information to their patrons, but most of these efforts have failed to inform the vast majority of consumers. Patrons at the 13 major chains sampled in the interview and receipt study mentioned above were asked whether they a) saw and b) used calorie information while in the restaurant in the period before §81.50 was in effect. Taking a weighted average and excluding Subway, only 3.1% of customers (1 in 32)-reported seeing calorie information (Table 1).

Table 1. Percent of consumers who reported seeing calorie information at certain New York City food service establishments covered under the previous Health Code §81.50, May-June 2007, preliminary data

Brand # of Sites # of Customers Interviewed* % of Customers who Reported Seeing Calorie Information in the Restaurant

Dominos 10 57 0.0%

Papa Johns 5 222 0.0%

Popeyes 7 512 0.6%

Dunkin Donuts 70 2,756 1.3%

Starbucks 37 1,285 2.7%

Au Bon Pain 2 166 3.7%

Burger King 20 1,033 3.8%

Yum Brands (Taco Bell, KFC, Pizza Hut) 21 861 4.6%

McDonald's 45 2,593 4.7%

Wendy's 11 474 6.9%

Subway 48 1,906 31.3%

*** Survey customer totals vary slightly due to exclusion of customers with missing data for calorie analyses.**

These restaurants' activities to make calorie information available to their patrons are woefully inadequate. Although a company such as McDonald's purports to have conducted extensive social science research in order to provide accessible, consumer-friendly nutrition information, this information was not noticed by 95% of New York City survey participants-even **after** they had purchased their food-and, therefore, can have little or no impact on choice. The reasons for such dismal results are not hard to identify. The information is usually not displayed where and when consumers make their purchases. Instead it is found in brochures, on placemats covered with food items, or on food wrappers, where the information is hard to find, difficult to read, and only accessible after the purchase is made. Patrons have to ask for information or search for it in advance on the internet. Furthermore, each food service establishment uses different formats, making it cumbersome to find. As a means to help patrons make informed and healthier choices, almost all present voluntary displays of nutrition information fail.

VIII. Leading health authorities recommend posting of calorie information

Calories are recognized as the single most important element of nutrition information to address the obesity epidemic. The Food and Drug Administration's Obesity Working Group (OWG) concluded its 2005 work with a report entitled "Calories Count" whose executive summary stated:

"The OWG's recommendations are centered on the scientific fact that weight control is primarily a function of balance of the calories eaten and calories expended on physical and metabolic activity . . . The recommendations contained in this report therefore focus on a "calories count" emphasis for FDA actions . . . OWG Principal Recommended Action Items . . . Calories: Issue an advance notice of proposed rulemaking (ANPRM) to solicit public comment on how to give more prominence to calories on the food label. As examples, increasing the font size for calories, including a percent Daily Value (%DV) column for total calories, and eliminating the listing for calories from fat."

While calories are just one component of nutritional choice, they are a critically important component. Unburned calories are stored as fat, regardless of whether the calories come from fats, carbohydrates or proteins. Studies of dietary intake in the United States have found that people are eating more calories, in contrast to most other aspects of dietary intake, which have improved. Average calorie intake for Americans over age 2 increased by nearly 200 calories per day, from 1,791 to 1,985 calories, between 1977 and 1996. Restaurants and fast food were the fastest growing source of calories in this period.

Leading health organizations and experts recognize that the calorie information gap contributes to food choices, with serious health consequences, and should be addressed to promote healthy food choices. The Institute of Medicine found that existing efforts fall far short of providing information in a simple accessible format. A Food and Drug Administration-sponsored expert group made its leading recommendation for away-from-home foods as follows:

"Away-from-home food establishments should provide consumers with calorie information in a standard format that is easily accessible and easy to use. Participants believe that information should be provided in a manner that is easy for consumers to see and use as part of their purchasing and eating decisions. Information should be provided for any standard menu item offered on a regular and ongoing basis that is prepared from a standardized recipe, whether the item is an entire meal or a meal component. Non-standard items, including daily specials and experimental items, may be exempted. Information should be provided for the standard menu item as usually offered for sale (i.e., the base product, in the portion size as offered for sale), since most means of providing information cannot easily account for changes due to customization and special orders."

During the public comment period for §81.50, the support received from organizations of health professionals was overwhelming. Organizations that submitted statements supporting the proposed resolution included the: American

Medical Association, American Diabetes Association, American Cancer Society, National Hispanic Medical Association, New York Academy of Medicine, Medical Society of the State of New York, and a wide range of prominent New York medical and community institutions. Consumers also support such measures: six nationally representative polls showed most consumers (62-87%) support requiring restaurants to list nutrition information.

IX. Mandating calorie information for restaurant chains is feasible, will reach many consumers, and can be reasonably expected to have a health impact

Subway, the only store that had posted calorie information at the point-of-purchase at the time of the Health Department's study, subsequently posted its calorie information in compliance with Health Code §81.50, making it much more prominent and demonstrating the feasibility of implementing this rule. See Figure 1. By putting calorie information where almost all consumers will look to make their selection-the menu board, menu or item tags-viewing this important nutrition information will become the public's default dining experience. No extra step or search will be required. Making a preferred behavior the default is a core public health strategy.

Figure 1. Subway Menu Boards in Manhattan on July 2, 2007

Chain FSEs represent an appropriate focus for regulation for three reasons. First, restaurant chains use highly standardized menu items and can readily measure or estimate accurate calorie counts. Second, these major chains represent a substantial and disproportionate share of restaurant meals. While restaurant chains make up approximately 10% of NYC's 23,000 restaurants, they account for a much larger proportion of restaurant **meals** than suggested by their

number (i.e., far more than 10% of meals). Data from The NPD Group, a major market research company, indicate that, in 2007, major chain restaurants in the NYC metropolitan area accounted for more than one third of all restaurant traffic-34.7%-more than 3-fold their representation among food service establishments overall. In fact, we estimate that this regulation has the potential to affect consumer choices involving at least 145 million meals in New York City per year, and possibly as many as 500 million or more. And third, as outlined above, chain restaurants typically serve food that is clearly and disproportionately associated with obesity.

X. Changes to Health Code to require posting of calorie information

Providing calorie information is a public heath intervention to help address the rapidly growing twin epidemics of obesity and diabetes. Providing clear and comprehensible point-of-purchase calorie information allows consumers to make more informed and healthier food choices in restaurants.

Accordingly, Health Code §81.50 has been repealed and reenacted to require that information on calorie content values of menu items be available to patrons of FSEs at the point-of-decision for all menu items that are served in standardized portions. The food service establishments covered by this provision would be any establishment in the City of New York that is one of a group of 15 or more food service establishments doing business nationally under the same name and offering for sale substantially the same menu items, regardless of whether such food service establishments are owned and operated by the same entity. Fifteen was found to be an appropriate cut-off to focus on chains with standardized menus, and will cover the vast majority of such chain restaurant locations.

This Health Code amendment will cover approximately 2,400 restaurants (10% of all FSEs). Clear and conspicuous posting of calorie information would be required on all menu boards and menus, as well as on food item display tags, adjacent or in close proximity, to the menu item, using a font and format that is at least as prominent in size as that used to post either the name or price of the menu item. This provision requires covered FSEs to make such information available to their customers in plain sight at the point-of-decision.

The prior version of §81.50 that is being repealed required that calorie information be included next to the listing of each menu item, and that calorie content values be posted in a size and typeface at least as large as the name or price of the menu item (and for menu boards, whichever size was larger). It also included an option for FSEs to propose alternative designs for making information available to patrons, but these alternative designs had to be at least as prominent as the means set forth in the Rule. The reenacted rule instead provides one, more flexible standard for displaying calorie information, incorporating the lessons learned by the Department from its analysis of many proposed alternative designs and its discussions with industry representatives. All of the alternative design elements that were considered approvable have been incorporated into the reenacted rule. Calorie information will have to be displayed as prominently as either the menu item's name or price, but not whichever is larger as was required by the former §81.50. Calorie information can be clearly associated with, rather than adjacent to, the menu item name or price, on the menu board or menu. Calorie information will also be provided on item tags where food is displayed. Information on item tags can substitute the use of ranges on the menu board where applicable. And, the current version allows for separate displays of calorie content information at drive-through windows. Because some of the alternative designs reviewed by the Department used font and background colors with poor contrast, however, a "format" requirement is being added to the equal prominence standard to ensure that calorie information can be easily read.

Under the prior rule, menu items for which calorie information was typically not made available, such as combination meals, would not have been covered. Because application of the reenacted rule will not be based on the prior provision of calorie information, calorie information for all menu items, including combination meals, will now be required to be posted.

In light of queries received about the definition of a menu, specific definitions of menus and menu boards were added.

This rule mandates posting only of calories, the single most important piece of nutrition information, at the point of selection. FSEs are, of course, not be precluded from providing additional nutrition information voluntarily. FSEs are also free to add disclaimers about possible slight variations from listed calorie content.

The Department's restaurant inspectors will be responsible for enforcing the requirement that nutrition information is provided on menu boards and menus.

In summary, the reenacted Health Code §81.50 is an important part of an integrated public response to the epidemic of obesity-the only condition of widespread public health importance in this country and this city that is getting worse, and getting worse rapidly. The restaurants covered by this calorie information regulation provide a large and increasing proportion of food consumed by New Yorkers, and consumption of high-calorie food in these establishments increases the risk of obesity, and with it, diabetes, heart disease, stroke, asthma, and cancer. Calories are by far the single most important piece of nutritional information, and currently this information is not accessible to consumers, who are unaware of and generally underestimate caloric content. There are consensus recommendations, broad evidence, and widespread scientific support for the rationale and soundness of this measure and its impact on health.

The measure is a narrowly tailored minimum requirement that has already been proven feasible to implement and does not in any way restrict communication of additional nutritional information. The rule focuses on chain restaurants, where the measure can be readily and accurately implemented, which account for a large and disproportionate proportion of meals served, and which serve food whose consumption has been clearly associated with excessive calorie intake and with obesity.

XI. Response to public comments

The Department received a total of 82 individual oral and written comments on the notice of intention: 65 were in favor, 13 were opposed and four were neither in support nor opposed.

In response to comments about certain menu items, such as salads where consumers choose from a range of standardized ingredients to create a fully customized offering, and where ingredients are posted on the menu, calorie information could be presented in one of two ways. It might be provided separately for each standardized ingredient. Alternatively, consistent with section 81.50 (c)(4)(i) of the rule, a range of calorie content information could be provided for a variety of ingredients, whether differentiated by type of ingredients or price.

66. Statement of Basis and Purpose in City Record Mar. 13, 2008:

The Department enforces provisions of the Health Code and other applicable laws intended to protect the safety of food served directly to the consumer throughout the City, including food that is commercially prepared and sold, or distributed for free, by food service establishments (FSEs), a broad category that includes restaurants, caterers (non-retail food processing establishments), mobile food vending units, and cafeterias.

The Board of Health hereby amends Article 81 of the Health Code to establish requirements enabling FSEs to use reduced atmosphere packaging food processing techniques that are not specifically addressed within either Article 81 or the State Sanitary Code. These processing techniques include reduced oxygen packaging (ROP) for storage and preservation of food, cook chill and **sous vide** processing. These new provisions codify minimal standards for such processes.

When Article 81 was repealed and reenacted in 1996, the food processing techniques that this amendment regulates were not commonly used in New York City FSEs. Increasingly, however, operators of FSEs are using food preparation techniques, including **sous vide** and cook chill processing, that are not currently regulated by specific provisions of Article 81 or the New York State Sanitary Code. Used properly, these techniques can extend the shelf life of a product and may improve the taste and quality of foods. However, these processing techniques, which extract air,

can create a significantly anaerobic environment that inhibits the growth of aerobic spoilage organisms, but may support pathogens that are either facultative (organisms capable of living under varying conditions, with or without oxygen) or anaerobic (able to live without oxygen), such as **Bacillus cereus, Staphylococci,** Listeria monocytogenes**, Clostridium perfringens**, and **Clostridium botulinum,** and it is therefore important to establish minimum food safety requirements for ROP processing.

Amend §81.03 Definitions

The following terms and definitions used in regulating these processes are being added to this section: aquatic animals, Hazard Analysis and Critical Control Point (HACCP) plan, critical control point, critical limit, cook chill processing, reduced oxygen packaging, packaging, **sous vide,** water activity (A_W), and the "pH" symbol for the negative logarithm of the hydrogen ion concentration.

Amend §81.06 Prevention of imminent health hazards

This section has been amended, adding a new subdivision (b), that describes the content of a HACCP plan whenever such plans are required by the Department or the Health Code to prevent the occurrence of imminent health hazards, and a new subdivision (c), prohibiting processing and preparation of certain foods without Department approval, and relettering the current provision as subdivision (a). The proposed HACCP plan requirements are modeled on those in the FDA 2005 Food Code §§8-201.12 and 8-201.14. When HACCP plans are required, they must be submitted to DOHMH for approval, then maintained at an FSE and be made available to DOHMH inspectors for review upon request. This provision explicitly authorizes the Department, as applicable, to require that an FSE submit additional information so that it may determine that food safety is not compromised by use of a proposed food processing technique, and it authorizes the Department to maintain the confidentiality of trade secrets that may be contained in HACCP plans when requested by an FSE.

The new provisions codify minimal standards for developing and implementing a HACCP plan. The HACCP plan outlines the FSE's formal procedures for use of the specific technique and when properly applied by the FSE enables safe use of the technique. HACCP plans were developed by the FDA's National Advisory Committee on Microbiological Criteria for Foods. Their use is widely recommended in the FDA's Food Code in a variety of potentially hazardous food preparation and processing techniques that the FDA considers high risk, where combinations of time and temperature differ from those specified in the Food Code, State Sanitary Code and Health Code, to promote food safety.

HACCP plan preparation requires consideration of each of the following:

1) Hazard analysis and risk assessment: the potential hazards associated with food processes at all stages are identified and the likelihood of occurrence is assessed.

2) Identification of critical control points (CCPs) in a process. CCPs are any points, procedures or operational steps that can be controlled during the process to eliminate a hazard or minimize its likelihood for occurrence.

3) Establishing critical limits for each CCP; determining target levels and tolerances to ensure each CCP is under control.

4) Establishing a monitoring schedule for each CCP. The system should ensure control of each CCP by scheduled testing, i.e., measuring temperature.

5) Establishing corrective action to be taken when a deviation occurs at a CCP, i.e., when monitoring indicates a CCP is out of control.

6) Establishing a record keeping-system to document each HACCP step.

7) Establishing a verification procedure enabling an FSE's food protection certificate holder, chef, and the Department to determine if the food processing operation conforms to the requirements of the HACCP plan.

Adding a new §81.12 Reduced oxygen packaging; cook chill and **sous vide** processing.

Reduced Oxygen Packaging

These new amendments to the Health Code will better inform FSE permittees of correct and safe procedures when utilizing reduced oxygen packaging (ROP) techniques, and will promote safer food processing by FSEs. ROP techniques include the following processes, which are defined in §1-201.10(B) of the 2005 FDA Food Code:

(1) Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package.

(2) Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of packaging material or the respiration of the food. Such packaging includes reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen.

(3) Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers[1]11 or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material.

(4) Cook chill packaging, in which cooked food is hot filled into impermeable bags which have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

(5) **Sous vide** packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.[2]12

These processing techniques, which extract air, can create a significantly anaerobic environment that prevents the growth of aerobic spoilage organisms. These aerobic organisms are responsible for the off-odors, slime, and texture changes that are also warning signs of spoilage. The benefits of ROP include its ability to prevent degradation or oxidative processes in food products; retard the amount of oxidative rancidity in fats and oils; prevent color deterioration in raw meats caused by oxygen; and shrinkage of the food by preventing water loss.

Sous Vide

Sous vide, a specialized ROP cooking process, simply means "under vacuum." **Sous vide** cooking is favored by some food scientists and operators of FSEs who claim it provides the best possible heat transfer coefficient between the heat source and packaged foods during cooking, enables consistency of taste and texture, and makes it possible to store cooked products at a proper (i.e., under 38 F (3.3°C)) holding temperature for longer periods of time. There has been an increase in demand for **sous vide** processed foods which contain little or no chemical preservation, and are given a mild heat treatment in order to achieve a fresh cooked taste. **Sous vide** products rely on a combination of minimal processing and storage under controlled chill conditions to prevent growth of pathogenic organisms and achieve microbiological safety, unlike conventional thermally processed products which rely on thermal destruction of any pathogens present.[3]13 The **sous vide** cooking process is a pasteurization step that reduces bacterial load but is not sufficient to sterilize a product; thus making the food shelf-stable without temperature controls.[4]14 Psychrotrophic **C. botulinum** types E and B are the organisms of most concern to minimally processed chilled foods with an extended shelf life as they may be able to grow during storage and produce a powerful neurotoxin which, if ingested, would cause botulism.

Additionally, these organisms are able to survive the mild heat treatment and continue to live and grow in an oxygen free environment.

In **sous vide** processing, vacuum packaged cooked, partially cooked, raw ingredients or combinations of ingredients require immediate refrigeration or frozen storage until the package is thoroughly cooled. The process may involve some or all of the following steps:

(1) Preparing raw materials (this step may include cooking or partial cooking of some or all ingredients);

(2) Packaging the product, application of vacuum, and sealing of the package;

(3) Cooking the product for a specified and monitored time/temperature;

(4) Storage of the cooked product at or below 34 F (1.1 C) for 30 days, or 72 hours at 38 F (3.3 C); and

(5) Reheating of the **sous vide** packaged items to at least 140 F (60C) before opening and service.

Holding Temperatures for ROP Products

The new regulation requires that cold holding temperatures for all ROP products, regardless of processing methods, be lower than the cold holding temperatures currently provided for potentially hazardous foods in the Health Code. Most food borne pathogens are either anaerobes (able to multiply without oxygen) or facultative (able to multiply either with or without oxygen), requiring special care to control their growth. Refrigerated storage temperatures of 41F (5C) may be adequate to prevent growth and/or toxin production of some pathogenic microorganisms but **C. botulinum** and Listeria monocytogenes are better controlled at temperatures at or below 38F (3.3°C). Controlling these pathogens will control the growth of other food borne pathogens as well.

Packaging of Aquatic animals Using an ROP Method

The FDA **Food Code** currently recommends against ROP processing of any aquatic animal product at the retail level except frozen aquatic animals. Accordingly, this amendment will prohibit FSEs from processing fresh, unfrozen aquatic animals by ROP methods.

The Department supports stringent requirements for preparation and storage of aquatic animals processed by **sous vide** because research has shown that aquatic animals are subject to outgrowths of **C. botulinum** type E when improperly heated.[5]15**C. botulinum** type E is naturally occurring in marine organisms, and will grow at refrigeration temperatures as low as 37.2°F (2.9°C.). Aquatic animals that may contain this microorganism include, but are not limited to salmon, trout, herring, whitefish, cod, plaice, eel, pollack, flounder and flatfish. The localization of contaminating spores of **C. botulinum** type E differs among aquatic animal species. Some aquatic animals species are contaminated in the intestines and viscera, some in the gills and the peritoneum, while others are contaminated on the outer surfaces (skin and fins). In some cases, strains have been isolated from internal organs and surface area of the same aquatic animals.

The presence of spores in the internal organs and skin of fish is a reflection of the general contamination of the environment, feed and water of the harvest area. However, the germination of spores, growth of vegetative cells and production of toxins in fishery products is due to a number of factors: the exposure of aquatic animals to temperature danger zones between time of harvest and delivery to food service or processing establishments; further exposure to temperatures in the danger zone during preparation or processing in the establishments; subjection to mild heat treatments or insufficient cooking temperatures; untrained or careless food workers' introduction of spores into the tissues and carcasses of the aquatic animals during preparation; and subsequent subjection of the finished (fishery) products to refrigerated storage temperatures warmer than 38°F (3.3°C).

Factors that may control **C. botulinum** type E growth and toxin production include efficient heat treatment (194° F or 90° C for 10 minutes), restricted shelf life, pH below 4.6, and holding temperatures at or below 37.4°F (3°C). In order for a food borne type E botulism outbreak to occur, a combination of the following four prerequisites must be present: the aquatic animals is already contaminated by type E spores from the environment; processing of the food is inadequate to inactivate type E spores, and there are inadequate holding temperatures, or the product is recontaminated after processing; or food is consumed without cooking or after insufficient heating. Thus, relative to other proteinaceous foods, there is concern that aquatic animals and aquatic animal products may be undercooked and that pathogens could survive in apparently cooked products. To require that aquatic animals be frozen during all stages of processing eliminates these hazards.

Sous Vide Cooking Temperatures

Cooking temperatures are one of the prime factors that control the growth of pathogens in food. For cooking temperatures to be effective in reducing pathogens, the following factors are to be considered: the pathogenic bacteria count prior to cooking; the initial holding temperature of the raw product; and the product mass and characteristics that affect the time the product takes to reach its intended internal cooking temperature. To eliminate microorganisms and pathogens through cooking, the product must be held at a sufficient temperature for a specified kill time. Cooking temperatures in the Health Code are based, in part, on the biology and chemistry of specific pathogens that are associated with certain protein-based foods, and are also required to be consistent with the New York State Sanitary Code.[6]16 To assure that heat treatment of a **sous vide** product is safe, the Department will require that FSEs cook food to temperatures required by §81.09 of the Health Code.

Requiring a Hazard Analysis Critical Control Point (HACCP) Plan for ROP

The use of the Hazard Analysis Critical Control Point or HACCP approach is probably the single most important strategy for controlling the safety of a food product. It has been demonstrated scientifically that the application of a combination of different multiple inhibitory factors like water activity (A_w) of 0.91 or less, pH of 4.6 or less, and high levels of competing microorganisms can impede the growth of these virulent facultative anaerobic organisms in vacuum packaged foods. However, **sous vide** and cook chill processes lack these barriers, and therefore depend on monitoring of critical limits, such as time and temperature for safety.[7]17 A HACCP plan is the recognized standard for monitoring critical limits in food processes and assuring food safety. The lack of inhibitory factors (e.g., aerobic bacteria) makes **sous vide** and other ROP processes high risk for transmission of food borne illness.

The importance of a HACCP plan for ROP methods of food processing like **sous vide** in FSEs begins with an understanding that the raw food received from the wholesale supply system is normally contaminated with either or both vegetative cells and/or spores of pathogenic microscopic organisms, some naturally occurring in their environment (e.g. finfish and other seafood),[8]18 and that the majority of the most virulent are either anaerobes or facultative anaerobes,[9]19 with a competitive advantage enabling them to survive and grow better in reduced oxygen environments,[10]20 such as vacuum sealed food bags, than in the presence of aerobic spoilage organisms. In addition, several studies have shown that further contamination of food, growth of pathogens, and production of toxins more often than not occur in the FSE due to the exposure of food to unsanitary environmental factors and production processes, such as preparation and preservation of food by untrained and inexperienced food workers. Since scientific evidence has shown that the inactivation of some of these pathogens, especially their spores, and destruction of toxins require temperatures far higher than the minimal heat processing usually employed for the production of most vacuum packaged foods, like **sous vide**, documented application of safety procedures must therefore be guaranteed,[11]21 and the only tested, proven and up-to-date procedure that guarantees drastic reduction of hazards to a safe level is use of a HACCP plan.

The new §81.12 of the Health Code will allow FSEs to package and process food using cook chill or **sous vide** methods, provided they submit and obtain approval from the Department for a HACCP plan conforming with the new §81.06(b) of the Health Code for each food item to be processed using one of these techniques.

67. Statement of Basis and Purpose in City Record Mar. 13, 2008:

The New York City Department of Health and Mental Hygiene (the Department or DOHMH) is required by law to protect and promote the health of all New Yorkers. The Bureau of Child Care, in the Department's Division of Environmental Health, enforces Article 47 ("Day Care Services") of the Health Code, which regulates public and private group day care services operating within New York City.

Background

At its October 24, 2007 meeting, the Board of Health approved for publication for public comment a further resolution to repeal and reenact Article 47, updating its provisions, and harmonizing them with comparable provisions of the New York Social Service Law (SSL) and the regulations of the State Office for Children and Family Services applicable to child day care in other parts of the State. An earlier resolution was authorized for publication by the Board of Health at its meeting in March, 2007, and a public hearing was held April 19, 2007. This resolution contains changes made in response to comments received at both hearings. The major difference between the two resolutions was the removal of the application of Article 47 to child care programs for children between the ages of three and five who attended any elementary schools.

Child care programs are essential for many working families. Beyond providing child development, education, recreation and a safe and structured environment for children while their parents work, they contribute to the emotional and social growth of children by building a sense of community, fostering intergenerational relationships, and providing first hand experiences in areas of learning. Children develop skills that strengthen character and promote friendships.

There are currently 2,084 group day care services in New York City holding DOHMH permits, 40 LYFE ("Living for the Young Family through Education") programs operated by the New York City Department of Education (DOE) in schools (offering infant toddler care for children of DOE students) and 1,065 private and/or religious organizations known to DOHMH which provide day care services. Under the current Article 47, neither DOE nor religious schools are required to hold a permit to operate a day care service if the service is part of an elementary school. DOE kindergartens are also exempt from any permit requirements. Although most other Article 47 requirements are currently applicable to "NPR" (for "no permit required") day care services operated by religious schools, unless complaints are received, they have in the past rarely been inspected.

In the Notice of Intention published March 13, 2007, the Department proposed that religious schools' early child care programs be required to obtain permits. This aspect of the proposed Health Code reenactment received favorable comment from children's advocacy organizations, but was opposed by the operators of the religious schools. Initially, at the request of the NPR community, the public comment period was extended, and the Department discussed with the organizations operating such schools how to reconcile their desire not to have their religious instruction programs be regulated at all with the Department's efforts to require that essential health and safety needs of the youngest children attending such school programs be addressed. These discussions resulted in a decision by the Department to recommend to the Board that this proposal be further amended so that no programs for children ages three through five in any public or non-public elementary school would be subject to the provisions in Article 47. Instead, the most compelling requirements affecting pre-kindergarten and kindergarten school children's health and safety will be incorporated in an amended Article 45 ("General Provisions Governing Schools and Children's Institutions"). Accordingly, Article 47 as originally published has been further revised to delete from the definition of "child care service" all pre-kindergarten and kindergarten programs operated within or as part of an elementary school. However, a child care service will continue to be defined as any program providing services for children younger than three years of age regardless of whether the program is located within or is part of an elementary school, provided that the majority of children in the school-based program will not have their third birthday before December 31st of any calendar year. In addition, the Article provides for voluntary permitting for school-based child care services for children three through five years of age.

There has been no substantive revision of Article 47 since 1988, and professional standards and expectations, as well as the regulatory environment for day care have changed considerably since that time. In 1997, the State assumed regulation (through registration and licensing) of all residential based group family and family day care homes for smaller groups of children under six years of age, including those in this city, and for all school age child care programs, generally after school programs for children ages five through 12. At the same time, the State Office of Family and Children's Services was designated to adopt rules for various kinds of day care programs statewide. These rules do not apply to Article 47 group child care facilities in New York City, but have served as a model, wherever practicable, for many provisions of the reenacted Article 47. The amended definition of "child care service" is consistent with the definition of "child day care" in state Social Services Law §390 (1)(a)(ii)(D), which excludes "a kindergarten, pre-kindergarten, or nursery school for children three years of age or older, . . . operated by a public school district or by a private school or academy which is providing elementary or secondary education or both, in accordance with compulsory education requirements of the education law, provided that the kindergarten, pre-kindergarten, nursery school, or after school programs is located on the premises or campus where the elementary or secondary education is provided."

Article 47 Changes

The Department received a substantial number of comments from the public in response to publication of both resolutions. The resolution adopted by the Board contains substantially the same text as that contained in the original resolution published for public comment in April, 2007, with further revisions made in response to public comments on teacher qualifications, teacher training requirements and instructional swimming. Further substantive changes to the original proposal are described in each of the following section summaries.

§47.01 Definitions. Most of the terms used in this Article are newly defined. The term "child care service" replaces the term "day care service" and will apply to any program, day or night, that provides child care services for three or more children under six years of age for five or more hours per week, and that operates for more than 30 days during any 12-month period. Neither the term nor this Article will be applicable to pre-kindergarten or kindergarten classes that are a part of or are located within any public or non-public elementary school, except for those offering child care services for children under three years of age. The Department of Education's (DOE's) LYFE infant/toddler programs, which are not otherwise regulated, are the only DOE-based child care programs that will need a DOHMH permit. In response to comments, it has been further clarified that kindergarten or pre-kindergarten classes that are within or "part of an elementary school" may be located in separate buildings than the elementary school, but must be under identical ownership, operation, management and control. All programs for children under three years of age regardless of where located will require permits from the Department. Additional definitions have been included for the terms "Fill and draw pool" and "Spa pool" to clarify those terms when used in the new provisions allowing swimming and the term "volunteer."

§§47.03, 47.05, 47.07 and 47.09 Permit requirements. Article 47 no longer exempts from permit requirements any child care service which otherwise comes within the revised definition. Prospective permittees will be required to attend pre-permit orientation where DOHMH staff will outline Article 47 requirements and answer questions. All permits will now be for two years. Permits will only be issued if all pre-permitting staff child abuse registry and criminal justice screening requirements are complied with, and the written health and safety plan required by §47.11 has been submitted and approved by DOHMH. Operators of school based child care services that are no longer required to hold permits under Article 47 may voluntarily apply for and be issued permits, if they need to demonstrate that they are in compliance with Article 47's requirements.

§47.11 Written safety plan. This is a new requirement. The written health and safety plan will aid in maintaining the health, safety and security of children and staff members. The written safety plan is intended to serve as the standard operating policies and procedures for the safe operation of a child care service. The plan will cover how the requirements of Article 47 are to be implemented with respect to medical supervision and health of children, medication administration, facility operation, maintenance, fire safety, specific activity safety, staff training, parent/child

orientation, and proper supervision. An initial plan will be reviewed and approved for all new permit applicants and updated as necessary upon permit renewal or if there are substantial changes in program operation. The Department will provide a model for preparing such plans.

§§47.13, 47.15, 47.17 Teaching staff qualifications. These provisions have been updated and are consistent with current New York State Department of Education requirements for early childhood certified teachers, as well as OCFS regulations. In response to public comments, §47.13 has been further amended to allow current group teachers with a baccalaureate degree and five years' teaching experience to continue to hold these positions.

§§47.19 and 47.21 Criminal justice and child abuse screening and corrective action plans. The current requirements have been expanded and set forth in greater detail, and are consistent with those imposed on State regulated child care programs by OCFS. Corrective action plans will be required if staff are reported as having confirmed or pending criminal histories or child abuse complaints, and the permittee elects to maintain the staff person at the child care service. The Department will provide models for preparing such plans.

§47.23 Supervision; staff to child ratios and group size. These provisions have been reformatted in charts for simplification and easy reference. All staff/child ratio requirements remain the same. For infant/toddler programs, staff ratios have been changed to allow either one teacher for every four children (1:4) or one teacher for three children (1:3); programs that maintain only a 1:4 staff ratio must demonstrate through their Written Safety Plan that they have a staff to child ratio of 1:3 available if they need to safely evacuate children younger than 12 months of age during emergencies. In addition, in response to a comment from the Administration for Children's Services the staff: child ratio the staff:child ratio for a group of children of mixed ages may be determined by the predominant age of the children in the group, provided the children are of contiguous ages.

§§47.25, 47.27, 47.29, 47.31, 47.33 Health of children and staff. These provisions have been updated as necessary to reflect current pediatric recommendations for well-child care, and other Health Code requirements for control of communicable diseases, and to incorporate regulations for administration of medication to children that are consistent with those of the OCFS (see, 18 NYCRR Part 18-1 and Part 18-2). The requirement that new staff hires be tested for tuberculosis infection has been eliminated since this group is at relatively low risk for tuberculosis. There is also a new provision that requires that medical information maintained in the child care service be confidential. The provisions are otherwise in most respects substantively the same as those in the current Article 47.

§47.35 Personal hygiene practices. This section consolidates various existing provisions.

§47.37 Training. Current §47.19 (d) requires training in establishing a health plan, recognizing and controlling infectious diseases and child abuse prevention. This new provision is modeled on training required for OCFS licensed programs elsewhere in the State, makes the educational director responsible for training, specifies a number of new training requirements and authorizes the DOHMH to approve or certify certain kinds of trainers. The Department initially received comments objecting to the extended training, and requesting that training frequency be reduced, since training in many areas may not be necessary for certified teachers, and that most child care services lack resources to support such training. In response to initial comments, the Department reduced the amount of training required and received comments supporting the need for additional training, especially for uncertified teaching staff. In an effort to strike a balance in the final resolution, minimum training is required for all staff in child abuse prevention and recognition, for teaching staff in infection control, and additional training is required for less qualified infant and toddler, night program and assistant teachers.

§47.39 Space allowance. This section consolidates similar current provisions in §47.29

§47.41 Indoor physical facilities. This section restricts infant/toddler programs to the first (ground) floor and one below ground level floor to facilitate evacuation of the youngest children in emergencies. Child care services for older children will be restricted to the third or lower floors for the same reason. Window guards will be required for all

windows because the Department believes that there is no "safe" distance to the ground for any child with access to an open window.

§47.43 Plumbing. This section consolidates provisions in current §47.39, makes child:toilet ratios applicable to children over 24 months of age; and requires toilet facilities for all children to be as close as practicable to classrooms and play areas. The requirement as originally published, requiring toilet facilities to be adjacent to classrooms and play areas of children under three years of age, would have been impossible for many existing facilities to comply with.

§47.45 Ventilation and lighting. This section is derived from current §47.29 (f) and (g), with additional requirements for control of specific defined indoor air quality nuisances.

§47.47 Outdoor play areas. This section is derived from current §47.35, and clarifies safety criteria for resilient surfaces under play equipment, and adds restrictions on use of rooftop play areas in non-fireproof buildings.

§47.49 General sanitation and maintenance. This section is derived from current §47.31 and adds requirements for use of environmentally sensitive cleaning products in accordance with Education Law §409-i.

§47.51 Rodents, insects and other pests prohibited; pesticide application notice. Current provisions in §47.31 have been amended and a requirement for notification of parents when pesticides are applied has been added, in accordance with Social Services Law § 390(c).

§47.53 Pet animals. This section has been amended to be consistent with Article 161 of this Code.

§47.55 Equipment and furnishings. New section including provisions from current §§47.31, 47.33 and 47.39, adding a prohibition on use of stackable cribs. The section has been further modified in response to comments to allow pillows to be used when recommended by a child's health care provider for orthopedic support.

§47.57 Safety; general requirements. Includes provisions from current §§ 47.29 and 47.41; adds requirements addressing concerns on heat advisory days; explicitly prohibits co-location of new child care services in buildings that contain environmental hazards such as dry cleaners, gas stations and power plants. In response to public comments, the original prohibition on swimming has been modified; subdivision (i) enables child care services to offer instructional swimming but maintains a requirement of barriers to water access.

§47.59 Fire safety. Includes provisions from current §§47.41 and 47.46.

§47.61 Food and food safety. Includes provisions from current §47.37; requires the person in charge of food operations to hold a food protection certificate issued pursuant to §81.15 of this Code. No child care service will also be required to hold a permit pursuant to Article 81, but will be responsible for compliance with that Article.

§47.63 Lead-based paint restricted. Renumbers current §47.44; adds restrictions on lead in soil in outdoor areas of a child care facility used by children.

§47.65 Transportation. Renumbers current §47.43; adds requirements for child restraints in vehicles transporting children.

§47.67 Child development policies, program, rest periods and clothing. Renumbers current §47.33; updates requirements for appropriate use of surveillance technology.

§47.69 Night care. Renumbers current §47.46; adds requirements for maintaining information about child's bedtime routines; limits time in night care to 12 hours.

§47.71 Physical activity and limits on television viewing. Renumbers and combines current §§47.35 and 47.36; and is otherwise unchanged.

§47.73 Required postings. Renumbers §47.03; adds notice about obtaining copies of inspection reports by calling the City's 311 telephone information number.

§47.75 Modification of provisions. Renumbers §47.47 without substantive change.

§47.77 Closing and enforcement. Renumbers and clarifies current § 47.49; adds provisions that operating a child care service without a permit shall be deemed an imminent health hazard and shall result in the closing of the service; authorizes the Department to close a service for imminent health hazards; allows Department discretion to allow continued operation with additional requirements of child care services with imminent health hazards to promote maximum degree of child safety; and authorizes Department to padlock facilities that have been ordered closed but that continue to operate in violation of a Commissioner's order. Imminent health hazard is defined in new §47.01 as any condition, such as lack of adequate supervision, that could be expected to be result in illness, physical injury or death of a child or children in care. Observation of such conditions would result in immediate closure of a child care program. Such a provision will harmonize Article 47 with more modern provisions of OCFS regulations for State-regulated child care programs, and reflect the policies and concerns underlying related child health and safety regulations, such as those governing day camps in Subpart 7.2 of the New York State Sanitary Code and Article 48 of the Health Code.

§47.79 Construction and severability. Applies the provisions in Health Code §3.33 specifically to this Article.

68. Statement of Basis and Purpose in City Record Mar. 13, 2008:

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, various provisions of the Health Code are being updated to assure that it provide the adequate legal tools for the Board and the DOHMH to effectively address the City's current and future public health needs. As part of this broad revision of the Health Code, Article 1 is repealed and reenacted so as to, in large part, update definitional terms used throughout the Code and to eliminate outdated terms.

69. Statement of Basis and Purpose in City Record Mar. 13, 2008:

Certain sections of Article 9 of the Health Code are amended pursuant to a comprehensive review of the Health Code. As a result of this assessment of the Health Code, §§9.01, 9.03, 9.05 and 9.07 are amended to eliminate unnecessary terms and language. Importantly, the amendment would allow the public to submit petitions electronically by facsimile or electronic mail.

In accordance with Charter Subdivision 1043(f), any person may petition an agency to consider the adoption of any rule and each agency is to prescribe by rule the procedure for submission, consideration and disposition of such petitions. Article 9 provides procedures for how the public may petition the Board to adopt a rule in the Health Code.

70. Statement of Basis and Purpose in City Record June 11, 2008:

Local Law No. 9 of 2008 amends Subchapter 2 of Chapter 3 of Title 17 of the Administrative Code of the City of New York by authorizing the Commissioner of Health and Mental Hygiene to issue up to one thousand (1000) newly created "fresh fruits and vegetables permits", as defined in §17-306(r) of the Administrative Code. Unlike other full term permits issued pursuant to Subchapter 2, these permits authorize the holders thereof to vend only "fresh fruits and vegetables". "Fresh fruits and vegetables" is defined, in part, in §17-306 (q) as the "unprocessed unfrozen raw fruits and vegetables that have not been combined with other ingredients."

Local Law 9 also establishes a new type of pushcart called a "green cart", which must comply with standards established by the Commissioner, and which is to be used exclusively by those issued fresh fruits and vegetables permits. No food vendor issued a fresh fruits and vegetables permit shall be authorized to vend from other than a "green cart" or vehicle or to vend any food other than fresh fruits and vegetables from the vehicle or green cart for which the fresh fruits and vegetables permit was issued. The initial issuance of these 1000 fresh fruits and vegetables permits shall

be phased in over a two year period. No more than five hundred (500) permits shall be issued during the first year of permit availability, with no more than one-half designated for use in each borough to be issued during the first year. During the second year of permit availability, the Commissioner may issue the remaining 500 permits along with any permits not issued during the first year of permit availability. Each of the 1000 fresh fruits and vegetables permits issued pursuant to Local Law 9 shall be designated for use exclusively in the designated areas of boroughs in the numbers authorized by that law. Local Law 9 further requires that preferences shall be given in the issuance of fresh fruits and vegetables permits and in the placement on any borough specific waiting lists for such permits to persons on any existing mobile food unit permit waiting list on the effective date of this local law, with additional preference given to those on these lists who are also disabled veterans, disabled persons and veterans, in that order of priority. Disabled veterans, disabled persons and veterans who are not on any existing mobile food unit permit waiting lists shall also be given preferences, as specified in §17-307(b)(4)(e).

It is the Department's experience that the demand for mobile food unit permits generally exceeds their availability as fixed by statutory maximums. Accordingly, it is anticipated that the demand for fresh fruits and vegetables permits will also exceed their limited availability. Accordingly, a fair, orderly and efficient procedure is needed for persons to communicate to the Department their interest in applying for fresh fruits and vegetables permits and for the Department to issue these permits. A new Chapter 26 is adopted. Section 26-02 of the rule directs the Department to establish five separate waiting lists, one for each borough of the City. Section 26-03 establishes preferences to be given on these borough specific waiting lists to certain categories of persons, specifically to those persons on any existing mobile food unit waiting list on the effective date of Local Law No. 9 of 2008, with additional preference to be given to those on existing waiting lists who are also disabled veterans, disabled persons and veterans, in that order of priority or preference. Section 26-03 further provides that preferences on these borough specific fresh fruits and vegetables permit waiting lists shall also be given, as specified in §17-307(b)(4)(e), to those not on any existing mobile food unit permit waiting lists on the effective date of Local Law 9 of 2008 but who are disabled veterans, disabled persons and veterans, in that same order of priority. Section 26-04 provides that only those persons holding valid mobile food vendor licenses at least ten (10) days prior to the Department's establishment of the borough specific waiting lists for fresh fruits and vegetables shall be eligible for placement on any of the lists established pursuant to this Chapter. Section 26-05 describes the notice to be provided to prospective applicants for newly issued fresh fruits and vegetables permits and for those seeking position(s) on any of the waiting lists. Section 26-06 describes the procedures to be followed for requesting position(s) on these lists. The remaining provisions of new Chapter 26 specify how the waiting lists are to be established and administered for those seeking fresh fruits and vegetables permits.

The original proposal published for public comment was slightly modified to take into consideration borough choice rankings assigned by waiting list applicants, in addition to any preference category or additional preference within a preference category, prior to the randomization and establishment of a borough specific waiting list. Section 26-03 was changed to provide that, among those applicants having the same weighted value based on any preference category and additional preferences within that category, borough rankings identified by persons on their waiting list applications would be a factor in their placement on borough specific waiting lists. Section 26-07, as modified, goes further in specifying that "those applicants specifying a borough as a preferred choice in which to operate shall be given preference on that borough's waiting list over those identifying that borough as a lesser choice." These changes were made to the original proposal because it will lead to a more orderly result after randomization and list establishment. The names of persons within the highest preference group and selecting a particular borough would be randomized followed by randomization of those persons in the highest group who ranked that same borough as their second choice, followed by those in the highest preference category selecting that borough as their third choice etc. More importantly, taking borough choice rankings into consideration before randomization and list establishment should result in giving potential vendors, within the limitations of their preference group, their first borough of choice and thereby maximizing the likelihood that they will apply for a permit and commence vending fresh fruits and vegetables.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph (1), subparagraph (c) of the New York City Charter, that

there is a substantial need for the immediate implementation of Chapter 26 of Title 24 of the Rules of the City of New York. This rule is necessary for the implementation of Local Law No. 9 of 2008, which becomes effective June 11, 2008. This law authorizes the Commissioner of Health and Mental Hygiene to issue up to one thousand newly created "fresh fruits and vegetables permits" authorizing the holders thereof to vend only fresh fruits and vegetables in designated areas and in numbers authorized by that law. Chapter 26 articulates the procedure to be followed by persons to communicate to the Department their interest in applying for fresh fruits and vegetables permits and for the Department to issue these permits. It provides for the establishment of five borough specific permit waiting lists and assigns preferences to be given on these borough specific waiting lists to various categories of persons, in accordance with the local law.

Local Law No. 9 is scheduled to become effective on June 11, 2008 and these rules are necessary for the law's effective implementation. The Notice of Intention to adopt Chapter 26 of Title 24 of the Rules of the City of New York was published in the City Record on April 10, 2008 and a public hearing on this rule was held on May 13, 2008. In addition, the notice to comment on the rule was extended until May 29, 2008. Adherence to the thirty day post-publication requirement set forth in §1043 of the Charter would mean that this rule would not take effect until some time after June 11, 2008. Simultaneous implementation of this rule on the effective date of the law, June 11, 2008, would allow for the law's immediate implementation and help avoid public and regulatory confusion.

71. Statement of Basis and Purpose in City Record June 11, 2008:

Local Law No. 9 of 2008 amended Subchapter 2 of Chapter 3 of Title 17 of the Administrative Code authorizing the Commissioner of Health and Mental Hygiene to issue up to one thousand (1000) newly created "fresh fruits and vegetables permits", as defined in §17-306(r) of the Administrative Code, which unlike other full-term permits issued pursuant to Subchapter 2, solely authorizes the holder thereof to exclusively vend "fresh fruits and vegetables". Local Law No. 9 of 2008 also established a new type of pushcart called a "green cart," which is defined in §17-306(s) of the Administrative Code as a "pushcart used exclusively by those issued fresh fruits and vegetables full-term permits" and which "must also have a distinctive and easily recognizable appearance in accordance with rules to be established by the commissioner". Section 6-01(m)(1) of Title 24 of the Rules of the City of New York provides that all green carts shall have permanently affixed on two sides of each cart either identical permit plates or identical permit decals that are easily identifiable and distinguishable from all other pushcart decals. Section 6-01(m)(2) provides that all green carts must use the distinctive and readily identifiable green cart umbrella to be provided by the Department. During the initial two-year phase in period that fresh fruits and vegetables permits are to be offered such umbrellas shall be provided, on a one time basis, free of charge to cart owners. Thereafter, for all replacement umbrellas and umbrellas provided by the Department after the initial two-year phase in period, green cart owners will be required to pay a fee to the Department reimbursing it for the cost it incurred in purchasing each such umbrella. Section 6-01(m)(2) would further require that green cart umbrellas be safely secured and maintained in good condition and repair at all times and that they be used whenever the green carts are being used to vend.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph (1), subparagraph (c) of the New York City Charter, that there is a substantial need for the immediate implementation of this amendment to Chapter 6 of Title 24 of the Rules of the City of New York. This rule is necessary for the implementation of Local Law No. 9 of 2008, which becomes effective June 11, 2008. This law authorizes the Commissioner of Health and Mental Hygiene to issue up to one thousand newly created "fresh fruits and vegetables permits" authorizing the holders thereof to vend only fresh fruits and vegetables in designated areas and in numbers authorized by that law. Local Law No. 9 also establishes a new type of pushcart called a "green cart" which must comply with standards established by the Commissioner, and which is to be used exclusively by those issued these permits. Local Law No. 9 also requires that a "green cart" have a "distinctive and easily recognizable appearance in accordance with rules to be established by the commissioner". This amendment to Chapter 6 of Title 24, specifically the addition of §6-01(m), requires that all green carts have permanently affixed on two sides of each green cart either identical permit plates or identical permit decals that are easily identifiable and

distinguishable from all other pushcart decals. It also requires that all green carts use a distinctive and readily recognizable "green cart" umbrella to be provided by the Department.

Local Law No. 9 is scheduled to become effective on June 11, 2008 and this rule is necessary for the law's effective implementation. The Notice of Intention to adopt Chapter 6 of Title 24 of the Rules of the City of New York, by adding a new §6-01(m), was published in the City Record on April 10, 2008 and a public hearing on the rule was held on May 13, 2008. In addition, the comment period was extended until May 29, 2008. Adherence to the thirty day post-publication requirement set forth in §1043 of the Charter would mean that this rule would not take effect until some time after June 11, 2008. Simultaneous implementation of this rule on the effective date of the law, June 11, 2008, would allow for the law's immediate implementation and help avoid public and regulatory confusion.

72. Statement of Basis and Purpose in City Record June 11, 2008:

Local Law No. 9 of 2008 amended Subchapter 2 of Chapter 3 of Title 17 of the Administrative Code authorizing the Commissioner of Health and Mental Hygiene to issue up to one thousand (1000) newly created "fresh fruits and vegetables permits", as defined in §17-306(r) of the Administrative Code, which unlike other full-term permits issued pursuant to Subchapter 2, solely authorize holders thereof to exclusively vend "fresh fruits and vegetables". Local Law No. 9 of 2008 also established a new type of pushcart called a "green cart," which is defined in §17-306(s) of the Administrative Code as a "pushcart used exclusively by those issued fresh fruits and vegetables full-term permits" and §17-307(b)(4)(b) of the Administrative Code designates specific police precincts within the City of New York within which fresh fruits and vegetables permits may be used. Pursuant to §17-307(b)(4)(c) of the Administrative Code, however, the commissioner may within eight months of its effective date exempt by rule any such police precinct upon determining that the rate of consumption of fresh fruits and vegetables in that precinct is not substantially lower than the citywide average and that the precinct does not have an elevated rate of nutrition-related health problems compared to the rest of the city.

Local Law No. 9 of 2008 was enacted to make fruits and vegetables more accessible in underserved neighborhoods. Since its enactment, the Department has refined its ability to estimate the rate of consumption of fruits and vegetables in those police precincts where fresh fruits and vegetables permits may be used pursuant to §17-307(4)(b) of the Administrative Code. Using consumption data at the zip code level, more precise estimates of consumption in each precinct were calculated than were previously derived from larger area estimates. Citywide, 14.5 percent of residents reported when surveyed that they had consumed no fruits or vegetables on the previous day. With its revised methodology, the Department now estimates that the rate of consumption of fruits and vegetables is not lower than the citywide average in two police precincts currently covered by Local Law No. 9, specifically the 45th precinct in the Bronx and the 72nd precinct in Brooklyn. The Department has also evaluated the health status of the residents of these two precincts, comparing their rates of hospitalization for heart disease, cancer and diabetes, as well as their rates of obesity and diabetes, with the overall rates for city residents. All of the specified hospitalization rates for these two precincts were either comparable to or lower than the citywide averages. According to self-reported survey data, rates of diabetes were comparable to the citywide average for both precincts; the rate of obesity was comparable to the citywide rate for one precinct, but was higher than the citywide rate for the other. Taken together, these multiple data points fail to demonstrate that either precinct has an overall elevation of nutrition-related health problems compared to the rest of the City. Based on these findings, the Department proposes that the 45th and 72nd police precincts be exempted by rule as designated areas within which fresh fruits and vegetables permits may be used to vend.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph (1), subparagraph (c) of the New York City Charter, that there is a substantial need for the immediate implementation of this amendment to Chapter 6 of Title 24 of the Rules of the City of New York removing two police precincts from those areas previously designated for vending by those issued fresh fruits and vegetables permits. This rule, which adds a new §6-01(o) to Chapter 6, is necessary for the

implementation of Local Law No. 9 of 2008, which becomes effective June 11, 2008. Local Law No. 9 of 2008 authorizes the Commissioner of Health and Mental Hygiene to issue up to one thousand newly created "fresh fruits and vegetables permits" authorizing the holders thereof to vend only fresh fruits and vegetables in designated areas and in numbers authorized by that law. Local Law No. 9 also designated the police precincts within the City in which fresh fruits and vegetables permits may be used, specifically areas within the City where the rate of consumption of fruits and vegetables was below the citywide average.

Pursuant to §17-307(b)(4)(c) of Local Law No. 9 the Commissioner of Health & Mental Hygiene is authorized within eight months of the effective date of this law to ". . . exempt by rule any such police precinct upon determining that the rate of consumption of fresh fruits and vegetables in that precinct is not substantially lower than the citywide average and that the precinct does not have an elevated rate of nutrition related health problems compared to the rest of the city." Since the enactment of this law the Department has refined its ability to estimate the rate of consumption of fruits and vegetables in those police precincts where fresh fruits and vegetables permits may be used pursuant to Local Law No. 9. With its revised methodology the Department now estimates that the rate of consumption of fruits and vegetables is not lower than the citywide average in two police precincts currently covered by Local Law No. 9, specifically the 45th and 72nd precincts. The Department has also evaluated the health status of the residents of these two precincts using newly obtained data and has determined that neither precinct has an overall elevation of nutrition-related health problems compared to the rest of the City. Based upon these findings, the Department intends that the 45th and 72nd precincts be exempted by rule as designated areas within which fresh fruits and vegetables permits may be used to vend.

Local Law No. 9 is scheduled to become effective on June 11, 2008 and this rule is necessary for the law's effective implementation. The Notice of Intention to amend Chapter 6 of Title 24 to exempt these two precincts from the coverage of Local Law No. 9 was published in the City Record on April 28, 2008 and a public hearing on the rule was held on May 29, 2008. Adherence to the thirty day post-publication requirement set forth in §1043 of the Charter would mean that the rule would not take effect until some time after June 11, 2008. Simultaneous implementation of this rule on the effective date of the law, June 11, 2008, would allow for the law's immediate implementation and help avoid public and regulatory confusion.

73. Statement of Basis and Purpose in City Record June 26, 2008:

Introduction

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public's health, the Article 7 of the Health Code has been updated so that it can provide the adequate legal tools to effectively address the City's current and future public health needs relative to the Department's Administrative Tribunal. Several of the provisions are without substantive change but have been reorganized such that the Article and its provisions flow in a more coherent and streamlined manner. The revisions reflect modern thinking about public health, public health law and due process. The revisions also reflect the current practices of the DOHMH and the Administrative Tribunal, including enforcement needs within the DOHMH and the need to conform the Article to the City Administrative Procedure Act as provided for in the New York City Charter. To that end, the Board has repealed and reenacted Article 7 as provided below. Changes made in response to public comments are indicated as well.

Section 7.01

This section officially establishes the Administrative Tribunal pursuant to §558 of the Charter.

Section 7.03

This section establishes the jurisdiction, power and duties of the Administrative Tribunal and its hearing examiners. The Tribunal's practices must be consistent with §1046 of the City Charter, thus ensuring compliance with the City Administrative Procedure Act. In addition to the powers provided for in current Article 7, certain powers have

been added that are inherent to the orderly conduct of hearings, such as the issuance of subpoenas for testimony or other evidence that is under the control of DOHMH and the authority to bar from continued participation in a hearing any person, including a party, authorized representative or attorney, witness or observer, who engages in disorderly, disruptive or obstructionist conduct, in order to maintain order and decorum and allow for efficient and expedient hearings.

Section 7.05

§7.05 provides for the organization of the Administrative Tribunal. The head of Adjudications at the Administrative Tribunal will be the Director who is responsible for the conduct of hearings and for all adjudicative matters of law, except that he or she will not be vested with the powers and duties of the Review Board. The Director appoints hearing examiners to exercise the powers and duties and discharge the responsibilities of the Administrative Tribunal with regard to adjudications. In this connection, the Director is able to assign hearing examiners to conduct hearings, and also delegate any or all of the powers vested in him or her, but is not able to delegate the powers and duties of the Review Board. Finally, §7.05 provides that the hearing examiners will be subject to the applicable rules of conduct promulgated pursuant to the New York City Charter.

Section 7.07

This section is substantively derived from the prior section in Article 7 describing procedures concerning a "finding" of violation. The actual document informing the respondent of the violation is entitled the "notice of violation." Referencing to the "notice of violation" rather than the "finding" of violation reflects DOHMH practice and the proper title. Changes to the procedures include a presumption that when a notice of violation includes the report by the person who made the inspection resulting in the notice of violation, such report is prima facie evidence of the facts contained therein. In addition, this section now clarifies that an amendment may not be made to the notice of violation if the amendment alleges new violations that have occurred since the original notice of violation or if the proposed amendment is not within the scope of the original notice of violation. Such subsequent or extraneous actions should afford the respondent the benefits, rights and duties associated with the receipt of a new notice of violation.

Section 7.09

This section changes the method by which a respondent must respond to a notice of violation by eliminating the concept of requiring a written answer. To reflect programmatic practice, conserve resources of the DOHMH and to provide additional convenience for the DOHMH and respondents, the changes facilitate adjudicatory efforts by allowing for and encouraging adjudications by mail in addition to the option of appearing in person or by an authorized representative at the scheduled hearing. Subdivision (a) specifies who, in addition to the respondent, may appear as an authorized representative on behalf of the respondent. In connection with mail adjudications, this section also provides additional guidance on mail adjudication procedures, including allowing the hearing examiner to request more evidence from the respondent in addition to the evidence submitted and allowing the hearing examiner to deny a mail adjudication request and adjourn the matter for a hearing. With the mail adjudications, the new provision indicates that when a notice of violation or related notice sets forth a penalty that may be paid in full satisfaction of the violations, the respondent may admit to the violations charged and pay the penalty by mail in the manner and time provided for in the notice. This type of payment shall constitute an admission of liability and will waive the respondent's rights to a hearing and appeal. This allows a respondent who simply wants to pay the penalty to do so without having to appear at a hearing. In response to public comment, paragraph (2) of subdivision (a) has been amended to delete any requirement that an affidavit be submitted by registered representatives. In addition, subdivision (c) has been clarified to provide that after a hearing has begun, adjournment requests must be addressed to the hearing examiner, regardless of prior administrative adjournments.

Subdivision (d) sets forth the rules for issuing default decisions where there is an unexplained failure to appear. Such default orders may be issued only by a hearing examiner. A default decision may be reconsidered in appropriate

circumstances. In such cases a hearing could be rescheduled so as to avoid prejudice to the respondent. In response to public comment, subdivision (d) has been clarified to change the term "received" to "postmarked" in providing for reopening or reconsideration of a default decision. Subdivision (e) explains the procedures for admitting the violations charged and paying a penalty by mail.

Section 7.11

§7.11 is derived largely from, and retains many of the provisions of prior §7.09. It addresses procedures for and guidance on hearings, including but not limited to provisions specifying that hearings are open to the public, that a respondent may present evidence, examine and cross examine witnesses, request the presence of the issuing inspector, that a record of the proceedings must be made and maintained, and requirements for the writing and service of hearing examiner decisions. This section also eliminates references to written answers. In response to a public comment, paragraph (2) of subdivision (f) has been amended to limit the number of times the hearing examiner may adjourn a hearing when a Department inspector has not appeared.

Section 7.13

The new §7.13 provides for the issuance of subpoenas related to a hearing in compliance with the Charter in order to allow for gathering appropriate and relevant evidence in a timely and orderly manner necessary for an expedient hearing.

With respect to a subpoena request subsequent to the commencement of a hearing, a hearing examiner may issue subpoenas to compel the production of any DOHMH record or document for examination or to compel the appearance of persons currently employed by DOHMH to give testimony if such production or testimony is reasonably related, relevant and necessary to the adjudication at issue.

Section 7.21

New §7.21 requires that "professional" representatives, those that represent two or more respondents in a calendar year, register with the Tribunal. The section also specifies the rules of conduct for authorized representatives to follow and allows for registered representatives to be barred from representing respondents at the Tribunal as a consequence of violating those rules or engaging in other specified behavior, including the submission of false or forged evidence. Prior §7.21, regarding the computation of time, has been renumbered as §7.23.

The following sections largely remain the same as their predecessor sections: §7.15 Disqualification of hearing examiners; §7.17 Review Board; §7.19 Disqualification of member of Review Board and §7.21, now proposed §7.23, Computation of time. An error of omission in §7.17 (c) has been corrected to provide that a notice of appeal must be filed by a respondent within 30 days of the Tribunal giving or mailing a decision to the respondent.

74. Statement of Basis and Purpose in City Record June 26, 2008:

The New York City Department of Health and Mental Hygiene (the Department or DOHMH) is required by law to protect and promote the health of all New Yorkers. The Bureau of Child Care, in the Department's Division of Environmental Health, enforces Article 47 ("Day Care Services") of the Health Code, which regulates public and private group day care services operating within New York City. At its meeting in March, 2008, the Board of Health adopted a resolution to repeal and reenact Article 47 ("Child Care Services"). Reenacted Article 47 excludes from the definition of "child care service" any school based instructional programs for children ages three through five, regardless of the kind of school offering such programs.

Article 47 is scheduled to go into effect on September 1, 2008. In 1995, school-based kindergartens (for children who are or who will be age five by December 31 of the school year) operated by the Board of Education were specifically exempted from the definition of "day care service" and were at the same time included in the regulatory

scope of Article 45 ("General Provisions Governing Schools and Children's Institutions") of the Health Code. With the exception of Board (now Department) of Education kindergartens, Article 47 has been applicable to all day care and instructional programs for children under six in all non-public schools. Religious organizations' day care services, which are not required to hold a permit under Article 47 have nevertheless been subject to almost all other Article 47 requirements except for staff criminal justice and child abuse screening.

In the next two years, both Article 45 and Article 49 ("Schools") of the Health Code which together regulate schools operating in New York City are scheduled for substantive revision as part of a project to modernize the entire Health Code. However, on September 1, 2008, the effective date of the repealed and reenacted Article 47, and until Articles 45 and 49's substantive revisions are adopted by the Board, a gap would exist in regulations covering the health and safety of school children ages three through five. Accordingly, the Department is proposing that the Board approve for publication and public comment a resolution that incorporates in a new Article 43 supplementary provisions applicable to schools providing programs for this age group. Child care programs for children younger than three would continue to be considered "child care services" and will require Article 47 permits regardless of whether they are located within or are part of a school.

ARTICLE 43 PROVISIONS

Article 43 contains many of the same provisions for health and safety that are applicable to child care services providing care to the same age groups regulated in accordance with repealed and reenacted Article 47, with some exceptions. The Department recognizes that all public and many non-public schools are subject to and regulated by the State and federal law, and we have no intention of duplicating and imposing a further layer of regulation where there are applicable similar laws and rules already in place. For example, some federal funding programs require school safety plans, particularly for evacuations in emergencies. If a school has a comprehensive safety plan, Article 43 will not require the person in charge of the school to duplicate or amend it. If school personnel are already required by any applicable law to be fingerprinted and undergo criminal justice record screening and review, as are all staff of public schools in this state, this Article will not require further fingerprinting or screening. The Article will not duplicate, but will supplement, requirements for child health in the regulations of the Chancellor of the City Department of Education. The specific sections proposed are as follows:

§43.01 Definitions. These definitions are intended to clarify terms used in the Article. In response to public comments received, changes were made to the definition of "school" to acknowledge that the local department or board of education may also determine whether the school provides an equivalent compulsory education. The definition of three-year-old was amended to indicate that if a school year begins in a month other than September, all children attending classes for three-year-olds must attain their third birthday within four months of the start of the school year.

§43.03 Scope and applicability. The Article is intended to supplement other provisions of the Health Code already applicable to schools, with particular reference to children ages three through five.

§43.05 Notice to the Department. The Department does not propose to issue permits to, license or register schools. However, to respond to complaints it is necessary to know of the existence of schools that provide classes for children in these age groups. Accordingly, we are requiring that a notice be filed with the Department on or before the effective date of the Article, and that notices thereafter be filed whenever new schools are established, or contact information for existing schools changes.

§43.07 Written safety plan. These provisions are essentially the same as those in Article 47, but exempt from this requirement schools that have already adopted the same or similar plans.

§43.09 Staff supervision. The Department is proposing that ratios of staff to children in Article 47 should also apply to school-based classes for the same age groups. To meet the ratios, the proposal would allow that staff providing supervision may include parents or other volunteers. This section also requires that staff maintain direct line of sight

observation of each child. In response to comments that the ratios would be very difficult to achieve in some non-public schools, the ratio of staff to five-year-olds in subdivision (b) has been changed from 1:15 to 1:25, to be comparable to current Department of Education staffing for kindergarten classes. Subdivision (c) has been amended to allow adults other than parents or volunteers to be counted as staff.

§43.11 Health; staff. This provision is essentially the same as in Article 47.

§43.13 Criminal justice and child abuse screening of current and prospective personnel and

§43.15 Corrective action plan. These provisions are essentially the same as in Article 47 (see, §§47.19 and 47.21). However, any school that is already required to fingerprint staff under any law would be exempt from these requirements. Corrective action plans would be maintained at the school by the person in charge, and be made available for Department inspection upon request.

§43.17 Health; child admission criteria; §43.19 Health; daily requirements; communicable diseases, and §43.21 Health; emergencies. These provisions are essentially the same as requirements in Article 47 (see, §§47.25, 47.27, 47.29, 47.31, 47.33).

§43.23 Lead-based paint restricted. This requirement is the same as current §45.12, a provision that will remain in this Article, but will be repealed in the substantive revision and modernization of Health Code provisions applicable to schools generally. Lead surveys are required annually for schools with interior surfaces that have lead-based paint, or paint of unknown lead content.

§43.24 Modification of provisions. This is a standard provision of most articles of the Health Code and essentially the same as §47.75 in Article 47.

75. Statement of Basis and Purpose in City Record June 26, 2008:

Introduction

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, the DOHMH proposed that Board of Health update various provisions of Article 3 of the Health Code to assure that it provide the adequate legal tools for the Board and the DOHMH to effectively address the City's current and future public health needs. The revisions reflect modern thinking about public health and legal preparedness subsequent to the September 11, 2001 terrorist attacks. The revisions reflect current law, policies and practices, and address the needs of the DOHMH regarding such matters as authorizing a rapid response by the Commissioner in the event of a public health emergency, the inspection of records and proceedings of the DOHMH, and the protection of the privacy of persons who are the subjects of such information. Pursuant to this review and assessment of the Health Code, the Board repealed and reenacted Article 3. The substance of the salient changes is as follows:

§3.01(b). Currently, subdivision (b) of §3.01 implies that pursuant to §556(c) of the Charter the DOHMH has an affirmative duty to ensure compliance with the Health Code and other relevant law. However, after §3.01(b) was adopted, §556(c) of the Charter was amended and no longer mandates that the DOHMH ensure compliance with the Health Code or any other provisions of law.

Instead, the Charter now provides that the DOHMH has the "jurisdiction to regulate all matters affecting health in the city of New York and to perform those functions and operations performed by the city that relate to the health of the people of the city . . ." It also provides in §556(a) that the DOHMH has the jurisdiction to enforce "all provisions of law applicable in the area under the jurisdiction of the DOHMH for the preservation of human life, for the care, promotion and protection of health and relative to the necessary health supervision of the purity and wholesomeness of the water supply and the sources thereof; . . .". The proposed amendment to subdivision (b) of §3.01 will harmonize the Health Code with the amended Charter.

§3.01 (c) and (d). Existing subdivision (c) of §3.01 provides that the DOHMH may take such actions as may become necessary to ensure the care and safety of the public health and, that subject to the directions of the Board, the Commissioner may establish procedures to be followed during an emergency declared by the Board. Since September 11, 2001, there have been concerns raised regarding the adequacy of the public health emergency powers of the Commissioner and how those powers interact with the powers and procedural requirements of the Board. The current subdivision (c) hampers the Commissioner's ability to act and respond rapidly to an emergency owing to the procedural requirements it sets forth and the need to await the further direction and discretion of the Board. The current subdivision (c) would seem to require in any emergency that the Commissioner wait for the Board membership to meet pursuant to the procedures as set forth in Public Officers Law and to direct how the Commissioner may actively respond to the public health emergency.

For example, in the event of a bioterrorist attack on the city where mass quantities of a virulent contagious agent may have been unleashed and disseminated, the current Health Code would seem to require that the Commissioner wait for the Board to formally declare a public health emergency and then for its direction before he or she is able to implement procedures to be followed that are not provided for in the Health Code. However, in a situation such as this, it would likely not be feasible or even prudent to postpone a response pursuant to these procedural requirements. Indeed, in such an emergency event, it is questionable as to whether the Board will be able to comply with these requirements. While this example illustrates a public health emergency from an act of bioterrorism, the application of this subdivision would include any and all emergency scenarios impacting the public health within the DOHMH's jurisdiction, such as, for example, the emergency concerns created by the power outage in August 2003. The blackout left all of New York City without electricity and much of its population without water or any means of communication. Indeed, it is likely that there may also be occasions when, because of transportation or communications interruptions, it might even be difficult to assemble the Board to convene a meeting.

A new subdivision (c) retains the first sentence of current subdivision (c) and repeals substantive concepts addressing procedures in the event of an emergency and addressed these issues in a new subdivision (d). The new subdivision (d) enhances the authority needed by the Commissioner to respond effectively, efficiently and appropriately in the event of an imminent or existing emergency affecting the public health and necessitating immediate action.

The amended powers of the Commissioner as set forth herein will allow the Commissioner to act immediately to prevent an imminent threat or respond to existing emergency circumstances as may be appropriate and necessary upon the Commissioner's declaration of a public health emergency. A public health emergency may be declared in conjunction with, or independent of, a declaration of a local state of emergency by the mayor or a declaration of a disaster emergency by the governor. The amendments to this subdivision create a more timely and efficient response in a public health emergency by removing procedural obstacles. In addition, upon the declaration of a public health emergency, the Commissioner may establish procedures to be followed for the protection of public health. These procedures may also include the suspension, alteration or modification of any provision of the Health Code, or the exercise of any power that the Board may have to respond to an emergency.

Enhancing the Commissioner's powers does not mean that the Board would be removed from the emergency response process. The Commissioner's actions would be effective only until the next meeting of the Board, which would have to be held within five business days if a quorum of the Board can be convened and, if not, then as soon as reasonably practicable. At that time, the Board would review the need for continuing, modifying or terminating any of the actions of the Commissioner. Thus, while the amended powers of the Commissioner will allow the Commissioner to respond immediately, the time-limited delegation of authority, for example, to suspend, alter or modify the Health Code, combined with the mandatory Board review of actions, will serve a precautionary function and enable full participation and input by the Board of Health. The Commissioner's and Board's authority to act in such situations is consistent with the Charter and other applicable law, including Article 2-B of the State Executive Law (authorizing the governor and mayors of localities to declare emergencies). Subdivision (d) also sets forth the manner in which orders issued thereunder are to be served.

Finally, subdivision (e) makes it clear that the authority granted to the Commissioner by this section is distinct from powers that he or she may have under other laws, and that such authority may be exercised in conjunction with other powers.

§3.03. Currently §3.03 consists of two subdivisions, (a) and (b). This section has been reorganized, dividing current subdivision (a) into several subdivisions and relettering current subdivision (b) as a new subdivision (e), rendering subdivision (a) easier to read and comprehend. Subdivision (a)'s paragraphs enumerate the conditions whereby the DOHMH may seize, embargo or condemn certain materials.

Subdivision (b), consistent with §17-118 of the Administrative Code, makes it clear that not only is an owner not entitled to compensation when the Department destroys, or otherwise disposes of, property that is dangerous and not capable of being reasonably salvaged, but also that such destruction or disposition can be at the owner's expense.

The Department sometimes encounters dangerous food or other products the source of which needs to be ascertained, or which may have been already distributed commercially within the City. While the department's authority to issue subpoenas and orders is otherwise clearly established in law, subdivision (e) re-emphasizes this authority in order to locate the source or destination of embargoed goods. No other substantive changes have been made.

§3.05. Current §3.05 authorizes the Department to inspect places where services for children under 16 are provided. This section has been repealed, as unnecessarily duplicative of the authority provided in §3.01. The new §3.05, formerly §3.07, now provides for the service of orders issued under subdivision (d) of §3.01. Subsequent §§3.09 and 3.11 are renumbered accordingly without substantive change. Current §3.12 is renumbered as §3.11, and the title of the section is changed.

§3.11. Current §3.12 addresses the monetary limits that may be imposed through compulsory civil enforcement proceedings for violations of this Code or other applicable law. The section has been renumbered and re-titled, and its language simplified without substantive change.

§§3.13 and 3.15. No changes have been made to these sections.

§3.17. Currently, §3.17 only prohibits the destruction or removal of notices of the DOHMH. However, there may be other posted materials, such as informational posters, or materials or notices that are required to be posted that should not be removed or destroyed. The section and its title were amended to broaden the application of the section to prohibit the destruction or removal of all materials or notices posted, or required to be posted, by the Department, unless the DOHMH grants permission to remove the posted materials, or the materials are removed pursuant to the Health Code or other applicable law.

§3.19. Current §3.19 prohibits a person from making a false, untrue or misleading statement or forging the signature of another on a certificate, application, registration, report or other document required to be prepared pursuant to the Health Code or submitted to the Department. Section 3.19 was drafted prior to the use of modern communications media, such as electronic delivery, and prior to the use of electronic and other methods of reproduction and is therefore limited in the scope of its application. The section has accordingly been amended to prohibit submission of false or misleading statements in any form, or medium, paper, electronic or otherwise and to conform this provision to other Code provisions referencing modern communications concepts.

Sections 3.19 and 3.21 have been combined, including the Notes to §3.21, to address false and/or misleading representations in the form of statements, reproductions or alterations, and §3.21 is now subdivision (b) of §3.19, and also reflects use of electronic delivery and electronic reproductions and conforms to other Sections using modernized concepts.

Current §3.21 prohibits the reproduction or alteration of permits, reports, certificates or "other paper" issued by the Commissioner, DOHMH or the Board to evade or violate any provision of the Health Code or other law. The section

has been amended and its scope broadened to prohibit the reproduction or alteration of any documents, paper, electronic or otherwise, issued by the Commissioner, DOHMH or the Board. In addition to documents in electronic form, the section now prohibits reproduction of any materials issued by DOHMH for any purpose.

Current §3.21 makes it unlawful to reproduce or alter DOHMH documents if the purpose of such reproduction or alteration is to evade or violate any provision of the Health Code or any other law. The section has been amended so that it is also unlawful if the effect of such reproduction or alteration is to evade or violate the law, or induce issuance of a license or permit. Providing evidentiary proof of the effect of an act is less difficult than proving that the actor had the intent or purpose to violate the law when reproducing or altering a DOHMH document.

§3.21. Current §3.23 has been renumbered as §3.21, and amended by removing the term "foreign" in reference to other languages, and now allows the Department, in its discretion, to accept non-English documents if they are accurately translated.

In addition, the section has been amended by bifurcating current §3.23 into subdivisions (a) and (b) and moving the clause addressing the use of the other languages in labels or signs in addition to the English language to subdivision (b) thereby separating and creating one subdivision to address materials that must be submitted to the DOHMH and one subdivision to address the use of language in signs, labels and other required writings that may affect the public.

§3.23. Current §3.25 is renumbered §3.23, and its language simplified, retaining its substance, clarifying that documents which are signed or certified by employees of the Department or other governmental agency shall be presumptive evidence of the facts stated therein.

§3.25. Current §3.27 is renumbered and amended to reflect current law and DOHMH policy concerning the inspection of records and proceedings of the DOHMH and the protection of the privacy of persons who are the subjects of such information while providing for the conditions under which information may be disclosed. Subdivision (e) of current §3.27, which currently allows access to the printed indexes of vital statistics records, has been repealed in its entirety. The Department will no longer make such indexes available, since such access can be abused and result in identity theft and attendant security risks. In addition, genealogists and others interested in genealogical research can access appropriate information from the Municipal Archives. While these amendments reflect the policies and practices of the DOHMH, the amended provisions also take into consideration the federal regulations promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA). HIPAA represents the federal privacy standard to protect patients' medical records and other health information provided to health plans, doctors, hospitals and other health care providers. Among other things, HIPAA provides for enhanced security and confidentiality of health information, and its final regulations cover health plans, health care clearinghouses, and those health care providers who conduct certain financial and administrative transactions electronically. The new privacy regulations ensure a national floor of privacy protections for patients by limiting the ways that health plans, pharmacies, hospitals and other covered entities can use patients' personal medical information. The regulations protect medical records and other individually identifiable health information, whether maintained in paper, in computers or communicated orally. The HIPAA regulations, however do not apply to traditional public health activities such as surveillance and epidemiological investigations. DOHMH has always recognized the importance of protecting individual privacy and respecting individual dignity to maintaining the quality and integrity of health data. The Notes to §3.25 provide a further discussion of its purpose and rationale.

Repeal current §§3.28 and 3.29. Section 3.28 currently provides a list of fees for searches other than vital statistics records. Rather than defining in the Health Code the various types of searches that may be performed and what fees shall be paid pursuant to the type of search involved, DOHMH believes that these issues should be more appropriately addressed in department regulations. Accordingly, §3.27 has been repealed in its entirety, and the authority to charge a reasonable fee for access to department records has been incorporated in subdivision (d) of §3.25. Current §3.29 has been repealed as unnecessary.

§3.27. This section renumbers current §3.30 as §3.27, simplifies its language without substantive change.

§3.29. Current §3.31 provides that the Health Code is intended to be consistent with applicable Federal and State law and will be construed as consistent whenever necessary to achieve such consistency. Principles of federal preemption and consistency with federal law are beyond the scope of the Health Code and are subject to evolving trends. Accordingly, §3.31 has been renumbered as §3.29 and amended to reflect the language of the City Charter, which requires the Health Code to be consistent with the federal and state constitutions, state law and the Charter itself.

§3.31. Current §3.33 is renumbered as §3.31.

76. Statement of Basis and Purpose in City Record Sept. 25, 2008:

The Board of Health, at its meeting on October 24, 2007, adopted a resolution repealing and reenacting Article 115 of the New York City Health Code (Prescription Formula Preparation Facilities). At the request of the Department's Bureau of Food Safety and Community Sanitation (BFSCS), the Board of Health further amended §115.17(g) and §115.21(f) of the Health Code to enable prepared powdered infant formula to be held in storage at temperatures of 40°F or lower.

The Production and Clinical Services Department of Food and Nutrition, Presbyterian Hospital, brought to the attention of the BFSCS that Article 115's required temperature for holding prepared powdered infant formula at 37°F is lower than that prescribed by the American Dietetic Association's guidelines. The Administrator of Presbyterian's Department of Food and Nutrition wrote that:

Our clinical care practice needs to be evidence based. The major reference we have used is the 2004 publication by the American Dietetic Association Infant Feedings: Guidelines for preparation of formula and Breastmilk in Health care Facilities. This reference states in Chapter 4-Formula Preparation and Handling: Dedicated refrigerators with adequate chill capacity (4°C, 40°F) for infant feedings in the formula room and on the patient care units are recommended. This reference also states: Care should be taken to avoid freezing temperatures (0°C, 32°F) or excessive heat (35°C, 95°F) in stock storage areas. While the code addresses mixed infant formula (not shelf stable products) we have found that attempting to maintain refrigerators at < 37°F has resulted in freezing of the mixed formula in our refrigerators.

Further review by the Department found that both the ADA guidelines and the UN Food and Agriculture Organization and World Health Organization recommendations for cooling and maintaining reconstituted powdered infant formula to prevent infection with certain microorganisms, including, but not limited to, **E.** sakazakii, are to initially cool prepared powdered formula to 35°F to 40°F (2°C to 4°C) within one hour of preparation, and then to store formula under refrigeration at temperatures below 41°F (5°C). Refrigerated storage, at temperatures lower than 41°F (5°C), is sufficient to prevent or slow growth of harmful bacteria.

Currently, Health Code §115.21(f) provides that "prescription infant formula prepared from a powdered food base shall be cooled to 37 degrees Fahrenheit (2.8 degrees Celsius) within one hour of preparation, and maintained at 37 degrees Fahrenheit (2.8 degrees Celsius)." In addition, labeling requirements in Health Code §115.17(g) provide that prescription formula be labeled with information that it be kept "under refrigeration at or below 40 degrees Fahrenheit (4.4 degrees Celsius), except that prescription formula for infants prepared with a powdered food base shall be maintained at temperatures below 37 degrees Fahrenheit (2.8 degrees Celsius) . . ."

Accordingly, to be consistent with WHO and ADA guidelines, and to maintain nutritional quality of prepared formula, the Board of Health amended the required holding temperature for prepared powered formula from 37°F (2.8°C) to 40°F (4°C). The Department believes this amendment will continue to promote a safe and nutritional product.

77. Statement of Basis and Purpose in City Record Sept. 25, 2008:

Introduction

The DOHMH proposed to repeal and reenact Article 11 pursuant to a comprehensive review and revision of the Health Code. Several of the proposed changes are not substantive but the text has been reorganized for clarity and consistency. The revisions reflect current thinking about public health, public health law and the efficacious control of communicable diseases and conditions of public health interest. The revisions also reflect the current practices of the DOHMH, enforcement needs within the Department, advances in science and technology and the continuing concerns regarding new or re-emerging pathogens and potential bioterrorism. Because some of the provisions of Article 11 are substantively connected to provisions of Article 13 (clinical laboratories), the resolution to repeal and reenact Article 11 has been changed to specify that it shall be effective as of February 1, 2009, by which time it is expected that the revisions to Article 13 will also be effective. As a result of this assessment of the Health Code, Article 11 was repealed and re-enacted as set forth in the resolution below. The substance of the salient changes is as follows:

Section 11.01

The DOHMH proposes to modernize certain of the definitions in existing §11.01. The significant changes are described below.

· "Case" is redefined to simplify and make clear that a person with a disease or condition which is reportable pursuant to this Code or any other law, based on clinical, laboratory, and/or epidemiological evidence or other recognized public health criteria, will be recognized as a case. The resolution has been changed to indicate that a "case" may also be an instance of such a disease or condition occurring in an individual.

· The resolution has been changed with regard to the definition of "clinical laboratory" to clarify that the definition applies to the term "laboratory" and that these terms include a blood bank.

· The definition of "child" is added to clarify that a person under the age of 18 will be recognized as a child, in accordance with New York State Law.

· A new term, "condition of public health interest", is added in recognition of the fact that Article 11 requires the reporting, and provides authority for the control, of more than communicable diseases.

· A definition of "contagious disease" is added and would specify that it is a communicable disease which is directly or indirectly transmissible from one individual to another.

· The definition of "directly observed therapy", heretofore applicable specifically to tuberculosis as set forth in former §11.47, is moved to this general definition section. The definition has general applicability both to tuberculosis treatment as well as to any other contagious disease situation as may become necessary.

· The definition of "exclude" is modified to clarify that it applies to attendance at a day care, school, child care setting, worksite or other place specified in the Code or as may be directed by the Department.

· The definition of "household contact" is revised to clarify that a person who has significant exposure to an infected person based on residence in the same household or residential premises so as to have the potential to acquire the infection will be considered a "household contact".

· A definition of "quarantine" is added to acknowledge that it is an available and effective method of contagious disease control, especially in light of the potential for pandemic influenza, bioterrorism and other potentially new or re-emerging contagious diseases.

· A definition of "suspect case" is added to clarify who will be considered a suspect case by the DOHMH.

Subdivision (a) of §11.03

The list of reportable diseases and conditions of public health interest is amended to ensure that it is consistent with

New York State's list of reportable diseases. It should be noted that the list of diseases and conditions which are reportable pursuant to the Health Code is not intended to in any way limit or impact what is reportable to the State Health Department pursuant to state law or regulation. Several new diseases or conditions, including drownings, Lymphocytic choriomeningitis virus, and Ricin poisoning would be added to the list of reportable conditions in New York City. In addition, the disease formerly identified as Ehrlichiosis has been reclassified into two new diseases, Human Granulocytic Anaplasmosis and Human Monocytic Ehrlichiosis. The resolution has been revised to incorporate technical changes, add clarifying language or correct unintended errors. Accordingly, the words "genitourinary and perinatal" have been deleted from the listing for Chlamydia trachomatis infections; the word "virus" has been added to the listing for Herpes simplex; the listing for "Poisoning by drugs or other toxic agents" has been modified to make clear that the poisonings which are required to be reported are not limited to lead, carbon monoxide and pesticide poisonings; the listing for Syphilis has been clarified to indicate that "all stages, including congenital" are reportable; and the listing for Urethritis was eliminated because it had been repealed previously by the Board of Health. Furthermore, the resolution has been changed to indicate that food poisoning occurring in two or more people, as opposed to three or more, is a reportable event in order to comport with CDC recommendations.

Subdivision (b) of §11.03

A new paragraph (b)(1) specifies which of the diseases and conditions set forth in subdivision (a) must be reported to the Department by telephone immediately, both when they are suspected and when they are confirmed. The resolution has been changed to conform the listings for "Influenza" and "Meningococcal" in (b)(1) to the exact wording and spelling set forth in subdivision (a). A new paragraph (b)(2) mandates that all of the other diseases and conditions set forth in subdivision (a) be reported within 24 hours of a confirmed diagnosis.

Subdivision (c) of §11.03

This subdivision (c) is the successor provision to former subdivision (b) and requires that outbreaks or suspected outbreaks of any disease or condition, unusual manifestations of disease or conditions, or unusual diseases -- regardless of whether they are listed in subdivisions (a) or (b) -- be reported to the Department immediately by telephone.

Subdivision (d) of §11.03

Subdivision (d) is added to clarify and reaffirm the Department's authority to conduct syndromic surveillance activities. In connection with this revision, a clarifying note has been added to §11.03 defining "syndromic surveillance." The Department already conducts such activities under its existing duty to exercise due diligence to ascertain the existence of outbreaks. This provision enhances that authority.

Subdivision (e) of §11.03

A new subdivision (e), derived in part from the current §11.03(b), elaborates upon the Department's broad authority to conduct epidemiological investigations to help control the spread of disease and to prevent and mitigate morbidity or mortality. In the course of conducting an investigation to verify diagnosis, or identify additional cases, contacts or carriers, or in attempting to ascertain the sources or causes of infection, injury or illness, the Department may require additional information beyond that which is routinely reported, and may collect or require the submission of clinical and environmental specimens, including isolates from clinical laboratories, for examination.

Section 11.05

Section 11.05 is revised to require additional groups of persons to submit the reports required by §11.03 (including dentists, licensed chiropractors, doctors of osteopathy, physician's assistants, nurse practitioners, persons in charge of hospitals, clinics and laboratories or their designees). By broadening the scope of persons reporting the Department would obtain a more comprehensive monitoring of reportable diseases and conditions. The resolution was changed to cross-reference Article 13 with regard to reporting by clinical laboratories.

Sections 11.07 and 11.09

These sections, providing for the reporting, respectively, of immunizations and blood lead test results and for the establishment of immunization and children's blood lead test registries, are substantially the same as their existing Health Code sections 11.04 and 11.06.

Section 11.11

Section 11.11 (former §11.07) provides for the strict confidentiality of epidemiological and surveillance information which is reported to the Department or which is obtained or generated by DOHMH in the course of its investigations. Subdivision (a) specifies that the disclosure of such information, including an individual's medical or identifying information, cannot be compelled, and that dissemination of such information must be as aggregated statistical data. The resolution has been changed to clarify that such information may be made available to the State Department of Health pursuant to the State Sanitary Code. The resolution has also been changed to delete, as unnecessary, the sentence specifying that such records shall not be deemed public records under the New York State Freedom of Information Law because it did not increase or diminish the confidentiality provided for by this section.

Subdivision (b) allows, to the extent permissible under applicable law, persons who are the subject of epidemiological reports and records to consent to the disclosure of information that is limited to their own patient information.

Subdivision (c), similar to former §11.07(c), allows for the disclosure of minimally necessary identifiable information, notwithstanding subdivisions (a) and (b), when the Department determines that such is necessary for the protection of public health.

Subdivision (d), substantially similar to former §11.07(d), provides for the confidentiality of the immunization and children's lead registries established by sections 11.07 and 11.09, respectively. The resolution has been changed, at paragraph (1) of subdivision (d), to delete language which limited the sharing of children's blood lead registry information with treating providers or public health agencies to only "test results and the dates of such testing". Programmatically, at times it may be necessary to share other information from said registry with a treating provider or a public health agency.

Section 11.13

Section 11.09 is replaced by a new §11.13, which requires physicians to advise not only cases, carriers and contacts, but to also advise a suspect case, of the applicable precautionary requirements necessary to prevent the spread of disease. It would include a reference to quarantine as a possible preventive and protective measure, should such be directed by the DOHMH in a particular case.

Section 11.15

Sections 11.15 and 11.17, which generally relate to exclusion and isolation, respectively, replace a number of disease-specific sections of the former Article 11.

Subdivision (a) of §11.15 requires the persons in charge of institutions to exclude from attendance certain individuals, such as cases, contacts or carriers of specified diseases, who may be food handlers or children under the age of six in a child care setting. These individuals would be excluded until the Department determines that they no longer present a risk to others.

Subdivision (b) makes it a violation of the Code for the owner or person in charge of the institutions specified in §11.15 to knowingly or negligently permit an individual to work in or attend such a place when required to be isolated

or excluded pursuant to Article 11.

Subdivision (c) provides general authority for the Department to issue exclusion orders when necessary to protect the public health. Individuals excluded pursuant to such orders would be provided with an opportunity to be heard in accordance with §11.23(k) of this article.

Section 11.17

Subdivision (a) requires hospitals, clinics, nursing homes or other medical facilities to isolate, in accordance with recognized infection control principles and State Department of Health regulations or guidance, cases, carriers and suspected cases and carriers of listed contagious diseases or of other contagious diseases, which in the opinion of the Commissioner present an imminent and significant threat to the public health. The resolution has been changed to make reference to the State Department of Health regulations or guidelines.

Subdivision (b) requires the person in charge of a shelter, correctional facility or other places providing medical care on site, but which do not have the capability to implement appropriate isolation precautions, to isolate such cases or carriers of contagious disease as directed by the Department until the individual can be transported to an appropriate healthcare facility. The resolution has been changed to delete reference to attending physicians in hospitals, clinics or nursing homes because such facilities are adequately regulated by the State Department of Health in regard to operational standards for isolation.

Subdivision (c) requires institutions such as schools and congregate child care settings to similarly isolate such cases and carriers as directed by the Department until the individual can be safely transported to an appropriate facility.

Subdivision (d) authorizes the Department to issue home isolation or quarantine orders to suspect or confirmed cases, carriers or contacts of contagious disease who are not hospitalized. Such persons would have an opportunity to be heard in accordance with §11.23(k) of this Article.

Section 11.19

Section 11.19 is substantially the same as former §11.49, except that the requirements now apply to both typhoid and paratyphoid fever. It updates the exclusion and control measures applicable to typhoid and paratyphoid fever to reflect more modern terminology and medical practice.

Section 11.21

This renumbered §11.21, providing for the reporting, examination, exclusion, removal and detention of cases and suspected cases of tuberculosis, is substantively the same as former §11.47 of this Article. Subdivision (a) is revised to require the submission of the telephone contact number of the case so as to enable communicating with or contacting the case as may be necessary.

In addition, the definition of "directly observed therapy" is moved to the general definition section (§11.01) of Article 11 and generalized to apply to both tuberculosis and other diseases as may be necessary.

Section 11.23

This new section is derived from former §11.55. The section clarifies that the Commissioner may issue removal and detention orders for individuals or for a group who may present a danger to others because they are or may be infected with a contagious disease, and provides for necessary flexibility with regard to the implementation of such authority.

With respect to subdivision (k) of §11.23, the resolution has been changed to also address the prevention of illnesses other than contagious diseases, such as the danger to others that may be posed by persons who have been

exposed to radiation or chemicals. Included in subdivision (k) are references to the Commissioner's ability to order (1) exclusion; (2) home isolation or quarantine; (3) testing or medical examination of a person who may have been exposed to, infected by or contaminated with a contagious disease or dangerous amounts of radioactive materials or toxic chemicals that may pose a significant risk or danger to others; (4) a person who has been exposed to a contagious disease that poses a significant risk or danger to others to complete an appropriate, prescribed course of preventive medication or vaccination or through directly observed therapy to treat the disease, and follow infection control provisions for the disease, as may be necessary to control the spread of disease; or (5) an individual who has been contaminated with dangerous amounts of radioactive materials or toxic chemicals to undergo decontamination procedures. The Commissioner's right to order a prescribed course of preventive medication, vaccination or directly observed therapy does not mean or suggest that there would be forcible administration of medication against a person's will; a court order would be obtained as necessary. Persons who are the subject of such non-custodial orders would be afforded an opportunity to be heard.

Section 11.25

Section 11.25 is substantially similar to former §11.64 but now includes Rocky Mountain spotted fever and tuberculosis as reportable diseases in animals and it allows for the possibility of reporting by telephone. The resolution has been changed to include salmonellosis as a reportable disease in animals. The resolution has also been changed to prohibit animals infected with any disease which is transmissible to humans and a threat to the public's health from being brought into or kept in the City.

Section 11.27

Section 11.27 is substantially similar to former §11.65 but it includes a new subdivision (h) that allows the Commissioner to modify the application of its provisions in specific instances of undue or unreasonable hardship. With respect to paragraph 2 of subdivision (d) of this section, the resolution has been changed to delete the reference to animals "over four months of age" because there is now at least one vaccine that can be administered as early as eight weeks of age. Such an animal would be considered "actively vaccinated" as defined by this section and therefore the reference to "over four months of age" is unnecessary.

Section 11.29

Section 11.29 is substantially similar to former §11.66 but changes the age at which a dog or a cat must be vaccinated from three to four months of age.

Section 11.31

New §11.31 is substantially similar to former §11.67 but also provides that no person shall intentionally or negligently cause or promote the spread of disease by failing to observe disease control measures including but not limited to isolation, exclusion or treatment.

78. Statement of Basis and Purpose in City Record Sept. 29, 2008:

Chapter 23 (Food Service Establishment Sanitary Inspection Procedures) was added to the rules of the Department of Health and Mental Hygiene (the Department) in 2005 to codify inspection procedures of the Bureau of Food Safety and Community Sanitation (BFSCS) of restaurants and other kinds of food service establishments operating pursuant to Department permits. These procedures establish objective measures of sanitary inspections, assigning point values for sanitary violations of Article 81 of the Health Code and Subpart 14-1 of the New York State Sanitary Code (10 NYCRR Chapter 1).

This rule amends Chapter 23 to include point values for violations of provisions regulating reduced oxygen packaging (ROP) and hazard analysis critical control point (HACCP) plans added to Article 81 of the New York City

Health Code (Health Code) in March 2008.

At that time, the Board of Health added a new subdivision (b) to §81.06 (Prevention of imminent health hazards) authorizing the Department to require that a HACCP plan be prepared by a food service establishment or non retail food service establishment whenever such establishment prepares, processes, cooks, holds, and stores foods, in a manner other than as specified in the Health Code. A new §81.12 (Reduced oxygen packaging; cook chill and **sous vide** processing) was added to establish minimum requirements for safe use of ROP techniques.

The amendments to Chapter 23 include changes to the charts in Appendix 23-A and Appendix 23-B, and add definitions of HACCP and ROP to §23-02 to reflect those in Health Code §81.03.

79. Statement of Basis and Purpose in City Record Dec. 23, 2008:

Introduction

As part of a comprehensive review of the Health Code to assess the efficacy of its articles in protecting the public's health, the Board of Health is repealing and reenacting Article 71, "Food and Drugs," to better reflect practice and the regulatory environment by, for example, explicitly extending the scope and coverage of the Article to cosmetics; assuring that the revised provisions provide adequate legal tools to effectively address the health and safety needs of the public; and by harmonizing such provisions with related provisions of the Federal Food, Drug and Cosmetic Act, the New York Agriculture and Markets Law and the New York Education Law and regulations promulgated thereunder. As part of the revision effort, particular effort has also been focused on clarifying the enforcement authority of the Department. The proposed changes will better enable the Department to take actions to protect the public from contaminated cosmetic products such as litargirio, a lead-containing deodorant powder; mercury-containing skin lightening creams; and herbal medicine products containing hazardous levels of heavy metals. Review and assessment of Article 71 has resulted in amendments to all but one of the sections in the Article, resulting in repeal and reenactment of Article 71 as set forth herein.

§71.01. Scope.

This section now includes cosmetics within the regulatory scope of the Article, which formerly applied only to food and drugs. The regulatory scheme of this Article is intended to be consistent with the regulatory scope of the Federal Food, Drug and Cosmetic Act (the "Act"), which also regulates cosmetics. Because adulterated or misbranded cosmetics may have serious or detrimental health and safety effects, incorporating regulation of cosmetics in this Article will enhance the protection of public health. Violations of this Article with respect to cosmetics will result from issues involving product ingredients, contaminants, processing, packaging, labeling, shipping or handling, that cause a cosmetic to be considered adulterated or misbranded.

§71.03. Definitions.

This section adds, as subdivision (c), a definition of the term "cosmetic," based on the definition in the Act. The definitions of "food" and "drug" similarly track the definitions in the Act. A new subdivision (f) defines label or labeling as having the same meaning as the terms defined in §173.01 of the Code.

§71.05. Adulteration or misbranding prohibited; possession deemed for purpose of sale.

This section is similar to former §71.05 and includes cosmetics.

Subdivision (c) conforms and updates standards for determining whether a food is adulterated in accordance with Federal and State law, clarifying that a food will be deemed adulterated if it bears or contains any added poisonous or added deleterious substance that is unsafe within the meaning of the Act (21 U.S.C. §346), unless such added substance is a pesticide chemical residue in or on a raw agricultural commodity, or as determined by the Commissioner. The

former provision referred only to a pesticide chemical.

Subdivision (d) ("Foods deemed misbranded") is new and provides a comprehensive list of criteria for determining when foods are misbranded, consistent with the Federal Act and State law.

Subdivision (e) ("Drug deemed adulterated") includes additional examples of when a drug will be deemed adulterated, derived from the Act and the New York Education Law. Paragraph (9), although not derived from Federal or State law, would be added to provide further protections.

Subdivision (f) ("Drug deemed misbranded") is new and tracks the provisions of the Act.

New subdivisions (g) ("Cosmetic deemed adulterated") and (h) ("Cosmetic deemed misbranded") reflecting the addition of cosmetics to the Article's regulatory scope, prohibit distribution of cosmetics which are adulterated or misbranded, and establish standards by which DOHMH will determine a cosmetic to be adulterated or misbranded, based on the Act and State Education Law.

§71.06. Labeling requirements.

This new section provides that any required statements and information on the labels for food, drug and cosmetic products appear in the English language in addition to any information or statements appearing in a foreign language to enable consumers to avail themselves of words, statements or other information required to be provided under applicable law.

§71.09 Records; access and confidentiality.

Former §71.09 has been updated to clarify limitations on Department redisclosure of pharmacy records.

§71.11. Embargo or seizure.

This section is unchanged from former §71.11, and adds "cosmetics" as items that may be seized or embargoed.

80. Statement of Basis and Purpose in City Record Dec. 23, 2008:

Introduction

As part of a comprehensive review of the Health Code to assess the efficacy of the articles in protecting public health, the Board of Health is repealing and reenacting Article 89 (Mobile Food Vending), reorganizing and deleting some of its provisions, and adding new ones, to better reflect practice and the regulatory environment, assure that the revised provisions provide adequate legal tools to effectively address the health and safety needs of the public and to harmonize such provisions with related provisions of Title 17 of the New York City Administrative Code ("Administrative Code"), the Department's rules in Chapter 6 of Title 24 of the Rules of the City of New York and the State Sanitary Code (10 NYCRR). As part of the revision effort, particular attention has been placed on food preparation and protection and maintenance of mobile food vending units, as well as on attempting to clarify enforcement procedures. Article 89 has not been substantively modified since it was adopted in 1978 and many of its provisions are obsolete. Pursuant to this review and assessment of the Health Code, the Board of Health has repealed and reenacted Article 89 as provided below.

§89.01 (Scope) is partly derived from current §89.25(a) concerning compliance with the applicable provision of the Health Code, and emphasizes that all mobile food vending, regardless of whether it occurs only in public spaces regulated by §§17-306 et seq. of the Administrative Code, or in private and restricted spaces, is subject to Health Code and State Sanitary Code requirements, as well as the Department's rules in Chapter 6 of Title 24 of the Rules of the City of New York.

§89.03 (Definitions) has been updated, adding new definitions, and clarifying terms used in this Article. The definition of "restricted space" has been added to cover spaces that may be open to the public, but where commercial activity, such as mobile food vending, may only be conducted with the written approval of the owners of the spaces. The definition of "stand" has been deleted, since the Department does not allow a stand to be used as or an adjunct of a mobile food vending unit. "Operation" of a mobile food vending unit has been defined to clarify that all the activities involved in setting up a unit for vending are considered to be part of operating a mobile food vending unit, making vendors responsible for violations that occur during preparation for vending, even though food is not being sold at the time the violations are observed. In response to a public comment, the definition of "material alteration" has been expanded to clarify and provide additional examples of a material alteration, including a change in the size of a mobile food vending unit, and changes in plumbing equipment, such as potable water and waste water tanks and sinks.

§89.05 (Permits and licenses required) and §89.07 (Licenses and badges) update requirements in current §89.03 (Permits, licenses; badges, identifying plates and insignia) to reflect current practice.

§89.09 (Terms of permits and licenses) is new and codifies the terms for all mobile food vending permits and licenses issued by the Commissioner.

§89.11 (Applications for permits and licenses) includes some of the provisions of current §89.03, but has been updated to reflect current practice.

§89.13 (Duties of licensees and permittees) includes many of the provisions of current § 89.07, but adds provisions reflecting current practice.

§89.15 (Prohibitions against transfer of foods) is the same as current §89.11.

§89.17 (Prohibitions against transfer of a license or permit) is new, reflects current practice and attempts to clarify that a license or permit may not be transferred, although the Department does not prohibit the leasing of a mobile food vending unit, to which a decal has been affixed by the Department, by the individual permittee to another licensed vendor. These arrangements are common industry practices. However, neither a permit or license document, nor a cart decal or a vendor badge may be transferred from one person to another. Decals are only affixed to carts that have passed a preoperational Department inspection and are considered fit for food vending. Licenses are issued only to persons who have passed a food protection course. Unregulated transfer of decals and licenses ill serves the public's expectation that foods served by such units are safe to eat.

§89.19 (Food protection and safety) updates current provisions in §§89.33 (Food preparation) and 89.37 (Condiments) and adds requirements similar to those in Article 81 for food protection related to food sources, use of thermometers, and hot and cold holding facilities, including ice. The section also prohibits butchering meat and service of fish products, requires refrigeration for processed fruits and vegetables, establishes vendor hygiene standards and requires that units be serviced and cleaned at least daily.

§89.21 (Water supply) has been expanded and updates requirements in current §89.35 (Potable water).

§89.23 (Equipment and hand wash sinks) retains the requirement for use of single-service articles in current §89.27, and requires that mobile food vending units be equipped to facilitate prevention of food contamination in accordance with Article 81. Physical specifications for various types of mobile food vending units will be incorporated in the Department's rules in Chapter 6 of Title 24 of the Rules of the City of New York.

§89.25. (Garbage, refuse and liquid wastes) has been updated and incorporates provisions requested by the City's Department of Sanitation to clarify the responsibility of mobile food vendors for maintaining cleanliness of street areas surrounding their vending units. It also specifically authorizes various City agencies to enforce its provisions, by issuing orders and writing notices of violation.

§89.27 (Mobile food commissaries) updates requirements of current §89.31 (Cleaning and servicing of mobile food units), eliminating references to "depots", and incorporates many related provisions of the State Sanitary Code. It prohibits using streets and sidewalks for cleaning units, and requires commissaries to maintain records of the mobile food vending units serviced.

§89.29 (Imminent health hazards) is new, and adds provisions from current §81.39 authorizing the Department to order cessation of operations when the Department believes that continuing operation endangers the public health. Permittees, whose carts are very often operated by other mobile food vendors, on notice that they, too, will be accountable for imminent health hazards created by the mobile food vendors, other than the permittee, who are operating the permittee's mobile food vending unit. The Department believes these provisions are necessary to promote more responsible ownership and operation of mobile food vending units. The section authorizes the Department inspector to remove or cover the mobile food vending unit and includes provisions for substantive due process, including timely hearings, for permittees and licensees ordered to cease operations.

§89.31 (Enforcement) includes the provision in current §89.19(c) authorizing seizure of a non-permitted unit in subdivision (a), prohibits vendors from leaving mobile vending food units unattended whenever food is maintained on the unit, and authorizes denial of a license or permit by the Commissioner in accordance with applicable law. Subdivisions (d) and (e) of this section are substantially the same as current §89.19 (Enforcement).

§89.33 (Suspension and revocation of license or permit) continues the four current provisions of §89.13 (Suspension and revocation of license or permit), and adds a new subdivision (e) to provide that a person not authorized to hold a license or permit, who has been issued a license or permit in error, may be notified that the license or permit is void. It also provides that failure to notify the Department of a change of address is not a defense to any proceeding brought by the Department for revocation of a license or permit. Also added to this section are provisions of current §89.15 (Notice; hearings).

§89.35 (Modification) preserves the current authority of the Commissioner in §89.25 (Compliance and modification) to modify any requirements of this article that present practical difficulties or unreasonable hardships, provided that the public health is not compromised. Other provisions of the current section in subdivisions (a) and (c) have been incorporated in other sections.

The following provisions have been deleted in their entirety as either obsolete, or duplicative of provisions of the Administrative Code or the Health Code: §89.09 Restrictions on the placement of mobile food units; §89.21 Seizure of perishable foods; §89.23 Penalties or fines; and §89.39 Identification of individual food servings. §89.09 (Placement of units in public spaces) is entirely subject to provisions of the Administrative Code. Penalties and fines for placement violations in public areas are established in the Administrative Code (public space vending) or Article 3 of the Health Code (restricted or private area violations and all other violations of any Health Code provisions). Seizure of perishable foods by the Department is authorized by Article 3's provisions for seizure or embargo of any article that is found unfit for use. Labeling of packaged foods is currently subject to federal regulation.

81. Statement of Basis and Purpose in City Record Dec. 23, 2008:

Introduction

As part of a comprehensive review of the Health Code to assess the efficacy of its provisions in protecting the public health, Article 13, Clinical Laboratories, has been amended to better reflect practice and the regulatory environment, assure that the revised provisions provide adequate legal tools to effectively ensure the reporting of presumptive and positive laboratory findings for any notifiable disease, condition, outbreak, unusual manifestation of disease or unusual disease listed or referenced in Section 11.03 or in Article 13. Pursuant to this review and assessment of the Health Code, and in response to public comments received, the Board has amended the provisions of Article 13 as provided for below.

Section 13.01

Subdivisions (a) and (c) have been deleted. Instead, a new definition of "laboratory" or "clinical laboratory", which terms are used interchangeably, makes clear that those terms also include a blood bank. The laboratory testing that blood banks in New York State are required to perform must, pursuant to state regulations, be done in state licensed laboratories. Therefore, the reporting and other requirements of Article 13, which are imposed on clinical laboratories, also apply to blood banks. The definition of "clinical laboratory" was amended to make consistent reference to New York City and to the New York State Public Health Law as used in the Health Code.

Section 13.03

Subdivision (a) was amended to clarify that only the laboratory that actually tests a clinical specimen must report positive findings, but that a laboratory that refers a specimen to another laboratory for analysis must provide all the information that the testing laboratory will need to fully comply with the reporting requirements. In response to comments submitted, and in recognition of the practice of blood banks which refer specimens to outside laboratories for testing to submit those specimens anonymously, without individual donor identifying information, DOHMH modified the proposal to require the referring blood bank to comply with the all of the reporting obligations imposed by the Code, instead of the testing laboratory. The subdivision was also amended to clarify that reports of presumptive and positive laboratory findings for all notifiable diseases or conditions, or any other reportable findings, are to be submitted within 24 hours of the clinical laboratory obtaining the results, and that, in addition, reports of presumptive or confirmed laboratory findings for diseases, conditions or occurrences which are urgently reportable pursuant to §11.03(b)(1) or (c) of this Code must be reported immediately by telephone. Subdivision (a) was also amended to provide greater specificity with regard to which data elements must be reported, including the reporting of race, ethnicity and gender if these data elements are known to the laboratory. Pregnancy status was specified as reportable if known and if clinically relevant to a positive laboratory result; for example a positive hepatitis B surface antigen or a positive syphilis test result. It should be noted that the Department has programs in place with regard to both these conditions which offer outreach services to affected women in order to mitigate perinatal and congenital transmission. Subdivision (a) was further amended to specify as reportable quantitative results for any positive or reactive serologic test results related to reportable diseases specified by the Department, and to incorporate the substance of former subdivision (d) of section 11.03 regarding the reporting of antibiotic susceptibility testing results.

Subdivision (b) was revised to add reporting requirements with regard to laboratory tests related to syphilis and hepatitis.

Subdivision (c) was amended to delete an outdated reference to July 1, 2006, and to incorporate the substance of former subdivision (e) of section 11.03 allowing laboratories to report to the Department through an electronic reporting system utilized by the New York State Department of Health.

Section 13.05

Subdivision (a) was amended to update the cross reference to Article 11's confidentiality provision.

Subdivision (b) was amended to clarify that negative direct smears to detect acid fast tuberculosis bacilli are not reportable to the Department, but must be reported to the physician, or other person ordering the test, within 24 hours, and to update laboratory tuberculosis testing and reporting requirements, including a requirement to perform nucleic acid amplification testing.

Section 13.07 (formerly §13.04)

This section, related to hemoglobin A1C reports, was renumbered, and subdivision (a) was amended to clarify that reports are to be submitted within 24 hours of the clinical laboratory obtaining the results.

Subdivision (c) was modified to clarify that the requirements of subdivision (a) of §13.03, as well as the provisions of paragraphs (1) through (6) of that subdivision, are applicable to hemoglobin A1C reports.

Subdivision (d) was amended to allow the disclosure of information to the patient's "treating health care providers" as opposed to "treating medical providers" as is currently set forth in the Code. The term "health care provider" is a more generally recognized term that is defined in the state Public Health Law as encompassing both "health care practitioners" and "health care facilities".

82. Statement of Basis and Purpose in City Record June 23, 2009:

Chapter 23 (Food Service Establishment Sanitary Inspection Procedures) was added to the rules of the Department of Health and Mental Hygiene (the Department) in 2005 to codify inspection procedures of the Bureau of Food Safety and Community Sanitation (BFSCS) of restaurants and other kinds of food service establishments operating pursuant to Department permits. These procedures establish objective measures of sanitary inspections, assigning points and condition values for sanitary violations of Article 81 of the Health Code and Subpart 14-1 of the New York State Sanitary Code (10 NYCRR Chapter 1).

Chapter 23 has been further amended to delete the point and condition values in Appendix 23-A and Appendix 23-B for administrative and documentation violations that had been counted in the scores received by food service establishments on sanitary inspections. The Department believes that these violations should not be counted as sanitary violations for the purpose of calculating the total score on a sanitary inspection, particularly if letter grade posting is to become a requirement. However, the Department may issue notices of violation for such violations and conduct compliance inspections to determine whether such violations have been corrected.

In Appendix 23-A and Appendix 23-B, the following "Administration" violations under the heading "Critical Violations" will not be scored and will be deleted from each worksheet:

1A Current valid permit, registration or other authorization to operate establishment not available.

1B Document issued by the Board of Health, Commissioner or Department unlawfully reproduced or altered.

1C Notice of the Department or Board of Health mutilated, obstructed, or removed.

1D Failure to comply with an Order of the Board of Health, Commissioner, or Department.

1F Failure to report occurrences of suspected food borne illness to the Department.

The only violation in this group that the Department plans to retain as a scored violation is "1E Duties of an officer of the Department interfered with or obstructed," which would be retained as written but renumbered as 7A. The current violation designated as 7A (Administration) would be deleted. This is being retained because a food service establishment that denies access or obstructs an inspection, or whose operator or employees threaten an inspector, is more suspect of having unsanitary conditions.

Under the heading "General Violations," the following "Documentation" violations would not be scored and would be deleted from each worksheet:

11A Permit not conspicuously displayed.

11B Manufacture of frozen dessert not authorized on food service establishment permit.

11C Failure of event sponsor to exclude vendor without a current valid permit or registration.

11D "Choking first aid" poster not posted. "Alcohol and pregnancy" warning sign not posted. "Wash hands" sign

not posted at hand wash facility. Resuscitation equipment: exhaled air resuscitation masks (adult & pediatric), latex gloves, sign not posted. Inspection report sign not posted.

However, part of 11D would be retained as a scored sanitary violation. ' "Wash hands" sign not posted at hand wash facility' is renumbered as 10M, a general violation under "Facility Maintenance."

The removal of administrative and documentation violations from the total inspection score will result in fewer points scored on food service establishment inspections so that the total points recorded for an inspection more accurately reflect sanitary conditions.

The comments received from the Greater New York City chapters of the New York State Restaurant Association representatives supported these changes but argued that even more violations related to facility maintenance and other aspects of operation that are allegedly not related to food safety should not be counted in the scoring. Such violations include citations for "excessive" grease under frying equipment; failure to wear hair restraints while adding milk to coffee; failure of the food protection certificate holder to be present at all times of operation; condition of entry doors at patron toilets; leaky faucets; cracked or missing tiles and holes in walls; unshielded light bulbs and conditions of non-food contact surfaces. The Department believes, however, the control of these conditions constitutes an important component of sanitary operation and affords necessary protection to the public health, and should therefore be kept in the scoring. Accordingly, no changes have been made to the proposal.

83. Statement of Basis and Purpose in City Record June 30, 2009:

The Department has requested that the Board of Health amend Article 45 of the New York City Health Code (General Provisions Governing Schools and Children's Institutions) to eliminate requirements in subdivision (c) of §45.09 (Staff) that every adult who regularly associates with children at a school, and that a person employed by the Department of Parks and Recreation ("DOPR") who regularly associates with children under the age of 16 in a DOPR recreational program be tested for tuberculosis prior to commencing work, and at Department established intervals after commencing work. In 2008, the Board repealed and reenacted Article 47 (Child Care Services), updatng provisions related to the health of children and staff, and eliminated a similar requirement. The Statement of Basis and Purpose accompanying that resolution indicated that "the requirement that new staff hires be tested for tuberculosis infection has been eliminated since this group is at relatively low risk for tuberculosis." The Department believes that the same justification applies to elimination of the requirement for school and DOPR staff and volunteers.

Accordingly, the Department has requested that the Board repeal subdivision (c) in its entirety, and substitute a provision authorizing the Department to require tuberculosis testing whenever necessary for epidemiological investigation.

84. Statement of Basis and Purpose in City Record June 30, 2009:

The Board of Health, at its meeting on March 6, 2008, adopted a resolution repealing and reenacting Article 47 of the New York City Health Code (Child Care Services). The Department of Health and Mental Hygiene (the "Department") has requested that the Board amend various provisions of subdivision (e) and repeal subdivision (f) of §47.31 (Health: medication administration) of the Health Code to enable child care services permittees regulated under Article 47 to administer medications to children with disabilities.

After adoption of the resolution, the American Diabetes Association brought to the Department's attention omission of a provision that would have made it possible for Article 47 permittees operating child care services to administer necessary medications, including injectible insulin, to diabetic children, where the Americans With Disabilities Act may require the child care service to administer such medication in order to reasonably accommodate the child's attendance in the child care service.

Article 47's current provisions allow health care professionals and certified non-professional staff to administer

certain medications, and are based on nearly identical provisions in regulations of the New York State Office of Children and Family Services (OCFS). Through an oversight, however, Article 47 omits provisions that would enable New York City child care services providers to accommodate children with disabilities who may require medication to be administered by injection, vaginally or rectally.

Accordingly, the Board is amending Article 47. The amendment is essentially the same as the applicable OCFS regulation, 18 NYCRR §418-1.11 and is consistent with Guidance issued by OCFS regarding compliance with the Americans with Disabilities Act and OCFS regulations on the administration of medications in child care programs. Two favorable comments were received, including one from the American Diabetes Association. No changes have been made to the proposal.

85. Statement of Basis and Purpose in City Record Sept. 28, 2009:

The Board of Health, at its meeting on June 18, 2008, adopted a resolution repealing and reenacting Article 7 of the New York City Health Code (Administrative Tribunal). Thereafter, the Department requested and the Board further amended §7.09 (Appearances) and §7.11 (Hearings and mail adjudications) of this Article. Subdivision (d) of §7.09 provides that a default may be found if the respondent fails to appear at a hearing of a notice of violation. The hearing examiner, after finding the respondent in default, will then review the allegations in the notice of violation, and may issue a default decision, finding the respondent in violation of the specific law or regulations cited. A respondent is notified of the default decision by certified mail. A respondent may then, within 30 days of the mailing of the notice of decision, request that the Tribunal vacate or reopen the default. The Tribunal has reported that respondents or their representatives often come to the Tribunal and ask for a copy of the default decision in order to expedite reopening of the default. This is usually done because they discover that they can't renew their permits because of an unpaid default penalty, and the Tribunal has been providing copies of default decisions upon request. While §7.09 (d) neither prohibits nor allows this practice, this amendment authorizes and codifies this practice in such instances. The Tribunal has drafted a new Notice of Appearance form and added a box to capture a signature to show personal receipt of the default decision. The amendment further provides that the thirty days for a respondent to request that a default be reopened would start to run from the earlier of the date of certified mailing or the date the copy is provided personally to the respondent or respondent's representative. The amendment does not require the Department to serve notices of decision on default personally, and does not extend the thirty days allowing a respondent to reopen or vacate a default. Subdivision (h) of §7.11 has also been amended to reflect the change in §7.09 (d), authorizing mailing and personally providing a copy of a default decision to a respondent.

86. Statement of Basis and Purpose in City Record Sept. 28, 2009:

The Board of Health, at its meeting on March 6, 2008, adopted a resolution repealing and reenacting Article 47 of the New York City Health Code Child Care Services). At the Department's request the Board has further amended §47.09 (Applications for permits) of the Code to require child care services to maintain e-mail addresses and to provide the Department with e-mail contact information.

The Department sought this amendment to enable it to better and more timely communicate directly to child care services information of public health concern that may affect the health and safety of children. Timely, rapid communication is important, for example, in instances of product recalls or public health or other emergencies, when the Department needs to advise permittees of appropriate protocols and preventive measures.

During the spring 2009 H1N1 influenza outbreak, the Department's Bureau of Child Care attempted to communicate immediately with child care services to inform permittees of preventive measures and reporting protocols. The bureau was able to communicate directly by e-mail with approximately 50% of the 2,000 child care services, but could only use mail and fax for the remaining services, unnecessarily delaying communication efforts.

87. Statement of Basis and Purpose in City Record Dec. 22, 2009:

Introduction

As part of a comprehensive review of the Health Code, the Board of Health has repealed and recodified Article 88 ("Temporary Food Establishments") of the Health Code, and retitled the Article as "Temporary Food Service Establishments." The title change better reflects practice and the regulatory environment. As recodified, Article 88 provides adequate legal tools to effectively address the health and safety needs of the public. Particular attention has been placed on emphasizing the applicability of relevant provisions of Article 81 ("Food Preparation and Food Establishments") to the operation of temporary food service establishments.

In compliance with §1043(b) of the Charter, an initial Notice of Intention to Repeal and Recodify Article 88 ("Temporary Food Service Establishments") was published in the City Record on September 22, 2008, and a public hearing was held on October 24, 2008. Since that time, however, additional changes were proposed in response to comments from agency staff and other City agency personnel. The major change involves an additional category of temporary food service establishments, those which are part of recurring events, and do not occur only on 14 or fewer consecutive days. These events have become more common in the City. For example, weekly flea markets in Fort Greene and at the foot of the Brooklyn Bridge in Brooklyn are scheduled for every Saturday or Sunday, from Spring through the Fall, and food service becomes an important part of the event. In some cases, the food becomes as important an event as the generating activity, such as the food services provided seasonally by the Red Hook Food Vendors Committee ("RHFV") every weekend during local park sports and recreational activities. The press release of the RHFV at the beginning of its 2009 season provides the times and locations of its food services and reads, in pertinent part as follows:

"(Brooklyn, New York)-The Food Vendors Committee of Red Hook Park Inc. (AKA Red Hook Food Vendors; RHFV) is thrilled to announce the kick-off of their 09 season beginning May 2nd, 2009 in Red Hook park, Brooklyn every weekend through the end of October. Extended days of operation will include long holiday weekends, including Memorial Day & Labor Day weekends.

RHFV are also pleased to announce their continued collaboration with the incredibly successful Brooklyn Flea and its new DUMBO market location. RHFV satellite stands will open for business beginning April 18th at The Flea in Fort Greene every Saturday, and at the DUMBO market every Sunday-(For more information, please visit www.brooklynflea.com)."

Article 88 of the Health Code and Subpart 14-2 ("Temporary Food Service Establishments") of the State Sanitary Code §14-2.1 currently define temporary food service establishments ("TFSEs") as those occurring for no more than "14 consecutive days duration" and neither the City nor the State provides for a permit for a TFSE operating for periods greater than 14 consecutive days. As a result, the Department is often attempting to determine whether the food service establishments at such recurring events should be considered mobile food vending or some other kind of food service establishment. Because these food service establishments are set up at recurring events, and may or may not conform to the definitions of "mobile food vending units" contained in Article 89 of the Code, the Department generally attempts, in each case, to modify requirements applicable to mobile food vending in an effort to accommodate such events, and impose additional necessary requirements for protection of public health, as appropriate. Having a category of "recurring event TFSE" makes it possible for these establishments to know in advance what regulations they will be required to comply with in every case, and not rely on modifications of other regulations that are not quite applicable.

In addition, after further discussions with the City agency responsible for permitting street events, the Department has determined that permitting of TFSEs may be conducted in a manner that is more responsive to the needs of their operators, without compromising public health interests, by (1) issuing an annual permit to persons who operate their TFSE at multiple events during the year and (2) not requiring an additional permit to operate a TFSE if the operator of the TFSE also currently holds a permit pursuant to Article 81 to operate a fixed food service establishment in New York City.

The following changes include those previously published and ones that have been made since the original publication for comment.

§88.01 Scope.

This section is new. It reinforces the DOHMH policy of considering temporary food service establishments as a type of food service establishment subject to Article 81 and other pertinent provisions of the Code, to the New York State Sanitary Code (10 NYCRR Chapter 2), and all rules and regulations governing the use of public streets.

§88.03 Definitions.

Definitions in former §88.01 appear in a new § 88.03, and the new section is expanded from two to five definitions. The term "temporary food service establishment" is redefined because these establishments may be found in many public and private, indoor and outdoor settings, and in connection with many different kinds of events and promotions.

A number of exceptions to the definition are listed, including for places where food is prepared by and served exclusively to group members and where the public is not invited, such as a school bake sale operated by a parent-teacher association. This is consistent with the State Sanitary Code §14-1.20, which excludes from the definition of a food service establishment those "food service operations where a distinct group mutually provides, prepares, serves and consumes the food such as a `covered dish supper' limited to a congregation, club or fraternal organization." Further exceptions added are for nutrition education programs and cooking demonstrations, and service of non-potentially hazardous foods and beverages to participants or attendees at meetings or social functions when such "incidental refreshments" are prepared by the organization holding the meeting or function. A note to this section clarifies that when food is served to the public under other circumstances, authorization or a permit from the Department is required. The section defines other terms used in Article 88, including "event," "food," "sponsor," and "operator." The definition of "temporary food processing establishment" was deleted as obsolete. In addition, as noted above, the definition of temporary food service establishment now includes food services that are provided at events that recur at intervals that exceed 14 consecutive days.

§88.05 Permit required.

This section incorporates provisions of former §88.21 ("Responsibility of sponsor") and amends former §88.03 ("Permit, registration") as follows:

1. Permits are required to operate any TFSE serving or distributing food to the public, including food provided by all commercial operators who contract with neighborhood, school, religious, fraternal or other affinity groups sponsoring community events. However, no additional TFSE permit is required for a fixed food service establishment that is currently operating a TFSE with a permit for a food service establishment issued pursuant to Articles 5 and 81 of the Health Code. Proof of an Article 81 permit must be provided, such as a copy of the permit, and the Article 81 permittee will be responsible for compliance with all requirements of Article 88.

2. Permits are required for events that take one day or less or occupy one or more blocks.

3. The distinction between temporary food processing and non-food processing establishments has been eliminated; all are considered TFSEs.

4. An operator of a TFSE who is invited by sponsors of various events to participate in multiple events during a year may apply for a single annual permit.

5. All operators of TFSEs are required to obtain a permit at least 30 days prior to any event in which they participate.

6. All permits shall be made available for inspection on request.

§88.07 Food safety and protection.

This section replaces former §§ 88.05 and 88.09. It requires all permittees operating TFSEs to hold a food protection certificate (required by former §88.19) issued by the Department or a certificate issued by another jurisdiction that is acceptable to the Department. New requirements are added for thermometers to be provided and used to confirm that the establishment is holding potentially hazardous foods at required temperatures, and for using ice safely when holding potentially hazardous foods. However, prohibitions on service of specific potentially hazardous foods without the approval of the Department are eliminated. The Department has concluded that the new requirement that every operator or supervisor of food services at a TFSE hold a food protection certificate will result in increased food safety. Operators and supervisors will be better educated and more aware of the dangers of serving some potentially hazardous foods in event settings where environmental conditions may be difficult or impossible to control.

Subdivision (f) retains the Commissioner's authority to prohibit sales or service of specific potentially hazardous foods or types of foods, including raw fish and shellfish.

Certain provisions originally proposed for inclusion in this section regarding hot and cold holding equipment and thermometers were deleted from this section and have been added to §88.09.

§88.09 Construction, facilities, equipment and utensils.

This section incorporates provisions from former §§88.07 and 88.15, as well as provisions from Article 81 regarding maintenance of food contact surfaces; sanitizing of utensils and equipment; provision of adequate shielded lighting; and the ventilation of steam, condensation, odors and fumes to prevent a nuisance.

Subdivision (h) requires that adequate hand washing facilities be provided, in accordance with Article 81. However, because the Department recognizes that there may be substantial variability in the plumbing facilities available at events and at participating TFSEs, this provision will allow the Department to approve alternative arrangements for hand washing where strict compliance with this Code requirement is not feasible.

A chart has been added to this section (Table 1) to enable a TFSE operator to determine the minimum equipment required, depending upon the food processes used, and whether food being prepared is potentially hazardous or prepackaged. Various subdivisions describe the general requirements for all equipment.

§88.11 Cooking and heating equipment.

This section retains requirements that equipment not create a hazard, and that flammable materials be maintained in accordance with Fire Department regulations and specifications.

§88.13 Water supply.

This section incorporates more rigorous requirements governing the provision and use of potable water for food preparation, and for hand washing and cleaning equipment, to protect food from contamination from untreated water, in accordance with the State Sanitary Code.

§88.15 Toilets and hand wash sinks.

This section is new and requires that sponsors of events provide adequate portable toilets and adjacent hand washing, soap and drying facilities for use of workers and patrons of TFSEs where fixed plumbing facilities are not adequate or available.

§88.17 Single service articles.

This section retains a requirement for use of single service articles, as defined in Article 81.

§88.19 Refuse and trash.

This section is amended to clarify that its provisions for clean up do not apply to events regulated by the Mayor's Office of Citywide Events Coordination and Management, Street Activity Permit Office ("SAPO"). This office, in accordance Mayor's Executive Order 100 (March, 2007) regulates all City public street and sidewalk events, and requires event sponsors to arrange with the New York City Department of Sanitation for the cleaning of streets and sidewalks and the appropriate disposal of wastes generated at such events. For other events, this section requires cleaning and maintenance. At the request of the Department of Sanitation, a provision related to disposal of recyclable materials has been added.

§88.21 Enforcement.

A provision authorizing the closure of a TFSE, formerly in §88.23, has been added to subdivision (b) of the revised §88.21. A new subdivision (a) ("Imminent health hazards") will allow the Department to dispose of food or order the disposal or sealing of unsafe, unclean, damaged or otherwise unsafe equipment that it identifies as an imminent health hazard, as defined in Article 81. Subdivision (c) incorporates a requirement of State Sanitary Code §14-2.17 (d) that access be provided to the Department's inspectors.

§88.23 Modification .

This section retains the authority of the Commissioner to modify requirements when strict compliance with a provision presents practical difficulties or unusual or unreasonable hardship.

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24 RCNY Health Code Reg. 131.00

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ARTICLE 131 BUILDINGS*15

Health Code Reg. § 131.00 INTRODUCTORY NOTES

As part of a comprehensive review and revision of the Health Code, a resolution was adopted by the Board of Health on September 22, 2009, repealing Article 131 and Article 135, and recodifying Article 131. The new Article 131 retains some provisions of both articles, adds new provisions, and eliminates provisions that are obsolete or that duplicate provisions of law enforced by the City's Department of Buildings ("DOB"), Department of Housing Preservation and Development ("HPD"), Department of Environmental Protection ("DEP") and the Fire Department ("FDNY"), where such law comprehensively regulates various aspects of commercial and residential buildings' structure and occupancy. **See, e.g**., the State Multiple Dwelling Law and the City Building, Housing Maintenance, Electrical, Plumbing and Fire Prevention Codes in Titles 27 and 28 of the Administrative Code of the City of New York ("Administrative Code"). Provisions that do not duplicate current law, and those related to window guards and nuisance control and abatement, have been retained. New provisions regulate fugitive perchloroethylene emissions from dry cleaning facilities into certain co-located or adjacent occupied buildings.

FOOTNOTES

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[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 131.01

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ARTICLE 131 BUILDINGS*15

§131.01 Scope and applicability.

This Article shall apply to all occupied commercial and residential buildings unless otherwise specified.

HISTORICAL NOTE

Section repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

DERIVATION

Former §131.01 Violations; responsibility.

Section amended City Record Jan. 14, 2003 eff. Feb. 13, 2003. [See Vol. 9 Statements of Basis and Purpose No. 18-A]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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ARTICLE 131 BUILDINGS*15

§131.03 Definitions.

When used in this Article, the following terms shall have the following meanings.

(a) Child-occupied premises shall mean a building or part of a building used as a residence for persons under eighteen (18) years of age, or in which child care or educational services are provided to such persons.

(b) Commercial building shall mean any building or part thereof in which a business, occupation, or trade is conducted but shall not mean a building that is registered with HPD in accordance with §§27-2097ff of the Administrative Code or any successor provision.

(c) Dry cleaning facility shall mean any building or part of a building in which dry cleaning equipment using perchloroethylene is used.

(d) Dust shall mean the solid particles generated by means such as handling, crushing, grinding, and rapid impact

of materials such as rock, metal, and wood.

(e) Fumes shall mean the airborne particles formed from the condensation of a volatilized solid.

(f) Gas shall mean the state of a substance in which it can expand indefinitely and completely fill its container.

(g) Multiple dwelling shall mean a residential building consisting of three or more dwelling units, rooms or apartments.

(h) Nuisance shall mean any condition dangerous to life or detrimental to health, as defined in §17-142 of the Administrative Code or any successor provision.

(i) Vapor shall mean the gaseous form of a substance that is normally in a solid or liquid state at room temperature and pressure.

HISTORICAL NOTE

Section repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

DERIVATION

Former §131.03 Heating became §131.07.

FOOTNOTES

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[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 131.04

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ARTICLE 131 BUILDINGS*15

§131.04 Gas-fired refrigerators; certain prohibited; sealing of defective.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

Subd. (c) amended City Record Jan. 14, 2003 eff. Feb. 13, 2003. [See Vol. 9 Statements of Basis and Purpose No. 18-A]

FOOTNOTES

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[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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ARTICLE 131 BUILDINGS*15

§131.041 Refrigerators, discarded; removal of locking devices.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 131.042

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ARTICLE 131 BUILDINGS*15

§131.042 Approved space and water heaters to be provided in certain one and two family residential buildings.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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ARTICLE 131 BUILDINGS*15

§131.05 Duty; responsibility for violations.

(a) Duty. The owner, manager, agent, lessee, tenant, occupant or other person who manages or controls all or part of a building shall operate such building or part thereof in a safe condition and in a manner that maintains the structural integrity, prevents infestation by pests, and provides heat, ventilation and lighting in accordance with this Code and other applicable law, and shall not create or allow to exist in such building any nuisance or other condition dangerous to the life or health of occupants, invitees or members of the public who are within such building or in or on premises adjacent to such building.

(b) Violations. The owner, manager, agent, lessee, tenant, and occupants of a building shall be jointly and severally liable for the existence in such building of a nuisance, or condition dangerous to life or health, or a violation of any provision of this article, insofar as they have the power to prevent or abate such condition or violation. Such persons shall comply with an order of the Commissioner or the Department, or of HPD, DOB, DEP or DOS, to remove any nuisance, or dangerous or unsanitary condition.

HISTORICAL NOTE

Section repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009.

[See Vol. 9 Statements of Basis and Purpose No. 38]

DERIVATION

Former §131.05 Self-inspection of gas appliances.

Section in original publication July 1, 1991.

Subd. (b) amended City Record Jan. 14, 2003 eff. Feb. 13, 2003. [See Vol. 9 Statements of Basis and Purpose No. 18-A]

FOOTNOTES

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[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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ARTICLE 131 BUILDINGS*15

§131.07 Heating.

(a) Any person who contracts to supply heat to a building or any part thereof shall furnish heat to every occupied portion of such building so that the minimum temperatures prescribed by subdivision (c) of this section are maintained during the times specified therein. The provisions of this section shall not apply to a building used for trades, businesses or occupations in which a lower temperature is essential and unavoidable.

(b) Any owner, agent, lessee, superintendent or janitor of a building who has under her or his control a furnace, boiler or other heating device or equipment in such building shall be deemed to have contracted to supply heat pursuant to subdivision (a) of this section unless otherwise provided by written contract or lease. An owner, agent, lessee, superintendent or janitor who is required by this section to provide heat shall be liable for failure to comply with this section.

(c) Unless otherwise provided by written contract or lease, or as provided by applicable law, including this Code,

the minimum temperatures required by subdivision (a) of this section shall be maintained as follows:

(1) In a dwelling, during the months between October first and May thirty-first between the hours of six a.m. and ten p.m.: a temperature of at least 68 degrees F when the outside temperature falls below 55 degrees F (12.78 degrees C) and during the hours between 10 p.m. and 6 a.m. a temperature of at least 55 degrees F (12.78 degrees C) whenever the outside temperature falls below 40 degrees F (4.44 degrees C); and

(2) In any other building, except for buildings in which educational, nutritional, geriatric, social, mental health, health care or similar services are provided directly to recipients when such services are being provided, a temperature of at least 65 degrees F (18.33 degrees C) shall be maintained when the outside temperature falls below 50 degrees F (10 degrees C) during the usual working hours of the occupants.

(d) The owner, agent, lessee, superintendent or janitor of (l) a one- or two- family home which is occupied in whole or in part by a tenant or tenants and in which there was within the previous year a violation of subdivision (a), (b) or (c) of this section due to a breakdown in the heating system; or (2) a multiple dwelling shall ensure that the furnace, boiler or other heating equipment under her or his control in such building is inspected by a qualified person between May first and October first of each year. In addition to testing the efficiency of the heating system to produce the heat required by this section, the central heating system or water heating appliance and its flues, vents and dampers shall be inspected for escape of carbon monoxide gas. The findings on inspection shall be recorded on forms approved by DOB within 15 days following the inspection and shall be kept on file by the owner for a period of one year. Such inspection reports shall be made available upon request to authorized employees or agents of DOB, HPD and the Department. All defects found upon inspection shall be corrected prior to the fifteenth day of October of the year in which the inspection was conducted.

HISTORICAL NOTE

Section repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

DERIVATION

Former §131.03 Heating.

Section in original publication July 1, 1991.

Subd. (d) amended City Record Jan. 14, 2003 eff. Feb. 13, 2003. [See Vol. 9 Statements of Basis and Purpose No. 18-A]

Former §131.07 Cellar and basement occupancy.

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 131.09

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ARTICLE 131 BUILDINGS*15

§131.09 Commercial buildings.

Any person whose duty it is to maintain a commercial building in a safe condition shall equip such building as follows and provide the following services:

(a) Lighting. All parts of such building shall be adequately lighted by natural or artificial means so as to enable any activity in such building to be carried on safely and to permit effective inspection and cleaning.

(b) Ventilation. All parts of such building shall be adequately ventilated by natural or artificial means so as to be free from harmful heat, dust, fumes, vapors or gases and, except in refrigerators and hardening rooms, condensate.

(c) Plumbing. Plumbing and plumbing fixtures, including the water supply system, fixture traps, soil, waste, storm water drainage and vent pipes, drains, sewers, and all devices connected thereto within or adjacent to the building storm shall be properly connected, vented, drained, installed and maintained in good repair, and shall not contaminate the

building's potable water supply. Water supply outlets and connections to water supply fixtures or appliances shall be protected from back-flow into the water system.

(d) Water; toilets, hand wash and utility sinks.

(1) Potable water shall be supplied under adequate pressure in quantities sufficient for drinking and sanitary needs of occupants.

(2) A sufficient number of hand wash sinks with running hot and cold water, liquid soap and individual disposable towels or mechanical drying devices shall be provided.

(3) A sufficient number of utility sinks of adequate size, with running water, shall be provided and shall be readily accessible to the areas where they are required for the washing of equipment or the building. Running hot water required for cleaning and sanitation, and when otherwise required by the Department, shall be provided.

(4) A sufficient number of toilet facilities shall be provided for the use of employees. Toilet facilities shall be equipped with the minimum number of water closets, urinals and other plumbing fixtures required by Chapter 4 of the New York City Plumbing Code, Administrative Code §28-PC 403, or successor law. Such toilets shall be properly flushed and trapped, conveniently located, adequately lighted and ventilated, and kept in a sanitary manner and in good repair.

(e) Floors. Floors shall be constructed of smooth, non-slip, hard materials, and kept clean and in good repair. When building use results in wet floors or requires frequent flushing of floors, floors shall be constructed of smooth cement, tile laid in cement, or other hard non-absorbent, watertight material; shall be graded and drained to properly trapped drains; and junctures formed by the wall and floor shall be covered with waterproof material that shall extend to a point at least six inches above the floor.

(f) Walls and ceilings. Walls and ceilings shall be constructed of hard materials, kept clean and in good repair. When uses of the building create steam or vapor, or when required by the Department, walls and ceilings shall be constructed of smooth cement, glazed tile, glazed brick or other non-absorbent material.

(g) Cleanliness and repair. Such buildings shall be regularly cleaned and kept clean and in good repair, and shall not be allowed to become overcrowded so as to impair the safety of operations or effectiveness of cleaning.

(h) Nothing in this section shall be interpreted as interfering with or prohibiting any private contract, lease, agreement or other arrangement between an owner, manager, tenant or occupant concerning their respective obligations to equip a building or provide the services required by this Code.

HISTORICAL NOTE

Section repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

DERIVATION

Former §131.09 Posting of signs on residential buildings became §131.11.

FOOTNOTES

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[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 131.11

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PART B CONTROL OF ENVIRONMENT

ARTICLE 131 BUILDINGS*15

§131.11 Posting signs.

(a) **Owner information in residential rental buildings and units.** Except for the New York City Housing Authority, owners of all residential buildings, and owners of residential rental units in one-and two- family houses, cooperatives and condominiums, who are not required to post certificates of inspection pursuant to the rules of HPD (28 RCNY §25-241, or any successor rule), shall post a sign in each building or individual rental unit owned, as applicable, containing the premises address; name and address of owner or managing agent for such building or unit; and a telephone number which tenants or occupants may call for service and repairs.

(b) **Signs to be maintained.**

(1) Signs required by this section shall be printed on a durable metal or plastic base, and shall be lettered in a size, form and color that is easily readable. When appropriate, such signs shall be translated into languages other than English that will be understood by the majority of tenants and other persons residing in or visiting a building.

(2) Signs shall be replaced when defaced or in disrepair. Except when it is necessary to replace a sign, no person shall remove, mutilate, destroy or obliterate such sign or its lettering.

(3) In addition to employees of the Department, this section may be enforced and notices of violation issued by employees of HPD, DOB, or any successor agencies.

HISTORICAL NOTE

Section repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

DERIVATION

Former §131.09 Posting of signs on residential buildings.

Section in original publication July 1, 1991.

Former §131.11 Receptacles for removal of waste materials.

Section in original publication July 1, 1991.

Subd. (c) amended City Record Jan. 14, 2003 eff. Feb. 13, 2003. [See Vol. 9 Statements of Basis and Purpose No. 18-A]

FOOTNOTES

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[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 131.13

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ARTICLE 131 BUILDINGS*15

§131.13 Control of unsafe conditions.

(a) Contaminants. When activities conducted within a building result in the production of contaminants that the Department determines are harmful to public health, the Department may order the owner or person in control of the building to take such measures that the Department determines are necessary to eliminate or reduce such conditions so that they are no longer harmful to the public health.

(b) Ventilation. When required by the Department mechanical ventilating systems, devices for the control of dust, gases, vapors and fumes, abatement devices, or other means of reducing conditions dangerous to health shall be installed and maintained in a building or surrounding premises by persons in control of such building or premises.

(c) Discarding refrigerators. Every person who discards a refrigerator shall remove the refrigerator door, locking device or hinges before placing the refrigerator on the street for collection by DOS or other waste removal service.

HISTORICAL NOTE

Section repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

DERIVATION

Former §131.13 Flexible gas tubing.

Section in original publication July 1, 1991.

Notes:

A public health nuisance, regardless of whether it is caused by a violation of other applicable law, remains subject to the nuisance abatement powers of the Department. See, e.g., §3.09 of this Code (General standards to protect health and safety; prohibited acts; necessary acts and precautions), which was upheld as constitutional in the predecessor to the Health Code, New York City Sanitary Code §181, in People ex rel. Styler v. Commonwealth Sanitation Co., 107 N.Y.S. 2d 982, 985 (Magistrates Ct. 1951): "The terms used by Section 181 of the Sanitary Code prohibiting careless and negligent acts and acts detrimental to health or dangerous to life, are no more indefinite and uncertain than those used in Sections 43 and 722 of the Penal Law and in many other criminal statutes, whose constitutionality has never been questioned."

FOOTNOTES

15

[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 131.15

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 131 BUILDINGS*15

§131.15 Window guards.

(a) **Window guards required.**

(1) The owner, manager, lessee, agent or other person who manages or controls a multiple dwelling, including, but not limited to, owners of condominium units and the board of directors of a cooperative, shall provide, install, and maintain, a window guard of a type and installation in accordance with the specifications of the Department set forth in Chapter 12 of Title 24 of the Rules of the City of New York, on the windows of each apartment in which a child or children ten (10) years of age and under reside, and on the windows, if any, in the public halls of a multiple dwelling in which such children reside.

(2) This section shall not apply to windows giving access to fire escapes or to a window on the first floor that is a required means of egress from the dwelling unit. It shall be the duty of each such person who manages or controls a multiple dwelling to ascertain whether such a child resides therein, in accordance with the notice requirements of the

Department in Chapter 12 of Title 24 of the Rules of the City of New York.

(b) **No refusal of window guards by occupant.** No tenant or occupant of a multiple dwelling unit, or other person, shall obstruct or interfere with the installation of window guards required by subdivision (a) of this section, nor shall any person remove such window guards.

(c) **No refusal to install by owners.** No owner, manager, lessee or other person who manages or controls a multiple dwelling shall refuse a written request of a tenant or occupant of a multiple dwelling unit, to install window guards regardless of whether such is required by subdivision (a), except that this section shall not apply to windows giving access to fire escapes.

(d) **Declaration of nuisance.**

(1) Failure to install or maintain window guards pursuant to this section is hereby declared to constitute a nuisance and a condition dangerous to life and health, pursuant to §17-145 of the Administrative Code.

(2) Every person obligated to comply with the provisions of subdivision (a) of this section is hereby ordered to abate such nuisance by installing and maintaining required window guards.

(3) Whenever a nuisance or condition is found to exist in violation of this section, the Department may order the person or persons obligated to install and maintain window guards to do so. In the event such order is not complied with within five (5) days after service of such order, the Department may request an agency of the City to execute such order pursuant to the provisions of §17-147 of the Administrative Code and shall be entitled to enforce its rights for reimbursement of expenses incurred thereby, pursuant to the provisions of Chapter 1, Title 17 of the Administrative Code. If such order is executed by HPD, or its successor agency, the expense of execution may be recovered by such agency pursuant to subchapter five of chapter two of Title 27 of the Administrative Code.

(e) **Enforcement by Department of Housing Preservation and Development.** Orders to install or repair window guards in multiple dwellings required by this section and any rules of the Department may be issued by the Commissioner and by HPD or any successor agency on behalf of the Commissioner.

HISTORICAL NOTE

Section repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

DERIVATION

Former §131.15 Window guards.

Section in original publication July 1, 1991.

Subd. (e) added City Record Oct. 30, 2007 eff. Nov. 29, 2007. [See Vol. 9 Statements of Basis and Purpose No. 29]

Notes:

Prior to adoption of this section in 1976, window falls were one of the leading causes of preventable, accidental deaths in children ten (10) years of age. Courts have determined that this section is constitutional and not void for vagueness. See, e.g., People v. Portnoy, 140 Misc. 2d 945, 535 N.Y.S.2d 305 (Crim. Ct. Bronx Cty.1988). Courts have also upheld the strict liability aspect of this section, and, for that matter, the entirety of the Code. In People v. Nemadi, 140 Misc. 2d 712, 531 N.Y.S.2d 693 (Crim. Ct. N.Y. Cty.1988), the court concluded that the City's authority to create strict liability offenses derives not from Public Health Law §12-b (1) but from §558(e) of the New York City Charter and that the City's determination that every violation was a misdemeanor was not arbitrary and was justified by the

densely populated areas of New York City. Indeed, while strict liability offenses are generally disfavored, the legislative power to impose liability without fault is often found valid in cases of public health, safety and welfare, and the hazard sought to be prevented by this section is of the sort traditionally dealt with by means of strict liability offenses. See, e.g., People v. Simon, 148 Misc.2d 845, 562 N.Y.S.2d 369 (Crim. Ct. Bronx Cty. 1990).

FOOTNOTES

15

[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 131.17

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PART B CONTROL OF ENVIRONMENT

ARTICLE 131 BUILDINGS*15

§131.17 Dry cleaning facilities.

(a) **Perchloroethylene emissions.** Dry cleaning facilities shall exhaust emissions from equipment using perchloroethylene so that no perchloroethylene vapors in excess of the nuisance level specified in subdivision (b) of this section enter co-located or adjacent dwellings, child-occupied facilities, or other occupied premises through windows, ventilation systems, or building structural penetrations.

(b) **Nuisance level.** Detection of perchloroethylene vapors from dry cleaning facilities in dwellings, child-occupied facilities, or other occupied premises at levels at or above 100 micrograms per cubic meter (mg/m^3) shall constitute a nuisance.

(c) **Remediation orders.** The Department may order the operators of such facilities to evaluate and correct problems when deemed necessary to prevent or remediate such nuisance.

HISTORICAL NOTE

Section repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

DERIVATION

Former §131.17 Modification by Commissioner became §131.19.

FOOTNOTES

15

[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 131.19

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ARTICLE 131 BUILDINGS*15

§131.19 Modification by Commissioner.

When the strict application of any provision of this article presents practical difficulties or unusual hardships, the Commissioner, in a specific instance, may modify the application of such provision consistent with the general purpose of this article and upon such condition as, in his or her opinion are necessary to protect life and health. The denial by the Commissioner of a request for modification may be appealed to the Board in the manner provided pursuant to §5.21 of this Code.

HISTORICAL NOTE

Section added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

DERIVATION

Former §131.17 Modification by Commissioner.

Section in original publication July 1, 1991.

FOOTNOTES

15

[Footnote 15]: * Article 131 repealed and added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 135.01

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PART B CONTROL OF ENVIRONMENT

ARTICLE 135 COMMERCIAL PREMISES*16

§135.01 Definitions.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

16

[Footnote 16]: * Article 135 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 135.03

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ARTICLE 135 COMMERCIAL PREMISES*16

§135.03 Responsibility for compliance.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

16

[Footnote 16]: * Article 135 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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ARTICLE 135 COMMERCIAL PREMISES*16

§135.05 Lighting.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

16

[Footnote 16]: * Article 135 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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ARTICLE 135 COMMERCIAL PREMISES*16

§135.07 Ventilation.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

16

[Footnote 16]: * Article 135 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 135.09

RULES OF THE CITY OF NEW YORK

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ARTICLE 135 COMMERCIAL PREMISES*16

§135.09 Plumbing.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

16

[Footnote 16]: * Article 135 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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ARTICLE 135 COMMERCIAL PREMISES*16

§135.11 Water, wash basins and utility sinks.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

16

[Footnote 16]: * Article 135 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 135.13

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ARTICLE 135 COMMERCIAL PREMISES*16

§135.13 Floors.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

16

[Footnote 16]: * Article 135 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 135.15

RULES OF THE CITY OF NEW YORK

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ARTICLE 135 COMMERCIAL PREMISES*16

§135.15 Walls and ceilings.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

16

[Footnote 16]: * Article 135 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 135.17

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ARTICLE 135 COMMERCIAL PREMISES*16

§135.17 Cleanliness and repair; freedom from unsafe and unhealthy conditions.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

16

[Footnote 16]: * Article 135 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 135.19

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ARTICLE 135 COMMERCIAL PREMISES*16

§135.19 Control of offensive or annoying conditions.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

16

[Footnote 16]: * Article 135 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 135.21

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ARTICLE 135 COMMERCIAL PREMISES*16

§135.21 Location of certain trades.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

16

[Footnote 16]: * Article 135 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY 135.23

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 135 COMMERCIAL PREMISES*16

§135.23 Cooperation with other governmental and private agencies.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

Section in original publication July 1, 1991.

FOOTNOTES

16

[Footnote 16]: * Article 135 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 38]

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24 RCNY Health Code Reg. 139.00

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 139 PUBLIC TRANSPORTATION FACILITIES

Health Code Reg. § 139.00 INTRODUCTORY NOTES

Article 139 is derived from S.C. §§301 through 306. The problem of maintaining subways, airplanes, railroads, ferries, buses and terminal facilities including airports, railroad stations, ferry terminals and subway stations in a clean and sanitary condition is the primary responsibility of those agencies of government owning, operating or regulating these transportation facilities, viz, the Transit Authority which runs the subway system, the Public Service Commission which regulates private railroads and buses, the Port of New York Authority which operates International and LaGuardia Airports and the Brooklyn Port Authority piers, the Department of Marine and Aviation which operates the municipal ferry service and many piers, the Interstate Commerce Commission, United States Public Health Service, and other governmental bodies. The Department of Health nevertheless has an interest in the sanitary condition of public transportation facilities in New York City so as to protect the health of its people. To avoid duplication of effort, the instant article provides a general standard of sanitation for these facilities and imposes restrictions on the public generally as to littering and smoking. Former requirements relating to ventilation, heating and lighting standards are omitted. Also see Article 181 for provisions applicable to public transportation facilities dealing with spitting, use of

common towels and use of common eating and drinking utensils.

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24 RCNY 139.01

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ARTICLE 139 PUBLIC TRANSPORTATION FACILITIES

§139.01 Definition.

Public transportation facility means any vehicle, airplane, carrier, platform, station, terminal or other structure or premises used for or in connection with the transportation of the public.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new. The definition of public transportation facility is included as a convenient term of reference encompassing the subway system, ferry service, interstate carriers, bus lines, trackless trolleys and all terminals, platforms and stations relating to such vehicles, airplanes, carriers and vessels.

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ARTICLE 139 PUBLIC TRANSPORTATION FACILITIES

§139.03 Sanitary standards.

A public transportation facility shall be kept in a clean and sanitary manner for the protection of the health of the public and employees. Dry dusting or dry sweeping is prohibited.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §301 but the requirement that the enumerated facilities be cleaned daily is omitted in favor of the more general performance standard. S.C. §§303, 304 and 305, dealing with ventilation, heating and lighting standards are omitted. The N.Y.C. Transit Authority, the Public Service Commission, the Port of New York Authority, the Department of Marine and Aviation, the Interstate Commerce Commission and other agencies of

government owning, operating or supervising public means of transportation and terminal facilities are active in these areas, and detailed provisions here would not serve any useful purpose. The Department of Health will, of course, continue its program of supervision of the sanitation of transportation facilities and will cooperate with these agencies of government in the protection of the health of employees and the public generally.

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24 RCNY 139.05

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ARTICLE 139 PUBLIC TRANSPORTATION FACILITIES

§139.05 Littering prohibited.

No person shall litter or otherwise create a nuisance or insanitary condition in or on a public transportation facility.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new. Although the language of Article 153 of this Code and §755(3)-2.1 of the Administrative Code prohibits littering in the City generally, the instant provision encompasses any public transportation facility which may not be a "public place" within the meaning of the local law. S.C. §302, carrying soiled or dirty clothing or bedding on public vehicles, is omitted.

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24 RCNY 139.07

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ARTICLE 139 PUBLIC TRANSPORTATION FACILITIES

§139.07 Smoking prohibited.

(a) Except as otherwise provided in subsection (b) of this section, no person shall smoke or carry an open flame or a lighted match, cigar, cigarette or pipe in or on a public transportation facility.

(b) The owner or person in charge of a public transportation facility may designate special areas in which smoking is permitted unless otherwise prohibited by the Fire Department or by other law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §306. The reference to "lighted match" is new. The former language which

permitted smoking on the "the unenclosed upper deck of... an omnibus" is replaced by the general exception allowing smoking in designated areas. This approach parallels regulations of the Department of Marine and Aviation (§§22 and 23 of Rules and Regulations of Department of Marine and Aviation contained in Ch. 12 of the 1946-52 Supplement of Rules and Regulations of New York City Agencies) and Unconsolidated Laws §§6528 and 6529.

Under New York City Criminal Courts Act §102c, magistrates are empowered to try violations of this section as an offense punishable by a $25 fine or ten days' imprisonment or both.

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24 RCNY Health Code Reg. 141.00

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 141 DRINKING WATER*14

Health Code Reg. § 141.00 INTRODUCTORY NOTES

As part of a comprehensive review of the Health Code to assess the efficacy of these articles in protecting public health, the Board of Health repealed and reenacted Article 141 on June 24, 2009. The section headings and provisions contained in the revised Article have been promulgated to regulate the public health and safety aspects of the New York City water supply for both potable and non-potable usage, to better reflect current practice and the regulatory environment, to assure that the revised provisions provide adequate legal tools to effectively address the public health aspects of public and private water supplies and to harmonize such provisions with related provisions of the New York State Sanitary Code, 10 NYCRR, Subparts 5-1, 5-2 and 5-6.

FOOTNOTES

14

[Footnote 14]: * Article 141 repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

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24 RCNY 141.01

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PART B CONTROL OF ENVIRONMENT

ARTICLE 141 DRINKING WATER*14

§141.01 Definitions.

ANSI. "ANSI" shall mean American National Standards Institute.

APHP. "APHP" shall mean American Public Health Association.

AWWA. "AWWA" shall mean American Water Works Association.

Bottled Water. "Bottled Water" shall mean any product, including natural spring or well water taken from municipal or private utility systems or other water sources, distilled water, deionized water, or any of the foregoing to which chemicals may be added, which are put into sealed bottles, packages or in other containers, to be sold for human consumption.

Building. "Building" shall mean any enclosed structure occupied or intended for supporting or sheltering any occupancy, including the service equipment therein. The term "building" used herein shall include, where applicable,

any affiliated buildings or structures, such as a building complex.

Bulk Water. "Bulk Water" shall mean water intended for potable purposes which is transported via licensed potable water tankers or trucks or equivalent from one area to another.

Contamination. "Contamination" shall mean the introduction into water of any biological, chemical, physical, or radiological substance, waste or waste water in concentrations that makes water unfit for its intended use.

Department. "Department" shall mean the New York City Department of Health and Mental Hygiene.

Device. "Device" shall mean the mechanical equipment used for the addition of chemicals to the drinking water supply of a building.

Disinfection. "Disinfection" shall mean a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

Drinking Water. "Drinking Water" shall mean water used for human consumption or used directly or indirectly in connection with the preparation of food for human consumption including the cleaning of utensils used in the preparation of food.

Fluoridation. "Fluoridation" shall mean treatment of water by the adjustment of fluoride ion concentrations to provide the optimum fluoride concentration in water.

Groundwater. "Groundwater" shall mean water at or below the water table.

Licensed Master Plumber. "Licensed Master Plumber" shall mean any person licensed by the Commissioner of Buildings to engage in the business or trade of master plumber to perform plumbing work within New York City.

Municipal Water Supply. "Municipal Water Supply" shall mean all pipes, mains and structures owned and/or maintained by the City, for the conveyance of drinking water to the public for human consumption or any connection to the municipal water supply system.

Non-potable Water. "Non-potable Water" shall mean water which is not treated to the approved drinking water standards, is not suitable and not intended for human consumption (drinking, washing or culinary purposes), but is produced and delivered to users for other purposes such as watering of lawns, washing vehicles and property.

NSF. "NSF" shall mean National Sanitation Foundation.

Parts per million (ppm). "Parts per million (ppm)" shall mean a unit of concentration expressed in parts per million (ppm) and is equivalent to milligrams per liter.

Potable Water. "Potable Water" shall mean drinking water that meets the water quality requirements established in Subpart 5-1 of the State Sanitary Code which is suitable for human consumption or used directly or indirectly in connection with the preparation of food for human consumption, including the cleaning of utensils used in the preparation of food.

State."State" shall mean the New York State Department of Health.

State Sanitary Code. "State Sanitary Code" shall mean Title 10, Chapter 1 of the Codes, Rules and Regulations of the State of New York.

Water Supply Tank. "Water Supply Tank" shall mean any device used to store drinking water used for potable purposes as part of the drinking water supply system in a building.

WEF. "WEF" shall mean Water Environment Federation.

Well. "Well" shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location or acquisition of ground water.

Well Water. "Well Water" shall mean water taken from below the ground through piping or similar installed device using external force or vacuum.

HISTORICAL NOTE

Section repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of

Basis and Purpose No. 35]

DERIVATION

Former §141.01

FOOTNOTES

14

[Footnote 14]: * Article 141 repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

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24 RCNY 141.03

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ARTICLE 141 DRINKING WATER*14

§141.03 Drinking Water Supply Source.

The owner, agent or other person in control of a building shall supply potable water by connecting to the municipal water supply or a source approved either by the Department or the State, which shall be available at all times on the premises of said building. The drinking water supply system of such building shall be connected to such approved source and shall not be subject to contamination. When supplied from a public source, the drinking water supply system shall not be connected to private or unapproved water supplies.

HISTORICAL NOTE

Section repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

FOOTNOTES

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[Footnote 14]: * Article 141 repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

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24 RCNY 141.05

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ARTICLE 141 DRINKING WATER*14

§141.05 Fluoridation of Municipal Water Supply.

The municipal water supply shall be fluoridated in the following manner: A fluoride compound shall be added to the drinking water supply at an optimum concentration of about 1.0 ppm of the fluoride ion, provided, however, the concentration of such ion shall not exceed 1.5 ppm at any time.

HISTORICAL NOTE

Section repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

DERIVATION

Former §141.08

FOOTNOTES

14

[Footnote 14]: * Article 141 repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

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ARTICLE 141 DRINKING WATER*14

§141.07 Building Drinking Water Storage Tanks.

(a) **Applicability.** The owner, agent or other person in control of a building which has one or more water tanks used to store potable water which is distributed as part of the building's drinking water supply system shall comply with the provisions of this section. This section does not apply to the domestic hot water system.

(b) **Inspection Requirements.** The owner, agent or other person in control of a building shall have the water tank inspected at least once annually. The inspection shall include the examination of the general condition of the tank, including but not limited to the condition of overflow pipes, access ladders, air vents, roof access hatches and screens. The interior and exterior of the water tank and its sealed edges and seams shall be inspected for evidence of pitting, scaling, blistering or chalking, rusting, corrosion and leakage. Inspection of sanitary conditions, including the presence of sediment, biological growth, floatable debris and insects in the tank and rodent or bird activity on and around the tank, shall be performed. The inspection shall include sampling of the water in the water tank to verify the bacteriological quality of the water supply in compliance with Subpart 5-1 of the State Sanitary Code. Sample results

shall be reported by a State certified laboratory equipped to analyze drinking water, in accordance with the latest edition of the Standard Methods for the Examination of Water and Wastewater, published jointly by the APHA, the AWWA and the WEF.

(c) **Reporting and Record Keeping.** A written report documenting the results of such inspection shall be maintained by the owner, agent or other person in control of a building for at least 5 (five) years from the date of the inspection and such reports shall be made available to the Department upon request within 5 (five) business days. The inspection report shall state whether or not all applicable requirements were met at the time of inspection and provide a description of any non-compliance with those requirements.

(d) **Public Notice.** The owner, agent or other person in control of a building shall post in an easily accessible location to residents in each building served by a potable water tank a notice that inspection results are available upon request. The notice must be placed in a frame with a transparent cover. The public notice shall include the name, address, and phone number where inspection results can be requested. Upon receipt of a request, the owner or manager shall make a copy of the inspection results available within 5 (five) business days.

(e) **Corrective Actions.** When an inspection identifies any unsanitary condition, the owner, agent or other person in control of a building shall take the necessary steps to immediately correct the condition. If water sampling analysis of the water tank finds noncompliance with the bacteriological quality standards as provided in Subpart 5-1 of the State Sanitary Code, this condition shall be reported to the Department within 24 hours. If it is found that the quality of such water is attributed to the sanitary condition of the water tank, the owner, agent or other person in control of a building shall clean the tank in accordance with section §141.09 of this Article. A water tank shall be cleaned whenever directed by the Department to correct an unsanitary condition.

HISTORICAL NOTE

Section repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of

Basis and Purpose No. 35]

DERIVATION

Former §141.03

FOOTNOTES

14

[Footnote 14]: * Article 141 repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

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ARTICLE 141 DRINKING WATER*14

§141.09 Building Water Tank Cleaning, Painting and Coating.

(a) **Applicability.** The owner, agent, or other person in control of a building which has one or more water tanks as part of its drinking water supply system shall comply with the provisions of this section.

(b) **Qualification.** No person or entity shall engage or hold themselves out as engaging in the business of cleaning, painting or coating of a water tank of any kind that is part of a building's drinking water supply system without holding a valid permit issued by the Commissioner, unless:

(1) that person is a licensed master plumber, as defined in section 141.01, or

(2) that entity is a corporation or partnership in which one of the officers or partners has the qualifications required by subdivision (b)(1) above.

(c) **Cleaning, Painting or Coating Requirements.** Water tanks that are a part of a building's drinking water

supply system shall be cleaned, painted and coated in accordance with the applicable provisions of the Administrative Code of the City of New York, the State Sanitary Code Part 5-1 and applicable industry standards and recommendations including, but not limited to, AWWA, NSF/ANSI, or other national standards developed by ANSI-accredited organizations. All products related to work performed shall be certified by ANSI-accredited organizations. No paint containing lead in any form or in any amount shall be used on the inside of a water tank. When a tank is cleaned, painted or coated, the water supply connections to and from the tank shall be disconnected or effectively plugged to prevent foreign matter from entering the distribution piping.

(d) **Disinfection.** All water, dirt, and foreign material accumulated during the cleaning and/or painting process shall be discharged from the tank. The tank shall then be disinfected in accordance with the applicable provisions of the Administrative Code of the City of New York and industry standards and recommendations including, but not limited to, AWWA, NSF/ANSI, or other national standards developed by ANSI-accredited organizations. All products related to work performed shall be certified by ANSI-accredited organizations. The drinking water supply tank shall be completely drained and flushed with potable water before refilling for use.

(e) **Sampling.** After painting or treating the interior of the tank, a water sample will be taken to ensure volatile organic compounds are not found at levels greater than that allowed by Subpart 5-1 of the State Sanitary Code. Sample results shall be reported by a State certified laboratory equipped to analyze drinking water, in accordance with the latest edition of the Standard Methods for the Examination of Water and Wastewater, published jointly by the APHA, the AWWA and the WEF.

(f) **Record Keeping.** A record of the date, address and work performed including a list of the cleaning, paints, coating and disinfection products used shall be maintained by the owner, agent or other person in control of a building for at least 5 (five) years from the date of the completed work and such records shall be made available to the Department upon request within 5 (five) business days.

HISTORICAL NOTE

Section repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of

Basis and Purpose No. 35]

FOOTNOTES

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[Footnote 14]: * Article 141 repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

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ARTICLE 141 DRINKING WATER*14

§141.11 Chemical Treatment of Building Drinking Water.

(a) **Applicability.** The provisions of this section shall apply to any person proposing to, or engaging in the business of chemical treatment of the drinking water supply system within a building. No owner, agent or other person in control of a building shall add any chemical or other substance to the drinking water supply unless such addition is performed by the holder of a permit issued by the Department. The provisions of this section do not apply to the treatment by addition of chemicals to water not intended for human consumption, however whenever such water is treated, all necessary precautions shall be taken to prevent the treated non-potable water from coming into contact with or contaminating a potable drinking water supply system, including through an accidental inter-connection or cross-connection.

(b) **Certification.** A permit to treat water chemically in a building shall be issued only for anti-corrosion, anti-scaling or disinfection purposes. Such permit shall be issued to:

(1) A person who has a degree with a major in chemistry, chemical engineering, or sanitary engineering from a college or university approved by the Board of Regents of the University of the State of New York and who has at least 5 (five) years experience in the chemistry of water or in closely related work or a water treatment plant operator with a certification issued by the State under Subpart 5-4 of the State Sanitary Code or an equivalent license or certification acceptable to the Department for the appropriate treatment types; or,

(2) A corporation or partnership in which one of the officers or partners has the qualifications required by subdivision (b)(1) of this section and is engaged in the full time supervision of all operations involving the addition of chemicals to drinking water for potable purposes.

(c) **Operators Requirement.** The actual addition of chemicals shall be performed only by the permittee or by a representative who is under the direct supervision of the permittee. All personnel involved in the addition of chemicals to the drinking water supply shall have successfully completed the appropriate course approved by the State under Subpart 5-4 of the State Sanitary Code, based on the system treatment complexity, flow and/or service population.

(d) **Product Standards.** The only chemicals, drinking water additives, treatment devices or equipment that may come in direct contact with drinking water for potable purposes must be in compliance with Subpart 5-1 of the State Sanitary Code, applicable industry standards and recommendations including, but not limited to, AWWA and NSF/ANSI 60 Drinking Water Treatment Chemicals-Health Effects and NSF/ANSI 61 Drinking Water System Components-Health Effects

(e) **Cross Connection Control.** To prevent the treated water from entering the municipal water supply system, cross connection control prevention shall be provided by installing a State-approved RPZ (Reduced Pressure Zone) Backflow Prevention Device on the potable water service connection to the building.

(f) **Design, Installation and Maintenance.** The system used to chemically treat the water shall be designed, installed and maintained in accordance with the manufacturer's specifications and applicable industry standards to ensure proper chemical dosage and operation. The system shall be tamper proof. Maximum feed pump capacity shall be adjusted to prevent any overfeed of chemicals above recommended levels. The installation of the device shall be such as to prevent the back-siphoning of chemicals. Sampling taps shall be provided both upstream and down stream of the chemical addition point in order to ensure representative samples.

(g) **Sampling.** Prior to placing the system in operation, the permittee shall confirm that the drinking water supply, after being chemically treated, complies with Subpart 5-1 of the State Sanitary Code. Once the system is operational, the permittee shall take monthly samples of the treated water, to ensure compliance with applicable sections of Subpart 5-1 of the State Sanitary Code. A permittee shall maintain or retain the services of a State certified laboratory equipped to analyze drinking water, in accordance with the latest edition of the Standard Methods for the Examination of Water and Wastewater, published jointly by the APHA, the AWWA and the WEF. Records of water sampling and analysis shall be maintained on file by the permittee for at least 5 (five) years and made available to the Department upon request within 5 (five) business days.

(h) **Water Quality.** A permittee who is operating and/or maintaining a system under this section shall ensure that the system used to chemically treat the water meets the requirements of the State Sanitary Code, Subpart 5-1 relating to Public Water Systems and applicable industry standards and recommendations including, but not limited to, AWWA, NSF/ANSI, or other national standards developed by ANSI-accredited organizations. All products related to work performed shall be certified by ANSI-accredited organizations. The health effects and the maximum dosage shall be monitored and maintained within limits set by the approved product.

(i) **Maintenance Record Keeping.** All personnel who work or maintain the chemical addition device, shall keep records showing the dates and times of service and the amount of each chemical applied to the drinking water supply being treated. Such records shall be maintained on file for at least 5 (five) years and made available to the Department

upon request within 5 (five) business days.

(j) **Chemical Storage.** All chemicals shall be kept only in the original sealable container provided by the supplier and in a secured area without public access acceptable to the Department. Such containers shall be clearly marked to indicate that their contents are to be used only for the treatment of the drinking water supply.

(k) **Termination of Treatment.** When a device is no longer in service, the owner, agent or other person in charge of the building in which it is installed shall cause the device to be completely disconnected from the water supply system and all openings shall be properly sealed.

(l) **Reporting.**

(1) **System Installation and/or Termination.** Within 24 hours after the installation and commencement of treatment or termination of a system, the permittee shall report to the Department the following information:

(A) The owner, name, address, and description of the premises where the device is located;

(B) The date the device was installed and/or terminated and the approval date for the device;

(C) The chemicals to be used with the device; and,

(D) The name and address of the permittee.

(2) **Water Quality.** When the water quality exceeds the standards as defined under subdivision (h) of this section, the permittee shall provide a report to the Department within 24 hours analyzing the cause of the water quality exceedance and any corrective actions that were taken.

HISTORICAL NOTE

Section repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of

Basis and Purpose No. 35]

DERIVATION

Former §141.07

FOOTNOTES

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[Footnote 14]: * Article 141 repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

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ARTICLE 141 DRINKING WATER*14

§141.13 Bottled Water.

(a) **Applicability.** No person shall import, manufacture or bottle water for human consumption in bottles or containers for sale or distribution in New York City without a valid permit issued by the State Department of Health and such bottles or containers shall be stamped with a State certification number to distribute bottled water. The requirements of Subpart 5-6 of the State Sanitary Code shall apply to bottled water produced, used, distributed and/or sold in New York City.

(b) **Bottled Water Standards.** Bottled drinking water shall meet the bacteriological, chemical and physical water quality standards as prescribed by Section 5-6.10 of Subpart 5-6 of the State Sanitary Code.

(c) **Enforcement.** When the Department finds that bottled water does not comply with the standards promulgated by the State Department of Health, the Department may order said source to discontinue distribution. Such bottled water shall remain out of distribution until compliance with all the applicable standards can be demonstrated to the

satisfaction of the Department. The unacceptable product may be embargoed, recalled and/or destroyed pursuant to the provisions of this Code.

HISTORICAL NOTE

Section repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

DERIVATION

Former §141.04

FOOTNOTES

14

[Footnote 14]: * Article 141 repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

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ARTICLE 141 DRINKING WATER*14

§141.15 Hauling Bulk Water.

(a) **Applicability.** No person shall import into, sell or transport from one area to another in New York City water intended for public potable use via tanker truck or equivalent means for the purpose of treatment, packaging, or human consumption without a permit issued by the State Department of Health. The requirements of Subpart 5-6 of the State Sanitary Code shall apply to bulk water produced, used, distributed and/or sold in New York City.

(b) **Water Quality Standards.** All bulk water shall meet, when delivered, the bacteriological, chemical and physical water quality standards as prescribed by Section 5-6.10 (Maximum contaminant levels) of Subpart 5-6 of the State Sanitary Code.

(c) **Enforcement.** When the Department finds that bulk water does not comply with the standards promulgated by the State, the Department may order said source to discontinue transportation and distribution. Such bulk water shall remain out of transportation or distribution until compliance with all applicable standards can be demonstrated to the

satisfaction of the Department. The unacceptable product may be embargoed, recalled and/or destroyed pursuant to the provisions of this Code.

HISTORICAL NOTE

Section repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

FOOTNOTES

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[Footnote 14]: * Article 141 repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

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24 RCNY 141.17

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ARTICLE 141 DRINKING WATER*14

§141.17 Groundwater Wells.

(a) **Applicability.** No owner, person, corporation, well driller or partnership shall engage in the installation, drilling, replacement or operation of a water well, water well pump or well pumping equipment as appurtenances supplying water to any building in New York City for water supply purposes without a permit issued by the Department.

(b) **Well Categories and Water Quality Standards.**

(1) **Potable Wells.** Potable well water used for drinking purposes shall meet the bacteriological, chemical and physical water quality standards as prescribed by the State Sanitary Code, Subpart 5-1. No well permit shall be issued for drinking water purposes unless the applicant can establish to the Department's satisfaction that the municipal water supply is not accessible.

(2) **Non-Potable Wells.** Non-potable well water used for purposes other than drinking shall meet the following water quality standards:

(A) Microbiological Standards: Not to exceed 200 Fecal Coliform per 100ml.

(B) All Other Pollutants: Not to exceed any limitation set by the New York City Department of Environmental Protection. The presence of any other substance shall be evaluated as a potential public health hazard to be determined by the Department.

(c) **Application Requirements.** No person shall construct or operate a water well without prior construction authorization and a permit issued by the Department. The application shall include the appropriate fees, application forms and other supplemental information as required by the Department.

(d) **Construction Standards.** No person shall construct or abandon any water well without a permit issued by the Department in accordance with Section 5-2.4 of the State Sanitary Code, nor shall any person use any water well except in accordance with the State Sanitary Code, Subparts 5-1, 5-2 and associated appendices (Appendix 5-A through 5-D). Applicable industry standards and recommendations including, but not limited to, AWWA, NSF/ANSI, or other national standards developed by ANSI-accredited organizations shall apply to wells constructed in New York City. Well water shall not be used for a purpose other than that stated on the permit. The well water supply system shall be free from cross connections as set forth in Section 5-1.31 of the State Sanitary Code and in accordance with the applicable provisions of the Administrative Code of the City of New York.

(e) **Driller Qualifications.** No person shall drill, construct or abandon a well without first registering with the New York State Department of Environmental Conservation pursuant to New York State Environmental Conservation Law §15-1525.

(f) **Signage.** On each pump, tap and outlet connected to a well whose water is not approved for drinking water, a weather-proof sign with the words: "Danger-WATER UNSAFE-This well water is NOT to be used for drinking or domestic purposes." shall be clearly, legibly and prominently displayed. Every pipe and fitting linked to the non-potable water supply system shall be properly identified to prevent any possible cross connection with the drinking water system or the municipal water supply system.

(g) **Well Decommissioning and Abandonment.** If a water well is to be sealed or closed, the owner of the property shall make application of notification to the Department on a form prescribed by the Department. Every decommissioned or abandoned groundwater well shall be sealed or closed so as to protect the aquifer from pollution or contamination, and to prevent a hazard to life or property. The Department may require abandonment of any well which it deems to be contaminated or damaged or which has been constructed or operated improperly.

(h) **Potable Well Water Standards and Disinfection.** A permit to use well water shall not be issued unless the water meets the bacteriological, chemical and physical water quality standards as prescribed by the State Sanitary Code Subpart 5-1. When the Department finds that a well does not comply with the State Sanitary Code or for other reasons, the Department may order such well to discontinue operations; such well shall remain out of service until compliance with appropriate standards can be demonstrated to the satisfaction of the Department. The owner, operator or permittee of a potable well requiring treatment to meet drinking water quality standards shall have the treatment plan approved by the Department, and shall complete acceptable water quality testing by a State certified laboratory to demonstrate compliance with appropriate standards, including those as required in Subpart 5-1 of the State Sanitary Code.

HISTORICAL NOTE

Section repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of

Basis and Purpose No. 35]

DERIVATION

Former §§141.09, 141.10

FOOTNOTES

14

[Footnote 14]: * Article 141 repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

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ARTICLE 141 DRINKING WATER*14

§141.19 Modification.

When the strict application of any provision of this Article presents practical difficulties or unusual hardships, the Commissioner, in a specific instance, may modify the application of such provision consistent with the general purpose of this Article and upon such condition as, in his or her opinion are necessary to protect life and health. The denial by the Commissioner of a request for modification may be appealed to the Board in the manner provided pursuant to § 5.21 or successor rule.

HISTORICAL NOTE

Section repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

DERIVATION

Former §141.13

FOOTNOTES

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[Footnote 14]: * Article 141 repealed and added City Record June 30, 2009 eff. July 30, 2009. [See Vol. 9 Statements of Basis and Purpose No. 35]

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ARTICLE 143 DISPOSAL OF SEWAGE

Health Code Reg. § 143.00 INTRODUCTORY NOTES

As part of a comprehensive review of the Code, Article 143 was amended by resolution of the Board on September 22, 2009 to better reflect practice and the regulatory environment, and to harmonize its provisions with related provisions of local law, §143.01 was amended, and §§143.03, 143.05, 143.07, 143.09 and 143.13 were repealed as no longer necessary. In accordance with Local Law 50/1991 and Local Law 65/1996, the New York City Department of Buildings and the New York City Department of Environmental Protection have jurisdiction over the activities formerly regulated by the Department.

Article 143 constitutes a revision of S.C. §§284(part), 285,286,287 and Regulations under §287, and it also replaces S.C. §§235(part), 236 and 237 which were concerned with the contents of privies, cesspools and septic tanks.

The article constitutes one part of the broad area of disposal of wastes. While Article 145, Water Pollution Control, deals with wastes entering the waters of the City, Article 143 is concerned with the specific problem of disposal of

human, household, and commercial liquid wastes which do not involve immediate discharges into the waters of the City. Each of the two articles complements the other and takes cognizance of both the nuisance problem and the pollution problem. Thus, the issuance of a permit under the instant article or under Article 145 will be premised on the overriding goal of controlling sewage and other wastes both locally and at the point of ultimate discharge. The article takes cognizance of the activities and regulations of other public agencies, such as the Departments of Buildings, Water Resources and Highways. Compliance with the provisions of this Article does not waive the requirements of any applicable provision of State or local law or regulation, e.g., a permit to construct a septic tank, when required by the Department of Buildings, must be obtained in addition to complying with the permit requirements of this article.

The article contains a novel requirement that for subdivision realty developments involving 15 or more dwellings, a community private sewage disposal system be built rather than individual systems unless there are special circumstances such as cost or physical or engineering difficulties. This mandatory requirement will reduce the total financial burden to a home owner who is often forced to carry the construction charges for an individual private system, where there are no public systems, only to have to abandon such system when public sewers are later built, and for which he is assessed. Under the new provision, a single temporary system will be built. When the City extends its system, the sewers already installed can be connected to the new public sewers, and the temporary community system abandoned.

It may be noted that for those private sewage disposal systems which involve the discharge of sewage into the waters of New York City, the possibility of dual permits, one under this article, and the other under Article 145 or under State law, is eliminated by a provision in §143.03 that no permit need be obtained under Article 143 when a permit is required to be obtained under Article 12 of the Public Health Law or under Article 145 of this Code. Thus, Articles 143 and 145 of this Code present no problem of overlap because any private sewage disposal system involving discharge of sewage into the waters of the city of New York will be regulated and a permit will be issued under Article 145 rather than under the instant article.

The table of section headings and the introductory notes were amended by resolution adopted on December 18, 1969 to conform to provisions of other amendments of this article adopted by the same resolution intended to clarify the responsibility of the Department of Health for evaluating the site and subsoil for the construction of a private sewage disposal system and for the enforcement of the standards of the Health Commissioner for such system, as distinguished from the construction permit issued by the Department of Buildings and applicable provisions enforced by other Departments.

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ARTICLE 143 DISPOSAL OF SEWAGE

§143.01 Definitions.

When used in this article:

(a) Municipal sewage systems means the series of sanitary, combined and storm sewers, intercepting sewers and intercepting collecting sewers, sewage treatment plants or pollution control facilities, drains and other facilities, connections and equipment for the conveyance, treatment and disposal of sewage and drainage operated by the Departments of the City of New York.

(b) Private sewage disposal system means a water-flushed facility for the disposition of sewage which does not connect either with the municipal sewage disposal system or with a sewer or other facility connecting with such municipal system.

(c) Privy means a permanent facility for urinating or defecating embedded in the subsurface which is not

waterflushed and which does not connect, directly or otherwise, to a private sewage disposal system or the municipal sewage disposal system, and includes a chemical toilet but does not include portable toilets such as those found in transportation facilities or at construction or other street locations.

(d) Sewage means human wastes, liquid kitchen wastes, waste water from wash basins, waste water from bathing facilities including a bathing establishment as defined in §165.01, or liquid wastes resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resources.

(e) Community private sewage disposal system means a private sewage disposal system which services fifteen or more dwellings.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (c) amended City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]

Subd. (e) added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]

Notes:

This section is new.

Subsection (a), municipal sewage disposal system, includes in one term all the sewers, sewer connections, pipes, drains and sewage disposal plants operated by the Water Resources Department. The definition is identical with the definition in §145.01(b).

Subsection (b), private sewage disposal system, includes all types of systems in which a sanitary disposition of sewage is made. It does not include a privy, i.e., a system which is not water-flushed and in which wastes are simply permitted to accumulate in one container. A "private sewer or drain" may be built under a permit from the Water Resources Department. This apparently refers to sewage systems privately built which eventually discharge into the waters of the City or connect with the municipal system.

Subdivision (c) was amended and a new subdivision (e) was added by resolution adopted by the Board of Health on September 22, 2009 to redefine "privy" and to add a definition of "privy" and to add a definition of "community private sewage disposal system."

Subsection (c), privy, specifically includes a chemical toilet but does not include a non-flush toilet which connects directly with a sewer, such as is commonly used by workmen on construction projects.

Subsection (d), sewage, includes all human excrement, other liquid wastes resulting from normal cooking and bathing functions, and industrial liquid wastes. Thus, this article is concerned with disposal of sewage not only from dwellings but from commercial and industrial buildings as well.

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ARTICLE 143 DISPOSAL OF SEWAGE

§143.03 Disposal of sewage generally; use of private sewage disposal system and privies. [Repealed]

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]

Section in original publication July 1, 1991.

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24 RCNY 143.05

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ARTICLE 143 DISPOSAL OF SEWAGE

§143.05 Private sewage disposal systems; permit for site and sub-soil evaluation; standards, exception. [Repealed]

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]

Section in original publication July 1, 1991.

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ARTICLE 143 DISPOSAL OF SEWAGE

§143.07 Private sewage disposal systems; proof of proper maintenance. [Repealed]

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]

Section in original publication July 1, 1991.

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24 RCNY 143.09

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 143 DISPOSAL OF SEWAGE

§143.09 Private sewage disposal systems; requirements for one and two family dwellings. [Repealed]

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]

Section in original publication July 1, 1991.

Rules of the City of New York

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

24 RCNY 143.11

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 143 DISPOSAL OF SEWAGE

§143.11 Community private sewage disposal systems.

(a) No permit shall be issued approving the site and sub-soil for the proposed construction of individual private sewage disposal systems in subdivision realty developments involving 15 or more dwellings, but application shall be made for a permit to construct and maintain a community private sewage disposal system for the disposal of sewage from all of the dwellings within the subdivision development. This provision shall not apply, however, if in the opinion of the Department, it is more practicable to construct individual systems rather than a community system, by reason of physical or engineering difficulties, estimated cost of construction or other pertinent considerations.

(b) No community private sewage disposal system shall be constructed and maintained without a permit issued by the Commissioner. The permit may contain such conditions as the Commissioner may impose for the protection of public health. No permit is required and this article shall not apply if a permit must be obtained for a disposal facility pursuant to §145.03 of this Code or pursuant to Article 12 of the Public Health Law.

(c) Application for a permit to construct and maintain a community private sewage disposal system shall be made by the owner of the subdivision development or his authorized representative, who shall submit a detailed report, including drawings of the proposed system, design data and such other data as will enable the Department to determine all facts relating to the proposed system and its intended operation or use.

(d) The Department may prescribe the number of copies of and the format in which the information required by subsection (b) of this section shall be submitted. Plans, specifications and other information shall contain the signature, seal and address of a professional engineer or architect licensed and registered pursuant to Article 145 or Article 147, respectively, of the Education Law.

(e) If the Department approves such application, a permit to construct and maintain the community private sewage disposal system shall be issued and shall remain valid until revoked, provided construction of the system is instituted within one year after issuance.

(f) No community private sewage disposal system shall be constructed otherwise than in accordance with plans and specifications filed with and approved by the Department and in compliance with all of the applicable provisions of the Building Code of the City of New York.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new. The mandatory requirement for community systems for subdivision developments in areas of the City where there are no public sewers is an attempt to facilitate the eventual construction of public sewer systems and, meanwhile, relieve the private home owner from unnecessary costs for sewage disposal. At present, if a private sewage system is built because there are no public sewers, the home owner must bear the cost of such construction. Later, when public sewers are built, he must abandon the private sewer and pay an assessment for the construction of the public sewers. Thus, he pays twice: first for his private system, then for public sewer assessment- In requiting community systems, the home owner pays only for his proportionate share of the community system, which, after public sewers are constructed in the area concerned, may be tied in to the public sewer. It is hoped, in this way, to reduce overall cost to the home owner and, at the same time, assure adequate facilities for the disposal of sewage. In those instances where community systems would be impractical, by reason of engineering difficulties, or where, for example, the cost of construction of a community system would be more than the total cost of all the individual private systems in the subdivision development, the provision authorizes the Department to waive the mandatory requirement for a community system. This section was amended by resolution adopted December 18, 1969 to conform its provisions to other amendments adopted by the same resolution and to clearly indicate the Department's primary responsibility for the public health supervision of community private sewage disposal systems.

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

24 RCNY 143.13

RULES OF THE CITY OF NEW YORK

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 143 DISPOSAL OF SEWAGE

§143.13 Private sewage disposal systems; inspection; operation. [Repealed]

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]

Section in original publication July 1, 1991.

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24 RCNY 143.15

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PART B CONTROL OF ENVIRONMENT

ARTICLE 143 DISPOSAL OF SEWAGE

§143.15 Privies.

No privy shall be constructed otherwise than in accordance with the requirements imposed by the Department in issuing the authorization for its temporary use, and no privy shall be maintained or used so as to create a nuisance or health hazard. A privy shall be covered and protected so as not to be exposed to the outer air. It shall not be allowed to pollute a well or water supply system, or to discharge sewage on surface ground level. Privies shall be protected against rodents, insects and other pests. When a privy is no longer to be used, it shall be thoroughly cleansed so that it will not cause a nuisance or health hazard, and it shall be filled in so as to prevent accidents.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from parts of S.C. §§285, 286, 287 Regs. 3 and 4 and §168 Reg. 3(part). The last sentence is new. The Department is authorized to set forth specific construction requirements whenever it authorizes construction of a privy.

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

24 RCNY 143.17

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 143 DISPOSAL OF SEWAGE

§143.17 Modification by Commissioner.

When the strict application of any provision of this article presents difficulties or unusual hardships, the Commissioner in a specific instance may modify the application of such provision consistent with the general purpose of this article and upon such conditions as, in his opinion, are necessary to protect health and the environment. The denial by the Commissioner of a request for modification may be appealed to the Board of Health in the manner provided by §5.21.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section was added on May 8, 1987 to allow the Commissioner, in a specific instance, to modify the

requirements of Article 143.

The Schedule of Section Headings was amended on May 8, 1987 to allow the Commissioner, in a specific instance, to modify the requirements of Article 143.

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24 RCNY 145.01

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 145 WATER POLLUTION CONTROL*17 [REPEALED] Notes: Article 145 was repealed by resolution adopted on September 22, 2009 as part of a Health Code revision process intended to modernize and update the Health Code as this provision is no longer necessary. The discharge of waste into City waters is comprehensively regulated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 22 U.S.C.A. §1251 et seq., and by the New York State Department of Environmental Conservation under 6 NYCRR Part 750 (State Pollutant Discharge Elimination System).

§145.01 Definitions.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]

Section in original publication July 1, 1991.

FOOTNOTES

17

[Footnote 17]: * Article 145 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]. Article in original publication July 1, 1991.

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24 RCNY 145.03

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 145 WATER POLLUTION CONTROL*17 [REPEALED] Notes: Article 145 was repealed by resolution adopted on September 22, 2009 as part of a Health Code revision process intended to modernize and update the Health Code as this provision is no longer necessary. The discharge of waste into City waters is comprehensively regulated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 22 U.S.C.A. §1251 et seq., and by the New York State Department of Environmental Conservation under 6 NYCRR Part 750 (State Pollutant Discharge Elimination System).

§145.03 New or altered disposal facilities; permits and approval of plans.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]

Section in original publication July 1, 1991.

FOOTNOTES

17

[Footnote 17]: * Article 145 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]. Article in original publication July 1, 1991.

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

24 RCNY 145.05

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 145 WATER POLLUTION CONTROL*17 [REPEALED] Notes: Article 145 was repealed by resolution adopted on September 22, 2009 as part of a Health Code revision process intended to modernize and update the Health Code as this provision is no longer necessary. The discharge of waste into City waters is comprehensively regulated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 22 U.S.C.A. §1251 et seq., and by the New York State Department of Environmental Conservation under 6 NYCRR Part 750 (State Pollutant Discharge Elimination System).

§145.05 Existing waste discharges; orders to abate pollution hazards.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]

Section in original publication July 1, 1991.

FOOTNOTES

17

[Footnote 17]: * Article 145 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]. Article in original publication July 1, 1991.

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24 RCNY 145.06

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 145 WATER POLLUTION CONTROL*17 [REPEALED] Notes: Article 145 was repealed by resolution adopted on September 22, 2009 as part of a Health Code revision process intended to modernize and update the Health Code as this provision is no longer necessary. The discharge of waste into City waters is comprehensively regulated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 22 U.S.C.A. §1251 et seq., and by the New York State Department of Environmental Conservation under 6 NYCRR Part 750 (State Pollutant Discharge Elimination System).

§145.06 Registration of outlets from certain disposal facilities.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]

Section in original publication July 1, 1991.

FOOTNOTES

17

[Footnote 17]: * Article 145 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]. Article in original publication July 1, 1991.

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24 RCNY 145.07

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 145 WATER POLLUTION CONTROL*17 [REPEALED] Notes: Article 145 was repealed by resolution adopted on September 22, 2009 as part of a Health Code revision process intended to modernize and update the Health Code as this provision is no longer necessary. The discharge of waste into City waters is comprehensively regulated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 22 U.S.C.A. §1251 et seq., and by the New York State Department of Environmental Conservation under 6 NYCRR Part 750 (State Pollutant Discharge Elimination System).

§145.07 Operation.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]

Section in original publication July 1, 1991.

Subd. (b) amended City Record Jan. 14, 2003 eff. Feb. 13, 2003. [See Vol. 9 Statements of Basis and Purpose No. 18-A]

FOOTNOTES

17

[Footnote 17]: * Article 145 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]. Article in original publication July 1, 1991.

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24 RCNY 145.09

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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PART B CONTROL OF ENVIRONMENT

ARTICLE 145 WATER POLLUTION CONTROL*17 [REPEALED] Notes: Article 145 was repealed by resolution adopted on September 22, 2009 as part of a Health Code revision process intended to modernize and update the Health Code as this provision is no longer necessary. The discharge of waste into City waters is comprehensively regulated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 22 U.S.C.A. §1251 et seq., and by the New York State Department of Environmental Conservation under 6 NYCRR Part 750 (State Pollutant Discharge Elimination System).

§145.09 Cooperation with other governmental agencies.

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]

Section in original publication July 1, 1991.

FOOTNOTES

17

[Footnote 17]: * Article 145 repealed City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 39]. Article in original publication July 1, 1991.

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24 RCNY Health Code Reg. 151.00

RULES OF THE CITY OF NEW YORK

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 151 RODENTS, INSECTS AND OTHER PESTS*13

Health Code Reg. § 151.00 INTRODUCTORY NOTES

Article 151 was repealed and reenacted by resolution on December 16, 2008, as part of a comprehensive review of the Health Code to assess the efficacy of the Code in protecting the public health, to provide adequate legal tools to effectively address the health and safety needs of the public concerning prevention and control of rodent, insect or other pest infestations. The title of the Article was changed from "Rodents, Insects and Other Pests," to "Pest Prevention and Management," to better reflect practice and the regulatory environment where the emphasis has shifted from use of pesticides to primary prevention of pests and infestations. The article's intent remains unchanged, namely, the prevention of infestations of rodent, insect or other pest life and to keep premises free of conditions conducive to pest infestations through continuous pest management efforts, the elimination of harborages and the institution of property maintenance practices designed to eliminate or severely limit the presence of pest populations. Because pesticide use is comprehensively regulated by state law, this article attempts to promote primary prevention methods of pest control and the secondary prevention of infestations without directly addressing how and by whom pesticides may be employed. The focus on pest management practices incorporates a hierarchy of actions to prevent and eliminate pests, including

structural alterations and repairs, and the elimination of conditions conducive to pest infestations.

FOOTNOTES

13

[Footnote 13]: * Article repealed and added City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 32]

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24 RCNY 151.01

RULES OF THE CITY OF NEW YORK

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 151 RODENTS, INSECTS AND OTHER PESTS*13

§151.01 Definitions.

When used in this article:

(a) Conditions conducive to pests means conditions of property construction, operation and maintenance in occupied or vacant property that promote or allow for the establishment of pest populations, their feeding, breeding and proliferation, and foster the creation of harborage conditions. Such conditions may include but are not limited to: the presence of weeds or other vegetation that are sources of food or shelter for rodents; accumulation of refuse and other material in or on which pests may find shelter, hide or nest; the presence of cracks, gaps or holes in building exteriors or interiors that enable the free movement of pests; the presence of food or water accessible to, and capable of, sustaining a pest population; or unsanitary conditions that attract pests.

(b) Harborage means any condition that provides shelter or protection for rodents, insects or other pests.

(c) Person in control means the owner, part owner, managing agent or occupant of premises or property, or any other person who has the use or custody of the same or any part thereof.

(d) Pest includes any unwanted member of the Class Insecta, including but not limited to mosquitoes, or of the Order Rodentia, including but not limited to the Norway rat, and any other unwanted plant, animal or fungal life that the Department determines is a pest because it is destructive, annoying or a nuisance.

(e) Pest management means ongoing prevention, monitoring and pest control activities and the elimination of rodents, insects or other pests from any building, lot, premise or vehicle. This includes, but is not limited to, the elimination of conditions conducive to pests and the use of traps and, when necessary, the use of pesticides.

(f) Pesticide means (1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended as a plant regulator, defoliant or desiccant, as defined in Environmental Conservation Law §33-0101 (35), or successor law, and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136.

(g) Premises or property means a commercial, private or public building or structure, including all rooms within the property as well as all public areas, halls, stairs, cellars, roofs, shafts, court yards, alleys and areas surrounding the structure. It shall also include all vacant lots, parks, streets and vehicles.

HISTORICAL NOTE

Section repealed and added City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 32]

FOOTNOTES

13

[Footnote 13]: * Article repealed and added City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 32]

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24 RCNY 151.02

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 151 RODENTS, INSECTS AND OTHER PESTS*13

§151.02 Prevention and pest management measures.

(a) **Properties shall be free of pests.** All premises capable of attracting or supporting rodents, insects and other pests shall be kept free from rodents, insects and other pests, and from any conditions conducive to pests. The person in control of such premises shall take such measures as may be necessary to prevent and control the harborage and free movement of rodents, insects or other pests.

(b) **Waste shall be managed to prevent pests.** All garbage and other waste and recyclable materials shall be deposited in tightly covered, watertight receptacles made of a material type and grade that is resistant to rodents, insects and other pests until such time that garbage and waste materials are moved to an area for a scheduled pickup, at which time they shall be placed in a suitable bag or other container acceptable to the Department, and to the City Departments of Sanitation and Housing Preservation and Development. Receptacles used for liquid waste shall be constructed to hold contents without leakage.

(c) **Pest management plans.** When the Department determines that, because of pest infestation or conditions conducive to pests, a written pest management plan is required, it shall order that a person in control of the premises write such a plan, maintain the plan in effect for such time as the Department shall specify, maintain a copy of the plan on the premises where the infestation or conditions were observed, and make a copy available, upon request, to the Department and, when specified by the Department, to occupants of the premises. In commercial and residential premises, when specified by the Department, the person in control of the premises shall post a sign at the building entrances stating that the pest management plan is in effect and identifying a location on the premises where a copy of the plan may be inspected. The plan shall include the following:

(1) Pest management strategies that will be employed on such premises; (2) A schedule for routine inspections, determined by the person in control, for conditions conducive to pests and the presence of pests;

(3) Actions to be taken when pests are present;

(4) Instructions to premises' occupants, tenants or other users on how to report the presence of pests to person(s) in control of the premises, with a notice conspicuously posted at building entrances indicating that such instructions are available and where occupants may obtain a copy;

(5) The name(s) and contact information for pest management businesses and/or professionals employed or contracted by the persons in control; and

(6) A log of visits by pest management professional(s) and the names of pesticides, if any, applied on each visit.

(d) **Elimination of conditions conducive to pests and to the presence of pests.** When the Department determines that a premises has pests or conditions conducive to pest life, it may order person(s) in control to take such action as be required by the Department, including, but not limited to, the following:

(1) Physically remove pest nests, waste, and other debris by vacuuming, washing surfaces, or otherwise collecting and discarding such debris.

(2) Eliminate existing routes of pest movement by sealing and repairing holes, gaps, and cracks in walls, ceilings, floors, molding, baseboards, around conduits, and around and within cabinets by the use of sealants, plaster, cement, wood or other durable materials.

(3) Eliminate existing harborages for pests by clearing interior and exterior debris and garbage, and clearing dense weeds, shrubs and other vegetation, if necessary.

(4) Remove existing sources of water for pests by draining standing water; repairing drains to prevent further accumulation of water; repairing leaks in faucets and plumbing; and maintaining the impermeability of roofs, ceilings, and exterior and interior walls.

(5) Eliminate existing sources of food for pests by keeping the property free of all types of waste and by regularly cleaning and maintaining areas where waste is stored and/or compacted before its removal.

(e) The use of pesticides shall not substitute for pest management measures required by this section.

HISTORICAL NOTE

Section repealed and added City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 32]

FOOTNOTES

13

[Footnote 13]: * Article repealed and added City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 32]

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24 RCNY 151.03

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PART B CONTROL OF ENVIRONMENT

ARTICLE 151 RODENTS, INSECTS AND OTHER PESTS*13

§151.03 Elimination of standing water.

Except for a wetland regulated by federal, state or local law, the Department may order the person(s) in control of any property including, but not limited to, a sunken lot, property below grade, excavation or any other place where stagnant water may collect, to fill in or drain such property or to employ other methods to prevent the breeding or harborage of mosquitoes and other pests in a manner consistent with federal, state and local law.

HISTORICAL NOTE

Section added City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 32]

FOOTNOTES

13

[Footnote 13]: * Article repealed and added City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 32]

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24 RCNY 151.04

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ARTICLE 151 RODENTS, INSECTS AND OTHER PESTS*13

§151.04 Enforcement by the Department and other City agencies.

Without limiting the authority of the Department, in addition to the Department, the City Departments of Buildings and Housing Preservation and Development are authorized to enforce this Article.

HISTORICAL NOTE

Section added City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 32]

FOOTNOTES

13

[Footnote 13]: * Article repealed and added City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 32]

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24 RCNY Health Code Reg. 153.00

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

Health Code Reg. § 153.00 INTRODUCTORY NOTES

Article 153 constitutes a formal revision of the subject matter contained in S.C. §§53, 233, 234, 243, 244, 246, 251, 252, 253, 315, 316, 317 and 318.

The provisions of this article deal principally with the prevention of littering of streets, public places and vacant lots, and cover the disposal of refuse or waste not covered by other articles of this Code, such as Article 143, Disposal of Sewage, Article 145, Water Pollution Control and Article 155, Butchers' Refuse. The provisions of §§153.01 through 153.19, which are derived from S.C. §§53, 233, 253, 315, 317 and 318, are virtually identical with §755(3)-2.1 of the Administrative Code, added by Local Law 99 (1955). Violation of the Administrative Code provision is "an offense punishable by a fine of not more than twenty-five dollars or by imprisonment not to exceed ten days, or both", while the violation of any of the provisions of this Code constitutes a misdemeanor under the City Charter §558(2) and is punishable by imprisonment up to one year, a fine of not more than five hundred dollars, or both (Penal Law §1937).

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24 RCNY 153.01

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

§153.01 Littering prohibited.

No person shall litter, sweep, lay or throw, or permit his employee or any other person under his control to litter, sweep, lay or throw any ashes, dirt, garbage, refuse or rubbish of any kind in or upon any street or public place, lot, air shaft, areaway, backyard, court or alley.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §§251 (part) and 315(1).

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PART B CONTROL OF ENVIRONMENT

ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

§153.03 Exposure or agitation of certain materials prohibited.

No lime, ashes, dry sand, coal, hair, waste paper, feathers or other substance that is likely to be carried by the wind shall be sieved, agitated or exposed, nor shall any carpet, mat, cloth, garment, yarn material or other substance be shaken, beaten, cleaned or scoured in any place where they or particles therefrom will pass into any street, public place or occupied premises.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §253 (part).

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24 RCNY 153.05

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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PART B CONTROL OF ENVIRONMENT

ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

§153.05 Precautions during construction or demolition work.

During the construction, repair, alteration or demolition of any building or erection, all usual or reasonable precautions shall be taken to prevent danger to life or health from falling fragments or substances or from flying dust or any other light materials into any street, place or building. The material to be removed in the demolition of any building or part thereof shall be wetted in order to lay dust incident to its removal.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §253 (part).

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24 RCNY 153.07

RULES OF THE CITY OF NEW YORK

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

§153.07 Exposure of rags, barrels, boxes and other materials prohibited.

No person shall place any rags, damaged merchandise, barrels, boxes, broken bales of merchandise or goods in any place where they or particles therefrom will pass into any street, public place or occupied premises.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §253 (part). S.C. §312 prohibiting street obstructions as by driving "any horse ... or any vehicle, upon any sidewalk or foot path in front of any building to the peril of any person" or any other blocking of "any street or other public place" has been omitted as obsolete and unnecessary.

Rules of the City of New York

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

24 RCNY 153.09

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

§153.09 Throwing or dropping offensive matter into streets, public places, rivers and other places prohibited.

No person shall throw or put any blood, swill, brine, offensive animal matter, noxious liquid, dead animals, offal, putrid or stinking vegetable or animal matter or other filthy matter of any kind, and no person shall allow any such matter to run or fall into any street, public place, sewer, receiving basin or river, any standing or running water or into any other waters of the City as defined in §145.01.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §§233 and 234. The reference to the built-up portions of the City in §234 has been omitted as obsolete. S.C. §231 prohibiting "any offensive water or other liquid or substance on... premises to the

prejudice of life...." has been omitted as obsolete and unnecessary.

CASE NOTES

¶ 1. See Matter of Daverus McQ, 309 A.D.2d 752, 765 N.Y.S.2d 270 (2d Dept. 2003), discussed in note to City Charter §558.

Rules of the City of New York

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

24 RCNY 153.11

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

§153.11 Spilling or scattering from vehicles prohibited.

No owner or person in charge of any vehicle shall drop, spill or scatter or permit to be dropped, spilled or scattered therefrom any dirt, sand, gravel, clay, loam, stone, building rubbish, hay, straw, shavings, saw dust or other light materials of any sort, ashes, trade, household or manufacturing wastes, rubbish, manure, garbage or refuse or any offensive matter, in or upon any street or public place.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. 317.

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24 RCNY 153.13

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

§153.13 Interference with Department of Sanitation employees prohibited.

No person shall prevent or interfere with any employee or agent of the Department of Sanitation in the sweeping or cleaning of any street or in the removal of snow, ice, sweepings, ashes, garbage, rubbish, or other refuse material.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §315(2).

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

24 RCNY 153.15

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

§153.15 Interference with refuse placed for collection prohibited.

No person other than an employee or agent of the Department of Sanitation shall disturb or remove any ashes, garbage or light refuse or rubbish placed for removal by householders or their tenants within the stoop or area line, or in front of the house or lots, unless requested by the residents or occupants of the premises.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §316. S.C. §242 on accumulation of manure and its disposal has been omitted as unnecessary.

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

24 RCNY 153.17

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

§153.17 Handbills, cards and circulars. [Repealed]

HISTORICAL NOTE

Section repealed City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and Purpose No. 4]

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §318. The prohibition against distribution of commercial or business advertising in the streets has been held not to be violative of the freedom of the press and speech provision of the United States Constitution; it is "clear that the constitution imposes no such restraint on

government as respects purely commercial advertising." **Valentine Police Commissioner of City of New York v. Christensen,** 316 U.S. 52, 62 S. Ct. 920, 86 L. Ed. 1262 (1942). The Supreme Court also held in the same case that the affixing or inclusion in an advertising handbill or leaflet of a protest against official conduct or some other civic appeal, will not bring such leaflet under the freedom of press and speech protection and will not achieve immunity from the law's prohibition against distribution. Such prohibition has also been held not to be violative of due process; a municipality has the right to prohibit the use of its streets for any purpose detrimental to the common good. **People v. Horwitz,** 140 N.Y.S. 437 (Mag. Ct. 1912). A prohibition which is directed solely to commercial or business advertising does not violate the equal protection clause of the constitution by allowing the distribution of other literature. **People ex rel Greenberg v. Heally,** 74 N.Y.S. 2d 102 (Mag. Ct. 1947).

The act of distribution has been held to constitute a complete offense; it is not necessary to show that the objectionable matter was cast away. **People v. Horwitz, supra.** It was also held in the same case that the fact that the advertising leaflets were enclosed in a wrapper or other container or slipped in copies of newspapers was immaterial. The prohibition against "commercial or business matter" was held not to include leaflets distributed by a union, the primary purpose of which was to create additional jobs for its members; inasmuch as labor is not a commodity its espousal does not come, therefore, within the meaning of "commercial advertising" which relates to buying or selling. **People ex rel Greenberg v. Heally, supra.**

Section 153.17 was repealed on May 17, 1995 to eliminate an obsolete provision of the Code prohibiting distribution of advertising handbills.

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24 RCNY 153.19

RULES OF THE CITY OF NEW YORK

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ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

§153.19 Duties of owners or persons in charge of premises.

(a) The owner, agent, lessee, tenant, occupant or other person who manages or controls a building or lot shall be jointly and severally responsible for keeping the sidewalk, flagging and curbstone abutting the premises free from obstructions and nuisances and for keeping such sidewalk, flagging and curbstone, the air shafts, areaways, backyards, courts and alleys, or lot clean and free from garbage, refuse, rubbish, litter, other offensive matter or accumulation of water.

(b) The owner, agent, lessee, tenant or occupant or other person who manages or controls a lot which is sunken, excavated, or below the grade of the adjacent sidewalk shall provide a proper fence to protect persons from falling into such lot.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived without substantive change from S.C. §§53 (part) and 251 (part).S.C. §311 on the method of cleaning streets has been omitted as unnecessary.

Subsection (b) is derived without substantive change from S.C. §251(part).

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

24 RCNY 153.21

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

§153.21 Removal of dead or diseased animals and offensive materials regulated; use and condition of vehicles.

(a) Every person who has contracted or undertaken to remove any diseased or dead animal, rubbish, garbage, dirt, or any offensive matter, or who is engaged in such removal shall do so promptly. The operation shall be conducted in a clean and sanitary manner and shall not create any hazard to life or health. The offensive matter shall not lie piled up or partially raked together in any street or place before its removal, and the loading or unloading of such matter or its transportation through any street, place or premises shall not consume an unreasonable period of time.

(b) Vehicles used for the carrying or transporting of any offensive matter shall be kept in a sanitary condition. They shall be properly covered at all times except as otherwise required during the loading and unloading operation. Such vehicles shall not be allowed to stand or remain unnecessarily in front of or near any premises. When not in use they shall be stored and kept in a manner so as not to cause any nuisance.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §§243 and 244. The piling up or the partial raking of the offensive matter in any street or public place prior to its removal is absolutely prohibited; the provision in S.C. §243 allowing such practice for "a reasonable time or for four hours" has been omitted. See also Article 155, Butchers' Refuse.

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

24 RCNY 153.23

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

§153.23 Filling of land; use of materials.

No person shall fill any land below established grade unless he has received a permit therefor from the department having jurisdiction. No materials shall be used in land filling operations other than clean earth, ashes, dirt, concrete, rock, gravel, stone, slag or sand. The provisions of this section do not apply to land filling operations conducted by a department or agency of the City.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §§252 and 315(1) (part). Unlike S.C. §252, this section does not list the materials prohibited in landfills, but rather lists those which may be used in such operation. The same approach is found in the

Department of Sanitation rules and regulations. (Section G.-2.0(c) of the Rules and Regulations Providing For ... Landfill Procedures For Owners of Private Lands and Lands Under Water, adopted Nov. 13, 1957). S.C. §252 Regs. 1 through 15 "Regulations Governing Landfills Conducted by an Official Agency of the City of New York" have been omitted. If any landfill operation conducted by an official agency gives rise to health problems, the matter is normally adjusted without recourse to legal remedies.

As a matter of historical interest, it may be noted that the Regulations referred to arose out of the case of **Catherine Sullivan v. William F. Carey, John L. Rice and The City of New York,** (not reported, Supreme Court, Bronx County, 1939), in which the Commissioners of Health and Sanitation were charged with derelictions in regard to landfills in Queens. Pursuant to stipulation approved by Wasservogel, J., the Surgeon General of the U.S. Public Health Service, Dr. Thomas Parran, appointed a board of experts consisting of Drs. M.J. Rosenau, E.L. Bishop, Huntington Williams, Kenneth F. Maxcy and Mr. R.E. Tabbett, who reported that the landfills involved in the litigation did not represent a health hazard, and went on to make detailed recommendations concerning landfill operations. These recommendations of the "Board to Investigate Landfills Maintained in the Borough of Queens" were adopted almost verbatim in Regs. 1-15 of S.C. §252. Although no longer necessary as a part of the Code since they were aimed at the regulation of other agencies, these regulations are included in this note because of the importance of their source:

"REGULATIONS GOVERNING LANDFILLS

CONDUCTED BY AN OFFICIAL AGENCY

OF THE CITY OF NEW YORK

1. The disposal of wastes by the landfill method shall be planned as an engineering project. General supervision shall be provided by a sanitary engineer in the operation and maintenance of landfills.

2. The face of the working fill shall be kept as narrow as is consistent with proper operation of trucks and equipment in order that the area of waste material exposed during the operating day be minimal.

3. The exposed surface shall be covered with earth as promptly as is consistent with proper operation and at the close of each day's operation both the surface and the face of the fill shall be completely covered, the object being to make a closed cell of each day's deposit.

4. Sufficient standby equipment shall be provided to prevent delay in covering, due to breakdowns or peak loads.

5. Waste building material, concrete or other bulky waste material which may furnish rat harborage shall not be used for the final surface or side slopes, but shall be promptly incorporated within the fill.

6. The final covering for surface and side slopes shall be maintained at a depth of approximately twenty four inches.

7. In case the finished fill has a boundary side slope, the toe of the slope shall terminate in a sand and gravel-filled ditch so as to prevent raveling of the toe with exposure of some of the waste material, the burrowing of rodents, and finally to obviate puddles by permitting seepage from the fill to be absorbed into the ground.

8. Spraying of the exposed waste material and adjacent surfaces shall be used when necessary to allay dust.

9. The layer of refuse shall not exceed an average depth of fifteen feet after initial compacting. Where deeper fills are necessary the filling shall be carried on in stages.

10. Control over the blowing of papers shall be adequately maintained by the use of movable snow fencing.

11. While the maintenance of proper earth covering as hereinbefore required will to a large extent prevent fires,

water under pressure shall be available for fire fighting purposes. If scavengers are tolerated they shall be adequately supervised.

12. All collections or surface water resulting from these landfill operations shall be drained, filled or treated with effective chemicals so as to prevent mosquito production or allay disagreeable odors.

13. Where necessary, effective steps shall be taken to prevent floatage of waste material into open water.

14. Inspection for and control of rodents shall be maintained until the fills are stabilized.

15. After the active period of filling operation is completed a maintenance program shall be continued until the fill has become stabilized so as to insure prompt repair of cracks, depressions and erosion of the surface and side slopes."

Notes:

S.C. §232 and Regulations concerning the opening of landfills has been omitted as unnecessary.

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24 RCNY 153.25

RULES OF THE CITY OF NEW YORK

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 153 LITTERING AND DISPOSAL OF REFUSE

§153.25 Interference with the use of docks, piers and bulkheads for the disposal of offensive materials prohibited.

No person shall obstruct, delay or interfere with the lawful use of any dock, pier or bulkhead by any person or contractor engaged in the disposal of any garbage, rubbish or other offensive matter or with the proper performance of such contract.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §246. S.C. §245 regulating the docking of vessels engaged in the removal of offensive materials has been omitted as unnecessary.

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24 RCNY Health Code Reg. 155.00

RULES OF THE CITY OF NEW YORK

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 155 BUTCHERS' REFUSE

Health Code Reg. § 155.00 INTRODUCTORY NOTES

Article 155 is a formal revision of S.C. §330 and Regulations, as enacted on July 25, 1956. It regulates vehicles used in the disposal of animal parts or refuse from butchers' establishments.

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

24 RCNY 155.01

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 155 BUTCHERS' REFUSE

§155.01 Permits.

(a) No person shall use a vehicle to remove, dispose of, convey or transport bones, offal, fats, raw hides, hoofs, entrails or other refuse parts of slaughtered animals, or bodies of dead animals, used or to be used in the manufacture or processing of inedible products, without a permit issued by the Commissioner for each such vehicle.

(b) No permit shall be issued for any vehicle unless, on inspection by the Department, it meets the specifications of §155.07, and unless the applicant satisfies the Commissioner of his good moral character.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §330(1) (2) and from §330 Reg. 1. The fee and expiration provisions in S.C. §330(3) are omitted here; they are included in Article 5.

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

24 RCNY 155.03

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 155 BUTCHERS' REFUSE

§155.03 Inspection and reinspection; abandonment of application; suspension and revocation of permits.

(a) An applicant or permittee shall produce each vehicle for which a permit is sought, or which is operated under a permit, for inspection or reinspection whenever requested by the Department and at a time and place designated by the Department. Failure to produce a vehicle at such time and place shall constitute an abandonment of the application for a permit or shall automatically suspend the permit for such vehicle until it is produced at such subsequent time and such place as the Department may designate. If the inspection discloses that the vehicle complies with the provisions of this article, the permit may be issued or reinstated.

(b) If the inspection or reinspection of a vehicle for which a permit has been issued discloses that the vehicle does not comply with the provisions of this article, the permit for such vehicle may be suspended either (1) until the vehicle is placed in compliance or (2) until such time as the Department may designate for placing the vehicle in compliance. In the first case, the permittee shall notify the Department when he considers the vehicle to be in compliance, and he shall present it for reinspection at a time and place designated by the Department. In the second case, the vehicle shall be

presented for reinspection at the expiration of the time and at the place designated by the Department. If the reinspection discloses that the vehicle again does not comply, the permit may be revoked.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §330 Reg. 2.

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

24 RCNY 155.05

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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PART B CONTROL OF ENVIRONMENT

ARTICLE 155 BUTCHERS' REFUSE

§155.05 Name and address of permittee on vehicle; metal plate to be affixed.

(a) Each vehicle shall have the names and business address of the permittee printed legibly in letters and figures at least four inches in height on each side of the vehicle body or upon each door.

(b) Each vehicle shall have a metal plate supplied by the Department affixed on its right side so as to be clearly visible at all times.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived without substantive change from S.C. §330 Reg. 3.

Subsection (b) is derived without substantive change from S.C. §330 Reg. 4.

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

24 RCNY 155.07

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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ARTICLE 155 BUTCHERS' REFUSE

§155.07 Vehicle body; specifications.

No vehicle shall be used for the purposes specified in §155.01 unless its body is constructed and maintained so that all materials carried may be readily removed, the entire interior or platform may be cleaned and sterilized, and so as to prevent leakage or spillage of materials while the vehicle is in operation. No vehicle shall be used unless it has one of the following types of bodies:

(1) A body which is totally, permanently enclosed, of welded steel or impervious wood construction, having doors for loading and unloading which fit tightly against rubber or other suitable gaskets and supplied with adequate clamps or latches to keep each door tightly closed at all times when not open during loading or unloading, or having hoppers or conveyors of a type approved by the Department. The body floor shall be constructed so as to prevent any leakage of materials loaded, handled or thrown upon the floor. If a sump pit is provided, it shall be so constructed and maintained as to prevent leaking or spilling, and so that it can be readily emptied, cleaned and sterilized; or,

(2) A platform type vehicle body of steel construction

upon which are set and carried welded steel containers supplied with either metal covers fitting tightly against rubber or other suitable gaskets with latches or similar locking devices so constructed and maintained as to keep the covers tight when the container is not being loaded or a heavy tarpaulin cover long enough and wide enough to completely cover the fully loaded containers and to extend down each of the four sides of the containers at least one foot. Such tarpaulin shall have heavy rope, leather or canvas ties at not more than eight inch intervals along the lower edges of the cover, and each container shall have suitable attachments to secure the ties of the tarpaulin cover; or

(3) If a permittee is engaged in chute loading from slaughter houses or transporting large dead animals, he may use, in lieu of a body type specified in subdivisions (1) or (2) of this section, a box open type body, having a heavy tarpaulin cover long enough and wide enough to cover the vehicle body completely when fully loaded and to extend at least one foot down each side and the front and rear end or tailgate. Such tarpaulin shall have heavy rope, leather or canvas ties at not more than two foot intervals along the bottom edge and the body of the vehicle shall have suitable attachments to secure the ties of the tarpaulin cover.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §330 Reg. 5; part of Reg. 5(a)(1)(b) and all of Reg. 5(d) are covered by §155.09.

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24 RCNY 155.09

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ARTICLE 155 BUTCHERS' REFUSE

§155.09 Operation of vehicles.

(a) A vehicle shall be loaded at all times in such a manner and by such methods as to prevent the release or discharge of dust and the spilling of materials upon sidewalks, roadways, streets, bridges or ferries. The operator of the vehicle shall remove immediately from sidewalks, roadways, public or open or other places all material spilled, littered or thrown thereon in loading operations or in the handling and return of receptacles or while traveling.

(b) Materials loaded into vehicles shall be dumped or unloaded and disposed of only at points where disposal of the particular material may be made lawfully.

(c) Material loaded in or upon vehicles shall not be reworked, resorted, picked over, or rehandled while the vehicle is on the streets or other public or open places and material shall not be transferred or reloaded from a vehicle while on the streets or other public or open places to or into any other vehicle, except that operators of the totally enclosed walk-in door type of vehicle may sort materials only inside the body, at which time the door or doors of the vehicle may

be kept open. Operators of the vehicle shall not work, sort, pick over, or rehandle any materials after removal from the inside of the premises served and before loading into the vehicle body.

(d) Material shall be carried only within the vehicle body or within containers, if any, on or in the vehicle body.

(e) After materials are dumped for disposal, the vehicle body and each container used shall be emptied thoroughly and cleared of all loose material.

(f) Each vehicle and each container shall be cleaned and washed frequently and thoroughly, inside and outside, so as to present a good appearance and be free of dirt and offensive odors at all times.

(g) Bodies of dead animals shall not be dissected outside of the premises from which removed in the loading process or in the vehicle.

(h) All loading hoppers, doors, covers or other closures of loading openings shall be kept closed and secured at all times, except that an opening then in use may be kept open during actual loading.

(i) Small dead animals shall be carried only within the vehicle body of an enclosed type vehicle, as specified in §155.07(1).

(j) Grease shall be carried only within the body of the vehicle, either in metal containers with individual tight-fitting metal covers, or in built-in, leak-proof covered metal containers or bins. Such containers shall be so constructed and maintained that they can be readily emptied and thoroughly cleaned and sterilized. Grease shall not be carried in a sump pit.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived without substantive change from S.C. §330 Reg. 6(b).

Subsection (b) is derived without substantive change from S.C. §330 Reg. 6(c).

Subsection (c) is derived without substantive change from S.C. §330 Reg. 6(e).

Subsection (d) is derived without substantive change from S.C. §330 Reg. 6(f).

Subsection (e) is derived without substantive change from S.C. §330 Reg. 6(g).

Subsection (f) is derived without substantive change from S.C. §330 Reg. 6(h).

Subsection (g) is derived without substantive change from S.C. §330 Reg. 6(i).

Subsection (h) is derived without substantive change from S.C. §330 Reg. 6(j).

Subsection (i) is derived without substantive change from S.C. §330 Reg. 5(d).

Subsection (j) is derived without substantive change from S.C. §330 Reg. 5(a)(l)(b)(part).

S.C. §330 Reg. 6(a) was omitted as involving unnecessary duplication of law; S.C. §330 Reg. 6(d) was omitted as involving a matter of noise control covered by the Administrative Code §435-5.0.

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24 RCNY Health Code Reg. 157.00

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ARTICLE 157 SOLID WASTE TRANSFER STATIONS [Repealed]

Health Code Reg. § 157.00 INTRODUCTORY NOTES

This Article was adopted on June 12, 1969. It was repealed and reenacted on June 26, 1990.

Article 157, Solid Waste Transfer Stations was repealed on May 17, 1995 owing to a transfer of permitting authority to the Department of Sanitation pursuant to Local Law 40 of 1990 (Administrative Code §16-130 et seq.).

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24 RCNY Health Code Reg. 161.00

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ARTICLE 161 ANIMALS

Health Code Reg. § 161.00 INTRODUCTORY NOTES

The Schedule of Section Headings was amended by resolution on December 14, 1998 to reflect the changes in §161.06 and repeal of §161.25.

Article 161 covers the subject matter formerly contained in S.C. §§4, 10(6) and (7), 11, 12, 13, 16, 17(1), 18, 19, 22, 58 and 227. It contains all the provisions of the Code dealing with live animals in New York City which are not covered in §11.65, control of animals affected with disease communicable to man.

A major change is involved in §§161.09(f) and 161.25. S.C. §12 prohibited the keeping of cows in the City without a permit. Under a long standing resolution of the Board of Health, a new permit for the keeping of cows for the production and sale of milk had not been issued for many years; as a result in 1958 there were only six such permits in effect. Because there are few outstanding permits and because there is no longer sufficient space in the City to permit the establishment of new city dairies without the creation of a nuisance, the prior Board resolution is incorporated into

the Code; however, present permittees are allowed to continue to keep cows for the production and sale of milk under the provisions of Sanitary Code sections 12 and 13. Such a provision is constitutional. **Stracquadanio v. Department of Health,** 285 N.Y. 93, 32 N.E. 2d 806 (1941). In order to avoid the necessity of repeating the detailed provisions concerning the physical facilities in and maintenance of cow barns under the regulations of S.C. §12 and the manner in which tuberculin test are made in city dairies under S.C. §13, the provisions of those sections in force at the time of enactment of the revised Code will remain in full force and effect and may be repealed when the last of the city dairies ceases to operate. Permits will no longer be required for the keeping of cows for domestic purposes and the twelve regulations governing that activity under S.C. §12 are repealed; they are no longer a problem in New York City.

Section 161.15(c) contains a new provision prohibiting pet shows from selling diseased dogs or cats.

S.C. §5 providing for the destruction of animals injured or diseased beyond recovery is omitted as completely covered by Code of Criminal Procedure §117d. S.C. §6, requiring reporting and removal of animals injured or diseased beyond recovery is also deleted. Charter §755(2) and Administrative Code §§755(2)-2.0 and 755(2)-6.0 place the responsibility for removal and disposal of dead animals on the Sanitation Department. See §153.21 on removal of dead animals. See also Collection Regulations of Department of Sanitation, §2(c), Supplement to Rules and Regulations of N.Y.C. Agencies, 1946-52. Diseased animals are to be reported to the Commissioner of Agriculture and Markets; see Agriculture and Markets Law §73.

S.C. §§7 and 8 prohibiting interference by unauthorized persons with dead, sick or injured animals and prohibiting the abandonment of such animals is omitted as adequately covered by Penal Law Article 16, Animals, and Code Cr. Proc. §117a.

S.C. §9 requiring dead horses to be tagged when placed in the streets and lighted when not removed before twilight is deleted as obsolete.

S.C. §14 requiring adequate ventilation, food and water for cattle is omitted. Provisions on health and sanitary conditions for cows are found in Agriculture and Markets Law §47 and prohibition of deprivation of food and drink is covered by Penal Law §185.

S.C. §15 dealing with the transportation of cattle is omitted as adequately covered by Penal Law §189.

S.C. §19 Regs. 1-15 of the regulations governing the sale of live rabbits or poultry have been deleted since several of the markets listed are no longer in existence and since live poultry is now sold only at the Queens Terminal Market or at licensed slaughter houses.

Several provisions dealing with certain diseases in animals which are communicable to man, i.e., rabies, anthrax and glanders, are found in §11.65. They include S.C. §§3, 4(part), 10(1)-(5) and 17(2).

This article was amended by resolution adopted on March 1, 1973, to add a new §161.06 to require the deworming of dogs and cats before they are offered for sale, sold or given away for adoption.

The Section Headings for §§161.15 and 161.17 were amended to additionally apply their provisions to training establishments for dogs and other small animals.

The Schedule of Section Headings was amended by resolution adopted on June 16, 1986 to include the Section Heading for new §161.04 as added on the same date.

The Section Heading for §161.04 was amended by resolution adopted on June 26, 1990 to reflect the amendments adopted on the same date.

The Section Heading of §161.07 was repealed and reenacted by resolution adopted on October 30, 1987 to bring

the Schedule of Section Headings into conformance with the repeal and reenactment of said section adopted on the same date.

The Schedule of Section Headings was amended by resolution on March 27, 1989 to include the Section Heading for new §161.08 as added on the same date.

Section 161.08 was added by resolution adopted on March 1989. It was repealed by resolution adopted on May 20, 1991.

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Rules of the City of New York

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

24 RCNY 161.01

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 161 ANIMALS

§161.01 Wild animals prohibited.

(a) No person shall sell or give to another person, possess, harbor or keep wild animals identified in subsection (b) of this section or in regulations promulgated by the Commissioner pursuant to subsection (e) of this section other than in:

(1) A zoological park or aquarium operated by the Department of Parks, by the Wildlife Conservation Society, or by the Staten Island Zoological Society; or

(2) A laboratory operated pursuant to §504 of the Public Health Law; or

(3) A circus or native wildlife rehabilitator licensed by federal or state agencies; or

(4) A place which has received the approval of the Department to exhibit or use such animals, and which has protective devices which are adequate to prevent such animal from escaping or injuring the public. The Department may

impose reasonable conditions and time limits on the granting of such approval.

(b) For the purposes of this Code, wild animals are deemed to be any animals which are naturally inclined to do harm and capable of inflicting harm upon human beings and are hereby prohibited pursuant to subsection (a). Such animals shall include: (i) any animals specified by the Commissioner in regulations promulgated pursuant to this section; (ii) any native or exotic wildlife whose possession or sale is prohibited because they are designated as protected or endangered pursuant to any federal, state or local law, regulation, or rule; and (iii) any of the following animals:

(1) All dogs other than domesticated dogs **(Canis familiaris),** including, but not limited to, wolf, fox, coyote, hyaena, dingo, jackal, dhole, fennec, raccoon dog, zorro, bush dog, aardwolf, cape hunting dog and any hybrid offspring of a wild dog and domesticated dog.

(2) All cats other than domesticated cats **(Felis catus),** including, but not limited to, lion, tiger, leopard, ocelot, jaguar, puma, panther, mountain lion, cheetah, wild cat, cougar, bobcat, lynx, serval, caracal, jaguarundi, margay and any hybrid offspring of a wild cat and domesticated cat.

(3) All bears, including polar, grizzly, brown and black bear.

(4) All fur bearing mammals of the family Mustelidae, including, but not limited to, weasel, marten, mink, badger, ermine, skunk, otter, pole cat, zorille, wolverine, stoat and ferret.

(5) All Procyonidae: All raccoon (eastern, desert, ring-tailed cat), kinkajou, cacomistle, cat-bear, panda and coatimundi.

(6) All carnivorous mammals of the family Viverridae, including, but not limited to, civet, mongoose, genet, binturong, fossa, linsang and suricate.

(7) All bats **(Chiroptera).**

(8) All non-human primates, including, but not limited to, monkey, ape, chimpanzee, gorilla and lemur.

(9) All squirrels **(Sciuridae).**

(10) Reptiles **(Reptilia).** All Helodermatidae (gila monster and Mexican beaded lizard); all front-fanged venomous snakes, even if devenomized, including, but not limited to, all Viperidae (viper, pit viper), all Elapidae (cobra, mamba, krait, coral snake), all Atractaspididae (African burrowing asp), all Hydrophiidae (sea snake), all Laticaudidae (sea krait); all venomous, mid-or rear-fanged, Duvernoy-glanded members of the family Colubridae, even if devenomized; any member, or hybrid offspring of the family Boidae, including, but not limited to, the common or green anaconda and yellow anaconda; any member of the family Pythonidae, including but not limited to the African rock python, Indian or Burmese python, Amethystine or scrub python; any member of the family Varanidae, including the white throated monitor, Bosc's or African savannah monitor, Komodo monitor or dragon, Nile monitor, crocodile monitor, water monitor, Bornean earless monitor; any member of the family Iguanidae, including the green or common iguana; any member of the family teiidae, including, but not limited to the golden, common, or black and white tegu; all members of the family Chelydridae, including snapping turtle and alligator snapping turtle; and all members of the order Crocodylia, including, but not limited to alligator, caiman and crocodile.

(11) Birds and Fowl **(Aves):** All predatory or large birds, including, but not limited to, eagle, hawk, falcon, owl, vulture, condor, emu, rhea and ostrich; roosters, geese, ducks and turkeys prohibited or otherwise regulated pursuant to §161.19 of this Code, the Agriculture and Markets Law or applicable federal law.

(12) All venomous insects, including, but not limited to, bee, hornet and wasp.

(13) **Arachnida and Chilopoda:** All venomous spiders, including, but not limited to, tarantula, black widow and

solifugid; scorpion; all venomous arthropods including, but not limited to, centipede.

(14) All large rodents **(Rodentia),** including, but not limited to, gopher, muskrat, paca, woodchuck, marmot, beaver, prairie dog, capybara, sewellel, viscacha, porcupine and hutia.

(15) All even-toed ungulates **(Artiodactyla)** including, but not limited to, deer, antelope, sheep, giraffe and hippopotamus.

(16) All odd-toed ungulates **(Perissodactyla)** other than domesticated horses **(Equus caballus),** including, but not limited to, zebra, rhinoceros and tapir.

(17) All marsupials, including, but not limited to, Tasmanian devil, dasyure, bandicoot, kangaroo, wallaby, opossum, wombat, koala bear, cuscus, numbat and pigmy, sugar and greater glider.

(18) Sea mammals (**Cetacea, Pinnipedia** and **Sirenia**), including, but not limited to, dolphin, whale, seal, sea lion and walrus.

(19) All elephants **(Proboscides).**

(20) All hyrax **(Hyracoidea).**

(21) All pangolin **(Pholidota).**

(22) All sloth and armadillo **(Edentala).**

(23) Insectivorous mammals **(Insectivora):** All aardvark **(Tubulidentata),** anteater, shrew, otter shrew, gymnure, desman, tenrec, mole and hedge hog.

(24) Gliding lemur **(Dermoptera).**

(c) In addition to domesticated dogs and cats, an animal may be kept, possessed, harbored or sold in the City of New York provided that possession of the animal is not otherwise prohibited by law, including federal, state and local laws regulating domestic animals and livestock or protecting wildlife and endangered species. Such animals include, but are not limited to, gerbil, hamster **(Mesocricetus auratus),** guinea pig, domesticated rabbit and fowl or small birds such as parakeet, parrot, canary and finch.

(d) An animal whose possession is prohibited pursuant to this section may be seized by any authorized employee, officer or agent of the Department or of any other agency of the City of New York, and the Commissioner shall provide for such animal's appropriate disposition.

(1) An order issued by the Commissioner pursuant to this section shall contain a notice that the owner of such animal may, within three business days of receipt of the order, request an opportunity to be heard with respect to whether the animal is a prohibited animal and its appropriate disposition. The Commissioner shall provide such an opportunity to be heard as soon as practicable, but no later than 15 days after receipt of such request.

(2) With the written consent of the Department, an owner of any animal whose possession is prohibited pursuant to this section, may remove such animal to another jurisdiction where its possession is not prohibited pursuant to any local or other law.

(e) The Commissioner may promulgate such regulations as may be necessary to add to the list in subsection (b) any animal which the Commissioner determines is naturally inclined to do harm and capable of inflicting bodily harm upon human beings.

(f) If any provision of this section is adjudged invalid by any court of competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of this section.

HISTORICAL NOTE

Section amended City Record July 9, 1999 eff. Aug. 8, 1999. [See Vol. 9 Statements of Basis and

Purpose No. 14]

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Section 161.01 was amended by resolution adopted on June 29, 1999 to clarify which animals are naturally inclined to do harm and capable of inflicting injury on human beings and should therefore be considered wild and to continue to prohibit their sale or possession with specified exceptions. Although the Department for many years has maintained lists of prohibited wild animals, the lists have not been codified in the Health Code or promulgated as regulations by the Commissioner. The identification of animals prohibited pursuant to this section incorporates the definition of "wild animal" contained in §370 of the Agriculture and Markets Law, as "animals capable of inflicting harm upon human beings," as well as their prior characterization in §161.01(a) of the Health Code as "naturally inclined to do harm." Also prohibited is possession and sale of any animals whose possession or sale is prohibited or regulated by federal, state or local law as a "protected" or "endangered" wildlife species. The section was further amended to authorize the Commissioner to add to the list of prohibited animals through regulations promulgated in accordance with the Citywide Administrative Procedure Act when necessary; to authorize employees, officers and agents of the Department and other City agencies to seize prohibited animals; to authorize the Commissioner to make a determination as to whether a particular animal is a prohibited animal and to order its appropriate disposition, allowing the owner an opportunity to be heard before a final determination is made by the Commissioner, and allowing the owner the alternative of arranging removal of the animal from the City to another jurisdiction where it may be lawfully possessed.

Subsection (a) is derived from S.C. §22. It is intended to prohibit the keeping of an animal as a pet when such animal is of a species which is generally wild even though the owner attempts to domesticate such animal. In effect, this continues the prohibition against even tame lions, bears, wolves and foxes in S.C. §22. The words **domitae naturae** (domestic animals) and **ferae naturae** (wild animals), although used for classification in property law, cannot be used here to establish a distinction between animals which may and which may not be kept because the terms lack precise technical meaning **(Commonwealth v. Flynn,** 285 Mass. 136, 188 N.E. 627 (1934)) and are in fact misleading. **Earl v. VanAlstine,** 8 Barb. 630 (N.Y. 1850). For instance, there are some species of dogs, although usually classified as **domitae naturae,** which are quite savage and ferocious, while the class **offerae naturae** includes many birds and animals which are not at all dangerous. The terms "wild, ferocious, fierce, dangerous or naturally inclined to do harm" are suggested by the **Van Alstine case, supra.**

Penal Law §197 which permits a person to keep a wild animal until it does some harm is not a sufficient protection in a densely populated city such as New York.

Reference to the Department of Licenses is omitted since it does not regulate the keeping of animals used in exhibitions or amusements. The zoological societies and laboratories are new exceptions.

Subdivision (3) of subsection (a) was amended by resolution adopted on June 24, 1965, which added the language "or other place * * * or an". Before the enactment of the amendment anyone had the right to keep a wild animal provided he had protective devices sufficient to restrain such animal. Under the amendment wild animals may only be kept by those institutions and establishments specifically named and a member of the public at large is prohibited from

doing so not withstanding that he has a protective device to restrain the animal.

Subsection (b) is derived from S.C. §22, but is in part new. This specifically prohibits the keeping of poisonous snakes except for the institutions or establishments named. Pet shops, circuses and sideshows may not, therefore, keep poisonous snakes. This section does not prohibit the keeping of non-poisonous snakes under adequate safeguards as required by subsection (a) (3) of this section.

Subsection (b) was added by resolution adopted on June 24, 1965.

Subsection (c) was formerly subsection (b) and was relettered to (c) by resolution adopted on June 24, 1965, which also added the language "a zoological park * * * antivenin."

strongCASE NOTES

#182; 1. The New York City Department of Health has interpreted the prohibition on wild animals to include ferrets. The constitutionality of this interpretation has been upheld. NY.C. Friends of Ferrets v. City of New York, 876 F.Supp. at 532, aff'd 71 F3d 405. However, in 1700 York Assocs. v. Kaskel, N.Y.L.J., June 3, 1999, page 30, col. 4 (Civ.Ct. New York Co.), the court held that the regulation was not enforceable because it was not promulgated under the procedures outlined in the City Administrative Procedures Act (CAPA, City Charter § 1041), which requires notice, opportunity for public comment and a hearing.

¶ 2. It is illegal per se for individuals to have a pet monkey in New York City. It is not necessary for the City to prove that a particular monkey is vicious or dangerous. Flikshtein v. City of New York, 710 N.Y.S.2d 112 (App.Div. 2d Dept. 2000).

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Rules of the City of New York

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

24 RCNY 161.02

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 161 ANIMALS

§161.02 Definitions.

When used in this article:

(a) Animal Shelter or shelter for homeless animals means a facility where homeless, stray, abandoned or unwanted animals are received, harbored, maintained or made available for adoption to the general public and which is owned, operated, or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other organization devoted to the welfare, protection or humane treatment of animals.

(b) Pet shop means a facility other than an animal shelter where live animals are sold, exchanged, bartered, or offered for sale as pet animals to the general public at retail for profit.

(c) Grooming parlor, salon, business, or establishment means a facility where animals are presented by their owners for bathing, dipping, clipping, combing, or cleaning for the purpose of improvement of the animal's appearance

and or well-being in return for a fee.

(d) Boarding kennel, business, or establishment means a facility other than an animal shelter where animals not owned by the proprietor are sheltered, harbored, maintained, groomed, fed, or watered in return for a fee.

(e) Training establishment for small animals means a facility where small animals, whether or not belonging to the owner or employee of such facility, are trained for any purpose in return for a fee.

(f) Stable for horses means a rental, boarding, racing, or private facility where one or more horses are housed and/or maintained.

(g) Pet animal or small animal means any bird, mammal, reptile, amphibian, fish, arthropod or other invertebrates kept as a pet for exhibit, work, companionship, or protection by a person, possession or which is not prohibited by the Commissioner or any Federal, State or local laws, rules or regulations.

(h) Attack or guard dog means a dog which is trained for personal protection, area protection, and/or the apprehension or warding off of an individual by means of barking, threatening gestures, biting, or restraining by the use of its teeth.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section was adopted on June 25, 1981 to define certain terms in order to clarify the provisions of this Article and to resolve difficulties of interpretation.

The Schedule of Section Headings was amended by resolution adopted on June 23, 1981 to include the heading for new §161.02 which was adopted on the same date.

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Rules of the City of New York

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

24 RCNY 161.03

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 161 ANIMALS

§161.03 Control of dogs and other animals to prevent nuisance.

(a) A person who owns, possesses or controls a dog, cat or other animal shall not permit the animal to commit a nuisance on a sidewalk of any public place, on a floor, wall, stairway or roof of any public or private premises used in common by the public, or on a fence, wall or stairway of a building abutting on a public place.

(b) Notices of violation for failure to comply with this section may be issued by any authorized employee, officer or agent of the Department, or of the Departments of Sanitation and Parks and Recreation, or successor agencies.

HISTORICAL NOTE

Section amended City Record Dec. 17, 2003 eff. Jan. 16, 2004. [See Vol. 9 Statements of Basis and Purpose No. 19]

Section in original publication July 1, 1991.

Notes:

Section 161.03 was amended by resolution adopted on December 10, 2003, adding a new subsection (b) to authorize its enforcement by duly authorized employees and agents of the Department and the Departments of Sanitation and Parks and Recreation.

This section is derived from S.C. §227. Specific reference is made to cats as well as dogs. The reference to walls within premises is new. Under New York City Criminal Courts Act §102c a magistrate is empowered to try and punish a violation of this section as an offense punishable by a fine of $25 or ten days imprisonment, or both.

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Rules of the City of New York

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

24 RCNY 161.04

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 161 ANIMALS

§161.04 Dog licenses.

(a) A dog license obtained in accordance with Chapter 115 of the New York State laws of 1894, as amended, shall be issued by the Department.

(b) Every person who owns, possesses or controls a dog shall not permit it to be in any public place, or in any open or unfenced area abutting on a public place, unless the dog has a collar about its neck with a currently valid metal tag attached thereto bearing the number of the license obtained for such dog in accordance with Chapter 115 of the Laws of 1894 of the State of New York, as amended or §§109 and 112 of the Agriculture and Markets Law.

(c) Notices of violation for failure to comply with this section may be issued by any authorized employee, officer or agent of the Department, or of the Departments of Sanitation and Parks and Recreation, or successor agencies.

HISTORICAL NOTE

Section amended City Record Dec. 17, 2003 eff. Jan. 16, 2004. [See Vol. 9 Statements of Basis and Purpose No. 19]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Dec. 30, 1998 eff. Jan. 29, 1999. [See Vol. 9 Statements of Basis and Purpose No. 12]

Notes:

Section 161.04 was further amended by resolution adopted on December 10, 2003, adding a new subsection (c) to authorize its enforcement by duly authorized agents and employees of the Department and the Departments of Sanitation and Parks and Recreation.

This section was amended by resolution adopted on June 26, 1990 to establish the Department's authority to issue dog licenses.

Subsection (a) was amended by resolution adopted on December 14, 1998 to delete reference to licenses issued prior to July 1, 1990 by the American Society for the Prevention of Cruelty to Animals, which expired prior to July 1, 1991.

CASE NOTES

¶ 1. In 1989 The American Society for the Prevention of Cruelty to Animals told the City of New York that it would no longer issue dog licenses. Pursuant to NYC Dog License Law §8-c (Agriculture and Markets Law §107) the Mayor designated the Health Department as city agency responsible for dog licensing. The board adopted amendments to the Health Code, 24 RCNY §§161.04, 161.15, implementing this program. The amendments are not inconsistent with State law and are a constitutional delegation of authority. Pet Professionals of NYC v. City of New York, 215 AD2d 742 [1996].

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Rules of the City of New York

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

24 RCNY 161.05

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 161 ANIMALS

§161.05 Dogs to be restrained.

(a) Except as specified in subdivision (b) of this section, a person who owns, possesses or controls a dog shall not permit it to be in any public place or in any open or unfenced area abutting on a public place unless the dog is effectively restrained by a leash or other restraint not more than six feet long.

(b)(1) Dogs within areas and facilities under the jurisdiction and control of the Department of Parks and Recreation ("DOPR"), or successor agency, shall be restrained except as otherwise permitted in accordance with the rules of the DOPR. Such rules shall include provisions that prohibit unrestrained dogs in unenclosed DOPR controlled areas and facilities except during a specified range of time, that shall not begin earlier than 9:00 P.M. and not extend past 9:00 A.M. Such rules shall also specify that persons in control of dogs allowed to be off the leash in such areas and facilities maintain and provide, on demand, proof of current dog licensure and current rabies vaccination when dogs are allowed to be off the leash. In addition, DOPR shall make available to the public, in a manner acceptable to the Department, information concerning rabies vaccination and dog licensure requirements, and the specific locations where and times

when dogs may be allowed off the leash in DOPR areas and facilities.

(2) Notwithstanding the provisions of paragraph (1) of this subdivision, the Department may, based on epidemiologic evidence indicating an increase in preventable off leash dog bites during off leash hours in areas open to off leash use, or a risk of zoonotic disease transmission, limit or eliminate the use of or access to specific areas or facilities, or parts thereof, under DOPR jurisdiction, by unrestrained dogs.

(c) Notices of violation for failure to comply with subdivision (a) of this section may be issued by any authorized employee, officer or agent of the Department, or of the Department of Sanitation or the Department of Parks and Recreation, or successor agencies.

HISTORICAL NOTE

Section amended City Record Dec. 11, 2006 eff. Jan. 10, 2007. [See Vol. 9 Statements of Basis and Purpose No. 26]

Section amended City Record Dec. 17, 2003 eff. Jan. 16, 2004. [See Vol. 9 Statements of Basis and Purpose No. 19]

Section in original publication July 1, 1991.

Notes:

Section 161.05 was amended by resolution adopted on December 10, 2003, adding a new subsection (b) to authorize its enforcement by duly authorized agents and employees of the Department and the Departments of Sanitation and Parks and Recreation.

Section 161.05 was further amended by resolution adopted on December 5, 2006. The substance of the existing provision was relettered as subdivisions (a) and (c) and subdivision (a) was amended to substitute the term "other restraint" for the term "chain," a more humane term. A new subdivision (b) was added to authorize the Department of Parks and Recreation to adopt rules providing for dogs to be off leash in areas and facilities under its jurisdiction and control, and to require persons controlling dogs off the leash to maintain and provide proof of current dog licensure and rabies vaccination, and for DOPR to provide public information about dog licensing, rabies vaccination, and the times when the locations where dogs are allowed to be off leash. Relettered subdivision (c) was amended to change the term "Departments of Sanitation and Parks and Recreation" to "Department of Sanitation or the Department of Parks and Recreation."

This section is derived from S.C. §17(1) without substantive change. A requirement to muzzle dogs, which was upheld in **People ex rel. Knoblauch v. Warden,** 216 N.Y. 154, 110 N.E. 451 (1915), was repealed on August 11, 1942, in favor of a mandatory requirement for the use of a leash.

Under §102c of the New York City Criminal Courts Act, a violation of this section is not a misdemeanor but is punishable by a fine up to $25.00 or imprisonment not to exceed 10 days, or both. However, Penal Law §722a provides: "Any person who suffers any unmuzzled, ferocious or vicious dog to be **at large** in any thoroughfare or public place in the city of New York shall be guilty of disorderly conduct." (emphasis added). When the two laws are read together, the following conclusions are reached: If a dog is kept on a leash it need not be muzzled since it is not "at large". If a dog is muzzled but not on a leash, there is a violation of this section but not of Penal Law §722a; this is not legally inconsistent. **People v. Lewis,** 295 N.Y. 42, 62 N.E. 2d 702 (1945). Finally, if an unmuzzled dog is not on a leash there is a violation of both laws. In such a case, the violation could be prosecuted under this section (and §102c of the New York City Criminal Courts Act would apply) or under Penal Law §722a. In the latter instance, Penal Law §723 provides

that the punishment is imprisonment up to six months or a fine up to $50.00 or both, or by probation up to two years.

Section 32 of the Rules and Regulations Affecting Property Under the Jurisdiction of the Commissioner of Parks, Supplement to Rules and Regulations of New York City Agencies, 1946-52, also prohibits a person from allowing a dog to roam at large in the parks and requires a leash no longer than six feet in length. Violation of this regulation is punishable by up to 30 days imprisonment or by a fine of not more than $50.00 or both.

CASE NOTES

¶ 1. In Juniper Park Civic Assn., Inc. v. City of New York, 14 Misc.3d 1203(A), 2006 WL 3628018 (Sup. Ct. Queens Co.), JPCA, a not-for-profit civic group brought a mandamus proceeding to compel the City to enforce 24 R.C.N.Y. § 161.05 (Leash Law) and 54 R.C.N.Y. § 1-04. Petitioner contended that people using Juniper Valley Park were violating the leash law, which requires that in public places, dog owners must keep them on leashes not more than six feet long. The Parks Department regulations stated that no person owning or possessing any animal shall cause or allow an animal to be unleashed or out of control in the park, except as allowed by the commissioner.

Approximately 20 years ago, the Parks Commissioner had an "unwritten policy" during which time dogs could be unleashed, in specified areas of some parks, between the hours of 9 P.M. and 9 A.M. That policy has been adopted by other Parks Commissioners since that time. since. JPCA contended that the Parks Commissioner did not have authority to enact such a policy in the face of explicit language in the Leash Law, particularly because the Parks Department's own written regulations essentially parrot these provisions.

In deciding the case, the court distinguished between statutes and codes. A statute is a type of law created by a legislative body by a majority vote of elected representatives and is approved by the executive. On the other hand, a code, rule or regulation is customarily created by some regulatory body which has been accorded that power by a legislative body. The regulations in question were created under a grant of legislative authority. The Leash Law was promulgated by the Department of Health under a grant of authority codified in City Charter § 558(b), and the Parks Department regulations were promulgated under a grant of authority in City Charter § 533(9). Both the Health Code and the Parks Department regulations have the force of law, but their promulgation has been authorized by the legislature. Thus, neither the Health Department nor the Parks Department needed any additional grant of authority to enact their regulations. Moreover, as between the Health Code and the Parks Department regulations, neither is inherently superior to the other. The Health Code appears to have a flat prohibition against unleashed dogs. Although the Parks Department regulations have a prohibition against dogs being unleashed in public, there are two important exceptions. Section 1-04[i] of the Parks Dept. rules states that dogs are permitted off-leash inside City parks when within established "dog runs" (see 56 RCNY Sec. 1-05[s][3] and "as permitted by the Commissioner. The court resolved the inconsistency between the regulations, pointing out that the introductory notes to the Health Code acknowledge the Parks Department's concurrent oversight of public health issues as they related to the City parks and recognize the Park's Commissioner's jurisdiction over the management of City parks and duty to promulgate regulations relating to parks. Ultimately, the court held that the Parks Department regulations are valid and that the Parks regulations permitting the Commissioner to allow unleashed dogs in the park, from 9 p.m. to 9 a.m., were controlling. The court also found that there was insufficient evidence that the Commissioner had failed to enforce provisions requiring dogs in parks to be on leashes between the hours of 9 a.m. and 9 p.m. Accordingly, the court dismissed the petition.

¶ 2. In Petrone v. Fernandez, 2008 Slip Op. 6198, 2008 N.Y.App.Div. Lexis 6062 (2d Dept.), a mail carrier alleged that he was injured while trying to evade defendant's unleashed dog, which was chasing him. Court held that the liability could be based on a violation of the Leash Law, even without demonstrating that the dog previously exhibited vicious propensities. Note, however, that the Third Department reached a contrary result in a case based on an upstate municipality's leash law (see Alia v. Fiorino, 39 AD3d 1068, 833 N.Y.S.2d 761 (3d Dept. 2007)). Note also that in Petrone, only the owner of the dog was potentially liable; a co-occupant who did not own the dog and was not even home at the time of the incident was not liable.

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

24 RCNY 161.06

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 161 ANIMALS

§161.06 Dogs and cats to be vaccinated and treated prior to change in ownership.

No person shall offer for sale, sell or give away any dog or cat unless such animal has been vaccinated against rabies in accordance with §11.65 of the Code, and treated for parasites or certified in writing by a duly licensed veterinarian to have been tested and found to be free of parasites.

HISTORICAL NOTE

Section amended City Record Dec. 30, 1998 eff. Jan. 29, 1999. [See Vol. 9 Statements of Basis and Purpose No. 12]

Section in original publication July 1, 1991.

Notes:

This section was amended by resolution adopted on December 14, 1998 to require that prior to sale or adoption of a dog or cat the animal is vaccinated against rabies in accordance with the provisions of §11.65 of the Code, and either treated for or certified by a veterinarian as free of any treatable parasites.

This section is new. It was enacted by resolution adopted on March 1, 1973, to require the deworming of dogs and cats or their certification as being free of intestinal helminths by a licensed veterinarian for the purpose of preventing the potential public health hazard of the diseases caused by toxocara parasites which may be transmitted to humans by infected dogs and cats.

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24 RCNY 161.07

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 161 ANIMALS

§161.07 Vicious or dangerous animals.

(a) A "vicious or dangerous animal" shall mean any animal other than one properly registered pursuant to §161.09(k) hereof, which menaces, threatens, attacks or bites a person. A Department record of a report made pursuant to §11.03 shall be prima facie evidence that the animal is vicious or dangerous.

(b) The owner of a dog or other animal which is the subject of a report pursuant to §11.03 or of a complaint of viciousness or dangerousness shall make such animal available for examination by the Department.

(c) If, upon examination of the animal, or consideration of its history of the circumstances of the report made pursuant to §11.03, or the complaint concerning said animal, the Department finds the animal to be vicious or dangerous, it may order:

(1) The animal to be surrendered for the purpose of humane destruction;

(2) The animal to be permanently removed from the City;

(3) The animal to be muzzled whenever the animal is in a public place or in any open or unfenced area abutting on a public place;

(4) Such other action as the Department deems sufficient to insure control of the animal and protection of the public.

(d) Any dog owned, kept, engaged in or trained for dog fighting, or any dog owned, kept or trained to attack persons and not properly registered pursuant to §161.09(k), shall be surrendered to the Department by the person who owns, possesses or controls it, for the purpose of performing an examination and for such other disposition as the Department may order in accordance with subsection (c) hereof.

(e) Whenever the Department finds a dog or other animal to be vicious or dangerous under subsection (c) hereof, it shall be presumed that the owner or keeper trained, caused or permitted such animal to be vicious or dangerous, so as to establish a prima facie maintenance of a nuisance in violation of §3.11 of this Code.

(f) An animal which is vicious or uncontrolled may be impounded by a peace officer or killed if capture is dangerous.

HISTORICAL NOTE

Section amended City Record Dec. 30, 1998 eff. Jan. 29, 1999. [See Vol. 9 Statements of Basis and

Purpose No. 12]

Section in original publication July 1, 1991.

Notes:

Section 161.07 was repealed and reenacted on October 30, 1987. This section was last amended in 1959 when subsection (c) was added.

Subsection (a) was amended by resolution dated December 14, 1998 to correct the cross reference to the provision in Article 161 dealing with guard or attack dogs, which is now renumbered at 161.09(k), and subsection (d) was amended to include within the sanctions applicable under §161.09(c) any dogs owned for the purpose of or engaging in dog fighting.

Subsection (a) is added to clarify the definition of "vicious or dangerous animal."

Subsection (b), authorizes the Department to examine an animal which is the subject of a bite report or complaint.

Subsection (c) authorized the Department, after an examination of the animal, or a consideration of its history, the circumstances of a reported bite or a complaint concerning the animal, to take action appropriate to the circumstances, which may include humane destruction, ordering removal from the City or muzzling, or such other action as will insure control of the animal and public safety.

Subsection (d) requires surrender of certain dogs kept or trained for dog fighting or of unregistered attack or guard dogs for examination.

Subsection (e) establishes the condition of being vicious or dangerous as a prima facie nuisance under §3.11 of the Health Code.

Subsection (f) is identical to the present subsection (c).

CASE NOTES

¶ 1. By evidence of a dog's extreme aggressiveness, including evidence of the dog's numerous attacks on adults and children, the dog was proved to be vicious or dangerous pursuant to paragraph (a) of this section. Department of Health v. Stallone, OATH Index No. 1486/97 (July 16, 1997).

¶ 2. Where a vicious or dangerous dog's owner could not be trusted to muzzle, leash or otherwise restrain the dog, and where the dog was too aggressive toward other dogs to permit placement in a shelter, the only alternative was humane destruction of the dog pursuant to paragraph (c) of this section. Department of Health v. Stallone, OATH Index No. 1486/97 (July 16, 1997).

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24 RCNY 161.08 [Regulated

RULES OF THE CITY OF NEW YORK

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ARTICLE 161 ANIMALS

§161.08 [Regulated Pit Bull Dogs. See Ad Code §§17-342 et seq.] [Repealed]

Notes:

Section 161.08 was added by resolution adopted on March 27, 1989. It was repealed by resolution adopted on May 20, 1991.

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24 RCNY 161.09

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ARTICLE 161 ANIMALS

§161.09 Permits to keep certain animals.

(a) No person operate a pet shop, grooming parlor, boarding kennel or training establishment for small animals without a permit issued by the Commissioner.

(b) No person shall construct or operate a shelter for homeless animals without a permit issued by the Commissioner.

(c) No person shall sell or keep for sale live rabbits or live poultry, including chickens, geese, ducks or other fowl, without a permit issued by the Commissioner. Such permit shall not include the right to slaughter rabbits or poultry for sale as food for human consumption for which a permit must be obtained pursuant to Article 93. A permit shall not be issued for the sale or keeping for sale of live roosters, ducks, geese or turkeys in the built-up portions of the City. A permit shall not be issued for the sale or keeping for sale of live rabbits or poultry on the same lot as a multiple dwelling as defined in section 4 of the Multiple Dwelling Law or, unless the consent of the occupants is obtained, on the same lot

as a two-family home. A permit shall not be issued unless the coops or runways are more than 25 feet from an inhabited building other than a one-family home occupied by the applicant and unless the applicant submits to the Department the written consent of the owner of the lot on which the poultry or rabbits are to be kept.

(d) Except on premises abutting upon a slaughter house no person shall yard horses or keep or yard cattle, swine, sheep or goats without a permit issued by the Commissioner. Such permit shall be issued only for unimproved areas of the borough of Richmond used for farming purposes.

(e) No person shall maintain or operate a stable for horses without a permit issued by the Commissioner except that no permit shall be required where a natural person or family owns a horse stable solely for housing and maintaining horses owned and used by the person or family for its exclusive recreational, non-commercial purposes.

(f) No person shall engage in the business of or hold herself or himself out as engaging in the business of importing, or selling, or offering for sale any animal of a species which is wild, ferocious, fierce, dangerous, or naturally inclined to do harm or any venomous snake and no person shall operate a snake farm engaged in the preparation of anti-venom without a permit issued by the Commissioner.

(g) No person who is charged with the supervision of a pet shop or business for the sale or offer for sale of dogs, cats or other small animals, or the boarding or grooming of small animals, or animal training, or similar type of operations, shall engage or be employed in such capacity unless he or she obtains a certificate indicating the successful completion of a course, acceptable to the Department, in the care and handling of such animals.

(h) Such certificate shall be placed in a clean, transparent cover or frame and displayed on the premises where the holder thereof is so engaged or employed in such a manner as to be clearly visible to the public. It shall be available for inspection at all times by the Department. No person shall mutilate, obstruct or tear down such certificate.

(i) The holder of such certificate shall successfully complete a refresher course in the care and handling of such animals when deemed necessary by the Department. The Department may require the holder of such certificate to complete a refresher course acceptable to the Department when the Department finds continuing violations of the Code, or when a zoonotic outbreak implicates animals cared for, treated or held in the establishment she or he supervises, or when the Department requires such course to acquaint him or her with current developments in animal care and handling principles.

(j) The Department may conduct such courses or approve courses conducted by educational institutions. Persons electing to enroll in such courses conducted by the Department may be charged a reasonable enrollment fee to defray all or part of the costs incurred by the Department in their administration.

(k) No person shall own a trained guard or attack dog for use within the City unless she or he has registered such animal with the Department. Any case of loss, theft or transfer of ownership of a trained guard or attack dog shall be reported by the owner to the Department within five (5) days of any such loss, theft or transfer. The Department may charge a reasonable fee to defray all or part of the cost incurred by the Department in the administration of this subsection.

(l) The owner of a trained guard or attack dog shall provide and see to it that such animal wears at all times a tag issued by the Department. Such tag shall have printed or stamped thereon, in clear and legible type, the words: "GUARD DOG" or "ATTACK DOG". Such tag shall be suspended at least three quarters of an inch and not more than one and one half inches from a collar worn by such animal. Lost, stolen or damaged tags shall be reported to the Department and may be replaced by the Department at reasonable cost.

(m) All premises in which a trained guard or attack dog is kept shall be provided with a sign or notice, printed in clear and legible type and conspicuously displayed, warning the public of the presence of such trained guard or attack dog. All establishments used in the business of training, selling or renting guard or attack dogs shall be provided with a

sign or notice, printed in clear and legible type and conspicuously displayed, advising the patrons or consumers of the requirements set forth in this section applicable to the use of such animals in the City, and the person engaged in such business shall provide a written copy of such notice to each of his or her patrons or consumers in a form deemed suitable by the Department.

HISTORICAL NOTE

Subds. (e)-(m) designated and amended City Record Dec. 30, 1998 eff. Jan. 29, 1999. [See Vol. 9

Statements of Basis and Purpose No. 12]

Section in original publication July 1, 1991.

Notes:

This section combines all the permit requirements for the keeping of live animals. See Article 5 for provisions relating to permit applications, expirations, revocations and renewals.

Subsection (a) is derived without substantive change from S.C. §18.

Subsection (a) was amended by resolution adopted on June 24, 1965, which added the phrase "or engage such animals"

Subsection (a) was further amended by resolution adopted on September 21, 1972 to add the words "fish, reptiles" to clearly and specifically indicate that this subsection is ago applicable to the sale or holding for sale of fish and reptiles in pet shops.

Subsection (a) was further amended by resolution adopted on September 18, 1975 to require a permit for engaging in the business of training small animals as an aid in preventing dog bites.

Subsection (a) was amended by resolution adopted on June 25, 1981 in order to conform it to the definitions contained in new §161.02 adopted on the same date.

Subsection (b) is derived without substantive change from S.C. §16.

Subsection (c) is derived from S.C. §19 and Regs. 2, 4 and 7 of the regulations governing the keeping of live rabbits or poultry. There are several important changes. (1) A permit will no longer be required for the keeping of rabbits or poultry not intended for sale, **e.g.,** as pets or for special occasions, such as before Easter or Thanksgiving; or when used for scientific purposes in a laboratory. (2) There is no exemption from the permit requirement, as in S.C. §19 Reg. 1, for unimproved sections of the City used for farming purposes. Although a exemption from the permit will be required for the keeping for sale or sale of live rabbits or poultry anywhere in the City, there is no intention of prohibiting the keeping of rabbits or poultry in unimproved areas. (3) The revision makes it clear that in built-up portions of the City a permit to keep chickens cannot include the right to keep roosters (**see: People v. Filactas**, 257 App. Div. 95, 12 N.Y.S. 2d 175 (1st Dept. 1939)), and the prohibition is extended to ducks, geese and turkeys. Even persons who keep live rabbits or fowl for purposes other than sale and who therefore do not need permits, are prohibited by §161.19(a) from keeping roosters, ducks, geese and turkeys in built-up areas. (4) Permits will no longer be issued for the keeping for sale or sale of live rabbits and poultry on the same lot as a dwelling; under §19 Reg. 2(d) this apparently could be done with the consent of the occupants although S.C. §19 Reg. 2(a) prohibited it.

The power of the Board to require permits for the keeping of poultry was upheld in **People v. Davis,** 78 App. Div. 570, 79 N.Y.S. 747 (2d Dept. 1903).

Subsection (d) is derived from S.C. §11 and Reg. 1. The limitation to the borough of Richmond is new.

Subsection (e) is derived without substantive change from S.C. §58.

Subsection (f) was repealed by resolution adopted on December 14, 1998 because there are no longer any cows kept for the purpose of selling milk in the City, and no current city dairies. As a result of the repeal of subsection (f), existing subsections (g), (h), (i), (j), (k), (l), (m) and (n) have been renumbered accordingly.

The first sentence of subsection (f) is derived from S.C. §12 but is changed so as to require a permit for the keeping of a cow only when it is kept for the sale of milk. Permits for keeping of cows for domestic purposes (there are presently about 30 issued) will no longer be required. The second sentence is new. As of the date of enactment of this Code, there are issued only six permits for the keeping of cows for the production and sale of milk. As a result of a long standing Board resolution which was never incorporated into the Sanitary Code, a new permit for a city dairy has not been issued for approximately 30 years. Thus the limitation of the right to keep cows for the sale of milk to those persons who are presently permittees while allowing the sale of an existing city dairy to a new owner does not change existing policy. Such a limitation is constitutional. **Stracquadanio v. Department of Health**, 285 N.Y. 93, 32 N.E. 2d 806 (1941).

Subsection (g) was added by resolution adopted on June 24, 1965.

This section was amended by resolution adopted on August 21, 1975, which added new subsections (h), (i), (,j) and (k) thereto to respectively require the completion of an approved training course in the care and handling of dogs, cats and other small animals by persons supervising pet shops of businesses for the sale, boarding,grooming of training of such animals or similar operations; the keeping and display of the certificate of completion of such course, on the premises supervised by the holder thereof the completion of refresher courses when deemed necessary by the Department; the conduct of such courses by the Department or approval of courses given by educational institutions; and the charging of a reasonable enrollment fee for courses conducted by the Department. These requirements are intended to aid in the prevention of the sale of sick and dangerous small animals and the inhumane housing and care of such animals.

Subsections (l), (m) and (n) were added by resolution adopted on September 18, 1975 to provide for registration of trained guard or attack dogs and warning to the public of their presence on the premises where they are kept, as aids in the prevention of dog bites.

Subsections (l), (m) and (n) were amended by resolution adopted on August 12, 1976 to additionally require the reporting of any loss, theft or change of ownership of a trained guard or attack dog; to replace the requirement for a red collar, which had proven unfeasible, with the requirement for a suitably labeled tag suspended from such dog's collar; and for the posting and distribution of notices by persons engaged in the business of training, selling or renting such dogs to advise their patrons or consumers of applicable requirements of this section.

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24 RCNY 161.11

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 161 ANIMALS

§161.11 Prevention of nuisances; cleaning.

(a) A permit required by §161.09 shall not be issued unless the applicant proves to the satisfaction of the Commissioner that the place for which the application is made does not constitute a nuisance because of its proximity to a residential, business, commercial or public building, and that the place will be maintained so as not to become a nuisance.

(b) The owner, lessee or person in charge of any place where animals are kept pursuant to a permit required by §161.09, shall take all measures for insect and rodent control required by Article 151 and shall conduct such place so as not to create a nuisance by reason of the noise of the animals, the escape of offensive odors, or the maintenance of any condition dangerous or prejudicial to public health.

(c) Every place where animals are kept pursuant to a permit required by §161.09 shall have implements and materials, such as brooms, hoses, hoseconnections, vacuum cleaners where dusty conditions are found, covered metal

receptacles, brushes, disinfectants and detergents, as may be required to maintain sanitary conditions. Such places shall have regularly assigned personnel to maintain sanitary conditions.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived from S.C. §16 Reg. 1 and S.C. §58 Reg. 1. The specific prohibition against building a shelter for homeless animals within 200 feet of certain buildings is omitted in favor of a more flexible regulation.

Subsection (b) is derived in part from S.C. §16 Reg. 8 and 9, S.C. §18 Reg. 5(part), S.C. §19 Reg. 6 of the regulations governing the keeping of live rabbits or poultry, and S.C. §58 Reg. 13. The reference to Article 151, Rodents, Insects and Other Pests, is new.

Subsection (c) is new. Also see Article 135, Commercial Premises.

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24 RCNY 161.13

RULES OF THE CITY OF NEW YORK

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ARTICLE 161 ANIMALS

§161.13 Self inspection.

The holder of a permit issued pursuant to §161.09 or the person in charge of the place for which the permit is issued shall inspect or designate a qualified or trained employee to inspect the premises at least once every two months and record the results of the inspection on a form furnished by the Department. Such records shall be kept on file for one year. If an inspection shows a violation of any provisions of this Code, the permittee or person in charge shall promptly correct such condition. A record of self inspection shall be available for inspection by the Department, but shall not be subject to inspection by others, or to subpoena, and shall not be used in, or as the basis for prosecution.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new in this context. Self inspection was required in wholesale food establishments (S.C. §148 Reg. 36), restaurants (S.C. §149 Reg. 40) and in retail food stores (S.C. §150 Reg. 28).

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24 RCNY 161.15

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 161 ANIMALS

§161.15 Keeping of small animals for sale, boarding, grooming, or training.

(a) Dogs, cats, birds or other small animals shall not be sold or held for sale, or boarded, groomed or trained in a room in which a person lives. Such animals shall not be sold or held for sale or kept in the same place where food or drink is sold for human consumption unless necessary precautions are taken to prevent contamination of the food or drink and the creation of a nuisance.

(b) The holder of a permit issued pursuant to §161.09 or the person in charge of the place for which the permit is issued, shall provide any individual seeking to purchase, adopt, groom, train, or board a dog, showing no evidence of licensure, with a dog license application, furnished by the Department, which shall be completed by the individual. The holder of a permit to operate a pet shop or shelter or person in charge thereof, shall not transfer possession, title, ownership, control or custody of any dog to a prospective purchaser or adopter without first requiring the purchaser or adopter to submit a completed application for a dog license and to pay all required license fees unless such purchaser or adopter shall execute and submit to such permittee a written statement that the dog to be purchased or adopted is to be

harbored outside the City. The operator of a shelter issued a permit by the Department shall not release an unlicensed dog to any person unless the person shall complete an application for a license and tender the license fees required by law. Such holder of a permit or person in charge shall forward such completed application and license fees to the Department in such manner as may be specified by the Department, consistent with the New York City Dog License Law enacted by the State legislature (Chapter 115 of the Laws of 1894, as amended). The license shall be issued by the Department.

(c) A holder of a permit to keep small animals for sale or for boarding, grooming or training, or to shelter homeless animals, shall maintain and keep for one year a record of purchases and sales and/or a record of boarding, grooming, training, providing shelter for homeless animals, or adoption services rendered. When a dog or cat is purchased, sold, adopted or kept, the permittee shall make an entry in the record which shall contain the name and address of the person from whom it was purchased and of the person to whom it was sold or given for adoption or of the person who ordered boarding, grooming, or training services for such animals, and a complete description of the animal, including its age, sex and breed. The permittee shall on at least a monthly basis report to the Department on a form furnished by the Department all licensed and unlicensed dogs which have been sold, adopted, groomed, trained, boarded, sheltered, or otherwise served. Such form shall include the name and address of the dog owner and license number of all licensed dogs as well as any other descriptive information regarding such dog as may be required by the Department.

(d) A holder of a permit to keep small animals for sale, boarding, grooming or training shall not sell or hold for sale, boarding, grooming or training a dog or cat which is affected with or which has been exposed to a disease which is communicable among such animals, and shall not keep such animals unless it is under the care of a licensed veterinarian.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record Dec. 30, 1998 eff. Jan. 29, 1999. [See Vol. 9 Statements of Basis and Purpose No. 12]

Subd. (b) amended City Record Dec. 30, 1997 eff. Jan. 29, 1998. [See Vol. 9 Statements of Basis and Purpose No. 9]

Notes:

Subsection (a) is derived from S.C. §18 Reg. 6. The complete prohibition against keeping animals in the same room where food or drink is prepared is modified to require precautions to prevent a nuisance or contamination of food. The Department does not issue a permit to keep small animals unless a certificate of occupancy is obtained for the premises from the Department 1 of buildings.

Subsection (b) is derived from S.C. §18 Reg. 7. References to boarding of animals are omitted. The requirement that the record be kept for one year is new. This provision which was originally adopted by the Board on February 11, 1941 is intended as a rabies control measure.

Subsection (b) was amended by resolution adopted on June 25, 1981 to enable the Department to ensure that all permittees are complying with State law.

Subsection (b) was amended by resolution adopted on December 17, 1997 to prohibit the holder of a permit issued to a pet shop or animal shelter pursuant to Section 161.09 or a person in charge of the place for which the permit is issued to surrender a dog to a prospective purchaser without first requiring the purchaser to submit an application for a

dog license and to pay all required fees.

Subsection (b) was amended by resolution adopted on December 14, 1998 to prohibit the release of an unlicensed dog from a shelter to any person, including an owner reclaiming a lost dog, unless the prospective owner completes an application for a dog license and pays all licensing fees.

The portion of subsection (c) prohibiting the keeping of diseased dogs and cats unless under a veterinarian's care is derived from part of S.C. §4. The prohibition of sale of diseased dogs and cats by permittees is new.

This section was amended by resolution adopted on September 18, 1975 to additionally apply its provisions to the business of boarding, grooming or training of small animals.

This Section was amended by resolution adopted on June 26, 1990 to specify procedures to be used by permittees concerning dogs in their establishments.

CASE NOTES

¶ 1. In 1989 The American Society for the Prevention of Cruelty to Animals told the City of New York that it would no longer issue dog licenses. Pursuant to NYC Dog License Law §8-c (Agriculture and Markets Law §107) the Mayor designated the Health Department as city agency responsible for dog licensing. The board adopted amendments to the Health Code, 24 RCNY §§161.04, 161.15, implementing this program. The amendments are not inconsistent with State law and are a constitutional delegation of authority. Pet Professionals of NYC v. City of New York, 215 AD2d 742 [1996].

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24 RCNY 161.17

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ARTICLE 161 ANIMALS

§161.17 Small animals kept for sale, shelters, kennels and training establishments; physical facilities and maintenance.

A place where small animals are kept for sale, a shelter for homeless animals or a kennel or other place where animals are boarded or trained shall meet the requirements of Article 135 governing walls, floors, ventilation, lighting and plumbing. An individual cage shall be provided for the use of each dog or cat three months of age or over except when isolation in a separate cage is medically contraindicated or, as specified in individual cases, animals are caged together for a humane reason. A veterinarian shall provide a written statement and such documentation as the Department may require indicating the reason why more than one animal should be caged together. Such documentation shall be maintained on the premises and be available for inspection. The floors, walls, implements and cages in such place shall be kept clean and in good repair. Cages shall be disinfected when necessary. Nothing in this Code shall prohibit the establishment of canine congregate socialization or play areas in boarding facilities regulated by this Code provided that animals allowed in such areas are certified by a veterinarian as vaccinated against rabies and free of other diseases transmissible to humans or other animals.

HISTORICAL NOTE

Section amended City Record Dec. 30, 1998 eff. Jan. 29, 1999. [See Vol. 9 Statements of Basis and Purpose No. 12]

Section in original publication July 1, 1991.

Notes:

This section was amended by resolution adopted on December 14, 1998 to provide flexibility to veterinarians in allowing more than one animals to be caged together, if it is medically beneficial to the animal(s), or for humane reasons, and to clearly differentiate requirements for caging from canine "play" or other congregate socialization areas.

This section is derived from S.C. §18 Regs. 2, 4(part), and 5 S.C. §16 Regs. 2, 3, 4, and 7(part). This section is applicable to places where animals are held for sale previously regulated under S.C. §18, to shelters for homeless animals previously regulated under S.C. §16 and to kennels or other places where animals are boarded which were formerly unregulated. Instead of setting forth the details found in the regulations of S.C. §§16 and 18, the section requires the physical facilities established for commercial premises in Article 135. The requirement for separate cages, found in S.C. §18 Re was adopted in 1941 as a rabies control measure. The three month delay in separation is included so as to permit full weaning prior to separation.

This section was amended by resolution adopted on September 18, 1975 to additionally apply its provisions to establishments for the training of small animals.

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24 RCNY 161.19

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PART B CONTROL OF ENVIRONMENT

ARTICLE 161 ANIMALS

§161.19 Keeping of live poultry and rabbits.

(a) No person shall keep a live rooster, duck, goose or turkey in a built-up portion of the City.

(b) A person who holds a permit to keep for sale or sell live rabbits or poultry shall keep them in coops and runways and prevent them from being at large. Coops shall be whitewashed or otherwise treated in a manner approved by the Department at least once a year and at such other times as the Department may direct in order to keep them clean. Coops, runways and the surrounding area shall be kept clean.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived in part from S.C. §19 Reg. 4 of the regulations governing the keeping of live rabbits or poultry. This applies to persons keeping rabbits or fowl as pets as well as to permittees under §161.09(c).

Subsection (b) is derived from S.C. §19 Regs. 3 and 5 of the regulations governing the keeping of live rabbits or poultry. It applies only to permittees under §161.09(c).

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ARTICLE 161 ANIMALS

§161.21 Yarding of horses, cattle, swine, sheep and goats.

The yard in which horses, cattle, swine, sheep or goats are kept shall be fenced so as to prevent the animals from roaming. The yard shall be properly graded and drained and kept clean.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §11 Regs. 2 and 3.

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24 RCNY 161.23

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 161 ANIMALS

§161.23 Stables for horses; physical facilities and maintenance.

(a) A stable for horses shall meet the requirements in Article 135 governing walls, floors, ventilation, lighting and plumbing and shall have rodent proofing when required by the Department because of evidence of rat infestation. The Department, under such appropriate conditions as it may require, may allow a stable for racing horses to have in the stalls an impacted earth floor with straw, hay or similar material used for bedding.

(b) All exposed surfaces in a stable for horses shall be kept clean, and the walls, ceilings and exposed woodwork shall be whitewashed when necessary.

(c) Straw, hay or other material used as bedding shall not be placed upon a street, sidewalk or roof of a building.

(d) A horse-watering trough shall be maintained in a clean and sanitary condition and supplied with clean water.

(e) Except in unimproved areas, a stable shall not have or use a manure vault, pit or bin.

(f) All manure and other refuse shall be kept and treated within the stable in a manner satisfactory to the Department so as to minimize odors and prevent the breeding of flies or other annoying or unsanitary conditions. Manure shall either be removed daily or pressed into bales or barrels, adequately protected against flies and otherwise treated in a manner satisfactory to the Department. Manure or other stable refuse shall not be permitted to remain in a stable for more than four days.

(g) Unless special facilities satisfactory to the Department are provided for outside loading, the vehicle in which manure is to be removed shall be completely inside the stable and the stable doors shall be closed when manure is loaded. When barrels are unloaded they shall be cleaned and deodorized inside the stable in a manner satisfactory to the Department so as to prevent the creation of a nuisance.

(h) A stable yard or other area used by animals shall be kept clean, and the surface shall be graded so as to prevent the accumulation of liquids.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived in part from S.C. §58 Regs. 2, 3, 4, 5, 6 and 7. Instead of setting forth the details found in these regulations, the subsection requires physical facilities required for commercial buildings in Article 135. The specifications for the size of windows, the height of the ceilings and the number of required cubic feet of air space per horse have been omitted. The requirement for rodent proofing when there is evidence of rat infestation is new. The exception for stables used for race horses is new.

Subsection (b) is derived without substantive change from S.C. §58 Reg. 8.

Subsection (c) is derived without substantive change from S.C. §58 Reg. 11.

Subsection (d) is new. Horse-watering troughs were completely prohibited under S.C. §58 Reg. 14.

Subsection (e) is derived without substantive change from S.C. §58 Reg. 9(part).

Subsection (f) is derived from S.C. §58 Reg. 9(part). The provision that prior to removal the manure must be kept and treated in a manner satisfactory to the Department is new. Instead of requiring removal twice a week, this subsection calls for removal at least every four days.

Subsection (g) is derived in part from S.C. §58 Reg. 10. The last sentence is new.

Subsection (h) is derived from S.C. §58 Reg. 12 but is expanded to include all areas used by animals.

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24 RCNY 161.25

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PART B CONTROL OF ENVIRONMENT

ARTICLE 161 ANIMALS

§161.25 Stables for cows; physical facilities and maintenance. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 30, 1998 eff. Jan. 29, 1999. [See Vol. 9 Statements of Basis and Purpose No. 12]

Section in original publication July 1, 1991.

Notes:

Section 161.25 was originally derived from Sanitary Code §§12 and 13 and at the time the Sanitary Code was reenacted as the Health Code, the Board anticipated that when there were no longer any dairies in the City and existing permits for keeping dairy cows for the sale of milk became inactive, keeping cows for the sale of milk in the City would

effectively be prohibited. This section was repealed by resolution adopted on December 14, 1998.

This section provides for the continuation in full force and effect of the following: S.C. §12 and the regulations governing the keeping of cows in the city of New York where milk is produced and prepared for sale within the city of New York, Regs. 1-25; S.C. §13 and Regs. 1-6 governing the tuberculin testing of dairy animals within the city of New York. When the few remaining permits become inactive the Board may repeal S.C. §12 and the regulations thereunder and S.C. §13 and the regulations thereunder, as well as this section of the revised Code. Section 161.09(f) **supra**, provides that new permits for the keeping of cows in the city of New York may be issued. When the last few city dairies will have disappeared, the keeping of cows for the sale of milk in the City will, in effect, be prohibited.

The provisions of S.C. §12, regulations governing the keeping of cows within the city of New York for domestic purposes only, Regs. 1-11 are omitted. Article 135, Commercial Premises, governs the operation of such stables for cows.

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ARTICLE 163 BARBER SHOPS*6

Health Code Reg. § 163.00 INTRODUCTORY NOTES

Article 163 constitutes a revision of S.C. §335 and Regulations. In addition to this article of the Code, Article 135, Commercial Premises, also relates to barber shops and beauty parlors.

Since 1946, New York State has regulated barbers, hair dressers, cosmetologists and establishments (Articles 27 and 28, General Business Law, added L. 1946, c. 802 and 801 eff. July 1, 1946).

Chapter 32, Article 31 of the Administrative Code under which barbers were formerly licensed was repealed in 1947, L.L. 1947, No. 71, October 31. Department of Licenses regulations, similar to the regulations under S.C. §335, were also repealed. This was in accord with a statement by Governor Thomas E. Dewey when he signed the State legislation: The barbers of New York City should not be regulated by both the City and the State. Before this bill becomes operative the law should be amended to protect them from double control and should exclude either City or State regulation." The provisions of Article 163 have been retained, however, because the State Law contemplates

continued regulation of this filed by the New York City Sanitary Code, as expressed in General Business Law §§406 and 436.

Sec. 406 (Sec. 436) "All beauty parlors (§436 reads: "all barber shops") shall be maintained and operated in accordance with the provisions of the state sanitary code, except in the city of New York where the city sanitary code shall apply, and all licenses or persons employed or engaged therein or in connection therewith shall comply with the provision of such codes."

A license issued by the Secretary of State pursuant to Articles 27 or 28 may be suspended or revoked if there is a violation of "any applicable sanitary code", General Business Law, §409(8) and §441(8). An amendment to the State law would be necessary if dual control of barber shops and beauty parlors by both the State and the City is to be eliminated. Until such legislation is enacted, the quoted sections of the law (406 and 436 of the General Business Law) in effect mandate upon the Board of Health the continuation of some Sanitary Code regulations in this area.

The elimination of archaic requirements, such as the posting of "no-spitting signs" (S.C. §335 Reg. 7), a prohibition against the use of shaving cups or mugs in common (S.C. §335 Reg. 19), and a requirement that every establishment (including beauty parlors!) provide cuspidors (S.C. §335 Reg. 6), should be noted.

Article 163 has been amended to delete references to beauty parlors which are no longer regulated by the New York City Department of Health. A new Article 27 of the General Business Law, entitled Licensing of Nail Specialty, Natural Hair Styling, Esthetics and Cosmetology, which became effective July 5, 1994, pre-empts the New York City Department of Health from regulating and issuing permits to beauty parlors.

FOOTNOTES

6

[Footnote 6]: * Article 163 amended City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and Purpose No. 3]

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ARTICLE 163 BARBER SHOPS*6

§163.01 Definitions.

When used in this article:

Barber shop means a store, establishment, place or premises in which one or more persons engage in the practice of barbering as defined pursuant to §431(4) of the General Business Law but does not include the practice of medicine, dentistry, optometry, nursing, physiotherapy or osteopathy by a person licensed and registered pursuant to the Education Law.

HISTORICAL NOTE

Section amended City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and

Purpose No. 3]

Section in original publication July 1, 1991.

Notes:

Subsection (a), a barber shop, and subsection (b), beauty parlor, are new and replace the definitions of "public barber shop"", "public hair-dressing establishment", "public manicuring parlor" and "public beauty parlor" in S.C. §335(2). The aim is to correlate the regulation of establishments under this article with the State law, i.e., Article 27 of the General Business Law, Practice of Hair-dressing and Cosmetology, and Article 28 of the General Business Law, Practice of Barbering. The exception for professions regulated by the Education Law is similar to a provision in General Business Law §§414 and 446.

Subsection (b) was deleted on May 17, 1995 to conform Article 163 with recent State law pre-empting local regulation of beauty parlors.

FOOTNOTES

6

[Footnote 6]: * Article 163 amended City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and Purpose No. 3]

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ARTICLE 163 BARBER SHOPS*6

§163.03 Permits; exceptions.

No person shall conduct a barber shop without a permit issued by the Commissioner. This section does not apply to a school licensed pursuant to the Education Law or regulated by the City Board of Education.

HISTORICAL NOTE

Section amended City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and

Purpose No. 3]

Notes:

This section is derived without substantive change from S.C. §335(1). The waiver of a permit for schools does not waive the other provisions of this article or any other applicable article of the Code. Unlike the State law, which licenses

both establishments and operators, this section requires permits only for establishments.

This section was amended on May 17, 1995 to delete the reference to beauty parlors.

FOOTNOTES

6

[Footnote 6]: * Article 163 amended City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and Purpose No. 3]

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24 RCNY 163.05

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ARTICLE 163 BARBER SHOPS*6

§163.05 Physical facilities and equipment.

A barber shop shall provide the following facilities and equipment:

(1) Washing facilities with hot and cold running water, a sanitary soap dispenser and freshly laundered individual or single-service towels for patrons and attendants.

(2) Receptacles, equipped with covers, which can be readily emptied and cleansed, for the deposit of soiled towels, linen and uniforms; and

(3) Receptacles, equipped with covers, for the deposit of hair droppings, paper, waste material and used single-service equipment.

HISTORICAL NOTE

Section amended City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and Purpose No. 3]

Notes:

This section was amended on May 17, 1995 to delete the reference to beauty parlors.

Subdivision (1) is derived from S.C. §335 Regs. 5, 14 and 18; reference to sewerage and connections is omitted. S.C. §335 Reg. 1, lighting and ventilation standards, is here omitted; see Article 135, Commercial Premises. The specific prohibition, in Reg. 18, against use of soap in common is changed to the more positive requirement for a "sanitary soap dispenser". The detail on laundering of towels in Reg. 14 is omitted. Subdivisions (2) and (3) are new. They are similar to Regs. 10 and 12, respectively, of the State Sanitary Code, Ch. X.

FOOTNOTES

6

[Footnote 6]: * Article 163 amended City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and Purpose No. 3]

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ARTICLE 163 BARBER SHOPS*6

§163.07 Attendants; sanitary habits.

An attendant shall wear a clean, washable, outer coat or uniform, and shall wash his or her hands thoroughly with hot water and soap before attending a patron and immediately after using the toilet.

HISTORICAL NOTE

Section amended City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and

Purpose No. 3]

Notes:

This section is derived from S.C. §335 Regs. 8 and 10. The requirement that the coat or uniform have full length sleeves has been omitted. The section also requires that the hands be washed after use of the toilet. S.C. §335 Reg. 9,

prohibiting an attendant from working if he is "affected with any disease in a communicable form", is here omitted but is covered in §11.63 of this Code. General Business Law §§403(3) and 433(3) authorize the Secretary of State to "require all persons licensed or registered under this article to submit to physical examination by a physician selected by the secretary of state."

FOOTNOTES

6

[Footnote 6]: * Article 163 amended City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and Purpose No. 3]

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ARTICLE 163 BARBER SHOPS*6

§163.09 Patrons; precautions and procedures.

(a) The headrest of a chair used to serve a patron shall first be covered with a freshly-laundered individual towel or a single-service paper covering.

(b) Alum or other astringent used to stop the flow of blood shall be applied in powdered or liquid form only. The stick form shall not be used.

(c) No powder puff, sponge or neck duster shall be used on any patron.

(d) No cosmetic which is adulterated under §77.01*12 or which is misbranded under §77.03* shall be used on a patron in a barber shop.

(e) No coal-tar hair dye which contains a color from a batch which has not been certified in accordance with the Federal Food, Drug, and Cosmetic Act shall be used on a patron in a barber shop unless a preliminary skin test is first

made in accordance with any directions accompanying the product. If the preliminary test results in redness, burning, itching, blisters or any other skin eruption in the area of the test, such coal-tar hair dye shall not be used. No coal-tar hair dye shall be used on a patron if the scalp or adjacent area shows evidence of abrasion, eruption or skin disease. No cosmetic containing a coal-tar color shall be used in the area surrounding the eyes, that is, the orbital area.

(f) No implement shall be used on or for a patron unless it is clean and sanitary.

HISTORICAL NOTE

Section amended City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and

Purpose No. 3]

Notes:

Subsection (a) is derived without substantive change from S.C. §335 Reg. 15.

Subsection (b) is derived without substantive change from S.C. §335 Reg. 16 but with the addition of the more positive language of Reg. 18 of the State Sanitary Code, Chapter X.

Subsection (c) is derived without substantive change from S.C. §335 Reg. 17.

Subsection (d) is derived without substantive change from part of S.C. §130 (1st para.)

Subsection (d) was amended on May 17, 1995 to delete the reference to beauty parlors.

Subsection (e) is derived from S.C. §131(1) and (1)(d) and S.C. §131(3) and (4). The requirement for the posting of a caution sign in the establishment is omitted.

The subsection requires preliminary tests only when the coal-tar hair dye used is required to bear preliminary test instructions and caution labels pursuant to the parallel requirements of the Federal and State law. Federal Food, Drug, and Cosmetic Act §601(a) and Education Law §681O(1)(a). Hair dyes containing certified coal-tar colors are not required to bear such instructions and caution labels, since they have been certified as "harmless and suitable for use" pursuant to F.F.D.C. Act §604; so-called harmless coal-tar colors in hair dyes also have been held not to require preliminary testing, instruction and caution labels although they are not from certified batches. Food and Drug Administration Trade Correspondence. (T.C.) Number 103, February 29, 1940. The subsection is wholly consistent with Federal and State law in the case of coal-tar dyes and does not raise the problem of inconsistent labeling requirements under Federal law and S.C. §131 which were the subject **of Gorolin Corporation v. City of New York,** 2 CCH Food Drug and Cosmetic Rep. (2d Ed.), Para. 7116 (S.D.N.Y., 1949).

Subsection (e) was amended on May 17, 1995 to delete the reference to beauty parlors.

Subsection (f) is derived without substantive change from S.C. §335 Regs. 12 and 13.

S.C. §335 Reg. 11, infectious diseases of patrons, and Reg. 19, use of shaving cups and finger bowls in common prohibited,

are omitted.

FOOTNOTES

6

[Footnote 6]: * Article 163 amended City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and Purpose No. 3]

12

[Footnote 12]: * Section repealed City Record May 18, 1999.

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24 RCNY 163.11

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ARTICLE 163 BARBER SHOPS*6

§163.11 General sanitary procedures.

(a) The floor of a barber shop shall be thoroughly swept and mopped at least once daily. Hair droppings shall be removed as soon as practicable in such a manner that objectionable conditions are not created.

(b) Single-service towels, papers and other material shall be disposed of in the proper receptacle immediately after use and shall not again be used.

HISTORICAL NOTE

Section amended City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and

Purpose No. 3]

Notes:

Subsection (a) is derived without substantive change from S.C. §335 Reg. 3.

Subsection (a) was amended on May 17, 1995 to delete the reference to beauty parlors.

Subsection (b) is new.

S.C. §335 Reg. 2, walls, ceilings and fixtures to be kept Clean and Reg. 4, water-closets to be provided, are here omitted but are covered in Article 135. Reg. 6, requiring cuspidors and Reg. 7 requiring posting of spitting signs, are omitted as obsolete. Reg. 20 requiring that a copy of "these regulations", i.e., the regulations under S.C. §335, be posted is also omitted.

FOOTNOTES

6

[Footnote 6]: * Article 163 amended City Record June 9, 1995 eff. July 9, 1995. [See Vol. 9 Statements of Basis and Purpose No. 3]

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ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

Health Code Reg. § 165.00 INTRODUCTORY NOTES

This Article was repealed and reenacted by resolution adopted on March 21, 2001 to modernize the law governing bathing establishments and to ensure consistency with the State Sanitary Code. This Article previously underwent a major revision in 1977. Since that time, the understanding of good design, operation and practice has changed, and the changes made are intended to incorporate new standards. Many of the provisions have been revised to clarify their meaning for owners, operators and those who design and build bathing establishments.

On March 24, 2009, the Board of Health amended various provisions (§§ 165.01-165.05, 165.09-165.11, 165.15-165.19, 165.23-165.31, 165.39, 165.43-165.49) of Article 165, and to create a new § 165.42, to primarily maintain consistency with requirements found in Subparts 6-1 (concerning supervision) and 6-3 (concerning spray grounds) of the New York State Sanitary Code.

GENERAL PROVISIONS

FOOTNOTES

5

[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.01 Applicability.

(a) This Article shall apply to all bathing establishments as defined in §165.03 owned or operated by city agencies, or commercial interests or private entities including, but not limited to, public or private schools, corporations, hotels, motels, camps, apartment houses, condominiums, country clubs, gymnasia and health establishments. The regulations shall apply to all shower and dressing rooms, toilet facilities, filtration, pumping, piping, disinfection and safety equipment provided and maintained in connection with such bathing establishments.

(b) This Article shall not apply to: (1) a pool, spray features/grounds or sauna and steam rooms, within a one or two family dwelling, or a dwelling unit of a multiple dwelling, and solely for the use of the occupants for non-commercial purposes, (2) a float tank or relaxation tank used by one person at a time, (3) pools used only for religious purposes (ritual immersion), (4) spa pools used for prescribed medical therapy or rehabilitation and under medical supervision, or (5) a spray ground that uses water from the municipal water supply or a source of potable water pursuant to §141.01 of this Code without impoundment, reuse or recirculation of the water.

(c) A school, day care facility, or summer day camp regulated under Articles 45, 47 and 48 respectively, of this Code and permitted pursuant to one or more of those Articles shall not require a permit under this Article, but shall comply with all other provisions of this Article.

(d) No alteration or repair or addition shall be made in a bathing establishment unless a written description of the alteration or repair or addition is submitted to the Department for review and approval prior to commencing work. Repair or remodeling of an existing permitted establishment shall be in compliance with design and construction requirements in this Article.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

Subd. (b) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

FOOTNOTES

5

[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.03 Definitions.

Adequate. "Adequate" means sufficient to accomplish the purposes for which something is intended, and to such a degree that no unreasonable risk to health or safety is presented. An item installed, maintained, designed and assembled, an activity conducted or act performed, in accordance with generally accepted standards, principles or practices applicable to a particular trade, business, occupation or profession, is adequate within the meaning of this Article.

Aquatic supervisory staff. "Aquatic supervisory staff" means an individual possessing the qualifications of Supervision Level II, Supervision Level III, or a supervising lifeguard having Level II qualifications, as provided in §165.15(b).

Bathing establishment. "Bathing establishment" means every indoor or outdoor place where: (1) there is a swimming, wading, spa, or special purpose pool, (2) there is a sauna or steam room with or without a pool, or (3) there is a spray ground with or without a pool, sauna or steam room.

Building code. "Building code" means the Building Code of the City of New York.

Certified pool operator. "Certified pool operator" means an individual possessing a current certification of the successful completion of a course in swimming pool technology administered by the Department.

Combined chlorine. "Combined chlorine" means the part of the total chlorine existing in water in chemical combination with ammonia, nitrogen, or organic compounds, mostly comprised of chloramines. Combined chlorine plus free chlorine equals total chlorine. Combine chlorine is calculated from the results of measuring the free and total chlorine with an appropriate test kit.

Cross connection. "Cross connection" means a physical connection between the potable water system and a non-potable source such as a pool, or physical connection between a bathing establishment water and the sanitary sewer or waste water disposal system such that non-potable water may flow into the potable water system.

Deep water or deep end. "Deep water or deep end" means those areas of a swimming pool where water is more than five feet deep.

Fill and draw pool. "Fill and draw pool" means a pool having no recirculation system. It has as the primary manner of cleaning the complete removal and disposal of the used water and replacement with water at periodic intervals. Public use of a fill and draw pool is prohibited.

Foot Shower. "Foot shower" means a shower head and similar water feature for use in rinsing debris from patrons' feet.

Major alteration, renovation or addition. "Major alteration, renovation or addition" means substantial physical change to the bathing establishment, shape, structure, enclosure, electrical system or other appurtenances, or to the water disinfection or recirculation system, or to the waste water system. It does not include replacement of equipment or piping previously approved by the Department provided that the type of and size of the equipment are not changed, nor does it include normal maintenance or repair.

mg/l. "mg/l" means milligrams per liter and is equivalent to parts per million (ppm).

Movable-bottom pool. "Movable-bottom pool" means a pool with a hydraulic lift arrangement for floor movement and a jet water self-cleaning system, or a movable panel to provide access for a robotic vacuum.

N.S.F. "N.S.F." means National Sanitary Foundation.

Pool. "Pool" means an artificial basin, tank, or chamber constructed of concrete, masonry, metal, or other impervious material which contains water and is operated for the purpose of bathing, wading, swimming, diving, water recreation, or therapy. This does not include bath tubs which are drained between uses.

Physical-therapy pool. "Physical-therapy pool" means a pool not intended for swimming or instruction in swimming. A "physical-therapy pool" is medically administered and specifically designed and constructed for hydro-therapy, medical treatment, physical or muscle relaxation, or reserved for use by persons with physical disabilities or other special purposes deemed appropriate by the Department.

Recirculation. "Recirculation" means the pump, piping, filtration system, chemical feed systems and accessories provided for treating the pool and/or spray pad water to meet the water quality standards in these rules.

Responsible person. "Responsible person" means a competent individual, at least 18 years of age, employed by the owner or operator of the bathing establishment, who shall be present at the bathing area at all times when the facility is officially open and who exercises control over the patrons, is trained in the use of lifesaving and safety equipment, and emergency procedures and the pool safety plan.

Shallow water or shallow end. "Shallow water or shallow end" means those areas of a swimming pool where the water is 5 feet deep or less.

Spa pool. "Spa pool" means a pool, primarily designed for therapeutic use or relaxation, which is normally not drained, cleaned or refilled for each individual. It may include, but is not limited to, hydrojet circulation, hot water, cold water, mineral bath, air induction, bubbles or any combination thereof. Spa pools shall have a maximum water depth of 4 feet at any point and may be equipped with aquatic seats within the perimeter of the pool. A "Spa pool" shall not be used for swimming or diving. "Spa Pool" means and includes "hydrotherapy pool," "whirlpool," "hot spa," or "hot tub."

Spray Pad. "Spray pad" means a specific area consisting of a play surface, spray features, and drains, upon which the bathers stand and are sprayed with water.

Spray Ground(s). "Spray Ground(s)" means an artificially created water jet, features or stream where water is sprayed from a structure or the ground in conjunction with a spray pad in which sprayed water is drained, collected, treated and re-circulated back for reuse purposes.

Spray Features. "Spray features" means the devices and plumbing used to convey the treated water to the spray pad to spray the patrons.

Spray Pad Treatment System. "Spray Pad Treatment System" means the equipment and processes used to filter, disinfect and circulate the water used for the spray pad and spray features.

Spray Pad Treatment Tank. "Spray Pad Treatment Tank" means the vessel to collect the water that has been sprayed on the spray pad and returned through the spray pad drains.

Superchlorination. "Superchlorination" means the addition of a sufficient amount of chlorinating compound to pool water and/or spray pad treatment tank water to remove combined chlorine (chlorine that has reacted with nitrogenous compounds) or destroy unwanted organisms in the pool water and/or spray pad treatment tank water. Generally the level of chlorine added is ten times the level of combined chlorine in the pool water and/or spray pad treatment tank water (in units of ml/l or ppm). Treatment of pool water and spray pad treatment tank water with non-chlorine chemicals to eliminate or suppress combined chlorine is not superchlorination.

Supervisory Staff. "Supervisory Staff " means an individual or individuals responsible for supervising bathers and monitoring the spray ground to ensure compliance with regulations for use, and who is familiar with its equipment and is trained in the operation and maintenance of the spray pad treatment system.

Swimming pool. "Swimming pool" means a pool of three foot depth or greater, designed to be used primarily for swimming or other recreation. This includes white-water slide, wave and movable bottom pools.

Turnover period. "Turnover period" means the time required to recirculate a volume of water equivalent to the water volume of the pool through the filtration system.

Wading pool. "Wading pool" means a pool intended to be used for wading by young children for general recreation or training and has a maximum water depth of 24 inches at any point.

Wave pool. "Wave pool" means a pool of special shape and design, with water-wave making machinery.

White-water slide. "White-water slide" means a facility consisting of a starting platform, one or more flumes, and a plunge pool.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

Bathing establishment amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Cross connection amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Foot shower added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Major alteration . . . amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Recirculation amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Spa pool amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Spray Pad added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Spray Ground(s) added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Spray Features added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Spray Pad . . . System added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Spray Pad . . . Tank added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Superchlorination amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Supervisory Staff added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Swimming pool amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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24 RCNY 165.05

RULES OF THE CITY OF NEW YORK

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.05 General Requirements for Permit Applications.

No person shall construct or operate a bathing establishment without prior construction authorization and a permit issued by the Department. No bathing establishment shall be constructed nor shall any major alterations or additions be made to any bathing establishment unless a completed application for the construction, alteration or addition is submitted to the Department for review and approval prior to commencement of work. The application shall include appropriate fees, application forms and other supplemental information as required by the specific circumstances. For bathing establishments with pools and/or spray grounds, the application package shall also include detailed engineering plans, specifications and an engineering design report. The permit shall be displayed in a conspicuous place at the facility. The Department may order any bathing establishment operating without a permit to close and remain closed until the facility has obtained and displays a valid permit issued by the Department.

(a) Application for a permit shall be made to the Department at least 30 days before the expiration of a permit or at least 30 days before the opening of any bathing establishment.

(b) **Change in ownership.** Within 30 days of the change in ownership of a bathing establishment, the new owner shall file the application for change in ownership with the Department.

(c) **Engineering plans, specifications and engineering report.** Every owner, personally or through his or her engineer or architect, shall submit to the Department plans and specifications covering construction, alteration or reconstruction of bathing establishments or installation or alteration of their equipment prior to the start of construction or installation. No deviation from the plans and specifications or conditions of approval may be made without prior approval of the Department. Plans, specifications and engineering reports shall be prepared by an engineer or architect licensed to practice in the State of New York, and shall include:

(1) **A scope of work letter.** The letter shall include a description of the facility location and background, including physical aspects of the surrounding environment and structures, land and seasonal ground water table, a detailed discussion of the proposed system and the work to be performed.

(2) **Engineering plans.** Three (3) identical sets of engineering plans each bearing the seal and signature of an engineer or architect licensed to practice in the State of New York, shall be submitted to the Department for review and approval. Detailed scaled and dimensional drawings shall include all of the following:

(A) **Plot plan and general site plan:**

(i) A plot plan or vicinity plan showing the precise location of the proposed bathing establishment and building and existing structures by references to known landmarks such as streets and public buildings.

(ii) Name of the project location, the scale in feet, the north point, and direction of prevailing wind (for outdoor pools).

(B) **Detailed plans:** All detailed plans shall be drawn to a suitable scale and include the following information:

(i) A bathing establishment layout plan showing all the proposed facilities: The locations of the bathing area, spray ground layout, spray pad area, diving boards, ladders, stairs, deck, walkway, walls or fences enclosing the pool, inlets, spray features, spray pad drains, main drains, pool and deck drains, vacuum fittings, drinking fountains, piping, hose bibbs, surface skimmer system, recirculation system and appurtenances, filtration system, disinfection equipment, sewage connections, water main, lighting fixtures and other proposed features related to the operation and safety of the proposed bathing establishment including bathhouse, toilet and shower.

(ii) Surface drainage management for the proposed bathing establishment. (For outdoor pools and spray grounds only.)

(iii) A flow diagram or schematic in elevation views of the water treatment and recirculation system.

(iv) Complete construction details, including dimensions, elevations and appropriate cross-sections.

(v) Piping plan containing the size, type and location of all piping, including elevations.

(vi) Construction notes, schedules, charts and other related data.

(3) **Specifications.** One set of complete specifications for the construction of the proposed bathing establishment, bather preparation facilities, recirculation system, filtration facilities, disinfection equipment and all other appurtenances shown on the detailed plans shall be submitted.

(4) **Engineering design report or calculations.** A summary of the design basis, including information relative to the capacity or patron loading (maximum and average), spray pad area, pool area and volume, hydraulic computation (including head loss in all piping and water treatment), chlorinator and pump sizing calculations, recirculation

equipment, filtration facilities, disinfection equipment, spray pad treatment system design calculations, spray feature flow rates, turnover and filtration rate, filter flow rates, pump curves, capacity of bathhouse and bather preparation facilities and toilet facilities, and all other appurtenances, shall be submitted.

(d) **Supplemental or additional information.** A completed application shall be accompanied by any supplemental information which the Department deems necessary for review. For bathing establishments using water other than the municipal public water supply, the application should also include source, quality, quantity available and characteristics of water supplied to the bathing establishment including alkalinity, pH, iron and manganese.

(e) No change in location or construction of the project shall be made from plans and specifications that have been approved without first submitting details of the proposed changes to the Department and receiving subsequent approval.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

Opening par amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (c) par (2) subpars (A), (B) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (c) par (3) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (c) par (4) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (d) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.07 Construction Inspection and Certification.

(a) **Certification.** All bathing establishments with pools shall file on completion of the construction, modification or addition, and prior to public use of new facilities or equipment, a construction compliance certificate to the Department. This certificate shall be prepared and signed by a professional engineer or architect licensed to practice in New York State. The certificate shall include a written statement that the establishment has been constructed in accordance with the plans and specifications approved by the Department.

(b) The applicant shall notify the Department of the completion of construction, modification, alteration or addition in order to schedule a compliance inspection. An approval for construction compliance inspection will be granted by the Department when all of the required items are completed to the Department's satisfaction.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.09 Requirements for Permit Approval.

All establishments shall be designed, constructed and completed in accordance with the requirements of this Article. For all bathing establishments:

(a) A completed and approved safety plan, as required by §165.19.

(b) Certificate of Occupancy for the bathing establishment, from the New York City Department of Buildings including an approval letter for underwater lighting construction and certificates of inspection for electrical work (for saunas), and plumbing and certificate of inspection for the gas fired heating system (for steam rooms).

(c) Waste water or sewer discharge permit from an approved agency (for pools and/or spray grounds) as required by §165.33.

(d) Copies of Aquatic Supervisory Certificates, as required by §165.15.

(e) Copies of Pool Operator Certificate, as required by §165.15.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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Subd. (a) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (c) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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24 RCNY 165.11

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.11 Enforcement.

(a) The most recent inspection report shall be readily available for inspection by the Department at the facility.

(b) **Public health hazards and closing criteria.** Where one or more of the following public health hazard conditions exist, the bathing establishment may be immediately closed by the Department and shall remain closed until the hazardous condition(s) are corrected. No person shall use the facility until the violations are corrected in compliance with the provisions of this Article. The facility shall remain closed until the Department has authorized the reopening of the facility. Public health hazard shall mean but shall not be limited to:

(1) **For pools:**

(A) Failure to provide adequate level of supervision, as required by §165.15.

(B) Failure to provide the minimum disinfectant residual levels, as required by §165.23.

(C) Failure to continuously operate the swimming pool's filtration and disinfection equipment.

(D) Use of an unapproved or contaminated water supply source for potable water use.

(E) Overhead electrical wires within 20 feet of the pool, except where covered and secured in a ceiling.

(F) Unprotected electrical circuits or wiring within 10 feet of the pool.

(G) Failure to maintain emergency lighting source.

(H) Inadequate number of lifesaving equipment on pool deck, as required by §165.17.

(I) Pool bottom or main drain grate not visible.

(J) Absence of or improper depth markings at a pool.

(K) Plumbing cross-connections between the drinking water supply and pool water or between sewage system and the pool's filter backwash facilities, or other cross-connections in the pool plumbing.

(L) Failure to provide and maintain an enclosure around the pool area that will prevent access to the pool during the hours in which the pool is not open for use.

(M) Use of unapproved chemicals or the application of chemicals by unapproved methods to the pool water.

(N) Broken, missing or unsecured main drain grates in the pool.

(O) Overcrowding of the pool that results in inability to supervise bathers.

(P) Glass or sharp objects in pool or on deck area.

(Q) Failure to provide pool safety plan approved by the Department.

(R) Spa pool water temperature exceeds 104 degree Fahrenheit.

(S) Any other condition dangerous to life or health.

(2) **For sauna and steam rooms:**

(A) Sauna temperature exceeds 194 degrees Fahrenheit.

(B) Steam temperature exceeds 120 degrees Fahrenheit.

(C) Door not free swinging or does not swing out.

(D) Viewing window not provided.

(E) Monitoring by attendant inadequate, or one hour timer not provided, as required by §165.63.

(F) Alarm not provided, inoperable, inaudible or not operating in correct range. Alarm not installed to cut off heat in sauna or steam room when activated.

(3) **For spray grounds:**

(A) Failure to provide adequate level of supervision of the spray ground as required by §165.15.

(B) Failure to provide the minimum disinfectant residual levels and the minimum ultraviolet light dosage as required by §165.23.

(C) Failure to continuously operate the spray ground filtration and disinfection equipment.

(D) Use of an unapproved or contaminated water supply source for potable water use.

(E) Overhead electrical wires within 20 feet of the spray ground, except where covered and secured in a ceiling.

(F) Unprotected electrical circuits or wiring within 10 feet of the spray pad.

(G) Broken or missing drain grates on the spray pad.

(H) Failure to maintain emergency lighting source.

(I) Plumbing cross-connections between the drinking water supply and spray ground treatment system or between sewage system and the spray pad's filter backwash facilities, or other cross-connections in the plumbing.

(J) Use of unapproved chemicals or the application of chemicals by unapproved methods to the spray ground water.

(K) Glass or sharp objects on spray pad or deck area.

(L) Visible contamination of the spray pad and/or spray pad treatment tank by a potentially toxic chemical or a bacteriological substance that could present a hazard to the public.

(M) Any other condition determined by the Department to be dangerous to life or health.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

Subd. (b) open par amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (b) par (3) added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.13 Modification.

The Department may approve on written application and after review, a modification when strict application of any provision of this Article presents practical difficulties or unusual hardships. The Commissioner in a specific instance may modify the application of such provision consistent with the general purpose of this Article and upon such conditions as, in his or her opinion, are necessary to protect the health or safety of bathers.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

SAFETY, OPERATION AND MAINTENANCE

REQUIREMENTS

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.15 Certifications, Supervision Coverage and Surveillance Requirements.

(a) All bathing establishments shall be maintained and operated in a safe, clean and sanitary condition at all times.

(b) **Certifications.** All bathing establishments shall be operated and supervised by the required certified personnel. The pool operator shall not hire or retain any person who does not have verifiable aquatic supervisory staff qualifications. Copies of the certificates or other documents showing possession of such qualifications shall be kept on file at the facility and shall be readily available for inspection by the Department.

(1) **Pool operator.** A certified pool operator shall be designated and shall be responsible for the operation of the bathing establishment in compliance with this Article. No person who is charged with the operation of a bathing establishment shall engage in or be employed in such capacity unless the person obtains a certificate indicating successful completion of a course in swimming pool technology administered by the department. A refresher course in swimming pool technology may be required for a licensed pool operator whenever deemed necessary by the

department. The department may require that a refresher course be taken when continuing violations of the Article are found, when a water borne disease outbreak implicates the pool and/or spray ground water or sanitary conditions at the pool and/or spray ground, or when the department requires such a course to acquaint the operator with current developments in pool operation technology.

(2) **Aquatic supervisory staff.** Except in a physical-therapy pool, appropriately certified aquatic supervisory staff shall be present whenever the pool is open. A minimum of one supervising lifeguard is required for pools that require three or more aquatic supervisory staff.

The aquatic supervisory staff shall meet the following minimum requirements:

(A) **Supervision Level II-Pool Lifeguard.**

(1) Shall be at least 16 years old (or 15 years old if a supervisory lifeguard is present), and

(2) Shall possess a current American Red Cross Basic Life Support for the Professional Rescuer Cardiopulmonary Resuscitation (CPR) certificate or equivalent American Heart Association certificate, or an equivalent certificate approved by the New York State Department of Health. Certification period shall not exceed one year, and

(3) Shall possess a current American Red Cross Lifeguard Training Certification, or an equivalent certificate approved by the New York State Department of Health.

(B) **Supervision Level III and IIIA.**

(1) **Level III.**

(i) Shall be at least 18 years old (or 16 years old if certified as Level II Lifeguard); and

(ii) Shall possess a current American Red Cross Community-Cardiopulmonary Resuscitation (CPR) certificate, or equivalent certificate approved by the New York State Department of Health. Certification period shall not exceed one year, except if assisting a lifeguard as specified in §165.15 (b)(2)(B)(2) below; and

(iii) Shall be competent to understand and apply the provisions of this Article and the Safety Plan, evaluate environmental hazards, use lifesaving equipment, and control bathers and crowds.

(2) **Level IIIA.** A supervision Level IIIA staff assists a lifeguard with direct supervision of bathers as specified in §165.15 (c)(1)(C)(6) below. No person shall be qualified under this paragraph unless such person possesses certification in Lifeguard Management issued by the American Red Cross or a certificate issued by a certifying agency determined by the State Commissioner of Health to provide an adequate level of training in aquatic injury prevention and emergency response. Certification shall be valid for the time period specified by the certifying agency but shall not exceed a consecutive three year period from course completion.

(C) **Supervising Lifeguard.**

(1) Supervising lifeguard shall have the qualifications for Supervision Level II.

(2) Supervising lifeguard shall have at least two years adequate life guarding experience.

(c) **Supervision.** For pools, aquatic supervisory staff shall be on the pool deck and shall provide continuous visual supervision and surveillance of the patrons in their assigned or designated area of coverage, without interference or interruption of his/her duties unless additional supervisory staff is provided. The staff shall not be subject to duties that would distract their attention from proper observation of patrons in the pool area, or that would prevent immediate assistance to persons in distress in water. The aquatic supervisory staff shall clear the water of bathers when the pool

area is left without adequate supervision. The following is the minimum number of aquatic supervisory staff required for visual surveillance of the entire pool area(s) that are open to bathing. Additional aquatic supervisory staff may be required by the Department whenever it is necessary for the protection of the patrons. The Department may consider such factors as pool size and shape, diving board use, patron decorum and usage by developmentally disabled patrons.

(1) **Swimming pools:**

(A) Pools with less than 3,400 square feet of surface water area: at least one Supervision Level II Lifeguard on duty for every 75 bathers.

(B) Pools with 3,400 square feet or greater in surface water area:

(1) At least one Supervision Level II Lifeguard shall be provided for each 3,400 square feet of pool surface area or fraction thereof.

(2) When the number of bathers exceeds or is likely to exceed 50 percent of the pool bather capacity based on 25 square feet of pool surface area per bather, at least one additional Supervision Level II Lifeguard shall be provided.

(3) At pools required to provide three or more Aquatic Supervisory Staff, a Supervising lifeguard is required.

(4) When included in the department approved safety plan, the pool operator may limit the portions of the pool open to bathers and provide the required aquatic supervisory staff consistent with the pool area open.

(C) **Use of pool for lap swimming or similar restricted usage:** When included in the department approved safety plan, usage of the pool limited to lap swimming or an organized small group activity, may be supervised by fewer lifeguards than required based solely on surface water area.

(2) **Wading pools:** At least one Level III supervisor shall be on duty.

(3) **Spa pools:** Except for spa pools described in §165.01(b), at least one Level III supervisor shall be on duty and provide periodic supervision at least once every 15 minutes, or as specified in the pool safety plan approved by the department.

(4) **Physical-therapy pools:** Except for spa pools described in §165.01(b), supervision by licensed health care providers such as physicians or therapists, qualified as Level III supervisors is required. Such person shall be in the pool or on the pool deck whenever pool is in use.

(5) **Wave pools:** A minimum of three Supervision Level II lifeguards, two of whom are in lifeguard chairs outfitted with the emergency switch that will immediately stop the wave machine, shall be present whenever the wave machine is in operation.

(6) **Pools in usage during instructional activities:** When instructional activities occur, including but not limited to learn to swim programs, physical education classes and swim team activities, and the required Supervision Level II staff (lifeguards, as per §165.15(b)(2)) provide the instruction, at least one additional staff meeting at least Supervision Level III must be provided for each aquatic supervisory staff engaging in instructional activities. When a Supervision Level IIIA staff is utilized to assist a Supervision Level II (lifeguard) staff with direct supervision of bathers during instruction, the Supervision Level IIIA staff must possess certification in aquatic injury prevention and emergency response as specified in §165.15(b)(2)(B)(2) above. The written Safety Plan must describe the duties, positioning at pool side and interaction between the lifeguard and Level III staff which ensures adequate bather supervision and emergency response. Note: where instructors, in the water or on the deck, supplement the required on-deck lifeguard(s) who do not provide instruction, no extra Level III supervision is required.

(7) **White-water slide:** Supervision by Supervision Level II lifeguards shall be provided in a number determined

by the Department depending on the design of the facility. A proposed supervision staff plan shall be submitted in writing to the department for review and approval.

(d) **Surveillance requirements for sauna and steam rooms:** If a one-hour timer is not provided, as provided for in §165.63, an attendant who meets the definition of responsible person, shall inspect the facility at a minimal interval of 15 minutes during all periods of operation of a sauna and steam room and shall maintain a daily log of inspections.

(e) **Supervision requirements for spray grounds:** At least one Supervisory Staff as defined in §165.03, shall provide periodic supervision of the spray ground.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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Subd. (b) par (2) subpar (B) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (b) par (2) subpar (C) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (c) par (6) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (c) par (7) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

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Subd. (e) added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.17 Lifesaving and Safety Equipment.

Either one commercially prepared 24-unit first aid kit or a minimum supply of band aids, bandage compresses and self-adhering gauze bandages must be provided at the spray ground unless otherwise specified in the safety plan. For facilities with pools, the following minimum equipment shall be kept in good repair and readily accessible near the pool deck at all times when the pool facility is open for use:

(a) **Lifesaving and safety equipment.**

(1) At all pools requiring a Level II lifeguard, the following lifesaving and safety equipment shall be provided:

(A) One rescue tube with an attached line for each lifeguard on duty.

(B) One reaching pole at least 15 feet long.

(C) A full size commercially available spine board (or a spine board 6 feet long and a minimum 16 inches wide) provided with straps and head immobilizer to aid in immobilization of a victim, and handholds.

(D) First aid kit. One commercially prepared 24-unit first aid kit or, a minimum supply of band aids, bandage compresses and self-adhering gauze bandages.

(E) Resuscitation equipment shall be available as specified in the Rules of the Department, Title 24 Rules of the City of New York Chapter 18 (24 R.C.N.Y. Ch. 18).

(F) Two blankets.

(2) At pools requiring a Level III supervisor, the following lifesaving and safety equipment shall be provided:

(A) First aid kit. One commercially prepared 24-unit first aid kit or, a minimum supply of band aids, bandage compresses and self-adhering gauze bandages.

(B) Resuscitation equipment shall be available as specified in the Rules of the Department, Title 24 Rules of the City of New York Chapter 18 (24 R.C.N.Y. Ch. 18).

(C) Two blankets.

(b) **Lifeguard station.** Elevated lifeguard chairs shall be provided at all pools having a surface area greater than 2,000 square feet. One elevated lifeguard chair is required for each 3,400 square feet of pool surface area or fraction thereof. The chairs shall be located so as to provide a clear, unobstructed view of the pool bottom in the pool area under surveillance.

(c) **Emergency telephone and emergency contact list.** A telephone shall be immediately accessible within 300 feet unimpeded distance of the pool water (an unlocked door or gate shall not be considered an impediment) for emergency communications in the bathing establishment. The telephone numbers of local police, emergency medical services, nearest hospital, fire department, and poison control center shall be posted in a conspicuous place near the telephone. The name, address and telephone number of the establishment shall be listed by the telephone.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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24 RCNY 165.19

RULES OF THE CITY OF NEW YORK

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.19 Pool Safety Plan.

The operators of pools and/or spray grounds shall develop, maintain and implement a written safety plan which consists of policies and procedures to be followed by the personnel during normal operation and emergencies for protecting the public from accidents and injuries. Safety plans must include procedures for daily bather supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan shall be approved by the department and shall be accessible for use and inspection by the department at all times. The owner or pool operator shall review the plan periodically and update the plan whenever a change occurs in the facility. Changes made to the plan shall be submitted to the department for approval before implementation.

HISTORICAL NOTE

Section amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and

Purpose No. 33]

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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24 RCNY 165.21

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ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.21 Facility Operating Policy.

(a) The operator shall comply with the minimum requirements of this Code governing safety and sanitation and shall enforce such additional policy as may be necessary to protect the health and safety of the public.

(b) Signs required to be posted shall be posted conspicuously pursuant to §165.41(n) and §165.63(h).

(c) **Contagious or infectious disease control.** Any person having any contagious disease shall be excluded from use of the pool. This includes skin disease, sore or inflamed eyes, a cold, ear or nasal discharges and other communicable diseases not readily apparent by a visual inspection.

(d) **Protection against infection.** Persons having any considerable area of exposed subepidermal tissue, open blisters, cuts, boils or other evident skin or other bodily infection shall be excluded from a bathing establishment.

(e) **Wastes and contamination.** Urinating, expectorating or blowing the nose or otherwise introducing human

waste or other contaminants into the pool is prohibited. Children's diapers shall be fully enclosed with impervious material so that liquid and solid wastes are contained therein and do not contaminate the pool water.

(f) **Alcohol.** The pool operator shall not permit persons under the influence of alcohol or who are exhibiting erratic behavior in the pool area.

(g) **Patron control.** Patrons shall be showered and dressed in bathing attire before entering the pool or entering upon walks immediately adjacent to pools.

(h) **Conduct.** The pool operator shall not permit patron conduct within the pool facility that is dangerous or compromises the safety of the patron involved or others in the facility. No boisterous or rough play, except supervised water sports, is permitted.

(i) **Diving.** Diving in water less than eight feet deep is prohibited, except for competitive swimming or training activities appropriately supervised by qualified staff.

(j) **Outdoor pools.** Swimming is prohibited at outdoor swimming pools when lightning is present, including a 15-minute period after the last lightning is observed.

(k) **Spa pools.** The use of oils, body lotions and minerals shall be prohibited.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and

Purpose No. 17]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

Rules of the City of New York

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

24 RCNY 165.23

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.23 Water Chemistry and Testing Requirements.

The chemical quality of water in the pool and/or spray ground shall not cause irritation to the eyes or skin of the bathers or have other objectionable physiological effects on patrons. The water shall be chemically balanced to maintain clarity, proper disinfection, total alkalinity, and pH levels as specified below:

(a) **Disinfectant residual.** All pools and/or spray grounds in use shall be automatically and continuously disinfected by means of equipment that is in compliance with the provisions of this Article and that uses a disinfectant which is approved by the department. Silver/copper ion generators, ozone and other disinfectants may be used only as a supplement to chlorine or bromine.

(1) **Chlorine residual.**

(A) **Pools.** Where chlorine is used as a disinfectant, and the pool water pH is less than or equal to 7.8, the dosage of

chlorine or chlorine compound shall be sufficient to maintain a concentration of at least 0.6 mg/l free chlorine throughout the pool. When pH is between 7.8 and 8.2, a concentration of at least 1.5 mg/l free chlorine residual shall be maintained. During use, pool water shall not exceed a free chlorine residual of 5.0 mg/l or a pH of 8.2. The pH of water in the spa pool shall be maintained between 7.2 and 7.8, and a minimum free residual chlorine of 1.5 mg/l shall be provided. Spa pools shall be chlorinated to 10 mg/l (shock treatment) at least once a week at end of daily usage period.

(B) **Spray Grounds.** When calcium hypochlorite or sodium hypochlorite are used to disinfect a spray pad and the spray pad treatment tank, the dose of chlorine or chlorine compound shall be sufficient to maintain a concentration of at least 2.0 mg/l free chlorine throughout the system including the treatment tank and water emanating from the spray features. A free chlorine residual of 10.0 mg/l shall not be exceeded in any spray pad treatment tank during use. Spray pad treatment tank water pH shall be maintained between 7.2 and 7.8.

(2) **Superchlorination and superoxidation.** When combined chlorine (chloramines) in excess of 0.5 mg/l is detected in pool and/or spray ground treatment tank water, the water shall be superchlorinated to attain a free chlorine concentration of at least 10 times the combined chlorine concentration, or oxidized by other means to eliminate the combined chlorine. Hand feeding of chemicals directly into the pool and/or spray ground treatment tank is permitted for purposes of superchlorination or superoxidation when the pool and/or spray ground is closed to the public.

(3) **Bromine.**

(A) When bromine is used as a disinfectant, the pH of water shall be maintained between 7.2 and 7.8, and a minimum bromine residual of 1.5 mg/l shall be provided. Spa pools shall be maintained at a bromine residual between 3 mg/l and 6 mg/l. A maximum of 6 mg/l bromine residual shall be permitted in any pool during use.

(B) The pH of the spray pad treatment tank water and water emanating from the spray features shall be maintained throughout the system between 7.2 and 7.8 and a minimum bromine residual of 4.4 mg/l shall be provided.

(4) **Silver/copper.** When silver/copper or copper ion generators are authorized, the concentration of copper shall not exceed 1.3 mg/l and the concentration of silver shall not exceed 0.05 mg/l.

(5) **Ozone.** When ozone is authorized, ozone concentration in pool water shall not exceed 0.1 mg/l and the ambient air zone concentration shall be less than 0.1 mg/l at all times either in the vicinity of the ozonator or at the pool water surface.

(6) **Ultraviolet Light.** The light intensity meter reading of the ultraviolet unit shall be monitored and recorded at least two times daily. The light intensity shall be maintained at the manufacturer's specified level for the flow rate. When the output intensity falls below the setpoint intensity, conditions causing decreased ultraviolet light intensity at the sensor shall be evaluated and corrected. The ultraviolet lamp(s) shall be replaced when the decreased ultraviolet light intensity is due to lamp failure.

(7) **Other disinfectants.** Use of cyanuric acid-based chlorine (or any other chlorine stabilizer) is prohibited. Pools found using or containing any cyanuric compound shall be closed, drained and refilled prior to continued use. Disinfectants other than those listed in §165.45(l) may be used only if approved by the department and the New York State Department of Health.

(b) **Total alkalinity.** The total alkalinity of the pool water shall be maintained within the range of 80 to 120 mg/l.

(c) **Testing kits.** Each pool or spray ground facility shall have functional colorimetric water testing equipment for free chlorine and combined chlorine, or total bromine; pH; total alkalinity; calcium hardness; copper concentration when silver/copper or copper ion generator is used; and ozone concentration when ozone generating equipment is used. FAS-DPD test kits are acceptable. A supply of appropriate reagents for making each type of test shall be maintained on site, shall be stored in their original labeled containers and shall be replaced every six months or as recommended by the

manufacturer. When colorimetric tests are used, color standards shall be furnished for each of the tests, that allow an accurate comparison of the sample to be tested from standpoint of color and density, and shall be reasonably permanent and no fading. Electronic residual and pH monitoring devices may be used in addition to the test kit.

(1) Water testing equipment for the disinfectant used in the water shall be maintained on site. The equipment for determining pH shall include at least five increments with a range of pH 6.8 to 8.2, accurate to the nearest 0.2 pH unit.

(2) Where chlorine is used as a disinfectant, a DPD (Diethyl-P-Phenylene Diamine) test kit with at least ten chlorine color standards with the following increments: 0.2, 0.4, 0.6, 0.8, 1.0, 1.5, 2.0, 3.0, 5.0 and 10 mg/l as minimum. If other halogens are used, an appropriate scale shall be provided.

(3) When bromine is used as a disinfectant, a colorimetric test kit for determining free bromine residual and pH shall be available. The test kit shall include at least seven bromine standards covering a range of 1.0 to 7.0 mg/l.

(4) Standard testing equipment for determining total alkalinity and calcium hardness, and saturation index. [See paragraph (e), Saturation Index, below.]

(5) When silver/copper or copper ion generator is authorized, a test kit for determining the concentration of copper shall be available.

(6) When ozone generating equipment is authorized, a test kit or equipment for determining the concentration of ozone in water shall be available.

(d) **Records and testing.** A bathing establishment operation record including all test results shall be maintained on a daily basis by the establishment. Whenever tests indicate that an inadequate disinfectant level, inadequate ultraviolet light intensity or inappropriate pH value are present, immediate action shall be taken to reestablish an appropriate disinfectant level and pH value. Pool water shall be manually tested and results recorded as indicated below, including pool water systems equipped with an automatic monitoring device to control pH and disinfectant residual in water:

(1) For pH, free chlorine or bromine residual the water shall be tested at least three times. Tests shall be at the beginning of the day, during the day's peak bather load, and at the end of the day; or more frequently, as needed, throughout each day to maintain the standards required by this Article.

(2) For combined chlorine the water shall be tested at least twice a week.

(3) Total alkalinity and calcium hardness or saturation index shall be tested at least once a month. [See paragraph (e), Saturation Index, below.]

(4) Copper concentration (when silver/copper or copper ion generator is used) shall be tested at least once a month.

(5) Ozone concentration (where ozone is used) shall be tested in accordance with the manufacturer's specifications or at least once a day.

(6) The ultraviolet light intensity meter reading of the ultraviolet light unit shall be monitored and recorded at least two times a day.

(e) **Saturation index.** For the purposes of this Article the saturation index shall be used to determine chemical balance of the water, and whether the water is corrosive (undersaturated) or scale forming (oversaturated). The Department may require that the bathing establishment determine the saturation index monthly or at any other frequency required to maintain water clarity, proper disinfection, alkalinity and pH levels.

S.I. = pH + TF + CF + AF - 12.1 Where: pH = actual reading Where: 12.1 = constant Where: TF = Temperature Factor (Table 1) Where: CF = Calcium Hardness Factor (Table 1) Where: AF = Total Alkalinity Factor (Table 1)

When saturation index is between -0.5 and +0.5, the water is balanced and within tolerance limits. The optimum saturation index is zero.

When saturation index is above +0.5, the water is super-saturated with $CaCO_3$ which may deposit a coating or scale in the pipeline, particularly metal filters, valves and pumps.

When saturation index is below -0.5, water will dissolve $CaCO_3$ and may be corrosive.

Table 1: Numerical Values for Saturation Index Formula

TemperatureF° (C°)	TF	CalciumHardness	CF	TotalAlkalinity	AF
32 (0)	0.0	5	0.3	5	0.7
37 (3)	0.1	25	1.0	25	1.4
46 (8)	0.2	50	1.3	50	1.7
53 (12)	0.3	75	1.5	75	1.9
60 (16)	0.4	100	1.6	100	2.0
66 (19)	0.5	150	1.8	150	2.2
76 (24)	0.6	200	1.9	200	2.3
84 (29)	0.7	300	2.1	300	2.5
94 (34)	0.8	400	2.2	400	2.6
105 (40)	0.9	800	2.5	800	2.9
128 (53)	1.0	1,000	2.6	1,000	3.0

Example: Given temperature 68 degrees, total hardness 200 mg/l, total alkalinity 20 mg/l, $CaCO_3$ and pH = 7.8

S.I. = pH + TF + CF + AF - 12.1 *(Calcium hardness = 0.70 × 200 = 140 mg/l)

S.I. = 7.8 + 0.52 + 1.76 + 1.22 - 12.1 = (-) 0.8 Therefore, the water is corrosive.

Note: Saturation index is best maintained slightly on the positive side within the tolerance limits.

Normal Control Levels: pH = 7.4 - 7.8

Temperature: 78 - 80 degrees (indoors)

Total alkalinity: 80 - 120/mg/l

Free chlorine: 0.6 (minimum) saturation index (-) 0.5 - (+)

0.5 calcium hardness: 180 - 250 mg/l

Alkalinity Control: To increase-$1\frac{1}{2}$ lb of sodium bicarbonate $NaHCO_3$ baking soda will raise the alkalinity of 10,000 gallons of water by 10 mg/l.

To lower-add no more than one pint ($\frac{1}{8}$ gallon) of muriatic acid per 5,000 gallons of pool water (or 1.25 lb of sodium bisulfate). Addition of such compounds may be added by hand into the water while the pool is closed. This will lower alkalinity by 12 mg/l.

pH: To increase-use soda ash.

To decrease-muriatic acid or sodium bisulfate.

Hardness Control: Calcium hardness is assumed to be 70% of total hardness. To increase-1 lb of calcium chloride will raise the calcium hardness of 10,000 gallons of water by 11 mg/l. It should be added in small amounts by hand into the water while the pool is closed. To lower, dilute with soft water.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and

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Subd. (b) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (c) heading, open par amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (c) par (1) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (c) par (2) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (d) heading, open par amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (d) par (1) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (d) par (2) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (d) par (6) added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

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FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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24 RCNY 165.25

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.25 Water Quality Standards.

The water in the pool and/or spray pad treatment tank shall meet the following water quality standards:

(a) **Water temperature.** The maximum water temperature for all spa pools shall not exceed 104 degrees Fahrenheit. A thermostatic control for water shall be provided. An audible alarm system shall be installed and maintained to warn of any temperature over 104 degrees Fahrenheit.

(b) **Water clarity and turbidity.**

(1) For pools, the water in a pool shall be sufficiently clear for a black and white object, four inches in diameter (known as Secchi disk), placed at any location on the bottom of the pool, to be readily visible when viewed from the pool deck. The water clarity test shall be performed as frequently as necessary throughout each day to maintain the standards required by this Article.

(2) **Spray Grounds.** The turbidity in the spray pad treatment tank shall not exceed 3 nephelometric turbidity units (NTU) at any time during use. If this turbidity level is exceeded, the spray pad shall be closed for use until the spray pad treatment system reduces the turbidity to less than 3 NTU.

(c) **Water physical quality.** The bottom and sidewalls of pool shall be kept free of sediment and visible soil, and the pool water surface and/or spray pad treatment tank water surface shall be kept free of visible floating matter.

(d) **Water bacteriological quality.** Samples of water may be collected by the department for microbiological analysis by a laboratory approved by the New York State Department of Health, for evaluating pool and spray pad water quality. The coliform bacteria level shall not exceed 4 colonies per 100 milliliters in more than one sample examined each month. When the membrane filter technique is used, or when the fermentation tube method is used, coliform bacteria shall not be present in more than 10 percent of portions analyzed in any month; and total bacteria shall not exceed 200 colonies per milliliter.

HISTORICAL NOTE

Section amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.27 Sanitation and Safety.

(a) **Pool and pool area.** (1) **General.** The pool shall be maintained free from sediment, lint, dirt and hair. The pool walls and bottom shall be vacuumed or brushed daily or as needed to remove visible material when pool is closed. The walls, floors, ceilings and equipment shall be maintained so that they are protected from deterioration.

(2) Pool and/or spray ground enclosures or fencing and gates shall be maintained in a manner consistent with §§165.41(i)(l) and/or165.42(g)

(3) Depth markings and safety lines for pools shall be provided and maintained in accordance with the provisions of §165.41(o) and be clearly visible and readable.

(4) Safety signs for pools shall be maintained in a manner consistent with §165.41(u).

(5) **Decks, Spray Pad and Features.**

(A) **General.** Pool and/or spray decks shall be rinsed daily to remove any materials or contaminates on the surface of the pool deck and/or surface of the spray pad. The deck shall be kept clean and free of puddled water. Cracks in the spray pad and/or pool decks shall be repaired when they may be a potential for leakage, present a tripping hazard, a potential cause of lacerations, or impact the ability to properly clean and maintain the pool and/or spray pad area.

(B) **Pools.** Indoor pool decks shall be disinfected at least weekly. The walks, overflow gutters, counters, lockers, equipment, furniture, interior partitions and walls shall be kept in good repair, clean and sanitary. The deck shall be kept free of obstructions and tripping hazards for at least a five-foot (5') width walkway around the entire pool.

(C) **Spray Pad and Features.** The water must be flushed to waste and not discharged into the spray pad treatment tank. Flushing may be accomplished by use of a hose supplied with potable water or by operation of the spray features providing it adequately flushes the entire pad surface and is discharged to waste. The spray pad and features shall be kept free of sediment and visible soil.

(6) **Spa pools.** Spa pools shall be drained and cleaned when needed, and not less than once every two weeks. Placement of chairs or other furniture shall be prohibited within three feet of the edge of any spa pool.

(7) **Food and drinks.** Glass and sharp objects are prohibited in the pool and on spray pad and all deck areas.

(8) For pools, ladders, handrails, diving equipment, lifeguard chairs, slides and other deck equipment shall be kept firmly secured to the deck and maintained in good repair.

(9) Floats or tubes not in use shall be removed from pool.

(10) **Safety ropes (for pools).** Safety ropes shall be kept in place except when pool is being used exclusively for lap swimming or competition.

(11) **Starting blocks (for pools).** Starting blocks shall only be used during supervised practices or swim meets, otherwise the starting blocks shall be removed or secured to prevent use by an untrained person.

(12) **Deck slides (for pools).** Deck slides shall be installed and maintained in accordance with the provisions of §165.41(q).

(13) **Rolling bulkheads (for pools).** Rolling bulkheads, when used, shall be provided with traction wheels running on the pool floor or alternatively in the overflow gutter. When not in use these should be stored in a safe manner.

(14) **Hosing.** A minimum length of 50 feet of hosing shall be provided and available to flush the entire deck area. Hose bibbs shall have antisiphonage devices. The hosing unit shall not be used to fill make-up water into the pool.

(15) **Water level for diving (for pools).** The water level in the pool shall be maintained to provide the required depths in areas for diving as provided below:

(A) Swimming pools equipped with diving boards prior to March 30, 1988, shall meet the minimum water depth and swimming pool and diving board dimensions shown in Columns (1) to (4) in Table 2. The minimum water depth requirement for one meter boards used only for competitive use and training or used in physical education instruction at schools shall meet criteria in Columns 2, 3 and 4 for 26"-30" boards listed in Table 2.

(B) Swimming pools equipped with diving boards after March 30, 1988, shall meet the criteria shown in Table 3. Minimum dimensions for pools with diving equipment are shown in Table 3 of §165.41.

(C) Head-first diving from the pool deck is prohibited in water depths less than eight feet except during competitive swimming or swimmer training activities.

Table 2: Minimum Water Depth Requirement

Board Heightabove Water	(1) Minimum-Board Over-hangover Water	(2) MinimumWater Depthin Diving Area	(3) Minimum DivingArea for-ward ofBoard TipWidth	Length	(4) MaximumSlope to 5'Water Depth
Up to 24"	2'6"	8'	4'	13'6"	1:3
> 24" - 26"	2'6"	8'	81/2'	10'	1:3
> 26" - 30"	3'	9'	16'	10'	1:3
> 30"	4'	11'	16'	20'	1:2
1 meter	4'	11'	16'	16'	1:3
> 1 meter	6'	12'	20'	20'	1:2

(b) **Bather loads.** The number of patrons within a pool enclosure shall not exceed the maximum permissible loading established by §165.41(m). The bather load shall be posted at entrance or at a location where it can be seen by all patrons. The certified pool operator shall be responsible for controlling the number of bathers so that the maximum capacity is not exceeded.

(c) **Bathhouse and bather preparation facilities.** All facilities shall be ventilated and maintained. The floors, walls, fixtures, showers, and toilets shall be kept clean, free of dirt and debris and in good condition. Floors shall be maintained in a slip-resistant condition. Soap dispensers shall be filled and operable. A supply of toilet paper shall be provided at each toilet at all times. All lavatories shall be provided with soap, paper towels or electrical-drying units, and covered waste and sanitary napkin receptacles where appropriate. Showers, when provided, shall be supplied with water at a temperature no more than 110°F Thermostatic, and tempering or mixing valves shall be kept in good operation to prevent scalding of the users. Shower curtains shall be kept clean. Foot showers, if used, shall be kept clean and free of puddled water. The use of foot baths is prohibited.

(d) **Care of suits and towels.** All swimming suits and towels used by the public and maintained for public use shall be washed with a detergent in hot water, rinsed and thoroughly dried after each use.

(e) **Security.** All doors or gates into the bathing area shall be maintained and checked for proper operation. They shall be kept closed and locked when the facility is closed.

(f) **Noise.** If the noise is excessive such that instructions cannot be heard, corrective action shall be taken.

(g) **Pools temporarily out of service or abandoned.** Pools temporarily not in use or not intended for use shall either be covered securely, or emptied, or secured in a manner approved by the department, by the owner of the property upon which the pool is constructed, or the bathing establishment operator or owner. Water shall not be permitted to accumulate around the pool or on pool covers so as to provide a breeding area for mosquitoes or other insects.

(h) **Sauna and steam rooms.** All sauna and steam rooms shall be maintained pursuant to manufacturers' instruction and operated in a safe, clean and sanitary condition which shall include compliance with the following requirements:

(1) Saunas shall be inspected regularly for the required maintenance to heater, controls and benches. Wood surfaces showing any signs of deterioration shall be replaced.

(2) Pouring water on heater or heating elements is prohibited during operating hours.

(3) Flammable materials such as gasoline, thinners, or paints, shall not be kept at the steam generator area.

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Subd. (c) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.29 Operation and Maintenance of Mechanical Equipment.

(a) **Manual.** A manual for operation of the pools and/or spray grounds shall be provided, maintained and available to the certified pool operator. It shall include instructions for each filter, pump or other piece of equipment, drawings, illustrations, charts, operating instructions and parts list, to permit installation, operation, winterization and maintenance. All valve operating procedures and schedules shall be provided in the equipment room for each mode of operation (recirculation, filtration, backwashing) with piping labeling and flow directions. The mechanical equipment shall be inspected and maintained in accordance with the manufacturers' recommendations and to ensure proper operation.

(b) Pumps, filters, ultraviolet disinfection system, disinfectant or chemical feeders, flow meters, gauges, and all related components of the pool water and/or spray pad treatment tank recirculation system shall be kept in continuous operation 24 hours a day to provide water quality consistent with §165.23 and §165.25. The water level in the spray pad treatment tank shall be maintained continuously by an automatic level control system. The spray pad treatment tank

shall be completely drained and cleaned at a frequency necessary to maintain water quality. Pool and/or spray ground equipment and appurtenances shall be operated and maintained in accordance with approved plans and specifications. They shall not be altered or modified in any way unless approved by the Department.

(c) **Inlet fittings.** (1) For pools, inlets shall be checked frequently to ensure that the rate of flow through each inlet establishes a uniform circulation of water and facilitates the maintenance of a uniform disinfectant residual throughout the pool.

(2) For spray grounds, inlets shall be adjusted to produce uniform circulation of water and to facilitate the maintenance of a uniform disinfectant residual throughout the spray pad treatment tank.

(d) **Main drains and deck drains.** Main drain and deck drain grates shall be secured in place at all times. Broken or missing main drain grates shall be repaired or replaced before the pool and/or spray pad is used.

(e) **Vacuum cleaners (for pools).** Vacuum cleaning shall not be conducted when pool is in use.

(f) **Filtration.** The filtration flow rate shall not exceed the maximum filtration design flow rate specified by the filter manufacturers' specifications and in accordance with N.S.F. standards.

(1) **Sand filters.**

(A) The flow rate shall not exceed fifteen gallons per minute per square foot (15 gpm/ft^2) of filter area for high-rate sand filters, and shall not exceed three gallons per minute per square foot (3 gpm/ft^2) for other sand filters.

(B) Filter air release valve shall be opened daily or more frequently as necessary to remove air which collects in the filter.

(C) Sand filter shall be backwashed at a flow rate of twelve to fifteen gallons per minute per square foot (12 to 15 gpm/ft^2) or at the design rate specified by the manu- facturers.

(2) **Diatomaceous earth filters.** Diatomaceous earth filters shall be properly maintained and operated according to the manufacturers' instructions and at a filter rate not exceeding two gallons per minute per square foot (2 gpm/ft^2) with body feed or 1.5 gpm/ft^2 without body feed. The backwash water should be managed and disposed of as required by §165.33(b) and §165.43(b)(2).

(3) **Cartridge filters.**

(A) Cartridge filters shall be operated at a filter rate not to exceed the design or a maximum of 0.375 gallons per minute per square foot (0.375 gpm/ft^2) for cartridge filters.

(B) Cleaning of the cartridges shall be accomplished according to manufacturers' instruction either in place or by cartridge removal, depending on the type of unit installed.

(C) One complete spare set of cartridges shall be available for replacement at all times to facilitate cleaning.

(g) **Surface skimmer system (for pools).** The perimeter overflow systems or automatic surface skimmers shall be clean and free of debris which would restrict flow. Skimming weirs shall be maintained and operated in accordance with §165.45(h)(2)(D). The strainer baskets for skimmers shall be cleaned daily to prevent clogging of suction line and cavitation. One spare strainer or screen shall be readily available for replacement. Broken or missing strainers or screens shall be replaced. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action which will remove all floating matter from surface of the water. The skimmer covers shall be securely fastened. The pool water shall be maintained at an elevation such that effective surface skimming of entire pool surface is accomplished. For pools with perimeter overflow systems, adequate surge storage capacity shall be maintained so that

flooding of the perimeter overflow system does not occur during periods of peak usage. The flow returning from the pool shall be balanced or valved such that the majority of flow is returned through the perimeter overflow or skimmer system.

(h) **Chemical feeders.** All chemical feeders shall be periodically inspected and serviced in accordance with the manufacturers' instructions.

(i) **Flow meters.** All flow meters shall be maintained in accurate operating condition and the glass and connecting tubes shall be kept clean.

(j) **Piping.** All exposed piping and valves shall be properly color coded pursuant to §165.45(c)(3).

(k) **Lighting and electrical equipment.**

(1) All lighting and electrical equipment shall be maintained in good repair and in good operating condition. Defects in the electrical system, including but not limited to wiring, pumps, underwater lights, overhead lights or their respective lenses, shall be immediately repaired.

(2) Portable AC electrical devices, such as announcing systems and radios within the reach of patrons, shall be prohibited.

(3) Windows and lighting equipment shall be adjusted to prevent glare and excessive reflection on the pool surface. Illumination levels shall be maintained in accordance with the provisions in §165.47.

(4) No overhead electrical wiring shall pass within 20 feet of the pool and/or spray pad except where covered and secured in a ceiling.

(5) When underwater lighting is not provided and night swimming is permitted, surface lighting shall be adequate to allow an observer on the deck to clearly see the pool bottom. Emergency lighting shall be maintained as required by §165.47(a)(7).

(6) At all indoor spray pads and spray pads used at night, surface lighting shall be adequate to allow an observer to clearly see the spray pad and deck.

(7) Defects in the electrical system, including overhead lights and the respective lenses, shall be immediately repaired.

(l) **Ventilation and heating.** Ventilation, heating and exhaust equipment shall be maintained and operated to provide air movement and temperature pursuant to §165.47(b) and (c).

(m) **Utraviolet light or equivalent treatment process.** Ultraviolet light disinfection or equivalent treatment process shall be provided and maintained to disinfect water provided to the spray pad in accordance with §165.45(l)(9). The ultraviolet light units shall be cleaned in accordance with the manufacturer's specifications. When the output intensity falls below the setpoint intensity, conditions causing decreased ultraviolet light intensity at the sensor shall be evaluated and corrected. When the decreased ultraviolet light intensity is due to lamp failure, the ultraviolet lamp(s) shall be replaced in accordance with manufacturer's recommendations.

(n) **Sauna.** Installation of the heating unit, maintenance of and other electrical installation shall be performed by a qualified licensed electrician.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and

Purpose No. 17]

Subds. (a)-(e) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (g) heading amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (k) pars (4)-(7) amended/added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (l) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (m) added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (n) relettered and amended (former subd. (m)) City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

Rules of the City of New York

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

24 RCNY 165.31

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.31 Chemical Handling and Storage.

(a) **General requirements.** All chemicals used in pools and/or spray grounds shall be handled and stored in accordance with manufacturers' recommendations and applicable law. Only chemicals used by the United States Environmental Protection Agency, specified as food additives by the United States Food and Drug Adminstration as potable use approved by NSF, or by the State Commissioner of Health, shall be used. Each chemical shall be kept covered and stored in the original, labeled container with the identity of the chemical and appropriate hazard warnings clearly labeled, away from flame and heat sources, and in a clean, dry, well-ventilated place which prevents unauthorized access to the chemicals. The facility shall maintain the manufacturer's instructions for all chemicals in the facility.

(b) **Mixing.** When mixing a chemical solution the pool operator shall mix the chemical in water. Each chemical or chemical solution shall be separately applied. Chemicals shall not be combined or mixed together prior to application. Clean inert materials shall be used for container and mixing tools, and mixing shall be done by pouring the chemical

into water. Mixing shall not be accomplished by pouring water into the chemical.

(c) **Method.** The method for addition of pool water treatment chemicals shall be specified in the pool safety plan. The method of chemical addition shall protect the patron from contact with concentrated chemicals. The method shall provide adequate distribution of the chemical throughout the pool and distribution shall be verified by pool water testing prior to bather exposure.

(d) **Smoking.** Smoking shall be prohibited in the chemical storage area or by anyone who is handling chemicals.

(e) **Carbon dioxide (CO_2).** CO_2 cylinders should be stored in a protective enclosure at the exterior of occupied structures. CO_2 cylinders used in the interior of occupied structures shall be placed only in a ventilated enclosure pursuant to §165.47.

(f) **Hypochlorite.** Hypochlorite shall be used with extreme caution during handling or mixing. When using calcium hypochlorite, the pool operator shall not mix or contaminate the hypochlorite with organic matter or any foreign material (such as household products, soap products, ammonia, paint products, solvents, acids, vinegar, or dirty rags) which may result in fire or decomposition explosion.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and

Purpose No. 17]

Subd. (a) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.33 Water Supply and Waste Water Disposal.

(a) **Water supply.** The water supply serving all plumbing fixtures, including drinking water fountains, lavatories and showers shall meet the provisions of §165.43.

(b) **Waste water disposal.** All waste water from a bathing establishment shall be discharged in such manner that waste water cannot be siphoned, flooded or otherwise discharged into the pool. The sanitary sewer serving the bathing establishment shall be discharged to a municipal sewer system or other approved disposal system. Wash or backwash water shall not be discharged to the ground surface.

(c) **Diatomaceous earth filter wash.** Diatomaceous earth filter wash or backwash water shall first pass through a separation tank designed for removal of the diatomaceous earth and suspended solids before discharging to an approved sanitary sewer system. The separation tank sludge shall be disposed of or treated as a solid waste material in accordance with applicable law.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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24 RCNY 165.35

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.35 Garbage and Refuse Disposal.

All garbage and refuse produced in connection with the operation of the bathing establishment shall be properly stored, collected, and disposed of in a sanitary manner to prevent harborage of rodents, insect attraction or breeding, odors, environmental pollution and accidents.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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24 RCNY 165.37

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.37 Drowning and Injury or Illness Incident Notification and Reporting.

(a) **Twenty-four hour notification.** All drownings, injuries, or illness in a bathing establishment shall be reported by the owner or operator to the Department within 24 hours of occurrence. A report as specified in paragraph (b) below shall be made to the Department whenever an incident occurs that:

(1) Results in death

(2) Requires resuscitation

(3) Requires referral to a hospital or other facilities for medical attention

(4) Involves illnesses associated with the water quality

(b) **Reporting.** The written incident report referred to in paragraph (a) above shall be completed and submitted to

the department within seven days. The incident shall be recorded in the log book and shall include:

(1) Name of the aquatic supervisory staff or operator

(2) The date, time and type of incident

(3) Cause of the injuries

(4) The extent of injuries, if any

(5) Actions taken by persons at the site

(6) Witnesses statements

(7) Lifesaving and safety equipment used.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

FOOTNOTES

5

[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

Rules of the City of New York

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24 RCNY 165.39

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.39 Record Keeping.

(a) **Pools.** The owner or person in charge of a pool shall maintain daily operational records and log book which shall include the following information: number of bathers; quantity of water added; length of time pumps and filters are in operation; time when each filter is backwashed or cleaned; quantity of each chemical added; time when the bottom and sides of the pool are cleaned; the results of all tests for hydrogen ion and residual chlorine; and other information the Department may require to demonstrate compliance with this Code. A copy of the daily operational records shall be forwarded to the Department at monthly intervals. Copies of the records shall also be kept at the bathing establishment for inspection by the Department for a period of six months from the date of the creation of the record.

(b) **Sauna and steam rooms.** The person in charge of a sauna or steam room shall maintain a daily log of quarter-hour inspections, unless a one-hour timer is provided pursuant to §§165.15(c) and 165.63(c). Copies of the records shall be readily available for inspection by the department at the facility for a period of six months from the date

of the creation of the record.

(c) **Spray Grounds.** The owner or person in charge of a spray ground shall maintain a daily operational record and log book which shall include the following information: quantity of water added; length of time pumps and filters are in operation; time when each filter is backwashed or cleaned; quantity of each chemical added; time when the spray pad and treatment tank are cleaned; the results of all tests for hydrogen ion and residual chlorine; dates and type of light cleaning maintenance and lamp replacement work for ultraviolet light system and other information the Department may require to demonstrate compliance with this Code. A copy of the daily operational records shall be forwarded to the Department at monthly intervals. Copies of the records shall also be kept at the bathing establishment for inspection by the Department for a period of twelve months from the date of the creation of the record.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and

Purpose No. 17]

Subd. (c) added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and

Purpose No. 33]

DESIGN AND CONSTRUCTION

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

Rules of the City of New York

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

24 RCNY 165.41

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.41 General Requirements for Pools.

(a) **General.** All bathing establishments with pools shall be designed and constructed in accordance with the requirements contained in this code. All bathing establishments with pools shall be located at a site conducive to good operation, maintenance, and public safety and free from contamination. The site shall have sufficient drainage and be separated from environmentally sensitive areas (for example, subsurface sewage disposal systems, open bodies of freshwater, groundwater wells).

(b) **Structural stability.** The designing architect or engineer shall certify the structural stability and safety of the bathing establishment. All bathing establishments shall be designed and constructed to withstand all anticipated loading for both full and empty conditions, and hydrostatic and earth pressures involved in each case. The strength of the assembled and installed components and accessories to be used in and around the pools should be such that no structural failure of any component part shall cause the failure of any other component part.

(c) **Construction material finishes.** (1) **Materials.** Pools shall be constructed of materials which are inert, stable, nontoxic, watertight and enduring. Sand or earth bottoms or unlined wooden tubs are prohibited. The materials of components and accessories used in and around the pools shall be compatible with human occupancy and the environment in which they are installed. Materials shall be capable of fulfilling the design, installation, and intended use requirements.

(2) **Finish.** The pool bottom and sides shall be white or a light color with a smooth and easily cleanable surface.

(3) **Corners.** All corners formed by intersection of pool walls and bottom shall be rounded.

(d) **Accessibility.** (1) **Entrance.** For pools receiving construction authorization from the department after the effective date of this Article, entrance to the pool area shall be at a point adjacent to the shallow end of the pool.

(2) An emergency exit from the pool room shall be provided. All exits should be clearly marked.

(e) **Equipment.** All equipment used or proposed for use in pools shall be tested and listed by N.S.F. or another testing laboratory under standards promulgated by N.S.F. Equipment that is experimental or not N.S.F. approved shall be submitted to the Department for review. The experimental equipment shall be tested as follows:

(1) Use-tested in New York or another state in at least 10 pools of comparable design for a period of at least 60 days, with engineering reports on results of use submitted; or

(2) Pilot-plant testing of at least 90 days, with formal submission of an operational report prepared by the design engineer or architect; or

(3) A combination of use and testing or a trial use period approved by the Department and the New York State Commissioner of Health.

(f) **Size and shape.** Dimensional limits are not specified for the length, width, or shape of pools. The size and shape shall be selected based on competitive requirements, bather demand, and space available for a particular establishment. The shape of any pool shall be such that the circulation of pool water and control of bathers' safety are not impaired. There shall be no underwater or overhead projections or obstructions which would endanger patron safety or interfere with pool operation.

(g) **Minimum water depth.** The minimum depth of water in the pool shall be three feet except for wading pools and wave pools.

(h) **Bottom slope.** The bottom of the pool shall slope downward toward the main drains. The slope in shallow areas (depths less than 5') shall not exceed one foot (1') vertical in twelve feet (12') horizontal. In portions of the pool with depth greater than five feet, the slope shall not be steeper than one foot in three feet.

(i) **Pool walls.** The walls of a pool shall be either:

(1) Vertical for a distance of at least six feet (6'); or

(2) Vertical for a distance of at least three feet (3') below the water level; below which the wall may be curved to the bottom with a radius not greater than the difference between the depth at that point and three feet (3'); provided that vertical is interpreted to permit slopes not greater than one foot (1') horizontal for each five feet (5') of depth of sidewall (11 degrees from vertical).

(j) **Safety ledges.** Ledges shall not extend into the pool unless they are essential for support of the upper wall construction.

(k) **Decks and walkways.** (1) **General.** A continuous deck at least five feet (5') wide shall extend completely around the pool. For spa and wading pools, two contiguous sides of decking equal to fifty percent (50%) or more of the perimeter shall be provided. The deck shall be of a uniform, easily cleaned, impervious material with a slip-resistant surface.

(A) **Deck capacity.** Additional deck space beyond the required five feet wide clear walkway may be constructed based on a minimum ratio of fifty square feet (50 ft^2) of pool deck area per bather.

(B) Where diving boards, slides, or any other deck equipment are installed at the pool, a clear deck of not less than five feet of constructed deck shall be provided behind the diving boards, slides, lifeguard chair or other deck equipment.

(2) **Deck covering.** Porous, non-fibrous deck covering which contains a label indicating it complies with the N.S.F. or other material approved by the department may be used for deck covering. An approved material shall meet the following criteria:

(A) The covering shall allow drainage so that the covering and the deck underneath it do not remain wet or retain moisture.

(B) The covering is inert and will not support bacterial growth.

(C) The covering provides a slip-resistant surface.

(D) The covering is durable and cleanable.

(3) **Slope.** The deck shall be sloped at least one-fourth inch per foot ($^1/_4$ in/ft) to deck drains or grades.

(4) **Drainage.** Deck drains, when used, shall be spaced and arranged so that not more than four hundred square feet (400 ft^2) of area is tributary to each drain, and drains shall not be spaced more than twenty-five feet (25 ft) apart. There shall be no direct connection between the pool deck drains and the pool gutter or recirculation system. The deck of outdoor pools shall be sloped away from the pool or to the deck drains to prevent surface runoff from entering the pool.

(5) **Roll-out and deck level gutters.** If the pool is equipped with deck level gutters, not more than five feet of deck shall be sloped toward the gutters.

(6) **Hose bibbs.** At least one hose bibb shall be provided to facilitate flushing of the deck area and each bibb shall be provided with an anti-siphonage device.

(7) **Rinse showers.** Adjacent recreational areas shall be separated from the bathing area by a suitable fence or barrier. If bathers are permitted free access between the deck and an adjacent recreational area without having to pass through a bathhouse or bather preparation facilities, a rinse shower area shall be installed so that bathers shall pass through the rinse shower area when going from the recreational area to the deck. Minimum requirements for a rinse shower shall include:

(A) water for the rinse shower(s),

(B) have sufficient drainage so that there is no standing water,

(C) a foot surface that is impervious and slip-resistant.

(l) **Pool enclosures.** All pools shall be protected by a fence, wall, building, or other solid barrier, or any combination thereof. A wall of a building may serve as part of the enclosure, provided that there is no direct access from the wall to the pool. Pools located on a roof, where there is no access to the roof except through doors where access can be prevented when the pool is unsupervised, do not require additional enclosure. All pools shall be provided with an

enclosure which shall comply with the following:

(1) No external handholds or footholds.

(2) Materials which are durable.

(3) At least six feet (6') in height, except for wading pools at four foot (4') minimum (see §165.51).

(4) Have a maximum vertical clearance above grade of two inches (2").

(5) The entrance into the pool enclosure shall be equipped with a door or gate that is self-closing and has a positive self-latching closure mechanism at least forty inches (40") above grade. Doors and gates at all entrances shall be equipped with hardware that permits secure locking of the entrance and prevents access when the pool is not supervised.

(6) Where a chain-link fence is provided, the openings between links shall not exceed $2\frac{3}{8}$ inches and chain link twists shall extend above the upper horizontal bar. The enclosure shall have railings and posts within the enclosure, which shall be capable of resisting a minimum lateral load of one hundred fifty pounds (150 lb) applied midway between posts and at top of posts, respectively. Enclosures, fence material or fabric shall be capable of withstanding a concentrated lateral load of fifty pounds (50 lb) applied anywhere between supports on an area twelve square inches (12 in^2), without failure or permanent deformation.

(7) Where a picket-type fence is provided, space between pickets shall not exceed 4 inches and pickets shall extend above the upper horizontal bar.

(m) **Pool capacities and patron loading.** The maximum permissible number of bathers allowed in the pool at one time is as follows:

(1) **Pools (except spa and wading pools):** Twenty-five square feet (25 ft^2) of water surface area shall be provided for each patron.

(2) **Diving area:** Three hundred square feet (300 ft^2) of pool water surface area shall be reserved around each diving board or diving platform, and this area shall not be included in computing the permissible patron use.

(3) **Spa pools:** Ten square feet (10 ft^2) of pool water surface area shall be provided for each patron.

(4) **Wading pools:** Fifteen square feet (15 ft^2) of pool water surface area shall be provided for each patron.

(n) **Spectator areas and visitor galleries.** There shall be an effective separation between spectator areas and bather areas so as to prevent contamination of the pool. Galleries for spectators shall not overhang any portion of the pool surface. The floor and foot rail of the gallery shall be of tight construction to prevent dirt from being tracked into the pool.

(o) **Depth markings and safety lines.** (1) **Depth markings.** Depth markings shall be numercial with numbers of four inch (4") minimum height, followed by the words "feet deep" or "foot depth", and with colors contrasting with the background. Depth of water shall be plainly marked at or above the water surface on the vertical pool wall and on the edge of the deck next to the pool. Depth markers shall indicate the actual pool depth. Water depth shall be measured at a point three feet (3') from the pool wall. Depth markers shall be spaced at not more than twenty-five foot (25') intervals along the pool perimeter. Where depth markings cannot be placed on the vertical walls above the water level, other means shall be used so that the markings will be plainly visible to persons in the pool. Markings shall be on both sides and ends of the pool placed at the following locations:

(A) At the points of maximum and minimum depth and at all points of change of slope.

(B) At break between the deep and shallow portions.

(C) At intermediate two foot (2') increments of depth.

(2) **Depth markers of irregularly shaped pools.** Depth markers of irregularly shaped pools shall specify depth at intervals of 25 feet measured along the perimeter of the pool.

(3) **Safety lines.** The boundary line between the shallow and deep areas where it exists, shall be marked at the five foot depth with a four inch stripe of contrasting color on the floor and walls of the pool and by a safety rope and floats equipped with float keepers. Where there is no break in slope the boundary shall be set at the five foot (5') depth, where it is ten feet (10') or more from the nearest end of the pool. Ledges and step edges shall also be marked with a four inch (4") stripe of contrasting color, two inches (2") on the tread and two inches (2") on the riser.

(p) **Diving area.**

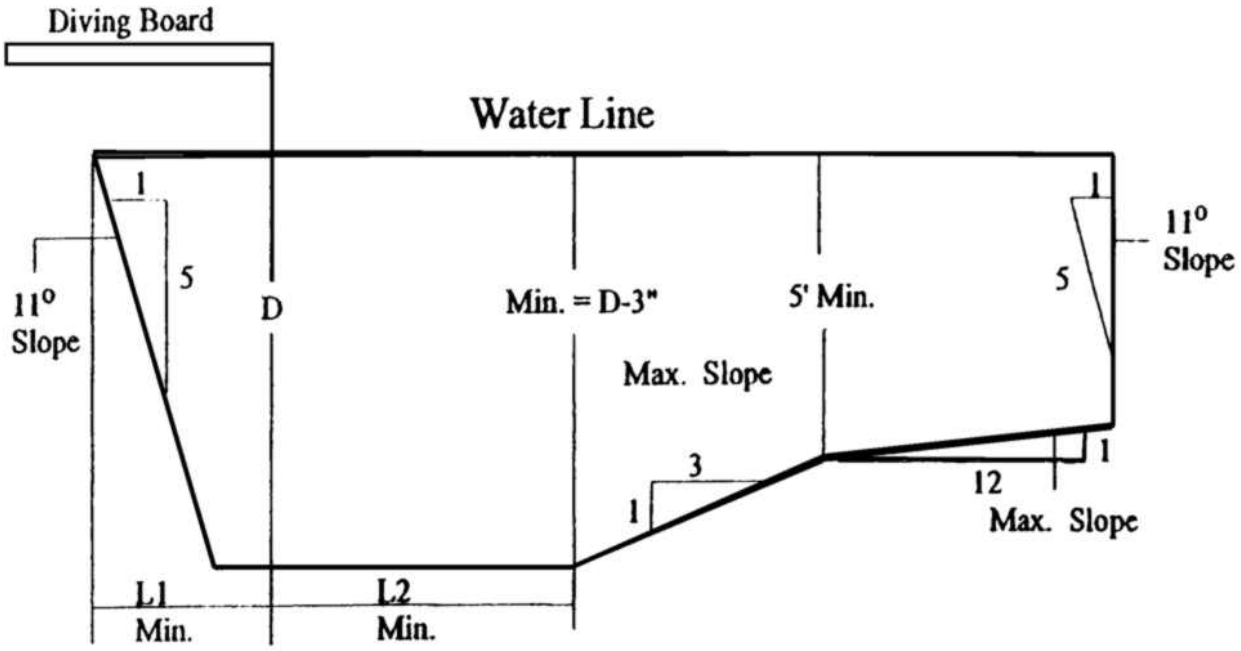
(1) The minimum dimensions of the swimming pool and appurtenances in the diving area shall conform to Table 3. The minimum dimensions for diving portion of swimming pools designed for competitive diving, may upon application to, and approval by, the department, utilize nationally recognized competitive design standards. For diving boards in excess of 3 meters in height over water, the design criteria, including pool dimensions shall be adjusted in accordance with good engineering practice.

(2) **Headroom.** There shall be a completely unobstructed clear distance of sixteen feet (16') above the diving board, measured from the center of the front end of the board. This area shall extend at least eight feet (8') behind, eight feet to each side, and sixteen feet (16') ahead of the measuring point.

(3) **Diving boards and platforms.** Diving boards and platforms in excess of three meters in height shall be designed and constructed or selected such that they are adequate to sustain expected static and dynamic loading with appropriate design safety factors.

(4) **Steps and guardrails for diving boards.** Supports, platforms and steps for diving boards shall be of adequate design and construction and of sufficient structural strength with appropriate design safety factors to safely carry the maximum anticipated loads. Steps shall be of corrosion-resistant material, easily cleanable and of nonslip design. Handrails shall be provided at all steps and ladders leading to diving boards one meter or more above the water. The guardrails shall be thirty inches (30") high, extending at least to the edge of the water.

Table 3. Minimum Dimensions for Diving Portion of Swimming Pool



Note: Minimum depth of five feet shall be maintained when a wall terminates at the pool area opposite diving boards. Otherwise, the specified shallow area floor slope may be used to shallow end.

Minimum Dimensions

Max. board heightover water	Max. diving boardlength	D	L(1)	L(2)	Poolwidth
26" (2/3 meter)	10'	8'-6"	2'-6"	10'-0"	20'-0"
30" (3/4 meter)	12'	9'-0"	3'-0"	10'-0"	20'-0"
1 meter	16'	11'-0"	4'-0"	20'-0"	20'-0"
3 meters	16'	12'-0"	6'-0"	20'-0"	24'-0"

Board placement shall be in compliance with the following. For multiple-board installations, minimum pool widths shall be increased accordingly.

1 meter or less-Board to pool side 10'0" 3 meters-Board to pool side 12'0" Distance between adjacent boards 10'0"

(q) **Deck slides.** All deck slides which may be installed at a swimming pool shall be labeled to indicate compliance with the requirements of the U.S. Consumer Product Safety Commission or other generally acceptable standard that provides equivalent and adequate safety. The bottom of any slide shall discharge into a minimum water depth of four feet.

(r) **Rolling bulkheads.** Rolling bulkheads which may be provided at a pool, shall be equipped with traction wheels running on the pool floor or alternatively in the overflow gutter. The design shall be such that the patrons cannot be entrapped under the bulkhead.

(s) **Starting blocks.** Starting blocks when provided, shall be designed according to recognized competitive design

standards. Starting blocks shall be installed over a minimum water depth of six feet (6').

(t) **Ladders, recessed steps, stairs and handrails.** Except in a wading pool, physical-therapy pool, wave pool, white-water slide or movable-bottom pool, steps or ladders shall be provided to serve the shallow and deep portion of the pool, and if the pool is over thirty fet wide, such steps or ladders shall be installed on each end and on opposite sides. Stairs, ladders, and recessed steps shall be located so as not to interfere with racing lanes or with diving. If recessed steps are used, at least one additional non-recessed stairway or one conventional ladder shall be provided.

(1) **Ladders.** Pool ladders shall be corrosion-resistant and shall be equipped with nonslip treads. All ladders shall be so designed as to provide a handhold and shall be rigidly installed. There shall be a clearance of not more than six inches (6") nor less than three inches (3") between any ladder and the pool wall.

(2) **Recessed steps.** Recessed steps shall be readily cleanable and shall be arranged to drain into the pool to prevent the accumulation of dirt. Recessed steps shall have a minimum breadth of five inches (5") and a minimum width of fourteen inches (14").

(3) **Stairs.** Where stairs are provided they shall be located diagonally in a corner of the pool or be recessed. They shall be equipped with a handrail. Stairs shall be of nonslip design, have a minimum tread of twelve inches (12") and a maximum rise of ten inches (10").

(4) **Handrails.** Where ladders, recessed steps and stairs are provided within the pool, there shall be a handrail at the top of each side thereof extending over the coping or edge of the deck.

(u) **Safety and warning signs.** (1) **"No diving" markers.** "No diving" markers at least four inches (4") high shall be located at not more than twenty-five foot (25') intervals around the pool perimeter, where the water depth is less than eight feet deep.

(2) **Warning signs.** A sign or signs shall be securely posted in a conspicuous place or places in the pool area and bather preparation facility and shall provide the following information:

(A) Maximum number of persons permitted in pool at any time.

(B) Maximum number of persons permitted on deck at any time.

(C) Maximum number of persons permitted in the pool area.

(D) The hours that pool is open.

(E) The hours that pool use is prohibited.

(F) "No person having any contagious disease or infectious condition such as sores or inflamed eyes, a cold, nasal or ear discharge, cuts, boils or other evident skin or other bodily infection shall enter the pool."

(G) "Urinating, expectorating or blowing the nose, or allowing human waste in any pool is prohibited."

(H) "Persons not dressed for bathing shall not enter upon walks immediately adjacent to pools, and bathers shall not enter places provided for spectators."

(I) "No person under the influence of alcohol or exhibiting erratic behavior shall enter the pool or the pool deck."

(J) "Emergency telephone number for police, fire, and hospital is 911."

(3) **Deck slides.** In pools equipped with a deck slide, the warning sign shall include the words: "No sliding in water

less than four feet deep and no sliding exept in a feet-first position."

(4) **Starting platforms and blocks.** In pools equipped with starting blocks, the warning sign shall include: "Starting blocks shall not be used for any purpose other than competitive swimming or swimmer-training activities."

(5) **White-water slides:** In facilities with white water slides, warnings shall be posted on a sign at the entrance to the slide tower containing the following:

(A) "Keep your hands inside of the flume."

(B) "No standing, kneeling, rotating, chain-riding, or stopping in flumes."

(C) "Sliding shall be performed only in a feet-first position."

(6) **Warm water spas:** In addition to the contents of paragraph (2), the following warning sign, with an area of at least three square feet, preceded by the word "CAUTION" shall be conspicuously posted in the vicinity of the pool at eye level:

(A) "Elderly persons and persons suffering from heart disease, diabetes, high or low blood pressure, shall not use the spa pool without medical consultation."

(B) "Unsupervised use by children is prohibited."

(C) "Do not use the spa pool while under the influence of alcohol. Persons using medications such as anticoagulants, antihistamines, vasoconstrictors, vasodilators, stimulants, hypnotics, narcotics or tranquilizers should not use the spa pool without medical consultation."

(D) "Do not use the spa pool if you are alone and the spa pool is unattended by pool staff."

(E) "Observe a reasonable time limit (e.g., 15 minutes), then shower, cool down and, if you wish, return for another brief stay. Long exposure may result in nausea, dizziness or fainting."

(F) "Emergency help can be obtained by using the telephone-dial 911."

(v) **Safety equipment.** The pool shall provide the safety equipment as required by §165.17.

(w) **First aid room.** Pools with a surface area in excess of four thousand square feet (4000 ft^2) shall have a readily accessible room or area designated and equipped for emergency care.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [Note: the diagram in Table 3 was not included in City Record Apr. 3, 2001 but is included as part of the official rule]. [See Vol. 9 Statements of Basis and Purpose No. 17]

FOOTNOTES

5

[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9

Statements of Basis and Purpose No. 17]

Rules of the City of New York

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

24 RCNY 165.42

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.42 General Requirements for Spray Grounds.

(a) **General.** All bathing establishments with a spray ground shall be designed and constructed in accordance with the requirements contained in this Code. All spray grounds shall be located at a site free from contamination and conducive to good operation, maintenance, and public safety. The designing architect or engineer shall certify the structural stability and safety of the spray grounds. The strength of the assembled and installed components and accessories to be used in and around the pools spray grounds should be such that no structural failure of any component part shall cause the failure of any other component part.

All spray grounds shall further comply with all of the following provisions:

(b) **Construction materials and finishes.**

(1) **Construction materials.** Spray pads shall be constructed of materials which are inert, stable, nontoxic,

watertight and enduring. Sand or earth bottoms are prohibited.

(2) **Finish.** Spray pad surface must be slip resistant and easily cleanable surface.

(c) **Spray Pad.**

(1) **Slope.** The spray pad shall be sloped to drain. The slope shall be sufficient to prevent water collecting on the pad.

(2) **Drainage.** The size, number and locations of the spray pad drains shall be determined and specified so as to assure water does not accumulate on the spray pads. Flow through the drains to the spray pad treatment tank shall be under gravity; direct suction outlets from the spray pad are prohibited.

(3) **Valves and Piping.** Valves and piping shall be provided in the spray pad drainage system to allow for discharging spray pad water to waste prior to returning to the spray pad treatment tank.

(4) **Grating.** Openings in the grates covering the drains shall not be over one-half inch wide. Gratings shall not be removable without the use of tools.

(d) **Decks.**

(1) A continuous deck at least five feet (5') wide shall extend completely around the entire spray pad perimeter. The deck shall be of a uniform, easily cleaned, impervious material with a slip-resistant surface.

(2) **Slope.** The deck shall be sloped at least one-fourth inch per foot ($^1/_4$ in/ft) to deck drains or grades.

(3) **Drainage.** Deck drains, when used, shall be spaced and arranged so that not more than four hundred square feet (400 ft^2) of area is tributary to each drain, and drains shall not be spaced more than twenty-five feet (25 ft) apart. There shall be no direct connection between the spray pad deck drains and the sanitary sewer system or treatment tank, or between the treatment tank and recirculation system. The deck for outdoor spray ground shall be sloped away from the spray pad or to the deck drains to prevent surface runoff from entering the spray pad.

(4) **Carpeting.** Carpeting shall not be permitted on the spray pad or desk.

(5) **Hose bibbs.** At least one hose bibb shall be provided to facilitate flushing of the spray pad and deck areas and each bibb shall be provided with an anti-siphon device.

(e) **Spray Features.** Spray features should be designed and installed so as not to pose a tripping hazard, a hazard to due water velocity from the spray features, or other possible safety hazards.

(f) **Foot Showers.** Showers shall be provided at the entry to the spray pad to allow for rinsing debris from patrons' feet prior to entering the spray pad, except such showers are not required at indoor spray grounds or those within the enclosure of an aquatic amusement park. The use of foot baths is prohibited. Wastewater from the foot showers shall be discharged to an approved waste disposal system to prevent standing water on the ground surface, and/or contamination of spray ground and adjacent areas. The foot shower area shall be free of puddle water.

(g) **Spray Ground Enclosures.** All spray grounds shall be protected by a fence, wall, building, other solid barrier, or any combination thereof. A wall of a building may serve as part of the enclosure, provided that there is no direct access from the wall to the spray ground. A spray ground located on a roof, where there is no access to the roof except through doors where access can be prevented when the spray ground is unsupervised, does not require additional enclosure. All spray grounds shall be provided with an enclosure which shall have the following characteristics: (1) No external handholds or footholds.

(2) Made of materials which are durable.

(3) At least four feet (4') in height,

(4) Maximum vertical clearance above grade of two inches (2").

(5) The entrance into the spray ground enclosure shall be equipped with a door or gate that is self-closing and has a positive self-latching closure mechanism at least forty inches (40") above grade. Doors and gates at all entrances shall be equipped with hardware that permits secure locking of the entrance and prevents access when the spray ground is not supervised.

(6) Where a chain-link fence is provided, the openings between links shall not exceed $2^{3}/_{8}$ inches and chain link twists shall extend above the upper horizontal bar. The enclosure shall have railings and posts within the enclosure, which shall be capable of resisting a minimum lateral load of one hundred fifty pounds (150 lb) applied midway between posts and at top of posts, respectively. Enclosures, fence material or fabric shall be capable of withstanding a concentrated lateral load of fifty pounds (50 lb) applied anywhere between supports on an area twelve square inches (12 in^2), without failure or permanent deformation.

(7) Where a picket-type fence is provided, space between pickets shall not exceed 4 inches and pickets shall extend above the upper horizontal bar.

(h) **Warning Signs.** A durable plate bearing the following wording in 24-point type (letters 0.25 inches in height) or more permanently marked thereon in colors contrasting with the background, shall be prominently affixed at spray pad or enclosure/entrance and in the bathhouse or bather preparation facilities at eye level containing the following:

(1) The hours that spray pad is open.

(2) The hours that spray pad use is prohibited.

(3) Individuals with diarrhea shall not use the spray pad.

(4) Spray features use recirculated water-do not drink.

(5) Children who are not toilet trained must wear a swim diaper covered by rubber pants.

(6) No animals allowed on or near spray pad.

(7) Pollution of the spray pad area is prohibited. Urinating, discharge of fecal matter, expectorating or nose blowing in any spray pad area is prohibited.

HISTORICAL NOTE

Section added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and

Purpose No. 33]

FOOTNOTES

5

[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

Rules of the City of New York

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24 RCNY 165.43

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.43 Water Supply, Waste Water, and Sewer Connections.

(a) **Water supply.** (1) The source and quality of the water supplied to the pool and/or spray ground and all plumbing fixtures, including drinking fountains, lavatories and showers, shall be obtained from the municipal water supply or a source of potable water pursuant to §141.01 of this Code.

(2) **Cross-connection control.** The potable water supply shall be protected against inter-connection or cross-connection to any potential source of contamination, including but not limited to backflow and back-siphonage. Water introduced into the pool and/or spray pad, either directly or to the recirculation system, shall be supplied through an air gap of at least 6 inches or two times the pipe diameter, whichever is greater. In pools and/or spray pad where it is not possible to provide an air gap, the pool and/or spray water shall be protected by an approved backflow prevention device.

(3) **Drinking water fountains.** Drinking fountains shall be of a slanting jet-type with a surrounding guard and

nonsubmersible opening. They shall be accessible by patrons at the pool and be supplied with adequate water pressure.

(4) **Fill spout.** When a fill spout is used to introduce water into the pool, it shall be covered so as not to create a hazard to the patrons. The open end of the fill spout shall have no sharp edges, shall not protrude more than two inches beyond the edge of the pool and shall be at least six inches above the deck level. The fill spout shall be located under the diving board when the pool is equipped with a diving board.

(b) **Waste water disposal.** (1) The sanitary sewer system shall have sufficient capacity to serve the facility, including the bathhouse, locker rooms and related accommodations. The building drains and sewer system shall have adequate capacity to carry filter backwash flows without surcharging or flooding. Sanitary sewage and pool and/or spray pad waste water shall be discharged to the municipal sanitary sewer system whenever possible. The establishment shall obtain the waste water discharge permit or approval from the appropriate regulatory agency (for example, the New York City Department of Environmental Protection) prior to discharge. When no such sewer is available, the connection shall be made to a suitable private subsurface disposal system or other system approved by the department and such agencies having jurisdiction.

(2) The pool and/or spray pad waste water shall be discharged to the sanitary sewer system through an air gap of at least six inches (6") or two times the pipe diameter, whichever is greater, so as to preclude the possibility of backup of sewage or waste water into the pool and/or spray pad piping system.

(c) **Potable water treatment and sewage treatment facilities.** Plans for any potable water treatment or sewage treatment facilities to be constructed on-site at the bathing establishment shall be submitted for approval by the department prior to construction of such facilities.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and

Purpose No. 17]

Subd. (a) heading amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (a) pars (1), (2) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (b) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

Rules of the City of New York

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

24 RCNY 165.45

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.45 Water Treatment System.

(a) **General.** A water treatment system consisting of pumps, piping, filters, water conditioning and disinfection equipment, and other accessory equipment, shall be provided which will clarify, chemically balance and disinfect the pool water and/or spray pad water. The system shall be designed for a recirculation flow rate that will result in a turnover period in each pool and/or spray ground not exceeding those specified below. Construction shall comply with all other provisions of this Code regarding water and waste water.

(1) **Pools.** Each pool shall have a separate water treatment system. Pools with an approved design rate of less than those specified below shall be operated at the design rate. Construction of fill and draw pools is prohibited.

Types of Pool	Turnover Period Shall Not Exceed
Swimming Pool	6 hours
Physical-Therapy Pool	4 hours
Moveable Bottom Pool	4 hours

Wading Pool	2 hours
Wave Pool	2 hours
White Water Slides	1 hour
Spa Pool	30 minutes; and shall be capable of returning the spa water to a turbidity of less than 0.50 N.T.U. (Nephelometric Turbidity Units) measured within four hours following the peak bather load.

Pools constructed prior to March 31, 1973 may have an eight-hour turnover rate.

(2) **Spray Grounds.** All water provided to the spray pad shall be treated with ultraviolet light as specified in 165.45(l)(9) during spray pad operation. The spray pad treatment system shall comply with the following requirements:

(A) The water from the spray pad treatment system can only be combined/circulated with water from other pool(s) if:

(1) All the water from the spray pad is treated by ultraviolet (uv) light disinfection prior to combining/circulating with water from the other pool(s) or;

(2) UV light disinfection are provided to treat all of the water in the other pool(s). The larger flow rate resulting from the two calculations below shall be the minimum flow rate used for the treatment system design. All recirculated water must pass through both the ultraviolet light unit(s) and filters. The minimum flow rate through the treatment system shall be calculated using the two methods described below:

(i) Minimum flow rate (For ultraviolet disinfection):

$$Q = \left(\frac{14.8 - \ln(V)}{12 \times 60} \right) V$$

Q: Minimum flow rate through the ultraviolet disinfection/filtration system (in gallons per minute) V: Pool volume (in gallons). ln(V): Natural log of the volume. 14.8-ln(V): Number of turnovers

(ii) Minimum filtration flow rate (for combined pool/spray pad system): The minimum filtration rate for a pool that shares water with a spray pad is specified in section 165.45(a)(2)(C)(iii). The minimum filtration flow rate shall be at least the sum of the flow rate for the pool type specified in §165.45(a)(1) and one third of the spray feature flow rate.

(B) When water supplying the spray features is removed from the spray pad treatment tank by a pump separate from the filtration/recirculation pump system, the ratio of the flow rate of water supplied to the spray features directly from the treatment tank must not exceed 3 times the design filtered water flow rate.

(C) **Turnover Rate.** (i) When water is supplied to the spray features by a pump which removes water directly from the spray pad treatment tank independent from the spray pad treatment tank filter pump, the turnover rate for filtration shall be determined by the feature flow rate. The filtration flow rate for the spray pad treatment tank must be at least one-third of the design spray feature flow rate.

(ii) When all of the water supplied to the spray features is filtered upon removal from the spray pad treatment tank before being supplied to the spray features, a reduced pumping rate for filtration/treatment of the spray pad treatment

tank water can be used when the spray features are not in operation. However, a minimum 4-hour turnover rate shall be provided.

(iii) The minimum flow rate through the filtration system for combined pool/spray pad systems shall be equal to or greater than the sum of the flow rate for the specific type pool as required by §165.45(a)(1), plus one third of the spray feature flow rate.

(b) **Equipment and storage area.** All the pumps, filters, chemical feeders and other mechanical equipment and chemicals shall be secured and protected by an appropriate enclosure or room, separate and apart from the pool. The size of the equipment room shall provide working space to perform routine operations. Clearance shall be provided for all equipment as prescribed by the manufacturers to allow normal maintenance operation and removal without disturbing other piping or equipment. Operating instructions and a schematic drawing for all equipment shall be provided in the equipment enclosure room. Adequate storage area shall be provided for chemicals and supplementary equipment. A dry above ground storage area shall be provided for facilities using calcium hypochlorite as a disinfectant. Equipment rooms shall not be used for storage of chemicals emitting corrosive fumes or for storage of other items to the extent that entrance to the room for inspection or operation of the equipment is impaired.

(c) **Hydraulics and piping system.** (1) Materials. The recirculating piping and fittings shall be of nontoxic material, resistant to corrosion, and able to withstand operating pressures. Acceptable materials for recirculation systems are polyvinylchloride (PVC), copper, stainless steel, aluminum, cast iron or other material suitable for water supply applications.

(2) **Size.** All pipes, fittings and valves of the recirculation system shall be designed to reduce friction losses to a minimum and to carry the required quantity of water at a maximum velocity not to exceed six feet per second (6 ft/s) under suction, ten feet per second (10 ft/s) under pressure and three feet per second (3 ft/s) in gravity flow.

(3) **Plumbing color coding.** All exposed piping and valves should be identified by color code in accordance with Table 4. Where two colors do not have sufficient contrast to easily differentiate between them, a six inch band of contrasting color should be painted on one pipe at approximately thirty inch (30") intervals. The name of the liquid or gas and arrows indicating direction of flow should be shown on the pipe.

Table 4: Plumbing Color Coding Schedule

Category	Color Code
Piping	
Potable water lines	Dark blue
Filtered water	Aqua
Skimmer or gutter return	Olive green
Main drain	Black
Alum	Orange
Chlorine (gas/solution)	Yellow
Soda ash	White
Acid	Pink
Waste lines	
Backwash waste	Dark brown
Sewer	Dark gray
Deck drains	Light brown
Other	
Compressed air	Dark green
Gas	Red

(4) **Installation and draining of pipes.** All equipment and piping shall be designed and fabricated to drain completely by use of drain plugs, drain valves or other means. All piping shall be supported continuously or at sufficiently close intervals to prevent sagging. All suction piping shall be sloped in one direction, preferably toward the pump. All supply and return pipelines to the pool and/or spray pad shall be provided with valves or other means to allow the piping to be drained to a point below the frost line. Provision shall be made for expansion and contraction of pipes.

(d) **Selection of recirculation pumps.** The recirculation pump shall have adequate capacity (flow rate and pressure) to meet the design requirements of the pool and/or spray pad treatment tank, including filter backwashing and turnover rate. It shall be of a self-priming type if installed above the hydraulic gradient. A gauge which indicates both pressure and vacuum shall be installed on the pump suction header and a pressure gauge shall be installed on the pump discharge line. Gauges shall be installed as near to the pump inlet as possible.

(e) **Strainers and screens.** The recirculation system shall include suitable strainer(s) or screen(s) to prevent hair, lint, and other debris from reaching the pump and filters. The strainers shall be of rigid construction, fabricated of corrosion-resistant material and of adequate strength to withstand maximum anticipated loading including pressure. The openings shall be no greater than one-eighth inch in any dimension. The total clear area of all openings shall be at least four times the area of the connecting pipe. The strainer shall have a quick-opening cover. One spare strainer basket shall be provided for each strainer. In systems where the filter is located on the suction side of the pump, strainers are not required.

(f) **Inlets (for pools).** Wall or floor inlets shall be provided for all pools and shall be located and directed to provide distribution of treated water to facilitate the maintenance of a uniform disinfectant residual throughout the entire pool.

(1) **Number.** Wall inlets shall be spaced at a distance of no greater than twenty feet (20') apart, with one inlet within five feet (5') of each corner of the pool and one in each recessed step area or other space where water circulation might be impaired.

(2) **Location.** Wall inlets shall be located at least twelve inches (12") below the design water surface. Bottom inlets shall be uniformly spaced with a separation distance of no greater than twenty feet (20') and with rows of inlets within fifteen feet (15') of each side wall. In any pool over sixty feet (60') in width, floor inlets should be provided. These shall be flush with the floor.

(3) **Type.** Inlet fittings shall be of the adjustable rate-of-flow type. Directional flow inlets shall be used with skimmer type pools. Inlets shall not extend from the floor or wall to create a hazard.

(4) **Testing.** Dye testing (crystal violet or equivalent) should be performed to determine and adjust the recirculation pattern.

(g) **Main drains (for pools).** Every pool constructed after July 15, 1998, shall have at least two hydraulically balanced main drains to the pool filter system installed in the pool floor at the deepest point. The minimum distance between the main drains shall be three feet (3') measured from center to center of the drains. If the floor of a spa pool is insufficient for a separation distance of three feet (3'), then the separation distance shall be as great as possible. The main drains shall be connected to a single main suction pipe by branch lines and the branch lines shall not be valved so as to be capable of operating independently. Pools constructed before July 15, 1998, shall have at least one main drain installed in the pool floor at the deepest point.

(1) **Location.** The main drains shall not be spaced at more than twenty feet (20') on centers and fifteen feet (15') from side walls and shall be connected in parallel.

(2) **Grating.** The main drain shall be protected by gratings or other approved covers having an opening sufficient

to restrict water velocity to less than $1^1/_2$ feet per second through the grating. The maximum width of grate opening shall be one-half inch. Gratings or drain covers shall not be removable without the use of tools.

(3) **Piping.** Each main drain shall be connected to the recirculation system. The branch pipe from each main drain shall be designed to carry at least one hundred percent (100%) of the design recirculation flow rate. The single main suction pipe to the pump shall be equipped with a valve to control total main drain flow. The suction velocity in the pipe shall not exceed six feet per second (6 ft/s).

(4) **Minimum flow.** At least thirty percent (30%) of the total recirculation rate should flow through the main drains.

(5) A hydrostatic relief valve shall be provided at each main drain for in-ground pools.

(h) **Surface skimmer systems (for pools).** A surface skimmer system, perimeter overflow system or recessed automatic surface skimmers, shall be provided on all pools and shall be designed and installed to continuously remove all floating material, surface dirt and waste water. A perimeter overflow system shall be required on all pools which have a pool width exceeding thirty feet (30'), or a surface area of over one thousand six hundred square feet (1,600 ft^2). Pools having a width of thirty feet (30') or less, or a surface area of one thousand six hundred square feet (1,600 ft^2) or less shall be provided either with perimeter overflows or skimmers. A combination of perimeter overflow systems and skimmers may also be used when approved by the department. All overflow systems and skimmers shall be capable of continuously removing all floating material, surface dirt and waste water.

(1) **Perimeter overflow systems.** All pools shall be designed to provide continuous skimming from the pool's surface at a rate of at least one hundred percent (100%) of recirculation rate. In pools where perimeter overflow systems are provided, the following shall be met:

(A) **Design.** The perimeter overflow systems shall extend completely around the pool, except at steps or recessed ladders in the shallow portion and shall be level to a tolerance of one-eighth inch ($^1/_8$"). The gutter shall be capable of continuously removing one hundred percent (100%) of the recirculation water and return it to the filter.

(B) **Size and shape.** The gutters, drains and return piping to the surge tank shall be designed to rapidly remove overflow water caused by recirculation displacement, wave action or other causes produced from the maximum pool bathing load. Make-up water supply equipment shall be provided to maintain continuous skimming.

(C) The gutter shall be designed to serve as a handgrip and to prevent entrapment of bather's arms, legs and feet. It shall permit ready inspection, cleaning and repair.

(D) The overflow gutter outlets shall be provided with outlet pipes at least two inches (2") in diameter. The outlet fittings shall have a clean opening in the grating at least equal to 1.5 times the cross-sectional area of the outlet pipe.

(E) Drainage shall be sufficient to minimize flooding and prevent backflow of skimmed water into the pool.

(F) **Surge capacity.** All overflow systems shall be designed with an effective surge capacity of not less than one gallon for each square foot of pool surface area. Surge shall be provided within a surge tank, in the gutter or filter above the normal flow line, or elsewhere in the system. Surge tanks, gutters and filter tanks should have overflow pipes to convey excess water to waste. Surge tanks shall be provided with means for complete draining.

(2) **Skimmers.** Skimmers shall be designed and installed to prevent electrical hazards or short circuiting. Recessed automatic surface skimmers are permitted on pools where the width does not exceed thirty feet (30') and a water surface area is less than one thousand six hundred square feet (1,600 ft^2). In pools where skimmers are provided, the following shall be met:

(A) **Number.** One skimmer for each four hundred square feet (400 ft^2) of water surface area or fraction thereof shall be provided. Additional skimmers may be required to achieve effective skimming.

(B) **Location.** Skimmers shall be so located to optimize skimming of the entire water surface with minimum interference and placed so as to prevent short circuiting. Prevailing wind direction and the pool outline shall be considered in the selection of skimmer locations and the location of skimmers shall be such that the interference of adjacent inlets and skimmers is minimized.

(C) **Capacity.** The piping and other pertinent components of skimmers shall be designed for a total capacity of one hundred percent (100%) of the required filter flow of the recirculation system and no skimmer shall be designed for a flowthrough rate less than thirty gallons per minute per foot (30 gpm/ft) of weir length.

(D) **Control.** Skimmers shall have weirs that adjust automatically and operate freely and continuously with variations of at least four inches in water level. All skimmed water shall pass through an easily removable and cleanable basket or screen before encountering control valves or entering the pump suction line. Each skimmer shall be equipped with a device to control flow.

(E) **Relief line.** Skimmers shall include a device to prevent an air lock in the suction line. If equalizer pipes are used, they shall pass an adequate amount of water to meet pump suction requirements should pool water drop below the weir level. The equalizer pipes shall be located at least one foot below the lowest overflow level of the skimmer. A valve or equivalent device that will remain tightly closed under normal operating conditions, but automatically open when the water level drops below the minimum operating level of the skimmer, shall be provided on each equalizer pipe.

(F) **Construction.** Skimmers shall be installed in the pool walls, be sturdy and be constructed of corrosion-resistant materials.

(G) **Handgrips.** Rounded coping not more than two inches (2") thick or other handgrip adjacent to the pool wall shall be provided. The handgrip shall not be more than nine inches above the minimum skimmer operating level. When the handgrip is formed by the pool deck, it shall slope away from the pool with a one-inch (1") drop in a one-foot (1') distance.

(H) **Testing.** Flotation testing should be performed to determine and adjust the recirculation system for optimum skimming.

(i) **Filtration.** The filtration system shall be designed to maintain the required pool and/or spray pad water quality. A water treatment system shall have one or more filters. Filters shall be installed with adequate clearance and facilities for ready and safe inspection, maintenance, disassembly and repair.

(1) **Sand filters.** The design filtration rate of rapid sand filters shall not exceed three gallons per minute per square foot (3 gpm/ft^2) of bed area at time of maximum head loss with sufficient area to meet the design rate of flow by the prescribed turnover rate. High-rate sand filters (pressure or vacuum) shall not exceed a filtration rate of fifteen gallons per minute per square foot (15 gpm/ft^2) of bed area. For multiple-cell rapid sand filters, the rate of filtration shall not exceed three gallons per minute per square foot (3 gpm/ft^2) of filter area. For multi-cell high-rate sand filters, filtration rate shall not exceed five gallons per minute per square foot (5 gpm/ft^2) of filter area. The sand filter system shall be equipped to backwash each filter at a rate of twelve to fifteen gallons per minute per square foot (12 to 15 gpm/ft^2) of filter bed area, or as recommended by the manufacturer. The backwash water shall be discharged to waste through a suitable air gap.

(A) **Filter media.** Sand or other media shall be carefully graded and meet the manufacturers' recommendation for pool use.

(B) **Accessories.** Influent pressure gauge, effluent pressure gauge, backwash sight glass and air relief valve shall be provided on all sand filters. Where multiple filter tanks are used a separate gauge panel shall be provided for each filter tank.

(2) **Diatomaceous earth filters.** The design filtration rate for pressure or vacuum type filters shall be no greater than 1.5 gallons per minute per square foot of effective filter area, except that a maximum filtration rate of two gallons per minute per square foot (2gpm/ft^2) may be allowed where continuous application of filter material is provided ("body slurry feed," see below). The filter and all component parts shall be of such materials, design and construction to withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operation.

(A) **Precoating.** Provision shall be made to introduce a precoat of diatomaceous filter aid to evenly cover the filter elements upon placing the equipment into initial operation and after cleaning. For pressure-type filters, the amount of filter aid shall be selected to provide at least the same protection to the filter element as that afforded by no less than 0.1 pound of diatomaceous earth filter aid per square foot of filter area.

(B) **Backwash and precoating.** Whenever the filter is backwashed or precoated, the filter piping shall be installed to permit continued recirculation of the water from the effluent back to the influent until a satisfactory clear effluent is produced prior to admitting the water into the pool, or to be discharged as waste water as an alternative.

(C) **Body or slurry feeding.** Where provided, the body feeding equipment designed for feed of filter aid to the filter influent shall be capable of applying not less than 0.1 pound of diatomaceous earth per square foot of filter area per 24 hours.

(D) **Regenerative-type filters.** Regenerative type of filters shall meet the same standards as pressure filters. Pumping by air or manual means shall be provided for and provision for visual inspection of elements shall be provided.

(E) **Accessories for pressure-type filters.** Each pressure-type filter requires a backwash sight glass, effluent pressure gauge, influent pressure gauge and air relief valve.

(F) **Accessories for vacuum-type filters.** A compound gauge which will indicate both positive and negative head shall be installed on the suction side of the pump. An adjustable high vacuum switch should be provided to prevent damage to the pump by cavitation.

(3) **Cartridge filters.** The design filtration rate for cartridge filters of depth type shall be less than three gallons per minute per square foot (3 gpm/ft^2) of cartridge cylinder surface area. For surface type, the design filtration rate for cartridge filters shall not exceed 0.375 gallon per minute per square foot (0.375 gpm/ft^2) of the pleated area of the cartridge. Influent pressure gauge, effluent pressure gauge and air relief valve shall be provided on all the filters. One complete extra set of filter cartridges shall be on hand at the facility's location.

(j) **Flow measurement and control.** (1) **Flow measurement.** A means of continuously measuring rate of flow shall be provided in the recirculation system. For sand filters, the flow-measuring equipment shall be located where the backwash flow rate can also be determined. The indicator shall be capable of measuring at least $1^1/_2$ times the design flow rate and shall be accurate within ten percent (10%) of true flow. The indicator shall have a range of readings appropriate for the anticipated flow rates, and be installed where it is readily accessible for reading and maintenance, and with straight pipe upstream and downstream of any fitting or restriction in accordance with the manufacturer's recommendation.

(2) **Flow regulation.** Where multiple pumps or filters are provided, each unit shall have a flow-regulating device installed. For spray grounds, automatic devices shall be provided for regulating the rate of flow through the filtration system and flow to the spray features.

(k) **Water heater and thermometer (pools).** A water heater shall be installed at all indoor pools. Heaters shall be installed in accordance with the standards contained in the Building Code and the manufacturer's recommendations. Heating coil, pipe or steam hose shall not be installed in a pool. Pools equipped with heaters shall have a fixed thermometer in the recirculation line downstream of the heater and another near the outlet of the pool.

(l) **Disinfection and chemical feeders.** Pools and/or spray pad treatment shall be designed to provide for continuous disinfection of the pool and/or spray pad water with a chemical which is an effective disinfectant and which imparts an easily measured, active residual. The pools and/or spray pad shall be equipped with a chlorinator, hypochlorinator, or other disinfectant feeder or feeders. An automatic controller shall be provided for continuous monitoring and adjusting the level of free residual disinfectant in the spray pad treatment tank. An automatic device shall be provided to deactivate chemical feeders when there is not flow in the spray pad treatment recirculation system. The feeder shall be automatic, easily disassembled for cleaning and maintenance, and capable of providing the required chemical residuals which meet the following requirements:

(1) **Design specifications.** The feeder shall be of sturdy construction and materials which will withstand wear, corrosion or attack by disinfectant solutions or vapors, and which are not adversely affected by repeated, regular adjustments or other normal use conditions. The feeder shall not allow flow of unintended chemicals or those containing foreign materials into the pool and/or spray pad treatment. The feeders shall incorporate anti-siphon safeguards so that the disinfectant cannot continue to feed into the pool and/or spray pad treatment tank, the pool piping system, the pool enclosure, spray pad treatment tank, the spray piping system or the spray pad enclosure if any type of failure of the equipment occurs.

(2) **Point of addition of disinfectant.** All chemicals shall be fed into the return line after the pump, filter and heater unless the feeder is otherwise designed and specified by the manufacturer, and approved by N.S.F. and the department.

(3) **Equipment capacity.** Feeders shall be capable of supplying disinfectant to the pool and/or spray pad treatment in a range of chlorine demand of up to 10 mg/l or equivalent.

(4) **Disinfection with bromine or solid forms of chlorine.** Where bromine or chlorine in stick or pellet form is used as a disinfectant, equipment shall be provided for feeding on continuous feed.

(5) **Disinfection with ozone.** Ozone generating equipment (OGE) is acceptable only as a supplement to chlorine or bromine disinfection system. OGE and its components shall be listed by N.S.F. or other listings that are approved by the department and meet the following design standards:

(A) The ozone concentration in the pool water shall be less than 0.10 mg/l. Off-gassing of ozone shall not result in ozone levels exceeding 0.10 mg/l in the equipment room or in the pool area. When the OGE is installed and annually thereafter, the air space within six inches (6") of the pool water level and air in the equipment room shall be tested to determine compliance with this requirement.

(B) All corona discharge OGE systems shall be vacuum systems.

(C) Backflow of pool water into OGE shall not occur.

(6) **Hypochlorinators (positive displacement pumps).** Where positive displacement pumps are used to inject the disinfectant solution into the recirculation line, the following requirements shall apply:

(A) **Feed.** Feed shall be continuous at the proper addition rate under all conditions of pressure in the recirculation system without constriction of the recirculation pump suction.

(B) **Solution tanks.** If granular calcium hypochlorite is used, two solution tanks, each with minimum capacity of

one-day supply, should be provided. All chemical containers including those used with chemical feeders shall be clearly labeled regarding their contents.

(7) **Gas chlorination.** Gas chlorination is prohibited. Chlorine gas shall not be used or stored except under permit from the Fire Department and in accordance with Building Code reference standards and as approved by the Department.

(8) **Copper/silver and copper ion generators.** All copper/silver and copper ion generators shall be approved by N.S.F. or equivalent which are approved by the department and are acceptable only as a supplement to chlorine or bromine disinfection system.

(9) **Ultraviolet light disinfection units.** All spray pad treatment systems shall provide ultraviolet light disinfection systems unless the provision of an alternative treatment process has been approved by the New York State Department of Health to be capable of providing the equivalent level of reduction of cryptosporidium as the ultraviolet light disinfection system specified in this article. The ultraviolet light unit shall be located between the spray pad treatment tank pump discharge and the spray features or as approved in accordance with §165.45(a)(2)(A). The following requirement for ultraviolet light shall apply:

(A) All ultraviolet light units must be validated with dosage by an independent agency with dosage. The validation process must determine the ultraviolet light unit's disinfection performance by indicating that a dose of 40mJ/cm^2 (at end of lamp life) is achieved at a flow rate equal to or greater than the design flow rate at the setpoint intensity. The validation procedure used must have been determined by the State Department of Health to be capable of demonstrating the disinfection performance described above.

(B) For systems utilizing quartz sleeves to separate the water passing through the chamber from the ultraviolet source, the system shall be designed to permit cleaning of the lamp jackets and the sensor window or lens without mechanical disassembly. For systems utilizing polytetrafluoroethylene (PTFE) surface materials to separate the water that flows through the ultraviolet chamber from the lamps, the ultraviolet unit shall be designed to be readily accessible to the interior and exterior of the PTFE. The ultraviolet unit shall be designed to permit use of either physical or chemical cleaning methods.

(C) An accurately calibrated ultraviolet light intensity meter, properly filtered to restrict its sensitivity to the disinfection spectrum shall be installed in the wall of the disinfection chamber at the point of greatest water depth from the tube or tubes.

(D) An automatic system shall be installed to prevent flow to the features in the event the ultraviolet light intensity decreases below the validated set point.

(E) An automatic, audible alarm shall be installed to warn of ultraviolet light disinfection system malfunction or impending shutdown.

(F) The unit shall be designed to protect the operator against electrical shock or excessive radiation.

(G) Installation of the unit shall be in a protected enclosure not subject to extremes of temperature.

(H) A spare ultraviolet lamp and other necessary equipment to effect prompt repair by qualified personnel properly instructed in the operation and maintenance of the equipment shall be provided on-site.

(m) **pH control.** Mechanical feed equipment for the purpose of adding a chemical for pH adjustment shall be provided for all pools and spray grounds built. An automatic controller shall be provided for continuously monitoring and adjusting the level of pH in the spray pad treatment tank. The method of chemical addition shall protect the bather from contact with concentrated chemicals. Soda ash, caustic soda, sodium bisulfate, carbon dioxide gas, muriatic acid,

or other chemicals approved for water supply use by the United States Environmental Protection Agency, as food additives by the United States Food and Drug Administration, or by the Department, shall be used to raise or lower pool water pH. The method shall provide adequate distribution of the chemical throughout the pool and distribution shall be verified by pool water testing prior to bather exposure. Where carbon dioxide (CO_2) is used as a method of pH control, the following features shall be provided:

(1) CO_2 shall be injected into the recirculation pipe at the same point where pH adjustment solutions (i.e., acid) would normally be added. The recirculation pipe shall be of sufficient size and length to provide a minimum of five seconds contact time prior to bather contact.

(2) CO_2 cylinders shall be anchored to prevent damage. Cylinders shall be inaccessible to the general public.

(3) The manufacturers' instructions shall be followed for installation and operation of cylinders. The units shall be operated by the pool operator as specified in the pool safety plan.

(4) CO_2 cylinders shall be stored in a protective enclosure at the exterior of occupied structures. If CO_2 cylinders are provided in the interior of occupied structures, they shall be placed in a ventilated enclosure.

(n) An automatic device shall be provided to deactivate chemical feeders when there is no flow in the recirculation system.

(o) **Pool vacuum system and cleaning system (for pools).** A cleaning system should be provided to remove sludge, sediment and other accumulations from the bottom of the pool. When a vacuum system is used as an integral part of the recirculation system, hose connections shall be located in the walls of the pool at least eight inches (8") below the waterline, and at such points that the floor of the pool can be cleaned with not more than fifty feet of suction hose.

(p) **Spray Pad Treatment Tank (for spray grounds only).** The spray pad treatment tank that receives the effluent water from the spray pad shall conform to the following specifications:

(1) **Material.** The spray pad treatment tank shall be constructed of materials which are inert, corrosion resistant, nontoxic, and watertight such as concrete, fiberglass, stainless steel, etc., which can withstand all anticipated loadings under full and empty conditions.

(2) **Volume.** The volume of the water in the spray pad treatment tank shall be sufficient to assure continuous operation of the filtration system. The capacity shall be measured from six inches above the uppermost pump inlet to the bottom of the overflow waste outlet.

(3) **Controller.** An automatic water level controller shall be provided for the spray pad treatment tank.

(4) **Ready Access.** The spray pad treatment tank must be designed to provide ready access for cleaning and inspections, and be capable of complete draining. An overflow pipe to convey excess water to waste through a suitable air gap must be provided.

(5) **Backflow Prevention.** The makeup water shall be introduced into the spray pad treatment tank through an air gap or by another method which will prevent back flow and back-siphonage.

(6) **Screen.** A screen or similar device shall be provided through which all water from the spray pad shall pass before entering the spray pad treatment tank or another method/process described to provide for removal of debris on the surface layer of the spray pad treatment tank water.

(7) **Filtered/Treated Water Inlets.** An adequate number of filtered or treated water inlets shall be provided and located for complete mixing and circulation of treated water within the spray pad treatment tank.

(8) **Drain.** At least one main drain suction outlet supplying water to the spray pad treatment tank filtration system shall be provided at the deepest point in the spray pad treatment tank.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and

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Subd. (a) heading, open par amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (a) par (1) designated and amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (a) par (2) added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (b) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (c) heading amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (c) pars (1),(2) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (c) par (4) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (d) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (f) heading, open par amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (g) heading, open par amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (h) heading, open par amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (j) par (2) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (k) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (l) heading, open par amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (l) par (1) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (l) par (3) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (l) par (9) added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (m) heading, open par amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (o) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

Subd. (p) added City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis and Purpose No. 33]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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24 RCNY 165.47

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.47 Lighting and Electrical Installation, Ventilation and Heating Require- ments.

(a) **Lighting and electrical installation.** Artificial lighting shall be provided for all bathing establishments which are to be used at night, or which do not have adequate natural lighting. The light and electrical installation shall be provided in accordance with the following:

(1) All new electrical wiring shall conform with Chapter 3 of Title 27 of the Administrative Code of the City of New York, entitled the "Electrical Code" and the National Electrical Code of the National Underwriters Laboratory, or any successor regulation or code.

(2) **Underwater.** When underwater lighting is used, not less than 8.35 lumens or 0.5 watt per square foot of pool water area shall be provided. Such lights shall be spaced to provide illumination so that all portions of the pool including the bottom, may be readily seen without glare. Overhead illumination on the water surface shall be a minimum of 30 foot-candles.

(3) If underwater lights are not provided, a minimum illumination of 50 foot-candles on the water surface and the deck shall be provided.

(4) **Decks.** A minimum of 50 foot-candles should be provided at deck area and/or spray pad.

(5) The illumination level in indoor pools and/or spray grounds shall be so designed to limit glare and excessive reflection.

(6) No overhead electrical wiring, except when secured within a ceiling, shall pass within twenty feet (20') of the pool enclosure and/or spray pad.

(7) **Emergency lighting.** All indoor pools where night swimming is permitted, and indoor pools where no natural light is present shall be provided with an adequate emergency lighting service. For outdoor pools, a portable battery powered light source is acceptable and shall be adequate and maintained to facilitate pool evacuation.

(8) **Electrical outlets.** Lighting or other electrical outlets in the deck, spray pad, shower room, and the water treatment areas shall have properly installed ground fault circuit interrupters (GFCI) at the outlet.

(9) Each underwater light shall be individually grounded by means of an adequate ground-wire with a screwed or bolted connection to the metal junction box from which the branch circuit to the individual light proceeds. Such junction boxes shall not be located in the pool deck within four feet of the pool wall.

(10) **Equipment room and storage area.** All pool equipment and chemical storage rooms shall be provided with artificial lighting sufficient to illuminate all equipment and supplies.

(11) **Sauna and steam rooms.** All electrical installation shall be in accordance with manufacturer's instruction and §165.47(a)(1).

(b) **Ventilation.** (1) **General.** All indoor pools and/or spray grounds shall be adequately ventilated, either by natural or mechanical means. Indoor portions of a bathing establishment, including indoor pools and/or spray grounds, dressing rooms, mechanical equipment rooms, storage areas, bathhouses, shower rooms and lavatories shall be ventilated pursuant to Article 12 of the Building Code or any successor law or regulation. The ventilation system for indoor pools and dressing rooms shall be designed so the bathers are not subjected to drafts and shall minimize condensation. A minimum of two air changes per hour shall be provided for indoor pool and/or spray ground areas. Any heating units shall be kept from contact with swimmers. Fuel burning heating equipment shall be installed and vented to the outdoors in accordance with the Building Code.

(2) **Carbon dioxide.** For facilities using carbon dioxide (CO_2) as the method of pH control, where cylinders are provided in the interior of occupied structures they shall be placed in a ventilated enclosure. A louvered fresh air intake shall be provided near the ceiling. Mechanical exhaust ventilation shall be provided at the rate of one air change every three minutes and take suction near the floor as far as practical from the door and fresh air intake. Exhausted air shall be ducted to the exterior of the building through a continuous pipe of at least $1^1/_2$ inches in diameter with the point of discharge so located as not to contaminate air inlets to any rooms or structures.

(c) **Heating.** A heating apparatus of sufficient capacity to heat the rooms to 75 degrees Fahrenheit shall be provided in dressing rooms, shower rooms, lavatories and pool areas used at times other than the summer months and shall be operated so as to maintain a minimum of 70 degrees Fahrenheit whenever the rooms are in use. Any heating apparatus used to heat the air in indoor portions of a bathing establishment shall be equipped with adequate protective guards and venting.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and

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FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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RULES OF THE CITY OF NEW YORK

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.49 Bathhouse and Bather Preparation Facilities.

(a) **General.** All bathing establishments shall have toilet facilities for each gender (as appropriate) within 300 feet and no more than one floor level above or below the bathing facility. Except where the bathing establishment is intended to serve as living units (such as hotel, motel, apartments, condominium and residents' institutions), there shall be a bathhouse and bather preparation facility for each gender provided with lockers, showers and toilets.

(b) **Location.** For all pools, the bather preparation facility shall be located so that the patrons shall pass through the bather preparation facilities to enter the pool. The layout of the preparation facilities shall be such that the patrons on leaving the dressing room pass the toilets and then the showers en route to the pool. For spray grounds, the bather preparation facility shall be conveniently located.

(c) **Materials.** Floors of the facility shall be of smooth-finished material with nonslip surfaces, impervious to moisture, easily cleanable and sloped at least one-fourth inch per foot ($^1/_4$"/ft) to drains. Carpeting shall not be

permitted in shower and toilet areas. Junctions between walls and floors shall be curved and of smooth, impervious materials, free from cracks or open joints. Partitions between toilets and in dressing rooms shall be at least ten inches (10") off the floor or shall be placed on continuous raised masonry or concrete bases at least four inches high, and constructed of impervious, easily cleanable material.

(d) **Design requirements.** All bathing establishments shall have an adequate number of toilets in properly ventilated compartments. The number of toilets to be provided shall be based upon the maximum number of persons, both adults and children, who can be accommodated in a bathing establishment at any one time. A bathing establishment shall have at least one toilet for every 40 female bathers, at least one toilet and one urinal for every 60 male bathers and at least one wash basin adjacent to the toilets for every 60 persons. A minimum of two toilets for female bathers shall be provided at every facility.

(e) **Shower room.** The number of shower heads to be provided shall be based upon the maximum number of persons, both adults and children, who can be accommodated in a bathing establishment at any one time. In no case shall there be fewer than two showers. A bathing establishment with indoor bathing facilities shall have at least one shower for every 40 persons of each sex. A bathing establishment with outdoor bathing facilities shall have at least one shower for every 80 persons of each sex. Showers in all bathing establishments shall have hot and cold running water. Showers shall be supplied with water at a temperature of at least ninety degrees Fahrenheit (90 °F) and no more than one hundred and ten degrees Fahrenheit (110 °F) and at a minimum rate of 1.5 gallons per minute and a maximum rate of 2.5 gallons per minute per shower. If shower curtains are used, they shall be of plastic or other impervious material and shall be kept clean. Heavy duty wall mounted soap dispensers (glass prohibited) shall be provided at each individual shower stall or at a rate of one dispenser per two shower heads in a common shower room containing more than one shower head.

(f) **Lavatories.** All lavatories shall be provided with liquid soap in an acceptable dispenser, paper towels or other individual towels or electrical hand-drying units and covered waste receptacles. Common use of bar soap or cloth towels shall not be permitted. Suitable sanitary napkin receptacles shall be provided in female toilet rooms. For spray grounds, a diaper changing area shall also be provided.

(g) **Lockers.** Lockers shall be set either on solid masonry or concrete bases at least four inches above the floor. Lockers shall be vented.

(h) **Hose bibbs.** Hose bibbs shall be provided within the bathhouse to enable the entire area to be flushed with a fifty foot (50') hose. Hose bibbs shall be provided with an anti-siphonage device.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and

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FOOTNOTES

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PART B CONTROL OF ENVIRONMENT

ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.51 Additional Requirements for Wading Pools.

(a) Wading pools shall comply with the additional provisions of this section:

(1) **Maximum depth.** The maximum water depth for wading pools shall be twenty-four inches (24") at any point.

(2) **Enclosure.** Except for pools constructed before March 24, 1959, a fence or other effective barrier at least four feet (4') in height, to separate the wading pool from other pools, shall totally enclose the wading pool and have a gate or door with a self-closing and self-latching mechanism.

(3) After the effective date of this article, where a wading pool is constructed in proximity to a swimming or wave pool, the wading pool shall be at the shallow end of the adjacent pool.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [Note internal redesignations by Law Department per Charter §1045(b)]. [See Vol. 9 Statements of Basis and Purpose No. 17]

FOOTNOTES

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ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.53 Additional Requirements for Spa Pools.

Spa pools shall comply with the additional provisions of this section:

(a) **Maximum depth.** The maximum water depth shall be four feet (4') measured from the waterline. The maximum submerged depth of any seat or sitting bench shall be two feet measured from the water line.

(b) **Location.** After the effective date of this Article, where a spa pool is constructed in proximity to a swimming or wave pool, the spa pool shall be at the shallow end of the adjacent pool with a minimum distance of five feet (5') between the pools.

(c) **Handholds.** All spas shall have one (1) or more suitable, slip-resistant handhold(s) around the perimeter, located no further than four feet (4') apart and not over twelve inches (12") above the water line. The handhold(s) may consist of rounded coping, ledge or decks along the immediate top edge of the spa; ladders, steps or seat ledges; and

ropes or railings.

(d) **Steps.** Design of steps shall conform to the following:

(1) Step treads shall have a minimum unobstructed horizontal tread depth of 10 inches for a minimum continuous width of twelve inches (12").

(2) Riser height shall not be less than seven inches (7") nor greater than twelve inches (12"). When the bottom tread serves as a bench or seat, the bottom riser may be a maximum of fourteen inches (14").

(3) Step treads shall have slip-resistant tread surfaces.

(4) Each set of steps shall be provided with at least one handrail to fully serve all treads and risers.

(5) Seats or benches may be provided as part of the steps.

(e) **Overflow system.** An overflow system shall be provided. It shall be designed and constructed so that the water level of the spa is at the operating level of the rim or weir device during use and non-use of the spa. When surface skimmers are used, one surface skimmer shall be provided for each one hundred square feet (100 ft^2) or fraction thereof of spa surface area. Recirculation through the skimmer shall be at least 30 gpm/skimmer. When two or more skimmers are used in a spa, they shall be located to maintain effective skimming action over the entire surface area of the spa. Skimmers shall conform to §165.45.

(f) **Air induction systems.** An air induction system shall be designed to prevent water backup that could cause electrical shock hazards. Air intake sources shall not permit the introduction of toxic fumes or other contaminants.

(g) **Heater and temperature requirements.** The maximum temperature of the spa water shall not exceed 104 degrees Fahrenheit. A thermostatic control for the water shall be required. An alarm system set to ring a bell or buzzer shall be installed to warn of any temperature over 104 degrees Fahrenheit. The alarm shall ring in the spa area as well as at the attendant's normal work station. The alarm system shall turn off the heat when the alarm sounds, and not allow the heater to be reset until the water temperature has cooled below the maximum level. A manual timer shall be installed that will require resetting after 15 minutes. This timer shall be set to ring a warning bell and may control the agitation pump. The heater shall be designed pursuant to §165.45 (k). Existing pools requiring modification to comply with this paragraph shall be in compliance on and after September 1, 2001.

(h) **Emergency switch.** For all spa pools, a clearly labeled emergency shutoff or control switch for the purpose of stopping the motor(s) that provide power to the recirculation system and jet system shall be installed readily accessible to the bathers at least five feet away, adjacent to, and within sight of the spa. Existing pools requiring modification to comply with this paragraph shall be in compliance on and after September 1, 2001.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and

Purpose No. 17]

FOOTNOTES

5

[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9

Statements of Basis and Purpose No. 17]

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24 RCNY 165.55

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ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.55 Additional Requirements for Physical-Therapy Pools.

Physical-Therapy pools shall comply with the additional provisions of this Section:

(a) **General.** Facilities for persons with physical disabilities shall be designed to provide safe entry and exit from the bathing establishment. Facilities for parking, path of travel, walks, ramps, drinking fountains, telephones, toilets and showers shall comply with the requirements of the Building Code.

(b) **Pool entry.** Access for persons with physical disabilities shall be at the shallow end of the pool. Pool entry shall be an eighteen inch (18") high block of steps followed by a normal set of pool steps. As an alternate, hoists or ramps are acceptable. Where removable ramps or steps are provided, the area beneath the ramp or steps shall be protected to prevent access to swimmers.

(c) **Steps and handrails.** Stair steps should have risers $5\frac{3}{4}$ inches high and a tread 12 to 18 inches wide to allow

for sitting. A handrail thirty-two inches (32") high, extending eighteen inches (18") beyond top and bottom steps, shall be provided. A twenty-two inch (22") handrail shall be provided for children. A six inch (6") handrail shall aid entry for those who cannot stand.

(d) **Wheelchairs.** Wheelchairs, if immersed in a pool, shall be safe, waterproof and designed for use in the pool environment.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

FOOTNOTES

5

[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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24 RCNY 165.57

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ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.57 Additional Requirements for Movable-Bottom Pools.

Movable-Bottom pools shall comply with the additional provisions of this section:

(a) **Design.** Hydraulic lift swimming pool floors where provided, shall be safe and maintenance-free.

(b) **Inlets.** A jet-water self-cleaning system should be provided so that the entire pool is self-cleaning. Two sets of return inlets located at two different heights should be provided to obtain adequate mixing at all times when the pool is shallow or deep.

(c) **Floor movement.** Floor movement shall be designed to minimize turbulence and provide safe entry and exit by persons with physical disabilities.

(d) **Depth signs.** A sign for pool water depth in use shall be provided and clearly lit and visible. "NO DIVING" sign shall also be provided. The control panel for changing water depth shall be located in a safe place which is

accessible only to aquatic supervisory staff or pool operator.

(e) **Diving boards.** For depths other than design diving depth, the diving board shall be in an upright position and chained or secured to prevent use.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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24 RCNY 165.59

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ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.59 Additional Requirements for White-Water Slides.

Pools with white-water slides shall comply with the additional provisions of this section:

(a) **General.** All slides shall be designed and constructed in accordance with the manufacturers' instruction to carry the anticipated load. All curves, turns and tunnels on the path of flume shall be designed and constructed in accordance with manufacturers' instruction.

(b) **Water slide landing area.** The landing area for a water slide flume shall comply with the following:

(1) The minimum plunge pool operating water depth shall be three feet (3'). This depth should be maintained in front of the flume for a distance of at least twenty feet (20').

(2) If the water slide flume shall end in a swimming pool, the landing area shall be divided from the rest of the swimming pool by a float line or as approved by the department.

(c) **Slide position.** The slide flume shall be perpendicular to the plunge pool back wall for a distance of at least ten feet (10') from the exit end of slide. The flume shall terminate between a depth six inches below to two inches above the pool water surface level. The distance between the side of a flume exit and a plunge pool side wall should be at least five feet (5'). The distance between sides of adjacent terminuses should be at least six feet (6').

(d) **Pump reservoir.** A pump reservoir shall be provided for the slide pump intakes. It shall be connected to the plunge pool by a weir. The minimum reservoir volume shall be equal to twice the combined flow rate in gallons per minute of all filters and slide pumps.

(e) The flume shall be designed to prevent users from becoming airborne while in the ride.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

FOOTNOTES

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[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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24 RCNY 165.61

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ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.61 Additional Requirements for Wave Pools.

Wave pools shall comply with the additional provisions of this section:

(a) **Perimeter overflow.** A perimeter overflow gutter system shall be provided. The gutter may be interrupted in the area where the water is less than two feet deep. The total capacity of the gutter shall be designed to carry one hundred percent (100%) of recirculation rate.

(b) **Entrapment prevention.** Any opening or connection between the wave pool and wave generator system shall be designed and constructed to prevent entrapment of bathers.

(c) **Lifeguard chairs.** Two lifeguard chairs shall be located along the deck edge on each side of wave pool where water depth is 3 feet or greater.

(d) **Emergency switches.** Switches which will stop the wave action shall be provided at each lifeguard chair.

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

FOOTNOTES

5

[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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24 RCNY 165.63

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ARTICLE 165 BATHING ESTABLISHMENTS*5 GENERAL PROVISIONS

§165.63 Sauna and Steam Rooms.

All sauna and steam rooms shall be designed and constructed in accordance with the following requirements:

(a) **Temperature control.** A sauna or steam room temperature shall be thermostatically controlled and shall not exceed 194 degrees Fahrenheit for a sauna room and 120 degrees Fahrenheit for steam room as measured at eye height.

(b) **Doors and windows.** A sauna or steam room shall be equipped with a free swinging type door or a door that swings outward freely and a window to facilitate viewing the interior of the room.

(c) **Safety.** The facility shall provide a one-hour timer to automatically disconnect all heating elements from the supply source at the end of one hour, or an attendant (meeting the definition of responsible person) who inspects the facility at a minimal interval of 15 minutes during all periods of operation of a sauna or steam room pursuant to §165.15(c), if the timer is not provided.

(d) **Timing device and temperature indicator.** A time and temperature indicator shall be provided in each sauna or steam room and shall be so installed as to be clearly visible to the patron in the sauna or steam room.

(e) **Alarm system.** An alarm system acceptable to the department shall be provided to indicate to the attendant and user any malfunction of the automatic temperature regulating control or of an electrical overloading of the equipment. The alarm system shall turn off the heat when the alarm sounds, and not allow it to be reset until the temperature has cooled to below the maximum allowable level. The operator shall be able to demonstrate the functioning of the alarm system to the department during an inspection. The alarm shall be tamper-proof. Patrons shall not be able to prevent the alarm from sounding, nor to prevent the heat from being cut off, nor to change the temperature set-point of the alarm.

(f) **Heater.** (1) The heater unit used in a sauna room shall be approved by Underwriters Laboratories, Inc., or be equipped with equivalent control and safety features acceptable to the department, provided that the installation or any alteration of such unit has been approved by the Department of Buildings.

(2) If the unit is a gas-fired system, no door openings (either metal or otherwise) to the gas heater are to be located within the enclosure of the sauna.

(g) **Steam generator.** The size of the steam generator shall be adequate for the design capacity. There shall be adequate free space for access to the generator for maintenance.

(h) **Warning signs.** A durable plate bearing the following wording, in 24 point type (letters 0.25 inches in height) or more, permanently marked thereon in colors contrasting with the background, shall be prominently affixed outside the doors of the sauna or steam room at eye level containing the following:

"Use of steam room or sauna should not exceed 30 minutes. Excessive exposure can be harmful to health. The Department of Health and Mental Hygiene recommends that persons who:

-have poor health; or

-have high blood pressure or a heart or circulatory disease; or

-are using prescription medication; or

-are pregnant

not use this facility before consulting their physician. Persons under the influence of alcohol or drugs should not use this facility."

HISTORICAL NOTE

Section added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

Subd. (h) amended City Record Jan. 14, 2003 eff. Feb. 13, 2003. [See Vol. 9 Statements of Basis and Purpose No. 18-A]

Notes:

Subsection (h) was amended by resolution adopted on December 12, 2002 following amendment of Chapter 22 of the New York City Charter by the electorate in the November 6, 2001 general election, which merged the Departments of Health and Mental Health, Mental Retardation and Alcoholism Services, and enactment of Local Law of 2002, which

further amended the Charter and changed the name of the merged agency to Department of Health and Mental Hygiene.

FOOTNOTES

5

[Footnote 5]: * Article repealed and added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 17]

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24 RCNY 167.01

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ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.01 Applicability.

(a) This Article shall apply to all bathing beaches, as defined under §167.03, that are owned, leased or operated by a person, group of persons, firm, corporation, association, organization, institution or city agency, but shall not apply to bathing beaches owned and/or maintained by an individual for the use of the individual and/or family and friends wherein no monetary compensation or any other compensation or consideration is exchanged.

(b) A camp regulated and permitted under Article 48 of the Health Code shall not require a permit under Article 167 of the Health Code, but shall comply with all other provisions of Article 167.

HISTORICAL NOTE

Section repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements

of Basis and Purpose No. 20]

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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24 RCNY 167.03

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PART B CONTROL OF ENVIRONMENT

ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.03 Definitions.

(a) "Adequate" means sufficient to accomplish the purpose for which something is intended, and to such a degree that no unreasonable risk to health or safety is presented. An item installed, maintained, designed and assembled, an activity conducted or act performed, in accordance with generally accepted standards, principles or practices applicable to a particular trade, business, occupation or profession, is adequate within the meaning of this Article.

(b) "Approval" means an authorization, permit, certification or equivalent determination issued pursuant to requirements promulgated by the Department.

(c) "Aquatic Supervisory Staff" means an individual possessing the qualifications of Supervision Level I, Supervision Level IIb, or a supervising lifeguard, as defined in §167.19(c) of this Article.

(d) "Bathing" means recreational activities where any part of the human body may come in direct contact with

water to the point of complete body submergence. Bathing includes, but is not limited to, swimming, diving, and wading. Bathing does not include any activities where contact with the water is minimal and where ingestion of the water is not probable, such as fishing and boating.

(e) "Bathing Beach" means any waterfront area of the City with associated bathing beach facilities not specifically restricted by the by the provisions contained in §167.05(d), where bathing is permitted regardless of whether it is recommended in accordance with the classifications given in §167.17. Bathing beach facilities include, but are not limited to, buildings, equipment, lavatories, toilets and showers or dressing facilities containing toilets and showers, if any, and the land areas used in connection therewith.

(f) "City" means the City of New York.

(g) "Department" means the New York City Department of Health and Mental Hygiene.

(h) **"E. coli"** means **Escherichia coli** a bacteria species which is a member of the family enterobacteriaceae which are the predominant facultative anaerobes in humans and warm blooded animal fecal material.

(i) "Enterococci" means enterococci bacteria, a subgroup of fecal streptococci that includes **Enterococcus faecalis, Enterococcus. faecium, Enterococcus avium,** and their variants. Enterococci bacteria are commonly found in the feces of humans and other warm-blooded animals. Although some strains are ubiquitous and not related to fecal pollution, the presence of enterococci in water is an indication of fecal pollution and the possible presence of enteric pathogens.

(j) "Fresh Water" in the City means any pond, lake or river in the City, including the Hudson River.

(k) "Geometric Mean" means the antilog of the summation of the logarithms of the values for samples examined divided by the number of samples.

(l) "Major Alteration, Renovation or Modification" means substantial physical changes to the bathing beach structure, enclosure, and electrical system or to the wastewater system. It does not include normal maintenance or repair.

(m) "Marine Water" means ocean and estuary water bodies. In the City, it means water bodies immediate to The Long Island Sound, Atlantic Ocean, and The New York Bight.

(n) "Preemptive Standards-New York City Wet Weather Advisory." A preemptive standard is a threshold level of precipitation that, when exceeded, can cause combined stormwater and sewage runoff to bypass the waste water treatment plants and overflow onto nearby receiving beach water bodies and may pose a public health threat. Based on hydraulic modeling of City waters, the Department issues Wet Weather Advisories each year for those bathing beaches directly impacted by wet weather.

(o) "Public Health Hazard" is any condition which poses an imminent threat to the health or safety of the public.

(p) "Qualified Lifeguard" means an individual possessing the qualifications of Supervision Level I and IIb as defined in §167.19(c) of this Article.

(q) "Responsible Person" means a competent individual, at least 18 years of age, employed by the owner or operator of the bathing beach, who is capable of exercising control over the patrons and is trained in the use of lifesaving and safety equipment, in emergency procedures and the Beach Safety Plan.

(r) "Standard Method" means the most recent edition of the publication entitled Standard Methods for the Examination of Water and Wastewater, as published by the American Public Health Association, the American Water Works Association, and the Water Environment Federation.

HISTORICAL NOTE

Section repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

Subd. (o) added City Record Dec. 11, 2006 eff. Jan. 10, 2007. [See Vol. 9 Statements of Basis and Purpose No. 27]

Subds. (p)-(r) renumbered (former (o)-(q)) City Record Dec. 11, 2006 eff. Jan. 10, 2007. [See Vol. 9 Statements of Basis and Purpose No. 27]

Notes:

Section 167.03 was amended on December 5, 2006, to include a definition of "public health hazard" as a new subdivision (o) and to re-letter subsequent subdivisions, in order to provide greater clarity to bathing beach operators and the public. Further, this definition is derived from New York State Department of Health guidance.

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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24 RCNY 167.05

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.05 Permit Applications.

(a) No person, group of persons, firm, corporation, association, organization or institution shall construct, operate, modify, maintain or grant permission for the use of any bathing beach without a permit issued by the Department. No bathing establishment shall be constructed nor shall any major renovation or modification be made to any bathing establishment unless a completed application for construction, alteration or addition is submitted to the Department for review and approval prior to commencement of work. The permit shall be posted conspicuously at the facility. The Department may order any bathing beach operating without a permit to close and remain closed until the bathing beach has obtained and displays a valid permit issued by the Department.

(b) **Application.** Application for a permit shall be made to the Department at least 30 days prior to the opening of any bathing beach. The application shall include appropriate fees, application forms and other supplemental information as required by the specific circumstances.

(c) **Renewal.** A bathing beach permit shall be renewed at least 30 days before reopening for the season. A bathing beach may be closed by the Department for failure to renew a bathing beach operating permit before reopening.

(d) **Restriction.** No person shall operate, construct or maintain and no permit shall be issued for a bathing beach within 750 feet of the point of discharge of the outlet of any sanitary sewer, the flow of which would contribute in any way to the pollution of the waters used by the bathers, and located outside the boundary delineated for primary contact recreation as defined by applicable regulations of the New York State Department of Environmental Conservation (see 6 NYCRR §700.1; see also, 6 NYCRR Parts 890, 891). "Primary contact recreation" shall mean recreational activities where the human body may come in direct contact with raw water to the point of complete body submergence. Primary contact recreation includes, but is not limited to, swimming, diving, water skiing, skin diving and surfing.

(e) **Requirements for Permit Approval.** All bathing beaches shall be designed, constructed and completed in accordance with the requirements of this Article. For permit applications for new bathing beaches, the following must be submitted to the Department:

(1) A completed and approved Beach Safety Plan, as required by §167.23.

(2) Certificate of Occupancy for the bathing beaches from the City Department of Buildings including certificate of inspection for electrical work and plumbing.

(3) Copies of Aquatic Supervisory Certificates, as required by §167.19.

(f) **Change in Ownership.** In the event of change in ownership of any bathing beaches permitted under this Article, the owner shall file an application with the Department for a change in ownership within 30 days after such change has occurred.

(g) **Exemption.** No permit is required for operation of a bathing beach or for the construction or maintenance of a bathing beach facility by a State or Federal agency.

HISTORICAL NOTE

Section repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements

of Basis and Purpose No. 20]

Subd. (d) amended City Record Mar. 27, 2009 eff. Apr. 26, 2009. [See Vol. 9 Statements of Basis

and Purpose No. 34]

Notes:

On March 24, 2009, the Board of Health amended language in §167.05(d) of the Health Code to maintain consistency with New York State Department of Environmental Conservation regulations concerning surface water classifications and primary contact recreation for New York City waters.

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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24 RCNY 167.07

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ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.07 New Construction, Major Renovation or Modification.

No major alteration, renovation or modification shall be made in a bathing beach unless a written description of the alteration or repair or addition is submitted to and approved by the Department in writing prior to commencing work. Repair or remodeling of an existing permitted bathing beach shall be in compliance with the design and construction requirements in this Article. Prior to adapting a water body for use by siting or constructing a public bathing beach, and prior to major renovation or modification of a existing bathing beach, the Department shall review and approve the following:

(a) **Engineering Plans, Specifications and Engineering Reports.** Every owner, personally or through his or her engineer or architect, shall submit to the Department engineering plans, specifications and engineer's report covering construction, major alteration or modification of the bathing beach prior to the start of construction. Plans, specifications, and reports shall be prepared by an engineer or architect licensed to practice in the State of New York, and shall include at least the following:

(1) **A Scope of Work Letter.** The letter shall ionclude a detailed discussion of the proposed work to be performed;

(2) **Engineering plans.** Three identical sets of engineering plans each bearing the seal and signature of an engineer or architect licensed to practice in the State of New York. The plans shall include the layout of the bathing beach, including, but not limited to: dimensions, bathhouses, access roads, parking, building, water supplies, sanitary and storm sewers, electrical and telephone services; and

(3) **Specifications.** One set of complete specifications for the construction of the bathing beach.

(b) **Supplemental Information.** An application shall be accompanied by any supplemental information, evidence, or documentation that the Department deems necessary.

(c) **Proposed Bathing Beaches.** In addition to the requirements set forth in subsections (a) and (b) of this section, an application to locate and/or construct a public bathing beach shall include, but not be limited to, the following:

(1) **Site Assessment.** A site assessment must include the following information: (A) **Watershed Map.** A detailed map depicting the waterbody and watershed, including but not limited to existing wastewater treatment plant discharge points, combined sewer overflow discharges, septic systems, storm sewer outfalls, agricultural runoff, landfills, commercial or industrial drainage, or other facilities that may have an impact on water quality, adjacent land use and major physical contour, highways, etc. The extent of the watershed to be mapped should be based upon knowledge of the characteristics of the watershed. All potential sources of pollution and wastewater discharge points must be shown on the map.

(B) **Plot Map.** A map drawn to scale, showing bathing beach location, dimensions, contours, existing land use and wastewater discharge points within 10,000 feet of the proposed beach unless otherwise required by the Department.

(C) **Water Level.** Seasonal or anticipated water level variation. If auxiliary water to augment low flow is planned, source, location and flowrate shall be described.

(D) **Sources of Contamination.** Evaluation of: (i) type and size of existing and potential sources of contamination, volume, occurrence and concentration level of materials in the effluent that may be of potential hazard to the bathers, and (ii) the potential for additional contamination after a significant rainfall event.

(E) **Weather and Topographical Influences.** Prevailing wind direction during the bathing season, rainfall, topography, or environmental factors including current measurements.

(F) **Water Quality.** A history of the bacteriological quality, pH, and the turbidity of the proposed body of water shall be researched from all possible sources. The results of at least one set of representative bacterial samples, each week for a period of eight weeks shall be included. Eight sets of samples shall include at least one set after heavy rains consisting of daily samples for a five-day period.

(G) **Physical and Chemical.** The physical and chemical quality of bathing water, including color, odor, floatable debris, oils and greases, high turbidity and other substances that can potentially present a public health threat. Except at ocean beaches, it shall be possible to see an eight inch black-and-white disk in four feet of water. Clarity tests should be performed at four-foot depth in the bathing area at a minimum of three different locations. A map depicting test locations, dates of sampling, and current conditions should be submitted.

(H) **Biological.** The biological quality of the bathing water, including vegetation types, infectious snails, bird nesting areas, and poisonous or dangerous aquatic organisms.

(I) **Fishing, Boating and Canoeing.** Location and level of boat traffic, number of vessels with marine sanitation devices, marinas or boat dockage areas, and any canoeing activity or fishing.

(2) **Bathymetry.** Bathing area boundaries, bottom slopes and material including high and low tide lines, and depth lines at mean high tide on a 5-foot contour.

(3) **Emergency Services.** Location relative to service facilities, such as medical, fire and police protection and communication.

(4) **Capacity.** Maximum and average bathing loads.

(5) Any other information that may impact the health or safety of bathers.

(d) **Certification.** Prior to operation of a new facility or equipment, the applicant must submit to the Department a construction compliance certificate prepared and signed by a professional engineer or architect licensed to practice in New York State. This certificate must include a written statement that the bathing beach and the building(s) and all appurtenances have been constructed in accordance with plans and specifications approved by the Department.

(e) **Construction Compliance Inspection.** The applicant shall notify the Department of the completion of construction, modification, alteration or addition in order to schedule a required compliance inspection. Approval for a construction compliance inspection will be granted when all of the required items are completed to the Department's satisfaction.

(f) **Permit Conditions.** Approval certificates or permits from other permit issuing agencies, if applicable or required by the Department.

HISTORICAL NOTE

Section repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements

of Basis and Purpose No. 20]

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.09 Enforcement.

(a) **Public Health Hazards and Closing Criteria.** Where a public health hazard condition exists, including one or more of the following, and said hazard(s) is(are) not immediately corrected, the bathing beach may be immediately closed in whole or in part by the Department and shall remain closed until such conditions are corrected to the satisfaction of the Department and in accordance with the provisions of this Article. The bathing beach in whole or in part shall remain closed until the Department has authorized reopening. Public health hazards shall include, but not be limited to, any of the following:

(1) Failure to provide adequate supervision of the beach as prescribed in §167.19;

(2) Failure to provide all lifesaving and safety equipment as prescribed in §167.21;

(3) Water quality inadequate as specified in §167.17(c);

(4) Failure to post public notification signs or advisories as prescribed in §167.27 indicating a potential health hazard or hazardous conditions, when water quality exceeds prescribed standards, in the event of sewage spills and pollution events, or when medical waste/hazardous materials are observed;

(5) Failure to provide adequate signs indicating that swimming and bathing are prohibited when lifeguards are not on active duty as prescribed in §167.19(a)(4), or when the bathing beach is closed;

(6) Medical waste, sewage, petroleum or other hazardous materials observed in beach area as prescribed in §167.13(a)(2);

(7) Use of unapproved or contaminated water supply sources for potable water use as prescribed in §167.31(f);

(8) Overhead electrical wire within 20 feet horizontally of the bathing beach as prescribed in §167.37(g)(2);

(9) Operating a bathing beach without a valid permit issued by the Department as prescribed in §167.05(a), (c);

(10) Operating without an approved Beach Safety Plan as prescribed in §167.23(a);

(11) Failure to provide depth markings, safety lines and diving requirements as prescribed in §167.29(b)(4), (5);

(12) Failure to provide appropriate safety and warning signs as prescribed in §167.37(f)(1), (f)(2)(B), (C); and,

(13) Any other condition determined to be a public health hazard by the Department.

(b) **Inspection availability.** The most recent inspection report shall be available at the facility at all times and shall be presented for inspection upon request by the Department.

HISTORICAL NOTE

Section repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements

of Basis and Purpose No. 20]

Subd. (a) amended City Record Dec. 11, 2006 eff. Jan. 10, 2007. [See Vol. 9 Statements of Basis and

Purpose No. 27]

Notes:

Section 167.09(a) was amended on December 5, 2006, to include that a violation of the requirements contained in §§167.05(a), (c); 167.23(a); 167.29(b)(4), (5); and 167.37(f)(1), (f)(2)(B), (C), be deemed a "public health hazard." Also, §167.09(a) was amended to include citations to the applicable Health Code sections where none were cited. These actions were taken in order to provide greater clarity to bathing beach operators and the public.

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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PART B CONTROL OF ENVIRONMENT

ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.11 Modification.

When the strict application of any provision of this Article presents practical difficulties, or unusual or unreasonable hardships, the Commissioner in a specific instance may modify the application of such provision consistent with the general purpose of this Article and upon such conditions as, in his or her opinion, are necessary to protect the health or safety of bathers. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

HISTORICAL NOTE

Section repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

WATER QUALITY STANDARDS AND CLASSIFICATIONS

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.13 Water Quality Standards.

(a) All bathing beaches shall meet the following water quality standards:

(1) **Bacteriological.** The water quality in a bathing beach shall be determined through the collection and analysis of water samples for the presence of Enterococci and/or **E. coli** bacteria using the Standard Methods for the determination of Enterococci bacteria and **E. coli** approved for bathing beaches. The bacteriological water quality of bathing beaches shall meet the following standards:

(A) For marine water beaches

Enterococci geometric mean shall not exceed 35 per 100 ml for a series of five or more samples collected during a 30-day period.

(B) For freshwater beaches

Enterococci geometric mean shall not exceed 33 per 100 ml for a series of five or more samples collected during a 30-day period.

-OR-

E. coli geometric mean shall not exceed 126 per 100 ml for a series of five or more samples collected during a 30-day period.

(2) **Chemical and Physical Quality.** The water shall be free of deposits, floatable debris, growths, oils and greases, or any foreign substances that may potentially present a public health threat. The water in bathing beaches shall be considered to exceed the chemical and/or physical quality standards when the Department determines that any substance is being discharged or may be discharged into the water that is or may be hazardous to the health of persons using the bathing beach.

(b) **Preemptive Standards-New York City Wet Weather Advisory.** The bathing beach operator shall post public notifications as prescribed in §167.27(a).

HISTORICAL NOTE

Section repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements

of Basis and Purpose No. 20]

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.15 Monitoring.

(a) Collection of samples and analysis for the purpose of surveillance or design shall be performed in accordance with the sampling plan specified by the Department. The sampling procedures will be based on potential pollution sources, storm water discharges, historical water quality data, regional hydrodynamics, beach usage, beach length, and geomorphology for representation of water quality monitoring.

(b) **Laboratory Analysis.** Bathing beach samples shall be examined by a laboratory in possession of a valid current New York State Department of Health National Environmental Laboratory Accreditation Certification (NELAC) using approved methods in accordance with City, state, and federal agencies.

(c) **Preemptive Standards-New York City Wet Weather Advisory.** For bathing beaches covered under this advisory, the operator shall be knowledgeable of the established wet weather rainfall intensity standards set for the facility. The operator shall monitor rainfall intensity/data on a daily basis during the bathing season.

HISTORICAL NOTE

Section repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.17 Classifications.

The Department shall assign to each bathing beach one of the classifications listed below based on the evaluation and evidence of information provided by water quality data, sanitary and safety survey, site condition or historical information.

(a) **Class A: Open for Swimming and Bathing.** All of the following conditions shall be considered in order for a beach to be classified as open and approved for swimming and bathing:

(1) Bathing beach water quality standards are in accordance with §167.13.

(2) Sanitary and safety surveys conducted pursuant to §167.25 are satisfactory to the Department; and

(3) The epidemiological history is satisfactory to the Department. No repeated complaints/reports of illness/injury received from the public or from owners/operators of bathing beaches.

(b) **Class B: Under Advisory-Not Recommended for Swimming and Bathing.** When any of the following conditions is present, a bathing beach/facility shall be under advisory, notifying the public of the likelihood of polluted water and recommending that the public avoid swimming in the water to prevent contracting a swimming related illness:

(1) Rainfall intensities exceed the preemptive standards/threshold of New York City Wet Weather Advisories, as issued by the Department before each bathing season.

(2) A sanitary and safety survey or investigation reveals the presence of floatable debris, medical/infectious waste, toxic contaminants, petroleum products and/or other contamination on the beach or evidence of sewage and wastewater discharge, which may constitute a potential public health hazard.

(c) **Class C: Closed-Temporarily Restricted for Swimming and Bathing.** When one or a combination of any of the following conditions exist, the beach may be closed for bathing.

(1) Water quality standards exceed the standards set forth in §167.13; or

(2) Epidemiological data indicates a significant incidence of related illnesses or repeated complaints/reports of illness/injury received from beach patrons; or

(3) Sanitary and Safety Survey/Investigation: A sanitary and safety survey or an investigation reveals the presence of floatable debris, medical/infectious waste, toxic contaminants, petroleum products or other contamination on the beach, or there is evidence of sewage and wastewater discharge in sufficient quantities that will adversely affect the quality of the beach water; or

(4) Presence of public health hazards as illustrated in §167.09.

If a bathing beach is closed due to unsatisfactory water quality sampling data, the beach shall remain closed to the public until appropriate sampling shows that the water quality meets the standards prescribed in §167.13(a). When a bathing beach is closed pursuant to §167.17(c), no one shall be allowed in the water and the beach must not be reopened without the express written permission of the Department. If a beach operator temporarily closes a beach voluntarily, the operator may reopen the beach when the conditions that led to the closing have been corrected.

HISTORICAL NOTE

Section repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements

of Basis and Purpose No. 20]

Subd. (c) par (4) amended City Record Dec. 11, 2006 eff. Jan. 10, 2007. [See Vol. 9 Statements of

Basis and Purpose No. 27]

Notes:

Section 167.17(c) was amended on December 5, 2006, such that the word "defined" was replaced by the word "illustrated."

SUPERVISION, SANITATION, SAFETY AND

PUBLIC NOTIFICATION

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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24 RCNY 167.19

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PART B CONTROL OF ENVIRONMENT

ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.19 Supervision and Certification.

(a) **Supervision.** Aquatic Supervisory Staff defined under §167.19(c) shall be on duty at the waterside at all times when a bathing beach is used by the bather(s) and shall provide continuous visual supervision and surveillance of the bathers in their assigned or designated area of coverage, without interference or interruption of his/her duties unless additional qualified staff is provided. The staff shall not be subject to duties that will divert their attention from the safety of the bather(s), or that will prevent immediate assistance to persons in distress in the water.

(1) **Minimum Supervision Requirement.** At least one aquatic supervisory staff person having at least the required supervisory level required under §169.19(c) shall be provided at all times for continuous visual surveillance for each 50 yards of beachfront or fraction thereorf. Sufficient aquatic supervisory staff must be provided for visual surveillance of the entire bathing area(s) open for swimming or bathing.

(2) **Additional Supervision.** The Department may require additional aquatic supervisory staff whenever it is

necessary for the protection of the bathers. Factors for additional aquatic supervision requirement may include, but are not limited to: bather loads, currents, tides, and any other conditions which may cause changes in water conditions; size and configuration of beach shape; diving board use; and other bather activities.

(3) **Area without Supervision.** Legible signs stating "No Swimming or Bathing" must be posted at areas not permitted/approved for bathing on property adjoining the designated bathing area that is owned or under control of the permit holder.

(4) **Lifeguard Not on Duty.** When no lifeguard is on duty at a beach, legible signs stating "No Lifeguard on Duty-Bathing and Swimming Prohibited", or language to that effect, shall be posted at every entrance to the bathing area. The sign must be at least 36" × 24" in size, with letters at least two inches high.

(b) **Operator.** All bathing beach and beach facilities shall be maintained and supervised by a responsible person who, as the operator, shall maintain the beach in compliance with the provisions of this Article. The operator of the bathing facility shall be accountable for, but not be limited to, the following responsibilities:

(1) Controlling decorum and activities at the bathing site;

(2) Hiring and retaining adequate and qualified supervisory personnel;

(3) Reporting injuries and deaths to the Department;

(4) Public notification for potential contamination, confirmed contamination or public health hazards;

(5) Monitoring weather, and other environmental conditions, that impact the beach; and

(6) Maintaining the physical facilities as required by this Article.

(c) **Certifications.** All bathing beaches shall be supervised by the required certified personnel. Copies of certificates or other documents showing possession of such qualifications shall be kept at the facility at all times and shall be presented for inspection by the Department upon request.

(1) **Lifeguards.** Appropriately certified lifeguards shall be present whenever the beach is open. A minimum of one supervising lifeguard is required for bathing beaches that require three or more lifeguards. The lifeguard shall meet the following minimum requirements:

(A) **Ocean Surf Beach: Supervision Level I-Surf Lifeguards**

(i) Shall be at least 16 years old; and

(ii) Shall possess a current American Red Cross Basic Life Support for the Professional Rescuer Cardiopulmonary Resuscitation ("CPR") certificate or American Heart Association Course "C" CPR certificate, or an equivalent certificate approved by the New York State Department of Health. Certification period must not exceed one year; and

(iii) Must possess a current Municipal Lifeguard Certification, or accepted equivalent certificate having successfully completed a minimum 20-hour (24-hour if first aid skills are included) surf lifeguard training courses acceptable to The New York State Department of Health. All training and ocean testing must be satisfactorily completed prior to assignment at ocean front. The certification period must not exceed three years.

(B) **Non-Surf Beach: Supervision Level IIb-Beach Lifeguard**

(i) Shall be at least 16 years old (or 15 years old if supervisory lifeguard is present); and

(ii) Shall possess a current American Red Cross Basic Life Support for the Professional Rescuer CPR certificate or American Heart Association Course "C" CPR certificate, or an equivalent certificate approved by the New York State Department of Health. Certification period must not exceed one year; and

(iii) Shall successfully complete a minimum 20-hour (24-hour if first aid skills are included) lifeguard training course (including a beach module) acceptable to the New York State Department of Health and possess a current certificate thereof. Certification period must not exceed three years.

(C) **Supervision Level III**

(i) Shall be at least 18 years old (or 16 years old if certified as Level II Lifeguard);

(ii) Shall possess a current American Red Cross Community-CPR certificate, or equivalent approved by the New York State Department of Health. Certification period shall not exceed one year; and

(iii) Shall be competent to:

(a) understand and apply the rules and regulations of this Article and implement the safety plan;

(b) evaluate environmental hazards;

(c) use lifesaving equipment; and

(d) undertake bather/crowd control.

(D) **Supervising Lifeguard.** Beaches that require Supervision Levels I and IIb aquatic supervisory staff shall provide a supervising lifeguard when the facility is required to provide three or more aquatic supervisory staff.

(i) Shall have the lifeguard qualifications specified in §167.19(c)(1)(A) for Ocean Surf Beach or §167.19(c)(1)(B) for Non-Surf Beach, as appropriate for the beach; and

(ii) Shall have at least two seasons of adequate lifeguard experience.

HISTORICAL NOTE

Section added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements

of Basis and Purpose No. 20]

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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24 RCNY 167.21

RULES OF THE CITY OF NEW YORK

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PART B CONTROL OF ENVIRONMENT

ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.21 Lifesaving and Safety Equipment.

(a) Lifesaving equipment shall be kept in good repair, have its function plainly marked, be kept in ready-to-use condition, and be readily accessible at bathing beaches at all times. At a minimum, the following equipment shall be maintained at all times:

(1) One rescue tube or torpedo buoy with attached line and a pocket face mask or face shield with a one way valve to assist with CPR for each lifeguard required by this Article, and

(2) One rescue board or lifeboat including sterned lifeboat, a catamaran surfboat or other suitable surfboat. The lifeboat or surfboat shall have hanging ropes on each side so that bathers may readily hold on and obtain support. The lifeboat or surfboat shall also be equipped with at least one ring buoy or life preserver with 60 feet or 18 meters of line attached, and

(3) One spine board, minimum of 6 feet long and 16 inches wide, provided with straps and head immobilizater to aid immobilization of victim, and 10 handholds, and

(4) One First Aid kit, which may be any commercially prepared 24-unit kit, or a supply of bandaids, bandage compresses and self-adhesive bandages.

(b) At least one set of the items listed in (2), (3) and (4) above shall be provided for each 500 feet of beachfront or fraction thereof, or as specified in the approved Beach Safety Plan, and shall be readily accessible to the lifeguards therein.

(c) **Lifeguard Station**

(1) **Elevated Chair.** There should be one elevated lifeguard chair for each 50 yards of beach front, or at locations provided in the approved safety plan. Elevated lifeguard chairs or towers shall be high enough to provide a completely unobstructed view of the bathing area under surveillance.

(2) **Lifeguard Apparatus.** Each lifeguard chair shall be equipped with a whistle or megaphone, and an umbrella or sunshade.

(d) **Telephone and Emergency Contact List.** A telephone, radio, or other suitable means of communication shall be readily accessible to the lifeguards for emergency communications at the bathing beach. A telephone list of local police, emergency medical services, nearest hospital and other entities shall be posted in a conspicuous place. At beaches with multiple lifeguard chairs, at least one radio and telephone shall be readily available from a lifeguard station building.

(e) **Emergency Care/First Aid Room.** Every bathing beach capable of accommodating 500 bathers shall have a readily accessible room or area designated and equipped for emergency care. The room shall be equipped with at least the following:

(1) Running potable water;

(2) A cot or bed with blankets and sheets;

(3) Advanced first aid supplies at least equivalent to 24 units; and

(4) Resuscitation equipment.

HISTORICAL NOTE

Section added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and

Purpose No. 20]

Subd. (b) amended City Record Dec. 11, 2006 eff. Jan. 10, 2007. [See Vol. 9 Statements of Basis and

Purpose No. 27]

Notes:

Section 167.21(b) was amended on December 5, 2006, to correct a descriptive technical unit error from "yards" to "feet", in order to be consistent with the intent of the New York State Sanitary Code (see 10 NYCRR §6-2.17(b)(1)). Also, by alternatively allowing for the provision of safety equipment per each approved Beach Safety Plan, the Department believes this language change will continue to promote public safety, while properly accounting for each

individual beach's water conditions, topography, crowd size, deportment and infrastructure.

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.23 Beach Safety Plan.

(a) The operator of a bathing beach shall develop, maintain, and implement a written Beach Safety Plan that consists of health and safety procedures to be followed by beach personnel during normal operations and in emergency situations. The plan shall include daily procedures and protocols for bather supervision, coverage and surveillance, responsibility and organization of all personnel, injury prevention, reacting to potential incidents, injuries and emergency situations, a list of emergency telephone numbers, location of first aid and rescue equipment, providing first aid and summoning help, and such other information, evidence, or documentation as the Department may require. The safety plan must be approved by the Department in writing before implementation. The safety plan must be kept at the beach facility at all times and be presented for inspection by the Department upon request.

(b) **Revisions.** The owner, lessee or operator shall submit to the Department revisions to the Beach Safety Plan whenever a change occurs in the facility, or at the direction of the Department. Revisions to the Beach Safety Plan shall not be implemented without written approval from the Department.

HISTORICAL NOTE

Section added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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24 RCNY 167.25

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ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.25 Sanitary and Safety Survey.

Prior to opening the bathing beach for operation, the operator or aquatic supervisory staff shall conduct a daily sanitary and safety survey. A sanitary and safety survey shall include, but not be limited to, a visual inspection for untreated sewage discharge, petroleum oil slick, floatable debris, medical/infectious materials or other sources of contamination as per §167.13(a)(2). All refuse (especially items such as syringes and medical refuse), garbage, and debris left on the beach or floating nearby, shall be removed and disposed of properly. The waterfront area of the beach shall be free of potholes, loose rocks, debris, glass containers, and other dangerous objects. If pollution which may potentially present a public health threat is observed, as described in §167.13(a)(2), the operator shall close the beach immediately and notify the Department for further instructions.

HISTORICAL NOTE

Section added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and

Purpose No. 20]

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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PART B CONTROL OF ENVIRONMENT

ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.27 Public Notification.

Bathing beach operators shall notify bathers of potential contamination, confirmed contamination, or public health hazards, as classified in §§167.17(b) and (c), by posting signs as prescribed by the Department in a conspicuous and visible place. Signs shall be posted by the bathing beach facility in areas visible to bathers including, but not limited to, beach entrances, bulletin boards, or in the general vicinity of the common bathing areas.

(a) **Class B: Under Advisory-Not Recommended For Swimming and Bathing.**

(1) **Preemptive Standards-New York City Wet Weather Advisory.** The bathing beaches covered under the Wet Weather Advisories, as defined under §167.03(n), shall post a "permanent" advisory at their beach operation, in an area visible and accessible to the public, during the entire bathing season, notifying the public of possible water quality standard exceedances and the potential of contracting bathing related illnesses. The operator is responsible for monitoring the rainfall intensities in the area. When the rainfall intensity exceeds the thresholds of the Preemptive

Standards-New York City Wet Weather Advisories, as issued by the Department, the operator shall post additional signs approved by the Department indicating that the Wet Weather Advisory is in effect until the required time period has elapsed.

(2) **Preemptive Swimming and Bathing Advisory.** The operator is responsible for posting signs indicating a Preemptive Swimming and Bathing Advisory when instructed by the Department. The sign must be posted and maintained until further notice from the Department.

(b) **Class C: Closed-Temporarily Restricted for Swimming and Bathing.**

(1) The bathing beach shall be closed for swimming and bathing by the operator when notified by the Department and must remain closed until the Department authorizes reopening. The operator is responsible for restricting bathers from entering the water and for posting beach closure signs as required by the Department.

(2) If the operator or any aquatic supervisory staff on duty determines that adverse weather or other environmental conditions pose a threat to the health and safety of the public, the operator must close the beach and beach closure signs must be posted.

HISTORICAL NOTE

Section added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and

Purpose No. 20]

OPERATION AND MAINTENANCE REQUIREMENTS

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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24 RCNY 167.29

RULES OF THE CITY OF NEW YORK

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ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.29 Control of Beach and Water Use.

(a) Each bathing beach shall be under the supervision of a competent operator who shall require the careful observance of sanitary regulations prescribed in this Article and the requirements of the permit issued for such bathing beach.

(b) **Waterfront Use.**

(1) **Bather Loading.** The number of bathers permitted in the bathing water of a bathing beach shall not exceed the maximum permissible loading established by §167.37(c). The operator shall be responsible for restricting usage so that the maximum capacity is not exceeded.

(2) **Surrounding Property.** All areas of an owner's, lessee's, or operator's property that are adjacent to the designated beach and are accessible to the public for entry into the water for bathing shall be supervised or patrolled

during hours of operation. Bathing is prohibited in areas where there is not lifeguard supervision.

(3) **Safety Signs or Public Advisory.** Signs to be posted shall be maintained and posted conspicuously in manner consistent with the requirements of this Article.

(4) Depth markings and safety lines shall be provided and maintained in accordance with the provisions of §167.37(e) and be clearly visible and readable.

(5) **Diving.** Diving shall not be permitted unless minimum depths in accordance with provisions contained in §167.37(d)(2) of this Article are provided.

(6) Bathing at 150 feet or more from shore is prohibited.

(7) **Motorized Vehicle.** No motorized vehicles shall be permitted on the beach, except emergency and maintenance vehicles operated by the aquatic supervisory staff, lifeguards, or operators.

(8) **Water Sports.** No boating, water skiing, fishing, scuba diving, or surfboarding shall be permitted in a bathing area when bathing is allowed. Floating lines, buoys, or signs may designate separate areas for the above activities.

(9) Swimming and bathing are prohibited outside of established hours, at night, during lightning or a thunderstorm, or in dangerous or unauthorized areas.

(10) **Fishing.** Where allowed at a bathing beach during bathing season, fishing shall be permitted only in areas where bathing has been temporarily prohibited.

(11) **Electrical Devices.** All plug-in electrical devices, such as portable announcing systems and radios, are prohibited within 20 feet of the water.

(12) **Glass.** Glass containers shall not be permitted on the beach.

(13) **Refuse.** During bathing season, all refuse, garbage and debris, whether water borne or produced in connection with the normal operation of the bathing beach, must be removed, stored, and disposed of in a sanitary manner to prevent harborage of rodents, insect attraction or breeding, odors, public health hazards, and environmental pollution.

HISTORICAL NOTE

Section added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and

Purpose No. 20]

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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24 RCNY 167.31

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ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.31 Facility Use and Maintenance.

(a) All bathing beach facilities shall be properly lighted, ventilated, and maintained and operated in a safe, clean, and sanitary condition at all times. The floors, fixtures, showers, and toilets shall be kept clean, free of dirt and debris, and in good condition. Floors shall be maintained in a slip-resistant condition. A supply of toilet paper shall be provided at each toilet at all times.

(b) **Toilet.** Toilet and shower facilities shall be provided and maintained at all bathing beaches in accordance with §167.39.

(c) **Hosing.** A minimum length of 50 feet of hosing shall be provided and available within the bathhouse to flush the entire area. Vacuum breakers shall be attached to all hose bibbs.

(d) **Lavatories.** All lavatories shall be provided with liquid soap in an acceptable dispenser, paper towels or other

individual towels or electrical hand-drying units, and a covered waste receptacle. Common use of bar soap or cloth towels shall not be permitted.

(e) **Structural Condition.** Walls and floors of the bathing beach facility shall be free from cracks or open joints. The floors must be well drained.

(f) **Drinking Water.** Water supply serving all plumbing fixtures, including drinking fountains, lavatories and showers, shall use the City water supply or shall meet the applicable drinking water quality standards for all sources of water supply in New York state. All facilities shall be provided with drinking water through a drinking fountain or served by disposable single-service drinking cups.

HISTORICAL NOTE

Section added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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24 RCNY 167.33

RULES OF THE CITY OF NEW YORK

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ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.33 Drowning, Injury and Illness Incidents.

(a) **24-Hour Notification.** In the event of a drowning, injury or illness in a bathing beach, bathing beach facility, or within the confines of the bathing beach, the owner, lessee, or operator shall notify the Department within 24 hours of occurrence whenever an incident occurs that:

(1) Results in death;

(2) Requires resuscitation;

(3) Requires referral to a hospital or other facility for medical attention; or

(4) Involves illnesses associated with the water quality;

(b) **Reporting.** In the event of an incident referred to in subsection (a) of this section, the owner, lessee, or operator

shall submit to the Department a written incident report within seven days. The incident report shall be recorded in the log book and shall include:

(1) Name of the lifeguards, supervisor staff or operator;

(2) The date, time, exact location and type of incident;

(3) Cause of the injuries;

(4) The extent of injuries, if any;

(5) Actions taken by persons at the site;

(6) Witnesses statements; and

(7) Lifesaving and safety equipment used, if any.

HISTORICAL NOTE

Section added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.35 Record Keeping.

The operator shall keep and maintain a log book of daily bathers using the beach, number of lifeguards on duty, weather conditions, water clarity, results of any water quality laboratory results and reports, and any reported rescues, injuries and illnesses. Copies of records shall be submitted to the Department on a monthly basis. The records shall be maintained at the facility for 12 months.

HISTORICAL NOTE

Section added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

BATHING BEACH DESIGN AND STANDARDS

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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24 RCNY 167.37

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ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.37 General Requirements.

(a) All bathing beaches shall be designed and constructed in accordance with the requirements contained in this Code. These standards are applicable to the design of new or modified bathing beaches regulated by this Article. The designing architect or engineer shall certify the structural stability and safety of the facility.

(b) **Pre-Qualifications for Proposed Beach.** A proposed bathing beach shall meet the following pre-qualification requirements for establishing a beach:

(1) **Site Assessment.** A satisfactory approval by the Department for site assessment contained in §167.07(c);

(2) **Water Surface Area.** The water surface where the beach is to be developed shall be at least one acre. In the event that the area is less than four acres with natural flow-through below 100 gallons per bather per day, a source of dilution water of at least 100 gallons per bather per day must be provided in accordance to the water quality

requirements prescribed in §167.13;

(3) **Land Area.** At least 35 square feet of land area per bather shall be provided;

(4) **Bottom Slope.** For depths up to four feet, the slope shall be uniform and not exceed 1:10 for greater depths, the slope should not exceed 1:3;

(5) **Bottom Material.** The bottom up to a water depth of six feet shall consist of sand, pea gravel or other similar material;

(6) **Sewage Discharge.** Wastewater discharges from sewage treatment plants, combined sewers or other sources shall be prohibited within 750 feet of the bathing beach;

(7) **Water Currents.** Water currents in the bathing area shall not exceed three feet per second; and

(8) **Water Quality.** Bathing beaches shall meet the water quality standards for bacteriological, physical and chemical quality contained in §167.13.

(c) **Maximum Permissible Loading.** Maximum Bathers. The maximum number of bathers permitted in the shallow water (four feet or less) of a bathing beach shall not exceed one bather per 25 square feet of water surface. In areas of water depth greater than four feet, at least 75 square feet per bather shall be provided.

(d) **Diving.**

(1) **Diving Platforms.** Floating diving piers and fixed platforms shall be constructed with a visible 12-inch air space under maximum feasible load. There shall be as little underwater construction as is consistent with adequate support. All braces and struts shall be designed to prevent entrapment of bathers. For solid flotation devices such as foam blocks, no air space is required.

(2) **Depth.** Diving from rafts, piers or other platforms shall be prohibited, unless a minimum water depth at mean low tide of eight feet is provided and maintained for a distance of at least 10 feet forward of the diving direction. For a diving board or other device three or less feet above the water, the depth at the end of it, and for 12 feet beyond it, shall be 10 feet. For heights above water greater than three feet, the depth at those locations shall be 12 feet and 20 feet beyond it. No diving device more than 10 feet above water shall be installed.

(e) **Depth Markers and Safety.** Except ocean beaches, marker lines with buoys shall be provided at all beaches to designate the perimeter, the shallow and deep-end areas at a depth of three to four feet, the diving area, drop-offs, and radical changes in slopes or underwater obstructions. A separate wading area up to two feet deep, designated by lines, shall be provided. Lines shall have floats at five-foot intervals and be securely anchored, and have buoys no more than 25 feet apart and at point whre lines are joined.

(f) **Safety and Warning Signs.**

(1) **"No Diving" Markers.** Clearly visible depth markers shall be provided at all the diving boards, platforms piers, floats and similar facilities, together with warning signs indicating "No Diving" where depth is less than eight feet.

(2) **Warning Signs.** A sign or signs shall be securely posted in a conspicuous place or places at the bathing facility and shall provide the following information:

(A) Maximum number of persons permitted at the bathing beach at any time; (B) The hours during which public bathing is allowed, and that entry into water at other times is prohibited; and

(C) **Beach Closed.** "No Swimming and Bathing" signs shall be placed up in areas adjacent to the beach but not open for swimming and bathing, and on the beach during the closed season.

(g) **Electrical Requirements.**

(1) All electrical wiring shall conform to Chapter 3 of Title 27 of the Administrative Code of the City of New York, entitled the "Electrical Code" and the National Electrical Code of the National Fire Protection Association, or any successor regulation or code.

(2) **Overhead Clearance.** No overhead electrical wiring, including lights, or plug-in electrical devices, such as portable announcing systems and radios, shall pass within 20 feet horizontally of the bathing beach high water line.

(h) **Safety Equipment.** The bathing beach shall provide the lifesaving and safety equipment identified in §§167.21(a), (b) and (c).

(j) **Emergency Care/First Aid Room.** Every bathing beach capable of accommodating 500 bathers shall have a readily accessible room or area designated and equipped for emergency care. The room shall contain the equipment identified in §167.21(d).

HISTORICAL NOTE

Section added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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24 RCNY 167.39

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ARTICLE 167 BATHING BEACHES*7 GENERAL PROVISIONS

§167.39 Bathhouses.

(a) **Materials.** Floors of the facility shall be of smooth-finished material with non-slip surfaces, impervious to moisture, cleanable and sloped at least one-fourth inch per foot to drains. Carpeting shall not be permitted in shower and toilet areas or other areas receiving bathers. Junctions between walls and floors shall be coved. Walls and partitions shall be of smooth, impervious materials, free from cracks or open joints. Partitions between dressing cubicles shall maintain at least 10 inches of open space from the floor or shall be placed on continuous raised masonry or concrete bases at least four inches high or on legs with bottom of locker at least 10 inches above the floor.

(b) **Toilets, Washbasins and Showers.** All bathing beach facilities shall be provided with an adequate number of toilets and handwashing facilities.

(1) A facility shall provide properly lighted, ventilated and maintained toilets and handwashing sinks and an adequate number of showers or a dressing facility containing toilets and showers.

(2) Separate toilet facilities shall be provided for each sex. All toilet facilities shall be provided with soap, paper towels or electrical hand drying units, and covered waste receptables. Suitable sanitary napkin receptacles shall be provided in toilet facilities used by females.

(3) Where showers are provided, they shall be supplied with water at a temperature of at least 90 degrees Fahrenheit and no more than 110 degrees Fahrenheit at a rate of at least 1.5 gallons per minute per showerhead. Thermostatic, tempering or mixing valves shall be kept in good operation to prevent scalding of bathers.

(c) **Drinking Water Fountains.** Where drinking fountains are provided, at least one drinking fountain for each 500 feet distance or for every 1,000 users shall be provided.

(1) Fountains shall be of slanting jet type with surrounding guard and non-submersible opening.

(2) Fountains shall be supplied with a minimum water pressure of 20 pounds per square inch.

(d) **Suits and Towels.** Where swimming suits and/or towels are provided, these items shall be properly stored and sanitized.

(e) **Lockers.** Lockers, where provided, shall be constructed on solid masonry or concrete bases at least four inches high or on legs with bottom of lockers 10 inches above the floor. Lockers shall be vented.

HISTORICAL NOTE

Section added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and

Purpose No. 20]

FOOTNOTES

7

[Footnote 7]: * Article repealed and added City Record Mar. 24, 2004 eff. Apr. 23, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20]

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24 RCNY Health Code Reg. 173.00

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 173 HAZARDOUS SUBSTANCES

Health Code Reg. § 173.00 INTRODUCTORY NOTES

This article was further amended by resolution adopted on June 22, 2004, effective August 2, 2004, repealing and re-enacting §173.14, and repealing §173.15 (Unsafe lead based paint work practices) and including its substantive provisions in §173.14.

Article 173 constitutes a revision of S.C. §122, §123, §222(4), (6), (7) and (8), §222a, §230a, §230c and §230d. The article deals primarily with the labeling and sale of hazardous substances. The use of hazardous insecticides, rodenticides and fumigants is covered by Article 171, Fumigation and Extermination. Regulation of ionizing radiation is found in Article 175, Radiological Hazards.

This article provides for informative labeling of hazardous substances so as to warn the public against the dangers involved in the use of the substances in order that users may take necessary and proper precautions against risk of bodily harm. It also regulates the conditions of sale of rodenticides and insecticides containing sodium fluoride, sodium

fluoroacetate, thallium, or live micro-organisms, fire extinguishers containing methyl bromide, paints containing lead, products containing lye in a concentration of ten percent or more and certain types of plastic bags.

Many substantive changes have been made. The definition of hazardous substance is new (§173.01(a)). The word "toxic" is defined on the basis of laboratory animal tests (§173.01(b)). Strong sensitizers are defined and regulated (§§173.01(g) and 173.05(e)). Labeling is defined and certain information is required to appear thereon (§§173.01(i) and 173.05(a), (b), (c) and (h). Advertisement is defined and false or misleading advertising or labeling is prohibited (§§173.01(j) and 173.07). Transfer of hazardous substances from one container to another without appropriate labeling is prohibited (§173.03(a)). Use of containers which may readily be mistaken for food, drug or cosmetic containers or reuse of food, drug or cosmetic containers with original labels or imprints is prohibited for a hazardous substance (§173.03(b)). The requirements for the use of signal words on labels are specified in §173.05(b)(3). Two new requirements are added on labeling of substances in retail packages and containers (§§173.05(b) (8) and (9)). The chart of suggested labels in S.C. 230c(7) is omitted. The class of substances which must bear the word "Poison" is required to be determined on the basis of tests on laboratory animals (§173.05(c)). Exemption from the labeling requirements of §173.05 is made for substances labeled in compliance with applicable State or Federal law (§173.05(a)), except for products containing lye (§173.15(a)). Rodenticides or insecticides containing sodium fluoroacetate or more than one percent thallium cannot be sold to persons other than permittees under §171.19 (section 173.09(c) and (d)). Products with one percent or less of thallium cannot be sold as exterminants unless they are in a safe form and in a container approved by the Department. Children's toys or furniture with a paint containing more than one percent lead cannot be manufactured or sold in the City one year after the effective date of the Code (§173.13(b)). The Department is given power to order removal of lead paint and to order recovering (§173.13(d)). After the effective date of the Code, lead paint is prohibited on inside walls in dwellings (§173.13(c)). Additional controls are provided for substances containing lye in a concentration of ten percent or more (§173.15). Plastic bags of a thickness of one mil or less are required to bear a warning label (§173.17).

The following portions of the Sanitary Code which provided for specific labels on certain products are omitted as covered by the broad requirements of section 173.05: S.C. §122, labeling of poisons; S C. §123, labeling of methyl alcohol; S.C. §222(4), label for poisonous rodenticides or exterminators; S.C. §222a, label for carbon tetrachloride and S.C. 223, label for finely spun glass. S.C. §230b, seizure and condemnation of products, is omitted here because it is covered by the provision in section 3.03 of this Code which gives the Department power to seize products and devices which are not properly labeled or which bear false or misleading labeling.

The table of section headings was amended on November 16, 1993 to reflect the addition of a new section 173.14 adopted on the same day.

The table of section headings was further amended on December 13, 1999 to reflect the renumbering of §173.15 as §173.16 and the addition of a new §173.15.

As part of a comprehensive review of the Code to assess the efficacy of its provisions in protecting the public health, Article 173 was amended on December 16, 2008 to better reflect practice and the regulatory environment, assure that the revised provisions provide adequate legal tools to effectively address the health and safety needs of the public and to harmonize such provisions with related provisions of federal and state law. As a result of this review, §§173.051, 173.06, 173.08, 173.09, 173.11 and 173.16 were repealed; §173.01 was repealed and reenacted, and §173.05 was amended, to reflect current federal law; §173.13 was amended to authorize the Commissioner to order remediation of leaded soil in properties used by children under six years of age; and §173.14 was amended to reference provisions in a new Article 43 and a repealed and reenacted Article 47.

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 173 HAZARDOUS SUBSTANCES

§173.01 Definitions.

When used in this article the following terms shall have the following meanings:

(a) Advertisement means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase or use of a hazardous substance.

(b) Art material means any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium. The term does not include substances subject to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, or drugs, devices, or cosmetics subject to Article 71 of the Code.

(c) Combustible means having a flashpoint at or above 100 degrees Fahrenheit (37.8 degrees Celsius) to and

including 150 degrees Fahrenheit (65.6 degrees Celsius) as determined by the test method described at 16 C.F.R. §1500.43a or successor regulation.

(d) Corrosive means capable of causing destruction of living tissue by chemical action when placed in contact with such tissue but shall not refer to action on inanimate surfaces.

(e) Electrical hazard means an article that in normal use or when subjected to reasonably foreseeable damage or abuse may cause personal injury or illness by electric shock due to its design or manufacture.

(f) Extremely flammable means that a substance has a flashpoint at or below 20 degrees Fahrenheit (-6.7 degrees Celsius) as determined by the test method described at 16 CFR § 1500.43a, or successor regulation.

(g) Flammable means that a substance has a flashpoint above 20 degrees Fahrenheit (-6.7 degrees Celsius) and below 100 degrees Fahrenheit (37.8 degrees Celsius), as determined by the method described at 16 C.F.R. §1500.43a or successor regulation.

(h) Flashpoint means the lowest temperature of a product at standard conditions at which the product's vapors will ignite momentarily when subjected to a flame. Flashpoint temperatures shall be determined pursuant to the procedures set forth in 16 C.F.R. §1500.43a or successor regu- lations.

(i) Hazardous substance means:

(1) Any substance or mixture of substances which is combustible, corrosive, extremely flammable, flammable, highly toxic, an irritant, a strong sensitizer, toxic, or generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause or has caused substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(2) Any substance which the Federal Consumer Product Safety Commission determines meets the requirements of section 2(f)(1)(A) of the Federal Hazardous Substances Act;

(3) Any radioactive substance if, with respect to such substance as used in a particular class of article or as packaged the Federal Consumer Product Safety Commission determines by regulation that the substance is sufficiently hazardous to require labeling to protect the public health; and

(4) Any toy or other article which the Federal Consumer Product Safety Commission or the Commissioner determines presents an electrical hazard, mechanical hazard, or thermal hazard.

(5) Hazardous substance shall not mean pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act or State Environmental Conservation Law; substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house; and source material, special nuclear material, or byproduct materials defined and regulated in applicable federal, state and local law.

(j) Highly toxic means any substance which falls within the definition or description set forth in 16 CFR §1500.3 or successor regulation. If, pursuant to 16 CFR §1500.4 or successor regulation, available data on human experience with any substance indicates results different from those obtained on animals in the dosages and concentrations specified, human data shall take precedence.

(k) Human experience or data shall mean a report or evidence of exposure of one or more persons to a hazardous substance resulting in an adverse effect.

(l) Irritant means a substance that is not corrosive which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

(m) Label or labeling means a display of written, printed, or graphic matter upon the immediate container of any hazardous substance or, in the cases of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto. A requirement of federal, State or local law that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears (i) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and (ii) on all accompanying literature where there are directions for use, written or otherwise.

(n) Mechanical hazard means an article that in normal use or when subjected to reasonably foreseeable damage or abuse presents an unreasonable risk of personal injury or illness due to its design or manufacture: (1) From fracture, fragmentation, or disassembly of the article;

(2) From propulsion of the article (or any part or accessory thereof);

(3) From points or other protrusions, surfaces, edges, openings, or closures;

(4) From moving parts;

(5) From lack or insufficiency of controls to reduce or stop motion;

(6) As a result of self-adhering characteristics of the article;

(7) Because the article (or any part or accessory thereof) may be aspirated or ingested;

(8) Because of instability; or

(9) Because of any other aspect of the article's design or manufacture.

(o) Strong sensitizer means a substance that will cause a hypersensitivity-type reaction through an immunologically-mediated (allergic) response, including allergic photosensitivity, which offers a significant potential for causing injury and where the allergic reaction typically becomes evident upon reexposure to the same substance.

(p) Thermal hazard means an article or thing that in normal use or when subjected to reasonably foreseeable damage or abuse, presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces due to its design or manufacture.

(q) Toxic means a substance, other than a radioactive substance, that

(1) Has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface or any substance deemed to be toxic pursuant to the procedures as set forth in 16 C.F.R.§1500.3 or successor regulation;.

(2) Is toxic (but not highly toxic) on the basis of human experience; or

(3) Presents a chronic hazard, if it is or contains a known or probable: (A) Human carcinogen;

(B) Human neurotoxin; or

(C) Human developmental or reproductive toxicant.

HISTORICAL NOTE

Section repealed and added City Record Dec. 23, 2008 eff. Jan. 22, 2009.

[See Vol. 9 Statements of Basis and Purpose No. 31]

Section in original publication July 1, 1991.

Notes:

Section 173.01 was repealed and reenacted by resolution adopted on December 16, 2008 as part of a comprehensive revision of the Health Code, to reflect current concepts and applicable law. Many definitions are derived from the Federal Hazardous Substances Act and the definition of labeling is similar to that found in Federal Food, Drug, and Cosmetic Act §321(m), Education Law §6802 and Agriculture and Markets Law §198.

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PART B CONTROL OF ENVIRONMENT

ARTICLE 173 HAZARDOUS SUBSTANCES

§173.03 Transfer of hazardous substances; use of food, drug and cosmetic con- tainers.

(a) No person shall transfer a hazardous substance from one container to another without affixing to the new container the labeling required by this article.

(b) No person shall use, possess, hold for sale, sell, give away or leave in any place a hazardous substance in a container which, whether or not previously used as a food, drug or cosmetic container, bears a food, drug or cosmetic label or imprint, or reuse a container which may be mistaken for a food, drug or cosmetic container because of its characteristic shape, impression or closure.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new. Subsection (b) applies to reuse of food, drug or cosmetic containers for hazardous original use or reuse of containers which bear labels or imprints improperly identifying them as food, drug or cosmetic containers.

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24 RCNY 173.05

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ARTICLE 173 HAZARDOUS SUBSTANCES

§173.05 Labeling.

(a) **Label required.** No person shall sell, hold for sale, transport, or give away a hazardous substance unless the labeling complies with this article. When a hazardous substance is labeled in compliance with applicable State or Federal law, this section shall not apply, except that if the Commissioner finds that the labeling of the substance is inadequate to protect the public health, the labeling of the substance shall, upon the order of the Commissioner and written notice to the manufacturer or distributor, contain such additional matter as may be required by this section.

(b) **Label contents.** The label of a package or container of a hazardous substance shall bear the following information:

(1) The name and place of business of the manufacturer, packer, distributor or seller;

(2) The common or usual name, or if there is no common or usual name, the chemical name, or if there is no

common or usual name and if the chemical name is unknown or complex, the recognized nonprotected name (not trade name only) of the hazardous substance or of each component which contributes substantially to its hazard, unless the United States Consumer Product Safety Commission by regulation permits or requires the use of a recognized generic name;

(3) The signal word "Danger," "Warning" or "Caution" to indicate the degree of hazard. The signal word "Danger" shall be used for substances which are extremely flammable, corrosive, or highly toxic. The signal word "Warning" or "Caution" shall be used for all other hazardous substances;

(4) An affirmative statement of the principal hazard or hazards of the substance such as "Flammable," "Extremely Flammable," "Vapor Harmful," "Causes Burns," "Absorbed through Skin" or similar words descriptive of the hazard;

(5) Precautionary measures describing the action to be followed or avoided;

(6) Instructions for first-aid treatment, if available;

(7) Instructions for handling or storage on packages or containers requiring special care in handling or storage;

(8) Instructions for final disposal of containers on retail packages or containers requiring special care in disposal; and,

(9) The statement "Keep Out of the Reach of Children" or its practical equivalent on retail packages or containers offered for household use.

(c) **Poisons.** In addition to the words, statements or other information required by subdivision (b) of this section, a hazardous substance shall bear on its label the word "Poison," a skull and crossbones symbol, directions to call a physician upon ingestion and, if available, an antidote, if such hazardous substance is highly toxic as defined in this Article.

(d) **Art materials.** All art materials shall be labeled in a manner as required pursuant to the Federal Hazardous Substances Act, as amended, and related regulations.

(e) **Other substances to be labeled.** When the Commissioner finds that any substance is dangerous or detrimental to the health and safety of the public, the Commissioner may require the substance to be labeled pursuant to subdivisions (b) or (c) of this section.

(f) **Strong sensitizers.** When the Department determines that a substance is a strong sensitizer, it may order the manufacturer, distributor or seller to label the substance pursuant to subdivision (b) of this section.

(g) **Experimental substances.** Subdivisions (b) and (c) of this section shall not apply to a substance still in the development stage when it is used solely for experimental purposes and when it is known that no specific hazard exists but the potential hazard is not identified, if it bears the following label or its practical equivalent: "Important! The properties of this substance have not been fully investigated and its handling or use may be hazardous. Exercise due care."

(h) **Wrapper labels.** The words, statements or other information required by this article to be borne on the label or labeling of a hazardous substance shall also appear on the outside container or wrapper, if any, of the retail package of the substance, unless the required word, statement or other information is easily legible through the outside container or wrapper, and on each place of the labeling of a hazardous substance where there are directions for use, whether written or otherwise.

(i) **Labeling to be conspicuous.** All words, statements or other information required on the label or labeling shall appear in a prominent place in the English language and in conspicuous and legible type which is contrasted by

typography, layout or color from other printed matter on the label, container or wrapper. If the label or labeling contains any representation in a foreign language, all words, statements or other information required to appear on the label, container or wrapper shall also appear thereon in the foreign language.

HISTORICAL NOTE

Section amended City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9

Statements of Basis and Purpose No. 31]

Section in original publication July 1, 1991.

Section 173.05 was amended by resolution adopted on December 16, 2008. Subdivision (a) was amended to delete the exemption for substances regulated pursuant to Articles 71, 75 or 77.

Subdivision (b) was amended by adding to paragraph (2) reference to US Consumer Product Safety Commissioner regulations. Paragraph (3), instead of permitting a free choice of the signal word to indicate the degree of hazard, requires the word "Danger" on the most hazardous substances, and either "Warning" or "Caution" on those presenting a lesser hazard, and is consistent with the Federal Hazardous Substances Act and related regulations. See 15 USCA § 1261 et seq. and 16 C.F.R. Part 1500.

Subdivision (c) was amended by deleting specific references to dose-related sequelae, and substituting a reference to when a hazardous substance is highly toxic as defined in this Article.

Subdivision (d) was deleted and a new subdivision (d) was added to require art materials to be labeled in accordance with the Federal Hazardous Substances Act and related federal regulations to protect the health and safety of persons using art materials.

Subdivision (e) was deleted and a new subdivision (e) was added, authorizing the Commissioner to order labeling where the Department determines that the warning signals on existing labels are inadequate.

Subdivision (f) is new and refers to labeling required for substances that are strong sensitizers.

Former subdivision (f) was relettered as subdivision (g), and former subdivision (g) which authorized abbreviating or omitting information was deleted.

Subdivision (i) was amended to add the term "conspicuous" to the label display.

Notes:

Subsection (a), which is in part derived from S.C. §230c(2), provides the scope of this article. The article applies to all hazardous substances, as did S.C. §230c, and not only retail packages intended for household use. The exemption for drugs and cosmetics which may be hazardous substances as defined in §173.01(a) is added since they are adequately covered by Articles 71, 75 and 77. The last sentence is also new and is similar to the exemption contained in State Sanitary Code, Ch. 9-A Reg. 6(a). A hazardous substance which bears a label or labeling which is in compliance with the applicable laws of the state of New York or the Federal government is not required to be relabeled pursuant to this section, unless the Commissioner so orders upon finding that the label or labeling is inadequate to protect the public health. If the Department finds that a large percentage of the hazardous substances labeled under other applicable laws are inadequately labeled, it may recommend amendment of this exemption so as to require certain additional labeling in all cases. There is no exemption from the requirements of §173.05 for products containing lye (see §173.15 and revisors' notes thereto). The provisions of the State Sanitary Code, Ch. 9-A, also dealing with labeling of hazardous substances, are not applicable in the city of New York.

Subsection (b) is derived in part from S.C. §230c(3) with some changes.

Subdivision (1) is derived without substantive change from S.C. §230c(3)(a). It is similar to the requirements of the regulations promulgated pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (7 C.F.R. §362.6) and the Federal Caustic Poisons Act §2(b)(2) and 21 C.F.R. §285.5.

Subdivision (2) is derived with some changes from S.C. §230c(3)(b) where a free choice was given on the use of the chemical, common or recognized generic name. This subdivision is similar to the requirements of the regulation promulgated pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (7 C.F.R. §362.7(b)). The latter regulation describes the "recognized non-protected name" as an appropriate new or coined name other than a trademark or trade name except when it has become a common name. Only the chemicals contributing substantially to the hazard are required on the label.

Subdivision (3) is new. Instead of permitting a free choice of the signal word to indicate the degree of hazard, this provision requires the word "Danger" on the most hazardous substances, and either "Warning" or "Caution" on those presenting a lesser hazard. The Board has not been convinced that "Warning" has any greater impact on the consumer who reads the labeling than the word "Caution" and the words are therefore made interchangeable; their significance to the consumer will be studied further. The determination of the signal word which is to appear on toxic substances is based on the amount which will produce death upon ingestion, inhalation or skin absorption. In addition, the Commissioner is given authority to require the signal word "Warning" or "Caution" to appear on substances which, although they do not meet the definition of toxic in §173.01(b), are detrimental to public health if not so labeled.

Subdivision (4) is derived from S.C. §230c(3)(d). The words "Extremely Flammable" are new.

Subdivision (5) is derived without substantive change from S.C. §230c(3)(e).

Subdivision (6) is derived without substantive change from S.C. §230c(3)(f).

Subdivision (7) is derived without substantive change from S.C. §230c(3)(h).

Subdivision (8) is new. It applies only to retail packages or containers requiring special care in disposal.

Subdivision (9) is new. It applies only to retail packages or containers offered for household use.

Subsection (c) is in part new and is in part derived from S.C. §230c(3)(g) and the footnote to the table following S.C. §230c(7). S.C. §230c(1)(c) is omitted. Although the word "Poison" is required on the highly toxic substances specified in subdivisions (1), (2) and (3) of the subsection, a definition of poison is avoided since it would only add to the many existing, inconsistent definitions to which toxicologists have properly taken exception. This is solely a labeling provision and is not intended as a standard for any other purpose. See the regulations under the Federal Insecticide, Fungicide and Rodenticide Act (7 C.F.R. §162.8) for a definition of economic poisons "highly toxic to man". Similar labeling is required under 7 C.F.R. §§362.6 and 362.9 and Agriculture and Markets Law §149(3).

Subsection (d) is new. In recognition of the fact that animals and humans sometimes react differently to a substance, the Commissioner is given authority to require a substance which does not fall into any of the three categories under subsection (c) to be labeled pursuant to that subsection, or to exempt a substance which falls into one of those categories, depending upon the available data on human experience.

The Manufacturing Chemists' Association publication entitled **Warning Labels Manual L-1, A Guide For the Preparation of Warning Labeling for Hazardous Chemicals,** contains material which can be of great value in preparing the labeling required by subsections (b) and (c), particularly section 173.05(b)(4), (5), (6) and (7). Since the definition of poison as adopted by the M.C.A. Labels and Precautionary Information Committee is similar to the categories specified in §173.05(c) (except for the length of observation, i.e.: 48 hours as compared with 14 days), the

M.C.A. manual can also be helpful in determining when a poison label is required. Although the M.C.A. manual uses the signal words required by §173.05(b)(3) in a diminishing order of severity of hazard, the same standard for selection is not employed, and the signal words, suggested in the manual, in some instances, may not be in accordance with the requirement of section 173.05(b)(3); also note that the latter permits interchangeability of "Warning" and "Caution". Finally, the manual can be of assistance in the selection of the name of the chemical under §173.05(b) (2), although it is noted that in the case of products containing lye, this Code (§173.15) requires the word "lye" to appear whereas the manual refers to "sodium hydroxide (Caustic Soda)".

Subsection (e) is new. Strong sensitizer is defined in §173.01(g). In recognition of the fact that (except for known sensitizers) it may be difficult for a manufacturer to know before marketing his product that it will produce hypersensitivity to reapplication, strong sensitizers are treated in a different manner from other hazardous substances. Only upon the order of the Commissioner is labeling required. Except upon non-compliance with a labeling order issued by the Commissioner, this subsection is not intended to change the existing incidence of product liability for unlabeled products which prove to be strong sensitizers.

Subsection (f) is derived from S.C. §230c(6). An additional limitation is that in order to be exempted it must be a substance for which no specific hazard is known but which has an unidentified potential hazard.

Subsection (g) is derived from S.C. §230c(4). The material required by subsections (b)(7) and (b)(8) cannot be omitted without the approval of the Department.

Subsection (h) is new. This is an addition to the requirement, previously stated in §173.05(b) and (c), that certain words, statements and other information appear on the label. The statements must appear on accompanying literature when it contains directions for use.

Subsection (i) is derived in part from S.C. §230c(5). The last sentence is new and is found in §71.07(b) for foods, drugs and cosmetics (derived from S.C. §133(10), in 21 C.F.R. §1.103(c) for food, drugs and devices in 21 C.F.R. §1.9(c) for food and in 21 C.F.R. §1.203(b) for cosmetics.

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RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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PART B CONTROL OF ENVIRONMENT

ARTICLE 173 HAZARDOUS SUBSTANCES

§173.051 Exemptions. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9

Statements of Basis and Purpose No. 31]

Section in original publication July 1, 1991.

Section in original publication July 1, 1991.

Notes:

This section is new. It was added by resolution adopted on October 22, 1963.

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24 RCNY 173.06

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 173 HAZARDOUS SUBSTANCES

§173.06 Pressurized Products. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9

Statements of Basis and Purpose No. 31]

Section in original publication July 1, 1991.

Notes:

This section is new. It was enacted by resolution adopted on October 22, 1963.

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RULES OF THE CITY OF NEW YORK

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ARTICLE 173 HAZARDOUS SUBSTANCES

§173.07 False or misleading advertising or labeling.

(a) No manufacturer, packer, distributor or seller of a hazardous substance shall disseminate or cause to be disseminated an advertisement concerning such hazardous substance that is false or misleading in regard to its safety or use.

(b) No person shall sell or hold for sale any hazardous substance the labeling of which is false or misleading in regard to its safety of use.

(c) In determining whether the labeling of, or an advertisement concerning, a hazardous substance is false or misleading, the Department shall consider the representations made or suggested by the label's statement, word, picture, design or emblem and the extent to which the labeling or advertisement fails to reveal material facts about the substance.

HISTORICAL NOTE

Section amended City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9

Statements of Basis and Purpose No. 31]

Section in original publication July 1, 1991.

Notes:

This section was amended by resolution adopted on December 16, 2008 to delete references to pressurized products and to clarify how the Department will determine if labels are false or misleading.

Subsection (a) is new. It is similar to Agriculture and Markets Law §202a and Education Law §6821(5) and §6823(4) and S.C. §133(12). The section is concerned with control of the produce or seller and not the communications medium that carries the offending advertisement. A similar provision is found in §§75.31 and 77.07 for drugs and devices and cosmetics respectively.

Subsection (b) is new. A similar provision is found in §75.05(1) for drugs and devices and §77.03(1) for cosmetics where false or misleading labeling results in misbranding of such products.

Subsection (c) is new. A similar provision is found in §75.33 for drugs and devices and in §77.09 for cosmetics. Unwarranted or misleading claims of safety on the labeling of, or in the advertisements concerning a hazardous substance, whether made directly or by implication, or failure to reveal dangers involved in the use of the product, will result in a finding that the labeling or advertisement is misleading and in violation of this section.

This section was amended by resolution adopted on October 22, 1963 which made the section applicable to pressurized products in addition to hazardous substances.

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24 RCNY 173.08

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ARTICLE 173 HAZARDOUS SUBSTANCES

§173.08 Carbon tetrachloride; prohibited for household use and in fire extin- guishers. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9

Statements of Basis and Purpose No. 31]

Section in original publication July 1, 1991.

Section in original publication July 1, 1991.

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ARTICLE 173 HAZARDOUS SUBSTANCES

§173.09 Rodenticides and insecticides. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9

Statements of Basis and Purpose No. 31]

Section in original publication July 1, 1991.

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ARTICLE 173 HAZARDOUS SUBSTANCES

§173.11 Fire extinguishers containing methyl bromide. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9

Statements of Basis and Purpose No. 31]

Section in original publication July 1, 1991.

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24 RCNY 173.13

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 173 HAZARDOUS SUBSTANCES

§173.13 Lead Paint.

(a)(1) **Lead-based paint prohibited.** No person shall possess, sell, hold for sale or give away paint or other similar surface-coating material which is intended or packaged in a form suitable for use in or around the household or otherwise for consumer use within the meaning of 15 U.S.C. Section 2057 et seq. and 16 Code of Federal Regulations (C.F.R.) Part 1303 or its successor regulations, containing more than 0.06 percent of metallic lead, based upon the total non-volatile content of the paint or other similar surface-coating material.

(2) **Notice that dry sanding and scraping are prohibited.** Any place where paint and paint removal products are sold, or where sanding equipment is sold or rented for use in the City of New York, shall prominently post, or otherwise distribute to purchasers and renters of paint removal and sanding equipment, a notice, in a form provided or approved by the Department, warning that dry sanding and scraping is prohibited as a method of removal of lead-based paint or paint of unknown lead content in any dwelling, day care center or school, and is a public nuisance pursuant to §17-181 of the Administrative Code of the City of New York.

(3) **Enforcement by Department of Consumer Affairs.** The provisions of paragraph (2) of this subdivision may be enforced by agents and employees of the Department and the Department of Consumer Affairs, or successor agency. Any violation of paragraph (2) issued by the Department of Consumer Affairs may be adjudicated at any tribunal authorized to hear such agency's violations.

(b) No person shall manufacture, sell, hold for sale, give away or leave toys, children's furniture or any other articles or things intended for use by children which have a paint or other similar surface-coating material containing more than 0.06 percent of metallic lead based on the total non-volatile content of the paint or other similar surface-coating material.

(c) No person shall use a paint or other similar surface-coating material containing more than 0.06 percent of metallic lead, based on the total non-volatile content of the paint or other similar surface-coating material on the interior or exterior surfaces of a dwelling. As used in this section, dwelling means any building or structure or portion thereof, including the property occupied by and appurtenant to such dwelling, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings. This subsection shall also apply to places where children reside, or are boarded, or where they receive regular care and/or education, such as day care services, schools and children's institutions.

(d) **Orders for abatement or remediation.**

(1) **Generally.** When the Department finds that there is lead-based paint, or dust with a lead content in excess of the clearance levels specified in §173.14(e) of this Code, on the interior of any dwelling, or concentrations of lead in the paint on the exterior of a dwelling, that may be creating a danger to health, it may in such cases as it deems essential, order the abatement or remediation of any such condition in a manner and under such safety conditions as it may specify. The Department may also order the removal or covering of soil appurtenant to any dwelling or other premises, including but not limited to, child care services, schools, and recreational facilities primarily used or occupied by children under the age of six years when it determines that there are concentrations of lead in such soil which exceed allowable limits of the U.S. Environmental Protection Agency found in 40 C.F.R. Part 745, or successor regulations, and further determines that such concentrations may be dangerous to health.

(2) **In a dwelling where a child with an elevated blood lead level resides.** When the Department finds that there is a child under 18 years of age with a blood lead level of fifteen (15) micrograms per deciliter or higher residing in any dwelling and further finds that the interior of such dwelling has lead-based paint that is (a) peeling, (b) on a friction, impact or chewable surface or (c) on any surface of the dwelling that, in the Department's determination, is a lead-based paint hazard because of its condition, location or accessibility to children, the Department shall order the abatement of any such condition in a manner and under such safety conditions as it may specify.

(3) **Objections to Department orders.** An owner or other person to whom an order issued pursuant to this subdivision is directed shall notify the Department that he or she objects to such order no later than three (3) days after service of the order. In deciding whether objections to an order issued pursuant to §173.13(d)(2) have merit, the Department may rely on the results of its lead-based paint sampling, provided such results are obtained in accordance with the methodology identified within the definition of "lead-based paint" in §173.14(b) of this Code and the Department has a reasonable belief that such reliance will be more protective of the health of a child with an elevated blood lead level.

(4) **Failure to comply with Department orders.** In the event that the Department determines that the owner or other person having the duty or liability to comply with an order issued pursuant to this subdivision fails to substantially comply therewith within five (5) days after service thereof, the Department shall in accordance with §27-2056.14 of the Administrative Code, request the Department of Housing Preservation and Development to execute such order pursuant to the provisions of §17-147 of the Administrative Code.

(5) **Definitions.** Except as otherwise provided, all terms used in this section shall have the same meanings as the terms defined in §173.14 of this Code.

HISTORICAL NOTE

Section amended City Record Oct. 2, 1996 eff. Nov. 1, 1996. [See Vol. 9 Statements of Basis and Purpose No. 6]

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 30, 2004 eff. July 30, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20-A]

Subd. (d) amended City Record July 30, 2004 eff. July 30, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20-A]

Subd. (d) par (1) amended City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 31]

Notes:

Subsection (a) is derived from S.C. §230d(1) and (3). The provisions of S.C. §230d(4) are deleted as no longer necessary and the requirement of S.C. §230d(2) is found in §173.05(i) and therefore is not duplicated here.

Subsection (a) was amended on September 24, 1996 to comply with Federal and State laws and regulations on the sale and usage of lead based paint. Effective Jan. 1, 1997.

Subdivision (a) was amended by resolution adopted July 22, 2004, effective August 2, 2004, by renumbering former subdivision (a) as paragraph (1). Paragraphs (2) and (3) require notices in certain businesses and authorize agents and employees of the City's Department of Consumer Affairs to enforce the placement of such notices, with respect to the prohibition of dry sanding and scraping as a method of removal of lead-based paint in §17-181 of the Administrative Code.

Subsection (b) is new.

Subsection (b) was amended on September 24, 1996 to comply with Federal and State laws and regulations on the manufacture, sale, holding for sale or giving away of articles with lead based paint intended for use by children. Effective Jan. 1, 1997.

Subsection (c) is new. It is the most effective means of reducing deaths and injuries to children from lead poisoning since the vast majority of incidents result from ingestion of paint on fallen pieces of plaster and paint on window sills. The definition of dwelling is identical to the definition contained in Multiple Dwelling Law §4(4).

Subsection (c) was amended on September 24, 1996 to comply with Federal and State laws and regulations on the use of lead based paint in or on the interior or exterior surfaces of dwellings, including places where children reside, are boarded, or receive regular care and/or education. The definition of "dwelling" was expanded to include "the property occupied by and appurtenant to such dwelling", for example fire escapes. Effective Jan. 1, 1997.

Subsection (d) is new. It is possible for the Commissioner to order removal of lead paint under section 131.01 of this Code, which pertains to removal of dangerous conditions, but the Commissioner would not then have the power to

order repainting. Here the Board specifically declares lead paint to be a dangerous condition, which, under certain circumstances, the Commissioner can order removed.

Subsection (d) was amended by resolution adopted on January 15, 1970 to authorize the Department to permit, as an alternate to removal of the lead paint from interior surfaces, the covering of such surfaces with materials and by methods prescribed by the Department. This will overcome the problems faced under the former provision occasioned by the hazards of existing paint removal methods. Such subsection was further amended to mandate the Department to order the removal of the lead paint or the covering of interior surfaces containing lead paint in those instances where a resident of the apartment is found to have a blood-lead level of 0.06 milligrams percent or higher, and when the person responsible for removal or covering of the lead paint fails to do so within five days after service of such order upon him, to request the Housing Development Administration to execute such order.

Subsection (d) was further amended by resolution adopted on November 21, 1974 to lower the allowable blood-lead level found in apartment dwellers from 0.06 milligrams percent or higher, to 0.04 milligrams percent or higher, required for the prevention of lead poisoning in urban children.

Subdivision (d) was amended by resolution adopted on December 16, 2008 by adding to paragraph (1) a provision authorizing the Department to order the removal of leaded soil from areas surrounding children's homes, and other places used by children, such as grounds of child care services and schools.

Subsection (d)(1) was repealed and reenacted by resolution adopted on April 2, 1981 to bring the provisions into compliance with the Center for Disease Control Guidelines for determination of what constitutes undue lead absorption, and to provide for the use of x-ray fluorometers to detect elevated levels of lead.

Subdivision (1) of subsection (d) was amended on September 24, 1996 to incorporate by reference the amended definition of "lead based paint" in Section 173.14(b)(16) and to clarify language. Subdivision (2) of subsection (d) was amended on September 24, 1996 to clarify the specific instances in which the Department is empowered to order a lead paint abatement. Effective Jan. 1, 1997.

Subdivisions (1) and (2) of section (d) were amended, a new subdivision (3) was adopted, and a portion of former subdivision (2) was renumbered as subdivision (4) by resolution adopted on July 22, 2004, effective August 2, 2004. The amendments to subdivision (2) incorporate a provision of Local Law 1 of 2004, which further reduces the Department's "action level" or environmental intervention blood lead level to 15 micrograms per deciliter of blood. A provision of former paragraph (2) of subdivision (d) which affords the Department discretion to issue orders to abate or remediate lead hazards when a child with a blood lead level of 15 to 19 micrograms resides in a dwelling unit has been repealed, since the Department already has that authority pursuant to subdivision (c) of this section. Paragraph (3) of subdivision (d), concerning Department review of challenges to Department orders to correct lead hazards, is new. It incorporates in the Health Code the Department's practice, reviewed in **601 Realty Corp. v. City of New York Department of Health,** 269 AD2d 268, 703 NYS2d 458 (AD 1 Dept. 2000) of providing owners with an opportunity to object to an order to abate a lead nuisance but declining to accept an owner's findings of allegedly lower values of lead in paint in contestation of the Department's findings where there is a child with an elevated blood lead level. **601 Realty** held that the Department was not being arbitrary and capricious or denying due process to owners who contest orders to abate lead nuisances. If the Department uses appropriate equipment and methodology to measure lead in paint at the home of a child with an elevated blood lead level it may properly rely on its own findings since it is attempting to be more protective of the health of such a child. A new paragraph (5) indicates that terms used in the section have the same meaning as terms in §173.14 of this Code.

Paragraph (2) of subsection (d) was further amended on January 16, 1975 by adding the phrase "and the erythrocyte porphyrin of whole blood or higher".

Subdivision 2 of subsection (d) was amended by resolution adopted on June 16, 1986 to reduce the level at which

lead is considered toxic in blood to a point consistent with current guidelines issued by the Centers for Disease Control of the federal Department of Health and Human Services.

Subdivision (d)(2) was further amended on October 6, 1992 to eliminate references to free erythrocyte porphyrin as a necessary element of poisoning and to reduce the level at which lead is considered toxic in blood to a point consistent with current guidelines issued by the Centers for Disease Control of the United States Department of Health and Human Services.

This section was amended by resolution adopted on December 20, 1973 to conform its provisions with §191.9 of Title 21, Subchapter D (Hazardous Substances), Part 191 of the Code of Federal Regulations which declares as a banned hazardous substance any paint or other similar surface coating material intended or packaged in a form suitable for use in or around the household and containing lead content in excess of 0.5 percent of the total weight of the contained solids or dried paint film.

CASE NOTES

¶ 1. Administrative Code §27-2013(h)(1) clearly prohibits the presence of lead paint in any multiple dwelling where children under six are likely to reside, regardless of the level of blood found in the child's blood. This personal injury action involves a five year old who ingested lead paint chips. The court dismissed the NYC housing authority argument that paint chips taken from the apartment were below the maximum permissible amount of lead in paint. This argument was based on NYC Health Code §173.13 which makes it unlawful to sell or use paint that contains more than 0.5% metallic lead on interiors of residences accessible to children under seven years of age. Colon v. NYC HA, 165 Misc. 2d 348 [1995].

¶ 2. The Department of Health is charged with a statutory duty to investigate violations involving lead paint levels in housing units, and any shortcoming in the conduct of that investigation is attributable to that agency. That factor entered into the decision of the court to permit the service of a late notice of claim in a lead poisoning case arising from the infant's residence in a City owned building. Holmes v. City of New York, 189 A.D.2d 676, 592 N.Y.S.2d 371 (1st Dept. 1993).

¶ 3. The enforcement activities of the New York City Department of Health (DOH) or Department of Housing Preservation and Development (HPD) do not render the City liable in negligence to a child allegedly injured by ingesting lead in the subject building. There is no liability in the absence of a special relationship between the municipal agency and the injured plaintiff, the court said. Thus, 24 RCNY Section 173.13 protects the general public rather than particular citizens who are injured by lead. Moreover, even if a "special duty" were found to exist, there would be no liability because the statute does not provide for a private right of action. Lindsay v. New York City Housing Authority, 1999 Westlaw 104599 (E.D.N.Y.).

¶ 4. Section 173.13 does not create a statutory duty on the part of the City to abate a lead hazard found in a building. However, where a muncipality allegedly assumed a duty by, for example, promising to repair a lead condition or making representations to the infant's parents regarding a lead condition, the municipality may be liable. Valencia v. Lee, 55 F.Supp.2d 122 (E.D.N.Y. 1999). Moreover, in Valdez v. MGS Realty & Management Corp., 2000 WL 511024 (U.S. Dist.Ct. S.D.N.Y), the City was held potentially liable on the basis of an assumption of a duty of care. A city public health advisor had visited the premises on several occasions and had advised the infant plaintiff's parents on how to protect against lead poisoning. In Valdez, although the city advisor discussed the hazards of lead poisoning, the parents were not warned that the suggested protective measures were not always effective and that the better course of action was for them to vacate the premises until the lead condition had been abated.

¶ 5. A landlord brought an Article 78 proceeding seeking to vacate a city health department nuisance abatement order. In denying the petition, the court noted that the agency is given wide latitude to rely on its inspection reports as a basis for ordering the owner to abate a lead condition, where it is undisputed that a young child resides in the subject

apartment. The court rejected an owner's claim that the odds were unfairly stacked against property owners. 601 Realty Corp. v. City of New York, 269 A.D.2d 268, 703 N.Y.S.2d 458 (1st Dept. 2000).

¶ 6. This regulation was enacted for the benefit of the general public, and does not create a special duty owing from the City to children allegedly injured by reason of ingestion of lead based paint. Gibbs v. Paine, 720 NY.S.2d 184 (App.Div. 2d Dept 2001).

¶ 7. This section was enacted for the benefit of the public and does not impose upon the City a duty towards any particular person. Moreover, the fact that the City advised the infant plaintiff's mother on nutrition and hygiene did not give rise to a duty beyond the duty imposed by statute. Harris v. Llewellyn, 298 A.D.2d 556, 748 N.Y.S.2d 676 (2d Dept. 2002).

¶ 8. Section 173.13 is an internal administrative regulation, intended to coordinate the regulatory functions of two mayoral agencies. It neither sets forth a tort standard of care nor imposes a duty in tort running to any member of the public. Accordingly, there is no private right of action arising out of the City's alleged failure to comply with the regulation. Miah v. New York City Housing Auth., 193 Misc.2d 601, 748 N.Y.S.2d 913 (Sup.Ct. New York Co. 2002)

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ARTICLE 173 HAZARDOUS SUBSTANCES

§173.14 Safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint.

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(c) (2) (B) Other than abatement work

(c) (3) Recordkeeping

(c) (3) (A) Records to be kept

(c) (3) (B) Time to maintain records

(d) Work methods and occupant relocation

(d) (1) Minimizing dust dispersion

(d) (2) Prohibited methods

(d) (3) Work practices and surface finishing

(d) (3) (A) Tools and materials

(d) (3) (B) Seal surfaces

(d) (3) (C) Repair underlying conditions

(d) (3) (D) Adjust painted doors and windows

(d) (3) (E) Work area preparation completed before commencing remediation

(d) (4) Relocation

(e) Occupant protection

(e) (1) Work ordered by the Department, or work that disturbs over 100 square feet of lead-based paint per room, regardless of whether such work is ordered by the Department, which is conducted in a child care service or kindergarten pursuant to §47.63 or §43.23 of this Code or §17-911 of the Administrative Code, or work ordered by HPD in accordance with §27-2056.11(a)(1) of the Administrative Code, or work performed pursuant to §27-2056.11(a)(2)(ii) of the Administrative Code

(e) (1) (A) Postings

(e) (1) (B) Pre-cleaning and protecting movable items

(e) (1) (C) Sealing vents

(e) (1) (D) Affixing doorway entrance flap

(e) (1) (E) Covering floors

(e) (1) (F) Sealing openings

(e) (1) (G) Instructing occupants

(e) (1) (H) Hazardous materials

(e) (1) (I) Clean-up and lead-contaminated dust clearance testing procedures

(e) (1) (J) Temporary access to work areas when occupants not relocated

(e) (2) Work that disturbs between two (2) and 100 square feet of lead-based paint per room that is being performed in accordance with §§17-911 and 27-2056.11(a)(2)(i) of the Administrative Code, or §43.23 or §47.63 of the Health Code.

(e) (2) (A) Postings and warning sign

(e) (2) (B) Pre-cleaning and protecting movable items

(e) (2) (C) Covering floors

(e) (2) (D) Sealing openings

(e) (2) (E) Instructing occupants

(e) (2) (F) Hazardous materials

(e) (2) (G) Clean-up and lead-contaminated clearance dust testing

(e) (2) (H) Temporary access to work areas when occupants not relocated

(e) (3) Work performed to remediate lead-based paint hazards on turnover in accordance with §27-2056.8 of the Administrative Code

(e) (3) (A) Preparation and work

(e) (3) (B) Clean-up

(e) (3) (C) Clearance dust testing

(f) Investigation of unsafe work practices by the Department

(f) (1) Authority to inspect

(f) (2) Scope of authority

(f) (3) Actions authorized

(g) Declaration pursuant to Administrative Code §17-145

(h) Modification by the Commissioner

(a) **Purpose, scope and applicability.** This section establishes work practices and safety standards for abatement and other reduction of lead-based paint hazards, and other work that disturbs surfaces covered with lead-based paint, or paint of unknown lead content, and the minimum qualifications of persons who conduct such activities, in premises where children younger than six years of age reside, receive child care services, or attend pre-kindergarten or kindergarten classes, and is intended to reduce the exposure of such children to the lead-based paint hazards associated with such work.

(b) **Definitions**. When used in this Article, or in §43.23 or §47.63 of this Code, the following terms shall have the following meanings:

Abatement. "Abatement" shall mean any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Abatement includes: (i) the removal of lead-based paint hazards, the permanent enclosure of encapsulation of lead-based paint, and the replacement of components or fixtures painted with lead-based paint; and (ii) all preparation, cleanup, disposal and post-abatement clearance testing associated with such measures. Abatement shall not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement shall not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

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

CFR. "CFR" shall mean this Code of Federal Regulations.

Chewable surface. "Chewable surface" shall mean a protruding interior window sill (i) in a dwelling unit in a multiple dwelling where a child under six years of age resides, which is readily accessible to such child, or (ii) such surface in a day care service, or kindergarten in an elementary school, that is readily accessible to a child under six years of age. "Chewable surface" shall also mean any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, day care service or kindergarten, such as a rail or stair, (i) where there is evidence that such other edge or protrusion has been chewed and where an occupant of the dwelling unit has notified the owner that a child under six years of age resides in that multiple dwelling, or (ii) where the operator of a day care service or kindergarten has observed that a child under six years of age has mouthed or chewed such edge or protrusion.

Child of applicable age. When used in Article 13 of Subchapter 2 of Chapter 2 of Title 27 of the Administrative Code, the term "child of applicable age" shall mean a child who is less than six years of age.

Common area. "Common area" shall mean a portion of a multiple dwelling that is not within a dwelling unit and is regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling.

Contractor. "Contractor" shall mean any person or firm engaged to perform work that disturbs lead-based paint pursuant to this section.

Deteriorated subsurface. "Deteriorated subsurface" shall mean an unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including, but not limited to, rotted or decayed wood, or wood or plaster that has been subject to moisture or disturbance.

Disturb. "Disturb" shall mean any action taken, which breaks down, alters or changes lead-based paint. Lead-based paint disturbances shall include, but not be limited to wet sanding or scraping or routine painting and maintenance activities.

Dwelling. "Dwelling" shall mean any building or structure or portion thereof, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings. For the purpose of investigations and orders issued by the Commissioner pursuant to §173.13 of this Code, dwelling shall include exteriors, yards or other areas of the building, and shall also include any structure in which a child with a blood lead level equal to or in excess of 15 micrograms per deciliter spends more than five hours per week.

Dwelling unit. "Dwelling unit" shall mean any residential accommodation in multiple dwelling or private dwelling.

Encapsulation. "Encapsulation" shall mean the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent. Only

encapsulants approved by the New York State Department of Health, or by another federal or state agency or jurisdiction which the Department or HPD has designated as acceptable may be used for performing encapsulation.

Enclosure. "Enclosure" shall mean the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

EPA. "EPA" shall mean the U.S. Environmental Protection Agency or successor agency.

Firm. "Firm" shall mean a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which EPA has issued a certificate of approval pursuant to 40 CFR 745.226(f) or successor regulation.

Friction surface. "Friction surface" shall mean any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion and abrade, scrape, or bind when in relative motion. Friction surfaces shall include, but not be limited to, window frames and jambs, doors, and hinges.

HEPA vacuum. "HEPA vacuum" shall mean a vacuum cleaner device equipped with a high efficiency particulate air filter capable of filtering out monodispersive particles of 0.3 microns or greater in diameter from a body of air at 99.97 percent efficiency or greater.

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

HUD. "HUD" shall mean the U.S. Department of Housing and Urban Development.

Impact surface. "Impact surface" shall mean any interior painted surface that shows evidence, such as marking, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.

Lead-based paint. "Lead-based paint" for the purpose of this Code, shall mean paint or other similar surface coating material containing 1.0 milligram of lead per square centimeter (mg/cm^2) or greater as determined by laboratory analysis, or by an x-ray fluorescence (XRF) analyzer. If an XRF analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the Performance Characteristic Sheets (PCS) published by the United States Environmental Protection Agency (EPA) for the specific XRF instrument used. XRF readings shall be classified as positive, negative or inconclusive in accordance with the United States Department of Housing and Urban Development (HUD) "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (June 1995, revised 1997), and the PCS published by the EPA and HUD for the specific XRF instrument used. XRF results which fall within the inconclusive zone, as determined by the PCS shall be confirmed by laboratory analysis of paint chips, results shall be reported in mg/cm^2 and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in mg/cm^2. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, laboratory analysis may be reported in percent by weight. In such case, lead-based paint shall mean any paint or other similar surface coating material containing more than 0.5% of metallic lead, based on the non-volatile content of the paint or other similar surface coating material. In the absence of a PCS for a specific XRF instrument or a particular function of such instrument, substrate correction, classification of XRF readings, and determinations of inconclusive readings shall be performed in accordance with the manufacturer's instructions for the specific XRF instrument used.

Lead-based paint hazard. "Lead-based paint hazard" shall mean any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

Lead-contaminated clearance dust test. "Lead-contaminated clearance dust test" shall mean a test for

lead-contaminated dust on floors, window wells, and window sills in a dwelling, that is made in accordance with this Code or §27-2056.11 of the Administrative Code.

Owner. "Owner" shall mean the owner, operator, managing agent or other person in control of the premises, dwelling, or dwelling unit subject to this section.

Peeling. "Peeling" shall mean that the paint or other surface-coating material is curling, cracking, scaling, flaking, blistering, chipping, chalking or loose in any manner, such that a space or pocket of air is behind a portion thereof or such that the paint is not completely adhered to the underlying surface.

Permanent. "Permanent" shall mean an expected design life of at least 20 years.

Remediation. "Remediation" shall mean the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead-based paint, or other method approved by the Department.

Removal. "Removal" shall mean a method of abatement that completely eliminates lead-based paint from surfaces.

Replacement. "Replacement" shall mean a strategy or method of abatement that entails the removal of building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

Stabilization. "Stabilization" shall mean repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated and applying a new protective coating or paint.

Substrate. "Substrate" shall mean the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

Turnover. "Turnover" shall mean the occupancy of a dwelling unit subsequent to the termination of a tenancy and the vacatur by a prior tenant of such dwelling.

Underlying defect. "Underlying defect" shall mean a physical condition in a dwelling or dwelling unit that is causing or has caused paint to peel or a painted surface to deteriorate or fail, such as a structural or plumbing failure that allows water to intrude into a dwelling or dwelling unit.

Wet sanding or wet scraping. "Wet sanding" or "wet scraping" shall mean a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

Work. "Work" shall mean any activity that disturbs paint in accordance with Article 14 of subchapter 2 of Title 27 of the Administrative Code or as otherwise ordered by the Department to remediate lead-based paint hazards.

Work area. "Work area" shall mean that part of a building where lead-based paint or paint of unknown lead content is being disturbed.

(c) **Administrative requirements.**

(1) **Filing procedures.**

(A) **Time for filing.** No less than twenty-four and no more than ninety-six hours prior to the commencement of work ordered by the Commissioner and not less than ten days prior to commencement of work that will disturb lead-based paint pursuant to §27-2056.11(a)(2)(ii) of the Administrative Code, an owner shall file with the Department a notice of the commencement of the work. Such notice shall be signed by the owner or by a representative of the firm

performing the work. Where work is required to commence in a lesser period of time than that specified herein for the filing of a notice of commencement of work, then such filing shall be made as soon as practicable but prior to the commencement of work.

(B) **Content of notice.** Such notice shall be in a form satisfactory to or prescribed by the Department and shall set forth at a minimum the following information:

(i) The address of the building and the specific location of the lead-based paint work within the building.

(ii) The name, address and telephone number of the owner of the premises in which the lead based paint work is to be performed.

(iii) The name, address, telephone number and EPA certification number of the firm that will be responsible for performing the work.

(iv) The date and time of commencement of the work, working or shift hours, and the expected date of completion.

(v) A complete description and identification of the surfaces and structures, and surface areas, subject to the work.

(vi) Any changes in the information contained in the notice required by this section, shall be filed with the Department prior to commencement of work, or if work has already commenced, within twenty-four hours of any change.

(2) **Training and certification.**

(A) **Abatement.** All work conducted as part of an abatement as defined in this section shall be performed by firms and workers certified to perform lead-based paint activities in accordance with regulations issued by EPA at subpart L of 40 CFR Part 745, or successor rule, for the abatement of lead-based paint hazards.

(B) **Other than abatement work.**

(i) **Other work to remediate lead-based paint hazards that is ordered by the Department or HPD, or work that disturbs large amounts of lead-based paint.** All work ordered by the Department, or by the HPD in accordance with § 27-2056.11(a)(1) of the Administrative Code, or work that disturbs over 100 square feet per room conducted in accordance with §17-911 of the Administrative Code, or §43.23 or §47.63 of this Code, or § 27-2056.11 (a)(2)(ii) of the Administrative Code, shall be performed by firms and trained workers meeting the following requirements:

(aa) Firm requirements. Firms conducting such work shall be certified to perform lead abatement by the EPA in accordance with subpart L of 40 CFR Part 745, or successor rule, for the abatement of lead hazards.

(bb) Worker requirements. Workers conducting such work shall be trained, at a minimum, in accordance with the regulations issued by HUD at 24 CFR 35.1330(a)(4), or successor rule.

(cc) Clearance dust testing requirements. No person shall perform a lead-contaminated dust clearance test in relation to such work unless such person is a third-party, who is independent of the owner and any individual or firm that performs the work. All personnel performing lead-contaminated clearance dust testing upon completion of work shall be trained, at a minimum, in accordance with regulations issued by HUD at 24 CFR 35. 1340(b)(1), or successor rule.

(ii) **Work not ordered by the Department or HPD that disturbs a small amount of paint in a multiple dwelling or in a child care facility or a kindergarten.** Work which is not ordered by the Department and disturbs between two and 100 square feet per room, which is performed in accordance with §17-911 or §27-2056.11(a)(2)(i) of the Administrative Code, or §43.23 or §47.63 of this Code, shall be performed by workers trained in accordance with

the following requirements:

(aa) Worker requirements. Workers conducting such work shall be trained under regulations issued by HUD at 24 CFR 35.1330(a)(4), or successor rule.

(bb) Clearance dust testing requirements. No person shall perform a lead-contaminated dust clearance test in relation to such work unless such person is a third-party, who is independent of the owner and any individual or firm that performs the work. Personnel performing lead-contaminated clearance dust testing after completion of work performed in accordance with §27-2056.11(a)(2)(i) of the Administrative Code shall be trained in accordance with regulations issued by HUD at 24 CFR 35.1340(b)(1), or successor rule.

(iii) **Work not ordered by the Department or HPD, which is performed in a dwelling unit upon turnover.** No person shall perform a lead-contaminated dust clearance test in relation to such work unless such person is a third-party, who is independent of the owner and any individual or firm that performs the work. Personnel performing lead-contaminated clearance dust testing after completion of work performed on turnover in accordance §27-2056.8 of the Administrative Code shall be trained in accordance with regulations issued by HUD at 24 CFR 35.1340(b)(1), or successor rule.

(3) **Recordkeeping.**

(A) **Records to be kept.** An owner shall keep a record of the following information for all lead-based paint remediation work subject to the provisions of this Code or Title 27 of the Administrative Code:

(i) The name, address, and telephone number of the person or entity who performed the work; the start date and completion date for the work.

(ii) A copy of all training certificates, required pursuant to subsection (c)(2) of this section, for the firms and personnel who performed work and clearance dust testing.

(iii) The location of the work performed in each room including a description of such work and invoices for payment for such work.

(iv) Results of lead-contaminated dust clearance tests analyzed by an independent laboratory certified by the state of New York.

(v) Checklists completed pursuant to §173.14(e)(1)(J) and (e)(2)(F) when occupants are allowed temporary access to a work area.

(B) **Time to maintain records.** Such records shall be maintained by an owner for a period of ten years from the date of completion of such work or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the Department upon request.

(d) **Work methods and occupant relocation.**

(1) **Minimizing dust dispersion.**

(A) Work to remediate or that disturbs lead-based paint shall be conducted in such a manner as to minimize the penetration or dispersal of lead contaminants or lead-contaminated materials from the work area to other areas of the dwelling unit and building or adjacent outdoor areas.

(B) Areas designated as a clean changing area shall be segregated from the work area by a physical barrier to prevent the penetration or dispersal of lead contaminants or lead-contaminated materials from the work area to other areas of the dwelling unit and building and to prevent occupant exposure to materials containing lead.

(2) **Prohibited methods.** The following methods shall not be used while performing work that disturbs lead-based paint in accordance with this section:

(A) Open flame burning or torching.

(B) Machine sanding or grinding without HEPA local exhaust control.

(C) Abrasive blasting or sandblasting without HEPA local ehaust control.

(D) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.

(E) Dry sanding or dry scraping.

(F) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the United States Consumer Product Safety Commission at 16 CFR 1500.3, and/or a hazardous chemical in accordance with the United States Occupational Safety and Health Administration regulations at 29 CFR 1910.1200 or 1926.59, as applicable to the work.

(3) **Work practices and surface finishing.**

(A) **Tools and materials.** All tools and materials used when disturbing paint shall be used in accordance with the manufacturer's instructions. Wet sanding, wet scraping, removal, encapsulation, enclosure, replacement and other maintenance and repair activities shall be performed using standard construction and treatment methods.

(B) **Seal surfaces.** All surfaces where paint has been disturbed shall be sealed and finished with appropriate materials. Underlying substrates shall be dry and protected from future moisture before applying a new protective coating or paint, and all paints and coatings shall be applied in accordance with the manufacturer's recommendations.

(C) **Repair underlying conditions.** Violations or conditions that cause or may cause paint to peel and which are readily observable and identifiable as to source, including but not limited to water leaks, shall be corrected as part of any lead-based paint remediation work.

(D) **Adjust painted doors and windows.** All painted windows and painted doors in the work area, including cabinet doors, shall be adjusted to ensure that they are properly hung, so that no painted surfaces bind or stick in a manner that movement of such windows and doors causes abrasion or friction of the surfaces.

(E) **Work area preparation completed before commencing remediation.** Work intended to remediate lead-based paint hazards shall not commence until work area preparation required by this section has been completed.

(4) **Relocation.** An owner shall request that an occupant temporarily relocate from a unit pending completion of work where it appears that work cannot be performed safely with occupants in residence. The owner shall offer a suitable, decent, safe and similarly accessible dwelling unit that does not have lead-based paint hazards to such occupants for temporary relocation. Unreasonable refusal by such occupants to relocate pursuant to such offer shall constitute a refusal of access pursuant to §§27-2009 and 27-2056.4(b) of the Administrative Code and, where applicable, 9 NYCRR §2524.3(e). Relocation shall not be required provided that the work can be done safely with occupants in residence, and provided further that at the end of each day of work, the work area is properly cleaned as specified in §173.14(e)(1)(I)(i); occupants have safe access to areas adequate for sleeping, use of bathroom and kitchen facilities and safe access to entry-/egress pathways; and the work does not create other safety hazards, as specified herein.

(e) **Occupant protection.**

(1) **Work ordered by the Department, or work that disturbs over 100 square feet of lead-based paint per**

room, regardless of whether such work is ordered by the Department, which is conducted in a child care service or kindergarten pursuant to §47.63 or §43.23 of this Code or §17-911 of the Administrative Code, or work ordered by HPD in accordance with §27-2056.11(a)(1) of the Administrative Code, or work performed pursuant to §27-2056.11 (a)(2)(ii) of the Administrative Code:

(A) **Postings.** The following information shall be conspicuously posted no later than twenty-four hours prior to beginning work and shall remain in place until the work area has been cleared for re-occupancy:

(i) **Notice of commencement of work.** Information on the notice submitted to the Department pursuant to subparagraph (1) of subdivision (c) of this section shall be posted at the entrance to the dwelling and at the entrance to the dwelling unit.

(ii) **Warning sign.** A warning sign of at least 8-1/2" by 11" reading in letters at least one inch high, as follows: WARNING: LEAD WORK AREA-POISON-NO SMOKING OR EATING. Such information shall be posted adjacent to the work area.

(B) **Pre-cleaning and protecting movable items.** All floors, movable furniture, draperies, carpets, or other objects in the work area shall be HEPA-vacuumed or washed; all movable items shall then be moved out of the work area or otherwise covered with two layers of six-mil disposable polyethylene sheeting before work begins. Such sheeting shall be taped together with waterproof tape, and taped to the floors or bottom of the walls or baseboards, so as to form a continuous barrier to the penetration of dust.

(C) **Sealing vents.** Forced-air systems within the room where work that disturbs lead-based paint is occurring shall be turned off and covered with two layers of six-mil polyethylene sheeting and waterproof tape to prevent lead contamination and lead dispersal to other areas.

(D) **Affixing doorway entrance flap.** After all movable objects have been removed, the work area shall be sealed off from non-work areas by taping with waterproof tape, two layers of disposable, six-mil polyethylene sheeting over every entrance or doorway to the work area, as follows: To deter the dispersal of lead dust one sheet shall be taped along all sides of the doorway and a slit shall be cut down the middle of the sheeting, leaving intact at least six inches of sheeting on the top and six inches of sheeting on the bottom of the doorway. A second sheet of polyethylene large enough to cover the doorway, shall be attached to the top of the doorway in the room or area where work is being conducted and shall act as a flap opening into the work area.

(E) **Covering floors.** The floor of the work area shall be covered with at least two sheets of disposable six-mil polyethylene sheeting. Such sheeting shall be taped together with waterproof tape, and taped to the bottom of the walls or baseboard, so as to form a continuous barrier to the penetration of dust to the floor. The furniture and non-movable furnishings, such as counters, cabinets, and radiators in the work area shall be removed or covered with such taped sheeting.

(F) **Sealing openings.** All openings, including windows, except those required to be open for ventilation, not sealed off or covered in accordance with §173.14(e)(1)(C) of this Code, shall be sealed with two layers of six-mil polyethylene sheeting and waterproof tape to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

(G) **Instructing occupants.** Occupants shall be instructed by the owner and contractor to avoid entering work areas in which work is ongoing until final clearance levels have been achieved.

(H) **Hazardous materials.** All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer's labels, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

(I) **Clean-up and lead-contaminated dust clearance testing procedures.**

(i) **Daily clean-up.** At the completion of work each day, the work area shall be thoroughly wet-mopped or HEPA vacuumed. No polyethylene sheeting, drop cloths, or other materials that are potentially hazardous to young children or infants shall be accessible outside the work area. In addition, any work area and other adjoining area exposed to lead or lead contaminated materials shall be cleaned as follows:

(aa) Large debris. Large demolition-type debris (e.g., door, windows, trim) shall be wrapped in six-mil polyethylene, sealed with waterproof tape, and moved to the area designated for trash storage on the property to be properly disposed of in a lawful manner.

(bb) Small debris. Small debris shall be HEPA-vacuumed or wet swept and collected. Before wet sweeping occurs, the affected surfaces shall be sprayed with a fine mist of water to keep surface dust from becoming airborne. Dry sweeping is prohibited. The swept debris and all disposable clothing and equipment shall be placed in double four-mil or single six-mil plastic bags which shall be sealed and stored along with other contaminated debris in the work area and shall be properly disposed of in a lawful manner.

(cc) Clean-up adjacent to the work area. On a daily basis, as well as during final clean-up, the area adjacent and exterior to the work area shall be examined visually to ensure that no lead debris has escaped containment. Any such debris shall be wet swept and HEPA vacuumed, collected and disposed of as described above.

(dd) Supply storage. Upon finishing work for the day, all rags, cloths and other supplies used in conjunction with chemical strippers or other flammable materials, or materials contaminated with lead dust or paint shall be stored at the end of each work day in sealed containers or removed from the premises, in a lawful manner.

(ii) **Final clean-up.** Final cleaning shall be conducted as follows, in the following sequence:

(aa) The final cleaning process shall start no sooner than one (1) hour after lead-based paint disturbance activities have been completed, but before repainting, if necessary.

(bb) First, all polyethylene sheeting shall be sprayed with water mist and swept prior to removal. Polyethylene sheeting shall be removed by starting with upper-level polyethylene, such as that on windows, cabinets and counters, folding the corners, ends to the middle, and placing in double four-mil or single six-mil plastic bags. Plastic bags shall be sealed and properly disposed of in a lawful manner.

(cc) Second, all surfaces in the work area shall be HEPA vacuumed. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(dd) Third, all surfaces in the work area shall be washed with a detergent solution. Washing shall begin with the ceiling and proceed down the walls to the floor. Wash water shall be properly disposed of in a lawful manner.

(ee) Fourth, all surfaces exposed to lead dust generated by the lead-based paint disturbance process shall be HEPA vacuumed again. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(ff) Fifth, all surfaces shall be inspected to ensure that all surfaces have been cleaned and all visible dust and debris have been removed. If all visible dust and debris have not been removed, affected surfaces shall be re-cleaned.

(iii) **Final inspection.** After final clean-up, and re-painting if necessary, has been completed, a final inspection shall be made by a third party retained by the owner who is independent of the owner and the contractor. The final clearance evaluation shall take place at least one (1) hour after the final cleaning and shall include a visual inspection and surface dust testing. Three wipe samples shall be collected and tested from each room or area where work has been

conducted; one wipe sample each shall be taken from a window well, a window sill and the floor. In addition, wipe samples shall be collected and tested from the floor in rooms or areas immediately adjacent to the work area.

(iv) **Clearance for permanent re-occupancy after completion of work.** Dust lead levels in excess of the following constitute contamination and require repetition of the clean-up and testing process in all areas where such levels are found. Areas where every sample result if below the following dust lead levels may be cleared for permanent re-occupancy:

Floors: 40 micrograms of lead per square foot.

Window Sills: 250 micrograms of lead per square foot.

Window Wells: 400 micrograms of lead per square foot.

Only upon receipt of laboratory test results showing that the above dust lead levels are not exceeded in the dwelling may the work area be cleared for permanent re-occupancy. However, temporary access to work areas may be allowed, provided that clean-up is completed, and dust test samples have been collected, in compliance with §173.14(e)(1)(I)(i),(ii) and (iii). The owner shall provide a copy of all lead-contaminated dust clearance test results to the occupants of the dwelling or dwelling unit. Copies of lead-contaminated dust wipe clearance test results shall be submitted to the Department whenever abatement or remediation of lead-based paint hazards has been ordered by the Department or Commissioner.

(J) **Temporary access to work areas when occupants not relocated.** When occupants are not relocated, temporary access may be allowed to areas in which work is in progress after work has ceased for the day provided that at the end of each work day:

(i) Any work area to be accessed is to be properly cleaned as specified in the daily clean-up requirements of §173.14(e)(1)(I)(i) and the final clean-up requirements of §173.14(e)(1)(I)(ii)**(bb)** through **(dd)** and **(ff)**;

(ii) There are no safety hazards (including, but not limited to, exposed electric wiring or holes in floor) or covered vents;

(iii) Floor coverings containing leaded dust and debris and hazardous materials are removed;

(iv) Floors in the work area are re-covered with a non-skid floor covering securely taped to the floor;

(v) Work areas are prepared in accordance with the requirements above when work recommences; and

(vi) At the end of each workday, and before access is permitted, a checklist indicating compliance with these conditions is completed and signed, in accordance with §3.19 of this Code, by the person responsible for overseeing the work.

(vii) Temporary access in accordance with these provisions may be allowed for no longer than five days. If work has not resumed within five days, temporary access may continue only if the person responsible for overseeing the work has repeated the work required by clauses (i)-(vi). Nothing herein shall extend the time for compliance with any order issued pursuant to this Code or for correction of any violation of the Administrative Code.

(2) **Work that disturbs between two (2) and 100 square feet of lead-based paint per room that is being performed in accordance with §§17-911 and 27-2056.11(a)(2)(i) of the Administrative Code, or §43.23 or §47.63 of the Health Code.**

(A) **Postings and warning sign.** A warning sign shall be posted in accordance with subparagraph (1)(A)(ii) of subdivision (e) of this section and caution tape shall be placed across the entrance to the work area.

(B) **Pre-cleaning and protecting movable items.** All floors, movable furniture, draperies, carpets, or other objects in the work area shall be HEPA-vacuumed or washed; all movable items shall then be moved out of the work area or otherwise covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work.

(C) **Covering floors.** The floor of the work area shall be covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work. Multiple layers of polyethylene sheeting shall be used as needed to prevent dust from contaminating the floor.

(D) **Sealing openings.** Where applicable, forced air systems in the work area shall be turned off and any openings in the work area shall be sealed with polyethylene or equivalent sheeting to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

(E) **Instructing occupants.** Occupants shall be instructed by the owner and contractor to avoid entering the work area until final clean-up has been completed. The owner shall provide temporary relocation of the occupants of a dwelling or a dwelling unit to appropriate housing when work cannot be performed safely.

(F) **Hazardous materials.** All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer's labels, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

(G) **Clean-up and lead-contaminated clearance dust testing.** Clean-up and lead-contaminated dust clearance testing shall be conducted in accordance with §173.14(e)(1)(I) of this Code.

(H) **Temporary access to work areas when occupants not relocated.** When occupants are not relocated, temporary access may be allowed to areas in which work is in progress after work has ceased for the day provided that at the end of each work day:

(i) Any work area to be accessed is to be properly cleaned as specified in the daily clean-up requirements of §173.14(e)(1)(I)(i) and the final clean-up requirements of §173.14(e)(1)(I)(ii)**(bb)** through **(dd)** and **(ff)**;

(ii) There are no safety hazards (including, but not limited to, exposed electric wiring or holes in the floor) or covered vents;

(iii) Floor coverings containing leaded dust and debris and hazardous materials are removed;

(iv) Floors in the work area are re-covered with a non-skid floor covering securely taped to the floor;

(v) Work areas are prepared in accordance with the requirements above when work recommences; and

(vi) At the end of each workday, and before access is permitted, a checklist indicating compliance with these conditions is completed and signed, in accordance with §3.19 of this Code, by the person responsible for overseeing the work.

(vii) Temporary access in accordance with these provisions may be allowed for no longer than five days. If work

has not resumed within five days, temporary access may continue only if the person responsible for overseeing the work has repeated the work required by clauses (i)-(vi). Nothing herein shall extend the time for compliance with any order issued pursuant to this Code or for correction of any violation of the Administrative Code.

(3) **Work performed to remediate lead-based paint hazards on turnover in accordance with §27-2056.8 of the Administrative Code.**

(A) **Preparation and work.** The procedures described in §173.14(e)(2)(A) through (D) of this Code shall be followed.

(B) **Clean-up.** At the completion of work, the work area shall be thoroughly wet-mopped or HEPA vacuumed and a visual examination shall be conducted in the work area and the area adjacent and exterior to the work area. Any noted lead-contaminated dust or debris shall be wet-mopped or HEPA vacuumed. All rags, cloths and other supplies used in conjunction with chemical strippers or other flammable materials, or materials contaminated with lead dust or paint shall be stored at the end of each work day in sealed containers or removed from the premises, in a lawful manner.

(C) **Clearance dust testing.** Clearance testing for lead-contaminated dust shall be conducted in accordance with §173.14(e)(1)(I) of this Code.

(f) **Investigation of unsafe lead work practices by the Department.**

(1) **Authority to inspect.** The Department may inspect any premises where work that is subject to this section is in progress or has been completed.

(2) **Scope of authority.** Such inspection may include but not be limited to premises where abatement or remediation of lead-based paint hazards is being conducted, where any work which may disturb lead-based paint or paint of unknown lead content is being conducted, or which is the subject of a complaint to the Department pursuant to §17-185 of the Administrative Code, and any areas affected by the emission or release of leaded dust or debris.

(3) **Actions authorized.** If the Department determines that such work is not being conducted in accordance with the provisions of this section, or other applicable law, the Department may order that such work be stopped immediately; that the premises be cleared of uncontained leaded dust and debris; that the conditions or work practices constituting a departure from the provisions of this section be corrected; and that the owner and any persons performing such work submit a work plan prior to resuming work, to demonstrate their ability and willingness to comply with the provisions of this Code or other applicable law.

(g) **Declaration pursuant to Administrative Code §17-145.** The existence of a lead-based paint condition or lead-based paint hazard pursuant to §173.13 of this Code, or a failure to comply with this section is hereby declared to constitute a public nuisance and a condition dangerous to life and health, pursuant to §17-145 of the Administrative Code. Every person obligated to comply with the provisions of this section or §173.13 of this Code is hereby ordered to abate or remediate such nuisance by complying with any order or direction issued by the Department.

(h) **Modification by the Commissioner.** When the strict application of any provision of this section or §173.13 of this Code presents practical difficulties or unusual hardships, the Commissioner or designee may modify the application of such provision consistent with the general purposes of this sections. When granting a modification the Commissioner or designee may impose such conditions as are necessary in the opinion of the Commissioner or designee to prevent lead contamination and to protect the health and safety of any persons likely to be exposed to lead as a consequence of such modification.

HISTORICAL NOTE

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Subd. (e) par (1) open par amended City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 31]

Subd. (e) par (2) open par amended City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 31]

Section repealed and added City Record July 30, 2004 eff. July 30, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20-A]

Section added City Record Dec. 3, 1993 eff. Jan. 2, 1994.

Section amended in part Oct. 2, 1996 eff. Nov. 1, 1996. [See Vol. 9 Statements of Basis and Purpose No. 7]

Subd. (a) amended City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 31]

Subd. (a) amended City Record Dec. 17, 1999 eff. Jan. 16, 2000. [See Vol. 9 Statements of Basis and Purpose No. 15]

Subd. (a) pars (1), (2) amended City Record Oct. 2, 1996 eff. Nov. 1, 1996. [See Vol. 9 Statements of Basis and Purpose No. 7]

Subd. (b) open par amended City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 31]

Subd. (b) Chewable surface definition amended City Record Mar. 20, 2006 eff. Apr. 19, 2006. [See Vol. 9 Statements of Basis and Purpose No. 24]

Subd. (b) Child of applicable age definition added City Record Mar. 20, 2006 eff. Apr. 19, 2006. [See Vol. 9 Statements of Basis and Purpose No. 24]

Subd. (b) pars (1), (5), (11), (16), (19) amended City Record Dec. 17, 1999 eff. Jan. 16, 2000. [See Vol. 9 Statements of Basis and Purpose No. 15]

Subd. (b) pars (4), (8) amended City Record Jan. 14, 2003 eff. Feb. 13, 2003. [See Vol. 9 Statements of Basis and Purpose No. 18-A]

Subd. (b) par (16) amended City Record Oct. 2, 1996 eff. Nov. 1, 1996. [See Vol. 9 Statements of Basis and Purpose No. 7]

Subd. (c) par (1) subpars (aa), (cc), (dd) amended City Record Dec. 17, 1999 eff. Jan. 16, 2000. [See Vol. 9 Statements of Basis and Purpose No. 15]

Subd. (c) par (2) amended City Record Dec. 17, 1999 eff. Jan. 16, 2000. [See Vol. 9 Statements of Basis and Purpose No. 15]

Subd. (c) par (2) subpar (B) clause (i) open par amended City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 31]

Subd. (c) par (2) subpar (cc) amended City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 15-A]

Subd. (c) par (2) subpar (B) clause (ii) open par amended City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 31]

Subd. (c) par (3) subpar (cc) amended City Record Dec. 17, 1999 eff. Jan. 16, 2000. [See Vol. 9 Statements of Basis and Purpose No. 15]

Subd. (c) par (3) subpar (cc) amended City Record Oct. 2, 1996 eff. Nov. 1, 1996. [See Vol. 9 Statements of Basis and Purpose No. 7]

Subd. (d) open par amended City Record Dec. 17, 1999 eff. Jan. 16, 2000. [See Vol. 9 Statements of Basis and Purpose No. 15]

Subd. (d) amended in part City Record Oct. 2, 1996 eff. Nov. 1, 1996. [See Vol. 9 Statements of Basis and Purpose No. 7]

Subd. (e) amended in part City Record Oct. 2, 1996, eff. Nov. 1, 1996. [See Vol. 9 Statements of Basis and Purpose No. 7]

Subd. (e) par (1) open par amended City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 31]

Subd. (e) par (2) open par amended City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9 Statements of Basis and Purpose No. 31]

Subd. (e) par (2) subpar (aa) clause (vi) added City Record Dec. 17, 1999 eff. Jan. 16, 2000. [See Vol. 9 Statements of Basis and Purpose No. 15]

Subd. (e) par (2) subpar (aa) clauses (vii), (viii) renumbered City Record Dec. 17, 1999 eff. Jan. 16, 2000. [See Vol. 9 Statements of Basis and Purpose No. 15]

Subd. (e) par (2) subpar (bb) clause (i) amended City Record Dec. 17, 1999 eff. Jan. 16, 2000. [See Vol. 9 Statements of Basis and Purpose No. 15]

Subd. (e) par (2) subpar (bb) clause (iii) amended City Record Sept. 24, 2001 eff. Oct. 24, 2001.

[See Vol. 9 Statements of Basis and Purpose No. 18]

Subd. (e) par (4) subpar (dd) amended City Record Sept. 24, 2001 eff. Oct. 24, 2001. [See Vol. 9 Statements of Basis and Purpose No. 18]

Subd. (f) amended City Record Dec. 17, 1999 eff. Jan. 16, 2000. [See Vol. 9 Statements of Basis and Purpose No. 15]

Subd. (g) amended City Record Dec. 17, 1999 eff. Jan. 16, 2000. [See Vol. 9 Statements of Basis and Purpose No. 15]

Notes:

The Table of Contents and subdivisions (a) (Purpose, scope and applicability), (b) (Definitions), (c) (Administrative requirements) and (e) (Occupant protection) were amended by resolution adopted on December 16, 2008 to update cross references for lead-based paint hazard control in Article 47 (Child Care Services) and a new Article 43 (School-Based Programs for Children Ages Three through Five).

Section 173.14 was repealed and re-enacted by recolution adopted on July 22, 2004, effective August 2, 2004, to harmonize lead-based paint hazard remediation safety standards with Local Law 1 of 2004 (the New York City Childhood Lead Poisoning Prevention Act of 2003) and the rules of the City's Department of Housing Preservation and Development. See, Article 14 of Subchapter 2 of Chapter 2 of Title 27 of the Administrative Code, and Chapter 11 of Title 28 of the Rules of the City of New York.

Subdivision (b) of §173.14 was amended by resolution adopted on March 16, 2006 to define the term "child of applicable age," in accordance with §27-5056.18 of the Administrative Code, and the definition of "chewable surface" was amended accordingly. The Board of Health made these amendments effective October 1, 2006, to enable the Department and the Department of Housing Preservation and Development time to phase in the new definition.

This section is new. It was added on November 16, 1993 to establish safety precautions and standards for various lead paint abatement methods whenever such abatement is ordered or directed by the Department or the Department of Housing Preservation and Development.

Subdivision (1) of subsection (a) was amended; new subdivisions (2) and (3) of subsection (a) were adopted; former subdivision (2) of subsection (a) was renumbered as subdivision (4) and amended; and former subdivisions (3) and (4) of subsection (a) were repealed on December 13, 1999 to harmonize the safety standards with provisions of Local Law 38 of 1999 for lead poisoning prevention and control, and to rescind authority of the Departments of Housing Preservation and Development and Environmental Protection to enforce these safety standards.

Subdivision (1) of subsection (b) was amended on December 13, 1999 to provide that the definition of the word "abatement" was applicable to orders of the Commissioner issued pursuant to §173.13 of the Health Code, and when otherwise made applicable pursuant to §27-2056.2(b) or §27-2056.5(c) or (d) of the Administrative Code of the City of New York.

Subdivisions (1) and (2) of subsection (a) were amended on September 24, 1996 to comply with Federal regulations regarding what constitutes a lead based paint violation. Effective Jan. 1, 1997.

Subsection (b). Subdivision (4) and subdivision (8) of subsection (b) were amended by resolution adopted on

December 12, 2002 following amendment of Chapter 22 of the New York City Charter by the electorate in the November 6, 2001 general election, which merged the Departments of Health and Mental Health, Mental Retardation and Alcoholism Services, and enactment of Local Law of 2002, which further amended the Charter and changed the name of the merged agency to Department of Health and Mental Hygiene, and the Commissioner to Commissioner of the Department of Health and Mental Hygiene.

Subdivision (5) of subsection (b) was amended on December 13, 1999 to provide that the definition of the words "deleader" or "deleader-contractor" was applicable to performance of abatements subject to this section.

Subdivision (11) of subsection (b) was amended on December 13, 1999 to substitute the word "fungi" as the plural form of the word "fungus."

Subdivision (16) of subsection (b) was amended on December 13, 1999 to harmonize the definition of lead based paint contained in paragraph (aa) with the definition in Article 14 of subchapter 2 of chapter 2 of the Administrative Code of the City of New York, as amended by Local Law 38 of 1999, and to reflect the correct reference section of the Administrative Code in paragraph (bb).

Subdivision (16) of subsection (b) was amended on September 24, 1996 to be consistent with the updated definition of "lead based paint" in the "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" issued by the United States Department of Housing and Urban Development and to recognize the different definition of "lead based paint" used by the Department of Housing Preservation and Development. Effective Jan. 1, 1997.

Subdivision (19) of subsection (b) was amended on December 13, 1999 to add the term "chalking" as a descriptive term for deterioration of paint and to harmonize the definition of "peeling" paint with that contained in Article 14 of subchapter 2 of chapter 2 of the Administrative Code of the City of New York, as amended by Local Law 38 of 1999.

Paragraphs (aa), (cc) and (dd) of subdivision (1) of subsection (c) were amended on December 13, 1999 to delete references to inspections by the Department of Environmental Protection and to authorize the Department to take certain immediate actions when abatements are not conducted pursuant to the provisions of this section.

Subdivision (2) of subsection (c) was amended on December 13, 1999 to establish qualifications in new paragraphs (bb), (cc) and (dd) for performing the surface dust testing mandated by Article 14 of subchapter 2 of chapter 2 of Title 27 of the Administrative Code, as amended by Local Law 38 of 1999. These qualifications and requirements are consistent with other certification programs administered by the Department.

Paragraph (cc) of subdivision (2) of subsection (c) was further amended by resolution on March 21, 2001 to clarify that organizations other than those specified in paragraph (bb) may provide training for dust sampling if approved by the Department, and to authorize the Department to issue a certificate to persons enrolled in a dust wipe training course offered by organizations other than the Department, and to charge a fee for such certificate as well as for issuance of a replacement certificate.

Paragraph (cc) of subdivision (3) of subsection (c) was amended on December 13, 1999 to delete references to inspections by employees of the Department of Environmental Protection.

Paragraph (cc) of subdivision (3) of subsection (c) was amended on September 24, 1996 to adjust record keeping requirements to allow for the retention of abatement records for seven years after the date of completion of the abatement, or for such other time period as may be required by law or regulation. Effective Jan. 1, 1997.

The opening paragraph of subsection (d) was further amended on December 13, 1999 to harmonize the Health Code with the provisions of Local Law 38 of 1999, by deleting references to "abatements" ordered by the Department of Housing Preservation and Development, and to indicate which provisions of this section apply to correction of lead

based paint hazards as specified in Article 14 of subchapter 2 of chapter 2 of Title 27 of the Administrative Code of the City of New York.

Subsection (d) and paragraph (aa) of subdivision (1) of subsection (d) were amended on September 24, 1996 to limit abatement methods to those specified in the abatement orders and to simplify language. Effective Jan. 1, 1997.

Paragraphs (aa) and (ee) of subdivision (3) of subsection (d) were amended on September 24, 1996 to simplify language and to clarify the activities involved in the process of enclosure. Effective Jan. 1, 1997.

Paragraph (ee) of subdivision (4) of subsection (d) was added on September 24, 1996 to limit the use of encapsulation as an abatement method to cases in which such method is authorized by the Department or the Department of Housing Preservation and Development. Effective Jan. 1, 1997.

Subdivision (5) of subsection (d) was amended on September 24, 1996 to simplify the reference to subsection (e)(2) which outlines the steps to be taken when performing replacement on certain surfaces. Effective Jan. 1, 1997.

New subparagraph (vi) of paragraph (aa) of subdivision (2) of subsection (e) was adopted; and subparagraphs (vi) and (vii) were renumbered as subparagraphs (vii) and (viii) on December 13, 1999 to harmonize the safety standards with provisions of Local Law 38 of 1999 for lead poisoning prevention and control and regulations of the Department of Housing Preservation and Development.

Subparagraphs (ii) and (iii) of paragraph (aa) of subdivision (2) of subsection (e) were amended on September 24, 1996 to include HEPA-vacuuming and washing of movable furniture, draperies, carpets, or other objects, in the process of abatement area preparation. Further, the amendments provide for added protection against the penetration of dust during abatement area preparation. Effective Jan. 1, 1997.

Subparagraphs (iv), (v) and (vi) of subdivision (2) of subsection (e) were renumbered to be subparagraphs (v), (vi) and (vii) and new subparagraph (iv) was added on September 24, 1996 to outline requirements for the isolation of forced-air systems to prevent the penetration or dispersal of lead contaminants or lead-contaminated material to other areas during abatement. Effective Jan. 1, 1997.

Subparagraph (i) of paragraph (bb) of subdivision (2) of subsection (e) was amended on December 13, 1999 to harmonize the safety standards with provisions of Local Law 38 of 1999 for lead poisoning prevention and control and regulations of the Department of Housing Preservation and Development.

Subparagraphs (ii) and (v) of paragraph (bb) of subdivision (2) of subsection (e) were amended on September 24, 1996 to make it consistent with amendments to subsection (e)(2)(aa) and to clarify language. Effective Jan. 1, 1997.

Subparagraph (iii) of paragraph (bb) of subdivision (2) of subsection (e) was amended on September 6, 2001, incorporating recommendations in Chapter 8 of the HUD **Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing** (1995) to more effectively control the dispersal of both airborne and floor leaded dust from abatement areas.

Paragraphs (aa) and (cc) of subdivision (3) of subsection (e) were amended on September 24, 1996 to clarify language. Effective Jan. 1, 1997.

Subdivision (4) of subsection (e) was amended on September 24, 1996 to outline clean-up procedures for all abatements of surfaces exceeding two (2) square feet per room, for all abatements of radiators, door frames, window frames and window sills and for all abatements ordered by the Department in relation to a child who is determined to be lead poisoned. Subparagraphs (i), (ii) and (iii) of paragraph (aa) of subdivision (4) of subsection (e) was amended on September 24, 1996 to clarify language. Subparagraphs (i), (ii) and (iii) of paragraph (bb) of subdivision (4) of subsection (e) was amended on September 24, 1996 to specify that the final cleaning process should start no sooner than

one hour after the completion of abatement activities, but before re-painting, if necessary, to allow for dust to settle and to specify that final clean-up should be performed on all polyethylene sheeting used, and on all surfaces in the abatement area. Paragraph (cc) of subdivision (4) of subsection (e) was amended to specify a one-hour time frame within which final clearance evaluation should take place after the final cleaning. Subparagraph numbering (i) and (ii) was added to paragraph (cc) of subdivision (4) of subsection (e) to divide already existing language into two parts to facilitate a reference in the new subsection (e)(5). Paragraph (dd) of subdivision (4) of subsection (e) was amended on September 24, 1996 to lower the post abatement clearance for bare floors from 200 to 100 micrograms of lead dust per square foot in keeping with HUD Guidelines. Effective Jan. 1, 1997.

Paragraph (dd) of subdivision (4) of subsection (e) was amended on September 6, 2001 to lower the post abatement re-occupancy dust lead clearance levels for floors, window sills and window wells in accordance with EPA's recently effective regulations, codified at 40 CFR §745.227(e)(8)(viii).

Subdivision (5) of subsection (e) was renumbered subdivision (6), subdivision (6) was renumbered subdivision (7) and new subdivision (5) was adopted on September 24, 1996 to outline clean-up procedures for all abatements of surfaces not exceeding two (2) square feet per room, except for abatements of radiators, door frames, window frames and sills and abatements ordered in relation to a child who is determined to be lead poisoned. Effective Jan. 1, 1997.

Subsection (f) was amended on December 13, 1999 to eliminate references to orders or directions of the Departments of Housing Preservation and Development and Environmental Protection.

Subsection (g) was amended on December 13, 1999 to repeal authority of the Department of Environmental Protection to grant requests for modification of any provision of this section.

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RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 173 HAZARDOUS SUBSTANCES

§173.15 Unsafe lead based paint work practices. [Repealed]

HISTORICAL NOTE

Section repealed City Record July 30, 2004 eff. July 30, 2004. [See Vol. 9 Statements of Basis and Purpose No. 20-A]

Section added City Record Dec. 17, 1999 eff. Jan. 16, 2000. [See Vol. 9 Statements of Basis and Purpose No. 15]

Notes:

Section 173.15 was repealed by resolution adopted July 22, 2004, effective August 2, 2004. Its provisions for

responding to complaints regarding unsafe lead-based paint work practices have been incorporated in §173.14(f) of the Health Code.

This section was added by resolution adopted on December 13, 1999 to incorporate in the Health Code and provide notice of the Department's procedures for responding to complaints of unsafe lead based paint work practices made pursuant to §17-179(b) of the Administrative Code. These procedures are consistent with the Department's practices in investigating other environmental complaints and with the provisions of §173.14(c)(1)(cc) of the Health Code, as amended, for enforcement of lead based paint abatement safety practices when abatement is ordered by the Commissioner pursuant to §173.13 of the Health Code.

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RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 173 HAZARDOUS SUBSTANCES

§173.16 Lye intended for household use. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 23, 2008 eff. Jan. 22, 2009. [See Vol. 9
Statements of Basis and Purpose No. 31]

Section renumbered City Record Dec. 17, 1999 eff. Jan. 16, 2000. (Formerly §173.15) [See Vol. 9
Statements of Basis and Purpose No. 15]

Section in original publication July 1, 1991.

Notes:

Section 173.15 was renumbered on December 13, 1999 when a new §173.15 was added.

This section is new. Under S.C. §230c and the State Caustic Poison Law, Agriculture and Markets Law, Art. 14A, lye has been labeled with the words "Poison" and "Danger", a skull and crossbones symbol, and numerous directions covering its various uses and antidotes. The labeling of lye is also regulated by the Federal Caustic Poisons Act. Unfortunately this labeling has not been sufficiently effective in eliminating the large number of poisonings caused by the ingestion of lye. Over a period of less than 34 months, from March 9, 1955 to December 31, 1957, there were 203 lye poisonings reported to the Poison Control Center. Of these, 145 cases or 71% were under 10 years of age, 7 cases or 3 1/2% were between 10 years and 19 years of age, 47 cases or 23% were 19 years of age and over, and 4 cases or 2 1/2% were of unknown age. Five cases resulted in death. Four of the five fatalities were 19 years of age or over, the fifth being a three year old child. Although these figures do not distinguish between the accidental ingestions and the attempted suicides, (such figures are not available) it can be seen from the fact that 71% were below age 10 that the vast majority of cases resulted from preventable accidents.

The Department has considered recommending to the Board the adoption of a provision prohibiting the sale of lye for household use as a means of completely eliminating injuries due to the misuse of the product, particularly by children. The Board has, however, adopted this section which regulates more strictly the labeling of the product and which empowers the Commissioner to prohibit the sale of unsafe packages or containers. It is hoped that rigorous enforcement of this section by the Department, self policing of labeling by the lye industry, development of safer packaging, and more consumer education will substantially reduce the accidents involving products containing lye. In the event that favorable results are not achieved under these regulations by 1960, the Department plans to propose a review of this section to the Board of Health, and to renew its recommendation of a complete ban of lye for household use.

Subsection (a) provides the scope of this section. It applies to all lye products intended for household use, whether or not sold in interstate commerce, including those labeled pursuant to other State or Federal laws, e.g.: Federal Caustic Poisons Act and Agriculture and Markets Law, Art. 14A. See §173.05(a) which provides for exemptions from 173.05 for products labeled in accordance with applicable State and Federal laws; this subsection makes it clear that exemptions from any provision of this article do not apply to lye products sold for household use. A household package or container of lye must be labeled pursuant to §173.05 and subsection (c) of this section and in the places required by §173.05(h). Under §173.07 false and misleading labeling or advertising is prohibited including the use of statements, names, instructions or pictures which indicate or imply safety of use.

Subsection (b) contains a definition of lye and specifies that it includes both sodium hydroxide and potassium hydroxide in a concentration of ten percent or more. Also see Federal Caustic Poisons Act §§2(a)(9) and (19), where sodium hydroxide and potassium hydroxide are similarly defined.

Subsection (c) contains the labeling requirements which are in addition to the requirements of §173.05 (b) and (c).

Subdivision (1) requires "Lye" or "Contains Lye" to appear on all products containing lye as defined in subsection (b) of this section. No other words satisfy this requirement.

Subdivision (2) is similar to the requirement of the Federal Caustic Poisons Act §2(b)(3).

Subdivisions (3) and (4) specify the wording required under §173.05(b)(3), (4), (5) and (8).

Subdivision (5) specifies the wording required under §§173.05(b)(6) and 173.05(c). It is similar to the requirements of the regulations promulgated pursuant to the Federal Caustic Poisons Act, (21 C.F.R. §2851 et seq).

Subdivision (5) of Subsection (c) was repealed and reenacted by resolution adopted on July 6, 1982 to conform with good medical practice.

Subdivision (6) requires notice on the front panel of the container to read the precautionary labeling.

Subdivision (7) specifies the directions and warnings required under §173.05(b)(7).

Subdivision (8) specifies additional matter required under §173.05(b)(7).

Subsection (d) empowers the Commissioner to prohibit the sale of packages and containers of lye for household use when its closures are inadequate. Safe, single use, disposable containers will be encouraged.

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RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 173 HAZARDOUS SUBSTANCES

§173.17 Plastic bags.

(a) No person shall sell, offer for sale, or deliver, or offer for delivery, or give away any plastic bag or partial plastic bag intended for domestic or household use, or for packaging articles intended for domestic or household use, or which is so designed or decorated so as to encourage its use as a toy, the length and width of which when added together totals twenty-five inches or more and the opening side of which is seven inches or more and the material of which is less than one mil (1/1000 inch) in thickness; unless such plastic bag bears the following warning statement, or a warning statement which the Commissioner has approved as the equivalent thereof:

"WARNING: To avoid danger of suffocation, keep this plastic bag away from babies and children. Do not use this bag in cribs, beds, carriages or play pens."

(b) Such warning statement shall be imprinted in a prominent place on the plastic bag or shall appear on a label securely attached to the bag in a prominent place, and shall be printed in legible type which shall be contrasted by

typography, layout or color from the contents of the bag and from other printed matter on the bag, if any. The size of the print of such statement shall be as follows:

Total length and width of bag		Size of print
60 inches or more	at least	24 point
40-59 inches	at least	18 point
30-59 inches	at least	14 point
25-20 inches	at least	10 point

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Jan. 14, 2003 eff. Feb. 13, 2003. [See Vol. 9 Statements of Basis and

Purpose No. 18-A]

Notes:

This section was added by resolution of June 15, 1959, filed with the City Clerk June 17, 1959 (also adopted as S.C. §230e). Since 1957, a total of 44 deaths, reportedly due to suffocation by plastic bags or other form of thin plastic film, came to the attention of the United States Public Health Service, 27 of them in the first half of 1959.

The section is designed to provide a continuing strong warning to alert users to the potential hazard of large size, thin plastic film bags. It is intended to encompass especially the thin plastic bag (under one mil) commonly used for covering clothes delivered by dry cleaning establishments and as covers in the delivery of pillows, mattresses and other similar large size objects.

It was amended by resolution adopted by the Board of Health on April 15, 1960 to conform with Chapter XII Regulation 8 of the New York State Sanitary Code, enacted by the Public Health Council on February 25, 1960.

Subsection (a) was amended by resolution adopted on December 12, 2002 following amendment of Chapter 22 of the New York City Charter by the electorate in the November 6, 2001 general election, which merged the Departments of Health and Mental Health, Mental Retardation and Alcoholism Services, and enactment of Local Law of 2002, which further amended the Charter and changed the name of the merged agency to Department of Health and Mental Hygiene, and the Commissioner to Commissioner of the Department of Health and Mental Hygiene.

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24 RCNY 173.19

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 173 HAZARDOUS SUBSTANCES

§173.19 Glues and cements containing volatile solvents.

(a) Except as other-wise provided in subsection (b), no person shall sell, offer for sale, deliver or give away to any individual under the age of 18 years any glue or cement commonly known as plastic cement, household cement, cement, or any other similar substance, if such glue or cement contains one or more of the following volatile solvents: 1. Toluol

2. Hexane

3. Trichlorethylene

4. Acetone

5. Toluene

6. Ethyl Acetate

7. Methyl Ethyl Ketone

8. Trichloroethane

9. Isopropanol

10. Methyl Isobutyl Ketone

11. Methyl Cellosolve Acetate

12. Cyclohexanone

13. Any other substance which the Commissioner from time to time determines to be similar to such solvents. The determination of the Commissioner shall be published in the **City Record.**

(b) This section shall not apply:

(1) To any glue or cement which has been certified by the Department that it contains a substance which makes such glue or cement malodorous or causes such glue or cement to induce sneezing, or

(2) Where the glue or cement is sold, delivered or given away simultaneously with and as part of a kit used for construction of model airplanes, model boats, model automobiles, model trains or other similar models, or

(3) Where the person to whom the glue or cement is sold, delivered or given is a member of a hobby association and who properly identifies himself as such by an official membership card or other means of identification issued by such association. For the purposes of this section, the term hobby association means a group of persons (1) whose principal function is the construction of model airplanes, model boats, model automobiles, model trains or other similar objects, (2) which is composed of 25 or more members, and (3) is approved by the Department. The Department shall from time to time cause to be published in the **City Record** a list of approved hobby associations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new. It was enacted by resolution adopted on January 21, 1964.

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

24 RCNY Health Code Reg. 175.00

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

Health Code Reg. § 175.00 INTRODUCTORY NOTES

Article 175 applies to all radiation equipment and radioactive material within the jurisdiction of the New York City Department of Health. Sections of Article 175 set forth under the heading, "Radiation Equipment," contain provisions for all radiation equipment and general and additional radiation control requirements applicable to specific radiation equipment. Sections of Article 175 set forth under the heading, "Radioactive Materials," contain provisions for all radioactive materials and general and additional radiation control requirements applicable to specific radioactive materials. Article 175 aims to protect the public generally, as well as workers in certain radiation installations, from the hazards inherent in the use of ionizing radiation. The Article is intended to serve as a framework for coordination of radiation control activities with the U.S. Atomic Energy Commission, the U.S. Food and Drug Administration, the N.Y. State Department of Labor, the N.Y. State Department of Health, the N.Y. State Atomic Energy Council, the N.Y. State Department of Environmental Conservation, and with other state and federal agencies, as well as with other N.Y. City agencies.

The present version of Article 175 follows the format of Part 16 of the New York Sanitary Code, relating to ionizing radiation, and is intended to be consistent with the standards included in Part 16 with certain standards deemed to be necessarily more restrictive. Article 175 is also intended to be compatible with safety standards of the U.S. Atomic Energy Commission in Title 10. Code of Federal Regulations; identical to standards established by the U.S. Food and Drug Administration in Title 21, Part 1020, of the Code of Federal Regulations; as well as consistent with corresponding standards for radiation control in the N.Y. State Industrial Code.

The present version of Article 175 continues many of the provisions which have been in such Articles since March 23, 1959, particularly the emphasis on the role of the radiation safety officer, safety standards identical with national recommendations, and information requirements for the location and use of all radiation sources. Article 175 now replaces the former registration on radiation equipment, such as medical x-ray units, with a permit system. Most of the former Notes in the previous Article 175 have been included within the text of the various sections. Reliance upon the recommendations in specific reports of the National Council on Radiation Protection and Measurements has been eliminated, with specific standards being included in appropriate sections of the Article. Such recommendations are to be used in complying with the requirements in Article 175, where appropriate. Guidelines to provide interpretations of several sections of Article 175 are to be issued by the Commissioner of Health after publication in The City Record.

Article 175 was first adopted in 1959, completely amended in 1962, and thereafter amended several times since. The present extensively revised version was adopted by the Board of Health on June 19, 1973 to provide greater uniformity with State and Federal requirements and was again repealed and reenacted on June 29, 1973 to incorporate necessary further amendments and revisions. Under the present Article 175, all radiation sources in the City must be obtained under either a permit or license or be specifically exempt. General licensing of small quantities of radioactive material is also provided for. However, the Department will be fully and currently informed of all radiation hazards within the City through its enforcement of the present Article 175.

This Article was amended by resolution adopted on June 19, 1975, to add a new table six (6) to Section Heading 175.117.

Article 175 was further amended by resolution adopted on September 18, 1975 which added a new section 175.70 to regulate equipment and procedures in the use of mammographic radiography for the detection of breast cancer and to prevent radiation hazards both to the person operating the applicable x-ray equipment and to the patient.

Article 175 was further amended by resolution adopted on December 6, 1976 to add new sections 175.118 through 175.124 which provide microwave radiation safety requirements designed to prevent the biologically deleterious effects of such radiation from improperly constructed, serviced or used microwave ovens. Such sections were intended to provide uniformity with applicable Federal performance standards governing microwave ovens contained in Section 1030.10 of Part 1030 of Subchapter J-"Radiological Health" of Chapter 1 of Title 21 of the Federal Code of Rules and Regulations (21 CFR Section 1030.10) promulgated pursuant to the applicable provisions of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f, 263g, and 263n). Such sections were not intended to institute a regular program of inspection of microwave ovens used in homes.

The Section Headings for Section 175.09 and 175.10 were amended by resolution adopted on December 15, 1977 to conform them with the provisions contained in such sections as amended by resolution of the same date.

The Table of Section Headings was amended by resolution adopted on February 26, 1981 to conform them with the provisions contained in such sections as added or amended by resolution of the same date.

The Section Heading of Section 175.104 was amended by resolution adopted in October 23, 1986 to have the heading conform to changes made in the Section itself on the same date.

Section 175.13 was repealed by resolution adopted on June 26, 1990 to remove a maximum fee that is no longer imposed by New York State.

The repeal and reenactment of Article 175 was adopted by resolution by the Board of Health on June 7, 1994 to incorporate updated basic radiation protection standards as codified in federal regulations in all applicable provisions of the Article, to remove redundant language, inconsistencies and outdated provisions, to ensure a consistent numbering format, incorporate the use of metric and Systeme Internationale units, provide gender neutral references and to incorporate other provisions to maintain compatibility with federal regulations.

General Provisions

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RULES OF THE CITY OF NEW YORK

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.01 Applicability and inapplicability, communications.

(a) **Applicability.** (1) Except as provided in §175.01(b), this Code applies to any person who sells, transfers, assembles, receives, produces, possesses, or uses any radiation source in this City.

(b) **Inapplicability.** (1) This Code does not apply to any person with respect to any radiation source subject to regulation, as provided for by law, by the New York State Department of Labor. This exclusion does not apply to:

(A) the use of such sources in places where the general public may be exposed; or

(B) to persons with respect to radiation sources used at industrial or commercial establishments for the application of radiation to human beings.

(2) This Code does not apply to any common or contract carrier or any shipper operating within this City to the extent that such carrier or shipper is subject to regulation as provided for by law by the U.S. Department of

Transportation or other agencies of the United States or agencies of the State or City of New York, except for compliance with provisions relating to transportation of radioactive materials set forth in §175.105.

(c) **Communications.** (1) Except as otherwise provided for in this Code, or as authorized by the Department, all applications, notifications, reports or other communications filed pursuant to this Code shall be addressed to the Department at:

Bureau of Radiological Health

2 Lafayette Street, 11th Floor

New York, New York 10007

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Subd. (c) amended City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and

Purpose No. 13]

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24 RCNY 175.02

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.02 Definitions.

(a) As used in this Code, the following definitions shall apply:

(1) "A_1" means the maximum activity of special form radioactive material permitted in a Type A package. "A_2" means the maximum activity of radioactive material, other than special form, LSA and SCO material, permitted in a Type A package. These values are either listed in Table A-1, Appendix A of §175.105 of this Code or may be derived in accordance with the procedure prescribed in such Appendix A.

(2) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(3) "Accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in

excess of 1 MeV. For purposes of this definition, "particle accelerator" is an equivalent term.

(4) "Accelerator-produced material" means any material made radioactive by a particle accelerator.

(5) "Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

(6) "Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

(7) "Added filtration" means any filtration which is in addition to the inherent filtration.

(8) "Adult" means an individual 18 or more years of age.

(9) "Agreement State" means any State with which the U.S. Nuclear Regulatory Commission or the U.S. Atomic Energy Commission has entered into an effective agreement under subsection 274b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

(10) "Airborne radioactive material" means any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(11) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive materials exist in concentrations:

(i) in excess of the derived air concentrations (DACs) specified in Table 1, Appendix B of §175.03 of this Code, or

(ii) to such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

(12) "Aluminum equivalent" means the thickness of aluminum (type 1100 alloy) affording the same attenuation, under specified conditions, as the material in question. The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper.

(13) "Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table 1, Columns 1 and 2, of Appendix B of §175.03 of this Code.

(14) "Area of use" means a portion of a physical structure, or a specified out-of-doors location, that has been set aside for the purpose of receiving, producing, using, or storing radioactive material.

(15) "As low as is reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits in this Code as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

(16) "Assembler" means any person engaged in the business of assembling, replacing, or installing one or more components into an x-ray system or subsystem. The term includes the owner of an x-ray system or such person's employee or agent who assembles components into an x-ray system that is subsequently used to provide professional or commercial services.

(17) "Attenuation block" means a block or stack, having dimensions 20 centimeters by 20 centimeters by 3.8 centimeters (8 inches by 8 inches by 1.5 inches), of type 1100 aluminum alloy or other materials having equivalent attenuation.

(18) "Authorized user" means an individual who is identified as an authorized user on a Department, Agreement State, or U.S. Nuclear Regulatory Commission license that authorizes the use of radioactive material or who is named as an authorized user on a certified registration issued by the Department.

(19) "Automatic exposure control" means a device which automatically controls one or more technique factors in order to obtain a required quantity of radiation at a preselected location(s).

(20) "Background radiation" means radiation from cosmic sources; naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from any regulated sources of radiation.

(21) "Barrier" [see "Protective Barrier"].

(22) "Beam axis" means a line from the source through the centers of the x-ray fields.

(23) "Beam-limiting device" means a device which provides a means to restrict the dimensions of the x-ray beam.

(24) "Beam monitoring system" means a system designed to detect and measure the radiation present in the useful beam.

(25) "Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to 1 disintegration (d) or transformation (t) per second ($d\text{-}s^{-1}$ or $t\text{-}s^{-1}$).

(26) "Bioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement, **in vivo** counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of this Code, "radiobioassay" is an equivalent term.

(27) "Brachytherapy" means a method of radiation therapy in which sealed sources are utilized to deliver a radiation dose at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application. Brachytherapy includes radiation therapy using electronic remote after-loading devices.

(28) "Breast equivalent phantom" means a device which contains test objects of various specified dimensions as speck sets, masses and fibers representing low density areas and microcalcifications related to the imaging of breast lesions and which can be imaged by a mammographic x-ray system to visualize such test objects.

(29) "Byproduct material" means:

(i) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(ii) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition.

(30) "Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first

calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged such that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. No licensee or registrant shall change the method observed by him/her of determining calendar quarters for purposes of this Code except at the beginning of a year.

(31) "Calibration" means the determination of:

(i) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or

(ii) the strength of a source of radiation relative to a standard.

(32) "C-arm x-ray system" means an x-ray system in which the image receptor and x-ray tube housing assembly are connected by a common mechanical support system in order to maintain a desired spatial relationship. This system is designed to allow a change in the projection of the beam through the patient without a change in the position of the patient.

(33) "Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(34) "Certified components" means components of x-ray systems which are subject to regulations promulgated under Public Law 90-602, the Radiation Control for Health and Safety Act of 1968.

(35) "Certified registration" means a registration for any therapeutic radiation machine issued by the Department upon review and approval of an application submitted pursuant to this Code.

(36) "Certified system" means any x-ray system which has one or more certified components.

(37) "Certified Radiation Equipment Safety Officer" means an individual who holds an unexpired certificate as a radiation equipment safety officer issued by the New York State Department of Health.

(38) "CFR" means Code of Federal Regulations.

(39) "Chelating agent" means amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

(40) "City" means the City of New York.

(41) "Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than 10 days; for Class W, Weeks, from 10 to 100 days; and for Class Y, Years, of greater than 100 days. For purposes of this Code, "lung class" and "inhalation class" are equivalent terms.

(42) "Coefficient of Variation," or "C" means the ratio of the standard deviation to the mean value of a population

$$C = \frac{s}{X} = \frac{1}{X}\left[\sum_{i=1} \frac{(X_i - X)^2}{(n-1)}\right]^{1/2}$$

where

s = estimated standard deviation of the population.

X = mean value of observations in sample.

X_i = $\mathbf{i}^{th}$ observation in sample.

n = number of observations in sample.

(43) "Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(44) "Collimator " means a device by which a radiation beam is restricted in size.

(45) "Commissioner" means the Commissioner of Health and Mental Hygiene of the City of New York.

(46) "Committed dose equivalent" ($H_{T,50}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(47) "Committed effective dose equivalent" ($H_{E,50}$) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($H_{E,50} = S\ w_T, H_{T,50}$).

(48) "Computed tomography" or "CT" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(49) "Cone" means a device used to indicate beam direction and to establish a minimum source-surface distance. It may or may not incorporate a collimator.

(50) "Contamination" means the presence in or on any animal, food, water supply, building or premises, body of water, municipal sewage disposal system, chattel or thing of a solid, liquid or gas emitting ionizing radiation which may constitute a danger to human beings.

(51) "Control panel" means that part of radiation equipment upon which is mounted the switches, knobs, pushbuttons, and other hardware necessary for manually setting the technique factors.

(52) "Conveyance" means: (i) "For transport by public highway or rail" any transport vehicle or large freight container;

(ii) "For transport by water" any vessel, or any hold, compartment, or defined deck area of a vessel including any transport vehicle on board the vessel; and

(iii) "For transport by aircraft" any aircraft.

(53) "Cooling curve" means the graphical relationship between heat units stored and cooling time.

(54) "Critical Group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(55) "Curie" means a unit of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7E10 transformations per second ($t\text{-}s^{-1}$).

(56) "Dead-man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(57) "Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

(58) "Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits-

(i) Release of the property for unrestricted use and termination of the license; or

(ii) Release of the property under restricted conditions and the termination of the license.

(59) "Dedicated check source" means a radiation source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

(60) "Deep dose equivalent" (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of 1 centimeter (1000 mg/cm^2).

(61) "Department" means the New York City Department of Health and Mental Hygiene.

(62) "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present.

(63) "Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of this Code, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table 1, Column 3, of Appendix B of §175.03 of this Code.

(64) "Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

(65) "Deterministic effect" [see "Nonstochastic effect"].

(66) "Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

(67) "Diagnostic type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation at a distance of one meter from the tube housing does not exceed 2.58 E-5 $C\text{-}kg^{-1}$ (100 milliroentgens) in one

hour with a beam-limiting device attached and the tube operated at its leakage technique factors as specified by the manufacturer. Measurements may be averaged over an area of 100 cm^2 with no linear dimensions greater than 20 centimeters (8 inches).

(68) "Diagnostic x-ray system" means an x-ray system designed for irradiation of any part of the human body for the purpose of diagnosis or visualization.

(69) "Diaphragm" means a device or mechanism by which the radiation beam is restricted in size.

(70) "Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(71) "Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of this Code, "radiation dose" is an equivalent term.

(72) "Dose equivalent (H_T)" means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

(73) "Dose limits" means the permissible upper bounds of radiation doses established in accordance with this Code. For purposes of this Code, "limits" is an equivalent term.

(74) "Dose monitor unit" [See "Monitor unit".]

(75) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(76) "Effective dose equivalent (H_E)" means the sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated ($H_E = S\ w_T H_T$).

(77) "Embryo/fetus" means the developing human organism from conception until the time of birth.

(78) "Entrance or access point" means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

(79) "Entrance exposure rate" means the exposure per unit time at the point where the center of the useful beam enters the patient. For the purposes of this definition, "exposure" is defined in §175.02(a)(80)(ii).

(80) "Equipment" means x-ray equipment.

(81) "Exclusive use" (also referred to in other regulations as "sole use" or "full load") means the sole use of a conveyance by a single consignor for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

(82) "Explosive material" means any chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

(83) "Exposure" means either:

(i) being exposed to ionizing radiation or to radioactive material; or

(ii) the quotient of dQ divided by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The units of exposure are the coulomb per kilogram ($C\text{-}kg^{-1}$) and the roentgen.

(84) "Exposure rate" means the exposure per unit of time.

(85) "External beam radiation therapy" means a method of radiation therapy utilized to deliver a radiation dose in which the source (sources) of radiation is (are) at a distance from the body. For the purposes of this Code "teletherapy" is an equivalent term.

(86) "External dose" means that portion of the dose equivalent received from any source of radiation outside the body.

(87) "Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

(88) "Eye dose equivalent" means the external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter ($300\ mg/cm^2$).

(89) "Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(90) "Filter" means material placed in the useful beam to absorb preferentially selected radiations.

(91) [Reserved]

(92) "Fissile material" means plutonium-239, plutonium-241, uranium-233, uranium-235 or any combination of these radionuclides. Fissile material means the fissile nuclides themselves, not material containing fissile nuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium that has been irradiated in thermal reactors only are not included in this definition. Certain exclusions from fissile material controls are provided in 10 CFR 71.15

(93) "Fluoroscopic imaging assembly" means a subsystem in which x-ray photons produce a fluoroscopic image. It includes the image receptor(s) such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

(94) "Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(95) "Gantry" means that part of a radiation therapy system supporting and allowing movements of the radiation head about a center of rotation.

(96) "General purpose radiographic x-ray system" means any radiographic x-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(97) "Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(98) "Gonad or gonadal shield" means a protective barrier for the ovaries or testes.

(99) "Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule per kilogram. One gray is equal to 100 rads.

(100) "Half-value layer (HVL)" means the thickness of specified material which, when introduced into the beam of a given path of radiation, reduces the exposure rate by one-half. In this definition, the contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.

(101) "Hazardous waste" means those wastes designated as hazardous by U.S. Environmental Protection Agency regulations in 40 CFR Part 261.

(102) "High radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour at 30 centimeters (12 inches) from any source of radiation or from any surface that the radiation penetrates. For the purposes of this Code, rooms or areas in which diagnostic x-ray systems are used for healing arts purposes are not considered high radiation areas.

(103) "Human use" [see "Medical use"].

(104) "Image receptor" means any device, such as a fluorescent input phosphor or radiographic film, which transforms incident x-ray photons either into a visible image or into another form which can be made into a visible image by further transformation.

(105) "Individual" means any human being.

(106) "Individual monitoring" means the assessment of:

(i) dose equivalent

(A) by the use of individual monitoring devices, or

(B) by the use of survey data; or

(ii) committed effective dose equivalent

(A) by bioassay, or

(B) by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

(107) "Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of this Code, "personnel dosimeter" and "dosimeter" are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal air sampling devices.

(108) "Inhalation class" [see "Class"].

(109) "Inherent filtration" means the filtration of the useful beam provided by the permanently installed components of the tube housing assembly.

(110) "Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, regulations, orders, requirements, and conditions of the Department.

(111) "Interlock" means a device arranged or connected such that the occurrence of an event or condition is

required before a second event or condition can occur or continue to occur.

(112) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

(113) "Kilo electron volt (keV)" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one thousand volts in a vacuum.

(114) "Kilovolt peak (kVp)" means the maximum value in kilovolts of the potential difference of a pulsating generator. When only one-half of the wave is used, the value refers to the useful half of the wave.

(115) "Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(116) "Leakage radiation" means radiation emanating from the diagnostic source assembly except for:

(i) the useful beam, and

(ii) radiation produced when the exposure switch or timer is not activated.

(117) "Leakage technique factors" means the technique factors associated with the diagnostic or therapeutic source assembly which are used in measuring leakage radiation. They are defined as follows:

(i) for diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs, **i.e.,** 10 milliampere seconds, or the minimum obtainable from the unit, whichever is larger.

(ii) for diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential.

(iii) for all other diagnostic or therapeutic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

(118) "License" means a radioactive materials license issued by the Department for the transfer, receipt, production, possession or use of radioactive materials pursuant to this Code. There are two types of licenses: general and specific. A "general license" means a license to transfer, receive, possess, or use radioactive material in certain forms or quantities which is issued pursuant to the terms and conditions of this Code. General licenses are effective without the filing of an application with or the issuance of a license document by the Department. A "specific license" means a license evidenced by a license document issued by the Department to a licensee upon review and approval of an application submitted pursuant to this Code or a license similarly issued by the New York State Department of Health, the New York State Department of Labor, the U.S. Nuclear Regulatory Commission or any agreement state. Unless otherwise specified, the type of license referred to in this Code shall be a specific license.

(119) "Licensed material" means byproduct, source, or special nuclear material received, possessed, produced, used, transferred or disposed of under a general or specific license issued by the Department or any radioactive material which is subject to the licensure requirement of this Code.

(120) "Licensee" means any person who is licensed by the Department in accordance with this Code or any person who possesses radioactive material which is subject to the licensure requirements of this Code.

(121) "Limits" [See "Dose limits"].

(122) "Light field" means the area illuminated by visible light, simulating the radiation field.

(123) "Linear accelerator" [See "Accelerator"]. For the purposes of this Code, "linac" is an equivalent term.

(124) "Line-voltage regulation" means the difference between the no-load line potentials expressed as a percent of the load line potential; that is,

Percent line-voltage regulation = 100 ($\mathbf{V}_n$ - $\mathbf{V}_1$)

$\mathbf{V}_1$

where:

V_n = No-load line potential and

V_1 = Line load potential.

(125) "Lost or missing licensed material" means licensed radioactive material whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(126) "Low specific activity (LSA) material" means radioactive material with limited specific activity which is nonfissile or is excepted under §175.105(b)(2) that satisfies the descriptions and limits set forth below. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of three groups:

(1) LSA-I.

(i) Uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radioactive radionuclides that are not intended to be processed for the use of these radionuclides; or

(ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures; or

(iii) Radioactive material, other than fissile material, for which the A_2 value is unlimited; or

(iv) Mill tailings, contaminated earth, concerete, rubble, other debris, and activated material in which the radioactive material is essentially uniformly distributed, and the average specific activity does not exceed 10^{-6} A_2/g.

(2) **LSA-II.**

(i) Water with tritium concentration up to 0.8 TBq/liter (20.0 Ci/liter); or

(ii) Material in which the radioactive material is essentially uniformly distributed, and the average specific activity does not exceed 10^{-4} A_2/g for solids and gases, and 10^{-5} A_2/g for liquids.

(3) **LSA-III.** Solids (e.g., consolidated wastes, activated materials) excluding powders, that satisfy the requirements of §71.77 in which:

(i) The radioactive material is essentially uniformly distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.);

(ii) The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for

7 days, would not exceed 0.1 A_2; and

(iii) The estimated average specific activity of the solid does not exceed 2×10^{-3} A_2/g.

(127) "Lung class" [see "Class"].

(128) "Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding 4 times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs.

(129) "Management" means the chief executive officer or that individual's designee or designees.

(130) "Maximum line current" means the root-mean-square current in the supply line of an x-ray machine operating at its maximum rating.

(131) "Medical institution" means a facility as defined in Article 28 of the New York State Public Health Law.

(132) "Medical misadministration" means the administration of:

(i) a radiopharmaceutical, radiobiologic or radiation from a source other than the one ordered;

(ii) a radiopharmaceutical, radiobiologic or radiation to the wrong person;

(iii) a radiopharmaceutical, radiobiologic or radiation by a route of administration, or to a part of the body, other than that in the order of the prescribing physician;

(iv) an activity of a diagnostic radiopharmaceutical or radiobiologic differing from the prescribed activity by more than 50 percent;

(v) an activity of a therapeutic radiopharmaceutical or radiobiologic differing from the prescribed activity by more than 10 percent;

(vi) a therapeutic radiation dose from any source other than a radiopharmaceutical, radiobiologic or brachytherapy source such that errors in computation, calibration, time of exposure, treatment geometry or equipment malfunction result in a calculated total treatment dose differing from the final prescribed total treatment dose ordered by more than 10 percent;

(vii) a therapeutic radiation dose from a brachytherapy source such that errors in computation, calibration, treatment time, source activity, source placement or equipment malfunction result in a calculated total treatment dose differing from the final total treatment dose ordered by more than 10 percent; or

(viii) a therapeutic radiation dose in any fraction of a fractionated treatment such that the administered dose in the individual treatment or fraction differs from the dose ordered for that individual treatment or fraction by more than 50 percent.

(133) "Medical use" means the intentional internal or external administration of radiation to humans in the practice of the healing arts in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. For the purposes of this Code, "human use" is an equivalent term.

(134) "Mega electron volt (MeV)" means the energy equal to that acquired by a particle with one electron charge passing through a potential difference of one million volts in a vacuum.

(135) "Member of the public" means any individual, except when that individual is receiving an occupational dose.

(136) "Minor" means an individual less than 18 years of age.

(137) "Monitor unit" means a unit response from the beam monitoring system from which the absorbed dose can be calculated. For the purposes of this Code, "Dose monitor unit" is an equivalent term.

(138) "Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of this Code, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(139) "NARM" means any naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source, or special nuclear material.

(140) "Natural radioactivity" means radioactivity of naturally occurring nuclides.

(141) "Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of this Code, "deterministic effect" is an equivalent term.

(142) "Normal form radioactive material" means radioactive material which has not been demonstrated to qualify as special form radioactive material.

(143) "Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

(144) "Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under §175.103(c)(9), from voluntary participation in medical research programs, or as a member of the public.

(145) "Operator" means any person conducting the business or activities carried on within a radiation installation or having by law the administrative control of a radiation source whether as owner, lessee, contractor, user or otherwise.

(146) "Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates of ionizing radiation from an external beam therapy unit for a specified set of exposure conditions.

(147) "Package" means the packaging together with its radioactive contents as presented for transport.

(i) "Fissile material package" or Type AF package, Type BF package, Type B(U)F package, or Type B(M)F package means a fissile material packaging together with its fissile material contents.

(2) Type A package means a Type A packaging together with its radioactive contents. A Type A package is defined and must comply with DOT regulations in 49 CFR Part 173.

(ii) "Type B package" means a Type B packaging together with its radioactive contents. On approval by the NRC, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kPa (100 lb/in^2) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in 10 CFR 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see

USDOT regulations in 49 CFR Part 173. A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in 10 CFR 71.13.

(148) "Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of 10 CFR Part 71. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(149) "Particle accelerator" [See "Accelerator"].

(150) "Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

(151) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, public authority or political subdivision of this State, any other State of the United States or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing, but shall not include federal government agencies.

(152) "Personnel monitoring equipment" [See "Individual monitoring devices"].

(153) "Phantom" means an object behaving in essentially the same manner as tissue with respect to absorption or scattering of the ionizing radiation in question.

(154) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(155) "Position indicating device (PID)" means a device on dental x-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance.

(156) "Positive collimating device" means a device which is permanently affixed to the x-ray tube housing and is intended to confine the emerging x-ray beam to the image receptor or area of clinical interest, whichever is smaller.

(157) "Primary protective barrier" [See "Protective barrier "].

(158) "Probabilistic effect" [See "Stochastic effect"].

(159) "Professional practice" means the practice of medicine, dentistry, podiatry, osteopathy, chiropractic or veterinary medicine.

(160) "Professional practitioner" means any person licensed or otherwise authorized under the New York State Education Law to practice a professional practice.

(161) "Protective apron" means an apron made of radiation attenuating material(s), used to reduce radiation exposure.

(162) "Protective barrier" means a barrier of radiation absorbing material(s) used to reduce radiation exposure. The types of protective barriers are as follows:

(i) "Primary protective barrier" means the material, excluding filters, placed in the useful beam, for protection purposes, to reduce the radiation exposure.

(ii) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(163) "Protective glove" means a glove made of radiation attenuating material(s) used to reduce radiation exposure.

(164) "Public dose" means the dose received by a member of the public from exposure to sources of radiation. It does not include occupational dose, dose received from background radiation, exposure to individuals administered radioactive material and released under §175.103(c)(9), dose received as a patient from medical practices, or dose from voluntary participation in medical research programs.

(165) "Pyrophoric liquid" means any liquid that ignites spontaneously in dry or moist air at or below 54.4°C (130°F). A pyrophoric solid is any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

(166) "Qualified expert" means an individual having the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs, **e.g.,** individuals certified in the appropriate field by the American Board of Radiology or the American Board of Health Physics, or those having equivalent qualifications. With reference to the calibration of radiation therapy equipment, an individual having, in addition to the above qualifications, training and experience in the clinical applications of radiation physics to radiation therapy, **e.g.,** individuals certified by the American Board of Medical Physics or in therapeutic Radiological Physics or X-Ray and Radium Physics by the American Board of Radiology.

(167) "Quality factor" (Q) means the modifying factor that is used to derive dose equivalent from absorbed dose.

(i) As used in this Code, the quality factors for converting absorbed dose to dose equivalent are shown in Table 1.

Table 1

Quality Factors and Absorbed Dose Equivalents

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent*	
X, gamma, or beta radiation and high-speed electrons		1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge		20	0.05
Neutrons of unknown energy		10	0.1
High-energy protons		10	0.1

*Absorbed dose in gray equal to 1 Sv or the absorbed dose in rad equal to 1 rem.

(ii) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, as provided in Table 1, 0.01 Sv (1 rem) of neutron radiation of unknown energies may, for purposes of this Code, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from Table 2 to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

Table 2

Mean Quality Factors, Q, and Fluence per Unit Dose

Equivalent for Monoenergetic Neutrons

Neutron Energy (MeV)	Quality Factora (Q)	Fluence per Unit Dose Equivalentb (neutrons cm-2 rem-1)	Fluence per Unit Dose Equivalentb (neutrons cm-2 Sv-1)

(thermal)	2.5E-8	2	980E6	980E8
	1E-7	2	980E6	980E8
	1E-6	2	810E6	810E8
	1E-5	2	810E6	810E8
	1E-4	2	840E6	840E8
	1E-3	2	980E6	980E8
	1E-2	2.5	1010E6	1010E8
	1E-1	7.5	170E6	170E8
	5E-1	11	39E6	39E8
	1	11	27E6	27E8
	2.5	9	29E6	29E8
	5	8	23E6	23E8
	7	7	24E6	24E8
	10	6.5	24E6	24E8
	14	7.5	17E6	17E8
	20	8	16E6	16E8
	40	7	14E6	14E8
	60	5.5	16E6	16E8
	1E2	4	20E6	20E8
	2E2	3.5	19E6	19E8
	3E2	3.5	16E6	16E8
	4E2	3.5	14E6	14E8

[a]Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-centimeter diameter cylinder tissue-equivalent phantom.

[b]Monoenergetic neutrons incident normally on a 30-centimeter diameter cylinder tissue-equivalent phantom.

(168) "Quarter" [See "Calendar quarter"].

(169) "Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs per gram or 0.01 joule per kilogram (0.01 gray).

(170) "Radiation" means alpha particles, beta particles, gamma rays, x rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of this Code, ionizing radiation is an equivalent term. Radiation, as used in this Code, does not include non-ionizing radiation, such as radiowaves or microwaves, visible, infrared, or ultraviolet light.

(171) "Radiation area" means any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in 1 hour at 30 centimeters (12 inches) from the source of radiation or from any surface that the radiation penetrates.

(172) "Radiation detector" means a device which in the presence of radiation provides a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

(173) "Radiation dose" [See "Dose"].

(174) "Radiation equipment" means any equipment or device which can emit radiation by virtue of the application thereto of high voltage.

(175) "Radiation installation" means any place or facility, including vehicles such as a van or truck, where:

(i) radiation equipment, in operable condition or assembles and intended to be used, is located or used; or

(ii) radioactive material is transferred, received, produced, possessed or used.

Such installation shall include generally a hospital; medical, dental, chiropractic, osteopathic, podiatric, or veterinarian institution, clinic or office; van or truck providing services at non-permanent locations; educational institution; commercial, private or research laboratory performing diagnostic procedures or handling equipment or material for medical use; or any trucking, storage, messenger or delivery service establishment. Radiation installation shall include, whether or not it is specifically stated above, any place, facility or vehicle such as a van or truck where radiation is applied intentionally to a human. The limits of the radiation installation shall be as designated by the operator.

(176) "Radiation machine" means any device capable of producing radiation except those devices with radioactive material as the only source of radiation.

(177) "Radiation safety officer" means an individual who, under the authorization of the operator of a radiation installation, administers a radiation protection program in accordance with §175.03 of this Code and who is qualified by training and experience in radiological health to evaluate the radiation hazards of such installation and administer such radiation protection program.

(178) "Radiation source" means any radioactive material or any radiation equipment.

(179) "Radiation therapy physicist" means the individual identified as the qualified radiation therapy physicist on a Department license or certified registration.

(180) "Radiation therapy simulation system" means a radiographic or fluoroscopic x-ray system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

(181) "Radioactive material" means any solid, liquid, or gas which emits radiation spontaneously.

(182) "Radioactive material site" means a location, or contiguous and adjacent locations, under a single license in which radioactive materials are authorized to be received, produced, used, possessed (stored), or transferred and in which a specific use of said radioactive materials may be evaluated by a single set of Departmental inspection criteria concerning the procedures, equipment or shielding utilized by the licensee.

(183) "Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

(184) "Radiobioassay" [See "Bioassay"].

(185) "Rated line voltage" means the range of potentials, in volts, of the supply line specified by the manufacturer at which the x-ray machine is designed to operate.

(186) "Rated output current" means the maximum allowable load current of the x-ray high-voltage generator.

(187) "Rated output voltage" means the allowable peak potential, in volts, at the output terminals of the x-ray high-voltage generator.

(188) "Rating" means the operating limits specified by the manufacturer.

(189) "Recording" means producing a permanent form of an image resulting from x-ray photons (**e.g.,** film, video tape).

(190) "Reference Man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

(191) "Registrant" means any person who is registered with the Department or who is legally obligated to register with the Department pursuant to this Code.

(192) "Registration" means registration with the Department in accordance with this Code.

(193) "Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem is equal to 0.01 sievert.

(194) "Research and development" means:

(i) theoretical analysis, exploration, or experimentation; or

(ii) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

(195) "Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

(196) "Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

(197) "Response time" means the time required for an instrument system to reach 90 percent of its final reading when the radiation-sensitive volume of the instrument system is exposed to a step change in radiation flux from zero sufficient to provide a steady state midscale reading.

(198) "Restricted area" means an area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A restricted area does not include any area used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(199) "Roentgen" means the special unit of exposure. One roentgen (R) equals 2.58E-4 coulomb per kilogram of air (see "Exposure").

(200) "Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

(201) "Scattered radiation" means radiation that, during passage through matter, has been deviated in direction. (The radiation also may have been modified by a decrease in energy.)

(202) "Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

(203) "Secondary protective barrier" [See "Protective barrier"].

(204) "Shallow dose equivalent" (H_S), which applies to the external exposure of the skin of the whole body or the skin of an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm^2).

(205) "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

(206) "SI" means the abbreviation for the International System of Units (Systeme Internationale).

(207) "Sievert" means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One sievert is equal to 100 rem.

(208) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

(209) "Source" means, for the purposes of radiation equipment, the focal spot of the x-ray tube.

(210) "Source-image receptor distance (SID)" means the distance from the source to the center of the input surface of the image receptor.

(211) "Source material" means:

(i) Uranium or thorium, or any combination thereof, in any physical or chemical form; or

(ii) Ores that contain by weight one-twentieth of 1 percent (0.05 percent) or more of uranium, thorium or any combination of uranium and thorium. Source material does not include special nuclear material.

(212) "Source material milling" means any activity that results in the production of byproduct material as defined in §175.02(a)(29)(ii).

(213) "Source of radiation" means any radioactive material or any device or equipment emitting, or capable of producing, radiation.

(214) "Source-skin distance or source-surface distance (SSD)" means the distance measured along the central ray from the center of the front surface of the source of the x-ray focal spot or sealed radioactive source to the surface of the irradiated object.

(215) "Special form radioactive material" means radioactive material which satisfies the following conditions:

(i) it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(ii) the piece or capsule has at least one dimension not less than 5 mm (0.2 inch); and

(iii) it satisfies the requirements of 10 CFR 71.75. A special form encapsulation designed in accordance with the requirements of 10 CFR 71.4 in effect on June 30, 1983, (see 10 CFR Part 71, revised as of January 1, 1983), and constructed prior to July 1, 1985, and a special form encapsulation designed in accordance with the requirements of 10 CFR 71.4 in effect on March 31, 1996, (see 10 CFR Part 71, revised as of January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

(216) "Special nuclear material" means:

(i) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the U.S. Nuclear Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(ii) Any material artificially enriched by any of the foregoing, but does not include source material.

(217) "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1. For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{\text{175 (grams contained U-235)}}{\text{350}} + \frac{\text{50 (grams U-233)}}{\text{200}} + \frac{\text{50 (grams Pu)}}{\text{200}} = 1$$

(218) "Specific activity" of a radionuclide means the radioactivity of a radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(219) "State" means the State of New York, unless the context of this Code clearly indicates that a different meaning is intended.

(220) "Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of this Code, "probabilistic effect" is an equivalent term.

(221) "Stray radiation" means the sum of leakage and scattered radiation.

(222) "Supervision" means:

(i) for radioactive materials licenses which do not authorize human use, the training of persons in the use of radioactive materials in other than medical procedures. Such training shall include at least thirty (30) hours of instruction in the principles and practices of radiation protection, radioactivity measurement, standardization and monitoring techniques and instruments, mathematics and calculations basic to the use and measurement of radioactivity, and biological effects of radiation; and

(ii) for radioactive materials licenses which do authorize human use, the training of a physician in the use of radioactive materials in the clinical treatment or diagnosis of disease. Such training shall provide that specified in §175.102(j), as applicable.

(223) "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations, and measurements of levels of radiation or concentrations of radioactive material present.

(224) "Technique factors" means the conditions of operation of radiation equipment. They are specified as follows:

(i) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

(ii) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

(iii) For CT x-ray systems designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

(iv) For CT x-ray systems not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time when the scan time and exposure time are equivalent; and

(v) For all other equipment, peak tube potential in kV, and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

(225) "Teletherapy" means a method of radiation therapy utilized to deliver a radiation dose in which the source (sources) of radiation is (are) at a distance from the body. For the purposes of this Code "external beam radiation therapy" is an equivalent term.

(226) "Test" means the process of verifying compliance with an applicable regulation.

(227) "Therapeutic-type protective tube housing" means:

(i) for x-ray therapy equipment not capable of operating at 500 kVp or above, the following definition applies: An x-ray tube housing so constructed that the leakage radiation averaged over any 100 cm^2 (15.5 $inches^2$) at a distance of 1 meter (3 feet) from the source does not exceed 2.58 E-4 $C\text{-}kg^{-1}$ (1 roentgen) in an hour when the tube is operated at its maximum rated continuous current for the maximum rated tube potential.

(ii) For x-ray therapy equipment capable of operation at 500 kVp or above, the following definition applies: An x-ray tube housing so constructed that the leakage radiation averaged over an 100 cm^2 (15.5 $inches^2$) area at a distance of 1 meter (3 feet) from the source does not exceed 0.10 percent of the useful beam dose rate at 1 meter (3 feet) from the source for any of its operating conditions.

(228) "This Code" means Article 175 and all other parts of the New York City Health Code applicable to licensees and registrants or other persons subject to the provisions of Article 175.

(229) "Total effective dose equivalent" (TEDE) means the sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(230) "Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §175.03(k)(7)(i)(F) of this Code.

(231) "Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(232) "Transport index (TI)" means the dimensionless number, rounded up to the next tenth, placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined by multiplying the maximum radiation level in millisievert (mSv) per hour at 1 meter (3.3ft) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at 1 meter (3.3 ft)).

(233) "Tube housing assembly" means the tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when they are contained within the tube housing.

(234) "Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of

the technique factors.

(235) "Type A package" means a packaging that, together with its radioactive contents limited to A_1 or A_2 as appropriate, meets the requirements of U.S. DOT 49 CFR 173.410 and 173.412 and is designed to retain the integrity of containment and shielding required by this part under normal conditions of transport as demonstrated by the tests set forth in 49 CFR 173.465 or 173.466, as appropriate.

(236) "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material. A_1 and A_2 are given in Appendix A of §175.105 or may be determined by procedures described in such Appendix A.

(237) [Reserved]

(238) [Reserved]

(239) "Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

(240) "U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 **et seq.,** to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c) and (d) of the Energy Reorganization Act of 1974 (Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, 42 U.S.C. 5814, effective January 19, 1975) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Public Law 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977.)

(241) "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

(242) "Unrestricted area" means an area, access to which is not controlled by the licensee or registrant for purposes of radiation protection.

(243) "Use" as used in radioactive materials licenses means to employ or apply radioactive materials for the licensed purpose. It shall include instruction of, and responsibility for, technical and support staff members. It does not include training others in the techniques of use of radioactive materials for the purpose of qualifying for licensure.

In licenses authorizing medical use of radioactive materials, "use" shall also include:

(i) ordering or directing the administration of radiation or radioactive materials to humans, including the method or route of administration;

(ii) actual use of, or direction of technologists or other paramedical personnel in the use of, radioactive material;

(iii) interpretation of results of diagnostic procedures; and

(iv) regular review of the progress of patients receiving therapy and modification of the originally prescribed dose as warranted by the patient's reaction to radiation therapy.

(244) "Useful beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the exposure controls are in a mode to cause the system to produce radiation.

(245) "Variable-aperture beam-limiting device" means a beam-limiting device which has capacity for stepless

adjustment of the x-ray field size at a given SID.

(246) "Very high radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of 5 Gy (500 rad) in 1 hour at 1 meter (3 feet) from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose (gray and rad) are appropriate, rather than units of dose equivalent (sievert and rem).

(247) "Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons produce a visible image.

(248) "Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Radioactive Waste Policy Act, P.L. 96-573, as amended by P.L. 99-240, effective January 15, 1986; that is, radioactive waste (a) not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in Section lle.(2) of the Atomic Energy Act (uranium or thorium tailings and waste) and (b) classified as low-level radioactive waste consistent with existing law and in accordance with (a) by the U.S. Nuclear Regulatory Commission.

(249) "Waste handling licensees" mean persons licensed to receive and store radioactive wastes prior to disposal and/or persons licensed to dispose of radioactive waste.

(250) "Week" means 7 consecutive days starting on Sunday.

(251) "Weighting factor" w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of W_T are:

Organ Dose Weighting Factors

Organ or Tissue	WT
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30a
Whole Body	1.00b

[a] 0.30 results from 0.06 for each of 5 "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

[b] For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

(252) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.

(253) "Worker" means an individual engaged in work under a license or registration issued by the Department and controlled by a licensee or registrant, but does not include the licensee or registrant.

(254) "Working level" (WL) means any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of 1.3E5 MeV of potential alpha particle energy. The short-lived radon daughters are:

(i) for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and

(ii) for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(255) "Working level month" (WLM) means an exposure to 1 working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

(256) "X-ray control" means a device which controls input power to the x-ray high-voltage generator and/or the x-ray tube. It includes equipment such as timers, phototimers, automatic brightness stabilizers, and similar devices, which control the technique factors of an x-ray exposure.

(257) "X-ray equipment" means an x-ray system, subsystem, or component thereof. Types of x-ray equipment are as follows:

(i) "Mobile x-ray equipment" means x-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled.

(ii) "Portable x-ray equipment" means x-ray equipment designed to be hand carried.

(iii) "Stationary x-ray equipment" means x-ray equipment which is installed in a fixed location.

(258) "X-ray field" means that area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(259) "X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube(s), high-voltage switches, electrical protective devices, and other appropriate elements.

(260) "X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

(261) "X-ray subsystem" means any combination of two or more components of an x-ray system for which there are requirements specified in this Article.

(262) "X-ray tube" means any electron tube which is designed for the conversion of electrical energy into x-ray energy. For the purposes of permit fee requirements in Article 5 of this Code, an x-ray tube means any electrical device which produces x-rays of intensity exceeding 1.29 E-4 $C\text{-}kg^{-1}$ (0.5 milliroentgen) per hour when measured 5 centimeters (2 inches) from any accessible surface thereof, and averaged over an area of 10 cm^2 (1.55 square inches).

(263) "Year" means the period of time beginning in January used to determine compliance with the provisions of this Code. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

Notes:

Paragraphs (141) and (161) of subsection (a) of §175.02 of the New York City Health Code was amended on March 10, 2005 to reflect 10 CFR §20.1003, which provides definitions for 10 CFR Part 20.

Subdivision (a) of §175.02 was amended on September 26, 2006, to modify the definition of "shallow dose equivalent" to ensure compatibility with the revised NRC definition as published in the Federal Register, dated April 5, 2002, titled "Revision of the Skin Dose Limit", 67 FR 16298, that became effective April 5, 2002 (amending 10 CFR §§20.1003; 20.1201).

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Subd. (a) par (1) amended City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Subd. (a) par (20) amended City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]

Subd. (a) par (45) amended City Record Jan. 14, 2003 eff. Feb. 13, 2003. [See Vol. 9 Statements of Basis and Purpose No. 18-A]

Subd. (a) par (52) amended City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Subd. (a) par (54) added City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of

Basis and Purpose No. 28]

Subd. (a) pars (55)-(263) renumbered (former pars (54)-(260)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]

Subd. (a) par (58) added City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]

Subd. (a) par (61) renumbered (former par (59)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Amended (as par (59)) City Record Jan. 14, 2003 eff. Feb. 13, 2003. [See Vol. 9 Statements of Basis and Purpose No. 18-A]

Subd. (a) par (70) added City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]

Subd. (a) par (81) renumbered (former par (78)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Amended as par (78) City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Subd. (a) par (91) renumbered (former par (88)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Repealed as par (88) City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Subd. (a) par (92) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (a) par (92) renumbered (former par (89)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Amended as par (89) City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Subd. (a) par (119) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (a) par (119) renumbered (former par (116)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Amended as par (116) City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Subd. (a) par (126) open par amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (a) par (126) renumbered (former par (123)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Amended as par (123) City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Subd. (a) par (126) subpar (1) clause (i) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (a). par (126) subpar (3) opening clause amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (a) par (126) subpar (3) clause (iii) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (a) par (135) renumbered and amended (former par (132)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]

Subd. (a) par (144) renumbered and amended (former par (141)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Amended as par (141) City Record Mar. 16, 2005 eff. Apr. 15, 2005. [See Vol. 9 Statements of Basis and Purpose No. 23]

Subd. (a) par (147) open par amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (a) par (147) renumbered (former par (144)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Amended as par (144) City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Subd. (a) par (147) subpar (i) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (a) par (147) subpar (2) added City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (a) par (164) renumbered (former par (161)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Amended as par (161) City Record Mar. 16, 2005 eff. Apr. 15, 2005. [See Vol. 9 Statements of Basis and Purpose No. 23]

Subd. (a) par (195) added City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]

Subd. (a) par (204) renumbered (former par (200)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Amended as par (200) City Record Sept. 29, 2006 eff. Oct. 29, 2006. [See Vol. 9 Statements of Basis and Purpose No. 25]

Subd. (a) par (215) renumbered (former par (211)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Amended as par (211) City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Subd. (a) par (232) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (a) par (232) renumbered (former par (228)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Amended as par (228) City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Subd. (a) par (235) renumbered (former par (231)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Amended as par (231) City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Subd. (a) par (237) renumbered (former par (233)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Repealed as par (233) City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Subd. (a) par (238) renumbered (former par (234)) City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]. Repealed as par (234) City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Notes:

A number of definitions in §175.02(a) in Article 175 of the NYC Health Code were added and/or amended on June 14, 2007 in order to assure compatibility with applicable federal U.S. Nuclear Regulatory Commission regulations on radioactive materials and licenses.

Paragraphs (141) and (161) of subsection (a) of §175.02 of the New York City Health Code was amended on March 10, 2005 to reflect 10 CFR §20.1003, which provides definitions for 10 CFR Part 20.

Subdivision (a) of §175.02 was amended on September 26, 2006, to modify the definition of "shallow dose equivalent" to ensure compatibility with the revised NRC definition as published in the Federal Register, dated April 5, 2002, titled "Revision of the Skin Dose Limit", 67 FR 16298, that became effective April 5, 2002 (amending 10 CFR §§20.1003; 20.1201).

Subdivisions (1), (52), (78), (89), (116), (123), (144), (228) and (231) of subsection (a) were amended and subdivisions (88), (233) and (234) of subsection (a) were repealed April 26, 1999 to conform to definitions in 10 CFR Part 71 to ensure compatibility with the NRC. In addition, the definition of "Licensed Material" was clarified to include radioactive material that requires a license even if one has not been obtained as well as radioactive material that is the subject of a general or specific license.

Subdivisions (45) and (59) of subsection (a) were amended by resolution adopted on December 12, 2002 following amendment of Chapter 22 of the New York City Charter by the electorate in the November 6, 2001 general election,

which merged the Departments of Health and Mental Health, Mental Retardation and Alcoholism Services, and enactment of Local Law of 2002, which further amended the Charter and changed the name of the merged agency to Department of Health and Mental Hygiene, and the Commissioner to Commissioner of the Department of Health and Mental Hygiene.

Paragraphs (141) and (161) of subsection (a) of §175.02 of the New York City Health Code was amended on March 10, 2005 to reflect 10 CFR §20.1003, which provides definitions for 10 CFR Part 20.

Rules of the City of New York

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

24 RCNY 175.03

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.03 Standards for protection against radiation.

(a) **General provisions.** (1) **Purpose.** (i) This section establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses, certified registrations and/or registrations issued by the Department.

(ii) The requirements of this Code are designed to control the receipt, production, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in this section. However, nothing in this section shall be construed as limiting actions that may be necessary to protect health and safety.

(2) **Scope.** Except as specifically provided otherwise by this Code, this section applies to persons subject to licensure, certified registration or registration by the Department to receive, produce, possess, use, transfer, or dispose

of sources of radiation. The limits in this section do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, or to voluntary participation in medical research programs.

(3) **Implementation.** (i) Any existing license, certified registration or registration condition that is more restrictive than the provisions in this section remains in force until there is an amendment or renewal of the license, certified registration or registration.

(ii) If a license, certified registration or registration condition exempts a licensee or registrant from a provision of this Code in effect on or before the effective date of this Code, it also exempts the licensee or registrant from the corresponding provision of this section.

(iii) If a license, certified registration or registration condition cites provisions of this Code in effect prior to the effective date of this Code, which do not correspond to any provisions of this section, the license, certified registration or registration condition remains in force until there is an amendment or renewal of the license, certified registration or registration that modifies or removes this condition.

(b) **Radiation protection programs.** (1) **Radiation Protection Programs.** Each person who operates or permits the operation of a radiation installation or who operates, transfers, receives, produces, possesses or uses, or permits the operation, transfer, receipt, production, possession or use of any radiation source shall:

(i) use, to the extent practicable, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as reasonably achievable (ALARA) below the limits specified in this Code;

(ii) develop, document, and implement a radiation protection program commensurate with the scope and extent of the program and sufficient to ensure compliance with the provisions of this Code;

(iii) provide a radiation safety officer pursuant to §175.03(b)(2) who shall be delegated authority to ensure the implementation of this radiation protection program. For licensed radioactive materials installations the radiation safety officer, or an authorized user designated to act as the radiation safety officer in the radiation safety officer's absence, shall be present on the premises at least 50 percent of the time that radioactive material is being handled or equipment containing radioactive material is being operated;

(iv) provide for a radiation safety committee to administer the radiation protection program in medical centers, hospitals and institutions of higher education. The committee shall include the facility operator or a person with the authority to act on behalf of the facility operator, and representation from departments within the facility where radiation sources are used. The committee shall oversee all uses of radiation-producing equipment and radioactive materials within the facility, shall review the activities of the radiation safety officer, and shall review the radiation safety program at least annually. The committee, or a subcommittee, shall oversee the administration of a quality assurance program as required by §175.03(b)(1)(v);

(v) provide a quality assurance program for diagnostic and therapeutic uses of radiation-producing equipment and radioactive materials pursuant to §175.07 and other applicable provisions of this Code;

(vi) ensure that all personnel involved in planning for or administering radiation doses to humans, or in the use of radiation-producing equipment or radioactive materials for other purposes, are supervised, are instructed as described in §175.04(c) and are competent to safely use such radiation sources and services;

(vii) ensure that radiation equipment is used only for those procedures for which it is designed;

(viii) ensure that acceptance testing, by an individual competent to perform such testing, is performed on all

medical and chiropractic diagnostic equipment and radiation therapy treatment and planning equipment before the first use of such equipment on humans; and

(ix) review the radiation protection program content and implementation at intervals not to exceed twelve months.

(2) **Radiation safety officer.** The radiation safety officer specified in §175.03(b)(1)(iii) shall be:

(i) For human use radiation equipment installations:

(A) a physicist certified by the American Board of Health Physics, the American Board of Radiology or the American Board of Medical Physics in a branch of physics related to the type of use of radiation sources in the installation; or

(B) a person satisfying the radiation safety officer qualifications set forth in §175.103(j) of this Code; or

(C) a professional practitioner as defined in §175.02(a)(157), practicing within such person's professional practice as defined in §175.02(a)(156).

(ii) For human use radiation equipment installations requiring a certified registration pursuant to §175.64:

(A) a physicist certified by the American Board of Health Physics, the American Board of Radiology or the American Board of Medical Physics in a branch of physics related to the type of use of radiation sources in the installation; or

(B) a person satisfying the radiation safety officer qualifications set forth in §175.103(j) of this Code; or

(C) an authorized user named on the facility's certified registration issued by the Department.

(iii) For non-human use radiation equipment installations:

(A) a veterinarian for veterinary installations; or

(B) a physicist certified by the American Board of Health Physics, the American Board of Radiology or the American Board of Medical Physics; or

(C) a person with equivalent training and experience as determined by the Department; or

(D) a researcher determined by the institution as qualified by training and experience for installations using only x-ray diffraction and fluorescence analysis equipment.

(iv) For non-human use radioactive materials installations:

(A) a physicist certified by the American Board of Health Physics, the American Board of Radiology or the American Board of Medical Physics in a branch of physics related to the type and use of radioactive material in the installation; or

(B) a person with equivalent training and experience as determined by the Department; or

(C) an authorized user named on the radioactive materials license issued by the Department.

(c) **Occupational dose limits.** (1) **Occupational dose limits for adults.**

(i) Except for planned special exposures pursuant to §175.03(c)(6), the licensee or registrant shall control the occupational dose to any individual adult from licensed or registered activities to ensure that such dose does not exceed:

(A) an annual limit, which is the lesser of:

(a) a total effective dose equivalent of 0.05 Sv (5 rem); or

(b) the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue, other than the lens of the eye, equal to 0.5 Sv (50 rem); and

(B) annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities of:

(a) an eye dose equivalent of 0.15 Sv (15 rem), and

(b) a shallow dose equivalent of 0.5 Sv (50 rem) to the skin of the whole body or to the skin of any extremity.

(ii) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime.

(iii) The assigned deep dose equivalent must be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent must be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure:

(A) the deep dose equivalent, eye dose equivalent and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable; or

(B) when a protective apron is worn during x-ray fluoroscopic procedures to be in compliance with §175.62(i) of this Code and monitoring is conducted as specified in §175.03(f)(2)(ii), the effective dose equivalent for external radiation may be determined for these individuals as follows:

(a) when only one individual monitoring device is used and it is located at the neck outside the protective apron, the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation; or

(b) when individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(iv) Derived air concentration (DAC) and annual limit on intake (ALI) values are presented in Table 1 of Appendix B of this section and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits.

(v) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week.

(vi) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person.

(2) **Requirements for summation of external and internal doses.** (i) If the licensee or registrant is required to monitor pursuant to both §175.03(f)(2)(i) and (v), the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee or registrant is required to monitor only pursuant to §175.03(f)(2)(i) or only pursuant to §175.03(f)(2)(v), then summation is not required to demonstrate compliance with

the dose limits. The licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses pursuant to §175.03(c)(2)(ii), (iii) and (iv). The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(ii) **Intake by inhalation.** If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(A) the sum of the fractions of the inhalation ALI for each radionuclide, or

(B) the total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000, or

(C) the sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T, and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than 10 percent of the maximum weighted value of H_{50}, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

(iii) **Intake by oral ingestion.** If the occupationally exposed individual also receives an intake of radionuclides by oral ingestion greater than 10 percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(iv) **Intake through wounds or absorption through skin.** The licensee or registrant shall evaluate and account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for separately pursuant to §175.03(c)(2)(iv).

(3) **Determination of external dose from airborne radioactive material.**

(i) Licensees, when determining the dose from airborne radioactive material, shall include the contribution to the deep dose equivalent, eye dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. (See Appendix B of this section, footnotes 1 and 2.)

(ii) Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

(4) **Determination of internal exposure.** (i) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee shall, when required pursuant to §175.03(f)(2) take suitable and timely measurements of:

(A) concentrations of radioactive materials in air in work areas; or

(B) quantities of radionuclides in the body; or

(C) quantities of radionuclides excreted from the body; or

(D) combinations of these measurements.

(ii) Unless respiratory protective equipment is used, as provided in §175.03(h)(3), or the assessment of intake is based on bioassays, the licensee shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(iii) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee may:

(A) use that information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document that information in the individual's record; and

(B) upon prior approval of the Department, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

(C) separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. (See Appendix B of this section.)

(iv) If the licensee chooses to assess intakes of Class Y material using the measurements given in §175.03(c)(4)(i)(B) or (C), the licensee may delay the recording and reporting of the assessments for periods up to 7 months, unless otherwise required by §175.03(l)(2) or (3). This delay permits the licensee to make additional measurements basic to the assessments.

(v) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(A) the sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from Appendix B for each radionuclide in the mixture; or

(B) the ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(vi) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(vii) When a mixture of radionuclides in air exists, a licensee may disregard certain radionuclides in the mixture if:

(A) the licensee uses the total activity of the mixture in demonstrating compliance with the dose limits in §175.03(c) and in complying with the monitoring requirements in §175.03(f)(2)(v), and

(B) the concentration of any radionuclide disregarded is less than 10 percent of its DAC, and

(C) the sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30 percent.

(viii) When determining the committed effective dose equivalent, the following information may be considered:

(A) In order to calculate the committed effective dose equivalent, the licensee or registrant may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(B) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.5 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), that is, the stochastic ALI, is listed in parentheses in Table 1 of Appendix B of this section. The licensee may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee or registrant uses the stochastic ALI, the licensee or registrant shall also demonstrate that the limit in §175.03(c)(1)(i)(A) is met.

(5) **Determination of prior occupational dose.** (i) For each individual who may enter the licensee's or registrant's

restricted area and is likely to receive, in a year, an occupational dose requiring monitoring pursuant to §175.03(f)(2), the licensee or registrant shall:

(A) determine the occupational radiation dose received during the current year; and

(B) request, in writing, the records of lifetime cumulative occupational radiation dose.

(ii) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

(A) the internal and external doses from all previous planned special exposures; and

(B) all doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual; and

(C) all lifetime cumulative occupational radiation doses.

(iii) In complying with the requirements of §175.03(c)(5)(i), a licensee or registrant may:

(A) accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; and

(B) accept, as the record of lifetime cumulative radiation dose, an up-to-date form RAD-4, "Cumulative Occupational Radiation Exposure History," or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant; and

(C) obtain reports of the individual's dose equivalent from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(iv) (A) The licensee or registrant shall record the exposure history, as required by §175.03(d)(5)(i), on form RAD-4, "Cumulative Occupational Radiation Exposure History," or other clear and legible record, of all the information required on that form. The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing form RAD-4 or equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on form RAD-4 or equivalent indicating the periods of time for which data are not available.

(B) Licensees or registrants are not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed pursuant to this Code in effect before January 1, 1994. Further, occupational exposure histories obtained and recorded on form RAD-4 or equivalent before the effective date of this Code, would not have included effective dose equivalent, but may be used in the absence of specific information on the intake of radionuclides by the individual.

(v) If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant:

(A) in establishing administrative controls pursuant to §175.03(c)(1) for the current year, shall assume that the

allowable dose limit for the individual is reduced by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(B) shall not authorize the individual to receive any planned special exposures.

(vi) The licensee or registrant shall retain the records on form RAD-4, "Cumulative Occupational Radiation Exposure History," or equivalent until the Department authorizes their disposition. The licensee or registrant shall retain records used in preparing form RAD-4 or equivalent for 3 years after the record is made.

(6) **Planned special exposures.** A licensee or registrant may authorize an adult worker to receive doses in addition to, and accounted for separately from, the doses received under the limits specified in §175.03(c)(1) provided that each of the following conditions is satisfied:

(i) The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the higher exposure are unavailable or impractical.

(ii) Before the exposure occurs, the licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure in writing.

(iii) Before a planned special exposure, the licensee or registrant ensures that each individual involved is:

(A) informed of the purpose of the planned operation; and

(B) informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(C) instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(iv) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall ascertain prior doses as required by §175.03(c)(5)(ii) during the lifetime of the individual for each individual involved.

(v) Subject to §175.03(c)(1)(ii), the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(A) the numerical values of any of the dose limits in §175.03(c)(1)(i) in any year; and

(B) five times the annual dose limits in §175.03(c)(1)(i) during the individual's lifetime.

(vi) The licensee or registrant maintains records of the conduct of a planned special exposure in accordance with §175.03(k)(7) and submits a written report in accordance with §175.03(l)(4).

(vii) The licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to §175.03(c)(1)(i) but shall be included in evaluations required by §175.03(c)(6)(iv) and (v).

(7) **Occupational dose limits for minors.** The annual occupational dose limits for minors are 10 percent of the annual occupational dose limits specified for adult workers in §175.03(c)(1).

(8) **Dose to an embryo/fetus.** (i) The licensee or registrant shall ensure that the dose to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 5 mSv (0.5 rem). (See §175.03(k)(8) for recordkeeping requirements.)

(ii) The licensee or registrant shall review exposure history and adjust working conditions so as to avoid a monthly exposure of more than 0.5 mSv (50 mrem) to a declared pregnant woman.

(iii) The dose to an embryo/fetus shall be taken as the sum of:

(A) the deep dose equivalent to the declared pregnant woman; and

(B) the dose to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.

(iv) If, by the time the woman declares pregnancy to the licensee or registrant, the dose to the embryo/fetus has exceeded 4.5 mSv (0.45 rem), the licensee or registrant shall be deemed to be in compliance with §175.03(c)(8)(i) if the additional dose to the embryo/fetus does not exceed 0.5 mSv (0.05 rem) during the remainder of the pregnancy.

(d) **Radiation dose limits for individual members of the public.**

(1) **Dose limits for individual members of the public.** (i) Each licensee or registrant shall conduct operations so that:

(A) the dose in any unrestricted area from external sources does not exceed 0.02 mSv (0.002 rem) in any one hour; and

(B) the total effective dose equivalent to individual members of the public from the licensed or registered operation, exclusive of the dose contribution from the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with §175.104 of this Code, does not exceed 1 mSv (0.1 rem) in a year.

(ii) Notwithstanding the provisions of §175.03(d)(1)(i)(B), where structural modification to the physical plant or equipment is required to meet the 1 mSv (0.1 rem) per year limit at facilities with radiation equipment installed before the effective date of these requirements and neither the use nor the physical components or structure of the facility are changed after the effective date of these requirements, the total effective dose equivalent to a member of the general public shall not exceed 5 mSv (0.5 rem) in a year. However, any such change occurring after the effective date of these requirements shall require the licensee or registrant to comply with the provisions of §175.03(d)(1)(i)(B).

(iii) The Department may impose additional restrictions on radiation levels in any unrestricted area and on the total quantity of radionuclides that a licensee may release in effluents in order to assure that the limits set forth in this Code are not exceeded.

(2) **Compliance with dose limits for individual members of the public.**

(i) The licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted areas and radioactive materials in effluents released to unrestricted areas to demonstrate compliance with the dose limits for individual members of the public in §175.03(d)(1).

(ii) A licensee or registrant shall show compliance with the annual dose limit in §175.03(d)(1) by:

(A) demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(B) demonstrating that:

(a) the annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Table 2 of Appendix B of this section; and

(b) if an individual were continually present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.5 mSv (0.05 rem) in a year.

(iii) Upon approval from the Department, the licensee or registrant may adjust the effluent concentration values in Table 2, Appendix B of this section, for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as, aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form.

(e) **Testing for leakage or contamination of sealed sources.**

(1) **Testing for leakage or contamination of sealed sources.** (i) The licensee or registrant in possession of any sealed source shall assure that:

(A) each sealed source, except as specified in §175.03(e)(1)(ii), is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee or registrant has a certificate from the transferor indicating that the sealed source was tested within 6 months before transfer to the licensee or registrant; and

(B) each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed 6 months; and

(C) each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed 3 months; and

(D) for each sealed source that is required to be tested for leakage or contamination, at any other time there is reason to suspect that the sealed source might have been damaged or might be leaking, the licensee or registrant shall assure that the sealed source is tested for leakage or contamination before further use; and

(E) tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, shall be capable of detecting the presence of 185 Bq (0.005 mCi) of radioactive material on a test sample. Test samples shall be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted on which one might expect contamination to accumulate. For a sealed source contained in a device, test samples are obtained when the source is in the "off" position; and

(F) the test for leakage for brachytherapy sources manufactured to contain radium shall be capable of detecting an absolute leakage rate of 37 Bq (0.001 mCi) of radon-222 in a 24 hour period when the collection efficiency for radon-222 and its daughters has been determined with respect to collection method, volume and time; and

(G) tests for contamination from radium daughters shall be taken on the interior surface of brachytherapy source storage containers and shall be capable of detecting the presence of 185 Bq (0.005 mCi) of a radium daughter which has a half-life greater than four (4) days; and

(H) the test for leakage for sealed sources containing iodine-125 shall be capable of detecting an absolute leakage rate of 185 Bq (0.005 mCi) in a 24 hour period.

(ii) A licensee or registrant need not perform tests for leakage or contamination on the following:

(A) sealed sources containing only radioactive material with a half-life of less than 30 days; (B) sealed sources containing only radioactive material as a gas;

(C) sealed sources containing 3.7 MBq (100 mCi) or less of beta or photon-emitting material or 370 kBq (10 mCi) or less of alpha-emitting material;

(D) sealed sources containing only hydrogen-3;

(E) seeds of iridium-192 encased in nylon ribbon; and

(F) sealed sources, except teletherapy and brachytherapy sources, which are stored, not being used and identified as in storage. The licensee or registrant shall, however, test each such sealed source for leakage or contamination and receive the test results before any use or transfer unless it has been tested for leakage or contamination within 6 months before the date of use or transfer.

(iii) Tests for leakage or contamination from sealed sources shall be performed by persons specifically authorized by the Department to perform such services.

(iv) Test results shall be kept in units of becquerels (or microcuries) and maintained for inspection by the Department.

(v) The following shall be considered evidence that a sealed source is leaking:

(A) The presence of 185 Bq (0.005 mCi) or more of removable contamination on any test sample.

(B) Leakage of 37 Bq (0.001 mCi) of radon-222 per 24 hours for brachytherapy sources manufactured to contain radium.

(C) The presence of removable contamination resulting from the decay of 185 Bq (0.005 mCi) or more of radium.

(D) Leakage of 185 Bq (0.005 mCi) of iodine-125 per 24 hours for sealed sources containing iodine-125.

(vi) The licensee or registrant shall immediately withdraw a leaking sealed source from use and shall take action to prevent the spread of contamination. The leaking sealed source shall be repaired or disposed of in accordance with this Code.

(vii) Reports of test results for leaking or contaminated sealed sources shall be made pursuant to §175.03(l)(7).

(f) **Surveys and monitoring.** (1) **General.** (i) Each licensee or registrant shall make, or cause to be made, surveys that:

(A) are necessary for the licensee or registrant to comply with this Code; and

(B) are necessary under the circumstances to evaluate:

(a) radiation levels; and

(b) concentrations or quantities of radioactive material; and

(c) the potential radiological hazards that could be present.

(ii) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated at intervals not to exceed 12 months for the radiation measured.

(2) **Personnel monitoring.** (i) **External radiation sources.** Each person who possesses any radiation source shall supply and require the proper use of appropriate, calibrated and operable individual monitoring devices by:

(A) adults likely to receive, in 1 year from sources external to the body, a dose in excess of 10 percent of the limits in §175.03(c)(1)(i) and

(B) minors and declared pregnant women likely to receive, in 1 year from sources external to the body, a dose in

excess of 10 percent of any of the applicable limits in §175.03(c)(7) or §175.03(c)(8); and

(C) individuals entering a high or very high radiation area.

(ii) A person supplying personnel monitoring devices to individuals pursuant to §175.03(f)(2)(i) shall ensure that the individuals wear such devices as follows:

(A) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure.

(B) An individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman pursuant to §175.03(c)(8) shall be located at the waist under any protective apron worn by the woman.

(C) An individual monitoring device used for monitoring the eye dose equivalent shall be located at the neck outside any protective apron worn by the individual, or at an unshielded location closer to the eye.

(D) An individual monitoring device used for monitoring the dose to the extremities shall be worn on the extremity likely to receive the highest exposure. The device shall be oriented to measure the highest dose to the extremity being monitored.

(iii) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with §175.03(c)(1), with other applicable provisions of this Code, or with conditions specified in a license, certified registration or registration shall be processed and evaluated by a dosimetry processor:

(A) holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(B) approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(iv) The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

(A) No licensee or registrant shall remove an exposure from an individual's exposure record without prior authorization from the Department.

(v) Each licensee or registrant shall monitor, to determine compliance with §175.03(c)(4), the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(A) adults likely to receive, in 1 year, an intake in excess of 10 percent of the applicable ALI in Table 1, Columns 1 and 2, of Appendix B of this section; and

(B) minors and declared pregnant women likely to receive, in 1 year, a committed effective dose equivalent in excess of 0.5 mSv (0.05 rem).

(vi) The licensee or registrant shall submit the dosimeter for processing with due diligence and in no event in excess of the time period specified by the manufacturer of the dosimeter.

(g) **Control of exposure from external sources in restricted areas.** (1) **Control of access to high radiation areas.** (i) The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or

more of the following features:

(A) a control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of 1 mSv (0.1 rem) in 1 hour at 30 cm (12 in.) from the source of radiation or from any surface that the radiation penetrates; or

(B) a control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(C) entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(ii) In place of the controls required by §175.03(g)(1)(i) for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(iii) The licensee or registrant may apply to the Department for approval of alternative methods for controlling access to high radiation areas.

(iv) The licensee or registrant shall establish the controls required by §175.03(g)(1)(i), (ii) or (iii) in a way that does not prevent individuals from leaving a high radiation area.

(v) The licensee or registrant is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the regulations of the U.S. Department of Transportation provided that:

(A) the packages do not remain in the area longer than 3 days; and

(B) the dose rate at 1 m (3 ft) from the external surface of any package does not exceed 0.1 mSv (0.01 rem) per hour.

(vi) The licensee or registrant is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in this section and to operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

(vii) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in §175.03(g)(1) if the registrant has met all the specific requirements for access and control specified in other applicable sections of this Code.

(2) **Control of access to very high radiation areas.** (i) In addition to the requirements in §175.03(g)(1), the licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 5 Gy (500 rad) or more in 1 hour at 1 m (3 ft) from a source of radiation or any surface through which the radiation penetrates. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation, or to non-self-shielded irradiators.

(ii) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as described in §175.03(g)(2)(i) if the registrant has met all the specific requirements for access and control specified in other applicable sections of this Code.

(3) **Control of access to very high radiation areas-irradiators.** (i) This subdivision applies to licensees or registrants with sources of radiation in non-self-shielded irradiators. Section 175.03(g)(3) does not apply to sources of radiation that are used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the

source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create high levels of radiation in an area that is accessible to any individual.

(ii) Each area in which there may exist radiation levels in excess of 5 Gy (500 rad) in 1 hour at 1 m (3 ft) from a source of radiation that is used to irradiate materials shall meet the following requirements:

(A) Each entrance or access point shall be equipped with entry control devices which: **(a)** function automatically to prevent any individual from inadvertently entering a very high radiation area; and

(b) permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour; and

(c) prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of 1 mSv (0.1 rem) in 1 hour.

(B) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by §175.03(g)(3)(ii)(A):

(a) the radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour; and

(b) conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices.

(C) The licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(a) the radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour; and

(b) conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee or registrant or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(D) When the shield for stored sealed sources is a liquid, the licensee or registrant shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(E) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of §175.03(g)(3)(ii)(C) and (D).

(F) Each area shall be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, which must be installed in the area and which can prevent the source of radiation from being put into operation.

(G) Each area shall be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the source of radiation.

(H) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into

the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour.

(I) The entry control devices required in §175.03(g)(3)(ii)(A) shall be tested for proper functioning. (See §175.03(k)(10) for recordkeeping requirements.)

(a) Testing shall be conducted prior to initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day; and

(b) testing shall be conducted prior to resumption of operation of the source of radiation after any unintentional interruption; and

(c) the licensee or registrant shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(J) The licensee or registrant shall not conduct operations, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(K) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, shall be controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any loose radioactive material that is carried toward such an exit and automatically to prevent loose radioactive material from being carried out of the area.

(iii) Licensees, registrants, or applicants for licenses or registrations for sources of radiation within the purview of §175.03(g)(3)(ii) which will be used in a variety of positions or in locations, such as open fields or forests, that make it impracticable to comply with certain requirements of §175.03(g)(3)(ii), such as those for the automatic control of radiation levels, may apply to the Department for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to those specified in §175.03(g)(3)(ii). At least one of the alternative measures shall include an entry-preventing interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

(iv) The entry control devices required by §175.03(g)(3)(ii) and (iii) shall be established in such a way that no individual will be prevented from leaving the area.

(h) **Respiratory protection and controls to restrict internal exposure in restricted areas.** (1) **Use of process or other engineering controls.** The licensee or registrant shall use to the extent practicable, process or other engineering controls, such as containment, decontamination, or ventilation, to control the concentrations of radioactive material in air.

(2) Use of other controls. When it is not practicable to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(i) control of access; or

(ii) limitation of exposure times; or

(iii) use of respiratory protection equipment; or

(iv) other controls.

If the licensee performs an ALARA analysis to determine whether or not respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee should also consider the impact of respirator use on workers' industrial health and safety.

(3) Use of individual respiratory protection equipment. (i) If the licensee or registrant uses respiratory protection equipment to limit intakes pursuant to §175.03(h)(2):

(A) except as provided in §175.03(h)(3)(i)(B), the licensee or registrant shall use only respiratory protection equipment that is tested and certified or had certification extended by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration.

(B) If the licensee or registrant wishes to use equipment that has not been tested or certified by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration or has not had certification extended by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration, or for which there is no schedule for testing or certification, the licensee or registrant shall submit an application to the Department for authorized use of that equipment. The application must include a demonstration by licensee testing or a demonstration on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(C) The licensee or registrant shall implement and maintain a respiratory protection program that includes:

(a) air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses; and

(b) surveys and bioassays, as necessary, to evaluate actual intakes; and

(c) testing of respirators for operability (user seal check for face sealing devices and functional check for others) immediately prior to each use; and

(d) written procedures regarding respirator selection; fit testing; inventory and control, storage, issuance; maintenance, repair and testing of respirators, including testing for operability immediately prior to each use; supervision and training of respirator users; monitoring, including air sampling and bioassays, and breathing air quality; and quality assurance and recordkeeping; and

(e) determination by a physician that the individual user is medically fit to use the respiratory protection equipment prior to initial fitting of a face sealing respirator; before the first field use of non-face sealing respirators and either every 12 months thereafter, or periodically at a frequency determined by a physician.

(f) Fit testing, with a fit factor 10 times the APF for negative pressure devices, and a fit factor greater than or equal to 500 for any positive pressure, continuous flow, and pressure demand devices, before the first field use of tight fitting, face sealing respirators and periodically thereafter at a frequency of at least once per year. Fit testing must be performed with the face-piece operating in the negative pressure mode.

(D) The licensee or registrant shall issue a written policy statement on respirator usage covering:

(a) the use of process or other engineering controls, instead of respirators; and

(b) the routine, nonroutine, and emergency use of respirators; and

(c) limitations on periods of respirator use and relief from respirator use.

(E) The licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or

communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(F) The licensee or registrant shall use respiratory protection equipment within the equipment manufacturer's expressed limitations for type and mode of use. When selecting respiratory devices, the licensee shall provide for low temperature work environments, and the concurrent use of other safety or radiological protection equipment or skin protection, when needed. The licensee shall use equipment in such a way as not to interfere with the proper operation of the respirator.

(ii) When estimating exposure of individuals to airborne radioactive materials, the licensee or registrant may make allowance for respiratory protection equipment used to limit intakes pursuant to §175.03(h)(2), provided that the following conditions, in addition to those in §175.03(h)(3)(i), are satisfied:

(A) the licensee or registrant selects respiratory protection equipment that provides a protection factor, specified in Appendix A of this section, greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in Table 1, Column 3 of Appendix B of this section. However, if the selection of respiratory protection equipment with a protection factor greater than this multiple of peak concentration is inconsistent with the goal specified in §175.03(h)(2) of keeping the total effective dose equivalent ALARA, the licensee or registrant may select respiratory protection equipment with a lower protection factor provided that such a selection would result in a total effective dose equivalent that is ALARA. In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the initially estimated dose, the corrected value must be used. If the dose is later found to be less than the initially estimated dose, the corrected value may be used.

(B) The licensee or registrant shall obtain authorization from the Department before using assigned protection factors in excess of those specified in Appendix A of this section. The Department may authorize a licensee or registrant to use higher protection factors on receipt of an application that:

(a) describes the situation for which a need exists for higher protection factors, and

(b) demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

(iii) In an emergency, the licensee or registrant shall use as emergency equipment only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration.

(iv) The licensee or registrant shall notify the Department in writing at least 30 days before the date that respiratory protection equipment is first used pursuant to either §175.03(h)(3)(i) or (ii).

(4) **Further restrictions on the use of respiratory protection equipment.** The Department may impose restrictions, in addition to those in §175.03(h)(2), §175.03(h)(3) and in Appendix A to §175.03 to:

(i) ensure that the respiratory protection program of the licensee is adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(ii) limit the extent to which a licensee may use respiratory protection equipment instead of process or other engineering controls.

(i) **Storage and control of licensed or registered sources of radiation.** (1) **Security of stored sources of**

radiation. The licensee or registrant shall secure from unauthorized removal or access licensed or registered sources of radiation that are stored in unrestricted areas.

(2) Radioactive materials shall not be stored with either food or beverages.

(3) Control of sources of radiation not in storage.

(i) The licensee or registrant shall control and maintain constant surveillance of licensed radioactive material that is in an unrestricted area and that is not in storage or in a patient.

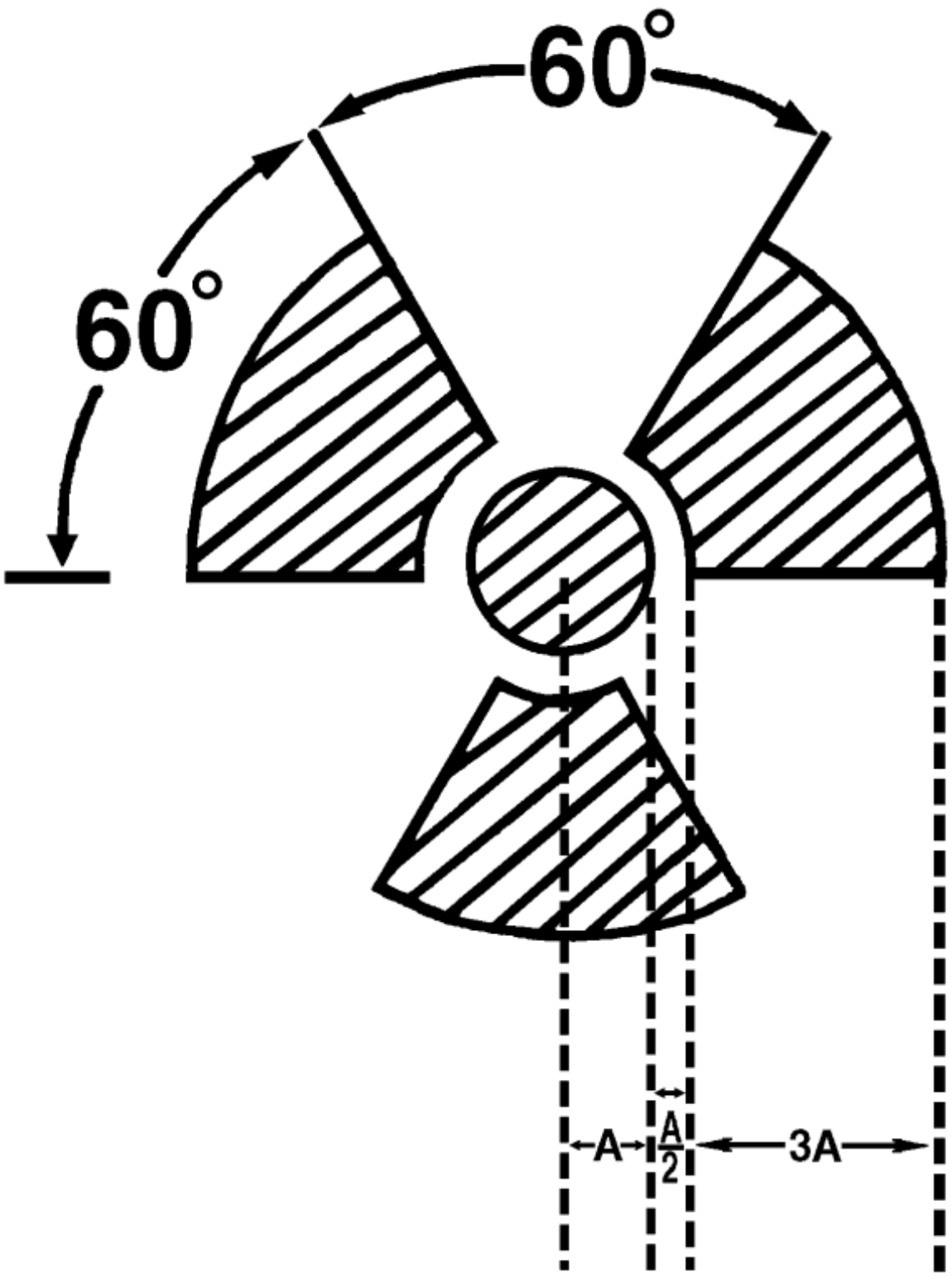
(ii) The registrant shall maintain control of radiation machines that are in an unrestricted area and that are not in storage.

(j) **Precautionary procedures.** (1) **Caution Signs.** (i) Standard radiation symbol. Unless otherwise authorized by the Department, the symbol prescribed herein shall use the colors magenta, or purple, or black on yellow background. The symbol prescribed is the three-bladed design as follows:

RADIATION SYMBOL

(A) Cross-hatched area is to be magenta, or purple, or black, and

(B) the background is to be yellow.



(ii) **Exception to color requirements for standard radiation symbol.** Notwithstanding the requirements of

§175.03(j)(1)(i), licensees or registrants are authorized to label sources, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(iii) **Additional information on signs and labels.** In addition to the contents of signs and labels prescribed in this section, the licensee or registrant shall provide, on or near the required signs and labels, additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

(2) Posting requirements. (i) **Posting of radiation areas.** The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(ii) **Posting of high radiation areas.** The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(iii) **Posting of very high radiation areas.** The licensee or registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA."

(iv) **Posting of airborne radioactivity areas.** The licensee or registrant shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(v) **Posting of areas or rooms in which licensed radioactive material is used or stored.** The licensee shall post each area or room in which there is used or stored an amount of licensed material exceeding 10 times the quantity of such material specified in Appendix C of this section with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)."

(vi) Such cautionary postings shall not be used except as required by this Code.

(3) **Exceptions to posting requirements.** (i) A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than 8 hours, if each of the following conditions is met:

(A) the sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in this section; and

(B) the area or room is subject to the licensee's or registrant's control.

(ii) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to §175.03(j)(2) provided that the patient could be released from confinement pursuant to §175.103(c)(9) of this Code.

(iii) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 cm (12 in.) from the surface of the sealed source container or housing does not exceed 0.05 mSv (0.005 rem) per hour.

(iv) A room or area is not required to be posted with a caution sign because of the presence of radiation machines used solely for diagnosis in the healing arts.

(4) **Labeling containers and radiation machines.** (i) The licensee or registrant shall ensure that each container of licensed radioactive material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label shall also

provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(ii) Each licensee shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(iii) Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner which cautions individuals that radiation is produced when it is ener- gized.

(iv) Such cautionary labels shall not be used except as required by this Code.

(5) **Exemptions to labeling requirements.** A licensee or registrant is not required to label: (i) containers holding licensed radioactive material in quantities less than the quantities listed in Appendix C of this section; or

(ii) containers holding licensed radioactive material in concentrations less than those specified in Table 3 of Appendix B of this section; or

(iii) containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by this section; or

(iv) containers when they are in transport and packaged and labeled in accordance with the regulations of the U.S. Department of Transportation; or

(v) containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells. The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(vi) installed manufacturing or process equipment, such as piping and tanks.

(6) **Procedures for receiving and opening packages.** (i) Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in §175.02(a)(232) and Appendix A of §175.105 of this Code, shall make arrangements to receive:

(A) the package when the carrier offers it for delivery; or

(B) notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(ii) Each licensee shall:

(A) monitor the external surfaces of a package labeled with a U.S. Department of Transportation specified radioactive White I, Yellow II or Yellow III label for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in §175.02(a)(211) of this Code; and

(B) monitor the external surfaces of a package labeled with a U.S. Department of Transportation specified radioactive White I, Yellow II or Yellow III label for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in §175.02(a)(232) and Appendix A of §175.105 of this Code; and

(C) monitor all packages known to contain radioactive material for radioactive contamination and radiation levels

if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(iii) The licensee or registrant shall perform the monitoring required by §175.03 (j)(6)(ii) as soon as practicable after receipt of the package, but not later than 3 hours after the package is received at the licensee's or registrant's facility if it is received during the licensee's or registrant's normal working hours, or not later than 3 hours from the beginning of the next working day if it is received after working hours.

(iv) The licensee or registrant shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the Department when:

(A) removable radioactive surface contamination exceeds the limits specified in §175.105 of the Code; or

(B) external radiation levels exceed the limits specified in §175.105 of this Code.

(v) Each licensee or registrant shall:

(A) establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(B) ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(vi) Licensees or registrants transferring special form sources in vehicles owned or operated by the licensee or registrant to and from a work site are exempt from the contamination monitoring requirements of §175.03(j)(6)(ii), but are not exempt from the monitoring requirement in §175.03(j)(6)(ii)(B) for measuring radiation levels that ensures that the source is still properly lodged in its shield.

(k) **Records.** (1) **General provisions.** (i) Each licensee or registrant shall use SI units (becquerel, gray, sievert and coulomb per kilogram) or special units (curie, rad, rem and roentgen) including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this Code.

(ii) The licensee or registrant shall make a clear distinction between the quantities entered on the records required by this section, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, eye dose equivalent, deep dose equivalent, or committed effective dose equivalent.

(2) **Records of radiation protection programs.** (i) Each licensee or registrant shall maintain records of the radiation protection program, including:

(A) the provisions of the program; and

(B) audits and other reviews of program content and implementation.

(ii) The licensee or registrant shall retain the records required by §175.03(k)(2)(i)(A) until the Department terminates each pertinent license, certified registration or registration requiring the record. The licensee or registrant shall retain the records required by §175.03(k)(2)(i)(B) for 3 years after the record is made.

(3) **Records of receipt, use and disposition of radioactive material.** (i) Each licensee shall maintain records of the receipt, use and disposition of radioactive material in units of becquerels or microcuries and shall include from whom such materials were received and the ultimate disposition.

(ii) The licensee shall retain the records required by §175.03(k)(3)(i) for 3 years after the record is made.

(4) **Records of surveys.** (i) Each licensee or registrant shall maintain records showing the results of surveys and

calibrations required by §175.03(f) and §175.03(j)(6)(ii). The licensee or registrant shall retain these records for 3 years after the record is made.

(ii) The licensee or registrant shall retain each of the following records until the Department authorizes the disposition of these records:

(A) records of the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(B) records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(C) records showing the results of air sampling, surveys, and bioassays required pursuant to §175.03(h)(3)(i)(C)**(a)** and **(b)**; and

(D) records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

(5) **Records of tests for leakage or contamination of sealed sources.** Records of tests for leakage or contamination of sealed sources required by §175.03(e)(1) shall be kept in units of becquerel or microcurie and maintained for inspection by the Department for 5 years after the records are made.

(6) **Records of prior occupational dose.** (i) The licensee or registrant shall retain the records of prior occupational dose and exposure history as specified in §175.03(c)(5) on form RAD-4, "Cumulative Occupational Radiation Exposure History" or equivalent, and the records used in preparing form RAD-4 until the Department authorizes their disposition.

(ii) Upon termination of the license or registration, the licensee or registrant shall permanently store records on form RAD-4, "Cumulative Occupational Radiation Exposure History," or equivalent, or shall make provision with the Department for transfer to the Department.

(7) **Records of planned special exposures.** (i) For each use of the provisions of §175.03(c)(6) for planned special exposures, the licensee or registrant shall maintain records that describe:

(A) the exceptional circumstances requiring the use of a planned special exposure; and

(B) the name of the management official who authorized the planned special exposure and a copy of the signed authorization; and

(C) what actions were necessary; and

(D) why the actions were necessary; and

(E) what precautions were taken to assure that doses were main-

tained ALARA; and

(F) what individual and collective doses were expected to result; and

(G) the doses actually received in the planned special exposure.

(ii) The licensee or registrant shall retain the records until the Department authorizes their disposition.

(iii) Upon termination of the license or registration, the licensee or registrant shall permanently store records on form RAD-4, "Cumulative Occupational Radiation Exposure History," or until disposition is authorized by the

Department.

(8) **Records of individual monitoring results.** (i) Recordkeeping Requirement. Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to §175.03(f)(2), and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before the effective date of these requirements need not be changed. These records shall include, when applicable:

(A) the deep dose equivalent to the whole body, eye dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities; and

(B) the estimated intake or body burden of radionuclides (see §175.03(c)(2)); and

(C) the committed effective dose equivalent assigned to the intake or body burden of radionuclides; and

(D) the specific information used to calculate the committed effective dose equivalent pursuant to §175.03(c)(4)(iii); and

(E) the total effective dose equivalent when required by §175(c)(2); and

(F) the total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose.

(ii) **Recordkeeping frequency.** The licensee or registrant shall make entries of the records specified in §175.03(k)(8)(i) at intervals not to exceed 1 year.

(iii) **Recordkeeping format.** The licensee or registrant shall maintain the records specified in §175.03(k)(8)(i) on form RAD-5, in accordance with the instructions for form RAD-5, or in clear and legible records containing all the information required by form RAD-5.

(iv) The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

(v) The licensee or registrant shall retain each required form or record until the Department authorizes disposition.

(vi) Upon termination of the license or registration, the licensee or registrant shall permanently store records on form RAD-4 or equivalent, or shall make provision with the Department for transfer to the Department.

(9) **Records of dose to individual members of the public.** (i) Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public as specified in §175.03(d).

(ii) The licensee or registrant shall retain the records required by §175.03(k)(9)(i) until the Department terminates each pertinent license, certified registration or registration requiring the record.

(10) **Records of testing entry control devices for very high radiation areas.**

(i) Each licensee or registrant shall maintain records of tests made pursuant to §175.03(g)(3)(ii)(I) on entry control devices for very high radiation areas. These records must include the date, time, and results of each such test of function.

(ii) The licensee or registrant shall retain the records required by §175.03(k)(10)(i) for 3 years after the record is made.

(11) **Form of records.** (i) Each record required by this section shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures.

(ii) The licensee shall maintain adequate safeguards against tampering with and loss of records.

(iii) The discontinuance or curtailment of activities does not relieve any person who possesses any radiation source of responsibility for retaining all records required by this Code.

(l) **Reports.** (1) **Reports of stolen, lost, or missing licensed or registered sources of radiation.** (i) **Telephone reports.** Each licensee or registrant shall report to the Department by telephone as follows:

(A) immediately after its occurrence becomes known to the licensee or registrant, stolen, lost, or missing licensed or registered radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C of this section under such circumstances that it appears to the licensee or registrant that an exposure could result to individuals in unrestricted areas; or

(B) within 30 days after its occurrence becomes known to the licensee or registrant, lost, stolen, or missing licensed or registered radioactive material in an aggregate quantity greater than 10 times the quantity specified in Appendix C of this section that is still missing.

(C) immediately after its occurrence becomes known to the registrant, a stolen, lost, or missing radiation machine.

(ii) **Written reports.** Each licensee or registrant required to make a report pursuant to §175.03(l)(1)(i) shall, within thirty (30) days after making the telephone report, make a written report to the Department setting forth the following information:

(A) a description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model and serial number, type and maximum energy of radiation emitted;

(B) a description of the circumstances under which the loss or theft occurred; and

(C) a statement of disposition, or probable disposition, of the licensed or registered source of radiation involved; and

(D) exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and

(E) actions that have been taken, or will be taken, to recover the source of radiation; and

(F) procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

(iii) Subsequent to filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within thirty (30) days after the licensee or registrant learns of such information.

(iv) The licensee or registrant shall prepare any report filed with the Department pursuant to §175.03(l)(1)(ii) so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

(2) **Notification of incidents.** (i) **Immediate notification.** Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause any of the following conditions:

(A) an individual to receive:

(a) a total effective dose equivalent of 0.25 Sv (25 rem) or more; or

(b) an eye dose equivalent of 0.75 Sv (75 rem) or more; or

(c) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 2.5 Gy (250 rad) or more; or

(B) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five (5) times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(ii) **Twenty-four hour notification.** Each licensee or registrant shall, within 24 hours of discovery of the event, report to the Department each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:

(A) an individual to receive, in a period of 24 hours:

(a) a total effective dose equivalent exceeding 0.05 Sv (5 rem); or

(b) an eye dose equivalent exceeding 0.15 Sv (15 rem); or

(c) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 0.5 Sv (50 rem); or

(B) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(iii) The licensee or registrant shall prepare each report filed with the Department pursuant to §175.03(l)(2) so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(iv) Licensees or registrants shall make the reports required by §175.03(l)(2)(i) and (ii) to the Department by telephone, telegram, mailgram, or facsimile.

(v) The provisions of §175.03(l)(2) do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to §175.03(l)(4).

(3) **Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the limits.** (i) **Reportable events.** In addition to the notification required by §175.03(l)(2), each licensee or registrant shall submit a written report within thirty (30) days after learning of any of the following occurrences:

(A) incidents for which notification is required by §175.03(l)(2); or

(B) doses in excess of any of the following:

(a) the occupational dose limits for adults in §175.03(c)(1); or

(b) the occupational dose limits for a minor in §175.03(c)(7); or

(c) the limits for an embryo/fetus of a declared pregnant woman in §175.03(c)(8); or

(d) the limits for an individual member of the public in §175.03(d)(1); or

(e) any applicable limit in the license or registration; or

(C) levels of radiation or concentrations of radioactive material in:

(a) a restricted area in excess of applicable limits in the license or registration; or

(b) an unrestricted area in excess of 10 times the applicable limit set forth in this Code or in the license or registration, whether or not involving exposure of any individual in excess of the limits in §175.03(d)(1).

(ii) **Contents of reports.** (A) Each report required by §175.03(l)(3)(i) shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(a) estimates of each individual's dose; and

(b) the levels of radiation and concentrations of radioactive material involved; and

(c) the cause of the elevated exposures, dose rates, or concentrations; and

(d) corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, generally applicable environmental standards, and associated license or registration conditions.

(B) Each report filed pursuant to §175.03(l)(3)(i) shall include for each individual exposed: the name, social security account number, and date of birth. With respect to the limit for the embryo/fetus in §175.03(c)(8), the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(iii) All licensees or registrants who make reports pursuant to §175.03(l)(3)(i) shall submit the report in writing to the Department.

(4) **Reports of planned special exposures.** The licensee or registrant shall submit a written report to the Department within 30 days following any planned special exposure conducted in accordance with §175.03(c)(6), informing the Department that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by §175.03(k)(7).

(5) **Reports of individual monitoring.** (i) This section applies to each person licensed or registered by the Department to:

(A) possess or use at any time, for processing or manufacturing for distribution pursuant to this Code, radioactive material in quantities exceeding any one of the following quantities:

Radionuclide	Activitya	
	Ci	GBq

Cesium-137	1	37
Cobalt-60	1	37
Gold-198	100	3,700
Iodine-131	1	37
Iridium-192	10	370
Krypton-85	1,000	37,000
Promethium-147	10	370
Technetium-99m	1,000	37,000

[a] The Department may require as a license condition, or by rule, regulation, or order pursuant to §175.03(n)(1), reports from licensees or registrants who are licensed or registered to use radionuclides not on this list, in quantities sufficient to cause comparable radiation levels.

(ii) Each licensee or registrant in a category listed in §175.03(l)(5)(i) shall submit an annual report of the results of individual monitoring carried out by the licensee or registrant for each individual for whom monitoring was required by §175.03(f)(2) during that year. The licensee or registrant may include additional data for individuals for whom monitoring was provided but not required. The licensee or registrant shall use form RAD-5 or equivalent or electronic media containing all the information required by form RAD-5.

(iii) The licensee or registrant shall file the report required by §175.03(l)(5)(ii), covering the preceding year, on or before April 30 of each year. The licensee or registrant shall submit the report to the Department.

(6) **Notifications and reports to individuals.** (i) Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in §175.04 of this Code.

(ii) When a licensee or registrant is required pursuant to §175.03(l)(3) to report to the Department any exposure of an individual to radiation or radioactive material, the licensee or registrant shall also notify the individual. Such notice shall be transmitted at a time not later than the transmittal to the Department, and shall comply with the provisions of §175.04 of this Code.

(7) **Reports of leaking or contaminated sealed sources.** The licensee or registrant shall file a report within five (5) days with the Department if the test for leakage or contamination required pursuant to §175.03(e)(1) indicates a sealed source is leaking or contaminated. The report shall include the equipment involved, the test results and the corrective action taken.

(8) **Event reporting.** (i) **Immediate report.** Each licensee or registrant shall notify the Department as soon as possible, but not later than four (4) hours, after the discovery of an event that prevents immediate preventive actions necessary to avoid exposures to radiation or radioactive material that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, **etc.**).

(ii) **Twenty-four hour report.** Each licensee or registrant shall notify the Department within twenty-four (24) hours after the discovery of any of the following events involving regulated sources of radiation:

(A) An unplanned contamination event that:

(a) requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(b) involves a quantity of material greater than five (5) times the lowest annual limit on intake specified in Appendix B of §175.03 of this Code for the material; and

(c) has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to

decay prior to decontamination.

(B) An event in which equipment is disabled or fails to function as designed when:

(a) the equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, or to mitigate the consequences of an accident;

(b) the equipment is required to be available and operable when it is disabled or fails to function; and

(c) no redundant equipment is available and operable to perform the required safety function.

(C) An event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

(D) An unplanned fire or explosion damaging any regulated radiation source or any device, container or equipment containing licensed material when:

(a) the quantity of material involved is greater than five (5) times the lowest annual limit on intake specified in Appendix B of §175.03 for the material; and

(b) the damage affects the integrity of the licensed material or its container.

(iii) **Preparation and submission of reports.** Reports made by licensees in response to requirements of §175.03(l)(9)(i) and (ii) must be made as follows:

(A) **Licensees shall make reports required by §175.03(l)(9)(i) and (ii) by telephone to the Department.** To the extent that the information is available at the time of notification, the information provided in these reports must include:

(a) the caller's name and call back telephone number;

(b) a description of the event, including date and time;

(c) the exact location of the event;

(d) the isotopes, quantities, and chemical and physical form of the licensed material involved; and

(e) any personnel radiation exposure data available.

(B) **Written report.** Each licensee or registrant who makes a report required by §175.03(l)(9)(i) or (ii) shall submit a written follow up report to the Department within thirty (30) days of the initial report. The reports must include the following:

(a) a description of the event, including the probable cause and the manufacturer and model number, if applicable, of any equipment that failed or malfunctioned;

(b) the isotopes, quantities and chemical and physical form of the licensed material involved;

(c) corrective actions taken or planned and the results of any evaluations or assessments; and

(d) the extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

(m) **Exemptions and variances.** The Department may grant, upon either its own initiative or an application by an

interested person, an exemption or variance from any requirement in this Code when the Department finds that such exemption or variance will not result in an undue danger to life or property from radiation hazards.

(n) **Additional requirements.** (1) Notwithstanding any exemptions set forth in this Code:

(i) The Department may, by rule, regulation or order, impose upon any person who sells, transfers, assembles, repairs, receives, produces, possesses, or uses any radiation source, such requirements, in addition to those set forth in this Code, as it deems appropriate or necessary to protect the public health and safety and to minimize danger to life or property from radiation hazards.

(ii) The Department may suspend, revoke, or amend any license, certified registration or registration issued pursuant to this Code when it finds that any person is not in compliance with this Code, or other laws, ordinances, rules, or regulations of the Department or this City.

(iii) The Department may order the owner, person in charge or the radiation safety officer of an installation, or any other person owning or responsible for a radiation source, to take such additional precautions or procedures as it may determine are necessary to prevent contamination or the over-exposure of persons to ionizing radiation or to otherwise protect the public health and safety. Except where the public health requires immediate action, no such order shall be issued until the person to be ordered is notified by any effective means of communication and is given an opportunity to be heard by such personnel of the Department as the Commissioner may designate.

(2) **Vacating premises.** Each specific licensee or registrant shall notify the Department in writing of intent to vacate not less than 30 days before vacating or relinquishing possession or control of premises which may have been contaminated with radioactive material as a result of licensed or registered activities. When deemed necessary by the Department, the licensee shall decontaminate the premises to such levels as the Department may specify.

(3) The Department may by order require the removal through an authorized person, or the surrender to the Department, of any radiation source by any person who:

(i) does not hold, or continue to hold, a valid license, certified registration or registration issued by the Department;

(ii) is not able or equipped, or who fails to observe with regard to such radiation source those radiation protection standards as are established by the Department or who uses such radiation source in violation of law, this Code, order of the Department, or as set forth in a license, certified registration or registration issued therefor by the Department. Such person shall decontaminate any premises which may have been contaminated with radioactive material as a result of licensed or registered activities to such radiation levels as the Department may specify. The expenses incidental to such transfer, surrender, and/or decontamination shall be borne by such person responsible for the source.

(4) When necessary or desirable in order to aid in determining the extent of any individual's exposure to radiation subsequent to any radiation accident, contamination, theft or loss, the licensee or registrant shall comply with all orders of the Department directing such licensee or registrant to make available to such individual appropriate medical evaluation services or appropriate tests and to furnish to the Department a copy of the reports of such evaluation or test.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Subd. (b) par (2) amended City Record July 15, 1997 eff. Aug. 14, 1997. [See Vol. 9 Statements of

Basis and Purpose No. 8]

Subd. (c) par (1) subpar (i) amended City Record Sept. 29, 2006 eff. Oct. 29, 2006. [See Vol. 9 Statements of Basis and Purpose No. 25]

Subd. (c) par (1) subpar (iii) amended City Record Sept. 29, 2006 eff. Oct. 29, 2006. [See Vol. 9 Statements of Basis and Purpose No. 25]

Subd. (f) par (2) subpar (vi) added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 16]

Subd. (h) amended in part City Record Sept. 29, 2006 eff. Oct. 29, 2006. [See Vol. 9 Statements of Basis and Purpose No. 25]

Subd. (j) par (6) subpar (iv) amended City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of Basis and Purpose No. 13]

Notes:

Subdivisions (c) and (h) and Appendix A of §175.03 were amended on September 26, 2006, to maintain compatibility with NRC requirements as published in the Federal Register, dated October 7, 1999, titled, "Respiratory Protection and Controls to Restrict Internal Exposures", 64 FR 54543; 64 FR 55524, dated October 13, 1999, that became effective February 2, 2000 (amending 10 CFR §§20.1003; 20.1701-.1704; adding 20.1705 and amending Appendix A to Part 20).

Section 175.03(b)(2)(i)(B) was relettered to (C) and new (B) was adopted; Section 170.03(b)(2)(ii)(B) was relettered to (C) and new (B) was adopted; Section 175.03(b)(2)(iii)(C) was relettered to (D) and new (C) was adopted and Section 175.03(b)(2)(iv)(B) was relettered to (C) and new (B) was adopted on June 30, 1997 to authorize individuals with the appropriate training and experience to become radiation safety officers even though they are not board certified. The amendment recognizes an option existing in Section 175.03(j) of the Health Code, 10 N.Y.C.R.R. Section 16.2(a)(99) and federal regulations codified at 10 C.F.R. Section 35.900.

In addition, Section 175.03(b)(2)(iv) was amended to clarify its applicability to non-human use radioactive materials.

Subparagraph (vi) of paragraph (2) of subsection (f) was added on March 21, 2001 to address the need for timely processing of personnel radiation monitoring devices.

Subparagraphs (A) and (B) of paragraph (iv) of subdivision (6) of subsection (j) were amended on April 26, 1999 to reflect the reenacted §175.105.

Rules of the City of New York

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

24 RCNY APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

APPENDIX A

APPENDIX A

[See tabular material in printed version]

Footnotes:

1. For use in the selection of respiratory protective equipment to be used only where the contaminants have been identified and the concentrations, or possible concentrations, are known.

2. The licensee shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face, face-piece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tightfitting respirator face-piece. Hoods and

suits are excepted.

3. The mode symbols are defined as follows:

3. CF = continuous flow

3. D = demand

3. NP = negative pressure, that is, negative phase during inhalation

3. PD = pressure demand, that is, always positive pressure

3. PP = positive pressure

3. RD = demand, recirculating or closed circuit

3. RP = pressure demand, recirculating or closed circuit

4. a. The protection factor is a measure of the degree of protection afforded by a respirator, defined as the ratio of the concentration of airborne radioactive material outside the respiratory protective equipment to that inside the equipment, usually inside the facepiece, under conditions of use. It is applied to the ambient airborne concentration to estimate the concentrations inhaled by the wearer according to the following formula:

Concentration inhaled = Ambient airborne concentration

Protection factor

b. The protection factors apply:

(i) Only for individuals trained in using respirators and wearing properly fitted respirators that are used and maintained under supervision in a well-planned respiratory protective program.

(ii) For air-purifying respirators only when high efficiency particulate filters, above 99.97% removal efficiency by thermally generated 0.3 mm dioctylphthalate (DOP) test or equivalent, are used in atmospheres not deficient in oxygen and not containing radioactive gas or vapor respiratory hazards.

(iii) No adjustment is to be made for the use of sorbents against radioactive material in the form of gases or vapors.

(iv) For atmosphere-supplying respirators only when supplied with adequate respirable air. Respirable air shall be provided of the quality and quantity required in accordance with the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration certification described in 30 CFR 11. Oxygen and air shall not be used in the same apparatus.

5. Excluding radioactive contaminants that present an absorption or submersion hazard. For tritium oxide, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of less than 2 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. If the protection factor for respiratory protective equipment is 5, the effective protection factor for tritium is about 1.4; with protection factors of 10, the effective factor for tritium oxide is about 1.7; and with protection factors of 100 or more, the effective factor for tritium oxide is about 1.9. Air-purifying respirators are not suitable for protection against tritium oxide. See also footnote 9 concerning supplied-air suits.

6. Canisters and cartridges shall not be used beyond service-life limitations.

7. Under-chin type only. This type of respirator is not satisfactory for use where it might be possible, such as, if an

accident or emergency were to occur, for the ambient airborne concentrations to reach instantaneous values greater than 10 times the pertinent values in Table 1, Column 3 of Appendix B of §175.03. This type of respirator is not suitable for protection against plutonium or other high-toxicity materials. The mask is to be tested for fit prior to use, each time it is donned.

8. a. Equipment shall be operated in a manner that ensures that proper air flow-rates are maintained. A protection factor of no more than 1000 may be utilized for tested-and-certified supplied-air hoods when a minimum air flow of 6 cubic feet per minute (0.17 m^3/min) is maintained and calibrated air line pressure gauges or flow measuring devices are used. A protection factor of up to 2000 may be used for tested and certified hoods only when the air flow is maintained at the manufacturer's recommended maximum rate for the equipment, this rate is greater than 6 cubic feet per minute (0.17 m^3/min) and calibrated air line pressure gauges or flow measuring devices are used.

b. The design of the supplied-air hood or helmet, with a minimum flow of 6 cubic feet per minute (0.17 m^3/min) of air, may determine its overall efficiency and the protection it provides. For example, some hoods aspirate contaminated air into the breathing zone when the wearer works with hands-over-head. This aspiration may be overcome if a short cape-like extension to the hood is worn under a coat or overalls. Other limitations specified by the approval agency shall be considered before using a hood in certain types of atmospheres. See footnote 9.

9. Appropriate protection factors shall be determined, taking into account the design of the suit and its permeability to the contaminant under conditions of use. Standby rescue persons are required whenever one piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The standby persons must be equipped with communications devices and respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons must be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

10. No approval schedules are currently available for this equipment. Equipment is to be evaluated by testing or on the basis of reliable test information.

11. This type of respirator may provide greater protection and be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure, such as skin absorption, must be taken into account in such circumstances.

12. Quantitative fit testing shall be performed on each individual, and no more than 0.02% leakage is allowed with this type of apparatus. Perceptible outward leakage of gas from this or any positive pressure self-contained breathing apparatus is unacceptable because service life will be reduced substantially. Special training in the use of this type of apparatus shall be provided to the wearer.

Note 1:

Protection factors for respirators approved by the U.S. Bureau of Mines and the National Institute for Occupational Safety and Health, according to applicable approvals for respirators for type and mode of use to protect against airborne radionuclides, may be used to the extent that they do not exceed the protection factors listed in this table. The protection factors listed in this table may not be appropriate to circumstances where chemical or other respiratory hazards exist in addition to radioactive hazards. The selection and use of respirators for such circumstances should take into account applicable approvals of the U.S. Bureau of Mines and the National Institute for Occupational Safety and Health.

Note 2:

Radioactive contaminants, for which the concentration values in Table 1, Column 3 of Appendix B of §175.03 are based on internal dose due to inhalation, may present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.

Definitions:

"Airpurifying respirator" means a respirator with an air purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air purifying element.

"Assigned protection factor" or "APF" means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

"Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

"Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the face-piece only when a negative pressure is created inside the face-piece by inhalation.

"Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end of service-life renders it unsuitable for use. Examples of this type of respirator are a disposable halfmask respirator or a disposable escape-only self contained breathing apparatus (SCBA).

"Filtering face-piece" or "dust mask" means a negative pressure particulate respirator with a filter as an integral part of the face-piece or with the entire face-piece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

"Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

"Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

"Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

"Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

"Loosefitting face-piece" means a respiratory inlet covering that is designed to form a partial seal with the face.

"Negative pressure respirator" or "tight fitting respirator" means a respirator in which the air pressure inside the face-piece is negative during inhalation with respect to the ambient air pressure outside the respirator.

"Positive pressure respirator" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

"Powered air purifying respirator" or "PAPR" means an air-purifying respirator that uses a blower to force the ambient air through air purifying elements to the inlet covering.

"Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that admits breathing air to the face-piece when the positive pressure is reduced inside the face-piece by inhalation.

"Qualitative fit test" or "QLFT" means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

"Quantitative fit test" "QNFT" means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

"Self-contained breathing apparatus" or "SCBA" means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

"Supplied air respirator" or "SAR" or "airline respirator" means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

"Tight-fitting face-piece" means a respiratory inlet covering that forms a complete seal with the face.

"User seal check" or "fit check" means an action conducted by the respirator user to determine if the respirator is properly sealed to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamylacetate check.

HISTORICAL NOTE

Footnote 2 amended City Record Sept. 29, 2006 eff. Oct. 29, 2006. [See Vol. 9 Statements of Basis and Purpose No. 25]

Footnote 9 amended City Record Sept. 29, 2006 eff. Oct. 29, 2006. [See Vol. 9 Statements of Basis and Purpose No. 25]

Definitions added City Record Sept. 29, 2006 eff. Oct. 29, 2006. [See Vol. 9 Statements of Basis and Purpose No. 25]

Notes:

Subdivisions (c) and (h) and Appendix A of §175.03 were amended on September 26, 2006, to maintain compatibility with NRC requirements as published in the Federal Register, dated October 7, 1999, titled, "Respiratory Protection and Controls to Restrict Internal Exposures", 64 FR 54543; 64 FR 55524, dated October 13, 1999, that became effective February 2, 2000 (amending 10 CFR §§20.1003; 20.1701-.1704; adding 20.1705 and amending Appendix A to Part 20).

Rules of the City of New York

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

24 RCNY APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

APPENDIX B ANNUAL LIMITS ON INTAKE (ALI) AND DERIVED AIR CONCENTRATIONS (DAC) OF RADIONUCLIDES FOR OCCUPATIONAL EXPOSURE; EFFLUENT CONCENTRATIONS; CONCENTRATIONS FOR RELEASE TO SANITARY SEWERAGE

APPENDIX B ANNUAL LIMITS ON INTAKE (ALI) AND DERIVED AIR CONCENTRATIONS (DAC) OF RADIONUCLIDES FOR OCCUPATIONAL EXPOSURE; EFFLUENT CONCENTRATIONS; CONCENTRATIONS FOR RELEASE TO SANITARY SEWERAGE

Introduction

For each radionuclide, Table I indicates the chemical form which is to be used for selecting the appropriate ALI or DAC value. The ALIs and DACs for inhalation are given for an aerosol with an activity median aerodynamic diameter (AMAD) of 1 mm, micron, and for three classes (D,W,Y) of radioactive material, which refer to their retention

(approximately days, weeks or years) in the pulmonary region of the lung. This classification applies to a range of clearance half-times for D if less than 10 days, for W from 10 to 100 days, and for Y greater than 100 days. Table 2 provides concentration limits for airborne and liquid effluents released to the general environment. Table 3 provides concentration limits for discharges to sanitary sewerage.

Note: The values in Tables 1, 2, and 3 are presented in the computer "E" notation. In this notation a value of 6E-02 represents a value of 6×10^{-2} or 0.06, 6E2 represents 6×10^{2} or 600, and 6E0 represents 6×10^{0} or 6.

Table 1 "Occupational Values"

Note that the columns in Table I of this appendix captioned "Oral Ingestion ALI," "Inhalation ALI," and "DAC," are applicable to occupational exposure to radioactive material.

The ALIs in this appendix are the annual intakes of given radionuclide by "Reference Man" which would result in either (1) a committed effective dose equivalent of 0.05 Sv (5 rem), stochastic ALI, or (2) a committed dose equivalent of 0.5 Sv (50 rem) to an organ or tissue, non-stochastic ALI. The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep dose equivalent to the whole body of 0.05 Sv (5 rem). The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, w_T. This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of w_T are listed under the definition of weighting factor in §175.02(a)(247). The non-stochastic ALIs were derived to avoid non-stochastic effects, such as prompt damage to tissue or reduction in organ function.

A value of $w_T = 0.06$ is applicable to each of the five organs or tissues in the "remainder" category receiving the highest dose equivalents, and the dose equivalents of all other remaining tissues may be disregarded. The following portions of the gastrointestinal tract-stomach, small intestine, upper large intestine, and lower large intestine-are to be treated as four separate organs.

Note that the dose equivalents for an extremity, skin and lens of the eye are not considered in computing the committed effective dose equivalent, but are subject to limits that must be met separately.

When an ALI is defined by the stochastic dose limit, this value alone is given. When an ALI is determined by the non-stochastic dose limit to an organ, the organ or tissue to which the limit applies is shown, and the ALI for the stochastic limit is shown in parentheses. Abbreviated organ or tissue designations are used:

LLI wall = lower large intestine wall;

St wall = stomach wall;

Blad wall = bladder wall; and

Bone surf = bone surface.

The use of the ALIs listed first, the more limiting of the stochastic and non-stochastic ALIs, will ensure that non-stochastic effects are avoided and that the risk of stochastic effects is limited to an acceptably low value. If, in a particular situation involving a radionuclide for which the non-stochastic ALI is limiting, use of that non-stochastic ALI is considered unduly conservative, the licensee may use the stochastic ALI to determine the committed effective dose equivalent. However, the licensee shall also ensure that the 0.5 Sv (50 rem) dose equivalent limit for any organ or tissue is not exceeded by the sum of the external deep dose equivalent plus the internal committed dose equivalent to that organ, not the effective dose. For the case where there is no external dose contribution, this would be demonstrated if the sum of the fractions of the non-stochastic ALIs (ALI_{ns}) that contribute to the committed dose equivalent to the organ receiving the highest dose does not exceed unity, that is, S (intake (in mCi) of each radionuclide/ALI_{ns}) # 1.0. If

there is an external deep dose equivalent contribution of H_d, then this sum must be less than 1-(H_d/50), instead of 1.0.

Note that the dose equivalents for an extremity, skin, and lens of the eye are not considered in computing the committed effective dose equivalent, but are subject to limits that must be met separately.

The derived air concentration (DAC) values are derived limits intended to control chronic occupational exposures. The relationship between the DAC and the ALI is given by:

DAC = ALI (in mCi)/(2000 hr-working yr-1 x 60 min-hr-1 x 2 x 104 ml-min-1)

=[ALI/2.4 x 109]mCi/ml,

where 2 x 10^4 Ml is the volume of air breathed per minute at work by Reference Man under working conditions of light work.

The DAC values relate to one of two modes of exposure: either external submersion or the internal committed dose equivalents resulting from inhalation of radioactive materials. DACs based upon submersion are for immersion in a semi-infinite cloud of uniform concentration and apply to each radionuclide separately.

The ALI and DAC values include contributions to exposure by the single radionuclide named and any in-growth of daughter radionuclides produced in the body by decay of the parent. However, intakes that include both the parent and daughter radionuclides should be treated by the general method appropriate for mixtures.

The values of ALI and DAC do not apply directly when the individual both ingests and inhales a radionuclide, when the individual is exposed to a mixture of radionuclides by either inhalation or ingestion or both, or when the individual is exposed to both internal and external irradiation. See §175.03(c)(2). When an individual is exposed to radioactive materials which fall under several of the translocation classifications of the same radionuclide, such as, Class D, Class W, or Class Y, the exposure may be evaluated as if it were a mixture of different radionuclides.

It should be noted that the classification of a compound as Class D, W, or Y is based on the chemical form of the compound and does not take into account the radiological half-life of different radionuclides. For this reason, values are given for Class D, W, and Y compounds, even for very short-lived radionuclides.

Table 2 "Effluent Concentrations"

The columns in Table 2 of this appendix captioned "Effluents," "Air" and "Water" are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of §175.03(d)(2). The concentration values given in Columns 1 and 2 of Table 2 are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.5 mSv (0.05 rem).

Consideration of non-stochastic limits has not been included in deriving the air and water effluent concentration limits because non-stochastic effects are presumed not to occur at or below the dose levels established for individual members of the public. For radionuclides, where the non-stochastic limit was governing in deriving the occupational DAC, the stochastic ALI was used in deriving the corresponding airborne effluent limit in Table 2. For this reason, the DAC and airborne effluent limits are not always proportional as they were in the previous version of the New York City Health Code in Table 4 of §175.117.

The air concentration values listed in Table 2, Column 1 were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4 x 10^9, relating the inhalation ALI to the DAC, as explained above, and then divided by a factor of 300. The factor of 300 includes the following components: a factor of 50 to relate the 0.05 Sv (5 rem) annual occupational dose limit to the 0.1 rem limit for members of the public, a factor of 3 to adjust for the difference in exposure time and the inhalation rate

for a worker and that for members of the public; and a factor of 2 to adjust the occupational values, derived for adults, so that they are applicable to other age groups.

For those radionuclides for which submersion, that is external dose, is limiting, the occupational DAC in Table 1, Column 3 was divided by 219. The factor of 219 is composed of a factor of 50, as described above, and a factor of 4.38 relating occupational exposure for 2,000 hours per year to full-time exposure (8,760 hours per year). Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^7 . The factor of 7.3×10^7 (ml) includes the following components: the factors of 50 and 2 described above and a factor of 7.3×10^5 (ml) which is the annual water intake of Reference Man.

Note 2 of this appendix provides groupings of radionuclides which are applicable to unknown mixtures of radionuclides. These groupings, including occupational inhalation ALIs and DACs, air and water effluent concentrations and releases to sewer, require demonstrating that the most limiting radionuclides in successive classes are absent. The limit for the unknown mixture is defined when the presence of one of the listed radionuclides cannot be definitely excluded as being present either from knowledge of the radionuclide composition of the source or from actual measurements.

Table 3 "Releases to Sewers"

The monthly average concentrations for release to sanitary sewerage are applicable to the provisions in §175.104(c). The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^6 (ml). The factor of 7.3×10^6 (ml) is composed of a factor of 7.3×10^5 (ml), the annual water intake by Reference Man, and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a Reference Man during a year, would result in a committed effective dose equivalent of 5 mSv (0.5 rem).

LIST OF ELEMENTS

Name	Symbol	Atomic Number	Name	Symbol	Atomic Number
Actinium	Ac	89	Mercury	Hg	80
Aluminum	Al	13	Molybdenum	Mo	42
Americium	Am	95	Neodymium	Nd	60
Antimony	Sb	51	Neptunium	Np	93
Argon	Ar	18	Nickel	Ni	28
Arsenic	As	33	Niobium	Nb	41
Astatine	At	85	Osmium	Os	76
Barium	Ba	56	Palladium	Pd	46
Berkelium	Bk	97	Phosphorus	P	15

Beryllium	Be	4	Platinum	Pt	78
Bismuth	Bi	83	Plutonium	Pu	94
Bromine	Br	35	Polonium	Po	84
Cadmium	Cd	48	Potassium	K	19
Calcium	Ca	20	Praseodymium	Pr	59
Californium	Cf	98	Promethium	Pm	61
Carbon	C	6	Protactinium	Pa	91
Cerium	Ce	58	Radium	Ra	88
Cesium	Cs	55	Radon	Rn	86
Chlorine	Cl	17	Rhenium	Re	75
Chromium	Cr	24	Rhodium	Rh	45
Cobalt	Co	27	Rubidium	Rb	37
Copper	Cu	29	Ruthenium	Ru	44
Curium	Cm	96	Samarium	Sm	62
Dysprosium	Dy	66	Scandium	Sc	21
Einsteinium	Es	99	Selenium	Se	34
Erbium	Er	68	Silicon	Si	14
Europium	Eu	63	Silver	Ag	47
Fermium	Fm	100	Sodium	Na	11
Fluorine	F	9	Strontium	Sr	38
Francium	Fr	87	Sulfur	S	16
Gadolinium	Gd	64	Tantalum	Ta	73
Gallium	Ga	31	Technetium	Tc	43
Germanium	Ge	32	Tellurium	Te	52
Gold	Au	79	Terbium	Tb	65

Hafnium	Hf	72	Thallium	Tl	81
Holmium	Ho	67	Thorium	Th	90
Hydrogen	H	1	Thulium	Tm	69
Indium	In	49	Tin	Sn	50
Iodine	I	53	Titanium	Ti	22
Iridium	Ir	77	Tungsten	W	74
Iron	Fe	26	Uranium	U	92
Krypton	Kr	36	Vanadium	V	23
Lanthanum	La	57	Xenon	Xe	54
Lead	Pb	82	Ytterbium	Yb	70
Lutetium	Lu	71	Yttrium	Y	39
Magnesium	Mg	12	Zinc	Zn	30
Manganese	Mn	25	Zirconium	Zr	40
Mendelevium	Md	101			

	Table 1 Occupational Values			Table 2 Effluent Concentrations		Table 3 Releases to Sewers		
	Col. 1	Col. 2	Col. 3	Col. 1		Col. 2		
Atomic No.	Radionuclide	Class		Oral Ingestion	Inhalation	Air (mCi/ml)	Water (mCi/ml)	Monthly Average Concentration (mCi/ml)
1	Hydrogen-3	Water, DAC includes skin absorption Gas (HT or T2) Submersion1: Use above values as HT and T2 oxidize in air and in the body to		8E4	8E4	2E-5	1E-7	1E-3	1E-2

		HTO						
4	Beryllium-7	W, all compounds except those given for Y	4E4	2E4	9E-6	3E-8	6E-4	6E-3
		Y, oxides, halides, and nitrates	-	2E4	8E-6	3E-8	-	-
4	Beryllium-10	W, see 7Be	1E3	2E2	6E-8	2E-10	-	-
			LLI wall (1E3)	-	-	-	2E-5	2E-4
		Y, see 7Be	-	1E1	6E-9	2E-11	-	-
6	Carbon-112	Monoxide	-	1E6	5E-4	2E-6	-	-
		Dioxide	-	6E5	3E-4	9E-7	-	-
		Compounds	4E5	4E5	2E-4	6E-7	6E-3	6E-2
6	Carbon-14	Monoxide	-	2E6	7E-4	2E-6	-	-
		Dioxide	-	2E5	9E-5	3E-7	-	-
		Compounds	2E3	2E3	1E-6	3E-9	3E-5	3E-4
9	Fluorine-182	D, fluorides of H, Li, Na, K, Rb,	5E4 St wall	7E4	3E-5	1E-7	-	-
		Cs, and Fr	(5E4)	-	-	-	7E-4	7E-3
		W, fluorides of Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, In, Tl, As, Sb, Bi, Fe, Ru, Os, Co, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, V, Nb, Ta, Mn, Tc, and Re	-	9E4	4E-5	1E-7	-	-
		Y, lanthanum fluoride	-	8E4	3E-5	1E-7	-	-
11	Sodium-22	D, all compounds	4E2	6E2	3E-7	9E-10	6E-6	6E-5
11	Sodium-24	D, all compounds	4E3	5E3	2E-6	7E-9	5E-5	5E-4
12	Magnesium-28	D, all compounds except those given for W	7E2	2E3	7E-7	2E-9	9E-6	9E-5
		W, oxides, hydroxides, carbides, halides, and nitrates	-	1E3	5E-7	2E-9	-	-
13	Aluminum-26	D, all compounds except those given for W	4E2	6E1	3E-8	9E-11	6E-6	6E-5
		W, oxides, hydroxides, carbides, halides, and nitrates	-	9E1	4E-8	1E-10	-	-
14	Silicon-31	D, all compounds except those given for W and Y	9E3	3E4	1E-5	4E-8	1E-4	1E-3
		W, oxides, hydroxides, carbides, and nitrates	-	3E4	1E-5	5E-8	-	-
		Y, aluminosili- cate glass	-	3E4	1E-5	4E-8	-	-
14	Silicon-32	D, see 31Si	2E3	2E2	1E-7	3E-10	-	-
			LLI wall (3E3)	-	-	-	4E-5	4E-4
		W, see 31Si	-	1E2	5E-8	2E-1	-	-

						0		
		Y, see 31Si	-	5E0	2E-9	7E-12	-	-
15	Phosphorus-32	D, all compounds except phosphates given for W	6E2	9E2	4E-7	1E-9	9E-6	9E-5
		W, phosphates of Zn2, S3, Mg2, Fe3, Bi3, and lanthanides	-	4E2	2E-7	5E-10	-	-
15	Phosphorus-33	D, see 32P	6E3	8E3	4E-6	1E-8	8E-5	8E-4
		W, see 32P	-	3E3	1E-6	4E-9	-	-
16	Sulfur-35	Vapor	-	1E4	6E-6	2E-8	-	-
		D, sulfidesand sulfates except those given for W	1E4 LLI wall (8E3)	2E4	7E-6	2E-8	-	-
			-	-	-		1E-4	1E-3
		W, elemental sulfur, sulfides of Sr, Ba, Ge, Sn, Pb, As, Sb, Bi, Cu, Ag, Au, Zn, Cd, Hg, W, and Mo. Sulfates of Ca, Sr, Ba, Ra, As, Sb, and Bi	6E3 -	2E3	9E-7	3E-9	-	-
17	Chlorine-36	D, chlorides of H, Li, Na, K, Rb, Cs, and Fr	2E3	2E3	1E-6	3E-9	2E-5	2E-4
		W, chlorides of lanthanides, Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, In, Tl, Ge, Sn, Pb, As, Sb, Bi, Fe, Ru, Os, Co, Rh, Ir, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, Hf, V, Nb, Ta, Cr, Mo, W, Mn, Tc, and Re	-	2E2	1E-7	3E-10	-	-
17	Chlorine-382	D, see 36Cl	2E4 St wall (3E4)	4E4 -	2E-5 -	6E-8 -	- 3E-4	- 3E-3
		W, see 36Cl	-	5E4	2E-5	6E-8	-	-
17	Chlorine-392	D, see 36Cl	2E4 St wall (4E4)	5E4 -	2E-5 -	7E-8 -	- 5E-4	- 5E-3
		W, see 36Cl	-	6E4	2E-5	8E-8	-	-
18	Argon-37	Submersion1	-	-	1E0	6E-3	-	-
18	Argon-39	Submersion1	-	-	2E-4	8E-7	-	-
18	Argon-41	Submersion1	-	-	3E-6	1E-8	-	-
19	Potassium-40	D, all compounds	3E2	4E2	2E-7	6E-10	4E-6	4E-5
19	Potassium-42	D, all compounds	5E3	5E3	2E-6	7E-9	6E-5	6E-4
19	Potassium-43	D, all compounds	6E3	9E3	4E-6	1E-8	9E-5	9E-4
19	Potassium-442	D, all compounds	2E4 St wall (4E4)	7E4 -	3E-5 -	9E-8 -	- 5E-4	- 5E-3

19	Potassium-452	D, all compounds	3E4 St wall (5E4)	1E5 -	5E-5 -	2E-7 -	- 7E-4	- 7E-3
20	Calcium-41	W, all compounds	3E3 Bone surf (4E3)	4E3 Bone surf (4E3)	2E-6 -	- 5E-9	- 6E-5	- 6E-4
20	Calcium-45	W, all compounds	2E3	8E2	4E-7	1E-9	2E-5	2E-4
20	Calcium-47	W, all compounds	8E2	9E2	4E-7	1E-9	1E-5	1E-4
21	Scandium-43	Y, all compounds	7E3	2E4	9E-6	3E-8	1E-4	1E-3
21	Scandium-44m	Y, all compounds	5E2	7E2	3E-7	1E-9	7E-6	7E-5
21	Scandium-44	Y, all compounds	4E3	1E4	5E-6	2E-8	5E-5	5E-4
21	Scandium-46	Y, all compounds	9E2	2E2	1E-7	3E-10	1E-5	1E-4
21	Scandium-47	Y, all compounds	2E3 LLI wall (3E3)	3E3 -	1E-6 -	4E-9 -	- 4E-5	- 4E-4
21	Scandium-48	Y, all compounds	8E2	1E3	6E-7	2E-9	1E-5	1E-4
21	Scandium-492	Y, all compounds	2E4	5E4	2E-5	8E-8	3E-4	3E-3
22	Titanium-44	D, all compounds except those given for W and Y	3E2	1E1	5E-9	2E-11	4E-6	4E-5
		W, oxides, hydroxides, carbides, halides, and nitrates	-	3E1	1E-8	4E-11	-	-
		Y, SrTi0	-	6E0	2E-9	8E-12	-	-
22	Titanium-45	D, see 44Ti	9E3	3E4	1E-5	3E-8	1E-4	1E-3
		W, see 44Ti	-	4E4	1E-5	5E-8	-	-
		Y, see 44Ti	-	3E4	1E-5	4E-8	-	-
23	Vanadium-472	D, all compounds except those given for W	3E4 St wall (3E4)	8E4 -	3E-5 -	1E-7 -	- 4E-4	- 4E-3
		W, oxides, hydroxides, carbides, and halides	-	1E5	4E-5	1E-7	-	-
23	Vanadium-48	D, see 47V	6E2	1E3	5E-7	2E-9	9E-6	9E-5
		W, see 47V	-	6E2	3E-7	9E-10	-	-
23	Vanadium-49	D, see 47V	7E4 LLI wall (9E4)	3E4 Bone surf (3E4)	1E-5 -	- 5E-8	- 1E-3	- 1E-2
		W, see 47V	-	2E4	8E-6	2E-8	-	-
24	Chromium-48	D, all compounds except those given for W and Y	6E3	1E4	5E-6	2E-8	8E-5	8E-4
		W, halides and nitrates	-	7E3	3E-6	1E-8	-	-
		Y, oxides and hydroxides	-	7E3	3E-6	1E-8	-	-
24	Chromium-492	D, see 48Cr	3E4	8E4	4E-5	1E-7	4E-4	4E-3
		W, see 48Cr	-	1E5	4E-5	1E-7	-	-

		Y, see 48Cr	-	9E4	4E-5	1E-7	-	-
24	Chromium-51	D, see 48Cr	4E4	5E4	2E-5	6E-8	5E-4	5E-3
		W, see 48Cr	-	2E4	1E-5	3E-8	-	-
		Y, see 48Cr	-	2E4	8E-6	3E-8	-	-
25	Manganese-512	D, all compounds except those given for W	2E4	5E4	2E-5	7E-8	3E-4	3E-3
		W, oxides, hydroxides, halides, and nitrates	-	6E4	3E-5	8E-8	-	-
25	Manganese-52m2	D, see 51Mn	3E4 St wall (4E4)	9E4 -	4E-5 -	1E-7 -	- 5E-4	- 5E-3
		W, see 51Mn	-	1E5	4E-5	1E-7	-	-
25	Manganese-52	D, see 51Mn	7E2	1E3	5E-7	2E-9	1E-5	1E-4
		W, see 51Mn	-	9E2	4E-7	1E-9	-	-
25	Manganese-53	D, see 51Mn	5E4 -	1E4 Bone surf (2E4)	5E-6 -	- 3E-8	7E-4 -	7E-3 -
		W, see 51Mn	-	1E4	5E-6	2E-8	-	-
25	Manganese-54	D, see 51Mn	2E3	9E2	4E-7	1E-9	3E-5	3E-4
		W, see 51Mn	-	8E2	3E-7	1E-9	-	-
25	Manganese-56	D, see 51Mn	5E3	2E4	6E-6	2E-8	7E-5	7E-4
		W, see 51Mn	-	2E4	9E-6	3E-8	-	-
26	Iron-52	D, all compounds except those given for W	9E2	3E3	1E-6	4E-9	1E-5	1E-4
		W, oxides, hydroxides, and halides	-	2E3	1E-6	3E-9	-	-
26	Iron-55	D, see 52Fe	9E3	2E3	8E-7	3E-9	1E-4	1E-3
		W, see 52Fe	-	4E3	2E-6	6E-9	-	-
26	Iron-59	D, see 52Fe	8E2	3E2	1E-7	5E-10	1E-5	1E-4
		W, see 52Fe	-	5E2	2E-7	7E-10	-	-
26	Iron-60	D, see 52Fe	3E1	6E0	3E-9	9E-12	4E-7	4E-6
		W, see 52Fe	-	2E1	8E-9	3E-11	-	-
27	Cobalt-55	W, all compounds except those given for Y	1E3	3E3	1E-6	4E-9	2E-5	2E-4
		Y, oxides, hydroxides, halides, and nitrates	-	3E3	1E-6	4E-9	-	-
27	Cobalt-56	W, see 55Co	5E2	3E2	1E-7	4E-10	6E-6	6E-5
		Y, see 55Co	4E2	2E2	8E-8	3E-10	-	-
27	Cobalt-57	W, see 55Co	8E3	3E3	1E-6	4E-9	6E-5	6E-4
		Y, see 55Co	4E3	7E2	3E-7	9E-10	-	-
27	Cobalt-58m	W, see 55Co	6E4	9E4	4E-5	1E-7	8E-4	8E-3

		Y, see 55Co	-	6E4	3E-5	9E-8	-	-
27	Cobalt-58	W, see 55Co	2E3	1E3	5E-7	2E-9	2E-5	2E-4
		Y, see 55Co	1E3	7E2	3E-7	1E-9	-	-
27	Cobalt-60m2	W, see 55Co	1E6 St wall (1E6)	4E6 -	2E-3 -	6E-6 -	- 2E-2	- 2E-1
		Y, see 55Co	-	3E6	1E-3	4E-6	-	-
27	Cobalt-60	W, see 55Co	5E2	2E2	7E-8	2E-10	3E-6	3E-5
		Y, see 55Co	2E2	3E1	1E-8	5E-11	-	-
27	Cobalt-612	W, see 55Co	2E4	6E4	3E-5	9E-8	3E-4	3E-3
		Y, see 55Co	2E4	6E4	2E-5	8E-8	-	-
27	Cobalt-62m2	W, see 55Co	4E4 St wall (5E4)	2E5 -	7E-5 -	2E-7 -	- 7E-4	- 7E-3
		Y, see 55Co	-	2E5	6E-5	2E-7	-	-
28	Nickel-56	D, all compounds except those given for W	1E3	2E3	8E-7	3E-9	2E-5	2E-4
		W, oxides, hydroxides, and carbides	-	1E3	5E-7	2E-9	-	-
		Vapor	-	1E3	5E-7	2E-9	-	-
28	Nickel-57	D, see 56Ni	2E3	5E3	2E-6	7E-9	2E-5	2E-4
		W, see 56Ni	-	3E3	1E-6	4E-9	-	-
		Vapor	-	6E3	3E-6	9E-9	-	-
28	Nickel-59	D, see 56Ni	2E4	4E3	2E-6	5E-9	3E-4	3E-3
		W, see 56Ni	-	7E3	3E-6	1E-8	-	-
		Vapor	-	2E3	8E-7	3E-9	-	-
28	Nickel-63	D, see 56Ni	9E3	2E3	7E-7	2E-9	1E-4	1E-3
		W, see 56Ni	-	3E3	1E-6	4E-9	-	-
		Vapor	-	8E2	3E-7	1E-9	-	-
28	Nickel-65	D, see 56Ni	8E3	2E4	1E-5	3E-8	1E-4	1E-3
		W, see 56Ni	-	3E4	1E-5	4E-8	-	-
		Vapor	-	2E4	7E-6	2E-8	-	-
28	Nickel-66	D, see 56Ni	4E2 LLI wall (5E2)	2E3 -	7E-7 -	2E-9 -	- 6E-6	- 6E-5
		W, see 56Ni	-	6E2	3E-7	9E-10	-	-
		Vapor	-	3E3	1E-6	4E-9	-	-
29	Copper-602	D, all compounds except those given for W and Y	3E4 St wall (3E4)	9E4	4E-5	1E-7	- 4E-4	- 4E-3
		W, sulfides, halides, and nitrates	-	1E5	5E-5	2E-7	-	-
		Y, oxides and hydroxides	-	1E5	4E-5	1E-7	-	-

29	Copper-61	D, see 60Cu	1E4	3E4	1E-5	4E-8	2E-4	2E-3
		W, see 60Cu	-	4E4	2E-5	6E-8	-	-
		Y, see 60Cu	-	4E4	1E-5	5E-8	-	-
29	Copper-64	D, see 60Cu	1E4	3E4	1E-5	4E-8	2E-4	2E-3
		W, see 60Cu	-	2E4	1E-5	3E-8	-	-
		Y, see 60Cu	-	2E4	9E-6	3E-8	-	-
29	Copper-67	D, see 60Cu	5E3	8E3	3E-6	1E-8	6E-5	6E-4
		W, see 60Cu	-	5E3	2E-6	7E-9	-	-
		Y, see 60Cu	-	5E3	2E-6	6E-9	-	-
30	Zinc-62	Y, all compounds	1E3	3E3	1E-6	4E-9	2E-5	2E-4
30	Zinc-632	Y, all compounds	2E4 St wall (3E4)	7E4 -	3E-5 -	9E-8 -	- 3E-4	- 3E-3
30	Zinc-65	Y, all compounds	4E2	3E2	1E-7	4E-10	5E-6	5E-5
30	Zinc-69m	Y, all compounds	4E3	7E3	3E-6	1E-8	6E-5	6E-4
30	Zinc-692	Y, all compounds	6E4	1E5	6E-5	2E-7	8E-4	8E-3
30	Zinc-71m	Y, all compounds	6E3	2E4	7E-6	2E-8	8E-5	8E-4
30	Zinc-72	Y, all compounds	1E3	1E3	5E-7	2E-9	1E-5	1E-4
31	Gallium-652	D, all compounds except those given for W St wall (6E4)	5E4 -	2E5 -	7E-5 -	2E-7 -	- 9E-4	- 9E-3
		W, oxides, hydroxides, carbides, halides, and nitrates	-	2E5	8E-5	3E-7	-	-
31	Gallium-66	D, see 65Ga	1E3	4E3	1E-6	5E-9	1E-5	1E-4
		W, see 65Ga	-	3E3	1E-6	4E-9	-	-
31	Gallium-67	D, see 65Ga	7E3	1E4	6E-6	2E-8	1E-4	1E-3
		W, see 65Ga	-	1E4	4E-6	1E-8	-	-
31	Gallium-682	D, see 65Ga	2E4	4E4	2E-5	6E-8	2E-4	2E-3
		W, see 65Ga	-	5E4	2E-5	7E-8	-	-
31	Gallium-702	D, see 65Ga	5E4 St wall (7E4)	2E5 -	7E-5 -	2E-7 -	- 1E-3	- 1E-2
		W, see 65Ga	-	2E5	8E-5	3E-7	-	-
31	Gallium-72	D, see 65Ga	1E3	4E3	1E-6	5E-9	2E-5	2E-4
		W, see 65Ga	-	3E3	1E-6	4E-9	-	-
31	Gallium-73	D, see 65Ga	5E3	2E4	6E-6	2E-8	7E-5	7E-4
		W, see 65Ga	-	2E4	6E-6	2E-8	-	-
32	Germanium-66	D, all compounds except those given for W	2E4	3E4	1E-5	4E-8	3E-4	3E-3
		W, oxides, sulfides, and halides	-	2E4	8E-6	3E-8	-	-
32	Germanium-672	D, see 66Ge	3E4 St wall (4E4)	9E4 -	4E-5 -	1E-7 -	- 6E-4	- 6E-3
		W, see 66Ge	-	1E5	4E-5	1E-7	-	-
32	Germanium-68	D, see 66Ge	5E3	4E3	2E-6	5E-9	6E-5	6E-4

		W, see 66Ge	-	1E2	4E-8	1E-10	-	-
32	Germanium-69	D, see 66Ge	1E4	2E4	6E-6	2E-8	2E-4	2E-3
		W, see 66Ge	-	8E3	3E-6	1E-8	-	-
32	Germanium-71	D, see 66Ge	5E5	4E5	2E-4	6E-7	7E-3	7E-2
		W, see 66Ge	-	4E4	2E-5	6E-8	-	-
32	Germanium-752	D, see 66Ge	4E4 St wall (7E4)	8E4 -	3E-5 -	1E-7 -	- 9E-4	- 9E-3
		W, see 66Ge	-	8E4	4E-5	1E-7	-	-
32	Germanium-77	D, see 66Ge	9E3	1E4	4E-6	1E-8	1E-4	1E-3
		W, see 66Ge	-	6E3	2E-6	8E-9	-	-
32	Germanium-782	D, see 66Ge	2E4 St wall (2E4)	2E4 -	9E-6 -	3E-8 -	- 3E-4	- 3E-3
		W, see 66Ge	-	2E4	9E-6	3E-8	-	-
33	Arsenic-692	W, all compounds	3E4 St wall (4E4)	1E5 -	5E-5 -	2E-7 -	- 6E-4	- 6E-3
33	Arsenic-702	W, all compounds	1E4	5E4	2E-5	7E-8	2E-4	2E-3
33	Arsenic-71	W, all compounds	4E3	5E3	2E-6	6E-9	5E-5	5E-4
33	Arsenic-72	W, all compounds	9E2	1E3	6E-7	2E-9	1E-5	1E-4
33	Arsenic-73	W, all compounds	8E3	2E3	7E-7	2E-9	1E-4	1E-3
33	Arsenic-74	W, all compounds	1E3	8E2	3E-7	1E-9	2E-5	2E-4
33	Arsenic-76	W, all compounds	1E3	1E3	6E-7	2E-9	1E-5	1E-4
33	Arsenic-77	W, all compounds	4E3 LLI wall (5E3)	5E3 -	2E-6 -	7E-9 -	- 6E-5	- 6E-4
33	Arsenic-782	W, all compounds	8E3	2E4	9E-6	3E-8	1E-4	1E-3
34	Selenium-702	D, all compounds except those given for W	2E4	4E4	2E-5	5E-8	1E-4	1E-3
		W, oxides, hydroxides, carbides, and elemental Se	1E4	4E4	2E-5	6E-8	-	-
34	Selenium-73m2	D, see 70Se	6E4	2E5	6E-5	2E-7	4E-4	4E-3
		W, see 70Se	3E4	1E5	6E-5	2E-7	-	-
34	Selenium-73	D, see 70Se	3E3	1E4	5E-6	2E-8	4E-5	4E-4
		W, see 70Se	-	2E4	7E-6	2E-8	-	-
34	Selenium-75	D, see 70Se	5E2	7E2	3E-7	1E-9	7E-6	7E-5
		W, see 70Se	-	6E2	3E-7	8E-10	-	-
34	Selenium-79	D, see 70Se	6E2	8E2	3E-7	1E-9	8E-6	8E-5
		W, see 70Se	-	6E2	2E-7	8E-10	-	-
34	Selenium-81m2	D, see 70Se	4E4	7E4	3E-5	9E-8	3E-4	3E-3
		W, see 70Se	2E4	7E4	3E-5	1E-7	-	-
34	Selenium-812	D, see 70Se	6E4	2E5 -	9E-5	3E-7	-	-

			St wall (8E4)		-	-	1E-3	1E-2
		W, see 70Se	-	2E5	1E-4	3E-7	-	-
34	Selenium-832	D, see 70Se	4E4	1E5	5E-5	2E-7	4E-4	4E-3
		W, see 70Se	3E4	1E5	5E-5	2E-7	-	-
35	Bromine-74m2	D, bromides of H, Li, Na, K, Rb, Cs,	1E4	4E4	2E-5	5E-8	-	-
			St wall					
		and Fr	(2E4)	-	-	-	3E-4	3E-3
		W, bromides of lanthanides, Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, In, Tl, Ge, Sn, Pb, As, Sb, Bi, Fe, Ru, Os, Co, Rh, Ir, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, Hf, V, Nb, Ta, Mn, Tc, and Re	-	4E4	2E-5	6E-8	-	-
35	Bromine-742	D, see 74mBr	2E4	7E4 -	3E-5	1E-7	-	-
			St wall (4E4)		-	-	5E-4	5E-3
		W, see 74mBr	-	8E4	4E-5	1E-7	-	-
35	Bromine-752	D, see 74mBr	3E4	5E4 -	2E-5	7E-8	-	-
			St wall (4E4)		-	-	5E-4	5E-3
		W, see 74mBr	-	5E4	2E-5	7E-8	-	-
35	Bromine-76	D, see 74mBr	4E3	5E3	2E-6	7E-9	5E-5	5E-4
		W, see 74mBr	-	4E3	2E-6	6E-9	-	-
35	Bromine-77	D, see 74mBr	2E4	2E4	1E-5	3E-8	2E-4	2E-3
		W, see 74mBr	-	2E4	8E-6	3E-8	-	-
35	Bromine-80m	D, see 74mBr	2E4	2E4	7E-6	2E-8	3E-4	3E-3
		W, see 74mBr	-	1E4	6E-6	2E-8	-	-
35	Bromine-802	D, see 74mBr	5E4	2E5 -	8E-5	3E-7	-	-
			St wall (9E4)		-	-	1E-3	1E-2
		W, see 74mBr	-	2E5	9E-5	3E-7	-	-
35	Bromine-82	D, see 74mBr	3E3	4E3	2E-6	6E-9	4E-5	4E-4
		W, see 74mBr	-	4E3	2E-6	5E-9	-	-
35	Bromine-83	D, see 74mBr	5E4	6E4 -	3E-5	9E-8	-	-
			St wall (7E4)		-	-	9E-4	9E-3
		W, see 74mBr	-	6E4	3E-5	9E-8	-	-
35	Bromine-842	D, see 74mBr	2E4	6E4 -	2E-5	8E-8	-	-
			St wall (3E4)		-	-	4E-4	4E-3

		W, see 74mBr	-	6E4	3E-5	9E-8	-	-
36	Krypton-742	Submersion1	-	-	3E-6	1E-8	-	-
36	Krypton-76	Submersion1	-	-	9E-6	4E-8	-	-
36	Krypton-772	Submersion1	-	-	4E-6	2E-8	-	-
36	Krypton-79	Submersion1	-	-	2E-5	7E-8	-	-
36	Krypton-81	Submersion1	-	-	7E-4	3E-6	-	-
36	Krypton-83m2	Submersion1	-	-	1E-2	5E-5	-	-
36	Krypton-85m	Submersion1	-	-	2E-5	1E-7	-	-
36	Krypton-85	Submersion1	-	-	1E-4	7E-7	-	-
36	Krypton-872	Submersion1	-	-	5E-6	2E-8	-	-
36	Krypton-88	Submersion1	-	-	2E-6	9E-9	-	-
37	Rubidium-792	D, all compounds	4E4 St wall (6E4)	1E5 -	5E-5 -	2E-7 -	- 8E-4	- 8E-3
37	Rubidium-81m2	D, all compounds	2E5 St wall (3E5)	3E5 -	1E-4 -	5E-7 -	- 4E-3	- 4E-2
37	Rubidium-81	D, all compounds	4E4	5E4	2E-5	7E-8	5E-4	5E-3
37	Rubidium-82m	D, all compounds	1E4	2E4	7E-6	2E-8	2E-4	2E-3
37	Rubidium-83	D, all compounds	6E2	1E3	4E-7	1E-9	9E-6	9E-5
37	Rubidium-84	D, all compounds	5E2	8E2	3E-7	1E-9	7E-6	7E-5
37	Rubidium-86	D, all compounds	5E2	8E2	3E-7	1E-9	7E-6	7E-5
37	Rubidium-87	D, all compounds	1E3	2E3	6E-7	2E-9	1E-5	1E-4
37	Rubidium-882	D, all compounds	2E4 St wall (3E4)	6E4 -	3E-5 -	9E-8 -	- 4E-4	- 4E-3
37	Rubidium-892	D, all compounds	4E4 St wall (6E4)	1E5 -	6E-5 -	2E-7 -	- 9E-4	- 9E-3
38	Strontium-802	D, all soluble compounds except SrTiO	4E3	1E4	5E-6	2E-8	6E-5	6E-4
		Y, all insoluble compounds and SrTiO	-	1E4	5E-6	2E-8	-	-
38	Strontium-812	D, see 80Sr	3E4	8E4	3E-5	1E-7	3E-4	3E-3
		Y, see 80Sr	2E4	8E4	3E-5	1E-7	-	-
38	Strontium-82	D, see 80Sr	3E2 LLI wall (2E2)	4E2 -	2E-7 -	6E-1 0 -	- 3E-6	- 3E-5
		Y, see 80Sr	2E2	9E1	4E-8	1E-10	-	-
38	Strontium-83	D, see 80Sr	3E3	7E3	3E-6	1E-8	3E-5	3E-4
		Y, see 80Sr	2E3	4E3	1E-6	5E-9	-	-
38	Strontium-85m2	D, see 80Sr	2E5	6E5	3E-4	9E-7	3E-3	3E-2
		Y, see 80Sr	-	8E5	4E-4	1E-6	-	-
38	Strontium-85	D, see 80Sr	3E3	3E3	1E-6	4E-9	4E-5	4E-4

		Y, see 80Sr	-	2E3	6E-7	2E-9	-	-
38	Strontium-87m	D, see 80Sr	5E4	1E5	5E-5	2E-7	6E-4	6E-3
		Y, see 80Sr	4E4	2E5	6E-5	2E-7	-	-
38	Strontium-89	D, see 80Sr	6E2 LLI wall (6E2)	8E2 -	4E-7 -	1E-9 -	- 8E-6	- 8E-5
		Y, see 80Sr	5E2	1E2	6E-8	2E-10	-	-
38	Strontium-90	D, see 80Sr	3E1 Bone surf (4E1)	2E1 Bone surf (2E1)	8E-9 -	- 3E-11	- 5E-7	- 5E-6
		Y, see 80Sr	-	4E0	2E-9	6E-12	-	-
38	Strontium-91	D, see 80Sr	2E3	6E3	2E-6	8E-9	2E-5	2E-4
		Y, see 80Sr	-	4E3	1E-6	5E-9	-	-
38	Strontium-92	D, see 80Sr	3E3	9E3	4E-6	1E-8	4E-5	4E-4
		Y, see 80Sr	-	7E3	3E-6	9E-9	-	-
39	Yttrium-86m2	W, all compounds except those given for Y	2E4	6E4	2E-5	8E-8	3E-4	3E-3
		Y, oxides and hydroxides	-	5E4	2E-5	8E-8	-	-
39	Yttrium-86	W, see 86mY	1E3	3E3	1E-6	5E-9	2E-5	2E-4
		Y, see 86mY	-	3E3	1E-6	5E-9	-	-
39	Yttrium-87	W, see 86mY	2E3	3E3	1E-6	5E-9	3E-5	3E-4
		Y, see 86mY	-	3E3	1E-6	5E-9	-	-
39	Yttrium-88	W, see 86mY	1E3	3E2	1E-7	3E-10	1E-5	1E-4
		Y, see 86mY	-	2E2	1E-7	3E-10	-	-
39	Yttrium-90m	W, see 86mY	8E3	1E4	5E-6	2E-8	1E-4	1E-3
		Y, see 86mY	-	1E4	5E-6	2E-8	-	-
39	Yttrium-90	W, see 86mY	4E2 LLI wall (5E2)	7E2 -	3E-7 -	9E-10 -	- 7E-6	- 7E-5
		Y, see 86mY	-	6E2	3E-7	9E-10	-	-
39	Yttrium-91m2	W, see 86mY	1E5	2E5	1E-4	3E-7	2E-3	2E-2
		Y, see 86mY	-	2E5	7E-5	2E-7	-	-
39	Yttrium-91	W, see 86mY	5E2 LLI wall (6E2)	2E2 -	7E-8 -	2E-10 -	- 8E-6	- 8E-5
		Y, see 86mY	-	1E2	5E-8	2E-10	-	-
39	Yttrium-92	W, see 86mY	3E3	9E3	4E-6	1E-8	4E-5	4E-4
		Y, see 86mY	-	8E3	3E-6	1E-8	-	-
39	Yttrium-93	W, see 86mY	1E3	3E3	1E-6	4E-9	2E-5	2E-4
		Y, see 86mY	-	2E3	1E-6	3E-9	-	-

39	Yttrium-942	W, see 86mY	2E4 St wall (3E4)	8E4 -	3E-5 -	1E-7 -	4E-4	4E-3
		Y, see 86mY	-	8E4	3E-5	1E-7	-	-
39	Yttrium-952	W, see 86mY	4E4 St wall (5E4)	2E5 -	6E-5 -	2E-7 -	7E-4	7E-3
		Y, see 86mY	-	1E5	6E-5	2E-7	-	-
40	Zirconium-86	D, all compounds except those given for W and Y	1E3	4E3	2E-6	6E-9	2E-5	2E-4
		W, oxides, hydroxides, halides, and nitrates	-	3E3	1E-6	4E-9	-	-
		Y, carbide	-	2E3	1E-6	3E-9	-	-
40	Zirconium-88	D, see 86Zr	4E3	2E2	9E-8	3E-10	5E-5	5E-4
		W, see 86Zr	-	5E2	2E-7	7E-10	-	-
		Y, see 86Zr	-	3E2	1E-7	4E-10	-	-
40	Zirconium-89	D, see 86Zr	2E3	4E3	1E-6	5E-9	2E-5	2E-4
		W, see 86Zr	-	2E3	1E-6	3E-9	-	-
		Y, see 86Zr	-	2E3	1E-6	3E-9	-	-
40	Zirconium-93	D, see 86Zr	1E3 Bone surf (3E3)	6E0 Bone surf (2E1)	3E-9 -	- 2E-11	4E-5	4E-4
		W, see 86Zr	-	2E1 Bone surf (6E1)	1E-8 -	- 9E-11	-	-
		Y, see 86Zr	-	6E1 Bone surf (7E1)	2E-8 -	- 9E-11	-	-
40	Zirconium-95	D, see 86Zr	1E3 -	1E2 Bone surf (3E2)	5E-8 -	- 4E-10	2E-5 -	2E-4 -
		W, see 86Zr	-	4E2	2E-7	5E-10	-	-
		Y, see 86Zr	-	3E2	1E-7	4E-10	-	-
40	Zirconium-97	D, see 86Zr	6E2	2E3	8E-7	3E-9	9E-6	9E-5
		W, see 86Zr	-	1E3	6E-7	2E-9	-	-
		Y, see 86Zr	-	1E3	5E-7	2E-9	-	-
41	Niobium-882	W, all compounds	5E4	2E5	9E-5	3E-7	-	-

		except those given for Y	St wall (7E4)	-	-	-	1E-3	1E-2
		Y, oxides and hydroxides	-	2E5	9E-5	3E-7	-	-
41	Niobium-892 (66 min)	W, see 88Nb	1E4	4E4	2E-5	6E-8	1E-4	1E-3
		Y, see 88Nb	-	4E4	2E-5	5E-8	-	-
41	Niobium-89 (122 min)	W, see 88Nb	5E3	2E4	8E-6	3E-8	7E-5	7E-4
		Y, see 88Nb	-	2E4	6E-6	2E-8	-	-
41	Niobium-90	W, see 88Nb	1E3	3E3	1E-6	4E-9	1E-5	1E-4
		Y, see 88Nb	-	2E3	1E-6	3E-9	-	-
41	Niobium-93m	W, see 88Nb	9E3	2E3	8E-7	3E-9	-	-
			LLI wall (1E4)	-	-	-	2E-4	2E-3
		Y, see 88Nb	-	2E2	7E-8	2E-10	-	-
41	Niobium-94	W, see 88Nb	9E2	2E2	8E-8	3E-10	1E-5	1E-4
		Y, see 88Nb	-	2E1	6E-9	2E-11	-	-
41	Niobium-95m	W, see 88Nb	2E3	3E3 -	1E-6	4E-9	-	-
			LLI wall (2E3)		-	-	3E-5	3E-4
		Y, see 88Nb	-	2E3	9E-7	3E-9	-	-
41	Niobium-95	W, see 88Nb	2E3	1E3	5E-7	2E-9	3E-5	3E-4
		Y, see 88Nb	-	1E3	5E-7	2E-9	-	-
41	Niobium-96	W, see 88Nb	1E3	3E3	1E-6	4E-9	2E-5	2E-4
		Y, see 88Nb	-	2E3	1E-6	3E-9	-	-
41	Niobium-972	W, see 88Nb	2E4	8E4	3E-5	1E-7	3E-4	3E-3
		Y, see 88Nb	-	7E4	3E-5	1E-7	-	-
41	Niobium-982	W, see 88Nb	1E4	5E4	2E-5	8E-8	2E-4	2E-3
		Y, see 88Nb	-	5E4	2E-5	7E-8	-	-
42	Molybdenum-90	D, all compounds except those given for Y	4E3	7E3	3E-6	1E-8	3E-5	3E-4
		Y, oxides, hydroxides, and MoS	2E3	5E3	2E-6	6E-9	-	-
42	Molybdenum-93m	D, see 90Mo	9E3	2E4	7E-6	2E-8	6E-5	6E-4
		Y, see 90Mo	4E3	1E4	6E-6	2E-8	-	-
42	Molybdenum-93	D, see 90Mo	4E3	5E3	2E-6	8E-9	5E-5	5E-4
		Y, see 90Mo	2E4	2E2	8E-8	2E-10	-	-
42	Molybdenum-99	D, see 90Mo	2E3	3E3 -	1E-6	4E-9	-	-
			LLI wall (1E3)		-	-	2E-5	2E-4
		Y, see 90Mo	1E3	1E3	6E-7	2E-9	-	-
42	Molybdenum-1012	D, see 90Mo	4E4	1E5 -	6E-5	2E-7	-	-
			St wall (5E4)		-	-	7E-4	7E-3

		Y, see 90Mo	-	1E5	6E-5	2E-7	-	-
43	Technetium-93m2	D, all compounds except those given for W	7E4	2E5	6E-5	2E-7	1E-3	1E-2
		W, oxides, hydroxides, halides, and nitrates	-	3E5	1E-4	4E-7	-	-
43	Technetium-93	D, see 93mTc	3E4	7E4	3E-5	1E-7	4E-4	4E-3
		W, see 93mTc	-	1E5	4E-5	1E-7	-	-
43	Technetium-94m2	D, see 93mTc	2E4	4E4	2E-5	6E-8	3E-4	3E-3
		W, see 93mTc	-	6E4	2E-5	8E-8	-	-
43	Technetium-94	D, see 93mTc	9E3	2E4	8E-6	3E-8	1E-4	1E-3
		W, see 93mTc	-	2E4	1E-5	3E-8	-	-
43	Technetium-95m	D, see 93mTc	4E3	5E3	2E-6	8E-9	5E-5	5E-4
		W, see 93mTc	-	2E3	8E-7	3E-9	-	-
43	Technetium-95	D, see 93mTc	1E4	2E4	9E-6	3E-8	1E-4	1E-3
		W, see 93mTc	-	2E4	8E-6	3E-8	-	-
43	Technetium-96m2	D, see 93mTc	2E5	3E5	1E-4	4E-7	2E-3	2E-2
		W, see 93mTc	-	2E5	1E-4	3E-7	-	-
43	Technetium-96	D, see 93mTc	2E3	3E3	1E-6	5E-9	3E-5	3E-4
		W, see 93mTc	-	2E3	9E-7	3E-9	-	-
43	Technetium-97m	D, see 93mTc	5E3 St wall -	7E3 (7E3)	3E-6 -	- 1E-8	6E-5 -	6E-4 -
		W, see 93mTc	-	1E3	5E-7	2E-9	-	-
43	Technetium-97	D, see 93mTc	4E4	5E4	2E-5	7E-8	5E-4	5E-3
		W, see 93mTc	-	6E3	2E-6	8E-9	-	-
43	Technetium-98	D, see 93mTc	1E3	2E3	7E-7	2E-9	1E-5	1E-4
		W, see 93mTc	-	3E2	1E-7	4E-10	-	-
43	Technetium-99m	D, see 93mTc	8E4	2E5	6E-5	2E-7	1E-3	1E-2
		W, see 93mTc	-	2E5	1E-4	3E-7	-	-
43	Technetium-99	D, see 93mTc	4E3 -	5E3 St wall (6E3)	2E-6 -	- 8E-9	6E-5 -	6E-4 -
		W, see 93mTc	-	7E2	3E-7	9E-10	-	-
43	Technetium-1012	D, see 93mTc	9E4 St wall (1E5)	3E5 -	1E-4 -	5E-7 -	- 2E-3	- 2E-2
		W, see 93mTc	-	4E5	2E-4	5E-7	-	-
43	Technetium-1042	D, see 93mTc	2E4 St wall (3E4)	7E4 -	3E-5 -	1E-7 -	- 4E-4	- 4E-3
		W, see 93mTc	-	9E4	4E-5	1E-7	-	-
44	Ruthenium-942	D, all compounds except those given for W and Y	2E4	4E4	2E-5	6E-8	2E-4	2E-3
		W, halides	-	6E4	3E-5	9E-8	-	-
		Y, oxides and hydroxides	-	6E4	2E-5	8E-8	-	-

44	Ruthenium-97	D, see 94Ru	8E3	2E4	8E-6	3E-8	1E-4	1E-3
		W, see 94Ru	-	1E4	5E-6	2E-8	-	-
		Y, see 94Ru	-	1E4	5E-6	2E-8	-	-
44	Ruthenium-103	D, see 94Ru	2E3	2E3	7E-7	2E-9	3E-5	3E-4
		W, see 94Ru	-	1E3	4E-7	1E-9	-	-
		Y, see 94Ru	-	6E2	3E-7	9E-10	-	-
44	Ruthenium-105	D, see 94Ru	5E3	1E4	6E-6	2E-8	7E-5	7E-4
		W, see 94Ru	-	1E4	6E-6	2E-8	-	-
		Y, see 94Ru	-	1E4	5E-6	2E-8	-	-
44	Ruthenium-106	D, see 94Ru	2E2 LLI wall (2E2)	9E1 -	4E-8 -	1E-10 -	3E-6	3E-5
		W, see 94Ru	-	5E1	2E-8	8E-11	-	-
		Y, see 94Ru	-	1E1	5E-9	2E-11	-	-
45	Rhodium-99m	D, all compounds except those given for W and Y	2E4	6E4	2E-5	8E-8	2E-4	2E-3
		W, halides	-	8E4	3E-5	1E-7	-	-
		Y, oxides and hydroxides	-	7E4	3E-5	9E-8	-	-
45	Rhodium-99	D, see 99mRh	2E3	3E3	1E-6	4E-9	3E-5	3E-4
		W, see 99mRh	-	2E3	9E-7	3E-9	-	-
		Y, see 99mRh	-	2E3	8E-7	3E-9	-	-
45	Rhodium-100	D, see 99mRh	2E3	5E3	2E-6	7E-9	2E-5	2E-4
		W, see 99mRh	-	4E3	2E-6	6E-9	-	-
		Y, see 99mRh	-	4E3	2E-6	5E-9	-	-
45	Rhodium-101m	D, see 99mRh	6E3	1E4	5E-6	2E-8	8E-5	8E-4
		W, see 99mRh	-	8E3	4E-6	1E-8	-	-
		Y, see 99mRh	-	8E3	3E-6	1E-8	-	-
45	Rhodium-101	D, see 99mRh	2E3	5E2	2E-7	7E-10	3E-5	3E-4
		W, see 99mRh	-	8E2	3E-7	1E-9	-	-
		Y, see 99mRh	-	2E2	6E-8	2E-10	-	-
45	Rhodium-102m	D, see 99mRh	1E3 LLI wall (1E3)	5E2 -	2E-7 -	7E-10 -	2E-5	2E-4
		W, see 99mRh	-	4E2	2E-7	5E-10	-	-
		Y, see 99mRh	-	1E2	5E-8	2E-10	-	-
45	Rhodium-102	D, see 99mRh	6E2	9E1	4E-8	1E-10	8E-6	8E-5
		W, see 99mRh	-	2E2	7E-8	2E-10	-	-
		Y, see 99mRh	-	6E1	2E-8	8E-11	-	-

45	Rhodium-103m2	D, see 99mRh	4E5	1E6	5E-4	2E-6	6E-3	6E-2
		W, see 99mRh	-	1E6	5E-4	2E-6	-	-
		Y, see 99mRh	-	1E6	5E-4	2E-6	-	-
45	Rhodium-105	D, see 99mRh	4E3 LLI wall (4E3)	1E4 -	5E-6 -	2E-8 -	- 5E-5	- 5E-4
		W, see 99mRh	-	6E3	3E-6	9E-9	-	-
		Y, see 99mRh	-	6E3	2E-6	8E-9	-	-
45	Rhodium-106m	D, see 99mRh	8E3	3E4	1E-5	4E-8	1E-4	1E-3
		W, see 99mRh	-	4E4	2E-5	5E-8	-	-
		Y, see 99mRh	-	4E4	1E-5	5E-8	-	-
45	Rhodium-1072	D, see 99mRh	7E4 St wall (9E4)	2E5 -	1E-4 -	3E-7 -	- 1E-3	- 1E-2
		W, see 99mRh	-	3E5	1E-4	4E-7	-	-
		Y, see 99mRh	-	3E5	1E-4	3E-7	-	-
46	Palladium-100	D, all compounds except those given for W and Y	1E3	1E3	6E-7	2E-9	2E-5	2E-4
		W, nitrates	-	1E3	5E-7	2E-9	-	-
		Y, oxides and hydroxides	-	1E3	6E-7	2E-9	-	-
46	Palladium-101	D, see 100Pd	1E4	3E4	1E-5	5E-8	2E-4	2E-3
		W, see 100Pd	-	3E4	1E-5	5E-8	-	-
		Y, see 100Pd	-	3E4	1E-5	4E-8	-	-
46	Palladium-103	D, see 100Pd	6E3 LLI wall (7E3)	6E3 -	3E-6 -	9E-9 -	- 1E-4	- 1E-3
		W, see 100Pd	-	4E3	2E-6	6E-9	-	-
		Y, see 100Pd	-	4E3	1E-6	5E-9	-	-
46	Palladium-107	D, see 100Pd	3E4 LLI wall (4E4)	2E4 Kid-neys (2E4)	9E-6 -	- 3E-8	- 5E-4	- 5E-3
		W, see 100Pd	-	7E3	3E-6	1E-8	-	-
		Y, see 100Pd	-	4E2	2E-7	6E-10	-	-
46	Palladium-109	D, see 100Pd	2E3	6E3	3E-6	9E-9	3E-5	3E-4
		W, see 100Pd	-	5E3	2E-6	8E-9	-	-
		Y, see 100Pd	-	5E3	2E-6	6E-9	-	-
47	Silver-1022	D, all compounds except those given for W and Y	5E4 St wall (6E4)	2E5 -	8E-5 -	2E-7 -	- 9E-4	- 9E-3
		W, nitrates and sulfides	-	2E5	9E-5	3E-7	-	-
		Y, oxides and hydroxides	-	2E5	8E-5	3E-7	-	-
47	Silver-1032	D, see 102Ag	4E4	1E5	4E-5	1E-7	5E-4	5E-3
		W, see 102Ag	-	1E5	5E-5	2E-7	-	-

		Y, see 102Ag	-	1E5	5E-5	2E-7	-	-
47	Silver-104m2	D, see 102Ag	3E4	9E4	4E-5	1E-7	4E-4	4E-3
		W, see 102Ag	-	1E5	5E-5	2E-7	-	-
		Y, see 102Ag	-	1E5	5E-5	2E-7	-	-
47	Silver-1042	D, see 102Ag	2E4	7E4	3E-5	1E-7	3E-4	3E-3
		W, see 102Ag	-	1E5	6E-5	2E-7	-	-
		Y, see 102Ag	-	1E5	6E-5	2E-7	-	-
47	Silver-105	D, see 102Ag	3E3	1E3	4E-7	1E-9	4E-5	4E-4
		W, see 102Ag	-	2E3	7E-7	2E-9	-	-
		Y, see 102Ag	-	2E3	7E-7	2E-9	-	-
47	Silver-106m	D, see 102Ag	8E2	7E2	3E-7	1E-9	1E-5	1E-4
		W, see 102Ag	-	9E2	4E-7	1E-9	-	-
		Y, see 102Ag	-	9E2	4E-7	1E-9	-	-
47	Silver-1062	D, see 102Ag	6E4 St wall (6E4)	2E5 -	8E-5 -	3E-7 -	- 9E-4	- 9E-3
		W, see 102Ag	-	2E5	9E-5	3E-7	-	-
		Y, see 102Ag	-	2E5	8E-5	3E-7	-	-
47	Silver-108m	D, see 102Ag	6E2	2E2	8E-8	3E-10	9E-6	9E-5
		W, see 102Ag	-	3E2	1E-7	4E-10	-	-
		Y, see 102Ag	-	2E1	1E-8	3E-11	-	-
47	Silver-110m	D, see 102Ag	5E2	1E2	5E-8	2E-10	6E-6	6E-5
		W, see 102Ag	-	2E2	8E-8	3E-10	-	-
		Y, see 102Ag	-	9E1	4E-8	1E-10	-	-
47	Silver-111	D, see 102Ag	9E2 LLI wall (1E3)	2E3 Liver (2E3)	6E-7 -	- 2E-9	- 2E-5	- 2E-4
		W, see 102Ag	-	9E2	4E-7	1E-9	-	-
		Y, see 102Ag	-	9E2	4E-7	1E-9	-	-
47	Silver-112	D, see 102Ag	3E3	8E3	3E-6	1E-8	4E-5	4E-4
		W, see 102Ag	-	1E4	4E-6	1E-8	-	-
		Y, see 102Ag	-	9E3	4E-6	1E-8	-	-
47	Silver-1152	D, see 102Ag	3E4 St wall (3E4)	9E4 -	4E-5 -	1E-7 -	- 4E-4	- 4E-3
		W, see 102Ag	-	9E4	4E-5	1E-7	-	-
		Y, see 102Ag	-	8E4	3E-5	1E-7	-	-
48	Cadmium-1042	D, all compounds except those given for W and Y	2E4	7E4	3E-5	9E-8	3E-4	3E-3
		W, sulfides, halides, and nitrates	-	1E5	5E-5	2E-7	-	-
		Y, oxides and hydroxides	-	1E5	5E-5	2E-7	-	-

48	Cadmium-107	D, see 104Cd	2E4	5E4	2E-5	8E-8	3E-4	3E-3
		W, see 104Cd	-	6E4	2E-5	8E-8	-	-
		Y, see 104Cd	-	5E4	2E-5	7E-8	-	-
48	Cadmium-109	D, see 104Cd	3E2 Kidneys (4E2)	4E1 Kidneys (5E1)	1E-8 -	- 7E-11	- 6E-6	- 6E-5
		W, see 104Cd	- -	1E2 Kidneys (1E2)	5E-8 -	- 2E-10	- -	- -
		Y, see 104Cd	-	1E2	5E-8	2E-10	-	-
48	Cadmium-113m	D, see 104Cd	2E1 Kidneys (4E1)	2E0 Kidneys (4E0)	1E-9 -	- 5E-12	- 5E-7	- 5E-6
		W, see 104Cd	- -	8E0 Kidneys (1E1)	4E-9 -	- 2E-11	- -	- -
		Y, see 104Cd	-	1E1	5E-9	2E-11	-	-
48	Cadmium-113	D, see 104Cd	2E1 Kidneys (3E1)	2E0 Kidneys (3E0)	9E-10 -	- 5E-12	- 4E-7	- 4E-6
		W, see 104Cd	- -	8E0 Kidneys (1E1)	3E-9 -	- 2E-11	- -	- -
		Y, see 104Cd	-	1E1	6E-9	2E-11	-	-
48	Cadmium-115m	D, see 104Cd	3E2 -	5E1 Kidneys (8E1)	2E-8 -	- 1E-10	4E-6 -	4E-5 -
		W, see 104Cd	-	1E2	5E-8	2E-10	-	-
		Y, see 104Cd	-	1E2	6E-8	2E-10	-	-
48	Cadmium-117m	D, see 104Cd	5E3	1E4	5E-6	2E-8	6E-5	6E-4
		W, see 104Cd	-	2E4	7E-6	2E-8	-	-
		Y, see 104Cd	-	1E4	6E-6	2E-8	-	-
48	Cadmium-117	D, see 104Cd	5E3	1E4	5E-6	2E-8	6E-5	6E-4
		W, see 104Cd	-	2E4	7E-6	2E-8	-	-
		Y, see 104Cd	-	1E4	6E-6	2E-8	-	-
49	Indium-109	D, all compounds except those given for W	2E4	4E4	2E-5	6E-8	3E-4	3E-3
		W, oxides, hydroxides, halides,	-	6E4	3E-5	9E-8	-	-

		and nitrates						
49	Indium-1102 (69.1 min)	D, see 109In	2E4	4E4	2E-5	6E-8	2E-4	2E-3
		W, see 109In	-	6E4	2E-5	8E-8	-	-
49	Indium-110(4.9 h)	D, see 109In	5E3	2E4	7E-6	2E-8	7E-5	7E-4
		W, see 109In	-	2E4	8E-6	3E-8	-	-
49	Indium-111	D, see 109In	4E3	6E3	3E-6	9E-9	6E-5	6E-4
		W, see 109In	-	6E3	3E-6	9E-9	-	-
49	Indium-112	D, see 109In	2E5	6E5	3E-4	9E-7	2E-3	2E-2
		W, see 109In	-	7E5	3E-4	1E-6	-	-
49	Indium-113m2	D, see 109In	5E4	1E5	6E-5	2E-7	7E-4	7E-3
		W, see 109In	-	2E5	8E-5	3E-7	-	-
49	Indium-114m	D, see 109In	3E2 LLI wall (4E2)	6E1 -	3E-8 -	9E-1 1 -	- 5E-6	- 5E-5
		W, see 109In	-	1E2	4E-8	1E-10	-	-
49	Indium-115m	D, see 109In	1E4	4E4	2E-5	6E-8	2E-4	2E-3
		W, see 109In	-	5E4	2E-5	7E-8	-	-
49	Indium-115	D, see 109In	4E1	1E0	6E-10	2E-12	5E-7	5E-6
		W, see 109In	-	5E0	2E-9	8E-12	-	-
49	Indium-116m2	D, see 109In	2E4	8E4	3E-5	1E-7	3E-4	3E-3
		W, see 109In	-	1E5	5E-5	2E-7	-	-
49	Indium-117m2	D, see 109In	1E4	3E4	1E-5	5E-8	2E-4	2E-3
		W, see 109In	-	4E4	2E-5	6E-8	-	-
49	Indium-1172	D, see 109In	6E4	2E5	7E-5	2E-7	8E-4	8E-3
		W, see 109In	-	2E5	9E-5	3E-7	-	-
49	Indium-119m2	D, see 109In	4E4 St wall (5E4)	1E5 -	5E-5 -	2E-7 -	- 7E-4	- 7E-3
		W, see 109In	-	1E5	6E-5	2E-7	-	-
50	Tin-110	D, all compounds except those given for W	4E3	1E4	5E-6	2E-8	5E-5	5E-4
		W, sulfides, oxides, hydroxides, halides, nitrates, and stannic phosphate	-	1E4	5E-6	2E-8	-	-
50	Tin-1112	D, see 110Sn	7E4	2E5	9E-5	3E-7	1E-3	-
		W, see 110Sn	-	3E5	1E-4	4E-7	-	-
50	Tin-113	D, see 110Sn	2E3 LLI wall (2E3)	1E3 -	5E-7 -	2E-9 -	- 3E-5	- 3E-4
		W, see 110Sn	-	5E2	2E-7	8E-10	-	-
50	Tin-117m	D, see 110Sn	2E3 LLI wall	1E3 Bone surf	5E-7 -	- 3E-9	- 3E-5	- 3E-4

			(2E3)	(2E3)				
		W, see 110Sn	-	1E3	6E-7	2E-9	-	-
50	Tin-119m	D, see 110Sn	3E3	2E3 - LLI wall (4E3)	1E-6 -	3E-9 -	- 6E-5	- 6E-4
		W, see 110Sn	-	1E3	4E-7	1E-9	-	-
50	Tin-121m	D, see 110Sn	3E3	9E2 - LLI wall (4E3)	4E-7 -	1E-9 -	- 5E-5	- 5E-4
		W, see 110Sn	-	5E2	2E-7	8E-10	-	-
50	Tin-121	D, see 110Sn	6E3	2E4 - LLI wall (6E3)	6E-6 -	2E-8 -	- 8E-5	- 8E-4
		W, see 110Sn	-	1E4	5E-6	2E-8	-	-
50	Tin-123m2	D, see 110Sn	5E4	1E5	5E-5	2E-7	7E-4	7E-3
		W, see 110Sn	-	1E5	6E-5	2E-7	-	-
50	Tin-123	D, see 110Sn	5E2	6E2 - LLI wall (6E2)	3E-7 -	9E-10 -	- 9E-6	- 9E-5
		W, see 110Sn	-	2E2	7E-8	2E-10	-	-
50	Tin-125	D, see 110Sn	4E2	9E2 - LLI wall (5E2)	4E-7 -	1E-9 -	- 6E-6	- 6E-5
		W, see 110Sn	-	4E2	1E-7	5E-10	-	-
50	Tin-126	D, see 110Sn	3E2	6E1	2E-8	8E-11	4E-6	4E-5
		W, see 110Sn	-	7E1	3E-8	9E-11	-	-
50	Tin-127	D, see 110Sn	7E3	2E4	8E-6	3E-8	9E-5	9E-4
		W, see 110Sn	-	2E4	8E-6	3E-8	-	-
50	Tin-1282	D, see 110Sn	9E3	3E4	1E-5	4E-8	1E-4	1E-3
		W, see 110Sn	-	4E4	1E-5	5E-8	-	-
51	Antimony-1152	D, all compounds except those given for W	8E4	2E5	1E-4	3E-7	1E-3	1E-2
		W, oxides, hydroxides, halides, sulfides, sulfates, and nitrates	-	3E5	1E-4	4E-7	-	-
51	Antimony-116m2	D, see 115Sb	2E4	7E4	3E-5	1E-7	3E-4	3E-3
		W, see 115Sb	-	1E5	6E-5	2E-7	-	-
51	Antimony-1162	D, see 115Sb	7E4	3E5 - St wall (9E4)	1E-4 -	4E-7 -	- 1E-3	- 1E-2

		W, see 115Sb	-	3E5	1E-4	5E-7	-	-
51	Antimony-117	D, see 115Sb	7E4	2E5	9E-5	3E-7	9E-4	9E-3
		W, see 115Sb	-	3E5	1E-4	4E-7	-	-
51	Antimony-118m	D, see 115Sb	6E3	2E4	8E-6	3E-8	7E-5	7E-4
		W, see 115Sb	5E3	2E4	9E-6	3E-8	-	-
51	Antimony-119	D, see 115Sb	2E4	5E4	2E-5	6E-8	2E-4	2E-3
		W, see 115Sb	2E4	3E4	1E-5	4E-8	-	-
51	Antimony-1202 (16 min)	D, see 115Sb	1E5 St wall (2E5)	4E5 -	2E-4 -	6E-7 -	- 2E-3	- 2E-2
		W, see 115Sb	-	5E5	2E-4	7E-7	-	-
51	Antimony-120 (5.76 d)	D, see 115Sb	1E3	2E3	9E-7	3E-9	1E-5	1E-4
		W, see 115Sb	9E2	1E3	5E-7	2E-9	-	-
51	Antimony-122	D, see 115Sb	8E2 LLI wall (8E2)	2E3 -	1E-6 -	3E-9 -	- 1E-5	- 1E-4
		W, see 115Sb	7E2	1E3	4E-7	2E-9	-	-
51	Antimony-124m2	D, see 115Sb	3E5	8E5	4E-4	1E-6	3E-3	3E-2
		W, see 115Sb	2E5	6E5	2E-4	8E-7	-	-
51	Antimony-124	D, see 115Sb	6E2	9E2	4E-7	1E-9	7E-6	7E-5
		W, see 115Sb	5E2	2E2	1E-7	3E-10	-	-
51	Antimony-125	D, see 115Sb	2E3	2E3	1E-6	3E-9	3E-5	3E-4
		W, see 115Sb	-	5E2	2E-7	7E-10	-	-
51	Antimony-126m2	D, see 115Sb	5E4 St wall (7E4)	2E5 -	8E-5 -	3E-7 -	- 9E-4	- 9E-3
		W, see 115Sb	-	2E5	8E-5	3E-7	-	-
51	Antimony-126	D, see 115Sb	6E2	1E3	5E-7	2E-9	7E-6	7E-5
		W, see 115Sb	5E2	5E2	2E-7	7E-10	-	-
51	Antimony-127	D, see 115Sb	8E2 LLI wall (8E2)	2E3 -	9E-7 -	3E-9 -	- 1E-5	- 1E-4
		W, see 115Sb	7E2	9E2	4E-7	1E-9	-	-
51	Antimony-1282 (10.4 min)	D, see 115Sb	8E4 St wall (1E5)	4E5 -	2E-4 -	5E-7 -	- 1E-3	- 1E-2
		W, see 115Sb	-	4E5	2E-4	6E-7	-	-
51	Antimony-128 (9.01 h)	D, see 115Sb	1E3	4E3	2E-6	6E-9	2E-5	2E-4
		W, see 115Sb	-	3E3	1E-6	5E-9	-	-
51	Antimony-129	D, see 115Sb	3E3	9E3	4E-6	1E-8	4E-5	4E-4
		W, see 115Sb	-	9E3	4E-6	1E-8	-	-
51	Antimony-1302	D, see 115Sb	2E4	6E4	3E-5	9E-8	3E-4	3E-3

		W, see 115Sb	-	8E4	3E-5	1E-7	-	-
51	Antimony-1312	D, see 115Sb	1E4	2E4	1E-5	-	-	-
			Thyroid (2E4)	Thyroid (4E4)	-	6E-8	2E-4	2E-3
		W, see 115Sb	-	2E4 Thyroid	1E-5	-	-	-
			-	(4E4)	-	6E-8	-	-
52	Tellurium-116	D, all compounds except those given for W	8E3	2E4	9E-6	3E-8	1E-4	1E-3
		W, oxides, hydroxides, and nitrates	-	3E4	1E-5	4E-8	-	-
52	Tellurium-121m	D, see 116Te	5E2	2E2	8E-8	-	-	-
			Bone surf (7E2)	Bone surf (4E2)	-	5E-10	1E-5	1E-4
		W, see 116Te	-	4E2	2E-7	6E-10	-	-
52	Tellurium-121	D, see 116Te	3E3	4E3	2E-6	6E-9	4E-5	4E-4
		W, see 116Te	-	3E3	1E-6	4E-9	-	-
52	Tellurium-123m	D, see 116Te	6E2	2E2	9E-8	-	-	-
			Bone surf (1E3)	Bone surf (5E2)	-	8E-10	1E-5	1E-4
		W, see 116Te	-	5E2	2E-7	8E-10	-	-
52	Tellurium-123	D, see 116Te	5E2	2E2	8E-8	-	-	-
			Bone surf (1E3)	Bone surf (5E2)	-	7E-10	2E-5	2E-4
		W, see 116Te	-	4E2 Bone surf	2E-7	-	-	-
			-	(1E3)	-	2E-9	-	-
52	Tellurium-125m	D, see 116Te	1E3	4E2	2E-7	-	-	-
			Bone surf (1E3)	Bone surf (1E3)	-	1E-9	2E-5	2E-4
		W, see 116Te	-	7E2	3E-7	1E-9	-	-
52	Tellurium-127m	D, see 116Te	6E2 -	3E2	1E-7	-	9E-6	9E-5
				Bone surf (4E2)	-	6E-10	-	-
		W, see 116Te	-	3E2	1E-7	4E-10	-	-
52	Tellurium-127	D, see 116Te	7E3	2E4	9E-6	3E-8	1E-4	1E-3
		W, see 116Te	-	2E4	7E-6	2E-8	-	-
52	Tellurium-129m	D, see 116Te	5E2	6E2	3E-7	9E-10	7E-6	7E-5

		W, see 116Te	-	2E2	1E-7	3E-10	-	-
52	Tellurium-1292	D, see 116Te	3E4	6E4	3E-5	9E-8	4E-4	4E-3
		W, see 116Te	-	7E4	3E-5	1E-7	-	-
52	Tellurium-131m	D, see 116Te	3E2 Thyroid (6E2)	4E2 Thyroid (1E3)	2E-7 -	- 2E-9	- 8E-6	- 8E-5
		W, see 116Te	-	4E2 Thyroid (9E2)	2E-7 -	- 1E-9	- -	- -
52	Tellurium-1312	D, see 116Te	3E3 Thyroid (6E3)	5E3 Thyroid (1E4)	2E-6 -	- 2E-8	- 8E-5	- 8E-4
		W, see 116Te	-	5E3 Thyroid (1E4)	2E-6 -	- 2E-8	- -	- -
52	Tellurium-132	D, see 116Te	2E2 Thyroid (7E2)	2E2 Thyroid (8E2)	9E-8 -	- 1E-9	- 9E-6	- 9E-5
		W, see 116Te	-	2E2 Thyroid (6E2)	9E-8 -	- 9E-10	- -	- -
52	Tellurium-133m2	D, see 116Te	3E3 Thyroid (6E3)	5E3 Thyroid (1E4)	2E-6 -	- 2E-8	- 9E-5	- 9E-4
		W, see 116Te	-	5E3 Thyroid (1E4)	2E-6 -	- 2E-8	- -	- -
52	Tellurium-1332	D, see 116Te	1E4 Thyroid (3E4)	2E4 Thyroid (6E4)	9E-6 -	- 8E-8	- 4E-4	- 4E-3
		W, see 116Te	-	2E4 Thyroid (6E4)	9E-6 -	- 8E-8	- -	- -
52	Tellurium-1342	D, see 116Te	2E4 Thyroid (2E4)	2E4 Thyroid (5E4)	1E-5 -	- 7E-8	- 3E-4	- 3E-3
		W, see 116Te	-	2E4	1E-5	-	-	-

			-	Thyroid (5E4)	-	7E-8	-	-
53	Iodine-120m2	D, all compounds	1E4	2E4 -	9E-6	3E-8	-	-
			Thyroid (1E4)		-	-	2E-4	2E-3
53	Iodine-1202	D, all compounds	4E3	9E3	4E-6	-	-	-
			Thyroid (8E3)	Thyroid (1E4)	-	2E-8	1E-4	1E-3
53	Iodine-121	D, all compounds	1E4	2E4	8E-6	-	-	-
			Thyroid (3E4)	Thyroid (5E4)	-	7E-8	4E-4	4E-3
53	Iodine-123	D, all compounds	3E3	6E3	3E-6	-	-	-
			Thyroid (1E4)	Thyroid (2E4)	-	2E-8	1E-4	1E-3
53	Iodine-124	D, all compounds	5E1	8E1	3E-8	-	-	-
			Thyroid (2E2)	Thyroid (3E2)	-	4E-10	2E-6	2E-5
53	Iodine-125	D, all compounds	4E1	6E1	3E-8	-	-	-
			Thyroid (1E2)	Thyroid (2E2)	-	3E-10	2E-6	2E-5
53	Iodine-126	D, all compounds	2E1	4E1	1E-8	-	-	-
			Thyroid (7E1)	Thyroid (1E2)	-	2E-10	1E-6	1E-5
53	Iodine-1282	D, all compounds	4E4	1E5 -	5E-5	2E-7	-	-
			St wall (6E4)		-	-	8E-4	8E-3
53	Iodine-129	D, all compounds	5E0	9E0	4E-9	-	-	-
			Thyroid (2E1)	Thyroid (3E1)	-	4E-11	2E-7	2E-6
53	Iodine-130	D, all compounds	4E2	7E2	3E-7	-	-	-
			Thyroid (1E3)	Thyroid (2E3)	-	3E-9	2E-5	2E-4
53	Iodine-131	D, all compounds	3E1	5E1	2E-8	-	-	-
			Thyroid (9E1)	Thyroid (2E2)	-	2E-10	1E-6	1E-5
53	Iodine-132m2	D, all compounds	4E3	8E3	4E-6	-	-	-
			Thyroid	Thyroid	-	3E-8	1E-4	1E-3

			(1E4)	(2E4)				
53	Iodine-132	D, all compounds	4E3	8E3	3E-6	-	-	-
			Thyroid (9E3)	Thyroid (1E4)	-	2E-8	1E-4	1E-3
53	Iodine-133	D, all compounds	1E2	3E2	1E-7	-	-	-
			Thyroid (5E2)	Thyroid (9E2)	-	1E-9	7E-6	7E-5
53	Iodine-1342	D, all compounds	2E4	5E4 -	2E-5	6E-8	-	-
			Thyroid (3E4)		-	-	4E-4	4E-3
53	Iodine-135	D, all compounds	8E2	2E3	7E-7	-	-	-
			Thyroid (3E3)	Thyroid (4E3)	-	6E-9	3E-5	3E-4
54	Xenon-1202	Submersion1	-	-	1E-5	4E-8	-	-
54	Xenon-1212	Submersion1	-	-	2E-6	1E-8	-	-
54	Xenon-122	Submersion1	-	-	7E-5	3E-7	-	-
54	Xenon-123	Submersion1	-	-	6E-6	3E-8	-	-
54	Xenon-125	Submersion1	-	-	2E-5	7E-8	-	-
54	Xenon-127	Submersion1	-	-	1E-5	6E-8	-	-
54	Xenon-129m	Submersion1	-	-	2E-4	9E-7	-	-
54	Xenon-131m	Submersion1	-	-	4E-4	2E-6	-	-
54	Xenon-133m	Submersion1	-	-	1E-4	6E-7	-	-
54	Xenon-133	Submersion1	-	-	1E-4	5E-7	-	-
54	Xenon-135m2	Submersion1	-	-	9E-6	4E-8	-	-
54	Xenon-135	Submersion1	-	-	1E-5	7E-8	-	-
54	Xenon-1382	Submersion1	-	-	4E-6	2E-8	-	-
55	Cesium-1252	D, all compounds	5E4	1E5 -	6E-5	2E-7	-	-
			St wall (9E4)		-	-	1E-3	1E-2
55	Cesium-127	D, all compounds	6E4	9E4	4E-5	1E-7	9E-4	9E-3
55	Cesium-129	D, all compounds	2E4	3E4	1E-5	5E-8	3E-4	3E-3
55	Cesium-1302	D, all compounds	6E4	2E5 -	8E-5	3E-7	-	-
			St wall (1E5)		-	-	1E-3	1E-2
55	Cesium-131	D, all compounds	2E4	3E4	1E-5	4E-8	3E-4	3E-3
55	Cesium-132	D, all compounds	3E3	4E3	2E-6	6E-9	4E-5	4E-4
55	Cesium-134m	D, all compounds	1E5	1E5 -	6E-5	2E-7	-	-
			St wall (1E5)		-	-	2E-3	2E-2
55	Cesium-134	D, all compounds	7E1	1E2	4E-8	2E-10	9E-7	9E-6
55	Cesium-135m2	D, all compounds	1E5	2E5	8E-5	3E-7	1E-3	1E-2
55	Cesium-135	D, all compounds	7E2	1E3	5E-7	2E-9	1E-5	1E-4

55	Cesium-136	D, all compounds	4E2	7E2	3E-7	9E-10	6E-6	6E-5
55	Cesium-137	D, all compounds	1E2	2E2	6E-8	2E-10	1E-6	1E-5
55	Cesium-1382	D, all compounds	2E4 St wall (3E4)	6E4 -	2E-5 -	8E-8 -	- 4E-4	- 4E-3
56	Barium-1262	D, all compounds	6E3	2E4	6E-6	2E-8	8E-5	8E-4
56	Barium-128	D, all compounds	5E2	2E3	7E-7	2E-9	7E-6	7E-5
56	Barium-131m2	D, all compounds	4E5 St wall (5E5)	1E6 -	6E-4 -	2E-6 -	- 7E-3	- 7E-2
56	Barium-131	D, all compounds	3E3	8E3	3E-6	1E-8	4E-5	4E-4
56	Barium-133m	D, all compounds	2E3 LLI wall (3E3)	9E3 -	4E-6 -	1E-8 -	- 4E-5	- 4E-4
56	Barium-133	D, all compounds	2E3	7E2	3E-7	9E-10	2E-5	2E-4
56	Barium-135m	D, all compounds	3E3	1E4	5E-6	2E-8	4E-5	4E-4
56	Barium-1392	D, all compounds	1E4	3E4	1E-5	4E-8	2E-4	2E-3
56	Barium-140	D, all compounds	5E2 LLI wall (6E2)	1E3 -	6E-7 -	2E-9 -	- 8E-6	- 8E-5
56	Barium-1412	D, all compounds	2E4	7E4	3E-5	1E-7	3E-4	3E-3
56	Barium-1422	D, all compounds	5E4	1E5	6E-5	2E-7	7E-4	7E-3
57	Lanthanum-1312	D, all compounds except those given for W	5E4	1E5	5E-5	2E-7	6E-4	6E-3
		W, oxides and hydroxides	-	2E5	7E-5	2E-7	-	-
57	Lanthanum-132	D, see 131La	3E3	1E4	4E-6	1E-8	4E-5	4E-4
		W, see 131La	-	1E4	5E-6	2E-8	-	-
57	Lanthanum-135	D, see 131La	4E4	1E5	4E-5	1E-7	5E-4	5E-3
		W, see 131La	-	9E4	4E-5	1E-7	-	-
57	Lanthanum-137	D, see 131La	1E4 -	6E1 Liver (7E1)	3E-8 -	- 1E-10	2E-4 -	2E-3 -
		W, see 131La	- -	3E2 Liver (3E2)	1E-7 -	- 4E-10	- -	- -
57	Lanthanum-138	D, see 131La	9E2	4E0	1E-9	5E-12	1E-5	1E-4
		W, see 131La	-	1E1	6E-9	2E-11	-	-
57	Lanthanum-140	D, see 131La	6E2	1E3	6E-7	2E-9	9E-6	9E-5
		W, see 131La	-	1E3	5E-7	2E-9	-	-
57	Lanthanum-141	D, see 131La	4E3	9E3	4E-6	1E-8	5E-5	5E-4

		W, see 131La	-	1E4	5E-6	2E-8	-	-
57	Lanthanum-1422	D, see 131La	8E3	2E4	9E-6	3E-8	1E-4	1E-3
		W, see 131La	-	3E4	1E-5	5E-8	-	-
57	Lanthanum-1432	D, see 131La	4E4 St wall (4E4)	1E5 -	4E-5 -	1E-7 -	- 5E-4	- 5E-3
		W, see 131La	-	9E4	4E-5	1E-7	-	-
58	Cerium-134	W, all compounds except those given for Y	5E2 LLI wall (6E2)	7E2 -	3E-7 -	1E-9 -	- 8E-6	- 8E-5
		Y, oxides, hydroxides, and fluorides	-	7E2	3E-7	9E-10	-	-
58	Cerium-135	W, see 134Ce	2E3	4E3	2E-6	5E-9	2E-5	2E-4
		Y, see 134Ce	-	4E3	1E-6	5E-9	-	-
58	Cerium-137m	W, see 134Ce	2E3 LLI wall (2E3)	4E3 -	2E-6 -	6E-9 -	- 3E-5	- 3E-4
		Y, see 134Ce	-	4E3	2E-6	5E-9	-	-
58	Cerium-137	W, see 134Ce	5E4	1E5	6E-5	2E-7	7E-4	7E-3
		Y, see 134Ce	-	1E5	5E-5	2E-7	-	-
58	Cerium-139	W, see 134Ce	5E3	8E2	3E-7	1E-9	7E-5	7E-4
		Y, see 134Ce	-	7E2	3E-7	9E-10	-	-
58	Cerium-141	W, see 134Ce	2E3 LLI wall (2E3)	7E2 -	3E-7 -	1E-9 -	- 3E-5	- 3E-4
		Y, see 134Ce	-	6E2	2E-7	8E-10	-	-
58	Cerium-143	W, see 134Ce	1E3 LLI wall (1E3)	2E3 -	- 8E-7	3E-9 -	- 2E-5	- 2E-4
		Y, see 134Ce	-	2E3	7E-7	2E-9	-	-
58	Cerium-144	W, see 134Ce	2E2 LLI wall (3E2)	3E1 -	1E-8 -	4E-11 -	- 3E-6	- 3E-5
		Y, see 134Ce	-	1E1	6E-9	2E-11	-	-
59	Praseodymium-1362	W, all compounds except those given for Y	5E4 St wall (7E4)	2E5 -	1E-4 -	3E-7 -	- 1E-3	- 1E-2
		Y, oxides, hydroxides, carbides, and fluorides	-	2E5	9E-5	3E-7	-	-
59	Praseodymium-1372	W, see 136Pr	4E4	2E5	6E-5	2E-7	5E-4	5E-3

		Y, see 136Pr	-	1E5	6E-5	2E-7	-	-
59	Praseodymium-138m	W, see 136Pr	1E4	5E4	2E-5	8E-8	1E-4	1E-3
		Y, see 136Pr	-	4E4	2E-5	6E-8	-	-
59	Praseodymium-139	W, see 136Pr	4E4	1E5	5E-5	2E-7	6E-4	6E-3
		Y, see 136Pr	-	1E5	5E-5	2E-7	-	-
59	Praseodymium-142m2	W, see 136Pr	8E4	2E5	7E-5	2E-7	1E-3	1E-2
		Y, see 136Pr	-	1E5	6E-5	2E-7	-	-
59	Praseodymium-142	W, see 136Pr	1E3	2E3	9E-7	3E-9	1E-5	1E-4
		Y, see 136Pr	-	2E3	8E-7	3E-9	-	-
59	Praseodymium-143	W, see 136Pr	9E2 LLI wall (1E3)	8E2 -	3E-7 -	1E-9 -	- 2E-5	- 2E-4
		Y, see 136Pr	-	7E2	3E-7	9E-10	-	-
59	Praseodymium-1442	W, see 136Pr	3E4 St wall (4E4)	1E5 -	5E-5 -	2E-7 -	- 6E-4	- 6E-3
		Y, see 136Pr	-	1E5	5E-5	2E-7	-	-
59	Praseodymium-145	W, see 136Pr	3E3	9E3	4E-6	1E-8	4E-5	4E-4
		Y, see 136Pr	-	8E3	3E-6	1E-8	-	-
59	Praseodymium-1472	W, see 136Pr	5E4 St wall (8E4)	2E5 -	8E-5 -	3E-7 -	- 1E-3	- 1E-2
		Y, see 136Pr	-	2E5	8E-5	3E-7	-	-
60	Neodymium-1362	W, all compounds except those given for Y	1E4	6E4	2E-5	8E-8	2E-4	2E-3
		Y, oxides, hydroxides, carbides, and fluorides	-	5E4	2E-5	8E-8	-	-
60	Neodymium-138	W, see 136Nd	2E3	6E3	3E-6	9E-9	3E-5	3E-4
		Y, see 136Nd	-	5E3	2E-6	7E-9	-	-
60	Neodymium-139m	W, see 136Nd	5E3	2E4	7E-6	2E-8	7E-5	7E-4
		Y, see 136Nd	-	1E4	6E-6	2E-8	-	-
60	Neodymium-1392	W, see 136Nd	9E4	3E5	1E-4	5E-7	1E-3	1E-2
		Y, see 136Nd	-	3E5	1E-4	4E-7	-	-
60	Neodymium-141	W, see 136Nd	2E5	7E5	3E-4	1E-6	2E-3	2E-2
		Y, see 136Nd	-	6E5	3E-4	9E-7	-	-
60	Neodymium-147	W, see 136Nd	1E3 LLI wall (1E3)	9E2 -	4E-7 -	1E-9 -	- 2E-5	- 2E-4
		Y, see 136Nd	-	8E2	4E-7	1E-9	-	-
60	Neodymium-1492	W, see 136Nd	1E4	3E4	1E-5	4E-8	1E-4	1E-3
		Y, see 136Nd	-	2E4	1E-5	3E-8	-	-
60	Neodymium-1512	W, see 136Nd	7E4	2E5	8E-5	3E-7	9E-4	9E-3
		Y, see 136Nd	-	2E5	8E-5	3E-7	-	-
61	Promethium-1412	W, all compounds except those	5E4 St	2E5	8E-5	3E-7	-	-

			wall					
		given for Y	(6E4)	-	-	-	8E-4	8E-3
		Y, oxides, hydroxides, carbides, and fluorides	-	2E5	7E-5	2E-7	-	-
61	Promethium-143	W, see 141Pm	5E3	6E2	2E-7	8E-10	7E-5	7E-4
		Y, see 141Pm	-	7E2	3E-7	1E-9	-	-
61	Promethium-144	W, see 141Pm	1E3	1E2	5E-8	2E-10	2E-5	2E-4
		Y, see 141Pm	-	1E2	5E-8	2E-10	-	-
61	Promethium-145	W, see 141Pm	1E4	2E2 Bone surf	7E-8	-	1E-4	1E-3
			-	(2E2)	-	3E-10	-	-
		Y, see 141Pm	-	2E2	8E-8	3E-10	-	-
61	Promethium-146	W, see 141Pm	2E3	5E1	2E-8	7E-11	2E-5	2E-4
		Y, see 141Pm	-	4E1	2E-8	6E-11	-	-
61	Promethium-147	W, see 141Pm	4E3	1E2	5E-8	-	-	-
			LLI wall (5E3)	Bone surf (2E2)	-	3E-10	7E-5	7E-4
		Y, see 141Pm	-	1E2	6E-8	2E-10	-	-
61	Promethium-148m	W, see 141Pm	7E2	3E2	1E-7	4E-10	1E-5	1E-4
		Y, see 141Pm	-	3E2	1E-7	5E-10	-	-
61	Promethium-148	W, see 141Pm	4E2	5E2 -	2E-7	8E-10 -	-	-
			LLI wall (5E2)		-		7E-6	7E-5
		Y, see 141Pm	-	5E2	2E-7	7E-10	-	-
61	Promethium-149	W, see 141Pm	1E3	2E3 -	8E-7	3E-9	-	-
			LLI wall (1E3)		-	-	2E-5	2E-4
		Y, see 141Pm	-	2E3	8E-7	2E-9	-	-
61	Promethium-150	W, see 141Pm	5E3	2E4	8E-6	3E-8	7E-5	7E-4
		Y, see 141Pm	-	2E4	7E-6	2E-8	-	-
61	Promethium-151	W, see 141Pm	2E3	4E3	1E-6	5E-9	2E-5	2E-4
		Y, see 141Pm	-	3E3	1E-6	4E-9	-	-
62	Samarium-141m2	W, all compounds	3E4	1E5	4E-5	1E-7	4E-4	4E-3
62	Samarium-1412	W, all compounds	5E4	2E5 -	8E-5	2E-7	-	-
			St		-	-	8E-4	8E-3

			wall (6E4)					
62	Samarium-1422	W, all compounds	8E3	3E4	1E-5	4E-8	1E-4	1E-3
62	Samarium-145	W, all compounds	6E3	5E2	2E-7	7E-10	8E-5	8E-4
62	Samarium-146	W, all compounds	1E1 Bone surf (3E1)	4E2 Bone surf (6E-2)	1E-11 -	9E-14	3E-7	3E-6
62	Samarium-147	W, all compounds	2E1 Bone surf (3E1)	4E2 Bone surf (7E-2)	2E-11 -	1E-13	4E-7	4E-6
62	Samarium-151	W, all compounds	1E4 LLI wall (1E4)	1E2 Bone surf (2E2)	4E-8 -	2E-10	2E-4	2E-3
62	Samarium-153	W, all compounds	2E3 LLI wall (2E3)	3E3 -	1E-6 -	4E-9 -	3E-5	3E-4
62	Samarium-1552	W, all compounds	6E4 St wall (8E4)	2E5 -	9E-5 -	3E-7 -	1E-3	1E-2
62	Samarium-156	W, all compounds	5E3	9E3	4E-6	1E-8	7E-5	7E-4
63	Europium-145	W, all compounds	2E3	2E3	8E-7	3E-9	2E-5	2E-4
63	Europium-146	W, all compounds	1E3	1E3	5E-7	2E-9	1E-5	1E-4
63	Europium-147	W, all compounds	3E3	2E3	7E-7	2E-9	4E-5	4E-4
63	Europium-148	W, all compounds	1E3	4E2	1E-7	5E-10	1E-5	1E-4
63	Europium-149	W, all compounds	1E4	3E3	1E-6	4E-9	2E-4	2E-3
63	Europium-150 (12.62h)	W, all compounds	3E3	8E3	4E-6	1E-8	4E-5	4E-4
63	Europium-150 (34.2 y)	W, all compounds	8E2	2E1	8E-9	3E-11	1E-5	1E-4
63	Europium-152m	W, all compounds	3E3	6E3	3E-6	9E-9	4E-5	4E-4
63	Europium-152	W, all compounds	8E2	2E1	1E-8	3E-11	1E-5	1E-4
63	Europium-154	W, all compounds	5E2	2E1	8E-9	3E-11	7E-6	7E-5
63	Europium-155	W, all compounds	4E3 -	9E1 Bone surf (1E2)	4E-8 -	2E-10	5E-5 -	5E-4 -
63	Europium-156	W, all compounds	6E2	5E2	2E-7	6E-10	8E-6	8E-5
63	Europium-157	W, all compounds	2E3	5E3	2E-6	7E-9	3E-5	3E-4
63	Europium-1582	W, all compounds	2E4	6E4	2E-5	8E-8	3E-4	3E-3

64	Gadolinium-1452	D, all compounds except those given for W	5E4 St wall (5E4)	2E5 -	6E-5 -	2E-7 -	- 6E-4	- 6E-3
		W, oxides, hydroxides, and fluorides	-	2E5	7E-5	2E-7	-	-
64	Gadolinium-146	D, see 145Gd	1E3	1E2	5E-8	2E-10	2E-5	2E-4
		W, see 145Gd	-	3E2	1E-7	4E-10	-	-
64	Gadolinium-147	D, see 145Gd	2E3	4E3	2E-6	6E-9	3E-5	3E-4
		W, see 145Gd	-	4E3	1E-6	5E-9	-	-
64	Gadolinium-148	D, see 145Gd	1E1 Bone surf (2E1)	8E3 Bone surf (2E2)	3E-1 2 -	- 2E-14	- 3E-7	- 3E-6
		W, see 145Gd	-	3E-2 Bone surf (6E-2)	1E-11 -	- 8E-14	- -	- -
64	Gadolinium-149	D, see 145Gd	3E3	2E3	9E-7	3E-9	4E-5	4E-4
		W, see 145Gd	-	2E3	1E-6	3E-9	-	-
64	Gadolinium-151	D, see 145Gd	6E3 -	4E2 Bone surf (6E2)	2E-7 -	- 9E-10	9E-5 -	9E-4 -
		W, see 145Gd	-	1E3	5E-7	2E-9	-	-
64	Gadolinium-152	D, see 145Gd	2E1 Bone surf (3E1)	1E-2 Bone surf (2E-2)	4E-12 -	- 3E-14	- 4E-7	- 4E-6
		W, see 145Gd	-	4E-2 Bone surf (8E-2)	2E-11 -	- 1E-13	- -	- -
64	Gadolinium-153	D, see 145Gd	5E3 -	1E2 Bone surf (2E2)	6E-8 -	- 3E-10	6E-5 -	6E-4 -
		W, see 145Gd	-	6E2	2E-7	8E-10	-	-
64	Gadolinium-159	D, see 145Gd	3E3	8E3	3E-6	1E-8	4E-5	4E-4
		W, see 145Gd	-	6E3	2E-6	8E-9	-	-
65	Terbium-1472	W, all compounds	9E3	3E4	1E-5	5E-8	1E-4	1E-3
65	Terbium-149	W, all compounds	5E3	7E2	3E-7	1E-9	7E-5	7E-4

65	Terbium-150	W, all compounds	5E3	2E4	9E-6	3E-8	7E-5	7E-4
65	Terbium-151	W, all compounds	4E3	9E3	4E-6	1E-8	5E-5	5E-4
65	Terbium-153	W, all compounds	5E3	7E3	3E-6	1E-8	7E-5	7E-4
65	Terbium-154	W, all compounds	2E3	4E3	2E-6	6E-9	2E-5	2E-4
65	Terbium-155	W, all compounds	6E3	8E3	3E-6	1E-8	8E-5	8E-4
65	Terbium-156m (5.0 h)	W, all compounds	2E4	3E4	1E-5	4E-8	2E-4	2E-3
65	Terbium-156m (24.4 h)	W, all compounds	7E3	8E3	3E-6	1E-8	1E-4	1E-3
65	Terbium-156	W, all compounds	1E3	1E3	6E-7	2E-9	1E-5	1E-4
65	Terbium-157	W, all compounds	5E4	3E2	1E-7	-	-	-
			LLI wall (5E4)	Bone surf (6E2)	-	(6E2)	7E-4	7E-3
65	Terbium-158	W, all compounds	1E3	2E1	8E-9	3E-11	2E-5	2E-4
65	Terbium-160	W, all compounds	8E2	2E2	9E-8	3E-10	1E-5	1E-4
65	Terbium-161	W, all compounds	2E3	2E3 -	7E-7	2E-9	-	-
			LLI wall (2E3)		-	-	3E-5	3E-4
66	Dysprosium-155	W, all compounds	9E3	3E4	1E-5	4E-8	1E-4	1E-3
66	Dysprosium-157	W, all compounds	2E4	6E4	3E-5	9E-8	3E-4	3E-3
66	Dysprosium-159	W, all compounds	1E4	2E3	1E-6	3E-9	2E-4	2E-3
66	Dysprosium-165	W, all compounds	1E4	5E4	2E-5	6E-8	2E-4	2E-3
66	Dysprosium-166	W, all compounds	6E2	7E2 -	3E-7	1E-9	-	-
			LLI wall (8E2)		-	-	1E-5	1E-4
67	Holmium-1552	W, all compounds	4E4	2E5	6E-5	2E-7	6E-4	6E-3
67	Holmium-1572	W, all compounds	3E5	1E6	6E-4	2E-6	4E-3	4E-2
67	Holmium-1592	W, all compounds	2E5	1E6	4E-4	1E-6	3E-3	3E-2
67	Holmium-161	W, all compounds	1E5	4E5	2E-4	6E-7	1E-3	1E-2
67	Holmium-162m2	W, all compounds	5E4	3E5	1E-4	4E-7	7E-4	7E-3
67	Holmium-1622	W, all compounds	5E5	2E6 -	1E-3	3E-6	-	-
			St wall (8E5)		-	-	1E-2	1E-1
67	Holmium-164m2	W, all compounds	1E5	3E5	1E-4	4E-7	1E-3	1E-2
67	Holmium-1642	W, all compounds	2E5	6E5 -	3E-4	9E-7	-	-
			St wall (2E5)		-	-	3E-3	3E-2
67	Holmium-166m	W, all compounds	6E2	7E0	3E-9	9E-12	9E-6	9E-5
67	Holmium-166	W, all compounds	9E2	2E3 -	7E-7	2E-9	-	-
			LLI wall (9E2)		-	-	1E-5	1E-4
67	Holmium-167	W, all compounds	2E4	6E4	2E-5	8E-8	2E-4	2E-3
68	Erbium-161	W, all compounds	2E4	6E4	3E-5	9E-8	2E-4	2E-3

68	Erbium-165	W, all compounds	6E4	2E5	8E-5	3E-7	9E-4	9E-3
68	Erbium-169	W, all compounds	3E3 LLI wall (4E3)	3E3 -	1E-6 -	4E-9 -	- 5E-5	- 5E-4
68	Erbium-171	W, all compounds	4E3	1E4	4E-6	1E-8	5E-5	5E-4
68	Erbium-172	W, all compounds	1E3 LLI wall (E3)	1E3 -	6E-7 -	2E-9 -	- 2E-5	- 2E-4
69	Thulium-1622	W, all compounds	7E4 St wall (7E4)	3E5 -	1E-4 -	4E-7 -	- 1E-3	- 1E-2
69	Thulium-166	W, all compounds	4E3	1E4	6E-6	2E-8	6E-5	6E-4
69	Thulium-167	W, all compounds	2E3 LLI wall (2E3)	2E3 -	8E-7 -	3E-9 -	- 3E-5	- 3E-4
69	Thulium-170	W, all compounds	8E2 LLI wall (1E3)	2E2 -	9E-8 -	3E-1 0 -	- 1E-5	- 1E-4
69	Thulium-171	W, all compounds	1E4 LLI wall (1E4)	3E2 Bone surf (6E2)	1E-7 -	- 8E-1 0	- 2E-4	- 2E-3
69	Thulium-172	W, all compounds	7E2 LLI wall (8E2)	1E3 -	5E-7 -	2E-9 -	- 1E-5	- 1E-4
69	Thulium-173	W, all compounds	4E3	1E4	5E-6	2E-8	6E-5	6E-4
69	Thulium-1752	W, all compounds	7E4 St wall (9E4)	3E5 -	1E-4 -	4E-7 -	- 1E-3	- 1E-2
70	Ytterbium-1622	W, all compounds except those given for Y	7E4	3E5	1E-4	4E-7	1E-3	1E-2
		Y, oxides, hydroxides, and fluorides	-	3E5	1E-4	4E-7	-	-
70	Ytterbium-166	W, see 162Yb	1E3	2E3	8E-7	3E-9	2E-5	2E-4
		Y, see 162Yb	-	2E3	8E-7	3E-9	-	-
70	Ytterbium-1672	W, see 162Yb	3E5	8E5	3E-4	1E-6	4E-3	4E-2
		Y, see 162Yb	-	7E5	3E-4	1E-6	-	-
70	Ytterbium-169	W, see 162Yb	2E3	8E2	4E-7	1E-9	2E-5	2E-4
		Y, see 162Yb	-	7E2	3E-7	1E-9	-	-
70	Ytterbium-175	W, see 162Yb	3E3 LLI wall (3E3)	4E3 -	1E-6 -	5E-9 -	- 4E-5	- 4E-4

		Y, see 162Yb	-	3E3	1E-6	5E-9	-	-
70	Ytterbium-1772	W, see 162Yb	2E4	5E4	2E-5	7E-8	2E-4	2E-3
		Y, see 162Yb	-	5E4	2E-5	6E-8	-	-
70	Ytterbium-1782	W, see 162Yb	1E4	4E4	2E-5	6E-8	2E-4	2E-3
		Y, see 162Yb	-	4E4	2E-5	5E-8	-	-
71	Lutetium-169	W, all compounds except those given for Y	3E3	4E3	2E-6	6E-9	3E-5	3E-4
		Y, oxides, hydroxides, and fluorides	-	4E3	2E-6	6E-9	-	-
71	Lutetium-170	W, see 169Lu	1E3	2E3	9E-7	3E-9	2E-5	2E-4
		Y, see 169Lu	-	2E3	8E-7	3E-9	-	-
71	Lutetium-171	W, see 169Lu	2E3	2E3	8E-7	3E-9	3E-5	3E-4
		Y, see 169Lu	-	2E3	8E-7	3E-9	-	-
71	Lutetium-172	W, see 169Lu	1E3	1E3	5E-7	2E-9	1E-5	1E-4
		Y, see 169Lu	-	1E3	5E-7	2E-9	-	-
71	Lutetium-173	W, see 169Lu	5E3 -	3E2 Bone surf (5E2)	1E-7 -	- 6E-10	7E-5 -	7E-4 -
		Y, see 169Lu	-	3E2	1E-7	4E-10	-	-
71	Lutetium-174m	W, see 169Lu	2E3 LLI wall (3E3)	2E2 Bone surf (3E2)	1E-7 -	- 5E-10	- 4E-5	- 4E-4
		Y, see 169Lu	-	2E2	9E-8	3E-10	-	-
71	Lutetium-174	W, see 169Lu	5E3 -	1E2 Bone surf (2E2)	5E-8 -	- 3E-10	7E-5 -	7E-4 -
		Y, see 169Lu	-	2E2	6E-8	2E-10	-	-
71	Lutetium-176m	W, see 169Lu	8E3	3E4	1E-5	3E-8	1E-4	1E-3
		Y, see 169Lu	-	2E4	9E-6	3E-8	-	-
71	Lutetium-176	W, see 169Lu	7E2 -	5E0 Bone surf (1E1)	2E-9 -	- 2E-11	1E-5 -	1E-4 -
		Y, see 169Lu	-	8E0	3E-9	1E-11	-	-
71	Lutetium-177m	W, see 169Lu	7E2 -	1E2 Bone surf (1E2)	5E-8 -	- 2E-10	1E-5 -	1E-4 -
		Y, see 169Lu	-	8E1	3E-8	1E-10	-	-
71	Lutetium-177	W, see 169Lu	2E3 LLI wall	2E3 -	9E-7 -	3E-9 -	- 4E-5	- 4E-4

			(3E3)					
		Y, see 169Lu	-	2E3	9E-7	3E-9	-	-
71	Lutetium-178m2	W, see 169Lu	5E4 St wall (6E4)	2E5 -	8E-5 -	3E-7 -	- 8E-4	- 8E-3
		Y, see 169Lu	-	2E5	7E-5	2E-7	-	-
71	Lutetium-1782	W, see 169Lu	4E4 St wall (4E4)	1E5 -	5E-5 -	2E-7 -	- 6E-4	- 6E-3
		Y, see 169Lu	-	1E5	5E-5	2E-7	-	-
71	Lutetium-179	W, see 169Lu	6E3	2E4	8E-6	3E-8	9E-5	9E-4
		Y, see 169Lu	-	2E4	6E-6	3E-8	-	-
72	Hafnium-170	D, all compounds except those given for W	3E3	6E3	2E-6	8E-9	4E-5	4E-4
		W, oxides, hydroxides, carbides, and nitrates	-	5E3	2E-6	6E-9	-	-
72	Hafnium-172	D, see 170Hf	1E3 -	9E0 Bone surf (2E1)	4E-9 -	- 3E-11	2E-5 -	2E-4 -
		W, see 170Hf	- -	4E1 Bone surf (6E1)	2E-8 -	- 8E-11	- -	- -
72	Hafnium-173	D, see 170Hf	5E3	1E4	5E-6	2E-8	7E-5	7E-4
		W, see 170Hf	-	1E4	5E-6	2E-8	-	-
72	Hafnium-175	D, see 170Hf	3E3 -	9E2 Bone surf (1E3)	4E-7 -	- 1E-9	4E-5 -	4E-4 -
		W, see 170Hf	-	1E3	5E-7	2E-9	-	-
72	Hafnium-177m2	D, see 170Hf	2E4	6E4	2E-5	8E-8	3E-4	3E-3
		W, see 170Hf	-	9E4	4E-5	1E-7	-	-
72	Hafnium-178m	D, see 170Hf	3E2 -	1E0 Bone surf (2E0)	5E-1 0 -	- 3E-12	3E-6 -	3E-5 -
		W, see 170Hf	- -	5E0 Bone surf (9E0)	2E-9 -	- 1E-11	- -	- -
72	Hafnium-179m	D, see 170Hf	1E3 -	3E2 Bone surf (6E2)	1E-7 -	- 8E-10	1E-5 -	1E-4 -
		W, see 170Hf	-	6E2	3E-7	8E-10	-	-
72	Hafnium-180m	D, see 170Hf	7E3	2E4	9E-6	3E-8	1E-4	1E-3

		W, see 170Hf	-	3E4	1E-5	4E-8	-	-
72	Hafnium-181	D, see 170Hf	1E3 -	2E2	7E-8	-	2E-5	2E-4
				Bone surf (4E2)	-	6E-10	-	-
		W, see 170Hf	-	4E2	2E-7	6E-10	-	-
72	Hafnium-182m2	D, see 170Hf	4E4	9E4	4E-5	1E-7	5E-4	5E-3
		W, see 170Hf	-	1E5	6E-5	2E-7	-	-
72	Hafnium-182	D, see 170Hf	2E2	8E-1	3E-1	-	-	-
			Bone surf (4E2)	Bone surf (2E0)	0 -	2E-12	5E-6	5E-5
		W, see 170Hf	- -	3E0	1E-9	-	- -	- -
				Bone surf (7E0)	-	1E-11		
72	Hafnium-1832	D, see 170Hf	2E4	5E4	2E-5	6E-8	3E-4	3E-3
		W, see 170Hf	-	6E4	2E-5	8E-8	-	-
72	Hafnium-184	D, see 170Hf	2E3	8E3	3E-6	1E-8	3E-5	3E-4
		W, see 170Hf	-	6E3	3E-6	9E-9	-	-
73	Tantalum-1722	W, all compounds except those given for Y	4E4	1E5	5E-5	2E-7	5E-4	5E-3
		Y, elemental Ta, oxides, hydroxides, halides, carbides, nitrates, and nitrides	-	1E5	4E-5	1E-7	-	-
73	Tantalum-173	W, see 172Ta	7E3	2E4	8E-6	3E-8	9E-5	9E-4
		Y, see 172Ta	-	2E4	7E-6	2E-8	-	-
73	Tantalum-1742	W, see 172Ta	3E4	1E5	4E-5	1E-7	4E-4	4E-3
		Y, see 172Ta	-	9E4	4E-5	1E-7	-	-
73	Tantalum-175	W, see 172Ta	6E3	2E4	7E-6	2E-8	8E-5	8E-4
		Y, see 172Ta	-	1E4	6E-6	2E-8	-	-
73	Tantalum-176	W, see 172Ta	4E3	1E4	5E-6	2E-8	5E-5	5E-4
		Y, see 172Ta	-	1E4	5E-6	2E-8	-	-
73	Tantalum-177	W, see 172Ta	1E4	2E4	8E-6	3E-8	2E-4	2E-3
		Y, see 172Ta	-	2E4	7E-6	2E-8	-	-
73	Tantalum-178	W, see 172Ta	2E4	9E4	4E-5	1E-7	2E-4	2E-3
		Y, see 172Ta	-	7E4	3E-5	1E-7	-	-
73	Tantalum-179	W, see 172Ta	2E4	5E3	2E-6	8E-9	3E-4	3E-3
		Y, see 172Ta	-	9E2	4E-7	1E-9	-	-
73	Tantalum-180m	W, see 172Ta	2E4	7E4	3E-5	9E-8	3E-4	3E-3
		Y, see 172Ta	-	6E4	2E-5	8E-8	-	-
73	Tantalum-180	W, see 172Ta	1E3	4E2	2E-7	6E-10	2E-5	2E-4
		Y, see 172Ta	-	2E1	1E-8	3E-11	-	-
73	Tantalum-182m2	W, see 172Ta	2E5	5E5 -	2E-4	8E-7	-	-
			St wall (2E5)		-	-	3E-3	3E-2

		Y, see 172Ta	-	4E5	2E-4	6E-7	-	-
73	Tantalum-182	W, see 172Ta	8E2	3E2	1E-7	5E-10	1E-5	1E-4
		Y, see 172Ta	-	1E2	6E-8	2E-10	-	-
73	Tantalum-183	W, see 172Ta	9E2 LLI wall (1E3)	1E3 -	5E-7 -	2E-9 -	- 2E-5	- 2E-4
		Y, see 172Ta	-	1E3	4E-7	1E-9	-	-
73	Tantalum-184	W, see 172Ta	2E3	5E3	2E-6	8E-9	3E-5	3E-4
		Y, see 172Ta	-	5E3	2E-6	7E-9	-	-
73	Tantalum-1852	W, see 172Ta	3E4	7E4	3E-5	1E-7	4E-4	4E-3
		Y, see 172Ta	-	6E4	3E-5	9E-8	-	-
73	Tantalum-1862	W, see 172Ta	5E4 St wall (7E4)	2E5 -	1E-4 -	3E-7 -	- 1E-3	- 1E-2
		Y, see 172Ta	-	2E5	9E-5	3E-7	-	-
74	Tungsten-176	D, all compounds	1E4	5E4	2E-5	7E-8	1E-4	1E-3
74	Tungsten-177	D, all compounds	2E4	9E4	4E-5	1E-7	3E-4	3E-3
74	Tungsten-178	D, all compounds	5E3	2E4	8E-6	3E-8	7E-5	7E-4
74	Tungsten-1792	D, all compounds	5E5	2E6	7E-4	2E-6	7E-3	7E-2
74	Tungsten-181	D, all compounds	2E4	3E4	1E-5	5E-8	2E-4	2E-3
74	Tungsten-185	D, all compounds	2E3 LLI wall (3E3)	7E3 -	3E-6 -	9E-9 -	- 4E-5	- 4E-4
74	Tungsten-187	D, all compounds	2E3	9E3	4E-6	1E-8	3E-5	3E-4
74	Tungsten-188	D, all compounds	4E2 LLI wall (5E2)	1E3 -	5E-7 -	2E-9 -	- 7E-6	- 7E-5
75	Rhenium-1772	D, all compounds except those given for W	9E4 St wall (1E5)	3E5 -	1E-4 -	4E-7 -	- 2E-3	- 2E-2
		W, oxides, hydroxides, and nitrates	-	4E5	1E-4	5E-7	-	-
75	Rhenium-1782	D, see 177Re	7E4 St wall (1E5)	3E5 -	1E-4 -	4E-7 -	- 1E-3	- 1E-2
		W, see 177Re	-	3E5	1E-4	4E-7	-	-
75	Rhenium-181	D, see 177Re	5E3	9E3	4E-6	1E-8	7E-5	7E-4
		W, see 177Re	-	9E3	4E-6	1E-8	-	-
75	Rhenium-182 (12.7 h)	D, see 177Re	7E3	1E4	5E-6	2E-8	9E-5	9E-4
		W, see 177Re	-	2E4	6E-6	2E-8	-	-
75	Rhenium-182 (64.0 h)	D, see 177Re	1E3	2E3	1E-6	3E-9	2E-5	2E-4
		W, see 177Re	-	2E3	9E-7	3E-9	-	-

75	Rhenium-184m	D, see 177Re	2E3	3E3	1E-6	4E-9	3E-5	3E-4
		W, see 177Re	-	4E2	2E-7	6E-10	-	-
75	Rhenium-184	D, see 177Re	2E3	4E3	1E-6	5E-9	3E-5	3E-4
		W, see 177Re	-	1E3	6E-7	2E-9	-	-
75	Rhenium-186m	D, see 177Re	1E3 St wall (2E3)	2E3 St wall (2E3)	7E-7 -	- 3E-9	- 2E-5	- 2E-4
		W, see 177Re	-	2E2	6E-8	2E-10	-	-
75	Rhenium-186	D, see 177Re	2E3	3E3	1E-6	4E-9	3E-5	3E-4
		W, see 177Re	-	2E3	7E-7	2E-9	-	-
75	Rhenium-187	D, see 177Re	6E5 St wall -	8E5 (9E5)	4E-4 -	- 1E-6	8E-3 -	8E-2 -
		W, see 177Re	-	1E5	4E-5	1E-7	-	-
75	Rhenium-188m2	D, see 177Re	8E4	1E5	6E-5	2E-7	1E-3	1E-2
		W, see 177Re	-	1E5	6E-5	2E-7	-	-
75	Rhenium-188	D, see 177Re	2E3	3E3	1E-6	4E-9	2E-5	2E-4
		W, see 177Re	-	3E3	1E-6	4E-9	-	-
75	Rhenium-189	D, see 177Re	3E3	5E3	2E-6	7E-9	4E-5	4E-4
		W, see 177Re	-	4E3	2E-6	6E-9	-	-
76	Osmium-1802	D, all compounds except those given for W and Y	1E5	4E5	2E-4	5E-7	1E-3	1E-2
		W, halides and nitrates	-	5E5	2E-4	7E-7	-	-
		Y, oxides and hydroxides	-	5E5	2E-4	6E-7	-	-
76	Osmium-1812	D, see 180Os	1E4	4E4	2E-5	6E-8	2E-4	2E-3
		W, see 180Os	-	5E4	2E-5	6E-8	-	-
		Y, see 180Os	-	4E4	2E-5	6E-8	-	-
76	Osmium-182	D, see 180Os	2E3	6E3	2E-6	8E-9	3E-5	3E-4
		W, see 180Os	-	4E3	2E-6	6E-9	-	-
		Y, see 180Os	-	4E3	2E-6	6E-9	-	-
76	Osmium-185	D, see 180Os	2E3	5E2	2E-7	7E-10	3E-5	3E-4
		W, see 180Os	-	8E2	3E-7	1E-9	-	-
		Y, see 180Os	-	8E2	3E-7	1E-9	-	-
76	Osmium-189m	D, see 180Os	8E4	2E5	1E-4	3E-7	1E-3	1E-2
		W, see 180Os	-	2E5	9E-5	3E-7	-	-
		Y, see 180Os	-	2E5	7E-5	2E-7	-	-
76	Osmium-191m	D, see 180Os	1E4	3E4	1E-5	4E-8	2E-4	2E-3
		W, see 180Os	-	2E4	8E-6	3E-8	-	-
		Y, see 180Os	-	2E4	7E-6	2E-8	-	-
76	Osmium-191	D, see 180Os	2E3 LLI wall (3E3)	2E3 -	9E-7 -	3E-9 -	- 3E-5	- 3E-4
		W, see 180Os	-	2E3	7E-7	2E-9	-	-
		Y, see 180Os	-	1E3	6E-7	2E-9	-	-
76	Osmium-193	D, see 180Os	2E3	5E3 -	2E-6	6E-9	-	-

			LLI wall (2E3)		-	-	2E-5	2E-4
		W, see 180Os	-	3E3	1E-6	4E-9	-	-
		Y, see 180Os	-	3E3	1E-6	4E-9	-	-
76	Osmium-194	D, see 180Os	4E2	4E1 -	2E-8	6E-1	-	-
			LLI wall (6E2)		-	1 -	8E-6	8E-5
		W, see 180Os	-	6E1	2E-8	8E-1 1	-	-
		Y, see 180Os	-	8E0	3E-9	1E-1 1	-	-
77	Iridium-1822	D, all compounds except those given for W and Y	4E4 St wall (4E4)	1E5	6E-5	2E-7	-	-
				-	-	-	6E-4	6E-3
		W, halides, nitrates, and metallic iridium	-	2E5	6E-5	2E-7	-	-
		Y, oxides and hydroxides	-	1E5	5E-5	2E-7	-	-
77	Iridium-184	D, see 182Ir	8E3	2E4	1E-5	3E-8	1E-4	1E-3
		W, see 182Ir	-	3E4	1E-5	5E-8	-	-
		Y, see 182Ir	-	3E4	1E-5	4E-8	-	-
77	Iridium-185	D, see 182Ir	5E3	1E4	5E-6	2E-8	7E-5	7E-4
		W, see 182Ir	-	1E4	5E-6	2E-8	-	-
		Y, see 182Ir	-	1E4	4E-6	1E-8	-	-
77	Iridium-186	D, see 182Ir	2E3	8E3	3E-6	1E-8	3E-5	3E-4
		W, see 182Ir	-	6E3	3E-6	9E-9	-	-
		Y, see 182Ir	-	6E3	2E-6	8E-9	-	-
77	Iridium-187	D, see 182Ir	1E4	3E4	1E-5	5E-8	1E-4	1E-3
		W, see 182Ir	-	3E4	1E-5	4E-8	-	-
		Y, see 182Ir	-	3E4	1E-5	4E-8	-	-
77	Iridium-188	D, see 182Ir	2E3	5E3	2E-6	6E-9	3E-5	3E-4
		W, see 182Ir	-	4E3	1E-6	5E-9	-	-
		Y, see 182Ir	-	3E3	1E-6	5E-9	-	-
77	Iridium-189	D, see 182Ir	5E3	5E3 -	2E-6	7E-9	-	-
			LLI wall (5E3)		-	-	7E-5	7E-4
		W, see 182Ir	-	4E3	2E-6	5E-9	-	-
		Y, see 182Ir	-	4E3	1E-6	5E-9	-	-
77	Iridium-190m2	D, see 182Ir	2E5	2E5	8E-5	3E-7	2E-3	2E-2
		W, see 182Ir	-	2E5	9E-5	3E-7	-	-
		Y, see 182Ir	-	2E5	8E-5	3E-7	-	-
77	Iridium-190	D, see 182Ir	1E3	9E2	4E-7	1E-9	1E-5	1E-4
		W, see 182Ir	-	1E3	4E-7	1E-9	-	-
		Y, see 182Ir	-	9E2	4E-7	1E-9	-	-
77	Iridium-192m	D, see 182Ir	3E3	9E1	4E-8	1E-1 0	4E-5	4E-4

		W, see 182Ir	-	2E2	9E-8	3E-10	-	-
		Y, see 182Ir	-	2E1	6E-9	2E-11	-	-
77	Iridium-192	D, see 182Ir	9E2	3E2	1E-7	4E-10	1E-5	1E-4
		W, see 182Ir	-	4E2	2E-7	6E-10	-	-
		Y, see 182Ir	-	2E2	9E-8	3E-10	-	-
77	Iridium-194m	D, see 182Ir	6E2	9E1	4E-8	1E-10	9E-6	9E-5
		W, see 182Ir	-	2E2	7E-8	2E-10	-	-
		Y, see 182Ir	-	1E2	4E-8	1E-10	-	-
77	Iridium-194	D, see 182Ir	1E3	3E3	1E-6	4E-9	1E-5	1E-4
		W, see 182Ir	-	2E3	9E-7	3E-9	-	-
		Y, see 182Ir	-	2E3	8E-7	3E-9	-	-
77	Iridium-195m	D, see 182Ir	8E3	2E4	1E-5	3E-8	1E-4	1E-3
		W, see 182Ir	-	3E4	1E-5	4E-8	-	-
		Y, see 182Ir	-	2E4	9E-6	3E-8	-	-
77	Iridium-195	D, see 182Ir	1E4	4E4	2E-5	6E-8	2E-4	2E-3
		W, see 182Ir	-	5E4	2E-5	7E-8	-	-
		Y, see 182Ir	-	4E4	2E-5	6E-8	-	-
78	Platinum-186	D, all compounds	1E4	4E4	2E-5	5E-8	2E-4	2E-3
78	Platinum-188	D, all compounds	2E3	2E3	7E-7	2E-9	2E-5	2E-4
78	Platinum-189	D, all compounds	1E4	3E4	1E-5	4E-8	1E-4	1E-3
78	Platinum-191	D, all compounds	4E3	8E3	4E-6	1E-8	5E-5	5E-4
78	Platinum-193m	D, all compounds	3E3 LLI wall (3E4)	6E3 -	3E-6 -	8E-9 -	- 4E-5	- 4E-4
78	Platinum-193	D, all compounds	4E4 LLI wall (5E4)	2E4 -	1E-5 -	3E-8 -	- 6E-4	- 6E-3
78	Platinum-195m	D, all compounds	2E3 LLI wall (2E3)	4E3 -	2E-6 -	6E-9 -	- 3E-5	- 3E-4
78	Platinum-197m2	D, all compounds	2E4	4E4	2E-5	6E-8	2E-4	2E-3
78	Platinum-197	D, all compounds	3E3	1E4	4E-6	1E-8	4E-5	4E-4
78	Platinum-1992	D, all compounds	5E4	1E5	6E-5	2E-7	7E-4	7E-3
78	Platinum-200	D, all compounds	1E3	3E3	1E-6	5E-9	2E-5	2E-4
79	Gold-193	D, all compounds except those given for W and Y	9E3	3E4	1E-5	4E-8	1E-4	1E-3
		W, halides and nitrates	-	2E4	9E-6	3E-8	-	-
		Y, oxides and hydroxides	-	2E4	8E-6	3E-8	-	-
79	Gold-194	D, see 193Au	3E3	8E3	3E-6	1E-8	4E-5	4E-4

		W, see 193Au	-	5E3	2E-6	8E-9	-	-
		Y, see 193Au	-	5E3	2E-6	7E-9	-	-
79	Gold-195	D, see 193Au	5E3	1E4	5E-6	2E-8	7E-5	7E-4
		W, see 193Au	-	1E3	6E-7	2E-9	-	-
		Y, see 193Au	-	4E2	2E-7	6E-10	-	-
79	Gold-198m	D, see 193Au	1E3	3E3	1E-6	4E-9	1E-5	1E-4
		W, see 193Au	-	1E3	5E-7	2E-9	-	-
		Y, see 193Au	-	1E3	5E-7	2E-9	-	-
79	Gold-198	D, see 193Au	1E3	4E3	2E-6	5E-9	2E-5	2E-4
		W, see 193Au	-	2E3	8E-7	3E-9	-	-
		Y, see 193Au	-	2E3	7E-7	2E-9	-	-
79	Gold-199	D, see 193Au	3E3 LLI wall (3E3)	9E3 -	4E-6 -	1E-8 -	- 4E-5	- 4E-4
		W, see 193Au	-	4E3	2E-6	6E-9	-	-
		Y, see 193Au	-	4E3	2E-6	5E-9	-	-
79	Gold-200m	D, see 193Au	1E3	4E3	1E-6	5E-9	2E-5	2E-4
		W, see 193Au	-	3E3	1E-6	4E-9	-	-
		Y, see 193Au	-	2E4	1E-6	3E-9	-	-
79	Gold-2002	D, see 193Au	3E4	6E4	3E-5	9E-8	4E-4	4E-3
		W, see 193Au	-	8E4	3E-5	1E-7	-	-
		Y, see 193Au	-	7E4	3E-5	1E-7	-	-
79	Gold-2012	D, see 193Au	7E4 St wall (9E4)	2E5 -	9E-5 -	3E-7 -	- 1E-3	- 1E-2
		W, see 193Au	-	2E5	1E-4	3E-7	-	-
		Y, see 193Au	-	2E5	9E-5	3E-7	-	-
80	Mercury-193m	Vapor	-	8E3	4E-6	1E-8	-	-
		Organic D	4E3	1E4	5E-6	2E-8	6E-5	6E-4
		D, sulfates	3E3	9E3	4E-6	1E-8	4E-5	4E-4
		W, oxides, hydroxides, halides, nitrates, and sulfides	-	8E3	3E-6	1E-8	-	-
80	Mercury-193	Vapor	-	3E4	1E-5	4E-8	-	-
		Organic D	2E4	6E4	3E-5	9E-8	3E-4	3E-3
		D, see 193mHg	2E4	4E4	2E-5	6E-8	2E-4	2E-3
		W, see 193mHg	-	4E4	2E-5	6E-8	-	-
80	Mercury-194	Vapor	-	3E1	1E-8	4E-11	-	-
		Organic D	2E1	3E1	1E-8	4E-11	2E-7	2E-6
		D, see 193mHg	8E2	4E1	2E-8	6E-11	1E-5	1E-4
		W, see 193mHg	-	1E2	5E-8	2E-10	-	-
80	Mercury-195m	Vapor	-	4E3	2E-6	6E-9	-	-
		Organic D	3E3	6E3	3E-6	8E-9	4E-5	4E-4
		D, see 193mHg	2E3	5E3	2E-6	7E-9	3E-5	3E-4

		W, see 193mHg	-	4E3	2E-6	5E-9	-	-
80	Mercury-195	Vapor	-	3E4	1E-5	4E-8	-	-
		Organic D	2E4	5E4	2E-5	6E-8	2E-4	2E-3
		D, see 193mHg	1E4	4E4	1E-5	5E-8	2E-4	2E-3
		W, see 193mHg	-	3E4	1E-5	5E-8	-	-
80	Mercury-197m	Vapor	-	5E3	2E-6	7E-9	-	-
		Organic D	4E3	9E3	4E-6	1E-8	5E-5	5E-4
		D, see 193mHg	3E3	7E3	3E-6	1E-8	4E-5	4E-4
		W, see 193mHg	-	5E3	2E-6	7E-9	-	-
80	Mercury-197	Vapor	-	8E3	4E-6	1E-8	-	-
		Organic D	7E3	1E4	6E-6	2E-8	9E-5	9E-4
		D, see 193mHg	6E3	1E4	5E-6	2E-8	8E-5	8E-4
		W, see 193mHg	-	9E3	4E-6	1E-8	-	-
80	Mercury-199m2	Vapor	-	8E4	3E-5	1E-7	-	-
		Organic D	6E4 St wall (1E5)	2E5 -	7E-5 -	2E-7 -	- 1E-3	- 1E-2
		D, see 193mHg	6E4	1E5	6E-5	2E-7	8E-4	8E-3
		W, see 193mHg	-	2E5	7E-5	2E-7	-	-
80	Mercury-203	Vapor	-	8E2	4E-7	1E-9	-	-
		Organic D	5E2	8E2	3E-7	1E-9	7E-6	7E-5
		D, see 193mHg	2E3	1E3	5E-7	2E-9	3E-5	3E-4
		W, see 193mHg	-	1E3	5E-7	2E-9	-	-
81	Thallium-194m2	D, all compounds	5E4 St wall (7E4)	2E5 -	6E-5 -	2E-7 -	- 1E-3	- 1E-2
81	Thallium-1942	D, all compounds	3E5 St wall (3E5)	6E5 -	2E-4 -	8E-7 -	- 4E-3	- 4E-2
81	Thallium-1952	D, all compounds	6E4	1E5	5E-5	2E-7	9E-4	9E-3
81	Thallium-197	D, all compounds	7E4	1E5	5E-5	2E-7	1E-3	1E-2
81	Thallium-198m2	D, all compounds	3E4	5E4	2E-5	8E-8	4E-4	4E-3
81	Thallium-198	D, all compounds	2E4	3E4	1E-5	5E-8	3E-4	3E-3
81	Thallium-199	D, all compounds	6E4	8E4	4E-5	1E-7	9E-4	9E-3
81	Thallium-200	D, all compounds	8E3	1E4	5E-6	2E-8	1E-4	1E-3
81	Thallium-201	D, all compounds	2E4	2E4	9E-6	3E-8	2E-4	2E-3
81	Thallium-202	D, all compounds	4E3	5E3	2E-6	7E-9	5E-5	5E-4
81	Thallium-204	D, all compounds	2E3	2E3	9E-7	3E-9	2E-5	2E-4
82	Lead-195m2	D, all compounds	6E4	2E5	8E-5	3E-7	8E-4	8E-3
82	Lead-198	D, all compounds	3E4	6E4	3E-5	9E-8	4E-4	4E-3
82	Lead-1992	D, all compounds	2E4	7E4	3E-5	1E-7	3E-4	3E-3
82	Lead-200	D, all compounds	3E3	6E3	3E-6	9E-9	4E-5	4E-4
82	Lead-201	D, all compounds	7E3	2E4	8E-6	3E-8	1E-4	1E-3
82	Lead-202m	D, all compounds	9E3	3E4	1E-5	4E-8	1E-4	1E-3
82	Lead-202	D, all compounds	1E2	5E1	2E-8	7E-11	2E-6	2E-5
82	Lead-203	D, all compounds	5E3	9E3	4E-6	1E-8	7E-5	7E-4

82	Lead-205	D, all compounds	4E3	1E3	6E-7	2E-9	5E-5	5E-4
82	Lead-209	D, all compounds	2E4	6E4	2E-5	8E-8	3E-4	3E-3
82	Lead-210	D, all compounds	6E1 Bone surf (1E0)	2E1 Bone surf (4E-1)	1E-10 -	6E-13	1E-8	1E-7
82	Lead-2112	D, all compounds	1E4	6E2	3E-7	9E-10	2E-4	2E-3
82	Lead-212	D, all compounds	8E1 Bone surf (1E2)	3E1 -	1E-8 -	5E-11 -	2E-6	2E-5
82	Lead-2142	D, all compounds	9E3	8E2	3E-7	1E-9	1E-4	1E-3
83	Bismuth-2002	D, nitrates	3E4	8E4	4E-5	1E-7	4E-4	4E-3
		W, all other compounds	-	1E5	4E-5	1E-7	-	-
83	Bismuth-2012	D, see 200Bi	1E4	3E4	1E-5	4E-8	2E-4	2E-3
		W, see 200Bi	-	4E4	2E-5	5E-8	-	-
83	Bismuth-2022	D, see 200Bi	1E4	4E4	2E-5	6E-8	2E-4	2E-3
		W, see 200Bi	-	8E4	3E-5	1E-7	-	-
83	Bismuth-203	D, see 200Bi	2E3	7E3	3E-6	9E-9	3E-5	3E-4
		W, see 200Bi	-	6E3	3E-6	9E-9	-	-
83	Bismuth-205	D, see 200Bi	1E3	3E3	1E-6	3E-9	2E-5	2E-4
		W, see 200Bi	-	1E3	5E-7	2E-9	-	-
83	Bismuth-206	D, see 200Bi	6E2	1E3	6E-7	2E-9	9E-6	9E-5
		W, see 200Bi	-	9E2	4E-7	1E-9	-	-
83	Bismuth-207	D, see 200Bi	1E3	2E3	7E-7	2E-9	1E-5	1E-4
		W, see 200Bi	-	4E2	1E-7	5E-10	-	-
83	Bismuth-210m	D, see 200Bi	4E1 Kid-neys (6E1)	5E0 Kid-neys (6E0)	2E-9 -	9E-12	8E-7	8E-6
		W, see 200Bi	-	7E-1	3E-10	9E-13	-	-
83	Bismuth-210	D, see 200Bi	8E2 -	2E2 Kid-neys (4E2)	1E-7 -	5E-10	1E-5 -	1E-4 -
		W, see 200Bi	-	3E1	1E-8	4E-11	-	-
83	Bismuth-2122	D, see 200Bi	5E3	2E2	1E-7	3E-10	7E-5	7E-4
		W, see 200Bi	-	3E2	1E-7	4E-10	-	-
83	Bismuth-2132	D, see 200Bi	7E3	3E2	1E-7	4E-10	1E-4	1E-3
		W, see 200Bi	-	4E2	1E-7	5E-10	-	-
83	Bismuth-2142	D, see 200Bi	2E4	8E2 -	3E-7	1E-9	-	-

			St wall (2E4)		-	-	3E-4	3E-3
		W, see 200Bi	-	9E-2	4E-7	1E-9	-	-
84	Polonium-2032	D, all compounds except those given for W	3E4	6E4	3E-5	9E-8	3E-4	3E-3
		W, oxides, hydroxides, and nitrates	-	9E4	4E-5	1E-7	-	-
84	Polonium-2052	D, see 203Po	2E4	4E4	2E-5	5E-8	3E-4	3E-3
		W, see 203Po	-	7E4	3E-5	1E-7	-	-
84	Polonium-207	D, see 203Po	8E3	3E4	1E-5	3E-8	1E-4	1E-3
		W, see 203Po	-	3E4	1E-5	4E-8	-	-
84	Polonium-210	D, see 203Po	3E0	6E-1	3E-10	9E-13	4E-8	4E-7
		W, see 203Po	-	6E-1	3E-10	9E-13	-	-
85	Astatine-2072	D, halides	6E3	3E3	1E-6	4E-9	8E-5	8E-4
		W	-	2E3	9E-7	3E-9	-	-
85	Astatine-211	D, halides	1E2	8E1	3E-8	1E-10	2E-6	2E-5
		W	-	5E1	2E-8	8E-11	-	-
86	Radon-220	With daughters removed	-	2E4	7E-6	2E-8	-	-
		With daughters present	-	2E1 (or 12 working level months)	9E-9	3E-11 (or 1.0 working level)	-	-
86	Radon-222	With daughters removed	-	1E4	4E-6	1E-8	-	-
		With daughters present	-	1E2 (or 4 working level months)	3E-8 (or 0.33 working level)	1E-10	-	-
87	Francium-2222	D, all compounds	2E3	5E2	2E-7	6E-10	3E-5	3E-4
87	Francium-2232	D, all compounds	6E2	8E2	3E-7	1E-9	8E-6	8E-5
88	Radium-223	W, all compounds	5E0 Bone surf (9E0)	7E1 -	3E-10 -	9E-13 -	- 1E-7	- 1E-6
88	Radium-224	W, all compounds	8E0 Bone	2E0 -	7E-10 -	2E-12 -	- 2E-7	- 2E-6

			surf (2E1)					
88	Radium-225	W, all compounds	8E0 Bone surf (2E1)	7E-1 -	3E-10 -	9E-13 -	- 2E-7	- 2E-6
88	Radium-226	W, all compounds	2E0 Bone surf (5E0)	6E-1 -	3E-10 -	9E-13 -	- 6E-8	- 6E-7
88	Radium-2272	W, all compounds	2E4 Bone surf (2E4)	1E4 Bone surf (2E4)	6E-6 -	- 3E-8	- 3E-4	- 3E-3
88	Radium-228	W, all compounds	2E0 Bone surf (4E0)	1E0 -	5E-10 -	2E-12 -	- 6E-8	- 6E-7
89	Actinium-224	D, all compounds except those given for W and Y	2E3 LLI wall (2E3)	3E1 Bone surf (4E1)	1E-8 -	- 5E-11	- 3E-5	- 3E-4
		W, halides and nitrates	-	5E1	2E-8	7E-11	-	-
		Y, oxides and hydroxides	-	5E1	2E-8	6E-11	-	-
89	Actinium-225	D, see 224Ac	5E1 LLI wall (5E1)	3E-1 Bone surf (5E-1)	1E-10 -	- 7E-13	- 7E-7	- 7E-6
		W, see 224Ac	-	6E-1	3E-10	9E-13	-	-
		Y, see 224Ac	-	6E-1	3E-10	9E-13	-	-
89	Actinium-226	D, see 224Ac	1E2 LLI wall (1E2)	3E0 Bone surf (4E0)	1E-9 -	- 5E-12	- 2E-6	- 2E-5
		W, see 224Ac	-	5E0	2E-9	7E-12	-	-
		Y, see 224Ac	-	5E0	2E-9	6E-12	-	-
89	Actinium-227	D, see 224Ac	2E-1 Bone surf (4E-1)	4E-4 Bone surf (8E-4)	2E-13 -	- 1E-15	- 5E-9	- 5E-8

		W, see 224Ac	- -	2E-3 Bone surf (3E-3)	7E-13 -	- 4E-15	- -	- -
		Y, see 224Ac	-	4E-3	2E-12	6E-15	-	-
89	Actinium-228	D, see 224Ac	2E3 -	9E0 Bone surf (2E1)	4E-9 -	- 2E-11	3E-5 -	3E-4 -
		W, see 224Ac	- -	4E1 Bone surf (6E1)	2E-8 -	- 8E-11	- -	- -
		Y, see 224Ac	-	4E1	2E-8	6E-11	-	-
90	Thorium-2262	W, all compounds except those given for Y	5E3 St wall (5E3)	2E2 -	6E-8 -	2E-10 -	- 7E-5	- 7E-4
		Y, oxides and hydroxides	-	1E2	6E-8	2E-10	-	-
90	Thorium-227	W, see 226Th	1E2	3E-1	1E-10	5E-13	2E-6	2E-5
		Y, see 226Th	-	3E-1	1E-10	5E-13	-	-
90	Thorium-228	W, see 226Th	6E0 Bone surf (1E1)	1E-2 Bone surf (2E-2)	4E-12 -	- 3E-14	- 2E-7	- 2E-6
		Y, see 226Th	-	2E-2	7E-12	2E-14	-	-
90	Thorium-229	W, see 226Th	6E-1 Bone surf (1E0)	9E-4 Bone surf (2E-3)	4E-13 -	- 3E-15	- 2E-8	- 2E-7
		Y, see 226Th	- -	2E-3 Bone surf (3E-3)	1E-12 -	- 4E-15	- -	- -
90	Thorium-230	W, see 226Th	4E0 Bone surf (9E0)	6E-3 Bone surf (2E-2)	3E-12 -	- 2E-14	- 1E-7	- 1E-6

		Y, see 226Th	- -	2E-2 Bone surf (2E-2)	6E-12 -	- 3E-14	- -	- -
90	Thorium-231	W, see 226Th	4E3	6E3	3E-6	9E-9	5E-5	5E-4
		Y, see 226Th	-	6E3	3E-6	9E-9	-	-
90	Thorium-232	W, see 226Th	7E-1 Bone surf (2E0)	1E-3 Bone surf (3E-3)	5E-13 -	- 4E-15	- 3E-8	- 3E-7
		Y, see 226Th	- -	3E-3 Bone surf (4E-3)	1E-12 -	- 6E-15	- -	- -
90	Thorium-234	W, see 226Th	3E2 LLI wall (4E2)	2E2 -	8E-8 -	3E-10 -	- 5E-6	- 5E-5
		Y, see 226Th	-	2E2	6E-8	2E-10	-	-
91	Protactinium-2272	W, all compounds except those given for Y	4E3	1E2	5E-8	2E-10	5E-5	5E-4
		Y, oxides and hydroxides	-	1E2	4E-8	1E-10	-	-
91	Protactinium-228	W, see 227Pa	1E3 -	1E1 Bone surf (2E1)	5E-9 -	- 3E-11	2E-5 -	2E-4 -
		Y, see 227Pa	-	1E1	5E-9	2E-11	-	-
91	Protactinium-230	W, see 227Pa	6E2 Bone surf (9E2)	5E0 -	2E-9 -	7E-12 -	- 1E-5	- 1E-4
		Y, see 227Pa	-	4E0	1E-9	5E-12	-	-
91	Protactinium-231	W, see 227Pa	2E-1 Bone surf (5E-1)	2E-3 Bone surf (4E-3)	6E-13 -	- 6E-15	- 6E-9	- 6E-8
		Y, see 227Pa	- -	4E-3 Bone surf (6E-3)	2E-12 -	- 8E-15	- -	- -
91	Protactinium-232	W, see 227Pa	1E3 -	2E1	9E-9	-	2E-5	2E-4

				Bone surf (6E1)	-	8E-11	-	-
		Y, see 227Pa	- -	6E1	2E-8	-	- -	- -
				Bone surf (7E1)	-	1E-10		
91	Protactinium-233	W, see 227Pa	1E3 LLI wall (2E3)	7E2 -	3E-7 -	1E-9 -	- 2E-5	- 2E-4
		Y, see 227Pa	-	6E2	2E-7	8E-10	-	-
91	Protactinium-234	W, see 227Pa	2E3	8E3	3E-6	1E-8	3E-5	3E-4
		Y, see 227Pa	-	7E3	3E-6	9E-9	-	-
92	Uranium-230	D, UF, UOF, UO(NO)	4E0 Bone surf (6E0)	4E-1 Bone surf (6E-1)	2E-10 -	- 8E-13	- 8E-8	- 8E-7
		W, UO, UF, UC1	-	4E-1	1E-10	5E-13	-	-
		Y, UO, UO	-	3E-1	1E-10	4E-13	-	-
92	Uranium-231	D, see 230U	5E3 LLI wall (4E3)	8E3 -	3E-6 -	1E-8 -	- 6E-5	- 6E-4
		W, see 230U	-	6E3	2E-6	8E-9	-	-
		Y, see 230U	-	5E3	2E-6	6E-9	-	-
92	Uranium-232	D, see 230U	2E0 Bone surf (4E0)	2E-1 Bone surf (4E-1)	9E-11 -	- 6E-13	- 6E-8	- 6E-7
		W, see 230U	-	4E-1	2E-10	5E-13	-	-
		Y, see 230U	-	8E-3	3E-12	1E-14	-	-
92	Uranium-233	D, see 230U	1E1 Bone surf (2E1)	1E0 Bone surf (2E0)	5E-10 -	- 3E-12	- 3E-7	- 3E-6
		W, see 230U	-	7E-1	3E-10	1E-12	-	-
		Y, see 230U	-	4E-2	2E-11	5E-14	-	-
92	Uranium-2343	D, see 230U	1E1 Bone surf	1E0 Bone surf	5E-10 -	- 3E-12	- 3E-7	- 3E-6

			(2E1)	(2E0)				
		W, see 230U	-	7E-1	3E-10	1E-12	-	-
		Y, see 230U	-	4E-2	2E-11	5E-14	-	-
92	Uranium-2353	D, see 230U	1E1 Bone surf (2E1)	1E0 Bone surf (2E0)	6E-10 -	3E-12	3E-7	3E-6
		W, see 230U	-	8E-1	3E-10	1E-12	-	-
		Y, see 230U	-	4E-2	2E-11	6E-14	-	-
92	Uranium-236	D, see 230U	1E1 Bone surf (2E1)	1E0 Bone surf (2E0)	5E-10 -	3E-12	3E-7	3E-6
		W, see 230U	-	8E-1	3E-10	1E-12	-	-
		Y, see 230U	-	4E-2	2E-11	6E-14	-	-
92	Uranium-237	D, see 230U	2E3 LLI wall (2E3)	3E3 -	1E-6 -	4E-9 -	3E-5	3E-4
		W, see 230U	-	2E3	7E-7	2E-9	-	-
		Y, see 230U	-	2E3	6E-7	2E-9	-	-
92	Uranium-2383	D, see 230U	1E1 Bone surf (2E1)	1E0 Bone surf (2E0)	6E-10 -	3E-12	3E-7	3E-6
		W, see 230U	-	8E-1	3E-10	1E-12	-	-
		Y, see 230U	-	4E-2	2E-11	6E-14	-	-
92	Uranium-2392	D, see 230U	7E4	2E5	8E-5	3E-7	9E-4	9E-3
		W, see 230U	-	2E5	7E-5	2E-7	-	-
		Y, see 230U	-	2E5	6E-5	2E-7	-	-
92	Uranium-240	D, see 230U	1E3	4E3	2E-6	5E-9	2E-5	2E-4
		W, see 230U	-	3E3	1E-6	4E-9	-	-
		Y, see 230U	-	2E3	1E-6	3E-9	-	-
92	Uranium-natural3	D, see 230U	1E1 -	1E0 Bone surf (2E1)	5E-10 Bone surf (2E0)	3E-12	3E-7	3E-6
		W, see 230U	-	8E-1	3E-10	9E-13	-	-
		Y, see 230U	-	5E-2	2E-11	9E-14	-	-

93	Neptunium-2322	W, all compounds	1E5 - LLI wall (2E5)	2E3 Bone surf (5E2)	7E-7 -	- 6E-9	2E-3 -	2E-2 -
93	Neptunium-2332	W, all compounds	8E5	3E6	1E-3	4E-6	1E-2	1E-1
93	Neptunium-234	W, all compounds	2E3	3E3	1E-6	4E-9	3E-5	3E-4
93	Neptunium-235	W, all compounds	2E4 LLI wall (2E4)	8E2 Bone surf (1E3)	3E-7 -	- 2E-9	- 3E-4	- 3E-3
93	Neptunium-236 (1.15E5 y)	W, all compounds	3E0 Bone surf (6E0)	2E-2 Bone surf (5E-2)	9E-12 -	- 8E-14	- 9E-8	- 9E-7
93	Neptunium-236 (22.5 h)	W, all compounds	3E3 Bone surf (4E3)	3E1 Bone surf (7E1)	1E-8 -	- 1E-10	- 5E-5	- 5E-4
93	Neptunium-237	W, all compounds	5E-1 Bone surf (1E0)	4E-3 Bone surf (1E-2)	2E-12 -	- 1E-14	- 2E-8	- 2E-7
93	Neptunium-238	W, all compounds	1E3 - LLI wall (1E3)	6E1 Bone surf (2E2)	3E-8 -	- 2E-10	2E-5 -	2E-4 -
93	Neptunium-239	W, all compounds	2E3 LLI wall (2E3)	2E3 -	9E-7 -	3E-9 -	- 2E-5	- 2E-4
93	Neptunium-2402	W, all compounds	2E4	8E4	3E-5	1E-7	3E-4	3E-3
94	Plutonium-234	W, all compounds except PuO	8E3	2E2	9E-8	3E-10	1E-4	1E-3
		Y, see PuO	-	2E2	8E-8	3E-10	-	-
94	Plutonium-2352	W, see 234Pu	9E5	3E6	1E-3	4E-6	1E-2	1E-1
		Y, see 234Pu	-	3E6	1E-3	3E-6	-	-
94	Plutonium-236	W, see 234Pu	2E0 Bone surf (4E0)	2E-2 Bone surf (4E-2)	8E-12 -	- 5E-14	- 6E-8	- 6E-7
		Y, see 234Pu	-	4E-2	2E-11	6E-14	-	-
94	Plutonium-237	W, see 234Pu	1E4	3E3	1E-6	5E-9	2E-4	2E-3
		Y, see 234Pu	-	3E3	1E-6	4E-9	-	-
94	Plutonium-238	W, see 234Pu	9E-1 Bone	7E-3 Bone	3E-12 -	- 2E-1	- 2E-8	- 2E-7

			surf (2E0)	surf (1E-2)		4		
		Y, see 234Pu	-	2E-2	8E-12	2E-14	-	-
94	Plutonium-239	W, see 234Pu	8E-1 Bone surf (1E0)	6E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7
		Y, see 234Pu	- -	2E-2 Bone surf (2E-2)	7E-12 -	- 2E-14	- -	- -
94	Plutonium-240	W, see 234Pu	8E-1 Bone surf (1E0)	6E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7
		Y, see 234Pu	- -	2E-2 Bone surf (2E-2)	7E-12 -	- 2E-14	- -	- -
94	Plutonium-241	W, see 234Pu	4E1 Bone surf (7E1)	3E-1 Bone surf (6E-1)	1E-10 -	- 8E-13	- 1E-6	- 1E-5
		Y, see 234Pu	- -	8E-1 Bone surf (1E0)	3E-10 -	- 1E-12	- -	- -
94	Plutonium-242	W, see 234Pu	8E-1 Bone surf (1E0)	7E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7
		Y, see 234Pu	- -	2E-2 Bone surf (2E-2)	7E-12 -	- 2E-14	- -	- -
94	Plutonium-243	W, see 234Pu	2E4	4E4	2E-5	5E-8	2E-4	2E-3
		Y, see 234Pu	-	4E4	2E-5	5E-8	-	-
94	Plutonium-244	W, see 234Pu	8E-1 Bone surf (2E0)	7E-3 Bone surf (1E-2	3E-12 -	- 2E-14	- 2E-8	- 2E-7

				)				
		Y, see 234Pu	- -	2E-2 Bone surf (2E-2)	7E-12 -	- 2E-14	- -	- -
94	Plutonium-245	W, see 234Pu	2E3	5E3	2E-6	6E-9	3E-5	3E-4
		Y, see 234Pu	-	4E3	2E-6	6E-9	-	-
94	Plutonium-246	W, see 234Pu	4E2 LLI wall (4E2)	3E2 -	1E-7 -	4E-10 -	- 6E-6	- 6E-5
		Y, see 234Pu	-	3E2	1E-7	4E-10	-	-
95	Americium-2372	W, all compounds	8E4	3E5	1E-4	4E-7	1E-3	1E-2
95	Americium-2382	W, all compounds	4E4 -	3E3 Bone surf (6E3)	1E-6 -	- 9E-9	5E-4 -	5E-3 -
95	Americium-239	W, all compounds	5E3	1E4	5E-6	2E-8	7E-5	7E-4
95	Americium-240	W, all compounds	2E3	3E3	1E-6	4E-9	3E-5	3E-4
95	Americium-241	W, all compounds	8E-1 Bone surf (1E0)	6E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7
95	Americium-242m	W, all compounds	8E-1 Bone surf (1E0)	6E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7
95	Americium-242	W, all compounds	4E3 -	8E1 Bone surf (9E1)	4E-8 -	- 1E-10	5E-5 -	5E-4 -
95	Americium-243	W, all compounds	8E-1 Bone surf (1E0)	6E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7
95	Americium-244m2	W, all compounds	6E4 St wall (8E4)	4E3 Bone surf (7E3)	2E-6 -	- 1E-8	- 1E-3	- 1E-2
95	Americium-244	W, all compounds	3E3 -	2E2 Bone surf (3E2)	8E-8 -	- 4E-10	4E-5 -	4E-4 -
95	Americium-245	W, all compounds	3E4	8E4	3E-5	1E-7	4E-4	4E-3
95	Americium-246m2	W, all compounds	5E4	2E5 -	8E-5	3E-7	-	-

			St wall (6E4)		-	-	8E-4	8E-3
95	Americium-2462	W, all compounds	3E4	1E5	4E-5	1E-7	4E-4	4E-3
96	Curium-238	W, all compounds	2E4	1E3	5E-7	2E-9	2E-4	2E-3
96	Curium-240	W, all compounds	6E1 Bone surf (8E1)	6E-1 Bone surf (6E-1)	2E-10 -	- 9E-13	- 1E-6	- 1E-5
96	Curium-241	W, all compounds	1E3 -	3E1 Bone surf (4E1)	1E-8 -	- 5E-11	2E-5 -	2E-4 -
96	Curium-242	W, all compounds	3E1 Bone surf (5E1)	3E-1 Bone surf (3E-1)	1E-10 -	- 4E-13	- 7E-7	- 7E-6
96	Curium-243	W, all compounds	1E0 Bone surf (2E0)	9E-3 Bone surf (2E-2)	4E-12 -	- 2E-14	- 3E-8	- 3E-7
96	Curium-244	W, all compounds	1E0 Bone surf (3E0)	1E-2 Bone surf (2E-2)	5E-12 -	- 3E-14	- 3E-8	- 3E-7
96	Curium-245	W, all compounds	7E-1 Bone surf (1E0)	6E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7
96	Curium-246	W, all compounds	7E-1 Bone surf (1E0)	6E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7
96	Curium-247	W, all compounds	8E-1 Bone surf (1E0)	6E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7
96	Curium-248	W, all compounds	2E-1 Bone surf (4E-1)	2E-3 Bone surf (3E-3)	7E-13 -	- 4E-15	- 5E-9	- 5E-8
96	Curium-2492	W, all compounds	5E4 -	2E4	7E-6	-	7E-4	7E-3

				Bone surf (3E4)	-	4E-8	-	-
96	Curium-250	W, all compounds	4E-2	3E-4 Bone surf (5E-4)	1E-13 -	8E-16	9E-10	9E-9
			Bone surf (6E-2)					
97	Berkelium-245	W, all compounds	2E3	1E3	5E-7	2E-9	3E-5	3E-4
97	Berkelium-246	W, all compounds	3E3	3E3	1E-6	4E-9	4E-5	4E-4
97	Berkelium-247	W, all compounds	5E-1	4E-3 Bone surf (9E-3)	2E-12 -	1E-14	2E-8	2E-7
			Bone surf (1E0)					
97	Berkelium-249	W, all compounds	2E2	2E0 Bone surf (4E0)	7E-10 -	5E-12	6E-6	6E-5
			Bone surf (5E2)					
97	Berkelium-250	W, all compounds	9E3 -	3E2 Bone surf (7E2)	1E-7 -	1E-9	1E-4 -	1E-3 -
98	Californium-2442	W, all compounds except those given for Y	3E4 St wall (3E4)	6E2 -	2E-7 -	8E-10 -	- 4E-4	- 4E-3
		Y, oxides and hydroxides	-	6E2	2E-7	8E-10	-	-
98	Californium-246	W, see 244Cf	4E2	9E0	4E-9	1E-11	5E-6	5E-5
		Y, see 244Cf	-	9E0	4E-9	1E-11	-	-
98	Californium-248	W, see 244Cf	8E0	6E-2 Bone surf (1E-1)	3E-11 -	2E-13	2E-7	2E-6
			Bone surf (2E1)					
		Y, see 244Cf	-	1E-1	4E-11	1E-13	-	-
98	Californium-249	W, see 244Cf	5E-1	4E-3 Bone surf (9E-3)	2E-12 -	1E-14	2E-8	2E-7
			Bone surf (1E0)					
		Y, see 244Cf	- -	1E-2 Bone surf (1E-2	4E-12 -	2E-14	- -	- -

				)				
98	Californium-250	W, see 244Cf	1E0 Bone surf (2E0)	9E-3 Bone surf (2E-2)	4E-12 -	3E-14	3E-8	3E-7
		Y, see 244Cf	-	3E-2	1E-11	4E-14	-	-
98	Californium-251	W, see 244Cf	5E-1 Bone surf (1E0)	4E-3 Bone surf (9E-3)	2E-12 -	1E-14	2E-8	2E-7
		Y, see 244Cf	- -	1E-2 Bone surf (1E-2)	4E-12 -	2E-14	- -	- -
98	Californium-252	W, see 244Cf	2E0 Bone surf (5E0)	2E-2 Bone surf (4E-2)	8E-12 -	5E-14	7E-8	7E-7
		Y, see 244Cf	-	3E-2	1E-11	5E-14	-	-
98	Californium-253	W, see 244Cf	2E2 Bone surf (4E2)	2E0 -	8E-10 -	3E-12 -	5E-6	5E-5
		Y, see 244Cf	-	2E0	7E-10	2E-12	-	-
98	Californium-254	W, see 244Cf	2E0	2E-2	9E-12	3E-14	3E-8	3E-7
		Y, see 244Cf	-	2E-2	7E-12	2E-14	-	-
99	Einsteinium-250	W, all compounds	4E4 -	5E2 Bone surf (1E3)	2E-7 -	2E-9	6E-4 -	6E-3 -
99	Einsteinium-251	W, all compounds	7E3 -	9E2 Bone surf (1E3)	4E-7 -	2E-9	1E-4 -	1E-3 -
99	Einsteinium-253	W, all compounds	2E2	1E0	6E-10	2E-12	2E-6	2E-5
99	Einsteinium-254m	W, all compounds	3E2 LLI wall (3E2)	1E1 -	4E-9 -	1E-11 -	4E-6	4E-5
99	Einsteinium-254	W, all compounds	8E0	7E-2	3E-1	-	-	-

			Bone surf (2E1)	Bone surf (1E-1)	1 -	2E-13	2E-7	2E-6
100	Fermium-252	W, all compounds	5E2	1E1	5E-9	2E-11	6E-6	6E-5
100	Fermium-253	W, all compounds	1E3	1E1	4E-9	1E-11	1E-5	1E-4
100	Fermium-254	W, all compounds	3E3	9E1	4E-8	1E-10	4E-5	4E-4
100	Fermium-255	W, all compounds	5E2	2E1	9E-9	3E-11	7E-6	7E-5
100	Fermium-257	W, all compounds	2E1	2E-1	7E-11	-	-	-
			Bone surf (4E1)	Bone surf (2E-1)	1 -	3E-13	5E-7	5E-6
101	Mendelevium-257	W, all compounds	7E3 -	8E1	4E-8	-	1E-4	1E-3
				Bone surf (9E1)	-	1E-10	-	-
101	Mendelevium-258	W, all compounds	3E1	2E-1	1E-10	-	-	-
			Bone surf (5E1)	Bone surf (3E-1)	0 -	5E-13	6E-7	6E-6
-	Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life less than 2 hours Submersion1	-	2E2	1E-7	1E-9	-	-	
-	Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life greater than 2 hours	-	2E-1	1E-10	1E-12	1E-8	1E-7	
-	Any single radionuclide not listed above that decays by alpha emission or spontaneous fission, or any mixture for which either the identity or the concentration of any radionuclide in the mixture is not known	-	4E-4	2E-13	1E-15	2E-9	2E-8	

Footnotes:

1 "Submersion" means that values given are for submersion in a hemispherical semi-infinite cloud of airborne material.

2 These radionuclides have radiological half-lives of less than 2 hours. The total effective dose equivalent received during operations with these radionuclides might include a significant contribution from external exposure. The DAC values for all radionuclides, other than those designated Class "Submersion," are based upon the committed effective dose equivalent due to the intake of the radionuclide into the body and do NOT include potentially significant contributions to dose equivalent from external exposures. The licensee may substitute 1E-7 mCi/ml for the listed DAC to account for the submersion dose prospectively, but should use individual monitoring devices or other radiation measuring instruments that measure external exposure to demonstrate compliance with the limits. See §175.03(c)(3).

3 For soluble mixtures of U-238, U-234, and U-235 in air, chemical toxicity may be the limiting factor (see §175.03(c)(1)(v)). If the percent by weight (enrichment) of U-235 is not greater than 5, the concentration value for a 40-hour workweek is 0.2 milligrams uranium per cubic meter of air average. For any enrichment, the product of the average concentration and time of exposure during a 40-hour workweek shall not exceed 8E-3 (SA) mCi-hr/ml, where SA is the specific activity of the uranium inhaled. The specific activity for natural uranium is 6.77E-7 curies per gram U. The specific activity for other mixtures of U-238, U-235, and U-234, if not known, shall be:
SA = 3.6E-7 curies/gram U U-depleted SA = [0.4 0.38 (enrichment) 0.0034 (enrichment)2] E-6, enrichment > 0.72

3 where enrichment is the percentage by weight of U-235, expressed as percent.

Notes:

1. If the identity of each radionuclide in a mixture is known but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

2. If the identity of each radionuclide in the mixture is not known, but it is known that certain radionuclides specified in this appendix are not present in the mixture, the inhalation ALI, DAC, and effluent and sewage concentrations for the mixture are the lowest values specified in this appendix for any radionuclide that is not known to be absent from the mixture; or

	Table 1 Occupational Values			Table 2 Effluent Concentrations			Table 3 Releases to Sewers	
	Col. 1	Col. 2	Col. 3	Col. 1		Col. 2		
Atomic No.	Radionuclide	Class	Oral Ingestion	DAC (mCi/ml) Inhalation	Air (mCi/ml)	Water (mCi/ml)	Monthly Average Concentration (mCi/ml)	
If it is known that Ac-227-D and Cm-250-W are not present	-	7E-4	3E-13	-	-	-		
If, in addition, it is known that Ac-227-W, Y, Th-229-W, Y, Th-230-W, Th-232-W, Y, Pa-231-W, Y, Np-237-W, Pu-239-W, Pu-240-W, Pu-242-W, Am-241-W, Am-242m-W, Am-243-W, Cm-245-W, Cm-246-W, Cm-247-W, Cm-248-W,	-	7E-3	3E-12	-	-	-		

Bk-247-W, Cf-249-W, and Cf-251-W are not present						
If, in addition, it is known that Sm-146-W, Sm-147-W, Gd-148-D, W, Gd-152-D, W, Th-228-W, Y, Th-230-Y, U-232-Y, U-233-Y, U-234-Y, U-235-Y, U-236-Y, U-238-Y, Np-236-W, Pu-236-W, Y, Pu-238-W, Y, Pu-239-Y, Pu-240-Y, Pu-242-Y, Pu-244-W, Y, Cm-243-W, Cm-244-W, Cf-248-W, Cf-249-Y, Cf-250-W, Y, Cf-251-Y, Cf-252-W, Y, and Cf-254-W, Y are not present	-	7E-2	3E-11	-	-	-
If, in addition, it is known that Pb-210-D, Bi-210m-W, Po-210-D, W, Ra-223-W, Ra-225-W, Ra-226-W, Ac-225-D, W, Y, Th-227-W, Y, U-230-D, W, Y, U-232-D, W, Pu-241-W, Cm-240-W, Cm-242-W, Cf-248-Y, Es-254-W, Fm-257-W, and Md-258-W are not present	-	7E-1	3E-10	-	-	-
If, in addition, it is known that Si-32-Y, Ti-44-Y, Fe-60-D, Sr-90-Y, Zr-93-D, Cd-113m-D, Cd-113-D, In-115-D, W, La-138-D, Lu-176-W, Hf-178m-D, W, Hf-182-D, W, Bi-210m-D, Ra-224-W, Ra-228-W, Ac-226-D, W, Y, Pa-230-W, Y, U-233-D, W, U-234-D, W, U-235-D, W, U-236-D, W, U-238-D, W, Pu-241-Y, Bk-249-W, Cf-253-W, Y, and Es-253-W are not present	-	7E0	3E-9	-	-	-
If it is known that Ac-227-D, W, Y, Th-229-W, Y, Th-232-W, Y, Pa-231-W, Y, Cm-248-W, and, Cm-250-W are not present	-	-	-	1E-14	-	-
If, in addition, it is known that Sm-146-W, Gd-148-D, W, Gd-152-D, Th-228-W, Y, Th-230-W, Y, U-232-Y, U-233-Y, U-234-Y, U-235-Y, U-236-Y, U-238-Y, U-Nat-Y, Np-236-W, Np-237-W, Pu-236-W, Y, Pu-238-W, Y, Pu-239-W, Y, Pu-240-W, Y, Pu-242-W, Y, Pu-244-W, Y, Am-241-W, Am-242m-W, Am-243-W, Cm-243-W, Cm-244-W, Cm-245-W, Cm-246-W, Cm-247-W, Bk-247-W, Cf-249-W, Y, Cf-250-W, Y, Cf-251-W, Y, Cf-252-W, Y, and Cf-254-W, Y are not present	-	-	-	1E-13	-	-
If, in addition, it is known that Sm-147-W, Gd-152-W, Pb-210-D, Bi-210m-W, Po-210-D, W, Ra-223-W, Ra-225-W, Ra-226-W, Ac-225-D, W, Y, Th-227-W, Y, U-230-D, W, Y, U-232-D, W, U-Nat-W, Pu-241-W, Cm-240-W, Cm-242-W, Cf-248-W, Y, Es-254-W, Fm-257-W, and Md-258-W are not present	-	-	-	1E-12	-	-
If, in addition, it is known that Fe-60, Sr-90, Cd-113m, Cd-113, In-115, I-129, Cs-134, Sm-145, Sm-147, Gd-148, Gd-152, Hg-194 (organic), Bi-210m, Ra-223, Ra-224, Ra-225, Ac-225, Th-228, Th-230, U-233, U-234, U-235, U-236, U-238, U-Nat, Cm-242, Cf-248, Es-254, Fm-257, and Md-258 are not present	-	-	-	-	1E-6	1E-5

3. If a mixture of radionuclides consists of uranium and its daughters in ore dust (10 mm AMAD particle distribution assumed) prior to chemical separation of the uranium from the ore, the following values may be used for the DAC of the mixture: 6E-11 mCi of gross alpha activity from uranium-238, uranium-234, thorium-230, and radium-226 per milliliter of air; 3E-11 mCi of natural uranium per milliliter of air; or 45 micrograms of natural uranium per cubic meter of air.

4. If the identity and concentration of each radionuclide in a mixture are known, the limiting values should be derived as follows: determine, for each radionuclide in the mixture, the ratio between the concentration present in the mixture and the concentration otherwise established in Appendix B for the specific radionuclide when not in a mixture. The sum of such ratios for all of the radionuclides in the mixture may not exceed "1" (i.e., "unity").

Example: If radionuclides "A," "B," and "C" are present in concentrations C_A, C_B, and C_C, and if the applicable DACs are DAC_A, DAC_B, and DAC_C, respectively, then the concentrations shall be limited so that the following relationship exists:

$$\frac{C_A}{DAC_A} + \frac{C_B}{DAC_B} + \frac{C_C}{DAC_C} \leq 1$$

Rules of the City of New York

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

24 RCNY APPENDIX C

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

APPENDIX C QUANTITIES* OF LICENSED OR REGISTERED MATERIAL REQUIRING LABELING

APPENDIX C QUANTITIES* OF LICENSED OR REGISTERED MATERIAL REQUIRING LABELING

Radionuclide	Quantity(mCi)**	Radionuclide	Quantity(mCi)**
Hydrogen-3	1,000	Chromium-48	1,000
Beryllium-7	1,000	Chromium-49	1,000
Beryllium-10	1	Chromium-51	1,000
Carbon-11	1,000	Manganese-51	1,000
Carbon-14	1,000	Manganese-52m	1,000
Fluorine-18	1,000	Manganese-52	100
Sodium-22	10	Manganese-53	1,000
Sodium-24	100	Manganese-54	100

Magnesium-28	100	Manganese-56	1,000
Aluminum-26	10	Iron-52	100
Silicon-31	1,000	Iron-55	100
Silicon-32	1	Iron-59	10
Phosphorus-32	10	Iron-60	1
Phosphorus-33	100	Cobalt-55	100
Sulfur-35	100	Cobalt-56	10
Chlorine-36	10	Cobalt-57	100
Chlorine-38	1,000	Cobalt-58m	1,000
Chlorine-39	1,000	Cobalt-58	100
Argon-39	1,000	Cobalt-60m	1,000
Argon-41	1,000	Cobalt-60	1
Potassium-40	100	Cobalt-61	1,000
Potassium-42	1,000	Cobalt-62m	1,000
Potassium-43	1,000	Nickel-56	100
Potassium-44	1,000	Nickel-57	100
Potassium-45	1,000	Nickel-59	100
Calcium-41	100	Nickel-63	100
Calcium-45	100	Nickel-65	1,000
Calcium-47	100	Nickel-66	10
Scandium-43	1,000	Copper-60	1,000
Scandium-44m	100	Copper-61	1,000
Scandium-44	100	Copper-64	1,000
Scandium-46	10	Copper-67	1,000
Scandium-47	100	Zinc-62	100
Scandium-48	100	Zinc-63	1,000
Scandium-49	1,000	Zinc-65	10
Titanium-44	1	Zinc-69m	100
Titanium-45	1,000	Zinc-69	1,000
Vanadium-47	1,000	Zinc-71m	1,000
Vanadium-48	100	Zinc-72	100
Vanadium-49	1,000	Gallium-65	1,000
Gallium-66	100	Krypton-81	1,000
Gallium-67	1,000	Krypton-83m	1,000
Gallium-68	1,000	Krypton-85m	1,000
Gallium-70	1,000	Krypton-85	1,000
Gallium-72	100	Krypton-87	1,000
Gallium-73	1,000	Krypton-88	1,000
Germanium-66	1,000	Rubidium-79	1,000
Germanium-67	1,000	Rubidium-81m	1,000
Germanium-68	10	Rubidium-81	1,000
Germanium-69	1,000	Rubidium-82m	1,000
Germanium-71	1,000	Rubidium-83	100
Germanium-75	1,000	Rubidium-84	100
Germanium-77	1,000	Rubidium-86	100
Germanium-78	1,000	Rubidium-87	100
Arsenic-69	1,000	Rubidium-88	1,000
Arsenic-70	1,000	Rubidium-89	1,000
Arsenic-71	100	Strontium-80	100
Arsenic-72	100	Strontium-81	1,000

Arsenic-73	100	Strontium-83	100
Arsenic-74	100	Strontium-85m	1,000
Arsenic-76	100	Strontium-85	100
Arsenic-77	100	Strontium-87m	1,000
Arsenic-78	1,000	Strontium-89	10
Selenium-70	1,000	Strontium-90	0.1
Selenium-73m	1,000	Strontium-91	100
Selenium-73	100	Strontium-92	100
Selenium-75	100	Yttrium-86m	1,000
Selenium-79	100	Yttrium-86	100
Selenium-81m	1,000	Yttrium-87	100
Selenium-81	1,000	Yttrium-88	10
Selenium-83	1,000	Yttrium-90m	1,000
Bromine-74m	1,000	Yttrium-90	10
Bromine-74	1,000	Yttrium-91m	1,000
Bromine-75	1,000	Yttrium-91	10
Bromine-76	100	Yttrium-92	100
Bromine-77	1,000	Yttrium-93	100
Bromine-80m	1,000	Yttrium-94	1,000
Bromine-80	1,000	Yttrium-95	1,000
Bromine-82	100	Zirconium-86	100
Bromine-83	1,000	Zirconium-88	10
Bromine-84	1,000	Zirconium-89	100
Krypton-74	1,000	Zirconium-93	1
Krypton-76	1,000	Zirconium-95	10
Krypton-77	1,000	Zirconium-97	100
Krypton-79	1,000		
Niobium-88	1,000	Palladium-101	1,000
Niobium-89m		Palladium-103	100
(66 min)	1,000	Palladium-107	10
Niobium-89		Palladium-109	100
(122 min)	1,000	Silver-102	1,000
Niobium-90	100	Silver-103	1,000
Niobium-93m	10	Silver-104m	1,000
Niobium-94	1	Silver-104	1,000
Niobium-95m	100	Silver-105	100
Niobium-95	100	Silver-106m	100
Niobium-96	100	Silver-106	1,000
Niobium-97	1,000	Silver-108m	1
Niobium-98	1,000	Silver-110m	10
Molybdenum-90	100	Silver-111	100
Molybdenum-93m	100	Silver-112	100
Molybdenum-93	10	Silver-115	1,000
Molybdenum-99	100	Cadmium-104	1,000
Molybdenum-101	1,000	Cadmium-107	1,000
Technetium-93m	1,000	Cadmium-109	1
Technetium-93	1,000	Cadmium-113m	0.1
Technetium-94m	1,000	Cadmium-113	100
Technetium-94	1,000	Cadmium-115m	10
Technetium-96m	1,000	Cadmium-115	100

Technetium-96	100	Cadmium-117m	1,000
Technetium-97m	100	Cadmium-117	1,000
Technetium-97	1,000	Indium-109	1,000
Technetium-98	10	Indium-110m	
Technetium-99m	1,000	(69.1m)	1,000
Technetium-99	100	Indium-110	
Technetium-101	1,000	(4.9h)	1,000
Technetium-104	1,000	Indium-111	100
Ruthenium-94	1,000	Indium-112	1,000
Ruthenium-97	1,000	Indium-113m	1,000
Ruthenium-103	100	Indium-114m	10
Ruthenium-105	1,000	Indium-115m	1,000
Ruthenium-106	1	Indium-115	100
Rhodium-99m	1,000	Indium-116m	1,000
Rhodium-99	100	Indium-117m	1,000
Rhodium-100	100	Indium-117	1,000
Rhodium-101m	1,000	Indium-119m	1,000
Rhodium-101	10	Tin-110	100
Rhodium-102m	10	Tin-111	1,000
Rhodium-102	10	Tin-113	100
Rhodium-103m	1,000	Tin-117m	100
Rhodium-105	100	Tin-119m	100
Rhodium-106m	1,000	Tin-121m	100
Rhodium-107	1,000	Tin-121	1,000
Palladium-100	100		
Tin-123m	1,000	Tellurium-133	1,000
Tin-123	10	Tellurium-134	1,000
Tin-125	10	Iodine-120m	1,000
Tin-126	10	Iodine-120	100
Tin-127	1,000	Iodine-121	1,000
Tin-128	1,000	Iodine-123	100
Antimony-115	1,000	Iodine-124	10
Antimony-116m	1,000	Iodine-125	1
Antimony-116	1,000	Iodine-126	1
Antimony-117	1,000	Iodine-128	1,000
Antimony-118m	1,000	Iodine-129	1
Antimony-119	1,000	Iodine-130	10
Antimony-120		Iodine-131	1
(16m)	1,000	Iodine-132m	100
Antimony-120		Iodine-132	100
(5.76d)	100	Iodine-133	10
Antimony-122	100	Iodine-134	1,000
Antimony-124m	1,000	Iodine-135	100
Antimony-124	10	Xenon-120	1,000
Antimony-125	100	Xenon-121	1,000
Antimony-126m	1,000	Xenon-122	1,000
Antimony-126	100	Xenon-123	1,000
Antimony-127	100	Xenon-125	1,000
Antimony-128		Xenon-127	1,000
(10.4m)	1,000	Xenon-129m	1,000

Antimony-128 (9.01h)	100
Antimony-129	100
Antimony-130	1,000
Antimony-131	1,000
Tellurium-116	1,000
Tellurium-121m	10
Tellurium-121	100
Tellurium-123m	10
Tellurium-123	100
Tellurium-125m	10
Tellurium-127m	10
Tellurium-127	1,000
Tellurium-129m	10
Tellurium-129	1,000
Tellurium-131m	10
Tellurium-131	100
Tellurium-132	10
Tellurium-133m	100
Barium-126	1,000
Barium-128	100
Barium-131m	1,000
Barium-131	100
Barium-133m	100
Barium-133	100
Barium-135m	100
Barium-139	1,000
Barium-140	100
Barium-141	1,000
Barium-142	1,000
Lanthanum-131	1,000
Lanthanum-132	100
Lanthanum-135	1,000
Lanthanum-137	10
Lanthanum-138	100
Lanthanum-140	100
Lanthanum-141	100
Lanthanum-142	1,000
Lanthanum-143	1,000
Cerium-134	100
Cerium-135	100
Cerium-137m	100
Cerium-137	1,000
Cerium-139	100
Cerium-141	100
Cerium-143	100
Cerium-144	1
Praseodymium-136	1,000
Praseodymium-137	1,000
Praseodymium-138m	1,000
Xenon-131m	1,000
Xenon-133m	1,000
Xenon-133	1,000
Xenon-135m	1,000
Xenon-135	1,000
Xenon-138	1,000
Cesium-125	1,000
Cesium-127	1,000
Cesium-129	1,000
Cesium-130	1,000
Cesium-131	1,000
Cesium-132	100
Cesium-134m	1,000
Cesium-134	10
Cesium-135m	1,000
Cesium-135	100
Cesium-136	10
Cesium-137	10
Cesium-138	1,000
Promethium-141	1,000
Promethium-143	100
Promethium-144	10
Promethium-145	10
Promethium-146	1
Promethium-147	10
Promethium-148m	10
Promethium-148	10
Promethium-149	100
Promethium-150	1,000
Promethium-151	100
Samarium-141m	1,000
Samarium-141	1,000
Samarium-142	1,000
Samarium-145	100
Samarium-146	1
Samarium-147	100
Samarium-151	10
Samarium-153	100
Samarium-155	1,000
Samarium-156	1,000
Europium-145	100
Europium-146	100
Europium-147	100
Europium-148	10
Europium-149	100
Europium-150 (12.62h)	100
Europium-150 (34.2y)	1
Europium-152m	100

Praseodymium-139	1,000	Europium-152	1
Praseodymium-142m	1,000	Europium-154	1
Praseodymium-142	100	Europium-155	10
Praseodymium-143	100	Europium-156	100
Praseodymium-144	1,000	Europium-157	100
Praseodymium-145	100	Europium-158	1,000
Praseodymium-147	1,000	Gadolinium-145	1,000
Neodymium-136	1,000	Gadolinium-146	10
Neodymium-138	100	Gadolinium-147	100
Neodymium-139m	1,000	Gadolinium-148	0.001
Neodymium-139	1,000	Gadolinium-149	100
Neodymium-141	1,000	Gadolinium-151	10
Neodymium-147	100	Gadolinium-152	100
Neodymium-149	1,000	Gadolinium-153	10
Neodymium-151	1,000	Gadolinium-159	100
Terbium-147	1,000	Ytterbium-162	1,000
Terbium-149	100	Ytterbium-166	100
Terbium-150	1,000	Ytterbium-167	1,000
Terbium-151	100	Ytterbium-169	100
Terbium-153	1,000	Ytterbium-175	100
Terbium-154	100	Ytterbium-177	1,000
Terbium-155	1,000	Ytterbium-178	1,000
Terbium-156m		Lutetium-169	100
(5.0h)	1,000	Lutetium-170	100
Terbium-156m		Lutetium-171	100
(24.4 h)	1,000	Lutetium-172	100
Terbium-156	100	Lutetium-173	10
Terbium-157	10	Lutetium-174m	10
Terbium-158	1	Lutetium-174	10
Terbium-160	10	Lutetium-176m	1,000
Terbium-161	100	Lutetium-176	100
Dysprosium-155	1,000	Lutetium-177m	10
Dysprosium-157	1,000	Lutetium-177	100
Dysprosium-159	100	Lutetium-178m	1,000
Dysprosium-165	1,000	Lutetium-178	1,000
Dysprosium-166	100	Lutetium-179	1,000
Holmium-155	1,000	Hafnium-170	100
Holmium-157	1,000	Hafnium-172	1
Holmium-159	1,000	Hafnium-173	1,000
Holmium-161	1,000	Hafnium-175	100
Holmium-162m	1,000	Hafnium-177m	1,000
Holmium-162	1,000	Hafnium-178m	0.1
Holmium-164m	1,000	Hafnium-179m	10
Holmium-164	1,000	Hafnium-180m	1,000
Holmium-166m	1	Hafnium-181	10
Holmium-166	100	Hafnium-182m	1,000
Holmium-167	1,000	Hafnium-182	0.1
Erbium-161	1,000	Hafnium-183	1,000
Erbium-165	1,000	Hafnium-184	100
Erbium-169	100	Tantalum-172	1,000

Erbium-171	100	Tantalum-173	1,000
Erbium-172	100	Tantalum-174	1,000
Thulium-162	1,000	Tantalum-175	1,000
Thulium-166	100	Tantalum-176	100
Thulium-167	100	Tantalum-177	1,000
Thulium-170	10	Tantalum-178	1,000
Thulium-171	10	Tantalum-179	100
Thulium-172	100	Tantalum-180m	1,000
Thulium-173	100	Tantalum-180	100
Thulium-175	1,000	Tantalum-182m	1,000
Tantalum-182	10	Iridium-188	100
Tantalum-183	100	Iridium-189	100
Tantalum-184	100	Iridium-190m	1,000
Tantalum-185	1,000	Iridium-190	100
Tantalum-186	1,000	Iridium-192m	
Tungsten-176	1,000	(1.4m)	10
Tungsten-177	1,000	Iridium-192	
Tungsten-178	1,000	(73.8d)	1
Tungsten-179	1,000	Iridium-194m	10
Tungsten-181	1,000	Iridium-194	100
Tungsten-185	100	Iridium-195m	1,000
Tungsten-187	100	Iridium-195	1,000
Tungsten-188	10	Platinum-186	1,000
Rhenium-177	1,000	Platinum-188	100
Rhenium-178	1,000	Platinum-189	1,000
Rhenium-181	1,000	Platinum-191	100
Rhenium-182		Platinum-193m	100
(12.7h)	1,000	Platinum-193	1,000
Rhenium-182		Platinum-195m	100
(64.0h)	100	Platinum-197m	1,000
Rhenium-184m	10	Platinum-197	100
Rhenium-184	100	Platinum-199	1,000
Rhenium-186m	10	Platinum-200	100
Rhenium-186	100	Gold-193	1,000
Rhenium-187	1,000	Gold-194	100
Rhenium-188m	1,000	Gold-195	10
Rhenium-188	100	Gold-198m	100
Rhenium-189	100	Gold-198	100
Osmium-180	1,000	Gold-199	100
Osmium-181	1,000	Gold-200m	100
Osmium-182	100	Gold-200	1,000
Osmium-185	100	Gold-201	1,000
Osmium-189m	1,000	Mercury-193m	100
Osmium-191m	1,000	Mercury-193	1,000
Osmium-191	100	Mercury-194	1
Osmium-193	100	Mercury-195m	100
Osmium-194	1	Mercury-195	1,000
Iridium-182	1,000	Mercury-197m	100
Iridium-184	1,000	Mercury-197	1,000
Iridium-185	1,000	Mercury-199m	1,000

Iridium-186	100	Mercury-203	100
Iridium-187	1,000		
Thallium-194m	1,000	Francium-223	100
Thallium-194	1,000	Radium-223	0.1
Thallium-195	1,000	Radium-224	0.1
Thallium-197	1,000	Radium-225	0.1
Thallium-198m	1,000	Radium-226	0.1
Thallium-198	1,000	Radium-227	1,000
Thallium-199	1,000	Radium-228	0.1
Thallium-201	1,000	Actinium-224	1
Thallium-200	1,000	Actinium-225	0.01
Thallium-202	100	Actinium-226	0.1
Thallium-204	100	Actinium-227	0.001
Lead-195m	1,000	Actinium-228	1
Lead-198	1,000	Thorium-226	10
Lead-199	1,000	Thorium-227	0.01
Lead-200	100	Thorium-228	0.001
Lead-201	1,000	Thorium-229	0.001
Lead-202m	1,000	Thorium-230	0.001
Lead-202	10	Thorium-231	100
Lead-203	1,000	Thorium-232	100
Lead-205	100	Thorium-234	10
Lead-209	1,000	Thorium-natural	100
Lead-210	0.01	Protactinium-227	10
Lead-211	100	Protactinium-228	1
Lead-212	1	Protactinium-230	0.1
Lead-214	100	Protactinium-231	0.001
Bismuth-200	1,000	Protactinium-232	1
Bismuth-201	1,000	Protactinium-233	100
Bismuth-202	1,000	Protactinium-234	100
Bismuth-203	100	Uranium-230	0.01
Bismuth-205	100	Uranium-231	100
Bismuth-206	100	Uranium-232	0.001
Bismuth-207	10	Uranium-233	0.001
Bismuth-210m	0.1	Uranium-234	0.001
Bismuth-210	1	Uranium-235	0.001
Bismuth-212	10	Uranium-236	0.001
Bismuth-213	10	Uranium-237	100
Bismuth-214	100	Uranium-238	100
Polonium-203	1,000	Uranium-239	1,000
Polonium-205	1,000	Uranium-240	100
Polonium-207	1,000	Uranium-natural	100
Polonium-210	0.1	Neptunium-232	100
Astatine-207	100	Neptunium-233	1,000
Astatine-211	10	Neptunium-234	100
Radon-220	1	Neptunium-235	100
Radon-222	1	Neptunium-236	
Francium-222	100	(1.15E5)	0.001
Neptunium-236		Curium-242	0.01
(22.5h)	1	Curium-243	0.001

Neptunium-237	0.001	Curium-244	0.001
Neptunium-238	10	Curium-245	0.001
Neptunium-239	100	Curium-246	0.001
Neptunium-240	1,000	Curium-247	0.001
Plutonium-234	10	Curium-248	0.001
Plutonium-235	1,000	Curium-249	1,000
Plutonium-236	0.001	Berkelium-245	100
Plutonium-237	100	Berkelium-246	100
Plutonium-238	0.001	Berkelium-247	0.001
Plutonium-239	0.001	Berkelium-249	0.1
Plutonium-240	0.001	Berkelium-250	10
Plutonium-241	0.01	Californium-244	100
Plutonium-242	0.001	Californium-246	1
Plutonium-243	1,000	Californium-248	0.01
Plutonium-244	0.001	Californium-249	0.001
Plutonium-245	100	Californium-250	0.001
Americium-237	1,000	Californium-251	0.001
Americium-238	100	Californium-252	0.001
Americium-239	1,000	Californium-253	0.1
Americium-240	100	Californium-254	0.001
Americium-241	0.001	Einsteinium-250	100
Americium-242m	0.001	Einsteinium-251	100
Americium-242	10	Einsteinium-253	0.1
Americium-243	0.001	Einsteinium-254m	1
Americium-244m	100	Einsteinium-254	0.01
Americium-244	10	Fermium-252	1
Americium-245	1,000	Fermium-253	1
Americium-246m	1,000	Fermium-254	10
Americium-246	1,000	Fermium-255	1
Curium-238	100	Fermium-257	0.01
Curium-240	0.1	Mendelevium-257	10
Curium-241	1	Mendelevium-258	0.01
Any alpha-emitting radionuclide not listed above or mistures of alpha emitters of unknown composition	0.001	Any radionuclide other than alpha-emitting radionuclides not listed above, or mixtures of beta emitters of unknown composition	0.01

NOTE: For purposes of §175.03(j)(2)(v), §175.03(j)(5)(i) and §175.03(l)(1)(i) where there is involved a combination of radionuclides in known amounts, the limit for the combination shall be derived as follows: determine, for each radionuclide in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific radionuclide when not in combination. The sum of such ratios for all radionuclides in the combination may not exceed "1"-that is, unity.

FOOTNOTES:

* The quantities listed above were derived by taking 1/10th of the most restrictive ALI listed in Table I, Columns 1 and 2, of Appendix B to §175.03, rounding to the nearest factor of 10, and constraining the values listed between 37 Bq and 37 MBq (0.001 and 1,000 mCi). Values of 3.7 MBq (100 mCi) have been assigned for radionuclides having a radioactive half-life in excess of E9 years, except rhenium, 37 MBq (1,000 mCi), to take into account their low specific activity.

** To convert mCi to kBq, multiply the mCi value by 37.

APPENDIX D

RADIOACTIVE SURFACE CONTAMINATION LIMITS

Application	Alpha (dpm/100cm2)		Beta/Gamma1	
	Total	Removable	Total (mR/hr)	Removable (dpm/100cm2)
Controlledarea				
Basic guide	25,000 Max. 5,000 Av.		500	1.0 5,000
Clean area	1,000	100	0.5	1,000
Non-controlledarea				
Skin, personalclothing		500	ND2	0.1 ND2
Release ofmaterial orfacilities	2,500 (Max.) 500 (Av.)		100	0.2 1,000

1 Measured at 1 cm from the surface

2 ND-Non-detectable

Rules of the City of New York

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

24 RCNY 175.04

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.04 Notices, instructions and reports to workers; inspections.

(a) **Purpose and scope.** (1) This section establishes requirements for notices, instructions and reports by licensees and registrants to individuals engaged in activities under a license or registration and options available to such individuals in connection with Department inspections of licensees or registrants to ascertain compliance with the provisions of all applicable regulations and conditions stated on the license or registration regarding radiological working conditions. The regulations in this section apply to all persons who receive, possess, produce, use, own or transfer sources of radiation registered with or licensed by the Department or are otherwise subject to this Code.

(b) **Posting of notices to workers.** (1) Each licensee and/or registrant shall post current copies of the following documents:

(i) this Code;

(ii) the radioactive materials license and the conditions or documents incorporated by reference into the license and any amendments thereto;

(iii) the certified registration and the conditions or documents incorporated by reference into the certified registration and any amendments thereto;

(iv) the certificate of registration;

(v) the operating procedures applicable to the work under the license, registration and/or certified registration;

(vi) any notice of violation involving radiological working conditions, any proposed imposition of civil penalty or order issued pursuant to this Code and any response from the licensee and/or registrant.

(2) If posting of a document specified in §175.04(b)(1)(i), (ii), (iii) or (v) is not practicable, the licensee and/or registrant may post a notice which describes the document and states where it may be examined.

(3) A current copy of the "Notice to Employees" prescribed by the Department shall be posted by each licensee and/or registrant wherever individuals work in or frequent any portion of a restricted area.

(4) Documents, notices, or forms posted pursuant to this Code shall appear in a sufficient number of places to permit individuals engaged in work under the license, certified registration and/or registration to observe them on the way to or from any particular work location to which the document applies, shall be conspicuous, and shall be replaced if defaced or altered.

(5) Department documents posted pursuant to §175.04(b)(1)(vi) shall be posted within two (2) working days after receipt of the documents from the Department; the licensee's and/or registrant's response, if any, shall be posted within two (2) working days after dispatch from the licensee and/or registrant. Such documents shall remain posted for a minimum of five (5) working days or until action correcting the violation has been completed, whichever is later.

(c) **Instructions to workers.** (1) All individuals working in or frequenting any portion of a restricted area:

(i) shall be kept informed of the storage, transfer, or use of radioactive material, of radiation producing equipment or of radiation in such portions of the restricted area;

(ii) shall be instructed in the operating procedures applicable to work under the license, registration or certified registration and in the health protection problems associated with exposure to such radioactive material or radiation, in precautions or procedures to minimize exposure, in the purposes and functions of protective devices employed, and shall be required to demonstrate familiarity with such precautions, procedures and devices;

(iii) shall be instructed in, and instructed to observe, to the extent within the worker's control, the applicable provisions of this Code, licenses, certified registrations and registrations for the protection of personnel from exposures to radiation or radioactive material occurring in such areas;

(iv) shall be instructed of their responsibility to report promptly to the licensee and/or registrant any condition which may lead to or cause a violation of this Code, licenses and registrations or unnecessary exposure to radiation or radioactive material;

(v) shall be instructed in the appropriate response to warnings made in the event of any unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(vi) shall be advised as to the radiation exposure reports which workers must be given or may request pursuant to §175.04(d).

(2) The extent of these instructions shall be commensurate with potential radiological health protection problems in the restricted area.

(3) Instruction shall be given before an individual begins work in a restricted area and at least annually thereafter.

(4) Records documenting individual worker instruction shall be maintained for inspection by the Department for a period of three (3) years.

(d) **Notification and reports to workers.** (1) Radiation exposure data for an individual and the results of any measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as specified herein. The information reported shall include data and results obtained pursuant to this Code or license or certified registration conditions as shown in records maintained by the licensee and/or registrant pursuant to §175.03(k)(8) of this Code. Each notification and report shall:

(i) be in writing;

(ii) include appropriate identifying data such as the name of the licensee and/or registrant, the name of the individual and the individual's social security number;

(iii) include the individual's exposure information; and

(iv) contain the following statement: "This report is furnished to you under the provisions of §175.04 of the New York City Health Code. You should preserve this report for further reference."

(2) Each licensee and/or registrant shall advise each worker annually of the worker's exposure to radiation or radioactive material as shown in records maintained by the licensee and/or registrant pursuant to §175.03(k)(8).

(3) Each licensee and/or registrant shall furnish a report of the worker's exposure to sources of radiation at the request of the worker formerly engaged in activities controlled by the licensee or registrant. The report shall include the dose record for each year the worker was required to be monitored pursuant to §175.03(f)(2) of this Code, or the equivalent provisions of previous versions. Such report shall be furnished within thirty (30) days from the date of the request, or within thirty (30) days after the dose of the individual has been determined by the licensee or registrant, whichever is later. The report shall cover the period of time that the worker's activities involved exposure to sources of radiation and shall include the dates and locations of licensed or registered (including certified registrations) activities.

(4) When a licensee and/or registrant is required pursuant to §175.03(l)(3) to report to the Department any exposure of an individual to radiation or radioactive material, the licensee and/or registrant shall also provide the individual a report on the exposure data included therein. Such reports shall be transmitted at a time not later than the transmittal to the Department.

(5) At the request of a worker who is terminating employment with the licensee and/or registrant in work involving exposure to radiation or radioactive material, during the current year, each licensee and/or registrant shall provide at termination to each such worker, or to the worker's designee, a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year or fraction thereof. If the most recent individual monitoring results are not available at that time, a written estimate of the dose shall be provided together with a clear indication that this is an estimate.

(e) **Presence of representatives of licensees and/or registrants and workers during inspections.** (1) Each licensee and/or registrant shall afford the Department at all reasonable times opportunity to perform an inspection of materials, machines, activities, facilities, premises and records pursuant to this Code.

(2) During an inspection, Department inspectors may consult privately with workers as specified in §175.04(f).

The licensee and/or registrant, or that person's representative, may accompany the Department inspectors during other phases of an inspection.

(3) If, at the time of inspection, an individual has been authorized by the workers to represent them during Department inspections, the licensee and/or registrant shall notify the inspectors of such authorization and shall give the workers' representatives an opportunity to accompany the inspectors during the inspection of physical working conditions.

(4) Each workers' representative shall be routinely engaged in work under control of the licensee and/or registrant and shall have received instructions as specified in §175.04(c).

(5) Different representatives of licensees or registrants and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one workers' representative at a time may accompany the inspectors.

(6) With the approval of the licensee and/or registrant and the workers' representative, an individual who is not routinely engaged in work under control of the licensee and/or registrant, for example a consultant to the licensee and/or registrant or to the workers' representative, shall be afforded the opportunity to accompany inspectors during the inspection of physical working conditions.

(7) Notwithstanding the other provisions of §175.04(e), Department inspectors are authorized to refuse to permit accompaniment by any individual who deliberately interferes with a fair and orderly inspection. With regard to any area containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee and/or registrant to enter that area.

(f) **Consultation with workers during inspections.** (1) Department inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of this Code, licenses, certified registrations and registrations to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

(2) During the course of an inspection any worker may bring privately to the attention of the inspectors, either orally or in writing, any past or present condition which the worker has reason to believe may have contributed to or caused any violations of this Code, license condition, certified registration condition or registration, or any unnecessary exposure of any individual to radiation from sources of radiation under the licensee's and/or registrant's control. Any such notices in writing shall comply with the requirements of §175.04(g)(1).

(3) The provisions of §175.04(f)(2) shall not be interpreted as authorization to disregard instructions pursuant to §175.04(c).

(g) **Requests by workers for inspections.** (1) Any worker or representative of workers who believes that a violation of this Code, registration, certified registration or license conditions exists or has occurred in work under a license and/or certificate of registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Bureau of Radiological Health. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee and/or registrant by the Bureau of Radiological Health no later than at the time of inspection except that, upon the request of the worker giving such notice, such worker's name and the name of individuals referred to therein shall not appear in such copy or any record published, released, or made available by the Department, except for good cause shown.

(2) If, upon receipt of such notice, the Bureau of Radiological Health determines that the complaint meets the requirements set forth in §175.04(g)(1), and that there are reasonable grounds to believe that the alleged violation exists or has occurred, an inspection shall be made as soon as practicable, to determine if such alleged violation exists or has

occurred. Inspections performed pursuant to §175.04(g) need not be limited to matters referred to in the complaint.

(3) No licensee, registrant, or contractor or subcontractor of a licensee or registrant shall discharge or in any manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under this Code or has testified or is about to testify in any such proceeding or because of the exercise by such worker on behalf of such worker or others of any option afforded by this Code.

(h) **Inspections not warranted; informal review.** (1) If the Bureau of Radiological Health determines, with respect to a complaint under §175.04(g), that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the Bureau of Radiological Health shall notify the complainant in writing of such determination. The complainant may obtain review of such determination by submitting a written statement of position with the Deputy Commissioner for Environmental Health Services, who will provide the licensee and/or registrant with a copy of such statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the Deputy Commissioner of Environmental Health Services who will provide the complainant with a copy of such statement by certified mail.

(2) Upon the request of the complainant, the Deputy Commissioner for Environmental Health Services may hold an informal conference in which the complainant and the licensee and/or registrant may orally present their views. An informal conference may also be held at the request of the licensee and/or registrant, but disclosure of the identity of the complaint will be made only following receipt of written authorization from the complainant. After considering all written or oral views presented, the Deputy Commissioner for Environmental Health Services shall affirm, modify, or reverse the determination of the Bureau of Radiological Health and furnish the complainant and the licensee and/or registrant a written notification of the decision and the reason therefor.

(3) If the Bureau of Radiological Health determines that an inspection is not warranted because the requirements of §175.04(g)(1) have not been met, the complainant shall be notified in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of §175.04(g)(1).

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PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.05 Fees.

(a) **Inspection fees.** Notwithstanding any other provision of this Code, the Department is authorized to charge the following inspection fees pursuant to Section 225 of the Public Health Law and the regulations promulgated thereunder:

(1) For radiation equipment facilities required to have quality assurance programs pursuant to §175.07 of this Code, the following inspection fees apply:

(i) Annually inspected facilities:

(A) Large hospital (more than 40 tubes) base fee: $1960.00

(B) Medium hospital (21-40 tubes) base fee: $1585.00

(C) Small hospital (1-20 tubes) base fee: $1290.00

(D) Large (more than 2500 examinations per year, excluding mammography) non-hospital base fee: $670.00

(E) Small (less than 2500 examinations per year, excluding mammography) non-hospital base fee: $375.00

(ii) Biennially inspected facilities:

(A) Large (more than 2500 examinations per year) facility base fee: $670.00

(B) Small (less than 2500 examinations per year) facility base fee: $375.00

(iii) For each tube inspected at annually or biennially inspected facilities, the following inspection fees apply in addition to the base fee:

(A) Radiographic: $120.00

(B) Fluoroscopic: $175.00

(C) Mammographic: $295.00

(D) Dental: $60.00

(E) All other: $60.00

(iv) For radiation equipment facilities not required to have quality assurance programs pursuant to §175.07 of this Code, the following inspection fees apply:

(A) First tube: $170.00

(B) Each additional tube: $60.00

(2) For linear accelerator facilities, the following fee applies:

(i) Base fee: $715.00

(3) For facilities licensed to possess and use radioactive materials, the following inspection fees apply:

(i) Specific licenses authorizing teletherapy

(A) Base fee: $320.00

(ii) Specific licenses of limited scope authorizing medical use (except for teletherapy)

(A) Base fee: $610.00

(B) Per site fee: $140.00

(iii) Specific licenses of limited scope authorizing non-human use

(A) Base fee: $385.00

(B) Per site fee: $160.00

(iv) Specific licenses of broad scope authorizing medical use (except for teletherapy)

(A) Base fee: $3515.00

(B) Per site fee: $140.00

(v) Specific license of broad scope authorizing research and development (non-human use)

(A) Base fee: $2450.00

(B) Per site fee: $160.00

(b) **Due date for inspection fees.** (1) Payment for inspection fees is due and payable thirty (30) days from the billing date.

(2) Failure to pay any inspection fee may result in the suspension or revocation of a registration, certified registration or radioactive materials license.

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PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.06 Professional practitioners and related provisions.

(a) Nothing in these regulations shall limit any human use of radiation in diagnostic and therapeutic procedures pursuant to sections below, provided that with respect to human use of radioactive materials, such use is in accordance with a specific license issued pursuant to these regulations, or an exemption therefrom, or under a license issued by the New York State Department of Health or the U.S. Nuclear Regulatory Com- mission.

(b) Each professional practitioner who treats or diagnoses any alleged or proven case of radiation illness or radiation injury to any individual, except that which can be expected in the normal course of radiation therapy, shall report to the Commissioner in writing within seven (7) days such treatment or diagnosis, the fact thereof and the full name, address, social security number, and age of such individual.

(c) No person other than a professional practitioner shall direct or order the application of radiation to a human being; nor shall any person other than a professional practitioner, or a person working under the direction, order, or

direct supervision of a professional practitioner apply radiation to a human being. Such direction, order to apply, application of, or administration of radiation shall be in the course of the practitioner's professional practice and shall comply with the following:

(1) The provisions of the license or other authorization of the professional practitioner under the Education Law of the State of New York, or any successor law or regulation, and all regulations pertinent thereto, including, but not limited to provisions as to those parts of the human body and those persons which the professional practitioner may diagnose, analyze or treat or to which he may direct or order the application of, or apply, radiation, and provisions as to the type of radiation which the professional practitioner may use and the purpose for which the professional practitioner may use it; and

(2) The applicable provisions of Part 89 of Title 10 of the Codes, Rules and Regulations of the State of New York and Article 35 of the Public Health Law of the State of New York, or any successor law or regulation, relating to the practice of radiologic technology including licensure requirements and the limitations under which radiologic technologists and other persons, other than professional practitioners, may apply x-rays to human beings and all regulations pertinent thereto.

(3) A professional practitioner shall be responsible for the supervision of any radiation employee who administers radiation to human beings to assure that each exposure is given consistent with expected medical benefit and in accordance with any standards or requirements relating to the practice for which he/she is licensed.

(d) A radiologic technologist shall be responsible for complying with the requirements of such technologist's license and the limitations established by the New York State Department of Health, Bureau of Radiologic Technology. Each activity carried out as a radiologic technologist shall be such as to assure the maximum medical benefit with the minimum radiation exposure to patients and employees.

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.07 Quality assurance programs and misadministration records and reports.

(a) **Purpose and scope.** This section establishes requirements for the use of machine-produced radiation, radioactive materials or the radiation therefrom for diagnostic and therapeutic uses in the healing arts. These requirements and provisions provide for the protection of the public health and safety and are in addition to, and not in substitution for, others in this Code. The requirements of this section apply to all applicants, licensees and registrants subject to this Code.

(b) **Diagnostic facilities.** A quality assurance program is a system of plans, actions, reviews, reports and records, the purpose of which is to ensure that diagnostic facilities achieve consistent high quality imaging and other diagnostic results, while maintaining radiation output and personnel doses within limits prescribed by the Department.

(1) Each radiation installation performing diagnostic x-ray and/or radioactive materials procedures, except dental, podiatric or veterinary facilities, shall implement a quality assurance program including at a minimum:

(i) the adoption of a manual containing written policies and procedures for radiation protection and describing the facility's quality assurance program. Policies and procedures must be consistent with the types of equipment and services provided including, but not limited to, identification of patients, use of gonadal or scoliosis shielding, personnel monitoring, protection of pregnant workers and patients, and holding of patients. The quality assurance manual must describe the various processing, generator and systems quality control tests appropriate for the types of equipment and services provided in sufficient detail to ensure that they will be performed properly;

(ii) the performance of quality control tests and the correction of deficiencies as specified in the quality assurance manual;

(iii) the maintenance of equipment records for each diagnostic imaging system, containing test results, records of equipment repairs and other pertinent information;

(iv) the provisions of a formalized in-service training program for employees including, but not limited to, quality assurance and radiation safety procedures;

(v) the determination of radiation output at the point of skin entry for common x-ray examinations;

(vi) the measurement of the amount of activity of each dose of a radiopharmaceutical/radiobiologic administered to each patient;

(vii) the calculated absorbed dose for diagnostic procedures involving radioactive materials;

(viii) the provision of the information described in §175.07(b)(1)(v), (vi) and (vii) to any patient upon request;

(ix) the performance of an ongoing program of analysis of repeated, rejected or misadministered diagnostic studies which is designed to identify and correct problems and to optimize quality; and

(x) the performance of an ongoing film processing quality assurance (sensitometry) program, including the use of sensitometry tools (densitometer, sensitometer and thermometer), the determination and plotting of daily sensitometry data, and corrective action when sensitometry values exceed tolerance limits.

(2) Each licensee or registrant shall maintain written records documenting processing quality assurance and audit activities for review by the Department. Such records shall be maintained by the licensee or registrant until after the next scheduled inspection is completed by the Department.

(c) **External beam and brachytherapy.** A quality assurance program for external beam therapy and brachytherapy is a system of plans, actions, reviews, reports and records, the purpose of which is to ensure a consistent and safe fulfillment of the dose prescription to the target volume, with minimal dose to normal tissue.

(1) Each licensee or registrant who uses external beam therapy and/or brachytherapy in humans shall implement a quality assurance program which includes at a minimum: (i) the adoption of a quality assurance manual containing written policies and procedures designed to ensure effective supervision, safety, proper performance of equipment, effective communication and quality control. These must include policies and procedures to ensure that:

(A) each patient's evaluation and intended treatment is documented in the patient's record;

(B) a written, signed and dated order for medical use of radiation or radioactive material is made for each patient in accordance with §175.06 of this Code;

(C) each patient is positively identified;

(D) all orders and other treatment records are clear and legible;

(E) staff will be instructed to obtain clarification before treating a patient if any element of the order or other record is confusing, ambiguous or suspected of being erroneous;

(F) each patient's response to treatment is assessed by an authorized user physician, or a physician under the supervision of an authorized user physician, for external beam therapy and/or brachytherapy, as appropriate, and that unusual responses are evaluated as possible indications of treatment errors;

(G) complete treatment records containing data recorded at the time of each treatment are maintained;

(H) the treatment charts of patients undergoing fractionated treatment are checked for completeness and accuracy at weekly intervals;

(I) final plans of treatment and related calculations are checked for accuracy before 25 percent of the prescribed dose for external beam therapy or 50 percent of the prescribed dose for brachytherapy is administered. If a treatment plan and related calculations were originally prepared by a radiation therapy physicist possessing the qualifications specified in §175.64(c)(2) or §175.103(j)(10), it may be checked by the same person using a different calculational method. Treatment plans and related calculations prepared by all other personnel must be checked by a second person using procedures specified in the treatment planning procedures manual required pursuant to §175.07(c)(2), and who has received training in the use of such manual;

(J) there is quality control for all physical components of radiation therapy such as: equipment function and safety (including treatment planning equipment), treatment planning procedures and computer codes, treatment application procedures, dosimetry and personnel radiation safety;

(K) that the quality control tests to be performed are documented, including:

(a) detailed procedures for performing each test;

(b) the frequency of each test;

(c) acceptable results for each test;

(d) corrective actions to be taken; and

(e) recordkeeping and reporting procedures for test results.

(2) Each licensee or registrant shall ensure that a radiation therapy physicist possessing the qualifications specified in §175.64(c)(2) or §175.103(j)(10), prepares a procedures manual describing how radiation therapy treatment planning is to be performed at the licensee's or registrant's facility. The treatment planning manual may be part of the quality assurance manual required by §175.07(c)(1) and shall include the calculation methods and formulas to be used at the facility, including the methods for performing the checks of treatment plans and related calculations as required by §175.07(c)(1). The treatment planning manual shall be reviewed annually by a radiation therapy physicist and shall be included in training given pursuant to §175.04(c) of this Code to facility staff who will participate in treatment planning.

(3) Each licensee or registrant shall ensure that all equipment used in planning and administering radiation therapy is properly functioning and is designed and used for the intended purpose and is maintained in accordance with the manufacturer's instructions and the quality assurance program described in the licensee's or registrant's quality assurance manual. Such equipment shall be calibrated prior to use on patients, at least annually thereafter and following any change, repair or replacement of any component which may alter the radiation output.

(4) Each licensee or registrant shall implement procedures for auditing the effectiveness of the radiation therapy quality assurance program as specified below. Audit procedures must specify either that:

(i) external audits will be conducted at intervals not to exceed twelve (12) months by radiation therapy physicists possessing the qualifications specified in §175.64(c)(2) or §175.103(j)(10) and by physicians who are active in the practice of the type of radiation therapy conducted by the licensee or registrant. These shall be individuals who are not involved in the therapy program being audited; and

(A) the individuals who conduct the audit will prepare and deliver to the licensee or registrant a written report which contains an assessment of the effectiveness of the quality assurance program and makes recommendations for any needed modifications or improvements; and

(B) the licensee or registrant shall promptly review the audit findings, address the need for modifications or improvements and document actions taken. If recommendations are not acted on, the reasons for this also shall be documented; or

(ii) internal audits will be conducted at intervals not to exceed twelve (12) months by program staff who will prepare and deliver to the licensee or registrant a written report as specified in §175.07(c)(4)(i)(A), and external audits will be conducted at intervals not to exceed five (5) years by an organized review program supervised by the American College of Radiology, or a program found to be equivalent by the Department based on the scope of the audit and the experience of the sponsoring organization in performing such audits; and

(A) the licensee or registrant shall promptly review the audit findings, address the need for modifications or improvements and document actions taken. If recommendations are not acted on, the reasons for this also shall be documented.

(5) Each licensee or registrant shall maintain written records documenting quality assurance and audit activities for review by the Department.

(d) **Therapy with radiopharmaceuticals and/or radiobiologics.** A quality assurance program for radiopharmaceutical/radiobiologic therapy is a system of plans, actions, reviews, reports and records, the purpose of which is to ensure a consistent and safe fulfillment of the dose prescription.

(1) Each licensee who uses radiopharmaceuticals and/or radiobiologics for therapy in humans shall implement a quality assurance program which includes at a minimum: (i) the adoption of a manual containing written policies and procedures designed to assure effective supervision, safety, proper performance of equipment, effective communication and quality control. These must include procedures to assure that:

(A) each patient's evaluation and intended treatment is documented in the patient's record;

(B) a written, signed and dated order for medical use of radioactive material is made in accordance with §175.06 of this Code;

(C) each patient is positively identified;

(D) all orders and other treatment records are clear and legible;

(E) staff will be instructed to obtain clarification before treating a patient if any element of the order or other record is confusing, ambiguous or suspected of being erroneous;

(F) each patient's response to treatment is assessed by an authorized user physician, or a physician under the supervision of an authorized user physician, for radiopharmaceutical/radiobiologic therapy and that unusual responses are evaluated as possible indications of treatment errors; and

(G) complete treatment records containing data recorded at the time of each treatment are maintained.

(2) Each licensee shall ensure that all equipment used in planning and administering radiopharmaceutical/radiobiologic therapy is designed and used for the intended purpose and is properly functioning, is properly calibrated and is maintained in accordance with the manufacturer's instructions and the quality assurance program described in the licensee's or registrant's quality assurance manual.

(3) Each licensee shall audit the radiopharmaceutical/radiobiologic quality assurance program at intervals not to exceed twelve (12) months to assess the effectiveness of the program, document the audit and any modifications or improvements found to be needed and institute corrective actions and improvements as indicated by the audit findings.

(e) **Records and reports of misadministrations.** (1) **Diagnostic misadministrations.**

(i) Records of misadministrations as defined in §175.02(a)(129) of this Code which involve diagnostic procedures and the corrective actions taken pursuant to §175.07(b)(1)(ix) shall be retained for three (3) years; and

(ii) if such a misadministration results in a dose to the patient exceeding 50 millisieverts (5 rem) to the whole body or 500 millisieverts (50 rem) to any individual organ, or involves the administration of iodine-125 or iodine-131 in the form of iodide in a quantity greater than 1 megabecquerel (30 microcuries), the licensee or registrant shall notify the Department in writing within fifteen (15) days and make and retain a record pursuant to §175.07(e)(3).

(2) **Therapy misadministrations.** (i) When a misadministration described in §175.02(a) (129)(v), (vi) or (vii), in which the percentage of error is equal to or less than 20 percent is discovered, the licensee or registrant shall immediately investigate the cause and take corrective action; and

(A) the licensee or registrant shall make and retain a record of all therapy misadministrations described in §175.07(e)(2). The record shall contain all the information required by §175.07(e)(3) and shall be retained for six (6) years.

(ii) When a therapy misadministration described in §175.02(a)(129)(i), (ii), (iii) or (viii) is discovered, or when a misadministration described in §175.02(a)(129)(v), (vi) or (vii) is discovered in which the percentage of error is greater than 20 percent, the licensee or registrant shall notify the Department by telephone within 24 hours. The licensee or registrant shall also notify the referring physician of the affected patient and the patient of any therapy misadministration described herein, with the exception of the misadministration defined in §175.02(a)(129)(viii). When it is not medically advisable to give such information to the patient, the information shall be made available to the patient's responsible relative or guardian on the patient's behalf. These notifications must be made within 24 hours after the misadministration is discovered. If the referring physician, patient or the patient's responsible relative or guardian cannot be reached within 24 hours, the licensee or registrant shall notify them as soon as practicable. It is not required that the patient be notified without first consulting the referring physician; however, medical care for the patient shall not be delayed because of this.

(iii) Within seven (7) days after an initial therapy misadministration report, the licensee or registrant shall send a written report to the Department. The written report must contain the name of the licensee or registrant, the information required by §175.07(e)(3) and whether the licensee or registrant notified the patient or the patient's responsible relative or guardian. This reporting requirement may be satisfied by submitting to the Department a copy of the incident report filed with the New York State Department of Health pursuant to 10 NYCRR Part 405 provided, however, that such report contains all information required by this Code.

(3) Each licensee or registrant shall maintain a record of each reportable diagnostic misadministration and each therapy misadministration for six (6) years. The record shall contain the names of all individuals involved in the event (including the treating physician, allied health personnel, the patient and the patient's referring physician), the patient's social security number or identification number if one has been assigned, a description of the event, the effect on the patient (including sequelae, prognosis and follow-up actions) and actions taken to prevent recurrence.

(4) Within seven (7) days after an initial therapy misadministration report made pursuant to §175.07(e)(2)(ii), the licensee or registrant shall provide the patient a written report, with a copy to the patient's referring physician. The report shall contain a brief description of the event, the effect on the patient including any change in the patient's health status which resulted from or could result from the misadministration, and recommendations for the appropriate course of treatment or follow-up. If it is not medically advisable to give such information to the patient, the report shall be made available to the patient's responsible relative or guardian on the patient's behalf. Such action shall be documented in the patient's treatment record.

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Subd. (b) par (1) subpars (viii), (ix) amended City Record Apr. 3, 2001 eff. May 3, 2001. [See

Vol. 9 Statements of Basis and Purpose No. 16]

Subd. (b) par (1) subpar (x) added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9

Statements of Basis and Purpose No. 16]

Subd. (e) par (1) subpar (ii) amended City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9

Statements of Basis and Purpose No. 16]

Notes:

Subparagraphs (viii) and (ix) of paragraph (1) of subsection (b) were amended and subparagraph (x) of paragraph (1) and paragraph (2) of subsection (b) were adopted on March 21, 2001 to provide additional quality assurance requirements for the processing of radiographic film after the x-ray film has been produced and to insure the proper maintenance of records.

Subparagraph (ii) of paragraph (1) of subsection (e) was amended on March 21, 2001 to delete the reference to iodine 123 to make the regulation consistent with state and federal regulations which have been amended owing to the lesser potency of iodine 123.

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PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.51 Registration and inspection of installations with radiation equipment; other permitted activities.

(a) **Applicability.** The provisions of this section apply to all radiation installations using any radiation equipment, and to those persons who sell, assemble and install such equipment as applicable. However, those facilities possessing equipment subject to the requirements of §175.64(b) of this Code are required to obtain a certified registration for that equipment. If such facility has additional radiation equipment not subject to the requirements of §175.64(b) of this Code, such equipment shall be registered pursuant to this section.

(b) **Registration required.** (1) Prior to establishing, maintaining or operating any radiation installation at which is located any radiation equipment in operable condition, or prior to installing such equipment which is intended to be used, the owner or operator of such installation shall have obtained a current certificate of registration or, for a therapeutic radiation machine subject to the requirements of §175.64(b) of this Code, a certified registration from the Department.

(2) For professional practitioners in private practice, registrations shall not be issued to anyone other than natural persons who shall be responsible for the use and operation of the equipment and shall be liable for violations of the conditions of the registration or the provisions of this Code.

(c) Application for a certificate of registration as described in §175.51(b)(1) shall be made to the Department on a written form and in a manner prescribed by the Department.

(d) Facilities at which either the operator or location will be changed shall apply for a new registration at least thirty (30) days prior to such change.

(1) Facilities without a current certificate of registration shall apply as follows:

No registrant shall apply x-rays to treat or diagnose any patient's medical condition at a facility that does not possess a current, non-expired Certificate of Registration from the Department. This shall not prohibit the installation of radiation-producing equipment by a registrant at a facility solely for testing purposes by medical physicists.

(i) All new facilities possessing radiation-producing equipment, excluding dental, podiatric, and veterinary facilities, shall apply for a certificate of registration at least thirty (30) days prior to the `expected start date' for clinical operation of the facility.

(ii) The applicant for registration shall submit the following information:

(A) a completed application form; and

(B) a medical physicist report detailing the results of initial quality control tests conducted on all radiation-producing equipment in the facility. In this context, the initial quality control tests shall be the sum of all quality control tests mandated to be conducted for the facility type at daily, weekly, monthly, semiannual, annual and biennial frequencies. In addition, a radiation protection survey shall be conducted for each room housing a radiographic unit. In this context, a medical physicist shall be an individual possessing a current, non-expired CRESO certification in New York State, or a license to practice the specialty of diagnostic medical physics in New York State.

(iii) The Department has the right to refuse to grant a facility's registration until such time as the facility's physicist report contains all quality control mandated tests as submitted by an individual licensed in New York State or possessing a CRESO certification in New York State.

(iv) Upon completion of the review process for the submitted quality control tests by the facility, if reasons exist to refuse authorization to register the facility's radiation-producing equipment for clinical usage, the facility shall be notified of the reasons for such a decision by the Department in writing.

(2) All new dental, podiatric, and veterinary facilities without a current certificate of registration shall apply for a new registration at least thirty (30) days before establishing the installation and/or installing the x-ray equipment. All new dental, podiatric, and veterinary facilities shall be prohibited from commencing diagnostic clinical examinations until such time that the facility has complied with items (i) and (ii) below:

(i) New facilities shall file a completed application form with the Department; and

(ii) Prior to any clinical usage of radiation-producing equipment, all such new facilities shall be inspected by the Department and shall correct all deficiencies noted at the time of such inspection.

(iii) The Department shall have the right to refuse to issue a certificate of registration to any facility that refuses to allow the Department to conduct an inspection of all of the facility's x-ray equipment and/or refuses to correct any violations of the Health Code noted during the inspection provided for in subparagraph (ii).

(e) **Renewal registrations.** Facilities with current, valid certificates of registration shall apply for renewal at least thirty (30) days prior to the expiration of such certificate of registration unless such certificate of registration is revoked or unless the installation is discontinued on or before the expiration of the certificate of registration.

(f) Fees for each registration shall be paid pursuant to §5.09(j). For certified registrations, fees shall be paid pursuant to §175.05.

(g) **Suspension and revocation of registrations.** (1) A registration may be denied, suspended or revoked pursuant to §5.17 of this Code or if the Commissioner finds that:

(i) the information submitted in the application is incorrect or incomplete; or

(ii) the installation is, has been or will be established, maintained, or operated in violation of this Code or any other applicable law, rule, regulation, or order; or

(iii) the certificate of registration has not been issued correctly; or

(iv) the fees for registration have not been paid as required.

(h) A certificate of registration shall be issued for a limited period of time extending from the date of issuance to the date of expiration as specified on the certificate of registration. The length of such period of time shall not exceed two years except that the Department may issue a certificate of registration for a longer period of time in order to stagger expiration dates for administrative purposes and may charge a proportionate increase in fees therefor.

(i) **Expiration of registrations.** (1) The registration issued for a radiation installation to the operator thereof shall expire and may be required to be surrendered to the Department upon:

(i) the expiration date specified on the certificate of registration; or

(ii) revocation by the Commissioner; or

(iii) a change of the person to whom the certificate of registration is issued; or

(iv) a change in address of the radiation installation if it is not a mobile unit; or

(v) a change in the name of the installation; or

(vi) the discontinuance of the installation.

(j) A certificate of registration shall not be transferable or assignable.

(k) A certificate of registration issued for a radiation installation shall be posted in accordance with the provisions of §5.15 of this Code.

(l) The registration shall not imply endorsement or approval by the Department and shall not be used to advertise or promote business.

(m) The operator of a radiation installation shall keep correct registration by reporting to the Department within ten (10) days any change affecting such information.

(n) **Inspections.** (1) Any radiation installation subject to the registration requirements of this section or the certified registration requirements of §175.64 of this Code shall be inspected periodically to assure compliance with the provisions of this Code and the maintenance of radiation exposures as far below the limits set forth in this Code as practicable.

(2) Except as otherwise provided in §175.51(n)(3), such inspections shall be made at a frequency specified herein, with the first inspection to be made at the time of the beginning of operation.

(A) Hospitals, clinics, radiologists and any other type of facility as specified by the Department shall be inspected annually.

(B) Dental, podiatric, veterinary installations shall be inspected triennially.

(C) All other facilities shall be inspected biennially.

(D) Reinspections or other appropriate follow-up activities shall be made at intervals of sixty (60) days or less to ensure correction of any violation found during an initial inspection and remaining uncorrected at the conclusion thereof.

(E) The inspections shall be made by the Department or, as the Department shall direct for dental and podiatric installations, by Certified Radiation Equipment Safety Officers approved by the Department, to use the New York City Health Code, including Article 175 thereof, for compliance purposes.

(i) Certified Radiation Equipment Safety Officers shall furnish an inspection report, in a form prescribed by the Department, signed by the person who made the inspection to the operator of the installation and a copy thereof to the Department in accordance with the instructions of the prescribed form.

(ii) Certified Radiation Equipment Safety Officers shall not charge or propose to charge a fee for an inspection in excess of a fair and reasonable amount as determined by the New York State Department of Health.

(3) The Department may establish inspection frequencies of any installation different from those specified in §175.51(n)(2).

(o) **Other activities requiring a permit.** (1) No person shall engage in the business of selling new or used radiation equipment to, or assembling, installing, or repairing such equipment for, professional practitioners or any other holder of a registration to operate a radiation installation in the City without a permit therefor issued by the Department. Application for such permit shall be made to the Department on a written form in a manner prescribed by the Department and fees paid pursuant to §5.07 of this Code.

(2) Each person who is engaged in the business of selling new or used radiation equipment to, or assembling, installing, or repairing such equipment for professional practitioners or any other person holding a registration to operate a radiation installation in the City shall comply with the reporting requirements in this Code.

(3) Any person who sells, assembles, installs or repairs new or used radiation equipment shall file a report with the Department pursuant to 21 CFR 1020.30(d), or any successor law or regulation, within fifteen (15) days of the completion of the activity.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Subd. (d) amended City Record Sept. 29, 2006 eff. Oct. 29, 2006. [See Vol. 9 Statements of Basis

and Purpose No. 25]

Subd. (n) par (2) subpar (E) added City Record July 30, 2004 eff. Aug. 29, 2004. [See Vol. 9

Statements of Basis and Purpose No. 21]

Notes:

Subdivision (d) of §175.51 was amended on September 26, 2006, in order to implement a NYS Comptroller's Audit Report (2001-N-9) recommendation that all new x-ray facilities be inspected by the Department prior to initiating clinical x-ray exams.

Paragraph (2) of subdivision (n) of §175.51 was added on July 22, 2004 to authorize the Department to also utilize Certified Radiation Equipment Safety Officers for the inspections of dental and podiatric installations to assure timely inspections for such installations.

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§175.52 Exemptions of radiation equipment.

(a) The provisions of these regulations shall not apply to:

(1) radiation equipment constructed so that it cannot emit radiation at a level greater than 1.3 E-7 C/kg (0.5 milliroentgen) per hour, measured 5 cm (2 in.) from any accessible surface thereof, and averaged over an area of 10 cm^2 (1.55 in^2) provided, however, that such exemption shall not apply to the testing or servicing of such equipment during its production; or

(2) radiation equipment during its storage, shipment, retail sale or other similar use (but not including installation) during which such equipment is not connected to a voltage source and does not emit radiation, provided however, that such equipment is not exempt from the labeling requirement of §175.56(d).

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

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ARTICLE 175 RADIATION CONTROL General Provisions

§175.53 Prohibited uses and activities.

(a) **Prohibited uses.**

(1) Hand-held fluoroscopic screens shall not be used.

(2) Shoe-fitting fluoroscopic devices shall not be used.

(3) Intraoral fluoroscopy in dental examinations shall not be used.

(4) Photofluorographic equipment shall not be used.

(5) Equipment employing bare overhead or uninsulated conductors shall not be used.

(6) Non-image intensified fluoroscopes shall not be used.

(b) **Prohibited activities.** (1) Individuals shall not operate x-ray equipment such that the useful beam is applied to human beings unless such individual is a professional practitioner or is otherwise authorized to operate x-ray equipment pursuant to New York State law.

(2) The sale, lease, transfer or loan of x-ray or fluoroscopic equipment or the supplies appertaining thereto, except to persons engaged in an occupation where such use is permitted or to institutions where such use is permitted, is prohibited. However, this restriction shall not apply to persons intending to use x-ray or fluoroscopic equipment and supplies solely for the application of radiation to other than human beings, nor to the acquisition of such equipment or supplies by wholesalers, distributors or retailers in the regular course of their trade or business.

(3) No person shall sell, lease, transfer, lend or install any radiation-producing equipment, or the supplies used in connection with such equipment, unless such supplies or equipment when properly placed into operation or properly used will meet the requirements of this Code. A person who undertakes to repair such equipment shall repair the same properly so that when it is placed in operation or properly used after the repair the equipment will meet the requirements of this Code for radiation protection and safety generally.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

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ARTICLE 175 RADIATION CONTROL General Provisions

§175.54 Surveys, shielding requirements and operator protection for diagnostic radiation machines.

(a) When appropriate, the Department may require the applicant for a certificate of registration to utilize the services of a qualified expert in shielding design to determine the shielding requirements prior to installation of radiation equipment. The shielding requirements shall be submitted to the Department for review.

(b) When appropriate, the Department may require that the continuity and adequacy of any protective barriers be verified by a protection survey performed by a qualified expert or a Certified Radiation Equipment Safety Officer. The findings shall be submitted to the Department for review, and shall be maintained by the owner or operator as part of the installation's radiation records and reports. (If the Department finds that the radiation surveys and reports of any qualified expert or Certified Radiation Equipment Safety Officer employed in this City are inadequate to assess radiation exposures, the Department may require the registrants and licensees to have such surveys and reports performed by other qualified experts or Certified Radiation Equipment Safety Officers and may notify the appropriate certifying agency of such action.

(c) **Operator protection.** (1) Fixed radiographic installations (except dental, mobile, portable, podiatric or mammographic systems or spot-film devices as defined in 21 CFR Section 1020.30(b)).

(i) The operator of radiographic equipment shall initiate x-ray exposures from a control console that satisfies the following requirements:

(A) the control console shall be located within a structure so constructed that

(a) radiation has to be scattered at least twice before entering the structure; or

(b) the structure shall be provided with a protective door that is interlocked to prevent an x-ray exposure unless the door is closed and which door shall have sufficient shielding to ensure compliance with the requirements of §175.03; and

(c) any walls of the structure shall be permanently fixed barriers of at least 2.13 m (7 ft) in height and shall provide sufficient shielding to ensure compliance with the requirements of §175.03; and

(B) the operator shall be provided with a viewing system to observe the patient during any exposure and which has been so placed that the operator can view any entry into the radiographic room; and

(C) the operator shall be provided with a means of communication with the patient from the operator's position at the control console; and

(D) the operator shall be allotted unobstructed floor space at the control console; and

(E) for control consoles located in structures without an interlocked door, the x-ray exposure control shall be fixed in the structure and placed at least 1.02 m (40 in.) from any open edge of the structure where radiation may enter.

(2) **Mobile, portable, podiatric and dental radiographic installations, excluding mammographic systems.** (i) Mobile, portable, podiatric and dental x-ray equipment shall be provided with the means to allow an operator to stand at least 2 m (6 ft) from the patient or behind a protective barrier and not in the path of the primary x-ray beam whenever an x-ray exposure is initiated.

(ii) Mobile and portable x-ray systems, excluding dental and podiatric systems, that are used continuously for greater than one week in the same location shall be deemed a fixed radiographic installation and shall meet the operator protection standards of either §175.54(c)(1)(i)(A) or (B).

(iii) Each operator of a mobile or portable radiographic x-ray unit, excluding dental and podiatric units, shall be provided with personnel monitoring as provided in §175.03 and shall wear a protective apron of at least 0.25 mm lead equivalent.

(3) **Mammographic installations.** (i) The operator of the mammographic equipment shall initiate x-ray exposures from the control console of the mammographic equipment such that:

(A) protective shielding is provided for the operator that meets the following criteria: **(a)** the shielding shall be provided to a height of 2m (6 ft) from the floor, with the lower edge not more than 7.5 cm (3 in.) from the floor. Such shielding shall be permanently attached to the mammographic x-ray unit in such a manner that an air gap does not exist between the shield and the mammographic unit or shall be constructed as a permanent operator shield such that the operator is able to stand completely within the shielded area during the exposure; and

(b) the exposure control shall be permanently fixed on the mammographic control console; and

(c) the operator shall be able to communicate with and view the patient from the operator's protected position

during the exposure.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

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ARTICLE 175 RADIATION CONTROL General Provisions

§175.55 Compliance with federal standards and precedence thereof.

(a) Whenever any requirement of this Code relating to radiation equipment conflicts with the Federal performance standard (21 CFR 1020.30, or any successor law or regulation) for diagnostic x-ray systems and/or their major components, the Federal performance standard shall take precedence over and supersede any conflicting requirements of this Code pertaining to radiation equipment.

(b) The operator shall retain, and shall present to the Department for examination when requested, all information provided by the manufacturer to the purchaser in accordance with the requirements of the applicable Federal standard and shall transfer this information to any subsequent owner of the equipment.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

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ARTICLE 175 RADIATION CONTROL General Provisions

§175.56 General requirements for radiation equipment.

(a) In addition to the requirements set forth in this section, all radiation equipment shall meet all applicable specific provisions of the sections of this Code set forth under the heading "Radiation Equipment" and all possession and use thereof shall comply with the requirements set forth in the sections of this Code set forth under the heading "General Provisions" and with any other applicable requirement deemed necessary by the Department.

(b) Radiation equipment which is not intended to be used must be made inoperable to the satisfaction of the Department by dismantling or sealing with an official Department seal or other suitable method, and shall not be unsealed or restored to operable condition without prior authorization by the Department.

(c) All radiation equipment, except equipment used solely in research and development, installed in a radiation installation shall, where applicable, be listed by the Underwriters' Laboratories, Inc., or shall comply with the National Electrical Code of the National Fire Protection Association or an equivalent safety standard.

(d) **Labels.** (1) The control panel for radiation equipment used for diagnostic or therapeutic radiology shall be clearly labeled with the words "CAUTION-THIS EQUIPMENT PRODUCES X-RAYS WHEN ENERGIZED" or other cautionary wording as specified in applicable performance standards established by the United States Department of Health and Human Services, Food and Drug Administration.

(2) Such cautionary labels shall not be used except as required by this Code.

(e) **Equipment accessories.** Film processing materials and techniques shall be those recommended by the x-ray film manufacturer or those otherwise tested to ensure maximum information content of the developed x-ray film and quality control methods shall be employed to ensure optimum results as specified in §175.07 of this Code. X-ray film shall not be used past the manufacturer's expiration date.

(f) **Beam quality-half-value layer.** (1) The half-value layer (HVL) of the useful beam for a given x-ray tube potential shall not be less than the appropriate value shown in Table 1 below under "Specified dental systems" for any dental system designed for use with intraoral image receptors and manufactured after December 1, 1980, and under "Other x-ray systems" for all other x-ray systems subject to this Code. If it is necessary to determine such half-value layer at an x-ray tube potential which is not listed in Table 1, linear interpolation or extrapolation may be made.

(2) Positive means shall be provided to insure that at least the minimum filtration needed to achieve the beam quality requirements specified in §175.56(f)(1) is in the useful beam during each exposure.

Table 1

X-ray tube voltage (kilovolt peak) Designed operating range	Minimum HVL (mm of Al) Measured operating potential	Specified dental systems	Other x-ray systems
Below 50	30		0.3
	40		0.4
	49		0.5
50 to 70	50	1.5	1.2
	60	1.5	1.3
	70	1.5	1.5
Above 70	71	2.1	2.1
	80	2.3	2.3
	90	2.5	2.5
	100	2.7	2.7
	110	3.0	3.0
	120	3.2	3.2
	130	3.5	3.5
	140	3.8	3.8
	150	4.1	4.1

(g) **Radiographic protective tube housings and diaphragm protection.**

(1) All radiographic protective tube housings shall be of the diagnostic type.

(2) All diaphragms, collimators, cones, shutters or other devices used to define the useful beam shall provide the same degree of attenuation as that required of the tube housing.

(h) The tube head shall remain stationary when placed in any exposure position and during the exposure.

(i) **Additional requirements.** In addition to other applicable requirements of this Code, diagnostic x-ray equipment manufactured after August 1, 1974, shall meet the following requirements:

(1) Aluminum equivalent of material between patient and image receptor. The aluminum equivalent of each of the items listed in Table 2 below, which are used between the patient and image receptor, shall not exceed the indicated limits. Compliance shall be determined by x-ray measurements made at a potential of 100 kVp and with an x-ray beam which has a half-value layer of 2.7 mm of aluminum. This requirement is applicable to front panel(s) of cassette holders and film changers provided by the manufacturer for purposes of patient support and/or to prevent foreign object intrusions. It does not apply to such items as a screen and its associated mechanical support panel or grids.

Table 2

Item	Aluminum equivalent (in mm)
Front panel(s) of cassette holder (total of all)	1.0
Front panel(s) of film changer (total of all)	1.0
Stationary tabletop	1.0
Moveable tabletop (including stationary subtop)	1.5
Cradle	2.0

(2) On battery-powered generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(j) The x-ray equipment, and all related items, including all individual components, whether related to the setting of exposure technique factors, the taking of the x-ray or post-exposure processing of the x-ray film, shall be maintained in proper working order. This includes, but is not limited to, dials, buttons, indicators, switches, controls and meters.

(k) All x-ray producing equipment shall be provided with a light, or other visual indication, which functions whenever x-rays are produced. This indication shall be visible at the operator's protected position.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Subd. (e) amended City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 16]

Subd. (j), (k) added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 16]

Notes:

Subsection (e) was amended on March 21, 2001 to prohibit the use of outdated x-ray film. In addition, the reference to paragraph (I) was deleted as unnecessary.

Subsections (j) and (k) were added on March 21, 2001 to include additional requirements for x-ray producing equipment.

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ARTICLE 175 RADIATION CONTROL General Provisions

§175.57 Diagnostic radiography (other than veterinary).

(a) **Applicability.** The provisions of this section apply to equipment for the recording of images.

(b) **Control and indication of technique factors.** (1) **Visual indication.** The technique factors to be used during an exposure shall be indicated before the exposure begins, except when automatic exposure controls are used, in which case the technique factors which are set prior to the exposure shall be indicated. On equipment having fixed technique factors, this requirement may be met by permanent markings. Indication of technique factors shall be visible from the operator's position except in the case of spot films made by the fluoroscopist.

(2) **Timers.** Means shall be provided to terminate the exposure at a preset time interval, a preset product of current and time, a present number of pulses, or a preset radiation exposure to the image receptor.

(i) Except during serial radiography, the operator shall be able to terminate the exposure at any time during an

exposure of greater than one-half section. Termination of exposure shall cause automatic resetting of the timer to its initial setting or zero. It shall not be possible to make an exposure when the timer is set to a zero or off position if either position is provided.

(ii) During serial radiography, the operator shall be able to terminate the x-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in progress.

(3) **Automatic exposure controls.** When an automatic exposure control is provided:

(i) indication shall be made on the control panel when this mode of operation is selected;

(ii) when the x-ray tube potential is equal to or greater than 51 kVp, the minimum exposure time for field emission equipment rated for pulsed operation shall be equal to or less than a time interval equivalent to two pulses and the minimum exposure time for all other equipment shall be equal to or less than 1/60 second or a time interval required to deliver 5 mAs, whichever is greater;

(iii) either the product of peak x-ray tube potential, current and exposure time shall be limited to not more than 60 kWs per exposure or the product of x-ray tube current and exposure time shall be limited to not more than 600 mAs per exposure except when the x-ray tube potential is less than 51 kVp in which case the product of x-ray tube current and exposure time shall be limited to not more than 2,000 mAs per exposure; and

(iv) a visible signal shall indicate when an exposure has been terminated at the limits described in §175.57(a)(3)(iii) and manual resetting shall be required before further automatically timed exposures can be made.

(c) **Accuracy.** Deviation of technique factors from indicated values shall not exceed the limits given in the information provided by the manufacturer in accordance with applicable Federal standards (21 CFR Part 1020, or any successor law or regulation).

(d) **Reproducibility.** The following requirements shall apply when the equipment is operated on an adequate power supply as specified by the manufacturer in accordance with the requirements of applicable Federal standards (21 CFR Part 1020, or any successor law or regulation):

(1) **Coefficient of variation.** For any specific combination of selected technique factors, the estimated coefficient of variation of radiation exposures shall be no greater than 0.05.

(e) **Linearity.** The following requirements apply when the equipment is operated on a power supply as specified by the manufacturer in accordance with the requirements of applicable Federal standards (21 CFR Part 1020 or any successor law or regulation) for any fixed x-ray tube potential within the range of 40 percent to 100 percent of the maximum rated.

(1) **Equipment having independent selection of x-ray tube current (mA).** The average ratios of exposure to the indicated milliampere-seconds product, C-kg^{-1}/mAs (mR/mAs), obtained at any two consecutive tube current settings shall not differ by more than 0.10 times their sum. This is:

$$' X_1 - X_2 ' \# 0.10 (X_1 X_2)$$

where X_1 and X_2 are the average C-kg^{-1}/mAs (or mR/mAs) values obtained at each of two consecutive tube current settings or at two settings differing by no more than a factor of 2 when the tube current selection is continuous.

(2) Equipment having selection of x-ray tube current-exposure time product (mAs). For equipment manufactured after May 3, 1994, the average ratios of exposure to the indicated milliampere-seconds product, C-kg^{-1}/mAs (mR/mAs), obtained at any two consecutive mAs selector settings shall not differ by more than 0.10 times their sum. This is: $' X_1 - X_2 ' \# 0.10 (X_1 X_2)$

where X_1 and X_2 are the average C-kg^{-1}/mAs (or mR/mAs) values obtained at each of two consecutive mAs selector settings or at two settings differing by no more than a factor of 2 where the mAs selector provides continuous selection.

(f) **Field limitation and alignment for mobile and stationary general purpose x-ray systems.** Except where spot-film devices are used, mobile and stationary general purpose radiographic x-ray systems shall meet the following requirements:

(1) **Variable x-ray field limitation.** A means for stepless adjustment of the size of the x-ray field shall be provided. Each dimension of the minimum field size at an SID of 100 cm shall be equal to or less than 5 cm.

(2) Visual definition:

(i) **Means for visually defining the perimeter of the x-ray field shall be provided.** The total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed 2 percent of the distance from the source of the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.

(ii) When a light localizer is used to define the x-ray field, it shall provide an average illuminance of not less than 160 lux (15 footcandles) at 100 cm or at the maximum SID, whichever is less. The average illuminance shall be based upon measurements made in the approximate center of each quadrant of the light field. Radiation therapy simulation systems are exempt from this requirement.

(iii) The edge of the light field at 100 cm or at the maximum SID, whichever is less, shall have a contrast ratio, corrected for ambient lighting, of not less than 4 in the case of beam-limiting devices designed for use on stationary equipment, and a contrast ratio of not less than 3 in case of beam-limiting devices designed for use on mobile equipment. The contrast ratio is defined as I_1/I_2 where I_1 is the illuminance 3 mm from the edge of the light field toward the center of the field and I_2 is the illuminance 3 mm from the edge of the light field away from the center of the field.

(g) **Field indication and alignment on stationary general purpose x-ray equipment.** Except when spot-film devices are used, stationary general purpose x-ray systems shall meet the following requirements in addition to those prescribed in §175.57(e):

(1) Means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, to align the center of the x-ray field with respect to the center of the image receptor to within 2 percent of the SID, and to indicate the SID to within 2 percent;

(2) The beam-limiting device shall numerically indicate the field size in the plane of the image receptor to which it is adjusted;

(3) Indication of field size dimensions and SIDs shall be specified in centimeters and/or inches, and shall be such that aperture adjustments result in x-ray field dimensions in the plane of the image receptor which correspond to those indicated by the beam-limiting device to within 2 percent of the SID when the beam axis is indicated to be perpendicular to the plane of the image receptor; and

(h) **Field limitation on radiographic x-ray equipment other than general purpose radiographic systems.** (1) X-ray systems designed for one image receptor size. Radiographic equipment designed for only one image receptor size at a fixed SID shall be provided with means to limit the field at the plane of the image receptor to dimensions no greater than those of the image receptor, and to align the center of the x-ray field with the center of the image receptor to within 2 percent of the SID or shall be provided with means to both size and align the x-ray field such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor.

(2) **Other x-ray systems.** Radiographic systems not specifically covered in §175.57(f), (g), (h)(1), and (j) and systems covered in §175.58(b), which are also designed for use with extraoral image receptors and when used with an extraoral image receptor, shall be provided with means to limit the x-ray field in the plane of the image receptor so that such field does not exceed each dimension of the image receptor by more than 2 percent of the SID, when the axis of the x-ray beam is perpendicular to the plane of the image receptor. In addition, means shall be provided to align the center of the x-ray field such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor. These requirements may be met with:

(i) a system which performs in accordance with §175.57(f) and (g); or, when alignment means are also provided, may be met with either:

(ii) an assortment of removable fixed-aperture, beam-limiting devices sufficient to meet the requirement for each combination of image receptor size and SID for which the unit is designed. Each such device shall have clear and permanent markings to indicate the image receptor size and SID for which it is designed; or

(iii) a beam-limiting device having multiple fixed apertures sufficient to meet the requirement for each combination of image receptor size and SID for which the unit is designed. Permanent, clearly legible markings shall indicate the image receptor size and SID for which each aperture is designed and shall indicate which aperture is in position for use.

(i) **Positive beam limitation (PBL).** These requirements apply to radiographic systems which contain PBL.

(1) **Field size.** When a PBL system is provided, it shall prevent x-ray production when: (i) either the length or width of the x-ray field in the plane of the image receptor differs from the corresponding image receptor dimension by more than 3 percent of the SID; or

(ii) the sum of the length and width differences as stated in §175.57(i)(1)(i), without regard to sign exceeds 4 percent of the SID.

(iii) The beam limiting device is at an SID for which PBL is not designed for sizing.

(2) **Conditions for PBL.** When provided, the PBL system shall function as described in §175.57(i)(1) whenever all the following conditions are met:

(i) the image receptor is inserted into a permanently mounted cassette holder;

(ii) the image receptor length and width are less than 50 cm;

(iii) the x-ray beam axis is within ± 3 degrees of vertical and the SID is 90 cm to 130 cm inclusive, or the x-ray beam is within ± 3 degrees of horizontal and the SID is 90 cm to 205 cm inclusive;

(iv) the x-ray beam axis is perpendicular to the plane of the image receptor to within ± 3 degrees; and

(v) neither tomographic nor stereoscopic radiography is being performed.

(3) **Operator initiated undersizing.** The PBL system shall be capable of operation such that, at the discretion of the operator, the size of the field may be made smaller than the size of the image receptor through stepless adjustment of the field size. Each dimension of the minimum field size at an SID of 100 cm shall be equal to, or less than, 5 cm. Return to PBL function as described in §175.57(i)(1) shall occur automatically upon any change of image receptor size or SID.

(4) **Override of PBL.** A capability may be provided for overriding PBL in case of system failure and for servicing the system. This override may be for all SIDs and image receptor sizes. A key shall be required for any override

capability that is accessible to the operator. It shall not be possible to remove the key while PBL is overridden. Each such key switch or key shall be clearly and durably labeled as follows:

For X-Ray Field Limitation System Failure

The override capability is considered accessible to the operator if it is referenced in the operator's manual or in other material intended for the operator or if its location is such that the operator would consider it part of the operational controls.

(j) **Field limitation and alignment for spot-film devices.** The following requirements shall apply to spot-film devices, except when the spot-film device is provided for use with a radiation therapy simulation system:

(1) Means shall be provided between the source and the patient for adjustment of the x-ray field size in the plane of the image receptor to the size of that portion of the image receptor which has been selected on the spot-film selector. Such adjustment shall be accomplished automatically when the x-ray field size in the plane of the image receptor is greater than the selected portion of the image receptor. If the x-ray field size is less than the size of the selected portion of the image receptor, the field size shall not open automatically to the size of the selected portion of the image receptor unless the operator has selected that mode of operation.

(2) Neither the length nor the width of the x-ray field in the plane of the image receptor shall differ from the corresponding dimensions of the selected portion of the image receptor by more than 3 percent of the SID when adjusted for full coverage of the selected portion of the image receptor. The sum, without regard to sign, of the length and width differences shall not exceed 4 percent of the SID. On spot-film devices manufactured after February 25, 1978, if the angle between the plane of the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, and compliance shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(3) The center of the x-ray field in the plane of the image receptor shall be aligned with the center of the selected portion of the image receptor to within 2 percent of the SID.

(4) Means shall be provided to reduce the x-ray field size in the plane of the image receptor to a size smaller than the selection portion of the image receptor such that:

(i) for spot-film devices used on fixed-SID fluoroscopic systems which are not required to, and do not, provide stepless adjustment of the x-ray field, the minimum field size, at the greatest SID, does not exceed 125 cm^2; or

(ii) for spot-film devices used on fluoroscopic systems that have a variable SID and/or stepless adjustment of the field size, the minimum field size, at the greatest SID, shall be containable in a square of 5 cm by 5 cm.

(5) A capability may be provided for overriding the automatic x-ray field size adjustment in case of a system failure. If it is so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic x-ray field size adjustment override is engaged. Each such system failure override switch shall be clearly labeled as follows:

For X-Ray Field Limitation System Failure.

(k) **Source-skin distance.** Mobile and portable x-ray systems other than dental shall be provided with means to limit the source-skin distance to not less than 30 cm.

(l) **Beam-on indicators.** The x-ray control shall provide visual indication whenever x-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(m) **Multiple tubes.** Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes which have been selected shall be clearly indicated before initiation of the exposure. This indication shall be both

on the x-ray control and at or near the tube housing assembly which has been selected.

(n) **Radiation from capacitor energy storage equipment.** Radiation emitted from the x-ray tube shall not exceed:

(1) 8.6 E -9 C-kg^{-1} (0.03 mR) in one minute at 5 cm from any accessible surface of the diagnostic source assembly, with the beam-limiting device fully open, the system fully charged, and the exposure switch, timer, or any discharge mechanism not activated. Compliance shall be determined by measurements averaged over an area of 100 cm2, with no linear dimension greater than 20 cm; and

(2) 2.58 E -5 C-kg^{-1} (100 mR) in one (1) hour at 100 cm from the x-ray source, with the beam-limiting device fully open, when the system is discharged through the x-ray tube either manually or automatically by use of a discharge switch or deactivation of the input power. Compliance shall be determined by measurement of the maximum exposure per discharge multiplied by the total number of discharges in one (1) hour (duty cycle). The measurements shall be averaged over an area of 100 cm^2 with no linear dimension greater than 20 cm.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Subd. (a) amended City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and

Purpose No. 16]

Notes:

Subsection (a) was amended on March 21, 2001 to remove language which is confusing and which does not appear in state or federal regulations.

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PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.58 Dental radiography.

(a) The requirements of this section apply specifically to x-ray equipment and associated facilities used for dental radiography and are in addition to, and not in substitution for, other requirements of this Code.

(b) Non-certified dental units shall meet the equipment and use conditions outlined in §175.58(b)(1) through (8), with exceptions as noted. Certified equipment shall meet the conditions in §175.58(b)(1) through (9).

(1) **Source-to-skin distance.** X-ray systems designed for use with an intraoral image receptor shall be provided with means to limit source-to-skin distance to not less than 17.8 cm (7 in.) or 10.2 cm (4 in.) for equipment operating at 50 kVp.

(2) **Field limitation.** (i) Radiographic systems designed for use with an intraoral image receptor shall be provided with means to limit the x-ray field such that the x-ray field at the minimum SSD shall be containable in a circle having a

diameter of not more than 7 cm (2.75 in.), except dental x-ray units manufactured before August 1, 1974 in which the x-ray beam shall not exceed 7.6 cm (3 in.) at the minimum SSD.

(ii) The operator shall position the end of the position indicating device (PID) within 1 cm (0.4 in.) of the skin of the patient, if such device is routinely used in conducting dental radiography.

(3) **Radiation exposure control.** (i) **Exposure initiation.**

(A) A device shall be provided to terminate the radiation exposure after a preset time interval or exposure. The exposure switch shall be of the dead-man type, and where protective barriers are required shall be so arranged that it cannot be operated outside the shielded area.

(B) An x-ray control shall be incorporated into each x-ray system such that an exposure can be terminated by the operator at any time, except for exposures of 0.5 sec or less.

(C) Termination of an exposure shall cause automatic resetting of the timer to its initial setting or to "zero."

(D) A timer setting beyond the necessary exposure time shall not be used.

(ii) **Exposure indication.** The x-ray control shall provide visual indication observable at or from the operator's protected position whenever x-rays are produced. A signal audible to the operator shall indicate that the exposure has terminated on dental x-ray units manufactured after August 1, 1974.

(4) **Timer reproducibility.** With a timer setting of 0.5 sec or less, the difference between the maximum exposure time (T_{max}) and the minimum exposure time (T_{min}) shall be less than or equal to 10 percent of the average exposure time (T), when four timing tests are performed:

$(T_{max} - T_{min}) \# 0.10\ T.$

(5) **Accuracy.** Deviation of technique factors from indicated values shall not exceed the limits specified for that system by its manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed 10% of the indicated value.

(6) **Kilovolts peak limitations.** Dental x-ray machines with a nominal fixed kVp of less than 50 kVp shall not be used to make diagnostic dental radiographs of humans.

(7) **Conditions for operation of equipment.** (i) Patient film holding devices shall be used when techniques permit. The x-ray system shall always be operated in such a manner that the useful beam at the patient's skin does not exceed the requirements of §175.58(b)(2).

(ii) The tube housing and the PID shall not be hand-held during an exposure.

(iii) Dental fluoroscopy shall not be used.

(iv) Time-temperature techniques or automatic processing shall be used to develop pre-operative diagnostic dental x-ray films. Processing techniques shall be consistent with those recommended by the x-ray film manufacturer. Sight developing of dental radiographs is prohibited except for films taken during operative procedures.

(v) Dental x-ray exposure technique factors and dental processing conditions shall yield entrance skin exposure (ESE) values for the bitewing x-ray projection that are identical to the range of ESE values for dental "D" and "E" speed film designations as published in HHS document #FDA-85-8245 (August 1985) or superseding documents.

(vi) Dental intraoral x-ray radiography shall be conducted with dental film classified American National Standards

Institute (ANSI) speed group "D" or faster.

(vii) The tube head shall remain stationary when placed in the clinical exposure position.

(viii) All x-ray units manufactured before August 1, 1974 shall be equipped with electronic means (timers) for exposure control not later than January 1, 1997.

(ix) Persons not required for the dental x-ray procedure shall not be present in the dental x-ray room.

(8) For extraoral dental radiography, the x-ray film used as the recording medium during the x-ray examination shall show substantial evidence of cut-off (beam delineation).

(9) **Additional requirements applicable only to certified systems.** Certified dental x-ray units shall meet the following additional requirements:

(i) **Reproducibility.** When the equipment is operated on an adequate power supply as specified by the manufacturer, the estimated coefficient of variation of radiation exposures shall be no greater than 0.05 for any specific combination of selected technique factors.

(ii) **Linearity.** When the equipment allows a choice of x-ray tube current settings and is operated on a power supply as specified by the manufacturer in accordance with the requirements of applicable federal standards, for any fixed x-ray tube potential within the range of 40-100 percent of the maximum rating, the average ratios of exposure to the indicated mAs product obtained at any two consecutive tube current settings shall not differ by more than 0.10 times their sum:

$(X_1 - X_2) \# 0.10 (X_1 X_2)$

where X_1 and X_2 are the average mR/mAs values obtained at each of two consecutive tube current settings.

(iii) **Accuracy.** Deviation of technique factors from indicated values shall not exceed the limits specified for that system by its manufacturer.

(iv) **Beam quality.** All certified dental x-ray systems manufactured on or after December 1, 1980 shall have a minimum half-value layer not less than 1.5 mm aluminum equivalent. Systems operating above 70 kVp are subject to the filtration requirements of §175.56(f).

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

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PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.59 Podiatric radiography.

(a) **Equipment.** (1) Collimating devices capable of restricting the useful beam to the area of clinical interest shall be used.

(2) The x-ray films used as the recording medium during the x-ray examination shall show substantial evidence of cut-off (beam delineation).

(3) A device shall be provided which terminates the exposure after a preset time interval or exposure. The exposure switch shall be of the dead-man type and where protective barriers are required shall be so arranged that it cannot be operated outside the shielded area.

(4) Each installation shall be arranged so that the operator can stand at least two (2) meters (6 feet) from the patient, the x-ray tube and the useful beam during exposure. A protective barrier shall be provided when the operator

cannot stand at least 2 meters (6 feet) away from the patient, the x-ray tube and the useful beam during exposures.

(b) **Conditions for operation of equipment.** (1) No person shall hold film during the exposure.

(2) Only persons required for the radiographic procedure shall be in the radiographic room during exposure.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

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ARTICLE 175 RADIATION CONTROL General Provisions

§175.60 Fixed radiography (excluding dental, veterinary and podiatric radio- graphy).

(a) **Equipment.** (1) Collimating devices capable of restricting the useful beam to the area of clinical interest shall be used.

(2) The x-ray films used as recording medium during the x-ray examination shall show substantial evidence of cut-off (beam delineation). In addition, general purpose equipment, exclusive of spot-film devices, shall be equipped with adjustable collimators with a means of visually defining the entire field. The total misalignment of the visually defined field with the x-ray field, along either the length or width dimensions, shall not exceed 2 percent of the SID. Such devices shall be calibrated in terms of the size of the projected useful beam at specified source-film distances with the same degree of accuracy.

(3) The technique factors to be used during an exposure shall be indicated before the exposure begins, except when automatic exposure controls are used, in which case the technique factors which are set prior to the exposure shall be

indicated. On equipment having fixed technique factors, this requirement may be met by permanent markings. Indication of technique factors shall be visible from the operator's position except in the case of spot films made by the fluoroscopist.

(4) A device shall be provided which terminates the exposure after a preset time interval or exposure.

(5) A dead-man type of exposure switch shall be used and so arranged such that it cannot be operated outside a shielded area. Exposure switches for spot-film devices used in conjunction with fluoroscopic equipment are excepted from this shielding requirement.

(b) **Conditions for operation of equipment.** (1) No person shall be regularly employed to hold patients or films during exposures nor shall such duty be performed by an individual occupationally exposed to radiation in the course of that individual's other duties. When it is necessary to restrain the patient, mechanical supporting or restraining devices should be used. If patients or films must be held by an individual, that individual shall be protected with appropriate shielding devices such as protective gloves and a protective apron of at least 0.25 mm lead equivalent. No part of the holding individual's body shall be in the useful beam. The exposure of any individual used for holding patients shall be monitored. Pregnant women and individuals under 18 years of age shall not hold patients under any conditions.

(2) Only persons required for the radiographic procedure shall be in the radiographic room during the exposure and, except for the patient, all such persons shall be equipped with appropriate shielding devices such as protective gloves and a protective apron of at least 0.25 mm lead equivalent.

(3) For patients who have not passed the reproductive age, gonadal shielding of not less than 0.5 mm lead equivalent shall be used during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

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ARTICLE 175 RADIATION CONTROL General Provisions

§175.61 Portable, bedside or mobile equipment (excluding dental, veterinary and podiatric radiography).

(a) **Equipment.** (1) Collimating devices capable of restricting the useful beam to the area of clinical interest shall be used.

(2) The x-ray films used as the recording medium during the x-ray examination shall show substantial evidence of cut-off (beam delineation). General purpose equipment, exclusive of portable equipment, shall be equipped with adjustable collimators with a means of visually defining the entire field. The total misalignment of the visually defined field with the x-ray field, along either the length or width dimensions, shall not exceed 2 percent of the SID. Such devices shall be calibrated in terms of the size of the projected useful beam at specified source-film distances with the same degree of accuracy.

(3) A device shall be provided which terminates the exposure after a preset time interval or exposure.

(4) All mobile, portable or bedside equipment shall be provided with cones or metal frames so that the minimum source-to-skin distance is at least 31 cm (12 in.).

(b) **Conditions for operation of equipment.** (1) No person shall be regularly employed to hold patients or films during exposures, nor shall such duty be performed by an individual occupationally exposed to radiation in the course of that individual's other duties. When it is necessary to restrain the patient, mechanical supporting or restraining devices should be used. If patient or films must be held by an individual, that individual shall be protected with appropriate shielding devices such as protective gloves and a protective apron of at least 0.25 mm lead equivalent. No part of the holding individual's body shall be in the useful beam. The exposure of any individual used for holding patients shall be monitored. Pregnant women and individuals under 18 years of age shall not hold patients under any conditions.

(2) For patients who have not passed the reproductive age, gonadal shielding of not less than 0.5 mm lead equivalent shall be used during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure.

(3) Personnel monitoring shall be required for all persons operating mobile or portable x-ray equipment.

HISTORICAL NOTE

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ARTICLE 175 RADIATION CONTROL General Provisions

§175.62 Fluoroscopy.

Fluoroscopic systems and associated components shall meet the following requirements:

(a) **Primary protective barrier.** (1) **Limitation of useful beam.** The entire cross-section of the useful beam shall be intercepted by the primary protective barrier of the fluoroscopic image assembly irrespective of position. The fluoroscopic tube shall not produce x-rays unless the barrier is in position to intercept the entire useful beam. The exposure rate due to transmission through the barrier with the attenuation block in the useful beam combined with radiation from the image intensifier, if provided, shall not exceed 5.16 E-7 $C\text{-}kg^{-1}$ (2 milliroentgens) per hour at 10 cm (4 in.) from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor for each roentgen per minute of entrance exposure rate.

(b) **Field limitation.** (1) **Image-intensified fluoroscopy.** For image-intensified fluoroscopic equipment the total misalignment of the edges of the x-ray field with the respective edges of the visible area of the image receptor along any

dimension of the visually defined field in the plane of the image receptor shall not exceed 3 percent of the SID. The sum, without regard to sign, of the misalignment along any two orthogonal dimensions intersecting at the center of the visible area of the image receptor shall not exceed 4 percent of the SID. For rectangular x-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the x-ray field which pass through the center of the visible area of the image receptor. Means shall be provided to permit further limitation of the field. The minimum field size, at the greatest SID, shall be equal to or less than 5 by 5 cm (2 by 2 in.).

(c) **Activation of tube.** X-ray production in the fluoroscopic mode shall be controlled by a device which requires continuous pressure by the operator for the entire time of any exposure. When recording serial fluoroscopic images, the operator shall be able to terminate the x-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in process.

(d) **Entrance exposure rate limits.**

(1) The fluoroscopic exposure rate when measured under the following conditions shall not exceed 5 Roentgens per minute:

(i) the controls are set to the dose rate mode used for the fluoroscopic procedure most commonly performed on that fluoroscopic unit; and

(ii) the image intensifier is set to the largest field of view; and

(iii) the image intensifier is at 12 inches (30 cm) above the tabletop or the over table fluoro tube is at a source to image distance normally used for an average patient; and

(iv) a patient phantom composed of 1 and $^{1}/_{2}$ inch (3.8 cm) thickness of Type 1100 aluminum and 0.02 inch (0.5 mm) thickness of copper or an equivalent device is completely intercepting the useful beam; and

(v) the measurement is made at the measurement location specified in 21 CFR §1020.32(d)(3).

(vi) If the exposure rate cannot be measured, the exposure integrated for one minute under the same conditions as subparagraph (i) or paragraph (7) shall not exceed 5 Roentgens.

(2) The maximum exposure rate measured in air shall not exceed 10 Roentgens per minute, when measured in the manner as specified in 21 CFR §1020.32(d)(3), except as follows:

(i) Equipment manufactured before May 19, 1995 and certified in accordance with 21 CFR Part 1020 and having an optional high level control is limited to a maximum output of 5 Roentgens per minute unless the high level control is activated and an audible signal to that effect is provided. When the high level is activated, the maximum exposure rate measured in air at a point where the center of the useful beam enters the patient shall not exceed 20 Roentgens per minute.

(ii) Certified equipment manufactured after May 19, 1995 with automatic exposure rate and having an optional high level control is limited to a maximum output of 10 Roentgens per minute unless the high level control is activated and an audible signal to that effect is provided. When the high level control is activated, the maximum exposure rate measured in air at a point where the center of the useful beam enters the patient shall not exceed 20 Roentgens per minute.

(iii) Certified equipment manufactured after May 19, 1995 without automatic exposure rate is limited to 5 Roentgens per minute unless the high level control is activated and an audible signal to that effect is provided. When the high level control is activated, the maximum exposure rate measured in air at a point where the center of the useful beam enters the patient shall not exceed 20 Roentgens per minute.

(3) With the system configured for the most frequently performed fluoroscopic procedure, exposure rates shall be measured with each of the following attenuators in the beam:

(i) 0.75 inches (19 mm) of aluminum (pediatric patient-25 kg.),

(ii) 1.50 inches (38 mm) of aluminum (small adult patient-50 kg.),

(iii) 1.50 inches (38 mm) of aluminum and 0.02 inches (0.5 mm) of copper (average adult patient-75 kg.),

(iv) 1.50 inches (38 mm) of aluminum and 0.08 inches (2.0 mm) of copper (large adult patient-100 kg.),

(v) 1.50 inches (38 mm) of aluminum and 0.08 inches (2.0 mm) of copper and 0.12 inches (3.0 mm) of lead (for maximum fluoroscopic exposure rate only).

The fluoroscopic exposure rates for the most frequently performed procedure shall be posted so that they are conspicuous to the operator.

(e) **Indication of potential and current.** During fluoroscopy and cinefluorography, x-ray tube potential and current shall be continuously indicated. Deviation of x-ray tube potential and current from the indicated values shall not exceed the maximum deviation as stated by the manufacturer in accordance with applicable Federal standards (21 CFR Part 1020 or successor regulations).

(f) **Source-skin distance.** Means shall be provided to limit the source-skin distance to not less than 38 cm (15 in.) on stationary fluoroscopes and to not less than 30 cm (12 in.) on mobile fluoroscopes. In addition, for image-intensified fluoroscopes intended for specific surgical applications that would be prohibited at the source-skin distances specified in §175.62(f), provision may be made for operation at shorter source skin distances but in no case less than 20 cm (8 in.). When provided, the manufacturer must set forth precautions with respect to the optional means of spacing in addition to other information as required in accordance with applicable Federal standards.

(g) **Fluoroscopic timer.** Fluoroscopy equipment shall not be operated for medical use unless a means is provided to preset the cumulative on-time of the fluoroscopic tube. The maximum cumulative time of the timing device shall not exceed 5 minutes without resetting. A signal audible to the fluoroscopist shall indicate the completion of any present cumulative on-time. Such signal shall continue to sound while x-rays are produced until the timing device is reset.

(h) **Contrast tests.** (1) The spatial resolution of the fluoroscopic system shall be measured using a test tool composed of a line pair (lp) plate with discreet line pair groups and a maximum lead foil thickness of 0.1 mm or an equivalent device. The test tool shall be placed on a 0.75 inch (19 mm) thickness of type 1100 aluminum, large enough to completely intercept the useful beam, with the test tool 12 inches (30 cm) from the entrance surface of the image receptor assembly. If the system has variable source-to-image distance (SID), the measurement SID shall not exceed 40 inches (100 cm). The image receptor of the fluoroscopic system shall be operated in the six inches (15 cm) field of view (FOV) to conduct this test. If six inches (15 cm) FOV is not available, the system shall be operated in the smallest FOV that exceeds the six inches (15 cm) FOV. The minimum spatial resolution at the center of the beam for all FOVs shall be determined by the following equation:

2 lp/mm × (6 inches (15cm)/size of FOV used) = minimum number of lp/mm.

(2) The low contrast performance of the fluoroscopic system shall be capable of resolving a minimum hole size of 3 mm using a test tool composed of a 1.0 mm aluminum sheet with two sets of four holes of dimension 1.0, 3.0, 5.0 and 7.0 mm and a phantom composed of a 1 and $^{1}/_{2}$ inch (3.8 cm) thickness of Type 1100 aluminum large enough to completely intercept the useful beam or an equivalent device. The test tool shall be 12 inches (30 cm) from the entrance surface of the image receptor assembly. The image receptor of the fluoroscopic system shall be operated in the six inches (15 cm) FOV to conduct this test. If six inches (15 cm) FOV is not available, the system shall be operated in the

smallest FOV that exceeds the six inches (15 cm) FOV.

(i) **Conditions for operation of equipment.** (1) The operator of any fluoroscopic installation shall determine and record the outputs made pursuant to §175.62(d) where the center of the useful beam enters the patient during routine fluoroscopy and cinefluorography. The rate shall be determined at least annually, each time a major component is serviced or replaced, when the outputs exceed the limits specified in §175.62 or when there is a reason to believe that the operating factors have changed significantly. Notwithstanding the requirements of §175.54, such measurements and measurement of stray radiation to operators and observers, are required when the equipment is first placed in operation.

(2) Protective garments of at least 0.25 mm lead equivalent shall be available and worn by the fluoroscopist during every examination.

(3) Unless measurements indicate that they are not needed, protective gloves and aprons of at least 0.25 mm lead equivalent each shall be worn by any person within the fluoroscopy room.

(4) Only persons needed in the fluoroscopy room shall be present during the ex- posure.

(j) **Exemptions.** (1) Fluoroscopic radiation therapy simulation systems are exempt from the requirements of §175.62(a), (d), and (g) provided that:

(i) the systems are designed and used in a manner such that no individual other than the patient is in the x-ray room when the system is producing x-rays; and

(ii) systems which do not meet the requirements of §175.62(g) are provided with a means of indicating the cumulative time that an individual patient has been exposed to x-rays. Procedures shall require that the timer be reset between cases.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

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Open par amended City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 16]

Subd. (d) amended City Record Sept. 29, 2006 eff. Oct. 29, 2006. [See Vol. 9 Statements of Basis and Purpose No. 25]

Subd. (d) par (3) added City Record Apr. 3, 2001 eff. May 3, 2001. This par (3) was bracketed out of rule in City Record Sept. 29, 2006 amendment.

Subd. (h) amended City Record Sept. 29, 2006 eff. Oct. 29, 2006. [See Vol. 9 Statements of Basis and Purpose No. 25]

Notes:

Subdivisions (d) and (h) of §175.62 were amended on September 26, 2006, to conform with the requirements of the New York State Sanitary Code §16.58 for fluoroscopic equipment, and FDA performance standards in 21 CFR 1020.32.

The first sentence of §175.62 was amended and paragraph (3) of subsection (d) was added on March 21, 2001 to include additional requirements for entrance exposure rate limits for fluoroscopic equipment in compliance with state and federal regulations.

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ARTICLE 175 RADIATION CONTROL General Provisions

§175.63 Mammography.

(a) **Applicability.** The provisions of this section apply to all facilities which produce, process or interpret mammograms for screening and/or diagnostic purposes and are in addition to, and not in substitution for, other requirements of this Code.

(b) **Requirement for certification.** (1) Except for facilities holding provisional certificates as described in §175.63(b)(2), effective October 1, 1994 each mammography facility shall have received a certificate indicating approval by the U.S. Food and Drug Administration (FDA) to provide screening and diagnostic mammography services pursuant to 21 CFR Section 900.11, or any successor law or regulation.

(2) A provisional certificate issued pursuant to 21 CFR Section 900.11, or any successor law or regulation, will be accepted in lieu of the certificate required by §175.63(b)(1) for a period of not longer than six (6) months from the date of issuance plus one ninety (90) day extension.

(c) **Equipment.** (1) Radiographic equipment designed for conventional radiographic procedures that has been modified or equipped with special attachments for mammography shall not be used for mammography.

(2) Radiographic equipment used for mammography shall:

(i) be certified by the U.S. Food and Drug Administration pursuant to 21 CFR 1010.2, or any successor law or regulation, as meeting the applicable requirements of 21 CFR 1020.30 and 21 CFR 1020.31 in effect on the date of manufacture; and

(ii) be specifically designed for mammography; and

(iii) incorporate a breast compression device; and

(iv) have the provision for operating with a removable grid, except for xeromammography systems.

(3) Beam quality for mammographic systems with a molybdenum target-molybdenum filter combination.

(i) When used with screen-film image receptors, and the contribution to filtration made by the compression device is included, the useful beam shall have a half-value layer (HVL) between the values of measured kVp/100 and measured kVp/100 0.1 mm aluminum.

(ii) For xeromammography, the HVL of the useful beam with the compression device in place shall be at least 1.0 and not greater than 1.6 mm aluminum, measured at 49 kVp with a tungsten target tube.

(d) **Dose.** (1) The average glandular dose delivered during a single cranio-caudal view of an approved phantom simulating a 4.5 cm thick, compressed breast consisting of 50 percent adipose and 50 percent glandular tissue, shall not exceed:

(i) 1 mGy (100 millirads) per exposure for screen-film mammography procedures without a grid;

(ii) 3 mGy (300 millirads) per exposure for screen-film mammography procedures with a grid; or

(iii) 4 mGy (400 millirads) per exposure for xeromammography procedures.

The dose shall be determined at least annually using the technique factors and conditions that are used to produce the phantom images submitted for accreditation.

(e) **Personnel.** The following requirements apply to personnel involved in any aspect of mammography, including the production, processing and interpretation of mammograms and related quality assurance activities.

(1) Interpreting physicians shall meet the following requirements:

(i) be licensed to practice medicine in the State of New York; and

(ii) have had the following training:

(A) be certified in an accepted speciality area by one of the bodies approved by FDA to certify interpreting physicians; or

(B) have had at least two (2) months of documented full-time training in the interpretation of mammograms, including instruction in radiation physics, radiation effects and radiation protection; and

(C) have forty (40) hours of documented continuing medical education in mammography. Time spent in residency specifically devoted to mammography is acceptable, if documented in writing by a fully qualified interpreting

physician; and

(iii) have had the following initial experience:

(A) have read and interpreted the mammograms from the examinations of at least 240 patients in the six (6) months preceding application; or

(B) read and interpret mammograms as specified in §175.63(e)(1)(iii)(A) under the direct supervision of a fully qualified interpreting physician; and

(iv) have the following continuing experience:

(A) continue to read and interpret mammograms from the examination of an average of at least 40 patients per month over 24 months; and

(B) continue to participate in education programs, either by teaching or completing an average of at least five (5) continuing medical education credits in mammography per year.

(2) Radiologic technologists shall meet the following requirements:

(i) have a New York State license to perform radiographic procedures; and

(ii) have satisfied the requirements set forth in 21 C.F.R. §900.12(a)(2), or its successor regulation.

(3) Medical physicists shall meet the following requirements:

(i) have approval by the Department to conduct evaluations of mammography equipment and procedures required under the Public Health Service Act; or

(ii) be certified in an accepted speciality area by one of the bodies approved by FDA to certify medical physicists; or

(iii) for those medical physicists associated with facilities applying for accreditation before October 27, 1997, meet the following criteria:

(A) have a masters, or higher, degree in physics, radiological physics, applied physics, biophysics, health physics, medical physics, engineering, radiation science, or in public health with a bachelor's degree in the physical sciences; and

(B) have one (1) year of training in medical physics specific to diagnostic radiological physics; and

(C) have two (2) years of experience in conducting performance evaluation of mammography equipment; and

(iv) participate in continuing education programs related to mammography, either by teaching or completing an average of at least five (5) continuing education units per year.

(f) **Quality assurance.** (1) Each registrant performing mammography examinations shall establish and maintain a quality assurance program to assure the adequate performance of the radiographic equipment and other equipment and materials used in conjunction with such equipment to ensure the reliability and clarity of its mammograms. The program shall also require periodic monitoring of the dose delivered by the facility's examination procedures to ensure that it does not exceed the limit specified in §175.63(d) and is appropriate for the image receptor used.

(2) For screen-film systems, the mammography quality assurance program required by §175.63(f)(1) shall be substantially the same as that described in the 1992 edition of "Mammography Quality Control: Radiologist's Manual, Radiologic Technologist's Manual and Medical Physicist's Manual," prepared by the American College of Radiology,

Committee on Quality Assurance in Mammography, or in any superseding document.

(3) For systems with alternate image receptor modalities, the mammography quality assurance program required by §175.63(f)(1) shall be substantially the same as the quality assurance program recommended by the image receptor manufacturer, which, if followed, will allow a facility to maintain high image quality.

(4) The mammography quality assurance program required by §175.63(f)(1) shall provide for the maintenance of log books documenting compliance with the requirements of §175.63(f)(1) through (3) and recording corrective actions taken.

(5) Prior to performing patient mammography, using a breast equivalent phantom specified in §175.63(f)(7)(i), (ii) or (iii), the registrant shall optimize the mammographic system and determine image resolution, which shall be the reference image resolution for the mammographic system.

(6) The registrant shall use the breast equivalent phantom used to satisfy the requirement of §175.63(f)(5) to test image resolution of the mammographic system at monthly intervals; mobile and portable equipment shall be so tested each time the unit is moved or at monthly intervals, whichever is less.

(7) No patient mammogram shall be performed unless the mammographic system is capable of imaging, using phantom objects as follows:

(i) the phantom image shall achieve at least the minimum score established by an accreditation body approved by the FDA in accordance with 21 C.F.R. §900.3(d) or 900.4(a)(8), or successor regulations; or

(ii) the equivalent test object resolution on another phantom approved by the Department.

(8) **Diminished phantom test object resolution and facility follow-up.**

(i) If, when tested pursuant to §175.63(f)(6), the mammographic system detects two (or more) fewer test objects than the reference resolution image made pursuant to §175.63(f)(5), the cause of resolution loss shall be determined and corrected and the mammographic system re-optimized pursuant to §175.63(f)(5).

(ii) If the imaging system resolves less than seven (7) test objects in the phantom, in addition to the requirements of §175.63(f)(8)(i), there shall be:

(A) a review of monthly phantom images to determine at which point the image resolution fell below the minimum specified in §175.63(f)(7); and

(B) a review, by a physician(s) not from the facility who is approved by the Department and meets the requirements of §175.63(e)(1), to determine the diagnostic quality of the mammographic images.

(iii) The review required by §175.63(f)(8)(ii)(B) shall include:

(A) images from the range of studies performed by the facility which such physician(s) ascertains to be sufficient to determine that the clinical images are of diagnostic quality; and

(B) images from the time interval from when such review is required to the date when the system met the requirements of §175.63(f)(7).

(iv) If film images reviewed by the physician(s) pursuant to §175.63(f)(8)(iii)(B) are identified as not being of diagnostic quality, the facility shall, within five (5) business days, notify:

(A) the referring physician or other authorized referring practitioner, or the patient, if not referred by a practitioner,

of the need for follow-up; and

(B) the Department of the results of the investigation and follow-up contacts.

(v) A record of the reviews and findings made pursuant to §175.63(f)(8)(ii)(B) shall be maintained by the registrant at the facility for review by the Department.

(vi) A record of the results of investigations and actions taken to correct any deficiency pursuant to this section shall be maintained for review by the Department for three (3) years.

(9) Each facility shall establish and maintain a clinical image quality control program, including at a minimum:

(i) monitoring of mammograms repeated due to poor image quality; and

(ii) maintenance of records, analysis of results and a description of any remedial action taken on the basis of such monitoring.

(10) Each facility shall establish a system for reviewing outcome date from all mammography performed, including follow-up on the disposition of positive mammograms and correlation of surgical biopsy results with mammogram reports.

(11) As part of its overall quality assurance program, each facility shall have a physicist with the qualifications specified in §175.63(e)(3) establish, monitor and direct the procedures required by §175.63(f) and perform a survey of the facility to assure that it meets the quality control and equipment standards as specified in §175.63(c)(2). Such surveys shall be performed at least annually and reports of such surveys shall be prepared and submitted to the body which accredited the facility. Each such report shall be retained by the facility for inspection by the Department.

(g) **Medical records.** (1) Each facility shall maintain mammograms and associated records in a permanent medical record of the patient as follows:

(i) for a period of not less than five (5) years or not less than ten (10) years, if no additional mammograms of the patient are performed at the facility, or longer as mandated by any applicable law or regulation; or

(ii) until requested by the patient to permanently transfer the records to a medical institution, to a physician of the patient or to the patient, and the records are so transferred.

(2) Each facility shall prepare a written report of the results of any mammography examination. Such report shall be completed as soon as reasonably possible and shall:

(i) be signed by the interpreting physician; and

(ii) be provided to the patient's physician(s) (if any); or

(A) if the patient's physician is not available or if the patient does not have a physician, the report shall be sent directly to the patient; and

(B) if such report is sent to the patient, it shall include a summary written in language easily understood by a lay person; and

(iii) be maintained in the patient's record pursuant to §175.63(g)(1).

(h) **Revocation of accreditation and accrediting body approval.** (1) If a facility's accreditation is revoked by an accrediting body (as defined in 21 CFR Section 900.2), the facility's certificate (as defined in 21 CFR Section 900.2)

shall remain in effect until such time as determined by the FDA or other certifying body on a case-by-case basis after an investigation into the reasons for the revocation. If the FDA or other certifying body determines that the revocation was justified by violations of applicable quality standards, the FDA or other certifying body will suspend or revoke the facility's certificate and/or require the submission and implementation of a corrective action plan, whichever action will protect the public health in the least burdensome way.

(2) If the approval of an accrediting body is revoked by FDA, the certificates of the facilities accredited by such body shall remain in effect for a period of one (1) year after the date of such revocation subject to FDA's determination that the facility is continuing to perform mammography of acceptable quality. The facility must obtain accreditation from an approved accrediting body within one (1) year of the date of revocation.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Subd. (e) par (2) amended City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of

Basis and Purpose No. 16]

Subd. (f) par (7) amended City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of

Basis and Purpose No. 16]

Notes:

Subparagraph (ii) of paragraph (2) of subsection (e) was amended and subparagraphs (iii) and (iv) were repealed on March 21, 2001 to amend the requirements for radiologic technologists in accordance with federal regulations.

Subparagraph (i) was amended; subparagraph (ii) was repealed; and subparagraph (iii) was relettered to be known as subparagraph (ii) of paragraph (7) of subsection (f) on March 21, 2001 to reflect federal regulations now in place for testing the minimum imaging quality of equipment prior to performing patient mammograms.

Rules of the City of New York

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

24 RCNY 175.64

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.64 Therapeutic radiation machines.

(a) **Purpose and scope.** (1) This section establishes requirements for the use of radiation machines used for therapeutic purposes in the healing arts to protect public health and safety and for which the registrant is responsible. The requirements of this section are in addition to, and not in substitution for, other applicable provisions of this Code. Except as specifically provided otherwise in this section, the requirements of this section are applicable to all therapeutic radiation machines used in the City of New York for the treatment of humans, regardless of the date of installation.

(b) **Certified registration for therapeutic radiation machines.** (1) **Certified registration required.**

(i) Section 175.64(b) applies only to therapeutic radiation machines subject to the requirements of §175.64(g) of this Code.

(ii) All new facilities with therapeutic radiation machines subject to the requirements of §175.64(g) of this Code, and all such existing facilities not holding a certified registration on August 1, 1994, shall obtain a certified registration from the Department in accordance with the provisions of this section.

(2) **Certified registration application.** (i) If the application is for use sited in a medical institution, only the institution's management may apply; for use not sited in a medical institution, any professional practitioner may apply.

(ii) An application for a certified registration shall be filed in duplicate (original plus one copy) on, and shall contain completely and accurately all information called for by, a written form prescribed by the Department.

(iii) When a change affecting a radiation source or installation subject to the certified registration requirements of this section is considered by a registrant, including but not limited to changes ordered pursuant to this Code, so that the information on file with the Department, either in the initial certified registration application, or subsequent request for amendments, or in the initial certified registration or amendment previously granted, will no longer be accurate, the registrant shall so inform the Department in writing.

(A) For ministerial changes, such notification shall be within 10 days of effecting such change.

(B) For all other changes, an amendment must be requested and received pursuant to §175.64(b)(2)(xiv).

(C) Failure to notify the Department of a change of ownership or address of a radiation installation may result in revocation of the installation's certified registration under §175.64(b)(2)(xii).

(iv) At any time subsequent to the filing of an application for a certified registration and before the termination of a certified registration issued in response thereto, the Department may require the applicant to submit supplementary statements containing additional information to enable the Department to determine whether such application should be approved or denied, or whether a previously issued certified registration should be amended, suspended or revoked.

(v) Each application or supplementary statement shall be signed by either the applicant personally or a person duly authorized by the applicant to sign for and on the applicant's behalf.

(vi) The Department will approve an application for, and issue in response thereto, a certified registration if the Department determines that the following requirements have been met:

(A) the applicant's proposed use, equipment, facilities and procedures will protect health and safety and will minimize danger to life and property from radiation hazards; and

(B) the applicant's instrumentation is appropriate for detecting and measuring the type(s) of radiation produced (either directly or indirectly) by the radiation source requested in the application; and

(C) the applicant, or the applicant's personnel, if the applicant is not an individual, is qualified by training and experience to use such radiation source for the purposes covered by the application so as to protect public health and safety and to minimize danger to life and property from radiation hazards; and

(D) the applicant submits sufficient information to support a determination that the requirements of §175.64(b)(2)(vi)(A), (B) and (C) are met.

(vii) Certified registrations issued by the Department shall be in the form of a written authorization permitting possession and use of radiation therapy machines capable of operating at 500 kV (photons) and/or 500 keV (electrons) or higher. Such possession and use provided for in the foregoing shall be subject to the requirements of:

(A) all applicable provisions of this Code; and

(B) all conditions as stated on the certified registration issued by the Department.

(viii) Except as otherwise provided in this Code, each certified registration shall expire on the expiration date stated on the certified registration. If any registrant duly files with the Department an application in proper form for renewal of such certified registration, or for a new and superseding certified registration, not less than 30 days prior to the stated expiration date, such certified registration shall not be deemed to have expired until the Department has finally determined such application.

(ix) The Department may terminate any certified registration upon the written request of the registrant.

(x) The Department may at any time set forth in any certified registration or incorporate by reference therein, additional conditions, restrictions or requirements applicable to the registrant's transfer, receipt, possession or use of any radiation source covered by such certified registration in order to protect the public health and safety and to minimize danger to life and property from radiation hazards.

(xi) Any certified registration may be amended or revoked by the Department by reason of amendment of this Code, or any other applicable law or regulation.

(xii) Any certified registration may be suspended or revoked by the Department for:

(A) any material misstatement in the application therefor or in any supplementary statement thereto;

(B) any condition revealed by such application, supplementary statement, report, record, inspection or other means, which would warrant the Department's refusal to grant a certified registration on an original application; or

(C) any violation or failure to observe any condition of such certified registration, this Code, or any other applicable rule, regulation or law now or hereafter in effect.

(xiii) Any application by a registrant for the renewal of a certified registration, including amendments, shall be considered as an application for a certified registration and shall be filed on, and shall contain completely and accurately all information called for by, a written form or other manner prescribed by the Department. In considering any such application for renewal, the Department will apply the requirements set forth in §175.64(b)(2)(vi).

(xiv) A registrant shall apply for, and shall have received approval for, a certified registration amendment before:

(A) permitting anyone to work as an authorized user under the certified registration; (B) permanently changing the radiation safety officer or radiotherapy physicist;

(C) making any change in the treatment room shielding;

(D) making any change in the location of the therapeutic radiation machine within the treatment room;

(E) using the therapeutic radiation machine in a manner that could result in increased radiation levels in areas outside the treatment room;

(F) relocating the therapeutic radiation machine;

(G) allowing an individual not listed on the registrant's certified registration to perform the duties of the radiation therapy physicist, except during the temporary absence of the radiation therapy physicist when a person who is otherwise qualified to perform such duties may perform such duties. Such temporary absence shall not exceed sixty (60) days; or

(H) before changing non-ministerial statements, representations and/or procedures incorporated by reference into

the certified registration.

Any application by a registrant for an amendment of a certified registration shall be filed in writing with the Department and shall set forth in detail the reasons for such requested amendment. In considering any such application for amendment, the Department will apply the requirements set forth in §175.64(b)(2)(vi).

(c) **Training requirements.** (1) The registrant of any therapeutic radiation machine shall require the authorized user to be a physician who:

(i) is certified in:

(A) Radiology, therapeutic radiology or radiation oncology by the American Board of Radiology; or

(B) Radiation oncology by the American Osteopathic Board of Radiology; or

(C) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(D) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(ii) is in the active practice of therapeutic radiology, and has completed 200 hours of instruction in basic radiation techniques applicable to the use of an external beam radiation therapy unit, 500 hours of supervised work experience, and a minimum of three (3) years of supervised clinical experience.

(A) To satisfy the requirement for instruction, the classroom and laboratory training shall include:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radiation; and

(d) radiation biology.

(B) To satisfy the requirement for supervised work experience, training shall be under the supervision of an authorized user at an institution and shall include:

(a) review of the full calibration measurements and periodic quality assurance checks;

(b) preparing treatment plans and calculating treatment times;

(c) using administrative controls to prevent misadministrations;

(d) implementing emergency procedures to be followed in the event of the abnormal operation of an external beam radiation therapy unit or its console; and

(e) checking and using survey meters.

(C) To satisfy the requirement for a period of supervised clinical experience, training shall include one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:

(a) examining individuals and reviewing their case histories to determine their suitability for external beam radiotherapy treatment, and any limitations or contraindications;

(b) selecting the proper dose and how it is to be administered;

(c) calculating the external beam radiotherapy doses and collaborating with the authorized user in the review of patients' progress and consideration of the need to modify originally prescribed doses as warranted by patients' reaction to radiation; and

(d) post-administration followup and review of case histories.

(2) The registrant of any therapeutic radiation machine shall require the radiation therapy physicist to:

(i) be certified by the American Board of Radiology in:

(A) Therapeutic radiological physics; or

(B) Roentgen ray and gamma ray physics; or

(C) X-ray and radium physics; or

(D) Radiological physics; or

(ii) be certified by the American Board of Medical Physics in Radiation Oncology Physics; or

(iii) be certified by the Canadian College of Medical Physics; or

(iv) hold a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and have completed one (1) year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision of a radiotherapy physicist at a medical institution. To meet this requirement, the individual shall have performed the tasks listed in §175.64(e)(1) and §175.64(g)(8) and (9) of this Code under the supervision of a radiation therapy physicist during the year of work experience.

(v) Notwithstanding the provision of §175.64(c)(2)(iv), as of January 1, 2000, the radiation therapy physicist shall be an individual who is certified as described in §175.64(c)(2)(i), (ii) or (iii).

(3) **Qualifications of operators.** (i) Any person, other than a qualified physician, who operates a therapeutic radiation machine for medical use shall be a licensed and registered radiation therapist, or a student currently enrolled in an approved program of study in radiation therapy technology and under the direct supervision of a qualified physician or licensed radiation therapist. Such direction or order to apply, or application of, radiation shall be in compliance with all applicable provisions of Title 10 of the New York Code of Rules and Regulations, Part 89, Subchapter L and Article 35 of the Public Health Law of the State of New York, or any successor laws or regulations.

(ii) The names and training of all personnel who currently operate any therapeutic radiation machine(s) shall be kept on file at the facility. Information on former operators shall be retained for a period of three (3) years beyond the last date such a person was authorized to operate a therapeutic radiation machine at the facility.

(4) The training and experience specified in §175.64(c)(1), (2) or (3) shall have been obtained within the 5 years preceding the date of application or the individual shall demonstrate continuing applicable experience since the required training and experience was completed.

(d) **General administrative requirements.** (1) The registrant shall be responsible for directing the operation of any therapeutic radiation machine and shall ensure that the requirements of this section are met in the operation of the

therapeutic radiation machine(s).

(2) A therapeutic radiation machine which does not meet the requirements of this Code shall not be used for irradiation of patients.

(3) A physician shall not act as an authorized user for any therapeutic radiation machine which is subject to the provisions of §175.64(g) until such time as said physician's training has been reviewed and approved by the Department.

(4) **Written safety procedures and rules.** (i) Written safety procedures and rules, including any restrictions required for the safe operation of a particular therapeutic radiation machine, shall be developed by a radiation therapy physicist. At a minimum, these shall include:

(A) the procedure to be followed to ensure that, except for contact therapy machines, only the patient is in the treatment room before turning the primary beam of radiation on to begin a treatment or after a door interlock interruption; and

(B) the procedure to be followed if the operator is unable to turn the primary beam of radiation off with controls outside the treatment room or in the event that potential harm to the patient or personnel is imminent; and

(C) the names and telephone numbers of the authorized users, radiation safety officer and radiation therapy physicist to be contacted immediately if the therapeutic radiation machine or console operates abnormally.

(ii) Such procedures and rules shall be provided to each individual who operates a therapeutic radiation machine and shall be available at the control console of the therapeutic radiation machine.

(iii) The operator shall be able to demonstrate familiarity with these rules.

(iv) The registrant shall provide instruction in the written safety procedures and rules required by §175.64(d)(4)(i) to all individuals who operate a therapeutic radiation machine and shall provide appropriate refresher training to such individuals at intervals not to exceed one (1) year. Such instruction shall include "dry runs" of emergency procedures.

(v) The registrant shall retain for three (3) years a record of individuals receiving instruction required by §175.64(d)(4)(iv), a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

(5) All individuals associated with the operation of a therapeutic radiation machine shall be instructed in, and shall comply with, the provisions of the registrant's quality assurance program as required by §175.07 of this Code.

(6) Individuals shall not be exposed to the useful beam except for medical therapy purposes and unless such exposure has been ordered in writing by an authorized user who meets the training requirements of §175.64(c). This provision specifically prohibits deliberate exposure of an individual for training, demonstration or other non-healing arts purposes.

(7) For radiation therapy machines installed after August 1, 1994, the registrant shall maintain the following information for each therapeutic radiation machine for inspection by the Department:

(i) report of acceptance testing;

(ii) records of calibrations and periodic spot checks for the therapeutic radiation machine, as well as the name(s) of the person(s) who performed such activities;

(iii) records of major maintenance and modifications performed on the therapeutic radiation machine after August

1, 1994, as well as the name(s) of the person(s) who performed such services; and

(iv) copies of all correspondence with this Department regarding that therapeutic radiation machine.

(8) For each radiation therapy machine, the registrant shall retain records of all surveys for inspection by the Department.

(9) **Record retention.** (i) Unless specified otherwise, all records required by this section shall be retained until disposal is authorized by the Department. All required records shall be retained in an active file from at least the time of generation until the next Departmental inspection. Any required record generated prior to the last Departmental inspection may be microfilmed or otherwise archived providing a complete copy of such record can be retrieved until such time as the Department authorizes final disposal.

(e) **General technical requirements.** (1) **Protection surveys.**

(i) The registrant shall ensure that radiation protection surveys of all new facilities, and existing facilities not previously surveyed, are performed with an operable radiation measurement survey instrument calibrated in accordance with §175.64(h). The radiation protection survey shall be performed by a radiation therapy physicist or by a physicist certified by the American Board of Health Physics or by the American Board of Radiology, the American Board of Medical Physics or the Canadian College of Medical Physics in the appropriate specialty and shall verify, with the therapeutic radiation machine in a "BEAM-ON" condition with the largest clinically available treatment field and with a scattering phantom in the useful beam of radiation, that:

(A) radiation levels in restricted areas are not likely to cause personnel exposures in excess of the limits specified in §175.03(c); and

(B) radiation levels in unrestricted areas do not exceed the limits specified in §175.03(d).

(ii) In addition to the requirements of §175.64(e)(1)(i), a radiation protection survey also shall be performed prior to any subsequent medical use:

(A) after making any change in the treatment room shielding;

(B) after making any change in the location of the therapeutic radiation machine within the treatment room;

(C) after relocating the therapeutic radiation machine;

(D) before using the therapeutic radiation machine in a manner that could result in increased radiation levels in areas outside the external beam radiation therapy treatment room; or

(E) whenever there is reason to believe that radiation levels in unrestricted areas may have increased.

(iii) The survey record shall indicate all instances where the facility, in the opinion of the physicist performing the survey, is in violation of applicable regulations. The survey record also shall include the date of the measurements, the reason the survey is required, the manufacturer's name, model and serial number or other unambiguous identification of the therapeutic radiation machine and of the instrument(s) used to measure radiation levels, a plan of the areas surrounding (including accessible areas above and below) the treatment room which were surveyed, the measured dose rate at several points in each area expressed in mSv (millirems) per hour, the calculated maximum radiation exposure in a period of one (1) week for each restricted and unrestricted area, and the signature of the individual conducting the survey.

(iv) If the results of the surveys required by §175.64(e)(1)(i) or (ii) indicate any radiation levels in excess of the respective limits specified in §175.64(e)(1)(i), the registrant shall lock the control in the "OFF" position and not use the

unit:

(A) except as may be necessary to repair, replace or test the therapeutic radiation machine, the therapeutic radiation machine shielding or the treatment room shielding; or

(B) until the registrant has applied for, and received, a specific exemption from the Department.

(2) If the survey required by §175.64(e)(1) indicates that an individual in an unrestricted area may be exposed to levels of radiation greater than those permitted by §175.03(d) of this Code, prior to the first medical use of the radiation therapy machine the registrant shall:

(i) equip the unit with beam direction interlocks or install additional radiation shielding to ensure compliance with §175.03(d) of this Code;

(ii) perform the survey required by §175.64(e)(1) again; and

(iii) include in the report required by §175.64(e)(3) the results of the initial survey, a description of the modification made to comply with §175.64(e)(2)(i), and the results of the second survey; or

(iv) request and receive an amendment to the certified registration that authorizes radiation levels in unrestricted areas greater than those permitted by §175.03(d) of this Code.

(3) **Reports of external beam radiation therapy surveys and measurements.** (i) The registrant for any therapeutic radiation machine subject to the requirements of §175.64(f) or §175.64(g) of this Code shall furnish a copy of the records required in §175.64(e)(1) and (2) to the Department within thirty (30) days following completion of the action that initiated the record requirement.

(4) A registrant shall control access to a therapeutic radiation machine treatment room by a door at each entrance.

(5) A registrant shall equip each entrance to a therapeutic radiation machine room with a beam condition indicator light.

(6) **Dosimetry equipment.** (i) The registrant shall have a calibrated dosimetry system available for use. The system shall have been calibrated for cobalt-60 by the National Institute of Standards and Technology (NIST, formerly the National Bureau of Standards) or by an American Association of Physicists in Medicine (AAPM) Accredited Dosimetry Calibration Laboratory (ADCL). The calibration shall have been performed within the previous two (2) years and after any servicing that may have affected system calibration.

(ii) The registrant shall have available for use a dosimetry system for quality assurance check measurements. To meet this requirement, the system shall be compared with a system calibrated pursuant to §175.64(e)(6)(i) and shall have been performed within the previous twelve (12) months and after each servicing that may have affected system calibration. Alternatively, the spot check system may be the same system used to meet the requirement in §175.64(e)(6)(i).

(iii) The registrant shall maintain a record of each dosimetry system calibration, intercomparison, and comparison for the duration of the registration or certified registration. For each calibration, intercomparison, or comparison, the record shall include the date, the model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by §175.64(e)(6)(i) and (ii), the correction factors that were determined, the names of the individuals who performed the calibration, intercomparison, or comparison, and evidence that the intercomparison was performed by, or under the direct supervision of, a radiation therapy physicist.

(f) **Therapeutic radiation machines incapable of operating at 500 kV or above.** (1) **Leakage radiation.**

(i) When the x-ray tube is operated at its maximum rated tube current for the maximum kV, the leakage air kerma rate shall not exceed:

(A) for 5-50 kV systems: 1 mGy (100 mrad) in any one hour at any position 5 cm from the tube housing assembly; or

(B) for 50 and kV systems: 1 cGy (1 rad) in any one hour in any direction at 1 m from the source. This air kerma measurement may be averaged over areas not larger than 100 cm^2. In addition, the air kerma rate at a distance of 5 cm from the surface of the tube housing shall not exceed 30 cGy (30 rad) per hour.

(2) **Permanent beam limiting devices.** (i) Permanent diaphragms or cones used for limiting the useful beam shall provide at least the same degree of attenuation as required for the tube housing assembly.

(3) **Adjustable or removable beam limiting devices.** (i) All adjustable or removable beam limiting devices, diaphragms, cones or blocks shall not transmit more than 5 percent of the useful beam for the most penetrating beam used.

(ii) When adjustable beam limiting devices are used, the position and shape of the radiation field shall be indicated by a light beam.

(4) **Filter system.** (i) The filter system shall be so designed that:

(A) filters cannot be accidentally displaced at any possible tube orientation;

(B) for equipment installed after August 1, 1994, an interlock system prevents irradiation if the proper filter is not in place; and

(C) the air kerma rate outside the useful beam measured 1 m from the filter slot shall not exceed 1 cGy (1 rad) in any hour under any operating conditions.

(ii) Each filter shall be marked as to its material of construction and its thickness.

(5) **Tube immobilization.** (i) The x-ray tube shall be mounted so that it cannot accidentally turn or slide with respect to the housing aperture; and

(ii) the tube housing assembly shall be capable of being immobilized for stationary portal treatments.

(6) **Source marking.** (i) The tube housing assembly shall be marked so that it is possible to determine the location of the source to within 5 mm, and such marking shall be readily accessible for use during calibration procedures.

(7) **Beam block.** (i) Contact therapy tube housing assemblies shall have a removable shield of material, equivalent in attenuation to 0.5 mm of lead at 100 kV, which can be positioned over the entire useful beam exit port during periods when the beam is not in use.

(8) **Timer.** (i) A suitable irradiation control device shall be provided to terminate the irradiation after a pre-set time interval.

(ii) A timer which has a display shall be provided at the treatment control panel. The timer shall have a pre-set time selector.

(iii) The timer shall be a cumulative timer which activates with an indication of "BEAM-ON" and retains its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it shall be necessary to reset the timer.

(iv) The timer shall terminate irradiation when a pre-selected time has elapsed, if any dose monitoring system present has not previously terminated irradiation.

(v) The timer shall permit accurate pre-setting and determination of exposure times as short as 1 sec.

(vi) The timer shall not permit an exposure if set at zero.

(vii) The timer shall not activate until the shutter is opened when irradiation is controlled by a shutter mechanism unless calibration includes a timer error correction to compensate for mechanical lag.

(viii) The timer shall be accurate to within 1 percent of the selected value or 1 second, whichever is greater.

(9) **Control panel functions.** (i) The control panel, in addition to the displays required by other provisions in §175.64(f), shall have:

(A) an indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible;

(B) an indication of whether x-rays are being produced;

(C) a means for indicating x-ray tube potential and current;

(D) a means for terminating an exposure at any time;

(E) a locking device which will prevent unauthorized use of the therapeutic radiation machine; and

(F) for therapeutic radiation machines installed after August 1, 1994, a positive display of the specific filter(s) in the beam.

(10) **Multiple tubes.** (i) When a control panel may energize more than one x-ray tube:

(A) it shall be possible to activate only one x-ray tube at any time;

(B) there shall be an indication at the control panel identifying which x-ray tube is energized; and

(C) there shall be an indication at the tube housing assembly when that tube is energized.

(11) **Target-to-skin distance (TSD).** (i) There shall be a means of determining the central axis TSD to within 1 cm and of reproducing this measurement to within 2 mm thereafter.

(12) **Shutters.** (i) Unless it is possible to bring the x-ray output to the prescribed exposure parameters within 5 sec after the x-ray "ON" switch is energized, the beam shall be attenuated by a shutter having a lead equivalency not less than that of the tube housing assembly. In addition, after the unit is at operating parameters, the shutter shall be controlled electrically by the operator from the control panel. An indication of shutter position shall appear at the control panel.

(13) **Low filtration x-ray tubes.** (i) Each therapeutic radiation machine equipped with a beryllium or other low-filtration window shall be clearly labeled as such upon the tube housing assembly and shall be provided with a permanent warning device on the control panel that is activated when no addition filtration is present to indicate that the dose rate is very high.

(14) Facility design requirements for therapeutic radiation machines capable of operating in the range of greater than 50 kV to 500 kV.

(i) In addition to shielding adequate to meet the requirements of §175.03(d), the treatment room shall provide:

(A) a system for continuous two-way aural communication between the patient and the operator at the control panel; and

(B) a system to permit continuous observation of the patient during irradiation by the operator from the control panel.

(ii) The therapeutic radiation machine shall not be used for patient irradiation unless both aural communication with and continuous observation of the patient are possible.

(15) **Additional requirements.** (i) Treatment rooms which contain a therapeutic radiation machine capable of operating above 150 kV shall meet the following additional requirements:

(A) all protective barriers shall be fixed except for entrance doors or beam interceptors;

(B) the control panel shall be located outside the treatment room, or in a totally enclosed and shielded booth which has a ceiling, inside the room;

(C) interlocks shall be provided such that all entrance doors, including doors to any interior booths, shall be closed before treatment can be initiated or continued; and

(D) if the radiation beam is interrupted by any door opening, it shall not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the control panel.

(16) **Full calibration measurements.** (i) Full calibration of a therapeutic radiation machine subject to the requirements of §175.64(f) of this Code shall be performed by, or under the direct supervision of, a radiation therapy physicist:

(A) before the first medical use following installation or reinstallation of the therapeutic radiation machine;

(B) annually; and

(C) before medical use under the following conditions:

(a) whenever quality assurance check measurements indicate that the radiation output differs by more than 5 percent from the value obtained at the last full calibrations; or

(b) following any component replacement, major repair or modification of components that could affect the characteristics of the radiation beam.

(D) Notwithstanding the requirements of §175.64(f)(16)(i)(C):

(a) full calibration of therapeutic radiation machines with multi-energy capabilities is required only for those modes and/or energies that are not within their acceptable ranges; and

(b) if the repair, replacement or modification does not affect all energies, full calibration shall be performed at the affected energy that is in most frequent clinical use at the facility and the remaining energies may be validated by quality assurance check procedures using the criteria in §175.64(f)(16)(i)(C)(a).

(ii) Whenever a quality assurance check required by §175.64(f)(17) indicates a significant change in the operating characteristics of a system, as specified in the radiation therapy physicist's quality assurance manual, the system shall be recalibrated as specified herein.

(iii) To satisfy the requirement of §175.64(f)(16)(i), full calibration shall include all measurements recommended for annual calibration by the National Council on Radiation Measurement and Protection (NCRP) Report 69, "Dosimetry of X-Ray and Gamma Ray Beams for Radiation Therapy in the Energy Range 10 keV to 50 MeV" (1981), or any successor protocol, and be performed with a dosimetry system calibrated pursuant to §175.64(e)(6)(i).

(iv) The registrant shall maintain a record of each calibration for the duration of the registration. The record shall include the date of the calibration, the manufacturer's name, model and serial number or other unambiguous identification of both the therapeutic radiation machine and the x-ray tube, the model numbers and serial numbers or other unambiguous identification of the instruments used to calibrate the therapeutic radiation machine, and the signature of the radiation therapy physicist responsible for performing the calibration.

(17) **Periodic quality assurance checks.** (i) Periodic quality assurance checks shall be performed on therapeutic radiation machines subject to the requirements of §175.64(f) of this Code which are capable of operation at greater than 50 kV.

(ii) To satisfy the requirement of §175.64(f)(17)(i), quality assurance checks shall meet the following requirements:

(A) the registrant shall perform quality assurance checks in accordance with written procedures established by the radiation therapy physicist;

(B) the quality assurance check procedures shall specify that the quality assurance check shall be performed during the calibration specified in §175.64(f)(16)(i); and

(C) the quality assurance check procedures shall specify the frequency at which tests or measurements are to be performed and the acceptable tolerance for each parameter measured in the check, when compared to the value for that parameter determined in the full calibration specified in §175.64(f)(16)(i).

(iii) The cause for a parameter exceeding a tolerance set by the radiation therapy physicist shall be investigated and corrected before the system is used for patient irradiation.

(iv) The registrant shall use the dosimetry system specified in §175.64(e)(6)(ii) to make the periodic quality assurance check required in §175.64(f)(17)(i).

(v) The registrant shall have the radiation therapy physicist review and sign the results of each radiation output quality assurance check at intervals not to exceed one month.

(vi) Therapeutic radiation machines subject to the requirements of §175.64(f) of this Code shall have safety quality assurance checks of each external beam radiation therapy facility performed monthly. This requirement does not apply to facilities which have not been used for more than one month, except that such safety quality assurance checks shall be performed before the first clinical treatment when the facility is returned to use.

(vii) To satisfy the requirements of §175.64(f)(17)(vii), safety quality assurance checks shall ensure proper operation of:

(A) electrical interlocks at each external beam radiation therapy room entrance, including those at any interior control booths;

(B) proper operation of the "BEAM-ON" and termination switches;

(C) beam condition indicator lights on the access door(s), control console and in the radiation therapy room;

(D) viewing and aural communication systems; and

(E) electrically operated treatment room doors from inside and outside the treatment room.

(viii) The registrant shall promptly repair any system identified in §175.64(f)(17)(vii) that is not operating properly.

(ix) The registrant shall maintain a record of each quality assurance check required by §175.64(f)(17)(i) and §175.64(f)(17)(vi) for three (3) years. The record shall include the date of the quality assurance check, the manufacturer's name, model and serial number or other unambiguous identification of the therapeutic radiation machine and of the instrument(s) used to measure the radiation output of the therapeutic radiation machine, and the signature of the individual who performed the periodic quality assurance check.

(18) **Operating procedures.** (i) The therapeutic radiation machine shall not be used for irradiation of patients unless the requirements of §175.64(f)(16) and §175.64(f)(17) have been met.

(ii) Therapeutic radiation machines shall not be left unattended unless it is secured pursuant to §175.64(f)(9)(i)(E).

(iii) When a patient must be held in position for radiation therapy, mechanical supporting or restraining devices shall be used.

(iv) The tube housing assembly shall not be held by an individual during operation unless the assembly is designed to require such holding and the peak tube potential of the system does not exceed 50 kV. In such cases, the holder shall wear protective gloves and apron of not less than 0.5 mm lead equivalency at 100 kV.

(v) A copy of the current operating and emergency procedures shall be maintained at the therapeutic radiation machine control console.

(vi) No individual other than the patient shall be in the treatment room during exposures from therapeutic radiation machines operating above 150 kV. At energies less than or equal to 150 kV, an individual, other than the patient, in the treatment room shall be protected by a barrier sufficient to meet the requirements of §175.03 of this Code.

(19) **Possession of survey instrument(s).** (i) Each facility location authorized to use a therapeutic radiation machine in accordance with §175.64(f) of this Code shall possess appropriately calibrated portable monitoring equipment. At a minimum, such equipment shall include a portable radiation measurement survey instrument capable of measuring dose rates over the range of 10 mSv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The survey instruments shall be operable and calibrated in accordance with §175.64(h).

(g) **Therapeutic radiation machines: photon therapy systems capable of operating at 500 kV and above and/or electron therapy systems capable of operating at 500 keV and above.** (1) All therapeutic radiation machines installed after August 1, 1994 shall have an active (not withdrawn or terminated), approved Premarket Approval Application (PMA) issued by the U.S. Food and Drug Administration pursuant to 21 CFR Part 814, or any successor law or regulation.

(2) Leakage radiation outside the maximum useful beam.

(i) The absorbed dose rate due to leakage radiation (excluding neutrons) at any point outside the maximum sized useful beam, but within a circular plane of radius two (2) meters which is perpendicular to and centered on the central axis of the useful beam at the nominal treatment distance (i.e. patient plane), shall not exceed a maximum of 0.2 percent and an average of 0.1 percent of the absorbed dose rate on the center axis at the treatment distance. Measurements shall be averaged over an area not exceeding 100 cm^2 at a minimum of 8 points uniformly distributed in the plane.

(ii) The neutron absorbed dose rate outside the useful beam shall be kept as low as practicable. Measurements of the portion of the leakage radiation dose contributed by neutrons shall be averaged over an area not exceeding 800 cm^2.

(iii) For each therapeutic radiation machine, the registrant shall determine, or obtain from the manufacturer, the leakage radiation existing at the positions specified in §175.64(g)(1)(i) and (ii) for the specified operating conditions.

(iv) Records on leakage radiation measurements shall be maintained at the installation for inspection by the Department.

(3) **Filters and wedges.** (i) Each filter and/or wedge which is removable from the system shall be clearly marked with an identification number. For removable wedge filters, the nominal wedge angle shall appear on the wedge or wedge tray (if permanently mounted to the tray). If the wedge or wedge tray is damaged, the wedge transmission factor shall be redetermined.

(4) **Termination switches.** (i) It shall be possible to terminate irradiation and equipment movement or go from an interruption condition to termination condition at any time from the operator's position at the treatment control panel.

(5) **Facility design requirements for therapeutic radiation machines capable of operating above 500 kV or 500 keV.** (i) In addition to shielding adequate to meet the requirements of §175.03 of this Code, the following design requirements are made:

(A) All protective barriers shall be fixed, except for access doors to the treatment room or movable beam interceptors.

(B) In addition to other requirements specified in this section, the control panel shall: **(a)** be located outside the treatment room;

(b) provide an indication of whether electrical power is available at the control panel and if activation of the radiation source is possible;

(c) provide an indication of whether radiation is being produced; and

(d) include a locking access control device which will prevent unauthorized use of the therapeutic radiation machine.

(C) There shall be a system for continuous two-way aural communication between the patient and the operator at the control panel.

(D) There shall be a system to permit continuous observation of the patient following positioning and during irradiation by the operator from the control panel.

(E) Treatment room entrances shall be provided with warning lights in a readily observable position near the outside of all access doors which will indicate when the useful beam is "ON" and when it is "OFF."

(F) Interlocks shall be provided such that all entrance doors must be closed before treatment can be initiated or continued; if the radiation beam is interrupted by any door opening, it shall not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the control panel.

(G) If the shielding material in any protective barrier requires the presence of a beam interceptor to ensure compliance with §175.03(d) of this Code, interlocks shall be provided to prevent the production of radiation, unless the beam interceptor is in place, whenever the useful beam is directed at the designated barrier(s).

(H) In addition to the termination switch required by §175.64(g)(4), at least one (1) emergency power cutoff switch or button (e.g. "scram button") shall be located in the radiation therapy treatment room and shall terminate all equipment electrical power including radiation and mechanical motion; all emergency power cutoff switches shall include a manual reset so that the therapeutic radiation machine cannot be restarted from the unit's control panel without

resetting the emergency cutoff switch.

(I) All safety interlocks shall be designed so that any defect or component failure in the safety interlock system prevents or terminates operation of the therapeutic radiation machine.

(J) Surveys for residual radioactivity shall be conducted on all therapeutic radiation machines capable of generating photon and electron energies above 10 MV or MeV prior to machining, removing or working on such machine's components which may have become activated due to photo-neutron production.

(6) **Radiation therapy physicist.** (i) The radiation therapy physicist named on the registrant's certified registration shall be responsible for:

(A) all full calibrations required by §175.64(g)(8) and protection surveys required by §175.64(e)(1);

(B) supervision and review of dosimetry as required by §175.07(c) of this Code;

(C) beam data acquisition and transfer for computerized dosimetry, and supervision of its use;

(D) quality assurance required by §175.07 of this Code and quality assurance check review required by §175.64(g)(9)(v);

(E) consultation with the authorized user(s) in treatment planning, as needed; and

(F) performance of calculations or other assessments regarding misadministrations.

(ii) If the radiation therapy physicist named on the registrant's certified registration is not a full-time employee of the registrant, the operating procedures required by §175.64(g)(7) shall specifically address how the radiation therapy physicist is to be contacted for problems or emergencies, as well as the specific actions to be taken until the radiation therapy physicist can be contacted.

(7) **Operating procedures.** (i) No individual, other than the patient, shall be in the treatment room during treatment.

(ii) The therapeutic radiation machine shall not be used for patient irradiation unless both aural and visual communication systems are operational and continuous observation of the patient is maintained.

(iii) No individual shall be in the treatment room during irradiation for testing or calibration purposes.

(iv) Therapeutic radiation machines shall not be used for medical use unless the requirements of §175.64(e)(1), §175.64(g)(8) and §175.64(g)(9) have been met.

(v) Therapeutic radiation machines, when not in operation, shall be secured to prevent unauthorized use.

(vi) If a patient must be held in position during treatment, mechanical supporting or restraining devices shall be used.

(vii) A copy of the current operating and emergency procedures shall be maintained at the therapeutic radiation machine control console.

(viii) Emergency procedures shall be posted in the treatment room.

(8) **Full calibration measurements.** (i) Full calibration of a therapeutic radiation machine subject to the requirements of §175.64(g) of this Code shall be performed by, or under the direct supervision of, the radiation therapy physicist named on the registrant's certified registration:

(A) before first medical use following installation or reinstallation of the therapeutic radiation machine;

(B) annually; and

(C) before medical use under the following conditions:

(a) whenever quality assurance check measurements indicate that the output differs by more than five (5) percent from the output obtained at the last full calibration; and

(b) following any component replacement, major repair, or modification of components that could affect the characteristics of the radiation beam; and

(D) Notwithstanding the requirements of §175.64(g)(8)(i)(C):

(a) full calibration of therapeutic radiation machines with multi-energy and/or multi-mode capabilities is required only for those modes and/or energies that are not within their acceptable ranges; and

(b) if the repair, replacement or modification does not affect all modes and/or energies, full calibration shall be performed on the affected mode/energy that is in most frequent clinical use for that machine at the facility and the remaining energies/modes may be validated with quality assurance check procedures pursuant to the criteria in §175.64(g)(8)(i)(C)(**a**).

(ii) To satisfy the requirement of §175.64(g)(8)(i), full calibration shall include all measurements required for annual calibration by "Comprehensive QA for Radiation Oncology: Report of AAPM Radiation Therapy Committee Task Group 40," Medical Physics 21(4):581-, 1994, or any successor protocol. Additionally, the facility shall conduct the output calibration for the therapeutic radiation machine's photon and electron beam modes according to the protocol as outlined in AAPM Report Task Group Report 21 ("A Protocol for the Determination of Absorbed Dose from High-Energy Photon and Electron Beams" Task Group 21 (TG21), Radiation Therapy Committee of American Association of Physicists in Medicine, published in Medical Physics, Volume 10(8), Nov/Dec 1983); or, AAPM Report Task Group Report 51(TG51) ("Protocol for Clinical Reference Dosimetry of High-Energy Photon and Electron Beams", Medical Physics, Volume 29(9), September 1999) or any successor to these documents.

(iii) The registrant shall use the dosimetry system described in §175.64(e)(6)(i) to measure the output at each discrete photon and electron energy (which the therapeutic radiation machine can produce) for one (1) set of exposure conditions. The remaining radiation measurements required in §175.64(g)(8)(ii) may then be made using a dosimetry system that indicates relative dose rates;

(iv) The registrant shall maintain a record of each calibration for the duration of the certified registration. The record shall include the date of the calibration, the manufacturer's name, model and serial number or other unambiguous identification of the therapeutic radiation machine along with the instrument's certificate of calibration, all measured beam output data collected during the calibration, the derivation for all the correction factors (as delineated in AAPM Reports TG 21 or TG 51 or any successor publication) applied to the `measured beam output data' in the calculation of the therapeutic radiation machine's beam output dose rate (the latter shall be conducted for each photon and electron beam clinically utilized at the facility), and the signature of the radiation therapy physicist named on the certified registration.

(9) **Periodic quality assurance checks.** (i) Periodic quality assurance checks shall be performed on each therapeutic radiation machine subject to the requirements of §175.64(g) of this Code.

(ii) To satisfy the requirement of §175.64(g)(9)(i), quality assurance checks shall include determination of all parameters for periodic quality assurance checks at the intervals contained in "Comprehensive QA for Radiation Oncology: Report of AAPM Radiation Therapy Committee Task Group 40," **Medical Physics 21(4):581-, 1994,** or any

successor protocol.

(iii) The registrant shall use a dosimetry system described in §175.64(e)(6)(ii) to make the periodic quality assurance checks required by §175.64(g)(9)(ii).

(iv) The registrant shall perform periodic quality assurance checks required by §175.64(g)(8)(i) in accordance with procedures established by the radiation therapy physicist named on the registrant's certified registration.

(v) The registrant shall review the results of each periodic radiation output check according to the following procedures:

(A) the authorized user and radiation therapy physicist shall be notified immediately if any parameter is not within its acceptable range as determined pursuant to §175.64(g)(9)(iv). The therapeutic radiation machine shall not be made available for subsequent medical use until the radiation therapy physicist has determined that all parameters are within their acceptable ranges;

(B) if all quality assurance check parameters appear to be within their acceptable ranges, the quality assurance check shall be reviewed and signed by either the authorized user or the radiation therapy physicist within ten (10) days; and

(C) the radiation therapy physicist shall review and sign the results of each radiation output quality assurance check at intervals not to exceed one (1) month.

(vi) Therapeutic radiation machines subject to the requirements of §175.64(g) of this Code shall have safety quality assurance checks of each external beam radiotherapy facility weekly.

(vii) To satisfy the requirement of §175.64(g)(9)(vi), safety quality assurance checks shall ensure proper operation of:

(A) electrical interlocks at each therapeutic radiation machine treatment room entrance;

(B) proper operation of "BEAM-ON", interrupt and termination switches;

(C) beam condition indicator lights on the access doors, control console, and in the radiation therapy treatment room;

(D) viewing and aural communication systems;

(E) electrically operated treatment room door(s) from inside and outside the treatment room;

(F) at least one (1) emergency power cutoff switch. If more than one (1) emergency power cutoff switch is installed and not all switches are tested at once, each switch shall be tested on a rotating basis.

(viii) The registrant shall lock the control console in the "off" position if any door interlock malfunctions. No registrant shall use the therapeutic radiation machine until the interlock system is repaired unless specifically authorized by the Department.

(ix) The registrant shall promptly repair any system identified in §175.64(g)(9)(vii) that is not operating properly.

(x) The registrant shall maintain a record of each quality assurance check required by §175.64(g)(9)(i) and (vii) for three (3) years. The record shall include the date of the quality assurance check, the manufacturer's name, model and serial number or other unambiguous identification of the therapeutic radiation machine of the instrument(s) used to measure the output of the therapeutic radiation machine, and the signature of the individual who performed the periodic

quality assurance check.

(10) **Reports of calibrations.** (i) The registrant shall furnish a copy of the initial full calibration report required by §175.64(g)(8)(i)(A) to the Bureau of Radiological Health within thirty (30) days following completion of the calibration.

(11) **Possession of survey instrument(s).** (i) Each facility location authorized to use a therapeutic radiation machine in accordance with §175.64(g) of this Code shall possess appropriately calibrated portable monitoring equipment. At a minimum, such equipment shall include a portable radiation measurement survey instrument capable of measuring dose rates over the range of 10 mSv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The survey instruments shall be operable and calibrated in accordance with §175.64(h).

(h) **Calibration and check of survey instruments.** (1) The registrant shall ensure that the survey instruments used to show compliance with the requirements of this section and other applicable parts of this Code have been calibrated before first use, at intervals not to exceed twelve (12) months and following repair.

(2) To satisfy the requirements of §175.64(h)(1), the registrant shall:

(i) calibrate all required scale readings up to 10 mSv (100 mrem) per hour with an appropriate radiation source;

(ii) calibrate at least two (2) points on each scale to be calibrated. These points should be at approximately $^1/_3$ and $^2/_3$ of the full scale.

(3) To satisfy the requirements of §175.64(h)(2), the registrant shall:

(i) consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than ten (10) percent; or

(ii) consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than twenty (20) percent if a correction factor or graph is conspicuously attached to the instrument.

(4) The registrant shall retain a record of each calibration required in §175.64(h)(1) for three (3) years and which shall include:

(i) a description of the calibration procedure;

(ii) the manufacturer, model and serial number of the instrument;

(iii) a description of the source used and the certified dose rates from the source (as evidenced by NIST traceability);

(iv) the rates indicated by the instrument being calibrated, the correction factors determined from the calibration data; and

(v) the signature of individual who performed the calibration and the date of calibration.

(5) Records of calibrations which contain information required by §175.64(h)(4) shall be maintained by the registrant at the facility.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Subd. (g) par (8) subpars (ii), (iv) amended City Record Sept. 29, 2006, eff. Oct. 29, 2006. [See Vol. 9 Statements of Basis and Purpose No. 25]

Notes:

Paragraph (8) of subdivision (g) of §175.64 was amended on September 26, 2006, in order to specify the use of x-ray therapy protocols developed by the American Association of Physicists in Medicine to be followed by each licensed facility in conducting the annual radiation output measurement for each therapy unit, and to delineate the minimal content that should be contained in each annual calibration report by the facility for review by Department inspectors.

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Rules of the City of New York

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

24 RCNY 175.65

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.65 Veterinary radiography and fluoroscopy.

(a) **Fixed radiographic installations.** (1) **Equipment.**

(i) Collimating devices capable of restricting the useful beam to the area of clinical interest shall be used.

(ii) The x-ray films used as the recording medium during the x-ray examination shall show substantial evidence of cut-off (beam delineation).

(iii) A device shall be provided which terminates the exposure after a preset time interval or exposure. The exposure switch shall be of the dead-man type and shall be so arranged that it cannot be operated outside a shielded area.

(2) **Conditions for operation of equipment.** (i) Only persons required for the x-ray procedure shall be in the x-ray room during exposures.

(ii) When an animal patient must be held in position during exposures, mechanical supporting or restraining devices shall be used.

(iii) Animal patients or films shall be held by an individual only under extreme conditions when clinically necessary. Such individuals shall wear protective gloves having at least 0.5 mm lead equivalent, a protective apron of at least 0.25 mm lead equivalent, and shall keep all parts of his/her body out of the useful beam.

(iv) The exposure of any individual used for holding animals shall be monitored.

(v) Pregnant women and individuals under 18 years of age shall not hold animal patients or films under any conditions.

(b) **Portable or mobile radiographic installations.** (1) **Equipment.**

(i) Collimating devices capable of restricting the useful beam to the area of clinical interest shall be used.

(ii) The x-ray film used as the recording medium during the x-ray examination shall show evidence of cut-off (beam delineation).

(iii) A device shall be provided which terminates the exposure after a preset time interval or exposure.

(iv) A dead-man type of exposure switch shall be provided with a cord of sufficient length so that the operator can stand at least two (2) m (6 ft) from the animal patient, the x-ray tube and out of the useful beam.

(2) **Conditions for operation of equipment.** (i) No person shall be regularly employed to support or hold animals or film during x-ray exposures.

(ii) When an animal patient must be held in position during exposures, mechanical supporting or restraining devices shall be used.

(iii) Animal patients or films shall be held by an individual only under extreme conditions when clinically necessary. Such individuals shall wear protective gloves having at least 0.5 mm lead equivalent, a protective apron of at least 0.25 mm lead equivalent, and shall keep all parts of his/her body out of the useful beam.

(iv) The exposure of any individual used for holding animals shall be monitored.

(v) Pregnant women and individuals under 18 years of age shall not hold animal patients or films under any conditions.

(c) **Fluoroscopic installations.** (1) **Equipment.**

(i) Equipment shall be so constructed that the entire cross-section of the useful beam is always intercepted by a primary protective barrier (usually a lead glass screen or image intensifier assembly) regardless of the panel-screen distance. For conventional fluoroscopes, this requirement may be assumed to have been met if, when the collimating system is opened to its fullest extent, an unilluminated margin is left on all edges of the fluorescent screen regardless of the position of the screen during use. Equipment with an image intensifier shall be so constructed that the useful beam cannot exceed the limits of the input phosphor.

(ii) The exposure shall automatically terminate when the barrier is removed from the useful beam.

(iii) With the fluoroscope operating at the highest potential employed and with the fluorescent screen 36 cm (14 in.) from the panel of the tabletop and in the useful beam without a patient, the exposure rate 5 cm (2 in.) beyond the viewing surface of the screen shall not exceed 7.74 E-6 $C\text{-}kg^{-1}\text{-}hr^{-1}$ (30 $mR\text{-}hr^{-1}$) for each 2.58 E-4 $C\text{-}kg^{-1}\text{-}\ min^{-1}$

($R\text{-}min^{-1}$) at the tabletop.

(iv) The fluoroscopic exposure switch shall be of the dead-man type.

(v) Provision shall be made to intercept the scattered x-rays from the undersurface of the tabletop and other structures under the table.

(vi) The source-panel or source-tabletop distance shall in no case be less than 30 cm (12 in.) and is recommended to be not less than 38 cm (15 in.).

(2) **Mobile fluoroscopic equipment is subject to the following additional requirements.** (i) In the absence of a tabletop, a cone or spacer frame shall limit the source-to-skin distance to not less than 30 cm (12 in.).

(ii) Image intensification shall always be provided.

(iii) It shall not be possible to operate a machine unless the useful beam is intercepted by the image intensifier.

(3) **Conditions for operation of equipment.** (i) Protective garments of at least 0.25 mm lead equivalent shall be available and shall be worn by the fluoroscopist during every examination.

(ii) Unless physical measurements indicate that they are not needed, protective garments of at least 0.25 mm lead equivalent each shall be worn by the physician, nurse, technician and all other persons within the fluoroscopy room.

(iii) Only persons needed in the fluoroscopic room shall be present during the exposure.

(iv) The fluoroscopic room shall be free of extraneous light that interferes with the examination.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Rules of the City of New York

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

24 RCNY 175.66

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.66 Miscellaneous and special types of radiation equipment.

(a) Types or uses of radiation producing equipment not specifically listed or covered by these regulations, and not specifically exempted, shall be manufactured, operated or used such that the radiation level measured 5 cm (2 inches) from any accessible surface, and averaged over an area of 10 cm^2 (1.55 $in.^2$), shall not exceed 1.3 E-7 C/kg (0.5 milliroentgen) per hour.

HISTORICAL NOTE

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Radioactive Materials

Rules of the City of New York

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

24 RCNY 175.101

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.101 General requirements for radioactive materials licenses.

(a) **License required.** (1) Except for the removal of source material from its place of deposit in nature or as otherwise provided in this Code, no person shall transfer, receive, produce, possess or use any radioactive material except pursuant to a license issued by the Department.

(2) Fees for each license shall be paid pursuant to §5.07 of this Code.

(3) The requirements of this section are in addition to, and not in substitution for, other requirements of this Code. In any conflict between the requirements of this section and a specific requirement in another part of this Code, the specific requirement governs.

(b) **Exempt source material.** (1) Any person is exempt from the provisions of this code to the extent that such person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided that,

except as authorized in a specific license issued by the Department, the U.S. Nuclear Regulatory Commission or an agreement state, such person shall not refine or process such ore.

(2) Any person is exempt from the provisions of this Code to the extent that such person receives, possesses, uses or transfers source material in any chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of 1 percent (0.05%) of the mixture, compound, solution or alloy.

(3) Any person is exempt from the provisions of this Code to the extent that such person receives, possesses, uses or transfers:

(i) any quantities of thorium contained in:

(A) incandescent gas mantles;

(B) vacuum tubes;

(C) welding rods;

(D) electric lamps for illuminating purposes provided that each lamp does not contain more than 50 milligrams of thorium;

(E) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting provided that each lamp does not contain more than 2 grams of thorium;

(F) rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent, by weight of thorium, uranium, or any combination of these; or

(G) personnel neutron dosimeters, provided that each dosimeter does not contain more than 50 milligrams of thorium;

(ii) any source material contained in the following products:

(A) glazed ceramic tableware, provided that the glaze contains not more than 20 percent by weight source material;

(B) glassware, containing not more than 10 percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile or other glass, glass enamel or ceramic used in construction;

(C) glass enamel or glass enamel frit containing not more than 10 percent by weight of source material imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983; or

(D) piezoelectric ceramic, containing not more than 2 percent by weight source material;

(iii) photographic film, negatives, and prints containing uranium or thorium;

(iv) any finished or partly fabricated product of, or containing, tungsten- thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed 4 percent by weight and that this exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such product or part;

(v) uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of such counterweights, provided that:

(A) each counterweight is manufactured in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, authorizing distribution by the licensee pursuant to 10 CFR Part 40;

(B) each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM";

(C) each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED"; and

(D) this exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such counterweights other than repair or restoration of any plating or other covering;

(vi) natural or depleted uranium metal used as shielding constituting part of any shipping container, provided that:

(A) the shipping container is conspicuously and legibly impressed with the legend "Caution-Radioactive Shielding-Uranium"; and

(B) the uranium metal is encased in mild steel or equally fire resistant metal or minimum wall thickness of one-eighth inch (3.2 mm);

(vii) thorium contained in finished optical lenses, provided that each lens does not contain more than 30 percent by weight of thorium, and that this exemption shall not be deemed to authorize either:

(A) the shaping, grinding, or polishing of such lens or manufacturing processes other than the assembly of such lens into optical systems and devices without any alteration of the lens; or

(B) the receipt, possession, use, or transfer of thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments;

(viii) uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcurie of uranium;

(ix) thorium contained in any finished aircraft engine part containing nickel-thoria alloy, provided that:

(A) the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

(B) the thorium content in the nickel-thoria alloy does not exceed 4 percent by weight.

(x) The exemptions contained in §175.101(b)(2) and (3)(i) through (ix) shall not authorize the manufacturer of any of the products described.

(c) **Exempt radioactive material other than source material.** (1) **Exempt concentrations.**

(i) Except as provided in §175.101(c)(1)(ii), any person is exempt from the provisions of this Code to the extent that such person receives, possesses, uses, transfers, owns or acquires products containing radioactive material introduced in concentrations not in excess of those listed in Appendix A of this section.

(ii) No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under §175.101(c)(1)(i) or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state, except in accordance with a specific license issued pursuant to this Code or a general license provided for in this Code.

(2) **Exempt quantities.** (i) Except as provided in §175.101(c)(2)(ii) and (iii), any person is exempt from the provisions of this Code to the extent that such person receives, possesses, uses, transfers, owns or acquires radioactive material in individual quantities, each of which does not exceed the applicable quantity set forth in Appendix B of this section.

(ii) Section 175.101(c)(2)(i) does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(iii) No person shall, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Appendix B of this section, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt under §175.101(c)(2)(i) or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to §32.18 of 10 CFR Part 32, or by the Department, which license states that the radioactive material may be transferred by the licensee to persons exempt under §175.101(c)(2)(i) or the equivalent regulations of the U.S. Nuclear Regulatory Commission or any agreement state.

(3) **Exempt items.** Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, or persons who initially transfer such products for sale or distribution, any person is exempt from the provisions of this Code to the extent that such person receives, possesses, uses, transfers, owns or acquires the following products:

(i) Timepieces or timepiece hands or dials containing radium which were manufactured under a specific license issued by the Department or an agreement state and which meet the following or equivalent conditions:

(A) The timepiece or timepiece hands or dials contain no more than the following specified quantities of radium:

(a) 5.55 kBq (0.15 mCi) per watch;

(b) 1.11 kBq (0.03 mCi) per watch hand;

(c) 3.33 kBq (0.09 mCi) per watch dial;

(d) 7.4 kBq (0.2 mCi) per clock;

(e) 1.48 kBq (0.04 mCi) per clock hand; or

(f) 4.44 kBq (0.12 mCi) per clock dial.

(B) The timepiece is not a pocket watch.

(C) The timepiece is marked or coded to identify the date of manufacture and that it contains radium.

(D) The timepiece emits sufficient luminosity, omitting photoactivation, that its dial can be read in the dark during its entire design lifetime.

(ii) Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified radiation dose rates:

(A) 925 MBq (25 mCi) of hydrogen-3 per timepiece.

(B) 185 MBq (5 mCi) of hydrogen-3 per hand.

(C) 555 MBq (15 mCi) of hydrogen-3 per dial (bezels when used shall be considered as part of the dial).

(D) 3.7 MBq (100 mCi) of promethium-147 per watch or 7.4 MBq (200 mCi) of promethium-147 per any other timepiece.

(E) 0.74 MBq (20 mCi) of promethium-147 per watch hand or 1.48 MBq (40 mCi) of promethium-147 per other

timepiece hand.

(F) 2.22 MBq (60 mCi) of promethium-147 per watch dial or 4.44 MBq (120 mCi) of promethium-147 per other timepiece dial (bezels when used shall be considered as part of the dial).

(G) The radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

(a) for wristwatches, 1 mGy (0.1 millirad) per hour at 10 centimeters from any surface; **(b)** for pocket watches, 1 mGy (0.1 millirad) per hour at 1 centimeter from any surface; **(c)** for any other timepiece, 2 mGy (0.2 millirad) per hour at 10 centimeters from any surface.

(H) 37 kBq (1 mCi) of radium-226 per timepiece in timepieces acquired prior to September 1, 1984.

(iii) Lock illuminators containing not more than 555 MBq (15 millicuries) of hydrogen-3 or not more than 74 MBq (2 millicuries) of promethium-147 installed in automobile locks. The radiation dose rate from each lock illuminator containing promethium-147 will not exceed 10 mGy (1 millirad) per hour at one centimeter from any surface when measured through 50 milligrams per square centimeter of absorber.

(iv) Precision balances containing not more than 37 MBq (1 millicurie) of hydrogen-3 per balance or not more than 18.5 MBq (0.5 millicurie) of hydrogen-3 per balance part.

(v) Automobile shift quadrants containing not more than 925 MBq (25 millicuries) of hydrogen-3.

(vi) Marine compasses containing not more than 27.8 GBq (750 millicuries) of hydrogen-3 gas and other marine navigational instruments containing not more than 9.25 GBq (250 millicuries) of hydrogen-3 gas.

(vii) Thermostat dials and pointers containing not more than 925 MBq (25 millicuries) of hydrogen-3 per thermostat.

(ix) Electron tubes, provided, that each tube does not contain more than one of the following specified qualities of radioactive material:

(A) 5.55 GBq (150 millicuries) of hydrogen-3 per microwave receiver detector tube or 370 MBq (10 millicuries) of hydrogen-3 per any other electron tube;

(B) 37 kBq (1 mCi) of cobalt-60;

(C) 185 kBq (5 mCi) of nickel-63;

(D) 1.11 MBq (30 mCi) of krypton-85;

(E) 185 kBq (5 mCi) of cesium-137;

(F) 1.11 MBq (30 mCi) of promethium-147;

and, provided further, that the radiation dose rate due to radioactive material contained in each electron tube does not exceed 10 mGy (1 millirad) per hour at one centimeter from any surface when measured through 7 milligrams per square centimeter of absorber.

(x) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(A) each source contains no more than one exempt quantity set forth in Appendix B of this section, and

(B) each instrument contains no more than 10 exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one or different types of radioactive materials and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in Appendix B of this section, provided that the sum of such fractions shall not exceed unity; and

(C) for the purposes of §175.101(c)(3)(x), 1.85 kBq (0.05 mCi) of americium-241 shall be considered one exempt quantity.

(xi) Spark gap irradiators containing not more than 37 kBq (1 mCi) of cobalt-60 per spark gap irradiator for use in electrically ignited fuel oil burners having a firing rate of at least 3 gallons (11.4 liter) per hour.

(xii) The exemptions contained in §175.101(c)(3)(i) through (xi) shall not authorize the application or incorporation of radioactive materials into the listed devices.

(4) Any person, except those who manufacture, process, or produce self-luminous products containing hydrogen-3, krypton-85, or promethium-147, is exempt from the provisions of this Code to the extent that such person receives, possesses, uses, transfers, owns, or acquires hydrogen-3, krypton-85 or promethium-147 in self-luminous products manufactured, processed, produced, imported, or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR §32.22, which license authorizes the transfer of the product to persons who are exempt from regulatory requirements. This exemption does not apply to hydrogen-3, krypton-85, or promethium-147 used in products for frivolous purposes or in toys or adorn- ments.

(5) Any person is exempt from the provisions of this Code to the extent that such person receives, possesses, uses, transfers, or owns articles containing less than 3.7 kBq (0.1 mCi) of radium-226 which were acquired prior to October 30, 1986.

(6) Any person, except those who manufacture, process, or produce gas and aerosol detectors containing radioactive material, is exempt from the provisions of this Code to the extent that such person receives, possesses, uses, transfers, owns or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards provided that detectors containing radioactive material shall have been manufactured, imported, or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR §32.26, or by an agreement state pursuant to equivalent regulations.

(i) Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an agreement state shall be considered exempt, provided that the device is labeled in accordance with the specific license authorizing distribution of the generally licensed device, and provided further that they meet requirements equivalent to 10 CFR §32.26.

(d) **Licensees and contractors of the U.S. Department of Energy and U.S. Nuclear Regulatory Commission.** (1) The owner or the person in charge of any radiation installation licensed by the U.S. Department of Energy and/or the U.S. Nuclear Regulatory Commission is exempt from the requirements of this Code provided that such owner or person in charge shall:

(i) afford the Department access to all records which such person is required to maintain pursuant to the U.S. Department of Energy or U.S. Nuclear Regulatory Commission license or contract issued to such person;

(ii) afford the Department opportunity to sample effluents, and to conduct such surveys of levels of radiation and radioactive contamination, as will not substantially interfere with or interrupt for any substantial period of time any activity licensed by or contracted for by the U.S. Department of Energy or U.S. Nuclear Regulatory Commission; and

(iii) afford inspectors or officers of the Department access to any installation in which such radioactive materials are present to accomplish the foregoing review of records, sampling of effluents, and conduct of surveys.

(2) Any U.S. Department of Energy or U.S. Nuclear Regulatory Commission contractor or subcontractor of the following categories operating within the City is exempt from the requirements of this Code to the extent that such contractor, or subcontractor under such contractor, transfers, receives, possesses, uses or acquires sources of radiation:

(i) prime contractors performing work for the U.S. Department of Energy at United States government-owned or controlled sites including the transportation of sources of radiation to or from such sites and the performance of contract services during temporary interruptions of such transportation;

(ii) prime contractors of the U.S. Department of Energy performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;

(iii) prime contractors of the U.S. Department of Energy using or operating nuclear reactors or other nuclear devices in a United States-owned vehicle or vessel; and

(iv) any other prime contractor or subcontractor of the U.S. Department of Energy or of the U.S. Nuclear Regulatory Commission when the City and the U.S. Nuclear Regulatory Commission jointly determine:

(A) that the exemption of the prime contractor or subcontractor is authorized by law; and

(B) that under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

(e) **General requirements for issuing specific licenses.** (1) The Department will approve an application for, and issue in response thereto, a specific license to receive, produce, possess, use and transfer any radioactive material, if the Department determines that the following requirements have been met:

(i) the applicant's proposed use, equipment, facilities and procedures will protect health and safety and will minimize danger to life and property from radiation hazards; and

(ii) the applicant's radiation detection and measuring instrumentation is appropriate for the radioactive materials and uses thereof requested in the application; and

(iii) the applicant, or the applicant's personnel, if the applicant is not an individual, is qualified by training and experience to use such radioactive material for the purposes covered by the application so as to protect public health and safety and to minimize danger to life and property from radiation hazards; and

(iv) the applicant submits sufficient information to support a determination that the requirements of §175.101(e)(1)(i) through (iii) are satisfied.

(f) **Applications for specific licenses.** (1) A license application shall be made in writing on forms prescribed by the Department and shall contain completely and accurately the information required thereon. Such application shall be filed in duplicate (original plus one copy) and may incorporate, by clear specific reference, information contained in any previous application, supplementary statement, notification or report filed with the Department.

(2) Each application or supplementary statement shall be signed by either the applicant personally or a person duly authorized by the applicant to sign for and on the applicant's behalf.

(3) For those applicants or licensees who are required to establish and maintain a radiation safety committee pursuant to this Code, each application or supplementary statement shall be transmitted with a letter signed by the chairman of the radiation safety committee indicating the committee's approval of the requested licensing action.

(4) At any time subsequent to the filing of an application for a license, including amendments, and before the termination of a license issued in response thereto, the Department may require the applicant to submit one or more

supplementary statements containing additional information to enable the Department to determine whether such application should be approved or denied, or whether a previously issued license should be amended, suspended or revoked.

(5) A single application may apply for a license covering more than one radioactive material.

(6) Specific licenses issued by the Department shall be in the form of a written authorization permitting possession of certain specific radioactive materials in not more than certain specific quantities, and certain specific uses of these radioactive materials. Such possession and use of radioactive materials provided for in the foregoing shall be subject to the requirements of:

(i) all applicable provisions of this Code; and

(ii) all conditions as stated on the license issued by the Department.

(g) **Amendments.** (1) When a change affecting the licensed operation or facility is considered by a licensee, including but not limited to changes ordered pursuant to this Code, so that the information on file with the Department, either in the initial license application or subsequent requests for amendments, or in the initial license or amendment previously granted, will no longer be accurate, the licensee shall request and receive an amendment for such change prior to causing such change.

(2) Any application by a licensee for a license amendment to conform with the provisions of §175.101(g)(1) shall be filed in writing with the Department and shall set forth in detail the reasons for such requested amendment. In considering any such application for amendment, the Department shall apply the requirements set forth in §175.101(e).

(3) A corrective amendment of any license may be issued by the Department at any time upon its initiative.

(4) Any license may be amended or revoked by the Department by reason of the amendment of this Code, or any other applicable law.

(h) **Expiration, renewal and termination of licenses.** (1) Except as otherwise provided in this Code, each license shall expire at the end of the day on the expiration date stated in the license. If, not less than 30 days prior to such expiration date, a licensee duly files with the Department an application in proper form for license renewal, or for a new and superseding license, the existing license shall not be deemed to have expired until the Department has finally determined such application.

(2) Any application by a licensee for the renewal of such license, including amendments, shall be considered as an application for a license and shall be filed on, and shall contain completely and accurately all information called for by, a written form or other manner prescribed by the Department. In considering any such application for renewal, the Department shall apply the requirements set forth in §175.101(e).

(3) Each licensee shall notify the Department in writing and request termination of the license when the licensee decides to terminate all activities authorized under the license. This notification and request for termination shall include the reports and information specified in §175.101(h)(4)(v) and a plan for completion of decommissioning.

(4) If a licensee does not submit an application for renewal pursuant to §175.101(h)(1), the licensee shall on or before the expiration date stated in the license:

(i) terminate use of radioactive material;

(ii) dispose of all radioactive material in accordance with all applicable regulations in effect at the time of disposal;

(iii) submit a written certification of the disposition of all radioactive materials authorized by the license on forms

prescribed by the Department;

(iv) remove radioactive contamination to the extent practicable; and

(v) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey to the Department. Such survey shall be subject to confirmation by the Department and shall include:

(A) levels of radiation in units (or multiples) of $Gy\text{-}hr^{-1}$ ($millirads\text{-}hr^{-1}$) at one (1) cm for beta-gamma radiation or at one (1) m for gamma radiation;

(B) levels of removable and fixed contamination, including alpha, in units of disintegrations (transformations) per min (becquerels) per 100 cm^2 for surfaces;

(C) $becquerels\text{-}ml^{-1}$ ($mCi\text{-}ml^{-1}$) for water;

(D) $becquerels\text{-}g^{-1}$ ($pCi\text{-}ml^{-1}$) for solids such as soil or concrete; and

(E) a description of the survey or other measuring instrument(s) used, including manufacturer(s) and model number(s) and date of most recent calibration.

(vi) If the information submitted pursuant to §175.101(h)(4)(v) does not adequately demonstrate that the premises are suitable for unrestricted use, the Department shall inform the licensee of the appropriate further actions required for the termination of the license, including, but not limited to, decontamination of the licensed premises to such levels and within such time frames as the Department may prescribe.

(vii) Each specific license shall continue in effect, beyond the expiration date if necessary, with respect to possession of residual radioactive materials present as contamination until the Department issues an amendment terminating the license. During this time the licensee shall:

(A) limit activities involving radioactive material to those related to decommissioning; and

(B) continue to control entry to restricted areas until the Department determines they are suitable for release for unrestricted use and the Department issues an amendment terminating the license.

(viii) The Department will approve a request for termination of a specific license, and issue an amendment terminating such license, when the Department determines that:

(A) radioactive material has been properly disposed; and

(B) premises have been decontaminated to such levels that the total effective dose equivalent (TEDE) from residual radioactivity distinguishable from background radiation, to an average member of the public will not exceed 25 mrem (0.25 mSv) per year;

(C) a radiation survey has been performed which describes all radiation levels and levels of fixed and removable contamination; and

(D) the licensee submits sufficient information to support a determination that the requirements of §175.101(h)(4)(viii)(A) through (C) have been met.

(i) **Amendment, suspension or revocation of licenses.** (1) Specific and general licenses shall be subject to amendment, suspension or revocation by reason of amendment of the New York State Public Health Law, enactment or amendment of any other applicable law, amendment of the New York State Sanitary Code, amendment of this Code, or

amendment or promulgation of any other applicable rule, regulation or order.

(2) In addition to the provisions of §5.17 of this Code, the Department may amend, revoke or suspend any license, in whole or in part, for:

(i) Any material misstatement in the application therefor or in any supplementary statement thereto.

(ii) Any condition revealed by such application, supplementary statement, report, record, inspection or other means, which would warrant the Department's refusal to grant a license on an original application.

(iii) Any violation or failure to observe any condition of such license, this Code, or any other applicable rule, regulation or law now or hereafter in effect.

(iv) Failure to notify the Department of a change in ownership or address of a radiation installation.

(j) **Emergency response plan.** (1) Each application for a license to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass and in excess of the quantities specified in Appendix C of this section shall include either:

(i) an evaluation showing that the maximum dose to a person offsite due to a release of radioactive materials would not exceed 10 mSv (1 rem) effective dose equivalent or 50 mSv (5 rem) to the thyroid; or

(ii) an emergency plan for responding to a release of radioactive material.

(2) One or more of the following factors may be used to support an evaluation submitted pursuant to §175.101(j)(1)(i):

(i) The radioactive material is physically separated so that only a portion could be involved in an accident.

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged.

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in Appendix C of this section due to the chemical or physical form of the material.

(iv) The solubility of the radioactive material would reduce the dose received.

(v) Facility design or engineered safety features in the facility would cause the release fraction to be lower than that shown in Appendix C of this section.

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in Appendix C of this section.

(vii) Other factors appropriate for the specific facility.

(3) An emergency plan for responding to a release of radioactive material submitted pursuant to §175.101(j)(1)(ii) shall include the following information:

(i) A brief description of the licensee's facility and area near the site.

(ii) An identification of each type of radioactive materials accident for which protective actions may be needed.

(iii) A classification system for classifying accidents as alerts or site area emergencies.

(iv) Identification of the means of detecting each type of accident in a timely manner.

(v) A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(vi) A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the Department.

(viii) A brief description of the responsibilities for developing, maintaining and updating the plan.

(ix) A commitment to, and brief description of, the means to promptly notify offsite response organizations and to request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Department immediately after notification of the appropriate offsite response organizations and not later than one (1) hour after the licensee declares an emergency.

(x) A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to offsite response organizations and the Department.

(xi) A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. The training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

(xii) A brief description of the means of restoring the facility to a safe condition after an accident.

(xiii) Provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations is recommended, but not required. Exercises must use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel and overall effectiveness of the response. Plan deficiencies identified in the critiques shall be corrected.

(xiv) A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986 codified at 42 USCA 11001 **et seq.,** if applicable to the applicant's activities at the proposed place of use of the radioactive materials.

(4) The licensee shall allow the offsite response organizations expected to respond in case of an accident sixty (60) days to comment on the licensee's emergency response plan before submitting it to the Department. The licensee shall provide any comments received within the sixty (60) days to the Department with the plan.

(k) **Conditions of specific licenses.** (1) Each of the following is hereby made a condition of each specific license:

(i) The licensee thereunder shall comply with all applicable provisions of the New York State Public Health Law,

all applicable provisions of this Code, all other laws now or hereafter in effect, and with all applicable rules, regulations, codes and orders now or hereafter in effect of the Department and of all appropriate regulatory agencies.

(ii) Neither such license, nor any right, title or interest in, of or to such license, shall be disposed of by assignment, transfer or otherwise, either voluntarily or involuntarily, either directly or indirectly, unless the Department shall, after securing complete and accurate pertinent information, have approved in writing of such disposal.

(iii) The licensee shall confine the possession and use of radioactive material to such location or locations and for such purpose or purposes as the license may authorize; provided, however, that except as otherwise provided in such license or this Code, such license shall be deemed to authorize the licensee to transfer the material covered by such license to any other person authorized to receive it by the Department, the U.S. Nuclear Regulatory Commission or an agreement state.

(iv) No person, in any advertisement, expressly or by implication, shall refer to the fact that an installation is licensed by the Department, and no person shall state or imply that an installation or its activities have been approved by the Board of Health, the Department or the Commissioner.

(v) The licensee shall notify the Department, in writing, within thirty (30) days if an authorized user, radiation safety officer or radiation therapy physicist permanently discontinues performance of duties under the license.

(vi) Each licensee shall notify the Department, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code by or against:

(A) the licensee;

(B) an entity (as that term is defined in 11 U.S.C. §101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(C) an affiliate (as that term is defined in 11 U.S.C. §101(2)) of the licensee.

This notification must indicate:

(A) the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the date of the filing of the petition.

(vii) Any license covering the use of special nuclear material, in the course of which licensed use additional special nuclear material is produced, shall be deemed to cover any such special nuclear material so produced, provided however, that the total quantity of special nuclear material possessed by the licensee is not sufficient to form a critical mass.

(viii) A licensee, employee of a licensee, contractor, subcontractor, or employee of a contractor or subcontractor shall not:

(A) engage in a deliberate misconduct that causes or would have caused if not detected, a licensee or applicant to be in violation of any provision of this Code or license condition issued by the Department; or

(B) deliberately submit to the Department information that the person submitting the information knows to be incomplete or inaccurate in some respect to the Department.

(2) The Department may at any time set forth in any license or incorporate by reference therein, additional conditions, restrictions or requirements applicable to the licensee's receipt, production, possession, use or transfer of radioactive material covered by such license in order to protect the public health and safety and to minimize danger to

life and property from radiation hazards.

(3) All licensees subject to the criteria to implement Increased Controls pursuant to the U.S. Nuclear Regulatory Commission (NRC) Order EA 05-090, 70 FR 72128, dated December 1, 2005, shall have as part of their Increased Control Program, a Fingerprinting and Criminal History Records Check procedure established for all individuals whom the licensee wishes to allow unescorted access to radioactive material quantities of concern. Such Fingerprinting and Criminal History Records Check procedures shall adhere to the requirements in NRC Order EA-07-305, 72 FR 70901, or any successor order, law or regulation. The requirements of this provision shall apply to all affected licensees upon its effective date.

(l) **Transfer of radioactive materials.** (1) No licensee shall transfer radioactive material except as authorized pursuant to this subsection.

(2) Except as provided otherwise by the license, and subject to the provisions of §175.101(l)(3) and (4), a licensee may transfer radioactive material:

(i) to the Department, after receiving prior written approval of the Department;

(ii) to the U.S. Nuclear Regulatory Commission;

(iii) to any person exempt from the provisions of this Code to the extent permitted under such exemption;

(iv) to any person authorized to receive radioactive material under the terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the Department, the U.S. Nuclear Regulatory Commission, or an agreement state, or to any person otherwise authorized to receive radioactive material by the federal government or any agency thereof, the department, or an agreement state; or

(v) as otherwise authorized by the Department in writing.

(3) Before transferring radioactive material to a specific licensee of the Department, the U.S. Nuclear Regulatory Commission or an agreement state, or to a general licensee who is required to register with the Department, the U.S. Nuclear Regulatory Commission or an agreement state prior to the receipt of the radioactive materials, the licensee transferring the radioactive material shall verify that the transferee's license or registration certificate authorizes the receipt of the type, form and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by §175.101(l)(3) are acceptable:

(i) the transferor may have in his/her possession, and read, a current copy of the transferee's specific license or registration certificate; or

(ii) the transferor may have in his/her possession a written certification by the transferee that he/she is authorized by license or registration certificate to receive the type, form and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date; or

(iii) for emergency shipments the transferor may accept oral certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date, provided that the oral certification is confirmed in writing within 10 days; or

(iv) the transferor may obtain other sources of information compiled by a reporting service from official records of the Department, the U.S. Nuclear Regulatory Commission or an agreement state as to the identity of licensees and the scope and expiration dates of licenses and registrations; or

(v) when none of the methods of verification described in §175.101(l)(4)(i) through (iv) are readily available, or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the Department, the U.S. Nuclear Regulatory Commission, or an agreement state that the transferee is licensed to receive the radioactive material.

(5) Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of §175.105 of this Code.

(m) **Reciprocity.** (1) The holder of a license issued by the New York State Department of Labor, the New York State Department of Health, the U.S. Nuclear Regulatory Commission or any agreement state, may bring, possess or use radioactive material covered by such license within the Department's jurisdiction for a period not in excess of 180 days in any twelve consecutive months without obtaining a license from the Department, provided that:

(i) such license does not limit the holder's possession or use of such material to a specific installation or installations;

(ii) such holder, prior to bringing such material into the city, files with the Department a notice indicating the period, type and location of proposed possession and use within the Department's jurisdiction, and a copy of the license;

(iii) such holder supplies such additional information as the Department may reasonably request;

(iv) such holder, during the period of this possession and use of such material within the city, complies with all applicable sections of this Code except §175.101(a)(1); and

(v) such holder, during such period, complies with all the terms and conditions of his license, except such terms or conditions which may be inconsistent with this Code.

(2) The holder of a license issued by the New York State Department of Labor, the New York State Department of Health, the New York City Department of Health and Mental Hygiene or an Agreement State must obtain reciprocity approval from the U.S. Nuclear Regulatory Commission to conduct licensed activity in areas of exclusive federal jurisdiction within New York City. At least three days before engaging in each activity for the first time in a calendar year, the licensee will provide the U.S. Nuclear Regulatory Commission with advanced notice of its proposed activity in areas under exclusive federal jurisdiction within New York City.

(n) **Financial assurance and recordkeeping for decommissioning.**

(1)(a) Each applicant for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B to this section shall submit a decommissioning funding plan as described in §175.101(n)(5). The decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by 10^5 is greater than one (1) (unity rule), where R is defined here as the sum of the ratios of the quantity of each isotope to the applicable value in Appendix B to this section.

(1)(b) Each holder of, or applicant for, any specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10 times the applicable quantities set forth in Appendix B to this section shall submit a decommissioning funding plan as described in §175.101(n)(5). The decommissioning funding plan must also be submitted when a combination of isotopes is involved if R, as defined in §175.101(n)(1)(a), divided by 10^{12} is greater than one (1) (unity rule). The decommissioning funding plan must be submitted to the Department within 2 years of the effective date of this provision.

(1)(c) Each applicant for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in §175.101(n)(5).

(1)(d) Each applicant for a specific license authorizing possession and use of quantities of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either:

(i) Submit a decommissioning funding plan as described in §175.101(n)(5); or

(ii) Submit a certification that financial assurance for decommissioning has been provided in the amount of $225,000 within eighteen months of the effective date of this provision using one of the methods described in §175.101(n)(6). For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph §175.101(n)(6) of this section must be submitted to the Department prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Department as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph §175.101(n)(6) of this section.

(1)(e) Each applicant for a specific license authorizing the possession and use of unsealed special nuclear material in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B to this section shall submit a decommissioning funding plan as described in §175.101(n)(5). A decommissioning funding plan must also be submitted when a combination of isotopes is involved if R, as defined in §175.101(n)(1)(a), divided by 10^5 is greater than one (1) (unity rule).

(2) Each applicant for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in §175.101(n)(4) shall either:

(i) submit a decommissioning funding plan as described in §175.101(n)(4); or

(ii) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by §175.101(n)(4) using one of the methods described in §175.101(n)(6). For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph §175.101(n)(6) of this section must be submitted to the Department prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Department as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph §175.101(n)(6) of this section.

(3) (i) Each holder of a specific license issued on or after July 27, 1990, which is of a type described in §175.101(n)(1) or (2), shall provide financial assurance for decommissioning in accordance with the criteria set forth in this section.

(ii) Each holder of a specific license issued before July 27, 1990, and of a type described in §175.101(n)(1) or (2), shall submit a decommissioning funding plan as described in §175.101(n)(5) or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(iii) Each holder of a specific license issued before July 27, 1990, and of a type described in §175.101(n)(2), shall submit a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in this section.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit the $1,125,000 amount must do so within 1 year of the effective date of this provision. Licensees

required to submit the $113,000 or $225,000 amount must do so within 18 months of the effective date of this provision. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

(i) Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of Appendix B to this section in unsealed form (for a combination of isotopes, if R, as defined in §175.101(n)(1)(a), divided by 10^4 is greater than 1, but R divided by 10^5 is less than or equal to 1)-$1,125,000.

(ii) Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of Appendix B to this section in unsealed form (for a combination of isotopes, if R, as defined in §175.101(n)(1)(a), divided by 10^3 is greater than 1, but R divided by 10^4 is less than or equal to 1)-$225,000.

(iii) Greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities of Appendix B to this section in sealed sources or plated foils (for a combination of isotopes, if R, as defined in §175.101(n)(1)(a), divided by 10^{10} is greater than 1, but R divided by 10^{12} is less than or equal to 1)-$113.000.

(5) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from §175.101(n)(6), including means of adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed 3 years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of §175.101(n)(6).

(6) Financial assurance for decommissioning must be provided by one or more of the following methods:

(i) **Prepayment.** Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(ii) **A surety method, insurance, or other guarantee method.** These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix D. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix E. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(A) the surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Department, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Department within 30 days after receipt of notification of cancellation.

(B) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the Department. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(C) The surety method or insurance must remain in effect until the Department has terminated the license.

(iii) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or depost of government securities. The surety or insurance provisions must be as stated in §175.101(n)(6)(ii).

(iv) In the case of federal, state or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in §175.101(n)(4), and indicating that funds for decommissioning will be obtained when necessary.

(7) Each licensed person shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Department and the site is released for unrestricted use. If records of relevant information are kept for other purposes, reference to these records and their location may be used. Information the Department considers important to decom- missioning consists of:

(i) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms and concentrations.

(ii) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(iii) Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or radioactive materials having only half-lives of less than 65 days, a list contained in a single document and updated every two (2) years, of the following:

(A) All areas designated and formerly designated restricted areas as defined in §175.02(a)(194);

(B) all areas outside of restricted areas that require documentation under §175.101(n)(7)(i);

(C) all areas where current and/or previous wastes have been buried; and

(D) all areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to decontaminate the area to unrestricted release levels or to apply for approval for disposal under §175.104(b).

(iv) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Subd. (h) par (4) subpar (vi) amended City Record Mar. 16, 2005 eff. Apr. 15, 2005. [See Vol. 9 Statements of Basis and Purpose No. 23]

Subd. (h) par (4) subpar (viii) clause (B) amended City Record Mar. 16, 2005 eff. Apr. 15, 2005. [See Vol. 9 Statements of Basis and Purpose No. 23]

Subd. (k) par (1) subpar (viii) added City Record Mar. 16, 2005 eff. Apr. 15, 2005. [See Vol. 9 Statements of Basis and Purpose No. 23]

Subd. (k) par (3) added City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (m) par (2) amended City Record June 20, 2007 eff. July 20, 2007. [See Vol. 9 Statements of Basis and Purpose No. 28]

Subd. (m) par (2) added City Record Mar. 16, 2005 eff. Apr. 15, 2005. [See Vol. 9 Statements of Basis and Purpose No. 23]

Subd. (n) par (1) amended City Record Mar. 16, 2005 eff. Apr. 15, 2005. [See Vol. 9 Statements of Basis and Purpose No. 23]

Subd. (n) par (1)(a) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (n) par (1)(b) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (n) par (1)(c) added City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (n) par (1)(d) added City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (n) par (1)(e) added City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (n) par (2) open par amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (n) par (2) subpar (ii) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9

Statements of Basis and Purpose No. 30]

Subd. (n) par (3) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (n) par (4) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statements of Basis and Purpose No. 30]

Subd. (n) par (5) amended City Record Mar. 16, 2005 eff. Apr. 15, 2005. [See Vol. 9 Statements of Basis and Purpose No. 23]

Subd. (n) par (7) open par amended City Record Mar. 16, 2005 eff. Apr. 15, 2005. [See Vol. 9 Statements of Basis and Purpose No. 23]

Notes:

On September 17, 2008, the Board of Health amended Health Code §175.101(k) pursuant to NRC Order EA-07-305 to incorporate a fingerprinting and criminal history records check requirement on licensees, who possess certain radioactive materials in quantities of concern. This requirement applies to those employees of affected licensees who are allowed unescorted access to certain radioactive materials in quantities of concern. Also, the Board amended several provisions of §175.101(n) of the Health Code, including the addition of new §175.101(n)(1) (c)-(e), in order to assure compatibility with applicable NRC regulations concerning financial assurance and decommissioning of a licensed facility. The NRC amended its regulations (e.g., 10 CFR §§30.35, 40.36, and 70.25) for financial assurance for certain materials licensees to bring the amount of financial assurance required more in line with current decommissioning costs. The objective of this action is to ensure that licensees maintain adequate financial assurance so that timely decommissioning can be carried out following shutdown of a licensed facility.

§175.101(m) in Article 175 of the NYC Health Code was amended on June 14, 2007 to provide reciprocity approval by the U.S. Nuclear Regulatory Commission (NRC). NRC required that the Department amend the NYC Health Code to include a 3-day advance notice requirement to NRC for prior approval to any initial activity by any Agreement State licensee/non-NRC licensee in areas under exclusive federal jurisdiction within NYC, as per 10 CFR §150.20.

Subparagraph (vi) of paragraph (4) of subsection (h) of §175.101 of the New York City Health Code was amended on March 10, 2005 to reflect 10 CFR §30.36 in assuring that licensees who wish to terminate licensed activities must perform decommissioning within timeframes prescribed by the Department.

Subparagraph (viii)(B) of paragraph (4) of subsection (h) of §175.101 of the New York City Health Code was amended on March 10, 2005 to reflect 10 CFR §20.1403, which provides specific dose limits to members of the public from sites released for unrestricted use.

Subparagraph (viii) of paragraph (1) of subsection (k) of §175.101 of the New York City Health Code was added on March 10, 2005 to reflect federal regulation 10 §30.10 which enables the Department to conduct enforcement actions against individuals who provide inaccurate information to the Department.

Paragraph (2) of subsection (m) of §175.101 of the New York City Health Code was added on March 10, 2005 to reflect 10 CFR §150.20 which clarifies that Agreement State licensees can seek reciprocal recognition of their license from the NRC when working within areas of exclusive Federal jurisdiction in New York City.

Paragraph (1)(b) of subsection (n) of §175.101 of the New York City Health Code was added on March 10, 2005 to reflect 10 CFR §30.35 which requires licensees that are authorized to possess sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10 to the 12th times the applicable quantities set forth in Appendix B of the New York City Health Code to submit a decommissioning funding plan.

Paragraph (5) of subsection (n) of §175.101 of the New York City Health Code was amended on March 10, 2005 to reflect 10 CFR §30.35, which addresses adjusting cost estimates for decommissioning at intervals not to exceed 3 years.

Paragraph (7) of subsection (n) of §175.101 of the New York City Health Code was amended on March 10, 2005 to reflect 10 CFR §30.35.

APPENDIX A

EXEMPT CONCENTRATIONS

Element (atomic number)	Isotope	Column I Gas concentration mCi/ml1	Column II Liquid and solid concentration mCi/ml2
Antimony (51)	Sb 122		3E-4
	Sb 124		2E-4
	Sb 125		1E-3
Argon (18)	A 37	1E-3	
	A 41	4E-7	
Arsenic (33)	As 73		5E-3
	As 74		5E-4
	As 76		2E-4
	As 77		8E-4
Barium (56)	Ba 131		2E-3
	Ba 140		3E-4
Beryllium (4)	Be 7		2E-2
Bismuth (83)	Bi 206		4E-4

Bromine (35)	Br 82	4E-7	3E-3
Cadmium (48)	Cd 109		2E-3
	Cd 115m		3E-4
	Cd 115		3E-4
Calcium (20)	Ca 45		9E-5
	Ca 47		5E-4
Carbon (6)	C 14	1E-6	8E-3
Cerium (58)	Ce 141		9E-4
	Ce 143		4E-4
	Ce 144		1E-4
Cesium (55)	Cs 131		2E-2
	Cs 134m		6E-2
	Cs 134		9E-5
Chlorine (17)	Cl 38	9E-7	4E-3
Chromium (24)	Cr 51		2E-2
Cobalt (27)	Co 57		5E-3
	Co 58		1E-3
	Co 60		5E-4
Copper (29)	Cu 64		3E-3
Dysprosium (66)	Dy 165		4E-3
	Dy 166		4E-4
Erbium (68)	Er 169		9E-4

	Er 171		1E-3
Europium (63)	Eu 152		6E-4
(T/2=9.2 Hrs)			
	Eu 155		2E-3
Fluorine (9)	F 18	2E-6	8E-3
Gadolinium (64)	Gd 153		2E-3
	Gd 159		8E-4
Gallium (31)	Ga 72		4E-4
Germanium (32)	Ge 71		2E-2
Gold (79)	Au 196		2E-3
	Au 198		5E-4
	Au 199		2E-3
Hafnium (72)	Hf 181		7E-4
Hydrogen (1)	H 3	5E-6	3E-2
Indium (49)	In 113m		1E-2
In 114m		2E-4	
Iodine (53)	I 126	3E-9	2E-5
I 131	3E-9	2E-5	
I 132	8E-8	6E-4	
Iodine (53)	I 133	1E-8	7E-5
I 134	2E-7	1E-3	

Iridium (77)	Ir 190	2E-3
	Ir 192	4E-4
	Ir 194	3E-4
Iron (26)	Fe 55	8E-3
	Fe 59	6E-4
Krypton (36)	Kr 85m	1E-6
	Kr 85	3E-6
Lanthanum (57)	La 140	2E-4
Lead (82)	Pb 203	4E-3
Lutetium (71)	Lu 177	1E-3
Manganese (25)	Mn 52	3E-4
	Mn 54	1E-3
	Mn 56	1E-3
Mercury (80)	Hg 197m	2E-3
	Hg 197	3E-3
	Hg 203	2E-4
Molybdenum (42)	Mo 99	2E-3
Neodymium (60)	Nd 147	6E-4
	Nd 149	3E-3
Nickel (28)	Ni 65	1E-3
Niobium(Columbium) (41)	Nb 95 Nb 97	1E-3 9E-3
Osmium (76)	Os 185	7E-4

	Os 191m	3E-2	
	Os 191		2E-3
	Os 193		6E-4
Palladium (46)	Pd 103		3E-3
	Pd 109		9E-4
Phosphorus (15)	P 32		2E-4
Platinum (78)	Pt 191		1E-3
	Pt 193m	1E-2	
	Pt 197m	1E-2	
	Pt 197		1E-3
Polonium (84)	Po 210	2E-10	7E-6
Potassium (19)	K 42		3E-3
Praseodymium (59)	Pr 142		3E-4
	Pr 143		5E-4
Promethium (61)	Pm 147		2E-3
	Pm 149		4E-4
Radium (88)	Ra 226	1E-11	1E-7
	Ra 228	2E-11	3E-7
Rhenium (75)	Re 183		6E-3
	Re 186		9E-4
	Re 188		6E-4

Rhodium (45)	Rh 103m	1E-1
	Rh 105	1E-3
Rubidium (37)	Rb 86	7E-4
Ruthenium (44)	Ru 97	4E-3
	Ru 103	8E-4
	Ru 105	1E-3
	Ru 106	1E-4
Samarium (62)	Sm 153	8E-4
Scandium (21)	Sc 46	4E-4
	Sc 47	9E-4
	Sc 48	3E-4
Selenium	Se 75	3E-3
Silicon (14)	Si 31	9E-3
Silver (47)	Ag 105	1E-3
	Ag 110m	3E-4
	Ag 111	4E-4
Sodium (11)	Na 24	2E-3
Strontium (38)	Sr 85	1E-3
	Sr 89	1E-4
	Sr 91	7E-4
	Sr 92	7E-4

Sulfur (16)	S 35	9E-8	6E-4
Tantalum (73)	Ta 182		4E-4
Technetium (43)	Tc 96m		1E-1
	Tc 96		1E-3
Tellurium (52)	Te 125m		2E-3
	Te 127m		6E-4
	Te 127		3E-3
	Te 129m		3E-4
	Te 131m		6E-4
	Te 132		3E-4
Terbium (65)	Tb 160		4E-4
Thallium (81)	Tl 200		4E-3
	Tl 201		3E-3
	Tl 202		1E-3
	Tl 204		1E-3
Thulium (69)	Tm 170		5E-4
	Tm 171		5E-3
Tin (50)	Sn 113		9E-4
	Sn 125		2E-4
Tungsten(Wolfram) (74)	W 181 W 187		4E-3 7E-4
Vanadium (23)	V 48		3E-4
Xenon (54)	Xe 131m		4E-6

	Xe 133	3E-6	
	Xe 135	1E-6	
Ytterbium (70)	Yb 175	1E-3	
Yttrium (39)	Y 90	2E-4	
	Y 91m	3E-2	
	Y 91	3E-4	
	Y 92	6E-4	
	Y 93	3E-4	
Zinc (30)	Zn 65	1E-3	
	Zn 69m	7E-4	
	Zn 69	2E-2	
Zirconium (40)	Zr 95	6E-4	
	Zr 97	2E-4	
Beta and/or gramma emitting radioactive material not listed above with half-life less than 3 years.		1E-10	1E-6

FOOTNOTES:

[1] Values are given only for those materials normally used as gases.

[2] $mCi\text{-}g^{-1}$ for solids.

NOTE 1: Many radioisotopes disintegrate into isotopes which are also radioactive. In expressing the concentrations in Appendix A, the activity stated is that of the parent isotope and takes into account the daughters.

NOTE 2: For purposes of §175.101(c)(1) where there is involved a combination of isotopes, the limit for the combination should be derived as follows:

Determine for each isotope in the product the ratio between the concentration present in the product and the exempt concentration present in the product and the exempt concentration established in Schedule A for the specific isotope when not in combination. The sum of such ratios may not exceed "1" (**i.e.,** unity).

Example:

Concentration of Isotope A in Product 1 / Exempt concentration of Isotope A	+	Concentration of Isotope B in Product 1 / Exempt concentration of Isotope B	# 1

HISTORICAL NOTE

Appendix A in original publication July 1, 1991.

Polonium (84) added City Record Apr. 3, 2001 eff. May 3, 2001.

Radium (88) added City Record Apr. 3, 2001 eff. May 3, 2001.

Notes:

Appendix A was amended on March 21, 2001 to be consistent with the New York State Sanitary Code, Appendix 16-A, Table 2.

APPENDIX B

EXEMPT QUANTITIES

Radioactive material	Microcuries1
Americium 241	.01
Antimony 122 (Sb 122)	100
Antimony 124 (Sb 124)	10
Antimony 125 (Sb 125)	10
Arsenic 73 (As 73)	100
Arsenic 74 (As 74)	10
Arsenic 76 (As 76)	10
Arsenic 77 (As 77)	100
Barium 131 (Ba 131)	10
Barium 133 (Ba 133)	10
Barium 140 (Ba 140)	10

Beryllium 7 (Be 7)	100
Bismuth 210 (Bi 210)	1
Bromine 82 (Br 82)	10
Cadmium 109 (Cd 109)	10
Cadmium 115m (Cd 115m)	10
Cadmium 115 (Cd 115)	100
Calcium 45 (Ca 45)	10
Calcium 47 (Ca 47)	10
Carbon 14 (C14)	100
Cerium 141 (Ce 141)	100
Cerium 143 (Ce 143)	100
Cerium 144 (Ce 144)	1
Cesium 131 (Cs 131)	1,000
Cesium 134m (Cs 134m)	100
Cesium 134 (Cs 134)	1
Cesium 135 (Cs 135)	10
Cesium 136 (Cs 136)	10
Cesium 137 (Cs 137)	10
Chlorine 36 (Cl 36)	10
Chlorine 38 (Cl 38)	10

Chromium 51 (Cr 51)	1,000
Cobalt 58m (Co 58m)	10
Cobalt 58 (Co 58)	10
Cobalt 60 (Co 60)	1
Copper 64 (Cu 64)	100
Dysprosium 165 (Dy 165)	10
Dysprosium 166 (Dy 166)	100
Erbium 169 (Er 169)	100
Erbium 171 (Er 171)	100
Europium 152 9.2h (Eu 152 9.2h)	100
Europium 152 13 yr (Eu 152 13yr)	1
Europium 154 (Eu 154)	1
Europium 155 (Eu 155)	10
Fluorine 18 (F 18)	1,000
Gadolinium 153 (Gd 153)	10
Gadolinium 159 (Gd 159)	100
Gallium 72 (Ga 72)	10
Germanium 71 (Ga 71)	100
Gold 198 (Au 198)	100
Gold 199 (Au 199)	100
Hafnium 181 (Hf 181)	10
Holmium 166 (Ho 166)	100

Hydrogen 3 (H3)	1,000
Indium 113m (In 113m)	100
Indium 114m (In 114m)	10
Indium 114 (In 114)	1
Indium 115m (In 115m)	100
Indium 115 (In 115)	10
Iodine 125 (I 125)	1
Iodine 126 (I 126)	1
Iodine 129 (I 129)	0.1
Iodine 131 (I 131)	1
Iodine 132 (I 132)	10
Iodine 133 (I 133)	1
Iodine 134 (I 134)	10
Iodine 135 (I 135)	10
Iridium 192 (Ir 192)	10
Iridium 194 (Ir 194)	100
Iron 55 (Fe 55)	100
Iron 59 (Fe 59)	10
Krypton 85 (Kr 85)	100
Krypton 87 (Kr 87)	10

Lanthanum 140 (La 140)	10
Lutetium 177 (Lu 177)	100
Manganese 52 (Mn 52)	10
Manganese 54 (Mn 54)	10
Manganese 56 (Mn 56)	10
Mercury 197m (Hg 197m)	100
Mercury 197 (Hg 197)	100
Mercury 203 (Hg 203)	10
Molybdenum 99 (Mo 99)	100
Neodymium 147 (Nd 147)	100
Neodymium 149 (Nd 149)	100
Nickel 59 (Ni 59)	100
Nickel 63 (Ni 63)	10
Nickel 65 (ni 65)	100
Niobium 93m (Nb 93m)	10
Niobium 95 (Nb 95)	10
Niobium 97 (Nb 97)	10
Osmium 185 (Os 185)	10
Osmium 191m (Os 191m)	100
Osmium 191 (Os 191)	100
Osmium 193 (Os 193)	100

Palladium 103 (Pd 103)	100
Palladium 109 (Pd 109)	100
Phosphorous 32 (P 32)	10
Platinum 191 (Pt 191)	100
Platinum 193m (Pt 193m)	100
Platinum 193 (Pt 193)	100
Platinum 197m (Pt 197m)	100
Platinum 197 (Pt 197)	100
Plutonium 239	.01
Polonium 210 (Po 210)	0.1
Potassium 42 (K 42)	10
Praseodymium 142 (Pr 142)	100
Praseodymium 143 (Pr 143)	100
Promethium 147 (Pm 147)	10
Promethium 149 (Pm 149)	10
Radium 226 (Ra 226)	0.1
Rhenium 186 (Re 186)	100
Rhenium 188 (Re 188)	100
Rhodium 103m (Rh 103m)	100
Rhodium 105 (Rh 105)	100
Rubidium 86 (Rb 86)	10
Rubidium 87 (Rb 87)	10
Ruthenium 97 (Ru 97)	100

Ruthenium 103 (Ru 103)	10
Ruthenium 105 (Ru 105)	10
Ruthenium 106 (Ru 106)	1
Samarium 151 (Sm 151)	10
Samarium 153 (Sm 153)	100
Scandium 46 (Sc 46)	10
Scandium 47 (Sc 47)	100
Scandium 48 (Sc 48)	10
Selenium 75 (Sc 75)	10
Silicon 31 (Si 31)	100
Silver 105 (Ag 105)	10
Silver 110m (Ag 110m)	1
Silver 111 (Ag 111)	100
Sodium 22 (Na 22)	10
Sodium 24 (Na 24)	10
Strontium 85 (Sr 85)	10
Strontium 89 (Sr 89)	1
Strontium 90 (Sr 90)	0.1
Strontium 91 (Sr 91)	10
Strontium 92 (Sr 92)	10
Sulfur 35 (S 35)	100

Tantalum 182 (Ta 182)	10
Technetium 96 (Tc 96)	10
Technetium 97m (Tc 97m)	100
Technetium 97 (Tc 97)	100
Technetium 99m (Tc 99m)	100
Technetium 99 (Tc 99)	10
Tellurium 125m (Te 125m)	10
Tellurium 127m (Te 127m)	10
Tellurium 127 (Tel 127)	100
Tellurium 129m (Te 129m)	10
Tellurium 129 (Te 129)	100
Tellurium 131m (Te 131m)	10
Tellurium 132 (Te 132)	10
Terbium 160 (Tb 160)	10
Thallium 200 (Tl 200)	100
Thallium 201 (Tl 201)	100
Thallium 202 (Tl 202)	100
Thallium 204 (Tl 204)	10
Thulium 170 (Tm 170)	10
Thulium 171 (Tm 171)	10
Tin 113 (Sn 113)	10
Tin 125 (Sn 125)	10
Tungsten 181 (W 181)	10

Tungsten 185 (W 185)				10
Tungsten 187 (W 187)			100	
Vanadium 48 (V 48)				10
Xenon 131m (Xe 131m)		1,000		
Xenon 133 (Xe 133)			100	
Xenon 135 (Xe 135)			100	
Ytterbium 175 (Yb 175)			100	
Yttrium 90 (Y 90)				10
Yttrium 91 (Y 91)				10
Yttrium 92 (Y 92)			100	
Yttrium 93 (Y 93)			100	
Zinc 65 (Zn 65)				10
Zinc 69m (Zn 69m)			100	
Zinc 69 (Zn 69)		1,000		
Zirconium 93 (Zr 93)				10
Zirconium 95 (Zr 95)				10
Zirconium 97 (Zr 97)				10
Any radioactive material not listed above other than alpha emitting radioactive material				0.1
Any alpha radionuclide notlisted above or mixtures of alphaemitters of unknown composition				0.1

[1] To convert microcuries (mCi) to kilobecquerels (kBq), multiply microcuries by 37.

HISTORICAL NOTE

Appendix B in original publication July 1, 1991.

Americium 241 added City Record Mar. 16, 2005 eff. Apr. 15, 2005. [See Vol. 9 Statements of Basis and Purpose No. 23]

Arsenic 73 (As 74) repealed City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 16]

Arsenic 74 (As 74) added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 16]

Beryllium 7 (Be 7) added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 16]

Carbon 14 (C14) added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 16]

Indium 114 (In 114) added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 16]

Plutonium 239 added City Record Mar. 16, 2005 eff. Apr. 15, 2005. [See Vol. 9 Statements of Basis and Purpose No. 23]

Radium 226 (Ra 226) added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 16]

Sodium 22 (Na 22) added City Record Apr. 3, 2001 eff. May 3, 2001. [See Vol. 9 Statements of Basis and Purpose No. 16]

Any alpha radionuclide . . . added (after Zirconium 97) City Record Mar. 16, 2005 eff. Apr. 15, 2005. [See Vol. 9 Statements of Basis and Purpose No. 23]

Notes:

Appendix B was amended on Mar. 10, 2005 to be consistent with 10 CFR Part 30 Appendix B.

Appendix B was amended on March 21, 2001 to be consistent with the New York State Sanitary Code, Appendix 16-A, Table 3.

APPENDIX C

QUANTITIES OF RADIOACTIVE MATERIAL REQUIRING CONSIDERATION OF THE NEED FOR AN EMERGENCY PLAN FOR RESPONDING TO A RELEASE

Radioactive material1	Release fraction	Quantity (curies)2
Actinium-228	0.001	4,000
Americium-241	.001	2
Americium-242	.001	2
Americium-243	.001	2
Antimony-124	.01	4,000
Antimony-126	.01	6,000
Barium-133	.01	10,000
Barium-140	.01	30,000
Bismuth-207	.01	5,000
Bismuth-210	.01	600
Cadmium-109	.01	1,000
Cadmium-113	.01	80
Calcium-45	.01	20,000
Californium-252	.001	9 (20 mg)
Carbon-14 Non CO	.01	50,000
Cerium-141	.01	10,000
Cerium-144	.01	300
Cesium-134	.01	2,000

Cesium-137	.01	3,000	
Chlorine-36	.5	100	
Chromium-51	.01	300,000	
Cobalt-60	.001	5,000	
Copper-64	.01	200,000	
Curium-242	.001	60	
Curium-243	.001	3	
Curium-244	.001	4	
Curium-245	.001	2	
Europium-152	.01	500	
Europium-154	.01	400	
Europium-155	.01	3,000	
Germanium-68	.01	2,000	
Gadolinium-153	.01	5,000	
Gold-198	.01	30,000	
Hafnium-172	.01	400	
Hafnium-181	.01	7,000	
Holmium-166m	.01	10C	
Hydrogen-3	.5	20,000	

Iodine-125	.5	10	
Iodine-131	.5	10	
Indium-114m	.01	1,000	
Iridium-192	.001	40,000	
Iron-55	.01	40,000	
Iron-59	.01	7,000	
Krypton-85	1.0	6,000,000	
Lead-210	.01	8	
Manganese-58	.01	60,000	
Mercury-203	.01	10,000	
Molybdenum-99	.01	30,000	
Neptunium-237	.001	2	
Nickel-63	.01	20,000	
Niobium-94	.01	300	
Phosphorus-32	.5	100	
Phosphorus-33	.5	1,000	
Polonium-210	.01	10	
Potassium-42	.01	9,000	
Promethium-145	.01	4,000	
Promethium-147	.01	4,000	
Ruthenium-106	.01	200	

Samarium-151	.01	4,000
Scandium-46	.01	3,000
Selenium-75	.01	10,000
Silver-110m	.01	1,000
Sodium-22	.01	9,000
Sodium-24	.01	10,000
Strontium-89	.01	3,000
Strontium-90	.01	90
Sulfur-35	.5	900
Technetium-99	.01	10,000
Technetium-99m	.01	400,000
Tellurium-127m	.01	5,000
Tellurium-129m	.01	5,000
Terbium-160	.01	4,000
Thulium-170	.01	4,000
Tin-113	.01	10,000
Tin-123	.01	3,000
Tin-126	.01	1,000
Titanium-44	.01	100
Vanadium-48	.01	7,000

Xenon-133	1.0	900,000	
Yttrium-91	.01	2,000	
Zinc-65	.01	5,000	
Zirconium-93	.01	400	
Zirconium-95	.01	5,000	
Any other beta-gamma emitter	.01	10,000	
Mixed fission products	.01	1,000	
Mixed corrosion products	.01	10,000	
Contaminated equipment beta-gamma	.001	10,000	
Irradiated material, any form other than solid noncombustible	.01	1,000	
Irradiated material, solid noncombustible	.001	10,000	
Mixed radioactive waste, beta-gamma	.01	1,000	
Packaged mixed waste, beta-gamma3	.001	10,000	
Any other alpha emitter	.001	2	
Contaminated equipment, alpha	.0001	20	
Packaged waste, alpha3	.0001	20	
Combination of radioactive materials listed above1			

FOOTNOTES:

1 For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Appendix C exceeds one.

2 To convert curies (Ci) to gigabecquerels (GBq), multiply curies by 37.

3 Waste packaged in Type B containers does not require an emergency plan.

HISTORICAL NOTE

Appendix C in original publication July 1, 1991.

APPENDIX D

CRITERIA RELATING TO USE OF FINANCIAL TESTS AND

PARENT COMPANY GUARANTEES FOR PROVIDING REASONABLE

ASSURANCE OF FUNDS FOR DECOMMISSIONING

I. **Introduction.** An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds will be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This appendix established criteria for passing the financial test and for obtaining the parent company guarantee.

II. **Financial Test.** A. To pass the financial test, the parent company must meet the criteria of either paragraph A.1 or A.2 of this section:

1. The parent company must have:

i. Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used); and

iii. tangible net worth of at least $10 million; and

iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used).

2. The parent company must have:

i. A current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. tangible net worth of at least $10 million; and

iii. tangible net worth at least six times the current decommissioning cost estimate (or prescribed amount if a certification is used); and

iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used).

B. The parent company's independent certified public accountant must have compacted the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Department within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

C. 1. After the initial financial test, the parent company must repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

2. If the parent company no longer meets the requirements of paragraph A of this section, the license, the licensee

must send notice to the Department of intent to establish alternate financial assurance as specified in this Code. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. **Parent Company Guarantee.** The terms of a parent company guarantee which an applicant or licensee obtains must provide that:

A. The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Department, as evidenced by the return receipts.

B. If the licensee fails to provide alternate financial assurance as specified by this Code within 90 days after receipt by the licensee and Department of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

C. The parent company guarantee and financial test provisions must remain in effect until the Department has terminated the license.

D. If a trust is established for decommissioning costs, the trustee and trust must be acceptable to the Department. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

HISTORICAL NOTE

Appendix D in original publication July 1, 1991.

APPENDIX E

CRITERIA RELATING TO USE OF FINANCIAL TESTS AND

SELF GUARANTEES FOR PROVIDING REASONABLE

ASSURANCE OF FUNDS FOR DECOMMISSIONING

I. **Introduction.** An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of section II of this appendix. The terms of the self-guarantee are in section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. **Financial Test.** A. To pass the financial test, a company must meet all of the following criteria:

1. tangible net worth at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

2. assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

3. A current rating for its most recent bond issuance of AAA, AA or A as issued by Standard and Poor's or Aaa, Aa

or A as issued by Moody's.

B. To pass the financial test, a company must meet all of the following additional requirements:

1. the company must have at least one class of equity securities registered under the Securities Exchange Act of 1934.

2. the company's independent certified public accountant must have compared the data used by the company in the financial test which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Department within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

3. After the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

C. If the licensee no longer meets the requirements of Section II.A. of this appendix, the licensee must send immediate notice to the Department of its intent to establish alternate financial assurance as specified in this Code within 120 days of such notice.

III. **Company Self-Guarantee.** The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

A. The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Department, as evidenced by the return receipt.

B. The licensee shall provide alternative financial assurance as specified in this Code within 90 days following receipt by the Department of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Department has terminated the license or until another financial assurance method acceptable to the Department has been put into effect by the licensee.

D. The licensee will promptly forward to the Department and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of Section 13 of the Securities and Exchange Act of 1934.

E. If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee will provide notice in writing of such fact to the Department within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of Section II.A. of this appendix.

F. The applicant or licensee must provide to the Department a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Department, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

HISTORICAL NOTE

Appendix E in original publication July 1, 1991.

Rules of the City of New York

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

24 RCNY 175.102

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.102 Requirements for specific types of radioactive materials licenses.

(a) **Types of license.** (1) For the purposes of §5.07(a) and §175.05 of this Code, the following special designations of radioactive materials licenses shall apply:

(i) A specific license of limited scope for teletherapy means a license that authorizes receipt, acquisition, ownership, possession, use and transfer of specified quantities and types of radioactive material for use in teletherapy programs.

(ii) A specific license of limited scope for medical use means a license that authorizes receipt, acquisition, ownership, possession, use and transfer of specified quantities and types of radioactive material for use in or on humans in a medical program, but does not include teletherapy.

(iii) A specific license of limited scope for other use means a license that authorizes receipt, production,

acquisition, ownership, possession, use and transfer of specified quantities and types of radioactive material for uses other than in or on humans.

(iv) A specific license of broad scope for medical use means a license that authorizes receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of the radioactive materials specified in the license, for use in or on humans in a medical program, but does not include teletherapy.

(v) A specific license of broad scope for research and development means a license that authorizes receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive materials specified in the license, in quantities not exceeding those specified in the license, for uses other than in or on humans.

(b) The requirements specified in this section are in addition to, and not in substitution for, others in this Code. In particular, the provisions of §175.101 apply to all license applications and all specific radioactive materials licenses.

(c) **Specific licenses for human use of radioactive materials in institutions.** (1) An application by an institution for a specific license for medical use of radioactive material will be approved if:

(i) the applicant satisfies the requirements specified in §175.101 and §175.103 of this Code; and

(ii) the applicant possesses adequate facilities for the clinical care of patients; and

(iii) the physician(s) designated on the application as the individual authorized user(s) has training and experience as specified in §175.103(j) in the proposed use, the handling and administration of radionuclides and the clinical management of radioactive patients. The physician shall furnish evidence of such experience with his/her application. A statement from his/her preceptor at the institution where he/she acquired such training and experience, indicating their amount and nature, may be submitted as evidence of such experience.

(iv) If the application is for a license to use unspecified quantities or multiple types of radioactive materials with atomic numbers 3 through 83 the applicant shall have had previous experience operating under a specific institutional license and have been engaged in the use of radioisotopes in medical research, as well as routine diagnosis and therapy.

(v) The license application is signed by the chairman of the radiation safety committee and an authorized representative of the institution.

(d) **Specific licenses to individual physicians for human use of radioactive materials.** (1) An application by an individual physician for a specific license for human use of radioactive material will be approved if:

(i) the applicant satisfies the requirements specified in §175.101 and §175.103 of this Code; and

(ii) the applicant has training and experience as specified in §175.103(j) in the proposed use, the handling and administration of radionuclides, and the clinical management of radioactive patients. The physician shall furnish evidence of such training and experience with his/her application. A statement from his/her preceptor at the institution where he/she acquired such training and experience, indicating their amount and nature, may be submitted as evidence of such experience.

(e) **Specific licenses of broad scope.** (1) A specific license of broad scope shall be issued only to medical institutions or institutions of higher education; such licenses shall not be issued to individuals.

(2) An application for a specific license of broad scope will be approved if:

(i) the applicant satisfies the general requirements specified in §175.101(e) of this Code; and

(ii) the applicant has engaged in a reasonable number of activities involving the use of radioactive material; and

(iii) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control, and accounting and management review that are necessary to assure safe operations, including:

(A) the establishment of a radiation safety committee pursuant to §175.03 of this Code; and

(B) the appointment of a full-time radiation safety officer pursuant to §175.03 of this Code; and

(C) the establishment of appropriate administrative procedures to assure:

(a) control of procurement and use of radioactive material; and

(b) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures; and

(c) review, approval, and recording by the radiation safety committee of safety evaluations of proposed uses prepared in accordance with §175.102(e)(2)(iii)(C)(**b**) prior to the use of radioactive materials.

(3) The following are conditions of all specific licenses of broad scope:

(i) Unless specifically authorized pursuant to other provisions of this Code, broad scope licensees shall not:

(A) conduct tracer studies in the environment involving direct release of radioactive material;

(B) receive, acquire, own, possess, use, transfer, or import devices containing 3.7 E6 GBq (100,000 Ci) or more of radioactive material in sealed sources used for irradiation of materials;

(C) add, or cause the addition of, radioactive material to any food, beverage, cosmetic, drug or other product designed for ingestion by, or application to, a human being except as authorized in the license.

(f) **Specific licenses for non-human use.** (1) An application for a specific license authorizing non-human use of radioactive materials will be approved if:

(i) the applicant satisfies the general requirements specified in §175.101(e) of this Code; and

(ii) the applicant, or the applicant's personnel, has training and experience commensurate with the proposed amounts, types and uses of radioactive materials which shall include at a minimum:

(A) a college degree at the bachelor level in a physical, biological, environmental or engineering science; and

(B) at least forty (40) hours of training and experience in the safe handling of radioactive materials appropriate to the type and forms of such materials to be used, which shall include:

(a) characteristics of ionizing radiation;

(b) units of radiation dose and quantities;

(c) radiation detection instrumentation; and

(d) biological hazards of exposure to radiation.

(g) **General licenses.** (1) A general license is hereby issued to own radioactive material without regard to quantity. Notwithstanding any other provisions of this Code, this general license does not authorize the manufacture, production,

transfer, receipt, possession or use of radioactive material.

(2) **Source material.** (i) A general license is hereby issued authorizing use and transfer of not more than 6.8 kilograms (15 pounds) of source material at any one time by persons in the following categories:

(A) pharmacists using the source material solely for the compounding of medicinals; (B) physicians using the source material for medicinal purposes;

(C) persons receiving possession of source material from pharmacists and physicians in the form of medicinals or drugs;

(D) commercial and industrial firms, and research, educational, and medical institutions for research, development, educational or commercial purposes;

and provided, that no such person shall, pursuant to this general license, receive more than 68 kilograms (150 pounds) of source material in any one (1) calendar year.

(ii) Persons who transfer, receive, possess or use source material pursuant to the general license issued in §175.102(g)(2)(i) are exempt from the provisions of §175.03, §175.04, §175.06, §175.104 and §175.105 of this Code to the extent that such transfer, receipt, possession or use is within the terms of such general license, provided however, that this exemption shall not be deemed to apply to any such person who is also in possession of source material under a specific license issued pursuant to this Code.

(iii) A general license is hereby issued authorizing the receipt of title to source material without regard to quantity. This general license does not authorize any person to transfer, receive, possess or use source material.

(3) **Certain devices and equipment.** (i) A general license is hereby issued to transfer, receive, possess or use radioactive material incorporated in the following devices or equipment which have been manufactured, tested and labeled in accordance with a specific license issued by the Department, the U.S. Nuclear Regulatory Commission or an agreement state, authorizing distribution under this general license or its equivalent.

(A) Static elimination devices. Devices designed for use as static eliminators which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 mCi) of polonium-210 per device.

(B) Ion generating tubes. Devices designed for ionization of air which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 mCI) of polonium-210 per device or a total of not more than 1.85 GBq (50 mCi) per device.

(4) **Certain measuring, gauging or controlling devices.** (i) A general license is hereby issued to receive, possess or use radioactive material when contained in devices used at a fixed location and designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere, when such devices are manufactured or imported in accordance with the specifications contained in a specific license issued to the supplier by the Department, the U.S. Nuclear Regulatory Commission or an agreement state, and authorizing distribution under this general license or its equivalent, provided that:

(A) such devices are labeled in accordance with the provisions of the specific license which authorizes the distribution of the devices;[1]5

(B) such devices bear a label containing the following or a substantially similar statement which contain the information called for in the following statement:

The transfer, receipt, possession or use of this device, Model[2]_____ , Serial6 number[2]

_____ , are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or of a State with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. Removal of this label is prohibited.

CAUTION-RADIOACTIVE MATERIAL

_____

(Name of supplier[2])

(C) such devices are installed on the premises of the general licensee by a person authorized to install such devices under a specific license issued to the installer by the Department, the U.S. Nuclear Regulatory Commission or an agreement state, if a label affixed to the device at the time of receipt states that installation by a specific licensee is required. This requirement does not apply while devices are held in storage in the original shipping container pending installation by a specific licensee.

(ii) Persons who receive, possess or use a device pursuant to the general license of §175.102(g)(3)(i):

(A) shall, within ten (10) days after the receipt of the device, notify the Department of the type of device and the name and address of the supplier;

(B) shall not transfer, abandon, or dispose of the device except by transfer to a person duly authorized to receive such device by a specific license issued by the Department, the U.S. Nuclear Regulatory Commission or an agreement state, and shall furnish to the Department, within thirty (30) days after any such transfer, a report containing the name of the manufacturer of the device, the type of device, the manufacturer's serial number of the device, and the name and address of the person receiving the device;

(C) shall assure that all labels affixed to the device at the time of receipt and bearing the statement, "Removal of this label is prohibited" are maintained thereon and shall comply with all instructions contained in such labels;

(D) shall have the device tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at the time of installation of the device or replacement of the radioactive material on the premises of the general licensee and thereafter at no longer than six (6) month intervals or at such longer intervals not to exceed three (3) years as are specified in the label required by §175.102(g)(3)(i)(A), provided, that devices containing only krypton-85 need not be tested for leakage, and devices containing only hydrogen-3 need not be tested for any purpose;

(E) shall have all the tests required by §175.102(g)(3)(ii)(D) and all other services involving the radioactive material, its shielding and containment, performed by the supplier or other person duly authorized by a specific license issued by the Department, the U.S. Nuclear Regulatory Commission or an agreement state, to manufacture, install or service such devices;

(F) shall, within thirty (30) days after the occurrence of a failure or of damage to the shielding of the radioactive material or the on-off mechanism or indicator or upon the detection of 0.185 kBq (0.005 mCi) or more of removable radioactive material, furnish to the Department a report containing the name of the manufacturer of the device and a brief description of the event and the remedial action taken; and shall maintain records of all tests performed on the devices as required herein, including the dates and results of the tests and the names of the persons conducting the tests;

(G) shall, upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding or containment of the radioactive material or the on-off mechanism or indicator, immediately suspend operation of the device until it has been repaired by a person holding a specific license issued by the Department, the U.S. Nuclear Regulatory Commission or an agreement state, to manufacture, install or service such devices, or disposed of by transfer to a person holding a specific license issued by the Department, the U.S. Nuclear Regulatory Commission

or an agreement state to receive the radioactive material contained in the device;

(H) shall be exempt from the provisions of §175.03, §175.04, §175.06, §175.104 and §175.105 of this Code, except that such persons shall comply with the provisions of §175.03(l)(1).

(iii) Any holder of a license issued by the Department, the U.S. Nuclear Regulatory Commission or an agreement state which authorizes the holder to manufacture, install or service a device subject to the general license in §175.102(g)(3)(i), and which is not limited as to specific installation or installations, may install or service such devices without obtaining a license from the Department provided that:

(A) such person shall file a report with the Department within thirty (30) days after the end of each calendar quarter in which any device is transferred to or installed within the Department's jurisdiction. Each such report shall identify the name and address of each person receiving a device, the type of device transferred, and the quantity and type of radioactive material contained in the device;

(B) the device is manufactured, labeled, installed and serviced in accordance with terms and conditions of the license issued to such person;

(C) such person shall assure that any labels required to be affixed to the device bear a statement that "Removal of this label is prohibited"; and

(D) the person to whom such device is transferred, or on whose premises such device is installed or serviced, has a copy of the general license requirements or equivalent requirements specified in §175.102(g)(3)(ii).

(iv) The Department may withdraw, limit or qualify its acceptance of any specific license issued by another agency, or any product distributed pursuant to such licensing document, upon determining that such action is necessary to prevent undue hazard to public health and safety or property.

(4) **Luminous safety devices for aircraft.** (i) A general license is hereby issued to receive, possess or use hydrogen-3 or promethium-147 contained in luminous safety devices for use in aircraft, provided:

(A) each device contains not more than 370 GBq (10 Ci) of hydrogen-3 or 11.1 GBq (300 mCi) of promethium-147; and

(B) each device has been manufactured, assembled or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, or each device has been manufactured, assembled or imported in accordance with the specifications contained in a specific license issued by the Department or an agreement state pursuant to licensing requirements equivalent to those in §32.53 of 10 CFR Part 32.

(ii) Persons who receive, possess or use luminous safety devices pursuant to the general license in §175.102(g)(4)(i) are exempt from the provisions of §175.03, §175.04, §175.06, §175.104 and §175.105 of this Code, except that such persons shall comply with the provisions of §175.03(l)(1).

(iii) This general license does not authorize the manufacture, assembly or repair of luminous safety devices containing hydrogen-3 or promethium-147.

(iv) This general license does not authorize the receipt, possession or use of promethium-147 contained in instrument dials.

(5) **Calibration and reference sources.** (i) A general license is hereby issued to those persons listed below to transfer, receive, possess or use, in accordance with the provisions of §175.102(g)(5)(iii) and (iv), americium-241 in the form of calibration or reference sources:

(A) any person who holds a specific license issued by the Department, the New York State Department of Health or the New York State Department of Labor which authorizes the transfer, receipt, possession or use of radioactive material; and

(B) any person who holds a specific license issued by the U.S. Nuclear Regulatory Commission which authorizes the transfer, receipt, possession or use of special nuclear material.

(ii) A general license is hereby issued to transfer, receive, possess or use plutonium in the form of calibration or reference sources in accordance with the provisions of §175.102(g)(5)(iv) and (v) to any person who holds a specific license issued by the Department, the New York State Department of Health or the New York State Department of Labor which authorizes the transfer, receipt, possession or use of radioactive material.

(iii) The general licenses in §175.102(g)(5)(i) and (ii) apply only to calibration or reference sources which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer or importer of the sources by the U.S. Nuclear Regulatory Commission pursuant to §32.57 of 10 CFR Part 32 or §70.39 of 10 CFR Part 70 or which have been manufactured or imported in accordance with the specifications contained in a specific license issued by the Department or an agreement state pursuant to licensing requirements equivalent to those contained in §32.57 of 10 CFR Part 32 or §70.39 of 10 CFR Part 70.

(iv) Persons who transfer, receive, possess or use one or more calibration or reference sources pursuant to these general licenses:

(A) shall not possess at any one time, at any one location of storage or use, more than 185 kBq (5 mCi) of americium-241 and 185 kBq (5 mCi) of plutonium in such sources;

(B) shall not transfer, receive, possess or use such source unless the source, or the storage container, bears a label which includes the following statement or a substantially similar statement which contains the information called for in the following statement:

The transfer, receipt, possession or use of this device, Model_____ , Serial number _____ , are subject to a general license and the regulations of the U.S. Nuclear Regulatory Commission or of a State with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label. CAUTION-RADIOACTIVE MATERIAL-THIS SOURCE CONTAINS (AMERICIUM-241) (PLUTONIUM)^{37}. DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

_____

(Name of manufacturer or importer);

(C) shall not transfer, abandon or dispose of such source except by transfer to a person authorized by a license from the Department, the U.S. Nuclear Regulatory Commission or an agreement state to receive the source;

(D) shall store such source, except when the source is being used, in a closed container adequately designed and constructed to contain americium-241 or plutonium which might otherwise escape during storage; and

(E) shall not use such source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(v) These general licenses do not authorize the manufacture of calibration or reference sources containing americium-241 or plutonium.

(vi) A general license is hereby issued to transfer, receive, possess or use sealed radioactive materials sources in individual quantities each of which does not exceed the applicable quantity set forth in Appendix B of §175.101 of this

Code, to any person who holds a specific license issued by the Department.

(vii) Persons who transfer, receive, possess or use sources pursuant to the general license in §175.102(g)(5)(vi):

(A) shall not transfer, abandon or dispose of such sources except by transfer to a person duly authorized to receive such sources by the Department, the U.S. Nuclear Regulatory Commission or an agreement state; and

(B) shall store such sources, except when being used, in a secure location.

(6) **Ice detection devices.** (i) A general license is hereby issued to transfer, receive, possess or use strontium-90 contained in ice detection devices, provided each device contains not more than 1.85 MBq (50 mCi) of strontium-90 and each device has been manufactured or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to §32.61 of 10 CFR Part 32 or by the Department or an agreement state pursuant to licensing requirements equivalent to those contained in §32.61 of 10 CFR Part 32.

(ii) Persons who transfer, receive, possess or use strontium-90 contained in ice detection devices pursuant to this general license:

(A) shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from overheating, to the device, discontinue use of the device until it has been inspected, tested for leakage and repaired by a person holding a specific license from the U.S. Nuclear Regulatory Commission or an agreement state to manufacture or service such devices; or shall dispose of the device pursuant to §175.104 of this Code;

(B) shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereon; and

(C) are exempt from the provisions of §175.03, §175.04, §175.06 and §175.105 of this Code, except that such persons shall comply with the provisions of §175.03(l)(1).

(iii) This general license does not authorize the manufacture, assembly, disassembly or repair of strontium-90 sources in ice detection devices.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

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Rules of the City of New York

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

24 RCNY 175.103

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.103 Medical use of radioactive materials.

(a) **General information.** (1) **Purpose and scope.** This section establishes requirements and provisions for the use of radioactive material in the healing arts and for issuance of licenses authorizing the medical use of this material. These requirements and provisions provide for the protection of the public health and safety. The requirements and provisions of this section are in addition to, and not in substitution for, others in this Code. The requirements and provisions of this Code apply to applicants and licensees subject to this section unless specifically exempted.

(2) **License required.** (i) No person shall manufacture, produce, acquire, receive, possess, use, or transfer radioactive material for medical use except in accordance with a specific license issued pursuant to this section or as otherwise provided in this section.

(ii) Unless prohibited by license condition an individual may receive, possess, use, or transfer radioactive material in accordance with this Code under the supervision of an authorized user as provided in §175.103(b)(5).

(3) **Application for license, amendment or renewal.** (i) If the application is for medical use sited in a medical institution, only the institution's management may apply. If the application is for medical use not sited in a medical institution, any professional practitioner may apply.

(ii) An application for a license for medical use of radioactive material, or renewal thereof, must be made by filing an original and one copy on Form BRC-M100, "Application for Radioactive Materials License". A request for license amendment may be submitted as an original and one copy in letter format.

(4) **License amendments.** A licensee shall apply for and shall have received a license amendment before:

(i) receiving or using radioactive material for a method or type of medical use not permitted by the license;

(ii) permitting anyone, except a visiting authorized user as specified by license condition, to work as an authorized user under the license;

(iii) changing the radiation safety officer or radiation therapy physicist;

(iv) receiving radioactive material in excess of the amount, or radionuclide or form different from that authorized by the license;

(v) adding to or changing the area of use or mailing address identified on the license; and

(vi) changing statements, representations, and procedures which are incorporated by reference into the license.

(5) **Notifications.** A licensee shall notify the Department in writing within 30 days when an authorized user, radiation safety officer, or radiation therapy physicist, permanently discontinues performance of duties under the license. This requirement is not intended to relieve the licensee of the requirements of §175.103(a)(4).

(b) **General administrative requirements.** (1) **ALARA Program.**

(i) Each licensee shall develop and implement a written program to maintain radiation doses and releases of radioactive material in effluents to unrestricted areas as low as reasonably achievable in accordance with §175.03(b) of this Code.

(ii) To satisfy the requirement of §175.103(b)(1)(i):

(A) for licensees that are medical institutions, the management, radiation safety officer and all authorized users shall participate in the establishment, implementation, and operation of the program as required by this Code or required by the radiation safety committee; or

(B) for licensees that are not medical institutions, management and all authorized users shall participate in the program as requested by the radiation safety officer.

(iii) The ALARA program shall include notice to workers of the program's existence and workers' responsibility to help keep dose equivalents ALARA.

(iv) The ALARA program shall include an annual review by the radiation safety committee for licensees that are medical institutions, or management, all authorized users and the radiation safety officer for licensees that are not medical institutions, of summaries of the types and amounts of radioactive material used, occupational dose reports, and continuing education and training for all personnel who work with or in the vicinity of radioactive material.

(v) The purpose of the review required by §175.103(b)(1)(iv) is to ensure that individuals make every reasonable effort to maintain occupational doses, doses to the general public, and releases of radioactive material to unrestricted

areas as low as reasonably achievable, taking into account the state of technology, and the cost of improvements in relation to benefits.

(vi) The licensee shall retain a current written description of the ALARA program for the duration of the license. The written description must include:

(A) a commitment by management to keep occupational doses as low as reasonably achievable;

(B) a requirement that the radiation safety officer brief management once each year on the radiation safety program;

(C) personnel exposure investigational levels that, when exceeded, will initiate an investigation by the radiation safety officer of the cause of the exposure; and

(D) personnel exposure investigational levels that, when exceeded, will initiate a prompt investigation by the radiation safety officer of the cause of the exposure and a consideration of actions that might be taken to reduce the probability of recurrence.

(2) **Radiation safety officer.** (i) A licensee shall appoint a radiation safety officer responsible for implementing the radiation safety program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's radioactive material program.

(ii) The radiation safety officer shall:

(A) investigate overexposures, misadministrations, accidents, spills, losses, thefts, unauthorized receipts, uses, transfers, and disposals, and other deviations from approved radiation safety practice and implement corrective actions as necessary;

(B) establish, implement and maintain written policy and procedures for:

(a) authorizing the purchase of radioactive material;

(b) receiving and opening packages of radioactive material;

(c) storing radioactive material;

(d) keeping an inventory record of radioactive material;

(e) using radioactive material safely;

(f) taking emergency action if control of radioactive material is lost;

(g) performing periodic radiation surveys;

(h) performing checks of survey instruments and other safety equipment;

(i) disposing of radioactive material;

(j) training personnel who work in or frequent areas where radioactive material is used or stored; and

(k) keeping copies of this Code, all records and reports required by this Code, each licensing request and license and amendments, and the written policies and procedures required by this Code;

(C) brief management at least once each year on the radioactive materials program; and

(D) for medical use sited at a medical institution, assist the radiation safety committee in the performance of its duties; or

(E) for medical use not sited at a medical institution, approve or disapprove radiation safety program changes with the advice and consent of management prior to submittal to the Department for licensing action.

(3) **Radiation safety committee.** Each medical institution licensee shall establish a radiation safety committee to oversee the use of radioactive material.

(i) The committee shall meet the following administrative requirements:

(A) Membership shall consist of at least three individuals and shall include an authorized user of each type of use permitted by the license, the radiation safety officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor the radiation safety officer. Other members may be included as the licensee deems appropriate.

(B) The committee shall meet at least quarterly.

(C) To establish a quorum and to conduct business, at least one-half of the committee's membership shall be present, including the radiation safety officer and the management's representative.

(D) The minutes of each radiation safety committee meeting shall include:

(a) the date of the meeting;

(b) members present;

(c) members absent;

(d) summary of deliberations and discussions;

(e) recommended actions and the numerical results of all ballots; and

(f) document any reviews required in §175.103(b)(1)(iv) and (b)(3)(ii).

(E) The committee shall provide each member with a copy of the meeting minutes, and retain one copy for the duration of the license.

(ii) To oversee the use of licensed material, the committee shall:

(A) be responsible for monitoring the institutional program to maintain individual and collective doses as low as reasonably achievable;

(B) review, on the basis of safety and with regard to the training and experience standards of this Code, and approve or disapprove any individual who is to be listed as an authorized user, the radiation safety officer, or radiation therapy physicist before submitting a license application or request for amendment or renewal;

(C) review on the basis of safety and approve or disapprove each proposed method of use of radioactive material;

(D) review on the basis of safety, and approve or disapprove with the advice and consent of the radiation safety officer and the management representative, minor changes in radiation safety procedures that are not potentially important to safety and are permitted under §175.103(b)(3)(iii);

(E) review on the basis of safety, and approve or disapprove with the advice and consent of the radiation safety officer and the management representative, procedures and radiation safety program changes prior to submittal to the Bureau of Radiological Health for licensing action;

(F) review quarterly, with the assistance of the radiation safety officer, occupational radiation exposure records of all personnel working with radioactive material;

(G) review quarterly, with the assistance of the radiation safety officer, all incidents involving radioactive material with respect to cause and subsequent actions taken;

(H) review annually, with the assistance of the radiation safety officer, the radioactive materials program; and

(I) establish a table of investigational levels for occupational dose that, when exceeded, will initiate investigations and considerations of action by the radiation safety officer.

(iii) A licensee may make minor changes in radiation safety procedures that are not potentially important to safety (**e.g.** editing of procedures for clarity, updating names or telephone numbers, replacement of equipment or assignment of service contracts), except for changes in §175.103(a)(4) or §175.103(i)(3). A licensee is responsible for assuring that any change made is in compliance with the requirements of this Code and the license.

(iv) A licensee shall retain a record of each change made pursuant to §175.103 (b)(3)(iii) until the license has been renewed or terminated. The record must include the effective date of the change, a copy of the old and new radiation safety procedures, the reason for the change, a summary of radiation safety matters that were considered before making the change, the signature of the radiation safety officer, and the signatures of the affected authorized user and of management or, in a medical institution, the radiation safety committee's chairman and the management representative.

(4) **Statement of authorities and responsibilities.** (i) A licensee shall provide the radiation safety officer, and at a medical institution the radiation safety committee, sufficient authority and organizational freedom to:

(A) identify radiation safety problems;

(B) initiate, recommend, or provide corrective actions; and

(C) verify implementation of corrective actions.

(ii) A licensee shall establish in writing the authorities, duties, responsibilities, and radiation safety activities of the radiation safety officer, and at a medical institution the radiation safety committee, and retain the current edition of these statements for the duration of the license.

(5) **Supervision.** (i) A licensee who permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user as allowed by §175.103(a)(2) shall:

(A) instruct the supervised individual in the principles and practices of radiation protection, radioactivity measurement standardization and monitoring techniques and instruments, mathematics and calculations basic to the use and measurement of radioactivity, and biological effects of radiation which are appropriate to that individual's use of radioactive material;

(B) if the supervised individual is a professional practitioner, provide further instruction by the supervising authorized user which shall include that training stipulated in §175.103(j) which is appropriate for the uses in which the supervised individual is being trained. The licensee shall maintain records of such training for three years.

(C) require the supervising authorized user to periodically review the supervised individual's use of radioactive material, review records kept to reflect this use, and provide reinstruction as needed; and

(D) require that only those individuals specifically trained, and designated by the authorized user, shall be permitted to administer radionuclides or radiation to patients.

(ii) A licensee shall require the supervised individual receiving, possessing, using or transferring radioactive material under §175.103(a)(2) to:

(A) follow the instructions of the supervising authorized user;

(B) follow the procedures established by the radiation safety officer; and

(C) comply with this Code and the license conditions with respect to the use of radioactive material.

(iii) Personnel, other than physicians or registered professional nurses, at institutional licensees involved in the performance of diagnostic procedures utilizing radioactive material which includes performing parenteral administration of radioactive material by intravenous, intramuscular or subcutaneous methods shall:

(A) have satisfactorily completed an educational program in nuclear medicine technology accredited by the Committee on Allied Health Education and Accreditation or the accrediting agency of the state in which the program was completed, provided such state accreditation requires education and training in the above methods of parenteral administration; or

(B) possess certification as a nuclear medicine technologist by the American Registry of Radiologic Technologists or certification by the Nuclear Medicine Technology Board; and

(iv) prior to permitting parenteral administration by a nuclear medicine technologist, the medical board of a hospital, or the radiation safety committee of an institution who have no medical board, shall adopt with governing authority approval:

(A) procedures to assure that the nuclear medicine technologist possesses the education and training or certification set forth in §175.103(b)(5)(iii) and is proficient in the competent performance of parenteral administration; and

(B) requirements for authorized user physician which at a minimum shall require supervision by such a physician on the premises when parenteral administration of radioactive material for diagnostic testing is performed by a qualified nuclear medicine technologist.

(v) A licensee that supervises an individual is responsible for the acts and omissions of the supervised individual.

(6) **Suppliers.** (i) A licensee may use for medical use only:

(A) radioactive material manufactured, labeled, packaged, and distributed in accordance with a license issued for such activities by an Agreement State or the U.S. Nuclear Regulatory Commission; and

(B) reagent kits that have been manufactured, labeled, packaged, and distributed in accordance with an approval issued by the U.S. Department of Health and Human Services, Food and Drug Administration ("FDA"); and

(C) teletherapy sources manufactured and distributed in accordance with a license issued pursuant to 10 CFR Part 30 or the equivalent regulations of an Agreement State.

(c) **General technical requirements.** (1) **Possession, use, calibration, and check of dose calibrators.**

(i) A medical use licensee authorized to administer radioactive materials shall possess a dose calibrator and use it to measure the amount of activity administered to each patient.

(ii) A licensee shall:

(A) check each dose calibrator for constancy with a dedicated check source at the beginning of each day of use. To satisfy this requirement, the check must be done on a frequently used setting with a sealed source of not less than 370 kBq (10 mCi) of radium-226 or 1.85 MBq (50 mCi) of any other photon-emitting radionuclide with a half-life greater than 90 days; and

(B) test each dose calibrator for accuracy upon installation and at intervals not to exceed 12 months thereafter by assaying at least 2 sealed sources containing different radionuclides, the activity of which the manufacturer has determined by traceability to a national standard to be within 5 percent of the stated activity, with minimum activity of 370 kBq (10 mCi) for radium-226 and 1.85 MBq (50 mCi) for any other photon-emitting radionuclide, and at least one of which has a principal photon energy between 100 keV and 500 keV; and

(C) test each dose calibrator for linearity upon installation and at intervals not to exceed three months thereafter over the range of use between 370 kBq (10 mCi) and the highest dosage that will be administered; and

(D) test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator.

(iii) Notwithstanding the provisions of §175.103(c)(1)(ii), a licensee that must use a dose calibrator to measure the activity of beta-emitting radioactive materials to be administered to a patient shall perform additional checks specified in §175.103(c)(1)(ii)(A) and (B) using the same radionuclide to be administered and having an activity of at least 50 percent, but not more than 200 percent, of the prescribed activity or by equivalent procedures approved by the Department. Records shall be kept pursuant to §175.103(c)(1)(vi).

(iv) A licensee shall mathematically correct dosage readings for any geometry or linearity error that exceeds ± 10 percent if the dosage is greater than 370 kBq (10 mCi) and shall repair or replace the dose calibrator if the accuracy or constancy error exceeds ± 10 percent.

(v) A licensee shall also perform checks and tests required by §175.103(c)(1)(ii) following adjustment or repair of the dose calibrator.

(vi) A licensee shall retain a record of each check and test required by §175.103(c)(1)(ii), (iii), and (v) for 3 years. Such records shall include:

(A) for §175.103(c)(1)(ii)(A), the models and serial numbers of the dose calibrator and check source, the identity and calibrated activity of the radionuclide contained in the check source, the date of the check, the activity measured, the instrument settings, and the name of the individual who performed the check;

(B) for §175.103(c)(1)(ii)(B), the model and serial number of the dose calibrator, the model and serial number of each source used and the identity of the radionuclide contained in the source and its activity, proof of traceability to a national standard, the date of the test, the results of the test, the instrument settings, and the signature of the radiation safety officer;

(C) for §175.103(c)(1)(ii)(C), the model and serial number of the dose calibrator, the calculated activities, the measured activities, the date of the test, and the signature of the radiation safety officer; and

(D) for §175.103(c)(1)(ii)(D), the model and serial number of the dose calibrator, the configuration and calibrated activity of the source measured, the activity of the source, the activity measured and the instrument setting for each volume measured, the date of the test, and the signature of the radiation safety officer.

(2) **Calibration and check of survey instruments.** (i) A licensee shall ensure that the survey instruments used to show compliance with this Code have been calibrated before first use, annually, and following repair.

(ii) To satisfy the requirements of §175.103(c)(2)(i) the licensee shall:

(A) calibrate all scales with readings up to 10 mSv (1000 mrem) per hour with a radiation source, the intensity of which is determined to within 10 percent accuracy;

(B) for each scale that shall be calibrated, calibrate two readings at approximately one-third and two-thirds of the full scale reading; and

(C) conspicuously note on the instrument the apparent exposure rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(iii) To satisfy the requirements of §175.103(c)(2)(ii) the licensee shall:

(A) consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 10 percent; and

(B) consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 20 percent and if a correction chart or graph is conspicuously attached to the instrument.

(iv) A licensee shall check each survey instrument for proper operation with the dedicated check source before each use. The licensee shall not be not required to keep records of these checks.

(v) The licensee shall retain a record of each calibration required in §175.103(c)(2)(i) for 3 years. The record shall include:

(A) a description of the calibration procedure; and

(B) a description of the source used and the certified exposure rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, the signature of the individual who performed the calibration and the date of calibration.

(vi) To meet the requirements of §175.103(c)(2)(i), (ii) and (iii), the licensee shall perform such calibrations as authorized by specific license condition or shall obtain the services of persons licensed by the U.S. Nuclear Regulatory Commission or an agreement state to perform calibrations of survey instruments. Records of calibrations which contain information required by §175.103(c)(2)(v), shall be maintained by the licensee.

(3) **Assay of radiopharmaceutical dosages.** A licensee shall:

(i) assay, before medical use, the activity of each radiopharmaceutical dosage that contains more than 370 kBq (10 mCi) of any radionuclide;

(ii) assay, before medical use, the activity of each radiopharmaceutical dosage with a prescribed activity of 370 kBq (10 mCi) or less of a photon-emitting radionuclide to verify that the dosage does not exceed 370 kBq (10 mCi); and

(iii) Retain a record of the assays required by §175.103(c)(3)(i) and (ii) for 3 years. To satisfy this requirement, the record shall contain the:

(A) generic name, trade name, or abbreviation of the radiopharmaceutical, its lot number, and expiration dates and the radionuclide;

(B) patient's name, and identification number if one has been assigned;

(C) prescribed dosage and activity of the dosage at the time of assay, or a notation that the total activity is less than 370 kBq (10 mCi);

(D) date and time of the assay; and

(E) initials of the individual who performed the assay.

(4) **Authorization for calibration and reference sources.** Any person authorized by §175.103(a)(2) for medical use of radioactive material may receive, possess, and use the following radioactive material for check, calibration and reference use:

(i) Sealed sources manufactured and distributed by persons specifically licensed pursuant to regulations of the U.S. Nuclear Regulatory Commission or equivalent regulations of an agreement state and that do not exceed 555 MBq (15 mCi) each;

(ii) Any radioactive material listed in §175.103(d)(1) or (e)(1) with a half-life of 100 days or less in individual amounts not to exceed 555 MBq (15 mCi);

(iii) Any radioactive material listed in §175.103(d)(1) or (e)(1) with a half life greater than 100 days in individual amounts not to exceed 7.4 MBq (200 mCi) each; and

(iv) Technetium-99m in individual amounts not to exceed 1.85 GBq (50 mCi).

(5) **Requirements for possession of sealed sources and brachytherapy sources.** (i) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions approved by the U.S. Nuclear Regulatory Commission or any agreement state and supplied by the manufacturer on the label attached to the source, device or permanent container thereof, or in the leaflet or brochure that accompanies the source or device, and shall maintain the instructions for the duration of source use in a legible form convenient to users.

(ii) A licensee in possession of a sealed source or brachytherapy source shall conduct a physical inventory of all such sources at intervals not to exceed 3 months. The licensee shall retain each inventory record for 5 years. The inventory records must contain the model number of each source, and serial number if one has been assigned, the identity of each source radionuclide and its estimated activity, the location of each source, date of the inventory and the signature of the radiation safety officer.

(iii) A licensee in possession of a sealed source or brachytherapy source shall survey with a radiation survey instrument at intervals not to exceed 3 months all areas where such sources are stored. This shall not apply to teletherapy sources in teletherapy units or sealed sources in diagnostic devices.

(iv) A licensee shall retain a record of each survey required in §175.103(c)(5)(iii) for 3 years. The record must include the date of the survey, a sketch of each area that was surveyed, the measured dose rate at several points in each area expressed in microsieverts (mrem) per hour, the model number and serial number of the survey instrument used to make the survey, and the signature of the radiation safety officer.

(6) **Syringe shields and labels.** (i) A licensee shall keep syringes that contain radioactive material to be administered in a radiation shield.

(ii) A licensee shall require each individual who prepares or administers radiopharmaceuticals/radiobiologics to use a syringe radiation shield unless the use of the shield is contraindicated for that patient.

(iii) A licensee shall conspicuously label each syringe, or syringe radiation shield that contains a syringe with

radioactive material, with the radiopharmaceutical/radiobiologic name or its abbreviation, the type of diagnostic study or therapy procedure to be performed, or the patient's name.

(7) **Vial shields and labels.** (i) A licensee shall require each individual preparing or handling a vial that contains radioactive material to keep the vial in a vial radiation shield.

(ii) A licensee shall conspicuously label each vial radiation shield that contains a vial of radioactive material with the radiopharmaceutical/radiobiologic name or its abbreviation.

(8) **Surveys for contamination and ambient radiation dose rate.** (i) A licensee shall survey with a radiation detection survey instrument at the end of each day of use all areas where radioactive materials are routinely prepared for use or administered.

(ii) A licensee shall survey with a radiation detection survey instrument at least once each week all areas where unsealed radioactive materials or radioactive wastes are stored.

(iii) A licensee shall conduct the surveys required by §175.103(c)(8)(i) and (ii) so as to be able to detect and measure dose rates as low as 1 mSv (0.1 mrem) per hour.

(iv) A licensee shall establish dose rate action levels for the surveys required by §175.103(c)(8)(i) and (ii) and shall require that the individual performing the survey immediately notify the radiation safety officer if a dose rate exceeds an action level.

(v) A licensee shall perform wipe tests for removable contamination once each week on all areas where radioactive materials are routinely prepared for use or administered and where unsealed sources of radioactive materials are stored.

(vi) A licensee shall perform the wipe tests required by §175.103(c)(8)(v) so as to be able to detect contamination on each wipe sample of 35 Bq (2000 disintegrations or transformations per minute).

(vii) A licensee shall establish removable contamination action levels for the surveys required by §175.103(c)(8)(v) and shall require that the individual performing the survey immediately notify the radiation safety officer if contamination exceeds action levels.

(viii) A licensee shall retain a record of each survey or wipe test required by §175.103(c)(8)(i), (ii) and (v) of this section for 3 years. The record must include the date of the survey, a sketch of each area surveyed, action levels established for each area, the measured dose rate at several points in each area expressed in mSv (mrem) per hour or the removable contamination in each area expressed in becquerels (disintegrations or transformations per minute) per 100 square centimeters, the serial number and the model number of the instrument used to make the survey or analyze the samples, and the initials of the individual who performed the survey.

(9) **Release of patients containing radioactive materials.** (i) Notwithstanding the provisions of §175.03(d)(1), a licensee shall not authorize release from confinement for medical care any patient administered radioactive material as either a radiopharmaceutical/radiobiologic or as a permanent source implant until the activity in the patient is such that the total effective dose equivalent for the individual (other than the patient) likely to receive the greatest dose is 5 mSv (500 mrem) or less.

(ii) When the total effective dose equivalent to any individual that could result from the release of a patient is likely to exceed 1 mSv (100 mrem), the licensee shall provide the patient, or the patient's competent representative, written information on risks of radiation and methods for reducing the exposure of individuals, and shall keep records of such patient releases for a period of five (5) years.

(iii) [Reserved]

(iv) **Radioactive cadavers.** (A) If any patient containing radioactive material administered/implanted for therapeutic purposes dies, it shall be the responsibility of the physician who pronounces such patient as dead to notify immediately the physician in charge of the case or such physician's designated representative.

(B) No person shall commence any autopsy on any cadaver that contains more than 185 MBq (5 mCi) of radioactive material administered/implanted for therapeutic purposes without first having consulted with, and having been advised by, the radiation safety officer of the hospital or the physician responsible for the administration/implantation of the radioactive material. If neither is available, a designated representative may serve.

(C) A radioactivity report on every cadaver containing more than 185 MBq (5 mCi) of radioactive material administered/implanted for therapeutic purposes shall be completed by the radiation safety officer or the physician responsible for the administration of the radioactive material or their designated representative. The report must include the name, address and radioactive materials license number of the hospital; the name of the deceased; the name, address and telephone number of the next of kin; the name, address and telephone number of the funeral home to which the deceased will be sent; the radionuclide involved; the approximate activity on the date of the report and the physical form; the location(s) of the radioactive materials within the body and the external dose rate at the body surface closest to the source; the precautions to be observed during autopsy or handling of the body by the funeral director; and the name of the person who prepared the form. This report shall accompany the body, whether autopsied or not, when it is surrendered to the funeral director. The Department shall be notified in person, by telephone, by mailgram or by facsimile within 24 hours of the death and a copy of the radioactivity report shall be sent to the Department within fifteen (15) days of the date of death.

(10) **Storage of volatiles and gases.** (i) A licensee shall store volatile radiopharma- ceuticals and radioactive gases in the shippers' radiation shield and container.

(ii) After drawing the first dosage, a licensee shall store and use a multidose container in a properly functioning fume hood.

(11) **Decay-in-storage.** (i) A licensee may hold radioactive material with a physical half-life of 65 days or less for decay-in-storage before disposal in ordinary trash and is exempt from the requirements of §175.104 of this Code if the licensee:

(A) holds radioactive material for decay a minimum of 10 half-lives;

(B) monitors radioactive material at the container surface before disposal as ordinary trash and determines that its radioactivity cannot be distinguished from natural background radiation levels with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding;

(C) removes or obliterates all radiation labels; and

(D) separates and monitors each generator column individually with all radiation shielding removed to ensure that its contents have decayed to natural background radiation levels before disposal.

(ii) For radioactive material disposed in accordance with §175.103 (c)(11)(i), the licensee shall retain a record of each disposal for 3 years. The record must include the date of the disposal, the date on which the radioactive material was placed in storage, the model and serial number of the survey instrument used, the background dose rate, the radiation dose rate measured at the surface of each waste container, and the name of the individual who performed the disposal.

(d) **Uptake, dilution and excretion.** (1) **Use of radiopharmaceuticals for uptake, dilution or excretion studies.**

(i) A licensee may use any radioactive material authorized in a license in any radiopharmaceutical or radiobiologic

for diagnostic studies involving the measurement of uptake, dilution or excretion.

(ii) A licensee shall prepare and use authorized radiopharmaceuticals or radiobiologics in accordance with the manufacturer's instructions for radiation safety.

(2) **Possession of a survey instrument.** A licensee authorized to use radioactive material for uptake, dilution, and excretion studies shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range 1.0 mSv (0.1 mrem) per hour to 1000 mSv (100 mrem) per hour. The instrument shall be operable and calibrated in accordance with §175.103(c)(2).

(e) **Imaging and localization.** (1) **Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.**

(i) A licensee may use any radioactive material authorized in a license in any diagnostic radiopharmaceutical, radiobiologic or reagent kit, except for aerosol or gaseous forms, for preparation and diagnostic use of a radiopharmaceutical or radiobiologic for studies involving imaging and localization.

(ii) A licensee may use generators upon approval of the Department.

(iii) Provided the conditions of §175.103(e)(3) are met, a licensee shall use radioactive aerosols or gases only if specific application is made to and approved by the Depart- ment.

(iv) A licensee shall prepare and use authorized radiopharmaceuticals or radiobiologics in accordance with the manufacturer's instructions for radiation safety.

(v) A licensee shall elute generators in compliance with §175.103(e)(2) and prepare radiopharmaceuticals from kits in accordance with the manufacturer's instructions for radiation safety.

(2) **Permissible molybdenum-99 concentration.** (i) A licensee shall not administer to humans a radiopharmaceutical containing more than 5.55 kBq (0.15 mCi) of molybdenum-99 per 37 MBq (1.0 mCi) of technetium-99m.

(ii) A licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators shall measure the molybdenum-99 concentration in each eluate or extract.

(iii) A licensee who must measure molybdenum concentration shall retain a record of each measurement for 3 years. The record shall include, for each elution or extraction of technetium-99m, the measured activity of the technetium-99m expressed in MBq (mCi), the measured activity of the molybdenum expressed in kBq (mCi), the ratio of the measures expressed as kBq (mCi) of molybdenum per MBq (mCi) of technetium-99m, the date of the test, and the initials of the individual who performed the test.

(iv) A licensee shall report immediately to the Bureau of Radiological Health each occurrence of molybdenum-99 concentration exceeding the limits specified in §175.103(e)(2)(1).

(3) **Control of aerosols and gases.** (i) A licensee who administers radioactive aerosols or gases shall do so with a system that will keep airborne concentrations within the limits prescribed by §175.03 of this Code.

(ii) The system shall provide for collection and decay or disposal of the aerosol or gas in a shielded container.

(iii) Before receiving, producing, using, or storing a radioactive gas, the licensee shall calculate the amount of time needed after a release to reduce the concentration in the area of use to the ALI listed in Table 1 of Appendix A of §175.03 of this Code. The calculation shall be based on the highest activity of gas handled in a single container and the measured available air exhaust rate.

(iv) A licensee shall post the time calculated in §175.103(e)(3)(iii) at the area of use, as well as safety measures to be instituted in case of a spill at the area of use.

(v) A licensee shall check the operation of collection systems monthly and measure the ventilation rates in areas of use at intervals not to exceed 6 months. Records of these checks and measurements shall be maintained for 3 years.

(vi) A copy of the calculations, including assumptions, measurements and calculations made, required in §175.103(e)(3)(iii) shall be recorded and retained for the duration of the license.

(4) **Possession of survey instruments.** A licensee authorized to use radioactive material for imaging and localization studies shall have in its possession a portable, radiation detection survey instrument capable of detecting dose rates over the range of 1.0 mSv (0.1 mrem) per hour to 1000 mSv (100 mrem) per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range 10 mSv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The instruments shall be operable and calibrated in accordance with §175.103(c)(2).

(f) **Radiopharmaceuticals/radiobiologics for therapy.** (1) **Use of radiopharmaceuticals/radiobiologics for therapy.**

(i) A licensee may use any radioactive material authorized in a license in any radiopharmaceutical or radiobiologic for a therapeutic use.

(ii) The licensee shall prepare and use authorized radiopharmaceuticals or radiobiologics in accordance with the manufacturer's instructions for radiation safety.

(2) **Safety instruction.** (i) A licensee shall provide oral and written radiation safety instruction for all personnel caring for patients undergoing radiopharmaceutical therapy. Refresher training shall be provided at intervals not to exceed 1 year.

(ii) To satisfy §175.103(f)(2)(i), the instruction shall describe the licensee's procedures for: (A) patient control;

(B) visitor control;

(C) contamination control;

(D) waste control; and

(E) notification of the radiation safety officer or authorized user in case of the patient's death or medical emergency.

(iii) A licensee shall keep for 3 years a list of individuals receiving instruction required by §175.103(f)(2)(i), a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

(3) **Safety precautions.** (i) For each patient receiving radiopharmaceutical therapy and hospitalized for compliance with §175.103(c)(9), a licensee shall:

(A) provide a private room with a private sanitary facility;

(B) post the patient's door with a "Caution: Radioactive Material" sign and note on the door or on the patient's chart where and how long visitors may stay in the patient's room;

(C) authorize visits by individuals under age 18 only on a patient-by-patient basis with the approval of the authorized user after consultation with the radiation safety officer;

(D) promptly after administration of the dosage, measure the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of §175.03 of this Code and retain for 3 years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in mSv (mrem) per hour, the instrument used to make the survey, and the initials of the individual who made the survey;

(E) either monitor material and items removed from the patient's room to determine that any contamination cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle these materials and items as radioactive waste;

(F) provide the patient with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before authorizing release of the patient;

(G) survey the patient's room and private sanitary facility for removable contamination with a radiation detection survey instrument before assigning another patient to the room. The room must not be reassigned until removable contamination is less than 5 Bq (;sl200 disintegrations per minute) per 100 square centimeters; and

(H) measure the thyroid burden of each individual who helped prepare or administer a dosage of iodine-131 within 3 days after administering the dosage, and retain for the period required by §175.03(k) a record of each thyroid burden measurement, date of measurement, the name of the individual whose thyroid burden was measured, and the initials of the individual who made the measurements.

(ii) A licensee shall notify the radiation safety officer or the authorized user immediately if the patient dies or has a medical emergency.

(4) **Possession of survey instruments.** A licensee authorized to use radioactive material for radiopharmaceutical therapy shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range 1.0 mSv (0.1 mrem) per hour to 1000 mSv (100 mrem) per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range 10 mSv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The instruments shall be operable and calibrated in accordance with §175.103(c)(2).

(g) **Sealed sources for diagnosis.** (1) Use of sealed sources for diagnosis. A licensee shall use the following sealed sources in accordance with the manufacturer's radiation safety, handling and maintenance instructions:

(i) Iodine-125 as a sealed source in a device for bone mineral analysis;

(ii) Americium-241 as a sealed source in a device for bone mineral analysis;

(iii) Gadolinium-153 as a sealed source in a device for bone mineral analysis; and

(iv) Iodine-125 as a sealed source in a portable device for imaging.

(2) **Availability of survey instrument.** A licensee authorized to use radioactive material as a sealed source for diagnostic purposes shall have available for use a portable radiation detection survey instrument capable of detecting dose rates over the range 1.0 mSv (0.1 mrem) per hour to 1000 mSv (100 mrem) per hour or a portable radiation measurement survey instrument capable of measuring dose rates over the range 10 mSv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The instrument shall be operable and calibrated in accordance with §175.103(c)(2).

(h) **Sealed sources for brachytherapy.** (1) Use of sealed sources for brachytherapy. A licensee shall use the following sources in accordance with the manufacturer's radiation safety, handling and maintenance instructions:

(i) Cesium-137 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(ii) Cobalt-60 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(iii) Gold-198 as a sealed source in seeds for interstitial treatment of cancer;

(iv) Iodine-125 as a sealed source in seeds for interstitial treatment of cancer as a permanent implant;

(v) Iridium-192 as seeds encased in nylon ribbon for interstitial treatment of cancer;

(vi) Palladium-103 as seeds for the interstitial treatment of cancer;

(vii) Strontium-90 as a sealed source in an applicator for treatment of superficial eye conditions; and

(viii) any other brachytherapy source authorized in the license.

(2) **Safety instruction.** (i) The licensee shall provide oral and written radiation safety instruction to all personnel caring for a patient receiving implant therapy. Refresher training shall be provided at intervals not to exceed 1 year.

(ii) To satisfy §175.103(h)(2)(i), the instruction shall describe:

(A) size and appearance of the brachytherapy sources;

(B) safe handling and shielding instructions in case of a dislodged source;

(C) procedures for patient control;

(D) procedures for visitor control; and

(E) procedures for notification of the radiation safety officer or authorized user if the patient dies or has a medical emergency.

(iii) A licensee shall retain for 3 years a record of individuals receiving instruction required by §175.103(h)(2)(i), a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

(3) **Safety precautions.** (i) For each patient receiving implant therapy a licensee shall:

(A) not place the patient in the same room with a patient who is not receiving radiation therapy unless the licensee can demonstrate compliance with the requirements of §175.03 of this Code at a distance of one meter from the implant;

(B) post the patient's door with a "Caution: Radioactive Materials" sign and note on the door or in the patient's chart where and how long visitors may stay in the patient's room;

(C) authorize visits by individuals under age 18 only on a case-by-case basis with the approval of the authorized user after consultation with the radiation safety officer;

(D) promptly after implanting the sources, survey the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with §175.03 of this Code and retain for 3 years a record of each survey that includes the time and date of the survey, a sketch of the area or list of points surveyed, the measured dose rate at several points expressed in mSv (mrem) per hour, the instrument used to make the survey, and the initials of the individual who made the survey; and

(E) provide the patient with radiation safety guidance that will help to keep the radiation dose to household members and the public as low as reasonably achievable before releasing the patient if the patient was administered a permanent implant.

(ii) A licensee shall notify the radiation safety officer or authorized user immediately if the patient dies or has a medical emergency.

(4) **Brachytherapy sources inventory.** (i) A licensee shall promptly return brachytherapy sources to their place of storage after removal from the patient.

(ii) Each time brachytherapy sources are returned to an area of storage from an area of use, the licensee shall immediately count or otherwise verify the number returned to ensure that all sources taken from the storage area have been returned.

(iii) A licensee shall make a record of brachytherapy source use which includes:

(A) the names of the individuals permitted to handle the sources;

(B) the number and activity of sources removed from storage, the room number of use and patient's name, the time and date they were removed from storage, the number and activity of the sources in storage after the removal, and the initials of the individual who removed the sources from storage; and

(C) the number and activity of sources returned to storage, the room number of use and patient's name, the time and date they were returned to storage, the number and activity of sources in storage after the return, and the initials of the individual who returned the sources to storage.

(iv) Immediately after implanting sources in a patient and immediately after removal of sources from a patient, including those sources inserted and removed by remote after loading devices, the licensee shall make a radiation survey of the patient and the area of use to confirm that no sources have been misplaced, left in the patient, or otherwise not returned to the appropriate place of storage. The licensee shall make a record of each survey.

(v) A licensee shall retain the records required in §175.103(h)(4)(iii) and (iv) for 3 years.

(5) **Release of patients treated with temporary implants.** (i) Immediately after removing the last temporary implant source from a patient, the licensee shall make a radiation survey of the patient with a radiation detection survey instrument to confirm that all sources have been removed. The licensee shall not release from confinement for medical care a patient treated by temporary implant until all sources have been removed.

(ii) A licensee shall retain a record of patient surveys which demonstrate compliance with §175.103(h)(5)(i) for 3 years. Each record must include the date of the survey, the name of the patient, the dose rate from the patient expressed as mSv (mrem) per hour and measured within 1 meter from the patient, and the initials of the individual who made the survey.

(6) **Possession of survey instruments.** A licensee authorized to use radioactive material for implant therapy shall have in its possession a portable radiation detection survey instrument capable of detecting rates over the range 1.0 mSv (0.1 mrem) per hour to 1000 mSv (100 mrem) per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range 10 mSv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The instruments shall be operable and calibrated in accordance with §175.103(c)(2).

(i) **Teletherapy.** (1) Use of a sealed source in a teletherapy unit. A licensee shall use cobalt-60 as a sealed source in a teletherapy unit for medical use in accordance with the manufacturer's radiation safety and operating instructions.

(2) **Maintenance, repair and inspection requirements.** (i) Routine maintenance of the teletherapy unit shall be performed according to the manufacturer's recommended schedule, including periodic replacement of parts. Replacement parts shall be those specified by the manufacturer of the teletherapy unit.

(ii) A licensee shall have each teletherapy unit fully inspected and serviced during teletherapy source replacement

or at intervals not to exceed 5 years, whichever comes first.

(iii) Repairs found to be needed shall be made promptly.

(iv) Only a person specifically licensed by the U.S. Nuclear Regulatory Commission or an agreement state to perform teletherapy unit inspections and servicing shall perform such functions, including, but not limited to installation, relocation, or removal of a teletherapy sealed source or a teletherapy unit that contains a sealed source or maintenance, adjustment, or repair of the source drawer, the shutter or other mechanism of a teletherapy unit that could expose the source, reduce the shielding around the source, result in increased radiation levels or compromise the safety of the unit.

(v) A licensee shall keep record of the inspections and servicing for the duration of the license. The record shall contain the name of the person performing the inspection or service, such person's license number, the date of inspection, the manufacturer's name and model number and serial number for both the teletherapy unit and source, a list of components inspected, the findings of the inspection, a list of components serviced and the type of service, a list of components replaced, and the signature of the licensed individual performing the service or inspection.

(3) **Amendments.** In addition to the requirements specified in §175.103(a)(4), a licensee shall apply for and shall have received a license amendment before:

(i) making any change in the treatment room shielding;

(ii) making any change in the location of the teletherapy unit within the treatment room;

(iii) using the teletherapy unit in a manner that could result in increased radiation levels in areas outside the teletherapy treatment room;

(iv) relocating the teletherapy unit; or

(v) allowing an individual not listed on the licensee's license to perform the duties of the radiation therapy physicist.

(4) **Safety instruction.** (i) A licensee shall post written instructions at the teletherapy unit console. To satisfy this requirement, these instructions shall inform the operator of: (A) the procedure to be followed to ensure that only the patient is in the treatment room before turning the primary beam of radiation on to begin a treatment or after a door interlock interruption; and

(B) the procedure to be followed if:

(a) the operator is unable to turn the primary beam of radiation off with controls outside the treatment room or any other abnormal operation occurs; and

(b) the names and telephone numbers of the authorized users and radiation safety officer to be immediately contacted if the teletherapy unit or console operates abnormally.

(ii) A licensee shall provide instruction in the topics identified in §175.103(i)(4)(i) of this section to all individuals who operate a teletherapy unit and shall provide appropriate refresher training to individuals at intervals not to exceed 1 year. Such instruction shall include "dry runs" of emergency procedures.

(iii) A licensee shall retain for 3 years a record of individuals receiving instruction required by §175.103(2)(4)(ii) of this section, a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

(5) **Doors, interlocks, and warning systems.** (i) A licensee shall control access to the teletherapy room by a door at each entrance.

(ii) A licensee shall equip each entrance to the teletherapy room with an electrical interlock system that shall:

(A) prevent the operator from turning the primary beam of radiation on unless each treatment room entrance door is closed;

(B) turn the primary beam of radiation off immediately when an entrance door is opened; and

(C) prevent the primary beam of radiation from being turned on following an interlock interruption until all treatment room entrance doors are closed and the beam on-off control is reset at the console.

(iii) A licensee shall equip each entrance to the teletherapy room with a beam condition indicator light.

(6) **Possession of survey instrument.** A licensee authorized to use radioactive material in a teletherapy unit shall have in its possession either a portable radiation detection survey instrument capable of detecting dose rates over the range 1.0 mSv (0.1 mrem) per hour to 1000 mSv (100 mrem) per hour, or a portable radiation measurement survey instrument capable of measuring dose rates over the range 10 mSv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The instruments shall be operable and calibrated in accordance with §175.103(c)(2).

(7) **Radiation monitoring device.** (i) A licensee shall have in each teletherapy room a permanent radiation monitor capable of continuously monitoring beam status.

(ii) Each radiation monitor shall be capable of providing visible notice of a teletherapy unit malfunction that results in an exposed or partially exposed source. The visible indicator of high radiation levels must be observable by an individual entering the teletherapy room.

(iii) Each radiation monitor shall be equipped with a backup power supply separate from the power supply to the teletherapy unit. This backup power supply may be a battery system.

(iv) A radiation monitor must be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients.

(v) A licensee shall maintain a record of the check required by §175.103(i)(7)(iv) for 3 years. The record shall include the date of the check, notation that the monitor indicates when the source is exposed, and the initials of the individual who performed the check.

(vi) If a radiation monitor is inoperable, the licensee shall require any individual entering the teletherapy room to use a survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in §175.103(i)(7)(v).

(vii) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

(8) **Viewing and communications system.** (i) A licensee shall construct or equip each teletherapy room to permit continuous observation of the patient by a licensed radiation therapy technician or physician from the teletherapy unit console during irradiation.

(ii) A licensee shall construct or equip each teletherapy room to provide a means of communication with the patient from the teletherapy unit console during irradiation.

(9) **Dosimetry equipment.** (i) A licensee shall have a calibrated dosimetry system available for use. The system shall have been calibrated for cobalt-60 by the National Institute of Standards and Technology (formerly the National Bureau of Standards) or by an American Association of Physicists in Medicine (AAPM) Accredited Dosimetry Calibration Laboratory (ADCL). The calibration shall have been performed within the previous two (2) years and after any servicing that may have affected system calibration.

(ii) The licensee shall have available for use a dosimetry system for spot check measurements. To meet this requirement, the system may be compared with a system that has been calibrated in accordance with §175.103(i)(9)(i). This comparison shall have been performed within the previous twelve (12) months (6 months if an ionization chamber) and after each servicing that may have affected system calibration. Alternatively, the spot check system may be the same system used to meet the requirement in §175.103(i)(9)(i).

(iii) The licensee shall retain a record of each calibration, intercomparison, and comparison for the duration of the license. For each calibration, intercomparison, or comparison, the record shall include the date, the model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by §175.103(i)(9)(i) and (ii), the correction factors that were deduced, the names of the individuals who performed the calibration, intercomparison, or comparison, and evidence that the intercomparison meeting was sanctioned by a calibration laboratory or radiologic physics center accredited by AAPM.

(10) **Full calibration measurements.** (i) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

(A) before the first medical use of the unit; and

(B) before medical use under the following conditions:

(a) whenever spot check measurements indicate that the output differs by more than 5 percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(b) following replacement of the source or following reinstallation of the teletherapy unit in a new location;

(c) following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(C) at intervals not exceeding 1 year.

(ii) To satisfy the requirement of §175.103(i)(10)(i), full calibration measurements shall include determination of:

(A) the output within ± 3 percent for the entire range of field sizes and for the distance or entire range of distances used for medical use;

(B) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(C) the uniformity of the radiation field and its dependence on the orientation of the useful beam;

(D) timer constancy and linearity over the range of uses;

(E) on-off error; and

(F) the accuracy of all distance measuring and localization devices in medical use.

(iii) A licensee shall use the dosimetry system described in §175.103(i)(9) to measure the output for one set of exposure conditions. The remaining radiation measurements required in §175.103(i)(10)(ii)(A) of this section may then

be made using a dosimetry system that indicates relative dose rates.

(iv) A licensee shall make full calibration measurements required by §175.103(i)(10)(i) in accordance with either the procedures recommended by the Scientific Committee on Radiation Dosimetry of the AAPM that are described in **Physics in Medicine and Biology** Vol. 16, No. 3, 1971, pp. 379-396, or by Task Group 21 of the Radiation Therapy Committee of the American Association of Physicists in Medicine that are described in **Medical Physics** Vol. 10, No. 6, 1983, pp. 741-771, and Vol. 11, No. 2, 1984, p. 213, or any superseding protocol.

(v) A licensee shall correct mathematically the outputs determined in §175.103(i)(10)(ii)(A) for physical decay for intervals not exceeding one month for cobalt-60.

(vi) Full calibration measurements required by §175.103(i)(10)(i) and physical decay corrections required by §175.103(i)(10)(v) shall be performed by the radiation therapy physicist named on the license.

(vii) A licensee shall retain a record of each calibration for the duration of the license. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number or other unambiguous identification of both the teletherapy unit and the source and of the instruments used to calibrate the teletherapy unit, tables that describe the output of the unit over the range of field sizes and for the range of distances used in radiation therapy, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, the measured timer accuracy for a typical treatment time, the calculated on-off error, the estimated accuracy of each distance measuring or localization device, and the signature of the radiation therapy physicist.

(11) **Periodic spot checks.** (i) A licensee authorized to use teletherapy units for medical use shall perform output spot checks on each teletherapy unit once each calendar month.

(ii) To satisfy the requirement of §175.103(i)(11)(i), measurements shall include determination of:

(A) timer constancy and timer linearity over the range of use;

(B) on-off error;

(C) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(D) the accuracy of all distance measuring and localization devices used for medical use;

(E) the output for one typical set of operating conditions; and

(F) the difference between the measurement made in §175.103 (i)(11)(ii)(E) and the anticipated output, expressed as a percentage of the anticipated value obtained at last full calibration corrected mathematically for physical decay.

(iii) A licensee shall use the dosimetry system described in §175.103(i)(9) to make the measurement required in §175.103(i)(11)(ii)(E).

(iv) A licensee shall perform measurements required by §175.103(i)(11)(i) in accordance with procedures established by the radiation therapy physicist. That individual does not need to actually perform the output spot check measurements.

(v) A licensee shall have the radiation therapy physicist review the results of each output spot check within 15 days. The radiation therapy physicist shall promptly notify the licensee in writing of the results of each output spot check. The licensee shall keep a copy of each written notification for 3 years.

(vi) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot checks of each teletherapy facility once each calendar month.

(vii) To satisfy the requirement of §175.103(i)(11)(vi), checks shall ensure proper operation of:

(A) electrical interlocks at each teletherapy room entrance;

(B) electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation, restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism;

(C) beam condition indicator lights on the teletherapy unit, on the control console, and in the facility;

(D) viewing systems;

(E) treatment room doors from inside and outside the treatment room; and

(F) electrically assisted treatment room doors with the teletherapy unit electrical power turned "off".

(viii) A licensee shall lock the control console in the "off" position if any door interlock malfunctions. No licensee shall use the unit until the interlock system is repaired unless specifically authorized by the Department.

(ix) A licensee shall promptly repair any system identified in §175.103(i)(11)(vii) that is not operating properly. The teletherapy unit shall not be used until all repairs are completed.

(x) A licensee shall retain a record of each spot check required by §175.103(i)(11)(i) and (vi) for 3 years. The record shall include the date of the spot check, the manufacturer's name, model number, and serial number for both the teletherapy unit and source, the manufacturer's name, model number and serial number of the instrument used to measure the output of the teletherapy unit, the measured timer accuracy, the calculated on-off error, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, the measured timer accuracy for a typical treatment time, the calculated on-off error, the estimated accuracy of each distance measuring or localization device, the difference between the anticipated output and the measured output, notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system and doors, and the signature of the individual who performed the periodic spot check.

(12) **Radiation surveys for teletherapy facilities.** (i) Before medical use, after each installation of a teletherapy source, and after making any change for which an amendment is required by §175.103(i)(3) the licensee shall perform radiation surveys with an operable radiation measurement survey instrument calibrated in accordance with §175.103(c)(2) to verify that:

(A) the maximum and average radiation levels at 1 meter from the teletherapy source with the source in the off position and the collimators set for a normal treatment field do not exceed 100 mSv (10 mrem) per hour and 20 mSv (2 mrem) per hour, respectively; and

(B) with the teletherapy source in the on position with the largest clinically available treatment field and with a scattering phantom in the primary beam of radiation, that:

(a) radiation levels in restricted areas are not likely to cause personnel exposures in excess of the limits specified in §175.03; and

(b) radiation levels in unrestricted areas do not exceed the limits specified in §175.03.

(ii) If the results of the surveys required in §175.103(i)(12)(i) indicate any radiation levels in excess of the respective limit specified in §175.103(i)(12)(i)(A) or (B), the licensee shall lock the control in the "off" position and not use the unit:

(A) except as may be necessary to repair, replace, or test the teletherapy unit, the teletherapy unit shielding or the treatment room shielding; or

(B) until the licensee has received a specific exemption from the Department.

(iii) A licensee shall retain a record of the radiation measurements made following installation of a source for the duration of the license. The record shall include the date of the measurements, the reason the survey is required, the manufacturer's name, model number and serial number of the teletherapy unit, the source, and the instrument used to measure radiation levels, each dose rate measured around the teletherapy source while in the off position and the average of all measurements, a plan of the areas surrounding the treatment room that were surveyed, the measured dose rate at several points in each area expressed in mSv (mrem) per hour, the calculated maximum level of radiation over a period of 1 week for each restricted and unrestricted area, and the signature of the radiation safety officer.

(13) **Safety checks for teletherapy facilities.** (i) A licensee shall promptly check all systems listed in §175.103(i)(11) for proper function after each installation of a teletherapy source and after making any change for which an amendment is required by §175.103(i)(3).

(ii) If the results of the checks required in §175.103(i)(12)(i) indicate the malfunction of any system specified in §175.103(i)(11), the licensee shall lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(iii) A licensee shall retain for 3 years a record of the facility checks following installation of a source. The record shall include notations indicating the operability of each entrance door interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system, and doors, and the signature of the radiation safety officer.

(14) **Modification of a teletherapy unit or room before beginning a treatment program.** (i) If the survey required by §175.103(i)(l2) indicates that an individual in an unrestricted area may be exposed to levels of radiation greater than those permitted by §175.03, before beginning the treatment program the licensee shall:

(A) either equip the unit with stops or add additional radiation shielding to ensure compliance with §175.03;

(B) perform the survey required by §175.103(i)(12) again; and

(C) include in the report required by §175.103(i)(15) the results of the initial survey, a description of the modification made to comply with §175.103(i)(14)(i) and the results of the second survey; or

(D) request and receive a license amendment that authorizes radiation levels in unrestricted areas greater than those permitted by §175.03.

(15) **Reports of teletherapy surveys, checks, tests, and measurements.** A licensee shall furnish a copy of the records required in §175.103(i)(12), (13) and (14) and the output from the teletherapy source expressed as Sv (rem) per hour at one meter from the source and determined during the full calibration required in §175.103(i)(10) to the Bureau of Radiological Health within 30 days following completion of the action that initiated the record requirement.

(j) **Training and experience requirements.** (1) **Radiation safety officer.** Except as provided in §175.103(j)(2), an individual fulfilling the responsibilities of the radiation safety officer as provided in §175.103(b)(2) shall:

(i) be certified by the:

(A) American Board of Health Physics in Comprehensive Health Physics; or

(B) American Board of Radiology; or

(C) American Board of Nuclear Medicine; or

(D) American Board of Science in Nuclear Medicine; or

(E) American Board of Medical Physics; or

(F) Board of Pharmaceutical Specialties in Nuclear Pharmacy; or

(ii) have had 200 hours of classroom and laboratory training as follows:

(A) radiation physics and instrumentation;

(B) radiation protection;

(C) mathematics pertaining to the use and measurement of radioactivity;

(D) radiation biology;

(E) radiopharmaceutical chemistry; and

(F) 1 year of full time experience in radiation safety at a medical institution under the supervision of the individual identified as the radiation safety officer on a Department, agreement state, or U.S. Nuclear Regulatory Commission license that authorizes the medical use of radioactive material; or

(iii) be an authorized user for those radioactive material uses that come within the radiation safety officer's responsibilities.

(2) **Training for experienced radiation safety officer.** An individual identified as a radiation safety officer on a Department, agreement state or U.S. Nuclear Regulatory Commission license on August 15, 1990 who oversees only the use of radioactive material for which the licensee was authorized on that date need not comply with the training requirements of §175.103(j)(1).

(3) **Training for uptake, dilution, or excretion studies.** Except as provided in §175.103(j)(11), the licensee shall require the authorized user of radioactive material listed in §175.103(d)(1)(i) to be a physician who:

(i) is certified in:

(A) Nuclear medicine by the American Board of Nuclear Medicine; or

(B) Diagnostic radiology by the American Board of Radiology; or

(C) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(ii) has completed 40 hours of instruction in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and 20 hours of supervised clinical experience:

(A) to satisfy the basic instruction requirement, 40 hours of classroom and laboratory instruction shall include:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity;

(d) radiation biology; and

(e) radiopharmaceutical chemistry.

(B) to satisfy the requirement for 20 hours of supervised clinical experience, training must be under the supervision of an authorized user at a medical institution and shall include:

(a) examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(b) selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(c) administering dosages to patients and using syringe radiation shields;

(d) collaborating with the authorized user in the interpretation of radioisotope test results; and

(e) patient followup; or

(C) has successfully completed a 6 month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in §175.103(j)(3)(ii).

(4) **Training for imaging and localization studies.** Except as provided in §175.103(j)(11), the licensee shall require the authorized user of a radiopharmaceutical, radiobiologic, generator, or reagent kit specified in §175.103(e)(1) to be a physician who:

(i) is certified in:

(A) Nuclear medicine by the American Board of Nuclear Medicine; or

(B) Diagnostic radiology by the American Board of Radiology; or

(C) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(ii) has completed 200 hours of instruction in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, 500 hours of supervised work experience and 500 hours of supervised clinical experience:

(A) to satisfy the basic instruction requirement, 200 hours of classroom and laboratory training shall include:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity;

(d) radiopharmaceutical chemistry; and

(e) radiation biology.

(B) to satisfy the requirement for 500 hours of supervised work experience, training shall be under the supervision of an authorized user at a medical institution and shall include:

(a) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(b) calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;

(c) calculating and safely preparing patient dosages;

(d) using administrative controls to prevent the misadministration of radioactive material;

(e) using emergency procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(f) eluting technetium-99m from generator systems, assaying and testing the eluate for molybdenum-99 and alumina contamination, and processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals or radiobiologics.

(C) to satisfy the requirement for 500 hours of supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution and shall include:

(a) examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(b) selecting the suitable radiopharmaceuticals or radiobiologics and calculating and measuring the dosages;

(c) administering dosages to patients and using syringe radiation shields;

(d) collaborating with the authorized user in the interpretation of radioisotope test results; and

(e) patient followup; or

(iii) has successfully completed a 6 month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in §175.103(j)(d)(ii).

(5) **Training for therapeutic use of radiopharmaceuticals or radiobiologics.** Except as provided in §175.103(j)(11), the licensee shall require the authorized user of a radioactive material listed in §175.103(f)(1)(i) for therapy to be a physician who:

(i) is certified by the:

(A) American Board of Nuclear Medicine; or

(B) American Board of Radiology in radiology, therapeutic radiology, or radiation oncology; or

(ii) has completed 80 hours of instruction in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and has had supervised clinical experience:

(A) to satisfy the requirement for instruction, 80 hours of classroom and laboratory training shall include:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity; and

(d) radiation biology;

(B) to satisfy the requirement for supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution and shall include:

(a) use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten individuals;

(b) use of strontium-89 as strontium chloride for the treatment of bone pain in patients with painful bone metastases in three individuals; and

(c) use of soluble phosphorus-32 for the treatment of ascites polycythemia vera, leukemia, or bone metastases in three individuals; and

(d) use of iodine-131 for treatment of thyroid carcinoma in three individuals; and

(e) use of colloidal chromic phosphorus-32 or of colloidal gold-198 for intracavitary treatment of malignant effusions in three individuals.

(6) **Training for therapeutic use of brachytherapy sources.** Except as provided in §175.103(j)(11), the licensee shall require the authorized user using a brachytherapy source specified in §175.103(h)(1) for therapy to be a physician who:

(i) is certified in:

(A) Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; or

(B) Radiation oncology by the American Osteopathic Board of Radiology; or

(C) Radiology, with a specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(D) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(ii) is in the active practice of therapeutic radiology, has completed 200 hours of instruction in basic radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources and 500 hours of supervised work experience and a minimum of 3 years of supervised clinical experience:

(A) to satisfy the requirement for instruction, 200 hours of classroom and laboratory training shall include:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity; and

(d) radiation biology.

(B) to satisfy the requirement for 500 hours of supervised work experience, training shall be under the supervision of an authorized user at an institution and shall include:

(a) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(b) checking survey meters for proper operation;

(c) preparing, implanting, and removing sealed sources;

(d) maintaining running inventories of material on hand;

(e) using administrative controls to prevent the misadministration of radioactive material; and

(f) using emergency procedures to control radioactive material.

(C) to satisfy the requirement for a period of supervised clinical experience, training shall include 1 year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional 2 years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:

(a) examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;

(b) selecting the proper brachytherapy sources and dose and method of administration;

(c) calculating the dose; and

(d) post-administration followup and review of case histories in collaboration with the authorized user.

(7) **Training for ophthalmic use of strontium-90.** Except as provided in §175.103(j)(11), the licensee shall require the authorized user using only strontium-90 for ophthalmic radiotherapy to be a physician who:

(i) Is certified in radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; or

(ii) Is in the active practice of therapeutic radiology or ophthalmology, and has completed 24 hours of instruction in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy:

(A) to satisfy the requirement for instruction, the classroom and laboratory training shall include:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity; and

(d) radiation biology.

(B) to satisfy the requirement for a period of supervised clinical training in ophthalmic radiotherapy, training must be under the supervision of an authorized user at a medical institution and must include the use of strontium-90 for the ophthalmic treatment of five individuals that includes:

(a) examination of each individual to be treated;

(b) calculation of the dose to be administered;

(c) administration of the dose; and

(d) followup and review of each individual's case history.

(8) **Training for use of sealed sources for diagnosis.** Except as provided in §175.103(j)(11), the licensee shall require the authorized user using a sealed source in a device specified in §175.103(g)(1) to be a physician, dentist, or

podiatrist who:

(i) is certified in:

(A) radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; or

(B) nuclear medicine by the American Board of Nuclear Medicine; or

(C) diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(ii) Has completed 8 hours of instruction in basic radioisotope handling techniques specifically applicable to the use of the device. To satisfy the requirement for instruction, the training shall include:

(A) radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;

(B) radiation biology; and

(C) radiation protection and training in the use of the device for the purposes authorized by the license.

(9) **Training for teletherapy.** Except as provided in §175.103(j)(11), the licensee shall require the authorized user of a sealed source specified in §175.103(i)(1) in a teletherapy unit to be a physician who:

(i) is certified in:

(A) radiology, therapeutic radiology or radiation oncology by the American Board of Radiology; or

(B) radiation oncology by the American Osteopathic Board of Radiology; or

(C) radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(D) therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(ii) is in the active practice of therapeutic radiology, and has completed 200 hours of instruction in basic radioisotope techniques applicable to the use of a sealed source in a teletherapy unit, 500 hours of supervised work experience, and a minimum of 3 years of supervised clinical experience:

(A) to satisfy the requirement for instruction, the classroom and laboratory training shall include:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity; and

(d) radiation biology.

(B) to satisfy the requirement for supervised work experience, training shall be under the supervision of an authorized user at an institution and shall include:

(a) review of the full calibration measurements and periodic spot checks;

(b) preparing treatment plans and calculating treatment times;

(c) using administrative controls to prevent misadministrations;

(d) implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and

(e) checking and using survey meters.

(C) to satisfy the requirement for a period of supervised clinical experience, training shall include 1 year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional 2 years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:

(a) examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment, and any limitations or contraindications;

(b) selecting the proper dose and how it is to be administered;

(c) calculating the teletherapy doses and collaborating with the authorized user in the review of patients' progress and consideration of the need to modify originally prescribed doses as warranted by patients' reaction to radiation; and

(d) post-administration followup and review of case histories.

(10) **Training for radiation therapy physicist.** The licensee shall require the radiation therapy physicist to:

(i) be certified by the American Board of Radiology or the American Board of Medical Physics in a branch of medical physics which deals with the therapeutic application of roentgen rays, gamma rays, electrons or other charged particles beams, neutrons and radiation from sealed radionuclide sources and the equipment associated with the production and use of these radiations; or

(ii) hold a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and have completed 1 year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision of a radiation therapy physicist at a medical institution. To meet this requirement, the individual shall have performed the tasks listed in §175.103(c)(5) and (i)(10), (11) and (12) under the supervision of a radiation therapy physicist during the year of work experience.

However, as of January 1, 2000 only individuals certified as in §175.103(j)(10)(i) shall be named as radiation therapy physicists.

(11) **Training for experienced authorized users.** Practitioners of the healing arts identified as authorized users for the human use of radioactive material on a Department, agreement state, or U.S. Nuclear Regulatory Commission license issued before August 15, 1990 who perform only those methods of use for which they were authorized on that date need not comply with the training requirements of §175.103(j)(1) through (9).

(12) **Recentness of training.** The training and experience specified in §175.103(j)(1) through (10) must have been obtained within the 5 years preceding the date of application or the individual shall have had continuing applicable experience since the required training and experience was completed.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Rules of the City of New York

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

24 RCNY 175.104

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.104 Waste disposal.

(a) **General requirements.** (1) A licensee shall dispose of licensed material only:

(i) by transfer to an authorized recipient as provided in §175.101 or §175.104(f) of this Code, or to the U.S. Department of Energy; or

(ii) by decay in storage; or

(iii) by release in effluents within the limits in §175.03(d); or

(iv) as authorized pursuant to §175.104(b), (c), (d) or (e).

(2) A person shall be specifically licensed to receive waste containing licensed material from other persons for:

(i) treatment prior to disposal; or

(ii) treatment or disposal by incineration; or

(iii) decay in storage; or

(iv) disposal at a land disposal facility licensed pursuant to 10 CFR Part 61 or the equivalent regulations of an agreement state; or

(v) storage until transferred to a storage or disposal facility authorized to receive the waste.

(3) A licensee or applicant for a license shall obtain any permits required by the New York State Department of Environmental Conservation pursuant to 6 NYCRR Part 380, or any successor law or regulation.

(4) A licensee or applicant for a license shall develop, document and implement a discharge minimization program required by the New York State Department of Environmental Conservation pursuant to 6 NYCRR Section 380-7, or any successor law or regulation.

(b) **Method for obtaining approval of proposed disposal procedures.** (1) A licensee or applicant for a license may apply to the Department for approval of proposed disposal procedures, not otherwise authorized in this Code, but which will conform to state and federal regulations, to dispose of licensed material generated in the licensee's operations. Each application shall include:

(i) a description of the waste containing licensed material to be disposed of, including the physical and chemical properties that have an impact on risk evaluation, and the proposed manner and conditions of waste disposal; and

(ii) an analysis and evaluation of pertinent information on the nature of the environment; and

(iii) the nature and location of other potentially affected facilities; and

(iv) analyses and procedures to ensure that doses are maintained ALARA and within the dose limits in §175.03.

(c) **Disposal by release into sanitary sewerage.** (1) A licensee may discharge licensed material into sanitary sewerage if each of the following conditions is satisfied:

(i) the material is readily soluble in water or is biological material that is readily dispersible in water; and

(ii) the quantity of licensed radioactive material that the licensee releases into the sewer in 1 month divided by the average monthly volume of water released into the sewer by the licensee does not exceed the concentration listed in Table 3 of Appendix B of §175.03; and

(iii) if more than one radionuclide is released, the following conditions must also be satisfied:

(A) the licensee shall determine the fraction of the limit in Table 3 of Appendix B of §175.03 represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee into the sewer by the concentration of that radionuclide listed in Table 3 of Appendix B of §175.03; and

(B) the sum of the fractions for each radionuclide required by §175.104(c)(1)(iii)(A) does not exceed unity; and

(iv) the total quantity of licensed radioactive material that the licensee releases into the sanitary sewerage in a year does not exceed 37 GBq (1 Ci) of all radioactive materials combined.

(2) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in §175.104(c)(1).

(d) **Treatment or disposal by incineration or burial.** (1) No person shall treat or dispose of licensed radioactive material by incineration except as specifically approved by the Department pursuant to §175.104(b).

(2) No person shall bury any licensed radioactive materials within this City.

(e) **Disposal of specific wastes.** (1) A licensee may ship for disposal outside of this City the following licensed material as if it were not radioactive, provided however, that the receiving jurisdiction regulates such materials as if they were not radioactive:

(i) 1.85 kBq (0.05 mCi), or less, of hydrogen-3 or carbon-14 per gram of medium used for liquid scintillation counting; and

(ii) 1.85 kBq (0.05 mCi), or less, of hydrogen-3 or carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.

(2) A licensee shall not dispose of tissue pursuant to §175.104(e)(1)(ii) in a manner that would permit its use either as food for humans or as animal feed.

(3) The licensee shall maintain records in accordance with §175.03(k)(l0).

(f) **Transfer for disposal and manifests.** (1) The requirements of §175.104(f) and Appendix A of §175.104 are designed to control transfers of low-level radioactive waste intended for disposal at a licensed low-level radioactive waste disposal facility, establish a manifest tracking system, and supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Each shipment of radioactive waste designated for disposal at a licensed low-level radioactive waste disposal facility shall be accompanied by a shipment manifest as specified in Section I of Appendix A of §175.104.

(3) Each shipment manifest shall include a certification by the waste generator as specified in Section II of Appendix A of §175.104.

(4) Each person involved in the transfer of waste for disposal or in the disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section III of Appendix A of §175.104.

(5) The licensee or applicant for a license shall comply with the requirements of the New York State Department of Environmental Conservation as codified in 6 NYCRR Part 381, or any successor law or regulation.

(g) **Compliance with environmental and health protection regulations.**

(1) Nothing in this section relieves the licensee from complying with other applicable Federal, State and local regulations governing any other toxic or hazardous properties of materials that may be disposed of pursuant to this section.

(h) **Records of waste disposal.** (1) The licensee shall maintain records of the disposal of licensed materials made under §175.104(b), (c), (d), (e) and 10 CFR Part 61 or the equivalent regulations of an agreement state.

(2) The licensee shall retain the records required by §175.104(h)(1) until the Department authorizes disposition.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

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APPENDIX A

REQUIREMENTS FOR TRANSFER OF LOW-LEVEL

RADIOACTIVE WASTE FOR DISPOSAL AT LAND DISPOSAL

FACILITIES AND MANIFESTS

I. **Manifest.** The shipment manifest shall contain the name, address, and telephone number of the person generating the waste. The manifest shall also include the name, address, and telephone number or the name and U.S. Environmental Protection Agency hazardous waste identification number of the person transporting the waste to the land disposal facility. The manifest shall also indicate: a physical description of the waste, the volume, radionuclide identity and quantity, the total radioactivity, and the principal chemical form. The solidification agent shall be specified. Waste containing more than 0.1% chelating agents by weight shall be identified and the weight percentage of the chelating agent estimated. Wastes classified as Class A, Class B, or Class C in Section I of Appendix B shall be clearly identified as such in the manifest. The total quantity of the radionuclides hydrogen-3, carbon-14, technetium-99, and iodine-129 shall be shown. The manifest required by this paragraph may be shipping papers used to meet U.S. Department of Transportation or U.S. Environmental Protection Agency regulations or requirements of the receiver, provided all the required information is included. Copies of manifests required by this section may be legible carbon copies or legible photocopies.

II. **Certification.** The waste generator shall include in the shipment manifest a certification that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the U.S. Department of Transportation, the New York State Department of Environmental Protection and this Department. An authorized representative of the waste generator shall sign and date the manifest.

III. **Control and Tracking.** (a) Any radioactive waste generator who transfers radioactive waste to a land disposal facility or a licensed waste collector shall comply with the requirements in III. (a)(1) through (8). Any radioactive waste generator who transfers waste to a licensed waste processor who treats or repackages waste shall comply with the requirements of III. (a)(4) through (8). A licensee shall:

(1) Prepare all wastes so that the waste is classified according to Section I of Appendix B and meets the waste characteristics requirements in Section II of Appendix B;

(2) Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with Section I of Appendix B;

(3) Conduct a quality control program to ensure compliance with Section I and II of Appendix B; the program shall include management evaluation of audits;

(4) Prepare shipping manifests to meet the requirements of Section I and II;

(5) Forward a copy of the manifest to the intended recipient, at the time of shipment, or deliver to a collector at the time the waste is collected, obtaining acknowledgment of receipt in the form of a signed copy of the manifest or equivalent documentation from the collector;

(6) Include one copy of the manifest with the shipment;

(7) Retain a copy of the manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by §175.101 of this Code; and

(8) For any shipments or any portion of a shipment for which acknowledgment of receipt has not been received within the times set forth in this section, conduct an investigation in accordance with Section III. (e).

(b) Any waste collector licensee who handles only prepackaged waste shall:

(1) Acknowledge receipt of the waste from the generator within 1 week of receipt by returning a signed copy of the manifest or equivalent documentation;

(2) Prepare a new manifest to reflect consolidated shipments; the new manifest shall serve as a listing or index for the detailed generator manifests. Copies of the generator manifests shall be a part of the new manifest. The waste collector may prepare a new manifest without attaching the generator manifests, provided the new manifest contains for each package the information specified in Section I of this appendix. The collector licensee shall certify that nothing has been done to the waste that would invalidate the generator's certification;

(3) Forward a copy of the new manifest to the land disposal facility operator at the time of shipment;

(4) Include the new manifest with the shipment to the disposal site;

(5) Retain a copy of the manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by §175.101 of this Code, and retain information from generator manifest until disposition is authorized by the Department; and

(6) For any shipments or any portion of a shipment for which acknowledgment of receipt is not received within the times set forth in this section, conduct an investigation in accordance with Section III. (e).

(c) Any licensed waste processor who treats or repackages wastes shall:

(1) Acknowledge receipt of the waste from the generator within 1 week of receipt by returning a signed copy of the manifest or equivalent documentation;

(2) Prepare a new manifest that meets the requirements of Sections I and II of this appendix. Preparation of the new manifest reflects that the processor is responsible for the waste;

(3) Prepare all wastes so that the waste is classified according to Section I of Appendix B and meets the waste characteristics requirements in Section II of Appendix B;

(4) Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with Sections I and III of Appendix B;

(5) Conduct a quality control program to ensure compliance with Sections I and II of Appendix B. The program shall include management evaluation of audits;

(6) Forward a copy of the new manifest to the disposal site operator or waste collector at the time of shipment, or deliver to a collector at the time the waste is collected, obtaining acknowledgment of receipt in the form of a signed copy of the manifest or equivalent documentation by the collector;

(7) Include the new manifest with the shipment;

(8) Retain copies of original manifests and new manifests and documentation of acknowledgment of receipt as the record of transfer of licensed material required by §175.101 of this Code; and

(9) For any shipment or portion of a shipment for which acknowledgment is not received within the times set forth in this section, conduct an investigation in accordance with Section III. (e).

(d) The land disposal facility operator shall:

(1) Acknowledge receipt of the waste within 1 week of receipt by returning a signed copy of the manifest or equivalent documentation to the shipper. The shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator. The returned copy of the manifest or equivalent documentation shall indicate any discrepancies between materials listed on the manifest and materials received;

(2) Maintain copies of all completed manifests or equivalent documentation until the Agency authorizes their disposition; and

(3) Notify the shipper, that is, the generator, the collector, or processor, and the Agency when any shipment or portion of a shipment has not arrived within 60 days after the advance manifest was received.

(e) Any shipment or portion of a shipment for which acknowledgment is not received within the times set forth in this section shall:

(1) Be investigated by the shipper if the shipper has not received notification or receipt within 20 days after transfer.

(i) Such investigation shall include tracing the shipment and filing a report with the Department. Each licensee who conducts a trace investigation shall file a written report with the Department within 2 weeks of completion of the investigation.

APPENDIX B

CLASSIFICATION AND CHARACTERISTICS OF LOW-LEVEL

RADIOACTIVE WASTE

I. **Classification of Radioactive Waste for Land Disposal.** (a) **Considerations.** Determination of the classification of radioactive waste involves two considerations. First, consideration must be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration must be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(b) **Classes of waste.** (1) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste must meet the minimum requirements set forth in Section II. (a). If Class A waste also meets the stability requirements set forth in Section II. (b), it is not necessary to segregate the waste for disposal.

(2) Class B waste is waste that must meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste must meet both the minimum and stability requirements set forth in Section II.

(3) Class C waste is waste that not only must meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste must meet both the minimum and stability requirements set forth in Section II.

(c) **Classification determined by long-lived radionuclides.** If the radioactive waste contains only radionuclides listed in Table I, classification shall be determined as follows:

(1) If the concentration does not exceed 0.1 times the value in Table I, the waste is Class A.

(2) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in Table I, the waste is Class C.

(3) If the concentration exceeds the value in Table I, the waste is not generally acceptable for land disposal.

(4) For wastes containing mixtures of radionuclides listed in Table I, the total concentration shall be determined by the sum of fractions rule described in Section I. (g).

Table I

Radionuclide	Concentration curie/cubic metera	nanocurie/gramb
C-14		8
C-14 in activated metal		80
Ni-59 in activated metal		220
Nb-94 in activated metal		0.2
Tc-99		3
I-129		0.08
Alpha emitting transuranicradionuclides with half-life greater than five years		100
Pu-241		3,500
Cm-242		20,000
Ra-226		100

[a] To convert the Ci-m^{-3} values to gigabecquerels (GBq) per cubic meter, multiply the Ci-m^{-3} by 37.

[b] To convert the nCi/g values to becquerel (Bq) per gram, multiply the nCi/g value by 37.

(d) **Classification determined by short-lived radionuclides.** If the waste does not contain any of the radionuclides listed in Table I, classification shall be determined based on the concentrations shown in Table II. However, as specified in Section I. (f), if radioactive waste does not contain any nuclides listed in either Table I or II, it is Class A.

(1) If the concentration does not exceed the value in Column 1, the waste is Class A.

(2) If the concentration exceeds the value in Column 1 but does not exceed the value in Column 2, the waste is Class B.

(3) If the concentration exceeds the value in Column 2 but does not exceed the value in Column 3, the waste is Class C.

(4) If the concentration exceeds the value in Column 3, the waste is not generally acceptable for near-surface disposal.

(5) For wastes containing mixtures of the radionuclides listed in Table II, the total concentration shall be determined by the sum of fractions rule described in Section I. (g).

Table II

Radionuclide	Concentration, curie/cubic meter*		
	Column 1	Column 2	Column 3

Total of all radionuclides with less than 5-year half-life	700	*	*
H-3	40	*	*
Co-60	700	*	*
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600

* To convert the Ci/m^3 value to gigabecquerel (GBq) per cubic meter, multiply the Ci/m^3 value by 37. There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in Table II determine the waste to be Class C independent of these radionuclides.

(e) **Classification determined by both long- and short-lived radionuclides.** If the radioactive waste contains a mixture of radionuclides, some of which are listed in Table I and some of which are listed in Table II, classification shall be determined as follows:

(1) If the concentration of a radionuclide listed in Table I is less than 0.1 times the value listed in Table I, the class shall be that determined by the concentration of radionuclides listed in Table II.

(2) If the concentration of a radionuclide listed in Table I exceeds 0.1 times the value listed in Table I, but does not exceed the value in Table 1, the waste shall be Class C, provided the concentration of radionuclides listed in Table II does not exceed the value shown in Column 3 of Table II.

(f) **Classification of wastes with radionuclides other than those listed in Tables I and II.** If the waste does not contain any radionuclides listed in either Table I or II, it is Class A.

(g) **The sum of the fractions rule for mixtures of radionuclides.** For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits must all be taken from the same column of the same table. The sum of the fractions for the column must be less than 1.0 if the waste class is to be determined by that column. **Example:** A waste contains Sr-90 in a concentration of 1.85 TBq/m^3 (50 Ci/m^3) and Cs-137 in a concentration of 814 GBq/m^3 (22 Ci/m^3). Since the concentrations both exceed the values in Column 1, Table II, they must be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33., for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(h) **Determination of concentrations in wastes.** The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as becquerel (nanocurie) per gram.

II. **Radioactive Waste Characteristics.** (a) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(1) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of Part D, the site license conditions shall govern.

(2) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(3) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(4) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1% of the volume.

(5) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(6) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with Section II. (a)(8).

(7) Waste must not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.*8

(8) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20°C. Total activity shall not exceed 3.7 TBq (100 Ci) per container.

(9) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practicable the potential hazard from the non-radiological materials.

(b) **The following requirements are intended to provide stability of the waste.** Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(1) **Waste shall have structural stability.** A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(2) Notwithstanding the provisions in Sections II. (a)(3) and (4), liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1% of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5% of the volume of the waste for waste processed to a stable form.

(3) Void spaces within the waste and between the waste and its package shall be reduced to the extent practicable.

III. **Labeling.** Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with Section I.

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Rules of the City of New York

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

24 RCNY 175.105

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.105 Transportation and Packaging of Radioactive Materials.

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Appendices

Appendix A-Determination of A_1 and A_2

Table A-1-A_1 and A_2 Values for Radionuclides

Table A-2-General Values for A_1 and A_2

(a) **General Provisions.** (1) **Purpose and Scope.**

(i) This section establishes requirements for packaging, preparation for shipment, and transportation of licensed material. The packaging and transport of licensed material are also subject to other sections of this Code (e.g., §§175.03, 175.101) and to the regulations of other agencies (e.g., the U.S. Nuclear Regulatory Commission (NRC), the U.S. Department of Transportation (USDOT) and the U.S. Postal Service*)13 having jurisdiction over means of transport and other applicable state and local laws and regulations. The requirements of this section are in addition to, and not in substitution for, other requirements.

(ii) This section applies to any licensee authorized by specific or general license issued by the Department to receive, possess, use, or transfer licensed material, if the licensee delivers that material to a carrier for transport, transports the material outside the site of usage as specified in the Department license, or transports that material on public highways. No provision of this section authorizes possession of licensed material.

(iii) The requirements of this section apply to any person who has a license or who is required to obtain a license pursuant to this Code, if the person delivers radioactive material to a common or contract carrier for transport or transports the material outside the confines of the person's facility or other authorized place of use.

(2) **Records.** Each record required by this section must be legible throughout the retention period specified by this Code. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate

safeguards against tampering with and loss of records.

(3) **Completeness and accuracy of information.**

(i) Information provided to the Department by an applicant for a license, or by a licensee, or information required by applicable laws or regulations, or licensed conditions to be maintained by the applicant or the licensee must be complete and accurate in all material respects.

(ii) Each applicant or licensee shall notify the Department of information identified by the applicant or licensee as having, for the regulated activity, a significant implication for public health and safety or common defense and security. An applicant or licensee violates this requirement if the applicant or licensee fails to notify the Department of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification must be provided to the Department within two working days of identifying the information. This requirement is not applicable to information that is already required to be provided to the Department by other reporting or updating requirements.

(4) **Requirement for license.**

(i) Except as authorized in a general license or a specific license issued by the Department, or as exempted in this section, no person may-

(A) Deliver licensed material to a carrier for transport; or

(B) Transport licensed material.

(ii) Exemptions from the requirement for license in §175.105(a)(4) are specified in §175.105(b)(2). General licenses for which no NRC package approval is required are issued in §§175.105(c)(3) and 175.105(c)(4). The general license in §175.105(c)(1) requires that an NRC certificate of compliance or other package approval be issued for the package to be used under the general license. The transport of licensed material or delivery of licensed material to a carrier for transport is subject to the operating controls and procedures requirements of §175.105(d), to the quality assurance requirements of §175.105(e), and to the general provisions of §175.105(a), including USDOT regulations referenced in §175.105(a)(6).

(5) **Definitions.** The following terms are defined herein for the purpose of this section. These definitions are in addition to those in §175.02. To ensure compatibility with international transportation standards, all limits in this section are given in terms of dual units: The International System of Units (SI) followed or preceded by U.S. standard or customary units. The U.S. customary units are not exact equivalents, but are rounded to a convenient value, providing a functionally equivalent unit. For the purpose of this section, either unit may be used.

(i) "Certificate holder" means a person who has been issued a certificate of compliance or other package approval by the U.S. Nuclear Regulatory Commission.

(ii) "Certificate of Compliance (CoC)" means the certificate issued by the NRC which approves the design of a package for the transportation of radioactive material.

(iii) "Close reflection by water" means immediate contact by water of sufficient thickness for maximum reflection of neutrons.

(iv) "Containment system" means the assembly of components of the packaging intended to retain the radioactive material during transport.

(v) "Criticality Safety Index (CSI)" means the dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages

containing fissile material during transportation. Determination of the criticality safety index is described in 10 CFR §§71.22, 71.23, and 71.59.

(vi) "Deuterium" means, for the purposes of 10 CFR §§71.15 and 71.22, deuterium and any deuterium compounds, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000.

(vii) "Graphite" means, for the purposes of 10 CFR §§71.15 and 71.22, graphite with a boron equivalent content less than 5 parts per million and density greater than 1.5 grams per cubic centimeter.

(viii) "Low toxicity alpha emitters" means natural uranium, depleted uranium, natural thorium; uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than 10 days.

(ix) "Maximum normal operating pressure" means the maximum gauge pressure that would develop in the containment system in a period of 1 year under the heat condition specified in 10 CFR 71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

(x) "Natural thorium" means thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

(xi) "Optimum interspersed hydrogenous moderation" means the presence of hydrogenous material between packages to such an extent that the maximum nuclear reactivity results.

(xii) "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, has undergone at least 1 year's decay since being used as a source of energy in a power reactor, and has not been chemically separated into its constituent elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies.

(xiii) "Surface Contaminated Object (SCO)" means a solid object that is not itself classed as radioactive material, but which has radioactive material distributed on any of its surfaces. SCO must be in one of two groups with surface activity not exceeding the following limits:

(A) SCO-1: A solid object on which:

(a) The non-fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4 Bq/cm^2 (10^{-4} $microcurie/cm^2$) for beta and gamma and low toxicity alpha emitters, or 0.4 Bq/cm^2 (10^{-5} $microcurie/cm^2$) for all other alpha emitters;

(b) The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4×10^4 Bq/cm^2 (1.0 $microcurie/cm^2$) for beta and gamma and low toxicity alpha emitters, or 4×10^3 Bq/cm^2 (0.1 $microcurie/cm^2$) for all other alpha emitters; and

(c) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4×10^4 Bq/cm^2 (1 $microcurie/cm^2$) for beta and gamma and low toxicity alpha emitters, or 4×10^3 Bq/cm^2 (0.1 $microcurie/cm^2$) for all other alpha emitters.

(B) SCO-II: A solid object on which the limits for SCO-I are exceeded and on which:

(a) The non-fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 400 Bq/cm^2 (10^{-2} $microcurie/cm^2$) for beta and gamma and low toxicity alpha emitters or 40 Bq/cm^2 (10^{-3} $microcurie/cm^2$) for all other alpha emitters;

(b) The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than

300 cm^2) does not exceed 8×10^5 Bq/cm^2 (20 microcuries/cm^2) for beta and gamma and low toxicity alpha emitters, or 8×10^4 Bq/cm^2 (2 microcuries/cm^2) for all other alpha emitters; and

(c) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 8×10^5 Bq/cm^2 (20 microcuries/cm^2) for beta and gamma and low toxicity alpha emitters, or 8×10^4 Bq/cm^2 (2 microcuries/cm^2) for all other alpha emitters.

(xiv) "Unirradiated uranium" means uranium containing not more than 2 x 103 Bq of plutonium per gram of uranium-235, not more than 9 x 106 Bq of fission products per gram of uranium-235, and not more than 5 x 10-3 g of uranium-236 per gram of uranium-235.

(xv) Uranium-natural, depleted, enriched

(A) "Natural uranium" means uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

(B) "Depleted uranium" means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(C) "Enriched uranium" means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

(6) **Transportation of licensed material.**

(i) Each licensee who transports licensed material outside the site of usage, as specified in the license or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the USDOT regulations in 49 CFR Parts 107, 171 through 180 and 390 through 397 appropriate to the mode of transport.

(A) The licensee shall particularly note USDOT regulations in the following areas:

(a) Packaging-49 CFR Part 173; Subparts A and B and I.

(b) Marking and labeling-49 CFR Part 172: Subpart D; and Sections 172.400 through 172.407 and Sections 172.436 through 172.441 of Subpart E.

(c) Placarding-49 CFR Part 172: Subpart F, especially Sections 172.500 through 172.519, 172.556, and Appendices B and C.

(d) Accident reporting-49 CFR Part 171: Sections 171.15 and 171.16.

(e) Shipping papers and emergency information-49 CFR Part 172: Subparts C and G.

(f) Hazardous material employee training-49 CFR Part 172: Subpart H.

(g) Security plans-49 CFR Part 172: subpart I.

(h) Hazardous material shipper/carrier registration-49 CFR Part 107: Subpart G.

(B) The licensee shall also note USDOT regulations pertaining to the following modes of transportation:

(a) Rail-49 CFR Part 174: Subparts A through D and K.

(b) Air-49 CFR Part 175.

(c) Vessel-49 CFR Part 176: Subparts A through F and M.

(d) Public Highway-49 CFR Part 177 and Parts 390 through 397.

(ii) If USDOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the USDOT specified in §175.105(a)(6)(i) to the same extent as if the shipment or transportation were subject to USDOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, must be filed with, or made to, the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(b) **Exemption.** (1) **Exemption of physicians.** Any physician licensed by a State to dispense drugs in the practice of medicine is exempt from §175.105(a)(6) with respect to transport by the physician of licensed material for use in the practice of medicine. However, any physician operating under this exemption must be licensed under applicable sections of this Code, 10 CFR Part 35 or the equivalent Agreement State regulations. Such transport must not be by public modes of transportation including, but not limited to, buses, subways, trams, taxicabs, car services, trains, ferries, or other means which would be returned immediately to public use after transporting licensed material.

(2) **Exemption for low-level materials.**

(i)A licensee is exempt from all requirements of this section with respect to shipment or carriage of the following low-level materials:

(A) Natural material and ores containing naturally occurring radionuclides that are not intended to be processed for use of these radionuclides, provided the activity concentration of the material does not exceed 10 times the values specified in Appendix A, Table A-2 of this section.

(B) Materials for which the activity concentration is not greater than the activity concentration values specified in Appendix A, Table A-2 of this section , or for which the consignment activity is not greater than the limit for an exempt consignment found in Appendix A, Table A-2 of this section.

(3) **Exemption from classification as fissile material.**

(i) Fissile material meeting the requirements of at least one of the paragraphs of this section are exempt from classification as fissile material and from the fissile material package standards of 10 CFR §§71.55 and 71.59, but are subject to all other requirements of this part, except as noted.

(ii) Individual package containing 2 grams or less of fissile material

(iii) Individual or bulk packaging containing 15 grams or less of fissile material provided the package has at least 200 grams of solid nonfissile material for every gram of fissile material. Lead, beryllium, graphite and hydrogenous material enriched in deuterium may be present in the package but must not be included in determining the required mass for solid nonfissile material.

(iv) Low concentrations of solid fissile material commingled with solid nonfissile material provided that:

(A) There is at least 2000 grams of solid nonfissile material for every gram of fissile material, and

(B) There is no more than 180 grams of fissile material distributed within 360 kg of contiguous nonfissile material.

(C) Lead, beryllium, graphite, and hydrogenous material may be present in the package but must not be included in determining the required mass of solid nonfissile material.

(v) Uranium enriched in uranium-235 to a maximum of 1 percent by weight, and with a total plutonium and

uranium-233 content of up to 1 percent of the mass of the uranium235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than 5 percent of the uranium mass.

(vi) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2 percent by mass, with a total plutonium and uranium-233 content not exceeding 0.002 percent of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of 2. The material must be contained in at least a DOT Type A package.

(vii) Packages containing, individually, a total plutonium mass of not more than 1000 grams, of which not more than 20 percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

(c) **General Licenses.** (1) **General license: NRC-approved package.**

(i) A general license is hereby issued to any licensee of the Department to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the NRC.

(ii) This general license applies only to a licensee who-

(A) Has a quality assurance program approved by the Department as satisfying the provisions of §175.105(e) of this Code.

(B) Has a copy of the certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken before shipment;

(C) Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and applicable provisions of the operating controls and procedures requirements of §175.105(d), the quality assurance requirements of §175.105(e), and the general provisions of §175.105(a); and

(D) Submits in writing to the Department, before the licensee's first use of the package, the licensee's name and license number and the package identification number specified in the package approval.

(iii) This general license applies only when the package approval authorizes use of the package under this general license.

(iv) For a Type B or fissile material package, the design of which was approved by NRC before April 1, 1996, the general license is subject to the additional restrictions contained in 10 CFR 71.13.

(2) **Previously approved package.**

(i) A Type B package previously approved by NRC but not designated as B(U) or B(M) in the identification number of the NRC Certificate of Compliance, may be used under the general license of §175.105(c)(1) with the following additional conditions:

(A) Fabrication of the packaging was satisfactorily completed by August 31, 1986, as demonstrated by application of its model number in accordance with §175.105(d)(2)(iii); (B) A package used for a shipment to a location outside the United States is subject to multilateral approval, as defined in USDOT regulations at 49 CFR 173.403; and

(C) A serial number that uniquely identifies each packaging which conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each packaging.

(ii) A Type B(U) package, a Type B(M) package, a low specific activity (LSA) material package or a fissile material package, previously approved by the NRC but without the designation "-85" in the identification number of the

NRC Certificate of Compliance, may be used under the general license of §175.105(c)(1) with the following additional conditions:

(A) Fabrication of the package is satisfactorily completed by April 1, 1999 as demonstrated by application of its model number in accordance with §175.105(d)(2)(iii) of this Code;

(B) A package used for a shipment to a location outside the United States is subject to multilateral approval as defined in USDOT regulations at 49 CFR 173.403; and

(C) A serial number which uniquely identifies each packaging which conforms to the approved design is assigned to and legibly and durably marked on the outside of each packaging.

(3) **General license: U.S. Department of Transportation specification container.**

(i) A general license is issued to any licensee of the Department to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in USDOT regulations at 49 CFR Parts 173 and 178.

(ii) This general license applies only to a licensee who has a quality assurance program approved by the Department as satisfying the provisions of §175.105(e) of this Code.

(iii) This general license applies only to a licensee who-

(A) Has a copy of the specification; and

(B) Complies with the terms and conditions of the specification and the applicable provisions of the operating and procedures requirements in §175.105(d), the quality assurance requirements in §175.105(e) and the general provisions contained in §175.105(a).

(iv) This general license is subject to the limitation that the specification container may not be used for a shipment to a location outside the United States, except by multilateral approval, as defined in USDOT regulations at 49 CFR 173.403.

(v) The requirements of §175.105(c)(3) shall expire October 1, 2008.

(4) **General License: Use of foreign approved package.**

(i) A general license is issued to any licensee of the Department to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate that has been revalidated by USDOT as meeting the applicable requirements of 49 CFR 171.12.

(ii) Except as otherwise provided herein, the general license applies only to a licensee who has a quality assurance program approved by the Department as satisfying the applicable provisions of §175.105(e) of this Code.

(iii) This general license applies only to shipments made to or from locations outside the United States.

(iv) This general license applies only to a licensee who-

(A) Has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate, relating to the use and maintenance of the packaging and to the actions to be taken before shipment; and

(B) Complies with the terms and conditions of the certificate and revalidation, and with the applicable provisions of the operating and procedures requirements in §175.105(d), the quality assurance requirements in §175.105(e) and the

general provisions in §175.105(a). With respect to the quality assurance provisions of §175.105(e) of this Code, the licensee is exempt from design, construction, and fabrication consid- erations.

(5) **General License: Fissile Material.**

(i) A general license is issued to any licensee of the Department to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped in accordance with this section. The fissile material need not be contained in a package which meets the standards of-subparts E and F of 10 CFR 71.22; however the material must be contained in a Type A package. The Type A package must also meet the DOT requirements of 49 CFR 173.417(a).

(ii) The general license applies only to a licensee who has a quality assurance program approved by the Department as satisfying the provisions of §175.105(e) of this part

(iii) The general license applies only when a package's contents:

(A) Contain less than a Type A quantity of fissile material; and

(B) Contains less than 500 total grams of beryllium, graphite, or hydrogenous material enriched in deuterium.

(iv) The general license applies only to packages containing fissile material that are labeled with a CSI which:

(A) Has been determined in accordance with section (5) of this section

(B) Has a value less than or equal to 10; and

(C) For a shipment of multiple packages containing fissile material, the sum of the CSIs must be less than or equal to 50 (for shipment on a nonexclusive use conveyance) and less than or equal to 100 (for shipment on an exclusive use conveyance).

(v) (A) The value for the CSI must be greater than or equal to the number calculated by the following equation:

$$CSI = 10\left[\frac{\text{grams of } {}^{233}U}{X} + \frac{\text{grams of } {}^{233}U}{Y} + \frac{\text{grams of Pu}}{Z}\right];$$

(B) The calculated CSI must be rounded up to the first decimal place;

(C) The values of X, Y, and Z used in the CSI equation must be taken from Tables-71.1 or 71.2, as appropriate;

(D) If Table 71-2 is used to obtain the value of X, then the values of the terms in the equation for uranium-233 and plutonium must be assumed to be zero; and,

(E) Table 71-1 values for X, Y, and Z must be used to determine the CSI if:

(a) Uranium-233 is present in the package;

(b) The mass of plutonium exceeds 1 percent of the mass of uranium-235;

(c) The uranium is of unknown uranium-235 enrichment or greater than 24 weight percent enrichment; or

(d) Substances having a moderating effectiveness (i.e., an average hydrogen density greater than H2O) (e.g., certain

hydrocarbon oils or plastics) are present in any form, except as polyethylene used for packing or wrapping.

(6) **General license: Plutonium/Beryllium special form material.**

(i) A general license is issued to any licensee of the Department to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance with this section. This material need not be contained in a package which meets the standards of subparts E and F of 10 CFR Part 71; however, the material must be contained in a Type A package. The Type A package must also meet the USDOT requirements of 49 CFR §173.417(a).

(ii) The general license applies only to a licensee who has a quality assurance program approved by the Department as satisfying §175.105(e)(1) of this section.

(iii) The general license applies only when a package's contents:

(A) Contain less than a Type A quantity of material; and

(B) Contain less than 1000 g of plutonium, provided that: plutonium-239, plutonium-241, or any combination of these radionuclides, constitute less than 240 g of the total quantity of plutonium in the package.

(iv) The general license applies only to packages labeled with a CSI which:

(A) Has been determined in accordance with part (v) of this section;

(B) Has a value less than or equal to 100;

(C) For a shipment of multiple packages containing Pu-Be sealed sources, the sum of the CSI must be less than or equal to 50 (for shipment on a nonexclusive use conveyance) and less than or equal to 100 (for shipment on an exclusive use conveyance).

(v) (A) The value for the CSI must be greater than or equal to the number calculated by the following equation:

$$\text{CSI} = 10\left[\frac{\text{grams of } {}^{239}\text{Pu} + \text{grams of } {}^{241}\text{Pu}}{24}\right]; \text{ and}$$

(B) The calculated CSI must be rounded up to the first decimal place.

(d) **Operating Controls and Procedures.** (1) **Applicability of operating controls and procedures.** A licensee subject to this section, who, under a general or specific license, transports licensed material or delivers licensed material to a carrier for transport, shall comply with the requirements of this subsection, with the quality assurance requirements of §175.105(e), and with the general provisions of §175.105(a) of this Code.

(2) **Preliminary determinations.** Before the first use of any packaging for the shipment of licensed material-

(i) The licensee shall ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that could significantly reduce the effectiveness of the packaging:

(ii) Where the maximum normal operating pressure will exceed 35 kPa (5 lbf/in^2) gauge, the licensee shall test the

containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure, to verify the capability of that system to maintain its structural integrity at that pressure; and

(iii) The licensee shall conspicuously and durably mark the packaging with its model number, serial number, gross weight, and a package identification number assigned by the NRC. Before applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the NRC.

(3) **Routine determinations.** Before each shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this section and of the license. The licensee shall determine that-

(i) The package is proper for the contents to be shipped;

(ii) The package is in unimpaired physical condition except for superficial defects such as marks or dents;

(iii) Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;

(iv) Any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(v) Any pressure relief device is operable and set in accordance with written procedures;

(vi) The package has been loaded and closed in accordance with written procedures;

(vii) Any structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose, unless it satisfies the design requirements of 10 CFR 71.45;

(viii) The level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable, and within the limits specified in USDOT regulations in 49 CFR 173.443;

(ix) External radiation levels around the package and around the vehicle, if applicable, will not exceed the limits specified in 10 CFR 71.47 at any time during transportation;

(x) Accessible package surface temperatures will not exceed the limits specified in 10 CFR 71.43(g) at any time during transportation; and

(xi) For fissile material, any moderator or neutron absorber, if required, is present and in proper condition.

(xii) When the isotopic abundance, mass, concentration, degree of irradiation, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown properties have credible values that will cause the maximum neutron multiplication.

(4) **Air transport of plutonium.**

(i) Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this section or included indirectly by citation of 49 CFR chapter I, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

(A) The plutonium is contained in a medical device designed for individual human application; or

(B) The plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in Appendix A, Table A-2, of this section and in which the radioactivity is essentially uniformly distributed; or

(C) The plutonium is shipped in a single package containing no more than an A_2 quantity of plutonium in any isotope or form, and is shipped in accordance with §175.105(a)(6); or

(D) The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the NRC.

(ii) Nothing in §175.105(d)(4)(i) is to be interpreted as removing or diminishing the requirements of 10 CFR 73.24

(iii) For a shipment of plutonium by air which is subject to §175.105(d)(4)(i)(D), the licensee shall, through special arrangement with the carrier, require compliance with 49 CFR 175.704, U.S. Department of Transportation regulations applicable to the air transport of plutonium.

(5) **Opening instructions.** Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with §175.03(j)(6) of this Code.

(6) **Records.**

(i) Each licensee shall maintain, for a period of 3 years after shipment, a record of each shipment of licensed material not exempt under §175.105(b)(2), showing where applicable-

(A) Identification of the packaging by model number and serial number;

(B) Verification that there are no significant defects in the packaging, as shipped;

(C) Volume and identification of coolant;

(D) Type and quantity of licensed material in each package, and the total quantity of each shipment;

(E) For each item of irradiated fissile material-

(a) Identification by model number and serial number;

(b) Irradiation and decay history to the extent appropriate to demonstrate that its nuclear and thermal characteristics comply with license conditions; and

(c) Any abnormal or unusual condition relevant to radiation safety;

(F) Date of the shipment;

(G) For fissile packages and for Type B packages, any special controls exercised;

(H) Name and address of the transferee;

(I) Address to which the shipment was made; and

(J) Results of the determinations required by §175.105(d)(3) and by the conditions of the package approval.

(ii) The licensee shall make available to the Department for inspection, upon reasonable notice, all records required by this section. Records are only valid if stamped, initialed, or signed and dated by authorized personnel or otherwise

authenticated.

(iii) The licensee shall maintain sufficient written records to furnish evidence of the quality of packaging. The records to be maintained include results of the determinations required by §175.105(d)(2); design, fabrication, and assembly records, results of reviews, inspections, tests, and audits; results of monitoring work performance and materials analyses; and results of maintenance, modification and repair activities. Inspection, test, and audit records must identify the inspector or data recorder, the type of observation, the results, the acceptability and the action taken in connection with any deficiencies noted. The records must be retained for 3 years after the life of the packaging to which they apply.

(7) **Inspection and tests.**

(i) The licensee or certificate holder shall permit the Department, at all reasonable times, to inspect the licensed material, packaging, premises, and facilities in which the licensed material or packaging is used, provided, constructed, fabricated, tested, stored, or shipped.

(ii) The licensee shall perform, and permit the Department to perform, any tests the Department deems necessary or appropriate for the administration of the requirements of this section.

(iii) The licensee shall notify the Department at least 45 days before fabrication of a package to be used for the shipment of licensed material having a decay heat load in excess of 5kW or with a maximum normal operating pressure in excess of 103kPa (15 lbf/in^2) gauge.

(8) **Reports.** The licensee shall report to the Department within 30 days-

(i) Any instance in which there is significant reduction in the effectiveness of any approved Type B, or fissile, packaging during use;

(ii) Details of any defects with safety significance in Type B, or fissile, packaging after first use, with the means employed to repair the defects and prevent their recurrence; or

(iii) Instances in which the conditions of approval in the certificate of compliance were not observed in making a shipment.

(9) **Advance notification of shipment of irradiated reactor fuel and nuclear waste.**

(i) As specified in §§175.105(d)(9)(ii), (iii) and (iv), each licensee shall provide advance notification to the governor of a State, or the governor's designee, and the Department, of the shipment of licensed material, through, or across the boundary of the State, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.

(ii) Advance notification is required under this subdivision for shipments of irradiated reactor fuel in quantities less than that subject to advance notification requirements of 10 CFR 73.37(f). Advance notification is also required under this subdivision for shipment of licensed material; other than irradiated fuel, meeting the following three conditions:

(A) The licensed material is required by this section to be in Type B packaging for transportation;

(B) The licensed material is being transported to or across a State boundary en route to a disposal facility or to a collection point for transport to a disposal facility; and

(C) The quantity of licensed material in a single package exceeds the least of the following:

(a) 3000 times the A_1 value of the radionuclides as specified in appendix A. Table A-1 for special form radioactive

material;

(b) 3000 times the A_2 value of the radionuclides as specified in appendix A. Table A-1 for normal form radioactive material; or

(c) 1000 TBq (27,000 Ci).

(iii) Procedures for submitting advance notification.

(A) The notification must be made in writing to the office of each appropriate governor or governor's designee and to the Department.

(B) A notification delivered by mail must be postmarked at least 7 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

(C) A notification delivered by any means other than mail must reach the office of the governor or of the governor's designee and the Department at least 4 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

(a) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the Federal Register on June 30, 1995 (60 FR 34306).

(b) The list will be published annually in the Federal Register on or about June 30 to reflect any changes in information.

(c) A list of the names and mailing addresses of the governors' designees is available on request from the Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(D) The licensee shall retain a copy of the notification as a record for 3 years.

(iv) Information to be furnished in advance notification of shipment. Each advance notification of shipment of irradiated reactor fuel or nuclear waste must contain the following information:

(A) The name, address, and telephone number of the shipper, carrier, and receiver of the irradiated reactor fuel or nuclear waste shipment;

(B) A description of the irradiated reactor fuel or nuclear waste contained in the shipment, as specified in the regulations of USDOT in 49 CFR 172.202 and 172.203(d);

(C) The point of origin of the shipment and the 7-day period during which departure of the shipment is estimated to occur;

(D) The 7-day period during which arrival of the shipment at State boundaries is estimated to occur;

(E) The destination of the shipment, and the 7-day period during which arrival of the shipment is estimated to occur; and

(F) A point of contact, with a telephone number, for current shipment information.

(v) **Revision notice.** A licensee who finds that schedule information previously furnished to a governor or governor's designee, or the Department, in accordance with this subdivision, will not be met, shall telephone a responsible individual in the office of the governor of the State or of the governor's designee, and the Department, and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a

record of the name of the individual contacted for 3 years.

(vi) **Cancellation notice.**

(A) Each licensee who cancels an irradiated reactor fuel or nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State or to the governor's designee previously notified, and to the Department.

(B) The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for 3 years.

(e) **Quality Assurance.** (1) **Quality assurance requirements.**

(i) **Purpose.** This subsection describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging that are important to safety. As used in this subsection, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(ii) **Establishment of program.** Each licensee shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of §§175.105(e)(1) through 175.105(e)(19) and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging. The licensee shall apply each of the applicable criteria in a graded approach, i.e., to an extent that is consistent with its importance to safety.

(iii) **Approval of program.** Before the use of any package for the shipment of licensed material subject to this subsection each licensee shall obtain Department approval of its quality assurance program. Each licensee shall file a description of its quality assurance program, including a discussion of which requirements of this subsection are applicable and how they will be satisfied, with the Department.

(iv) Repealed.

(v) Repealed.

(vi) **Previously approved programs.** An NRC-approved quality assurance program that satisfies the applicable criteria of Appendix B of 10 CFR Part 50, and that is established, maintained, and executed with regard to transport packages, will be accepted as satisfying the requirements of §175.105(e)(1)(ii) of this Code. Before first use, the licensee shall notify the NRC and the Department of its intent to apply its previously approved Appendix B program to transportation activities. The licensee shall identify the program by date of submittal to the NRC and date of NRC approval.

(2) **Quality assurance organization.**

(i) The licensee shall be responsible for the establishment and execution of the quality assurance program. The licensee may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. The licensee shall clearly establish and delineate, in writing, the authority and duties of persons and organizations performing activities affecting the safety-related functions of structures, systems, and components. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

(ii) The quality assurance functions are-

(A) Assuring that an appropriate quality assurance program is established and effectively executed; and

(B) Verifying, by procedures such as checking, auditing, and inspection, that activities affecting the safety-related functions have been performed correctly.

(iii) The persons and organizations performing quality assurance functions must have sufficient authority and organizational freedom to-

(A) Identify quality problems;

(B) Initiate, recommend, or provide solutions; and

(C) Verify implementation of solutions.

(iv) The persons and organizations performing quality assurance functions shall report to a management level that assures that the required authority and organizational freedom, including sufficient independence from cost and schedule, when opposed to safety considerations, are provided.

(v) Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location or locations where activities are performed, the organizational structure for executing the quality assurance program may take various forms, provided that the persons and organizations assigned the quality assurance functions have the required authority and organizational freedom.

(vi) Irrespective of the organizational structure, the individual(s) assigned the responsibility for assuring effective execution of any portion of the quality assurance program, at any location where activities subject to this subsection are being performed, must have direct access to the levels of management necessary to perform this function.

(3) **Quality assurance program.**

(i) The licensee shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of §§175.105(e)(1) through 175.105(e)(19). The licensee shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used. The licensee shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(ii) The licensee, through its quality assurance program, shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. The licensee shall assure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

(iii) The licensee shall base the requirements and procedures of its quality assurance program on the following considerations concerning the complexity and proposed use of the package and its components:

(A) The impact of malfunction or failure of the item to safety;

(B) The design and fabrication complexity or uniqueness of the item;

(C) The need for special controls and surveillance over processes and equipment;

(D) The degree to which functional compliance can be demonstrated by inspection or test; and

(E) The quality history and degree of standardization of the item.

(iv) The licensee shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary to assure that suitable proficiency is achieved and maintained. The licensee shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program which they are executing.

(4) **Package design control.**

(i) The licensee shall establish measures to assure that applicable requirements and the package design, as specified in the license for those materials and components to which this subdivision applies, are correctly translated into specifications, drawings, procedures, and instructions. These measures must include provisions to assure that appropriate quality standards are specified and included in design documents and that deviations from standards are controlled. Measures must be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the safety-related functions of the materials, parts, and components of the packaging.

(ii) The licensee shall establish measures for the identification and control of design interfaces and for coordination among participating design organizations. These measures must include the establishment of written procedures, among participating design organizations, for the review, approval, release, distribution, and revision of documents involving design interfaces. The design control measures must provide for verifying or checking the adequacy of design, by methods such as design reviews, alternate or simplified calculational methods, or by a suitable testing program. For the verifying or checking process, the licensee shall designate individuals or groups other than those who were responsible for the original design, but who may be from the same organization. Where a test program is used to verify the adequacy of a specific design feature in lieu of other verifying or checking processes, the licensee shall include suitable qualification testing of a prototype or sample unit under the most adverse design conditions. The licensee shall apply design control measures to items such as the following:

(A) Criticality physics, radiation shielding, stress, thermal, hydraulic, and accident analyses;

(B) Compatibility of materials;

(C) Accessibility for inservice inspection, maintenance, and repair;

(D) Features to facilitate decontamination; and

(E) Delineation of acceptance criteria for inspections and tests.

(iii) The licensee shall subject design changes, including field changes, to design control measures commensurate with those applied to the original design. Changes in the conditions specified in the package approval require the Department's approval.

(5) **Procurement document control.** The licensee shall establish measures to assure that adequate quality is required in the documents for procurement of material, equipment, and services, whether purchased by the licensee or by its contractors or subcontractors. To the extent necessary, the licensee shall require contractors or subcontractors to provide a quality assurance program consistent with the applicable provisions of this section.

(6) **Instructions, procedures, and drawings.** The licensee shall prescribe activities affecting quality by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall require that these

instructions, procedures, and drawings be followed. The instructions, procedures, and drawings must include appropriate quantitative or qualitative acceptance criteria for determining that important activities have been satisfactorily accomplished.

(7) **Document control.** The licensee shall establish measures to control the issuance of documents such as instructions, procedures, and drawings, including changes, which prescribe all activities affecting quality. These measures must assure that documents, including changes, are reviewed for adequacy, approved for release by authorized personnel, and distributed and used at the location where the prescribed activity is performed. These measures must assure that changes to documents are reviewed and approved.

(8) **Control of purchased material, equipment, and services.**

(i) The licensee shall establish measures to assure that purchased material, equipment, and services, whether purchased directly or through contractors and subcontractors, conform to the procurement documents. These measures must include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source, and examination of products on delivery.

(ii) The licensee shall have available documentary evidence that material and equipment conform to the procurement specifications before installation or use of the material and equipment. The licensee shall retain, or have available, this documentary evidence for the life of the package to which it applies. The licensee shall assure that the evidence is sufficient to identify the specific requirements met by the purchased material and equipment.

(iii) The licensee shall assess the effectiveness of the control of quality by contractors and subcontractors at intervals consistent with the importance, complexity, and quantity of the product or services.

(9) **Identification and control of materials, parts, and components.** The licensee shall establish measures for the identification and control of materials, parts, and components. These measures must assure that identification of the item is maintained by heat number, part number, or other appropriate means, either on the item or on records traceable to the item, as required throughout fabrication, installation, and use of the item. These identification and control measures must be designed to prevent the use of incorrect or defective materials, parts, and components.

(10) **Control of special processes.** The licensee shall establish measures to assure that special processes, including welding, heat treating, and nondestructive testing, are controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards, specifications, criteria, and other special requirements.

(11) **Internal inspection.** The licensee shall establish and execute a program for inspection of activities affecting quality by or for the organization performing the activity, to verify conformance with the documented instructions, procedures, and drawings for accomplishing the activity. The inspection must be performed by individuals other than those who performed the activity being inspected. Examination, measurements, or tests of material or products processed must be performed for each work operation where necessary to assure quality. If direct inspection of processed material or products is not carried out, indirect control by monitoring processing methods, equipment, and personnel must be provided. Both inspection and process monitoring must be provided when quality control is inadequate without both. If mandatory inspection hold points, which require witnessing or inspecting by the licensee's designated representative and beyond which work should not proceed without the consent of its designated representative, are required, the specific hold points must be indicated in appropriate documents.

(12) **Test control.** The licensee shall establish a test program to assure that all testing required to demonstrate that the packaging components will perform satisfactorily in service is identified and performed in accordance with written test procedures that incorporate the requirements of this section and the requirements and acceptance limits contained in the package approval. The test procedures must include provisions for assuring that all prerequisites for the given test

are met, that adequate test instrumentation is available and used, and that the test is performed under suitable environmental conditions. The licensee shall document and evaluate the test results to assure that test requirements have been satisfied.

(13) **Control of measuring and test equipment.** The licensee shall establish measures to assure that tools, gauges, instruments, and other measuring and testing devices used in activities affecting quality are properly controlled, calibrated, and adjusted at specified times to maintain accuracy within necessary limits.

(14) **Handling, storage, and shipping control.** The licensee shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels must be specified and provided.

(15) **Inspection, test, and operating status.** (i) The licensee shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures must provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent bypassing of the inspections and tests.

(ii) The licensee shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

(16) **Nonconforming materials, parts, or components.** The licensee shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements to prevent their inadvertent use or installation. These measures must include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items must be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

(17) **Corrective action.** The licensee shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a significant condition adverse to quality, the measures must assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

(18) **Quality assurance records.** The licensee shall maintain sufficient written records to describe the activities affecting quality. The records must include the instructions, procedures, and drawings required by subdivision (6) of this subsection, to prescribe quality assurance activities and must include closely related specifications such as required qualifications of personnel, procedures, and equipment. The records must include the instructions or procedures which establish a records retention program that is consistent with applicable requirements and designates factors such as duration, location, and assigned responsibility. The licensee shall retain these records for 3 years beyond the date when the licensee last engages in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee shall retain the superseded material for 3 years after it is superseded.

(19) **Audits.** The licensee shall carry out a comprehensive system of planned and periodic audits, to verify compliance with all aspects of the quality assurance program, and to determine the effectiveness of the program. The audits must be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited. Audited results must be documented and reviewed by management having responsibility in the area audited. Follow-up action, including reaudit of deficient areas, must be taken where indicated.

HISTORICAL NOTE

Section repealed and added City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of

Basis and Purpose No. 13]

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Notes:

This section was repealed and reenacted on April 26, 1999 as a matter of compatibility to conform to NRC regulations found in 10 CFR Part 71 governing packaging and transportation of radioactive material.

APPENDIX A

DETERMINATION OF A_1 AND A_2

I. Values of A_1 and A_2 for individual radionuclides, which are the bases for many activity limits elsewhere in this Code, are given in Table A-1. The curie (Ci) values specified are obtained by converting from the Terabecquerel (TBq) value. The Terabecquerel values are the regulatory standard. The curie values are for information only and are not intended to be the regulatory standard. Where values of A_1 and A_2 are unlimited, it is for radiation control purposes only. For nuclear criticality safety, some materials are subject to controls placed on fissile material.

II. a. For individual radionuclides whose identities are known, but which are not listed in Table A-1, the A_1 and A2 values contained in Table A-3 may be used. Otherwise, the licensee shall obtain prior Department approval of the A1 and A_2 values for radionuclides not listed in Table A-1, before shipping the material.

b. For individual radionuclides whose identities are known, but which are not listed in Table A-2, the exempt material activity concentration and exempt consignment activity values contained in Table A-3 may be used. Otherwise, the licensee shall obtain prior Department approval of the exempt material activity concentration and exempt consignment activity values for radionuclides not listed in Table A-2, before shipping the material.

c. The licensee shall submit requests for prior approval, described under paragraphs II(a) and II(b) of this Appendix, to the Department.

III. In the calculations of A_1 and A_2 for a radionuclide not in Table A-1, a single radioactive decay chain, in which radionuclides are present in their naturally occurring proportions, and in which no daughter radionuclide has a half-life either longer than 10 days, or longer than that of the parent radionuclide, shall be considered as a single radionuclide, and the activity to be taken into account, and the A_1 or A_2 value to be applied, shall be those corresponding to the parent radionuclide of that chain. In the case of radioactive decay chains in which any daughter radionuclide has a half-life either longer than 10 days, or greater than that of the parent radionuclide, the parent and those daughter radionuclides shall be considered as mixtures of different radionuclides.

IV. For mixtures of radionuclides whose identities and respective activities are known, the following conditions apply:

a. For special form radioactive material, the maximum quantity transported in a Type A package is as follows:
S size="4">i B(i)A1(i) #1

where B(i) is the activity of radionuclide i, and A_1(i) is the A_1 value for radionuclide I.

b. For normal form radioactive material, the maximum quantity transported in a Type A package is as follows:

SB(i)/A2(i) < 1

where B(i) is the activity of radionuclide i, and A_2(i) is the A_2 value for radionuclide i.

c. Alternatively, the A_1 value for mixtures of special form material may be determined as follows:

A_1 for mixture = _____1
S size="4">i f(i)A1(i)

where f(i) is the fraction of activity for radionuclide I in the mixture, and A_1(i) is the appropriate A_1 value for radionuclide I.

d. Alternatively, the A_2 value for mixtures of normal form material may be determined as follows:

A_2 for mixture = _____1
S size="4">i f(i)A2(i)

where f(i) is the fraction of activity for radionuclide I in the mixture, and A_2(i) is the appropriate A_2 value for radionuclide I.

e. The exempt activity concentration for mixtures of nuclides may be determined as follows:

Exempt activity concentration for mixture = _____1
S size="4">i f(i) (i)

where f(i) is the fraction of activity concentration of radionuclide I in the mixture, and [A] is the activity concentration for exempt material containing radionuclide I.

f. The activity limit for an exempt consignment for mixtures of radionuclides may be determined as follows:

Exempt activity concentration for mixture = _____1
S size="4">i f(i)A(i)

where f(i) is the fraction of activity of radionuclide I in the mixture, and A is the activity limit for exempt consignments for radionuclide I.

V. When the identity of each radionuclide is known, but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped, and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in paragraph IV. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters and beta/gamma emitters.

Table A-1

A1 and A2 Values for Radionuclides

Symbol ofradio-nuclide	Element andatomic number	A1 (TBq)	A1 (Ci)	A2 (TBq)	A2 (Ci)	Specific activity (TB q/g) (Ci/g)

Ac-225 (a)	Actinium (89)	8.0X10-1	2.2X101	6.0X10-3	1.6X10-1	2.1X103	5.8X104
Ac-227 (a)		9.0X10-1	2.4X101	9.0X10-5	2.4X10-3	2.7	7.2X101
Ac-228		6.0X10-1	1.6X101	5.0X10-1	1.4X101	8.4X104	2.2X106
Ag-105	Silver (47)	2.0	5.4X101	2.0	5.4X101	1.1X103	3.0X104
Ag-108m (a)		7.0X10-1	1.9X101	7.0X10-1	1.9X101	9.7X10-1	2.6X101
Ag-110m (a)		4.0X10-1	1.1X101	4.0X10-1	1.1X101	1.8X102	4.7X103
Ag-111		2.0	5.4X101	6.0X10-1	1.6X101	5.8X103	1.6X105
Al-26	Aluminum (13)	1.0X10-1	2.7	1.0X10-1	2.7	7.0X10-4	1.9X10-2
Am-241	Americium (95)	1.0X101	2.7X102	1.0X10-3	2.7X10-2	1.3X10-1	3.4
Am-242m (a)		1.0X101	2.7X102	1.0X10-3	2.7X10-2	3.6X10-1	1.0X101
Am-243 (a)		5.0	1.4X102	1.0X10-3	2.7X10-2	7.4X10-3	2.0X10-1
Ar-37	Argon (18)	4.0X101	1.1X103	4.0X101	1.1X103	3.7X103	9.9X104
Ar-39		4.0X101	1.1X103	2.0X101	5.4X102	1.3	3.4X101
Ar-41		3.0X10-1	8.1	3.0X10-1	8.1	1.5X106	4.2X107
As-72	Arsenic (33)	3.0X10-1	8.1	3.0X10-1	8.1	6.2X104	1.7X106
As-73		4.0X101	1.1X103	4.0X101	1.1X103	8.2X102	2.2X104
As-74		1.0	2.7X101	9.0X10-1	2.4X101	3.7X103	9.9X104
As-76		3.0X10-1	8.1	3.0X10-1	8.1	5.8X104	1.6X106
As-77		2.0X101	5.4X102	7.0X10-1	1.9X101	3.9X104	1.0X106
At-211 (a)	Astatine (85)	2.0X101	5.4X102	5.0X10-1	1.4X101	7.6X104	2.1X106
Au-193	Gold (79)	7.0	1.9X102	2.0	5.4X101	3.4X104	9.2X105
Au-194		1.0	2.7X101	1.0	2.7X101	1.5X104	4.1X105
Au-195		1.0X101	2.7X102	6.0	1.6X102	1.4X102	3.7X103
Au-198		1.0	2.7X101	6.0X10-1	1.6X101	9.0X103	2.4X105
Au-199		1.0X101	2.7X102	6.0X10-1	1.6X101	7.7X103	2.1X105

Ba-131 (a)	Barium (56)	2.0	5.4X101	2.0	5.4X101	3.1X103	8.4X104
Ba-133		3.0	8.1X101	3.0	8.1X101	9.4	2.6X102
Ba-133m		2.0X101	5.4X102	6.0X10-1	1.6X101	2.2X104	6.1X105
Ba-140 (a)		5.0X10-1	1.4X101	3.0X10-1	8.1	2.7X103	7.3X104
Be-7	Beryllium (4)	2.0X101	5.4X102	2.0X101	5.4X102	1.3X104	3.5X105
Be-10		4.0X101	1.1X103	6.0X10-1	1.6X101	8.3X10-4	2.2X10-2
Bi-205	Bismuth (83)	7.0X10-1	1.9X101	7.0X10-1	1.9X101	1.5X103	4.2X104
Bi-206		3.0X10-1	8.1	3.0X10-1	8.1	3.8X103	1.0X105
Bi-207		7.0X10-1	1.9X101	7.0X10-1	1.9X101	1.9	5.2X101
Bi-210		1.0	2.7X101	6.0X10-1	1.6X101	4.6X103	1.2X105
Bi-210m (a)		6.0X10-1	1.6X101	2.0X10-2	5.4X10-1	2.1X10-5	5.7X10-4
Bi-212 (a)		7.0X10-1	1.9X101	6.0X10-1	1.6X101	5.4X105	1.5X107
Bk-247	Berkelium (97)	8.0	2.2X102	8.0X10-4	2.2X10-2	3.8X10-2	1.0
Bk-249 (a)		4.0X101	1.1X103	3.0X10-1	8.1	6.1X101	1.6X103
Br-76	Bromine (35)	4.0X10-1	1.1X101	4.0X10-1	1.1X101	9.4X104	2.5X106
Br-77		3.0	8.1X101	3.0	8.1X101	2.6X104	7.1X105
Br-82		4.0X10-1	1.1X101	4.0X10-1	1.1X101	4.0X104	1.1X106
C-11	Carbon (6)	1.0	2.7X101	6.0X10-1	1.6X101	3.1X107	8.4X108
C-14		4.0X101	1.1X103	3.0	8.1X101	1.6X10-1	4.5
Ca-41	Calcium (20)	Unlimited	Unlimited	Unlimited	Unlimited	3.1X10-3	8.5X10-2
Ca-45		4.0X101	1.1X103	1.0	2.7X101	6.6X102	1.8X104
Ca-47 (a)		3.0	8.1X101	3.0X10-1	8.1	2.3X104	6.1X105
Cd-109	Cadmium (48)	3.0X101	8.1X102	2.0	5.4X101	9.6X101	2.6X103
Cd-113m		4.0X101	1.1X103	5.0X10-1	1.4X101	8.3	2.2X102

Cd-115 (a)		3.0	8.1X101	4.0X10-1	1.1X101	1.9X104	5.1X105
Cd-115m		5.0X10-1	1.4X101	5.0X10-1	1.4X101	9.4X102	2.5X104
Ce-139	Cerium (58)	7.0	1.9X102	2.0	5.4X101	2.5X102	6.8X103
Ce-141		2.0X101	5.4X102	6.0X10-1	1.6X101	1.1X103	2.8X104
Ce-143		9.0X10-1	2.4X101	6.0X10-1	1.6X101	2.5X104	6.6X105
Ce-144 (a)		2.0X10-1	5.4	2.0X10-1	5.4	1.2X102	3.2X103
Cf-248	Californium (98)	4.0X101	1.1X103	6.0X10-3	1.6X10-1	5.8X101	1.6X103
Cf-249		3.0	8.1X101	8.0X10-4	2.2X10-2	1.5X10-1	4.1
Cf-250		2.0X101	5.4X102	2.0X10-3	5.4X10-2	4.0	1.1X102
Cf-251		7.0	1.9X102	7.0X10-4	1.9X10-2	5.9X10-2	1.6
Cf-252 (h)		5.0X10-2	1.4	3.0X10-3	8.1X10-2	2.0X101	5.4X102
Cf-253 (a)		4.0X101	1.1X103	4.0X10-2	1.1	1.1X103	2.9X104
Cf-254		1.0X10-3	2.7X10-2	1.0X10-3	2.7X10-2	3.1X102	8.5X103
Cl-36	Chlorine (17)	1.0X101	2.7X102	6.0X10-1	1.6X101	1.2X10-3	3.3X10-2
Cl-38		2.0X10-1	5.4	2.0X10-1	5.4	4.9X106	1.3X108
Cm-240	Curium (96)	4.0X101	1.1X103	2.0X10-2	5.4X10-1	7.5X102	2.0X104
Cm-241		2.0	5.4X101	1.0	2.7X101	6.1X102	1.7X104
Cm-242		4.0X101	1.1X103	1.0X10-2	2.7X10-1	1.2X102	3.3X103
Cm-243		9.0	2.4X102	1.0X10-3	2.7X10-2	1.9X10-3	5.2X101
Cm-244		2.0X101	5.4X102	2.0X10-3	5.4X10-2	3.0	8.1X101
Cm-245		9.0	2.4X102	9.0X10-4	2.4X10-2	6.4X10-3	1.7X10-1
Cm-246		9.0	2.4X102	9.0X10-4	2.4X10-2	1.1X10-2	3.1X10-1
Cm-247 (a)		3.0	8.1X101	1.0X10-3	2.7X10-2	3.4X10-6	9.3X10-5
Cm-248		2.0X10-2	5.4X10-1	3.0X10-4	8.1X10-3	1.6X10-4	4.2X10-3
Co-55	Cobalt (27)	5.0X10-1	1.4X101	5.0X10-1	1.4X101	1.1X105	3.1X106

Co-56	3.0X10-1	8.1	3.0X10-1	8.1	1.1X103	3.0X104
Co-57	1.0X101	2.7X102	1.0X101	2.7X102	3.1X102	8.4X103
Co-58	1.0	2.7X101	1.0	2.7X101	1.2X103	3.2X104
Co-58m	4.0X101	1.1X103	4.0X101	1.1X103	2.2X105	5.9X106
Co-60	4.0X10-1	1.1X101	4.0X10-1	1.1X101	4.2X101	1.1X103
Cr-51	Chromium (24)	3.0X101	8.1X102	3.0X101	8.1X102	3.4X103	9.2X104
Cs-129	Cesium (55)	4.0	1.1X102	4.0	1.1X102	2.8X104	7.6X105
Cs-131	3.0X101	8.1X102	3.0X101	8.1X102	3.8X103	1.0X105
Cs-132	1.0	2.7X101	1.0	2.7X101	5.7X103	1.5X105
Cs-134	7.0X10-1	1.9X101	7.0X10-1	1.9X101	4.8X101	1.3X103
Cs-134m	4.0X101	1.1X103	6.0X10-1	1.6X101	3.0X105	8.0X106
Cs-135	4.0X101	1.1X103	1.0	2.7X101	4.3X10-5	1.2X10-3
Cs-136	5.0X10-1	1.4X101	5.0X10-1	1.4X101	2.7X103	7.3X104
Cs-137 (a)	2.0	5.4X101	6.0X10-1	1.6X101	3.2	8.7X101
Cu-64	Copper (29)	6.0	1.6X102	1.0	2.7X101	1.4X105	3.9X106
Cu-67	1.0X101	2.7X102	7.0X10-1	1.9X101	2.8X104	7.6X105
Dy-159	Dysprosium (66)	2.0X101	5.4X102	2.0X101	5.4X102	2.1X102	5.7X103
Dy-165	9.0X10-1	2.4X101	6.0X10-1	1.6X101	3.0X105	8.2X106
Dy-166 (a)	9.0X10-1	2.4X101	3.0X10-1	8.1	8.6X103	2.3X105
Er-169	Erbium (68)	4.0X101	1.1X103	1.0	2.7X101	3.1X103	8.3X104
Er-171	8.0X10-1	2.2X101	5.0X10-1	1.4X101	9.0X104	2.4X106
Eu-147	Europium (63)	2.0	5.4X101	2.0	5.4X101	1.4X103	3.7X104
Eu-148	5.0X10-1	1.4X101	5.0X10-1	1.4X101	6.0X102	1.6X104
Eu-149	2.0X101	5.4X102	2.0X101	5.4X102	3.5X102	9.4X103
Eu-150 (short lived)	2.0	5.4X101	7.0X10-1	1.9X101	6.1X104	1.6X106

Eu-150 (long lived)		7.0X10-1	1.9X101	7.0X10-1	1.9X101	6.1X104	1.6X106				
Eu-152		1.0	2.7X101	1.0	2.7X101	6.5	1.8X102				
Eu-152m		8.0X10-1	2.2X101	8.0X10-1	2.2X101	8.2X104	2.2X106				
Eu-154		9.0X10-1	2.4X101	6.0X10-1	1.6X101	9.8	2.6X102				
Eu-155		2.0X101	5.4X102	3.0	8.1X101	1.8X101	4.9X102				
Eu-156		7.0X10-1	1.9X101	7.0X10-1	1.9X101	2.0X103	5.5X104				
F-18	Fluorine (9)	1.0	2.7X101	6.0X10-1	1.6X101	3.5X106	9.5X107				
Fe-52 (a)	Iron (26)	3.0X10-1	8.1	3.0X10-1	8.1	2.7X105	7.3X106				
Fe-55		4.0X101	1.1X103	4.0X101	1.1X103	8.8X101	2.4X103				
Fe-59		9.0X10-1	2.4X101	9.0X10-1	2.4X101	1.8X103	5.0X104				
Fe-60 (a)		4.0X101	1.1X103	2.0X10-1	5.4	7.4X10-4	2.0X10-2				
Ga-67	Gallium (31)	7.0	1.9X102	3.0	8.1X101	2.2X104	6.0X105				
Ga-68		5.0X10-1	1.4X101	5.0X10-1	1.4X101	1.5X106	4.1X107				
Ga-72		4.0X10-1	1.1X101	4.0X10-1	1.1X101	1.1X105	3.1X106				
Gd-146 (a)	Gadolinium (64)	5.0X10-1	1.4X101	5.0X10-1	1.4X101	6.9X102	1.9X104				
Gd-148		2.0X101	5.4X102	2.0X10-3	5.4X10-2	1.2	3.2X101				
Gd-153		1.0X101	2.7X102	9.0	2.4X102	1.3X102	3.5X103				
Gd-159		3.0	8.1X101	6.0X10-1	1.6X101	3.9X104	1.1X106				
Ge-68 (a)	Germanium (32)	5.0X10-1	1.4X101	5.0X10-1	1.4X101	2.6X102	7.1X103				
Ge-71		4.0X101	1.1X103	4.0X101	1.1X103	5.8X103	1.6X105				
Ge-77		3.0X10-1	8.1	3.0X10-1	8.1	1.3X105	3.6X106				
Hf-172 (a)	Hafnium (72)	6.0X10-1	1.6X101	6.0X10-1	1.6X101	4.1X101	1.1X103				
Hf-175		3.0	8.1X101	3.0	8.1X101	3.9X102	1.1X104				
Hf-181		2.0	5.4X101	5.0X10-1	1.4X101	6.3X102	1.7X104				
Hf-182		Unlimited	Unlimited	Unlimited	Unlimited	8.1X10-6	2.2X10-4				

Hg-194 (a)	Mercury (80)	1.0	2.7X101	1.0	2.7X101	1.3X10-1	3.5
Hg-195m (a)		3.0	8.1X101	7.0X10-1	1.9X101	1.5X104	4.0X105
Hg-197		2.0X101	5.4X102	1.0X101	2.7X102	9.2X103	2.5X105
Hg-197m		1.0X101	2.7X102	4.0X10-1	1.1X101	2.5X104	6.7X105
Hg-203		5.0	1.4X102	1.0	2.7X101	5.1X102	1.4X104
Ho-166	Holmium (67)	4.0X10-1	1.1X101	4.0X10-1	1.1X101	2.6X104	7.0X105
Ho-166m		6.0X10-1	1.6X101	5.0X10-1	1.4X101	6.6X10-2	1.8
I-123	Iodine (53)	6.0	1.6X102	3.0	8.1X101	7.1X104	1.9X106
I-124		1.0	2.7X101	1.0	2.7X101	9.3X103	2.5X105
I-125		2.0X101	5.4X102	3.0	8.1X101	6.4X102	1.7X104
I-126		2.0	5.4X101	1.0	2.7X101	2.9X103	8.0X104
I-129		Unlimited	Unlimited	Unlimited	Unlimited	6.5X10-6	1.8X10-4
I-131		3.0	8.1X101	7.0X10-1	1.9X101	4.6X103	1.2X105
I-132		4.0X10-1	1.1X101	4.0X10-1	1.1X101	3.8X105	1.0X107
I-133		7.0X10-1	1.9X101	6.0X10-1	1.6X101	4.2X104	1.1X106
I-134		3.0X10-1	8.1	3.0X10-1	8.1	9.9X105	2.7X107
I-135 (a)		6.0X10-1	1.6X101	6.0X10-1	1.6X101	1.3X105	3.5X106
In-111	Indium (49)	3.0	8.1X101	3.0	8.1X101	1.5X104	4.2X105
In-113m		4.0	1.1X102	2.0	5.4X101	6.2X105	1.7X107
In-114m (a)		1.0X101	2.7X102	5.0X10-1	1.4X101	8.6X102	2.3X104
In-115m		7.0	1.9X102	1.0	2.7X101	2.2X105	6.1X106
Ir-189 (a)	Iridium (77)	1.0X101	2.7X102	1.0X101	2.7X102	1.9X103	5.2X104
Ir-190		7.0X10-1	1.9X101	7.0X10-1	1.9X101	2.3X103	6.2X104
Ir-192 (c)		1.0	2.7X101	6.0X10-1	1.6X101	3.4X102	9.2X103
Ir-194		3.0X10-1	8.1	3.0X10-1	8.1	3.1X104	8.4X105

K-40	Potassium (19)	9.0X10-1	2.4X101	9.0X10-1	2.4X101	2.4X10-7	6.4X10-6
K-42		2.0X10-1	5.4	2.0X10-1	5.4	2.2X105	6.0X106
K-43		7.0X10-1	1.9X101	6.0X10-1	1.6X101	1.2X105	3.3X106
Kr-81	Krypton (36)	4.0X101	1.1X103	4.0X101	1.1X103	7.8X10-4	2.1X10-2
Kr-85		1.0X101	2.7X102	1.0X101	2.7X102	1.5X101	3.9X102
Kr-85m		8.0	2.2X102	3.0	8.1X101	3.0X105	8.2X106
Kr-87		2.0X10-1	5.4	2.0X10-1	5.4	1.0X106	2.8X107
La-137	Lanthanum (57)	3.0X101	8.1X102	6.0	1.6X102	1.6X10-3	4.4X10-2
La-140		4.0X10-1	1.1X101	4.0X10-1	1.1X101	2.1X104	5.6X105
Lu-172	Lutetium (71)	6.0X10-1	1.6X101	6.0X10-1	1.6X101	4.2X103	1.1X105
Lu-173		8.0	2.2X102	8.0	2.2X102	5.6X101	1.5X103
Lu-174		9.0	2.4X102	9.0	2.4X102	2.3X101	6.2X102
Lu-174m		2.0X101	5.4X102	1.0X101	2.7X102	2.0X102	5.3X103
Lu-177		3.0X101	8.1X102	7.0X10-1	1.9X101	4.1X103	1.1X105
Mg-28 (a)	Magnesium (12)	3.0X10-1	8.1	3.0X10-1	8.1	2.0X105	5.4X106
Mn-52	Manganese (25)	3.0X10-1	8.1	3.0X10-1	8.1	1.6X104	4.4X105
Mn-53		Unlimited	Unlimited	Unlimited	Unlimited	6.8X10-5	1.8X10-3
Mn-54		1.0	2.7X101	1.0	2.7X101	2.9X102	7.7X103
Mn-56		3.0X10-1	8.1	3.0X10-1	8.1	8.0X105	2.2X107
Mo-93	Molybdenum (42)	4.0X101	1.1X103	2.0X101	5.4X102	4.1X10-2	1.1
Mo-99 (a) (i)		1.0	2.7X101	6.0X10-1	1.6X101	1.8X104	4.8X105
N-13	Nitrogen (7)	9.0X10-1	2.4X101	6.0X10-1	1.6X101	5.4X107	1.5X109
Na-22	Sodium (11)	5.0X10-1	1.4X101	5.0X10-1	1.4X101	2.3X102	6.3X103
Na-24		2.0X10-1	5.4	2.0X10-1	5.4	3.2X105	8.7X106
Nb-93m	Niobium (41)	4.0X101	1.1X103	3.0X101	8.1X102	8.8	2.4X102

Nb-94	7.0X10-1	1.9X101	7.0X10-1	1.9X101	6.9X10-3	1.9X10-1
Nb-95	1.0	2.7X101	1.0	2.7X101	1.5X103	3.9X104
Nb-97	9.0X10-1	2.4X101	6.0X10-1	1.6X101	9.9X105	2.7X107
Nd-147	Neodymium (60)	6.0	1.6X102	6.0X10-1	1.6X101	3.0X103	8.1X104
Nd-149	6.0X10-1	1.6X101	5.0X10-1	1.4X101	4.5X105	1.2X107
Ni-59	Nickel (28)	Unlimited	Unlimited	Unlimited	Unlimited	3.0X10-3	8.0X10-2
Ni-63	4.0X101	1.1X103	3.0X101	8.1X102	2.1	5.7X101
Ni-65	4.0X10-1	1.1X101	4.0X10-1	1.1X101	7.1X105	1.9X107
Np-235	Neptunium (93)	4.0X101	1.1X103	4.0X101	1.1X103	5.2X101	1.4X103
Np-236 (short-lived)	2.0X101	5.4X102	2.0	5.4X101	4.7X10-4	1.3X10-2
Np-236 (long-lived)	9.0X100	2.4X102	2.0X10-2	5.4X10-1	4.7X10-4	1.3X10-2
Np-237	2.0X101	5.4X102	2.0X10-3	5.4X10-2	2.6X10-5	7.1X10-4
Np-239	7.0	1.9X102	4.0X10-1	1.1X101	8.6X103	2.3X105
Os-185	Osmium (76)	1.0	2.7X101	1.0	2.7X101	2.8X102	7.5X103
Os-191	1.0X101	2.7X102	2.0	5.4X101	1.6X103	4.4X104
Os-191m	4.0X101	1.1X103	3.0X101	8.1X102	4.6X104	1.3X106
Os-193	2.0	5.4X101	6.0X10-1	1.6X101	2.0X104	5.3X105
Os-194 (a)	3.0X10-1	8.1	3.0X10-1	8.1	1.1X101	3.1X102
P-32	Phosphorus (15)	5.0X10-1	1.4X101	5.0X10-1	1.4X101	1.1X104	2.9X105
P-33	4.0X101	1.1X103	1.0	2.7X101	5.8X103	1.6X105
Pa-230 (a)	Protactinium (91)	2.0	5.4X101	7.0X10-2	1.9	1.2X103	3.3X104
Pa-231	4.0	1.1X102	4.0X10-4	1.1X10-2	1.7X10-3	4.7X10-2
Pa-233	5.0	1.4X102	7.0X10-1	1.9X101	7.7X102	2.1X104
Pb-201	Lead (82)	1.0	2.7X101	1.0	2.7X101	6.2X104	1.7X106
Pb-202	4.0X101	1.1X103	2.0X101	5.4X102	1.2X10-4	3.4X10-3

Pb-203	4.0	1.1X102	3.0	8.1X101	1.1X104	3.0X105
Pb-205	Unlimited	Unlimited	Unlimited	Unlimited	4.5X10-6	1.2X10-4
Pb-210 (a)	1.0	2.7X101	5.0X10-2	1.4	2.8	7.6X101
Pb-212 (a)	7.0X10-1	1.9X101	2.0X10-1	5.4	5.1X104	1.4X106
Pd-103 (a)	Palladium (46)	4.0X101	1.1X103	4.0X101	1.1X103	2.8X103	7.5X104
Pd-107	Unlimited	Unlimited	Unlimited	Unlimited	1.9X10-5	5.1X10-4
Pd-109	2.0	5.4X101	5.0X10-1	1.4X101	7.9X104	2.1X106
Pm-143	Promethium (61)	3.0	8.1X101	3.0	8.1X101	1.3X102	3.4X103
Pm-144	7.0X10-1	1.9X101	7.0X10-1	1.9X101	9.2X101	2.5X103
Pm-145	3.0X101	8.1X102	1.0X101	2.7X102	5.2	1.4X102
Pm-147	4.0X101	1.1X103	2.0	5.4X101	3.4X101	9.3X102
Pm-148m (a)	8.0X10-1	2.2X101	7.0X10-1	1.9X101	7.9X102	2.1X104
Pm-149	2.0	5.4X101	6.0X10-1	1.6X101	1.5X104	4.0X105
Pm-151	2.0	5.4X101	6.0X10-1	1.6X101	2.7X104	7.3X105
Po-210	Polonium (84)	4.0X101	1.1X103	2.0X10-2	5.4X10-1	1.7X102	4.5X103
Pr-142	Praseodymium (59)	4.0X10-1	1.1X101	4.0X10-1	1.1X101	4.3X104	1.2X106
Pr-143	3.0	8.1X101	6.0X10-1	1.6X101	2.5X103	6.7X104
Pt-188 (a)	Platinum (78)	1.0	2.7X101	8.0X10-1	2.2X101	2.5X103	6.8X104
Pt-191	4.0	1.1X102	3.0	8.1X101	8.7X103	2.4X105
Pt-193	4.0X101	1.1X103	4.0X101	1.1X103	1.4	3.7X101
Pt-193m	4.0X101	1.1X103	5.0X10-1	1.4X101	5.8X103	1.6X105
Pt-195m	1.0X101	2.7X102	5.0X10-1	1.4X101	6.2X103	1.7X105
Pt-197	2.0X101	5.4X102	6.0X10-1	1.6X101	3.2X104	8.7X105
Pt-197m	1.0X101	2.7X102	6.0X10-1	1.6X101	3.7X105	1.0X107
Pu-236	Plutonium (94)	3.0X101	8.1X102	3.0X10-3	8.1X10-2	2.0X101	5.3X102

Pu-237	2.0X101	5.4X102	2.0X101	5.4X102	4.5X102	1.2X104
Pu-238	1.0X101	2.7X102	1.0X10-3	2.7X10-2	6.3X10-1	1.7X101
Pu-239	1.0X101	2.7X102	1.0X10-3	2.7X10-2	2.3X10-3	6.2X10-2
Pu-240	1.0X101	2.7X102	1.0X10-3	2.7X10-2	8.4X10-3	2.3X10-1
Pu-241 (a)	4.0X101	1.1X103	6.0X10-2	1.6	3.8	1.0X102
Pu-242	1.0X101	2.7X102	1.0X10-3	2.7X10-2	1.5X10-4	3.9X10-3
Pu-244 (a)	4.0X10-1	1.1X101	1.0X10-3	2.7X10-2	6.7X10-7	1.8X10-5
Ra-223 (a)	Radium (88)	4.0X10-1	1.1X101	7.0X10-3	1.9X10-1	1.9X103	5.1X104
Ra-224 (a)	4.0X10-1	1.1X101	2.0X10-2	5.4X10-1	5.9X103	1.6X105
Ra-225 (a)	2.0X10-1	5.4	4.0X10-3	1.1X10-1	1.5X103	3.9X104
Ra-226 (a)	2.0X10-1	5.4	3.0X10-3	8.1X10-2	3.7X10-2	1.0
Ra-228 (a)	6.0X10-1	1.6X101	2.0X10-2	5.4X10-1	1.0X101	2.7X102
Rb-81	Rubidium (37)	2.0	5.4X101	8.0X10-1	2.2X101	3.1X105	8.4X106
Rb-83 (a)	2.0	5.4X101	2.0	5.4X101	6.8X102	1.8X104
Rb-84	1.0	2.7X101	1.0	2.7X101	1.8X103	4.7X104
Rb-86	5.0X10-1	1.4X101	5.0X10-1	1.4X101	3.0X103	8.1X104
Rb-87	Unlimited	Unlimited	Unlimited	Unlimited	3.2X10-9	8.6X10-8
Rb(nat)	Unlimited	Unlimited	Unlimited	Unlimited	6.7X106	1.8X108
Re-184	Rhenium (75)	1.0	2.7X101	1.0	2.7X101	6.9X102	1.9X104
Re-184m	3.0	8.1X101	1.0	2.7X101	1.6X102	4.3X103
Re-186	2.0	5.4X101	6.0X10-1	1.6X101	6.9X103	1.9X105
Re-187	Unlimited	Unlimited	Unlimited	Unlimited	1.4X10-9	3.8X10-8
Re-188	4.0X10-1	1.1X101	4.0X10-1	1.1X101	3.6X104	9.8X105
Re-189 (a)	3.0	8.1X101	6.0X10-1	1.6X101	2.5X104	6.8X105
Re(nat)	Unlimited	Unlimited	Unlimited	Unlimited	0.0	2.4X10-8

Rh-99	Rhodium (45)	2.0	5.4X101	2.0	5.4X101	3.0X103	8.2X104
Rh-101		4.0	1.1X102	3.0	8.1X101	4.1X101	1.1X103
Rh-102		5.0X10-1	1.4X101	5.0X10-1	1.4X101	4.5X101	1.2X103
Rh-102m		2.0	5.4X101	2.0	5.4X101	2.3X102	6.2X103
Rh-103m		4.0X101	1.1X103	4.0X101	1.1X103	1.2X106	3.3X107
Rh-105		1.0X101	2.7X102	8.0X10-1	2.2X101	3.1X104	8.4X105
Rn-222 (a)	Radon (86)	3.0X10-1	8.1	4.0X10-3	1.1X10-1	5.7X103	1.5X105
Ru-97	Ruthenium (44)	5.0	1.4X102	5.0	1.4X102	1.7X104	4.6X105
Ru-103 (a)		2.0	5.4X101	2.0	5.4X101	1.2X103	3.2X104
Ru-105		1.0	2.7X101	6.0X10-1	1.6X101	2.5X105	6.7X106
Ru-106 (a)		2.0X10-1	5.4	2.0X10-1	5.4	1.2X102	3.3X103
S-35	Sulphur (16)	4.0X101	1.1X103	3.0	8.1X101	1.6X103	4.3X104
Sb-122	Antimony (51)	4.0X10-1	1.1X101	4.0X10-1	1.1X101	1.5X104	4.0X105
Sb-124		6.0X10-1	1.6X101	6.0X10-1	1.6X101	6.5X102	1.7X104
Sb-125		2.0	5.4X101	1.0	2.7X101	3.9X101	1.0X103
Sb-126		4.0X10-1	1.1X101	4.0X10-1	1.1X101	3.1X103	8.4X104
Sc-44	Scandium (21)	5.0X10-1	1.4X101	5.0X10-1	1.4X101	6.7X105	1.8X107
Sc-46		5.0X10-1	1.4X101	5.0X10-1	1.4X101	1.3X103	3.4X104
Sc-47		1.0X101	2.7X102	7.0X10-1	1.9X101	3.1X104	8.3X105
Sc-48		3.0X10-1	8.1	3.0X10-1	8.1	5.5X104	1.5X106
Se-75	Selenium (34)	3.0	8.1X101	3.0	8.1X101	5.4X102	1.5X104
Se-79		4.0X101	1.1X103	2.0	5.4X101	2.6X10-3	7.0X10-2
Si-31	Silicon (14)	6.0X10-1	1.6X101	6.0X10-1	1.6X101	1.4X106	3.9X107
Si-32		4.0X101	1.1X103	5.0X10-1	1.4X101	3.9	1.1X102
Sm-145	Samarium (62)	1.0X101	2.7X102	1.0X101	2.7X102	9.8X101	2.6X103

Sm-147	Unlimited	Unlimited	Unlimited	Unlimited	8.5X10-1	2.3X10-8
Sm-151	4.0X101	1.1X103	1.0X101	2.7X102	9.7X10-1	2.6X101
Sm-153	9.0	2.4X102	6.0X10-1	1.6X101	1.6X104	4.4X105
Sn-113 (a)	Tin (50)	4.0	1.1X102	2.0	5.4X101	3.7X102	1.0X104
Sn-117m	7.0	1.9X102	4.0X10-1	1.1X101	3.0X103	8.2X104
Sn-119m	4.0X101	1.1X103	3.0X101	8.1X102	1.4X102	3.7X103
Sn-121m (a)	4.0X101	1.1X103	9.0X10-1	2.4X101	2.0	5.4X101
Sn-123	8.0X10-1	2.2X101	6.0X10-1	1.6X101	3.0X102	8.2X103
Sn-125	4.0X10-1	1.1X101	4.0X10-1	1.1X101	4.0X103	1.1X105
Sn-126 (a)	6.0X10-1	1.6X101	4.0X10-1	1.1X101	1.0X10-3	2.8X10-2
Sr-82 (a)	Strontium (38)	2.0X10-1	5.4	2.0X10-1	5.4	2.3X103	6.2X104
Sr-85	2.0	5.4X101	2.0	5.4X101	8.8X102	2.4X104
Sr-85m	5.0	1.4X102	5.0	1.4X102	1.2X106	3.3X107
Sr-87m	3.0	8.1X101	3.0	8.1X101	4.8X105	1.3X107
Sr-89	6.0X10-1	1.6X101	6.0X10-1	1.6X101	1.1X103	2.9X104
Sr-90 (a)	3.0X10-1	8.1	3.0X10-1	8.1	5.1	1.4X102
Sr-91 (a)	3.0X10-1	8.1	3.0X10-1	8.1	1.3X105	3.6X106
Sr-92 (a)	1.0	2.7X101	3.0X10-1	8.1	4.7X105	1.3X107
T(H-3)	Tritium (1)	4.0X101	1.1X103	4.0X101	1.1X103	3.6X102	9.7X103
Ta-178 (long-lived)	Tantalum (73)	1.0	2.7X101	8.0X10-1	2.2X101	4.2X106	1.1X108
Ta-179	3.0X101	8.1X102	3.0X101	8.1X102	4.1X101	1.1X103
Ta-182	9.0X10-1	2.4X101	5.0X10-1	1.4X101	2.3X102	6.2X103
Tb-157	Terbium (65)	4.0X101	1.1X103	4.0X101	1.1X103	5.6X10-1	1.5X101
Tb-158	1.0	2.7X101	1.0	2.7X101	5.6X10-1	1.5X101
Tb-160	1.0	2.7X101	6.0X10-1	1.6X101	4.2X102	1.1X104

Tc-95m (a)	Technetium (43)	2.0	5.4X101	2.0	5.4X101	8.3X102	2.2X104
Tc-96		4.0X10-1	1.1X101	4.0X10-1	1.1X101	1.2X104	3.2X105
Tc-96m (a)		4.0X10-1	1.1X101	4.0X10-1	1.1X101	1.4X106	3.8X107
Tc-97		Unlimited	Unlimited	Unlimited	Unlimited	5.2X10-5	1.4X10-3
Tc-97m		4.0X101	1.1X103	1.0	2.7X101	5.6X102	1.5X104
Tc-98		8.0X10-1	2.2X101	7.0X10-1	1.9X101	3.2X10-5	8.7X10-4
Tc-99		4.0X101	1.1X103	9.0X10-1	2.4X101	6.3X10-4	1.7X10-2
Tc-99m		1.0X101	2.7X102	4.0	1.1X102	1.9X105	5.3X106
Te-121	Tellurium (52)	2.0	5.4X101	2.0	5.4X101	2.4X103	6.4X104
Te-121m		5.0	1.4X102	3.0	8.1X101	2.6X102	7.0X103
Te-123m		8.0	2.2X102	1.0	2.7X101	3.3X102	8.9X103
Te-125m		2.0X101	5.4X102	9.0X10-1	2.4X101	6.7X102	1.8X104
Te-127		2.0X101	5.4X102	7.0X10-1	1.9X101	9.8X104	2.6X106
Te-127m (a)		2.0X101	5.4X102	5.0X10-1	1.4X101	3.5X102	9.4X103
Te-129		7.0X10-1	1.9X101	6.0X10-1	1.6X101	7.7X105	2.1X107
Te-129m (a)		8.0X10-1	2.2X101	4.0X10-1	1.1X101	1.1X103	3.0X104
Te-131m (a)		7.0X10-1	1.9X101	5.0X10-1	1.4X101	3.0X104	8.0X105
Te-132 (a)		5.0X10-1	1.4X101	4.0X10-1	1.1X101	3.1X104	3.0X105
Th-227	Thorium (90)	1.0X101	2.7X102	5.0X10-3	1.4X10-1	1.1X103	3.1X104
Th-228 (a)		5.0X10-1	1.4X101	1.0X10-3	2.7X10-2	3.0X101	8.2X102
Th-229		5.0	1.4X102	5.0X10-4	1.4X10-2	7.9X10-3	2.1X10-1
Th-230		1.0X101	2.7X102	1.0X10-3	2.7X10-2	7.6X10-4	2.1X10-2
Th-231		4.0X101	1.1X103	2.0X10-2	5.4X10-1	2.0X104	5.3X105
Th-232		Unlimited	Unlimited	Unlimited	Unlimited	4.0X10-9	1.1X10-7
Th-234 (a)		3.0X10-1	8.1	3.0X10-1	8.1	8.6X102	2.3X104

Th(nat)	Unlimited	Unlimited	Unlimited	Unlimited	8.1X10-9	2.2X10-7
Ti-44 (a)	Titanium (22)	5.0X10-1	1.4X101	4.0X10-1	1.1X101	6.4	1.7X102
Tl-200	Thallium (81)	9.0X10-1	2.4X101	9.0X10-1	2.4X101	2.2X104	6.0X105
Tl-201		1.0X101	2.7X102	4.0	1.1X102	7.9X103	2.1X105
Tl-202		2.0	5.4X101	2.0	5.4X101	2.0X103	5.3X104
Tl-204		1.0X101	2.7X102	7.0X10-1	1.9X101	1.7X101	4.6X102
Tm-167	Thulium (69)	7.0	1.9X102	8.0X10-1	2.2X101	3.1X103	8.5X104
Tm-170		3.0	8.1X101	6.0X10-1	1.6X101	2.2X102	6.0X103
Tm-171		4.0X101	1.1X103	4.0X101	1.1X103	4.0X101	1.1X103
U-230 (fast lung absorption) (a)(d)	Uranium (92)	4.0X101	1.1X103	1.0X10-1	2.7	1.0X103	2.7X104
U-230 (medium lung absorption) (a)(e)		4.0X101	1.1X103	4.0X10-3	1.1X10-1	1.0X103	2.7X104
U-230 (slow lung absorption) (a)(f)		3.0X101	8.1X102	3.0X10-3	8.1X10-2	1.0X103	2.7X104
U-232 (fast lung absorption) (d)		4.0X101	1.1X103	1.0X10-2	2.7X10-1	8.3X10-1	2.2X101
U-232 (medium lung absorption) (e)		4.0X101	1.1X103	7.0X10-3	1.9X10-1	8.3X10-1	2.2X101
U-232 (slow lung absorption) (f)		1.0X101	2.7X102	1.0X10-3	2.7X10-2	8.3X10-1	2.2X101
U-233 (fast lung absorption) (d)		4.0X101	1.1X103	9.0X10-2	2.4	3.6X10-4	9.7X10-3
U-233 (medium lung absorption) (e)		4.0X101	1.1X103	2.0X10-2	5.4X10-1	3.6X10-4	9.7X10-3
U-233 (slow lung absorption) (f)		4.0X101	1.1X103	6.0X10-3	1.6X10-1	3.6X10-4	9.7X10-3
U-234 (fast lung absorption) (d)		4.0X101	1.1X103	9.0X10-2	2.4	2.3X10-4	6.2X10-3
U-234 (medium lung absorption) (e)		4.0X101	1.1X103	2.0X10-2	5.4X10-1	2.3X10-4	6.2X10-3

U-234 (slow lung absorption) (f)	4.0X10 1	1.1X10 3	6.0X10-3	1.6X10-1	2.3X10-4	6.2X10-3
U-235 (all lung absorption types) (a),(d),(e),(f)	Unlim-ited	Unlim-ited	Unlim-ited	Unlim-ited	8.0X10-8	2.2X10-6
U-236 (fast lung absorption) (d)	Unlim-ited	Unlim-ited	Unlim-ited	Unlim-ited	2.4X10-6	6.5X10-5
U-236 (medium lung absorption) (e)	4.0X10 1	1.1X10 3	2.0X10-2	5.4X10-1	2.4X10-6	6.5X10-5
U-236 (slow lung absorption) (f)	4.0X10 1	1.1X10 3	6.0X10-3	1.6X10-1	2.4X10-6	6.5X10-5
U-238 (all lung absorption types) (d),(e),(f)	Unlim-ited	Unlim-ited	Unlim-ited	Unlim-ited	1.2X10-8	3.4X10-7
U (nat)	Unlimited	Unlimited	Unlimited	Unlimited	2.6X10-8	7.1X10-7
U (enriched to 20% or less) (g)	Unlim-ited	Unlim-ited	Unlim-ited	Unlim-ited	See Table A-4	See Table A-4
U (dep)	Unlimited	Unlimited	Unlimited	Unlimited	See Table A-4	(See Table A-3)
V-48	Vanadium (23)	4.0X10-1	1.1X101	4.0X10-1	1.1X101	6.3X103	1.7X105
V-49	4.0X101	1.1X103	4.0X101	1.1X103	3.0X102	8.1X103
W-178 (a)	Tungsten (74)	9.0	2.4X102	5.0	1.4X102	1.3X103	3.4X104
W-181	3.0X101	8.1X102	3.0X101	8.1X102	2.2X102	6.0X103
W-185	4.0X101	1.1X103	8.0X10-1	2.2X101	3.5X102	9.4X103
W-187	2.0	5.4X101	6.0X10-1	1.6X101	2.6X104	7.0X105
W-188 (a)	4.0X10-1	1.1X101	3.0X10-1	8.1	3.7X102	1.0X104
Xe-122 (a)	Xenon (54)	4.0X10-1	1.1X101	4.0X10-1	1.1X101	4.8X104	1.3X106
Xe-123	2.0	5.4X101	7.0X10-1	1.9X101	4.4X105	1.2X107
Xe-127	4.0	1.1X102	2.0	5.4X101	1.0X103	2.8X104
Xe-131m	4.0X101	1.1X103	4.0X101	1.1X103	3.1X103	8.4X104
Xe-133	2.0X101	5.4X102	1.0X101	2.7X102	6.9X103	1.9X105

Xe-135		3.0	8.1X101	2.0	5.4X101	9.5X104	2.6X106
Y-87 (a)	Yttrium (39)	1.0	2.7X101	1.0	2.7X101	1.7X104	4.5X105
Y-88		4.0X10-1	1.1X101	4.0X10-1	1.1X101	5.2X102	1.4X104
Y-90		3.0X10-1	8.1	3.0X10-1	8.1	2.0X104	5.4X105
Y-91		6.0X10-1	1.6X101	6.0X10-1	1.6X101	9.1X102	2.5X104
Y-91m		2.0	5.4X101	2.0	5.4X101	1.5X106	4.2X107
Y-92		2.0X10-1	5.4	2.0X10-1	5.4	3.6X105	9.6X106
Y-93		3.0X10-1	8.1	3.0X10-1	8.1	1.2X105	3.3X106
Yb-169	Ytterbium (70)	4.0	1.1X102	1.0	2.7X101	8.9X102	2.4X104
Yb-175		3.0X101	8.1X102	9.0X10-1	2.4X101	6.6X103	1.8X105
Zn-65	Zinc (30)	2.0	5.4X101	2.0	5.4X101	3.0X102	8.2X103
Zn-69		3.0	8.1X101	6.0X10-1	1.6X101	1.8X106	4.9X107
Zn-69m (a)		3.0	8.1X101	6.0X10-1	1.6X101	1.2X105	3.3X106
Zr-88	Zirconium (40)	3.0	8.1X101	3.0	8.1X101	6.6X102	1.8X104
Zr-93		Unlimited	Unlimited	Unlimited	Unlimited	9.3X10-5	2.5X10-3
Zr-95 (a)		2.0	5.4X101	8.0X10-1	2.2X101	7.9X102	2.1X104
Zr-97 (a)		4.0X10-1	1.1X101	4.0X10-1	1.1X101	7.1X104	1.9X106

[a] A_1 and/or A_2 values include contributions from daughter nuclides with half-lives less than 10 days.

[b] The values of A_1 and A_2 in Curies (Ci) are approximate and for information only; the regulatory standard units are Terabecquerels (TBq), (see Appendix A to §175.105-Determination of A_1 and A_2, Section I.).

[c] The quantity may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance from the source.

[d] These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.

[e] These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and hexavalent compounds in both normal and accident conditions of transport.

[f] These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.

[g] These values apply to unirradiated uranium only.

[h] A_1 = 0.1 TBq (2.7 Ci) and A_2 = 0.001 TBq (0.027 Ci) for Cf-252 for domestic use.

[i] A_2 = 0.74 TBq (20 Ci) for Mo-99 for domestic use.

TABLE A-2

EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES

Symbol ofradio-nuclide	Element andatomic number	Activity concen-tration for exemptma-terial (Bq/g)	Activity concen-tration for exemptma-terial (Ci/g)	Activity limit forexempt con-sign-ment (Bq)	Activity limit forexempt con-sign-ment (Ci)
Ac-225	Actinium (89)	1.0X101	2.7X10-10	1.0X104	2.7X10-7
Ac-227		1.0X10-1	2.7X10-12	1.0X103	2.7X10-8
Ac-228		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Ag-105	Silver (47)	1.0X102	2.7X10-9	1.0X106	2.7X10-5
Ag-108m (b)		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Ag-110m		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Ag-111		1.0X103	2.7X10-8	1.0X106	2.7X10-5
Al-26	Aluminum (13)	1.0X101	2.7X10-10	1.0X105	2.7X10-6
Am-241	Americium (95)	1.0	2.7X10-11	1.0X104	2.7X10-7
Am-242m (b)		1.0	2.7X10-11	1.0X104	2.7X10-7
Am-243 (b)		1.0	2.7X10-11	1.0X103	2.7X10-8
Ar-37	Argon (18)	1.0X106	2.7X10-5	1.0X108	2.7X10-3
Ar-39		1.0X107	2.7X10-4	1.0X104	2.7X10-7
Ar-41		1.0X102	2.7X10-9	1.0X109	2.7X10-2
As-72	Arsenic (33)	1.0X101	2.7X10-10	1.0X105	2.7X10-6
As-73		1.0X103	2.7X10-8	1.0X107	2.7X10-4
As-74		1.0X101	2.7X10-10	1.0X106	2.7X10-5
As-76		1.0X102	2.7X10-9	1.0X105	2.7X10-6
As-77		1.0X103	2.7X10-8	1.0X106	2.7X10-5

At-211	Astatine (85)	1.0X103	2.7X10-8	1.0X107	2.7X10-4
Au-193	Gold (79)	1.0X102	2.7X10-9	1.0X107	2.7X10-4
Au-194		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Au-195		1.0X102	2.7X10-9	1.0X107	2.7X10-4
Au-198		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Au-199		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Ba-131	Barium (56)	1.0X102	2.7X10-9	1.0X106	2.7X10-5
Ba-133		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Ba-133m		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Ba-140 (b)		1.0X101	2.7X10-10	1.0X105	2.7X10-6
Be-7	Beryllium (4)	1.0X103	2.7X10-8	1.0X107	2.7X10-4
Be-10		1.0X104	2.7X10-7	1.0X106	2.7X10-5
Bi-205	Bismuth (83)	1.0X101	2.7X10-10	1.0X106	2.7X10-5
Bi-206		1.0X101	2.7X10-10	1.0X105	2.7X10-6
Bi-207		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Bi-210		1.0X103	2.7X10-8	1.0X106	2.7X10-5
Bi-210m		1.0X101	2.7X10-10	1.0X105	2.7X10-6
Bi-212 (b)		1.0X101	2.7X10-10	1.0X105	2.7X10-6
Bk-247	Berkelium (97)	1.0	2.7X10-11	1.0X104	2.7X10-7
Bk-249		1.0X103	2.7X10-8	1.0X106	2.7X10-5
Br-76	Bromine (35)	1.0X101	2.7X10-10	1.0X105	2.7X10-6
Br-77		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Br-82		1.0X101	2.7X10-10	1.0X106	2.7X10-5
C-11	Carbon (6)	1.0X101	2.7X10-10	1.0X106	2.7X10-5
C-14		1.0X104	2.7X10-7	1.0X107	2.7X10-4

Ca-41	Calcium (20)	1.0X105	2.7X10-6	1.0X107	2.7X10-4
Ca-45		1.0X104	2.7X10-7	1.0X107	2.7X10-4
Ca-47		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Cd-109	Cadmium (48)	1.0X104	2.7X10-7	1.0X106	2.7X10-5
Cd-113m		1.0X103	2.7X10-8	1.0X106	2.7X10-5
Cd-115		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Cd-115m		1.0X103	2.7X10-8	1.0X106	2.7X10-5
Ce-139	Cerium (58)	1.0X102	2.7X10-9	1.0X106	2.7X10-5
Ce-141		1.0X102	2.7X10-9	1.0X107	2.7X10-4
Ce-143		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Ce-144 (b)		1.0X102	2.7X10-9	1.0X105	2.7X10-6
Cf-248	Californium (98)	1.0X101	2.7X10-10	1.0X104	2.7X10-7
Cf-249		1.0	2.7X10-11	1.0X103	2.7X10-8
Cf-250		1.0X101	2.7X10-10	1.0X104	2.7X10-7
Cf-251		1.0	2.7X10-11	1.0X103	2.7X10-8
Cf-252		1.0X101	2.7X10-10	1.0X104	2.7X10-7
Cf-253		1.0X102	2.7X10-9	1.0X105	2.7X10-6
Cf-254		1.0	2.7X10-11	1.0X103	2.7X10-8
Cl-36	Chlorine (17)	1.0X104	2.7X10-7	1.0X106	2.7X10-5
Cl-38		1.0X101	2.7X10-10	1.0X105	2.7X10-6
Cm-240	Curium (96)	1.0X102	2.7X10-9	1.0X105	2.7X10-6
Cm-241		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Cm-242		1.0X102	2.7X10-9	1.0X105	2.7X10-6
Cm-243		1.0	2.7X10-11	1.0X104	2.7X10-7
Cm-244		1.0X101	2.7X10-10	1.0X104	2.7X10-7

Cm-245		1.0	2.7X10-11	1.0X103	2.7X10-8
Cm-246		1.0	2.7X10-11	1.0X103	2.7X10-8
Cm-247		1.0	2.7X10-11	1.0X104	2.7X10-7
Cm-248		1.0	2.7X10-11	1.0X103	2.7X10-8
Co-55	Cobalt (27)	1.0X101	2.7X10-10	1.0X106	2.7X10-5
Co-56		1.0X101	2.7X10-10	1.0X105	2.7X10-6
Co-57		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Co-58		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Co-58m		1.0X104	2.7X10-7	1.0X107	2.7X10-4
Co-60		1.0X101	2.7X10-10	1.0X105	2.7X10-6
Cr-51	Chromium (24)	1.0X103	2.7X10-8	1.0X107	2.7X10-4
Cs-129	Cesium (55)	1.0X102	2.7X10-9	1.0X105	2.7X10-6
Cs-131		1.0X103	2.7X10-8	1.0X106	2.7X10-5
Cs-132		1.0X101	2.7X10-10	1.0X105	2.7X10-6
Cs-134		1.0X101	2.7X10-10	1.0X104	2.7X10-7
Cs-134m		1.0X103	2.7X10-8	1.0X105	2.7X10-6
Cs-135		1.0X104	2.7X10-7	1.0X107	2.7X10-4
Cs-136		1.0X101	2.7X10-10	1.0X105	2.7X10-6
Cs-137 (b)		1.0X101	2.7X10-10	1.0X104	2.7X10-7
Cu-64	Copper (29)	1.0X102	2.7X10-9	1.0X106	2.7X10-5
Cu-67		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Dy-159	Dysprosium (66)	1.0X103	2.7X10-8	1.0X107	2.7X10-4
Dy-165		1.0X103	2.7X10-8	1.0X106	2.7X10-5
Dy-166		1.0X103	2.7X10-8	1.0X106	2.7X10-5
Er-169	Erbium (68)	1.0X104	2.7X10-7	1.0X107	2.7X10-4

Er-171		1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Eu-147	Europium (63)	1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Eu-148		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Eu-149		1.0X102	2.7X10-9	1.0X107	2.7X10-4		
Eu-150 (short lived)		1.0X103	2.7X10-8	1.0X106	2.7X10-5		
Eu-150 (long lived)		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Eu-152		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Eu-152m		1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Eu-154		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Eu-155		1.0X102	2.7X10-9	1.0X107	2.7X10-4		
Eu-156		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
F-18	Fluorine (9)	1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Fe-52	Iron (26)	1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Fe-55		1.0X104	2.7X10-7	1.0X106	2.7X10-5		
Fe-59		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Fe-60		1.0X102	2.7X10-9	1.0X105	2.7X10-6		
Ga-67	Gallium (31)	1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Ga-68		1.0X101	2.7X10-10	1.0X105	2.7X10-6		
Ga-72		1.0X101	2.7X10-10	1.0X105	2.7X10-6		
Gd-146	Gadolinium (64)	1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Gd-148		1.0X101	2.7X10-10	1.0X104	2.7X10-7		
Gd-153		1.0X102	2.7X10-9	1.0X107	2.7X10-4		
Gd-159		1.0X103	2.7X10-8	1.0X106	2.7X10-5		
Ge-68	Germanium (32)	1.0X101	2.7X10-10	1.0X105	2.7X10-6		
Ge-71		1.0X104	2.7X10-7	1.0X108	2.7X10-3		

Ge-77		1.0X101	2.7X10-10		1.0X105	2.7X10-6	
Hf-172	Hafnium (72)	1.0X101	2.7X10-10		1.0X106	2.7X10-5	
Hf-175		1.0X102	2.7X10-9		1.0X106	2.7X10-5	
Hf-181		1.0X101	2.7X10-10		1.0X106	2.7X10-5	
Hf-182		1.0X102	2.7X10-9		1.0X106	2.7X10-5	
Hg-194	Mercury (80)	1.0X101	2.7X10-10		1.0X106	2.7X10-5	
Hg-195m		1.0X102	2.7X10-9		1.0X106	2.7X10-5	
Hg-197		1.0X102	2.7X10-9		1.0X107	2.7X10-4	
Hg-197m		1.0X102	2.7X10-9		1.0X106	2.7X10-5	
Hg-203		1.0X102	2.7X10-9		1.0X105	2.7X10-6	
Ho-166	Holmium (67)	1.0X103	2.7X10-8		1.0X105	2.7X10-6	
Ho-166m		1.0X101	2.7X10-10		1.0X106	2.7X10-5	
I-123	Iodine (53)	1.0X102	2.7X10-9		1.0X107	2.7X10-4	
I-124		1.0X101	2.7X10-10		1.0X106	2.7X10-5	
I-125		1.0X103	2.7X10-8		1.0X106	2.7X10-5	
I-126		1.0X102	2.7X10-9		1.0X106	2.7X10-5	
I-129		1.0X102	2.7X10-9		1.0X105	2.7X10-6	
I-131		1.0X102	2.7X10-9		1.0X106	2.7X10-5	
I-132		1.0X101	2.7X10-10		1.0X105	2.7X10-6	
I-133		1.0X101	2.7X10-10		1.0X106	2.7X10-5	
I-134		1.0X101	2.7X10-10		1.0X105	2.7X10-6	
I-135		1.0X101	2.7X10-10		1.0X106	2.7X10-5	
In-111	Indium (49)	1.0X102	2.7X10-9		1.0X106	2.7X10-5	
In-113m		1.0X102	2.7X10-9		1.0X106	2.7X10-5	
In-114m		1.0X102	2.7X10-9		1.0X106	2.7X10-5	

In-115m		1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Ir-189	Iridium (77)	1.0X102	2.7X10-9	1.0X107	2.7X10-4		
Ir-190		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Ir-192		1.0X101	2.7X10-10	1.0X104	2.7X10-7		
Ir-194		1.0X102	2.7X10-9	1.0X105	2.7X10-6		
K-40	Potassium (19)	1.0X102	2.7X10-9	1.0X106	2.7X10-5		
K-42		1.0X102	2.7X10-9	1.0X106	2.7X10-5		
K-43		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Kr-81	Krypton (36)	1.0X104	2.7X10-7	1.0X107	2.7X10-4		
Kr-85		1.0X105	2.7X10-6	1.0X104	2.7X10-7		
Kr-85m		1.0X103	2.7X10-8	1.0X1010	2.7X10-1		
Kr-87		1.0X102	2.7X10-9	1.0X109	2.7X10-2		
La-137	Lanthanum (57)	1.0X103	2.7X10-8	1.0X107	2.7X10-4		
La-140		1.0X101	2.7X10-10	1.0X105	2.7X10-6		
Lu-172	Lutetium (71)	1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Lu-173		1.0X102	2.7X10-9	1.0X107	2.7X10-4		
Lu-174		1.0X102	2.7X10-9	1.0X107	2.7X10-4		
Lu-174m		1.0X102	2.7X10-9	1.0X107	2.7X10-4		
Lu-177		1.0X103	2.7X10-8	1.0X107	2.7X10-4		
Mg-28	Magnesium (12)	1.0X101	2.7X10-10	1.0X105	2.7X10-6		
Mn-52	Manganese (25)	1.0X101	2.7X10-10	1.0X105	2.7X10-6		
Mn-53		1.0X104	2.7X10-7	1.0X109	2.7X10-2		
Mn-54		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Mn-56		1.0X101	2.7X10-10	1.0X105	2.7X10-6		
Mo-93	Molybdenum (42)	1.0X103	2.7X10-8	1.0X108	2.7X10-3		

Mo-99		1.0X102	2.7X10-9	1.0X106	2.7X10-5		
N-13	Nitrogen (7)	1.0X102	2.7X10-9	1.0X109	2.7X10-2		
Na-22	Sodium (11)	1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Na-24		1.0X101	2.7X10-10	1.0X105	2.7X10-6		
Nb-93m	Niobium (41)	1.0X104	2.7X10-7	1.0X107	2.7X10-4		
Nb-94		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Nb-95		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Nb-97		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Nd-147	Neodymium (60)	1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Nd-149		1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Ni-59	Nickel (28)	1.0X104	2.7X10-7	1.0X108	2.7X10-3		
Ni-63		1.0X105	2.7X10-6	1.0X108	2.7X10-3		
Ni-65		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Np-235	Neptunium (93)	1.0X103	2.7X10-8	1.0X107	2.7X10-4		
Np-236 (short-lived)		1.0X103	2.7X10-8	1.0X107	2.7X10-4		
Np-236 (long-lived)		1.0X102	2.7X10-9	1.0X105	2.7X10-6		
Np-237 (b)		1.0	2.7X10-11	1.0X103	2.7X10-8		
Np-239		1.0X102	2.7X10-9	1.0X107	2.7X10-4		
Os-185	Osmium (76)	1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Os-191		1.0X102	2.7X10-9	1.0X107	2.7X10-4		
Os-191m		1.0X103	2.7X10-8	1.0X107	2.7X10-4		
Os-193		1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Os-194		1.0X102	2.7X10-9	1.0X105	2.7X10-6		
P-32	Phosphorus (15)	1.0X103	2.7X10-8	1.0X105	2.7X10-6		
P-33		1.0X105	2.7X10-6	1.0X108	2.7X10-3		

Pa-230	Protactinium (91)	1.0X101	2.7X10-10	1.0X106	2.7X10-5
Pa-231	1.0	2.7X10-11	1.0X103	2.7X10-8	
Pa-233	1.0X102	2.7X10-9	1.0X107	2.7X10-4	
Pb-201	Lead (82)	1.0X101	2.7X10-10	1.0X106	2.7X10-5
Pb-202	1.0X103	2.7X10-8	1.0X106	2.7X10-5	
Pb-203	1.0X102	2.7X10-9	1.0X106	2.7X10-5	
Pb-205	1.0X104	2.7X10-7	1.0X107	2.7X10-4	
Pb-210 (b)	1.0X101	2.7X10-10	1.0X104	2.7X10-7	
Pb-212 (b)	1.0X101	2.7X10-10	1.0X105	2.7X10-6	
Pd-103	Palladium (46)	1.0X103	2.7X10-8	1.0X108	2.7X10-3
Pd-107	1.0X105	2.7X10-6	1.0X108	2.7X10-3	
Pd-109	1.0X103	2.7X10-8	1.0X106	2.7X10-5	
Pm-143	Promethium (61)	1.0X102	2.7X10-9	1.0X106	2.7X10-5
Pm-144	1.0X101	2.7X10-10	1.0X106	2.7X10-5	
Pm-145	1.0X103	2.7X10-8	1.0X107	2.7X10-4	
Pm-147	1.0X104	2.7X10-7	1.0X107	2.7X10-4	
Pm-148m	1.0X101	2.7X10-10	1.0X106	2.7X10-5	
Pm-149	1.0X103	2.7X10-8	1.0X106	2.7X10-5	
Pm-151	1.0X102	2.7X10-9	1.0X106	2.7X10-5	
Po-210	Polonium (84)	1.0X101	2.7X10-10	1.0X104	2.7X10-7
Pr-142	Praseodymium (59)	1.0X102	2.7X10-9	1.0X105	2.7X10-6
Pr-143	1.0X104	2.7X10-7	1.0X106	2.7X10-5	
Pt-188	Platinum (78)	1.0X101	2.7X10-10	1.0X106	2.7X10-5
Pt-191	1.0X102	2.7X10-9	1.0X106	2.7X10-5	
Pt-193	1.0X104	2.7X10-7	1.0X107	2.7X10-4	

Pt-193m		1.0X103	2.7X10-8	1.0X107	2.7X10-4		
Pt-195m		1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Pt-197		1.0X103	2.7X10-8	1.0X106	2.7X10-5		
Pt-197m		1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Pu-236	Plutonium (94)		1.0X101	2.7X10-10	1.0X104	2.7X10-7	
Pu-237		1.0X103	2.7X10-8	1.0X107	2.7X10-4		
Pu-238		1.0	2.7X10-11	1.0X104	2.7X10-7		
Pu-239		1.0	2.7X10-11	1.0X104	2.7X10-7		
Pu-240		1.0	2.7X10-11	1.0X103	2.7X10-8		
Pu-241		1.0X102	2.7X10-9	1.0X105	2.7X10-6		
Pu-242		1.0	2.7X10-11	1.0X104	2.7X10-7		
Pu-244		1.0	2.7X10-11	1.0X104	2.7X10-7		
Ra-223 (b)	Radium (88)		1.0X102	2.7X10-9	1.0X105	2.7X10-6	
Ra-224 (b)		1.0X101	2.7X10-10	1.0X105	2.7X10-6		
Ra-225		1.0X102	2.7X10-9	1.0X105	2.7X10-6		
Ra-226 (b)		1.0X101	2.7X10-10	1.0X104	2.7X10-7		
Ra-228 (b)		1.0X101	2.7X10-10	1.0X105	2.7X10-6		
Rb-81	Rubidium (37)		1.0X101	2.7X10-10	1.0X106	2.7X10-5	
Rb-83		1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Rb-84		1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Rb-86		1.0X102	2.7X10-9	1.0X105	2.7X10-6		
Rb-87		1.0X104	2.7X10-7	1.0X107	2.7X10-4		
Rb(nat)		1.0X104	2.7X10-7	1.0X107	2.7X10-4		
Re-184	Rhenium (75)		1.0X101	2.7X10-10	1.0X106	2.7X10-5	
Re-184m		1.0X102	2.7X10-9	1.0X106	2.7X10-5		

Re-186		1.0X103	2.7X10-8	1.0X106	2.7X10-5
Re-187		1.0X106	2.7X10-5	1.0X109	2.7X10-2
Re-188		1.0X102	2.7X10-9	1.0X105	2.7X10-6
Re-189		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Re(nat)		1.0X106	2.7X10-5	1.0X109	2.7X10-2
Rh-99	Rhodium (45)	1.0X101	2.7X10-10	1.0X106	2.7X10-5
Rh-101		1.0X102	2.7X10-9	1.0X107	2.7X10-4
Rh-102		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Rh-102m		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Rh-103m		1.0X104	2.7X10-7	1.0X108	2.7X10-3
Rh-105		1.0X102	2.7X10-9	1.0X107	2.7X10-4
Rn-222 (b)	Radon (86)	1.0X101	2.7X10-10	1.0X108	2.7X10-3
Ru-97	Ruthenium (44)	1.0X102	2.7X10-9	1.0X107	2.7X10-4
Ru-103		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Ru-105		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Ru-106 (b)		1.0X102	2.7X10-9	1.0X105	2.7X10-6
S-35	Sulphur (16)	1.0X105	2.7X10-6	1.0X108	2.7X10-3
Sb-122	Antimony (51)	1.0X102	2.7X10-9	1.0X104	2.7X10-7
Sb-124		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Sb-125		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Sb-126		1.0X101	2.7X10-10	1.0X105	2.7X10-6
Sc-44	Scandium (21)	1.0X101	2.7X10-10	1.0X105	2.7X10-6
Sc-46		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Sc-47		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Sc-48		1.0X101	2.7X10-10	1.0X105	2.7X10-6

Se-75	Selenium (34)	1.0X102	2.7X10-9	1.0X106	2.7X10-5
Se-79	1.0X104	2.7X10-7	1.0X107	2.7X10-4	
Si-31	Silicon (14)	1.0X103	2.7X10-8	1.0X106	2.7X10-5
Si-32	1.0X103	2.7X10-8	1.0X106	2.7X10-5	
Sm-145	Samarium (62)	1.0X102	2.7X10-9	1.0X107	2.7X10-4
Sm-147	1.0X101	2.7X10-10	1.0X104	2.7X10-7	
Sm-151	1.0X104	2.7X10-7	1.0X108	2.7X10-3	
Sm-153	1.0X102	2.7X10-9	1.0X106	2.7X10-5	
Sn-113	Tin (50)	1.0X103	2.7X10-8	1.0X107	2.7X10-4
Sn-117m	1.0X102	2.7X10-9	1.0X106	2.7X10-5	
Sn-119m	1.0X103	2.7X10-8	1.0X107	2.7X10-4	
Sn-121m	1.0X103	2.7X10-8	1.0X107	2.7X10-4	
Sn-123	1.0X103	2.7X10-8	1.0X106	2.7X10-5	
Sn-125	1.0X102	2.7X10-9	1.0X105	2.7X10-6	
Sn-126	1.0X101	2.7X10-10	1.0X105	2.7X10-6	
Sr-82	Strontium (38)	1.0X101	2.7X10-10	1.0X105	2.7X10-6
Sr-85	1.0X102	2.7X10-9	1.0X106	2.7X10-5	
Sr-85m	1.0X102	2.7X10-9	1.0X107	2.7X10-4	
Sr-87m	1.0X102	2.7X10-9	1.0X106	2.7X10-5	
Sr-89	1.0X103	2.7X10-8	1.0X106	2.7X10-5	
Sr-90 (b)	1.0X102	2.7X10-9	1.0X104	2.7X10-7	
Sr-91	1.0X101	2.7X10-10	1.0X105	2.7X10-6	
Sr-92	1.0X101	2.7X10-10	1.0X106	2.7X10-5	
T(H-3)	Tritium (1)	1.0X106	2.7X10-5	1.0X109	2.7X10-2
Ta-178 (long-lived)	Tantalum (73)	1.0X101	2.7X10-10	1.0X106	2.7X10-5

Ta-179		1.0X103	2.7X10-8	1.0X107	2.7X10-4
Ta-182		1.0X101	2.7X10-10	1.0X104	2.7X10-7
Tb-157	Terbium (65)	1.0X104	2.7X10-7	1.0X107	2.7X10-4
Tb-158		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Tb-160		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Tc-95m	Technetium (43)	1.0X101	2.7X10-10	1.0X106	2.7X10-5
Tc-96		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Tc-96m		1.0X103	2.7X10-8	1.0X107	2.7X10-4
Tc-97		1.0X103	2.7X10-8	1.0X108	2.7X10-3
Tc-97m		1.0X103	2.7X10-8	1.0X107	2.7X10-4
Tc-98		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Tc-99		1.0X104	2.7X10-7	1.0X107	2.7X10-4
Tc-99m		1.0X102	2.7X10-9	1.0X107	2.7X10-4
Te-121	Tellurium (52)	1.0X101	2.7X10-10	1.0X106	2.7X10-5
Te-121m		1.0X102	2.7X10-9	1.0X105	2.7X10-6
Te-123m		1.0X102	2.7X10-9	1.0X107	2.7X10-4
Te-125m		1.0X103	2.7X10-8	1.0X107	2.7X10-4
Te-127		1.0X103	2.7X10-8	1.0X106	2.7X10-5
Te-127m		1.0X103	2.7X10-8	1.0X107	2.7X10-4
Te-129		1.0X102	2.7X10-9	1.0X106	2.7X10-5
Te-129m		1.0X103	2.7X10-8	1.0X106	2.7X10-5
Te-131m		1.0X101	2.7X10-10	1.0X106	2.7X10-5
Te-132		1.0X102	2.7X10-9	1.0X107	2.7X10-4
Th-227	Thorium (90)	1.0X101	2.7X10-10	1.0X104	2.7X10-7
Th-228 (b)		1.0	2.7X10-11	1.0X104	2.7X10-7

Th-229 (b)		1.0	2.7X10-11	1.0X103	2.7X10-8		
Th-230		1.0	2.7X10-11	1.0X104	2.7X10-7		
Th-231		1.0X103	2.7X10-8	1.0X107	2.7X10-4		
Th-232		1.0X101	2.7X10-10	1.0X104	2.7X10-7		
Th-234 (b)		1.0X103	2.7X10-8	1.0X105	2.7X10-6		
Th (nat) (b)		1.0	2.7X10-11	1.0X103	2.7X10-8		
Ti-44	Titanium (22)	1.0X101	2.7X10-10	1.0X105	2.7X10-6		
Tl-200	Thallium (81)	1.0X101	2.7X10-10	1.0X106	2.7X10-5		
Tl-201		1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Tl-202		1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Tl-204		1.0X104	2.7X10-7	1.0X104	2.7X10-7		
Tm-167	Thulium (69)	1.0X102	2.7X10-9	1.0X106	2.7X10-5		
Tm-170		1.0X103	2.7X10-8	1.0X106	2.7X10-5		
Tm-171		1.0X104	2.7X10-7	1.0X108	2.7X10-3		
U-230 (fast lung absorption) (b),(d)		Uranium (92)	1.0X101	2.7X10-10	1.0X105	2.7X10-6	
U-230 (medium lung absorption) (e)			1.0X101	2.7X10-10	1.0X104	2.7X10-7	
U-230 (slow lung absorption) (f)			1.0X101	2.7X10-10	1.0X104	2.7X10-7	
U-232 (fast lung absorption) (b),(d)			1.0	2.7X10-11	1.0X103	2.7X10-8	
U-232 (medium lung absorption) (e)			1.0X101	2.7X10-10	1.0X104	2.7X10-7	
U-232 (slow lung absorption) (f)			1.0X101	2.7X10-10	1.0X104	2.7X10-7	
U-233 (fast lung absorption) (d)			1.0X101	2.7X10-10	1.0X104	2.7X10-7	
U-233 (medium lung absorption) (e)			1.0X102	2.7X10-9	1.0X105	2.7X10-6	
U-233 (slow lung absorption) (f)			1.0X101	2.7X10-10	1.0X105	2.7X10-6	
U-234 (fast lung absorption) (d)			1.0X101	2.7X10-10	1.0X104	2.7X10-7	

U-234 (medium lung absorption) (e)	1.0X102	2.7X10-9	1.0X105	2.7X10-6
U-234 (slow lung absorption) (f)	1.0X101	2.7X10-10	1.0X105	2.7X10-6
U-235 (all lung absorption types) (b),(d),(e),(f)	1.0X101	2.7X10-10	1.0X104	2.7X10-7
U-236 (fast lung absorption) (d)	1.0X101	2.7X10-10	1.0X104	2.7X10-7
U-236 (medium lung absorption) (e)	1.0X102	2.7X10-9	1.0X105	2.7X10-6
U-236 (slow lung absorption) (f)	1.0X101	2.7X10-10	1.0X104	2.7X10-7
U-238 (all lung absorption types) (b),(d),(e),(f)	1.0X101	2.7X10-10	1.0X104	2.7X10-7
U (nat) (b)	1.0	2.7X10-11	1.0X103	2.7X10-8
U (enriched to 20% or less) (g)	1.0	2.7X10-11	1.0X103	2.7X10-8
U (dep)	1.0	2.7X10-11	1.0X103	2.7X10-8
V-48 Vanadium (23)	1.0X101	2.7X10-10	1.0X105	2.7X10-6
V-49	1.0X104	2.7X10-7	1.0X107	2.7X10-4
W-178 Tungsten (74)	1.0X101	2.7X10-10	1.0X106	2.7X10-5
W-181	1.0X103	2.7X10-8	1.0X107	2.7X10-4
W-185	1.0X104	2.7X10-7	1.0X107	2.7X10-4
W-187	1.0X102	2.7X10-9	1.0X106	2.7X10-5
W-188	1.0X102	2.7X10-9	1.0X105	2.7X10-6
Xe-122 Xenon (54)	1.0X102	2.7X10-9	1.0X109	2.7X10-2
Xe-123	1.0X102	2.7X10-9	1.0X109	2.7X10-2
Xe-127	1.0X103	2.7X10-8	1.0X105	2.7X10-6
Xe-131m	1.0X104	2.7X10-7	1.0X104	2.7X10-7
Xe-133	1.0X103	2.7X10-8	1.0X104	2.7X10-7
Xe-135	1.0X103	2.7X10-8	1.0X1010	2.7X10-1
Y-87 Yttrium (39)	1.0X101	2.7X10-10	1.0X106	2.7X10-5

Y-88	1.0X101	2.7X10-10	1.0X106	2.7X10-5
Y-90	1.0X103	2.7X10-8	1.0X105	2.7X10-6
Y-91	1.0X103	2.7X10-8	1.0X106	2.7X10-5
Y-91m	1.0X102	2.7X10-9	1.0X106	2.7X10-5
Y-92	1.0X102	2.7X10-9	1.0X105	2.7X10-6
Y-93	1.0X102	2.7X10-9	1.0X105	2.7X10-6
Yb-169	Ytterbium (70)	1.0X102	2.7X10-9	1.0X107	2.7X10-4
Yb-175	1.0X103	2.7X10-8	1.0X107	2.7X10-4
Zn-65	Zinc (30)	1.0X101	2.7X10-10	1.0X106	2.7X10-5
Zn-69	1.0X104	2.7X10-7	1.0X106	2.7X10-5
Zn-69m	1.0X102	2.7X10-9	1.0X106	2.7X10-5
Zr-88	Zirconium (40)	1.0X102	2.7X10-9	1.0X106	2.7X10-5
Zr-93 (b)	1.0X103	2.7X10-8	1.0X107	2.7X10-4
Zr-95	1.0X101	2.7X10-10	1.0X106	2.7X10-5
Zr-97 (b)	1.0X101	2.7X10-10	1.0X105	2.7X10-6a

[a] [Reserved]

[b] Parent nuclides and their progeny included in secular equilibrium are listed in the following:

Sr-90	Y-90
Zr-93	Nb-93m
Zr-97	Nb-97
Ru-106	Rh-106
Cs-137	Ba-137m
Ce-134	La-134
Ce-144	Pr-144
Ba-140	La-140
Bi-212	Tl-208 (0.36), Po-212 (0.64)
Pb-210	Bi-210, Po-210
Pb-212	Bi-212, Tl-208 (0.36), Po-212 (0.64)
Rn-220	Po-216
Rn-222	Po-218, Pb-214, Bi-214, Po-214
Ra-223	Rn-219, Po-215, Pb-211, Bi-211, Tl-207
Ra-224	Rn-220, Po-216, Pb-212, Bi-212, Tl-208(0.36), Po-212 (0.64)
Ra-226	Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
Ra-228	Ac-228

Th-226	Ra-222, Rn-218, Po-214
Th-228	Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-229	Ra-225, Ac-225, Fr-221, At-217, Bi-213, Po-213, Pb-209
Th-nat	Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-234	Pa-234m
U-230	Th-226, Ra-222, Rn-218, Po-214
U-232	Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
U-235	Th-231
U-238	Th-234, Pa-234m
U-nat	Th-234, Pa-234m, U-234, Th-230, Ra-226, Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
U-240	Np-240m
Np-237	Pa-233
Am-242m	Am-242
Am-243	Np-239

[c] [Reserved]

[d] These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.

[e] These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and hexavalent compounds in both normal and accident conditions of transport.

[f] These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.

[g] These values apply to unirradiated uranium only.

TABLE A-3

GENERAL VALUES FOR A1 AND A2

Contents	A1	A2	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limits for exempt consignments (Bq)	Activity limits for exempt consignments (Ci)
	(TBq)				(TBq)	(Ci)
Only beta or gamma emitting radionuclides	1 x	2.7 x	2 x	5.4 x	1 x	2.7	1 x	2.7

are known to be present	10-1	100	10 -2	10-1	101	x10-10	104	x10-7
Only alpha emittingradionuclides are knownto be present	2 x 10-1	5.4 x 100	9 x 10-5	2.4 x 10-3	1 x 10-1	2.7 x10-12	1 x 103	2.7 x10-8
No relevant data are available	1 x 10-3	2.7 x 10-2	9 x 10-5	2.4 x 10-3	1 x 10-1	2.7 x 10-12	1 x 103	2.7 x 10-8

TABLE A-4

ACTIVITY-MASS RELATIONSHIPS FOR URANIUM

Uranium Enrichment1 wt % U-235 present	Specific Activity	
	TBq/g	Ci/g
0.45	1.8 x 10-8	5.0 x 10-7
0.72	2.6 x 10-8	7.1 x 10-7
1	2.8 x 10-8	7.6 x 10-7
1.5	3.7 x 10-8	1.0 x 10-6
5	1.0 x 10-7	2.7 x 10-6
10	1.8 x 10-7	4.8 x 10-6
20	3.7 x 10-7	1.0 x 10-5
35	7.4 x 10-7	2.0 x 10-5
50	9.3 x 10-7	2.5 x 10-5
90	2.2 x 10-6	5.8 x 10-5
93	2.6 x 10-6	7.0 x 10-5
95	3.4 x 10-6	9.1 x 10-5

1 The figures for uranium include representative values for the activity of the uranium-234 that is concentrated during the enrichment process.

(60 FR 50264, Sept. 28, 1995 as amended at 61 FR 28724, June 6, 1996; 69 FR 3800, Jan. 26, 2004).

HISTORICAL NOTE

Subd. (a) par (1) subpar (ii) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statement of Basis and Purpose No. 30]

Subd. (a) par (5) amended in part (various additions and renumbering) City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statement of Basis and Purpose No. 30]

Subd. (a) par (6) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statement of Basis and Purpose No. 30]

Subd. (b) pars (1), (2) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statement of Basis and Purpose No. 30]

Subd. (b) par (3) added City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statement of Basis and Purpose No. 30]

Subd. (c) par (3) subpar (v) added City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statement of Basis and Purpose No. 30]

Subd. (c) par (5) added City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statement of Basis and Purpose No. 30]

Subd. (d) par (3) subpar (xii) added City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statement of Basis and Purpose No. 30]

Subd. (d) par (4) subpar (i) clause (B) amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statement of Basis and Purpose No. 30]

Subd. (d) par (9) subpar (iii) clause (C) opening par amended City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statement of Basis and Purpose No. 30]

Subd. (e) par (1) subpars (iv), (v) repealed City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statement of Basis and Purpose No. 30]

Appendix A repealed and added City Record Sept. 25, 2008 eff. Oct. 25, 2008. [See Vol. 9 Statement of Basis and Purpose No. 30]

DERIVATION

Section repealed and added City Record June 30, 1999 eff. July 30, 1999. [See Vol. 9 Statements of

Basis and Purpose No. 13]

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Notes:

On September 17, 2008, the Board of Health amended multiple provisions of Health Code §175.105, including the repeal and reenactment of §175.105 Appendix A, in order to maintain compatibility with applicable NRC regulations found in various provisions of 10 CFR Part 71 relating to the transportation and packaging of radioactive material.

Microwave Ovens

FOOTNOTES

13

[Footnote 13]: * Postal Service Manual (Domestic Mail Manual), §124.3, which is incorporated by reference at 39 CFR 111.1.

Rules of the City of New York

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

24 RCNY 175.201

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.201 Microwave Ovens.

(a) **Applicability.** The provisions of this Code relating to microwave ovens shall apply to such ovens sold, offered for sale, repaired or altered for use in homes, restaurants or other food vending establishments, hospitals or other medical care facilities, schools, and other establishments in the City where the public may be exposed.

(b) **Definitions.** As used in the sections of this Code relating to microwave ovens, the following definitions shall apply:

(1) "Microwave oven" means a device designed to heat, cook or dry food through the application of electromagnetic energy at frequencies assigned by the Federal Communications Commission in the normal industrial, scientific and medical heating bands ranging from 890 megahertz to 6,000 megahertz.

(2) "Cavity" means that portion of the microwave oven in which food may be heated, cooked or dried.

(3) "Door" means the movable barrier which prevents access to the cavity during operation and whose function is to prevent emission of microwave energy from the passage or opening which provides access to the cavity.

(4) "Safety interlock" means a device or system of devices which is intended to prevent generation of microwave energy when access to the cavity is possible.

(5) "Service adjustments or service procedures" means those servicing methods prescribed by the manufacturer for a specific product model.

(6) "Stirrer" means that feature of a microwave oven which is intended to provide uniform heating of the load by constantly changing the standing wave pattern within the cavity or moving the load.

(7) "External surface" means the outside surface of the cabinet or enclosure provided by the manufacturer as part of the microwave oven, including doors, door handles, latches and control knobs.

(c) **Requirements for microwave ovens.** (1) **Power density limit.** The power density of the microwave radiation emitted by a microwave oven shall not exceed 5 milliwatts (mW) per cm^2 at any point 5 cm (2 in.) or more from the external surface of the oven except that a microwave oven offered for sale or sold by its manufacturer shall not have a power density exceeding 1 mW per cm^2 at any point 5 cm (2 in.) or more from the external surface of the oven.

(2) **Measurements and test conditions.** (i) Microwave ovens shall be in compliance with the power density limits if the maximum reading obtained at the location of greatest microwave radiation emission does not exceed the limits specified in this section when the emission is measured through at least one stirrer cycle.

(ii) The emission shall not exceed the requirements of §175.201(c)(1) when the microwave oven is operated at its maximum output and contains a load of 275 15 milliliters of tap water initially at 20.5 degrees Centigrade placed within the cavity at the center of the load-carrying surface provided by the manufacturer. The water container shall be a low form 600 milliliter beaker having an inside diameter of approximately 8.5 cm and made of an electrically non-conductive material such as glass or plastic.

(iii) Measurements shall be made with the door fully closed as well as with the door fixed in any other position which allows the oven to operate.

(3) **Door and safety interlocks.** (i) Microwave ovens manufactured prior to October 6, 1971 shall have one safety interlock.

(ii) Microwave ovens manufactured from October 6, 1971 through November 6, 1976: (A) shall have a minimum of two operative safety interlocks, one of which shall be concealed. A concealed safety interlock on a fully assembled microwave oven must not be operable by any part of the body, or a rod 3 mm or greater in diameter and with a useful length of 10 cm. A magnetically operated interlock is considered to be concealed only if a test magnet, held in place on the oven by gravity or its own attraction, cannot operate the safety interlock. The test magnet shall have a pull at zero air gap of at least 4.5 kg and a pull at 1 cm air gap of at least 450 g when the face of the magnet which is toward the interlock switch when the magnet is in the test position is pulling against one of the large faces of a mild steel armature having dimensions of 80 mm by 50 mm by 8 mm.

(B) The insertion of an object into the oven cavity through any opening while the door is closed shall not cause microwave radiation emission from the oven to exceed the applicable power density limits specified in §175.201(c)(1).

(iii) For microwave ovens manufactured on or after August 4, 1974:

(A) One (the primary) required safety interlock shall prevent micro-

wave radiation emission in excess of the requirement of §175.201(c)(1); the other (secondary) required safety

interlock shall prevent microwave radiation emission in excess of 5 mW per cm^2 at any point 5 cm (2 in.) or more from the external surface of the oven. The two required safety interlocks shall be designated as primary or secondary in the service instructions for the oven.

(B) A means of monitoring one or both of the required safety interlocks shall be provided which shall cause the oven to become inoperable and remain so until repaired if the required safety interlock(s) should fail to perform required functions as specified in this section. Interlock failures shall not disrupt the monitoring function.

(iv) Microwave ovens manufactured on and after November 7, 1976:

(A) shall have a minimum of two operative safety interlocks. At least

one operative safety interlock on a fully assembled microwave oven shall not be operable by any part of the human body, or any object with a straight insertable length of 10 centimeters. Such interlock must also be concealed, unless its actuation is prevented when access to the interlock is possible. Any visible actuator or device to prevent actuation of this safety interlock must not be removable without disassembly of the oven or its door. A magnetically operated interlock is considered to be concealed, or its actuation is considered to be prevented, only if a test magnet held in place on the oven by gravity or its own attraction cannot operate the safety interlock. The test magnet shall be capable of lifting vertically at zero air gap at least 4.5 kilograms, and at 1 centimeter air gap at least 450 grams when the face of the magnet, which is toward the interlock when the magnet is in test position, is pulling against one of the large faces of a mild steel armature having dimensions of 80 millimeters by 50 millimeters by 8 millimeters.

(B) Microwave radiation emission from such ovens in excess of the limits specified in §175.201(c)(1) shall not be caused by insertion of an insulated wire through any opening in the external surfaces of a fully assembled oven into the cavity, waveguide, or other microwave-energy-containing spaces while the door is closed, provided the wire, when inserted, could consist of two straight segments forming an obtuse angle of not less then 170 degrees.

(v) Failure of any single mechanical or electrical component of the microwave oven shall not cause all safety interlocks to be inoperative.

(vi) Service adjustments or service procedures on the microwave oven shall not cause the safety interlocks to become inoperative or the microwave radiation emission to exceed the power density limits of this section as a result of such service adjustments or procedures.

(4) **Enforcement by the department, notice of repair and installation.** (i) Any microwave oven found deficient in meeting the provisions of §175.201(c) after survey by a Department representative shall be immediately taken out of service until such deficiencies have been corrected. The Bureau of Radiological Health shall be notified within 48 hours of the completion of such repairs.

(ii) Within 48 hours of an installation of a microwave oven in any restaurant or other food vending establishment, hospital or other medical care facility, school, or other establishment in the City where the public may be exposed, a notification of such installation shall be made to the Bureau of Radiological Health.

(e) **User instructions.** (1) For microwave ovens manufactured prior to October 3, 1975 manufacturers thereof shall provide or cause to be provided, with each oven, adequate instructions for its safe use including clear warnings of precautions to be taken to avoid possible exposure to microwave radiation.

(2) For microwave ovens manufactured on or after October 3, 1975 manufacturers thereof shall provide or cause to be provided, with each oven, radiation safety instructions which:

(i) occupy a separate section and are an integral part of the regularly supplied user's manual and cookbook, if supplied separately, and are located so as to elicit the attention of the reader;

(ii) are as legible and durable as other instructions with the title emphasized to elicit the attention of the reader by such means as boldfaced type, contrasting color, a heavy-lined border, or similar means; and

(iii) contain the following wording:

"PRECAUTIONS TO AVOID POSSIBLE EXPOSURE TO

EXCESSIVE MICROWAVE ENERGY

(A) Do not attempt to operate this oven with the door open since open-door operation can result in harmful exposure to microwave energy. It is important not to defeat or tamper with the safety interlocks.

(B) Do not place any object between the oven front face and the door or allow soil or cleaner residue to accumulate on sealing surfaces.

(C) Do not operate the oven if it is damaged. It is particularly important that the oven door close properly and that there is no damage to the:

(a) door (bent);

(b) hinges and latches (broken or loosened);

(c) door seals and sealing surfaces.

(D) The oven should not be adjusted or repaired by anyone except properly qualified service personnel."

(f) **Service instructions.** (1) For microwave ovens manufactured prior to October 3, 1975 manufacturers thereof shall provide or cause to be provided to servicing dealers and distributors and to others upon request, for each oven model, adequate instructions for service adjustment and service procedures including clear warnings of precautions to be taken to avoid possible exposure to microwave radiation.

(2) For microwave ovens manufactured on or after October 3, 1975 manufacturers thereof shall provide or cause to be provided to servicing dealers and distributors and to others upon request, for each oven model, adequate instruction for service adjustments and service procedures, and, in addition, radiation safety instructions which:

(i) occupy a separate section and are an integral part of the regularly supplied service manual and are located so as to elicit the attention of the reader;

(ii) are as legible and durable as other instructions with the title emphasized so as to elicit the attention of the reader by such means as boldfaced type, contrasting color, a heavy-lined border, or by similar means; and

(iii) contain the following wording:

"PRECAUTIONS TO BE OBSERVED BEFORE AND DURING

SERVICING TO AVOID POSSIBLE EXPOSURE TO

EXCESSIVE MICROWAVE ENERGY

(A) Do not operate or allow the oven to be operated with the door open.

(B) Make the following safety checks on all ovens to be serviced before activating the magnetron or other microwave source, and make repairs as necessary:

(a) interlock operation;

(b) proper door closing;

(c) seal and sealing surfaces (arcing, wear, and other damage);

(d) damage to or loosening of hinges and latches;

(e) evidence of dropping or abuse.

(C) Before turning on microwave power for any service test or inspection within the microwave generating compartments, check the magnetron, waveguide or transmission line, and cavity for proper alignment, integrity, and connections.

(D) Any defective or misadjusted components in the interlock monitor, door seal, and microwave generation and transmission systems shall be repaired, replaced, or adjusted before the oven is released to the owner.

(E) A microwave leakage check to verify compliance with the Federal performance standard should be performed on each oven prior to release to the owner."

(iv) Include additional radiation safety precautions or instructions which may be necessary for particular oven designs or models.

(g) **Warning labels on microwave ovens.** (1) Microwave ovens manufactured on or after October 3, 1975 shall have the following warning labels:

(i) A label, permanently attached to or inscribed on the oven, which shall be legible and readily viewable during normal oven use, which shall have the title emphasized and be so located as to elicit the attention of the user, and which shall bear the following warning statement:

"PRECAUTIONS FOR SAFE USE TO AVOID POSSIBLE

EXPOSURE TO EXCESSIVE MICROWAVE ENERGY

DO NOT Attempt to Operate This Oven With:

(A) Object Caught in Door

(B) Door That Does Not Close Properly

(C) Damaged Door, Hinge, Latch, Sealing Surface"

(ii) A label permanently attached to or inscribed on the external surface of the oven which shall be legible and readily viewable during servicing and which shall have the word "CAUTION" emphasized and so located thereon as to elicit the attention of service personnel, and which shall bear the following warning statement:

"CAUTION: This Device is to be Serviced Only by Properly Qualified Service Personnel. Consult the Service Manual for Proper Service Procedures to Assure Continued Compliance with the Federal Performance Standard for Microwave Ovens and for Precautions to be Taken to Avoid Possible Exposure to Excessive Microwave Energy".

(iii) The labels provided in accordance with §175.201(g)(1)(i) and (ii) shall bear only the statements specified therein, except for additional radiation safety warnings or instructions which may be necessary for particular oven designs or models.

(iv) A microwave oven model may be exempted from one or more of the radiation safety warnings specified in §175.201(g)(1)(I) based upon a determination pursuant to the federal Radiation Control for Health and Safety Act of 1968 and the regulations promulgated thereunder that such model would continue to comply with the standards contained in §175.201(c)(1), (2) and (3) under the adverse condition of use addressed by such precautionary statements.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

Other

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Rules of the City of New York

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

24 RCNY 175.301

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 175 RADIATION CONTROL General Provisions

§175.301 Television receivers and other electronic devices.

(a) No television receiver or other electronic device, whether used in the home or elsewhere, which emits radiation on application of high voltage, shall be offered, transferred or consigned for sale or use in the City of New York unless it is so constructed as to prevent radiation therefrom at a level greater than 1.29 E-7 C-kg^{-1} (0.5 milliroentgens per hour), measured five (5) cm (2 in.) from any accessible surface and averaged over an area of 10 cm^{2} (1.55 in.^{2}).

(b) No replacement part shall be offered, transferred or consigned for sale or use in the City of New York which on being installed could cause the assembled unit for which it is intended to exceed the radiation limit allowed under this section.

(c) No person shall alter or adjust any television receiver or other electronic device, whether used in the home or elsewhere, which can emit radiation in such manner as to increase the radiation emission level thereof, unless the level thereby achieved be within the emission limit allowed under this section.

HISTORICAL NOTE

Section repealed and added City Record June 27, 1994 eff. July 27, 1994.

Section in original publication July 1, 1991.

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Rules of the City of New York

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

24 RCNY Health Code Reg. 181.00

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 181 PROTECTION OF PUBLIC HEALTH GENERALLY

Health Code Reg. § 181.00 INTRODUCTORY NOTES

Article 181 constitutes a revision of S.C. §§143, 213, 214, 221 and 338 dealing with diverse matters of environmental health and sanitation. Except for §181.15 on tattooing establishments, which is new, there are no major substantive changes.

Rules of the City of New York

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

24 RCNY 181.01

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 181 PROTECTION OF PUBLIC HEALTH GENERALLY

§181.01 Definitions.

In this article (a) public transportation facility is used as defined in §139.01,

(b) commercial premises is used as defined in §135.01,

(c) food establishment is used as defined in §81.03,

(d) day care service, school and children's institutions are used as defined in §45.01, and

(e) hotel, rooming house and lodging house are used as defined in Multiple Dwelling Law §4.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new.

Rules of the City of New York

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

24 RCNY 181.03

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 181 PROTECTION OF PUBLIC HEALTH GENERALLY

§181.03 Spitting prohibited.

(a) No person shall spit upon a sidewalk of a street or place, or on a floor, wall or stairway of any public or private building or premises used in common by the public, or in or on any public transportation facility.

(b) The owner or person in charge of a public transportation facility shall permanently and conspicuously post in each such place a sufficient number of notices prohibiting spitting.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §213. The posting of signs prohibiting spitting is now required only for public

transportation facilities. Under New York City Criminal Courts Act §102c, magistrates are empowered to try and punish violators of this section as and for an offense punishable by a fine of not more than $25 or by imprisonment up to 10 days or both.

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

24 RCNY 181.05

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 181 PROTECTION OF PUBLIC HEALTH GENERALLY

§181.05 Common towel prohibited.

No person who owns or is in charge of commercial premises, an office or other business establishment, day care service, school, children's institution, hotel, rooming house, lodging house, public wash room, public lavatory, public transportation facility or any other public place or any place used in common by the public shall furnish or maintain or permit the furnishing or maintenance of a common towel for the use of more than one person.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §214.

Rules of the City of New York

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

24 RCNY 181.07

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 181 PROTECTION OF PUBLIC HEALTH GENERALLY

§181.07 Common eating and drinking utensils prohibited.

The use or furnishing for use of common eating or drinking utensils is prohibited in commercial premises, a public transportation facility, food establishment, hotel, rooming house, lodging house, day care service, school, children's institution, park, street or any other public place or any place used in common by the public.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §143.

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24 RCNY 181.09

RULES OF THE CITY OF NEW YORK

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 181 PROTECTION OF PUBLIC HEALTH GENERALLY

§181.09 Manufacture and handling of cigars, cigarettes and tobacco.

(a) No person engaged in the preparation, manufacture, sorting or handling of cigars, cigarettes or tobacco intended for sale shall at any time:

(1) Touch such cigar, cigarette or tobacco with his lips, teeth or tongue; or,

(2) Moisten such cigar, cigarette or tobacco with saliva, directly or indirectly, by spitting or by use of the fingers or utensils or accessories of any kind; or,

(3) Spray or moisten such cigar, cigarette or tobacco with water or any other liquid emitted from the mouth; or,

(4) Permit such cigar, cigarette or tobacco to touch or be introduced into the nose of any person.

(b) A person engaged in the preparation, manufacture, sorting or handling of cigars, cigarettes or tobacco intended

for sale shall thoroughly wash his hands with soap and warm water before beginning work, immediately after each visit to the toilet, and at all other times when necessary during the course of the work.

(c) A copy of this section shall be posted conspicuously in every place where cigars, cigarettes or tobacco are prepared, manufactured, sorted or handled.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §338. Subsection (b) is new.

Rules of the City of New York

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

24 RCNY 181.11

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 181 PROTECTION OF PUBLIC HEALTH GENERALLY

§181.11 Growing of poison ivy and ragweed prohibited.

No person who owns, occupies or is in charge of a lot or premises shall cause or allow poison ivy, ragweed, or other poisonous or allergenic weed to grow on such lot or premises.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §221. S.C. §221 prohibited the growth of poison ivy, ragweed, etc., in such a manner that it encroached on or its seed was carried into a public place; the instant section prohibits a person from growing or permitting these plants to grow on property he owns, occupies or of which he is in charge. Public Health Law §§1320 and 1321 deal with the powers and duties of local boards of health with respect to noxious weeds and

growths. Public Health Law §1321(4) also authorizes local legislative bodies, such as the Board of Health (see Charter §558), to enact additional legislation on the subject. In New York City eradication of these poisonous or deleterious growths is the method best calculated to protect the public from their harmful effects. This section aims at such eventual eradication.

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24 RCNY 181.15

RULES OF THE CITY OF NEW YORK

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 181 PROTECTION OF PUBLIC HEALTH GENERALLY

§181.15 Tattooing prohibited. [Repealed]

HISTORICAL NOTE

Section repealed City Record Aug. 15, 1997 eff. Sept. 14, 1997.

Section in original publication July 1, 1991.

Notes:

The Section Heading and text of Section 181.15 were repealed on September 15, 1997 to remove the ban on tattooing since such ban is no longer appropriate.

This section was repealed and reenacted by resolution adopted on October 2, 1961. The original §181.15, which required tattooing establishments to comply with strict conditions including sterilization of instruments and dye

solutions, was enacted because of the occurrence of 15 cases of serum hepatitis resulting from tattooing in 1959. Despite the efforts of the Department to obtain compliance, tattooing establishments have been found repeatedly to fail to sterilize instruments and equipment. As a result of such failure the number of cases of serum hepatitis caused by tattooing rose from 4 in 1960 to 13 in 1961 up to September 30th. Since it is a practical impossibility for the Department to supervise each tattooing establishment at all times to insure proper sterilization, a complete ban on tattooing except for medical purposes is the only feasible means of safeguarding the public against disease from this source.

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

24 RCNY 181.17

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 181 PROTECTION OF PUBLIC HEALTH GENERALLY

§181.17 Smoking prohibited in certain areas.

(a) It shall be unlawful for any person to smoke or carry a lighted cigar, cigarette or pipe in any elevator or in any retail food establishment commonly known as a supermarket.

(b) It shall be unlawful for any person to smoke or carry a lighted cigar, cigarette or pipe in any classroom or in any lecture hall, except that the owner or person in charge of such classroom or lecture hall may designate a special area or areas where smoking is permitted, unless otherwise prohibited by the Fire Department or by other law. The area or areas where smoking is permitted shall contain not more than 20% of the total seats of the classroom or lecture hall.

(c) It shall be unlawful, except as provided in subsection (e), for any person to smoke or carry a lighted cigar, cigarette or pipe in any theatre, motion picture theatre, opera house, concert hall, hospital, sanatorium, nursing home, convalescent home, home for the aged or chronically ill patients, museum or library.

(d) It shall be unlawful, except as provided in subsection (e), to smoke or carry a lighted cigar, cigarette or pipe in any enclosed public space in which 50 or more persons gather for religious, recreational, political or social purpose. This subsection shall not apply to:

(1) Any place in which social functions such as weddings, parties, testimonial dinners and similar functions are held and in which the seating arrangements are under the control of the sponsor of the function and not of the owner or person in charge of such place.

(2) Any establishment which sells admission tickets on a seasonal or other periodic basis.

(e) The owner or person in charge of any building, structure or place specified in subsections (c) and (d) may designate special areas therein where smoking is permitted unless otherwise prohibited by the Fire Department or by other law.

(f) Signs prohibiting or permitting smoking, as the case may be, shall be posted conspicuously by the owner or person in charge of each building, structure or place specified in subsections (a), (b), (c) and (d).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new. It was added by resolution adopted on July 25, 1974. Smoking is already prohibited by various provisions of the New York City Administrative Code, e.g., §§C19-165.1, C19-165.2 and C19-165.4. It is apparent that those provisions are fire prevention measures, whereas the basis for this section is the protection of the health and comfort of non-smokers. This difference in objective accounts for any divergencies between those sections and this section. It should be noted that smoking may not be permitted in designated areas if prohibited by the Fire Department or by other law. (See §139.07 of this Code which prohibits smoking in public transportation facilities.)

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

24 RCNY 181.19

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE IV ENVIRONMENTAL SANITATION

PART B CONTROL OF ENVIRONMENT

ARTICLE 181 PROTECTION OF PUBLIC HEALTH GENERALLY

§181.19 Required Point-of-Sale Tobacco Health Warnings and Smoking Cessation Information.

(a) Any person in the business of selling tobacco products face-to-face to consumers in New York City shall prominently display tobacco health warning and smoking cessation signage produced by the Department.

(b) The signage required by subdivision (a) of this section shall be:

1. designed by the Department and may include:

a. information about tobacco products and the adverse health effects of tobacco use;

b. a pictorial image illustrating the effects of tobacco use; and

c. information about how to get help to quit using tobacco;

2. produced in two sizes:

a. one "small sign," not to exceed 144 square inches; and

b. one "large sign," not to exceed 576 square inches;

3. distributed by the Department or by the Department of Consumer Affairs, although additional signage may be ordered by calling 311.

(c) Persons who engage in face-to-face sales of tobacco products to consumers in New York City shall prominently display the signs required by subdivision (a) of this section by posting:

1. one "small sign" on or within 3 inches of each cash register or each place where payment may be made so that the sign(s) are unobstructed in their entirety and can be read easily by each consumer making a purchase; or

2. one "large sign" at each location where tobacco products are displayed so that:

a. the sign(s) are unobstructed in their entirety and can be read easily by each person considering a tobacco product purchase; and

b. in such a way that the distance between the bottom of the sign(s) and the floor shall be no less than four feet, and the distance between the top of such sign(s) and the floor shall be no more than seven feet.

(d) The Commissioner shall have the authority to modify periodically the text, images and content of signage produced by the Department pursuant to subdivision (a) of this section based on the Commissioner's determination that such modifications may contribute to the prevention or reduction of tobacco use and its harms, the prevention of tobacco sales to minors, or the correction of misinformation among consumers about the health effects of tobacco use. Persons required to post health warning and smoking cessation signage pursuant to subdivision (a) of this section shall display any modified signage upon receipt, as set forth in subdivision (c) of this section.

(e) The provisions of this section may be enforced by any authorized agent or employee of either the Department or the Department of Consumer Affairs, or successor agency. Any violation of this section issued by the Department of Consumer Affairs may be adjudicated at any tribunal authorized to hear such agency's violations.

(f) If any provision of this section, or its application to any person or circumstance, is held invalid by any court of competent jurisdiction, the remaining provisions or the application of the section to other persons or circumstances shall not be affected.

HISTORICAL NOTE

Section added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 41]

Notes:

The Department proposes that the Board of Health amend Article 181 of the Health Code to add a new §181.19 that would require the posting of tobacco health warnings and smoking cessation information in all places where tobacco is sold in New York City.

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Rules of the City of New York

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

24 RCNY Health Code Reg. TV

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

Health Code Reg. § TV INTRODUCTORY NOTES

Title V of the New York City Health Code contains provisions for the reporting of vital events, that is, births, fetal deaths and deaths in the City of New York. The title also contains the requirements for the disposal of human remains.

The provisions of this title are authorized by §567 of the City Charter:

The Board of Health shall prescribe the persons who shall be required to keep a registry of births, fetal deaths and deaths occurring in the City and file certificates thereof with the department and the form and manner in which such registry shall be kept and certificates filed. The Board of Health shall make rules for the recording of births which have not been recorded in accordance with law and for the change or alteration of any birth, fetal death or death certificate upon proof satisfactory to the commissioner.

The analysis of mortality and morbidity statistics is an important tool of modern public health administration. The study of reports of births, fetal deaths and deaths under this title, and of reports of disease under Title II of this Code, supply continuous information to measure the state of health of the people of the City of New York, to measure the effectiveness of the Department of Health, and to indicate the need for existing or new public health programs.

The reporting of vital events not only plays an important part in the regulation of public health, but also serves the need for the creation and preservation of personal records of births and deaths. There is a need for records of birth as a

means of proving such matters as identity or citizenship, and for records of death to determine such matters as rights to inheritance or succession.

Title V covers the subject matter of Article III of the Sanitary Code, Birth, Fetal Deaths and Deaths (S.C. §§31-36, 38-46); S.C. §350, Births and Deaths on Vessels and Aircrafts; Duty of Officers, Physicians and Others to Report; General Regulations of the Board of Health Relating to S.C. §§31 to 45; Rules of the Board of Health Governing the Change or Alteration of Any Birth, Stillbirth (Fetal Death) or Death Certificate; Rules of the Board of Health Governing the Recording of Births Which Have Not Been Recorded In Accordance With Law; and Rules of the Board of Health Governing the Charging of Fees for Searches and the Furnishing of Certifications of Birth Records, Certified Copies of Birth, Marriage and Death Records, Reports of Sanitary Violations, or Condemnation Certificates. The revision presents no major substantive changes but rather consolidates the many scattered code provisions, regulations, and Rules of the Board, in a unified code which reflects current practice in the administration of the vital statistics field; the revision also eliminates much obsolete detail. In addition, the revision extends the reporting period within which certain vital events must be reported, and clarifies the respective duties of those required to prepare reports and to file certificates. The revision also clarifies some of the provisions relating to the performance of autopsies. Provisions omitted in this revision include requirements contained in the Sanitary Code concerning notification to the office of the Chief Medical Examiner when unusual deaths or fetal deaths occur, which merely duplicated provisions of the Administrative Code, §§878-1.0 and 878-2.0. S.C. §36 relating to the making of false or misleading statements is omitted from this title but has been incorporated in §3.19. The resolution of the Board of Health relating to S.C. §31, concerning the reporting of births when the City is under enemy attack, has been included in the section providing for general emergency powers of the Commissioner of Health (§3.01 (c)). S.C. §42a relating to special requirements in disposing of the remains of a person who has died of smallpox has been omitted.

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

24 RCNY Health Code Reg. 201.00

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 201 BIRTHS*15

Health Code Reg. § 201.00 INTRODUCTORY NOTES

This article contains provisions for the reporting of births occurring in the City, for the maintenance of registries of births and for the reporting of births not reported at the time of the event.

FOOTNOTES

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[Footnote 15]: * Article 201 amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 37]

Rules of the City of New York

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

24 RCNY 201.01

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 201 BIRTHS*15

§201.01 Definitions.

When used in this title:

(a) "Live birth" or "birth" means the complete expulsion or extraction from its mother of a product of conception, regardless of the duration of pregnancy, which after expulsion or extraction shows evidence of life, such as breathing, beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(b) "Person in charge of a hospital" means the officer or employee who is responsible for the administration of a hospital or similar institution and includes but is not limited to a person holding the title of chief executive officer, administrator, superintendent, director or executive director.

(c) "Hospital" means a facility or institution licensed pursuant to Article 28 of the State Public Health Law and defined as such in §2801 of said law.

HISTORICAL NOTE

Section amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9

Statements of Basis and Purpose No. 37]

Section in original publication July 1, 1991.

Notes:

Subsection (a), live birth or birth, is derived from S.C. §31(a). The definition follows the 1950 World Health Organization (WHO) definition of "live birth", as contained in International Recommendations on Definitions of Live Birth and Fetal Death. P.H.S. Pub. No. 39 (National Office of Vital Statistics, October, 1950, page 6). The WHO definition, except for its inclusion of "pulsation of the umbilical cord" as an additional sign of life, does not substantially differ from S.C. §31(a).

Subsection (b), person in charge of a hospital, is new. Since administrative heads of hospitals in New York City have various titles, the term "person in charge of a hospital" must be broadly defined. The term "superintendent" was previously used without definition in S.C. §§31(b)and (f).

Subdivision (b) was amended and subdivision (c) was added by resolution adopted on June 24, 2009. The definition of "hospital" is intended to capture the entire range of facilities that are licensed by the State Department of Health pursuant to Article 28 of the State Public Health Law, including in-patient hospitals and birthing centers that are so licensed.

FOOTNOTES

15

[Footnote 15]: * Article 201 amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 37]

Rules of the City of New York

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

24 RCNY 201.03

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 201 BIRTHS*15

§201.03 Reporting births.

(a) When a live birth occurs in the City, it shall be reported to the Department as follows:

(1) If the birth occurs in a hospital or route thereto, by the person in charge of such hospital or his or her designee; or,

(2) If the birth occurs elsewhere than in a hospital or en route thereto, by the physician, licensed midwife or registered physician assistant, in attendance at or after such birth; or,

(3) If a physician, licensed midwife or registered physician assistant attends at or after the birth elsewhere than in a hospital, or en route thereto, as an associate of a hospital, by the person in charge of the hospital with which he or she is associated or by the designee of such person in charge; or,

(4) If the birth occurs without the attendance of a physician, licensed midwife or registered physician assistant, by either of the parents of the child or, if no parent is alive, by the next of kin of the child or any person present at the birth.

(b) A person required to report a live birth pursuant to paragraphs (1), (2) or (3) of subdivision (a) of this section

shall file a certificate of birth and a confidential medical report, and a person required to report pursuant to paragraph (4) of subdivision (a) of this section shall file a certificate of birth only. Reports shall be filed within 5 business days after the birth with the office maintained and designated by the Department for such purposes.

(c) The person required to report a birth shall provide to the Department information that was required to be reported, but that was not so reported, within five business days of that person receiving the information.

(d) Upon a request by the Department for additional information that may be necessary to complete, clarify or verify the information required to be reported, the person required to report a birth shall provide such information to the Department within five business days of the request.

HISTORICAL NOTE

Section amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9

Statements of Basis and Purpose No. 37]

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §§31(b) (part) and (c)(part). Subdivision (3) is new and relates to article 43, Nurse Midwifery. This section deals only with the duty of filing the certificate of birth and the confidential medical report; their preparation is dealt with in §201.05. The reporting requirement of live births by midwives, other than nurse midwives, has here been omitted since S.C. §196 and Regulations continues to govern midwives holding a permit on the effective date of this Code. Reg. 26 of thereof specifies how a midwife is to report a birth (see Article 43). The term "confidential medical report" is used in lieu of "supplementary medical report", as more descriptive. (see §201.07). in the case of a birth occurring elsewhere than in a hospital and in the absence of a physician or nurse midwife, the next of kin or any person present at birth is required to file a certificate. Section l.03(k) defines "physician" as including a licensed practitioner of medicine and interns and other physicians authorized to practice medicine in a hospital or state institution pursuant to §6512(1)(b) of the Education Law.

Subsection (b) was amended by resolution adopted on September 15, 1977 to conform its provisions with the concept of centralized functions and the use of a more effective computerized birth record retrieval system by the Manhattan office of the Bureau of Vital Records.

Subsection (b) was amended by resolution adopted on October 23, 1986 to increase the time for reporting births from 48 hours to five business days.

This section was amended by resolution adopted on June 24, 2009. This section focuses on who is required to file a report of a live birth with the Department. Section 201.05 concerns who must prepare and certify such reports. Throughout this section and others in this Article, the phrase "or on its ambulance service" has been replaced by "en route thereto" to acknowledge the fact that ambulance services can be independent of hospitals and to encompass births that may occur en route to a hospital, such as in an automobile, taxicab or police car. This section also acknowledges the broader range of licensed health care professionals that can participate at or after a birth. Subdivisions (c) and (d) are new, and have been added to require reporters to submit additional information, and to clarify the Department's authority to require additional information.

FOOTNOTES

15

[Footnote 15]: * Article 201 amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 37]

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24 RCNY 201.05

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 201 BIRTHS*15

§201.05 Preparation and certification of certificate of birth and confidential medical report of birth.

(a) The certificate of birth and confidential medical report shall be prepared and certified by the person required to file the same pursuant to §201.03, but when the birth occurs in a hospital or en route thereto, the certificate and the confidential medical report shall be prepared and certified by the physician, licensed midwife or registered physician assistant in attendance or assisting, or by a certified nurse practitioner or registered professional nurse present at or after the birth, or by a designee of the person in charge of the hospital who is trained or approved by the Department. When a physician, licensed midwife or registered physician assistant attends at or after a birth elsewhere than in a hospital or en route thereto, he or she shall prepare and certify the certificate and confidential medical report. A person certifying a certificate and confidential medical report shall examine said documents for correctness of the information contained thereon and make any necessary changes.

(b) The certificate and confidential medical report shall be prepared on forms prescribed by the Board and furnished by the Department and shall contain no statement indicating the marital name or status of the mother or whether the child was born in or out of wedlock. The person preparing the certificate shall enter all information required by the form provided by the Department, except that in case of a child born out of wedlock such person shall not enter the name of the putative father unless there is submitted to the preparer a verified written consent of the putative father

pursuant to §17-166(d) of the Administrative Code or a voluntary acknowledgement of paternity pursuant to §4135-b of the State Public Health Law. When the birth occurs in a hospital or en route thereto, the information required by the forms shall be taken from the hospital records of the case. In a hospital, worksheets provided or otherwise approved by the Department shall be used in the preparation of the certificate and confidential medical report, and if such worksheets are used by individuals other than a physician, licensed midwife, registered professional nurse, certified nurse practitioner or registered physician assistant, then such individuals shall be trained or approved by the Department. Worksheets shall be retained by the hospital for a period of at least three years from the date of the birth, and shall, upon request, be made available to the Department for inspection.

(c) All live births occurring in the City at facilities reporting 100 or more live births per year shall be reported to the Department electronically by means of computer programs specified and provided or otherwise authorized for use by the Department. All facilities at which fewer than 100 live births are reported per year may, at their election and upon approval by the Department, implement an electronic birth certificate reporting system or continue to report births on approved paper forms.

(d) All facilities required to file birth certificates electronically and facilities reporting fewer than 100 births per year which elect to report electronically, shall apply to the Department prior to implementing any system and, upon approval by the Department, shall make electronic reports only in such manner and on computer programs prescribed and provided or otherwise authorized by the Department.

HISTORICAL NOTE

Section amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9

Statements of Basis and Purpose No. 37]

Section amended City Record Mar. 23, 1995 eff. Apr. 22, 1995. [See Vol. 9 Statements of Basis and

Purpose No. 1]

Section in original publication July 1, 1991.

Notes:

Subsection (a) is derived without substantive change from S.C. §§3l(b)(part) and (c)(part). The provision regarding preparation of certificates and reports by nurse midwives is new (see Article 43).

Subsection (b) is derived from S.C. §§31(b)(part), (c)(part), (d) and (e)(part). The provision relating to the entering of the name of a putative father incorporates the gist of Administrative Code §567-1.0(d). The provisions of subdivisions (2) and (3) of S.C. §31(d) which described in detail the manner of certifying the certificate have been omitted. Certified copies of birth certificates and certifications of birth are given prima facie evidentiary value. Public Health Law §4103 and Administrative Code §567-4.0(c). The courts in private controversies have limited the evidentiary value of a birth record to the fact of birth and will not accept such a record as proof of parentage or other issues. Generally on this question, see "West Maine Inc." New York State Liquor Authority, 285 App. Div. 756, 141 N.Y.S. 2d 46 (4th Dept. 1955), commented on in 30 N.Y.U.L. Rev. 1670, 1680-1681 (1955) and 31 N.Y.U.L. Rev. 785, 800 (1956); In Re Meyer's Estate, 206 Misc. 368, 132 N.Y.S. 2d 825 (Surrogate's Court 1954); In Re Lang's Estate, 140 N.Y.S. 2d 566 (Surrogate's Court 1955); In Re Billing's Estate, 196 Misc. 141, 91 N.Y.S. 2d 665(Surrogate's Court 1949); In Re Strong's Estate, 168 Misc. 716, 6 N.Y.S. 2d 300 (Surrogate's Court 1938), affirmed 256 App. Div. 971, 11 N.Y.S. 2d 225 (1st Dept. 1939). On the evidentiary value of delayed birth registrations, see notes to §201.11.

Subsection (c), (d), (e) and (f) are new and were adopted by resolution on March 14, 1995 to authorize the Department to establish an electronic birth certificate reporting program in New York City, to be phased in commencing

on the effective date of these amendments and to be fully operational when electronic reporting becomes mandatory on January 1, 1997. The regulations require that births occurring at certain faciliites in New York City on or after January 1, 1997 be reported by electronic means. The amendments permit facilities reporting 100 or fewer births each year to institute an electronic reporting program with the permission of the Department. In adopting these amendments, the Board has also authorized the renumbering of references to old Administrative Code sections concerning birth certificates in subsection (b) Administrative Code §567-1.0(d), therefore, is renumbered §17-166(d), and includes a reference to Title I of Article 41 of the Public Health Law which, as amended effective July 1, 1993, specifies certain forms for and the periods of time within which voluntary acknowledgments of paternity may be filed. The references in the Notes to subsection (b) are, accordingly, also amended. The evidentiary value of birth certificates is prescribed in §567-4.0(c) of the Administrative Code which, as renumbered, is §17-169(c).

Subdivisions (a), (b) and (c) were amended, subdivisions (d) and (e) were repealed and subdivision (f) was amended and re-lettered as a new subdivision (d) by resolution adopted on June 24, 2009. This section governs who is required to prepare and certify a report of a live birth, including a range of licensed professionals. The section now mentions certification in addition to preparation in order to clarify what the long-standing practice and use of approved forms has been; namely that the reports must be signed, whether in hardcopy or electronically. For births occurring in or en route to a hospital, worksheets approved by the Department must be used and retained by the hospital for at least three years.

FOOTNOTES

15

[Footnote 15]: * Article 201 amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 37]

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

24 RCNY 201.07

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 201 BIRTHS*15

§201.07 Confidential medical report of birth; not subject to compelled disclosure subpoena or inspection.

(a) The confidential medical report of birth shall be confidential and not subject to compelled disclosure or to inspection by persons other than the Commissioner or authorized personnel of the Department, except in a criminal action or criminal proceeding, or for official purposes by a federal, state, county or municipal agency charged by law with the duty of detecting or prosecuting crime. The Commissioner may, however, approve the inspection of such medical reports for scientific purposes.

(b) Within the context of this section, scientific purposes shall mean epidemiologic surveillance and investigation by a governmental public health agency, research, or the compilation of statistics relating factors bearing on disease incidence, prevalence, mortality or treatment.

HISTORICAL NOTE

Section amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9

Statements of Basis and Purpose No. 37]

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §31(e)(part). The provision which states that the information in the supplementary medical report is not a part of the certificate of birth as well as the phrase which states that the report is regarded and treated as confidential and privileged communication have been omitted as unnecessary. See also §207.11. The exception for the use of the confidential medical report in criminal actions, or proceedings and for purposes of detecting or prosecuting crime is new. See also notes to §§203.07 and 205.07 governing confidential medical reports of fetal death and death.

Note that the certificate of birth itself is protected against indiscriminate disclosure by Administrative Code §567-4.0(a), which prescribes the persons or governmental agencies authorized to receive certified copies of record of birth, and the conditions under which a certification of birth may be issued. A certification of birth contains only the name, sex, date of birth and place of birth of the person to whom it relates and none of the other data in the record of birth. This provision is set forth in full in the Appendix to this edition of the Code.

Section 201.07 was amended by resolution adopted on June 24, 2009. The confidential medical report of birth is still not subject to disclosure except as specified in the section. The phraseology of subdivision (a) was changed to "confidential and not subject to compelled disclosure" in order to broaden the prohibition on disclosure and to conform to the language of other Articles in this Code. Epidemiologic surveillance and investigations by a governmental public health agency are now specified as within the meaning of "scientific purposes" so as to permit disclosure with the approval of the Commissioner.

FOOTNOTES

15

[Footnote 15]: * Article 201 amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 37]

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24 RCNY 201.09

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 201 BIRTHS*15

§201.09 Foundlings.

(a) The report of the finding of a child whose parents are unknown, filed by the Commissioner of the City Administration for Children's Services in accordance with the provisions of subdivision two of §398 of the State Social Services Law, shall constitute the birth record of such child.

(b) The address or location where such child was found shall be considered as the place of birth, and the date of birth shall be that determined by the Commissioner of the City Administration for Children's Services as the approximate date of birth.

(c) If, however, such child is subsequently identified, and a certificate of birth for such child has been duly filed either before or following identification, the report of the Commissioner of the City Administration for Children's Services shall be placed under seal by the Department, and such seal shall not be broken except upon order of a court of competent jurisdiction.

HISTORICAL NOTE

Section added City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9

Statements of Basis and Purpose No. 37]

Notes:

Section 201.09 was added by resolution adopted on June 24, 2009. This section is new and tracks §4131 of the State Public Health Law.

FOOTNOTES

15

[Footnote 15]: * Article 201 amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 37]

Rules of the City of New York

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

24 RCNY 201.11

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 201 BIRTHS*15

§201.11 Delayed registration of birth.

(a) When a birth in the City is not recorded in the Department within one year following the birth, it may be recorded with the approval of the Commissioner or the Commissioner's designee. Application for such delayed registration shall be made on a form furnished by the Department by the parents or surviving parent, or by the guardian of the person whose birth is to be recorded, if such person is a minor, or by the person himself or herself if he or she is 18 years of age or over and his or her parents are dead. The application shall be accompanied by the following:

(1) A certified statement issued by the Department that a search was made for the record of birth in question and that such record was not found; and

(2) Such documentary and other evidence as will establish to the satisfaction of the Commissioner or the Commissioner's designee the facts and date of birth as alleged in the application. The burden of submitting convincing proof rests with the applicant.

(b) When an application for delayed registration has been granted and a certificate of birth on a delayed registration form is filed pursuant to this section, the Department shall issue to the applicant without further charge, in

exchange for the certified statement submitted pursuant to paragraph (1) of subdivision (a) of this section, a certified copy of the certificate of birth.

(c) No application for delayed registration shall be granted, and no delayed certificate of birth shall be registered or issued for a deceased person.

HISTORICAL NOTE

Section amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9

Statements of Basis and Purpose No. 37]

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 1, 1998 eff. July 31, 1998. [See Vol. 9 Statements of Basis and

Purpose No. 11]

Notes:

Subsection (a) is derived from the rules of the Board of Health on delayed registration of birth. When both parents are alive, both must join in the application for delayed registration; previously under Board Rules 1 and 5(a) only one parent applied and the other submitted a supporting affidavit. Submission of other supporting affidavits previously required under Rule 5(b) is no longer mandatory but may be required by the Commissioner or his designated representative under the provision that the facts alleged in the application be established to his satisfaction.

Subsection (a) was amended by resolution adopted on June 16, 1998 to require that unreported births are registered within one year of the date of birth. Subsection (a) was also amended to reflect the age of eighteen as the age of majority, thereby making the Health Code consistent with the New York State Public Health Law.

Paragraph (2) of subsection (a) was amended by resolution adopted on June 16, 1998 to change the definition of a minor from a person less than 21 years of age to a person less than 18 years of age, thereby making the Health Code consistent with the New York State Public Health Law.

Subsection (b) is new.

Subsection (c) is new and clarifies present practice in those rare instances where a report of the foundling is not filed within a reasonable period after the person is found.

On the evidentiary value of delayed registrations of birth, insofar as it affects proof of citizenship in immigration cases, see Mah Toi v. Brownell, 219 F. 2d 642, 644 (9th Cir. 1955); see also United States v. Casares Moreno, 122 F. Supp. 375 (S.D. Calif. 1954), affirmed, 226 F. 2d 873 (9th Cir. 1955). See also, Note, Evidentiary Effect of Delayed Birth Certificate, 55 Col. L. Rev. 565 (1955) for an analysis of the problem generally.

Subdivisions (a) and (b) were amended, paragraph (2) of subdivision (a) was deleted, and subdivision (c) was repealed and reenacted by resolution adopted on June 24, 2009. This section remains essentially the same, except that prior subdivision (c), relating to foundlings, was deleted in light of the new section 201.09. A new subdivision (c) was added to clarify that delayed registrations of birth cannot be issued for individuals who are already deceased.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Although an applicant for a birth certificate has the burden of proving that he or she was born in New York City, that proof need not be entirely documentary in nature. Thus, circumstantial evidence can be presented, such as

affidavits from siblings and other family members regarding the applicant's parentage. **Tucker v. New York City Dept. of Health,** 5 Misc.3d 716, 785 N.Y.S.2d 862 (Sup.Ct. New York Co. 2004).

FOOTNOTES

15

[Footnote 15]: * Article 201 amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 37]

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

24 RCNY Health Code Reg. 203.00

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 203 TERMINATION OF PREGNANCY*16

Health Code Reg. § 203.00 INTRODUCTORY NOTES

This Article was repealed and reenacted by resolution adopted on September 15, 1977 to combine the provisions of former Articles 203 and 204, which were repealed by the same resolution, into one new article to pertain to all events governed by such former articles and to define them as terminations of pregnancy, other than live births, on the basis of spontaneous terminations or as induced terminations. Fetal deaths as formerly defined, are included in the present definition for termination of pregnancy. The new definitions for spontaneous and induced terminations of pregnancy relate to antenatal losses in a pregnancy regardless of duration of pregnancy; delete references to the maximum 24 week period of gestation contained in subdivision 3 of §125.05 of the State Penal Law defining a justifiable abortion, since such legal limitation is implied where applicable in this article by operation of law; and refer to the signs of life in §201.01 (a) of this Code in lieu of repeating them, in the interests of brevity and clarity. This article also clarifies and simplifies its definitions and provisions to provide greater uniformity with related current Federal and State practice and requirements in the area of vital statistics.

This Article was amended by resolution of the Board on June 24, 2009 to mandate electronic reporting of spontaneous terminations of pregnancy for hospitals or other facilities, such as doctors' offices, reporting births electronically and for hospitals or other facilities reporting 100 or more induced terminations per year; update the

definition of induced termination to match that of the Centers for Disease Control and Prevention; broaden the class of individuals who are obligated to report, or who are authorized to prepare reports to licensed health care practitioners, defined as a physician or other person licensed or authorized pursuant to the New York State Education Law or other applicable law, to perform terminations of pregnancy; require departmental approval or training for any non-licensed health care practitioner designated to prepare reports; clarify that only physicians may sign or certify reports of spontaneous terminations and that licensed health care practitioners may also sign or certify reports of induced terminations; and allow the issuance of a disposition permit, upon request, for the disposal of a conceptus that has not completed 24 weeks of gestation.

On September 15, 1977, the Board of Health passed a resolution to repeal then-Articles 203 and 204 and to reenact them as a new Article 203 to pertain to all events governed by the former articles and to define them as terminations of pregnancy. Terminations of pregnancy were classified as either spontaneous or induced terminations.

Two U.S. Supreme Court cases have upheld vital statistics or public health reporting requirements for terminations of pregnancy. In Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976), the Court unanimously upheld a Missouri law that required health facilities and physicians to report all abortions to the health department. The Court concluded that the keeping of such statistics and records is useful to the state's interest in protecting the health of its female citizens, and that record-keeping and reporting requirements "that are reasonably directed to the preservation of maternal health and that properly respect a patient's confidentiality and privacy are permissible." Id. at 80, 96 S.Ct. at 2846.

Subsequently, the Supreme Court reiterated its holding in Danforth when it considered the reporting requirements of the Pennsylvania Abortion Control Act in Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992). The Court held, "The collection of information with respect to actual patients is a vital element of medical research, and so it cannot be said that the requirements serve no purpose other than to make abortions more difficult." Id. at 900-01, 112 S.Ct. at 2832.

FOOTNOTES

16

[Footnote 16]: * Article 203 amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 36]

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24 RCNY 203.01

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 203 TERMINATION OF PREGNANCY*16

§203.01 Definitions.

When used in this title:

(a) "Termination of pregnancy" means the expulsion or extraction of a conceptus, regardless of the duration of pregnancy, other than a live birth as defined in § 201.01(a), and includes fetal death.

(b) "Spontaneous termination of pregnancy" means the unplanned termination of a pregnancy, including but not limited to an ectopic pregnancy, or such a termination associated with a cesarean section, or an operative procedure unrelated to pregnancy resulting in an inadvertent termination.

(c) "Induced termination of pregnancy" means the purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant and which does not result in a live birth. This definition excludes management or prolonged retention of products of conception following a spontaneous termination of pregnancy.

(d) "Conceptus" means the product of any termination of pregnancy, regardless of its duration, including a hydatidiform mole, fetal tissue or other evidence of pregnancy recovered by operative or other procedure, but not

including a live birth as defined in § 201.01(a).

(e) "Licensed health care practitioner" means a physician or other person licensed or authorized pursuant to the New York State Education Law, or other applicable law, to perform terminations of pregnancy.

HISTORICAL NOTE

Section amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9

Statements of Basis and Purpose No. 36]

Section in original publication July 1, 1991.

Notes:

This section is new. It was added by resolution adopted on September 15, 1977.

This section was amended by resolution adopted on June 24, 2009.

Subdivision (a) was amended to remove the clause "as formerly defined," as there was no such previous reference.

Subdivision (c) was amended to reflect the definition recommended by the National Center for Health Statistics of the federal Centers for Disease Control and Prevention.

A new definition of "licensed health care practitioner" was added as subdivision (e). Which health care practitioners may perform which health care services is a function of state law, most importantly the New York State Education Law. The new definition simply refers to whichever health care practitioners are authorized to perform terminations of pregnancy pursuant to the state Education Law, or other applicable law. In turn, those health care practitioners are among those who are obligated or authorized to file or prepare reports, as specified in sections 203.03 and 203.05. The simplicity of this definition facilitates reporting, including electronic reporting, and avoids the need to delineate which health care practitioners are obligated or authorized to file termination of pregnancy reports or to prepare documents associated therewith.

FOOTNOTES

16

[Footnote 16]: * Article 203 amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 36]

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

24 RCNY 203.03

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 203 TERMINATION OF PREGNANCY*16

§203.03 Reporting terminations of pregnancy.

(a) When a termination of pregnancy occurs in the City it shall be reported as follows:

(1) If the event occurs in a hospital or en route thereto, by the person in charge of such hospital or his or her designee; or

(2) If the event occurs elsewhere than in a hospital or en route thereto, by the licensed health care practitioner in attendance at or after such event; or

(3) If a licensed health care practitioner attends at or after the event elsewhere than in a hospital or en route thereto as an associate of a hospital, by the person in charge of the hospital with which the licensed health care practitioner is associated or by the designee of such person in charge; or

(4) If the event is investigated by the office of chief medical examiner, by a medical examiner within that office.

(b) The person required to report a termination of pregnancy pursuant to subdivision (a) of this section shall file:

(1) A certificate of induced termination of pregnancy for an induced termination of pregnancy; or

(2) A certificate of spontaneous termination of pregnancy, including a confidential medical report, for a spontaneous termination of pregnancy; provided that a medical examiner, when required to report pursuant to paragraph (a)(4) of this section, shall file a certificate of spontaneous termination of pregnancy only.

(c) A certificate of termination of pregnancy required by this section shall be filed within 24 hours after the event if a permit to dispose of the conceptus pursuant to Article 205 of this Code is required or requested, and in all other cases a certificate of termination of pregnancy shall be filed within five business days after the event with any office maintained and designated by the Department for such purposes.

(d) In circumstances where the issuance of a disposition permit pursuant to Article 205 of this Code is required or requested and a person required to report a termination of pregnancy pursuant to subdivision (a) of this section does not file a report thereof electronically, the requirement of filing a certificate and confidential medical report, if any, required by this section may be fulfilled by delivery of the same immediately upon demand and within the time prescribed by subdivision (c) of this section to a funeral director or undertaker authorized to take charge of the conceptus or to the person in charge of the City mortuary if the remains are to be buried in the City cemetery. Such funeral director, undertaker or person in charge of the City mortuary, or an agent of such funeral director or undertaker registered with the Department pursuant to Article 205 of this Code or a designee of the person in charge of the mortuary, shall then file the certificate within 48 hours following the receipt of the certificate of termination of pregnancy. Funeral directors, undertakers, City mortuary personnel, and their agents or designees, shall not divulge information in the confidential documents except to authorized personnel of the Department.

(e) All spontaneous terminations of pregnancy occurring at or en route to hospitals or other facilities that report births electronically to the Department pursuant to Article 201 of this Code, all induced terminations of pregnancy occurring at hospitals or other facilities reporting 100 or more induced terminations of pregnancy per year, and all terminations of pregnancy reported by the office of chief medical examiner, shall be reported to the Department electronically by means of computer programs specified and provided or otherwise authorized for use by the Department. In circumstances where the issuance of a disposition permit pursuant to Article 205 of this Code is required or requested, and a person required to report a termination of pregnancy pursuant to subdivision (a) of this section files a report thereof electronically, a funeral director or undertaker authorized to take charge of the remains, or the person in charge of the City mortuary when said mortuary files an application for a disposition permit, shall also file, within 72 hours following the termination of pregnancy, the application for such a permit electronically by means of computer programs specified and provided or otherwise authorized for use by the Department. All hospitals or other facilities that are not required to report terminations of pregnancy electronically pursuant to this subdivision may, at their election and upon approval by the Department, implement an electronic reporting system, or continue to report terminations of pregnancy on approved paper forms. However, once a hospital or facility has commenced reporting electronically, such hospital or facility may not report on paper forms unless otherwise authorized by the Department.

(f) All facilities required or electing to report electronically pursuant to subdivision (e) of this section shall apply to the Department prior to implementing any electronic reporting system and, upon approval by the Department, shall make electronic reports only in such manner and on computer programs prescribed and provided by or otherwise authorized by the Department. Written paper reports may be submitted for a limited period of time only in the case of extenuating circumstances, temporary equipment failure, or prolonged inability to access the electronic reporting system, and only with the specific approval of the Department. In addition, the Department may, on its own initiative, allow written, paper reports to be submitted if electronic reporting is not possible in a particular circumstance, as a result of a deficiency in the Department's electronic reporting system. The Department may, in addition, require summary, cumulative or periodic reports on such reporting schedule as it may deem necessary.

(g) The person required to report a termination of pregnancy or to file an application for a disposition permit shall provide to the Department information that was required to be reported, but that was not so reported, within five

business days of that person receiving the information.

(h) Upon a request by the Department for additional information that may be necessary to complete, clarify or verify the information required to be reported, the person required to report a termination of pregnancy or to file an application for a disposition permit shall provide such information to the Department within five business days of the request.

HISTORICAL NOTE

Section amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9

Statements of Basis and Purpose No. 36]

Section in original publication July 1, 1991.

Subd. (d) amended City Record July 1, 1998 eff. July 31, 1998. [See Vol. 9 Statements of Basis and

Purpose No. 11]

Notes:

This section is new. It was added by resolution adopted on September 21, 1977 and is derived from former §§203.03 and 204.03.

Subsection (d) was amended by resolution adopted on June 16, 1998, to change the time required for the filing of the certificate of termination of pregnancy by funeral directors, undertakers and city mortuary personnel from 24 to 48 hours, thereby making the time frame consistent with the State requirements. The subsetion was also amended to allow for filing via authorized electronic means.

This section was amended by resolution adopted on June 24, 2009.

Subdivision (a) was amended to update terminology from physician or nurse-midwife to other licensed health care practitioners, in order to reflect the current practice of having medical practitioners other than physicians in attendance at terminations of pregnancy. Permitting a licensed health care practitioner who was in attendance, other than a physician, to report a termination of pregnancy facilitates reporting and does not affect medical care standards.

Subdivision (b) was modified to accommodate legal nomenclature and to reflect the change to paragraph (4) of subdivision (a) clarifying that when the office of chief medical examiner files a certificate of spontaneous termination of pregnancy, any medical examiner within that office may file the certificate without a confidential medical report.

Subdivision (c) was amended to change the 24 hour filing requirement for spontaneous terminations and 5 day filing requirement for induced terminations of pregnancy to a 24 hour reporting requirement for all terminations of pregnancy when a permit to dispose of the conceptus is required or requested. Certificates and confidential medical reports, if any, related to terminations not resulting in the issuance of a disposition permit must be filed within 5 business days after the event. As per amendments to section 203.09 (see below), such permit is required for all terminations occurring at 24 weeks gestation or later and may be requested for terminations occurring at less than 24 weeks. Subdivision (c) was also amended to remove the provision pertaining to filing within 15 days for the termination of pregnancy revealed by pathological examination. This provision is no longer applicable as pathological examination is no longer required for determining pregnancy status.

Subdivision (d) was amended to make proper reference to New York City, and to accommodate the fact that in some cases, but not necessarily all, a conceptus may be buried or otherwise disposed of pursuant to a permit issued by the Department. In such circumstances, the required documents may be filed by a funeral director, undertaker or person

in charge of the City mortuary, as the case may be, or a registered agent or designee of such persons. Such an alternative means of filing is only available, however, when the report is being filed in paper form. Reference to electronic filing was deleted and incorporated into the new subdivision (e).

Subdivision (e) was added to require all facilities reporting births electronically or reporting 100 or more induced terminations of pregnancy in any 1 year, and the office of chief medical examiner, to report terminations of pregnancy electronically. When a required reporter files electronically, a funeral director or undertaker authorized to take charge of the remains, or the person in charge of the City mortuary when filing an application for a disposition permit, must also file such application electronically. Facilities not required to report electronically may opt to do so with approval by the Department or may continue to report on paper. However, once a facility begins to file electronically, it may not revert to paper filing unless so authorized by the Department.

Subdivision (f) was added to require departmental approval of electronic reporting systems, in order to ensure the uniformity and quality of data collection. The subdivision also requires approval from the DOHMH prior to the electronic transfer of data from a facility to the Department to ensure the protection of the confidentiality of the information provided. The subdivision also provides for alternative arrangements, upon the Department's approval or initiative, in particular circumstances.

Subdivision (g) was added to provide for situations in which a reporter receives required information after reporting the termination of the pregnancy. The reporter must submit such information within 5 business days of receipt.

Subdivision (h) was added to require reporters to provide, within 5 business days of a request by the Department, additional information necessary to complete, clarify or verify the information required to be reported. Such information may include, for example, updated causes of death.

FOOTNOTES

16

[Footnote 16]: * Article 203 amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 36]

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Rules of the City of New York

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

24 RCNY 203.05

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 203 TERMINATION OF PREGNANCY*16

§203.05 Preparation and certification of certificates.

(a)(1) **Preparation.** Any certificate or confidential medical report required by this Article shall be prepared by the same person required to file the same pursuant to § 203.03 but when a termination of pregnancy occurs in a hospital or en route thereto, the certificate and confidential medical report, if any, shall be prepared by a licensed health care practitioner in attendance, assisting or present at or after the event, by the chief medical officer of the hospital, by the physician in charge of the service on which the woman was treated, or by a designee of the person in charge of the hospital who is trained or approved by the Department. When a licensed health care practitioner attends at or after a termination of pregnancy elsewhere than in a hospital or en route thereto, he or she, or a designee of such person who is trained or approved by the Department, shall prepare the required certificate and confidential medical report, if any.

(2) **Certification.** A certificate of spontaneous termination of pregnancy and the confidential medical report shall be certified by a physician in attendance or assisting at or after the event, by the chief medical officer of the hospital where the event occurred, or by the physician in charge of the service on which the woman was treated. A certificate of induced termination of pregnancy shall be certified by a licensed health care practitioner, who is licensed or authorized pursuant to the State Education Law or other applicable law to perform such a termination of pregnancy, in attendance or assisting at or after the event, by the chief medical officer of the hospital where the event occurred, or by the

physician in charge of the service on which the woman was treated. When a termination of pregnancy certificate is filed by the office of chief medical examiner, the certificate shall be certified by a medical examiner within that office. A person certifying a certificate and confidential medical report, if any, shall examine said documents for correctness of the information contained thereon and make necessary changes.

(b) The certificates specified in § 203.03(b), except for certificates filed electronically pursuant to § 203.03(e), shall be prepared on forms prescribed by the Board and furnished by the Department. Computer programs specified and provided or otherwise authorized for use by the Department for electronic filing shall be reflective of the forms prescribed by the Board except to the extent that differences may be necessary or warranted in order to accommodate electronic formatting. The person preparing the certificate shall enter all information required by the appropriate form. When a termination of pregnancy occurs in a hospital or en route thereto, the information shall be taken from the hospital record of the case. If worksheets are used to prepare certificates of termination of pregnancy and confidential medical reports, if any, the worksheets shall be ones provided by the Department or in a form approved by the Department. If individuals other than a physician, licensed midwife, registered professional nurse, certified nurse practitioner or registered physician assistant use such worksheets, then such individuals shall be trained or approved by the Department. The person preparing the certificate and confidential medical report, if any, or such person's employer, shall retain such worksheets for a period of three years from the date of the event, and shall, upon request, make such worksheets available to the Department for inspection.

HISTORICAL NOTE

Section amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9

Statements of Basis and Purpose No. 36]

Section in original publication July 1, 1991.

Subd. (b) amended City Record July 1, 1998 eff. July 31, 1998. [See Vol. 9 Statements of Basis and

Purpose No. 11]

Notes:

This section is new. It was added by resolution adopted on September 15, 1977 and is derived from former §§203.05 and 204.05.

Subsection (b) was amended by resolution adopted on June 16, 1998 to allow for filing certificates via authorized electronic means on forms authorized by the Department.

This section was amended by resolution adopted on June 24, 2009.

The title of section 203.05 was amended to "Preparation and Certification of Certificates" and the paragraph titles "Preparation" and "Certification" were added to subdivision (a). These changes were made to indicate that separate rules apply to the preparation and certification of certificates.

Paragraph (1) of subdivision (a) was amended to include licensed health care practitioners, as defined in § 203.01, and to reflect gender neutrality. Besides physicians, licensed health care practitioners may also attend, assist or be present at terminations of pregnancy. Permitting a licensed health care practitioner in attendance, assisting or present at or after the event, other than a physician, to prepare reports facilitates the expeditious preparation of certificates and does not affect medical care standards. Accordingly, when a termination of pregnancy occurs in a hospital, reports may be prepared by a licensed health care practitioner who was in attendance, assisting or present at or after the event; the chief medical officer of the hospital; or the physician in charge of the treating hospital service. When a termination of

pregnancy occurs elsewhere than in a hospital and is attended by a licensed health care practitioner, the practitioner may prepare the report.

This paragraph was also amended to permit the designee of a person in charge of a hospital, or the designee of the attending licensed health care practitioner elsewhere than in a hospital, to prepare the required certificate and confidential medical report, if any. Such a designee must be trained or approved by the Department. This is particularly useful for electronic reporting and will enable the hospital, or, for example, a doctor attending a termination of pregnancy in his or her office, to delegate the task of preparing the certificate to a lower level employee. The training and approval requirement should improve data quality.

Paragraph (2) of subdivision (a) is substantially new and was amended to clarify that, regardless of which kind of licensed health care practitioner or other individual is authorized to file a report or to prepare a certificate, only a physician may certify a certificate of spontaneous termination of pregnancy or the associated confidential medical report. For induced termination of pregnancy certificates, a licensed health care practitioner, as well as the several physicians specified, may certify such reports. A certifying physician, or a medical examiner who is also a physician, is required to examine the documents being certified and make necessary changes. Accordingly, the requirement for a physician's countersignature has been deleted.

Subdivision (b) was amended to provide that if worksheets are used by anyone authorized to prepare certificates of termination of pregnancy and confidential medical reports, if any, the worksheets must be approved by the DOHMH. This will enable the Department to control the quality of data collection. In addition, the requirement to have the Board of Health approve the electronic form of certificates was deleted, because electronic forms are merely reflective of the paper forms prescribed by the Board pursuant to this subdivision, aside from incidental formatting differences.

FOOTNOTES

16

[Footnote 16]: * Article 203 amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 36]

Rules of the City of New York

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

24 RCNY 203.07

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 203 TERMINATION OF PREGNANCY*16

§203.07 Confidential medical report of spontaneous termination of pregnancy and certificate of induced termination of pregnancy; not subject to or compelled disclosure inspection.

(a) The confidential medical report of a spontaneous termination of pregnancy shall be confidential and not subject to compelled disclosure or to inspection by persons other than the Commissioner or authorized personnel of the Department, except in a criminal action or criminal proceeding, or for official purposes by a federal, State, county or municipal agency charged by law with the duty of detecting or prosecuting crime. The Commissioner may, however, approve the inspection of such medical reports for scientific purposes.

(b) Within the context of this section, scientific purposes shall mean epidemiologic surveillance and investigation by a governmental public health agency, research, or the compilation of statistics relating factors bearing on disease incidence, prevalence, mortality or treatment.

(c) The certificate of induced termination of pregnancy shall be confidential and not subject to compelled disclosure or to inspection by persons other than the Commissioner or authorized personnel of the Department.

HISTORICAL NOTE

Section amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 36]

Section in original publication July 1, 1991.

Subds. (a), (c) amended City Record Jan. 14, 2003 eff. Feb. 13, 2003. [See Vol. 9 Statements of Basis and Purpose No. 18-A]

Notes:

This section is new. It was added by resolution adopted on September 15, 1977 and is derived from former §§203.07 and 204.07.

This section was amended by resolution adopted on September 14, 1982 to allow the Commissioner to release confidential medical reports of spontaneous termination of pregnancy for scientific purposes, as defined.

Subsections (a) and (c) were amended by resolution adopted on December 12, 2002 to delete references to the Department of Health. Chapter 22 of the New York City Charter was amended by the electorate in the November 6, 2001 general election, merging the Departments of Health and Mental Health, Mental Retardation and Alcoholism Services, and Local Law of 2002 further amended the Charter and changed the name of the merged agency to Department of Health and Mental Hygiene.

This section was amended by resolution adopted on June 24, 2009.

Subdivision (a) was amended to provide that the disclosure of the confidential medical report of spontaneous termination of pregnancy shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code.

Subdivision (b) was amended to include epidemiologic surveillance and investigation conducted by governmental public health agencies within the meaning of "scientific purposes."

Subdivision (c) was amended to provide that the certificate of induced termination of pregnancy is confidential and that disclosure shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code.

FOOTNOTES

16

[Footnote 16]: * Article 203 amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 36]

Rules of the City of New York

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

24 RCNY 203.09

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 203 TERMINATION OF PREGNANCY*16

§203.09 Disposal of conceptus.

Every conceptus that has completed 24 or more weeks of gestation shall be disposed of in a manner provided for human remains generally and in accordance with a disposition permit issued pursuant to Article 205 of this Code. When, however, a conceptus has not completed 24 weeks of gestation, it may be disposed of in accordance with a disposition permit issued pursuant to Article 205 of this Code, upon request.

HISTORICAL NOTE

Section amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9

Statements of Basis and Purpose No. 36]

Section in original publication July 1, 1991.

Notes:

This section is new. It was added by resolution adopted on September 15, 1977 and is derived from former

§§203.11 and 204.09.

This section was amended by resolution adopted on June 24, 2009.

This section was amended to clarify that a disposition permit may be issued, upon request, for the disposal of a conceptus of less than 24 weeks gestation.

FOOTNOTES

16

[Footnote 16]: * Article 203 amended City Record June 30, 2009 eff. Jan. 1, 2010 per City Record notice. [See Vol. 9 Statements of Basis and Purpose No. 36]

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Rules of the City of New York

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

24 RCNY Health Code Reg. 205.00

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

Health Code Reg. § 205.00 INTRODUCTORY NOTES

This Article contains provisions for the reporting of deaths occurring in the City, for the maintenance of registries of deaths, and for the disposal of human remains. In following the traditional and administratively convenient pattern of incorporating both the requirements for reporting of deaths and sepulture, this Article serves two aims-to assure statistical accuracy as well as sound disposal of the dead. As part of a comprehensive review and revision of the Code, the amendments to this Article seek, in particular, to reflect modern standards and current programmatic practice while removing outdated provisions.

FOOTNOTES

17

[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY 205.01

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.01 Definitions.

When used in this title:

(a) "Burial" means interment of human remains in the ground or in a tomb, vault, crypt, cell or mausoleum, and includes any other usual means of final disposal of human remains other than cremation.

(b) "Cremation" means the burning of human remains in a crematory.

(c) "Human remains" or "remains" means a conceptus which has completed 24 weeks or more of gestation or all or any part of the dead body of a human being but does not include human ashes recovered after cremation. For purposes of this Article a conceptus of less than 24 weeks gestation for which the issuance of a disposition permit pursuant to §205.21 has been requested shall be treated as human remains.

(d) "Hospice" means a program issued a certificate of approval pursuant to Article 40 of the Public Health Law and defined as such in §4002 of said law.

(e) "Person in control of disposition" means, in accordance with all of the provisions of §4201 of the Public Health

Law, the following persons who are eighteen years of age or older in descending order of priority:

(1) the person designated in a written instrument executed pursuant to the provisions of §4201 of the Public Health Law;

(2) the decedent's surviving spouse;

(2-a) the decedent's surviving domestic partner;

(3) any of the decedent's surviving children;

(4) either of the decedent's surviving parents;

(5) any of the decedent's surviving siblings;

(6) a guardian appointed pursuant to article seventeen or seventeen-a of the Surrogate's Court Procedure Act or article eighty-one of the Mental Hygiene Law;

(7) any person who would be entitled to share in the estate of the decedent as specified in §4-1.1 of the Estates, Powers and Trusts Law, with the person in closest relationship having the highest priority;

(8) a duly appointed fiduciary of the estate of the decedent;

(9) a close friend or relative who is reasonably familiar with the decedent's wishes, including the decedent's religious or moral beliefs, when no person higher on this list is reasonably available, willing, or competent to act, provided that such person has executed a written statement pursuant to subdivision seven of §4201 of the Public Health Law; or

(10) a chief fiscal officer of a county or a public administrator appointed pursuant to article twelve or thirteen of the surrogate's court procedure act, or any other person acting on behalf of the decedent, provided that such person has executed a written statement pursuant to subdivision seven of §4201 of the Public Health Law.

HISTORICAL NOTE

Section amended City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Subd. d par (1) amended City Record July 1, 1998 eff. July 31, 1998. [See Vol. 9 Statements of Basis

and Purpose No. 10] Subd. (d) became subd. (e).

Subd. d pars. (2), (3), (5), (7), (8) amended City Record July 1, 1998 eff. July 31, 1998. [See Vol. 9

Statements of Basis and Purpose No. 11] Subd. (d) became subd. (e).

Notes:

This section was amended by resolution adopted on September 22, 2009.

Subdivision (c) was amended to more fully define human remains, including a conceptus, to clarify when a permit for disposition is required. The 24 weeks or more of gestation is consistent with former §205.13, which required a

permit for disposition after 24 weeks.

Subdivision (d) was added to define "hospice," which under State Public Health Law includes hospice care programs as well as hospice facilities. Hospice is increasingly utilized as a form of end-of-life care, and consequently hospice providers are preparing a larger proportion of death certificates.

Subdivision (e) was deleted. It had defined "use for anatomical purposes", which was referred to in section 205.13 and has been deleted. New subdivision (e) was added to conform to the provisions of Public Health Law §4201, which applies in the City and establishes the persons in descending priority who shall have the right to control the disposition of the remains of a decedent. It replaces former subdivision (d), which defined "next of kin" and their order of priority for receiving communications and giving instructions regarding the disposal of a decedent's remains.

Subsection (a), burial, is new. It replaces a variety of terms employed in the Sanitary Code when referring to final disposals of bodies: S.C. §41 "buried, cremated, or otherwise disposed of"; §42 "interment, cremation or other disposition"; S.C. §§31-45 Reg. 2 "disposal"; S.C. §§31-45 Reg. 3 "burial, cremation or other final disposal"; S.C. §§31-45 Reg. 6 "Final disposition"; S.C. §§31-45 Reg. 11 "interred or cremated", and "burial or cremation". As herein defined, burial includes all final disposals of human remains other than cremation and bizarre types of disposals.

Subsection (b), cremation, is new and serves to distinguish between cremation as defined and incineration in a hospital.

Subsection (c), human remains or remains, is new and covers dead bodies and fetuses. The definition excludes an amputated part of a living person. Cremated remains are excluded from the definition since it is not the purpose of this article to control disposal of the ashes after cremation.

Subsection (d), next of kin, is new. It defines next of kin in accordance with the Decedent Estate Law, and adds as an element the availability to act, i.e., to make arrangement for burial or cremation, or to give necessary consents, as in the case of an autopsy. In the event that the closest relative is either unavailable or fails to act, the person or persons next in line of priority as next of kin may then act. This subsection is not intended as any limitation on the right of a person to control the disposal of his own body, Public Health Law §4201, nor does it determine the broader issue of who among conflicting claimants is authorized to dispose of human remains which is a matter for judicial determination in accordance with existing State law. The instant provision is aimed at the practical problem of availability of next of kin for the purpose of granting necessary consents or making other arrangements. On the question of who is authorized to act, see notes to §205.37.

Paragraphs (2), (3), (5), (7) and (8) of subsection (d) were amended by resolution dated June 16, 1998 to change the definition of a minor next of kin from persons less than 21 years of age to persons less than 18 years of age, thereby making the Health Code consistent with the New York State Public Health Law. Paragraph (8) of subsection (d) was also amended to reflect the codification of former §83 of the Decedent Estate Law into Estates, Powers and Trusts Law §4-1.1.

Subsection (e), use for anatomical purposes, is new. The phrase was previously used without definition in S.C. §§32(j) and 43.

CASE NOTES

¶ 1. Where a decedent died without a spouse, his children were under 18 years of age, and there was no indication that his parents were alive, a sibling was the next of kin qualified to receive his remains and to give instructions regarding burial. Caseres v. Ferrer, 6 A.D.3d 433, 774 N.Y.S.2d 372 (2d Dept. 2004).

FOOTNOTES

17

[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY 205.03

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.03 Reporting deaths.

(a) When a death occurs in the City, it shall be reported to the Department as follows:

(1) If the death is from natural causes and occurs in a hospital, or en route thereto, or while under the care of a hospice, by the person in charge of the hospital or hospice, or his or her designee; or,

(2) If the death is from natural causes and occurs elsewhere than in a hospital, or en route thereto, or while not under the care of a hospice, by the licensed physician in attendance or by such physician's duly authorized medical associate, provided such associate reviews the medical records of the decedent and certifies that he or she has found no evidence of suspicious or unusual circumstances; or,

(3) If the death is investigated by the Office of Chief Medical Examiner pursuant to Title 17, Chapter 2 of the Administrative Code, and jurisdiction over the remains is assumed by that office, by a medical examiner within the Office of Chief Medical Examiner.

(b) The person required to report a death pursuant to paragraphs (1) or (2) of subdivision (a) of this section shall

file a certificate of death and a confidential medical report, and the Office of Chief Medical Examiner, when required to report pursuant to paragraph (3) of subdivision (a) of this section, shall file a certificate of death only. Reports shall be filed within 24 hours after the death or the finding of the remains with any office maintained and designated by the Department for such purposes.

(c) In circumstances where the person required to report a death pursuant to subdivision (a) of this section does not file a report thereof electronically, the requirement of filing the certificate of death and the confidential medical report, if any, may be fulfilled by delivering the same immediately upon demand and within the time prescribed by subdivision (b) of this section, to a funeral director or undertaker authorized to take charge of the remains, or to the person in charge of the City mortuary if the remains are to be buried in the City cemetery. Such funeral director, undertaker or person in charge of the City mortuary, or an agent of such funeral director or undertaker registered with the department pursuant to this Article or a designee of the person in charge of the mortuary, shall file the certificate and confidential medical report with the Department within 72 hours following death or the finding of the remains. Funeral directors, undertakers, the person in charge of the City mortuary, and their agents or designees, shall not divulge information contained in the confidential medical report of death except to authorized personnel of the Department.

(d)* All18 hospitals and hospices that report 25 or more deaths to the Department per year, and the Office of Chief Medical Examiner, shall electronically prepare any death certificates and confidential medical reports, and shall, within 24 hours after the death or finding of the remains, file such documents electronically with the Department by means of computer programs specified and provided or otherwise authorized for use by the Department. In circumstances where a person required to report a death pursuant to subdivision (a) of this section files a report thereof electronically with the Department, and an authorized funeral director or undertaker has taken charge of the remains, such funeral director or undertaker shall, within 72 hours after the death or the finding of the remains, file such document with the Department electronically by means of computer programs specified and provided or otherwise authorized for use by the Department. If the remains are to be buried in the City cemetery, the person required to report a death pursuant to subdivision (a) of this section shall complete the process of electronically filing the entire certificate of death and confidential medical report, if any, within 72 hours after the death or finding of the remains. All persons required or authorized to report a death or to file a death certificate with the Department that are not required to report or file electronically pursuant to this subdivision may, at their election and upon approval by the Department, implement an electronic reporting system or continue to report deaths on approved paper forms. This subdivision shall take effect on April 1, 2010.

(e) All facilities, organizations or individuals required or electing to report electronically pursuant to subdivision (d) of this section shall apply to the Department prior to implementing any system and, upon approval by the Department, shall make electronic reports only in such manner and on computer programs prescribed and provided or otherwise authorized by the Department. All individuals utilizing the Department's electronic reporting system to prepare, certify, enter information onto or file death certificates or confidential medical reports, pursuant to §205.05, shall be trained or approved by the Department in the proper use of the system and completion of the electronic reporting forms. Written paper reports may be submitted for a limited period of time only in the case of extenuating circumstances, temporary equipment failure, or prolonged inability to access the electronic reporting system, and only with the specific approval of the Department. In addition, the Department may on its own initiative allow written, paper reports to be submitted if electronic reporting is not possible in a particular circumstance. The Department may, in addition, require summary, cumulative or periodic reports on such reporting schedule as it may deem necessary.

(f) The person required to report a death or to file a death certificate shall provide to the Department any information that was required to be reported, but that was not so reported, within five business days of that person receiving the information.

(g) Within five business days of receipt of any autopsy results or other information that would change the information in the cause of death section of the certificate or the confidential medical report, the person required to report the death shall file a supplemental report of the cause of death to amend the certificate or confidential medical

report, if any. Said supplemental report shall be certified by a person specified in paragraph (2) of subdivision (a) of §205.05 of this Article.

(h) Upon a request by the Department for additional information that may be necessary to complete, clarify or verify the information required to be reported, the person required to report a death or to file a death certificate shall provide such information to the Department within five business days of the request.

HISTORICAL NOTE

Section amended City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 1, 1998 eff. July 31, 1998. [See Vol. 9 Statements of Basis and

Purpose No. 11]

Subd. (c) amended City Record July 1, 1998 eff. July 31, 1998. [See Vol. 9 Statements of Basis and

Purpose No. 11]

Notes:

This section was amended by resolution adopted on September 22, 2009.

Subdivision (a) has been amended to clarify the circumstances when a hospital or hospice must report a death and to broaden the situations in which institutions are required to report deaths to include deaths occurring en route to a hospital or while under the care of a hospice. This subdivision was also amended to permit the designee of a person in charge of a hospital or hospice to report a death to the DOHMH. This will enable the hospital or hospice to delegate the task of filing the report to a lower level employee. Subdivision (a) has also been amended to reflect the correct name of the Office of Chief Medical Examiner, and to reflect that a medical examiner within the Office of Chief Medical Examiner is the person responsible for reporting a death. The subdivision was further amended to reflect gender neutrality.

Subdivision (b) was amended to correct legal nomenclature distinguishing between a "subsection" and a "paragraph." The words "Office of" were added to Chief Medical Examiner to indicate that it is the office that is required to report.

Subdivision (c) was amended to remove a general description of electronic filing of death certificates, as it is described in greater detail in new subdivision 205.03 (d). This subdivision was also amended to add agents of funeral directors or undertakers and agents or designees of the person in charge of the City mortuary. Funeral directors or undertakers and the person in charge of the City mortuary use agents to file certificates and confidential medical reports with the Department, and now this subdivision will reflect that practice. The subdivision will now require that all such agents used by funeral directors or undertakers to be registered with the Department to ensure compliance with Departmental procedures. Subdivision (c) was also amended to correct legal nomenclature distinguishing between a "subdivision" and a "subsection."

Subdivision (d) was added to require all hospitals and hospices that report 25 or more deaths to the Department per year, and the Office of Chief Medical Examiner, to report deaths electronically. When a required reporter files electronically, a funeral director or undertaker authorized to take charge of the remains, or the person in charge of the City mortuary when filing an application for a disposition permit, must also file such application electronically. All

persons required or authorized to report a death or to file a death certificate with the Department that are not required to report or file electronically may, at their election and upon approval of the Department, implement an electronic reporting system or continue to report deaths on approved paper forms. This subdivision takes effect on April 1, 2010.

Subdivision (e) was added to require departmental approval of electronic reporting systems, in order to ensure the uniformity and quality of data collection. Toward that end, all individuals utilizing the electronic reporting system must be trained or approved by the Department in the proper use of the system and completion of electronic reporting forms. The subdivision also provides for alternative arrangements, upon the Department's approval or initiative, in particular circumstances.

Subdivision (f) was added to provide for situations in which a reporter receives required information after reporting the death. The reporter must submit such information within five business days of receipt.

Subdivision (g) was added to provide for situations in which a reporter receives autopsy results or other information that would change the information in the cause of death section of the certificate or the confidential medical report. The reporter must submit such information within five business days of receipt.

Subdivision (h) was added to require reporters to provide, within five business days of a request by the Department, additional information necessary to complete, clarify or verify the information required to be reported. Such information may include, for example, updated causes of death.

Subsections (a) and (b) are derived from S.C. §33(a) (part), (b) (part), (c) (part) and (e) (part). The provision dealing with telephone reports to the chief medical examiner in subsection (e) has been omitted since these telephone reports are a matter of crime detection and not of direct concern to the Department; the Administrative Code, §878-1.0, requires that both the chief medical examiner and police department officials be notified in the case of violent, unusual or suspicious deaths (defined in Charter §878) so that this omission will not affect crime detection procedures. The requirement in S.C. §33(e) that the chief medical examiner file a tentative certificate in case of incomplete information and replace it when the missing information becomes available or the case is closed, has also been omitted. Administrative Code §556-13.0 provides that the Department of Health may prescribe the manner in which the chief medical examiner is to report on deaths investigated by his office to the Department of Health.

Paragraph (2) of subsection (a) was amended by resolution adopted on December 26, 1961 which added the provision that a medical associate of an attending physician may sign a death certificate provided the associate views the body and certifies that there is no evidence of suspicious or unusual circumstances. This provision was added to permit the expeditious disposal of remains in cases where the attending physician is away on vacation or is out of the city for other reasons.

Paragraph (2) of subsection (a) was further amended by resolution adopted on June 15, 1967 which added the requirement that the physician in attendance or his medical associate visit the scene of death and view the body of the decedent before reporting the death to the Department.

Paragraph (2) of subsection (a) was further amended by resolution adopted on December 24, 1968 to restore its requirements to those previously adopted by resolution on December 26, 1961 which were found to provide more expeditious disposal of the remains for the benefit of the family of the deceased.

Paragraph (2) of subsection (a) was further amended by resolution adopted on June 16, 1998 to eliminate the requirement that a medical associate view the body of the decedent after death, but instead review the medical records of the decedent to determine whether evidence of suspicious or unusual circumstances exist in the cause of death. This amendment only applies to deaths due to natural causes and occurring elsewhere than in a hospital. Viewing the body of the decedent, in and of itself, is not sufficient to determine the cause of death or to discover evidence of suspicious or unusual circumstances. Any time there is doubt about the circumstances of the death, the case must be referred to the office of the Chief Medical Examiner.

Subsection (b) was amended by resolution adopted on September 3, 1977, to conform its provisions with the concept of centralization of functions of the Bureau of Vital Statistics. Subsection (c) was amended by resolution of the same date to delete the title of superintendent of City mortuaries eliminated by the Health and Hospitals Corporation of the City.

Subsection (c) is derived from S.C. §33(f) (part). The time within which the funeral director is to file the report is extended from 24 to 48 hours following death.

Subsection (c) was further amended by resolution adopted on June 16, 1998 to allow for filing certificates and reports via authorized electronic means. This subsection was also amended to allow a funeral director, undertaker or person in charge of the city mortuary to file the certificate of death and confidential medical report with the Department within 72 hours of death, thereby making the Health Code filing requirements consistent with the state Public Health Law.

FOOTNOTES

17

[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

18

[Footnote 18]: * Subd. (d) effective Apr. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

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Rules of the City of New York

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

24 RCNY 205.05

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.05 Preparation and certification of certificate of death and confidential medical report of death.

(a) (1) Preparation. Except with regard to personal particulars as specified in subdivision (b) of this section, the certificate of death and confidential medical report, if any, shall be prepared by the person required to report the same pursuant to subdivision (a) of §205.03, but when a death occurs in a hospital or en route thereto, or while under the care of a hospice, the certificate and confidential medical report shall be prepared by the physician in attendance or assisting, by the chief medical officer of the hospital or hospice, by the physician in charge of the service on which the death occurs, or by a designee of the person in charge of the hospital or hospice who is trained or approved by the Department.

(2) Certification. A certificate of death and the confidential medical report, if any, shall be certified by a physician in attendance or such physician's duly authorized medical associate, by the chief medical officer of the hospital or hospice reporting the death, or by the physician in charge of the service on which the death occurred. When a death certificate is filed by the Office of Chief Medical Examiner, the certificate shall be certified by a medical examiner within that office. A person certifying a certificate and confidential medical report, if any, shall examine said documents for correctness of the information contained thereon and make necessary changes.

(b) The certificate of death and confidential medical report, if any, shall, except when such are filed electronically pursuant to §205.03(d), be prepared on forms prescribed by the Board and furnished by the Department. Computer programs specified and provided or otherwise authorized for use by the Department for electronic filing shall reflect the forms prescribed by the Board except to the extent that differences may be necessary or warranted in order to accommodate electronic formatting. The person preparing the certificate and confidential medical report, if any, pursuant to paragraph (1) of subdivision (a) of this section, shall enter the name of the deceased and all other information required by the form, but the information concerning the deceased characterized as "personal particulars" shall be entered by the funeral director or undertaker authorized to take charge of the remains except when the remains are to be buried in the City cemetery, in which case such personal particulars shall be entered by the person preparing the certificate pursuant to paragraph (1) of subdivision (a) of this section. The confidential medical report shall contain a statement of the cause of death which shall represent the physician's best opinion on the basis of all the evidence available to him or her. When the death is reported by a hospital or hospice, the information required by the forms shall be taken from the hospital or hospice records of the case. If, in a hospital or a hospice, worksheets are used in the preparation of certificates of death and confidential medical reports, they shall be provided or approved by the Department, and individuals using such worksheets shall be trained or approved by the Department. Worksheets shall be retained by the hospital or hospice for a period of three years from the date of the event, and shall, upon request, be made available to the Department for inspection.

HISTORICAL NOTE

Section amended City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 16, 1993 eff. Aug. 15, 1993.

Subd. (b) amended City Record July 1, 1998 eff. July 31, 1998. [See Vol. 9 Statements of Basis and

Purpose No. 11]

Notes:

This section was amended by resolution adopted on September 22, 2009.

The title of section 205.05 was amended to "Preparation and certification of certificate of death and confidential medical report of death" and the paragraph titles "Preparation" and "Certification" were added to subdivision (a). These changes were made to indicate that separate rules apply to the preparation and certification of certificates.

Paragraph (1) of subdivision (a) was amended to permit the designee of a person in charge of a hospital or hospice to prepare the required certificate and confidential medical report, if any. Such a designee must be trained or approved by the Department. This is particularly useful for electronic reporting and will enable the hospital or hospice to delegate the task of preparing the certificate to a lower level employee. The training and approval requirement should improve data quality. It was further amended to clarify the circumstances when a hospital or hospice must report a death and to broaden the situations in which institutions are required to report deaths to include deaths occurring en route to a hospital or while under the care of a hospice. Paragraph (1) of subdivision (a) was also amended to delete the reference to that portion of the confidential medical report of death pertaining to race and ancestry to be completed by the funeral director or, in the case of city burial, by the physician. The Department is planning to modify the death certificate form so that the race and ancestry items will no longer be contained in the confidential medical report of death.

Paragraph (2) of subdivision (a) is substantially new and was amended to clarify which physicians may certify a

death, including the physician in attendance or such physician's duly authorized medical associate. A person certifying a certificate and confidential medical report, if any, shall examine the documents for correctness of the information contained thereon and make necessary changes.

Subdivision (b) was amended by deleting the requirement that the Board of Health approve the electronic form of certificates, because, aside from incidental formatting differences, electronic forms are merely reflective of the paper forms prescribed by the Board pursuant to this subdivision. Subdivision (b) was also amended to reflect changes made to subdivision (a) and to provide for improving the quality of data collection. Any worksheets used by anyone authorized to prepare certificates of death and confidential medical reports must be approved by the Department. Any individual who uses such worksheets shall be trained or approved by the Department. The worksheets shall be retained by the hospital or hospice for a period of three years from the date of event and shall, upon request, be made available to the Department for inspection. The subdivision also clarifies which person preparing the certificate and confidential medical report shall be responsible for completing its various sections.

This section is derived without substantive change from S.C. §33(a) (part), (b) (part), (e) (part), (f) (part) and Reg. 1 of the General Regulations relating to S.C. §§31-45. The requirement that the statement of cause of death "shall represent the physician's best opinion on the basis of all the evidence available to him" replaces the provision that "No certificate of death upon which the cause of death is indefinite shall be accepted" previously in Reg. 1. The Board of Health on June 12, 1950 approved a recommendation that local military installations be provided with the death certificate forms approved for use by the chief medical examiner's office. This form is to be used whenever deaths occur on government reservations as a result of external causes. The designations "Assistant Medical Examiner", "Chief Medical Examiner", and the space for the Medical Examiner case number are to be manually obliterated before use of the form by a military physician.

Certified copies of death certificates are given prima facie evidentiary value. Public Health Law §4103 and Administrative Code §5674.0(c). The courts have not, however, given full weight in private controversies to statements contained in death certificates, particularly in respect of the stated cause of death. Generally, the courts have ruled that such a certificate is proof only of the fact of death. The Court of Appeals in Begley v. Prudential Insurance Co. of America, 1 N.Y. 2d 530, 136 N.E. 2d 839 (1950) stated that the words `jumped or fell' appearing in the death certificate and report of the medical examiner may not be read as conclusively establishing death by suicide." See too Beglin v. Metropolitan Life Insurance Co., 173 N.Y. 374, 66 N.E. 102 (1903); Ursaner v. Metropolitan Life Ins. Co., 274 App. Div. 77, 79 N.Y.S. 2d 760 (1st Dept. 1948), motion for resettlement denied, 277 App. Div. 803, 89 N.Y.S. 2d 526 (1949), affirmed, 299 N.Y. 730, 87 N.E. 2d 452 (1949); Wolz v. Commercial Travelers Mut. Acc. Assn. of America, 266 App. Div. 688, 40 N.Y.S. 2d 128 (2d Dept. 1943); Greenberg v. Prudential Ins. Co. of America, 266 App. Div. 685, 40 N.Y.S. 2d 494 (2d Dept. 1943). Killip v. Rochester General Hospital, 1 Misc. 2d 349, 146 N.Y.S. 2d 164 (Supreme Court, Monroe County 1955); In Re Meyer's Estate, 206 Misc. 368, 132 N.Y.S. 2d 825 (Surrogate's Court 1954). There are two cases in New York which have stated that it is error to exclude a certificate of death as proof of cause of death when offered in evidence in a private controversy. In Re Monroe's Will, 270 App. Div. 1039, 63 N.Y.S. 2d 141 (2d Dept. 1946) and Duffy v. 42nd Street, M. & S.N. Av. Ry. Co., 266 App. Div. 865, 42 N.Y.S. 2d 534 (2d Dept. 1943). These cases constitute a minority holding in New York and appear to be confusing death certificates with hospital records which fall within the purview of Civil Practice Act §374-a; that provision permits records made in the regular course of business to be admitted in evidence. Note too that the "ancient documents" rule contained in Civil Practice Act §389 was not intended by the Legislature to change the rules of evidence on admissibility of death certificates. Robinson v. Supreme Commandery, 77 App. Div. 215, 79 N.Y.S. 13 (1st Dept. 1902) affirmed, 177 N.Y. 564, 69 N.E. 1130 (1904). In Re Rose's Estate, 201 Misc. 470, 106, N.Y.S. 2d 235 (Surrogate's Court 1951) raises, although it does not decide, the question whether a statement of time of death in a certificate of death is proof of such fact. See, in this connection, Decedent Estate Law §89, concerning disposition of property where there is no evidence that persons have died otherwise than simultaneously.

Subsection (a) was amended on June 29, 1993 to require the funeral director to complete that portion of the confidential medical report of death relating to race and ancestry.

Subsection (b) was amended by resolution adopted on June 16, 1998 to allow for filing certificates and reports via authorized electronic means.

FOOTNOTES

17

[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

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

24 RCNY 205.06

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.06 Certifications of death. [Repealed]

HISTORICAL NOTE

Section repealed City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

Section in original publication July 1, 1991.

Notes:

This section is new. It has become apparent that there is a need for individuals to be able to prove the fact that a next of kin, for example, has died without needing to disclose other information of a personal nature found on a death certificate. In order to accommodate this need, this section authorizes the issuance of certifications of death which contain a limited amount of information.

FOOTNOTES

17

[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

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

24 RCNY 205.07

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.07 Confidential medical report of death; not subject to compelled disclosure or inspection.

(a) The confidential medical report of death shall be confidential and not subject to compelled disclosure or to inspection by persons other than the Commissioner or authorized personnel of the Department, except in a criminal action or criminal proceeding, or for official purposes by a Federal, State, county or municipal agency charged by law with the duty of detecting or prosecuting crime, or by researchers authorized and approved by the National Death Index of the National Center for Health Statistics of the federal Centers for Disease Control and Prevention, or successor agency. The Commissioner may, however, approve the inspection of such confidential medical reports for scientific purposes and, for confidential medical reports of deaths occurring on or after January 1, 2010, by the spouse, domestic partner, parent or child of the deceased or by the individual identified on the death certificate filed with the Department as the person in control of disposition.

(b) Within the context of this section, scientific purposes shall mean epidemiologic surveillance and investigation by a governmental public health agency, research, and/or the compilation of statistics relating factors bearing on disease incidence, prevalence, mortality or treatment.

(c) Notwithstanding subsection (a), upon application of an individual licensed to practice medicine, the

Commissioner may release a certified copy of the confidential medical report of death, or, in his or her sole discretion, provide abstracts of such information, when, and to the extent that:

(1) a need for the family medical history has been demonstrated, to the satisfaction of the Commissioner, in order to counsel or to diagnose and/or treat an illness or condition in an individual; and

(2) the information contained in the confidential medical report of death has been demonstrated, to the satisfaction of the commissioner, to be otherwise unavailable.

(d) The information released pursuant to subsection (c) may be issued only to the licensed practitioner making the request.

HISTORICAL NOTE

Section amended City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Subds. (c), (d) added City Record July 16, 1993 eff. Aug. 15, 1993.

Notes:

This section was amended by resolution adopted on September 22, 2009.

Subdivision (a) was amended to provide that disclosure of the confidential medical report of death shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code. It was further amended to provide for inspection by researchers authorized and approved by the National Death Index of the National Center for Health Statistics of the Centers for Disease Control and Prevention, or its successor agency. This is to facilitate scientific research of death data by researchers who apply through the federally-established National Death Index. Subdivision (a) was also amended to provide for inspection of confidential medical reports of death occurring on or after January 1, 2010 by the spouse, domestic partner, parent or child of the deceased, or by the individual identified on the death certificate as the person in charge of disposition. This change will make cause of death information available to the above list of individuals, which is consistent with the policies of some states.

Subdivision (b) was amended to include epidemiologic surveillance and investigation conducted by governmental public health agencies within the meaning of "scientific purposes".

This section is derived without substantive change from S.C. §33(c) (part). The former provision that the medical report "shall be deemed not a part of such certificate and shall be regarded and treated as a confidential and privileged communication" has been omitted as unnecessary. Note that Administrative Code §567-4.0(b) contains a restriction on the issuance of copies of the certificate itself. The words used in this section, "shall not be subject to subpoena", have been interpreted by the Court of Appeals in Re Baker's Mutual Insurance Co. of New York, 301 N.Y. 21, 92 N.E. 2d 49 (1950) as giving the medical report of death complete confidentiality. Note in this connection the notes to section 11.07(a), confidentiality of certain reportable disease reports and records. See also People ex. rel. Lemon v. Supreme Court, 245 N.Y. 24, 156 N.E. 84 (1927); People ex rel. Higgins v. Emerson, Comm. of Health, 102 Misc. 183, 169 N.Y.S. 297 (Sup. Ct. 1918).

This section was amended by resolution adopted on September 14, 1982 to allow the Commissioner to release confidential medical reports of death for scientific purposes, as defined.

Subsections (c) and (d) were added on June 29, 1993 to authorize the Commissioner to release, under specific

circumstances, a certified copy of the confidential medical report of death or provide abstracts of the information contained therein.

FOOTNOTES

17

[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY 205.09

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.09 Certifications of death.

(a) A party entitled to obtain a transcript of a record of death, or a certified copy of a certificate of death, may request a certification of death, and the Department may, at its discretion, thereupon issue such a certificate.

(b) A certification of death shall contain only the name, sex, date of death, date that the certificate was accepted for filing by the Department, manner of death and the place of death of the person to whom it relates, as well as the death record number from which said information is derived.

HISTORICAL NOTE

Section added City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

Notes:

This section was added by resolution adopted on September 22, 2009.

This section was essentially reenacted and renumbered from the former Section 205.06, which was deleted.

Subdivision (a) was amended to provide discretion to the Department in the issuance of certifications of deaths, which are abstracts of death certificates. The Department does not currently have the systems to prepare or issue such certifications.

Subdivision (b) was amended to update the minimum amount of information that would be useful on a certification of death by adding the date that the certificate was accepted for filing by the Department and the manner of death (accident, suicide, homicide or natural).

FOOTNOTES

17

[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY 205.11

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.11 Performance and reports of autopsies.

When, in the opinion of the Commissioner, the prevention of spread of disease or other public health consideration requires that an autopsy be performed, he or she may request the Office of Chief Medical Examiner of the City or arrange for a pathologist to perform the same and to file an autopsy report with and in the manner specified by the Department.

HISTORICAL NOTE

Section amended City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Notes:

This section was amended by resolution adopted on September 22, 2009.

This section was amended to reflect gender neutrality. Subdivision (b) was deleted and replaced with Section 205.03 (g), which provides for situations in which a reporter receives autopsy results or other information that would change the information in the cause of death section of the certificate or the confidential medical report.

Subsection (a) is derived from S.C. §35(a). The reference to persons dying in New York City has been deleted.

Subsection (b) is derived from S.C. §35(b). This section requires a report of all autopsies on infants other than autopsies performed by the office of the chief medical examiner; the Sanitary Code previously required autopsy reports of autopsies "following a death from natural causes" including those on remains of persons one year of age or over.

Generally, on the right to dissect or perform autopsies, see Public Health Law §§4210 and 4201, Administrative Code §§878-3.0 and 878-3.1 and County Law §939. The latter section applies to medical assistants who may be appointed by the district attorneys for New York County or Kings County and who, after appointment, are authorized, inter alia, to dissect, perform or attend an autopsy on the remains of a human being.

Subsection (b) was amended by resolution adopted on September 15, 1977, to conform its provisions with the concept of centralization of functions of the Bureau of Vital Statistics.

FOOTNOTES

17

[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY 205.15

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.15 Disposal of amputated parts; certificate of amputation. [Repealed]

HISTORICAL NOTE

Section repealed City Record Sept. 22, 2004 eff. Oct. 22, 2004. [See Vol. 9 Statements of Basis and Purpose No. 22]

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §43. The period within which funeral directors are to file amputation certificates received by them has been extended from 48 to 72 hours following the operation. The right of the parent or guardian to act where the patient is a minor or is incompetent is stated explicitly. The section does not apply to the situation where, following the amputation, the patient dies. In such a case, the provisions of this article pertaining to disposals of human remains generally apply. Note in this connection that the definition of human remains (§205.01 (c)) does not include amputated parts of living persons.

This section was amended by resolution adopted on September 15, 1977 to delete the title of superintendent of city mortuaries eliminated by the Health and Hospitals Corporation of the City and to conform its provisions to the concept of centralization of functions of the Bureau of Vital Records.

FOOTNOTES

17

[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY 205.13

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.13 Disposal of human remains; time limit.

(a) Except as set forth in subdivision (b) of this section, remains of persons dying in the City, or remains resulting from a termination of pregnancy occurring in the City, shall be buried, cremated or transported out of the City within four days following death or termination of pregnancy. Such remains may, however, within the four-day period, be placed in the general reception vault of a cemetery for a period not exceeding ten days from the placement therein. The Department may extend the time limitations contained in this subdivision and may, in granting an extension, specify conditions to be observed to prevent seepage or escape of offensive odors.

(b) Human remains may be temporarily held for more than the time periods specified in subdivision (a) of this section without being buried, cremated or transported out of the City only if an appropriate interim disposition permit has been issued pursuant to §205.21 of this Article.

HISTORICAL NOTE

Section renumbered and amended (former §205.17) City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Notes:

This section was amended by resolution adopted on September 22, 2009.

Former section 205.13, concerning disposal of certain human remains after use for anatomical purposes, was deleted as an unnecessary requirement for public health purposes. Section 205.01, defining "human remains", and Section 205.21, concerning the issuance of disposition permits, now specify the circumstances when such a permit is required or authorized.

New section 205.13 is derived from the former section 205.17. Subdivision (a) was amended to add a reference to remains, as defined in section 205.01(c), resulting from a termination of pregnancy occurring in the City in order to be consistent with the rest of the section. This subdivision was also amended to correct legal nomenclature distinguishing between a "subdivision" and a "section."

Subdivision (b) was added to provide for the holding of human remains for more than the time periods specified in subdivision (a) of this section without being buried, cremated or transported out of the City if an appropriate interim disposition permit has been issued. This was to accommodate, among other circumstances, the interim holding of body parts (as occurred during the World Trade Center disaster), or the holding of human remains during mass mortality events or while being used for anatomical purposes.

This section is derived without substantive change from S.C. §41 and Reg. 12 of General Regulations relating to S.C. §§31 to 45. The power to grant extensions is vested in the Department rather than specifically in the Registrar of Records and Assistant Registrar of Records. This accords with the general policy of the revision to avoid referring to Department personnel by titles which change over the years.

In connection with the problems of disposal of remains which emit ionizing radiation, the provisions of Article 175 should be consulted.

The courts have upheld the conviction of an undertaker who failed to bury a body within a reasonable time after death as required by State law (now Public Health Law §4200(1). People ex rel. Travis v. Daniels, 269 App. Div. 599, 57 N.Y.S. 2d 457 (3d Dept. 1945); People v. Ackley, 270 App. Div. 958, 62 N.Y.S. 2d 771 (3d Dept. 1946), affirmed, 296 N.Y. 731, 70 N.E. 2d 544 (1946) motion to amend remittitur denied, 296 N.Y. 825, 72 N.E. 2d 16 (1947) certiorari denied, 330 U.S. 846, 67 Sup. Ct. 1081, 91 L. Ed. 1290 (1947). Generally, on this problem, see Finley v. Atlantic Transport Co., 220 N.Y. 249, 115 N.E. 715 (1917): In Re Tierneys Estate, 88 Misc. 347, 151 N.Y.S. 972 (Surrogate's Court 1914). Note also the annotations to §205.37.

Section 205.17 was amended by resolution adopted on September 15, 1977, to conform its provision with current related requirements.

FOOTNOTES

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[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY 205.15

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.15 Delivery of remains to funeral director or undertaker; unclaimed remains.

When a death or termination of pregnancy occurs in a hospital, hospice or other health care facility, the person in charge shall deliver the remains immediately upon demand and within the time for filing reports prescribed in §§203.03(c) and 205.03(b) to a funeral director or undertaker who presents a certification that he or she has been authorized to take charge of the remains by the person in control of disposition as defined in §205.01. If the remains are not claimed within 24 hours following death or termination of pregnancy, the person in charge of the hospital, hospice or other health care facility shall immediately notify the person in charge of the City mortuary. If, however, an autopsy is to be performed on unclaimed remains pursuant to §4214(1) of the Public Health Law, the person in charge of the hospital, hospice or other health care facility shall notify the person in charge of the City mortuary within 48 hours of death and prior to the autopsy. Under such circumstances the filing of the certificate of death and confidential medical report may be postponed until 72 hours after death. The requirement of filing may be fulfilled by delivery of the certificate and confidential medical report to the person in charge of the City mortuary when the remains are removed from the hospital or other health care facility.

HISTORICAL NOTE

Section renumbered and amended (former §205.19) City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section amended City Record July 1, 1998 eff. July 31, 1998. [See Vol. 9 Statements of Basis and Purpose No. 11]

Section in original publication July 1, 1991.

Former §205.15 Disposal of amputated parts; certificate of amputation. [Repealed]

Section repealed City Record Sept. 22, 2004 eff. Oct. 22, 2004. [See Vol. 9 Statements of Basis and Purpose No. 22]

Section in original publication July 1, 1991.

Notes:

This section was amended by resolution adopted on September 22, 2009.

This section is derived from former section 205.19. This section was amended to clarify that it applies to deaths or terminations of pregnancy that occur in hospice or other health care facilities, in addition to hospitals. The reference to "a permit issued pursuant to §205.25" was deleted because, in practice, disposition permits are not issued until after death certificates are prepared, certified and registered. The references to "next of kin" and the "Public Administrator" were deleted and replaced with the "person in control of disposition" as now defined in section 205.01. The section was further amended to clarify that the performance of an autopsy pursuant to §4214(1) of the State Public Health Law refers to unclaimed remains. The section was also amended to reflect gender neutrality.

This section is derived from S.C. §39. That section provided that the body of a person "who has died from natural causes" be turned over to the city mortuary if not claimed within 24 hours. The quoted phrase has been omitted; in cases involving death from other than natural causes, notification to the chief medical examiner must be given immediately pursuant to Administrative Code §878-1.0. A hospital may perform an autopsy on a body which is unclaimed after 48 hours, Public Health Law §4214(1); however, medical schools have a prior right to such bodies, Public Health Law §4214(2). See also Public Health Law §§4211 and 4212. In practice, medical schools notify the superintendent of city mortuaries of their needs. Under the instant section a hospital desiring to perform an autopsy on an unclaimed body must notify the Department by telephone within 24 hours after death. Within 48 hours after death and prior to the performance of the autopsy, the hospital is to notify the superintendent who will be able to advise the hospital whether any medical school has asserted a prior claim to the body. If not, the autopsy may be performed at the expiration of the 48 hour period and the body, together with the certificate of death and medical report, will be turned over to the superintendent of city mortuaries within 72 hours.

This section was amended by resolution adopted on September 15, 1977, to update its provisions in conformity with the presently required practice in the Bureau of Vital Records and to delete the title of superintendent of City mortuaries eliminated by the Health and Hospitals Corporation of the City.

This section was further amended by resolution adopted on June 16, 1998 to eliminate the requirement of reporting to the Department the need for an autopsy pursuant to §4124(1) of the Public Health Law when remains have not been claimed within 24 hours of death or termination of pregnancy.

FOOTNOTES

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[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY 205.17

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.17 Claiming of human remains removed to the City mortuary.

When human remains which have been removed to the City mortuary are subsequently claimed, the person in charge of the City mortuary shall deliver the remains, on demand, to a funeral director or undertaker who submits a written statement that he or she, or the funeral establishment with which he or she is associated, has been employed by the person in control of disposition. Together with the remains, the person in charge of the City mortuary shall deliver the certificate of death or termination of pregnancy and confidential medical report, if any, or, if such documents have been filed with the Department, any permit issued by the Department authorizing burial in the City cemetery. When the funeral director or undertaker is required to notify the public administrator of a county in the City pursuant to §1113 of the Surrogate's Court Procedure Act, the statement of such funeral director's or undertaker's employment shall first be approved by the public administrator.

HISTORICAL NOTE

Section renumbered and amended (former §205.21) City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Notes:

This section was amended by resolution adopted on September 22, 2009.

This section is derived from former section 205.21. This section was amended by replacing "next of kin, legal representative or, in the absence of arrangements by such next of kin or legal representative, by a friend of the deceased" with the "person in control of disposition". This is consistent with amendments to Section 205.01. The section was also amended to reflect gender neutrality.

This section is derived from Reg. 6 of General Regulations relating to S.C. §§31 to 45. The revision explicitly provides for the delivery of certificates and permits to funeral directors simultaneously with delivery of the remains. The requirement of approval by the Public Administrator has been conformed more closely to the applicable requirements of §136-o of the Surrogate's Court Act, which reads as follows:

Every undertaker shall also report to such public administrator, within twelve hours after receiving an order for the burial by him of any deceased person having no next of kin known to him to be entitled to administer, the name and residence of such deceased person.

This section was amended by resolution adopted on September 15, 1977, to delete the title of superintendent of city mortuaries which was eliminated by the Health and Hospitals Corporation of the City and to conform its provisions with current related requirements.

FOOTNOTES

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[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY 205.19

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.19 Removal of human remains from place of death or termination of preg- nancy.

(a) (1) Except as specified in this section, no person shall remove human remains from the place of death or termination of pregnancy unless a certificate of death or termination of pregnancy and a confidential medical report, if any, have been filed electronically with the Department by the person required to report a death or termination of pregnancy pursuant to subdivision (a) of §205.03 or subdivision (a) of §203.03, or unless such documents have been delivered to a funeral director, undertaker or to the person in charge of the City mortuary pursuant to §205.03 or §203.03, or unless a burial, cremation, interim or transportation permit has been issued pursuant to §205.21. Prior authorization of the Department shall not be required to remove human remains to a county in a State contiguous to the City. However, an appropriate permit shall be obtained prior to burial or cremation of human remains, temporary holding of remains pursuant to subdivision (b) of §205.13, or transportation to any other area, as required pursuant to this Article. When a death or termination of pregnancy occurs under circumstances which do not require notification to the Office of Chief Medical Examiner, the remains may be removed from the place of death, termination of pregnancy or autopsy to another place within the City or to a county within a State contiguous to the City by a licensed funeral director or undertaker if such person has in his or her possession a certificate of death or termination of pregnancy including any confidential medical report, or if such certificate and confidential medical report, if any, have been filed electronically with the Department by the person required to report the death or termination of pregnancy pursuant to

subdivision (a) of §205.03 or subdivision (a) of §203.03. If, however, the death or termination of pregnancy is required to be reported to the Department by the Office of Chief Medical Examiner pursuant to §205.03(a)(3) or §203.03(a)(4), the remains may be removed from the place of death, termination of pregnancy or autopsy by the funeral director or undertaker if either he or she has received a completed death or termination of pregnancy certificate from the medical examiner who had taken charge of the remains, or if a death or termination of pregnancy certificate has been electronically filed by the Office of Chief Medical Examiner.

(2) Notwithstanding the requirements of paragraph (1) of this subdivision, in the case of a death from natural causes occurring elsewhere than in a hospital or hospice, such remains may be removed only to a funeral establishment within the City or within a county of a State contiguous to the City if the funeral director, undertaker or person in charge of the mortuary has obtained authorization from the Office of Chief Medical Examiner to remove the remains, or has obtained authorization to remove the remains and assurance from the physician attending the death, or from his or her duly authorized medical associate pursuant to paragraph (2) of subdivision (a) of §205.03, that the death is from natural causes and that said physician or medical associate assumes responsibility for certifying to the cause of death.

(b) When a death occurs in a hospital, under circumstances which do not require notification to the Office of Chief Medical Examiner, the person in charge of the hospital may remove the remains to another hospital for purposes of autopsy, but such remains shall not be removed from the hospital in which the autopsy is performed unless the applicable provisions of subdivision (a) of this section have been complied with.

(c) When a death occurs under circumstances which do not require notification to the Office of Chief Medical Examiner and while the deceased was under the continued medical supervision of a staff physician of a voluntary or municipal hospital as part of the general care offered by such hospital to a patient who has been transferred from the hospital to his or her home, the person in charge of such hospital may remove the remains to the hospital for purposes of autopsy, but such remains shall not be removed from the hospital unless the applicable provisions of subdivision (a) of this section have been complied with.

(d) This section shall not prevent the transportation of human tissues for diagnostic purposes or pathological study, the removal of human remains by the person in charge of the City mortuary for burial in the City cemetery or the removal of human remains when ordered by an officer of the City police department or the Office of Chief Medical Examiner pending completion of an investigation by either agency or by both.

HISTORICAL NOTE

Section renumbered and amended (former §205.23) City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record June 14, 1996 eff. July 14, 1996. [See Vol. 9 Statements of Basis and Purpose No. 5]

Notes:

This section was amended by resolution adopted on September 22, 2009.

This section, relating to the removal of human remains, is derived from former section 205.23. Subdivision (a) was amended by separating it into paragraphs (1) and (2). Paragraph (1) was amended to update, clarify and conform to current practice the circumstances under which human remains may be removed from the place of death or termination of pregnancy. The paragraph now provides for electronic filing prior to removal. The paragraph was further amended to

clarify that the filing must be made by the person required to report a death or termination of pregnancy pursuant to subdivision (a) of §205.03 or subdivision (a) of §203.03, and was amended to reference interim disposition permits in accordance with changes to sections 205.13 and 205.21. Paragraph (1) was amended to delete the requirement that a licensed funeral director or undertaker must have in his or her possession a "completed" certificate of death or termination of pregnancy, as the personal particulars section may not yet have been completed by the funeral director or undertaker. The paragraph was further amended to clarify throughout that it applies to terminations of pregnancy as well as deaths.

Paragraph (2) of subdivision (a) is new. It provides for the removal of human remains from the place of death or termination of pregnancy in the case of a death from natural causes occurring elsewhere than in a hospital or hospice if the funeral director, undertaker or person in charge of the mortuary has obtained authorization from the Office of Chief Medical Examiner to remove the remains, or has obtained authorization to remove the remains and assurance from the physician attending the death, or from his or her duly authorized medical associate, that the death is from natural causes and that said physician or medical associate assumes responsibility for certifying to the cause of death. This is consistent with current practice.

Subdivision (b) was amended to correct legal nomenclature distinguishing between a "subdivision" and a "subsection" and to correct the title of the Office of Chief Medical Examiner.

Subdivision (c) was amended to correct the title of the Office of Chief Medical Examiner, reflect gender neutrality and correct legal nomenclature distinguishing between a "subdivision" and a "subsection."

Subdivision (d) was amended to clarify that the police department is of the City, and to correct the title of the Office of Chief Medical Examiner.

This section is derived from S.C. §38 and Reg. 3 of General Regulations relating to S.C. §§31 to 45.

Subsection (a) makes explicit the present practice that a burial, cremation or transportation permit includes permission to remove the remains from the place of death or fetal death. The provision relating to removal of remains under charge of the Chief Medical Examiner is new and is intended to insure that the Chief Medical Examiner will be notified in all cases under his jurisdiction. The section extends the purposes for which removal may be sought by omitting the qualification previously contained in S.C. §38(b) that such removal could only be "for the purpose of preparing the body for burial or other disposition." The holding of services thus is a proper purpose for removal. The requirement that the funeral director or undertaker be employed by the "nearest available relative, friend or personal representative of the deceased, or Public Administrator, or executor or executrix of the deceased" has been omitted in this section, and is consolidated with other provisions concerning a funeral director's or undertaker's authorization in §205.37.

The section heading and subsections (z) and (d) were amended by resolution adopted on September 15, 1977 to delete the title Superintendent of City Mortuaries eliminated by the Health and Hospitals Corporation of the City and to conform their provisions with current related requirements.

Subsection (a) was amended by resolution adopted on October 30, 1987 to refer to the removal of human remains out of the City to a contiguous county in the State after receiving telephone authorization from the Department. This procedure is authorized by §205.25.

Subsection (b) is new; it is intended to facilitate the performance of autopsies.

Subsection (c) is derived from S.C. §38(d) without substantive change except that the person in charge of the hospital rather than a "physician or intern registered with the department of health..."may remove the body of a patient who was under home care to the hospital for autopsy purposes.

Subsection (d) is derived from S.C. §38(c). The Police Department and Office of Chief Medical Examiner may order removal to the City mortuary of human remains pending completion of an investigation, whether or not the person "died suddenly in a public place," as was previously required. The provision that the Superintendent of City Mortuaries may also remove remains for burial in the city cemetery is new. This subsection, formerly numbered as subsection (e) was renumbered as subsection (d) by resolution adopted on January 15, 1970 and former subsection (d) was repealed by the same resolution which incorporated and reinforced its provisions by the amendments to subsections (a), (b) and (c).

This section was amended by resolution adopted on January 15, 1970 to delete the requirement for a permit or telephone authorization from the Department to remove the remains of a deceased person from the place of death and to reinforce the requirement for a death certificate from the office of the Chief Medical Examiner before removal of the remains of a person who died under circumstances requiring notification to the office of the Chief Medical Examiner.

This section was previously amended by resolution adopted on October 30, 1987 to refer to the procedure established pursuant to §205.25(a) whereby telephone authorization could be obtained to transport human remains from Bronx to Westchester or Queens to Nassau prior to issuance of a burial, cremation or transportation permit. It was further amended on June 10, 1996 with the amendment of §205.25(a) to eliminate the need for any prior authorization for removals in these counties only. The appropriate permit must still be obtained in accordance with this Article for burial, cremation and/or transportation of human remains to other areas.

CASE NOTES FROM FORMER §205.23

¶ 1. A complaint charging defendant with two counts of removal of human remains from the place of death, 24 RCNY §205.23, when he arranged for the removal of two dead women from his apartment without notifying the police is dismissed as facially insufficient because there is no corroboration to establish that defendant removed "remains" from his residence. People v. Pappas, 163 Misc. 2d 1029 [1994].

FOOTNOTES

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[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY 205.21

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.21 Burial, cremation, holding and transportation of human remains; disposition permit.

(a) When a death or termination of pregnancy occurs in the City, the remains shall not be buried, cremated, temporarily held as an interim disposition pursuant to subdivision (b) of §205.13 or transported out of the City unless an appropriate disposition permit has been issued by the Department. However, remains may be transported out of the city to a contiguous county in the State without obtaining prior authorization to transport from the Department. In such cases, an appropriate disposition permit must still be issued by the Department prior to burial, cremation, interim disposition or transportation to any other area. Such burial, cremation, interim disposition or transportation permit shall not be issued until a certificate of death or termination of pregnancy and, if required, a confidential medical report have been filed with the Department. A permit to bury, temporarily hold or cremate human remains or to transport them out of the City includes authorization to remove the remains from the place of death or termination of pregnancy pursuant to §205.19(a). If remains are to be transported out of the City by common carrier, they shall be prepared in such manner as to comply with the State Sanitary Code.

(b) (1) No person in charge of a cemetery or crematory in the City shall allow human remains to be buried or cremated in the cemetery or crematory until a permit issued pursuant to subsection (a) of this section is surrendered to him or her, and he or she shall not accept any permit which has been changed or altered unless the change or alteration

is countersigned by the Department. A permit for the burial or cremation of human remains issued by the authorized agency of any municipality or county within the United States, of any state, territory or possession of the United States, the District of Columbia, or of any foreign State within whose jurisdiction the death or termination of pregnancy occurred, which specifies the cemetery or crematory, may be accepted by the person in charge of the cemetery or crematory instead of a permit issued by the Department. If a permit issued in another jurisdiction does not specify the cemetery or crematory, or if the cemetery or crematory specified is not the actual place of intended burial or cremation, it shall not be accepted by the person in charge of a cemetery or crematory but shall be exchanged for a permit issued by the Department.

(2) The person in charge of a cemetery or crematory shall maintain a permanent record of each burial or cremation which shall include the permit number and permit issuing authority of all permits received pursuant to this subdivision and after making such permanent record, he or she may completely destroy such permits by incineration or other equally effective means.

(3) The person to whom an interim disposition permit has been issued in accordance with subdivision (b) of §205.13 shall maintain a permanent record of each of the human remains being temporarily held which shall include the permit number, and shall maintain the original interim disposition permit until such time it is surrendered to the Department in exchange for a final burial, cremation or transportation permit.

(c) A burial permit issued pursuant to this section includes authorization to place the remains in the general reception vault of the cemetery named in the permit prior to permanent burial in such cemetery.

(d) Application for a cremation permit shall be made by the person in control of disposition. The application shall be supported by an affidavit which establishes the authority of such person in control of disposition to request cremation. The affidavit shall contain the name of the funeral director or undertaker who is to arrange for cremation, the name of the crematory where cremation is to take place and a statement that the applicant assumes all responsibility for the cremation. Such affidavit shall be maintained by the funeral director or undertaker. No cremation permit shall be issued unless the application is approved by the office of the chief medical examiner pursuant to §17-204 of the Administrative Code.

HISTORICAL NOTE

Section renumbered and amended (former §205.25) City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record June 14, 1996 eff. July 14, 1996. [See Vol. 9 Statements of Basis

and Purpose No. 5]

Subd. (d) amended City Record Sept. 22, 2004 eff. Oct. 22, 2004. [See Vol. 9 Statements of Basis

and Purpose No. 22]

Notes:

This section was amended by resolution adopted on September 22, 2009.

This section, regarding disposition permits, is derived from former section 205.25. Permits to bury, cremate or to transport human remains have long been required in New York City. In circumstances such as during mass mortality

events or when human remains are used for anatomical purposes, it may be necessary to temporarily hold human remains beyond the periods specified in section 205.13 without burial, cremation or transportation. Subdivision (b) of section 205.13 requires the issuance of an interim disposition permit by the Department to temporarily hold human remains for such periods. Accordingly, subdivision (a) of this section 205.21 has been amended to include reference to interim temporary holding permits, in addition to burial, cremation and transportation permits.

Subdivision (b) has been divided into three paragraphs. New paragraph (3) of subdivision (b) specifies the information required to be kept by a person to whom an interim holding permit has been issued. It also requires the surrender of the interim permit when a final disposition permit to bury, cremate or transport the human remains is issued.

Subdivision (d) has been revised to utilize the newly defined term "person in control of disposition".

This section is derived from S.C. §§42 and 44 and Regs. 5 and 11 of General Regulations relating to S.C. §§31 to 45. The section reflects current Department practice of requiring that the report or fetal death be filed prior to the issuance of a burial, cremation, or transportation permit.

Subsection (a) states explicitly that a burial, cremation or transportation permit includes permission to remove the remains from place of death or fetal death. A new provision has been added requiring compliance with State Sanitary Code provisions on shipment of remains out of the City by common carrier. It was amended by resolution adopted on June 24, 1971 which imposed the $2.50 fee for burial, cremation and transportation permits. The $2.50 fee for burial, cremation, and transportation permits was eliminated by resolution adopted on December 22, 1972.

Subsections (a) and (b) of Section 205.25 were amended by resolution adopted on September 15, 1977, to conform their provisions with current related requirements.

Subsection (a) was amended by resolution adopted on October 30, 1987 to allow removal of human remains out of the City to a contiguous county in the State after receiving telephone authorization from the Department. An appropriate Department permit would still need to be obtained prior to burial or cremation.

Subsection (a) which was previously amended by resolution adopted on October 30, 1987 to allow removal of human remains in certain circumstances from the City to a contiguous county in the State after receiving telephone authorization from the Department, was further amended on June 10, 1996 to eliminate the need to obtain any authorization from the Department prior to transportation of human remains from the City to either Westchester or Nassau County. The appropriate Department permit is still required prior to burial or cremation in these instances, and for transportation of human remains to any other location for burial or cremation. The incorrect reference to §205.03(a) in this section as printed was also changed to read, as corrected, §205.23(a).

Subsection (b) expands the list of jurisdictions outside New York City whose burial or cremation permits may be accepted by persons in charge of a cemetery or crematory; see Notes on section 205.27.

Subsection (b) was amended by resolution adopted on February 20, 1969 which amended the last sentence of such subsection to permit cemeteries and crematories to keep a permanent record of burials or cremations in lieu of a permanent file of burial permits.

Subsection (c) states that a burial permit includes authorization to place the remains in the cemetery's general reception vault. When remains are placed in the cemetery's vault and are subsequently buried in that cemetery, no additional permit is necessary.

Subsection (d) of §205.25 of the New York City Health Code is being amended on September 14, 2004 to recognize the expertise of licensed funeral directors and rely on their representations that cremations have been properly authorized. It will also facilitate electronic filing of death certificates.

Subsection (d) authorizes the "next of kin, legal representative or friend" to apply for a cremation permit rather than the "nearest relative of the deceased or other authorized person" as in Reg. 5 of the General Regulations relating to S.C. §§31 to 45.

FOOTNOTES

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[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

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

24 RCNY 205.23

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.23 Transportation of human remains into City.

Human remains shall not be brought into the City unless a permit for their transportation, burial or cremation has been issued by the authorized agency of a municipality or county within the United States, of a state, territory or possession of the United States, the District of Columbia or of any foreign state within whose jurisdiction death or termination of pregnancy occurred. When the jurisdiction in which the event occurred does not issue such permits, the Department may accept certified copies of certificates of death or termination of pregnancy in lieu of such permits. Remains brought into the City for burial or cremation shall be dealt with pursuant to §205.13 and §205.21. Remains brought into the City in the course of transit shall not be detained for any purpose other than transshipment unless a permit is first obtained from the Department specifying where, how long and under what conditions such remains may be held, but no such permit shall be required for the uninterrupted transit or for the direct transshipment of remains. This section does not apply to the transportation of human tissues to be used for diagnostic purposes or pathological study.

HISTORICAL NOTE

Section renumbered and amended (former §205.27) City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Notes:

This section was amended by resolution adopted on September 22, 2009.

This section is derived from former section 205.27. It has been amended to clarify that when human remains are being transported into the City from a jurisdiction that does not issue disposition permits, the Department may accept certified copies of certificates of death or termination of pregnancy in lieu of a permit.

This section is derived from S.C. §40. The section regulates the transportation of human remains into the City from New York State, other states, United States territories and possessions, the District of Columbia and from foreign states. The revision accords recognition to permits issued by foreign states whereas S.C. §40 previously prohibited removal from the dock or terminal of bodies brought into the City from without the "boundaries of the United States", unless a permit had been obtained from the Department. The provisions providing for retention of remains solely for purposes of transshipment without a permit, as well as the provisions for a permit to allow retention for other purposes prior to transshipment, are new.

Section 205.27 was amended by resolution adopted on September 15, 1977, to conform its provisions with current related requirements.

FOOTNOTES

17

[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY 205.25

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.25 Cemeteries, crematories, mausoleums, vaults and tombs.

(a) When human remains are buried in the ground, the top of the coffin or casket shall be at least three feet below the level of the ground, but if the coffin or casket is enclosed in a concrete or metal vault, the top of the vault shall be at least two feet below the level of the ground.

(b) General vaults in cemeteries used for the permanent burial of human remains shall be provided with crypts or cells which can be sealed, and every crypt or cell shall be sealed immediately after remains are placed in it unless the remains are enclosed in a hermetically-sealed metal or stone coffin or casket.

(c) General reception vaults in cemeteries shall be maintained in good sanitary condition.

HISTORICAL NOTE

Section renumbered and amended (former §205.31) City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Notes:

This section was amended by resolution adopted on September 22, 2009.

This section is derived from former section 205.31. Subdivision (a) has been repealed as the regulation of new cemeteries and cemetery name changes is wholly within the jurisdiction of the New York State Department of Health and Department of State pursuant to the Public Health Law and Not-for-Profit Corporation Law and related regulations. The remaining subdivisions have been re-lettered accordingly.

This section is derived without substantive change from S.C. §45 (part) and Regs. (last part) and 13 of General Regulations relating to S.C. §§31 to 45. Note that §451 of the Real Property Law makes it unlawful "for any person to take by deed, devise or otherwise or set apart or use any land or ground in any of the counties of ... Kings, Queens, Richmond ... for cemetery purposes without the consent of the . . . Board of Aldermen of the City of New York . . . first had and obtained in like manner as provided for in the membership corporations law; and said . . . Board of Aldermen in granting such consent may annex thereto such conditions, regulations and restrictions as such board may deem the public health or the public good require." The City Charter §21 vests in the Council, which replaced the Board of Aldermen, "the legislative power of the city". See also Charter §§954 and 959 on continuity of powers and duties of agencies and offices.

The Administrative Code §200-3.0 contains a provision prohibiting acquisition of land for cemetery purposes, with stated exceptions, in the County of Queens.

A provision similar to Real Property Law §451 noted above, relating to the acquisition of land by cemetery corporations, is contained in Membership Corporations Law §73. It requires the consent of the Board of Aldermen for land acquisition in the counties of Kings and Queens (and other counties outside this City). Generally, see Membership Corporations Law Article IX-Cemetery Associations and General Municipal Law Article 8-Cemeteries. Section 160 thereof provides that the common council of any city may acquire land for burial purposes within or without the city concerned, with the provision that, "The provisions of this section shall not apply to the counties of New York, Kings, Queens and Westchester." See also Religious Corporations Law §7 et. seq.

FOOTNOTES

17

[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

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Rules of the City of New York

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

24 RCNY 205.27

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.27 Disinterment permits; opening of coffins or caskets.

(a) No person shall disinter a coffin or casket containing human remains or expose or disturb a mausoleum, vault, tomb, grave or other place of burial unless a disinterment permit has been issued by the Department, but this requirement does not apply during the course of a burial for which a burial permit has been obtained pursuant to §205.21. No disinterment permit is required when the disinterment is ordered by the Office of Chief Medical Examiner or the district attorney of a county within the City in the exercise of official duties. A disinterred coffin or casket containing human remains shall be prepared so as to comply with the State Sanitary Code.

(b) Disinterment permits may be issued only to funeral directors and undertakers of, if the remains are to be reburied in the same cemetery, to the person in charge of the cemetery. Application for a disinterment permit shall be made on a form furnished by the Department and submitted at any office maintained and designated by the Department for such purposes. The application shall be supported by an affidavit from the person in control of disposition or other authorized person requesting disinterment. Such affidavit shall be maintained by the funeral director or undertaker.

(c) No person, other than the chief medical examiner or the chief medical examiner's duly authorized representative, shall open a coffin or casket which has been disinterred unless the opening is ordered by a court of

competent jurisdiction.

HISTORICAL NOTE

Section renumbered and amended (former §205.33) City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Subd. (b) amended City Record Sept. 22, 2004 eff. Oct. 22, 2004. [See Vol. 9 Statements of Basis

and Purpose No. 22]

Notes:

This section was amended by resolution adopted on September 22, 2009.

This section, regarding disinterment permits, is derived from former section 205.33 and remains essentially unchanged. Modifications were made to reflect renumbering of sections, correcting the title of the Office of Chief Medical Examiner, the use of the new term "person in control of disposition" and gender neutrality.

This section is derived from S.C. §§42b and 45(part) and Regs. 8, 9 and 10 of General Regulations relating to S.C. §§31 to 45. There are no substantive changes other than the exemption from the requirement of obtaining disinterment permits of the chief medical examiner and of any district attorney of New York, Kings, Queens, the Bronx or Richmond County acting within official capacities. Note that if, during the burial of a coffin containing human remains, there must be a temporary disturbance of remains already interred, no disinterment permit is required. The prohibition against opening a coffin or casket without court order is, however, applicable to such officials.

The courts have stated their disposition to exercise a "benevolent discretion" when a question is presented involving disinterment of human remains. See, in this connection, Fromm v. Fromm, 280 App. Div. 1022, 117 N.Y.S. 2d 81 (3d Dept. 1952); Application of Shine, 208 Misc. 832, 143 N.Y.S. 2d 374 (Sup. Ct. 1955); In Re Harlam, 57 N.Y.S. 2d 103 (Sup. Ct. 1945); In Re Herskovitz, 48 N.Y.S. 2d 906 (Sup. Ct. 1945); Petition of Forrisi, 170 Misc. 649, 10 N.Y.S. 2d 888 (Sup. Ct. 1939).

Subsection (b) of §205.33 of the New York City Health Code is being amended on September 14, 2004 to recognize the expertise of licensed funeral directors and rely on their representation that disinterments have been properly authorized. It will also facilitate electronic filing of death certificates.

Subsection (b) of §205.33 was amended by resolution adopted on September 15, 1977, to conform its provisions with the concept of centralization of the Bureau of Vital Records.

Subsection (c) was amended by resolution adopted on June 19, 1975, which authorized the chief medical examiner or his representative to open a casket which has been disinterred without court order.

FOOTNOTES

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[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special

provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

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Rules of the City of New York

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

24 RCNY 205.29

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.29 Registration of funeral directors and undertakers, and their agents.

(a) No permit or authorization pursuant to this article shall be issued or granted to a funeral director or undertaker who has not registered with the Department pursuant to subdivision (b) of this section. No certificate of death or confidential medical report shall be filed with the Department on behalf of a funeral director or undertaker except by an agent of such funeral director or undertaker who has registered with the Department pursuant to subdivision (c) of this section.

(b) A funeral director or undertaker who has a State certificate of registration pursuant to §3428 of the Public Health Law may register with the Department upon presentation of his or her State registration certificate and a government-issued picture identification of said funeral director or undertaker. The registration shall contain the registrant's name and address and the name and address of funeral establishments with which such registrant is associated, if any, and such registrant shall present evidence of such associations. The registrant shall subsequently register any change of name or address or association.

(c) An agent of a funeral director or undertaker may register with the Department upon presentation of (1) a letter of authorization in a form specified by the Department from the funeral director or undertaker who is the principal of

the agent, and (2) a government-issued picture identification of the agent.

HISTORICAL NOTE

Section renumbered and amended (former §205.35) City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Former §205.29 Obtaining of permits.

Section amended City Record June 14, 1996 eff. July 14, 1996. [See Vol. 9 Statements of Basis and Purpose No. 5]

Section in original publication July 1, 1991.

Notes:

This section was amended by resolution adopted on September 22, 2009.

Former section 205.29, regarding when and where permits are obtained, has been deleted as unnecessary.

This new section 205.29 is derived from former section 205.35.

Subdivision (a) now requires that agents of funeral directors or undertakers who seek to file certificates with the Department must, in addition to the funeral directors or undertakers, register with the Department.

Subdivision (b) was amended to require presentation of a government issued picture identification, in addition to the State-issued certificate, in order for a funeral director or undertaker to register with the Department.

Subdivision (c) was added to specify the documentation that an agent must present in order to be registered with the Department. Such measures provide a greater level of security to the registration process.

Subsection (a) is derived from S.C. §46, and subsection (b) consolidates requirements in S.C. §§32(i), 33(f) and Regs. 4, 5, 6 and 9 of the General Regulations relating to S.C. §§31 to 45 that the funeral director or undertaker be registered with the Department pursuant to S.C. §46.

Subsection (b) permits any funeral director or undertaker who holds a New York State certificate to register with the Department. This conforms the Code to present practice; under previous S.C. §46 only a funeral director or undertaker "practicing" in New York City appeared to be covered. See §205.37 requiring funeral directors and undertakers to be properly employed or authorized to act.

FOOTNOTES

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[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY 205.31

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.31 Authority of funeral director or undertaker.

(a) No funeral director or undertaker shall apply for any permit required pursuant to this article unless he or she, or the funeral establishment with which he or she is associated, has been employed by the person in control of disposition. When applying for such permit, the funeral director or undertaker shall sign a statement on the certificate of death or fetal death which shall contain:

(1) His or her name and State license number;

(2) The name, business address and State business registration number of the funeral establishment with which he or she is associated;

(3) The name and the relationship to the decedent of the person who has employed the funeral establishment with which he or she is associated.

(b) When a funeral director or undertaker is required to notify the public administrator of a county in the City pursuant to §1113 of the Surrogate's Court Procedure Act, the employment of the funeral director or undertaker shall

first be approved by such public administrator before a burial, cremation or transportation permit may be issued.

HISTORICAL NOTE

Section renumbered and amended (former §205.37) City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Notes:

This section was amended by resolution adopted on September 22, 2009.

This section, regarding the authority of funeral directors or undertakers to apply for departmental permits, is derived from former section 205.37. Subdivision (a) now uses the term "person in control of disposition" as it is newly defined in section 205.01. Paragraphs (1) and (2) were also amended to reflect gender neutrality.

Subsection (a) is derived from Reg. 4 of General Regulations relating to S.C. §§31 to 45. The class of persons who may employ a funeral director or undertaker is explicitly designated. Subsection (b) is new. See in this connection §205.21 and notes thereto.

Public Health Law §4201 gives a person "the right to direct the manner in which his body shall be disposed of after his death." For cases which indicate that such direction need not be contained in a testamentary document, see In Re Scheck's v, Estate, 172 Misc. 236, 14 N.Y.S. 2d 946 (Surrogate's Court 1939); and In Re Johnson's Estate, 169 Misc. 215, 7 N.Y.S. 2d 81, 83 (Surrogate's Court 1938). In the absence of effective directions of the deceased, the right to dispose of human remains is given to the spouse or next of kin. Generally, on this question, see Gostkowski v. Roman Catholic Church of the Sacred Heart of Jesus and Mary, 262 N.Y. 320, 186 N.E. 798 (1933); Beller v. City of New York, 269 App. Div. 642, 58 N.Y.S. 2d 112 (1st Dept. 1945); Feller et. al. v. University Funeral Chapel, Inc. et. al., 124 N.Y.S. 2d 546 (Sup. Ct. 1953); Enoch v. Ambrose, 112 N.Y.S. 2d 882 (Sup. Ct. 1952); Petition of Forrisi, 170 Misc. 649, 10 N.Y.S. 2d 888 (Sup. Ct. 1939).

Subsection (b) of §205.37 was amended by resolution adopted on September 15, 1977, to update its provisions with present law.

FOOTNOTES

17

[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY 205.33

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 205 DEATHS AND DISPOSALS OF HUMAN REMAINS*17

§205.33 Authority of Department to withhold registration, permits and filing of certificates.

In addition to the forfeitures and penalties set forth in Articles 3 and 5 of this Code, when serious, repeated or persistent violations of any of the provisions of this Code are found, the Department may deny, suspend or revoke any registration and refuse to issue burial permits or other authorizations issued pursuant to this Article, or refuse to accept for filing certificates of death or confidential medical reports. Any funeral director, undertaker or funeral establishment, or registered agent of such director, undertaker or establishment, whose City registration is denied, suspended or revoked shall thereafter be provided with an opportunity to be heard pursuant to the rules of the Department.

HISTORICAL NOTE

Section renumbered and amended (former §205.39) City Record Sept. 28, 2009 eff. Jan. 1, 2010. [See Vol. 9 Statements of Basis and Purpose No. 40]

DERIVATION

Section in original publication July 1, 1991.

Notes:

This section was amended by resolution adopted on September 22, 2009.

This section replaced former section 205.39 and provides authority for the Department to withhold registration of funeral directors, undertakers or their agents, to refuse to issue permits or to accept certificates for filing such when serious or repeated violations of the Code are found to have been committed. When City registration is denied, suspended or revoked, an opportunity to be heard will be provided pursuant to the rules of the Department, currently found in Chapter 7 of Title 24 of the Rules of the City of New York. Such a strict enforcement mechanism will prevent abuses of the registration process.

This section is derived from Reg, 7 of General Regulations relating to S.C, §§31 to 45. Discretion to withhold issuance of a permit is vested in the Department generally rather than in the Commissioner and Registrar of Records. The last sentence of Reg. 7 which previously limited the right to withhold permits to 72 hours has been omitted.

FOOTNOTES

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[Footnote 17]: * Article 205 amended City Record Sept. 28, 2009 eff. Jan. 1, 2010 with other special provisions. [See Vol. 9 Statements of Basis and Purpose No. 40]

Rules of the City of New York

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

24 RCNY Health Code Reg. 207.00

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 207 GENERAL VITAL STATISTICS PROVISIONS

Health Code Reg. § 207.00 INTRODUCTORY NOTES

This article supplements the three articles dealing with the reporting of vital events, ie., Articles 201,203 and 205. It provides for the correction of vital records, inspection of records, fees for searches and transcripts of records and other general matters. In addition, it contains a provision for the reporting of vital events occurring on carriers, such as ships and airplanes, which terminate their voyage in this City.

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Rules of the City of New York

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

24 RCNY 207.01

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 207 GENERAL VITAL STATISTICS PROVISIONS

§207.01 Correction of records; application and approval; accompanying docu- ments.

(a) The Commissioner or other personnel of the Department designated by him may approve the amendment of birth, termination of pregnancy or death certificate. Application shall be made on a form furnished by the Department. Application for amendment of a birth certificate shall be made by the parents or surviving parent, or by the guardian of the person whose birth certificate is to be corrected or by the person himself if he is 18 years of age or over and his parents are dead. Application for amendment of a death or termination of pregnancy certificate shall be made by the next of kin or, if there is no next of kin, by the persons authorized to arrange for burial or cremation of the remains.

(b) Every application shall be accompanied by supporting documentary evidence and by a certified copy of the certificate involved. An application for amendment of a birth certificate if made within one year of the reporting of the birth, may, however, be accompanied by a certificate of birth registration instead of a certified copy of the birth certificate.

(c) No application shall be approved unless the Commissioner or his designee is satisfied that the evidence submitted shows the true facts and that an error was made at the time of preparing and filing of the certificate, or that the name of a person named in a birth certificate has been changed pursuant to court order.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 1, 1998 eff. July 31, 1998. [See Vol. 9 Statements of Basis and Purpose No. 11]

Notes:

Subsection (a) is derived from Rules 1 and 5(part) of the Rules of the Board of Health on Correction of Records. The provision that an application for amendment of a death or fetal death certificate may be filed by the persons authorized to arrange for the burial or cremation of the remains, if there are no next of kin, is new. Approval may be granted by the Commissioner or his designated representative.

Subsection (a) of §207.01 was amended by resolution adopted on September 15, 1977, to conform its provisions with current related requirements.

Subsection (a) was further amended by resolution dated June 16, 1998 to reflect the age of eighteen as the age of majority, thereby making the Health Code consistent with the New York State Public Health Law.

Subsection (b), except for the last sentence which is new, is derived from Rule 3(part) and Rule 4(part) of the Rules on Correction of Records. The last sentence is designed to encourage corrections within a year.

Subsection (c) is derived without substantive change from Rules 2 and 5(part) of the Rules on Correction of Records.

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

24 RCNY 207.03

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 207 GENERAL VITAL STATISTICS PROVISIONS

§207.03 Correction of records; method of amendment; adding missing information.

(a) Except as provided in §207.05, when an application for amendment is approved, a single line shall be drawn through the information subject to amendment, and the correct information shall be inserted immediately above it. The certificate shall be marked to show that it is amended, and the name of the person approving the amendment and the date thereof shall be noted on the certificate. When the name of a person is changed pursuant to court order, the new name shall be similarly inserted on the certificate together with a statement that the change of name is by court order and the date of the order. The Department may use an alternate method of recording corrections or other amendments to electronic records or forms. The history of these electronic corrections or amendments shall be clearly recorded within the electronic record or form by the Department.

(b) Within one year following the filing of a birth, termination of pregnancy or death certificate, any missing information may be added upon submission of the information on a form furnished by the Department by any person authorized to file an application for amendment pursuant to §207.01. After one year following the filing of a certificate, however, missing information shall be added only upon approval of an application for amendment in the manner specified in §207.01.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 1, 1998 eff. July 31, 1998. [See Vol. 9 Statements of Basis and Purpose No. 11]

Notes:

Subsection (a) is derived without substantive change from Rule 7(c), (d) and (e) of the Rules on Correction of Records.

Subsection (a) was amended by resolution adopted on June 16, 1998 to allow corrections to certificates or records filed via authorized electronic means to be recorded in a technologically feasible and accurate manner. The "strike-out" method of noting corrections and the history of amendments on paper forms could not be utilized for electronic forms. With the changes to subsection (a) the Department would be enabled to employ an alternative method for noting electronic changes and corrections, while ensuring that the history of these amendments is reflected in the electronic record or form.

Subsection (b) is derived without substantive change from Rule 6 of the Rules on Correction of Records.

Subsection (b) of §207.03 was amended by resolution adopted on September 15, 1977, to conform its provisions with current related requirements.

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

24 RCNY 207.05

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 207 GENERAL VITAL STATISTICS PROVISIONS

§207.05 Correction of records; filing of new birth certificates.

(a) A new birth certificate shall be filed when:

(1) Proof is submitted to the Department that the previously unmarried parents of a child have intermarried subsequent to the birth of such person; or,

(2) Notification is received by the Department from the clerk of a court of competent jurisdiction or proof is submitted of a judgment, order or decree relating to the parentage of the person; or,

(3) Notification is received by the Department from the clerk of a court of competent jurisdiction or proof is submitted of a judgment, order or decree relating to the adoption of the person. Every new birth certificate filed because of adoption shall bear a statement that it is filed pursuant to §567-2.0(a)(3) of the Administrative Code; or,

(4) A putative father of a child consents under oath to the filing of a new birth certificate bearing his name as the father of the child born out of wedlock; or,

(5) The name of the person has been changed pursuant to court order and proof satisfactory to the Department has

been submitted that such person has undergone convertive surgery.

(b) When a new birth certificate is filed pursuant to subsection (a) of this section, the original birth certificate, the application for a new birth certificate and supporting documents shall be placed under seal, and such seal shall not be broken except by order of a court of competent jurisdiction. Thereafter, when a certified copy is requested of the certificate of birth of the person for whom a new certificate has been filed pursuant to the provisions of this section, a copy of the new certificate of birth shall be issued, except when an order of a court of competent jurisdiction requires the issuance of a copy of the original certificate of birth.

(c) A new birth certificate may be filed when an application for amendment is submitted within three months after the report of birth, or when the Commissioner or other personnel of the Department designated by him finds it desirable by reason of the nature and extent of the amendments. In such a case, the original certificate shall be filed with the application for amendment.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

Subsections (a) and (b) are derived without substantive change from Rule 7(a)(1) of the Rules on Correction of Records and are based on Administrative Code §567-2.0. The term "unmarried parents" as used in subsection (a)(1) of this section is interpreted as meaning "single parents"; to interpret the term otherwise would be contrary to the interpretation of an identical provision of the Public Health Law §4138(1)(a), 1944 Opinions of Attorney General 253 (1st case), and might result in jeopardizing possible rights of the child concerned. See, in this connection, Melis v. Department of Health, 260 App. Div. 772, 24 N.Y.S. 2d 51 (1st Dept. 1940) in which the court held that a finding of nonpaternity made by the Family Court in an action for support was not binding on the child, inasmuch as she was not a party to the proceedings. The court further held that in a declaratory action which is appropriate to determine legitimacy and parentage "the infant whose rights are paramount, should be made a party in the manner provided by law (§225 Civil Practice Act) and a guardian ad literm appointed to protect its interests." 260 App. Div. at 775, 24 N.Y.S. 2d at 55. In P.v. Department of Health, 200 Misc. 1090, 107 N.Y.S. 2d 586 (Sup. Ct. 1951) which involved an application by P for the issuance of a new certificate stating that P was the father of the infant, instead of H who was the husband of the infant's mother, the court required the appointment of a special guardian to represent the child. The court maintained that it is not warranted "in ignoring the child's right to be represented or heard in a proceeding which may have a lasting bearing on the child's parentage." Note too that it is well established that the presumption of legitimacy will be overcome only by clear and convincing evidence. In re Lentz, 247 App. Div. 31, 283 N.Y.S. 749 (2d Dept. 1935). Anonymous v. Anonymous, 208 Misc. 633, 143 N.Y.S. 2d 221 (Sup. Ct. 1955). It is equally well established that spouses may not testify to nonaccess during their marital union. Commissioner of Welfare v. Koehler, 284 N.Y. 260, 30 N.E. 2d 587 (1940).

Subsection (a) was amended by resolution adopted on December 16, 1971 which added subdivision (5).

Subsection (c) is derived without substantive change from Rule 7(a)(2) and 7(b) of the Rules on Correction of Records.

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

24 RCNY 207.07

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 207 GENERAL VITAL STATISTICS PROVISIONS

§207.07 Correction of records; copy of amended certificate to be issued.

When a certificate of birth, termination of pregnancy or death is amended, the Department shall issue to the applicant in exchange for the copy submitted with the application pursuant to §207.01 the following:

(1) In the case of the amendment of a birth certificate, a certified copy or a certification of the amended birth certificate or, if application was made within one year of the filing of the original birth certificate, an amended certificate of birth registration; or,

(2) In the case of the amendment of a death or termination of pregnancy certificate, a certified copy of the certificate of termination of pregnancy or death, or a certification of death.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Open par amended City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 42]

Notes:

This section was amended by resolution adopted on September 22, 2009. The words "without further charge" were deleted from the first sentence of this section in order to avoid confusion or potential conflict with new subdivision (g) of §207.13 which authorizes the charging of fees for some corrections or amendments of birth or death certificates.

This section is derived without substantive change from Rule 3(part) of the Rules on Correction of Records except that a new certificate of birth registration is to be issued when corrections are made within one year of filing the original birth certificate.

Section 207.07 was amended by resolution adopted on September 15, 1977, to conform its provisions with current related requirements.

Paragraph (2) was amended by resolution adopted on June 16, 1986 to conform with new §205.06 adopted on the same date.

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

24 RCNY 207.09

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 207 GENERAL VITAL STATISTICS PROVISIONS

§207.09 Preparation or filing of certificates or reports; payment prohibited.

No person who is required to prepare or file a certificate or report pursuant to any provision of this title shall charge or accept payment for performing such obligation.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived without substantive change from S.C. §34.

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

24 RCNY 207.11

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 207 GENERAL VITAL STATISTICS PROVISIONS

§207.11 Inspection of records; transcripts.

Except as provided in §§201.07, 203.07 and 205.07, inspection of records filed with the Department may be made and transcripts of records may be obtained pursuant to the provisions of §3.27 of this Code and §17-169 of the Administrative Code, respectively. No paper, file, report, record or proceeding concerning a death shall, however, be open to inspection except to a person, or to his representative who shall be an agent or other person having a legal or fiduciary obligation to such person, who has a personal interest therein as a relative, next of kin, heir or beneficiary, of a deceased person to whom the records pertain, or to a person who has a vested right in property by reason of the death of the person to whom the records pertain, or who otherwise establishes that such inspection or transcript is necessary or required for a judicial or other proper purpose, or to prevent the misuse or misappropriation of City, state or federal governmental funds. Inspection of records for the collection of information for sale or release to the public, or for other commercial or speculative purposes shall not be deemed a proper purpose. The Department may impose reasonable conditions as to the use and redisclosure of information, and may limit access to the minimum necessary to fulfill the purpose for which information is requested.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is new except for the last sentence which is derived without substantive change from the Department Rules and Regulations as to Publicity, Time and Manner of Inspection of the Papers, Files, Reports, Records and Proceedings of the Department of Health (Adopted February 16, 1938).

This section was amended by resolution adopted on September 15, 1977, to conform and update its provisions with the presently required practice of the Bureau of Vital Records.

This section was last amended by resolution adopted on September 15, 1977 to eliminate reference to marriage records over which the Department no longer had jurisdiction.

The restriction concerning inspection of records of death to one "who otherwise establishes some personal right or interest therein" may be found in the Rules and Regulations of the Department adopted February 18, 1938.

This section was further amended by resolution adopted on May 12, 1988. The amendment is intended to incorporate the regulations of the New York State Department of Health, §35.4, relating to "judicial or other proper purposes," to clarify the meaning of the term "personal right or interest," and to allow appropriate disclosures to avert the misuse of governmental funds.

Rules of the City of New York

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

24 RCNY 207.13

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 207 GENERAL VITAL STATISTICS PROVISIONS

§207.13 Fees for searches and transcripts of records.

(a) The Department shall charge fees for searches and transcripts as follows: (1) For a search of two consecutive calendar years under one name and for issuance of a certified copy of a certificate of birth, death, or termination of pregnancy, or a certification of birth or death, or a certification that the record cannot be found, the fee is $5.00 for each copy.

(2) For each additional calendar year search, if applied for at the same time or within three months of the original request and if proof of payment for the basic search is submitted, the fee is $1;

(3) For a certified copy of the reverse side of a death certificate issued at the same time as a copy of the face of the certificate, the fee is $2;

(4) For a two calendar year search under one name for documents relating to transportation of human remains and the issuance of a certified copy of one side of a document, the fee is $3 and for each certified copy of an additional side, the fee is $1.50; and,

(5) For consulting indexes to vital statistics records, in accordance with the provisions of §3.27(e), the fee is $5 for each day or part thereof. The fee for consulting such indexes for one year is $100, which shall enable the applicant to designate not more than two representatives to consult such indexes on his behalf.

(b) When the Board permits inspection or disclosure of information contained in a confidential medical report of birth, termination of pregnancy or death, fees shall be charged as follows:

(1) For a search of two consecutive calendar years under one name and for issuance of an uncertified copy of the certificate and confidential medical report, if found, the fee is $2.50. For each additional year searched the fee is $1.

(2) When the certificate number is furnished or search is made by the person or a representative of the person to whom approval has been granted, the fee for an uncertified copy of the certificate and confidential medical report is $1.

(c) Upon proper application by an authorized person, the Department shall exchange a certified copy of a birth or death certificate or a certification that such a record cannot be found for a certification of birth or death, and a certification of birth or death or a certification that such a record cannot be found for a certified copy of a birth or death certificate, without charge, when application is made within three months of the issuance of the certification that a record cannot be found or of the certified copy or certification to be exchanged.

(d) When application for searches and issuance of transcripts is made by any agency of the government of the United States, a voucher for future payment of required fees may be accepted by the Department instead of immediate payment of fees.

(e) The Department shall make searches and issue certified copies or transcripts without charge when:

(1) Requested for official purposes by any agency of the City or State or of any other political subdivision of the State; or,

(2) Requested pursuant to §1384-n of the Civil Practice Act in connection with an application for benefits available from the Veterans Administration, if written proof of the application is first submitted; or,

(3) Requested in connection with applications for allowances for dependents of persons in the armed forces of the United States, in connection with an induction or enlistment into any armed force of the United States, or in connection with an application for a veterans' bonus pursuant to any law of the State, if written proof of the application, induction or enlistment is first submitted; or,

(4) Requested by an officer of the New York Society for the Prevention of Cruelty to Children for use in court cases; or,

(5) The Commissioner or the person in charge of the office of the Department designated to receive vital records, for good cause, so directs.

(f) The Department may issue without charge verifications of information contained on records filed with the Department when requested by an agency of the City, State, the government of the United States, any state, territory or possession of the United States or any political subdivision thereof, the government of the District of Columbia, or by charitable or social welfare organizations or agencies.

(g) The Department shall, effective January 1, 2010, charge an application fee of $40.00 to correct or amend birth or death certificates as follows:

(1) Adding a given name more than 60 days after birth

(2) Correcting birth and death certificate errors and omissions made by family members and informants

(3) Correcting hospital birth certificate errors and omissions after 12 months

(4) Correcting funeral home errors

(5) Correcting funeral home omissions filed after 12 months

(6) Amending a birth certificate for an adoption

(7) Amending a new birth certificate for a person who has undergone convertive surgery

(8) Re-submitting an application more than 1 year after rejection

(h) The Department shall, effective January 1, 2010, charge a fee of $40.00 for disposition permits issued pursuant to Article 205, except those for burials in the City cemetery.

HISTORICAL NOTE

Section heading amended City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 42]

Section in original publication July 1, 1991.

Subd. (g) added City Record Sept. 28, 2009 eff. Oct. 28, 2009. [See Vol. 9 Statements of Basis and Purpose No. 42]

Notes:

This section was amended by resolution adopted on September 22, 2009. The section was re-titled as "Fees for vital statistics services" and new subdivisions (g) and (h) were added to include fees for corrections of birth and death certificates and for disposition permits issued pursuant to Article 205. The fees are based on cost analyses to partially recover the Department's costs in performing these functions.

This section is derived from the Rules of the Board on Fees for Searches and Transcripts.

Subsection (a) prescribes basic fees to be charged.

Subsection (a) was amended by resolution adopted on February 26, 1962 so as to increase the fee for a certified copy of a birth from $1.00 to $2.00, the fee for each additional calendar year search from 25 cents to 50 cents and for a two year calendar search for documents relating to transportation of human remains from $1.00 to $2.00.

Subdivision (1), except for the last clause, is derived from Rules 1 and 3, and adds provisions for searches for certificates of fetal death, for which Rules 1 and 3 did not provide. The term "record" has been changed to "certificate." The fee is set for a search covering two consecutive years, rather than one year, to conform to the long-standing Department practice in making such searches. The last clause providing that the hourly fee be charged unless all the required information is given on the application is new.

Subdivision (2) is derived from Rule 2; the period within which application must be made has been changed from "ninety (90) days" to "three months."

Subdivision (3) is derived from Rule 4; "record" has been changed to "certificate."

Subdivision (4) is derived without substantive change from Rule 5.

Subdivision (5) is derived from Rule 8. The hourly fee has been raised from $1.00 to $2.00. The rule applies to searches for all records, instead of death records only.

Subsection (a) was further amended by resolution adopted on November 19, 1963 which added subdivision (6). It was further amended by resolution adopted on May 21, 1970 so as to increase all of the fees prescribed by that subsection to the amounts now therein provided. Subdivision (1) of subsection (a) was further amended by resolution of December 22, 1972 which changed the fee for certified copies of a certificate of death from $2.50 for the first copy and $1.25 for each additional copy ordered at the same time to $2.25 for each copy.

Subsections (a) and (b) were further amended by resolution adopted on February 20, 1975 to increase all the fees prescribed by such subsections to the amount now therein provided to reflect, in part, the increased costs of providing the searches and transcripts of vital statistics records.

Subsections (a) and (b) were amended by resolution adopted September 15, 1977, to update their provisions and conform them to the presently required practice of the Bureau of Vital Records.

Paragraph (1) of subsection (a) was further amended by resolution adopted on May 29, 1980 to increase the fees for copies of birth and death certificates to reflect, in part, the increased cost of providing these copies, and in addition to help eliminate administrative problems and facilitate the processing and issuance of birth and death certificates.

Paragraph (1) of subsection (a) was amended by resolution adopted on June 16, 1986 to increase the fee for providing the documents specified in said paragraph to reflect the cost to the Department and deletes the reference to a fee for each hour, or part thereof, for a search based upon inadequate information because of its extremely limited use. In addition, the amendment provides conformity with new §205.06 adopted on the same date.

Subsection (b) is derived from Rule 19. No fee is to be charged for information furnished from confidential medical reports unless a fee is set by the Board resolution permitting the disclosure. Rule 19 required payment of a specified fee unless the Board resolution stated that no fee is to be charged.

It was amended by resolution adopted on June 25, 1962 which established the fees for searches and copies of certificates.

Subsection (c) is derived from Rule 6. The subsection provides for the issuance of a certified copy of a birth certificate or a certification of birth without charge whenever a "not found" statement, a certification of birth or a certified copy of a birth certificate is surrendered, respectively. The provision for "not found" statements applies when subsequent information is furnished and the record is in fact found. Rule 6 provided only for the issuance of the "certified copy of a birth certificate and a surrender of a certification of birth." A limitation of three months during which such application for exchange may be made has been added. The term "Upon a proper application" has been expanded by making specific reference to §567-4.0 of the Administrative Code.

Subsection (c) was amended by resolution adopted on June 16, 1986 to conform with §205.06 adopted on the same date.

Subsection (d) is derived from Rule 9. The provision has been simplified to provide that the Department may accept United States government vouchers instead of immediate payment of fees. The last sentence of Rule 9 relating to free orders for searches for investigations by the War and Navy Departments has been omitted.

Subsection (e) authorizes searches and issuances of certified copies or transcripts without fee, in appropriate cases.

Subdivision (1) is derived from Rule 10 and has been expanded to include any political subdivision of the State, such as other municipalities or county governments within New York State.

Subdivisions (2) and (3) are derived from Rule 11 with some deletion of unnecessary detail.

Subdivision (4) is derived without substantive change from Rule 13.

Subdivision (5) is derived from Rule 16. General discretionary authority to waive fees is vested in the Commissioner or the director of the Bureau of Records and Statistics (or the person holding the equivalent of that office). The phrase "for good cause" replaces "extreme poverty" previously used.

Subsection (f) is derived from Rule 15. The following clause of that rule has been omitted: "but the Registrar of Records in issuing a verification shall have in mind the purpose of Chapter 584 of the Laws of 1936, relative to disclosure of the names of the parents."

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

24 RCNY 207.15

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

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TITLE V VITAL STATISTICS

ARTICLE 207 GENERAL VITAL STATISTICS PROVISIONS

§207.15 Preservation of records.

Registries of birth, termination of pregnancy or death, and permits required to be kept on file pursuant to §205.25(b), may be permanently preserved electronically, or through photostatic, microphotographic or microfilm copies.

HISTORICAL NOTE

Section amended City Record Mar. 23, 1995 eff. Apr. 22, 1995. [See Vol. 9 Statements of Basis and Purpose No. 1]

Section in original publication July 1, 1991.

Notes:

This section is new.

Section 207.15 was amended by resolution on September 15, 1977, to conform its provisions with current related requirements.

This section was first amended by resolution on September 15, 1977 to conform its provisions with then-current related requirements. It was amended on March 14, 1995 to authorize the Department to preserve in an appropriate manner birth certificates which are filed electronically.

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

24 RCNY 207.17

RULES OF THE CITY OF NEW YORK

Title 24 Department of Health and Mental Hygiene

Health Code of the City of New York

TITLE V VITAL STATISTICS

ARTICLE 207 GENERAL VITAL STATISTICS PROVISIONS

§207.17 Certificates and reports; legibility and correctness.

Every certificate of birth, termination of pregnancy and death, and every confidential medical report which is not filed electronically in accordance with other provisions of this Code shall be filled out legibly on typewriter or with permanent black ink and shall be properly signed. No certificate or report shall be accepted which is imperfectly filled out, or on which a felt-tipped type of pen has been used, or if it has been corrected, interlined or altered in any manner.

HISTORICAL NOTE

Section amended City Record Mar. 23, 1995 eff. Apr. 22, 1995. [See Vol. 9 Statements of Basis and Purpose No. 1]

Section in original publication July 1, 1991.

Notes:

This section is derived from the first sentence of Reg. 1 of the General Regulations relating to S.C. §§31-45. The

prohibition of ball point pens is new.

Section 207.17 was amended by resolution adopted on September 15, 1977, to conform its provisions with current related requirements.

This section was previously amended by resolution adopted on September 15, 1997 to conform its provisions to then-current requirements. It was further amended by resolution adopted on March 14, 1995 to refer to birth certificates required to be filed electronically pursuant to subsections (c), (d), (e) and (f) of §201.05.

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TITLE V VITAL STATISTICS

ARTICLE 207 GENERAL VITAL STATISTICS PROVISIONS

§207.19 Births, termination of pregnancy and deaths on buses, train, ships and airplanes.

When a birth, termination of pregnancy or death occurs on a bus, train, ship or airplane which terminates a voyage, trip or flight at a terminal in The City of New York, the person in charge or the owner of such bus, train, ship or airplane shall file with the Department a certificate of such birth, if the child is brought into the City, or a certificate of termination of pregnancy or death if the remains are brought into the City. A certificate of birth occurring on a ship or airplane during any voyage, trip or flight which terminates at a terminal in the Port of New York, but not in The City of New York, may be filed with the Department if the child is brought into the City. Certificates, on a form prescribed by the Board and furnished by the Department, shall be filed with the Manhattan office of the Department within 24 hours following the arrival of the bus, train, ship or airplane. Certificates shall contain such information as the Board may require, including the specific location or the latitude and longitude where such event took place and whether the event occurred on land, at sea, or in the air.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Notes:

This section is derived from S.C. §350. The section expands the scope of S.C. §350 in that it is made applicable to vital events on buses and trains coming into the City. Fetal deaths are now covered in addition to births and deaths. Subsection (4) of S.C. §350 requiring the keeping of a special register has been omitted as a matter of intra-Departmental administration.

Section 207.19 was amended by resolution adopted on September 15, 1977, to conform its provisions with current related requirements.

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24 RCNY APPENDICES

RULES OF THE CITY OF NEW YORK

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APPENDICES

APPENDICES

(The following materials from the City Charter, Administrative Code and other law or regulation are included in this edition of the New York City Health Code for easy reference).

Rules Governing the Examination, License and Conduct of the Business of Master Plumber

Rules for the Examination, Licensing and Procedure Relating to Motion Picture Theater Matrons

Regulations Governing the Business of Supplying Inhalation Therapy Service and Additional Regulations Governing the Examination and Issuance of Certificates of Competency for Technicians and Supervising Technicians in Inhalation Therapy Service

RULES GOVERNING THE EXAMINATION, LICENSE

AND CONDUCT OF THE BUSINESS OF

MASTER PLUMBER

Regulations of the City Civil Service Commission and the

Commissioner of Health for the Examination,

Licensure and Conduct of the Business of Master Plumber.

Reg. L.M.P.1 Effective date and applicability.

L.M.P.1.1 These regulations shall be effective September 1, 1960. They shall be applicable to the examination, licensure and conduct of the business of Master Plumber and shall supersede all prior rules pertaining thereto.

Reg. L.M.P.2 Applications.

L.M.P.2.1 Any person desiring to obtain a license from the Commissioner of Health to engage in the business of Master Plumber shall file an application for examination with the City Civil Service Commission during the period fixed by such Commission. The signed application shall be in the handwriting of the applicant on the form prescribed by the Commissioner and shall give such information as to citizenship, character, education, previous employment, training and fitness as may be required. False or misleading statements may be cause for rejection and possible disqualification of the candidate from taking future license examinations and from holding any position or employment with the City of New York.

L.M.P.2.2 A defective application shall be suspended and the applicant notified of the particulars wherein it requires correction. Corrections must be made within five days after such notice.

L.M.P.2.3 The City Civil Service Commission shall fix the period of not less than two weeks during which applications shall be received. Notice that applications will be received shall be advertised by the Commission for at least two weeks prior to the final date for the receipt of the applications daily in the City Record and, in the discretion of the Commissioner of Health, in such other publications as he may designate.

Reg. L.M.P.3 Qualifications.

L.M.P.3.1 Every person applying for a Master Plumber's License shall

(a) be a citizen of the United States

(b) be thoroughly proficient in reading and writing the English language, and

(c) have not less than ten years' experience in the plumbing industry in the United States, or possess a technical degree in engineering from a college or university approved by the Regents of the University of the State of New York and three years of the specified experience.

Reg. L.M.P.4 Examinations.

L.M.P.4.1 Examinations shall be conducted at least one each year. They shall be under the direction of the director of examinations and be conducted, insofar as practicable, in conformity with the procedure of the Department of Personnel with respect to other license examinations conducted by it.

L.M.P.4.2 The examination shall be designed to determine the merit and fitness of applicants, and shall include a written test, a practical test, and such inquiry into the applicant's reputation, character, responsibility and past experience

as the City Civil Service Commission may require.

Reg. L.M.P.5 Examination fee.

L.M.P.5.1 An examination fee of $20 shall be paid by the applicant at the time of filing his application. This fee shall entitle the applicant to take one written test and if he attains a passing rating, to take one practical test. In the event that he fails such practical test, the applicant shall be permitted to take two additional practical tests provided the applications for these practical tests are filed not later than two years from the date of the written test. A separate application and a $10 fee must be filed for each of the subsequent practical tests.

Reg. L.M.P.6 Appeals.

L.M.P.6.1 Claims of manifest error in the rating of an examination must be made to the City Civil Service Commission in writing within two months after the date of the mailing of the failure notice to the candidate. They shall be considered in the manner prescribed for other license examinations.

Reg. L.M.P.7 Committee of plumbing industry.

L.M.P.7.1 Not later than the 15th day of December in each year the director of examinations, in the manner prescribed by law, shall select a committee of the plumbing industry to assist the Commission in the conduct of examinations for the ensuing calendar year.

L.M.P.7.2 To be eligible for recognition by the City Civil Service Commission and the Commissioner of Health as an established Master Plumber association in accordance with the provisions of Section 816-2.0 of the Administrative Code, such association, if not heretofore thus recognized, must (1) have been incorporated under the laws of the State of New York, (2) have a paid-up membership of not less than 100 members on the date of application, (3) have been an active organization for a period of not less than five years immediately preceding the date of application, (4) have not more than 10 percent of its membership affiliated with any other recognized Master Plumber association, and (5) have as its officers or directors persons who are not members of any other recognized Master Plumber association.

Reg. L.M.P.8 Issuance of licenses and metal plates-fees.

L.M.P.8.1 Upon the certification of the City Civil Service Commission that an applicant has qualified as a Master Plumber, the Commissioner of Health shall, except for good cause, issue to the applicant a Master Plumber's license upon payment of a fee of $5.

L.M.P.8.2 (a) In order to engage in the trade, business or calling of a duly registered and Licensed Master Plumber, the licensee shall, before registering with the Department of Buildings, apply to the Commissioner of Health for a "LICENSED PLUMBER" metal plate which shall be issued for the premises designated in the application upon payment of a fee of $5. All "LICENSED PLUMBER" metal plates shall be renewed annually by the Commissioner of Health during the month of January upon payment of a fee of $2.

(b) Where the metal plate has been lost, and an affidavit is submitted establishing such fact, a new metal plate shall be issued by the Commissioner of Health upon a new application and payment of a fee of $5.

Reg. L.M.P.9 Metal plates regulated.

L.M.P.9.1 (a) Not more than one "LICENSED PLUMBER" metal plate shall be issued to any Licensed Master Plumber.

(b) A metal plate shall not be issued for the conduct of business at any premises located in a residence district as provided for on the use district map and in the use district map designated rules accompanying the zoning resolution of the City of New York.

(c) The Commissioner of Health shall reserve the right to refuse to issue or renew a metal plate to any Licensed Master Plumber who fails to display prominently to the public on the window of the place of business, designated in his application or on a sign securely attached to the said premises, his full name with the words "Licensed Plumber" immediately thereunder and, if the business is conducted under a trade name or a co-partnership or corporation, such trade name or a co-partnership or a corporation name immediately above his full name. Any vehicle and/or stationery used in conjunction with such business shall have prominently lettered thereon, his full name, the words "Licensed Plumber," metal plate number and business address.

(d) The metal plate when issued shall be kept prominently displayed to the public at the place of business designated in the application. The metal plate shall not be transferred to another address nor shall it be transferred to or displayed in connection with any co-partnership or corporation of which the holder of such plate may become a partner or officer, without first notifying the Commissioner of Health in writing and receiving his written approval thereof. A Master Plumber wishing to engage in the plumbing business as a corporation or partnership or using a trade name shall file such documents as may be required with the Commissioner of Health, showing financial control and responsibility for the performance of plumbing work in accordance with the Administrative Code of the City.

L.M.P.9.2 A person retiring from business as a Master Plumber shall surrender to the Commissioner of Health his metal plate. In the event of the decease of a Master Plumber who was engaged in the plumbing business under a metal plate issued by the Commissioner of Health, his legal representative may, with the consent of the Commissioner of Buildings, carry on and complete all unfinished work of said Licensed Master Plumber for which plans have been filed and approved provided that such work is supervised by a duly Licensed Master Plumber and is completed within one year from the date of death. Such legal representative shall submit an affidavit to the Commissioner of Health, setting forth all the particulars, and if satisfactory, the Commissioner of Health may authorize the retention of the metal plate without any further fee for renewal or otherwise until the completion of said work but not for a greater period than one year as hereinbefore stated.

L.M.P.9.3 All plumbing work shall be installed in accordance with the rules and regulations of the Administrative Code and the Health Code of the City of New York and shall be performed by a licensed and registered Master Plumber or, under his supervision, by his employees or by the employees of the corporation or partnership with which such plumber is associated in conformity with L.M.P.9.1(d).

L.M.P.9.4 A licensed Master Plumber to whom a metal plate has been issued and any corporation or partnership with which he is associated shall not loan, rent, sell or transfer the privileges of such metal plate to any person for the performance of plumbing work.

Reg. L.M.P.10 Revocation, suspension or cancellation of license.

L.M.P.10.1 The Commissioner of Health may at any time revoke, suspend or cancel the license of a Master Plumber for cause, after notice and hearing to the licensee. A Licensed Master Plumber, upon receiving notice that his license and metal plate has been revoked or suspended, shall immediately surrender to the Commissioner of Health his license and metal plate.

Reg. L.M.P.11 Additional regulations.

L.M.P.11.1 The Commissioner of Health and the City Civil Service Commission may prescribe additional regulations governing the examination and conduct of the trade, business or calling of registered and Licensed Master Plumbers. Said regulations shall be separate and distinct from these regulations, but shall in no wise conflict therewith.

Reg. L.M.P.12 Enactment and amendment of regulations.

L.M.P. 12.1 These regulations and all amendments thereto shall not become effective until public notice thereof shall have been given in the City Record for not less than three days and a public hearing held thereon.

RULES FOR THE EXAMINATION, LICENSING AND

PROCEDURE RELATING TO MOTION PICTURE

THEATRE MATRONS

Rule 1 Application.

An applicant for examination for the license of a Motion Picture Theatre Matron shall, before being examined, file with the Commissioner of Health an application on such forms as may be prescribed and shall furnish such information as may be required. All applications shall be filled out in the handwriting of the applicant and must be accompanied by two photographs of the applicant, not to exceed 1 1/2 inches square.

Rule 2 Qualifications.

Every applicant for a license shall be at least 21 years old.

Rule 3 Examinations.

The examination of the applicant shall consist of an oral interview and/or written examination relating to the statements furnished in the application and shall include a tuberculin skin test. A chest X-ray examination to determine that the applicant is free from tuberculosis in a communicable form shall be required in cases of a positive skin test.

Rule 4 Licenses: Duration-Revocation.

Licenses shall be issued for a period of not more than three (3) years and shall be deemed revoked at the expiration date thereof unless renewed. Licenses may be revoked and/or shall be surrendered to the Commissioner of Health for cause or upon such other grounds as the Commissioner of Health may deem proper.

Rule 5 Fees.

The fee for the license of motion picture theatre matron together with identification badge shall be two ($2.00) dollars. The license shall at all times be displayed in the cashier's booth of the motion picture theatre where and while the matron is on duty.

Rule 6 Identification.

All matrons while on duty in a theatre shall wear a white uniform and shall display on the left breast thereof the licensed matron's identification badge issued by the Commissioner of Health.

Notes:

The rules for the examination, licensing and procedure relating to motion picture theatre matrons were adopted by resolution on March 8, 1943, filed with the City Clerk on March

10, 1943, pursuant to Administrative Code §B32-30.0 which provides as follows:

§B32-30. Licensed matrons, fee--a. Each theatre licensed under the provisions of this article shall provide at least one matron who shall be in attendance at all times when such unaccompanied children are present.

b. Each such matron shall be licensed by the Department of Health which shall furnish appropriate means of identification which shall be worn conspicuously while such matron is in attendance.

c. Each applicant for such license shall qualify by such physical or other examinations as the Commissioner of

Health shall prescribe, as relevant to the functions to be performed by such matron.

d. The fee for such license shall be two dollars and shall be paid to the Department of Health.

e. Any person qualified as a school teacher on any existing civil service list, or any registered nurse shall be entitled to such matron's license and no fee shall be required of her."

REGULATIONS GOVERNING THE BUSINESS OF

SUPPLYING INHALATION THERAPY SERVICE

Reg. 1 Application for a Purveyor's License.

(a) Application for a purveyor's license to conduct the business of supplying inhalation therapy service as provided in section 561-3.0 of the Administrative Code of the City of New York, shall be made by the owner on forms furnished by the Department of Health.

(b) In the application the purveyor shall state the address of the principal place of business and, if the purveyor conducts any branch office or place of business, the address or addresses thereof, together with the permit number and date of issuance to the purveyor of the Fire Department permit to store combustibles and dangerous materials at each of said premises where such materials are stored.

Reg. 2 License.

(a) The license shall be issued by the Commissioner of Health for a particular individual, firm or corporation and for the designated principal place of business and branch offices or places of business mentioned in the license and shall not be valid for use by any other person or at any place other than that for which issued, and any transfer as to person or place shall forthwith revoke and terminate such license.

(b) The license shall be conspicuously displayed on the premises designated therein as the principal place of business and a certification of such license, issued by the Department of Health shall be conspicuously displayed at each branch office designated on the license.

Reg. 3 Supervising Technicians.

(a) Every purveyor shall have at least one supervising technician at each place of business from which inhalation therapy equipment is supplied or distributed, who shall be available at all times.

(b) The supervising technician shall be the technical supervisor or director of the inhalation therapy service of such purveyor and he shall supervise the technicians who operate the inhalation therapy equipment of such purveyor or for such purveyor. The supervising technician shall be in charge of the proper operation and servicing of the inhalation therapy equipment.

(c) It shall be the duty of the purveyor to file with the Commissioner of Health within 48 hours after the employment of a supervising technician, a notice of such employment giving the full name and address of the supervising technician, his current certificate of competency number, and the date of commencement of employment. A similar notice of termination of employment shall likewise be filed by the purveyor within 48 hours after the termination of employment of a supervising technician.

Reg. 4 Technicians.

(a) Every purveyor shall employ as many technicians as may be necessary to properly operate the inhalation therapy equipment of such purveyor.

(b) No technician shall operate inhalation therapy equipment of a purveyor or for a purveyor except under the general supervision of a supervising technician of such purveyor.

Reg. 4A

Where purveyors' licenses or supervising technicians' or technicians' certificates of competency have been revoked for cause by the Commissioner of Health, such licenses, supervising technicians' or technicians' certificates of competency shall be surrendered forthwith to the Commissioner of Health by the holders thereof.

Reg. 5 Gas Cylinders and Storage Thereof.

(a) No cylinder containing gas shall be received or used for inhalation therapy service unless it complies with the following:

1. It conforms with the standards and specifications of the Interstate Commerce Commission applicable to such cylinders.

2. It shall be conspicuously marked with the chemical name of the gas in lettering having a height not less than one twenty-fifth (1/25) of the diameter of the cylinders and a minimum height of one-eighth (1/8) inch. Whenever practicable the name of the gas shall appear on the shoulder of the cylinder. It shall be legibly marked with the name and place of business of the manufacturer. All such markings shall be by means of stenciling, stamping or labeling, and of as permanent a nature as practical.

3. On and after January 1, 1945, the upper portion, preferably the shoulder of the cylinder, is painted with the distinguishing color to correspond with the gas contained as herein indicated:

[See tabular material in printed version]

4. (a) In the case of oxygen, it is of the high pressure type with a capacity of at least 220 cubic feet or 6,000 liters, at 2,000 pounds per square inch gauge pressure and 70 degrees Fahrenheit, or in the case of half size cylinders, 110 cubic feet at 2,000 pounds per square inch gauge pressure and 70 degrees, Fahrenheit. The provisions of this paragraph shall not become effective until January 1, 1947, but during the period until such effective date, no cylinder with less than 1,800 pounds per square inch gauge pressure shall be supplied. The limitations as to sizes of cylinders of oxygen permitted do not apply to the use of oxygen in cases of emergencies, or for first-aid resuscitation, or for use by ambulatory patients.

(b) The gas contained in a cylinder furnished or used for inhalation therapy shall contain not less than 20 percent of oxygen in the case of helium-oxygen mixtures and not less than 90 percent oxygen in the case of carbon dioxide-oxygen mixtures. Cylinders with mixtures of gases shall be labeled to show the proportion of each gas present in terms of percent by volume.

(c) Every cylinder of carbon dioxide or helium, kept, stored or used by a purveyor, shall comply with the requirements contained in subdivision (a) and on and after January 1, 1945, the upper portion, preferably the shoulder of such cylinders, shall be painted with the distinguished color grey in the case of carbon dioxide and brown in the case of helium gas.

(d) All gases furnished or used in inhalation therapy must comply with the United States Pharmacopoeia standards of purity where such standards exist and where a mixture of gases is used each component of such mixtures must comply with said standards.

(e) Adequate space, which shall be clean, dry and away from hot radiators, hot steam pipes, the sun and other sources of heat, shall be provided and used for the storage of cylinders.

(f) Cylinders shall be properly labeled giving the approximate gas contents, and empty cylinders shall be stored separately from full or partly full cylinders.

(g) The valve on every cylinder of a capacity over 50 cubic feet of gas, except when in use, shall be kept covered with a cylinder valve protective cap.

(h) A strict compliance with all fire laws, regulations and ordinances governing the storage of gases or combustible and dangerous materials shall be maintained at all times.

Reg. 6 Regulators.

(a) Every cylinder or group of cylinders of gas, when made ready for use for inhalation therapy service, shall have attached thereto an accurate pressure reducing and regulating mechanism, calibrated to measure flow of gas in liters per minute and shall be equipped with a high pressure gauge to show pressure in the cylinder or group of cylinders.

(b) Before use on each case the regulating mechanism shall be tested for accurate working conditions at the rates of 5 and 10 liters per minute by recognized methods for testing gas flow. The flow meter shall not have an error of more than 10 percent at any of said points and the indicator shall return to zero when the cylinder valve is completely closed.

(c) The flow meter shall be calibrated for the particular gas for which it is to be used.

(d) Regulators, when not in use, shall be protected against dust entering the intake and shall be stored in clean closed cabinets or a satisfactory dust protecting substitute.

(e) Tests for leaks in the regulator shall be made and any leaks found shall be repaired.

(f) A regulating mechanism that has been used on a cylinder of pure carbon dioxide or helium shall not be used on a cylinder containing pure oxygen or mixtures of oxygen with helium or carbon dioxide.

Reg. 7 Tents: Sanitary Condition and Testing.

(a) All tents, that is the cabinet (cooling unit) and the canopy, used for inhalation therapy service shall be maintained in a clean, sanitary condition and in good repair.

(b) No electrical apparatus or appliance used for supplying inhalation therapy service shall be employed unless they have been submitted for examination and a written approval has been obtained from the Commissioner of the Department of Water Supply, Gas and Electricity, as far as the electrical features are concerned.

(c) The cabinet of every motor driven tent, after each use and at least once a month while not in use, shall be checked for:

1. motor failure,

2. temperature control,

3. drainage, if ice is used,

4. leakage of gas by recognized tests, and

5. obstructions which inhibit the free passage of circulation of tent atmosphere.

(d) The cabinet of every thermal tent before being delivered for use shall be checked for drainage if ice is used, for leakage of gas and for any obstruction in the thermal circulating system.

(e) No equipment shall be used unless it is in good condition and capable of maintaining continuously in the closed canopy 45 percent oxygen concentration at a flow of 12 liters per minute.

(f) The equipment shall be tested at the place where it is being installed following installation and prior to the departure of the technician to determine whether it does maintain such oxygen concentration in the closed canopy as has been prescribed for the patient.

Reg. 8 Tents When in Use, Inspections and Charts.

(a) Every tent when in use shall be inspected and checked by a technician of the purveyor to determine the oxygen concentration, temperature and whether the tent is functioning properly, at least twice each day or more often, if necessary.

(b) A record shall be kept on a chart, attached to or near the patient's bed, upon which the technician on each visit or inspection shall enter the date and time of the visit or inspection, the temperature, the liter flow, the oxygen concentration, and such other information as may be necessary, and append thereto his signature or initials.

(c) Cylinders of gas must be securely strapped or supported so that they cannot be accidentally knocked over.

(d) Immediately before use, cylinder valves shall be opened slightly until gas escapes and then closed but this shall not be done in the patient's room.

(e) The ice used in a cooling cabinet shall be inserted in chunks of such size as to maintain proper temperature and circulation of atmosphere.

Reg. 9 Catheters and Masks in General.

(a) All catheters and masks shall be kept in a clean, sanitary condition and in good repair.

(b) When a catheter is used by a patient, the oxygen shall be required to pass or flow through an insufflation bottle or humidifier, unless otherwise ordered by the attending physician.

(c) Every catheter when in continuous use by a patient shall, after removal, be inspected, cleaned and checked by a technician or physician to determine proper functioning at least twice during each 24 hours.

(d) Every mask shall be inspected to determine proper functioning whenever a new cylinder of gas is attached.

(e) Cylinders of gas must be securely strapped or supported so that they cannot be accidentally knocked over.

Reg. 10 Warnings Against Fire Hazards.

(a) Every tent, catheter or mask for inhalation therapy service shall be equipped at the time of delivery with a set of instructions warning against possible fire hazards and the technician shall call attention to these instructions.

(b) Signs, warning against fire hazards, shall be conspicuously displayed in the patient's room and on the door leading to the patient's room. Such signs shall have a white background and shall clearly and legibly bear in red letters the following:

Caution

No Smoking No Matches No Sparks No Open Flames No Candles No Oil Grease No Other Inflammable Materials No Electric Pads, Electric Call Bells or Other Electrical Equipment

(c) In addition to the aforesaid, the technician shall verbally warn the patient, nurse, members of the household and

others attending the patient, against smoking and all other possible fire hazards.

Reg. 11 Cleaning and Sterilization of Equipment.

(a) Adequate space, preferably a separate room, shall be provided for the cleaning and sterilization of inhalation therapy equipment. The floor of such space or room shall be constructed of smooth cement or tile laid in cement or other hard non-absorbent water-tight material.

(b) After the termination of each case the tent, both cabinet and canopy, shall be washed with soap and water both inside and outside, and then the canopy either rubbed down with 70 percent alcohol or dipped in a solution of not less than 1:1,000 mercury bichloride for five minutes and washed with water or sterilized by any other satisfactory method.

(c) After the termination of each case the catheter used shall be cleaned and sterilized. The terminal inch of the catheter shall be examined as to whether any of the small holes are plugged. The catheter after such sterilization and examination shall be placed in a sealed container and delivered in such sealed container to the next patient.

(d) After the termination of each case the masks used shall be scrubbed thoroughly with soap and water and then either boiled in water, or immersed or washed in a 70 percent alcohol solution or other effective sterilizing agent.

Reg. 12 Maintenance of Premises and Equipment.

(a) The premises occupied by a purveyor shall be maintained in a clean, sanitary condition.

(b) All equipment used in inhalation therapy service shall be maintained in a clean, sanitary condition and in good working order.

(c) Equipment in usable condition shall be stored separately from unclean or defective equipment.

(d) All equipment returned to the premises, following each use, shall be thoroughly examined for leakage and other defects immediately after cleaning.

Reg. 13 Apprenticeship; Apprentice Certificate.

(a) No person employed by a purveyor, unless accompanied by a technician or supervising technician, shall install, operate or service or assist in installing, operating or servicing of inhalation therapy equipment for a patient.

(b) No person shall work and no employer shall engage, allow or permit to work as an apprentice to a supervising technician or technician unless he is the holder of an apprentice certificate. Before an apprentice is engaged an application for an apprentice certificate signed by the apprentice and countersigned by the employer must be filed by the employer with the Department of Health. Such apprentice certificate shall be valid for one (1) year from date of issuance unless employment is sooner terminated or the certificate is otherwise revoked by the Commissioner of Health.

Reg. 14 Records to be Kept by the Purveyor.

The purveyor shall keep a record of all gas purchased, giving dates, amounts, type of gas, cylinder numbers and person from whom purchased, and he shall also keep a record of each case in which inhalation therapy service was supplied, giving the name of the patient, the place where the service was rendered, the name and address of the physician prescribing the services, the type of equipment, the date and time when service commenced and when service terminated, the amount and type of gas used with the dates of the commencement of each cylinder of gas, and the name of the technician or supervising technician in direct charge of installation of equipment for each case. Such records shall be kept for a period of three years and shall be open to inspection by any authorized representative of the Department of Health.

ADDITIONAL REGULATIONS GOVERNING THE

EXAMINATION AND ISSUANCE OF CERTIFICATES OF

COMPETENCY FOR TECHNICIANS AND SUPERVISING

TECHNICIANS IN INHALATION THERAPY SERVICE

Reg. 20 Applications for Certificates of Competency.

(a) Persons desiring to obtain from the Commissioner of Health a certificate of competency as a technician or as a supervising technician in inhalation therapy service shall apply for the necessary examination by filing with the Department of Health, an application on such forms as may be prescribed, and furnishing such information as to character, education, previous employment, training and fitness as may be required. Applications shall be filled out in the handwriting of the applicant and shall be accompanied by two photographs of the applicant, not to exceed one and one-half inches square. No false or misleading statement shall be made in any application, affidavit or other paper filed with the Commissioner of Health.

(b) Applications shall be received during regular office hours at the office of the Department of Health, 125 Worth Street, Manhattan.

Reg. 21 Qualifications for Certificates of Competency.

(a) **Technicians.** Applicants for a certificate of competency as a technician shall be thoroughly proficient in reading and writing the English language and shall have had not less than two years attendance at a secondary school or its equivalent, one year of which shall have included instructions in physics, chemistry or general science, or the equivalent. In addition thereto, the applicant shall have had not less than three months experience as an apprentice or experience equivalent thereto.

(b) Supervising technicians. Applicants for a certificate of competency as a supervising technician shall have the same educational qualifications as required for a technician and in addition thereto, shall have had not less than two years' experience as a technician actually engaged in inhalation therapy service.

A person who has a current certification for respiratory therapy technician issued by the American Association for Respiratory Therapy or one who is registered as a respiratory therapist by the American Association for Respiratory Therapy shall be deemed qualified as a supervising technician and shall be issued a certificate of competency as a supervising technician upon filing the appropriate application without being required to take a written examination therefor.

Reg. 22 Examinations for Certificates of Competency.

(a) Examination for the issuance of certificates, or competency as technician or supervising technician, shall be designed to determine the merit and fitness of applicants and shall include a written test, a practical test and such inquiry into applicant's reputation, character, responsibility and past experience as the Commissioner of Health may require.

(b) Examinations shall be conducted on behalf of the Commissioner of Health by a departmental board consisting of at least three employees of the Department of Health designated by the Commissioner. Said Board shall be known as the "Board of Inhalation Therapy."

(c) Examination shall be conducted at least once each year.

Reg. 23 Waiver of Educational Qualifications and Examination.

Upon submission of satisfactory proof by an applicant that he has been engaged in inhalation therapy service prior to October 23, 1943, the educational qualifications hereinbefore mentioned and the examination may be waived (1) for a certificate of competency as a technician, if the applicant has had one year's experience as a technician in inhalation therapy service prior to said date, and (2) for a certificate of competency as a supervising technician, if the applicant has had five years' experience in inhalation therapy service prior to said date. Such proof must be submitted in an application for the respective certificate of competency not later than May 15, 1944, except that in a case of a person in the armed services of the United States such proof may be submitted in an application for the respective certificate of competency within one year following honorable discharge from such services.

Reg. 24 Certificate of Competency Regulated.

(a) The Commissioner of Health shall issue a certificate of competency as a technician or supervising technician in inhalation therapy service to those persons who have qualified following an examination for the respective certificate, and to those persons who have qualified under Regulation 23.

(b) A certificate of competency as a technician or supervising technician shall, except for good cause, be renewed each year without further examination. Where a person has failed to apply for renewal of his certificate of competency for two successive years his right to such certificate shall terminate and he shall be required to qualify again before a new certificate is issued.

(c) Each supervising technician and each technician, during the performance of his duties as such, shall carry his certificate or renewal certificate on his person and shall display same on demand.

Reg. 25 Effective Date.

These regulations shall take effect January 1, 1944, except as otherwise provided in paragraphs 3 and 4 of subdivision (a) of Regulation 5 and in subdivision (c) of Regulation 5.

Notes:

The regulations governing the business of supplying inhalation therapy service (Regs. 1-14) and the additional regulations governing the examination and issuance of certificates of competency for technicians and supervising technicians in inhalation therapy service (Regs. 20-25) were adopted by resolution on December 24, 1943, filed with the City Clerk on December 24, 1943, pursuant to Administrative Code §561-3.0(e). Regulation 23 was amended by resolution on April 5, 1944, filed with the City Clerk on April 6, 1944. Regulation 14 was amended by resolution on November 28, 1944, filed with the City Clerk on December 5, 1944. Regulation 4A was adopted by resolution on June 7, 1945, filed with the City Clerk on June 15, 1945. Regulation 5(a)(2) was amended by resolution on December 29, 1945, filed with the City Clerk on January 2, 1946. Regulation 5(a)(4) was amended by resolution on January 27, 1947, filed with the City Clerk on January 30, 1947.

Resolutions

Resolution Dated: July 5, 1962

Whereas, the Board of Health has taken and filed among its records numerous reports from the Department of Health that the water lines in the Ramblersville community in the Borough of Queens, bounded roughly by 160th Avenue, Hawtree Creek Basin, Russell Street, 99th Street, and the Transit Authority right-of-way, are in a deteriorated and rotted condition and that the same leak at main points, and

Whereas, such reports disclose that long sections of such deteriorated, leaky water lines are laid along the bottom of creeks whose waters are highly polluted and that such polluted waters are in direct contact with the aforesaid water lines at points of leakage, and

Whereas, such reports further indicate that such water lines are also in direct contact with sewage on the surface of the ground at points of leakage, and

Whereas, such reports further disclose that the drinking water in said community is grossly contaminated, and

Whereas, such reports further indicate that investigations conducted by the Department of Water Supply, Gas and Electricity and the Department of Health have revealed that from time-to-time that the pressure in such lines at times is negative, with the resultant strong possibility of widespread back-siphonage of the polluted water into the drinking water supply of the people residing in said community of Ramblersville, and

Whereas, the danger exists that because of the negative pressures in the aforesaid water lines in Ramblersville the water supply of Ramblersville and other communities adjacent to said community of Ramblersville may become contaminated and polluted, and

Whereas, the Board of Health regards the aforesaid reports as sufficient proof to authorize the declaration that the said private water lines by reason of the aforesaid defects and circumstances are in a condition and in effect dangerous to life and health of the Ramblersville community and communities adjacent thereto and a public nuisance, and

Whereas, personal service or service pursuant to subdivisions (a) or (b) of §564-21.0 [§17-148] of the Administrative Code of the City of New York of any orders requiring the abatement of such nuisance and such condition in effect dangerous to life and health upon each of the persons, who, pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City of New York, has a duty or liability to abate such nuisance and condition, would result in delay prejudicial to the public health, welfare and safety, now, therefore, be it

Resolved, that the Board of Health is of the opinion that the said water lines are in a condition and in effect dangerous to life and health of the Ramblersville community and other communities adjacent thereto and the said water lines be and are hereby declared a public nuisance and in a condition in effect dangerous to life and health, and be it further

Resolved, that the Board of Health hereby declares that the aforesaid nuisance and condition is widespread throughout the area described above, and be it further

Resolved, that all persons who, pursuant to the provisions of Chapter 22 of the Administrative Code of the City of New York and such other chapters, sections, rules and laws are as applicable thereto, have a duty or a liability to abate said nuisance and condition in effect dangerous to life and health are hereby ordered forthwith to commence to abate said nuisance and condition by replacing and laying such water lines at such depth as will prevent freezing and other defects in the said water lines and by otherwise protecting the replaced water lines in such manner as to prevent damage thereto by freezing and other hazards, and be it further

Resolved, that in the event that such persons or any of them shall fail to comply with this order within three days after service thereof pursuant to subdivision (c) of §564-21.0 [§17-148] of the Administrative Code of The City of New York, the Department of Health be and it is hereby authorized and directed to take all necessary steps to secure the abatement of said nuisance and condition in effect dangerous to life and health.

George James, M.D., Acting Chairman, Board of Health

A true copy. jy3.6

William J. McCleary, Jr., Secretary

Resolution Dated: January 21, 1964

At a meeting of the Board of Health of the Department of Health held January 21, 1964, the following resolution

was adopted:

Whereas, the Board of Health has taken and filed among its records reports from the Department of Health indicating that there are some 43,000 residence buildings in New York City which are in such poor structural condition as to readily provide rat harborages throughout such buildings, and Whereas, such reports disclose that in addition to such structural condition many such buildings lack adequate facilities for handling and removing of garbage, refuse and waste material and as a result garbage, refuse and waste material does in fact accumulate therein, and

Whereas, such reports further indicate that such conditions are conducive to and result in rat infestation in such buildings, and

Whereas, rats are a menace to public health in that they cause the spread of disease, attack children and cause serious injury to them, start fires and create insanitary conditions, and

Whereas, such reports indicate that such buildings are; located and that such conditions exist throughout the City, and

Whereas, the Board of Health regards the aforesaid reports as sufficient proof to authorize the declaration that such rat-infested buildings by reason of the aforesaid circumstances are in a condition and in effect dangerous to life and health and constitute a public nuisance, and

Whereas, personal service or service pursuant to subdivisions (a) or (b) of §564-21.0 [§17-148] of the Administrative Code of The City of New York of orders requiring the abatement of such nuisance and conditions in effect dangerous to life and health upon each of the persons who, pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City of New York, has a duty or liability to abate such nuisance and conditions, would result in delay prejudicial to the public health, welfare and safety, now, therefore, be it

Resolved, that the Board of Health is of the opinion that the said rat-infested buildings are in a condition in effect dangerous to life and health and constitute a public nuisance and such buildings be and they hereby are declared, in each instance, a public nuisance and in a condition in effect dangerous to life and health, and be it further

Resolved, that the Board of Health hereby declares that the aforesaid nuisance and conditions are widespread throughout the entire City, and be it further

Resolved, that all persons who, pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City of New York and such other chapters, sections, laws and rules as are applicable thereto, have the duty or liability to abate such nuisance and conditions in effect dangerous to life and health, are hereby ordered forthwith to abate such nuisance and conditions by:

1. Applying rodenticides in those areas of the buildings which are rat harborages, in a manner which will effectively exterminate rats in such buildings, and

2. By promptly removing garbage, refuse and waste material from all public parts of the building and by keeping such building free from garbage, refuse and waste material at all times, and

3. By sealing all holes in floors, walls and ceilings throughout the entire building and keeping such floors, walls and ceilings free from holes which permit rat infestation, and be it further

Resolved, that in the event that such persons or any of them shall fail to comply with this order within five (5) days after service thereof pursuant to subdivision (c) of §564-21.0 [§17-148] of the Administrative Code of the City of New York, the Department of Health be and is hereby authorized and directed to take all necessary steps to secure the abatement of said nuisance and conditions in effect dangerous to life and health.

A true copy. j27.29

George James, M.D., Chairman, Board of Health

William J. McCleary, Jr., Secretary

Resolution Dated: January 29, 1965

At a meeting of the Board of Health of the Department of Health held January 29, 1965, the following resolution was adopted:

Whereas, the Board of Health has taken and filed among its records reports that there are dwellings in New York City which are deteriorated and

1. Which (a) have been seriously neglected by the owner or (b) have a history of repeated violations of the New York City Health Code or the Multiple Dwelling Law and/or other laws, statutes, ordinances or regulations relating to housing maintenance, and

2. Which (a) have no running water or (b) have no effective sewage disposal facilities or (c) have no electricity or (d) have no heat following a history of repeated violations of the heating requirements of the New York City Health Code or of other applicable laws, statutes, ordinances or regulations or (e) which have no heat because the boiler, furnace or distribution facilities thereof are so defective as to render the heating system inoperative or (f) contain other conditions which, in the opinion of the Department of Health, present an immediate danger to the life and health and of the occupants thereof or the occupants of adjacent buildings, and

Whereas, such reports indicate that such dwellings are located in numerous areas throughout the City, and

Whereas, the Board of Health regards the aforesaid reports as sufficient proof to authorize the declaration that such dwellings by reason of any of the circumstances specified in paragraph "1" above or any combination thereof together with any of the conditions specified in paragraph "2" above or any combination thereof are in a condition and in effect dangerous to life and health and constitute a public nuisance, and

Whereas, personal service or service pursuant to subdivisions (a) or (b) of §564-21.0 [§17-148] of the Administrative Code of the City of New York of orders requiting the abatement of such nuisance and conditions in effect dangerous to life and health upon each of the persons who, pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City of New York, has a duty or liability to abate such nuisance and conditions, would result in imminent peril and delay prejudicial to the public health, welfare and safety, now, therefore, be it

Resolved, that the Board of Health is of the opinion that such dwellings are in a condition and in effect dangerous to life and health and constitute a public nuisance and such dwellings be and they hereby are declared in each instance a public nuisance and in a condition and in effect dangerous to life and health, and be it further

Resolved, that all persons who, pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City of New York and such other chapters, sections, laws or rules as are applicable thereto, have the duty or liability to abate such nuisance and conditions in effect dangerous to life and health, are hereby ordered to abate such nuisance and conditions forthwith by causing running water, electricity, adequate sewage disposal facilities or heat, as the case may be, to be supplied to such dwellings, and be it further

Resolved, that in the event that such persons or any of them shall fail to take all necessary steps to comply with this order immediately, the Department of Health be and it is hereby authorized to take forthwith all necessary measures to secure the abatement of said nuisance and conditions in effect dangerous to life and health.

A true copy.

William J. McCleary, Jr., Secretary

Resolution Dated: March 19, 1965

At a meeting of the Board of Health of the Department of Health held March 19, 1965, the following resolution was adopted:

Whereas, the Board of Health has taken and filed among its records reports from the Department of Health that there are vacant lots in New York City in which rats are present, and

Whereas, such reports indicate further that such vacant lots when located between two buildings which are rat infested become passageways for rats traveling from one building to another or become places of refuge when rat-infested buildings are either demolished or subject to rat extermination activities and that such lots even when they are at a distance from a rat-infested area may serve as a breeding place and harborage for rats, and

Whereas, rats wander from such lots into nearby areas in search of food or invade buildings adjoining such lots, and

Whereas, rats are a menace to public health in that they cause the spread of disease, attack and cause serious injury to children, start fires and create insanitary conditions, and

Whereas, such reports indicate that such vacant lots are located in numerous areas throughout the City, and

Whereas, the Board of Health regards the aforesaid reports as sufficient proof to authorize the declaration that such vacant lots by reason of the aforesaid circumstances are in a condition and in effect dangerous to life and health and constitute a public nuisance, and

Whereas, personal service or service pursuant to subdivisions (a) or (b) of §564-21.0 [§17-148] of the Administrative Code of the City of New York of orders requiring the abatement of such nuisance and conditions in effect dangerous to life and health upon each of the persons who, pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City of New York, has a duty or liability to abate such nuisance and conditions, would result in delay prejudicial to the public health, welfare and safety, now, therefore, be it

Resolved, that the Board of Health is of the opinion that the said vacant lots are in a condition in effect dangerous to life and health and constitute a public nuisance and such vacant lots be and they hereby are declared, in each instance, a public nuisance and in a condition in effect dangerous to life and health, and be it further

Resolved, that the Board of Health hereby declares that such vacant lots are located in numerous areas throughout the entire City, and be it further

Resolved, that all persons who, pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of The City of New York and such other chapters, sections, laws and rules as are applicable thereto, have the duty or liability to abate such nuisance and conditions in effect dangerous to life and health, are hereby ordered to abate such nuisance and conditions by:

1. Applying rodenticides in a manner which will effectively exterminate rats in such vacant lots, and

2. By promptly removing garbage, refuse and waste material therefrom and by keeping such vacant lots free from garbage, refuse and waste material at all times, and be it further

Resolved, that in the event that such persons or any of them shall fail to comply with this order within five days after service thereof pursuant to subdivision c of Section 564-21.0 [§17-148] of the Administrative Code of The City of New York, the Department of Health be and it is hereby authorized to take all necessary steps to secure the abatement

of said nuisance and conditions in effect dangerous to life and health.

A true copy. m22,24

William J. McCleary, Jr., Secretary

Resolution Dated: October 13, 1965

At a meeting of the Board of Health of the Department of Health held October 13, 1965, the following resolution was adopted:

Whereas, the Board of Health has taken and filed among its records reports that in numerous areas throughout the City there are private sewers which are defective or broken or in a state of disrepair and from which raw sewage escapes onto the surrounding ground surface, and

Whereas, there are families with children living in many of the aforementioned areas who, in the course of their play and other daily activity, come into direct contact with the exposed sewage, and

Whereas, raw sewage contains pathogenic organisms and intestinal bacteria, which are not in themselves pathogenic, but which by their presence in large numbers may cause illness, and

Whereas, exposed sewage emits noxious odors to the detriment and annoyance of persons in the vicinity thereof, and

Whereas, there is always present the danger that escaping raw sewage may contaminate the water supply in the vicinity of such sewage, and

Whereas, the aforementioned reports indicate further that the number of private sewers discharging raw sewage is increasing and will continue to increase, and

Whereas, the Board of Health regards the aforesaid reports as sufficient proof to authorize the declaration that said private sewers are in a condition and in effect dangerous to life and health and constitute a public nuisance, and

Whereas, personal service or service pursuant to subdivisions (a) or (b) of §564-21.0 [§17-148] of the Administrative Code of the City of New York of orders requiring the abatement of such nuisance and conditions in effect dangerous to life and health upon each of the persons, who pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City of New York, has a duty or liability to abate such nuisance and conditions, would result in imminent peril and delay prejudicial to the public health, welfare, and safety, now, therefore, be it

Resolved, that the Board of Health is of the opinion that such private sewers are in a condition and in effect dangerous to life and health and constitute a public nuisance and such sewers be and they hereby are declared to be in each instance in a condition and in effect dangerous to life and health and a public nuisance, and be it further

Resolved, that all persons who, pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City of New York and such other chapters, sections, laws or rules as are applicable thereto, have the duty or liability to abate such nuisance and conditions in effect dangerous to life and health, are hereby ordered to abate such nuisance and conditions in effect dangerous to life and health by repairing or replacing such sewers in a manner which will prevent the escape of raw sewage therefrom and which will permit the proper disposition of such sewage, and be it further

Resolved, that in the event that such persons or any of them shall fail to comply with this order within five days after service thereof pursuant to subdivision (c) of §564-21.0 [§17-148] of the Administrative Code of the City of New York, the Department of Health be and it is hereby authorized and directed to take all necessary steps to secure the

abatement of said nuisances and conditions in effect dangerous to life and health.

A true copy. o18,20

William J. McCleary, Jr., Secretary

Resolution Dated: April 16, 1970

At a meeting of the Board of Health of the Department of Health held April 16, 1970, the following resolution was adopted:

Whereas, the Board of Health has taken and filed among its records reports that there are dwellings in New York City whose interior walls, ceilings, doors, baseboards, window sills or window frames have paint containing more than one percent of metallic lead-based on the non-volatile content of the paint, and

Whereas, there are persons residing at such dwellings who have blood lead levels of 0.06 milligrams percent or higher, and

Whereas, such reports indicate that such dwellings are located in numerous areas throughout the Boroughs of Manhattan, The Bronx, Brooklyn and Queens, and

Whereas, the Board of Health regards the aforesaid reports as sufficient proof to authorize the declaration that such dwellings by reason of the aforesaid circumstances are in a condition and in effect dangerous to life and health and constitute a public nuisance, and

Whereas, the Board of Health by resolution adopted on January 15, 1970 amended subsection (d) of §173.13 of the New York City Health Code so as to require the Department of Health to order the removal of the paint or the covering of such surfaces with such materials and by such methods as the Department may direct to protect the life and health of the occupants of such dwellings, and

Whereas, such amendment further required said Department to request the Housing Development Administration to execute such order pursuant to the provisions of §564-20.0 [§17-145] of the Administrative Code in the event that the owner or other person having the duty or liability to comply with such order fails to comply therewith within five days after service thereof in accordance with the provisions of §564-21.0 [§17-148] of the Administrative Code, and

Whereas, personal service or service pursuant to subdivisions (a) or (b) of §564-21.0 [§17-148] of the Administrative Code of the City of New York of orders under subsection (d) of §173.13 of the New York City Health Code on each of the persons who has a duty or liability to comply with such order would result in imminent period and delay prejudicial to the public health, welfare and safety, now, therefore, be it

Resolved, that the Board of Health is of the opinion that such dwellings are in condition and in effect dangerous to life and health and constitute a public nuisance and such dwellings be and they hereby are declared in each instance a public nuisance and in a condition and in effect dangerous to life and health, and be it further

Resolved, that all persons who have the duty or liability to abate such nuisance and conditions in effect dangerous to life and health, are hereby ordered to abate such nuisance and conditions by removing such paint or recovering such surfaces with such materials and by such methods as shall be specified by the Department of Health in an order served on any such person through the mail, and be it further

Resolved, that in the event that such persons or any of them shall fail to take all necessary steps to comply with this order, the Department of Health be and it is hereby authorized to take all necessary measures under §173.13(d) of the New York City Health Code to secure the abatement of said nuisance and conditions in effect dangerous to life and health.

A true copy. a20

Lorance Hockert, Secretary

Resolution Dated: July 15, 1970

At a meeting of the Board of Health of the Department of Health held July 15, 1970, the following resolution was adopted:

Resolved, that the resolution adopted by the Board of Health on the ninth day of September, nineteen hundred forty-seven and filed with the City Clerk on the nineteenth day of September, nineteen hundred forty-seven be and the same hereby is amended, to read as follows:

Whereas, the Health Department has engaged in a program of having manufacturers design and construct food equipment in a sanitary manner, and

Whereas, equipment manufacturers have demonstrated their willingness to cooperate in this program, and

Whereas, the heavy food equipment manufacturers are not located in The City of New York and the inspection of their equipment would require considerable time of key inspectorial personnel, and

Whereas, manufacturers have consented to undertake any expense which may be involved in having Health Department representatives visit their plants to inspect the equipment for sanitary design and construction before it is placed on the market, therefore, be it

Resolved, that a fee of one hundred dollars ($100) for each day spent traveling to, inspecting at the applicant's plant, and returning to the Department of Health, by a representative of the Department of Health, be charged; plus the estimated travel and lodging expenses of such representative, the entire amount thereof to be deposited in advance with the Department of Health by the applicant for this service. The fee charged for such inspectorial service shall be credited by the Department of Health to the General Fund of the City of New York, and included in its semi-monthly transmission of revenue collections to the Treasurer of the City of New York. Any excess of the deposit for the inspector's actual travel and lodging expenses shall be returned to the applicant.

A true copy.

Lorance Hockert, Secretary

Resolution Dated: October 22, 1970

Whereas, the Board of Health has taken and filed among its records reports that there are buildings in New York City which have been vacated by all legal tenants, and

1. Which have been abandoned or deserted or seriously neglected by the owner, and

2. Which (a) have conditions of deterioration or accumulations of garbage, rubbish or other waste materials conducive to or resulting in rodent or insect infestations or fires or (b) are not sufficiently sewered or drained resulting in flooding conditions or accumulations of stagnant water or liquid wastes or (c) have conditions endangering the safety and health of persons in the vicinity who are attracted and gain access thereto or (d) contain other conditions which, in the opinion of the Department of Health, present an immediate danger to life and health, and

Whereas, such reports indicate that such vacant buildings are located in numerous areas throughout the City, and

Whereas, the Board of Health regards the aforesaid reports as sufficient proof to authorize the declaration that such

vacant buildings by reason of any of the circumstances specified in paragraph 1 above together with any of the conditions specified in paragraph 2 above or any combination thereof are in a condition and in effect dangerous to life and health and constitute a public nuisance, and

Whereas, personal service or service pursuant to subdivision (a) or (b) of §564-21.0 [§17-148] of the Administrative Code of the City of New York of orders requiring the abatement of such nuisance and conditions in effect dangerous to life and health upon each of the persons who, pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City of New York, has a duty or liability to abate such nuisance and conditions, would result in imminent peril and delay prejudicial to the public health, welfare and safety; now, therefore, be it

Resolved, that the Board of Health is of the opinion that such vacant buildings are in a condition and in effect dangerous to life and health and constitute a public nuisance and such vacant buildings be and they hereby are declared in each instance a public nuisance and in a condition and in effect dangerous to life and health; and be it further

Resolved, that all persons who, pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City of New York and such other chapters, sections, laws or rules as are applicable thereto, have the duty or liability to abate such nuisance and conditions in effect dangerous to life and health, are hereby ordered to abate such nuisance and conditions forthwith by: (1) causing all entrances and windows to such buildings to be sealed in accordance with appropriate regulations to effectively prevent unauthorized entry into such buildings; or (2) causing such buildings to be demolished to the ground, the lot leveled to grade and the excess debris resulting from such demolition removed, and be it further

Resolved, that in the event that such persons or any of them shall fail to take all necessary steps to comply with this order immediately, the Department of Health be and it is hereby authorized to take forthwith all necessary measures to secure the abatement of said nuisance and conditions in effect dangerous to life and health.

(As adopted by the Board of Health, October 22, 1970).

A true copy.

Mary C. McLaughlin, M.D., M.P.H., Chairman, Board of Health

Lorance Hockert, Secretary

Resolution Dated: June 24, 1971

Sir-At a meeting of the Board of Health of the Department of Health held June 24, 1971, the following resolution was adopted:

Resolved, that the resolution adopted by the Board of Health on the thirteenth day of October, nineteen hundred sixty-five and filed with the City Clerk on the fourteenth day of October, nineteen hundred sixty-five, relating to private sewers which are defective or broken or in a state of disrepair, be and the same hereby is amended to read as follows:

Whereas, the Board of Health has taken and filed among its records reports that in numerous areas throughout the City there are private sewers which are defective or broken or in a state of disrepair and from which raw sewage escapes onto the surrounding ground surface, and

Whereas, there are families with children living in many of the aforementioned areas who, in the course of their play and other daily activity, come into direct contact with the exposed sewage, and

Whereas, raw sewage contains pathogenic organisms and intestinal bacteria, which are not in themselves pathogenic, but which by their presence in large numbers may cause illness, and

Whereas, exposed sewage emits noxious odors to the detriment and annoyance of persons in the vicinity thereof, and

Whereas, there is always present the danger that escaping raw sewage may contaminate the water supply in the vicinity of such sewage, and

Whereas, the aforementioned reports indicate further that the number of private sewers discharging raw sewage is increasing and will continue to increase, and

Whereas, the Board of Health regards the aforesaid reports as sufficient proof to authorize the declaration that said private sewers are in a condition and in effect dangerous to life and health and constitute a public nuisance, and

Whereas, personal service or service pursuant to subdivisions (a) or (b) of §564-21.0 [§17-148] of the Administrative Code of the City of New York of orders requiring the abatement of such nuisance and conditions in effect dangerous to life and health upon each of the persons, who pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City

of New York, has a duty or liability to abate such nuisance and conditions, would result in imminent peril and delay prejudicial to the public health, welfare, and safety; now, therefore, be it

Resolved, that the Board of Health is of the opinion that such private sewers are in a condition and in effect dangerous to life and health and constitute a public nuisance and such sewers be and they hereby are declared to be in each instance in a condition and in effect dangerous to life and health and a public nuisance, and be it further

Resolved, that all persons who, pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City of New York and such other chapters, sections, laws or rules as are applicable thereto, have the duty or liability to abate such nuisance and conditions in effect dangerous to life and health, are hereby ordered to abate such nuisance and conditions in effect dangerous to life and health by repairing or replacing such sewers in a manner which will prevent the escape of raw sewage therefrom and which will permit the proper disposition of such sewage, and be it further

Resolved, that in the event that such persons or any of them shall fall to comply with this order within two days after service thereof pursuant to subdivision (c) of §564-21.0 [§17-148] of the Administrative Code of The City of New York, the Department of Health be and is hereby authorized and directed to take all necessary steps to secure the abatement of said nuisances and conditions in effect dangerous to life and health.

Resolved further, that this resolution shall take effect immediately.

jy6-8

Lorance Hockert, Secretary

Resolution Dated: April 29, 1972

Whereas, the Board of Health has taken and filed among its records reports from the Department of Health indicating that in numerous areas throughout the City, and especially in the Borough of Richmond, there are obstructed drainage conditions caused by (1) the blockage of water courses and drainage ditches, pipes or channels resulting from the failure to clean them by removing accumulations of garbage, debris, disused materials or other solid waste materials therefrom, or (2) the inadequacy of drainage provided by water courses, ditches, pipes or channels resulting from the failure to repair, reshape or replace them, and

Whereas, during and after periods of rain storm or heavy rainfall such conditions result in the flooding of streets and private residential areas causing physically dangerous and impassable areas for emergency vehicles and equipment,

and

Whereas, during and after periods of rain storm or heavy rainfall such conditions result in the flooding and surcharging of sanitary sewers and private sewage disposal systems causing the discharge and ponding of raw sewage mixed with storm water in the surrounding areas, and

Whereas, there are families with children living in the areas affected by such flooding, discharge of sewage and ponding who, in the course of their daily activity and play, come into direct contact with the exposed raw sewage and are in danger of drowning in the ponding of such storm water mixed with raw sewage, and

Whereas, raw sewage contains pathogenic microorganisms and intestinal bacteria which are not in themselves pathogenic but which by their presence in large numbers may cause illness, and

Whereas, there is always the present danger that the storm water mixed with raw sewage may contaminate the water supply in the vicinity thereof, and

Whereas, the Board of Health regards the aforesaid reports as sufficient proof to authorize the declaration that such obstructed drainage conditions are in effect dangerous to life and health and constitute a public nuisance, and

Whereas, personal service or service pursuant to subdivisions (a) or (b) of §564-21.0 [§17-148] of the Administrative Code of the City of New York, of orders requiring the abatement of such nuisance and conditions in effect dangerous to life and health upon each of the persons, who pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City of New York, has a duty or liability to abate such nuisance and conditions, would result in imminent peril and delay prejudicial to the public health, welfare and safety, now, therefore, be it

Resolved, that the Board of Health is of the opinion that such obstructed and malfunctioning water courses, drainage ditches, pipes or channels are in a condition and in effect dangerous to life and health and constitute a public nuisance and they hereby are declared to be in each instance in a condition and in effect dangerous to life and health and a public nuisance, and be it further

Resolved, that each person who, pursuant to the provisions of Chapter 22 [Chapter 17] of the Administrative Code of the City of New York and such other chapters, sections, laws or rules as are applicable thereto, has the duty or liability to abate such nuisance and conditions in effect dangerous to life and health, is hereby ordered to abate such nuisance and conditions in effect dangerous to life and health by:

1. Cleaning and clearing away any accumulation of garbage, debris, disused material or other solid waste materials blocking or obstructing the flow of storm or other water in such part of such water courses, drainage ditches, pipes or channels as may exist on property owned by him or over which he has management and control, and

2. Repairing, reshaping or replacing such water courses, drainage ditches, pipes or channels which are eroded, corroded or otherwise defective, and be it further

Resolved, that in the event that such persons or any of them shall fail to comply with this order within two days after service thereof pursuant to subdivision (c) of §564-21.0 [§17-148] of the Administrative Code of the City of New York, the Department of Health be and it is hereby authorized and directed to take all necessary steps to secure the abatement of said nuisances and conditions in effect dangerous to life and health.

Resolved further, that this resolution shall take effect immediately.

(As adopted by the Board of Health April 29, 1972)

A true copy. a26-28

Joseph A. Cimino, M.D., M.P.H. Chairman, Board of Health

Marc Weinberger, Acting Secretary

Resolution Dated: October 29, 1981

At a meeting of the Board of Health of the Department of Health held October 29, 1981, the following resolution was adopted:

Whereas, the Board of Health has taken and filed among its records, reports that in numerous areas throughout the City, private property has been found on which is hazardous matter which is stored or disposed of in an unsafe or illegal manner, and

Whereas, there are residential dwellings, children who may come in contact with this matter in the course of their play, aquifers providing public drinking water, and private property in the immediate vicinity of this hazardous matter, and

Whereas, hazardous matter may be toxic, corrosive, easily ignitable, explosive or infectious, and

Whereas, hazardous matter can pose a safety hazard by leading to fire and explosion in the structures in which they are stored, and

Whereas, for the purpose of this resolution illegal storage or disposal of hazardous matter is considered to be that storage or disposal of hazardous matter which is in violation of any Federal, State or local ordinance.

Whereas, the aforementioned reports indicate that the number of incidents of such unsafe or illegal storage or disposal of hazardous matter is of significant proportions and dangerous to life and health, now, therefore be it

Resolved, for the purpose of this resolution, hazardous matter is considered to be all substances defined by §173.01 of the New York City Health Code and any waste or material whether or not in its waste state, listed in the Code of Federal Regulations, 40 CFR-Part 261 §§261.31, 261.32, 261.33(1) and 261.33(f), as presently constituted or as modified in the future, and all polychlorinated biphenyls, and be it further

Resolved, that the Board of Health is of the opinion that such hazardous matter, which in the opinion of the Department is stored or disposed of in an unsafe or illegal manner, is in a condition and in effect dangerous to life and health and constitute a public nuisance as defined by §564-15.0 [§17-142] of the Administrative Code of the City of New York and such hazardous matter be and it hereby is declared to be in each instance in a condition and in effect dangerous to life and health and a public nuisance; and be it further

Resolved, that all persons, who pursuant to Chapter 22 [Chapter 17] of the Administrative Code of the City of New York and such other chapters, sections, laws or rules as are applicable thereto, have the duty or liability to abate such nuisance and conditions in effect dangerous to life and health are hereby ordered to abate such nuisance and conditions in

effect dangerous to life and health, by safely and legally storing said hazardous matter or by safely and legally providing for the removal of such hazardous matter in a manner deemed appropriate by the Department within five days or in a shorter period of time if such nuisance and condition is determined by the Board of Health to constitute an imminent peril, and be it further

Resolved, that in the event that such persons or any of them shall fail to comply with this order after service thereof pursuant to Section 564-21.0 [§17-148] of the Administrative Code of the City of New York, the Department of Health be and it is hereby authorized and directed to take all necessary steps to secure the abatement of said nuisance and conditions in effect dangerous to life and health, and to assess such persons for the costs incurred in securing the

abatement of said nuisances and conditions pursuant to Section 564-22.0 [§17-149] of the Administrative Code of the City of New York.

Resolved further, that this resolution shall take effect immediately.

A true copy.

Patricia J. Caruso, Secretary

Filed with the City Clerk November 3, 1981.

VOLUME 9

STATEMENTS OF BASIS AND PURPOSE

1. Statement of Basis and Purpose in City Record Mar. 23, 1995:

These amendments to the New York City Health Code ("Health Code") are promulgated pursuant to Section 556(d) and 558(c) of the New York City Charter ("the Charter") empowering the Board of Health to prescribe in the Health Code the form and manner in which a registry of births occurring in the City of new York shall be kept and birth certificates filed. Section 17-168 of the Administrative Code of the City of New York ("the Administrative Code") requires the certificate of birth registration to be issued on forms furnished by the Department of health ("the Department").

The proposed amendments to sections 201.05; 207.15 and 207.17 of the Health Code will authorize the Department to implement an "Electronic Birth Certificate" system [EBC] in the City of New York.

New subsections of section 201.05 of the Health Code will require all births occurring at facilities which generally report more than 100 births annually to be reported electronically by computer. Persons responsible for reporting births at facilities with fewer than 100 births per year may apply to the Department for permission to report electronically, or continue to report on paper forms.

The amendments include corrections of references in section 201.05 of the Health Code to reflect present numbering of sections of the Administrative Code and to incorporate recent amendments to the Public Health Law regarding voluntary acknowledgment of paternity.

It is further proposed to amend section 207.15 of the Health Code to permit the Department to permanently preserve the confidential medical report filed with birth certificate records electronically, and to amend section 207.17 to require that vital records, including birth certificates, that are not filed electronically continue to be filed in a manner acceptable to the Department.

The State of New York has already completed large-scale implementation of EBC; development of EBC in New York City is a cooperative effort of the City and State Department of Health.

According to present estimates of cost-effectiveness, only hospitals generally reporting at least one hundred births per year will be required to participate in EBC, which will be fully implemented by January 1, 1997. Until that time, the Department will gradually phase in a few institutions at a time. After that date, all other persons and facilities required to report births pursuant to section 201.03 of the Health Code will either continue to report births on paper forms as they do now or, at their option, may apply to the Department for permission to participate in EBC.

Each EBC participating reporting source will be required to install and maintain specific personal computer hardware. The Department will provide the computer program. Before January 1, 1997, when electronic reporting will be required, the Department will encourage each reporting source implementing EBC to apply to the Department for

software and technical assistance, allowing sufficient time for staff training and addressing any problems which may arise.

EBC will require the hospital to enter by computer the same data, in the same "fields," that are now entered on paper forms. Except for minor changes for which board approval will be requested, there is no change contemplated in the form or content of the birth certificate or confidential medical report, only in the manner, i.e., the means by which persons required to report births shall transmit prescribed reports of births to the Department.

After entry of all data, a certificate will be printed at the facility reporting the birth (so that it may be signed by the physician or other birth attendant), and delivered with other certificates to the Department within the five days presently required by section 201.03 of the Health Code.

The entire certificate-certificate of birth (upper) portion and confidential medical report (lower) portion-will be transmitted on computer diskette to the Department during the initial implementation of EBC. At a later date, the Department plans to eliminate diskette transfers and will require the electronic file to be directly transmitted to the Department via modem over telephone lines. The Department will no longer require the confidential medical report to be printed at facilities participating in EBC.

In summary, printing of the certificate of birth but not the confidential medical report of birth should not disrupt any services provided to the people of this City. With EBC, contents and legal integrity of the certificate will be maintained, with the additional expectation that no information will be lost and processing time will be shortened, resulting in better service by the Department. Principal users of these data at the New York City Department of Health, the New York State Department of Health and the National Center for Health Statistics have been consulted and support a change to EBC. Approximately 12 other jurisdictions, including New York State, currently print only the upper "legal" portion of the birth certificate.

Advantages of an EBC System

1. **Increased productivity.** Both the participating reporting hospitals and the Department of Health will require fewer support resources, since data will be entered only once, by and at the hospital, not at the Department. EBC reporting will eliminate handwritten or manually typed certificates which are inefficient to produce and prone to error. The Department will greatly reduce the time andd resources devoted to manually coding birth certificate data since EBC software will incorporate coding options for hospital staff entering data.

2. **Improved data quality.** The EBC software will automatically check data as it is being entered for internal inconsistencies. Errors would be corrected before data are finally entered and before the birth certificate is printed, resulting in greater accuracy in the certificate itself (a legal record of birth registration) and the confidential medical report (used for public health purposes).

3. **Ease of use.** With only minimal training and support, reporters of births at hospitals will be able to generate birth certificates and facilitate internal data collection for analysis of outcomes or populations served or other purposes.

4. **Rapid processing and assignment of Social Security numbers.** Parents of newborns who have requested Social Security numbers as part of the birth registration process may currently experience delays of up to five months before receiving numbers, as a result of time consuming tasks involved in manual recording, coding and transmission. EBC will reduce the time required for processing numbers by at least two months.

5. **Security.** EBC will assure data confidentiality by means of audit control numbers, passwords for entry into the sytem, and encoding data transmitted by telephone or data lines.

This amendment was inadvertently omitted from the Department's Regulatory Agenda.

2. Statement of Basis and Purpose in City Record June 9, 1995:

This amendment to the New York City Health Code is promulgated pursuant to Sections 558(b) and (c) of the New York City Charter empowering the Board of Health to promulgate the Health Code. Section 556 concerning the Department's jurisdiction to regulate matters affecting health in the City of New York, and businesses and activities affecting public health within the City, and Section 1043 granting the Department of Health rulemaking authority.

The proposed amendment of the New York City Health Code would repeal Article 157 regulating solid waste transfer stations. Prior to 1990, the Department of Sanitation regulated non-putrescible solid waste transfer stations and the Department of Health regulated transfer stations handling putrescible waste. In 1990 it became clear that the growth of the solid waste disposal industry had created complex problems in New York City affecting public health and transport and disposal management.

In June of 1990 the Board of Health adopted a major revision of Article 157, accompanied by a finding of imminent threat to health which finding was approved by the Mayor. Simultaneously, the Departments of Health and Sanitation were working toward a regulatory approach that would invest Sanitation with day to day regulatory and permitting authority over putrescible waste transfer stations, and would incorporate the public health concerns articulated in the newly revised Article 157. As a result of this work, Local Law 40 of 1990 (adding Section 16-130 of the New York City Administrative Code) was enacted by the City Council investing the Department of Sanitation with regulatory and permitting authority. Comprehensive rules were adopted by the Department of Sanitation thereafter, which are at least as strict as the provisions of Article 157 (see, Rules of the City of New York, Title 16, Ch. 4).

Therefore, the Department of Health no longer routinely regulates or permits solid waste transfer stations, and Article 157 is no longer necessary. The Department of Health does retain its general powers to abate public health nuisances pursuant to existing law as well as Administrative Code Section 16-133(e).

3. Statement of Basis and Purpose in City Record June 9, 1995:

Article 163 of the New York City Health Code regulates both barber shops and beauty parlors and authorizes the issuance of permits by the Department to both types of establishment. Recently enacted state legislation, specifically a new Article 27 of the General Business Law, entitled **Licensing of Mail Specialty, Natural Hair Styling, Esthetics and Cosmetology,** which became effective July 5, 1994, pre-empts the New York City Department of Health from regulating and issuing permits to beauty parlors. The Department has issued permits to conduct beauty parlors pursuant to Sections 163.03 and 5.07(a) of the New York City Health Code.

The New York State Department of State has regulated and licensed beauty parlors, barber shops, hair dressers and cosmetologists since 1946, pursuant to former Article 27 of the General Business Law ("GBL"). However, Section 406 of the former Article 27 required that beauty parlors located in the City comply with the New York City Health Code. The new Article 27 of the "GBL", by deleeting Section 406, does not require this compliance.

Furthermore, the regulatory scheme established by the new Article 27 is sufficiently broad so as to pre-empt the regulations pertaining to beauty parlors found in Article 163 of the Health Code. The regulation of an "appearance enhancement business", which is defined as the business of providing any or all of the services of "nail specialty", "natural hair styling", "esthetics", and "cosmetology" at a fixed location is now wholly within the jurisdiction of the Department of State. Licenses for individuals to engage in the above specialties as well as licenses to operate an "appearance enhancement business" are to be issued by the state agency, pursuant to the new Article 27 of the "GBL".

Article 28 of the "GBL" governing the practice of barbering, despite some recent revision, does **not** preempt the New York City Health Department from regulating barber shops or issuing permits to these establishments, which it does pursuant to Sections 163.03 and 5.07(a) of the New York City Health Code. Section 436 of the "GBL", requires that barber shops be maintained and operated in accordance with the State Sanitary Code and the New York City Health Code, and therefore, the Department's regulatory obligation is continued in this area.

The proposed amendments to Article 163, by deleting Section 163.01(b) in its entirety and by removing the references to "beauty parlor" in the schedule of Article headings, the Article heading and Sections 163.03, 163.05, 163.09(d) and 163.11, would remove provisions that conflict with state law and are, therefore, no longer enforceable. For this same reason, Section 5.07(a) of the Health Code must be amended to remove beauty parlors from the listing of permits, licenses and certificates of qualification that are issued by the Department.

4. Statement of Basis and Purpose in City Record June 9, 1995:

Section 153.17 is substantially derived from Section 318 of the Sanitary Code of the City of New York, adopted by the Board of Health in 1938. In 1955, nearly identical language was incorporated into provisions of the Administrative Code prohibiting littering. [L.L. 1955, No. 99, formerly A.C. Section 755(3)-2.1]. When this provision was adopted, and until the United States Supreme Court rules otherwise, "commercial speech" was not considered to be constitutionally protected under the First Amendment. [**Valentine v. Christensen,** 316 U.S. 52, 62 S.Ct. 920 (1942); U.S. Const. amend. 1]. In 1976, the U.S. Supreme Court, overruling its earlier decisions, held that "commercial" speech was protected expression within the contemplation of the First Amendment. **Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council,** 425 U.S. 748, 96 S.Ct. 1817 (1976). Following the reasoning of the Supreme Court, the New York Court of Appeals found that the Administrative Code prohibition was unconstitutional as an unreasonable regulation of constitutionally protected speech. **People v. Remeny,** 40 N.Y.2d 527, 387 N.Y.S.2d 415 (1976). Section 153.17 of the Health Code, therefore, is similarly unconstitutional and unenforceable.

This proposal did not appear in the Department's regulatory agenda because, although it continued to be printed in the Health Code, it has not been enforced since 1976. As a result of recent inquiries as to its viability, it has been decided that this provision should be repealed to avoid public confusion and to correct the Code.

5. Statement of Basis and Purpose in City Record June 14, 1996:

These amendments to the New York City Health Code ("Health Code") are promulgated pursuant to §§556(d) and 558(c) of the New York City Charter ("the Charter") empowering the Board of Health to prescribe in the Health Code the form and manner in which a registry of births, deaths and feetal deaths occurring in the city shall be kept. Section 17-166 of the Administrative Code of the City of New York ("the Administrative Code") requires the Department of Health ("the Department") to keep a record of the births, fetal deaths and deaths filed with the Department.

The proposed amendments to §§205.25, 205.23 and 205.29 of Article 205 of the New York City Health Code are intended to remove requirements that no longer serve any public health purpose and which, because of administrative changes in the Department of Health, place unnecessary burdens on the funeral industry and bereaved families by requiring prior Department permission for transport of human remains out of the city for burial or cremation in a county of the State contiguous to the City of New York.

Health Code §205.25 currently allows exceptions to the requirement that after normal business hours, on weekends, and on holidays, human remains may be transported out of the City to a contiguous county in the State when telephone authorization to transport has been given by the Department. An appropriate Department permit is required in all cases prior to burial or cremation.

This and a related provision was initially adopted (by resolution, on October 30, 1987) to ease the burden created by the nightly closing of borough burial desk offices. Those offices were then open weekdays 9:00 A.M. to 5:00 P.M., and issued appropriate permits for transport of human remains out of the city to a contiguous county in the State.

In May, 1994 all borough burial desk offices (except Manhattan) were permanently closed as a cost saving measure. As a result of these closings the Department needs to reevaluate and, if possible, to make more efficient the system by which peermits to bury, cremate or transport human remains are issued and to eliminate unnecessary emands upon the only remaining burial desk, which is in the Department's building in Manhattan at 125 Worth Street and which operates 24 hours a day.

At the present time, therefore, transport from the City to contiguous counties (i.e., Nassau and Westchester) within New York State is already permitted in certain circumstances after telephone authorization is obtained. The original reason for the after-hours telephone authorizations was to ease the burden on funeral directors who routinely obtained permits at the borough office burial desks. Since the elimination of these borough offices, the telephone authorizations are also irrelevant and requiring telephone or written authorization for transport of human remains to the two contiguous counties have become burdensome for funeral directors and some bereaved families (especially where religious observance requires burial without delay) and the Department. The Metropolitan Funeral Directors Association, Inc. has petitioned the Department for appropriate amendment of the health Code to eliminate telephone authorizations for transport out of the City to a contiguous county in the State and the Department agrees that such a change is indicated to eliminate a burdensome procedure, not otherwise justified for any public health reasons. In all instances, the appropriate Department permit will still be required for burial or cremation of human remains. Transport to contiguous counties in New York State will result in no danger to the public health.

Health Code §205.23(a) also requires amendment to conform with §205.25(a) as revised and §205.29 requires amendment to reflect the administrative elimination of the borough office burial desks.

The proposed changes, if approved, will have no effect on the Department's current procedure of not authorizing further disposition of human remains until a burial or cremation permit has been issued. Cremations within the City would still require approval of the New York City Office of Chief Medical Examiner, and the Department will not issue a peermit or a death certificate until the appropriate reports have been filed with the Department.

These amendments to Article 205 were not included in the Department's Regulatory Agenda for FY 1995, because they result from the Department's response to a petition from the Metropolitan Funeral Directors Association, Inc. dated August 22, 1995, which was received after the FY 1995 Regulatory Agenda was adopted. They are included in the Regulatory Agenda for FY 1996.

6. Statement of Basis and Purpose in City Record Oct. 2, 1996:

Deteriorating lead based paint in older housing continues to be the most significant source of childhood lead poisoning in New York City. Section 173.13 of the New York City Health Code authorizes the Department to issue orders to abate lead paint in dwellings. The amendments to Section 173.13 will make it consistent with Federal and State laws and regulations regarding the sale and usage of lead based paint and will clarify testing procedures and definitions for determining what constitutes a lead paint violation. It is also proposed, in a separate resolution, to amend Section 173.14 which describes and codifies acceptable, recognized safety techniques for abatement of lead based paint.

Pursuant to the changes proposed in Section 173.13, paint may only be offered for sale if it contains 0.06 percent of metallic lead or less. (Currently the standard in the Code is 0.5 percent). The applicability and exceptions to this maximum lead content standard will be defined by reference to Federal law and regulation, rather than by listing exceptions in the Health Code.

The proposed changes will also clarify the testing procedures for determining what constitutes a lead paint violation. The proposed amendment to Section 173.13(d) incorporates by reference the proposed definition of "lead based paint" in Section 173.14(b)(16). As proposed, "lead based paint" shall mean "paint or other similar surface-coating material containing 1.0 milligram of lead per square centimeter (mg/cm^2) or greater, as determined by laboratory analysis, or by an x-ray fluorescence (XRF) analyzer." According to the recently issued **Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing,** (United States Department of Housing and Urban Development, Washington D.C., 1995), an XRF reading of 1.0 milligram of lead per square centimeter or greater (as proposed in Section 173.14), is considered an indicator that the paint is lead based. Currently, Section 173.13 defines lead based paint as containing more than 0.5 percent of metallic lead by weight. Section 173.13 also currently permits measurement of lead based paint by an XRF analyzer to be 0.7 milligrams of lead per square centimeter or greater. Because the percent by weight method requires laboratory analysis of paint chips, so that results are not immediately

available upon inspection, the Health Code also allows for the alternative testing method which does provide immediate results, namely x-ray fluorescence (XRF) analyzers. The percent by weight standard is also problematic in New York City because added layers of non-lead paint result in a dilution of lead as a percent by weight. As a result, lead in chips can exceed the mass per area threshold, but fall below the percent by weight threshold. The new definition requires that XRF results be compared with lab analysis of samples for lead mass by surface area, so that measures are directly comparable.

It is also proposed that the Department order lead abatements in a dwelling when it finds that there is a child under 18 with a blood-lead level of 20 micrograms per deciliter or higher residing therein and also finds lead based paint, as defined in the proposed amendment to 173.14(b)(16), that is peeling, is on a window friction surface or is on any surface which is considered to be a lead hazard because of its condition, location or accessibility to children.

The term "person" as used in subsection (d), has been amended to "child" so as to be applicable to a person under 18 years of age. Generally, where adults are diagnosed as lead poisoned it is the result of occupational exposure rather than housing conditions.

7. Statement of Basis and Purpose in City Record Oct. 2, 1996:

Deteriorating lead based paint in older housing continues to be the single largest source of childhood lead poisoning in New York City. Abatement of lead based paint is frequently required pursuant to the New York City Health Code, Section 173.13 or by an Order of the Commissioner of the Department of Housing Preservation and Development (HPD).

Section 173.14 of the New York City Health Code describes and codifies acceptable, recognized safety techniques for abatement of lead based paint. Such safety precautions are essential to ensure that occupants of a dwelling subject to lead abatement are protected from exposure to lead dust and residue produced during abatement.

The amendments to Section 173.14 were designed to incorporate the philosophy and thinking underlying Federal guidelines andd State regulations, particularly with regard to the definition, assessment and control of lead based paint and lead based paint hazards. The proposed changes focus on three (3) areas: the definition of lead-based paint; the measurement of lead-based paint; and the control of lead-based paint hazards.

It is also proposed, in a separate resolution, to amend Section 173.13 which authorizes the Department to issue orders to abate lead paint in dwellings, and specifically to incorporate by reference the proposed definition of "lead based paint" in Section 173.14(b)(16).

In 1995, the **Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing** (U.S. Department of Housing and Urban Development, Washington, D.C., 1995) were issued pursuant to Title X of the Housing and Community Development Act of 1992. The HUD Guidelines provide detailed information on how to identify and control lead based paint in housing, based on the most current scientific research. The proposed amendments to Section 173.14 of the New York City Health Code were developed with guidance from these federal guidelines as well as Title 10, New York Codes, Rules and Regulations (N.Y.C.R.R.), Section 67-2.4(a)(1) and (a)(2). These State regulations outline the basis and extent of an environmental lead investigation and describe methods for abatement of lead paint conditions which result in lead poisoning.

Currently, Section 173.14, subsection (b)(16) defines "lead based paint" as "paint or other similar surface coating material having a reading of 0.7 milligrams of lead per square centimeter or greater on an xd-ray fluorescent analyzer or containing more than 0.5 percent of metallic lead, based on the non-volatile content of the paint or other similar surface coating material." This definition is inconsistent with HUD Guidelines. It is proposed that, for the purposes of the Health Code, 1.0 mg/cm^2 be the new standard in Section 173.14, whether lead content in paint is determined by XRF analysis or laboratory analysis of paint chips. The percent by weight standard is problematic in New York City because added layers of non-lead paint result in a dilution of lead as a percent by weight. As a result, lead in chips can exceed

the mass per area threshold, but fall below the percent by weight threshold. The new definition requires that XRF results be compared with lab analysis of samples for lead mass by surface area, so that measures are directly comparable. In the event that such readings cannot be obtained owing to the nature of the lead painted structure, the proposed definition in subsection (b)(16) will permit reporting of results in percentage lead by weight and in such case, 0.5 percent will be the standard.

At present, the primary method used to determine the presence of lead based paint is an x-ray fluorescent (XRF) analyzer. When using this instrument, the readings vary depending on such factors as the type of instrument and the type of surface being tested. Both the HUD Guidelines and State regulations recognize that XRF analyzers have inconclusive ranges, within which the presence or absence of lead cannot be accurately determined. For example, if an XRF analyzer has an inconclusive range of 0.8 to 1.3 mg/cm^2, a result of 0.3 mg/cm^2 would be considered negative, a result of 2.0 mg/cm^2 would be considered positive and a result of 1.1 mg/cm^2 would be considered inconclusive.

To account for the imprecision in XRF readings, it is proposed that the amended Section 173.14(b)(16) outline procedures for determining whether XRF results are positive, negative or inconclusive and that inconclusive results be confirmed by laboratory analysis of paint chips. Different brands and models of XRF analyzers have different inconclusive ranges. It is proposed that the Performance Characteristic Sheet (PCS) for the particular XRF instrument used be referenced to determine the inconclusive zone for that particular instrument, as is recommended by the HUD Guidelines. A PCS is a document produced by HUD and the United States Environmental Protection Agency for XRF instruments available for commercial use. In the event that a PCS is not available for a particular XRF instrument, it is proposed that the XRF readings be classified in the amended subsection (b)(16) as positive, negative or inconclusive in accordance with the procedures established in Title 10 N.Y.C.R.R., Section 67-2.4(a)(1) and (a)(2). This provision establishes a pre-determined inconclusive range of more than 0.4 but less than 1.6 mg/cm^2 for mean substrate corrected readings. "Mean substrate corrected readings" are required because XRF readings can be subject to bias caused by interference from the material underlying the paint (the "substrate"), and must therefore be taken into account in order to produce an accurate measurement of the amount of lead present in the paint. PCSs also contain information on substrate correction procedures for each instrument.

It is further proposed that the definition also recognize the different definitions of "lead based paint" used by the New York City Department of Housing Preservation and Development and the Department of Health. For purposes of violations of the Housing Maintenance Code, the proposed definition of "lead based paint" refers to Section 27-2013 of the New York City Administrative Code.

Currently, clean-up procedures for all lead-based paint abatement prior to repainting apply uniformly to all surface areas to be abated, regardless of the size. It is proposed that Section 173.14, subsection (e)(4) make certain distinctions in the procedures required based on the size of the area and the nature of the surface to be abated. Therefore, it is proposed that clean-up procedures for all abatements of surfaces not exceeding two square feet per room (except with regard to radiators, door frames, window frames and sills) be made less stringent by modifying the requirements to include daily clean-up, spray and sweep, HEPA vacuum, detergent wash, inspection for visual dust and debris, and after re-painting, if necessary, another visual inspection. The lead content in paint used on radiators, door frames, window frames and sills tends to be higher than the lead content in paint used on other surfaces. Therefore, it is proposed that these surfaces, regardless of their size, receive the unmodified clean-up procedure which, in addition to the procedures specified above, also include a second HEPA vacuum, surface dust testing and clearance for re-occupancy. It is also proposed that the unmodified procedure also be used for all abatements ordered by the Department in relation to a child under 18 years of age with a blood-lead level of 20 micrograms per deciliter or higher.

In keeping with recent scientific findings, it is proposed that the post-abatement clearance level for bare floors be lowered from 200 to 100 micrograms of lead dust per square foot. This proposed amendment is aimed at minimizing lead dust on floors as much as possible to protect young children.

8. Statement of Basis and Purpose in City Record July 15, 1997:

This amendment to the New York City Health Code ("Health Code") is promulgated pursuant to various provisions of law.

Section 556 of the New York City Charter ("the Charter") grants the Department of Health jurisdiction to regulate matters affecting health in the City of New York and to enforce all provisions of law applicable to the jurisdiction of the Department. Section 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 556(s) of the Charter specifically empowers the Department to "supervise and regulate the public health aspects of ionizing radiation, the handling and disposal of radioactive wastes and the activities within the city affecting radioactive materials, excluding special nuclear materials in quantities sufficient to form a critical mass." Section 1043 of the Charter grants the Department of Health rulemaking authority.

The New York City Department of Health is authorized to enact laws provided they are not inconsistent with the New York State Sanitary Code. [Public Health Law Section 228(2)]. Laws which satisfy the minimum applicable requirements set forth in the State Sanitary Code are not considered inconsistent. [Public Health Law Section 228(3)]. State regulations pertaining to radiation are found in part 16 of the State Sanitary Code [10 N.Y.C.R.R. Part 16]. The qualifications for radiation safety officer are addressed in 10 N.Y.C.R.R. Section 16.2(a)(99).

This proposed amendment to the New York City Health Code concerns the qualifications of persons serving as radiation safety officers in facilities where radioactive materials or x-ray machines are used. Radiation safety officers are employees of these facilities who are responsible for conducting radiation safety activities to ensure compliance with the radiation safety standards set forth in Article 175 of the Health Code. In addition to Section 175.03(b)(2), qualifications for radiation safety officers are delineated in Section 175.103(j), governing the medical use of radioactive material. When Article 175 was repealed and reenacted in 1994, Section 175.03 inadvertently omitted the qualifications of individuals who were not board certified yet had the appropriate training and experience to serve as radiation safety officers, which option exists in Health Code Section 175.103(j), 10 N.Y.C.R.R. Section 16.2(a)(99) and federal regulations codified at 10 C.F.R. Section 35.900.

Therefore, it is proposed that the qualifications for radiation safety officers for human use radiation equipment as outlines in Section 175.03(b)(2)(i) also authorize the training and experience listed in Section 175.103(j) of the Health Code. It is also proposed that the qualifications for radiation safety officers for human use radiation equipment as outlines in Section 175.03(b)(2)(ii) also authorize the training and experience listed in Section 175.103(j) of the Health Code. For non-human use radiation equipment installations, as outlines in Section 175.03(b)(2)(iii), and for non-human use radioactive materials installations, as outlined in Section 175.03(b)(2)(iv), it is proposed that the Department of Health have the discretion to determine that persons with training and experience equivalent to the qualifications which are now accepted may also qualify for the position of radiation safety officer.

9. Statement of Basis and Purpose in City Record Dec. 30, 1997:

Pursuant to New York State Law it is unlawful to possess an unlicensed dog in the City of New York, (L. 1894, ch. 115 as amended). Further, Section 161.04 of the New York City Health Code prohibits a person who owns or is in control of a dog to allow it to be in a public place or in any unfenced area abutting a public place without a license tag affixed to its collar. When a dog is appropriately licensed and wears the license tag, its owner can be identified and located in the event that the dog is lost, is allowed by its owner to be in public without a leash or bites a human, or even another animal, while loose. Licensing is a basic indicator of responsible pet ownership. It is assumed that the owner of a licensed dog will act responsibly by keeping a dog under control and avoiding any situations which might result in a dog causing harm to humans or other animals. It is clear that licensing dogs establishes a significant measure of control in avoiding bites and transmission of disease, thereby affording greater protection to the public health. A license enables the Department to identify an owner who has failed to control a dog, and should increase compliance with other measures designed to control dogs in one of the largest cities in the world, e.g., rabies control and leash laws (New York City Health Code Sections 11.65 and 161.05).

An analysis of dog bite reports received by the Department demonstrates that unlicensed dogs are more likely to be associated with reports than those with licenses. From comparison of reports, the Department estimates that as many as 200,000 to 300,000 dogs (at least two-thirds of the resident population) are not licensed, and dog bites continue to be a serious public health problem.

The significant number of dog bites reported to the Department remains a major concern of the Department. During each of the past three fiscal years (1995 through 1997), there was an average of 9,800 dog bites reported to the Department. In analyzing the association between dog bites and licensing, it was noted that less than 10% of the 892 dogs seized because of biting incidents were licensed. Four breeds of dogs were associated with approximately 70% of these biting incidents: Pit Bulls (n=294); German Shepherds (n=191); Rottweilers (n=73) and Chow Chows (n-70). The Department was unable to verify licensing for approximately 90% of the Pit Bulls, German Shepherds and Rottweilers and 80% of the Chow Chows. Licensing would improve the Department's ability to track the owners of biting dogs and result in the return of greater numbers of lost or stolen animals to their owners.

The proposed amendment to the Health Code would require Section 161.09 permittees who sell or adopt out dogs to the public to require purchasers who will harbor the dogs within the City, to submit a completed license application, and for the Section 161.09 permittees to receive the license fee from the prospective owner, prior to turning a dog over to that prospective owner amending Health Code Section 161.15(b). It would be unlawful for these permittees (pet shop owners and animal shelters) to transfer possession, ownership or control of a dog to any person who does not complete a license application and tender the appropriate fee. The permittee will, in turn, transmit the completed applications and fees to the Department. These provisions are already authorized under section 8-b of the New York City Dog License Law enacted by the State legislature (L. 1894, ch. 115, as amended, which appears following State Agriculture and Markets Law, section 107). The Department will thereafter issue the license to the owner.

This provision is designed to increase compliance with existing City and State laws requiring licensing of dogs in the City of New York and increasing public health and safety through more responsible dog ownership.

The proposed rule was not included in the Health Department's regulatory agenda nor anticipated, because it is the result of recent analysis by the Department of dog bites and dog licensing.

10. Statement of Basis and Purpose in City Record July 1, 1998:

Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City Housing Authority and the Department of Housing Preservation and Development. By the end of 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55 percent of those registered domestic partners who reported demographic information were heterosexual couples, and less than 45 peercent were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

Consistent with the intent of such orders, this proposal would extend to domestic partners the same authority applicable to spouses, to obtain, correct, or amend vital records and make decisions concerning the deceased domestic partner as specified in Title V of the New York City Health Code.

This rule is proposed at the request of the Administration, in conjunction with a citywide review of policies and practices relating to spouses and domestic partners. Therefore, it did not appear in the 1997 Regulatory Agenda.

11. Statement of Basis and Purpose in City Record July 1, 1998:

These amendments to the New York City Health Coe ("Health Code") are promulgated pursuant to Sections 556(d), 556(r), 558(b) and 558(c) of the New York City Charter ("the Charter") empowering the Board of Health to prescribe in the Health Code the form and manner in which a registry of fetal deaths and deaths occurring in the City of New York shall be kept and death certificates filed. Section 17-166 of the Administrative Code of the City of New York ("Administrative Code") requires the Department to maintain, produce and provide birth, fetal death and death records, as well as certificates of induced termination of pregnancy. Further, Section 17-169 of the Code mandates that the Department prescribe the form of certified birth records and of fetal death and death records, as well as the age requirements necessary for individuals to obtain the aforementioned records.

The proposed amendments to sections 203.03, 203.05, 205.03, 205.05 and 207.03 of the Health Code will authorize the Department to implement an "Electronic Death Registration System" ("EDRS") in the City of New York. Currently, terminations of pregnancy and deaths occurring in the City are reported on paper to the Department by those individuals and entities that are required to do so. For those that must comply with the Health Code reporting requirements, this process is labor and time intensive.

In collaboration with the New York State Department of Health, the Department is developing the EDRS, an automated electronic system that will ease the burden of filing, improve data quality, insure enhanced security, and greatly speed the flow of relevant information to and from those entities that are responsible for reporting deaths in New York City.

Although the fully rolled-out EDRS will not obligate all individuals to report via electronic devices, it is anticipated that a large number of individuals and organizations will utilize the system to report deaths in the City. An immediate benefit of EDRS will eliminate the need for funeral directors to travel to the Department's headquarters to file death certificates and obtain burial permits. Moreso, the system will be capable of accepting payment for certified copies by way of electronic funds transfer or other automated means. Additionally, certified copies of death certificates would then be available for pick-up, mail or overnight delivery, at the option of the requester. Finally, the EDRS will allow corrections to be made prior to filing without retyping the certificate. Ultimately, the relative ease and convenience of using the EDRS will prompt many to opt to file using the automated system.

Accordingly, the amendments to section 205.03 and 205.05 of the Health Code will allow an alternative electronic filing of information required for a certificate of death and confidential medical report by those entities specified in sections 205.03 and 205.05. Moreover, the amendment to be made to section 207.03 would allow corrections to be noted on electronic certificates and records in a different manner from paper documents. Currently, the Health Code requires that approved changes to certificates be clearly reflected on the certificate itself by requiring that a single line be drawn through the amended item, and the correct information inserted immediately above it. This method of recording approved changes on electronic certificates and records may be technologically infeasible and burdensome. As such, amending section 207.03 allows for a programmatic solution that would be technically practical, while still being functionally equivalent to the manner of noting changes on paper certificates and records.

Further, the proposed amendment to section 205.19 of the Health Code would no longer require that the Department be notified in cases where an autopsy is to be performed on unclaimed remains, pursuant to Section 4214(1) of the Public Halth Law. This notification is redundant with that which is currently made, and will continue to be made, to the City mortuary.

Sections 201.11, 205.01, and 207.01 are amended to change the definition of a minor to mean a person under 18 years of age, thereby bringing the Health Code in conformity with the New York State Public Health Law. Section 201.11 is also amended to more strictly define a delayed registration of birth.

12. Statement of Basis and Purpose in City Record Dec. 30, 1998:

Introduction

It is proposed that the Health Code be amended to repeal provisions relating to veterinary public health which are no longer applicable in the City; clarify a recent Health Code amendment regarding licensing of dogs; deregulate private horse stables; and reflect current considerations in control of animal diseases that may be transmitted to humans.

Section 11.65

Rabies remains epizootic in New York City, and the Department erxpends considerable resources monitoring dogs' vaccination status and investigating dog bite incidents to prevent or rules out any risk to the public or an individual's health. Section 11.65 of Article 11 ("Reportable Diseases and Conditions") of the New York City Health Code prescribes requirements for reporting, observation and control of animals affected with or suspected of having various diseases communicable to humans. Sections 11.65(e) through (g) currently specify measures for isolation and observation of animals subject to rabies that have bitten a person. Animals "subject to rabies" inclue any animals capable of contracting or transmitting the disease. Section 11.65(e)(1) specifies that a person owning, possessing or controlling a dog or other animal that is subject to rabies and has bitten a person must confine and observe the animal for 10 days. No change is proposed with respect to the periods of observation applicable to dogs and cats.

However, rather than prescribing specific observation and isolation periods in the Code, it is proposed that the applicable Code sections referring to the period of observation be amended to reflect current veterinary practice and national and state regulatory requirements, particularly those in the State Sanitary Code, recognizing that rabies virus may follow a different course or progression in different animals. This will afford the Department flexibility and permit it to exercise its discretion in prescribing appropriate, varying peeriods of confinement and observation for different animals, and clarifying the instructions for notification to the Department of events observed during and at the conclusion of the period of confinement and isolation.

Section 11.03

It is further proposed that section 11.03(a), which includes "animal bite" as a condition reportable to the Department, be amended to require reporting of any exposure to an animal subject to rabies, not only bites of these animals. The State Sanitary Code, 10 N.Y.C.R.R. 2.14, defines "exposure" as "introduction of the rabies virus into the body of a human or animal" and includes a bite within that definition. It is proposed that all references to animal bites in section 11.65 be amended accordingly.

Article 161

The Department proposes to repeal various provisions of Article 161 ("Animals") which are no longer applicable or which presently serve no public health purpose, and to clarify the applicability of these and other provisions.

Private Horse Stables. It is proposed that private horse stables maintained by a natural person or a family on its own property to house horses for their own exclusive recreational, non-commercial use be removed from Health Code regulation. That is, a permit would no longer be required for these non-commercial stables. While the Department would no longer inspect these facilities on a regular basis the Department would retain its inspectorial authority in cases of complaints for example. In addition the sanitary requirements of Section 161.23, as well as certain specified provisions of Article 135, would continue to apply to these types of private horse stables. There are currently only a very small number of private family-owned stables maintained for recreational use in the City. While these stables would, in effect, be deregulated by the Department, all stables would continue to be subject to public nuisance and humane laws and regulations.

Cows. As the Board anticipated (see Notes, Health Code section 161.25), there are no longer any dairies in the City, nor are there likely to be any new dairies opening, and no cows are kept in the City for the sale of milk. Section 161.25 regulating the provision and maintenance of stables for cows should be repealed. Section 161.09(f), which prohibits keeping cows for production and sale of milk without a permit and the provision for issuance of permits for keeping cows contained in section 5.07(a) of the Code should be repealed accordingly.

Dog Licensing. In 1990, the American Society for the Prevention of Cruelty to Animals (the "ASPCA") ceased issuing ddog licenses in the City of New York pursuant to the New York City Dog Licensing Law, L. 1894, c. 115, as amended, and the Department assumed the licensing authority pursuant to section 161.04 of the Health Code, adopted by Board resolution on June 26, 1990. This section as adopted retained a provision that ASPCA-issued licenses in effect on July 1, 1990 would remain in effect until their expiration date. Such licenses have long since expired. Inasmuch as their is no longer any need for any reference to the ASPCA's licensing authority, this section should be amended accordingly.

Dog licensing remains an indicator of responsible pet ownership. To increase the numbers of dogs licensed by the Department, section 161.15(b) of the Health Code was amended by Board resolution adopted in December, 1997, to require permittee pet shops and shelters to "transfer possession, title, ownership, control or custody of any dog to a prospective purchaser or adopter" only upon receipt of a license application and fees. State and City law clearly and explicitly require that every dog permanently owned, possessed or harbored in the City must be licensed. It is proposed that this subsection be further amended to include among such transfers those from a shelter to an owner reclaiming his/her unlicensed dog from the shelter.

Rabies Vaccination andd Parasite-Free Certification. In 1973, section 161.06 was adopted requiring "deworming" or providing veterinary certification that a dog or cat was free of intestinal helminths before the animal is offered for sale, sold, or given away to another person. It is proposed to expand this section to require treatment for, or certification that an animal tested free of any parasitic infection. It is also proposed that this section be amended to require that upon change of ownership of a dog or cat, certification of the animal's vaccination against rabies be provided to the new owner. This amendment would require no change in veterinary practice, or in the vaccination requirements of section 11.65 of the Code, but would require disclosure of vaccination status on transfer of ownership of dogs and cats.

Vicious or Dangerous Animals. It is proposed that section 161.07 ("Vicious or dangerous animals") be amended to correct a reference in the definition of a "vicious or dangerous animal" in section 161.07(a). This subsection presently excepts from the definition animals "properly registered under 161.09(a)" (trained guard or attack dog). The reference should be to section 161.09(k), as renumbered. A further amendment is proposed to section 161.07(d) which would subject dogs owned, kept, trained for, or engaging in dog fighting to the same control measures, i.e., examinations and seizures, and sanctions as other vicious or dangerous animals.

Individual Caging of Dogs and Cats. It is proposed that section 161.17 be amended to allow for the presence of more than one animal in a cage if a veterinarian determines that for medical or humane reasons it would benefit the animal(s) to be caged with one or more companions, or if the animals would be injured if separated from their companions. The original requirement for housing one animal in a cage was intended to be a rabies control measure. However, many animals, particularly those who have been raised and housed together for long periods of time, fail to thrive in such situations and if a veterinarian certifies that it is medically indicated for dogs to be caged together, determining the rabies vaccination status of each animal would be the responsibility of the veterinarian. It is further proposed that this section be amended to clearly state that nothing in the Health Code prohibits congregate "socialization" or play areas in permitted boarding facilities if all animals have been properly vaccinated against rabies, and certified as free of other illnesses which may be transmitted to humans or animals.

13. Statement of Basis and Purpose in City Record June 30, 1999:

The New York City Department of Health is one of the agencies that implements the Agreement between New York State and the U.S. Nuclear Regulatory Commission ("NRC") to regulate the use of radioactive materials under §274 of the Atomic Energy Act of 1954. The Agreement requires that the City's Radiation Control Program be compatible with the NRC's program for regulation of materials subject to the Agreement. Generally, states are allowed three years to enact compatible regulations.

In 1995, the U.S. Nuclear Regulatory Commission ("NRC") revised its regulations governing transportation of radioactive material found in 10 CFR Part 71, to bring the United States into compatibility with International Atomic Energy Agency ("IAEA") Safety Series 6 Revisions. (Regulations for the Safe Transport of Radioactive Material, 1985 Edition, Safety Series No. 6.) The revised NRC regulations, in combination with corresponding amendments by the U.S. Department of Transportation ("DOT") (codified at 49 C.F.R. Parts 171, **et seq.**) brought the United States into accord with the IAEA regulations. The NRC's and DOT's regulations became effective April 1, 1996.

Existing §175.105 of the Health Code regulates the packaging, preparation for shipment and transportation of radioactive materials in New York City, except those directly related to national defense. The Health Code requirements apply to all persons who transport, or offer for transport radioactive material within or through the City. The Bureau of Radiological Health proposes to repeal and reenact the current §175.105 to ensure compatibility with 10 CFR Part 71.

The proposed reenactment continues regulation of intra-city radioactive materials at the same levels of safety and security as all other shipments regardless of point of departure or destination (e.g., interstate, intercounty).

Section 175.02, the definition section of Article 175, is also amended to achieve compatibility with the NRC regulations governing transportation. Other actions in the resolution include amendment of §175.01(c) to update the current mailing address for the Bureau of Radiological Health, and amendment of §175.03(j)(6)(iv)(B) to delete references to specific provisions in the current version of §175.105 to reflect the proposed reenacted §175.105.

A. **Amendments to the Health Code Regarding Matters of Compatibility**

New York City, as one of the jurisdictions covered by the "Agreement State" program with the NRC, must comply with certain federal regulations, deemed "matters of compatibility", enacted into Title 10 of the CFR by adopting essentially equivalent regulations.

-It is proposed that certain definitions contained in §175.02 be amended to conform with 10 CFR Part 71 because such definitions have been deemed matters of compatibility by the NRC.

-It is proposed that existing §175.105 regulating the packaging and transportation of radioactive materials be repealed and reenacted. The proposed new §175.105 would require compliance with certain federal regulations when shipping radioactive materials, such regulations having been deemed matters of compatibility by the NRC. Incorporation of these amendments into the Health Code is critical in order for the City to be deemed compatible by the NRC.

-It is proposed to amend §175.03(j) to delete references contained therein to specific subsections in existing §175.105, to make that section consistent with the proposed reenactment of §175.105.

B. **Technical Amendments Made to Conform with Federal Regulations**

-It is proposed that Appendix A and accompanying Tables be repealed and reenacted and proposed Appendix A Determination of A_1 and A_2 values, Table A-1, A_1 and A_2 Values for Radionuclides and Table A-2 General Values for A_1 and A_2 be added in order to conform with 10 CFR Part 71, such Tables being deemed matters of compatibility by the NRC.

C. **Other Amendments to Article 175**

-It is proposed to amend §175.01 to update the address of the Bureau of Radiological Health provided therein to which communications regarding Article 175 should be addressed.

14. Statement of Basis and Purpose in City Record July 9, 1999:

It is proposed that Health Code §161.01 ("Wild animals prohibited") be amended to update regulations with

respect to prohibiting the sale or possession of a broad range of classifications (class, order, family, genus or species) of "wild" animals in New York City.

The Department has not heretofore promulgated a list of prohibited animals either in the Health Code or as Commissioner's regulations because of concerns that the list might not be sufficiently comprehensive so as to cover every species of wild animal and that omission of certain animals from such a list would be interpreted to mean that their possession was lawful. Moreover, different wildlife species have, from time to time, emerged as fashionable animals to own, potentially requiring frequent amendment of the Code. Absent a list, however, the Department has been required to litigate whether a specific animal or species is "wild, ferocious, fierce, dangerous or naturally inclined to do harm" pursuant to the current provisions of §161.01(a). It is therefore proposed that the public be placed on notice as to which wild animals the Department has historically prohibited because they are dangerous, i.e., capable of and inclined toward inflicting bodily harm upon a human being, and/or because their possession or sale is prohibited because they appear on federal or State endangered or protected species lists.

It is therefore proposed that §161.01 be amended to include a listing of classifications of animals which residents of the City would be prohibited from selling, keeping or harboring. To accommodate changes in pet ownership patterns which make it desirable to possess animals not initially prohibited, it is proposed that the Board authorize the Commissioner to promulgate additional regulations from time to time adding to the list as the Commissioner deems necessary. Such regulations would be promulgated, as are all other Commissioner's regulations, in accordance with §1043 of the New York City Charter (the City Administrative Procedure Act), allowing for public comment.

The proposed list of prohibited animals does not include domesticated dogs and cats, which have been bred over many generations to eliminate feral characteristics, thereby enabling most species and breeds to live compatibly with humans. Also not on the prohibited list are animals such as hamsters, guinea pigs, and rabbits which are not otherwise prohibited by applicable law.

Jurisdictions throughout the nation have developed such lists based on local conditions. The proposed list of prohibited animals to be included in the Health Code is based on the Department's past experience. During the past five years, for example, the Department has seized, or issued violations to persons who unlawfully possessed, such animals as caiman, alligator, monkey, monitor lizard, serval, wallaby, coatimundi, snapping turtle, wolf-hybrid, scorpion, tarantula, and venomous snakes. A common defense expressed to justify possession is ignorance that possession of a certain animal is unlawful. Where the owner defends such possession, the Department has the legal burden of proving that the animal is a wild animal within the current definition of §161.01.

Little guidance can be derived from either state or federal laws as to which animals should be prohibited locally. The New York Environmental Conservation Law regulating native to New York wildlife management, and federal laws regulating the importation, sale and keeping of endangered species do not identify all the many and varied "wild" animals which should be prohibited in a densely populated urban environment because they pose a potential public health and safety risk.

In all cases, the danger to the public from wild animals arises from natural reflexive adaptive mechanisms which enable these animals to survive in the wild and which have not and/or cannot be eliminated by multigenerational breeding, resulting in their being considered "naturally inclined to do harm." And although individual species members may appear to have been "tamed" to the extent that their behavior appears to be modified while held in captivity, the individual animal's behavior remains unpredictable and the animal continues to be capable of inflicting injury to human beings. It is therefore proposed that the list of prohibited animals in amended subsection (b) include all native (to New York) or exotic (not native) wildlife which are both naturally inclined to do harm and deemed capable of inflicting bodily harm.

The proposal would also amend subsection (a) of §161.01 to clarify which organizations, institutions and persons shall be exempt from these prohibitions and to authorize the Department to establish conditions and grant approval for

limited exhibition or use of prohibited animals.

Other provisions proposed to be added to §161.01 would authorize seizure of prohibited animals by officers, employees or agents of the Department or other City agencies; and authorize the Commissioner to determine disposition of a prohibited animal that has been seized, offering the owner an opportunity to be heard and present proof as to whether an animal is a prohibited animal and its disposition before the Commissioner or his or her designee makes a final determination. The amendment requires the Commissioner to grant the owner an opportunity to be heard as soon as practicable, but no later than 15 days of the request, and also allows the owner the opportunity of arranging to remove the animal from the City of New York to another jurisdiction where such animal may be lawfully possessed.

Further, it should be noted that the Department responded to a petition to recognize pet ferrets as lawful in New York City by stating its intention to bring the issue to the Board of Health to initiate rulemaking on the subject of the petition. This resolution complies with the stated intention by requesting the Board, for public safety reasons, to continue the prohibition on the sale and possession of ferrets in New York City. The Department's rationale on this issue follows.

The Department has historically regarded ferrets as wild animals and prohibited their possession because of a number of public health and safety concerns. These reasons are discussed at length in a federal court decision upholding the City's treatment of ferrets as wild animals. See, **New York City Friends of Ferrets v. The City of New York, et al.,** 876 F.Supp. 529 (S.D.N.Y. 1995), aff'd 71 F.3rd 405 (2d Cir. 1995). The public health concerns as they relate to disease prevention, particularly with respect to rabies, which were expressed by the City in the court documents submitted have largely been mooted: the viral shedding period for ferrets is now known and there exists an approved rabies vaccine for the domestic ferret. Other public safety issues, however, related to injury prevention, remain unresolved.

The primary public safety concern is that the ferret, despite any possible popularity as a household pet, remains prone to vicious, unpredictable attacks on humans, particularly very young children and infants. In the **New York City Friends of Ferrets** litigation, the Department relied upon a number of epidemiological studies and monographs, including a study in the state of California, completed during 1987-88, showing a pattern of such injuries. In considering whether the Health Code should be changed to allow ferrets to be sold and owned in New York City, the Department contacted California authorities and was advised that the state will continue to ban ferret ownership because of concerns about child safety and as well as the potential dangers posed by feral ferret populations to native wildlife.

Reports of injuries caused by ferrets continue to surface. Further, since there are no reliable data to indicate how many ferrets are currently owned, calculation of rates of injury inflicted by ferrets and comparison of such rates to rates of injury inflicted by other companion animal species (dogs and cats) is impossible.

In 1994 the National Association of State Public Health Veterinarians and the Council of State and Territorial Epidemiologists continued to express serious concerns about the safety of ferret ownership:

There are several characteristics of attacks by ferrets that are of particular public health concern. Many ferret attacks involve infants and small children who are sleeping or lying down. Ferrets have climbed into cribs and inflicted hundreds of disfiguring bites on defenseless infants. . . . There is anecdotal information that the propensity to be aggressive and bite varies with the family line of the ferret. Public health officials believe that more objective data are needed on the risk factors that lead to injuries from ferrets so that specific preventive strategies can be recommended. Until such data are available the safest approach is to restrict ferrets from households that have infants or small children.

National Association of State Public Health Veterinarians, Inc., Statement on ferrets issued jointly by the Council of State and Territorial Epidemiologists and the National Association of State Public Health Veterinarians, Minneapolis, MN; 1994. In response to a telephone inquiry in April 1999, the Department was advised that this warning would remain unchanged in any current recommendation, although other warnings about rabies were no longer applicable.

Similarly, in a 1998 statement, the American Veterinary Medical Association ("AVMA") recommended that "no ferret be left unattended with any individual incapable of removing himself or herself from the ferret." AVMA, Position on ferrets, approved by the AVMA House of Delegates, 1994; amended by the AVMA Executive Board, 1998.

Other recent discussions of ferret bites stress that, despite an acknowledged lack of voluminous public health bite reports and generally sparse documentation in medical literature, reported ferret attacks are "quite vicious" and pose a "great" health risk to infants and small children. See, e.g., Applegate JA, Walhout MF. Childhood risks from the ferret. J Emerg Med. 1998; 16:425-7.

At the public hearing, many comments were received from and on behalf of owners or advocates of ferret ownership, opposed to the proposed continued ban on pet ferrets. Some of these comments stated that while they do not regard ferrets as wild animals, and not naturally inclined to do harm, they do believe ferrets can inflict injury, although with no greater frequency than dogs or cats. Some also stated categorically that no ferret should be left alone with an infant, child or any helpless person, and that owners who allowed such contact were irresponsible, but no more irresponsible than owners of cats or dogs who left children or infants alone with these pets. One comment in support of the Department's continuing ban on ferrets was received from a New Hampshire veterinarian reporting serious facial injuries to a 9-month old child whose parents assumed their pet ferret was in an "escape-proof" cage. None of the persons commenting referred to the special housing conditions in New York City, where millions of people live in apartment buildings, where ferrets can escape and travel into other persons' apartments and public spaces. The resolution as adopted with respect to ferrets is unchanged from that originally proposed.

As a result of comments received from the New York Herpetological Society, the list of prohibited snakes and reptiles includes more specific classifications of venomous snakes and reptiles which may be dangerous even if temporarily devenomized; constrictor snakes which may be less than ten feet when purchased, but will be well over ten feet in adulthood; and other reptiles which will become larger, more aggressive and difficult to manage as they mature.

In response to another comment made at the public hearing, threatening action to enjoin promulgation and/or enforcement of these amendments because of the proposed continuing ban on ferrets, the resolution as adopted contains a severability clause providing that if any provision therein is struck down, the remainder of the resolution shall have full force and effect.

15. Statement of Basis and Purpose in City Record Dec. 17, 1999:

On July 15, 1999, the Mayor signed into law Local Law 38 of 1999 (hereafter referred to as "Local Law 38"), which repeals §27-2013(h) of the Administrative Code of the City of New York, also known as "Local Law 1" of 1982, and establishes a new law "in relation to childhood lead poisoning prevention." The new law, which was signed into law by the Mayor on July 15, 1999 and became effective on November 12, 1999, through a new Article 14 of Subchapter 2 of Chapter 2 of Title 27 of the Administrative Code, prescribes maintenance standards and duties of owners of multiple dwellings built before January 1, 1960, as well as duties of the City's Department of Housing Preservation and Development ("DHPD") with respect to lead based paint hazards. Local Law 38 also adds provisions to Title 17 (Health) of the Administrative Code which require the Department of Health to "refer to appropriate medical providers any person who requests assistance in blood lead screening, testing, diagnosis or treatment, and upon the request of a parent or guardian, arrange for blood lead screening of any child who requires screening and whose parent or guardian is unable to obtain a lead test because the child is uninsured or the child's insurance does not cover such screening"; and to develop a pamphlet explaining the hazards associated with lead based paint, describing the procedures to be used for correction of violations, and including a telephone number to which the public may report complaints of "unsafe lead-based paint work practices". Local Law 38 also adds a new §17-181 to Title 17 of the Administrative Code, prohibiting dry scraping as a means of removing lead based paint or paint of unknown origin.

Local Law 38 requires owners to inspect apartments where children under six reside and correct lead based paint hazards using either "exclusive interim controls" or the standards set forth in §173.14 of the Health Code ("Safety

standards for lead based paint abatement"). Section 173.14 was originally intended to apply to orders to abate lead hazards issued by the Commissioner of the Department of Health or by the Commissioner of DHPD. The Department believes it is necessary to amend §173.14 to distinguish when §173.14 is applicable to orders issued by the Commissioner of Health pursuant to §173.13(d), where there is a child with an elevated blood lead level, and when the safety standards of §173.14 are to be utilized pursuant to provisions of Title 27 of the Administrative Code. Although no changes are required for the Department to implement §17-179(a) of Title 17 of the Administrative Code, it is proposed that a new §173.15 of the Health Code incorporate provisions for addressing the complaints it may expect to receive of "unsafe work practices" in accordance with §17-179(b) of the Administrative Code.

In view of the new law, therefore, the Department recommends amendment of various provisions of the lead based paint abatement safety standards of §173.14 of the Health Code, and adoption of a new §173.15, as follows:

1. Amend the provisions on purpose, scope and applicability of subsection 173.14(a) to clearly state that §173.14 safety standards will apply to correction of lead based paint hazards when ordered by the Commissioner of Health pursuant to §173.13 of the Health Code and in circumstances authorized or required by Local Law 38.

2. Authorize approval of surface dust testing courses. The new Article 14 of Subchapter 2 of Chapter 2 of Title 27 of the Administrative Code also requires certain surface dust testing after correction of lead based paint hazards. Such testing determines if there has been adequate cleaning to reduce to acceptable levels the amount of lead in any remaining dust. A new subsection 27-2056.5(b)(12) of the Administrative Code requires that "surface dust tests shall be completed by an individual who has passed a course approved by the department of health on how to conduct a surface dust wipe test." The Department proposes to offer such courses at the Department's Lead Poisoning Prevention Program (LPPP), as well as to establish a list of courses currently approved by the United States Environmental Protection Agency and Department of Housing and Urban Development. It is therefore proposed that subdivision 173.14(c)(2)(cc) be amended accordingly to reflect such a requirement, and to enable the Department to charge an appropriate fee and to require refresher courses as needed.

3. Enforcement of abatement safety standards and responding to complaints of unsafe lead based paint work practices. It is proposed that a new §173.15 be adopted codifying the procedures employed by the Department in addressing complaints of "unsafe lead-based paint work practices" related to non-compliance with Local Law 38's "exclusive interim controls."

Currently, the Department and the City's Department of Environmental Protection and DHPD share responsibility for enforcement of §173.14 of the Health Code. However, even before the City Council amended Title 27 of the Administrative Code, the Department had plans to exercise exclusive enforcement of §173.14's lead based paint abatement safety standards, and now also proposes to respond to complaints of unsafe lead based paint work practices it receives pursuant to Administrative Code §17-179(b). The Department considers it to be more effective for LPPP sanitarians to inspect residences of children with elevated blood lead levels both for the presence of lead hazards and for owners' compliance with the safety standards, as well as on receipt of complaints of unsafe lead based paint work practices.

It should be noted that the Department currently responds to environmental complaints pursuant to the Department's general nuisance abatement duties and authority under the Public Health Law, the Health Code and Administrative Code. If a complaint is verified, and depending on the extent of the nuisance, the Commissioner may issue an order to stop work and safely remove the nuisance and not allow work to resume unless a plan is submitted for safe continuance. Department inspectors may also issue notices of violations for failure to comply with a Commissioner's order which will be returnable to the Department's Administrative Tribunal and punishable by fines of $100 to $2,000. It is proposed that subsection 173.14(c)(1)(cc) be amended to authorize the Department to stop work and require corrective action if a lead abatement is not being done pursuant to §173.14. It is further proposed that there be a new §173.15 which will place the public on notice that complaints of any other "unsafe lead based paint work practices" will be investigated by the Department and appropriate action taken. Upon adoption of the new §173.15, the

current §173.15 ("Lye intended for household use") would be renumbered as §173.16.

At the public hearing, many comments were submitted objecting to the proposal to "harmonize" the provisions of §173.14 with those of Local Law 38. These comments stated that the Board of Health should continue to require that the Health Code abatement safety standards apply to correction of lead based paint hazards whenever DHPD issues a violation, despite the explicit provisions in the amended Administrative Code referred to above which require that specific "exclusive interim controls" be utilized when such violations are timely corrected. These comments generally stated that the Health Code requirements do not have to be harmonized with provisions of the Administrative Code, that the Health Code abatement safety standards are "more stringent" and more protective of children's health than the interim controls.

Despite such comments, the Department believes that Local Law 38 is a vast improvement over the prior Local Law 1 of 1982, which was flawed and impractical and which was repealed by the new law. Local Law 38, if fully implemented in accord with the proposed changes in the Health Code, will result, the Department believes, in a greater level of lead safety for the population as a whole. The new law requires the use of these interim controls in many situations, such as pursuant to the now required annual notice and inspection, where DHPD has not issued a violation and which until now have not been subject to any safety standards. If implemented properly, the interim controls will result in the safe correction of hazards resulting from known or presumed lead based paint. The Department's new role in investigating complaints of unsafe work practices will substantially enhance the proper utilization of the interim controls. Within this housing maintenance regulatory scheme, the 21 day period in which owners may still utilize interim controls for correcting a DHPD violation (by the method of wet scraping to remove peeling paint and repainting) is the final incentive to owners to properly maintain their property, without requiring adherence to the Health Code abatement safety standards. For the Department to continue to enforce conflicting provisions of the Health Code in such cases would create regulatory confusion and encourage non-compliance with either law.

In response to a comment from DHPD concerning instances where §173.14 will continue to apply to correction of lead hazards, as defined in the Administrative Code and outlined above, the Department has amended the proposal to incorporate a requirement that, in abatement area preparation, painted windows and doors be adjusted so that they do not "bind," i.e., do not stick in a manner that causes abrasion or friction, a definition derived from DHPD's regulations. In a further attempt to harmonize the Department's procedures with the comprehensive scheme established by Local Law 38, proposed new §173.15 has been changed to provide that unsafe lead based paint work practices investigations will encompass disturbances of actual or presumed lead based paint. In addition, since the proposal was published, the Department has determined that the fee for its dust wipe training course will be $52.00 and has revised the applicable provision accordingly.

15-A. Statement of Basis and Purpose in City Record Apr. 3, 2001:

Although the number and severity of childhood lead poisoning cases continues to decline, lead poisoning remains a problem in New York City. The goal of eliminating lead poisoning in New York City can be further served by clarifying and updating certain reporting requirements of the Health Code, and providing direct access to individual blood lead test information about New York City children to the health care providers responsible for lead poisoning screening and treatment. Article 11 of the Health Code would be amended to clarify New York City's blood lead test reporting requirements and to establish a children's blood lead registry authorizing direct access by children's health care providers. It is further proposed that §173.14 (Safety standards for lead abatement) be amended to permit the Department to charge a fee for issuing certificates to persons who complete dust wipe sampling courses offered by non-Department of Health training programs, so that the Department may recoup the costs incurred in approving such courses and issuing the necessary certificates.

Blood lead testing is a critical measure for helping to protect children's health. The longer an elevated blood lead level in a child is undetected, the greater the risk to that child of adverse health consequences. Mandated timely reporting of all blood lead levels provides the Department with surveillance data necessary to monitor blood lead levels

of individual children, directing allocation of resources for prevention, environmental investigation and intervention and treatment in areas at greatest risk, and assisting in effective planning to improve screening rates. Although current New York State and City laws and regulations are designed to establish comprehensive requirements for reporting of children's blood lead test results, there are gaps in some reporting requirements.

1. **Amend Article 11 to include a new Health Code §11.06-Blood Lead Reporting and Children's Blood Lead Registry**

a. Reporting of blood lead levels below 10 micrograms/deciliter.

In accordance with §§11.03 and 11.05 of the New York City Health Code, physicians, administrators of health care facilities and clinical laboratories, must now report to the Department, in writing, within 24 hours, results of blood tests of 10 or more micrograms of lead per deciliter (mcg/dL) of whole blood. In addition, all clinical laboratories are required to report results of all blood lead tests to the New York State Department of Health (NYS DOH) and to the local health officer in whose jurisdiction the subject of the test resides pursuant to 10 N.Y.C.R.R. Subpart 67-3. If the laboratory reports electronically to NYS DOH, NYS DOH is required to notify the local health officer of the test results and the laboratory is deemed to have satisfied NYS DOH requirements. State regulations do not explicitly require health care providers to report test results to the local health officer unless the blood lead test result is equal to or greater than 45 mcg/dL. The City Department of Health tracks children's blood lead levels and performs environmental investigations in accordance with Health Code §173.13 when there is a receipt of a report of one blood lead level of 20 mcg/dL or greater, or two reports at levels of 15-19 mcg/dL for specimens taken three months apart. The Department also notifies parents and providers of the need to repeat tests when it receives reports of children's blood lead levels at 10 mcg/dL and greater.

Reports of blood lead test results below 10 mcg/dL are used by the Department for planning, educational, outreach and surveillance purposes. Also, when matched to children who are known "cases," test results below the environmental intervention threshold become a factor in a decision by the Department to discontinue case and/or environmental follow-up. There is, however, no urgent need to receive such reports within 24 hours.

The new provisions in §11.06(a) are intended to clarify reporting requirements, and to capture the results of blood lead test results which are less than 10 mcg/dL which are not reported electronically to the State by clinical laboratories. They are also intended to clarify the intent of the original proposal by requiring that providers who analyze blood lead specimens without submitting the specimen to a clinical laboratory for analysis must report to the Department results less than 10 mcg/dL. Reports are required within five (5) business days.

Section 11.03 is amended to cross reference the additional blood lead test reporting requirements in §11.06.

b. Establishing a Children's Blood Lead Registry

State law requires children's primary health care providers to assess children between the ages of six months and six years at every well child visit, or at least annually, for "high dose lead exposure" using a risk assessment instrument, and to screen or refer their patients for lead screening as necessary. Such providers are also required to screen or refer each child for blood lead screening at or around one and two years of age. Non-primary health care providers, e.g., emergency care providers, must inquire whether children who seek their care have been appropriately assessed and tested, and if not, test or refer these children for lead testing. In addition, as managed care programs increase and more children are enrolled in managed care, the Department has been receiving requests from health care providers associated with managed care organizations for information about children's lead screening history, to assist such providers in assessing children's risks and needs for new or further testing.

To facilitate the exchange of such information, the Department is adding a new §11.06 authorizing establishment of a children's blood lead level registry, modeled on the Department's Citywide Immunization Registry ("CIR"), which will allow access by health care providers to their patients' blood lead test results, enabling providers to track their

patients' blood lead testing history and provide appropriate follow-up blood lead tests and medical care as necessary.

Because many children in New York City may have no regular health care provider, it is imperative that individual health care providers have access to complete lead testing histories for their patients so that they may determine when testing is needed. The creation of a blood lead test registry that is accessible to health care providers, with appropriate security provisions, can help health care providers identify children who need lead testing, thereby increasing screening rates throughout the City. Direct access to lead test results will enable such health care providers to evaluate their patients' current lead testing status and order needed tests or provide appropriate medical care for their patients.

The Department originally proposed that the Board repeal provisions applicable to lead poisoning reporting in §11.03, incorporating provisions for reporting all blood lead test results in the new §11.06. The original proposal would have raised the blood lead level at which reporting within 24 hours is required from 10 mcg/dl to 15 mcg/dl. After the public hearing, review of the comments received, and a Board discussion at its meeting on December 13, 2000, the proposal was amended to retain the requirement that blood lead test results of 10 mcg/dl or higher be reported to the Department within 24 hours and to clarify the reporting requirements pertaining to blood lead test results less than 10 mcg/dl. The lead poisoning reporting provisions in §11.03 are amended only to the extent of cross-referencing additional reporting requirements in §11.06.

2. **Amend Health Code §11.07(d) to assure confidentiality of blood lead test registry records.**

Records of children's blood lead tests maintained by the Department would be subject to the same confidentiality requirements as that afforded the immunization registry pursuant to Health Code §11.07(d), and this section is amended accordingly to include reference to the children's blood lead registry.

3. Amend Health Code §173.14(c) to prescribe fees for issuing dust wipe sampling course certificates for completion of non-Department of Health training courses.

This amendment authorizes the Department to charge an administrative fee for the costs incurred by the Department for evaluating the training of persons who complete approved courses for dust wipe sampling and for providing a certificate.

In December, 1999, the Board adopted amendments to Health Code §173.14 which authorized the Department to administer such dust wipe training courses, charge a fee for attendance, and issue certificates to persons who complete its courses successfully. Since the Department is also authorized to approve courses given by other trainers, it is proposed that the Health Code be further amended to prescribe fees to cover costs of issuing certificates to individuals who complete dust wipe sampling courses conducted by Department-approved training organizations.

The Department is currently conducting this dust wipe course for a fee ($52.00), as authorized by Health Code §173.14(c)(2)(cc), to defray any costs incurred for course registration, materials, training, and certification. The Department has been approached by various organizations requesting approval to offer the course. The Department is developing procedures for approving these courses and proposes to issue certificates to individuals who pass approved courses. The Department will maintain records of all individuals who receive these certificates and provide such information to D.H.P.D. or other persons on request.

The Department will charge a fee of $15.00 either for issuing certificates to individuals who have taken and passed approved courses, or for issuing replacement certificates to individuals whose certificates were either lost or destroyed.

16. Statement of Basis and Purpose in City Record Apr. 3, 2001:

The New York City Department of Health's Office of Radiological Health supervises and regulates the public health aspects of ionizing radiation, including the handling and disposal of radioactive waste and responding to emergencies involving sources of ionizing radiation. The Office of Radiological Health carries out its mandate through

its registration, licensing, inspection, emergency response and public education programs.

The New York City Charter [§556(s)] empowers the Department to regulate all aspects of ionizing radiation within the five boroughs of New York City. The New York State Sanitary Code [10 N.Y.C.R.R., Part 16] delegates ionizing radiation material regulation and oversight to those municipalities having a population of more than 2,000,000. The Federal Atomic Energy Act of 1954 [§274(o)], as amended, authorizes State regulation of byproduct material, source material and special nuclear material in quantities not sufficient to form a critical mass pursuant to an Agreement with the U.S. Nuclear Regulatory Commission (formerly the Atomic Energy Commission). The New York City Department of Health, as part of the New York State Agreement, therefore exercises regulatory authority for radioactive material within the City.

Several amendments to Article 175 are adopted in order to achieve consistency with federal and state regulations. New regulations for mammography have been promulgated by the U.S. Food and Drug Administration (FDA) under the Mammography Quality Standards Act (MQSA). Further, the FDA has changed the exposure rate limits for fluoroscopic procedures to reduce the risk of skin injury to patients. The amendments for those sections of Article 175 dealing with mammography and fluoroscopy would be consistent with the new FDA requirements.

Article 175 is further amended with regard to quality assurance programs, radiation safety, and general requirements for radiation producing equipment.

Section 175.03(f)(2)(iii) [should be (vi) added] is amended to address the need for timely processing of personnel radiation monitoring devices in keeping with the manufacturer's guidelines. There is currently no language in the section requiring timely processing to assure prompt notification, investigation and correction of unusual exposure levels to radiation workers.

Section 175.07(b)(1) is amended to include additional quality assurance requirements for the processing of radiographic film after the x-ray film has been produced, and to insure the proper maintenance of records. Licensees or registrants would be required to maintain written records documenting quality assurance and audit activities for review by the Department. Section 175.07(e) of the Health Code deals with records and reports of misadministrations. Subparagraph (ii) of paragraph (1) is amended to remove the reference to iodine-123 to make the regulation consistent with the language of §16.25 of the New York State Sanitary Code and with §35.2 of Title 10 of the Code of Federal Regulations (C.F.R.) which have been amended owing to the lesser potency of iodine-123.

Section 175.56 of the Health Code outlines the general requirements for radiation equipment. Subsection (e)(1) is amended to prohibit the use of outdated x-ray film because outdated film jeopardizes the quality and stability of the radiographic image. Subsections (j) and (k) are added to include requirements for x-ray producing equipment. Currently, there is no language in this section which addresses defective or inoperable x-ray equipment which could compromise patient safety and/or radiographic image quality. New subsection (j) requires that x-ray equipment be maintained in proper working order and new subsection (k) requires that all x-ray producing equipment be provided with a visual indicator which functions whenever x-rays are produced.

Section 175.57 covers diagnostic radiography. Subsection (a) reads: "The provisions of this section apply to equipment for the recording of images, except equipment involving use of an image intensifier or computed tomography x-ray systems manufactured on or after November 28, 1984." The subsection is amended by changing it to read: "The provisions of this section apply to equipment for the recording of images." It is not intended that this section regulate image intensifiers or computed tomography systems. In addition, the 1984 date is no longer relevant.

Section 175.62 covers fluoroscopy. The reference to "manufactured on or after August 1, 1974" has been deleted. The section would apply to all fluoroscopic systems. New paragraph (3) was added to subsection (d) to include additional requirements for entrance exposure rate limits for fluoroscopic equipment in compliance with state and federal regulations. The new paragraph reads as follows: "When the high level control is activated, the maximum

exposure rate measured in air at a point where the center of the useful beam enters the patient shall not exceed 20 roentgens per minute." Routine fluoroscopy procedures are limited to five roentgens per minute for the average size patient with an upper limit of ten roentgens per minute for individual patients. However, a high level option on this equipment is provided to be used during special procedures such as angioplasty, and there is currently no upper limit on the exposure rate per minute. The amount of radiation exposure to patients during these fluoroscopically guided invasive procedures has become a concern because of the increased risk of injury to the patient. Equipment manufactured after May 19, 1995 is required by FDA rule to automatically limit the exposure rate to 20 roentgens per minute in the high level mode. This addition to the Health Code addresses the remaining equipment manufactured before that date. New York State has already amended Title 10 N.Y.C.R.R., §16.58 to address this potential hazard.

Section 175.63(e) of the Health Code outlines the regulations governing personnel involved in any aspect of mammography. The requirements for radiographic technologists amended to reflect MQSA regulations [21 C.F.R. §900.12(a)(2)]. The mammography quality assurance provisions [§175.63(f)(7)] are amended to include language reflecting the MQSA requirements regarding the minimum imaging quality of equipment prior to performing patient mammograms. The FDA seeks to establish a uniform standard for a breast phantom, which attempts to approximate the imaging conditions which are found during mammographic procedures.

Section 175.101 outlines the general requirements for radioactive materials licenses. Appendices A (Exempt Concentrations) and B (Exempt Quantities) of §175.101 are amended to be consistent with the New York State Sanitary Code.

Statement Pursuant to §1042-Regulatory Agenda

Parts of this resolution were not included in the Regulatory Agenda because recent analysis conducted by the Department on the standards for protection against radiation and radiation producing equipment, and the need to make Article 175 compatible with recently amended Federal and State regulations concerning mammography and fluoroscopy procedures disclosed a need to amend the Code after the Regulatory Agenda was published.

17. Statement of Basis and Purpose in City Record Apr. 3, 2001:

The New York City Department of Health is responsible for assuring that the bathing establishments in the City of New York are constructed and operated in compliance with the New York City Health Code for the purpose of protecting public health and safety. The Health Code must be consistent with, and at least as stringent in its requirements as the New York State Sanitary Code.

The Department has conducted a review of all applicable rules and regulations governing the design, maintenance, and operation of bathing establishments including the New York State Sanitary Code, (Title 10 N.Y.C.R.R. Subpart 6-1), Article 165 of the New York City Health Code (the Code), and other related Federal, State and local rules and regulations. After completing a comprehensive review of all applicable rules and regulations, Article 165 of the Code has been amended to clarify and simplify various complex engineering technical design, maintenance and operation requirements contained in both the Code and the State Sanitary Code. The intent of this amendment is to modernize and update this Article of the Health Code, establishing bathing establishment regulations that are consistent with the Sanitary Code and which include important material not presently covered in the Sanitary Code. These modifications are intended to result in a compendium of regulations that would stand alone and not require reference to the Sanitary Code in its application or use.

The essentials of the amendments are as follows:

GENERAL PROVISIONS

(a) Article 165 has been amended to include definitions such as Aquatic Supervisory Staff, Certified Pool Operator, Responsible Persons, Wading Pool, Spa Pool, White-Water Slide and Movable-Bottom Pool that are currently

regulated under the State Sanitary Code. Additionally, other terms and language are proposed to expand and clarify definitions, to improve readability and to express the intent of such terms as they are used in Article 165.

(b) Article 165 has been amended to exclude pools used for religious purposes (ritual immersion) and physical therapy (activities performed under prescribed medical supervision) purposes only. This amendment would be consistent with New York State rules.

(c) The term "Special Purpose Pool" has been deleted from Article 165 and replaced with the term "Physical Therapy Pool" to apply, where appropriate, to pools used for activities performed under medical or clinical supervision. Wave pools, movable bottom pools, and white-water slide pools will be dealt with separately without use of the term, "Special Purpose Pool".

(d) Article 165 has been amended to include specific requirements governing general procedures for permit application, permit approval criteria, and the process. This should make the application process simpler and less time consuming for both the public and the Department.

SAFETY, OPERATION AND MAINTENANCE REQUIREMENTS

(a) In the interest of protecting the public and promoting public health and safety, Article 165 has been amended to incorporate provisions of the State Sanitary Code that address safety, operation and maintenance, where such are not presently covered in Article 165. In addition, the following proposals would be incorporated:

(1) Amendment of the Article to include specification of ownership, level and certification of supervision requirements for various types of pools such as hotel pools which, under the existing Sanitary Code may be operated without basic CPR certified staff on premises, and condominium pools for which the Sanitary Code does not specify any supervision or staffing requirements. This amendment will significantly contribute to patron safety in the City of New York.

(2) Amendment of Article 165 to include chemical handling and storage requirements consistent with the Sanitary Code.

DESIGN AND CONSTRUCTION CODES

(a) Article 165 has been amended to simplify and consolidate all applicable rules and regulations that include or exceed requirements of the Sanitary Code. Further, the reenactment of Article 165 would reduce the complexity of various technical design and construction requirements. The ultimate goal of these amendments is to make the technical review process simpler and to reduce the risk of injuries to the users.

(b) To be consistent with Sanitary Code, Article 165 has been amended to require fifty square feet (50 sf) per patron of deck area (beyond the required walk way area) in the calculation of the maximum permissible number of bathers allowed on the pool deck at any time. This change represents a thirty-five square foot (35 sf) increase over the existing requirement.

(c) Article 165 has been amended to reflect Sanitary Code requirements for color coding of pool plumbing which are easier to understand and follow for these purposes than City Building Code standards, but will remain consistent with any Building Code requirements related to color coding.

(d) Article 165 has been amended to include installation of an emergency switch at spa pools for purposes of stopping motor(s) that provide power to the recirculation and jet systems. This change is consistent with Article 680 (Swimming Pools, Fountains and Similar Installations) of the National Electrical Code, 1999 Edition.

(e) Article 165 has been amended to include the following "shallow end" requirements:

(1) **Swimming Pool.** The entrance to the pool area shall be at a point adjacent to the shallow end of the pool.

(2) **Wading Pool.** Where there is a wading pool associated with a swimming or wave pool, the wading pool shall be at the shallow end of the adjacent pool.

(3) **Spa Pool.** When the spa pool is adjacent to another pool, the spa pool shall be located at the shallow end.

The remaining amendments would modernize the technical requirements of the existing Article 165 and would represent the current thinking of health and safety experts.

18. Statement of Basis and Purpose in City Record Sept. 24, 2001:

The Department proposes that the Board of Health amend §173.14 of the Health Code governing lead abatement safety standards to: 1) lower Health Code post-abatement re-occupancy clearance dust lead levels to reflect lower levels contained in regulations of the U.S. Environmental Protection Agency (EPA) which became effective March 6, 2001, and 2) require that abatement work areas be sealed off to further reduce occupant exposure from both floor and airborne lead dust.

1. The federal Residential Lead-Based Paint Hazard Reduction Act of 1992 (Public Law 102-550), codified at 42 U.S.C.A. §4851, et seq. directed several federal agencies, including the Department of Housing and Urban Development (HUD), Centers for Disease Control and Prevention (CDC) and EPA to develop lead poisoning prevention guidelines and regulations. In 1993, the Board adopted §173.14 of the Health Code to establish safety standards for lead based paint abatement in New York City. During the past eight years, the Board has amended the Health Code to reflect updated federal regulations and guidelines. The Health Code's current re-occupancy dust lead clearance levels reflect 1996 amendments by the Board based on HUD guidelines. (See **Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing,** U.S. HUD, June 1995.)

EPA has recently promulgated regulations for conducting certain lead-based paint activities. (See Lead; Identification of Dangerous Levels of Lead; Final Rule, 40 CFR Part 745, January 5, 2001.) EPA's regulations include more stringent post-abatement re-occupancy dust lead clearance levels than the above referenced HUD guidelines, and are intended to further minimize exposure to lead hazards. Accordingly, the Department requests the Board to lower the re-occupancy dust lead clearance levels found in Health Code §173.14(e)(4)(dd) in accordance with the more stringent provisions of the EPA regulations, codified at 40 CFR §745.227(e)(8)(viii), as follows:

Floors: 40 micrograms of lead per square foot

Window Sills: 250 micrograms of lead per square foot

Window Wells: 400 micrograms of lead per square foot

After publication of the proposal, the Department proposed amending the above referenced section, inserting the terms "dust lead levels" and "dust lead clearance levels" instead of "lead dust levels" or "dust levels" to more closely reference the federal regulation and emphasize that it is the amount of lead in dust, rather than the amount of dust alone which must be measured. Accordingly, these terms have been incorporated in the resolution adopted.

2. A further amendment is proposed to §173.14(e)(2)(bb)(iii) of the Health Code related to safe lead abatement work practices. This provision currently requires that abatement work areas be sealed off from other areas by taping two layers of polyethylene sheeting over the doorway entry to the work area, creating an "S-shaped" entry-way to prevent the dispersal of lead dust. The current Health Code provision is based on asbestos abatement work practices and is most appropriate where the potential hazards are primarily airborne. However, since most lead abatement work produces both airborne and floor lead dust hazards, the Department believes that it would be more effective to seal off work areas using a method that prevents both air and floor dispersion of lead dust. Accordingly, the Department proposes that the

Board amend this provision, accounting for the above cited HUD Guidelines (Chapter 8 of HUD Guidelines), to require that polyethylene sheeting be taped along all sides of the doorway and that a slit be cut down the middle of the sheeting, leaving intact at least six inches of sheeting attached to the top and six inches at the bottom of the doorway. A second sheet of polyethylene would then be attached to the top of the doorway in the room or area where abatement is being conducted, acting as a flap opening into the abatement area.

18-A. Statement of Basis and Purpose in City Record Jan. 14, 2003:

Chapter 22 of the New York City Charter, as amended by the electorate in the General Election on November 6, 2001 (Questions 5 and 4), merged the New York City Department of Health and the City Department of Mental Health, Mental Retardation and Alcoholism Services into a single agency, the Department of Public Health. On July 29, 2002, the Mayor signed Local Law 22 of 2002 which further amended Chapter 22 and various other provisions of the Charter and the Administrative Code of the City of New York, changing the name of the merged agency to the "Department of Health and Mental Hygiene," retroactive to July 1, 2002. The Charter amendment necessitates amendment of various Health Code provisions which currently specifically identify the "Department" and "Commissioner" as the "Department of Health" and "Commissioner of Health," respectively.

Wherever the term "Department" is defined as "Department of Health" or "Commissioner" is defined as "Commissioner of Health" or where there is a requirement that signs or warnings be posted referring to the Department or Commissioner of Health or another government agency is mentioned in the same Health Code provision referring to the "Department," the provision has been amended making a specific reference to the Department (or Commissioner) of Health and Mental Hygiene. In other provisions, where there is a reference to the "Department of Health" or "Commissioner of Health" the phrase has simply been shortened to the "Department" or "Commissioner" in accordance with the respective amended definitions in §1.03 of the Health Code.

In addition, where the change in Department name appears in a provision referring to another agency which no longer exists, or has been replaced by a successor agency, these references have been updated.

19. Statement of Basis and Purpose in City Record Dec. 17, 2003:

The New York City Department of Health and Mental Hygiene (the "Department") is authorized and required by law to promote and protect the health and safety of New York City residents and visitors by ensuring an environment free from animal-borne diseases and hazards, as well as those caused by other vectors. Article 161 contains various provisions related to issues of public health concern in ownership and management of animals in the City of New York.

The Department enforces provisions of the New York City Health Code (the "Health Code"), the Administrative Code of the City of New York and the New York State Sanitary Code related to investigating reports of animal bites and rabies; managing wild, vicious and/or dangerous animals; licensing and regulating working horses and dogs, and companion dogs; and issuing animal exhibition permits. The Department inspects and issues permits for facilities where animals are sold, adopted, held, groomed, trained, boarded and sheltered. The Department monitors the City's contract for animal care and control services, investigates animal nuisance complaints and cooperates with all government and voluntary agencies involved in the care and control of animals.

New York State and New York City animal control laws are intended to safeguard the health and safety of the public. In addition to having their dogs actively vaccinated against the disease of rabies, responsible dog owners must obtain a license (New York City Dog License Law, Ch. 115 of the laws of 1894, as amended); attach a dog license tag to the dog's collar when the animal is in a public place (see, Health Code §161.04); hold the dog on a leash no longer than six feet when the dog is in a public place (see, Health Code §161.05); and remove their dog's feces from any public areas (see, Health Code §161.03 and New York Public Health Law §1310).

Licensing companion dogs is increasingly seen as an important indicator of responsible dog ownership, reducing the numbers of strays, biting incidents and homeless, unwanted animal overpopulation. It enables owners of stray dogs

to be more easily identified so that lost dogs may be returned to their owners. It makes it possible for the Department to identify and control biting and dangerous dogs, and to control rabies. Information about ownership and rabies vaccination status of a biting dog may aid a victim's medical practitioner in the decision making process regarding the possible need to initiate rabies prophylaxis.

After a pack of dogs inflicted serious bite wounds on two people in the Rockaways in December, 2001, the Department joined with various government agencies and other organizations enforcing dog control and public safety laws, including the New York City Police Department (NYPD), Department of Parks and Recreation (DPR), Department of Sanitation (DOS), Housing Authority, Department of Housing Preservation and Development, Center for Animal Care and Control (CACC) and the American Society for the Prevention of Cruelty to Animals (ASPCA) to form a Dangerous Dog Task Force. The aim of the Task Force is to increase public safety by encouraging responsible dog ownership through the following activities: (a) animal information and ownership sessions, (b) spay/neuter and rabies vaccination clinics, (c) training for various agency units which enforce animal laws and regulations, (d) closing gaps and clarifying applicable laws, and (e) securing vacant properties that provide harborage for stray dogs.

Pursuant to current law, CACC employees who are special patrolmen and NYPD officers may issue notices of violation to owners whose dogs create a nuisance, have no dog license tags attached to their collars, or are unrestrained or improperly restrained. DOS, which is authorized to enforce the State "pooper scooper" law (Public Health Law §1310), and DPR, which currently enforces DPR's animal control regulations in park lands within DPR's jurisdiction, have expressed interest in obtaining authority for their enforcement employees to enforce certain animal control provisions of Article 161 of the Health Code which contribute to public health and safety. Accordingly, the Board of Health has amended applicable provisions of Article 161 of the Health Code to enable DPR and DOS enforcement agents to issue notices of violation of Health Code §161.03 ("Control of dogs and other animals to prevent nuisance"), §161.04 ("Dog Licenses") and §161.05 ("Dogs to be restrained") resulting in an expected improvement in the public's compliance with these provisions.

Except for a letter from the Commissioneer of DOS in support of the proposal, there were no written or oral comments submitted in response to the publication of the proposal in The City Record or at the public hearing.

20. Statement of Basis and Purpose in City Record Mar. 24, 2004:

The Department is responsible for protecting the health and safety of beach users by providing for the proper construction and operation of bathing beaches in New York City. Article 167 of the current Health Code sets forth standards for operation and maintenance of bathing beaches in New York City.

To help protect public health at the Nation's beaches, the Beaches Environmental Assessment and Coastal Health ("BEACH") Act was signed into law in October 2000. **See** Pub. L. No. 106-284, 114 Stat. 871 (2002) (codified at 33 U.S.C. §1313(i)). The BEACH Act required the U.S. Environmental Protection Agency ("EPA") to publish performance criteria for monitoring and assessing coastal recreation waters and for promptly notifying the public when those waters fail to meet applicable water quality standards. In June 2002, the EPA published its performance criteria, which included new public notification procedures, replacement of Coliform with Enterococci as the indicator organism, and revisions to standards and methods of bacteriological analysis. **See** EPA, National Beach Guidance and Required Performance Criteria for Grants (June 2002), **available at http://www.epa.gov/waterscience/beaches/grants/guidance/all.pdf** The BEACH Act further requires that, by April 2004, states implement a monitoring and public notification program that is consistent with performance criteria published by EPA. If a state fails to adopt a program that is consistent with EPA's performance criteria, the BEACH Act requires the EPA to propose a program for the state. Thus, in approximately four months, both New York State and New York City will be required to adopt or comply with EPA's performance criteria.

The Department proposes that Article 167 be repealed and reenacted to adopt the EPA's performance criteria pursuant to the BEACH Act, and to adopt beach safety, operation, and maintenance requirements set forth in the New

York State Sanitary Code (10 N.Y.C.R.R., Ch. 1, Subpart 6-2), which is applicable in New York City.

The key revisions to Article 167 of the Health Code are as follows:

GENERAL PROVISIONS

(1) Proposed section 167.01 ("Applicability") is new. It incorporates sections 6-2.3 and 6-2.8(a) of the State Sanitary Code, as well as existing Health Code §167.03(a).

(2) Proposed section 167.03 ("Definitions") amends existing section 167.01 by expanding and clarifying terms and by adding definitions such as Adequate, Approval, Aquatic Supervisory Staff, Bathing, City, Department, Escherichia coli, Enterococci, Fresh Water, Geometric Mean, Major Alteration, Renovation or Modification, Marine Water, Qualified Lifeguard and Standard Method.

(3) Proposed section 167.05 ("Permit Applications") amends existing section 167.03 by requiring, among other things, that permit applications be submitted 30 days before opening a bathing beach. **See** State Sanitary Code §6-2.5. Proposed subsection (c) is new and would require permits to be renewed before reopening a bathing beach for the season., **i.e.,** May though November. Further, proposed subsection (e) is new and would require bathing beach owners to file an application for change in ownership within 30 days of the sale or transfer.

(4) Proposed section 167.07 ("New Construction, Major Renovation or Modification") would amend existing section 167.05 by adding provisions from section 6.2.19 of the State Sanitary Code.

(5) Proposed section 167.09 ("Enforcement") sets forth new criteria for closing bathing beaches, and is modeled upon State Sanitary Code §§6-2.4(b) and (c).

WATER QUALITY STANDARDS AND CLASSIFICATIONS

To improve monitoring of bathing beaches and public health, the Department proposes to incorporate those provisions of the State Sanitary Code and EPA performance criteria that address water quality standards, monitoring requirements, and beach classifications. The specific amendments include:

(1) Proposed Health Code §167.13 ("Water Quality Standards") would replace the coliform standards in existing Health Code §167.13 with enterococci standards, in accordance with the EPA's proposed new standards for enterococci.

See EPA, Ambient Water Quality Criteria for Bacteria-1986, available at www.epa.gov/ost/pc/ambientwqc/bacteria1986.pdf. Proposed subsection (b) would add the City's Premptive Standards-New York City Wet Weather Advisory. The advisory would provide preemptive measures against swimming and bathing in possibly contaminated water and thus enhance protection of public health.

(2) A new section 167.15 ("Monitoring") has been added to comply with EPA's performance criteria and State Sanitary Code §6-2.15(b), and to incorporate the Department's existing monitoring procedures, which are based on potential pollution sources, storm water discharges, historical water quality data analysis, regional hydrodynamics, beach usage and beach length.

(3) Proposed section 167.17 ("Classifications") changes the beach classification terms in existing Health Code §167.13 (a)-(c) as follows:

(a) "Approved for Bathing" to "Class A: Open for Swimming and Bathing"

(b) "Not Recommended for Bathing" to "Class B: Under Advisory-Not Recommended for Swimming and Bathing" and

(c) "Temporarily Restricted for Bathing" to "Class C: Closed Temporarily Restricted for Swimming and Bathing."

SUPERVISION, SANITATION, SAFETY AND PUBLIC NOTIFICATION

(1) Proposed sections 167.19 ("Supervision and Certification") and 167.21 ("Lifesaving Safety Equipment") amend existing section 167.11 by incorporating those provisions of the State Sanitary Code that address supervision and sanitary safety. **See, e.g.,** State Sanitary Code §§6-2.17, 6-2.19, and 6-2.20.

(2) Proposed section 167.23 ("Beach Safety Plan") is new and reflects some of the Department's existing policies as well as various provisions of State Sanitary Code §6-2.17(c) ("Safety Plan").

(3) Proposed section 167.25 ("Sanitary and Safety Survey") is new, and reflects the Department's current policies.

(4) Proposed section 167.27 ("Public Notification") is new and must be added to comply with the EPA's performance criteria.

OPERATION AND MAINTENANCE REQUIREMENTS

(1) Proposed section 167.29 ("Control of Beach and Water Use") is new and incorporates those provisions of the State Sanitary Code that address operation and maintenance but are not covered in existing Article 167. **See** State Sanitary Code §§6-2.16(a)-(j) and 6-2.18(a).

(2) Proposed section 167.31 ("Facility Use and Maintenance") amends existing section 167.07 by adding various provisions from the State Sanitary Code, such as sections 6-2.11, 6-2.13(b) and (c), and 6-2.19.5.8.

(3) Proposed section 167.33 ("Drowning, Injury and Illness Incidents") amends existing section 167.15 by incorporating State Sanitary Code §6-2.7 in proposed subsection (a), and by adding new reporting requirements in proposed subsection (b).

(4) Proposed section 167.35 ("Record Keeping") is new and reflects the record keeping and reporting requirements set forth in State Sanitary Code §6-2.18.

BATHING BEACH DESIGN AND STANDARDS

In order to provide better guidance to new permit applicants and to current operators and owners who wish to build beach facilities, including bathhouses, it is proposed that a new section 167.37 ("General Requirements") be added to reflect State Sanitary Code §6-2.19, as follows:

(1) Proposed subsection (b) adds pre-qualification requirements for establishing a bathing beach, which consists of site assessment, water surface area, land area, bottom slope, bottom material, sewage discharge, water currents, and water quality. **See** State Sanitary Code §§6-2.19.4.0, 6-2.19.4.9, 4.10, and 4.11.

(2) To modernize the technical requirements of existing Article 167, proposed subsections (d) through (i) incorporate the State Sanitary Code requirements for diving, depth markers, safety and warning signs and electrical requirements, safety equipment, and emergency care/first aid room. **See** State Sanitary Code §6-2.19.4.7 and §6-2.19.4.8.

(3) Proposed subsection (c) would add a maximum bather capacity limitation of at least 25 square feet per bather in shallow water less than four feet deep and at least 75 square feet per bather in deeper water greater than four feet deep. **See** State Sanitary Code §6-2.19.4.3.

POST PUBLICATION CHANGES

After publication of the proposed rule, the Department made changes to the proposal in response to testimony presented at the public hearing held on January 22, 2004 and in response to comments submitted to the Department by the New York State Department of Health (NYSDOH). In response to comments received from the New York City Department of Environmental Protection and after a review of recent EPA publications by the Department, Section 167.13 [Water Quality Standards] of the proposal was changed in consultation with NYSDOH. The "single sample limit/upper percentile value" for both marine water and freshwater beaches was removed from the bacteriological water quality standards.

In response to written comments submitted to the Department by NYSDOH, the following changes were made to the proposal: Section 167.03(d): "water skiing" and "surfing" were deleted from the definition of "bathing". Section 167.03(n): the word "may" has been added to "pose a public health threat" in the definition of "preemptive standards-New York City Wet Weather Advisory". Section 167.05(d) was changed from "500 feet" to "750 feet" to conform with Section 6-2.19, Item 4.10 of the Sanitary Code, which requires a distance of 750 feet between any wastewater discharges and a bathing beach. Section 167.07(c)(1)(G) was revised to include a "water clarity" test as required by Section 6-2.19, Item 4.11.3 of the Sanitary Code. Section 167.13(a)(1): "E. coli" was added to the bacteriological water quality standard. Section 167.17(b)(2): the beach classification "Class B: Under Advisory-Not Recommended for Swimming and Bathing" was revised in that a beach may be assigned to this category when there is contamination on the beach or evidence of sewage and wastewater discharge "which may constitute a potential public health hazard". Section 167.21 was revised. A pocket face mask or face shield is now required at all beaches to avoid delays in the initiation of CPR. In addition to being required at all beaches, a rescue tube or torpedo buoy, a rescue board or lifeboat, a spine board and a first aid kit are also required "for each 500 yards of beachfront or fraction thereof". Section 167.25 was revised and now reads "if pollution which may potentially present a public health threat is observed, as described in Section 167.13(a)(2), the operator shall close the beach immediately and notify the Department for further instructions". Section 167.27(b)(2) was revised to require that "the operator must close the beach and beach closure signs must be posted" if adverse weather or environmental conditions pose a threat to the health and safety of the public. Section 167.37(d)(2) was revised to require that for a diving board three or less feet above the water, the 10-foot required depth at the end of the diving board should extend for 12 feet beyond the board as required in Section 6-2.19, Item 4.8.2 of the Sanitary Code.

20-A. Statement of Basis and Purpose in City Record July 30, 2004:

Introduction

The Board of Health has amended various provisions of the Health Code to harmonize current provisions of the Health Code, applicable to public and private lead poisoning prevention activities and safe lead-based paint work practices in child-occupied dwelling units and children's group day care and public kindergarten programs, with Local Law 1 of 2004 (Local Law 1) and current regulations of the U.S. Environmental Protection Agency ("EPA").

Over the past 30 years there has been a dramatic decline in childhood lead poisoning; however, childhood lead poisoning remains a significant public health concern. Elevated blood lead levels have been associated with intelligence deficiencies, reading and learning disabilities, reduced attention span, hyperactivity and behavior problems. The ingestion of household dust containing lead from deteriorating or abraded lead-based paint is believed to be a primary factor in lead poisoning occurring in children under six years of age.

In 1960, the Board of Health amended the Health Code to ban the use of lead-based paint on residential interior surfaces. In 1970, the Health Code was further amended to provide that the Department investigate a child's home for possible environmental lead hazards when there is a report of a child with an environmental intervention blood lead level ("EIBLL"). Local Law 1 of 1982, the City's first lead poisoning prevention law, amended the Housing Maintenance Code (Title 27 of the Administrative Code of the City of New York) to require owners to correct lead-based paint hazards in dwelling units in multiple dwellings where children under seven years of age resided, but was never fully implemented. Its provisions were interpreted as requiring abatement of all lead-based paint, not just

deteriorating lead-based paint, despite the nearly universal consensus that requiring abatement of intact lead-based paint could result in increasing children's risk of lead poisoning. In 1999, after many years of litigation relating to implementation of Local 1 of 1982, the City Council enacted Local Law 38, repealing Local Law 1, to create a more pragmatic and workable approach to housing maintenance than was possible under Local Law 1 of 1982. However, on July 1, 2003, New York's highest court invalidated Local Law 38 on the grounds of inadequate review under the State and City environmental quality review laws and on February 5, 2004, the City Council, overriding the Mayor's veto, enacted Local Law 1 of 2004, repealing Local Law 1 of 1982 and Local Law 38 of 1999.

In 1992 the U.S. Congress enacted Title X-the Residential Lead-Based Paint Hazard Reduction Act (Title X), to develop a national strategy to build the infrastructure necessary to elimate lead-based paint hazards in federally assisted housing. Throughout the 1990's, federal agencies sponsored studies and assessments to help determine how to best prevent lead poisoning in young children. The U.S. Department of Housing and Urban Development ("HUD") initially published guidelines for lead hazard assessment and remediation in 1995. Comprehensive HUD regulations did not become effective, however, until September 15, 2000, and are applicable to lead remediation in federally subsidized housing. It was not until March 1, 1999 that EPA's regulations for "abatement" of lead-based paint by certified workers and firms became effective in New York State.

Since 1993, Health Code §173.14 has specified procedures and methods for correcting lead-based paint hazards when ordered or directed by the Department, or, in some cases, when correcting violations placed by the City's Department of Housing Preservation and Development (HPD) pursuant to Title 27 of the Administrative Code of the City of New York (hereinafter "Administrative Code" or "Housing Maintenance Code"). Section 173.14 has been amended periodically by the Board to reflect prevailing safety standards and legal requirements. Methods and work practices for lead based paint abatement are specified in the Health Code and generally prohibited any person from performing an "abatement" if the person had not complied with applicable laws requiring training, licensing, certification, or other authorization. However, as noted, it is only since March 1, 1999 that EPA regulations have specified training, certification and work rules for firms and personnel performing various lead-based paint activities. See, e.g., EPA regulations at Title 40 Code of Federal Regulations Part 745 ("40 CFR 745").

EPA's rules now govern procedures and requirements for the certification of individuals and firms engaged in certain lead-based paint activities state-wide, and work practice standards for performing the activities defined in EPA's rules. These rules require certain changes in the Health Code. For example, EPA's rules define "abatement" as any measure or set of measures designed to permanently eliminate lead-based paint hazards, and any firm or individual performing abatement as defined by EPA must be EPA-trained and certified. EPA's definition of abatement excludes activities that are not designed to permanently correct lead-based paint hazards, such as renovation, remodeling, or repair activities that may incidentally result in a reduction or elimination of lead-based paint hazards or disturbing lead-based paint. Furthermore, EPA's certification requirements do not apply to interim controls or other operations and maintenance activities designed to temporarily, but not permanently, reduce lead-based paint hazards. EPA also does not regulate individuals or firms engaged in non-abatement activities.

Local Law 1 of 2004 requires owners of older multiple dwellings in which a child under seven resides to identify and remediate lead-based paint hazards. There is also a broad requirement for remediation of lead-based paint hazards whenever a tenant vacates a rental unit. Local Law 1 defines remediation as the "reduction or elimination of a lead-based paint hazard by wet scraping and repainting, removal, encapsulation, enclosure, or replacement . . . or other method approved by the commissioner of health and mental hygiene." Local Law 1 does not specify a preferred method to be utilized in remediation. Although the method of remediation is optional, Local Law 1 requires lead dust clearance testing after correction of HPD violations and after voluntary repairs by owners which disturb two or more square feet of lead-based paint per room in housing subject to the law. Local Law 1 also specifies minimum training and certification requirements for individuals and firms engaged in remediation and conducting final lead dust clearance testing.

Local Law 1 also provides that the work practices in HPD rules "shall be no less stringent than the safety standards

required by the commissioner of health and mental hygiene whenever such commissioner shall order the abatement of lead-based paint hazards pursuant to §173.13 of the health code or a successor rule. . . ." See, e.g., Administrative Code §27-2056.11(a)(1). This and other requirements in Local Law 1 have resulted in parallel, nearly identical, work practices rules in both the amended Health Code and HPD rules.

There are differences between HPD's final rules and the Health Code, particularly pertaining to the use of wet scraping and repainting. This method was considered an "exclusive interim control" in Local Law 38, but is only one of several methods of remediation in the new Local Law 1 and in the proposed amended Health Code. While the amended Health Code no longer allows this as a method of "abatement" its limited use will be allowed in certain circumstances. Although EPA rules do not define wet scraping and repainting as a method of abatement, this method of lead-based paint hazard reduction will continue to be an acceptable way to correct violations, both pursuant to HPD rules and when ordered by the Department in certain circumstances. In the Notice of Intention to amend published for public comment, the Department initially proposed that wherever the term "abatement" appears in the current Health Code with respect to lead-based paint and lead hazards, the term "remediation," a broader and more inclusive term, but used. In response to comments received objecting to this change in all cases, the final resolution retains the term "abatement" in §173.13(d)(2) with respect to children with environmental intervention blood lead levels. The work practices governing remediation of lead-based paint hazards incorporate the provisions of Local Law 1, EPA rules applicable to "abatements" and nearly all the current provisions of existing Health Code §173.14 are reorganized according to the magnitude and permanence of the remediation work. Local Law 1 adds a new Chapter 9 ("Lead-Based Paint in Day Care Facilities") to Title 17 of the Administrative Code, imposing some additional requirements are lead-based paint hazard remediation and inspections on group day care operators and the owners of the buildings in which day care is located, which will need to be have been harmonized with existing provisions in Article 47 of the Health Code. Although Local Law 1 imposes no new requirements for remediation of lead-based paint hazards in Department of Education-operated kindergartens, the Department has imposed in the past, and proposes that the Board continue to impose, the same requirements for preventing exposure of children under six in public kindergartens to lead-based paint hazards as may be applicable to day care, pre-kindergarten classes and non-public kindergartens. See, e.g., Health Code §§45.12 and 47.44.

Amend Health Code §173.13 ("Lead Paint")

1. Amend Health Code §173.13(a) by adding a provision to enhance enforcement of the prohibition in both Health Code §173.14 and Local Law 1 of dry sanding and scraping. This provision requires places of business selling paint or paint removal products to post a warning sign alerting consumers to the prohibition of this method in dwellings, day care centers and schools. This section is being further amended to authorize enforcement by the City's Department of Consumer Affairs, which currently inspects hardware and paint suppliers in the City to enforce laws restricting sales of box cutters and spray paints.

2. Amend Health Code §173.13(d)(1) to better reflect national recognition, federal guidelines, and the Department's experience in identifying and ordering remediation of lead hazards in housing, other buildings, and the areas surrounding such structures, in which children may reside or spend time, but which are not subject to the lead poisoning prevention provisions of the Housing Maintenance Code. Such premises include owner-occupied cooperative, condominium and one- and two-family homes, and commercial buildings in which children's institutions and programs are located, or to which children at risk may have access. While the Department has exercised its general nuisance abatement authority (see, e.g., Health Code §3.11), in ordering the abatement of lead hazards on building exteriors, from fire escapes or yard soil and even at a museum exhibition of soft lead tiles, Health Code §173.13(d)(1) is being amended to include a provision authorizing the Department to order the remediation of any leaded substances it finds which may present a hazard to children.

3. Amend §173.13(d)(1) to authorize the Department to order remediation of lead-contaminated dust in a dwelling unit where the source of the lead-contaminated dust is not a condition of the dwelling in which the unit is located.

4. Amend §173.13(d)(2) to change the mandatory environmental intervention action level for a lead poisoned child from a single 20 mcg/dL or greater blood lead level to a single 15 mcg/dL or greater. Local Law 1 amends Title 17 of the Administrative Code to provide for this intervention level.

5. Add a provision to §173.13 concerning the disposition of objections to Department orders to remediate lead hazards. From 1970 to 1997, the Department used X-ray fluorescent analysis (XRF) equipment for sampling lead-based paint. The particular model of the machine used became outdated in the early 1990's, because it was not able to adjust for composition of the substrate of building components in calculating the value of lead on surface paint. Because of these equipment limitations, the Department's orders to abate nuisance were subject to routine challenge by owners submitting contrary results of laboratory analysis of paint chip samples. The process of removing paint chips further damaged deteriorated lead painted surfaces and contestations delayed the correction of confirmed lead-based paint hazards in dwellings where children with an EIBLL resided. In 1997, the Department purchases XRF equipment that self-adjusts for substrate composition. At the same time, a new Health Code definition of lead-based paint was adopted which incorporated federal definitions and the availability of federal calibration standards for XRF equipment. This has resulted in the Department generally rejecting the challenges of owners who simply submitted results that differed from the Department's. This Department practice was challenged in two suits, but upheld by the courts. See, e.g., 601 **Realty Corp. v. City of New York Department of Health,** 269 AD2d 268, 703 NY2d 458 (AD 1st Dept. 2000). Processing such contestations unacceptably delays remediation of surfaces in the home of a lead poisoned child and promotes the taking of paint chips from deteriorating surfaces, further endangering such children. Currently, objections to Department orders are considered only if the objector presents evidence that the Department's XRF equipment is not functioning or was not calibrated properly, not merely because the onwer's XRF or laboratory sampling results are different than the Department's. Two comments objecting to this amendment were received, but for the reasons already stated, no change has been made in the resolution.

Repeal and re-enact Health Code §173.14

1. Add definitions to Health Code §173.14(b). Define "abatement" as a set of measures specifically designed to permanently correct lead-based paint hazards, consistent with the federal definitions [24 CFR 35.110 (1999) and 40 CFR 745.223 (1997)]; "remediation" as the reduction or elimination of a lead-based paint hazard (Local Law 1, Administrative Code §27-2056.2); and "disturbance" as any action taken which breaks down, alters or changes lead-based paint (15 RCNY Chapter 1). Other applicable definitions of terms in the rules generally adopt the same definitions in Local Law 1 or in EPA rules.

2. Add provisions to Health Code §173.14(c), tracking Local Law 1 and EPA rules, differentiating training and credentialing requirements for abatement, other remediation of lead-based paint hazards, and disturbance of lead-based paint in the course of conducting other non-ordered repair and maintenance activities.

3. Amend the administrative requirements of Health Code §173.14(c).

(i) Notification of commencement of work requirements. Local Law 1 [§27-2056.11(a)(2)(ii) of the Administrative Code] requires building owners or their representatives to notify the Department prior to performing work that will disturb greater than 100 square feet of paint per room or involve removing two or more windows. Comments received from owner and housing rehabilitation organizations indicated that such requirements would be excessively bureaucratic and burdensome and served no useful purpose. Comments supporting the notice requirement stated that the notice requirement was not "unreasonable." No change has been made in the resolution.

(ii) Recordkeeping. Currently, Health Code §173.14(c)(3) requires building owners to maintain records for seven years; Local Law 1 [§27-2056.17 of the Administrative Code] requires building owners to maintain records for ten years.

4. Amend training and certification requirements in Health Code §173.14(c)(2) to harmonize EPA, Local Law 1

and Department remediation requirements. EPA regulations (40 CFR Part 745, Subpart L) specify that firms, inspectors, risk assessors, supervisors, project designers and workers performing abatements be EPA certified. Local Law 1 specifies that only the **firms** engaged to perform work to remediate HPD violations, or non-violation work that disturbs greater than 100 square feet of paint per room or which involves the removal of two or more windows must be certified to perform lead abatements in accordance with 40 CFR Part 745, Subpart L. See, §27-2056.11(a)(2)(ii) of the Administrative Code. The amended Health Code requires that all **abatement** activities be performed only by firms and personnel who are EPA certified, but that only the firms require EPA-certification to conduct other lead-based paint remediation activities regulated by Local Law 1 or the Health Code, and that their workers be HUD trained. However, all work ordered by the Department pursuant to Health Code §173.13(d)(2) to correct interior lead-based paint hazards where there is a child with an environmental intervention blood lead level will be termed "abatements" and will require use of EPA-certified workers.

5. Workers performing work other than abatement. Local Law 1 specifies that persons performing work that disturbs from two to 100 square feet of paint per room or does not involve the removal of two or more windows must have successfully completed a course on lead safe work practices offered or approved by HUD or the Department. See, §27-2056.11(a)(2)(i) of the Administrative Code. HUD regulations specify training requirements for persons performing interim control work (including remediation by the method of wet scraping and repainting) as defined in federal regulations. See, 24 CFR §35.1330(a)(4). The amended Health Code requires workers performing such remediation pursuant to Local Law 1 [see, §27-2056.11(a)(2)(i) of the Administrative Code] to be trained in accordance with these HUD regulations. Local Law 1 exempts from its worker training requirements any worker performing work that disturbs lead-based paint surfaces consisting of less than (a) two square feet of peeling lead-based paint per room or (b) ten percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame in a multiple dwelling unit or day care facility. See, §§27-2056.11(a)(2)(iii) and 17-912 of the Administrative Code.

6. The Department is conducting an ongoing public health education campaign to increase awareness of potential lead hazards to young children from exposure to leaded dust and debris resulting from even minimal home repairs and maintenance, and the Health Code requires that signs be posted at places where paints are sold and paint scrapers are sold or rented warning that dry scraping of lead-based paint is prohibited in the City in any building where children reside. The Health Code, Local Law 38, HPD rules and Local Law 1 contain provisions prohibiting dry scraping and sanding as a method of removal of lead-based paint, but the signage requirement is new and not mandated by any law. To enhance enforcement of this provision, Health Code §173.13(a) has been further amended to authorize enforcement by the City's Department of Consumer Affairs which already inspects hardware and paint stores to enforce laws restricting sales of box cutters and spray paints.

7. Workers remediating lead-based paint hazards violations pursuant to Department orders (other than when ordered to permanently abate lead-based paint), issued pursuant to Health Code §§45.12, 47.44 and 173.13(d)(1), HPD orders or violations issued under §27-2056.11(a)(1) of the Administrative Code, or where any work disturbs greater than 100 square feet of paint per room or involves the removal of two or more windows pursuant to §27-2056.11(a)(2)(ii) of the Administrative Code, will be required to be minimally trained in accordance with HUD regulations. See, 24 CFR §35.1330(a).

8. Add requirements in Health Code §173.14(c)(2)(bb) for qualifications of persons performing lead-contaminated clearance dust tests after the completion of non-abatement work that disturbs lead-based paint. Local Law 1 requires lead-contaminated dust clearance testing at the completion of all work performed in compliance with Department orders; to correct HPD violations pursuant to §27-2056.11(a)(1) of the Administrative Code; that disturbs areas consisting of (a) two or more square feet of peeling lead-based paint per room or (b) ten percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame, pursuant to §27-2056.11(a)(2)(i) and (ii) of the Administrative Code; on turnover, pursuant to §27-2056.8 of the Administrative Code; and in day care facilities, pursuant to §17-912 of the Administrative Code. Health Code §45.12 requires that lead-based paint work performed in kindergartens operated by the City Department of Education must be performed in

accordance with Health Code §173.14, and dust wipe tests by similarly trained personnel will also be required after the completion of such work in these facilities.

9. As repealed and re-enacted, Health Code §173.14(e)(1)(I)(iii) specifies that no person shall perform a lead-contaminated dust clearance test unless such person is a third-party, who is independent of the owner and firm that performs the work. Section 27-2056.11(b) of the Administrative Code also specifies that no person shall perform a lead-contaminated dust clearance test unless such person has successfully completed a course approved or administered by the Department, EPA or HUD. HUD regulations specify training requirements and courses for persons performing clearance dust testing following work other than abatement. Health Code §173.14(c)(2)(A) requires all persons performing any abatement work, including dust test sampling, to be EPA certified. Health Code §173.14(c)(2)(B) specifies training of persons performing work disturbing lead-based paint, or paint of unknown lead content, in Department of Education kindergartens and work conducted in compliance with orders issued by the Department to remediate lead-based paint hazards, when such work would not be considered an "abatement." See, HUD regulations 24 CFR 35.1340(b)(1). Although one comment requested that the requirement for dust testing to be conducted by an independent third party be deleted as economically burdensome, the Department does not believe that such a change would benefit the public health.

10. Revise work methods and occupant protection standards in Health Code §173.14(d) and (e). Local Law 1 specifies that the rules for an owner correcting HPD violations, or doing any work that disturbs more than 100 square feet of lead-based paint per room without a violation, shall be no less stringent than those utilized in complying with an order issued pursuant to Health Code §173.13. The Health Code amendments accordingly specify work methods and occupant protection practices in buildings constructed before January 1, 1960, where children under 7 reside, for various types of lead-based paint activities. Required preparation of the work area is categorized in subdivision (e) as follows: (1) work to remediate lead-based paint hazards pursuant to a Department order, an HPD violation or non-ordered work that disturbs over 100 square feet of lead-based paint per room; (2) work performed that disturbs small or moderate amounts, i.e., two to 100 square feet per room, of lead-based paint, and the same amounts of non-ordered work performed in a day care facility or a Department of Education kindergarten; and (3) work performed in a dwelling unit upon turnover.

11. Remediation work to comply with a Department order or correct an HPD violation, or non-ordered work that disturbs more than 100 square feet of lead-painted surfaces per room, shall require that floors be cleaned before commencing work. In conducting work that disturbs lead-based paint in accordance with §17-911 (day care services), §27-2056.11(a)(2)(i) of the Administrative Code, or §45.12 (kindergartens) of the Health Code additional requirements would include using multiple layers of plastic or equivalent sheeting as needed to prevent dust from contaminating the floor; and, where applicable, turning off forced air systems in the work area and sealing off any vent openings in the work area with polyethylene.

12. Work to remediate lead-based paint hazards on turnover would require preparation of the work area using the procedures described above. However, since the dwelling unit will not be occupied while work is in progress, clean-up procedures are only specified at completion of all work, followed by lead-contaminated clearance dust testing.

13. In response to public comments, additional provisions have been added to §173.14(d) and (e), reflecting HPD's final rules, to clarify under what conditions occupants of units undergoing work that disturbs lead-based paint must be relocated; and under what conditions occupants who do not relocate may have temporary access to work areas which have been adequately cleaned, but have not been cleared for "permanent re-occupancy" because work has not been completed, or where work has been completed and lead-contaminated dust test results have not been received.

Additional changes in subdivisions (d) and (e) have been made, deleting as unnecessary a provision which required a one hour delay after final cleaning before collecting lead-contaminated dust clearance test samples, and clarifying that only objects in the work area required pre-work cleaning, and that only doors and cabinets covered with lead-based paint or paint of unknown lead content require re-hanging or other treatment to avoid binding.

Subdivision (h) of §173.14 has been further amended to add that the Commissioner or designee may also issue modifications of the application of provisions in §173.13, when compliance with orders issued pursuant to such provisions present practical difficulties or unusual hardships. Articles 45 and 47 already contain a similar provision and do not require further amendment.

To facilitate use of this complex section, a new table of contents has been added to §173.14.

Repeal §173.15 ("Unsafe lead based paint work practices")

This section authorized the Department to respond to complaints of unsafe lead-based paint work practices, and its substantive provisions have been incorporated within §173.14 of the Health Code. The provision was originally adopted to implement Local Law 38 of 1999, and was modeled on the procedures in the repealed Health Code §173.14(c)(1)(cc). Local Law 1 of 2004 includes such a provision in a new §17-185 of the Administrative Code, mandating that the Department respond to such complaints. It may be found in subdivision (f) of the Health Code §173.14, as re-enacted.

Amend §§47.44 and 45.12

Amend §47.44 ("Lead Based Paint Restricted") of Article 47 ("Day Care Services") to harmonize Health Code provisions for remediation of lead-based paint hazards in day care services with new provisions added to Title 17 of the Administrative Code (Chapter 9: "Lead-Based Paint in Day Care Facilities") and amend §45.12 ("Lead Based Paint Restricted: Kindergartens") to track §47.44. The amendments to §47.44 include a new declaration of nuisance, modeled on that in §173.14, which will enable the City to recover its costs in remediating lead-based paint hazards in day care services whenever the Department determines that the operator of the day care service or the owner of the building in which the service is located who was ordered to remediate lead hazards has failed to substantially comply with such order. The resolution as adopted contains a new provision, similar to the provision in HPD's rules, establishing a procedure for owners or operators of day care services to present evidence opposing Department orders to remediate peeling paint of unknown lead content, by demonstrating that such paint does not contain lead. Each of these sections has also been further amended by adding provisions referencing the definitions in §173.14 of the Code.

Statement of Need for Immediate Implementation

I hereby find, pursuant to §1043(e)(1)(c) of the New York City Charter, that there is a substantial need for the immediate implementation of amendments to Articles 45, 47 and 173 of the New York City Health Code ("amendments") adopted by the Board of Health (the "Board") harmonizing such provisions with Local Law 1 of 2004 ("New York City Childhood Lead Poisoning Prevention Act of 2003", hereinafter "LL 1") and with the rules of the New York City Department of Housing Preservation and Development ("HPD"), amending Chapter 11 of Title 28 of the Rules of the City of New York concerning lead-based paint, to enable such amendments to take effect on August 2, 2004, the day LL 1 and HPD's rules take effect.

The implementation of the amendments before the expiration of the thirty-day post-publication period required by Charter §1043(e)(1)(c) is necessary to avoid inconsistencies between the Health Code and LL 1 and the HPD rules for any period of time. Adoption of these amendments has required (a) an initial meeting of the Board on May 19, 2004 to approve the publication of the amendments in the City Register: (b) a public hearing held thirty days after the publication of the amendments; and (c) a second meeting of the Board to consider and adopt the amendments. The notice of intention to amend the Health Code was published in the City Record on May 21, 2004 and a public hearing held on June 23, 2004. The Board met to consider the public comments and adopted the final amendments on July 22, 2004. Adherence to the thirty-day post-publication requirements set forth in §1043 of the Charter would mean that these amendments would not take effect until some time in late August, after HPD's rules are in effect.

Local Law 1 and HPD's rules contain extensive and complex provisions for lead-based paint remediation in multiple dwellings occupied by children under seven years of age, and in day care services caring for children under six years of age. Local Law 1 requires that the work practices in HPD's rules be "no less stringent than the safety standards

required by the commissioner of health and mental hygiene whenever such commissioner shall order the abatement of lead-based paint hazards pursuant to §173.13 of the health code or a successor rule. . . ." See, Administrative Code §27-2056.11(a)(1). HPD's rules were published in the City Record July 2, 2004, and will take effect on August 2, 2004. Simultaneous implementation of the amendments to the Health Code, the HPD rules and Local Law 1 on the same day will help avoid potential public and regulatory confusion.

Thomas R. Frieden, M.D., M.P.H. Commissioner Department of Health and Mental Hygiene

Approved by Michael Bloomberg, Mayor

21. Statement of Basis and Purpose in City Record July 30, 2004:

The New York City Department of Health's Office of Radiological Health (ORH) supervises and regulates the public health aspects of ionizing radiation, including the handling and disposal of radioactive waste and responding to emergencies involving sources of ionizing radiation. The Office of Radiological Health carries out its mandate through its registration, licensing, inspection, emergency response and public education programs.

The Department is requesting the authority to use State Certified Radiation Safety Officers as part of its x-ray inspection program by amending §175.51(n) of the New York City Health Code. Section 175.51(n) covers inspections. It is proposed that a new paragraph (E) be added to paragraph 2 of subsection (n) of §175.51 to include language that would authorize the Department to utilize Certified Radiation Equipment Safety Officers (CRESO) for the inspections of dental and podiatric installations in lieu of or in addition to using the Department's ORH inspectors. This proposed amendment would allow the Department's ORH flexibility in assuring timely inspections for these types of installations during years when there are large numbers of these installations coming due for inspections.

22. Statement of Basis and Purpose in City Record Sept. 22, 2004:

The New York City Department of Health and Mental Hygiene is currently developing an Electronic Death Registration System (EDRS) and plans to begin implementation in October 2004. [See Local Law 2 of 2004]. EDRS will enable death certificates to be filed, processed and amended electronically. EDRS will provide many benefits, including, improved accuracy, data quality and timeliness; enhanced security provided by encryption and identity authentication and real-time error-detection, to name a few. To facilitate the implementation and use of EDRS, and to update the Department's procedures and bring them into conformance with those of many other jurisdictions, it is necessary to propose certain changes in the Health Code.

The Department repealed Section 205.15 of the Health Code in its entirety. The provision requires that when an amputated part of a living person is recovered during an operation, a certificate of amputation be delivered within 48 hours to a funeral director, who then shall file it with the Department within 72 hours following the operation. The Department believes that this requirement is outdated, does not serve a purpose and removing this requirement would also be consistent with other jurisdictions that have no such requirement.

Sections 205.25(d) and 205.33(b) are amended to eliminate the necessity of affidavits accompanying applications for permits for cremation and disinterment. The Department believes that there is no need for the affidavits to accompany the applications submitted to the Department but rather that the affidavits can be appropriately retained by the funeral director or undertaker in charge of the cremation or disinterment.

23. Statement of Basis and Purpose in City Record Mar. 16, 2005:

The New York City Department of Health's Office of Radiological Health supervises and regulates the public health aspects of ionizing radiation, including the handling and disposal of radioactive waste and responding to emergencies involving sources of ionizing radiation. The Office of Radiological Health carries out its mandate through its registration, licensing, inspection, emergency response and public education programs.

The New York City Charter [Section 556(c)(11)] empowers the Department to regulate all aspects of ionizing radiation within the five boroughs of New York City. The New York State Sanitary Code [10 N.Y.C.R.R. Part 16] delegates ionizing radiation material regulation and oversight to those municipalities having a population of more than 2,000,000. The Federal Atomic Energy Act of 1954 [Section 274(o)], as amended, authorizes State regulation of byproduct material, source material and special nuclear material in quantities not sufficient to form a critical mass pursuant to an Agreement with the U.S. Nuclear Regulatory Commission (NRC) (formerly the Atomic Energy Commission). The New York City Department of Health and Mental Hygiene, as part of the New York State Agreement, therefore exercises regulatory authority for radioactive material within the City.

Article 175 is amended in order to achieve consistency with federal regulations. Each Agreement State (there are currently 31) program is required to maintain compatibility with the NRC regulatory program. The NRC ensures an adequate level of compatibility through the Integrated Materials Performance Evaluation Program (IMPEP) and conducts a quadrennial review of Agreement State programs. The latest IMPEP review of the New York State program took place in July of 2002.

In the July 2002 IMPEP review, the NRC evaluated each of the four participants of the New York State Agreement, which consist of the New York State Department of Health, New York State Department of Labor, New York State Department of Environmental Conservation, and the New York City Department of Health and Mental Hygiene. NRC findings were presented in their Final Report dated November 12, 2002.

Article 175 of the New York City Health Code is amended in order to comply with the NRC IMPEP report and to be compatible with NRC regulations. Section 175.02 (141) and (161) are amended to add language to the definitions of "Occupational dose" and "Public dose" and to clarify that these doses do not include exposure to individuals administered radioactive material and released under §175.103(c)(9).

Section 175.101(h)(4)(vi) is amended to address the specific language found in 10 CFR Part 30 "Timeliness in Decommissioning Material Facilities". The language is amended to assure that licensees, who wish to terminate licensed activities, perform decommissioning within timeframes prescribed by the Department.

Section 175.101(h)(viii)(B) is amended to include the language found in 10 CFR Part 20 "Radiological Criteria for License Termination". This amendment deals with specific dose limits to members of the public from sites released for unrestricted use.

A new subparagraph (viii) is added to subsection (k) of §175.101 to reflect the language found in 10 CFR Part 30 "Deliberate Misconduct by Unlicensed Persons". This amendment will allow the Department to conduct enforcement actions against individuals who provide inaccurate or incomplete information to the Department.

Section 175.101(m) covers reciprocity. A new paragraph (2) is added to subsection (m) of §175.101 to address the specific language found in 10 CFR Part 150 "Recognition of Agreement State Licensees in Areas Under Exclusive Federal Jurisdiction Within an Agreement State". The amended language will clarify the fact that Agreement State Licensees can seek reciprocal recognition of their license from the Nuclear Regulatory Commission when working within areas of exclusive Federal jurisdiction in New York City.

Section 175.101(n)(1) is amended to remove a redundant "of the" in the first paragraph and to reflect the language found in 10 CFR §30.35 by adding a new paragraph to §175.101(n)(1), which will require licensees that are authorized to possess sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10 to the 12th times the applicable quantities set forth in Appendix B, to submit a decommissioning funding plan as described in §175.03(n)(4) of this section.

Section 175.101(n)(5) is amended to add language found in 10 CFR §30.35 concerning adjusting cost estimates for decommissioning at intervals not to exceed 3 years; and

The first sentence of §175.101(n)(7) is amended to add language found in 10 CFR §30.35 which requires licensees to keep records of decommissioning until the site is released for unrestricted use.

Appendix B (Exempt Quantities) of §175.101 is amended to include americium, plutonium and any alpha radionuclide not listed above or mixtures of alpha emitters to be consistent with 10 CFR Part 30 Appendix B.

Statement Pursuant to §1042-Regulatory Agenda

This rule was not included in the Regulatory Agenda because it is the result of an analysis conducted by the Department to ensure consistency with the NRC requirements.

24. Statement of Basis and Purpose in City Record Mar. 20, 2006:

Background/Overview

This amendment, as outlined below, is intended to increase the effectiveness of the New York City Childhood Lead Poisoning Prevention Act of 2003, Local Law 1 of 2004, in preventing childhood lead poisoning. In accordance with provisions of Local Law 1 of 2004, it lowers the age of a "child of applicable age" which triggers Local Law 1 of 2004 actions from "under seven years of age" to "under six years of age" in order to better prioritize the invested private and public moneys and resources for lead-based paint hazard reduction in housing. Protecting younger children who are at greatest risk for lead poisoning is the most effective and efficient way of preventing childhood lead poisoning in New York City.

In 1960, the Board of Health amended the Health Code to ban the use of lead-based paint on residential interior surfaces. In 1970, the Health Code was further amended to provide for an investigation by the Department of possible environmental lead hazards in the home of a child with a reported Environmental Intervention Blood Lead Level ("EIBLL"). Local Law 1 of 1982, the New York City's first housing maintenance law aimed at the primary prevention of childhood lead poisoning, amended the Housing Maintenance Code (Title 27 of the Administrative Code of the City of New York) to require owners to correct lead-based paint hazards in dwelling units in multiple dwelling buildings where children under seven years of age resided. In 1999, the City Council enacted Local Law 38, repealing Local Law 1 of 1982, to create what it characterized as a more pragmatic and workable approach to housing maintenance than was possible under Local Law 1 of 1982. However, on July 1, 2003, New York's highest court invalidated Local Law 38 on the grounds of inadequate review under the State and City environmental quality laws. On February 5, 2004, the City Council voted to override the Mayor's veto and enacted Local Law 1 of 2004, repealing Local Law 1 of 1982 and Local Law 38 of 1999.

Local Law 1 of 2004 amended the Housing Maintenance Code and other provisions of the Administrative Code with respect to addressing lead hazards in units in multiple dwellings in which a child of "applicable age" resides. To maintain consistency with the Administrative Code, the Board of Health repealed and reenacted various Health Code provisions applicable to lead-based paint hazard control and remediation in the homes of children with EIBLL, as well as in day care facilities, kindergartens and residences of other children of applicable age. Effective August 2, 2004, Local Law 1 of 2004 included a provision defining a child of "applicable age" and also authorized the Board of Health to amend such definition, as follows:

§27-5056.18 Application of this article based on age of child. For the purposes of this article, the term "applicable age" shall mean "under seven years of age" for at least one calendar year from the effective date of this section. Upon the expiration of such one year period, in accordance with the procedures by which the health code is amended, the board of health may determine whether or not the provisions of this article should apply to children of age six, and based on this determination, may redefine "applicable age" for the purposes of some or all of the provisions of this article to mean "under six years of age," but not lower.

The Amendment

Over the past 35 years there has been a dramatic decline in childhood lead poisoning; however, childhood lead poisoning remains a significant public health concern. Elevated blood lead levels have been associated with reduced intelligence, reading and learning disabilities, reduced attention span, hyperactivity and behavior problems (Baghurst et al., 1992; Bellinger et al., 1994; Lanphear et al., 2000; Mendelsohn et al., 1998). Interior lead-based paint that is peeling, cracking or chipping and dust from peeling or damaged lead-based paint remain major sources of lead exposure for urban children including New York City (NYC) children (Bellinger et al., 1986; Clark et al., 1992; Lanphear et al., 1996; Lanphear and Roghmann, 1997; NYC Department of Health and Mental Hygiene, Childhood Lead Poisoning Prevention Program Annual Report, in press). The primary route of exposure to lead-based paint in children is ingestion of lead-contaminated household dust (CDC, 2002).

The Department believes that the reduction of lead-based paint hazards in housing is essential to prevent childhood lead poisoning. These efforts are most effective when targeted to the homes of young children who are at greatest risk for lead poisoning. In addressing lead-based paint hazards, as in so much of public health, prioritization is absolutely crucial. Reducing the applicable age from under seven years of age to under six years of age would increase the effectiveness of Local Law 1 of 2004 by focusing efforts and resources to children most in need of, and who will benefit most from, intervention and prevent more lead poisoning cases. Because the risk of lead poisoning for children under six years of age is almost twice the risk for six-year-old children, more childhood lead poisoning cases would be prevented if regulatory actions were focused on children under six years instead of children under seven years (NYC DOHMH surveillance data).

The Department has analyzed and reviewed available data on blood lead levels for NYC children and lead-based paint hazards in housing, and concludes the following:

1. Children under three years of age are at greatest risk for lead poisoning, particularly from exposures to lead-based paint hazards.

a. The rate of elevated blood lead levels (> =10 mg/dL) is highest for children under three years, both in NYC and nationwide (CDC, 1994; CDC, 1997; CDC, 2005; NYC Lead Poisoning Prevention Program Annual Report 2004, in press). The rate of NYC children newly identified with elevated blood lead levels in 2003 and 2004 was 1.4% for children under three tested for lead poisoning, as compared to 0.8% for children three to less than six and 0.6% for six-year-old children tested for lead poisoning.

b. Children under three years are more likely to crawl on the floor and engage in normal object-to-mouth and hand-to-mouth activities (mouthing), behaviors that increase their risk of ingesting household lead-based paint and dust (Moya et al., 2004).

c. Blood lead levels generally peak around two years of age and subsequently decrease as children grow older (Lanphear et al., 1996; Lanphear et al., 2002). This pattern in blood lead levels has been associated with changes in mobility and mouthing behavior, and consequent changes in exposure to lead-based paint and dust.

d. In the presence of actual or presumed lead-based paint hazards identified by the Department of Housing Preservation and Development (HPD) during housing inspections, NYC children under three years have the highest rate of elevated blood lead levels, with 3.0% for children under three years, 1.8% for children three to less than six years and 0.9% for six-year-old children. This means that for every 100 children with actual or presumed lead-based paint hazards who are tested, two more children aged less than three and one more child aged three to less than six years are identified with elevated blood lead levels as compared to six-year-old children.

e. The proportion of children with Environmental Intervention Blood Lead Levels ("EIBLL") (currently defined as > =15 mg/dL) for whom the Department identified lead-based paint hazards is highest among children under three years, with 75% of children less than three years having identified lead-based paint hazards, as compared to 66% of children three to less than six years, and 53% of six-year-old children.

f. Remediation of lead-based paint hazards in housing is more effective in preventing and reducing elevated blood lead levels for infants and toddlers than for older children. Thus, children under three years benefit the most from housing-based environmental interventions (CDC, 2004; Leighton et al., 2003).

2. In addition to covering the highest risk group of children (under three years), Local Law 1 of 2004 provides a sufficient margin of safety for preventing exposure of young children to lead-based paint hazards by applying to children aged three through five years.

a. Behaviors such as crawling and mouthing decline with age and children spend less time close to or on the floor. As a result, children three years and older are at reduced risk for ingesting lead-based paint and dust even when such hazards are present in their homes (see paragraphs 1(b) through (d), above).

b. Childhood lead poisoning may be increasingly associated with previous lead exposures experienced at younger ages and to sources other than current household lead-based paint hazards as children become older.

i. Elevated blood lead levels indicate both recent lead exposures as well as exposures in the past. When children are exposed to lead for a period of time, lead is stored in the bone and other tissues in the body. Blood lead levels can increase when the stored lead is remobilized from these storage sites in the body into the blood. Because the exchange between lead in the blood and other tissues can occur for some time, blood lead levels can remain elevated for an extended period of time even after sources of lead exposure have been removed (Auchincloss & Leighton, 2002; Roberts et al., 2001; Rust et al., 1999). Blood lead levels alone are therefore not an accurate means of determining the timing and total duration of lead exposure for children.

ii. Currently, many NYC children are not tested for lead poisoning at ages one and two, as required by New York State law. Only about 54% of children with elevated blood lead levels aged three to less than six, and 37% of six-year-old children had received a blood lead test before age three. Lead exposure in these children could have occurred earlier but was undetected due to lack of blood lead testing.

iii. As explained above in paragraphs 1 (d) and (e), older children with EIBLLs are less likely to have lead-based paint hazards identified at any of their addresses inspected by the Department. Similarly, in the presence of actual or presumed lead-based paint hazards identified by HPD during housing inspections, older children who are tested are less likely to have elevated blood lead levels.

iv. Older children with EIBLLs are also disproportionately foreign-born as compared to younger children with EIBLLs. Of children newly identified with EIBLLs in 2003 and 2004, 43% of six-year-old children are born in a foreign country, as compared to 13% of children aged three to less than six years and 9% of children aged less than three years. The most common foreign birth countries for children with EIBLLs are Mexico, Haiti, Pakistan, Bangladesh and the Dominican Republic. Lead poisoning among foreign-born children may be associated with exposures outside of the United States and/or to lead sources related to cultural practices of the child's birth country. These lead exposure sources include air pollution from leaded gasoline exhaust and industrial emissions, occupational exposures of children and their families, lead contaminated food and food containers, lead containing pottery used for cooking and storing foods, traditional herbal and mineral medicine products, and cosmetics (CEC, 2006; Fewtrell et al., 2003).

3. Reducing the applicable age from under seven to under six will not increase the rate of lead poisoning among six-year-old children as indicated by a review of housing and children's blood lead level data.

a. Despite changes to the applicable age in NYC lead poisoning primary prevention laws in the past decade (the applicable age for Local Law 38, effective from November 1999 through June 2003, was under six years), the number of lead poisoning cases for six-year-old children have continued to decline as for children in other age groups. Between 1995 and 2003, the number of children newly identified with elevated blood lead levels declined by 79% in children under three years, 86% in children three to less than six years, and 81% in six-year-old children.

Changing the applicable age to children under six years will also harmonize the New York City law with national and state policies, guidelines and regulations aimed at reducing childhood lead poisoning. These include Centers for Disease Control and Prevention (CDC) guidelines, New York State law, and policy statements of the American Academy of Pediatrics (AAP) regarding childhood blood lead screening and risk assessment for lead exposure. These guidelines and regulations reflect the overall direction of primary prevention efforts at national, state and local levels, which are aimed at eliminating childhood lead poisoning by year 2010.

In addition to adding a definition of "child of applicable age" the Board has also amended the definition of "chewable surface" in Health Code §173.14(b) to apply to children under six years of age residing in multiple dwelling units. Currently this definition is applicable to children under seven years of age residing in multiple dwelling units in New York City, and to children under six years of age who attend day care and kindergarten.

25. Statement of Basis and Purpose in City Record Sept. 29, 2006:

In order to maintain compatibility with applicable New York State Sanitary Code and federal regulations, the NYC Health Code is being amended concerning both Radioactive Materials and Radiation Equipment. The Health Code is also being amended to comply with a NYS Comptroller's Audit Report (2001-N-9) recommendation that all new x-ray facilities be inspected and approved by the Department prior to initiating clinical x-ray exams. Finally, the Health Code is being amended to delineate the specific protocols to be followed in calibration of x-ray therapy units, and to specify the content of the x-ray therapy calibration reports to be reviewed by the Department.

Radioactive Materials

The Department's Office of Radiological Health (ORH) licenses and inspects radioactive materials facilities for compliance with Article 175 of the New York City Health Code to protect the health and safety of patients, operators and the general public. There are about 375 licensed sites in New York City possessing radioactive material for medical, academic and research purposes. ORH inspects these facilities at frequencies of once every one, two or three years depending on the type of usage.

As noted above, New York State is an "Agreement State", which means that NYS and the United States Nuclear Regulatory Commission (NRC) have entered into an agreement under the Atomic Energy Act, which delegates authority to NYS to regulate radioactive material at non-reactor sites within its jurisdiction. The New York State Agreement is comprised of four regulatory programs-New York State Department of Health, New York State Department of Labor, New York State Department of Environmental Conservation, and the New York City Department of Health and Mental Hygiene. The Department, through its Office of Radiological Health, regulates radioactive material for medical, academic and research purposes within the 5 boroughs of New York City.

Each Agreement State program is required to maintain compatibility with the NRC regulatory program.[1]1 The NRC ensures an adequate level of compatibility through the Integrated Materials Performance Evaluation Program (IMPEP) and conducts a quadrennial review of Agreement State programs. The latest IMPEP review of the NYS program took place in July of 2002.

In the July 2002 IMPEP review, the NRC evaluated each of the four components of the New York State Agreement. NRC findings were presented in its Final Report, dated November 12, 2002. The NRC IMPEP report concluded that certain regulations needed to be incorporated into Article 175 of the New York City Health Code in order to ensure compatibility with NRC regulations. Those regulations that remained to be incorporated were:

· "Revision of the Skin Dose Limit", 10 CFR Part 20 amendment (67 FR 16298) that became effective April 5, 2002 (amending 10 CFR §§20.1003; 20.1201).

· "Respiratory Protection and Controls to Restrict Internal Exposures", 10 CFR Part 20 amendment (64 FR 54543; 55524) that became effective February 2, 2000 (amending 10 CFR §§20.1003; 20.1701-20.1704; adding 20.1705 and

amending Appendix A to Part 20).

Radiation Equipment

The Office of Radiological Health (ORH) inspects x-ray facilities for compliance with Article 175 of the New York City Health Code for the protection of the health and welfare of the patient, operator and general public. There are approximately 7000 registered sites in New York City possessing x-ray units for patient diagnosis and treatment.

The NYC Health Code is being amended to assure compatibility with the NYS Sanitary Code regulations on x-ray equipment and the federal regulations as to equipment performance standards. To achieve this compatibility, the amendments to Article 175 incorporate the language or intent of the following regulations:

· NYS Sanitary Code regulations for x-ray equipment as contained in 10 NYCRR §16.58 (effective 2/4/2004); and

· Food and Drug Administration (FDA) regulations as to the x-ray equipment performance standards as contained in 21 CFR Part 1020 (and as so stated in the NYS Sanitary Code §16.58).

In addition, Article 175 of the Health Code is being amended to:

· Comply with a NYS Comptroller Audit Report (2001-N-9) recommendation that all new x-ray facilities be inspected by ORH prior to initiating clinical x-ray exams; and,

· Delineate the specific protocols to be followed in calibration of x-ray therapy units, and specify the content of the x-ray therapy calibration reports to be reviewed by ORH.

AMENDMENTS TO THE HEALTH CODE

I. Radioactive Materials

Sections 175.02 and 175.03 of the NYC Health Code are being amended to address the NRC rule, "Revision of the Skin Dose Limit," 10 CFR Part 20 amendment (67 FR 16298) that became effective April 5, 2002 (amending 10 CFR §§20.1003; 20.1201). The definition of "shallow dose equivalent" is being revised (§175.02) and the method for calculation (§175.03) is being updated.

The definition of "Shallow dose equivalent" in §175.02 is being changed to read as follows: **"Shallow dose equivalent" (H_S)**, which applies to the external exposure of the skin of the whole body or the skin of an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm2). This amendment is required to achieve compatibility with the 2002 revised NRC definition found in 10 CFR §20.1003. For purposes of external exposure, "whole body" means head, trunk (including male gonads), arms above the elbow, or legs above the knee. "Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

The method for calculating shallow-dose equivalent is being updated in §175.03 to state that the assigned shallow-dose equivalent must be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. This change achieves compatibility with the revised NRC occupational dose limits for adults found in 10 CFR §20.1201.

Also, §175.03 of the NYC Health Code is being amended to address the NRC rule: "Respiratory Protection and Controls to Restrict Internal Exposures" 10 CFR Part 20 amendment (64 FR 54543; 55524) that became effective February 2, 2000 (amending 10 CFR §§20.1003; 20.1701-20.1704; adding 20.1705 and amending Appendix A to Part 20).

The NYC Health Code previously did not specify conditions under which licensees should use respirators. Revisions to §175.03 incorporate revised NRC language concerning ANSI standards, and the summing of internal and

external radiation doses for ALARA (As Low As Reasonably Achievable) purposes. A statement is being added to §175.03 that an individual user who participates in a respiratory protection program is to be determined medically fit periodically at a frequency determined by a physician. (See also, "Frequency of Medical Examinations for Use of Respiratory Protection Equipment" (60 FR 7900) that became effective March 13, 1995 (amending 10 CFR §20.1703), which is incorporated within the "Respiratory Protection and Controls to Restrict Internal Exposures" 10 CFR Part 20 amendment). A provision for licensees to consider the impact on workers' industrial health and safety is being added to address OSHA requirements with respect to use of appropriate respiratory protective equipment. Additional requirements are being added to §175.03 regarding breathing air quality and procedures for respirator selection, repair, and quality assurance.

In addition, a large body of definitions relevant to Respiratory Protection and Controls is being added to §175.03 APPENDIX A-Protection Factors For Respirators.

II. Radiation Equipment

Section 175.51(d)(1), (2) of the NYC Health Code is being amended to implement a NYS Comptroller Audit Report (2001-N-9) recommendation that all new x-ray facilities be inspected by the ORH prior to initiating clinical x-ray exams.

To accomplish this, the Health Code is being amended with language to authorize ORH to enforce this new registration policy. ORH registers two types of x-ray facilities in New York City:

1) Facilities such as dental offices, podiatrist offices and veterinary offices, all of which are not legally mandated to have a Quality Control (QC) program in effect for their facility; and

2) Facilities such as medical offices, radiologist offices, chiropractic offices, and other large facilities that must have a functioning and on-going QC program at their facility.

At the time of a new registration, facilities not mandated to have a QC program (i.e., dental, podiatrist, and veterinary facilities) shall not be allowed to initiate clinical patient x-rays until they have passed an ORH inspection and corrected all violations (if any) so noted. At the time of a new registration, facilities required to have a QC program (i.e., large facilities, radiologist's offices, medical doctor's offices, and chiropractor's offices) will be mandated to submit all initial acceptance testing to ORH for review and approval prior to conducting clinical studies.

Section 175.62(d) of the NYC Health Code is being amended to implement the NYS Sanitary Code regulations (i.e., NYS Sanitary Code §16.58(a)(7), (8) and (9)) pertaining to fluoroscopic x-ray equipment as to the utilization of a new patient equivalent phantom composition^{2},2 the maximum radiation output rate, and the measurements to be conducted by each facility to determine patient Entrance Skin Exposure (ESE). Also, as per these amendments, fluoroscopic exposure rates for the most frequently performed procedures are now to be conspicuously posted.

Section 175.62(d) of the NYC Health Code is being amended to reflect the utilization of a new patient equivalent phantom. Per NYS Sanitary Code §16.58(a)(7), the new phantom adds 0.2 mm copper sheets to the existing $1^{1}/_{2}$ inches Type 1100 aluminum phantom thickness to more realistically match the x-ray attenuation properties of the human abdomen. Manufacturers of x-ray fluoroscopic units have hardened the x-ray beam quality (i.e., made the x-ray beam penetrate to deeper depths in matter) over the last several years. The existing $1^{1}/_{2}$ thick aluminum phantom due to the hardened x-ray beams does not simulate the attenuation properties of the human abdomen, hence, necessitating the addition of material to the $1^{1}/_{2}$ inches of aluminum.

Section 175.62(d) of the NYC Health Code is being further amended to implement the language adopted in the NYS Sanitary Code §16.58(a)(8) that conforms to the FDA fluoroscopic performance standards as reflected in 21 CFR §1020.32(d), (e)(1), (2) (59 FR 26402, effective May 19, 1995). The NYS Department of Health has succinctly codified the FDA changes, and ORH is adopting the same language in its amendments. These performance standards mandate

the maximum radiation output rate that the fluoroscopic equipment is not to exceed, determined by: 1) date of manufacture of the fluoroscopic equipment, and 2) whether a high-level boost mode is present on the equipment. The NYC Health Code is amended to reflect these more restrictive regulations as outlined in §16.58(a)(8) of the NYS Sanitary Code.

Also, per NYS Sanitary Code §16.58(a)(9), the State requires that patient ESE values be measured for each fluoroscopic unit and be posted. This requirement to post is to make the fluoroscopic operators aware of the typical exposures for different body sizes. Accordingly, §175.62(d) of the NYC Health Code is being updated to reflect this NYS Sanitary Code change in posting requirements.

Section 175.62(h)(1)-(2) of the NYC Health Code is being amended to implement the language adopted in NYS Sanitary Code §16.58(a)(12), (13) as to:

1) The new methodology for conducting compliance measurements for the high and low contrast resolution for fluoroscopic equipment; and,

2) The utilization of new high contrast test tool, measuring high contrast resolution in line pairs per millimeter (lp/mm).

Reflecting the medical physicist's testing methods in determining high and low contrast resolution for fluoroscopic units, the State changed the testing methodology as to the fluoroscopic operating parameters (for example, determining resolution in the magnification mode of operation) and changed the test tool used to determine high contract resolution. The NYC Health Code is being updated to reflect this more professional method in measuring the resolution performance of fluoroscopic units.

Finally, §175.64(g)(8)(ii), (iv) of the NYC Health Code is being amended to specify the use of x-ray therapy protocols developed by the American Association of Physicists in Medicine (AAPM) to be followed by each facility in conducting the annual radiation output measurement for each therapy unit, and to delineate the minimal content that should be contained in each annual calibration report by the facility for review by ORH inspectors. These provisions of the Health Code are also being modified to be more comprehensive as to the content of x-ray therapy output calibration reports and more specific as to the methodology employed in the actual output calibration measurements.

Each facility utilizing the specialized x-ray units for patient cancer treatment (denoted as LINACs) must make annual output calibrations for each unit and save these reports for review by ORH. The AAPM has published professional guidance for therapy calibration protocols that should be utilized when calibrating LINACs. If followed, the AAPM protocols result in the validity of the actual numerical value for radiation output to have an uncertainty of +/- 5%. The AAPM protocols are published in peer-reviewed journals and so represent the best collective reasoning and knowledge of the top medical physicists working in radiation therapy. Prior to this amendment, Article 175 (specifically, §175.64(g)(8)(ii)) did not delineate specific protocols to be followed during calibration of the LINACs. The amended section is now specific as to the AAPM protocols that may be followed by facilities during calibration of their LINAC units. Also, there is confusion as to the exact content of each calibration report that is to be generated and reviewed by ORH. By amending §175.64(g)(8)(iv), the section now accurately reflects the content of the calibration report to be retained by the facility for inspection purposes. Both changes were more in the form of clarification of existing ORH inspection standards.

26. Statement of Basis and Purpose in City Record Dec. 11, 2006:

The New York City Department of Health and Mental Hygiene (the Department) is authorized and required by law to promote and protect the health and safety of New York City residents and visitors by promoting an environment free from animal-borne diseases and hazards, as well as those caused by other vectors. The Department enforces Article 161 and Article 11 of the New York City Health Code ("Health Code") and provisions of other applicable law related to ownership and management of animals in the City of New York.

State and City laws and regulations require that dogs (a) be actively vaccinated against the disease of rabies (Health Code §11.66), (b) be licensed (Ch. 115, laws of 1894, as amended), (c) have a dog license tag attached to the dog's collar when the animal is in a public place (Health Code §161.04), and be restrained by a leash or chain not more than six feet in length when the animal is in a public place (Health Code §161.05).

In addition to the Department, special patrolmen employed by Animal Care and Control of New York City, Inc., New York City Department of Sanitation (DSNY) K-9 enforcement agents, and Police Department (NYPD) officers issue violations to the owners of dogs in a public place that do not have a dog license tag attached to their collars and for unrestrained dogs. Department of Parks and Recreation (DOPR) enforcement agents enforce Health Code §§161.03, 161.04 and 161.05 in DOPR facilities.

In 1942, restraining a dog in New York City public areas by a leash or chain, replaced a Board of Health requirement that dogs in public areas be muzzled. DOPR's current rules generally require that dogs be leashed in DOPR facilities, except as permitted by the DOPR commissioner. See DOPR rules, 56 RCNY §§1-04(i) ("Failure to control animals") and 1-05(s)(3) ("Dog runs"). In the 1990's DOPR initiated a policy of Courtesy Hours to accommodate dog owners in certain areas of some parks that did not have dog runs, enabling them to exercise their dogs off leash during the hours of 9:00 P.M. and 9:00 A.M. DOPR has informed the Department that this policy was implemented at the request of dog owners who had no alternative place to exercise their dogs. DOPR has requested that the Board of Health amend §161.05 of the Health Code to provide explicit authorization for the DOPR "off the leash" policy in the areas and facilities within DOPR's jurisdiction.

The Department, like DOPR, realizes that alternative space for dogs to exercise is not generally available in our urban environment. The Department recommends adoption of an amendment to §161.05 of the Health Code to allow dog owners who comply with formal DOPR rules to exercise their dogs off leash, in specific areas of specified park facilities during specified times. Department data for 2004 show that 93 (2.3%) of 4,082 dog bites reported Citywide occurred in DOPR facilities, and that about the same proportion, 86 (2.2%) of the 3,956 dog bites reported citywide, occurred in DOPR facilities in 2005. These bite reports do not indicate whether the biting dog was restrained or off leash. The Department supports codification of DOPR's policy of "Courtesy Hours", which has existed for more than 15 years, whereby DOPR will adopt specific rules concerning where and when dogs may be off the leash in City parks areas and facdilities. In addition, rabies remains endemic in New York City and the numbers of cases of rabies in wildlife appears to be increasing: from six positive cases in 2003, to 14 in 2004, doubling to 28 cases in 2005. Wild animals, many subject to rabies, reside in City parks, and also enter New York City from suburban habitats, seeking open spaces in the City, including those in parks. While rabies remains endemic in the City, all dogs must be vaccinated against rabies, in accordance with Health Code §§11.65 and 11.66. However, when dogs are off the leash in park areas and facilities and not under their owners' constant observation, the dogs are at greater risk of exposure to rabid animals than leashed dogs. Accordingly, this Health Code amendment will require DOPR to adopt rules providing that owners of dogs off the leash maintain and present proof that their dogs have current rabies vaccinations. Finally, the proposed amendment requires the DOPR to provide the public with appropriate information concerning dog licensing and rabies vaccination requirements, as well as times when, and places where, in DOPR areas and facilities, dogs will be allowed off the leash.

Changes made in Response to Public Comments

As noted, publication of this proposal generated substantial public comment. Approximately 13,200 individuals and groups expressed support for the proposal, and 202 individuals and groups expressed opposition to any amendment that would allow dogs to be off the leash under any circumstances stating that this would adversely affect public health. After review of the public comments, and for the same reasons stated in the original Statement of Basis and Purpose, and because the off leash policy has been in effect for approximately 20 years, the Department has no reason to believe that there will be any increased risk to public health as a result of the Health Code change at this time. However, the amendment as originally proposed has been changed to require that DOPR adopt rules allowing dogs to be off the leash in unenclosed DOPR areas and facilities only from 9:00 P.M. to 9:00 A.M. To facilitate enforcement by DOPR and

identification of dog owners, the rule requires that persons controlling off leash dogs present proof of current dog licensure, as well as of current rabies vaccination, as originally proposed. Many comments of persons opposed to the amendment alleged that persons in control of off leash dogs do not comply with the current unofficial policies. DOPR, after reviewing such comments, has assured the Department that complaints should be made promptly through 311 if there are persons who let dogs run on or off the leash in areas off limits to dogs, or allow dogs to be off leash at impermissible times; or create any nuisance; or menace people, or otherwise behave in any manner that compromises public health, or threatens public safety. DOPR has represented that it will direct its enforcement officers to investigate and address such complaints. In addition, the rule has been further amended to authorize the Department's Commissioner to limit or eliminate off-leash privileges in specific DOPR areas and facilities if the Department determines, based on epidemiological evidence, that there is an increase in preventable off leash dog bites or a risk of zoonotic disease transmission in such areas or facilities.

In other changes, subdivision (a) of §161.05 has been amended to substitute the term "other restraint" for the term "chain" and there has been a minor, non-substantive, change in subdivision (c) with respect to identifying officers of the Department of Sanitation and the DOPR as authorized to enforce this section.

27. Statement of Basis and Purpose in City Record Dec. 11, 2006:

The Department is reponsible for protecting the health and safety of the public who use permitted bathing beaches by providing for the proper construction, operation and maintenance of these facilities within New York City. Article 167 of the New York City Health Code sets forth standards for the operation and maintenance of bathing beaches under permit by the Department.

In order to maintain consistency with relevant New York State Department of Health requirements and to provide greater clarity to bathing beach operators and the public, it is proposed that certain changes be made to various provisions of Article 167, as stated below. Specifically, and for example, the current definition of "public health hazard" in the Health Code consists merely of a list of items that constitute a "public health hazard." The Department wishes to expand that list to include additional items that rise to the seriousness of a "public health hazard." Also, in order to provide greater clarity and guidance to both bathing beach operators and the public, the Department wishes to add a general definition of "public health hazard" applicable to this Article.

Amendments to the Health Code

Section 167.03 is being amended such that the following definition of "public health hazard" is to be added to the list of definitions, and is to read as follows: **" 'Public Health Hazard' is any condition which poses an imminent threat to the health or safety of the public."** This definition is derived from the New York State Department of Health's Environmental Health Manual, Technical Reference, Item No. ADM2, dated 3/3/03. Therefore, the Department requests that §167.03 of the Health Code be amended to include the above definition of "public health hazard." Also, §167.17(c)(4) is being amended such that the word "defined" is replaced by the word "illustrated" and to read as follows: "Presence of public health hazards as **illustrated** in §167.09."

Section 167.09(a) is being amended such that the requirements found in the sections below are to be added so as to reflect that violations of these requirements constitute a "public health hazard":

· §167.05(a), (c) (operating without a valid permit issued by the Department);

· §167.23(a) (operating without a Department-approved Beach Safety Plan);

· §167.29(b)(4), (5) (failure to provide depth markings, safety lines and diving requirements);

· §167.37(f)(1), (f)(2)(B), (C) (failure to provide appropriate safety and warning signs, e.g., when diving/swimming/bathing is allowed).

Additionally, the list of existing "public health hazards" in §167.09(a) is being amended to include citations to the applicable Health Code sections where none are currently cited.

Finally, §167.21(b) is being amended to correct a technical unit error from "yards" to "feet", in order to be consistent with the intent of the relevant New York State Sanitary Code provision [i.e., 10 NYCRR §6-2.17(b)(1)], which provides that, "Lifesaving equipment shall be readily accessible at all bathing beaches." The Department is further amending this subdivision to alternatively allow provision of safety equipment per an approved Beach Safety Plan. The Department believes this change is consistent with the NYS Sanitary Code, and will continue to promote public safety, while properly accounting for each individual beach's water conditions, topography, crowd size, deportment and infrastructure. Accordingly, the amended §167.21(b) reads: **"At least one set of the items listed in (2), (3) and (4) above shall be provided for each 500 feet of beachfront or fraction thereof, or as specified in the approved Beach Safety Plan, and shall be readily accessible to the lifeguards therein."**

28. Statement of Basis and Purpose in City Record June 20, 2007:

The Office of Radiological Health (ORH) licenses and inspects radioactive materials facilities for compliance with Article 175 of the New York City Health Code for the protection of the health and safety of patients, radiation program employees and the general public. There are about 375 licensed sites in New York City possessing radioactive material for medical, academic and research purposes. ORH inspects these facilities at frequencies of once every one, two or three years depending on the type of usage.

New York State is an "Agreement State", which means that the State and the United States Nuclear Regulatory Commission (NRC) have entered into an agreement under the Atomic Energy Act, which delegates authority to NYS to regulate radioactive material at non-reactor sites within its jurisdiction. The New York State Agreement is comprised of three regulatory programs-New York State Department of Health (DOH), New York State Department of Environmental Conservation (DEC), and the New York City Department of Health and Mental Hygiene (DOHMH). Formerly, the radiation protection division of the New York State Department of Labor (DOL) was a fourth agency, which regulated commercial and industrial sources of radiation. This division of DOL has recently been subsumed under DOH. Under this Agreement State structure, the New York City Department of Health and Mental Hygiene, through ORH, regulates radioactive material for medical, academic and research purposes within the five boroughs of New York City.

Each Agreement State program (there are currently 33) is required to maintain compatibility with NRC regulatory program requirements. To ensure compatibility with applicable federal regulations on radioactive materials, the NYC Health Code must be amended.

Changes to Health Code

In May 2006, the NRC reviewed portions of Article 175 submitted to it by ORH. This NRC review resulted in 8 (eight) comments, which were transmitted to DOHMH by letter dated June 12, 2006. Based on these NRC comments, the following eight amendments to Article 175 are being adopted to address NRC's compatibility concerns:

· Radiation Protection Requirements: Amended Definitions and Criteria

· 1. Amend the §175.02(a) definition "Member of the Public".

· 2. Amend the §175.02(a) definition "Occupational Dose".

· Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within An Agreement State

· 3. Amend §175.101(m) to indicate that non-NRC licensees are to provide 3 days advance notice to NRC of

activity in areas under exclusive federal jurisdiction within NYC.

· Radiological Criteria for License Termination

· 4. Amend §175.02(a) definition "Background Radiation".

· 5. Amend §175.02(a) by adding the definition "Critical Group".

· 6. Amend §175.02(a) by adding the definition "Decommission".

· 7. Amend §175.02(a) by adding the definition "Distinguishable from background".

· 8. Amend §175.02(a) by adding the definition "Residual radioactivity".

1. Amend the §175.02(a) definition of "Member of the Public" to include the reference to 'occupational dose' as contained in the NRC's definition of 10 CFR §20.1003.

The definition of "Member of the Public", located at §175.02(a)(132), is being changed by inserting the following **italic text** and deleting the [bracketed text] as indicated below:

"Member of the public" means any individual, except [an] **when that** individual [who is performing assigned duties for the licensee or registrant involving exposure to sources of radiation] **is receiving an occupational dose.**

This amendment is to satisfy the following NRC Comment: "NYCDH needs to include the phrase "occupational dose" to 175.02(132) [sic] to meet the Compatibility Category A designation assigned to this definition in §10 CFR 20.1003." The amended definition is now identical to the NRC definition of "Member of the Public".

2. Amend the §175.02(a) definition of "Occupational Dose" to differentiate between licensed and unlicensed sources of radiation consistent with NRC's definition.

The definition of "Occupational Dose", located at §175.02(a)(141), is being changed by inserting the following **italic text** and deleting the [bracketed text] as indicated below.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to [sources of] radiation[,] **or to radioactive material from licensed and unlicensed sources of radiation,** whether in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received[:] from background radiation, **from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under §175.103(c)(9)** [as a patient from medical practices], from voluntary participation in medical research programs, or as a member of the public.

This amendment is to satisfy the following NRC Comment: "NYCDH needs to revise the definition of "occupational dose" to include both licensed and unlicensed sources of radiation add the phrase to 175.02(141) [sic] to meet the Compatibility Category A designation assigned to this definition in §10 CFR 20.1003." The amended definition is now essentially identical to the NRC definition of "Occupational Dose".

3. Amendment of §175.101(m) concerns reciprocity approval by NRC. NRC is requiring three-day advance notice to it for approval prior to any initial activity by any Agreement State licensee/non-NRC licensee in areas under exclusive federal jurisdiction within NYC.

§175.101(m)(2) is being changed by inserting the **italic text** as indicated below:

The holder of a license issued by the New York State Department of Labor, the New York State Department of

Health, the New York City Department of Health and Mental Hygiene or an Agreement State must obtain reciprocity approval from the U.S. Nuclear Regulatory Commission to conduct licensed activity in areas of exclusive federal jurisdiction within New York City. **At least three days before engaging in each activity for the first time in a calendar year, the licensee will provide the U.S. Nuclear Regulatory Commission with advanced notice of its proposed activity in areas under exclusive federal jurisdiction within New York City, as indicated in 10 CFR §150.20, or its successor regulation.**

This amendment is to satisfy the following NRC Comment: "NYCDH needs to include a reference to advance notification in 175.101(m) to meet Compatibility Category C designation assigned to §10 CFR 150.20." The amended provision now captures the essential objectives of the NRC requirement.

4. Amend the §175.02(a) definition of "Background radiation" to include the phrase "or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under control of the licensee" compared to NRC's definition.

The definition of "Background radiation", located at §175.02(a)(20), is being changed by inserting the following **italic text** and deleting the [bracketed text] as indicated below:

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive material[s], including radon[,] **(**except as a decay product of source or special nuclear material[,]**);** and [including] global fallout as it exists in the environment from the testing of nuclear explosive devices **or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee**. "Background radiation" does not include radiation from any regulated sources of radiation.

This amendment is to satisfy the NCR Comment: "NYCDH needs to add the phrase "or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under control of the licensee" to 175.01(20) (sic) to meet the Compatibility Category A designation assigned to this definition in §10 CFR 20.1003." The amended definition is now essentially identical to the NRC definition of "Background radiation".

5. Amend §175.02(a) by adding the definition "Critical Group" from 10 CFR §20.1003. The definition "Critical Group" as shown in the **italic text** below, is being inserted in §175.02(a) in alphanumeric order, and all subsequent subdivisions are being re-numbered accordingly.

"Critical Group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

This amendment is to satisfy the following NRC Comment: "NYCDH omitted a definition for "critical group" compared to NRC's regulations. NYCDH needs to add the definition to 175.02 to meet the Compatibility Category B designation assigned to this portion of §10 CFR 20.1003." The definition is identical to the NRC definition of "Critical Group".

6. Amend §175.02(a) by adding the definition "Decommission" from 10 CFR §20.1003. The definition "Decommission" as shown in the **italic text** below, is being inserted in §175.02(a) in alphanumeric order and all subsequent subdivisions are being re-numbered accordingly.

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits-

(i) Release of the property for unrestricted use and termination of the license; or

(ii) Release of the property under restricted conditions and the termination of the license.

This amendment is to satisfy the following NRC Comment: "NYCDH omitted a definition for "decommission" compared to NRC's regulations. NYCDH needs to add the definition to 175.02 to meet the Compatibility Category designations assigned to these portions 10 CFR 20.1003, 30.4, 40.4 and 70.4." The definition is identical to the NRC definition of "Decommission".

7. Amend §175.02(a) by adding the definition "Distinguishable from background" from 10 CFR §20.1003. The definition "Distinguishable from background" as shown in the **italic text** below, is being inserted in §175.02(a) in alphanumeric order and all subsequent subdivisions are being re-numbered accordingly.

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

This amendment is to satisfy the following NRC Comment: "NYCDH omitted a definition for "distinuishable from background" compared to NRC's regulations. NYCDH needs to add the definition to 175.02 to meet the Compatibility Category B designation assigned to this portion of §10 CFR 20.1003." The definition is identical to the NRC definition of "Distinguishable from background".

8. Amend §175.02(a) by adding the definition "Residual radioactivity" from 10 CFR §20.1003. The definition "Residual radioactivity" as shown in the **italic text** below, is being inserted in §175.02(a) in alphanumeric order and all subsequent subdivisions are being re-numbered accordingly.

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

This amendment is to satisfy the following NRC Comment: "NYCDH omitted a definition for "residual radioactivity" compared to NRC's regulations. NYCDH needs to add the definition to §175.02 to meet the Compatibility Category B designation assigned to this portion of §10 CFR 20.1003." The definition is identical to the NRC definition of "Residual radioactivity".

29. Statement of Basis and Purpose in City Record Oct. 30, 2007:

The Department's Division of Environmental Health, Bureau of Food Safety and Community Sanitation ("BFSCS") has proposed that the Board of Health amend Article 131 of the Health Code to authorize HPD to issue Commissioner's Orders to Abate a Nuisance ("COTA") on behalf of the Commissioner for missing or improperly installed window guards in units and public areas in multiple dwellings where children 10 years of age and younger reside.

Since the adoption of Health Code §131.15 ("Window guards") in 1976, window guards have been required on windows in multiple dwelling units and public areas in multiple dwellings in the City where children 10 years of age and younger reside except for windows giving access to fire escapes. This provision has been effective in preventing many falls. From 1973-1976 there were approximately 200 preventable falls annually, and an average of 25 fatalities per year.[1]3 In calendar year 1977, the first year after §131.15 went into effect, there were 151 preventable falls, resulting in the deaths of 26 children. In more recent years, e.g., from 1996-2006, there has been an average of 12.5 preventable falls annually, with no more than two preventable fatalities occurring in any year.[2]4 In 2006, there were six preventable falls and no fatalities.

Health Code §131.15(d) provides that failure to install or maintain window guards constitutes a public nuisance and a condition dangerous to life and health, in accordance with §17-145 of the New York City Administrative Code

("Administrative Code"). Health Code §131.15(d)(3) further provides that whenever a window guard nuisance or condition, such as an improperly installed guard is observed, the Department may order the landlord to provide, maintain and/or install window guards within five days, and that when such order is not complied with within five days after service, the Department may request that an agency of the City execute the order pursuant to §17-147 of the Administrative Code to install or repair the window guards. The owner of the building is responsible for payment of any expenses incurred by the City. Currently, the HPD executes these orders when owners fail to do so. Although Housing Maintenance Code ("HMC") §27-2125 authorizes HPD "to cause or order corrections of violations" in multiple dwellings if such violations are dangerous to human life and safety or detrimental to health, there is no specific HMC provision authorizing HPD to issue violations or orders relating to absent or improperly installed window guards. At present, HPD has reported that it observes lack of window guards or improperly installed guards in approximately 950 to 1,000 units per month when its inspectors are in a unit to inspect other housing-related complaints. Enabling HPD to issue COTAs on behalf of the Commissioner of Health for window guard violations would enhance and expedite enforcement, providing an owner with the earliest possible notice of the condition and an opportunity to correct it before HPD does so, further promoting children's safety.

The original proposal published for public comment would have authorized HPD to issue orders to abate window guard nuisances to landlords for the repair and installation of window guards. The final resolution has been clarified to indicate that HPD will be issuing such orders on behalf of the Commissioner.

30. Statement of Basis and Purpose in City Record Sept. 25, 2008:

New York State is an Agreement State, which means that this State and the United States Nuclear Regulatory Commission (NRC) have entered into an agreement under the Atomic Energy Act, which delegates authority to New York State to regulate radioactive material at non-reactor sites within its jurisdiction. The New York State Agreement is comprised of three regulatory programs - 1. the New York State Department of Health, 2. the New York State Department of Environmental Conservation, and 3. the New York City Department of Health and Mental Hygiene. Under this Agreement State structure, the New York City Department of Health and Mental Hygiene, through the Office of Radiological Health (ORH), regulates radioactive material for medical, research and academic purposes within the five boroughs of New York City.

ORH licenses and inspects radioactive materials facilities for compliance with Article 175 of the New York City Health Code for the protection of the health and safety of patients, radiation program employees and the general public. There are about 375 licensed sites in New York City possessing radioactive material for medical, academic and research purposes. ORH inspects these facilities at frequencies of once every one, two or three years depending on the type of usage.

Each Agreement State program is required to maintain compatibility with the NRC regulatory program. The NRC ensures an adequate level of compatibility through its Integrated Materials Performance Evaluation Program (IMPEP) and conducts a quadrennial review of Agreement State programs. The latest IMPEP review of the NYS program took place in November of 2006.

In their November 2006 IMPEP review, the NRC evaluated each of the three components of the New York State Agreement State structure. NRC findings were presented in their Final Report, dated January 31, 2007.

The NRC IMPEP Final Report concluded that NRC requirements (Items 1 and 2 below) needed to be incorporated into Article 175 of the New York City Health Code in order to maintain appropriate compatibility with applicable federal regulations. Item 3 below is an NRC requirement that must be incorporated into the Health Code pursuant to NRC Order EA-07-305 (72 FR 70901).

1. "Financial Assurance for Materials Licensees," (published in 68 FR 57327) that became effective on December 3, 2003 and was due for Agreement State adoption by December 3, 2006.

The NRC amended its regulations (located at 10 CFR Parts 30, 40, and 70) in 2003 for financial assurance for certain materials licensees, including all waste brokers, to bring the amount of financial assurance required more in line with current decommissioning costs. The objective of this action was to ensure that licensees maintain adequate financial assurance so that timely decommissioning can be carried out following shutdown of a licensed facility. Therefore, language in Health Code §175.101(n) is now being modified accordingly.

2. "Compatibility with IAEA Transportation Safety Standards and other Transportation Safety Amendments," (published in 69 FR 3698) that became effective on October 1, 2004 and was due for Agreement State adoption by October 1, 2007.

The NRC amended its regulations (located at 10 CFR Part 71) in 2004 on packaging and transporting radioactive material. This rulemaking was designed to ensure that federal regulations would be compatible with the latest version of the International Atomic Energy Agency (IAEA) standards and to codify other applicable requirements. Therefore, language in Health Code §§175.02,175.105 and 175.105 Appendix A is now being modified accordingly.

3. NRC Order EA-07-305 (published in 72 FR 70901) imposing fingerprinting and criminal history records check requirements for unescorted access to certain radioactive materials that became effective for Agreement States on December 5, 2007.

Pursuant to its Order EA-07-305, the NRC has determined that a fingerprinting and criminal history records check requirement shall be imposed on all licensees, including Agreement State licensees, who are subject to Increased Controls (see NRC Order EA 05-090). Agreement States are charged with issuing their equivalent fingerprinting and criminal history records check requirements by June 5, 2008. Section 652 of the Energy Policy Act of 2005 (EPAct), which became law on August 8, 2005, amended Section 149 of the Atomic Energy Act (AEA) to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check for "any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks." Section 149 of the AEA also requires that "all fingerprints obtained by a licensee or applicant * * * shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check." NRC has decided to implement this requirement, prior to the completion of a future rulemaking, which will implement these provisions of the EPAct, because a deliberate malevolent act by an individual with unescorted access to these radioactive materials has the potential to result in significant adverse impacts to the public health and safety.

Pursuant to a previous NRC Order EA 05-090 (located at 70 FR 72128, December 1, 2005), the NRC ordered all licensees who, at any given time, possess certain radioactive sources in certain quantities to comply with certain Increased Controls (ICs). The purpose of the ICs Order for radioactive sources was to enhance control of radioactive material in order to reduce the risk of unauthorized use of radioactive materials, through access controls to aid prevention, and prompt detection, assessment, and response to mitigate potentially high consequences that would be detrimental to public health and safety. These ICs for radioactive sources and quantities were established to delineate licensee responsibility to maintain control of said licensed material and secure it from unauthorized removal or access.

This NRC Order EA-07-305 (72 FR 70901), imposing fingerprinting and criminal history records check requirements for unescorted access to certain radioactive materials, extends its security requirements applicable to those same IC licensees and became effective on December 5, 2007. Licensees will now be required to submit fingerprints of each individual who the licensee wishes to permit unescorted access to certain licensed materials. The fingerprints would be submitted to the NRC which would then forward them to the FBI. Results of the FBI criminal history record check would be sent to NRC which would then forward them to the licensee. Each licensee shall be responsible for determining whether to allow an individual unescorted access to radioactive materials in quantities of concern. Therefore, Health Code §175.101 is now being modified to add these NRC security requirements.

31. Statement of Basis and Purpose in City Record Dec. 23, 2008:

Introduction

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, the DOHMH proposed that the Board of Health amend Article 173, Hazardous Substances, to better reflect practice and the regulatory environment, provide adequate legal tools to effectively address the health and safety needs of the public and to harmonize its provisions with related provisions of federal and state law. Pursuant to this review and assessment of the Health Code, the Department proposed that the Board amend certain of the provisions of current Article 173 as described below.

§173.01 (Definitions) has been repealed and reenacted. It changes or amends definitions for the terms "hazardous substance," "toxic," "highly toxic," "flammable," "combustible," "corrosive," "irritant," "label," "electrical hazard," "mechanical hazard," "thermal hazard" and "art material." These changes modernize the terms used in the Article, incorporating corresponding definitions from the Federal Hazardous Substances Act (15 USCA §1261 et seq.), and related regulations (16 CFR Part 1500).

§173.05 (Labeling).

Subdivision (a) has been amended to delete exceptions for Articles 71, 75 and 77.

Subdivision (b) has been amended to harmonize with corresponding provisions in the Federal Hazardous Substances Act (15 USCA §1261 et seq.) and its related regulations (16 CFR Part 1500), and regulations that may be adopted by the United States Consumer Product Safety Commission.

Subdivision (c) has been amended to delete paragraphs (1) through (3) and refers to highly toxic substances as defined in this Article. Elimination of paragraphs (1) through (3) obviates the need for subdivision (d), which has accordingly been deleted.

New subdivision (d) requires labeling of art materials in accordance with the Federal Hazardous Substances Act and related federal regulations to protect the health and safety of persons using art materials.

New subdivision (e) is a general provision requiring labeling not otherwise required under federal, state or local law. The remaining subdivisions have been relettered accordingly.

Current subdivision (g) on changing labeling requirements pursuant to the discretion of the Commissioner is deleted, and former subdivision (f) is relettered as (g). Deference will be given to labeling requirements as set forth in the Federal Hazardous Substances Act and its related federal regulations.

Current subdivision (i) has been amended to add the term "conspicuous" to characterize required labeling, reflecting the language in the Federal Hazardous Substances Act and related regulations.

§173.051 (Exemptions) has been repealed, as an exemption for pressurized products is no longer necessary with the repeal of §173.06.

§173.06 (Pressurized Products) has been repealed as unnecessary because pressurized products are currently subject to New York City Fire Department regulations. See, 3 RCNY §32-01.

§173.07 (False or misleading advertising or labeling) has been amended to delete references to pressurized products.

§173.08 (Carbon tetrachloride; prohibited for household use and in fire extinguishers) has been repealed as the use of carbon tetrachloride, as noted, is prohibited by Fire Department rules for use in pressurized containers, and for at

least the past 30 years, the FDA has banned carbon tetrachloride in any product to be used in the home. See, 3 RCNY §32-01 and 16 CFR §1500.17.

§173.09 (Rodenticides and insecticides) has been repealed, as pesticide use is comprehensively regulated by both the New York Environmental Conservation Law and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136.

§173.11 (Fire extinguishers containing methyl bromide) has been repealed as neither the Fire Department nor National Fire Protection Association Standard 10 consider a fire extinguisher containing methyl bromide acceptable. See, 3 RCNY §15-02.

§173.13 (Lead Paint) has been amended to specify that orders for remediation of lead hazards in soil, authorized in paragraph (1) of subdivision (d) may be issued when a child under six years of age resides in or uses the premises appurtenant to the leaded soil.

§173.14 (Safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint) has been amended to delete references to §45.12, now §43.23, and §47.44, now §47.63. Amendments have been incorporated in the Table of Contents and subdivisions (a), (b), (c) and (e). Subdivision (a) was amended after the public comment period to correct a technical omission in the proposal published.

§173.16 (Lye intended for household use) has been repealed as §173.05 has been amended to provide for and address the labeling provisions as set forth in this section.

32. Statement of Basis and Purpose in City Record Dec. 23, 2008:

Introduction

As part of a comprehensive review of the Health Code to assess the efficacy of the Code in protecting the public health, the Board of Health has repealed and reenacted Article 151, Rodents, Insects and Other Pests, changing its title to Pest Prevention and Management, to better reflect practice, the regulatory environment, and to assure that the revised provisions provide adequate legal tools to effectively address the health and safety needs of the public concerning prevention and control of rodent, insect and other pest infestations. The main intent of this revised article is to prevent the infestation of rodent, insect or other pests and to prohibit the existence on any premises of conditions conducive to pest infestations through continuous pest management efforts, elimination of harborages and requiring property maintenance practices to eliminate or severely limit the presence of pest populations. Because the regulation of pesticide use is preempted by state law, this article attempts to promote prevention of pests and pest infestations without directly addressing the use of pesticides. The focus on pest management incorporates a hierarchy of actions to prevent and eliminate pests, including structural alterations and repairs, and the elimination of conditions conducive to pest infestations. In addition, for the reasons stated below, the Board has also repealed Article 171 (Fumigation and Extermination).

1. Repeal and reenact Article 151.

Section 151.01 Definitions defines terms used in the article.

The term "conditions conducive to pests" has been added and refers to conditions that attract and contribute to the presence of pests, and require correction.

The term "harborage" remains unchanged from the current Article 151.

The term "person in control" is retained and now refers to responsibility over a "premises" or "property."

The term "pest" replaces the term "insects and other pests" in current Article 151, and refers to unwanted insects,

rodents or other pests as determined by the Department.

The term "pest management" has been added, and replaces the term "eradication." Pest management consists of prevention, monitoring and control of pests, and is required to maintain a pest free environment. Eradication, the prior term, referred only to the elimination of pests through extermination, too narrow a practice for effective management of pests. Eradication should be interpreted as only one component of "pest management."

The term "pesticide" has been added to refer to substances or mixtures of substances used to prevent, destroy, repel or mitigate against pests, consistent with the term as defined in the New York Environmental Conservation Law.

The terms "premises" and "property" have been defined to mean building structures, rooms and units of a building, and public parts of buildings, as well as yards, building lots, vacant lots, parks, streets, and vehicles.

Section 151.02 Prevention and pest management measures represents a change from the former Article's emphasis on eradication methods and extermination and reflects several needs.

First, New York Environmental Conservation Law preempts localities from regulating the use or application of pesticides, and as such, mandating eradication as previously defined to include the use of poisons or pesticides, is no longer permitted. Additionally, effective pest management requires a hierarchy of strategies that prioritize prevention and monitoring, and address the management of pests as a proactive ongoing set of tasks and responsibilities, not just a reaction to the undesired presence of pests.

Subdivision (a), "Properties shall be free of pests," requires that premises must be kept free from pests and conditions conducive to their presence. This section requires persons in control to take measures that may be necessary to prevent and control these conditions.

Subdivision (b), "Waste shall be managed to prevent pests," is necessary because improperly handled waste is a significant source of food and harborage for many pests. This subdivision mandates that solid and liquid garbage be stored in containers that prevent the entry of pests, until garbage is ready to be picked up, at which time garbage may be placed in suitable bags or other containers acceptable to the City's Department of Sanitation and other agencies regulating garbage pickup.

Subdivision (c), "Pest management plans," defines components of a written management plan, when the Department determines that such a plan is required, including a description of pest management strategies to be employed, a schedule of routine inspections, a list of actions taken when pests are present, instructions to occupants and other users of the premises as to how to report the presence of pests, and the name and contact information for the pest management business or professionals retained by the persons in control. In response to a comment asking who is responsible for routine inspections, paragraph (2) has been amended to read: "A schedule for routine inspections, determined by the person incontrol, for conditions conducive to pests and the presence of pests; . . .". In response to another comment indicating that requiring a person in control of a building to duplicate record keeping practices that State law mandates for pesticide applicators is burdensome and not feasible, paragraph (6) has been further amended so that the person in control of a building is required only to maintain a record of the names, not the quantities, of pesticides applied in the premises.

Subdivision (d), "Elimination of conditions conducive to pests and the presence of pests," describes the pest management actions that may be ordered by the Department to control pests. These actions include the physical removal of pest nests, waste and other debris, the elimination of pest entry and travel via the sealing and closure of openings, the elimination of harborage, the elimination of harborages and the elimination of pest food sources.

Subdivision (e) prohibits the use of pesticides alone to substitute for pest management measures required by this section. Pesticide use should not be the first and only line of defense against pests.

Section 151.03 Elimination of standing water authorizes the Department, with the exception of protected wetlands, to order the correction of standing water problems in areas other than protected wetlands lots, excavations or other places to prevent the breeding and harborage of mosquitoes and other pests.

Section 151.04 Enforcement by the Department and other City agencies authorizes the Department to issue orders to enforce this Article and conveys the same authority to the City's Departments of Buildings and Housing Preservation and Development.

2. Repeal Article 171

The Board of Health has repealed Article 171 (Fumigation and Extermination), as no longer necessary. The U.S. Environmental Protection Agency comprehensively regulates substances used as pesticides, and the New York State Department of Environmental Conservation currently comprehensively regulates all aspects of pesticide use in New York State. See, e.g., Environmental Conservation Law Article 33 and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136.

33. Statement of Basis and Purpose in City Record Mar. 27, 2009:

The Department is responsible for the protection of the health and safety of the public using permitted bathing establishments by assuring the proper construction, operation and maintenance of regulated facilities within New York City. Article 165 of the Health Code sets forth standards for the operation and maintenance of bathing establishments operating under permit issued by the Department.

Effective March 28, 2007, the New York State Department of Health adopted regulations regarding Recreational Aquatic Spray Grounds located at 10 New York Code, Rules and Regulations, Subpart 6-3. The purpose of these State Sanitary Code regulations is to establish standards for the safe and sanitary operation of recreational spray grounds that re-circulate water. These regulations were promulgated in response to multiple outbreaks associated with gastrointestinal illness caused by contaminated recycled spray ground water at spray parks. See New York State Register, December 27, 2006. Therefore, the Board of Health adopted the State Sanitary Code spray ground requirements in order to maintain consistency between Subpart 6-3 regulations of the State Sanitary Code and relevant provisions of Article 165 of the Health Code.

Also, effective November 7, 2007, the New York State Department of Health amended §6-1.23 of the State Sanitary Code, which contains bather supervision and training requirements relating to lifeguard surveillance during instructional swimming activities. Accordingly, the Board of Health adopted the State Sanitary Code amendment requirements found in Section 6-1.23(a)(6) in order to maintain consistency between the State Sanitary Code and §165.15 of Article 165 of the Health Code, which concerns bathing establishment supervision and surveillance requirements.

CHANGES TO THE HEALTH CODE

The following are the changes to Article 165:

· §165.01 (applicability of Article extended to include certain spray grounds)

· §165.03 (spray ground-related definitions added)

· §165.05 (spray ground requirements added to permit applications)

· §165.09 (spray ground requirements added related to permit approvals)

· §165.11 (spray ground requirements added related to enforcement)

· §165.15 (spray ground and lifeguard surveillance requirements added related to supervision)

· §165.17 (spray ground requirements added related to lifesaving and safety equipment)

· §165.19 (all bathing establishments, including spray grounds, required to have a safety plan)

· §165.23 (spray ground requirements added related to water chemistry and testing)

· §165.25 (spray ground requirements added related to water quality standards)

· §165.27 (spray ground requirements added related to sanitation and safety)

· §165.29 (spray ground requirements added related to maintenance of mechanical equipment)

· §165.31 (spray ground requirements added related to chemical handling and storage)

· §165.39 (spray ground requirements added related to recordkeeping)

· §165.42 (new section created adding general requirements for spray grounds)

· §165.43 (spray ground requirements added related to water supply and cross-connections)

· §165.45 (spray ground and pool requirements added related to water treatment systems)

· §165.47 (spray ground requirements added related to lighting, electrical and ventilation)

· §165.49 (spray ground and pool requirements added related to location and facilities)

34. Statement of Basis and Purpose in City Record Mar. 27, 2009:

The Department is responsible for protecting the health and safety of the public who use permitted bathing beaches by providing for the proper construction, operation and maintenance of these facilities within New York City. Article 167 of the Health Code sets forth standards for the operation and maintenance of bathing beaches operating under permit by the Department.

The boundary restricting bathing currently defined under §167.05(d) is inconsistent with the surface water classifications (usage designations) contained in New York State Department of Environmental Conservation (NYSDEC) regulations (see 6 NYCRR Parts 700, 701, 890, 891; see also, http://www.dec.ny.gov/chemical/23853.html). Successful improvements of pollution control programs and continued comprehensive upgrades to wastewater treatment infrastructure have resulted in a significant improvement in water quality, therefore, providing for the possibility for additional permitted bathing facilities in previously restricted areas. Accordingly, some of the previously restricted areas for bathing under §167.05(d) are now classified by NYSDEC to allow bathing (SB-primary contact). Pursuant to 6 NYCRR 700.1, "primary contact recreation" means recreational activities where the human body may come in direct contact with raw water to the point of complete body submergence. Primary contact recreation includes, but is not limited to, swimming, diving, water skiing, skin diving and surfing.

In order to maintain consistency with the surface water classification as defined under NYSDEC regulations, the defined boundary lines restricted for bathing under §167.05(d) are replaced with boundary lines of water classification used for primary contact as defined by the NYSDEC.

Changes to the Health Code

The list of restricted boundaries in §167.05(d)(1)-(6) is deleted. Also, §167.05(d) is amended to allow boundaries delineated for primary contact as defined by applicable surface water classification regulations of the NYSDEC.

35. Statement of Basis and Purpose in City Record June 30, 2009:

Introduction

As part of a comprehensive review of the Health Code to assess the efficacy of its Articles in protecting the public health, the Board repealed and reenacted Article 141, Drinking Water, to better reflect current practice and the regulatory environment, to assure that the revised provisions provide adequate legal tools to effectively address the public health aspects of public and private water supplies and to harmonize such provisions with related provisions of the New York State Sanitary Code, 10 NYCRR, Subparts 5-1, 5-2 and 5-6. As part of the revision effort, antiquated and obsolete provisions have been omitted and the standards set forth in the revised Article 141 have been modernized to reflect current industry practice and standard requirements as set forth in the New York State Sanitary Code, the Rules of the City of New York, the Administrative Code of the City of New York, the New York State Public Health Law and standards as established by industry associations, such as the American National Standards Institute (ANSI), American Water Works Association (AWWA), and National Sanitation Foundation (NSF). The revised Article supplements rather than duplicates the regulations of other governmental agencies concerned with water supply such as the New York City Department of Environmental Protection, the New York City Department of Buildings, and the New York State Department of Health. Pursuant to this review and assessment of the Health Code, the Board repealed and reenacted Article 141 as provided below.

The key revisions to Article 141 are noted below:

The prior title to the Article, "Drinking Water," has been amended to reflect the regulatory scheme of the Article and is now titled, "Water Supply Safety Standards."

Section 141.01

This section "Definitions" is derived from prior section 141.01 and provides updated definitions and adds to the list of terms in the current definitions section. The existing terms, "device" and "potable water" have been updated to reflect modern usage, and the following terms and their definitions have been added: "ANSI," "APHP," "AWWA," "Bottled Water," "Building," "Bulk Water," "Contamination," "Department," "Disinfection," "Drinking Water," "Fluoridation," "Ground Water," "Licensed Master Plumber," "Municipal Water Supply," "Non-potable Water," "NSF," "ppm," "State," "State Sanitary Code," "Water Supply Tank," "WEF," "Well" and "Well Water." The addition of these terms and their definitions brings the Article into greater conformity with its regulatory scope and has been updated to compare with the corresponding and applicable definitions in the Rules of the City of New York and the New York State Sanitary Code.

Section 141.03

This section, "Drinking Water Supply Source" is derived from prior section 141.02.

Section 141.05

This section, "Fluoridation of Municipal Water Supply" is derived from prior section 141.08.

Section 141.07

This section, "Building Drinking Water Storage Tanks" is derived from prior section 141.03, which currently contains provisions on drinking water tank inspections, cleaning and painting requirements. The title of this section has been changed to better reflect the subject of Drinking Water Storage Tanks in buildings and the subdivisions have been reorganized to better clarify the requirements related to annual inspections, such as record keeping, public notice and for corrective actions.

Section 141.09

This section, "Building Water Tank Cleaning, Painting and Coating" is derived from prior sections 141.03 and 141.05, which both previously contained provisions on water tank inspection, cleaning, coating and painting. The changes to this section reflect and incorporate current Department practices and standards prescribed by the New York City Building Code, AWWA, and NSF concerning the maintenance, cleaning and disinfection of building water tanks and any part of the building drinking water systems. In particular, the amendments provide more stringent standards for maintenance, cleaning and disinfection to ensure that tanks are cleaned properly and regularly. Updated and more stringent provisions for permitting of individuals who engage in cleaning or painting water tanks have been added, as have requirements for sampling and record keeping.

Section 141.11

The prior section 141.11 "Drinking Water on Vessels" has been removed from the Health Code to reflect applicable federal regulations (see, 21 CFR Parts 1240, 1250) and Department practice. The Department will no longer regulate water on vessels, but will respond to and assist Federal agencies when requested.

This section, "Chemical Treatment of Drinking Water" includes and amends provisions from prior section 141.07. The title of this section has been changed to better reflect the substance of the section and the subdivisions have been reorganized to better reflect the regulatory effort. The changes to the existing provisions reflect current Department practices, and incorporate references to industry organizations, such as AWWA and NSF as well as the requirements of the New York State Sanitary Code, Subpart 5-2. AWWA and NSF provide modern standards and technical guidance on matters related to current, approved chemicals for use in drinking water supplies, devices used to add chemicals to water supplies, and methods for water sampling and analysis.

Section 141.13

This section, "Bottled Water" includes and amends provisions derived from prior section 141.04 on bottled drinking water. The requirement for filing for a permit with the Department has been removed since it duplicates the New York State Department of Health requirement for permitting of bottled water in the State of New York. The provisions have been updated to reflect and conform to the bottled drinking water standards and procedures for distribution as prescribed by Subpart 5-6 of the State Sanitary Code and current Department enforcement practices.

Section 141.15

This section, "Hauling Bulk Water", includes and amends provisions from prior sections 141.021 and 141.11. The requirement for filing for a permit with the Department has been removed since it duplicates the New York State Department of Health requirement for permitting of bulk water in the State of New York. The provisions have been updated to reflect and conform to the bulk water standards and procedures for distribution as prescribed by Subpart 5-6 of the State Sanitary Code and current Department enforcement practice.

Section 141.17

This section, "Groundwater Wells," incorporates provisions from prior sections 141.09 and 141.10. These provisions have been amended to reflect and include references to newer standards as set forth in the New York State Sanitary Code, Subpart 5-1. New provisions have also been added concerning permit applications for well water use. Groundwater quality standards and well construction standards make reference to and reflect the standards set forth in Part 5 of the State Sanitary Code, and the rules and regulations of the New York State Department of Environmental Conservation and the New York City Department of Environmental Protection and applicable provisions promulgated by the New York City Council contained in the Administrative Code of the City of New York, as these entities have jurisdiction related to the construction, operation and maintenance of groundwater wells.

Section 141.19

This section, "Modification," is derived from prior section 141.13 and has been amended to reflect gender neutrality.

36. Statement of Basis and Purpose in City Record June 30, 2009:

Introduction

As part of a comprehensive review of the Health Code to assess the efficacy of the Code in protecting public health, the Department proposes that current Article 203, Termination of Pregnancy, be amended, effective January 1, 2010, to assure that the Code provides adequate legal tools to effectively address general public health matters. As part of the revision effort, obsolete provisions have been omitted and the standards and references set forth in revised Article 203 have been modernized to reflect current Department and public health practice.

Pursuant to this review and assessment of the Health Code, the DOHMH proposes that the Board amend Article 203 as provided for below.

Section 203.01

Subdivision (a) was amended to remove the clause "as formerly defined," as there was no such previous reference.

Subdivision (c) was amended to reflect the definition recommended by the National Center for Health Statistics of the federal Centers for Disease Control and Prevention.

A new definition of "licensed health care practitioner" was added as subdivision (e). Which health care practitioners may perform which health care services is a function of state law, most importantly the New York State Education Law. The new definition simply refers to whichever health care practitioners are authorized to perform terminations of pregnancy pursuant to the state Education Law or other applicable law. In turn, those health care practitioners are among those who are obligated or authorized to file or prepare reports, as specified in sections 203.03 and 203.05. The simplicity of this definition facilitates reporting, including electronic reporting, and avoids the need to delineate which health care practitioners are obligated or authorized to file termination of pregnancy reports or to prepare documents associated therewith.

Section 203.03

Subdivision (a) was amended to update terminology from physician or nurse-midwife to other licensed health care practitioners, in order to reflect the current practice of having medical practitioners other than physicians in attendance at terminations of pregnancy. Permitting a licensed health care practitioner who was in attendance, other than a physician, to report a termination of pregnancy facilitates reporting and does not affect medical care standards.

Subdivision (b) was modified to accommodate legal nomenclature and to reflect the change to paragraph (4) of subdivision (a) clarifying that when the office of chief medical examiner files a certificate of spontaneous termination of pregnancy, any medical examiner within that office may file the certificate without a confidential medical report.

Subdivision (c) was amended to change the 24 hour filing requirement for spontaneous terminations and 5 day filing requirement for induced terminations of pregnancy to a 24 hour reporting requirement for **all** terminations of pregnancy when a permit to dispose of the conceptus is required or requested. Certificates and confidential medical reports, if any, related to terminations not resulting in the issuance of a disposition permit must be filed within 5 business days after the event. As per amendments to section 203.09 (see below), such permit is required for all terminations occurring at 24 weeks gestation or later and may be requested for terminations occurring at less than 24 weeks. Subdivision (c) was also amended to remove the provision pertaining to filing within 15 days for the termination of pregnancy revealed by pathological examination. This provision is no longer applicable as pathological examination is no longer required for determining pregnancy status.

Subdivision (d) was amended to make proper reference to New York City, and to accommodate the fact that in some cases, but not necessarily all, a conceptus may be buried or otherwise disposed of pursuant to a permit issued by the Department. In such circumstances, the required documents may be filed by a funeral director, undertaker or person in charge of the City mortuary, as the case may be, or a registered agent or designee of such persons. Such an alternative means of filing is only available, however, when the report is being filed in paper form. Reference to electronic filing was deleted and incorporated into the new subdivision (e).

Subdivision (e) was added to require all facilities reporting births electronically or reporting 100 or more induced terminations of pregnancy in any 1 year, and the office of chief medical examiner, to report terminations of pregnancy electronically. When a required reporter files electronically, a funeral director or undertaker authorized to take charge of the remains, or the person in charge of the City mortuary when filing an application for a disposition permit, must also file such application electronically. Facilities not required to report electronically may opt to do so with approval by the Department or may continue to report on paper. However, once a facility begins to report electronically, it may not revert to paper filing unless so authorized by the Department.

Subdivision (f) was added to require departmental approval of electronic reporting systems, in order to ensure the uniformity and quality of data collection. The subdivision also requires approval from the DOHMH prior to the electronic transfer of data from a facility to the Department to ensure the protection of the confidentiality of the information provided. The subdivision also provides for alternative arrangements, upon the Department's approval or initiative, in particular circumstances.

Subdivision (g) was added to provide for situations in which a reporter receives required information after reporting the termination of the pregnancy. The reporter must submit such information within 5 business days of receipt.

Subdivision (h) was added to require reporters to provide, within 5 business days of a request by the Department, additional information necessary to complete, clarify or verify the information required to be reported. Such information may include, for example, updated causes of death.

Section 203.05

The title of section 203.05 was amended to "Preparation and Certification of Certificates" and the paragraph titles **"Preparation"** and **"Certification"** were added to subdivision (a). These changes were made to indicate that separate rules apply to the preparation and certification of certificates.

Paragraph (1) of subdivision (a) was amended to include licensed health care practitioners, as defined in section 203.01, and to reflect gender neutrality. Besides physicians, licensed health care practitioners may also attend, assist or be present at terminations of pregnancy. Permitting a licensed health care practitioner in attendance, assisting or present at or after the event, other than a physician, to prepare reports facilitates the expeditious preparation of certificates and does not affect medical care standards. Accordingly, when a termination of pregnancy occurs in a hospital, reports may be prepared by a licensed health care practitioner who was in attendance, assisting or present at or after the event; the chief medical officer of the hospital; or the physician in charge of the treating hospital service. When a termination of pregnancy occurs elsewhere than in a hospital and is attended by a licensed health care practitioner, the practitioner may prepare the report.

This paragraph was also amended to permit the designee of a person in charge of a hospital, or the designee of the attending licensed health care practitioner elsewhere than in a hospital, to prepare the required certificate and confidential medical report, if any. Such a designee must be trained or approved by the Department. This is particularly useful for electronic reporting and will enable the hospital, or, for example, a doctor attending a termination of pregnancy in his or her office, to delegate the task of preparing the certificate to a lower level employee. The training and approval requirement should improve data quality.

Paragraph (2) of subdivision (a) is substantially new and was amended to clarify that, regardless of which kind of licensed health care practitioner or other individual is authorized to file a report or to prepare a certificate, only a physician may certify a certificate of spontaneous termination of pregnancy or the associated confidential medical report. For induced termination of pregnancy certificates, a licensed health care practitioner, as well as the several physicians specified, may certify such reports. A certifying physician, or a medical examiner who is also a physician, is required to examine the documents being certified and make necessary changes. Accordingly, the requirement for a physician's countersignature has been deleted.

Subdivision (b) was amended to provide that if worksheets are used by anyone authorized to prepare certificates of termination of pregnancy and confidential medical reports, if any, the worksheets must be approved by the DOHMH in order to control the quality of data collection. In addition, the requirement to have the Board of Health approve the electronic form of certificates has been deleted, because electronic forms are merely reflective of the paper forms prescribed by the Board pursuant to this subdivision, aside from incidental formatting differences.

Section 203.07

Subdivision (a) was amended to provide that the disclosure of the confidential medical report of a spontaneous termination of pregnancy shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code.

Subdivision (b) was amended to include epidemiologic surveillance and investigation conducted by governmental public health agencies within the meaning of "scientific purposes."

Subdivision (c) was amended to provide that the certificate of induced termination of pregnancy is confidential and that disclosure shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code.

Section 203.09

This section was amended to clarify that a disposition permit may be issued, upon request, for the disposal of a conceptus of less than 24 weeks gestation. It should be noted that the original proposal to amend this section proposed to change the gestational age at which a disposition permit would be required from the current 24 weeks to 20 weeks in order to be consistent with the Public Health Law applicable in the rest of the state, but not in New York City. Upon further reflection, the Department is withdrawing that particular proposed change. Section 4162 of the Public Health Law, specifying 20 weeks, does not apply in New York City. Furthermore, the 20-week requirement in section 4162 dates back to the 1960's, whereas the Health Code's current 24-week standard was adopted in 1977 and is consistent with the timeframe set forth in a 1970 amendment to subdivision (3) of section 125.05 of the Penal Law defining a justifiable abortion. Therefore, the Department has concluded that the gestational age at which a disposition permit is required in New York City should remain at 24 weeks.

37. Statement of Basis and Purpose in City Record June 30, 2009:

Introduction

As part of a comprehensive review of the Health Code, the Department proposes that current Article 201, Births, be amended to assure that the revised provisions provide adequate legal tools to effectively address general public health matters and to reflect modern public health thinking and practice.

Pursuant to this review and assessment of the Health Code, the DOHMH proposes that the Board amend Article 201, effective January 1, 2010, as set forth below.

Section 201.01

The definition of the term "person in charge of a hospital" has been amended to include the title of chief executive officer as an example of a person in charge of a hospital. Such amendment provides additional guidance on which individuals the DOHMH will consider a person in charge.

A new subdivision (c) has been added to define the term "hospital" in a manner consistent with Article 28 of the State Public Health Law to include not only in-patient hospitals, but also, for example, diagnostic and treatment centers.

Section 201.03

Subdivision (a) has been amended to delete reference to a hospital's ambulance service as the only forum for a birth en route to a hospital, and to add the broader concept of a birth occurring en route to the hospital. This subdivision was also amended to permit the designee of a person in charge of a hospital to report a live birth to the DOHMH. This will enable the hospital to delegate the task of filing the report to a lower level employee. Reference to a "maternity clinic" has been deleted as such facilities are subsumed within the term "hospital" as now defined.

Subdivision (a) has also been amended to permit a licensed midwife and a registered physician assistant, in addition to a physician, in attendance at a birth outside a hospital to report such birth. Permitting such licensed health care professionals to report the birth reflects the practice of having medical personnel other than physicians participate in live births. In addition, permitting reporting by such licensed health care professionals in attendance at the live birth other than a physician does not affect medical care standards; rather, it facilitates reporting requirements.

Subdivision (b) was amended to correct legal nomenclature distinguishing between a "subsection" and a "paragraph".

Subdivision (c) has been added to require reporters to provide additional required information upon receipt of new information by the reporter. The new subdivision provides for submission of such information within five business days of receipt by the reporter.

Subdivision (d) has been added to require reporters to provide, within five business days of a request by the Department, additional information necessary to complete, clarify or verify the information required to be reported.

Section 201.05

Subdivision (a) has been amended to permit a licensed midwife or registered physician assistant, in addition to a physician, certified nurse practitioner or a registered professional nurse, to prepare a birth certificate and a confidential medical report of birth, and to further specify that such documents must be certified. This subdivision now permits individuals other than the licensed health care professionals who attended or assisted, or who were present at or after the birth to prepare and certify the certificates and confidential medical reports, relying on their review of medical records. This change recognizes current practice in hospitals, especially in the context of electronic filing. However, the amendment requires that such individuals be designated by the person in charge of the hospital and that they be trained or approved by the Department. If a birth occurs elsewhere than in a hospital or en route thereto, and is attended by a physician, licensed midwife, certified nurse practitioner or a registered physician assistant, then only they can prepare and certify the documents. Furthermore, this subdivision was amended to make clear that the act of certifying involves an examination of the record being certified for correctness of the information.

Subdivision (b) has been amended to reflect gender neutrality and to correct a reference to a particular section of the State Public Health Law. In order to control the quality of data collection, a provision has been added to require that DOHMH approved worksheets be used in a hospital, and that individuals using them, other than the specified licensed professionals, be trained or approved by the Department. Such worksheets must be retained by the hospital for three years, and must be made available for inspection by the Department upon request.

Subdivision (c) and subdivision (f) (now renumbered as subdivision (d)) have been amended to remove now

unnecessary language concerning requirements that were effective January 1997. Renumbered subdivision (d) has been amended to emphasize that electronic reporting can only occur upon approval by the Department.

Subdivisions (d) and (e) have been deleted as no longer necessary because currently both the birth certificate and the confidential medical report of birth are required to be filed electronically.

Section 201.07

Subdivision (a) was amended to indicate that the disclosure of confidential medical reports of birth shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code.

Subdivision (b) was amended to include epidemiologic surveillance and investigation conducted by governmental public health agencies within the meaning of "scientific purposes".

Section 201.09

A new §201.09 has been added to specify how, in a manner consistent with §4131 of the State Public Health Law, reports of foundlings filed by the City's Commissioner of Children's Services are to treated and processed by the Department.

Section 201.11

Subdivision (a) has been amended to reflect gender neutrality. Paragraph (2) has been deleted as the submission of a certificate of birth on an application for a delayed registration of birth no longer reflects the Department's application process.

Subdivision (b) was amended to correct legal nomenclature distinguishing a "subsection" and a "paragraph".

Subdivision (c) was deleted as no longer necessary given that the new §201.09 comprehensively covers the handling of foundling reports. A new subdivision (c) has been added to clarify that an application for a delayed registration of birth will not be granted for a person who is already deceased.

38. Statement of Basis and Purpose in City Record Sept. 28, 2009:

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, the Board of Health has updated various provisions of the Health Code to provide adequate legal tools for the Board and the DOHMH to effectively address the City's current and future public health needs. One aspect of this revision is the repeal of Article 131 (Buildings Generally) and Article 135 (Commercial Premises), and the incorporation of surviving provisions of both articles into a new Article 131 (Buildings). The new Article 131 eliminates outdated and obsolete provisions of both articles, revises the provisions that have been retained, and adds new provisions consistent with the Department's current priorities and concerns. The comments received are addressed in the individual section discussions that follow.

§131.01 Scope. This section is new and clarifies the purpose and applicability of this Article. As indicated in the introductory notes, the provisions of this Article are not intended to duplicate authority exercised by other City agencies.

§131.03 Definitions. This section is new and defines terms used in the Article.

§131.05 Duty; responsibility for violations. This section is derived in part from both former §131.01 (Violations; responsibility) and §135.13 (Responsibility for compliance).

§131.07 Heating. The provisions of former §131.03 have been modified and updated, and are incorporated into this

section. The 1968 Building Code, Administrative Code §§27-740ff, and the 2008 New York City Building Code §1204 specify minimum heating system capacities for various building use categories but do not require that minimum temperatures be maintained during times buildings are occupied. The New York City Department of Housing Preservation and Development ("HPD") enforces Housing Maintenance Code §27-2029, which establishes minimum heating requirements for dwellings. The Health Code temperature requirements are therefore currently only enforced in buildings not subject to Housing Maintenance Code requirements

Minimum seasonal (between October 1 and May 31) temperatures maintained for occupied buildings not used as dwellings (with the exception of those buildings otherwise regulated, such as child day care, school, or health care facilities, buildings housing non-regulated educational, social or health services or buildings whose heating arrangements are subject to lease or contract) have been lowered from 68 degrees F (20 degrees C) to 65 degrees F (18.33 degrees C). The change in minimum temperature is based on city-wide sustainability and energy saving efforts and is consistent with PlaNYC of 2007, as well as World Health Organization (WHO) recommendations for indoor temperatures of 64.4 to 69.8 degrees F (18 to 21 degrees C) for the general population, which was issued in 1985. WHO reviewed these recommendations again in 2007 and determined that there is little scientific evidence correlating indoor air temperatures with public health and that more research is needed in this subject area. A comment received in favor of the proposed reduction in commercial building temperatures also recommended reducing the minimum temperature to be maintained in dwellings. However, as previously noted, dwelling temperatures are established in the Housing Maintenance Code, are the subject of legislation and cannot be amended by rule.

In addition, as noted above, the Statement of Basis and Purpose as originally published indicated an intention that buildings housing educational, social or health services and programs be exempt from the lowered minimum temperature, but the text of the resolution itself omitted such a provision. The resolution adopted by the Board corrects this omission and includes a provision explicitly exempting buildings in which such services are located from the reduced minimum temperature.

§131.09 Commercial buildings. This section retains provisions of former Article 135 that remain applicable to such buildings with respect to lighting (former §135.05); ventilation (§135.07); plumbing (§135.09); water, wash basins and utility sinks (§135.11); floors (§135.13); walls and ceilings (§135.15); and cleanliness and repair (§135.17). Provisions of former §135.19 (control of offensive or annoying conditions) have been incorporated in a new §131.13, as noted below.

§131.11 Posting signs. This section removes provisions of former §131.09, which requires posting of ownership information at certain residential buildings, because it largely duplicates rules of HPD. Current HPD rules require that owners of multiple dwellings consisting of six or more apartments, or those who are otherwise required to post certificates of inspections in these buildings, maintain on those certificates "complete and correct information . . . as the premises' address, registration number, name and address of owner or managing agent registered with the [HPD] Office of Code Enforcement, and a telephone number which tenants may call for service and repairs." See 28 RCNY §25-241(i). Because such information is important to persons residing in other rental properties who may not otherwise have access to ownership information, this section preserves the requirement that minimum ownership information be posted in rental residential buildings not subject to HPD's rules.

The proposal published for public comment required additional signage that would alert occupants of multiple dwellings to the need to return notices to their landlords regarding lead paint and window guard inspections, and would warn about dry scraping of lead paint. Comments were received both objecting to and favoring such changes in signage requirements, from groups representing owners and occupants, respectively. In consideration of the comments received, the proposal to require building owners to post information about lead paint and window guards has been withdrawn. Signage requirements alerting building occupants to these particular health and safety responsibilities of building owners will be further considered in a future proposal so that Department requirements can be consistent with those of other agencies. They will be more concise and therefore less burdensome than the requirements originally proposed, and also be better able to effectively convey public health messages.

§131.13 Control of unsafe conditions. This section is derived from former §135.19 (Control of offensive or annoying conditions) and has been updated to reflect current regulatory practice. A comment was received from the DOS that "§131.041 Refrigerators, discarded; removal of locking devices," originally proposed for repeal, does not duplicate any provision in DOS rules, and remains an important safeguard against children accidentally locking themselves in discarded refrigerators. Accordingly, this provision has been restored to the resolution and incorporated as subdivision (c) in this section.

§131.15 Window guards. This section retains all the provisions of former §131.15, but has been amended to incorporate references to the rules of the Department set forth in 24 RCNY Chapter 12, containing specifications for window guards and their installation, and for notices to tenants.

§131.17 Dry cleaning facilities. This section is new and prohibits contamination of residential and child occupied buildings by perchloroethylene (PERC) vapors from dry cleaning facilities located in the same or adjacent buildings. The City Department of Environmental Protection regulates and issues permits to dry cleaners using PERC in the City pursuant to 15 RCNY Chapter 12. The State Environmental Conservation Law regulates the equipment used in such facilities. However, no law currently establishes permissible limits for emissions from dry cleaning facilities into child-occupied or residential facilities. This section codifies current Department regulatory practice, and requires operators of dry cleaning facilities to provide for proper operation and exhaust ventilation of equipment using PERC. The standard for residential PERC contamination is based on research and guidelines issued by the New York State Department of Health (NYSDOH).

The Department received comments from dry cleaner and solvent industry associations objecting to the establishment of the current intervention level of 100 micrograms per cubic meter (mg/m^3) of PERC as excessive, and expressing their concern that the Department would "automatically" issue notices of violation to dry cleaning establishments that exceed this threshold. The Department does not agree that the standard is excessive. NYSDOH established the level of 100 micrograms per cubic meter (mg/m^3) as guidance for emissions into residences in 1991. The level was again formally reviewed by NYSDOH in 1997. NYSDOH has also used the toxicity value, which forms the basis for the guidance level, in a more recent (2004-2006) effort to establish related health-based guidance values for PERC.

The Department's intention, with the promulgation of this rule, has been to codify and provide public notice of its practice. The Department's current practice does not require that a notice of violation ("NOV") be automatically issued upon receipt of laboratory results showing elevated levels of PERC in residential premises. Professional judgment is always exercised when evaluating environmental sampling in environmental investigations.

Although no change has been made to the intervention level, in response to a comment regarding potentially duplicative requirements (see, e.g., City Department of Environmental Protection rules in Chapter 12 Title 15 of the Rules of the City of New York), the Department has amended §131.17 (c) by replacing the term "install and maintain mechanical ventilating systems or other devices for control of vapors" with "evaluate and correct problems associated with vapor control."

§131.19 Modification by Commissioner. This section contains the provisions of former §131.17.

The following provisions of former Articles 131 and 135 have been repealed because they are either obsolete or are duplicative of laws and regulations covering matters comprehensively regulated by other City agencies:

Obsolete provisions repealed:

§131.04 Gas fired refrigerators; certain prohibited; sealing of defective.

§131.042 Approved space and water heaters to be provided in certain one- and two-family residential buildings.

§131.05 Self inspection of gas appliances.

§131.07 Cellar and basement occupancy.

§131.13 Flexible gas tubing.

§135.21 Location of certain trades.

§135.23 Cooperation with other governmental and private agencies.

Provisions repealed because of duplicative enforcement authority:

§131.042 (l) Rules for venting of gas appliances are enforced by the Department of Buildings ("DOB") (1 RCNY §§41 and 40-39) and, in multiple dwellings, are enforced by HPD (28 RCNY §25-29).

§131.11 Receptacles for removal of waste materials duplicates Administrative Code §16-120.

39. Statement of Basis and Purpose in City Record Sept. 28, 2009:

1. Amend Article 143.

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, the Board of Health is amending Article 143, covering the disposal of sewage, repealing provisions for construction of private sewage disposal systems, and the issuance of permits for site and sub-soil evaluation related to such construction, in order to better reflect practice and the current regulatory environment. In addition, for the reasons stated below, the Board is repealing Article 145 (Water Pollution Control).

Article 143 broadly addresses disposal of wastes within the City, in particular, the disposal of human, household, and commercial liquid wastes which are not directly discharged into City waters. Article 145 complements Article 143 by regulating wastes directly entering City waters.

Under Health Code §§143.03 and 143.05, the Department regulates private sewage disposal systems, such as septic tanks and privies that are not connected to the City's sewage disposal system and that discharge into a local site and underlying sub-soil.

Health Code §143.07 requires proof of proper maintenance of private sewage disposal systems. Health Code §143.09 regulates private sewage disposal systems for one and two family dwellings. Health Code §143.13 provides that private sewage disposal systems are subject to Department inspection and be operated so as not to create a nuisance.

When Local Law 50/1991 was enacted, amending Charter §1403, the New York City Department of Environmental Protection was granted jurisdiction over the "location, construction, alteration, repair, maintenance and operation of all sewers" including the "authority to supervise and adopt rules regarding private sewage disposal systems . . . and to prescribe civil penalties for the violation of such rules . . . and to issue permits pursuant to such rules for the construction and maintenance of such private sewage disposal systems . . ."

Local Law 65/1996 amended New York City Building Code §27-157(4) to remove a reference requiring that a site and sub-soil evaluation be obtained from the Department prior to the construction of a private sewage disposal system. Also, under Charter §643(5), the Buildings "[C]ommissioner may approve the installation of and issue a permit for the construction of an individual on site private sewage disposal system for premises. Such permit shall be issued in accordance with the commissioner, in consultation with the commissioner of environmental protection, for the installation of an individual on site private sewage disposal system."

Therefore, based on the above, Health Code §§143.03, 143.05, 143.07, 143.09 and 143.13 are no longer necessary as the Department is no longer responsible for regulating private sewage disposal facilities. Under New York City charter provisions §643 and §1403, the Department of Buildings issues permits for individual private sewage disposal systems and the Department of Environmental Protection has enforcement authority regarding these systems.

The current definitions set forth in §143.01 are being kept and subdivision (c) is being amended to make clear that the Health Department does not regulate portable toilets such as those found on street locations or at construction sites; and a new subdivision (e) defining "community private sewage disposal systems" is being added to §143.01 as this term is not defined in the Health Code, although the Health Department currently regulates such sewage disposal systems under §143.11.

2. Repeal Article 145

Article 145 ("Water Pollution Control") requires a permit from the Department for discharge of sewage into City waters. The Board hereby repeals Article 145 as no longer necessary. The discharge of waste into City waters is comprehensively regulated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 22 U.S.C.A. §1251 et seq., and by the New York State Department of Environmental Conservation under 6 NYCRR Part 750 (State Pollutant Discharge Elimination System).

40. Statement of Basis and Purpose in City Record Sept. 28, 2009:

Introduction

As part of a comprehensive review of the Health Code to assess the efficacy of the articles in protecting the public's health, the Department proposed that Article 205, Deaths and Disposals of Human Remains, be amended, effective January 1, 2010, to assure that the revised provisions provide adequate legal tools to effectively address public health matters and to reflect modern standards and current programmatic practice while removing outdated provisions.

Pursuant to this review and assessment of the Health Code, the Board amended Article 205 as provided for below.

Section 205.01

Subdivision (c) was amended to more fully define human remains, including a conceptus, to clarify when a permit for disposition is required. The 24 weeks or more of gestation is consistent with former §205.13, which required a permit for disposition after 24 weeks.

Subdivision (d) was added to define "hospice," which under State Public Health Law includes hospice care programs as well as hospice facilities. Hospice is increasingly utilized as a form of end-of-life care, and consequently hospice providers are preparing a larger proportion of death certificates.

Subdivision (e) was deleted. It had defined "use for anatomical purposes", which was referred to in section 205.13 and has been deleted. New subdivision (e) was added to conform to the provisions of State Public Health Law §4201, which applies in the City and establishes the persons in descending priority who shall have the right to control the disposition of the remains of a decedent. It replaces former subdivision (d), which defined "next of kin" and their order of priority to receive communications and to give instructions regarding the disposal of a decedent's remains.

Section 205.03

Subdivision (a) has been amended to clarify the circumstances when a hospital or hospice must report a death and to broaden the situations in which institutions are required to report deaths to include deaths occurring en route to a hospital or while under the care of a hospice. This subdivision was also amended to permit the designee of a person in charge of a hospital or hospice to report a death to the DOHMH. This will enable the hospital or hospice to delegate the

task of filing the report to a lower level employee. Subdivision (a) has also been amended to reflect the correct name of the office of chief medical examiner, and to reflect that a medical examiner within the Office of Chief Medical Examiner is the person responsible for reporting a death. The subdivision was further amended to reflect gender neutrality.

Subdivision (b) was amended to correct legal nomenclature distinguishing between a "subsection" and a "paragraph." The words "office of" were added to chief medical examiner to indicate that it is the office that is required to report.

Subdivision (c) was amended to remove a general description of electronic filing of death certificates, as it is described in greater detail in new subdivision 205.03 (d). This subdivision was also amended to add agents of funeral directors or undertakers and agents or designees of the person in charge of the City mortuary. Funeral directors or undertakers and the person in charge of the City mortuary may use agents to file paper certificates and confidential medical reports with the Department, and now this subdivision will reflect this practice. The subdivision will now require that if funeral directors or undertakers use such agents they must be registered with the Department to ensure compliance with Departmental procedures. Subdivision (c) was also amended to correct legal nomenclature distinguishing between a "subdivision" and a "subsection."

Subdivision (d) was added to require all hospitals and hospices that report 25 or more deaths to the Department per year, and the office of chief medical examiner, to report deaths electronically. When a required reporter files electronically, a funeral director or undertaker authorized to take charge of the remains, or the person in charge of the City mortuary when filing an application for a disposition permit, must also file such application electronically. All persons required or authorized to report a death or to file a death certificate with the Department that are not required to report or file electronically may, at their election and upon approval of the Department, implement an electronic reporting system or continue to report deaths on approved paper forms. This subdivision takes effect on April 1, 2010.

Subdivision (e) was added to require departmental approval of electronic reporting systems, in order to ensure the uniformity and quality of data collection. Toward that end, all individuals utilizing the electronic reporting system must be trained or approved by the Department in the proper use of the system and completion of electronic reporting forms. The subdivision also provides for alternative arrangements, upon the Department's approval or initiative, in particular circumstances.

Subdivision (f) was added to provide for situations in which a reporter receives required information after reporting the death. The reporter must submit such information within five business days of receipt.

Subdivision (g) was added to provide for situations in which a reporter receives autopsy results or other information that would change the information in the cause of death section of the certificate or the confidential medical report. The reporter must submit such information within five business days of receipt.

Subdivision (h) was added to require reporters to provide, within five business days of a request by the Department, additional information necessary to complete, clarify or verify the information required to be reported. Such information may include, for example, updated causes of death.

Section 205.05

The title of section 205.05 was amended to "Preparation and certification of certificate of death and confidential medical report of death" and the paragraph titles "Preparation" and "Certification" were added to subdivision (a). These changes were made to indicate that separate rules apply to the preparation and certification of certificates.

Paragraph (1) of subdivision (a) was amended to permit the designee of a person in charge of a hospital or hospice to prepare the required certificate and confidential medical report, if any. Such a designee must be trained or approved by the Department. This is particularly useful for electronic reporting and will enable the hospital or hospice to delegate

the task of preparing the certificate to a lower level employee. The training and approval requirement should improve data quality. It was further amended to clarify the circumstances when a hospital or hospice must report a death and to broaden the situations in which institutions are required to report deaths to include deaths occurring en route to a hospital or while under the care of a hospice. Paragraph (1) of subdivision (a) was also amended to delete the reference to that portion of the confidential medical report of death pertaining to race and ancestry to be completed by the funeral director or, in the case of city burial, by the physician. The Department is planning to modify the death certificate form so that the race and ancestry items will no longer be contained in the confidential medical report of death.

Paragraph (2) of subdivision (a) is substantially new and was amended to clarify which physicians may certify a death, including the physician in attendance or such physician's duly authorized medical associate. A person certifying a certificate and confidential medical report, if any, shall examine the documents for correctness of the information contained thereon and make necessary changes.

Subdivision (b) was amended by deleting the requirement that the Board of Health approve the electronic form of certificates, because, aside from incidental formatting differences, electronic forms are merely reflective of the paper forms prescribed by the Board pursuant to this subdivision. Subdivision (b) was also amended to reflect changes made to subdivision (a) and to provide for improving the quality of data collection. Any worksheets used by anyone authorized to prepare certificates of death and confidential medical reports must be approved by the Department. Any individual who uses such worksheets shall be trained or approved by the Department. The worksheets shall be retained by the hospital or hospice for a period of three years from the date of event and shall, upon request, be made available to the Department for inspection. The subdivision also clarifies which person preparing the certificate and confidential medical report shall be responsible for completing its various sections.

Section 205.07

Subdivision (a) was amended to provide that disclosure of the confidential medical report of death shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code. It was further amended to provide for inspection by researchers authorized and approved by the National Death Index of the National Center for Health Statistics of the federal Centers for Disease Control and Prevention, or its successor agency. This is to facilitate scientific research of death data by researchers who apply through the federally established National Death Index. Subdivision (a) was also amended to provide for inspection of confidential medical reports of death occurring on or after January 1, 2010 by the spouse, domestic partner, parent or child of the deceased, or by the individual who is identified on the death certificate as the person in control of disposition. This change will make cause of death information available to the above list of individuals, which is consistent with the policies of some states. The addition of the person in control of disposition was made in response to a public comment.

Subdivision (b) was amended to include epidemiologic surveillance and investigation conducted by governmental public health agencies within the meaning of "scientific purposes".

Section 205.09

This section was essentially reenacted and renumbered from the former Section 205.06, which was deleted.

Subdivision (a) was amended to provide discretion to the Department in the issuance of certifications of deaths, which are abstracts of death certificates. The Department does not currently have the systems to prepare or issue such certifications.

Subdivision (b) was amended to update the minimum amount of information that would be useful on a certification of death by adding the date that the certificate was accepted for filing by the Department and the manner of death (accident, suicide, homicide or natural).

Section 205.11

This section was amended to reflect gender neutrality. Subdivision (b) was deleted and replaced with Section 205.03 (g), which provides for situations in which a reporter receives autopsy results or other information that would change the information in the cause of death section of the certificate or the confidential medical report.

Section 205.13

Former section 205.13, concerning disposal of certain human remains after use for anatomical purposes, was deleted as an unnecessary requirement for public health purposes. Section 205.01, defining "human remains", and Section 205.21, concerning the issuance of disposition permits, now specify the circumstances when such a permit is required or authorized.

New section 205.13 is derived from the former section 205.17. Subdivision (a) was amended to add a reference to remains, as defined in section 205.01(c), resulting from a termination of pregnancy occurring in the City in order to be consistent with the rest of the section. This subdivision was also amended to correct legal nomenclature distinguishing between a "subdivision" and a "section."

Subdivision (b) was added to provide for the holding of human remains for more than the time periods specified in subdivision (a) of this section without being buried, cremated or transported out of the City if an appropriate interim disposition permit has been issued. This was to accommodate, among other circumstances, the interim holding of body parts (as occurred during the World Trade Center disaster), or the holding of human remains during mass mortality events or while being used for anatomical purposes.

Section 205.15

This section is derived from former section 205.19. This section was amended to clarify that it applies to deaths or terminations of pregnancy that occur in hospice or other health care facilities, in addition to hospitals. The reference to "a permit issued pursuant to §205.25" was deleted because, in practice, disposition permits are not issued until after death certificates are prepared, certified and registered. The references to "next of kin" and the "Public Administrator" were deleted and replaced with the "person in control of disposition" as now defined in section 205.01. The section was further amended to clarify that the performance of an autopsy pursuant to §4214(1) of the State Public Health Law refers to unclaimed remains. The section was also amended to reflect gender neutrality.

Section 205.17

This section is derived from former section 205.21. This section was amended by replacing "next of kin, legal representative or, in the absence of arrangements by such next of kin or legal representative, by a friend of the deceased" with the "person in control of disposition". This is consistent with amendments to Section 205.01. The section was also amended to reflect gender neutrality.

Section 205.19

This section, relating to the removal of human remains, is derived from former section 205.23. Subdivision (a) was amended by separating it into paragraphs (1) and (2). Paragraph (1) was amended to update, clarify and conform to current practice the circumstances under which human remains may be removed from the place of death or termination of pregnancy. The paragraph now provides for electronic filing prior to removal. The paragraph was further amended to clarify that the filing must be made by the person required to report a death or termination of pregnancy pursuant to subdivision (a) of §205.03 or subdivision (a) of §203.03, and was amended to reference interim disposition permits in accordance with changes to sections 205.13 and 205.21. Paragraph (1) was amended to delete the requirement that a licensed funeral director or undertaker must have in his or her possession a "completed" certificate of death or termination of pregnancy, as the personal particulars section may not yet have been completed by the funeral director or undertaker. The paragraph was further amended to clarify throughout that it applies to terminations of pregnancy as well as deaths.

Paragraph (2) of subdivision (a) is new. It provides for the removal of human remains from the place of death or termination of pregnancy in the case of a death from natural causes occurring elsewhere than in a hospital or hospice if the funeral director, undertaker or person in charge of the mortuary has obtained authorization from the office of chief medical examiner to remove the remains, or has obtained authorization to remove the remains and assurance from the physician attending the death, or from his or her duly authorized medical associate, that the death is from natural causes and that said physician or medical associate assumes responsibility for certifying to the cause of death. This is consistent with current practice.

Subdivision (b) was amended to correct legal nomenclature distinguishing between a "subdivision" and a "subsection" and to correct the title of the office of chief medical examiner.

Subdivision (c) was amended to correct the title of the office of chief medical examiner, reflect gender neutrality and correct legal nomenclature distinguishing between a "subdivision" and a "subsection."

Subdivision (d) was amended to clarify that the police department is of the City, and to correct the title of the office of chief medical examiner.

Section 205.21

This section, regarding disposition permits, is derived from former section 205.25. Permits to bury, cremate or to transport human remains have long been required in New York City. In circumstances such as during mass mortality events or when human remains are used for anatomical purposes, it may be necessary to temporarily hold human remains beyond the periods specified in section 205.13 without burial, cremation or transportation. Subdivision (b) of section 205.13 requires the issuance of an interim disposition permit by the Department to temporarily hold human remains for such periods. Accordingly, subdivision (a) of this section 205.21 has been amended to include reference to interim temporary holding permits, in addition to burial, cremation and transportation permits.

Subdivision (b) has been divided into three paragraphs. New paragraph (3) of subdivision (b) specifies the information required to be kept by a person to whom an interim holding permit has been issued. It also requires the surrender of the interim permit when a final disposition permit to bury, cremate or transport the human remains is issued.

Subdivision (d) has been revised to utilize the newly defined term "person in control of disposition".

Section 205.23

This section is derived from former section 205.27. It has been amended to clarify that when human remains are being transported into the City from a jurisdiction that does not issue disposition permits, the Department may accept certified copies of certificates of death or termination of pregnancy in lieu of a permit.

Section 205.25

This section is derived from former section 205.31. Subdivision (a) has been repealed as the regulation of new cemeteries and cemetery name changes is wholly within the jurisdiction of the New York State Department of Health and Department of State pursuant to the Public Health Law and Not-for-Profit Corporation Law and related regulations. The remaining subdivisions have been re-lettered accordingly.

Section 205.27

This section, regarding disinterment permits, is derived from former section 205 33 and remains essentially unchanged. Modifications were made to reflect renumbering of sections, correcting the title of the Office of Chief Medical Examiner, the use of the new term "person in control of disposition" and gender neutrality.

Section 205.29

Former section 205.29, regarding when and where permits are obtained, has been deleted as unnecessary.

This new section 205.29 is derived from former section 205.35.

Subdivision (a) now requires that agents of funeral directors or undertakers who seek to file certificates with the Department must, in addition to the funeral directors or undertakers, register with the Department.

Subdivision (b) was amended to require presentation of a government issued picture identification, in addition to the State-issued certificate, in order for a funeral director or undertaker to register with the Department.

Subdivision (c) was added to specify the documentation that an agent must present in order to be registered with the Department. Such measures provide a greater level of security to the registration process.

Section 205.31

This section, regarding the authority of funeral directors or undertakers to apply for departmental permits, is derived from former section 205.37. Subdivision (a) now uses the term "person in control of disposition" as it is newly defined in section 205.01. Paragraphs (1) and (2) were also amended to reflect gender neutrality.

Section 205.33

This section replaced former section 205.39 and provides authority for the Department to withhold registration of funeral directors, undertakers or their agents, to refuse to issue permits or to accept certificates for filing such when serious or repeated violations of the Code are found to have been committed. When City registration is denied, suspended or revoked, an opportunity to be heard will be provided pursuant to the rules of the Department, currently found in Chapter 7 of Title 24 of the Rules of the City of New York. Such a strict enforcement mechanism will prevent abuses of the registration process.

41. Statement of Basis and Purpose in City Record Sept. 28, 2009:

I. Background

Reducing the burden of tobacco use is a core function of DOHMH. In 2002, the Department launched a comprehensive tobacco control program to reduce and prevent smoking in New York City. By implementing multiple, intensive interventions-taxation, legislation, public education, and cessation strategies-and rigorously evaluating these efforts, the Department has taken a pioneering approach to tobacco control that has yielded unprecedented results.

Despite the Department's tobacco control successes, more than 950,000 adults and 20,000 public high school students still smoke in New York City.[1,2]1112 Continued tobacco use among these smokers may reflect a lack of awareness and comprehension of the negative health outcomes associated with tobacco use, as well as a lack of knowledge about the availability of smoking cessation assistance.

The Department proposes that the Board of Health enact the proposed amendment to require that locations that sell tobacco products post signs describing the health harms associated with tobacco use and the smoking cessation resources available to New Yorkers. This amendment will promote further reductions in smoking prevalence in New York City.

II. Tobacco use is the leading cause of preventable death.

Smoking is the leading cause of preventable death in the United States and in New York City. Up to one half of life-long smokers, depending on age, are expected to die of tobacco-related diseases.[3]13 Smokers who die of

tobacco-related diseases lose an average of 14 years of life.[4]14 In New York City, nearly one in seven deaths are smoking-related; smoking kills about 7,400 people a year, a third of them before age 65.[5]15 Despite a 27% reduction in adult smoking prevalence since 2002, nearly one million New Yorkers still smoke.

There are numerous health risks associated with smoking. Research has linked tobacco use with chronic diseases including lung cancer, heart disease, stroke, blindness, asthma, chronic obstructive pulmonary disorder and emphysema. Bladder, larynx, esophagus, cervix, kidney, lung, pancreas, and stomach cancers have also been shown to be associated with tobacco. Smoking also has numerous reproductive effects including infertility, pre-term delivery and low birth weight.[6]16

III. Tobacco users' behaviors are influenced by their awareness and understanding of the health risks associated with tobacco use

Since the first Surgeon General's report was published in 1964, much information has been made public about the health risks associated with smoking. Despite this, there remain significant gaps in smokers' understanding of these risks.[7,8,9]171819 These gaps in risk awareness are widest among lower socioeconomic groups.[10]20

Smokers' health behaviors are strongly influenced by their understanding of the health risks of smoking. Smokers who perceive greater smoking-related health hazards are more likely to consider quitting and to quit smoking successfully. Health warnings are strongly associated with health knowledge.[11,12]2122 Research has shown that health warnings which communicate the adverse health effects of tobacco use are among the most effective at prompting smokers to quit.[13]23 In addition, research has shown that smokers find pictorial warnings more effective and engaging than text-only warnings.[14,15]2425 Pictorial warnings appear to be especially effective among youth: 78% of Canadian youth agree that pictorial warnings on Canadian packages have been effective in informing them about the effects of cigarette smoking, and 46% report that the pictorial warnings have been effective in getting them to try to quit smoking.1626

IV. Smoking cessation information will increase the likelihood that smoking cessation aids are utilized and contribute to reductions in smoking prevalence.

In 2007, nearly 70% of all adult smokers in New York City tried to quit smoking at least once.[17]27 But without assistance, fewer than 10% of smokers who try to quit achieve permanent abstinence.[18]28 Studies have consistently shown that smokers can double their chances of quitting smoking successfully by getting counseling and using nicotine replacement therapy or other appropriate drug treatments.[19]29 Free cessation counseling and nicotine replacement therapy are available to New York residents who call the New York State Smokers' Quitline, but New Yorkers must first be made aware of the availability of that service.

Research has shown that utilization of cessation services increases when smokers are made aware of their availability.[20,21,22]303132 Displaying this information where cigarettes are sold will ensure that smokers are informed about resources that are available to help them quit smoking for good, and increase utilization of these resources to further decrease smoking prevalence in New York City.

V. Point-of-sale tobacco information will contribute to reductions in youth tobacco sales.

The majority of adult smokers begin smoking during adolescence; two-thirds of them are daily smokers by the age of 19.[23]33 Despite existing New York State and New York City laws prohibiting tobacco sales to people under the age of 18, minors are able to purchase cigarettes illegally at some licensed retail establishments.[24]34

Requiring health warning signs at the point-of-sale in places where cigarettes are sold will reinforce compliance with existing laws prohibiting tobacco sales to minors. By highlighting the undesirability and unacceptability of tobacco use, health warning signs will be consistent with other Department efforts to prevent youth smoking initiation and will further de-normalize smoking.

VI. Proposed changes to Health Code to require that health warnings and smoking cessation information be posted at all tobacco retail locations.

Accordingly, the Department requests that the Board amend Article 181 of the Health Code to add a provision that would require the posting of tobacco health warnings and smoking cessation information in all places where tobacco is sold in New York City.

VII. Response to comments

The Department received 46 comments from individuals on behalf of themselves or organizations. Of those comments, 33 were in support of the proposed amendment to Article 181 and 13 were in opposition. The proposal has been amended in response to comments and for clarity. Several comments expressed concern that the size of the required health warning signage was too large to be accommodated by many New York City retailers. Accordingly, the proposal has been amended to reduce the maximum size of the required signage from 1,296 square inches to 576 square inches, and to give retailers the option of posting smaller signage at each place of payment, or larger signage near tobacco displays. In addition, the proposal has been amended to authorize the New York City Department of Consumer Affairs (DCA) to distribute the health warning signage, to enforce Section 181.19, and to adjudicate at its Administrative Tribunal violations of Section 181.19 that are issued by DCA.

42. Statement of Basis and Purpose in City Record Sept. 28, 2009:

The Board of Health hereby approves revisions to Sections 207.07 and 207.13 of the Health Code to establish fees, effective January 1, 2010, for certain vital records corrections and permits. The effective date of the fees is being added to the resolution to reflect the Department's intent.

Background

The Department does not currently charge fees for correcting or amending birth and death certificates, or for issuing disposition permits to funeral directors, which are required for burial, cremation or transport outside the City. The Department is proposing to charge fees based on cost analyses to partially recover the Department's costs in performing these functions.

Cost calculations

Fees for each service were calculated through a user cost analysis, conducted by the Department's Division of Finance and Planning in cooperation with the City's Office of Management and Budget. A user cost analysis assesses costs of current operations involved in providing a specific service to the public. A fee, no greater than the cost, is then determined on a per unit basis. The costs that are factored into the calculation include direct costs (PS-personal services, including fringe and OTPS-other than personal services) and indirect costs (executive management overhead, including fringe; administrative services overhead, including fringe; space and utilities; and cost of other agency services).

The new disposition permit fee matches the Department's cost. The correction fee will recover roughly two-thirds of the Department's costs and will be comparable to fees charged by other jurisdictions.

Corrections and amendments application fee

The Department's Office of Vital Records receives and processes requests for corrections and amendments to birth and death certificates. Approximately 45,000 corrections applications are processed annually. Currently, Health Code §207.07 requires the Department to issue amended certificates "without further charge" when amendments are approved. In order to avoid confusion and potentially conflicting provisions, the Department is deleting these words from §207.07. The Department is further adding a subdivision (g) to §207.13, effective January 1, 2010, to charge a $40.00 fee, to be paid upon application, for about two-thirds of the corrections applications for the following:

· Adding a given name more than 60 days after birth

· Correcting birth and death certificate errors and omissions made by family members and informants

· Correcting hospital birth certificate errors and omissions filed after 12 months

· Correcting funeral home errors

· Correcting funeral home omissions filed after 12 months

· Amending a birth certificate for an adoption

· Amending a new birth certificate for a person who has undergone convertive surgery

· Re-submitting an application more than 1 year after rejection

No fee will be charged for the following:

· Acknowledgments of paternity

· Orders of filiation (parentage)

· Medical Examiner amendments

· Recording delayed registrations of births

· Reports of foundlings

· Correcting Department errors

· Birth certificate amendments filed within 12 months of the birth when filed by hospitals or licensed midwives

· Adding missing information within 12 months of filing a death certificate by a medical certifier or funeral director

Disposition permit fee (burial, cremation, transport permits)

Health Code §205.25(a) requires, in part, that, "When a death or termination of pregnancy occurs in the City, the remains shall not be buried, cremated or transported out of the City unless an appropriate permit has been issued by the Department." Furthermore, the Department is considering amending the Code to reflect the issuance of an interim disposition permit. If such a proposal is adopted, the Department will charge a fee for the interim permit, but will not charge when that permit is surrendered in exchange for a final disposition permit. In 2007, there were 54,073 deaths and several hundred terminations over 24-weeks gestation. Each of these requires a disposition permit. The Department is adding a subdivision (h) to section 207.13, effective January 1, 2010, to charge a $40.00 fee for each disposition permit, to be paid upon application, except for those burials in the City cemetery (about 3,000 per year). A reference to Article 205 of the Code is being added to the resolution in order to clarify that the fee will be imposed for disposition permits issued pursuant to that Article.

Rules of the City of New York

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

25 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 25 Department of Mental Health and Retardation Health

CHAPTER 1 ADJUDICATIONS

§1-01 Conduct of Adjudicatory Hearings.

New York City Department of Mental Health, Mental Retardation and Alcoholism Services adjudications regarding the fitness and discipline of agency employees shall be conducted by the Office of Administrative Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Commissioner of the Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

28 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 1 RULES AND REGULATIONS

§1-01 Applicability.

This chapter shall govern loans to owners of multiple dwellings for rehabilitation or improvement pursuant to Article VIII of the Private Housing Finance Law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

28 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 1 RULES AND REGULATIONS

§1-02 Definitions.

As used in this chapter, the following terms shall mean:

Agency. The term "Agency" shall mean the Department of Housing Preservation and Development of the City of New York or the office or department charged with the administration of the program.

Cost of acquisition. The term "cost of acquisition" shall mean the sum of

(1) cash payments made to acquire the property to be rehabilitated or improved and

(2) the net cost of satisfying the bona fide mortgages, liens (including real estate taxes due and owing to the City of New York) and other encumbrances on the property. The cost of acquisition shall in no event exceed the appraised value of the property prior to rehabilitation.

Development cost. The term "development cost" shall comprehend those items included under such heading in §1-05 (Allowable Rehabilitation and Improvement Cost) of these Rules and Regulations.

Maximum mortgage amount. The term "maximum mortgage amount" shall mean the lesser of the following:

(1) An amount which, together with all prior liens permitted under §1-08(c) of this chapter, shall not exceed 90 percent of the value of the property after completion of rehabilitation;

(2) Where the property is owned free and clear and was acquired more than one year before submission of the loan

application, development cost;

(3) Where the property was acquired more than one year before submission of the loan application and is encumbered, an amount necessary to satisfy such encumbrances (not to exceed the appraised value of the property prior to rehabilitation) plus development cost, provided that the loan shall not exceed two times the development cost;

(4) Where the property is to be acquired or was acquired less than one year before submission of the loan application, the cost of acquisition plus development cost. Persons or families of low income. The term "persons or families of low income" shall mean and include, pursuant to §401 subdivision 3 of Article VIII of the Private Housing Finance Law, owner-occupants, persons and families in occupancy immediately prior to the date the loan is granted, and persons or families whose probable aggregate annual income during the period of occupancy does not exceed six times the rental (including the value or cost to them of heat, light, water and cooking fuel) of the apartment occupied by such persons or families except in the case of persons or families with three or more dependents, where such ratio shall not exceed seven to one, as this definition may be further expanded or limited by §1-12 (Management Supervisory Requirements) of this chapter.

Value of the property after completion of rehabilitation. The term "value of the property after completion of rehabilitation" shall mean appraised value prior to rehabilitation plus development cost, provided that the estimated revenues, including any subsidies, will be sufficient to support the estimated debt service and operating expenses.

HISTORICAL NOTE

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28 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 1 RULES AND REGULATIONS

§1-03 Eligibility and General Conditions.

(a) Applicants for loans and any prior lienors must covenant in writing, that so long as any part of such loan remains unpaid, or any tax exemption-tax abatement granted as a result of the installations, alterations, improvements or rehabilitation remains in effect, or for a period of at least ten years from the occupancy date, whichever is the later, the following conditions will govern:

(1) Apartments in such multiple dwelling shall be available solely for persons or families of low income as herein defined and as set forth below in subdivision (c) and in §1-12 (Management Supervisory Requirements) of this chapter.

(2) Apartments shall be available strictly in the order of priority set forth in §l-12(d) of this chapter.

(3) No charge or rental for apartments in such multiple dwelling shall be made or charged in excess of the maximum rentals prescribed by the Department of Housing Preservation and Development in accordance with the New York City Rent and Rehabilitation Law and the regulations promulgated thereunder.

(4) At all times during the life of the mortgage, the owner shall keep and maintain the rehabilitated building and all fixtures and articles of personal property now or hereafter used in the building in good condition, order and repair. Failure on the part of the owner to comply with this provision or make repairs when requested by the Agency shall result in the Agency, at its option, employing workmen to make such repairs at the owner's expense or declaring the unpaid principal balance of the mortgage, with interest, immediately due and payable.

(5) Any persons owning, operating or managing such multiple dwelling, during or after rehabilitation, shall comply

with the laws under which a loan is made and the Rules and Regulations now or hereafter adopted by the Agency, including Equal Opportunity Regulations.

(6) Any persons owning, operating or managing such multiple dwelling shall permit the authorized officers, employees, agents or inspectors of the Agency to enter in or upon the mortgaged premises and inspect same at all reasonable hours.

(7) The Agency, its officers, employees, agents or inspectors shall have full power to investigate and order the owner of said multiple dwelling or his agents to furnish such reports and information as it may require concerning the planning and construction of the installation, rehabilitation or improvement and the management of said multiple dwelling and shall also have full power to audit the books and records of such owner with respect to such matters. Owners of buildings rehabilitated under this program must submit reports as specified in §1-12 (Management Supervisory Requirements) of this chapter.

(8) The foregoing covenants shall run with the land.

(9) The applicant shall comply with applicable laws and regulations of the Department of Buildings, particularly §26-235 of the Administrative Code referring to the sealing of vacant buildings, and make the buildings safe. It must be clearly understood that the filing of an application does not relieve the applicant of any liability for violation of such rules.

(b) Any individual, partnership, organization or corporation may qualify for a loan if the holder of a fee title to the property, or of an option or contract to purchase with a conveyance of title to be made prior to, simultaneous with, the execution of the loan documents.

(c) Loan applicants must be prepared to certify when the loan is granted that at least eighty percent of the tenants occupying the building on such date are persons or families of low income whose probable aggregate annual income will not exceed six times the rental (or seven times, where there are three or more dependents) (including the value or cost to them of heat, light, water and cooking fuel), based on the rents projected to be charged upon completion of the rehabilitation.

HISTORICAL NOTE

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Rules of the City of New York

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

28 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 1 RULES AND REGULATIONS

§1-04 Preliminary Site Submission.

The applicant, prior to the filing of a formal application, shall submit to the Agency, for preliminary consideration, a description of the proposed installation, alteration, improvement or rehabilitation which shall include the following information:

(a) A plot plan of the project site which will include the section, block and lot, metes and bounds description with specific designation of the building or buildings to be improved under the proposed loan or loans. This may be waived by the Agency for loans less than $4,200 per unit;

(b) A statement of the general character and physical condition of buildings within the immediate environs of the project site, and of the applicable zoning;

(c) A statement outlining plans for the installations, alterations and rehabilitation to each building, the approximate period of time necessary for the completion of such and the estimated cost to each building;

(d) A statement setting forth the names and addresses and telephone numbers of the proposed developers, architect and general contractor, attorney and accountants with a resume of the experience of each;

(e) A statement as to the source of the equity contribution for such work;

(f) A statement setting forth the results of a survey of the housing needs of site occupants and a plan for meeting those needs;

(g) A statement setting forth a plan for the management of the building during the alteration, improvement or rehabilitation where tenants remain in occupancy during the work and after such work is completed;

(h) Where the property is located within an Urban Renewal, Model Cities, Code Enforcement or any certified area of governmentally sponsored improvements, a letter from the Project Director in charge of such area certifying that rehabilitation of such property is in conformity with plans for the area. Upon receipt of such information, the agency shall advise the applicant whether a formal application may be filed within the time period specified by the agency.

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Rules of the City of New York

28 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 1 RULES AND REGULATIONS

§1-05 Allowable Rehabilitation and Improvement Costs.

Loans may, at the discretion of the Agency, include the following items of cost incurred in the process of rehabilitation or improvement of multiple dwellings:

(a) **Development cost.** (1) Construction costs.

(2) Relocation stipends paid in accordance with applicable laws and regulations to tenants in occupancy of the building to be rehabilitated on the date of execution of the loan, or on such prior date as may be approved by the Agency, but not earlier than the date of filing the loan application.

(3) Architectural and legal fees and contractor's overhead and profit as set forth in the schedules herein, and reasonable fees for accounting and appraisals.

(4) The cost of a "Payment and Performance Bond" or an amount in lieu thereof, as provided in §1-09 (Fee Requirements) of this chapter.

(5) Real estate taxes, assessments, frontage and meter charges and sewer rents accruing during the period of construction, commencing on the date of execution of the loan, where income is inadequate during the period of construction to pay such costs.

(6) Monthly interest on the amounts advanced under the loan during the period of construction.

(7) A supervision fee as provided in §1-09 of this chapter.

(8) Fees due and payable to an approved title company for the title insurance policy, recording of loan documents and mortgage recording taxes.

(9) Net cost, if any, related to the rehabilitation or improvement including, but not limited to, maintaining the property pending rehabilitation or improvement, or where actions are taken in aid of the rehabilitation or improvement prior to the closing, such net costs commencing no earlier than the date of the loan application as may be approved by the Agency. Net cost represents the extent to which, due to the rehabilitation or improvement, operating expenses for repairs, janitorial services, real estate taxes, utilities and management contract and expenses related to the rehabilitation or improvement including cost of initial renting as such are approved by the Agency exceeds the rents collected from the property.

(10) Premiums for insurance during construction.

(11) An amount approved by the Agency for contingencies, to provide for approved change orders and other approved increases in development cost.

(b) **Cost of acquisition.** (1) The sum of cash payments made to acquire the property to be rehabilitated or improved, and

(2) The net cost of satisfying bona fide mortgages, liens (including real estate taxes due and owing to the City of New York) and other encumbrances on the property. The cost of acquisition shall in no event exceed the appraised value of the property prior to rehabilitation. The sum of (1) and (2) shall not exceed the appraised value of the property prior to rehabilitation.

(c) **Cost of refinancing.** Actual cost to applicant or to any one with whom applicant has an identity of interest, of satisfying or refinancing existing mortgages, liens, including real estate taxes due and owing to the City of New York and other encumbrances.

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§1-06 Application Submission.

Applicants who receive approval after review of the preliminary site submission may obtain application forms from the Department of Housing Preservation and Development, Office of Rehabilitation Financing, 100 Gold Street, New York, N.Y. 10033. Application forms may also be obtained from the Department of Housing Preservation and Development, Office of Special Improvements, 2 Lafayette Street, New York, N.Y. 10007, when a loan is sought for less than $4,200 per unit. Submission must include the following:

(a) An original and four (4) copies of the application (typewritten or legibly printed) shall be submitted. If the applicant is a corporation, the corporate seal must be affixed to the application. The application shall set forth the name, address and telephone number of the owner of record of the property, the holders of existing liens and of the proposed architect, contractor and attorney.

(b) Three (3) copies of preliminary plans shall be submitted. Such plans are to show existing and proposed room or apartment layouts of all the floors; also a plot plan showing the land and building with dimensions and an apartment distribution schedule. Preliminary drawings must be prepared by a registered architect or professional engineer. (Information on rehabilitation design standards promulgated by the Agency may be obtained from the Agency). Where because of the nature of the rehabilitation, plans are not required by the Department of Buildings, this requirement for three copies of preliminary plans may be waived in the discretion of the Deputy Commissioner.

(c) For all types of rehabilitation work, the applicant must file an original and three (3) copies of an outline specification and cost estimate for all work to be performed, giving a description of the work and an estimate of the cost and trade cost breakdown of each item. Quality of workmanship and materials shall conform to the rehabilitation design

standards promulgated by the Agency.

(d) A copy of the document through which the applicant claims title or option.

(e) Where applicant is a corporation, a copy of the following additional documents will be required: New York State Certificate of Incorporation or authorization to do business in the state with proof of payment of current franchise taxes and New York City General Corporation Tax.

(f) Where applicant is a partnership, copies of its partnership agreement and certificate, a list of all its partners and the information specified in subdivision (g) of this section with regard to each.

(g) A list of the assets of the applicant with particular reference to any real estate holdings within the City of New York and where applicant is a corporation, a list of such assets of all officers, directors and of all stockholders having more than ten percent interest; and a statement of the direct or indirect interest of any such parties in other government programs providing loans or other public assistance.

(h) Applicant must file on the form provided by the Agency a sworn Certificate of Interest disclosing the identity of all parties involved or to be involved in the purchase, ownership and rehabilitation of the premises in question, and where applicable, the details of the transaction by which one or more of the parties acquired title and full particulars regarding all mortgages and other liens on the premises and all payments made or to be made in connection therewith. If any portion of the loan is to be used to satisfy a mortgage, the applicant will be required to certify as to the origin of each mortgage; if a purchase money mortgage to state the total purchase price of the property, the amount secured by the mortgage and the balance due thereon; if not a purchase money mortgage, to state the actual cash advanced to the mortgagor and the balance due thereon; to state the amount to be paid to the mortgage holder at the date of loan closing to satisfy the mortgage; to certify that payment made to the holder of the mortgage is and will be a bona fide arms length transaction, and disclose whether there is any relationship by family ties or otherwise among any of the parties, their officers or principals; and finally, to certify that the mortgagee of the satisfied mortgage neither has nor will have any financial relationship to the rehabilitation project. Applicant is also required to disclose promptly during the processing of the application, by an amended certificate, any changes which occur during such processing and to verify the continued accuracy of the certificate at the loan closing.

(i) Applicant must file a detailed plan for the management of the building during the period of alteration, improvement or rehabilitation when tenants remain in occupancy and after such work is completed. The plan should detail his experience in management of residential property, plans for tenant involvement in the upkeep and maintenance of the building and for community group involvement, if any.

(j) A filing fee shall be paid as provided in §1-09.

(k) Investigatory reports required by the Agency shall be charged to the applicant.

(l) Such additional information in such form as the Agency may require. Upon receipt of such application, the Agency will determine whether the loan shall be made based on a recommendation by a Municipal Loan Committee, consisting of the Commissioner of Development, the Deputy Commissioner of the Office of Rehabilitation Financing, the Assistant Administrator for Programs and Policies, the Comptroller, and the General Counsel; and in the case of loans processed by the Office of Special Improvements consisting also of the Office of Rent and Housing Maintenance and the Deputy Commissioner of such Office.

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§1-07 Insurance Requirements.

The applicant is required to submit to the Agency, for its approval in a form satisfactory to the Agency including but not limited to, an endorsement that fifteen days prior notice by registered mail, return receipt requested, of cancellation shall be given to the City of New York as the Agency shall prescribe, the following evidence of insurance prior to loan closing or commencement of construction or installation, whichever is first: (a) An original policy of fire insurance with extended coverage, for a term of three (3) years, in an amount at least equal to the amount of the loan. During the construction period coverage may be for less than the amount of the loan. Such policy must contain a loss payable clause, naming the City of New York, c/o Department of Housing Preservation and Development as mortgagee and further provide that "buildings in course of renovation with permission granted to complete and occupy" or a similar description to this effect. When the improvements are completed, such proviso is to be deleted from the policy.

(b) An original policy of owners protective liability and property damage insurance issued to the contractor, with the owner and "The City of New York Department of Housing Preservation and Development" as additional insured, to protect the owner and the City against claims for property damage and for personal injuries, including accidental death caused by the operations of the contractor or his sub-contractors during the performance of work at the building or adjacent thereto, in at least the sum of $100,000-$300,000 bodily injury and $25,000-$50,000 property damage, or in such larger amounts as may be determined by the Agency. When improvements are completed, this coverage may be discontinued.

(c) Evidence of the contractor's coverage for public liability and property damage insurance, or by the comprehensive general liability insurance to protect him and his subcontractors, the owner and the City against claims for property damage and for personal injuries including accidental death in at least the sum of $100,000-$300,000

bodily injury and $25,000-$50,000 property damage.

(d) An original policy of boiler insurance (broad form) in the amount of not less than $50,000 providing coverage in the event of explosion, collapse, or rupture of boilers during installation or operation, where applicable.

(e) The contractor and each sub-contractor shall provide adequate Worker's Compensation Insurance for all employees engaged in the work on a building who may come within the protection of the Workers' Compensation Law, and where practicable, Employer's General Liability Insurance for employees not so protected.

(f) A payment and performance bond guaranteeing performance by the contractor and payment for all services and material. Where satisfactory proof has been presented that after a diligent effort such bond cannot be obtained, the Agency may accept in lieu thereof

(1) a guarantee of completion executed by the owner and where the owner is a corporation, by the principal stock-holder(s) or officer(s) thereof,

(2) a financial statement by each party executing such a guarantee, showing sufficient net assets and net worth to give reasonable certainty of financial ability to fulfill such commitment, and

(3) an amount equal to two (2%) percent of the construction cost as a non-refundable fee. The Agency may in its discretion, where satisfactory proof has been presented that after a diligent effort such bond cannot be obtained, accept in lieu thereof bonds furnished by subcontractors covering at least fifty (50%) percent of the construction cost, in which case the balance of the construction cost shall be covered by guarantees of completion and fees as described above. Following completion of the rehabilitation the owner shall maintain public liability insurance against claims for personal injury or death and for damage to property suffered by others, occurring upon, in or about the building in at least the sum of $100,000-$300,000 bodily injury and $25,000-$50,000 property damage in a form satisfactory to the Agency. Modification of those insurance requirements as to term, amount, or coverage may be made only with the approval of the Deputy Commissioner of the Agency charged with the administration of this pro- gram.

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§1-08 Mortgage Conditions.

(a) No loan may exceed the maximum mortgage amount.

(b) Each loan made under this program shall be secured by a bond or note and mortgage upon the multiple dwelling to be improved and the land upon which it is situated to be repaid over or within a period of thirty years in such manner as may be provided therein.

(c) The Agency may take a junior lien on the property as security for the loan or may, in accordance with the provisions of the Private Housing Finance Law, participate in a rehabilitation loan with a private lender, provided that the total indebtedness will not exceed the maximum mortgage amount after completion of rehabilitation. In determining whether to take a junior lien the Agency shall give favorable consideration to the following, if present: that the interest rate on the prior lien is more favorable than the Agency can offer the mortgagor; that the holder of the prior lien is an institutional lender of recognized standing; and that the principal amounts due under the prior lien or liens are being amortized on a basis which would not jeopardize the City's lien. A subordination agreement may be required from the holder of any prior lien where the Agency deems it desirable.

(d) The mortgagor shall be required at the closing to execute a construction contract for the performance of the work with a general contractor or tradesman. Both the contract and the general contractor or tradesman must be approved by the Agency and the Agency reserves unto itself the right to approve or reject a contractor. The mortgagor shall be required to submit a resume of the experiences of the proposed contractor and all proposed subcontractors, financial statements of the contractor and for all firms in which the contractor has a controlling interest for the last three years, references from at least three major clients of each contractor, and a statement of the ethnic breakdown of the

employees of each such contractor and subcontractor in advance of such closing.

(e) At the closing of the loan, the owner shall advise the Agency by a sworn statement of changes, if any, that have occurred since the date of application for the loan with respect to condition of the building, mortgage balances, acquisition cost, taxes, liens, discounts and assignments, and any change in relationship of parties in interest, and if there have been no changes, shall so state. If any portion of the loan is used to satisfy a mortgage, the mortgagor will be required at the closing to provide a certificate from the holder of the mortgage as to the amount paid by such mortgagee for the mortgage, where applicable, and the balance due thereon.

(f) Interest and amortization payments shall be due and payable commencing on the first day of the third month after a certificate of occupancy, temporary or permanent, has been obtained, where applicable. This period may be extended upon due notice by the Agency to the City Comptroller where occupancy is dependent on conditions beyond the owner's control such as the availability of Federal rent supplements.

(g) A mortgagor may not, at any time, further encumber, mortgage or permit any encumbrance or lien of any kind upon the mortgaged premises without the prior written consent of the Agency, nor may the premises or any part thereof be conveyed, assigned or transferred without the prior written consent of the Agency. Failure to comply with this subdivision (g) at the option of the Agency, shall result in the Agency's declaring the entire unpaid principal balance and interest immediately due and payable.

(h) The mortgage may provide that with the consent of the Agency a mortgagor may prepay the principal amount of the loan together with interest then due. However, the apartments in the premises shall remain subject to the conditions set forth in §1-03 (Eligibility and General Conditions) of this chapter.

(i) The Agency shall establish first rentals or adjust maximum rents, whichever is applicable, for all buildings rehabilitated with a municipal loan and certify same to the Division of Housing and Community Renewal. In arriving at such rent levels, the Agency shall consider the total of the projected operating costs, including water and sewer taxes, fuel, insurance, utilities, painting and repairs, and vacancy allowance, a reasonable return on the owner's equity and interest and amortization payments on the mortgage.

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§1-09 Fee Requirements.

(a) Simultaneously with the filing of the application the applicant shall deliver to the Department of Housing Preservation and Development, Office of Rehabilitation Financing, a certified or cashier's check payable to the "Municipal Loan Program Application Account" in the sum of one hundred fifty dollars ($150), or such larger amount as may be required by the Agency to defray the costs of appraisal, credit reports and other expenses of processing the application. Applications filed with the Office of Special Improvements must be accompanied by such a check payable to "Small Loan Program Application Account" in the amount of one hundred dollars ($100) for such purposes.

(b) All mortgage loans are subject to a supervision fee in the amount of two (2%) percent of the total loan, payable to the City of New York. Such fee may be waived by the Agency in whole or in part in the case of loans under $4,200 per unit.

(c) A fee in lieu of payment and performance bond, where applicable, shall be requested equal to two (2%) percent of the estimated construction cost, which sum shall be deposited by the Agency in its Rehabilitation Loan Reserve Fund.

(d) A management fee in the amount of 1/4 percent of the original principal amount of the loan shall be charged and payable per annum to meet costs of supervision during the life of the loan. The Agency may in its discretion deposit such sum in its Rehabilitation Loan Fund or use such sum in whole or in part to pay a bank or the New York City Housing Development Corporation for the performance of such services as are generally performed by a banking institution which itself owns and holds a mortgage.

(e) Where a monthly installment of principal and interest on a mortgage has become overdue for a period in excess of fifteen (15) days a "late charge" of one (1) cent per month for every dollar of such installment so overdue may be charged the mortgagor by the Agency and deposited in its Rehabilitation Loan Reserve Fund.

(f) The Agency may determine in its sole discretion to submit the loan application to the New York City Housing Corporation. In the event that such corporation is or shall become the mortgagee, all fees required by this section shall be paid to the corporation rather than to the City of New York, except as the Agency may otherwise prescribe.

(g) None of the fees provided for by this section are refundable.

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§1-10 Construction Requirements: Payments.

(a) The plans, specifications, work write-ups or any description of work to be performed on a building subject to a loan under this program must be approved by the applicable office of the Agency prior to the commencement of any rehabilitation work or the closing of a mortgage loan for same. Such plans, specifications, work write-ups or other description of work must conform to the rehabilitation design standards of the Agency and must have been approved by the Department of Buildings, where applicable, or any other necessary governmental bureau or department.

(b) During the rehabilitation process the Agency's architects, engineers, rehabilitation specialists or officers and others designated by the Agency may conduct periodic inspections of the work. Copies of all plans, specifications, work write-ups or other description of work, with the Agency's approval stamped thereon, must be kept on the job site for the use of such Agency personnel.

(c) Requests for change-orders shall be in writing. Change-orders must be fully documented, showing original and revised cost estimates and reasons for such change-orders. Upon approval thereof, which shall also be in writing, the change shall be reflected in a revised trade payment breakdown.

(d) The Agency may require the deposit of loan advances in a separate escrow account, in a bank designated by the Agency, subject to withdrawal only upon the joint signatures of the borrower and a representative of the Agency. The Agency may further require that the owner deposit all or a designated portion of the rents collected from the multiple dwellings during the period of construction in such escrow account, or in a separate trust account under such terms and provisions as the Agency shall prescribe.

(e) Progress payments on work completed shall be made on the basis of sworn statements as herein provided, subject to review and approval by the Agency. At the time of each progress payment, the contractor, mortgagor or owner shall execute for the Agency a sworn statement that all bills due for labor, services rendered, and materials furnished in connection with the work to the date of payment are paid and that no liens have been filed, or if not paid, submit list itemizing the amounts due to creditors so as to insure a proper allocation of the payment to satisfy in full such unpaid items. Such statement shall reconcile requisitions with the trade payment breakdown previously submitted. The Agency reserves unto itself the right, at its discretion, to take proceeds of the loan and pay all verified delinquent claims for labor, materials or other services rendered. The Agency shall further withhold an amount equal to no less than ten percent of the total amount of each progress payment as a retention fund under the mortgage to assure satisfactory progress of the work. Such retention, or a portion thereof, may be released prior to the completion of the work upon written request by the owner or mortgagor with the approval of the Deputy Commissioner of the Agency; the retention on completed work may thus be reduced to five percent upon completion of fifty percent of the work. All of the retention remaining shall be released upon the completion of the work to the entire satisfaction of the Agency and other necessary state or municipal bureaus or departments, the presentation to the Agency of a permanent certificate of occupancy, where applicable, proof of payment for all labor and materials, a cost certification prepared and certified by an independent public accountant licensed by New York State, and also a sworn certificate disclosing any changes from the applicant's filing in accordance with §1-06(g) (Application Submission) of this chapter.

(f) The portion of the loan representing interest on advances during construction shall be adjusted upon completion of the rehabilitation as follows: If such portion shall be more than the amount required for interest on advances, the excess shall be credited to the mortgagor in reduction of the principal of the loan; if less than the amount required for such interest, the difference shall be deducted from the final payment of loan proceeds and paid over to the City of New York.

(g) Any income derived during any period of occupancy prior to commencement of debt service may be credited against the construction loan.

(h) Books and records of the contractor and of subcontractors relative to the rehabilitation shall be subject to audit by the Agency. All subcontracts shall be submitted to the Agency when executed and any interest between the mortgagor and the subcontractor shall be disclosed at that time.

(i) The aforementioned cost certification shall be provided on a form approved by the Agency and must include the following:

(1) A certified list of the actual costs paid by the general contractor for materials and sub-contract work under the general contract.

(2) A certified list of the actual costs for non-construction items as were approved by the Agency.

(3) Proof that all labor and materials included in the rehabilitation have been paid for.

(4) An opinion certifying as to the accuracy of the owner's costs statements by an independent certified public accountant.

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§1-11 Labor Compliance Conditions.

Each mortgagor or contractor performing rehabilitation work with proceeds of a mortgage loan under this program must agree that the following standards and requirements will be strictly complied with:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin or sexual orientation. The contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, national origin or sexual orientation. Such action will include, but not be limited to the following: employment, up-grading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this non-discrimination clause.

(b) The contractor will participate in an on-the-job training program in accordance with the Mayor's Executive Order No. 50 of 1980 as amended and the agreement dated December 10, 1970 with the New York Building and Construction Industry, Board of Urban Affairs Fund, and will enter into a contract with the Agency to implement such training program.

(c) To the extent that such preference is not inconsistent with the Executive Orders and the agreements referred to in subdivision (b) above, the contractor, including sub-contractors within model cities, urban renewal and code enforcement areas will give a priority in hiring to persons living within the geographic neighborhood in which the work is being performed.

(d) The contractor will not sub-contract any part of the work without prior written approval of the Agency. The Agency will not approve any sub-contractor for work who is at the time ineligible because of violations of this §1-11 (Labor Compliance Conditions) of this chapter, inefficiency, abandonment of duties, or disregard for creditors on prior jobs performed under this program. Failure to comply with the provisions of this §1-11 will result in the Agency's withholding from the contractor any progress payments, in addition to exercising such other rights as may be reserved to the Agency in the loan documents, and forfeiture by the contractor of consideration for future work under this program.

(e) With every requisition for a progress payment or at such times as the Agency shall prescribe, the contractor shall submit to the Agency copies of his payroll report and of each of the sub-contractors (it being understood that the contractor will be responsible for the submission of records of sub-contractors). Such payroll report shall contain such items as prescribed by the Agency including, but not limited to, the name and address of each employee, his classification or trade, ethnic/racial origin, hourly rate of pay, deductions made, number of hours worked and actual wages paid for the work week.

(f) In order to assure strict compliance with this section and these rules and regulations, the books and records of the general contractor or tradesman and all sub-contractors shall at all times be available to the agents or representatives of this Agency and the Agency reserves the right to interview or confer with any employee on a construction job or in the office of general contractor or tradesman or sub-contractor, at any time, in order to determine such strict compliance. Failure to comply with this chapter shall be considered a breach of construction contract and may result, at the discretion of the Agency, in the removal of the general contractor, tradesman or sub-contractor from the construction job and other penalties as the Agency might deem necessary to impose.

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§1-12 Management Supervisory Requirements.

(a) Neither an owner, nor anyone acting in his behalf, shall make a charge or demand a fee of any kind for processing a tenant's application.

(b) The owner shall receive no more than one month's rent as security and one month's rent in advance at the time the tenant takes occupancy of premises rented after the loan is granted. Upon direction by the Agency, such security deposits when received by the owner shall be immediately submitted to the Agency to be held in escrow by the Agency for the benefit of the tenant. The Agency will deposit all such funds in a separate interest bearing account with a banking institution of the Agency's choice. The records of such account shall be available at all times to an owner or tenant for the purposes of audit, inspection or examination, and interest accruing from such account shall enure to the benefit of the tenant-depositor. The principal amount of such deposit together with interest thereon shall be returned to the tenant by the Agency upon the written request of the owner certifying that the tenant's occupancy has been terminated and that all the terms and conditions of such occupancy have been complied with.

(c) The apartments in a rehabilitation building are available to persons or families of low income as defined in §1-02 (Definitions) of this chapter.

(1) Probable aggregate annual income includes the annual income of the chief wage earner of the family, plus all other income of other members of the family in excess of $1,500 per annum for each such member. The income of a working minor who is a full-time student shall not be included in the computation of such annual income. Social Security or other pension plan payments received by females aged sixty-two years and over, or males sixty-five or over shall be excluded from computation of annual income up to a total maximum amount of $75 a month per individual.

(2) If at the time a loan is granted, the tenant's probable annual income exceeds, or later increases so as to exceed, the prescribed income limits by more than fifty percent, he can be removed, with the Agency's consent, from the building either the expiration of a two-(2) year period from the time the loan was granted.

(3) A tenant who moves into the building after the loan has been granted is subject to removal, with the Agency's consent, when his yearly income exceeds the income limits by more than fifty percent.

(4) If, after the expiration of a two-year period from the time the loan was granted, more than twenty percent of the tenants in the building are over-income, the Agency may require the owner to remove over-income tenants.

(5) When the owner of the building occupies one of the units, he will be liable for rent surcharges the same as any tenant.

(6) Any person or family in occupancy whose income exceeds the maximum prescribed shall pay a rent surcharge in accordance with the following schedule:

(Percentage of Maximum Permitted Income)	
Up to 100 percent	Basic rent only
In excess of 100 to 105 percent	Basic rent only
In excess of 105 to 110 percent	Basic rent plus 5 percent
In excess of 110 to 115 percent	Basic rent plus 10 percent
In excess of 115 to 120 percent	Basic rent plus 15 percent
In excess of 120 to 125 percent	Basic rent plus 20 percent
In excess of 125 to 130 percent	Basic rent plus 25 percent

Table **(Continued)**

In excess of 130 to 135 percent	Basic rent plus 30 percent
In excess of 135 to 140 percent	Basic rent plus 35 percent
In excess of 140 to 145 percent	Basic rent plus 40 percent
In excess of 145 to 150 percent	Basic rent plus 45 percent
In excess of 150 percent	Basic rent plus 50 percent

The owner of the dwelling must, subject to the approval of the Agency, take the action necessary to assure compliance with these provisions. Rental surcharges collected by the owner are paid to the Agency by check made out to the order of the City of New York and are used to reimburse the City for any tax exemption or abatement granted to the owner. If such benefits have not been granted, or if a sum equal to the amount of tax exemption and abatement granted has already been paid to the City, the surcharge shall be paid to the City in reduction of the loan in accordance with §403 Subdivision 4 of Article VIII of the Private Housing Finance Law.

(d) Tenants for initial occupancy of such rehabilitated buildings, and for the filing of vacancies as they occur, shall be selected by the Owner in the following order of priority: (1) Site occupants, that is, tenants occupying the building on the date of preliminary site submission or such later date approved by the Agency. "Building" in this paragraph shall include parcels subject to a consolidated loan. Where the Housing Authority has entered into a leasing program regarding the rehabilitated building, all tenants eligible for public housing must apply to the Housing Authority to recognize their priority.

(2) Tenants in occupancy shall have the first priority for internal transfer.

(3) If the site is within an urban renewal area or other redevelopment area, residents of sites acquired to effectuate the plans for such area; families in emergency need of housing, including families who are homeless, under warrant of eviction, living in buildings condemned as unfit for human habitation, or facing displacement from sites, buildings or dwelling units being cleared or vacated by governmental action. Within this class preference shall be given to residents

of the same community planning district.

(4) Persons listed on the outside waiting list in strict chronological order.

(5) Others, subject to Agency approval. Notwithstanding the foregoing, where a federal subsidy is involved, federal standards of priority are controlling as to the affected apartments.

(e) The Agency may direct that a certain number of apartments be held vacant until the building is at least 70 percent occupied by relocatees having priorities (1) through (3) of subdivision (d) above, but not beyond the date when debt service commences. Implementation of the priority system described above shall be accomplished as follows:

(1) The owner shall submit to the Agency, prior to renting, a Tenant Selection Review Form prescribed by the Agency.

(2) The owner shall fully complete such form and state whether he wishes to reject or accept the tenant applicant.

(3) The Agency shall render a decision on acceptability of the tenant within three working days of receipt of the Tenant Selection Review Form.

(4) The Agency reserves the right to approve or reject any tenant applicant and the owner agrees to be bound by its decision. It shall be the owner's responsibility to contact the Agency to obtain such decision. If the applicant is rejected, the owner will follow the same procedure for any other applicant he considers.

(5) The owner shall accept referrals from whatever governmental source the Agency may designate. Where the Agency determines that an owner has rejected a tenant applicant, it reserves the right to order him to submit another applicant for that housing unit. The fact that an applicant is on welfare shall not be grounds for rejection. Failure to submit a Tenant Selection Review Form to the Agency, failure to obtain Agency approval prior to renting, or renting an apartment to a tenant applicant who has not been approved by the Agency, shall, at the option of the Agency, make the owner liable for the expense of finding a comparable housing unit for another applicant who is eligible under renting priorities set forth above and for any unusual cost in relocating such applicant in such comparable unit.

(f) At the discretion of the Agency, the owner may be required to enter into a regulatory agreement with regard to the management and operation of the building and the rents, profits, dividends or distribution of its property and as otherwise prescribed by the Agency.

(g) The owner shall maintain separate and accurate books and records of all managerial and financial data, including assets, liabilities, equity, income and expense, relative to the rehabilitated property or properties for which a separate loan has been made. Such books and records must be made available to the representatives of the Agency for audit, examination or review upon demand. Unless this requirement is modified or waived in the case of a loan under $4,200 per unit, financial reports as prescribed by the Agency relative to a rehabilitated property or properties for which such a separate loan has been made are required to be filed in duplicate, with the Agency for the six-month period ended December 31, and the twelve-month (annual) period ended each June 30. The reports are due within 90 days after the close of each respective period. The indicated filing requirements are to be met with respect to the initial operating periods although these may not be full six- or twelve- month periods. Such reports are to be based on audit examination, in accordance with generally accepted auditing standards, by an independent public accountant licensed in New York State. The annual report, for the fiscal year ended each June 30, is to be certified by such accountant relative to the financial statements and other data required to be contained therein. The foregoing reports are to include the following:

(1) Accountant's certification.

(2) Financial statements (accrual basis).

(i) Balance Sheet, with such supporting schedules as required to be fully informative.

(ii) Statement of Operations, with detailed income and expense subclassifications. The annual statement shall also show separately the operating figures for the last six months of the fiscal year, January l-June 30.

(iii) Statement of Sources and Application of Funds (Change in net working capital). There shall also be filed such other financial reports or data as the Agency may require.

(h) The Agency reserves the right to make periodic inspection on each apartment in the rehabilitated building. Such inspections shall be for the purpose of inspecting the condition and maintenance of the building, the condition of utilities, fixture and equipment. Periodic visits may also be made to the building by representatives of the Agency for the purpose of conferring with tenants, advising on consumer practices, frauds and products, education regarding maintenance of dwellings and where necessary serving as a liaison or intermediary on landlord-tenant problems. Copies of reports of such inspections shall be made available to the owner with recommendations for corrective measures where necessary.

(i) Re-renting or eviction proceedings may only take place with the approval of the Agency. No new tenants may be moved into a building without the owner's following the same procedures as hereinabove set forth.

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§1-13 Community Participation.

The Agency acknowledges the desirability of involving recognized and responsible community organizations in the planning and execution of rehabilitation efforts in their areas.

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§1-14 Fee Schedules.

Allowable architectural and legal fees and contractor's overhead and profit shall not exceed the fee schedules below:

(a) **Architectural fees.** Five and a half percent of construction cost up to $400,000; above that, four and a half percent but not less than $22,000. The fee, which includes mechanical engineers fees will be paid directly to the architect in three parts. Upon closing the municipal loan with plans and specifications approved by the Department of Buildings and this Agency, the architect will receive sixty percent of his fee, an additional twenty percent at closing of the walls and the final twenty percent at completion thereof and upon receipt of a statement of compliance accompanied by a Certificate of Occupancy.

(1) Any work beyond the scope of the contract requirements requested by the Department of Housing Preservation and Development in writing, shall be paid to the architect at the rate of two and a half times the reasonable salaries of technicians engaged in such changes.

(2) When the basic plans are repeated for identical buildings (within twenty percent of design is reused) then such fee shall be reduced by thirty-three and a third percent of original design fee.

(3) Architect shall supply all required services, plans, specifications and filing with the Department of Buildings.

(4) If buildings are contiguous, and only one set of mechanical drawings is used for all buildings, then the fee for each duplicate building shall be 50 percent of the original building construction cost.

(b) **Contractor's overhead and profit.**

Construction Cost	Fee as Percent of Constuction Cost
Less than $100,000	10.0
100,000	9.7
200,000	9.4
300,000	9.1
400,000	8.8
500,000	8.5
600,000	8.2
700,000	7.9
800,000	7.6
900,000	7.3
1,000,000	7.0
1,500,000	5.5
2,000,000	4.0

The amount allowed shall not be less than that for the preceding construction cost.

(c) **Legal fees.** One percent of construction cost up to $50,000, plus three tenths of one percent on amounts in excess of $50,000. The legal fee shall be paid in two parts as follows: Seventy-five percent on closing and twenty-five percent at final payment.

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§1-15 Rent Adjustments.

(a) Upon completion of the rehabilitation or improvement, maximum rents shall be adjusted pursuant to §33.9 of the Rent and Eviction Regulations and the rules and regulations adopted pursuant to those provisions.

(b) Such rentals may thereafter be increased upon application made by the owner to the office or department charged with administration of the Program in the manner set forth herein and as set forth in §33.9 of the Rent and Eviction Regulations and the rules and regulations adopted pursuant thereto. If such office or department determines that a rent increase is required based upon operating and maintenance expenses, real estate taxes, debt service requirements, vacancy and other rent collection losses, and a return on equity computed at 8 percent, the director of that office or department shall so certify to the Office of Rent Control and inform the Office of Rent Control of the amount of the increases which are requested. The Office of Rent Control shall issue written notice to the tenants of the rent increases requested by the owner. Upon expiration of the time allowed for the tenants to answer as set forth in such notice, the Office of Rent Control shall forward any responses to the administering office or department. Such office or department shall review the responses and the record and may then request that the Office of Rent Control issue orders adjusting the rents as finally determined by that office or department. The Office of Rent Control will issue such orders within fifteen days after receipt of such request.

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§1-16 Failure to Comply with Regulations.

Upon failure of an applicant, owner or mortgagor to comply with this chapter, said applicant, owner or mortgagor may be disqualified by the Agency from applying for a loan under this program for up to three years following the date of any failure.

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§1-17 Waiver.

The Agency may waive any of this chapter where the nature of the installation, alteration, improvement or rehabilitation or other circumstances warrant such exception. Any waiver to be effective requires the approval of the Commissioner or the Municipal Loan Committee.

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§2-01 General Provisions.

(a) **Purpose.** This chapter (and any applicable regulations promulgated by the governmental authority providing funds for the rehabilitation or improvement) shall govern the making of loans for rehabilitation and improvement pursuant to Article VIII-A of the Private Housing Finance Law of the State of New York.

(b) **Definitions.** As used in these rules and regulations, the following terms shall have the meanings set forth below:

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

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

Commissioner. "Commissioner" shall mean the Commissioner (or Acting Commissioner) of the Department or the chief executive officer (or acting chief executive officer) of any successor to the Department.

Department or Dept. "Department" or "Dept." shall mean the Department of Housing Preservation and Development of the City or any successor thereto.

Dwelling unit. "Dwelling unit" shall mean any residential accommodation in a multiple dwelling.

Housing Maintenance Code. "Housing Maintenance Code" shall mean the Housing Maintenance Code of the City

constituting Chapter 2 of Title 27 of the Administrative Code.

Multiple Dwelling Law. "Multiple Dwelling Law" shall mean the Multiple Dwelling Law of the State of New York.

Multiple dwelling or building. "Multiple dwelling" or "building" shall mean an existing dwelling within the City which is rented or leased to be occupied, or is occupied, as the residence of three or more families living independently of each other, and for which a loan application is made under the program.

Occupancy by persons or families of low income. "Occupancy by persons or families of low income" shall mean occupancy by persons or families paying rentals or carrying charges not in excess of the average rentals or carrying charges prevailing in local projects of municipally-aided limited-profit housing companies aided under Article II of the Private Housing Finance Law of the State of New York, the occupancy of which commenced on or after May 18, 1970. The rental or carrying charge for any such projects assisted under §236 of the United States Housing Act of 1937 shall mean the fair market rental or carrying charge determined from time to time in accordance with the provisions of the agreement with the housing company pursuant to said section.

Notwithstanding the foregoing, "occupancy by persons or families of low income" in single room occupancy housing shall mean occupancy by persons paying rentals not in excess of seventy-five (75) percent of the Moderate Rehabilitation Fair Market Rents for 0-bedroom units. "Moderate Rehabilitation Fair Market Rent" shall mean one hundred twenty (120) percent of the amount, less tenant utility allowance where applicable, which is indicated for 0-bedroom units on the then current Existing Housing Fair Market Rent Schedule for the §8 Existing Housing Assistance Payments Program under the administration of the Department. Where the Department determines on the basis of a market survey or other acceptable and documented evidence that the market rents for dwelling units in the immediate neighborhood where the building is located exceeds the applicable Existing Housing Fair Market Rents, the Department may increase said rents by an amount not to exceed ten (10%) percent.

Owner. "Owner" shall mean an individual, partnership, corporation or other entity, including a non-profit company, a mutual company, or a housing development fund company, which holds record title in fee simple to the premises or is the lessee thereof under a lease having an unexpired term of not less than fifteen years.

Premises. "Premises" shall mean the multiple dwelling or the building and includes the land upon which it is situated.

Program. "Program" shall mean the program for the making of loans pursuant to Article VIII-A of the Private Housing Finance Law of the State of New York and this chapter.

Rehabilitation. "Rehabilitation" or "rehabilitation or improvement" shall mean the curing of any substandard or insanitary condition or conditions, or the replacement, repair or upgrading of heating, plumbing, electrical and related systems.

Rent or rental. "Rent" or "rental" shall also mean carrying charge whenever the multiple dwelling is cooperatively owned. This definition shall not apply to §2-04(a)(2) of this chapter.

Single room occupancy housing. "Single room occupancy housing" shall mean dwelling units which:

(1) may be lawfully occupied as the residence of single individuals capable of living independently of each other and do not contain either food preparation facilities or sanitary facilities or both, or

(2) are otherwise used and maintained for such occupancy in full compliance with the building's certificate of occupancy and the provisions of the New York State Multiple Dwelling Law.

Useful life of the dwelling. "Useful life of the dwelling" shall mean the period of time, as determined by the Dept., that the multiple dwelling is expected to be habitable at a level of comfort, safety and sanitation compatible with current requirements of state and city statutes, ordinances and administrative regulations, where there is regular maintenance and care of the major building systems by competent mechanics.

Useful life of the rehabilitation or improvement. "Useful life of the rehabilitation or improvement" shall mean the period of time as determined by the Department that the improvement is expected to function in good condition, with routine maintenance and repair.

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§2-02 Eligibility and General Conditions.

(a) **Eligible buildings.** (1) Loans may be made to an owner of a multiple dwelling located within the City to enable or assist such owner to eliminate a substandard or insanitary condition or conditions in violation of the Multiple Dwelling Law or the Housing Maintenance Code of the City of New York or to provide for the replacement and rehabilitation of the heating, plumbing, electrical and related systems or other improvements as shall be reasonably necessary to prolong the useful life of such dwelling.

(2) No loan shall be made unless the average rent for dwelling units in the building is not in excess of the average rent prevailing in local projects of municipally-aided limited-profit housing companies aided under Article II of the Private Housing Finance Law of the State of New York, the occupancy of which commenced on or after May 18, 1970, except for loans made to rehabilitate single room occupancy housing, in which cases the average rent for such units in the building shall not exceed seventy-five (75%) percent of the Moderate Rehabilitation Fair Market Rent as defined in §2-01(b) "Occupancy by persons or families of low income" of these Regulations, for 0-bedroom units.

(b) **Allowable costs.** At the discretion of the Dept., loan proceeds may be advanced to finance the following items of cost incurred in connection with the rehabilitation or improvement:

(1) Construction costs and filing fees required by the Department of Buildings and other governmental agencies having jurisdiction.

(2) Interim interest on the loan proceeds.

(3) Recording and filing fees and mortgage taxes.

(4) Payment and Performance Bond(s).

(5) Fees or charges attributable to the examination and insurance of title.

(6) Real estate taxes, assessments, water and meter charges and sewer rents.

(7) Fire insurance premiums.

(c) **Maximum amount.** The loan amount shall not exceed an average of ten thousand ($10,000) dollars per dwelling unit or the actual cost of the rehabilitation or improvement, whichever is less.

(d) **Term.** The term of a loan shall not exceed twenty years, except that the term of a loan whose amount exceeds an average of five thousand ($5,000) dollars per dwelling unit shall not exceed thirty (30) years. In no event shall the term of any loan exceed the useful life of the rehabilitation or improvement.

(e) **Interest rate.** The interest rate shall be three (3%) percent per annum, except where otherwise determined by the Department.

(f) **Protection of mortgage lien.** Subsequent to the loan closing, the Department at its discretion may pay any liens and charges the priority of which are superior to its mortgage and may pay such other expenses as may be appropriate to protect its loan or to protect the lien of the mortgage relating thereto, provided that such expenditures shall not exceed one-half of the total amount of the loan.

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§2-03 Application Procedure.

(a) **Application forms.** Application forms may be obtained from the Department, 100 Gold Street, New York, N.Y. 10038, Attention: Article VIII-A Loan Program. All applications shall be submitted to the Department for review and approval.

(b) **Eligible applicants.** Loan applications may be submitted by an owner or his duly authorized agent or by a contract vendee who becomes an owner prior to or simultaneously with the loan closing.

(c) **Application submission.** The application, in form specified by the Department, shall include the following:

(1) A description of the rehabilitation or improvement and the estimated cost thereof.

(2) The name, address and telephone number of the applicant, the owner, the managing agent and the holders of existing mortgages and other liens against the multiple dwelling.

(3) A statement of income and expenses for a period of time to be determined by the Department.

(4) A statement of the current monthly rent or carrying charges of each residential and commercial unit, the name of each residential tenant, the number of rooms in each residential unit, and the rent controlled or rent stabilized status of each residential unit.

(5) A statement of the current non-publicly assisted, rent stabilized market rents of residential units in the building and, if known, a similar statement for comparable apartments in adjacent buildings or buildings in the immediate vicinity.

(6) Such additional information as the Department may require.

(d) **Consultation.** The staff of the Department will be available for preapplication consultation.

(e) **Certification of inability to obtain financing.** With the application, the owner shall submit an affidavit certifying that within the prior six months attempts to obtain financing for the rehabilitation or improvement at prevailing interest rates with the premises as security, from at least two (2) lending institutions which normally provide this type of financing were not successful, and, if known, the reasons for such failure or other factors indicating an inability of the private sector to provide unaided financing. If the multiple dwelling is encumbered by a mortgage held by a lending institution whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or their successors, such mortgagee shall be one of the lending institutions to which the applicant made an attempt to obtain such financing.

(f) **Application fee.** The owner shall pay an application fee in the amount of seventy-five ($75) dollars for each building for which application is made. Payment shall be made no later than the date of the Department's loan closing. The fee shall not be refundable and shall be used to help defray the expenses of the City in administering the Program. In the case of applications covering two or more adjacent buildings the application fee shall be seventy-five ($75) dollars for the first building and fifty ($50) for each additional building.

(g) **Loan commitment.** No commitment for a loan shall be deemed to have been made unless and until a written letter of commitment shall have been issued by the Department. Any commitment issued shall be conditioned upon full and timely compliance with the requirements of these Rules and Regulations, the availability of funds to make the loan and such other terms and conditions as the Department may require. The acceptance or processing of a loan application by the Department may not be construed to be a commitment for a loan. A commitment may only be issued in writing and no owner, applicant or other party may rely upon any statement or representation made by any official, employee or agent of the Department regarding the loan application.

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§2-04 Determination of Feasibility and Conditions Precedent to Making a Loan.

(a) **Low income tenancy and rent increases.** (1) **Covenant on low income tenancy.** No loan shall be made unless the owner covenants in writing that so long as any part of the loan shall remain unpaid:

(i) Upon vacancy, each dwelling unit in the multiple dwelling shall be available solely for occupancy by persons or families of low income; and

(ii) No person living in the multiple dwelling at the time the loan is made shall be required to move because of the rehabilitation or improvement financed by the loan, other than temporarily during the course of construction.

(2) **Rent increases.** (i) The Department, in its sole discretion, shall have the option to adjust the rent for each rental unit within the multiple dwelling pursuant to authority granted by subdivision 7 of §452 of the Private Housing Finance Law of the State of New York. The total rental adjustment shall be in an amount not in excess of the debt service (both principal and interest) calculated on that portion of the loan which the Department attributes to the financing of the rehabilitation of the rental units as if such loan were to be repaid over a self-amortizing term to be determined by HPD which shall be not less than ten (10) years for loans averaging five thousand ($5,000) dollars or less per dwelling unit, and not less than fifteen (15) years for loans exceeding five thousand ($5,000) dollars per dwelling unit. The initial rental adjustment for each rental dwelling unit will be calculated by dividing the total rental adjustment by the total number of rental rooms. Such adjustment shall be applied equally on a per room per month basis, except that a greater adjustment may be allowed for vacant units. For loans which closed prior to the effective date of these regulations,

unequal adjustments may be allowed if HPD sends notification of such rent adjustment to the tenants prior to the closing of the loan.

For rents to be adjusted under the provisions of this subparagraph, the owner(s) of the premises must agree to waive any and all increases which are attributable to the completed rehabilitation work financed by the 8A loan or required pursuant to the Housing Repair and Maintenance Agreement to which he might be entitled under the Administrative Code Chapters 4 and/or 5 of Title 26.

Rental adjustments under this subparagraph shall have no effect upon the status of

(A) rent stabilized units which will remain stabilized with the rental adjustment added to the then current rent and subject to continuing lease increases granted by the appropriate governmental authority, or

(B) rent controlled units which will remain controlled with the rental adjustment added to the then current maximum base rent and maximum collectible rent and subject to continuing increases in the maximum base rent and maximum collectible rent granted by the appropriate governmental authority.

Nothing contained in this subparagraph (2)(i) shall affect the time period for the repayment of the loan as determined by the Department under §2-02(d).

(ii) As an alternative to the rental adjustment provided under the preceding sub- paragraph (2)(i) the Department may in appropriate circumstances restructure the rents under §33.9 of the New York City Rent and Eviction Regulations provided the rents as restructured do not exceed the average rent prevailing in local projects of municipally-aided limited- profit housing companies aided under Article II of the Private Housing Finance Law of the State of New York, the occupancy of which commenced on or after May 18, 1970, or in the case of a single room occupancy housing, seventy-five (75%) percent of the Moderate Rehabilitation Fair Market Rent, as defined in these regulations, for 0-bedroom units.

(3) **Status of apartments.** Loans may be made irrespective of the current status of control, stabilization or decontrol of dwelling units and shall not have any effect upon such present or future status of the units.

(4) **Tenant notification.** Prior to final approval of the loan, the owner shall be required to give tenants residing in the multiple dwelling written notification of the proposed rehabilitation or improvement and the possibility of rent increases, in form specified or approved by the Department. The owner shall submit an affidavit to the Department certifying that such written notification has been given to the tenants. The Department shall notify the tenants in writing no later than twenty-eight (28) calendar days prior to the loan closing of the nature of the proposed rehabilitation or improvement and any projected rent increases. The tenants may forward their comments or objections regarding the proposed loan to the Department for consideration of all relevant issues. The Department, in its discretion, may hold or require the owner to hold at least one public meeting with the tenants or their representatives to discuss the proposed rehabilitation or improvement and any projected rent increases. The Department may, as an alternative to its twenty-eight day notification, hold a tenant meeting if at least three (3) business days before the meeting a copy of the Department's notification letter is sent by ordinary mail to all tenants. If rents are to be adjusted pursuant to §2-4(a)(2)(i), the Department shall send by ordinary mail a written notice of the approximate expected rent increase after the completion of the rehabilitation or improvement and prior to the establishment of the rental adjustments. After this notification, tenants may again forward their comments or objections to the Department for consideration. The Department shall consider any comments or objections that it considers to be relevant to the rent increases and which are received within ten (10) days after the date of mailing (by deposit in a general or branch post office or other official depository of the United States Postal Service) of the Department's notification.

(b) **Real estate taxes, assessments, water and meter charges and sewer rents.** The owner shall make full and timely payment of current real estate taxes, assessments, water and meter charges and sewer rents during the term of the loan. At the time of the loan closing real estate taxes, assessments, water and meter charges or sewer rents may, with the

consent of the Department, be in arrears, provided all such arrears, including any interest and penalties thereon, shall be discharged by the owner subsequent to the loan closing pursuant to arrangements satisfactory to the Department. The Department may require under terms and provisions as it shall prescribe, that the owner place money in escrow on a monthly basis to cover any outstanding real estate taxes, assessments, water and meter charges and sewer rents, accrued interest and penalties, or payments of principal and interest on the loan and one-twelfth of the prospective annual real estate taxes, assessments, water and meter charges, sewer rents and premiums for insurance. Unless otherwise required by the Department as a condition precedent to the loan and subject to all provisions of this chapter, the owner may apply for any rent adjustment or other benefits, including tax exemption and/or tax abatement, to which he, as a result of the rehabilitation or improvement, may become entitled under the provisions of the Administrative Code and all regulations promulgated thereunder.

(c) **Relationship of loan to other mortgages.** (1) **Existing mortgages.** Loans may be made with respect to a multiple dwelling encumbered by mortgages provided no mortgage is in default, except by reason of the deteriorated physical condition of the building, if such condition and default shall be remedied by the proposed rehabilitation or improvement.

(2) **Modification agreement.** A mortgage modification or extension agreement may be required from the holder of a prior mortgage against the building where such mortgage secures a loan which is not self-liquidating and matures prior to the final payment date of the proposed loan.

(3) **Subordination of existing liens.** (i) An existing mortgage or other lien held by the owner or a relative of the owner, or an officer, director, stockholder or partner of the owner, or a relative of such persons, or a party which is associated or affiliated with or a subsidiary of the owner shall be subordinated to the lien of the mortgage given to secure the City loan.

(ii) A secured loan made by a private non-institutional lender, if made in conjunction with a loan made by the City for the partial financing of the rehabilitation, shall be subordinated to the lien of the mortgage given to secure the City loan.

(d) **Removal of violations and management.** (1) **Removal of violations.** All multiple dwellings assisted under this Program shall be brought into substantial compliance with the Multiple Dwelling Law and the Housing Maintenance Code within a period of time to be determined by the Department but in no event later than one (1) year from the date set forth in the loan documents for the commencement of the payment of principal and interest on the loan.

(2) **Additional work.** The Department may require that the owner correct conditions and perform work in the premises in addition to that set forth in the Building Improvement Loan Agreement.

(3) **Management.** No loan shall be made unless the Department shall have determined that the owner has evidenced an ability to manage the building in accordance with good real estate industry practice. In appropriate cases, the Department may require a written management plan, acceptable to the Department, to ensure proper procedures for management of the property, including rent collection, supervision of building employees, payment of bills for maintenance and operation and handling tenant complaints.

(e) **Agency determination of feasibility.** (1) **Code compliance.** No loan shall be made unless the rehabilitation or improvement will result in the elimination of a substandard or unsanitary condition(s) existing in the multiple dwelling in violation of the Multiple Dwelling Law or the Housing Maintenance Code, or will provide for the replacement and rehabilitation of the heating, plumbing, electrical and related systems or other improvements if reasonably necessary to prolong the useful life of the dwelling. In either case, the estimated useful life of the multiple dwelling after rehabilitation shall not be less than the term of the loan.

(2) **Economic viability.** No loan shall be approved unless after the rehabilitation or improvement and any

restructuring of rents as set forth in §2-4(a) hereof, or any rent adjustment or other benefits to which the owner may otherwise become entitled under the provisions of the Administrative Code, or otherwise, as a result of the rehabilitation or improvement, the building's projected revenues are sufficient to meet all maintenance and operating expenses, real estate taxes, water rates, sewer rents, vacancy and collection losses, debt service and return on equity.

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§2-05 Contract Terms and Insurance Requirements.

(a) **Loan documents.** Each loan shall be evidenced by a promissory note executed by the owner of the multiple dwelling in form specified by the Department. The Department in its discretion may require that one or more of the shareholders, officers or directors of a corporate owner co-sign the note or otherwise guarantee or pledge security or provide an acceptable surety for the repayment of the loan. The following additional documents may be required:

(1) **Building Loan Contract.** A Building Loan Contract between the owner and the City in form specified by the Department.

(2) **Mortgage or financing statement.** A mortgage executed by the owner in form specified by the Department, shall be required as security for all loans, except that, if the loan is for thirty-five thousand ($35,000) dollars or less, or for a term of seven (7) years or less, the Department may, in its discretion, accept a financing statement as security.

(3) **Disclosure statement.** A sworn disclosure statement, in form specified by the Department, executed by the owner or his duly authorized agent disclosing the identity of all parties involved or to be involved in the ownership, financing and rehabilitation or improvement of the building.

(4) Such other documents executed by the owner as the City or the Department and its attorneys deem necessary or desirable.

(b) **Repayment of the loan by the borrower.** (1) **Method of repayment.** Debt service consisting of payments of interest on the unpaid principal balance and repayment of the principal amount shall be paid in equal monthly installments so as to be fully amortized by the maturity date of the loan. At its discretion, the Department may require an alternative schedule of loan payments provided the loan is fully paid by its maturity date.

(2) **Prepayment privileges.** The loan may be prepaid only in accordance with the terms specified in the loan documents.

(3) **Refinancing.** Any debt in existence prior to the time of the closing of the City loan and secured by a lien against the premises may, without the consent of the Department be refinanced after such closing provided:

(i) the principal amount of the refinanced debt shall not exceed the unpaid principal balance of the debt at the time of the refinancing, except that if such lien is subordinate to that of the mortgage given to secure the City loan, the principal amount shall not exceed the unpaid balance of the debt at the time of the closing of the City loan;

(ii) the rate of interest on the refinanced debt shall not exceed the rate prevailing in the private market at the time of the refinancing;

(iii) after refinancing debt service on the refinanced debt shall be paid in equal and constant periodic installments; and

(iv) at the time of the refinancing the mortgage given to secure the City loan shall not be in default with respect to any payment of principal or interest or any other payment required under the terms of said mortgage or the note secured thereby.

(4) **Further encumbrances.** Except as otherwise provided in §2-5(b)(3), an owner shall not at any time further encumber, mortgage or permit any encumbrance or lien of any kind or nature upon the premises without the prior written consent of the Department nor, shall the premises or any part thereof be conveyed without the prior written consent of the Department. On failure to comply with this paragraph (4), the Department, at its option, may declare the entire loan immediately due and payable.

(c) **Insurance requirements.** (1) **Fire insurance.** Ten days before loan closing the owner shall deliver to the Department prepaid insurance policies issued by companies in form and amounts satisfactory to the Department, insuring the premises against loss or damage by fire, with the usual extended coverage endorsement, and such other hazards as may reasonably be required by the Department. Such policies shall name the City as a mortgagee and provide that losses thereunder shall be payable to the City as its interest may appear.

(2) **Workmen's compensation.** Each contractor and sub-contractor, pursuant to the Workmen's Compensation Law, shall provide adequate Workmen's Compensation Insurance for all employees engaged in work on a building who may come within the protection of said law.

(3) The Department may require the owner or contractor to provide Public Liability, Property Damage and Employer's General Liability insurance.

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§2-06 Construction Requirements and Payment of Loan Proceeds.

(a) **Cost estimates, construction contract and contractors.** (1) **Scope of work and cost estimates.** Applicants shall be required to submit estimates showing the nature and cost of each item of the rehabilitation or improvement. The Department may require the applicant to submit more than one estimate per trade and may prescribe forms on which such estimates shall be prepared or summarized. The plans, specifications, work write-ups or any other description of work to be performed must be approved by the Department prior to the commencement of any rehabilitation work or the making of a loan for same. The technical specifications shall conform to the standards established by the Department and where applicable, shall be subject to the approval of the Department of Buildings or other governmental agencies having jurisdiction.

(2) **Approval of construction contract.** The specifications approved by the Department shall be made part of the written construction contract between the owner and the general contractor, and such construction contract shall be subject to the written approval of the Department. If a general contractor is not engaged, the owner shall enter into a written construction contract with each subcontractor. The pertinent specifications approved by the Department shall be made a part of each such contract and each such contract shall be subject to the written approval of the Department.

(3) **Contractors.** The Department reserves the right to disapprove any contractor or subcontractor because of previous violation of statutes, rules or regulations relating to discrimination, standards of employment or labor standards, or because of inefficiency, abandonment of duties, or disregard for creditors on prior jobs performed under this Program or other programs of the City.

(b) **Payment of loan proceeds.** (1) **Periodic inspections.** While rehabilitation is in progress the Department's personnel may conduct periodic inspections of the work and ma- terials.

(2) **Progress payments.** Progress payments for work completed shall be made on the basis of sworn statements as hereinafter provided, subject to review, inspection and approval by the Department. At the time of each progress payment, the borrower and the general contractor, if a general contractor has been engaged, or other contractor, shall execute and submit to the Department a sworn statement, in form specified by the Department, certifying that there has been compliance with all labor standards pursuant to §2-6(d) hereof, that payment has been made or will be made from the proceeds of such progress payments for all labor and services rendered and materials furnished in connection with the work to the date of payment and that any liens placed against the premises subsequent to the closing of the loan have been paid, bonded or otherwise discharged. In the sole discretion of the Department, progress payments shall be made payable directly to the owner, directly to the contractor, or jointly to the owner and contractor.

(3) **Retention.** The Department shall withhold an amount equal to ten percent (10%) of the total amount of each approved progress payment to create a retention fund to assure satisfactory progress and completion of the work. Up to fifty percent (50%) of such retention may be released upon the completion of at least fifty per cent (50%) of the work upon written request by the borrower and approval by the Department. The remainder of the retention funds shall be released upon:

(i) completion of the work to the full satisfaction of the Department;

(ii) issuance of approvals by governmental agencies having jurisdiction, including, where applicable, a certificate of occupancy or of completion by the Department of Buildings; and

(iii) proof of payment for all labor and materials provided in connection with the rehabilitation or improvement. In lieu of subparagraph (ii) above, the Department in its discretion may accept from an architect registered with the State of New York or a professional engineer licensed by the State of New York, a certification that the completed work complies with the requirements of the particular governmental agencies having jurisdiction thereof and that applications seeking the approval of certification of such agencies have been properly filed with or submitted to such agencies.

(4) **Escrow provisions.** The Department may require the deposit of loan advances in a separate escrow account, in a bank designated by the Department, subject to withdrawal only upon the joint signatures of the borrower and a representative of the Department. The Department may further require that the owner deposit in such escrow account, or in a separate trust account in such bank under such provisions as the Department shall prescribe, all or a designated portion of the rents collected from the multiple dwelling during the period of construction.

(5) **Failure to complete work.** If the borrower for any reason fails to diligently pursue or timely complete the rehabilitation to the full satisfaction of the Department, the Department may, after written notice to the borrower, enter upon the premises, effect the completion of the rehabilitation and charge the cost thereof to the borrower.

(6) **Adjustments for interim interest.** Any portion of the loan representing interest on advances during construction shall be adjusted upon completion of the rehabilitation as follows. If such portion shall be more than the amount required for interest on advances, the excess shall be credited to the borrower in reduction of the principal of the loan; if less than the amount required for such interest, the difference shall be deducted from the final advance of loan proceeds due borrower and paid to the City.

(c) **Non-discrimination and affirmative action.** (1) **Compliance.** The owner and any contractor or subcontractor engaged in connection with the rehabilitation or improvement must agree as a condition of such engagement to comply with all applicable federal, state and local statutes, rules and regulations relating to discrimination and standards of employment. The owner shall not exclude any person, including prospective tenants, from participation in, deny any person the benefits of, or subject any person to discrimination under this Program on the grounds of race, color, national origin, creed, age, sex, or sexual orientation.

If an owner, contractor or subcontractor fails to comply with the provisions of this paragraph (1), the Department, in its discretion, may, in addition to or as an alternative to any other remedies reserved to the City or the Department in the loan documents, withhold progress payments to the owner or disapprove the contractor or subcontractor for future work under this Program or other programs of the Department.

(2) **Books, records and inspections.** In order to assure strict compliance with this subdivision (c), all contractors and subcontractors will be required to sign an agreement, in form specified by the Department, to make their books and records available for inspection by representatives or agents of the Department. In order to determine such compliance the Department reserves the right to interview or confer with any employee at any time, on a rehabilitation site or in the office of the contractor or subcontractor.

(d) **Labor standards.** (1) **Compliance with labor standards.** The owner and any contractor or subcontractor engaged in connection with the rehabilitation or improvement must agree as a condition of such engagement to comply with all applicable federal, state and local statutes, rules and regulations relating to labor standards, including the payment of prevailing wage rates.

(2) **Enforcement.** Each contractor and subcontractor shall be required to submit to the Department for review, copies of their weekly payrolls and such other documentation and reports as may be required by the Department. If the contractor engages a subcontractor, the contractor shall be obligated to obtain such required documentation and reports from the subcontractor. All books and records of the owner, contractors, subcontractors, laborers and materialmen involved in the rehabilitation shall be made available to representatives or agents of the Department and other governmental agencies having jurisdiction, for review or audit. The above parties may be required to submit to oral examination under oath. Such examination may include, but is not limited to, the performance and quality of the work, any and all matters pertaining to the loan and compliance with applicable statutes, rules and regulations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

28 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 2 RULES AND REGULATIONS PURSUANT TO ARTICLE VIII-A OF THE PRIVATE HOUSING FINANCE LAW OF NEW YORK AND TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

§2-07 Supervision by the Department.

(a) **Power to inspect and investigate.** (1) **Covenant on inspection and investigation.** No loan shall be made unless the owner covenants in writing that so long as any part of the loan shall remain unpaid:

(i) All persons operating or managing the multiple dwelling will permit the duly authorized officers, employees, agents or inspectors of the Department to enter in or upon and inspect such multiple dwelling at all reasonable hours; and

(ii) The Department by its duly authorized representatives shall have full power to investigate into and order the owner of the multiple dwelling to furnish such reports and information as the Department may require concerning the rehabilitation or improvement and the management of the multiple dwelling, and shall have full power to audit the books of the owner with respect to such matters.

(2) **Nature of inspection.** In addition to any other inspections authorized by law, the Department may make periodic inspections of the building so long as any monies remain unpaid on the loan. Such inspections shall be for the purpose of inspecting the condition and maintenance of the building, including its utilities, fixtures and equipment. Copies of any inspection reports shall be made available to the owner with recommendations for corrective measures where necessary. Representatives of the Department may periodically visit the building for the purpose of conferring with tenants and, where necessary, serving as a liaison or intermediary on landlord-tenant problems.

(b) **Annual statement of income and expenses.** (1) No loan shall be made unless the owner covenants in writing that so long as any part of the loan shall remain unpaid the owner shall submit to the Department annually, in such form as shall be approved by the Department, a statement of the income and expenses of such multiple dwelling. The statement of income shall include, but is not limited to, the monthly rent of each residential apartment and the rent controlled or rent stabilized status of each unit.

(2) The annual statement shall cover the twelve month period ending June 30th or such other period approved by the Department, and shall be submitted within ninety days after the close of such period. The Department, in its discretion, may require submission of statements of income and expenses on a more frequent basis.

(3) On five days' notice, the books and records of the owner relative to the premises shall be made available to representatives or agents of the Department for review, examination or audit.

(c) **Failure to comply with regulations.** Upon failure or refusal of an applicant, owner or mortgagor to comply with this chapter (and all applicable rules and regulations promulgated by the governmental authority providing funds for the rehabilitation or improvement), such applicant, owner or mortgagor in addition to the imposition of any civil or criminal penalties provided by law, may be disqualified by the Department from applying for or receiving a loan under this Program or other programs of the Department for up to three (3) years following the date of any such refusal or failure. These rules and regulations shall be enforceable by the governmental authority providing funds for the rehabilitation or improvement as well as by the City.

(d) **Waiver.** The Department may waive any of this chapter where the nature of the rehabilitation or improvement or other circumstances warrant such exception. Any waiver to be effective shall require the written approval of the Commissioner or his designee and shall include a specific statement of the reason(s) for such waiver.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

28 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-01 Sponsors and Publicity.

(a) **Sponsorship of development.** Applicants for sponsorship of a limited-profit housing company development shall furnish to the Department of Housing Preservation and Development, hereinafter referred to as "HPD",

(1) an application for approval of the site and sponsors,

(2) evidence of financial ability and other qualifications, and

(3) such other data or information as HPD shall require. Applications, financial data and information with respect to qualifications shall be in such form and substance as HPD shall, from time to time, require. All references herein to "housing company" shall be deemed to mean limited-profit housing company.

(b) **Eligibility-letter of intent.** In addition to other requirements, a person or organization shall be ineligible for final approval as a sponsor of a housing company development unless such person or organization complies with all of the policies of the HPD Office of Community Partnerships.

(c) **Publicity by sponsor.** No public announcements of any kind with respect to the housing company development shall be made by the sponsor without prior written formal approval of HPD.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) open par amended City Record Jan. 2, 2003 §1, eff. Feb. 1, 2003. [See Note 1]

Subd. (b) amended City Record Jan. 2, 2003 §2, eff. Feb. 1, 2003. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 2, 2003:

Sections 32(3) and 32-a of the Private Housing Finance Law authorizes HPD to issue rules governing Article II limited-profit housing company developments (more commonly known as "Mitchell-Lama Developments"). The proposed amendments to chapter two of title 28 of the Rules of the City of New York (a) reflect statutory changes since the last time the rules were revised, (b) reflect changes in HPD's practices since the last revision, and (c) clarify instances where HPD has found issues or problems resulting from the current wording of such rules.

Rules of the City of New York

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

28 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-02 Rental or Sale of Space and Solicitation of Deposits.

(a) **Priority of applicants for dwelling units-initial rent up period.** All inquiries and applications for the purchase of shares or rental of dwelling units received within 10 days of the public announcement about the development by HPD shall be treated on a par with each other regardless of the actual date of receipt of inquiry, application or deposit. In order to receive consideration, all inquiries shall be in writing and directed to the housing company, which shall note the date of receipt thereon. All correspondence addressed to the housing company or sponsor relating to the proposed development shall be acknowledged within ten (10) days of its receipt.

(b) **Offer to rent or sell during initial rent up period.** No housing company shall advertise or offer to rent any space or sell any cooperative shares without prior written approval of HPD. Advertisements shall include language as follows: "Equal Housing Opportunity" and "supervised by N.Y.C. Department of Housing Preservation and Development." Advertisements shall also include language as follows: "Only one request for an application per person shall be permitted."

(c) **Rental schedule and charges.** No housing company shall rent or lease any dwelling units or other rental space or equipment until the schedule of rentals or of carrying charges and equity payments for the entire housing development company has been approved in writing by HPD. No change in the schedule or in the accommodations in the development shall be made without prior written approval of HPD.

(d) **Prerequisites to rental or sales.** The rental or leasing of space shall not be commenced by a housing company until:

(1) In the case of a cooperative housing company (hereinafter referred to as a "mutual housing company"), the Information Bulletin shall be accepted for filing by the Department of Law of the State of New York pursuant to §352-e of the General Business Law.

(2) The sponsoring agreement, restricted bank account, and required insurance coverage have been provided by the housing company and approved, in writing, by HPD.

(3) The sales or rental agreement, blanket position bond, and resolution of the Board of Directors of the housing company authorizing the agreement have been approved by HPD.

(4) All application forms, subscription agreements, occupancy agreements, receipts, and all other forms proposed to be used by the housing company must be approved in writing by HPD before they are used.

(e) **Solicitation of deposits.** Deposits from applicants for dwelling units shall not be solicited or accepted by the housing company until after the development has been approved by the State Division of Housing and Community Renewal, the housing company has been duly organized, and the development has been approved by the Board of Estimate or its successor.

(f) **Procedure for deposits.** Deposits shall not exceed $100 per dwelling unit, nor shall deposits be solicited or accepted until HPD has approved in writing:

(1) The form of receipt, and

(2) The opening of a trust account in which all deposits are required to be promptly deposited in the name of the housing company (or such other person or organization designated by HPD), and

(3) **The proposed selling agent.** Deposits shall be accepted by the housing company by check or money order only, payable to the housing company. In the case of a mutual housing company, all funds so received shall be deposited in said account and shall bear the title "Capital Trust Account" after the name of the housing company. Funds on deposit in said trust account shall be restricted and subject to withdrawal only upon the filing of a written authorization signed by a designee of HPD.

(4) All other criteria set forth in this section governing rental of dwelling units or sale of shares.

(g) **Form of receipt.** The receipt for the deposit shall clearly state that no monies in addition to the deposit may be collected as a further or final payment until HPD has (1) authorized the receipt by the housing company of further payments, and (2) approved the provisions of the subscription and occupancy agreement in the case of a mutual housing company development or of the lease agreement in the case of a rental development.

(h) **Filing of applications, eligibility, investigation of applicants, waiting lists.**

(1) Every housing company shall have adequate supplies of applications on hand at all times at its business and sales office.

(2) Any bona fide resident of the State of New York who has reached his/her majority under the laws of the State of New York may file an application for the lease of a dwelling unit in a rental housing company or the purchase of shares in a mutual housing company, provided, however, that in developments assisted by a project-based Section 8 contract under the United States Housing Act of 1937, as amended, or assisted by a contract under Section 236 of the National Housing Act, as amended, any legal resident of the United States who has reached his/her majority under the laws of New York may file an application for such lease or such purchase of shares. No condition or limitation shall be imposed upon an applicant in connection with the filing or execution of an application other than:

(i) an application fee;

(ii) non-returnable fees to cover the cost of credit investigation, home visit or administrative costs; and

(iii) conditions set forth in applicable governmental authorizations, Land Disposition Agreements or other documents of such public nature. The application and non-returnable fees shall be in amounts approved by HPD. No applicant can be refused a place on an external waiting list for reason of financial ineligibility. Financial eligibility shall be determined at the time an apartment is offered. However, applicants shall be advised of the financial eligibility requirements at the time of applying.

(3) Applications shall be consecutively numbered and dated upon receipt by the housing company or shall be numbered pursuant to order of selection by lottery, as applicable. The housing company or its managing agent shall provide an applicant with a dated receipt or other form of documentation setting forth the date and/or waiting list number of the application. Applicants must meet the occupancy standards at the time of application. No applicant may be placed on more than one waiting list by bedroom size in a particular housing company development.

(4) Each application, together with income and occupancy information and other data as hereinafter specified, shall be investigated by the housing company at the time an apartment is offered to determine the eligibility of the applicant. The data received by any housing company relative to tenant income shall be regarded as confidential in nature and protected accordingly to the extent permitted by law. In the case of a mutual housing company development, applicants approved by the mutual housing company shall upon notification of such approval be required to pay the balance of the purchase price of the shares allocated to the apartment. Thereafter, such application, together with supporting data, including a satisfactory credit history, and, in the case of a mutual housing company development, one copy of the contract for sale of shares approved by the housing company, shall be forwarded to HPD for its approval. Home visits conducted in connection with a credit check are permitted.

(5) Except for developments governed by §3-21 of these rules, no applicant shall be given possession of an apartment until his or her application has been approved by HPD and he or she has executed an occupancy agreement or lease.

(6) Applications which are rejected by a housing company without being submitted to HPD shall have clearly marked thereon the reason for disapproval and shall be kept for a period of time as HPD may direct, and shall be available for examination by HPD. The applicant shall be advised in writing of the reason for his or her rejection.

(7) The housing company may adopt a policy permitting or prohibiting guarantors that must be applied uniformly to all applicants. Where an applicant requires a guarantor to guarantee payment of rent/carrying charges to a housing company that has adopted a policy permitting guarantors, the managing agent shall conduct a credit check and income review of the guarantor to assure that guarantor is financially responsible.

(8) (i) All housing companies, whether mutual or rental, shall maintain waiting lists on forms approved by HPD for all tenant/cooperator applications for apartments, listed in chronological order, by apartment size, by date of receipt or by order of selection by lottery, as applicable. All eligibility requirements for age, residency and family composition must be met by the cut-off date for the lottery. As used in this chapter, the term "tenant/cooperator" shall mean a tenant residing in an apartment in a rental development and/or a shareholder/proprietary lessee residing in an apartment in a mutual housing company development, as the case may be. These master waiting lists shall be kept in the management office. A conformed copy of the master waiting lists by apartment size shall be sent to HPD. Thereafter, on a semi-annual basis, or more frequently if requested by HPD, updated waiting lists shall be submitted to HPD. The waiting lists must reflect the status of each application, i.e. who received an apartment, who declined an apartment, who withdrew, or any other circumstances, including dates the actions were taken.

(ii) The opening and closing of all waiting lists shall be subject to prior written approval of HPD. A housing company wishing to open a waiting list shall present HPD with a written proposal of its contemplated publicity efforts. The proposal shall require plans for the outreach to members of minority groups who would otherwise be unlikely to

learn of these available housing opportunities. The plan shall include advertisement in at least two daily newspapers of general circulation and two publications known to have high readership amongst minorities, and shall contain language as set forth in subdivision (b) of this section. The plan shall be presented to HPD thirty days in advance of the projected date for commencement of advertising. A housing company opening a closed waiting list shall select applicants by a lottery to be approved by HPD. When a list has sufficient names on it to last for three years, the list may be closed by HPD. Waiting lists for various size apartments may be closed at different times as the particular apartment-size list attains sufficient names.

(iii) No application shall be taken or deposit accepted for a position on the waiting list subsequent to the official closing of such waiting list. Any application added to the waiting list after the official closing date shall be rejected by HPD.

(9) Each applicant and members of his or her household shall furnish an affidavit attesting to the gross household income for the preceding year and the anticipated gross household income for the current year. Each applicant and members of his or her household shall also be required to furnish to the housing company or HPD certified copies of tax returns filed by them with the Internal Revenue Service ("IRS") and the New York State Department of Taxation and Finance for the preceding or subsequent years for admission purposes as well as during their occupancy of a dwelling unit of the development. Applicant and members of his or her household shall assume the cost of obtaining certified copies for these purposes. Failure to provide certified tax returns when requested for admission purposes shall result in rejection of the application; failure to provide certified copies during occupancy shall result in imposition of maximum surcharges upon the tenant/cooperator.

(10) The waiting list shall be printed in a legible manner and shall be available for inspection by members of the Board of Directors, members of the Tenants Association, residents of the development, city officials and applicants.

(11) If, at any time, an applicant's name has been omitted from a waiting list in error, and said applicant can present adequate documentation satisfactory to the housing company or its managing agent to substantiate an earlier date of application for an apartment, applicant's name shall be inserted into the waiting list in the corrected date order. Insertions to the waiting list shall be submitted to HPD for prior written approval.

(12) Except for the priorities mentioned below, the waiting list by apartment size in chronological order by date of receipt of application or order of selection by lottery, as applicable, shall be maintained in the following manner:

Type Apartment Desired

(Example: 1 Bedroom)

Date of Request	Name	Address	Business Telephone	Residence Telephone	Veteran's Date of Discharge
1/1/69	J. Doe	XXX Ave. Y	123-4567	765-5432	5/6/68

Selections of tenants or cooperators must be made from this list in chronological order or order of selection by lottery, as applicable.

(13) Notwithstanding anything to the contrary contained in this subdivision, an applicant on a waiting list for the lease of a dwelling unit in a rental housing company development or the purchase of shares in a mutual housing company development who, while he or she is on such waiting list, occupies a dwelling unit in such development in violation of this chapter, shall be removed from such waiting list.

(i) **Occupancy priorities.** The following occupancy priorities shall apply to all housing companies:

(1) **First priority.** Tenant/cooperators currently residing in a development whose household composition renders

them eligible for a larger or smaller apartment shall be given first priority for an internal transfer. First preference shall be given to tenant/cooperators who are moving to a smaller apartment. No priority shall be given to residents seeking additional apartments for members of their household, or for non-resident family members or any other parties. The housing company shall maintain an internal transfer list by apartment size, listed in chronological order by date of receipt of transfer request. If, at any time, a tenant/cooperator's name has been omitted from the internal transfer list in error, and said tenant/cooperator can present adequate documentation satisfactory to the housing company or its managing agent to substantiate an earlier request for a transfer, said tenant/cooperator's name shall be inserted into the internal list in the corrected date order. Insertions to the internal transfer list shall be submitted to HPD for prior written approval.

A tenant/cooperator on an internal transfer list, whose household composition so changes as to render him or her ineligible for the apartment size requested, shall be placed on the appropriate size apartment list as of the date when the change occurred or the date the original request is made, whichever is later; provided, however, that, except for enlargement of a household due to birth or adoption, the change to a larger household composition must have occurred at least one year prior to placement on the internal transfer list. If a tenant/cooperator is offered an apartment as an internal transfer and he or she is no longer eligible for that size apartment due to a change in household composition, his or her name shall then be placed on the appropriate size apartment list as of the date when the change occurred which made him or her ineligible.

The tenant/cooperator must meet the occupancy standards for the size apartment requested at the time that he or she places his or her name on the internal transfer list and must have been in residence for a period of no less than one year before he or she may request a transfer to a larger apartment. The income affidavit submitted by the tenant/cooperator on file with the housing company or its managing agent must reflect a sufficient number of occupants to warrant a transfer at the time of his or her request, as well as when an apartment is offered. The housing company or its managing agent shall deny a transfer to the tenant/cooperator if he or she fails to satisfy these requirements. No transfer request will be accepted based on pregnancy. No transfer of apartments shall be effected if the tenant/cooperator seeking the transfer is in arrears in rent/carrying charges, surcharges, capital assessments, submetering charges or any other fees or charges. The housing company shall advise the tenant/cooperator in writing of its denial of a request for transfer.

A tenant/cooperator who transfers to a smaller apartment, whether at his or her request or at the mandate of the housing company, shall not be considered over income for purposes of eviction if his or her income exceeds the maximum allowable for the new apartment.

The tenant/cooperator shall be required to pay a surcharge effective the first day of the month following his or her residency in the new apartment if his or her income exceeds the maximum allowable for that apartment.

(2) **Second priority.** Pursuant to §31(7) of the Private Housing Finance Law, honorably discharged veterans (or their surviving spouse or domestic partner) who:

(i) have served in the armed forces of the United States for a period of at least six months (or any shorter period which terminated due to death or injury incurred in such service), provided some portion of the period of service was between December 22, 1961 and May 7, 1975, and

(ii) have been thereafter discharged or released therefrom under conditions other than dishonorable, or died in such service, not more than five years prior to the time of application for admission to such project. The preference granted under this law applies to all veterans (or their surviving spouse or domestic partner) regardless of whether they served in Vietnam, the United States or in any other country, provided the veteran meets the conditions outlined above.

(2-a) **Third priority.** Pursuant to §31(7-a) of the Private Housing Finance Law, preference in admission to a project with an open waiting list, as determined by HPD, shall be given to disabled veterans as such term is defined

pursuant to §85 of the Civil Service Law, and for projects with a closed list, as determined by HPD, preference shall be given upon the opening of the waiting list to such disabled veterans.

(3) **Fourth priority.** Persons listed on the external waiting lists by apartment size in strict chronological order by date of receipt of application or order of selection by lottery, as applicable. Family members of a tenant/cooperator, whether or not members of the tenant/cooperator's household, shall not receive preferential treatment on the waiting lists.

(4) The above priorities shall not be applicable to staff or student housing or to housing for the elderly or disabled except as such priorities apply within each special category. Preference in admission to any development or to such portion of any development which has been specifically designed for occupancy by elderly or disabled persons, as the case may be, shall be given to such persons.

(j) **Application fee for rentals and mutual housing companies.** A rental or mutual housing company development may require an application fee of up to $200 at the time of submission of an application for an apartment. Any deviation from this subdivision (j) requires prior written approval from HPD. Said application fee is to be returned in full without interest if the housing company rejects the application. The housing company may retain a reasonable portion of the application fee, not to exceed fifty dollars, for administrative costs if an applicant withdraws his or her application. If an apartment is offered to an applicant and the applicant does not accept the apartment, the housing company may remove the applicant from the waiting list and retain part or all of the application fee for a processing fee. A housing company may elect to offer an applicant an apartment for a second or third time, but such additional offers are not mandatory.

(k) **Security deposit for purchase of cooperative shares.** A mutual housing company may, at its option, require an applicant for a mutual housing company apartment to submit, along with his/her written acceptance of said apartment, a security deposit of up to one month's carrying charges which may be retained by the housing company and apportioned between the housing company and the outgoing cooperator to reimburse them respectively for their losses in the event the applicant withdraws his or her acceptance of the apartment.

(l) **Verification of income at time of admission and during occupancy.** (1) **Admission income verification.** The housing company or its managing agent shall verify the aggregate income of each applicant and members of his or her household prior to admission to the development in the following manner:

(i) Each applicant shall furnish an affidavit attesting to the gross household income of his or her household for the preceding year and the anticipated gross household income for the current year. All members of the household must be listed on the income affidavit whether or not income was earned.

(ii) Each applicant and each member of the household having any income shall furnish proof of income by supplying copies of W-2 forms filed by them for the preceding year, or a statement from their employer setting forth their current rate of income and their total earned income for the immediately preceding year and a copy of their IRS or New York State income tax returns for the immediately preceding year. HPD or the housing company may require submission of certified income tax returns for admission purposes. Each self-employed applicant and self-employed member of the household who will reside with the applicant shall furnish a certified copy of his or her IRS and New York State income tax returns for the immediately preceding year. Applicants and members of the applicant's household shall pay the cost of obtaining certified copies of their income tax returns.

(iii) A copy of amendments to any tax returns, or of tax assessments shall be furnished to the housing company within 30 days after filing the amendment or receipt of notice of the assessment.

(iv) Additional proof of eligibility may be requested by the housing company or HPD.

(2) **Income verification during occupancy.** During occupancy, a tenant/cooperator and members of his or her

household shall submit when requested by the housing company, its managing agent or HPD certified copies of their IRS and/or New York State income tax returns for audit or verification purposes with regard to continued eligibility, surcharges or any other valid purpose. The tenant/cooperator and members of his or her household shall assume the cost of obtaining such certified copies.

(3) Failure to provide certified income tax returns or other documentation. Failure to provide certified copies of income tax returns or other required documentation shall result in denial of admission to new applicants and imposition of the maximum surcharge to those already in occupancy.

(m) **Occupancy standards.** (1) Apartments shall be offered for occupancy as they become vacant in accordance with the standards set forth below (occupancy standards shall be applied without regard to the pending birth or pending adoption of a child):

(i) Efficiency apartments (no bedrooms). One (1) or two (2) persons.

(ii) One (1) bedroom apartments. Two (2) or three (3) persons shall occupy a one-bedroom apartment. A single person may occupy a one-bedroom apartment if the development has less than ten percent (10%) efficiency apartments.

(iii) Two (2) bedroom apartments. No fewer than three persons, a brother and a sister who are both adults, or a parent or guardian with at least one child.

(iv) Three (3) bedroom apartments. No fewer than (A) five (5) persons, (B) parent(s) or guardian(s) with two children of the opposite sex, (C) a household of three adults with one child where at least one adult is the parent or guardian of such child, or (D) a household of one parent or guardian and his or her three children shall occupy a three-bedroom apartment.

(v) Four (4) bedroom apartments. No fewer than (6) persons.

(vi) All apartments. In all cases the tenant/cooperator named on the lease must be at least eighteen years of age and must actually occupy the apartment as his or her primary residence.

(vii) HPD may grant waivers of occupancy standards for medical reasons.

(2) Priority shall be given to internal transfers in the offering of all vacant apartments.

(n) **Lease and occupancy agreements.** (1) No tenant/cooperator shall be permitted to occupy an apartment until an executed lease or occupancy agreement has been approved by HPD. The minimum term of such lease or occupancy agreement shall be one year.

(2) No tenant/cooperator shall have the right to sublet without prior written approval of HPD and the housing company, which only shall be given in exceptional circumstances, including, but not limited to, military service. No tenant/cooperator shall have the right to assign his or her lease/occupancy agreement.

(3) No tenant/cooperator may accept any consideration or thing of value from a guest, invitee or other occupant in exchange for occupancy, whether temporary or permanent, unless such person is listed on the application, income affidavit or recertification of the tenant/cooperator and the tenant/cooperator continues to maintain the apartment as his or her primary residence.

(4) It is required that the apartment of the tenant/cooperator be at initial occupancy and continue to be his or her primary place of residence. The facts and circumstances to be considered in determining whether a tenant/cooperator occupies a dwelling unit as his or her primary residence include, but are not limited to, whether such tenant/cooperator

(i) specifies an address other than such dwelling unit as his or her place of residence or domicile in any tax return,

motor vehicle registration, driver's license or other document filed with a public agency,

(ii) gives an address other than such dwelling unit as his or her voting address,

(iii) sublets or permits unauthorized persons to occupy the dwelling unit without written approval by HPD and the housing company or attempts to assign such dwelling unit, or

(iv) spent less than an aggregate of one hundred eighty-three days in the preceding calendar year in the City at such dwelling unit (unless such individual is in active service in the armed forces of the United States or took occupancy at such dwelling unit during the preceding calendar year). However, no dwelling unit may be considered the primary residence of the tenant/cooperator unless the tenant/cooperator provides proof that he or she either filed a New York City Resident Income Tax return at the claimed primary residence for the most recent preceding taxable year for which such return should have been filed or that the tenant/cooperator was not legally obligated to file such tax return pursuant to §1705(b)(1)(A) and §1751(a) of the Administrative Code due to residency in a foreign country or pursuant to §11-1751(a) of the Administrative Code and §6-01 of the Tax Law because the tenant/cooperator's income for such year was below that required for the filing of a return or pursuant to §893 or 894 of the Internal Revenue Code due to employment by a foreign government or international organization or due to any treaty obligation of the United States which applies to such taxpayer. The tenant/cooperator whose residency is being questioned will be obligated to provide proof that his or her apartment is his or her primary place of residence, including, but not limited to, certified New York State income tax returns, utility bills, and voter registration data.

(5) The terms and conditions of all tenancies, including tenancies of commercial and professional space, shall be subject to HPD written approval.

(o) **Applicability of Section 235-F of the Real Property Law.** (1) **Definition of terms.** Section 235-f of the Real Property Law of the State of New York shall apply to all housing companies, subject to the restrictions set forth in this section. As used in this subdivision (o), the term "occupant" shall mean a person, other than a tenant/cooperator, residing together with the tenant/cooperator in an apartment in a rental or mutual housing company development subject to these rules, who is not a party to the lease or occupancy agreement, including, but not limited to, a member of a tenant/cooperator's immediate family, whose occupancy has been approved by the housing company and HPD.

(2) **Admission and eligibility requirements for occupants.**

(i) No tenant/cooperator shall permit a person to "co-occupy" the tenant/cooperator's apartment without first obtaining the written approval of the housing company and/or HPD, except as specified in subdivision (p) of this section. Such approval shall be sought by the tenant/cooperator and the proposed occupant, submitting to the housing company through its managing agent the same financial information as is required to be submitted by any tenant/cooperator.

(ii) The housing company and/or HPD may reject any proposed occupant:

(A) For the same reasons that the housing company and/or HPD would reject the application of a person who applies to become a tenant/cooperator of a vacant apartment, provided that no rejection shall be based on the financial ability of a proposed occupant to pay the rent/carrying charge for the apartment if the tenant/cooperator has adequate financial ability to pay such rent/carrying charge; or

(B) when the acceptance of a proposed occupant would result in the apartment being occupied contrary to the occupancy standards for apartments set forth in subdivision (m) of this section; or

(C) when the acceptance of a proposed occupant would result in the apartment being occupied in violation of the income eligibility requirements of the Private Housing Finance Law or these rules, or

(D) when the acceptance of a proposed occupant would violate the income eligibility or other occupancy standards or requirements of any other federal, state or city program applicable to such apartment.

(3) **Status of occupant.**

(i) No occupant, except as otherwise set forth in subdivision (p) of this section, shall have any rights under the lease/occupancy agreement for the apartment or to succeed to the rights of the tenant/cooperator, if the tenancy of the tenant/cooperator terminates. Acceptance by the housing company of full or partial payment of rent/carrying charges from an occupant, by check or otherwise, shall not give the occupant any rights of tenancy under the lease/occupancy agreement or otherwise.

(ii) Each occupant shall be required to furnish to the housing company such financial and other information, on an annual or more frequent basis, that the tenant/cooperator is required to furnish to the housing company, in the form that the tenant/cooperator is required to furnish such information, including by affidavit. Where the rental or carrying charge for an apartment, or a rental surcharge, is based on the income of persons residing in the apartment, the income of the occupant shall be included in such com- putation.

(iii) The tenant/cooperator and the occupant shall occupy the apartment as their primary residence, and the occupant shall represent his or her intention to do so prior to commencing occupancy.

(p) **Occupancy rights of family members.** (1) The rights of family members of a tenant/cooperator who have requested to remain as the lawful tenant/cooperator are governed by policies and procedures set forth in this subdivision, except in those instances where this subdivision is preempted by the rules or regulations of other federal, state or city programs.

(2) As used in this subdivision the following definitions shall apply:

(i) "Tenant/Cooperator" shall mean any person named on a lease as a lessee or who is a party to a rental agreement or proprietary lease and obligated to pay rent or carrying charges for the use or occupancy of an apartment.

(ii) "Family member" shall mean:

(A) A husband, wife, son, daughter, stepson, stepdaughter, including any adopted children father, mother, stepfather, stepmother, brother, sister, nephew, niece, uncle, aunt, grandfather, grandmother, grandson, grandaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the tenant/cooperator.

(B) Any other person residing with the tenant/cooperator in the apartment as a primary residence who can prove emotional and financial commitment and interdependence between such person and the tenant/cooperator. Although no single factor shall be determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed shall be the income affidavit filed by the tenant/cooperator for the apartment and other evidence which may include, without limitation, the following factors:

(a) longevity of the relationship;

(b) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;

(c) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, person and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;

(d) engaging in family activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;

(e) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, registering a domestic partnership pursuant to Executive Order No. 48, dated January 7, 1993 or Local Law No. 27 of 1998, serving as a representative payee for purposes of public benefits, or other such formalizations;

(f) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;

(g) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;

(h) engaging in other patterns of behavior, or other action which evidences the intention of creating a long-term, emotionally committed relationship.

In no event shall evidence of a sexual relationship between such persons be required or considered.

(iii) "Disabled person" shall mean a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which is demonstrable by medically acceptable clinical and laboratory diagnostic techniques and which is expected to be permanent and to substantially limit one or more of such person's major life activities.

(iv) "Senior citizen" shall mean a person who is sixty-two (62) years of age or older.

(3) Unless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to federal, state or local law, regulations or other requirements of governmental agencies, if the tenant/cooperator has permanently vacated the apartment, any member of such tenant/cooperator's family, who has resided with the tenant/cooperator in the apartment as a primary residence, as determined by §3-02(n)(4) of these rules, for a period of not less than two years immediately prior to the tenant/cooperator's permanent vacating of the apartment, and has appeared on the income affidavits for at least the two consecutive annual reporting periods prior to the tenant/cooperator's permanent vacating of the apartment, or where such person seeking succession rights is a senior citizen or disabled person, for a period of not less than one year immediately prior to the tenant/cooperator's permanent vacating of the apartment, and has appeared on the income affidavit for at least the reporting period immediately prior to the permanent vacating of the apartment by the tenant/cooperator, or from the inception of the tenancy or commencement of the relationship if for less than such periods, may request to be named as a tenant/cooperator on the lease and where applicable on the stock certificate. In the event that HPD has authorized the housing company not to collect surcharges based on income affidavits, the family member shall be asked to provide other evidence of occupancy for the required period of time. The burden of proof is on said family member to show use of the apartment as his or her primary residence during the required period to be eligible to succeed to possession.

(4) Family members do not have the right to succeed the tenant/cooperator in occupancy if the housing company terminates the tenancy of a tenant/cooperator for cause.

(5) The minimum periods of required residency set forth in this section shall not be deemed to be interrupted by any period during which the family member who is seeking succession rights temporarily relocates because he or she:

(i) is engaged in military duty;

(ii) is enrolled as a full-time student;

(iii) is not in residence at the apartment pursuant to a court order not involving any terms or provisions of the lease/occupancy agreement, and not involving any grounds specified in the Real Property Actions and Proceedings

Law;

(iv) is engaged in employment requiring temporary relocation from the apartment;

(v) is hospitalized temporarily for medical treatment; or

(vi) has other reasonable grounds that shall be determined by HPD upon application by such person.

(6) The housing company shall secure credible evidence of the tenant/cooperator's permanent removal from the apartment and the surrender of the apartment or the tenant/cooperator's written declaration to vacate the apartment prior to the consideration of reletting or succession to the apartment by a family member.

(i) Where a tenant/cooperator has died, the lease and shares of stock for such decedent's apartment shall be surrendered by the decedent's estate or survivors for redemption. The housing company, upon written request received from any member of such deceased tenant/cooperator's family who has resided with the deceased tenant/cooperator in the apartment as a primary residence as set forth in paragraph (3) of this subdivision, shall sell or transfer the shares and/or the lease to said family member.

(ii) In the event that that is a legal dispute or claim involving the rightful ownership of the stock assigned to an apartment in a mutual housing company, pending a determination thereof by an appropriate tribunal or court of law, such family members as set forth in paragraph (3) of this subdivision shall continue to be permitted to reside in the apartment.

(iii) If the appropriate tribunal or court of law shall determine that someone other than such family members as set forth in paragraph (3) of this subdivision is entitled to the ownership of the stock then, upon presentation of a court order or other valid evidence, such new owner shall be permitted solely to surrender the stock to the housing company for redemption pursuant to the applicable provisions of the Private Housing Finance Law. In such event, such family members in occupancy as set forth in paragraph (3) of this subdivision shall be afforded a reasonable opportunity to purchase the stock from the housing company for the price authorized pursuant to the Private Housing Finance Law and §3-06 of this chapter.

(7) The housing company and/or HPD shall have the option of requiring any proposed successor to move to a smaller apartment in the development, in the event the apartment in question is or would become underoccupied according to occupancy standards set forth in subdivision (m) of this section.

(8) Where a family member applies to the housing company for permission to remain in occupancy as a tenant/cooperator, the housing company shall act on the application within thirty (30) days of receipt by either requesting that HPD approve the application or by denying the application and notifying the applicant family members in writing of its determination.

(i) In the event the housing company denies such application, the notice to the applicant shall set forth in writing the reasons why the evidence submitted was deemed inadequate and resulted in such denial and inform the applicant of the right to appeal and the method of appeal.

(ii) A family member whose application to succeed to a lease or an occupancy agreement has been denied by a housing company may, within thirty (30) calendar days of receipt of the written denial, appeal to the Commissioner of HPD (hereinafter "Commissioner") or his or her designee. Such appeal shall include proof of service of a copy of such appeal upon the housing company. The appeal shall briefly set forth the reasons why the family member believes he or she is entitled to occupy the apartment and any errors or erroneous findings he or she believes are contained in the housing company's determination. The Commissioner or his or her designee shall review the housing company's determination and any additional information submitted by the applicant and shall issue the final agency decision with regard to the applicant's application. The only review of this determination is pursuant to Article 78 of the Civil Practice

Law and Rules.

(iii) Pending the agency's determination, the applicant may continue in occupancy and shall be required to pay for the use and occupancy of the apartment in an amount equal to the monthly rental/carrying charge paid by the vacating tenant/cooperator.

(iv) In the event the agency determines that the applicant is ineligible to remain in occupancy then such applicant shall vacate the apartment or the housing company may seek to terminate the occupancy without any further approval by HPD.

(9) This subdivision shall not apply to staff housing where employment at the institution is a primary requirement for residency. It shall also not apply to housing designated for senior citizens or the disabled, unless such succeeding family member would have qualified for an apartment as an original tenant.

(q) **Payment of rent and deposit of security.** (1) A rental housing company may require all new tenants to deposit as security an amount equal to a maximum of two months' rent, or such amount as may be approved by HPD at the time of signing the lease except where federal law or regulations prohibit. Commercial or professional tenants may be required to deposit as much rent as security as the housing company requires.

(2) Each rental housing company is required to open an interest bearing bank account in accordance with §7-103 of the General Obligations Law.

(r) **Unauthorized payments.** No company, associate, director, officer, employee, agent or other person shall solicit or receive, directly or indirectly, any commission, bonus, gratuity, fee or any other payment not expressly authorized by HPD from any person interested directly or indirectly, in the filing of an application or in obtaining a lease or occupancy agreement.

Violation, in whole or in part, of Penal Law, §180.55 by any agent, sub-agent, or employee of the agent is a crime and may be grounds for the cancellation of a sales or rental agreement or managing agent's agreement by HPD.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record Jan. 2, 2003 §3, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (c) amended City Record Jan. 2, 2003 §4, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (d) par (1) amended City Record Jan. 2, 2003 §5, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (f) pars (3), (4) amended City Record Jan. 2, 2003 §6, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (g) amended City Record Jan. 2, 2003 §7, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (h) amended City Record Jan. 2, 2003 §8, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (h) par (2) amended City Record Jan. 17, 2003 §1, eff. Feb. 1, 2003. [See Note 1]

Subd. (h) par (13) added City Record Nov. 12, 2003 §1, eff. Dec. 12, 2003. [See Note 2]

Subd. (i) amended City Record Jan. 2, 2003 §9, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (i) open par amended City Record Oct. 31, 2007 §1, eff. Nov. 30, 2007. [See Note 4]

Subd. (i) par (2-a) added City Record Oct. 31, 2007 §1, eff. Nov. 30, 2007. [See Note 4]

Subd. (i) par (3) amended City Record Oct. 31, 2007 §1, eff. Nov. 30, 2007. [See Note 4]

Subd. (j) amended City Record Jan. 2, 2003 §10, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (k) amended City Record Jan. 2, 2003 §11, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (l) par (1) subpar (ii) amended City Record Jan. 2, 2003 §12, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (l) par (2) amended City Record Jan. 2, 2003 §13, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (m) amended City Record Jan. 2, 2003 §14, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (n) amended City Record Jan. 2, 2003 §15, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (o) amended City Record Jan. 2, 2003 §16, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (p) repealed and added City Record July 27, 1993 eff. Aug. 26, 1993.

Subd. (p) par (2) subpar (ii) clause (B) item (e) amended City Record Jan. 2, 2003 §17, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (p) par (3) amended City Record July 14, 2006 §1, eff. Aug. 13, 2006. [See Note 3]

Subd. (p) par (3) amended City Record Jan. 2, 2003 §18, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (p) par (5) amended City Record Jan. 2, 2003 §19, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (p) par (6) subpar (i) amended City Record Jan. 2, 2003 §20, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (p) par (8) subpar (ii) amended City Record Aug. 10, 2009 §1, eff. Sept. 9, 2009. [See T28 §3-14 Note 3]

Subd. (p) par (8) subpars (ii), (iii) amended City Record Jan. 2, 2003 §21, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (q) amended City Record Jan. 2, 2003 §22, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (r) amended City Record Jan. 2, 2003 §23, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 17, 2003:

Supplemental notice is hereby given pursuant to the authority vested in the Commissioner of the Department of

Housing Preservation and Development by §1802 of the New York City Charter and Sections 32(3) and 32-a of the Private Housing Finance Law, and in accordance with the requirements of §1043 of the New York City Charter that the Department of Housing Preservation and Development adopted amended rules for City-Aided Limited-Profit Housing Companies that were originally published in the City Record on January 2, 2003 and that will take effect on February 1, 2003. This supplemental notice is being given to correct certain typographical errors of a technical nature that appeared in the original City Record publication on January 2, 2003 and only includes those provisions in which such typographical errors appeared. The effective date of the amended rules remains February 1, 2003.

2. Statement of Basis and Purpose in City Record Nov. 12, 2003: Sections 32(3) and 32-a of the Private Housing Finance Law authorize HPD to issue rules governing Article II limited-profit housing company developments (more commonly known as "Mitchell-Lama developments"). The proposed amendment to 28 RCNY §3-02(h) provides that a waiting list applicant who occupies a Mitchell-Lama apartment in that development in violation of the rules while he or she is on such waiting list shall be removed from such waiting list. Mitchell-Lama apartments are highly desirable and in scarce supply. Persons who illegally occupy such units should not be able to "legalize" their occupancy by thereafter assuming their places on the waiting list. This is tantamount to rewarding such persons for violating the program's restrictions. The proposed amendments to 28 RCNY §3-14(d) and §3-17(a) require members or officers of a Tenants Association or Board of Directors to reside in the relevant limited-profit housing company development as his or her primary place of residence. A duly constituted Tenants Association of a rental housing company or Board of Directors of a mutual housing company represents the interests of the tenant body in such developments, and the members and officers thereof need to be in residence in order to truly provide effective representation.

3. Statement of Basis and Purpose in City Record July 14, 2006: The first amendment clarifies the timing of the co-residency requirement for succession to a Mitchell-Lama apartment. The other amendments to the Mitchell-Lama rules primarily address the issue of surcharges. Courts do not allow housing companies to bring summary dispossess proceedings against tenant/cooperators who have failed to pay their surcharges. This is because the housing companies do not list surcharges as a component of rent on their leases and occupancy agreements. To conform our rules to the case law, the amendments require housing companies to obtain a certificate of eviction following an administrative hearing by an HPD designated hearing officer pursuant to 28 RCNY §3-18. The last amendment conforms HPD's Mitchell-Lama rules to the federal government's rules regarding surcharges.

4. Statement of Basis and Purpose in City Record Oct. 31, 2007: The rule amendments implement two State laws enacted this year. Chapter 420 of the Laws of 2007 grants a preference to disabled veterans who have served in the armed forces of the United States for the purposes of occupancy in Mitchell-Lama projects. Chapter 597 of the Laws of 2007 allows a mutual housing company, with HPD's approval, to require a standard form and procedure for shareholders to cast proxies and absentee ballots.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Linville Housing Co., Inc. v. McGann, New York Law Journal June 24, 1996, page 29, col. 6 (App.Term 1st Dept.). The Housing Court lacks subject matter jurisdiction to determine tenant succession rights to Mitchell-Lama apartments. Original jurisdiction over such claims is vested with the New York City Department of Housing Preservation and Development.

¶ 2. A person does not have succession rights under the Mitchell-Lama law unless he or she is a family member and resided with the former tenant for at least two years prior to the tenant's departure. Alfred v. Barrios-Paoli, 251 A.D.2d 659, 676 N.Y.S.2d 185 (App.Div. 2d Dept. 1998).

¶ 3. The New York City Department of Housing Preservation and Development has exclusive jurisdiction to determine succession claims of remaining family members, and its issuance of a certificate of eviction cannot be collaterally attacked in a subsequent summary proceeding. Lindsay Park Housing Corp. v. Grant, 190 Misc.2d 777, 740 N.Y.S.2d 552 (App.Term 2nd Dept. 2001).

¶ 4. A Mitchell-Lama cooperative served a shareholder with a preliminary notice of grounds for eviction seeking to terminate the tenancy on the ground that she violated the terms of her occupancy agreement and New York City regulation in that her application and her tenancy were not approved by the New York City Department of Housing Preservation and Development (HPD), her name was not on the mandated waiting list and she did not meet the eligibility requirements for the apartment (the latter is covered by 28 RCNY 3-03). The notice alleged that the tenant obtained the apartment by fraudulent means, including payments to certain persons at rates in excess of the HPD mandated resale price. The notice also stated that if plaintiff failed to cure the defaults within 10 days from it service upon her, the cooperative would apply to HPD for a certificate of eviction. The tenant's response was to commence an action for a declaratory judgment that her tenancy was valid. She applied to the Supreme Court for a Yellowstone injunction tolling the time to cure and prohibiting the cooperative from taking steps to terminate the lease. The court, however, denied the injunction, holding that HPD had primary jurisdiction to determine whether the tenant's alleged violations of the Mitchell-Lama rules warranted termination of the tenancy. Thus, the tenant had to proceed by means of a hearing before HPD and then, if necessary, bring an Article 78 from HPD's determination. Wong v. Gouverneur Gardens Housing Corp., 308 A.D.2d 301, 764 N.Y.S.2d 53 (1st Dept. 2003).

¶ 5. Under 28 RCNY § 3-02(i), a tenant who resides with his or her family will be eligible for an internal apartment transfer list only if the entire family, and not the individual tenant, is seeking the apartment. A tenant who is mistakenly given an internal transfer in violation of the rules, is subject to eviction. It does not matter whether the tenant intentionally violated any rules. If the tenant was not in fact eligible for the apartment, he or she cannot remain there. Matter of Verdell v. Lincoln Amsterdam House, Inc., 27 A.D.3d 388, 813 N.Y.S.2d 68 (2nd Dept. 2006).

¶ 6. In Matter of Nole v. N.Y.C. Dept. of Housing Preservation and Development, 26 A.D.3d 163, 808 N.Y.S.2d 678 (1st Dept. 2006), leave to appeal dism'd, 6 N.Y.3d 890, 817 N.Y.S.2d 624, 850 N.E.2d 671(2006), a tenant brought an Article 78 proceeding seeking to annul an administrative determination that granted a certificate of eviction on the ground of non-primary residence. In upholding the certificate of eviction, the court held that 28 RCNY 3-02(n)(4)(iv), which provides that a dwelling unit cannot be considered the primary residence of a tenant or cooperator unless a New York City tax return was filed for the most recent tax year or the tenant was not legally obligated to file a return, does not create an unconstitutional irrebuttable presumption.

¶ 7. Where a daughter admitted that she moved into her mother's apartment two months before her mother's death, the daughter did not meet the length-of-residence test for succession rights. Mayfield v. Esplanade Gardens, 30 A.D.3d 296, 817 N.Y.S.2d 275 (1st Dept. 2006), appeal dismissed, 7 N.Y.3d 864, 824 N.Y.S.2d 607, 857 N.E.2d 1138 (2006).

¶ 8. There was substantial evidence to support a finding that a tenant did not reside at the subject apartment as a primary residence, where the tenant owned a home in New Jersey at which his wife and children resided, where he received mail at the New Jersey house, which was listed by the Social Security Administration, where he had a New Jersey driver's license, and where the phone in the subject apartment was listed in the name of someone else. Shi Yi Tang v. New York City Dept. of Housing Preservation and Development, 29 A.D.3d 470, 816 N.Y.S.2d 423 (1st Dept. 2006).

¶ 9. The procedures governing succession rights in State-assisted Mitchell-Lama housing are substantially similar to those set forth in 28 RCNY § 3-02(p), governing City-assisted Mitchell-Lama housing. Rochdale Village, Inc. v. Goode, 16 Misc.3d 49, 842 N.Y.S.2d 142 (App.Term, 2d & 11th Judic. Dists. 2007).

¶ 10. Where an occupant does not meet the requirements for succession rights under the Mitchell-Lama rules, the occupant cannot acquire rights merely because the housing company had acquiesced in petitioner's occupancy for a time after petitioner's parents (the named tenants) had vacated the apartment. Schorr v. NYC Dept. of Housing Preservation and Dev. 2008 NY Slip Op. 2083, 10 NY3d 776, 857 N.Y.S.2d, 2008 NY Lexis 540 (Ct. App. NY).

¶ 11. In one case, plaintiff sought succession rights to Michell-Lama apartment based upon his alleged co-occupancy of the apartment along with his daughter. The fact that petitioner included income affidavits submitted by

his daughter and son-in-law did not establish his entitlement to the subject apartment as a matter of law. HPD was entitled to consider the fact that there was no objective documentary evidence in support of petitioner's claim. Further, there were inconsistencies in plaintiff's application. Petitioner provided an address other than the subject apartment as his place or residence on a tax return filed during the relevant time period. HPD did not act illegally or irrationally in declining petitioner's request that his appeal be reopened to consider additional documents, or in concluding that such documents, if considered, would not have warranted a different determination. Moreover, due process rights had been satisfied and an evidentiary hearing was not needed. (28 RCNY 3-02(p)(8)(ii). In re Hochhauser/Lurie v. NYC Dept. of HPD, 48 AD3d 288, 853 NYS2d 22, 2008 NY App. Div. Lexis 1231 (App. Div. 1st Dept.)

¶ 12. In another case, a tenant (Bonfante) claimed succession rights to his apartment, alleging that he co-resided in the apartment with his grandfather, the sole shareholder of record, for two years prior to the grandfather's death, as required under 28 RCNY 3-02(p)(3). The respondent, Franklin Plaza, is subject to regulations created by Housing Preservation Development (HPD). Franklin Plaza denied petitioner's claim based on the fact that Bonfante moved into the apartment with his girl friend only after his grandfather left for a nursing care facility. Moreover, Bonfante failed to notify Franklin Plaza of his intentions, and his name did not appear on his grandfather's income documents for the three prior calendar years. The petitioner's father, who resides in another apartment, listed petitioner as a member of his household on his income affidavits for the three prior calendar years. The Dept. of Housing Preservation and Development agreed that Bonfante was not entitled to succession rights, and, in an Article 78 proceeding, the court upheld that determination. Petitioner clearly failed to meet the elements needed for succession rights, in that he did not live in the apartment at the same time as his grandfather, and was not listed on the income affidavits for at least the two reporting periods prior to the tenant's permanent vacating of the apartment. The fact that petitioner's name was not on the income affidavits created a presumption that he did not reside in the apartment as a primary residence. Although that presumption is rebuttable, the tenant failed to provide the necessary proof. The court further held that HPD was not compelled to conduct a hearing in a succession rights case where, as here, petitioner was not listed on the certification forms. IMO Application of Franklin R. Bonfante v. Donovan 2008 NY Slip Op. 50416U, 2008 NY Misc. Lexis 899 (Sup. Ct. NY County).

¶ 13. A great-grandparent is not one of the relatives listed in the statute. Thus, a great-granddaughter, who sought succession rights to her great-grandmother's apartment, was required to prove that tenant and petitioner shared a financial and emotional commitment and had financial interdependence. Matter of Williams, 2007 NY Slip Op. 52188U, 17 Misc. 3d 1129A, 851 N.Y.S.2d 75 (Sup.Ct. New York Co.).

Rules of the City of New York

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

28 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-03 Tenant Income Limitations, Surcharges and Applicability of Federal §8 Subsidy to Tenant/Cooperators in Residence.

(a) **Income limitations.** (1) The dwellings in a rental development shall be available for persons or families whose probable aggregate annual income at the time of admission and during the period of occupancy does not exceed the greater of (i) the median income for such persons or families for the New York City metropolitan statistical area or (ii) seven times the annual rental, including the value or cost of heat, light, water and cooking fuel, except that in the case of families with three or more dependents, such ratio shall not exceed eight times the annual rental.

(2) "Probable aggregate annual income" shall mean the total income of the chief wage earner as reported in the New York State income tax return, plus the total income, in excess of $15,000 or such amount as determined by State law, of each other member of the household, less such personal exemptions and deductions for medical expenses as are actually taken by each tax paying occupant on the New York State tax return. However, the income of a household member, under 21 years of age, who is a full time student shall not be included in the computation of such annual income.

(3) Subject to the conditions contained in paragraphs (1) and (2) supra, in determining the eligibility of tenant/cooperators in a mutual housing company development, there may be added to the total annual carrying charges an amount equal to six per cent of the original investment of a person or family in the equity obligations of such mutual housing company and where same is not included in the carrying charges payable to the mutual housing company, the value or cost to the tenant/cooperator of:

(i) heat, light, water and cooking fuel

(ii) the cost of repainting, upon the basis of $45 per room per year and

(iii) the cost of replacement of fixtures and appliances upon the basis of $10 per room per year.

(4) Notwithstanding other applicable provisions, families with two or more dependents whose probable aggregate annual income does not exceed one hundred twenty-five percent of the limitations as to income as determined pursuant to paragraphs (1) and (2) of this subdivision (a), shall also be eligible for admission to the dwelling of a project provided that any family becoming eligible for admission by reason hereof shall pay, from the time of admission, a rental surcharge as provided for in subdivision (b) of this section, computed on the basis of the income limitations applicable to such family in the absence of this provision.

(b) **Surcharges.** In the event that the aggregate annual income of all occupants of a dwelling unit shall exceed the maximum above set forth, the tenant or cooperator shall be required to pay a surcharge based upon the following schedule:

Schedule of Surcharges

Income	Percent of Basic Rent Constituting Surcharge
Up to 100 percent of maximum income limit	None
From 100 percent and up to 105 percent of maximum income limit	None
From 105 percent and up to 110 percent of maximum income limit	5
From 110 percent and up to 115 percent of maximum income limit	10
From 115 percent and up to 120 percent of maximum income limit	15
From 120 percent and up to 125 percent of maximum income limit	20
From 125 percent and up to 130 percent of maximum income limit	25
From 130 percent and up to 135 percent of maximum income limit	30
From 135 percent and up to 140 percent of maximum income limit	35
From 140 percent and up to 145 percent of maximum income limit	40
From 145 percent and up to 150 percent of maximum income limit	45
From 150 percent and over	50

(c) **Surcharge procedures.** (1) Surcharges shall be payable monthly on a current basis by tenant/cooperators in occupancy based upon income realized during the prior calendar year and such income shall be reported on income affidavits to be furnished by tenant/cooperators.

(2) On February 15th of each year during occupancy, or at such other date as determined by HPD, the housing company shall distribute to each tenant/cooperator an affidavit to be executed by all occupants residing in the apartment as to the income realized by each of such occupants during the preceding calendar year. The information requested shall be set forth in a form of affidavit prescribed by HPD.

(3) The tenant/cooperator shall return to the housing company or its managing agent the income affidavit supplied by the housing company duly executed and notarized by April 30th of each year.

(4) The surcharges shall be computed by the housing company or its managing agent in sufficient time so that surcharge billings shall commence no later than July 1st of each year. The income affidavits will be subject to verification at any time, pursuant to such method as may be determined by HPD, including, but not limited to, spot check audits of certified income tax forms and verification by the New York State Department of Taxation and Finance as set forth in §60(9) of the Private Housing Finance Law. Tenant/cooperators and other occupants selected for audit shall be required to provide a certified copy of the IRS or New York State income tax return for the audited year(s). The tenant/cooperators shall assume the cost of obtaining said certified copies. If HPD establishes a verification system with the New York State Department of Taxation and Finance, those tenant/cooperators found to have reporting

discrepancies shall be obligated to furnish certified copies of IRS or New York State income tax returns. The housing company may, upon HPD's approval, implement a policy imposing a penalty fee when additional income is found that would have resulted in an additional surcharge.

(5) A housing company or its designee is required to collect all surcharges computed on the basis of income received by all individuals in occupancy.

(d) **General requirements.** (1) In the event that a tenant/cooperator shall fail to return a fully completed affidavit by April 30th of each year, the income of such tenant/cooperator shall be presumed to have exceeded the maximum allowable income by 150 percent or more. Written notice shall thereupon be given, informing such tenant/cooperator that the maximum surcharge will be imposed effective July 1st. In the event completed income affidavits are submitted after April 30th but prior to June 30th, the maximum surcharge will not be imposed. However a non-refundable administrative fee, payable to the housing company, shall be charged. This fee shall not exceed $50.00. The housing company may remit half of any such fee collected to the managing agent to compensate for the additional administrative work.

In the event completed income affidavits are submitted after June 30th, a correction to the maximum surcharge billing shall be made effective the first day of the month following the submission of such income affidavit. However, a non-refundable administrative fee, payable to the housing company, shall be charged. This fee shall not exceed $150.00. The housing company may remit half of any such fee collected to the managing agent to compensate for the additional administrative work. HPD may permit reimbursement of excess surcharge to the tenant/cooperator in extenuating circumstances.

(2) Reserved.

(3) Whenever changes occur in rentals or carrying charges or any component thereof used in the computation of surcharges, surcharges shall be recalculated by the housing company or its managing agent.

(4) A housing company cannot bring an eviction proceeding against any tenant/cooperator who fails or refuses to pay surcharges without the issuance of a certificate of eviction by HPD following an administrative hearing by an HPD designated hearing officer in accordance with §3-18 of this chapter.

(5) Housing companies or their managing agents shall submit a copy of the surcharge information tabulation sheets, and all changes thereto, together with copies of the income affidavits for HPD review and evaluation. Surcharge records shall be kept available by the housing company or its managing agent for inspection by HPD.

(6) Tenant/cooperators and other occupants shall be required by HPD to furnish certified copies of their IRS and New York State income tax returns. The cost for the certified report is to be borne by the tenant/cooperator.

(e) **Removal.** (1) In the event that the income of a household in occupancy shall increase and exceed the maximum prescribed by these rules by more than twenty-five percent based on the latest existing rent/carrying charges, such household shall be subject to removal from the dwelling unit occupied by them. However, such household may be permitted to remain in occupancy until such income exceeds the maximum prescribed by these rules by more than fifty percent, if the housing company with the approval of HPD shall determine that removal would cause hardship to such household.

(2) Households living in a development under a lease for ninety-nine years renewable, or in perpetuity, or by reason of ownership of stock in a housing company may, with the approval of HPD, be permitted to remain in occupancy for not more than three years after such increase in income exceeds the maximum prescribed by these rules by more than fifty percent unless such occupancy is extended by the housing company with the approval of HPD. Any such household required to vacate an apartment because of excessive income as herein provided shall be discharged from liability on any note, bond, or other evidence of indebtedness relating thereto and shall be reimbursed by the

housing company for all sums paid by such household to the housing company on account of the purchase of stock or income debentures as a condition of such occupancy.

(f) **Interim changes in income.** (1) Where a tenant/cooperator anticipates a long-term reduction in income, resulting from death of a wage earner, retirement, or other such circumstances, said tenant/cooperator must submit documentation of such interim change in income to the managing agent. The managing agent shall verify the documentation submitted, and if a change in income is so determined, shall remove the surcharge and inform HPD of such action. HPD reserves the right to disapprove the action of the housing company.

(2) Where a tenant/cooperator anticipates a temporary reduction in income, such as job loss, temporary illness, or other such circumstances, said tenant/cooperator must submit documentation of such temporary reduction in income to the managing agent. The managing agent shall verify the documentation submitted, and if the interim change in income is so determined, shall reduce, eliminate or defer collection of surcharges for a reasonable period of time or shall arrange for an extended payment plan.

(3) The managing agent must maintain supporting documentation for all agreements which shall be available for review by HPD. Any tenant/cooperator shall have the right to appeal any determination under this subdivision (f) to HPD.

(g) **Applicability of federal §8 subsidy to tenant/cooperators in residence.** Pursuant to §31, subdivision 10 of the Private Housing Finance Law, a housing company shall accept federal reimbursement under §8 of the Housing and Community Development Act of 1974, as amended, in lieu of such amount of rent/carrying charge payment for a person qualifying under such act. A housing company shall not reject an applicant for an apartment solely on the basis that all or part of the rent/carrying charges shall be paid under §8 of the Housing and Community Development Act of 1974, as amended.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §24, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subd. (d) amended City Record July 14, 2006 §2, eff. Aug. 13, 2006. [See T28 §3-02 Note 3]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Summary proceedings cannot be used to recover the surcharges imposed by § 3-02(b). A plenary action must be used. Bedford Gardens v. Silberstein, N.Y.L.J., June 29, 1998, page 30, col. 4 (App.Term 2d & 11th Judic. Dists.).

Rules of the City of New York

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

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-04 Housing Company Funds and Bonds.

(a) **Bank accounts.** All funds of the housing company shall be deposited in banks or savings and loan associations maintaining an office in the State of New York in accounts which are insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation. All bank accounts shall be maintained in the name of the housing company and in a manner and form prescribed by HPD.

(b) **Trust funds.** All funds received by housing companies shall be held by such companies as trust funds to be applied and used for the purpose of carrying out their obligations under the law.

(c) **Fidelity bonds general.** Each housing company shall obtain and keep in full force and effect a fidelity bond or bonds covering its signatory officers and such other persons as are authorized to receive or disburse monies on behalf of the company. These bonds shall be in such amounts as HPD may require, shall be drawn in form and substance satisfactory to it and shall have as surety thereunder such company or companies authorized to do business within the State of New York as are approved by HPD.

(d) **Fidelity bonds for rental, sales and managing agent.** All rentals, sales and managing agents shall be required to deliver to the housing company and to HPD before their employment shall become effective, a fidelity bond covering all officers and employees handling funds of the housing company. The amount, form and substance of such bond shall be subject to approval by both the housing company and HPD.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-05 Rent Collection.

(a) **Rent collection.** (1) Rent/carrying charges of tenant/cooperators is payable on the first day of each month.

(2) It is the responsibility of the managing agent to collect rent/carrying charges and take the necessary actions to collect past due rent/carrying charges.

(3) A charge for late payment of rent/carrying charges may be implemented by each housing company. In order to implement a late charge, a written request must be submitted to HPD setting forth the dollar amount of the proposed charge and the date of the month it is to be billed. In the case of a mutual housing company, a Board of Directors Resolution certified and acknowledged by the Secretary of the Corporation setting forth the adoption of the late charge by the Corporation shall be submitted to HPD. HPD shall respond in writing. Late charges shall be considered additional rent.

(4) Where a tenant has vacated, whether voluntarily or involuntarily, it is still the responsibility of the managing agent and counsel to locate such tenant and to collect all sums due the housing company. In achieving this end, consideration should be given to utilizing the services of a credit bureau to locate a vacated tenant, ascertain his or her current employment and discover available assets, if any. Judgments should be secured, and garnishments placed, if feasible.

(b) **Write-offs of uncollectible accounts.**(l) Where collection efforts on the part of the housing company, managing agent and counsel have not been successful, the housing company may turn over uncollected accounts to a collection agency licensed by the New York City Department of Consumer Affairs.

(2) Where all efforts as outlined above prove to be unsuccessful and an account appears to be uncollectible, write-offs should be handled as follows:

(i) Accounts receivable not in excess of three months' rent may be written off at discretion of the housing company.

(ii) Accounts receivable equal to or in excess of three months' rent may be written off only after approval by HPD. Requests for such approval must be supported by a detailed description of collection efforts and such other material as may be required by HPD.

(iii) Except for cases of fraud and misrepresentation, counsel to the housing company may be permitted to compromise and settle all accounts of vacated tenants turned over to him or her regardless of the amount involved when such compromise and settlement are of an urgent nature and are approved by the housing company. HPD must be advised of such settlements in cases where indebtedness equaled or exceeded three months' rent.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §25, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subd. (b) par (1) amended City Record Jan. 17, 2003 §2, eff. Feb. 1, 2003. [See T28 §3-02 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-06 Resale of Cooperative Shares.

(a) **Procedures.** (1) A shareholder desiring to sell his or her shares in a mutual housing company shall notify the housing company in writing no later than 90 days in advance of his or her intention to sell his or her shares to the housing company or its designee, pursuant to the provisions of the housing company by-laws and occupancy agreement.

(2) The shareholder shall transfer his or her shares to the housing company and shall thereafter surrender possession of the apartment at the agreed upon time pursuant to arrangements made with the housing company. After the shareholder has surrendered possession of the apartment, the housing company will inspect the apartment to determine necessary repairs. Any surcharge or any other fees and charges owing to the housing company shall be deducted from the equity due the cooperator.

(3) The housing company shall enter the transfer of shares on its books.

(4) The shareholder shall be responsible for carrying charges and submetered electrical charges for up to 90 days after surrendering possession of the apartment or until the housing company transfers the shares to the new owner, whichever occurs earlier.

(5) (i) If a tenant/cooperator seeks to withdraw his or her offer of sale of shares, and no commitment has been made to a purchaser, the housing company at its option, may permit the tenant/cooperator to withdraw his or her offer, and may charge the tenant/cooperator a reasonable fee for this service.

(ii) If, within an 18 month period, shares for the same apartment are re-offered for sale after a previous withdrawal

pursuant to subparagraph (i) of this paragraph, the tenant/cooperator must post security for administrative costs in the amount of two months' carrying charges. If the shares for the apartment are sold, the security shall be refunded. If the shares for the apartment are withdrawn again, the security shall be forfeited.

(6) The occupancy agreement for each mutual housing company shall set forth the obligations of each shareholder with respect to the condition of the unit at the time that such shareholder vacates the unit.

(7) In the case of National Housing Act of 1937, as amended, §223(f) refinanced mutual housing companies, where the appliances were included as security for the insured mortgage, the outgoing shareholder shall be required to leave behind the appliances which were in place at the time of refinancing or to replace them with appliances of equal size and amenities. In the case of non-refinanced mutual housing companies, a board of directors may adopt a uniform policy whereby either the incoming or outgoing cooperator shall be responsible for providing a stove and refrigerator for his or her apartment.

A board may adopt a policy which apportions the cost of appliances between the incoming and outgoing shareholders as follows: As appliances require replacement, the cooperator in residence would be required to purchase the new appliance(s). A life-expectancy schedule would be established for each type of appliance and the appliance would be depreciated over that pre-determined time period. If the cooperator in residence vacated the apartment any time during the depreciation period, he or she would be reimbursed for the remainder of the period by the incoming cooperator. If the depreciation period were over when the cooperator vacated, the incoming cooperator would be obligated to purchase new appliances and the process would commence again. The depreciated appliances would become the property of the housing company. Any policy adopted must be applied uniformly to all apartments.

(8) The mutual housing company shall follow the chronological order of its waiting list in the sale of shares. In the event a mutual housing company has substantially depleted its waiting list, the mutual housing company shall seek potential applicants. A mutual housing company and its managing agent shall only open a closed waiting list in accordance with the requirements of §3-02 of these rules.

(b) **Resale price of shares.** (1) The resale price of shares in a mutual housing company shall be fixed by the mutual housing company, subject to the approval of HPD and shall be equal to

(i) the consideration the selling tenant/cooperator paid for such shares and

(ii) any capital assessments and voluntary capital contributions approved by HPD and paid by the selling tenant/cooperator to the mutual housing company, to the extent not already included in the consideration paid for such shares, and,

(iii) if established by the mutual housing company, a proportionate share of the actual aggregate amortization paid on all existing and prior mortgages on the project in reduction of total outstanding principal indebtedness during such period as shall be fixed by the board of directors of the mutual housing company, to the extent not already included in the consideration paid for such shares, and

(iv) reasonable non-refundable administrative charges, not to exceed $150. Said administrative charge is to be retained by the mutual housing company.

(2) The aggregate amount to be paid to the selling tenant/cooperator with respect to the sale of the selling tenant/cooperator's shares shall be fixed by the board of directors of the mutual housing company, subject to the approval of HPD, and shall be equal to

(i) the consideration the selling tenant/cooperator paid for such shares,

(ii) any capital assessments and voluntary capital contributions approved by HPD and paid by the selling

tenant/cooperator to the mutual housing company, to the extent not already included in the consideration paid for such shares, and

(iii) a proportionate share of the actual aggregate amortization paid by the selling tenant/cooperator on all existing and prior mortgages on the project in reduction of total outstanding principal indebtedness during such period as shall be fixed by the board of directors pursuant to subparagraph (iii) of paragraph (1) of this subdivision (b), to the extent not already included in the consideration paid for such shares. To the extent that a selling tenant/cooperator may be entitled to an amount less than the resale price of his or her shares, the difference shall be retained by the mutual housing company.

(3) The Board of Directors may, subject to the approval of HPD, establish a general policy pursuant to which a selling tenant/cooperator who had occupied more than one dwelling unit is paid an amount measured by his or her proportionate share of the actual aggregate amortization paid during his or her period of occupancy on all existing or prior mortgages on the project.

To the extent that a selling tenant/cooperator may be entitled to an amount greater than the resale price of shares, the difference may be paid to the selling tenant/cooperator by the mutual housing company.

(4) The "proportionate share of the actual aggregate amortization paid on all existing and prior mortgages on the project" referred to in paragraph (1) of subdivision (b) of this section shall be in the same ratio to such actual aggregate amortization as the number of shares held by the selling tenant/cooperator at the time of sale bears to the total number of shares of issued and outstanding capital stock of the mutual housing company during such period.

(5) Nothing contained in this section shall prohibit the continued use of any method of calculating resale price adopted by a mutual housing company and approved by HPD prior to July 26, 1983.

(6) Participation in the full amortization provisions of this section is voluntary and not mandatory.

(7) A mutual housing company electing to amend its by-laws pursuant to this subdivision (b) shall submit to HPD for its approval, a Board of Directors Resolution certified and acknowledged by the Secretary of the Corporation setting forth the adoption of this provision and a fully executed copy of a by-law amendment certified by the Secretary of the Corporation.

(c) **Joint ownership of cooperative shares.** A mutual housing company shall, upon request of the shareholder, permit members of his or her immediate family in occupancy to become co-owners of shares and co-signatories on the occupancy agreement provided that the mutual housing company receives evidence satisfactory to it that: Such individual has been included on the two most recent income affidavits filed by the shareholder; has been a bona fide resident of the apartment for at least two years during which time the apartment has been his or her primary residence; and that such individual and the shareholder intend to continue in good faith to remain in joint occupancy. A mutual housing company Board of Directors and its managing agent shall not unreasonably withhold permission to add a co-owner or co-signatory as set forth above. The financial status of the proposed party shall not be a factor as long as the prime tenant/cooperator meets the minimum eligibility requirements at the time of request. A mutual housing company may limit the number of persons permitted to be added to the stock certificate. The same criteria shall be utilized for all residents. For purposes of this section, the definition of family member contained in §3-02(p) of these rules shall apply. Co-ownership of shares does not guarantee the right to succession to an apartment in a mutual housing company development. Successor cooperators must qualify under §3-02(p) of these rules.

(d) **Bequeathing of apartments.** In no event may the right of occupancy in a Mitchell-Lama mutual housing company development be bequeathed to another. Upon the death of the tenant/cooperator, the shares must be returned to the mutual housing company which will arrange for a sale pursuant to subdivision (a) of this section. Notwithstanding the foregoing, eligible members of the tenant/cooperator's immediate family in occupancy may acquire such shares if they meet the requirements of §3-02(p) of these rules.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §26, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subd. (a) par (2) (amended as par (3)) amended City Record Jan. 17, 2003 §3, eff. Feb. 1, 2003. [See T28 §3-02 Note 1]

Subd. (b) par (4) amended City Record Jan. 17, 2003 §3, eff. Feb. 1, 2003. [See T28 §3-02 Note 1]

Subd. (c) amended City Record July 27, 1993, eff. Aug. 26, 1993.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-07 Management and Operations.

(a) **Special services.** A housing company may furnish tenant/cooperators with special services not provided for in the lease or occupancy agreement such as bus, laundry, television antenna or other services upon such terms as HPD shall approve in writing. These services and all facilities used in connection therewith, shall be made available to all tenant/cooperators on equal terms. Discontinuance of special services at the request of a tenant/cooperator shall not entitle the tenant/cooperator to a reduction in rent or carrying charges unless HPD shall otherwise direct.

(b) **Services, repairs, replacements and improvements.** (1) Each housing company shall maintain its structures, grounds, elevators, boilers and other equipment, either by contract or by qualified employees in such a manner as to preserve the property, to protect the health and safety of the residents and employees, and to provide economical operation of the development.

(2) Contracts for building services, repairs, replacements, redecorating or improvements and supplies shall be let on the basis of lowest cost compatible with quality of performance, material and workmanship, on the basis of no less than three competitive bids, according to the following schedule:

In housing companies with fewer than five hundred (500) dwelling units, contracts over $15,000 shall be submitted for HPD written approval.

In housing companies with five hundred (500) dwelling units or greater, contracts over $30,000 shall be submitted for HPD written approval. The housing company's submission shall include the three bids plus a contract executed by the successful bidder as well as the other documents as set forth below.

Notwithstanding the foregoing, HPD reserves the right to require any individual housing company to submit for approval any or all contracts over $5,000.

In the case of a mutual housing company, the submission shall be accompanied by

(i) a certified copy of resolution of the housing company's Board of Directors acknowledged by the Secretary of the Corporation, approving the contract, bearing the housing company's corporate seal and

(ii) the housing company's attorney's certification that the proposed contract is in compliance with the rules of HPD.

In the case of a rental development, the president or managing general partner of the housing company or his or her duly authorized designee must sign the contract.

The following language shall be included in all contracts for building services, repairs, replacements, redecorating and improvements: "Material, equipment and workmanship shall be subject to the inspection and approval of HPD or its duly authorized agent at the discretion of HPD during the progress of the work and before final payment is made on the contract."

Every contract subject to HPD approval shall contain the following language: "This agreement is subject to written approval by HPD. No work shall commence until this agreement is approved by HPD."

(3) The housing company or its managing agent shall require that all firms performing work on the housing company's behalf, supply evidence in the form of a certificate of insurance for workers' compensation and commercial general liability, naming the housing company and HPD as additional insured parties. For contracts subject to HPD approval, such certificates must be submitted to HPD for its written approval before any such contract is executed by the housing company.

The liability limits for workers' compensation shall be statutory, and the commercial general liability insurance shall be in standard comprehensive general liability form, naming the housing company and HPD as additional insureds, against all claims for bodily injury, death or property damage in an amount not less than $1,000,000 per occurrence, $2,000,000 annual aggregate for bodily injury and property damages.

(4) On all contracts over $100,000, the successful bidder shall, not later than the time of its delivery of the executed contract, deliver to the housing company and HPD an executed Performance Bond for 100 percent of the accepted bid as surety for the faithful performance of the contract and an executed Payment Bond for 100 percent of the accepted bid as surety for the payment of all persons performing labor or furnishing materials in connection therewith. Alternatively, the contractor may submit an unconditional, irrevocable letter of credit from a New York Clearing House bank equal to at least 10 percent (10%) of the dollar amount of the contract which shall provide that the full amount may be drawn down by the housing company upon delivery of a letter certifying default of the contractor. Request for waiver of a bond or letter of credit shall be submitted in writing to HPD by the housing company.

(5) The following language shall be included in all contracts that are subject to HPD approval for building services, repairs, replacements, redecorating and improvements: "Contractor shall not assign any monies due or to become due hereunder without the written consent of the Owner and HPD, nor shall Contractor subcontract or assign any of the work without prior written approval by the Owner and HPD of such sub-contractor or assignee." In addition, such contracts shall contain the following language: "This agreement is subject to written approval by HPD."

(6) In the case of emergencies, where immediate employment of a contractor is deemed necessary by the housing company to prevent damage to property or prevent injury to persons, submission to HPD of the data required by paragraph (2) above may be made after execution of a contract or performance of the work, provided that such submission is made promptly following the date on which such emergency arose. However, if the emergency occurs

during working hours, notification of emergency should be made by telephone to HPD and verbal approval obtained prior to commencement of repairs.

(7) All contracts for building services or maintenance of buildings equipment on an annual or time basis that require HPD approval pursuant to paragraph two of this subdivision shall be submitted to HPD for written approval before execution by the housing company, and prior to expiration of the previous contract, if any. Where such a contract does not provide for automatic renewal, a new contract must be submitted for approval to HPD at least thirty (30) days prior to expiration of the existing contract. All such contracts for building services or maintenance of buildings equipment shall provide that they are subject to termination without cause upon thirty (30) days written notice by the housing company or upon ten (10) days written notice by HPD, and immediately upon notification by the housing company or HPD that the contractor has materially breached his contract. After termination, no amounts shall be owed except for work actually completed.

(8) In the event that any director, officer, shareholder, employee or agent of any housing company shall be directly or indirectly connected with any person, firm or corporation which may submit any bid, or to whom any contract is proposed or awarded, pursuant to the provisions of paragraph (2) or (5) hereof, a statement setting forth the nature of such connection shall be included in the submission to HPD and shall be made a part of the minutes of the meeting wherein the contract was approved.

(c) **Contracts and retainers.** (1) All contracts and retainer agreements with attorneys and accountants shall be subject to termination without cause by HPD or the housing company upon thirty (30) days written notice and immediately by written notice by the housing company or HPD if there has been a material breach of contract. After termination, no amounts shall be owed except for work actually completed. Managing agent contracts are subject to §3-16 of these rules.

(2) An accountant retained by a housing company shall be an independent C.P.A. licensed to practice under the laws of the State of New York.

(3) No company, association, director, officer, employee, agent or other person shall solicit or receive, directly or indirectly any commission, bonus, gratuity, fee or any other payment not expressly authorized by HPD from any individual, firm or corporation which may submit any bid, or to whom any contract is proposed to be awarded.

(4) Violation of this subdivision (c) by any company, association, director, officer, employee, agent or other person shall be cause for discharge and any other appropriate action; and a provision to such effect shall be incorporated in all employment agreements entered into by the company.

(d) **Cancellation by HPD.** Any contract, agreement or retainer, entered into by the housing company or its managing agent in violation of the provisions of this section shall be subject to immediate cancellation by HPD.

(e) **Employees, wages and living quarters.** (1) The number, types, qualifications and rate of pay of the employees required for the proper maintenance and operation of the housing company's properties shall be subject to review by HPD and the housing company shall submit staffing plans to HPD for its review and approval, if required by HPD.

(2) The rental of an apartment in a development by an employee of the housing company shall be subject to the same rules and procedures as are applicable to all other tenants, except that income limitations, occupancy standards, and surcharges shall not apply when the employee is living at the development for the furtherance of the housing company's interests. However, the number of apartments, if any, which may be set aside for such employees shall be subject to the approval of HPD. The agreement shall provide for the termination of occupancy by the employee when his or her services are discontinued. Such resident employees shall not be shareholders, if such company is a mutual housing company.

(f) **Certification of superintendents and boiler technicians.** The housing company or managing agent shall

require the building superintendent and one boiler room technician from each housing company to obtain a certificate of completion of a course offered by an accredited institution on the maintenance of a vacuum steam system, where applicable. Such accreditation must be furnished to the Division of Housing Supervision of HPD if requested by HPD.

(g) **Examination of operations.** The administration and operation of a development shall be subject to examination at the discretion of HPD. The housing company shall make all data, records, information and areas of the physical property available for such examination.

(1) **Physical inspection.** All developments are subject to physical inspection. HPD may retain a third party to make inspections or may rely on inspections made by others. The inspector shall carry out his or her inspection together with a representative of the housing company. In the case of a rental development, a representative of the duly constituted Tenants Association may join in the inspection.

The Tenants Association may make a list of complaints available to HPD in advance of the inspection date; the inspector shall notify the representative in advance of the date and time of the inspection. All inspections shall be made in the course of normal business hours.

HPD or its designee shall issue a written inspection report which shall be sent to the owner or President of the Board of Directors, the managing agent and, in the case of a rental development, the Tenants Association. The managing agent, with the knowledge and approval of the housing company, shall cause all emergency repairs to be made immediately and will comply expeditiously with the requirements of the inspection report. The managing agent will advise HPD in writing of actions taken to comply with recommendations in the inspection report.

To facilitate the physical inspection of a development, the following records shall be maintained:

(i) Apartment painting, maintenance and repair files.

(ii) A log of repairs or improvements to plant, structures and grounds.

(iii) A log of service interruptions, such as heat, hot water, elevator and utilities.

(iv)A log of contracts, including, but not limited to, name of contractor, fee and expiration date.

(v) A log of general supplies, tools and equipment.

(vi) An oil consumption log setting forth delivery date, gallonage and price per gallon; or a steam or gas consumption log, where applicable.

(vii) Electricity usage log (monthly kwh consumed).

(2) **Fiscal examination of operations.** HPD shall at its discretion conduct audits and reviews of housing company financial operations. The housing company shall cooperate in making all books and records available for such audit and review. To facilitate the examination of data, the following records shall be maintained and (where indicated) sent to HPD:

(i) Permanent individual tenant/cooperator files which shall include the initial application forms, credit checks, home visit reports where applicable, and other supporting documentation. In addition, the file should contain all income affidavits, tenant/cooperator leases and occupancy agreements and any special forms, riders, documents and information which may pertain to the eligibility of said tenant/cooperator for his or her apartment and any and all subsidies which may be applicable.

(ii) A quarterly vacancy report to be sent to HPD within thirty days of its preparation.

(iii) Current tenant/cooperator rent roll to be sent to HPD every twelve months.

(iv) A monthly operating statement showing rent/carrying charges and other receipts, disbursements, aged accounts payable and aged rent/carrying charge arrears, including the name of occupant in arrears, his or her apartment number and dollar amount of arrears to be sent to HPD no later than thirty days after the end of the month for which such monthly operating statement was prepared.

(v) An annual audited financial statement which shall be prepared for and submitted to HPD no later than one hundred twenty (120) days from the end of the audited fiscal period.

(3) In the event the income and reserves of the housing company shall be insufficient, as determined by HPD, to complete all required repairs, HPD, in conjunction with the housing company, shall establish priorities.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §27, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subd. (b) par (3) amended City Record Aug. 10, 2009 §2, eff. Sept. 9, 2009. [See T28 §3-14 Note 3]

Subd. (c) par (1) amended City Record Jan. 17, 2003 §4, eff. Feb. 1, 2003. [See T28 §3-02 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. In one case, the operator of coin-metered laundry facilities brought an action against a Mitchell-Lama cooperative, seeking specific performance of a laundry lease agreement. Although the regulation, at the time in question, required the approval of the Department of Housing Preservation and Development (HPD) on any contract over $10,000 (the figure has since been raised to $30,000), the contract did not contain any condition regarding HPD's approval, and the lessor's agent represented that he was authorized to enter into the lease. The court held that even though HPD's approval for the lease was never obtained, the lessee had a viable action against the lessee for breach, if the lessor could show that it was never given actual notice of the HPD regulation. If the lessee had been dealing directly with a government agency, it would have been chargeable with any regulations applicable to the proposed contract. In this case, however, the lessor was dealing with a private cooperative, and was not chargeable with knowledge of the applicable regulations. Although the lessee could not operate the machines in the absence of HPD approval, it nevertheless had the right to maintain an action against the cooperative for damages. Cointech, Inc. v. Masaryk Towers Corp., 777 N.Y.S.2d 76 (App.Div. 1st Dept. 2004).

Rules of the City of New York

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

28 RCNY 3-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-08 Reserves and Escrow Accounts.

(a) **Reserves.** Each housing company shall be required to maintain a reserve fund comprised of three components, each of which shall be funded as follows:

(1) **Mutual housing companies:**

(i) Reserve for replacements. Ten dollars ($10) per rental room per year, plus interest earned on all reserve fund investments.

(ii) Reserve for painting and decorating. Twenty-five dollars ($25) per dwelling unit per year.

(iii) Reserve for vacancy and collection losses and contingencies. Three percent (3%) of the rent roll until the accumulation in this reserve is equal to twenty-five percent (25%) of the rent roll; and thereafter, such deposits as are necessary to maintain the reserve at the stated level.

It should be understood that the reserve component for vacancy and collection losses and contingencies is primarily set aside for the funding of "contingencies" which are defined as unexpected occurrences or emergencies.

(2) **Rental Housing Companies.**

(i) Reserve for replacements. Stoves and refrigerators-fifteen dollars ($15) per rental room per year. Dishwashers-forty dollars and fifty cents ($40.50) per apartment per year. Air conditioners-seventy-five ($75) per air conditioner per year; plus interest earned on all reserve fund investments, where applicable.

(ii) Reserve for painting and decorating. Thirty-five dollars ($35) per rental room per year.

(iii) Reserve for vacancy and collection losses and contingencies. Three percent (3%) of the rent roll, until the accumulation in this reserve is equal to twenty-five percent (25%) of the rent roll; and thereafter, such deposits as are necessary to maintain the reserve at the stated level.

It should be understood that the reserve component for replacements in a rental development applies to replacement of appliances primarily, rather than replacement of systems. The "contingency" reserve component is set aside for unexpected occurrences or emergencies.

(b) **Bank resolutions.** The resolution filed with the bank shall contain, in addition to the clauses required by the bank, the following clauses: Further resolved, that withdrawals from such account be accompanied by "Authorization for Expenditure of Funds" signed by a designated HPD official, and that duplicate copies of monthly bank statements shall be forwarded to HPD's Division of Housing Supervision, upon HPD's request; that when an investment in securities is contemplated, withdrawal shall be made upon presentation of "Authorization for Expenditure of Funds;" that the bank shall make the investment, shall hold the securities in safekeeping and shall deposit to such account the proceeds realized on either liquidation or redemption.

Further resolved, that this resolution shall remain in full force and effect unless and until revoked with HPD's written consent. A certified copy of the housing company's resolution opening the bank account and a photocopy of the housing company's signature card filed with the bank shall be submitted to HPD's Division of Housing Supervision.

(c) **Administration of accounts.** (1) **Deposits.** There shall be deposited into the reserve account monthly an amount equal to one-twelfth (1/12) of all the annual reserves.

(2) **Disbursements.** No disbursements from the reserve account shall be made without prior written authorization by HPD.

(3) **Investments.** All funds not currently required shall be invested. Such investments shall be limited to Federally insured interest-bearing bank accounts and Federal obligations.

(i) If interest-bearing bank accounts are utilized, passbooks and bank records shall be annotated as follows:

Withdrawals from this account are limited to checks payable to (Housing Company), Reserve Fund Account, (Name of bank in which reserve fund is maintained).

(ii) If Federal obligations are purchased, a custodial agreement for the bank in which the "Reserve Fund Account" is maintained. This agreement shall require that all interest and proceeds from liquidation or redemption of securities be re-deposited to the "Reserve Fund Account." A photocopy of the custodial agreement shall be submitted to HPD's Division of Housing Supervision.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §28, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subd. (b) amended City Record Aug. 10, 2009 §3, eff. Sept. 9, 2009. [See T28 §3-14 Note 3]

Subd. (c) par (3) subpar (ii) amended City Record Aug. 10, 2009 §4, eff. Sept. 9, 2009. [See T28

§3-14 Note 3]

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28 RCNY 3-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-09 Insurance.

(a) **General.** The following is intended to serve as minimum requirements for housing companies in arranging an insurance program to provide protection against the usual hazards experienced during the course of operation. Since the same conditions may not prevail in all developments, separate studies should be made as to the actual exposures and hazards and the insurance coverage necessary to meet them.

It is incumbent upon all housing companies to see that proper insurance coverage is maintained at all times and that coverages are modified or changed to meet changing conditions. Copies of all insurance policies and renewals shall be transmitted promptly to HPD. Furthermore, all insurance coverage that is maintained by housing companies must be issued by an insurance company in good standing licensed to issue insurance in New York State.

(b) **Minimum required coverage.**

(1) **Upon opening a corporate or sales office.**

(i) **Public liability (Comprehensive General Liability Form)** Minimum limits of $1,000,000 per occurrence, $2,000,000 annual aggregate for bodily injury and property damage.

(ii) **Workers' compensation.** As required by statute.

(iii) **Disability benefits.** As required by statute.

(iv) **Blanket fidelity bond.** Appropriate limits as determined by HPD.

(v) **Hold up. Inside and outside.** Money and securities. (Broad Form if possible where safe is located on premises.)

(2) **Upon acquisition of site.**

(i) **Liability coverage.** To be endorsed to include site and any buildings thereon.

(ii) **Fire insurance.** Housing company should obtain this coverage on its buildings and/or personal property.

(3) **Upon commencement of construction of the limited-profit housing company development.** The following coverages are generally supplied by the General Contractor pursuant to the terms of the construction contract. Contractors shall be required to submit the required policies delineated in this section to HPD before the commencement of any construction work and operations shall not be allowed to commence until coverage required has been approved by HPD.

(i) **Contractor's public and protective liability and property damage.** Contractor shall provide such coverage to protect him and his subcontractors against claims for property damage and personal injury, including accidental death, in the sum of $1,000,000 per occurrence, $2,000,000 annual aggregate bodily injury and property damage.

(ii) **Owner's protective liability and property damage.** Contractor shall provide such coverage to protect the housing company against claims for property damage and personal injury including accidental death caused by the operation of the contractor or his subcontractors during the performance of the work in the sum of $1,000,000 per occurrence, $2,000,000 annual aggregate bodily injury and property damage.

(iii) **Workers' compensation.** As required by statute.

(iv) **Disability benefits.** As required by statute.

(v) **Fire and extended coverage insurance.** Pursuant to the terms of the Construction Contract. It is recommended that a builder's risk "Completed Value" form of policy be used. Adequate coverage shall be maintained for any materials which are stored away for the development site. It is recommended that the housing company rather than the contractor obtain this coverage.

(vi) **Boiler.** Minimum of $1,000,000 pursuant to the terms of the Construction Contract. It is recommended that the housing company rather than the contractor obtain this coverage.

(vii) **Payment and performance bond.** Pursuant to the terms of the Construction Contract.

(4) **Upon occupancy of buildings.** Policies carried during the initial or construction periods of a housing development for which there is a continuing exposure thereafter may remain in force and the policies adjusted in accordance with requirements during later conditions.

(i) **Comprehensive general liability.** Minimum limits of $1,000,000 per occurrence, $2,000,000 annual aggregate for bodily injury including accidental death and property damage. This policy should include coverage for the maintenance or use of the premises as well as for all elevators which are located in the development.

(ii) **All Risk Property Policy.** Policy should be written in an amount equal to at least 90 percent of the insurable value of the development. The prior approval of HPD shall be obtained for a deductible clause in excess of $5,000. Fire policies shall contain a provision that the settlement of all fire losses shall be subject to the approval of HPD. Policies shall be endorsed to cover the interest of The City of New York, as first mortgagee.

(iii) **Rents.** The rental income of the development should be written on a 100 percent co-insurance basis.

(iv) **Workers' compensation.** As required by statute.

(v) **Disability benefits.** As required by statute.

(vi) **Fidelity Bond.** 3D Comprehensive form of policy is recommended for this coverage. The amount of the coverage shall be two and one-half times the value of the monthly rent roll plus any other fluid assets. However, in certain cases using the two and one-half times factor may make the amount of coverage unrealistic and the cost prohibitive for the risk involved. Therefore, HPD reserves the right to determine, on a case by case basis, what amount is sufficient. A rider should include coverage for a managing agent. Furthermore, for mutual housing companies, a rider can also be added to include the interest of all non-compensated officers, directors and committee members.

(vii) **Boiler and machinery.** HPD recommends a "Comprehensive" form of coverage be used or a rider be added to the "Broad" form to cover "Miscellaneous Electrical Equipment". The amount of insurance to be carried shall be sufficient to cover the maximum probable damage to the property of the development and property of others that may arise out of any accident occurring through the operation of such equipment, but in any event not less than $1,000,000. Policies shall be endorsed to cover the interest of the City of New York, as first mortgagee.

(viii) **Directors and officers.** For mutual housing companies. Minimum limit of $1,000,000.

(ix) **Umbrella liability.** The minimum requirement for under 150 units $1,000,000; 151 to 500 units $5,000,000; 501 to 1,000 units $10,000,000; over 1,001 units $15,000,000.

(x) **Miscellaneous risks.**

(A) **Automobiles.** Any vehicle owned by the housing company shall be covered by automobile liability insurance with minimum limits of $250,000/500,000 for bodily injury, including accidental death, and at least $100,000 for property damage. For damage to the vehicle itself, comprehensive fire and theft shall be obtained. For automobiles owned by employees and officers of the housing company, used on behalf of the company, proper liability coverage shall be obtained with limits of $250,000/500,000 for bodily injury including accidental death and $100,000 for property damage.

(B) **Sales and management companies.** Where the housing company employs independent sales or managing agents, these agents or their employees who are responsible for the handling of housing company monies shall, without expense to the company, be bonded by a Blanket Position Bond, in favor of the housing company and a copy of such Blanket Position Bond shall be submitted to HPD.

(C) **Contractors, concessionaires, and similar professionals.** In the event that repair, alterations, exterminating or any other work or services shall be performed by the housing company, the housing company shall require that all firms performing such operations, supply evidence that workers' compensation and public liability insurance are in force. The limits for liability shall be at least $500,000 for bodily injury and property damage, combined single limit. It may be that certain contractors and concessionaires, by the nature of the liability factor for the work being done, and the cost of the contract, would have a higher risk factor. In that event we reserve the right to require, on a case by case basis, a higher amount for bodily injury. The housing company and HPD shall be named as an Additional Insured.

(D) **Commercial tenants.** Must carry a minimum of $500,000 for bodily injury and property damage, combined single limit. It may be that certain commercial tenants, by the nature of their business, would have a higher bodily injury risk factor. In that event we reserve the right to require, on a case by case basis, a higher amount for bodily injury. The housing company and HPD shall be named as an Additional Insured.

(E) **Architects and engineers.** Must furnish evidence of their liability coverage.

(F) For subparagraphs (x)(C) and (x)(D) above, the housing company and HPD shall be named as an Additional

Insured.

(G) Insurance coverage shall be reviewed prior to the anniversary date of each policy with respect to the adequacy of coverage. HPD may direct a housing company to increase the amount of its coverage to reflect current replacement value where appro- priate.

(c) **Notice of loss.** (1) The housing company shall give immediate notice to HPD of the occurrence of any damage to its property caused by fire or any other hazards, whether or not covered under any of the above insurance coverages.

(2) If damage to housing company property is sustained at other than normal business hours, the loss must be reported to HPD on the first regular business day following the occurrence.

(3) Personal injury or fatality as a result of a fire or other than natural causes must be reported to HPD immediately.

(4) In the event that a housing company decides to employ a Public Adjuster for the purpose of negotiating a settlement with its insurance company, the housing company must request approval from HPD in writing. Approval by HPD must be confirmed in writing to the housing company.

(5) Unless HPD exercises its rights under the mortgage to apply insurance proceeds to the mortgage, all checks in payment of losses shall clear through HPD Insurance Unit. HPD representatives will inspect to see that the damaged property has been restored to satisfactory condition, after which time the checks shall be released to the housing company.

(d) **Cancellation.**

All policies shall provide for a minimum of thirty (30) days notification to HPD in the event of cancellation, amendment or alteration of a policy.

(e) **Capital grant insurance requirements.**

(1) The housing company shall cause to be placed and kept in force all forms of insurance needed to protect the company adequately or required by law, including but not limited to workers' compensation insurance, disability insurance, public liability, boiler insurance, and all risk property insurance. All of the various types of insurance coverage required for the benefit of the housing company shall be placed with such companies, in such amounts, and with such beneficial interest appearing therein as shall be acceptable to the housing company and the New York State Division of Housing and Community Renewal, and otherwise be in conformity with the requirements of the mortgage.

(2) The housing company shall provide or make provision for a managing agent's bond naming the New York State Housing Finance Agency as obligee with an amount and an insurance company acceptable to the housing company, the New York State Housing Finance Agency, the New York State Division of Housing and Community Renewal and HPD.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §29, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subd. (e) par (2) amended City Record Aug. 10, 2009 §5, eff. Sept. 9, 2009. [See T28 §3-14 Note 3]

Rules of the City of New York

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28 RCNY 3-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-10 Rent and Carrying Charge Increases.

(a) **Procedure for request of increase.** (1) The housing company shall prepare the requisite petition, application, or motion for an increase in the maximum rental or carrying charges per room and submit same to HPD for approval as to form and authorization for hearing procedures.

(2) In the event the housing company fails to submit said petition, application or motion as set forth in paragraph (1) above, HPD may, upon its determination of the need for an increase in rents or carrying charges, promulgate a petition preparatory to effectuating the hearing, which petition need not be in the same form as delineated in §3-10(b).

(b) **Public hearing requirement.** (1) Before acting upon any application or motion for an increase in the maximum rental/carrying charges per room to be charged tenant/cooperators of dwellings where HPD is the supervising agency under the provisions of the Private Housing Finance Law, a public hearing shall be held. Said hearing shall be held upon not less than thirty (30) days notice to the tenant/cooperators. Such notice shall have annexed thereto a copy of the application or motion for increase in rental/carrying charges and shall set forth the facts upon which the application or motion is based. A development assisted by a Federal Section 236 contract must also comply with Federal rent/carrying charge increase requirements.

(2) No applications or motion for an increase in the maximum rental/carrying charges per room shall be entertained or acted upon hereunder for a period of two years from the date of any previous order of the supervising agency for the increase of maximum rental/carrying charges affecting the same dwelling.

(3) In the event that a hearing having been scheduled is adjourned for any reason whatsoever, then notice of such

adjourned date shall be posted near the elevators, on bulletin boards or in any other conspicuous places on the lobby floor; such notice shall constitute compliance with these regulations.

(c) **Contents of application.** (1) An application for rental/carrying charge increases shall be submitted to HPD, together with a copy of the notice proposed to be delivered to the tenant/cooperators. (For the purpose of this subdivision (c) the term "rental" shall mean and be interchangeable with the term "carrying charges" as used for a mutual company and the term "tenant" shall mean and be interchangeable with the term "cooperator").

(2) The notice to be delivered to the tenants shall first be submitted to HPD for its approval and shall contain:

(i) In bold print, at the top,

TO ALL TENANTS OF (Name of Development)
NOTICE OF APPLICATION (Housing Company)
FOR RENTAL INCREASE

(ii) In the body of the notice:

PLEASE TAKE NOTICE, that upon the annexed application of (Housing Company) the Department of Housing Preservation and Development of the City of New York will be requested to approve an increase in the maximum average monthly room rental in the housing development of (Housing Company) from (present maximum) to (requested maximum); and
PLEASE TAKE NOTICE FURTHER that a public hearing will be held at the time and place designated by HPD in the attached cover letter from HPD, and at that time evidence will be introduced in support of said application by the undersigned. Interested parties may appear in person to comment or may provide written comments to HPD.
YOU MAY APPEAR IN PERSON OR BY ATTORNEY
(Place) _____
Date (Date of Notice) _____
Date (Date of Notice) Housing Company
_____ (Attorneys)

(3) Applications for rent increases shall be verified and submitted in quadruplicate. They shall contain:

(i) Name of housing company, location of development, date of organization and number of rental rooms.

(ii) Dates of completion and of occupancy.

(iii) Status with respect to tax exemption.

(iv) Present average room rent.

(v) Present income from non-dwelling spaces.

(vi) Capitalization, authorized and actual.

(vii) Status of dividend and debenture interest payments accruing from date of initial occupancy.

(viii) Assessed valuation. Land and land improvements.

(ix) Such other information and data as may be pertinent.

(x) Request for a specific rent increase.

(4) The application shall have annexed the following exhibits and schedules:

Exhibit I. A three year projection of operations on a cash flow basis as per a format available from HPD, complete with applicable schedules. In addition to the three years an actual base year should be used as a starting point reflecting the information in the latest certified statement of financial condition as prepared by a certified public accountant. **Exhibit II.** A calculation of the increase required on an average per room per month rate in a format available from HPD. This calculation will commence with beginning working capital or deficit working capital as of the beginning of the projection. Include total deficits projected for the length of the projection and one month's working capital to be left at the end of the period. This deficit then divided by the number of months between expected day of increase and the end of projections and that amount divided by the number of rental rooms in the development will produce the required per room per month dollar increase. **Exhibit III.** A three year projection of operations on a cash flow basis after reflecting the increase calculated in Exhibit II above. All applicable schedules will be provided as required in Exhibit I. **Exhibit IV.** The most recent annual audited financial statement for the housing company. It should be noted that working capital or negative working capital resulting from prior years' operations, as well as required reserves not funded, must be considered in the calculation of required increase in the petition. The format for these exhibits and schedules is available from HPD. HPD may require further information on any of the matters listed above or on any other matters and may request an amended or superseding application. Such additional information shall be verified and filed in quadruplicate within the time stated by HPD.

(d) **The hearing.** (1) If the papers submitted to HPD are in form sufficient to warrant consideration by such agency, the applicant shall be notified in writing. Such notification shall include the date and place established by HPD for the public hearing on the application. The hearing shall be held within sixty (60) days of the date of such notification.

(2) Thereafter, the applicant shall notify each tenant in writing by notice approved by HPD of the pending application and the date and place set for the hearing. Such notification shall be sent to the tenants by ordinary mail or distributed under each apartment door and a copy shall be posted in a conspicuous public place on the lobby floor of each building affected. Additional copies of the notice to tenants shall be kept by the applicant for inspection by tenants requesting same. Satisfactory proof of notification to tenants must be supplied to HPD not less than ten (10) days prior to the date set for hearing.

(3) All books, records and financial data pertinent to the requested increase shall be made available to representatives of the Tenants Association in a rental development.

(4) The hearing shall be presided over by such hearing officer as may be designated by HPD for such purpose. The applicants and those opposing the application, in person or by duly authorized representatives, shall each be given a reasonable opportunity to be heard.

(5) A record of the proceedings shall be kept, which shall include, among other things, the application, the notice to tenants, the written and documentary material received, including comments received by HPD. A verbatim transcript of the hearing shall be made and kept as a record of the public hearing. The cost of such transcript shall be borne by the housing company.

(6) HPD shall make its decision with respect to the application, and if it is determined that an increase shall be granted, the Commissioner shall issue an Order specifying the amount of the increase and the date(s) of implementation. Said Commissioner's Order may be structured to provide for a single or multiple-stage increase.

(7) Prior to the issuance of the Commissioner's order, HPD shall make available the results of a preliminary financial analysis of the application. In the case of a rental development, such analysis shall be provided to both the owner and the Tenants Association or their respective representatives or designees. If either party in the case of a rental

development requests a meeting to review the preliminary financial analysis, HPD's Assistant Commissioner of Housing Supervision shall call a meeting with both parties present prior to making a recommendation to the Commissioner. In the case of a mutual housing company, such analysis shall be provided to the President of the Board of Directors or his or her designee. If the Board of Directors requests a meeting to review such analysis, the Assistant Commissioner of Housing Supervision shall call a meeting prior to making a recommendation to the Commissioner.

(e) **Implementation of rent or carrying charge increase.** A rent increase shall become effective on the first day of the month specified in the Commissioner's Order. The housing company or managing agent shall notify the tenants of such increase by ordinary mail or distribution under each apartment door at least fifteen (15) days in advance thereof or thirty (30) days in advance in the case of a development assisted by a Federal 236 contract, and by posting a copy of the order granting said increase in a conspicuous public place on the lobby floor of each building affected; if such notice is not given in sufficient time then the rent increase shall become effective on the first day of the following month. Proof of such notification shall also be furnished prior to the institution of any rent increase.

(f) **Failure to maintain essential services.** No increase will be granted where in the discretion of HPD the owner of a rental development is not substantially maintaining essential services. Any tenant or his or her representative who wishes to raise this objection must do so by filing a verified statement with HPD a minimum of ten (10) days prior to the date set for the hearing, setting forth in separate allegations each claimed instance of failure to substantially maintain essential services.

(g) **Service fees and charges.** A housing company may, with the prior written approval of HPD, impose or increase fees for services including, but not limited to parking, air- conditioning, master antenna, appliances and storage.

(h) **Reimbursement of professional fees to Tenants Associations.** (1) A Tenants Association that is constituted pursuant to §3-17 of this chapter shall be eligible for reimbursement of professional fees incurred when such Tenants Association retains an accountant, architect or engineer to review a rent increase application which has been submitted by a housing company to HPD and approved as to form by HPD. Only one accountant and/or one architect or engineer may be retained by a Tenants Association pursuant to this subdivision to review a particular rent increase application submitted by a housing company pursuant to this section.

(2) On the date upon which a housing company submits a rent increase application to HPD pursuant to paragraph one of subdivision (a) of this section, such housing company shall notify the Tenants Association in writing that it has submitted such application and that the Tenants Association may retain an accountant and/or an engineer or architect to review the rent increase application upon approval as to form of such application by HPD.

(3) A Tenants Association may retain a professional or professionals to review a rent increase application that has been approved as to form by HPD provided, however, that such professional or professionals shall be retained within ten days after receipt of the notice required pursuant to paragraph two of this subdivision. Said notice shall be deemed to have been received on the business day immediately following the day of mailing. Such Tenants Association shall provide a copy of the retainer agreement or agreements to the housing company and to HPD prior to submission of the professional report or reports pursuant to paragraph four of this subdivision.

(4) A Tenants Association which has retained a professional or professionals to review a rent increase application that has been approved as to form by HPD shall submit a copy of the report and the bill for services of such professional or professionals to the housing company and to HPD at least seven days prior to the scheduled date of the hearing on such application.

(5) The total fees charged by a professional or professionals retained by a Tenants Association pursuant to this subdivision shall be the fair and reasonable cost of the services rendered by such professional or professionals, but shall not exceed in total the amounts specified in the following schedule:

Size of Housing Development Maximum Total Fee(s)

Under 500 units $3,250

500 or more units $4,000

(6) The housing company shall remit payment for services to a professional or professionals who is retained by a Tenants Association pursuant to this subdivision within a reasonable time after receipt of the bill for services, and not later than thirty days after the hearing on the rent increase application.

(7) This subdivision shall not apply in the case of a rent increase application exclusively subject to the approval of HUD.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) heading amended City Record Jan. 2, 2003 §30, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (b) par (1) amended City Record Jan. 2, 2003 §31, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (c) par (2) subpar (ii) amended City Record Jan. 17, 2003 §5, eff. Feb. 1, 2003. [See T28 §3-02 Note 1]

Subd. (c) par (2) subpar (ii) amended City Record Jan. 2, 2003 §32, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (c) par (4) amended City Record Jan. 2, 2003 §33, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (d) par (2) open par amended City Record Jan. 2, 2003 §34, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (d) par (3) amended City Record Jan. 2, 2003 §35, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (d) par (5) amended City Record Jan. 2, 2003 §36, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (d) par (6) amended City Record Jan. 2, 2003 §37, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (d) par (7) amended City Record Aug. 10, 2009 §6, eff. Sept. 9, 2009. [See T28 §3-14 Note 3]

Subd. (d) par (7) repealed and added City Record Jan. 2, 2003 §38, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (e) amended City Record Jan. 2, 2003 §39, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (h) added City Record Jan. 2, 2003 §40, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Subd. (h) par (2) amended City Record Jan. 17, 2003 §6, eff. Feb. 1, 2003. [See T28 §3-02 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. The regulation contemplates a two step review process for review of an application for a rent increase. After the housing company submits an application for a rent increase, the City Department of Housing Preservation and Development is required to hold a public hearing. After the hearing, the hearing officer is required to make written findings and recommendations, which must be submitted for review to the Assistant Commissioner of the Division of Housing Supervision. The Assistant Commissioner is supposed to conduct an independent review of the case before submitting recommendations to the Commissioner. It is improper for the agency to permit the hearing officer to function as the Assistant Commissioner on the same case. Waterside Tenants Association v. Waterside Redevelopment Co., N.Y.L.J., Aug. 22, 1997, page 23, col. 3 (Sup.Ct. New York Co.).

Rules of the City of New York

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28 RCNY 3-11

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-11 Utility Pass-Through, Submetering, Direct Metering.

(a) **Utility pass-through.** (1) **Procedure for request of increase.**

(i) A housing company which desires to implement an increase in that portion of the rent/carrying charges attributable to utilities must make a request in writing to HPD for permission to do so. Accompanying said request must be photocopies of utility bills for the period of two years prior to the date of request in order to compare current costs with prior costs.

(ii) The housing company must indicate the total annual amount of the increase requested and, in addition, indicate the amount of the increase on a per room per month basis.

(iii) In the case of a mutual housing company, the utility increase request must be accompanied by a board of director's resolution approving same.

(iv) The housing company's accountant shall verify in writing that the supporting figures submitted are correct.

(v) The housing company, upon submission of a request to HPD, shall post the request in a conspicuous public place on the lobby floor of each building. In the case of a rental development, a copy of the request with the back-up data shall be mailed to the President of the Tenants Association for review and comment. Additional copies of the request with back-up data shall be kept by the housing company for inspection by tenant/cooperators requesting same.

(2) **Procedure for processing increase.** The above data will be analyzed by the Division of Housing Supervision

of HPD to determine the validity of the request for a utility pass-through. Tenant/cooperators shall be allowed thirty (30) days from the date of notification to the shareholders or Tenants Association to comment on the request. Upon determination by HPD that a pass-through of increased utility costs is warranted, based on an increase in utility rates, an increase in utility consumption or any combination thereof, HPD shall approve implementation of said utility pass-through and shall notify the housing company in writing of such approval and of the duration of said utility pass-through. In a rental development, a copy of the approval letter shall be sent to the President of the Tenants Association. HPD may deny the request if the housing company has sufficient resources to absorb the increases.

(3) **Implementation by housing company.**

(i) A utility pass-through shall become effective on the first day of the month following the approval of same. The housing company shall notify the tenant/cooperators of such utility pass-through at least fifteen (15) days in advance thereof by either ordinary mail or distribution under each apartment door, and by posting a copy of the approval letter in a conspicuous public place on the lobby floor of each building affected; if such notice is not given in sufficient time, then the pass-through shall become effective on the first day of the next following month after such notice is given.

(ii) A utility pass-through may be requested at any time that an increase in rates or usage occurs; however, no more than one (1) pass-through for the housing company will be approved by HPD for implementation within any six (6) month period.

(b) **Submetering of electricity.** Wherever allowable as determined by the Public Service Commission, a housing company which is master metered for electricity may, pursuant to HPD approval, install equipment for the submetering of electrical charges within dwelling units and bill tenant/cooperators for their individual consumption, plus administrative costs and amortization of equipment. A housing company seeking to convert to submetering must comply with all requirements of the Public Service Commission with respect to such conversion. Rent/carrying charges shall continue to reflect the cost of electricity for public areas and usages.

(1) **Submission of plans.** The housing company shall submit to HPD for review and approval plans and specifications for the installation of submetering equipment.

(2) **Bidding requirements.**

(i) All contracts for the sub-metering of electricity shall be bid in accordance with §3-07 of these rules.

(ii) In the event that any director, officer, stockholder, employee or agent of any housing company shall be directly or indirectly connected with any person, firm, or corporation which may submit any bid, or to whom any contract is proposed or awarded, a statement setting forth the nature of such connection shall be included in the submission to HPD. In the case of a mutual housing company, it shall be made a part of the minutes.

(3) **Testing of submetering equipment.**

(i) The housing company shall be responsible for maintaining accurate meters. Periodic inspections shall be conducted for this purpose.

(ii) If a tenant/cooperator requests an inspection of a meter at a time other than the periodic inspection, the cost of said inspection will be borne by the housing company if the meter is found to be defective, or by the tenant/cooperator if the accuracy of the meter is found to be within prescribed parameters.

(4) **Grievance procedures.** Grievance procedures prepared by the housing company relating to the submetering of electrical charges shall be submitted to HPD for review and approval before such procedures are implemented by the housing company.

(c) **Direct metering of electricity.** (1) A housing company whose project obtains electricity through a master meter may, pursuant to HPD approval, install equipment for the purpose of having electricity directly metered to each tenant/cooperator.

(2) The housing company shall submit to HPD for review, plans and specifications for installation of direct metering equipment. The bidding requirement set forth in §3-07 of these rules shall be complied with.

(3) At the time of request by the housing company for permission to direct meter a development, a copy of the request shall be sent by ordinary mail to all tenant/cooperators.

(4) Prior to any determination being made by HPD regarding the conversion to direct metering, HPD will solicit tenant/cooperator comments regarding said conversion.

(5) A determination will be made by HPD after analysis of existing utility charges as to whether rents or carrying charges at the development require adjustment as a result of the conversion.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §41, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-12 Energy Conservation. [Repealed]

HISTORICAL NOTE

Section repealed City Record Jan. 2, 2003 §42, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

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28 RCNY 3-13

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-13 Sanctions.

(a) **Written notice and opportunity to appear.** In the event of a violation by a housing company which could result in removal of any or all of a Board of Directors pursuant to §32(6) of the Private Housing Finance Law, the Board of Directors shall be provided with written notice and affected directors shall be given an opportunity to appear and be heard before HPD with respect to any alleged violations.

(b) **Representation by counsel.** The respective parties may be represented by counsel before HPD.

(c) **Appointment of replacement board of directors.** Pursuant to §32(6) of the Private Housing Finance Law, HPD may replace any or all members of a Board of Directors by appointing persons who HPD in its sole discretion deems advisable, including officers or employees of HPD, as new directors to serve in the places of those removed. Directors so appointed need not be shareholders or meet other qualifications which may be prescribed by the housing company's Certificate of Incorporation or by-laws.

(d) **Term of appointment.** Directors appointed under this section shall serve only for a period coexistent with the duration of the violation, or until HPD is assured against commitment of violations of a similar nature, and shall serve in such capacity without compensation.

(e) **Debarment.** Any person or entity may be debarred for a period not to exceed ten years from contracting with or managing any housing companies supervised by HPD upon a finding by a hearing officer designated by the Commissioner that there has been a material violation of these rules or the provisions of Article II of the Private Housing Finance Law by such person or entity or their agent or agents or upon a finding by a hearing officer designated

by the Commissioner that they have engaged in activity which would constitute a violation of the Penal Law. Any person or entity so debarred may appeal in writing to the Commissioner within ninety days of written notification of the debarment.

(f) **Control of admissions and transfers.** Upon a finding that any housing company is in violation of these rules with respect to admissions and transfers, HPD may take over control of all internal and external waiting lists and have sole responsibility for the selection and approval of admissions and transfers.

(g) **Compulsory training.** HPD may at its discretion require managing agent employees and members of the board of directors to attend housing education courses at the respective expense of the managing agent and the housing company.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §43, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subd. (e) amended City Record Aug. 10, 2009 §7, eff. Sept. 9, 2009. [See T28 §3-14 Note 3]

CASE AND ADMINISTRATIVE NOTES

¶ 1. In misconduct proceeding of housing development corporation board of directors, the Department bore the burden of proof where the rules provide the respondent an "opportunity to appear and be heard." **Dep't of Housing Preservation and Development v. ATA Housing Corp.**, OATH Index No. 2099/04 (June 8, 2004).

¶ 2. Administrative law judge recommended removal of housing development corporation board of directors for failure to pay a utility bill by the deadline fixed by the Department and failing to enter into a repayment agreement for more than $1 million in unapproved spending. **Dep't of Housing Preservation and Development v. ATA Housing Corp**., OATH Index No. 2099/04 (June 8, 2004).

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-14 Corporate Action.

(a) **Certificates of incorporation, by-laws, rules and regulations.** Each housing company shall file with HPD, for its approval, a certified and acknowledged copy of its proposed by-laws. Each housing company shall also file with HPD, for its approval, a certified and acknowledged copy of all proposed amendments to its certificate of incorporation or by-laws. The housing company shall forward to HPD for its files two copies of the by-laws or amendments to the certificate of incorporation or by-laws subsequent to HPD approval. Failure to seek HPD approval or rejection by HPD of the by-laws or amendments to the certificate of incorporation or by-laws will render the by-laws or such amendments null and void. Certificates of incorporation, by-laws, rules and regulations established by a housing company shall be in conformity with state laws and HPD rules. Housing company certificates of incorporation, by-laws, rules and regulations to the contrary shall be deemed null and void.

(b) **Disposition of housing company property.** No personal property, books, financial or other records of a housing company shall be destroyed or disposed of without the written consent of HPD.

(c) **Salaries, fees or other compensation to officers or directors.** No housing company shall pay any salaries, fees or any other form of compensation to any officer or director for services rendered in his or her capacity as corporate officer.

(d) **Responsibilities of Board of Directors.**

(1) Members of the Board of Directors of a housing company, whether rental or mutual housing company, bear a high public responsibility, since they have elected to operate under a City-aided program to effectuate public policy by

encouraging the building and operating of housing developments for families of moderate income.

(2) Board members have a fiduciary responsibility to the shareholders of the corporation. Each board member must ensure that buildings, grounds and other assets are kept up to high standards so that their value is not impaired and that the annual operating revenue is spent effectively and economically.

(3) Board members must exercise judicious control of the premises entrusted in their care, including community rooms and public spaces.

(4) Members of the Board of Directors have an obligation to provide to tenant/cooperators the most economical operation of the development without endangering the long term interest of the project.

(5) Board members should be aware of and responsive to tenant/cooperator grievances.

(6) Upon HPD's request, the housing company shall submit to HPD a copy of the minutes from the relevant meeting, certified as to correctness by the housing company's secretary.

(7) No board member shall receive any preferential treatment or thing of value as a result of his or her board membership.

(8) Members or officers of the Board of Directors must occupy a dwelling unit at the mutual housing company development represented by such Board of Directors as his or her primary place of residence.

(e) **Duties and powers.** The Board of Directors has the responsibility for establishing policy covering administration of property, interests, business and transactions of the corporation and may delegate to officers such authority as it deems necessary. Sound organizational policy dictates that individual members of the Board should not interfere with day-to-day management and operation of the project or with its employees or intrude upon management functions. Failure to adhere to this policy reduces the efficiency of the operating staff by creating conflicts in control and in the chain of command. However, the Board as a whole is obligated to ensure that the day-to-day operations of the housing company are handled in the most efficient and expeditious manner and nothing herein should be construed to reduce that responsibility.

(f) **Capital assessments by a mutual housing company.**

(1) **Capital assessments.** A mutual housing company may, by vote of its directors followed by a vote of the shareholders, assess all shareholders on an equitable basis in order to undertake a program of major capital improvements or major repairs approved by HPD. A mutual housing company must obtain a majority of votes at a meeting of shareholders for this purpose and obtain HPD's approval for the assessment.

(2) **Proceeds of capital assessments.** The proceeds of capital assessments shall be deposited in a blocked bank account and all withdrawals from such account shall be subject to the written approval of HPD. Any surplus remaining in the account upon completion of HPD approved repairs or improvements shall be added to the reserve fund.

(3) **Approval process.** A request for approval of a capital assessment shall be submitted in writing to HPD, and shall specifically indicate the type of capital improvements or repairs required, along with an estimate of probable cost and the timetable for completion of the proposed program. Contracts for completion of the program shall be subject to the appropriate provisions of HPD rules [and regulations], and shall include a provision that the acceptance of all work is subject to the approval of HPD.

(g) **Conflicts of interest prohibited in mutual housing companies.** No officer or member of the Board of Directors or their immediate family:

(1) shall be or become interested directly or indirectly in any manner whatsoever in any business dealing with the

mutual housing company except for resale of shares of their own apartments.

(2) shall act as attorney, accountant, managing agent, broker or employee for any person, firm or corporation interested directly or indirectly in any manner whatsoever in business dealings with the mutual housing company;

(3) shall accept any valuable gift, whether in the form of service, loan, thing or promise, or any other form from any person, firm or corporation which to his or her knowledge, is interested directly or indirectly, in any manner whatsoever, in business dealings with the mutual housing company.

(4) Any deviation from the above requires prior written approval of HPD.

(h) **Annual meetings and elections.**

(1) The Board of Directors of a mutual housing company shall hold regular meetings for the conduct of business. In addition, an annual meeting for the election of directors shall be held at a time and place, and in the manner prescribed by the mutual housing company's by-laws.

(2) (i) All elections of directors for a mutual housing company that has not been refinanced under §223(f) of the National Housing Act must be supervised by an independent election company or the mutual housing company's attorney and/or accountant. Prior to conducting the election, the mutual housing company must notify HPD in writing of the name of the independent election company, or the alternate supervisor of the election, and of the intended election procedures.

(ii) A mutual housing company may request a waiver from the requirements of subparagraph (i) of paragraph two of this subdivision by making a written submission at least sixty days prior to the election of directors to the Assistant Commissioner of Housing Supervision.

(iii) When the cost of an independent election company meets the dollar threshold, the contract between the independent election company and the mutual housing company will require HPD's approval in accordance with §3-07 of this chapter.

(i) **Voluntary dissolution.**

(1) Subdivisions two and three of section 35 of the Private Housing Finance Law, with respect to City-aided limited-profit housing companies, provides as follows:

"A company aided by a loan made after [May 1, 1959] may voluntarily be dissolved, without the consent of [HPD], not less than twenty [(20)] years after the occupancy date upon payment in full of the remaining balance of principal and interest due and unpaid upon the mortgage or mortgages and of any and all expenses incurred in effecting such voluntary dissolution. Upon such dissolution, title to the project may be conveyed in fee to the owner or owners of its capital stock or to any corporation designated by it or them for the purpose, or the company may be reconstituted pursuant to appropriate laws relating to the formation and conduct of corporations, provided, however, that prior to any such dissolution and conveyance or reconstitution, payment shall be made of all current operating expenses, taxes, indebtedness and all accrued interest thereon and the par value of and accrued dividends on the outstanding stock of such company. If after making such payments, and after conveyance of the project, a surplus remains in the treasury of the company, such surplus . . . shall upon dissolution, be paid into the general fund of the [City of New York]. After such dissolution and conveyance, or such reconstitution, the provisions of [Article II of the Private Housing Finance Law] shall become and be inapplicable to any such project and its owner or owners and any tax exemption granted with respect to such project pursuant to [§33 of the Private Housing Finance Law] shall cease and terminate."

(2) **Notice of Intent for Rental Companies.** A rental housing company intending to dissolve and/or reconstitute pursuant to §35, shall submit to HPD no later than 365 days prior to the anticipated date of dissolution and/or

reconstitution, a notice of such intention ("Notice of Intent") which shall contain the following information and supporting documents:

(i) Name and address of the housing development;

(ii) Name and business address of the beneficial and legal owner(s) other than limited partners and stockholders;

(iii) Name and address of proposed transferee, if property is being sold or transferred and the proposed date of any such transfer;

(iv) A current rent roll reflecting rents last ordered by HPD and/or by HUD including surcharges, subsidy and other special charge data;

(v) A list of tenants who are presently receiving rent subsidies which may be discontinued as a result of dissolution and the proposed rents to be charged such subsidy recipients after dissolution;

(vi) A copy of any applicable documents relating to the rental development, including, but not limited to, the urban renewal plan, the plan and project, the deed or lease, the land disposition agreement, any applicable Board of Estimate or City Council resolution and the temporary certificate of occupancy and permanent certificate of occupancy, or any other documents requested by HPD; and

(vii) A list of all State, municipal and/or federal financial assistance or subsidies received by the housing development (such as low income housing tax credits, tax exempt bond financing, interest reduction subsidy under Section 236 of the National Housing Act, as amended, project-based Section 8 under the United States Housing Act of 1937, as amended, housing choice vouchers, rent supplement, J-51 or other tax exemption and/or abatement benefits, and flexible subsidy grants) and the amount thereof.

All such documents shall also be given to the Tenants Association as well as to a management office on site (or, if there is no management office on site, to a management office located within the city of New York). At such management office, such documents shall be made available to any tenant of such rental housing company and/or his or her representative upon request.

The owner shall notify all tenants by ordinary mail or distribution at or under each apartment door and by posting a copy in a conspicuous place on the lobby floor of each building affected of its intent to dissolve or reconstitute at or about the same time as the delivery of the notice of intent to HPD.

(3) **Public information notice for rental companies.** At least sixty (60) days prior to the proposed date of dissolution and/or reconstitution, a rental housing company intending to dissolve and/or reconstitute shall serve a Notice of a Public Meeting by distribution under each apartment door; shall post such notice in three (3) conspicuous locations within the lobby and elevator areas of each building; and shall send such notice by certified or registered mail to each of the following:

(i) Commissioner and the Assistant Commissioner of Housing Supervision, and

(ii) The president or chairperson of the Tenants Association.

Such notice shall specify the day, date, time and location of a public information meeting which shall be held to inform tenants of the proposed dissolution and/or reconstitution of the housing company. If the public information meeting is outside the community district in which the housing company is located, the owner must provide transportation for tenants. Such public information meeting shall be held not less than 10 nor more than 20 days after service of the Notice upon the parties set forth above.

(4) Public information meeting for Rental Companies. Pursuant to the Notice as specified above, the rental housing

company shall conduct at least one public information meeting with the tenants. At such meeting representatives of the rental housing company shall inform the tenants of the rental housing company's intention to dissolve and/or reconstitute; the rental housing company's removal from HPD's jurisdiction and, if applicable, its subsequent registration with the New York State Division of Housing and Community Renewal (DHCR) for the purpose of rent stabilization pursuant to the applicable DHCR rules and regulations; whether rent stabilization will be applicable; prospective changes in ownership and any other relevant information regarding future plans for the rental housing company affecting the tenants. A question and answer period shall be conducted. The Tenants Association may invite local elected officials or other representatives to participate.

(5) Where applicable, the rental housing company shall provide evidence that it has appropriately preregistered all apartments with DHCR, indicating current rents for each apartment and services provided to the tenants as of the date of dissolution and/or reconstitution.

(6) **Mutual housing companies-special meeting.** A board of directors of a mutual housing company intending to dissolve and/or reconstitute pursuant to §35 shall call a special meeting in conformance with the mutual housing company by-law requirements for the purpose of ascertaining shareholder interest in dissolution. The secretary of the board of directors shall submit to HPD a certified resolution stating that not less than a majority of the dwelling units represented at such special meeting approved an expenditure of funds in a specified amount for the purpose of preliminary exploration of dissolution and/or reconstitution, unless the by-laws of the company mandate a greater affirmative vote. Each dwelling unit shall be entitled to one vote regardless of the number of shares allocated to such dwelling unit, the number of shareholders holding such shares, or the provisions regarding voting in such mutual housing company's certificate of incorporation or by-laws. Said resolution shall include language as follows:

"This resolution authorizes the board of directors to take steps necessary to ascertain the desirability of dissolution and/or reconstitution. This resolution authorizes the expenditure of $_____ for such investigation, and notifies the shareholders that there are Private Housing Finance Law requirements for dissolution. This resolution also advises the shareholders that the New York State Department of Law requirements must be met prior to actual dissolution and/or reconstitution."

A certified copy of the resolution shall be submitted to HPD within seven (7) business days after such vote. Expenditure of funds authorized above shall require prior written approval of HPD, if the dollar amount for any one retainer, agreement, or contract exceeds $15,000 for mutual housing companies with fewer than five hundred (500) dwelling units and $30,000 for those with five hundred (500) or greater.

(6-a) **Special meeting to authorize preparation of an offering plan and filing of Notice of Intent.**

(i) Pursuant to the applicable notice period in the mutual housing company's by-laws, a special meeting shall be convened by the board of directors of the mutual housing company to authorize the (A) preparation and submission to the office of the Attorney General of the State of New York of a private cooperative or condominium offering plan for the housing project, and (B) submission to HPD of the mutual housing company's notice of its intention to dissolve and/or reconstitute ("Notice of Intent"). Eligible voters for purposes of a quorum and for a vote on preparation and submission of such plan and such Notice of Intent shall be persons named on the stock certificate. Preparation and submission of such plan and such Notice of Intent requires approval of two-thirds (2/3) of the dwelling units in such mutual housing company. Each such dwelling unit shall be entitled to one vote regardless of the number of shares allocated to such dwelling unit, the number of shareholders holding such shares, or the provisions regarding voting in such mutual housing company's certificate of incorporation or by-laws.

(ii) The Notice of Intent shall be submitted to HPD no later than 365 days prior to the anticipated date of dissolution and/or reconstitution. It shall be accompanied by evidence of the appropriate shareholder vote and resolution authorizing the preparation and submission of the offering plan and such Notice of Intent in accordance with subparagraph (i) of this paragraph and shall contain the following information and supporting documents:

(A) Name and address of the housing development;

(B) Name and address of proposed transferee, if property is being sold or transferred and the proposed date of any such transfer;

(C) A current rent roll reflecting carrying charges last ordered by HPD and/or by HUD including surcharges, subsidy and other special charge data;

(D) A list of cooperators who are presently receiving subsidies which may be discontinued as a result of dissolution and the proposed carrying charges to be charged such subsidy recipients after dissolution;

(E) A copy of any applicable documents relating to the mutual development, including, but not limited to, the urban renewal plan, the plan and project, the deed or lease, the land disposition agreement, any applicable Board of Estimate or City Council resolution and the temporary certificate of occupancy and permanent certificate of occupancy, or any other documents requested by HPD. Such documents shall also be given to a management office on site (or, if there is no management office on site, to a management office located within the city of New York). At such management office, such documents shall be made available to any cooperator of such mutual housing company and/or his or her representative upon request; and

(F) A list of all State, municipal and/or federal financial assistance or subsidies received by the housing development (such as low income housing tax credits, tax exempt bond financing, interest reduction subsidy under Section 236 of the National Housing Act, as amended, project-based Section 8 under the United States Housing Act of 1937, as amended, housing choice vouchers, rent supplement, J-51 or other tax exemption and/or abatement benefits, and flexible subsidy grants) and the amount thereof;

All such documents shall also be given to a management office on site (or, if there is no management office on site, to a management office located within the city of New York). At such management office, such documents shall be made available to any cooperator of such mutual housing company and/or his or her representative upon request.

Such mutual housing company shall notify all cooperators by ordinary mail or distribution at or under each apartment door and by posting a copy in a conspicuous place on the lobby floor of each building affected of its intent to dissolve or reconstitute at or about the same time as the delivery of the Notice of Intent to HPD.

(7) **Special meeting to authorize dissolution and/or reconstitution of mutual housing companies.** Pursuant to the applicable notice period in the mutual housing company's by-laws, a special meeting to authorize dissolution and/or reconstitution shall be convened by the board of directors of the mutual housing company after the acceptance by the office of the Attorney General of the State of New York of the filing of the offering plan pertaining to the proposed transfer from the mutual company to a private cooperative or condominium corporation. Eligible voters for purposes of a quorum and for the vote on dissolution and/or reconstitution shall be persons named on the stock certificate. Dissolution and/or reconstitution of the mutual housing company requires approval of two-thirds (2/3) of the dwelling units in such mutual housing company. Each such dwelling unit shall be entitled to one vote regardless of the number of shares allocated to such dwelling unit, the number of shareholders holding such shares, or the provisions regarding voting in such mutual housing company's certificate of incorporation or by-laws.

(7-a) **Conduct of special meetings.**

(i) Special meetings required pursuant to paragraphs six, six-a and seven of this subdivision shall be conducted no more frequently than once every twelve months.

(ii) Special meetings required pursuant to paragraphs six-a and seven of this subdivision shall be conducted by an independent election company. At least sixty days prior to conducting such special meetings, the mutual housing company must notify HPD in writing of the name of the independent election company, and of the intended special

meeting procedures, and HPD must issue its approval in writing of such independent election company and of the intended special meeting procedures before such special meeting can take place.

(iii) If the cost of any special meeting required pursuant to paragraphs six, six-a and seven of this subdivision exceeds $15,000 in housing companies with fewer than five hundred (500) dwelling units or $30,000 in housing companies with at least five hundred (500) dwelling units, the contracts will require HPD's prior written approval. With respect to special meetings required pursuant to paragraphs six-a and seven, the independent election company must submit proof to HPD that the requirements of this subparagraph have been met.

(8) **Operating Documents of Mutual Housing Companies.** Each mutual housing company shall provide in any voting provisions in its certificate of incorporation and by-laws that in the shareholder votes required pursuant to paragraphs six, six-a and seven of this subdivision, each dwelling unit shall be entitled to one vote regardless of the number of shares allocated to such dwelling unit, the number of shareholders holding such shares, or any other provisions regarding voting in such mutual housing company's certificate of incorporation or by-laws.

(9) **Waiting list notifications.** Both rental and mutual housing companies shall submit an affidavit certifying that each applicant on such housing company's apartment waiting list has been advised in writing of the proposed dissolution and/or reconstitution and that fees have been returned to said applicants prior to dissolution and/or reconstitution. Further, the affidavit shall state that any funds unreturned for lack of proper address or other technicality shall be escrowed and returned upon applicant's request.

(10) **Payment of mortgage(s) and other indebtedness by rental and mutual housing companies.** On the date set for dissolution and/or reconstitution and mortgage prepayment, the housing company shall submit to HPD payment in a form approved by HPD for all principal, interest, supervisory fees, surcharges, amounts payable pursuant to residual receipt notes and any other amounts which may be owing to the City of New York, including any surplus due to be paid into the general fund of the City pursuant to Private Housing Finance Law Article II, §35(3).

(i) At least sixty (60) days prior to the date set for dissolution and/or reconstitution and mortgage prepayment, a schedule of all accounts payable, taxes due and any other indebtedness, including the par value and accrued dividends on outstanding stock (or, in the case of a partnership, accrued distributions) shall be submitted to HPD for its review and written approval; said schedule to be prepared and certified to HPD by an independent certified public accountant acceptable to HPD. Such schedule shall contain a listing of all items of indebtedness, the amount thereof, the source of payment thereof and the anticipated date of payment, plus the amount of money anticipated to be paid to the City from the remaining surplus. At the time of dissolution and/or reconstitution, such certified schedule shall be amended to reflect the current status of all accounts, and the exact amount, if any, owed to the City. Housing company funds may not be used for the purpose of prepayment of the mortgage debt.

(ii) Accounts payable may include monies owed on executed contracts for repairs or capital improvements, subject to HPD approval. Any contract for capital improvement or repair work in an amount in excess of $15,000 executed within ninety (90) days prior to submission of a Notice of Intent to dissolve and/or reconstitute other than contracts for projects subject to HUD supervision must have a statement attached to the contract submission, sent to HPD for approval, advising HPD that the housing company is contemplating dissolution and/or reconstitution at the time of said submission of the contract. Failure to submit such contracts may result in exclusion of their cost in calculating surplus.

(iii) No legal and accounting fees or other costs in a rental development associated with dissolution and/or reconstitution shall be charged to the housing company.

(iv) Where applicable, the housing company shall submit evidence of payment of any relevant mortgages.

(11) **Issuance of letter of no objection to rental and mutual housing companies.** Upon payment by certified check or checks from a New York clearing house bank of all amounts owing to the City and/or other mortgagee and certification of compliance with all applicable rules and provisions of law relating to dissolution and/or reconstitution,

HPD shall issue a Letter of No Objection to the housing company's dissolution and/or reconstitution.

(12) **Notification to New York City Department of Finance.** On the date of dissolution and/or reconstitution, both rental and mutual housing companies shall send written notification to the Department of Finance that the property owned by the housing company is to be restored to a full taxpaying position effective the date of dissolution and/or reconstitution. A copy of such notice shall be sent to the HPD Division of Housing Supervision.

(13) **Notification to senior citizen rent increase exemption (SCRIE) program.** No later than ten days after the date of dissolution and/or reconstitution, both rental and mutual housing companies shall send written notification to the HPD Division of Housing Supervision's SCRIE unit of said dissolution and/or reconstitution and to all SCRIE recipients advising them of their status after dissolution and/or reconstitution.

(14) **Terminology Used by Mutual Housing Company.** Whenever a mutual housing company uses the term "dissolution," it shall include reconstitution where such housing company elects to reconstitute upon dissolution of such housing company. Furthermore, where the mutual housing company's board or the sponsor of a cooperative conversion of a mutual housing company represents in its cooperative offering plan or other documents that such mutual housing company is amending and/or restating its certificate of incorporation and/or that the shareholders will be voting on a voluntary reconstitution and conversion from a limited-profit mutual housing company to a private cooperative, section 35 of the Private Housing Finance Law designates these actions as a dissolution and reconstitution of the former limited-profit housing company cooperative.

(j) **Proxies, Direct Mail Ballots and Absentee Ballots.**

(1) With HPD's approval, a mutual housing company may require a standard form and procedure for the casting of proxies or absentee ballots in any matter requiring a shareholder vote.

(2) Notwithstanding anything to the contrary contained herein, in any vote conducted pursuant to paragraphs six-a or seven of subdivision (i) of this section, voting by proxy shall not be permitted. However, HPD may approve, in writing, a standard form direct mail ballot for transmission to the independent election company engaged to conduct any votes pursuant to paragraphs six-a and seven of subdivision (i) of this section. Such standard form of direct mail ballot shall be invalidated by the shareholder executing such ballot if such shareholder appears to vote in person in any vote conducted pursuant to paragraphs six-a or seven of subdivision (i) of this section.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §§44-46, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 10, 2009 §8, eff. Sept. 9, 2009. [See Note 3]

Subd. (d) par (8) added City Record Nov. 12, 2003 §2, eff. Dec. 12, 2003. [See T28 §3-02 Note 2]

Subd. (h) par (2) subpar (ii) amended City Record Aug. 10, 2009 §9, eff. Sept. 9, 2009. [See Note 3]

Subd. (i) par (2) amended City Record Aug. 10, 2009 §10, eff. Sept. 9, 2009. [See Note 3]

Subd. (i) par (2) subpar (vi) amended City Record July 14, 2006 §1, eff. Aug. 13, 2006. [See Note 1]

Subd. (i) par (3) subpar (i) amended City Record Aug. 10, 2009 §11, eff. Sept. 9, 2009. [See Note 3]

Subd. (i) par (5) amended City Record Jan. 17, 2003 §7, eff. Feb. 1, 2003. [See T28 §3-02 Note 1]

Subd. (i) par (6) amended City Record Aug. 10, 2009 §12, eff. Sept. 9, 2009. [See Note 3]

Subd. (i) par (6) amended City Record July 14, 2006 §2, eff. Aug. 13, 2006. [See Note 1]

Subd. (i) par (6) amended City Record Jan. 17, 2003 §7, eff. Feb. 1, 2003. [See T28 §3-02 Note 1]

Subd. (i) par (6-a) added City Record July 14, 2006 §1, eff. Aug. 13, 2006. [See Note 2]

Subd. (i) par (6-a) subpar (i) amended City Record Aug. 10, 2009 §13, eff. Sept. 9, 2009. [See Note 3]

Subd. (i) par (6-a) subpar (ii) amended City Record Aug. 10, 2009 §14, eff. Sept. 9, 2009. [See Note 3]

Subd. (i) par (7) amended City Record Aug. 10, 2009 §15, eff. Sept. 9, 2009. [See Note 3]

Subd. (i) par (7) amended City Record July 14, 2006 §1, eff. Aug. 13, 2006. [See Note 2]

Subd. (i) par (7-a) amended City Record Aug. 10, 2009 §16, eff. Sept. 9, 2009. [See Note 3]

Subd. (i) par (7-a) added City Record July 14, 2006 §3, eff. Aug. 13, 2006. [See Note 1]

Subd. (i) par (8) amended City Record Aug. 10, 2009 §17, eff. Sept. 9, 2009. [See Note 3]

Subd. (i) par (8) amended City Record July 14, 2006 §2, eff. Aug. 13, 2006. [See Note 2]

Subd. (i) par (10) subpar (iv) amended City Record Jan. 17, 2003 §7, eff. Feb. 1, 2003. [See T28 §3-02 Note 1]

Subd. (i) par (14) added City Record Aug. 10, 2009 §18, eff. Sept. 9, 2009. [See Note 3]

Subd. (j) amended City Record Aug. 10, 2009 §19, eff. Sept. 9, 2009. [See Note 3]

Subd. (j) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See T28 §3-02 Note 4]

NOTE

1. Statement of Basis and Purpose in City Record July 14, 2006:

The rule amendments clarify certain dissolution procedures for City-aided limited-profit housing companies. First, the requirement that dissolution documents submitted by a limited-profit housing company also be submitted to the Tenants Association has been enhanced by also requiring that such documents be given to either a management office on site, or, if there is no management office on site, to a management office in New York City. This amendment is to ensure that such documents are still accessible to tenants at large, as well as to their representatives in developments with a Tenants Association. Finally, it allows for distribution at or under each door of a dwelling unit in case certain doors do not have space beneath them to slip documentation. The second amendment makes the dollar thresholds for HPD approval of the funding of the feasibility study the same as they are currently for contracts in general. The third amendment requiring that two of the special meetings (first to authorize preparation of an offering plan and filing of a Notice of Intent, and second to authorize withdrawal from the Mitchell-Lama Program after the acceptance by the Attorney General's Office of the offering plan) relating to the dissolution of a mutual housing company be conducted by an independent election company ensures that these meetings are conducted in a fair and professional manner. Since the votes taken at such meetings are often contentious and have a huge impact on the cooperators, it is critical that they be supervised and regulated by a fair and impartial party.

2. Statement of Basis and Purpose in City Record July 14, 2006: The amendments are intended to clarify the dissolution procedures for mutual housing companies. The proposed amendments provide that the special meeting for shareholders to vote to authorize the dissolution or reconstitution of such housing companies cannot occur until after the

acceptance by the Attorney General's Office of the filing of the offering plan for the proposed conversion to a private cooperative or condominium corporation. The Attorney General's Office has informed HPD that under the Martin Act, it must accept a comprehensive offering plan before a final vote is taken by shareholders to dissolve and reconstitute a Mitchell-Lama cooperative into a private cooperative. The rule change ensures that HPD's Mitchell-Lama rules are in conformity with this requirement.

3. Statement of Basis and Purpose in City Record Aug. 10, 2009: The first seven amendments and the ninth amendment correct technical matters in the current rules as well as conform the appeals process for succession cases to current practices. The eighth amendment provides that a mutual housing company's certificate of incorporation must be in conformity with State law and HPD rules and that any provision thereof that doesn't meet this requirement will be deemed null and void. The HPD rules already contain a similar provision regarding a mutual housing company's by-laws, rules and regulations and it logically follows that the certificates of incorporation should be subject to the same limitations. The eighth amendment also reiterates the statutory requirement that HPD must approve amendments to a mutual housing company's certificate of incorporation. The tenth and fourteenth amendments require both rental and mutual housing development companies to provide information regarding tax exemptions and other governmental subsidies along with a notice of intent to leave the Mitchell-Lama program. The rest of the rule amendments address voting procedures for buyouts from the Mitchell-Lama Program. First, they would limit the simple majority feasibility study vote, the 2/3 majority vote for preparation and submission of the offering plan and notice of intent, and the final 2/3 majority vote for dissolution and/or reconstitution, to one vote per dwelling unit regardless of the number of shares allocated to such dwelling unit, the number of shareholders holding such shares or the provisions regarding voting in such mutual housing company's certificate of incorporation or by-laws. This is similar to what the New York State Division of Housing and Community Renewal already requires for State-aided Mitchell-Lama mutual housing company developments. It also would eliminate any ambiguity created by the wording of the current rule since the Business Corporation Law otherwise allows a cooperative to specify in its operating documents the proportion of shares or votes of shares that can authorize dissolution. The amendments also would limit the frequency of any one of these votes to once every twelve months and clarify the fact that HPD must approve the intended special meeting procedures and the proposed independent election company before the special meeting can be held. They also require mutual housing companies to submit these procedures and their proposed independent election company at least sixty days prior to the special meeting date so that HPD has time to conduct the requisite review. The next amendment mandates that a mutual housing company's operating documents be amended to reflect that these dissolution votes must be conducted on a per dwelling unit basis. The final amendment prohibits the use of proxies in the votes for preparation and submission of the offering plan and notice of intent, and the final 2/3 majority vote for dissolution and/or reconstitution, unless HPD has approved, in writing, a standard form direct mail ballot for transmission to the independent election company engaged to conduct any votes pursuant to paragraphs six-a and seven of subdivision (i) of this section. Since the dissolution or reconstitution of a Mitchell-Lama mutual housing company has an enormous impact on the future of each of its residents, it is important that each dwelling unit get an equal say in the matter, particularly because the allocation of shares in a Mitchell-Lama mutual housing company does not have the same financial implication as it does for unregulated cooperatives. Furthermore, these votes should be limited in frequency so that they do not create a continuously stressful environment for shareholders who reside in such developments or excessively burden the finances of the housing companies. Finally, the prohibition against the use of proxies in certain votes, except as such standard form direct mail ballots might be authorized by the supervising agency, ensures that such votes will be fair and equitable and that shareholders are not unduly pressured to vote in a certain manner.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A landlord may leave the Mitchell Lama program after a 20 year period, by paying the balance due on its mortgage and certain expenses of dissolution. The landlord must also apply to DHCR for permission to dissolve the rental housing company. Tenants, whose rents would be greatly affected by such dissolution, are entitled to notice of the application. Where such an application is pending before DHCR, the proper course of action for aggrieved tenants is to oppose that action, and then, if necessary, bring an Article 78 proceeding challenging the administrative determination.

In other words, the tenants may not bring a plenary proceeding which, in effect, would be an end run around the administrative proceeding. Davis v. Waterside Housing Co., N.Y.L.J. Mar. 19, 2001, page 25, col. 2 (Sup.Ct. New York Co.).

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-15 Partnerships.

(a) **Partnership agreements.** Certain housing companies are permitted to become partners of partnerships formed pursuant to Section 16 of the Private Housing Finance Law. Partnership Agreements and amendments thereto are subject to prior approval in writing by HPD. Admission, withdrawal or retirement of general partners is [also] subject to the prior written approval of HPD.

(b) **Partnership distributions.** All distributions of any partnership organized pursuant to §16 of the Private Housing Finance Law are subject to the written approval of HPD. All such distributions must be in accordance with the rules of HPD and with the requirements of the Private Housing Finance Law.

(c) **Related party transactions.** In the event that a housing company employs or contracts with any person or entity in which any partner of such a partnership is directly or indirectly an interested party, the partnership shall disclose such fact to HPD.

(d) **Financial records.** A partnership formed pursuant to §16 of the Private Housing Finance Law shall furnish to HPD all financial and other reports required by HPD.

(e) **Removal of directors.** In the event that HPD exercises its right to remove the directors of a housing company, the housing company as a general partner shall have the right to terminate the exercise of all rights and powers by any other general partner and to exclusively exercise all rights and powers in connection with the project so long as HPD-appointed directors continue to serve.

(f) **Transfers of interests.** All transfers of general partnership interests are subject to the prior written approval of HPD. HPD may require, as a condition of admission or substitution of general partners all such information regarding any proposed new general partner as it deems necessary.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subds. (a), (b), (c), (f) amended City Record Jan. 2, 2003 §47, eff. Feb. 1, 2003. [See T28 §3-01

Note 1]

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-16 Managing Agents Agreements.

(a) **Managing agents agreement required.** All housing companies are required to enter into written agreements for management services which must be approved in writing by HPD. This subdivision (a) applies to all agents, corporate or individual. Managing agent agreements are subject to the provisions of subdivision (e) of §3-13 of this chapter regarding debarment.

(b) **Criteria for selection of managing agent.**

(1) The prospective agent, corporate or individual, must be a real estate broker in good standing duly licensed by the State of New York. Site managers employed by the prospective agent must be certified, by an organization acceptable to HPD, within twelve (12) months after assignment to an HPD-supervised housing development. The certification requirement cannot be waived by transferring the site manager to an alternate HPD-supervised site prior to the end of the twelve month period.

If a housing company elects to undertake self-management of its housing development, it must seek written approval from HPD. The person being employed to perform the role of manager must be approved in writing by HPD. If the manager is an employee of the housing company, he or she is not obligated to have a real estate broker's license. However, the employee-manager must be certified, by an organization acceptable to HPD, within twelve (12) months after his or her initial employment date.

(2) The agent must provide a fidelity bond in an amount and form and with a surety approved by HPD.

(3) The agent shall provide evidence of experience and capability commensurate with the responsibility it seeks to undertake.

(4) The agent may be required to submit a management plan proposing a program conducive to proper maintenance and economic viability of the project, and to harmonious relations among tenant/cooperators, management and the community. The plan shall include, but shall not be limited to, policy regarding deployment of personnel, tenant/cooperator-management relations, tenant/cooperator selection, rent/carrying charge collection procedures, agency reporting procedures, fiscal accountability, physical plant maintenance, equal opportunity measures and security measures. The plan shall take into account the characteristics of the development, its neighborhood and type of tenancy (e.g., senior citizen or handicapped). The plan and its implementation will be considered in determining the agent's employment, renewal and compensation, and will be subject to HPD review and written approval.

(5) The agent must maintain an office or place of business in the metropolitan area at no cost to the housing company where it will keep all books, records, bills and other documents pertaining to the housing company. These records will be available for inspection and review by the owner, HPD or other interested parties as permitted by statute or rules of HPD.

(c) **Term of managing agent's agreement.** (1) Any managing agent's agreement shall be in a form approved by HPD and shall be of no force or effect until the contract has been approved in writing by HPD.

(2) All new managing agent's agreements shall have a term of one (1) year commencing July 1st and terminating on June 30th of the following year. All renewals shall have a similar one (1) year term; provided, however that if a new managing agent agreement commences after July 1st, it still shall terminate on the June 30th following the commencement of such agreement.

(3) Managing agent agreement renewals must be submitted to HPD for written approval.

(4) Any managing agent's agreement shall provide that it is subject to termination without cause upon thirty (30) days written notice by the housing company or HPD. HPD or the housing company shall have the right to immediately terminate any managing agent for cause.

(5) Promptly upon any termination, the managing agent shall turn over to the housing company, all project records, rent rolls, bills, cancelled checks, bank statements, bank books, waiting lists, correspondence, ledgers and all other documents related to or owned by the housing company.

(6) HPD may review the performance of a managing agent at any time and may solicit comments from owners, tenants, and others relating to the performance of the managing agent.

(d) **Managing agent's fee.**

(1) The managing agent's fee will be negotiated by the housing company and will be subject to approval by HPD.

(2) The fee may be further adjusted on a compound basis by a percentage to be established annually by HPD, said percentage may be subject to negotiation by the housing company, but may not exceed the maximum percentage authorized by HPD.

(3) If a new managing agent enters into an agreement with a housing company to replace an existing agent at a development, the maximum fee which can be paid to the new agent will be the fee established for the prior agent, plus any cumulative percentages adjustments which have been approved by HPD, regardless of whether the prior agent was given said increases. The new agreement is subject to negotiation by the housing company within the maximum established above.

(4) If, upon evaluation by HPD, it is determined that an agent's performance has not been satisfactory during the prior year, the agent shall not be entitled to the annual increase in its fee. In its evaluation, HPD will consider comments from the housing company and the Tenants Association but will make the final determination regarding the increase. HPD will advise the housing company in writing at least 30 days prior to the agreement renewal date each year if approval of the annual increase is being withheld and the reasons therefor.

(5) An approved annual increase in the managing agent's fee will become effective on July 1st of each year.

(6) In the event a newly constructed development goes into occupancy, the managing agent's fee shall be negotiated by the housing company, but in no event shall it exceed the highest fee plus cumulative increases for a development of comparable size and nature already in existence within the program. Comparability will be determined solely by HPD.

(7) If HPD disapproves an annual increase for a managing agent, HPD may within a reasonable period of time meet with the representatives of the housing company and the managing agent to discuss the reasons for HPD's dissatisfaction. The managing agent shall take such steps as deemed necessary by HPD to satisfy HPD requirements. If the agent's performance remains unsatisfactory, HPD may, upon notice to the housing company, terminate the managing agent's agreement.

(e) **Duties and responsibilities of managing agent.** The principals of the managing agent shall devote a reasonable percentage of their time in supervising management duties of their subordinate staff. Said management duties shall include, but shall not be limited to, the following:

(1) investigate, hire, pay, supervise and discharge all personnel necessary to be employed in order to properly maintain and operate the development in accordance with an operating schedule, job standards and reasonable and necessary wage rates approved by the housing company. Such personnel shall be considered employees of the housing company and compensation for the services of such employees shall be considered an operating expense of the company, provided, however, that in each development the managing agent shall employ and shall compensate out of its fee one or more responsible individuals as approved by HPD and the housing company whose job it shall be to carry out the responsibilities of the managing agent at the premises;

(2) prepare tax records, including withholding and social security records for the employees of the development, and shall administer required programs of workers' compensation and other employee liability insurance programs;

(3) collect all monthly rents, carrying charges and all other charges due from tenant/cooperators both residential and commercial, and from other users or concessionaires; and take such action with respect thereto as the owner may authorize;

(4) cause the buildings and grounds of the development, and all equipment appurtenant thereto to be maintained according to standards acceptable to the housing company and to HPD;

(5) subject to the approval of the owner and in accordance with HPD rules, contract for water, electricity, gas, fuel oil, extermination and other necessary services;

(6) submit tenant/cooperator applications to HPD for approval; maintain waiting lists in accordance with HPD rules and utilize such lists in the re-rental of vacated apartments or resale of shares in a mutual housing company; perform all services in connection with the processing of applications resulting from such reletting or resale;

(7) diligently undertake the renting of any parking spaces, commercial and non-dwelling space in the project, arranging for the execution of such leases or permits as may be required;

(8) undertake recertification of tenant/cooperator income as required by HPD or by federal regulations;

(9) prepare and submit annual operating budgets, monthly operating reports, rent rolls, vacancy reports, rent arrears reports, surcharge tabulation sheets, equal opportunity reports, HUD excess income reports, where applicable, and any other documents required by the housing company or HPD;

(10) maintain books and records relating to the development;

(11) establish operating bank accounts and make deposits and withdrawals in such account as directed by the housing company; maintain a blocked reserve account as required by HPD and invest the funds of such account in accordance with HPD rules to attain the maximum return on investment;

(12) advise the housing company and HPD of projected needs for repairs and replacements at least once each year; review physical inspection reports and effect compliance;

(13) submit contracts and retainers for HPD approval in accordance with HPD rules; (14) process tax matters in a timely manner;

(15) conduct an annual inspection of all apartments for the purpose of identifying unreported electrical or other equipment (air conditioners, freezers, washing machines and dryers), observing the physical condition of the apartments, and ascertaining compliance with the rules and regulations of the project, HPD and HUD, where applicable, and report its findings in writing to the Owner and HPD;

(16) receive, record and respond to all service requests made by tenants in a timely manner; and

(17) carry out such other duties and responsibilities as may be stipulated by the housing company or HPD and as may be included in the management agreement.

(f) **Allocation of management expenses.** In order to establish a uniform allocation of management expenses between the managing agent and the housing company, the below listed charges are allocated as follows:

[See tabular material in printed version]

(g) **Leasing of commercial space, commissions.** In the leasing of commercial space, payment of real estate brokerage commission shall be solely in accordance with the following rules:

(1) No brokerage commissions shall be permitted for that part of a lease term in excess of 20 years.

(2) No brokerage commissions shall be permitted for:

(i) tax payments deemed to be additional rent and paid by the tenant,

(ii) options to renew for an additional term of years, unless such option shall have been duly exercised in accordance with the terms of the lease or

(iii) payments for items not included in basic rent, including, but not limited to, utilities and costs of improvements made by the owner.

(3) Maximum brokerage commissions shall be permitted in accordance with the following schedule, based on the rentals charged the tenant:

[See tabular material in printed version]

(4) Brokerage commissions earned and due the broker, shall be paid by the housing company in an amount not to exceed the dollar amount of the non-refundable security held by the housing company at the time the lease is approved

by HPD. The balance due, if any, shall be paid when the tenant takes possession of the premises in accordance with the terms of the lease.

(5) Brokerage commissions earned and due the broker, where the tenant is a bank, supermarket chain or where the tenant's latest published credit rating is "A" or better and no security deposit is required under the lease, shall be paid by the housing company when the lease is approved by HPD.

(6) When requested by HPD, the broker shall submit trade references, financial statements and any other credit information which shall be properly authenticated in order to determine the credit-worthiness of the tenant.

(7) The brokerage agreement shall constitute the complete understanding between the housing company and the broker. There shall be no payments to the broker beyond those authorized by such agreement.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §48, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subds. (e), (f), (g) [became (d), (e), (f) in City Record Jan. 2, 2003] amended City Record Jan. 17,

2003 §8, eff. Feb. 1, 2003. [See T28 §3-02 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. A tenant's persistent and continuous refusal to grant the management company periodic access to his apartment, as required by the statute, can be grounds for eviction. The court upheld HPD's determination that the tenant was not entitled to cure the violation. Fitzgerald v. New York City Dept. of Housing Preservation and Development, 1 A.D.3d 285, 767 N.Y.S.2d 589 (1st Dept. 2003).

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-17 Housing Company Responsibilities to Tenant/Cooperators.

(a) **Tenants Association.** (1) All rental housing companies shall recognize a duly constituted Tenants Association that will be representative of the tenant body as a whole.

(2) A Tenants Association shall be duly constituted when a petition is signed by tenants representing no less than forty (40%) percent of the dwelling units. A group seeking recognition on the basis of such petition must submit the original petition to HPD and a copy to the housing company, and must arrange for the posting of a notice in each building of the development advising the other tenants of their intention to seek recognition.

If HPD determines that the proposed group has been duly constituted, it will advise the housing company in writing of its decision to recognize the group. In the event other tenants representing no less than forty (40%) percent of the dwelling units in the development seek recognition of an alternative group, the housing company shall provide for an election to determine which shall be the duly constituted Tenants Association. In such an election each dwelling unit in the development shall be accorded one vote.

(3) Upon recognition of a Tenants Association, an election of officers must be held and the names of the officers of said association shall be furnished to HPD.

(4) HPD reserves the right to review and approve the by-laws and constitution of a Tenants Association.

(5) Members or officers of the Tenants Association must occupy a dwelling unit at the rental housing company development represented by such Tenants Association as his or her primary place of residence.

(b) **Availability of housing company records.** (1) The rental housing company shall provide the Tenants Association with copies of operating budgets and financial statements of the housing company within 30 days after said documents are filed with HPD.

(2) In a rental development which does not have a duly constituted and recognized Tenants Association, the rental housing company shall maintain copies of the operating budget and financial reports in the management office on site. If there is no office on site, the documents shall be made available upon request.

(3) Any tenant/cooperator or any Tenants Association's duly authorized representative may audit the books of the housing company during normal business hours and shall have access to the financial records upon which such financial statement is based.

(4) In a mutual housing company, the operating budget and financial statements shall be supplied to all shareholders.

(c) **Consultation.** The housing company or its duly authorized representative shall meet on a regular basis with representatives of a Tenants Association to discuss matters relating to the development. Such meeting shall take place at the development at a time mutually convenient to the Tenants Association and the housing company, and shall be held on a monthly basis unless the Tenants Association chooses to meet on a less frequent basis.

(d) **Availability of community space.** The housing company or its managing agent shall not unreasonably withhold permission for use of the development's community space from its residents. A reasonable charge may be made for janitorial or related services. A deposit may be required for the use of the space which is refundable if the premises is free of acts of vandalism.

The housing company shall, in consultation with the Tenants Association, establish priorities for the use of the community space.

If other organizations of tenants exist within a housing development, such as, for example, a senior citizen's club or garden club, the housing company through its managing agent, should make every effort to accommodate the needs of these organizations by providing an opportunity for use of the community space available. While the Tenants Association has first priority with regard to meeting space, it should not be to the exclusion of all other tenant organizations in the development.

There is no obligation for the housing company to make community space available for fund-raising events or for organizations whose membership consists primarily of non-tenants. The use of the community room for these purposes should be at the discretion of the housing company in consultation with the Tenants Association.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §49, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subd. (a) par (3) amended City Record Jan. 17, 2003 §9, eff. Feb. 1, 2003. This par (3) became par

(2) in City Record Jan. 2, 2003. [See T28 §3-02 Note 1]

Subd. (a) par (5) added City Record Nov. 12, 2003 §3, eff. Dec. 12, 2003. [See T28 §3-02 Note 2]

Subd. (d) amended City Record Jan. 17, 2003 §9, eff. Feb. 1, 2003. This subd. (d) became subd. (c)

in City Record Jan. 2, 2003. [See T28 §3-02 Note 1]

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CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-18 Lease Termination and Renewals.

(a) **Preliminary notice of grounds of eviction, administrative hearing and certificate of eviction.** Except as otherwise provided in this subdivision, no eviction proceeding based upon a holdover or a breach of the terms of the lease or occupancy agreement shall be initiated by a housing company against a residential tenant/cooperator without the issuance of a certificate of eviction by HPD following an administrative hearing by an HPD designated hearing officer. The hearing officer's decision shall be final without recourse to an administrative appeal. Notwithstanding the foregoing, such hearing and certificate of eviction shall not be required for any eviction proceeding based upon non-payment of rent/carrying charges or any sum which constitutes rent or additional rent pursuant to the applicable lease or occupancy agreement. Furthermore, at HPD's sole discretion, such hearing and certificate of eviction may be waived in accordance with subdivision (e) of this section.

To set an eviction hearing the housing company shall notify HPD in writing of the facts which it contends justify eviction, together with an affidavit stating that a preliminary notice of grounds for eviction has been served upon the tenant/cooperator as follows:

(1) The notice shall be sent to the tenant/cooperator by regular first class mail, and by certified or registered mail, return receipt requested; and

(2) A copy of the notice shall also be served by personal delivery to the tenant/cooperator; or by delivery to a person of suitable age and discretion occupying the apartment in question; or if admittance cannot be obtained and such person cannot be found, by affixing a copy upon the door or placing a copy under the door of the apartment.

(3) The notice may be served simultaneously with any notice to cure which may be required by the tenant/cooperator's lease/occupancy agreement, and shall advise the tenant/cooperator of the following:

(i) The specific charges against him or her;

(ii) that he or she has the opportunity to appear before an HPD hearing officer to deny or explain the charges against him or her;

(iii) that he or she may retain counsel to represent him or her at a hearing;

(iv) that the findings of the HPD hearing officer, should a hearing take place, may be determinative as to the factual issues.

(b) **Administrative hearing.** If, after ten days from the date of service of the preliminary notice of grounds for eviction, the tenant/cooperator has not cured the breach of his or her lease/occupancy agreement, the housing company may request HPD to proceed to schedule a hearing at which the housing company shall present to the hearing officer its charges against the tenant/cooperator. The housing company shall advise the tenant/cooperator of the date and place of the hearing in the same manner prescribed for the service of the preliminary notice of grounds for eviction as specified in paragraphs one and two of subdivision (a) of this section.

If the tenant/cooperator fails to appear at the designated hearing, he/she shall be advised by the hearing officer, by regular first class mail, that unless a request to reopen the matter is received by the hearing officer within a designated period of time, a decision shall be rendered by the hearing officer based upon the information provided by the housing company and that such decision shall be final.

All witnesses at the hearing shall be sworn to tell the truth. Witnesses may be examined and cross-examined by either party and by the hearing officer. The hearing officer may accept any evidence which he or she deems to be relevant and material. A tape recording of the hearing shall be made by the hearing officer, and the hearing officer shall arrange for a transcript of the tape upon the written request of either party, at the expense of the party requesting said transcript.

In the event the hearing officer finds grounds for the eviction, he or she shall issue a certificate authorizing the housing company to commence summary proceedings for such eviction of the tenant/cooperator, stating the reasons for his or her decision. At the soll discretion of the hearing officer, such decision may also contain a probationary period or opportunity to cure. A copy of said certificate shall be sent to the tenant/cooperator and to his or her attorney, if any, by regular first class mail. Service of process for summary proceedings may be made simultaneously with or subsequent to the service of such certificate.

Acceptance of rent/carrying charges after the commencement of eviction proceedings, pursuant to the administrative hearing process, shall be without prejudice.

Notwithstanding anything to the contrary contained in this subdivision (b), a breach of lease or occupancy agreement involving hazardous conditions, violent or disruptive behavior, fraud or illegality shall not be subject to any opportunity to cure by the tenant/cooperator.

(c) **Appeals.** There is no administrative appeal from the determination of the hearing officer. The decision of the hearing officer is subject only to review by commencing an action pursuant to Article 78 of the Civil Practice Law and Rules.

(d) **Summary proceedings.** The above procedures do not apply to summary proceedings for non-payment of rent, carrying charges and any other monetary obligations of the tenant/cooperator to the housing company pursuant to his or her lease or occupancy agreement or any other agreement between the tenant/cooperator and the housing company with

respect to ancillary services, except as specified in subdivision (a) of this section.

(e) **Emergency evictions.** The above procedures may be waived at the sole discretion of HPD in any case in which HPD determines that the health or safety of the tenant/cooperators of a development is jeopardized by another tenant/cooperator or his or her family, members of his or her household or visitors to his or her premises.

(f) **Applicability.** The above procedures shall be the sole requirements to commencement of eviction proceedings and it is the express intention of HPD that no other section of these rules is applicable.

(g) **Lease/occupancy agreement renewals.** The housing company shall offer a renewal of a tenant/cooperator's lease/occupancy agreement between ninety (90) and one hundred twenty (120) days prior to the expiration of his or her existing lease/occupancy agreement, unless the tenant/cooperator shall have materially breached the lease/occupancy agreement, shall be ineligible for continued occupancy of his or her apartment, or shall otherwise be found to be a nuisance. Such renewal lease/occupancy agreement shall be for a minimum of a one-year term.

If a housing company wishes to refuse to renew a tenant/cooperator's lease/occupancy agreement, it shall notify the tenant/cooperator with respect to its reason for refusing to renew in a notice to be served upon the tenant/cooperator in the same manner prescribed with respect to the preliminary notice of grounds for eviction between ninety (90) days and one hundred twenty (120) days prior to the expiration of his or her existing lease/occupancy agreement. A copy of said notice shall be sent to HPD. If the tenant/cooperator holds over subsequent to the expiration date of his or her lease, the housing company shall commence eviction proceedings against the tenant/cooperator in accordance with the administrative hearing process set forth in this section, unless the material breach of lease relates to non-payment of rent/carrying charges or additional rent/carrying charges as set forth in subdivision (a) of this section.

(h) **Illegal occupancy.** A housing company having knowledge of occupancy of an apartment in conflict with the requirements of the Private Housing Finance Law, HPD rules or the requirements applicable to the apartment by reason of any federal, state or city benefit or subsidy, lease or occupancy agreement, or by reason of any other applicable law or regulation, shall notify HPD in writing of said illegal occupancy. The housing company shall, as soon as practicable, commence eviction proceedings against the last-authorized tenant/cooperator of the apartment in accordance with the administrative hearing process set forth in this section.

An illegal occupant of an apartment shall not be entitled to any protections pursuant to this section. A housing company shall not knowingly accept rent from an illegal occupant, and shall seek to recover from such occupant the full market value of the apartment.

The acceptance of rent/carrying charges from or on behalf of an illegal occupant shall not be deemed to create any right of tenancy or any obligation on the part of the housing company to afford such person the protection which these rules afford to authorized tenant/cooperators.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §50, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 14, 2006 §3, eff. Aug. 13, 2006. [See T28 §3-02 Note 3]

Subd. (d) amended City Record July 14, 2006 §3, eff. Aug. 13, 2006. [See T28 §3-02 Note 3]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where a tenant subleased the apartment without permission, made a profit on the sublease over and above the rent, and failed to list the occupant on the required income affidavits, these breaches were non-curable and the tenant

could be evicted. Waterside Redevelopment Co. v. Dept. of HPD, 270 A.D.2d 87, leave to appeal denied, 95 N.Y.2d 765, 716 N.Y.S.2d 39 (2000).

¶ 2. A persistent and continuous refusal to pay maintenance, in order to force changes in management, constitutes a nuisance which justifies eviction, and the tenant was not entitled to cure the violation. Fitzgerald v. New York City Dept. of Housing Preservation and Development, 1 A.D.3d 285, 767 N.Y.S.2d 589 (1st Dept. 2003).

¶ 3. In Matter of Nole v. N.Y.C. Dept. of Housing Preservation and Development, 26 A.D.3d 163, 808 N.Y.S.2d 678 (1st Dept. 2006), leave to appeal dism'd, 6 N.Y.3d 890, 817 N.Y.S.2d 624, 850 N.E.2d 671(2006), the court held that the form of notice of preliminary grounds for eviction complied with 28 RCNY § 3-18(a), and was sufficiently specific. Although the notice gave the wrong date for the lease, it was properly served, and the tenant was not prejudiced by the defect. The manner of service was reasonably calculated to make the tenant aware of the proceeding so as to afford her an opportunity to be heard.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-19 Senior Citizen Rent Increase Exemption Program ("SCRIE").

(a) **Background and applicability.** Local Law No. 40 of 1976 (§§26-601 et seq.) amended the Administrative Code of the City of New York in order to establish an exemption from rent increases for senior citizens who meet the eligibility requirements specified therein, and who reside in a dwelling unit whose rent is regulated or established pursuant to the provisions of Articles II, IV, V or XI of the Private Housing Finance Law. Amendments to the law in 1977 and 1978 made dwelling units in a dwelling subject to or initially subject to a mortgage insured by the federal government pursuant to §213 of the National Housing Act (12 USCA §1715e) eligible for the exemption. The Administrative Code was subsequently further amended to include increases in charges due to capital assessments and voluntary capital contributions within the definition of "increase in maximum rent," and to require that rent increase exemptions and tax abatements granted for such assessments and contributions be paid back by the tenant/shareholder to the housing company, and by the housing company to the City, upon transfer of shares. The amendment regarding capital assessments specifically excluded any dwelling unit subject to a mortgage insured or initially insured by the federal government pursuant to §213 of the National Housing Act, as amended (12 USCA §1715e). Subdivision (g) of §3-19 implements the amendment to the Administrative Code. The rules set forth in this section implement Administrative Code §§26-601 et seq., and are applicable as provided therein. In addition, an amendment was passed on September 6, 1977 to allow portability for senior citizens receiving a subsidy under the rent and rehabilitation law, the rent stabilization law and Local Law 40 of 1976. Portability means that a senior citizen with a valid SCRIE subsidy may move within a development, and in addition, certificates issued by the Department for the Aging and HPD are interchangeable under conditions set forth in the law.

(b) **Eligibility requirements.**

(1) The head of household or spouse is 62 years of age or older.

(2) The total disposable income of all members of the household when combined does not exceed the amount provided for in RPTL §467-c(1)(d).

(3) The increase in maximum rent or carrying charges resulted in the maximum rent or carrying charge equalling or exceeding one-third of the combined disposable income of all members of the household. That portion of a rent or carrying charge increase attributable to gas or electrical utility charges or an increase in dwelling space, services or equipment is excluded from exemption.

(4) The head of household is not receiving any other rent subsidies other than public assistance.

(c) **Procedures.**

(1) A head of household may apply to HPD for a SCRIE subsidy on a form prescribed and made available by HPD. In addition to the application, he or she must submit any other documentation necessary to assist HPD in its review.

(2) HPD shall review the application and shall notify the applicant of its determi- nation.

(3) When HPD determines that an applicant is eligible, HPD shall advise both the eligible senior citizen and the housing company of the established base rent which the housing company is to charge the senior citizen. The established base rent shall remain the same until a change in circumstance occurs.

(4) Senior citizens receiving benefits under this program must complete an annual recertification form prescribed and made available by HPD.

(5) The effective date of the SCRIE subsidy for applications received by HPD not more than 120 days from the date of the increase shall be the effective date of the increase. The effective date of the SCRIE subsidy for all other applications shall be the first day of the month following the receipt of the application and shall be based only upon the most recent increase in maximum rent.

(6) It shall be illegal for a housing company to collect any amount for which a SCRIE subsidy provides credit or to withhold benefits from a tenant/cooperator entitled to a SCRIE subsidy and collection or retention of any such amount for a dwelling unit occupied by such eligible head of household shall be deemed a rent overcharge. Upon conviction therefor, the housing company and its directors and any employee responsible therefor, shall be guilty of a misdemeanor, punishable by a fine not to exceed one thousand dollars or imprisonment not to exceed six months, or both.

(d) **Reimbursement to housing companies.**

(1) On a quarterly basis, HPD will issue Tax Abatement Certificates to all housing companies which have extended benefits to senior citizens deemed eligible by HPD. The certificates will be in an amount equal to the difference between the approved rent/carrying charges for the dwelling units and the amount of the established base rents charged to the eligible senior citizens.

(2) The housing company, upon receipt of the Tax Abatement Certificate, shall submit the certificate with the next quarterly real estate tax bill to the Department of Finance, paying the amount of the bill less the credit for the amount on the Tax Abatement Certificate. In those instances, where the taxes to be paid are less than the amount to be abated, HPD shall issue a voucher to the housing company for the balance.

(3) The housing company shall provide HPD with a revised rent roll upon implementation of each new rent/carrying charge increase.

(4) HPD, at its discretion, may electronically notify the Department of Finance of the abatement amount in lieu of the issuance of a Tax Abatement Certificate. If HPD electronically notifies the Department of Finance of the abatement amount, such electronic notification shall be deemed to be the equivalent of a Tax Abatement Certificate.

(e) **Termination of or change of benefits.**

(1) Any change in the status of the head of household or members of household which renders such persons ineligible shall result in the cancellation of benefits.

(2) Any change in income may result in a change in base rent/carrying charges.

(3) It is the obligation of both the recipient of benefits under this program and the housing company to notify HPD of any change in status or income which may affect eligibility.

(4) Failure of a senior citizen receiving benefits to recertify on an annual basis will result in termination of benefits.

(5) If an audit or other means of verification discloses that an exemption is excessive, the amount of tax payable by reason of such disclosure and the statutory penalty thereon, shall be a lien upon the property as of the due date of the tax for which the excessive exemption was claimed. In the event the excessive exemption was not due to any willful fault of the housing company, the amount of tax payable by reason of the disclosure shall be a lien upon the property as of the date for payment of taxes next following certification of such corrected order by HPD.

(f) **Portability of benefits.**

(1) When a head of household receiving a SCRIE subsidy moves his or her principal residence to another dwelling unit eligible under this program, the head of household may apply to HPD for a SCRIE subsidy relating to the subsequent dwelling unit which shall provide that the head of household shall be exempt from paying that portion of the maximum rent for the subsequent dwelling unit which is the least of the following:

(i) The amount by which the rent for the subsequent dwelling unit exceeds the established base rent actually required to be paid in the original dwelling unit;

(ii) the amount of rent abated in the most recent month in the original dwelling unit; or

(iii) the amount by which the maximum rent of the subsequent dwelling unit exceeds one-third of the continued income of all members of the household.

(2) A senior citizen seeking to transfer his or her rent exemption must complete and submit a SCRIE application and portability request prescribed and made available by HPD. In addition to submission of the application form and portability request, proof of income and proof of previous rent and subsidy are required.

(g) **Procedures for applications for SCRIE subsidies for charges attributable to capital assessments and voluntary capital contributions.**

(1) This subdivision implements the provisions of §§26-605 and 26-615 of the Administrative Code regarding SCRIE subsidies for charges attributable to capital assessments and project-wide voluntary capital contributions, which are approved by HPD, where applicable.

(2)(i) A head of household who receives an increase in carrying charges based upon a charge attributable to capital assessments or voluntary capital contributions shall make an application for such certificate to HPD on a form prescribed and made available by HPD.

(ii) In addition to the application, a head of household must submit any other documentation necessary to assist HPD in its review.

(3) HPD shall review the application and any supporting documentation to determine the eligibility of the head of household. HPD shall approve or disapprove applications, and, if it approves, shall issue a written notification to such head of household and to the affected housing company indicating the total amount of SCRIE subsidy available pursuant to this subdivision. If the application is disapproved, HPD shall issue a written notification of disapproval to such head of household indicating the reasons for the disapproval.

(4) Upon receipt of notification of eligibility, the housing company shall provide the decrease in charges applicable to the capital assessment or voluntary capital contribution, and HPD shall reimburse the affected housing company in accordance with the procedures provided in subdivision (d) of this section in an amount equal to the total capital assessment or capital contribution.

(5)(i) Documentation of imposition of a capital assessment or voluntary capital contribution shall be provided by the affected housing company to HPD, in addition to any further information required by HPD to make a determination of eligibility under this subdivision.

(ii) A housing company which imposes a capital assessment or voluntary capital contribution shall provide notice to all persons affected by such capital assessment or voluntary capital contribution of the potential availability of a SCRIE subsidy pursuant to this subdivision. Such notice shall be included in the notice to such person of the imposition of such capital assessment or voluntary capital contribution.

(6)(i) Notification and documentation of any transfer of shares by an eligible head of household who has received a SCRIE subsidy under this subdivision shall be provided in writing to HPD by the affected housing company immediately upon the closing date of such transfer except in cases involving a succession of rights claim, in which case notification shall be made in writing within five days of approval of the succession claim.

(ii) The affected housing company shall be entitled to deduct from the amount to be paid to such eligible head of household for the sale of such shares all amounts previously covered by a SCRIE subsidy which are attributable to a capital assessment or voluntary capital contribution. Where there is a transfer of shares through succession rights and where the successor is not entitled to a SCRIE subsidy under this subdivision, the affected housing company shall be entitled to receive a payment from the successor in an amount equal to all SCRIE subsidies attributable to a capital assessment or voluntary capital contribution.

(iii) Such housing company shall not approve the transfer of shares unless it has received the payment required by subparagraph (ii) of this paragraph, or made the deduction therein authorized.

(iv) Payment by such housing company of the amount attributable to the capital assessment or voluntary capital contribution set forth in subparagraph (ii) of this subdivision shall be made to the Department of Finance through an adjustment in tax abatement status issued to the Department of Finance by HPD, or by remittance by such housing company of such amount directly to the Department of Finance and written notification to HPD of such payment by the housing company within 90 days of the collection thereof. Payments due to the City in accordance with this subparagraph shall be deemed a tax lien and may be enforced in any manner authorized for the collection of delinquent taxes on real property.

(7) The provisions of this section shall be applicable to an application pursuant to this subdivision except where in conflict with this subdivision, in which case, the provisions of this subdivision shall control.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §51, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 14, 1999 §1, eff. Oct. 14, 1999. [See Note 1]

Subd. (b) pars (3), (4) amended City Record Sept. 14, 1999 §2, eff. Oct. 14, 1999. These pars were renumbered (2), (3) in City Record Jan. 2, 2003 amendment. [See Note 1]

Subd. (c) par (4) repealed [Note this par (4) was also repealed in City Record Jan. 2, 2003] City Record Jan. 17, 2003 §10, eff. Feb. 1, 2003. [See T28 §3-02 Note 1]

Subd. (g) added City Record Sept. 14, 1999 §3, eff. Oct. 14, 1999. [See Note 1]

Subd. (g) par (2) subpar (i) amended City Record Jan. 17, 2003 §10, eff. Feb. 1, 2003. [See T28 §3-02 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 14, 1999:

The amendments affect the rules relating to the Senior Citizen Rent Increase Exemption Program (SCRIE). The amendments implement changes in the law made by Chapter 366 of the laws of 1995 which increased the maximum SCRIE recipient income from $16,500 to $20,000. The amendments also implement changes in the law made by Chapter 737 of the laws of 1986 and Chapter 584 of the laws of 1987, which provided for an exemption to SCRIE recipients from increases in rent attributable to capital assessments or voluntary capital contributions.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where a tenant subleased the apartment without permission, made a profit on the sublease over and above the rent, and failed to list the occupant on the required income affidavits, these breaches were non-curable and the tenant could be evicted. Waterside Redevelopment Co. v. Dept. of HPD, 704 N.Y.S.2d 63, (App.Div. 1st Dept. 2000).

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CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-20 Assignment of tax. [Repealed]

HISTORICAL NOTE

Section repealed City Record Jan. 2, 2003 §52, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

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CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-21 Limited Profit Housing Companies Having Federally Insured Mortgages Pursuant to §223(f) of the National Housing Act.

(a) **General.** Certain limited profit housing companies have been refinanced under §223(f) of the National Housing Act through the New York City Housing Development Corporation (HDC). Such housing companies remain subject to the provisions of the Private Housing Finance Law and the rules and regulations governing city-aided limited profit housing companies, except as provided otherwise by agreement with, or regulations of, the U.S. Department of Housing and Urban Development (HUD). In general, all matters involving management, maintenance, and operation shall be supervised by HUD except as otherwise set forth by statute or in this section. Compliance with the requirements of the Private Housing Finance Law shall continue to be supervised by HPD. To the extent that HUD should relinquish authority over matters such as rent setting and management supervision, those responsibilities shall revert back to HPD.

(b) **Tenant/cooperator income and eligibility requirements.** Tenant/cooperator income and eligibility standards, as set forth in the Private Housing Finance Law and §3-02 of these rules apply to housing companies refinanced under §223(f). This includes, but is not limited to, rules regarding filing of applications, tenant/cooperator eligibility, maintenance of waiting lists, occupancy priorities, income verification at admission and during occupancy, occupancy standards and primary residence requirements.

Refinanced housing companies shall not be required, however, to submit applications to HPD for its prior approval. Instead, a post-audit of applications shall be conducted by HPD. Notwithstanding the foregoing, HPD reserves the right, where violations of law or of HPD rules are found, to reinstitute temporarily or permanently, a requirement of prior review and approval of all applications for admission to or transfer within a development. In addition, HPD and/or the housing company shall conduct income verification audits periodically either as a result of a

spot check or other procedures. Tenant/cooperators and members of their household selected for audit shall be required to provide certified copies of IRS or New York State income tax returns, as requested and shall assume the cost of such copies.

In refinanced housing companies which have "236" mortgage interest subsidy contracts, the housing companies are required to meet HUD income limits, where they differ from HPD, and any other federal law or regulation which may apply unless they are violative of New York State laws. HPD rules must be met regarding such things as waiting lists and submission of rent rolls. HUD does not prescribe the form of waiting list for "236" developments. If a "236" housing company maintains a single bound waiting list in chronological order, it shall also be required to maintain lists by bedroom size in chronological order for HPD.

(c) **Surcharge billing, collection and remittance.** Refinanced housing companies are obligated to bill and collect surcharges. HPD will continue to supervise the billing and collection of surcharges as required by the Private Housing Finance Law and §3-03 of this chapter. All agreements with managing agents must include a provision that it is the responsibility of the managing agent to bill and collect surcharges. Refinanced housing companies are obligated to recognize hardship cases as set forth in §3-03 of these rules.

(d) **Housing company funds and bonds.** The provisions of §3-04 apply to §223(f) housing companies.

(e) **Resale of cooperative shares.** The provisions of the Private Housing Finance Law and §3-06 of this chapter apply to mutual housing companies refinanced under §223(f). These include, but are not limited to, the provision that a mutual company electing to amend its by-laws regarding sale of shares, shall submit to HPD for its approval, a Board of Directors Resolution certified and acknowledged by the Secretary of the Corporation setting forth the adoption of the amendment and a fully executed copy of a by-law amendment certified by the Secretary of the Corporation.

In the case of §223(f) refinanced mutual housing companies, where the appliances were included as security for the insured mortgage, the outgoing shareholder shall be required to leave behind the appliances which were in place at the time of refinancing or to replace them with appliances of equal size and amenities.

(f) **Occupancy rights of family members and applicability of §235-f of the Real Property Law.** The provisions of §3-02(o) and (p) apply to housing companies refinanced under §223(f).

(g) **Joint ownership of shares.** The provisions of §3-06(c) of these rules [and regulations] apply to housing companies refinanced under §223(f).

(h) **Bequeathing of apartments.** In no event may the right of occupancy in a unit in a refinanced housing company be bequeathed to another. Upon the death of the tenant/cooperator, the shares must be returned to the mutual housing company which will arrange for a sale pursuant to §3-06(a) of this chapter. Notwithstanding the foregoing, eligible members of the tenant/cooperator's immediate family in occupancy may acquire such shares if they meet the requirements of §3-02(p) of this chapter.

(i) **Billing and collection of amounts due on subordinate mortgages.** HPD shall bill and collect amounts due pursuant to the terms and conditions of the Subordinate Mortgage executed by each housing company in connection with its §223(f) refinancing. Each housing company is required to submit on a timely basis an annual audited financial statement. Such statement shall indicate whether or not surplus cash, as defined in the Regulatory Agreement, is available. If surplus cash is available, and is required to be paid to the City of New York pursuant to the Disbursement Agreement, a payment equal to the amount of surplus cash shall accompany the submission of the audited financial statement.

(j) **Submissions.** The following documents are required to be submitted to HPD and HDC on a timely basis:

(1) Audited Financial Statement

(2) Annual Budget (HDC only)

(3) Surcharge Tabulation Sheets (HPD only)

(4) Income Affidavits (HPD only)

(5) Waiting Lists and Internal Transfer Lists (HPD only)

(6) Original Insurance Policies to HDC

(7) Copies of excess rent reports as required in the Federal 236 interest reduction subsidy program

(8) Data relating to Senior Citizen Rent Increase Exemption Program (HPD only)

(9) Rent Roll (at request of HPD)

(10) Data relating to compliance by the housing company with any applicable law, rules, regulation or administrative order of the city, state or federal government (at request of HPD)

(11) Amendments to Certificates of Incorporation, by-laws, and partnership agree- ments

(12) Any and all books and records of the housing company which HPD directs to be made available

(k) **Rent or carrying charge increases.** HUD will be responsible for the approval of all rent/carrying charge increases with respect to all refinanced developments. HPD and HDC shall be notified by the housing company of its request for a rent/carrying charge increase. HUD shall notify HPD and HDC of its approval of any rent/carrying charge increase. A revised rent/carrying charge roll shall be submitted to HPD and HDC subsequent to implementation of an increase.

(l) **Distributions of surplus cash.** All distributions of surplus cash by any housing company require the prior written approval by HPD.

(m) **Reserve requirements.** Reserve requirements and releases from reserve accounts are subject to HUD supervision and approval.

(n) **Annual physical inspection.** HPD reserves the right to conduct a physical inspection of each development at any time. A copy of any inspection report prepared by HDC will be provided to HPD.

(o) **Shelter rent certification.** HPD shall continue to certify Shelter Rent pursuant to §33(1)(d) of the Private Housing Finance Law. All housing companies must make timely submission of all data required to enable HPD to make such certification.

(p) **Notifications.** Notification of changes in Board of Directors, officers, managing agents, attorneys and accountants shall be provided promptly to HPD and HDC.

(q) **Transfer of ownership interests in rental developments.** All transfers of ownership interests in rental developments including changes in general partners are subject to prior written approval of HPD and HDC.

(r) **Terms of subordinate mortgage and disbursement agreement.** Nothing contained in these rules shall limit obligations of housing companies pursuant to the Private Housing Finance Law or pursuant to the mortgage closing documents applicable to each development, including, without limitations, the terms and conditions of the Subordinate Mortgage and of the Disbursement Agreement.

(s) **Managing agents agreements.** All managing agents' contracts must be sent to HDC for written approval

HDC will review and approve the selection of and agreements with managing agents of refinanced developments, including self-management, and renewals or extensions of prior managing agents' agreements. If HDC approves a managing agent's agreement, HDC will evidence its consent by letter or by executing the managing agent's agreement. HDC will submit the executed agreement to HUD for approval. HPD reserves the right, in conjunction with HDC, to review and approve agreements with managing agents of refinanced developments.

If HDC disapproves a managing agent's agreement, HDC will advise the owner of the refinanced project and HUD of the reasons for the disapproval.

(t) **Structural changes and major capital improvements.** In order to remodel, add to, alter, remove or demolish the project or any portion thereof, the owner of a refinanced project must

(1) notify HUD, HDC and HPD in writing, and

(2) obtain the prior written consent of HDC and HUD (and, where necessary, HPD) except that such notification and consent is not required to perform such minor repairs as do not require a permit from the City of New York Department of Buildings or to perform emergency repairs.

(u) **Lease terminations and renewals.** HPD will apply the procedures set forth in §3-18 of this chapter to all refinanced projects so that no eviction proceeding may be instituted against any tenant/cooperator continuing to pay his or her rent/carrying charges without the issuance by HPD of a certificate of eviction.

(v) **Notification of legal proceedings.** The housing company or managing agent shall notify HPD, HDC and the Tenants Association of any litigation by or against the housing company which would have a material effect upon the financial condition of the housing company. Failure to notify HPD or the Tenants Association shall in no event be deemed to afford a defense to litigation.

(w) **Removal of Board of Directors.** The provisions of the Private Housing Finance Law and §3-13 of this chapter apply to housing companies refinanced under §223(f).

(x) **Tenants Association.** The provisions of the Private Housing Finance Law and §3-17 of this chapter apply to rental housing companies refinanced under §223(f).

(y) **Senior citizen rent increase exemption program.** The provisions of the Private Housing Finance Law and §3-19 of this chapter apply to housing companies refinanced under §223(f).

(z) **Insurance.** Refinanced housing companies must meet insurance requirements of HUD, HDC and HPD. HPD shall be named as an Additional Insured.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §53, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subd. (c) amended City Record July 14, 2006 §4, eff. Aug. 13, 2006. [See T28 §3-02 Note 3]

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CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-22 Form of Residential Lease.

The form of residential lease including occupancy agreements utilized by housing companies is subject to the approval of HPD and shall be submitted to HPD, if requested. All leases shall be for a minimum term of one year. Failure to comply with the foregoing requirement shall in no event be deemed to afford a defense to the enforcement of a lease by a housing company.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §54, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

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CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-23 Equal Opportunity Policy.

All housing companies shall comply with all applicable Federal, state and local laws, rules and regulations concerning equal opportunity in housing.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §55, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

28 RCNY 3-24

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-24 Special Powers.

Notwithstanding any other provisions of this chapter, HPD may authorize special emergency measures in any instance in which it is determined by HPD that a development is in serious financial difficulty.

HISTORICAL NOTE

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Rules of the City of New York

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28 RCNY 3-25

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 3 CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

§3-25 Miscellaneous Provisions.

(a) **HPD Discretion.** All determinations to be made by HPD in accordance with this chapter shall be in the sole discretion of HPD.

(b) **Statutory Authority Not Limited.** Nothing in this chapter shall be deemed to limit HPD's authority pursuant to applicable laws.

(c) **Technical Violations.** Provided that there has been a good faith effort to comply with this chapter, technical violations of this chapter by HPD shall not invalidate any action taken pursuant to this chapter, nor shall such technical violations give rise to any rights, claims or causes of action against HPD or the City of New York. The Commissioner, upon good cause shown, may alter the timing or sequence of the actions described in this chapter, provided all affected parties are given reasonable notice.

(d) **Severability.** If any clause, sentence, paragraph, section or part of this chapter should be adjudged by any court of competent jurisdiction, to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof correctly involved in the controversy in which such judgment shall have been rendered.

HISTORICAL NOTE

Section amended City Record Jan. 2, 2003 §56, eff. Feb. 1, 2003. [See T28 §3-01 Note 1]

Section in original publication July 1, 1991.

Subd. (d) amended (as subd. (b)) City Record Jan. 17, 2003 §11, eff. Feb. 1, 2003. [See T28 §3-02

Note 1]

CASE AND ADMINISTRATIVE NOTES

¶1. The public agency cannot waive regulations which govern procedure affecting substantial rights of parties. Thus, where the regulations give aggrieved tenants the right to an independent review by an assistant commissioner of a rent increase application, the agency cannot waive the regulation. Waterside Tenants Association v. Waterside Redevelopment Co., N.Y.L.J., Aug. 22, 1997, page 23, col. 3 (Sup.Ct. New York Co.).

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 4 COMPANIES FORMED PURSUANT TO THE REDEVELOPMENT COMPANIES LAW OF THE STATE OF NEW YORK

§4-01 Reports.

Upon the completion of any project, as evidenced by the issuance of a temporary or permanent certificate of occupancy, each redevelopment company shall be required to file with the Department of Housing Preservation and Development (HPD):

(a) Within thirty (30) days of the expiration of each six (6) months of operation, a report certified by an officer, disclosing the following:

(1) A statement of dividends declared, furnishing the date of declaration, the amount of the dividend, persons to whom paid and the amount paid to each such person.

(2) A statement of the date and amount of any interest paid on income debentures or other obligations of the redevelopment company, disclosing date of payment, the amount of interest, persons to whom paid and the amount paid to each such person.

(3) All appropriate data relative to rental surcharges, including the name of the occupant surcharged, the apartment number and the amount of monthly surcharge.

(4) The name and residence address of each of the officers and directors of the redevelopment company and the date of their election.

(5) A brief summary of the action taken at any meeting of the Boards of Directors or stockholders of the redevelopment company during said period.

(6) The facts with relation to any changes in capitalization, including the issuance or redemption of capital stock, debentures or notes.

(7) The facts with relation to the transfer of the shares of stock of any cooperator (if same be a project owned on a cooperative basis), which shall include the names of the parties to the transfer and the date thereof, the apartment affected, the number of rooms and the sales price of said shares, or, if the project be a rental project, the date of any changes in tenancies, the apartment number, number of rooms and the old and new monthly rental.

(8) The date, amount and nature of expenditures for capital improvements.

(9) The date, amount and nature of single expenditures exceeding $500.00 for repairs.

(b) Within ninety (90) days after the close of each fiscal year of operation, a financial statement, in form approved or supplied by the Board, which will adequately represent the true financial condition of the redevelopment company.

(c) Within ten (10) days after the date of each meeting held by the stockholders of the Board of Directors of the redevelopment company, a copy of the minutes of the meeting.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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28 RCNY 4-02

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Title 28 Housing Preservation and Development

CHAPTER 4 COMPANIES FORMED PURSUANT TO THE REDEVELOPMENT COMPANIES LAW OF THE STATE OF NEW YORK

§4-02 Limitations.

No company shall: (a) Enter into any contract for the payment of salaries to officers or employees, or for the construction or for the substantial repair, improvement or operation of projects without the prior written approval of the HPD.

(b) Issue any prospectus, information bulletin, lease or other document pertaining to the purchase of stock or occupancy of an apartment without the prior written approval of the HPD.

(c) Prior to the completions of a project, receive or collect deposits or payments for a place on an applicants' list without the prior written approval of the HPD and upon such terms and conditions as the HPD shall prescribe.

(d) After the project has been completed and after initial occupancy, receive or collect a deposit in excess of $50.00 for a place on a waiting list to obtain occupancy of an apartment, without the prior written approval of the HPD.

(e) Directly or indirectly, refuse, withhold from, or deny to any person or any of the dwellings or business accommodations in such projects or property or the privileges and services incident to the occupancy thereof on account of the race, color, creed, national origin or ancestry of any such person.

(f) Rent or offer to rent, or sell or offer to sell, any of its capital stock to any persons or families whose probable aggregate annual income at the time of admission exceeds eight times the rental, including the value or cost to them of heat, light, water and cooking fuel of the dwelling that may be furnished to such persons or families. The "probable

aggregate annual income" means the annual income of the chief wage earner of the family and his or her spouse or domestic partner. For purposes of this subdivision, a domestic partner shall mean a person who has registered a domestic partnership in accordance with applicable law with the City Clerk, or has registered such a partnership with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the former City Department of personnel are to be transferred to the City Clerk.)

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (f) amended City Record June 8, 1998 eff. July 8, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 8, 1998:

Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City housing authority and the department of housing preservation and development. By the end of April, 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55 percent of those registered domestic partners who reported demographic information were heterosexual couples, and less than 45 percent were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

Consistent with the intent of such orders, and the Commissioner's authority pursuant to Charter §§1043 and 1802, the Department is now acting to provide that rules applicable to spouses, as specified herein, should now be extended to domestic partners.

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28 RCNY 4-03

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Title 28 Housing Preservation and Development

CHAPTER 4 COMPANIES FORMED PURSUANT TO THE REDEVELOPMENT COMPANIES LAW OF THE STATE OF NEW YORK

§4-03 Limitations on Sale of Shares.

(a) No by-laws shall hereafter be adopted or amended without the prior written approval of the HPD.

(b) The by-laws of each company hereafter adopted shall provide that the sale of its shares of capital stock shall not be made at a price greater than the par value thereof or the cost to the selling stockholder, without the prior written approval of the HPD.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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28 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 4 COMPANIES FORMED PURSUANT TO THE REDEVELOPMENT COMPANIES LAW OF THE STATE OF NEW YORK

§4-04 Verification of Tenant-Income Limitations.

(a) Each redevelopment company whose contract with The City of New York contains an income limitation for occupancy shall at the time of accepting an applicant for occupancy subject to the approval of the HPD, secure appropriate evidence of the fact that the income of the applicant is within the limits prescribed by the contract.

(b) The applicant shall furnish the information in an affidavit setting forth the aggregate annual income of the applicant and his spouse or domestic partner including a statement therein that the copy of the applicant's income tax report filed with the Internal Revenue Service for the last calendar year, submitted with the affidavit, is a true copy. The applicant shall furnish a power of attorney granting to the Board the right to examine or obtain copies of the original return. For purposes of this subdivision, a domestic partner shall mean a person who has registered a domestic partnership in accordance with applicable law with the City Clerk, or has registered such partnership with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the former City Department of Personnel are to be transferred to the City Clerk.)

(c) The applicant shall be informed:

(1) that his application has been accepted conditioned on the fact that applicant's income will not exceed the permitted amount at the time of admission to the project which time will be calculated to be the period between sixty (60) and ninety (90) days prior to actual occupancy; and

(2) that a further affidavit will be required of him at that time; and

(3) that if the income of the applicant has increased to an amount above the permitted maximum, the application should be withdrawn immediately.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record June 8, 1998 eff. July 8, 1998. [See T28 §4-02 Note 1]

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28 RCNY 4-05

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Title 28 Housing Preservation and Development

CHAPTER 4 COMPANIES FORMED PURSUANT TO THE REDEVELOPMENT COMPANIES LAW OF THE STATE OF NEW YORK

§4-05 Surcharges (Rental Procedure).

(a) Each redevelopment company whose contract with the City of New York contains an income limitation for occupancy shall:

(1) On April 15th of each year during occupancy, mail to each tenant, a notice or request for information as to the income of his family group during the preceding calendar year. Such notice shall request information to be furnished on a form approved by the HPD, and shall require a reply by the tenant on or before May 1st of such year.

(2) Furnish a tabulation of this information to the Board by May 15th of each year. The records on which the tabulation is based shall be kept available for inspection by the Board.

(b) Surcharges shall be imposed upon the tenants or cooperators, and collected from and after July 1st of each year on the basis of the best information available to the company, as approved by the HPD, and shall continue until revised with the approval of the HPD. Surcharge income shall be paid over to The City of New York as directed by the HPD.

(c) In the event that any tenant shall fail to supply the required information by May 1st, the income of such tenant shall be presumed to have exceeded the maximum allowed by law, and written notice shall thereupon be given to such tenant that the surcharge will be imposed against him on July 1st, unless facts are submitted by the tenant to warrant the removal of the surcharge. The rental surcharge shall be the amount provided in the contract and shall be calculated in the manner set forth therein.

(d) On and after July 1st of each year, no rental payment shall be accepted from any tenant in default under the foregoing requirements unless such payment includes such surcharge, and eviction proceedings shall be commenced by the redevelopment company against such tenant.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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28 RCNY 4-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 4 COMPANIES FORMED PURSUANT TO THE REDEVELOPMENT COMPANIES LAW OF THE STATE OF NEW YORK

§4-06 Schedule of Fees.

(a) **Consideration or approval fee.** One-tenth of one of the estimated total project cost, payable one-third upon the filing of the proposed redevelopment plan with HPD, one-third upon preliminary approval of the plan by HPD, and one-third upon the approval of the plan by the Board of Estimate or its successor.

(b) **Construction supervision and audit fee.** Three-tenths of one percent of the total project cost up to $30,000,000 plus two-tenths of one percent of costs in excess of $30,000,000. The foregoing shall be payable on or before the certification of the total project cost by the HPD in such manner as the HPD shall require.

(c) **Management and general supervision fee.** $1.00 per annum for rental room, payable semi-annually, the first payment to be made six (6) months after the issuance of a Certificate of Occupancy on all of the residential buildings. Such payments shall be made until the termination of tax exemption on the real estate of the company.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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28 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 5*1 J51 TAX EXEMPTION AND TAX ABATEMENT

§5-01 Scope and Construction.

(a) **Scope.** This chapter governs the granting of tax exemption and tax abatement pursuant to §489 of the Real Property Tax Law of the State of New York, §11-243, formerly §J51-2.5 of the Administrative Code of the City of New York, and Chapter 61 of the New York City Charter, including the procedure for filing an application for tax exemption and tax abatement and the issuance of Certificates of Eligibility and Reasonable Cost by the Office of Tax Incentive Programs of the Department of Housing Preservation and Development.

(b) **Construction.** This chapter is to be construed to secure the effectuation of the purposes of §489 of the Real Property Tax Law and §11-243 of the Administrative Code and in accordance with the general principal of law that exemption statutes are strictly construed against the taxpayer applying for the exemption. Except as hereinafter provided, this chapter, as amended, applies to all applications pending on or submitted after the effective date.

HISTORICAL NOTE

Section amended City Record Jan. 27, 1998 eff. Feb. 26, 1998. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Jan. 27, 1998:

The Act authorizes HPD to promulgate Rules governing the administration of the program. The proposed changes

to the rules (i) bring the rules into conformance with amendments to the Act which became effective on June 15, 1993, (ii) provide procedures necessary to implement these amendments, (iii) further clarify implementation of the Act, (iv) provide modest increases to the allowances for certain items on the Itemized Cost Breakdown Schedule where warranted by inflation and (v) revise fees to place a penalty on uncollectible checks and charge a reasonable fee for declaratory rulings.

FOOTNOTES

1

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

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28 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 5*1 J51 TAX EXEMPTION AND TAX ABATEMENT

§5-02 Definitions.

As used in this chapter, the following terms have the meanings indicated below.

Act. "Act" means §11-243 of the Administrative Code as amended.

Administrative Code. "Administrative Code" means the Administrative Code of the City of New York, as amended.

Alterations or improvements. "Alterations" or "improvements" means only those physical changes to an existing dwelling set forth in §5-08.

Attorney General. "Attorney General" means the Attorney General of the State of New York.

Bedroom. "Bedroom" means any living room as defined in §27-2004 of the Housing Maintenance Code and §4 of the Multiple Dwelling Law, after excluding the primary living room and the kitchen, except as provided in §5-03(e)(2)(ii) and in §5-03(e)(2)(iv).

Building. "Building" means a complete or substantially complete permanent improvement for occupancy or use within prior to the commencement of construction of alterations, improvements or conversion, provided such improvement is permanently affixed to the land, and that such improvement, exclusive of the land, has an assessed valuation of more than one thousand dollars ($1,000) for the fiscal year immediately preceding the commencement of construction, provided that such assessed valuation test shall not apply to alterations, improvements or conversions is

carried out with substantial governmental assistance.

Certificate of Eligibility and Reasonable Cost. "Certificate of Eligibility and Reasonable Cost" means the certificate issued by the Office pursuant to §5-05(g)(3).

Certified reasonable cost or CRC. "Certified reasonable cost" or "CRC" means the cost of a conversion or alterations or improvements certified by the Office to be eligible for the benefits of the Act pursuant to the procedures set forth in this chapter, as evidenced by the issuance by the Office of a "Certificate of Eligibility and Reasonable Cost."

City. "City" means the City of New York.

Class A multiple dwelling. "Class A multiple dwelling" means a Class A multiple dwelling as defined in §4 of the Multiple Dwelling Law, and shall include a garden-type maisonette dwelling project as defined below. A "Class A multiple dwelling used for single room occupancy" means a dwelling occupied pursuant to §248 of the Multiple Dwelling Law.

Class B multiple dwelling. "Class B multiple dwelling" means a Class B multiple dwelling as defined in §4 of the Multiple Dwelling Law.

Commencement of construction. (a) For work requiring a permit, "commencement of construction" means:

(1) the date of issuance of a permit by the Department of Buildings, or

(2) if physical alterations commenced prior to obtaining a required building permit, the actual start date, or

(3) for projects eligible pursuant to §5-03(a)(1), (3), (4), (9) or (10), the actual commencement of construction in good faith based on prior issuance of a permit by the Department of Buildings. Demolition work does not constitute "commencement of con- struction."

(b) If the issuance of a Building Permit by the Department of Buildings is not required by law, commencement of construction means the date any physical operation has commenced solely for the purpose of making eligible alterations or improvements. The Office may require that the commencement of construction date be confirmed by an affidavit from the owner, along with such other information as the Office may require to substantiate such date, including but not limited to, an affidavit of a registered architect or licensed professional engineer, a copy of the work contract, invoices, cancelled checks and a contractor's affidavit. If a building permit is not required and if the cost of the work claimed is less than five thousand dollars ($5000) the Office may, in its discretion, accept an owner's affidavit as to the date of commencement of construction, and waive some or all of the additional evidence or information. If an application contains a series of Major Capital Improvements, the commencement of construction date is that of the first major capital improvement for which benefits are claimed.

Commissioner. "Commissioner" means the Commissioner of the Department of Housing Preservation and Development or his or her designee.

Common area. "Common area" means the area in an existing dwelling other than the area which is within the interior walls of individual dwelling units.

Completion of construction. "Completion of construction" means the earlier of:

(i) the date of issuance or reissuance of a Permanent Certificate of Occupancy by the Department of Buildings;

(ii) the date of issuance of a Temporary Certificate of Occupancy by the Department of Buildings for all of the dwelling units therein, provided the only work remaining to secure a Permanent Certificate of Occupancy is work to be performed or completed in space to be used exclusively for non-residential purposes; or

(iii) the date of the issuance of a sign-off by the Department of Buildings as evidenced by the J-3, a computer printout or such other official documentation as may be required by the Department of Buildings and is acceptable to the Office if issued in connection with an eligible alteration, improvement or conversion; provided, however, that

(a) if none of the documents set forth above are required by law, "Completion of construction" shall mean that date on which physical operations to undertake alterations or improvements are concluded as confirmed by the submission of such information as the Office may require to substantiate such date, including but not limited to, a copy of the work contract, invoices, cancelled checks and a contractor's affidavit. If none of the documents set forth above are required by law and if the cost of the work claimed is less than five thousand dollars ($5,000), the Office may, in its discretion, accept an owner's affidavit as to the date of completion of construction and waive some or all of the additional evidence and information;

(b) if the applicant is a limited profit housing company organized pursuant to article two of the private housing finance law which owns and operates a planned unit development consisting of at least fifteen thousand (15,000) dwelling units. "Completion of construction" shall mean that date on which physical operations to undertake alterations or improvements are concluded as confirmed by the submission of such information as the Office may require to substantiate such date, including but not limited to, a copy of the work contract, invoices, cancelled checks and a contractor's affidavit, or, if the cost of the work claimed is less than five thousand dollars ($5,000), the Office may, in its discretion, accept an owner's affidavit as to the date of completion of construction and waive some or all of the additional evidence and information. Notwithstanding the foregoing, all required sign-offs including, but not limited to, the J-3 issued by the Department of Buildings, must be submitted to the Office before it issues a Certificate of Eligibility and Reasonable Cost pursuant to section 5-05(g)(3) of this chapter to such an applicant; and

(c) if an Alteration Type-1 Permit was issued to any applicant other than an applicant who is a limited profit housing company organized pursuant to article two of the private housing finance law which owns and operates a planned unit development consisting of at least fifteen thousand (15,000) dwelling units, the only acceptable evidence of completion of construction shall be the Temporary or Permanent Certificate of Occupancy.

Condominium. "Condominium" means any residential unit which is owned pursuant to the Condominium Act, Article IX-B of the Real Property Law, provided it is situated in a building which is a Class A multiple dwelling, and provided that such condominium has had a plan of condominium ownership accepted for filing by the Attorney General or has received a "no action" letter from the Attorney General, or has demonstrated that it is not subject to the requirements of §352(e) of the General Business Law.

Conversion. "Conversion" means only those items of work set forth in §5-08 which are necessary for the conversion of any building not a Class A multiple dwelling, into a Class A multiple dwelling. For purposes of eligibility for benefits, an interim multiple dwelling claiming benefits for conversion based on compliance with the standards of safety and fire protection set forth in Article 7-B of the Multiple Dwelling Law shall be deemed a Class A multiple dwelling.

Cooperative. "Cooperative" means any building which is operated for the benefit of persons or families who are entitled to occupancy by reason of ownership of stock, membership, or other indices of ownership in the corporate owner, or for the benefit of such persons or other families and other persons or families entitled to occupancy under applicable provision of law without ownership of stock, membership, or other indices of ownership in the corporate owner, provided, such cooperative has either had a plan of cooperative ownership accepted for filing by the Attorney General or has received a "no action" letter from the Attorney General, or has demonstrated that it is not subject to the requirements of §352(e) of the General Business Law.

Department of Buildings. "Department of Buildings" means the Department of Buildings of the City.

Department of Environmental Protection. "Department of Environmental Protection" means the Department of

Environmental Protection of the City.

Department of Finance. "Department of Finance" means the Department of Finance of the City.

Designated historic district or landmark site or structure. "Designated historic district or landmark site or structure" means an historic district or landmark site or landmark structure as designated by the Landmarks Preservation Commission of the City.

DHCR. "DHCR" means the New York State Division of Housing and Community Renewal.

Disposition of Funds Statement. "Disposition of Funds Statement" means written confirmation of funds actually advanced for construction under a building loan agreement made pursuant to Article 8, 8-a, 11, 12, 15 or 22 of the Private Housing Finance Law, or §312 of the United States Housing Act of 1964 (42 U.S.C. §1452 b), or the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §12701 et seq.) or §696-a or §99(h) of the General Municipal Law, or any other City-supervised housing program, or, in the discretion of the Office, other governmentally supervised housing programs.

Existing dwelling. "Existing dwelling" means a Class A multiple dwelling, including a garden-type maisonette dwelling project, or one or two Class A dwelling units in a building over space used for commercial occupancy which was in existence prior to the commencement of construction of alterations or improvements for which tax exemption or tax abatement is claimed under the terms of the Act, provided that a valuation for the improvement of more than one thousand dollars ($1,000), exclusive of the land, appears on the annual record of assessed valuation of the City for the fiscal year immediately preceding the commencement of construction of alterations or improvements, and provided further that such assessed valuation test shall not apply if the alterations, improvements or conversion are carried out with substantial governmental assistance.

Floor area. "Floor area" of a building means the gross horizontal areas of all of the floors of a dwelling measured from the exterior faces of exterior walls or from the center line of party walls. "Floor area" of a dwelling unit means the gross floor area within the dwelling unit measured from the interior faces of the demising partitions or walls.

Garden-type maisonette dwelling project. A "garden-type maisonette dwelling project" shall mean a project consisting of a series of dwelling units which together and in their aggregate were arranged or designed to provide three or more apartments and are provided as a group collectively with all essential services such as, but not limited to, water supply, house sewers and heat, and which are in existence and operated as a unit under single ownership on the date upon which an application for the benefits of the Act is received by the Office, even though Certificates of Occupancy may have been issued for portions thereof as private dwellings.

General Business Law. "General Business Law" means the General Business Law of the State of New York.

Gross cubic content. "Gross cubic content" of a building means the volume within the exterior faces of the perimeter walls (or center line of party walls), above legal grade, and below the roof level, plus any legal residential space below grade level. Roof bulkheads or roof penthouses used exclusively for machinery or equipment shall not be included. New exterior stair towers or elevator shafts shall not be included, unless they substitute for existing stair or elevator space which is converted to residential space.

Hotel. "Hotel" shall mean those buildings defined as Hotels by §5-03(f)(4).

Housing Maintenance Code. "Housing Maintenance Code" means the Housing Maintenance Code of the City, constituting §27-2001 et seq. of the Administrative Code, as amended.

HPD. "HPD" means the Department of Housing Preservation and Development of the City.

HUD. "HUD" means the United States Department of Housing and Urban De- velopment.

Increase in gross cubic content. "Increase in gross cubic content" means any portion of a building that results from new construction as distinguished from alterations or improvements to the gross cubic content in existence immediately prior to commencement of construction.

Institutional lender. "Institutional lender" means any municipal, federal or state agency and any savings or commercial bank, life insurance company, public real estate investment company, pension fund or any other entity having assets in excess of fifty million dollars ($50,000,000), whose mortgage loans are subject to regulation of a federal or state agency.

Itemized Cost Breakdown Schedule. "Itemized Cost Breakdown Schedule" means the schedule set out in §5-08.

Landmark. "Landmark" means an improvement which has been designated as a landmark by the Landmarks Preservation Commission of the City or which is within the boundaries of a historic district designated by the Landmarks Preservation Commission of the City.

Major capital improvement or MCI. "Major capital improvement" or "MCI" means only those items of work designated as major capital improvements (MCI's) and set forth, preceded by an asterisk, in §5-08.

Minimum tax zone. "Minimum tax zone" means the area within the Borough of Manhattan in which tax abatement benefits are limited as set forth in §5-06(e)(2).

Moderate rehabilitation. "Moderate rehabilitation" means a scope of work in a substantially occupied Class A multiple dwelling which includes a major capital improvement in not less than one of the five categories set forth in §5-03(a)(6), and in which the certified reasonable cost, calculated as set forth in §5-03(a)(6), equals or exceeds $2,500 (two thousand five hundred dollars) per dwelling unit, and meets the notice and filing requirements set forth in §5-03(h)(1).

Mutual company. "Mutual company" shall have the same meaning as set forth in section two of the Private Housing Finance Law.

Non-targeted Area. "Non-targeted Area" means a geographic area in the city of New York that is not located in a Targeted Area.

Office. "Office" means the Office of Tax Incentive Programs of HPD, or any successor thereto authorized to administer this chapter.

Ordinary repairs. "Ordinary repairs" means those items of work listed in the Itemized Cost Schedule as ordinary repairs, i.e., those items not preceded by an asterisk.

Permanent residential use. "Permanent residential use" shall mean the lease of all residential units for residential purposes as set forth in §5-03(f)(4).

Private dwelling. "Private dwelling" means any building or structure which is either: (1) exclusively designed and occupied for residential purposes by not more than two families or

(2) for which the Department of Buildings has issued a Certificate of Occupancy which describes the building as intended exclusively for not more than two families. Private dwelling shall also be deemed to include a series of one or two-family dwelling units each of which faces or is accessible to a legal street or public thoroughfare, if each dwelling unit is equipped as a separate dwelling unit with all essential services, and if each such unit is arranged so that it may be approved as a legal one-family or two-family dwelling.

Private Housing Finance Law. "Private Housing Finance Law" means the Private Housing Finance Law of the State of New York.

Reasonable cost. "Reasonable cost" means the cost of a conversion, alteration or an improvement as conclusively determined and certified by the Office pursuant to this chapter.

Rehabilitation schedule. "Rehabilitation schedule" means the Itemized Cost Breakdown Schedule.

Rules. "Rules" means this chapter of the Rules of the City of New York.

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

Substantial governmental assistance. "Substantial governmental assistance" shall mean a project carried out with grants, loans or subsidies from any federal, state or local agency or instrumentality, including, without limitation, financing or insurance provided by the State of New York Mortgage Agency and New York City Residential Mortgage Insurance Corporation, but shall not include (1) taxable bonds issued by a federal, state, or local agency or instrumentality, (2) purchase money mortgages from a federal, state or local agency or instrumentality, or (3) any grant, loan or subsidy from a federal, state or local agency or instrumentality which does not specifically require a program of affordable housing (e.g., energy conservation grants). In the discretion of the Office, a below market sale by a Federal, state or local agency or instrumentality or a written agreement with a Federal, state or local agency or instrumentality for development of affordable housing shall qualify as a subsidy.

Substantial interest. "Substantial interest" as used in §5-03(h)(2) shall mean ownership of an interest of ten percent (10%) or more in a property or entity owning property or sponsoring a conversion, alteration or improvement.

Substantial rehabilitation. "Substantial rehabilitation" means any rehabilitation of a Class A multiple dwelling where the scope of work includes at least four of the systems listed in §5-03(a)(6)(i), or where, for City-owned buildings or buildings conveyed by deed from the Commissioner of Finance eligible for benefits under §5-03(a)(9), the scope of work includes rehabilitation work in at least four major systems in elevator buildings or three major systems in non-elevator buildings, and where major systems include heating, plumbing, electricity, elevator, windows and roof (replacement or covering with a new roof of at least seventy-five percent (75%) of the aggregate roof area), provided further that work done during City ownership or work financed by a City program but not eligible for benefits because outside of the required time limits, may be counted toward the required systems if the work was done and the system has a substantial remaining useful life at the time of application as evidenced by a certification by the Commissioner which may be based on such information as permits, sign-offs, disposition of funds statements, inspections or other program records.

Substantially occupied. "Substantially occupied" shall mean that at least sixty percent (60%) of the units in a building are occupied by permanent residential tenants immediately prior to the start of rehabilitation, during the entire period of rehabilitation (except for temporary periods of relocation in substantially governmentally assisted projects) and immediately subsequent to completion of construction of the rehabilitation.

Successor in interest. "Successor in interest" shall mean an institutional lender which originates or acquires an interest in a loan to finance alterations, improvements or a conversion eligible for benefits under this chapter and which acquires title to the alterations, improvements or conversion as result of the original owner's default on such loan, whether by mortgage foreclosure or deed in lieu of foreclosure.

Supervising agency. "Supervising agency" shall have the same meaning as set forth in section two of the Private Housing Finance Law.

Targeted Area. "Targeted Area" means a geographic area in the city of New York in the zip code listed below that has been determined by the department of health and mental hygiene to have high rates of children with environmental intervention blood lead levels:

Borough Zip Code Neighborhood Name

Bronx 10458 Belmont-Fordham-Bedford Park

Bronx 10468 University Heights-Kingsbridge

Brooklyn 11205 Fort Greene-Clinton Hill

Brooklyn 11206 Williamsburg-Bedford Stuyvesant

Brooklyn 11216 Bedford Stuyvesant

Brooklyn 11217 Park Slope-Boerum Hill

Brooklyn 11218 Kensington-Windsor Terrace

Brooklyn 11221 Bushwick-Bedford Stuyvesant

Brooklyn 11222 Greenpoint

Brooklyn 11225 Crown Heights-Prospect Lefferts

Brooklyn 11226 Flatbush

Brooklyn 11230 Midwood

Brooklyn 11233 Stuyvesant Heights-Ocean Hill

Brooklyn 11235 Sheepshead Bay-Brighton Beach

Brooklyn 11237 Bushwick

Brooklyn 11238 Prospect Heights

Manhattan 10026 South Central Harlem

Manhattan 10027 Manhattanville-Harlem

Manhattan 10031 Hamilton Heights

Manhattan 10032 South Washington Heights

Manhattan 10033 Middle Washington Heights

Queens 11102 Old Astoria

Queens 11385 Ridgewood-Glendale

Tax abatement exclusion zone. "Tax abatement exclusion zone" means the area within the Borough of Manhattan in which tax abatement benefits are limited as set forth in §5-06(e)(3).

Zoning Resolution. "Zoning Resolution" means the Zoning Resolution of the City, as amended.

HISTORICAL NOTE

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

Section in original publication July 1, 1991.

Building amended City Record Jan. 8, 1993 eff. Feb. 7, 1993.

Completion of construction amended City Record Dec. 24, 2003 eff. Jan. 23, 2004. [See Note 2]

Mutual company added City Record Aug. 5, 2009 §1, eff. Sept. 4, 2009. [See Note 4]

Non-targeted area added City Record Jan. 6, 2006 §1, eff. Feb. 5, 2006. [See Note 3]

Substantial rehabilitation amended City Record Dec. 1, 2004 §1, eff. Dec. 31, 2004. [See T28 §5-03 Note 3]

Substantial rehabilitation amended City Record Jan. 8, 1999 §1, eff. Feb. 7, 1999. [See Note 1]

Supervising agency added City Record Aug. 5, 2009 §1, eff. Sept. 4, 2009. [See Note 4]

Targeted area added City Record Jan. 6, 2006 §1, eff. Feb. 5, 2006. [See Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 8, 1999:

Section 489 of the Real Property Tax Law and §11-243 of the Administrative Code allow HPD to promulgate rules regarding tax benefits under the program. The proposed changes are intended to assist in the City's effort to prevent abandonment of residential buildings, to authorize benefits for certain types of improvements to cogeneration facilities and to make certain technical corrections.

2. Statement of Basis and Purpose in City Record Dec. 24, 2003: This proposed amended rule gives large planned unit developments with at least 15,000 dwelling units that are owned and operated by limited profit housing companies organized under Private Housing Finance Law Article 2 (the "Mitchell-Lama" law) the flexibility to prove completion of construction by documentation other than required sign-offs, in order to be eligible for real property tax benefits under Real Property Tax Law §489 and New York City Administrative Code §11-243 (the "J-51" program). The proposed rule change is in recognition of the fact that the rehabilitation work being done at such communities is on a far more extensive scale, making the filing of the supplemental documentation necessary to complete a J-51 application a lengthier and more cumbersome process. For the very same reasons, HPD amended its J-51 rules in 2000 to give such developments twelve additional months to complete their J-51 applications so that they might qualify for these much needed tax exemptions/abatements. Nonetheless, such applicants would have to submit all required sign-offs before the Office would issue to them a Certificate of Eligibility and Reasonable Cost for J-51 benefits.

3. Statement of Basis and Purpose in City Record Jan. 6, 2006: The proposed rule amendments implement local law number 74 for the year 2005. Local Law No. 74 amended §11-243 of the New York City Administrative Code (the "J-51 Law") by extending J-51 tax benefits for the abatement of lead-based paint hazards in common areas as well as in an existing dwelling unit even if such unit is vacant, thereby also eliminating the requirement that the eligible unit be occupied by a child under the age of seven. The local law also requires HPD to establish two schedules of certified reasonable costs for items that are included in an abatement of lead-based paint hazards, one for targeted areas and one

for non-targeted areas. Such schedules must be promulgated within 180 days of the effective date of Local Law 74, shall be used for any such abatements that are commenced on or after August 2, 2004, and must be reviewed biennially. Finally, Local Law 74 eliminates the notice of intent requirement for the commencement of lead-based paint abatement work as well as the additional fee or penalty imposed for failure to file such notice with the Department of Finance at least 45 days prior to the commencement of such work.

4. Statement of Basis and Purpose in City Record Aug. 5, 2009: The rule amendments implement Local Laws 14 and 15 of 2007, which exempted Mitchell-Lama cooperative developments from the assessed valuation cap on J-51 benefits if they stayed in the Mitchell-Lama program for an additional fifteen years and which also made eligible for J-51 benefits work done for Mitchell-Lama developments with government subsidies provided that such developments also agreed to remain in the Mitchell-Lama program for an additional fifteen years.

FOOTNOTES

1

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

Rules of the City of New York

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

28 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 5*1 J51 TAX EXEMPTION AND TAX ABATEMENT

§5-03 Eligible Projects and Eligibility Requirements.

(a) **Eligible projects.** Subject to the limitations relating to single room occupancy and permanent residential use set forth in §§5-03(f)(4), 5-04(a)(4) and 5-07(f)(1), the following classes of projects may be granted tax exemption and tax abatement:

(1) Conversion of any building or structure classified as a Class B multiple dwelling or a Class A multiple dwelling used for single room occupancy into a Class A multiple dwelling, but only if the conversion is carried out with substantial governmental assistance.

(2) Conversion of residential units covered by Article 7-C of the Multiple Dwelling Law in buildings classified as interim multiple dwellings pursuant to such article and registered with the New York City Loft Board to units which are in compliance with the standards of safety and fire protection set forth in Article 7-B of the Multiple Dwelling Law or to units which have a Certificate of Occupancy as part of a Class A multiple dwelling. Provided, that if only a portion of a building is eligible as an interim multiple dwelling, benefits shall be pro-rated between such portion and the remaining part of the building.

(3) Conversion of any non-residential building or structure situated in the borough of Manhattan into a Class A multiple dwelling, provided the building was a non-residential building immediately prior to the commencement of construction of the conversion, and provided further that if construction commenced on or after January 1, 1982, such conversion is permitted as-of-right by the Zoning Resolution.

(4) Conversion of any non-residential building or structure situated in the boroughs of the Bronx, Brooklyn,

Queens or Staten Island into a Class A multiple dwelling, provided the building was a non-residential building immediately prior to the commencement of construction of the conversion, and provided further that if commencement of construction occurred on or after October 1, 1983, such conversion is permitted as-of-right by the Zoning Resolution.

(5) Alterations or improvements to the exterior of a building visible from a public street, provided the alterations or improvements are made pursuant to a Permit for Minor Work, Certificate of Appropriateness, or Certificate of No Effect issued by the Landmarks Preservation Commission with respect to a landmark and the building or structure is otherwise eligible and either an existing dwelling or a building other than a private dwelling, which is being converted into a Class A multiple dwelling. Such alterations are eligible for the full amount spent on the required work whether or not the work qualifies as an MCI, provided, however, that each item of work must appear on the Itemized Cost Breakdown Schedule as set forth in §5-08.

(6) Alterations or improvements constituting a moderate rehabilitation of a substantially occupied Class A multiple dwelling, provided the project meets all the conditions set forth below:

(i) The scope of work must includes a major capital improvement in not less than one of the following five categories designated below:

(A) **Elevators:**

(a) Replacement of existing unit in its entirety;

(b) Replacement of traction machine;

(c) Replacement of one or two-speed controller; or

(d) Conversion of manual to automatic.

(B) **Heating:**

(a) Boiler and/or burner replacement; or

(b) Piping, heat, mains, risers, branches in all dwelling units.

(C) **Plumbing:**

(a) Piping (gas), risers and branches in all dwelling units;

(b) Piping (waste and vent), mains, risers branches in all dwelling units;

(c) Piping (water-main and risers), mains, risers, branches in all dwelling units; or

(d) Sprinklers, in entire building.

(D) **Wiring:**

(a) Adequate in all dwelling units; or

(b) New in all dwelling units.

(E) **Window and trim replacement:** provided that all the windows are replaced in at least ninety percent (90%) of all residential units; and

(ii) The scope of work must have an average certified reasonable cost of not less than two thousand five hundred

dollars ($2,500) for each dwelling unit in existence at the commencement of construction of the rehabilitation, comprised exclusively of major capital improvements, exclusive of any certified reasonable cost for ordinary repairs.

(iii) For the purpose of moderate rehabilitation, a Class A multiple dwelling is substantially occupied if at least sixty percent (60%) of the units are occupied by permanent residential tenants immediately prior to the start of rehabilitation, during the entire period of rehabilitation (except, in substantially governmentally assisted projects, for temporary periods of relocation pursuant to a governmentally supervised plan of temporary relocation) and immediately subsequent to completion of construction of the rehabilitation.

(7) Alterations or improvements to an existing dwelling; provided that such items of work are set forth in §5-08 and are necessary to eliminate presently existing unhealthy or dangerous conditions or to replace inadequate and obsolete sanitary facilities, including asbestos abatement to the extent required by any federal, state or local law.

(8) Alterations or improvements designated as energy conservation items in §5-08. In order to be eligible pursuant to this paragraph the building being altered or improved must be an existing dwelling.

(9) Alterations or improvements commenced on or after September 1, 1987 constituting a substantial rehabilitation of a Class A multiple dwelling or a conversion of a building or structure into a Class A multiple dwelling as part of a program to provide housing for low and moderate income households, provided that:

(i) such alterations or improvements or conversions shall be aided by a grant, loan or subsidy from any federal, state or local agency or instrumentality. For purposes of this paragraph, the term "low and moderate income households" shall mean households having an annual household income no greater than one hundred sixty-five percent (165%) of area median income for the Metropolitan Statistical Area as determined by HUD. Notwithstanding the foregoing sentence, HPD shall grant benefits to a building if no more than eighty percent (80%) of units are rented to households having an annual household income no greater than one hundred eighty percent (180%) of such area median income, provided at least twenty percent (20%) of the units in such building are rented to households with an annual household income no greater than eighty percent (80%) of such area median income.

(ii) Reserved.

(10) Conversion of a property classified under the zoning resolution as a non-profit institution with sleeping accommodations into a Class A multiple dwelling, but only if such conversion is carried out with substantial governmental assistance.

(11) Alterations or improvements to any private dwelling, or conversion of any private dwelling to a Class A multiple dwelling, or conversion of any multiple dwelling to a private dwelling, provided that in each instance the alterations, improvements or conversion are carried out with substantial governmental assistance.

(b) **Eligible items of work: major capital improvements.** (1) Items of work designated as major capital improvements in the itemized cost breakdown schedule contained in §5-08 shall be eligible for tax benefits. Except for purposes of §5-03(c)(1)(iii), any item of work set forth in §5-08 shall also be considered a major capital improvement if done pursuant to an Alteration Type-I Permit issued by the Department of Buildings or if it is part of the scope of work of a moderate rehabilitation.

(2) An existing dwelling shall not be eligible to receive tax abatement or tax exemption for any item of work designated as a major capital improvement if it is receiving tax abatement or tax exemption for the same or a similar major capital improvement at the time of application for tax benefits, except as provided in §5-04(b)(4).

(c) **Eligible items of work: ordinary repairs.** (1) Ordinary repairs are those items of work listed in the Itemized Cost Breakdown Schedule which are not preceded by an asterisk. The replacement of any component part of any item of work listed in §5-08 is also an ordinary repair. Ordinary repairs are not eligible for tax abatement unless they are:

(i) Made to a common area; and are

(A) Certified to have been started and completed within a twelve month period by an affidavit:

(a) of a registered architect or a licensed professional engineer; or

(b) by the applicant. Certification by the applicant must be substantiated to the satisfaction of the Office by cancelled checks or such other proof of payment as the Office shall require, contractors' affidavits and/or such other information as may be required by the Office to substantiate such completion of construction; and

(B) Made concurrently with a major capital improvement to such common area which requires a permit by the Department of Buildings. Ordinary repairs are made concurrently with a major capital improvement if they are started no earlier than sixty days before and no later than sixty days after the issuance of a building permit for the major capital improvement; or

(ii) Done pursuant to an Alteration Type-I Permit issued by the Department of Buildings; or

(iii) Done as part of a moderate rehabilitation pursuant to §5-03(a)(6) provided, however, that only major capital improvements shall be counted to meet the requirement of §5-03(a)(6)(ii) that the CRC for a moderate rehabilitation must equal or exceed an average of two thousand five hundred dollars ($2,500) per dwelling unit; or

(iv) In the case of projects described in §5-03(a)(9), done pursuant to an Alteration Type-II Permit.

(2) The certified reasonable cost for ordinary repairs may not exceed twice the amount actually expended on the designated concurrent major capital improvement, exclusive of any such ordinary repairs.

(3) An existing dwelling is not eligible to receive tax abatement for any item of work designated as an ordinary repair if the existing dwelling was receiving tax abatement for ordinary repairs pursuant to the Act as of the December thirty-first of the calendar year preceding the date of the application to the Office, unless the ordinary repair independently qualifies under this subdivision (c) as eligible for tax benefits. Tax abatement may not be received for repairs to any item for which benefits of tax abatement are already being received.

(d) **Time Requirements.** (1) In order to receive the tax benefits provided by the Act, eligible projects, except for conversions described in §5-03(a)(2), must be completed within thirty-six months following the commencement of construction, provided, however, a sixty month period for completion of construction following commencement of construction shall be available for alterations and improvements undertaken by a housing development fund company organized pursuant to Article 11 of the Private Housing Finance Law which:

(i) are carried out with substantial governmental assistance or

(ii) which are carried out in a property transferred from the City if alterations and improvements are completed within seven years after the date of transfer, provided that all such alterations, improvements or conversions must be completed in any event prior to December 31, 2007. Provided further, however, the Office may grant an extension of the project completion period for any project carried out with the assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality if such alterations, improvements, or conversions are completed within sixty (60) months from commencement of construction.

(2) In a multi-building project, if all buildings are not completed within the thirty-six month period following commencement of construction, applications for benefits may be filed for separate buildings or separate groups of buildings which are on the same tax block and lot completed within such thirty-six month period, provided separate permits are in effect for each such filing; otherwise all work must be completed within such thirty-six month period.

(3) In order to receive the tax benefits provided by the Act, an application for certification of reasonable cost must

be filed with the Office not later than forty-eight months following the commencement of construction of the conversion, alteration or improvement, except that an application for benefits pursuant to §5-03(a)(2) must be filed not later than twelve months following completion of construction of the conversion.

(4) At the discretion of the Commissioner, an extension of the time to file to seventy-two months from the commencement of construction may be granted for any project carried out with substantial governmental assistance.

(5) An application for certification of reasonable cost must contain all documentation required by §5-05 and be completed and filed with the Office within twenty-four months of the initial filing date with the Office or the application shall be deemed withdrawn at the end of the tax quarter in which the twenty-fourth (24th) month falls, and no tax benefits shall be authorized for the conversion, alteration or improvements made thereunder. Provided, however, that for projects carried out with substantial governmental assistance and which have received a Temporary Certificate of Eligibility, the applicant must complete the application within one year of the completion of construction. Refer to §5-05 for detailed filing requirements. Applicants must notify the Office of any change of address and/or change of ownership of the property, and any change in the designated filing agent.

(6) Notwithstanding the provisions contained in paragraph five of this subdivision, an application for certification of reasonable cost must contain all documentation required by §5-05 and be completed and filed with the Office within thirty-six months of the initial filing date with the Office if the applicant is a limited profit housing company organized pursuant to article two of the private housing finance law which owns and operates a planned unit development consisting of at least fifteen thousand (15,000) dwelling units. If such application is not so completed and filed with the Office within thirty-six months of the initial filing date, the application shall be deemed withdrawn at the end of the tax quarter in which the thirty-sixth (36th) month falls, and no tax benefits shall be authorized for the conversion, alteration or improvements made thereunder.

(e) **Construction and maintenance requirements.** (1) In order to be eligible for tax benefits a building must be structurally sound and must comply with applicable laws including, but not limited to, the Building Code, the Multiple Dwelling Law, the Housing Maintenance Code and the Zoning Resolution.

(2) The following subparagraphs set forth the minimum number of bedrooms required by the Act.

(i) Buildings converted to Class A multiple dwellings, buildings where the configuration has been altered to increase the number of units, and existing dwellings which have been substantially rehabilitated must contain bedrooms in a number equal to seventy-five (75%) percent of the dwelling units contained therein in order to be eligible to receive tax benefits.

(ii) The bedroom count requirement set forth in subparagraph (i) above is not applicable to non-residential buildings or structures converted to Class A multiple dwellings when the resulting dwelling units therein contained an average floor area of one thousand square feet or more.

(iii) A substantial rehabilitation of an existing dwelling shall be exempt from the provisions of this paragraph (2) in the event that (A) the number of dwelling units in such existing dwelling is not thereby increased and (B) the number of bedrooms in such existing dwelling is not thereby reduced.

(iv) For purposes of the bedroom count requirement set forth in subparagraphs (i) and (ii) above, dwelling units which contain a combined living/dining/kitchen space in excess of three hundred and twenty-five square feet may be deemed to include both a kitchen and living room, so that any additional rooms may be considered bedrooms, under subparagraphs (i) and (ii) above.

(3) No building shall be eligible to receive benefits pursuant to the Act unless all of the dwelling units contained therein are Class A dwelling units as defined in §4 of the Multiple Dwelling Law, and have complete sanitary facilities and a complete kitchen or kitchenette for the exclusive use of the person or family residing in such unit, provided,

however, if a building contains both Class A and Class B units, benefits may be pro-rated as set forth in §5-03(f)(4). Class B units may be eligible to apply to the Office for tax benefits pursuant to § 11-244 of the Administrative Code.

(f) **Rent regulatory requirements.** (1) **Rent regulation generally mandatory.** In order to be eligible to receive tax benefits under the Act and for at least so long as a building is receiving the benefits of the Act, except for dwelling units which are exempt from such requirement pursuant to paragraph (2) below, all dwelling units in buildings or structures converted, altered or improved shall be subject to rent regulation pursuant to:

(i) the City Rent and Rehabilitation Law (§26-401 et seq. of the Administrative Code); or

(ii) the Rent Stabilization Law of 1969 (§26-501 et seq. of the Administrative Code); or

(iii) the Private Housing Finance Law; or

(iv) any federal law providing for rent supervision or regulation by HUD or any other federal agency; or

(v) the Emergency Tenant Protection Act of 1974.

(2) **Exemption from rent regulation.**

(i) Notwithstanding paragraph (1) above, dwelling units in multiple dwellings which are owned as cooperatives or condominiums and which are not regulated pursuant to any of such laws shall not be required to be subject to rent regulation.

(ii) Newly created dwelling units in a building for which a prospectus for condominium or cooperative formation has been submitted to the Attorney General at the time of application for benefits to the Office shall not be required to registered with DHCR, unless a plan of cooperative or condominium ownership has not been declared effective within fifteen (15) months of the date of the acceptance for filing of the plan of cooperative or condominium ownership with the Attorney General.

(3) **Deregulation of units.** (i) With respect to a dwelling unit in any building receiving benefits under the Act,

(A) such unit shall remain subject to rent regulation until the occurrence of the first vacancy after tax benefits are no longer being received for the building at which time the unit shall be deregulated, unless the unit is otherwise subject to rent regulation; or

(B) if each lease and renewal thereof for such unit for the tenant in residence at the time of the expiration of the tax benefits has included a notice in at least twelve point type informing such tenant that the unit shall become subject to deregulation upon the expiration of the tax benefits and stating the approximate date on which tax benefits are to expire, such dwelling unit shall be deregulated after tax benefits are no longer being received for the building, unless the unit is otherwise subject to rent regulation.

(ii) Rent regulation shall not be terminated by the waiver or revocation of tax benefits.

(iii) Rent regulation of dwelling units shall not be exempted or terminated other than as set forth in this subdivision (f) as long as benefits are in force.

(4) **Permanent residential use.** All dwelling units must be leased for permanent residential purposes for a term of not less than one year so long as tax benefits are in effect. Permanent residential use shall not include use as a hotel, dormitory, employee residence or facility, fraternity or sorority house, resort housing or any similar type of non-permanent housing. For purposes of this chapter, a "hotel" shall mean (i) any Class B multiple dwelling, as such term is defined in the Multiple Dwelling Law, (ii) any structure or part thereof containing living or sleeping accommodations which is used or intended to be used for transient occupancy, (iii) any apartment hotel or transient

hotel as defined in the Zoning Resolution, or (iv) any structure or part thereof which is used to provide short term rentals or owned or leased by an entity engaged in the business of providing short term rentals. For purposes of this definition, a lease, sublease, license or any other form of rental agreement for a period of less than six months shall be deemed to be a short term rental. Notwithstanding the foregoing, (i) a structure or part thereof owned or leased by a not-for-profit corporation for the purpose of providing governmentally funded emergency housing shall not be considered a hotel for purposes of this chapter, and (ii) benefits may be pro-rated by deducting out work attributable to Class B units in a building containing both Class A and Class B units, provided that all units in a building are registered with DHCR as rent stabilized or rent controlled units, and are utilized for permanent residential use.

(5) **Escalation clauses in leases.** Except for the notice referred to in subparagraph (i)(B) above, no lease for dwelling units which are registered with DHCR shall contain escalation clauses for real estate taxes or any other provisions for increasing the rent set forth in the lease, other than permitting an increase in rent pursuant to an order of DHCR or the Rent Guidelines Board.

(6) **Partial waiver of rent adjustments attributable to major capital improvements.** (i) As a requirement for claiming or receiving any tax abatement attributable to a major capital improvement, the owner of the property shall file with the Office, on the date any application for benefits is made, a declaration stating that in consideration of any tax abatement benefits which may be received pursuant to such application for alterations or improvements constituting a major capital improvement, such owner agrees to waive the collection of a portion of the total annual amount of any rent adjustment attributable to such major capital improvement which may be granted by DHCR pursuant to the rent stabilization code equal to one-half of the total annual amount of the tax abatement benefits which the property receives pursuant to such application with respect to such alterations or improvements. For example, an owner receiving a total rent adjustment over eighty-four months equal to $100,000 for a major capital improvement along with tax abatement of $100,000 for the same improvement would waive collection of $50,000 during such period. Such waiver shall commence on the date of the first collection of such rent adjustment, provided that, in the event that such tax abatement benefits were received prior to such first collection, the amount waived shall be increased to account for such tax abatement benefits so received. The entire amount shall be applied against the first annual rent adjustment, including any retroactive rent adjustments which may be granted by the applicable DHCR order, unless the amount exceeds such adjustments, in which event the excess shall be carried forward. The calculation of the amount attributable to the waiver shall be against the total rent adjustment for the eighty-four month period prior to the application of any annual percentage limitation applied by DHCR to defer collection of the total rent adjustment. In calculating rental adjustments pursuant to Rent Guidelines Board orders the amount of the waived rent shall not be included in the base rent. Following the expiration of a tax abatement for alterations or improvements constituting a major capital improvement for which a rent adjustment has been granted by DHCR, the owner may collect the full amount of annual rent permitted pursuant to such rent adjustment. A copy of such declaration shall be filed simultaneously with DHCR. Such declaration shall be binding upon such owner, and his or her successors and assigns.

(ii) The provisions of subparagraph (i) shall not apply to substantial rehabilitation of buildings vacant when alterations or improvements are commenced or to buildings rehabilitated with substantial governmental assistance.

(g) **Eligibility rules for cooperatives and condominiums.** (1) Buildings owned as cooperatives or condominiums are eligible for tax exemption pursuant to the Act, provided the work is eligible pursuant to §5-03(a).

(2) Eligibility for tax abatement is limited to: (i) Cooperatives and condominiums, for alterations and improvements completed prior to or within thirty-six months after the first closing in a condominium to a bona fide purchaser occurs or in the case of a cooperative thirty-six months from the date on which the first shares allocable to a unit are conveyed to a bona fide purchaser, or

(ii) Any cooperative or condominium in which dwelling units have been newly created by the substantial rehabilitation of a vacant building or the conversion of a non-residential building, or

(iii) Any cooperative or condominium, for alterations and improvements commenced on or prior to August 7, 1992 which meets the following requirements:

(A) Alterations or improvements to at least one building-wide Major Capital Improvement as set forth in §5-03(a)(6)(i) or a new roof (at least seventy-five percent (75%) of the aggregate roof area is replaced or covered with new roofing) are part of the application for benefits, and

(B) the actual assessed valuation of such multiple dwelling shall not exceed an average of thirty thousand dollars ($30,000) per dwelling unit at the time of commencement of construction of the alterations and improvements, and

(C) during the three years immediately preceding the commencement of construction of the alterations and improvements the average per room sale price of the dwelling units or the stock allocated to such dwelling units shall have been no greater than thirty-five percent (35%) of the maximum mortgage amount for a single family house eligible for purchase by the Federal National Mortgage Association, provided, that if an amount less than ten percent (10%) of the dwelling units or an amount of stock less than the amount allocable to ten percent (10%) of such dwelling units was transferred during such preceding three year period, eligibility for benefits shall be conditioned upon the multiple dwelling having an actual assessed valuation per dwelling unit of no more than twenty-five thousand dollars ($25,000) at the time of commencement of construction of any such alterations or improvements.

(D) Assessed valuation shall be actual assessed valuation and not the transitional assessed value.

(E) The maximum amount of tax abatement which may be applied against taxes due in any tax year by any cooperative or condominium claiming benefits under this §5-03(g)(2)(iii) shall be limited to two thousand five hundred dollars ($2,500) per dwelling unit.

(iv) Any cooperative or condominium, for work commenced after August 7, 1992 which meets the following requirements:

(A) the actual assessed valuation of such multiple dwelling shall not exceed an average of forty thousand dollars ($40,000) per dwelling unit at the time of the commencement of construction of the alterations and improvements, and

(B) during the three years immediately preceding the commencement of construction of the alterations and improvements the average per room sale price of the dwelling units or the stock allocated to such dwelling units shall have been no greater than thirty-five percent (35%) of the maximum mortgage amount for a single family house eligible for purchase by the Federal National Mortgage Insurance Corporation provided that if an amount less than ten percent (10%) of the dwelling units or an amount of stock less than the amount allocable to ten percent (10%) of such dwelling units was not transferred during such preceding three year period eligibility for benefits shall be conditioned upon the multiple dwelling having an actual assessed valuation per dwelling unit of no more than forty thousand dollars ($40,000) at the time of the commencement of construction of the alteration or improvement.

(C) Assessed valuation shall be actual assessed valuation and not the transitional assessed value.

(D) The maximum amount of tax abatement which may be applied against taxes due in any tax year by any cooperative or condominium claiming benefits under this §5-03(g)(2)(iv) shall be limited to two thousand five hundred dollars ($2,500) per dwelling unit.

(E) Notwithstanding anything to the contrary contained in this subparagraph (iv), the availability of any benefits pursuant to the Act to any multiple dwelling, building or structure owned and operated by a limited-profit housing company established pursuant to article two of the Private Housing Finance Law shall not be conditioned upon the assessed valuation of such multiple dwelling, building or structure, including land, as calculated as an average dollar amount per dwelling unit, at the time of commencement of the alterations or improvements; provided, however, that such limited-profit housing company (1) is organized and operating as a mutual company, (2) continues to be organized

and operated as a mutual company and to own and operate the multiple dwelling, building or structure receiving such benefits, and (3) has entered into a binding and irrevocable agreement with the commissioner of housing of the state of New York, the supervising agency, the New York city housing development corporation, or the New York state housing finance agency prohibiting dissolution or reconstitution of such limited-profit housing company pursuant to section thirty-five of the Private Housing Finance Law for not less than fifteen years from the commencement of such benefits.

(v) For purposes of determining the number of rooms in applying the limitations contained in §5-03(g)(2)(iii) and (iv), the number of zoning rooms shall be used unless there is no filing with the Department of Buildings indicating the number of zoning rooms, in which case the number shall be either:

(A) the room count as evidenced in the plan of cooperative or condominium ownership, or

(B) at the discretion of the Office, the room count as certified by a licensed architect.

(vi) Where the building is occupied in part for residential purposes and in part for non-residential purposes, the assessed valuation of the property shall be allocated by the Office between the residential and the non-residential portions based on pro rata square footage, unless the non-residential portion is on a separately assessed tax lot, and only the amount of valuation allocated to the residential portion shall be considered in computing the assessed valuation per dwelling unit for purposes of §5-03(g)(2)(iii) and (iv).

(h) **Special requirements for moderate rehabilitation and special non-harassment provisions.** (1) **Special requirements for moderate rehabilitation.**

(i) In order to be eligible for tax benefits pursuant to §5-03(a)(6), an applicant must:

(A) Not more than one hundred eighty days nor less than thirty days prior to the commencement of construction of rehabilitation, complete form MR-1 (notice to tenants) and send it by registered or certified mail, return receipt requested, to all tenants residing in the building to be rehabilitated and post a copy conspicuously in the building lobby; and

(B) Complete form MR-2 (affidavit that MR-1 was mailed) and file it with the Office not less than thirty days prior to the start of rehabilitation.

(ii) If more than one hundred eighty days elapse between the date Form MR-1 is mailed to any tenant and the date rehabilitation actually commences, new Forms MR-1 and MR-2 must be completed and mailed and posted and filed as required by subparagraphs (i) and (ii) of this paragraph (1) provided that, in the case of a loan program supervised by HPD, notice to HPD shall be unnecessary, and further provided that HPD may itself provide the required notice to tenants prior to commencement of construction in lieu of the MR-1 written notice and MR-2 affidavit.

(iii) In the discretion of the Office, in lieu of the requirements established by subparagraphs (i) and (ii) of this paragraph (1), the applicant may establish by proof satisfactory to the Office that it has provided notice to HPD and to the tenants residing in the building to be rehabilitated of (A) the proposed work prior to commencement of such work, (B) the identity of the owner's representative, and (C) the tenants' rights under applicable law with respect to such work.

(2) **Special non-harassment provisions.** In order to be eligible for any tax exemption pursuant to the Act, irrespective of the cost of the conversion, alteration or improvement, or to be eligible for tax abatement when the CRC per dwelling unit exceeds seven thousand five hundred dollars ($7,500) (including the cost of any conversion, alteration or improvement for which an abatement was approved within four years prior to commencement of construction of the contemplated project), the owner of the property shall file with the Office, not less than thirty days before the commencement of construction of the conversion, alteration or improvement (the "cut-off date"), an affidavit, or, at the time of application, a late filing affidavit or, where any information referred to in §5-03(h)(2)(i) below changes prior to applying for or claiming any benefit under this subdivision (h), an amended affidavit, setting forth the following

information:

(i) every owner or record and owner of a substantial interest in the property or entity owning the property or sponsoring the conversion, alteration or improvement;

(ii) a statement that none of such persons had, within the five years prior to the cut-off date, been found to have harassed or unlawfully evicted tenants by judgment or determination of a court or agency (including a non-governmental agency having appropriate legal jurisdiction) under the penal law, any state or local law regulating rents or any state or local law relating to harassment of tenants or unlawful eviction; and

(iii) any change in the information required to be set forth.

(3) No conversion, alteration or improvement subject to paragraph (2) of this subdivision (h) shall be eligible for tax exemption or tax abatement under the Act where:

(i) any affidavit required under paragraph (2) has not been filed; or

(ii) any such affidavit contains a willful misrepresentation or omission of any material fact; or

(iii) any person referred to in §5-03(h)(2)(i) has been found to have harassed or unlawfully evicted tenants until and unless the finding is reversed on appeal, provided that any such finding after the cut-off date shall not apply to or affect any tax abatement or exemption for the conversion, alteration or improvement covered by the affidavit.

HISTORICAL NOTE

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

Section in original publication July 1, 1991.

Subd. (a) par (9) amended City Record Dec. 1, 2004 §2, eff. Dec. 31, 2004. [See Note 3]

Subd. (c) par (1) subpar (i) clause (A) item (b) amended City Record Nov. 30, 2004 §1, eff. Dec. 30, 2004. [See Note 2]

Subd. (d) par (1) subpar (ii) amended City Record Dec. 1, 2004 §3, eff. Dec. 31, 2004. [See Note 3]

Subd. (d) par (6) added City Record Apr. 11, 2001 eff. May 11, 2001. [See Note 1]

Subd. (e) par (2) amended City Record Dec. 1, 2004 §4, eff. Dec. 31, 2004. [See Note 3]

Subd. (f) par (4) amended City Record Apr. 21, 2005 §1, eff. May 21, 2005. [See Note 4]

Subd. (f) par (4) amended City Record Dec. 10, 2004 §1, eff. Jan. 9, 2005. [See T28 §6-01 Note 3]

Subd. (f) par (6) amended City Record Jan. 8, 1999 §2, eff. Feb. 7, 1999. [See T28 §5-02 Note 1]

Subd. (g) par (2) subpar (iv) clause (E) added City Record Aug. 5, 2009 §2, eff. Sept. 4, 2009. [See T28 §5-02 Note 4]

NOTE

1. Statement of Basis and Purpose in City Record May 11, 2001:

This proposed amended rule gives large planned unit developments with at least 15,000 dwelling units that are owned and operated by limited profit housing companies organized under Private Housing Finance Law Article 2 (the "Mitchell-Lama" law) twelve additional months to complete their applications for real property tax benefits under Real Property Tax Law §489 and New York City Administrative Code §11-243 (the "J-51" program). The additional twelve months (other applications must be completed within twenty-four months from the date of filing) is in recognition of the fact that the rehabilitation work being done at such communities is on a far more extensive scale, making the filing of the supplemental documentation necessary to complete a J-51 application a lengthier and more cumbersome process. These extra twelve months will give such communities the additional time they need to prepare the necessary paperwork to qualify for much needed tax exemptions/abatements available pursuant to the J-51 program.

2. Statement of Basis and Purpose in City Record Nov. 30, 2004: The fee charged in connection with applications for tax exemption and abatement benefits under the J-51 Program (Real Property Tax Law §489 and New York City Administrative Code §11-243) has not been adjusted for almost thirteen years. The cost of administering J-51 benefits now significantly exceeds the fee. This increase will reduce, but not eliminate, the shortfall. Furthermore, the Tax Incentives Program itself now has the technology to search for hazardous or immediately hazardous violations when it is processing J-51 applications. Therefore, once these amendments take effect, HPD will no longer require an applicant to submit a Code Violation Search report from HPD's Division of Code Enforcement, or charge a fee for an applicant's failure to do so. Finally, the rule amendments reflect new federal rules that will take effect on October 28 implementing the Check Clearing for the 21st Century Act ("Check 21 Act"). The Check 21 Act lets banks use electronic-check processing efficiencies to cut an estimated $2 billion a year from the cost of moving, clearing and returning paper checks. Under the Check 21 Act, banks can warrant as an accurate and legible representation of the original check a brand new legal proof of payment called the "substitute check" (which is a special paper copy). The rule amendments enable HPD to accept instruments other than cancelled checks as proof of payment in order to determine the cost of the work performed.

3. Statement of Basis and Purpose in City Record Dec. 1, 2004: The State Legislature has enacted Chapter 418 of the Laws of 2002, which amends the Real Property Tax Law to extend the date by which a development must be completed to be eligible to receive J-51 benefits from December 31, 2003 to December 31, 2007. It also extended the ability of a local legislative body (City Council) to adopt the changes contained in the State-enabling legislation from June 1, 2003 to June 1, 2007. Finally, the State bill authorized the extension of enriched J-51 benefits to privately-owned substantially rehabilitated buildings if affordable housing is created in connection with a government subsidy, loan or grant. Last year, the City Council adopted Local Law 16 for the year 2003, which implemented chapter 418's amendments. The J-51 rules are being amended to reflect these changes.

4. Statement of Basis and Purpose in City Record Apr. 21, 2005: Real Property Tax Law §§421-a and 421-g both expressly state that hotels are not eligible for the respective tax exemption benefits. However, neither statute defines "hotel". Similarly, Administrative Code §11-243(r) provides for the withdrawal of J-51 benefits if a structure becomes operated exclusively for hotel use, but does not define "hotel". The proposed amendment clarifies that space owned or leased by a not-for-profit corporation for the purpose of providing governmentally funded emergency housing is not a hotel.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Jan. 27, 1998 eff. Feb. 26, 1998. Note: Statement of Basis and Purpose. The Act authorizes HPD to promulgate Rules governing the administration of the program. The proposed changes to the rules (i) bring the rules into conformance with amendments to the Act which became effective on June 15, 1993, (ii) provide procedures necessary to implement these amendments, (iii) further

clarify implementation of the Act, (iv) provide modest increases to the allowances for certain items on the Itemized Cost Breakdown Schedule where warranted by inflation and (v) revise fees to place a penalty on uncollectible checks and charge a reasonable fee for declaratory rulings.

Rules of the City of New York

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

28 RCNY 5-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 5*1 J51 TAX EXEMPTION AND TAX ABATEMENT

§5-04 Ineligible Projects, Items of Work.

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

(1) Any tax lot which is receiving tax exemption or tax abatement under any other provision of state or local law for rehabilitation or new construction, including but not limited to §420-c, §421-a, §421-b, §421-g, and §488-a of the Real Property Tax Law, but not including the provisions of the Private Housing Finance Law as of the date that the Certificate of Eligibility is issued.

(2) Any building for which real estate taxes, water or sewer charges, payments in lieu of taxes, emergency repair or relocation liens are due and owing or not satisfied of record as of the last day of the tax quarter preceding the submission date of the Certificate of Eligibility to the Department of Finance, provided that a property rehabilitated by a loan pursuant to Article 8 or Article 15 of the Private Housing Finance Law shall not be ineligible pursuant to this section if there are no real estate taxes or water and sewer charges due and owing as of the last day of a tax quarter preceding commencement of construction of such rehabilitation. The benefits of tax exemption and tax abatement shall not be denied to any property pursuant to this section on account of unpaid real estate taxes, water or sewer charges provided the applicant or his predecessor in title has entered into an installment agreement with the City pursuant to §11-401 et seq. of the Administrative Code and all payments required by said installment agreement have been paid when due.

(3) Any multiple dwelling which results from the conversion of a private dwelling except as provided in §5-03(a)(11).

(4) The conversion, alteration or improvement, commenced on or after July 1, 1982, of any Class B multiple dwelling or Class A multiple dwelling used in whole or in part for single room occupancy regardless of the status or use of the building after the conversion, alteration or improvement, unless such conversion, alteration or improvement is carried out with substantial governmental assistance.

(5) Any property for which the improvement is assessed at one thousand dollars ($1,000) or less at the commencement of construction of alterations, improvements or conversion, provided that such assessed valuation test shall not apply if the alterations, improvements or conversion is carried out with substantial governmental assistance.

(6) Any building or structure that results from new construction as distinguished from rehabilitation, alterations, improvements or conversion, as evidenced by issuance of a building permit for new construction. In order for a building to be characterized as rehabilitated, altered, improved or converted, one of the following conditions must be met before, during and after construction:

(i) At least seventy-five percent (75%) of the total area of the original perimeter walls, but in any event at least fifty percent (50%) of the total area of the original non-party perimeter walls, must remain in place as perimeter walls in the building for which benefits are claimed; or

(ii) At least eighty percent (80%) of the original structural floor area of the building must remain in place as structural floor in the building for which benefits are claimed.

(7) The conversion of any building, or portion thereof.

(i) which is located within any district in the County of New York where a floor area ratio, as that term is defined in the Zoning Resolution, of fifteen or greater is permitted by said resolution, or

(ii) located in the City where residential conversion as-of-right is not permitted by said resolution, unless construction actually commenced in the County of New York prior to January 1, 1982, or in the Counties of Kings, Queens, Richmond or the Bronx prior to October 1, 1983, pursuant to an alteration permit, or unless the building is eligible for the benefits of the Act pursuant to §5-03(a)(2).

(8) Any conversion commenced on or after June 28, 1988 of any property classified under the Zoning Resolution as a non-profit institution with sleeping accommodations, unless such conversion is carried out with substantial governmental assistance.

(b) **Ineligible items of work.** The tax benefits of the Act are not available for:

(1) Alterations or improvements done in connection with the refinancing of a housing project pursuant to §223(f) of the National Housing Act, as amended.

(2) Any portion of a building that results from new construction as distinguished from alterations or improvements or which represents an increase in the gross cubic content of a building from the gross cubic content in existence immediately prior to commencement of construction.

(3) Any portion of a building occupied by stores, professional offices, community facilities or otherwise used for commercial or non-residential purposes pursuant to the classifications set forth in the Zoning Resolution.

(4) Any item of work if a building is receiving tax abatement for the same or a similar item of work at the time of application for the benefits of the Act, provided, however, that if an item or a system which was previously repaired is replaced in its entirety while the building is still receiving the benefits of the Act for such repair, tax benefits for the replacement shall be granted only to the extent that the certified reasonable cost of the replacement exceeds the amount of the previously granted certified reasonable cost attributable to the repair.

(5) An existing dwelling is not eligible to receive tax abatement for any item of work designated as an ordinary repair if the existing dwelling was receiving tax abatement for ordinary repairs pursuant to the Act as of the December thirty-first of the calendar year preceding the date of the application to the Office, unless the ordinary repair independently qualified under §5-03(c) as eligible for tax benefits. Tax abatement may not be received for repairs to any items for which benefits of tax abatement are already being received.

HISTORICAL NOTE

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

Section in original publication July 1, 1991.

FOOTNOTES

1

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

Rules of the City of New York

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

28 RCNY 5-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 5*1 J51 TAX EXEMPTION AND TAX ABATEMENT

§5-05 Application Procedure: Documentation.

(a) **Application forms and filing.** Prescribed forms and applications are available from the Department of Housing Preservation and Development, Office of Tax Incentive Programs, 100 Gold Street, 1st Floor, New York, New York 10038. All applications must be submitted to the Office on forms approved by the Office. Only applications complete in all detail will be considered for certification of eligibility and reasonable cost. All forms must be filled out fully and legibly by the applicant and shall be typewritten or inscribed in permanent ink. Applications and supporting documentation may only be submitted to the Office for review and approval after the completion of construction of work and during the following four filing periods: February 1/March 15; May 1/June 15; August 1/September 15; November 1/December 15. If the fifteenth of March, June, September or December falls on a City holiday or on a weekend, the filing period shall end on the next business day.

(b) **Preliminary application.** All applicants who intend to apply for tax exemption and tax abatement when they complete conversion, alteration or improvements must file a notice of intent form (form J-11) with the Department of Finance which describes the work for which tax benefits will be claimed, estimates the cost of the work for which tax benefits will be claimed and estimates the cost of the work which will be eligible for tax benefits. Such form must be filed not less than 45 days prior to the commencement of construction. If the scope of the work or the estimated cost changes materially, applicants must file a revised form with the Department of Finance. Applicants who fail to comply with the provisions of this subdivision (b) must pay a penalty at the time of issuance of a Certificate of Eligibility and Reasonable Cost of five hundred dollars ($500) plus an amount equal to one percent (1%) of the amount stated on the Certificate of Eligibility and Reasonable Cost in excess of ten thousand dollars ($10,000), provided that HPD may waive the penalty for projects receiving substantial governmental assistance. The penalty prescribed by this §5-05(b) is

in addition to the normal filing fees prescribed in §5-05(f). Notwithstanding the foregoing, an applicant who performs an abatement of lead-based paint hazards shall not be required to file a notice of intent form (form J-11) with the Department of Finance prior to commencement of work, and no additional fee or penalty shall be due and owing HPD at the time of issuance of a certificate of eligibility and reasonable cost for failure to file such notice of intent.

(c) **Documentation required of all applicants.** All applicants must maintain documents relating to claimed costs as specified in §5-07(b), and all completed applications for final tax benefits must include the following documentation of the applicant's actual expenditures properly organized and collated in time sequence:

(1) Original and four copies of the application form; and

(2) one copy of the following:

(i) Paid bills, cancelled checks, installment agreements, and the work contract and any change orders, indicating work, location of building, and quantity in appropriate unit of measurement all in a form corresponding to the individual items on the Itemized Cost Breakdown Schedule so that the claimed costs can be audited by HPD against the specific items and allowances contained in such schedules; or

(ii) A disposition of funds statement or certification by the Commissioner of the cost of the work based upon other program records where the alterations, improvements, or conversions are undertaken aided by a loan made pursuant to Article 8, 8-a, 11, 12, 15 or 22 of the Private Housing Finance Law or §312 of the United States Housing Act of 1964 (42 U.S.C. §1452 b), or the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §12701 et seq.) or §696-a or §99(h) of the General Municipal Law, or any other City-supervised housing program, or, in the discretion of the Office, other governmentally-supervised housing program; or

(iii) in the discretion of the Office, a certification by an independent certified public accountant of the cost of the conversion, alterations or improvements, in accordance with generally accepted auditing standards and based upon the books and records of the owner provided that the original records are retained as set forth in §5-07 and are available for audit purposes; or

(iv) in the case of applications for buildings under §5-03(a)(9), a designated special application form may be submitted including the general contract (if applicable), trade payment breakdown schedule and an HPD inspection report or an HPD-approved construction monitor's certificate of completion. The Office, upon receipt of appropriate documentation, may determine that each such project has incurred eligible costs of at least twenty thousand dollars ($20,000) in CRC per unit and grant a Certificate of Eligibility and Reasonable Cost for one hundred and fifty percent (150%) of such amount, i.e., thirty thousand dollars ($30,000) in CRC per unit; and

(3) Plans and amendments, if any, approved by the Department of Buildings; and

(4) Proof of commencement of construction:

(i) Copy of a building permit issued by the Department of Buildings; or

(ii) The Office may require that the date of commencement of construction be confirmed by an affidavit from the owner together with, at the discretion of the Office, such other information as the Office may require to substantiate such date, including but not limited to, an affidavit of a registered architect or licensed professional engineer, a copy of the work contract, invoices, cancelled checks or such other proof of payment as the Office shall require, and a contractor's affidavit. If a Permit from the Department of Buildings is not required and if the cost of the work claimed is less than ten thousand dollars ($10,000) the Office may, in its discretion, accept an owner's affidavit as to the date of the commencement of construction, and waive some or all of the additional evidence or information. If an application contains a series of major capital improvements, the commencement of construction date is that of the first major capital improvement for which benefits are claimed; and

(5) Proof of completion:

(i) A Permanent Certificate of Occupancy; or

(ii) A Temporary Certificate of Occupancy for all of the dwelling units therein, and an affidavit from a registered architect or licensed engineer and the owner that the only work remaining to secure a permanent Certificate of Occupancy is work to be performed or completed in space to be used exclusively for non-residential purposes; or

(iii) A sign-off by the Department of Buildings as evidenced by the J-3, a computer printout or such other official documentation as may be required by the Department of Buildings and is acceptable to the Office if issued in connection with an eligible alteration, improvement or conversion; or

(iv) If none of the above are required by law, completion of construction may be confirmed by the submission of such information as may be required by the Office, including but not limited to a copy of the work contract, invoices, cancelled checks or such other proof of payment as the Office shall require, disposition of funds statements, certification by the Commissioner based on program records or inspection, and a contractor's affidavit which confirm such completion of construction date to the satisfaction of the Office. If none of the documents set forth above are required by law and if the cost of the work claimed is less than ten thousand dollars ($10,000), the Office may, in its discretion, accept an owner's affidavit as to the date of completion of construction and waive some or all of the additional evidence and information.

(6) **Proof of compliance with the Housing Maintenance Code. (a)** For applications received on or before December 30, 2004: Unless a Certificate of Occupancy has been issued within one year of the date of submission of the application, for all units for which benefits are claimed, a report of search from the Division of Code Enforcement of the Department of Housing Preservation and Development dated no earlier than ninety days prior to the date of submission of an application is required. In lieu of the latter, a building profile from the Department of Housing Preservation and Development may be submitted indicating that there are no violations of record which are classified as hazardous or immediately hazardous. If hazardous or immediately hazardous violations of record appear, the applicant must either clear the violations of record or submit affidavits:

(i) from a registered architect, or a licensed professional engineer, certifying that the architect or engineer has inspected the premises and that work necessary to remove any hazardous or immediately hazardous violations has been completed. If a violation classified as hazardous or immediately hazardous was caused by a tenant and the tenant refuses to grant access to the applicant to correct the violation, such violation will not preclude eligibility provided the applicant can establish these facts with clear and con- vincing evidence; and

(ii) from the owner, certifying that the architect or engineer has inspected the premises and that work necessary to remove any hazardous or immediately hazardous violations has been completed. If a violation classified as hazardous or immediately hazardous was caused by a tenant and the tenant refuses to grant access to the applicant to correct the violation, such violation will not preclude eligibility provided the applicant can establish these facts with clear and convincing evidence.

(b) For applications received after December 30, 2004 for which a Certificate of Occupancy has not been issued within one year of the date of submission of such application for all units for which benefits are claimed: If a search by the Department of Housing Preservation and Development dated no earlier than ninety days prior to the date of submission of such application indicates that there are any violations of record which are classified as hazardous or immediately hazardous, the applicant must either clear the violations of record or submit affidavits:

(i) from a registered architect, or a licensed professional engineer, certifying that the architect or engineer has inspected the premises and that work necessary to remove any hazardous or immediately hazardous violations has been completed. If a violation classified as hazardous or immediately hazardous was caused by a tenant and the tenant refuses to grant access to the applicant to correct the violation, such violation will not preclude eligibility provided the applicant

can establish these facts with clear and con- vincing evidence; and

(ii) from the owner, certifying that the architect or engineer has inspected the premises and that work necessary to remove any hazardous or immediately hazardous violations has been completed. If a violation classified as hazardous or immediately hazardous was caused by a tenant and the tenant refuses to grant access to the applicant to correct the violation, such violation will not preclude eligibility provided the applicant can establish these facts with clear and convincing evidence.

(7) Applications for benefits pursuant to §§5-03(a)(2), (3) or (4) must provide proof of compliance with the relocation requirements of §11-243(z) of the Act.

(8) Department of Buildings Certification for Tax Exemption and Tax Abatement (Form J-3) or, if no permits from the Department of Buildings are required, at the option of the Office, alternative documentation to prove absence of Building Code violations.

(9) Proof that the building has been registered with HPD in accordance with the provisions of article two of subchapter four of the Housing Maintenance Code.

(10) (i) For applications received on or after March 19, 2006, an affidavit from the owner certifying that whenever any household appliance in any dwelling unit, or any household appliance that provides heat or hot water for any dwelling unit in the multiple dwelling, is installed or replaced with a new household appliance on or after March 19, 2006, such new appliance shall be certified as Energy Star. If applicable, such affidavit may instead certify (A) that an appropriately-sized Energy Star certified household appliance is not manufactured, such that movement of walls or fixtures would be necessary to create sufficient space for such appliance, and/or (B) that an Energy Star certified boiler or furnace of sufficient capacity is not manufactured.

(ii) For purposes of this paragraph (10), (A) "household appliance" shall mean any refrigerator, room air conditioner, dishwasher or clothes washer, within a dwelling unit in the multiple dwelling that is provided by the owner, and any boiler or furnace that provides heat or hot water for any dwelling unit in the multiple dwelling, and (B) "Energy Star" shall mean a designation from the United States Environmental Protection Agency or Department of Energy indicating that a product meets the energy efficiency standards set forth by the agency for compliance with the Energy Star program.

(d) **Additional documentation for buildings owned as cooperatives or as condominiums.** Buildings owned as cooperatives or condominiums must submit the following additional documentation:

(1) An opinion of counsel which states that the building is a legal cooperative or condominium and which has a prospectus accepted for filing by the Attorney General, or was formed prior to the date of prospectus was required by law, or is exempt for other reasons from the filing requirements; and

(2) If benefits are claimed under §5-03(g)(2)(i), evidence of the first sale of a condominium unit or shares of stock allocable to a cooperative unit in a form required by the Office; and

(3) A copy of the prospectus or offering plan which has been accepted for filing by the Attorney General, and all subsequent amendments which become effective prior to the time the Office issues a Certificate of Eligibility and Reasonable Cost for any cooperative or condominium eligible for tax abatement pursuant to §5-03(g).

(4) Provided, however, if benefits are being claimed under §5-03(g)(2)(iii) or §5-03(g)(2)(iv), evidence shall be submitted with respect to assessed valuation per unit and the average per room sale price during the three years preceding the application in a form prescribed by the Office.

(e) **Additional documentation for certain alterations or improvements.** Certain alterations and improvements

require the approval of designated agencies and such additional documentation as the Office shall require. The "Schedule of Required Information, Permits and Sign-offs" set forth in §5-09 of these rules contains a list of the documentation that the Office requires for specific alterations and improvements.

(f) **Filing Fees.** (1) Applicants must submit a non-refundable application fee with each application in the amount of five hundred ($500) dollars. Upon notification of a determination of reasonable cost in excess of ten thousand dollars ($10,000) and prior to issuance of the Certificate of Reasonable Cost, the applicant must pay an additional fee in an amount equal to one percent (1%) of the reasonable cost in excess of ten thousand dollars ($10,000). If applicable, the penalty prescribed by §5-05(b) must also be paid at this time.

(2) If a Code Violation Search report is not submitted with an application submitted on or before December 30, 2004 in accordance with §5-05(c)(6)(a), an additional non-refundable filing fee equal to the fee charged by the HPD Division of Code Enforcement, currently thirty dollars ($30), must be submitted to cover the cost of processing such search. This fee must be submitted simultaneously with the five hundred dollar ($500) application fee.

(3) Payment of all fees must be made by certified or cashier's check or a check from an attorney or owner/agent payable to the "NYC Department of Finance NYCJ51 Fee". In the event a check is returned unpaid, the applicant shall be assessed a fifty dollar ($50) processing fee and all further payments with respect to the application shall be made by certified or cashier's check.

(g) **Issuance of a certificate of eligibility.** (1) The Office shall review each application to determine if it is eligible for tax benefits in accordance with the provisions of these rules and the Act. The Office will inform an applicant if the file is incomplete; however, it is the applicant's responsibility to complete the application within twenty-four months of the initial filing date as provided in §5-03(d)(5). Provided, however, that for projects carried out with substantial governmental assistance and which have received a Temporary Certificate of Eligibility, the applicant must complete the application within one year of the completion of construction.

(2) The certified reasonable cost for all eligible items of work shall be calculated as follows:

(i) The certified reasonable cost for all eligible items of work shall be the lesser of the applicant's actual cost, or the allowance set forth in the Itemized Cost Breakdown Schedule.

(ii) The certified reasonable cost for all eligible items of work shall be reduced where such items are allocable in whole or part to, or service, ineligible portions of the building, if any, in the same ratio as the ineligible space bears to the aggregate floor area of the building.

(iii) For buildings eligible for enriched abatement as provided in §5-06(c)(1) the total certified reasonable cost shall not exceed the lesser of the owner's total actual expenditure or one hundred fifty percent (150%) of the total of the Itemized Cost Breakdown Schedule amounts set forth in §5-08.

(iv) For buildings subject to the dollar limit set forth in §5-06(d), the aggregate certified reasonable cost may not exceed the maximum eligible CRC set forth therein.

(v) In the event there is any identity of interest between the owner and the contractor, cost shall be determined based on subcontracts and the evidence of actual cost of labor and materials.

(3) The Office shall issue a Certificate of Eligibility and Reasonable Cost for all approved applications. Failure to produce satisfactory supporting documentation of the cost of an alteration, improvement or conversion, or any part thereof, or any of the items specified in this chapter may result in the denial of a Certificate of Eligibility and Reasonable Cost.

(h) **Filing procedure with the Department of Finance.** (1) For cooperatives and condominiums with an average

transitional assessed valuation per dwelling unit of less than forty thousand dollars ($40,000), in order to receive tax abatement beginning on the first day of any tax quarter, the applicant must file a Certificate of Eligibility and Reasonable Cost with the appropriate borough Office of the Real Property Assessment Bureau of the Department of Finance during the third month preceding the start of such tax quarter; i.e.: January 1 through January 31 for the tax quarter beginning April 1, April 1 through April 25 for the tax quarter beginning July 1, July 1 through July 31 for the tax quarter beginning October 1, October 1 through October 31 for the tax quarter beginning January 1.

(2) For cooperatives and condominiums with an average transitional assessed valuation per dwelling unit of forty thousand dollars ($40,000) or more, and for all other buildings receiving benefits, in order to receive tax abatement beginning on the first day of January or July of any year, the applicant must file a Certificate of Eligibility and Reasonable Cost with the appropriate borough office of the Real Property Assessment Bureau of the Department of Finance during the third or sixth month preceding the start of such tax period; i.e.: January 1 through January 31 or April 1 through April 25 for the tax period beginning July 1, or July 1 through July 31 or October 1 through October 31 for the tax period beginning January 1.

(3) The following documents must be filed with the Certificate of Eligibility and Reasonable Cost during the time periods indicated above:

(i) Department of Buildings Certification for Tax Exemption and Tax Abatement (Form J-3) or, if no permits from the Department of Buildings are required, at the option of the Office, alternative documentation to prove absence of Building Code violations;

(ii) Certified Tax Search or copy of Installment Agreement;

(iii) Department of Finance Application for Tax Exemption and Tax Abatement.

HISTORICAL NOTE

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

Section in original publication July 1, 1991.

Subd. (b) amended City Record Jan. 6, 2006 §2, eff. Feb. 5, 2006. [See T28 §5-02 Note 3]

Subd. (b) amended City Record Nov. 30, 2004 §2, eff. Dec. 30, 2004. [See T28 §5-03 Note 2]

Subd. (c) par (4) subpar (ii) amended City Record Nov. 30, 2004 §3, eff. Dec. 30, 2004. [See T28 §5-03 Note 2]

Subd. (c) par (5) subpar (iv) amended City Record Nov. 30, 2004 §4, eff. Dec. 30, 2004. [See T28 §5-03 Note 2]

Subd. (c) par (6) amended City Record Nov. 30, 2004 §5, eff. Dec. 30, 2004. [See T28 §5-03 Note 2]

Subd. (c) pars (9), (10) added City Record Aug. 2, 2006 §1, eff. Sept. 1, 2006. [See Note 1]

Subd. (f) par (1) amended City Record Nov. 30, 2004 §6, eff. Dec. 30, 2004. [See T28 §5-03 Note 2]

Subd. (f) par (2) amended City Record Nov. 30, 2004 §7, eff. Dec. 30, 2004. [See T28 §5-03 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 2, 2006:

The rule amendments require multiple dwelling registration in accordance with article two of subchapter four of the Housing Maintenance Code as a prerequisite for getting J-51 benefits. They also implement Local Law 107 of 2005, which require recipients of J-51 tax exemption benefits to purchase certain Energy Star certified household appliances.

FOOTNOTES

1

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

Rules of the City of New York

28 RCNY 5-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 5*1 J51 TAX EXEMPTION AND TAX ABATEMENT

§5-06 Tax Exemption/Tax Abatement Commencement: Duration and Amount.

(a) **Tax Exemption.** (1) Except as provided in §489(9) of the Real Property Tax Law, for a period of fourteen years, or thirty-four years if the eligible project was a moderate rehabilitation or a project eligible under §5-03(a)(9), any increase in assessed valuation of properties which receive a Certificate of Eligibility and Reasonable Cost shall be exempt from taxation on any increase in assessed valuation resulting from the certified reasonable cost of the alteration, improvement or conversion performed pursuant to the Act. If the conversion, alteration or improvement results in an increase in the gross cubic content of the building, the portion of the building which represents the additional cubic content shall not be exempt from any increase in assessed valuation. In the case of fourteen year exemptions, any increase in assessed value which results from an alteration, improvement or conversion shall be fully exempt for ten years and such exemption shall be reduced by twenty per cent (20%) in each succeeding year. In the case of thirty-four year exemptions, any increase in assessed value which results from an alteration, improvement or conversion shall be fully exempt for thirty years and such exemption shall be reduced by twenty per cent (20%) in each succeeding year.

(2) The land improved by a building with a Certificate of Eligibility and Reasonable Cost shall not be exempt from an increase in assessed valuation. An increase in assessed valuation resulting from an alteration, improvement or conversion other than one made pursuant to the Act shall not be exempt.

(3) Tax exemption shall commence on the first day of July following the commencement of tax abatement with the following exceptions:

(i) If tax abatement commences on July first, tax exemption shall start at the same time; (ii) Tax exemption may commence on the first day of any tax quarter designated by the Office following the commencement of construction if

the property is:

(A) Aided by a loan made pursuant to Article 8, 8-a or 15 of the Private Housing Finance Law; or

(B) Aided by a loan made pursuant to §312 of the United States Housing Act of 1964 (42 U.S.C. §1452 b); or

(C) Started after July 1, 1983 by a housing development fund company organized under Article 11 of the Private Housing Finance Law and carried out either

(a) with substantial governmental assistance or

(b) in a property transferred from the City where alterations and improvements are completed within seven years of the date of such transfer; or

(D) Started after July 1, 1988 by or on behalf of a company not qualified under any of the above provisions, which is a not-for-profit corporation qualified pursuant to §501(c)(3) of the Internal Revenue Code and which has entered into a regulatory agreement with the HPD requiring operation of the property as housing for low and moderate income persons and families; or

(E) Started after July 1, 1992, and aided by a loan or grant under Article 11, 12 or 22 of the Private Housing Finance Law, §696-a (Article 16) or §99(h) of the General Municipal Law, or the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §12701 et seq.).

(iii) A Temporary Certificate of Eligibility may be issued in the discretion of the Office for projects eligible for tax benefits pursuant to §5-06(a)(3)(ii) above.

(b) **Tax exemption limitation.** (1) Except for special circumstances enumerated in paragraph (4) of this subdivision (b), property in the Borough of Manhattan south of or adjacent to the south side of one hundred tenth street with an average assessed valuation per dwelling unit of thirty-eight thousand dollars ($38,000) or more after completion of construction, calculated by dividing the amount of the total assessed valuation of the residential portion of the property as determined under the Real Property Tax Law by the number of dwelling units in the building after completion of construction of the conversion, alteration or improvement, shall not be eligible for a tax exemption. The amount of assessed valuation that will be exempt from taxation shall be calculated pursuant to the following table:

Average Assessment per Dwelling Unit After Completion of Construction	Percent of Increased Assessment Exempt
$18,000 or less	100%
$18,001-$22,000	75%
$22,001-$26,000	50%
$26,001-$30,000	25%
$30,001-$37,999	0%
$38,000 or more	No exemption granted

(2) In calculating the amount of assessed valuation that will be exempt from taxation pursuant to the formula in paragraph (1) above, the full amount of total assessed valuation that does not represent increased assessed valuation shall be applied in such formula prior to the inclusion of any amount of increased assessed valuation.

(3) Where the real property is occupied in part for residential purposes and in part for non-residential purposes, unless the non-residential portion is on a separately-assessed tax lot, the assessed valuation of the property shall be allocated by the Office between the residential and non-residential portions based on pro rata square footage. In computing the total assessed valuation per dwelling unit under paragraph (1) above, only the amount of valuation so allocated to the residential portion shall be considered.

(4) Exception to Assessed Valuation Limitation to Allow Additional Affordable Housing Units.

(i) Notwithstanding the provisions in paragraph (1), the Office may reduce or remove the limitations on the exemption from taxation provided in such paragraph with respect to a particular property undergoing alteration or improvement, upon application of the property owner and a determination by the Commissioner that the increased benefit will increase the number of dwelling units that will be affordable to persons of low and moderate income, and the increased benefit is necessary to make economically viable units or to improve the quality of dwelling units that will be affordable to persons of low or moderate income.

(ii) As used in this paragraph (4), the term "persons of low or moderate income" shall mean persons who would qualify for housing subsidies pursuant to section two hundred thirty-five (§235) of the National Housing Act, as amended, at one hundred thirty-five percent (135%) of the income limitations provided therein. The term "affordable," when used in connection with persons of low or moderate income, shall mean that such persons shall not be required to spend more than thirty percent of their adjusted annual income for housing.

(iii) Upon receiving an application under this paragraph (4) in proper form, the Office shall immediately submit it to the community board for the area in which the project is located, which may, within forty-five days of receiving it and after a public hearing, make recommendations to the Office as to the application. The Office shall act on the application within sixty days of receiving it from the property owner in proper form, but not before expiration of the time for the community board to make its recommendations, unless the board has acted sooner.

(iv) The Office will not approve any application under this paragraph (4), unless the owner enters into an agreement with the City which guarantees that at least thirty percent (30%) of the apartments in the building receiving tax benefits shall be rented or sold to persons of low or moderate income at rentals or carrying charges not exceeding thirty percent (30%) of their annual income, and that such apartments will, on vacancy, be re-rented or re-sold to persons of low or moderate income for a period of no less than fifteen (15) years. Such units must be rehabilitated or newly created units resulting from substantial rehabilitation or conversion.

(5) For purposes of this subdivision (b), the assessed valuation shall be the actual assessed valuation not transitional assessed valuation.

(6) Further exceptions to assessed valuation limit. The following conversions, alterations, and improvements are not subject to the limitations set forth in paragraphs (1) and (2) of this subdivision (b).

(i) Alterations or improvements under §5-03(a)(6); and

(ii) Conversions of residential units covered by Article 7-C of the Multiple Dwelling Law under §5-03(a)(2); and

(iii) Alterations or improvements under paragraphs (5), (7) or (8) of §5-03(a) when carried out:

(A) with substantial governmental assistance, or with the aid of grants, loans or subsidies from any not-for-profit philanthropic organization one of whose primary purposes is providing housing affordable to persons of low or moderate income as defined in §5-06(b)(4)(ii); or

(B) with mortgage insurance by the New York City Residential Mortgage Insurance Corporation or the State of New York Mortgage Agency; or

(C) within the areas in New York County set forth in §5-10; or

(D) pursuant to a program established by the Federal Housing Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or Government National Mortgage Association for the rehabilitation of existing multiple dwellings for persons of low or moderate income, or a program of mortgage insurance

for the rehabilitation of existing multiple dwellings pursuant to §223(f) of the National Housing Act, as amended, or a program of mortgage insurance established by the Federal Housing Administration for the rehabilitation of existing multiple dwellings for persons of low or moderate income; provided that properties receiving benefits under such programs are located in a neighborhood strategy area, as defined by HUD (24 CFR Part 881), or in one of the neighborhood preservation areas listed in §5-10.

(7) Assessed valuation limits for projects commenced prior to June 1, 1986. Conversions, alterations and improvements commenced after September 15, 1983 and before June 1, 1986 are subject to the exemption limitations set forth in §5-06(b) whether they are located in Manhattan or in any other Borough of the City, unless they qualify under one of the exceptions to the assessed valuation limit set forth in §5-06(b)(6), or are located in a designated neighborhood preservation area, as listed in §5-06(d)(3)(iii)(C). For purposes of this subdivision (b), the Clinton neighborhood preservation area is exempt from the assessed valuation limits of §5-06(b) only for conversions, alterations and improvements commenced prior to June 28, 1988.

(c) **Tax abatement.** (1) **Enriched abatement.** In the case of

(i) alterations or improvements carried out pursuant to §5-03(a)(6) which are carried out with substantial governmental assistance or with the aid of grants, loans or subsidies from any not-for-profit philanthropic organization one of whose primary purposes is providing low or moderate income housing or financed with mortgage insurance by the New York City Residential Mortgage Insurance Corporation or the State of New York Mortgage Agency or pursuant to a program established by the Federal Housing Administration for rehabilitation of existing multiple dwellings in a neighborhood strategy area, as defined by HUD (24 CFR Part 881); or

(ii) any conversion, alteration or improvement of property located in census tracts in which seventy-five percent (75%) or more of the population live in households which earn fifty percent (50%) or less of the median household income of the City, involving substantial governmental assistance; or

(iii) any alteration, improvement or conversion carried out pursuant to §5-03(a)(9);

the abatement of taxes on such property, including the land shall not exceed the lesser of the total actual cost of the alterations, improvements or conversion or one hundred fifty percent (150%) of the total certified reasonable cost of the alterations or improvements, and the annual abatement of taxes shall not exceed twelve and one-half percent (12.5%) of such certified reasonable cost.

(2) **Maximum annual and aggregate abatement.**

(i) In all cases not qualifying for the enriched abatement described in §5-06(c)(1), the maximum annual and aggregate abatement for each of the eligible projects listed in §5-03(a) is as follows:

Project	Maximum Annual Abatement		Maximum Total Abatement
	§5-03(a)(1)	8 1/3% of CRC	90% of CRC
*	§5-03(a)(1)	8 1/3% of CRC	50% of CRC
	§5-03(a)(2)	8 1/3% of CRC	90% of CRC
**	§5-03(a)(2)	8 1/3% of CRC	50% of CRC
	§5-03(a)(3)	8 1/3% of CRC	50% of CRC
	§5-03(a)(4)	8 1/3% of CRC	90% of CRC
***	§5-03(a)(5)	8 1/3% of CRC	90% of CRC
****	§5-03(a)(6)	8 1/3% of CRC	100% of CRC
	§5-03(a)(7)	8 1/3% of CRC	90% of CRC
*****	§5-03(a)(8)	8 1/3% of CRC	90% of CRC*
	§5-03(a)(10)	8 1/3% of CRC	90% of CRC

*****	§5-03(a)(11)	8 1/3% of CRC	90% of CRC
******	§5-03(a)(6)	121/2% of CRC	150% of CRC
******	§5-03(a)(9)	121/2% of CRC	150% of CRC

****** Conversions within the County of New York on any tax lot bordering on or south of 96th Street.

****** Conversions within the County of New York.

****** Only work specified on the Itemized Cost Breakdown Schedule is eligible for tax benefits. However, the CRC for such qualifying work shall be equal to the actual cost of the work. Notwithstanding the foregoing, the maximum allowable abatement may not exceed 50% of CRC if done in connection with a non-residential conversion located within the County of New York.

****** Non governmentally-assisted moderate rehabilitation.

****** Only eligible for 50% of CRC if done in connection with a non-residential conversion located within the County of New York.

****** Pursuant to §5-06(c)(1): governmentally-assisted moderate rehabilitation and substantial rehabilitation.

(ii) In cases qualifying for the enriched abatement described above in §5-06(c)(1), the maximum aggregate and annual abatement is:

(3) **Tax abatement shall commence as follows:**

(i) for cooperatives and condominiums with an average transitional assessed valuation per dwelling unit of less than forty thousand ($40,000) dollars, on the first day of the tax quarter following the filing of the Certificate of Eligibility and Reasonable Cost with the Real Property Assessment Bureau of the Department of Finance, except as provided in subparagraphs (ii) and (iii) below:

(ii) for cooperatives and condominiums with an average transitional assessed valuation per dwelling unit of forty thousand ($40,000) dollars or more, and for all other buildings, on the first day of January or July, whichever date next follows the filing of the Certificate of Eligibility and Reasonable Cost with the Real Property Assessment Bureau of the Department of Finance;

(iii) for property aided by a loan made pursuant to the authorities listed below or owned by a type of corporation listed below, on the first day of any tax quarter designated by the Office following the commencement of construction:

(A) Article 8, 8-a, or 15 of the Private Housing Finance Law or §312 of the United States Housing Act of 1964 (42 U.S.C. §1452b), or

(B) if commencement of construction occurred after July 1, 1988, by or on behalf of a not-for-profit corporation qualified pursuant to §501(c)(3) of the Internal Revenue Code and which has entered into a regulatory agreement with HPD requiring operation of the property as housing for low and moderate income persons and families, or

(C) if commencement of construction occurred after July 1, 1992, Article 11, 12 or 22 of the Private Housing Finance Law or §696-a (Article 16) or §99(h) of the General Municipal Law or the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §12701 et seq.).

(4) Taxes may be abated each year by the amount specified in the §5-06(c), provided that in no event may taxes be abated for more than twenty years nor may the abatement in any twelve month period exceed the amount of taxes payable in such twelve month period.

(d) **Tax abatement limitations.** (1) **Dollar limit.** For conversions, alterations or improvements commenced on or after September 15, 1983, except in special circumstances enumerated in paragraphs (2) and (3) of this subdivision (d), the certified reasonable cost of a conversion, alteration or improvement eligible for abatement shall not exceed the amounts specified in the following table:

Number of Rooms Per Dwelling Units	Maximum Eligible CRC
21/2	$12,600
31/2	$15,000
41/2	$17,400
51/2	$19,800

(2) **Enriched dollar limit.** An abatement may exceed the limitations set forth in paragraph (1) of this subdivision (d) by a maximum of twenty-five percent (25%) of the applicable limitation if, upon written request of the applicant, the Office determines that:

(i) in the case of a conversion pursuant to paragraphs (1), (2), (3) or (4) of §5-03(a), the increased cost is necessary to comply with applicable law; or

(ii) in the case of an alteration or improvement pursuant to §5-03(a)(7), the increased cost is necessary to eliminate unhealthy or dangerous conditions or replace inadequate and obsolete sanitary facilities in a satisfactory manner; or

(iii) in the case of an alteration or improvement pursuant to §5-03(a)(8), the increased cost is necessary to conserve energy in a satisfactory manner; or

(iv) in the case of an alteration or improvement pursuant to §5-03(a)(5), the increased cost, to the extent such cost is not offset by any and all tax credits received as a result of the alteration or improvement, is necessary to comply with any provision of law regulating historic or landmark buildings or structures.

(3) **Exceptions to dollar limit.** The following conversions, alterations, and improvements are not subject to the limitations set forth in paragraphs (1) and (2) of this subdivision (d), but are subject to the limitations of paragraph (4) of this subdivision (d).

(i) alterations or improvements under §5-03(a)(6); and

(ii) conversions of residential units covered by Article 7-C of the Multiple Dwelling Law under §5-03(a)(2); and

(iii) alterations or improvements under paragraphs (5), (7) and (8) of §5-03(a) when carried out:

(A) with substantial governmental assistance or with the aid of grants, loans or subsidies from any not-for-profit philanthropic organization one of whose primary purposes is providing housing affordable to persons of low or moderate income as defined in §5-06(b)(4)(ii); or

(B) with mortgage insurance provided by the New York City Residential Mortgage Insurance Corporation or the State of New York Mortgage Agency; or

(C) within the areas set forth in §5-10; or

(D) pursuant to a program established by the Federal Housing Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or Government National Mortgage Association for the rehabilitation of existing multiple dwellings for persons of low or moderate income, or a program of mortgage insurance for the rehabilitation of existing multiple dwellings pursuant to §223(f) of the National Housing Act as amended, or a

program of mortgage insurance established by the Federal Housing Administration for the rehabilitation of existing multiple dwellings for persons of low or moderate income; provided that properties receiving benefits under such programs are located in a neighborhood strategy area, as defined by HUD (24 CFR Part 881), or in one of the neighborhood preservation areas listed in §5-10.

(4) (i) Tax abatement for a multiple dwelling shall be available only if:

(A) for alterations and improvements commenced after June 28, 1988 and on or prior to June 15, 1993, the actual assessed valuation of such multiple dwelling, including land, does not exceed an average of thirty thousand dollars ($30,000) per dwelling unit at the time of commencement of construction of the alterations or improvements; or

(B) for alterations and improvements commenced after June 15, 1993, the actual assessed valuation of such multiple dwelling, including land, does not exceed an average of forty thousand dollars ($40,000) per dwelling unit at the time of commencement of construction of the alterations or improvements.

Unless the non-residential portion is a separately-assessed parcel, when the building is occupied in part for residential purposes and in part for non-residential purposes, the assessed valuation of the property shall be allocated by the Office between the residential and the non-residential portions based on pro rata square footage, and only the amount of valuation so allocated to the residential portion shall be considered in computing the assessed valuation per dwelling unit.

(ii) The limitations set forth in this paragraph (4) shall not apply to:

(A) multiple dwellings owned as a cooperative or condominium; or

(B) multiple dwellings in which units have been newly created by substantial rehabilitation of vacant buildings or conversions; or

(C) alterations or improvements under §5-03(a)(6); or

(D) conversions of residential units covered by Article 7-C of the Multiple Dwelling Law under §5-03(a)(2); or

(E) alterations or improvements under paragraphs (5), (7) and (8) of §5-03(a) when carried out:

(a) with substantial governmental assistance or with the aid of grants, loans or subsidies from any not-for-profit philanthropic organization one of whose primary purposes is providing housing affordable to persons of low or moderate income as defined in §5-06(b)(4)(ii); or

(b) with mortgage insurance provided by the New York City Residential Mortgage Insurance Corporation or the State of New York Mortgage Agency; or

(c) within the areas set forth in §5-10; or

(d) pursuant to a program established by the Federal Housing Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or Government National Mortgage Association for the rehabilitation of existing multiple dwellings for persons of low or moderate income, or a program of mortgage insurance for the rehabilitation of existing multiple dwellings pursuant to §223(f) of the National Housing Act as amended, or a program of mortgage insurance established by the Federal Housing Administration for the rehabilitation of existing multiple dwellings for persons of low or moderate income; provided that properties receiving benefits under such programs are located in a neighborhood strategy area, as defined by HUD (24 CFR Part 881), or in one of the neighborhood preservation areas listed in §5-10.

(5) Tax abatement benefits shall not be available to any limited-profit housing company established pursuant to

article two of the Private Housing Finance Law to reduce taxes beneath the applicable statutory minimum tax, provided however, the benefits of the Act shall apply to alterations and improvements commenced after June 1, 1986 by any such company provided the project is otherwise eligible. Such multiple dwelling shall be eligible for benefits where at least one building-wide major capital improvement as set forth in §5-03(a)(6)(i) or a new roof (at least seventy-five percent (75%) of the aggregate roof area is replaced or covered with new roofing) or building-wide submetering of all individual dwelling units is part of the application for benefits. Furthermore, to the extent that such alterations or improvements are financed with grants, loans or subsidies from any federal, state or local agency or instrumentality, such multiple dwelling, building or structure, shall be eligible for benefits only if the limited-profit housing company has entered into a binding and irrevocable agreement with the commissioner of housing of the state of New York, the supervising agency, the New York city housing development corporation, or the New York state housing finance agency prohibiting the dissolution or reconstitution of such limited-profit housing company pursuant to section thirty-five of the Private Housing Finance Law for not less than fifteen years from the commencement of benefits. The abatement of taxes on such property, including the land, shall not be an amount greater than ninety percent (90%) of the certified reasonable cost of such alterations or improvements, nor greater than eight and one-third percent ($8\frac{1}{3}$%) of such certified reasonable cost in any twelve month period, nor be effective for more than twenty years. The annual abatement of taxes in any twelve month period shall in no event exceed fifty percent (50%) of the applicable exemption granted pursuant to article two of the Private Housing Finance Law or other applicable laws or fifty percent (50%) of payments required to be made in lieu of taxes in such twelve month period. Notwithstanding the foregoing, the annual abatement of taxes for alterations or improvements commenced prior to June 1, 1986, may not be applied to reduce the amount of taxes payable or the amount of payments required to be made in lieu of taxes in any twelve month period to an amount less than the minimum amount of taxes required to be paid pursuant to §3 of the Private Housing Finance Law (ten percent (10%) of shelter rent or assessed value at time of acquisition of the property by the housing company, whichever is higher).

(e) **Restricted eligibility projects.** (1) The following buildings shall be eligible for limited tax benefits as set forth herein

(i) **For any building:**

(A) in which conversion, alteration or improvement commences on or after January 1, 1982, and

(B) which is located in the County of New York within an area designated herein as a minimum tax zone, the benefits of the Act shall not be applied to abate or reduce the taxes upon the land portion of such real property, which shall continue to be taxed based upon the assessed valuation of the land and the applicable tax rate at the time such taxes are levied; provided, however, that the foregoing limitation with respect to abatement of taxes shall not apply:

(a) to any multiple dwelling which is eligible for benefits based upon moderate rehabilitation pursuant to §5-03(a)(6) or

(b) to any conversion, alteration or improvement which is carried out with substantial governmental assistance.

(ii) **For any building:**

(A) in which conversion, alteration or improvement commenced on or after January 1, 1982, and

(B) which is located in the County of New York within an area designated herein as a tax abatement exclusion zone, the benefits of the Act shall not be applied to abate or reduce the taxes upon such real property, which shall continue to be taxed based upon the assessed valuation of the land and the improvements and the applicable tax rate at the time such taxes are levied; provided, however, that the foregoing limitation shall not deprive such real property of any benefits of exemption from taxation of an increase in assessed valuation to which it is entitled pursuant to the Act, and provided further that the foregoing limitation with respect to abatement of taxes shall not apply:

(a) to any Alteration or Improvement designated herein as a major capital improvement, provided that the maximum amount of tax abatement which may be applied against taxes due in any tax year by any such multiple dwelling for any such alterations and improvements shall be limited to an amount not in excess of two thousand five hundred dollars ($2,500) per dwelling unit, or

(b) to any conversion, alteration or improvement which is carried out with substantial governmental assistance.

(2) The minimum tax zone in the County of New York is as follows: all tax lots now existing or hereafter created within the following designated area or adjacent or contiguous to either side of any street forming the boundary of such designated area, which area is bounded and described as follows: beginning at Central Park West and 86th Street; thence easterly along 86th Street to the East River; thence southerly along the easterly boundary of New York County to 23rd Street; thence westerly along 23rd Street to Third Avenue; thence southerly along Third Avenue to 14th Street; thence westerly along 14th Street to Broadway; thence southerly along Broadway to Houston Street; thence westerly along Houston Street to West Street; thence northerly along West Street to 14th Street; thence easterly along 14th Street to 9th Avenue; thence northerly along 9th Avenue to 57th Street; thence westerly along 57th Street to the Hudson River; thence northerly along the westerly boundary of New York County to 72nd Street; thence easterly along 72nd Street to Central Park West; thence northerly along Central Park West to 86th Street and Central Park West, which is the place of beginning.

(3) The tax abatement exclusion zone in the County of New York is as follows: all tax lots within the following designated area or adjacent or contiguous to either side of any street forming the boundary of such designated area or adjacent or contiguous to either side of any street designated as included in such area, which area is bounded and described as follows: beginning at the intersection of 96th Street and Central Park West; thence easterly to Park Avenue; thence southerly along Park Avenue to the intersection of Park Avenue and 72nd Street; thence easterly along 72nd Street to York Avenue; thence northerly along York Avenue to the Franklin Delano Roosevelt Drive; thence north-westerly along the Franklin Delano Roosevelt Drive to as far as 96th Street; thence easterly to the easterly border of New York County; thence southerly along such border to 34th Street; thence westerly along 34th Street to 8th Avenue; thence northerly, along 8th Avenue and Central Park West as far as 96th Street, which is the place of beginning. Additionally, the following north/south and east/west thoroughfares shall be included in the tax abatement exclusion zone; 96th Street between Central Park West and the East River; 86th Street between Central Park West and the East River; 79th Street between West End Avenue and the East River; 72nd Street between West End Avenue and the East River; West End Avenue from 72nd Street to 86th Street; and Riverside Drive from 72nd Street to 96th Street.

HISTORICAL NOTE

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

Section in original publication July 1, 1991.

Subd. (d) par (5) amended City Record Aug. 5, 2009 §3, eff. Sept. 4, 2009. [See T28 §5-02 Note 4]

Subd. (e) redesignated (formerly §5-03(i)) City Record Jan. 27, 1998 eff. Feb. 26, 1998. [See T28 §5-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Jan. 27, 1998 eff. Feb. 26, 1998. Note: Statement of Basis

and Purpose. The Act authorizes HPD to promulgate Rules governing the administration of the program. The proposed changes to the rules (i) bring the rules into conformance with amendments to the Act which became effective on June 15, 1993, (ii) provide procedures necessary to implement these amendments, (iii) further clarify implementation of the Act, (iv) provide modest increases to the allowances for certain items on the Itemized Cost Breakdown Schedule where warranted by inflation and (v) revise fees to place a penalty on uncollectible checks and charge a reasonable fee for declaratory rulings.

Rules of the City of New York

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

28 RCNY 5-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 5*1 J51 TAX EXEMPTION AND TAX ABATEMENT

§5-07 Record Keeping: Revocation of Tax Exemption/Tax Abatement.

(a) **Subpoenas, oaths, books and records.** For the purpose of determining the correctness of any application or certificate, the Commissioner may:

(1) Examine any books, papers, records or other data which may be relevant or material to such inquiry;

(2) Summon any person, including the owner or an officer or any employee of the owner, or any person having possession, custody or care of books, papers or records relating to the correctness of the application, to appear before the Commissioner or his designate at any time or place named in the summons or to produce such books, papers, records or other data and to give such testimony under oath, as may be relevant or material to such inquiry; and

(3) Take such testimony under oath as may be relevant to such inquiry.

(b) **Retention of books and records.** All books, records and documents listed in §5-05, together with all other documents, which in accordance with generally accepted auditing standards, may be used to substantiate entries in the applicant's books and records shall be kept at all times available for inspection by the Office and shall be retained for a period of at least three years from the date on which an applicant collects a Certificate of Eligibility except that (1) where an audit has been initiated and a final determination has not been rendered, such records shall be retained until such determination has been made and (2) where an applicant has entered into an installment arrangement with respect to payment for work comprising all or a part of the project, such records shall be retained until the later of (i) three years from the date on which the applicant collects the Certificate of Eligibility and (ii) one year following payment in full for the work comprising the project.

(c) **On-going program review.** To ensure that the Office will have sufficient current data to properly evaluate the program of tax exemption and tax abatement and effectively administer the program, the Office may, during the period of tax exemption and abatement, require owners to submit rental data, construction data and such other information as the Office deems necessary to carry out the functions delegated to it pursuant to the Act.

(d) **Preservation and inspection of records.** Records of each application shall be maintained by the Office. Records of approved applications are available for inspection and copying upon prior written request to the Office. Copies of records are available upon payment in advance of twenty-five cents ($0.25) per page.

(e) **Revocation or reduction of tax exemption and tax abatement for failure to substantiate claimed costs.** All applications are subject to post-audit by HPD.

(1) The Commissioner may, after notice pursuant to §5-07(g), reduce or revoke past or future tax exemption or tax abatement if he or she finds that the application for tax exemption or tax abatement, including all affidavits submitted in connection with the application, contains a false statement or false information as to a material matter or omits a material matter. It is the responsibility of the recipient of the benefits, whether the original applicant or any subsequent owner, including any condominium or cooperative, to document all claimed costs in a manner acceptable to HPD and in accordance with generally accepted auditing standards so that original checks or such other proof of payment as the Office shall require can be properly matched against the items on the Itemized Cost Breakdown Schedule and so that the auditors may examine original documentation for the cost of all supplies and the cost of all subcontracts. If, after notice of an opportunity to be heard and a request to produce documentation of claimed costs, a recipient of tax benefits hereunder fails to substantiate claimed costs to the satisfaction of HPD, the CRC shall be reduced or revoked as applicable. In the event that HPD determines on the basis of the total available evidence that the application contains a false statement or false information as to a material matter, or omits a material matter, all benefits hereunder shall be revoked.

(2) Tax benefits will not be revoked for failure to substantiate the amount of claimed costs after the expiration of three years from the date on which the applicant collects the Certificate of Eligibility from the Office, except that (1) where an audit has been initiated within the three-year period, but a final determination has not been rendered, or (2) where the applicant has not made payment in full for the work comprising the project within two years after the applicant has collected the Certificate of Eligibility, then such benefits may be revoked subsequent to such three year period.

(3) Tax benefits may be revoked in whole or in part at any time during the tax benefit period if there has been fraud or misrepresentation or for any violation of the Act or this chapter.

(4) If an institutional lender has become a successor in interest to the original owner of such building or structure, and, after diligent efforts to obtain original contracts, checks and other records normally reviewed by the Office to verify claimed costs, is unable to obtain part or all of such records, the Office shall permit the substitution, in whole or in part, of documentation certified by the institutional lender showing the amounts advanced by the institutional lender pursuant to the mortgage loan to finance such alterations or improvements along with such other documentation as the Office may require.

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

(1) The building is operated for commercial or hotel or transient hotel use as indicated by, but not limited to, a lease or agreement for occupancy for periods of less than one year. Revocation shall be effective from the first tax period the prohibited use began.

(2) The real estate taxes and other charges having tax lien status with respect to the building (and land) total $1,000

or more and remain unpaid for one year after the same are due and payable to the City and the applicant or his or her predecessor in title has not entered into an installment agreement with the City which provides for the payment of delinquent taxes, assessments or other legal charges pursuant to §11-401 et seq. of the Administrative Code or has entered into an installment agreement but all payments required by said installment agreement have not been paid when due.

(3) The building ceases to be subject to the rent regulatory provisions of law set forth in §5-03(f)(1), unless the building is exempt from such provisions pursuant to §5-03(f)(2).

(4) During the periods prescribed by §5-07(b), the owner of any building receiving tax exemption or tax abatement, or any employee or agent of such owner, fails to appear and produce books, papers, records or other data required by §5-07(a) after being duly summoned to appear.

(5) Benefits granted hereunder shall not be withdrawn if within thirty (30) days after notice of a breach or omission pursuant to §5-07(g), the purported breach or omission has been cured or the owner has established to the satisfaction of the Office or the Department of Finance that it did not occur.

(g) **Notice of revocation or reduction.** Prior to revocation or reduction of tax exemption and tax abatement hereunder, notice of the breach or omission shall be given either by the Office or by the Department of Finance to the applicant by regular mail to the address to which the Department of Finance sends tax bills or to such other address for the applicant on record with the Department of Finance, and to the mortgagee if registered to receive tax bill from the Department of Finance. Benefits shall not be withdrawn if within thirty (30) days after notice of breach or omission the owner establishes that such breach or omission did not occur.

(h) **Non-discrimination.** No owner of any dwelling which is receiving the benefits of the Act, nor any agent, employee, manager, or officer of such owner shall directly or indirectly deny dwelling accommodations in such property, or any of the privileges or services incident to occupancy in violation of §11-243(k) of the Administrative Code.

(i) **Declaratory rulings.** A declaratory ruling with respect to an analysis of a specific or hypothetical site, project, fact pattern or document or an interpretation of the applicability of a specific provision of §489 of the Real Property Tax Law or §11-243 of the Administrative Code or these rules to an actual or hypothetical site, project, fact pattern or document or any other issue related to eligibility may be given in the discretion of the Office upon payment of a non-refundable fee in the amount of seven hundred fifty dollars ($750) payable at the time such declaratory ruling is requested in writing. In no event shall a declaratory ruling bind the Office as to the overall eligibility of a project for J-51 benefits. At the discretion of the Commissioner, this fee may be waived for projects supervised or funded by HPD or any other New York City or New York State agency or instrumentality.

(j) The Department of Finance shall use the following procedure to effect revocation and reinstatement of tax benefits for non-payment of real estate taxes:

(1) In January of each calendar year, the Department of Finance shall notify the owner of such outstanding real estate taxes (as defined in paragraph 2 of §5-07(f)) pursuant to §5-07(g) of these Rules. Following the date of this notification, the owner shall have sixty (60) days to pay such outstanding taxes. This shall constitute the first cure period.

(2) If the owner has paid such outstanding taxes during the first cure period (or entered into a valid installment agreement with the City), the tax exemption and/or abatement benefits shall continue on the property. If the owner has not paid such outstanding taxes before the expiration of the first cure period, the Department of Finance shall revoke all tax exemption and/or abatement benefits for the tax year commencing July 1 after the date of the beginning of the first cure period.

(3) Following the expiration of the first cure period, the Department of Finance shall again notify the owner of such outstanding real estate taxes (as defined in paragraph 2 of §5-07(f)) pursuant to §5-07(g) of these Rules. Following the date of this notification, the owner shall have ninety (90) days to pay such outstanding taxes. This shall constitute the second cure period.

(4) If the owner has paid such outstanding taxes during the second cure period (or entered into a valid installment agreement with the City), the Department of Finance shall, upon notification by the taxpayer, reinstate tax exemption and/or abatement benefits to the property for the tax year commencing July 1 after the date of the beginning of the first cure period. If the owner has not paid such outstanding taxes before the expiration of the second cure period, the property shall irrevocably lose all tax exemption and/or abatement benefits for such tax year, and the Department of Finance shall also revoke all tax exemption and/or abatement benefits for all tax years commencing on or after the second July 1 that follows the date of the beginning of the first cure period.

(5) Following the expiration of the second cure period, the Department of Finance shall again notify the owner of such outstanding real estate taxes (as defined in paragraph 2 of §5-07(f)) pursuant to §5-07(g) of these Rules. Following the date of this notification, the owner shall have one-hundred and eighty (180) days to pay such outstanding taxes. This shall constitute the third cure period.

(6) If the owner has paid such outstanding taxes during the third cure period (or entered into a valid installment agreement with the City), the Department of Finance shall reinstate the tax exemption and/or abatement benefits to the property for all tax years commencing on or after July 1 after the date of the beginning of the first cure period. If the owner has not paid such outstanding taxes before the expiration of the third cure period, the property owner shall irrevocably lose all J-51 tax exemption and/or abatement benefits awarded by HPD for such tax years.

(7) The Commissioner may exempt projects assisted with Substantial Governmental Assistance or projects supervised or monitored by HPD from the procedures in this subdivision by giving notice in writing to the Department of Finance, Attn: Director of Exemptions, provided, further, that projects exempted from these procedures shall continue to have tax exemption and/or abatement benefits revoked for the period of their tax delinquency for failure to pay real estate taxes pursuant to the provisions of §5-07(f)(2).

(8) All claims for reinstatement of J-51 tax exemption and/or abatement benefits resulting from revocations made prior to the effective date of these Rules must be made in writing to the Department of Finance, Property Exemption Unit, within one year of the effective date of these Rules.

(k) The revocation of benefits for noncompliance with the Act or this chapter shall not exempt any unit from continued compliance with the requirements of the Act or this chapter.

HISTORICAL NOTE

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

Section in original publication July 1, 1991.

Subd. (e) par (1) amended City Record Nov. 30, 2004 §8, eff. Dec. 30, 2004. [See T28 §5-03 Note 2]

Subd. (e) par (3) amended City Record Nov. 21, 2007 §1, eff. Dec. 21, 2007. [See Note 2]

Subd. (f) par (2) amended City Record Nov. 20, 2000 §1, eff. Dec. 20, 2000. [See Note 1]

Subd. (f) par (5) amended City Record Nov. 20, 2000 §3, eff. Dec. 20, 2000. [See Note 1]

Subd. (g) amended City Record Nov. 20, 2000 §4, eff. Dec. 20, 2000. [See Note 1]

Subd. (h) amended City Record Nov. 21, 2007 §2, eff. Dec. 21, 2007. [See Note 2]

Subd. (j) added City Record Nov. 20, 2000 §2, eff. Dec. 20, 2000. [See Note 1]

Subd. (k) added City Record Nov. 21, 2007 §3, eff. Dec. 21, 2007. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 20, 2000:

Decribes these amendments as a Notice of Promulgation (which is a final notice) and as a Notice of Opportunity to Comment (Indicating that this is the first publication and not a final rule). It is included here as a final rule per Corporation Counsel. Also note further provisions of City Record Nov. 20, 2000:

The proposed rules add the installation of food waste disposers in multiple dwellings as a J-51 eligible, non-MCI plumbing item. Local Law 74 of 1997 permits food waste disposers to be installed in residential kitchens throughout the City, as of October, 1997. Research also indicates that such devices can divert substantial amounts of solid waste from the City's landfills and enrich the quality of the septic sludge the City produces, thereby improving the City's solid waste management function. The proposed rules also change the procedures for revocation of tax benefits and add a new procedure for re-instatement of tax benefits following revocation. These changes will make the process of revocation of J-51 tax benefits more efficient and less cumbersome for the Department of Finance, which implements all J-51 benefits awarded by HPD.

2. Statement of Basis and Purpose in City Record Nov. 21, 2007: The rule amendments would clarify that J-51 tax benefits may be revoked for any violation of Administrative Code §11-243 (the "J-51 Law") or the rules promulgated thereunder (Chapter 5 of Title 28 of the Rules of the City of New York), and that such revocation of benefits does not exempt any unit from continued compliance with the requirements of such provisions. The rules already expressly provide similarly for J-51's rent regulation requirements but not for its other requirements including, but not limited to, the prohibition against discriminating against persons because of race, religion, alienage or citizenship status, or the use of, participation in, or being eligible for a governmentally funded housing assistance program such as Section 8 (Administrative Code §11-243(k)). Finally, the rule amendments correct an incorrect statutory reference in 28 RCNY §5-07(h).

FOOTNOTES

1

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

Rules of the City of New York

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

28 RCNY 5-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 5*1 J51 TAX EXEMPTION AND TAX ABATEMENT

§5-08 Itemized Cost Breakdown Schedule.

The following allowances apply to alterations, improvements and conversions for which the commencement of construction occurred after June 1, 1997. For alterations, improvements and conversions for which commencement of construction occurred on or before June 1, 1997, the Itemized Cost Breakdown Schedule in effect as of the date of such commencement of construction shall apply, except in the case of asbestos abatement, for which the allowance set forth below shall apply to all applications pending on or submitted after November 1, 1997.

Maximum Allowance for All Buildings

(a) **General Construction.**

		Item	Units	Allowance
# *	(1)	Asbestos abatement1		See table
# *	(2)	Boiler room enclosure	sq. ft.	7.50
# *	(3)	Bulkhead	sq. ft.	8.50
	(4)	Ceiling, cellar (fireproof gyp bd)	sq. ft.	1.60
	(5)	Ceilings, gypsum board or plaster	rooms	280.
# *	(6)	Cement wash or parge water-proofing	sq. ft.	1.00
	(7)	Ceramic tile, bathroom2	bathrooms	750.
# *	(8)	Chimney, masonry	floors	1200.

# *	(9)	Compactor, see Item 39. Refuse		
#	(10)	Concrete, structural slab3	cu. yd.	500.
#	(11)	Concrete, structural foundation3	cu. yd.	250.
#	(12)	Concrete, flatwork4	sq. ft.	4.00
# *	(13)	Abatement of lead-based paint hazards5		See Itemized Cost Breakdown Schedule for Abatement of Lead-Based Paint Hazards in (h) below
	(14)	Demolition & removal allowance6	rooms	200.
		Doors (incl. frame and hardware)		
# *	(15)	Main entrance and lobby	set	4000.
# *	(16)	Hollow metal	doors	475.
	(17)	Wood Swing	doors	135.
	(18)	Bi-fold closet	Bi-fold	110.
	(19)	Sliding closet (2 doors)	set	125.
# **	(20)	Storm	doors	180.
	(21)	Dumbwaiters converted to closets	units	250.
	(22)	Dumbwaiters sealed	units	110.
	(23)	Entrance, stoops, steps, concrete	risers	225.
# *	(24)	Fire escapes	Flights	2000.
#	(25)	Floor joists (incl. sub floor)3	joists	165.
	(26)	Flooring, finished wood	rooms	500.
	(27)	Flooring, resilient w/ underlayment	rooms	450.
# **	(28)	Insulation, wall (thermal only)	sq. ft.	0.50
# **	(29)	Insulation, roof (thermal only)	sq. ft.	0.85
# *	(30)	Leaders and gutters	floors	40.
# *	(31)	Lintel replacement	units	250.
# *	(32)	Mailboxes	d.u.	50.
# *	(33)	Masonry	sq. ft.	7.50
# *	(34)	Parapet including coping	lin. ft.	135.
	(35)	Partitions, gypsum board or plaster	rooms	600.
	(36)	Partitions, framing	rooms	350.
# *	(37)	Pointing7	sq. ft.	2.00
# *	(38)	Railings, roof	lin. ft.	25.
# *	(39)	Refuse		
# *		chute, complete	floors	750.
# *		compactor, central unit	compactors	6800.
# *		recycling, base separating unit (turntable &/or diverter)	chutes	17000.
# *		recycling, floor control panel	floors	750.
# *	(40)	Roof surface	sq. ft.	1.25
	(41)	Skylight including screens8	units	1300.
	(42)	Stairs, steel	flights	2200.
#	(43)	Structural steel3	lbs.	1.50
# *	(44)	Window, single pane glass9	units	140.
# **	(45)	Window, insulating glass	units	175
# **	(46)	Window, insulating glass over 24 sf	sq. ft.	10.
# **	(47)	Window, storm with screen	units	65.

# *	(48)	Window guards, approved security	units	175
# *	(49)	Window guards, childproof	units	25.

(b) **Elevator.**

		Item	Units	Allowance
# *	(1)	New elevator, complete	unitsfloors	45,000+7000
# *	(2)	Convert manual to automatic10	units	7000.
		Elevator, partial		
# *	(3)	Motor11	motor	3500.
# *	(4)	Traction machine11	units	10,000.
# *	(5)	One-speed controller11	controller	6200.
# *	(6)	Two-speed or variable controller11	controller	8000.
# *	(7)	Cables	floors	400.
# *	(8)	Shaftway floor	doors	800.
# *	(9)	Floor call station	floors	200.
# *	(10)	Interlocks	interlocks	280.
# *	(11)	Door operator	units	2500.
# *	(12)	Car		
# *		Reline cab	units	4200.
# *		Top of car safety device	units	2800.

(c) **Plumbing.**

		Item	Units	Allowance
	(1)	Bathtubs12	tubs	450.
# *	(2)	Hot water heater/tank (input)	MBH	See table
# **	(3)	Insulation, pipe (also for heating)	lin. ft.	2.50
	(4)	Kitchen sink13	sink	175.
	(5)	Lavatory12	lavs	150.
		Piping		
# *	(6)	Water main, risers, branches	d.u.	1700.
# *	(7)	Waste and vent (complete)	d.u.	1500.
# *	(8)	Water service, street connect14	lin. ft.	110.
# *	(9)	Sewer, street connection	lin. ft.	200.
# *	(10)	Gas, risers and connections	d.u.	275.
# *	(11)	Sprinklers, heads only	heads	30.
# *	(12)	Sprinklers, piping and heads	heads	220.
# *	(13)	Standpipe	floor	600.
# *	(14)	Tank, water storage	gallon	1.50
	(15)	Water closets12	units	200.
	(16)	Food waste disposers13	units	300.

(d) **Heating.**

		Item	Units	Allowance
# **	(1)	Boiler-burner (output)15	MBH	See table
# **	(2)	Boiler (output)	MBH	See table

# **	(3)	Burner (output)15	MBH	See table
	(4)	Convectors or radiators	units	250
# *	(5)	Electronic boiler control system	units	2500.
	(6)	Exhaust duct (int. kit & bath only)	unit	310.
# *	(7)	Metal boiler stack	floors	400.
# *	(8)	Oil tank	gallon	See table
# *	(9)	Piping, heat mains, risers, branch	rooms	220.

(e) **Electric.**

	Item	Units	Allowance
# *	(1) All new apartment wiring	d.u.+room	400.+420.*
# *	(2) Apartment wiring only, adequate(risers and meters separate)16	d.u.	370.
# *	(3) Service equipment and risers16		
	Electric service equipment		
# *	with individual meter	entry+d.u.	1500.+160.
# *	with master meter	entry+d.u.	1500+110.
# *	Apartment panel	d.u.	300.
	Risers		
# *	with individual meter16	d.u.	500.
# *	with master meter16	d.u.	350.
# *	(4) Intercom, door opener	d.u.	100.
	(5) Outlet on new circuit	circuit	100.
# *	(6) Smoke detectors, hard wired	d.u.	100.
# *	(7) Submetering installation17	d.u.	280.
#	(8) Cogeneration equipment19	kilowatt	400

(f) **Moderate Rehabilitation Only.**

Item	Units	Allowance
(1) Kitchen cabinets18	lin. ft.	55.
(2) Kitchen cabinets, base & counter18	lin. ft.	70.
(3) Medicine cabinets inc. mirror12	units	85.
(4) Range (minimum 24 in. width)13	units	300.
(5) Refrigerator (min. 12 cf nominal)13	units	420.
(6) Steam or chemical cleaning	sq. ft.	0.80

(g) **Landmarks Projects Only**

Items of work listed on this schedule only per §5-03(a)(5)

Boiler/Burner Table
(maximum allowance)

Item	Output in MBH (thousand BTU per hour)		
	0-2,000 MBH	2,000-6,000 MBH	> 6,000 MBH
Boiler-burner15	$1,500.16.50/MBH	20,000.7.25/MBH	47,600.2.65/MBH
Burner15	$500.4.75/MBH	6000.2.00/MBH	8,300.1.65/MBH
Boiler (existingburner)	$1,000.11.75/MBH	14,000.5.25/MBH	39,300.1.00/MBH

Domestic Hot Water Table
(maximum allowance)

Input in MBH	Allowance
0-600	$460. 9.10/MBH
>600	$1,900. 6.70/MBH

Oil Tank Table
(maximum allowance)

Size in Gallons	Allowance
0-4000	$500. l.10/gal.
>4000	$2,900. .50/gal.

Asbestos Abatement Table
(maximum allowance)

Internal Linear Feet	$1600. + $10./linear ft.
Internal Square Feet	$1600. + $10./sq. ft.

(h) **Abatement of Lead-Based Paint Hazards**[5]

	Item	Units	Allowance for Non-targeted Areas	Allowance for Targeted Areas
# *	(1)	Inspection for Lead-Based Paint Hazards20	d.u.commonarea21	400. 400.
# *	(2)	Risk Assessment of Lead-Based Paint Hazards20	d.u.commonarea22	250. 250.
# *	(3)	Ceilings, lamination	rooms	320. 420.
# *	(4)	Ceilings, common area, lamination	sq. ft.	1.80 2.50
# *	(5)	Doors (incl. frame and hardware), main entrance and lobby	set	4600. 5000.
# *	(6)	Doors (incl. frame and hardware), hollow metal	doors	550. 800.
# *	(7)	Doors (incl. frame and hardware), wood swing	doors	155. 350.
# *	(8)	Doors (incl. frame and hardware), bi-fold closet	bi-fold	125. 300.
# *	(9)	Sliding closet (2 doors, incl. frame and hardware)	set	145. 300.
# *	(10)	Flooring, finished wood	rooms	575. 1250.
# *	(11)	Flooring, resilient w/underlayment	rooms	515. 585.
# *	(12)	Partitions, gypsum board or plaster	rooms	690. 1170.
# *	(13)	Partitions, common area	sq. ft.	1.80 2.50
# *	(14)	Stairs, steel (incl. risers, pans, railings, stringers, & newel posts), stripped	steps	45. 60.
# *	(15)	Window, insulating glass	units	200. 425.
# *	(16)	Window, insulating glass over 24 sf	sq. ft.	12. 30.
# *	(17)	Convectors or radiators, new	units	260. 275.
# *	(18)	Convectors or radiators, stripped	units	115. 150.
# *	(19)	Risers, stripped	lin. ft.	15. 20.
# *	(20)	Kitchen cabinets18	lin. ft.	65. 75.
# *	(21)	Kitchen cabinets, base & counter18	lin. ft.	80. 105.
# *	(22)	Medicine cabinets (incl. mirror)23	units	95. 125.
# *	(23)	Remove and install window sill	units	115. 150.
# *	(24)	Remove and install baseboard, wood molding	lin. ft.	2.50 3.50
# *	(25)	Remove and install closet shelf and pole	set	55. 75.

* Denotes Major Capital Improvement (MCI).

** Denotes Energy Conversation Items which shall also be considered Major Capital Improvements.

# Denotes that the item allowance may be reduced by proportion of non-residential space where the item serves both residential and non-residential space. (Items wholly within or serving the non-residential space receive no allowance.)

1. For (1) removal or encapsulation of any friable asbestos when done as part of a substantial rehabilitation requiring an alteration permit, or (2) for removal of asbestos Thermal System Insulation (TSI) on other rehabilitation or (3) for removal of other friable asbestos (and not roofing, siding or flooring) pursuant to a report from a certified asbestos inspector describing condition, quantity and location of asbestos containing materials to be removed including microscopic analysis. TSI shall mean insulation applied to heating, ventilation or air conditioning systems, hot or cold domestic water systems for the purpose of preventing heat transfer or water condensation. TSI shall include insulation on boilers, water tanks, air handling equipment and ducts, piping, pipe fittings or valves.

2. For bathroom with ceramic tile floor and full tile wainscot. Maximum one per apartment unless the apartment has two or more bedrooms. This item is eligible as an MCI if new water main, riser, and branch piping is installed throughout and if new ceramic tile and at least two new bathroom fixtures are installed in at least 90 percent of the bathrooms.

3. This item requires an affidavit from an engineer or architect certifying that he has personal knowledge of the installation and that the quantity claimed was installed. It also requires site photographs or other evidence satisfactory to HPD documenting the installation of the item.

4. This item includes inner walkways, courtyards, cellar slabs and the public sidewalk.

5. For construction commenced on or after August 2, 2004, requires (a) "an abatement" of lead-based paint hazards, as defined in 40 Code of Federal Regulations part 745 or any successor regulations, in any existing dwelling, including any vacant or occupied dwelling unit or any common area, and (b) proof of lead-based paint hazards pursuant to an "inspection" and/or "risk assessment", as defined in 40 Code of Federal Regulations part 745 or any successor regulations. Notwithstanding the foregoing, no such benefit shall be given for (a) any abatement performed to comply with a notice of violation issued for a violation of article fourteen of subchapter two of chapter two of title 27 of the Administrative Code, or (b) any abatement performed in a dwelling unit or in the common areas in such dwelling unless all of the lead-based paint hazards identified in such dwelling unit or in all of the common areas in such dwelling have been abated.

Furthermore, the deleading of lead-based paint hazards pursuant to a NYC Dept. of Health and Mental Hygiene order that is commenced prior to August 2, 2004 will continue to be eligible for J-51 benefits provided that there is an approved contract and sign-off. The allowance for such deleading of lead-based paint hazards will be per contract.

6. For substantial alterations and conversions only. The maximum quantity for this item is the number of new rooms created in the space where the demolition was done.

7. Not eligible if brickwork is covered by cement wash or other coating.

8. For skylights over 16 sq. ft. The maximum allowance for eligible skylights under 16 sq. ft. shall be 50 percent of allowance listed.

9. Not eligible without new or existing storm window.

10. Plus all other applicable partial elevator items listed.

11. For buildings over eight stories the approved quantity shall be equal to the actual quantity increased by 10 percent for each floor over eight.

12. Maximum of one per apartment unless the apartment has two or more bedrooms. This item is eligible as an MCI if new water main, riser, and branch piping is installed throughout and if new ceramic tile and at least two new bathroom fixtures are installed in at least 90 percent of the bathrooms.

13. Maximum of one per apartment.

14. For water service 2 1/2" in diameter or greater than approved length shall be equal to one and one-half times the actual installed length.

15. Oil, gas, or combination burner.

16. The "Adequate Wiring" MCI as set forth in the prior Rules has been divided into its components which consist of "Apartment wiring only, adequate," and "Service equipment and risers."

17. For submetering, the owner must comply with the rent decrease requirements of DHCR, and the project must consist of a building-wide submetering in all individual dwelling units.

18. The eligible length cannot exceed 8 feet in any apartment.

19. This item requires an affidavit from an engineer or architect certifying the installation of a natural gas-fired electric cogeneration system or the conversion or modification of an existing oil-fired cogeneration system to a natural gas-fired electric cogeneration system. Such affidavit also must provide that the waste heat from the cogeneration unit is used for heating domestic hot water or space heating or cooling of the residential units.

20 In order to qualify for benefits for Inspection for Lead-Based Paint Hazards or Risk Assessment of Lead-Based Paint Hazards, (a) the inspection or risk assessment must be an "inspection" or "risk assessment" as defined in 40 Code of Federal Regulations part 745 or any successor regulations, (b) the inspection or risk assessment must have determined that lead-based paint hazards exist in such dwelling, including any vacant or occupied dwelling unit or any common area, and (c) an "abatement" of lead-based paint hazards, as defined in 40 Code of Federal Regulations part 745 or any successor regulations, must have been performed in response to such inspection or risk assessment determination. Notwithstanding the foregoing, no such benefit shall be given for the inspection or risk assessment of a dwelling unit or common area if (a) any abatement performed in a dwelling unit or common area in response to such inspection or risk assessment determination was also performed to comply with a notice of violation issued for a violation of article fourteen of subchapter two of chapter two of title 27 of the Administrative Code, or (b) all of the lead-based paint hazards identified in such dwelling unit or in all of the common areas in such dwelling by such inspection or risk assessment have not been abated. Furthermore, such benefits for inspection or risk assessment of lead-based paint hazards shall only be given for such inspections or risk assessments commenced on or after August 2, 2004.

21 For dwellings with no more than three stories, the allowance for both non-targeted areas and targeted areas for inspection of all of the common areas in such dwelling is $400. For dwellings with four to six stories, the allowance for both non-targeted areas and targeted areas for inspection of all of the common areas in such dwelling is $800. For dwellings with at least seven stories, the allowance for both non-targeted areas and targeted areas for inspection of all of the common areas in such dwelling is $1200.

22 For dwellings with no more than three stories, the allowance for both non-targeted areas and targeted areas for risk assessment of all of the common areas in such dwelling is $250. For dwellings with four to six stories, the allowance for both non-targeted areas and targeted areas for risk assessment of all of the common areas in such dwelling is $300. For dwellings with at least seven stories, the allowance for both non-targeted areas and targeted areas for risk

assessment of all of the common areas in such dwelling is $400.

23 Maximum of one per apartment unless the apartment has two or more bathrooms.

HISTORICAL NOTE

Section amended City Record Jan. 27, 1998 eff. Feb. 26, 1998. Internal renumbering by Law Department per Charter §1045(b). [See T28 §5-01 Note 1]

Section in original publication July 1, 1991.

Subd. (a) item (13) amended City Record Jan. 6, 2006 §3, eff. Feb. 5, 2006. [See T28 §5-02 Note 3]

Subd. (a) item (13) amended City Record July 2, 2004 §2, eff. Aug. 1, 2004. [See T28 Chap 11 footnote]

Subd. (a) item (13a) repealed City Record Jan. 6, 2006 §3, eff. Feb. 5, 2006. [See T28 §5-02 Note 3]

Subd. (a) item (13a) added City Record July 2, 2004 §2, eff. Aug. 1, 2004. [See T28 Chap 11 footnote]

Subd. (a) item (13b) repealed City Record Jan. 6, 2006 §3, eff. Feb. 5, 2006. [See T28 §5-02 Note 3]

Subd. (a) item (13b) added City Record July 2, 2004 §2, eff. Aug. 1, 2004. [See T28 Chap 11 footnote]

Subd. (c) par (16) added City Record Nov. 20, 2000 §5, eff. Dec. 20, 2000. [See T28 §5-07 Note 1]

Subd. (e) par (8) added City Record Jan. 8, 1999 eff. Feb. 7, 1999. [See T28 §5-02 Note 1]

Subd. (h) added City Record Jan. 6, 2006 §4, eff. Feb. 5, 2006. [See T28 §5-02 Note 3]

Footnote 5 amended City Record Jan. 6, 2006 §3, eff. Feb. 5, 2006. [See T28 §5-02 Note 3]

Footnote 5 amended City Record July 2, 2004 §2, eff. Aug. 1, 2004. [See T28 Chap 11 footnote]

Footnote 5a repealed City Record Jan. 6, 2006 §3, eff. Feb. 5, 2006. [See T28 §5-02 Note 3]

Footnote 5a added City Record July 2, 2004 §2, eff. Aug. 1, 2004. [See T28 Chap 11 footnote]

Footnote 19 amended City Record June 18, 2001 §1, eff. July 18, 2001. [See Note 1]

Footnote 19 added City Record Jan. 8, 1999 eff. Feb. 7, 1999.

Footnotes 20-23 added City Record Jan. 6, 2006 §4, eff. Feb. 5, 2006. [See T28 §5-02 Note 3]

NOTE

1. Statement of Basis and Purpose in City Record June 18, 2001:

At one time, the installation of new cogeneration equipment was eligible for tax benefits under the "J-51" program.

Although conversions of existing cogeneration systems continued to receive J-51 tax benefits, new installations were removed from the Itemized Cost Breakdown Schedule because of concerns about air pollution and the particular technology as well as because of a dearth of applications. However, the installation of new cogeneration equipment is currently eligible for benefits under the City of New York's Industrial and Commercial Incentives Program ("ICIP"). Furthermore, the Public Service Commission ("PSC") has recently stated that on-site generation of electricity is more efficient and has a lower environmental impact than utility generation. The PSC has stated that when larger customers choose to cogenerate, the efficiency of resource consumption (fuel use) increases because the thermal energy incidental to electric generation is captured, and that the potential for improvement of environmental emissions increases when industry self-generates or cogenerates with state-of-the-art equipment operating under current, more stringent environmental requirements. HPD's Division of Architecture, Construction and Engineering concurs with the PSC's current viewpoint, and is especially concerned about recent documentation indicating that there is or will be a shortage of generating capacity in New York City. As such, the amended rules would extend tax benefits to the installation of new residential cogeneration equipment using natural gas.

FOOTNOTES

1

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

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Rules of the City of New York

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

28 RCNY 5-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 5*1 J51 TAX EXEMPTION AND TAX ABATEMENT

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

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

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

(a) **Asbestos abatement.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) **Boiler enclosure.**

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

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

(i) **Chimney.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) **Fire escapes.**

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

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

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

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

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

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

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

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

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

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

(q) **Oil tank installation.**

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

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

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

(r) **Piping: gas.**

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

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

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

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

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

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

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

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

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

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

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

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

(u) **Sealing dumbwaiters.**

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

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

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

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

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

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

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

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

(x) **Standpipes.**

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL NOTE

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

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

FOOTNOTES

1

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

Rules of the City of New York

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

28 RCNY 5-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 5*1 J51 TAX EXEMPTION AND TAX ABATEMENT

§5-10 Neighborhood Preservation Program Areas.

AREAS IN THE COUNTY OF BRONX:

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

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

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

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

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

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

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

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

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

AREAS IN THE COUNTY OF KINGS (BROOKLYN):

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

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

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

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

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

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

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

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

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

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

Flatbush Avenue; Avenue K; and Coney Island Avenue.

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

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

AREAS IN THE COUNTY OF NEW YORK (MANHATTAN):

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

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

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

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

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

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

AREAS IN THE COUNTY OF QUEENS:

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

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

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

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

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

AREAS IN THE COUNTY OF RICHMOND (STATEN ISLAND):

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

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

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

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

HISTORICAL NOTE

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

FOOTNOTES

1

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

Rules of the City of New York

28 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

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

§6-01 Scope; Construction; Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL NOTE

Section in original publication July 1, 1991.

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

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

7, 1996. [See Note 1]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTE

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

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

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

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

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

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

Rules of the City of New York

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

28 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

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

§6-02 Eligibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) meets one of the following conditions:

(A) is constructed with substantial governmental assistance, or

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

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

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

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

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

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

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

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

operative date. The operative date shall be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) each of which contained:

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

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

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

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

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

(a) each of which contained:

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

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

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

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

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

(a) each of which contained:

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

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

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

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

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

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

(a) each of which contained:

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

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

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

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

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

(a) each of which contained:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL NOTE

Section in original publication July 1, 1991.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Aug. 17, 2003. [See Note 1]

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

Aug. 17, 2003. [See Note 1]

NOTE

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

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

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

Rules of the City of New York

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

28 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

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

§6-03 Local Community Planning Board Review.

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

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

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

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

HISTORICAL NOTE

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

Section in original publication July 1, 1991.

Rules of the City of New York

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

28 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL NOTE

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

Section in original publication July 1, 1991.

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

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

Rules of the City of New York

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

28 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

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

§6-05 Application Procedure; Documentation.

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

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

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

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

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

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

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

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

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

(ii) Compliance with eligibility requirements including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the difference in costs, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Reserved.

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

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

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

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

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

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

HISTORICAL NOTE

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

Section in original publication July 1, 1991.

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

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

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

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

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

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

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

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

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

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

NOTE

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

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

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

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

Rules of the City of New York

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

28 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

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

§6-06 The Tax Exemption.

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

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

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

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

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

TEN YEAR EXEMPTION

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

FIFTEEN YEAR EXEMPTION

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

TWENTY YEAR EXEMPTION

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

TWENTY-FIVE YEAR EXEMPTION

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

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

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

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

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

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

HISTORICAL NOTE

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

Section in original publication July 1, 1991.

28 RCNY 6-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL NOTE

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

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Rules of the City of New York

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

28 RCNY 6-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

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

§6-08 Affordable Housing Construction Requirements.

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

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

[See tabular material in printed version]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) New subflooring

(C) New partition framing

(D) New sheetrock walls and ceilings

(E) New windows

(F) New finish flooring, roofing and insulation

(G) New kitchen cabinets

(H) New baths with ceramic tile finishes

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

(J) New finish carpentry

(K) New plumbing

(L) New heating

(M) New electrical

(N) New elevators (where applicable)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A cover sheet identifying:

(i) the applicant

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

(iii) the location of the affordable housing units

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

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

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

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

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

(A) proof of selection of site; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL NOTE

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

Section in original publication July 1, 1991.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTE

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

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

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

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

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

Rules of the City of New York

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

28 RCNY 6-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

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

§6-09 New Eligibility Requirements.

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

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

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

Commence. "Commence" shall mean:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL NOTE

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

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

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

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

NOTE

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

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

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

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

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

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

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

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

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

Rules of the City of New York

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

28 RCNY 6-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

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

§6-10 Applicability of Certain Provisions.

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

HISTORICAL NOTE

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

NOTE

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

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

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

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

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28 RCNY 6 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

APPENDIX A ANNUAL SCHEDULE OF REASONABLE COSTS

APPENDIX A ANNUAL SCHEDULE OF REASONABLE COSTS

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

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

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

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

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

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

[See tabular material in printed version]

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

2. To qualify for a Labor allowance, applicants must submit a list of all personnel to be employed in the maintenance and operation of each building along with corresponding projected wage and salary data. Projects with five units or less are not eligible for the Labor allowance.

3. Available only when the owner pays apartment gas bills.

4. Does not include electricity within apartments.

(d) **Vacancy reserve and management and administration fee.** The vacancy reserve allowance and the management and administration fee shall together be equal to 9 percent of the sum of the expenses determined pursuant to §§6-04(a)(1)(i), (iii), and (iv) of this Chapter less the amount determined pursuant to §6-04(a)(1)(v) of this Chapter.

(e) **Room calculation.** For purposes of this Appendix A's schedule of maximum allowances, the number of rooms shall be calculated in accordance with the definition of "room count" contained in subdivision (c) of §6-01 of this chapter.

HISTORICAL NOTE

Subd. (b) amended City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See T28 §6-08 Note 1]

Subd. (e) added City Record July 18, 2003 §11, eff. Aug. 17, 2003. [See T28 §6-02 Note 1]

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28 RCNY 7-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 7 PARTIAL TAX EXEMPTION FOR PRIVATE DWELLINGS PURSUANT TO §421-B OF THE REAL PROPERTY TAX LAW

§7-01 Definitions.

The following terms shall have the following meaning:

Act. "Act" means §421-b of the Real Property Tax Law as amended.

Commencement of new construction. "Commencement of new construction" means the date upon which the foundation is started in good faith as certified in an affidavit by a licensed architect or professional engineer after the issuance of a new building permit by the Department of Buildings based upon plans approved by the Department of Buildings.

Commencement of reconstruction. "Commencement of reconstruction" means the date upon which work begins in good faith after the filing of a building notice with the Department of Buildings or the issuance of an alteration permit where required.

Commissioner. "Commissioner" means the Commissioner of the Department of Housing Preservation and Development of the City of New York or the chief executive officer of a successor thereto authorized to administer this chapter, or such representative of said Department as shall have been duly designated by the Commissioner to act on his behalf.

Completion of new construction. "Completion of new construction" means the date a Certificate of Occupancy is issued by the Department of Buildings for lawful residential use.

Completion of reconstruction. "Completion of reconstruction" means the date all work necessary to complete reconstruction is completed. Such completion may be confirmed by:

(1) Issuance or reissuance of a Certificate of Occupancy; or

(2) Issuance of a Letter of Completion by the Department of Buildings; or

(3) Issuance of a Certificate of Completion or Compliance or other evidence of completion by a City agency other than the Department of Buildings; or

(4) If none of the above is required by law, an affidavit by a registered architect, licensed professional engineer or attorney certifying to the date of completion or an affidavit by the applicant if the cost of work is less than five thousand ($5,000) dollars.

Department. "Department" means the Department of Housing Preservation and Development of the City of New York.

Office. "Office" means the Office of Development of the Department of Housing Preservation and Development of the City of New York or any successor thereto authorized to administer this chapter.

Prior assessed valuation. "Prior assessed valuation" means the total assessed value of a tax lot (land and improvements) during the tax year immediately preceding the tax year of Commencement of New Construction or Commencement of Reconstruction.

Private dwelling. "Private dwelling" means a building or structure, including the land upon which it is situated, which is designed and occupied exclusively for residence purposes by not more than two families living independently of each other with separate cooking facilities.

Reconstruction. "Reconstruction" means reconstruction, alteration or improvement of a Private Dwelling if the actual cost thereof is not less than forty (40%) percent of Prior Assessed Valuation.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Department added City Record Sept. 22, 2006 §1, eff. Oct. 22, 2006. [See T28 §7-05 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 7 PARTIAL TAX EXEMPTION FOR PRIVATE DWELLINGS PURSUANT TO §421-B OF THE REAL PROPERTY TAX LAW

§7-02 General Applicability.

(a) **Eligible projects.** As used herein, eligible projects means private dwellings which are newly constructed or reconstructed provided such construction or reconstruction commences after July 1, 1978 but before July 1, 1980 and is completed no later than April 1, 1982.

(b) **Other tax exemptions.** No private dwelling shall be eligible for tax exemption pursuant to this chapter if it is receiving tax exemption under any other provision of law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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28 RCNY 7-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 7 PARTIAL TAX EXEMPTION FOR PRIVATE DWELLINGS PURSUANT TO §421-B OF THE REAL PROPERTY TAX LAW

§7-03 Amount and Duration of Tax Exemption.

(a) **Taxes on prior assessed valuation not subject to exemption.** Taxes on prior assessed valuation are not eligible for exemption under the Act. The prior assessed valuation is subject to taxes at the tax rate in effect from time-to-time.

(b) **Exemption during construction or reconstruction.** (1) Eligible projects which have received a Preliminary Certificate of Eligibility shall be exempt from taxes (other than assessments for local improvements) upon any increase in assessed valuation over the prior assessed valuation for the period specified in paragraph (2) of this §7-03(b).

(2) The period of exemption shall commence upon the first day of the tax year immediately following the taxable status date (January 25th) after the commencement of construction or reconstruction and shall extend for two years after commencement of construction or reconstruction, unless construction or reconstruction is completed in less than two years in which case the period of exemption will terminate on the first day of the first tax year following completion of construction or reconstruction.

(c) **Exemption after construction or reconstruction.** Following the period specified in paragraph (2) of §7-03(b), an increase in assessed valuation over the prior assessed valuation of eligible projects which have received a Final Certificate of Eligibility shall be exempt from taxes (other than assessments for local improvements) for eight consecutive tax years pursuant to the following schedule:

[See tabular material in printed version]

HISTORICAL NOTE

Section in original publication July 1, 1991.

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28 RCNY 7-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 7 PARTIAL TAX EXEMPTION FOR PRIVATE DWELLINGS PURSUANT TO §421-B OF THE REAL PROPERTY TAX LAW

§7-04 Revocation of Tax Exemption.

(a) **False or misleading application.** If the applicant has furnished information which is incorrect or misleading in any substantial respect or which fails to comply with these regulations and if the breach or omission has not been cured within ninety (90) days, or such lesser time as may be designated by the Office, after notice has been given to the applicant and any subsequent owner or mortgagee of the private dwelling registered with the Office, the Office shall revoke a Preliminary or Final Certificate of Eligibility.

(b) **Failure to complete within required time.** If the applicant fails to complete construction or reconstruction within the time provided in paragraph (2) of §7-03(b), the Office shall revoke a Preliminary Certificate of Eligibility.

(c) **Non-conforming use.** If the Office determines that a private dwelling is not being used for residential purposes at any time after two years of tax exemption received pursuant to these regulations, the Office shall revoke a Preliminary or Final Certificate of Eligibility.

(d) **Procedure upon revocation.** The Office shall advise the Department of Finance that a Preliminary or Final Certificate of Eligibility has been revoked. The Department of Finance shall prospectively withdraw tax exemption granted to an eligible project unless revocation occurred pursuant to §7-04(a) in which case the Department of Finance shall reinstate the amount of taxes which have been exempted, together with interest, at the rate of fifteen (15%) percent per annum to be calculated from the day on which such taxes would have been payable but for the exemption.

(e) **Criminal penalties.** In addition to revocation of tax exemption, applicants who submit applications which

contain false statements or false information may be subject to criminal penalties as provided in Article 175 of the Penal Law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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28 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 7 PARTIAL TAX EXEMPTION FOR PRIVATE DWELLINGS PURSUANT TO §421-B OF THE REAL PROPERTY TAX LAW

§7-05 Application Procedure.

(a) **General requirements.** All applicants must file an application for a Final Certificate of Eligibility. An application for a Preliminary Certificate of Eligibility must also be filed if tax exemption during new construction or reconstruction is requested. Applicants who do not file an application for a Preliminary Certificate of Eligibility shall be required to furnish the information required in an application for a Preliminary Certificate of Eligibility and pay the Preliminary Certificate of Eligibility filing fee at the time they submit their application for a Final Certificate of Eligibility. All applications must be filed with the Director of Tax Incentive Programs, 100 Gold Street, New York, N.Y. 10038 between March 16 and January 31. The Office will not accept applications between February 1 and March 15.

(b) **New construction: Preliminary Certificate of Eligibility.** An application for a Preliminary Certificate of Eligibility shall be filed within ninety (90) days of commencement of new construction and prior to the issuance of a Temporary Certificate of Occupancy or a Certificate of Occupancy. The application shall include:

(1) A non-refundable filing fee in the amount of one hundred twenty-five ($125) dollars for each newly constructed private dwelling.

(2) Applicant's affidavit in the form required by the Department which shall certify that plans have been submitted to and approved by the Department of Buildings.

(3) Proof to the satisfaction of the Office of the Eligible Project's Prior Assessed Valuation.

(4) An affidavit by a licensed architect or professional engineer as to the date of commencement of new construction.

(c) **Reconstruction: Preliminary Certificate of Eligibility.** An application for a Preliminary Certificate of Eligibility shall be filed within ninety (90) days of the date of Commencement of Reconstruction. The application shall include:

(1) A non-refundable filing fee in the amount of ten ($10) dollars for each reconstructed private dwelling.

(2) Applicant's certification as to the date of commencement of reconstruction and that the cost of reconstruction will be not less than forty (40%) percent of the prior assessed valuation.

(3) Applicant's certification of the cost or estimated cost of reconstruction and prior assessed valuation.

(d) **New construction: Final Certificate of Eligibility.** An application for a Final Certificate of Eligibility shall be filed within ninety (90) days of issuance of a Certificate of Occupancy. The application shall include:

(1) A copy of the building permit.

(2) A copy of the Certificate of Occupancy.

(e) **Reconstruction:Final Certificate of Eligibility.** An application for a Final Certificate of Eligibility shall be filed within ninety (90) days of completion of reconstruction. The application shall include:

(1) Confirmation of completion of reconstruction.

(2) Proof to the satisfaction of the Office that the actual cost of reconstruction is not less than forty (40%) percent of the prior assessed valuation which shall include but not be limited to: copies of paid bills, cancelled checks and work contracts.

(3) Copy of building permit or alteration permit where required.

(f) **Filing with the Department of Finance.** Upon receipt of the application for a Preliminary or Final Certificate of Eligibility, and upon the Office's determination that a private dwelling is entitled to tax exemption pursuant to the Act, the Office shall issue a Preliminary or Final Certificate of Eligibility. Applicants shall file with the Preliminary Certificate of Eligibility and the Final Certificate of Eligibility with the appropriate Borough officer of the Real Property Assessment Bureau of the Department of Finance on the next following February 1 through March 15 filing period, together with an application to said Department for tax exemption.

(g) All applicants for a Preliminary or Final Certificate of Eligibility must, in addition to the timely filing of an application, provide all of the required documentation for such application on or before December 31, 2010.

(h) Notwithstanding anything to the contrary contained in this section, the Department may waive the filing deadlines for an application for a Final Certificate of Eligibility set forth in §§7-05(d) and 7-05(e) of this chapter if (1) the Department, in its sole discretion, determines that the owner of such private dwelling reasonably relied upon a representation by the seller of such private dwelling that the seller would file or had filed the application for the Final Certificate of Eligibility, and (2) the owner of such private dwelling provides all of the required documentation for such application on or before December 31, 2010.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (g) amended City Record Sept. 18, 2009 §1, eff. Oct. 18, 2009. [See Note 3]

Subd. (g) amended City Record Sept. 5, 2008 §1, eff. Oct. 5, 2008. [See Note 2]

Subd. (g) added City Record Sept. 22, 2006 §2, eff. Oct. 22, 2006. [See Note 1]

Subd. (h) amended City Record Sept. 18, 2009 §1, eff. Oct. 18, 2009. [See Note 3]

Subd. (h) amended City Record Sept. 5, 2008 §1, eff. Oct. 5, 2008. [See Note 2]

Subd. (h) added City Record Sept. 22, 2006 §2, eff. Oct. 22, 2006. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 22, 2006:

HPD's rules require applications for Final Certificates of Eligibility for 421-b tax benefits to be filed within 90 days of issuance of a Certificate of Occupancy for a new private dwelling. The rule amendment allows HPD to waive the filing deadline for such applications in certain instances in order to ensure that homeowners who purchase private dwellings with the reasonable expectation that their new homes will be eligible for 421-b benefits are not penalized due to the seller's misrepresentations regarding the filing of a 421-b application. The rule amendments also provide that all of the required documentation for any application for a Preliminary or Final Certificate of Eligibility must be filed on or before December 31, 2008.

2. Statement of Basis and Purpose in City Record Sept. 5, 2008: The RPTL §421-b tax incentive program currently applies to residences which commence construction before July 1, 2006. The program was not extended by the Legislature, so its application has ceased with the exception of unfinished units, which were previously required to obtain a certificate of occupancy by July 1, 2008. However, the State Legislature recently extended the deadline for completion of projects eligible for RPTL §421-b benefits from July 1, 2008 to July 1, 2009. The reason for this extension was that the downturn in the housing market coupled with the difficulty involved in obtaining construction financing had prevented some builders from completing projects which were commenced in compliance with the RPTL §421-b program. In 2006, HPD adopted rule amendments that allowed it to waive the filing deadline for RPTL §421-b applications in certain instances in order to ensure that homeowners who purchase private dwellings with the reasonable expectation that their new homes will be eligible for 421-b benefits are not penalized due to the seller's misrepresentations regarding the filing of a 421-b application. The 2006 rule amendments also provided that all of the required documentation for any application for a Preliminary or Final Certificate of Eligibility must be filed on or before December 31, 2008. Due to the above-mentioned completion extension, HPD is now extending the deadline for filing required documentation for such tax exemption benefits from December 31, 2008 to December 31, 2009.

3. Statement of Basis and Purpose in City Record Sept. 18, 2009: The RPTL §421-b tax incentive program currently applies to residences which commence construction before July 1, 2006. The program was not extended by the Legislature, so its application has ceased with the exception of unfinished units, which were previously required to obtain a certificate of occupancy by July 1, 2009. However, the State Legislature recently extended the deadline for completion of projects eligible for RPTL §421-b benefits from July 1, 2009 to July 1, 2010. The reason for this extension was that the downturn in the housing market coupled with the difficulty involved in obtaining construction financing had prevented some builders from completing projects which were commenced in compliance with the RPTL §421-b program. In 2006, HPD adopted rule amendments that allowed it to waive the filing deadline for RPTL §421-b applications in certain instances in order to ensure that homeowners who purchase private dwellings with the reasonable expectation that their new homes will be eligible for 421-b benefits are not penalized due to the seller's misrepresentations regarding the filing of a 421-b application. The 2006 rule amendments also provided that all of the required documentation for any application for a Preliminary or Final Certificate of Eligibility must be filed on or before December 31, 2008. The State Legislature previously extended the completion deadline to July 1, 2009 and HPD

amended its rules accordingly to extend to deadline for submission of documentation to December 31, 2009. Due to the above-mentioned additional completion extension, HPD is now extending the deadline for filing required documentation for such tax exemption benefits from December 31, 2009 to December 31, 2010.

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28 RCNY 8-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-01 Scope; Definitions.

Administrative Code §§11-301 et seq. and Administrative Code §§11-401 et seq. establish a procedure for sale of tax liens and a procedure for the Commissioner of Finance to deliver a deed conveying a tax delinquent property to a qualified Third Party after final judgment is rendered in an in rem foreclosure action. These rules clarify the circumstances under which certain property may be removed from tax lien sales and how Third Parties may be qualified and selected to acquire property from the Commissioner of Finance pursuant to a judgment rendered in an in rem foreclosure action.

Affiliate. "Affiliate" shall mean (a) any Person that has, directly or indirectly, a five percent (5%) or greater ownership interest in a Third Party, or any Person in which a Third Party, any partner or shareholder of a Third Party, or any partner or shareholder of any Person that is a partner or shareholder of a Third Party, has a five percent (5%) or greater ownership interest, and (b) any individual who is a member of the immediate family (whether by birth or marriage) of an individual who is an Affiliate, which includes for purposes of this definition a spouse, a domestic partner as defined in City Charter §1150(13), a brother or sister of the whole or half blood (including an individual related by or through legal adoption) of such individual or his/her spouse or domestic partner, a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing, or a trust for the benefit of any of the foregoing. Ownership of or by a Third Party referred to in this definition includes beneficial ownership effected by ownership of intermediate entities.

Distressed Property. "Distressed Property" shall mean any parcel of class one or class two real property that is subject to a tax lien or liens with a lien or liens to value ratio, as determined by the Commissioner of Finance, equal to

or greater than fifteen percent and that meets one of the following two criteria:

(a) such parcel has an average of five or more hazardous or immediately hazardous violations of record of the Housing Maintenance Code per dwelling unit; or

(b) such parcel is subject to a lien or liens for any expenses incurred by HPD for the repair or the elimination of any dangerous or unlawful conditions therein, pursuant to Administrative Code §27-2144, in an amount equal to or greater than one thousand dollars.

HPD. "HPD" shall mean the Department of Housing Preservation and Development.

Neighborhood Preservation Consultant. "Neighborhood Preservation Consultant" shall mean an organization under contract with HPD to undertake activities in connection with the Third Party Transfer Process within a particular area.

Not-for-profit Qualified Developer. "Not-for-profit Qualified Developer" shall mean a not-for-profit entity that has been found eligible by HPD to participate in the Third Party Transfer Process.

Person. "Person" shall mean any natural person, business entity, trust or estate, or any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

Regulatory Agreement. "Regulatory Agreement" shall mean an agreement between HPD and a Third Party selected for conveyance of property pursuant to the Third Party Transfer Process that restricts or conditions the use of such property.

Rules. "Rules" shall mean these Rules.

Tenants. "Tenants" shall mean legal residential Tenants of a property that is subject to the Third Party Transfer Process. Squatters and other unlawful occupants are not Tenants.

Third Party. "Third Party" shall mean an entity or individual that may be deemed qualified and selected by the Commissioner of HPD as eligible to acquire a property pursuant to the Third Party Transfer Process.

Third Party Transfer Process. "Third Party Transfer Process" shall mean the process under which certain properties are transferred to Third Parties pursuant to Administrative Code §§11-401 et seq. and these Rules.

HISTORICAL NOTE

Section added City Record July 17, 1998 eff. Aug. 16, 1998.

Not-for-profit Qualified Developer added City Record Apr. 8, 2002 eff. May 8, 2002. [See §8-06

Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth

standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

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28 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-02 Procedures for Distressed Property.

(a) The Commissioner of Finance shall, not less than sixty days preceding the date of the sale of a tax lien or tax liens, submit to the Commissioner of HPD a description by block and lot, or by such other identification as the Commissioner of Finance may deem appropriate, of any parcel of class one or class two real property on which there is a tax lien that may be sold by the City. The Commissioner of HPD shall determine, and advise the Commissioner of Finance, not less than ten days preceding the date of the sale of a tax lien or tax liens, whether any such parcel is a Distressed Property as defined in §8-01 of these Rules. Any tax lien on a parcel so determined to be a Distressed Property shall not be included in such sale.

In connection with a subsequent sale of a tax lien or tax liens, the Commissioner of Finance may, not less than sixty days preceding the date of the sale, resubmit to the Commissioner of HPD a description by block and lot, or by such other identification as the Commissioner of Finance may deem appropriate, of any parcel of class one or class two real property that was previously determined to be a Distressed Property pursuant to these Rules and on which there is a tax lien that may be included in such sale. The Commissioner of HPD shall determine, and advise the Commissioner of Finance, not less than ten days preceding the date of the sale, whether such parcel remains a Distressed Property. If the Commissioner of HPD determines that the parcel is not a Distressed Property, then the tax lien on the parcel may be included in such sale.

(b) The Commissioner of HPD may periodically review whether a parcel of class one or class two real property remains a Distressed Property. If the Commissioner determines that the parcel is not a Distressed Property as defined in these Rules, then the tax lien on the parcel may be included in a tax lien sale.

(c) The Commissioner of HPD may recommend to the Commissioner of Finance that a tax lien on a parcel of property other than a Distressed Property should not be included in a tax lien sale. The Commissioner of Finance, may, in his or her sole discretion, exclude such tax lien on such parcel from a tax lien sale, in accordance with the recommendation of the Commissioner of HPD.

HISTORICAL NOTE

Section added City Record July 17, 1998 eff. Aug. 16, 1998.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

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28 RCNY 8-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-03 Qualification and Selection of a Third Party.

(a) In an in rem foreclosure action, the court shall make a final judgment authorizing the award of possession of any parcel of class one or class two real property described in the list of delinquent taxes not redeemed or withdrawn from the in rem foreclosure action as provided in Chapter 4 of Title 11 of the Administrative Code and as to which no answer is interposed as provided in such chapter, and authorizing the Commissioner of Finance to prepare, execute and cause to be recorded a deed conveying full and complete title to such property either to the City or to a Third Party deemed qualified and selected by the Commissioner of HPD.

(b) Such Third Party shall be deemed qualified and shall be selected pursuant to such criteria as are established in these Rules. The Commissioner of HPD shall not deem qualified any Third Party who has been finally adjudicated by a court of competent jurisdiction, within seven years of the date on which such Third Party would otherwise be deemed qualified, to have violated any section of articles one hundred fifty (relating to arson), one hundred seventy-five (relating to offenses involving false written statements), one hundred seventy-six (relating to insurance fraud), one hundred eighty (relating to bribery not involving public servants, and related offenses), one hundred eighty-five (relating to fraud on creditors) or two hundred (relating to bribery involving public servants and related offenses) of the Penal Law or any similar laws of another jurisdiction, or who has been suspended or debarred from contracting with the City or any agency of the City pursuant to §335 of the Charter, during the period of such suspension or debarment.

(c) Other bases for disqualification of a Third Party may include, but shall not be limited to, any of the following:

(1) Record of Housing Maintenance Code violations, including, but not limited to class B and class C violations,

legal proceedings to enforce the Housing Maintenance Code including, but not limited to, litigation by HPD's Housing Litigation Bureau, or Emergency Repair Program charges with respect to any real property owned or managed by a Third Party or such Third Party's spouse or domestic partner, as defined in City Charter §1150(13), or by any Affiliate of such Third Party or of such Third Party's spouse or domestic partner;

(2) Arrears on taxes, water and sewer charges, or other governmental charges or tax, mortgage, or lien foreclosure or enforcement proceedings with respect to any real property owned by a Third Party or such Third Party's spouse or domestic partner, as defined in City Charter §1150(13), or by any Affiliate of such Third Party or of such Third Party's spouse or domestic partner;

(3) Arrears or defaults on other governmental obligations;

(4) Default or poor performance on a government contract;

(5) Re-designation or termination of negotiations after selection for a government project or contract;

(6) Non-responsibility determination by a government agency;

(7) Conviction or pending charges of fraud, bribery, grand larceny, any other felony, arson, or tenant harassment;

(8) Any other similar facts which demonstrate to HPD that a Third Party is not qualified for selection.

(d) HPD may select a Third Party for conveyance of a property pursuant to the Third Party Transfer Process by any method which it determines will best meet the purposes of such process, including, without limitation, selection:

(1) by a request for qualifications process;

(2) by a request for proposals process;

(3) from a pre-qualified list;

(4) by a request for offer process; or

(5) by a direct selection of an entity judged by HPD to be qualified.

(e) In selecting a Third Party, HPD shall consider:

(1) residential management experience;

(2) financial capacity;

(3) rehabilitation experience;

(4) ability to work with government and community organizations;

(5) neighborhood ties;

(6) ability to finance or obtain financing for the required rehabilitation; (7) whether the Third party is a not for profit organization or neighborhood-based-for-profit individual or organization;

(8) intent and ability to improve, manage and maintain the property to be transferred;

(9) whether an application has been submitted under sponsorship of a Not-for-profit Qualified Developer on behalf of the Tenants for eventual ownership by the Tenants of a property that is subject to an in rem judgment of foreclosure.

(i) Such an application must be submitted to HPD in such form as HPD shall approve, on or before the date that is specified by HPD in the written notice to Tenants made pursuant to subdivision (c) of §8-04 of these rules; (ii) Such application must be sponsored by a Not-for-profit Qualified Developer and accompanied by a letter from such Not-for-profit Qualified Developer indicating that the Not-for-profit Qualified Developer is applying for transfer of the foreclosed property, is prepared to acquire, manage and rehabilitate the foreclosed property, and is sponsoring the Tenants in their effort to eventually own such property; and

(iii) Such application shall only be considered where: (A) the foreclosed property contains at least 10 residential units, (B) such property is at least 50 percent occupied; and (C) the application is signed by 60% of the Tenant households of such property; and

(10) any other factors that HPD deems relevant to such selection.

HISTORICAL NOTE

Section added City Record July 17, 1998 eff. Aug. 16, 1998.

Subd. (e) amended City Record July 18, 2008 §1, eff. Aug. 17, 2008. [See Note 2]

Subd. (e) par (7) amended City Record Apr. 8, 2002 eff. May 8, 2002. [See §8-06 Note 1]

Subd. (e) par (8) amended City Record Apr. 8, 2002 eff. May 8, 2002.

Subd. (e) par (9) added City Record Apr. 8, 2002 eff. May 8, 2002. [See §8-06 Note 1]

Subd. (e) par (9) subpar (i) amended City Record Sept. 30, 2005 §1, eff. Oct. 30, 2005. [See Note 1]

Subd. (e) par (10) renumbered (former par (9)) City Record Apr. 8, 2002 eff. May 8, 2002.

NOTE

1. Statement of Basis and Purpose in City Record Sept. 30, 2005:

These rules amend provisions relating to the timing of the notice provided to tenants of buildings that are in an **in rem** foreclosure action and setting the deadline for submission of tenant petitions. The Department of Housing Preservation and Development (HPD) sends a notice to tenants to inform them about the **in rem** action and about options that may be available to them under the Third Party Transfer Program. The proposed rules remove the specific time periods within which the notice must be sent and within which the deadline for submissions of tenant petitions must be set. Both time periods were tied to the date of entry of the foreclosure judgment. However, since the date of entry of the judgment is within the court's discretion and is generally not controlled by the agency, it has sometimes proved difficult to strictly adhere to the regulatory time periods. With these amendments HPD has the flexibility to continue to provide ample time for notification to tenants and submission of tenant petitions.

2. Statement of Basis and Purpose in City Record July 18, 2008: The proposed amendments clarify criteria for submission of a tenant petition application under sponsorship of a not-for-profit entity during the Third Party Transfer process. The amendments also clarify an interim evaluation period for buildings where a tenant petition application has been submitted, to ensure that the tenants in such buildings receive training and are made aware of the milestones that must be met for the building to eventually transfer to tenant ownership. Finally, the rules clarify the process for notifying tenants of buildings that are subject to a supplemental judgment of foreclosure.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

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***** Current through December 2009 ****

28 RCNY 8-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-04 Third Party Transfer Process.

(a) After the four-month period following the entry of a final in rem judgment with respect to a parcel of real property, but prior to expiration of the time set forth in Administrative Code §§11-401 et seq. for the conveyance of title to such real property to a Third Party following such judgment, HPD may:

(1) request the Commissioner of Finance to execute a deed to a Third Party selected by HPD; or

(2) take such other action as may be permitted by Administrative Code §§11-401 et seq. as HPD deems appropriate.

(b) If HPD selects a Third Party to acquire a property, HPD may arrange a closing date and may deliver the deed to the Third Party provided that the proposed conveyance has not been disapproved pursuant to Administrative Code §11-412.2.

(c) HPD will provide a written notice to Tenants of properties that are the subject of an in rem judgment of foreclosure and eligible for the Third Party Transfer Program. Such notice will advise Tenants of the foreclosure action, briefly describe the Third Party Transfer Program, and advise Tenants of an opportunity to apply for eventual ownership of such property under the sponsorship of a Not-for-profit Qualified Developer. Such notice shall be provided prior to entry of such judgment for such property and will be posted in a common area of the property, provided, however, that in the case of a property that is subject to a supplemental judgment of foreclosure due to a default in an installment agreement or a property that is subject to a summary judgment of foreclosure due to dismissal of an owner answer, such

notice shall be provided prior to entry of such judgment or as soon as practicable thereafter. In addition, HPD will make an effort to place such notice beneath the doors of individual units in such properties.

HISTORICAL NOTE

Section added City Record July 17, 1998 eff. Aug. 16, 1998.

Subd. (c) amended City Record July 18, 2008 §2, eff. Aug. 17, 2008. [See T28 §8-03 Note 2]

Subd. (c) amended City Record Sept. 30, 2005 §2, eff. Oct. 30, 2005. [See T28 §8-03 Note 1]

Subd. (c) added City Record Apr. 8, 2002 eff. May 8, 2002. [See §8-06 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

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28 RCNY 8-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-05 Operation After Third Party Transfer Process.

(a) **Regulatory Agreement.** HPD may require that the Third Party selected for conveyance of property pursuant to the Third Party Transfer Process execute a Regulatory Agreement with HPD as a condition for such conveyance which shall be recorded and shall run with the land for the period set forth therein.

(b) **Use Restrictions.** Any conveyance of a property to a Third Party shall be for an existing use. HPD may impose additional restrictions upon the use of such property and may require a Third Party to agree to comply with such restrictions. Such use restrictions may be enforced by any means that HPD determines to be necessary or appropriate, including, but not limited to, provisions in any deed, land development agreement, regulatory agreement, note, mortgage, enforcement note, enforcement mortgage, security agreement, lien, restrictive declaration, or other legal document. HPD may require a Third Party to provide security for its compliance with use restrictions in such types and amounts as are determined by HPD to be necessary or desirable.

HISTORICAL NOTE

Section added City Record July 17, 1998 eff. Aug. 16, 1998.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

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28 RCNY 8-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-06 Interim Evaluation Period.

(a) A property that has been transferred to a Third Party for which a Not-for-profit Qualified Developer has sponsored a Tenant application pursuant to §8-03(e)(9) of these rules shall be subject to an interim evaluation period during which progress toward eventual ownership by Tenants will be monitored by HPD.

(b) No later than thirty days after transfer to a Third Party of a property for which a Not-for-profit Qualified Developer has sponsored a Tenant application pursuant to §8-03(e)(9) of these rules, such Not-for-Profit Qualified Developer shall inform the Tenants that the property has entered into an interim evaluation period, and shall provide information to the Tenants about the process toward eventual ownership by the Tenants. Such Not-for-Profit Qualified Developer shall make training available to such Tenants, no later than ninety days after such transfer. The training may include courses in building management, maintenance, and managing building finances. HPD may also provide notice to the Tenants regarding commencement of the interim evaluation period.

(c) The interim evaluation period shall include certain milestones for achievement which shall form the basis for HPD to either permit the property to move forward toward eventual ownership by Tenants, or to remove the property from the process toward such ownership. HPD shall evaluate progress toward eventual ownership by Tenants using the following milestones:

(i) whether Tenants have cooperated with the Third Party and Not-for-Profit Qualified Developer in renewing leases or establishing new leases where none exists;

(ii) whether at least 80% of the Tenants are actively paying rent;

(iii) whether Tenants have cooperated with relocation plans, where applicable;

(iv) whether Tenants have attended training programs offered by the Not-for-Profit Qualified Developer; and

(v) any additional factors that HPD considers appropriate in evaluating the tenants' progress toward ownership, provided that HPD notifies the Tenants of any such additional factors.

(d) Such interim evaluation period shall commence upon transfer of the property to the Third Party and shall continue upon the transfer of the property to the Not-for-Profit Qualified Developer. Such interim evaluation period shall end when any required rehabilitation of the property has been completed and permanent loan conversion has taken place, or at the conclusion of such longer period as HPD shall determine with notice to the Tenants.

(e) HPD shall evaluate compliance with the milestones listed in subdivision (c) of this section at regular intervals, and shall inform Tenants and the Not-for-Profit Qualified Developer of its findings. HPD may at any time remove a property from the process toward eventual ownership by Tenants based upon its evaluation. If HPD has not removed the property from such process, at the completion of the interim evaluation period it shall make a determination for such property pursuant to §8-07 of these rules.

HISTORICAL NOTE

Section added (Subd. (b) formerly subd. (a)) City Record July 18, 2008 §3, eff. Aug. 17, 2008. [See

T28 §8-03 Note 2]

Section added City Record Apr. 8, 2002 eff. May 8, 2002. [See Note]1

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

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28 RCNY 8-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-07 Transfer from Not-for-Profit Qualified Developer to Tenant Ownership.

(a) Unless a determination has otherwise already been made, HPD shall make a determination whether or not to approve the transfer from a Not-for-Profit Qualified Developer to Tenant ownership upon completion of the interim evaluation period. HPD will consider the following criteria when making such determination:

(1) That an application was submitted to HPD pursuant to and in accordance with §8-03(e)(9) of these rules;

(2) The time period that has elapsed since transfer of the property to the Not-for-profit Qualified Developer;

(3) Whether the property has been rehabilitated and permanent loan conversion has taken place;

(4) The number of Tenants who have signed a petition affirming that there is a functioning tenant organization, that they wish to own the property, and that they understand the extent of the responsibilities of ownership of the property;

(5) The amount of time that a Tenant organization has been in existence at the property;

(6) The number of members of the Tenant organization who have participated in any training offered by HPD, including, but not limited to, courses in building management, maintenance, and managing building finances;

(7) The number of Tenants who have attended a presentation by HPD regarding ownership of the property;

(8) The level of Tenant interest in ownership as indicated through subscriptions to buy units;

(9) The record of payment of all existing loans, status of rent payments, and adequacy of management of the property;

(10) HPD's evaluation of the progress made toward tenant ownership during the interim evaluation period as set forth in §8-06 of these rules; and

(11) Any other criteria that HPD deems relevant to the request, including, but not limited to, any information provided to it by the Not-for-profit Qualified Developer.

HISTORICAL NOTE

Section so designated (former §8-06(b)) and amended City Record July 18, 2008 §3, eff. Aug. 17,

2008. [See T28 §8-03 Note 2]

DERIVATION

Former §8-06(b) added City Record Apr. 8, 2002 eff. May 8, 2002. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 8, 2002:

The rules amend Chapter 8 of Title 28 of the rules of the Department of Housing Preservation and Development (HPD) concerning tax liens and **in rem** foreclosure actions.

The amendments provide for a notice to be given to tenants of properties that are subject to an **in rem** foreclosure judgment and are eligible for the Third Party Transfer Program. The notice informs the tenants about HPD's Third Party Transfer Program. The rule provides a time frame for issuing the notice, the content of the notice and the manner of communicating it to the tenants. The amendments also prescribe an application process that will allow tenants interested in eventual ownership of their property to apply to HPD under sponsorship of a Not-for-profit Qualified Developer. Finally, the amendments provide criteria to be used to determine when consent will be given to transfer of title to a property in the Third Party Transfer Program to a tenant association that applied for eventual ownership under the sponsorship of a Not-for-profit Qualified Developer.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

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28 RCNY 8-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-08 Miscellaneous Provisions.

(a) **HPD Discretion.** All determinations to be made by HPD in accordance with these Rules shall be in the sole discretion of HPD.

(b) **Statutory Authority Not Limited.** Nothing in these Rules shall be deemed to limit HPD's authority pursuant to applicable laws.

(c) **Technical Violations.** Provided that there has been a reasonable good faith effort to comply with these Rules, technical violations of these Rules shall not invalidate any action taken pursuant to these Rules, nor shall such technical violation give rise to any rights, claims, or causes of action.

HISTORICAL NOTE

Section renumbered (former §8-07) and amended City Record July 18, 2008 §3, eff. Aug. 17, 2008.

[See T28 §8-03 Note 2]

DERIVATION

Former §8-07 renumbered (former §8-06) City Record Apr. 8, 2002 eff. May 8, 2002.

Section added City Record July 17, 1998 eff. Aug. 16, 1998.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

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28 RCNY 9-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 9 REMOVAL OF VIOLATIONS ISSUED PURSUANT TO THE HOUSING MAINTENANCE CODE

§9-01 General Provisions.

The purpose of the Dismissal Request Program is to provide owners of multiple dwellings, private dwellings, and co-operative and condominium units, in New York City with a mechanism for obtaining re-inspections of their properties for the purpose of removing corrected housing code violations from the records of the Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 9-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 9 REMOVAL OF VIOLATIONS ISSUED PURSUANT TO THE HOUSING MAINTENANCE CODE

§9-02 Eligible Applicants.

(a) The Department will accept Dismissal Requests from owners or managing agents for re-inspections of properties in each of the five boroughs of the City of New York.

(1) Owners and managing agents of multiple dwellings must be registered with the Department in accordance with the provisions of §§27-2097 through 27-2099 of the Housing Maintenance Code in order to submit a Dismissal Request.

(2) Owners of co-operative and condominium units and private dwellings must submit proof of ownership satisfactory to the Department in order to submit a Dismissal Request.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) open par amended City Record Sept. 9, 1997 eff. Oct. 9 1997.

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***** Current through December 2009 ****

28 RCNY 9-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 9 REMOVAL OF VIOLATIONS ISSUED PURSUANT TO THE HOUSING MAINTENANCE CODE

§9-03 Fee.

Each Dismissal Request must be accompanied by a certified check or money order, made payable to the New York City Commissioner of Finance, for a scheduled amount based on the dwelling classification and number of open violations at the time the Dismissal Request form is submitted to the Borough Code Enforcement Office, as follows:

Dwelling Classification Fee

Private Dwelling $250

Multiple Dwelling with 1-300 open violations $300

Multiple Dwelling with 301-500 open violations $400

Multiple Dwelling with 501 or more open violations $500

HISTORICAL NOTE

Section amended City Record Dec. 7, 2006 §1, eff. Jan. 6, 2007. [See Note 1]

Section amended City Record Sept. 9, 1997 eff. Oct. 9 1997.

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 7, 2006:

The adopted rules amend certain sections of the Department's rules relating to removal of violations issued pursuant to the Housing Maintenance Code. The rules establish a new fee schedule for Dismissal Request applications based upon the dwelling classification and the number of violations subject to the re-inspection. The fee schedule reflects additional costs to the Department as the scope of a re-inspection broadens. The rules also provide for a longer time for completion of the re-inspection during the period from October 1st to May 31st, when the Department's inspectors are responding to critical complaints of lack of heat and hot water. The rules also add unpaid emergency repair charges to the list of circumstances for which the Department may reject a Dismissal Request application. Finally, the rules make certain other technical changes.

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28 RCNY 9-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 9 REMOVAL OF VIOLATIONS ISSUED PURSUANT TO THE HOUSING MAINTENANCE CODE

§9-04 Re-inspection.

(a) The Department shall use its best efforts to re-inspect the premises within 45 business days of the date of receipt of the Dismissal Request and shall place in the mail to the applicant a copy of the inspection report indicating the results of such re-inspection within 45 business days of the date of receipt of the Dismissal Request in the Code Enforcement Borough Office, provided, however, that during the period of October 1st through May 31st, the Department shall use its best efforts to re-inspect the premises and place in the mail to the applicant a copy of the inspection report indicating results of re-inspection within 90 business days of the date of receipt of the Dismissal Request in the Code Enforcement Borough Office.

(b) In the event that the Department does not inspect and mail a copy of such inspection report within the aforementioned time periods, the fee shall, upon written application to the Department by the applicant, be returned to the owner. Notwithstanding the refund of the fee, the Dismissal Request shall continue to be processed in the regular course of business. A re-inspection of the property will be made and a copy of the inspection report indicating the results of the re-inspection will then be mailed to the owner.

(c) The applicant may request an inspection date that exceeds the aforementioned time periods, provided, however, that such a request and waiver of any refund for the fee be in writing signed by the applicant and received within 15 business days of the date of receipt of the Dismissal Request in the Code Enforcement Borough Office.

HISTORICAL NOTE

Section amended City Record Dec. 7, 2006 §2, eff. Jan. 6, 2007. [See T28 §9-03 Note 1]

Section in original publication July 1, 1991.

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28 RCNY 9-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 9 REMOVAL OF VIOLATIONS ISSUED PURSUANT TO THE HOUSING MAINTENANCE CODE

§9-05 Submission of Dismissal Requests.

(a) A Dismissal Request must be submitted on a form that can be obtained at any Code Enforcement Borough Office, either in person or by mail request, or on the Department's website at hpd/nyc.gov.

(b) The Dismissal Request form, together with the fee, must be submitted either in person or by mail to the Borough Code Enforcement Office in the borough in which the property is located, provided, however, that for property located in Staten Island, such form may be submitted to the Manhattan Code Enforcement Office.

HISTORICAL NOTE

Section amended City Record Dec. 7, 2006 §3, eff. Jan. 6, 2007. [See T28 §9-03 Note 1]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 9, 1997 eff. Oct. 9 1997.

Subd. (b) open par amended City Record Sept. 9, 1997 eff. Oct. 9 1997.

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28 RCNY 9-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 9 REMOVAL OF VIOLATIONS ISSUED PURSUANT TO THE HOUSING MAINTENANCE CODE

§9-06 Exceptions to the Dismissal Request Procedure.

(a) The application for a Dismissal Request by an owner or managing agent who is otherwise eligible to apply for a Dismissal Request pursuant to the foregoing provisions may be rejected by the Department where the building that is the subject of the application is a building for which:

(1) there is pending Department-related litigation; or

(2) there is an uncollected judgment arising from Department-related litigation; or

(3) there is an unpaid emergency repair charge for repairs performed by or on behalf of the Department.

HISTORICAL NOTE

Section amended City Record Dec. 7, 2006 §4, eff. Jan. 6, 2007. [See T28 §9-03 Note 1]

Section amended City Record Sept. 9, 1997 eff. Oct. 9 1997.

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 10-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 10 ADMINISTRATION OF APPLICATIONS FOR CERTIFICATIONS OF NO HARASSMENT*1

§10-01 Definitions.

Whenever used in this chapter:

Administrative Code. "Administrative Code" shall mean the New York City Administrative Code.

Access authorizer. "Access authorizer" shall mean the person who authorizes HPD to enter the property, which person shall be an individual natural person who either (i) has legal possession of all common areas of the property, or (ii) is authorized to sign on behalf of and bind the persons or entities who have legal possession of all common areas of the property.

Affidavit of no future harassment. "Affidavit of no future harassment" shall mean an affidavit affirming that no future harassment will occur at the property during the period for which a certification or waiver remains in effect.

Applicant. "Applicant" shall mean the person who executes an application, which person shall be an individual natural person who is either (i) an owner, or (ii) a principal or officer of an owner who is authorized to sign on behalf of and bind such owner.

Application. "Application" shall mean an application for a certification, waiver, or exemption submitted to HPD, unless the context clearly indicates reference to an application for a permit submitted to DOB.

Building loan contract. "Building loan contract" shall have the meaning set forth in §22 of the Lien Law.

Certification. "Certification" shall mean a certification of no harassment.

Commencement of substantial work. "Commencement of substantial work" shall mean (i) if the alterations and/or demolition work for which a certification or waiver was granted is financed by a recorded building loan contract, the date upon which a lender has advanced funds in an amount that is not less than 50% of the total amount of such building loan contract and actual construction work has commenced at the property using such funds, or (ii) if the alterations and/or demolition work for which a certification or waiver was granted is not financed by a building loan contract, the actual performance and payment of not less than 50% of the total cost of such alteration and/or demolition work.

Commissioner. "Commissioner" shall mean the Commissioner of HPD or his or her designee.

DHCR. "DHCR" shall mean the Division of Housing and Community Renewal of the State of New York.

DOB. "DOB" shall mean the Department of Buildings of the City of New York.

Dwelling unit. "Dwelling unit" shall mean a dwelling unit or rooming unit, as such terms are defined in Administrative Code §27-2004.

Exemption. "Exemption" shall mean a determination by HPD that a certification pursuant to the terms of the Administrative Code or the Zoning Resolution is not required.

Fee. "Fee" shall mean a sum in the amount of (i) $500 if the property contains 1 to 10 dwelling units, (ii) $1,500 if the property contains 11 to 30 dwelling units, (iii) $2,500 if the property contains 31 to 50 dwelling units, and (iv) $3,500 if the property contains more than 50 dwelling units, which amount is a fee to offset all or part of the administrative cost to HPD of processing the application.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.

Inquiry period. "Inquiry period" shall mean (i) with respect to an application submitted pursuant to any provision of the Zoning Resolution, the period of time therein defined as the inquiry period, and (ii) with respect to an application submitted pursuant to Administrative Code §28-107.1 et seq. and Administrative Code §27-2093, a period commencing three years prior to submission of the application and ending on the date that HPD issues a final determination on the application.

Luxury hotel. "Luxury hotel" shall mean a single room occupancy multiple dwelling in which the rent on May 5, 1983, exclusive of governmentally assisted rental payments, charged for 75% or more of the total number of occupied individual dwelling units was more than 55 dollars per day for each unit rented on a daily basis, or more than 250 dollars per week for each unit rented on a weekly basis or more than 850 dollars per month for each unit rented on a monthly basis. For computation purposes, the rental value of units which were vacant on May 5, 1983 shall be deemed to be the rent charged for comparable occupied units in the property on such date.

Owner. "Owner" shall mean (i) the holder of title to the property, (ii) a contract vendee of title to the property, or (iii) the lessee pursuant to a net lease of the entire property with an unexpired term of not less than ten years from the date of submission of the application.

Property. "Property" shall mean the real property that is the subject of an application.

Residential kitchen. "Residential kitchen" shall mean (i) a kitchen that is located within a dwelling unit, or (ii) a kitchen serving residential occupants that is not located within a dwelling unit.

Residential bathroom. "Residential bathroom" shall mean (i) a bathroom that is located within a dwelling unit, or (ii) a bathroom serving residential occupants that is not located within a dwelling unit.

Waiver. "Waiver" shall mean a waiver of the requirement for a certification pursuant to the terms of the Administrative Code.

Zoning Resolution. "Zoning Resolution" shall mean the New York City Zoning Resolution, as amended.

HISTORICAL NOTE

Section repealed and added (former §10-02) City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10 footnote]

Inquiry period amended City Record Jan. 29, 2009 §1, eff. Feb. 28, 2009. [See Note 1]

DERIVATION

Former §10-02 in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Jan. 29, 2009:

These rules make technical corrections to internal citations of the Administrative Code of the City of New York to ensure their accuracy.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Under this section, as amended, the inquiry ends on the date of the Commissioner's final determination. Therefore, SRO owner's post-filing acts and omissions may be considered for evidence of harassment. **Dep't of Housing Preservation & Development v. Avid,** OATH Index No. 801/08 (Apr. 4, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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§10-02 Scope of Rule.

(a) The requirements of this chapter apply to certifications, exemptions, and waivers pursuant to Administrative Code §28-107.1 et seq., Administrative Code §27-2093, Zoning Resolution §96-110, Zoning Resolution §93-90, Zoning Resolution §98-70, Zoning Resolution §23-013, and any subsequently enacted provision of the Administrative Code or Zoning Resolution which authorizes HPD to make determinations concerning certifications, exemptions, or waivers.

(b)(1) With regard to single room occupancy multiple dwellings, a certification shall be required where mandated pursuant to Administrative Code §28-107.1 et seq. and Administrative Code §27-2093. In accordance with the authority of the Commissioner pursuant to Administrative Code §28-107.3(4) to prescribe by regulation other types of alteration work, a certification shall be required where the application and plans filed with DOB seek to:

(i) increase or decrease the number of dwelling units;

(ii) alter the layout, configuration or location of any portion of a dwelling unit;

(iii) increase or decrease the number of residential kitchens or residential bathrooms;

(iv) alter the layout, configuration or location of any portion of a residential kitchen or residential bathroom;

(v) demolish or change the use or occupancy of any dwelling unit and/or any portion of the building serving the dwelling units.

(2) Where the application and the accompanying plans submitted to DOB do not provide for any such changes, a

certification shall not be required pursuant to Administrative Code §28-107.3(4), but may be required pursuant to other provisions of Administrative Code §28-107.1 et seq. or pursuant to the Zoning Resolution.

(c) With regard to properties located in the Special Clinton District defined in Article XI, Chapter 6 of the Zoning Resolution (§96-00 et seq.), a certification shall be required where mandated pursuant to the terms of such Article and Zoning Resolution §96-110.

(d) With regard to multiple dwellings located in the anti-harassment area defined in Zoning Resolution §93-90 (Hudson Yards/Garment Center), a certification shall be required where mandated pursuant to the terms of such section.

(e) With regard to multiple dwellings located in the anti-harassment area defined in Zoning Resolution §23-013 (Greenpoint-Williamsburg), a certification shall be required where mandated pursuant to the terms of such section and New York City Zoning Resolution §93-90.

(f) With regard to multiple dwellings located in the anti-harassment area defined in Zoning Resolution §98-70 (West Chelsea), a certification shall be required where mandated pursuant to the terms of such section and New York City Zoning Resolution §93-90.

HISTORICAL NOTE

Section repealed and added (former §10-01) City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See

Chapter 10 footnote]

Subd. (a) amended City Record Jan. 29, 2009 §2, eff. Feb. 28, 2009. [See T28 §10-01 Note 1]

Subd. (b) amended City Record Jan. 29, 2009 §2, eff. Feb. 28, 2009. [See T28 §10-01 Note 1]

DERIVATION

Former §10-01 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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§10-03 Application.

(a) An application shall contain such information, in such form, as HPD shall require.

(b) An application shall be executed by an applicant. If the applicant is not an access authorizer, the application shall also be executed by an access authorizer.

(c) An application may be submitted to HPD (i) by hand delivery on business days, during such hours and in such location as HPD shall determine, (ii) by mail, or (iii) by private courier.

(d) The submission of any application shall be accompanied by certified check, bank check, or money order in the amount of the fee made payable to New York City Department of Finance.

(e) Following the submission of an application, HPD may request any additional information that HPD determines is relevant to the certification. If HPD sends a written request for additional information to the applicant by regular or certified mail at the address of the applicant set forth in the application, and HPD does not receive such additional information within thirty days following the mailing of such request, HPD may (i) reject the application, or (ii) review the application without such information and draw a negative inference with respect to the missing information.

(f) An application shall be deemed to be complete when the completed application, the fee, and the necessary supporting documentation have been received and acknowledged as sufficient by HPD.

(g) If HPD determines at any time that an application contains a material misstatement of fact, HPD may reject

such application and bar the submission of a new application for a period not to exceed three years.

(h) HPD may refuse to accept, or to act upon, an application for a certification pursuant to the Zoning Resolution where HPD finds at any time that (i) taxes, water and sewer charges, emergency repair program charges, or other municipal charges remain unpaid with respect to the multiple dwelling, (ii) the multiple dwelling has been altered either without proper permits from DOB or in a way that conflicts with the certificate of occupancy for the multiple dwelling (or, where there is no certificate of occupancy, any record of HPD indicating the lawful configuration of the multiple dwelling) and such unlawful alteration remains uncorrected; or (iii) HPD has previously denied an application pursuant to the Zoning Resolution.

(i) If any information stated in an application changes at any time before HPD makes a final determination, the applicant shall promptly update the application with such new information and submit it to HPD. If such changed information includes any facts that would render the original applicant ineligible to submit the application, HPD may require that the amended application be executed by an individual who is at that time eligible to submit the application.

HISTORICAL NOTE

Section repealed and added (former §10-03) City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See

Chapter 10 footnote]

DERIVATION

Former §10-03 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

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§10-04 Investigation.

(a) Except as otherwise provided in these rules, HPD shall conduct an investigation of each application for a certification.

(b) HPD shall publish a notice in The City Record and such other publications as HPD shall determine seeking public comment regarding whether there has been harassment of the lawful occupants of the property during the inquiry period.

(c) HPD shall send notices to the local Community Board and such other organizations as HPD shall determine seeking comments on any application for a certification.

HISTORICAL NOTE

Section repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10

footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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§10-05 Initial Determination.

(a) Upon the completion of the investigation of an application for a certification, HPD shall either (i) reject such application as provided in §10-03 of this Chapter, (ii) determine that there is not reasonable cause to believe that harassment occurred during the inquiry period at the property, (iii) determine that there is reasonable cause to believe that harassment occurred during the inquiry period at the property, or (iv) determine that DHCR or a court having jurisdiction has found that there has been harassment, unlawful eviction, or arson at the property during the inquiry period.

(b) If HPD rejects an application as provided in §10-03 of this Chapter, HPD shall send written notice of such determination to the applicant.

(c) If HPD determines that there is not reasonable cause to believe that harassment occurred during the inquiry period at the property, HPD shall (i) send written notice of such determination to the applicant, and (ii) grant the certification in accordance with the terms of §10-08 of this Chapter.

(d) If HPD determines that there is reasonable cause to believe that harassment occurred during the inquiry period at the property, HPD shall send written notice of such determination to the applicant and shall comply with the procedures set forth in §10-06 and §10-07 of this Chapter.

(e) If HPD determines that DHCR or a court having jurisdiction has found that there has been harassment, unlawful eviction, or arson at the property during the inquiry period, HPD may deny the certification without a hearing and issue a final determination in accordance with §10-07 of this Chapter. In such event, HPD may combine the initial

determination pursuant to this section and the final determination pursuant to §10-07 of this Chapter into a single document.

HISTORICAL NOTE

Section repealed and added (former §10-05) City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10 footnote]

DERIVATION

Former §10-05 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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§10-06 Hearing.

(a) When HPD has determined in accordance with §10-05(d) of this Chapter that there is reasonable cause to believe that harassment occurred at the property during the inquiry period, HPD shall schedule a hearing before the Office of Administrative Trials and Hearings at which the applicant will have an opportunity to challenge such determination.

(b) HPD shall serve a notice of hearing by regular mail upon the applicant and any other individual or entity as determined by HPD. Such notice shall state the date, time, and location of hearing and shall inform the applicant that he or she may be represented by counsel and may present witnesses and other evidence.

(c) Upon conclusion of such hearing, the hearing officer shall make a report and recommendation to the Commissioner whether an application should be granted or denied.

(d) Notwithstanding anything to the contrary in this section or these rules, an applicant may waive its right to a hearing before the Office of Administrative Trials and Hearings.

HISTORICAL NOTE

Section repealed and added (former §10-06) City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See

Chapter 10 footnote]

DERIVATION

Former §10-06 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

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§10-07 Final Determination.

(a) When HPD has determined in accordance with §10-05(d) of this Chapter that there is reasonable cause to believe that harassment occurred at the property during the inquiry period and a hearing has been held before the Office of Administrative Trials and Hearings in accordance with §10-06 of this Chapter, the Commissioner shall review the report and recommendation of the hearing officer and make a final determination to grant or deny the application.

(b) When HPD has determined in accordance with §10-05(d) of this Chapter that there is reasonable cause to believe that harassment occurred at the property during the inquiry period and the applicant has waived its right to a hearing before the Office of Administrative Trials and Hearings in accordance with §10-06(d) of this Chapter, the Commissioner shall make a final determination to grant or deny the application.

(c) When HPD has determined in accordance with §10-05(e) of this Chapter that DHCR or a court having jurisdiction has found that there has been harassment, unlawful eviction, or arson at the property during the inquiry period, the Commissioner shall make a final determination to grant or deny the application. In such event, HPD may combine the initial determination pursuant to §10-05 of this Chapter and the final determination pursuant to this section into a single document.

(d) HPD shall provide the applicant with written notice of the final determination.

HISTORICAL NOTE

Section repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10

footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

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§10-08 Certification.

(a) A certification shall be effective for three years from the date upon which such certification is signed by the Commissioner, which period shall be stated in such certification. Such certification shall apply to any plan approval, any alteration or demolition permit application, or any renewal of a permit issued for such plan approval, alteration or demolition permit application that is submitted to DOB during such period.

(b) HPD shall not issue a certification unless HPD has received an affidavit of no future harassment executed by one or more individual natural persons who are, at the time of execution of such affidavit, either (i) all of the owners of the property, or (ii) principals or officers of all of the owners of the property who are authorized to sign on behalf of and bind such owners.

HISTORICAL NOTE

Section repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10

footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

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§10-09 Waiver or Exemption.

(a) Notwithstanding any provision of these rules to the contrary, if an application is for a waiver or exemption, (i) HPD may, but shall not be required to, waive the fee, and (ii) if HPD does not waive the fee, but subsequently grants such waiver or exemption, HPD may, but shall not be required to, return such check or money order to the applicant.

(b) Notwithstanding any provision of these rules to the contrary, HPD may grant a waiver or exemption at any point following the submission of an application therefor.

(c) A waiver or exemption shall be effective for such period and subject to such conditions as HPD shall determine, which period and conditions, if any, shall be stated in such waiver or exemption. Such waiver or exemption shall apply to any plan approval, any alteration or demolition permit application, or any renewal of a permit issued for such plan approval, alteration or demolition permit application that is submitted to DOB during such period which complies with such conditions, if any.

(d) HPD shall not issue a waiver unless, in accordance with Administrative Code §27-2093(e), the current title holder of record of the property (i) was the title holder of record of the property prior to May 5, 1983, (ii) entered into a contract of sale for the purchase of the property which was recorded prior to May 5, 1983, (iii) held a mortgage on the property recorded prior to May 5, 1983 and thereafter acquired the property as a result of the foreclosure of such mortgage, or (iv) is a lending organization described in Administrative Code §27-2093(e)(2)(ii), granted a mortgage commitment on the property recorded prior to May 5, 1983, thereafter granted a mortgage on the property pursuant to such commitment, and thereafter acquired the property as a result of the foreclosure of such mortgage.

(e) HPD shall not issue a waiver unless HPD has received an affidavit of no future harassment executed by one or more individual natural persons who are either (i) all of the owners of the property, or (ii) principals or officers of all of the owners of the property who are authorized to sign on behalf of and bind such owners.

HISTORICAL NOTE

Section added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10 footnote]

Subd. (d) amended City Record Jan. 29, 2009 §3, eff. Feb. 28, 2009. [See T28 §10-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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§10-10 Suspension and Rescission.

(a) HPD may rescind a certification, waiver, or exemption at any time if HPD determines that the application for such certification, waiver, or exemption contained a material misstatement of fact.

(b) If HPD determines that there is reasonable cause to believe that harassment has occurred after the date that HPD issued a certification or a waiver, HPD may suspend such certification or waiver. If the certification or waiver was granted solely pursuant to the Administrative Code, HPD shall not suspend such certification or waiver pursuant to the preceding sentence unless HPD determines that there is reasonable cause to believe that such harassment occurred before commencement of substantial work.

(1) If HPD determines that there is reasonable cause to believe that harassment has occurred after the date that HPD issued a certification or a waiver, HPD shall deliver a notice of suspension to the applicant and to the owner and will refer the matter for hearing at the Office of Administrative Trials and Hearings.

(2) HPD shall serve a notice of hearing by regular mail upon the applicant and any other individual or entity as determined by HPD. Such notice shall state the date, time, and location of hearing and shall inform the applicant that he or she may be represented by counsel and may present witnesses and other evidence.

(3) Upon conclusion of such hearing, the hearing officer shall make a recommendation to the Commissioner whether or not the certification should be rescinded.

(4) The Commissioner shall make a final determination whether to rescind such certification, and shall provide the

applicant with written notice of such determination.

HISTORICAL NOTE

Section added (former §10-08) City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10

footnote]

DERIVATION

Former §10-08 in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. ALJ permitted employees of tenants' advocacy group to testify about statements made by deceased tenant because rules permit "any person" to submit information about harassment after a certificate of no harassment has been issued. Group was not appearing as counsel for the deceased tenant but as an interested person. **Dep't of Housing Preservation & Development v. 331 West 22nd Street LLC**, OATH Index No. 912/06, mem. dec. (Dec. 29, 2006).

¶ 2. HPD may rescind a certificate of no harassment if it can show that harassment occurred after the certificate was issued but before substantial work has commenced. SRO building owner failed to show substantial work had commenced, as defined in this section. **Dep't of Housing Preservation & Development v. 331 West 22nd Street LLC**, OATH Index No. 912/06, mem. dec. (Dec. 29, 2006).

¶ 3. Substantial work has commenced upon the payment of the first advance by a lender on a building loan contract which is financing the alterations or demolition for which a certificate of no harassment or waiver was granted. SRO owner did not establish substantial work as loan received was not a building loan contract, as defined in section 2(13) of the Lien Law because the loan was not secured by a mortgage on the property, nor was it duly acknowledged or filed with the county clerk. **Dep't of Housing Preservation & Development v. 331 West 22nd Street LLC**, OATH Index No. 912/06, mem. dec. (Dec. 29, 2006).

¶ 4. Substantial work may be established under this section by proof of actual expenditure of more than fifty percent of the total cost of the alteration or demolition. Although the rule states that substantial work has occurred upon an "actual expenditure of more than fifty percent of the total cost of alteration or demolition," ALJ finds that clause is modified by the phrase "for which a certificate of no harassment or waiver was granted," included in the previous sentence. ALJ rejected SRO building owner's argument that proof of expenditure of more than fifty percent of the total cost of the demolition establishes substantial work where the owner expended less than 50 percent of the total cost of the work to be done (demolition and construction) under the certificate of no harassment. **Dep't of Housing Preservation & Development v. 331 West 22nd Street LLC**, OATH Index No. 912/06, mem. dec. (Dec. 29, 2006).

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

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§10-11 Miscellaneous.

(a) Any determination by HPD pursuant to this Chapter shall be in the sole discretion of HPD.

(b) An application may not be withdrawn after HPD issues either (i) an initial determination that there is reasonable cause to believe that harassment occurred during the inquiry period at the property, or (ii) a final determination that harassment occurred during the inquiry period at the property.

HISTORICAL NOTE

Section added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

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28 RCNY 11-01

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CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-01 Definitions.

Whenever used in this chapter:

(a) Abatement. "Abatement" shall mean any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Abatement includes: (i) the removal of lead-based paint and dust lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and (ii) all preparation, cleanup, disposal and post abatement clearance testing associated with such measures. Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(b) Applicable age. "Applicable age" shall mean under seven years of age for at least one calendar year from August 2, 2004. Upon the expiration of such one year period, in accordance with the procedures by which the health code is amended, the board of health may determine whether or not the provisions of article 14 of the housing maintenance code should apply to children of age six, and based on this determination, may redefine "applicable age" for the purposes of some or all of the provisions of such article 14 to mean under six years of age. In the event that the board of health makes such determination, the term "applicable age" shall mean under six years of age.

(c) CFR. "CFR" shall mean the Code of Federal Regulations.

(d) Chewable surface. "Chewable surface" shall mean a protruding interior window sill in a dwelling unit in a multiple dwelling where a child of applicable age resides and which is readily accessible to such child. "Chewable surface" shall also mean any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, such as a rail or stair, where there is evidence that such other edge or protrusion has been chewed or where an occupant has notified the owner that a child of applicable age who resides in that multiple dwelling has mouthed or chewed such edge or protrusion.

(e) Commissioner. "Commissioner" shall mean the Commissioner of the New York city department of housing preservation and development or of its successor agency.

(f) Common area. "Common area" shall mean a portion of a multiple dwelling that is not within a dwelling unit and is regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling.

(g) Contractor. "Contractor" shall mean any person engaged to perform work that disturbs lead-based paint pursuant to this chapter.

(h) Department. "Department" shall mean the New York city department of housing preservation and development or its successor agency.

(i) Deteriorated subsurface. "Deteriorated subsurface" shall mean an unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including, but not limited to, rotted or decayed wood, or wood or plaster that has been subject to moisture or disturbance.

(j) Disturb. "Disturb" shall mean any action taken, which breaks down, alters or changes lead-based paint. Lead-based paint disturbances shall include, but not be limited to wet sanding or scraping or routine painting and maintenance.

(k) Door. "Door" shall mean every door in a dwelling unit including, but not limited to, the entrance door to the unit, closet doors, and cabinet doors where such cabinets are affixed to the walls of the dwelling unit.

(l) Encapsulation. "Encapsulation" shall mean the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent. Only encapsulants approved by the New York state department of health or by another federal or state agency or jurisdiction which the department has designated as acceptable may be used for performing encapsulation.

(m) Enclosure. "Enclosure" shall mean the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

(n) Firm. "Firm" shall mean a company, partnership, corporation, sole pro- prietorship, association, or other business entity that performs lead-based paint activities to which the United States environmental protection agency has issued a certificate of approval pursuant to 40 CFR 745.226(f).

(o) Friction surface. "Friction surface" shall mean any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion and abrade, scrape, or bind when in relative motion. Friction surfaces shall include, but not be limited to, window frames and jambs, doors, and hinges.

(p) HEPA-vacuum. "HEPA-vacuum" shall mean a vacuum cleaner device equipped with a high efficiency particulate air filter capable of filtering out monodispersive particles of 0.3 microns or greater in diameter from a body of air at 99.97 percent efficiency or greater.

(q) Housing maintenance code. "Housing maintenance code" shall mean chapter two of title 27 of the administrative code of the city of New York.

(r) Impact surface. "Impact surface" shall mean any interior painted surface that shows evidence, such as marking, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.

(s) Lead-based paint hazard. "Lead-based paint hazard" shall mean any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

(t) Lead-based paint. "Lead-based paint" shall mean paint or other similar surface coating material containing 1.0 milligrams of lead per square centimeter or greater, as determined by laboratory analysis, or by an x-ray fluorescence analyzer. If an x-ray fluorescence analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings shall be classified as positive, negative or inconclusive in accordance with the United States department of housing and urban development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (June 1995, revised 1997) and the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings that fall within the inconclusive zone, as determined by the performance characteristic sheets, shall be confirmed by laboratory analysis of paint chips, results shall be reported in milligrams of lead per square centimeter and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in milligrams of lead per square centimeter. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, a laboratory analysis may be reported in percent by weight. In such case, lead-based paint shall mean any paint or other similar surface-coating material.

(u) Lead-contaminated dust. "Lead-contaminated dust" shall mean dust containing lead at a mass per area concentration of 40 or more micrograms per square foot on a floor, 250 or more micrograms per square foot on window sills, and 400 or more micrograms per square foot on window wells, or such more stringent standards as may be adopted by the department of health and mental hygiene.

(v) Lead contaminated dust clearance test. "Lead contaminated dust clearance test" shall mean a test for lead-contaminated dust on floors, window wells, and window sills in a dwelling, that is made in accordance with §27-2056.11 of the housing maintenance code.

(w) Peeling. "Peeling" shall mean that the paint or other surface-coating material is curling, cracking, scaling, flaking, blistering, chipping, chalking or loose in any manner, such that a space or pocket of air is behind a portion thereof or such that the paint is not completely adhered to the underlying surface.

(x) Permanent. "Permanent" shall mean an expected design life of at least 20 years.

(y) Remediation or Remediate. "Remediation" or "Remediate" shall mean the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead-based paint, or other method approved by the commissioner of the department of health and mental hygiene.

(z) Removal. "Removal" shall mean a method of abatement that completely eliminates lead-based paint from surfaces.

(aa) Replacement. "Replacement" shall mean a strategy or method of abatement that entails the removal of

building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

(bb) Rule or rules. "Rule" or "rules" shall mean a rule or rules promulgated pursuant to §1043 of the New York city charter.

(cc) Stabilization. "Stabilization" means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, and removing loose paint and other material from the surface to be treated.

(dd) Substrate. "Substrate" shall mean the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

(ee) Turnover. "Turnover" shall mean the occupancy of a dwelling unit subsequent to the termination of a tenancy and the vacatur by a prior tenant of such dwelling unit. Such term shall not mean temporary relocation of an occupant for purposes of performing work pursuant to article 14 of the housing maintenance code.

(ff) Underlying defect. "Underlying defect" shall mean a physical condition in a dwelling or dwelling unit that is causing or has caused paint to peel or a painted surface to deteriorate or fail, such as a structural or plumbing failure that allows water to intrude into a dwelling or dwelling unit.

(gg) Wet sanding or wet scraping. "Wet sanding" or "wet scraping" shall mean a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

(hh) Window. "Window" shall mean the non-glass parts of a window, including but not limited to any window sash, window well, window jamb, window sill, or window molding.

(ii) Work. "Work" shall mean any activity performed in accordance with article 14 of the housing maintenance code that disturbs paint.

(jj) Work area. "Work area" shall mean that part of a building where paint is being disturbed.

HISTORICAL NOTE

Section repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

DERIVATION

Section repealed and added City Record Oct. 13, 1999 eff. Nov. 12, 1999.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of

lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-02 Owner's Responsibility to Remediate.

An owner shall remediate all lead-based paint hazards and underlying defects in a dwelling unit where a child of applicable age resides in accordance with the applicable work practices set forth in §11-06 of these rules.

HISTORICAL NOTE

Section repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

DERIVATION

Former §11-02 Lead Based Paint Hazard repealed and added City Record Oct. 13, 1999 eff. Nov. 12, 1999.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading

supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-03 Notice Inquiring About the Residency of a Child of Applicable Age.

(a) Notice upon signing of a lease, including a renewal lease, if any, or upon any agreement to lease or at the commencement of occupancy if there is no lease.

(1) The owner of a multiple dwelling erected prior to January first, nineteen hundred sixty or of a multiple dwelling erected on or after January first, nineteen hundred sixty and before January first, nineteen hundred seventy-eight, where an owner has actual knowledge of the presence of lead-based paint, shall provide to an occupant of a dwelling unit at the signing of a lease, including a renewal lease, if any, or upon any agreement to lease, or at the commencement of occupancy if there is no lease, a notice in English and Spanish inquiring whether a child of applicable age resides or will reside therein. If there is a lease, such notice will be attached as a rider to the lease. In addition, such owner shall deliver to the occupant at the time the occupant signs a lease, if any, or upon any agreement to lease, or, at the commencement of occupancy if there is no lease, the pamphlet developed by the department of health and mental hygiene pursuant to §17-179(b) of the administrative code of the city of New York. Such notice shall be printed on a single form, the content of which shall be as specified in Appendix A hereto, and shall be printed in not less than ten point type, and shall bear the title "Prevention of Lead-based Paint Hazards-Inquiry Regarding Child". Such notice shall be in duplicate, one copy of which will be for the occupant's records, and one copy of which will be returned to the owner. Such notice shall be kept for a period of ten years from the date of receipt by the owner or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request. The notice provided at the signing of a lease, or upon any agreement to lease, or at the commencement of occupancy if there is no lease, shall also contain a statement, signed by such owner, stating that he or she has complied with the provisions concerning apartments at turnover pursuant to §27-2056.8 of Article 14

of the housing maintenance code and §11-05 of these rules, and that he or she has delivered such pamphlet developed by the department of health and mental hygiene to the occupant.

(2) No occupant in a dwelling unit in such multiple dwelling shall refuse or unreasonably fail to provide accurate and truthful information regarding the residency of a child of applicable age therein, nor shall an occupant refuse access to the owner at a reasonable time and upon reasonable prior notice to any part of the dwelling unit for the purpose of investigation and repair of lead-based paint hazards.

(3) Where an occupant has responded to the notice provided by the owner pursuant to paragraph (1) of this subdivision by indicating that no child of applicable age resides therein or has failed to respond to such notice, if a child of applicable age subsequently comes to reside in such dwelling unit at any time during the immediately following year prior to the delivery of the annual notice by the owner pursuant to subdivision (b) of this section, the occupant shall have the duty to inform the owner in writing that such child has come to reside therein.

(b) **Annual Notice.**

(1) Each year an owner of a multiple dwelling erected prior to January first, nineteen hundred sixty shall cause to be delivered to each residential unit a notice in English and Spanish inquiring as to whether a child of applicable age resides therein and advising the occupant of his or her duty to report the presence of such child in writing.

(2) Such notice shall be delivered as provided in §27-2056.4(e) of article 14 of the housing maintenance code, no earlier than January first and no later than January sixteenth, provided, however, that if such notice is enclosed with the January rent bill, such notice may be delivered no sooner than December fifteenth and no later than January sixteenth.

(3) Such notice shall be printed on a single form, the content of which shall be as specified in Appendix B hereto, and shall be printed in not less than ten point type, and shall bear the title "Prevention of Lead-based Paint Hazards-Inquiry Regarding Child". Such notice may be combined with the annual window guard notice required by 24 RCNY Chapter 12 in a form approved by the department of health and mental hygiene. Such notice shall be in duplicate, one copy of which will be for the occupant's records, and one copy of which will be returned to the owner. Such notice shall be kept for a period of ten years from the date of receipt by the owner or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request.

(4) Upon receipt of such notice, the occupant shall have the duty to deliver a written response to the owner indicating whether a child of applicable age resides in the dwelling unit, by February fifteenth of the year in which the notice is sent. Where an occupant has responded to the notice provided by the owner pursuant to paragraph one of this subdivision by indicating that no child of applicable age resides therein, or has failed to respond to such notice, if a child of applicable age subsequently comes to reside in such dwelling unit at any time prior to delivery of the next annual notice, the occupant shall have the duty to inform the owner in writing that such child has come to reside therein.

(5) If, subsequent to the delivery of such annual notice, the owner does not receive a written response by February fifteenth, and does not otherwise have actual knowledge as to whether a child of applicable age resides therein, then the owner shall at reasonable times and upon reasonable notice inspect the occupant's dwelling unit to ascertain whether a child of applicable age resides therein. Where, between February sixteenth and March first of that year the owner has made reasonable attempt to gain access to the dwelling unit and was unable to gain access, the owner shall notify the department of health and mental hygiene of that circumstance in writing.

(c) The wording of the notices specified in this section shall not be altered or varied in any manner, unless otherwise approved by the department or the department of health and mental hygiene, provided, however, that such owner may provide such notice in any languages in addition to English and Spanish as such owner believes will be of assistance in ensuring communication of the content of such notice to the occupants of the multiple dwelling.

HISTORICAL NOTE

Section repealed and added (formerly §11-04) City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

DERIVATION

Former §11-04 repealed and added City Record Oct. 13, 1999 eff. Nov. 12, 1999.

Section in original publication July 1, 1991.

Former §11-03 Owner's Duty Upon Vacancy

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-04 Investigation for Lead-based Paint Hazards.

(a) In any dwelling unit in a multiple dwelling erected prior to January first, nineteen hundred sixty where a child of applicable age resides, and in any dwelling unit in a multiple dwelling erected on or after January first, nineteen hundred sixty and before January first, nineteen hundred seventy-eight, where a child of applicable age resides and the owner has actual knowledge of the presence of lead-based paint, and in common areas of such multiple dwellings, the owner shall cause a visual inspection to be made for peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces and impact surfaces. A visual inspection for lead-based paint hazards shall include every surface in every room in the dwelling unit, including the interiors of closets and cabinets. Such inspection shall be undertaken at least once a year and more often if necessary, such as when, in the exercise of reasonable care, an owner knows or should have known of a condition that is reasonably foreseeable to cause a lead-based paint hazard, or an occupant makes a complaint concerning a condition that is likely to cause a lead-based paint hazard or requests an inspection, or the department issues a notice of violation or orders the correction of a violation that is likely to cause a lead-based paint hazard.

(b) An owner shall maintain or transfer to a subsequent owner records of inspections of dwelling units performed pursuant to this section. Such records shall include the location of such inspection and the results of such inspection for each surface in each room, as specified in subdivision (a) of this section, and the actions taken as a result of such inspection pursuant to §11-02 of these rules. If an owner claims an inability to gain access to the unit for such inspection, such records shall contain a statement describing the attempt made to gain access, including, but not limited to providing a written notice to the tenant, delivered by certified or registered mail, or by first class mail with proof of mailing from the United States Postal Service, informing the tenant of the necessity of access to the dwelling unit to

perform the inspection, and the reason why access could not be gained. Such records shall be kept for a period of ten years from either the date of completion of the inspection, or from the date of the last attempt to gain access by the owner, or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request. In addition, the owner shall make such records available to the occupant of such dwelling unit upon request.

(c) Nothing in this section shall be deemed to preclude an owner from conducting any additional types of inspections for lead-based paint hazards, provided, however, that such owner shall correct any lead-based paint hazards identified pursuant to such inspection in accordance with the work practices specified in §11-06 of these rules.

HISTORICAL NOTE

Section repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

DERIVATION

Former §11-04 Notice of Inquiry Regarding the Presence of a Child repealed and added City

Record Oct. 13, 1999 eff. Nov. 12, 1999.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-05 Turnover of Dwelling Units.

(a) Upon turnover of any dwelling unit in a multiple dwelling erected prior to January first, nineteen hundred and sixty, or of a dwelling unit in a private dwelling erected prior to January first, nineteen hundred and sixty where each dwelling unit is to be occupied by persons other than the owner or the owner's family, the owner shall within such dwelling unit have the responsibility to:

(1) remediate all lead-based paint hazards and any underlying defects, when such underlying defects exist;

(2) make all bare floors, window sills, and window wells in the dwelling unit smooth and cleanable;

(3) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all doors and door frames; and

(4) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all windows, or provide for the installation of replacement window channels or slides on all lead-based painted friction surfaces on all windows.

(b) Such work shall be performed in the time period commencing with the vacancy of the unit and shall be completed prior to reoccupancy of such unit. All work performed pursuant to this section shall be performed using the applicable safe work practices set forth in §11-06(g)(3) of these rules.

(c) An owner shall maintain or transfer to a subsequent owner records of work performed in dwelling units

pursuant to this section in accordance with the recordkeeping requirements of §11-06(c) of these rules. In addition, the owner shall make such records available to the new occupant of such dwelling unit upon request.

(d) An owner shall certify that he or she has complied with §27-2056.8 of article 14 of the housing maintenance code and this section in the notice provided to an occupant upon signing of lease, if any, or upon any agreement to lease, or at the commencement of occupancy if there is no lease pursuant to subdivision (a) of §11-03 of these rules.

HISTORICAL NOTE

Section repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

DERIVATION

Former §11-05 Owner's Duty to Inspect repealed and added City Record Oct. 13, 1999 eff. Nov.

12, 1999.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-06 Safe Work Practices.

(a) **Filing procedures.** Not less than ten days prior to commencement of work that will disturb lead-based paint pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code, an owner shall file with the department of health and mental hygiene a notice of the commencement of the work. Such notice shall be signed by the owner or by a representative of the firm performing the work. Where work is required to be commenced in a lesser period of time than that specified herein for the filing of a notice of commencement of work, then such filing shall be made as soon as practicable but prior to the commencement of work. Such notice shall be in a form satisfactory to or prescribed by the department of health and mental hygiene and shall set forth at a minimum the following information:

(1) The name, address and telephone number of the owner of the premises in which the lead-based paint work is to be performed;

(2) The address of the building and the specific location of the lead-based paint work within the building;

(3) The name, address and telephone number of the firm who will be responsible for performing the work;

(4) The date and time of commencement of the work, working or shift hours, and the expected date of completion;

(5) A complete description and identification of the surfaces and structures, and surface areas, subject to the work; and

(6) Any changes in the information contained in the notice required by this section shall be filed with the

department of health and mental hygiene prior to commencement of work, or if work has already commenced, within 24 hours of any such change.

(b) **Licensing and training.**

(1) **Abatement.** All work conducted as part of an abatement as defined in this chapter shall be performed by firms and personnel certified to perform lead-based paint activities in accordance with regulations issued by the United States environmental protection agency at subpart L of 40 CFR part 745 for the abatement of lead hazards, or successor rule.

(2) Work ordered by the department to correct a lead-based paint hazard violation in accordance with §27-2056.11(a)(1) of article 14 of the housing maintenance code, or work performed pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code, shall be performed in accordance with the following requirements:

(i) **Firm requirements.** Firms conducting such work shall be certified to perform lead abatement by the United States environmental protection agency in accordance with subpart L of 40 CFR part 745 for the abatement of lead hazards, or successor rule.

(ii) **Worker requirements.** Workers conducting such work shall be trained, at a minimum, in accordance with the regulations issued by the United States department of housing and urban development at 24 CFR §35.1330(a)(4), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(iii) **Clearance dust testing.** No person shall perform a lead-contaminated dust clearance test pursuant to this section unless such person is a third party, who is independent of the owner and any individual or firm that performs such work. All personnel performing lead-contaminated dust clearance testing after completion of such work shall be trained, at a minimum, in accordance with regulations issued by the United States department of housing and urban development at 24 CFR §35.1340(b)(1), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(3) Work performed in accordance with §27-2056.11(a)(2)(i) of article 14 of the housing maintenance code, shall be performed in accordance with the following requirements:

(i) **Worker requirements.** Workers conducting such work shall be trained under regulations issued by the United States department of housing and urban development at 24 CFR §35.1330(a)(4), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(ii) **Clearance dust testing.** No person shall perform a lead-contaminated dust clearance test pursuant to this section unless such person is a third party, who is independent of the owner and any individual or firm that performs such work. Personnel performing lead-contaminated dust clearance testing after completion of such work shall be trained in accordance with regulations issued by the department of housing and urban development at 24 CFR §35.1340(b)(1), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(4) Work performed in a dwelling unit upon turnover in accordance with §27-2056.8 of article 14 of the housing maintenance code. No person shall perform a lead-contaminated dust clearance test pursuant to this paragraph unless such person is a third party, who is independent of the owner and any individual or firm that performs the work upon turnover. Personnel performing lead-contaminated dust clearance testing after completion of such work shall be trained in accordance with regulations issued by the department of housing and urban development at 24 CFR §35.1340(b)(1), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(c) **Recordkeeping.** An owner shall keep a record of the following information for all work performed pursuant to

this section:

(1) The name, address, and telephone number of the person or entity who performed the work; the start date and completion date for the work;

(2) A copy of all licenses and training certificates, required pursuant to subdivision (b) of this section, for the firms and personnel who performed work and lead-contaminated dust clearance testing;

(3) The location of the work performed in each room including a description of such work and invoices for payment for such work;

(4) Results of lead-contaminated dust clearance tests analyzed by an independent laboratory certified by the state of New York;

(5) Checklists completed pursuant to (g)(1)(ix)(F)**(f)** when occupants are allowed temporary access to a work area; and

(6) Such records shall be maintained by such owner for a period of ten years from the date of completion of such work or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request.

(d) **Work methods.**

(1) **Minimizing dust dispersion.** Work that disturbs lead-based paint as defined in this chapter shall be carried out in such a manner as to minimize the penetration or dispersal of lead contaminants or lead-contaminated materials from the work area to other areas of the dwelling unit and building or adjacent outdoor areas.

(2) An area designated as a clean changing area shall be segregated from the work area by a physical barrier to prevent the penetration or dispersal of lead contaminants or lead-contaminated materials from the work area to other areas of the dwelling unit and building and to prevent occupant exposure to materials containing lead.

(3) Repair of lead-based paint hazard violations may be performed by wet sanding, wet scraping, removal, enclosure, encapsulation, replacement or abatement except where otherwise specified in article 14 of the housing maintenance code or these rules.

(e) **Prohibited methods.** The following methods shall not be used while performing work in accordance with these rules that disturbs lead-based paint or paint of unknown lead content:

(1) Open flame burning or torching.

(2) Machine sanding or grinding without HEPA local exhaust control.

(3) Abrasive blasting or sandblasting without HEPA local exhaust control.

(4) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.

(5) Dry sanding or dry scraping.

(6) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the United States consumer product safety commission at 16 CFR §1500.3, and/or a hazardous chemical in accordance with the United States occupational safety and health administration regulations at 29 CFR §§1910.1200 or 1926.59, as applicable to the work.

(f) **Work practices and surface finishing.**

(1) All tools and materials used when disturbing paint shall be used in accordance with the manufacturer's instructions.

(2) Wet sanding, wet scraping, removal, enclosure, encapsulation, replacement, abatement and other maintenance and repair activities shall be performed using standard construction and treatment methods, and in accordance with manufacturer's instructions, where applicable.

(3) All surfaces where paint has been disturbed shall be sealed and finished with appropriate materials. Underlying surface substrates shall be dry and protected from future moisture before applying a new protective coating or paint, and all paints and coatings shall be applied in accordance with the manufacturer's recommendations.

(g) **Occupant protection.**

(1) **Work ordered by the Department to correct a lead-based paint hazard violation in accordance with §27-2056.11(a)(1) of article 14 of the housing maintenance code, or work performed pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code.**

(i) **Postings.** The following information shall be conspicuously posted no later than twenty-four hours prior to beginning work and shall remain in place until the work area has been cleared for re-occupancy:

(A) Notice of commencement of work information submitted to the department of health and mental hygiene pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code. Such information shall be posted at the entrance to the dwelling and at the entrance to the dwelling unit.

(B) A warning sign of at least 8-1/2" by 11" with letters at least one inch high, reading as follows: WARNING: LEAD WORK AREA-POISON-NO SMOKING OR EATING. Such information shall be posted adjacent to the work area.

(ii) **Pre-cleaning and protecting moveable items.** All floors, moveable furniture, draperies, carpets, or other objects in the work area shall be HEPA-vacuumed or washed; all moveable items shall then be moved out of the work area or otherwise covered with two layers of six-mil disposable polyethylene sheeting before work begins. Such sheeting shall be taped together with waterproof tape, and taped to the floors or bottom of the walls or baseboards, so as to form a continuous barrier to the penetration of dust.

(iii) **Sealing vents.** Forced-air systems within the room where work that disturbs lead-based paint is occurring shall be turned off and covered with two layers of six-mil polyethylene sheeting and waterproof tape to prevent lead contamination and lead dispersal to other areas.

(iv) **Affixing doorway entrance flap.** After all moveable objects have been removed, the work area shall be sealed off from non-work areas by taping with waterproof tape, two layers of disposable, six-mil polyethylene sheeting over every entrance or doorway to the work area, as follows: To deter the dispersal of lead dust one sheet shall be taped along all sides of the doorway and a slit shall be cut down the middle of the sheeting, leaving intact at least six inches of sheeting on the top and six inches of sheeting on the bottom of the doorway. A second sheet of polyethylene large enough to cover the doorway, shall be attached to the top of the doorway in the room or area where work is being conducted and shall act as a flap opening into the work area.

(v) **Covering floors.** The floor of the work area shall be covered with at least two sheets of disposable six-mil polyethylene sheeting. Such sheeting shall be taped together with waterproof tape, and taped to the bottom of the walls or baseboard, so as to form a continuous barrier to the penetration of dust to the floor. The furniture and non-moveable furnishings, such as counters, cabinets, and radiators in the work area shall be removed or covered with such taped

sheeting.

(vi) **Sealing openings.** All openings, including windows, except those required to be open for ventilation, not sealed off or covered in accordance with subdivision (g)(1)(iii) of the section, shall be sealed with two layers of six-mil polyethylene sheeting and waterproof tape to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

(vii) **Instructing occupants.** Occupants shall be instructed by the owner and contractor to avoid entering the work area until final clearance levels have been achieved.

(viii) **Hazardous materials.** All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer's labels, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

(ix) **Clean-up and lead-contaminated dust clearance testing procedures.**

(A) **Daily clean-up.** At the completion of work each day, the work area shall be thoroughly wet-mopped or HEPA-vacuumed. No polyethylene sheeting, drop cloths, or other materials that are potentially hazardous to young children or infants shall be accessible outside the work area. In addition, any work area and other adjoining area exposed to lead or lead-contaminated materials shall be cleaned as follows:

(a) Large debris. Large demolition-type debris (e.g., door, windows, trim) shall be wrapped in six-mil polyethylene, sealed with waterproof tape, and moved to the area designated for trash storage on the property to be properly disposed of in a lawful manner.

(b) Small debris. Small debris shall be HEPA-vacuumed or wet swept and collected. Before wet sweeping occurs, the affected surfaces shall be sprayed with a fine mist of water to keep surface dust from becoming airborne. Dry sweeping is prohibited. The swept debris and all disposable clothing and equipment shall be placed in double four-mil or single six-mil plastic bags which shall be sealed and stored with other contaminated debris in the work area and shall be properly disposed of in a lawful manner.

(c) Clean-up adjacent to the work area. On a daily basis, as well as during final clean-up, the area adjacent and exterior to the work area shall be examined visually to ensure that no lead debris has escaped containment. Any such debris shall be wet swept and HEPA-vacuumed, collected and disposed of as described above.

(d) Supply storage. Upon finishing work for the day, all rags, cloths and other supplies used in conjunction with chemical strippers or other flammable materials, or materials contaminated with lead dust or paint shall be stored at the end of each work day in sealed containers or removed from the premises, in a lawful manner.

(B) **Final clean-up.** Final cleaning shall be performed as follows, in the following sequence:

(a) The final cleaning process shall start no sooner than one (1) hour after lead-based paint disturbance activities have been completed, but before repainting, if necessary.

(b) First, all polyethylene sheeting shall be sprayed with water mist and swept prior to removal. Polyethylene sheeting shall be removed by starting with upper-level polyethylene, such as that on windows, cabinets and counters, folding the corners, ends to the middle, and placing in double four-mil or single six-mil plastic bags. Plastic bags shall be sealed and properly disposed of in a lawful manner.

(c) Second, all surfaces in the work area shall be HEPA-vacuumed. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(d) Third, all surfaces in the work area shall be washed with a detergent solution. Washing shall begin with the ceiling and proceed down the walls to the floor. Wash water shall be properly disposed of in a lawful manner.

(e) Fourth, all surfaces exposed to lead dust generated by the lead-based paint disturbance process shall be HEPA-vacuumed again. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(f) Fifth, all surfaces shall be inspected to ensure that all surfaces have been cleaned and all visible dust and debris have been removed. If all visible dust and debris have not been removed, affected surfaces shall be re-cleaned.

(C) **Final inspection.** After final clean-up, and re-painting if necessary, has been completed, a final inspection shall be made by a third party retained by the owner who is independent of the owner and the contractor. The final clearance evaluation shall include a visual inspection and lead-contaminated dust clearance testing. Three wipe samples shall be collected and tested from each room or area where work has been conducted; one wipe sample contaminated dust clearance samples shall be collected and tested from the floor in rooms or areas immediately adjacent to the work area.

(D) **Clearance for re-occupancy.** Lead-contaminated dust levels in excess of the following constitute contamination and require repetition of the clean-up and testing process in all areas where such levels are found. Areas where every lead-contaminated dust sample result is below the following levels may be cleared for re-occupancy:

Floors: 40 micrograms of lead per square foot.

Window Sills: 250 micrograms of lead per square foot.

Window Wells: 400 micrograms of lead per square foot.

Only upon receipt of laboratory test results showing that the above dust lead levels are not exceeded in the dwelling may the work area be cleared for permanent re-occupancy. However, temporary access to work areas may be allowed, provided that clean-up is completed and dust test samples have been collected in compliance with this section. The owner shall provide all lead-contaminated dust clearance test results to the occupants of the dwelling or dwelling unit.

(E) **Relocation.** An owner shall request that an occupant temporarily relocate from a unit pending completion of work where it appears that work cannot be performed safely with occupants in residence. Such owner shall offer a suitable, decent, safe and similarly accessible dwelling unit that does not have lead-based paint hazards to such occupants for temporary relocation. Unreasonable refusal by such occupants to relocate pursuant to such offer shall constitute a refusal of access under housing maintenance code §§27-2009 and 27-2056.4(b), and, where applicable, 9 NYCRR §2524.3(e). Relocation shall not be required provided that work can be done safely with occupants in residence, and provided further that at the end of each day of work, the work area is properly cleaned as specified in subdivision (g)(1)(ix)(A) of this section; occupants have safe access to areas adequate for sleeping; occupants have bathroom and kitchen facilities available to them; occupants have safe access to entry/egress pathways; and the work does not create other safety hazards (e.g., exposed electrical wiring or holes in the floor).

(F) **Temporary access to the work area when occupants not relocated.** When occupants are not relocated, temporary access may be allowed to areas in which work is in progress after work has ceased for the day, provided that at the end of each work day: **(a)** Any work area to be accessed is properly cleaned as specified in the daily clean-up requirements of subdivision (g)(1)(ix)(B)**(b)** through **(d)** and **(f);**

(b) There are no safety hazards (including, but not limited to, exposed electric wiring or holes in the floor) or covered vents;

(c) Floor coverings containing leaded dust and debris and hazardous materials are removed;

(d) Floors in the work area are re-covered with a non-skid floor covering securely taped to the floor;

(e) Work areas are prepared in accordance with the requirements above when work recommences; and

(f) At the end of each workday, and before access is permitted, a checklist indicating compliance with these conditions is completed and signed by the person responsible for overseeing the work. No person shall make a false, untrue or misleading statement or forge the signature of another person on any document or record required to be prepared pursuant to these rules.

(g) Temporary access in accordance with these provisions may be allowed for no longer than five days. If work has not resumed within five days, temporary access may continue only if the person responsible for overseeing the work has repeated the actions required by clauses **(a)** through **(f)** of this subparagraph (F). Nothing herein shall extend the time for compliance with any violation issued pursuant to article 14 of the housing maintenance code.

(2) **Work performed in accordance with §27-2056.11(a)(2)(i) of article 14 of the housing maintenance code that disturbs lead-based paint.**

(i) **Postings.** A warning sign shall be posted in accordance with subdivision (g)(1)(i)(B) of this section and caution tape shall be placed across the entrance to the work area.

(ii) **Pre-cleaning and protecting moveable items.** All floors, moveable furniture, draperies, carpets, or other objects in the work area shall be HEPA-vacuumed or washed; all moveable items shall then be moved out of the work area or otherwise covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work.

(iii) **Covering floors.** The floor of the work area shall be covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work. Multiple layers of polyethylene sheeting shall be used as needed to prevent dust from contaminating the floor.

(iv) **Sealing openings.** Where applicable, forced air systems in the work area shall be turned off and any openings in the work area shall be sealed with polyethylene or equivalent sheeting to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

(v) **Instructing occupants.** Occupants shall be instructed by the owner and contractor to avoid entering the work area until final clean up has been completed.

(vi) **Hazardous materials.** All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer's labels, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

(vii) Clean-up and lead-contaminated dust clearance testing shall be conducted in accordance with subdivision (g)(1)(ix) of this section.

(viii) Relocation and temporary access to work areas when occupants are not relocated, where provided, shall be performed in accordance with (g)(1)(ix)(E) and (F) of this section.

(3) **Work performed in a dwelling unit on turnover in accordance §27-2056.8 of article 14 of the housing maintenance code.**

(i) **Preparation.** The procedures described in subdivision (g)(2)(i)-(iv) of this section shall be followed.

(ii) **Clean-up.** At the completion of work, the work area shall be thoroughly wet-mopped or HEPA-vacuumed and a visual examination shall be conducted in the work area and the area adjacent and exterior to the work area. Any noted lead-contaminated dust or debris shall be wet-mopped or HPEA-vacuumed. All rags, cloths and other supplies used in conjunction with chemical strippers or other flammable materials, or materials contaminated with lead dust or paint shall be stored at the end of each work day in sealed containers or removed from the premises, in a lawful manner.

(iii) **Lead-contaminated dust clearance testing.** Lead-contaminated dust clearance testing shall be conducted in accordance with subdivision (g)(1)(ix)(C)-(D) of this section.

HISTORICAL NOTE

Section repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

DERIVATION

Former §11-06 Presumption repealed and added City Record Oct. 13, 1999 eff. Nov. 12, 1999.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-07 Presumption.

(a) In any multiple dwelling erected prior to January first, nineteen hundred sixty, it shall be presumed that the paint or other similar surface-coating material in any dwelling unit where a child of applicable age resides or in the common areas of such multiple dwelling is lead-based paint.

(b)(1) The presumption established in this section may only be rebutted as provided in paragraph (2) of this subdivision by the registered owner, registered officer or director of a corporate owner or by a registered managing agent of such multiple dwelling by submitting to the department:

(i) a sworn written statement, supported by lead-based paint testing or sampling results, including a description of the testing methodology and manufacturer and model of instrument used to perform such testing or sampling;

(ii) a sworn written statement by the person who performed the testing if performed by an employee or agent of the owner which shall include a copy of the certificate of training as a certified lead-based paint inspector or risk assessor as provided in subdivision (d) of this section;

(iii) a copy of the inspection report provided by the person who performed the testing or sampling which shall include a description of the surfaces in each room where such testing or sampling was performed; and

(iv) a copy of the results of such testing and/or such laboratory tests of paint chip samples performed by an independent laboratory certified by the state of New York where such testing has been performed.

(2) Such written statement and all supporting documentation shall be submitted to the department not later than six (6) days before the date set for correction in the notice of violation in accordance with paragraph (1) of this subdivision, and may only be submitted to rebut the presumption where the department has not performed an XRF test prior to issuing such violation. Receipt by the department of a complete application in accordance with this subdivision including such written statement and such supporting documentation shall toll the time period to correct the violation. Receipt of an incomplete application shall not toll the time period for correction of the violation.

(3) The department shall notify the registered owner, registered officer or director of a corporate owner or registered managing agent of such multiple dwelling of its determination in writing, and, if the department determines that such presumption has not been rebutted, such notice shall set a date for correction of the violation.

(c) Where testing or sampling is performed to rebut the presumption established in this section, the performance of such testing shall be in accordance with the definition for lead-based paint established in §11-01(s) of these rules and §27-2056.2(7) of article 14 of the housing maintenance code. Laboratory analysis for paint chip samples shall be permitted only where XRF tests fall within the inconclusive zone for the particular XRF machine or where the configuration of the surface or component to be tested is such that an XRF machine cannot accurately measure the lead content of such surface or component. Laboratory tests of paint chip samples, where performed, shall be reported in mg/cm^2, unless the surface area of a paint chip sample cannot be accurately measured, or if an accurately measured paint chip sample cannot be removed, in which circumstance the laboratory test may be reported in percent by weight. Where paint chip sampling has been performed, the sworn written statement by the person who performed the testing shall include a statement that such sampling was done in accordance with 40 CFR §745.227 or successor provisions.

(d) Testing performed to rebut the presumption may only be performed by a person who has been certified as a lead-based paint inspector or risk assessor in accordance with subparts L and Q of 40 CFR part 745 or successor provisions and such testing shall be performed in accordance with 40 CFR §745.227(a) and (b) or successor provisions.

HISTORICAL NOTE

Section repealed and added (formerly §11-06) City Record July 2, 2004 eff. Aug. 1, 2004. [See

Chapter 11 footnote]

DERIVATION

Former §11-06 repealed and added City Record Oct. 13, 1999 eff. Nov. 12, 1999.

Section in original publication July 1, 1991.

Former §11-07 Exemption from Presumption

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation

for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-08 Exemption from Presumption.

(a) A registered owner or registered officer or director of a corporate owner or registered managing agent of a multiple dwelling erected prior to January first, nineteen hundred sixty or, where title to such multiple dwelling is held by a cooperative housing corporation or the units in such multiple dwelling are owned as condominium units, a representative of the corporation or the condominium board of managers may apply to the department, in writing, for an exemption of the application of the presumption established under article 14 of the housing maintenance code and §11-07 of these rules with respect to such multiple dwelling or any part thereof, provided further, that where title to such multiple dwelling is held by a cooperative housing corporation or the units in such multiple dwelling are owned as condominium units, the shareholder of record on the proprietary lease or the owner of record of such condominium unit, as is applicable, may apply to the department for such exemption for his or her individual unit where such presumption is or may become applicable.

(b) Except as otherwise provided in subdivision (c), such exemption shall be granted only where such owner or such other person specified in subdivision (a) of this section submits a written determination made by a lead-based paint inspector or risk assessor certified pursuant to subparts L and Q of 40 CFR part 745 or successor provisions, and in accordance with 40 CFR §745.227(b), or Chapter 7 of the department of housing and urban development's Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing that each tested surface and component in each dwelling unit in such multiple dwelling or in the individual dwelling unit, if applying for an exemption of a particular dwelling unit in such multiple dwelling, is free of lead-based paint as defined in §11-01(s) of these rules and §27-2056.2(7) of article 14 of the housing maintenance code, or, that as a result of a substantial alteration of each dwelling unit such lead-based paint on each surface and component in each dwelling unit has been contained so that

each surface tested is negative for such lead-based paint. Where surfaces or components within the dwelling unit can be demonstrated by the owner, to the satisfaction of the department, to have a common construction and painting history, the lead-based paint inspector or risk assessor performing such testing may test a sample of the surfaces and components having such common construction and painting history within the dwelling unit to make such determination, in accordance with 40 CFR §745.227(b), or Chapter 7 of the department of housing and urban development's Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing. For purposes of this section, the term "contained" shall mean that every surface containing lead-based paint has been permanently covered, enclosed and sealed with sheetrock or similar durable construction material to eliminate gaps which may allow access to or dispersion of dust or other matter from the underlying surface.

(c) For any surface within a dwelling unit or dwelling where encapsulation has been applied to a surface for the purpose of qualifying such dwelling unit or dwelling for an exemption under this section, in addition to the information required to be provided to the department pursuant to subdivision (d) of this section, such application shall include: the location of each surface that has been encapsulated; the name of the encapsulant that has been used, which shall be limited to those approved by the New York state department of health or by another federal or state agency or jurisdiction which the department has designated as acceptable; and a statement by the person who applied such encapsulant, who shall be certified to perform abatement pursuant to 40 CFR part 745 or successor provisions, that it has been applied in accordance with the manufacturer's instructions. The surfaces to which such encapsulants are applied shall be subject to periodic monitoring by the owner to ensure that they remain undamaged and intact, provided further, that the owner of such dwelling unit or dwelling shall keep records of any monitoring of such encapsulated surfaces for a period of ten years and produced by the owner upon request by the department.

(d) In addition to the information required by subdivision (c) of this section, where applicable, an application for exemption shall include: the address of the multiple dwelling; the number of units; the dates, if known, when substantial alterations were made to the dwelling unit(s) and a description of the work performed; the date of the inspection resulting in the determination; and a copy of the inspection report. Such inspection report shall contain a description of the surfaces tested and the results of such testing. Such application shall also include a copy of the certificate of training of the person who performed such testing.

(e) Upon submission of a complete application for exemption to the department, such multiple dwelling or part thereof, or dwelling unit, shall be deemed to be exempt from application of the presumption established under article 14 of the housing maintenance code and §11-07 of these rules. The department may revoke an exemption granted pursuant to this section where the department determines, after inspection, that a surface in any dwelling unit for which lead-based paint was contained or to which an encapsulant was applied is no longer intact or sealed or that such exemption was determined to be based upon fraud, mistake or misrepresentation. The department shall provide written notification to the owner upon making such determination. Absent fraud, mistake or misrepresentation in the initial application, an owner may reapply for the exemption by showing that the surface for which the lead-based paint was no longer contained or encapsulated has been repaired and resealed.

(f) Results of lead-based paint testing or evidence of application of encapsulants to surfaces performed prior to the effective date of these rules, that conforms with the requirements of this section, may be submitted to qualify for an exemption from the presumption pursuant to this section.

HISTORICAL NOTE

Section repealed and added (formerly §11-07) City Record July 2, 2004 eff. Aug. 1, 2004. [See

Chapter 11 footnote]

DERIVATION

Section 11-07 repealed and added City Record Oct. 13, 1999 eff. Nov. 12, 1999.

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FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-09 Certification of Correction of Lead-Based Paint Hazard Violation.

(a) A registered owner or registered officer or director of a corporate owner or registered managing agent shall submit a certification of correction of a lead-based paint hazard violation issued pursuant to §27-2056.6 of article 14 of the housing maintenance code and these rules within five (5) days of the date set for correction in the notice of violation. Such certification shall be made in writing, under oath by the registered owner, a registered officer or director of a corporate owner or by the registered managing agent and shall include the following:

(1) the date that the violation was corrected, and a statement that the violation was corrected in compliance with article 14 of the housing maintenance code and §11-06 of these rules;

(2) the results of laboratory tests performed by an independent laboratory certified by the state of New York for lead-contaminated dust clearance tests performed pursuant to §27-2056.11(b) and (d) of the housing maintenance code and §11-06(g)(1)(ix)(C) and (D) of these rules;

(3) a copy of the certificate of training required pursuant to §11-06(b)(2)(iii) qualifying the person who performed the lead-contaminated dust clearance testing; and

(4) a sworn statement by the person or firm who performed the work necessary to correct the violation that such work was performed in accordance with the applicable provisions of §27-2056.11 of article 14 of the housing maintenance code and the applicable provisions of §11-06 of these rules; and

(5) a copy of the certification by the United States environmental protection agency of the firm that performed the

work as required pursuant to §11-06(b)(2)(i) of these rules.

(b) Certification of a lead-based paint hazard violation shall be rejected by the department unless the results of the laboratory tests for the required lead-contaminated dust clearance tests are submitted with the certification, and such laboratory test results comply with the standards specified in §11-06(g)(1)(ix)(D) of these rules.

(c) Failure to file a certification of correction of such violation shall establish a prima facie case that such violation has not been corrected.

HISTORICAL NOTE

Section repealed and added (formerly §11-08) City Record July 2, 2004 eff. Aug. 1, 2004. [See

Chapter 11 footnote]

DERIVATION

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FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

28 RCNY 11-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-10 Postponements.

(a) An owner may apply to the department in writing for postponement of the time to correct a lead-based paint hazard violation issued pursuant to §27-2056.6 of article 14 of the housing maintenance code within the five days preceding the date set for correction of such violation pursuant to §27-2115(l)(1).

(b) Grant of a postponement shall be in the sole discretion of the department, and will be limited to circumstances where a showing has been made by the owner, to the satisfaction of the department, that such owner has taken steps to correct the violation promptly but that full correction could not be completed expeditiously because of the existence of a serious technical difficulty, inability to obtain necessary materials, funds or labor, or inability to gain access to the dwelling unit or other area of the building necessary to make the required repair. An application for postponement shall contain a detailed statement by the registered owner or agent, or registered managing agent, explaining the steps taken to correct the violation promptly and the specific circumstances surrounding the inability to fully correct the violation within the time set for correction of the violation. Where an owner claims inability to gain access, such application shall include a description of the steps taken to gain access, including but not limited to providing a written notice to the tenant, delivered by certified or registered mail, informing the tenant of the necessity of access to the dwelling unit to correct the violation and the reason why access could not be gained.

(c)(1) The department shall make a determination in writing whether the post- ponement shall be granted or denied, and the reasons therefor. The department may include such other conditions as are deemed necessary to insure correction of the violation within the time set by the postponement. If the postponement is granted, a new date for correction shall be set, which shall not exceed fourteen days from the date set for correction in the notice of violation, provided, however, that the department may grant an additional postponement of fourteen days where the department

determines that the conditions which is the subject of the violation has been stabilized.

(2) The department may grant a postponement of the time to correct a lead-based paint hazard violation in excess of the twenty-eight days provided for in paragraph (1) of this subdivision, where the department determines that the work to be done to remediate the violation includes one or more substantial capital improvements to be made in conjunction with such work, and that such improvements will significantly reduce the presence of lead-based paint in such multiple dwelling or dwelling unit, provided that the paint which is the subject of the violation is stabilized. An owner who applies for such longer postponement shall submit an application within the time period specified in subdivision (a) of this section, and shall include with such application such documentation as the department may require to make its determination, which may include, but is not limited to, written contracts for work, building permits, plans filed with the department of buildings; invoices for materials purchased; and evidence that work has commenced and substantial progress has been made.

HISTORICAL NOTE

Section repealed and added (formerly §11-09) City Record July 2, 2004 eff. Aug. 1, 2004. [See

Chapter 11 footnote]

DERIVATION

Section 11-09 repealed and added City Record Oct. 13, 1999 eff. Nov. 12, 1999.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-11

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-11 Audit and Inspection by the Department.

(a) Upon the issuance of a commissioner's order to abate by the commissioner of the department of health and mental hygiene pursuant to New York city health code §173.13, the department shall require that an owner submit to it all records required to be kept by such owner pursuant to article 14 of the housing maintenance code and these rules. At such other times as the department may deem it necessary, the department may require that an owner submit to it all records required to be kept by such owner pursuant to article 14 of the housing maintenance code and these rules. If such order to abate has been issued, such records shall be submitted to the department within 45 days of written demand for such records by the department. In all other cases, the time period for submission shall be stated in writing to the owner, and shall be in the discretion of the department.

(b) The department may undertake any inspection and enforcement actions it deems necessary under applicable law and these rules based upon its review of the records submitted by an owner pursuant to subdivision (a) of this section. The department may also undertake any inspection or enforcement action authorized by law where an owner refuses or fails to produce any of the records required to be kept pursuant to article 14 of the housing maintenance code, these rules, and other applicable law.

HISTORICAL NOTE

Section added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

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28 RCNY 11-12

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-12 Dwelling Units in Cooperative Housing Corporations and Condominiums.

Where the department has issued a violation pursuant to article 14 of the housing maintenance code for a dwelling unit in a multiple dwelling where (i) title to such multiple dwelling is held by a cooperative housing corporation or such dwelling unit is owned as a condominium unit, and (ii) such dwelling unit is occupied by the shareholder of record on the proprietary lease for such dwelling unit or the owner of record of such condominium unit, as is applicable, or the shareholder's or record owner's family, the cooperative housing corporation or the condominium board of managers may apply to the department to have such violation reissued. Such application shall include a sworn affidavit from a representative of the cooperative housing corporation or condominium board of managers attesting to the status of such multiple dwelling as either a cooperative or condominium, and a sworn affidavit from the shareholder of record on the proprietary lease of the unit or the owner of record of the condominium unit for which the violation was issued, attesting to his or her occupancy of the unit.

HISTORICAL NOTE

Section added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

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28 RCNY 11 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

APPENDIX A LEASE/COMMENCEMENT OF OCCUPANCY NOTICE FOR PREVENTION OF LEAD BASED PAINT HAZARDS-INQUIRY REGARDING CHILD

APPENDIX A LEASE/COMMENCEMENT OF OCCUPANCY NOTICE FOR PREVENTION OF LEAD BASED PAINT HAZARDS-INQUIRY REGARDING CHILD

You are required by law to inform the owner if a child under seven years of age resides or will reside in the dwelling unit (apartment) for which you are signing this lease/commencing occupancy. If such a child resides or will reside in the unit, the owner of the building is required to perform an annual visual inspection of the unit to determine the presence of lead-based paint hazards. IT IS IMPORTANT THAT YOU RETURN THIS FORM TO THE OWNER OR MANAGING AGENT OF YOUR BUILDING TO PROTECT THE HEALTH OF YOUR CHILD. If you do not respond to this notice, the owner is required to attempt to inspect your apartment to determine if a child under seven years of age resides there.

If a child under seven years of age does not reside in the unit now, but does come to live in it at any time during the year, you must inform the owner in writing immediately. If a child under seven years of age resides in the unit, you should also inform the owner immediately at the address below if you notice any peeling paint or deteriorated subsurfaces in the unit during the year.

Please complete this form and return one copy to the owner or his or her agent or representative when you sign the lease/commence occupancy of the unit. Keep one copy of this form for your records. You should also receive a copy of a pamphlet developed by the New York City Department of Health explaining about lead based paint hazards when you sign your lease/commence occupancy.

CHECK ONE: A child under seven years of age resides in the unit

CHECK ONE: A child under seven years of age does not reside in the unit

_____ (Occupant signature)

Print occupant's name, address and apartment number: _____

(NOT APPLICABLE TO RENEWAL LEASE) Certification by owner: I certify that I have complied with the provisions of §27-2056.8 of Article 14 of the Housing Maintenance Code and the rules promulgated thereunder relating to duties to be performed in vacant units, and that I have provided a copy of the New York City Department of Health and Mental Hygiene pamphlet concerning lead-based paint hazards to the occupant.

_____ (Owner signature)

RETURN THIS FORM TO: _____
_____

OCCUPANT: KEEP ONE COPY FOR YOUR RECORDS

OWNER COPY/OCCUPANT COPY

HISTORICAL NOTE

Appendix repealed and added July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

APENDICE A

CONTRATO/COMIENZO DE OCUPACION Y

MEDIDAS DE PRECAUCION CON LOS PELIGROS

DE PLOMO EN LA PINTURA-ENCUESTA

RESPECTO AL NI;atNO.

Usted esta requerido por ley informarle al due;atno si un ni;atno menor de siete a;atnos de edad esta viviendo o vivira con usted en la unidad de vivienda (apartamento) para la cual usted va a firmar un contrato de ocupacion. Si tal ni;atno empieza a residir en la unidad, el due;atno del edificio esta requerido hacer una inspecion visual a;atnualmente de la unidad para determinar la presencia peligrosa de plomo en la pintura. POR ESO ES IMPORTANTE QUE USTED LE DEVEUELVA ESTE AVISO AL DUE;atNO O AGENTE AUTORIZADO DEL EDIFICIO PARA PROTEGER LA SALUD DE SU NI;atNO. Si usted no informa al dueno, el dueno esta requerido inspeccionar su apartamento para descubrir si un ni;atno menor de siete a;atnos de edad esta viviendo en el apartamento.

Si un ni;atno de siete a;atnos de edad no vive en la unidad ahora, pero viene a vivir en cualquier tiempo durante el a;atno, usted debe de informarle al due;atno por escrito inmediatamente a la direccion provenida abajo. Usted tambien debe de informarle al due;atno por escrito si un ni;atno menor de siete a;atnos de edad vive en la unidad y si usted observa que durante el a;atno la pintura se deteriora o esta por pelarse sobre la superficie de la unidad.

Por favor de llenar este formulario y devolver una copia al due;atno del edificio o al agente o representante cuando usted firme el contrato o empieze a ocupar la unidad. Mantegna una copia de este formulario para sus archivos. Al firmar su contrato de ocupacion usted recibira un pamfleto hecho por el Departamento de Salud y Salud de la Ciudad de Nueva York, explicando el peligro de plomo en pintura.

MARQUE UNO: Vive un ni;atno menor de siete a;atnos de edad en la unidad.

MARQUE UNO: No vive un ni;atno menor de siete a;atnos de edad en la unidad.

_____ (Firma del inquilino)

Nombre del inquilino, Direccion, Apartamento: _____

(Esto no es aplicable para un renovamiento del contrato de alquiler.) Certificacion de due;atno: Yo certifico que he cumplido con la provision de §27-2056.8 del Articulo 14 del codigo y reglas de Vivienda y Mantenimiento (Housing Maintenance Code) relacionado con mis obligaciones sobre las unidades vacante, y yo le he dado al ocupante una copia del pamfleto del Departamento de Salud y Salud Mental de la Ciudad de Nueva York sobre el peligro de plomo en pintura.

_____ (Firma del due;atno)

DEVUELVA ESTE FORMULARIO A: _____
_____

INQUILINO: MANTENGA UNA COPIA PARA LOS ARCHIVOS

COPIA DEL DUE;atNO/COPIA DEL INQUILINO

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28 RCNY 11 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

APPENDIX B ANNUAL NOTICE FOR PREVENTION OF LEAD BASED PAINT HAZARDS-INQUIRY REGARDING CHILD

APPENDIX B ANNUAL NOTICE FOR PREVENTION OF LEAD BASED PAINT HAZARDS-INQUIRY REGARDING CHILD

You are required by law to inform the owner if a child under seven years of age resides or will reside in your dwelling unit (apartment). If such a child resides or will reside in the unit, the owner of the building is required to perform an annual visual inspection of the unit to determine the presence of lead-based paint hazards. IT IS IMPORTANT THAT YOU RETURN THIS FORM TO THE OWNER OR MANAGING AGENT OF YOUR BUILDING TO PROTECT THE HEALTH OF YOUR CHILD. If you do not respond to this notice, the owner is required to attempt to inspect your apartment to determine if a child under seven years of age resides there.

If a child under seven years of age does not reside in the unit now, but does come to reside in it at any time during the year, you must inform the owner in writing immediately. If a child under seven years of age lives in the unit you should also inform the owner immediately if you notice any peeling paint or deteriorated surfaces in the unit during the year. You may request that the owner provide you with a copy of any records required to be kept as a result of a visual inspection of your unit.

Please complete this form and return one copy to the owner or his or her agent or representative by March 1st. Keep one copy of this form for your records.

CHECK ONE: A child under seven years of age resides in the unit

CHECK ONE: A child under seven years of age does not reside in the unit

_____ (Occupant signature)

Print occupant's name, address and apartment number: _____

RETURN THIS FORM TO: _____
_____

OCCUPANT: KEEP ONE COPY FOR YOUR RECORDS

OWNER COPY/OCCUPANT COPY

HISTORICAL NOTE

Appendix repealed and added July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

APENDICE B

AVISO A;atNUAL PARA MEDIDAS DE PRECAUCION

CON LOS PELIGROS DE PLOMO EN LA PINTURA-

ENCUESTA RESPECTO AL NI;atNO

Usted esta requerido por ley informarle al due;atno si un ni;atno menor de siete anos de edad esta viviendo o vivira con usted en su unidad de vivienda (apartamento). Si tal ni;atno empvive en la unidad, el due;atno del edificio esta requerido hacer una inspecion visual a;atnualmente de la unidad para determinar la presencia peligrosa de plomo en la pintura. POR ESO ES IMPORTANTE QUE USTED LE DEVEUELVA ESTE AVISO AL DUE;atNO O AGENTE AUTORIZADO DEL EDIFICIO PARA PROTEGER LA SALUD DE SU NI;atNO. Si usted no informa al dueno, el dueno esta requerido inspeccionar su apartamento para descubrir si un ni;atno menor de siete a;atnos de edad esta viviendo en el apartamento.

Si un ni;atno menor de siete a;atnos de de edad no vive en la unidad ahora, pero viene a vivir en cualquier tiempo durante el a;atno, usted debe de informarle al due;atno por escrito inmediatamente. Usted tambien debe de informarle al due;atno por escrito si el ni;atno menor de siete a;atnos de edad vive en la unidad y si usted observa que durante el a;atno la la pintura se deteriora o esta por pelarse sobre la superficie de la unidad, usted tiene que informarle al due;atno inmediatamente. Usted puede solicitar que el due;atno le de una copia de los archivos de la inspecion visual hecha en su unidad.

Por favor de llenar este formulario y devolver una copia al due;atno del edificio o al agente o representante antes de Marzo 1. Mantegna una copia de este formulario para su informacion.

MARQUE UNO: Vive un ni;atno menor de siete a;atnos de edad en la unidad.

MARQUE UNO: No vive un ni;atno menor de siete a;atnos de edad en la unidad.

_____ (Firma del inquilino)

Nombre del inquilino, Direccion, Apartamento: _____

DEVUELVA ESTE FORMULARIO A: _____
_____

INQUILINO: MANTENGA UNA COPIA PARA SU INFORMACION

COPIA DEL DUE;atNO/COPIA DEL INQUILINO

Rules of the City of New York

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28 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-01 Owner Responsibilities for Smoke Detecting Devices for Class A Multiple Dwellings.

Pursuant to §27-2045 of the Administrative Code of the City of New York, the owner of a Class A multiple dwelling which is

required to be equipped with smoke detecting devices pursuant to Article 6 of Subchapter 17 of Chapter 1 of Title 27 of the Administrative Code of the City of New York shall: (a) Provide and install one or more approved and operational smoke detecting devices in each dwelling unit as prescribed in the rules and regulations relating to smoke detecting devices and systems of the Department of Buildings.

(b) Post a notice in a form approved by the Commissioner of the Department of Housing Preservation and Development in a common area of the building, readily visible and preferably in the area of the inspection certificate, informing the occupants of such building that the owner is required by law to install one or more approved and operational smoke detecting devices in each dwelling unit in the building and that each occupant is responsible for the maintenance and repair of such devices and for replacing any or all such devices which are stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit. In addition, the notice should state that the occupant of a dwelling unit in which a battery-operated smoke detecting device is provided and installed shall reimburse the owner a maximum of ten dollars for the cost of providing and installing each such device. The occupant shall have one year from the date of installation to make such reimbursement. A sample of an approved notice is attached and made part of these regulations.

(c) The notice in §12-01(b) above:

(1) shall have letters not less than three-sixteenths of an inch in height;

(2) the lettering of the notice shall be of bold type and shall be properly spaced to provide good legibility and the background shall be of contrasting colors;

(3) the notice shall be durable and shall be substantially secured to the common area where posted;

(4) the notice shall be of metal, plastic, or decal;

(5) lighting shall be sufficient to make the notice easily legible.

(d) Replace any smoke detecting device which has been stolen, removed, missing or rendered inoperable during a prior occupancy of the dwelling unit and which has not been replaced by the prior occupant prior to the commencement of a new occupancy of a dwelling unit.

(e) Replace within thirty calendar days after the receipt of written notice any such device which becomes inoperable within one year of the installation of such device and through no fault of the occupant of the dwelling unit.

(f) Keep the following records, on the premises unless specifically exempted, relating to the installation and maintenance of smoke detecting devices in the building:

(1) date notice posted pursuant to §12-01(b) of this chapter;

(2) date of installation of each smoke detecting device;

(3) whether the smoke detecting device receives its primary power from the building wiring or whether it is a battery-operated device;

(4) apartment number and location within apartment where device installed;

(5) date device tested to see if it is in operable condition;

(6) maintenance work performed on device;

(7) date tenant requested replacement/repair;

(8) file a certification of satisfactory installation within 10 days after completion with the Department of Housing Preservation and Development, Borough Division of Code Enforcement. This certification shall be set forth on a form available at the HPD Borough Office.

A sample for the keeping the above records is attached and made a part of these regulations. These records must be made available to the Commissioner of the Department of Housing Preservation and Development upon request.

HISTORICAL NOTE

Section heading amended City Record Aug. 26, 2004 §2, eff. Aug. 26, 2004. [See Chapter 12

footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

28 RCNY 12-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-02 Occupant Responsibilities for Smoke Detecting Devices for Class A Multiple Dwellings.

Pursuant to §27-2045(2) of the Administrative Code of the City of New York it shall be the sole duty of the occupant of each unit in a Class A multiple dwelling in which a smoke detecting device has been provided and installed by the owner to:

(a) keep and maintain such device in good repair; and

(b) replace any and all devices which are either stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit.

Note: Except as provided in §12-01(d) and (e) above, an owner of a Class A multiple dwelling who has provided and installed a smoke detecting device in a dwelling unit shall not be required to keep and maintain such device in good repair or to replace any such device which is stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit. In addition, the occupant of a dwelling unit in which a battery-operated smoke detecting device is provided and installed shall reimburse the owner a maximum of ten dollars for the cost of providing and installing each such device. The occupant shall have one year from the date of installation to make such reimbursement.

HISTORICAL NOTE

Section heading amended City Record Aug. 26, 2004 §2, eff. Aug. 26, 2004. [See Chapter 12

footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Once the owner has equipped an apartment with a smoke detector, it is the responsibility of the tenant to check whether the detector is in working order. If the tenant notifies the landlord of a problem, the landlord is required to replace the detector within 30 days. However, if the tenant fails to notify the landlord, the responsibility falls entirely on the tenant. Rodriguez v. New York City Housing Authority, N.Y.L.J., Aug. 13, 2002, page 23, col. 2 (Sup.Ct. Bronx Co.).

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting

devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

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28 RCNY 12-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-03 Owner Responsibilities for Smoke Detecting Devices for Class B Multiple Dwellings.

Pursuant to §27-2046 of the Administrative Code of the City of New York the owner of a Class B multiple dwelling which is required to be equipped with smoke detecting devices pursuant to Article 6 of Subchapter 17 of Chapter 1 of Title 27 of the Administrative Code of the City of New York shall:

(a) Provide and install one or more approved and operational smoke detecting devices in each dwelling unit or, in the alternative, provide and install a line-operated zoned smoke detecting system with central office tie-in for all public corridors and public spaces pursuant to rules and regulations promulgated by the Commissioner of the Department of Buildings.

(b) Keep and maintain smoke detecting devices in good repair.

(c) Replace any smoke detecting device which has been stolen, removed, missing or rendered inoperable prior to the commencement of a new occupancy of a dwelling unit.

(d) Keep the following records, on the premises unless specifically exempted, relating to the installation and maintenance of smoke detecting devices in the buildings:

(1) date of installation of each smoke detecting device;

(2) whether the smoke detecting device receives its primary power from the building wiring or whether it is a

battery operated device or in the alternative whether it is a line operated zoned smoke detecting system with central annunciation and central tie-in for all public corridors and public spaces;

(3) room number and location within room where each smoke detecting device is installed;

(4) date device was tested to see if in operable condition;

(5) maintenance performed on each device;

(6) file a certification of satisfactory installation within 10 days after completion with the Department of Housing Preservation and Development, Borough Division of Code Enforcement. This certification shall be set forth on a form available at the HPD Borough Office.

HISTORICAL NOTE

Section heading amended City Record Aug. 26, 2004 §2, eff. Aug. 26, 2004. [See Chapter 12

footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to

installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

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***** Current through December 2009 ****

28 RCNY 12-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-04 Form for Records or Smoke Detecting Devices.

A sample form for keeping the above records is attached and made a part of this chapter. These records must be made available to the Commissioner of the Department of Housing Preservation and Development upon request.

NOTICE

The owner, _____

of this building located at _____

is required by law to post this notice advising tenants that the owner is required by law to provide and install one or more approved and operational smoke detectors in each apartment in this building. The law further makes tenant of each apartment responsible for the maintenance and repair of the detectors installed in the apartment and for replacing any or all detectors which are stolen, removed, missing or become inoperable during the occupancy of the apartment. The law also provides that the tenant of each Class A apartment in the building in which a battery-operated smoke detector is provided and installed shall pay the owner a maximum of ten dollars ($10.00) for the cost of providing and installing each detector. The tenant has one (1) year from the date of installation to make such payment to the owner.

HISTORICAL NOTE

Section heading amended City Record Aug. 26, 2004 §2, eff. Aug. 26, 2004. [See Chapter 12 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

28 RCNY 12-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-05 Definitions.

For the purposes of this chapter

(a) CO means carbon monoxide; and

(b) CO alarm means a "carbon monoxide alarm" as defined in 1 RCNY Chapter 28 and shall also mean a "carbon monoxide detecting device" as such term is used in subchapter 7 of chapter 1 and subchapter 2 of chapter 2 of title 27 of the administrative code of the city of New York.*2

HISTORICAL NOTE

Section added City Record Aug. 26, 2004 §3, eff. Aug. 26, 2004. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation

and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

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[Footnote 2]: * 1 RCNY §28-02(a)(2) states: The term "CO alarm" means a "carbon monoxide alarm" as defined in RS 17-14, and shall also mean a "carbon monoxide detecting device" as such term is used in Subchapter 17 of Chapter 1, and Subchapter 2 of Chapter 2, of Title 27 of the Administrative Code of the City of New York. 1 RCNY §28-02(e)(2) states: Existing buildings. Buildings in existence on November l1, 2004, and buildings with work permits issued prior to November 1, 2004, may, in the alternative, be equipped with battery-operated CO alarms compliant with RS 17-14 §5.2.3 or plug-in type CO alarms with a back-up battery compliant with RS 17-14 §5.2.4, except where such buildings are substantially improved or altered on or after November 1, 2004.

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CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-06 Owner Responsibilities for CO Alarms for Class A Multiple Dwellings.

Pursuant to §27-2046.1 of the administrative code of the city of New York, the owner of a Class A multiple dwelling that is required to be equipped with carbon monoxide detecting devices pursuant to article 7 of subchapter 17 of chapter 1 of title 27 of the administrative code of the city of New York and as prescribed by the Department of Buildings ("DOB") pursuant to chapter 28 of title 1 of the rules of the city of New York shall comply with the following requirements:

(a) Provide and install one or more approved and operational CO alarms in each dwelling unit, provided that there shall be installed at least one approved and operational CO alarm within 15 feet of the primary entrance to each room lawfully used for sleeping purposes;

(b) Post a notice in a form approved by the Commissioner of the Department of Housing Preservation and Development ("HPD" or "the Department") in a common area of a Class A multiple dwelling, readily visible and preferably in the area of the inspection certificate informing the occupants of such building that:

(1) the owner is required by law to install one or more approved and operational CO alarm in each dwelling unit in the building within 15 feet of the primary entrance to each room lawfully used for sleeping purposes;

(2) each occupant is responsible for the maintenance and repair of such alarms and for replacing any or all such alarms that are stolen, removed, missing, or rendered inoperable during the occupancy of such dwelling unit; and

(3) the occupant of a dwelling unit in which a CO alarm is newly installed or in which a CO alarm is installed by the owner as a result of such occupant's failure to maintain such alarm or where such alarm has been lost or damaged by such occupant, shall reimburse the owner in the amount of $25.00 per device for the cost of such work, and such occupant shall have one year from the date of installation to make such reimbursement.

(4) An owner may choose to post a single notice that complies with this provision as well as the provisions of 28 RCNY §12-01(b).

(5) The notice required by this subdivision shall conform with the following requirements:

(i) the notice shall have letters not less than three-sixteenths of an inch in height;

(ii) the lettering of the notice shall be of bold type and shall be properly spaced to provide good legibility and the background shall be of contrasting colors;

(iii) the notice shall be durable and shall be substantially secured to the common area where posted;

(iv) the notice shall be of metal, plastic, or decal; and

(v) lighting shall be sufficient to make the notice easily legible; and

(vi) A sample of an approved notice is attached and made part of these rules.

(c) Replace any CO alarm that has been stolen, removed, found missing, or rendered inoperable during a prior occupancy of the dwelling unit and which has not been relaced by the prior occupant before the commencement of a new occupancy of the dwelling unit;

(d) Replace within 30 calendar days after receipt of written notice any such alarm that becomes inoperable within one year of the installation of such alarm due to a defect in the manufacture of such alarm through no fault of the occupant of the dwelling unit;

(e) Provide written information regarding the testing and maintenance of CO alarms to at least one adult occupant of each dwelling unit, including, but not limited to, general information concerning carbon monoxide poisoning and what to do if a CO alarm goes off. Such information may include material that is distributed by the manufacturer or any material prepared or approved by DOB;

(f) Keep the following records, on the premises unless another location is approved by HPD, relating to the installation and maintenance of CO alarms in the building:

(1) date notice posted pursuant to §12-06(b) of this chapter;

(2) date of installation of each CO alarm;

(3) whether each CO alarm receives its primary power from the building wiring with secondary battery back-up, is a battery-operated alarm, or is a plug-in type CO alarm with a back-up battery;

(4) apartment number and location within apartment where each alarm was installed;

(5) date each alarm tested to determine if it is in operable condition;

(6) maintenance work performed on each alarm; and

(7) date occupant requested replacement/repair.

These records must be made available to HPD, DOB, the Fire Department, or the Department of Health and Mental Hygiene ("DOHMH") upon request; and

(g) File a certification of satisfactory installation within 10 days after completion with the HPD Borough Division of Code Enforcement in the borough where the dwelling is located. This certification shall be set forth on a form available at each HPD Borough Office and/or on HPD's website.

HISTORICAL NOTE

Section added City Record Aug. 26, 2004 §3, eff. Aug. 26, 2004. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

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28 RCNY 12-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-07 Owner Responsibilities for CO Alarms for Private Dwellings.

Pursuant to §27-2046.1 of the administrative code of the city of New York, the owner of a private dwelling that is required to be equipped with CO alarms pursuant to article 7 of subchapter 17 of chapter 1 of title 27 of the administrative code of the city of new York and as prescribed by DOB pursuant to chapter 28 of title 1 of the rules of the city of New York shall comply with the following requirements:

(a) Provide and install one or more approved and operational CO alarm in each dwelling unit, provided that there shall be installed at least one approved and operational CO alarm within 15 feet of the primary entrance to each room lawfully used for sleeping as prescribed in the DOB rules and regulations relating to CO alarms.

(b) For purposes of (c) through (g) of this section, "private dwelling" shall mean a dwelling unit in a one-family or two-family home that is occupied by a person or persons other than the owner of such unit or the owner's family.

(c) Provide notice in a form approved by the Department to the occupants of such dwelling that:

(1) the owner is required by law to install an approved and operational CO alarm in each dwelling or dwelling unit in the building, within 15 feet of the primary entrance to each room lawfully used for sleeping;

(2) each occupant is responsible for the maintenance and repair of such alarms and for replacing any or all such alarms that are stolen, removed, missing, or rendered inoperable during the occupancy of such dwelling or dwelling unit; and

(3) the occupant of a dwelling or dwelling unit in which a CO alarm is newly installed or in which a CO alarm is installed by the owner as a result of such occupant's failure to maintain such alarm or where such alarm has been lost or damaged by such occupant shall reimburse the owner in the amount of $25.00 per alarm for the cost of such work, and the occupant shall have one year from the date of installation to make such reimbursement;

(d) Replace any CO alarm that has been stolen, removed, found missing, or rendered inoperable during a prior occupancy of the dwelling or dwelling unit and that has not been replaced by the prior occupant before commencement of a new occupancy of the dwelling or dwelling unit;

(e) Replace within 30 calendar days after receipt of written notice any such alarm that becomes inoperable within one year of the installation of such alarm due to a defect in the manufacture of such alarm through no fault of the occupant of the dwelling or dwelling unit;

(f) Provide written information regarding the testing and maintenance of CO alarms to at least one adult occupant of each dwelling or dwelling unit, including, but not limited to, general information concerning carbon monoxide poisoning and what to do if a CO alarm goes off. Such information may include material that is distributed by the manufacturer or any material prepared or approved by DOB; and

(g) Keep the following records relating to the installation and maintenance of CO alarms in the dwelling or dwelling unit:

(1) date of installation of each CO alarm;

(2) whether each CO alarm receives its primary power from the building wiring with secondary battery back-up, is a battery-operated device, or is a plug-in type CO alarm with a back-up battery;

(3) location within dwelling or dwelling unit where each alarm is installed;

(4) date each alarm was tested to determine if it is in operable condition;

(5) maintenance work performed on each alarm; and

(6) date occupant requested replacement/repair.

These records must be made available to HPD, DOB, the Fire Department, or DOHMH upon request.

HISTORICAL NOTE

Section added City Record Aug. 26, 2004 §3, eff. Aug. 26, 2004. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain

circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

28 RCNY 12-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-08 Occupant Responsibilities for CO Alarms for Class A Multiple Dwellings and Private Dwellings.

(a) Pursuant to §27-2046.1 of the administrative code of the city of New York, it shall be the sole duty of the occupant of each unit in a Class A multiple dwelling and the occupant of a dwelling or dwelling unit in a private dwelling in which a CO alarm has been provided and installed by the owner to:

(1) keep and maintain such CO alarm in good repair; and

(2) replace any alarm that is either stolen, removed, missing, or rendered inoperable during the occupancy of such dwelling or dwelling unit.

(b) The occupant of a dwelling or dwelling unit in which a CO alarm is newly installed or in which a CO alarm is installed by the owner as a result of such occupant's failure to maintain such alarm where such alarm has been removed or damaged by such occupant shall reimburse the owner in the amount of $25.00 per alarm for the cost of such work. Such occupant shall have one year from the date of installation to make such reimbursement.

(c) Except as provided in §12-06(c) and (d) and §12-07(d) and (e) above, an owner who has provided and installed a CO alarm in a dwelling or dwelling unit shall not be required to keep and maintain such alarm in good repair or to replace any such alarm that is stolen, removed, or rendered inoperable during the occupancy of such dwelling or dwelling unit.

HISTORICAL NOTE

Section added City Record Aug. 26, 2004 §3, eff. Aug. 26, 2004. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

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Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-09 Owner Responsibilities for CO Alarms for Class B Multiple Dwellings.

Pursuant to §27-2046.2 of the administrative code of the city of New York, the owner of a Class B multiple dwelling that is required to be equipped with one or more CO alarms pursuant to article 7 of subchapter 17 of chapter 1 of title 27 of the administrative code of the city of New York and as prescribed by DOB pursuant to chapter 28 of title 1 of the rules of the city of New York shall:

(a) Provide and install one or more approved and operational CO alarm in each dwelling unit or in the alternative, provide and install a line operated zoned CO detecting system with central annunciation and central office tie-in for all public corridors and public spaces;

(b) Keep and maintain CO alarms or systems in good repair;

(c) Replace any CO alarm that has been stolen, removed, found missing, or rendered inoperable prior to the commencement of a new occupancy of a dwelling unit;

(d) Keep the following records, on the premises unless another location is approved by HPD, relating to the installation and maintenance of CO alarms or systems:

(1) date of installation of each CO alarm or system;

(2) whether the CO alarm receives its primary power from the building wiring with secondary battery back-up, is a

battery-operated alarm, is a plug-in type CO alarm with a back-up battery, or in the alternative whether it is a line operated zoned CO detecting system with central annunciation and central office tie-in for all public corridors and public spaces;

(3) room number and location within room where each CO alarm was installed;

(4) date each alarm was tested to determine if it is in operable condition;

(5) maintenance work performed on each alarm;

These records must be made available to HPD, DOB, the Fire Department, or DOHMH upon request; and

(e) File certification of satisfactory installation within 10 days after completion with the HPD Borough Division of Code Enforcement in the borough where the dwelling is located. This certification shall be set forth on a form available at each HPD Borough Office and/or on HPD's website.

HISTORICAL NOTE

Section added City Record Aug. 26, 2004 §3, eff. Aug. 26, 2004. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to

installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 12-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-10 Form for Notices for CO Alarms.

A sample form for providing notice to occupants pursuant to §12-06 is attached and made a part of this chapter.

NOTICE

The owner, _____, of this building located at _____ is required by law to post this notice advising tenants that the owner is required by law to provide a CO alarm in each apartment in this building within 15 feet of the primary entrance to each room lawfully used for sleeping. The law further makes the tenant of each apartment responsible for the maintenance and repair of the alarms installed in the apartment and for replacing any or all alarms that are stolen, removed, missing, or become inoperable during the occupancy of the apartment. The law also provides that the occupant of each Class A apartment in the building in which a CO alarm is provided and installed shall pay the owner $25.00 per alarm for the cost of such work. The occupant has one year from the date of installation to make such payment to the owner.

HISTORICAL NOTE

Section added City Record Aug. 26, 2004 §3, eff. Aug. 26, 2004. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-01 Purpose and Scope.

It is the purpose of this chapter to set forth an administrative procedure to allow new owners of multiple dwellings and other appropriate units in the City of New York the opportunity to correct violations while being assured that legal actions will not be brought against such new owners and that civil penalties accruing to the Department of Housing Preservation and Development will be stayed during the correction period. Pursuant to the procedure set forth herein, a new owner may seek to limit his or her liability while attempting to achieve correction of violations. The regulations created herein institute uniform procedures for an application for such a stay of legal actions, the basis upon which a determination of such application shall be made, the condition upon which a stay may be granted, the revocation of a stay, and the effect of compliance and non-compliance by a new owner with the conditions of a stay.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-02 Definitions.

In these regulations, the following terms shall have the meanings specified:

Department. "Department" shall mean the Department of Housing Preservation and Development or any successor to that Department.

New owner. "New owner" shall mean a person, entity, firm or corporation or agent or principal thereof who has achieved the status of the owner of the freehold or lesser estate therein, receiver, administrator, managing agent, mortgagee in possession, assignee of rents, executor, trustee, or lessee of the subject building who shall demonstrate that such change in ownership was not for the purpose of establishing eligibility for a stay under these regulations, and that:

(1) such status was attained not more than sixty (60) days prior to the making of its application herein; or,

(2) such status was attained not more than six (6) months prior to the effective date of these regulations if the application is made within sixty (60) days of such effective date.

Subject building. "Subject building" shall mean the dwelling in which the violations set forth in the notice of violation are to be found.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-03 Application and Prerequisites.

(a) An application for a stay shall be made during regular business hours to the Department's Agreements and Compliance Unit, 150 William Street, 6th Floor, New York, N.Y. 10038.

(b) A new owner must submit, in support of an application for a stay of legal action, documentary proof that:

(1) the applicant is a new owner as defined in §13-02 "New owner" of this chapter; and

(2) a registration statement has been filed with the Department's Office of Code Enforcement by the new owner, or proof that registration is not required for or allowed to be filed by the applicant.

(c) A new owner seeking a stay or an extension thereof may submit in support of the application any additional statements, information, documents, affidavits, records or reports as he or she may consider desirable to assist the Department in reaching its determination as to whether a stay or an extension thereof should be granted or the length of such stay or extension thereof.

(d) All written materials shall be submitted with a certification by the new owner, or if such an application is submitted by a corporation or partnership, by an office or partner thereof, that all statements contained in all forms and documents submitted in support of the application are true and correct, and an acknowledgement that the applicant is aware that, under §27-2118(a)(3) of the Housing Maintenance Code, any false or misleading statement in an application or an accompanying document, relating to an action to be taken or determination to be made by the Department shall be

guilty of a misdemeanor punishable by fine of not less than ten dollars ($10) nor more than one thousand dollars ($1,000), for each such violation or by imprisonment up to one year, or by both such fine and imprisonment.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-04 Determination of Stay.

Upon application by a new owner, the Department shall make a determination as to whether a stay shall be granted. The Department may take into consideration in determining whether to grant a stay, and the new owner may submit in attempting to establish his or her entitlement to a stay, the following information:

(a) That the new owner has demonstrated, by his or her past and present conduct, that there is a substantial probability that he or she will utilize a postponement to achieve correction of each violation for which a stay is sought. In assessing whether the past conduct of the new owner demonstrates that such a substantial probability exists, the following information may be considered:

(1) whether the new owner has complied with prior orders of the Department;

(2) whether the new owner has complied with prior orders of other City departments concerning building conditions;

(3) whether the new owner has any outstanding debts to the City for emergency repairs or has incurred such debts within five (5) years prior to the date of the applications; and

(4) what the new owner is doing to correct other violations for which he or she is not seeking a stay.

(b) The financial ability of the new owner to achieve correction of each violation for which a stay is sought.

Following a new owner's application for a stay, the Department shall prepare a written statement setting forth the reasons for the granting or the denial of such application. The statement shall be signed and dated by the person making the determination and shall be made part of the records of the Department. A copy of the determination shall be delivered to the new owner or mailed to him or her by regular mail.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-05 Length of Stay.

The length of a stay shall be set by the Department and shall be for a period or periods of time that will provide the new owner with a reasonable time to achieve correction of each violation which is the subject of the application for a stay. In any case, the length of such stay or stays shall be no less than the time allowed by classification pursuant to §27-2115(a) of the Housing Maintenance Code, said time running from the date of the new owner's application for a stay. In determining the appropriate length of time for a stay, the Department may consider:

(a) The time required for correction;

(b) The nature, classification, and estimated cost of repair of outstanding violations, as well as the length of time such violations have remained uncorrected;

(c) The proposed course of action which the new owner will undertake to achieve correction;

(d) Any actions the new owner might have already taken to correct violations prior to the application for a stay; and

(e) The financial ability of the new owner to achieve correction of violations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-06 Written Agreement and Condition of Stay.

(a) In the event the Department determines that a stay could appropriately be granted to the new owner, the Department shall require the new owner to execute an agreement prepared by the Department which shall set forth an exact schedule of removal of all violations for which the new owner is seeking a stay and in which the new owner acknowledges his or her responsibility to correct each violation by those dates. Such agreement may also:

(1) require the new owner to take a particular course of action to correct specified violations;

(2) require a new owner to deposit the rental income of the subject building into an escrow account from which expenditures for scheduled repairs are made; and

(3) may contain other conditions, as the Department finds appropriate, including repayment of Emergency Repair Program expenditures.

(b) In the event the Department determines, after consideration of information described in §13-04 of this chapter, that a stay might be granted but that a further assurance of violation removal is required from the new owner, a stay may be granted on the condition that the new owner accept service of a summons and complaint or a summons with notations and agree to allow the agreement described in §13-06(a) above to be entered in the New York City Civil Court as an order of that court.

(c) If the Department reasonably concludes from the data submitted that the new owner will acquire additional

funds, or may be able to acquire the necessary financing from a particular lending institution or type of lending institution to which the new owner has not applied, the Department may require the new owner to make one or more applications for such financing as a condition precedent to the granting of a stay. The Department shall grant an interim stay sufficient in length for a reply, in the ordinary course of business, to any such application upon the condition that the new owner shall inform the Department of such a reply within five (5) days of its receipt. The Department shall make a final determination as to whether a stay shall be granted upon receiving such information or upon an expiration of the interim stay.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-07 Extension of Stay.

In the event a new owner shall apply for an extension of a stay previously granted, the Department may grant such stay if the new owner:

(a) Makes an application for such extension at least five (5) days prior to the expiration of the correction date set forth in the agreement described in §13-06 of this chapter;

(b) Clearly demonstrates to the Department that:

(1) the inability to correct in a timely manner was caused by circumstances substantially beyond the control of the new owner, or that the impediments were not reasonably foreseeable at the time the new owner applied for and was granted the original stay;

(2) no course of action, other than the one undertaken by the new owner could have achieved correction within the time set forth in the original stay agreement; and,

(3) the new owner has devised a reasonable course of action which he or she intends to pursue if an extension of the stay is granted by the Department, which course of action would remove or circumvent any impediments to correction within the time allowed for an extension of the stay;

(c) Submits any data or information requested by the Department which may include the following:

(1) any information described in §§13-05 or 13-07(b) of this chapter;

(2) documentation of the actions taken to achieve correction, including receipted bills and/or cancelled checks for any work performed or materials supplied;

(3) a statement by the new owner as to the impediments to correction which presently exist; or,

(4) such additional information of any nature as the Department may request to assist it in making a determination as to whether and how long an extension in the stay should be granted; and

(d) Executes an agreement prepared by the Department which sets forth an exact schedule of removal of all violations for which the new owner is seeking an extension of a stay and in which the new owner acknowledges the new dates for correction and his or her responsibility to correct by those dates and, where applicable or required, consents to the extension agreement being entered as an amendment to an order of the New York City Civil Court.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-08 Revocation of Stay and Effect Thereof.

(a) The Department shall have the power to revoke a stay or an extension of a stay by notice to the new owner given by certified mail, return receipt requested, in the event of: (1) discovery of misrepresentation or fraud in an application for a stay or an extension of a stay; or,

(2) failure by a new owner to adhere to the terms of any part or all of either an agreement for a stay described in §13-06 of this chapter or an agreement for an extension of a stay described in §13-07.

(b) In the event that the Department revokes a stay or an extension of a stay:

(1) the new owner shall be liable for full civil penalties as provided by law; and,

(2) such revocation shall not affect a new owner's responsibility to remove violations at the subject building, and, where an agreement executed under §§13-06 or 13-07 of this chapter has been entered as an order of the New York City Civil Court, the schedule of removal of violations contained therein.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-09 Effect of Compliance.

If the new owner properly and substantially corrects the violations for which a stay is granted, the Department may, in its discretion, recommend to the Office of the Comptroller waiver of any potential causes of action for civil penalties which have accrued pursuant to the Housing Maintenance Code for the violations which have been corrected pursuant to the stay agreement. If the Office of the Comptroller approves such waiver, a written statement of such waiver, signed and dated by the person making such waiver and indicating the Comptroller's approval, shall be made part of the records of the Department. Any such waiver shall be binding and irrevocable.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-10 Severability.

In the event that any section or portion of this chapter shall be held invalid or unenforceable for any reason, it shall not in any way invalidate, affect or impair the remaining sections of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 14-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 14 RENT SETTING AND INCREASES TO TENANTS IN DIVISION OF ALTERNATIVE MANAGEMENT PROGRAM BUILDING*1

§14-01 General Provisions.

(a) All notices required by this chapter shall be in English and Spanish.

(b) For the purposes of this chapter, unless the context indicates otherwise, the following definitions apply:

DAMP. "DAMP" shall mean to the Division of Alternative Management Programs, or any successor division, of the Department of Housing Preservation and Development.

DAMP Lessee. "DAMP Lessee" shall mean a person or entity with whom HPD has entered into a lease for the management of a building under any DAMP Program.

DAMP Programs. "DAMP Programs" shall mean the programs administered by DAMP.

DAMP Program Director. "DAMP Program Director" shall mean the individual at HPD responsible for the operation of an individual DAMP Program or his or her designee.

Room. "Room" shall mean the basic living space of a dwelling unit (i.e. living room, kitchen, dining room, and bedroom). Each bathroom shall be considered as one-half of a room. In studio apartments or apartments in which the kitchen (or kitchenette) and living area occupy the same space, that space shall be considered as two Rooms.

Tenant. "Tenant" shall mean a residential tenant of record occupying a dwelling unit pursuant to a lease with the City or with a net lessee which has entered into a net lease with the City for the building in which such dwelling unit is

located. Other residential occupants, such as squatters and licensees, are not Tenants. Non-residential tenants or occupants, such as those who occupy space for retail, commercial, manufacturing, or community facility purposes, are not Tenants.

(c) Unless otherwise provided in this title, the provisions of this chapter govern the procedures for setting and increasing rents for Tenants of City-owned buildings participating in DAMP Programs.

(d) No Tenant shall receive more than one rent increase within a twelve-month period unless additional increases in the maximum rental charge-per-Room are requested or approved by no fewer than sixty percent (60%) of the Tenants.

(e) DAMP shall assist eligible Tenants in applying for existing rental assistance programs.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. (Note: subds. (c), (d), (e) so designated by Editor to avoid having 2 subds. (b)). [See Chapter 14 footnote]

Section in original publication July 1, 1991.

Subd. (a) amended City Record May 14, 1999 §1, eff. June 13, 1999. (Note: this subd. (a) was bracketed out of the rule in Nov. 7, 2001 amendment)

Subd. (b) DAMP definition amended (as former subd. (f)) City Record May 14, 1999 §2, eff. June 13, 1999. [See T28 §21-22 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended rules reflect current procedures employed by HPD.

28 RCNY 14-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 14 RENT SETTING AND INCREASES TO TENANTS IN DIVISION OF ALTERNATIVE MANAGEMENT PROGRAM BUILDING*1

§14-02 Initial Rent Setting.

(a) To facilitate a particular building's operation and as a condition of admission to a DAMP Program, the appropriate DAMP Program Director may establish a minimum per Room rent level for all dwelling units in such building.

(b) The determination to establish a minimum per Room rent level for all dwelling units in a particular building shall be based on the DAMP Program Director's estimate of the maintenance and operating expenses of the particular building upon admission to a DAMP Program. The DAMP Program Director shall consider the existing rent roll for the particular building or project, the number of vacant dwelling units at the time of admission to a DAMP Program and the maintenance and operating expenses incurred by other buildings presently or previously in that or other DAMP Programs.

(c) The DAMP Program Director shall notify each Tenant that the particular building has been accepted into a DAMP Program, the effective date of entry, to whom rent payments are to be made after that date, and what the initial rent for the dwelling unit will be upon entry and shall provide information on any rental assistance which may be available to the Tenants and the procedures to apply for such assistance. The notice shall be in writing and sent by regular mail to the affected Tenants at least thirty (30) days before the date of entry into a DAMP Program.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 14 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended rules reflect current procedures employed by HPD.

Rules of the City of New York

28 RCNY 14-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 14 RENT SETTING AND INCREASES TO TENANTS IN DIVISION OF ALTERNATIVE MANAGEMENT PROGRAM BUILDING*1

§14-03 Interim Rent Increases.

(a) One or more interim rent increases may be necessary to raise rents to a level sufficient to cover the maintenance and operating expenses of a particular building during the period of City ownership and alternative management.

(b) The DAMP Lessee may prepare a request to the appropriate DAMP Program Director for an interim increase in the rent level per Room for Tenants of a particular building. If the DAMP Lessee fails to submit a request for an interim rent increase, the DAMP Program Director may propose an increase in the rents in accordance with the provisions of these rules.

(c) The DAMP Lessee or DAMP Program Director shall prepare a statement of the maintenance and operating expenses which form the basis for the rent increase, a history not to exceed the prior year of billing and collection of rents in the particular building and a current rent roll. The statement shall contain:

(1) the past actual expenditures for maintenance and operation of a particular building for the period it has participated in a DAMP Program for a period not to exceed the prior year, including, but not limited to: the cost of fuel for heat and hot water, expenditures for common space utilities, repair and maintenance, supplies, insurance, and custodial services; and fees for management and professional services.

(2) a projection of maintenance and operating expenses of the particular building for a period of one (1) year following the effective date of the rent increase, including, but not limited to: the cost of fuel for heat and hot water; expenditures for common space utilities, repair and maintenance, supplies, insurance and custodial services; and fees for

management and professional services to be rendered.

(3) a calculation of the rent required on a per room per month rate and per dwelling unit per month rate.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 14 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended rules reflect current procedures employed by HPD.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 14-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 14 RENT SETTING AND INCREASES TO TENANTS IN DIVISION OF ALTERNATIVE MANAGEMENT PROGRAM BUILDING*1

§14-04 Disposition Rent Increases.

(a) Disposition rent increases are necessary to raise rents to a level sufficient to cover the maintenance and operating expenses in a particular building during the first year of private ownership.

(b) The DAMP Lessee may prepare a request to the appropriate DAMP Program Director for a disposition rent increase for Tenants to take effect prior to the sale of the particular building.

(c) If a request for a disposition rent increase is not submitted, the DAMP Program Director may propose a disposition rent increase in accordance with the provisions of this chapter.

(d) The DAMP Lessee or DAMP Program Director shall prepare a statement of estimated maintenance and operating expenses which form the basis for the disposition rent increase, a history not to exceed the prior year of billing and collection of rents in the particular building and a current rent roll. The statement of estimated maintenance and operating expenses shall contain:

(1) the past actual expenditures for maintenance and operation of a particular building, including, but not limited to: the cost of fuel for heat and hot water, payments for common space utilities, repair and maintenance, supplies, insurance and custodial services; fees for management and professional services; and a capital and/or operating reserve, if any.

(2) a proposed budget for the maintenance and operation of the particular building setting forth the projected

operating expenses during the first year of private ownership, including, but not limited to: the cost of fuel for heat and hot water, expenditures for common space utilities, repair and maintenance, cleaning supplies, insurance, custodial services, fees for management and professional services, a reserve for vacancies and uncollectible debts, a capital and/or operating reserve, if any, real estate taxes, water and sewer charges and debt service.

(3) a calculation of the rent required on a per Room per month and per dwelling unit per month rate.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 14 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended rules reflect current procedures employed by HPD.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 14-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 14 RENT SETTING AND INCREASES TO TENANTS IN DIVISION OF ALTERNATIVE MANAGEMENT PROGRAM BUILDING*1

§14-05 Notice of Interim and Disposition Rent Increases.

(a) All Tenants who are subject to the proposed increase will be sent a notice in writing of the proposed rent increase by regular mail, with a duplicate copy delivered to the Tenant's apartment not less than sixty (60) days before the anticipated effective date of the rent increase. The date of notice shall be deemed to be either five (5) days from the date of postmark, or the actual date of delivery to the Tenant's apartment, whichever is earlier. Each affected Tenant will have thirty (30) days from the date of the notice to submit by mail to DAMP or by hand-delivery to the place designated by DAMP in the notice written comments on the proposed rent increase. The date of submission shall be deemed to be five (5) days after the date of postmark or the actual date of the hand-delivery receipt, whichever is earlier. During the comment period, the financial data pertinent to the proposed rent increase shall be available for inspection upon request.

(b) The notice of proposed rent increase in DAMP Programs shall be addressed to each affected Tenant and shall include the proposed new rent level, the statement of estimated maintenance and operating expenses upon which the rent increase was calculated, the anticipated effective date of the rent increase, and shall provide information on any rental assistance which may be available to the Tenant and the procedures to apply for such assistance. The notice of proposed rent increase in DAMP Programs shall also inform each affected Tenant of the opportunity and procedure for commenting on the proposed rent increase by submitting written comments.

(c) A final notice of rent increase shall be addressed to each affected Tenant and sent by regular mail with a duplicate copy delivered to the Tenant's apartment, at least thirty (30) days before the effective date of the rent increase, after consideration by the DAMP Program Director of any written comments submitted by the Tenants of a particular building participating in a DAMP Program. The final notice of rent increase shall include the specific amount of the rent

increase and its effective date, and shall provide information on any rental assistance which may be available to the Tenant and the procedures to apply for such assistance.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 14 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended rules reflect current procedures employed by HPD.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 14-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 14 RENT SETTING AND INCREASES TO TENANTS IN DIVISION OF ALTERNATIVE MANAGEMENT PROGRAM BUILDING*1

§14-06 Alternative Rent Setting.

Notwithstanding anything to the contrary contained in this chapter, and subject to the notice and other procedural requirements of this chapter, DAMP may set rents for a particular building based on a per square foot per apartment standard instead of a per Room per apartment standard. In addition, if a project consists of more than one building in a common ownership entity, rents may be set based on economic estimates of the maintenance and operating expenses of the multi-building project instead of on economic estimates relating to the maintenance and operating expenses of an individual building.

HISTORICAL NOTE

Section renumbered and amended (formerly §14-07) City Record Nov. 7, 2001 eff. Dec. 7, 2001.

(Former §14-06 Rental Assistance was repealed). [See Chapter 14 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended rules reflect current procedures employed by HPD.

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***** Current through December 2009 ****

28 RCNY 15-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 15 SELF-INSPECTION OF CENTRAL HEATING PLANTS

§15-01 Definitions.

Central heating plant. The term "central heating plant" as used in this chapter shall include all portions of a central heating or hot water system that are located within the public parts of a building.

Qualified persons.

(1) Plumber licensed by the City of New York.

(2) Oil burner installer licensed by the City of New York.

(3) High pressure boiler operating engineer licensed by the City of New York.

(4) Portable high pressure boiler operating engineer licensed by the City of New York.

(5) Boiler inspector holding a certificate of competence from the New York State Department of Labor.

(6) Certified employee of a public utility.

(7) Energy auditor certified as oil burner or system replacement auditor qualified by the oil heating institutes of New York in accordance with training qualifications set by the Public Service Commission for purposes of the Home Insulation and Energy Act.

(8) Employee of the owner holding a certificate of fitness for pre-heated oil burners issued by the Fire Department

of the City of New York.

(9) Employee of Department of Housing Preservation and Development's Office of Energy Conservation holding a certificate of competence issued by the Assistant Commissioner of that office and engaged by the owner of the premises to conduct self-inspection.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 15-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 15 SELF-INSPECTION OF CENTRAL HEATING PLANTS

§15-02 Form of Report.

The report shall be filed on forms to be prescribed by the department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 15-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 15 SELF-INSPECTION OF CENTRAL HEATING PLANTS

§15-03 Preliminary Certifications.

(a) The report shall be submitted with a certification by the person preparing the report that such person is qualified pursuant to this chapter.

(b) If the person preparing the report is an employee of a public utility, the report shall contain a certification by a supervisor of the employee that the utility has determined the employee is competent to perform the required tests and inspections.

(c) If a license or certificate holder is assisted in preparing the report by an employee, the license or certificate holder shall certify that such employee, is competent to perform the assigned tasks and indicate which tasks were performed by such employees.

(d) Notwithstanding the foregoing, inspections by Building Department personnel or by a duly authorized insurance company in conformance with §27-793 of the Administrative Code shall be acceptable in lieu of the self-inspection by a qualified person as defined in §15-01 "qualified persons" of this chapter provided the owner certifies as to the existence of such an inspection.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 15-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 15 SELF-INSPECTION OF CENTRAL HEATING PLANTS

§15-04 Certification by the Owner.

Such report shall be submitted with a certification by the owner that the person preparing the report is qualified under the terms of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 15-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 15 SELF-INSPECTION OF CENTRAL HEATING PLANTS

§15-05 Certification by the Department.

Upon the filing of a certified report of an inspection of a central heating plant, an employee of the department shall inspect such report and, if the report has been prepared by a qualified person under the terms of this chapter and the required certifications have been submitted, he or she shall prepare and file among the department's records a certificate stating that the report was prepared by a qualified person, unless the department determines that the person preparing the report is not in fact a qualified person under the terms of these regulations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 15-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 15 SELF-INSPECTION OF CENTRAL HEATING PLANTS

§15-06 Administrative Procedures.

(a) Unless a postponement is granted in the manner provided below such certified report is required to be filed on or before October 15th of each year.

(b) On or before October 15th an owner may request an extension of the time to file a report and to correct any defects disclosed in the report. Such application must be verified and must set forth an acceptable explanation for the applicant's inability to file or correct by October 15th. The department shall treat such application in the same manner as an application for a postponement made pursuant to §27-2117(a) of the Housing Maintenance Code. The department shall not grant a postponement requested after October 15th.

(c) After the date on which the report is required to be fried and until the date set forth on the notice of violation as the date by which the violation must be corrected, the owner may file the report and the department shall deem the violation corrected on the date that an employee of the department certified the report in the manner provided in §15-05 of this chapter. Notwithstanding the foregoing, the department shall maintain the violation of its records with a notation of the date of the report's certification by the department, until the May 31st following the year in which the report was to be filed.

(d) After the date set forth on the notice of violation as the date by which the violation must be corrected, the owner may file such report and the department shall enter a notation in its records of the date on which such report was certified by the department. After the date of certification by the department, the per diem penalty shall be stayed. The department shall maintain the violation on its records, with a notation of the date of the report's certification by the department, until May 31st following the year in which the report was to be filed.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 16-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 16 ACCESS TO BOILER ROOMS IN MULTIPLE DWELLINGS

§16-01 Inspection Access.

The owner of every multiple dwelling shall have the area, where the building's heating system is located, readily accessible to members of the department to make inspections pursuant to the Housing Maintenance Code. In the event such area is kept under lock, a key shall be kept on the premises at all times with such person as the owner shall designate; however, if there is a person residing on the premises who performs janitorial services, such person shall hold the key. The owner shall post two notices naming such designated person and his location.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 16-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 16 ACCESS TO BOILER ROOMS IN MULTIPLE DWELLINGS

§16-02 Notices.

The notices in §16-01 above:

(a) shall read: Key to heating system area lock is located at _____;

(b) shall designate the apartment and person in possession of the key;

(c) shall have letters not less than three-sixteenths of an inch in height;

(d) shall be of sufficient size to accommodate the required lettering and to provide a margin of not less than one-fourth inch about the lettering on all sides;

(e) the letters and the background of the notice shall be of contrasting colors;

(f) shall be of metal, plastic or decal;

(g) shall be placed preferably over the mailboxes but, in any case, shall be conspicuously displayed in a prominent location in the entrance hall; a second notice shall be placed on the entrance door of the locked area where the building's heating system is located;

(h) shall be between 6 feet and 8 feet above the floor;

(i) shall be maintained free of damage or defacement.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 17-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 17 AMOUNTS TO BE FILED AS TAX LIENS PURSUANT TO THE HOUSING MAINTENANCE CODE

§17-01 Scope.

This chapter governs administrative determinations and hearings pursuant to Article 8 of Subchapter 5 of Chapter 2 of Title 27 of the Administrative Code (Housing Maintenance Code). It is the purpose of this chapter created herein to effect uniform procedures for the: (a) notification of owners and other persons of emergency conditions and the Department's intent to make repairs; (b) maintenance of records required by Article 8 of Subchapter 5 of Chapter 2 of Title 27 of the Administrative Code; and (c) implementation of recoupment procedures required by Article 8 of Subchapter 5 of Chapter 2 of Title 27 of the Administrative Code. This chapter is issued pursuant to §27-2092 of the Administrative Code to insure that such procedures are conducted in a lawful, orderly and fair manner, and are designed to provide all interested persons with the maximum feasible notification, opportunity to act and opportunity to be heard.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 17-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 17 AMOUNTS TO BE FILED AS TAX LIENS PURSUANT TO THE HOUSING MAINTENANCE CODE

§17-02 Definitions.

In this chapter, the following terms shall have the meanings specified:

Commissioner. "Commissioner" shall mean the Commissioner of Housing Preservation and Development or a person designated by him to exercise the powers conferred herein.

Department. "Department" shall mean the Department of Housing Preservation and Development.

Departmental representative. "Departmental representative" shall mean a person designated by the Commissioner to present before a Hearing Officer the evidence as to repairs performed at the subject premises and the lawfulness and propriety of those repairs.

Emergency condition. "Emergency condition" shall mean a condition dangerous to human life and safety or detrimental to health.

Hearing. "Hearing" shall mean a hearing conducted pursuant to §17-05 of this chapter.

Hearing officer. "Hearing officer" shall mean an individual appointed pursuant to §27-2092 of the Administrative Code to hear and recommend to the Commissioner determinations required by this chapter and by Article 8 of Subchapter 5 of Chapter 2 of Title 27 of the Administrative Code of the Housing Maintenance Code.

Objecting party. "Objecting party" shall mean any person having a substantial interest in the subject premises who

has made a proper objection to a Statement of Account.

Owner. "Owner" shall be as defined by §4(44) of the Multiple Dwelling Law and §27-2004(a)(45) of the Administrative Code.

A substantial issue of fact. "A substantial issue of fact" shall arise when the documentary evidence produced by an objecting party is sufficient to rebut the presumption of validity of the Department's records or the lawfulness of the repairs made.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 17-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 17 AMOUNTS TO BE FILED AS TAX LIENS PURSUANT TO THE HOUSING MAINTENANCE CODE

§17-03 Notice to Owner or Other Persons of Intent to Do Emergency Repair.

(a) **Notice to owner.** Upon certification of an emergency condition at any dwelling, the Department shall give notice to the owner, in the manner prescribed in §17-03(b) of said emergency condition and its intention to repair the same unless the owner immediately remedies said condition. However, nothing contained in this subdivision (a) shall be construed to create a higher duty to notify owners than is otherwise required by statute or case law.*1

(b) **Method of notice.** Notice may be by any method reasonably calculated to apprise the owner of the emergency condition prior to the time the Department actually repairs it. Such methods include, but are not limited to, telephone, regular mail, special delivery, or certified mail.

(c) **Notice to owner of multiple dwelling.** In any multiple dwelling where the owner has registered a managing agent, notification of emergency conditions pursuant to §17-03(a) above may be made upon said registered managing agent.

(d) **Notice to mortgagee or lienor.** Any mortgagee or lienor who wishes notification of emergency conditions existing at a particular dwelling and of the Department's intention to repair said condition may file with the Emergency Services Division of the Department a statement on forms supplied by the Department. Such mortgagee or lienor who shall so register shall receive the same notice afforded to the owner pursuant to §17-03(b) herein.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * As in the case of 300 West 154th Street Realty Co. v. Department of Buildings of the City of New York 26 N.Y. 2d 538, 311 NYS 2d 899 (1970) the Commissioner will not feel obligated to notify owners where there is an extreme emergency or where the emergency condition is in the actual control or operation of the owner; it is the purpose of the Commissioner to notify owners in all cases.

28 RCNY 17-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 17 AMOUNTS TO BE FILED AS TAX LIENS PURSUANT TO THE HOUSING MAINTENANCE CODE

§17-04 Maintenance of Records.

(a) **Maintenance of building records.** There shall be filed in the office of the Department a record of all work caused to be performed by or on behalf of the Department which would give rise to a lien under §27-2144 of the Administrative Code. Such records shall be kept on a building by building basis. Such records will be accessible during business hours at the office of the Emergency Services Division of the Department upon proper application.

(b) **Maintenance of record of work order.** Within thirty (30) days after the issuance of a purchase or work order to cause a repair to be made by or on behalf of the Department, which would give rise to a lien under §27-2144 of the Administrative Code, such order shall be entered on the records of the Department. Such records shall be accessible during business hours at the office of the Emergency Services Division of the Department upon proper application.

(c) **Filing of certificate.** Upon the completion of a repair the Department shall cause a certificate pursuant to Article 8 of Subchapter 5 of Chapter 2 of Title 27 of the Administrative Code to be filed, setting forth the work done and the expenses incurred and certifying that such expenses were necessary and proper in the exercise of its lawful powers.

HISTORICAL NOTE

Section in original publication July 1, 1991.

28 RCNY 17-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 17 AMOUNTS TO BE FILED AS TAX LIENS PURSUANT TO THE HOUSING MAINTENANCE CODE

§17-05 Determination of Definitely Computed Amount.

(a) **Statement of account.** Whenever the Department has incurred expenses for the repair of a dwelling or for the elimination of any dangerous or unlawful conditions therein, pursuant to this article or any other provision of the Administrative Code, it may serve upon the owner or the registered managing agent at his address registered with the Department in the manner provided in §27-2095 of the Housing Maintenance Code a statement of the expense incurred including administrative fees and sales tax and a demand for payment thereof. If the owner does not within thirty (30) days of service of such statement, notify the Department in writing of his objection to the statement of expenses or any individual item therein, such owner or his successor in interest may not in any subsequent judicial or administrative proceeding contest any item contained in such statement. Such objection shall specify the items objected to and the nature of such objections and shall include any documentary evidence supporting such claim. Those items not specifically objected to shall be deemed admitted.

(b) **Failure to object.** Upon the failure to object in writing within thirty (30) days to the Statement of Account, such sum shall be considered definitely computed.

(c) **Determination to be made upon receipt of objection.** Within a reasonable time after receipt of a written objection to the Statement of Account, the Commissioner shall make a determination of the sums lawfully expended:

(1) Upon receipt of an objection to the Statement of Account, the Department shall issue to the objecting party a notice stating that a determination is to be made and specifying a date by which additional evidence supporting the objection may be submitted.

(2) The Commissioner shall make a determination based on all the evidence received from the objecting party as well as the records of the Department.

(3) After the Commissioner has made a determination he shall inform the objecting party of such determination in writing and state the reasons therefor. Such determination shall become final and the amount definitely computed when no application for judicial review has been made in the time and manner provided by law.

(d) **Determination to be made on hearing.** (1) Where the Commissioner determines that substantial issues of fact are raised which cannot be determined by documentary evidence, a Hearing Officer shall hold a hearing pursuant to §17-05(d) of these regulations as regards such question of fact.

(2) Persons appointed by the Commissioner pursuant to this chapter shall have the duty to conduct fair, impartial, and informed hearings, to maintain order and avoid unnecessary delay. They shall have all powers necessary to achieve these ends, and all powers granted to the Department by §§27-2091 and 27-2092 and Article 8 of Subchapter 5 of Chapter 2 of Title 27 of the Housing Maintenance Code, including the following powers:

(i) To hold hearings and make recommendations, specify and modify the course, time, and place of the hearing and regulate the conduct of parties or counsel;

(ii) To call or hold conferences before, during, or after the hearing, on or off the record, for simplification of issues or any other purpose;

(iii) To sign and issue any orders relating to the proceeding on its own motion or on motion of any party, including but not limited to orders of consolidation, severance, inspection, subpoena, and adjournment, and to rule upon the objections to motions for such orders or objections to the orders themselves;

(iv) To administer oaths and to take testimony;

(v) To rule upon offers of proof, motions, and objections, to receive evidence, to determine the order of proof, and to take any actions or issue any order which will prevent surprise at the hearing;

(vi) To question witnesses; and

(vii) To present a written recommendation to the Commissioner as to the definitely computed amount of monies expended at the premises by the Department.

(3) The Commissioner may appoint himself, or any other person, to serve as a Hearing Officer.

(4) (i) The Department shall issue a notice of hearing which shall include:

(A) a date, time and place scheduled for the hearing;

(B) the appointment of a Hearing Officer;

(C) a place and method for service of applications for orders and subpoenas on the Hearing Officer;

(D) the name, business address and telephone number of the Department's representative;

(E) a statement informing the party of the consequences of default pursuant to subparagraph (4)(ii) of this section and

(F) his right to be represented by counsel. The notice of hearing shall be served on the objecting party as provided by §27-2095 of the Administrative Code.

(ii) Should the objecting party fail to appear at the hearing after being properly notified pursuant to §17-05(d)(4)(i) the Hearing Officer shall recommend a determination to the Commissioner based upon the objection and other evidence submitted by the objective party as well as the records of the Department.

(5) (i) All motions made prior to a hearing shall be

(A) made in writing;

(B) supported by affidavits or other documentary evidence;

(C) served upon all parties; and

(D) filed with the Hearing Officer, with copies of affidavits of service upon the other parties at least ten days before the hearing unless the Hearing Officer permits a motion to be made at a later time in the proceedings. Responses to written motions shall be made within five (5) days after service of the motion, unless the Hearing Officer prescribes another period in an order served with the motion.

(ii) The Hearing Officer may at any time call a conference to consider any motion and dispose of the motion after the conference. The Hearing Officer may reserve decision on any motion made under this subdivision (d) until, during, or after the hearing in which case objection shall be allowed at the hearing. The Hearing Officer may dispose of such motion in the recommendation or order following the hearing, provided, however, that a motion for an adjournment, for a change of parties or for a subpoena shall be ruled upon prior to the submission of evidence at the hearing.

(6) (i) Subpoenas, including subpoenas duces tecum as they are defined in the Civil Practice Law and Rules shall be issued only by the Hearing Officer, in the name of the Commissioner.

(ii) Subpoenas, shall be served as specified in the Civil Practice Law and Rules and shall be accompanied by such fees as may be required by law. When the Hearing Officer issues a subpoena the Hearing Officer may direct the party seeking the issuance of the subpoena to serve such subpoenas and pay such fees.

(iii) Any party or person objecting to or seeking recision or modification of a subpoena or a subpoena duces tecum must serve written objection on the Hearing Officer within five (5) days from the date of service, or at the hearing, whichever is sooner.

(7) All relevant material and reliable evidence shall be admitted which bears upon the propriety and lawfulness of the sums expended including but not limited to the existence of dangerous or emergency conditions, notification of owner, where necessary, performance of the repair by the Department's contractor and propriety and amount of the expenses.

(8) (i) After due consideration of the evidence and arguments the Hearing Officer shall make a written recommendation to the Commissioner in which he shall detail his recommendations and the reasons therefor.

(ii) The Commissioner shall determine the sums lawfully expended based on the recommendations of the Hearing Officer. He shall inform the objecting party of such determination in writing and the reasons therefor. Such determination shall become final when no application for judicial review has been made in the time and the manner provided by law.

(iii) Such determination shall be part of the official record of the Department and shall be available for public inspection.

HISTORICAL NOTE

Section in original publication July 1, 1991.

28 RCNY 18-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 18 RELOCATION PAYMENTS AND SERVICES

§18-01 Services to Persons Temporarily Displaced by Vacate Orders and Payment of Fees to Persons Providing Substitute Permanent Residences to Persons thus Displaced.

(a) **Definitions.** The following capitalized terms used in this section shall have the meanings stated below.

Administrative Code. "Administrative Code" refers to the New York City Charter and Administrative Code.

Agency or Department. "Agency or Department" refers to the Division of Relocation Operations, Department of Housing Preservation and Development (HPD), 75 Maiden Lane, New York, NY 10038.

Prepared for Occupancy. "Prepared for occupancy" refers to premises are prepared for occupancy when freed of all hazardous violations classified as hazardous by the Office of Rent and Housing Maintenance pursuant to Article 2 of Subchapter 5 of Chapter 2 of Title 27 of the Housing Maintenance Code, supplied with all appropriate fixtures and appliances, painted, and reasonably cleansed and available for occupancy.

Relocatee. "Relocatee" refers to an individual or a head of household and his/her family, deprived of a permanent residence rented by him/her or them in the City of New York as a direct result of the enforcement of a Vacate Order (as defined in these regulations) and not ineligible for relocation services or benefits under any provision of these regulations or of law. "Family" shall include those persons who permanently resided with a head of household at the time the Vacate Order was issued.

Relocation Manager. "Relocation Manager" refers to an employee of the Department assigned to coordinate and direct the furnishing of relocation services to a particular relocatee.

Site Occupancy Record. "Site Occupancy Record" refers to a written file concerning each relocatee, maintained by the Relocation Manager, recording all pertinent agency actions concerning the relocatee.

Standard Apartment. "Standard Apartment" refers to an apartment satisfying the following criteria:

(i) There may not be more than three (3) hazardous violations as classified by the Office of Rent and Housing Maintenance pursuant to Article 2 of Subchapter 5 of Chapter 2 of Title 27 of the Housing Maintenance Code in the building.

(ii) Floor area of rooms must be adequate for all resident family members as defined in the Administrative Code.

(iii) Absence of vermin infestation, mice, or other pests or a letter from a licensed exterminator certifying that the building is under contract to be serviced monthly.

(iv) Apartment must be self-contained; it may not have any rooms or facilities which can be reached only by going through a public area.

(v) The building must have central heat and hot water.

(vi) There must be a private kitchen or kitchenette within the apartment for the exclusive use of the tenant.

(vii) There must be private and fully enclosed toilet and bathing facilities within the apartment for the exclusive use of the tenant.

(viii) Each room must have a window or adequate light and ventilation.

Suitable Accommodation. "Suitable accommodation" refers to accommodations adequate in size to meet the needs of relocatee and his/her family as defined by §27-2075 of the Administrative Code.

Uninhabitable. "Uninhabitable" refers to substantial structural or other damage due to fire, smoke or water that cannot be or is not remedied within a reasonable time.

Vacate Order. "Vacate Order" refers to any order of a governmental agency requiring occupants of a structure to depart therefrom pursuant to the following:

(i) Health Department vacate orders issued pursuant to §17-159 Administrative Code (relating to orders for housing defects likely to cause disease) or other provision of law;

(ii) Buildings Department vacate orders issued pursuant to §26-101 et seq. of the Administrative Code or other provision of law.

(iii) Fire Department vacate orders issued pursuant to §15-227 of the Administrative Code or other provision of law.

(iv) Code enforcement vacate order issued by the Division of Code Enforcement of HPD.

(b) **Department duties upon issuance of Vacate Order.** Upon receiving notice of a Vacate Order, the Department shall offer temporary shelter to relocatee. The Department may order a relocatee to move from one temporary shelter to another if, in the judgment of the Department this shall facilitate the work of the Department or reduce the costs of temporary shelter payable by the Department. After offering such temporary shelter to relocatee, the Department shall offer temporary shelter to relocatee. The Department may order a relocatee to move from one temporary shelter to another if, in the judgment of the Department this shall facilitate the work of the Department or reduce the costs of temporary shelter payable by the Department. After offering such temporary shelter to relocatee, the

Department shall:

(1) furnish relocatee with a copy of this section in English and Spanish and shall notify him/her of the name, office address and telephone number of the Relocation Manager assigned to the relocatee;

(2) submit an application to the New York City Housing Authority on behalf of the relocatee within seven (7) days after relocatee's entry into temporary shelter;

(3) pay temporary shelter benefits in the amounts provided in subdivision (c) of this section and subject to the other conditions stated in these regulation; and

(4) refer relocatee to at least three Standard Apartments in the borough of relocatee's choice, if available. Copies of this section in English and Spanish shall be posted in the offices of Relocation Managers.

(c) **Temporary shelter benefits.** The Department shall pay the actual cost of temporary shelter up to $12 per day for one adult and $7 per day for each additional person residing with the relocatee in the room or, if suitable substitute shelter is unavailable for these amounts, the Department may pay such additional sums as are necessary to obtain suitable shelter for the relocatee.

(d) **Moving expenses.** Upon moving to suitable permanent accommodations, a relocatee not entitled to payment of moving expenses from another City Agency shall be entitled to reimbursement from the Department of his/her moving expenses to the extent of either of the following:

(1) actual expenses up to $300.00, upon relocatee's submission of a paid bill immediately following the move or;

(2) a scheduled amount based on the number of rooms vacated, as follows:

[See tabular material in printed version]

(e) **Obligations of relocatee.** (1) Unless this section specifically requires otherwise, any notice required to be given by a relocatee must be given in writing to the Relocation Manager.

(2) Relocatee must actively seek out suitable permanent accommodations and report his/her progress to the Relocation Manager weekly or at such longer intervals as the Department shall require.

(3) Prior to moving from temporary shelter to permanent accommodations found by his/her own efforts or to signing a lease for such accommodations, relocatee must notify the Relocation Manager. This notice shall include the address from which relocatee was vacated, the new permanent address and the name of relocatee.

(4) The relocatee has the duty to submit a copy of the Tenant Introduction Letter signed by a landlord, agent or superintendent, to the Department, within three working days of any apartment referral made by the Department and, in the event the relocatee is of the opinion that the accommodations are unavailable, unsuitable or otherwise unacceptable, (s)he shall, at the time of submitting the Letter, specifically state in writing the facts upon which his/her conclusions are based.

In the event the relocatee is of the opinion that the accommodations are unavailable, unsuitable or otherwise unacceptable, (s)he shall specifically state in writing the fact upon which his/her conclusions are based.

(5) The relocatee has a duty to advise the Department whenever (s)he finds permanent accommodations and to keep the Department advised regarding the date of expected occupancy.

(6) The Department is entitled to withdraw its offer and the relocatee is entitled to withdraw his/her acceptance of an apartment if the apartment is not prepared for occupancy within 21 days after the initial acceptance.

(7) After having accepted a unit offered through the efforts of the Department and having been notified that it is prepared for occupancy, the relocatee has a duty to report to the Department in writing, if possible, or orally, within three working days of such notification any facts which in his/her opinion would constitute grounds for a determination that the accommodations have not been prepared for occupancy.

(8) The relocatee has a duty to respond to all reasonable notices for appointments with the Department.

(f) **Non-occupancy in temporary shelter; termination of benefits.** (1) Before an emergency relocatee ceases to reside at his/her assigned temporary shelter accommodations, it shall be his/her duty to notify the Department immediately in writing. The Department shall forthwith terminate temporary shelter benefits.

(2) Whenever an emergency relocatee is absent from his/her temporary accommodations for a period of four consecutive days or more, it shall be his/her duty to inform the Department of the date upon which (s)he will return. The Department shall, during the period of absence, suspend temporary shelter benefits.

(3) Except where an emergency relocatee has notified the Department in compliance with paragraph (1) or (2) above, the Department, whenever it is of the opinion that the emergency relocatee is not residing at his/her temporary shelter accommodations, may suspend temporary shelter benefits upon four days notice. This notice shall advise that the relocatee's temporary shelter benefits, shall be suspended unless (s)he notifies the Relocation Manager during business hours, or the hotel management at other times, of his/her continuing occupancy within four calendar days of the delivery of the notice.

(4) Temporary shelter benefits suspended under the provisions of paragraph (3) above shall be suspended for a period of seven days, at which time such benefits will be terminated unless the relocatee, within that seven day period, has advised the Department during business hours, or the hotel management at other times, of his/her intention to continue in occupancy, in which case the relocatee shall be reinstated.

(5) The provisions of paragraphs (3) and (4) above shall be applied to a relocatee and his/her household only once. Thereafter, the Department may terminate a relocatee's temporary shelter benefits upon four days' notice except where the relocatee has notified the Department of his/her intended absence, as required in paragraph (2) above. Such notice of termination shall advise that the relocatee's temporary shelter benefits shall be terminated unless (s)he notifies the Department during business hours or the hotel management at other times, of his/her continuing occupancy within four calendar days of the delivery of the notice.

(g) **Refusal to relocate; termination of benefits.** (1) Relocatee's temporary shelter benefits shall be terminated after notice and hearing (as provided in subdivisions (i)-(m) of this section upon his/her unjustified refusal of three Standard Apartments or, if the relocatee is to be relocated to a rooming unit, three rooming units which are suitable accommodations, to which (s)he has been referred by the Department unless any of the following is true:

(i) The relocatee has been offered and has agreed to rent an accommodation from New York City Housing Authority, which accommodation is not yet prepared for occupancy.

(ii) An accommodation previously accepted by the Relocatee and not withdrawn by the Department is not prepared for occupancy;

(iii) The Department has failed to process a public housing application expeditiously; or

(iv) Physical incapacity or illness of the relocatee or member of his/her household prevents the relocatee from complying with his/her obligations under subdivision (e) hereof.

(2) A termination hearing (pursuant to subdivisions (i)-(m)) of this section) based on relocatee's unjustified refusal as provided in subdivision (g)(1) above, shall be adjourned for seven days if:

(i) The relocatee has an application for public housing pending with the New York City Housing Authority; and the Authority, through no fault or delay of the relocatee, has not certified, rejected, or given notice of deferral of certification regarding such application; or;

(ii) Other good cause is shown.

(h) **Other grounds of termination.** Relocatee's temporary shelter benefits may be terminated immediately, after notice and hearing (pursuant to subdivisions (i)-(m) of this section) upon occurrence of any of the following:

(1) The relocatee refuses, without good cause, to accept an offer to rent suitable accommodations made by the New York City Housing Authority.

(2) The relocatee refuses, without good cause, to move into accommodations which the relocatee has agreed to rent from the New York City Housing Authority and which are prepared for occupancy;

(3) The relocatee refuses, without good cause, to move into accommodations which were offered through the efforts of the Department which the relocatee has agreed to accept, and which have been prepared for occupancy;

(4) The relocatee has refused without good cause, a request by the Department or by the New York City Housing Authority to provide pertinent information relevant to the agency's relocation efforts or the relocatee's eligibility for benefits and services;

(5) The relocatee has failed without good cause, to comply with the obligation to actively seek out suitable accommodations and to report his/her progress on a weekly basis, as required under subdivisions (i)-(m) of this section above.

(6) The relocatee or any member of his/her household dwelling in temporary shelter has engaged in conduct which threatens the health, safety or property of: other residents, guests or visitors in the facility; city personnel, agents or employees; or of the proprietor of the facility, his/her agents or employees.

(7) The relocatee has made material misstatements or concealed material facts from the Department concerning his/her initial or continued eligibility for relocation services.

(8) The relocatee has available to him/her suitable and habitable permanent accommodations at the time of notice of the intention to terminate.

(9) The relocatee has failed to respond to a notice for appointment with employees of the Department, as required under subdivisions (i)-(m) of this section above.

(10) The relocatee is ineligible for relocation benefits or services:

(i) because (s)he did not in fact dwell in the vacated premises;

(ii) because the vacated premises were not uninhabitable, unless the prior accommodations are no longer available to the relocatee through no fault of his/her own; or

(iii) because (s)he is otherwise ineligible.

(i) **Hearing procedures; notice of hearing and other matters.** Prior to the termination of temporary shelter benefits paid on behalf of any relocatee, the Department shall give relocatee notice of the intended termination and an opportunity to be heard, according to the procedures stated in subdivision (i) and the following subdivisions.

(1) Notice of intention to terminate benefits shall be delivered to relocatee in the manner provided in

subdivision(p) of this section for the giving of notice and within the time stated in subdivision (i)(2) below. This notice shall be given in Spanish and English and shall advise relocatee:

(i) of the date upon which the Department intends to terminate temporary shelter benefits and of the factual and legal basis upon which the Department intends to terminate temporary shelter benefits;

(ii) the time, date and place which the Department will make available for a hearing if requested.

(iii) that if the relocatee desires a hearing, (s)he must make a written request therefor which must be received by the Department at least three days before the date which the Department has indicated it will make available for a hearing; except, in the case of a termination under subdivision (i)(2) below, relocatee's request for a hearing must be received by the Department at least one day before the date which the Department has indicated it will make available for a hearing.

(iv) that for good cause the relocatee may request a change in the time, date and/or place which the department has indicated it will make available for a hearing;

(v) that a timely request for a hearing and appearance at the hearing will stay any intended termination until at least seven days after a hearing officer's decision;

(vi) that, if the relocatee requests a hearing, (s)he has the right to be represented by an attorney or other representative, to provide a translator, to testify, to produce witnesses to testify, to offer documentary evidence, to cross-examine opposing witnesses, and to examine the site occupancy record prior to or at the hearing.

(2) Notice of the hearing shall be served no fewer than seven days prior to the scheduled date of the hearing except that notice of the hearing shall be served no fewer than three days prior to the scheduled date of the hearing when termination is intended by reason of:

(i) threatening conduct of the relocatee or member his/her family as described in subdivision (h)(6) above;

(ii) the fact that relocatee did not dwell in the vacated premises, as provided in subdivision (h)(10) above; or

(iii) the fact that the vacate premises were not uninhabitable, as provided in subdivision (h)(10) above.

(3) Relocatee or his/her attorney or representative shall be entitled upon request to examine his/her site occupancy records at a reasonable time before the hearing.

(j) **Hearing procedures; conduct of hearing.** (1) The hearing shall be conducted by an impartial hearing officer appointed by the Department in accordance with the Manual for Hearing Officers in Administrative Adjudication. The hearing officer shall have the power to administer oaths and shall have no prior personal knowledge of the facts concerning the proposed termination of relocatee.

(2) The hearing shall be informal, all relevant and material evidence shall be admissible and the legal rules of evidence shall not apply. The site occupancy record shall be part of the evidence at any hearing whether or not the Relocation Manager is or can be present. The hearing shall be confined to the factual and legal issues raised in the notice of intention to terminate benefits.

(3) Relocatee shall have a right to be represented by counsel or other representative, to testify, to produce witnesses to testify, to offer documentary evidence, to cross-examine opposing witnesses and to examine the site occupancy record.

(4) For good cause, the hearing may be adjourned by the hearing officer on his/her own motion or at the request of an emergency relocatee or the Department.

(5) The hearing officer shall make a written summary of the proceedings including a statement of the relocatee's oral and written position and shall annex any documentary evidence offered at the hearing in support thereof. The relocatee shall be shown this summary and given the opportunity to object. In the case of a Spanish-speaking relocatee the summary shall be read to the relocatee in Spanish. In the event the objection is not resolved at the hearing, that objection shall be made part of the summary. The relocatee shall promptly be provided with a copy of the completed summary. The hearing officer may, in his discretion, combine this summary with his findings of fact.

(6) The Department will provide adequate translation services for Spanish-speaking relocatees.

(k) **Hearing procedures: decision.** (1) The hearing officer shall render a decision which shall include written findings of fact and shall state the legal basis for any decision to terminate and shall set the termination date in the event that termination is ordered. The decision shall be final absent a timely appeal as described in subdivision (m) below.

(2) A copy of the decision shall be delivered to the relocatee no fewer than seven days prior to the termination date set by the hearing officer, except in the case of termination under subdivision (i)(2) of this section delivery shall be at least 24 hours before termination. Delivery shall be effected in the manner for giving notice provided in subdivision (p) of this section.

(3) In setting a termination date the hearing officer shall take into consideration all the surrounding circumstances, including in appropriate cases:

(i) the ground(s) for the termination;

(ii) the number of offerings of standard apartments to relocatee;

(iii) the relocatee's cooperation with the Department;

(iv) the status of any public housing application;

(v) any delay in the processing of such application that may be due to the Department or the relocatee; and

(vi) the hardship which will result to the relocatee or his/her family.

(4) Notwithstanding any other provision of this section, the hearing officer may not stay termination for a period greater than 14 days after the date of his/her decision, unless the relocatee establishes that the termination would result in exceptional hardship to the relocatee or his/her household.

(l) **Hearing procedures; default.** Failure to appear at the scheduled termination hearing shall result in termination of temporary shelter benefits unless upon written application to the Department, the relocatee establishes either:

(1) That the relocatee was not properly served with a notice of intention to terminate an opportunity for a hearing; or

(2) That the default was excusable and that relocatee has a meritorious defense to the intended termination.

Termination shall be stayed if such written application is made prior to the scheduled date of termination. If termination has occurred, the relocatee may make written application to the Department within four days of termination for temporary accommodations which shall be granted if the relocatee set forth facts establishing either of the grounds set forth above. The Department shall issue and serve the relocatee a notice of intention to terminate and opportunity for a hearing, in accordance with the provisions of subdivision (i) above, except that the hearing shall be scheduled on the third business day after service of such notice and that the relocatee need not make a separate request for such hearing.

(m) **Appeal.** An appeal from a decision of a hearing officer may be made in writing to the Assistant Commissioner

of Division of Relocation Services or his designee provided it is received by the Department within at least five days after the delivery of the hearing officer's decision. The record before the Assistant Commissioner shall consist of the summary of proceedings, the site occupancy record, the hearing officer's decision and any affidavits or documentary evidence or written arguments which the appellant may wish to submit. Termination shall be stayed pending at determination of the appeal. A copy of the decision on appeal will be delivered in the manner for giving notice provided in subdivision (p) of this section. In no event shall termination be ordered during the seven-day period immediately following the delivery of the decision on appeal, except in the case of termination under subdivision (i)(2) of this section, termination shall occur within 24 hours after delivery of notice of an adverse decision on appeal.

(n) **Application for relief.** If, at any time, a relocatee believes he has been or will be harmed by any action of the Department which he believes is in violation of any law or regulation and if no other provision of this section provides an opportunity for a hearing, he may make application for a hearing to the Commissioner of the Department or his designee in writing setting forth the Department's action and the manner in which he will be harmed. Notice of the time, date, and place of the hearing and the hearing procedures will be as set forth in subdivisions (i)-(m) of this section.

(o) **Relocation benefits.** A relocatee may be eligible for relocation payment as described in paragraphs (1) and (2).

(1) **Relocation allowance:** A relocatee shall be awarded a relocation allowance payment as shown on the schedule below if the relocatee satisfies the following criteria:

(i) The relocatee must be certified by the Red Cross, Fire Department as having lost all or most of his/her possessions as a result of a fire or other disaster.

(ii) The relocatee must not be under investigation by the Fire Department in relation to a fire of suspicious origin.

(iii) The relocatee must be moving into an apartment which has been certified by the Department as a standard apartment as defined in §18-01(a) "standard apartment."

[See tabular material in printed version]

Notwithstanding the above:

(iv) A relocatee who moves to a rooming house that is certified by the Department as a suitable accommodation and prepared for occupancy is eligible for a relocation allowance payment of $100.00.

(v) No payment will be made to a relocatee whose temporary benefits have been terminated under subdivisions (f)(3) or (f)(5), (g), or (h) of this section.

(2) **Relocation incentive:** A relocatee shall be awarded a relocation incentive payment, calculated as set forth below, if the relocatee satisfies the following criteria:

(i) The relocatee must be moving from temporary shelter furnished by the Department into a unit found through his/her own efforts which is not a unit listed by the Department offered to relocatee by the Department or a unit under the jurisdiction of the New York City Housing Authority.

(ii) The relocatee must be moving into an apartment that has been certified by the Department as a standard apartment as defined in §18-01(a) "Standard Apartment" or, if into a rooming house, into an accommodation certified by the Department as a suitable accommodation and prepared for occupancy as defined in §18-01(a) "Suitable accommodation" and "Prepared for occupancy."

(iii) The relocatee must not be under investigation by the Fire Department in relation to a fire of suspicious origin.

(iv) Relocatee's temporary shelter benefits shall not have been terminated under subdivisions (f)(3) or (f)(5), (g), or

(h) of this section.

(v) The relocatee must move from temporary housing within thirty (30) days after he/she moved into temporary housing or the date of the Vacate Order, whichever is later.

An eligible relocatee shall receive a relocation incentive payment equal to one-half the difference between (x) the projected cost of temporary housing for the relocatee for a period of forty-five days, and (v) the actual cost of temporary housing for the relocatee for the period he/she stayed in temporary housing provided however, such payment shall not exceed the Maximum Monthly Shelter Allowance schedule as established under Human Resources Administration Department Regulations, Chapter II, §352.3 (2)-1, as set forth below:

[See tabular material in printed version]

The above schedule shall be revised, without further amendment to these whenever HRA amends its Maximum Monthly Shelter Allowance Schedule.

(3) **Disallowance.** Within thirty (30) days of receiving written notification of a disallowance of relocation benefits because an apartment was not a Standard Apartment or, if a rooming unit, was not a suitable accommodation or was not prepared for occupancy, the relocated tenant may furnish, in writing to HPD evidentiary matter indicating the cure of the defect, or in the alternative, the tenant's reason for disagreement with the finding of HPD. Within thirty (30) days of receipt of said documentation from the tenant HPD shall issue its final determination to the tenant, and reasons therefore.

(p) **Notice.** Any notice required under this section to be given by the Department shall be:

(1) personally served on relocatee; or

(2) left with a person of suitable age and discretion in relocatee's place of residence in temporary shelter or other residence; or

(3) placed under the door of relocatee's place of residence and a copy with the desk clerk or other responsible representative of the proprietor or lessee of temporary shelter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The City can recover hotel expenses incurred for relocating tenants who vacated the subject premises pursuant to a vacate order. Moreover, the term "tenant includes the members of the tenant's household who permanently resided with him or her at the time the vacate order was issued. **Retek v. City of New York,** 14 A.D.3d 708, 789 N.Y.S.2d 263 (2d Dept. 2005).

¶ 2. The Department of Housing Preservation and Development has the duty to provide relocation services for a tenant where the displacement of the tenant results from the enforcement of laws or regulations. The regulations promulgated by HPD define the term "relocatee" to include a person deprived of a permanent residence as a result of the enforcement of a vacate order. Thus, where a tenant was required to vacate an illegal basement apartment, HPD was required to offer him temporary shelter, and thereafter to provide relocation services, including referral to at least three other apartments. The court rejected HPD's argument that the occupant of an illegal apartment could not be deemed a permanent resident for purposes of the relocation statute. Cupidon v. Donovan, 8 Misc.3d 1024(A), 803 N.Y.S.2d 17 (Sup.Ct. New York Co. 2005).

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 18-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 18 RELOCATION PAYMENTS AND SERVICES

§18-02 Relocation Assistance to Persons Displaced from City-Owned Dwelling Units by Certain Vacate Orders.

(a) **Application.** Notwithstanding the provisions of §18-01 of this chapter, this §18-02 shall apply to persons residing in City-owned buildings which are subject to a Vacate Order which, by its terms, shall take effect thirty (30) or more days after the date of issuance.

(b) **Definitions.** The following terms used in this section shall have the meaning stated below.

Administrative Code. "Administrative Code" refers to the New York City Charter and Administrative Code.

Agency or Department. "Agency or Department" refers to the Division of Relocation Operations, Department of Housing Preservation and Development (HPD), 75 Maiden Lane, New York, New York 10038.

Prepared for occupancy. "Prepared for occupancy" refers to apartments that are prepared for occupancy when freed of all violations classified as immediately hazardous by the Office of Rent and Housing Maintenance pursuant to Article 2 of Subchapter 5 of Chapter 2 of Title 27 of the Administrative Code, supplied with all appropriate fixtures and appliances, painted, exterminated, if necessary, and reasonably cleansed and available for occupancy.

Relocatee. "Relocatee" refers to an individual or a head of household and his or her family, deprived of a permanent residence rented by the person, household or family in the City of New York as a direct result of the enforcement of a Vacate Order (as defined in these regulations) and eligible for relocation services or benefits under these regulations and any other applicable law. "Family" and "household" shall include those persons who permanently resided with a head of household at the time the Vacate Order was issued.

Relocatee accepts an apartment. "Relocatee accepts an apartment" refers to relocatee has established to the Department that the relocatee has leased an apartment in a privately-owned building; or relocatee has paid the first month rent for an apartment in a City-owned building.

Relocation manager. "Relocation manager" refers to an employee of the Department assigned to coordinate and direct the furnishing of relocation services to a particular relocatee.

Site occupancy record. "Site occupancy record" refers to a written file concerning each relocatee maintained by the relocation manager, recording all pertinent agency actions concerning the relocatee.

Standard apartment. "Standard apartment" refers to an apartment satisfying the following criteria:

(i) There may not be more than three (3) immediately hazardous violations as classified by the Office of Rent and Housing Maintenance pursuant to Article 2 of Subchapter 5 of Chapter 2 of Title 27 of the Housing Maintenance Code, in the building which directly and adversely affect the use of the apartment;

(ii) The number of rooms and the floor area of rooms must be adequate for all resident family or household members and meet the requirements of the Administrative Code;

(iii) There shall be no infestation, by vermin, mice or other pests, or a letter shall be submitted from a licensed exterminator certifying that the building is under contract to be serviced monthly;

(iv) It must be self-contained and may not have any rooms or facilities which can be reached only by going through a public area;

(v) The building must have central heat and hot water;

(vi) There must be a private kitchen or kitchenette within the apartment for the exclusive use of the tenant;

(vii) There must be private and fully enclosed toilet and bathing facilities within the apartment for the exclusive use of the tenant; and

(viii) Each room must have a window or adequate light and ventilation.

Suitable Accommodation. "Suitable accommodation" refers to accommodations adequate in size to meet the needs of relocatee and his/her family as defined by §27-2075 of the Administrative Code.

Vacate Order. "Vacate Order" refers to any order of a governmental agency requiring occupants of a structure to depart therefrom, which order, by its terms, shall take effect thirty (30) or more days after its issuance, pursuant to the following:

(i) Health Department vacate orders issued pursuant to §17-159 of the Administrative Code (relating to orders for housing defects likely to cause disease) or other provision of law;

(ii) Buildings department vacate orders issued pursuant to §26-101 et seq. of the Administrative Code or other provision of law.

(iii) Fire department vacate orders issued pursuant to §15-227 of the Administrative Code or other provision of law

(iv) Code enforcement vacate order issued pursuant to §27-2139 of the Administrative Code by the Division of Code Enforcement or other divisions of HPD.

(c) **Department duties.** (1) Upon receiving notice of a Vacate Order which is applicable to a City-owned building,

the Department shall promptly offer relocation assistance to residential tenants of the building and shall furnish them with a copy of this section in English and Spanish and notify them of the name, office address and telephone number of the Relocation Manager assigned to them. Copies of this section in English and Spanish shall be posted in the office of the Relocation Manager.

(2) The Department shall refer relocatee to at least three (3) Standard Apartments or apartments which may be repaired to be Standard Apartments, which may be located in other City-owned buildings. Such apartments shall, if available, be located in the borough of the relocatee's choice. If the relocatee prefers relocating into a rooming unit, the relocatee shall be referred to rooming units if any are available.

(3) The Department may, in its discretion, provide temporary shelter as provided in subdivision (n) of this section subject to such conditions as the Department may impose.

(d) **Obligations of Relocatee.** (1) The relocatee has the duty of inspecting a dwelling unit to which the relocatee has been referred by the Department within three (3) working days. If the relocatee believes that the accommodations are unsuitable or otherwise unacceptable, the relocatee must give the Department a written description of the specific defects claimed within four (4) working days after the referral.

(2) The relocatee has a duty to advise the Department whenever permanent accommodations are found and to keep the Department advised regarding the date of expected occupancy.

(3) The relocatee is entitled to withdraw his or her acceptance of an apartment if the apartment is not prepared for occupancy within thirty (30) days after initial acceptance. In such an instance, the relocatee shall notify the Department in writing, if possible, or orally, within three (3) working days of the withdrawal of acceptance of an apartment.

(e) **Moving expenses allowance.** (1) **Eligible persons.** A relocatee shall be entitled to a moving expense allowance if the relocatee satisfies the following criteria:

(i) The relocatee is not entitled to payment of moving expenses from another City agency;

(ii) The relocatee must be moving to an accommodation to which the relocatee was referred or which has been approved by the Relocation Manager;

(iii) The relocatee must not be under investigation by the Fire Department in relation to a fire of suspicious origin; and

(iv) The Department has not determined the relocatee to be ineligible pursuant to subdivision (g) of this section of these regulations.

(2) **Moving expense allowance.** An eligible relocatee shall receive the following assistance:

(i) The Department may move the relocatee's belongings at the Department's expense, or

(ii) If the relocatee notifies the Department prior to the date of the move that the relocatee wishes to arrange for moving independently, the Department may grant financial assistance in accordance with a schedule of moving allowances prepared by the agency, which shall provide for an allowance based on the number of rooms vacated as follows:

[See tabular material in printed version]

Such financial assistance shall be:

(A) By credit against future rent if the relocatee is moving into a City-owned building, or

(B) By reimbursement to the relocatee if the relocatee is moving into a building which is not City-owned, provided that prior to such reimbursement relocatee shall submit a paid bill within ten (10) working days following the move.

(f) **Relocation incentive allowance.** (1) **Eligible persons.** A relocatee shall be awarded a relocation incentive payment, calculated as set forth below, if the relocatee satisfies the following criteria.

(i) The relocatee must either (A) accept an apartment to which the relocatee has been referred by the Relocation Manager within 10 days of having been referred to three Standard Apartments by the Relocation Manager and move into that apartment within 10 days of the date on which that apartment is prepared for occupancy; or (B) move within 30 days from the initial verbal or written contact of the relocatee by the Relocation Manager after issuance of the Vacate Order; whichever is later;

(ii) The relocatee must move to an accommodation to which the relocatee has been referred by or which has been approved by the Relocation Manager;

(iii) The relocatee must not be under investigation by the Fire Department in relation to a fire of suspicious origin;

(iv) The Department has not determined the relocatee to be ineligible pursuant to subdivision (g) of these regulations.

(2) **Incentive allowance.** An eligible relocatee shall receive a relocation incentive payment in accordance with the Maximum Monthly Shelter Allowance schedule established under Human Resources Administration Regulations, Chapter II, §352.3(2)-1 as set forth below:

[See tabular material in printed version]

The above schedule shall be revised without further amendment to these regulations, whenever HRA amends its Maximum Monthly Shelter Allowance Shelter.

(g) **Determination of Ineligibility for Benefits.** The Department may determine that a relocatee is ineligible for benefits if:

(1) A relocatee unjustifiably refuses to accept three (3) standard apartments or, if the relocatee is to be relocated to a rooming unit, three (3) rooming units which are suitable accommodations, to which the relocatee has been referred by the Department.

(2) The relocatee has made material misstatements or concealed material facts from the Department concerning the relocatee's initial or continued eligibility for relocation services;

(3) Suitable and habitable permanent accommodations are available to the relocatee at the time of notice of determination;

(4) The relocatee has failed to respond to a notice for appointment with employees of the Department, as required;

(5) The relocatee did not in fact dwell in the vacated premises;

(6) The relocatee, if in temporary shelter, has had temporary shelter benefits terminated under subdivisions (f)(3) or (5), (g) or (h) of §18-01 of these regulations;

(7) The relocatee or a member of the family or household has engaged in conduct which threatens the health, safety or property of the residents, guests or visitors of residents of the building to be vacated or the staff of the Department;

(8) The relocatee was subject to legal action by the Department which is resolved in the Department's favor;

(9) The relocatee has refused, without good cause, a request by the Department to provide pertinent information relevant to the agency's relocation efforts, or the relocatee's eligibility for benefits or services; or

(10) The relocatee is otherwise ineligible.

(h) **Review of agency determination.** (1) **Protest of determination ineligibility.** If it is determined by the agency that the relocatee is ineligible for benefits, the relocatee may, within thirty (30) days of receiving written notification of ineligibility, file with the Assistant Commissioner of the Division of Relocation Services a written protest and request that the determination be reviewed. The relocatee's protest shall set forth the basis for the protest and the reasons claimed as the grounds on which such determination should be reversed. The protest shall be reviewed by the Assistant Commissioner unless the relocatee indicates that he or she desires a hearing or the Assistant Commissioner, in his or her discretion, directs that a hearing be held. Upon receipt of a request for a hearing or if a determination is made that a hearing would be appropriate, the Department shall establish the time, date and place for the hearing and provide notice of the hearing to the relocatee. The provisions of subdivisions (i) to (m) of this section of the regulations shall apply to the notice of hearing and the hearing procedures.

(2) **Other claims for review of an agency action.** In situations other than a determination of ineligibility, if a relocatee believes he or she has been or will be harmed by any action of the Department which the relocatee believes is in violation of any law or regulations, the relocatee may make application for relief to the Assistant Commissioner of the Division of Relocation Operations. The relocatee shall file a written request setting forth the action and the manner in which he or she believes he or she will be harmed. The Assistant Commissioner, in his or her discretion, may issue a determination on the request or direct that a hearing be held on the application. If a hearing is to be held, the provisions of subdivisions (i) to (m) of this section shall apply to the notice of hearing and hearing procedures.

(i) **Hearing procedures: Conduct of hearing.** (1) A hearing held pursuant to subdivision (h) of this section shall be conducted by an impartial hearing officer appointed by the Department in accordance with the Manual for Hearing Officers in Administrative Adjudication. The hearing officer may be an employee of the agency. The hearing officer shall have the power to administer oaths and shall have no prior personal knowledge of the particular facts concerning the denial of benefits or the claim to be reviewed.

(2) The Department shall establish the date, time and place of any hearing and shall provide notice of the date, time and place of the hearing to the relocatee in the manner provided in subdivision (m) of this section at least three (3) days prior to the hearing date.

(3) **A hearing shall be informal.** All relevant and material evidence shall be admissible. Any site occupancy record shall be part of the evidence at any hearing whether or not the Relocation Manager is or can be present. A hearing shall be confined to the factual and legal issues raised in the determination for which review has been sought by the relocatee.

(4) A relocatee shall have a right to be represented by counsel or other representative, to testify, to produce witnesses to testify, to offer documentary evidence to cross-examine opposing witnesses and to examine the site occupancy record.

(5) For good cause, a hearing may be adjourned by the hearing officer on the hearing officer's own motion or at the request of a relocatee or the Department.

(6) A hearing officer shall make a written summary of the proceedings including a statement of the relocatee's oral and written position and shall annex any documentary evidence offered at the hearing in support thereof. The relocatee shall be shown this summary and given the opportunity to object. In the case of a Spanish-speaking relocatee, the summary shall be read to the relocatee in Spanish. In the event any objection is not resolved at the hearing, that

objection shall be made part of the summary. The relocatee shall promptly be provided with a copy of the completed summary. The hearing officer may, in the hearing officer's discretion, combine this summary with any findings of fact.

(7) The Department will provide adequate translation services for a Spanish-speaking relocatee.

(j) **Hearing procedures: decision.** (1) The hearing officer shall render a decision which shall include written findings of fact and shall state the legal basis for any decision. The decision shall be final absent a timely appeal as described in subdivision (l) below.

(2) A copy of the decision shall be mailed or delivered to the relocatee within seven (7) business days after the hearing. Delivery shall be made in the manner for giving notice provided in subdivision (m) of this section.

(3) The hearing officer may take into consideration relevant circumstances, including, in appropriate cases:

(i) The relocatee's cooperation with the Department;

(ii) That the accommodation previously accepted by the relocatee and not withdrawn by the Department is not prepared for occupancy;

(iii) That physical incapacity or illness of the relocatee or member of the family or household prevented the relocatee from complying with the relocatee's obligations under subdivision (d) hereof; and

(iv) The hardship which will result to the relocatee or the family or household.

(k) **Hearing procedures: default.** Failure to appear at a scheduled hearing shall result in dismissal of the claim for review of an agency action unless, upon written application to the Department, the relocatee establishes either:

(1) That the relocatee was not properly served with a notice of hearing; or

(2) That the default was excusable and that relocatee has a meritorious defense to action taken by the agency.

(l) **Appeal of hearings.** An appeal from a decision of a hearing officer may be made in writing to the Assistant Commissioner of Division of Relocation Services or the Assistant Commissioner's designee provided it is received by the Department not less than five (5) days after service of the hearing officer's decision. The record before the Assistant Commissioner shall consist of the summary of the proceedings, the site occupancy record, the hearing officer's decision and any affidavits or documentary evidence or written arguments which the appellant may wish to submit. A copy of the decision on appeal will be delivered in the manner for giving notice provided in subdivision (m) of this section.

(m) **Notice.** Unless this article provides for another method of notice, any notice required under these regulations to be given or served by the Department shall be:

(1) Personally served on the relocatee;

(2) Left with a person of suitable age and discretion at the relocatee's place of residence and mailed to the relocatee; or

(3) Affixed to the door of the relocatee's place of residence and mailed to the relocatee.

(n) **Temporary shelter.** (1) The Department, in its discretion, may provide temporary shelter prior to or after the effective date of the vacate order. The Department may limit the granting of such benefits to situations in which the relocatee has selected a permanent accommodation and the dwelling is not yet ready for occupancy.

(2) The Department, if it provides temporary shelter, shall pay the actual cost of temporary shelter up to $12 per

day for one adult and $7 per day for each additional person residing with the relocatee in the room or, if suitable substitute shelter is unavailable for these amounts, the Department may pay such additional sums as are necessary to obtain suitable shelter for the relocatee.

(3) If a relocatee is provided temporary shelter, the relocatee shall be provided with a copy of §18-01 of these regulations, in English and in Spanish, upon moving into temporary shelter and only the provisions of that section relating to termination of temporary shelter benefits and the obligations of a relocatee in temporary shelter shall apply to the relocatee.

(o) **Waiver.** The Department may waive all or part of the foregoing rules and regulations where the circumstances warrant such exemption. Any waiver to be effective shall require the written approval of the Assistant Commissioner of the Division of Relocation Operations or his or her designee and shall include a specific statement of the reason(s) for such waiver.

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***** Current through December 2009 ****

28 RCNY 18-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 18 RELOCATION PAYMENTS AND SERVICES

§18-03 Finder's Fees.

(a) **General.** Under certain circumstances, the Department will make a payment, termed a "finder's fee," to a person or entity furnishing permanent accommodations to a relocatee. Such payments shall be made pursuant to the provisions of this §18-03.

(b) **Definitions.** The definitions stated in §18-01 of this chapter (concerning relocation assistance (to persons displaced by Vacate Orders) are incorporated into this section unless a contrary definition is indicated.

(c) **Notification of availability of apartment inspection.** A person or entity desiring payment of a finder's fee (a "finder") shall notify the Department of the availability of an apartment for which the fee is sought. Said apartment will be approved as eligible for payment of a finder's fee if, after inspection by the Department, it is determined that:

(1) The apartment is a Standard Apartment.

(2) The neighborhood of the apartment does not, in the judgment of the Department, have an excessive number of abandoned buildings or consist predominantly of vacant land; and

(3) If the apartment has been formed by combining two adjacent apartments, only one kitchen may be left operable; in the other kitchen, the sink and stove must be removed and the gas and water lines capped. An apartment so inspected and approved shall be deemed an "Approved Apartment" and the finder shall be notified whether or not the apartment has been so approved.

(d) **Application for payment of fee.** If a relocatee shall move into an Approved Apartment, the finder may make application to the Department for payment of a finder's fee and payment shall be made in an amount determined pursuant to subdivision (e) below if each of the following shall be established:

(1) the relocatee was referred to the Approved Apartment by the Department; (2) the relocatee is in physical occupancy of the Approved Apartment as certified by his/her Relocation Manager;

(3) a lease with a minimum term of two years must have been executed by a relocatee and the owner of the Approved Apartment and a copy of same has been filed with the Department; and

(4) the Approved Apartment must have been freshly painted and any repairs required by the Department shall have been completed by the finder, provided, however, that an extension of time for said painting or repairs may be granted by the Department if it is established that performance thereof was prevented by the actions or lack of cooperation of relocatee.

(e) **Schedule of finder's fees.** The amount of a finder's fee payable under this section shall be determined according to the following schedule, except as noted in the final sentence of subdivision (e):

[See tabular material in printed version]

The finder's fee otherwise payable under the schedule may be reduced in the discretion of the Assistant Commissioner of Relocation Services if the apartment has more than one bedroom for every two persons in the family of the relocatee moving into the apartment.

(f) **No other fees to be collected by finder.** No broker's fee, apartment fee or fee of any other kind shall be charged to or be collected from relocatee by a finder or anyone affiliated with or claiming through a finder. By acceptance of a finder's fee from the Department, a finder waives any right or claim (s)he or it might otherwise have had to any such fee from relocatee.

(g) **Limitation.** (1) No second finder's fee may be paid for any apartment if a previous finder's fee has been paid for said apartment within six months previous to the date of execution of the lease with the relocatee with respect to whom the second fee is claimed.

(2) No finder's fee shall be paid for any apartment if it is established that:

(i) the prior tenant in the apartment departed prior to expiration of his/her lease; and

(ii) said departure followed harassment by the landlord thereof or termination of services to said apartment.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 18 RELOCATION PAYMENTS AND SERVICES

§18-04 Relocation of Tenants from Public Improvements and Quasi-public Sites and City Assisted Urban Renewal Sites.

(a) **Purpose.** The purpose of this section is to implement for the City of New York the rules and regulations affecting relocation practices and benefit payments for those eligible site occupants who are displaced from public improvement and quasi-public sites or from urban renewal sites which are not federally assisted.

(b) **Definitions.**

Business concern. "Business concern" refers to a corporation, partnership, individual proprietor or other private entity, including a nonprofit organization, engaged in some type of business, professional or institutional activity necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, professional or institution.

City assisted urban renewal site. "City assisted urban renewal site" refers to undertakings and activities of the City of New York in a designated area, under an urban renewal plan as authorized under the provisions of Article 15 of the General Municipal Law, and which is not assisted by the Federal Government.

Displaced person. "Displaced person" refers to any family, individual, or partnership, corporation or association who is displaced or moves from real property, or who moves his personal property from such real property, in or after the date of the acquisition of the real property for the site or project.

Dwelling. "Dwelling" refers to the purpose of determining payments to residential tenants or persons in occupancy

under regulations governing all benefit payments other than moving expenses, the term "dwelling" shall mean the primary place of permanent abode of a person and does not include seasonable or part time dwelling units such as beach houses or vacation bungalows.

Family. "Family" refers to two or more individuals who by blood, marriage, adoption or mutual consent live together as a family unit. For example, two roommates would not be a family, but a couple, who live together as a family, even if not formally married, would be entitled to benefits as if they were married. A certificate of registration as domestic partners in the City of New York shall be evidence of a family relationship for the purposes of this section.

Finder's fee apartment. "Finder's fee apartment" refers to a standard dwelling unit which is provided to the Department of Housing Preservation and Development by any owner, agent or broker for a fee, and into which a relocatee has been moved by the Department.

Furnished room. "Furnished room" is a room rented furnished, usually by the week, which does not have a toilet and bath for the exclusive use of the tenant. Unit must be in conformance with local code standards for boarding houses, or other dwellings for congregate living.

Individual. "Individual" refers to a person who is not a member of a family.

Institutionalized. "Institutionalized" refers to a term to mean the placement of a residential tenant to any hospital, nursing him, or other institution on an indefinite basis.

Property. "Property" refers to tangible personal property, excluding fixtures, equipment and other property which under State or local law are considered real property, but including such items of real property as the site occupant may lawfully remove.

Public housing. "Public housing" refers to housing operated, maintained or leased by the New York City Housing Authority.

Public improvement site. "Public improvement site" refers to an area which the City of New York has condemned for a public use; such public uses may be schools, libraries, hospitals, parks, playgrounds, road widening, police stations, fire houses, etc.

Standard Unit. "Standard unit" refers to one which is decent, safe and sanitary and must:

(i) have a window or adequate light and ventilation in every room.

(ii) have central heat and central hot water system.

(iii) have a kitchen or kitchenette for the exclusive use of the tenant.

(iv) have a fully enclosed bathroom containing toilet and bath for the exclusive use of the tenant.

(v) have no hazardous violations as recorded by the Department of Buildings against the premises.

(vi) be inspected and approved as standard by the Department of Housing Preservation and Development.

(vii) rental should not exceed 25 percent of the relocatee's gross income or within the financial means of the displaced person.

(viii) not be generally less desirable than the acquired dwelling with respect to public utilities, public and commercial facilities, and be reasonably accessible to the displaced persons present or potential place of employment.

(ix) not be overcrowded.

(c) **Basic eligibility conditions for relocation payments.** In order to qualify for benefits as a displaced person all the following conditions must be fulfilled:

(1) The real property in which the person resides or does business must have been acquired by the City of New York; and the person must have moved as a result of its acquisition.

(2) The person must be an occupant of the real property on the date title vested in the City of New York.

(3) Displacement is made necessary by the acquisition of such real property by the City of New York.

(d) **Determinations and appeals.** Determinations by the Commissioner of the Department of Housing Preservation and Development or his designee, shall be final as to payments under these rules and regulations. However, in the event of dissatisfaction by any displaced person, such person shall have the following right of review:

(1) In case of any disputed questions of eligibility or determinations of the amount of a relocation payment, which is not disposed by agreement, the displaced person may request and will receive a review by the Commissioner or his designee, which designee shall not be one who has participated in the original decision.

(2) Upon such review, the displaced person may submit any and all additional material in writing for consideration in the matter.

(3) Such review as provided in paragraph (1) above, must be requested in writing within 30 days of the date of the original determination by the Department. The request shall be sent to Commissioner of the Department of Housing Preservation and Development, 100 Gold Street, New York, N.Y. 10038.

(4) The decision of the Commissioner shall be made in writing to the displaced person making such appeal, which decision shall be final.

(e) **Moving and related expenses.** Whenever the acquisition of real property for a program or project will result or has resulted in the displacement of any displaced person from the required site on or after the effective date of these rules, the head of the Department of Housing Preservation and Development or his designee, shall make a payment to any displaced person upon application as approved by such official for:

(1) The actual reasonable expenses in moving himself, his family, business, or other personal property;

(2) The actual direct loss of tangible personal property incurred as a result of moving or discontinuing a business but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the Department of Housing Preservation and Development, or his designee;

(3) The actual reasonable expense of searching for a substitute business site. The amount of this payment is limited to $500. Payment for expenses related to the finding of replacement housing is not authorized.

(f) **Actual reasonable expenses in moving.** (1) **Allowable expenses.**

(i) Packing and crating of personalty.

(ii) Advertising for packing, crating and transportation as the head of the Department of Housing Preservation and Development or his designee may require.

(iii) Storage of personal property for a period not to exceed 6 months when the head of the Department of Housing Preservation and Development, or his designee, determines that storage is necessary.

(iv) Insurance premiums covering loss and damage of personal property while in storage or transit.

(v) Removal, dismantling and reassembly of machinery, equipment, appliances and other items, not acquired as real property, including reconnection of utilities which do not constitute an improvement to the replacement site, and which were not acquired by the City of New York.

(vi) Such other reasonable expenses as determined by the head of the Department of Housing Preservation and Development, including expenditure incurred by and in behalf of the City incidental to the move.

(2) **Limitations.** (i) When the displaced person accomplishes the move himself, the amount of payment shall not exceed the estimated cost of moving commercially established by the Department of Housing Preservation and Development unless the Department of Housing Preservation and Development determines that documentation submitted by the displaced person justifies a larger amount.

(ii) When an item of personal property used in connection with any business is not moved but sold and promptly replaced with a comparable item, reimbursement shall not exceed the replacement cost minus the proceeds received from the sale, or the cost of moving, whichever is less.

(iii) When personal property used in connection with any business to be moved is of law value and high bulk, and the cost of moving would be disproportionate in relation to the value, in the judgement of the head of the Department of Housing Preservation and Development or his designee, the allowable reimbursement for the expense of moving the personal property shall not exceed the difference between the amount which would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market.

(iv) The owner of an outdoor advertising display who does not receive either a fixture award or a fee award, and who does not conduct a business on the site, shall be entitled only to moving expenses. However, the amount of the moving expense to be paid shall be limited to the less of

(A) The value of the sign or

(B) The actual moving cost.

(v) In the event any tenant who moves chooses to take actual moving expense allowances, the following notice to the Department of Housing Preservation and Development is required:

(A) Residential tenants must provide not less than 5 days written notice with moving estimate before the move takes place of tenant's intention.

(B) Commercial tenants must provide notice of intention to move not less than 30 days nor more than 90 days prior to the commencement of the move, and must submit 3 independent bona-fide estimate or bids at least 15 days prior to the commencement of the move.

(g) **Exclusions from moving expenses and losses.** The following items are excluded from moving expenses and losses:

(1) Cost of moving structures, improvements or other real property in which the displaced person reserved ownership.

(2) Interest on loans to cover moving expenses.

(3) Loss of good will.

(4) Loss of profits.

(5) Loss of trained employees.

(6) Personal injury.

(7) Cost of preparing the application for moving and related expenses.

(8) Modification of personal property to adapt it to the replacement site, except when required by law.

(9) Additional expenses incurred because of living in a new location.

(10) Such other items as the head of the Department of Housing Preservation and Development determined should be excluded.

(h) **Actual direct loss of property by business.** (1) When the personal property other than stock kept for sale is abandoned, the displaced person is entitled to payment for the difference between the in-place value and the amount which he receives from the sale of the item, or the cost of moving, whichever is less.

(2) When the displaced person does not move personal property and claims direct loss, he shall be required to make bonafide effort to sell it.

(3) When personal property is sold and the business reestablished, the displaced person is entitled to payment as provided in §18-04(f)(2)(ii).

(i) **Expenses in searching for replacement business site.** (1) Subject to the limitation herein, the following items are allowed:

(i) Travel costs.

(ii) Reasonable cost for meals and lodging.

(iii) Time spent in searching at the rate of the displaced person's salary or earnings, but not to exceed $10 per hour.

(iv) Broker or realtor fee to locate a replacement business with the advance approval of the head of the Department of Housing Preservation and Development or his designee.

(2) **Limitation on such expenses.** The total amount which a displaced person may be paid for searching expense shall not exceed $500.

(j) **Payments in lieu of moving and related expenses.** (1) **Residential tenants.**

(i) Any displaced person eligible for moving expense payments who is displaced from a dwelling may, in lieu of actual moving expense, elect to accept a fixed moving expense allowance not to exceed $300 according to the following schedule:

(A) **For persons who own furniture:**

No. of Rooms	Amount	No. of Rooms	Amount
1-1/2	$120	5-5/2	$300.00
2-2/2	170	6-6/2	300.00
3-3/2	215	7-7/2	300.00
4-4/2	260	8-more	300.00

(B) **For persons who do not own furniture:**

$25, for the first room and $15 additional for each additional room.

(ii) Every displaced residential tenant who chooses a fixed payment moving expense in lieu of actual moving expense shall also be entitled to a Dislocation Allowance of $200. This Dislocation Allowance is not subject to any set off by the Department of Housing Preservation and Development.

(iii) In the event any residential tenant is required by the Department of Housing Preservation and Development to move to another unit within the same site, whether through emergency or furtherance of clearance, such tenant can at his option elect to receive actual money expenses or the fixed "in lieu of payment. No Dislocation Allowance can be paid for an on-site move.

(2) **Business fixed payment.** Any displaced person otherwise eligible for moving expense payment who is displaced from his place of business may elect to choose one of three types of fixed payments in lieu of actual moving and related expenses:

(i) **Six times the monthly rental.** This choice may be elected by any commercial tenant. The maximum payment if $4,000, the minimum is 400, and such choice replaces actual moving expenses and related expense. It is not necessary to submit moving estimates.

(ii) **"In lieu of" payment.** This choice may be selected by a commercial tenant who satisfies the head of the Department of Housing Preservation and Development, or his designee, that:

(A) The business cannot be relocated without a substantial loss of its existing patronage. Loss of existing patronage to a business must include the following factors: the type of business conducted by the displaced concern; the nature of the clientele of the displaced concern; and the relative importance of the present and proposed location to the displaced business; and

(B) The business is not a part of a commercial enterprise having at least one other establishment not being acquired by the City of New York, which is in the same or similar business; and

(C) The business contributes materially to the income of the displaced owner. This standard eliminates those part-time family occupations such as newspaper routes, part-time typing, etc. unless they contribute substantially to the displaced person's income.

This "in lieu of" payment shall be in the amount equal to the average annual earnings of the business, except that such payment shall not be less than $2,500 nor more than $10,000. Any "in lieu of" payment to an eligible non-profit making organization shall be limited to $2,500 unless it is in fact operating a profit making business. The definition of "contributes materially to the income of the displaced owner" shall mean:

(a) That the business had average annual gross receipts of at least $2,000, or

(b) That the business had average annual net earnings of at least $1,000 or

(c) That the business contributed at least 33 1/3 percent of the average total annual income of the owner or owners.

The average annual receipts, earning or income is determined by one half the sum during the 2 taxable years immediately preceding the taxable year in which the business moves, or during such other period as the head of the Department of Housing Preservation and Development may determine. In the event this choice is taken by the tenant no moving estimates or bids are necessary to be submitted by tenant. This choice replaces actual moving expenses and related expense.

(iii) **A negotiated payment.** This choice may be selected by commercial tenants only upon prearrangement and consent of the head of the Department of Housing Preservation and Development, or his designee. This choice replaces

actual moving expenses and related expenses. The negotiated amount is the specific amount approved for payment(s) by the Department of Housing Preservation and Development prior to any actual move and requires the submission by the tenant of at least three acceptable estimates or bids for moving, the physical inspection by the Department of Housing Preservation and Development, the written offer by the tenant to accept a stipulated amount, and the written approval, prior to the move, from the Department of Housing Preservation and Development. The stipulated amount must be considerably below the lowest estimated cost of the move. If this choice is taken, no detailed bills need be submitted by the tenant.

(k) **Replacement housing for homeowner.** (1) The addition to payments otherwise authorized pursuant to subdivisions (e), (f), (j) and (t) of this section, the head of the Department of Housing Preservation and Development or his designee, shall make an additional payment not in excess of $15,000, to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 180 days prior to the acquisition of the property. Such additional payment shall include the following elements:

(i) The amount, if any, which when added to the amount of condemnation award or purchase price (if by negotiation) of the dwelling acquired by the City of New York, equals the reasonable cost of a comparable replacement dwelling which is decent, safe and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market.

(ii) The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the City of New York was encumbered by a bonafide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the acquisition of dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of the amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on saving deposits by commercial banks in the general area in which the replacement dwelling is located.

(iii) Reasonable expenses incurred by such displaced person for evidence of title, recording fees and other closing costs incidents to the purchase of the replacement dwelling, but not including prepared expenses. Attorneys fees shall be not more than one percent of the purchase price, with a minimum of $200.

(2) The additional payment of replacement housing for homeowners shall be made only to such displaced person who purchases and occupies a replacement dwelling which is a decent, safe and sanitary dwelling, not later than the end of the one year period beginning on the date on which he receives from the City of New York payment for the acquired dwelling, or on the date on which he moves from the acquired dwelling whichever is the later date.

(3) Whenever a displaced person is eligible for a payment but has not yet purchased a replacement dwelling, the head of the Department of Housing Preservation and Development shall at the request of the displaced person, provide a written statement to any interested person, financial institution or lending agency as to such person's eligibility for a payment and the requirements that must be satisfied before such payment can be made.

(l) **Eligibility for homeowners replacement housing.** (1) **A displaced owner.** Occupant is eligible for a replacement housing payment if he meets the eligibility requirements enumerated under subdivision (k) of this section.

(2) A displaced owner-occupant of a dwelling who is determined to be ineligible for a homeowners replacement housing payment may be eligible for a replacement housing payment for tenants and others as more fully set forth in subdivision (n) of this section.

(m) **Computation of homeowners replacement housing payment.** (1) **Differential payment for replacement housing.** (i) **Displaced owner.** Occupants shall have the right to elect to use either a schedule method or comparative

method in determining the amount to be paid.

(A) **The schedule method:** The schedule of average prices of comparable sales housing in the locality, is as follows:

[See tabular material in printed version]

(B) **The Comparative Method:** The cost of comparable unit is determined on a case by case basis through the use of the sales price (together with any adjustments necessary to reflect the market sales experience) of one or more dwelling determined to be the most representative of the acquired dwelling and conforming to the definition of "comparable replacement housing". The comparable dwellings may be selected by the Relocation Agency, or by the displaced person with the approval of the Relocation Agency.

(ii) **Limitations.** (A) If the displaced person, of his own volition, purchases and occupies a decent, safe and sanitary dwelling at a price less than the acquisition price of the acquired building, no differential payment shall be made.

(B) If the displaced person, of his own volition, purchases and occupies, a decent, safe and sanitary dwelling at a price less than the average sale price, as above, of a comparative replacement dwelling, the differential payment will be reduced to that amount required to pay the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling.

(C) If the dwelling unit occupied by the claimant was part of a structure owned by the claimant which also included space used for non-residential or multi-residential purposes, the amount of the differential payment shall be determined by using as the acquisition payment of the dwelling unit only that part of the total payment which relates to the value of the claimant's residential use portion of the structure.

(D) When an eligible claimant, who has received all or a portion of a rental assistance payment (because he elected to rent), subsequently files a claim for replacement housing payment for homeowners, the total amount of the rental assistance payment he has received must be deducted from the amount of the payment to which he may be entitled.

(2) **Interest payment.** The interest payment shall be based on present value of the reasonable cost of the interest differential, including points paid by the purchaser on the amount refinanced not to exceed the amount of the unpaid debt for its remaining term at the time of acquisition of the real property.

(3) **Incidental expenses.** (i) The incidental expense payment is the amount necessary to compensate the homeowner for costs incident to the purchase of the replacement dwelling such as:

(A) Legal, closing and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings of plats, and charges incident to recordation. Attorney fees are limited to one percent of the purchase price but not less than $200.

(B) Lenders, Federal Housing Administration, or Veterans Administration appraisal fees.

(C) Federal Housing Administration application fee.

(D) Certification of structural soundness when required by lender, Federal Housing Administration or Veterans Administration.

(E) Credit report.

(F) Title policies or abstracts of title.

(G) Escrow Agent's Fee (mortgage fee).

(H) State revenue stamps, or sale or transfer taxes.

(ii) No fee, cost, charge or expenses is reimbursable which is determined to be a part of the finance charge under Title I of the Federal Truth in Lending Act and Regulation "Z" issued pursuant thereto.

(n) **Replacement housing payment for tenants and certain others-eligibility.** (1) A displaced tenant or owner-occupant of less than 180 days before condemnation date, is eligible for a replacement housing payment if he actually occupied the dwelling for not less than 90 days immediately prior to the acquisition of the property, and meets the other eligibility requirements.

(2) In addition to amounts otherwise authorized, the Relocation Agency shall make a payment to or for any displaced person from any dwelling not eligible to receive a payment under subdivision (k) of this section which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days prior to the acquisition of such dwelling. Tenant or other occupant of the property shall be notified of the actual date of title vesting in the City.

(3) Payment under subdivision (n) shall be either:

(i) The amount necessary to enable such displaced person to lease or rent for a period not to exceed 4 years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or

(ii) The amount necessary to enable such person to make a down payment and including incidental expenses described in subdivision (m)(3) of this section (incidental expense), on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public and commercial facilities, but not exceeding $4,000 except that, if such amounts exceed $2,000 such person must equally match any such amount in excess of $2,000 in making the down payment.

(A) The displaced person is required to apply all of the portion of the total down payment which was not needed to meet the cost of incidental expenses, toward the purchase of the dwelling.

(B) The down payment for the replacement housing shall be limited to that amount which would normally be required for a conventional loan, unless otherwise approved by the head of the Relocation Agency, or his designee.

(4) An owner-occupant otherwise eligible for payment of a Homeowners Replacement Housing Payment but who rents instead of purchases a replacement dwelling is eligible for replacement housing payment for tenants.

(5) The additional payment of Replacement Housing Payment for Tenants and Certain Others shall be made only to such displaced person who moves into a unit which is decent, safe and sanitary, and a standard dwelling, not later than six months from the date he moves from the site dwelling or six months from the effective date of these regulations, whichever is later.

(6) If individuals, not a family, are joint occupants of a single family unit acquired for a project, each eligible claimant shall be paid a prorated share of the total payment applicable to single individual. The total payment made to all such claimants shall not exceed the total applicable to a single individual.

(o) **Computations of replacement housing payment for displaced tenants.** (1) Displaced tenants who rent shall have the right to elect to use either a Schedule Method or a Comparative Method to determine the payment due them.

(2) **Schedule:** The Schedule of Average Rents in the City of New York is as follows:

No. of Bed-	Average Contract Monthly	Average	Average Gross Monthly	Average Gross Annual

rooms	Rental	Utilities		Rentals	Rentals
		Gas	Elec		
0	214	5	17	$236	$2,832
1	240	5	21	266	3,192
2	283	7	25	315	3,780
3	328	8	28	364	4,368
4	372	9	31	412	4,944
5 or more	372	9	31	412	4,944

Replacement housing payment under the schedule method is computed by determining the amount necessary to rent a suitable replacement dwelling unit for 4 years (the average monthly cost from the schedule) or the new actual rent paid, whichever is lower, and subtracting from such amount 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to condemnation if such rent is reasonable, or if not reasonable, 48 times the monthly economic rent for the dwelling unit as established by the Relocation Agency. For purpose of these regulations, economic rent is defined as the amount of rent the displaced tenant would have had to pay for a similar dwelling unit in areas not generally less desirable than the dwelling unit to be acquired.

(3) **Comparative method.** The cost of a comparable unit may be determined on a case-by-case basis by using the average month's rent for one or more dwellings determined to be the most representative of the acquired dwelling conforming to the definition of "comparable replacement housing." The comparable dwellings may be selected by the Relocation Agency, or by the displaced person with the approval of the Relocation Agency. The payment is to be computed by determining the amount necessary to rent for 4 years a suitable replacement dwelling or the new actual rent paid, whichever is lower, and substracting from the amount so determined the lesser of 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of condemnation, or if not reasonable, 48 times the monthly economic rent for the dwelling unit established by the Relocation Agency.

(4) **Exceptions.** (i) The head of the Department of Housing Preservation and Development may establish the average month's rent by using more than 3 months, if he deems it advisable.

(ii) Notwithstanding any of the provisions herein, payments for persons displaced on or after the effective date of this regulation shall not exceed 48 times the difference between the base monthly rental and the lesser of (A) the comparable monthly rental (whether Comparative or Schedule) for a replacement dwelling or (B) the actual monthly rental for the replacement dwelling into which the displaced person is relocated. The $4,000 limitation shall as apply.

(5) **Disbursement of rental replacement housing payment.** All rental replacement housing payments in excess of $500 will be made in 4 equal installments on an annual basis. Before making each installment payment, the Relocation Agency must verify that the tenant is in decent, safe and sanitary housing.

(p) **Replacement housing payment to purchaser.** If the tenant elects to purchase instead of rent, the payment shall be computed by determining the amount necessary to enable him to make a down payment and to cover incidental expenses on the purchase of replacement housing.

(1) The down payment shall be the amount necessary to make a down payment on a suitable replacement dwelling. Determination on the amount "necessary" for such down payment shall be based on down payment that would be required for a conventional loan.

(2) Incidental expenses of closing the transaction are those as described in subdivision (m)(3) of this section.

(3) The full amount of the down payment must be applied to the purchase price and such down payment and incidental costs shown on the closing statement.

(q) **Computation of replacement housing payment for certain others.** (1) A displaced owner-occupant not eligible under subdivision (k) of this section, replacement housing payment for homeowner, because he elects not to purchase a replacement dwelling, but wishes to rent, may receive a rental replacement housing payment not to exceed $4,000. The payment shall be computed in the same manner as indicated in subdivision (o) of this section except that the present rental rate for the original dwelling shall be the economic rent as determined by market data.

(2) A displaced owner-occupant who does not qualify for a replacement housing payment under subdivision (k) herein, because of the 180 day occupancy requirement and elects to rent, is eligible for rental replacement housing not to exceed $4,000. The payment will be computed in the same manner as indicated herein, except that the present rental rate for the original dwelling shall be the economic rent as determined by market data.

(3) A displaced owner-occupant who does not qualify for a replacement housing payment under subdivision (k) herein because of the 180 day occupancy requirement and elects to purchase a replacement dwelling, is eligible for a replacement housing downpayment and closing cost not to exceed $4,000. The payment will be computed in the same manner as shown herein.

(r) **Bonus assistance for tenants.** In the addition to payments otherwise authorized, and subject to the limitations below, the head of the Relocation Agency shall make an additional payment to every displaced person who moves into permanent decent, safe and sanitary accommodations according to the following schedule:

No. of Rooms	Tenant Found Apts.	Public Housing and Finders Fee Apts.
1 to 3	$300	$150
4	400	200
5	500	250
6	600	300
7	700	350
8 or more	800	400

The above bonus or relocation allowance payments are subject to the following limitations and criteria:

(1) Payments are calculated on the basis of the number of rooms required by the tenant based on family composition, and into which the tenant moves.

(2) Two or more families occupying one apartment and being relocated shall each be entitled to the benefits contained herein upon their permanently relocating off-site to separate standard accommodations.

(3) Payments under subdivision (r) herein are not payable and available to displaced persons unless the person moves after title to the property occupied vests in the City of New York.

(4) The actual amount of the bonus or relocation allowance payment provided in this subdivision (r) to be paid to displaced persons shall be reduced by any amounts paid or credited to that displaced person for a Dislocation Allowance (subdivision (j), a Replacement Housing Payment for Homeowners of this section, and/or a Replacement Housing Payment for Tenants and Certain Others (subdivision (n) of this section).

(5) Bonus payment is limited to $100 where the tenant is institutionalized.

(6) For the purpose of this section, Public Housing is defined as all housing is provided in the "Definitions" herein and to all types of equivalent housing including, Rent Supplement and Capital Grant Assistance.

(s) **Finder fee payments.** Finders fee payment are to be paid to owners, agents or brokers who have listed with the

Relocation Agency standard apartment into which relocatee have moved. The schedule is as follows:

[See tabular material in printed version]

Finders fee for furnished room in a rooming house-$50 per room.

(t) **Settlement costs.** (1) **General.** The Department of Housing Preservation and Development as soon as practical after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is earlier, shall reimburse the owner to the extent the head of the Relocation Agency deems fair and reasonable for expenses such owner necessarily incurred, if not paid through some other source for:

(i) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the City of New York; and

(ii) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(iii) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting of title in the City of New York, or the effective date of possession of such real property by the City of New York, whichever is earlier.

(2) **Documentation in support of a claim.** If real property is acquired by condemnation, a claim for payment under paragraph 1 of this subdivision shall be submitted to the Relocation Agency and supported by such documentation as may be required by the head of the Relocation Agency. If the real property is acquired by purchase, payment shall be made at settlement of the acquisition and accounted for in the settlement statement, on the basis of such documentation as may be required by the Relocation Agency.

(3) **Time for filing settlement cost claims.** Each such claim shall be submitted to the relocation agency within a period of 6 months after either the acquisition of the property or the effective date of these rules and regulations, whichever is later.

(u) **Time for filing claims.** All relocation payment claims of eligible tenants must be submitted to the Relocation Agency within a period of six months from the date of the permanent move from the site or six months from the effective date of these regulations, whichever is later, except where provided otherwise herein:

(v) **Relocation assistance and advisory services.** (1) The head of the Relocation Agency shall provide relocation assistance for displaced persons and shall offer services which should include:

(i) Determine the need, if any, of displaced persons for relocation assistance.

(ii) Provide current and continuing information on the availability, prices and rentals of comparable decent, safe and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses.

(iii) Assist a person displaced from his business in obtaining and becoming established in a suitable replacement location.

(iv) Supply information concerning Federal, State and City housing program disaster loan programs and other Federal, State or City programs offering assistance to displaced persons.

(v) Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(vi) The Commissioner of the Department of Housing Preservation and Development shall coordinate all relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

(2) If the Commissioner of the Department of Housing Preservation and Development determine that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

(3) The head of the Relocation Agency shall make every effort to pay promptly any displaced person who makes application for payments authorized by these regulations after a move, or in hardship cases, advance payments may be authorized.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) Family definition amended City Record June 8, 1998 eff. July 8, 1998. [See T28 §4-02

Note 1]

Rules of the City of New York

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28 RCNY 19-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-01 Applicability.

Except as otherwise provided in §19-07 of this rule, the unauthorized occupant policy of the Department of Housing Preservation and Development's Division of Property Management's (DPM) applies only to those occupants who were residing in DPM/HPD apartments as of April 1, 1988 and have continuously resided in the same apartment since, or who have been residing in an apartment with a legal tenant and wish to continue residing in the same apartment upon the death or departure of the legal tenant. All occupants who have illegally entered a DPM/HPD apartment since the implementation of the Vacant Apartment Security procedures on April 1, 1988 are not eligible to be set up as authorized tenants and shall be referred directly to The Legal Affairs Unit (TLAU).

HISTORICAL NOTE

Section amended City Record Feb. 9, 1993 eff. Mar. 7, 1993.

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 19-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-02 Evaluation Generally.

All unauthorized occupants in residence as of April 1, 1988 who have not already been referred to TLAU for legal advice are to be evaluated on a case by case basis to determine whether they would be acceptable as legal tenants. Occupants will be evaluated based on their household composition, residence history, involvement in unacceptable activities and willingness to pay rent and arrears.

HISTORICAL NOTE

Section in original publication July 1, 1991.

28 RCNY 19-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-03 Interview.

(a) The Real Property Manager (RPM) shall make at least three (3) attempts to interview each occupant.

(b) If no one is available at the time of visit, the RPM shall leave a Notice of Attempted Interview, indicating the date and time of the next visit (if known) and a contact name, phone number and mailing address. If no contact is made after three attempted visits the RPM shall send a Notice of Attempted Interview to the occupant by certified mail notifying them of the attempted visits and indicating that legal proceedings will begin if the occupant does not contact the manager within one week to complete an interview. The Notice shall include a contact name, phone number and address. The manager shall also double check with the building superintendent and/or neighboring tenants to make sure the occupant is not mentally or physically incapable of understanding or dealing with the attempted visits and written notice.

(c) If the RPM is able to contact the occupant, an Evaluation Questionnaire shall be filled out appropriately. Documentation provided by the occupant for all claims concerning household members, length of residence and relationship to or residence with the tenant of record shall be noted by the RPM. Documentation may include copies of a birth certificate or marriage license, stamped envelopes received at the address, utility bills in the occupant's name at the address, an old lease from the former owner with the present occupant's name or the name of an immediate family member, a letter from the tenant of record, public records, etc.

(d) Allegations of unacceptable activity must be confirmed by at least three independent sources (e.g. two residents and the superintendent) and documented by the RPM in the Unacceptable Activity Affidavit. Examples of unacceptable activity include, but are not limited to, drug trafficking, prostitution, organized gambling, attacking or threatening other

residents of the building, damaging or defacing any portion of the building, generating excessive traffic of people and/or materials in and out of the building, and generating loud noise which is disturbing to other residents. Allegations of unacceptable activity which is illegal will be referred to the Narcotics Control Unit to be checked against their database and, if possible, against Police Department Records.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

28 RCNY 19-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-04 Evaluation of Occupants--Procedures.

(a) If the occupants refused to cooperate with the RPM or were repeatedly unavailable despite a good faith attempt by the RPM to contact them, the occupants will be referred to TLAU for legal action by the Area Director.

(b) If the occupants cooperated with the RPM and a questionnaire was completed, the occupants will be evaluated based on household circumstances, involvement in unacceptable activities and willingness to pay rent and arrears.

(c) Priority households and households with a claim of right to their apartment will be presumed acceptable candidates for legal tenancy and will be screened for involvement in unacceptable activities and willingness to pay rent and arrears. Priority households are those which include senior citizens (age sixty-two or older), mentally or physically handicapped individuals, pregnant women and children under the age of eighteen. Households which have a claim of right to their apartment include those which a member lived in the apartment with the legal tenant and has continuously resided there since the legal tenant's departure; and those which lived in the apartment at the time of vesting and have continuously resided therein since the date of vesting.

(d) Households not identified as "priority" or "claim of right" may also be considered for legal tenancy, but only if special circumstances (i.e., fairness, equity, and the best interests of the building and its residents dictate that the unauthorized occupant be set up as a legal tenant) are involved. Households determined by the Assistant Commissioner to involve special circumstances will be presumed acceptable candidates for legal tenancy and further screened for involvement in illegal activities and willingness to pay rent.

(e) All other households will be referred to TLAU for legal action.

(f) Priority, claim of right and special circumstances households which are not involved in unacceptable activities and are willing to pay rent and arrears will be referred to the Bureau of Vacant Apartment Repair and Rental (BVARR) to be set up as legal tenants. Any such households which are involved in unacceptable activities (as attested to in an Unacceptable Activities Affidavit) and/or are not willing to pay rent and arrears, will be referred to TLAU for legal action.

(g) HRA-occupants must agree to pay rent equal to the HRA approved maximum shelter allowance for their household size.

(h) Non-HRA occupants must be willing to pay rent as follows:

Studio	(2.5 rooms):	$250;	2 Bedroom	(4.5 rooms):	$312;
1 Bedroom	(3.5 rooms):	$286;	3 Bedroom	(5.5 rooms):	$349;

and so forth. If the specified rent is more than 30 percent of the occupant's income, the occupant must be willing to pay a rent equal to 30 percent of their income.

(i) Payment of arrears equal to the lesser of 12 months or the period of occupancy must be made within two years. Acceptable terms of payment include an emergency housing grant from HRA, payment in full at the time of leasing, or a minimum

of three months or one-third of the total arrears paid at the time of leasing with the remainder to be paid within two years according to an agreed upon schedule. The specific terms of payment will be negotiated by BVARR staff.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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28 RCNY 19-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-05 Referral to the Bureau of Vacant Apartment Repair and Rental.

(a) Occupants referred to BVARR as acceptable for legal tenancy will negotiate and sign a lease agreement with BVARR staff stipulating monthly rent, the total amount of arrears to be paid, and the dates and amounts for payment of such arrears.

(b) In most cases occupants will be set up in their existing apartment. Some occupants may be set up in a smaller apartment if they underoccupy their existing apartment. Underoccupancy is defined as less than one household member per apartment bedroom. Households which are determined to underoccupy their existing apartment should be relocated to the nearest available apartment of appropriate size, preferably in the same building or neighborhood. Claim of right households will always have the right to be set up in their existing apartment. The possibility of relocation due to underoccupancy will be addressed during negotiations prior to lease signing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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28 RCNY 19-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-06 Termination of UOP Policy.

(a) The unauthorized occupant policy of the Department of Housing Preservation and Development's Division of Property Management's (DPM) as specified in §§19-01 through 19-05 above, shall, on February 29, 1992, cease and be of no further force and effect other than as specified in this section.

(b) (1) HPD shall, no later than March 13, 1992, notify unauthorized occupants of its buildings with authorized tenants of record ("occupied buildings"), that those who were in occupancy as of April 1, 1988, who have not already been evaluated under this chapter, may apply to become legal tenants pursuant to this policy. Such notice shall state that applications are available at the Area Office. All such applications shall be filed with HPD no later than May 31, 1992. No application filed after that date shall be considered or evaluated.

(2) Notice under this subsection (b) shall be made by publishing such notice once in the City Record, posting such notice in each Area Office of DPM and by posting one copy in the lobby of each of its occupied building. Such notifications shall be completed by March 13,]992.

(3) Each application shall be evaluated pursuant to the procedures and standards set forth in §§19-02, 19-03(d), 19-04 and 19-05.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

28 RCNY 19-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-07 Post Termination Provision.

(a) **Post termination eligibility.** (1) Any person who submitted an application for legal tenancy pursuant to the procedures set forth in §19-06(b)(1) by May 31st, 1992, or is the occupant of an apartment identified on HPD's tenant accounting system as being occupied by unauthorized occupants as of May 31st, 1992 is eligible for a tenancy pursuant to this section. No other unauthorized occupants are eligibile for tenancy pursuant to this section.

(2) Tenancy will be offered to unauthorized occupants, as specified in subdivision (a)(1) above, who, in the judgment of HPD, will make good tenants. Tenancy will not be offered to those occupants who have engaged in unacceptable activity, or who fail to pay any accured arrears which they have been advised by HPD are due for the apartment, or who fail to sign a lease. Occupants will be responsible for arrears payments for the lesser of 12 months or the period of occupancy. Conduct that constitutes unacceptable activity shall be solely within HPD's discretion to determine.

(3) Tenancy will be offered only for residential apartments in "occupied" buildings owned by the City of New York and managed by HPD's Division of Property Management (DPM), except those deemed by HPD to be substandard, or too costly or impractical to repair. The definition of "occupied" building does not include buildings that have no legal residential tenants as recognized by DPM, and does not include buildings categorized by DPM as "vacant" buildings. Buildings not managed by DPM are excluded from this rule.

(b) **Remaining unauthorized occupants.** Unauthorized occupants not covered by this section and who do not qualify under Chapter 24 of this title (Successor Tenants), will be removed from City-owned buildings, except in extraordinary circumstances as determined solely in the discretion of HPD.

HISTORICAL NOTE

Section added City Record Feb. 9, 1993 eff. Mar. 11, 1993.

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***** Current through December 2009 ****

28 RCNY 20-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 20 RULES CONCERNING ARTICLE 7-A OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW*1

§20-01 Criteria for Appointment.

(a) Any person proposed for appointment as an administrator pursuant to Article 7-A of the Real Property Actions and Proceedings Law shall, prior to appointment:

(1) be a graduate of the 7-A Training Program administered by the Department of Housing Preservation and Development and submit to a review by the Inspector General of the Department in relation to matters which are within the jurisdiction of such Inspector General, or

(2) if such person is not a graduate of such Program, possess experience which, in the discretion of the Department, warrants appointment as an administrator and such person submits to a review by the Inspector General of the Department in relation to matters which are within the jurisdiction of such Inspector General, or

(3) if such person is not a graduate of such Program and if such person does not possess experience which warrants appointment as an administrator, consents in good faith as a condition for such appointment to enroll in and graduate from such Program and such person submits to a review by the Inspector General of the Department in relation to matters which are within the jurisdiction of such Inspector General.

(b) For the purposes of subdivision (a) of this section, the evaluation of the "experience" of such person may include, but is not limited to, consideration of the ownership or management history of residential property by such person, whether such person served previously as a 7-A administrator or as a manager of City-owned property and, if such person was previously a 7-A administrator, the date or dates of prior appointments, compliance with prior Court

orders of appointment, compliance with reporting requirements of the Department's 7-A Counseling and Assistant Unit, and such other indicators of experience which may be contained in the records of the Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record June 25, 2001 eff. July 25, 2001. Note further provisions: These amended rules implement newly enacted State legislation (Chapter 375 of the Laws of 1999) authorizing evaporation of certain liens pursuant to a regulatory agreement with the new owner of a building for which an administrator has been appointed pursuant to Article 7-A of the Real property Actions and Proceedings Law.

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28 RCNY 20-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 20 RULES CONCERNING ARTICLE 7-A OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW*1

§20-02 Applicability.

These rules apply to any building for which (i) an administrator is appointed pursuant to Article 7-A of the Real Property Actions and Proceedings Law ("RPAPL") on or after August 19, 2003, or (ii) an administrator was appointed pursuant to Article 7-A of the RPAPL prior to August 19, 2003 and has not been discharged as of August 19, 2003.

HISTORICAL NOTE

Section amended City Record May 27, 2004 eff. June 26, 2004. [See Note 1]

Section added City Record June 25, 2001 §2, eff. July 25, 2001. [See Chapter 20 footnote]

NOTE

1. Statement of Basis and Purpose in City Record May 27, 2004 These amended rules implement newly enacted State legislation (Chapter 387 of the Laws of 2003). The law permits that certain outstanding liens may be reduced to zero pursuant to a regulatory agreement with the new owner of a building for which an administrator had been appointed pursuant to Article 7-A of the Real Property Actions and Proceedings Law. The regulatory agreement requires that the owner provide adequate, safe and sanitary housing accommodations for persons of low income for a period of not less than thirty years.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record June 25, 2001 eff. July 25, 2001. Note further provisions: These amended rules implement newly enacted State legislation (Chapter 375 of the Laws of 1999) authorizing evaporation of certain liens pursuant to a regulatory agreement with the new owner of a building for which an administrator has been appointed pursuant to Article 7-A of the Real property Actions and Proceedings Law.

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28 RCNY 20-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 20 RULES CONCERNING ARTICLE 7-A OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW*1

§20-03 Regulatory Agreement.

(a) When a building covered by these rules is transferred to a new owner at any time following appointment of such administrator, §778(10) of the RPAPL authorizes the Department of Housing Preservation and Development ("Department") to enter into a regulatory agreement ("Regulatory Agreement") with the new owner.

(b) A Regulatory Agreement shall require the new owner to provide adequate, safe and sanitary housing accommodations for persons of low income, as such term is defined in Subdivision 19 of §2 of the Private Housing Finance Law, for a period of not less than thirty years and may require such additional provisions as the Department deems appropriate, including, but not limited to, income and occupancy restrictions and a plan for the continuing repair and maintenance of the property.

(c) A Regulatory Agreement shall include a certification by the new owner of the real property containing such building that (i) the prior owner has no direct or indirect interest in such real property, and (ii) the prior owner has no direct or indirect interest in such new owner.

(d) A Regulatory Agreement may provide that, upon transfer of such building to the new owner, any outstanding liens filed with and recorded by the City pursuant to §778(1) of the RPAPL and §309 of the Multiple Dwelling Law shall immediately be reduced to zero upon execution of such Regulatory Agreement.

HISTORICAL NOTE

Section amended City Record May 27, 2004 eff. June 26, 2004. [See T28 §20-02 Note 1]

Section added City Record June 25, 2001 §3, eff. July 25, 2001. [See Chapter 20 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record June 25, 2001 eff. July 25, 2001. Note further provisions: These amended rules implement newly enacted State legislation (Chapter 375 of the Laws of 1999) authorizing evaporation of certain liens pursuant to a regulatory agreement with the new owner of a building for which an administrator has been appointed pursuant to Article 7-A of the Real property Actions and Proceedings Law.

Rules of the City of New York

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28 RCNY 20-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 20 RULES CONCERNING ARTICLE 7-A OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW*1

§20-04 Miscellaneous Provisions.

(a) All determinations to be made by the Department in accordance with these rules shall be in the sole discretion of the Department.

(b) Nothing in these rules shall be deemed to limit the Department's authority pursuant to any applicable law.

(c) Provided that there has been a good faith effort to comply with these rules, technical violations of these rules shall not invalidate any action taken pursuant to these rules, nor shall such technical violations give rise to any rights, claims or causes of action. The Commissioner, upon good cause shown, may alter the timing or sequence of the actions described in these rules, provided all affected parties are given reasonable notice.

HISTORICAL NOTE

Section added City Record June 25, 2001 §4, eff. July 25, 2001. [See Chapter 20 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record June 25, 2001 eff. July 25, 2001. Note further

provisions: These amended rules implement newly enacted State legislation (Chapter 375 of the Laws of 1999) authorizing evaporation of certain liens pursuant to a regulatory agreement with the new owner of a building for which an administrator has been appointed pursuant to Article 7-A of the Real property Actions and Proceedings Law.

28 RCNY 21-21

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 21*1 DIVISION OF ALTERNATIVE MANAGEMENT PROGRAMS

SUBCHAPTER B RIGHTS OF TENANTS AND TERMINATION OF TENANCIES

§21-21 Definitions.

City. "City" shall mean the City of New York.

City-approved lease. "City-approved lease" shall mean a form of lease, approved by an authorized official of HPD, and containing such other approvals of City officials as are, from time-to-time, required.

City-owned building. "City-owned building" shall mean any building owned by the City and assigned to HPD for management.

DAMP. "DAMP" shall mean the Division of Alternative Management Programs.

DAMP Lessee. "DAMP Lessee" shall mean a person or entity with whom HPD has entered a lease for the management of buildings under any DAMP program.

DSS. "DSS" shall mean the Department of Social Services of the Human Resources Administration of the City.

Guest. "Guest" shall mean any person entering the building with the consent of the Tenant.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City.

Lease term. "Lease term" shall mean one month.

Occupant. "Occupant" shall mean any person other than a Tenant occupying an apartment.

Occupied building. "Occupied building" shall mean a City-owned building, occupied by Tenants.

Rules. "Rules" shall mean these rules.

Tenant. "Tenant" shall mean an authorized residential tenant of record occupying a dwelling unit in a City-owned building pursuant to a lease with the City or with a DAMP Lessee. Other residential occupants such as squatters and licensees are not Tenants. Nonresidential tenants or occupants, such as those who occupy space for retail, commercial, manufacturing, or community facility purposes, are not Tenants.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 21 footnote]

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Tenant Interim Lease regulations do not provide for succession rights. 518 West 134th St. Tenants Assoc. v. Calderon, N.Y.L.J., July 20, 1999, page 26, col. 1 (App.Term 1st Dept.).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended chapter repeals provisions for HPD programs that no longer exist and makes other technical changes to existing rules.

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28 RCNY 21-22

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 21*1 DIVISION OF ALTERNATIVE MANAGEMENT PROGRAMS

SUBCHAPTER B RIGHTS OF TENANTS AND TERMINATION OF TENANCIES

§21-22 General.

(a) **Scope.** HPD is responsible for managing, rehabilitating, and disposing of buildings owned by the City. HPD's goals include improving living conditions for Tenants in City-owned buildings and returning the City's housing stock to private tax-paying ownership, while maintaining it as affordable housing.

(b) **Coverage.** These Rules govern the termination of tenancies, and the rights and responsibilities of Tenants in City-owned buildings that are under the jurisdiction of DAMP.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 21 footnote]

Section in original publication July 1, 1991.

Subd. (a) amended City Record May 14, 1999 §3, eff. June 13, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 14, 1999:

This amendment clarifies that the Rules apply to all City-owned buildings under the jurisdiction of the Department of Housing Preservation and Development which are selected for the DAMP program.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended chapter repeals provisions for HPD programs that no longer exist and makes other technical changes to existing rules.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 21-23

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 21*1 DIVISION OF ALTERNATIVE MANAGEMENT PROGRAMS

SUBCHAPTER B RIGHTS OF TENANTS AND TERMINATION OF TENANCIES

§21-23 Rights of Tenants.

(a) **Tenancy.** All Tenants of a building in DAMP shall be month-to-month Tenants.

(b) **Continuation of Tenancy.** As long as a Tenant continues to pay the rent, in accordance with §21-24(b), his/her month-to-month tenancy shall be renewed, unless the DAMP Lessee asserts grounds for termination or non-renewal under these Rules.

(c) **Eviction Proceedings (Failure to Pay Rent).** A DAMP Lessee may commence eviction proceedings when a Tenant has failed to pay the rent due in accordance with §21-24(b). If the DAMP Lessee has any reason to know that the Tenant's rent has ever been paid by DSS, then the DAMP Lessee must ascertain the Tenant's public assistance status from HPD prior to instituting non-payment proceedings.

(d) **Eviction Proceedings (Termination of Tenancy).** Without the approval of HPD, the DAMP Lessee may refuse to renew a Tenant's lease or may commence an action or proceeding to recover possession of any housing accommodation upon one or more of the following grounds:

(1) The Tenant, other Occupant or Guest is violating a substantial obligation of the Tenant's tenancy.

(2) The Tenant, Occupant or Guest is committing or permitting a nuisance in such housing accommodation or the

building containing such housing accommodation.

(3) Occupancy of the housing accommodation by the Tenant is illegal because of the requirements of law, or such occupancy is in violation of contracts with governmental agencies.

(4) The Tenant, Occupant or Guest is using or permitting such housing accommodation to be used for an illegal purpose.

(5) The Tenant has unreasonably refused the DAMP Lessee or HPD access to the housing accommodation for the purpose of making necessary inspections, repairs or improvements required by law or authorized or required by HPD.

(6) The Tenant has refused, after at least twenty days written notice, to move to a substantially similar housing accommodation at the same rent provided:

(i) that the DAMP Lessee has a plan approved by DAMP to reconstruct, renovate or improve the housing accommodation currently occupied by the Tenant or the building in which it is located; and

(ii) that the move is reasonably necessary to permit such reconstruction, renovation or improvement; and

(iii) that the DAMP Lessee offers the Tenant in writing the right of reoccupancy of a reconstructed, renovated, or improved housing accommodation at the same rent or at a rent set pursuant to applicable rules for the respective DAMP Program or other rent restructuring authority.

(7) The housing accommodation is not occupied by the Tenant, not including subtenants or occupants, as his or her primary residence, unless the subtenant or assignee has been approved pursuant to §21-24(i) of these Rules.

(8) The building is to be placed in a program of rehabilitation or reconstruction which requires the vacating of the entire building.

(9) The building is to be sealed or demolished.

(10) The Tenant has refused to reoccupy a housing accommodation that has been renovated, reconstructed or improved, and continues to occupy a housing accommodation which was offered for the purposes of relocation pursuant to paragraph (6) above.

(11) For any other reason permitted by law.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 21 footnote]

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where the property is under the Neighborhood Redevelopment Plan, a landlord can remove a tenant in order to perform the necessary work, provided that the tenant is offered suitable relocation. The landlord serves the tenant with a 20 day notice prior to the date at which the tenant is to vacate the premises, and can bring a holdover proceeding against a tenant who refuses to move. A court held that it was insufficient for the landlord to merely contact a tenant about a "possible" relocation; the owner must propose a specific alternative apartment for the tenant. Quisqueya Housing Corp. v. Various Tenants, N.Y.L.J., Aug. 30, 1999, page 28, col. 6 (Civ.Ct. New York Co.).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended chapter repeals provisions for HPD programs that no longer exist and makes other technical changes to existing rules.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 21-24

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 21*1 DIVISION OF ALTERNATIVE MANAGEMENT PROGRAMS

SUBCHAPTER B RIGHTS OF TENANTS AND TERMINATION OF TENANCIES

§21-24 Conditions of Residential Tenancy.

(a) **Conditions of Residential Tenancy.** All Tenants of a building in DAMP shall be subject to the terms of the Conditions of Tenancy contained in these Rules and contained in any City-approved leases they have been issued. Where a City-approved lease has been issued, the terms of such lease shall govern, to the extent that they differ from these Rules. Where no City-approved lease has been issued, the terms of this section shall govern.

(b) **Rent and Term.** (1) The DAMP Lessee shall lease an apartment to a Tenant for the lease term. The Tenant shall pay the rent for each month in advance on the first day of that month during the term of such rental at the DAMP Lessee's office or at such other place or address as the DAMP Lessee shall designate.

(2) HPD shall have the right to implement rent restructuring plans pursuant to the applicable rules for the respective DAMP Program. If the Tenant refuses to pay the increased rent, the DAMP Lessee shall have the right to terminate the tenancy.

(c) **Occupancy.** The apartment leased to the Tenant shall be occupied for residential purposes only, subject only to applicable laws, the lease and these Rules. The Tenant, the members of the Tenant's immediate family, and any other person permitted by law, may reside in the Tenant's apartment.

(d) **Maintenance and Repair by Tenant.** The Tenant shall take good care of his/her apartment and fixtures in the

apartment and keep it clean, safe and orderly. The Tenant shall be responsible, at the Tenant's expense, for all repairs and replacement whenever the need results from any act or neglect of the Tenant or Guest.

(e) **Improvements.** The Tenant and the Guest shall make neither improvements nor alterations without the DAMP Lessee's prior written consent. Any and all such improvements or alterations shall, upon installation, become the property of the DAMP Lessee at the option of the DAMP Lessee, if approved by HPD. Improvements or alterations of any kind or nature built or placed within the apartment by the Tenant or Guest during the Lease Term shall be removed by the Tenant before the termination of the lease term at the option of the DAMP Lessee. If the Tenant fails to remove such improvements or alterations from his or her apartment at the direction of the DAMP Lessee or fails to repair any damages or defacement to the apartment caused by such removal or construction by the end of the lease term, the Tenant shall be and remain liable to the DAMP Lessee for all costs incurred by the DAMP Lessee in removing same from the apartment and all costs incurred by the DAMP Lessee to repair any damage or defacement to the apartment as a result thereof after the Tenant's lease term has expired.

(f) **Services.** The DAMP Lessee shall supply heat as required by law, and hot and cold water. The Tenant shall pay for all electricity, gas, telephone and other utility services used in his or her apartment and arrange for services with the public utility and telephone company (except for utility services that are master-metered in buildings that are master-metered). The Tenant shall obtain and pay for any meters, permits or approvals needed to comply with this provision (other than master meters), as may be required by law.

(g) **Liability.** The DAMP Lessee shall not be responsible to the Tenant or the Guest for any loss of property or injury to the Tenant or any other person resulting from theft or any crime in the apartment or elsewhere in the building or for loss or damage to persons or property sustained by smoke, fire or water coming on or being within said apartment or building. The DAMP Lessee shall only be liable for loss, expense or damage to any person or property due to the DAMP Lessee's negligence. The Tenant shall reimburse the DAMP Lessee for any expenses incurred or loss suffered by the DAMP Lessee, as a result of the action or inaction of the Tenant or Guest.

(h) **Entry to Apartment.** (1) The DAMP Lessee and its agents may (but shall not be obligated to) enter the Tenant's apartment at any time in case of an emergency, and at any reasonable hour to: repair, inspect, exterminate, improve or perform other work, including rehabilitation to the apartment or building determined to be necessary by the DAMP Lessee. The DAMP Lessee may take into the Tenant's apartment all materials and equipment required for such purposes.

(2) The Tenant shall furnish unhindered access to the DAMP Lessee and its agents to all areas of the Tenant's apartment and building for the purpose of making tests or repairs. If there should be any loss of usable space, the Tenant may request, in writing, a proportionate rent reduction for such loss, provided, however, that such reduction shall only be for the period until the area involved has been restored to the Tenant.

(i) **Assignment and Sublease.** The Tenant may not assign the Tenant's tenancy rights, or the Tenant's lease, or sublet the Tenant's apartment or grant any license as to the whole or any part, without first obtaining the written permission of the DAMP Lessee. If the Tenant shall assign such tenancy rights or such lease or sublet the Tenant's apartment or any part thereof, without the written consent of the DAMP Lessee, the Tenant's tenancy may be terminated. Any permitted assignment of tenancy rights or of the Tenant's lease or sublet of the apartment shall not relieve or release Tenant from any obligations under these Conditions of Tenancy. Any subtenant or assignee shall be bound by and be subject to all the terms of these Conditions of Tenancy. In the event that the Tenant's tenancy rights or lease is terminated for any reason, it shall be the duty of the Tenant to remove any subtenants. The DAMP Lessee may collect rent from the assignee, subtenant or occupant if the Tenant fails to pay the rent. The DAMP Lessee shall credit the amount collected against the rent owed by the Tenant. However, the DAMP Lessee's acceptance of such rent does not change the status of the assignee, subtenant or occupant to that of a direct Tenant of the DAMP Lessee.

(j) **Notices.** Any bill, statement or notice must be in writing. If to the Tenant, it must be delivered or mailed to the

Tenant at the Tenant's apartment or such other address as the Tenant designates. If to the DAMP Lessee, it must be mailed to the DAMP Lessee's address.

(k) **End of Term.** At the end of the tenancy, the Tenant shall remove all of the Tenant's and the Guest's personal property and leave the Tenant's apartment broom clean and in good condition, subject to ordinary wear and tear. All property and additions which remain after the Tenant leaves the apartment may either be retained by the DAMP Lessee as the DAMP Lessee's property, or be removed by the DAMP Lessee at the Tenant's expense.

(l) **Liens and Encumbrances.** The Tenant shall not mortgage or place or cause to be placed, any liens or encumbrances upon or affecting the fee title or any interest in the apartment or building.

(m) **Termination.** Tenant's lease shall terminate immediately in the event that a vacate order is issued by any governmental agency certifying that the building or any part thereof is in a condition which endangers the life, health or safety of the Tenant or other occupants. In the event that the vacate order is rescinded as a result of repairs made to the building or part thereof, while the building is under the jurisdiction of DAMP, the Tenant's tenancy shall be reinstated.

(n) **Attorneys' Fees.** Neither the DAMP Lessee nor the Tenant, in any action or summary proceeding, may recover, against the other, attorneys' fees or other costs for legal action.

(o) **Application of Arrears.** If the Tenant pays to the DAMP Lessee less than the full monthly rent, any subsequent payments shall first be applied to arrears. The DAMP Lessee's acceptance of partial or full payment of rent or failure to insist in any one or more cases upon the strict performance of any of the Tenant's obligations shall not be construed as a waiver or relinquishment for the future of such obligation, right or remedy.

(p) **Rules.** The Tenant shall observe and comply with such rules as the DAMP Lessee, with HPD's prior approval, may determine are needed for the safety, care and cleanliness of the Tenant's apartment and building and the comfort, quiet and convenience of other occupants of the building.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001.

Section in original publication July 1, 1991. [See Chapter 21 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended chapter repeals provisions for HPD programs that no longer exist and makes other technical changes to existing rules.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 22-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 22*1 DISPOSITION OF RESIDENTIAL PROPERTY DEVELOPED OR REHABILITATED BY A CITY LOAN

§22-01 Definitions.

Building. "Building" shall mean any residential building (including the land in the tax lot) which is owned by the City, managed by HPD and which, prior to entering City ownership, was either developed or rehabilitated through a City loan program.

City. "City" shall mean the City of New York.

Commissioner. "Commissioner" shall mean the Commissioner of HPD or his or her designee.

Disposition. "Disposition" shall mean the sale of a Building to a Permanent Owner.

Disposition Rent. "Disposition Rent" shall mean the rent established by HPD for a Building prior to its return to private ownership.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.

Laws. "Laws" shall mean any and all applicable laws, ordinances, orders, rules and/or regulations.

Permanent Owner. "Permanent Owner" shall mean the person or entity which shall own a Building after Disposition.

Rules. "Rules" shall mean this subchapter.

Tenants. "Tenants" shall mean authorized residential tenants of record. Occupants such as squatters and licensees are not Tenants.

HISTORICAL NOTE

Section added City Record Jan. 28, 2000 eff. Feb. 27, 2000. [See Chapter 22 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 28, 2000 eff. Feb. 27, 2000. Note further provisions: These rules deal with procedures for the disposition of residential properties owned by the City which were developed or rehabilitated with loans from the City.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 22-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 22*1 DISPOSITION OF RESIDENTIAL PROPERTY DEVELOPED OR REHABILITATED BY A CITY LOAN

§22-02 General.

(a) **Coverage.** These Rules govern the procedures for restructuring rents in Buildings, providing notices to Tenants and the Disposition of Buildings to Permanent Owners.

(b) **Program description.** HPD will select qualified Permanent Owners to acquire Buildings owned by the City.

HISTORICAL NOTE

Section added City Record Jan. 28, 2000 eff. Feb. 27, 2000. [See Chapter 22 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 28, 2000 eff. Feb. 27, 2000. Note further provisions: These rules deal with procedures for the disposition of residential properties owned by the City which were developed or rehabilitated with loans from the City.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 22-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 22*1 DISPOSITION OF RESIDENTIAL PROPERTY DEVELOPED OR REHABILITATED BY A CITY LOAN

§22-03 Selection of Permanent Owners.

HPD may select a Permanent Owner for a Building by any appropriate method, including, but not a limited to sealed bid sale or auction, a request for qualifications process, a request for proposals process, a request for offers or, in the discretion of HPD, by a direct designation of an entity judged by HPD to be a suitable Permanent Owner. HPD, in selecting a Permanent Owner, may consider any relevant factors, including, but not limited to, the prospective Permanent Owner's prior record in other City housing programs as a property owner or manager or the Permanent Owner's status as an organization formed by the Tenants in the Building.

HISTORICAL NOTE

Section added City Record Jan. 28, 2000 eff. Feb. 27, 2000. [See Chapter 22 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 28, 2000 eff. Feb. 27, 2000. Note further provisions: These rules deal with procedures for the disposition of residential properties owned by the City which were developed or rehabilitated with loans from the City.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 22-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 22*1 DISPOSITION OF RESIDENTIAL PROPERTY DEVELOPED OR REHABILITATED BY A CITY LOAN

§22-04 Rent Setting.

(a) **Establishment of disposition rent.** HPD may establish a Disposition Rent for each dwelling unit in a Building based upon the estimated cost of (i) operating the Building in private ownership, and (ii) the repayment of City investment in the Building, including, but not limited to, any City investments during City ownership and any City loan prior to City ownership. The Disposition Rent per dwelling unit shall reflect the expenses for the Building for the first year following disposition. Such expenses may include, but shall not be limited to: allowances for vacancies, debt service coverage, debt service, fuel, common space utilities, repair and maintenance, cleaning supplies, insurance, custodial services, management fees, professional services, operating reserve, capital replacement reserve, real estate taxes, return on equity, anticipated capital repairs and water and sewer charges. The expenses shall be projected by HPD based on its experience and knowledge of the operation of similar buildings.

(b) **Notice of opportunity to comment.** Prior to establishment of the Disposition Rent, HPD shall notify the Tenants of the proposed amount of the Disposition Rent and afford them a thirty (30) day opportunity to submit written comments to HPD.

(c) **Notice of disposition rent.** Once a Disposition Rent has been established, HPD shall send a written notice of the amount of the Disposition Rent to all Tenants at least thirty (30) days before the effective date of the new Disposition Rent. The notice of Disposition Rent may be combined with any notice of Disposition.

HISTORICAL NOTE

Section added City Record Jan. 28, 2000 eff. Feb. 27, 2000. [See Chapter 22 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 28, 2000 eff. Feb. 27, 2000. Note further provisions: These rules deal with procedures for the disposition of residential properties owned by the City which were developed or rehabilitated with loans from the City.

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Rules of the City of New York

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28 RCNY 22-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 22*1 DISPOSITION OF RESIDENTIAL PROPERTY DEVELOPED OR REHABILITATED BY A CITY LOAN

§22-05 Disposition to Permanent Owner.

(a) **Notice of disposition.** HPD shall send a notice of Disposition to Tenants of a Building advising them of the contemplated sale to the Permanent Owner at least thirty (30) days prior to Disposition. The notice shall provide the Tenants with the name, address, telephone number and contact person for the Permanent Owner.

(b) **Post-sale registration.** Immediately following Disposition, the Permanent Owner shall register all units in a Building with the New York State Division of Housing and Community Renewal if required by applicable law.

HISTORICAL NOTE

Section added City Record Jan. 28, 2000 eff. Feb. 27, 2000. [See Chapter 22 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 28, 2000 eff. Feb. 27, 2000. Note further provisions: These rules deal with procedures for the disposition of residential properties owned by the City which were developed or rehabilitated with loans from the City.

Rules of the City of New York

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28 RCNY 22-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 22*1 DISPOSITION OF RESIDENTIAL PROPERTY DEVELOPED OR REHABILITATED BY A CITY LOAN

§22-06 Miscellaneous Provisions.

(a) **HPD discretion.** All determinations to be made by HPD in accordance with these Rules shall be in the sole discretion of HPD.

(b) **Statutory authority not limited.** Nothing in these Rules shall be deemed to limit HPD's authority pursuant to any applicable Laws.

(c) **Method of notification.** Notification shall be in English and Spanish and shall be either posted in a common area of the Building and affixed to or placed under each apartment door of the Building, or mailed to every apartment in the Building, as determined by HPD.

(d) **Technical violation and other variances.** Provided that there has been a good faith effort to comply with these Rules, technical violations of these Rules shall not invalidate any action taken pursuant to these Rules, nor shall such technical violations give rise to any rights, claims or courses of action. The Commissioner, upon good cause shown, may alter the timing or sequence of the actions described in these Rules, provided all affected parties are given reasonable notice.

HISTORICAL NOTE

Section added City Record Jan. 28, 2000 eff. Feb. 27, 2000. [See Chapter 22 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 28, 2000 eff. Feb. 27, 2000. Note further provisions: These rules deal with procedures for the disposition of residential properties owned by the City which were developed or rehabilitated with loans from the City.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 24-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-01 Definitions.

City owned building. "City owned building" shall mean any building owned by the City of New York and assigned to HPD for management.

DHHD. "DHHD" shall mean the Division of Homeless Housing Development.

DPM. "DPM" shall mean the Division of Property Management.

Disabled Person. "Disabled person" shall mean a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techinques, and which are expected to be permanent and which substantially limit one or more of such person's life activities.

Family Member. "Family member" shall mean:

(1) A husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, nephew, niece, uncle, aunt, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of a tenant;

(2) Any other person residing with the tenant in the apartment as a primary residence, who can prove emotional and financial commitment, and interdependence between such person and the tenant. Although no single factor shall be

determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed may include, without limitation, such factors as listed below. In no event is evidence of a sexual relationship between such persons to be required or considered.

(A) longevity of the relationship;

(B) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;

(C) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;

(D) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, ect.;

(E) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, ect.;

(F) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;

(G) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;

(H) engaging in other patterns of behavior or other action which evidences the intention of creating a long-term, emotionally-committed relationship.

Occupant. "Occupant" shall mean a person occupying an apartment, other than a tenant.

Occupied building. "Occupied building" shall mean a City owned building, occupied by tenants.

Senior Citizen. "Senior Citizen" shall mean a person who is sixty-two years of age or older.

Tenant. "Tenant" shall mean an HPD authorized residential tenant of record. Occupants such as squatters and licensees are not tenants of record.

Unacceptable activity. "Unacceptable activity" shall include, but not be limited to, drug trafficking, prostitution, unlawful possession of a firearm, organized gambling, attacking or threatening other residents of a building or employees, contractors or agents of HPD, damaging or defacing any portion of a building, generating excessive traffic of people or materials in and out of a building, generating loud noise which is disturbing to other residents or engaging in any activity which constitutes a nuisance, or creates a hazard to other tenants of the building.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 24-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-02 Statement of Purpose.

These regulations are intended to set forth the standards that will be used by HPD to determine who will be eligible to apply to succeed to the tenancy of a tenant when an apartment is permanently vacated by that tenant.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

Rules of the City of New York

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28 RCNY 24-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-03 Coverage.

These rules apply to residential apartments in city owned buildings under the jurisdiction of DPM and DHHD.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 24-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-04 Eligible Persons.

Unless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to federal, state or local law, regulations or other requirements of governmental agencies, if a tenant has permanently vacated an apartment, any family member, who has resided with the tenant in the apartment as a primary residence for a period of no less than two (2) years, or where such family member is a "senior citizen", or a "disabled person", for a period of no less than one (1) year, immediately prior to the permanent vacating of the apartment by the tenant, or from the inception of the tenancy or commencement of the relationship, if for less than such periods, may apply to HPD to become the legal tenant of such apartment.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 24-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-05 Ineligible Persons.

Persons otherwise eligible to apply for tenancy under §24-04 above shall not be offered tenancy if:

(a) they have engaged in an unacceptable activity, or;

(b) they fail to pay any accrued rent which they have been advised by HPD is due for the apartment or;

(c) the permanent tenant was evicted for failure to pay rent or any other cause, or a proceeding, other than a non-payment proceeding, has been commenced against the permanent tenant and not yet completed.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

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***** Current through December 2009 ****

28 RCNY 24-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-06 Calculation of Minimum Period of Residency.

The minimum periods of required residency set forth in this subdivision shall not be deemed to be interrupted by any period during which the "family member" temporarily relocates because he or she:

(a) is engaged in active military duty;

(b) is enrolled as a full time student;

(c) is not in residence at the apartment pursuant to a court order not involving any term or provision of the lease, and not involving any grounds specified in the Real Property Actions and Proceedings Law;

(d) is engaged in employment requiring temporary relocation from the apartment.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 24-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-07 Application for Successor Tenancy.

An occupant seeking to become a tenant must show that he or she is eligible to apply for tenancy pursuant to §24-04 of these rules. Such application must be made on a form prescribed by HPD within 30 days after the permanent vacating of the apartment by the permanent tenant, or within 90 days after the effective date of these rules, whichever is later.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. An occupant seeking to become a tenant must apply for tenancy within 30 days the tenant of record permanently vacates the premises. The proper procedure is to make a timely application to the Department of Housing Preservation and Development (HPD) for tenant status , not to make a belated claim of tenant status in response to a summary holdover proceeding brought by the landlord. United Tenants Ass'n./Mutual Housing Ass'n. v. Price, N.Y.L.J., May 18, 2001, page 18, col. 1 (App.Term 1st Dept.).

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 24-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-08 Application.

HPD shall review the application of an occupant who seeks

to become a successor tenant and shall advise the applicant of the acceptance or rejection of such application. If the application is rejected for failure to show that the occupant is an eligible person, HPD shall give a brief description of the reason for such rejection. If the occupant's application is rejected for unacceptable activity, the rejection shall so state.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

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28 RCNY 24-09

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CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-09 Appeal.

If an application is rejected, the applicant may appeal such determination within 14 days to the Assistant Commissioner of the Division having jurisdiction of the applicant's building. Such appeal shall be in writing. The Assistant Commissioner shall review the determination and any additional information submitted by the applicant and shall issue the final agency decision with regard to the applicant's application.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

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28 RCNY 25-01

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PART 1 SCOPE

§25-01 Scope.

These rules shall govern the installation and maintenance of gas-fueled space and water heaters in the residence portions of multiple dwellings in the City of New York, including but not limited to the installation of such devices in multiple dwellings which are installed in lieu of centrally supplied heat and hot water under the provisions of sections 27-2028, 27-2031, 27-2032, and 27-2034 of the Administrative Code, and in one and two family residences not heated by a central heating system.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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28 RCNY 25-06

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PART 2 DEPARTMENTAL PROCEDURES

§25-06 Applications and Plans.

(a) Before commencing the installation of a gas-fueled space or water heater in a dwelling a plumbing repair slip or building notice, as specified below must be filed in the borough office of the Department of Buildings where the installation is to be made, giving the address of the dwelling and all pertinent information required on the forms.

(b) Before filing these forms in the offices of the Department of Buildings the applicant shall have the house numbers and the block and lot checked in the offices of the borough president where that procedure is followed in a particular borough, and in addition obtain a certification from the Department of Housing Preservation and Development of the classification of the multiple dwelling in which the appliances are to be installed.

(c) When applications are filed for permits to install gas-fueled space and water heaters the plumbing repair slips, the building notice forms and the envelopes in which they are placed shall be stamped by the plan clerk with a stamp reading: "GAS AP- PLIANCES".

(d) Plumbing repair slips shall be accepted only where gas appliances will be connected to flues in existing brick

chimneys, and where no other venting or other work is required to be done. They shall not be accepted for installation of gas-fueled heaters in sleeping rooms. Plumbing repair slips shall clearly state the type of appliance to be installed, the floors, apartments and rooms in which they are to be placed, including the number of rooms in the apartment and the occupancy of each room, whether sleeping room or otherwise. They shall describe the condition of the chimney flue to be used and state whether the draft is satisfactory. If a gas meter is to be installed its location shall be given.

(e) Where vent pipes are to be installed, or other work done in connection with the installation of gas-fueled heaters, a building notice application shall be filed. It shall indicate the type of each such device, the floor on which, and the apartment and the occupancy of the room in which such appliance is to be installed, the material and dimensions of the vent pipe or flue, and the dimensions of the court or yard to which the exhaust vent will be carried. If a gas meter is to be installed, its location shall be shown. No plumbing specification sheet or plumbing repair slip need be filed with such a building notice.

(f) Application for permits to install gas-fueled space heaters and water heaters may be made separately or together on one application but each such application shall indicate that all apartments in the building will be provided with gas-fueled space and/or water heaters as the case may be. The location, type, make, and capacity of all such appliances previously installed or to be installed in a building shall be specified. If any of the appliances have been installed in multiple dwellings prior to December 9, 1955, which the owner desires to maintain, the necessary work to make them comply with these rules should be indicated.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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28 RCNY 25-07

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PART 2 DEPARTMENTAL PROCEDURES

§25-07 Examination and Approval of Applications.

(a) Plumbing repair slips, when filed, shall be processed in the usual manner and forwarded to the inspectors of plumbing.

(b) Building notices calling for the installation of gas-fueled space and water heaters shall be expedited and may be taken out of turn, except that they shall be processed in the order in which they were received. They shall be examined for compliance with these rules and all other laws and regulations applicable to such installations. If any chimney or metal stack is to be installed, examiners shall check such construction for compliance with subchapter 15 of chapter 1 of Title 27 of the Administrative Code (Building Code). They shall require that the foundations shall be carried not less than four feet below the surface of the ground, and that the soil on which it is build to be not overloaded. They shall require that new chimneys be strapped to the existing walls.

(c) Only applications calling for the installation of gas-fueled space or water heaters, approved by the Department of Health, specifying the make and model shall be approved. All such gas appliances shall be of types approved also by the American Gas Association. However, where an owner desires to continue to use any gas appliance installed in a

multiple dwelling prior to December 9, 1955, clearly shows on the plan the data required by paragraph f of §25-06 of these rules and prominently marks the appliances that have not been approved by the Department of Health, the application may be conditionally approved pending the approval of the appliances by the Department of Health.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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28 RCNY 25-08

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PART 2 DEPARTMENTAL PROCEDURES

§25-08 Commencement of Work.

(a) It shall be unlawful to commence any construction for which a building notice has been filed until a permit for the proposed work has been issued by the borough superintendent, and it shall be unlawful to commence the installation of piping of any gas appliance until a registered plumber has filed a signed statement with the borough superintendent containing the address of said plumber and stating the he is duly authorized to proceed with the work.

(b) The plumber shall notify in writing the borough superintendent of the Department of Buildings of the borough in which any gas-fueled space or water heater is to be installed when such work is to begin and when it will be ready for operation and inspection.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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28 RCNY 25-09

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PART 2 DEPARTMENTAL PROCEDURES

§25-09 Inspection of Gas-Fueled Space and Water Heaters.

(a) Where a plumbing repair slip has been filed it shall be the responsibility of the inspectors of plumbing to see that gas-fueled space and water heaters are installed in dwellings, apartments and rooms where such heaters are permitted to be installed in lieu of central heat or supply of hot water. They shall see to it that the appliances are of types approved by the Department of Health and the American Gas Association, and are installed in compliance with these rules. Inspectors shall require the filing of a building notice where an appliance is to be placed in sleeping room where vent pipes are to be installed, or other work done.

(b) A building notice covering the installation of these appliances in dwellings shall be forwarded directly to the plumbing inspectors when approved as a permit. The installation of such appliances including Type B and other gas vents, but not chimneys, shall be inspected by inspectors of plumbing. If a building notice application does not call for construction of a masonry or metal chimney, it shall be reported as completed, by the plumbing inspector, provided the work was satisfactory with a note on his report "no structural work".

(c) If the building notice calls for the erection of a masonry or metal chimney, it shall be forwarded by the

plumbing inspector to the construction inspector as soon as the plumbing inspector has found the installation of these gas appliances and vent connections satisfactory. The construction inspector shall report such an application completed if the construction of the chimney has been satisfactorily performed

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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28 RCNY 25-10

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PART 2 DEPARTMENTAL PROCEDURES

§25-10 Issuing Approvals.

(a) A gas-fueled space or water heater installed after December 18, 1957, and a gas-fueled space heater installed prior to that date, in the residence portion of a multiple dwelling and installed after October 1, 1964, in one and two family dwellings, shall be approved by the Department of Buildings only if it is of a type approved by the Department of Health and the American Gas Association, and if it has been installed in compliance with these rules. A gas-fueled water heater installed in a multiple dwelling prior to December 18, 1957, and in a one or two family dwelling prior to October 1, 1964 shall be approved by this department only after it has been made to comply with all the requirements of these rules. The certification of approval of type of appliance by the Department of Health of such water heaters shall be attached to the plumbing repair slip or building notice.

(b) A building notice or plumbing repair slip which has been filed to cover the installation of only gas-fueled space heaters or only gas-fueled water heaters shall be reported as being satisfactorily completed only if all apartments in the building have been provided with either space or water heaters as the particular application specified. If an application calls for the installation of both space heaters and water heaters it shall be reported as being satisfactorily completed only if all apartments in the building have been provided with both space heaters and water heaters. Nor shall any

application be reported as being satisfactorily completed unless all new appliances have been installed in compliance with these rules and all existing appliances have been made to conform with them.

(c) When the plumbing section signs off, as satisfactorily completed, a plumbing repair slip or a building notice application which provides for the installation of gas-fueled space heaters in all apartments of a multiple dwelling, including the apartments where gas-fueled space heaters may have been installed prior to December 18, 1957, they shall make a list of such premises and send a copy of the list to the Department of Housing Preservation and Development. Where water heaters also have been satisfactorily installed, that fact should be noted on the list. The list shall contain the premises and the application number under which the appliances have been installed, and shall be forwarded weekly.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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28 RCNY 25-16

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PART 3 WHERE HEATERS MAY BE USED

§25-16 Substitution for Central Heating or Hot Water Supply.

Gas-fueled space or water heaters may be used in lieu of centrally supplied heat or hot water only in an apartment in a dwelling which complies with all the following requirements:

(a) The apartment shall consist of two or more living rooms.

(b) The apartment shall consist entirely of rooms used in Class A occupancy, or in one or two family dwellings.

(c) The apartment shall not be, in whole or in part, arranged, designed or intended to be used for single room occupancy.

(d) The apartment shall not have been formed, in whole or in part, as a result of work done to increase the number of apartments of a converted dwelling or a tenement under an application or plan filed with the department on or after December 9, 1955.

(e) The apartment shall not be located in a building which has been vacant under conditions and for periods which

render it subject to the provisions of §27-2089 of the Administrative Code.

(f) The apartment shall not have been converted or altered under plans filed with the department on or after December 9, 1955 so as to cause any existing or newly created portion of a Class A or Class B converted dwelling not previously constituting an apartment consisting of rooms used for Class A occupancy to become such an apartment.

(g) The apartment shall not be a part of Class A or Class B multiple dwelling which is or was converted to such dwelling from a single family or two-family dwelling under an application or plan filed with the department on or after December 9, 1955.

(h) The apartment shall not be in a tenement which, after being used or occupied as other than a tenement, is or was reconverted to a tenement under any application or plan filed with the department on or after December 9, 1955.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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§25-21 Required Approvals of Appliances.

Gas-fueled space and water heaters, installed after December 18, 1957, in apartments in multiple dwellings, in lieu of centrally supplied heat or hot water where such centrally supplied heat or hot water supply is required by the Multiple Dwelling Code, and in one and two family dwellings installed after October 1, 1964 shall be types approved by the Department of Health and the American Gas Association.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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§25-22 Prohibited Types of Water Heaters.

On and after December 18, 1957, it shall be unlawful to install in any apartment in any multiple dwelling, and after October 1, 1964 in a one or two family dwelling a gas-fueled water heater, so designed and arranged that it heats water in pipe coils placed at a distance from the hot water storage tank.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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§25-23 Number and Capacity of Gas-Fueled Heaters.

(a) Where gas fueled heaters are permitted to be installed in lieu of the required centrally supplied heat, each "living room", as such term is defined in subdivision 18 of §4 of the Multiple Dwelling Law, shall be heated by a heater placed in such room or in an adjoining room which connects with it except that a room whose exterior walls are exposed only on a fully enclosed inner court may be heated by a heater located one room removed from such room. For this purpose, an inner court shall be considered fully enclosed even though some of the enclosure walls are located on an adjoining lot. The aggregate input capacity of the heater or heaters installed in any apartment shall not be less than the number of living room times ten

thousand (10,000) British thermal units per hour.

(b) Notwithstanding the provisions of the subdivision (a) of this section, there shall be installed and continuously maintained by the owner in each apartment gas-fueled heaters in such numbers and at such locations as shall be sufficient to heat such apartment to the minimum temperature which would be required to be maintained therein by the owner under the provisions of the Sanitary Code of the city relating to the heating of buildings, if such owner were

required to furnish centrally supplied heat in such apartment.

(c) The requirements of subdivisions (a) and (b) of this section are not applicable when an apartment in a multiple dwelling is heated by gas-fueled space heater or heaters which were installed by a tenant prior to December 18, 1957, and in a one or two family dwelling prior to October 1, 1964 and owned by such tenant or successor tenant.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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§25-24 Capacity of Water Heaters.

Gas-fueled water heaters shall be automatic storage types having a capacity of not less than twenty gallons and shall, in any event, be adequate to provide a supply of hot water as defined in §27-2031 and §27-2034 of the Housing Maintenance Code, and §131.042 of the Health Code.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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28 RCNY 25-25

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§25-25 Shut-Off Devices.

Each gas-fueled space or water heater installed in an apartment in a dwelling shall be equipped with an effective device which will automatically shut off the gas supply to such heater in the event that its pilot light or other constantly burning flame is extinguished, or in the event of an interruption of the gas supply to such heater. Such automatic gas shut-off device shall be of a type which, after it has shut off the supply of gas to a heater, will not permit such heater to be relighted unless such shut-off device is first reset manually.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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§25-26 Gas Piping.

(a) The sizes of gas piping shall be such as to give an adequate volumetric flow of gas to all appliances. The minimum diameter of gas piping shall be three-quarters of an inch (3/4") except that a branch supplying only one appliance may be one-half inch (1/2") diameter.

(b) Each gas-fueled space and water heater shall be rigidly connected to the gas piping supplying gas to the apartment.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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§25-27 Appliances in Sleeping Rooms.

(a) Gas-fueled water heaters shall not be installed in a room occupied for sleeping purposes, in bathrooms, or in any occupied room normally kept closed.

(b) It shall be unlawful to install a gas-fueled space heater in a room occupied for sleeping purposes except when the space heater is so designed, installed and operated for it:

(1) Obtains combustion air directly from the outside of the building or through a duct leading to the outside.

(2) It vents directly to space outside of the building other than an inner court, or is connected through a flue or outlet pipe with an outside chimney which conforms with the requirements of sub-article three of article twelve of the Building Code.

A flue in an existing brick chimney may be used if it is in good condition and tests show that it will provide adequate draft.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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28 RCNY 25-28

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§25-28 Clearances from Combustible Materials.

(a) Space heaters and water heaters approved by the American Gas Association Laboratories, shall have clearance from combustible materials in accordance with the terms of their approval.

(b) Gas-fueled space and water heaters shall be installed also in conformity with any applicable requirements of specifications Z21.30 of 1954 of the American Standards Association, except where these rules otherwise provide.

(c) Vent connectors and vent and outlet pipes shall be installed so as to provide a minimum clearance of three inches on all sides from combustible material. Vent and outlet pipes shall not pass through a floor. Where a vent or outlet pipe passes through partition or roof constructed wholly or in part of combustible material, a ventilated metal thimble not less than six inches larger in diameter than the pipe shall be provided. Any material used to fill the space between the vent pipe and the thimble shall be incombustible.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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§25-29 Venting of Gas Appliances.

(a) **Definitions.** A flue, vent or outlet pipe is a conduit or passageway, vertical or nearly so, for conveying flue gases to the outer air.

A vent connector is a pipe connecting an appliance with the flue, vent, outlet pipe or chimney.

(b) Every vent or outlet pipe serving a gas space or water heater shall be provided with a draft hood of a type approved by the American Gas Association, Inc., laboratories of the Underwriters' Laboratories, Inc., as conforming to accepted standards, unless the heater has an approved built-in draft hood, or has been approved by the American Gas Association without a draft hood. The draft hood shall be installed at the flue collar or as near to the appliance as possible and in the position for which it was designed, with reference to horizontal and vertical planes. The relief opening of the draft hood shall not be obstructed. A suitable cap shall be provided at top of vent pipes.

(c) Each gas-fueled space or water heater installed in an apartment in lieu of the required centrally supplied heat and hot water supply, respectively, shall be connected to a chimney flue, outlet pipe, or type B vent, complying with the

requirements of subdivision (h) of this section, which shall be carried four feet above a flat roof and two feet above the highest part of a peaked roof, except that type B vents need not comply with this provision when equipped with a vent cap approved by the Department of Buildings or previously approved by the Board of Standards and Appeals for the prevention of downdraft. A flue in an existing chimney may be used if a licensed plumber certifies that he has made a smoke test of the flue and found no gas escaping through its walls, and made a test of the draft and found it adequate. However, window or wall type heaters of the sealed combustion chamber type which have been approved by the Department of Buildings or previously approved by the Board of Standards and Appeals may be vented in accordance with the approval of the Board, except as provided in subdivision (d) of this section.

(d) No gas-fueled space heater, including a window or wall type recessed heater and no gas-fueled water heater, installed in a dwelling, shall be vented to an inner court unless it is connected to a chimney complying with the requirements of subchapter 15 of Chapter 1 of title 27 of the Administrative Code (Building Code). Standard steel steam or water pipes are acceptable in such locations.

(e) Gas-fueled water heaters shall be located as close as practicable to a vent or flue. They should be so located as to provide short runs of piping to fixtures.

(f) Vent connectors shall consist of galvanized iron of not less than No. 26 U.S. gauge in thickness, cement-asbestos pipe, approved type B vents, enameled steel pipe of a quality acceptable to the superintendent as heat and corrosion resistant, or other materials satisfactory to the superintendent.

(g) Vent connectors shall have a cross-sectional area at least equal to the area of the vent outlets of the appliance and shall have a minimum diameter or dimension of three inches.

(h) Outlet pipes and vents, on the exterior of a building, shall consist of standard water, steam or soil pipes, cement-asbestos pipe, type B vents approved by the Department of Buildings or previously approved by the Board of Standards and Appeals, or other corrosion resistant materials satisfactory to the superintendent, all so connected as to prevent leakage at joints. Outlet pipes and vents on the exterior of a building shall be adequately supported and braced. Flues inside of building shall be constructed as low temperature chimneys. Type B vents may be used inside buildings when installed in accordance with the requirements of §27-887(d) of the Administrative Code (Building Code) and with the conditions of their approval.

(i) Only vent connections serving appliances located in one story of a building may be made to any flue. The cross-sectional area of any flue shall be equal to or greater than the total cross-sectional area of all vents connected to it, but in any case the least internal dimensions shall be three inches.

(j) Vent connections may be made to a flue serving other heat producing appliances, above the connection of the other heat producing appliances, or the smoke pipe or vent connection from the gas appliance and the other heat producing device may enter the flue through a single opening if joined together by a Y fitting located as close as practical to the flue. The angle of intersection between the branch and the stem of the Y shall not exceed forty-five degrees. The area of the common outlet pipe shall not be less than the combined areas of the outlet pipes joined by the Y fitting.

(k) The horizontal run of vent pipe connectors shall not exceed three-fourths of the vertical rise of the flue to which the vent is attached, measured from the connection of the appliance to the top of the flue. A vent connector shall be pitched upward from the gas appliance with a slope of not less than one-fourth inch vertically for each foot of horizontal run.

(l) No dampers, steel wool or other obstructions shall be placed in any vent pipe or flue.

HISTORICAL NOTE

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§25-30 Gas-Fueled Space Heaters Installed Prior to December 18, 1957.

(a) Gas-fueled space heaters installed prior to December 18, 1957, if of a type not approved by the Department of Health and the American Gas Association, shall be replaced by centrally supplied heat or by gas heaters approved by the said authorities on or before November 1, 1958, in any tenement and converted dwelling which contains ten or more apartments, and on or before November 1, 1959, in other tenements and converted dwellings.

(b) On or before the applicable dates given in subdivision (a) of this section, gas-fueled space heaters installed prior to December 18, 1957, in tenements and converted dwellings prescribed in said paragraph shall be made to comply with all the requirements of §§25-23 to 25-29.

HISTORICAL NOTE

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PART 4 INSTALLATION OF GAS-FUELED HEATERS

§25-31 Gas-Fueled Water Heaters Installed Prior to December 18, 1957.

(a) On or before November 1, 1958, in any tenement and converted dwelling which contains ten or more apartments, and on or before November 1, 1959, in other tenements and converted dwellings, any gas-fueled water heater installed prior to December 18, 1957, if of a type not approved by the Department of Health, shall be replaced by a supply of hot water or by a water heater approved by said department.

(b) On or before the applicable dates given in §25-30(a), gas-fueled dwellings described in said paragraph shall be made to comply with all the applicable requirements of §§25-23 to 25-29, and all gas-fueled water heaters that have water heaters installed prior to December 18, 1957, in tenements and converted dwellings' sleeping rooms shall be removed.

(c) Any gas-fueled water heater so designed and arranged that it heats water in pipe coils placed at a distance from the hot water storage tank, installed prior to December 18, 1957, may be maintained in tenements and converted dwellings described in subdivision (a) of this section on and after the applicable dates given in said rule only if it is of a type approved by the Department of Health. However, no gas-fueled water heater shall be maintained in a sleeping

room or bathroom.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 25-32

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER A INSTALLATION AND MAINTENANCE OF GAS-FUELED WATER AND SPACE HEATERS IN ALL PORTIONS OF DWELLINGS USED OR OCCUPIED FOR LIVING PURPOSES

PART 4 INSTALLATION OF GAS-FUELED HEATERS

§25-32 Maintenance of Space and Water Heaters.

(a) The owner of the tenement or converted dwelling and of the one and two family dwelling in which gas-fueled space and water heaters have been installed by him shall maintain each such appliance in a condition of good repair and in good operating condition.

(b) On and after November 1, 1958, in any tenement and converted dwelling which contains ten or more apartments, and on and after November 1, 1959, in any other tenement and converted dwelling, where a tenant provided a space or water heater on October 1, 1957, each such appliance shall be made to comply with all the applicable requirements of these rules and shall be maintained in a condition of repair and in good operating condition by the tenant.

(c) Should a tenant fail to comply with the requirements of subdivision (b) of this section, it shall be the duty of the owner of the tenement or converted dwelling to provide centrally supplied heat and a supply of hot water, or if such apartment is eligible therefore and he so elects, to install and continuously maintain space and water heaters therein which shall comply with the requirements of these rules.

(d) On and after November 1, 1958, in any tenement and converted dwelling which contains ten or more apartments, and on and after November 1, 1959, in any other tenement and converted dwelling, where gas-fueled space or water heaters were provided by the tenant, and the ownership of such appliances passes from the tenant or successor tenant, or if any such space or water heaters are removed from gas-fueled space or water heater, or temporarily for the purpose of repairs, then such an apartment, except for the purpose of immediate replacement by another owner will be subject to the duties imposed on an owner by subdivision (c) of this section.

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Rules of the City of New York

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28 RCNY 25-33

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER A INSTALLATION AND MAINTENANCE OF GAS-FUELED WATER AND SPACE HEATERS IN ALL PORTIONS OF DWELLINGS USED OR OCCUPIED FOR LIVING PURPOSES

PART 4 INSTALLATION OF GAS-FUELED HEATERS

§25-33 Existing Appliances in Ineligible Locations.

Where a gas-fueled space heater or water heater has heretofore been installed in a dwelling not complying with all the requirements of §25-16, nothing in these rules shall be construed to relieve the owner of his responsibility to provide for such dwelling centrally supplied heat and a supply of hot water.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER A INSTALLATION AND MAINTENANCE OF GAS-FUELED WATER AND SPACE HEATERS IN ALL PORTIONS OF DWELLINGS USED OR OCCUPIED FOR LIVING PURPOSES

PART 4 INSTALLATION OF GAS-FUELED HEATERS

§25-34 Instruction to Tenants.

The owner or the authorized agent of the owner shall instruct the tenant of each apartment wherein a space or water heater is located as to the proper method of using and operating such appliance.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 25-35

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER A INSTALLATION AND MAINTENANCE OF GAS-FUELED WATER AND SPACE HEATERS IN ALL PORTIONS OF DWELLINGS USED OR OCCUPIED FOR LIVING PURPOSES

PART 4 INSTALLATION OF GAS-FUELED HEATERS

§25-35 Variations.

Where there is a practical difficulty in carrying out the strict letter of the provisions of these rules, the borough superintendent may vary such provisions for a specific installation, provided the necessary safety is secured and the variance is not in conflict with the Administrative Code.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 25-51

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER C CONDUCT AND MAINTENANCE OF LODGING HOUSES

§25-51 Conduct and Maintenance of Lodging Houses.

(a) **Lodging house, defined.** As used in these rules, the term lodging house shall mean any house or building or portion thereof, in which persons are harbored, or received, or lodged, for hire for a single night, or for less than a week at one time, or any party of which is let for any person to sleep in, for any term less than a week. The term lodging house shall not be deemed to include a Class A multiple dwelling used or let for single room occupancy.

(b) **Permits required.** It shall be unlawful to conduct, maintain or operate a lodging house containing rooms in which there are more than three beds for the use of lodgers, or in which more than six persons are allowed to sleep unless a permit therefor has been issued by the Commissioner of Housing Preservation and Development.

(c) **Procedure for obtaining a permit.**

(1) **Information to be given in application.** Each application for a permit shall file with the Department of Housing Preservation and Development in duplicate, a written application, dated, signed by himself, and correctly setting forth:

(i) The full name and address of the proprietor of the lodging house and of the owner of the premises.

(ii) The location of the lodging house.

(iii) The portions of the building intended to be used as a lodging house.

(2) **Certificate from the Fire Department.** The applicant shall procure from the Fire Department of the City of New York a certificate to the effect that the premises for which a permit is desired complies with all laws, rules and regulations enforceable by the Fire Department.

(d) **Conduct, maintenance and operation of lodging houses.** (1) Every permittee shall conduct, maintain and operate such lodging house in accordance with the terms of his permit and the rules and regulations of the Department of Housing Preservation and Development.

(2) **Permit to be displayed.** The permit of the Department of Housing Preservation and Development issued for such lodging house shall be continuously and conspicuously displayed in the office or hall of such lodging house.

(3) **Numbers of lodgers permitted.** (i) No keeper of a lodging house shall receive lodgers therein without displaying continuously and conspicuously in each room a card issued for such room by the Department of Housing Preservation and Development setting forth the maximum number of lodgers permitted to be accommodated in such room, and also a copy of these rules and regulations.

(ii) No keeper of a lodging house shall accommodate in any sleeping room thereof a number of lodgers greater than the number set forth on the card issued for such room by the Department of Housing Preservation and Development; nor shall he accommodate any lodgers in any room in which a card, duly issued therefor, is not displayed as above described.

(4) **Ventilation.** (i) In every lodging house each room shall be adequately ventilated as required by law and to the satisfaction of the Department of Housing Preservation and Development.

(ii) In every sleeping room there shall be provided not less than 400 cubic feet of air space per bed.

(iii) Neither side of any bed shall at any time be nearer than two feet to the side of any other bed.

(iv) All beds shall be so arranged that the air shall circulate freely under each of them.

(v) In the ease of all lodging houses for which permits are for the first time applied for after the year 1919, no beds or bunks shall be placed one above another.

(5) **Airing, etc.** (i) Except when extreme severity of the weather prevents, all windows of sleeping rooms, waterclosets, washrooms and bathrooms shall be kept open not less than one foot at the bottom and one foot at the top at least four hours daily.

(ii) Beds occupied at night shall be vacated by 10 A.M. or 12 M., and the bedding thereof shall be turned over and exposed to the air from 10 A.M. to 2 P.M. or from 12 M. to 4 P.M. daily, as prescribed by the permits issued for each lodging house.

(iii) For the accommodations of lodgers working by night, special beds or rooms shall be set apart for their use during the day, but the bedding of suc beds must be turned over and exposed to the air in a room with outside windows, open as above prescribed, for at lease four consecutive hours daily.

(iv) Only servants at work or lodgers accommodated as per-subparagraph (iii) of this subdivision, shall be allowed in sleeping rooms during the four-hour period for airing, as specified in the permit issued for such lodging house, in any lodging house in which accommodations are provided for male lodgers, no female servants shall be employed; likewise, where accommodations are provided for female lodgers, no male servants shall be employed.

(6) **Beds and bedding.** (i) In every lodging house there shall be provided for each lodger a separate bed with

bedspread, bedding and bedclothes satisfactory to the Department of Housing Preservation and Development.

(ii) All portions of the building, including all furniture, bed clothing, matresses and pillows shall always be kept clean and free from vermin.

(iii) Sheets and pillow cases shall be kept in a condition clean and satisfactory to the Department of Housing Preservation and Development.

(iv) In the case of all lodging houses for which permits are for the first time applied for after the year 1910, the frames of all beds shall be of metal.

(7) **Waterclosets.** (i) In every lodging house there shall be provided waterclosets in the ratio of at least one watercloset to every fifteen beds or fraction thereof.

(ii) In every lodging house for which a permit shall be first applied for after February 1st, 1911, there shall be provided at least one watercloset on each floor, and watercloset shall be provided on every floor in the ratio of at least one to every fifteen beds or fraction thereof on such floors.

(iii) Every watercloset shall be properly ventilated by an unobstructed opening to the outer air.

(iv) No gas or offensive odors shall be allowed to escape from any water closet, sewer or outlet into any sleeping room or part thereof. Each watercloset shall be provided with a self-closing door, which shall be cut away at the bottom so as to provide adequate ventilation.

(v) In no lodging house shall any person be allowed to sleep in a room in which there is a watercloset.

(vi) In every lodging house for which a permit shall be first applied for after February 1st, 1911, there shall be provided at least one washroom on each floor.

(vii) In every lodging house there shall be provided washrooms with running water, set wash basins or other individual washing appliances satisfactory in character to the Department of Housing Preservation and Development. Such individual appliances shall be provided in proportion to the number of beds in the lodging house as follows: One such appliance for every ten beds or fraction thereof.

(8) **Baths.** (i) In every lodging house shower baths shall be provided in the ration of at least one shower bath to every fifty beds or fraction thereof, or tub baths shall be provided in the ration of at least one tub bath to every twenty-five beds or fraction thereof.

(ii) All such baths shall be provided with hot and cold running water, and shall be at all times accessible for the use of lodgers free of charge.

(9) **Water and towels.** An adequate supply of water and clean individual towels shall be provided. The use of common towel is prohibited.

(10) **Floors and walls of waterclosets, etc.** In every lodging house the floors of all waterclosets, washrooms and bathrooms, and the walls thereof to a height of at least four feet above the floor shall be constructed of such durable, waterproof material as may be approved by the Department of Housing Preservation and Development.

(11) **Cleanliness and repair.** (i) Every lodging house and every part thereof shall be at all times kept clean and free from dirt, filth garbage and rubbish in or on the premises belonging to or connected with the same.

(ii) All waterclosets, washbasins, baths, windows, fixtures, fitting and painted surfaces shall be at all times kept thoroughly clean and in good repair.

(iii) The floors, walls and ceilings of all rooms, passages, and stairways must be at all times kept clean and in good repair.

(iv) If painted with oil, all walls and ceilings shall be thoroughly washed with soap and water at least twice yearly, and at such other times as the Department of Housing Preservation and Development may direct.

(12) **Spitting and cuspidors.** (i) In each hall, room, cubicle, watercloset, washroom and bathroom of every lodging house there shall be provided a sufficient number of cuspidors or spittoons.

(ii) In every such room, etc., there shall be continuously and conspicuously a sing: "SPITTING FORBIDDEN EXECPT IN PROPER RECEPTACLES."

(iii) All such cuspidors or spittoons shall be of durable waterproof material and shall be thoroughly cleaned at least once daily, and shall be at all times maintained in a condition satisfactory to the Department of Housing Preservation and Development.

(13) **Method of sweeping regulated.** Sweeping of any portions of such lodging houses shall be so performed as to avoid the raising of dust in the process. Dry sweeping prohibited.

(14) **Illness.** It shall be the duty of the keeper, agent, or owner of every lodging house to immediately report to the Department of Health the occurance of any illness in such house.

(15) **No Women or Children lodged.** In no lodging house in which men are lodged shall any women or girl be lodged or any boy under the age of sixteen years, unless accompained by his father or legal male guardian.

(e) **Violations, revocation or suspension of permit**. A violation of any of the foregoing rules and regulations shall constitute sufficient cause for the revocation or suspension of a permit by the Commissioner of Housing Preservation and Development.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 25-61

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER D SIGNS AT INCINERATOR SERVICE OPENINGS

§25-61 Signs at Incinerator Service Openings.

(a) Signs on doors leading to the service openings shall be not less than eight inches wide and not less than 3 inches high, and shall have letters not less than one-quarter inch in height.

(b) Signs placed on the walls over the hoppers shall be not less than ten inches wide and four inches in height and shall have letters not less than five-sixteenths of an inch in height.

(c) The lettering of the signs shall be of the bold type and shall be properly spaced to provide good legibility, and the letters and the background shall be of contrasting colors.

(d) Signs on doors shall be located on the hall side and approximately five feet above the floor.

(e) Signs shall be durable and shall be substantially secured to the door wall.

(f) Lighting shall be sufficient to make the signs easily legible at all times.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 25-71

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER E SIGNS SHOWING THE MAXIMUM LAWFUL OCCUPANCY FOR SLEEPING PURPOSES OF APARTMENTS, SUITES OF ROOMS AND SINGLE-ROOM UNITS CONSTITUTING "ACCOMMODATIONS FOR TRANSIENTS"

§25-71 Signs Showing the Maximum Lawful Occupancy for Sleeping Purposes of Apartments, Suites of Rooms and Single-Room Units Constituting "Accommodations For Transients."

(a) (1) Except as otherwise provided in paragraph (5) of this subdivision (a), the owner of every multiple dwelling containing any accommodations for transients (see definition of accommodations for transients' in subd(b) hereof), except structures containing not less than 200 rooms and classified by the department as hotels (whether a class A or class B multiple dwelling), shall install and maintain signs therein in accordance with the applicable requirements set forth in paragraph two, three, four and five of this subdivision.

(2) There shall be displayed in each apartment, suite of rooms and single-room unit constituting such accommodations for transients, a sign which shall show both the currently applicable total maximum lawful occupancy, for sleeping purposes, of such apartment, suite or unit, and the currently applicable maximum lawful occupancy, for sleeping purposes, of each living room constituting a part of each such apartment or suite.

(3) In addition, in each room in any such apartment or suite, there shall be displayed a sign showing the maximum lawful occupancy, for sleeping purposes, of such room.

(4) Such signs shall be displayed in each such apartment, suite of rooms, single-room unit and living room, in

conformity with the applicable requirement of paragraphs two, three and four of this subdivision.

(5) Such signs need not be displayed in any apartment, suite of rooms, single-room unit or dormitory in a hotel (whether a class A or class B multiple dwelling), which apartment, suite, unit or dormitory consists of a room or rooms used for class B occupancy (see definitions of `room used for class B occupancy') lawfully, during any time while such apartment, suite, unit or dormitory is occupied for sleeping purposes by any person or persons, none of whom has occupied same for such purposes for a continuous period exceeding eighty-five days.

(b) **Accommodations for Transients.** (1) Any apartment, suite of rooms or single-room unit, consisting in whole or in part of any room or rooms used for class B occupancy, or any portion of any such apartment or suite, or

(2) any dormitory, or

(3) any apartment or portion thereof used for single room occupancy.

(c) **Application.** These rules shall apply to the signs which are required by §27-2080 of the Administrative Code to be installed and maintained in each apartment, suite of rooms and single-room unit constituting "accommodations for transients" as described in subdivision (b) of this section.

(d) **Material.** Signs shall be constructed of metal, slow-burning plastic or other material approved by the Commissioner, and shall be substantial, rigid and durable in construction. Signs of cardboard or heavy paper may be used if such material is encased in strong metal, wood or plastic frames and is covered by clear plastic or glass not less than one sixteenth inch (1/16") in thickness and if provided with substantial backing. Signs shall be provided with means for fastening securely to the wall.

(e) **Room signs.** The following information shall appear on signs required in rooms in which not more than one (1) adult is permitted to sleep:

Department of Housing Preservation and Development

City of New York

Premises: _____

(address of building)

Room No. _____ on _____ story.

Not more than ONE (1) ADULT permitted to sleep in this room. §27-2075, Administrative Code.

The following information shall appear on signs required in rooms in which not more than two (2) adults are permitted to sleep:

Department of Housing Preservation and Development

City of New York

Premises: _____

(address of building)

Room No. _____ on _____ story.

Not more than TWO (2) ADULTS permitted to sleep in this room. §27-2075 of the Administrative Code.

In both of the above instances the address of the premises and the location of the room must be shown, in addition to the number of persons permitted to sleep in such room.

(f) **Apartment signs.** The following information shall appear on signs required in apartments and suites of rooms showing the total maximum occupancy for sleeping purposes of entire apartment or suite of rooms:

Department of Housing Preservation and Development

City of New York

Premises: _____

(address of building)

Apartment

(or suite) No. _____ on _____ story.

Not more than a TOTAL OF _____ ADULTS permitted to sleep in this apartment (or suite). §27-2075, Administrative Code.

The permitted lawful occupancy for sleeping purposes of each room in this apartment is as follows:

Room No. _____ not more than _____ ADULTS

Room No. _____ not more than _____ ADULTS

(Provide separate line for each room in apartment or suite.)

The above sign must show the address of the premises, the location of the apartment or suite of rooms, the total maximum lawful occupancy for sleeping purposes of the entire apartment or suite, and the permitted lawful occupancy for sleeping purposes of each individual room in said apartment or suite. The maximum lawful occupancy for sleeping purposes of each room shall be shown on a separate line, with a proper designation by room number in order to identify each room.

(g) **Size of sign and lettering.** The lettering shall be of the Gothic type.

The letters forming "DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT", and the letters and numerals showing the number of ADULTS, shall be not less than one-quarter inch (1/4") in height. All other letters and numerals shall be not less than three-sixteenths inch (3/16") in height. Letters shall be of such width and spacing as will provide the greatest legibility.

The letters and the background of the sign shall be of contrasting colors.

The size of sign shall be sufficient to accommodate the required lettering and to provide a margin of not less than one-quarter inch (1/4") about the lettering on all sides.

(h) **Location of signs.** Signs shall be located at a distance of not less than five feet (5') or more than six feet (6') above the floor.

Where a sign is required to be displayed in a room, same shall be so located that it is visible at all times to the occupant or occupants of such room.

Where a sign showing the total maximum occupancy for sleeping purposes of an entire apartment or suite of rooms is required to be displayed in such apartment or suite, such signs shall be located in a portion of such apartment or suite through which it is necessary for every occupant to pass after entering or before departure from such apartment or suite. Such sign shall be visible at all times to the occupants of such apartment or suite.

(i) **Lighting.** Sufficient lighting shall be provided so that the sign will be plainly legible at all times when the apartment or room is occupied.

(j) **Maintenance.** Signs shall be maintained in a clean and legible condition. Signs that are damaged shall be repaired or replaced immediately. Signs that are painted over shall be replaced or restored to the original condition. Signs that become loose shall be securely fastened.

HISTORICAL NOTE

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Rules of the City of New York

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28 RCNY 25-81

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER F SIGNS IDENTIFYING OWNER, MANAGING AGENT AND SUPERINTENDENT OF MULTIPLE DWELLINGS

§25-81 Signs Identifying Owner, Managing Agent and Superintendent; Plans on Premises.

(a) (1) Identification signs for the purpose of identifying the owners and managing agents of multiple dwellings by the display of the serial number, shall comply with the applicable provisions of these rules.

(2) Identification signs for the purpose of identifying the superintendents, janitors or housekeepers of multiple dwellings, wherein such employees are required by the provisions of §83, Multiple Dwelling Law, shall comply with the applicable provisions of these rules.

(b) Signs shall be constructed of metal, slow-burning plastic or other material approved by the Commissioner and shall be substantial, rigid and durable, in construction. Signs of cardboard or heavy paper may be used if such material is encased in strong metal, wood or plastic frames and is covered by clear plastic or glass not less than one-sixteenth inch in thickness and if provided with substantial backing. Signs shall be provided with means for fastening securely to the wall.

(c) (1) The following information shall appear on the sign, prescribed in paragraph (1) of subdivision (a) of this section, in four lines of lettering as indicated and in the order indicated:

Department of Housing Preservation and Development

City of New York

Serial Number

Street Address of Building

(2) The following information shall appear on the sign, prescribed in paragraph (2) of subdivision (a) of this section, in four lines of lettering as indicated and in the order indicated:

Title (Superintendent, Janitor or Housekeeper) Name of Superintendent, Janitor or Housekeeper Address of Superintendent, Janitor or housekeeper (including apartment number, if any)

(d) **Telephone number of superintendent, janitor or housekeeper.** The size of sign shall be sufficient to accommodate the required lettering and provide a margin of not less than one-fourth inch about the lettering on all sides.

(e) (1) Serial numbers, as specified in §27-2104 shall be determined and assigned by the Department of Housing Preservation and Development. No serial number shall be changed or ordered without the approval of the Department of Housing Preservation and Development. The serial number shall be placed on the sign by the owner or his representative.

(2) The street address of the building consisting of the house number and the street shall be placed on each sign by the owner or his representative.

(3) The lettering shall be gothic type. The numbers composing the serial number shall be not less than one-half inch in height. The letters forming "Department of Housing Preservation and Development" and the street address shall not be less than one-fourth inch in height. All other letters shall be not less than three-sixteenth of an inch in height. Letters shall be of such width and whatever as will provide the greatest legibility.

(f) The lettering of signs, as specified in §27-2104, shall be Gothic type and shall not be less than three-sixteenths of an inch in height. Letters shall be of such width and spacing as will provide the greatest legibility.

(g) The letters and the background of the sign shall be of contrasting colors.

(h) Signs shall be approved by the Department of Housing Preservation and Development before installation.

(i) Signs shall be located in the entrance hall at the main entrance to the building at the street floor. Signs shall be placed preferably over the mail boxes but, in any case, shall be conspicuously displayed in a prominent location in the entrance hall. Signs shall be located between 7 feet and 9 feet above the floor.

(j) Signs shall be fastened directly to the wall by screws or bolts in a rigid, substantial manner, or by other means as may be approved by the Department of Housing Preservation and Development.

(k) Sufficient lighting shall be provided so that the sign will be plainly legible at all times.

(l) Signs that are defaced, damaged or removed, shall be promptly repaired or replaced. Signs shall be maintained in such manner as to be easily read at all times.

HISTORICAL NOTE

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28 RCNY 25-91

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER G REQUIREMENT THAT OWNERS OF MULTIPLE DWELLINGS FILE A "24-HOUR" TELEPHONE NUMBER WITH THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

§25-91 Rules for Enforcement of Subdivision 4 of §27-2098 of the Administrative Code of the City of New York.

(a) The words "may be reached at all hours and time" within the meaning of subdivision (4) of §27-2098 of the Administrative Code shall be construed to mean a telephone number at or through which in the normal course of events a person might reasonably be expected to be reached at all times and this shall be deemed to include:

(1) the telephone number of the residence of such person; or

(2) the telephone number of an agent fully authorized to act on behalf of the owner; or

(3) the telephone number of a person, firm or corporation, including an answering service, which has in its possession at all times a telephone number at which the person or agent can be reached at all times.

A corporation may comply with this subdivision by any of the means as hereinabove set forth.

(b) The term "emergency repairs" within the meaning of this subdivision shall be construed to designate a condition in a multiple dwelling which, in the opinion of the department, constitutes, or if not properly corrected, will constitute, a fire hazard or a serious threat to the life, health or safety of occupants thereof.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER H OWNER'S RIGHT TO ACCESS TO APARTMENTS OR ROOMS IN MULTIPLE DWELLINGS

§25-101 Owner's Right of Access.

(a) **Owner to give notice.** Where an owner seeks access to an apartment, suite of rooms or to a room, under the provisions of §27-2008 in order to make inspection therein for the purpose of determining whether such places are in compliance with the provisions of the multiple dwelling law of the administrative code, he shall notify the tenants that he will seek access to the apartment, suite of rooms, or rooms, not less than twenty-four hours in advance of such time. Where an owner, contractor or agent of the owner seeks access to make improvements required by law or to make repairs, notice shall be given to the tenant not less than one week in advance of the time when the improvements or repairs are to be started. However, where repairs are urgently needed in emergencies to prevent damage to property or to prevent injury to persons, such repairs of leaking gas piping or appliances, leaking water piping, stopped-up or defective drains or leaking roofs, broken and dangerous ceiling conditions, no advance notice shall be required from the owner, agent, contractor or workman.

(b) **Notices to be in writing.** Where an owner is required to give notice in advance of seeking access to an apartment, suite of rooms or to a room, as required by subdivision (a) of this section, such notice shall be in writing and shall contain a statement of the nature of the improvement or repairs to be made.

(c) **Authorization to be in writing.** Where an authorized agent or employee of an owner seeks access to an apartment, suite of rooms, or rooms, the authorization of the owner shall be in writing and the agent or employee shall exhibit such authorization to the tenant when access is requested.

(d) **Hours when access to be permitted.** Except in emergencies, access to an apartment, suite of rooms, or rooms, shall be limited, to the hours between nine antemeridian and five post-meridian. Access shall not be required on Saturdays, Sundays or legal holidays except in emergencies.

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28 RCNY 25-111

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER I BOILER ROOM ENCLOSURE

§25-111 Boiler Room Enclosure for Multiple Dwellings with Central Heat.

(a) A separate enclosure shall not be required when the central heating plant is located in a cellar that is used for no other purpose, provided that

(1) The building is occupied entirely for residential purposes.

(2) The first tier is of fireproof construction with no opening to the upper stories.

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28 RCNY 25-121

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER J SIGNS INDICATING FLOORS IN MULTIPLE DWELLINGS

§25-121 Signs Indicating Floors in Multiple Dwellings Pursuant to §27-2047 Administrative Code.

(a) Signs may be posted or painted and may consist of numerals or letters only.

(b) Numerals or letters shall be not less than three inches in height and except for the numeral one (1), shall be not less than two inches in width and shall be sufficiently large to be easily read.

(c) Numerals or letters shall be of a color which will contrast with the background. The numerals or letters may or may not be fixed to other material.

(d) Lighting shall be sufficient to make the signs legible at all times. Lighting within the sign or in back of the sign shall not be required if other illumination is sufficient to make the sign legible.

(e) Signs shall be durable and shall be substantially secured to the walls.

(f) The superintendent may vary the provisions of these rules where strict compliance would produce unnecessary hardship, provided the intent of the law and rules is obtained.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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28 RCNY 25-131

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER K HOUSE NUMBERS

§25-131 House Numbers.

(a) On each building erected or altered after the effective date of these rules there shall be affixed in a conspicuous location at or near the main entrance of a building, the house number of the building.

(b) House numbers shall be of such size and shall be so located as to be clearly visible from the public sidewalk during daylight hours. Where the building is remote from the sidewalk, the number of the building and a directional arrow indicating the building location shall be provided in addition to the conspicuous number at the entrance to the building.

(c) House numbers shall be constructed of durable material and shall be maintained in such condition as to be readily visible as required by subdivision (b) of this section.

HISTORICAL NOTE

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***** Current through December 2009 ****

28 RCNY 25-141

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER L MEASURING FLOOR AREA OF PUBLIC HALLS, STAIRS, FIRE-STAIRS AND FIRE-TOWERS IN MULTIPLE DWELLINGS TO DETERMINE LIGHTING REQUIREMENTS

§25-141 Measuring Floor Area of Public Halls, Stairs, Fire-Stairs and Fire-Towers in Multiple Dwellings to Determine Lighting Requirements.

(a) To compute the square feet of floor area of public halls in multiple dwellings having an unenclosed stair, the floor area of the public hall and the horizontal area of the stair opening shall be added. At the lowest story, where there is an ascending flight of stairs but no descending flight of stairs, only the area of the actual flight of stairs shall be added to the floor area of such lowest story.

(b) To compute the square feet of floor area of a fire-stair or a fire-tower in a multiple dwelling, one-half of the horizontal area of such fire-stair or fire-tower, measured from the wall of the stair landing on one level to the wall of the stair landing on the next level, shall be deemed to be the floor area at each such level.

(c) Where the light from the fixture at the highest story provides adequate illumination, in the opinion of the department, no lighting fixture shall be required at the roof level of the stair bulkhead.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 25-151

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER M ENTRANCE DOORS, LOCKS AND INTERCOMMUNICATION SYSTEMS

§25-151 Entrance Doors, Locks and Intercommunication Systems.

(a) Bulkhead doors and scuttles shall have no key locks and shall not be locked by a key at any time. The only permissible and acceptable means of securing a bulkhead door or scuttle is by means of a movable bolt or hook on the inside.

(b) Subdivision (n) of §25-174 of the current departmental rules and regulations in its last un-numbered paragraph provides as follows:

"All passageways required under these rules shall be not less than seven feet (7'0") in height and not less than three feet (3'0") in width and shall at all times be kept clear and unobstructed. Doors and gates at the end of such passageways are prohibited, except that a door or gate equipped with an approved-type knob or panic bolt which shall be readily openable from the inside will be permitted at the building line. Doors and gates provided with key locks or padlocks are prohibited."

(c) Where an entrance door leading from a vestibule to the main entrance hall or lobby is equipped with one or more automatic self-closing and self-locking doors, the entrance door from the street to the vestibule need not be equipped with automatic self-closing and self-locking doors.

(d) Every entrance from the street, court, yard or cellar to a class A multiple dwelling erected or converted after

January 1, 1968 containing eight or more apartments shall be equipped with automatic self-closing and self-locking doors. Such multiple dwelling, as aforesaid, shall also be equipped with an intercommunication system to be located at the required main entrance door.

(e) On or after January 1, 1969, every entrance from the street, court, yard or cellar to a class A multiple dwelling erected or converted prior to January 1, 1968 containing eight or more apartments, provided that a majority of tenants in occupancy request or consent in writing, shall be equipped with automatic self-closing and self-locking doors and shall also be equipped with an intercommunication system.

(f) Every self-locking door required under this section shall be installed and maintained so as to be readily openable from the inside without the use of keys.

(g) The minimal devices acceptable for the intercommunication system shall be a bell or buzzer system, or a speaking and listening device to permit communication by voice between the occupant of each apartment and a person outside such required main entrance door, and a return buzzer mechanism to release or open the lock to the aforesaid required door.

(h) The bell and intercommunication system shall be located at the required main entrance door so that a person may readily reach the door when the unlocking buzzer is activated.

(i) No push button device shall be more than six feet from the floor and the speaking and listening device shall be installed to be not less than four feet and not more than five feet from the floor.

(j) The device or devices for the intercommunication system installed in the apartment shall be readily accessible to the occupant.

(k) The device or devices for the intercommunication system installed hereunder shall be of a type and kind approved by the Department of Buildings or previously approved by the Board of Standards and Appeals.

(1) Devices which have been previously installed and which are in good condition and performing in an adequate manner may, in the discretion of the department, be accepted.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 25-161

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER N INSTALLATION OF SECURITY ITEMS IN MULTIPLE DWELLINGS

§25-161 Installation of Peepholes.

(a) These new peepholes, or door interviewers, must bear a label showing the approval of the Department of Buildings or the previous approval of the Board of Standards and Appeals.

(b) The peepholes must be so located as to enable a person in such housing unit to view from the inside of the entrance door any person immediately outside.

(c) The distance above the inside finished floor to the center of the peephole shall be approximately 5 feet.

(d) The cutout shall not affect the adequacy of any stiffening member of the door.

(e) Peepholes installed prior to the enactment of the legislation will be acceptable unless the cutout for the peephole has affected the adequacy of any stiffening member of the door.

HISTORICAL NOTE

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28 RCNY 25-162

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER N INSTALLATION OF SECURITY ITEMS IN MULTIPLE DWELLINGS

§25-162 Installation of Two 50 Watt Lights at Front Entrance Way.

(a) All electrical work shall be done in accordance with the requirements and approval of the Department of Buildings.

(b) The installation shall be a separate circuit or connected to the house line servicing the public halls.

(c) The lights shall be encased in a metal guard or shatterproof globe.

(d) The lights of at least 50 watts of incandescent or equivalent illumination shall be placed on each side of the front entrance-way at a height of between 7 to 11 feet above floor level adjacent to such entrance-way and adequate to light same.

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28 RCNY 25-163

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Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER N INSTALLATION OF SECURITY ITEMS IN MULTIPLE DWELLINGS

§25-163 Installation of Viewing Mirrors in Self-Service Elevators.

(a) Mirrors shall be made of polished metal.

(b) Mirrors shall be of such size and so located on the car wall opposite the car entrance so that a person entering the elevator may have a complete view of the interior of the car. It shall not be necessary to provide a view of the floor and ceiling.

(c) The mirror shall be so located as not to interfere with or endanger passengers in the elevator.

(d) Mirrors shall be mounted and secured so that they cannot be readily removed by the public.

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***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER N INSTALLATION OF SECURITY ITEMS IN MULTIPLE DWELLINGS

§25-164 Installation of Lights in Rear Yards, Side Yards, Front Yards and Courts.

(a) All electrical work shall be done in accordance with requirements and approval of the Department of Buildings.

(b) The installation shall be a separate circuit or connected to the house line servicing the public halls.

(c) The light or lights, of at least 40 watts of incandescent or equivalent illumination, shall be placed so as not to create a nuisance.

(d) The lights shall be so located as to adequately light all portions of the rear yards, side yards, front yards and courts.

(e) Lights are not required in an inner court that is accessible only from the interior of the building and to which access is restricted for clean-out purposes.

HISTORICAL NOTE

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Rules of the City of New York

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28 RCNY 25-171

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER O FIRE-RETARDING OF ENTRANCE HALLS, STAIR HALLS AND PUBLIC HALLS IN OLD LAW TENEMENTS AND CONVERTED DWELLINGS

§25-171 Fire-Retarding of Entrance Halls, Stair Halls and Public Halls in Old Law Tenements and Converted Dwellings.

(a) **Intent.** The fire-retarding rules herewith set forth are approved by the Department of Buildings for old law tenements and converted dwellings where their entrance halls, stair halls and public halls are required, by §189, subdivisions 1 and 4, §238, subdivision 4, and §218, subdivisions 5 and 6, Multiple Dwelling Law, and §27-2044, Housing Maintenance Code, to be fire-retarded in a manner approved by the Department of Buildings.

(1) All entrance halls, stair halls and public halls, including service halls and stairs, shall be fire-retarded to the extent required by the Multiple Dwelling Law and the Multiple Dwelling Code and the Housing Maintenance Code.

(2) It is the intent that all wood structural members of partitions, ceilings and stair soffits shall be completely protected with fire-retarding materials where they may be exposed to fire in entrance, stair and public halls. To this extent these rules and regulations cover only general conditions and are not designed to cover specific or special cases. Where such may occur the owner is required to consult the Department of Buildings and receive instructions before work is started.

(3) Where existing dumbwaiter shafts are located in, or open on public halls which are required to be fire-retarded, such dumbwaiter shafts, when not constructed of fireproof or fire-retarding materials, shall be fire-retarded on the inner

side, from the lowest story to the roof inclusive, in accordance with the requirements of paragraph (1) of subdivision (b) of this section or paragraph (2) of subdivision (b) of this section, except in cellar where such shafts shall be enclosed with fireproof materials.

All doors opening from such dumbwaiter shafts shall be self-closing, and doors and assemblies when of wood or other non-fireproof construction shall be lined on both sides with No. 26 U.S. gauge metal, except in cellar where doors and assemblies shall have a fire-resistive of at least one (1) hour.

(4) It is not intended that these rules and regulations in themselves require plans to be filed. However, should any work involve structural changes, then plans are required to be filed in the Department of Buildings and such changes shall be subject to all other Rules and Regulations applicable thereto.

(5) Work shall not commence until satisfactory evidence has been submitted to the Department of Buildings that compensation insurance has been obtained in accordance with the provisions of the Workmen's Compensation Law.

It is the intent of 238, subdivision 4, Multiple Dwelling Law, that every entrance hall, public hall and stair hall in every old law tenement four stories or more in height shall be fire-retarded.

Every old law tenement three stories and a basement, or three stories, basement and cellar in height shall be deemed to be four stories in height when the main entrance from the grade is to the basement, and every entrance hall, public hall and stair hall in such building shall be fire-retarded.

In old law tenements where the entrance halls, public halls and stair halls are required to be fire-retarded, existing wood stairs shall be fire-retarded in conformity with the requirements of these rules and regulations, whether or not such halls had been fire-retarded in accordance with plans filed with and approved by the former Tenement House Department or Department of Buildings, prior to the enactment of subdivision 4 of §238 of the Multiple Dwelling Law.

(b) **Partitions.** All existing partitions separating from entrance halls, stair halls and public halls, or otherwise forming enclosing partitions of entrance halls, stair halls and public halls, shall be fire-retarded by any one of the following methods:

(1) **Metal lath and cement of gypsum mortar.** Completely remove all existing materials to face of studs or other structural members on hall side of partitions and recover with metal lath and two coats of cement of gypsum mortar. If cement mortar is used it shall be three-quarters inch (3/4") thick, if gypsum mortar is used it shall be one inch (1") thick. The second coat of mortar shall not be applied until the first coat has thoroughly set and in no case shall the second coat be applied on the same day that the first coat of mortar is applied.

In lieu of the above method, completely remove all combustible materials from plaster face of partitions on hall side and repair existing plaster. After inspection, cover existing plaster with herringbone or similar approved type metal lath with rigid rib reinforcement to provide good bond between new and existing plaster. Cover lath with two coats (scratch and brown) of cement of gypsum mortar as above.

The first coat of cement mortar (scratch) shall be composed of one (1) part of Portland cement to one and one-half (1 1/2) parts of sand, with an additional volume of hydrated lime not greater than ten (10) percent of the volume of Portland cement. The second coat (brown) shall be composed of one (1) part of Portland cement to three parts (3) of sand, with an additional volume of hydrated lime not greater than ten (10) percent of the volume of Portland cement.

The first coat (scratch) of gypsum mortar shall be composed of one (1) part of gypsum to one (1) part of sand. The second coat (brown) of gypsum mortar shall be composed of one (1) part of gypsum to one and one-half (1 1/2) parts of sand.

(2) **Plaster boards and gypsum mortar or stamped metal.** Completely remove all existing materials to face of

studs or other structural members on hall side of partitions and recover with plaster boards or perforated rock lath three-eights inch (3/8") thick, covered with two coats of gypsum mortar (scratch and brown) so that the aggregate thickness shall be at least one inch (1"), or in lieu thereof, recover same with plaster boards one-half inch (1/2") thick, covered with No. 26 U.S. gauge stamped metal.

In lieu of the above method, completely remove all combustible material from plaster face of partitions on hall side and repair existing plaster. After inspection, plaster boards or perforated rock lath may be applied directly over the existing plaster face of partitions on hall side. Cover plaster boards or perforated rock lath with two coats of gypsum mortar as above, or plaster boards may be covered with No. 26 U.S. gauge stamped metal.

(3) **Mineral wool.** Fill solidly between partition uprights, from underside of flooring to ceiling with mineral wool blown in place by the pneumatic method, packed solidly to fill all spaces and voids.

(4) **Brick, gypsum, etc.** Fill solidly between partition uprights from underside of flooring to ceiling with brick, gypsum, or other acceptable material packed solidly to fill all spaces and voids. Where brick, gypsum, or other masonry material is intended to be used, application must be filed before installation with the Department of Buildings for approval of strength of existing members intended to support the proposed masonry fire-retarding.

(5) **Other methods.** No other method may be used unless same is acceptable to the Department of Buildings.

(6) **Removal of windows in public hall partitions.** When windows in walls or partitions are removed, both sides of the openings shall be sealed with fire-retarding materials, except that wood lath and plaster may be used on the room side of the opening when the existing surface of the room is constructed of wood lath and plaster.

(7) **Electric meters.** Where direct current (DC) electric meters of public utility companies are present or installed on partitions of public halls the fire-retarding shall continue unbroken behind the meters or the meters shall be mounted on a heavy slate back or non-magnetic fireproof equivalent, such as transite, asbestos board, etc., against which fire-retarding finished up tightly.

(8) **Partitions in class B converted dwellings.** Where fire-retarding is required in any class B converted dwelling referred to in paragraph (7) of subdivision (a) of this section, both sides of all enclosure partitions of entrance halls, stair halls and public halls throughout such building shall be fire-retarded in accordance with the provisions of paragraph (3) or (4) of subdivision (b) of this section.

(9) **Partitions in altered old law tenements.** In any old law tenement where the occupancy is increased on any story, the enclosing partitions of any entrance hall, stair hall or public hall on the story where the occupancy has been increased, shall be fire-retarded on both sides. Such requirements shall apply only to the walls of the entrance hall, stair hall or public hall adjoining the altered apartment. The enclosing partitions of such halls other than those adjoining the altered apartment, and the partitions on any story where the occupancy has not been increased, shall be fire-retarded on the hall side. The method of fire-retarding shall be as set forth in paragraph (1) or (2) of subdivision (b) of this section, or said partitions shall be fire-retarded in accordance with the provisions of paragraph (3) or (4) of subdivision (b) of this section.

(10) **Newly constructed partitions.** In any entrance hall, stair hall or public hall where any partition or part thereof is newly constructed, and where the plaster has been removed from any partition or part thereof, such partition shall be fire-retarded on both sides.

(c) **Ceilings.** Any approved method for fire-retarding partitions shall be acceptable for fire-retarding ceilings, provided that all existing materials are completely removed to face of joists. Mineral wool, brick gypsum or other masonry fill will not be accepted.

(1) Where any entrance hall, public hall or stair hall, or any other portion thereof, in any part of any old law

tenement or converted dwelling is required to be fire-retarded that portion of any ceiling directly underneath any such entrance hall, public hall or stair hall shall be fire-retarded. Where such ceiling is located in any store, apartment or other space it shall also be fire-retarded as required for partitions by paragraph (1) or (2) of subdivision (b) of this section.

Where the above method is impractical due to the existing ceiling construction in any such store, apartment or other space, the Department of Buildings may permit the fire-retarding of such ceilings to be applied from above by removing the floor of any such entrance hall, public hall or stair hall and installing between the floor beams, and directly against the ceiling below, a layer of heavy building paper over which there shall be placed a basket made of reinforced ribbed expanded metal lath weighing at least 3.4 pounds per square yard. Such basket shall be lined with Portland cement or gypsum mortar not less than one inch (1") in thickness. The building paper, metal lath and cement or gypsum mortar shall be carried at least halfway up on the sides of the beams. However, this method will not be accepted for the fire-retarding of any such ceiling located in a space used for a hazardous purpose or business, nor will it be accepted for the fire-retarding of any such ceiling located in the cellar or for the fire-retarding of any ceiling located in any store, apartment or other space when such ceiling is constructed of wood or of wood and metal applied directly to the beams. In such cases the ceilings shall be fire-retarded according to the requirements of paragraph (1) or (2) of subdivision (b) of this section.

(d) **Existing wood stairs.** Except where stairs of incombustible material are required in class B converted dwellings as set forth in paragraph (7) of subdivision (a) of this section, all wood railings, balustrades and newel posts shall be completely removed from every existing wood stairs and such stairs shall be provided with railings, balustrades and newel posts of metal or other hard incombustible material, of such size are secured in such manner to the existing stairs as may be approved by the Department of Buildings, except handrails may be hardwood.

Soffits and stringers of existing wood stairs shall be fire-retarded in accordance with the methods set forth in subdivisions (e) and (f) of this section.

(e) **Stair soffits.** The soffits of every stair in every entrance hall, public hall, and stair hall, including any soffit extending beyond the enclosure partitions of any such hall, shall be fire-retarded.

Any approved method for fire-retarding partitions shall be acceptable for fire-retarding stair soffits provided that all existing materials are completely removed to face of structural members of stair soffits.

(f) **Fascia-stair and well.** Fascia of outside stringer on rake of stairs, and well fascia at floor level, shall be fire-retarded their full depth to form complete seals with the soffits of stairs and ceilings of halls, respectively. Type of fire-retarding shall be one of those herein approved for ceilings of halls, or in lieu thereof, cover fascia with sheet asbestos not less than three-sixteenths inch (3/16") thick with joints well pointed over which there shall be an additional single layer of No. 26 U.S. gauge stamped metal or cover fascia with a single layer of No. 14 U.S. gauge steel.

(g) **Fire-stopping.** All partitions required to be fire-retarded shall be fire-stopped with incombustible material at floors, ceilings and roofs. Fire-stopping over partitions shall extend from the ceilings to the underside of the flooring or roofing above. Fire-stopping under partitions shall extend from the underside of flooring to ceiling below. All spaces between floor joints (directly over and under partitions) shall be completely filled the full depth of the joists. Any space from top of partition to underside of roof boarding shall be completely fire-stopped.

Fire-stopping shall be done with brick, cinder concrete, gypsum, metal lath and Portland cement or gypsum mortar, mineral wool, or other materials acceptable to the Department of Buildings.

(h) **Door openings.** Except as provided in paragraphs (1) and (2) of this subdivision, all door openings into any public hall, entrance hall or stair hall which required to be fire-retarded shall be equipped with self-closing protective assemblies having a fire resistive rating of at least one hour.

(1) In old law tenements where the number of apartments is not being increased, existing wood doors opening into public halls, entrance halls or stair halls may remain provided such doors are made to be self-closing ("butterfly" spring hinges are not acceptable) and, provided further, all glazed transoms and panels in every such door are glazed with wire glass. All such transoms shall be made stationary.

(2) Where, in any old law tenement, the number of apartments is being increased on one or more stories, door openings into public halls, entrance halls or stair halls on each story or stories shall be equipped with self-closing protective assemblies having a fire-resistive rating of at least one hour.

In such old law tenements existing wood doors opening into public halls, entrance halls or stair halls may remain on any story where there is no increase in the number of apartments, provided such doors and every transom and panel in same are made to conform to the requirements set forth in paragraph (1) of subdivision (h) of this section.

(3) All doors shall be properly fitted to their assemblies and there shall be no unnecessary spaces between doors and door bucks or saddles.

(i) **Materials.** All materials used in the process of fire-retarding shall be of a type and manufacture acceptable to the Department of Buildings.

The following shall be considered as minimum requirements:

(1) **Metal lath.** Metal lath shall weigh at least 30 pounds per square yard, except lath used over existing plaster which lath shall weigh at least 3.4 pounds per square yard and be reinforced with rigid ribs not less than three eights inch (3/8") deep, spaced not more than eight (8") on center running full length of sheets. Where ribs exceed 4.8 inches on center, same shall have at least one intermediate one eight inch (1/8") inverted rib running the full length of sheets.

Metal lath fastened to stubs shall be attached at least at six inch (6") intervals with 4-penny nails or one inch (1") roofing nails or No. 14 steel wire gauge wire staples, and to wood joists by at least 6-penny nails, one and one-quarter inch (1 1/4") roofing nails, or one inch (1") No. 14 steel wire gauge wire staples. When metal lath is applied over existing plastered surfaces, same shall be fastened with nails or staples of the same gauge and such nails or staples have anchorage of at least one-half inch (1/2")in studs and three-quarters inch (3/4") in joists. Laps between the studs or joists shall be securely tied or laced. Stiffened metal lath on wood studs, or joists, shall be nailed or stapled at least at eight inch (8") intervals, and the laps between studs similarly tied or laced.

Metal lath shall be galvanized or painted.

(2) **Plaster boards or perforated rock lath.** Plaster boards or perforated rock lath shall be of type and manufacture acceptable to the Department of Buildings. Each board shall bear the name of manufacturer and brand stamped thereon for inspection after erection.

Plaster boards or perforated rock lath nailed directly to wood studding or joists shall be fastened with one and one-eighth inches (1 1/8") wire nails of at least No. 13 steel wire gauge, with flat three-eighth inch (3/8") heads. When such boards are applied over existing plastered surfaces, same shall be fastened with nails of the same gauge and such nails shall have anchorage of at least one-half inch (1/2") in studs and three-quarters inch (3/4") in joists. The maximum space between nails shall be four inches (4"). The joints shall be broken at every other board. The wetting of such boards before plastering is forbidden.

(3) **Stamped metal.** Stamped metal shall be No. 26 U.S. gauge (equivalent thickness .018 inches or 3/160 inches) with one inch (1") lapped seams. Size of sheets shall be not more than twenty-four inches by ninety-six inches (24" x 96"), having a selvage consisting of a half-round bead sufficient to create a one inch (1") overlap at both seams. Nailing shall be secured direct to studs or joists with 6-penny smooth box nails (two inches (2") or No. 12 1/2" gauge) with nails on end seams spaced not more than three inches (3")apart. Nailing to plaster is forbidden and in all cases nails shall

have anchorage of at least one-half inch (1/2") in studs and three-quarters inch (3/4") in joists. All beads at seam shall be chisel sealed, making a tight joint. All sheets shall be marked "26 U.S. Gauge" for identification and inspection after erection.

(4) **Mineral wool.** Mineral wool shall be of a type and manufacture acceptable to the Department of Buildings.

Holes shall be cut approximately three inches (3") in diameter through the wood lath and plaster near the ceiling, in the panels between each two adjacent studs. As an alternative, holes may be cut approximately three inches by six inches (3" x 6") on every second stud. Check each stud panel with a weight and line to find out whether there is any obstruction. If any cross-bridging or other obstruction is encountered additional holes shall be cut until access has been gained to all open spaces within the stud panel in all specified partitions. Mineral wool shall then be blown into all spaces by the pneumatic method with air pressure sufficient to pack the insulation to a density acceptable to the Department of Buildings. Mineral wool for this work shall be in bags or containers marked with the manufacturer's name and label specifying its type.

(5) **Other materials.** No other material may be used unless same is acceptable to the Department of Buildings.

(j) **Exceptions.** Where any portion of any entrance hall, stair hall or public hall has been previously fire-retarded under the supervision of this department, the former Tenement House Department or various former Departments of Buildings, such fire-retarding will be accepted only to the extent that same has been previously approved, provided, however, that such entrance hall, stair hall or public hall is otherwise made to conform to all the requirements set forth in these rules.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER O FIRE-RETARDING OF ENTRANCE HALLS, STAIR HALLS AND PUBLIC HALLS IN OLD LAW TENEMENTS AND CONVERTED DWELLINGS

§25-172 Fire-Retarding of Cellar Ceilings in Old Law Tenements and Converted Dwellings.

(a) **Intent.** The fire-retarding rules herewith set forth are approved by the Department of Buildings for the existing multiple dwellings where the ceilings of the cellar or other lowest story is required, by §185 and §240, subdivision 3, Multiple Dwelling Law, and by §27-2044, Housing Maintenance Code, to be fire-retarded in a manner approved by the Department of Buildings.

(1) It is the intent of the law to provide a continuous fire-retarded covering over the entire ceiling of the cellar, or other lowest story, so as to prevent fire communicating with upper stories of a multiple dwelling.

Where there is a space less than four feet six inches (4'-6") in height from the ground or floor level to the underside of the first tier of beams, such space shall be considered as an "air space" and not as a cellar. However, when such space opens to a cellar where fire-retarding of the ceiling is required, then such space shall be separated from the cellar with a partition constructed of incombustible material in which there is provided a self-closing door and assembly having a fire-resistive rating of at least one hour.

Where the ceiling of the cellar or other lowest story is required to be fire-retarded, all openings in such ceilings for stairways not located directly under a main stair, also openings in ceiling such as pipe shafts, vent shafts, unenclosed dumbwaiter shafts, disused flues, etc., shall be properly closed. (Private stairs within duplex apartments extending into

cellar or basement are not required to be enclosed.)

New partitions erected to enclose existing stair referred to in the preceding paragraph shall be of incombustible materials. Existing partitions enclosing any such stair will be acceptable where same are of incombustible materials or where same are fire-retarded on both sides in accordance with the methods set forth in or §25-171(b)(1) or (2) and with materials conforming with the requirement of §25-171(i) of these rules and regulations. Door openings in such enclosure partitions shall be equipped with self-closing protective assemblies having fire-resistive ratings of at least one hour.

When existing shafts, including dumbwaiter shafts, extend below the ceiling a distance less than one-half (1/2) the height of the cellar, such shafts shall be considered as being part of the cellar ceiling and the enclosures of said shafts shall be fire-retarded in the same manner as required for cellar ceilings. All existing shafts, including dumbwaiter shafts, which extend below the ceiling a distance more than one-half (1/2) the height of the cellar shall be enclosed with incombustible materials. All shafts referred to in this paragraph shall have adequate cleanout at base consisting of fire-proof self-closing door and assembly having a fire-resistive rating of at least one hour.

Where new partitions or enclosures are erected in a cellar they shall be constructed of incombustible materials.

(2) **Wood girders, columns, posts, etc.** The fire-retarding material of ceiling of cellar or other lowest story shall be carried down and around all non-fireproof ceiling projections, such as wood girders, etc., which are less than six inches (6" x 6") in diameter.

The fire-retarding material also shall be turned down at least three inches (3") on all non-fire-retarding columns, posts, etc., which are less than six inches (6") in diameter.

(3) **Non-fire-retarded cellar partitions.** When non-fire-retarded partitions in cellar, or other lowest story, extend to the ceiling, the fire-retarding material of the ceiling shall be turned down at least three inches (3") on said partitions, or the partitions shall be cut off at top to permit the fire-retarding of the ceiling to be continuous.

Where, in any old law tenement three (3) stories and basement in height, there is also a cellar under the basement story, the ceiling of such cellar shall be fire-retarded; and also, in any such old law tenement, where the main entrance from the grade is to the first story that portion of the basement ceiling which is directly under the first story entrance hall, public hall and stair hall shall be fire-retarded.

In every old law tenement three (3) stories and basement in height with no cellar under the basement, where the main entrance from the grade is to the basement story, the ceiling of the basement story shall be fire-retarded throughout. In any such old law tenement where the main entrance from the grade is to the first story no such fire-retarding will be required.

(4) **Heating appliances.** The portion of the ceiling over any furnace, boiler or hot water heater shall be fire-retarded in accordance with the methods set forth in §25-171(b)(1) or (2) and such fire-retarding shall extend for a distance of at least four feet (4'-0") beyond the sides and rear, and eight feet (8'-0") in front of such furnace or boiler.

(5) It is not intended that these rules and regulations in themselves require plans to be filed. However, should any work involve structural changes, then plans are required to be filed in the Department of Buildings and such changes shall be subject to all other rules and regulations applicable thereto.

(6) Work shall not commence until satisfactory evidence has been submitted to the Department of Buildings that compensation insurance has been obtained in accordance with the provisions of the Workmen's Compensation Law.

(b) **Methods.** Cellar ceilings shall be fire-retarded according to any of the following methods:

Metal lath and cement or gypsum mortar conforming to §25-171(b)(1) of these rules.

Plaster boards and gypsum mortar or stamped metal conforming to §25-171(b)(2) of these rules and regulations.

No. 26 U.S. gauge stamped metal over existing plastered ceiling, when erected without damage to the plaster. Furring strips are not required, but if used, they shall be metal covered on both sides and on face surface. Stamped metal shall not be applied until after existing plastered ceiling has been inspected and approved by an inspector of the Department of Buildings.

(c) **Materials.** No other method may be used unless same are acceptable to the Department of Buildings.

Materials used shall be in accordance with the provisions of §25-171(i)(1), (2) or (3) of these rules and regulations.

Mineral wool, brick, gypsum or other masonry fill will not be accepted for fire-retarding cellar ceilings.

No other materials may be used unless same are acceptable to the Department of Buildings.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 25-173

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER O FIRE-RETARDING OF ENTRANCE HALLS, STAIR HALLS AND PUBLIC HALLS IN OLD LAW TENEMENTS AND CONVERTED DWELLINGS

§25-173 Fire-Retarding of Cooking Spaces in all Multiple Dwellings.

(a) **Intent.** The rules herewith set forth are approved by the Department of Buildings for the protection of cooking spaces under §§33 and 176 of the Multiple Dwelling Law.

As set forth in §33 of the Multiple Dwelling Law, nothing in these rules shall be construed as permitting fire-retarding partitions in fireproof multiple dwellings.

(b) **Section 33, Multiple Dwelling Law.** Execpt when sprinkler heads are installed in conformity with subdivision (e) of this section, §33 of the Multiple Dwelling Law requires fire-retarding of cooking spaces in existing and newly constructed class A and class B multiple dwellings.

(c) **Ceilings and walls exclusive of doors.** Walls and ceilings shall be fire-retarded according to any of the following methods:

Metal lath and cement or gypsum mortar conforming to §25-171(b)(1) of these rules and regulations.

Plaster boards and gypsum mortar or stamped metal conforming to §25-171(b)(2) of these rules and regulations.

No. 26 U.S. gauge stamped metal over existing plaster when erected without damage to the plaster. Furring strips

are not required, but if used, they shall be metal covered on both sides and on face surface. Stamped metal shall not be applied until after existing plaster has been inspected and approved by an inspector of the Department of Buildings.

Materials used shall be in accordance with the provisions of §25-171(i)(1), (2) or (3) of these rules and regulations.

No other methods or materials may be used unless same are acceptable to the Department of Buildings.

(d) **Combustible material.** In every cooking space, all combustible material immediately underneath or within one foot of any apparatus used for cooking or warming of food shall be fire-retarded in conformity with the applicable provisions of these rules or covered with asbestos at least three-sixteenths inch (3/16") in thickness and twenty-six gauge metal or with fire-resistive material of equivalent rating. There shall always be at least two feet (2'-0") of clear space above such apparatus.

(e) Sprinkler heads installed in ceilings of cooking spaces in lieu of fire-retarding the ceilings and walls. Where sprinkler heads are installed in the ceilings of cooking spaces in lieu of fire-retarding the ceilings and walls, all of the provisions of subdivisions (a) to (f) of this section inclusive, shall be complied with, except that it will not be required that the fire-retarding of the walls and ceilings of cooking spaces be complied with.

Before the installation of sprinkler heads is begun a "Plumbing Repair Slip" shall be filed with and approved by the Department of Buildings.

Sprinkler heads shall be of a type and manufacture approved by the Department of Buildings or previously approved by the Board of Standards and Appeals or by the Underwriters Laboratories Limited, and shall have fusible struts constructed to fuse at a temperature not higher than two hundred twelve degrees (212°) Fahrenheit.

Every sprinkler head shall bear the year of manufacture clearly on its surface. No sprinkler head may be installed after December 31st of the year following the year of manufacture.

There shall be provided at least one (1) sprinkler head for every fifty-nine (59) square feet or fraction thereof of the floor area of the cooking space.

Sprinkler heads shall be connected with the water supply of the building through a pipe of at least one-half (1/2) inch inside diameter.

Where practicable, sprinkler heads shall be located in an upright position on top of the sprinkler piping.

There shall be kept available on the premises at all times a sufficient supply of extra sprinkler heads and also a sprinkler wrench for use to replace promptly any fused or damaged sprinkler heads.

Any head which has opened or has been damaged shall be replaced immediately with a good sprinkler head.

Painting or kalsomining of sprinkler heads is prohibited.

(f) **Cooking spaces constructed after July 1, 1949.** Application and plans must be filed with and approved by the Department before any work is started in connection with the construction of any cooking space after July 1, 1949.

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CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER O FIRE-RETARDING OF ENTRANCE HALLS, STAIR HALLS AND PUBLIC HALLS IN OLD LAW TENEMENTS AND CONVERTED DWELLINGS

§25-174 Fire-Escapes, Fire-Stairs and Fire-Towers.

(a) **Intent.** These rules have been approved by the Department of Buildings to supplement the provisions of §53 of the Multiple Dwelling Law in relation to fire-escapes, fire-stairs, etc.

Where fire-escapes serve as a means of exit from other than multiple dwellings, such fire-escapes shall comply with the laws governing such occupancy.

The voluntary erection of fire-escapes on private residence buildings or business and residence buildings shall be in conformity with these rules and regulations unless otherwise directed by the Borough Superintendent of the Department of Buildings.

It is the intent of these rules to cover only general conditions and they are not designed to cover specific or special cases. When such may occur the owner is required to consult the Department of Buildings and receive instructions before starting of work.

(1) **Fire-escapes on multiple dwellings requiring new certificate of occupancy.** Except as provided in paragraph (2) of subdivision (g) of this section re lodging houses, double-rung ladder type fire-escapes will not be accepted when a new certificate of occupancy is required.

(2) **Alterations for increased occupancy.** Where an alteration is made increasing occupancy on any story and a fire-escape is required such fire-escape shall conform to the provisions of §53 of the Multiple Dwelling Law and to the applicable provisions of these rules.

(b) **General provisions.** (1) **Caution.** No fire-escapes shall be removed from any apartment without due precaution against leaving occupants without fire-escape protection as required by subdivision 9 of §53 of the Multiple Dwelling Law.

(2) **Entrance story, etc.-second means of egress.** Where the distance to safe landing, from the window sill of any apartment on any story, including the entrance story, is more than twelve feet (12'-0"), a balcony and sliding drop-ladder or other approved second means of egress shall be provided for such apartment. Safe egress to street or other safe place shall be provided from the termination of such means of egress.

(3) **Application blanks and plans.** Before the erection of new fire-escapes or alteration of existing fire-escapes upon any multiple dwelling, application must be filed with and approved by the Department of Buildings.

(4) **Projections beyond the building line.** Every part of fire-escapes or balconies erected on the fronts of multiple dwellings shall be at least ten feet (10') above the sidewalk when such fire-escapes or balconies project beyond the building line.

(c) **Illegal fire-escapes shall be removed.** All vertical ladder, wire, chain or cable fire-escapes if required as a means of egress shall be removed and replaced with a legal means of egress.

(d) **Acceptable existing means of egress on existing multiple dwellings.** Except as provided in subdivision (c) of this section, in any existing multiple dwelling any existing means of egress which was lawfully permitted prior to the time the Multiple Dwelling Law became effective may be continued as a legal means of egress as hereinafter enumerated.

If located on the front or rear wall of the building and properly connected with stairs with proper openings.

If located in an outer court at a point distant not more than thirty feet (30'-0") from the outer end of such court and provided such court is not less than five feet (5'-0") in width from wall to wall at any point between such fire-escape and the outer end of said court.

If located in an inner court whose least horizontal dimension is not less than fifteen feet (15'-0") measured from wall to wall.

If a party-wall balcony on the front or rear wall of the building and there are no doors or openings in the walls between the two buildings other than windows in fireproof air shafts.

If a party-balcony located in an outer court not more than fifteen feet (15'-0") in length measured from the outer end of such court to the innermost point thereof, and not less than five feet (5'-0") in width from wall to wall at any point between the fire-escape and the outer end of said court, and provided also that there are no doors or openings in the walls between the two buildings other than windows in fireproof air-shafts.

No fire-escape, however, shall be deemed sufficient unless all the following conditions are complied with:

All fire-escapes, whether a required means of egress or not, shall be maintained in good order, repair and structurally safe.

All parts shall be of iron or stone.

Except as provided in subdivision (bb) of this section every apartment above the ground floor in each multiple

dwelling shall have direct access to a legal fire-escape without passing through a public hall.

Except party-wall balconies, all balconies shall be connected to each other by means of a stair or, when permitted, by double-rung ladders.

All fire-escapes, except party-wall balconies, shall have proper drop-ladders in guides from the lowest balcony of sufficient length to reach a safe landing place beneath.

All fire-escapes not on the street shall have a safe and adequate means of egress from the yard or court to the street or the the adjoining premises.

Prompt and ready access shall be had to all fire-escapes. Except as provided in subdivision (bb) of this section, such access shall be through a living room or private hall in each apartment or suite of rooms at each story above the ground floor and shall not include the window of a stairhall, nor shall any such egress be obstructed by sinks or other kitchen fixtures, or in any other way.

No existing fire-escape shall be extended or have its location changed except with the written approval of the Department of Buildings. Where an existing apartment in a tenement house erected prior to April twelfth, nineteen hundred and one, is located entirely on a court and has no rooms opening on the street or yard, fire-escapes hereafter provided for such apartments may be located in courts under the same conditions as prescribed for existing fire-escapes in this subdivision.

When wire, chain cable or vertical ladder fire-escapes are permitted to remain on multiple dwellings under the provisions of subdivision 9 of §53, they shall be considered only as supplemental fire-escapes.

Such fire-escapes shall be maintained in a safe condition of repair at all times and shall be subject to the applicable requirements of all laws and to these rules in relation to maintenance of existing fire-escapes.

Before a pending violation requiring the removal of such existing fire-escapes is superseded or cancelled, an inspection shall be made in accordance with the specific requirements as set forth in the preceding paragraph.

Each of the owners of adjoining structures, commonly served by party-wall balconies serving as a required means of egress, shall maintain in good order and repair that portion of each such balcony which is on his property, and each such owner shall maintain egress normally unobstructed and unimpeded from each such balcony to and through his stucture.

It shall be unlawful for the owner of a structure on which there is a party-wall balcony serving as a required means of egress from an adjoining structure, to remove such party-wall balcony or any portion thereof or to prevent, eliminate or obstruct egress from such party-wall balcony to and through his structure, unless and until such owner has had erected a legal fire-escape or other approved means of egress.

See also subdivision (bb) of this section.

(e) **Party-wall balconies. (1) New party-wall balconies.** The erection of new party-wall balconies shall be subject to the discretion and jurisdiction of the Department of Buildings, provided, however, that there shall be no doors or openings in the wall between the buildings served by such balconies other than windows in fireproof airshafts. New party-wall balconies will not be permitted on adjoining frame multiple dwellings.

(2) **Existing party-wall balconies.** Party-wall balconies existing on any multiple dwelling shall afford safe egress, be kept in good order and repair, be constructed so as to be structurally strong and shall be maintained in conformity with all other applicable laws, rules and regulations. Such fire-escapes are acceptable on occupied multiple dwellings.

(f) **Party-wall fire-escapes.** The Department of Buildings may consent to the erection of party-wall fire-escapes

on adjoining multiple dwellings, to which the occupants have safe, unobstructed access in common, when such party-wall fire-escapes are constructed and maintained in accordance with the law and these rules and regulations.

(1) Any existing party-wall fire-escape (stairways) connection with and used in common by a multiple dwelling and a non-multiple dwelling is acceptable when such fire-escape is maintained in good order and repair and affords safe egress.

(g) **Double-rung ladders.** (1) Double-rung ladders will not be permitted on new fire-escapes.

(2) Any fire-escape existing prior to the enactment of the Multiple Dwelling Law on any multiple dwelling that does not require a certificate of occupancy resulting from an alteration, if structurally sound and in good condition and provided with existing ladders inclined at an angle not exceeding eighty (80) degrees and equipped with double-rung steps and which affords safe egress, shall be deemed to be a legal fire-escape.

When a certificate of occupancy is requested or required in connection with a lodging house which is equipped with a double-rung ladder fire-escape and such fire-escape is in good repair and adequate, except as to type, and only minor violations exist the correction of which will make the premises conform to all other law requirements, the existing double-rung ladder fire-escape may be accepted.

(3) Except as provided in paragraph (2) of subdivision (g) of this section re lodging houses, double-rung ladders are not acceptable when a new certificate of occupancy is to be issued.

(h) **Alteration of existing two-balcony fire-escapes on existing multiple dwellings.** When a building is not more than three (3) stories in height and provided with a balcony on each of the second and third stories, with connecting vertical ladders, and balconies not less than two feet five inches (2'-5") in width and of adequate length, the Department of Buildings may permit the removal of vertical ladders and replacing of the said ladders with regulation sixty (60) degree connecting stairs. Standards shall be one-half inch (1/2") round or square and height of rail at least two feet nine inches (2'-9").

The stairs shall be not less than seventeen inches (17") wide with a passageway between string and wall or string and top rail of not less than fourteen inches (14"). In lieu of such passageway, the Department of Buildings will permit a drop-ladder to be installed and placed at each end of the lowest balcony in those cases where it is impractical to provide a passageway of such minimum width.

New brackets shall be provided where necessary.

The gateway shall be cut in the front rail with a drop-ladder and guides from second (2nd) story to safe landing. Where fire-escapes are located at rear of building a gooseneck ladder shall be provided. The gooseneck ladder may be placed at an angle from the top floor balcony to the roof. When placed at an angle a minimum space of twenty-four inches (24") shall be maintained between the strings and front top rail and a minimum space of at least twenty-four inches (24") between the string of the gooseneck ladder and the frame of the window.

Conditions may be found where this modification will not exactly apply. When such a condition is found it should be brought to the attention of the Department of Buildings for decision.

When fire-escapes are at the front no gooseneck ladder shall be required.

When access to such existing two-balcony fire-escape is solely by means of a window in a bathroom, the doors of such bathrooms shall be glazed with glass or other than wire glass and all key or cylinder locks shall be removed from doors. In such bathrooms there shall be no fixture located in front of the window opening to fire-escape.

Such altered two-balcony fire-escape shall conform to all other requirements of law and these rules and

regulations.

(i) **Accessibility of fire-escapes from apartments, rooms, kitchenettes and other spaces.** Prompt and ready access shall be had to all fire-escapes and, except as provided in subdivision (bb) of this section, such access shall be through a living room, kitchenette or private hall in each apartment or suite of rooms at each story above the ground floor.

Access to fire-escapes shall not include the window of a stairhall, nor shall any such egress be obstructed by sinks or other kitchen fixtures, or in any other way.

A clear space of at least twenty-one inches (21") must be maintained as a passageway between any fixtures and the side of an opening leading to fire-escapes.

In any apartment which is occupied by a "family" as defined in §4, paragraph 5, Multiple Dwelling Law, and in which one or more living rooms are rented to boarders or lodgers, every such room shall be directly accessible to a fire-escape without passing through a public hall, and for separately occupied living rooms access to fire-escapes shall be direct from such rooms without passing through a public hall or any other separately occupied room, except as may be permitted in sections sixty-six, sixty-seven and two hundred forty-eight of the Multiple Dwelling Law.

(1) **Egress from apartments used for "single room occupancy."** No room in any apartment shall be so occupied for "single room occupancy" unless each room therein shall have free and unobstructed access to each required means of egress from the dwelling without passing through any sleeping room, bathroom or water-closet compartment.

In apartments used for "single room occupancy" there shall be access to a second means of egress within the apartment without passing through any public stair or public hall. On and after July 1, 1957, every tenement used or occupied for single room occupancy in whole or part under the provisions of §248, Multiple Dwelling Law, and which does not have at least two means of egress accessible to each apartment and extending from the ground story to the roof, shall be provided with at least two means of egress, or, in lieu of such egress, every stair hall or public hall, and every hall or passage within an apartment, shall be equipped on each story with one or more automatic sprinkler heads approved by the department. Elevator shafts in such tenements shall be completely enclosed with fireproof or other incombustible material and the doors to such shafts shall be fireproof or shall be covered on all sides with incombustible material.

In apartments used for "single room occupancy" where access to a required means of egress is provided through a room such access to such room shall be through a clear opening at least thirty inches (30") wide extending from floor to ceiling and such opening shall not be equipped with any door frame, or with any device by means of which the opening may be closed, concealed or obstructed.

(j) **Window bars, gates, etc.** No iron bars, gates or other obstructing devices will be permitted on any window giving access to fire-escapes or where such window provides a secondary means of egress in case of fire on any story, including the ground floor, basement, cellar, etc.

Windows on grade level at sidewalk, yard or court, or a roof level of an adjoining building, may have bars, but at least, one window in any apartment or suite of rooms shall be without bars or obstructions of any kind in order to afford a second means of egress and such window shall conform to the provisions of subdivision (k) of this section.

(k) **Windows and doors to fire-escapes.** The window or door giving access to fire-escapes shall not be less than two feet (2') in width and the sill of the window shall not be more than three feet (3') above the floor. Window openings shall be not less than two feet six inches (2'-6") high in the clear.

(1) **Steel casement sash.** Steel casement sash opening outward onto any fire-escape balcony three feet six inches (3'-6") in width will be permitted, provided such sash is equipped with approved extension hinges so that, when opened,

the sash will be flat against the wall, and further provided that there will be no adjusters on the sash as part of its equipment. Passageway of fourteen inches (14") clear width is required to be maintained between the sash or hinges and any portion of the fire-escape when the sash lies flat against the wall.

When casement sash is set at right angle to the fire-escape stairway a clear radial width of twenty inches (20") must be provided.

(2) **Wire screens and storm windows.** Wire screens are permitted on a door or window giving access to a fire-escape. Such screens may be of the rolling type, casement or of a type that slides vertically or horizontally in sections, providing that there shall be a clear unobstructed space two feet (2') in width and two feet six inches (2'-6") in height when the screens are opened and further provided that no such screen shall be subdivided with muntins or other dividing or separating bars into spaces less than two feet (2') in width by two feet six inches (2'-6") in height.

Storm sash and storm doors are permitted on openings giving access to fire-escapes provided they are arranged so as to be easily and readily opened from the inside and do not obstruct or interfere with safe egress.

(l) **Egress from fire-escape balconies not to be obstructed.** Egress from fire-escape balconies must not be obstructed by signs, fixed awnings or any other obstruction.

(m) **Extension roofs used as means of egress or directly under fire-escape balcony.**

(1) **Hereafter erected extension roofs.** Where the roof of an extension hereafter erected is to be used as a means of egress from a fire-escape, or where a fire-escape balcony is located directly above said roof, such roof shall be of fireproof constuction.

(2) **Existing extension roofs.** Except in converted dwellings where sprinklers may be installed, in every multiple dwelling where a fire-escape balcony is situated over and not more than eight feet (8') above a non-fireproof roof, or where a non-fireproof roof of an extension is to be used as egress from fire-escapes, the entire ceiling of said extension must be fire-retarded with metal lath and cement or gypsum mortar in the manner prescribed in §25-171(b)(1) and (i)(1) of these rules and regulations, or with one-half inch (1/2") approved plaster boards lined with No. 26 U.S. gauge stamped metal. In buildings requiring the issuance of a certificate of occupancy as a result of being altered structurally, the only approved method shall be with cement of gypsum mortar and metal lath weighing not less than three (3.0) pounds per square yard which shall be applied directly to the beams or other structural members.

Where the roof of an existing extension is used as fire egress, a balcony shall be provided at the level of the roof and, if the distance between the said balcony and a safe landing is more than sixteen feet (16'-0"), a landing platform must be provided not more than ten feet (10'-0") from said safe landing and this landing platform and the balcony on the roof level must be connected by a regulation stairway. From the landing platform a drop-ladder in guides must be provided so as to reach the safe landing.

A balcony and drop-ladder in guides as per paragraph (11) of subdivision (r) of this section shall be provided for every two fire-escape stacks or fraction thereof using an extension roof for landing and fire egress.

(3) **Skylights on extensions.** Any existing skylights in said roof must be constructed of incombustible material whenever deemed necessary.

Where skylights exist or are hereafter constructed on the roof of an extension used as a means of egress from a fire-escape, they must not interfere with egress in any way and if in the line of said egress, they must be provided with a substantial guard-rail not less than three feet six inches (3'-6") high.

(n) **Egress to street required from fire-escapes located in yards and courts not extending to the street.** In an old law tenement or a converted dwelling where fire-escapes are located in a yard less than thirty feet (30'-0") in depth,

or in a court which does not extend to such a yard or to the street, there shall be egress to the street by means of a fire-proof passageway. In such multiple dwellings, where the yard is less than thirty feet (30'-0") in depth and where the consent of the owner of the adjoining premises is obtained, in lieu of providing such fire-proof passageway, a door or gate in a lot-line fence leading from such yard or court to the yard or court of the adjoining premises may be accepted, provided, however, that such door or gate provides adequate egress and is not locked or secured in any manner except by a readily-accessible, easy to open hook or bolt.

Where fire-escapes are located in the yard of a new law tenement or of a multiple dwelling erected after April 18, 1929, access shall be provided from the street to the yard either in a direct line or through a court as provided in paragraph c of subdivision 2 of §238 and paragraph i of subdivision 2 of § 27, Multiple Dwelling Law.

Where fire-escapes are located in a court of a new law tenement or of a Multiple dwelling erected after April 18, 1929, and such court does not extend to the street, a fireproof passageway leading directly to the street shall be provided as required by paragraph b of subdivision 2 of §53, Multiple Dwelling Law.

All passageways required under these Rules shall be not less than seven feet (7'-0") in height and not less than three feet (3'-0") in width and shall at all times be kept clear and unobstructed. Doors and gates at the end of such passageways are prohibited, except that a door or gate equipped with an approved-type knob or panic bolt which shall be readily openable from the inside will be permitted at the building line. Doors and gates provided with keylocks or padlocks are prohibited.

(o) **Location for new fire-escapes.** No required fire-escape shall be permitted to be placed on an adjoining property without the written consent of the Department of Buildings. No fire-escape shall be erected within ten feet (10') of the termination of a duct. Fire-escapes for existing multiple dwellings shall be located as required by the department and arranged so as to provide legal egress for all rooms and apartments.

(1) **Fire-escapes in court (side yard).** Except as provided in paragraph (6) of subdivision (bb) of this section where an apartment has a street frontage and extends also to a yard, fire-escapes may be permitted to be placed in a court (side yard) if the court (side yard) is not less than seven feet (7'-0") wide. In any multiple dwelling where exterior structural conditions are such as to prevent the erection of a fire-escape on the street or yard, new fire-escapes may be permitted to be erected in a lot-line court (side yard) providing the lot-line court (side yard) extends from street to rear yard and is not less than three feet (3'-0") in width for its full length. Fire-escapes erected in such court may be three feet (3'-0") wide when the width of such court does not permit balconies three feet four inches (3'-4") in width.

The width of stairways and passageways and other arrangement details affected by the permitted reduction in the width of balconies will be determined and furnished to contractor by the Department upon request.

(2) Where an existing apartment in a tenement erected prior to April 12, 1901, is located entirely on a court and has no rooms opening on the street or yard, fire-escapes hereafter provided for such apartments may be located in courts under the same conditions as prescribed for existing fire-escapes in subdivision (d) of this section.

(p) **Materials.** All fire-escapes hereafter constructed shall consist of outside open balconies and stairways of iron, stone, or other approved materials. Wherever the term wrought iron is used in these rules it shall be deemed to include all other especially approved metals.

Cast iron will not be permitted to enter into the construction of fire-escapes.

The use of old material in the construction of new fire-escapes is prohibited.

Bolts used in the construction or repair of fire-escapes shall be machine bolts. The use of stove bolts is prohibited.

The strength and construction of stone balconies hereafter erected forming part of the fire-escape shall be subject

to the approval of the Department of Buildings.

All structural steel used in the construction of fire-escapes shall be at least one-quarter (0.25) inch in thickness.

(q) **Types of fire-escapes.** There shall be two types of fire-escapes: "Type A" and "Type B". Except for brackets and braces as hereafter described, what is applicable to one type is equally applicable to the other whether or not it is so stated specifically.

(1) **Definition of "Type A" and "Type B" fire-escapes.**

Type A. "Type A" shall mean fire-escape is one which has a supporting bracket at each end of the balcony or platform.

Type B. "Type B" fire-escape is one which has brackets not more than four feet (4') apart supporting the balcony or platform.

(2) Cantilever brackets will not be accepted for new fire-escapes on existing buildings.

(3) Details of other types of structural supports for fire-escapes must be submitted to and approved by the Department before being used in the construction of fire-escapes.

(4) "Type A" fire-escapes are not permitted on frame buildings, walls or hollow masonry constructions, on walls of solid masonry less than eight inch (8") in thickness nor on hollow walls of solid masonry unless complete construction details are submitted to and approved by the Department before the construction of fire-escapes.

(r) **Balconies.** All balconies, except those erected upon frame buildings and buildings having eight inch (8") brick walls, shall be not less than three feet four inches (3'-4") in width over all and may project into the public highway to a distance not greater than four feet (4') beyond the building line. Balconies erected upon frame buildings and buildings having eight inch (8") brick walls shall be thirty-six inches (36") in width. Balcony railings must be not less than two feet nine inches (2'-9") high.

(1) **Passageway.** Seventeen inches (17") in width is required between the strings of stairs and the wall, or between the strings of stairs and railings, clear of all projections to a height of six feet six inches (6'-6").

Fourteen inches (14") clear width is required between the hatchway railing and the window sill.

Seventeen inches (17") in width is required between the gooseneck ladder and the hatchway on the upper balcony.

(2) **Openings.** The openings for stairways in all balconies shall be not less than twenty-one inches (21") wide, and of such length as to provide at least six feet six inches (6'-6") clear headroom on all stairways at every tread, and shall have no covers of any kind.

A round, iron guard rail, three-quarters inch (3/4") in diameter shall be provided around all hatchways on all new balconies, and also, when necessary, around hatchways on existing balconies. Such guard rails shall be at least two feet six inches (2'-6") high and shall be properly braced at intervals of three feet (3'). The brace from guard rail to the front top rail shall be so arranged to allow six feet six inches (6'-6") of headroom on the stairway.

Openings are not permitted in the floor of the lowest balcony of any new fire-escapes. Egress must be from a gateway in the front or end rail.

(3) **Top rails.** New top rails must be one and three-quarters inches by one-half inch (1 3/4" x 1/2") wrought iron or steel. Angle iron top rails will not be accepted. Separate bolt ends must be one and one-half inches by one-half inch (1 1/2" x 1/2") at connection with top rails and secured to the same by two three-eighths inch (3/8") bolts well upset.

No welded connections, other than shop welding, for top rails, will be permitted.

Top rails must go through the wall. When the wall is of brick, stone or concrete they must be anchored on the inner face thereof by means of nuts and four-inch by four-inch by three-eighths inch (4" x 4 x 3/8") washers. Where a masonry wall is eight inches (8") in thickness the washers shall be continuous and shall extend vertically from four inches (4") below the bracket anchorage to four inches (4") above the top rail.

Bolt ends must be at least three-quarters inch (3/4") in diameter.

Top rails must be anchored in the wall at least nine inches (9") from the window or door opening.

On recess fire-escapes the top rails need not go through the wall, but must be hot leaded six inches (6") in brick or stone and at least twelve inches (12") from the outside face of the wall.

The front and return top rail, unless in one (1) piece, must be secured at the angle in the following manner: (1) with lap joint, by one-half inch (1/2") rivet and a strap of same dimension as the top rail, with one (1) three-eighths inch (3/8") rivet or bolt in each end of the strap; (2) with butt joint, by a triangular plate four inches by six inches by three-eighths inch (4" x 6" x 3/8") secured to each member of the top rail by two (2) three-eighths inch (3/8") bolts or rivets.

Where front rails are not rigid they must be braced with outside braces. Said braces must be wrought iron not less than one and three-quarters inches by one-half inch (1 3/4" x 1/2") placed on edge. The braces must be properly spaced and secured to the extended brackets and top rails by three-eighths inch (3/8") rivets or bolts. Where brackets are extended to receive outside braces the extended portion must never be less than two inches by one-half inch (2" x 1/2") and secured to the bracket by two (2) three-eighths inch (3/8") rivets or bolts.

Bow braces and overhead braces will not be accepted.

(4) **Bottom rails.** Bottom rails must be one and one-half inches by three-eighths inch (1 1/2" x 3/8") wrought iron and front rail of same must be secured to brackets three-eighths- inch (3/8") rivets or bolts.

Return bottom rails must be leaded or cemented in the wall when the latter is of brick, or may be secured to the brackets when this is practicable.

The bottom front and return rails must be connected at angles by at least one (1) three-eighths inch (3/8") rivet or bolt well burred.

(5) **Standards.** Standards must be not less than one-half inch (1/2") round or square set vertically, riveted to the top and bottom rails, not more than six inches (6") apart on centers. Special designs must be submitted for any variation, and approved before work is begun.

(6) **Floor slats.** Floor slats must be of wrought iron one and one-half inches (1 1/2") in width and three-eighths inch (3/8") thick and placed not more than one and one-quarter inches (1 1/4") apart.

In new balconies floor slats shall not project more than six inches (6"), and in old balconies not more than eighteen inches (18"), beyond the end bracket and shall not be supported by the bottom rail.

All floors must be well secured to the brackets by three-eighths inch (3/8") "U" or clamp bolts.

Floor slats may be spliced with a four-inch (4") splice plate three-eighths inch (3/8") thick, secured by three-eighths inch (3/8") countersunk or roundhead bolts or rivets on each side of the joint.

The ends of the floor slats must not project over stairs so as to overhang the top tread more than one-half inch

(1/2"). The ends of such floor slats shall not be cut or burned off so as to be jagged or uneven. The floor slats shall be in true alignment.

(7) **Battens.** Battens must be one and one-half inches by three-eighths inch (1 1/2" x 3/8") not more than three feet (3') apart, riveted to the slats by five-sixteenth inch (5/16") rivets and so spaced as to secure rigidity.

No welded connections, other than shop welding, for top rails will be permitted.

Top rail must go through the wall. When the wall is of brick, stone or concrete they must be anchored on the inner face thereof by means of nuts and four-inch by four-inch by three-eighths inch (4" x 4"x 3/8") washers. Where a masonry wall is eight inches (8") in thickness the washers shall be continuous and shall extend vertically from four inches (4") below the bracket anchorage to four inches (4") above the top rail.

Bolt ends must be at least three-quarters inch (3/4") in diameter.

Top rails must be anchored to the wall at least nine inches (9") from the window or door opening.

On recess fire-escapes the top rails need not go through the wall, but must be hot leaded six inches (6") in brick or stone and at least twelve inches (12") from the outside face of the wall.

The front and return top rail, unless in one (1) piece, must be secured at the angle in the following manner: (1) with lap joint, by one-half inch (1/2") rivet and a strap of same dimension as the top rail, with one (1) three-eighths inch (3/8") rivet or bolt in each end of the strap; (2) with butt joint, by a triangular plate four inches by six inches by three-eighths inch (4" x 6" x 3/8") secured to each member of the top rail by two (2) three-eighths inch (3/8") rivets or bolts.

Top rails may be spliced with iron of the same dimensions as the rails with two (2) three-eighths inch (3/8") rivets or bolts on each side of the splice, or may be overlapped not less than eight inches (8") and secured by two (2) three-eighths inch (3/8") bolts or rivets.

Where front rails are not rigid they must be braced with outside braces. Said braces must be wrought iron not less than one and three-quarters inches by one-half inch (1 3/4" x 1/2") placed on edge. The braces must be properly spaced and secured to the extended brackets and top rails by three-eighths inch (3/8") rivets or bolts. Where brackets are extended to receive outside braces the extended portion must never be less than two inches by one-half inch (2" x 1/2") and secured to the bracket by two (2) three-eighths inch (3/8") rivets or bolts.

Bow braces and overhead braces will not be accepted.

(8) **Landings.** Landings at the head and foot of stairs shall be at least forty inches by twenty inches (40" x 20"), except on the balcony on the top story where the gooseneck ladder is located such landing shall be not less than forty inches by thirty inches (40" x 30"). On the lowest balcony where the opening to drop-ladder is in the return rail at front of the lowest tread the landing must be at least forty inches by thirty-six inches (40" x 36").

(9) **Egress from lowest balcony.** The gateway in the rail must be of sufficient width to permit the proper installation of the drop-ladder and guide-rods.

Where the opening to the drop-ladder is in the return rail and at front of the lowest step, the landing at the foot of the stairs must be at least three feet by three feet, four inches (3' x 3'- 4").

Top rails must be well braced at the gateway.

(10) **Distance from lowest balcony to ground.** The distance from the lowest balcony to the ground or safe landing shall be not more than sixteen feet (16'-0"), except that in existing multiple dwellings where due to structural conditions,

such as plate glass store fronts, etc., it is not possible to erect such lowest balcony within sixteen feet (16'-0") of the ground, the Department of Buildings may permit such balcony to be erected at a height of not more than eighteen feet (18'-0") above the ground.

(11) **Termination of fire-escapes on extension roofs.** Where fire-escape stairs or ladders rest upon a fireproof roof, no balcony need be provided at the foot of such stairs or ladders.

Where fire-escapes terminate on the roof of an existing extension, a guide-rod drop-ladder shall be provided at the level of the roof of such extension. Where the distance from such roof to a safe landing is more than sixteen feet (16'-0"), an intermediate balcony not more than ten feet (10'-0") above a safe landing shall be provided, and such intermediate balcony shall equipped with a guide-rod and drop-ladder and connected by means of a regulation stairway and balcony at the level of the extension roof.

Balconies, where required, must be anchored and constructed in a manner satisfactory to the Department of Buildings.

The roof of every extension used for egress, or upon which fire-escapes terminate, shall be fireproof or fire-retarded according to the provisions of subdivision (m) of this section of these rules and regulations.

(s) **Brackets and braces. (1) "Type A".** All horizontal members of brackets and all cross beams shall be not less than four-inch (4") channels weighing not less than seven and one-quarter (7.25) pounds to the linear foot.

The end bracket members shall enter the wall at a point not less than nine inches (9") from a door or window and shall be anchored on the inside face of the wall with an eight inch by eight inch by three-eighths inch (8" x 8" x 3/8") washer and one-inch (1") bolt and nut. Where the wall is eight inches (8") in thickness the washer shall be continuous and shall extend across all brackets and cross beams. The bolt end shall be wrought iron not less than two inches by one-half inch (2" x 1/2") which shall be drawn out to form the necessary bolt end without welded connections. The bolt end shall be secured to the bracket with two (2) one-half inch (1/2") rivets. On eight-inch (8") walls the bolt end shall not be less than nine inches (9") long. On twelve-inch (12") walls the bolt end shall not be less than eleven inches (11") long. On sixteen-inch (16") walls the bolt end shall not be less than fifteen inches (15") long.

When the wall is eight inches (8") in thickness the bracket member shall enter the wall not less than seven inches (7").

When the wall is twelve inches (12") in thickness the bracket member shall enter the wall not less than eleven inches (11").

When the wall is sixteen inches (16") in thickness the bracket member shall enter the wall not less than fifteen inches (15").

The intermediate cross beams shall enter the wall not less than eight inches (8") except where they enter the wall under a window. In such case the cross beam shall enter the wall not less than four inches (4").

The member forming the hatchway opening shall be a four-inch (4") channel iron weighing not less than seven and one-quarter (7.25) pounds per foot. It shall be secured to the intermediate cross beam with a three-inch by three-inch by one-quarter inch (3" x 3" x 1/4") lug and two (2) one-half inch (1/2") rivets or bolts.

The front bottom member of the fire-escape shall be of the following size and weights:

Length of Balcony	Weight of Channels	Size of Channels
Up to 11 feet	9.0 pounds per foot	5 inches
Up to 13 feet	10.5 pounds per foot	6 inches

Up to 15 feet	12.25 pounds per foot	7 inches
Up to 17 feet	13.75 pounds per foot	8 inches

The bracket braces shall be angle iron not less than two and one-half inches by two and one-half inches by one-quarter inch (2 1/2" x 2 1/2"x 1/4"). The braces shall drop not less than twenty-four inches (24") from the top of the bracket and shall extend out to a point not less than three-quarters (3/4) of the length of the bracket.

Each member of the brace shall be secured to the bracket with two (2) one-half inch (1/2") rivets.

The drop member of the brace shall be secured to the extended member with two (2) one-half inch (1/2") rivets.

The heel of the brace shall be cut out one-half inch (1/2") to allow for the drainage of water.

Where, owing to cornices, water-tables and porticos, it is impossible to use the standard brackets, inverted brackets may be used. When inverted brackets are used they shall be constructed with an upright wall member and a diagonal member. The wall member shall be an angle iron not less than three inches by four inches by three-eighths inch (3" x 4"x 3/8") and the diagonal member shall be an angle iron not less than three inches by three inches by three-eighths inch (3" x 3"x 3/8").

Each member shall be secured to the bracket with two (2) one-half inch (1/2") rivets.

The wall members shall be secured to the wall with two (2) one-inch (1") bolts which shall pass through the wall and be anchored on the inside face of the wall with a washer four inches by three-eighths inch (4" x 3/8") which shall extend across the two (2) bolts. A one-inch (1") nut shall secure the washer to the bolt. The bolts shall be placed sixteen inches (16") apart on centers. The four-inch (4") member of the wall brace shall bear against the wall and shall extend from the bracket to and above the top return rail of the balcony. The top return rail of the balcony shall be secured to the wall member of the brace with two (2) one-inch (1") rivets or nuts and bolts.

When inverted braced are used the bracket member shall enter the wall not less than four inches (4").

All other portions of "Type A" fire-escapes, except roof balconies, shall be constructed and erected as specified for the construction and erection of "Type B" fire-escapes.

(2) **"Type B".** The horizontal members of brackets shall consist of a one-piece wrought iron bar two inches by one-half inch (2" x 1/2") set so that the two inch (2") dimension is vertical.

Brackets shall be not more than four feet (4'-0") apart.

Welded brackets will not be accepted.

Angle iron brackets will not be accepted.

The top member of the bracket must be drawn out to form the necessary bolt end without welded connection.

Brackets shall be placed not less than eight inches (8") nor more than sixteen inches (16") below the window sill, except by special permission from this Deparment.

The top member of the bracket must go through the wall, and when the wall is of brick, must be anchored as specified for brackets in new buildings.

Brackets on buildings in course of erection must be built into the wall. They must be carried through the wall and turned down three inches (3"), or the top member must be drawn out so as to form a bolt end one inch (1") in diameter and provided with nuts and with washers four inches by six inches (4" x 6") and three-eighths-inch (3/8") in thickness,

or where brackets on existing buildings or buildings in the course of erection pass through the walls under window or door openings, such brackets shall be anchored on the inside face of the wall with a four-inch by three-eighths inch (4" x 3/8") plate extending across the opening and bearing nine inches (9") on the inner face of each pier. In such case as additional one-half inch (1/2") bolt passing through wall and anchored to plate with one-half inch (1/2") nut shall be provided. If wall is recessed said bar must be shaped so as to bear on inner face of recessed wall and the ends of said bar to bear nine inches (9") on inner face of each pier. In addition a four-inch (4") steel channel stiffener must be provided to extend across the entire recessed portion. Blocking the recessed portion will not be permitted. Where walls are eight inches (8") in thickness the four-inch by three-eighths-inch (4" x 3/8") plate must extend across and take in all brackets.

Special designs must be submitted for fire-escape framing other than standard and for masonry openings not included in above schedule.

Horizontal members of brackets must be braced with one-inch (1") square braces and shall rest on a shoulder. The braces shall be secured to the horizontal member with a rivet one-half inch (1/2") in diameter, at a point two-thirds (2/3) of the length of the horizontal member from the wall. The heel of the brace must be secured to the top member by a rivet of the same size.

The brace when entering the wall must be hot leaded in brick or stone three inches (3") and have a proper bearing on the face of the wall for at least eight inches (8").

If wedges are used to obtain full bearing against the wall, they must be of iron and well secured to the brace and must fill in solidly the space between brace and wall.

Anchorage in or bracing in terra cotta is not permitted.

Braces must drop at least one-third (1/3) of the length of the long brackets and must drop not less than eight inches (8") for short brackets.

Where a bracket is to receive additional weight on account of suspension rod for lower balconies, said bracket must be reinforced by an additional one-inch (1") square bracing running from the end of the bracket parallel to the regulation brace.

Where it is impossible to brace the brackets in the manner described above, angle iron and tie rod supports must be used.

(3) **Anchorages for mullion windows, both "Type A" and "Type B".**

Masonry Span	Brackets	Anchorage Member
5'-0"	3'-6" Long	6" Channel 10.5 pounds or 6" x 4" x 9/16" Angle
6'-0"	3'-6" Long	7" Channel 9.8 pounds or 6" x 4" x 11/16" Angle
7'-0"	3'-6" Long	8" Channel 11.5 pounds or 7" Channel 12.25 Angle
8'-0"	3'-6" Long	8" Channel 11.5 pounds
9'-0"	3'-6" Long	8" Channel 13.75 pounds
5'-0"	4'-0" Long	8" Channel 11.5 pounds or 6" x 4" x 3/4" Angle
6'-0"	4'-0" Long	8" Channel 11.5 pounds

7'-0"	4'-0" Long	8" Channel 13.75 pounds
8'-0"	4'-0" Long	8" Channel 16.25 pounds
9'-0"	4'-0" Long	8" Channel 21.25 pounds

Notes:

1-Working stresses taken at 16,000 pounds per square inch.

2- Load taken at 100 pounds per sq. ft. and includes live and dead loads.

3- Loads on anchorage members due to bracket reaction placed for maximum bending moment produced in member.

4- Bearing plates of suitable size must be provided for brackets taking ladder load and for anchorage members.

6" x 4" x 9/16" angle weighs 18.1 pounds per lin. ft.

6" x 4" x 11/16" angle weighs 21.8 pounds per lin. ft.

6" x 4" x 3/4" angle weighs 23.6 pounds per lin. ft.

Angle irons to support balconies where regulation braces cannot be used shall not be less than four inches by four inches by three-eighths inch (4" x 4" x 3/8"). Tie rods shall not be less than one inch (1") in diameter and shall be anchored through the wall in the same manner as brackets.

The angle iron support in such cases shall be set so that the tie rods will pull toward the heaviest part of the webs.

When it becomes necessary to shift a bracket from one location to another in order to carry the stairs, a new regulation two inch by one-half inch (2" x 1/2") bracket shall be installed.

No welded brackets, corroded brackets or brackets set flat with cast iron under-bracing will be accepted. Such brackets shall be replaced, wherever found, by a two-inch by one-half inch (2" x 1/2") bar bracket with cast iron under-bracing is found, said bracket may be permitted to remain if proper one inch (1") square under-bracing is provided.

(t) **Stairways.** All stairways shall be placed at an angle of not more than sixty (60) degrees with flat open steps not less than six inches (6") in width and twenty inches (20") in length and with a rise of not more than nine inches (9").

(1) **Treads.** Treads of such construction as may be approved by the Department from time to time will be permitted.

Flat iron bars forming treads must be one and one-half inches by three-eighths inch (1 1/2" x 3/8") and spaced not more than three-quarters of an inch (3/4") apart.

Bars forming treads must be secured to supporting angle irons by three-eighths-inch (3/8") rivets and these angle irons must be fastened to the strings by two (2) three-eighths-inch (3/8") rivets or bolts, well burred. Galvanized angle irons one and one-half inches by one and one-half inches by one-quarter inch (1 1/2" x 1 1/2" x 1/4") will be accepted but if not galvanized, said angle irons shall be one and one-half inches by one and one-half inches by three-eighths inch (1 1/2" x 1/2" x 3/8").

In all cases the vertical legs of the angle irons must be set tightly against the strings so that there will be no

intervening spaces.

All treads must be set level and must not overhang so as to interfere with foot room on the tread below.

(2) **Patented treads.** Patented treads approved by the Department of Buildings or previously approved by Board of Standards and Appeals for new installations will be accepted by the Department of Buildings as legal for use in buildings under its jurisdiction. Five samples of approved treads to be furnished to the Department of Buildings (once delivered to each Borough) as a permanent record.

(3) **Strings.** Where the strings of the stairs are adjacent to the front rails the strings must be securely fastened to the top rails.

Strings must be braced by round bars three-quarters-inch (3/4") in thickness, properly hot-leaded or secured by four inches by three-eighths inch (4" x 3/8") expansion bolts in brick or stone wall at a height of not less than six feet six inches (6'-6") in the clear above the floor of the balcony. Strings of stairways shall be four inches by three-eighths inch (4" x 3/8") wrought iron and shall rest on a bracket at the bottom and be bolted to a bracket at the top.

Welded strings, other than shop welded, will not be accepted.

(4) **Hand rails.** Hand rails must be of wrought iron, three-quarters-inch (3/4") round or one and one-half inches by three-eighths inch (1 1/2" x 3/8") bar, well braced with intermediate braces not more than five feet (5'-0") apart, and of the same size and material as the handrail, and secured to the strings with two (2) three-eighths inch (3/8") rivets at each end and at each brace; or handrails may be secured to the bottom rail of the upper balcony and top rail of the lower balcony by two (2) three-eighths inch (3/8") rivets at each end.

On all fire-escapes hereafter erected double handrails must be provided for all stairways.

(u) **Drop-ladder.** A drop-ladder shall be provided from the lowest balcony and be of sufficient length to reach a safe landing place beneath. The drop-ladder shall be fifteen inches (15") in width, shall be placed in guides and shall be not more than sixteen feet (16'-0") in length.

Except in multiple dwellings hereafter erected or converted, where the distance from the lowest balcony to a safe landing place is more than sixteen feet (16'-0") but because of structural conditions, such as plate glass store fronts, etc., a balcony is not possible, the Department may accept a drop-ladder in guides, if the distance from the floor of the lowest balcony to a safe landing place is not more than eighteen feet (18'-0").

No drop-ladder is required where the distance from the lowest balcony to a safe landing place does not exceed five feet (5'-0").

No drop-ladder will be permitted to land or terminate on a stoop or any part thereof unless the written approval of the Department of Buildings is obtained.

(1) **Guides.** All drop-ladders shall have guides provided with stops so that the ladders cannot be raised above the same. The drop-ladder must be suspended from a point directly over the opening in the rail of the balcony and arranged to slide in the guides so as to drop in position for use. All drop-ladders shall be provided with a shoe at the bottom.

The guides shall be constructed of one and one-half inches by one and one-half inches by one-quarter inch (1 1/2" x 1 1/2" x 1/4") angle iron, and shall be not less than twenty-one inches (21") apart.

(2) **Strings.** Strings of drop-ladders must be one and one-half inches by three-eighths inch (1 1/2" x 3/8") bar. No welded drop-ladders will be accepted unless shop welded.

(3) **Rungs.** The rungs must be five-eighths inch (5/8") in thickness, not over twelve inches (12") apart and must be

riveted to the strings.

(v) **Gooseneck ladder.** The top balcony of every fire-escape shall be provided with a stair or with a gooseneck ladder leading from said balcony to and above the roof, except that no such stairs or gooseneck ladders will be required in the following locations or under the following conditions:

(1) On multiple dwellings with peak roofs having a pitch of more than twenty (20) degrees.

(2) Where fire-escapes are located on the fronts or in street courts of multiple dwellings facing upon the street.

Where a multiple dwelling does not face upon the street, such as a multiple dwelling located at the rear of a lot upon which there is another building, every fire-escape on such multiple dwelling shall be provided with a stair or gooseneck ladder as required above, except where the roof of such building has a pitch of more than twenty (20) degrees as stated in exception A above.

Except as provided in paragraph (1) and (2) above, every fire-escape on every hereafter erected or converted multiple dwelling, and every new fire-escape hereafter provided on every existing multiple dwelling, shall be provided with a regulation stairway from the top balcony to the roof when such buildings exceed four (4) stories in height. In such multiple dwellings exceeding four (4) stories in height when due to special structural conditions which would not permit the erection of a stair from the top balcony to the roof or where the height from the top balcony to the roof may be such as to make the installation of a stair impractical, the Department of Buildings may accept a gooseneck ladder in lieu of a regulation stairway.

The top balcony of a fire-escape on every multiple dwelling not exceeding four (4) stories in height may be equipped with a gooseneck ladder.

(i) **Construction and location of gooseneck ladders.** The gooseneck ladder shall be fifteen inches (15") wide and shall be so located that it will not obstruct egress from the apartment or apartments on the top floor. The effective opening between the side of any window and the string of gooseneck ladder shall be not less than twenty-four inches (24").

The gooseneck ladder must be fourteen inches (14") from the front rail on existing balconies and twenty-one inches (21") on balconies hereafter erected.

(ii) **Strings.** The gooseneck ladder must be constructed with one piece strings of two inch by one-half inch (2" x 1/2") wrought iron.

Strings must be directly secured to the brackets or secured to a two inch by one-half inch (2" x 1/2") bar bearing on two (2) brackets and well secured to strings and brackets by three-eighths inch (3/8") bolts or rivets.

Strings must spread at the parapet wall or roof to give a passageway of eighteen inches (18").

Strings must be tied through the wall by braces going through the parapet immediately above the roof, or, in the absence of the parapet wall, the said braces must go through the wall immediately below the ceiling of the top floor and be secured by three-quarters-inch (3/4") bolts and four inches by four inches by three-eighths-inch (4" x 4" x 3/8") washers.

The gooseneck ladder strings must extend thirty inches (30") above the roof level. Where there is a parapet, a gateway at the roof level shall be provided.

The strings of the gooseneck ladder must be secured to and braced at the roof.

(iii) **Rungs.** Rungs shall be of wrought iron five-eighths inch (5/8") thick, spaced not more than twelve inches

(12") apart and shall be riveted through the strings.

The top rung of all gooseneck ladders shall be level with the roof.

(w) **Painting.** Section 53, Multiple Dwelling Law, required new fire-escapes to have two (2) coats of paint. The Department of Buildings will require these two (2) coats to be applied on contrasting colors, the first coat at the shop before erection, and the second coat applied after erection.

Existing fire-escapes shall be repainted whenever deemed necessary, in a manner satisfactory to the Department. Notice shall be given by the owner to the Borough Superintendent prior to the painting of fire-escapes.

(x) **Exceptions.** Any deviations or exceptions from these rules other than those specifically mentioned herein shall be submitted to the Department of Buildings for approval. Consent and approval shall be in written form and bear the signature of the Commissioner, Deputy Commissioner, Superintendent or the person designated to sign such consent by the Commissioner, Deputy Commissioner or Superintendent.

(y) **Fire-escapes on frame buildings.** Fire-escapes shall be constructed as for brick or stone buildings with following exceptions, and except also that balconies three feet (3'-0") wide will be acceptable to the Department.

(1) **Brackets.** Horizontal members of brackets must be one and three-quarters inches by one-half inch (1 3/4" x 1/2") wrought iron set on edge; one inch (1") bolt end through a four inches by three-eighths inch (4" x 3/8") iron plate, long enough to take in all brackets, secured to and bearing directly on the inside of the studs. Spaces between the studs behind such plates shall be filled in solidly with timber secured to the studs.

The heel of bracket braces must rest against one and three-quarter inches by one and three-quarter inches by one-quarter inch (1 3/4" x 1 3/4" x 1/4") angle iron extended across and well secured to studs.

(2) **Top rails.** Top rails shall be anchored by three-quarters inch (3/4") bolt ends, through a four inch by three-eighths inch (4" x 3/8") wrought iron plate spanning at least two (2) studs. Space behind plate and between studs shall be blocked solidly.

(3) **Bottom rails.** Bottom rails shall be secured to the siding in a substantial manner with two (2) one and one-quarter inch (1 1/4") No. 14 wood screws, or may be secured to the brackets where practicable.

(4) **Stairways.** Stair braces shall be secured to the wall of the building by two (2) No. 14 wood screws.

(z) **Outside fireproof stairs.** Outside fireproof stairs shall be constructed according to approved plans and applications of the Department of Buildings. Such regulations as govern the measurements of inside stairs shall be applied to outside fireproof stairways except that in multiple dwellings not exceeding three (3) stories and basement in height, a fireproof stairway leading from a front porch roof which is fireproof to the fireproof floor of an unenclosed porch will be deemed an outside fireproof stairway and such stairways may be of the same width as the ordinary fire-escape stairs. Area covered by fireproof outside stairs must not encroach upon the minimum dimensions of yards or courts.

(aa) **Fire-towers.** Fire-towers shall be constructed according to approved plans and applications filed with the Department of Buildings.

(bb) **Egress: hotels and certain other class A and class B dwellings which are subject to the provisions of §67, Multiple Dwelling Law.**

(1) **Exceptions.** Any such multiple dwelling, altered or erected after April fifth, nineteen hundred forty-four, and which is required to conform to the provisions of articles one, two, three, four, five, eight, nine and eleven of Multiple Dwelling Law, shall not be required to conform to the provisions of paragraphs (1), (2), (3) and (4) of subdivision (bb)

of this section.

(i) Except in fireproof class A multiple dwellings erected under plans filed after January first, nineteen hundred twenty-five, and which were completed before December thirty-one, nineteen hundred thirty-three, and except as otherwise provided in paragraph (4) of subdivision (bb) of this section, in every such dwelling three (3) or more stories in height there shall be from each story at least two (2) independent means of unobstructed egress located remote from each other and accessible to each room, apartment or suite.

(2) **First means of egress.** The first means of egress shall be an enclosed stair extending directly to a street, or to a yard, court or passageway affording continuous, safe and unobstructed access to a street, or by an enclosed stair leading to the entrance story, which story shall have direct access to a street. That area of the dwelling immediately above the street level and commonly known as the main floor, where the occupants are registered and the usual business of the dwelling is conducted, shall be considered a part of the entrance story; and a required stair terminating at such main floor or its mezzanine shall be deemed to terminate at the entrance story. An elevator or unenclosed escalator shall never be accepted as a required means of egress.

(3) **Second means of egress.** The second means of egress shall be by an additional enclosed stair conforming to the provisions of paragraph (2) of subdivision (bb) of this section, a fire-stair, a fire-tower or an outside fire-escape. In a non-fireproof dwelling when it is necessary to pass through a stair enclosure which may or may not be a required means of egress to reach a required means of egress, such stair enclosure and that part of the public hall or corridor leading thereto from a room, apartment or suite, shall be protected by one (1) or more sprinkler heads; in a fireproof dwelling only that part of the hall or corridor leading to such stair enclosure need be so protected.

(4) **Required second means of egress-impractical.** Where it is impractical in such existing dwellings to provide a second means of egress, the department may order additional alteration to the first means of egress and shafts, stairs and other vertical openings as the department may deem necessary to safeguard the occupants of the dwelling, may require the public hall providing access to the first means of egress to be equipped on each story with one (1) or more automatic sprinkler heads, and, in non-fireproof dwellings may also require automatic sprinkler heads in the stair which serves as the only means of egress.

(5) **Public halls and corridors providing access to fire-escapes.** Public halls and corridors providing access to fire-escapes, existing and new, are acceptable when a direct and uninterrupted line to travel to the fire-escape is provided.

Public halls and corridors providing access to fire-escapes shall be fire-retarded or shall be equipped with automatic sprinkler heads. The fire-retarding and sprinkler installation shall be in conformity with the rules and regulations of this Department and as required by subdivision 3 of §67 of the Multiple Dwelling Law.

All openings which provide direct access to an existing fire-escape from a public hall or corridor shall be equipped with fireproof doors and assemblies with the doors self-closing or fireproof windows glazed with clear wire glass. Access to new fire-escapes from such halls or corridors shall be by means of fireproof doors and assemblies with doors self-closing. Doors providing access to fire-escapes from public halls or corridors may be glazed with clear wire glass.

(6) **Fire-escapes-existing and new.** Existing fire-escapes which are structurally strong and in good repair, having connecting stairways set at an angle or not more than sixty-five (65) degrees, may be accepted as a secondary means of egress.

Except as otherwise required herein, new and existing fire-escapes shall be provided with a safe landing and the termination shall lead directly to a street or to a passageway which provides access to a street.

When it is impractical to provide a termination for fire-escapes as specified in these rules, the Department may accept a termination from such fire-escapes which leads to safety.

(7) **Supplementary means of egress.** A stair, fire-stair, fire-tower, or fire-escape which is supplementary to the egress requirements of paragraphs (2), (3) and (4) of subdivision (bb) of this section, need not lead to the entrance story or to a street, or to a yard or a court which leads to a street, provided the means of egress therefrom is approved by the department.

Fire-escapes which are supplementary to the required second means of egress, including fire-escapes of the inclined ladder and vertical ladder types, may remain on the dwelling if maintained in good order and repair, are structurally strong and safe and are provided with safe landing and the termination thereof leads to safety in a manner satisfactory to this Department.

(8) **Signs-supplementary means of egress.** Supplementary stairs, fire-stairs, fire-towers or fire-escapes which do not lead to the entrance story or to a street, or to a yard or court leading to a street, shall be clearly marked "NOT AN EXIT" in black letters at least four inches (4") high on a yellow background and at the termination of each such stair, fire-stair, fire-tower or fire-escape, there shall be a directional sign indicating the nearest means of egress leading to a street. All signs shall be constructed, located and illuminated in a manner satisfactory to the department.

(9) **Signs-general provisions.** Every means of egress shall be indicated by a sign reading "EXIT" in red letters at least eight inches (8") high on a white background, or vice versa, illuminated at all times during the day and night by a red light of at least twenty-five (25) watts or equivalent illumination. Such light shall be maintained in a keyless socket. On all stories where doors, openings or passageways giving access to any means of egress are not visible from all portions of such stories, directional signs shall be maintained in conspicuous locations, indicating in red on a white background, or vice versa, the direction of travel to the nearest means of egress. At least one sign shall be visible from the doorway of each room or suite of rooms. Existing signs and illumination may be accepted if, in the opinion of the department, such existing signs and illumination serve the intent and purpose of this subdivision.

(10) **Stairs, fire-stairs and fire-towers.** Stairs, fire-stairs and fire-towers hereafter provided shall be constructed according to plans and applications approved by the Department of Buildings.

(cc) **Egress: lodging houses.** (1) **Arrangement.** There shall be at least two (2) means of unobstructed egress from each lodging-house story, which shall be remote from each other. The first means of egress shall be to a street either directly or by an enclosed stair having unobstructed direct access thereto. If the story is above the entrance story, the second means of egress shall be by an outside fire-escape constructed in accordance with the provisions of section fifty-three, Multiple Dwelling Law, or by an additional enclosed stair. Such second means of egress shall be accessible without passing through the first means of egress.

(2) **Doors and windows.** All doors opening upon entrance halls, stair halls, other public halls or stairs, or elevator, dumbwaiter or other shafts, and the door assemblies, shall be fireproof with the doors made self-closing by a device approved by the department, and such doors shall not be held open by any device whatever. All openings on the course of a fire-escape shall be provided with such doors and assemblies or with fireproof windows and assemblies, with the windows self-closing and glazed with wire glass, such doors or windows and their assemblies to be acceptable to the department.

(3) **Aisles.** There shall be unobstructed aisles providing access to all required means of egress in all dormitories. Main aisles, approved as such by the department to provide adequate approaches to the required means of egress, shall be three feet (3'-0") or more in width, except that no aisles need be more than two feet six inches (2'-6") wide if it it is intersected at intervals of not more than fifty feet (50'-0") by cross-over aisles at least three feet (3'-0") wide leading to other aisles or to an approved means of egress.

(4) **Signs.** Every required means of egress from the lodging-house part of the dwelling shall be indicated by a sign reading "EXIT" in red letters at least eight inches (8") high on a white background illuminated at all times during the day and night by a light of at least twenty-five (25) watts or equivalent illumination. Such light shall be maintained in a

keyless socket. On all lodging-house stories where doors, openings, passageways or aisles are not visible from all portions of such stories, and in other parts of the dwelling which may be used in entering or leaving the lodging-house part and in which a similar need exists, signs with easily readable letters at least eight inches (8") in height, and continuously and sufficiently illuminated by artificial light at all times when the natural light is not sufficient to make them easily readable, shall be maintained in conspicuous locations, indicating the direction of travel to the nearest means of egress. At least one (1) such sign shall be easily visible from the doorway of each cubicle.

(5) **Roof egress.** Access from the public hall at the top story to the roof shall be provided by means of a bulkhead or a scuttle acceptable to the department. Every such scuttle and the stair or ladder leading thereto shall be located within the stair enclosure.

(6) **Persons accommodated.** The number of persons accommodated on any story in a lodging-house shall not be greater than the sum of the following components:

(i) Twenty-two (22) persons for each full multiple of twenty-two inches (22") in the smallest clear width of each means of egress approved by the department, other than a fire-escape.

(ii) Twenty persons (20) for each lawful fire-escape accessible from such story if it is above the entrance story.

(7) In view of the fact that §66, subdivision 3 (formerly §13, subdivision m), Multiple Dwelling Law, required lodging-houses to be sprinklered throughout, including public halls, the Department will accept existing double-rung ladder type fire-escapes on the condition that such fire-escapes are maintained in a good state of repair.

(dd) **Ladders leading to roof scuttles.** Ladders to roof scuttles as required under the provisions of§§187 and 233 of the Multiple Dwelling Law, shall be of incombustible material, not less than fifteen inches (15") wide, with strings not less than one and one-half inches by three-eighths inch (1 1/2" x 3/8"), with five-eighths inch (5/8") rungs not more than twelve inches (12") apart. Strings of such ladders shall be secured at top and bottom and ladder must be so arranged as to permit sufficient toe hold.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 25-191

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER Q LIST OF ALL VIOLATIONS CLASSIFIED AS RENT IMPAIRING

§25-191 List of All Violations Classified as Rent Impairing.

The Department of Housing Preservation and Development has promulgated the following as a complete list of violations, currently classified as rent impairing under Multiple Dwelling Law, §302-a.

The list contains a brief description of the conditions constituting the violations, the section of the Multiple Dwelling Law or Housing Maintenance Code violated and the order number now assigned thereto by the Department of Rent and Housing Main- tenance.

[See tabular material in printed version]

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28 RCNY 25-201

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Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER R COLLECTION, RETENTION AND DISPOSAL OF GARBAGE, RUBBISH AND REFUSE IN MULTIPLE DWELLINGS

§25-201 Collection, Retention and Disposal of Garbage, Rubbish and Refuse in Multiple Dwellings.

(a) The owner, lessee or person in charge of every multiple dwelling shall keep upon the premises sufficient, proper and separate metal receptacles for the deposit of garbage, rubbish and other waste materials of such capacity and construction as provided for in these rules.

(1) Where dumbwaiter service is provided all garbage, rubbish, refuse and other waste matter in the building shall be collected at least once daily and deposited in separate metal receptacles. These receptacles shall be provided with tight fitting covers and shall be located in the cellar, basement or other lowest story except when placed outside the building for regular collection by the Department of Sanitation. Such receptacles shall always be kept covered with tight fitting covers. They shall be regularly disinfected and kept in a clean sanitary condition.

(b) Where no dumbwaiter service is maintained the following regulations shall apply: (1) Between the hours of 7 a.m. and 9 a.m. or between 6 p.m. and 8 p.m. at least two metal receptacles of such capacities as are provided for in these rules shall be placed within the building so as to be accessible to every occupant therein. Such receptacles shall not be placed so as to obstruct egress or create a nuisance. The owner shall notify all tenants concerning location of receptacles and hours of collection.

(i) Occupants of the respective floors shall deposit all garbage, rubbish and refuse only in the receptacles referred

to in the foregoing rule, and during the hours indicated therein. Throwing garbage or other waste matter out of windows or depositing same in any place other than in receptacles provided for in these rules is forbidden.

(ii) The receptacles referred to in paragraph (1) of subdivision (b) of this section shall be promptly removed from their locations upon the expiration of the period indicated and taken to the cellar, basement or other lowest story and there disposed of in accordance with paragraph (1) of subdivision (a) of this section.

(iii) All receptacles referred to in paragraph (1) of subdivision (b) of this section shall be provided with tight fitting covers and shall be maintained in a sanitary condition as provided in paragraph (1) of subdivision (a) of this section. Capacity of receptacles shall be based upon an allowance of at least one receptacle of a two cubic foot content for every five living rooms.

(iv) Newspapers, periodicals, magazines, paper bags, or similar waste paper shall first be tightly wrapped in small bundles and then placed for collection at the location and during the hours indicated in paragraph (1) of subdivision (b) of this section. Throwing loose paper into public halls,

shafts, courts or yards is prohibited.

(c) In lieu of complying with the foregoing rules, §25-201(b)(1) to §25-201(b)(iv), inclusive, an owner, lessee or other person in charge of the building may elect to call at each apartment or room at least once daily and collect such garbage, rubbish or refuse for deposit in receptacles referred to in paragraph (1) of subdivision (a) of this section.

(d) The provisions of these rules shall not apply to any multiple dwelling where regular incinerator services are provided and maintained.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER S CONSTRUCTION AND MAINTENANCE OF REFUSE CHUTES AND REFUSE ROOMS

§25-211 Construction and Maintenance of Refuse Chutes and Refuse Rooms.

(a) **Refuse chute enclosures.** Refuse chutes used for conveyance of garbage and rubbish from upper floors of a building to a cellar or other location shall be constructed with an enclosure of brick masonry at least eight inches in thickness or of reinforced concrete at least six inches in thickness, except as otherwise provided in this section.

(b) **Height and service openings.** Refuse chutes shall extend from the refuse collection room to a height of at least six feet above the roof. Service openings into the chute shall be equipped with approved self-closing hoppers so constructed that the chute is closed off while the hopper is being loaded and so that no part will project into the chute. The area of the service opening shall not exceed one third the are of the chute. Hopper doors shall have a fire resistive rating of at least one hour, unless separated from the corridor by a fireproof, self-closing door in which case they shall be constructed of incombustible material.

(c) **Existing flues and refuse chutes.** Flues for existing incinerators may be used for refuse chutes provided such flues are in good condition and provided the flues comply with the provisions of subdivisions (a) and (b) of this section. Existing refuse chutes may be continued in use provided they conform to the provisions of subdivisions (a) and (b) of this section, except that existing refuse chutes of other construction, which have been approved by the department may be retained.

(d) **Refuse chutes in new construction.** Where refuse compacting systems are required hereafter in new

construction, refuse chutes shall be required for conveyance of garbage and rubbish to refuse collection rooms, except that refuse chutes will not be required in class A multiple dwellings which are four stories or less in height. Refuse chutes erected hereafter in new construction shall be of a type approved by the board or shall comply with the requirements of subdivisions (a) and (b) of this section. Chutes shall be constructed straight and plumb, without projections of any kind within the chute. Refuse chutes shall have an inside dimension of at least twenty-four inches for the full height of the chute. All chutes shall be supported on fireproof construction having at least a three hour fire resistive rating.

(e) **Refuse collection rooms.** A refuse collection room shall be provided at the bottom of all chutes at the cellar or lowest story level to receive the refuse. Such rooms shall be enclosed with walls and roofs constructed of material having a minimum fire resistive rating of three hours, except that gypsum masonry may not be used for such enclosure walls. Openings to such rooms shall be provided with fireproof, self-closing doors having a minimum fire resistive rating of one and one-half hours. It shall be unlawful to keep such doors open. Refuse chutes shall extend to the underside of the roof of the refuse room or lower. Roofs shall be at least six inches away from combustible floor or wall construction. Refuse rooms shall be used only for receipt of refuse and for refuse compacting equipment. Refuse rooms shall be provided with sufficient sprinklers to sprinkle all parts of the room, with at least two sprinkler heads provided and with sprinklers so separated as to sprinkle a maximum area of the room when one of the sprinklers is blocked or not operating. A hose connection shall be provided with the refuse room. Existing refuse rooms and incinerator rooms that have been approved by the department for such use may be retained as approved.

(f) **Collection room floors.** The floor within the room for the collection of refuse shall be constructed of concrete and shall be sloped to a floor drain within the room connected to the house drain. The drain shall be provided with a protective screen to retain solid material. Floor drain traps shall be readily accessible for cleaning.

(g) **Use of existing combustion chambers.** Existing incinerator combustion chambers may be used in whole or in part as refuse collecting rooms for collection of refuse and for compacting equipment provided the grates are removed and provided they comply with the provisions of subdivision (e) of this section.

(h) **Sprinkler operation and water supply.** Sprinklers shall be designed to operate automatically at a temperature not exceeding one hundred sixty-five degrees Fahrenheit. They may be electrically controlled provided such sprinklers are approved by the Board of Standards and Appeals. Sprinklers may be connected to the cold water supply of the building at the point where such service enters the building or at the base of a water supply riser provided the piping of such service or riser is of adequate size. No connections, except those for sprinklers, shall be made to the sprinkler piping.

(i) **Hoppers, cut off door and compactors.** A hopper and cut off door shall be provided at the bottom of the refuse chute to regulate and guide the flow of refuse into containers. Where compactors are installed so that the refuse flows directly into the compacting equipment, the equipment may be used in place of the hopper and cut off door. Compacting equipment shall be arranged to operate automatically when the level of rubbish is not higher than three feet below the lowest door.

Compactors shall be located entirely within the enclosure of the refuse room and former combustion chamber where the latter is retained, except that motors, pumps and controls may be installed in adjacent rooms.

(j) **Number of sprinkler heads.** Sufficient sprinklers shall be installed in the refuse room and former combustion chamber to provide sprinkler coverage for the entire area of each unit.

(k) **Lighting.** Adequate lighting shall be provided in refuse rooms.

(l) **Maintenance.** Refuse chutes, refuse rooms, hoppers and all parts of the refuse collecting system shall be maintained in a clean and sanitary condition at all times, free of vermin, odors and defects, and shall be maintained in good operating condition. Fused sprinkler heads shall be replaced promptly.

(m) **Pest control.** The owner shall establish a program to ensure that the refuse chute and the refuse room and appurtenances will be treated as often as may be necessary to prevent infestation with insects and rodents. The owner shall maintain a record of such treatments which shall be available at all times for the inspection by the department.

(n) These rules shall apply only to refuse chutes in new construction and to refuse chutes resulting from the conversion of existing incinerator flues and to existing refuse chutes.

(o) **Collection and disposal of refuse within premises.** The collection and disposal of refuse within any building or on any premises shall be performed as deemed necessary to provide for the safety, health and well being of the occupants of buildings and of the public. The construction, operation, maintenance, cleanliness and sanitation of refuse chutes and refuse rooms and extermination treatment for insects and rodents, and the keeping of records of such treatments for refuse chutes and refuse rooms shall be in accordance with regulations established by this department in consultation with the department of health.

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Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER T OBSTRUCTION OF FIRE EXITS IN MULTIPLE DWELLINGS

§25-221 Obstruction of Exits Used as Means of Egress in Case of Fire in Various Multiple Dwellings.

(a) In every multiple dwelling, public halls, stairs, corridors and passageways and every part thereof used as means of egress shall be kept free and clear of encumbrances at all times in order that free, safe and unobstructed egress to the outside of the building may be maintained during all hours of the day and night.

(b) Passageways required by the Multiple Dwelling Law which provide egress from yards and courts shall, at all times, be kept clear and unobstructed. Doors and gates at the ends of such passageways are prohibited except that a door or gate equipped with an approved type knob or panic bolt protected by a steel plate and readily openable from the inside may be permitted at the building line. Doors and gates provided with key locks are prohibited. Windows on grade level at sidewalk, yard or court or at roof level of an adjoining building may have bars, but at least one window in any apartment or suite of rooms shall be without bars or obstructions of any kind in order to afford a second means of egress.

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Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER U SURFACES OF WALLS AND CEILINGS IN MULTIPLE DWELLINGS

§25-231 Surfaces of Walls and Ceilings in Multiple Dwellings.

This department will require that any part of a wall or ceiling required to be replastered or repainted by §§78 and 80 of the Multiple Dwelling Law shall be so painted that the entire wall or ceiling is of a uniform color. Dark colors which tend to diminish the natural light within a dwelling shall not be accepted as meeting the requirements of §80, subdivision 4, of the Multiple Dwelling Law.

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Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER V POSTING OF CERTIFICATE OF INSPECTION VISITS IN MULTIPLE DWELLINGS

§25-241 Posting of Certificate of Inspection Visits in Multiple Dwellings.

(a) In multiple dwellings consisting of more than six families or whenever a certificate of inspection visits is posted, a certificate frame shall be provided inside the building in a conspicuous place within view of the place at which mail is delivered to the building and in a place readily accessible for signature by Office of Code Enforcement inspectors.

(b) The bottom of the certificate frame shall be not less than 48 nor more than 62 inches above the floor.

(c) The frame shall be constructed of corrosion-resistant metal or durable, impact and flame-resistant plastic.

(d) The certificate frame shall be of a size to accommodate properly a standard 6 x 9 certificate.

(e) The certificate frame shall be faced with plastic or other transparent lacing but not glass, adequate to permit the certificate of inspection visits to be read without difficulty.

(f) The frame shall be of tamperproof construction and shall be provided with a six thirty-two (6-32) "Allen Set Screw" located in the center of the top part of the frame to permit removal of the transparent facing and the inspection certificate for inspector's endorsement.

(g) Any replacement of certificate frames shall comply with all requirements specified herein.

(h) Sufficient lighting shall be provided to make the certificate of inspection visits legible at all times.

(i) The owner has a continuing duty to maintain complete and correct information on the certificate of inspection as the premises' address, registration number, name and address of owner or managing agent registered with the Office of Code Enforcement, and a telephone number which tenants may call for service and repairs.

(j) Where the certificate of inspection visits is destroyed or defaced, the owner shall notify the registration unit of the borough Code Enforcement Office requesting a replacement within five days by certified mail, return receipt requested, or in person on the form prescribed by the Department.

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Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER W SEALING AND PROTECTION OF VACANT AND UNGUARDED BUILDINGS

§25-251 Sealing and Protection of Vacant and Unguarded Buildings.

(a) Where buildings are vacant, unguarded, open to unauthorized entry and are required to be sealed by the provisions of an unsafe building order, they shall be sealed and protected in the following manner:

(1) **Buildings with exterior walls constructed of brick or other masonry.**

(i) All exterior openings including door openings, in the cellar, in the story at street level, in the second story above street level, on the course of a fire escape, or which are less than 12 feet measured horizontally from an opening in an adjoining building, shall be sealed with concrete block. One door opening, readily visible from the street, may, at the discretion of the owner, be sealed with a door. The door shall be of solid wood covered with 26 gauge metal or constructed of 1-inch by 6-inch tongue and groove boards with cross and diagonal battens of 1-inch boards and covered on the outside with 26 U.S. gauge galvanized steel with edging turned over and nailed with flat heads galvanized nails. The door shall be hung in such a manner that no screws are exposed on the outside of the door on either the hinges or the hasps. Hinges shall not have removable hinge pins. Two hasps and locks shall be provided, located so as to divide the height of the door in equal sections.

(ii) Concrete block shall conform to the provisions of Reference Standard RS-10 of the Administrative Code.

(iii) All door and window frames shall be removed before concrete blocks are installed. Brickwork which new

concrete blocks will abut, shall be cleaned and thoroughly wetted before blocks are installed.

(iv) Doors and windows, not exceeding 6 feet in width, shall be sealed with concrete block at least 4 inches in thickness. Openings exceeding 6 feet in width shall be sealed with concrete blocks at least 8 inches in thickness.

(v) Concrete blocks shall be laid in masonry cement mortar with a mix of not more than three parts of sand for each part of masonry cement by volume. Joints in masonry shall be broken. Masonry cement shall conform to the provisions of Reference Standard RS-10. Joints on the exterior faces shall be struck and shall be provided with a smooth finish.

(vi) Openings in masonry walls, which are not required to be enclosed with concrete block in accordance with subparagraph (i) of paragraph (1) of this subdivision, shall be sealed with boards covered by sheet metal in the manner specified in paragraph (4) of this subdivision.

(2) **Buildings with exterior walls constructed of material other than masonry.**

(i) All exterior openings in walls of buildings which do not have walls constructed of masonry, shall be sealed with boards covered by sheet metal in the manner specified in paragraph (a)(4) of this subdivision.

(3) Openings in roofs shall be sealed as follows:

(i) Roof bulkheads, skylights, ventilating equipment and similar structures shall be completely removed. Openings remaining after removal of structures shall be sealed with 1-inch tongue and groove boards, not less than 6 inches in nominal width, laid on 3-inch by 6-inch joists, not more than 16 inches on center. Joists shall be secured to the roof timbers framed about the openings in a sound and secure manner. Boards shall be covered with roofing to provide a watertight durable cover.

(4) Sealing of openings by boards covered with sheet metal, where permitted under subparagraph (vi) of paragraph (l) in masonry walls and under subparagraph (i) of paragraph (4) in walls of material other than masonry, shall be done in the following manner:

(i) Boards shall be 1-inch by 6-inch cut to a length to fit the height and width of the wall opening, with a cross and diagonal battens of l-inch boards, on the inside, or shall be exterior grade plywood, at least 5/8 inches in thickness, cut to fit the wall opening on the inner side of the window frame.

(ii) Outside or exposed surfaces of the boards or plywood shall be covered with No. 26 U.S. gauge galvanized steel, with edging turned over and nailed with flat head galvanized nails.

(iii) Boards shall be nailed to the sides, top and bottom of the window frame with 16-penny, 3 1/2-inch nails, where the window frame is in good, firm condition. Where the window frame is loose or defective, the boards shall be securely fastened to the brick wall.

(5) **Utilities and service lines.** All gas, electric, water, steam and other service lines to the building except sewer lines shall be disconnected and certifications to that effect by the respective utility companies or city agencies having jurisdiction shall be filed with the department.

(6) Prior to the completion of required sealing of exterior openings as detailed pursuant to paragraphs (1), (2), (3) and (4), above, all combustible debris, rubbish, abandoned furniture or materials capable of supporting combustion shall be removed from the premises.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 26-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-01 Definitions.

Appeals Committee. "Appeals Committee" shall mean the Commercial Rent Appeals Committee established pursuant to these rules.

City-owned building. "City-owned building" shall mean any building owned by the City of New York and assigned to HPD for management.

Committee. "Committee" shall mean the Commercial Rent Committee established pursuant to these rules.

Cost of Operation. "Cost of Operation" shall mean the amount, as determined by HPD, from time to time, that represents HPD's cost of maintenance of such units and making them available for commercial use.

DPM. "DPM" shall mean the Division of Property Management of the Office of Property Management of the Department of Housing Preservation and Development.

DRO. "DRO" shall mean the Division of Relocation Operations of the Office of Property Management of the Department of Housing Preservation and Development.

Fair Market Rent (FMR). "Fair Market Rent" ("FMR") shall mean the rent that would be paid for the commercial unit, in a bona fide arms length transaction, at the highest and best use of the commercial unit, but in no event shall fair market rent be less than the cost of operation or the current rent.

Governmental Tenant. "Governmental Tenant" shall mean a tenant who is a Community Board, Municipal

Hospital Advisory Board, Mayoral governmental agency, city professional employee association, or any board, commission, or advisory body established by the City Charter, or Executive Order of the Mayor.

Qualified Not-For-Profit Organization. "Qualified Not-For-Profit Organization" shall mean an organization:

(1) that has tax exempt status under §501(c)(3) of the Internal Revenue Code, the New York State Non-For-Profit Corporation Law, or local laws governing real estate tax exemption eligibility; and

(2) that is in good standing with all governmental funding and oversight agencies; and

(3) whose activities provide a service to a substantial segment of the public at large, at nominal cost, and not for the exclusive use of members of the organization; and

(4) whose membership in the organization, and access to its services are not restricted by unrelated or discriminatory criteria, including but not limited to race, sex, ethnicity, political affiliation or sexual orientation; and

(5) that provides on-going programs which fully utilize the city property for non-profit purposes; and

(6) that utilizes the property for non-profit purposes exclusively, without subleasing to for-profit uses.

Rules. "Rules" shall mean these rules.

Sale of the Business Occupying a Commercial Unit. "Sale of the Business Occupying a Commercial Unit" shall occur when a substantial portion of the assets, shares of stocks, partnership interest or other significant indicia of ownership or control passes from the existing tenant, or any principal of the existing tenant, to any other person or entity.

Tenant. "Tenant" shall mean authorized commercial tenant of record. Occupants such as squatters and licensees are not tenants of record.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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***** Current through December 2009 ****

28 RCNY 26-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-02 General.

The Department of Housing Preservation and Development of the City of New York (HPD) is responsible for managing, rehabilitating, and disposing of buildings owned by the City of New York that were acquired through tax foreclosure and other means. HPD recognizes that it has not increased rents to commercial tenants on a regular basis and the result is that some businesses pay less to HPD than the cost of similar space leased by competing businesses, thus providing such commercial tenants an unfair competitive benefit.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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***** Current through December 2009 ****

28 RCNY 26-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-03 Policy.

It is the policy and intention of HPD that commercial units within city-owned buildings be rented at fair market rents, and that commercial units rented to qualified not-for-profit organizations be rented at 50 percent of fair market rent. However, it is also HPD's policy to minimize the impact of rent restructuring on current tenants, by phasing in rent increases as set forth in these rules.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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***** Current through December 2009 ****

28 RCNY 26-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-04 Coverage.

These Rules govern the procedures for the periodic review and resetting of rents in leased commercial units under the jurisdiction of the Division of Property Management and the Division of Relocation Operations.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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28 RCNY 26-05

RULES OF THE CITY OF NEW YORK

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CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-05 Commercial Rent Restructuring Committee.

There shall be a Commercial Rent Restructuring Committee consisting of two persons designated by the Assistant Commissioner of Property Management, and one person designated by the Assistant Commissioner of Relocation Operations.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 26-06

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Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-06 Periodic Review.

The commercial rent for every leased commercial unit under the jurisdiction of DPM and DRO shall be reviewed not more than once every year. Such review shall be conducted by the Commercial Rent Restructuring Committee.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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28 RCNY 26-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-07 New Rent.

The Commercial Rent Restructuring Committee shall determine the fair market rent of each commercial tenant, other than governmental tenants or community gardens, as determined by HPD. Such fair market rent shall be the new rent for the commercial unit. The new rent for qualified not-for-profit organizations shall be 50 percent of the fair market rent. The rent for governmental tenants shall be the cost of operation of the unit.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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***** Current through December 2009 ****

28 RCNY 26-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-08 Phase-In of New Rents of For-Profit Tenants.

(a) Where the Commercial Rent Restructuring Committee determines that the difference between the new rent and the current rent of a commercial unit is an increase of more than 15 percent of the current rent, the Committee shall direct that the new rent be phased in over a period of not more than five (5) years. The current rent of such unit shall be increased each year until the rent shall equal the new rent, but each such increase shall be no more than 15 percent of the prior year's rent for each of the first four years. On the fourth anniversary of the Commercial Rent Restructuring Committee's implementation of the rent increase, the remainder of any difference between the rent then being charged and the new rent shall be the amount of the increase for the final year of the phase-in period.

(b) Notwithstanding subdivision (a) above, in no event shall the first rent increase of the phase-in result in a rent less than:

(1) 25 percent of FMR or current rent plus 15 percent, whichever is more, for a commercial unit of 1000 square feet or more; or

(2) $300 or FMR, whichever is less, for a commercial unit of less than 1000 square feet.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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28 RCNY 26-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-09 Phase-In of New Rents of Not-For-Profit Tenants.

(a) Where the Commercial Rent Restructuring Committee determines that the difference between the new rent and the current rent of a commercial unit whose tenant is a qualified not-for-profit organization is an increase of more than 10 percent of the current rent, the Committee shall direct that the new rent be phased in. The current rent of such unit shall be increased each year until the rent shall equal the new rent, but each such increase shall be no more than 10 percent of the prior year's rent for each of the first five years. On the fifth anniversary of the Commercial Rent Restructuring Committee's implementation of the rent increase, the rent shall increase by 15 percent each year until the rent charged shall equal the new rent.

(b) Notwithstanding subdivision (a) above, in no event shall the first rent increase of the phase-in result in a rent less than $150.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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***** Current through December 2009 ****

28 RCNY 26-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

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§26-10 Reconsideration of Rent During Phase-In Period.

Where a tenant has received a rent increase eligible for a phase-in under §26-08, the Commercial Rent Restructuring Committee may not review such rent again until the phase-in provided for under §26-08 has been completed or five years have elapsed since the commencement of a phase-in.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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28 RCNY 26-11

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CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-11 Termination of Phase-In.

If there is a sale of the business occupying a commercial unit, or a termination of the tenancy, any previously determined phase-in under §26-08 or §26-09 shall terminate immediately and the rent for the unit shall be the fair market rent as determined by HPD's staff, or by auction.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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28 RCNY 26-12 30-Day

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CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-12 30-Day Notice.

The Commercial Rent Restructuring Committee shall notify the tenant of the new rent, and of the phase-in schedule, if any, at least 30 days prior to the effective date of such new rent.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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28 RCNY 26-13

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-13 Appeal.

(a) There shall be a Commercial Rent Restructuring Appeals Committee which shall consist of the Assistant Commissioner of the Division of Property Management, the Assistant Commissioner of the Division of Relocation Operations and one person designated by HPD's General Counsel. An Assistant Commissioner may be represented on the Appeals Committee by an individual designated by such Assistant Commissioner who reports directly to such Assistant Commissioner, provided that such designee did not also serve as a designee in the Commercial Rent Restructuring Committee's decision to set the rent which is appealed from.

(b) The tenant of a commercial unit for which a new rent has been determined shall have the right to state their objections to the Appeals Committee in writing. Such objections may be received at any time up to 60 days after the effective date of the rent increase. However, the filing of such objections shall not postpone the effective date of the new rent, or of any other action that HPD may take with regard to the commercial unit.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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***** Current through December 2009 ****

28 RCNY 26-14

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-14 Postponement of Effective Date.

The Appeals Committee shall consider objections promptly. If the Appeals Committee is not scheduled to convene within the next 30 days, the Assistant Commissioner of the Division which has jurisdiction over the commercial unit may postpone the effective date of the new rent until after the next scheduled Appeals Committee meeting.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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***** Current through December 2009 ****

28 RCNY 26-15

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-15 Final Determination.

The determination by the Appeals Committee of any objections by a tenant to a rent restructuring shall be final.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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***** Current through December 2009 ****

28 RCNY 27-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER A TRIPARTITE GENERAL ORDER NO. 1: APPROVAL OF SPECIFICATIONS FOR PAPER BAGS USED FOR CONTAINING UNCOMPACTED REFUSE AND INCINERATOR RESIDUE; APPROVAL OF SPECIFICATIONS FOR PLASTIC BAGS USED FOR CONTAINING UNCOMPACTED REFUSE; AND APPROVAL OF SPECIFICATIONS FOR CONTAINERS USED FOR CONTAINING COMPACTED REFUSE

§27-01 Statement of Policy and Intent.

To improve the environment and to improve refuse containment and collection operations, the use of paper bags for containing uncompacted refuse and incinerator residue should be permitted; the use of plastic bags for containing uncompacted refuse should be permitted and the use of containers for containing compacted refuse should be permitted.

Accordingly pursuant to Local Law 11 of the Laws of 1971 and to §13-1.11 of the Health Code, the Department of Sanitation and the Department of Housing Preservation and Development, and the Department of Health hereby approve the specifications set forth in §27-02 below for paper bags for containing uncompacted refuse and incinerator residue; hereby approve the specifications set forth in §27-03 below for plastic bags for containing uncompacted refuse; and hereby approve the specifications set forth in §27-04 below for containers for containing compacted refuse.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

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28 RCNY 27-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER A TRIPARTITE GENERAL ORDER NO. 1: APPROVAL OF SPECIFICATIONS FOR PAPER BAGS USED FOR CONTAINING UNCOMPACTED REFUSE AND INCINERATOR RESIDUE; APPROVAL OF SPECIFICATIONS FOR PLASTIC BAGS USED FOR CONTAINING UNCOMPACTED REFUSE; AND APPROVAL OF SPECIFICATIONS FOR CONTAINERS USED FOR CONTAINING COMPACTED REFUSE

§27-02 Specifications For Paper Bags Used For Containing Uncompacted Refuse and Incinerator Residue.

(a) **Substance:** Paper bags shall be fabricated from wet-strength*2 kraft paper, wholly extensible or wholly non-extensible or equivalent.

(b) **Strength:** The non-extensible paper used to construct single-ply or multi-ply bags must have a nominal basis weight of 100 pounds per 500 sheets, each 24 inches by 36 inches, and a minimum basis weight of 95 pounds per 500 sheets, each 24 inches by 36 inches.

The extensible or equivalent paper used to construct single-ply or multi-ply bags must have a nominal basis weight of 90 pounds per 500 sheets, each 24 inches by 36 inches, and a minimum basis weight of 85.5 pounds per 500 sheets, each 24 inches by 36 inches.

Minimum tensile energy absorptions for dry and wet extensible or equivalent paper used in single and multi-ply bags are set forth in Table I.

Table I

Minimum Tensile Energy Absorption-Extensible

	Dry	Wet
Cross Direction of Paper (Single-ply or Multi-ply)	9.3 ft. lb./sq. ft.	2.7 ft.lb./sq. ft.
Cross Direction Plus Machine Direction of Paper (Single-plyor Multi-ply)	30.8 ft. lb./sq. ft.	Not specified

Table II

Minimum Tensile Breaking Strengths-Non-Extensible

	Dry	Wet
Cross Direction of Paper (Single-ply or Multi-ply)	34.0 lbs./in. width	9.0 lbs./in. width
Cross Direction Plus Machine Direction of Paper (Single-plyor Multi-ply)	95.0 lbs./in. width	Not specified

The method of testing for nominal and minimum basis weight shall be the Tappi Standard Method T-410 which shall be conducted in accordance with Section 4 of Federal Specification UU-S-48-E. Tensile breaking strength and tensile energy absorption tests shall be performed according to Tappi Standard Methods T-404, T-456, and T-494.

Wet tensile breaking strength and tensile energy absorption are to be determined by using one inch width specimens that have been immersed in water for two hours at 73 degrees Fahrenheit 3.5 degrees Fahrenheit.

(c) **Adhesives:** Any Adhesive used for seams and closures must meet the water resistant requirements for Federal Specification UU-S-48E.

(d) Any tape used on sewn ends of bags shall be 2 1/8 inches wide (1/8 inch minus tolerance unlimited plus tolerance) and shall be made from kraft paper having a nominal basis weight of not less than 70 pounds per 500 sheets each 24 inches by 36 inches.

(e) **Thread:** The strength of any stitching on the ends of sewn bags shall be not less than that of 12/5 cotton needle and 12/4 cotton looper thread or equivalent.

(f) **Capacity:** The usable capacity of bags shall not exceed four cubic feet. Measurement of capacity will be determined by the application of the following formula, applying the prescribed measurements of the unfilled bag.

Cubic Foot Capacity = [**T**-0.4 (**FG**)] [(**FG**)]

5425

Where: T = Inside Tube Tube Length of Bag (in inches) Where: F = Inside Face Width of Bag (in inches) Where: G = Inside Gusset Width of Bag (in inches)

No restrictions are made on bag dimensions provided that they do not deviate from the prescribed dimensions by more than the following tolerances:

Width: ±3/16 inch

Bottom: ±3/16 inch

Length: ±1/4 inch

(g) **Labeling:** On and after January 1, 1971, but prior to April 1, 1971, all bag packaging shall be labeled with an approved logo imprinted or pasted onto the principal panel of all such packaging. On or after April 1, 1971, each bag and all bag packaging shall be labeled with an approved logo marked and imprinted visibly, respectively, along the center of the face of such bag and on the principal display panel of all bag packaging. Such logo shall not be less than one square inch in size. Display of such logo on bags and all bag packaging shall be deemed the manufacturer's certification that such bags and all bags contained in such packages conform to these specifications and testing procedures.

Each bag and all bag packaging shall have marked thereon the name and address of the principal place of business of the manufacturer or distributor of the same and a code identifying the date and location of bag manufacture.

Each bag and retail package of bags shall be prominently marked with the words, "NOT LAWFUL FOR COMPACTED WASTE IN NEW YORK CITY", in block letters not less than 1/4 inch high.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

2

[Footnote 2]: * All wet-strength paper will be specially marked on the outer surface for verification by longitudinal stripes spaced not less than 2" and not more than 10" apart across the paper width, and each strip will be not less than 1/8" in width. Any other grade of paper used in the bags will not be striped in this manner. For multi-ply bags, the verificatiion marking will appear on the outside surface of the bag. Set forth in Table II is the minimum tensile breaking strengths for dry and wet non-extensible paper used in single and multi-ply bags.

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28 RCNY 27-03

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CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER A TRIPARTITE GENERAL ORDER NO. 1: APPROVAL OF SPECIFICATIONS FOR PAPER BAGS USED FOR CONTAINING UNCOMPACTED REFUSE AND INCINERATOR RESIDUE; APPROVAL OF SPECIFICATIONS FOR PLASTIC BAGS USED FOR CONTAINING UNCOMPACTED REFUSE; AND APPROVAL OF SPECIFICATIONS FOR CONTAINERS USED FOR CONTAINING COMPACTED REFUSE

§27-03 Specifications for Plastic Bags Used for Containing Uncompacted Refuse.

(a) **Substance:** The film from which plastic bags are constructed shall be manufactured from polyethylene or ethylene copolymer resin.

(b) **Film Strength:** The film used to fabricate plastic bags shall have a dart impact strength at folds and seals not less than 40 grams per 1.0 mil when tested in accordance with ASTM D-1709, Method A.

(c) **Film Thickness:** The gauge of the film used to fabricate plastic bags shall have an average of no less than 1.5 mils with a point-to-point variation not exceeding ± 20 percent.

(d) **Film Flammability:** The film used to construct plastic bags shall be capable of incineration under normal municipal incinerator practices.

(e) **Bag Dimensions:** From inside or seals, plastic bags shall have a minimum inside circumference of 40 inches and a minimum inside length of 22 inches and a maximum inside circumference of 60 1/2 inches and a maximum length of 37 1/2 inches.

(f) **Heat Seal Strength:** Any heat seal shall withstand a ten-minute tensile loading of 1 lb./inch of seal without failure in accordance with ASTM F-88-68.*3

(g) **Slip Coefficient:** Plastic bags shall be readily opened by hand and shall have a slip coefficient between 0.1 and 0.25 when tested in accordance with ASTM D-1894.

(h) **Closures:** Each package of plastic bags shall contain a number of tie closures (at least five inches in length) equal to the number of bags.

(i) **Drop Resistance:** Plastic bags shall be capable of withstanding a drop of five feet onto smooth concrete when filled with a material having weight density of twenty pounds, per cubic foot, and when securely closed with a twist tie and when tested in accordance with the National Sanitation Foundation test method.**4

(j) **Labeling:** On and after January 1, 1971, but prior to April 1, 1971, all bag packaging shall be labeled with an approved logo imprinted or pasted onto the principal panel of all such packaging. On or after April 1, 1971, each bag and all bag packaging shall be labeled with an approved logo marked and imprinted visibly, respectively, along the center of the face of such bag and on the principal display panel of all bag packaging. Such logo shall not be less than one square inch in size. Display of such logo on bags and all bag packaging shall be deemed the manufacturer's certification that such bags and all bags contained in such packages conform to these specifications and testing procedures.

Each bag and all bag packaging shall have marked thereon the name and address of the principal place of business of the manufacturer or distributor of the same and a code identifying the date and location of bag manufacture.

Each bag and retail package of bags shall be prominently marked with the words, "NOT LAWFUL FOR COMPACTED WASTE IN NEW YORK CITY", in block letters not less than 1/4 inch high.

(k) Plastic bags larger than the sizes specified in subdivision (e) above shall have an average of no less than 3.0 mils gauge with a point-to-point variation not exceeding 20 percent and shall not exceed an inside circumference of 66 inches and an inside length of 48 inches. The bags exclusive of packaging and ties shall have a minimum weight of 210 pounds per 1,000 bags.

(l) **Bag opacity:** Plastic refuse bags shall be of high opacity with a minimum reading of 65 percent as determined by a hazemeter or recording spectrophotometer when tested in accordance with ASTM D-1003.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

3

[Footnote 3]: ** Refer to "Incineration Guidelines, 1969; U.S. Public Health Service.

4

[Footnote 4]: ** Available from the National Sanitation Foundation are the complete details of the test method. Write to 2355 W. Stadium Boulevard, Ann Arbor, Michigan 48103.

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28 RCNY 27-04

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CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER A TRIPARTITE GENERAL ORDER NO. 1: APPROVAL OF SPECIFICATIONS FOR PAPER BAGS USED FOR CONTAINING UNCOMPACTED REFUSE AND INCINERATOR RESIDUE; APPROVAL OF SPECIFICATIONS FOR PLASTIC BAGS USED FOR CONTAINING UNCOMPACTED REFUSE; AND APPROVAL OF SPECIFICATIONS FOR CONTAINERS USED FOR CONTAINING COMPACTED REFUSE

§27-04 Specifications for Containers Used for Containing Compacted Refuse.

(a) As used herein the term "container" shall mean any container used for the storage of compacted refuse, including, but not limited to any such bag, sack, box, bin, barrel, tub, or tube.

(b) Containers shall have been evaluated and approved by the Department of Sanitation pursuant to the performance standards and specifications of the Department for the approval of refuse compactor systems. The manufacturer or distributor of such containers shall submit a certification with his request for container approval listing detailed specifications of such containers attesting to the container's compliance with the performance standards and specifications of the Department and setting out any conditions relevant to the use of such container, including a list of compactor systems with which the container is compatible. Such performance standards shall include without limitation the following:

(1) Containers shall be capable of containing refuse with an output density range of from 450 pounds to 700 pounds per cubic yard (16.7 pounds to 25.9 pounds per cubic foot) unless specific approval of an alternate capability is made by the Department of Sanitation.

(2) Containers shall during filling in the course of evaluation not allow tears or punctures in excess of one (1) inch in more than ten (10) percent of observed samples, and shall during handling in the course of evaluation not allow tears or punctures in excess of one (1) inch in more that ten (10) percent of samples.

(3) Containers shall not allow their contents to spill from tears or punctures.

(4) Returnable containers shall be capable of easily discharging their contents by gravity.

(5) Containers shall be of unit construction when supplied to users and shall not require additional components to be considered ready for use, unless specific exception to this requirement is given by the Department of Sanitation pursuant to §27-04(b) above.

(c) Containers shall not exceed four (4) cubic feet in capacity unless specific approval of a larger capacity is made by the Department of Sanitation pursuant to §27-04(b) above.

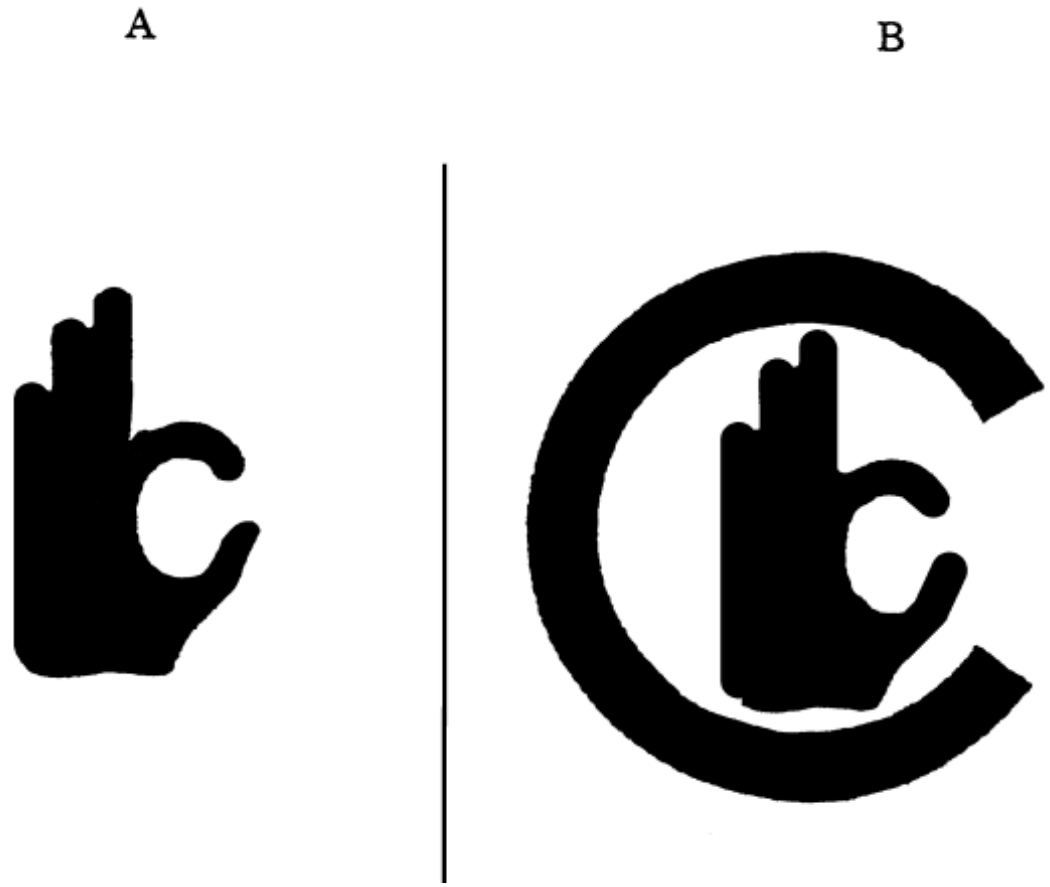
(d) Containers shall be free of jagged or sharp edges.

(e) Containers shall be of high opacity and not transparent.

(f) **Labeling:** On or after January 1, 1974, each approved disposable container or sealable separate section shall be marked with an approved logo along the center of its widest side and the applicable identifying model number registered with the Department of Sanitation. If enclosed in an outer wrapping, said wrapping shall be similarly marked. Such logo shall be no less than 1 percent of the area on which it is marked, but not be less than one square inch in size. Display of such logo on disposable containers and wrappings or sealable separate sections shall be deemed the manufacturer's or distributor's certification that such disposable containers and wrappings or sealable separate sections conform in detail to the specifications of the prototypes evaluated and approved by the Department of Sanitation and to the specification set forth in the certification submitted pursuant to §27-04(b) above.

Each disposable container and wrapping or sealable separate section shall have marked thereon the name and address of the principal place of business of the manufacturer or distributor of the same and a code identifying the date and location of container manufacture.

From and after the respective dates of the foregoing amendments, the approved logo for bags and retail packages of bags which meet the specifications set forth in §27-02 or §27-03 of the said Tripartite General Order No. 1 shall be as illustrated in Box A below, and the approved logo for disposable containers, wrappings and sealable separate sections which meet the specifications set forth in §27-04 of the said Tripartite General Order No. 1 shall be as illustrated in Box B below.



FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

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Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER A TRIPARTITE GENERAL ORDER NO. 1: APPROVAL OF SPECIFICATIONS FOR PAPER BAGS USED FOR CONTAINING UNCOMPACTED REFUSE AND INCINERATOR RESIDUE; APPROVAL OF SPECIFICATIONS FOR PLASTIC BAGS USED FOR CONTAINING UNCOMPACTED REFUSE; AND APPROVAL OF SPECIFICATIONS FOR CONTAINERS USED FOR CONTAINING COMPACTED REFUSE

§27-05 Requirements for Employment of Bags and Containers Meeting Specifications Set Out in §§27-02, 27-03 and 27-04.

(a) Bags and containers which meet the specifications approved under this order:

(1) shall not be filled so as to prevent the effective closure thereof:

(2) shall not weigh more than 100 pounds when filled:

(3) shall be in such condition as to hold their contents without leakage:

(4) shall be effectively closed:

(5) when stored in the building shall be kept in a metal receptacle or rat-proof and fire-proof room:

(6) when awaiting collection outside the building, shall be removed from any metal receptacle and shall be neatly stacked in front of such building.

(b) Containers which meet the specifications approved under this order: shall not contain compacted refuse bound with non-combustible ties.

(c) The Commissioners of the Department of Sanitation or Housing Preservation and Development or Health may conduct or order the manufacturer or distributor of any product displaying a logo as provided in §27-04(f) to conduct in an independent testing laboratory selected by any such administrator or commissioner, such tests as are necessary to determine whether such product is in conformity with the provisions of this order. The expenses for all such tests shall be borne by the aforementioned manufacturer or distributor. Such Commissioner may require such appearance of any manufacturer, distributor, retailer or user of any product displaying a logo as provided in §27-04(f) as are necessary to determine if a violation of any of the provisions of this order has occurred.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 27-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER A TRIPARTITE GENERAL ORDER NO. 1: APPROVAL OF SPECIFICATIONS FOR PAPER BAGS USED FOR CONTAINING UNCOMPACTED REFUSE AND INCINERATOR RESIDUE; APPROVAL OF SPECIFICATIONS FOR PLASTIC BAGS USED FOR CONTAINING UNCOMPACTED REFUSE; AND APPROVAL OF SPECIFICATIONS FOR CONTAINERS USED FOR CONTAINING COMPACTED REFUSE

§27-06 Amendment and Repeal.

This order may be amended or repealed only upon joint order of the Departments of Sanitation, Housing Preservation and Development and Health pursuant to Section 1043 of the City Charter of the City of New York.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing

Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 27-11

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER B TRIPARTITE GENERAL ORDER NO. 2: APPROVAL OF SPECIFICATIONS FOR WASTE CONTAINERIZATION SYSTEMS

§27-11 Purpose and Scope.

The Departments of Sanitation, Housing Preservation and Development and Health find that the use of systems for the disposal of waste that utilize large containers which are mechanically lifted and emptied into, loaded onto or attached to collection vehicles (hereinafter "waste containerization systems") will tend to improve waste containment and increase the efficiency of waste collection operations, and accordingly approve as to specifications, pursuant to §27-2021 of the Housing Maintenance [Administrative] Code, any waste containerization system that meets the specifications set forth below.

Nothing contained in this order shall constitute an agreement by the Department of Sanitation to provide hoist compactor, hoist-fitted chassis, roll-on roll-off or any other specialized service to any person using containers covered by this order. Such service shall continue to be available only by contract with the Department of Sanitation and subject to such conditions as the Department of Sanitation may impose.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 27-12

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER B TRIPARTITE GENERAL ORDER NO. 2: APPROVAL OF SPECIFICATIONS FOR WASTE CONTAINERIZATION SYSTEMS

§27-12 Specifications for Waste Containerization Systems.

(a) The owner or other person in charge of the premise served by a waste containerization system (hereinafter the "premises") shall maintain in a safe, clean, odor-free and properly operating condition all containers and other equipment kept on such premises in connection with the operation of such system and shall keep the place of storage for the containers safe, clean and odor-free at all times. There shall be kept on the premises a hose and brush or a steam cleaner and all other necessary equipment to properly clean the containers, unless such containers are regularly cleaned at a location off the premises and such equipment is not required by any other law or regulation. Each container shall be cleaned on a concrete or other paved surface properly drained into the sewer or a septic system. Such surface and drainage system shall be maintained in a safe, clean, odor-free and properly operating condition.

(b) A waste containerization system shall be of sufficient capacity to permit the safe and sanitary storage of 150 percent of all waste normally accumulated on or generated within the premises between any regularly scheduled collections, unless otherwise agreed by the Commissioner of the Department of Sanitation. Notwithstanding the foregoing, unless a waste containerization system is sufficient to permit the safe and sanitary storage of all waste normally accumulated on or generated within the premises during a period of 72 hours, the owner or person in charge of the premises shall keep on hand sufficient additional lawful waste receptacles to permit such storage.

(c) Except when in the process of being collected or emptied, all containers shall be kept and stored on the

premises at all times, in rooms or compartments which comply with §27-837 of the Building [Administrative] Code or in any other location not prohibited by law. If the place of storage is outside the premises, the containers shall be kept in location where they will not be unsightly and will not cause a nuisance to residents of the premises or of neighboring premises. If possible they should be screened from view by an attractive enclosure. The place of storage of the containers shall be one from which the containers may be safely moved to the location where they are emptied or collected. Such location shall be one to which collection vehicles have safe and convenient access and which shall be suitably equipped, adequately lit and of sufficient size for the safe loading or emptying of the containers. The place of storage of the containers and the location where the containers are emptied or loaded shall be subject to the approval of the Department of Sanitation on behalf of itself, the Department of Housing Preservation and Development and the Department of Health.

(d) Containers shall be compatible in all respects, including without limitation dimensions and loading mechanisms, with the collection vehicles which service them.

(e) Containers in which tenants are required or permitted to deposit waste shall be of types which can safely, easily, and conveniently be opened and closed by all tenants using them and while available for tenant use shall be kept in a place which provides safe and convenient access for tenants.

(f) Containers shall:

(1) be made of continuously welded steel with all welds and edges ground smooth;

(2) be capable of holding 700 pounds of waste per cubic yard of capacity, when at rest and during loading and unloading, without permanent distortion;

(3) have adequate provision for reinforcement, stiffening and protection at points of high stress or wear;

(4) hold liquids without leaking and be equipped with a drain plug at the bottom on one end; and

(5) have heavy duty skids or rollers or other devices to keep the bottom of the container off the ground and reduce wear when it is moved.

(g) Containers shall have tight-fitting doors and/or lids which shall

(1) be attached by means of heavy duty hinges;

(2) be equipped with counterbalance springs whenever necessary to prevent destructive or dangerous overswinging;

(3) be reinforced to prevent bending and warping; and

(4) completely seal the containers to prevent rodents, insects and other pests from entering.

(h) The Department of Sanitation shall keep and make available to the public a list of containers which in the opinion of such Department, the Department of Housing Preservation and Development and the Department of Health meet the physical specifications of subdivisions (f) and (g) of this section.

(i) Unless made of stainless steel or another material not subject to corrosion or wear, containers shall be completely primed and painted inside and out with corrosion-resisting primer and paint. They shall be repainted whenever the metal shows through the paint and whenever necessary to prevent them from becoming unsightly. Containers shall have painted in block letters on one vertical side (and in the case of a container that is loaded onto or attached to a collection vehicle, in a position where it is easily visible when loaded or attached) the name and principal business address of the owner of the container, the capacity of the container in cubic yards and the gross allowed weight

of the container (calculated on the basis of 700 pounds per cubic yard of capacity plus the tare weight of the container). The words "STAND CLEAR WHEN CONTAINER IS BEING SERVICED" shall be painted in a prominent position on all four vertical sides in block letters at least four inches high.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 27-13

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER B TRIPARTITE GENERAL ORDER NO. 2: APPROVAL OF SPECIFICATIONS FOR WASTE CONTAINERIZATION SYSTEMS

§27-13 Amendment or Repeal.

This order may be amended or repealed only upon joint order of the Department of Health, the Department of Housing Preservation and Development and the Department of Sanitation pursuant to §1043 of the New York City Charter. §51-66 effective August 29, 1973.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of

Sanitation (Title 16, Chap 9).

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 28-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-01 General Provisions.

(a) **Definitions.**

Action. "Action" shall mean the Agency's selection of a community group, approval of a project, or execution of an EDA.

Agency. "Agency" shall mean the city's Department of Housing Preservation and Development and any successor agency, or its designee.

Agreements. "Agreements" shall mean escrow agreements, syndication agreements, NSA syndication agreements and any other agreements through which developers are obligated to provide syndication funds.

Applicant. "Applicant" shall mean any entity applying for designation as a community group.

CAPA. "CAPA" shall mean the City Administrative Procedure Act set forth in §1041 et seq. of the city charter, as amended from time to time.

City. "City" shall mean city of New York.

Commissioner. "Commissioner" shall mean the commissioner of the agency or his or her designee.

Community Group. "Community Group" shall mean a locally-based not-for-profit corporation formed pursuant to the not-for-profit corporation law of the State of New York which has been selected by the agency to receive

syndication funds to perform a project.

Comptroller. "Comptroller" shall mean the comptroller of the city.

Developer. "Developer" shall mean the business entity which received certain tax benefits as general partner of the business entity which developed a development.

Development. "Development" shall mean a housing development in New York City funded pursuant to §8 of the United States Housing Act of 1937 (42 U.S.C. §1437f) and rules promulgated pursuant thereto by the United States Department of Housing and Urban Development.

EDA. "EDA" shall mean an escrow disbursement agreement by which syndication funds are distributed to a community group in order to fund eligible improvements as approved by the agency.

Eligible Activities. "Eligible Activities" shall mean those improvements or services approved by the agency to be performed by community groups with syndication funds, as set forth more fully in the scope of work of the EDA for each such project.

Encumbered Funds. "Encumbered funds" shall mean syndication funds which have been appropriated or otherwise set aside to be used for a project pursuant to a currently valid and binding EDA.

EO Clearance. "EO clearance" shall mean that (i) the community group and, if required by the agency, its principals (and, where the agency deems such additional review to be appropriate, the contractors retained by such community group and all of their respective principals) have completed, executed, and submitted the required forms to and attended any required meetings with the agency's office of equal opportunity, and (ii) the agency's office of equal opportunity, after review of such information and any other available information, has made no finding of noncompliance with the applicable laws regarding equal opportunity, labor compensation, locally based enterprises, and other matters monitored by the agency's office of equal opportunity.

Escrow Account. "Escrow account" shall mean one or more escrow accounts administered by the city to retain the syndication funds until distribution.

Escrow Agreement. "Escrow agreement" shall mean an instrument by which some developers were required to provide syndication funds.

Guidelines. "Guidelines" shall mean the §8 syndication sharing program guidelines governing the program, which were approved by the city's board of estimate on September 19, 1985 (Cal. No. 644) and thereafter annually renewed until 1990. These rules replace and supersede the guidelines, which expired by their own terms on December 31, 1990.

IG Clearance. "IG clearance" shall mean that (i) the community group and, if required by the agency, its principals (and, where the agency deems such additional review to be appropriate, the contractors retained by such community group and all of their respective principals) have completed, executed, and submitted the required forms to and attended any required meetings with the agency and/or the department of investigation's office of the inspector general, and (ii)the agency and/or the department of investigation's office of the inspector general, after review of such information and any other available information, has made no findings of derogatory information, which indicates that the city should not do business with the community group, or if applicable, its contractors.

Laws. "Laws" shall mean any applicable laws, ordinances, orders, rules, and regulations promulgated by any local, state, or federal authority having jurisdiction over the subject matter thereof, as amended from time to time.

NSA Syndication Agreement. "NSA syndication agreement" shall mean an instrument by which some developers were required to provide syndication funds.

Program. "Program" shall mean the tax syndication sharing program governed by these rules.

Project. "Project" shall mean the activities set forth in the scope of work of an EDA which are to be undertaken by a community group using syndication funds.

Public Hearing. "Public hearing" shall mean a meeting convened by the agency in accordance with §28-06(c) at which interested persons shall be afforded the opportunity to comment upon the community group(s), project(s), and EDA(s) which are the subject of one or more actions proposed by the agency. A public hearing shall be held only if the agency determines, based upon the written comments received by it in accordance with §28-06(b) that further consideration of the proposed action(s) is required.

RFP. "RFP" shall mean a request for proposals.

Rules. "Rules" shall mean these rules, which replace and supersede the guidelines.

Syndication Agreement. "Syndication agreement" shall mean an instrument by which some developers were required to provide syndication funds.

Syndication Funds. "Syndication funds" shall mean the funds which the agreements required developers to provide from either (i) shares of the proceeds of the sale or syndication of the developments, or (ii) any equivalent amounts (where developers elected to retain rather than sell or syndicate development equity).

Unencumbered Funds. "Unencumbered funds" shall mean syndication funds in an escrow account which have not been appropriated or otherwise set aside to be used for a project pursuant to a currently valid and binding EDA, including, but not limited to, funds which never were the subject of an EDA and funds which were the subject of an EDA which has been terminated.

(b) **Program.** Under the program, the city administers the syndication funds paid into the escrow account by developers pursuant to syndication agreements and disburses such syndication funds to groups for projects pursuant to these rules.

(c) **Purpose of rules.** These rules set forth the standards for, inter alia, selection of community groups, approvals of projects, execution of EDA's, and disbursements of syndication funds.

(d) **Purpose of tax syndication sharing program.** The agency may undertake actions for any public purpose, provided that all actions undertaken in connection with the tax syndication sharing program are authorized by applicable laws. Such public purposes shall include, but shall not be limited to:

(1) promoting the preservation and rehabilitation of existing residential housing,

(2) eliminating conditions in existing residential housing which are unsafe or detrimental to health,

(3) facilitating the creation and maintenance of open spaces, parks, playgrounds, and trees in neighborhoods,

(4) providing technical assistance and support to community groups in creating and implementing projects,

(5) furthering neighborhood preservation,

(6) administering and maximizing revenue upon the accounts containing syndication funds,

(7) minimizing city expenses, and

(8) otherwise furthering the best interest of the city.

(e) **General authority.** (1) **General.** The agency may take actions and otherwise act for the purposes of an in accordance with the procedures described in these rules.

(2) **Escrow account.** The agency or the city may retain syndication funds in an escrow account pending disbursement. The provisions regarding the escrow account are contained in §28-02.

(3) **Selection of community groups.** The agency may from time to time select community groups to receive syndication funds through any competitive or non-competitive process authorized by these rules or applicable laws which the agency deems to be in the best interest of the city. The provisions regarding the selection of community groups are contained in §28-03.

(4) **Conditional designation.** The agency may conditionally designate applicants as community groups, and may subsequently terminate such conditional designations. The provisions regarding the conditional designation of community groups are contained in §28-04.

(5) **Projects.** The agency may negotiate with any conditionally designated community group concerning the terms of the EDA pursuant to which such community group will perform one or more projects. The provisions regarding such projects are contained in §28-05.

(6) **Disbursement.** The agency may disburse syndication funds pursuant to EDA's, these rules, and applicable laws. The provisions regarding disbursement procedures are contained in §28-06.

(7) **Project administration.** The agency shall require community groups to utilize syndication funds in accordance with these rules, the agreements, the EDA's and applicable laws. The provisions regarding project administration are contained in §28-07.

(f) **Other rules.** With respect to this program, these rules shall preempt and supersede any other rules promulgated by the agency (unless such other rules specifically refer to, and state that they apply to, the program). These rules replace and supersede the guidelines.

(g) **Borough president consultation.** With respect to any proposed action pursuant to these rules, the commissioner may consult with the borough president for the borough in which the development which generated the syndication funds and/or the project for which such syndication funds will be used are located and with such other parties as the commissioner shall deem appropriate.

HISTORICAL NOTE

Section added City Record Aug. 13, 1992 eff. Sept. 12, 1992.

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28 RCNY 28-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-02 Escrow Account.

(a) **General.** The city or the agency shall establish an interest-bearing escrow account into which syndication funds received from developers shall be deposited and held until such syndication funds are disbursed pursuant to these rules.

(b) **Trust and agency account.** Syndication funds received by the agency shall be deposited into:

(1) The trust and agency account administered by the comptroller pursuant to the resolution adopted by the city's board of estimate on September 19, 1985 (Cal. No. 644), as renewed and/or amended on February 6, 1986 (Cal. No. 33), April 30, 1987 (Cal. No. 55), February 25, 1988 (Cal. No. 325), March 9, 1989 (Cal. No. 35), and March 8, 1990 (Cal. No. 245), or

(2) Any other interest bearing escrow account established and administered pursuant to these rules and applicable laws.

(c) **Interest.** Any interest accruing from the syndication funds deposited into the escrow account shall become, and shall remain, the property of the city. The city shall retain or utilize such interest for any lawful purpose determined by the city to be in the best interests of the city.

(d) **Principal.** Encumbered funds shall be disbursed from the escrow account in accordance with the applicable EDA, these rules, and all applicable laws. Unencumbered funds shall be disbursed from the escrow account in accordance with these rules and all applicable laws.

(e) **Beneficiaries.** The syndication funds have been provided by developers for the benefit of the citizens of New York City, who are the sole intended beneficiaries of the syndication funds, the program, and these rules. The agency shall determine, in its sole discretion, whether to apply syndication funds for the benefit of any geographical area in New York City or for the benefit of the citizens of the city as a whole. Notwithstanding any provision of these rules or any agreement or EDA to the contrary, the agency may require, in connection with any selection pursuant to §28-03 or any designation pursuant to §28-04, that any applicant or community group sign an agreement or other statement acknowledging that the syndication funds are for the benefit of the citizens of New York city and not for the benefit of any other individual or group (or any subset of such group).

HISTORICAL NOTE

Section added City Record Aug. 13, 1992 eff. Sept. 12, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 28-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-03 Selection of Community Groups.

(a) **General.** This §28-03 sets forth standards for the selection of community groups to receive syndication funds for projects. Such determinations shall be made by the agency, in accordance with the standards set forth herein, for the purposes of (i) ascertaining whether a community group meets the requirements of the program and has the ability to perform the project, and (ii) furthering the best interests of the city. The agency may select a community group to receive syndication funds by any method permitted by law which it determines will best meet the program's objectives, including, but not limited to, sole source, application, RFP, selection by a process mandated by an entity other than the agency, and selection by an entity other than the agency.

(b) **Grandfathered selection.** Notwithstanding any provision of these rules to the contrary, the agency may select:

(1) Any community group which was the co-sponsor of a development; or

(2) Any community group with which it began to negotiate before the date upon which the guidelines ceased to be effective; or

(3) Any community group which was selected by a developer in accordance with an agreement prior to the agency's use of EDA's as if, and to the same extent as if, such community group had been selected by the agency pursuant to these rules.

(c) **Sole source.** Where the agency deems it to be necessary or desirable, a community group may be selected to receive syndication funds without any competitive process. In such event, the agency shall, prior to taking any action

with respect to disbursement of such syndication funds, prepare a written statement signed by the commissioner setting forth the reasons why a more competitive process was not appropriate or desirable. Such statement shall thereafter be placed with the records concerning the project which are retained by the agency and shall be kept on file in accordance with the agency's usual record retention procedures.

(d) **Application.** Where and at such time as the agency deems it to be necessary or desirable, a community group may be selected via an application process.

(1) **Distribution.** (i) **Notice.** At such time as the agency commences an application process for selection of one or more community groups, the agency shall place advertisements in **The City Record** and such other publications as the agency shall deem appropriate. The advertisement shall include, at a minimum, a short description of the program, the availability of syndication funds, any required or suggested project, the place where application forms can be obtained and the deadline for submission of applications.

(ii) **Application forms.** The agency or its designee shall prepare or cause to be prepared the forms upon which application are to be submitted, which forms may require such information as the agency deems to be necessary or desirable to effectuate the purposes of the program. Application forms shall be made available by the agency to all potential applicants.

(iii) **Amendments.** The agency may change any aspect of the information set forth in the advertisement at any time. The agency shall amend the advertisement accordingly and shall place such amended advertisement in **The City Record,** the publications in which the original advertisement appeared, and such other publications as the agency shall deem appropriate. If it is infeasible for the agency to publish the amended advertisement in the publications in which the original advertisement appeared, the agency shall endeavor to provide substantially the same type of notice as was provided with respect to the original advertisement. The agency may also mail copies of such amended advertisement to potential applicants who have done prior business with the agency or who have requested to be on a mailing list for such purpose. Notwithstanding the foregoing, an application process may be terminated by the agency at any time without adver- tisement.

(2) **Submissions.** (i) **Time period.** The agency may impose a deadline for submission of applications, which shall be a reasonable period of time after the advertisement first appears. The agency may, in the alternative, impose no deadline, in which case the agency shall receive, review, and approve or reject applications on a rolling basis as and when such applications are received.

(ii) **Completeness.** The agency shall require applications to be submitted on the required forms and to be completed and executed in the manner set forth therein.

(3) **Selection.** (i) **Completeness.** The application must include all required forms, and such forms must be fully and properly completed and executed, at the time of submission. The agency may reject an application if it determines that such requirements are not met.

(ii) **Selection.** The agency may review and judge applications and select community groups by any method and upon any criteria permitted by law or these rules.

(4) **Limitations.** (i) **No obligation.** The publication of an advertisement and the provision and acceptance of application forms shall not represent any obligation or agreement whatsoever on the part of the city or the agency, which may only be incurred or entered into by an EDA approved by the law department and duly executed by both parties. The city and the agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any applicant at any time, including, but not limited to, the cost of preparing an application.

(ii) **No warranty.** The agency shall make no warranties, express or implied, with respect to any factual information contained in any advertisement.

(5) **Rights retained by agency.** Where it is deemed by the agency to be in the best interests of the city:

(i) The agency may terminate any application process in whole or in part at any time.

(ii) The agency may reject any and all applications.

(iii) The agency may at any time allow applicants to make modifications or additions to their applications.

(iv) The agency may negotiate with applicants and may negotiate with parties which have not submitted applications.

(v) The agency may negotiate on terms other than those set forth in the advertisement.

(e) **RFP.** Where the agency deems it to be feasible and desirable, a community group may be selected to receive syndication funds via an RFP. The RFP shall state that it is the type of selection process which the agency deems appropriate and shall describe the program, the availability of syndication funds, any required or suggested project(s), the selection process, and such other matters as the agency deems to be relevant. Where a potential community group has previously submitted a proposal and the agency has issued an RFP soliciting additional proposals to compete with such proposal, such RFP shall contain a copy or summary of such proposal and shall set forth in detail the standards by which the competition shall be judged.

(1) **Issuance.** The agency may issue RFP's at any time it deems appropriate and desirable.

(2) **Distribution.** (i) **Notice.** At such time as the agency issues an RFP for selection of one or more community groups, the agency shall place advertisements in **The City Record** and such other publications as the agency shall deem appropriate. The advertisement shall include, at a minimum, a short description of the program, the availability of syndication funds, any required or suggested project, the place a copy of the RFP can be obtained and the deadline for submission of proposals.

(ii) **Availability.** A copy of the RFP shall be made available to all potential applicants prior to the submission deadline. The agency shall require all recipients of any RFP to furnish identification and shall cause a list of recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process.

(iii) **Amendments.** The agency may issue written amendments to the RFP at any time prior to the submission deadline. The agency shall provide copies of such amendments to all recipients of the RFP.

(3) **Public Information.** (i) **Conference.** Prior to the submission deadline, the agency may, but shall not be required to, hold an open conference where agency staff answer questions about submission and program requirements. The time and place for such conference, if any, shall be indicated in the RFP solicitation.

(ii) **Agency contacts.** Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the RFP. The agency may require that contact with agency personnel by prospective applicants with respect to an RFP be limited to one or more person(s) designated in the RFP and/or that such contact be in writing.

(4) **Submissions.** (i) **Deadline.** The deadline for submissions shall be a reasonable period of time after the advertisement first appears and shall be stated in the RFP.

(ii) **Completeness.** The agency shall require proposals to be submitted in the format and number prescribed in the RFP and to contain all information and forms required therein.

(5) **Selection.** (i) **Basic requirements.** The agency may reject a proposal if it determines that either of the

following basic requirements are not met:

(A) **Completeness.** The proposal must include all required forms, and such forms must be fully and properly completed and executed, at the time of submission.

(B) **Compliance.** The proposal must comply in all respects with all material terms of the RFP.

(ii) **Threshold criteria.** The agency may impose such additional threshold criteria in the RFP as it deems necessary or desirable. Provided that a proposal has passed all basic requirements, the agency shall consider such threshold criteria as are established in the RFP. Such threshold criteria may include, but shall not be limited to, those characteristics of applicants which have a bearing on their ability to successfully complete the project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload), those characteristics of the applicant's proposal which have a bearing on the performance of the project, and any other factors which the agency deems appropriate.

(iii) **Competitive criteria.** The agency may impose such additional competitive criteria in the RFP as it deems necessary or desirable. Provided that a proposal has passed all threshold criteria, the agency shall consider such competitive criteria as are established in the RFP. Such criteria may include, but shall not be limited to, those characteristics of applicants which have a bearing on their ability to successfully complete the project (e.g., organizational capacity, comparable experience, and current and expected workload), those characteristics of the applicant's proposal which have a bearing on the performance of the project, and any other factors which the agency deems appropriate.

(6) **Limitations.** (i) **No obligation.** An RFP shall not represent any obligation or agreement whatsoever on the part of the city or the agency, which may only be incurred or entered into by written EDA approved as to form by the city's law department and duly executed by both parties. The city and the agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any applicant at any time, including, but not limited to, the cost of responding to the RFP.

(ii) **No warranty.** The agency shall make no warranties, express or implied, with respect to any factual information contained in any RFP.

(7) **Rights retained by agency.** Where it is deemed by the agency to be in the best interests of the city:

(i) The agency may withdraw any RFP in whole or in part prior to conditional designation of a community group.

(ii) The agency may reject any and all proposals submitted in response to an RFP.

(iii) The agency may at any time waive compliance with an RFP, change any of the terms and conditions of an RFP, or allow certain applicants to make modifications or additions to their respective proposals.

(iv) The agency may negotiate with one or more applicants who have submitted proposals pursuant to an RFP, and may negotiate with parties which have not responded to the RFP.

(v) The agency may negotiate and execute an EDA on terms other than those set forth in the RFP.

(f) **Non-agency selection.** The agency may select an applicant to be a community group without any agency selection process where such applicant has already been selected or designated by (i) another agency or instrumentality of the city, (ii) any agency or instrumentality of the state or federal government, (iii) any public authority, public benefit corporation, or other quasi-governmental entity, (iv) a developer pursuant to an agreement, or (v) any other entity designated by the agency to perform such selection. Notwithstanding anything to the contrary in the preceding sentence or elsewhere in these rules, the agency shall only select a community group pursuant to this §28-03(f) where the agency

deems such method of selection to be necessary or desirable, and the agency shall not be required to select any applicant solely because such applicant has been selected by any other entity.

(g) **Non-agency process.** The agency may select a community group by a process not set forth in these rules where funding for the project is provided by, and/or the alternative selection process is mandated by, either (i) another agency or instrumentality of the city, (ii) any agency or instrumentality of the state or federal government, (iii) any public authority, public benefit corporation, or other quasi-governmental entity, (iv) a developer pursuant to an agreement, or (v) any other entity designated by the agency to perform such selection. Notwithstanding anything to the contrary in the preceding sentence or elsewhere in these rules, the agency shall only select a community group pursuant to this §28-03(g) where the agency deems such method of selection to be necessary or desirable, and the agency shall not be required to utilize any selection process solely because such selection process has been mandated by any other entity.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 28-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-04 Conditional Designation of Community Groups.

(a) **Rejection letters.** The agency shall notify all unsuccessful applicants in writing. Such letter shall state the reasons for the rejection of such applicant's proposal or other submission.

(b) **Conditional designation.** The agency shall notify all successful applicants of their conditional designation as community groups. Such notification may be, but shall not be required to be, in writing and may be in any form which the agency deems to be appropriate, including, but not limited to, a conditional designation letter. Such letter, if any, shall be signed by the commissioner and shall constitute the selection and conditional designation of the applicant, subject to satisfaction of all conditions stated in the letter or in these rules or imposed by the agency or by applicable law. The letter may include, but shall not be limited to, the following matters:

(1) **Acceptance deadline.** The letter may require the applicant to unconditionally accept the designation within a time period for acceptance established therein.

(2) **Program requirements.** The letter may set forth program requirements and conditions upon which the designation was made and may state that any non-conformance or change in any of such requirements may be deemed by the agency to constitute a default.

(3) **Schedule.** The letter may contain a schedule of activities which must be completed as pre-conditions for the actions to be taken in connection with the disbursement of syndication funds.

(c) **No liability.** Conditional designation shall mean only that the agency intends to negotiate with the community

group concerning a project and EDA until such conditional designation is terminated, a requirement of the agency or the city is not satisfied, or an EDA is executed. Conditional designation is not a contract or agreement and shall not create any rights on the community group's part, including, without limitation, rights of enforcement, equity, or reimbursement. No such contract or agreement shall exist, and no such rights shall be created, until the city and the community group enter into a written EDA approved as to form by the law department and duly executed by both parties.

(d) **Termination of conditional designation.** (1) **Causes for termination.** After conditional designation of a community group, the agency may terminate such conditional designation at any time if the agency determines that the city should not enter into an EDA with the community group for any reason, including, but not limited to, the following:

(i) **Failure to comply with terms of designation.** The community group has failed to comply with any term or condition of the conditional designation letter.

(ii) **Failure to meet city requirements.** The community group has either (A) failed to clear one or more of the required city reviews, including, but not limited to, IG clearance and EO clearance, or (B) failed to satisfy other requirements established by the agency or the city.

(iii) **Lack of resources.** The community group lacks the necessary expertise, administrative or other resources, or legal capacity to perform the project.

(iv) **Lack of funding.** Adequate funding for the entire project, whether from syndication funds, other city funds, or any other public or private source, is not available or is not provided in a timely manner.

(v) **Best interests of city.** The agency or the city has not approved the required actions for any reason determined by the agency or the city to be in the best interests of the city.

(2) **Notice of termination.** If the agency elects to terminate the conditional designation of a community group, the agency shall notify the community group of such termination in writing.

(3) **Right to comment.** The agency shall give any terminated community group an opportunity to comment on the reasons for such termination, either in writing or by a conference with a responsible official of the agency. The agency shall give due consideration to any comments made by such community group, but shall retain the sole discretion whether to revoke the termination, set specific conditions for a revocation of the termination, or retain the termination. If the agency decides to revoke or conditionally revoke the termination, the agency shall notify the community group of its decision in writing. Nothing in this §28-04(d)(3) or this §28-04 shall be deemed to restrict the power and authority of the agency to negotiate with other parties, to enter into EDA's, or to take such other actions with respect to the syndication funds as the agency shall determine to be necessary or desirable, prior to receipt of comments from a terminated community group.

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***** Current through December 2009 ****

28 RCNY 28-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-05 Projects.

(a) **EDA.** The agency shall negotiate with each conditionally designated community group concerning the terms of the EDA pursuant to which such community group will perform one or more projects. Such negotiation shall continue until either the community group's conditional designation is terminated pursuant to these rules or an EDA is executed by the city and the community group. The city and the agency shall not disburse any syndication funds from the escrow account to the community group for any project until the city and the community group have executed an EDA in form approved by the law department and in form and substance acceptable to the agency. Each disbursement of syndication funds from the escrow account to a community group for a project shall be made in accordance with such EDA. The agency shall not be obligated to disburse any funds pursuant to an EDA beyond those syndication funds received from the developer of the applicable development.

(b) **Scope of work.** Each EDA shall include a scope of work describing the project in form and substance satisfactory to the agency. Such scope of work shall include, without limitation, a detailed description of the eligible activities to be performed with the syndication funds, and timetables for commencement, progress, and completion of the project.

(c) **Eligible activities.** The eligible activities to be included in the scope of work of any EDA may include, but shall not be limited to, the following:

(1) **Project activities:** (i) Acquisition, rehabilitation (including all costs of maintenance and operation of occupied residential buildings during rehabilitation), and/or construction of housing accommodations and/or community facilities.

(ii) Rehabilitation or repair of city-owned occupied residential buildings.

(iii) Community improvements, including, but not limited to,

(A) demolition or resealing and securing of buildings in accordance with an area improvement plan or housing strategy,

(B) development and/or maintenance of permanent site improvement projects,

(C) facade and street improvements, and

(D) development, enhancement or maintenance of new or existing community facilities or open spaces.

(iv) Landlord/tenant activities, including, but not limited to,

(A) tenant organizing, education and counseling,

(B) negotiations and mediations of landlord-tenant disputes,

(C) landlord-tenant referral services.

(2) **Related administrative costs.** Not more than twenty percent (20%) of the syndication funds disbursed to a community group shall be used for administrative expenses incurred by the community group in connection with the project, including, but not limited to,

(i) salaries for staff who provide services which are particular to the project,

(ii) consultant fees,

(iii) office supplies,

(iv) rent,

(v) insurance,

(vi) other costs directly related to the performance of the project.

(3) **Other approved use.** The agency may approve any other use of syndication funds which is consistent with these rules, even though such use is not listed in §28-05(c)(1) or §28-05(c)(2).

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28 RCNY 28-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-06 Disbursements.

(a) **General.** The agency may disburse syndication funds from the escrow account pursuant to these rules and applicable laws.

(b) **Written comment.**

(1) **Notice to public.** At such time as the agency proposes to execute an EDA with a community group, the agency shall place an advertisement in The City Record and such other publication as the agency shall deem appropriate, which advertisement shall include, at a minimum:

(i) a description of the program,

(ii) a description of the proposed project,

(iii) the designated community group(s) or other proposed recipient of the syndication funds,

(iv) where and when the public may inspect the proposed EDA, and

(v) where and when members of the public may comment in writing on any action described in the advertisement and/or EDA.

(2) **Notice to borough president.** Prior to or simultaneously with publication of the advertisement required pursuant to §28-06(b)(1), the agency shall mail copies of the advertisement and proposed EDA to the following officials

or their designees:

(i) the borough president in the borough in which the project is located,

(ii) the community board in the community district in which the project is located, and

(iii) such other public officials or agencies as the agency shall deem appropriate.

(3) **Submission of written comments.** The agency shall impose a deadline for submission of written comments, which shall be a reasonable time after the advertisement first appears, but in no event less than fourteen (14) calendar days.

(4) **Review of written comments.** After the deadline for submission of written comments, the agency shall review the written comments received by it and shall determine whether such comments raise substantive issues which require further consideration. If the agency concludes that further consideration is required, the agency shall convene a public hearing in accordance with §28-06(c). If the agency concludes that further consideration is not required, the agency shall either (i) approve the proposed EDA, (ii) approve the proposed EDA with modifications, or (iii) disapprove the proposed EDA. If the agency approves the proposed EDA, the agency may, but shall not be required to, proceed with the execution of the EDA. If the agency approves the proposed EDA with modifications, the agency may, but shall not be required to, proceed with the execution of the modified EDA, and no additional public comment procedure shall be required concerning such modifications. If the agency disapproves the proposed EDA, the agency shall thereafter either (i) resume negotiations with the community group on a new or modified EDA, or (ii) terminate the conditional designation of the community group.

(c) **Public hearing.** If the agency determines, based upon the written comments received by it, that further consideration of the proposed action(s) is required, the agency shall convene a public hearing in accordance with this §28-06(c).

(1) **Notice to public.** The agency shall place an advertisement in **The City Record** and such other publications as the agency shall deem appropriate, which advertisement shall include, at a minimum, (i) a description of the program, (ii) a description of the proposed project, (iii) the designated community group(s) or other proposed recipient of the syndication funds, (iv) where and when the public may inspect the proposed EDA, and (v) the date, time, and location at which members of the public may comment in person on any action described in the advertisement and/or EDA. The agency shall endeavor to mail copies of such advertisement to (i) the borough president in the borough in which the project is located, (ii) the community board in the community district in which the project is located, (iii) such other public officials or agencies as the agency shall deem appropriate, and (iv) if feasible, all parties who submitted written comments pursuant to §28-06(b).

(2) **Conduct of public hearing.** A representative of the agency shall commence the public hearing by describing the action proposed by the agency. The agency shall then afford all persons attending who desire to comment upon such action a reasonable opportunity to speak; provided, however, that the agency may establish and enforce a uniform time limit upon the comments of all speakers; provided further, however, that such time limit shall in no event be less than two (2) minutes per speaker. An audio tape or transcript shall be made of the proceedings and a record shall be made of persons in attendance at the hearing.

(3) **Review of public comments.** After the public hearing, the agency shall review the comments of the speakers and shall determine whether to (i) approve the proposed EDA, (ii) approve the proposed EDA with modifications, or (iii) disapprove the proposed EDA. If the agency approves the proposed EDA, the agency may, but shall not be required to, proceed with the execution of the EDA. If the agency approves the proposed EDA with modifications, the agency may, but shall not be required to, proceed with the execution of the modified EDA, and no additional public comment procedure shall be required concerning such modifications. If the agency disapproves the proposed EDA, the agency shall thereafter either (i) resume negotiations with the community group on a new or modified EDA, or (ii) terminate

the conditional designation of the community group.

(d) **Unencumbered funds.** The agency may disburse unencumbered funds in any manner permitted by law and these rules, including, without limitation, the following methods:

(1) **New community group.** The agency may select a new community group and make disbursements to it in accordance with these rules;

(2) **Agency project.** The agency may prepare a scope of work and EDA for a project and/or disburse unencumbered funds for the performance of such project to the agency rather than to a community group;

(3) **Tax levy.** The agency may apply unencumbered funds toward the cost of providing city services in the borough of the development which generated such syndication funds; and

(4) **Best interests of the city.** The agency may utilize unencumbered funds in any other manner deemed by the agency to be in the best interests of the city, including, but not limited to, disbursement of such unencumbered funds into the general fund of the city.

(e) **Non-escrowed syndication funds.** Where developers and community groups entered into agreements which provided for the payment of syndication funds directly from the developers to the community groups, the agency shall seek to enforce these rules to the extent practicable. Where the respective agreements provide the agency with sufficient authority to do so, the agency may (1) order developers to thereafter make all payments of syndication funds to the city rather than directly to community groups, and (2) order community groups to surrender all syndication funds in their possession to the city. Any syndication funds so obtained or recovered shall be deposited into the escrow account and made subject to the requirements of these rules.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 28-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-07 Project Administration.

(a) **Accounts established by community groups.** The community group shall establish a separate checking or savings account and shall submit a banking resolution to the agency which shall provide that (1) the commissioner shall be authorized to stop all disbursements from each such account or seize all funds therein, in the event of any failure to comply with the applicable EDA or agreement, or for any other reason deemed necessary or desirable by the agency to protect the best interests of the city consistent with these rules and applicable laws, and (2) checks or drafts shall be signed by at least two officers or designated, authorized signatories of the community group before a check or draft may be negotiated or funds withdrawn. Any syndication funds received by a community group, whether from the escrow account pursuant to an EDA or directly from a developer pursuant to an agreement, or monies repaid to the community group from any project activities, shall be deposited into such account and shall be held and utilized strictly in accordance with these rules. No syndication funds shall be disbursed to the community group and no funds shall be disbursed by the community group from such account until and unless the agency shall approve such banking resolution in writing.

(b) **Reporting requirements and audits.** (1) **Reports.** At the end of the first six-month period after a community group receives its first disbursement, and every six months thereafter for as long as syndication funds remain in use by the community group, it shall provide the agency with a report and interim financial statement summarizing the use of the syndication funds received by it, together with copies of all bank statements and cancelled checks, and with a reconciliation of the checking and/or savings account.

(2) **Audits.** Starting with the end of the first full calendar year in which syndication funds were available to the community group for six months or longer, (i) the community group shall provide yearly audited financial statements to

the agency, and (ii) all of the books and records of the community group shall be subject to review and audit by the agency or the comptroller. The community group shall maintain such books and records and shall make them available for audit for a period of six (6) years after the expiration of its EDA. Any agreements between a community group and its contractors shall contain substantially the same language as contained in this §28-07(b)(2). The community group shall require the certified public accountant retained by it to prepare its audited financial statement to (i) make its "work papers" available upon demand to the agency or the comptroller, and (ii) register with the comptroller upon demand by the city.

(c) **EDA defaults.** In the event that a community group defaults on its obligations pursuant to an EDA, the agency may terminate such EDA and/or invoke any other remedy available to the city pursuant to the EDA, these rules, or applicable laws.

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***** Current through December 2009 ****

28 RCNY 28-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-08 Miscellaneous Provisions.

(a) **Adverse findings.** Nothwithstanding any provision to the contrary in these rules or in any document concerning any selection process, any project, or the program, the agency may reject any applicant or terminate any conditional designation of a community group if the agency determines at any time that good and sufficient reasons exist why the city should not do business with such party or should not allow such party to act as community group for the particular project in question. Such reasons shall include, but shall not be limited to, evidence with respect to the applicant or any member of its development team or any contractor retained by such applicant or any of its principals of:

(1) Arson conviction or pending cases,

(2) Harassment conviction or pending cases,

(3) Arrears or default upon any debt, lease, contract, tax, lien, fee, charge, or obligation to the city,

(4) City mortgage or tax foreclosure proceedings or arrears,

(5) Unsuccessful record with comparable projects, including, but not limited to, poor workmanship, failure to complete a project expeditiously, building violations or litigation history against other properties, or unsuccessful record of managing residential real property,

(6) Inability, due to lack of organizational capacity, competing demands from other projects, or any other factor to

perform all work required to successfully complete the project,

(7) Bankruptcy or insolvency,

(8) Violation of the conflict of interest provisions of the city charter or any other applicable laws, or

(9) Failure to obtain IG clearance and/or EO clearance.

(b) **Agency discretion.** All determinations to be made by the agency and/or the commissioner in accordance with these rules shall be in the sole discretion of the agency and/or the commissioner; provided, however, that the agency and/or the commissioner shall comply in all respects with applicable laws.

(c) **Statutory authority not limited.** Nothing in these rules shall be deemed to prevent the agency from exercising such greater or additional rights, remedies, privileges, powers, and authority as shall be provided by law.

(d) **Rights not conferred.** These rules are not intended to confer rights or benefits upon the general public or upon any individual, entity, or actual or potential community group. Nothing in these rules shall be deemed to confer any rights or benefits whatsoever upon any party which are in addition to any rights deriving from applicable laws or written contracts with the agency.

(e) **No legal obligation.** At any time prior to the execution of a legally binding written EDA by the agency and the community group, the agency may withdraw its approval of all or any portion of a project, change the contemplated actions and project, change the community group selection process for a project, terminate the designation of a community group, select a new community group, or take any other action deemed by the agency to be necessary or appropriate. A selection process shall not represent any obligation or agreement whatsoever on the part of the city or the agency, which may only be incurred or entered into by written EDA approved as to form by the law department and duly executed by both parties. The city and the agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any applicant at any time, including, but not limited to, the cost of applying for selection as a community group. Conditional designation of a community group shall mean only that the agency intends to negotiate with such community group concerning one or more potential projects until either an EDA is executed or such conditional designation is terminated. Conditional designation of an applicant is not a contract or agreement and shall not create any rights on the applicant's part, including, without limitation, rights of enforcement, equity or reimbursement. No such contract or agreement shall exist, and no such rights shall be created, until the city and the community group enter into an EDA approved as to form by the law department and duly executed by both parties. Approval of a project and/or EDA by any party pursuant to these rules shall not obligate the agency to proceed with the project or with the execution of such EDA.

(f) **Technical violations.** Technical violations of these rules shall not invalidate the selection of any community group, any EDA, or any other action taken pursuant to these rules, nor shall such technical violations give rise to any rights, claims, or causes of action in favor of members of the general public or potential community groups.

(g) **Compliance with laws.** All actions by the agency pursuant to these rules shall be made in accordance with applicable laws. Each community group selected and project undertaken pursuant to these rules shall meet the eligibility criteria of the laws which authorize the agency to undertake the actions necessary or incident to the performance of such project.

(h) **Amendments.** These rules may be amended pursuant only to the procedures and requirements contained in CAPA.

(i) **Waivers.** The commissioner may at any time waive in writing one or more of the provisions of these rules with respect to any community group or project. Such writing shall state the reasons for such waiver.

(j) **Singular and plural.** With respect to any of the terms used in these rules, the singular shall be deemed to include the plural and the plural shall be deemed to include the singular, unless the context requires otherwise.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 29-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-01 General Provisions.

Definitions.

Applicant. The term "applicant" shall mean any potential sponsor of a project who has requested or been requested to be a sponsor of a project.

Building. The term "building" shall mean a residential multiple dwelling occupied by tenants and (prior to disposition) owned by the City which was developed as part of the Special Initiative Program ("SIP") by HPD and which is not currently in any other HPD disposition program.

City. The term "city" shall mean the City of New York.

Disposition. The term "disposition" shall mean the sale of a building by the city to a sponsor.

Grant. The term "grant" shall mean a grant made by the City for eligible project activities.

HPD. The term "HPD" shall mean the City's Department of Housing Preservation and Development and any successor agency.

Laws. The term "laws" shall mean any and all applicable laws, ordinances, orders, rules and regulations promulgated by any local, state or federal authority.

Loan. The term "loan" shall mean a loan made by the City for eligible project activities.

Pre-Disposition Notice. The term "pre-disposition notice" shall have the meaning set forth in §28-07(a).

Program. The term "program" shall mean the SIP program as it relates to the sale of occupied SIP buildings currently in City ownership.

Project. The term "project" shall mean a building in the program.

Project activity. The term "project activity" shall mean any activity performed or required to be performed by the sponsor in connection with a project, including, but not limited to, the acquisition, rehabilitation and management of a building.

Rehabilitation. The term "rehabilitation" shall mean the Scope of Work approved by HPD in connection with a Project, including but not limited to all work necessary to effect compliance with Federal Housing Quality Standards as set forth by the United States Department of Housing and Urban Development.

Rules. The term "rules" shall mean the rules set forth in this chapter.

Schedule of rent. The term "schedule of rent" shall have the meaning set forth in §28-04(a).

SIP Program. The term "SIP Program" shall mean the Special Initiative Program of HPD's Division of Homeless Housing Development.

Sponsor. The term "sponsor" shall mean the applicant selected or approved by HPD to perform or to be responsible for the performance of the project activities in connection with a project.

Subsidy. The term "subsidy" shall mean any available governmental program offering rental assistance payments.

Tenants. The term "tenants" shall mean authorized residential tenants of record.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 29-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-02 Sponsor Selection.

(a) **General.** The SIP program utilized vacant City-owned buildings to develop homeless housing. Most of these buildings remain under City ownership and management. The purpose of the SIP occupied sales program is to dispose of these buildings to qualified sponsors. Sale of the buildings is anticipated to be pursuant to Article 16 of the General Municipal Law and each disposition will require approval of the Mayor and the City Council, acting in their respective capacities pursuant to applicable Laws. HPD may select a sponsor for a project by any method it determines will best meet the purposes of the program including, without limitation, a request for proposal process, a request for qualifications process or, in the discretion of HPD, by a direct designation of an entity judged by HPD to be suitable for the task. HPD, in selecting an applicant, may consider any relevant factors, including, but not limited to, the applicant's prior record in housing projects done under other City programs, the applicant's prior selection by the City as a sponsor in another program, the applicant's record as a property owner or manager, the applicant's relevant experience in and knowledge of the neighborhood where the project is located and any relevant written comment by tenants.

(b) **Joint venture sponsors.** In selecting sponsors, HPD may give a preference to qualified not-for-profit community-based organizations which apply as joint venturers with qualified for-profit organizations with experience in management of real estate. Such preference, if any, shall be given first to a shared ownership joint venture with a for-profit and a not-for-profit and second to a not-for-profit owner with a for-profit manager.

(c) **Other sponsors.** In selecting sponsors other than joint venture sponsors, HPD may give a preference to qualified not-for-profit community-based organizations. HPD may also select qualified for-profit real estate organizations with management experience.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 29-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-03 Designation of Sponsors.

(a) **Conditional designation.** HPD shall provide written notification to all selected Applicants of their conditional designation as Sponsor.

(b) **No liability.** Conditional designation of an applicant as a sponsor shall mean only that HPD intends to recommend disposition of the project to such sponsor if such conditional designation has not been terminated and all requirements of HPD have been satisfied. Disposition is subject to obtaining all required governmental approvals, including, but not limited to, approval by the Mayor and the City Council, acting pursuant to applicable laws. Conditional designation of an applicant is not a contract or agreement and shall not create any rights on the applicant's part, including, without limitation, rights of enforcement, equity or reimbursement. No such contract or agreement shall exist, and no such rights shall be created, until the city and the sponsor enter into a written agreement with all requisite approvals and duly executed by both parties.

(c) **Termination of conditional designation.** After conditional designation of a sponsor, HPD may at any time terminate such conditional designation at its sole discretion.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 29-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-04 Schedule of Rent.

(a) **Schedule of rent.** Prior to disposition, HPD shall establish a schedule of rent for each apartment in a building. The schedule of rent shall be set by HPD based on its estimates of the cost of operating the building, including, to the extent deemed necessary by HPD, reasonable reserves, allowance for vacancy and collection losses, insurance, utilities, water and sewer charges, taxes, heating fuel, provision for social services, and a reasonable management fee for the sponsor. The schedule of rent shall set rents at no greater than the Federal Section 8 fair market rent. The schedule of rent and the rationale therefor shall be kept on file by HPD and be available for public inspection. Sponsor shall be required to register the schedule of rents with the New York State Division of Housing and Community Renewal.

(b) **Subsidies.** Notwithstanding the schedule of rent, such rent shall not be collected until completion of all required Rehabilitation, including compliance with Federal Housing Quality Standards to enable subsidies to flow to tenants. Tenants eligible for federal rent subsidies may be offered housing vouchers and/or Section 8 certificates as determined by HPD. In the event that a tenant does not qualify for such subsidies, the rent collected shall in no event be greater than the applicable public assistance shelter allowance or, if the tenant does not qualify for public assistance, thirty percent (30%) of the income of the tenant.

HISTORICAL NOTE

Section added City Record May 21, 1993 eff. June 20, 1993.

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CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-05 Tax Exemption, Grants and Loans.

(a) **Tax exemption.** Partial or full exemption from real property taxes may be available for the buildings in accordance with applicable laws.

(b) **Project activity grants and loans.** HPD intends to provide grants or loans to sponsors to cover the cost of eligible project activities, including but not limited to acquisition and rehabilitation.

HISTORICAL NOTE

Section added City Record May 21, 1993 eff. June 20, 1993.

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***** Current through December 2009 ****

28 RCNY 29-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-06 Project Operation.

(a) **Regulatory agreement.** A sponsor shall be required to execute a regulatory agreement with HPD as a condition for disposition of a building. The regulatory agreement shall be recorded and shall run with the land for a period set forth therein. The regulatory agreement shall require the sponsor and all of sponsor's successors and assigns to comply with program requirements.

(b) **Use restrictions.** HPD shall impose restrictions upon the use of a building and shall require sponsor to agree to comply with such restrictions as a condition for acquisition of a building. Such use restrictions may be enforced by any means which HPD determines to be necessary or appropriate, including, but not limited to, provisions in any deed, land disposition agreement, regulatory agreement, note, mortgage, security agreement, lien, restrictive declaration, or other document. HPD may require a sponsor to secure its obligations to comply with use restrictions in such form as is determined by HPD to be necessary or desirable.

(c) **Occupancy in buildings.** Occupancy on vacancy shall be limited to persons and families whose annual income does not exceed eighty percent (80%) of the median income for the New York Metropolitan Statistical Area as determined by the United States Department of Housing and Urban Development. HPD may require that a portion of any future vacancies be reserved for referrals by the City of persons in need of shelter.

(d) **Rent stabilization.** Sponsors shall be required to register an HPD approved schedule of rents with the New York State Department of Housing and Community Renewal and to operate the buildings within the rent stabilization system.

HISTORICAL NOTE

Section added City Record May 21, 1993 eff. June 20, 1993.

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28 RCNY 29-07

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CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-07 Tenant Notice.

(a) **Pre-disposition notice.** Upon the selection of a proposed sponsor for a building in the program, HPD shall so notify all tenants of such building ("pre-disposition notice") by providing them with

(1) the name of the proposed sponsor;

(2) a notification of the schedule of rent and of the available subsidies;

(3) a statement that tenants may comment in writing on HPD's proposed action, including the proposed sponsor and schedule of rents, within thirty (30) days of service of the notice.

(b) **Manner of notice.** The Pre-disposition notice shall be posted in a common area of the building and affixed to or placed under each apartment door of the building, or shall be sent by regular mail to each tenant in the building. The Pre-disposition notice shall be in both English and Spanish.

HISTORICAL NOTE

Section added City Record May 21, 1993 eff. June 20, 1993.

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28 RCNY 29-08

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CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-08 Miscellaneous Provisions.

(a) **HPD discretion.** All determinations to be made by HPD in accordance with these Rules shall be in the sole discretion of HPD.

(b) **Statutory authority not limited.** Nothing in these Rules shall be deemed to limit HPD's authority pursuant to all applicable laws.

(c) **Method of Notification.** Unless otherwise provided herein, notification shall be in English and Spanish, and shall be either posted in a common area of the building and affixed to or placed under each apartment door of the building, or mailed to every apartment in the building, as determined by HPD.

(d) **Technical violations and other variances.** Provided that there has been a good faith effort to comply with these Rules, technical violations of these Rules shall not invalidate any action taken pursuant to these Rules, nor shall such technical violations give rise to any rights, claims, or causes of action. The commissioner, upon good cause shown, may alter the timing or sequence of the actions described in these Rules, provided all affected parties are given reasonable notice.

HISTORICAL NOTE

Section added City Record May 21, 1993 eff. June 20, 1993.

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28 RCNY 30-01

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CHAPTER 30 NEIGHBORHOOD REDEVELOPMENT PROGRAM*1

§30-01 Definitions.

Administrative Code. "Administrative Code" shall mean the Administrative Code of the City.

Building. "Building" shall mean any multiple dwelling which is occupied by Tenants and (prior to Disposition) owned by the City, including any vacant land adjacent thereto, which is or may be the subject of a Project.

City. "City" shall mean the City of New York.

Commissioner. "Commissioner" shall mean the Commissioner of HPD or his or her designee.

DHCR. "DHCR" shall mean the State of New York Division of Housing and Community Renewal.

Disposition. "Disposition" shall mean the date of title transfer of a Building from the City to a Sponsor.

Final Selection. "Final Selection" shall mean a decision by HPD to select a Building for the Program.

FMR. "FMR" shall mean the fair market rent set by the §8 program or any other successor program of the United States Department of Housing and Urban Development.

Housing Maintenance Code. "Housing Maintenance Code" shall mean Chapter 2 of Title 27 of the Administrative Code.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City, or its designee.

Intake Rent. "Intake Rent" shall mean the rent set by HPD which takes effect after Project Commencement.

Interim Payment Agreement. "Interim Payment Agreement" shall mean an agreement entered into between HPD, the Sponsor and a Tenant eligible for rental assistance to temporarily accept less than the full rent from the Tenant prior to the provision of rental assistance.

Laws. "Laws" shall mean any and all applicable laws, ordinances, orders, rules and regulations.

Lessee. "Lessee" shall mean the Sponsor during the period between Project Commencement and Disposition if HPD and Sponsor enter into a temporary lease of the Building.

Post-Rehabilitation Rent. "Post-Rehabilitation Rent" shall mean the rent set by HPD which takes effect after Substantial Completion.

Preliminary Selection. "Preliminary Selection" shall mean a preliminary determination by HPD to select a Building for the Program.

Program. "Program" shall mean the Neighborhood Redevelopment Program.

Project. "Project" shall mean a project in the Program.

Project Activity. "Project Activity" shall mean any activity performed or required to be performed by the Sponsor in connection with a Project.

Project Commencement. "Project Commencement" shall mean the date the Project has commenced, as set forth in the notice described in §30-04(e).

Qualified Not-For-Profit Corporation. "Qualified Not-For-Profit Corporation" shall mean a not-for-profit entity selected by HPD to participate in the Program.

Rehabilitation. "Rehabilitation" shall mean the installation, replacement, or repair of one or more Building systems or the correction of inadequate, unsafe, or insanitary conditions.

Rules. "Rules" shall mean the rules set forth in this chapter.

Sponsor. "Sponsor" shall mean the entity selected by HPD to lease, own and/or develop the Project, and any entity substantially controlled by such Sponsor.

Subsidy. "Subsidy" shall mean a loan or a grant made by HPD to a Sponsor for Project Activities.

Substantial Completion. "Substantial Completion" shall mean the date on which HPD certifies that (a) construction work comprising at least 95 percent of the approved Rehabilitation cost has been satisfactorily completed, and (b) all work required to remove Housing Maintenance Code violations which were of record before the Rehabilitation of the Building and were then classified as "B" and "C" has been completed.

Tenants. "Tenants" shall mean residential tenants of record occupying a dwelling unit in a Building. Other residential occupants, such as squatters and licensees, are not Tenants. Non-residential tenants or occupants, such as those who occupy space in a Building for retail, commercial, manufacturing, or community facility purposes, are not Tenants.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

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28 RCNY 30-02

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§30-02 General.

(a) **Coverage.** These Rules govern the procedures for: selecting Buildings for the Program, selecting Sponsors for the Program, providing Subsidies for Projects, Project operation, determination and establishment of rents, and providing notices to Tenants. Buildings in the Program shall be subject to these Rules.

(b) **Program Description.** Under the Program, titles to Buildings will be conveyed to Sponsors who will thereafter be responsible for the Rehabilitation of such Buildings. Sale of the Buildings will be pursuant to applicable Laws and each Disposition will require approval of the Mayor and the City Council, acting in their respective capacities pursuant to such Laws.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff.

Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

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28 RCNY 30-03

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§30-03 Selection of Sponsors.

HPD may select a Sponsor for a Project by any method which it determines will best further the purposes of the Program, including, without limitation, pursuant to a request for qualifications process, pursuant to a request for proposals process, selection from a pre-qualified list or, in the discretion of HPD, by a direct designation of an entity judged by HPD to be suitable for the task. HPD, in selecting a Sponsor, may consider any relevant factors, including, but not limited to:

(i) the Sponsor's prior record in other City housing programs;

(ii) the Sponsor's prior selection by the City as a developer in another program;

(iii) the Sponsor's record as a property owner, developer, or manager;

(iv) the Sponsor's relevant experience in and knowledge of the neighborhood where the Project is located, and

(v) any relevant written comments by Tenants. It is intended that the Sponsor will be a Qualified Not-For-Profit Corporation.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

28 RCNY 30-04

RULES OF THE CITY OF NEW YORK

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CHAPTER 30 NEIGHBORHOOD REDEVELOPMENT PROGRAM*1

§30-04 Selection of Buildings, Tenant Notification.

(a) **Eligible Buildings.** HPD may select Buildings for the Program if:

(1) Rehabilitation of the Building is technically and financially feasible;

(2) The Building has not been accepted into another HPD disposition program.

(b) **Notice of Preliminary Selection.** After HPD has found a Building to be eligible pursuant to subdivision (a) of this section and has preliminarily selected the Building for the Program, HPD shall provide all Tenants of the Building with a document containing the following:

(1) A statement that HPD is considering placing the Building in the Program;

(2) A description of the Program;

(3) A statement that an Intake Rent will be set;

(4) A statement that the Building may be eligible for other HPD programs and the name, address and phone number of an HPD employee who may provide information on how to apply for such other programs;

(5) The name of the Sponsor selected by HPD to develop the Project; and

(6) A statement that the Building will remain in the Program unless accepted into another HPD program.

(c) **Tenant Meeting.** HPD shall hold a Tenant meeting prior to making a Final Selection, giving notice to Tenants at least two business days prior to such meeting.

(d) **Notice of Final Selection.** No sooner than thirty (30) days after the Preliminary Selection, HPD shall notify the Tenants of a Building of the Final Selection of the Building for the Program. No later than ninety (90) days after the notice of Final Selection, the Tenants of a Building selected for the Program may apply for any other HPD disposition program that accepts applications from Tenants.

(e) **Notice of Project Commencement.** No sooner than ninety (90) days after the notice of Final Selection, HPD shall notify the Tenants of a Building that the Project has commenced, unless the Tenants have applied for another HPD disposition program that accepts applications from Tenants within such time period. If the Tenants have applied for another HPD disposition program that accepts applications from Tenants within such time period and have been rejected from such program, then, immediately after the later of such rejection or ninety (90) days after the notice of Final Selection, HPD shall notify such Tenants that the Project has commenced.

(f) **Notice of Intake Rent.** Either at the time of the notice of Project Commencement or thereafter, HPD shall notify each Tenant of the Intake Rent and the date it becomes effective, which effective date shall be not less than thirty (30) days after the date of the notice of Intake Rent, and shall, in accordance with §30-09 of these Rules, provide information on rental assistance which may be available to Tenants and the procedures to apply for such assistance.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

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28 RCNY 30-05

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§30-05 Subsidy.

(a) **Eligible Costs.** Subject to the limitations set forth in applicable Laws, a Subsidy may be made in such amounts as may be required for Project Activities.

(b) **Commitment Letter.** HPD may state Subsidy terms in a commitment letter signed by the Commissioner. Such commitment letter, if any, may contain such terms as HPD may deem necessary or desirable in order to effectuate the purposes of these Rules and to protect the City's interests. The provision of the Subsidy shall be made subject to satisfaction of all the terms and conditions contained in such commitment letter.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed

amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

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28 RCNY 30-06

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§30-06 Rent Setting.

(a) **Establishment of Intake Rents.** HPD shall from time to time on a program-wide basis establish Intake Rents for all dwelling unit Buildings selected for the Program based upon a minimum rent level per zoning room based on operating costs in similar Buildings. The Intake Rent and the rationale therefore shall be kept on file by HPD and be available for public inspection. HPD shall provide notice of Intake Rent pursuant to §30-04(f).

(b) **Pre-commitment meeting.** After the notice of Project Commencement pursuant to §30-04(e), and prior to the issuance of a commitment letter containing the terms and conditions for a Subsidy, HPD shall send a notice informing the Tenants of the time and place of a meeting to discuss the Program at least two business days prior to such meeting. A representative of HPD shall attend such meeting.

(c) **Projection of Post-Rehabilitation Rents.** HPD shall determine a rent for each dwelling unit in the Building to take effect upon Substantial Completion. The Post-Rehabilitation Rent per occupied dwelling unit may be based upon the Tenants' income or may reflect the expenses for the Building as projected by HPD less the effective annual net commercial income, if any. If the Post-Rehabilitation Rent reflects the Building's expenses, HPD shall project the annual maintenance and operating expenses for the Building after Substantial Completion, including allowances for vacancies and debt service coverage. The expenses shall be projected by HPD based on its experience and knowledge of the operation of similar buildings. For those apartments which are vacant at the time of the sending of the notice of Substantial Completion pursuant to subdivision (h) of this section, HPD shall set Post-Rehabilitation Rents at no greater than one hundred and ten percent (110%) of the FMR for the area in which the Building is located.

(d) **Pre-Disposition notice.** Following the pre-commitment meeting held pursuant to subdivision (b) of this

section, and not less than thirty (30) days prior to Disposition, HPD shall send a notice which shall

(1) inform each Tenant of the contemplated Rehabilitation which will be performed in the Project;

(2) advise each Tenant of the expected rental increase to result from the Rehabilitation which will take effect after Substantial Completion (i.e., the Post-Rehabilitation Rent);

(3) provide information on rental assistance which may be available to the Tenant and the procedures to apply for such assistance in accordance with §30-09 of these Rules;

(4) apprise each Tenant of such Tenant's right to submit written comments; and

(5) advise each Tenant that where relocation during Rehabilitation is necessary, HPD will use its best efforts to minimize inconvenience to affected Tenants.

(e) **Implementation of Intake Rent.** Commencing no earlier than the date set forth in the notice of Intake Rent sent pursuant to §30-04(f), HPD shall charge the Intake Rent, except that rents for Tenants whose rents at such time are greater than the Intake Rent shall not be decreased.

(f) **Registration of Rent.** Not less than thirty (30) days after Disposition, Sponsor shall register with DHCR the rent charged to each Tenant in the Building at the time of Disposition. Leases shall contain a provision satisfactory to HPD requiring notice to the Tenant of the subsequent establishment of the Post-Rehabilitation Rent.

(g) **Increase in Projected Post-Rehabilitation Rents.** If the Post-Rehabilitation Rents established by HPD pursuant to subdivision (c) of this section reflect the Building's expenses, and HPD determines that its projection of maintenance and operating costs must be increased based on unforeseen changes in the circumstances and factors which formed the basis of the original projection, including, but not limited to, unexpected increases in fuel or utility costs, HPD shall notify Tenants of the amount of the expected rent increase over and above the Post-Rehabilitation Rent set forth in the pre-Disposition notice sent pursuant to subdivision (d) of this section.

(h) **Notice of Substantial Completion.** Following Substantial Completion, HPD shall send a notice to each Tenant that the Rehabilitation is substantially complete and that the Tenant's rent will be increased to the Post-Rehabilitation Rent in not less than sixty (60) days. Such notice shall state that the Tenant has an opportunity to comment regarding the quality of Rehabilitation. Such notice shall also include the amount of the Post-Rehabilitation Rent, its effective date, and provide information on rental assistance which may be available to the Tenant and the procedures to apply for such assistance in accordance with §30-09 of these Rules. Prior to the establishment of Post-Rehabilitation Rents, HPD shall give due consideration to Tenant comments regarding the quality of the Rehabilitation.

(i) **Implementation and Registration of Post-Rehabilitation Rents.** Not less than sixty (60) days after the sending of the notice of Substantial Completion pursuant to subdivision (h) of this section, HPD shall complete and sign a rent order, and shall mail such order to the Tenant with a copy to the Sponsor. The rent set forth on each rent order shall be the Post-Rehabilitation Rent for such apartment as was determined in accordance with subdivision (c) of this section and as set forth in the pre-Disposition notice or as adjusted pursuant to subdivision (g) of this section. If an apartment is vacant at the time of establishment of rents, the rent order shall be mailed to the Sponsor. Immediately upon receipt of the rent order or a copy thereof, the Sponsor shall register the Post-Rehabilitation Rent for each Tenant in the Building with DHCR.

(j) **Two year leases.** The Sponsor must offer two year leases to all Tenants upon Substantial Completion.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

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28 RCNY 30-07

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§30-07 Project Operation Prior to Disposition if HPD Temporarily Leases the Building to the Sponsor.

(a) **Lease.** Prior to Disposition, HPD may temporarily lease the Building to a Lessee pursuant to the terms of a written lease.

(b) **Tenant selection policy.** Lessee shall rent vacant apartments only to low and/or moderate income Tenants as defined by HPD and in accordance with HPD guidelines. HPD may also, in the public interest, require that other persons, determined by HPD to be in need of housing, receive priority in the renting of apartments. HPD may require that rentals be pre-approved by HPD, that specified lists of eligible persons be used, or may direct any other Tenant selection method be used.

(c) **Successor Tenants.** Persons claiming to be successor Tenants, if any, prior to a unit entering rent stabilization, are subject to the rules set forth in Chapter 24 of Title 28 of the Rules of the City of New York.

(d) **Interim Payment Agreement.** HPD may require the Lessee to enter into one or more Interim Payment Agreements in accordance with §30-09 of these Rules.

(e) **Limitation on Collection of Arrears.** At such time as a Tenant is one month or more in arrears on the payment of rent to Lessee, Lessee may commence a proceeding for such rent arrears and/or for possession of the apartment. Lessee may not sue for arrears which accrued more than three (3) months prior to the commencement of the lease for the Building.

(f) **Vacancy Rents.** Rents for vacant apartments shall be set by Lessee, subject to HPD approval.

(g) **Commencement of Legal Proceedings.** Lessee may commence legal proceedings, including eviction proceedings for failure to pay rent in accordance with §21-23(c) of chapter 21 of this title, with the prior approval of HPD.

(h) **Tenant Complaints.** (1) Complaints shall, in the first instance, be directed to Lessee.

(2) Tenants shall have the right to file written complaints with HPD staff if a Tenant deems Lessee's response to be inadequate or unsatisfactory.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

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28 RCNY 30-08

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§30-08 Project Operation After Disposition.

(a) **Regulatory Agreement.** A Sponsor may be required to execute a regulatory agreement with HPD as a condition for the Project. The regulatory agreement shall be recorded and shall run with the land for the period set forth therein. The regulatory agreement shall require the Sponsor and all of Sponsor's successors and assigns to comply with Project requirements.

(b) **Use Restrictions.** HPD may impose restrictions upon the use of a Building and may require Sponsor to agree to comply with such restrictions as a condition for Disposition or Subsidy. Such use restrictions may be enforced by any means which HPD determines to be necessary or appropriate, including, but not limited to, provisions in any deed, land disposition agreement, regulatory agreement, note, mortgage, security agreement, lien, restrictive declaration, or other legal document. HPD may require a Sponsor to provide security for its compliance with use restrictions in such types and amounts as are determined by HPD to be necessary or desirable. Such types of security may include, but shall not be limited to, surety bonds, letters of credit, or cash.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

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28 RCNY 30-09

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CHAPTER 30 NEIGHBORHOOD REDEVELOPMENT PROGRAM*1

§30-09 Rental Assistance.

(a) HPD will assist eligible Tenants in applying for existing rental assistance programs during the period of the Building's participation in the Program. HPD will provide Tenants with applications for §8 of the United States Housing Act of 1973, as amended, and senior citizen rent increase exemptions, advise Tenants which rental assistance program is most suitable for their individual needs and assist Tenants in completing rental assistance applications.

(b) Each Tenant who applies for rental assistance is solely responsible for supplying all required documentation and materials necessary to process an application: i.e., attending required interviews, providing the necessary income certification and complying with all procedures to process an application.

(c) HPD shall review all applications for rental assistance and make a preliminary determination of a Tenant's eligibility within sixty (60) days of receipt of a completed application. HPD shall promptly notify the Sponsor of all applicants for rental assistance and shall forward to the Sponsor copies of the applications, letters granting or denying rental assistance, Interim Payment Agreements entered into, and letters extending or terminating Interim Payment Agreements. Upon a finding of preliminary eligibility, HPD will provide the Tenant with an Interim Payment Agreement, which shall be signed by the Sponsor, the Tenant and HPD before it becomes effective. This Interim Payment Agreement shall include:

(1) the amount of the increased rent for the apartment;

(2) the amount of rent that the Tenant must pay pending the final eligibility determination of the rental assistance application (as such amount is determined in accordance with subdivision (d) of this section);

(3) a statement of the grounds for termination pursuant to subdivision (e) of this section; and

(4) notice to the Tenant that s(he) remains liable for the full amount of the rent retroactive to the effective date of the increase if, at any time, the rental assistance application is denied by HPD or the Interim Payment Agreement is terminated pursuant to paragraphs one, three or four of subdivision (e) of this section, provided, however, that if the Interim Payment Agreement is terminated pursuant to paragraph one of subdivision (e) of this section, the Tenant shall not be liable for the full amount of the rent increase retroactive to its effective date if s(he) notifies HPD within thirty (30) days of any change in household income which renders the Tenant ineligible for rental assistance.

(d) A Tenant who receives an Interim Payment Agreement will be required to pay the greater of (1) the amount set forth in the Interim Payment Agreement, which is the amount that s(he) would pay on a monthly basis if the rental assistance application is approved, or (2) the rent charged prior to implementation of the rent increase.

(e) The Interim Payment Agreement will terminate one year after the date of issuance or upon the earlier occurrence of any of the following:

(1) any change in the Tenant's household income which renders the Tenant ineligible for rental assistance; or

(2) any change in the rent charged by the City; or

(3) failure by the Tenant to comply with any of the requirements necessary to process the application for rental assistance; or

(4) failure by the Tenant to pay, within thirty (30) days of the date due, the rent payable under the Interim Payment Agreement pursuant to subdivision (d) of this section, unless payment of such rent is being withheld for lack of services which the Tenant has given written notice of to the Sponsor; or

(5) receipt by Tenant of rental assistance pursuant to a rental assistance application filed in accordance with this section.

(f) HPD will permit any Tenant who has applied for rental assistance in accordance with subdivision (b) of this section and who has not been provided with an Interim Payment Agreement pursuant to subdivision (c) of this section, to pay a rent increase in stages of $10.00 per room per quarter.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

28 RCNY 30-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 30 NEIGHBORHOOD REDEVELOPMENT PROGRAM*1

§30-10 Miscellaneous Provisions.

(a) **HPD Discretion.** All determinations to be made by HPD in accordance with these Rules shall be in the sole discretion of HPD.

(b) **Statutory Authority not Limited.** Nothing in these Rules shall be deemed to limit HPD's authority pursuant to applicable Laws.

(c) **Method of Notification.** Unless otherwise provided herein, notification shall be in English and Spanish, and shall either be posted in a common area of the Building and affixed to or placed under each apartment door of the Building, or mailed to every apartment in the Building, as determined by HPD.

(d) **Technical Violations.** Provided that there has been a good faith effort to comply with these Rules, technical violations of these Rules shall not invalidate any action taken pursuant to these Rules, nor shall such technical violations give rise to any rights, claims, or causes of action. The Commissioner, upon good cause shown, may alter the timing or sequence of the actions described in these Rules, provided all affected parties are given reasonable notice.

(e) **Funding Source Requirements.** Notwithstanding any provision of these Rules to the contrary, if the requirements of any funding source for a Project conflict with the requirements of these Rules, the requirements of the funding source shall govern.

HISTORICAL NOTE

Section renumbered and amended (formerly §30-09) City Record Jan. 7, 2002 eff. Feb. 6, 2002.

[See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 31-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 31*1 TAX EXEMPTIONS UNDER §420-C OF THE REAL PROPERTY TAX LAW

§31-01 General Provisions.

(a) **Scope.** These Rules govern the grant of tax exemption pursuant to §420-c of the Real Property Tax Law including the procedure for filing an application for tax exemption and the issuance of Certificates of Eligibility by the Office.

(b) **Definitions.**

Aggregate Floor Area. "Aggregate Floor Area" shall mean the sum of the gross areas of the several floors of a building, measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings.

Allocation Document. "Allocation Document" shall mean a document issued by the Housing Credit Agency with respect to Real Property indicating either (i) that such Real Property has received a binding reservation for tax credits or (ii) that such Real Property has been allocated tax credits pursuant to §42 of the Code.

Application Date. "Application Date" shall mean the date of submission to the Office of a completed application (including all required documentation), as determined by the office for benefits under this chapter.

Certificate of Eligibility. "Certificate of Eligibility" shall mean the certificate issued by the Office pursuant to §31-04(d) of these Rules.

City. "City" shall mean the City of New York.

Code. "Code" shall mean the United States Internal Revenue Code of 1986, as amended.

Commissioner. "Commissioner" shall mean the commissioner of the Department of Housing Preservation and Development or the commissioner of any successor agency or department thereto or her or his designee.

Controlling Interest. "Controlling Interest" shall mean: (i) in the case of a corporation, direct or indirect ownership of a majority of shares of each class of voting stock in such corporation, and (ii) in the case of a partnership, a majority ownership in each general partner in such partnership.

Department. "Department" shall mean the Department of Housing Preservation and Development of the City.

Department of Finance. "Department of Finance" shall mean the Department of Finance of the City or any successor agency or department thereto.

Eligible Property. "Eligible Property" shall mean Real Property containing Housing Accommodations and conforming to the criteria listed in §31-02(a) of these rules. Real property not containing Housing Accommodations is not Eligible Property. If a portion of Real Property is not Eligible Property, tax exemption shall be apportioned in accordance with §31-03(b) of this chapter. Eligible Property shall be exempt if a Regulatory Agreement with the City or the State or the Housing Trust Fund Corporation is in effect and contemplates construction or rehabilitation of such property for use for housing for persons of low income by a date certain.

Housing Development Fund Company or HDFC. "Housing Development Fund Company or HDFC" shall mean a corporation organized pursuant to Article XI of the Private Housing Finance Law and incorporated pursuant to §402 of the Not-For-Profit Corporation Law.

Housing Accommodations. "Housing Accommodations" shall mean Real Property used for (i) residential purposes including dwelling units, common sanitary and cooking and dining facilities, common recreation areas including outdoor recreation areas and public areas such as cellars, basements, public halls and stairs and roofs; (ii) ancillary residential purposes including management, administrative and social service offices and facilities used to provide social services (including job training, as defined herein) primarily for Persons or Families of Low Income residing in such Housing Accommodations; or (iii) on or after July 1, 2004, community facility uses that (A) provide services to individuals who reside in the area, (B) limit any fees charged for such community facility uses to fees that are affordable to individuals whose household incomes do not exceed sixty percent (60%) of the area median income adjusted for family size, and (C) are located on the same Real Property as the dwelling units that constitute such Housing Accommodations. Notwithstanding the foregoing, any portion of the combined floor area of such ancillary residential purposes and/or community facility uses which exceeds twenty-five percent (25%) of the Aggregate Floor Area of the Real Property shall not qualify as Housing Accommodations.

Housing Corporation. "Housing Corporation" shall mean a non-profit housing corporation as defined in Article XI of the Private Housing Finance Law which is not incorporated as an HDFC as defined in such Article XI.

Housing Credit Agency. "Housing Credit Agency" shall mean the New York State Division of Housing and Community Renewal or the City's Department of Housing Preservation and Development or such other agency as shall be designated as a housing credit agency in the city for the State of New York under §42 of the Code.

Housing Trust Fund Corporation. "Housing Trust Fund Corporation" shall mean the corporation established pursuant to §45-a of the Private Housing Finance Law.

Initial Filing Date. The term "Initial Filing Date" shall mean the date an initial application is submitted to the office (which application may be incomplete).

Job Training. "Job Training" shall mean programs, services and commercial activities occurring within an Eligible Property in space occupied by a not-for-profit corporation. Such programs, services and commercial activities must be for the benefit primarily of Persons or Families of Low Income residing in the Housing Accommodations.

Loan "Loan" shall mean a loan for the acquisition and/or construction and/or rehabilitation and/or permanent financing of Housing Accommodations provided by the City, the State or the Housing Trust Fund Corporation.

Office. "Office" shall mean the Tax Incentive Programs Unit of the Department of Housing Preservation and Development or any successor thereto authorized to administer these rules.

Participant. "Participant" shall mean an owner of Real Property that is the subject of an Allocation Document.

Persons or Families of Low Income. "Persons or Families of Low Income" shall mean persons or families who are in low income groups and who cannot afford to pay enough to cause private enterprise in their municipality to build a sufficient supply of adequate, safe and sanitary dwellings as set forth in §2 of the Private Housing Finance Law.

Qualified Owner. "Qualified Owner" shall mean an entity: (a) which is either (i) an HDFC, or (ii) a Housing Corporation, or (iii) is a wholly owned subsidiary of such a company or corporation, or (iv) a limited partnership in which the Controlling Interest is held by (A) an HDFC or Housing Corporation or (B) a wholly owned subsidiary of an HDFC or Housing Corporation, or (v) a corporation sponsored or formed by such an HDFC company or Housing Corporation and (b) in which no officer, director, shareholder, member, partner or employee shall receive any pecuniary profit, income or other distributions from the Eligible Property except (i) low income housing tax credits and non-cash tax benefits available pursuant to the Code and (ii) reasonable compensation for services rendered and (c) which is a participant in the federal low income housing tax credit program pursuant to §42 of the Code and has not defaulted in its obligations thereunder. An example of a qualified owner is a limited partnership in which the Controlling Interest is held by: (a) an HDFC or Housing Corporation or (b) a wholly owned subsidiary of an HDFC or Housing Corporation. Housing Corporations are only eligible if in existence on the effective date of chapter 647 of the Laws of 1994 (August 2, 1994).

Real Property. The term "Real Property" shall mean the land, buildings and other improvements subject to taxation pursuant to §102 of the Real Property Tax Law which are the subject of an application under §31-04 of these Rules.

Regulatory Agreement. "Regulatory Agreement" shall mean an agreement with the City, the State or the Housing Trust Fund Corporation (i) restricting the use of Real Property to Housing Accommodations for Persons or Families of Low Income and (ii) imposing the rental and occupancy restrictions established by §42 of the Code on at least seventy percent (70%) of the dwelling units in such Real Property. Such agreement may be contained in the mortgage securing the Loan or may be a separate agreement recorded of record against the Real Property.

Rules. "Rules" shall mean these Rules.

State. "State" shall mean the State of New York.

HISTORICAL NOTE

Section added City Record Mar. 7, 1997 eff. Apr. 6, 1997.

Subd. (a) amended City Record Oct. 22, 1999 §1, eff. Nov. 21, 1999. [See Note 1]

Subd. (b) Aggregate Floor Area definition added City Record Oct. 22, 1999 §2, eff. Nov. 21, 1999.

[See Note 1]

Subd. (b) Allocation Document definition amended City Record Oct. 22, 1999 §3, eff. Nov. 21,

1999. [See Note 1]

Subd. (b) Commissioner definition amended City Record Oct. 22, 1999 §4, eff. Nov. 21, 1999. [See

Note 1]

Subd. (b) Controlling Interest definition amended City Record Oct. 22, 1999 §5, eff. Nov. 21, 1999.

[See Note 1]

Subd. (b) Department definition added City Record Oct. 22, 1999 §2, eff. Nov. 21, 1999. [See

Note 1]

Subd. (b) Housing Accommodations amended City Record Feb. 20, 2008 §1, eff. Mar. 21, 2008.

[See Note 2]

Subd. (b) Housing Accommodations definition amended City Record Oct. 22, 1999 §7, eff. Nov.

21, 1999. [See Note 1]

Subd. (b) Housing Development Fund Corporation definition amended City Record Oct. 22,

1999 §6, eff. Nov. 21, 1999. [See Note 1]

Subd. (b) Job Training definition added City Record Oct. 22, 1999 §2, eff. Nov. 21, 1999. [See

Note 1]

Subd. (b) Office definition amended City Record Oct. 22, 1999 §8, eff. Nov. 21, 1999. [See Note 1]

Subd. (b) Qualified Owner definition amended City Record Oct. 22, 1999 §9, eff. Nov. 21, 1999.

[See Note 1]

Subd. (b) Regulatory Agreement definition amended City Record Oct. 22, 1999 §10, eff. Nov. 21,

1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 22, 1999:

Section 420-c of the Real Property Tax Law authorizes the Department of Housing, Preservation and Development to promulgate rules governing tax exemption. The proposed changes are intended to assist the City in its effort to authorize benefits for the types of projects contemplated by the Rules in a more clear and precise manner.

2. Statement of Basis and Purpose in City Record Feb. 20, 2008: Section 420-c of the Real Property Tax Law was originally enacted in 1993 to provide tax exemption for eligible owners who develop affordable housing by syndicating federal low income housing tax credits. Under Real Property Tax Law §420-c, eligible owners are corporations, partnerships or limited liability companies in which at least 50% of the controlling interest is held by a charitable or social welfare organization formed under 501(c)(3) or 501(c)(4) of the Internal Revenue Code. They also must own legal and beneficial title or a legal and beneficial leasehold interest with a term of at least 30 years. Furthermore, the municipality must sign or approve a regulatory agreement requiring that the real property be used to provide low income housing for the entire term of the tax exemption (i.e., even after the tax credits have expired). Currently, only ancillary residential purposes that primarily serve the residents of such housing accommodations can receive Real Property Tax Law §420-c benefits. The rule amendments extend this important tax exemption to community facility

uses that meet eligibility criteria similar to those provided for in the tax credit program. Any project that has this type of community facility use as of July 1, 2004 or thereafter can now receive Real Property Tax Law §420-c benefits for such facility. This amendment recognizes the importance of such community facility uses to the entire community in which the housing accommodations are located and not just to the residents thereof. Collectively, the ancillary residential purposes and community service facilities in such housing accommodations cannot exceed 25% of the aggregate floor area of the real property. The portion that does will be ineligible for the Real Property Tax Law §420-c tax exemption.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Mar. 7, 1997 eff. Apr. 6, 1997. Note: There was no Statement of Basis and Purpose.

Rules of the City of New York

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28 RCNY 31-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 31*1 TAX EXEMPTIONS UNDER §420-C OF THE REAL PROPERTY TAX LAW

§31-02 Eligibility Requirements.

(a) **Eligible Property.** Real Property may be eligible for an exemption from Real Property taxes as set forth in §31-05 if:

(1) It has been acquired and/or rehabilitated and/or constructed, and/or otherwise financed with a Loan; and

(2) It is bound by a Regulatory Agreement; (i) restricting the use of Real Property to Housing Accommodations for Persons or Families of Low Income and (ii) imposing the rental and occupancy restrictions established by §42 of the Code on at least seventy percent (70%) of the dwelling units in such Real Property. Such agreement may be contained in the mortgage securing the Loan or may be a separate agreement recorded of record against the Real Property; and

(3) An Allocation Document has been issued for the Eligible Property; and

(4) It is owned, at the Application Date and for the duration of such exemption, by a Qualified Owner; and

(5) It constitutes Housing Accommodations for Persons or Families of Low Income as set forth in the Regulatory Agreement or Allocation Document.

(b) **Time Requirements.**

(1) In order to receive retroactive tax exemption pursuant to §31-05(a)(2) hereof, the Initial Filing Date of an application for a Certificate of Eligibility must have been on or before October 24, 1993, unless application is made under Chapter 513 of the Laws of 1993 in which case application must be made ninety days after the effective date of

said chapter (July 26, 1993).

(2) An application for a Certificate of Eligibility must contain all documentation required by §31-04(b) and be completed within twenty-four months of the Initial Filing Date with the Office or the application may be deemed withdrawn.

(3) If the Allocation Document submitted with the application for the Certificate of Eligibility was a binding or non-binding reservation or determination of eligibility for low income housing tax credits or a credit carry over allocation issued pursuant to §42(h)(1)(E) of the Code, then a United States Treasury Form 8609 of which Part I of said form is completed by a Housing Credit Agency must be submitted for the Real Property to the Office within thirty-six months of the Initial Filing Date of the application. In all cases the application file must ultimately contain a copy of Form 8609.

HISTORICAL NOTE

Section added City Record Mar. 7, 1997 eff. Apr. 6, 1997.

Subd. (a) amended City Record Oct. 22, 1999 §12, eff. Nov. 21, 1999. [See T28 §31-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Mar. 7, 1997 eff. Apr. 6, 1997. Note: There was no Statement of Basis and Purpose.

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28 RCNY 31-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 31*1 TAX EXEMPTIONS UNDER §420-C OF THE REAL PROPERTY TAX LAW

§31-03 Ineligible Projects and Portions of Projects.

(a) **Ineligible Projects.** Tax exemption is not available and shall not be granted with respect to the Real Property if, at the time application is made for a Certificate of Eligibility, the owner of the Real Property is in default under the terms of the Loan and/or the Regulatory Agreement.

(b) **Ineligible Portions of Real Property.** Tax exemption is not available for portions of Real Property not used for Housing Accommodations for Persons or Families of Low Income, as determined by the Office.

HISTORICAL NOTE

Section added City Record Mar. 7, 1997 eff. Apr. 6, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Mar. 7, 1997 eff. Apr. 6, 1997. Note: There was no Statement of Basis and Purpose.

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28 RCNY 31-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 31*1 TAX EXEMPTIONS UNDER §420-C OF THE REAL PROPERTY TAX LAW

§31-04 Application Procedure and Documentation.

(a) **Application forms and filing for certificate of eligibility.** Prescribed forms and applications are available from the Office. All applications must be submitted to the Office on forms approved by the Office.

(b) **Documentation required of all applicants.** All completed applications for tax exemption must include the following documentation:

(1) Original and two copies of the fully completed application form;

(2) Copy of the deed for the Real Property;

(3) Copy of all mortgages and notes evidencing the Loan(s) for the Real Property;

(4) Copy of the Regulatory Agreement binding the Real Property;

(5) Copy of the Allocation Document for the Real Property;

(6) Copy of the filed Certificate(s) of Incorporation, stock certificates, filed Certificate(s) of Limited Partnership and partnership agreements, as applicable, evidencing that the applicant is a Qualified Owner.

(7) Schematic drawings of all proposed or completed buildings or improvements to the Real Property, including all floors thereof, which schematic drawings identify those portions of the Real Property which are not dwelling units and clearly specify (i) areas used for common residential or ancillary residential purposes which qualify as Housing

Accommodations for Persons and Families of Low Income and (ii) all areas used for commercial and otherwise ineligible purposes which do not qualify as Housing Accommodations; indicate the square footage of each such space, all drawn to a scale acceptable to the Office which scale is clearly indicated on each drawing, provided, however, that the Office may waive schematics if there is no space not used for dwelling units or other residential purposes;

(8) A certification from the City, the State or the Housing Trust Fund Corporation indicating that the applicant is not in default under the terms of the Loan and the Regulatory Agreement with respect to the Real Property which is the subject of the application if requested by the Office; and

(9) A copy of the Temporary or Permanent Certificate of Occupancy, if issued.

(10) Any such additional documentation which the Office may require.

(11) An application may contain more than one building provided that each such building is part of a project, and is specified in the deed, mortgages and notes and the Regulatory Agreement(s) for such project; and provided further that there is a final Allocation Document for each such building.

(c) **Completion of application.** An application for a Certificate of Eligibility must contain all documentation required by §31-04(b) and be completed within twenty-four months of the Initial Filing Date with the Office or the application may be deemed withdrawn. An application for a Certificate of Eligibility shall be deemed complete if the application includes all the documentation required in §31-04(b). The requirements of §31-04(b)(5) may be temporarily satisfied as provided in §31-02(b)(3) by a binding or non-binding reservation or a credit carry over allocation issued pursuant to §42(h)(i)(E) of the Internal Revenue Code pending compliance with §31-02(b)(3) hereof or proof of application for such reservation or allocation. Applicants must notify the Office of any change of address and/or change of ownership of the premises and any change in the designated filing agent.

(d) **Issuance of a certificate of eligibility.**

(1) It is the applicant's responsibility to complete the application within twenty-four months, or, where applicable, within thirty-six months of the Initial Filing Date as provided in 31-04(c). The Office shall issue a Certificate of Eligibility for all approved applications.

(2) Failure to produce documentation satisfactory to the Office or failure to comply with these Rules may result in the denial of a Certificate of Eligibility, and rejection of the application.

(3) Notwithstanding the issuance of a Certificate of Eligibility, the tax exemption may be revoked or revised pursuant to §31-06 of these rules.

(e) **Implementation of benefit.** Upon issuance of a 420-c Certificate of Eligibility and payment of outstanding fees, the Office will transmit the Certificate of Eligibility to the Department of Finance

HISTORICAL NOTE

Section added City Record Mar. 7, 1997 eff. Apr. 6, 1997.

Subd. (b) opening par amended City Record Oct. 22, 1999 §13, eff. Nov. 21, 1999. [See T28 §30-01

Note 1]

Subd. (b) par (7) amended City Record Oct. 22, 1999 §13, eff. Nov. 21, 1999. [See T28 §30-01

Note 1]

Subd. (b) par (11) added City Record Oct. 22, 1999 §13, eff. Nov. 21, 1999. [See T28 §30-01 Note 1]

Subd. (c) amended City Record Oct. 22, 1999 §14, eff. Nov. 21, 1999. [See T28 §30-01 Note 1]

Subd. (e) amended City Record Oct. 22, 1999 §15, eff. Nov. 21, 1999. [See T28 §30-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Mar. 7, 1997 eff. Apr. 6, 1997. Note: There was no Statement of Basis and Purpose.

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28 RCNY 31-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 31*1 TAX EXEMPTIONS UNDER §420-C OF THE REAL PROPERTY TAX LAW

§31-05 Tax Exemption: Effective Date, Duration and Amount.

(a) **Effective date of exemption.** Tax exemption under this chapter shall commence on the latter of: (i) the date of acquisition of the Eligible Property by the Qualified Owner or, (ii) the date of execution of a Regulatory Agreement, or (iii) the date upon which the property becomes a participant in the Federal Low Income Housing Tax Credit Program which is either the date of issuance of an Allocation Document or the date of signing of a Regulatory Agreement provided that an Allocation Document is issued prior to the issuance of a Certificate of Eligibility, except as follows:

(1) Where Eligible Property acquired after January 5 was exempt from Real Property taxation on the date of such transfer, the property shall remain exempt for the balance of the tax year in progress and for the next full tax year.

(2) **Duration of exemption.** The exemption shall expire upon the expiration or termination of the Regulatory Agreement or thirty years from commencement of exemption if the Regulatory Agreement exceeds thirty years. If the extended use period as defined in the Code is terminated in accordance with §42 of the Code, the Regulatory Agreement shall be deemed terminated.

(3) **Amount of tax exemption.** With respect to the portions of Real Property which are not Eligible Property, the Department of Finance will apportion assessed value between exempt portions of Real Property and non-exempt portions thereof (both as determined by the Office) based upon each portion's relative percentage of the entire parcel's full market value.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1999 §18, eff. Nov. 21, 1999. [See T28 §30-01 Note 1]

Section added City Record Mar. 7, 1997 eff. Apr. 6, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Mar. 7, 1997 eff. Apr. 6, 1997. Note: There was no Statement of Basis and Purpose.

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28 RCNY 31-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 31*1 TAX EXEMPTIONS UNDER §420-C OF THE REAL PROPERTY TAX LAW

§31-06 Record Keeping; Revocation of Tax Exemption.

(a) **Subpoenas, Oaths, Books and Records.** For the purpose of ascertaining the correctness of any application, the Commissioner may: (1) examine any books, papers, records or other data which may be relevant or material to such inquiry; (2) summon any person, including the owner or an officer or any employee of the owner, or any person having possession, custody or care of books, papers or records relating to the correctness of the application, to appear before the Commissioner or his or her designee at the time or place named in the summons or to produce such books, paper, records or other data and to give such testimony under oath, as may be relevant or material to such inquiry; and (3) take such testimony under oath as may be relevant to such inquiry.

(b) **Retention of Books and Records.** All books, records and documents listed in §31-04, together with all other documents which may be used to substantiate entries in the applicant's books and records shall be kept by the applicant at all times available for inspection by the Office and shall be retained for the duration of the tax exemption.

(c) **Preservation and Inspection of Records.** Records of each application shall be maintained by the Office. Records of approved applications are available for inspection and copying upon prior written request to the Office. Copies of records are available upon payment in advance of an amount to be determined by the Office.

(d) **Suspension or Revocation of Tax Exemption.**

(1) The Commissioner may suspend future tax exemptions if she or he finds reasonable evidence indicating that the application for tax exemption, including any substantiating documentation submitted or considered in connection with the application, contains a false statement or false information as to a material matter or omits a material matter. In

the event the Commissioner determines, on the basis of the total available evidence, that the application contains false statements or false information as to a material matter or omits a material matter, all past and future benefits hereunder may be revoked.

(2) The Commissioner may revoke the tax exemption retroactively in whole or in part during the tax exemption period if there has been fraud or misrepresentation or for a failure to provide notice under §31-06(f) hereof.

(3) The Commissioner shall revoke or revise, as applicable, tax exemptions prospectively in the event the Real Property or any portion thereof is no longer Eligible Property. An Eligible Property shall not be deemed "no longer an Eligible Property" for the purposes of this paragraph solely because the term of the Loan has expired.

(e) **Additional Grounds for Suspension or Revocation.**

(1) The Commissioner may suspend tax exemptions prospectively in the event that the owner of the Real Property is in default under the terms of the Loan and/or the Regulatory Agreement. The suspension of tax exemption shall commence upon the date of the issuance of a notice of default from the City. In the event the default is not cured, the Commissioner shall revoke all future tax exemptions.

(2) If the Allocation Document for the Real Property submitted with the application for Certificate of Eligibility was not a United States Treasury Form 8609 of which Part I of said form has been completed by the Housing Credit Agency, the Commissioner may revoke past and future tax exemption if the Applicant has not submitted such form 8609 within thirty-six months of the Initial Filing Date of the application. The Commissioner may revoke past and future tax exemptions if the Applicant has not submitted to the Office a Permanent Certificate of Occupancy for the Eligible Property within thirty-six months after the Initial Filing Date.

(f) **Owner's Notification.** Throughout the period of the exemption, if there is any material change in the information upon which the Office has relied in granting the Certificate of Eligibility, the owner of the Real Property benefiting from tax exemption shall notify the Office within one month of such changes. Such notification shall be by certified mail and in a form acceptable to the Office. Such material changes shall include, but not be limited to, changes in the use of any portion of the Eligible Property as Housing Accommodations and changes in any aspect of the ownership status or management of Applicant.

(g) **Notice of Suspension, Revocation or Reduction.** Prior to suspension, revocation or reduction of tax exemption hereunder, notice of the breach or omission shall be given by the Office to the applicant by certified mail to the address of the owner or agent duly registered on the City Collector's Owner Registration File. Benefits shall not be suspended, revoked or reduced if, within thirty days after the date of the mailing of such notice, the owner establishes that such breach or omission did not occur.

(h) **Fees.** For Applications received after the effective date of these Rules, the Office shall charge a filing fee of one hundred ($100) dollars per Application. In addition, there shall be a charge of eighty ($80) dollars per Class A dwelling unit and sixty ($60) dollars per Class B dwelling unit, as applicable, due at the time of issuance of a Certificate of Eligibility. Such fee shall be non-refundable under any circumstances, including but not limited to the subsequent revocation or revision of a Certificate. A declaratory ruling with respect to an analysis of a specific fact pattern, document or organizational structure or an interpretation of the applicability of a specific provision of the 420-c statute or Rules to an actual or hypothetical site, project, fact pattern, document or organizational structure or any other issue related to eligibility may be given by the Office upon payment of a non-refundable fee of two hundred fifty ($250) dollars payable at the time such declaratory ruling is requested in writing. In no event shall a prior ruling bind the Office as to the overall eligibility of a project for 420-c benefits.

HISTORICAL NOTE

Section added City Record Mar. 7, 1997 eff. Apr. 6, 1997.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Mar. 7, 1997 eff. Apr. 6, 1997. Note: There was no Statement of Basis and Purpose.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 32-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 32*1 TAX EXEMPTION AND TAX ABATEMENT UNDER §421-G OF THE REAL PROPERTY TAX LAW

§32-01 Scope and Construction.

(a) **Scope of Rules.** This chapter governs the grant of tax abatement and exemption pursuant to §421-g of the Real Property Tax Law of the State of New York, including the procedure for filing an application for tax abatement and exemption and the issuance of Certificates of Eligibility by the Office of Tax Incentives of the Department of Housing Preservation and Development. Upon issuance of the Certificate of Eligibility, the calculation and implementation of the tax abatement and exemption are under the jurisdiction of the Department of Finance.

(b) **Construction.** This chapter is to be construed to secure the effectuation of the purposes of §421-g of the Real Property Tax Law in accordance with the general principle of law that tax exemption and abatement statutes are to be strictly construed against the taxpayer applying for the tax exemption or abatement.

HISTORICAL NOTE

Section added City Record July 2, 1997 eff. Aug. 1, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 2, 1997 eff. Aug. 1, 1997. Note further provisions: Section 421-g of the Real Property Tax Law authorizes the Department to promulgate Rules governing administration of the program. The proposed Rules deal with (i) application procedure, documentation, and filing fees, (ii) effective date, duration of exemption and abatement, implementation procedure with the Department of Finance, (iii) rent registration, and (iv) certifying continuing use, record keeping, revocation of taxd exemption and abatement; discrimination prohibited.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 32-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 32*1 TAX EXEMPTION AND TAX ABATEMENT UNDER §421-G OF THE REAL PROPERTY TAX LAW

§32-02 Definitions.

As used in this chapter, the following terms shall have the following meanings:

Act. "Act" shall mean §421-g of the Real Property Tax Law.

Aggregate Floor Area. "Aggregate Floor Area" shall mean the sum of the gross areas of the several floors of a building, measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings.

Applicant. "Applicant" shall mean any person obligated to pay real property taxes on the property for which exemption from or abatement of real property taxes under the Act is sought or in the case of exempt property, the record owner or lessee thereof.

Benefit Period. "Benefit Period" shall mean the period of time when a Recipient is eligible to receive benefits pursuant to the Act.

Certificate of Eligibility. "Certificate of Eligibility" shall mean the document issued by the Department certifying a tax lot as eligible for benefits pursuant to the Act.

Class A Multiple Dwelling. "Class A Multiple Dwelling" shall mean a Class A multiple dwelling as defined in §4 of the Multiple Dwelling Law.

Commencement of Conversion. "Commencement of Conversion" shall mean the date of issuance by the

Department of Buildings of a building permit for the conversion of a Non-Residential Building to an Eligible Multiple Dwelling, provided however that such permit is issued on or after July 1, 1995 and no later than June 30, 2007.

Commissioner. "Commissioner" shall mean the Commissioner of Housing Preservation and Development, or his or her designee, or the chief executive officer of any successor agency or department thereto authorized to administer these Rules.

Completion of Conversion. "Completion of Conversion" shall mean the date of issuance by the Department of Buildings of a Temporary or Permanent Certificate of Occupancy for the portion of the building for which an application for a Certificate of Eligibility is filed.

Department. "Department" shall mean the Department of Housing Preservation and Development of the City of New York or any successor agency or department thereto.

Department of Buildings. "Department of Buildings" shall mean the Department of Buildings of the City of New York or any successor agency or department thereto.

Department of Finance. "Department of Finance" shall mean the Department of Finance of the City of New York or any successor agency or department thereto.

Eligible Area. Subject to the Zoning Resolution, the "Eligible Area" in which tax benefits pursuant to the Act for Eligible Multiple Dwellings are available shall mean the area in the borough of Manhattan bounded by Murray Street on the north starting at the intersection of West Street and Murray Street; running easterly along the center line of Murray Street; connecting through City Hall Park with the center line of Frankfort Street and running easterly along the center lines of Frankfort and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit Plaza; connecting through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street.

Any tax lot which is located partly inside the Eligible Area shall be deemed to be located entirely inside such area.

Eligible Multiple Dwelling. "Eligible Multiple Dwelling" shall mean a Class A multiple dwelling, except a Hotel, created from conversion of a Non-Residential Building, provided, however, that such multiple dwelling is located within the Eligible Area, and provided further, however, that the Aggregate Floor Area of Commercial, Community Facility and Accessory Use Space within such multiple dwelling does not exceed twenty-five per cent (25%) of the Aggregate Floor Area of such multiple dwelling.

Exempt Dwelling Unit. "Exempt Dwelling Unit" shall mean a dwelling unit exempt from rent regulation or deregulated pursuant to the Rent Regulation Reform Act of 1993, the Rent Regulation Reform Act of 1997, Local Law 4 of 1994, or by reason of the condominium or cooperative status of the dwelling unit.

Floor Area of Commercial, Community Facility and Accessory Use Space. "Floor Area of Commercial, Community Facility and Accessory Use Space" shall mean the gross horizontal areas of all space in a multiple dwelling or dwellings designated for commercial or community facility or accessory uses (as defined in §12-10 of the Zoning Resolution). Home occupation space within dwelling units shall not be counted as accessory use space.

Hotel. "Hotel" shall mean (i) any Class B multiple dwelling, as such term is defined in the Multiple Dwelling Law, (ii) any structure or part thereof containing living or sleeping accommodations which is used or intended to be used for transient occupancy, (iii) any apartment hotel or transient hotel as defined in the Zoning Resolution, or (iv) any structure or part thereof which is used to provide short term rentals or owned or leased by an entity engaged in the business of providing short term rentals. For purposes of this definition, a lease, sublease, license or any other form of rental

agreement for a period of less than six months shall be deemed to be a short term rental. Notwithstanding the foregoing, a structure or part thereof owned or leased by a not-for-profit corporation for the purpose of providing governmentally funded emergency housing shall not be considered a hotel for purposes of this chapter.

Landmark. "Landmark" shall mean a structure designated a landmark or a structure in a historic district designated by the Landmarks Preservation Commission of the City of New York or any successor commission, agency or department thereto.

Non-Residential Building. "Non-Residential Building" shall mean a structure or portion of a structure having at least one floor, a roof and at least three walls enclosing all or most of the space used in connection with the structure or portion of the structure, and which has a Certificate of Occupancy for commercial, manufacturing or other non-residential use for not less than ninety per cent (90%) of the aggregate floor area of such structure or portion of such structure, or other proof of such non-residential use as is acceptable to the Department.

Office. "Office" shall mean the Office of Tax Incentives of the Department or any successor thereto.

Person. "Person" shall mean an individual, corporation, limited liability company, partnership, association, agency, trust, estate, foreign or domestic government or subdivision thereof, or other entity.

Recipient. "Recipient" shall mean an applicant to whom a Certificate of Eligibility has been issued pursuant to the Act or the successor in interest of such applicant, provided that where a person who has entered into a lease or purchase agreement with the owner or lessee of exempt property has been a co-applicant, such person or the successor in interest of such person shall be deemed the Recipient.

Rules. "Rules" shall mean this chapter of the Rules of the City of New York.

Temporary Certificate of Occupancy. "Temporary Certificate of Occupancy" shall mean, for the purpose of establishing eligibility pursuant to the Act, a Temporary Certificate of Occupancy issued by the Department of Buildings for all of the dwelling units in an Eligible Multiple Dwelling for which benefits pursuant to the Act are sought.

Zoning Resolution. "Zoning Resolution" shall mean the Zoning Resolution of the City of New York.

HISTORICAL NOTE

Section added City Record July 2, 1997 eff. Aug. 1, 1997.

Commencement of Conversion amended City Record Dec. 10, 2004 §4, eff. Jan. 9, 2005. [See T28 §6-01 Note 3]

Hotel amended City Record Apr. 21, 2005 §3, eff. May 21, 2005. [See T28 §5-03 Note 4]

Hotel amended City Record Dec. 10, 2004 §5, eff. Jan. 9, 2005. [See T28 §6-01 Note 3]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 2, 1997 eff. Aug. 1, 1997. Note further provisions: Section 421-g of the Real Property Tax Law authorizes the Department to promulgate Rules governing administration of

the program. The proposed Rules deal with (i) application procedure, documentation, and filing fees, (ii) effective date, duration of exemption and abatement, implementation procedure with the Department of Finance, (iii) rent registration, and (iv) certifying continuing use, record keeping, revocation of taxd exemption and abatement; discrimination prohibited.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 32-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 32*1 TAX EXEMPTION AND TAX ABATEMENT UNDER §421-G OF THE REAL PROPERTY TAX LAW

§32-03 Application Procedure, Documentation, Filing Fees.

(a) **Application Forms.** All applications shall be submitted to the Department by the March 31 immediately following the first taxable status date following Completion of Conversion on such form or forms as shall be prescribed by the Department. All application forms may be obtained from the Department of Housing Preservation and Development, Office of Tax Incentives, 100 Gold Street, New York, NY 10038. Only applications complete in all detail shall be considered for a Certificate of Eligibility. All forms must be filled out fully and legibly by the applicant and shall be typewritten or inscribed in permanent ink.

An application shall consist of the following:

(1) A copy of the pre-construction Certificate of Occupancy, or, if no such Certificate of Occupancy is available, a letter from the Department of Buildings establishing the pre-conversion use of the Non-Residential Building, or other proof that the Eligible Multiple Dwelling was a Non-Residential Building prior to conversion.

(2) A copy of the new Temporary or Permanent Certificate of Occupancy issued as a result of the conversion of a Non-Residential Building to an Eligible Multiple Dwelling. The new Temporary or Permanent Certificate of Occupancy must be issued by the Department of Buildings by the taxable status date in order for the Eligible Multiple Dwelling to receive tax benefits the following tax year.

(3) (i) If the Eligible Multiple Dwelling shall be owned as a cooperative or condominium: a copy of the prospectus or offering plan which has been accepted for filing by the Attorney General (if required by law), and all subsequent

amendments which become effective prior to the time the Office issues a Certificate of Eligibility. If the prospectus or offering plan has not yet been approved by the Attorney General, a statement by the owner that if the prospective cooperative or condominium plan has not been declared effective for filing at a time fifteen months after the issuance of a Certificate of Eligibility, that such owner will register the rental units with the New York State Division of Housing and Community Renewal no later than fifteen calendar days after such fifteen month period or

(ii) If the Eligible Multiple Dwelling shall be owned as a rental building:

(A) evidence satisfactory to the Office that the owner of rental dwelling units has registered all dwelling units in the Eligible Multiple Dwelling other than Exempt Dwelling Units with the New York State Division of Housing Community and Renewal or

(B) if the Eligible Multiple Dwelling is not registered at the time of issuance of a Certificate of Eligibility, an affidavit, on a form approved by the Office, stating that the owner shall register all units other than Exempt Dwelling Units as they become occupied and shall submit proof of registration thereof.

(4) A copy of one set of plans covering the Eligible Multiple Dwelling approved by the Department of Buildings, as evidenced by a seal of the Department of Buildings thereon or an architect's affidavit that such plans are so approved.

(5) A copy of the Department of Buildings "Plan Work Approval Application" (PW-1), with the "Schedule A-Occupancy/Use" (PW-1A), the "Work Permit Application" (PW-2), and the approved building permit or equivalent, as required by the Department of Buildings.

(6) A copy of the dated revised tax map approved by the Department of Finance if applicable. A complete application for a revised tax map for the Eligible Multiple Dwelling must be filed with the Department of Finance no later than December first of the year preceding the commencement of the Benefit Period.

(7) A computer printout from the Department of Finance and the Department of Environmental Protection (for water & sewer charges) listing outstanding charges on the Eligible Multiple Dwelling owed to the City. If outstanding charges on the Eligible Multiple Dwelling are owed to the City at time of application, the Applicant must provide proof of payment or evidence that the outstanding charges are being paid in timely installments pursuant to a written agreement with the Department of Finance or other appropriate agency.

(8) An affidavit, in the form approved by the Office, setting forth the following information:

(i) a statement that within seven years immediately preceding the date of application for a Certificate of Eligibility, neither the Applicant, nor any person owning a substantial interest in the property (as herein defined as ownership and control of an interest of ten per cent (10%) or more in property or any Person owning a property), nor any officer, director, or general partner of the applicant or such person was finally adjudicated by a court of competent jurisdiction to have violated §235 of the Real Property Law or any section of Article 150 of the Penal Law or any similar arson law of another jurisdiction with respect to any building, or was an officer, director, or general partner of a Person at the time such Person was finally adjudicated to have violated such law; and

(ii) a statement setting forth any pending charges alleging violation of §235 of the Real Property Law or any section of Article 150 of the Penal Law or any similar arson law of another jurisdiction with respect to any building by the applicant or any Person owning a substantial interest (as defined above) in the property, or any officer, director, or general partner of the Applicant or such Person, or any Person for whom the applicant or person owning a substantial interest in the property is an officer, director or general partner.

(9) A statement that the applicant agrees to comply with and be subject to the Rules promulgated by the Department of Finance and the Department to secure compliance with the Act and all applicable local, state, and federal laws.

(10) Such application shall also certify that all taxes, water charges and sewer rents currently due and owing on the property which is subject of the application have been paid or are currently being paid in timely installments pursuant to written agreement with the Department of Finance or other appropriate agency.

(b) **Qualified Applicants.** (1) In addition to any other qualifications for benefits pursuant to the Act, the Applicant must be:

(i) obligated to pay real property tax on the property for which benefits are sought, whether such obligation arises because of record ownership of such property or because the obligation to pay such tax has been assumed by contract; or

(ii) the record owner or lessee of property which is exempt from real property taxation who has entered into an agreement to sell or lease such property to another person. Such person shall be a co-applicant with such owner or lessee.

(2) A co-applicant with a public entity shall be eligible to receive benefits pursuant to the Act, provided that for such period as the property that is the subject of the Certificate of Eligibility is exempt from real property taxation because it is owned or controlled by a public entity no benefits shall be available to such Recipient pursuant to the Act.

Such Recipient shall receive benefits pursuant to the Act when such property ceases to be eligible for exemption pursuant to other provisions of law, as follows: the Recipient shall, commencing with the date such tax exemption ceases, and continuing until the expiration of the Benefit Period pursuant to the Act, receive the benefits to which such Recipient is entitled in the corresponding tax year pursuant to the Act.

(3) The burden of proof shall be on the applicant to show by clear and convincing evidence that the requirements for granting benefits under the Act have been satisfied. The Department shall have the authority to require that statements in connection with the application shall be made under oath.

(c) **Timing Requirements.** (1) Non-Residential Buildings of less than 100,000 square feet of Aggregate Floor Area

(i) In a non-residential building of less than 100,000 square feet of Aggregate Floor Area; Completion of Conversion to an Eligible Multiple Dwelling of at least seventy-five per cent (75%) of the Aggregate Floor Area of such Non-Residential Building, as evidenced by a Temporary or permanent Certificate of Occupancy, must take place within three years of Commencement of Construction.

(ii) Only the Aggregate Floor Area for which conversion is completed within such three year period shall be considered in calculating the exemption and abatement provided pursuant to the Act.

(2) Non-Residential Buildings of 100,000 square feet or more of Aggregate Floor Area

(i) In a Non-Residential Building of 100,000 square feet or more of Aggregate Floor Area, Completion of Conversion to an Eligible Multiple Dwelling of at least seventy-five per cent (75%) of the Aggregate Floor Area of such Non-Residential Building, as evidenced by a Temporary or permanent Certificate of Occupancy, must take place within five years of Commencement of Conversion, provided, however, that Completion of Conversion to an Eligible Multiple Dwelling of at least fifty per cent (50%) of the Aggregate Floor Area of such Non-Residential Building must take place within three years of Commencement of Conversion.

(ii) Proof of completion of partial conversion within three years shall be submitted with an application for a Certificate of Eligibility for full exemption and abatement benefits pursuant to the Act.

(iii) Only the Aggregate Floor Area for which conversion is completed within the five-year period specified in

§32-03(c)(2)(i) of these Rules or, in the case of partial exemption from or partial abatement of real property taxes, the three-year period specified in §32-04(b)(3) of these Rules, shall be considered in calculating the exemption and abatement provided pursuant to the Act, provided, however, that neither partial exemption from nor partial abatement of real property taxes shall be available for Commercial, Community Facility or Accessory Use Space.

(d) **Calculating Aggregate Floor Area.** (1) In a Non-Residential Building of less than 100,000 square feet of Aggregate Floor Area containing a separately assessed non-residential parcel, the Aggregate Floor Area of such separately assessed non-residential parcel shall not be considered in determining whether seventy-five per cent (75%) of the Aggregate Floor Area of such Non-Residential Building has been converted to an Eligible Multiple Dwelling.

(2) In a Non-Residential Building of 100,000 square feet or more of Aggregate Floor Area containing a separately assessed non-residential parcel, the Aggregate Floor Area of such separately assessed non-residential parcel shall not be considered in determining whether seventy-five per cent (75%) or, in the case of partial exemption from or partial abatement of real property taxes, fifty per cent (50%) of the Aggregate Floor Area of such Non-Residential building has been converted to an Eligible Multiple Dwelling.

(3) **Commercial Reduction of Benefits:** (i) If the Aggregate Floor Area of Commercial, Community Facility and Accessory Use Space exceeds twelve per cent (12%) of the Aggregate Floor Area of any building (Eligible Multiple Dwelling) receiving benefits pursuant to the Act, the benefits provided pursuant to the Act shall be equal to the amount provided by §32-04(b)(1) and §32-04(b)(2) of these Rules, reduced by a percentage equal to the difference between the per centum of the Aggregate Floor Area that is Commercial, Community Facility and Accessory Use Space and twelve per cent (12%).

(ii) If the Aggregate Floor Area of such building (Eligible Multiple Dwelling) contains more than twenty-five per cent (25%) of Commercial, Community Facility and Accessory Use Space no benefits shall be available pursuant to the Act.

(iii) If a building contains a separately assessed non-residential parcel, the Aggregate Floor Area of such parcel shall not be considered in calculating the Aggregate Floor Area of Commercial, Community Facility and Accessory Use Space relevant to determining eligibility for and amount of benefits pursuant to the Act.

(e) **Filing Fees.** (1) **Application Fee:** A non-refundable application fee of one thousand five hundred dollars ($1,500) plus two hundred and fifty dollars ($250) per dwelling unit, not to exceed twenty five thousand dollars ($25,000) per application shall be paid at the time of application. For applications received prior to the effective date of these Rules, the application fee shall be paid at the time of issuance of a Certificate of Eligibility. No applications received after the effective date of these Rules will be accepted by the Department without the application fee. For Eligible Multiple Dwellings of 100,000 square feet or more of Aggregate Floor Area applying for partial benefits, each subsequent submission after the initial application shall be accompanied by a non-refundable fee of two thousand five hundred ($2,500) dollars. Such fee shall be non-refundable under any circumstances, including but not limited to the subsequent revocation or revision of a Certificate of Eligibility.

(2) A declaratory ruling with respect to an analysis of a specific fact pattern, document or organizational structure or an interpretation of the applicability of a specific provision of the Act or Rules to an actual or hypothetical site, project, fact pattern, document or organizational structure or any other issue related to eligibility may be given by the Office upon payment of a non-refundable fee of one thousand five hundred ($1,500) dollars payable at the time such declaratory ruling is requested in writing. In no event shall a prior ruling bind the Office as to the overall eligibility of a project for benefits pursuant to the Act.

(3) Payment of the fees required by paragraphs (1) and (2) of this subdivision shall be made by a certified or cashier's check payable to the New York City Department of Finance.

(4) Paragraphs (1) and (3) of this subdivision shall take effect in accordance with subdivision e of §1043 of the

Charter and shall be retroactive to and deemed to have been in full force and effect on and after April 1, 1997.

HISTORICAL NOTE

Section added City Record July 2, 1997 eff. Aug. 1, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 2, 1997 eff. Aug. 1, 1997. Note further provisions: Section 421-g of the Real Property Tax Law authorizes the Department to promulgate Rules governing administration of the program. The proposed Rules deal with (i) application procedure, documentation, and filing fees, (ii) effective date, duration of exemption and abatement, implementation procedure with the Department of Finance, (iii) rent registration, and (iv) certifying continuing use, record keeping, revocation of taxd exemption and abatement; discrimination prohibited.

Rules of the City of New York

28 RCNY 32-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 32*1 TAX EXEMPTION AND TAX ABATEMENT UNDER §421-G OF THE REAL PROPERTY TAX LAW

§32-04 Effective Date, Duration of Exemption and Abatement, Implementation Procedure with the Department of Finance.

(a) **Effective Date of Abatement and Exemption.** Tax benefits issued pursuant to the Act shall begin the July 1 following the issuance of a Certificate of Eligibility by the Department, provided that:

(1) an application for tax benefits must be received by the Department by the close of business on the March 31 following the first taxable status date following Completion of Conversion. An application for partial tax exemption and abatement benefits for Non-Residential Buildings of 100,000 square feet or more of Aggregate Floor Area must be received by the close of business on the March 31 following the first taxable status date following the partial Completion of Conversion, and

(2) a Temporary Certificate of Occupancy or Certificate of Occupancy is issued by the Department of Buildings by the prior taxable status date, and

(3) for applications received after March 31, 1997, the applicant has submitted evidence that the Department of Finance has approved the final tax lots for those tax lots subject to the benefits pursuant to the Act by the prior taxable status date, if lot apportionment is required.

(b) **Duration and Extent of Benefits.** (1) **Duration of Exemption.**

(i) Eligible Multiple Dwellings not designated as a Landmark prior to Completion of Conversion: a tax lot

containing an Eligible Multiple Dwelling that is the subject of a Certificate of Eligibility issued pursuant to the Act shall be exempt from real property taxation for local purposes, other than assessments for local improvements, on the amount of the assessed value attributable exclusively to the physical improvement, for a period not to exceed twelve consecutive years beginning in the tax year immediately following the issuance of a Certificate of Eligibility, so long as such Eligible Multiple Dwelling is used or held out for use for dwelling purposes, except as otherwise provided herein.

During the first eight years, the exemption shall equal the amount of the assessed value attributable exclusively to the physical improvement. During the ninth year, the exemption shall equal eighty per cent (80%) of such amount; during the tenth year, the exemption shall equal sixty per cent (60%) of such amount; during the eleventh year, the exemption shall equal forty per cent (40%) of such amount; and during the twelfth year, the exemption shall equal twenty per cent (20%) of such amount.

(ii) Eligible Multiple Dwellings designated as a Landmark before Completion of Conversion: a tax lot containing an Eligible Multiple Dwelling that is the subject of a Certificate of Eligibility issued pursuant to the Act, and that is in a building that, in accordance with procedures set forth in local law, was designated as a Landmark before Completion of Conversion shall be exempt from real property taxation for local purposes, other than assessments for local improvements, on the amount of the assessed value attributable exclusively to the physical improvement, for a period not to exceed thirteen consecutive years beginning in the tax year immediately following the issuance of a Certificate of Eligibility, so long as such Eligible Multiple Dwelling is used or held out for use for dwelling purposes, except as otherwise provided herein.

During the first nine years, the exemption shall equal the amount of the assessed value attributable exclusively to the physical improvement. During the tenth year, the exemption shall equal eighty per cent (80%) of such amount; during the eleventh year, the exemption shall equal sixty per cent (60%) of such amount; during the twelfth year, the exemption shall equal forty per cent (40%) of such amount; and during the thirteenth year, the exemption shall equal twenty per cent (20%) of such amount.

(2) **Duration of Abatement.** (i) Eligible Multiple Dwellings not designated as a Landmark prior to Completion of Conversion: in addition to the benefits set forth in §32-04(b)(1)(i) of these Rules, a tax lot containing an Eligible Multiple Dwelling that is the subject of a Certificate of Eligibility issued pursuant to the Act shall receive an abatement of real property taxes for a period not to exceed fourteen consecutive years beginning in the tax year immediately following the issuance of a Certificate of Eligibility, so long as such Eligible Multiple Dwelling is used or held out for use for dwelling purposes, except as otherwise provided herein.

During the first year, the abatement shall be equal to the amount of the real property tax that would have been due but for such abatement, provided, however, that if the tax lot, during the first year of such abatement, was fully or partially exempt from real property taxes, other than pursuant to the exemption authorized by the Act, then the abatement shall equal the amount of real property tax that would have been due but for such full or partial exemption. During the second through tenth years, the abatement shall equal one hundred per cent (100%) of such amount; during the eleventh year, the abatement shall equal eighty per cent (80%) of such amount; during the twelfth year, the abatement shall equal sixty per cent (60%) of such amount; during the thirteenth year, the abatement shall equal forty per cent (40%) of such amount, and during the fourteenth year, the abatement shall equal twenty per cent (20%) of such amount.

(ii) Eligible Multiple Dwellings designated a Landmark prior to Completion of Conversion: in addition to the benefits set forth in §32-04(b)(1)(ii) of these Rules, a tax lot containing an Eligible Multiple Dwelling that is the subject of a Certificate of Eligibility issued pursuant to the Act and that is in a building that, in accordance with procedures set forth in local law, was designated as a Landmark before Completion of Conversion shall receive an abatement of real property taxes for a period not to exceed fifteen consecutive years beginning in the tax year immediately following the issuance of a Certificate of Eligibility, so long as such Eligible Multiple Dwelling is used or held out for use for dwelling purposes, except as otherwise provided herein.

During the first year, the abatement shall be equal to the amount of the real property tax that would have been due but for such abatement, provided, however, that if the tax lot, during the first year of such abatement, was fully or partially exempt from real property taxes, other than pursuant to the exemption authorized by the Act, then the abatement shall equal the amount of the real property tax that would have been due but for such full or partial exemption. During the second through eleventh years, the abatement shall equal one hundred per cent (100%) of such amount; during the twelfth year, the abatement shall equal eighty per cent (80%) of such amount; during the thirteenth year, the abatement shall equal sixty per cent (60%) of such amount; during the fourteenth year, the abatement shall equal forty per cent (40%) of such amount, and during the fifteenth year, the abatement shall equal twenty per cent (20%) of such amount.

The following table shall illustrate the computation of the exemption and abatement pursuant to this subsection:

Tax Year Following Date of Issuance of Certificate of Eligibility	Landmarked Eligible Multiple Dwellings		Non-Landmarked Eligible Multiple Dwellings	
	Exemption	Abatement	Exemption	Abatement
1	100%	100%	100%	100%
2	100%	100%	100%	100%
3	100%	100%	100%	100%
4	100%	100%	100%	100%
5	100%	100%	100%	100%
6	100%	100%	100%	100%
7	100%	100%	100%	100%
8	100%	100%	100%	100%
9	100%	100%	80%	100%
10	80%	100%	60%	100%
11	60%	100%	40%	80%
12	40%	80%	20%	60%
13	20%	60%	0%	40%
14	0%	40%	0%	20%
15	0%	20%	0%	0%

(3) **Partial Benefits for Buildings of 100,000 square feet or more**

(i) In a Non-Residential Building of 100,000 square feet or more of Aggregate Floor Area in which Completion of Conversion to an Eligible Multiple Dwelling of at least fifty per cent (50%) of the Aggregate Floor Area of such Non-Residential Building has taken place within three years of Commencement of Conversion, and which is the subject of a Certificate of Eligibility for partial exemption and partial abatement issued pursuant to the Act, partial exemption and partial abatement of real property taxes shall be available, as follows:

(A) partial exemption benefits shall equal the amount of the assessed value attributable exclusively to the physical improvement resulting from the conversion of at least fifty per cent (50%) of the Aggregate Floor Area of the Non-Residential Building that has received a Temporary Certificate of Occupancy and

(B) partial abatement benefits shall be equal to the amount of the real property tax that would have been due during the first year of such partial abatement but for such partial abatement upon the amount of square feet of Aggregate Floor Area of the Non-Residential Building that has received a Temporary Certificate of Occupancy for conversion of at least

fifty per cent (50%) of the Aggregate Floor Area of the Non-Residential Building, provided, however, that if the tax lot, during the first year of such partial abatement was fully or partially exempt from real property taxes, other than pursuant to the exemption authorized by the Act, then the partial abatement shall be equal to the amount of real property tax that would have been due upon such amount of square feet of Aggregate Floor Area of the Non-Residential Building but for such full or partial exemption. Nothing in this paragraph shall be deemed to require an Applicant to apply for partial exemption or abatement benefits pursuant to the Act, provided, however, that if an applicant applies for a Certificate of Eligibility for such benefits, he or she shall submit proof of completion of partial conversion with the application for such certificate.

(ii) The Benefit Period of the exemption and abatement benefits defined in §32-04(b) of these Rules shall begin upon receipt of any partial exemption from or partial abatement of real property taxes for a Non-Residential Building of 100,000 square feet or more of Aggregate Floor Area.

(4) **Benefit Reduction for Non-Residential Space.** If the Aggregate Floor Area of Commercial, Community Facility and Accessory Use Space exceeds twelve per cent (12%) of the Aggregate Floor Area of any building receiving benefits pursuant to the Act, the abatement and exemption benefit shall be reduced according to the procedure set forth in §32-03(d)(3) of these Rules.

(5) Benefits granted under the Act may not be combined with benefits under any other section of the Real Property Tax Law or any local law or any Rule promulgated thereunder for the same tax lot.

(c) **Implementation of Benefit.** Upon issuance of a 421-g Certificate of Eligibility, payment of outstanding fees, and verification that all charges owed to the City outstanding for more than one quarter have been paid, the Department will transmit the Certificate of Eligibility to the Department of Finance.

HISTORICAL NOTE

Section added City Record July 2, 1997 eff. Aug. 1, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 2, 1997 eff. Aug. 1, 1997. Note further provisions: Section 421-g of the Real Property Tax Law authorizes the Department to promulgate Rules governing administration of the program. The proposed Rules deal with (i) application procedure, documentation, and filing fees, (ii) effective date, duration of exemption and abatement, implementation procedure with the Department of Finance, (iii) rent registration, and (iv) certifying continuing use, record keeping, revocation of taxd exemption and abatement; discrimination prohibited.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 32-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 32*1 TAX EXEMPTION AND TAX ABATEMENT UNDER §421-G OF THE REAL PROPERTY TAX LAW

§32-05 Rent Regulation.

(a) **Applicability of Rent Regulation:** Notwithstanding the provisions of the City Rent and Rehabilitation Law (§26-401 et seq. of the Administrative Code), as amended; or the Rent Stabilization Law of 1969 (§26-501 et seq. of the Administrative Code), as amended; or the Emergency Tenant Protection Act of 1974, as amended, the rents of each dwelling unit in an Eligible Multiple Dwelling, except Exempt Dwelling Units, shall be fully subject to control under such local laws and act for the entire period for which the Eligible Multiple Dwelling is receiving benefits pursuant to the Act. An Eligible Multiple Dwelling receiving benefits pursuant to the Act whose benefits are suspended, terminated or revoked by the Department shall be deemed to be receiving benefits for the length of time such benefits would have been received if such benefits had not been suspended, terminated or revoked, or for the period such local law is in effect, whichever is shorter.

(b) **Deregulation of Units:** After the expiration of the Benefit Period, such rents shall continue to be subject to rent regulation, except that such rents that would not have been subject to such rent regulation but for this Section, shall be decontrolled if the landlord has included in each lease and renewal thereof for such unit for the tenant in residence at the time of such decontrol a notice in at least twelve point type informing such tenant that the unit shall become subject to such decontrol upon the expiration of benefits pursuant to the Act.

HISTORICAL NOTE

Section added City Record July 2, 1997 eff. Aug. 1, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 2, 1997 eff. Aug. 1, 1997. Note further provisions: Section 421-g of the Real Property Tax Law authorizes the Department to promulgate Rules governing administration of the program. The proposed Rules deal with (i) application procedure, documentation, and filing fees, (ii) effective date, duration of exemption and abatement, implementation procedure with the Department of Finance, (iii) rent registration, and (iv) certifying continuing use, record keeping, revocation of taxd exemption and abatement; discrimination prohibited.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 32-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 32*1 TAX EXEMPTION AND TAX ABATEMENT UNDER §421-G OF THE REAL PROPERTY TAX LAW

§32-06 Certifying Continuing Use, Record Keeping; Revocation of Tax Exemption and Abatement; Discrimination Prohibited.

(a) **Certifying Continuing Use.** (1) For the duration of the Benefit Period, the Recipient shall file annually with the Department, on or before the taxable status date, a certificate of continuing use. Such certificate shall be on a form prescribed by the Department. The Department shall have the authority to require such information as it deems necessary to determine whether the Recipient has established continuing eligibility for benefits.

(2) The Department shall have the authority to terminate benefits pursuant to the Act upon failure of the Recipient to file such certificate by the taxable status date. The burden of proof shall be on the Recipient to establish continuing eligibility for benefits and the Department may require that statements made in such certificate shall be made under oath.

(3) The Recipient shall, on the certificate of continuing use, state whether any charges alleging violation by the Recipient or any Person owning substantial interest (as herein defined as ownership and control of an interest of ten per cent (10%) or more in property or any Person owning a property) in the property, or any officer, director, or general partner of the Recipient or Person owning a substantial interest in the property, or any Person for whom the Recipient or Person owning a substantial interest in the property is an officer, director or general partner, of §235 of the Real Property Law or any section of Article 150 of the Penal Law or any similar arson law of another jurisdiction, are pending.

(b) **Collection of Data; subpoenas; testimony.** At any time subsequent to the filing of an application and during

the Benefit Period, the Department may:

(1) Examine any books, papers, records or other data which may be relevant or material to the tax exemption requested or granted;

(2) Administer oaths to and take the testimony of any Person, including, but not limited to the owner of property which is the subject of an application for a Certificate of Eligibility or a Certificate of Eligibility pursuant to the Act and issue subpoenas requiring the attendance of persons and the production of such bills, books, papers or other documents as it shall deem necessary.

(c) **Availability of books and records, revocation.** All books, records and documents required by §32-03(a) herein, or which relate to or support the application made pursuant to the Act, shall be kept by the owner and made available for inspection by the Department until the expiration of the tax benefit requested or granted. Failure to make books, records, or documents, including an annual schedule of rents for each unit in the building available upon request for the Benefit Period may result in the termination or revocation of tax benefits.

(d) **Preservation of Records.** The Department shall maintain a complete file of all records, documents, notice and correspondence relating to each application. Pursuant to the provisions of the Freedom of Information Law, these records shall be open to public inspection upon prior written request to the Department of Housing Preservation and Development, Records Access Officer, 100 Gold Street, New York, NY 10038.

(e) **False or misleading documents; revocation.** (1) The Department may deny, reduce, terminate or revoke any exemption from or abatement of tax payments pursuant to the Act whenever:

(i) a recipient fails to comply with the requirements of the Act or the Rules; or

(ii) an application, certificate, report or other document submitted by an applicant or Recipient pursuant to the Act or these rules contains a false or misleading statement as to a material fact or omits to state any material fact necessary in order to make the statements therein not false or misleading.

The Department may declare any applicant or recipient referred to in §32-06(e)(1)(a) or §32-06(e)(1)(b) of these Rules to be ineligible for future benefits pursuant to the Act for the same or other property.

(2) Notwithstanding any other law to the contrary, a recipient shall be personally liable for any taxes owned pursuant to the Act whenever such Recipient fails to comply with the Act or these rules, or makes such false or misleading statement or omission, and the Department determines that such act was due to the recipient's willful neglect, or that under the circumstances such act constituted a fraud on the Department or a buyer or prospective buyer of the property. The remedy herein for an action in personam shall be in addition to any other remedy or procedure for the enforcement of collection of delinquent taxes provided by any general, special or local law. Any lease provision which obligates a tenant to pay taxes which become due because of willful neglect or fraud by the recipient, or otherwise relieves or indemnifies the recipient from any personal liability arising hereunder, shall be void as against public policy except where the imposition of such taxes or liability is occasioned by actions of the tenant in violation of the lease.

(f) **Additional grounds for termination or revocation.** The Commissioner of Finance or the Commissioner of Housing Preservation and Development may terminate or revoke tax exemption and tax abatement granted to a building pursuant to the Act upon the happening of any of the following events:

(1) Any eligible multiple dwelling in which aggregate floor area is converted from the use authorized pursuant to the Act:

(i) where such conversion results in less than seventy-five per cent (75%) of the aggregate floor area of such

property being used or held out for use for dwelling purposes, or

(ii) where such conversion results in more than twenty-five per cent (25%) of such aggregate floor area being used or held out for use for commercial, community facility or accessory use space, or

(iii) where such conversion in a building of 100,000 square feet or more of aggregate floor area that has a certificate of eligibility for partial exemption or partial abatement pursuant to §32-04(b)(3) of these rules results in less than fifty per cent (50%) of such aggregate floor area being used or held out for use for dwelling purposes,

shall cease to be eligible for benefits as of the last date upon which the eligible multiple dwelling met the requirements of the Act and the recipient proves by clear and convincing evidence that at least seventy-five per cent (75%) of the aggregate floor area of the property was used or held out for use for dwelling purposes, or twenty-five per cent (25%) or less of the aggregate floor area of such property was used or held out for use for commercial, community facility or accessory use space, or at least fifty per cent (50%) of the aggregate floor area of such property in a building of 100,000 sqare feet or more which is receiving partial exemption or abatement benefits was used or held out for use for dwelling purposes, respectively.

Such recipient shall pay, with interest, any taxes for which benefits were claimed after such date, including the pro-rata share of tax for which any benefits were claimed during the tax year in which the property was converted to a use not eligible for benefits pursuant to the Act.

Notwithstanding the foregoing, an eligible multiple dwelling shall not be subject to termination or revocation of benefits pursuant to this paragraph (1) by reason of the conversion of the use of space therein if such conversion results from the actions of a third party unaffiliated with the recipient, the lease or occupancy agreement with such third party contains a provision prohibiting such conversion, and the recipient is actively prosecuting enforcement of such provision.

(2) If, during the benefit period, any real property tax or water or sewer charge due and payable with respect to property receiving an exemption or abatement pursuant to the Act shall remain unpaid for at least one year following the date upon which such tax or charge became due and payable, all exemptions and abatements granted pursuant to the Act with respect to such property shall be revoked, unless within thirty days from the mailing of a notice of revocation by the Department of Finance satisfactory proof is presented to the Department of Finance that any and all delinquent taxes and charges owing with respect to such property as of the date of such notice have been paid in full or are currently being paid in timely installments pursuant to a written agreement with the Department of Finance or other appropriate agency. Any revocation pursuant to this paragraph shall be effective with respect to real property tax which became due and payable following the date of such revocation.

(3) The eligible multiple dwelling ceases to be subject to the provisions of law set forth in §32-05 of these rules unless the eligible multiple dwelling is exempt from such provisions. Termination shall be effective on the date of such cessation;

(4) Any person subject to be summoned by virtue of §32-06(b) of these rules fails to appear and produce books, papers, records or other data as required by said section, after being duly summoned to appear. Revocation shall be retroactive to start of construction;

(5) The applicant fails to file the certificate of continuing use as described in §32-06(a) of these rules by the taxable status date of a given year. Termination of benefits shall take effect July 1 of the tax year relating to such taxable status date.

(6) Any partial exemption from or partial abatement of real property taxes granted pursuant to the Act for a non-residential building of 100,000 square feet or more of aggregate floor area shall be revoked if completion of conversion of at least seventy-five per cent (75%) of the aggregate floor area of such non-residential building has not

taken place within five years of commencement of conversion. Revocation shall be retroactive to the commencement of the benefit period.

(7) If any person described in the statement required by §32-03(a)(8) or §32-06(a)(3) of these rules is finally adjudicated by a court of competent jurisdiction to be guilty of any charge listed in such statement, the recipient shall cease to be eligible for benefits pursuant to the Act and shall pay, with interest, any taxes for which benefits were claimed pursuant to the Act.

(g) **Discrimination prohibited; revocation.** No owner of a multiple dwelling that is receiving the benefits of the Act, nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy thereto in violation of the anti-discrimination provision of §8-107 of the Administrative Code. The practice of any discrimination as described herein shall result in the revocation of benefits under the Act, retroactive to the date of such practice. Nothing contained in this subdivision (g) shall restrict such consideration in the development of housing accommodations for the lawful purpose of providing for the special needs of a particular group.

(h) **Notice and procedure upon reduction, suspension, termination or revocation.** Prior to any reduction, suspension, termination or revocation of benefits under the Act, the Department shall serve, by ordinary mail, a Notice of Reduction, Suspension, Termination, or Revocation on the Eligible Multiple Dwelling, Attn: Managing Agent (or on such other person as the Recipient may request in writing), stating that said recipient is in violation of one or more provisions of the Act or these rules. The notice will provide a brief description of the violation alleged. The recipient shall have ninety (90) days to cure the violation or, alternatively, may request an informal hearing within (30) days from the date of the notice to rebut the allegations therein. Upon the recipient's failure to cure or rebut within the time prescribed, the Department shall advise the Department of Finance that the recipient's certificate of eligibility has been suspended, terminated, or revoked or that the Recipient's exemption or abatement has been reduced. The Department of Finance shall take such action as is necessary to execute the penalty imposed by the Department. All taxes plus interest required to be paid retroactively pursuant to the Act or these rules shall constitute a tax lien as of the date that it is determined that such taxes would have been due but for the benefits claimed pursuant to the Act at three per cent (3%) above the applicable rate of interest imposed by such city generally for non-payment of real property tax with respect to such property for the period in question.

HISTORICAL NOTE

Section added City Record July 2, 1997 eff. Aug. 1, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 2, 1997 eff. Aug. 1, 1997. Note further provisions: Section 421-g of the Real Property Tax Law authorizes the Department to promulgate Rules governing administration of the program. The proposed Rules deal with (i) application procedure, documentation, and filing fees, (ii) effective date, duration of exemption and abatement, implementation procedure with the Department of Finance, (iii) rent registration, and (iv) certifying continuing use, record keeping, revocation of taxd exemption and abatement; discrimination prohibited.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 33-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-01 General Provisions.

(a) **Definitions.**

(1) "Agency Activity" shall mean the making of any Disposition, the provision of any Assistance, or the execution of any agreement regarding Disposition or Assistance by the Agency in connection with a Project.

(2) "Administrative Code" shall mean the Administrative Code of the City.

(3) "Agency" shall mean the City's Department of Housing Preservation and Development and any successor agency.

(4) "Applicant" shall mean any potential Sponsor of a Project, without regard to the method used by the Agency to select the Sponsor for such Project, including, but not limited to, any person or entity which has submitted or might potentially submit a qualification statement, proposal, bid, application, or other submission.

(5) "Assistance" shall mean funds or other items of value provided by the Agency to a Sponsor in order to enable such Sponsor to perform Project Activities. Assistance may be made available to Sponsors in any form permitted by applicable Law which is determined by the Agency to be necessary or desirable, including, but not limited to, Loans and Subsidies.

(6) "Authorization Letter" shall mean a letter authorizing an Applicant or Selected Applicant to apply for funding to a potential public or private financing institution for the development of one or more Project(s) on one or more

Site(s).

(7) "Binding Agreement" shall mean a legally binding written agreement between a Sponsor and the City which (i) requires such Sponsor to perform or be responsible for the performance of Project Activities in connection with a Project, (ii) has been approved by the Governing Body, if such approval is required by applicable Laws, (iii) has been approved as to form by the Law Department, and (iv) has been duly executed by all parties whose execution of such agreement is required to make such agreement legally enforceable; provided, however, that a net lease, lease, or license agreement between the City and an Applicant or Selected Applicant with regard to possession of or the right to enter all or part of a Site during the term of negotiations regarding a Project or prior to the Disposition of a Site shall not be deemed to be a Binding Agreement.

(8) "City" shall mean the City of New York.

(9) "City Housing Goals" shall mean the purposes set forth in §33-01(c).

(10) "Commissioner" shall mean the Commissioner of the Agency or his or her designee.

(11) "Disposition" shall mean the conveyance of fee title or any other real property interest in a Site from the City to a Sponsor. Such real property interests shall include, but shall not be limited to, ground leases, easements, future interests, and other conveyances of less than the entire fee title to a Site. Notwithstanding anything herein to the contrary, such real property interests shall not include any interests conveyed at mortgage foreclosure sales, utility easements, leases entered into by the Agency's Office of Housing Management and Sales, transfers of Jurisdiction over a Site from one City agency to another, or licenses.

(12) "EO Clearance" shall mean that (i) an Applicant, Selected Applicant, or Sponsor and its principals (and, where the Agency deems such additional review to be appropriate, the contractors retained by such Applicant, Selected Applicant, or Sponsor and all of their respective principals) have completed, executed, and submitted the required forms to and attended any required meetings with the Agency's Office of Equal Opportunity, and (ii) the Agency's Office of Equal Opportunity, after review of such information and any other available information, has made no finding of noncompliance with the applicable Laws regarding equal opportunity, labor compensation, locally based enterprises, and other matters monitored by the Agency's Office of Equal Opportunity.

(13) "Governing Body" shall mean the Mayor and/or the City Council, acting singly or in combination in accordance with the powers vested in them by the City Charter.

(14) "GML" shall mean the General Municipal Law of the State of New York.

(15) "Grant" shall mean a grant made by the City to a Sponsor for Project Activities pursuant to Article 16 of the GML.

(16) "IG Clearance" shall mean that (i) an Applicant, Selected Applicant, or Sponsor and its principals (and, where the Agency deems such additional review to be appropriate, the contractors retained by such Applicant, Selected Applicant, or Sponsor and all of their respective principals) have completed, executed, and submitted the required forms to and attended any required meetings with the Department of Investigation's Office of the Inspector General and/or the Agency's Sponsor Review Unit, as the case may be, and (ii) the Department of Investigation's Office of the Inspector General and/or the Agency's Sponsor Review Unit, as the case may be, after review of such information and any other available information, has made no finding of derogatory information which indicates that the City should not do business with such party.

(17) "Laws" shall mean any applicable laws, ordinances, orders, rules, and regulations promulgated by any local, state, or federal authority having jurisdiction over the subject matter thereof, as amended from time to time.

(18) "Law Department" shall mean the City's Law Department and any successor agency, or its designee.

(19) "Loan" shall mean a loan made by the City to a Sponsor for Project Activities.

(20) "Negotiation Letter" shall mean a letter informing a Selected Applicant that the Agency will commence negotiations with such Selected Applicant regarding a Project.

(21) "PHFL" shall mean the Private Housing Finance Law of the State of New York.

(22) "Program" shall mean two or more Projects which (i) share the same funding source, Sponsor, grantee, or borrower, or otherwise provide for similar treatment of multiple Sites, and (ii) are deemed by the Agency to constitute a Program.

(23) "Project" shall mean a project which involves Disposition and/or Assistance by the City to a Sponsor pursuant to these Rules for Project Activities to be performed at any Site.

(24) "Project Activity" shall mean any activity performed, caused to be performed, or required to be performed by the Sponsor in connection with a Project, including, but not limited to, the acquisition, design, rehabilitation, construction, improvement, and/or marketing of a Site.

(25) "RFP" shall mean a Request for Proposals.

(26) "RFQ" shall mean a Request for Qualifications.

(27) "RPTL" shall mean the Real Property Tax Law of the State of New York.

(28) "Rules" shall mean these rules.

(29) "Selected Applicant" shall mean an Applicant selected or approved by the Agency to enter into negotiations with the Agency regarding a Project.

(30) "Site" shall mean the real property and improvements, if any, located in New York City which are the subject of a Project performed pursuant to these Rules.

(31) "Sponsor" shall mean an Applicant or Selected Applicant, or an entity formed by an Applicant or Selected Applicant and approved by the Agency, which has executed one or more Binding Agreement(s) with the Agency. Unless the Agency elects to limit the types of entities which may serve as Sponsor for a Project, a Sponsor may be an individual, corporation, partnership, joint venture, or any other entity permitted by Law.

(32) "Subsidy" shall mean any Assistance by the Agency which is intended to reduce the cost of a Project to its Sponsor. Subsidy may be made available to Sponsors in any form permitted by applicable Law which is determined by the Agency to be necessary or desirable, including, but not limited to, (i) Grants, (ii) real property sale prices which are nominal or are otherwise below the fair market value of such Sites, (iii) Loans at no interest or nominal interest or at interest rates below the prevailing private sector interest rates for similar loans, (iv) Loans which provide for payment or other terms which are more favorable than the prevailing private sector terms for similar loans, (v) Loans which provide that principal and/or interest may be written down or otherwise forgiven, (vi) Tax Benefits, (vii) contractual agreements to provide funding, (viii) waiver or forgiveness of City deposits, fees, charges, taxes, liens, or rights to receive payment, (ix) construction or funding by the City of infrastructure or other improvements which are customarily paid for by real estate developers, (x) rental subsidy assistance administered by the City under the Section 8 Housing Voucher or Certificate Program or any other rental subsidy programs, and (xi) any other Assistance permitted by Law.

(33) "Tax Benefit" shall mean a tax abatement, exemption, or waiver granted by the City to a Sponsor in connection with a Project. For the purposes of the preceding sentence, "tax" shall mean City real property taxes and

assessments, City water and sewer charges, City and state taxes on the transfer of real property, recording taxes and fees, and any other tax or governmental imposition which a Sponsor may be required to pay in connection with a Project.

(b) **Purpose of Rules.** These Rules set forth the procedures for Site and Sponsor selection for Projects.

(c) **Purpose of Projects.** The Agency shall have the power and authority to initiate and undertake Projects for any public purpose, provided that all Agency Activities to be undertaken in connection with any Project are authorized by applicable Laws. Such public purposes shall include, but shall not be limited to, (i) increasing the supply of available rental and ownership housing which is affordable to persons of low, moderate, and/or middle income; (ii) increasing the supply of available rental and ownership housing which is suitable for and affordable to persons with special needs; (iii) encouraging the construction of new residential housing; (iv) facilitating the conversion of existing non-residential structures into residential housing; (v) promoting the preservation and rehabilitation of existing residential housing; (vi) eliminating conditions in existing residential housing which are unsafe or detrimental to health; (vii) facilitating both residential and non-residential uses in accordance with the provisions of the applicable urban renewal plans or urban development action area projects; (viii) facilitating non-residential uses; (ix) mitigating potential adverse environmental impacts of the development of residential housing and the redevelopment of urban renewal areas; (x) encouraging the investment of private capital for such purposes; (xi) maximizing City revenue; and (xii) minimizing City expenses.

(d) **General Authority.** (1) **General.** The Agency may make Dispositions and provide Assistance to Sponsors for the purposes and in accordance with the procedures described in these Rules.

(2) **Site Selection.** The Agency may from time to time select Sites for Projects. The provisions regarding the selection of Sites are contained in §33-02.

(3) **Sponsor Selection.** The Agency may from time to time select Sponsors for Projects through any competitive or non-competitive process authorized by applicable Law which the Agency deems to be in the best interest of the City, including, but not limited to, direct negotiation, RFQ, RFP, competitive bidding, public bidding, auction, and selection by entities other than the Agency. For Projects involving privately owned Sites, notwithstanding any provision of these Rules to the contrary, the Sponsor and Site may be selected together by any such process and the Agency may consider the characteristics of the Site in addition to any other selection criteria. The provisions regarding the selection of Sponsors are contained in §33-03.

(4) **Negotiations.** The Agency may commence, conduct, and/or terminate negotiations with Applicants and/or Selected Applicants. During such negotiations, subject to approval of the Governing Body, where such approval is required by Law, the City may lease or net lease Sites to Applicants and/or Selected Applicants which have complied with all terms of the applicable selection process, applicable Laws, these Rules, and any and all agreements pertaining thereto. The provisions regarding negotiations with Applicants and Selected Applicants are contained in §33-04.

(5) **Disposition.** Subject to approval of the Governing Body, the City may convey Sites to Sponsors which have complied with all terms of the applicable selection process, applicable Laws, these Rules, and any and all agreements pertaining thereto. The provisions regarding Disposition of Sites are contained in §33-05.

(6) **Assistance.** The City may provide Assistance to Sponsors in order to facilitate Project Activities in such amounts and types as are determined by the Agency to be necessary or desirable. The provisions regarding Assistance are contained in §33-06.

(7) **Project Operation.** The Agency may require Sponsors to operate Sites in accordance with regulatory agreements entered into with the Agency. The provisions regarding Project operation are contained in §33-07.

(e) **Programs.** Where two or more Projects share the same funding source, Sponsor, grantee, or borrower, or otherwise provide for similar treatment of multiple Sites pursuant to these Rules, the Agency may deem such Projects to

constitute a Program. The Agency may repeat a Project or create a Program where the Agency, for any reason, deems it necessary or desirable to do so. Such reasons may include, but shall not be limited to, the continued availability of a particular source of funding, the continued need for a particular type of housing, and the continued interest of any non-City persons or entities, whether private, quasi-public, or public, in performing such type of Projects. The Agency shall determine whether any Project is in a Program and whether any set of Projects constitutes a Program.

(f) **Additional Rules.** The Agency may from time to time promulgate additional rules for certain Programs, which rules shall preempt and supersede these Rules to the extent of any conflict, inconsistency, or ambiguity. Such rules shall be promulgated whenever the Agency determines, for any good and sufficient reason, that additional rules are necessary or desirable in order to facilitate the orderly progress of Agency initiatives to achieve the City Housing Goals. Such reasons may include, but shall not be limited to, the number of Projects in, or the type or number of programmatic requirements of, any Program for which the Agency determines that additional rules are necessary or desirable. The Agency shall determine which rules, if any, apply to any Program or Project.

(g) **Source of Funds.** The Agency may fund any Agency Activity deemed by the Agency to be necessary or desirable in connection with a Project with any available source of funds which is eligible for such purpose under applicable Law. Each Project must comply with all statutory and regulatory requirements with respect to the use of such funds, which requirements shall supersede Project requirements in the event of any conflict or inconsistency.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

The proposed rules set forth (i) how sites are selected for projects and programs; and (ii) how sponsors are selected for projects and programs.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 33-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-02 Site Selection.

(a) **General.** This Article sets forth procedures for the selection of Sites for Projects. Such determinations shall be made by the Agency, in accordance with the procedures set forth herein, for the purposes of ascertaining whether a Site meets the requirements of a Project and applicable Laws, achieving the City Housing Goals, and protecting and furthering the best interests of the City.

(b) **Determination of Appropriateness.** The Agency may determine to place any Site into any Project where the Agency determines, for any reason, that such Project is an appropriate treatment for such Site. Such reasons, may include, but shall not be limited to, the following:

(1) The physical conditions or economic characteristics of the Site make it appropriate for the treatment afforded by the Project.

(2) The Site requires more private investment and/or less Assistance than would be provided under any other appropriate Project or Program, and the Project permits the treatment of the Site with such level of private investment or Assistance.

(3) The Site requires less private investment and/or more Assistance than would be provided under any other appropriate Project or Program, and the Project permits the treatment of the Site with such level of private investment or Assistance.

(4) The Site possesses unique features which make the treatment afforded by the Project necessary or desirable.

(5) The Project addresses a housing need which has not been and is not likely to be fully alleviated by the operations of the private housing market, and the Site is appropriate for inclusion in the Project.

(6) The Project would return the Site to private ownership and/or private manage- ment.

(7) The interest of one or more private parties in the Site creates special opportunities to develop the Site in unique and beneficial ways, including, but not limited to, ways which provide housing for persons with special needs, maximize City revenue, permit development with less Assistance than would be required if the Site were in another Project or Program, permit production of a greater number of units or a greater proportion of lower income units than would be produced if the Site were in another Project or Program, and/or permit development of more ancillary open space or other public facilities.

(8) The Site is not City-owned and the owner, or an authorized representative of the owner, has applied to the Agency, pursuant to any process authorized by these Rules, other rules of the Agency, or applicable Law, to have the Site included in a Project which would serve the City Housing Goals.

(9) The inclusion of the Site in the Project would serve any of the City Housing Goals.

(c) **Selection.** Upon the selection of a Site for a Project, the Agency may, but shall not be required to, prepare a written statement identifying the Site and the Project. Such Site selection document may be in any form which the Agency deems appropriate, including, but not limited to, a letter or memorandum placed in the file for the Project, an Authorization Letter, entry into a book, file, database, or other record of Agency Site Selections, any document prepared in order to comply with applicable Laws (including, but not limited to, the Uniform Land Use Review Procedure, the Urban Renewal Law, and the Urban Development Action Area Act), a document issued as part of any process to select a Sponsor (including, but not limited to, any RFQ, RFP, or bid solicitation), or a Loan commitment letter. Failure to prepare a Site selection document shall not invalidate the selection of a Site for a Project.

(d) **Revocation.** The Agency may revoke a Site selection where the Agency deems such revocation to be necessary or desirable. Upon the revocation of a Site selection, the Agency may, but shall not be required to, prepare a written statement identifying the Site and the Project from which the Site has been removed. Such Site selection revocation document, if any, may be in any of the forms permitted for a Site selection document. Failure to prepare a Site selection revocation document writing shall not invalidate the revocation, and any subsequent selection of a Site for a different Project shall serve to automatically terminate the prior Site selection. After revocation of any Site selection, the Agency may select the Site for any other Project in accordance with these Rules.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

The proposed rules set forth (i) how sites are selected for projects and programs; and (ii) how sponsors are selected for projects and programs.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 33-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-03 Sponsor Selection.

(a) **General.** This Article sets forth procedures for the selection of Sponsors for Projects. Such determinations shall be made by the Agency, in accordance with the procedures set forth herein, for the purposes of ascertaining whether a potential Sponsor meets the requirements of a Project and applicable Laws, achieving the City Housing Goals, and protecting the best interests of the City. The Agency may select a Sponsor for a Project by any method permitted by Law which it determines will best meet the Project's objectives and the City Housing Goals, including, but not limited to, direct negotiation, RFQ, RFP, competitive bidding, public bidding, auction, selection by entities other than the Agency, and application. For Projects involving privately owned Sites, notwithstanding any provision of these Rules to the contrary, the Sponsor and Site may be selected together by any such method and the Agency may consider the characteristics of the Site in addition to any other selection criteria.

(b) **Direct Negotiation.** Where the Agency deems it to be necessary or desirable, a Sponsor may be selected for a Project without any competitive process. In such event, the Agency may, prior to taking any Agency Activity with respect to such Project, prepare a written statement signed by the Commissioner setting forth the reasons why a more competitive process was not appropriate or desirable. Such statement, if any, shall thereafter be placed with the records concerning the Project which are retained by the Agency and shall be kept on file in accordance with the Agency's usual record retention policies.

(c) **RFQ.** Where the Agency deems it to be necessary or desirable, a Sponsor may be selected for a Project via an RFQ. The RFQ shall describe the Project and/or Program, the Site, the selection process, and such other matters as the Agency deems to be relevant.

(1) **Issuance.** The Agency may issue RFQs for Projects at any time it deems appropriate and desirable.

(2) **Distribution.** (i) **Notice.** At such time as the Agency issues an RFQ for a Project, the Agency may place advertisements in The City Record and/or such other publications as the Agency shall deem appropriate. The Agency may also mail copies of such advertisement to potential Applicants, including, but not limited to, Applicants who have done prior business with the Agency or who have requested to be on a mailing list for such purpose. The advertisement shall include, at a minimum, a short description of the Project or Program, the place a copy of the RFQ can be obtained and the fee, if any, therefor, and the deadline for submission of qualification statements and the fee, if any, therefor.

(ii) **Availability.** A copy of the RFQ shall be made available to all potential Applicants prior to the submission deadline. The Agency shall require all recipients of any RFQ to identify themselves and shall cause a list of recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process. The Agency may charge a fee, in an amount to be determined by the Agency, for a copy of the RFQ.

(iii) **Amendments.** The Agency may issue amendments to the RFQ at any time prior to the submission deadline. The Agency shall provide copies of such amendments to all recipients of the RFQ.

(3) **Public Information.** (i) **Conference.** Prior to the submission deadline, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about submission and Project requirements. The time and place for such conference, if any, shall be indicated in the RFQ and/or any advertisement.

(ii) **Agency Contacts.** Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the RFQ. The Agency may require that contact with agency personnel by prospective Applicants with respect to an RFQ be limited to one or more person(s) designated in the RFQ and/or that such contact be in writing.

(4) **Submissions.** (i) **Time Period.** The deadline for submissions shall be a reasonable period of time after the advertisement first appears and shall be stated in the RFQ.

(ii) **Fee.** The Agency may require an Applicant to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of a qualification state- ment.

(iii) **Completeness.** The Agency shall require qualification statements to be submitted in the format and number prescribed in the RFQ and to contain all information and forms required therein.

(5) **Selection.** (i) **Basic Requirements.** The Agency may reject a qualification statement if the Agency determines that either of the following basic requirements are not met:

(A) **Completeness.** The qualification statement must include all required forms, and such forms must be fully and properly completed and executed, at the time of submission.

(B) **Compliance.** The qualification statement must comply in all respects with all material terms of the RFQ.

(ii) **Threshold Criteria.** The Agency may impose such additional threshold criteria in the RFQ as it deems necessary or desirable. Provided that a qualification statement has passed all basic requirements, the Agency shall consider such threshold criteria as are established in the RFQ. Such threshold criteria shall include, but shall not be limited to, those characteristics of Applicants which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload).

(iii) **Competitive Criteria.** The Agency may impose such additional competitive criteria in the RFQ as it deems necessary or desirable. Provided that a qualification statement has passed all threshold criteria, the Agency shall consider such competitive criteria as are established in the RFQ. Such criteria shall include, but shall not be limited to,

those characteristics of Applicants which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and expected workload).

(6) **Limitations.** (i) **No Obligation.** An RFQ shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any Applicant at any time, including, but not limited to, the cost of responding to the RFQ.

(ii) **No Warranty.** The Agency shall make no warranties, express or implied, with respect to any factual information contained in any RFQ.

(7) **Rights Retained by Agency.** Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may withdraw any RFQ in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all Applicants which submit qualification statements in response to an RFQ.

(iii) The Agency may at any time waive compliance with an RFQ, change any of the terms and conditions of an RFQ, allow certain Applicants to make modifications or additions to their respective qualification statements, require certain Applicants to submit additional information or documentation, or withdraw individual Sites from an RFQ.

(iv) The Agency may negotiate with one or more Applicants who have submitted qualification statements pursuant to an RFQ, and may negotiate with parties which have not responded to the RFQ.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the RFQ.

(d) **RFP.** Where the Agency deems it to be necessary or desirable, a Sponsor may be selected for a Project via an RFP. The RFP shall describe the Project and/or Program, the Site, the selection process, and such other matters as the Agency deems to be relevant. Where a potential Sponsor has previously submitted a proposal and the Agency has issued an RFP soliciting additional proposals to compete with such proposal, such RFP shall contain a copy or summary of such proposal and shall set forth in detail the standards by which the competition shall be judged.

(1) **Issuance.** The Agency may issue RFPs for Projects at any time it deems appropriate and desirable.

(2) **Distribution.** (i) **Notice.** At such time as the Agency issues an RFP for a Project, the Agency may place advertisements in the **City Record** and/or such other publications as the Agency shall deem appropriate. The Agency may also mail copies of such advertisement to potential Applicants, including, but not limited to, Applicants who have done prior business with the Agency or who have requested to be on a mailing list for such purpose. The advertisement shall include, at a minimum, a short description of the Project or Program, the place a copy of the RFP can be obtained and the fee, if any, therefor, and the deadline for submission of proposals and the fee, if any, therefor.

(ii) **Availability.** A copy of the RFP shall be made available to all potential Applicants prior to the submission deadline. The Agency shall require all recipients of any RFP to identify themselves and shall cause a list of recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process. The Agency may charge a fee, in an amount to be determined by the Agency, for a copy of the RFP.

(iii) **Amendments.** The Agency may issue amendments to the RFP at any time prior to the submission deadline. The Agency shall provide copies of such amendments to all recipients of the RFP.

(3) **Public Information.** (i) **Conference.** Prior to the submission deadline, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about submission and Project requirements.

The time and place for such conference, if any, shall be indicated in the RFP and/or any advertisement.

(ii) **Agency Contacts.** Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the RFP. The Agency may require that contact with Agency personnel by prospective Applicants with respect to an RFP be limited to one or more person(s) designated in the RFP.

(4) **Submissions.** (i) **Time Period.** The deadline for submissions shall be a reasonable period of time after the advertisement first appears and shall be stated in the RFP.

(ii) **Fee.** The Agency may require an Applicant to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of a proposal.

(iii) **Completeness.** The Agency shall require proposals to be submitted in the format and number prescribed in the RFP and to contain all information and forms required therein.

(5) **Selection.** (i) **Basic Requirements.** The Agency may reject a proposal if it determines that either of the following basic requirements are not met:

(A) **Completeness.** The proposal must include all required forms, and such forms must be fully and properly completed and executed, at the time of submission.

(B) **Compliance.** The proposal must comply in all respects with all material terms of the RFP.

(ii) **Threshold Criteria.** The Agency may impose such additional threshold criteria in the RFP as it deems necessary or desirable. Provided that a proposal has passed all basic requirements, the Agency shall consider such threshold criteria as are established in the RFP. Such threshold criteria may include, but shall not be limited to, those characteristics of Applicants which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload), those characteristics of the Applicant's proposal which have a bearing on the performance of the Project (e.g., number and size of units produced, rental or sale prices, income levels or special needs of prospective residents, amount of Assistance required, amount of revenue to be received by the City, and design), and any other factors which the Agency deems appropriate.

(iii) **Competitive Criteria.** The Agency may impose such additional competitive criteria in the RFP as it deems necessary or desirable. Provided that a proposal has passed all threshold criteria, the Agency shall consider such competitive criteria as are established in the RFP. Such criteria may include, but shall not be limited to, those characteristics of Applicants which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and expected workload), those characteristics of the Applicant's proposal which have a bearing on the performance of the Project (e.g., number and size of units produced, rental or sale prices, income levels or special needs of prospective residents, amount of Assistance required, amount of revenue to be received by the City, and design), and any other factors which the Agency deems appropriate.

(6) **Limitations.** (i) **No Obligation.** An RFP shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any Applicant at any time, including, but not limited to, the cost of responding to the RFP.

(ii) **No Warranty.** The Agency shall make no warranties, express or implied, with respect to any factual information contained in any RFP.

(7) **Rights Retained by Agency.** Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may withdraw any RFP in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all Applicants which submit proposals in response to an RFP.

(iii) The Agency may at any time waive compliance with an RFP, change any of the terms and conditions of an RFP, allow certain Applicants to make modifications or additions to their respective proposals, require certain Applicants to submit additional information or documentation, or withdraw individual Sites from an RFP.

(iv) The Agency may negotiate with one or more Applicants who have submitted proposals pursuant to an RFP, and may negotiate with parties which have not responded to the RFP.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the RFP.

(e) **Competitive Bidding.** Where the Agency deems it to be feasible and desirable, a Sponsor may be selected for a Project via competitive bidding without public adver- tisement.

(1) **Solicitation.** The Agency may issue written bid solicitations for Projects at any time it deems appropriate and desirable. The bid solicitation shall describe the Project and/or Program, the Site, the competitive factor(s) upon which the bidding is based, the minimum thresholds, if any, for eligibility to bid, the reasons why public bidding is not feasible or desirable, the method by which bids are being solicited and the justification therefor, and such other matters as the Agency deems to be relevant.

(2) **Distribution.** (i) **Notice.** At such time as the Agency issues a bid solicitation for a Project, the Agency shall inform prospective bidders and solicit bids in such manner as the Agency shall deem appropriate.

(ii) **Availability.** The Agency shall cause a list of recipients of the bid solicitation to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process. The Agency may charge a fee, in an amount to be determined by the Agency, for a copy of the bid solicitation.

(iii) **Amendments.** The Agency may issue amendments to the bid solicitation at any time prior to the submission deadline. The Agency shall provide copies of such amendments to all recipients of the bid solicitation as set forth on the list of recipients.

(3) **Public Information.** (i) **Conference.** Prior to the submission deadline, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about submission and Project requirements. The time and place for such conference, if any, shall be indicated in the bid solicitation.

(ii) **Agency Contacts.** Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the bid solicitation. The Agency may require that contact with agency personnel by prospective bidders with respect to a bid solicitation be limited to one or more person(s) designated in the bid solicitation and/or that such contact be in writing.

(4) **Submissions.** (i) **Time Period.** The deadline for submissions shall be a reasonable period of time after the issuance of the bid solicitation and shall be stated in the bid solicitation.

(ii) **Fee.** The Agency may require a bidder to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of a bid.

(iii) **Completeness.** The Agency shall require bids to be submitted in the format and number prescribed in the bid solicitation and to contain all information and forms required therein.

(5) **Selection.** (i) **Basic Requirements.** The Agency may reject a bid if it determines that either of the following basic requirements are not met:

(A) **Responsiveness.** The bid must include all required forms, such forms must be fully and properly completed and executed, and the bid must comply in all respects with all material terms of the bid solicitation.

(B) **Responsibility.** The Agency may impose such eligibility criteria for bidders in the bid solicitation as the Agency deems necessary or desirable to ensure that only responsible bidders are selected. Each bidder shall be required to comply with all of the eligibility criteria established in the bid solicitation. Such eligibility criteria may include, but shall not be limited to, those characteristics of bidders which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload).

(ii) **Competitive Criteria.** The Agency may impose such competitive criteria for the comparative evaluation of bids in the bid solicitation as it deems necessary or desirable. Provided that a bidder has passed all basic requirements, the Agency shall evaluate such bids on the basis of such competitive criteria as are established in the bid solicitation. Such competitive criteria may include, but shall not be limited to, amount of revenue to be received by the City, amount or type of Assistance required, rental or sale prices, income levels of prospective residents, number and size of units produced, and any other factors which the Agency deems appropriate.

(6) **Limitations.** (i) **No Obligation.** A bid solicitation shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any bidder at any time, including, but not limited to, the cost of responding to the bid solicitation.

(ii) **No Warranty.** The Agency shall make no warranties, express or implied, with respect to any factual information contained in any bid solicitation.

(7) **Rights Retained by Agency.** Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may withdraw any bid solicitation in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all bidders.

(iii) The Agency may at any time waive compliance with a bid solicitation, change any of the terms and conditions of a bid solicitation, allow certain bidders to make modifications or additions to their respective bids, or withdraw individual Sites from a bid solicitation.

(iv) The Agency may negotiate with one or more bidders and may negotiate with non-bidders.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the bid solicitation.

(f) **Public Bidding.** Where the Agency deems it to be feasible and desirable, a Sponsor may be selected for a Project via public bidding.

(1) **Solicitation.** The Agency may issue written bid solicitations for Projects at any time it deems appropriate and desirable. The bid solicitation shall describe the Project and/or Program, the Site, the competitive factor(s) upon which the bidding is based, the minimum thresholds, if any, for eligibility to bid, and such other matters as the Agency deems to be relevant.

(2) **Distribution.** (i) **Notice.** At such time as the Agency issues a bid solicitation for a Project, the Agency shall place advertisements in The City Record and/or such other publications as the Agency shall deem appropriate. The advertisement shall include, at a minimum, a short description of the Project or Program, the place a copy of the bid

solicitation can be obtained and the fee, if any, therefor, and the deadline for submission of bids and the fee, if any, therefor.

(ii) **Availability.** A copy of the bid solicitation shall be made available to all potential bidders prior to the submission deadline. The Agency shall require all recipients of any bid solicitation to furnish identification and shall cause a list of recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process. The Agency may charge a fee, in an amount to be determined by the Agency, for a copy of the bid solicitation.

(iii) **Amendments.** The Agency may issue amendments to the bid solicitation at any time prior to the submission deadline. The Agency shall provide copies of such amendments to all recipients of the bid solicitation.

(3) **Public Information.** (i) **Conference.** Prior to the submission deadline, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about submission and Project requirements. The time and place for such conference, if any, shall be indicated in the bid solicitation and/or any advertisement.

(ii) **Agency Contacts.** Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the bid solicitation. The Agency may require that contact with agency personnel by prospective bidders with respect to a bid solicitation be limited to one or more person(s) designated in the bid solicitation and/or that such contact be in writing.

(4) **Submissions.** (i) **Time Period.** The deadline for submissions shall be a reasonable period of time after the advertisement first appears and shall be stated in the bid solicitation.

(ii) **Fee.** The Agency may require a bidder to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of a bid.

(iii) **Completeness.** The Agency shall require bids to be submitted in the format and number prescribed in the bid solicitation and to contain all information and forms required therein.

(5) **Selection.** (i) **Basic Requirements.** The Agency may reject a bid if it determines that either of the following basic requirements are not met:

(A) **Responsiveness.** The bid must include all required forms, such forms must be fully and properly completed and executed, and the bid must comply in all respects with all material terms of the bid solicitation.

(B) **Responsibility.** The Agency may impose such eligibility criteria for bidders in the bid solicitation as the Agency deems necessary or desirable to ensure that only responsible bidders are selected. Each bidder shall be required to comply with all of the eligibility criteria established in the bid solicitation. Such eligibility criteria may include, but shall not be limited to, those characteristics of bidders which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload).

(ii) **Competitive Criteria.** The Agency may impose such competitive criteria for the comparative evaluation of bids in the bid solicitation as it deems necessary and desirable. Provided that a bidder has passed all basic requirements, the Agency shall evaluate such bids on the basis of such competitive criteria as are established in the bid solicitation. Such competitive criteria may include, but shall not be limited to, amount of revenue to be received by the City, amount or type of Assistance required, rental or sale prices, income levels of prospective residents, number and size of units produced, and any other factors which the Agency deems appropriate.

(6) **Limitations.** (i) **No Obligation.** A bid solicitation shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency

shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any bidder at any time, including, but not limited to, the cost of responding to the bid solicitation.

(ii) **No Warranty.** The Agency shall make no warranties, express or implied, with respect to any factual information contained in any bid solicitation.

(7) **Rights Retained by Agency.** Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may withdraw any bid solicitation in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all bidders.

(iii) The Agency may at any time waive compliance with a bid solicitation, change any of the terms and conditions of a bid solicitation, allow certain bidders to make modifications or additions to their respective bids, or withdraw individual Sites from a bid solicitation.

(iv) The Agency may negotiate with one or more bidders and may negotiate with non-bidders.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the bid solicitation.

(g) **Auctions.** Where the Agency deems it to be feasible and desirable, a Sponsor may be selected for a Project via auction.

(1) **Information.** The Agency may prepare an auction brochure containing written descriptions of the Project, the Site, the eligibility criteria for bidders, the terms and conditions of the auction, and such other matters as the Agency deems to be relevant.

(2) **Distribution of Notice.** (i) **Notice.** At such time as the Agency elects to select a Sponsor via auction, the Agency shall place advertisements in The City Record and/or such other publications as the Agency shall deem appropriate. The advertisement shall include, at a minimum, a short description of the Project or Program, the place and time where the auction brochure may be obtained, the place and time where the auction will be held, and such other matters as the Agency deems to be relevant.

(ii) **Availability.** The Agency shall require all recipients of the auction brochure to identify themselves and shall cause a list of such recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process.

(iii) **Amendments.** The Agency may issue amendments to the auction brochure at any time prior to the auction. The Agency shall send copies of such amendments to all recipients of the auction brochure.

(3) **Public Information.** (i) **Conference.** Prior to the auction, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about the Project and the auction. The time and place for such conference, if any, shall be indicated in the public advertisement for the auction.

(ii) **Agency Contacts.** Agency staff shall be available prior to the auction by telephone and/or in person to answer general questions about the auction. The Agency may require that contact with agency personnel by prospective participants with respect to an auction be limited to one or more person(s) and/or that such contact be in writing.

(4) **Fee.** The Agency may require an auction participant to pay such non-refundable fee as is determined by the Agency to be appropriate upon admission to the auction.

(5) **Eligibility Criteria.** The Agency may impose such eligibility criteria for bidders in the auction as the Agency deems necessary or desirable to ensure that only responsible bidders are selected. Each bidder shall be required to

comply with all of the eligibility criteria established in the terms and conditions of the auction. Such eligibility criteria may include, but shall not be limited to, those characteristics of bidders which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload). The Agency may reject any bidder at an auction if the eligibility requirements are not met.

(6) **Limitations.** (i) **No Obligation.** An auction shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any bidder at any time, including, but not limited to, the cost of attending the auction.

(ii) **No Warranty.** The Agency shall make no warranties, express or implied, with respect to any factual information contained in any written description of the auction.

(7) **Rights Retained by Agency.** Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may cancel any auction at any time.

(ii) The Agency may decline to enter into negotiations with any and all bidders.

(iii) The Agency may at any time waive compliance with the eligibility requirements for the auction, change any of the terms and conditions of the auction, allow certain bidders to make modifications or additions to their respective bids, or withdraw individual Sites from an auction.

(iv) The Agency may negotiate with one or more bidders and may negotiate with non-bidders.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the written description of the auction.

(h) **Non-Agency Selection.** The Agency may select an Applicant to be the Sponsor of a Project without any Agency selection process where such Applicant has already been selected or designated by (i) the Agency in connection with any Project or Program, (ii) another agency or instrumentality of the City, (iii) any agency or instrumentality of the state or federal government, (iv) any public authority, public benefit corporation, or other quasi-governmental entity, or (v) any other entity designated by the Agency to perform such selection. Notwithstanding anything to the contrary in the preceding sentence or elsewhere in these Rules, the Agency shall only select a Sponsor pursuant to this §33-03(h) where the Agency deems such method of selection to be necessary or desirable, and the Agency shall not be required to select any Applicant solely because such Applicant has been selected by any other entity.

(i) **Non-Agency Process.** The Agency may select an Applicant to be the Sponsor of a Project by a process not set forth in these Rules where funding for such Project is provided by, and the alternative selection process is mandated by, either (i) another agency or instrumentality of the City, (ii) any agency or instrumentality of the state or federal government, (iii) any public authority, public benefit corporation, or other quasi-governmental entity, or (iv) any other entity providing funding. Notwithstanding anything to the contrary in the preceding sentence or elsewhere in these Rules, the Agency shall only select a Sponsor pursuant to this §33-03(i) where the Agency deems such method of selection to be necessary or desirable, and the Agency shall not be required to utilize any selection process solely because such selection process has been mandated by any other entity.

(j) **Application.** Where and at such time as the Agency deems it to be necessary or desirable, a Sponsor may be selected for a Project via an application process.

(1) **Distribution.** (i) **Advertisement.** At such time as the Agency commences an application process for a Project, the Agency or its designee may prepare or cause to be prepared an advertisement describing (i) such aspects of the

Project and the selection process as the Agency deems to be relevant, and (ii) the place where application forms can be obtained. The Agency may place such advertisement in The City Record and/or such other publications as the Agency shall deem appropriate. The Agency may also mail copies of such advertisement to potential Applicants, including, but not limited to, Applicants who have done prior business with the Agency or who have requested to be on a mailing list for such purpose.

(ii) **Application Forms.** The Agency or its designee shall prepare or cause to be prepared the forms upon which applications are to be submitted, which forms may require such information as the Agency deems to be necessary or desirable to effectuate the purposes of the Project. Application forms shall be made available by the Agency or its designee to all potential Applicants. The Agency or its designee may charge a fee, in an amount to be determined by the Agency, for application forms.

(iii) **Amendments.** The Agency may change any aspect of the information set forth in the advertisement at any time. The Agency shall amend the advertisement accordingly and shall place such amended advertisement in The City Record, the publications in which the original advertisement appeared, and such other publications as the Agency shall deem appropriate. If it is infeasible for the Agency to publish the amended advertisement in the publications in which the original advertisement appeared, the Agency shall endeavor to provide substantially the same type of notice as was provided with respect to the original advertisement. The Agency may also mail copies of such amended advertisement to potential Applicants who have done prior business with the Agency or who have requested to be on a mailing list for such purpose. Notwithstanding the foregoing, an application process may be terminated by the Agency at any time without advertisement.

(2) **Submissions.** (i) **Time Period.** The Agency may impose a deadline for submission of applications, which shall be a reasonable period of time after the advertisement first appears. The Agency may, in the alternative, impose no deadline, in which case the Agency shall receive, review, and approve or reject applications on a rolling basis as and when such applications are received.

(ii) **Fee.** The Agency or its designee may require an Applicant to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of an application or thereafter.

(iii) **Completeness.** The Agency shall require applications to be submitted on the required forms and to be completed and executed in the manner set forth therein.

(3) **Selection.** (i) **Completeness.** The application must include all required forms, and such forms must be fully and properly completed and executed, at the time of submission. The Agency may reject an application if it determines that such requirements are not met.

(ii) **Selection.** The Agency may review and judge applications and select Sponsors by any method and upon any criteria permitted by Law or these Rules, including, but not limited to, the methods set forth in §33-03(b), §33-03(c)(5), §33-03(d)(5), §33-03(e)(5), §33-03(f)(5), §33-03(g), §33-03(h), and §33-03(i).

(4) **Limitations.** (i) **No Obligation.** The publication of an advertisement and the provision and acceptance of application forms shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any Applicant at any time, including, but not limited to, the cost of preparing an application.

(ii) **No Warranty.** The Agency shall make no warranties, express or implied, with respect to any factual information contained in any advertisement.

(5) **Rights Retained by Agency.** Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may terminate any application process in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all Applicants which submit applications.

(iii) The Agency may at any time allow Applicants to make modifications or additions to their applications and/or require certain Applicants to submit additional information or documentation.

(iv) The Agency may negotiate with Applicants and may negotiate with parties which have not submitted applications.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the advertisement.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

The proposed rules set forth (i) how sites are selected for projects and programs; and (ii) how sponsors are selected for projects and programs.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 33-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-04 Negotiations.

(a) **Notification.** Upon the completion of any selection process, the Agency shall notify each respondent Applicant of the Agency's determination with respect to such Applicant. Such notification may be in such form and delivered in such manner as the Agency deems to be appropriate. With respect to any Selected Applicant, the form of such notification may include, but shall not be limited to, a Negotiation Letter, Authorization Letter, or Loan commitment letter.

(b) **Negotiations.** Negotiations with any Selected Applicant shall be subject to satisfaction of all conditions established in these Rules or imposed by the Agency, Governing Body, or applicable Law.

(1) **Deadlines.** The Agency may require the Selected Applicant to commence or complete negotiations and/or commence or complete other specified actions within a specified time period.

(2) **Deposits.** The Agency may require the Selected Applicant to pay deposits of such types, in such amounts, and at such times as the Agency deems appropriate. The Agency shall notify the Selected Applicant in writing of (i) the types and amounts of the deposits, if any, which the Selected Applicant is or shall be required to pay, (ii) the date upon which each such deposit shall become due, (iii) whether such deposits are refundable or non-refundable, and (iv) if such deposits are refundable, the conditions under which a refund will be issued.

(3) **Project Requirements.** The Agency may establish Program and Project requirements and conditions for the commencement and continuation of negotiations.

(4) **Schedule.** The Agency may establish a schedule of activities which must be completed as pre-conditions for the Agency Activities to be taken in connection with the Project.

(c) **No Liability.** An Authorization Letter or Negotiation Letter, or any written or oral communication with respect to the selection of a Selected Applicant or the ensuing negotiations, is not a contract or agreement and shall not create any rights on the Selected Applicant's part, including, without limitation, rights of enforcement, equity or reimbursement. No such contract or agreement shall exist, and no such rights shall be created, until the City and the Selected Applicant enter into one or more Binding Agreement(s) requiring such Selected Applicant to perform or be responsible for the performance of Project Activities in connection with a Project.

(d) **Termination.** The Agency may terminate negotiations with a Selected Applicant at any time with or without cause. If the Agency elects to terminate negotiations with a Selected Applicant, the Agency shall notify the Selected Applicant of such termination. Such notification may be in such form and delivered in such manner as the Agency deems to be appropriate.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

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***** Current through December 2009 ****

28 RCNY 33-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-05 Site Disposition.

(a) **Approvals.** The Agency shall not make any Disposition until and unless the following approvals have been granted:

(1) **Governing Body Approval.** All Dispositions shall require prior approval by the Governing Body and shall be subject to any further terms and conditions imposed by the Governing Body as a condition for its approval.

(2) **Law Department Approval.** All legal documents relating the transfer of title or otherwise relating to the Project shall require prior approval by the Law Department.

(3) **Agency Approval.** Notwithstanding the prior approval of the Governing Body and the Law Department, all Dispositions shall require prior approval by the Agency, which approval may be withdrawn by the Agency, for any reason deemed by the Agency to be in the best interests of the City, at any time prior to Disposition. As a condition precedent to its approval of any Disposition, the Agency may require a potential Sponsor to have satisfied all terms and conditions determined by the Agency to be necessary or desirable, including, but not limited to, the terms and conditions set forth in any selection process, Authorization Letter, Negotiation Letter, or Loan commitment letter.

(b) **Legal Documents.** The Agency may require a Sponsor to execute such legal documents, including, but not limited to, a deed, land disposition agreement, and regulatory agreement, as the Agency deems necessary or desirable to transfer title to the Site, enforce the obligations of the Sponsor, effectuate the purposes of the Project, and otherwise protect the best interests of the City. Such documents may contain such terms and conditions, consistent with these Rules, as are required by the City on a city-wide basis or as the Agency determines are necessary or desirable to transfer

fee title or any other real property interest in the Site, enforce the obligations of the Sponsor, effectuate the purposes of the Project, and otherwise protect the best interests of the City.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

The proposed rules set forth (i) how sites are selected for projects and programs; and (ii) how sponsors are selected for projects and programs.

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28 RCNY 33-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-06 Assistance.

(a) **General.** The Agency shall have the power and authority to provide, in connection with any Project, such Assistance, including, but not limited to, Loans and Subsidies, as are authorized to be provided by applicable Law.

(b) **Loans.** The Agency shall have the power and authority to provide, in connection with any Project, such Loans as are authorized to be provided by applicable Law.

(1) **General Considerations.** If the Agency Activities to be undertaken in connection with a Project include a Loan, then the Agency, in making determinations concerning Loan terms, shall act to protect the City's interests as a prudent mortgage lender, provide for a reasonable return (where such return is intended in accordance with the Project and applicable Laws) to the Sponsor, and meet the standards of other lenders, if any.

(2) **Eligible Costs.** Subject to the limitations set forth in these Rules and applicable Laws, a Loan may be made in such amounts as may be required for all Project Activities.

(3) **Commitment Letter.** The Agency may state Loan terms in a commitment letter signed by the Commissioner. Such commitment letter, if any, may contain such terms as the Agency may deem necessary or desirable in order to effectuate the purposes of these Rules and to protect the City's interests as a lender. The closing of the Loan shall be made subject to satisfaction of all the terms and conditions contained in such commitment. The commitment letter may require, among other things, that the Sponsor and its contractors and all of their respective principals obtain necessary City approvals and clearances as a condition precedent to the closing of the Loan.

(4) **Financing.** If a Project includes acquisition, purchase money, construction, or permanent financing to be provided by the City, the Loan for such purpose shall be evidenced by a note and may be secured by such security or collateral documents and by such collateral as the Agency may deem necessary or desirable in accordance with applicable Law. The Loan documents may contain such terms, consistent with these Rules, as the Agency may deem necessary or desirable in order to effectuate the purposes of these Rules and applicable Laws and to protect the City's interests as lender. The Loan documents may provide that the indebtedness evidenced or secured thereby shall evaporate in any manner permitted by applicable Law.

(c) **Subsidies.** The Agency shall have the power and authority to provide, in connection with any Project, such Subsidies as are authorized to be provided by applicable Law.

(d) **Federal Benefits.** Notwithstanding any provision of these Rules to the contrary, any allocation of federal benefits, including, but not limited to, rental subsidies and low income housing tax credits, shall be made in accordance with the federal laws and regulations concerning such benefits. Nothing in these Rules shall be deemed to impose any additional requirements regarding such allocation. The Agency may utilize such administrative procedures, consistent with such laws and regulations, as it deems appropriate to effectuate the purposes of the federal benefits and the City Housing Goals.

(e) **Tax Benefits.** Notwithstanding any provision of these Rules to the contrary, any exemption from or abatement of real property taxes pursuant to the PHFL, GML, RPTL, or Administrative Code, including, but not limited to, exemptions or abatements pursuant to Articles 2, 5, and 11 of the PHFL, Article 16 of the GML, Sections 420-a, 420-b, 420-c, 421-a, 421-b, 422, 488-a, and 489 of the RPTL, and Sections 11-243 and 11-244 of the Administrative Code and any successors thereto, shall be made in accordance with the Laws concerning such benefits. Nothing in these Rules shall be deemed to impose any additional requirements regarding such allocation. The Agency may utilize such administrative procedures, consistent with such Laws, as it deems appropriate to effectuate the purposes of such Laws and the City Housing Goals.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

The proposed rules set forth (i) how sites are selected for projects and programs; and (ii) how sponsors are selected for projects and programs.

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***** Current through December 2009 ****

28 RCNY 33-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-07 Project Operation.

(a) **Regulatory Agreement.** A Sponsor may be required to execute a Regulatory Agreement with the Agency as a condition for the Agency Activities taken by the Agency in connection with the Project. The Regulatory Agreement shall be recorded against the Site and shall run with the land for the period set forth therein. The Regulatory Agreement shall require the Sponsor and all of Sponsor's successors and assigns to comply with Project requirements.

(b) **Marketing.** The Agency may require a Sponsor to market vacant dwelling units in accordance with the requirements of a marketing plan prepared by the Agency. Such marketing plan may include such requirements with respect to the marketing as the Agency deems necessary and desirable, including, but not limited to, (i) requirements to ensure outreach to make eligible City residents aware of the availability for rental or sale of such dwelling units, and (ii) requirements to ensure that applications for the rental or sale of dwelling unit are opened and considered in a random order. A marketing plan may, but shall not be required to, contain provisions providing a preference to certain applicants where the Agency deems such preference to be appropriate. Factors for the granting of such preference may include, but shall not be limited to, special needs, residence in the community in which the Site is located, or referral by the Agency to the Sponsor for relocation.

(c) **Use Restrictions.** The Agency may impose restrictions upon the use of a Site and may require a Sponsor to agree to comply with such restrictions as a condition for receiving any Disposition or Assistance. Such use restrictions may be enforced by any means which the Agency determines to be necessary or appropriate, including, but not limited to, provisions in any deed, land disposition agreement, regulatory agreement, note, mortgage, security agreement, lien, restrictive declaration, or other legal document. The Agency may require a Sponsor to provide security for its compliance with use restrictions in such types and amounts as are determined by the Agency to be necessary or

desirable. Such types of security may include, but shall not be limited to, surety bonds, letters of credit, or cash.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

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28 RCNY 33-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-08 Miscellaneous Provisions.

(a) **Termination.** Notwithstanding any provision to the contrary in these Rules or in any document concerning any selection process, Project, or Program, the Agency may reject any Applicant or Selected Applicant and/or terminate any negotiations, selection process, Project, and/or Program at any time and for any reason, including, but not limited to, the reasons set forth in §33-08(a)(1), §33-08(a)(2), §33-08(a)(3), and §33-08(a)(4), or without cause.

(1) **Adverse Findings.** The Agency determines at any time that good and sufficient reasons exist why the City should not do business with an Applicant or Selected Applicant or should not allow such Applicant or Selected Applicant to act as Sponsor for a Project. Such reasons shall include, but shall not be limited to, evidence with respect to the Applicant or Selected Applicant or any member of its development team of (i) arson conviction or pending cases; (ii) harassment conviction or pending cases; (iii) arrears or default upon any debt, lease, contract, tax, lien, fee, charge, or obligation to the City; (iv) City mortgage or tax foreclosure proceedings or arrears; (v) unsuccessful record with comparable projects, including, but not limited to, poor workmanship, failure to complete a project expeditiously, substantial and significant building violations or litigation history against other properties, or unsuccessful record of managing residential real property; (vi) inability, due to lack of organizational capacity, competing demands from other projects, or any other factor, to perform all required Project Activities; (vii) bankruptcy or insolvency; (viii) violation of the conflict of interest provisions of the New York City Charter or any other applicable Laws; or (ix) failure to obtain IG Clearance, EO Clearance, or other necessary City clearances.

(2) **Unable to Recommend Sale.** The Agency is unable to recommend to the Governing Body that it grant the approvals required for a Project for any reason, including, but not limited to, a determination by the Agency that (i) the Applicant or Selected Applicant has failed to clear one or more of the required City reviews, (ii) there has been a

transfer of ownership interests in the Applicant or Selected Applicant after commencement of negotiations without the approval of the Agency, (iii) adequate City funding for the Assistance to be included in the Project is not available, or (iv) funding to be provided by entities other than the City is not available or is not provided in a timely manner.

(3) **Noncompliance.** An Applicant or Selected Applicant has failed to comply with any term or condition established by the City or the Agency, including, but not limited to, any Program or Project requirement, deposit requirement, deadline, or schedule.

(4) **Best Interests of City.** The Agency or the City has not approved the Agency Activities required for a Project for any reason determined by the Agency or the City to be in the best interests of the City.

(b) **Agency Discretion.** All determinations to be made by the Agency and/or the Commissioner in accordance with these Rules shall be in the sole discretion of the Agency and/or the Commissioner; provided, however, that the Agency and/or the Commissioner shall comply in all respects with applicable Laws.

(c) **Statutory Authority Not Limited.** Nothing in these Rules shall be deemed to prevent the Agency from exercising such greater or additional rights, remedies, privileges, powers, and authority as shall be provided by Law.

(d) **Rights Not Conferred.** These Rules are not intended to confer rights or benefits upon the general public or upon any individual or entity. Nothing in these Rules shall be deemed to confer any rights or benefits whatsoever upon any party which are in addition to any rights deriving from applicable Laws or written contracts with the Agency.

(e) **No Legal Obligation.** At any time prior to the execution of a Binding Agreement, the Agency may withdraw all or any portion of a Site from a Project, change the Agency Activities and Project Activities contemplated in connection with a Project, change the Sponsor selection process for a Project, terminate negotiations with an Applicant or Selected Applicant, commence negotiations with one or more other Applicant(s) or Selected Applicant(s), or take any other action deemed by the Agency to be necessary or appropriate. No selection process, or part thereof or actions in connection therewith, shall represent or result in any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any Applicant or Selected Applicant at any time, including, but not limited to, the cost of responding to a selection process. An Authorization Letter or Negotiation Letter, or any written or oral communication with respect to the selection of a potential Sponsor or the ensuing negotiations, is not a contract or agreement and shall not create any rights on the part of the Applicant or Selected Applicant, including, without limitation, rights of enforcement, equity or reimbursement. No such contract or agreement shall exist, and no such rights shall be created, until the City and the Sponsor enter into a Binding Agreement. Approval of a Project and any agreements in connection with such Project by the Governing Body, if applicable, and the Law Department shall not obligate the Agency to proceed with the Project or with the execution of such agreements.

(f) **Technical Violations.** Technical violations of these Rules shall not invalidate the selection of any Site, the selection of any Sponsor, or any other Agency Activity taken pursuant to these Rules, nor shall such technical violations give rise to any rights, claims, or causes of action in favor of members of the general public or potential sponsors.

(g) **Compliance With Laws.** All Agency Activities by the Agency pursuant to these Rules shall be made in accordance with applicable Laws. Each Site and Sponsor selected for any Project pursuant to these Rules shall meet the eligibility criteria of the Laws which authorize the Agency to undertake the Agency Activities necessary or incident to the performance of such Project.

(h) **Fees.** The Agency shall promulgate by rule the amount of any fee provided for in these Rules.

(i) **Waivers.** Where literal application of one or more of the provisions of these Rules would result in unnecessary hardship, would involve practical difficulties, or would constitute an unreasonable limitation beyond the intent and

purpose of these Rules, the Commissioner may at any time waive in writing such provision or provisions of these Rules with respect to any Project. Such writing shall state the reasons for such waiver.

(j) **Singular and Plural.** With respect to any of the terms used in these Rules, the singular shall be deemed to include the plural and the plural shall be deemed to include the singular, unless the context requires otherwise.

(k) **Effective Date.** These Rules shall be deemed effective as of June 29, 1997.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

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Rules of the City of New York

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28 RCNY 34-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-01 Definitions.

Building. "Building" shall mean any City-owned multiple dwelling, other than a single room occupancy dwelling, which is occupied by Tenants.

City. "City" shall mean the City of New York.

Disposition. "Disposition" shall mean the sale of a Building to an HDFC.

Disposition Rent Increase. "Disposition Rent Increase" shall mean the last rent set by HPD prior to Disposition.

HDFC. "HDFC" shall mean a housing development fund company formed pursuant to Article XI of the Private Housing Finance Law in order to purchase a Building pursuant to these Rules.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City.

Intake Rent Increase. "Intake Rent Increase" shall mean the initial rent set by HPD upon Selection of a Building.

Interim Payment Agreement. "Interim Payment Agreement" shall mean an agreement entered into between HPD, the Tenant Association and/or HDFC, and a Tenant eligible for rental assistance to temporarily accept less than the full rent from the Tenant prior to the provision of rental assistance.

Interim Rent Increase. "Interim Rent Increase" shall mean any rent, other than an Intake Rent Increase or a Disposition Rent Increase, set by HPD from time to time after Selection and before Disposition of a Building.

Laws. "Laws" shall mean any and all applicable laws, orders, rules and regulations.

Occupied Units. "Occupied Units" shall mean any lawfully occupied dwelling units leased and occupied by a Tenant in a Building.

Program. "Program" shall mean the Tenant Interim Lease Program.

Rehabilitation. "Rehabilitation" shall mean the installation, replacement, or repair of one or more systems or the correction of inadequate, unsafe, or unsanitary conditions in a Building.

Selection. "Selection" shall mean notification to a Tenant Association, pursuant to §34-03(c) of these Rules, that HPD has approved a Building for the Program.

Rules. "Rules" shall mean the Rules set forth in this chapter.

Tenant. "Tenant" shall mean a residential tenant of record occupying a dwelling unit in a Building pursuant to a lease with the City or with a Tenant Association that has entered into a Tenant Interim Lease. Other residential occupants, such as squatters and licensees, are not Tenants. Non-residential tenants or occupants, such as those who occupy space in a Building for retail, commercial, manufacturing, or community facility purposes, are not Tenants.

Tenant Association. "Tenant Association" shall mean an unincorporated association with elected officers that has been formed by and continues to include as members the Tenants of at least sixty percent (60%) of the Occupied Units in a Building. If there is more than one such unincorporated association, "Tenant Association" shall mean the one from which HPD accepts an application for the Program and, if applicable, the one with which HPD executes a Tenant Interim Lease.

Tenant Interim Lease. "Tenant Interim Lease" shall mean the written month-to-month net lease of an entire Building executed by the City, as lessor, and by the Tenant Association, as lessee, following Selection of a Building.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 34-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-02 General.

(a) **Coverage.** These Rules will govern the procedures for: selecting Buildings for the Program, leasing Buildings to Tenant Associations, determining and establishing rent, providing notice to Tenants and terminating Buildings from the Program. Buildings in the Program will be subject to these Rules and chapter 21 of this title. Notwithstanding any provision of chapter 14 of this title to the contrary, Buildings in the Program will not be subject to chapter 14 of this title.

(b) **Program Description.** Under the Program, Buildings are net leased to Tenant Associations and subsequently sold to HDFCs that will thereafter be solely responsible for the operation of such Buildings.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which

certain City-owned buildings may become tenant-owned low income cooperatives.

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28 RCNY 34-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-03 Entering the Program.

(a) **Eligible buildings.** A Building may be eligible for selection for the Program if HPD makes all of the following discretionary determinations:

(1) the Building requires Rehabilitation such that it is not marketable to the private sector in its "as is" condition, and HPD funding is necessary to return the Building to the private sector; and

(2) the performance of Rehabilitation is technically feasible; and

(3) the cost of Rehabilitation is economically reasonable; and

(4) the cost of Rehabilitation is within available HPD resources; and

(5) the Building is a Class A multiple dwelling containing at least three dwelling units; and

(6) at least two of the dwelling units in the Building are Occupied Units; and

(7) the Building has not been designated by HPD for disposition through another program, except to the extent that rules promulgated by HPD for such other program explicitly authorize a withdrawal to participate in the Program; and

(8) the Building has not previously participated in the Program, unless such participation was terminated more than five years prior to the current application.

(b) **Application procedure; selection requirements.** If HPD has determined that a Building is eligible for the Program and its assignment to the Program is in the best interests of the City, a Tenant Association may apply for selection for the Program by complying with the following standards:

(1) the Tenant Association must submit an application on a form supplied by HPD signed by

(i) the Tenants of all of the Occupied Units in a Building containing up to five dwelling units, or

(ii) the Tenants of at least sixty percent (60%) of the Occupied Units in a Building containing six or more dwelling units; and

(2) the Tenants of at least fifty percent (50%) of the Occupied Units must pay one hundred percent (100%) of the billable rent for their respective dwelling units for the three months immediately prior to the filing of the application and continuously until HPD makes a determination of Selection; and

(3) officers and members of the Tenant Association must attend training classes as directed by HPD; and

(4) the Tenant Association must notify the Tenants of a meeting at which HPD will discuss the Program. Tenants of at least fifty percent (50%) of the Occupied Units must attend the meeting. If Tenants of less than fifty percent (50%) of the Occupied Units attend the meeting, the Tenant Association must notify the Tenants of a second meeting. If Tenants of less than fifty percent (50%) of the Occupied Units attend the second meeting, the Building will not be considered for the Program; and

(5) HPD must determine that the Building can be managed by the Tenant Asso- ciation.

(c) **Notice of approval.** If the application has been approved, HPD will notify the Tenant Association of such approval in a written notice by regular mail to the president of the Tenant Association. The notice of approval shall include any notice of an Intake Rent Increase, which shall be implemented thirty (30) days thereafter in accordance with subdivision (f) of this section, and HPD shall send a copy to the Tenants by regular mail. If the application has been rejected, HPD will notify the president of the Tenant Association of such rejection and the reason therefor by regular mail.

(d) **Post-acceptance activities.** Upon acceptance of the application and prior to execution of the Tenant Interim Lease, the Tenant Association must:

(1) adopt by-laws and articles of association in a form specified by HPD; and

(2) elect officers; and

(3) set up a restricted bank account as required by HPD.

(e) **Execution of the Tenant Interim Lease.** After HPD determines that the Tenant Association has complied with all of the requirements set forth in §34-03(d) of these Rules, the Tenant Association must sign the Tenant Interim Lease and implement the Intake Rent Increase set by HPD.

(f) **Intake Rent Increases.** (1) HPD will from time to time establish intake rent levels, expressed as a minimum dollar amount per zoning room, for all dwelling units in Buildings entering the Program. Such intake rent levels will be based upon maintenance and operating expenses in similar buildings. Such intake rent levels and the rationale therefore will be kept on file by HPD and will be available for public inspection.

(2) HPD will issue an intake rent roll to the Tenant Association and will notify the Tenants of the Intake Rent Increase at least thirty (30) days prior to the effective date of the Intake Rent Increase.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

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28 RCNY 34-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-04 Program Activities.

(a) **Lease.** Upon acceptance of a Building into the Program, HPD will temporarily lease the Building to the Tenant Association pursuant to the terms of a Tenant Interim Lease. The Tenant Interim Lease shall require the Tenant Association to follow these Rules and all HPD directives. Furthermore, officers and members of the Tenant Association must attend training classes as directed by HPD during the term of the Tenant Interim Lease.

(b) **Residential vacancies.** If any dwelling unit in the Building is or becomes vacant, the Tenant Association will not sign a lease for such vacant dwelling unit, or allow such vacant dwelling unit to become occupied, without the prior written approval of HPD.

(c) **Tenant Association.** The Tenant Association will comply with the terms of these Rules, the Tenant Interim Lease, and all HPD directives with regard to the leasing or occupancy of vacant dwelling units. Such HPD directives may include, without limitation,

(i) procedures and criteria for the selection of new Tenants,

(ii) rents to be charged,

(iii) priority for persons that HPD has determined are in need of housing, and

(iv) the use of specified lists of eligible persons.

(d) **Non-residential vacancies.** If any non-residential unit in the Building is or becomes vacant, the Tenant

Association will not sign a lease for such vacant non-residential unit, or allow such vacant non-residential unit to become occupied, without the prior written approval of HPD. The Tenant Association will comply with the terms of these Rules, the Tenant Interim Lease, and all HPD directives with regard to the leasing or occupancy of vacant non-residential units. Such HPD directives may include, without limitation,

(i) procedures and criteria for the selection of new non-residential tenants, and

(ii) rents to be charged.

(e) **Collection of arrears.** At such time as a Tenant is two months or more in arrears on the payment of rent to the Tenant Association, the Tenant Association may commence a proceeding for such rent arrears and/or for possession of the dwelling unit.

(f) **Legal proceedings.** The Tenant Association may not commence legal proceedings against Tenants without the prior written approval of HPD, except as specified in §34-04(e) of these Rules or in the Tenant Interim Lease. For non-residential tenants, legal proceedings may be commenced by the Tenant Association without prior written approval of HPD upon any default in the lease.

(g) **Tenant complaints.** The Tenant Association will respond in a timely manner to all Tenant complaints.

(h) **Interim rent increases.** During the term of the Tenant Interim Lease, one or more rent increases may be necessary to reflect the actual costs of operating a Building. HPD will from time to time establish an interim rent roll for a Building in the Program reflecting expenses of maintaining and operating the Building.

(1) HPD will prepare a statement of the projected cost of maintaining and operating the Building in the period following the Interim Rent Increase, which statement will reflect actual expenditures, adjusted for inflation on an individual or on a compounded yearly basis, for the maintenance and operation of the Building (including, but not limited to, the cost of fuel, common space utilities, repair and maintenance, supplies, insurance, custodial services, and fees for management and professional services) and any other costs anticipated to be associated with the maintenance and operation of the Building.

(2) HPD will calculate the rent levels necessary to cover the projected cost of maintaining and operating the Building in the period following the Interim Rent Increase, as reflected in such statement, and shall implement an Interim Rent Increase based upon such calculation.

(3) HPD will issue an interim rent roll to the Tenant Association and will notify the Tenants of such Interim Rent Increase at least thirty (30) days prior to the effective date of the new rent.

(4) From the date that Tenants receive notice of the Interim Rent Increase until the effective date of the Interim Rent Increase,

(i) HPD will make such statement of maintenance and operating expenses available for public inspection,

(ii) any Tenant may comment in writing to HPD regarding the Interim Rent Increase, and

(iii) HPD will consider any timely comments received from Tenants.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

28 RCNY 34-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-05 Disposition.

(a) **Disposition rent increase.** (1) Prior to disposition, HPD will prepare a statement of the projected cost of maintaining and operating the Building in the first year following Disposition, which statement will reflect,

(i) actual expenditures, adjusted for inflation on an individual or compounded yearly basis, for the maintenance and operation of the Building prior to Disposition (including, but not limited to, the cost of fuel, common space utilities, repair and maintenance, supplies, insurance, custodial services, and fees for management and professional services),

(ii) real estate taxes,

(iii) water and sewer charges,

(iv) contingency reserves,

(v) reserves for vacancies and uncollectible debts, and

(vi) any other costs anticipated to be associated with the maintenance and operation of the Building.

(2) HPD will calculate the rent levels necessary to cover the projected cost of maintaining and operating the Building in the first year following disposition, as reflected in such statement, and shall implement a Disposition Rent Increase based upon such calculation.

(3) HPD will issue a disposition rent roll to the Tenant Association and will notify the Tenants of such Disposition

Rent Increase at least thirty (30) days prior to the effective date of the new rent.

(4) From the date that Tenants receive notice of the Disposition Rent Increase until the effective date of the Disposition Rent Increase,

(i) HPD will make such statement of maintenance and operating expenses available for public inspection,

(ii) any Tenant may comment in writing to HPD regarding the Disposition Rent Increase, and

(iii) HPD will consider any timely comments received from Tenants.

(b) **Disposition.** HPD will not convey a Building to an HDFC unless:

(1) the Tenant Association has, in the judgment of HPD, satisfactorily managed the Building during the term of the Tenant Interim Lease; and

(2) Tenants of at least eighty percent (80%) of the Occupied Units have signed subscription agreements to purchase the shares in the HDFC attributable to their dwelling units; and

(3) HPD has notified the Tenants of the Disposition Rent Increase.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

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28 RCNY 34-06

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CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-06 Rental Assistance.

(a) HPD will assist eligible Tenants in applying for existing rental assistance programs during the period of the Building's participation in the Program. HPD will provide Tenants with applications for §8 of the United States Housing Act of 1973, as amended, and senior citizen rent increase exemptions, advise Tenants which rental assistance program is most suitable for their individual needs, assist Tenants in completing rental assistance applications, and forward all necessary documentation to the appropriate authority for final review and processing.

(b) Each Tenant who applies for rental assistance is solely responsible for supplying all required documentation and materials necessary to process an application: i.e., attending required interviews with the authority responsible for determining a Tenant's eligibility for rental assistance, providing the necessary income certification and complying with all procedures to process an application.

(c) HPD shall review all applications for rental assistance and make a preliminary determination of a Tenant's eligibility within sixty (60) days of receipt of a completed application. HPD shall promptly notify the Tenant Association and/or HDFC of all applicants for rental assistance and shall forward to the Tenant Association and/or HDFC copies of the applications, letters granting or denying rental assistance, Interim Payment Agreements entered into, and letters extending or terminating Interim Payment Agreements. Upon a finding of preliminary eligibility, HPD will provide the Tenant with an Interim Payment Agreement, which shall be signed by the Tenant, the Tenant Association and/or HDFC, and HPD, before it becomes effective. This Interim Payment Agreement shall include:

(1) the amount of the increased rent for the apartment;

(2) the amount of rent that the Tenant must pay pending the final determination of the rental assistance application;

(3) a statement of the grounds for termination pursuant to subdivision (e) of this section; and

(4) notice to the Tenant that s(he) remains liable for the full amount of the rent retroactive to the effective date of the increase if, at any time, the rental assistance application is denied by HPD or the Interim Payment Agreement is terminated pursuant to paragraphs one, three or four of subdivision (e) of this section, provided, however, that if the Interim Payment Agreement is terminated pursuant to paragraph one of subdivision (e) of this section, the Tenant shall not be liable for the full amount of the rent increase retroactive to its effective date if s(he) notifies HPD within thirty (30) days of any change in household income which renders the Tenant ineligible for rental assistance.

(d) A Tenant who receives an Interim Payment Agreement will be required to pay the amount which s(he) would pay on a monthly basis if the rental assistance application is approved, or the rent charged prior to implementation of the rent increase, whichever is greater.

(e) The Interim Payment Agreement will terminate one year after the date of issuance or upon the earlier occurrence of any of the following:

(1) any change in the Tenant's household income which renders the Tenant ineligible for rental assistance; or

(2) any change in the rent charged by the City; or

(3) failure by the Tenant to comply with any of the requirements necessary to process the application for rental assistance; or

(4) failure by the Tenant to pay, within thirty (30) days of the date due, the rent payable under the Interim Payment Agreement pursuant to subdivision (d) of this section, unless payment of such rent is being withheld for lack of services which the Tenant has given written notice of to the Tenant Association and/or HDFC; or

(5) receipt by Tenant of rental assistance pursuant to a rental assistance application filed in accordance with this section.

(f) HPD will permit any Tenant who has applied for rental assistance in accordance with subdivision (b) of this section and who has not been provided with an Interim Payment Agreement pursuant to subdivision (c) of this section, to pay a rent increase in stages of $10.00 per room per quarter.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

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28 RCNY 34-07

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CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-07 Removal from the Program.

HPD may remove a Building from the program and terminate the Tenant Interim Lease with respect to such Building if HPD determines that:

(a) there is a default under the Tenant Interim Lease; or

(b) the management of the Building has failed to comply with generally accepted standards of management; or

(c) the Tenant Association has an inadequate record in regard to rent collections; or

(d) the Tenant Association has an inadequate record in regard to timely payment of bills; or

(e) the Tenant Association has failed to comply with HPD reporting requirements as set forth in the Tenant Interim Lease; or

(f) the Tenant Association has failed to comply with HPD directives; or

(g) HPD determines that the Building no longer meets the eligibility requirements of the program.

(h) for any other reason, it is no longer in the best interests of the City to keep the Building in the program.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note internal relettering by Law Department per Charter §1045(b). [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

28 RCNY 34-08

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CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-08 Miscellaneous Provisions.

(a) **HPD discretion.** All determinations to be made by HPD in accordance with these Rules will be in the sole discretion of HPD.

(b) **Statutory authority not limited.** Nothing in these Rules will be deemed to limit HPD's authority to act pursuant to applicable laws.

(c) **Method of notification.** Unless otherwise provided herein, notices to Tenants will be in English and Spanish, and will either be posted in a common area of the Building and affixed to or placed under each dwelling unit door of the Building, or mailed to every occupied dwelling unit in the Building, as determined by HPD.

(d) **Technical violations.** Provided that there has been a good faith effort to comply with these Rules, technical violations of these Rules will not invalidate any action taken pursuant to these Rules, nor will such technical violations give rise to any rights, claims, or causes of action. HPD, upon good cause shown, may alter the timing or sequence of the actions described in these Rules, provided all affected parties are given reasonable notice.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

28 RCNY 35-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-01 Definitions.

Administrative Code. "Administrative Code" shall mean the Administrative Code of the City.

Building. "Building" shall mean any multiple dwelling that is occupied by Tenants and (prior to sale to the NPC) owned by the City, including any vacant land adjacent thereto, which is or may be the subject of a Project.

City. "City" shall mean the City of New York.

Commissioner. "Commissioner" shall mean the Commissioner of HPD or his or her designee.

DHCR. "DHCR" shall mean the State of New York Division of Housing and Community Renewal.

Disposition. "Disposition" shall mean the date of title transfer of a Building from the NPC to a Sponsor.

Final Selection. "Final Selection" shall mean a decision by HPD to select a Building for the Program.

FMR. "FMR" shall mean the fair market rent set by the Section 8 program or any other successor program of the United States Department of Housing and Urban Development.

Housing Maintenance Code. "Housing Maintenance Code" shall mean Chapter 2 of Title 27 of the Administrative Code.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City, or its designee.

Intake Rent. "Intake Rent" shall mean the rent set by HPD that takes effect after Project Commencement.

Interim Payment Agreement. "Interim Payment Agreement" shall mean an agreement entered into between HPD, a Tenant eligible for rental assistance and the NPC or the Sponsor, as applicable, to temporarily accept less than the full rent from the Tenant prior to the provision of rental assistance.

Laws. "Laws" shall mean any and all applicable laws, ordinances, orders, rules and regulations.

NPC. "NPC" shall mean a not-for-profit corporation selected by HPD to participate in the Program and to which the City net leases and thereafter conveys title to a Building in the Program prior to Disposition.

Post-Rehabilitation Rent. "Post-Rehabilitation Rent" shall mean the rent set by HPD that takes effect after substantial completion.

Preliminary Selection. "Preliminary Selection" shall mean a preliminary determination by HPD to select a Building for the Program.

Program. "Program" shall mean the Neighborhood Entrepreneurs Program.

Project. "Project" shall mean a project in the Program.

Project Activity. "Project Activity" shall mean any activity performed or required to be performed by the Sponsor in connection with a Project.

Project Commencement. "Project Commencement" shall mean the date the Project has commenced, as set forth in the notice described in §35-04(f).

Rehabilitation. "Rehabilitation" shall mean the installation, replacement, or repair of one or more Building systems or the correction of inadequate, unsafe, or insanitary conditions.

Rules. "Rules" shall mean the rules set forth in this chapter.

SDMA. "SDMA" shall mean a site development and management agreement entered into by the NPC and the Sponsor that determines the Sponsor's responsibilities regarding the day-to-day operation of the Building prior to Disposition.

Sponsor. "Sponsor" shall mean the entity selected to manage, own and/or develop the Project, and any entity substantially controlled by such Sponsor.

Subsidy. "Subsidy" shall mean a loan or a grant made by HPD to the NPC or to a Sponsor for Project Activities.

Substantial Completion. "Substantial Completion" shall mean the date on which HPD certifies that (a) construction work comprising at least 95 percent of the approved Rehabilitation cost has been satisfactorily completed, and (b) all work required to remove Housing Maintenance Code violations which were of record before the Rehabilitation of the Building and were then classified as "B" and "C" has been completed.

Tenants. "Tenants" shall mean residential tenants of record occupying a dwelling unit in a Building. Other residential occupants, such as squatters and licensees, are not Tenants. Non-residential tenants or occupants, such as those who occupy space in a Building for retail, commercial, manufacturing, or community facility purposes, are not Tenants.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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28 RCNY 35-02

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Title 28 Housing Preservation and Development

CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-02 General.

(a) **Coverage.** These Rules govern the procedures for: selecting Buildings for the Program, net leasing and sale of Buildings to the NPC, selecting Sponsors for the Program, the SDMA between the NPC and the Sponsor. Disposition of Buildings to Sponsors, providing subsidies for projects, project operation, determining and establishing rents, and providing notices to Tenants. Buildings in the Program shall be subject to these Rules.

(b) **Program Description.** Under the Program, Buildings will be net leased and thereafter conveyed to the NPC. Sale of the Buildings to the NPC will be pursuant to applicable Laws and each such sale will require approval of the Mayor and the City Council, acting in their respective capacities pursuant to such Laws. Upon net lease, the NPC will enter into an SDMA with the Sponsor. After the Rehabilitation of the Building is completed, the Building will be sold by the NPC to the Sponsor.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-03 Selection of Sponsors.

HPD may select a Sponsor for a Project by any method which HPD determines will best further the purposes of the Program, including, without limitation, pursuant to a request for qualifications process, pursuant to a request for proposals process, selection from a pre-qualified list or, in the discretion of HPD, by a direct designation of an entity judged by HPD to be suitable for the task. In selecting a Sponsor, any relevant factors may be considered, including, but not limited to:

(i) the Sponsor's prior record in other City housing programs;

(ii) the Sponsor's prior selection by the City as a developer in another program;

(iii) the Sponsor's record as a property owner, developer or manager;

(iv) the Sponsor's relevant experience in and knowledge of the neighborhood where the project is located, and

(v) any relevant written comments by Tenants.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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28 RCNY 35-04

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CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-04 Selection of Buildings, Tenant Notification.

(a) **Eligible Buildings.** HPD may select Buildings for the Program if:

(1) Rehabilitation of the Building is technically and financially feasible;

(2) The Building has not been accepted into another HPD disposition program.

(b) **Notice of Preliminary Selection.** After HPD has found a Building to be eligible pursuant to subdivision (a) of this section and has preliminarily selected the Building for the Program, HPD shall provide all Tenants of the Building with a document containing the following:

(1) A statement that HPD is considering placing the Building in the Program; (2) A description of the Program;

(3) A statement that an Intake Rent will be set;

(4) A statement that the Building may be eligible for other HPD programs and the name, address and phone number of an HPD employee who may provide information on how to apply for such other programs;

(5) The name of the Sponsor selected by HPD to develop the Project; and

(6) A statement that the Building will remain in the Program unless accepted into another HPD program.

(c) **Tenant Meeting.** HPD shall hold a Tenant meeting prior to making a Final Selection, giving notice to Tenants

at least two business days prior to such meeting.

(d) **Interim Reminder Notice.** No later than thirty (30) days after the notice of Preliminary Selection, HPD shall notify the Tenants of a Building selected for the Program that they have ninety (90) days left to apply for any other HPD disposition program that accepts applications from Tenants.

(e) **Notice of Final Selection.** No sooner than sixty (60) days after the notice of Preliminary Selection, HPD shall notify the Tenants of a Building of the Final Selection of the Building for the Program.

(f) **Notice of Project Commencement.** No sooner than sixty (60) days after the Notice of Final Selection, HPD shall notify the Tenants of a Building that the Project has commenced, unless Tenants have applied for another HPD disposition program that accepts applications from Tenants within such time period. If the Tenants have applied for another HPD disposition program that accepts applications from Tenants within such time period and have been rejected from such program, then, immediately after the later of such rejection or sixty (60) days after the notice of Final Selection, HPD shall notify Tenants that the Project has commenced.

(g) **Notice of Intake Rent.** Either at the time of the notice of Project Commencement or thereafter, HPD shall notify each Tenant of the Intake Rent and the date it becomes effective, which effective date shall be not less than thirty (30) days after the date of the notice of Intake Rent, and shall, in accordance with §35-10 of these Rules, provide information on rental assistance which may be available to Tenants and the procedures to apply for such assistance.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

28 RCNY 35-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-05 Subsidy.

(a) **Eligible Costs.** Subject to the limitations set forth in applicable Laws, a Subsidy may be made in such amounts as may be required for Project Activities.

(b) **Commitment Letter.** HPD may state Subsidy terms in a commitment letter signed by the Commissioner. Such commitment letter, if any, may contain such terms as HPD may deem necessary or desirable in order to effectuate the purposes of these Rules and to protect the City's interests. The provision of the Subsidy shall be made subject to satisfaction of all the terms and conditions contained in such commitment letter.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs

Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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28 RCNY 35-06

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CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-06 Rent Setting.

(a) **Establishment of Intake Rents.** HPD shall from time to time on a program-wide basis establish Intake Rents for all dwelling units in Buildings selected for the Program based upon a minimum rent level per zoning room based on operating costs in similar Buildings. The Intake Rent and the rationale therefore shall be kept on file by HPD and be available for public inspection. HPD shall provide notice of Intake Rent pursuant to §35-04(g).

(b) **Pre-commitment meeting.** After the notice of Project Commencement pursuant to §35-04(f), and prior to the issuance of a commitment letter containing the terms and conditions for a Subsidy, HPD shall send a notice informing the Tenants of the time and place of a meeting to discuss the Program at least two business days prior to such meeting. A representative of HPD shall attend such meeting.

(c) **Projection of Post-Rehabilitation Rents.** HPD shall determine a rent for each dwelling unit in the Building to take effect upon Substantial Completion. The Post-Rehabilitation Rent per occupied dwelling unit may be based upon the Tenants' income or may reflect the expenses for the Building as projected by HPD less the effective annual net commercial income, if any. If the Post-Rehabilitation Rent reflects the Building's expenses, HPD shall project the annual maintenance and operating expenses for the Building after Substantial Completion, including allowances for vacancies and debt service coverage. The expenses shall be projected by HPD based on its experience and knowledge of the operation of similar buildings. For those apartments which are vacant at the time of the sending of the notice of Substantial Completion pursuant to subdivision (h) of this section, HPD shall set Post-Rehabilitation Rents at no greater than one hundred and ten percent (110%) of the FMR for the area in which the Building is located.

(d) **Pre-Disposition Notice.** Following the pre-commitment meeting held pursuant to subdivision (b) of this

section, and not less than thirty (30) days prior to sale of a Building to the NPC, NPD shall send a notice that shall:

(1) inform each Tenant of the contemplated Rehabilitation which will be performed in the Project;

(2) advise each Tenant of the expected rental increase to result from the Rehabilitation that will take effect after Substantial Completion (i.e., the Post-Rehabilitation Rent); (3) provide information on rental assistance which assistance that may be available to the Tenant and the procedures to apply for such assistance in accordance with §35-10 of these Rules;

(4) apprise each Tenant of such Tenant's right to submit written comments; and

(5) advise each Tenant that where relocation during Rehabilitation is necessary, HPD will use its best efforts to minimize inconvenience to affected Tenants.

(e) **Implementation of Intake Rent.** Commencing no earlier than the date set forth in the notice of Intake Rent sent pursuant to §35-04(g), HPD shall charge the Intake Rent, except that rents for Tenants whose rents at such time are greater than the Intake Rent shall not be decreased.

(f) **Registration of Rent.** Not less than thirty (30) days after sale of a Building to the, NPC, the Sponsor shall register with DHCR the rent charged to each Tenant in the Building at the time of such sale. Leases shall contain a provision satisfactory to HPD requiring notice to the Tenant of the subsequent establishment of the Post-Rehabilitation Rent.

(g) **Increase in Projected Post-Rehabilitation Rents.** If the Post-Rehabilitation Rents established by HPD pursuant to subdivision (c) of this section reflect the Building's expenses, and HPD determines that its projection of maintenance and operating costs must be increased based on unforeseen changes in the circumstances and factors which formed the basis of the original projection, including, but not limited to, unexpected increases in fuel or utility costs, HPD shall notify Tenants of the amount of the expected rent increase over and above the Post-Rehabilitation Rent set forth in the pre-Disposition notice sent pursuant to subdivision (d) of this section.

(h) **Notice of Substantial Completion.** Following Substantial Completion, HPD shall send a notice to each Tenant that the Rehabilitation is substantially complete and that the Tenant's rent will be increased to the Post-Rehabilitation Rent in not less than sixty (60) days. Such notice shall state that the Tenant has an opportunity to comment regarding the quality of Rehabilitation. Such notice shall also include the amount of the Post-Rehabilitation Rent, its effective date, and provide information on rental assistance which may be available to the Tenant and the procedures to apply for such assistance in accordance with §35-10 of these Rules. Prior to the establishment of Post-Rehabilitation Rent, HPD shall give due consideration to Tenant comments regarding the quality of the Rehabilitation.

(i) **Implementation and Registration of Post-Rehabilitation Rents.** Not less than sixty (60) days after the sending of the notice of Substantial Completion pursuant to subdivision (h) of this section, HPD shall complete and sign a rent order, and shall mail such order to the Tenant with a copy to the Sponsor. The rent set forth on each rent order shall be the Post-Rehabilitation Rent for such apartment as was determined in accordance with subdivision (c) of this section and as set forth in the pre-Disposition notice or as adjusted pursuant to subdivision (g) of this section. If an apartment is vacant at the time of establishment of rents, the rent order shall be mailed to the Sponsor. Immediately upon receipt of the rent order or a copy thereof, the Sponsor shall register the Post-Rehabilitation Rent for each Tenant in the Building with DHCR.

(j) **Two year leases.** The Sponsor must offer two year leases to all Tenants upon Substantial Completion.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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***** Current through December 2009 ****

28 RCNY 35-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-07 Project Operation by Sponsor under the SDMA Prior to Disposition.

(a) **SDMA.** Prior to Disposition to the Sponsor, the NPC shall enter into a SDMA with the Sponsor.

(b) **Tenant Selection Policy.** Sponsor shall rent vacant apartments only to low and/or moderate income Tenants as defined by HPD and in accordance with HPD guidelines. HPD may also, in the public interest, require that other persons, determined by HPD to be in need of housing, receive priority in the renting of apartments. HPD may require that rentals be pre-approved by HPD, that specified lists of eligible persons be used, or may direct any other Tenant selection method be used.

(c) **Successor Tenants.** Persons claiming to be successor Tenants, if any, prior to a unit entering rent stabilization, are subject to the rules set forth in Chapter 24 of Title 28 of the Rules of the City of New York.

(d) **Interim Payment Agreement.** HPD may require the Sponsor to enter into one or more Interim Payment Agreements in accordance with §35-10 of these Rules.

(e) **Limitation on Collection of Arrears.** At such time as a Tenant is one month or more in arrears on the payment of rent to Sponsor, Sponsor may commence a proceeding for such rent arrears and/or for possession of the apartment. Sponsor may not sue for arrears that accrued more than three (3) months prior to the commencement of the lease for the Building.

(f) **Vacancy Rents.** Rents for vacant apartments shall be set by Sponsor, subject to HPD approval.

(g) **Commencement of Legal Proceedings.** Sponsor may commence legal proceedings, including eviction proceedings for failure to pay rent in accordance with §21-23(c) of chapter 21 of this title, with the prior approval of HPD and the NPC.

(h) **Tenant Complaints.** (1) Complaints shall, in the first instance, be directed to Sponsor.

(2) Tenants shall have the right to file written complaints with HPD staff or the NPC if a Tenant deems Sponsor's response to be inadequate or unsatisfactory.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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Title 28 Housing Preservation and Development

CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-08 Disposition to Sponsor.

Under satisfactory completion of the Rehabilitation, title for the Building shall be sold and transferred to the Sponsor by the NPC.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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28 RCNY 35-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-09 Project Operation After Disposition to Sponsor.

(a) **Regulatory Agreement.** A Sponsor may be required to execute a regulatory agreement with HPD as a condition for the Project. The regulatory agreement shall be recorded and shall run with the land for the period set forth therein. The regulatory agreement shall require the Sponsor and all of Sponsor's successors and assigns to comply with Project requirements.

(b) **Use Restrictions.** HPD may impose restrictions upon the use of a Building and may require Sponsor to agree to comply with such restrictions as a condition for Disposition or Subsidy. Such use restrictions may be enforced by any means which HPD determines to be necessary or appropriate, including, but not limited to, provisions in any deed, land disposition agreement, regulatory agreement, note, mortgage, security agreement, lien, restrictive declaration, or other legal document. HPD may require a Sponsor to provide security for its compliance with use restrictions in such types and amounts as are determined by HPD to be necessary or desirable. Such types of security may include, but shall not be limited to, surety bonds, letters of credit, or cash.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-10 Rental Assistance.

(a) HPD will assist eligible Tenants in applying for existing rental assistance programs during the period of the Building's participation in the Program. HPD will provide Tenants with applications for §8 of the United States Housing Act of 1973, as amended, and senior citizen rent increase exemptions, advise Tenants which rental assistance program is most suitable for their individual needs, and assist Tenants in completing rental assistance applications.

(b) Each Tenant who applies for rental assistance is solely responsible for supplying all required documentation and materials necessary to process an application: i.e., attending required interviews providing the necessary income certification and complying with all procedures to process an application.

(c) HPD shall review all applications for rental assistance and make a preliminary determination of a Tenant's eligibility within sixty (60) days of receipt of a completed application. HPD shall promptly notify the NPC or the Sponsor, as applicable, of all applicants for rental assistance and shall forward to the NPC or the Sponsor, as applicable, copies of the applications, letters granting or denying rental assistance, Interim Payment Agreements entered into, and letters extending or terminating Interim Payment Agreements. Upon a finding of preliminary eligibility, HPD will provide the Tenant with an Interim Payment Agreement, which shall be signed by the Tenant, HPD and the NPC or the Sponsor, as applicable, before it becomes effective. This Interim Payment Agreement shall include:

(1) the amount of the increased rent for the apartment;

(2) the amount of rent that the Tenant must pay pending the final eligibility determination of the rental assistance application (as such amount is determined in accordance with subdivision (d) of this section);

(3) a statement of the grounds for termination pursuant to subdivision (e) of this section; and

(4) notice to the Tenant that s(he) remains liable for the full amount of the rent retroactive to the effective date of the increase if, at any time, the rental assistance application is denied by HPD or the Interim Payment Agreement is terminated pursuant to paragraphs one, three or four of subdivision (e) of this section, provided, however, that if the Interim Payment Agreement is terminated pursuant to paragraph one of subdivision (e) of this section, the Tenant shall not be liable for the full amount of the rent increase retroactive to its effective date if s(he) notifies HPD within thirty (30) days of any change in household income which renders the Tenant ineligible for rental assistance.

(d) A Tenant who receives an Interim Payment Agreement will be required to pay the greater of (1) the amount set forth in the Interim Payment Agreement, which is the amount that s(he) would pay on a monthly basis if the rental assistance application is approved, or (2) the rent charged prior to implementation of the rent increase.

(e) The Interim Payment Agreement will terminate one year after the date of issuance or upon the earlier occurrence of any of the following:

(1) any change in the Tenant's household income which renders the Tenant ineligible for rental assistance; or

(2) any change in the rent charged by the City; or

(3) failure by the Tenant to comply with any of the requirements necessary to process the application for rental assistance; or

(4) failure by the Tenant to pay, within thirty (30) days of the date due, the rent payable under the Interim Payment Agreement pursuant to subdivision (d) of this section, unless payment of such rent is being withheld for lack of services which the Tenant has given written notice of to the Sponsor; or

(5) receipt by Tenant of rental assistance pursuant to a rental assistance application filed in accordance with this section.

(f) HPD will permit any Tenant who has applied for rental assistance in accordance with subdivision (b) of this section and who has not been provided with an Interim Payment Agreement pursuant to subdivision (c) of this section, to pay a rent increase in stages of $10.00 per room per quarter.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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28 RCNY 35-11

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-11 Miscellaneous Provisions.

(a) **HPD Discretion.** All determinations to be made by HPD in accordance with these Rules shall be in the sole discretion of HPD.

(b) **Statutory Authority not Limited.** Nothing in these Rules shall be deemed to limit HPD's authority pursuant to applicable Laws.

(c) **Method of Notification.** Unless otherwise provided herein, notification shall be in English and Spanish, and shall either be posted in a common area of the Building and affixed to or placed under each apartment door of the Building, or mailed to every apartment in the Building, as determined by HPD.

(d) **Technical Violations.** Provided that there has been a good faith effort to comply with these Rules, technical violations of these Rules shall not invalidate any action taken pursuant to these Rules, nor shall such technical violations give rise to any rights, claims, or causes of action. The Commissioner, upon good cause shown, may alter the timing or sequence of the actions described in these Rules, provided all affected parties are given reasonable notice.

(e) **Funding Source Requirements.** Notwithstanding any provision of these Rules to the contrary, if the requirements of any funding source for a Project conflict with the requirements of these Rules, the requirements of the funding source shall govern.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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28 RCNY 36-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 36 ALTERNATIVE ENFORCEMENT PROGRAM*1

§36-01 Definitions.

For purposes of this chapter:

(a) Alternative Enforcement Program. "Alternative Enforcement Program" shall mean the program established by Local Law 29 of 2007.

(b) Department. "Department" shall mean the New York City Department of Housing Preservation and Development or its successor.

(c) Housing Maintenance Code. "Housing Maintenance Code" shall mean chapter two of title 27 of the administrative code of the city of New York.

(d) Multiple Dwelling Law. "Multiple Dwelling Law" shall mean the New York State Multiple Dwelling Law.

HISTORICAL NOTE

Section added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. [See Chapter 36 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 36 added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. Note: Statement of Basis and Purpose.

The rules are intended to implement Local Law 29 of 2007. The law establishes an Alternative Enforcement Program under which the Department of Housing Preservation and Development will identify distressed buildings for participation in the Program, monitor progress toward correction of Housing Maintenance Code violations, or undertake correction of the violations itself. The rules set forth the process for owners to request reinspection by the Department for the purpose of dismissing corrected violations from the records of the Department, so that a building that has been repaired in accordance with the standards established in the law may be discharged from the Program. The rules also establish fees for the various actions to be undertaken by the Department under the Program, as authorized by the law.

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28 RCNY 36-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 36 ALTERNATIVE ENFORCEMENT PROGRAM*1

§36-02 Request for Reinspection and Dismissal of Violations.

(a)(1) An owner or managing agent of a building that has been identified for participation in the Alternative Enforcement Program may submit an application for reinspection of such building for the purpose of dismissing corrected violations of the Housing Maintenance Code or Multiple Dwelling Law from the Department's records in order for the building to be discharged from such Program.

(2) Such application shall be submitted to the Department on the form approved by the Department for such purpose, and shall be accompanied by a certified check or money order, made payable to the New York City Commissioner of Finance in the amount specified in §36-03 of these rules. Such application shall be submitted either in person or by mail to the Alternative Enforcement Program Office.

(3) Such application shall be submitted to the Department within four months of notification to the owner that such building has been identified for participation in the Alternative Enforcement Program, provided, however, that the Department may deny such application if it has altready implemented the provisions of subdivision k of §27-2153 of the Housing Maintenance Code within such four-month period.

(4) Such application will not be processed by the Department unless such building is registered with the Department in accordance with the provisions of §§27-2097 through 27-2099 of the Housing Maintenance Code.

HISTORICAL NOTE

Section added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. [See Chapter 36 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 36 added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. Note: Statement of Basis and Purpose.

The rules are intended to implement Local Law 29 of 2007. The law establishes an Alternative Enforcement Program under which the Department of Housing Preservation and Development will identify distressed buildings for participation in the Program, monitor progress toward correction of Housing Maintenance Code violations, or undertake correction of the violations itself. The rules set forth the process for owners to request reinspection by the Department for the purpose of dismissing corrected violations from the records of the Department, so that a building that has been repaired in accordance with the standards established in the law may be discharged from the Program. The rules also establish fees for the various actions to be undertaken by the Department under the Program, as authorized by the law.

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28 RCNY 36-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 36 ALTERNATIVE ENFORCEMENT PROGRAM*1

§36-03 Alternative Enforcement Program Fees.

(a) An owner of a building who has been notified of participation in the Alternative Enforcement Program shall be subject to fees for any inspection, reinspection or any other action undertaken by the Department during the time period that such building is in such Program. The schedule of fees is as follows:

(1) For each reinspection performed upon application by an owner for dismissal of violations within the first four months after notification of participation in the Alternative Enforcement Program: $1,000 per building.

(2) For a building-wide inspection, monitoring of repair work and reassessment of a building pursuant to subdivisions k and m of §27-2153 of the Housing Maintenance Code: $500 per dwelling unit every six months, beginning on the date of the building-wide inspection, with a maximum total fee of $1,000 per dwelling unit during participation in the Alternative Enforcement Program.

(3) For each inspection based upon a complaint that results in issuance of a class B or class C violation: $200 per inspection.

(4) For each reinspection pursuant to a certification of correction of violation(s) submitted to the Department, where the Department finds that one or more violations have not been corrected: $100 per reinspection per building.

(b) All fees imposed pursuant to this section that remain unpaid by the owner shall constitute a debt recoverable from the owner and a lien upon the building and lot, and upon the rents and other income thereof. The provisions of article eight of subchapter five of the Housing Maintenance Code shall govern the effect and enforcement of such debt

and lien.

HISTORICAL NOTE

Section added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. [See Chapter 36 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 36 added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. Note: Statement of Basis and Purpose.

The rules are intended to implement Local Law 29 of 2007. The law establishes an Alternative Enforcement Program under which the Department of Housing Preservation and Development will identify distressed buildings for participation in the Program, monitor progress toward correction of Housing Maintenance Code violations, or undertake correction of the violations itself. The rules set forth the process for owners to request reinspection by the Department for the purpose of dismissing corrected violations from the records of the Department, so that a building that has been repaired in accordance with the standards established in the law may be discharged from the Program. The rules also establish fees for the various actions to be undertaken by the Department under the Program, as authorized by the law.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 36 ALTERNATIVE ENFORCEMENT PROGRAM*1

§36-04 Education Course.

An owner or managing agent or other designated representative of a building which is the subject of an order by the Department pursuant to subdivision k of §27-2153 of the Housing Maintenance Code, shall be required to complete a course of training relating to building operation and maintenance, approved by the Department, prior to discharge of the building from the Alternative Enforcement Program. The charge for participation in such course shall be $300 for each participant. Such charge shall be paid prior to commencement of participation in such course.

HISTORICAL NOTE

Section added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. [See Chapter 36 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 36 added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. Note: Statement of Basis and Purpose.

The rules are intended to implement Local Law 29 of 2007. The law establishes an Alternative Enforcement Program under which the Department of Housing Preservation and Development will identify

distressed buildings for participation in the Program, monitor progress toward correction of Housing Maintenance Code violations, or undertake correction of the violations itself. The rules set forth the process for owners to request reinspection by the Department for the purpose of dismissing corrected violations from the records of the Department, so that a building that has been repaired in accordance with the standards established in the law may be discharged from the Program. The rules also establish fees for the various actions to be undertaken by the Department under the Program, as authorized by the law.

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28 RCNY 37-01 [Fees

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 37 FEES FOR ADMINISTRATION OF LOAN PROGRAMS AND CERTAIN OTHER MUNICIPALITY-AIDED PROJECTS*1

§37-01 [Fees Authorized.]

HPD shall be authorized to charge and collect the fees set forth in this chapter.

HISTORICAL NOTE

Section added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See Chapter 37 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. Note: Statement of Basis and Purpose.

Pursuant to New York City Charter §1802 and various federal and state statutes, the Department of Housing Preservation and Development (HPD), is empowered to perform a broad range of functions relating to both private and City-owned real property. The proposed rules set forth fees that may be charged and collected by HPD for its administrative costs in connection with performing such functions. The rules provide for fees for review by HPD of certificates of incorporation, for appraisals, for preparing or renewing license agreements for

short-term leases of City-owned property, and for refinancing mortgages.

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28 RCNY 37-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 37 FEES FOR ADMINISTRATION OF LOAN PROGRAMS AND CERTAIN OTHER MUNICIPALITY-AIDED PROJECTS*1

§37-02 Definitions.

For purposes of this chapter:

(a) Appraisal Fee. "Appraisal Fee" shall mean the amount charged to a grantee, borrower, or recipient for HPD's administrative costs in connection with a Simple Appraisal or a Complex Appraisal.

(b) Certificate of Incorporation Fee. "Certificate of Incorporation Fee" shall mean the amount charged to an applicant for HPD's administrative costs in connection with the review of the formation or dissolution of a housing development fund corporation pursuant to Article XI of the Private Housing Finance Law or any amendment to the certificate of incorporation of a housing development fund corporation.

(c) City-owned Property. "City-owned Property" shall mean real property title to which is held by the City of New York.

(d) Complex Appraisal. "Complex Appraisal" shall mean an investigation by an appraiser to estimate the value of a property that is the basis of underwriting of a loan or grant or that will be conveyed from City to private ownership where such property consists of:

(1) six or more tax lots consisting entirely of vacant land, for which the valuation can be made solely based upon available comparable sales data; or

(2) any improved residential property consisting of four or more class A units; or

(3) any improved property consisting of a combination of commercial and residential uses; or

(4) any property consisting of a combination of vacant and improved land; or

(5) any other complex development project consisting of a combination of uses.

(e) HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.

(f) License Agreement Fee. "License Agreement Fee" shall mean the amount charged to an applicant for HPD's administrative costs in connection with preparing each license agreement or renewal thereof for short-term use of City-owned property. Such fee shall not be deemed to be a rental or use and occupancy charge.

(g) Mortgage Refinance Fee. "Mortgage Refinance Fee" shall mean the amount charged to a grantee, borrower, or recipient for HPD's administrative costs in connection with processing requests to subordinate, satisfy or otherwise modify HPD debt.

(h) Simple Appraisal. "Simple Appraisal" shall mean an investigation by an appraiser to estimate the value of a property that is the basis of underwriting of a loan or grant or that will be conveyed from City to private ownership where such property consists of:

(1) five or fewer tax lots consisting entirely of vacant land, for which the valuation can be made solely based upon available comparable sales data; or

(2) any improved residential property consisting of not more than three class A residential units for which the valuation can be made solely based upon available comparable sales data.

HISTORICAL NOTE

Section added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See Chapter 37 footnote]

Subd. (b) amended City Record May 11, 2009 §1, eff. June 10, 2009. [See Note 1]

Subd. (g) amended City Record May 11, 2009 §1, eff. June 10, 2009. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 11, 2009:

Pursuant to New York City Charter §1802 and various federal and state statutes, the Department of Housing Preservation and Development (HPD), is empowered to perform a broad range of functions relating to both private and City-owned real property. HPD is authorized to charge and collect fees in relation to such functions. The rule clarifies definitions for two of the fees. It amends the definition of the mortgage refinancing fee to clarify the intent to also charge for processing requests to satisfy or otherwise modify HPD debt. The rule also amends the definition of the certificate of incorporation fee to clarify the intent to also charge for reviewing dissolutions of housing development fund corporations and amendments to certificates of incorporation.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. Note: Statement of Basis and Purpose.

Pursuant to New York City Charter §1802 and various federal and state statutes, the Department of Housing Preservation and Development (HPD), is empowered to perform a broad range of functions relating to both private and City-owned real property. The proposed rules set forth fees that may be charged and collected by HPD for its administrative costs in connection with performing such functions. The rules provide for fees for review by HPD of certificates of incorporation, for appraisals, for preparing or renewing license agreements for short-term leases of City-owned property, and for refinancing mortgages.

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28 RCNY 37-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 37 FEES FOR ADMINISTRATION OF LOAN PROGRAMS AND CERTAIN OTHER MUNICIPALITY-AIDED PROJECTS*1

§37-03 Amount of Fee.

The amount of each fee authorized under this chapter shall be as follows:

(a) Appraisal Fee. HPD may charge an Appraisal Fee in the amount of two thousand five hundred dollars ($2,500) for each Simple Appraisal, and in the amount of three thousand dollars ($3,000) for each Complex Appraisal.

(b) Certificate of Incorporation Fee. HPD may charge a Certificate of Incorporation fee in the amount of two hundred and fifty dollars ($250).

(c) License Agreement Fee. HPD may charge a License Agreement Fee in the amount of one hundred dollars ($100).

(d) Mortgage Refinance Fee. HPD may charge a Mortgage Refinance Fee in the amount of two hundred dollars ($200).

HISTORICAL NOTE

Section added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See Chapter 37 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. Note: Statement of Basis and Purpose.

Pursuant to New York City Charter §1802 and various federal and state statutes, the Department of Housing Preservation and Development (HPD), is empowered to perform a broad range of functions relating to both private and City-owned real property. The proposed rules set forth fees that may be charged and collected by HPD for its administrative costs in connection with performing such functions. The rules provide for fees for review by HPD of certificates of incorporation, for appraisals, for preparing or renewing license agreements for short-term leases of City-owned property, and for refinancing mortgages.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 37-04 [Fees

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 37 FEES FOR ADMINISTRATION OF LOAN PROGRAMS AND CERTAIN OTHER MUNICIPALITY-AIDED PROJECTS*1

§37-04 [Fees Due and Payable.]

All Fees Authorized Pursuant to this Chapter Shall be Due and Payable as Directed by HPD. The fees set forth in this chapter shall be in addition to any other fees authorized under any other law or rules.

HISTORICAL NOTE

Section added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See Chapter 37 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. Note: Statement of Basis and Purpose.

Pursuant to New York City Charter §1802 and various federal and state statutes, the Department of Housing Preservation and Development (HPD), is empowered to perform a broad range of functions relating to both private and City-owned real property. The proposed rules set forth fees that may be charged and collected by HPD for its administrative costs in connection with performing such functions. The rules provide for fees for

review by HPD of certificates of incorporation, for appraisals, for preparing or renewing license agreements for short-term leases of City-owned property, and for refinancing mortgages.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 38-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 38 CAMPAIGN FINANCE ACT IMPLEMENTATION*1

§38-01 Definitions.

As used in this chapter, the following terms shall have the following meaning:

(a) Act. "Act" shall mean the New York City Campaign Finance Act, §§3-701 through 3-720 of the New York City Administrative Code.

(b) BCL. "BCL" shall mean the Business Corporation Law.

(c) City. "City" shall mean the City of New York.

(d) Discretionary Tax Benefit. "Discretionary Tax Benefit" shall mean an exemption from or abatement of real property taxation approved by the City Council, including, but not limited to, any such exemption or abatement pursuant to PHFL Articles II, V, and XI, GML Article 16, or RPTL §422.

(e) EDC. "EDC" shall mean the New York City Economic Development Corporation.

(f) GML. "GML" shall mean the General Municipal Law.

(g) HDC. "HDC" shall mean the New York City Housing Development Corporation.

(h) HPD. "HPD" shall mean the City's Department of Housing Preservation and Development.

(i) PHFL. "PHFL" shall mean the Private Housing Finance Law.

(j) RPTL. "RPTL" shall mean the Real Property Tax Law.

(k) UDAAP. "UDAAP" shall mean Article 16 of the General Municipal Law.

(l) ULURP. "ULURP" shall mean the Uniform Land Use Review Procedure set forth in §§197-c and 197-d of the New York City Charter.

(m) Urban Renewal Law. "Urban Renewal Law" shall mean Article 15 of the General Municipal Law.

(n) Zoning Resolution. "Zoning Resolution" shall mean the New York City Zoning Resolution.

HISTORICAL NOTE

Section added City Record Sept. 22, 2008 §1, eff. Oct. 22, 2008. [See Chapter 38 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 2008. Note Statement of Basis and Purpose:

The Campaign Finance Act ("Act") authorizes the Department of Housing Preservation and Development to promulgate rules setting forth which categories of actions, transactions and agreements providing affordable housing do, and do not, constitute business dealings with the City of New York for purposes of the Act. Entities engaging in actions, transactions and agreements that do not constitute business dealings with the City would not be subject to disclosure requirements and the campaign contribution limitations set forth in the Act.

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***** Current through December 2009 ****

28 RCNY 38-02 [Actions,

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 38 CAMPAIGN FINANCE ACT IMPLEMENTATION*1

§38-02 [Actions, Transactions and Agreements for Providing Affordable Housing Which Constitute "Business Dealings with the City".]**2

(a) Except as otherwise provided in the Act and §38-03 of these rules, actions, transactions and agreements for providing affordable housing shall constitute "business dealings with the city" for purposes of the Act where any such action, transaction or agreement involves:

(1) the disposition of City-owned real property; or

(2) a loan or grant by HPD or HDC, except as otherwise provided in §38-03 of these rules; or

(3) any Discretionary Tax Benefit; or

(4) any discretionary approval following a public hearing by either the City Council or the Office of the Mayor, including, but not limited to, any approval pursuant to ULURP, UDAAP, the Urban Renewal Law, the PHFL or the Zoning Resolution; or

(5) the allocation of federal low income housing tax credits by HPD pursuant to Internal Revenue Code §42; or

(6) the execution of an agreement with HPD regarding the creation of inclusionary housing in accordance with any applicable provision of the Zoning Resolution.

(b) The actions, transactions or agreements set forth in subdivision a of this section shall only constitute business dealings with the City during the following periods:

(1) For an action, transaction or agreement that involves the disposition of City-owned real property, the period commencing on the date that the proposed sponsor submits or makes a proposal to HPD, HDC or EDC to acquire such property and ending as provided in paragraph b of subdivision 18 of §3-702 of the Act.

(2) For an action, transaction or agreement that involves a loan or grant by HPD or HDC, the period commencing on the date that the proposed sponsor makes or submits an application or proposal to HPD or HDC for such loan or grant and ending one year after the date of construction completion or the final advance or disbursement of funds pursuant to such loan or grant.

(3) For an action, transaction or agreement that involves a Discretionary Tax Benefit, the period commencing with the submission of an application for such exemption or abatement and ending one year after the date of approval of such exemption or abatement by the City Council.

(4) For an action, transaction or agreement that requires any discretionary approval following a public hearing by either the City Council or the Office of the Mayor, including, but not limited to, any approval pursuant to ULURP, UDAAP, the Urban Renewal Law, the PHFL or the Zoning Resolution, but not including the approval of a Discretionary Tax Benefit by the City Council, the period commencing with negotiations and ending as provided in paragraph b of subdivision 18 of §3-702 of the Act, where applicable, or 120 days after approval by the City Council or the Office of the Mayor.

(5) For an action, transaction or agreement that involves the allocation of federal low income housing tax credits by HPD, the period commencing with the submission of an application for such tax credits to HPD and ending one year after the date of issuance by HPD of the Low Income Housing Credit Allocation and Certification form to the applicant.

(6) For an action, transaction or agreement that involves the execution of an agreement with HPD regarding the creation of inclusionary housing in accordance with any applicable provision of the Zoning Resolution, the period commencing with the submission of an application to HPD for such agreement, and ending one year after the date of execution by HPD of a certificate of completion for the inclusionary housing dwelling units.

(7) For an action, transaction or agreement that involves more than one of the actions, transactions and agreements set forth in subparagraphs one through six of this subdivision, the period commencing on the earliest date provided in such subparagraphs and ending on the latest date provided in such subparagraphs.

(8) Notwithstanding anything to the contrary contained herein, for any proposed action or transaction that HPD determines will not be consummated or for any proposed agreement that HPD determines will not be executed, the end date shall be one year after the date upon which HPD notifies the Office of the Mayor of such determination.

HISTORICAL NOTE

Section added City Record Sept. 22, 2008 §1, eff. Oct. 22, 2008. [See Chapter 38 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 2008. Note Statement of Basis and Purpose:

The Campaign Finance Act ("Act") authorizes the Department of Housing Preservation and Development to promulgate rules setting forth which categories of actions, transactions and agreements providing affordable housing do, and do not, constitute business dealings with the City of New York for purposes of the Act. Entities

engaging in actions, transactions and agreements that do not constitute business dealings with the City would not be subject to disclosure requirements and the campaign contribution limitations set forth in the Act.
2

[Footnote 2]: ** Section heading provided by editor.

28 RCNY 38-03 [Actions,

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 38 CAMPAIGN FINANCE ACT IMPLEMENTATION*1

§38-03 [Actions, Transactions and Agreements for Providing Affordable Housing Which Do Not Constitute "Business Dealings with the City".]*3

(a) Notwithstanding any other provision of these rules to the contrary, actions, transactions and agreements for providing affordable housing shall not constitute "business dealings with the city" as defined in subdivision 18 of §3-702 of the Act where any such action, transaction or agreement:

(1) is entered into with a housing development fund company that is formed as a cooperative corporation pursuant to PHFL Article XI and the Business Corporation Law, including any discretionary tax benefit granted to such company; or

(2) is entered into with a limited profit housing company formed pursuant to PHFL Article II that is organized and operated as a mutual company; or

(3) involves solely a mortgage modification; or

(4) involves solely the subordination, satisfaction, or assignment of a mortgage; or

(5) relates to approval of a certificate of incorporation for a housing development fund company; or

(6) involves solely a license agreement or lease for use of City-owned property for nominal consideration or no consideration; or

(7) is entered into by an individual or family in connection with the purchase of a one- to four-unit home, a

condominium dwelling unit, or the shares attributable to a cooperative dwelling unit under a housing program administered by HPD; or

(8) involves a loan pursuant to PHFL §8-b; or

(9) involves a loan or grant the sole purpose of which is the remediation of lead-based paint hazards; or

(10) involves exemption or abatement of real property taxes pursuant to RPTL §§420-a, 420-c, 421-a, 421-b, 488-a, or 489; or

(11) involves a change in ownership of property that is the subject of an action, transaction or agreement for providing affordable housing and that constituted "business dealings with the city" pursuant to subdivision a of §38-02 of these rules; or

(12) involves an approval or consent granted pursuant to the provisions of an agreement with HPD, EDC or HDC providing for such approval or consent; or

(13) involves the conveyance of property pursuant to New York City Administrative Code §11-412.1; or

(14) involves provision of relocation services pursuant to Administrative Code §26-301 or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC §§4601 et seq.); or

(15) is entered into for the purpose of settlement of litigation to which the City of New York, HDC, or EDC is a party; or

(16) is not listed in §38-02 of these rules.

HISTORICAL NOTE

Section added City Record Sept. 22, 2008 §1, eff. Oct. 22, 2008. [See Chapter 38 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 2008. Note Statement of Basis and Purpose:

The Campaign Finance Act ("Act") authorizes the Department of Housing Preservation and Development to promulgate rules setting forth which categories of actions, transactions and agreements providing affordable housing do, and do not, constitute business dealings with the City of New York for purposes of the Act. Entities engaging in actions, transactions and agreements that do not constitute business dealings with the City would not be subject to disclosure requirements and the campaign contribution limitations set forth in the Act.

3

[Footnote 3]: * Section heading provided by editor.

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-01 Organization and Voting.

(a) **Organization.** The Loft Board (hereinafter referred to as "the Board") shall consist of no fewer than 5 and no more than 9 members, including an impartial Chair and one representative of loft manufacturing interests, one representative of the real estate industry and one representative of loft residential tenants, respectively. The other members, representing the public, shall include the Commissioner of the Department of Buildings, serving **ex officio** and may include one other member serving **ex officio.** The Board may conduct business with fewer than the full complement of its appointed members when one or more vacancies are created by the death, resignation, or inability of a member or members to continue serving on the Board for any reason, until the appointment of replacement(s) by the Mayor.

(b) **Voting.** Each member of the Board shall have one vote. No members, except those serving **ex officio,** may vote by proxy or have another person serve on the Board in their absence. Representatives of the special interest groups, specified in §1-01(a), **supra,** may in their absence, designate substitutes to participate in discussions at the Board meetings, when the Board, by vote requests such participation. Such designated substitutes may participate only to the extent permitted by the Board and shall not have the right to vote.

(c) **Quorum.** A majority of the members of the Board constitutes a quorum for the transaction of business. Board action may be taken by affirmative vote of the majority of the members of the Board when a quorum is present. No action may be taken without at least 4 affirmative votes.

HISTORICAL NOTE

Section amended City Record Apr. 10, 1991 eff. May 10, 1991.

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-02 Rules and Regulations, Method of Adoption.

The Board shall issue rules and regulations governing its procedures and the exercise of its powers under Article 7-C of the New York State Multiple Dwelling Law and Executive Order No. 66 of Mayor Edward I. Koch. Loft Board staff shall be responsible for drafting rules, regulations, guidelines and procedures at the direction of the Chair or by vote of the Board. In addition, draft rules, regulations, guidelines and procedures may be presented to the Board for consideration by Board members or other interested parties. Loft Board staff shall comply with §1043 of the New York City Charter in the promulgation of all rules and regulations. All draft rules and regulations proposed shall be submitted to the Board for comment and review before they are published for comment. Draft rules and regulations may be modified at the direction of the Chair or by vote of the Board. In case of disagreement between the Chair and at least four (4) members of the Board, alternative versions may be published. Upon vote of the Board, rules and regulations shall be adopted and ordered into effect following periods for public notification and comment, mandated by §1043 of the New York City Charter, and hearings when required by §282(d) of Article 7-C of the New York State Multiple Dwelling Law, except that emergency regulations or guidelines may be adopted without prior public notification and comment.

Following consideration of comments received and public testimony, the Board may modify or amend the proposed rules or regulations in response thereto.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-03 Meetings.

(a) The Board shall meet in regularly scheduled sessions. It may also meet in special sessions at the request of the Chair or by affirmative vote of 5 members.

(b) The order of business at all meetings shall be determined by the Chairman, but such order may be changed by vote of the Board. The Chairman will place on the agenda any matter at the request of at least three (3) members, with the Chair determining when such matter is to be placed on the agenda.

(c) All meetings and hearings will be conducted in accordance with Robert's Rules of Order unless such rules are in conflict with anything stated herein, in which case these Regulations shall control.

(d) The Board may conduct public hearings on any matter within its purview under Article 7-C of the New York State Multiple Dwelling Law, at the direction of the Chair or by vote of the Board.

(e) All regular and special sessions shall be open to the public. Loft Board staff shall notify the public of such sessions, in accordance with §95 **et seq.** of the New York State Public Officers Law. Members of the public are invited to observe the Board's deliberations at all regular and special sessions, but shall be permitted to speak or otherwise participate only in those sessions designated as public hearings. At such hearings, any member of the public shall be permitted to speak for 3 minutes on the subject before the Board. The time limit on any speaker may be modified or waived at the request of any Board member.

(f) The Board may meet in Executive Session by majority vote of its entire membership. This vote shall be taken at

a public session, on a motion describing in general terms the subject matter to be considered at the Executive Session proposed. Executive Sessions may be called for discussions of proposed, pending, or current litigation, including requests for intervention by the Board in particular cases, for deliberation in quasi-judicial proceedings and for any other purposes allowed by law. Such sessions shall be closed to the public and convened and conducted in accordance with §100 of the New York State Public Officers Law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-04 Minutes and Transcripts.

(a) Minutes shall be taken at every regular session of the Board and shall be made available to Board members and the public no later than two weeks from the date of a session.

(b) Minutes shall be taken of every Executive Session of the Board and shall be made available to Board members and the public no later than one week from the date of a session, provided, however, that the summaries of actions reported in such minutes need not include any matter which is not required to be made public by the Freedom of Information Law, Article 6 of the New York State Public Officers Law.

(c) All public hearings shall be electronically recorded by the Board or by a recording service under the Board's direction. Copies of such recordings or transcripts thereof shall be available at the prevailing rate to the public or to Board members, except that such recordings or transcripts may be made available without charge to Board members at the direction of the Chair or by vote of the Board.

(d) An electronic recording of any open session of the Board will be made only if ordered in advance of such session at the direction of the Chair or by vote of the Board. Copies of such recordings or transcripts thereof shall be available under the same conditions set forth in §1-04(c), supra.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-05 Public Access to Minutes and Records/Procedures.

Minutes of open and Executive sessions and all records of the Board available under Article 6 of the New York State Public Officers Law (The Freedom of Information Law) shall be available for public inspection, by mail or by appointment upon prior written request, at the offices of the New York City Loft Board, weekdays, between the hours of 10 a.m. and 4 p.m. and during other business hours of the office. Copies of all such minutes and records may be obtained by the public at a charge of 25 per page no bigger than 9 x 14 inches. Requests for inspection or for copies of materials available under the Freedom of Information Law should be addressed to: Records Access Officer, New York City Loft Board.

When the Records Access Officer denies access to records in whole or in part, such determination may be appealed within 30 days by written application to: Records Access Officer, New York City Loft Board.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-06 Applications to the Board.

(a) All applications to the Board concerning coverage, hardship claims, rent adjustments, fixture fee disputes, exemption, and any other matters within the purview of the Board under Article 7C of the Multiple Dwelling Law, shall be submitted at the Office of the Loft Board, on such forms as may be prescribed by the Loft Board together with such additional information as may be required. The applicant shall submit 12 copies of the application, plus one for each affected party, and shall be required to list, to the best of his or her knowledge, all affected parties when filing his or her application. Affected parties for coverage and hardship claims shall include: owners; all tenants of record, including residential, commercial and manufacturing tenants; and all occupants of the building in question, if different from tenants of record. Affected parties for harassment claims shall include the owner and all residential tenants or occupants of the building in question. For all other categories of applications, affected parties shall include the owner and such occupants as are necessary for a final resolution of the claims asserted in the application.

(b) The staff of the Loft Board shall serve all affected parties with a copy of the application by regular mail, retaining records attesting to such services. Instructions on the procedures for filing an answer shall be enclosed in each mailing. Service shall be deemed to be completed five days after the date of mailing.

(c) A party who has been served with a copy of an application shall have 30 days from the date on which service of the application was completed to file an answer with the Board, with proof of service upon the applicant. The answer shall contain facts and arguments relevant to the issues raised in the application.

(d) Service of the answer upon the applicant may be done in person or by mail at the address of the applicant specified in the application or by facsimile transmission to the applicant at a fax number designated by the applicant or

the applicant's attorney. If service of the answer upon the applicant is accomplished by facsimile transmission, service of the answer will be deemed complete on the day of the facsimile transmission when the respondent mails a second copy of the answer to the applicant or his or her attorney within 3 days of date of the facsimile transmission.

(e) The original answer and any accompanying documents may be submitted to the board on the date that the answer is due either personally, by mail or by facsimile transmission at the fax number designated for the Board.

(f) The answering party shall also submit to the Board 12 additional copies of the answer and any accompanying documents with proof of service of the answer upon the applicant. If the answer and any accompanying documentation is submitted to the Board by facsimile transmission, service of the answer will be deemed complete as of the date of facsimile transmission if the original answer, accompanying documents and proof of service required herein are submitted to the Board personally within 3 days of the date of the facsimile transmission or by mail, postmarked within 3 days of the date of the facsimile transmission. Failure to submit the original answer, any accompanying documents and proof of service to the Board as required herein following facsimile transmission of such documents will constitute a default and the respondent will then be subject to the procedures outlined in §21 of these rules.

(g) All applications, answers and other proofs requested by the staff or the Board shall be verified or affirmed. Whenever the Board Rules Relating to Loft Board Procedures for Conducting Business and Considering Applications or its subject matter rules require that a document be filed with the Board, it is required that the document be received by the Board. If the Board's Rules of Internal Board Procedures or its subject matter rules require that a document be filed with the Board within a prescribed time period, that document must be received by the Board within the specified time period.

(h) Any affected party may submit amended pleadings as of right up to and including the date of the first scheduled conference in the case. The hearing examiner will afford the applicant or respondent the opportunity to respond to amended pleadings submitted on the date of the first scheduled conference. Thereafter, amended pleadings may be submitted only if permitted by the hearing examiner assigned to the case.

(i) (1) If a respondent fails to file an answer to any application within 30 days after the date on which service of the application is completed, the respondent will be in default and will be barred from filing an answer at a later date or offering any evidence in its defense. The respondent's defensive case will not be heard as a result of its failure to file an answer. The hearing examiner assigned to the case will advise the respondent in writing of the default and that an inquest will be held unless the respondent moves for relief from the default as specified in paragraph 2 below. This provision will not apply where an extension to file an answer has been granted before the expiration of the 30-day period.

(2) A party who is barred from filing an answer will have 30 days after the date of mailing of the default determination, to move for relief from the default determination and establish before the hearing examiner that good cause existed for the failure to file an answer. Any motion for relief from a default determination must be received by the hearing examiner, with proof of service to all affected parties, within the specified time period. Good cause can be established by proof of a reasonable explanation for failure to file an answer and a summary of the defense to be presented, which establishes it not to be frivolous. Where the respondent fails to file an answer and no timely motion to open the default determination has been received by the hearing examiner, the case will proceed and respondent will not be permitted to file an answer or present its defensive case.

(3) Following the issuance of a final Board determination, a respondent who has not moved for relief from a default judgment as set forth in paragraph 2 above and is aggrieved by the default determination may move to reopen the proceeding by filing an application for reconsideration with the Board within 30 days of the date of mailing of the final determination. Such application will be granted only if the Board, in its discretion, finds that the respondent has established (i) extraordinary circumstances for the failure to file the answer and (ii) substantial likelihood of success on the merits.

(4) In a case in which the respondent is barred from filing an answer, the applicant must present a **prima facie** case before the hearing examiner demonstrating entitlement to the relief sought in the application.

(j) (1) The staff of the Board shall investigate applications and may conduct informal conferences, upon 15 days notice to the applicant and all parties who have filed an answer, to settle disputes or clarify issues. As part of its investigation, the staff may request that the parties furnish additional evidence or memoranda relevant to the application and request appropriate books and records relevant to the issues in dispute.

(2) (i) All parties shall be afforded an opportunity for a hearing within a reasonable time, upon 15 days notice to the applicant and all parties who have filed an answer. The notice of hearing shall include a statement of the nature of the proceeding and time and place it will be held; the legal authority and jurisdiction under which the hearing is to be held, and a reference to the particular sections of law and rules involved; and a short and plain statement of the matters to be adjudicated.

(ii) The Executive Director shall determine whether the hearing shall be conducted before a staff hearing examiner or before an Administrative Law Judge at the Office of Administrative Trials and Hearings (OATH). All such hearings shall be conducted in accordance with procedures set forth in this section. Where a hearing is conducted at OATH, the Administrative Law Judge shall submit recommended findings of fact and a recommended decision to the Loft Board, which shall make the final findings of fact and decision. Where a hearing is conducted by a staff hearing examiner, such hearing will be conducted by a staff hearing examiner assigned solely to adjudicative duties, who may take testimony under oath and consider affidavits and other proofs. Formal rules of evidence shall not apply to such hearings, except that effect shall be given to the rules of privilege recognized by law. All such hearings shall be electronically recorded, and a duplication of the tape recording or transcript of the proceedings shall be available to any party upon application and agreement to pay the fee assessed for the duplication. At the hearing the parties shall be afforded the opportunity to be represented by counsel, to issue subpoenas or to request that a subpoena be issued, to call witnesses, to cross-examine opposing witnesses and to present oral and written arguments on the law and facts.

(3) Parties shall be advised of their right to representation by counsel at all stages of the administrative proceedings and of their right to cross-examine witnesses at hearings.

(4) When a party fails to furnish documents requested by the staff or the Loft Board or fails to submit to examination or cross-examination, inferences adverse to his or her position may be drawn by the fact-finder from such refusal.

(5) Where informal conferences conducted by the staff with the affected parties result in the resolution of disputes to the mutual satisfaction of the parties, a stipulation of agreement shall be entered into by the parties and reviewed by the Executive Director. A summary report of such matters including the type of application, the issues presented and the resolution reached shall be made to the Board which may direct that a particular matter be reopened and remanded for further investigation. Upon approval by the Board of matters on summary calendar, such cases shall be deemed closed.

(k) (1) Parties may consent to adjourn conferences or hearings with the approval of the hearing examiner or Administrative Law Judge assigned to the case. No more than 2 consecutive consent adjournments will be permitted, except as noted below.

(2) Additional requests for adjournments must be made in writing to the hearing examiner or Administrative Law Judge assigned to the case, with notice to all affected parties, at least 2 days before the date of the scheduled conference or hearing. Such adjournment will be granted at the sole discretion of the hearing examiner or Administrative Law Judge.

(3) When any party adjourns more than two consecutive schedule conferences or hearings, the hearing examiner or Administrative Law Judge may direct that the next scheduled hearing or conference be marked final. This notice shall be sent to the parties in writing.

(4) If an applicant does not appear for a conference or hearing which has been marked final against him/her, the application will be dismissed for failure to prosecute unless the hearing examiner or Administrative Law Judge approves a written request for its reinstatement which must be made within 30 days upon a showing of extraordinary circumstances which prevented the applicant's attendance at the hearing or conference.

(5) If a respondent does not appear for a conference or hearing marked final against him/her, the answer will be stricken and the respondent will be barred from presenting its defensive case unless the hearing examiner or Administrative Law Judge approves a written request for its reinstatement which must be made within 30 days upon a showing of extraordinary circumstances which prevented the respondent's attendance at the hearing or conference.

(6) In a case in which the respondent is barred from filing an answer and presenting its defensive case, the applicant must then present a **prima facie** case at an inquest before a hearing examiner or Administrative Law Judge, demonstrating entitlement to the relief sought in the application.

(l) If an applicant fails to appear at a hearing on due notice which has not been marked final against the applicant, his or her application shall be dismissed without prejudice. If a respondent fails to appear for a hearing on due notice which has not been marked final against the respondent, the staff shall conduct, through one of its hearing examiners, an inquest on the application. All such inquests shall be electronically recorded. Where a respondent fails to appear for a hearing and an inquest is held the conclusions of which are adverse to his or her contentions, the respondent may move to re-instate the matter within 30 days of the date of the mailing of the final determination, upon good cause shown. Good cause can be established by proof of a reasonable explanation for failure to appear on the date of the hearing and a summary of the defense to be presented, which establishes it not to be frivolous. After 30 days, any motion to reopen will be denied as untimely, except that the Executive Director may grant such motion, in his discretion, if extraordinary circumstances for the non-appearance and further delay can be shown, and a substantial likelihood of success on the merits can be shown.

(m) The staff of the Board shall prepare written reports of all hearings and inquests conducted by staff hearing examiners and shall submit such reports to the Board. These reports shall be based exclusively on the administrative record of the case. They shall include:

(1) a description of the application, and the names of the parties, their counsel and other persons affected by the application;

(2) a summary of the facts disputed and the facts found during any investigation and of testimony and other proofs taken at the hearing or inquest;

(3) copies of the application and of all affidavits, memoranda, and briefs submitted by the parties;

(4) a staff recommendation to the Board regarding disposition of the application, with a summary of the factual and legal bases for such recommendation. A copy of all written recommended decisions shall be mailed forthwith to each party.

(n) All final determinations regarding the disposition of any application brought to a hearing or inquest shall be made by the Board. The Board may adopt, reject, remand, defer or modify the disposition recommended by the staff or Administrative Law Judge employed by OATH. Pending its final determination, the Board or the Chair may direct the staff to provide it with additional information regarding the application, with copies of any relevant documents not included in the staff report, and with a transcript of the hearing or inquest. When a final decision is entered, it shall be mailed forthwith to each party.

(o) The Board may, by a vote of a majority of the Board as specified in paragraph 3 of these rules, conduct a **de novo** hearing or inquest on an application. The provisions on the taking of evidence, set forth in §1-06(e), **supra,** shall apply to hearings conducted by the Board. All such proceedings shall be electronically recorded.

(p) The report and recommendation of the staff or administrative law judge on each application shall be promptly referred to the Loft Board. A copy of the Board's determination, including an order and any supporting opinion shall be mailed to the applicant and all parties who filed an answer. A determination of the Board shall constitute a final agency determination for purposes of commencement of the running of the statute of limitations for the filing of an Article 78 C.P.L.R. petition challenging the Board's determination, unless a timely application for reconsideration has been filed (see §1-07 of these rules).

HISTORICAL NOTE

Section amended City Record Dec. 23, 1994 eff. Jan. 22, 1995.

Section amended City Record Apr. 10, 1991 eff. May 10, 1991.

Section in original publication July 1, 1991.

Subd. (p) amended City Record July 15, 1998 eff. Aug. 14, 1998.

CASE AND ADMINISTRATIVE NOTES

¶ 1. In 1995, IMD owner filed an application for an extension of legalization deadlines then in effect. Upon enactment of 1996 amendments to Loft Law, new deadlines were adopted, but Loft Board continued to process the application as one for a "retroactive extension" of the pre-1996 deadlines. Pursuant to section 1-06(h), amendment of the application was permitted to add a request for an extension of the 1996 deadline to obtain a building permit. **Matter of Ken-Zen Institute, Ltd.,** OATH Index No. 897/98 (Feb. 24, 1998), **aff'd in part,** Loft Bd. Order No. 2235 (Mar. 24, 1998).

¶ 2. Loft Board rules, not OATH rules or the CPLR, govern an application to vacate a default in a Loft Board proceeding. **Matter of Slavis,** OATH Index No. 993/97 (Jan. 27, 1998), **aff'd,** Loft Bd. Order No. 2233 (Mar. 24, 1998).

¶ 3. Under this section, OATH lacks discretion to grant an untimely application to vacate a default. The defaulting party's remedy, if aggrieved by any subsequent final determination issued by the Loft Board, is to make an application for reconsideration to the Board pursuant to section 1-06(i)(3) of the Board's rules. **Matter of Slavis,** OATH Index No. 993/97 (Jan. 27, 1998), **aff'd,** Loft Bd. Order No. 2233 (Mar. 24, 1998).

¶ 4. Where owner failed to answer tenant's application, was provided with notice and opportunity to make a motion to vacate this default and missed the deadline set forth in the notice by three weeks, the application to vacate was denied as untimely. **Matter of Slavis,** OATH Index No. 993/97 (Jan. 27, 1998), **aff'd,** Loft Bd. Order No. 2233 (Mar. 24, 1998).

¶ 5. Defaulting owner, who was represented by counsel and given notice and opportunities to move to be relieved from default and did not do so prior to rescheduled hearing date, was required to make a motion to be relieved from default. Mere appearance will not relieve a default. **Matter of Barth,** OATH Index Nos. 990-91/98 (June 5, 1998), **aff'd,** Loft Bd. Order No. 2283 (Sept. 24, 1998).

¶ 6. Application may be dismissed for failure to prosecute pursuant to subparagraph (k)(4) of this section where the applicant did not respond to two letters from the Loft Board asking for further information to support application. **Matter of Meltzer,** OATH Index No. 895/98 (Mar. 11, 1998), **aff'd,** Loft Bd. Order No. 2254 (May 28, 1998).

¶ 7. Pursuant to subparagraph (j)(2)(ii) of this section, the strict or formal rules of evidence do not apply to Loft Board hearings. Administrative law judge issued preliminary ruling from the bench that the Dead Man's Statute, CPLR section 4519, is inapplicable in a Loft Board hearing. Party's objection to receipt of testimony on that basis was deemed

waived where party did not avail himself of the opportunity to submit authority to the contrary. **Matter of Sultan,** OATH Index Nos. 1314-15/98, at 14, n. 1 (Aug. 18, 1998), **aff'd,** Loft Bd. Order No. 2323 (Oct. 27, 1998).

¶ 8. Pursuant to paragraph (l) of this section, non-compliance application is dismissed without prejudice upon the failure of all three applicants to appear for duly scheduled trial. **Matter of Puryear,** OATH Index No. 1645/98 (June 26, 1998), **aff'd,** Loft Bd. Order No. 2285 (Sept. 24, 1998).

¶ 9. Owner's default for failing to file a timely answer excused because the Loft Law had expired during the thirty-day period to answer. **Matter of Kasolapov**, OATH Index No. 271/00, mem. dec. (Sept. 17, 1999).

¶ 10. Motion to vacate default granted where movant's explanation for failing to answer-mail delivery failure-was unopposed and movant's defense to the applicant's overcharge claim was not frivolous. The movant challenged the applicant's right to claim damages by arguing that the applicant was not a subtenant but was merely a roommate of the subtenant. **Matter of Shannon**, OATH Index No. 1757/99, mem. dec. (Apr. 15, 1999).

¶ 11. Owner's motion to vacate default because its attorney was out of the country denied where it failed to set forth a summary of a non-frivolous defense to the application, as required by subparagraph (i)(2) of this section. **Matter of Bills**, OATH Index No. 921/99 (Apr. 12, 1998), **modified on penalty after supplemental report and recommendation**, Loft Bd. Order No. 2421 (June 25, 1999).

¶ 12. Tenants sought to include in their coverage proceeding a further hearing on the issue of whether the building was a single entity, or horizontal multiple dwelling under Loft Law. Owner moved to preclude relitigation of that issue in light of a prior ruling by a Loft Board hearing officer, based on written submissions and an inspection of the premises, that the premises constituted two distinct buildings for coverage purposes. Administrative law judge granted owner's motion to preclude further litigation of the horizontal multiple dwelling issue, finding that the parties had had a full and fair opportunity to "litigate" the issue previously before the Loft Board hearing officer, even though no evidentiary hearing was held since the right to an evidentiary hearing under Loft Board rule 1-06(j) is not absolute. No hearing is required in the absence of disputed material issues of fact. **Matter of South 11th Street Tenants' Association**, OATH Index Nos. 1242-44/96 (Mar. 30, 1999), **aff'd,** Loft Bd. Order No. 2397 (Apr. 29, 1999).

¶ 13. Administrative law judge denied owner's motion to vacate default in non-compliance proceeding where owner had not demonstrated a reasonable excuse for failing to answer. **Matter of Chapin,** OATH Index No. 275/00, mem. dec. (Apr. 27, 2000).

¶ 14. Owner's excuse for not answering petition rests on technical deficiency in service, "office failure," and assumption dispute had been resolved between the two tenants. Administrative law judge granted motion to vacate default in light of public policy favoring a party's participation in litigation and petitioner's consent. Loft Board reversed, holding that under rule 1-06(i), sole remedy was to make an application for reconsideration after the Loft Board issues its order. **Matter of Latin,** OATH Index No. 1110/00, mem. dec. (Feb. 15, 2000), **rev'd,** Loft Bd. Order No. 2555 (July 20, 2000).

¶ 15. Administrative law judge granted owner's application to vacate default. The Loft Board reversed that portion of the administrative law judge's report, holding that under 29 RCNY 1-06(i) the owner's application was untimely and must be denied; the owner's remedy is to apply for reconsideration after the Loft Board issues its order pursuant to 1-06(i)(3). **Matter of Schwartz,** OATH Index No. 272/00 (June 19, 2000), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2544 (July 20, 2000).

¶ 16. Loft Board rule 1-06(l) mandates dismissal of an application without prejudice where an applicant fails to appear at a hearing on due notice, which has not been marked final against the applicant. **Kamen v. Suraci,** OATH Index No. 2364/00 (Aug. 16, 2000), **aff'd,** Loft Bd. Order No. 2557 (Sept. 26, 2000).

¶ 17. Where ALJ was provided with Stipulation of Settlement of holdover proceeding between the same parties to a

coverage proceeding, in which applicant had sold his rights and agreed to move out, ALJ, after giving notice, dismissed the coverage petition with prejudice. **Matter of Abramson,** OATH Index No. 1197/01 (Jan. 16, 2001).

¶ 18. Where two tenants who filed answers failed to appear at a scheduled hearing, their rights to participate were foreclosed and requests dismissed pursuant to subsection (k)(4) of this section. **Matter of Lipton,** OATH Index Nos. 278-79/00 (Feb. 26, 2001).

¶ 19. Mailing of new notice of hearing and default, following the reopening of OATH's offices after temporary dislocation due to the September 11th attack at the World Trade Center, served to commence a new 30-day period in which respondent could move to vacate default pursuant to 29 RCNY § 1-06(i)(2). Further, it is the public policy of New York State that a party should not be prejudiced by the running of a statute of limitations in the period following the disaster at the World Trade Center. Executive Order Nos. 113.7 and 113.18; **see Ishay v. City of New York,** 178 F.Supp.2d 314 (E.D.N.Y. 2001). **Matter of Haley,** OATH Index No. 355/02, mem. dec. (Dec. 6, 2001).

¶ 20. Motion to vacate default pursuant to 29 RCNY § 1-06(i)(2) granted where substituted party defaulted because it never received copies of the notice and statement of charges and no showing has been made that allowing party to represent its interests in this matter would cause prejudice to any other party. **Loft Bd. v. 53 Downing Street, LLC,** OATH Index No. 2102/01, mem. dec. (Aug. 30, 2001).

¶ 21. Motion to vacate default deemed timely where copy of motion papers faxed to the trial judge were received within the extended deadline to file, even though original motion papers sent by mail were not received until the first business day after the extended deadline. **Loft Bd. v. 53 Downing Street, LLC,** OATH Index No. 2102/01, mem. dec. (Aug. 30, 2001).

¶ 22. Mailing of new notice of hearing and default, following the reopening of OATH's offices after temporary dislocation due to the September 11th attack at the World Trade Center, served to commence a new 30-day period in which respondent could move to vacate default pursuant to 29 RCNY § 1-06(i)(2). Further, it is the public policy of New York State that a party should not be prejudiced by the running of a statute of limitations in the period following the disaster at the World Trade Center. Executive Order Nos. 113.7 and 113.18; **see Ishay v. City of New York,** 178 F.Supp.2d 314 (E.D.N.Y. 2001). **Matter of Haley,** OATH Index No. 355/02, mem. dec. (Dec. 6, 2001).

¶ 23. Owner's request for an adjournment at time of trial to obtain a building permit was denied. Adjournment of trial may be granted only upon a showing of good cause by the party seeking the adjournment. **Matter of Buchen,** OATH Index Nos. 1132/98 & 105/99 (Mar. 21, 2002), **aff'd,** Loft Bd. Order No. 2725 (Apr. 18, 2002).

¶ 24. Pursuant to subsection (k)(4) of this section, tenant application for Loft Law coverage dismissed with prejudice for failure to prosecute when applicant failed to appear at the scheduled hearing, which had been adjourned several times and marked final. **Matter of Munzer,** OATH Index Nos. 2109-10/01 (May 13, 2002), **aff'd,** Loft Bd. Order No. 2743 (June 25, 2002).

¶ 25. Tenants' failure to appear at hearing on unreasonable interference application requires that application be dismissed for failure to prosecute under this rule. **Matter of Tsuji,** OATH Index No. 1351/03 (Sept. 3, 2003), **aff'd,** Loft Bd. Order No. 2832 (Nov. 13, 2003).

¶ 26. Administrative law judge determined that petition for protected occupancy had been abandoned where tenant did not appear for the proceeding, a money judgment for non-payment and a warrant of eviction had been issued against him by civil court, and tenant had surrendered possession of the subject premises. **Matter of Ehlich**, OATH Index No. 1698/03, mem. dec. (Feb. 5, 2004), **aff'd**, Loft Bd. Order No. 2850 (Mar. 18, 2004).

¶ 27. The Loft Board denied an abandonment application, finding that not all of the affected parties were served with the application. For an abandonment application, affected parties include the owner and such applicants as are necessary for a final resolution of the claims asserted in the application. The application indicated that the owner listed

only the window period occupants on the application as affected parties. Loft Board records indicated that the two allegedly abandoned units were subsequently occupied by three other persons who were not listed on the application. Failure to name those three other persons was fatal to the application. **Matter of 43 Crosby Street, LLC**, Loft Bd. Order No. 3124 (Nov. 16, 2006), **rejecting**, OATH Index No. 1937/06 (Aug. 2, 2006).

¶ 28. Pursuant to subsection (i)(4) of this section, respondent-owner's default did not entitle applicant-tenant to a default judgment or the granting of her application. Applicant still had to prove the allegations of her application. Overcharge application denied when tenant failed to make out a **prima facie case. Matter of Maugenest**, Loft Bd. Order No. 3118 (Nov. 16, 2006).

¶ 29. The provision in subsection (h) of this section, allowing amended pleadings up to the date of the conference, does not apply to an inquest where all adverse parties have defaulted because there cannot be a conference with only one party. **Matter of Maugenest**, Loft Bd. Order No. 3118 (Nov. 16, 2006).

¶ 30. Building owner's default vacated on a showing of good cause. Answer had been timely filed but lacked proof of service and was not attached to the Loft Board's answer form, as required by subsection (c) of this section. Irregular filing was deemed to be a mere technical defect and defenses of insufficient funds and reliance on outside management to perform the legalization process seen as not frivolous. Vacating respondent's default did not prejudice tenant. **Matter of Thornley**, OATH Index No. 2180/07 (Sept. 28, 2007).

¶ 31. Pursuant to subsection (i)(2) of this section, a party who has been declared in default may apply to vacate the default upon a showing of a reasonable excuse for the failure to file a timely answer and a non-frivolous defense to the application. A building owner faxed her answer to the Loft Board after business hours but before midnight on the due date. The answer was date-stamped as received the following day. The Loft Board interprets subsection (f) of this section to require faxing by close of business on the due date. The owner's timely application to vacate the default was granted. The ALJ found the owner's interpretation of the rule was reasonable because the rule does not specify that the answer must be faxed by close of business of the due date. **Matter of Weadick,** OATH Index No. 1555/08, mem. dec. (Feb. 22, 2008).

¶ 32. Pursuant to subsection (i)(2) of this section, a party has thirty days from the date of the mailing of the default application to make an application to vacate his or her default, or he or she will be barred from participation in the proceeding. Application to vacate default, made more than thirty days after the mailing of the default determination was denied as untimely; defaulting building owner was precluded from presenting a defense at the hearing. **Matter of Schwartz**, OATH Index No. 966/08 (Feb. 15, 2008), **adopted**, Loft Bd. Order No. 3430 (Apr. 17, 2008).

¶ 33. Former owner was a proper party to tenants' overcharge application. Omission of the term "former owner" from the definition of "affected parties" in subsection (a) of this section, does not provide a basis to dismiss claim against former owner. Subsection (a) is a procedural rule identifying the essential participants an applicant must notify when filing an overcharge claim. The rule does not limit the Loft Board's jurisdiction, derived from Article 7-C of the Multiple Dwelling Law, which does not preclude overcharge claims against former owners. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

¶ 34. Summary judgment is appropriate where there is no triable issue of fact and the movant has established entitlement to relief as a matter of law. There is no need for an evidentiary hearing where there is no material factual dispute. Held: tenant was entitled to summary judgment in an overcharge case. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-06.1

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-06.1 Limitations on Applications.

(a) [Reserved]

(b) [Reserved]

(c) **Rent overcharges.** An application for rent overcharges shall be filed within four years of such overcharge. Overcharges shall not be awarded for the period prior to the date of filing of a coverage or registration application, nor for more than four years before the date on which the application for overcharge was filed.

(d) **Code compliance rent adjustment applications.** An application pursuant to §2-01(i)(2) for code compliance rent adjustments shall be filed by the time set forth therein.

HISTORICAL NOTE

Section amended City Record Oct. 15, 2001 eff. Nov. 14, 2001. [See Note 1]

Section added City Record Nov. 4, 1993 eff. Dec. 4, 1993.

Subd. (d) added (as Subd. (e)) City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected copy supersedes the Mar. 30, 1999 version). [See T29 §2-01 Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 15, 2001:

Subdivisions (a) and (b) of §1-06.1 were promulgated on December 4, 1993 (and became effective six months later, on June 4, 1994). The Loft Board stated at the time that evidence to prove coverage was growing stale with the passage of time and therefore no new building-wide coverage cases or building registrations should be accepted at the Loft Board.

However, as a result of the decision in **180 Varick Street Corp. v. Center for Entrepreneurial Management, Inc.** (NY Law Journal, Sept. 16, 1998), the Board repealed these provisions, since there was no purpose in maintaining the rule given the holding in that decision, which permits people to obtain coverage through judicial action.

CASE AND ADMINISTRATIVE NOTES

¶ 1. This section provides no limitation period applicable to building owners' applications for extensions of legalization deadlines pursuant to §2-01(b) of this chapter, and therefore an extension application filed after expiration of the deadline at issue relates back to that deadline. Matter of Drewvin Building Corporation, OATH Index No. 748/96 (July 12, 1996), aff'd, Loft Bd. Order No. 2004 (Sept. 26, 1996); Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996), aff'd, Loft Bd. Order No. 1935 (Mar. 28, 1996).

¶ 2. Paragraph (c) of this section limits an award for overcharges to four years prior to the filing of the application, but it does not bar the Loft Board from examining rental history pre-dating the four-year period for the purpose of determining the legal rent. The Rent Regulation Reform Act, CPLR section 213, which bars examination of rental records outside the four-year period, makes no reference to the Loft Law and is held not to apply here. Tenant's documentation, consisting of canceled checks and rent and utility bills, were found sufficient to establish current legal rent and to establish that the tenant was overcharged. **Matter of Arcaya**, OATH Index No. 919/99 (June 17, 1999), **aff'd**, Loft Bd. Order No. 2454 (Dec. 13, 1999), **aff'd sub nom. Sori-Goalya Realty, LLC v. NYC Loft Bd.**, NYLJ, Feb. 28, 2001, at 19, col. 6 (Sup. Ct. N.Y. Co.), **aff'd**, 284 A.D.2d 137, 726 N.Y.S.2d 93 (1st Dep't 2001).

¶ 3. Pursuant to subsection c of this section calculation of overcharge is limited to the four years prior to the date of the application. **Matter of McIntosh,** OATH Index No. 604/02 (Oct. 15, 2002), **aff'd,** Loft Bd. Order No. 2763 (Nov. 19, 2002).

¶ 4. Tenants are entitled only to overcharges accruing after the date that the coverage application was filed. **Matter of Tenants of 323-325 W. 37**th Street, OATH Index No. 692/06 (May 18, 2007).

¶ 5. CPLR section 213-a requires that an action on a residential overcharge be brought within four years of the first overcharge alleged. Overcharge application brought in 2006 was time barred where first overcharge allegedly occurred in 1990. ALJ had applied limitation provision set forth in Loft Board rule 1-06.1. Supreme Court held that, while the wording of the Loft Board regulation is slightly different from CPLR 213-a, "clearly a City regulation cannot alter a limitation period set forth in a state statute." **Thornley v. Al-Farah**, OATH Index Nos. 1819/06 & 1935/06 (Aug. 11, 2006), **adopted**, Loft Bd. Order No. 3405 (Feb. 21, 2008), **rev'd sub nom. Nur Ashki Jerrahi Community v. NYC Loft Bd.**, 868 N.Y.S.2d 494, 2008 N.Y. Misc. LEXIS 6746 (Sup. Ct. N.Y. County Nov. 19, 2008); **but see Matter of Arcaya**, OATH Index No. 919/99 (June 17, 1999), **aff'd**, Loft Bd. Order No. 2454 (Dec. 13, 1999), **aff'd sub nom. Sori-Goalya Realty, LLC v. New York City Loft Bd.**, NYLJ, Feb. 28, 2001, at 19, col. 6 (Sup. Ct. N.Y. County), **aff'd, 284 A.D.2d 137**, 726 N.Y.S.2d 93 (1st Dep't 2001) (holding that the CPLR is limited to civil judicial proceedings and does not apply to Loft Board proceedings).

¶ 6. Subsection [c] of this section precludes an award for overcharges for the period prior to the date of filing of a coverage or registration application. Owner, who challenged tenant's claim of protected occupant status, moved for summary judgment arguing tenant's overcharge application was a "de facto coverage" application precluded by subsection [c]. ALJ denied motion, finding subsection [c] was inapplicable, where the owner had registered the building and the unit 18 years earlier. The tenant was seeking a finding that he is a protected occupant, not a finding of coverage.

Matter of Fogel, OATH Index Nos. 2025/08 & 2026/08, mem dec (Oct. 14, 2008).

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-07 Reconsideration of Determination.

(a) The Loft Board, upon the application of a party aggrieved by a determination of the Board, may, in its sole discretion, reconsider such determination. An application for reconsideration will be granted only under the following extraordinary circumstances: allegations of denial of due process or material fraud in the prior proceedings, an error of law, an erroneous determination based on a ground that was not argued by the parties at the time of the prior proceeding and that the parties could not have reasonably anticipated would be the basis for a determination, and discovery of probative, relevant evidence which could not have been discovered at the time of the hearing despite the exercise of due diligence.

(b) An aggrieved party must file with the Board 12 copies of his or her reconsideration application, along with proof that the reconsideration application has been served on the affected parties to the prior proceeding and the application fee required by section 2-11(b)(15). Service of the application shall be made in accordance with the provisions of section 2-01(d)(1)(i). To be considered timely, a reconsideration application must be received by the Loft Board within 30 days of the date of mailing by the Loft Board of the determination sought to be reconsidered. The application must specify the questions presented for reconsideration and the facts and points of law relied upon as a basis for seeking reconsideration.

(c) Within 20 days of service of the reconsideration application, any party supporting or opposing the application shall file 12 copies of an answering brief or memorandum with the Board, with proof of service upon the applicant for reconsideration. Such brief or memorandum must contain the facts and argument on which such party is relying. Upon determination of the reconsideration application, the decision of the Board will be mailed to all parties who filed an application or answer in the reconsideration pro- ceeding.

(d) A Loft Board determination pursuant to section 1-06 of these rules shall be the final agency determination for the purpose of judicial review, unless a timely application for reconsideration of the determination has been filed. In such case, (i) if the Loft Board modifies or revokes the underlying order, such revocation or modification shall be deemed the final agency determination from which judicial review may be sought; (ii) if the Loft Board denies the reconsideration application, the underlying order shall be deemed the final agency determination from which judicial review may be sought, and the date of the denial of the reconsideration application shall be deemed the date of the final agency determination; and (iii) if the Loft Board decides the reconsideration application by remanding the matter to the hearing officer for further proceedings, neither the underlying order nor the remand order shall constitute a final agency determination, and no judicial review may be sought until such time as the Loft Board issues a final agency determination following the remand.

HISTORICAL NOTE

Section amended City Record July 15, 1998 eff. Aug. 14, 1998. [See T29 §1-07.1 Note 1]

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-07.1

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-07.1 Appeal from Determination of the Director, or Determination of a Hearing Officer Under Section 2-04.

(a) A person aggrieved by a written determination of the Director with respect to any matter that is not required by these rules to be determined by the full Board, or by a determination of a hearing officer with respect to housing maintenance standard violations under section 2-04 of these rules, may appeal from such determination to the full Board. The determination of the Loft Board deciding such appeal shall constitute the final agency determination from which judicial review may be sought. For the purposes of this section, a "person aggrieved by a written determination of the Director" shall be the owner or any residential tenant of the building in question whose rights may be affected by the determination. For the purposes of this section, a "person aggrieved by a determination of a hearing officer with respect to housing maintenance standard violations under section 2-04 of these rules" shall be the owner of the building in question or the Director of Enforcement of the Loft Board, in his or her capacity as prosecutor of housing maintenance standard violations.

(b) A person aggrieved by a determination as set forth in subdivision (a) of this section must file with the Loft Board 12 copies of an appeal application, along with proof of service of the appeal application upon the affected parties to the prior proceeding and, except where the Director of Enforcement of the Loft Board is the appellant, the application fee required by section 2-11(b)(14). Service of the application shall be made in accordance with the provisions of section 2-01(d)(1)(i). To be considered timely, an appeal application must be received by the Loft Board within 45 days of the date of mailing of the determination sought to be appealed. The application must specify the questions presented for appeal and the facts and points of law relied upon as a basis for seeking appeal. For the purposes of this section, an "affected party" in an appeal from a determination of the Director shall be the owner or any residential tenant of the building in question whose rights may be affected by the determination. For the purposes of this section, an "affected

party" in an appeal from a determination of a hearing officer with respect to housing maintenance standard violations under section 2-04 of these rules shall be the owner of the building in question or the Director of Enforcement of the Loft Board, in his or her capacity as prosecutor of housing maintenance standard violations.

(c) Within 20 days of service of the appeal application, any party supporting or opposing the application shall file 12 copies of an answering brief or memorandum with the Board, with proof of service, in accordance with the provisions of section 2-01(d)(1)(i) of these rules, upon the applicant. Such brief or memorandum must contain the facts and argument on which such party is relying. Upon determination of the appeal application, the decision of the Loft Board will be mailed to all parties who filed an application or answer in the appeal proceeding.

(d) In determining an appeal from a determination of a hearing officer with respect to housing maintenance standard violations under §2-04 of these rules, the Loft Board shall review the determination with regard to whether the facts found therein are supported by substantial evidence in the record, whether the law was correctly applied, and whether the penalty imposed is appropriate, but shall not consider any evidence not presented to the hearing officer, unless good cause is shown as to why the evidence was not previously available.

(e) The Loft Board shall have the power to reverse, remand, or modify any determination appealed from pursuant to this section and may reduce the penalty imposed by a hearing officer for housing maintenance standard violation.

HISTORICAL NOTE

Section added City Record July 15, 1998 eff. Aug. 14, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 3, 2001:

The amendments to §1-07 provide that if a party files a timely application for reconsideration, the time to commence an Article 78 proceeding in court will be tolled until the Loft Board decides the reconsideration application. As in current practice, parties are not required to file a reconsideration application before seeking judicial review. This amendment is intended to save parties the effort and expense of commencing both a reconsideration application and an Article 78 proceeding, and save the Loft Board staff the effort of having to both defend an Article 78 and review an identical reconsideration application.

In the past, aggrieved parties often filed reconsiderations only to reargue legal issues that had been determined against them in the underlying proceeding. This was, however, never the purpose of the rule. The proposed amendments limit the grounds on which a person aggrieved by a Loft Board determination may seek reconsideration, to extraordinary grounds such as lack of due process or error in the determination which could not have been anticipated at the time of the underlying proceeding. An example of the latter would be a mathematics error made in the calculation of rent in a rent overcharge case.

Section 1-07.1 amends the Loft Board's rules to clarify when a person may obtain the full Loft Board's review (i.e., appeal) of a determination made by the Executive Director, or by a hearing officer in the context of a minimum housing standards violation case. A new provision states that an appeal from an administrative determination must be made within 45 days of the date of mailing of the determination sought to be appealed. In order to seek judicial review of such an administrative determination, the aggrieved party must first exhaust its administrative remedies by obtaining a Loft Board order upholding the administrative determination. The section also provides that the Loft Board's determination, rather than the Director's or hearing officer's determination, constitutes the final agency determination.

The amendments contained herein shall not apply to orders of the Loft Board, written determinations of the Executive Director, or determinations of hearing officers or administrative law judges pursuant to section 2-04 issued prior to the effective date of this rule.

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-08 Ex Parte Communications on Pending Applications.

(a) After an application has been filed with the Loft Board, an employee of the Board assigned to conduct a conference or hearing, or make findings of fact and recommendations on that application, shall not communicate on any substantive matter involving the merits of the application with one party to a dispute without notice and opportunity for all parties to participate.

(b) After an application has been filed with the Loft Board, a member of the Board shall not communicate with any member of the staff concerning such application until the matter is before the Board for determination, except that the Chair in its administrative capacity may communicate with the Executive Director, the Operations Director, and Counsel, and shall disclose the fact of such communication to the Board when the case reaches the Board for its determination. Nor shall any member of the Board be present at hearings or conferences conducted by the staff.

(c) When an application has been processed by staff and reaches the Loft Board for determination, any member of the Board who has had **ex parte** communication with a party to such application shall disclose this fact to the other members of the Board prior to the Board's consideration of the matter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

11 of 59 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-09 Action by the Board on Its Own Initiative.

The Board on its own initiative may commence appropriate proceedings or investigations pursuant to its powers or duties under Article 7-C of the Multiple Dwelling Law, including, but not limited to, findings, determinations or enforcement proceedings concerning coverage, hardship claims, rent adjustments, fixture fee disputes, exemptions and compliance with requirements of Article 7-C, including the minimum housing maintenance standards promulgated by the Board. Prior to making a finding or determination pursuant to Article 7-C, the Board shall afford the party against whom a proceeding is directed an opportunity to be heard on not less than 10 days notice by regular mail.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-10 Administrative Authority and Correspondence.

Administrative authority is vested in the Executive Director of the staff, under the direction of the Chair. Official correspondence regarding administrative matters shall be signed by the Executive Director or by his or her designees. Official correspondence to the Board may be addressed to the New York City Loft Board or to the attention of the Chair or the Executive Director at the New York City Loft Board.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-11 Petitioning Board to Adopt Rules.

(a) **Definitions.**

Persons. "Persons" shall mean an individual, partnership, corporation or other legal entity, and any individual or entity acting in a fiduciary or representative capacity.

Petition. "Petition" shall mean a request or application for the Loft Board to adopt a rule.

Petitioner. "Petitioner" shall mean the person who files a petition.

Rule. "Rule" shall have the same meaning set forth in Section 1041 (5) of the New York City Charter.

(b) **Procedures for Submitting Petitions.** (1) Any person may petition the Loft Board to consider the adoption of rules.

(2) The petition must contain the following information:

(i) The proposed language for the rules to be adopted;

(ii) A statement of the Loft Board's authority to promulgate the rules and their purpose;

(iii) The petitioner's argument in support of adopting the rules;

(iv) The period of time the rule should be in effect;

(v) The name, address and telephone number of the petitioner;

(vi) The signature of the petitioner.

(3) All petitions should be typewritten.

(4) The Loft Board is authorized to adopt a form petition. Every petition shall be submitted on such form unless such a form is not available from the Loft Board, in which case the petition shall be filed on plain white, durable paper which shall be eleven by eight and one-half inches in size.

(5) Petitions shall be mailed or delivered to the offices of the Loft Board marked to the attention of the Chair or the Executive Director.

(6) Upon receipt of a petition submitted in proper form, the petition shall be stamped with the date it was received and shall be assigned a processing number. The petition shall then be forwarded to the Chair who may, at his or her discretion, reject the petition or present the petition for consideration by the Board. If the Chair rejects the petition, he or she must do so by written notice stating the reasons for denial. Copies of the Chair's notice rejecting the petition, together with a copy of the petition, shall be presented to the Board at the next regularly scheduled session, after which any Board member may present the petition for consideration by the Board.

(7) Within sixty days from the date the petition was received by the Loft Board, the Loft Board shall either deny any petition not preciously rejected by the Chair by written notice stating the reasons for denial, or shall state in writing the Loft Board's intention to grant the petition and to initiate rulemaking by a specified date. In proceeding with such rulemaking, the Loft Board shall not be bound by the language proposed by petitioner, but may amend or modify such proposed language at the Loft Board's discretion.

(8) The Loft Board's decision to deny or grant a petition is final and shall not be subject to judicial review.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-01 Code Compliance Work.

(a) **Code compliance timetable for IMD's.** The owner of any building, structure or portion thereof that meets the criteria for an IMD set forth in §281 of Article 7-C and Loft Board coverage regulations, shall comply with the code compliance deadlines set forth below. Any building or unit that is not covered by Article 7-C because of the denial of a grandfathering application or expiration of study area status is not required to be legalized pursuant to these regulations, unless either the area in which the building is located is rezoned to permit residential use or a unit or units at the building qualify for coverage pursuant to M.D.L. §281(4). However, the building must still comply with all other applicable laws and regulations.

In these code compliance regulations, the term "month" shall mean thirty days and the term "occupant," unless otherwise provided, shall mean a residential occupant qualified for the protections of Article 7-C, any other residential tenant, and any nonresidential tenant.

The failure of an owner to meet any of the code compliance deadlines set forth below does not relieve the owner of its obligations to comply with these requirements.

Paragraphs (1) through (4) of this subdivision implement the initial code compliance deadlines that applied pursuant to §284(1)(i) of Article 7-C before the enactment of later amendments, and paragraphs (5) through (8) reflect those amendments, as set forth in §284(1)(ii) through (v).

(1) **Deadlines for filing alteration applications.** (i) Code compliance timetable for buildings in which all residential units are as of right.

The owner of an IMD that contains only residential units in which residential use is permitted as of right under the Zoning Resolution shall have filed an alteration application by March 21, 1983.

(ii) Buildings with 3 or more as of right units and additional units eligible for grandfathering.

The owner of an IMD that, on December 1, 1981, contained 3 or more residential units as of right and 1 or more units eligible for coverage by use of one of the grandfathering procedures set forth in subsection 281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall have filed an alteration application for all covered as of right residential units by March 21, 1983, and

(B) Following the grandfathering approval of any additional residential units, the owner shall amend the existing alteration application to reflect approval of the grandfathering application for the additional unit or units within a month from such approval or within a month of the effective date of these regulations, whichever is later.

(iii) Buildings with fewer than 3 as of right units and additional units eligible for grandfathering.

The owner of an IMD that, on December 1, 1981, contained fewer than three residential units as of right and 1 or more units eligible for coverage by use of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall file an alteration application for all covered residential units within 9 months after approval of the grandfathering application of the unit that becomes the third covered residential unit, and

(B) Following the grandfathering approval of the unit that becomes the third eligible residential unit, the owner of a building with additional units eligible for grandfathering shall amend the existing alteration application to reflect approval of the grandfathering application for the additional unit or units within a month after such approval or within a month after the initial timely filing of the alteration application referred to in §2-01(a)(1)(iii)(A) above, whichever is later.

(iv) Buildings in study areas rezoned to permit as of right residential use.

The owner of an IMD located in an area designated by the Zoning Resolution as a study area that is rezoned to permit residential use as of right shall file an alteration application within 9 months after the effective date of such rezoning.

(v) Buildings in study areas rezoned to permit residential use with 3 or more as of right units and additional units eligible for grandfathering.

The owner of an IMD that is located in an area designated by the Zoning Resolution as a study area and that, as a result of rezoning, contains 3 or more residential units as of right and 1 or more units eligible for coverage by use of one of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08 "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall file an alteration application for all covered as of right residential units within 9 months after the effective date of such rezoning, and

(B) Following the grandfathering approval of any additional residential units, the owner shall amend the existing alteration application to reflect approval of the grandfathering application for the additional unit or units within a month after such approval.

(vi) Buildings in study areas rezoned to permit residential use with fewer than 3 as of right units and additional units eligible for grandfathering.

The owner of an IMD that is located in an area designated by the Zoning Resolution as a study area and that, as a result of rezoning, contains fewer than 3 residential units as of right and 1 or more units eligible for coverage by use of one of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall file an alteration application for all covered residential units within 9 months after approval of the grandfathering application of the unit that becomes the third covered residential unit, and

(B) Following the grandfathering approval of the unit that becomes the third eligible residential unit, the owner of a building with additional units eligible for grandfathering shall amend the existing alteration application to reflect approval of the grandfathering application for the additional unit or units within a month after such approval or within a month after the initial timely filing of the alteration application referred to in §2-01(a)(1)(vi)(A) above, whichever is later.

(2) **Deadlines for obtaining permits.**

(i) Code compliance timetable for buildings in which all residential units are as of right.

The owner of an IMD that contains only residential units in which residential use is permitted as of right under the Zoning Resolution shall take all necessary and reasonable actions to obtain a building permit within 6 months after the effective date of these regulations.

(ii) Buildings with 3 or more as of right units and additional units eligible for grandfathering.

The owner of an IMD that, on December 1, 1981, contained 3 or more residential units as of right and 1 or more units eligible for coverage by use of one of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall take all necessary and reasonable actions to obtain a building permit for all covered residential units within 6 months after the effective date of these regulations, and

(B) Following the grandfathering approval of any additional residential units, the owner shall take all necessary and reasonable actions to obtain approval of the amended alteration application for the additional units within 6 months after such grandfathering approval or within 6 months after the effective date of these regulations, whichever is later.

(iii) Buildings with fewer than 3 as of right units and additional units eligible for grandfathering.

The owner of an IMD that, on December 1, 1981, contained fewer than 3 residential units as of right and 1 or more units eligible for coverage by use of one of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall take all necessary and reasonable actions to obtain a building permit for all covered residential units within 6 months after the effective date of these regulations or within 6 months after the timely filing of an alteration application, whichever is later, and

(B) Following the grandfathering approval of the unit that becomes the third eligible residential units, the owner of a building with additional units eligible for grandfathering shall take all necessary and reasonable actions to obtain approval of the amended alteration application for the additional units within 6 months after such grandfathering approval or within 6 months after the effective date of these regulations, whichever is later.

(iv) Buildings in study areas rezoned to permit as of right residential use.

The owner of an IMD located in an area designated by the Zoning Resolution as a study area that is rezoned to

permit residential use as of right shall take all necessary and reasonable actions to obtain a building permit for all covered residential units within 6 months after the effective date of these regulations or within 6 months after the timely filing of the alteration application, whichever is later.

(v) Buildings in study areas rezoned to permit residential use with 3 or more as of right units and additional units eligible for grandfathering.

The owner of an IMD that is located in an area designated by the Zoning Resolution as a study area and that, as a result of rezoning, contains 3 or more residential units as of right and 1 or more units eligible for coverage by use of one of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall take all necessary and reasonable actions to obtain a building permit for all covered residential units within 6 months after the effective date of these regulations or within 6 months after the timely filing of the alteration application, whichever is later, and

(B) Following the grandfathering approval of any additional residential units, the owner shall take all necessary and reasonable actions to obtain approval of the amended alteration application for the additional units within 6 months after such grandfathering approval.

(vi) Buildings in study areas rezoned to permit residential use with fewer than 3 as of right units and additional units eligible for grandfathering.

The owner of an IMD that is located in an area designated by the Zoning Resolution as a study area and that, as result of rezoning, contains fewer than three residential units as of right and one or more units eligible for coverage by use of one of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall take all necessary and reasonable actions to obtain a building permit for all covered residential units within 6 months after the effective date of these regulations or within 6 months after the timely filing of the alteration application, whichever is later, and

(B) Following the grandfathering approval of the unit that becomes the third eligible residential unit, the owner of a building with additional units eligible for grandfathering shall take all necessary and reasonable actions to obtain approval of the amended alteration application for the additional units within 6 months after such grandfathering approval.

(3) **Deadlines for Article 7-B compliance.** The owner of an IMD shall achieve compliance with the fire and safety standards of Article 7-B of the M.D.L. for all covered residential units within 18 months after a building permit has been obtained or within 18 months after the effective date of these regulations, whichever is later. Or the owner may elect to comply with other local building codes or provisions of the M.D.L. that provide alternative means of meeting the fire and safety standards of Article 7-B (pursuant to §287 of Article 7-C) within 18 months after a building permit has been obtained or within 18 months after the effective date of these regulations, whichever is later. Where an owner is required to amend the existing alteration application to reflect approval of grandfathering applications for additional units pursuant to §2-01(a)(1)(ii)(B), (iii)(B), (v)(B) or (vi)(B) above, the owner shall achieve compliance with the fire and safety standards of Article 7-B, or with alternative building codes or provisions of the M.D.L. for the additional grandfathered unit or units within 18 months after the timely approval of the amended alteration application or within 18 months after the effective date of these regulations, whichever is later. Issuance of a temporary certificate of occupancy shall be considered the equivalent of Article 7-B compliance or compliance with alternative building codes or provisions of the M.D.L.

(4) **Deadlines for obtaining a final certificate of occupancy.** The owner of an IMD shall take all necessary and

reasonable actions to obtain a final certificate of occupancy as a class A multiple dwelling for all covered residential units within 6 months after compliance with the fire and safety standards of Article 7-B, alternative building codes or provisions of the M.D.L. has been achieved, or within 6 months after a temporary certificate of occupancy has been obtained. The owner of an IMD that contains additional units subject to §2-01(a)(1)(ii)(B), (iii)(B), (v)(B) or (vi)(B) above, shall take all necessary and reasonable actions to obtain a final certificate of occupancy as a class A multiple dwelling for the additional unit or units within 6 months after the date such unit or units come into compliance with the fire and safety standards of Article 7-B, alternative building codes, or provisions of the M.D.L., or within 6 months after the date such unit or units are covered by a temporary certificate of occupancy.

(5) Notwithstanding the provisions of subdivisions (a)(1) through (4) of this section, the owner of an IMD who has not been issued a final certificate of occupancy as a class A multiple dwelling for all covered residential units on or before June 21, 1992 shall:

(i) File an alteration application by October 1, 1992; and

(ii) Take all reasonable and necessary action to obtain a building permit by October 1, 1993; and

(iii) Achieve compliance with the fire and safety standards of Article 7-B of the M.D.L. for all covered residential units by April 1, 1995, or within 18 months after an approved alteration permit has been obtained, whichever is later. The owner may, alternatively, elect to comply with other building codes or provisions of the M.D.L. that provide alternative means of meeting the fire and safety standards of Article 7-B (pursuant to M.D.L. §287) by April 1, 1995 or within 18 months after an approved alteration permit has been obtained, whichever is later; and

(iv) Take all reasonable and necessary actions to obtain a final certificate of occupancy as a class A multiple dwelling for all covered residential units by October 1, 1995, or within 6 months after achieving compliance with the fire and safety standards of Article 7-B, alternative building codes, or provisions of the M.D.L., whichever is later.

(6) Notwithstanding the provisions of subdivisions (a)(1) through (a)(5) of this section, the owner of an IMD who has not complied with the requirements of M.D.L §284(1)(i) or (ii) by June 30, 1996 shall:

(i) File an alteration application by October 1, 1996; and

(ii) Take all reasonable and necessary action to obtain an approved alteration permit by October 1, 1997; and

(iii) Achieve compliance with the fire and safety standards of Article 7-B of the M.D.L. for all covered residential units by April 1, 1999 or within 18 months after obtaining an approved alteration permit, whichever is later; and

(iv) Take all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for all covered residential units by June 30, 1999, or within 3 months after achieving compliance with the fire and safety standards of Article 7-B of the M.D.L., whichever is later.

(v) As an alternative to complying with the requirements of subparagraph (iii) of this subdivision, an owner may, pursuant to M.D.L. §287, elect to comply with other local building codes or provisions of the M.D.L. that provide alternative means of meeting the fire and safety standards of Article 7-B by April 1, 1999 or within 18 months after obtaining an approved alteration permit, whichever is later.

(7) Notwithstanding the provisions of subdivisions (a)(1) through (a)(6) of this section, the owner of an IMD who has not complied with the requirements of M.D.L. §284(1)(i), (ii), or (iii) by June 30, 1999 shall:

(i) File an alteration application by September 1, 1999; and

(ii) Take all reasonable and necessary actions to obtain an approved alteration permit by March 1, 2000; and

(iii) Achieve compliance with the fire and safety standards of Article 7-B of the M.D.L. for all covered residential units by May 1, 2002, or within 12 months after obtaining an approved alteration permit, whichever is later; and

(iv) Take all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for all covered residential units by May 31, 2002, or within 1 month after achieving compliance with the fire and safety standards of Article 7-B of the M.D.L., whichever is later.

(v) As an alternative to complying with the requirements of subparagraph (iii) of this subdivision, an owner may, pursuant to M.D.L. §287, elect to comply with other local building codes or provisions of the M.D.L. that provide alternative means of meeting the fire and safety standards of Article 7-B by May 1, 2002 or within 12 months after obtaining an approved alteration permit, whichever is later.

(8) Notwithstanding the provisions of subdivisions (a)(1) through (a)(7) of this section, the owner of an IMD who has not complied with the requirements of M.D.L. §284(1)(i), (ii), (iii) or (iv) by May 31, 2002 shall:

(i) File an alteration application by September 1, 1999; and

(ii) Take all reasonable and necessary actions to obtain an approved alteration permit by March 1, 2000; and

(iii) Achieve compliance with the fire and safety standards of Article 7-B of the M.D.L. for all covered residential units by May 1, 2008, or within 12 months after obtaining an approved alteration permit, whichever is later; and

(iv) Take all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for all covered residential units by May 31, 2008, or within 1 month after achieving compliance with the fire and safety standards of Article 7-B of the M.D.L., whichever is later.

(v) As an alternative to complying with the requirements of subparagraph (iii) of this subdivision, an owner may, pursuant to M.D.L. §287, elect to comply with other local building codes or provisions of the M.D.L. that provide alternative means of meeting the fire and safety standards of Article 7-B by May 1, 2008 or within 12 months after obtaining an approved alteration permit, whichever is later.

(b) **Extensions of time to comply with the amended code compliance timetable.** (1) **Extensions of current deadlines.** Pursuant to M.D.L. §284(1)(vi), an owner of an IMD may apply to the Loft Board for an extension of time to comply with the code compliance deadlines set forth in §284 of the Multiple Dwelling Law, as in effect on the date of the filing of the extension application. An application for an extension shall not be filed after the deadline for which an extension is sought has passed, except that where title to the IMD was conveyed to a new owner, within 90 days after acquisition of title, such new owner may file an application for an extension of time of up to one (1) year to comply with the most recently passed deadline. "New Owner" shall be defined as an unrelated entity or unrelated natural person(s) to whom ownership interest is conveyed for a bona fide business purpose and not for the purpose of evading code compliance deadlines of the Multiple Dwelling Law. The Executive Director shall make a determination of whether an applicant qualifies as a "new owner." The Executive Director may request documentation or other appropriate information to substantiate that an applicant is a "new owner."

(2) **Statutory standard.** The Loft Board will grant an extension pursuant to this subdivision only where an owner has demonstrated that it has met the statutory standards for such an extension, namely, that the necessity for the extension arises from conditions or circumstances beyond the owner's control, and that the owner has made good faith efforts to meet the code compliance timetable requirements. Examples of such conditions or circumstances include, but are not limited to, a requirement for a certificate of appropriateness for modification of a landmarked building, a need to obtain a variance from the Board of Standards and Appeals or the denial of reasonable access to an IMD unit. The existence of conditions or circumstances beyond the owner's control must be demonstrated in the application by the submission of corroborating evidence, for example, copies of documents from the Landmarks Commission or the Board of Standards and Appeals, or an architect's statement. Failure to include such corroborating evidence in the application

shall be grounds for denial of the application without further consideration.

(3) The owner of an IMD may apply to the Loft Board's Executive Director for an extension to comply with the amended code compliance timetable. The Loft Board's Executive Director will promptly decide each application for an extension. Where the Loft Board's Executive Director determines that the owner has met the statutory standards for an extension, the Executive Director shall grant the minimum extension required by the IMD owner. The Executive Director's determination shall be mailed to the owner and to the affected parties identified in the application submitted pursuant to paragraph (4) of this subdivision, and shall be subject to review by the Loft Board upon application by such owner or affected party. An application for review of such determination shall be timely if filed within 20 days after the date of mailing. Applications for extensions pursuant to this subparagraph shall be limited to one per deadline in the amended code compliance timetable.

(4) **Form of application and tenant responses.** An extension application filed pursuant to this subdivision (b) of §2-01 shall be filed on a form prescribed by the Loft Board and shall meet the requirements of this subdivision and §§1-06 and 2-11 of these rules. An application for an extension must specify a date to which the applicant seeks to have the deadline extended. Failure to so specify in the application shall be grounds for dismissal of the application. Applications must include a list of all residential IMD units in the building. Applications filed pursuant to paragraph (3) of this subdivision must be filed with the Loft Board along with two copies. Prior to filing an extension application pursuant to paragraph (3), an owner shall serve a copy of such application upon each occupant of an IMD unit in the building. Any occupant of an IMD unit in the building may file an answer to such application with the Loft Board within 20 days from completion of service by owner. The occupant(s) of an IMD unit shall serve a copy of such answer upon the owner prior to filing the answer with the Loft Board. Service pursuant to this subdivision may be by first class mail, or by any method permitted by Article 3 of the New York Civil Practice Law and Rules. Each application and answer filed with the Loft Board shall include proof of such service. Service by mail shall be deemed completed five days following mailing. If service of the application is performed in any manner other than mailing, service shall be deemed completed on the date the application is served. While an application filed under this subdivision is pending, an owner may amend such application one time to request a longer extension period than was originally sought in the application.

(c) **Violations of the code compliance timetable.** (1) The Loft Board, on its own initiative or in response to complaints, may commence a proceeding to determine whether an owner has violated the provisions of §284(1) of the MDL or these code compliance rules. In addition, a residential occupant of an IMD building may make an application seeking a Loft Board determination whether the owner of the occupant's building is in violation of the provisions of §284(1) of the MDL or these code compliance rules.

(2) An owner who is found by the Loft Board to have violated the code compliance timetable or any provision of these rules may be subject to a civil penalty not to exceed $1,000 for each violation as prescribed by the Loft Board; (ii) may be subject to all penalties set forth in Article 8 of the M.D.L.; (iii) may be subject to the penalties set forth in Chapter 1 of Title 26 and Chapter 1 of Title 27 of the Administrative Code; and (iv) may be subject to a specific performance proceeding as set forth in subparagraph (4) below.

(3) Upon demonstration by an owner of insufficient funds to proceed with code compliance, the Loft Board shall consider the lack of sufficient funds in mitigation of any fine to be imposed against the owner upon a finding of noncompliance. To obtain the benefit of the defense of insufficient funds, an owner shall supply the Loft Board with an income and expense statement for the building verified by an independent certified public accountant, a written estimate of the cost of compliance with the cited deadline or requirement from a registered architect, and if the building does not provide sufficient funds for purposes of compliance then the owner shall also supply a letter from two separate banks or mortgage brokers refusing to offer sufficient funds to comply, accompanied by copies of the owner's applications for such funds, or if the lenders refuse to provide a written rejection, then the owner shall file an affidavit setting forth the basis for the owner's belief that the applications have been rejected.

(4) If the Loft Board finds an owner in violation of the code compliance timetable of these rules, the Board or any three occupants of separate, covered residential units in the building may apply to a court of competent jurisdiction for an order of specific performance directing the owner to satisfy all code compliance requirements set forth in this section.

(5) The owner of an IMD who is found by the Loft Board to have wilfully violated the code compliance timetable of these regulations or to have violated the code compliance timetable more than once may be found guilty of harassment with respect to such IMD in a harassment proceeding before the Loft Board.

(6) If any residential occupant is required to vacate its unit as a result of a municipal vacate order that has been issued for hazardous conditions as a consequence of an owner's unlawful failure to comply with the code compliance timetable:

(i) The occupant, at its option, shall be entitled to recover from the owner the fair market value of any improvements made or purchased by the occupant and shall be entitled to reasonable moving costs incurred in vacating the unit. All such transactions shall be fully in accordance with Loft Board rules and regulations regarding Sales of Improvements. These rights are in addition to any other remedies the occupant may have.

(ii) Any municipal vacate order shall be deemed an order to the owner to correct the noncompliant conditions, subject to the provisions of Article 7-C. The issuance of such an order as a result of the owner's unlawful failure to comply with the code compliance timetable shall result in a rebuttable presumption of harassment in a harassment proceeding brought by an occupant or occupants before the Loft Board.

(iii) When the owner has corrected the noncompliant conditions the occupants shall have the right to reoccupy the unit and shall be entitled to all applicable tenant protections of Article 7-C, including the right to reoccupy the unit at the same rent paid prior to the vacancy period plus any rental adjustments authorized by the Loft Board pursuant to its rules and regulations. Furthermore, the occupant shall be entitled to recover from the owner reasonable moving costs incurred in reoccupying the unit in accordance with Loft Board rules and regulations regarding Sales of Improvements.

(iv) At no time shall rent for the unit be due or collectible for such period of vacancy.

(d) **Procedure for occupant review of plans, resolution of occupant objections, and certification of estimated future rent adjustments.** (1) **Notice: form and time requirements.** (i) All notices, requests, responses and stipulations served by owners and occupants directly upon each other shall be in writing, with a copy delivered or mailed to the Loft Board, accompanied by proof of service, within five days of delivery, if service was made personally, or within five days of mailing if service was performed by mail. Service by the parties shall be effected either

(A) by personal delivery or

(B) by certified or registered mail, return receipt requested, with an additional copy sent by regular mail.

Proof of service shall be in the form of a verified statement of the person who effected service, setting forth the time, place and other details of service, if service was made personally, or by copies of the return receipt and verified statement of mailing, if service was performed by mail. Communications by the Loft Board pursuant to these regulations will be sent by regular mail.

Service shall be deemed effective upon personal delivery or five days following service by mail. Deadlines provided herein are to be calculated from the effective date of service.

(ii) Modifications on consent, change of address. Applications may be withdrawn and disputes may be resolved, by written agreement of the parties, subject to Loft Board approval. Parties may change their addresses upon service of written notice to the other parties and the Loft Board, and such notice shall be effective upon personal delivery or five

days following service by mail.

(2) **Procedure for occupant review of plans and resolutions of occupant objections.** This paragraph (2) shall apply to IMD's for which a building permit for achieving compliance with the fire and safety standards of Article 7-B, alternative building codes or provisions of the M.D.L. has not been issued as of October 23, 1985, the date of adoption of these regulations. In the case of a building permit that has been issued as of October 23, 1985 and that remains in effect or is renewed, an owner who thereafter requests reinstatement of the underlying alteration application pursuant to Department of Buildings ("D.O.B.") Directive No. 17 of 1971 shall be required to comply with all provisions of this paragraph (2) with respect to all work yet to be performed as of the date that reinstatement is requested.

This paragraph (2) shall apply where an owner is required to amend an alteration application to reflect grandfathering approval of additional units pursuant to §§2-01(a)(1)(ii)(B), (iii)(B), (v)(B), or (vi)(B), or where an owner is required to amend an alteration application to reflect the coverage of additional units under M.D.L. §281(4); however, if the proposed work is to be performed solely within the additional unit(s), this paragraph (2) shall only apply to the occupant(s) of such unit(s). This paragraph (2) shall not apply to IMD's for which a building permit for achieving compliance with Article 7-B, alternative building codes or provisions of the M.D.L. has already been issued and is in effect as of the date of adoption of these regulations, and which remains in effect or is renewed without reinstatement of the underlying alteration application until such compliance is achieved. However, an occupant of such an IMD may file an application with the Loft Board based on the grounds that the scope of the work approved under the alteration application for which the permit was issued constitutes an unreasonable interference with the occupant's use of its unit in accordance with the provisions of §2-01(h) of these regulations. This paragraph (2) also shall not apply to those units in IMD's for which a temporary or final/permanent certificate of occupancy as a class A multiple dwelling has been issued and is in effect as of the date of adoption of these regulations.

(i) Within 15 days of the filing of its alteration application or within 30 days after the effective date of this regulation, whichever is later, the owner shall provide all occupants with a narrative ,statement, upon such form as is prescribed by the Loft Board, describing separately for each unit, both residential and nonresidential, all the work to be performed in such unit and all the work to be performed in common areas. This description shall include a listing of all noncompliant conditions, citation to the specific provisions of law or regulation that require their correction, and the work to be performed to correct them; an estimated time schedule for performance of the work; and a certification that the narrative statement is a complete and accurate statement reflecting the work proposed in the filed alteration application. In accordance with the procedures set forth in §2-01(d)(1), following service of such narrative statement, the owner shall file with the Loft Board the original statement with proof of service, two copies of its filed alteration application along with the D.O.B's acknowledgment of filing, and two copies of the submitted plans. Occupants may examine the alteration application and plans by appointment at the Loft Board or at the D.O.B in accordance with the department's procedures. An occupant may request from the owner a reproducible copy of the alteration application and plans, construction specifications, if any, and the tenant safety plan described in subparagraph (ii) below, and the owner shall supply such copy within 7 days of service of the request. Cost to the occupant shall be $5.00 per page for plans required by §27-162 of the Administrative Code and $0.25 per page for all other documents.

(ii) The owner shall certify to the D.O.B., upon such form as is prescribed by the Loft Board for this purpose, that it has complied with the provisions of the preceding subparagraph (i); that it shall comply with all other requirements of this paragraph (2) of the Loft Board's regulations and with the requirement for a tenant safety plan pursuant to D.O.B. Directive No. 2 of 1984; and that prior to obtaining the building permit, the owner shall submit to the department a letter from the Loft Board, certifying compliance with all requirements of §2-01(d)(2). This certification shall be filed with the D.O .B. within 5 days after the owner's filing with the Loft Board pursuant to the procedures described in the preceding subparagraph (i).

(iii) Within 30 days after the owner has filed the narrative statement, as required by §2-01(d)(2)(i), the Loft Board will notify the owner and all occupants that a conference has been scheduled. This notification shall be by regular mail. This conference is for informational and conciliatory purposes. The Loft Board representative assigned to conduct the

conference shall outline the requirements of Article 7-B of the M.D.L., shall review the provisions of these code compliance regulations, including the section dealing with occupant participation (§2-01(f)) and shall address the participants' questions.

The owner or its representative will present its proposed work plan and the estimated time schedule for performance of the work. The occupants may raise any questions, comments or suggestions regarding the proposed work plan and the estimated schedule. The Loft Board representative shall encourage the owner and occupants to discuss fully the prepared plan and schedule and to reach an agreement as to the performance of code compliance work. The Loft Board representative may authorize an additional period of time, not to exceed 21 days, for the parties to negotiate an agreement. If the parties are unable to come to an agreement within the authorized time period, the remaining provisions of this paragraph (2) shall apply. Any agreement reached by the parties, including any agreement reached after the above-mentioned 21 day period, must be in writing and filed with the Loft Board as provided in §2-01(f).

With the exception of material contained in any written agreement(s) among the parties, the conference shall not be electronically recorded, and the specifics or nature of communications made at the conference or in the course of negotiations during the authorized time period shall not be admissible as evidence in any Loft Board proceedings. Information or responses to questions provided by the Loft Board representative will be advisory only and should not be relied upon as a substitute for professional advice of lawyers, architects or engineers retained by the participants.

The conference may be scheduled in the evening. Upon the request of the owner and the occupant(s), the Loft Board shall schedule a conference for any IMD for which §2-01(d)(2) does not apply.

(iv) (A) Within 45 days after the conference or, if authorized, the additional period of time described in §2-01(d)(2)(iii), any occupant may file (a) with the D.O.B. an alternate plan for work affecting the occupant's use of its unit*1 when the owner's proposed plan may unreasonably interfere with the occupant's use of the unit or (b) with the Loft Board an application in support of any claim that the owner's proposed plan will diminish services to which an occupant is legally entitled. In addition, if authorized by the Loft Board representative, an alternate plan may be proposed by an occupant which is not required to be filed with the D.O.B. when the occupant's claim does not require a D.O.B. review of code issues in order for the Loft Board to resolve the dispute.

(B) If the alternate plan proposed pursuant to this subparagraph is required to be filed with the D.O.B., it shall be filed by a registered architect or professional engineer retained by the occupant, who shall be responsible for any required fees. An application concerning plumbing work shall be filed with the D.O.B. by a licensed plumber retained by the occupant, who shall be responsible for any required fees. Two or more occupants may file a joint application setting forth their alternate plan. Failure to file an alternate plans application within the prescribed time period will constitute a waiver of an occupant's right to challenge the owner's submitted work plan on the ground that it would unreasonably interfere with such occupant's use of its unit or constitute a diminution of services; however, late filing of an alternate plans application shall be permitted if, upon application, the Loft Board or its staff by administrative decision, determines that good cause existed for such occupant's failure to file in a timely manner and if a building permit has not yet been issued. Within 5 days after filing an alternate plans application, the occupant(s) shall provide the owner and all other occupants with a narrative statement setting forth the occupant's(s') objections to, comments on, or criticisms of the owner's plan and any projected increase(s) in code compliance costs resulting from the occupant's(s') alternate plan. In accordance with the procedures set forth in §2-01(d)(1), the occupant(s) shall file with the Loft Board: the original of such narrative statement with proof of service, two copies of its filed alternate plans application with the D.O.B.'s acknowledgment of filing, and two copies of the submitted plans, if it is an alteration application. The owner and other occupants may review the alternate plans application and plans by appointment at the Loft Board or at the D.O.B. in accordance with the department's procedures. An owner or another occupant may request from the filing occupant(s) a reproducible copy of the application and plans and shall be supplied with such copy within 7 days after service of the request. Cost to the requesting party shall be $5.00 per page for plans required by §27-162 of the Administrative Code and $0.25 per page for all other documents.

(v) The D.O.B. shall review the owner's alteration application and plan and any alternate application(s) and plan(s) submitted by occupant(s) of the building. The D.O.B. may issue objections pursuant to its usual procedures. The occupant(s) through its (their) architect(s) or engineer(s), shall take all necessary and reasonable actions to cure such objections within 45 days of notice of objections from the D.O.B. The owner, through its architect or engineer, shall take all necessary and reasonable actions to cure such objections within 60 days of notice of objections from the D.O.B. An applicant's failure to take all necessary and reasonable actions to cure such objections within the prescribed time period may subject the applicant to civil penalties of up to $1,000 to be imposed by the Loft Board for failure to comply with these regulations.

(vi) If amendments to the plans initially submitted to the Loft Board are made, the applicant shall file two copies of any amended plans with the Loft Board, and copies shall be supplied upon request in accordance with the procedures described in paragraphs (2) and (4) above. Within 40 days of service by the Loft Board of notice of revised plans any occupant(s) who has (have) not previously done so, may file with the D.O.B. an alternate plan application for work affecting the occupant's(s') use of its (their) unit(s). Such occupant(s) shall comply with all the requirements of subparagraph (iv) above. The occupant(s) is (are) limited in its (their) objections to only those items that represent a change from submissions previously received. The procedures for D.O.B. review set forth in subparagraph (v) above shall apply.

(vii) (A) When the D.O.B has no further objections to the owner's application and plan, and if no alternate plan has been filed by any occupant of the subject building within the time period provided for such filing in this regulation, the Loft Board shall issue a letter certifying compliance with all requirements of §2-01(d)(2). To receive such certification, the owner shall verify to the Loft Board that no revisions have been made to the plans since the narrative statement conference or summarize any revisions which may have been made. If an alternate plan has been filed and the 45 day period for addressing objections has expired without all necessary and reasonable actions having been taken to cure the objections, the Loft Board shall issue a letter certifying compliance with all requirements of §2-01(d)(2). Upon submission of such letter, the D.O.B may approve the owner's application and plan and issue a building permit.

(B) **(a)** Where the occupant(s) have submitted alternate application(s) and plan(s) and are unable to agree with the owner upon the work to be performed, and the D.O.B. has no objections to such applications and plans, the applicant shall advise the Loft Board and the owner of the D.O.B. approval of the plans and refer them to the Loft Board for review and resolution of the dispute, as to which application(s) and plan(s) should be approved and the work for which a building permit should be issued. Such referral will occur no sooner than 30 days after notification of the removal of the last objection or of the lack of objection. In addition, when authorized by the Loft Board representative, such referral may be made before all objections have been removed if the remaining objections do not need to be resolved in order for the Loft Board to resolve the dispute. If the owner and the occupant(s) come to an agreement, they shall immediately inform the D.O.B. and the Loft Board and void the abandoned application(s) and plan(s).

(b) If alternate approvable applications and plans are referred to the Loft Board, the Loft Board shall review the plans and on its own initiative may commence a proceeding to determine whether the owner's plan would result in an unreasonable interference of the occupant's(s') use of its (their) unit(s). The proceeding will be governed by the Board's regulations on Internal Board Procedures. Parties shall have an opportunity to submit a written statement setting forth the basis for seeking disapproval of the alternate plan(s). In the case of an occupant, such a statement shall include an explanation of how the owner's proposed plan would result in an unreasonable interference with the occupant's use of its unit. If the Loft Board finds that the owner's plan would result in such an unreasonable interference, it shall order the owner to amend its plan or to authorize the final approval of plan(s) submitted by the occupant(s) for the space(s) involved. A failure or refusal to comply with such an order may constitute a violation of §§284(1)-(i)(B) of Article 7-C and these regulations, and the owner may be subject to civil penalties and actions initiated by the Loft Board to compel specific performance, and such other penalties as are outlined in §2-01(c) of these regulations.

If the Loft Board or its Executive Director finds that the owner's approvable application and plan would not unreasonably interfere with the occupant's(s') use of its (their) unit(s), the Loft Board or its Executive Director shall

issue an order stating that the owner's plan may be approved by the D.O.B. and a building permit issued, and that the alternate application(s) and plan(s) be voided. Also such an order shall certify compliance with all requirements of §2-01(d)(2).

(viii) Within 10 days after the issuance of a building permit by the D.O.B., or within 30 days after the effective date of these regulations, whichever is later, the owner shall file a copy of the building permit with the Loft Board. Furthermore, the owner shall file two copies of any subsequent amendments, including plans, to the alteration application upon which the building permit is based, within 10 days after the filing of such amendment(s) with the D.O.B.

(ix) Approval of plans by the D.O.B. pursuant to this subsection shall not be construed as approval of the costs incident to construction in accordance with such plans as necessary and reasonable costs of code compliance work for purposes of rent adjustment proceedings under §§2-01(i) through 2-01(l) of these regulations.

(3) **Procedures for certification of estimated further rent adjustments.** Following the approval of an alteration application or alternate plans by the D.O.B., an owner may apply to the Loft Board for certification of estimated future rent adjustments, based on the owner's work plan and the Loft Board Schedule of Allowable Necessary and Reasonable Code Compliance Costs. The filing of such an application, however, shall be totally at the discretion of the owner and shall not be a basis for staying commencement or continuation of work under a valid building permit issued by the D.O.B. All applications for certification of estimated future rent adjustments shall be processed in accordance with the Loft Board's regulations governing Internal Board Procedures, except as provided herein. The owner shall file with the Loft Board an application on a form prescribed by the Board. The application shall describe separately for each residential unit all of the work to be performed and the work to be performed in common areas and nonresidential units; and calculation of the necessary and reasonable costs based on the Loft Board schedule and any other necessary and reasonable costs as permitted pursuant to §2-01(j) of these regulations. If the owner anticipates the use of financing, the application shall also include any statements, letters of intent or commitment, or other materials from institutional or noninstitutional lenders regarding the terms or conditions of such financing. In addition, the owner shall file with the Loft Board two copies of the approved alteration application and two copies of the approved plans.

The owner's application shall be served on the building's occupants by the Loft Board in accordance with its regulations on Internal Board Procedures. Occupants may review the alteration application and plans at the D.O.B. in accordance with the Department's procedures or by appointment at the Loft Board. An occupant may request from the owner a reproducible copy of the alteration application and plans, and the owner shall supply such a copy within 7 days after service of the request at a cost to the occupant of $5.00 per page for plans required by §27-162 of the Administrative Code and $0.25 per page for all other documents. Occupants may submit an answer within 20 days after the date on which service of the application was completed (§1-06(c) of these regulations) in response to the owner's application, setting forth any objections, comments or suggestions regarding the calculation of necessary and reasonable costs of approved work. The Loft Board may schedule a conference to discuss objections, comments or suggestions raised by the occupants and responses by the owner. Following such a conference, the application will be processed, and the Loft Board will certify the necessary and reasonable code compliance work and concomitant costs, and the estimated future rent adjustments. The certification is a reasonable estimate based on available information. However, actual rent adjustments shall be determined by the Loft Board in accordance with §§2-01(i) through 2-01(l) of these regulations.

(e) **Code compliance for nonconforming units.** If the D.O.B. has issued an objection to the owner's alteration application because a covered residential unit cannot be brought into compliance under appropriate building codes, provisions of the M.D.L., or the Zoning Resolution because of its size, design, or location within the building, the owner and affected occupant(s) should make every effort to reach accommodations that would permit every covered unit to be made code compliant.

If the owner and affected occupant(s) are unable to reach a resolution, either the owner or the residential occupant

may apply to the Loft Board for a determination as to whether the unit can be made code compliant. In processing such an application the Loft Board may, following a hearing:

(1) Order the owner to apply for a non-use related variance, special permit, minor modification, or administrative certification, where the granting of such an application would make compliance possible; or

(2) Order the owner to alter the unit, or to redesign residential units and common area space into a configuration that can be legally converted to residential use; or

(3) If these remedies are unavailing, remove a unit from Article 7-C Coverage if it cannot be legally converted to residential use.

Such orders also shall require compliance within a specified period of time and shall require occupant cooperation in achieving compliance.

(f) **Occupant participation in the code compliance process.** (1) The Loft Board encourages the owners and occupants of interim multiple dwellings to work together to achieve code compliance. Such cooperation may include, but is not limited to, occupants' performance of code compliance work. Owners, occupants and their representatives should make good faith efforts to communicate and cooperate with each other throughout the process so as to reduce or eliminate potential disputes during the course of code compliance. Cooperation may result in benefits to all the parties insofar as:

(i) costs incurred by the owner may be minimized, reducing the capital the owner would have to raise and reducing the rent adjustment increases that would have to be passed along to residential occupants;

(ii) access difficulties may be minimized;

(iii) incidents of harassment may be eliminated or reduced;

(iv) losses incurred by nonresidential tenants may be eliminated or minimized; and

(v) code compliance may be achieved in a timely fashion.

(2) While occupants have no right as a matter of law to perform code compliance work, the owner and the occupants(s) may agree voluntarily to allow such occupant(s) to perform code compliance work or any portion thereof, within the building, to the extent permitted by applicable laws and regulations. The owner is required to obtain the appropriate Department of Buildings approval for all work to be performed, but where the owner and occupant(s) have agreed that work will be performed by the occupant(s) they may also agree that the occupant(s) is (are) required to obtain all consents and approvals prior to filing with the D.O.B. pursuant to Administrative Code §§27-142, 27-151 and 27-220 on any work so permitted. Should the owner and the occupant(s) agree upon performance of the code compliance work or any portion thereof by such occupant(s), the owner and the occupant(s) shall file a written Agreement with the Loft Board pursuant to §2-01(d)(1) of these regulations. Such Agreement shall include:

(i) an outline specification of all work to be performed and by whom it is to be performed;

(ii) a time schedule for work to be performed as well as the identification of who is to supervise all construction work;

(iii) a certification that the parties shall provide all information required in the processing of applications for rent adjustment(s), if any, by the Loft Board;

(iv) a certification by the owner and occupant(s) that all work shall be in accordance with the code compliance timetable set forth in §2-01(a) of these regulations.

Such Agreement by the owner and the occupant(s) shall be consistent with the Alteration Application and any Building Notice(s) or Plumbing Repair Slip(s) filed with the D.O.B. and the Loft Board.

(3) If at any time after execution of the Agreement but prior to the completion of the code compliance work the occupant(s) or the owner abrogate(s) the Agreement, the abrogation shall be in writing, served upon all other parties to the Agreement and filed with the Loft Board in accordance with §2-01(d)(1). Such abrogation shall not relieve the owner of the obligation to comply with Article 7-C and these regulations. The owner and the occupant(s) may also agree in writing, with a copy served on the Loft Board, to: (i) waive the procedure for occupant review of plans and resolution of occupant objections set forth in §2-01(d)(2) of these regulations; or

(ii) modify the procedure for notice to occupants of proposed work set forth in §§2-01(d)(2) and 2-01(g)(3) of these regulations. Any other Agreement for waiver or modification of other provisions of these regulations shall be submitted to the Loft Board for its approval. No Agreement shall be approved that proposes that code compliance will not be achieved or that it will be achieved after the deadlines prescribed in §§2-01(a) and 2-01(b) of these regulations.

(4) If an owner who has agreed to allow an occupant to perform code compliance work applies to the Loft Board for an extension of time to obtain a final residential certificate of occupancy pursuant to §2-01(b) of these regulations, the owner must exercise due diligence in monitoring the timely completion of such code compliance work in order to have grounds of good cause for its inability to meet the code compliance timetable.

(g) **Notice to occupants of proposed work, repairs and inspections and occupant's obligation to provide access.** (1) Unless otherwise agreed by the parties, the owner shall provide all occupants with written notice of the approximate commencement date, duration and scope of all work to be performed within their units and of all common area work that may interfere with access to their units or the provision of services to their units. The notice need not provide an exact date for the work, but must provide a range of three consecutive working days during which work to be completed in one working day will take place and a range of five consecutive working days during which work expected to require more than one consecutive working day will begin. Such notice shall be served by personal service, first class mail, registered mail (return receipt requested), or certified mail (return receipt requested), such that service is effective at least 3 days prior to the first date in the range of days for work that may reasonably be expected to be completed within one working day and at least 10 days prior to the first date in the range of days for all other work expected to require two or more consecutive working days.

(2) No later than the day preceding the first scheduled day of work, the owner shall provide written notice, either confirming a specific starting date from among those specified or cancelling the scheduled work for the day or days specified. In instances where scheduled work is cancelled, it must be rescheduled in accordance with the provisions of §2-01(g)(1). Notice under this provision shall be accomplished by personal delivery of the written notice to the occupant or, in the occupant's absence, to a person of suitable age and discretion within the unit. If delivery to a person as prescribed herein cannot be achieved, the owner or agent shall deposit the written statement under the main entrance of the unit or, if that is not possible, shall affix such notice to the main entrance of the unit. An occupant may designate in writing another occupant within the building to receive notice pursuant to this §2-01(g) provided that such designee is authorized to provide reasonable access to the occupant's unit as required in such notice. Such designation shall be served on the owner by personal service, first class mail, registered mail (return receipt requested), or certified mail (return receipt requested).

(3) Upon appropriate notice, occupants shall provide the owner with reasonable access to their units so that all requisite code compliance or repair work, or inspections and surveys as may be required for the purpose of code compliance, may be performed. Upon the failure of an occupant to provide such access, the owner may apply to the Loft Board for an order affording the owner reasonable access to the unit. Recognizing the necessity of construction work proceeding without unnecessary delays caused by administrative processing, the Loft Board will process applications for access under the following expedited procedures:

(i) The owner shall serve the occupant with a copy of the owner's verified or affirmed application for access on such form as prescribed by the Loft Board, and shall file twelve copies of the application at the offices of the Loft Board, along with proof that a copy of the application has been served upon the occupant. Service on the occupant shall be effected either by:

(A) personal service or

(B) certified or registered mail, return receipt requested, with an additional copy sent by regular mail.

(ii) The occupant shall file with the Loft Board twelve copies of a written answer in response to the application within ten business days of service of the application.

(iii) (A) If the occupant answers, the Loft Board shall serve a copy of the answer on the owner by regular mail at the address designated on the application and shall notify both owner and occupant of a hearing date, which shall be scheduled for a date no fewer than 8 days nor more than 15 days from the mailing of the notice. There shall be no more than one adjournment per party, limited to 7 days, for good cause shown. Except as provided herein, the provisions of §1-06 shall apply to an application for access under this subdivision.

(B) If the occupant fails to answer, the Loft Board may issue an order granting access.

(iv) A finding by the Loft Board of failure by the owner to comply with any of the notice provisions of this section or a finding by the Loft Board that an occupant has unreasonably withheld access shall be the basis for a civil penalty not to exceed $1,000 for each such finding of violation. The necessary and reasonable cost of bringing and pursuing a Loft Board access proceeding that results in a finding that a residential occupant has unreasonably withheld access as well as labor or other costs incurred by the owner because access was unreasonably denied, may be included in the owner's application for code compliance rent adjustment as an allowable cost to be allocated to such occupant's residential unit, as provided for in §2-01(l)(1) of these rules.

(v) The failure of an occupant to comply with a Loft Board order regarding access shall be grounds for eviction of that occupant in a proceeding brought before a court of competent jurisdiction.

(h) **Unreasonable interference with use.** Whenever reasonably possible, work to achieve code compliance should be performed without any, including the temporary, dislocation of occupants from their units and with minimal disruption to the occupants' use of their units. The owner shall take all reasonable actions to ensure that code compliance work does not unreasonably interfere with the use of any occupied unit. Arrangements should be made for each day's work to be a full day's work, to the extent possible. Scheduling of work must be done, to the extent possible, in a fashion that minimizes disruptions in the provision of essential services. Regular maintenance shall be performed within the building during the construction period, except when construction renders regular maintenance impossible.

After the filing of an alteration application by the owner but before the issuance of a building permit, occupants who object to the proposed work because it will unreasonably interfere with their use of their units must bring their objections to the D.O.B. as provided in §2-01(d)(2). After a permit has been issued through the process described in §2-01(d)(2), in which the occupants have had an opportunity to participate, the occupants may raise no further objections to the scope of the work approved under the permit on the grounds that it constitutes an unreasonable interference with their use of their units. In the case of an IMD for which a building permit for achieving code compliance with Article 7-B, alternative building codes or provisions of the M.D.L. has been issued and is in effect as of the date of adoption of these regulations, such that §2-01(d)(2) is not applicable, an occupant of such an IMD may file an application pursuant to this subdivision (h) on the grounds that the scope of the work approved under the permit constitutes an unreasonable interference with the occupant's use of its unit. In granting such an application, the Loft Board shall process the application in accordance with Loft Board regulations on Internal Board Procedures and may order the owner to amend its alteration application. If the permit is revoked by the D.O.B. on these grounds, the occupants shall have the opportunity to participate in the review of plans through the process described in §2-01(d)(2).

If, in the course of performing the work, the owner or its agents engage in work beyond that authorized by the permit, depart significantly from the work described in the owner's narrative statement and plan or from the estimated time schedule for performance of the work as amended according to the requirements of §2-01(d)(2), engage in repeated or substantial violations of the notice provisions of §2-0l(g), or violate the provisions of the tenant safety plan, an occupant aggrieved by such action(s) may file an application with the Loft Board setting forth the factual basis for its claim that such unauthorized work, departure from the schedule, or violation of the tenant safety plan unreasonably interferes with the occupant's use of its unit. A finding by the Loft Board of unreasonable interference with an occupant's use by the owner or its agents may result in civil penalties of up to $1,000 for each violation. A finding by the Loft Board of unreasonable and willful interference with an occupant's use by the owner or its agents may result in civil penalties of up to $1,000 for each violation and may constitute harassment of tenants. The exemptions from rent regulations provided to an owner pursuant to §286(6) of the M.D.L. and Loft Board Regulations on Sales of Improvements may not be available in a building when an owner has been found guilty of harassment of tenants subject to regulations adopted by the Loft Board.

(i) **Applications for rent guidelines board increases and for rent adjustments based on costs of compliance.** (1) **Rent guidelines board increases.** (i) Upon issuance of a final certificate of occupancy, an owner shall be eligible for the percentage rent increases established by the New York City Rent Guidelines Board (RGB) (hereinafter "RGB Increases"). The first such rent increase shall commence as of the first day of the first month following the day an owner submits to the Loft Board a Notice of RGB Increase[s] in the form prescribed by the Loft Board, and each such subsequent rent increase shall be effective on each one- or two-year anniversary of such commencement date, as applicable. (This one-or two-year period during which a particular RGB Increase is effective is referred to herein as the "RGB Increase Period.") The last RGB Increase prior to issuance by the Loft Board of the final rent owner setting the initial legal regulated rent, pursuant to §2-01(m) of these rules, shall remain effective until expiration of the applicable RGB Increase Period. The amount of each RGB increase shall be equal to the percentage increase applicable to one or two-year leases as established by the RGB on the date the Notice is submitted and on each one- or two-year anniversary thereof, as applicable, and shall be applied to the maximum rent permissible under Loft Board rules as of the date the Notice of RGB Increase[s] filing is submitted to the Loft Board. The RGB Increase shall apply to all covered residential units, except for those units that are exempt from rent regulation as a result of the owner's purchase of improvements or rights pursuant to M.D.L. §286(6) or §286(12) and Loft Board rules promulgated pursuant thereto.

(ii) To obtain the rent increase, the owner shall submit two copies of a Notice of RGB Increase on a form prescribed by the Loft Board. The notice shall contain the rent in effect, including escalations and increases provided under M.D.L. §286(2), for each covered residential unit subject to rent regulation, and shall be submitted with a copy of the final certificate of occupancy, a copy of the individual notices described in subparagraph (iii) of this paragraph, and an affidavit that such notices were sent by certified or registered mail to each affected occupant.

(iii) The owner shall send to each affected occupant a notice in the form prescribed by the Loft Board setting forth the maximum permissible rent under Loft Board rules for the unit occupied by such occupant. The notice shall also request the occupant to elect RGB increases applicable to one-year or two-year leases. Such election shall be binding upon the occupant for the entire period prior to expiration of the last RGB Increase before issuance by the Loft Board of the final rent order setting the initial legal regulated rent. The failure of an occupant to make an election and return a copy of same to the Loft Board within 45 calendar days of the mailing thereof by the applicant shall be deemed to be an election to be governed by increases applicable to one year leases.

(iv) If an occupant disputes the maximum permissible rent under Loft Board rules as set forth in the aforementioned notice, such occupant shall, within the 45-day period described in subparagraph (iii) of this paragraph, notify the Loft Board and the owner, on the form provided pursuant to subparagraph (v) of this paragraph, of the amount in dispute. Failure of such occupant to notify the Loft Board within such 45-day period shall be deemed to be an acceptance by the occupant of the amount of rent claimed by the owner. During the period prior to the resolution of the dispute, the occupant shall pay rent in an amount no less than the amount not in dispute plus the RGB Increase authorized by these rules (for example, if the owner claims the rent in effect is $450 and the occupant claims it is $400,

the rent paid to the owner prior to resolution of the dispute shall be no less than $400 plus the applicable RGB Increase). The occupant shall pay any deficiency in one lump sum at the time that the first rent payment is due following resolution of the dispute.

(v) Responses from affected occupants to the Loft Board notifying the Loft Board of a dispute in the rent or of an election of the period of the RGB rent increase shall be in the form prescribed by the Loft Board, a copy of which form shall be included in the aforementioned notice from the owner to each affected occupant pursuant to subparagraph (iii) of this paragraph.

(2) **Cost of compliance increases.** (i) An owner may apply for rent adjustments based on the necessary and reasonable costs of obtaining a residential certificate of occupancy: once upon certification of compliance with Article 7-B of the M.D.L., alternative local building codes or provisions of the M.D.L. or issuance of a temporary residential certificate of occupany, or once upon issuance of a final residential certificate of occupancy, or both. The application may include those necessary and reasonable costs incurred prior to June 21, 1982 for which the residential occupant(s) have not reimbursed or are not in the process of reimbursing the owner. In the course of the processing of the application, the residential occupant(s) who claim(s) that reimbursement has been or is being made for such costs shall be required to present satisfactory proof of such reimbursement to the Loft Board. Rent adjustments shall be allowed for both necessary and reasonable code compliance costs incurred by an owner in obtaining the building permit under which code compliance work is performed and for necessary and reasonable costs incurred for work performed after the issuance of such a permit. An owner who has failed to register its building as an IMD on or before December 1, 1985 or, in the case of a building which is an IMD solely pursuant to M.D.L. §281(4), an owner who has failed to register his building as an IMD on or before February 11, 1993, shall be allowed only necessary and reasonable code compliance costs incurred after registration. An owner who fails to register its building as an IMD on or before March 1, 1986 or, in the case of a building which is an IMD solely pursuant to M.D.L. §281(4), an owner who fails to register its building as an IMD on or before May 11, 1993, shall be allowed only the necessary and reasonable code compliance costs incurred after registration, and such costs shall be based upon the schedule in effect on the effective date of these regulations, without indexing, regardless of when such costs were incurred.

(ii) An application filed pursuant to this paragraph (2) of §2-01(i) shall be filed within nine months after the owner has obtained a certificate of occupancy or February 1, 2000, whichever date is later. An owner that fails to file an application for code compliance rent adjustments in a timely manner pursuant to this provision shall be deemed to have waived its right to seek such a rent adjustment. An application submitted pursuant to this paragraph shall be submitted on a form prescribed by the Loft Board and shall meet the requirements of this paragraph and §§1-06 and 2-11 of these rules, except that for applications filed pursuant to clause (A) of subparagraph (iii) of this paragraph, only two copies must be filed plus one for each affected party, and for precertified applications filed pursuant to clause (B) of subparagraph (iii) of this paragraph, only two copies of the application must be filed. As part of the application the applicant must submit an itemized statement of costs incurred, including paid bills, cancelled checks or receipts for work performed, any construction contracts, the certificate issued by the Department of Buildings for the pertinent level of compliance, and such other information or materials as the Board requires. If the applicant seeks reimbursement for interest and service charges incurred in connection with compliance costs, the applicant must submit the information and materials required under paragraph (4) of §2-01(k) of these rules. In accordance with the provision of §1-06(j)(1), the Board may require the applicant to furnish such reports and information as it may require concerning the code compliance work performed and may audit the books and records of the applicant with respect to such matters.

(iii) An application filed pursuant to this paragraph (2) of §2-01(i) may be submitted to the Loft Board for an audit or may be precertified pursuant to clause (B) of this subparagraph.

(A) If the application is not precertified, the Loft Board shall audit the application to ascertain whether the code compliance costs set forth in the application: (a) are substantiated by invoices and copies of cancelled checks or other similarly reliable documentary evidence submitted as part of the application; and (b) do not exceed the reasonable code compliance costs set forth in the schedule contained in these rules. Once the Loft Board's audit of an application is

completed, the Executive Director shall, by first class mail, send the affected residential occupants a copy of the owner's application and send the affected residential occupants and the owner a copy of the auditor's report.

(B) An owner shall have the option to file a precertified application for code compliance rent adjustments pursuant to this clause (B). Costs attributable solely to the precertification of the application shall not be included as reimbursable code compliance costs. A precertified application shall meet the requirements of subparagraph (ii) of this paragraph as to form and content, shall be served on all affected residential occupants, and shall be filed, together with:

(a) certification by a certified public accountant ("CPA"), certifying that said CPA has audited the code compliance cost information contained in the application and that the code compliance costs set forth in the application (i) are substantiated by invoices and copies of cancelled checks or other similarly reliable documentary evidence; and (ii) do not exceed the reasonable code compliance costs set forth in the schedule contained in these rules;

(b) certification by a registered architect that the code compliance work described in the application for which the owner seeks reimbursement has been performed, meets the requirements of MDL Article 7-B, and is reimbursable pursuant to these rules; and

(c) proof of service of the precertified application upon all affected residential occupants.

(C) Residential occupants may, no later than 45 days following mailing by the Loft Board of the auditor's report pursuant to clause (A) of this subparagraph or service of a precertified application pursuant to clause (B) of this subparagraph, as the case may be, serve comments concerning the application upon the owner, and shall file such comments with the Loft Board along with proof of such service. Comments may include, but are not limited to, such matters as the scope of work performed, its necessity and reasonableness, the quality of the workmanship, and the actual costs claimed by the owner. Such comments shall specify the items in contention and the reasons therefor, and shall be supported by corroborating evidence, e.g., contractors' estimates, invoices, and/or architects' statements. The Executive Director may extend the 45-day period for a period of time not to exceed 21 days, upon a written request of a registered architect, contractor or CPA stating that he or she has been retained by an affected residential occupant for the purpose of reviewing the owner's application and the Loft Board audit, where an audit has been performed, and stating the reason an extension of time is needed to complete such review. Within the 45-day period, or within the period of any extension granted by the Executive Director, an affected residential occupant may request that the Executive Director schedule a conference at the offices of the Loft Board with the owner or the owner's representative. The conference shall be scheduled expeditiously and shall be limited to the issues presented in the owner's application and in the Loft Board audit, where an audit has been performed.

(D) If the Executive Director determines that there are no genuine issues of material fact with regard to the application, the Executive Director shall recommend approval of the application. In the event that the Executive Director finds that a genuine issue of material fact has been raised with regard to any item in the application, he shall proceed with respect to such item in accordance with clause (E) or (F) of this subparagraph, as appropriate, and at the same time shall recommend approval of the part of the application as to which he has determined there are no genuine issues of material fact. In considering the application under this clause (D), the Board shall review the application, the comments submitted, and the recommendation of the Executive Director, and shall determine whether to approve the application or any part thereof.

(E) Where the Executive Director finds that a genuine issue of material fact has been raised he may take appropriate action to obtain such relevant information as in his discretion is necessary to assist him in reaching a determination. Such action may include, but shall not be limited to, ordering an inspection of the premises, directing the parties to serve and file additional information or corroborating evidence in support of their positions, holding an informal conference with the parties, or directing that a hearing be scheduled pursuant to the provisions of clause (F) of this subparagraph. No later than 45 days following the end of the period in which residential occupants may submit comments pursuant to clause (C) of this subparagraph, the Executive Director shall either make findings of fact and a

recommended determination to the Board, or shall direct that a hearing be scheduled pursuant to clause (F) of this subparagraph; provided, however, that the 45-day period shall be extended an additional 30 days if, prior to the expiration of the 45-day period, the Executive Director has requested additional information or documentary evidence pursuant to item (2) of this clause (E) and the time to provide such additional information or documentary evidence, or to respond to such additional information or documentary evidence, has not yet passed. In making a recommended determination pursuant to this clause (E), the Executive Director shall consider, and shall make available to the Board, the application, any comments of the residential occupants, inspection results, information provided by the parties at an informal conference, additional comments, information or corroborating evidence submitted by the parties in writing, or other relevant information.

(a) If the Executive Director orders an inspection of the premises, the results of the inspection shall be mailed to the parties within three business days of completion of such inspection, and the parties may serve and file comments concerning the inspection results within eight business days after the date of mailing of such results.

(b) A party directed to serve and file additional information or documentary evidence shall serve and file the additional information or evidence within fourteen business days of such order. The party upon whom the additional information or evidence has been served shall serve and file its response, if any, within five business days after service of the information or evidence.

(c) If the Executive Director obtains any other relevant information to assist him in making his recommended determination under this clause (E), the Executive Director shall ensure the parties are provided with such information, shall provide the parties an opportunity to comment in writing on such information within up to 15 business days after service thereof, and shall provide the parties an opportunity to respond to each other's comments within five business days after service of such comments.

(F) If the Executive Director determines that a genuine issue of material fact has been raised which may be resolved only by a hearing, the Executive Director may bifurcate the application into two parts: (1) the part that requires no hearing, which shall proceed pursuant to clause (D) or (E) of this subparagraph, as applicable, and (2) the part as to which a hearing is required, which shall proceed pursuant to this clause (F). Such hearing may be preceded by an informal conference, but in any case, shall be commenced not more than 30 days after the decision of the Executive Director to bifurcate the application, unless the parties stipulate in writing otherwise. Within 30 days after the conclusion of the hearing, the hearing officer shall make findings of fact and a recommended determination. In making the recommended determination the hearing officer shall consider, and shall make available to the Board, the application, any comments of the residential occupants, inspection results, information provided by the parties at an informal conference, additional comments, information or corroborating evidence submitted by the parties in writing, testimony given at any hearing, or other relevant information. The hearing officer shall submit his recommended determination with respect to the portion of the application proceeding pursuant to this clause (F) to the Board for its consid- eration.

(G) Nothing in this subparagraph (iii) of §2-01(i)(2) shall be construed to preclude partial approval of an application by the Board pursuant to clause (D) or (E) of this subparagraph prior to a hearing pursuant to clause (F). If the Board issues an initial order determining the portion of the application that proceeded under clause (D) or (E) of this subparagraph and grants a rent adjustment to the owner pending the conclusion of a hearing pursuant to clause (F), the owner may continue to collect rents in the amounts stated in the initial order unless and until a supplementary order is issued.

(iv) In evaluating all applications for code compliance rent adjustments, the Loft Board shall review the owner's application, the comments of residential occupants, the Loft Board schedule of costs described in §2-01(j), or alternative schedule described below, and any other information considered by the Executive Director and the hearing officer in making a recommended determination. The Board shall determine the necessary and reasonable code compliance costs incurred by the owner, which shall be charged to all affected residential occupants as rent adjustments. Owners shall be

allowed to pass along no more than the costs recited in the current Loft Board schedule as of the date on which the construction contract(s) is (are) entered into for items included in the contract(s), except as provided in the first paragraph of this subdivision (i) and other necessary and reasonable costs not on the schedule pursuant to §2-01(j) below. For items not included in the construction contract(s), costs will be determined based upon the schedule in effect at the time work was performed and §2-01(j) below. Owners submitting applications on or after June 1, 1989 shall be allowed to pass along no more than the costs recited in the revised schedule of costs promulgated by the Board on October 25, 1990. In all cases, if actual compliance costs are less than the amount recited in the Loft Board schedule, rent adjustments shall reflect the lesser actual costs.

(v) An owner may elect that the Loft Board shall deem the total cost of compliance to be the amounts certified by the Department of Housing Preservation and Development in any certificate of eligibility issued in connection with an application for tax exemption or tax abatement (such as "J-51") to the extent that such certificate reflects categories of costs approved by the Loft Board.

(vi) An owner may expressly waive its right to a rent adjustment based on the cost of compliance. To do so, it shall indicate its waiver decision on the Notice of RGB Increase form described in §2-01(i)(1) and follow the procedures therein for notification of the affected occupants. In addition, an owner may be deemed to have waived its right to a rent adjustment based on the cost of compliance pursuant to §2-01(i)(2)(ii).

(vii) Whenever service upon parties is required in this §2-01(i)(2), service shall be made, and proof of service filed, in accordance with the requirements of §2-01(d)(1)(i).

(viii) If the Loft Board finds, following notice and an opportunity to be heard, that an architect or CPA has knowingly made a misleading material statement in the context of a certification issued pursuant to §2-01(i)(2)(iii)(B), the Loft Board may refuse to accept subsequent certifications from such architect or CPA, and shall refer its findings to the appropriate licensing agency.

(j) **Schedule of costs.** The Loft Board schedule of reasonable code compliance costs for obtaining a residential certificate of occupancy promulgated pursuant to §§280 and 286(5) of Article 7-C is appended to these regulations. The schedule is current as of September, 1984, will be applicable to applications filed with the Board before June 1, 1989 and shall be indexed annually, both prospectively and retroactively, based upon the average of the annual percentage change reported in the Dodge Building Cost Index and the Engineering News-Record Building Cost Index for New York as of September of each year. However, for periods prior to 1977 and after 1988 only the Engineering News-Record Building Cost Index will be used. The schedule promulgated by the Board on October 25, 1990 will be applied to all rent adjustment applications submitted on or after June 1, 1989 and shall be indexed annually, both prospectively and retroactively, based upon the annual percentage change reported in the Engineering News-Record Building Cost Index for New York as of September of each year. The schedule is intended to include all necessary and reasonable code compliance cost items. It includes the allowable costs of materials and labor for demolition and construction necessary for achieving minimal code compliance. It also includes professional fees and municipal filing fees necessary for code compliance. Rent adjustments shall not be allowed for items not included in the schedule unless upon owner application they are shown to be necessary and reasonable costs of code compliance, nor shall rent adjustments be allowed for costs not necessary to obtain a residential certificate of occupancy. In addition, notwithstanding the existence of a work item on the schedule, rent adjustments shall not be allowed for: (1) costs incurred in repairing or replacing items located in the common or commercial areas of the building or involving its exterior (such as masonry, fire escape, or skylight repairs) to the extent such items are repaired or replaced with a similar or comparable item due to their deteriorated condition (such costs being "deferred maintenance" costs); (2) the costs of curing preexisting violations in the building evidenced by municipal notices of violation to the extent such violations would have to be cured even if the building did not have to be made code compliant pursuant to Article 7-C; and (3) other "soft" costs, such as BRAC payments. The repair or replacement of work items (other than windows, as provided below) located within the residential units of the building shall not constitute a deferred maintenance cost. The foregoing rules are qualified to the following extent; (x) if the roof is required to be repaired or replaced, and it has been

replaced within the 10-year period prior to the narrative statement conference for the building, half the necessary and reasonable costs shall be recognized as code compliance costs and allocated equally among any residential units whose occupants had made significant use of the roof during this 10-year period ("significant use" may be evidenced by the presence on the roof of the residential occupants' property, such as outdoor furniture, plants, decking, and clotheslines); otherwise, the costs of roof repair and replacement shall be excluded as deferred maintenance; (y) if windows are required to be repaired or replaced, the necessary and reasonable costs shall be recognized as code compliance costs if incurred to meet residential certificate of occupancy standards, but shall be excluded if they resulted instaed from the deteriorated condition of the windows; and (z) the repair or replacement of utility risers, other building system components, or structural components due to their deteriorated condition with similar or comparable items shall constituye deferred maintenance costs unless these components had been installed by a residential tenant.

In determining the appropriate rent adjustment for code compliance for each affected unit the Loft Board will decide on a case-by-case basis whether the work item applied for was necessary and reasonable to achieve minimal code compliance in the building. "Minimal code compliance" shall not be limited exclusively to the least expensive method of compliance but may also include other reasonable approaches to meeting legal requirements which are not unduly burdensome to the residential occupants. In assessing the reasonableness of the approach, the Board may consider the construction standards and specifications applied in housing programs financed by the Department of Housing Preservation and Development and other affordable housing programs in New York City. Where the cost of an allowable code compliance item has been included in the initial rent adjustment based upon Article 7-B compliance, the cost of any subsequent work performed to repair or replace that item may not be included in the final rent adjustment based upon issuance of a final residential certificate of occupancy. Rent adjustments for approved work items will be based on the lower of the actual cost or the scheduled amount for the item. In the case of approved work items that do not appear on the schedule, the necessary and reasonable cost of such items will be determined and included in the rent adjustments.

Further, if in order to provide heat as required by Loft Board Minimum Housing Maintenance Standards, the landlord is or was required to install a central heating system or individual heating systems or to modify an existing system, the necessary and reasonable costs incurred in purchasing and installing or modifying such system or systems shall be costs that may be passed along to tenants as part of the rent adjustment calculated pursuant to these regulations.

If in order to meet utility company standards or rules, an owner is required to perform work such as installing meters or constructing meter rooms, the necessary and reasonable costs of such work shall be costs that may be passed through as rent adjustments pursuant to these rules. Also, if in order to provide elevator services as required by the Department of Buildings or Loft Board Minimum Housing Maintenance Standards, the landlord has modified or replaced an existing elevator, the necessary and reasonable costs of performing such work shall be costs that may be passed along to the tenants as part of the code compliance rent adjustments.

As part of the legalization work, the landlord shall also replace elevator hoistway door locks where prohibited with a security device on residential floor landings that provides substantially the same or enhanced security to the tenants, and the necessary and reasonable costs of performing such work shall be costs that may be passed along to the tenants as part of the code compliance rent adjustment. "Substantially the same or enhanced security" shall be defined as follows: (1) a "zero clearance vestibule," if the elevator is equipped with sliding doors and the vestibule may be created without altering their operation; (2) a vestibule extending into the IMD unit, with the minimum dimensions required to meet code requirements, if the elevator is equipped with swinging doors which open into the IMD unit; or (3) any other security arrangement to which the owner and tenant agree which meets DOB and Fire Department requirements. On request of the residential tenant, additional security measures such as mirrors and reinforced vestibule walls shall be installed by the owner, provided they are acceptable to DOB and the Fire Department, and the cost of their installation shall also be a recognized cost of code compliance.

If a tenant has performed construction without the owner's consent at any time after the initial narrative statement conference, and additional costs are incurred by the owner as a result, such as architectural fees to revise plans or labor

and material costs to perform additional work, these costs may be passed through to the tenant as part of the code compliance rent adjustments.

In situations in which the owner alters or reconfigures residential units in a manner which results in changes in residential floor area pursuant to a Loft Board order or agreement among the parties, the Loft Board may determine the base rents to be charged for such spaces reflective of the change. Installation of an elevator vestibule to provide a tenant with security from intruders using the elevator shall not be the basis for an adjustment of base rent.

Also, see §2-01(0).

(k) **Rent adjustments.** (1) When an owner files an application for code compliance rent adjustments pursuant to §2-01(i)(2) prior to obtaining a certificate of occupancy, rent adjustments granted by the Board shall be retroactive to the first day of the month following the date of the filing of the completed rent adjustment application by the owner. When an owner files an application for code compliance rent adjustments pursuant to §2-01(i)(2) after obtaining a final certificate of occupancy, rent adjustments granted by the Board shall be retroactive to the first day of the month following the date of the issuance of the final certificate of occupancy. In either case, rent adjustments granted by the Board shall take effect on the first rent payment date that occurs at least 10 days after the Loft Board has mailed a final rent adjustment order to the owner and all affected residential occupants. For example, in a case where an owner filed an application for a rent adjustment prior to obtaining a certificate of occupancy, if the owner filed its application on March 15, 1986, and the Loft Board's order was mailed on October 6, 1986, the increase would be effective November 1, 1986, retroactive to April 1, 1986. At the option of the residential occupant, such retroactive increase may be paid either in a lump sum or as an addition to the regular monthly rent payments at a rate equal to 20 percent of the rent in effect, including any escalators, as of the date of application for adjustment ("base rent") until payment of the full retroactive amount is completed. Also, see §2-01(o).

(2) The total rent adjustment per building shall be determined by the Loft Board:

(i) by dividing the allowable cash costs of compliance approved by the Loft Board, exclusive of interest and service charges, over a 10-year period of amortization; or

(ii) by dividing the allowable cash costs of compliance approved by the Loft Board over a 15-year period of amortization and adding the actual mortgage debt service, incurred by the owner to pay allowable cash costs of compliance approved by the Loft Board that are attributable to interest and service charges in each year of indebtedness to an Institutional Lender (as defined in paragraph (4) of this subdivision) or any Qualified Noninstitutional Lender (as defined in paragraph (4) of this subdivision) that is approved by the Loft Board pursuant to such paragraph. The portion of the rent adjustment attributable to mortgage debt service shall be computed on the basis of the average annual debt service attributable to interest, finance and service charges over the loan term, provided that the maximum total amount of interest charged includable in rent shall not exceed that reflected in a 15 year self-amortizing mortgage.

Service charges shall include mortgage application fees; commitment fees; fees for professionals who are required to be paid by the lender (such as appraisers, attorneys and surveyors); mortgage title examination and insurance fees and charges; origination fees; points; mortgage recording tax; and other recording charges.

The use of a 10-year period of amortization, not including debt service, or of a 15-year period of amortization, including debt service, shall be at the option of the owner when interest and service charges are incurred to pay for any portion of allowable cash costs of compliance approved by the Board.

(3) In cases where the owner of a building receives tax abatement and exemption under Part 1 of Subchapter 2 of Chapter 2 of Title II (§11-243 formerly J-51) of the Administrative Code, the total annual rent adjustment for the IMD shall be adjusted to reflect a reduction equal to one-half of the total annual tax abatement granted for the IMD for those categories of costs approved by the Loft Board as necessary and reasonable for code compliance. The allocation of such reduction shall be in accordance with the formulae for allocation of rent adjustments contained in §2-01(l) of these

regulations.

(4) (i) **Definitions.** For purposes of amortizing code compliance costs and interest and service charges over a 15-year period, the following terms have the following meanings: (A) "Institutional lender" shall mean any bank, trust company, national bank, savings bank, state or federal savings and loan association, state or federal credit union, insurance

company; any pension fund or retirement system of any corporation, association or any other entity owned or controlled by any one of the above, provided the same is supervised by or responsible to any agency of the federal government, or the State or the City of New York; and any governmental agency.

(B) "Qualified noninstitutional lender" shall mean any person or entity other than (A) the owner of the building, (B) any person or entity that owns, directly or through another entity, more than 50% of the ownership interest in the property, or any person or entity that at any time after March 26, 1993 has owned directly or through another entity, more than 50% of the ownership interest in the property, or (C) the spouse of any person described in clauses (A) or (B) above.

(ii) **Procedure for applying for rent adjustment based on loans used to finance allowed compliance costs.**

(A) Required documentation for all loans. An applicant seeking a rent adjustment based on interest and service charges for any loan from an institutional lender or qualified noninstitutional lender shall submit, as part of the application described in §2-01(i)(2), a descripion of the terms of the loan, the identity of the lender, a copy of all documents (including amendments thereto) evidencing or securing the loan (e.g., the note, loan agreement, mortgage, and security agreement, if any) certified by the lender as being true and correct copies; and evidence of the payment of service charges in the form of paid bills, canceled checks or other similar evidence.

(B) Additional documentation required for a loan from any qualified noninstitutional lender. In the case of a loan from a qualified noninstitutional lender, an applicant must submit, in addition to the documents enumerated in sentence (i) of subparagraph (b) of this paragraph, a completed Application for Noninstitutional Lender Approval in the form prescribed by the Loft Board together with an affidavit of Noninstitutional Lender-Lender Approval Form and an Affidavit of Noninstitutional Lender-Loan Approval Form. A completed Application for Noninstitutional Lender Approval and Affidavit of Noninstitutional Lender-Lender Approval Form must be submitted before the Loft Board will begin to process the rent adjustment application described in §2-01(i)(2).

(C) Additional documentation required for a loan from a qualified noninstitutional lender that is related to the applicant by blood, marriage or ownership of stock, partnership interests or other ownership interests. In the case of a loan from any qualified noninstitutional lender that is related to the applicant by blood, marriage or ownership of stock, partnership interests or other ownership interests, an applicant must submit, in addition to the documents enumerated in sentences (ii) and (iii) of subparagraph (b) of this paragraph, a statement from the lender's certified public accountant to the effect that the loan under consideration is a bona fide loan and that the interest payable thereunder has been included or is includable as income in the lender's federal income tax return or, alternatively, a true and correct copy (certified as such by the lender or the lender's certified public accountant) of the lender's federal income tax return(s) (or the applicable schedules thereto) showing that such interest has been included in the lender's income for federal income tax purposes for each year to date of such application that interest under the loan has been paid to an including the most recent year in which a federal income tax return has been filed; and copies (both sides) of canceled checks drawn on an account of the lender evidencing payment of the proceeds of the loan to or on behalf of the owner.

The Loft Board shall approve a noninstitutional lender in determining rent adjustments pursuant to §2-01(k)(2); provided, however, in the case of a qualified noninstitutional lender that is related to the applicant by blood, marriage or ownership of stock, partnership interests or other ownership interests, that the applicant submits reliable evidence (in the form described above) that the loan under consideration is a bona fide loan. Service charges shall be reimbursable only

to the extent that they have been paid on or prior to the date of application and only when supported by reliable evidence (in the form described above). Only that portion of interest charges on a noninstitutional loan that does not exceed 2 points over the Federal National Mortgage Association's yield on multi-family, 15-year fixed-rate loans shall be included in rent adjustments. The procedures for applications to the Loft Board set forth in §1-06 of these rules shall not apply to Applications for Non- Institutional Lender Approval. The owner shall be required to submit two copies of the Application for Non-Institutional-Lender Approval. Such application will be approved provided such filing contains the information required by these rules.

The portions of the preceding provisions of §2-01(k) pertaining to loans from qualified noninstitutional lenders (specifically, the reference to qualified noninstitutional lenders in §§2-01(k)(2)(ii), and §§2-01(k)(4)(i)(B), 2-01(k)(4)(ii)(B), 2-01(k)(4)(ii)(C), and the paragraph immediately following §2-01(k)(4)(ii)(C) shall terminate on June 30, 1995 unless extended by the Loft Board.

(1) **Allocation of rent adjustments.** The total rent adjustment per IMD determined pursuant to §§2-01(i) through (k) above, for obtaining a residential certificate of occupancy shall be allowed among individual residential units in the following manner:

(1) Allowable code compliance costs of work performed in a residential unit to bring the unit into compliance shall be allocated to that residential unit.

(2) Allowable code compliance costs of systems work, such as utility service or heat, that only services and is only capable of servicing the residential units and of work performed in nonresidential units solely to achieve Article 7-C compliance for the residential units shall be allocated equally among those residential units regardless of where the work is performed.

(3) An equal share of allowable code compliance costs of work in common areas and nonresidential units, except as provided in §2-01(1)(2), in the building shall be allocated to each residential unit. Allowable code compliance costs for systems work, such as utility service or heat, which services or is capable of servicing nonresidential units shall be deemed to be code compliance costs of work in common areas.

This share, as described in this §2-01(l)(3), shall be equal to the portion of total allowable code compliance costs of work in common areas and nonresidential units, except as provided in §2-01(l)(2), which bears the same proportion to the total as the sum of the amount of floor area devoted to the maximum number of residential units in the building at any time after April 1, 1980 which qualified for coverage under M.D.L. Article 7-C and of the residential units which appear on the final certificate of occupancy which did not qualify for coverage under M.D.L. Article 7-C bears to the building's total floor area, divided equally among the sum of the maximum number of residential units in the building at any time which qualified for coverage under M.D.L. Article 7-C and the number of residential units which appear on the final certificate of occupancy which did not qualify for coverage under M.D.L. Article 7-C so that

$$\mathbf{S} = \frac{(\mathbf{TC} \times \mathbf{RA/TA})}{\mathbf{R}}$$

that is S equals (TC multiplied by (RA divided by TA)) divided by R,

where S = Share per residential unit

TC = Total allowable code compliance costs of work in common areas and nonresidential units, except as provided in §2-01(l)(2)

RA = Sum of the floor area of the maximum number of residential units in the building at any time which qualified for coverage under M.D.L. Article 7-C and of the residential units which appear on the final certificate of occupancy

which did not qualify for coverage under M.D.L. Article 7-C

TA = Total Floor area

R = Sum of the maximum number of residential units in the building at any time which qualified for coverage under M.D.L. Article 7-C and the number of residential units which appear on the final certificate of occupancy which did not qualify for coverage under M.D.L. Article 7-C

For purposes of allocating rent adjustments pursuant to §2-01(1)(3):

Total floor area (TA) is defined as the sum of the gross areas of the floors of a building measured from the exterior faces of exterior walls or from the center line of walls separating two buildings. Floor area includes rentable space, such as space in penthouses, cellars, and basements, but excludes rooms with mechanical, heating and air conditioning equipment and elevator and stair bulkheads, water tanks and cooling towers. Nonresidential tenant, residential tenant and vacant rental spaces are included in the floor area.

Floor Area of Residential Units (RA) is defined as the sum of the clear area of the floor contained within the partitions or walls enclosing any room, space, foyer, hall or passageways of each of the residential units. It shall not include common areas, public halls, public vestibules, public rooms or other public parts of the building.

Common areas are defined as spaces used for bulkheads, stairs, hallways, cellars, basements, fire escapes, rooms used for mechanical, elevator and heating equipment, and other areas used by all the residential occupants of the building, including storage areas.

(m) **Initial legal regulated rents/issuance of residential leases.** (1) Following the calculation of code compliance rent adjustments pursuant to §2-01(i)(2)(ii) or the waiver of an owner's right to such rent adjustments pursuant to §2-01(i), the Loft Board shall set the initial legal regulated rent for all covered residential units remaining subject to rent regulation under M.D.L. Article 7-C.

(2) If an owner has waived its right to code compliance rent adjustments, the Loft Board may establish the initial legal regulated rents for covered residential units subject to rent regulation under M.D.L. Article 7-C based on the owner's RGB application pursuant to §2-01(i)(1), or, if no RGB application was filed, by evidence including, but not limited to, Loft Board records, documents submitted by affected parties, and the testimony of witnesses.

(3) (i) Upon the issuance by the Loft Board of an order establishing the initial legal regulated rent, the owner shall offer each residential occupant a residential lease subject to the provisions regarding evictions and regulation of rent set forth in the Emergency Tenant Protection Act of 1974, except that to the extent the provisions of Article 7-C are inconsistent with such act, the provisions of Article 7-C and these rules shall govern. At such time, the owner shall register with the New York State Division of Housing and Community Renewal in accordance with the ETPA.

Note: §285(3) of the M.D.L. requires registration with a real estate industry stabilization association; however, amendments to the ETPA (Chapter 403 of the Laws of 1983) modified that filing requirement as shown.

(ii) If the owner has received any RGB Increase under §2-01(i)(1), then the initial term of such lease shall end upon expiration of the last RGB Increase Period (as defined in §2-01(i)(1)) prior to the setting of the initial legal regulated rent; provided, however, that no notice or proceeding by the owner to recover the unit pursuant to §2524.4 of the Rent Stabilization code may be commenced during the pendency of this initial abbreviated lease term.

The initial legal regulated rent established by the Loft Board pursuant to this subparagraph (ii) shall be equal to:

(A) the rent in effect, including escalations, and any RGB Increase granted under §2-01(i)(1) as of the date of the rent order ("base rent"), plus

(B) the maximum annual amount of any increase allocable to compliance as provided herein.

(iii) If an owner has not received any RGB Increases under §2-01(i)(1), then the rent shall be the sum of clauses (A) and (B) of subparagraph (ii) above plus the percentage increase then applicable to one-or-two year leases, as elected by the tenant, as established by the RGB and applied to the base rent, provided, however, such percentage increases may be adjusted downward by the Loft Board if prior increases based on Loft Board guidelines cover part of the same time period to be covered by the Rent Guidelines Board adjustments. For units in buildings that have been rented at market value subject to subsequent rent regulation as a result of the owner's purchase of improvements pursuant to M.D.L. §286(6) and §2-07(f)(5) of these rules, the initial legal regulated rent shall be calculated as set forth above except that the code compliance cost increase shall be zero.

(4) Rental adjustments attributable to the cost of code compliance shall not become part of the base rent for purposes of calculating rent adjusted pursuant to Rent Guidelines Board increases and shall terminate, after 10 or 15 years, as established by Loft Board order.

(n) **Cooperatives and condominiums.** (1) Cooperative or condominium conversion of an IMD shall be fully in accordance with Article 23-A of the General Business Law, as amended, and the rules and regulations promulgated by the New York State Attorney General pursuant thereto. No eviction plan for conversion to cooperative or condominium ownership for a building that is, in whole or in part, an IMD shall be submitted for filing to the office of the New York State Attorney General pursuant to the General Business Law until a final residential certificate of occupancy is obtained and the residential occupants are offered residential leases in accordance with these regulations.

(2) Noneviction plans for such buildings may be submitted for filing provided that the sponsor or owner association remains legally responsible for bringing all rental, cooperative, and condominium units and all common areas of the building into compli ance with Article 7-B of the M.D.L., or alternative building codes or provisions of the M.D.L. described in §2-01(a)(3) of these regulations and for all work in common areas required to obtain a residential certificate of occupancy. An IMD that has been converted to cooperative or condominium ownership is subject to compliance with Article 7-C and Loft Board rules and regulations promulgated pursuant thereto.

(3) Cooperative and condominium units occupied by unit owners or tenant-shareholders are not subject to rent regulation pursuant to Article 7-C of the M.D.L. Cooperative and condominium units occupied by residential occupants qualified for the protection of Article 7-C of the M.D.L., i.e., who are not unit owners or tenant-shareholders, are subject to rent regulation pursuant to the statute.

(4) The sponsor or owner association of an IMD building that has converted to cooperative or condominium ownership shall file for code compliance rent adjustments for any units remaining subject to rent regulation pursuant to M.D.L. Article 7-C by the time set forth in §2-01(i)(2)(ii). A sponsor or owner association that fails to file an application for code compliance rent adjustments in a timely manner pursuant to this provision shall be deemed to have waived its right to seek such a rent adjustment.

(5) At any time after obtaining a residential certificate of occupancy, the sponsor or owner association of such an IMD building shall file with the Loft Board a list of all units originally registered as IMD units that are occupied by unit owners or tenant-shareholders, certifying that such units are occupied by unit owners or tenant-shareholders, and affirming that the sponsor or owner association seeks exemption for those units from the Loft Board's order setting the initial legal regulated rents. The building shall remain subject to the annual registration renewal requirement pending completion of Loft Board review of such list.

(o) Reserved.

(p) **Schedule of costs.**

Description	Unit	Revised Schedule*

(1) **Demolition.**

Dumpster (incl. permit)	Mini	30.45/load
	10 yd.	385.78/load
	20 yd.	482.13/load
Demolition susp. plaster or sheetrock ceiling	sq. ft. sq. ft.	1.27 0.76
Demolition of non fire-rated partition	sq. ft.	1.02
Removal of non-code compliant hot water heater	each	76.13
Removal of non-code compliant space heater	each	64.35
Removal of non-code compliant heater, ceiling unit	each	193.05
Removal of non-code compliant plumbing fixture	each	64.35
Remove window and frame on lot lines	each	64.35
Demolition of wooden stairs	per floor	256.39

(2) **Masonry**

Allowance for openings in interior walls for exhausts, vents and heaters	per opening	50.75
Fireproofing columns, 4" solid block	sq. ft.	6.44
New window opening in brick or concrete block wall	each	386.11
New door opening in sheetrock	each	76.13
New door opening in brick or concrete block wall	each	386.11
Exterior wall opening for exhausts, vents and space heater	each	321.76
New fire-rated stair enclosure-		
top floor to roof	each	1,287.02
first floor to cellar	each	1,287.02
Extend brick parapet to provide 3'6" height	sq. ft.	32.18
New bulkhead (25 linear feet)	each	3,217.55
Bulkhead ventilation louver (12" x 12") completely installed	each	128.70
Gypsum block (4") to enclose boiler/meter rooms	sq. ft.	6.44

(3) **Metals**

New metal stair, 2'6" wide, for top floor to roof*	floor	2,233.00
New roof railings to provide 3'6" parapet	lin. ft.	19.31
Metal stair to cellar to replace existing*	floor	1,930.53
Skylight including screen 20 sq. ft.	each	772.21
Scuttle ladder to roof	each	257.40
Fire escape, new	floor	2,445.44
Extend fire escape to roof & platform	each	1,930.53
Exterior screened stair	floor	3,217.55
Cellar "engineer's" hatch with frame, ladder, cutting, patching1 hardware new steel (24" x 24") completely inst.	each	1,930.53

(4) **Carpentry**

Floor joist, 3 × 10	lin. ft.	10.15
Floor joist, 3 × 12	lin. ft.	12.18
Subflooring replacement	sq. ft.	1.83
Framing for new partitions	sq. ft.	1.29

(5) **Doors and Windows**

Building entry and/or vestibule, new installation	lin. ft.	257.40
Hollow metal door and frame (common area)-replacement	each	450.46
Hollow core wood door and frame	each	128.70
Dwelling unit entrance door with frame including lock, door knobs and hinges	each	514.81

Bulkhead door with frame	each	450.46
Repair existing dwelling unit entrance door	each	128.70
New dwelling unit entrance door lock	each	128.70
Reversing swing of door	each	86.28
Double hung window (double glaze) 20 sq. ft.	each	321.76
Double hung window (single glaze) 20 sq. ft., installed	each	268.98
Windows larger than 20 sq. ft.	each sq. ft. above 20	25.74
Lot line window	each	406.00
Glazing-wired	sq. ft.	10.94

(6) **Finishes**

Painting (primer coat on sheetrock, plus one coat)	sq. ft.	0.37
Plaster patching	sq. ft.	1.93
Gypsum board, non-fire rated (1/2") for interior unit partitions	sq. ft.	2.03
Fire-rated gypsum board (5/8") to fireproof underside of stairs, 2 hrs. rating	sq. ft.	2.58
To separatecommercial/manufacturing from residential portion of building, 1 or 2 hrs. rating	sq. ft.	1.29/2.58
To separate apartments, 1 hr. rating	sq. ft.	1.29
To enclose fire stairs and/or fire corridor, 1 or 2 hrs. rating	sq. ft.	1.29/2.58
To enclose cellar, common area rooms 1 or 2 hrs. rating	sq. ft.	1.29/2.58
To enclose bath and/or kitchens	sq. ft.	1.29
Dry-wall, impervious to water, for bathroom use	sq. ft.	1.93

Note: All gypsum board descriptions and prices are finished, i.e. taped and spackled.

INSULATION

Wall Insulation (R-11)	sq. ft.	0.32
Roof Insulation (R-30)	sq. ft.	0.64

TILE AND FLOORINGS

Tile repair in residential bathroom	sq. ft.	7.61
Tile work in residential bathroom (newbase only)	bathroom	64.35

(7) **Specialities**

Mail Boxes	each	56.84
Floor Signs	each	12.87
Peephole Bell Chain on Existing Door	per door	64.35
Smoke Detector, Hard Wired	each	128.70
Intercom in Buildings with 8 or more units	per D.U.	152.25
Bell and Buzzer System	per D.U.	50.75

(8) **Equipment**

Electric or Gas Range	each	386.11

(9) **Conveying Systems**

ELEVATORS

New Elevator: Base Price	each	57,915.90
Additional	per floor	7,722.12
Seal Off Shaft	per floor	514.81
Service Car	per floor	15,225.00

(10) **Mechanical**

HEAT AND HOT WATER

Hot Water Heater, Gas Fired, 40 Gal.	each	321.76
Hot Water Heater, Electric, 40 Gal.	each	450.46
Separate Domestic Central	per D.U.	321.76
Hot Water System Central Heating System, Gas or Oil, Including Piping and Radiators	per D.U.	3,861.06
Central Boiler, Gas or Oil	per D.U.	1,287.02
Gas Fired Heater, Residential	each	965.27
Gas Meter: Lines (3/4") to Individual D.U.	lin. ft.	7.61
Electric BaseboardHeater to Heat 1,000 Sq. Ft.	per D.U.	1,930.53
New Radiator or Convector	each	450.46
Radiator: I. Valve and Air Vent	each	96.53
Radiator: II. Valve and Steam Trap	each	115.83
Gas Riser for Heat or Hot Water	per D.U.	772.21
Gas Riser for Cooking	per D.U.	643.51
Gas-Fired Hot Water Boiler for Individual Dwelling Unit, Installed with Piping, Venting and Valving	per D.U.	4,504.57
Plumbing Valve on Existing Fixture	each	45.05
Mechanical Ventilation (Including Exhaust Ducts) for Internal Units (with Existing Shaft)		
-Bathroom	each	304.50
-Kitchen	each	365.40
-Fan (Including Wiring)	each	609.00

WATER DISPOSAL AND PLUMBING

Water Closet	each	231.66
Bath Tub w. Trim	each	463.33
Shower Body, Piping with Trim	each	160.37
Kitchen Sink with Trim	each	231.66
Lavatory with Trim	each	193.05
Sink Faucet	each	96.53
Copper pipe (1/2")+	lin. ft.	6.44
Copper pipe (3/4")+	lin. ft	9.01
Replace Inadequately Sized Sink Trap	each	193.05
Waste and Trap for Existing Tub	each	208.08
Lead Bend for Water Closet	each	257.40
New Water Riser and Branches	per D.U.	1,480.07
New Water Main Assuming 6-story building 2" copper main street main on same of street as building2	each	3,552.50
Replace Sprinkler Head	each	38.61
Sprinkler System, New, Based on Per Head	each	261.87
Relocate Existing Sprinkler Head	each	193.05
Siamese Connection**	each	772.21
Fire Pump**	each	15,444.24
Alarm Valve**	each	965.27
New Standpipe Main**	each	9,009.14
Siamese, Check Valve**	each	1,544.42
Siamese, Check Valve with Piping and Water Flow Alarm**	each	3,861.06
Roof Tank 5,000 Gal. Inc. Structural Supports**	each	19,305.30
New Water Meter:		

2"	each	2,030.00
3"	each	3,045.00
4"	each	4,060.00

AIR DISTRIBUTION

Supply Air Fan or Roof Exhaust Fan	each	487.20
Wall Exhauster	each	436.45
Fire Damper and Grill in Existing Shaft	each	64.35
Turbine Fan in Existing Shaft	each	193.05
Provide Ventilation for Enclosed Central Heating System Equipment	each	1,287.02

VENTILATION EXHAUST RISER

Kitchenette	each	386.11
Bath	each	321.76

(11) **Electrical**

Panel Board with Separate Electric Riser, Single Phase, Three Wire Service	each	900.91
Single Pole Switch Outlet Fully Installed	each	77.22
Lighting Outlet, Fully Installed	each	128.70
New Fixture on Switch, Fully Installed	each	193.05
Hall Lighting Outlet, Fully Installed	each	154.44
110 V Outlet	each	116.73
110 V Outlet (Ground Fault Interrupter Electrical Meter:	each	137.03
-Panel & Rough Wiring	building	1,319.50
-Meter (Assembly) Plan	per D.U.	167.48

(12) **Municipal Filing Fees, Professional Fees, Local Law Compliance and Extraordinary Costs of Legalization**

Municipal fees for filing necessary for Code Compliance (e.g. Dept. of Buildings Alteration Application, City Planning Commission Special Permit, etc.). Does not include regular annual filings for inspections or regulation.	Actual fee charged
All Architectural and Engineering Fees	Maximum 7 percent of approved, necessary and reasonable costs of Code Compliance items in categories 1-12 of this schedule.
Legal Fees-costs incurred in obtaining financing for Code Compliance	Maximum 4 percent of approved necessary and reasonable costs of Code Compliance for cost items in categories 1-12 of this schedule.
Local Law Compliance (Handicapped, Landmarks and Asbestos)	Approved necessary and reasonable costs of Code Compliance, reviewed and determined by the Loft Board case by case.
Extraordinary Costs of Legalization (construction management fees; overtime costs for alterations required to be done after hours; and excessive costs above scheduled allowance resulting from individual building characteristics)	Maximum 7.5 percent for this category of approved, necessary and reasonable costs of Code Compliance.

[1] Includes concrete plan.

[2] All other situations will be resolved on a case by case basis.

[+] Plumbing items include necessary pipe installation. These items are for replacement work only.

* The figures in this final cost schedule have been calculated by using the 1989 prices, published in the City Record on August 13, 1990, multiplied by 1.5 percent, the yearly index for 1990.

** These items will only be considered as necessary and reasonable when installation is mandated resulting from other required code compliance work.

The following Department of Buildings memoranda are included here for informational purposes only and not for comment. These directives are referred to in §2-01(d)(2) of the code compliance regulations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 29, 2006 §1, eff. Sept. 28, 2006.[See Note 8]

Subd. (a) par (8) subpars (iii), (iv), (v) amended City Record Apr. 29, 2008 §1, eff. May 29, 2008.

[See Note 10]

Subd. (b) amended City Record Sept. 8, 2006 §1, eff. Oct. 28, 2006. [See Note 9]

Subd. (c) par (1) amended City Record May 8, 1997 eff. June 7, 1997. [See Note 2]

Subd. (c) par (2) numbered and amended City Record May 8, 1997 eff. June 7, 1997. [See Note 2]

Subd. (c) par (3) numbered and amended City Record May 8, 1997 eff. June 7, 1997. [See Note 2]

Subd. (c) par (4) renumbered and amended (formerly (2)) City Record May 8, 1997 eff. June 7,

1997. [See Note 2]

Subd. (c) par (5) renumbered by editor (formerly (3)).

Subd. (c) par (6) renumbered by editor (formerly (4)).

Subd. (d) par (2) subpars (iv), (v), (vi), (vii) amended City Record Aug. 19, 1994 eff. Sept. 18, 1994.

Subd. (e) amended City Record Aug. 19, 1994 eff. Sept. 18, 1994.

Subd. (g) amended City Record Apr. 8, 1999 eff. May 8, 1999. (This amendment supersedes Mar.

30, 1999 version) [See Note 3]

Subd. (i) par (2) amended City Record July 3, 1996 eff. Aug. 2, 1996.

Subd. (i) par (2) subpar (i) amended City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected

copy supersedes the Mar. 30, 1999 version) [See Note 4]

Subd. (i) par (2) subpar (ii) amended City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected

copy supersedes the Mar. 30, 1999 version) [See Note 4]

Subd. (i) par (2) subpar (vi) amended City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected copy supersedes the Mar. 30, 1999 version) [See Note 4]

Subd. (j) amended City Record Aug. 19, 1994 eff. Sept. 18, 1994.

Subd. (k) par (1) amended City Record July 3, 1996 eff. Aug. 2, 1996.

Subd. (m) amended City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected copy supersedes the Mar. 30, 1999 version) [See Note 4]

Subd. (n) amended City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected copy supersedes the Mar. 30, 1999 version) [See Note 4]

Subd. (o) repealed City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected copy supersedes the Mar. 30, 1999 version) [See Note 4]

DERIVATION

Subd. (a) par (5) amended City Record May 8, 1997 eff. June 7, 1997. [See Note 2]

Subd. (a) par (5) added City Record Jan. 12, 1993 eff. Feb. 11, 1993.

Subd. (a) par (6) added City Record May 8, 1997 eff. June 7, 1997. [See Note 2]

Subd. (a) par (7) amended City Record Nov. 3, 2005 §1, eff. Dec. 3, 2005. [See Note 6]

Subd. (a) par (7) amended City Record Aug. 22, 2003 eff. Sept. 21, 2003. [See Note 5]

Subd. (a) par (7) added City Record Jan. 14, 2000 eff. Feb. 13, 2000. [See Note 1]

Subd. (a) par (8) amended City Record Nov. 3, 2005 §2, eff. Dec. 3, 2005. [See Note 6]

Subd. (a) par (8) added City Record Aug. 22, 2003 eff. Sept. 21, 2003. [See Note 5]

Subd. (b) amended City Record May 8, 1997 eff. June 7, 1997. [See Note 2]

Subd. (b) par (1) amended City Record June 23, 2006 eff. July 23, 2006. [See Note 7] There were amendments made without brackets and italics.

Subd. (b) par (1) amended City Record Nov. 3, 2005 §3, eff. Dec. 3, 2005. [See Note 6] This erroneous amendment was corrected by the Law Department.

Subd. (b) par (1) amended City Record Aug. 22, 2003 eff. Sept. 21, 2003. [See Note 5]

Subd. (b) par (1) amended City Record Jan. 14, 2000 eff. Feb. 13, 2000. [See Note 1]

Subd. (b) repealed and added City Record Jan. 12, 1993 eff. Feb. 11, 1993.

Subd. (b) par (2) subpar (iii) amended (as par (3)) City Record Apr. 5, 1996 eff. May 5, 1996.

Subd. (c) par (1) amended City Record Aug. 19, 1994 eff. Sept. 18, 1994.

Subd. (g) amended City Record Aug. 19, 1994 eff. Sept. 18, 1994.

NOTE

1. Statement of Basis and Purpose in City Record Jan. 14, 2000:

In July 1999, the Legislature amended Article 7-C of the Multiple Dwelling Law (the "Loft Law") to extend the code compliance deadlines that owners are required to meet. As a result, it is necessary to amend the Loft Board rules to conform to the legislative changes. These amendments update the rules to conform to the terms of the amended Loft law.

2. Statement of Basis and Purpose in City Record May 8, 1997: These amendments revise the rules relating to code compliance legalization deadlines; extensions of the code compliance legalization deadlines; violations of the code compliance legalization deadlines; and sales of improvements. Text added to the rules is shown underlined, and text deleted from the rules is bracketed. Text that is neither underlined nor bracketed remains unchanged. In July, 1996, the Legislature amended Article 7-C of the Multiple Dwelling Law (the "Loft Law") to extend the code compliance deadlines which owners are required to meet. As a result, it is necessary to amend the Loft Board rules to conform to the legislative changes. These amendments update the code compliance deadlines in sections 2-01(a), (b), and (c), and section 2-07, to conform to the amended law.

3. Statement of Basis and Purpose in City Record Apr. 8, 1999: The amendment allows owners to serve a notice seeking access either by personal service or by first class mail alone or certified mail alone (removing the cumbersome requirement of duplicate mailings). The amendment also allows tenants to serve owners by personal service or first class mail or certified mail, to inform the owner of the designation of another tenant to receive notice and provide access. The amendment also increases the number of copies of applications and answers that owners and occupants must file with the Loft Board from two to twelve, in order to reduce the agency's administrative costs. Cross-references to the notice provisions set forth in §2-01(d)(1) are deleted to make the rule easier to understand.

4. Statement of Basis and Purpose in City Record Apr. 7, 1999: It is the Loft Board's mandate to take a fixed group of buildings and move them through the process of legalization, ultimately reducing the number of buildings in its jurisdiction. The last step in that process is setting the initial legal regulated rents, and directing the owners to issue rent stabilized leases and to register with the State Division of Housing and Community Renewal (DHCR). This occurs after the owner has achieved compliance with Article 7-B of the Multiple Dwelling Law or has obtained a residential certificate of occupancy. It is not uncommon, however, for owners to obtain a residential certificate of occupancy but delay obtaining a final rent order setting the initial legal regulated rents. This has the effect of keeping such buildings in the Loft Board's jurisdiction indefinitely. Under current rules, there is no deadline for filing these applications. This amended rule requires owners to file their applications for a final rent order soon after obtaining a residential certificate of occupancy. Also, current rules do not give the Loft Board the authority to issue final rent orders in the absence of an owner's application. This amendment gives the Board that authority. The amendment provides that owners who do not file an application for code compliance rent adjustments within the time limit set forth are deemed to have waived their right to such adjustments. The rule gives owners until February 1, 2000, whichever is later, to make their application. The amendment allows the Loft Board to set the initial legal regulated rent in cases where an owner has submitted neither an application for code compliance rent adjustments nor a Rent Guidelines Board increase under 2-01(i)(1). In such case, the Loft Board can commence a proceeding to establish the initial legal regulated rents (without reference to the costs of code compliance) based on evidence such as records in the Loft Board's files, documents submitted by affected parties, and the testimony of witnesses. Section 2-01(n) is amended to clarify the Loft Board's existing policy on IMD buildings converted to cooperative or condominium ownership. The provision makes clear that owners of

coops or condos must file for a final rent order for any rent-regulated units remaining in the building by the deadline applicable to all final rent order applications. It also requires owners of such buildings to provide the Loft Board with a list of owner-occupied units after the building obtains its residential certificate of occupancy. The filing of this form triggers a review of Loft Board records. If the Loft Board's records confirm that the identified units are all owner-occupied, the Loft Board will initiate a summary proceeding to issue a final order, which will result in the removal of the building from the Loft Board's jurisdiction. The amendment makes clear that until the Loft Board issues that order, a coop or condo remains in the Loft Board's jurisdiction and must continue to renew its annual registration. Section 2-01(o) is repealed. Section 2-01(o) states that the "foregoing regulations" constitute a "comprehensive set of rules governing code compliance" but that the "Loft Board reserves the right" to promulgate additional rules on related topics. Subdivision (o) is unnecessary because it contains no substantive provisions, and because the Loft Board's rulemaking authority is set forth in MDL Article 7-C and Executive Order No. 66 (Sept. 30, 1982). The repeal of this subdivision in no way limits the Loft Board's rulemaking authority.

5. Statement of Basis and Purpose in City Record Aug. 22, 2003: On April 23, 2002 and again on May 29, 2002, the Legislature amended Article 7-C of the Multiple Dwelling Law (the "Loft Law") to extend the code compliance deadlines that owners are required to meet. As a result, it is necessary to amend the Loft Board rules to conform to the legislative changes. These amendments update the rules to conform to the terms of the amended Loft Law.

6. Statement of Basis and Purpose in City Record Nov. 3, 2005: The Legislature has recently amended Article 7-C of the Multiple Dwelling Law (the "Loft Law") to extend the code compliance deadlines that owners are required to meet. As a result, it is necessary to amend the Loft Board rules to conform to the legislative changes. These amendments update the rules to conform to the terms of the amended Loft Law.

7. Statement of Basis and Purpose in City Record June 23, 2006: The extension provisions set forth in §2-01(b) are being amended to correct a typographical error in a citation to a provision of the Multiple Dwelling Law. The citation is being amended from MDL §284(1)(vi) to MDL §284(1)(v).

8. Statement of Basis and Purpose in City Record Aug. 29, 2006: The Legislature recently amended Article 7-C of the Multiple Dwelling Law (the "Loft Law") to extend the code compliance deadlines that IMD owners are required to meet in legalizing their buildings and to extend the deadline for the Loft Law itself. The compliance extensions are set forth in §284 of the Multiple Dwelling Law. As a result, it is necessary to amend the Loft Board rules to conform to the legislative changes. After consultation with counsel and further deliberation, these amendments were drafted to parallel more closely the language in the statute and to conform to the terms of the amended Loft Law, including the recent amendment by Part Q of Chapter 62 of the Laws of 2006. Sections 2-01(a)(1)(iv) through 2-01(2)(iii) have been restored because these sections were inadvertently omitted by the present publisher, although they were duly promulgated prior to the time they became effective.

9. Statement of Basis and Purpose in City Record Sept. 28, 2006: The extension provisions set forth in §2-01(b) are being amended to eliminate most retroactive extensions of missed code compliance deadlines and to simplify the application process for obtaining an extension. This proposed rule would prohibit most owners from seeking retroactive extensions of missed code compliance deadlines. Extensions should be granted only to diligent owners who are in the process of complying with the Loft Law but are unable to meet the next deadline due to a condition or circumstance beyond their control. There is no acceptable reason an owner could not bring such circumstances to the Loft Board's attention and seek appropriate relief before the expiration of the deadline. The only exception provided is for owners who recently bought their IMD buildings. Such owners would be given 90 days after taking title to seek an extension of a missed code compliance deadline, provided they can meet the statutory standards and other requirements set forth in §2-01(b)(2) of the Rules. The proposed rule also would simplify the extension rule by eliminating the three types of extension applications (extensions of 90 days or less, 91 days to one year and more than one year) and their attendant special procedures. Currently, the three time periods alter the service requirements. Additionally, the short extension rule codified in subdivision (b) of §2-01 of the Board's rules provides that owners may obtain an extension of 90 days or less on an **ex parte** basis. In contrast, under the new rule there would no longer be three different types of extension

applications, but only one. The same standards for granting an application would apply to extensions of any length. The Executive Director would decide all extension applications. By eliminating separate procedures for different length extensions and the ability of owners to apply for short extensions on an **ex parte** basis, these amendments will provide occupants of IMD units with notice of every owner's request for an extension and an opportunity to be heard on the merits of every extension application. In addition, the rule would provide that for all applications, regardless of length of extension sought, the owner-applicant rather than the Loft Board would be responsible for mailing the application to the affected tenants and providing the Loft Board with proof of service upon the tenants.

10. Statement of Basis and Purpose in City Record Apr. 29, 2008: The Legislature recently amended Article 7-C of the Multiple Dwelling Law (the "Loft Law") to extend the code compliance deadlines that IMD owners are required to meet in legalizing their buildings and to extend the deadline for the Loft Law itself. See Laws of 2007, chapter 62. The compliance extensions are set forth in §284 of the Multiple Dwelling Law. As a result, it is necessary to amend the Loft Board rules to conform to these legislative changes.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Loft Board's determination that cost of restoring elevator service would be borne by tenants was let stand since Loft Board was precluded from reaching and in fact did not reach this issue in context of proceeding pursuant to 29 RCNY 2-01(d)(2)(vii)(B)(b); rather Loft Board offered tenants right to waive requirement of elevator service if cost of repairs would shift to them. Nardo v. NYC Loft Bd., 202 AD2d 364 [1994].

¶ 2. A building owner may file an application to extend a legalization deadline pursuant to paragraph (b) of this section after that deadline has expired, and the application will relate back to the expired deadline. Matter of Drewvin Building Corporation, OATH Index No. 748/96 (July 12, 1996), aff'd, Loft Bd. Order No. 2004 (Sept. 26, 1996); Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996), aff'd, Loft Bd. Order No. 1935 (Mar. 28, 1996).

¶ 3. The Loft Board's amendment of paragraph (b) of this section, providing for adjudication of extension applications by submission of papers without evidentiary hearings, would be applied prospectively, not retroactively to a case that was pending and had already been tried when the amendment became effective. Matter of Drewvin Building Corporation, OATH Index No. 748/96 (July 12, 1996), aff'd, Loft Bd. Order No. 2004 (Sept. 26, 1996).

¶ 4. Although a building owner obtained a building permit, completed article 7-B compliance, and obtained a final certificate of occupancy while the owner's application for an extension of time to obtain a building permit remained pending, the application was not rendered moot by the issuance of the building permit or by the completion of the legalization process. Matter of Drewvin Building Corporation, OATH Index No. 748/96 (July 12, 1996), aff'd, Loft Bd. Order No. 2004 (Sept. 26, 1996).

¶ 5. An application pursuant to paragraph (b) of this section for an extension of the legalization deadlines in the 1992 amendments to the Loft Law was not rendered moot by the enactment of new deadlines in the 1996 amendments to the Loft Law, because the 1996 amendment did not retroactively entitle building owners to maintain non-payment proceedings against tenant for periods of non-compliance with the 1992 deadlines. Matter of Dezer Properties Co., OATH Index No. 894/98 (Dec. 18, 1997), aff'd, Loft Bd. Order No. 2220 (Feb. 26, 1998); Matter of Landau, OATH Index No. 130/98 (Aug. 7, 1997), aff'd, Loft Bd. Order No. 2155 (Oct. 10, 1997).

¶ 6. The grant of an application for an extension of a legalization deadline pursuant to paragraph (b) of this section constituted a determination that the owner had exercised good faith efforts at legalization before the deadline that was thus extended, and that determination was final and binding on the tenants and could not be relitigated in the context of the owner's application for an additional extension of the legalization deadline. Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996), aff'd, Loft Bd. Order No. 1935 (Mar. 28, 1996).

¶ 7. Where a building owner obtained an approved alteration permit while the owner's application for a third extension of the deadline to obtain that permit was pending, the requested extension expired on the date that the permit

was obtained, and the issue for adjudication was whether the owner exercised good faith efforts to obtain the permit up until that date. Matter of Dezer Properties Co., OATH Index No. 894/98 (Dec. 18, 1997), aff'd, Loft Bd. Order No. 2220 (Feb. 26, 1998).

¶ 8. The provision in subparagraph (b)(2)(iii) (formerly subparagraph (b)(3)) of this section for the grant of "the minimum extension required by the IMD owner" should be construed to permit the minimum extension reasonably likely to be required, not the minimum extension that conceivably could be required. Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996), aff'd, Loft Bd. Order No. 1935 (Mar. 28, 1996).

¶ 9. An application by a building owner's architect for an 18-month extension of the deadline to obtain an alteration permit, after the owner had previously obtained extensions of 90 days and one year, was granted where the architect had in good faith pursued resolution of the Department of Buildings' objections to the work plans, and where two of the objections required approvals from the Landmarks Commission and the Loft Board. Matter of Gerep Realty, OATH Index No. 747/96 (Jan. 3, 1996), aff'd, Loft Bd. Order No. 1910 (Jan. 24, 1996).

¶ 10. Where a building owner retained a legalization architect, paid the architect's fees as agreed, and frequently asked the architect about the progress of legalization, but the architect misled the owner by repeatedly stating that completion was near although in fact the architect had failed for some time to work on moving the building toward legalization, the owner's application for an extension pursuant to paragraph (b) of this section was granted because the owner had exercised good faith efforts at legalization despite the architect's nonfeasance. Matter of Drewvin Building Corporation, OATH Index No. 748/96 (July 12, 1996), aff'd, Loft Bd. Order No. 2004 (Sept. 26, 1996).

¶ 11. Because a building owner's delay in obtaining an approved alteration permit was occasioned by a process agreed to between the owner and the tenants, whereby the tenants sought Department of Buildings approval for their alternative plans, and, upon grant of such approval, the owner amended its alteration application to conform to the tenants' alternative plans, the owner's application for an extension of time to obtain an alteration permit pursuant to paragraph (b) of this section was granted. Matter of Hip Hin Realty Corp., OATH Index No. 753/96 (Apr. 2, 1996), aff'd, Loft Bd. Order No. 1959 (Apr. 25, 1996).

¶ 12. Where an escrow account was set up by agreement of the building owner and the tenants, in settlement of various disputes between them, and the escrow funds were to be used to pay legalization costs, the requirement that the owner engage in protracted negotiations with the tenants to obtain release of the escrow funds constituted a matter beyond the owner's control, such that the owner's application for an extension of legalization deadlines pursuant to paragraph (b) of this section was granted. Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996), aff'd, Loft Bd. Order No. 1935 (Mar. 28, 1996).

¶ 13. Where a building owner was unable to obtain an approved alteration permit due to the Loft Board's delay of more than two years in deciding an issue necessary to the completion of the narrative statement process, the delay was attributable to matters beyond the owner's control such that the owner was entitled to an extension pursuant to paragraph (b) of this section. Matter of Landau, OATH Index No. 130/98 (Aug. 7, 1997), aff'd, Loft Bd. Order No. 2155 (Oct. 10, 1997).

¶ 14. A building owner's ultimate success in obtaining an alteration permit did not constitute proof that the owner moved sufficiently diligently to entitle the owner to an extension pursuant to paragraph (b) of this section. Matter of Dezer Properties Co., OATH Index No. 894/98 (Dec. 18, 1997), aff'd, Loft Bd. Order No. 2220 (Feb. 26, 1998).

¶ 15. Delay in legalization due to the ignorance of a new owner of a building that the building was covered by the Loft Law did not constitute an excuse for noncompliance with legalization deadlines, sufficient to justify grant of an extension of those deadlines pursuant to paragraph (b) of this section. Matter of Dezer Properties Co., OATH Index No. 894/98 (Dec. 18, 1997), aff'd, Loft Bd. Order No. 2220 (Feb. 26, 1998).

¶ 16. Where a building owner deferred legalization work until completion of protracted judicial review of the Loft

Board's coverage order, the owner's application for an extension of the legalization deadlines pursuant to paragraph (b) of this section was denied because the owner's failure to obtain a stay of the Loft Board's order pending outcome of judicial review and the owner's casual and indiligent pursuit of the judicial appeal did not satisfy the requirement of good faith efforts to comply with the legalization deadlines. Matter of Dezer Properties Company, OATH Index No. 132/98 (Aug. 27, 1997), aff'd, Loft Bd. Order No. 2174 (Oct. 30, 1997).

¶ 17. Where a building owner contended that delay in obtaining an approved alteration permit was due to the owner's change from an application for a permit for a multiple dwelling to an application for a permit for a two-family dwelling, the delay was not caused by matters beyond the owner's control, and the owner's application for an extension of legalization deadlines pursuant to paragraph (b) of this section was denied. Matter of 20 Beaver Street, OATH Index No. 134/98 (Aug. 28, 1997), aff'd, Loft Bd. Order No. 2164 (Oct. 10, 1997).

¶ 18. Where one of two owners of a building delegated the other owner to handle legalization, and that owner failed to pursue legalization with reasonable diligence, the failure to meet legalization deadlines was not beyond the owners' control, and therefore the first owner's application for an extension pursuant to paragraph (b) of this section was denied. Matter of Longa, OATH Index No. 432/98 (Oct. 10, 1997), aff'd, Loft Bd. Order No. 2191 (Dec. 18, 1997).

¶ 19. A building owner's decision to proceed with alteration of commercial space in the building before filing an application for an alteration permit for legalization work in the residential areas did not constitute a matter beyond the owner's control, and therefore the owner's application for an extension of legalization deadlines pursuant to paragraph (b) of this section was denied. Matter of Debar Realty Corporation, OATH Index No. 138/98 (Oct. 23, 1997), adhered to in supplemental report and recommendation (Feb. 20, 1998), aff'd, Loft Bd. Order No. 2234 (Mar. 24, 1998).

¶ 20. Although a building owner's delay in filing its narrative statement for nine months after filing its alteration permit was on the advise of the owner's architect, the delay was not beyond the owner's control and did not constitute a good faith effort at compliance with the legalization deadlines, and therefore the owner's application for an extension of those deadlines pursuant to paragraph (b) of this section was denied. Matter of Debar Realty Corporation, OATH Index No. 138/98 (Oct. 23, 1997), adhered to in supplemental report and recommendation (Feb. 20, 1998), aff'd, Loft Bd. Order No. 2234 (Mar. 24, 1998).

¶ 21. A tenant's application for a declaration pursuant to paragraph (a) of this section that a building owner was not in compliance with the legalization deadlines in the 1992 amendments to the Loft Law was rendered moot by the enactment of new deadlines in the 1996 amendments to the Loft Law. Matter of Davies, OATH Index No. 126/97 (Aug. 12, 1996), aff'd in part and remanded in part on other grounds, Loft Bd. Order No. 2023 (Nov. 21, 1996); see also Matter of Einzig, OATH Index No. 397/97 (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2064 (Jan. 30, 1997); Matter of Menking, OATH Index No. 1985/96 (Sept. 5, 1996), aff'd, Loft Bd. Order No. 2025 (Nov. 21, 1996); Matter of 790-16 Tenants Group, OATH Index No. 130/97 (Aug. 16, 1996), aff'd, Loft Bd. Order No. 2024 (Nov. 21, 1996); Matter of Halaby, OATH Index No. 1520/96 (Nov. 4, 1996), aff'd, Loft Bd. Order No. 2057 (Jan. 30, 1997).

¶ 22. Although the tenants' non-compliance application pursuant to paragraph (a) of this section was dismissed as moot due to the legislative revision of the legalization deadlines after the application was filed, such dismissal was without prejudice to the parties' positions in future litigation of disputes concerning rent due before the revision of those deadlines. Matter of Residential Tenants of 376 Broome Street, OATH Index No. 128/97 (Feb. 28, 1997), aff'd, Loft Bd. Order No. 2087 (Mar. 20, 1997).

¶ 23. Where a building owner filed an application for an alteration permit in March 1980, that application was disapproved in May 1980, and the owner took no further action toward legalization in the next 17 years, and where the Department of Buildings had issued a letter stating that the 1980 alteration application was no longer valid, the owner was not in compliance with the October 1, 1996 deadline for filing an alteration application pursuant to subparagraph (a)(6)(i) of this section, or with the deadline for serving a narrative statements pursuant to subparagraph (d)(2)(i) of this section. The owner was declared not to be in compliance with the Loft Law and was ordered to file an alteration

application forthwith and serve a narrative statement within 20 days thereafter. Matter of 42-44 Bond Street Tenants, OATH Index No. 132/97 (May 2, 1997), aff'd, Loft Bd. Order No. 2121 (June 26, 1997).

¶ 24. Whether a building owner could include the costs of installing individual heating units and electrical meters as code compliance costs pursuant to paragraph (i) of this section was not determined as part of the tenants' diminution of services application pursuant to §2-04 of this chapter, but was deferred until the owner applies for a code compliance rent adjustment. Matter of 29 John Street Tenants' Association, OATH Index No. 1982/96 (Nov. 20, 1996), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2058 (Jan. 30, 1997).

¶ 25. Once an owner has obtained a residential certificate of occupancy, it is eligible for a retroactive Rent Guidelines Board increase. The Loft Board has interpreted Sec. 2-01(i)(1) to mean that an owner must take the affirmative step of applying for the increase, or will lose the opportunity for the increase (Application of Greenwich Associates, Loft Board Order No. 2068, Feb. 27, 1997). However, in one case, where an owner became eligible for the retroactive increase before December 3, 1993, the effective date of Section 2-01(i)(1), a Loft Board hearing officer told the owner that the increase could be obtained without a separate application, and the Loft Board never told the owner that under its new rule a separate application had to be made, the court in effect applied estoppel against the agency and held that the owner was eligible for the increase despite its failure to have made the separate application. The court distinguished Greenwich on the ground that the owner in Greenwich had not become eligible for the increase until after the effective date of the new regulation. Brady Properties v. New York City Loft Board, 702 N.Y.S.2d 63 (App.Div. 1st Dept. 2000).

¶ 26 While the Loft Board may make findings regarding violations of the code compliance timetables for Interim Multiple Dwellings, the court may also find violations of the code compliance timetables. Suraci v. Mucktar, N.Y.L.J., July 19, 2000, page 24, col. 1 (Civ.Ct. New York Co.).

¶ 27. Amendment of Multiple Dwelling Law section 284(1) compliance deadlines does not render pending non-compliance application moot even where there is no dispute that owner filed alteration application by the new October 1, 1996 deadline. Finding the Loft Board arbitrary for refusing to adjudicate tenant-initiated applications of non-compliance under old legalization deadlines while allowing owner-initiated applications for extensions under old deadlines, the Supreme Court reversed existing Loft Board precedent and found that whether the landlord complied with the superseded 1992 deadlines directly affected the rights of the parties, and therefore application should not have been dismissed as moot. **Rehwinkel v. NYC Loft Bd.,** NYLJ, Apr. 28, 1999, at 26, col. 2 (Sup. Ct. N.Y. Co.), **rev'g and remanding,Matter of D'Emanuelle,** OATH Index No. 1528/96 (Nov. 7, 1996), **aff'd,** Loft Bd. Order No. 2053 (Jan. 9, 1997).

¶ 28. A tenant's application for a declaration pursuant to paragraph (a) of this section that a building owner was not in compliance with the legalization deadlines in the 1992 amendments to the Loft Law was rendered moot by the enactment of new deadlines in the 1996 amendments to the Loft Law. **Matter of Davies,** OATH Index No. 126/97 (Aug. 12, 1996), **aff'd in part and remanded in part on other grounds,** Loft Bd. Order No. 2023 (Nov. 21, 1996); **see also Matter of Einzig,** OATH Index No. 397/97 (Dec. 12, 1996), **aff'd,** Loft Bd. Order No. 2064 (Jan. 30, 1997); **Matter of Menking,** OATH Index No. 1985/96 (Sept. 5, 1996), **aff'd,** Loft Bd. Order No. 2025 (Nov. 21, 1996); **Matter of 790-16 Tenants Group,** OATH Index No. 130/97 (Aug. 16, 1996), **aff'd,** Loft Bd. Order No. 1520/96 (Nov. 4, 1996), **aff'd,** Loft Bd. Order No. 2057 (Jan. 30, 1997).

¶ 29. Although the tenants' non-compliance application pursuant to paragraph (a) of this section was dismissed as moot due to the legislative revision of the legalization deadlines after the application was filed, such dismissal was without prejudice to the parties' positions in future litigation of disputes concerning rent due before the revision of those deadlines. **Matter of Residential Tenants of 376 Broome Street,** OATH Index No. 128/97 (Feb. 28, 1997), **aff'd,** Loft Bd. Order No. 2087 (Mar. 20, 1997).

¶ 30. Owner found in non-compliance by virtue of collateral estoppel where a prior application for an extension of

code compliance deadlines was denied. **Matter of Loback,** OATH Index No. 263/99 (Oct. 22, 1998), **aff'd,** Loft Bd. Order No. 2339 (Nov. 24, 1998).

¶ 31. Where managing agent, on behalf of owner, failed to demonstrate the financial effect a two-year-old rent strike had on its ability to meet legalization deadlines and where lack of access to the units to complete the legalization work was not sufficiently shown to have an impact on legalization efforts, the failure to meet the deadlines was not a matter beyond the owner's control. **Matter of R.E.D.I. Management Corp.,** OATH Index No. 1130/98 (May 15, 1998), **remanded for further consideration,** Loft Bd. Order No. 2347 (Dec. 29, 1999), **on remand, Matter of R.E.D.I. Management Corp.,** OATH Index No. 1130/98, mem. dec. (Feb. 23, 1999), **aff'd,** Loft Bd. Order No. 2383 (Mar. 23, 1999).

¶ 32. The owner did not meet the statutory standard of good faith where the reason for the requested extension was the alleged failure of the architect to properly document the conditions in existence at the premises. Responsibility for bringing a building into compliance is one which the owner may not delegate and a lack of communication between the owner and an architect is a matter which is entirely within the owner's control. **Matter of Katovale Realty,** OATH Index No. 519/99 (Nov. 19, 1998), **aff'd,** Loft Bd. Order No. 2351 (Dec. 29, 1998).

¶ 33. Where application for retroactive extension provided no explanation of what, if any, efforts were made between March 1, 1995 and July 1, 1996 to bring building into compliance, or an explanation of what delayed compliance, and where owner did not even file an alteration application until September 26, 1996, outside the period for which retroactive extension was sought, the owner failed to meet the statutory standard for granting an extension. **Matter of 595 Realty, LLC,** OATH Index No. 898/98 (Mar. 5, 1998), **aff'd,** Loft Bd. Order No. 2239 (Mar. 24, 1998).

¶ 34. Merely stating that owner was unaware that unit was an IMD, and that his architect suffered a debilitating accident five months after the deadline did not meet the statutory standard for granting an extension. **Matter of Masi Corp.,** OATH Index No. 1129/98 (Mar. 23, 1998), **aff'd,** Loft Bd. Order No. 2252 (May 28, 1998).

¶ 35. Application for extension denied absent any corroborating documentation of claim that a discrepancy exists between the number of registered units and number of occupied units and because this confusion may be caused by a lack of communication between the owner and the owner's architect, a circumstance which is not beyond the owner's control. **Matter of Cortlandt Realty Co.,** OATH Index No. 896/98 (Jan. 28, 1998), **aff'd,** Loft Bd. Order No. 2227 (Feb. 26, 1998).

¶ 36. Petitioner bears the burden of persuasion in an extension application to show that he exercised reasonably diligent efforts to meet the code compliance deadlines but was precluded from doing so due to matters beyond his control. This burden is not met where application itself failed to set forth sufficient facts to warrant extension, or where the requisite corroborating documentation was not submitted. **Matter of Meltzer,** OATH Index No. 895/98 (Mar. 11, 1998), **aff'd,** Loft Bd. Order No. 2254 (May 28, 1998).

¶ 37. Extension to obtain alteration permit warranted due to tenants' repeated efforts to thwart owner's installation of sprinkler heads in their units (pursuant to owner's revised narrative statement), the Loft Board's decision to reopen narrative statement process and the Loft Board's representations of the length of time to complete the process. **Matter of Silverstein,** OATH Index No. 989/98 (Apr. 15, 1998), **aff'd,** Loft Bd. Order No. 2253 (May 28, 1998).

¶ 38. Application for extension granted where owner of the largest IMD registered with the Loft Board, was unable to meet the statutory deadlines due to the complexity of the building issues involved, the procedures required by cooperative ownership to get approval for a specific plan, and subsequent litigation commenced by one shareholder-tenant which led to the issuance of a temporary restraining order preventing the co-op from working toward legalization for a period of four months. **Matter of C. True Building Corp.,** OATH Index No. 141/98 (Sept. 2, 1998), **aff'd,** Loft Bd. Order No. 2324 (Oct. 27, 1998).

¶ 39. Application for extension granted due to related pending litigation, brought by one of the IMD shareholder

tenants, was found to be a matter beyond petitioner's control; petitioner demonstrated its good faith efforts to legalize the premises in a prior proceeding and since that time. **Matter of C. True Building Corp.,** OATH Index No. 732/99 (Dec. 16, 1998), **remanded for further hearing,** Loft Bd. Order No. 2354 (Jan. 28, 1999), **on remand, Matter of C. True Building Corp.,** OATH Index No. 732/99 (Apr. 22, 1999), **aff'd,** Loft Bd. Order No. 2402 (May 25, 1999).

¶ 40. Delay in obtaining alteration permit was due to two circumstances beyond owner's control; the Loft Board delay in certifying owner's compliance with the narrative statement process, and delay caused by necessity to negotiate for easements with neighboring property owners. **Matter of Szeto,** OATH Index No. 763/98 (Dec. 31, 1997), **aff'd,** Loft Bd. Order No. 2245 (May 28, 1998).

¶ 41. Extension applications may be granted in part and denied in part. While an owner's efforts prior to the expiration of a particular deadline are "relevant to whether an extension should be granted, a lack of sufficient good faith efforts prior to the deadline's expiration does not, by itself, prevent the Board from granting an extension for a subsequent period of time in which the owner did in fact make good faith efforts but was barred from reaching the next step in legalization for reasons beyond his or her control." Loft Bd. Order 2235/00 (Mar. 24, 1998), **aff'g in part, rev'g in part,Matter of Ken-Zen Institute, Ltd.,** OATH Index No. 897/98 (Feb. 24, 1998).

¶ 42. Pursuant to subparagraph (c)(2) of this section, IMD owner is fined $8,000 for failure to meet eight code compliance deadlines imposed by the Loft Law. **Matter of Loback,** OATH Index No. 263/99 (Oct. 22, 1998), **aff'd,** Loft Bd. Order No. 2339 (Nov. 24, 1998).

¶ 43. Absent proof showing any reasonable and necessary action taken to obtain a building permit pursuant to Multiple Dwelling Law section 284(1)(iii), owner is fined $1,000 for non-compliance with amended deadlines. **Matter of 50 Greene Street Tenants,** OATH Index No. 1321/98 (July 10, 1998), **rev'd and remanded,** Loft Bd. Order No. 2291 (Sept. 24, 1998), **on remand,** OATH Index No. 1321/98, supp. report (Oct. 22, 1998), **aff'd,** Loft Bd. Order No. 2340 (Nov. 24, 1998).

¶ 44. Although non-compliance application was granted, a fine was not imposed because the tenant's application failed to put the owner on notice that a fine was sought. **Matter of Barth,** OATH Index Nos. 990-91/98 (June 5, 1998), **aff'd,** Loft Bd. Order No. 2283 (Sept. 24, 1998).

¶ 45. Respondent failed to file narrative statement within 15 days of filing the alteration application, as required by subparagraph (d)(2)(i) of this rule. **Matter of Loback,** OATH Index No. 263/99 (Oct. 22, 1998), **aff'd,** Loft Bd. Order No. 2339 (Nov. 24, 1998).

¶ 46. Amendment of narrative statements and legalization plans by IMD owners is permitted without limitation under subparagraph (d)(2)(vi) of this rule. **Matter of Sultan,** OATH Index Nos. 1314-15/98 (Aug. 18, 1998), **aff'd,** Loft Bd. Order No. 2323 (Oct. 27, 1998).

¶ 47. Although subparagraph (d)(2)(iv)(B) of this rule would appear to require tenants to file alternative plans with the Department of Buildings in order to object to owner's plans, that requirement would be wasteful where the tenants' position was that the owner's amended plans were improper, and that the owner's previous plans, which had already been filed with DOB, were proper. Therefore there would be no point to requiring the tenants to re-file the owner's previous plans with DOB. **Matter of Sultan,** OATH Index Nos. 1314-15/98 (Aug. 18, 1998), **aff'd,** Loft Bd. Order No. 2323 (Oct. 27, 1998).

¶ 48. The fact that the Loft Board had granted the owner's access application did not mean that the owner was entitled to an extension of the code compliance deadlines based upon the owner's claim that he was prevented from meeting the deadlines due to reasons beyond its control, i.e., denial of access and a tenant rent strike. The Loft Board's access rule (section 2-01(g)) only requires that the owner seek "reasonable access." The rules do not require a finding, implicit or otherwise, that the owner's access request was diligent or that the tenants' denial was unreasonable. Here, the record showed the owner's efforts to secure access were both tardy and half-hearted. **Matter of R.E.D.I. Management**

Corp., OATH Index No. 1130/98 (May 15, 1998), **remanded for further consideration,** Loft Bd. Order No. 2347 (Dec. 29, 1998), **on remand, Matter of R.E.D.I. Management Corp.,** OATH Index No. 1130/98, mem. dec. (Feb. 23, 1999), **aff'd,** Loft Bd. Order No. 2383 (Mar. 23, 1999).

¶ 49. No unreasonable interference with tenant's use and occupancy of her space exists where landlord's proposed internal staircase was required as a second means of egress for legalization, even though the owner's plan would take some of the tenant's space, where tenant's proposed alternatives were shown to be not feasible. However, owner's plan to construct a vestibule to provide direct access to the freight elevator from a neighboring unit, which was not required for legalization, and would take air, light and space from the tenant's unit constituted an unreasonable interference, pursuant to paragraph (h) of this section. **Matter of Langer,** OATH Index No. 1316/98 (Sept. 25, 1998), **aff'd,** Loft Bd. Order No. 2334 (Nov. 24, 1998).

¶ 50. Owner applied for Rent Guidelines Board increase pursuant to paragraph (i) of this section. In determining the initial legal regulated rent, the percentage increase the owner is entitled to is calculated, pursuant to section 2-06(c), on the total rent of the IMD unit, which includes the base rent as set forth in a lease agreement and subsequent riders, and escalator payments, here an agreed to percentage of the increase in real estate taxes. **Matter of Sayage,** OATH Index No. 1505/98 (Aug. 28, 1998), **aff'd,** Loft Bd. Order No. 2325 (Oct. 27, 1998).

¶ 51. Challenges relating to building conditions and/or housing maintenance standards are irrelevant to rent computation where owner seeks a Rent Guidelines Board increase pursuant to paragraph (i) of this rule. Proper remedy is a separate housing maintenance or harassment application. **Matter of JAR Realty,** OATH Index No. 734/98 (Jan. 12, 1998), **aff'd,** Loft Bd. Order No. 2222 (Feb. 26, 1998); **Matter of 110 West 14th Realty Corp.,** OATH Index No. 892/98 (Apr. 14, 1998), **aff'd,** Loft Bd. Order No. 2251 (May 28, 1998).

¶ 52. Applicants established owner's continuing non-compliance with legalization timetables through documentary evidence from Loft Board, Department of Buildings records and testimony of tenants. Fine was requested and imposed for long-term non-compliance. **Matter of Barth**, OATH Index Nos. 538 & 714/00 (Nov. 22, 1999), **modified on penalty**, Loft Bd. Order No. 2469 (Jan. 25, 2000).

¶ 53. Relying on **Rehwinkel v. NYC Loft Bd.**, NYLJ, Apr. 28, 1999, at 26, col. 3 (Sup. Ct., N.Y. Co.), and breaking with prior Loft Board precedent (see earlier annotations), the administrative law judge ruled that dismissal of a non-compliance application as moot due to legislative amendment of legalization deadlines, was improper so long as the Loft Board continued to hear "retroactive" extension applications. **Matter of Kosolapov**, OATH Index No. 271/00, mem. dec. (Oct. 13, 1999).

¶ 54. Access application granted where petitioner established that occupant of loft was properly notified of proposed work dates and failed to provide access on a specified date, as required by paragraph (g). Where, as here, the occupant failed to timely answer the application, the Loft Board may issue an order granting access, pursuant to subparagraph (g)(3)(B) of this section. **Matter of Kiamie Princess Marion Realty**, OATH Index No. 277/00 (Sept. 29, 1999), **aff'd**, Loft Bd. Order No. 2443 (Nov. 1, 1999).

¶ 55. Administrative law judge recommended **sua sponte** that the Loft Board extend a legalization deadline for three months longer than the owner had requested in its extension application where the event beyond its control, a pending unreasonable interference application, would not be resolved by the end of 1998, necessitating another extension application. The Loft Board remanded the matter to the administrative law judge to give any tenants who may have been opposed to the longer extension an opportunity to be heard on the matter. On remand, no tenant submitted written opposition nor appeared to oppose longer extension period. **Matter of C. True Building Corp.**, OATH Index No. 732/99 (Apr. 22, 1999), **aff'd**, Loft Bd. Order No. 2402 (May 25, 1999).

¶ 56. Petitioner's application for an extension of the deadlines for obtaining a building permit and achieving compliance with Article 7-B safety and fire standards was denied where the owner failed to make the required showing

that it was unable to meet the deadline due to circumstances beyond its control. Petitioner's assertions that former architect had failed to make any meaningful progress toward legalization for a two and-one-half year period did not excuse his failure to monitor the progress of his former architect. **Matter of Ken-Zen Institute, Ltd.**, OATH Index No. 2338/99 (Aug. 3, 1999), **aff'd**, Loft Bd. Order No. 2506 (Mar. 30, 2000).

¶ 57. Petitioner's application for a one-year extension of the code compliance deadline based on financial hardship was denied because the owner did not produce sufficient proof that it made good faith efforts to comply with the deadline. Administrative law judge found that a single bank loan application that was rejected shortly after the expiration of the deadline failed to meet the rule's good faith efforts standard. The claimed financial hardship was not shown to be a condition beyond petitioner's control, as no other financing options were considered. **Matter of Rubinstein Realty Associates, Inc.**, OATH Index No. 2339/99 (June 30, 1999), **aff'd**, Loft Bd. Order No. 2429 (Oct. 1, 1999).

¶ 58. Although problems with financing may well qualify for the granting of an extension of time to attain code compliance, the extension application was denied where no proof of the building's current financial status, the loan amount needed, nor copies of loan applications were submitted. This information was found necessary for the owner to meet the standards of proof required for an extension to be granted. **Matter of Les Pieds Nickels**, OATH Index No. 1896/99 (June 29, 1999), **aff'd**, Loft Bd. Order No. 2430 (Oct. 1, 1999).

¶ 59. Applicant failed to make requisite showing that it exercised diligent efforts to obtain building permit, and was prevented from doing so by matters beyond its control where respondent had taken only four steps towards legalization over a two-year period since the Board had granted it a previous extension. **Matter of D.L.B. Co.**, OATH Index Nos. 1407-08/99 (July 29, 1999), **aff'd**, Loft Bd. Order Nos. 2434 and 2435 (Oct. 1, 1999).

¶ 60. In his initial report, the administrative law judge had recommended that the Loft Board deny the owner's application to extend the deadline to obtain a building permit, finding that neither the tenants' rent strike nor the dispute regarding access were beyond the owner's control so as to excuse the owner's failure to obtain the building permit by the statutory deadline. The Loft Board remanded the matter citing to error in report and recommendation's treatment of a prior Loft Board order granting access because "[i]n granting the access application, the Loft Board implicitly found that the owner had in fact diligently sought access and that the access had been unreasonably denied by the tenants." On remand, after reconsideration of the effect of the prior Loft Board order, the administrative law judge adheres to his original recommendation and resubmits it to the Loft Board. The Loft Board's access rules only require that the owner seek "reasonable access" and do not require a finding that the owner's access request was diligent or that the tenants' denial was unreasonable. The access order made no finding that the owner had been diligent in trying to obtain access and no finding that the tenants had been unreasonable in denying access. **Matter of R.E.D.I. Management Corp**., OATH Index No. 1130/98, mem. dec. (Feb. 23, 1999), **aff'd**, Loft Bd. Order No. 2383 (Mar. 23, 1999).

¶ 61. Pursuant to this section, to be entitled to an extension of a legalization deadline, the owner must show that it made diligent efforts to meet the deadline in question but was prevented from doing so by reasons beyond its control. The Loft Board had adopted the administrative law judge's recommendation that an application for an extension of the deadline to obtain a building permit be denied for the period from October 1, 1993 to April 1, 1998, because the owner made no showing of the legalization efforts he had taken during that period. Administrative law judge had recommended that the owner be granted an extension for the period from April 2, 1998 and July 7, 1998, based upon her finding that the owner diligently pursued the permit during that period by clearing 20 of 28 Building Department objections. The Loft Board rejected that recommendation and denied the application in full, finding that although the owner may have exercised diligent effort to clear the objections during that period, it had failed to show that the substance of the department's objections involved matters beyond its control. **Matter of Keung Tat Realty**, OATH Index No. 533/00 (Dec. 6, 1999), **aff'd in part, rev'd in part**, Loft Bd. Order No. 2471 (Jan. 25, 2000).

¶ 62. Pursuant to subparagraph (b)(2)(iii) of this section, no evidentiary hearing is required where petitioner failed to meet initial burden of showing that circumstances beyond its control prevented it from meeting the deadline. Here,

owner did nothing other than register the building as an IMD and hire an architect during the five months since it purchased the building. **Matter of Anorac Realty, Inc.**, OATH Index No. 2125/99 (Aug. 27, 1999), **aff'd**, Loft Bd. Order No. 2441 (Nov. 1, 1999).

¶ 63. Under subparagraph (b)(3) of this section, service of extension application is required only on residential, not commercial occupants. **Matter of Enki Properties, N.V. Ltd., Inc**., OATH Index No. 276/00 (Oct. 5, 1999), **aff'd**, Loft Bd. Order No. 2442 (Nov. 1, 1999).

¶ 64. Pursuant to subparagraph (i)(1)(iv) of this section, a tenant has 45 days from the mailing of the notice of a Rent Guidelines Board increase to file a challenge to the maximum legal rent claimed by the owner or the tenant is deemed to have accepted the rent claimed by the owner. Administrative law judge dismissed the tenant's challenge to the proposed rent increase as untimely where it was filed three months after the 45-day deadline to answer. Administrative law judge rejected the tenant's claim that she had filed her answer late because she had not received the notice of increase from the owner, crediting instead testimony from the owner, corroborated by the return receipt bearing a signature resembling the tenant's signature, that the notice was delivered to the correct address. **Matter of Breson Corp**., OATH Index No. 1758/99 (Aug. 27, 1999), **aff'd**, Loft Bd. Order No. 2437 (Oct. 1, 1999).

¶ 65. The Loft Board held that a residential occupant of a cooperative building who has opted to purchase shares in his unit, and continues to reside there as an owner-occupant, lacks standing to pursue an unreasonable interference application at the Loft Board. **Matter of Domingo**, OATH Index No. 1125/98 (May 21, 1999), **rev'd**, Loft Bd. Order No. 2453 (Dec. 13, 1999), **aff'd sub nom. Domingo v. NYC Loft Bd.**, Sup. Ct. N.Y. Co. Index No. 107058/00 (May 1, 2000) (Tolub, J.)

¶ 66. A tenant's unreasonable interference application alleging that the owner's proposed removal of a staircase between the second and third floors would unreasonably interfere with his use and occupancy was denied where the second and third floors were independent IMD units and the use of the staircase was limited in nature. **Matter of Wertheim**, OATH Index No. 1758/98 (Feb. 1, 1999), **aff'd**, Loft Bd. Order No. 2373 (Feb. 23, 1999).

¶ 67. Pursuant to subparagraph (i)(2)(iii)(C) of this section, tenants had 45 days from the service of the owner's pre-certified application for a cost of compliance rent adjustment to file their response with the Loft Board. Tenants filed late response to owner's application for final rent order and moved to vacate their default. Administrative law judge found that this was an appropriate case to vacate the default because the movants had not received specific notice of the 45-day rule, had had discussions with Board staff in which they were mislead, and had already filed an answer raising facially meritorious defenses to the application. **Matter of EBW, LLC**, OATH Index No. 848/00 (Nov. 24, 1999).

¶ 68. Administrative law judge denied extension application due to five-year delay in curing Landmarks Commission violations that, on their face, could have been cured in a timely manner by applicant. Applicant did not meet its burden of showing reasons beyond its control and reasonable diligence in obtaining a permit. Applicant produced no evidence that Landmarks Commission and Department of Buildings failed to respond to its requests for action. **Matter of Izbar Realty Corp.**, OATH Index No. 2021/00 (June 23, 2000), **aff'd,** Loft Bd. Order No. 2546 (July 20, 2000).

¶ 69. Owner's work on commercial non-IMD portions of the premises was elective and cannot be posited as a ground for delayed work on the IMD units. Owner provided insufficient basis for granting extension of time to comply with code timetables. **Matter of Jackson Mak (JSM Properties Inc.),** OATH Index No. 532/00 (May 10, 2000), **aff'd,** Loft Bd. Order No. 2532 (June 29, 2000).

¶ 70. IMD owner sought extension of the deadlines to file an alteration application and to obtain an approved work permit because the tenant refused access to his apartment. The application was denied because the owner had already received a ninety-day extension of the deadline to file an alteration application and because the owner took no action

during the period from early November 1999 when the Loft Board granted an access order, and February 2, 2000, when the owner attempted but failed to gain access to the tenant's apartment. The owner could have sought fines against and ultimately the eviction of the tenant if access was still withheld. **Matter of Kiamie Princess Marion Realty,** OATH Index No. 2020/00 (July 31, 2000), **aff'd,** Loft Bd. Order No. 2561 (Sept. 26, 2000).

¶ 71. New owner was on notice of the existence of the pending non-compliance application when it took possession of the building and can be held responsible for the prior owner's non-compliance. **Matter of Schwartz,** OATH Index No. 272/00 (June 19, 2000), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2544 (July 20, 2000).

¶ 72. In a tenants' non-compliance proceeding, administrative law judge found that issuance of a final certificate of occupancy by the Department of Buildings established that the building meets all building code requirements for legalization. The Department of Buildings, not the Loft Board, is the agency charged with determining whether to issue a certificate of occupancy. The Loft Board is not the proper forum for tenant challenges to validity of a certificate of occupancy. **Matter of Connors,** OATH Index Nos. 2361-62/00 (Aug. 30, 2000), **aff'd,** Loft Bd. Order No. 2624 (Apr. 24, 2001), **on reconsideration, prior Order is reversed and remanded,** Loft Bd. Order No. 2738 (June 25, 2002) Related subsequent litigation: the tenants made an application to the Department of Buildings to revoke the certificate of occupancy based upon their contention that the landlord did not perform legalization work specified in the approved plans. DOB denied the application and the tenants appealed to the Board of Standards and Appeals, which denied the appeal. On judicial review of the agency determinations, the court ruled for the tenants and declared the certificate of occupancy issued by DOB to be null and void. The court found that the legalization work specified in the approved plans was never completed and therefore the certificate of occupancy should never have been issued in the first place. When DOB and BSA denied the tenants' application to revoke the C of O those agencies wrongfully deprived the Loft Board of jurisdiction it otherwise would have had to supervise the legalization process. **Byrne v. Bd. of Standards and Appeals,** Sup. Ct. N.Y. Co. Part 49, Index No. 11535/01 (Apr. 8, 2002)(Cahn, J.), **rev'g, Matter of Connors,** OATH Index Nos. 2361-62/00 (Aug. 30, 2000).

¶ 73. Despite loft tenants' filing of alternate plans three days after the 45-day deadline had expired, judge found tenants' efforts and lack of prejudice to landlord constituted "good cause" to recommended granting the tenants' application to accept their alternate plans. **Matter of Tenants of 78-82 Reade Street,** OATH Index No. 2015/00 (July 17, 2000), **aff'd,** Loft Bd. Order No. 2560 (Sept. 26, 2000).

¶ 74. New owner's legalization plan, which omitted the roof, unreasonably interfered with tenant's occupancy where tenant has resided in unit for sixteen years and during that time has had unfettered use of a roof adjoining her apartment. Notwithstanding the leases that governed tenant's tenancy between 1984 and 1996 made no mention of the roof, long-term use in the circumstances of this case requires a finding of unreasonable interference in violation of 2-01(h). **Matter of McGehee,** OATH Index No. 1306/00 (Dec. 1, 2000), **aff'd,** Loft Bd. Order No. 2599 (Dec. 19, 2000).

¶ 75. Petitioner sought extension of code compliance deadline for obtaining a building permit based upon the ground that the owner attempted unsuccessfully, through the Loft Board, to address tenant concerns, which resulted in a delay of Loft Board certification of compliance. ALJ found petitioner met the statutory standard of good faith effort and also found the petitioner adequately explained the delay in obtaining Board certification which held up owner's application to DOB for permit. **Matter of 67 Greene Street**, OATH Index No. 1925/01 (July 27, 2001), **aff'd,** Acting Exec. Dir. Decision (Nov. 13, 2001).

¶ 76. Where owner immediately retained an architect who filed extension application within four months after premises had been declared covered, extension of alteration application was recommended. **Matter of 25 Jay Street, LLC,** OATH Index No. 932/01 (May 22, 2001).

¶ 77. Owner pursued legalization with reasonable diligence and was unable to comply due to circumstances beyond its control where owner filed alteration plan and narrative statement, where tenants prolonged negotiations, and where an unreasonable interference application was also pending. Petitioner's application for an extension of the deadlines to

file an alteration application and to obtain an alteration permit should be granted because the owner was unable to meet deadlines pending outcome of unreasonable interference application. **Matter of 40 Lispenard Street, LLC,** OATH Index No. 1677/01 (June 19, 2001), **aff'd,** Acting Exec. Dir. Decision (Nov. 13, 2001).

¶ 78. One sentence application submitted by the owner failed to show it made diligent efforts to meet the legalization deadlines under the relevant period, and that it was prevented from doing so by conditions or circumstances beyond its control for granting an extension as set forth in Loft Board rule 2-01(b)(2). **Loft Bd. v. Matter of Vlachos,**, OATH Index No. 2080/01 (June 7, 2001), **aff'd,** Loft Bd. Order No. 2650 (June 28, 2001).

¶ 79. An extension application was granted in part and denied in part where owner took virtually no steps towards legalization until he retained an architect in November 1999 but thereafter pursued legalization diligently by service of the narrative statement, the alteration plans, and two other items upon the Loft Board and the tenants. **Matter of 111 Mercer Street,**, OATH Index No. 1676/01 (June 20, 2001), **aff'd,** Loft Bd. Order No. 2664 (July 24, 2001).

¶ 80. Owner failed to serve access notice on tenants in compliance with section 2-01(g) of the Loft Board rules. Notice was sent by mail to an attorney and not to the tenants. In addition, no follow up notice setting specific dates for access was served on anyone. The access was premature and the ALJ recommended that the application be dismissed on the record. **Matter of Conners,** OATH Index No. 708/01 (Oct. 30, 2000).

¶ 81. An access application was denied based on the owner's failure to comply with the Loft Board rules regulating amendments to approved plans and narrative statement. Tenants' proof demonstrated that the owner disregarded work required by the narrative statement and made changes to the plans without notifying the Loft Board or the tenants. **Matter of Pelli,** OATH Index Nos. 1195-96/01 (Feb. 26, 2001), **aff'd in part, modified in part,** Loft Bd. Order No. 2624 (Apr. 24, 2001), **aff'd,** _____A.D.2d_____, 774 N.Y.S.2d 492 (1st Dep't 2004).

¶ 82. Prior Loft Board order dismissing noncompliance application lacked **res judicata** status because it was based on a procedural holding rather than on the merits. The owner's sporadic efforts to obtain a permit, where he also used stairway and elevator disputes as excuses to avoid moving forward with legalization, did not excuse owner's failure to meet deadlines. **Matter of Way,** OATH Index No. 2206/00 (Jan. 2, 2001).

¶ 83. An unreasonable interference application was granted based upon tenants' proof showing that the owner materially deviated from the work required in the narrative statement and approved plans. **Matter of Pelli,** OATH Index Nos. 1195-96/01 (Feb. 26, 2001), **aff'd in part, modified in part,** Loft Bd. Order No. 2624 (Apr. 24, 2001), **aff'd,** _____A.D.2d_____, 774 N.Y.S.2d 492 (1st Dep't 2004).

¶ 84. Extension application dismissed without prejudice as moot where the legislature subsequently extended the deadlines for Article 7-B compliance and for obtaining a certificate of occupancy beyond the extension sought by the owner in its application. **Matter of C. True Building Corp.,** OATH Index No. 1926/01 (Nov. 29, 2001), **modified,** Exec. Dir. Decision (Jan. 28, 2002).

Loft Board Executive Director finds there was a five week period during which the owner was not brought back in compliance by operation of law; she grants the application with respect to that five week period (Sept. 15, 2001 to Oct. 29, 2001).

¶ 85. As owner sought extension of the deadline to obtain a certificate of occupancy beyond time the legislature provided by operation of law when Loft Law was amended, Loft Board finds owner's application was not moot with respect to that additional period. Owner's letter recounting financial problems following the death of his father, absent documentary support, did not meet requirements for obtaining an extension. **Matter of 35 West 26th Street,** OATH Index No. 359/02 (Nov. 20, 2001), **aff'd in part, rejected in part,** Loft Bd. Order No. 2703 (Feb. 7, 2002).

¶ 86. Extension application granted where court appointed Administrator recently took over a troubled building requiring significant repair, most notably the installation of a central boiler and hot water system, and where the tenants

disputed his selection of the particular system. **Matter of Manning,** OATH Index No. 1678/01 (Oct. 17, 2001), **aff'd,** Loft Bd. Order No. 2691 (Nov. 29, 2001)

¶ 87. Pursuant to subsection (b)(2) of this rule, the existence of conditions or circumstances beyond the owner's control must be demonstrated in the application by the existence of corroborating evidence. IMD owner's one sentence statement in the applications, that several tenants asked to do the interior work themselves but have not completed it, does not demonstrate the existence of conditions or circumstances beyond the owner's control. Nor do photocopies of work permit renewals for the various addresses at issue constitute corroborating evidence of the existence of conditions or circumstances beyond the owner's control, where original permits had been filed nine years before and owner offered no explanation for the delay. **Matters of 26-32 and 36-40 Tiffany Place,** OATH Index Nos. 1923-24/01 (Aug. 7, 2001), **aff'd,** Loft Bd. Order No. 2673-74 (Oct. 10, 2001).

¶ 88. Extension request denied where the owner claimed that the legalization process was slowed by its recent discovery of existing violations approximately eight months after it purchased the building. ALJ found that this circumstance showed a lack of diligence, not a circumstance beyond the owner's control. **Matter of Mandala LLC,** OATH Index No. 360/02 (Oct. 12, 2001), **aff'd,** Loft Bd. Order No. 2690 (Nov. 29, 2001).

¶ 89. Owner failed to prove its assertion that it complied with Loft Board regulation requiring the filing of a declaration of intent form with the Loft Board before converting IMD unit to commercial use. Therefore, pending litigation over current occupant's residential use of the unit was not a matter beyond owner's control that prevented it from meeting compliance deadlines. **Matter of Mandala LLC**, OATH Index No. 360/02 (Oct. 12, 2001), **aff'd,** Loft Bd. Order No. 2690 (Nov. 29, 2001).

¶ 90. Administrative law judge determined that the owners were not entitled to an extension of any kind, since they could make no showing that their failure to meet the deadlines was beyond their control. Furthermore, the owners could not evade responsibility for their inaction by delegating their code compliance obligations to a net lessee in January 2001, at a time when they had failed to take any substantial compliance actions for nine years. **Matter of Blue 123 Corp.,** OATH Index No. 358/02 (Nov. 23, 2001), **aff'd,** Loft Bd. Order No. 2702 (Feb. 7, 2002).

¶ 91. Access application served simultaneously with access notice was found to be defective on its face because no proof of prior service of access notice and denial of access by tenant was supplied, as required by subsection (g) of this section. **Matter of J.L. Management (SDL Realty),** OATH Index No. 2326/01 (Aug. 14, 2001), **aff'd,** Loft Bd. Order No. 2671 (Oct. 10, 2001).

¶ 92. Administrative law judge recommended maximum fine in default tenant-initiated non-compliance proceeding where judge found that no alteration permit had been obtained and owner had prior non-compliance finding. **Matter of Blakeley,** OATH Index No. 445/03 (Dec. 13, 2002)

¶ 93. Noncompliance application filed in 1997 was granted as owner did not obtain an alteration permit by the deadline then in effect. Owner's argument that 1998 and 2001 agreements with the tenants had operated as extensions of time for the owner to obtain a permit, beyond the initial October 1997 deadline, were unpersuasive. The agreements operated as such only upon the condition that the owner clear all objections and obtain an alteration permit, which the owner failed to do, even as of the time of trial in January 2002. **Matter of Buchen,**, OATH Index Nos. 1132/98 & 105/99 (Mar. 21, 2002), **aff'd,** Loft Bd. Order No. 2725 (Apr. 18, 2002).

¶ 94. An applicant for an extension is required to demonstrate: (1) the owner's good faith efforts to achieve compliance with the statutory deadline and (2) circumstances beyond the owner's control that prevented compliance. Petitioner failed to note any efforts to achieve compliance with building permit deadline and failed to demonstrate circumstances beyond its control. **Matter of D&A 28th Street Realty, LLC,** OATH Index No. 440/03 (Nov. 20, 2002), **aff'd,** Loft Bd. Order No. 2771 (Jan. 9, 2003).

¶ 95. Petitioner sought retroactive 27-month extension of the deadline for obtaining a building permit. Extension application denied for failure to satisfy the standards set forth in subsection (b) of this section. Petitioner claimed that the Loft Board's two-year delay in issuing the certification of the plans precluded its compliance with the deadline. Board found that owner took no steps to inquire as to the status of the certification during this period. Passive pursuit of application does not demonstrate good faith compliance with legalization mandate of Loft Law. **Matter of Estate of Goldman,** OATH Index No. 1080/02 (Mar. 6, 2002), **aff'd,** Loft Bd. Order No. 2724 (Apr. 18, 2002).

¶ 96. Owner's extension application filed in 1998 is denied where the owner failed to testify or otherwise produce any documentary evidence indicating that he made diligent efforts to obtain the building permit prior to the October 1997 deadline, but was prevented from so doing by matters beyond his control. Counsel's representations at trial were argument, not evidence, and in any event did not address the owner's code compliance efforts prior to the deadline. **Matter of Buchen,** OATH Index Nos. 1132/98 & 105/99 (Mar. 21, 2002), **aff'd,** Loft Bd. Order No. 2725 (Apr. 18, 2002).

¶ 97. Extension application denied where owner submitted cursory application without showing circumstances beyond owner's control. **Matter of 125 Rivington Street Associates,** OATH Index No. 602/02 (Jan. 18, 2002), **aff'd,** Loft Bd. Order No. 2715 (Mar. 14, 2002).

¶ 98. Extension application denied despite recent efforts to meet compliance where the owner failed to explain two years of inactivity. **Matter of Millner,** OATH Index No. 795/02 (Feb. 19, 2002), **aff'd,** Loft Bd. Order No. 2716 (Mar. 14, 2002), **reconsideration denied,** Loft Bd. Order No. 2740 (June 25, 2002).

¶ 99. Under subparagraph (b)(2) of this section, petitioner must establish that it pursued legalization deadlines with reasonable diligence and that it has been unable to comply due to circumstances beyond its control. Landlord was unable to meet deadlines due to a pending unreasonable interference application before this tribunal. Extension granted in part for 18-month period. **Matter of 40 Lispenard Street, LLC,** OATH Index No. 1713/02 (June 10, 2002), **aff'd,** Loft Bd. Order No. 2742 (June 25, 2002).

¶ 100. Pursuant to subsection (d)(2)(iv)(A) of this section, an occupant has 45 days from the date of the narrative statement conference to file alternate plans with the Department of Buildings. Subsection (d)(2)(iv)(B) permits consideration of alternate plans filed after the 45-day deadline if the Loft Board determines there was good cause for the failure to meet the deadline. Administrative law judge denied tenant's application to consider an approved "pre-reconsideration" plan that was submitted on eve of second day of hearing, well after the 45-day deadline had run. Administrative law judge did not find good cause existed for the late submission as applicant had opportunity to address owner's narrative statement and legalization plan two years ago and, indeed, did do so in timely filed alternate plans. **Matter of Beaumont,** OATH Index No. 2104/01, mem. dec. (Aug. 27, 2002).

¶ 101. Where the Loft Board finds that the owner is guilty of violations of the "unreasonable interference" regulations, it can issue a fine, even without filing a separate proceeding charging harassment. Pelli v. City of New York, 5 A.D.3d 268, 774 N.Y.S.2d 492 (1st Dept. 2004).

¶ 102. 29 RCNY 2-01(m)(3)(ii) provides in substance that where a loft building owner has received Rent Guidelines Board (RGB) increases during the legalization process, the term of the initial rent stabilized lease ends upon the expiration of the last RGB increase period. The regulation further provides that no notice or proceeding by the owner to recover the unit under Rent Stabilization Code §2524.4 (owner occupancy, in this case) may be commenced during the initial abbreviated lease term. In this case, the tenant's first lease began with an order of the Loft Board setting the initial legal regulated rent and expired only five months later. The court was faced with the following question: can the landlord acquire a unit under the owner occupancy rules as soon as the abbreviated lease has expired, or does he or she have to wait until the end of the next full lease term? The court held that the intent of the law was to give the tenant the benefit of at least one full lease term, and that owner occupancy proceedings could not be brought until the end of the first full-length lease. Damasco v. Berger, 5 A.D.3d 176, 772 N.Y.S.2d 518 (1st Dept. 2004).

¶ 103. Administrative law judge excused applicant's late submission of alternative plans under the good cause exception of subsection (d)(2)(iv) of this section where its submission was disrupted by the events of September 11, 2001. **Matter of Vander Heyden,** OATH Index No. 438/03 (Apr. 22, 2003), **aff'd,** Loft Bd. Order No. 2799 (May 15, 2003).

¶ 104. Petitioner sought extension of time to obtain alteration permit pursuant to the Multiple Dwelling Law and Loft Board rules. Petitioner landlord demonstrated that it pursued legalization with reasonable diligence and that it has been unable to comply due to circumstances beyond its control. Landlord was unable to obtain permit pending resolution of unreasonable interference claim by second-floor tenant. A twelve-month extension was granted to the landlord. **Matter of Lispenard Street, LLC,** OATH Index No. 1352/03 (Mar. 31, 2003), **aff'd in part, modified in part,** Loft Bd. Order No. 2800 (May 15, 2003).

¶ 105. An owner applied for an extension of more than one year to legalize the premises. The owner claimed that the tenants impeded legalization by failing to comply with a stipulation that gave the tenants an opportunity to review and submit modifications to the owner's plans. The administrative law judge found that the owner failed to show good faith efforts to complete legalization or circumstances beyond its control. The owner did not show that it did anything to further legalization during the four-year period between tenants' failure to act and the time of the application or that disputes with tenants obstructed the legalization process. **Matter of 13 East 17th Street, LLC,** OATH Index No. 1099/03 (Mar. 10, 2003), **aff'd,** Loft Bd. Order No. 2790 (Apr. 4, 2003).

¶ 106. A new interim multiple dwelling owner filed an extension application of the March 1, 2000 building permit deadline until September 30, 2003. In its application, the owner alleged that it was unable to obtain copies of the plans filed by the prior owner's architect after inquiring at the Loft Board, the Department of Buildings, and with the prior owner and prior owner's architect. The administrative law judge recommended denial of the application because the current owner failed to show the prior owner's good faith efforts to achieve compliance or circumstances impeding the prior owner's compliance. For the new building owner's three-month period of ownership, the judge similarly recommended denying the application because the owner failed to show the statutory requirements for an extension. **Matter of 145 Reade, LLC,** OATH Index No. 1588/03 (Nov. 25, 2003), **aff'd,** Loft Bd. Order No. 2839 (Jan. 15, 2003).

¶ 107. The tenants of a second floor loft filed an application alleging that the building owner's plan to install a passenger elevator through their kitchen constituted short term and long term unreasonable interference with the use of their unit. Considering that installation of the elevator was not required for legalization, that construction of the elevator would require significant reconstruction of the unit, and that construction would cause considerable short term disruption, the owner's plan was found to be unreasonable. **Matter of Slotkin,** OATH Index No. 741/03 (Nov. 24, 2003), **aff'd,** Loft Bd. Order No. 2853 (Mar. 18, 2004).

¶ 108. A tenant filed an unreasonable interference application alleging that the owner's proposed building wide sprinkler system, the installation of a bathroom vent duct on her ceiling, and the installation of a basewall heating and hot water system in her unit would unreasonably interfere with her use and occupancy of the space. The administrative law judge found that the proposed sprinkler system and installations would not unreasonably interfere with the tenant's use and occupancy because the owner's plan was a rational and reasonable one that provided for building wide safety. In addition, the installations would have negligible or no effect on the tenant's use of her unit. **Matter of Beaumont,** OATH Index No. 2104/01 (Jan. 30, 2003), **aff'd,** Loft Bd. Order No. 2785 (Mar. 7, 2003).

¶ 109. Administrative law judge held that resolution of unreasonable interference application under section 2-01(h) where owner and tenant submitted competing plans with respect to disputed legalization items does not depend on a determination of which plan is more appealing; the owner's plan prevails unless the tenant can show the owner's plan is unreasonable. **Loft Bd. v. 24-26 Harrison Street, New York, NY,** OATH Index No. 1089/03 (June 23, 2003), **aff'd in part, modified in part,** Loft Bd. Order No. 2816 (July 24, 2003).

¶ 110. Administrative law judge held that the Rent Guidelines Board increases under subsection (i)(1)(i) of this section do not commence when owner obtains a certificate of occupancy, but only when the owner makes a demand on the tenant and notice of that demand is served on the Loft Board. **Matter of Trengove,** OATH Index No. 439/03 (Feb. 25, 2003), **aff'd,** Loft Bd. Order No. 2789 (Apr. 4, 2003).

¶ 111. Administrative law judge recommended granting building owner's application for access to loft tenants' unit and for costs incurred as a result of tenants' denial to be calculated into tenants' final rent where the tenants' refusal of access was unreasonable. **Matter of Pelli**, OATH Index No. 546/05 (Oct. 18, 2004), **aff'd**, Loft Bd. Order No. 2892 (Jan. 20, 2005), **reconsideration denied**, Loft Bd. Order No. 2899 (Feb. 24, 2005).

¶ 112. Administrative law judge recommended grant of access application where building owner established that occupant of loft was properly notified of proposed inspection dates and failed to provide access on a specified date. **Matter of Benaresh**, OATH Index No. 1209/04 (Mar. 22, 2004), **aff'd**, Loft Bd. Order No. 2856 (Apr. 27, 2004).

¶ 113. Administrative law judge recommends denial of building owner's access application and fine of $150 for failure to properly serve the tenant with the access notice and access application. **Matter of Plot Realty**, LLC, OATH Index No. 1285/03 (Oct. 6, 2004), **aff'd**, Loft Bd. Order No. 2920 (Apr. 21, 2005).

¶ 114. Administrative law judge held that the owner's failure to specify that windows were double-glazed in the access application did not entitle tenants to refuse access where the access notice need only specify the "scope of all work to be performed" (29 RCNY §2-01(g)(1)). **Matter of Pelli**, OATH Index No. 546/05 (Oct. 18, 2004), **aff'd**, Loft Bd. Order No. 2892 (Jan. 20, 2005), **reconsideration denied**, Loft Bd. Order No. 2899 (Feb. 24, 2005).

¶ 115. Loft Board access rule 2-01(g)(1) permit parties or their representatives to enter agreements on access. **Matter of Les Pieds Nickles, Inc.**, OATH Index No. 1938/04 (July 22, 2004), **aff'd in part, rejected in part**, Loft Bd. Order No. 2874 (Sept. 23, 2004).

¶ 116. The cost of construction of a bulkhead and staircase is attributable solely to the residential tenants. **Matter of Moskowitz**, OATH Index No. 1841/04 (June 10, 2004), **aff'd,** Loft Bd. Order No. 2873 (July 22, 2004).

¶ 117. Alternate plans application pursuant to section 2-01(d)(2)(vii)(B) dismissed where owner withdrew proposed amended plans. **Matter of Connors**, OATH Index No. 2001/04 (July 26, 2004), **aff'd**, Loft Bd. Order No. 2875 (Sept. 23, 2004).

¶ 118. Loft Board rejects ALJs statement that the notice provisions of subsections (g)(1) and (2) of this section do not apply to non-legalization work such as repairs, maintenance work or inspections. **Matter of Bryne**, OATH Index No. 2003/04 (Jan. 14, 2005), **adopting on different grounds**, Loft Bd. Order No. 2999 (Jan. 19, 2006), **resp.'s app. for reconsideration den.**, Loft Bd. Order No. 3050 (May 18, 2006), **pet.'s app. for reconsideration den.**, Loft Bd. Order No. 3080 (July 20, 2006).

¶ 119. Subsection (g)(3)(i)(V) of this section gives the Loft Board authority to fine an owner for filing a frivolous access application. One thousand dollar fine was imposed on the owner where the board found the application appeared to have been motivated more by vindictiveness than a sincere concern about the legality of the wiring. **Matter of Pelli**, Loft Bd. Order No. 3014 (Feb. 16, 2006), **adopting in part, rejecting in part**, OATH Index No. 688/06 (Jan. 19, 2006).

¶ 120. Access notice must be specific enough to inform tenants which areas of their apartments will be affected and to provide tenants some idea of the degree to which the work will interfere with the use of their unit. Loft Board rejected ALJ's use of the narrative statement as a way to provide sufficient description of the scope of the work to be performed, where access notice was deficient. **Matter of 20 Beaver St, LLC**, Loft Bd. Order No. 3086 (July 20, 2006), **rejecting**, OATH Index No. 1732/06 (May 23, 2006).

¶ 121. Mere technical violations of the notice provisions of the Loft Board's access rule does not, without more, make out a claim of unreasonable interference; to establish unreasonable interference under subsection h of this section, a tenant must show that those violations interfered with the tenants use of his or her unit. **Matter of Bryne**, Loft Bd. Order No. 2999 (Jan. 19, 2006), **Resp.'s app. for reconsideration den.**, Loft Bd. Order No. 3050 (May 18, 2006), **pet.'s app. for reconsideration den.**, Loft Bd. Order No. 3080 (July 20, 2006).

¶ 122. Evidence of insufficient funds will not excuse noncompliance, but under subsection (c)(3) of this section, insufficient funds may be considered in mitigation of fines imposed upon a finding of noncompliance. Owner did not provide the required substantiating documentation for its defense of lack of funds, and maximum fines were imposed for missing multiple deadlines. **Matter of Thornley**, OATH Index No. 2180/07 (Sept. 28, 2007).

¶ 123. The duty to comply with code compliance deadlines is nondelegable. Claim that noncompliance was due to unsound advice from building managers was rejected. **Matter of Thornley**, OATH Index No. 2180/07 (Sept. 28, 2007).

¶ 124. A warranty of habitability claim under 2-01(d) of this section may be brought in conjunction with a properly pleaded application for unreasonable interference under 2-01(h), harassment under 2-02(c), or diminution of services under 2-04(c), but a tenant cannot file an independent application before the Loft Board under subsection (d) of this section solely for a breach of warranty of habitability. **Matter of Ashley**, Loft Bd. Order No. 3350 (Oct. 18, 2007), **adopting in part, rejecting in part**, OATH Index No. 1061/06 (Apr. 16, 2007).

¶ 125. Under subsection (h) of this section, an unreasonable interference application must contest conditions arising from the completion of legalization work by the owner. Loft Board dismisses an unreasonable interference application based upon fumes caused by spray painting business conducted by commercial tenant (auto body shop) because the condition was not connected to legalization work. **Matter of 517-525 West 45th Street Tenants' Ass'n**, OATH Index No. 1061/06 (Apr. 16, 2007), **adopted in part, rejected in part on other grounds**, Loft Bd. Order No. 3350 (Oct. 18, 2007).

¶ 126. Pursuant to section 2-01(i)(1)(iv), a tenant has 45 days to elect two-year lease. After a hearing, it was determined that the tenant failed to file the election form until 18 days after the deadline. The tenant failed to establish either good cause for her late filing or that the delay in filing was so minimal as to be excused under the maxim **de minimus non curat lex**. **Matter of Green333 Corp**., OATH Index No. 1206/07 (May 31, 2007), **adopted**, Loft Bd. Order No. 3333 (Sept. 7, 2007).

¶ 127. Loft Board rejects ALJ's rationale that owner should be fined the maximum, $1000 per violation, because the owner failed to comply with all four areas of the legalization timetable. The Board held such finding was not relevant or necessary in order to justify the imposition of maximum fines, but adopted the finding that the owner violated 14

deadlines and should be fined $14,000. **Loft Bd. v. Korean Assoc. of New York, Inc.**, OATH Index No. 1194/08, mem. dec. (Feb. 8, 2008), **adopted**, Loft Bd. Order No. 3416 (Mar. 20, 2008).

¶ 128. An IMD owner may be held responsible for missed deadlines of previous owners, inasmuch as an owner who purchases an IMD after code compliance deadlines have expired is presumed to be on notice of those deadlines. **Matter of Schwartz**, OATH Index No. 966/08 (Feb. 15, 2008), **adopted**, Loft Bd. Order No. 3430 (Apr. 17, 2008).

¶ 129. Owner should not be assessed fines where he was not placed on notice by the pleadings or other communications from the tenants that a fine was sought. **Matter of Schwartz**, OATH Index No. 966/08 (Feb. 15, 2008), **adopted**, Loft Bd. Order No. 3430 (Apr. 17, 2008).

¶ 130. Under subsection (c), residential occupants have standing to file a non-compliance application seeking to impose fines against an owner. The ALJ rejected the owner's "creative and technical" contention that the use of the articles "the" and "an" in the rule indicates that only the Loft Board may commence a proceeding that leads to fines. The

ALJ held that it is the Loft Board that makes the determination whether "the" owner should be fined, whether the matter was commenced by a tenant or by the Board itself. **Matter of Frankel**, OATH Index No. 1556/08, mem. dec. (May 23, 2008).

¶ 131. Subsection (h) of this provision pertains solely to claims of unreasonable interference arising from performance of actual legalization work subsequent to the issuance of a work permit and does not pertain to issues arising from an amendment to the legalization plan. Loft Board rejects claim that owner violated subsection (h) because the amended plan allegedly includes work beyond that authorized by the permit, where the proof showed the legalization work would not unreasonably interfere with the tenants' use of their unit or unreasonably compromise their safety. **Matter of Connors & Byrne**, OATH Index No. 1429/07 (May 4, 2007), **adopted**, Loft Bd. Order No. 3394 (Jan. 18, 2008), **applicationfor reconsideration denied**, Loft Bd. Order No. 3434 (May 15, 2008).

FOOTNOTES

1

[Footnote 1]: * As pursuant to §27-142 of the Administrative Code the Department of Buildings has agreed to accept such applications for filing without requiring the owner's authorization, which is an exception to its normal procedures.

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-02 Harassment.

(a) **Applicability.** These harassment regulations shall apply to all future complaints of harassment filed with the Loft Board after the effective date of these regulations (April 20, 1987). Pending cases in which the Loft Board has not yet rendered a final determination as of the effective date of these regulations (April 20, 1987) shall be subject to all sections of these regulations except §§2-02(c)(i) through 2-02(c)(6)(i); the processing of these pending cases shall be in accordance with the Board's Regulations for Internal Board Procedures-§§l-06(a) to (j). All orders of harassment issued prior to the effective date of these regulations (April 20, 1987) shall be noted in Loft Board records and in the office of the City Register in accordance with the provisions of §2-02(d)(l)(iii) of these regulations. Landlords affected by previous orders may apply to the Loft Board in accordance with §2-02(d)(2) for an order terminating the finding of harassment no sooner than one year and 180 days from the effective date of these regulations.

(b) **Definitions.**

Harassment. The term "harassment"*2 shall mean any course of conduct engaged in by the landlord or any other person acting on its behalf that interferes with or disturbs the comfort, repose, peace or quiet of an occupant in the occupant's use or occupancy of its unit if such conduct is intended to cause the occupant to vacate the building or unit, or to surrender or waive any rights of such occupant under the occupant's written lease or other rental agreement or pursuant to Article 7-C.

Harassment shall include, but is not limited to, the intentional interruption or discontinuance of or willful failure to provide or to restore services customarily provided in the building or required by written lease or other rental agreement or, for residential occupants qualified for the protections of Article 7-C, by the Loft Board regulations regarding

minimum housing maintenance standards. Harassment shall not include either the lawful termination of a tenancy or lawful refusal to renew or extend a written lease or other rental agreement, or acts performed in good faith and in a reasonable manner for the purposes of operating, maintaining or repairing any building or part thereof.

Landlord. The term "landlord" shall mean the owner of an IMD, the lessee of a whole building all or part of which is an IMD, or the agent or other person having control of such a building.

Occupant. The term "occupant", unless otherwise provided, shall mean a residential occupant qualified for the protections of Article 7-C, any other residential tenant, or a nonresidential tenant.

(c) **Procedures for considering harassment applications.** (1) It is unlawful for a landlord or any other person acting on its behalf to engage in conduct constituting harassment against any occupant of an IMD. A complaint of harassment may be filed with the Loft Board by an occupant or occupants of an interim multiple dwelling. The complaint shall be filed on a form prescribed by the Loft Board and shall be processed in accordance with the Board's Regulations for Internal Board Procedures-§§1-06(a) to (j), except as provided herein.

(2) (i) The complaint shall allege in separately numbered paragraphs each type of conduct claimed to constitute harassment of occupants of the IMD by the landlord. Each paragraph shall contain a complete description of the conduct complained of, including the actual or approximate date(s) on which such conduct occurred, the manner and location of each occurrence, and if the complaint is filed on behalf of more than one occupant, the occupant(s) against whom the occurrence was directed. Except for a complaint alleging conduct that has occurred prior to the effective date of these regulations (April 20, 1987), the complaint shall be filed within 180 days of the conduct complained of; where an ongoing course of conduct is alleged, the complaint shall be filed within 180 days of the last occurrence alleged. A complaint alleging conduct that has occurred prior to the effective date of these regulations (April 20, 1987) shall be filed within 180 days of the effective date of these regulations.

(ii) If a complaint fails to set forth a claim of harassment as defined in §2-02(b) "Harassment", the Loft Board shall notify the complainant(s) in writing of the deficiency and of the opportunity to file an amended complaint with the Loft Board within 15 days after the date of notification. Following such period if the complaint does not allege conduct constituting harassment, it shall not be processed further. If appropriate, it shall be deemed a complaint of failure to provide service and shall be processed pursuant to the Loft Board's rules and regulations relating to enforcement of minimum housing maintenance standards. Staff's decision not to process a harassment complaint may be reviewed by the Loft Board upon application by a complainant.

(iii) Once the Loft Board staff has decided to accept a harassment complaint for further processing as described in §2-02(c)(2)(ii), a complainant found by the Loft Board to have filed such a complaint in bad faith or in wanton disregard of the truth may be subject to a civil penalty not to exceed $1,000 for each such violation.

(3) The staff of the Loft Board shall serve all affected parties, including the owner, with a copy of the complaint by regular mail, retaining records attesting to such service. However, where a complaint of harassment solely alleges that the owner's challenge of a sale of improvements is frivolous, the Loft Board staff shall serve only the owner. Instructions for filing an answer and a notice scheduling a conference on the complaint shall be enclosed in each mailing. Where the landlord against whom a complaint of harassment has been filed is not the owner of the IMD, the mailing to the owner shall advise the owner that a finding of harassment may affect the owner's ability to decontrol or to obtain market rentals for covered IMD units pursuant to §286(6) of Article 7-C and the Loft Board's regulations.

(4) Parties shall have 15 days after the date on which service of the complaint was completed to file an answer with the Board. Twelve copies of the answer with proof of service of the answer on the complainant(s) must be filed at the offices of the Loft Board.

(5) (i) The notice of conference will schedule a date and time for an informal conference as soon as possible following the time period for filing an answer.

(ii) Such conferences shall be conducted by the staff with the affected parties in an effort to resolve and alleviate the conditions and events alleged. Where resolution to the mutual satisfaction of the parties is achieved, a stipulation containing the terms of the resolution and the penalties, if any, for its breach shall be executed and shall be filed with the Loft Board for its approval on a summary calendar.

(6) Where charges of harassment remain unresolved following the conference, a hearing on the complaint will be held in accordance with the procedures of §§l-06(e)and (f) of the regulations for internal Board Procedures and the following:

(i) the hearing will be limited to the charges contained on the original complaint, as modified at the conference, and any additional charges of harassment arising as a result of conduct occurring after the conference.

(ii) acts performed by an occupant in good faith and in a reasonable manner for the purposes of operating a nonresidential conforming use shall be presumed not to constitute harassment. The presumption may be rebutted by a showing that such acts were performed on the landlord's behalf and intended by the landlord to cause another occupant to vacate the building or its unit or to surrender or waive any rights of such occupant under the occupant's written lease or other rental agreement or pursuant to Article 7-C.

(iii) a finding by the Loft Board that the owner has willfully violated the code compliance timetable or has violated the code compliance timetable more than once may be considered as evidence of harassment. (See regulations on Code Compliance-§2-01(c)(3)).

(iv) the issuance of a municipal vacate order for hazardous conditions as a consequence of the owner's unlawful failure to comply with the code compliance timetable shall result in a rebuttable presumption of harassment. (See regulations on Code Compliance-§2-01(c)(4)).

(v) a finding by the Loft Board of unreasonable and willful interference with an occupant's use of its unit by the owner or its agents may be considered as evidence of harassment. (See Regulations on Code Compliance-§2-01(h)).

(vi) a finding by the Loft Board of a willful violation of Minimum Housing Maintenance Standards may be considered as evidence of harassment of residential tenants. (See regulations on Enforcement of Minimum Housing Maintenance Standards-§2-04(e)(6)).

(vii) a finding by the Loft Board that the filing of an application by the owner objecting to the sale of improvements was frivolous may be considered as evidence of harassment of residential tenants. An objection to the sale may be found to be frivolous on grounds including, but not limited to, the following:

(A) that it was filed without a good faith intention to purchase the improvements at fair market value or

(B) that the owner's valuation of the improvements has no reasonable relationship to the fair market value, as determined by the Loft Board. (See regulations on Sales of Improvements-§2-07(g)(1)(i)). At the occupant's request the Loft Board shall issue its findings on an outstanding complaint of harassment based upon the allegation that the owner's objection to the sale of improvements is frivolous, or any other pending complaint of harassment in the building, concurrently with its determination of the owner's challenge.

(viii) a determination by a civil or criminal court of landlord harassment of an occupant or occupants may be considered as evidence of harassment.

(d) **Findings of harassment.** (1) (i) An owner found guilty of harassment shall not be entitled to decontrol of or market rental for any IMD unit for which a sale of improvements pursuant to §286(6) of Article 7-C and the regulations promulgated pursuant thereto takes place in the IMD where the harassment occurred. This restriction shall apply to any sale of improvements that takes place on or after the date of the order containing the finding of harassment until such

time as the order may be terminated in accordance with §2-02(d)(2).

(ii) A landlord found guilty of harassment by the Loft Board may be liable for a civil penalty not to exceed $1,000 for each occurrence that is found to constitute harassment. Registration as an IMD shall not be issued or renewed for any building for which fines have been imposed for landlord harassment until such fines have been paid.

(iii) The order containing the finding of harassment shall be attached to and noted upon the current and all subsequent IMD registration applications on file for the IMD affected by such finding until such time as the order may be terminated in accordance with §2-02(d)(2). The order shall be binding upon all persons or parties who succeed to the landlord's interest in the premises. A copy of the Board's order containing the finding of harassment shall be mailed to the complainant, the owner, all occupants of the building, and any other parties to the proceeding. Notice of such order shall be filed by the Loft Board in the office of the City Register.

(iv) The procedure provided for herein shall be in addition to any procedures provided under other provisions of law and shall not be construed to alter, affect or amend any right, remedy or procedure under any other provisions of law, such as:

(A) an occupant may apply to the Supreme Court of the State of New York for an order enjoining the landlords from harassment pursuant to §235-d(4) of the Real Property Law and may pursue all other remedies in relation to harassment including the award of damages before a court of competent jurisdiction.

(B) upon the request of a residential occupant who either vacates, has been removed from or is otherwise prevented from occupying its unit as a result of harassment, a landlord shall take all reasonable and necessary action to restore the occupant to its unit, provided that such request is made within seven days after removal, pursuant to §26-521(b) of the Administrative Code.

(C) residential occupants of IMDs are afforded the protections available to residential tenants pursuant to the Real Property Law and the Real Property Actions and Proceedings Law, including §223-b of the RPL regarding retaliatory evictions, notwithstanding that such occupants may reside in an owner occupied IMD having fewer than 4 residential units.

(D) special proceedings pursuant to RPAPL 7-A are available to all occupants of IMDs, notwithstanding that such IMDs may contain less than three residential units.

(2) (i) Where a landlord has been found guilty of harassment by the Loft Board, the current landlord may apply to the Loft Board pursuant to the regulations for Internal Board Procedures, following the period of time specified in the order containing the finding of harassment, for an order terminating such finding. The order containing the finding of harassment shall specify the period of time, within a range of one to three years from the date of the order of harassment, during which the landlord shall be barred from applying for an order of termination. However, where a landlord has been convicted of a crime for conduct found by the Loft Board to constitute harassment, the current landlord may apply for an order of termination only after at least five years have passed since the date of the order of harassment. The Loft Board may grant such relief if it finds that:

(A) since notification of the order the landlord has not engaged in the proscribed conduct and has not engaged in any other conduct which constitutes harassment; and

(B) the landlord has achieved compliance with the fire and safety standards of Article 7-B, alternative building codes or provisions of the M.D.L., as provided in §2-01(a)(3) of the Code Compliance Regulations and as may be exhibited by the issuance of a temporary certificate of occupancy, or, if Article 7-B compliance was achieved prior to the date of the order of harassment, has obtained a final certificate of occupancy as a class A multiple dwelling; and

(C) the landlord has paid all civil penalties assessed in the order of harassment, and there are no other orders of

harassment outstanding for the IMD; and

(D) the landlord is in compliance with the regulations relating to registration of IMDs.

(ii) An order terminating a prior Loft Board finding of harassment shall apply prospectively only, and the owner shall not be entitled to the decontrol of or market rental for any residential unit for which a sale of improvements pursuant to §286(6) of Article 7-C and the regulations promulgated pursuant thereto has taken place in the period from the date of the order finding harassment to the date of the order terminating such finding.

(iii) If the Loft Board at a regularly scheduled meeting or at a special session called in accordance with §l-03(a) of the regulations for Internal Board Procedures has reasonable cause to believe that harassment is occurring or has occurred at the IMD after the date of an order terminating a prior finding of harassment, the Loft Board shall suspend such order of termination immediately. Notice of such suspension shall be mailed to the landlord and to all occupants. Upon the landlord's written request, the Loft Board shall schedule a hearing as soon as reasonably possible but not later than thirty days after the date of receipt of such request to determine whether the order of termination should be reinstated or revoked.

(iv) The order of termination or of suspension, reinstatement or revocation of termination shall be included among the IMD registration material on file, and notice of termination or of suspension, reinstatement or revocation of termination shall be filed by the Loft Board in the office of the City Register.

(e) **Harassment by prime lessees.** (1) **"Prime lessee."** For the purposes of these harassment regulations the term "prime lessee" shall mean the party with whom the landlord entered into a lease or rental agreement for use and occupancy of a portion of an IMD, which is being used residentially, where s/he is not the residential occupant qualified for protection of the unit, regardless of whether such lessee is currently in occupancy of any portion of the space s/he has leased from the landlord or whether such lease remains in effect.

(2) It is unlawful for a prime lessee or any other person acting on his or her behalf to engage in conduct that would constitute harassment if engaged in by the landlord as defined in §2-02(b) "Harassment" against any of its current or former subtenants who are residential occupants qualified for the protections of Article 7-C. A complaint of harassment may be filed with the Loft Board by a residential occupant qualified for the protections of Article 7-C against its prime lessee. The complaint shall be processed in accordance with the procedures described in §2-02(c).

(3) (i) A prime lessee found guilty of harassment by the Loft Board may be liable for a civil penalty not to exceed $1,000 for each occurrence that is found to constitute harassment.

(ii) A prime lessee found guilty of harassment by the Loft Board shall not be entitled to recover subdivided space pursuant to §2-09(c)(5)(i) and §2-09(c)(5)(iii) of the rules and regulations Relating to Subletting and Similar Matters and shall not be entitled to the rent adjustment provided for in §2-09(c)(6)(ii)(D)(b) of those regulations.

(4) (i) A prime lessee found guilty of harassment by the Loft Board may apply to the Loft Board pursuant to the Regulations for Internal Board Procedures, following the period of time specified in the order containing the finding of harassment, for an order terminating such finding. The order containing the finding of harassment shall specify the period of time, within a range of one to three years from the date of the order of harassment, during which the prime lessee shall be barred from applying for an order of termination. However, where a prime lessee has been convicted of a crime for conduct found by the Loft Board to constitute harassment, the prime lessee may apply for an order of termination only after at least five years have passed since the date of the order of harassment. The Loft Board may grant such relief if it finds that:

(A) since notification of the order the prime lessee has not engaged in the proscribed conduct and has not engaged in any other conduct which constitutes harassment; and

(B) the prime lessee has paid all civil penalties assessed in the order of harassment, and there are no other orders of harassment outstanding for the prime lessee.

(ii) An order terminating a prior Loft Board finding of harassment by a prime lessee shall apply prospectively only.

HISTORICAL NOTE

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. An ongoing course of conduct pursuant to subparagraph (c)(2)(i) of this section is not a series of disparate, unrelated acts, separate in time and tied together only by an allegation of a continuing intent to harass, but is a course of conduct that is continuous and actually in process at a time within the 180-day limitation period. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996), aff'd, Loft Bd. Order No. 2054 (Jan. 9, 1997).

¶ 2. An allegation that a building owner leased a floor to an illegal after-hours establishment, the business of which disturbed the residential tenants, ending less than 180 days before the harassment application was filed, was not barred by the 180-day limitation period pursuant to subparagraph (c)(2)(i) of this section. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996), aff'd, Loft Bd. Order No. 2054 (Jan. 9, 1997).

¶ 3. The claim that the building owner deliberately damaged a tenant's loft unit by flooding the unit above the tenant's unit, although improbable, stated a triable claim of harassment pursuant to this section. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996), aff'd, Loft Bd. Order No. 2054 (Jan. 9, 1997).

¶ 4. A claim that a tenant was without heat on more than 20 days from January to April stated a sufficient claim of harassment at the pleading stage. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996), aff'd, Loft Bd. Order No. 2054 (Jan. 9, 1997).

¶ 5. Although allegations may be time-barred as harassment claims pursuant to the 180-day limitation period of subparagraph (c)(2)(i) of this section, the admissibility of evidence of such time-barred allegations to show motive, intent or any other material fact pertaining to harassment claims that are not time-barred is a matter committed to the discretion of the trial judge. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996), aff'd, Loft Bd. Order No. 2054 (Jan. 9, 1997).

¶ 6. An owner's withholding over an eight-month period of required tenant services-including heat, water pressure, elevator service, electricity, extermination services, cleaning of common areas and building security-combined with other conduct by the owner evidencing an intent to force the two remaining rent-regulated tenants in the building to vacate or give up their rights, constituted harassment pursuant to paragraph (b) of this section. Matter of Kalmanowicz, OATH Index No. 1333/97 (Aug. 25, 1997), aff'd, Loft Bd. Order No. 2162 (Oct. 10, 1997).

¶ 7. For harassment consisting of various denials of required building services and other conduct evidencing an intent to force tenants to vacate or give up their rights, the penalty imposed pursuant to paragraph (d) was a civil penalty of $7,000, and an order barring the owner from applying for termination of the harassment finding for three years. Matter of Kalmanowicz, OATH Index No. 1333/97 (Aug. 25, 1997), aff'd, Loft Bd. Order No. 2162 (Oct. 10, 1997).

¶ 8. A general release given by a tenant to a building owner as part of a settlement of a Civil Court case precluded the adjudication of harassment claims that had accrued on or before the date of the release. To the extent that the tenant might have a claim for harassment based on events that occurred after the date of the release, he is not precluded from filing an application asserting such a claim. Matter of Ashbaugh, OATH Index No. 1979/96 (July 25, 1996), aff'd, Loft Bd. Order No. 2008 (Sept. 26, 1996).

¶ 9. Because the tenant was evicted by order of the housing court, following the tenant's sale of improvements and Loft Law rights in the course of a federal bankruptcy case, the tenant's occupancy was legally terminated and therefore he could not maintain a harassment application pursuant to paragraph (b) of this section. Matter of Jones, OATH Index No. 133/97 (Sept. 12, 1996), aff'd, Loft Bd. Order No. 2038 (Nov. 21, 1997).

¶ 10. Where a landlord's application for termination of a previous finding of harassment pleaded all of the elements required for such termination pursuant to subparagraph (d)(2)(i) of this section, and the answering tenants agreed with the matters pleaded in the application and supported termination of the harassment finding, the application was granted without an evidentiary hearing. Matter of 17-19 Bleecker Street, LLC, OATH Index No. 1462/97 (May 2, 1997), aff'd, Loft Bd. Order No. 2118 (June 26, 1997).

¶ 11. Where the Loft Board has found the landlord to have engaged in harassment, the court must defer to that determination. However, if the Loft Board has ruled on the issue of harassment, the court has jurisdiction to determine whether or not harassment has occurred. If a finding of harassment has been made either by the court or the Loft Board, then a sale of loft fixtures will not result in decontrol of the unit. However, if the sale of fixtures occurred before any finding of harassment was made, the unit will be decontrolled. Suraci v. Mucktar, N.Y.L.J., July 19, 2000, page 24, col. 1 (Civ.Ct. New York Co.).

¶ 12. Tenant failed to meet her burden of establishing intentional harassment where the sole evidence presented were tenant's uncorroborated statements of service disruptions and the owner provided substantial documentation to support his assertions that legally mandated services had been provided. **Matter of Wilson,** OATH Index No. 1573/97 (Mar. 20, 1998), **aff'd,** Loft Bd. Order No. 2280 (Sept. 24, 1998).

¶ 13. Fine of $1,000 imposed pursuant to subparagraph (c)(2)(iii) of this section where tenant's harassment application was baseless and filed in bad faith, and where tenant made false representations in order to delay the adjudicative process and to avoid providing evidence in support of the charges. **Matter of Wilson,** OATH Index No. 1573/97 (Mar. 20, 1998), **aff'd,** Loft Bd. Order No. 2280 (Sept. 24, 1998).

¶ 14. Petitioners failed to establish that the landlord possessed the requisite intent to deprive them of protected occupancy rights, an essential element of harassment. Although petitioners established that: 1) a commercial tenant caused substantial noise at unreasonably late hours of the night; 2) that this condition constituted a breach of the warranty of habitability; and 3) that respondent-landlord failed to take effective remedial action even though fully informed of the noise condition, landlord's buy out offer, without more, was insufficient to support inference that landlord neglected the noise condition in order to induce petitioners to waive protected occupancy rights. **Matter of Latin,** OATH Index No. 1110/00 (June 19, 2000), **aff'd,** Loft Bd. Order No. 2555 (July 20, 2000).

¶ 15. Administrative law judge found (1) tenant's sporadic heat complaints more than 180 days apart were not continuous and therefore time-barred; and (2) the complaint failed to meet the particularity requirement of the regulation (29 RCNY § 2-02(c)(2)(i)) because it failed to allege actual or approximate dates when inadequate heat was provided. **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part on other grounds,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 16. Administrative law judge inferred owner's intent to harass from owner's persistent refusal to comply with orders to restore elevator service by the Loft Board and a Housing Court judge. **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part on other grounds,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 17. Loft Board denied harassment application where respondent attempted to gain access to petitioner's unit to make a window repair without conferring with tenant. Harassment does not include acts performed in good faith and in a reasonable manner for the purpose of repairing the building (29 RCNY § 2-02(b)). **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part on other grounds,** Loft Bd.

Order No. 2704 (Feb. 7, 2002).

¶ 18. Harassment claim based on hiring of security guard and adoption of guest sign-in policy denied. Administrative law judge found implementation of security procedures reasonable given landlord's duty to provide appropriate controls on public access to residential portions of the building (29 RCNY § 2-04(b)(8)). **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part on other grounds,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 19. Loft Board rejected administrative law judge's recommendation of $1,000 fine for bad faith filing based on a finding that twelve charges of direct acts of harassment were made without regard for the truth. **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 20. Loft Board imposes maximum $1,000 fine against owner for its ongoing, persistent denial of elevator service in defiance of an order of the New York City Civil Court, Housing Part (29 RCNY § 2-02(d)(1)(ii)). **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 21. Application to vacate a Loft Board order finding harassment of an outgoing tenant by a former landlord granted where application conformed to all requirements of subsection (d)(2) of this section which governs termination of prior finding of harassment, **i.e.,** current landlord has not engaged in proscribed conduct; current landlord has received certificate of occupancy; there are no other orders of harassment outstanding for the IMD; and, the landlord is in compliance with current IMD registration requirements. **Matter of 31 Washington Brooklyn Corp.,** OATH Index No. 2106/01 (Aug. 1, 2001), **aff'd,** Loft Bd Order No. 2672 (Oct. 10, 2001).

¶ 22. ¶ 22. Administrative law judge grants owner's pre-trial motion to dismiss various allegations of harassment as time barred when the complaint was filed more than 180 days after the alleged conduct. **Matter of Neal,** OATH Index No. 352/02, mem. dec. (July 31, 2002).

¶ 23. In a pre-trial motion to dismiss harassment counts for failure to plead prima facie case, statements allegedly made by owner's representative must be viewed in the light most favorable to the tenant when determining whether the allegations, if credited, would constitute harassment under Loft Board rules. Administrative law judge dismissed one charge based upon statement allegedly made by owner's representative, in the context of arranging for an inspection of petitioner's unit by owner's architect shortly after the owner had purchased the building, that petitioner's unit may have to be demolished due to structural damage, finding it to be too conditional in nature to infer that it was made with the requisite intent to cause the tenant to vacate the building or surrender his rights. Judge denied motion to dismiss another charge based upon subsequent alleged statement that owner would find a way to demolish petitioner's unit if petitioner refused to accept owner's buy out offer. **Matter of Neal,** OATH Index No. 352/02, mem. dec. (July 31, 2002).

¶ 24. Administrative law judge denied building owner's motion to dismiss or strike tenant's harassment application where no collateral estoppel was shown as to harassment claims raised in Supreme Court action which the court expressly refused to hear. **Matter of Connors,** OATH Index No. 223/04, mem. dec. (Oct. 27, 2003).

¶ 25. Administrative law judge dismissed tenant's harassment application finding that reference to the probable demolition of the building would not in and of itself rise to the level of harassment because the owner can not be deemed to have acted in bad faith in relying on an engineer's report and because the definition of harassment specifically excludes good faith acts taken by the owner to repair the building. **Matter of Neal,** OATH Index Nos. 352/02, 672/03 (Feb. 4, 2003), **aff'd,** Loft Bd. Order No. 2787 (Mar. 7, 2003).

¶ 26. Administrative law judge found that the reduction in elevator services was harassment. Administrative law judge also found harassment based on owner's menacing behavior towards the tenants on two specific dates and on owner's refusal to place the co-tenant's name on intercom despite specific requests to do so. Administrative law judge

recommended a $3,000 fine be imposed for the three counts of harassment found and that the owner be barred for two years from applying for an order to terminate the harassment finding. **Matter of Rebo,** OATH Index Nos. 924/03 & 926/03 (Dec. 18, 2003), **aff'd,** Loft Bd. Order No. 2840 (Jan. 15, 2003).

¶ 27. Administrative law judge found that building owner harassed tenant by entering into tenant's apartment without notice and removing bathroom fixtures; Administrative law judge recommended that owner be fined $1,000 and barred from filing an application terminating the finding of harassment for three years. **Matter of the Alkara**, OATH Index No. 1101/03 (Oct. 6, 2004), **aff'd in part, modified in parton other grounds**, Loft Bd. Order No. 2920 (Apr. 21, 2005).

¶ 28. Count of harassment relating to damaged windows was not time barred, although the date that the windows were damaged was outside the 180-day time frame, because the failure to repair the window was a "continuing violation". **Matter of Tenants of 13 East 17th Street**, Loft Bd. Order No. 3041 (Apr. 20, 2006), **adopting in part, rejecting in part**, OATH Index Nos. 1343/03, 354/03, 357/03 (Aug. 17, 2005).

¶ 29. Count of harassment relating to damaged windows was dismissed as not rising to the level of harassment, where nothing adduced during the hearing evidenced that the damage to the windows constituted anything other than an annoyance to the occupant whose view through the windows is impaired. **Matter of Tenants of 13 East 17th Street**, Loft Bd. Order No. 3034 (Apr. 20, 2006), **adopting in part, rejecting in part**, OATH Index Nos. 1343/03, 1354/03, 1357/03 (Aug. 17, 2005).

¶ 30. Pursuant to subsection (d)(2) of this section, a current IMD owner may file an application with the Loft Board to terminate a prior finding of harassment. Application to terminate 1991 finding of harassment granted where remaining IMD tenants withdrew objections to the application pursuant to a negotiated settlement, outstanding fines were paid, and 7-B compliance achieved. **Matter of Falcon Properties Inc.**, OATH Index No. 444/07 (Mar. 27, 2007).

¶ 31. Application to vacate a finding of harassment, issued against former owner in 1993, is granted pursuant to subsection (d)(2)(i) of this section. There was no evidence of further harassment, the owner achieved Article 7-B compliance, paid all outstanding fines and properly registered the building. **Matter of Infinite Realty, LLC,** OATH Index No. 1219/08 (Feb. 8, 2008), **adopted**, Loft Bd. Order No. 3417 (Mar. 20, 2008).

FOOTNOTES

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[Footnote 2]: * Real Property Law cf. §235-d.

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-03 Hardship Applications.

(a) **Procedures.** (1) **Who may file.** (i) The owner of an interim multiple dwelling registered with the Loft Board may file an application for exemption of a building or portion thereof from Article 7-C of the Multiple Dwelling Law on the basis that compliance in obtaining a residential certificate of occupancy would cause hardship for any of the reasons set forth in §2-03(b) below.

(ii) A lessee of a whole building, any portion of which is an interim multiple dwelling registered with the Loft Board, may file an application for exemption from Article 7-C, provided that no application filed by a lessee shall be considered by the Loft Board unless the owner of the building consents in writing to the filing of such application.

(iii) A duly authorized agent (including the attorney) of the owner of an interim multiple dwelling registered with the Loft Board may file an application for exemption on behalf of the owner.

(2) **Filing deadline.** (i) Notices of application for exemption due to hardship for a building or portion thereof must be submitted to the Loft Board by no later than June 30, 1983 pursuant to §285(2) of the Multiple Dwelling Law. Such notices shall be filed by letter from the owner, lessee of the whole building or agent and shall only be accepted for buildings registered or which by June 30, 1983 had applied to register as interim multiple dwellings with the Loft Board.

(ii) The applicant must perfect his/her/its application by no later than October 31, 1983.

(iii) Notwithstanding any provisions of subparagraphs (i) and (ii) of this paragraph (2) to the contrary, the owner,

lessee of the whole building or agent of a registered interim multiple dwelling which is subject to coverage under Article 7-C solely pursuant to MDL §281(4) shall file his application on or before April 27, 1988 pursuant to MDL §285(2).

(3) **Perfecting hardship applications.** (i) An application shall only be accepted for a building with a current interim multiple dwelling registration.

(ii) The application shall be in a form acceptable to the Loft Board and shall be consistent with the requirements of these regulations, the Board's regulations relating to applications to the Board (regulations for Internal Procedures-§§1-06(a) to (j), and fees §2-11. The applicant must provide all information necessary or appropriate by no later than October 31, 1983 in order for the application to be considered. An additional time period of no more than sixty days for the submission of all required documentation in support of the completed application may be requested and will be granted if good cause is shown. The applicant must indicate the basis for the application, the residential units for which exemption is being applied for, and the specific claims for exemption being made. In addition, supporting data must be provided with the application whenever necessary or appropriate to fully set forth to explain the basis for the application. Where an applicant is unable to file all necessary and appropriate information by October 31, 1983, due to the absence of legalization regulations, but has filed submissions and paid the filing fee such applicant may request additional time to provide all necessary and appropriate information within 30 days of the effective date or legalization regulations adopted by the Loft Board. Notwithstanding the foregoing, an applicant who timely filed his application on or before April 27, 1988 for a hardship exemption involving an interim multiple dwelling subject to coverage under Article 7-C pursuant to MDL§281(4) must provide all additional information necessary or appropriate in support of such application on or before February 21, 1993.

(iii) In processing the application, the Loft Board may demand such additional information as it deems necessary or appropriate in making a determination. Failure of the applicant to provide any such information required by the Loft Board may result in the denial of the application.

(iv) Applications for exemption shall not be considered unless the owner has also filed an alteration application with the Department of Buildings. A copy of such alteration application must accompany each hardship application including two copies of the submitted plans and such additional copies of the plans as the Board may require. The Loft Board may vote to waive the requirement that an alteration application be filed and proceed with the consideration of the application for exemption. The approval of such a waiver shall apply only to the consideration of a hardship application and shall in no way affect the owner's obligation to file an alteration application for all other purposes as required by §284 of the Multiple Dwelling Law.

In deciding whether to waive the requirement that an alteration application be filed, the board will consider the following criteria:

(A) whether the information that would be contained in the alteration application is already available in other records or could be made available in an alternate form in other records or could be made available in an alternate form acceptable to the Board; and

(B) whether hardship can be proved without the information contained in the alteration application.

(v) Processing of an owner's application for exemption shall be in accordance with the rules regarding applications to the Board (Regulations for Internal Board Procedures-§§1-06(a) to (j), except as set forth below. These rules provide for the service of the application on all affected parties, opportunity to answer in writing, and the conducting of informal conferences and administrative hearings.

If a perfected application appears to the staff to be well rounded, there shall be conducted an administrative hearing following notice as provided pursuant to Internal Board Procedures at least sixty days in advance of the hearing date.

(b) **Processing of applications for exemption due to hardship.** (1) **Basis for application.** The basis for applying for an exemption due to hardship is that compliance with Article 7-C of the Multiple Dwelling Law in obtaining a legal residential certificate of occupancy would cause hardship for one of the following two reasons.

(i) **Adverse impact.** Compliance would cause an unreasonably adverse impact on a non-residential conforming use occupant existing on June 21, 1982 within the building, or compliance would cause an unreasonable adverse impact on a non-residential conforming use occupant existing on July 27, 1987 for a building which is subject to coverage under Article 7-C pursuant to MDL §281(4).

(ii) **Infeasible costs.** The costs of compliance would render legal residential conversion financially infeasible.

(2) **Appropriate tests.** (i) **Adverse impact.** The test for unreasonably adverse impact on a non-residential conforming use occupant existing on June 21, 1982, or on July 27, 1987 for a building subject to coverage under Article 7-C pursuant to MDL §281(4), shall be whether legal residential conversion would necessitate displacement of such occupant. An owner making a claim on this basis will be required to produce as part of the application, evidence to substantiate the claim. Displacement of non-residential conforming use occupants may include instances where:

(A) all or a critical portion, adversely affecting the conduct of business, of the space of an existing non-residential conforming use occupant would be lost as a result of the residential conversion;

(B) the nature of an existing non-residential conforming use would render legal residential conversion to be infeasible or illegal by causing an imminent peril to the health and safety of residential occupants;

(C) the result of the legal residential conversion would be unreasonably disruptive to the business of the non-residential conforming use; or

(D) the inability of an owner who purchased the building before June 21, 1982, or before July 27, 1987 for a building subject to coverage under Article 7-C pursuant to MDL §281(4), to expand his/her/its business which is an existing non-residential conforming use due to legal residential conversion would result in the elimination of existing jobs.

(ii) **Infeasible costs.** The test for cost infeasibility shall be that the owner would be unable to attain a reasonable return on his/her/its investment; not maximum return on investment.

(A) Reasonable rate of return on the owner's investment shall be defined as a net annual return of five percent or more where net annual return is the percentage amount by which the annual earned income from the building exceeds the annual operating expenses of the building.

(B) Earned income shall mean the maximum annual collectible rent for the building, including any and all escalators, for both residential and non-residential units, plus miscellaneous income from all other sources in the building including vending machines, and sign rentals. The Loft Board shall impute a rental value for vacant units or units occupied either residentially or non-residentially by the landlord, any member of the landlord's family or an employee of the landlord, at the fair market value for the space, or if subject to Article 7-C at the maximum legal rent.

(C) Operating expenses shall consist of the actual, reasonable cost of: fuel, labor, utilities, taxes other than income or corporate franchise taxes, fees, permits, necessary contracted services and non-capital repairs, insurance, parts and supplies, management fees and other administrative costs and interest on a bona fide mortgage. Criteria to be considered in determining a bona fide mortgage other than an institutional mortgage shall include: condition of the property; location of the property, the existing mortgage market at the time the mortgage is placed, the term of the mortgage, the amortization rate, the principal amount of the mortgage, security and other terms and conditions of the mortgage.

(D) **(a)** No application shall be approved unless the owner's equity in such building exceeds five percent of:

(1) the arms length purchase price of the property;

(2) the cost of any capital improvements for which the owner has not collected or will not collect a surcharge;

(3) any repayment of principal of any mortgage or loan used to finance the purchase of the property or, any capital improvements for which the owner has not collected or will not collect a surcharge; and

(4) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner.

(b) For the purposes of this paragraph, owner's equity shall mean the sum of: (1) the purchase price of the property less the principal of any mortgage or loan used to finance the purchase of the property,

(2) the cost of any capital improvement for which the owner has not collected or will not collect a surcharge less the principal of any mortgage or loan used to finance said improvement,

(3) any repayment of the principal of any mortgage or loan used to finance the purchase of the property or any capital improvement for which the owner has not collected or will not collect a surcharge, and

(4) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner.

An owner making a claim on this basis will be required to produce, as part of the application, evidence, subject to audit, based on a representative consecutive 12 month period beginning no earlier than January 1, 1982, or, for a building subject to coverage under Article 7-C pursuant to MDL §281(4), no earlier than January 1, 1987, of the current net annual return for the building and the projected net annual return following legalization including, but not limited to, current and projected earned income, operating expenses and equity information.

Inability to make a reasonable return on investment may include situations where the necessary and reasonable costs of compliance will cause residential units to rent at above prevailing market levels.

(3) **Processing guidelines.** (i) Applications for exemption due to hardship will not be granted if the result of self-created hardship.

(ii) Applications for exemption due to hardship will not be granted if compliance can be reasonably achieved through:

(A) alteration of units,

(B) relocation of tenants (residential) or non-residential conforming use) to vacant space within the building,

(C) re-design of space, or

(D) application for a non-use related variance, special permit, minor modification or administrative certification.

Owners filing hardship applications shall be required to make a reasonable attempt to cooperate with the tenants to achieve compliance through the methods listed above.

(iii) In considering such applications, the Loft Board shall require the owner and tenants to consider constructive suggestions for alternatives to the proposed legalization plan, which would allow for the minimum vacating of residential occupancy, without adversely affecting existing non-residential conforming uses.

(c) **Granting of applications.** (1) In resolving applications for exemption due to hardship, the Loft Board shall

grant only the minimum relief necessary to relieve any hardship.

(2) If the Loft Board approves an application for exemption due to hardship, the building or portion thereof for which the application is approved shall be exempt from Article 7-C of the Multiple Dwelling Law and may be converted to non-residential uses which must be in conformance with the zoning resolution and compatible with existing residential use. As a condition of approval of such application, the owner shall file with the Loft Board a certified copy of an irrevocable recorded covenant in form satisfactory to the Loft Board, enforceable by the City of New York for fifteen (15) years from the date of the recording, that the building or portion thereof for which the hardship exemption has been granted will not be re-converted to residential uses during that time.

When the Loft Board approves such an application, the owner will be notified of the Board's intent to approve the application and will be afforded an opportunity of no more than 90 days to file the required covenant. The Loft Board will issue its final order approving the application following receipt of the certified copy of the covenant. If proof of the filing of the required covenant is not filed with the Loft Board within 90 days, the application will be denied and the owner will be required to comply with Article 7-C of the Multiple Dwelling Law.

(3) If the hardship exemption is granted for a portion of the building, the IMD status for such building and the remaining residential units, covered under Article 7-C of the Multiple Dwelling Law in such building, shall not be affected, even if there are less than three qualified units remaining.

(4) In approving an exemption application due to hardship, the Loft Board may fix reasonable terms and conditions regarding the owner's payment to the residential occupant of any reasonable moving costs and the fair market value of any improvements made or purchased by the residential occupant, and a reasonable time period for relocation, not to exceed one year.

HISTORICAL NOTE

Subd. (a) pars (2), (3) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (b) par (2) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The Loft Board has strictly enforced the filing deadlines for the filing of hardship applications, and this policy has been upheld by the courts. Vlachos v. New York City Loft Board, 118 A.D.2d 378, 504 N.Y.S.2d 649 (1st Dept. 1986).

¶ 2. The fact that a building owner's IMD registration had lapsed when the owner filed a hardship application did not constitute a valid defense to the hardship application pursuant to subparagraph (a)(3)(i) of this section, where the Loft Board staff accepted a building owner's hardship application and did not advise the owner that the application was defective in any respect, and the owner cured the lapsed registration by renewal of the registration well before the hardship application was adjudicated. Matter of Prince, OATH Index No. 1506/95 (May 21, 1997), aff'd, Loft Bd. Order No. 2131 (Aug. 28, 1997).

¶ 3. A building owner's failure to file an application for an alteration permit before filing his hardship application did not constitute a defense to the hardship application pursuant to subparagraph (a)(3)(iv) of this section, because the owner asked the Loft Board for a waiver of the requirement of an alteration application and the Board never acted on the request or otherwise instructed the owner to file an alteration application, and the owner filed an alteration application before the hardship application was adjudicated. Matter of Prince, OATH Index No. 1506/95 (May 21, 1997), aff'd, Loft Bd. Order No. 2131 (Aug. 28, 1997).

¶ 4. Where a building owner's commercial use of a portion of an IMD was a moderate hazard as defined by

applicable codes, not a high hazard, legalization of the residential units of the IMD would not require relocation of the commercial use from the IMD, and therefore the hardship application pursuant to subparagraph (b)(1)(i) of this section was denied. Matter of Prince, OATH Index No. 1506/95 (May 21, 1997), aff'd, Loft Bd. Order No. 2131 (Aug. 28, 1997).

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RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-04 Minimum Housing Maintenance Standards.

(a) **Definitions.**

Landlord. As used in these regulations, the term "landlord" shall mean the owner of an interim multiple dwelling, the lessee of a whole building part of which is interim multiple dwelling, or the agent or other person having control of such dwelling.

Residential occupant. As used in these regulations, the term "residential occupant" shall mean an occupant of an interim multiple dwelling eligible for protection under Article 7-C of the New York State Multiple Dwelling Law.

(b) **Basic services.** Landlords of interim multiple dwellings shall provide the following minimum housing maintenance services to residential occupants eligible for the protection of Article 7-C of the Multiple Dwelling Law:

(1) **Water supply and drainage.** The landlord of an interim multiple dwelling (I.M.D.) shall provide and maintain a supply of pure and wholesome water at all times sufficient in quantity and pressure to provide for sanitary maintenance. The landlord shall properly maintain and keep in good repair the plumbing and drainage system. Where water mains are available in the street, every residentially occupied unit shall be supplied with water from such mains. The landlord shall keep the water free from connection to any unsafe water supply or from cross-connections to any drainage system.

Where a landlord of an I.M.D. installed or installs plumbing fixtures to residentially occupied units, (s)he shall maintain same in good working order.

(2) **Heat.** (i) Except as provided below, where there is a central heating system in an I.M.D. every residentially occupied unit shall be provided with heat from the system. During the period from October 1 through May 31, centrally supplied heat shall be provided so as to maintain every portion of the dwelling used or occupied for living purposes, between the hours of 6:00 AM and 10:00 PM at a temperature of at least 68 degrees Fahrenheit whenever the outside temperature falls below 55 degrees Fahrenheit, and between the hours of 10:00 PM and 6:00 AM at a temperature of at least 55 degrees Fahrenheit whenever the outside temperature falls below 40 degrees Fahrenheit.

(ii) Where a system of gas or electric heating has been provided for a residentially occupied unit such a system may be utilized instead of a central heating system where a central heating system is lacking or otherwise may be used to supplement a central heating system. During the period from October 1 through May 31, heat from individual systems of gas or electric heat where the landlord pays for operation shall be provided so as to maintain every portion of the dwelling used or occupied for living purposes, between the hours of 6:00 AM and 10:00 PM, at a temperature of at least 68 degrees Fahrenheit whenever the outside temperature falls below 55 degrees Fahrenheit, and between the hours of 10:00 PM and 6:00 AM at a temperature of at least 55 degrees Fahrenheit whenever the outside temperature falls below 40 degrees Fahrenheit.

(iii) The landlord may install individual heating systems to meet the landlord's obligation to either provide all the heat required pursuant to these regulations or to supplement the heat provided by an existing system, provided that the installation and system are approved for residential use by appropriate City agencies.

(iv) The landlord shall not object to the installation by a residential occupant of an individual heating system, provided that:

(A) such installation does not conflict with landlord's approved alterations plans;

(B) the installation and system are approved for residential use by the appropriate City agencies; and

(C) the residential occupant has requested in writing that the landlord make such an installation and the landlord has refused to comply with any such request within a reasonable time but in no event more than 45 days from the date of such request.

(v) The landlord shall maintain all central heating systems and all gas or electric heating fixtures and systems provided by the landlord to residentially occupied units in proper working order unless the parties otherwise agreed that the residential occupant will be responsible for maintenance of the gas or electric heating fixtures and systems used to heat his/her unit.

(3) **Hot water.** The landlord shall supply every bath, shower, washbasin and sink in all residentially occupied units in an interim multiple dwelling at all times between the hours of 6:00 a.m. and midnight with hot water at a constant minimum temperature of 120 degrees Fahrenheit from a central source of supply or from individual gas or electric hot water heaters except where such individual units have been previously installed and where responsibility for operation has been assumed by the residential occupant.

(4) **Electricity.** The landlord shall maintain electrical service to all residentially occupied units at all times in order to allow said units to obtain electric power. The intention of this standard is to afford electrical service to all residentially occupied units.

(5) **Gas.** Where gas service is currently provided to residentially occupied units the landlord shall cause the said service to be maintained in good working order. The landlord shall not unreasonably withhold his/her cooperation if the residential occupant wishes to install gas service at the residential occupant's cost and expense.

(6) **Smoke detectors.** By no later than March 1, 1983, all residentially occupied units within interim multiple dwellings shall be equipped with operational smoke detecting devices, either battery operated or receiving their primary

power from the building's electrical service, approved by the appropriate city agencies. If smoke detecting devices are not installed by March 1, 1983, residential occupants are authorized to install them on their own.

The residential occupant of a unit in which a battery operated smoke detecting device is provided and installed by the landlord shall reimburse the landlord a maximum of ten dollars for each such device. The residential occupant shall have one year from the date of installation to make such reimbursement. All sections of the Housing Maintenance Code relating to smoke detectors shall apply to interim multiple dwellings.

(7) **Public lighting.** The landlord shall provide and maintain electric lighting fixtures for every public hall, stair, firestair and fire tower on every floor and shall cause such required lights in all such fixtures to be turned on at sunset every day and to remain on until sunrise the following day on a 24-hour a day 7 day a week basis where natural light is not adequate.

(8) **Entrance door security.** The landlord shall properly maintain all existing entrance door security and at a minimum at least one door at each entrance must have a lock. All tenants must be provided with keys to all entrance door locks.

(9) **Elevator service.** The landlord shall not diminish nor permit the diminution of legal freight or passenger elevator service and shall cause said service to be maintained in good working order.

(10) **Window guards.** (i) The owner, lessee, agent or other person who manages or controls an interim multiple dwelling shall provide, install, and maintain, a window guard, of a type deemed acceptable by the Department of Health, installation to be made pursuant to specifications provided by the Department of Health, on the windows of each unit in which a child or children ten (10) years of age and under reside, and on the windows, if any, in the public halls of an interim multiple dwelling in which such children reside, except that this section shall not apply to windows giving access to fire escapes or to a window on the first floor that is a required means of egress from the dwelling unit. It shall be the duty of each such person who manages or controls an interim multiple dwelling to ascertain whether such a child resides therein.

(ii) No residential occupant of an interim multiple dwelling unit, or other person shall obstruct or interfere with the installation of window guards required by subsection (i), nor shall any person remove such window guards.

(iii) No owner, lessee or other person who manages or controls an interim multiple dwelling shall refuse a written request of a residential occupant of an interim multiple dwelling unit, to install window guards regardless of whether such is required by subsection (i), except that this section shall not apply to windows giving access to fire escapes.

(iv) The residential occupant of a unit in which window guards are provided and installed shall reimburse the landlord as follows: the residential occupant's share of the entire costs may be determined by adding:

(A) the residential occupant's pro-rata share of the full cost of window guards in the public areas (obtained by dividing said cost by the total number of residential units in the building); and

(B) the full cost of the window guards (including installation charges) installed within the residential occupant's unit. The cost may not exceed $16.00 per window guard.

(v) The residential occupants of the remaining units in the building shall reimburse the landlord for the remainder of the cost of window guards installed in the public areas based on their pro-rata shares, as defined in subparagraph (i), above. All reimbursement payments shall be payable within (90) days of installation.

(c) **Additional lease agreement services.** In addition to those services mandated by §2-04(b) of this Rule, owners, lessees of whole buildings and agents shall maintain and shall continue to provide to residential occupants services specified in their lease or rental agreement. In the absence of a lease or rental agreement, owners, lessees of whole

buildings and agents shall provide those services to residential occupants which were specified in the lease or rental agreement most recently in effect in addition to those services mandated in §2-04(b). There shall be no diminution of services. Nothing contained in these rules allows reduction in the prior services supplied by mutual agreement where those services exceed the services mandated by §2-04(b). Where the prior services are below those mandated by §2-04(b), the services mandated by §2-04(b) shall be provided.

(d) **Guide for the courts.** The services mandated by subdivisions (b) and (c) of this section shall provide a guide which courts can use as part of their determination as to whether registered parties are meeting their current and future responsibilities to residential loft occupants according to the Warranty of Habitability (Real Property Law §235-b(1)) for the interim multiple dwellings, until such time as this rule is amended or modified by the Loft Board.

(e) **Enforcement and penalties.** (1) **Staff.** The Loft Board authorizes staff hearing examiners or Administrative Law Judges at the Office of Administrative Trials and Hearing ("OATH"), if the Executive Director so determines, to conduct hearings on alleged violations of housing maintenance standards and to impose penalties in accordance with ranges of proposed fines adopted by the Loft Board, where such violations are determined to exist. The Loft Board further authorizes staff to take all steps necessary to enforce the minimum housing maintenance standards.

(2) **Inspections and notices of violation.** Staff employed or assigned to the Loft Board shall be authorized to conduct inspections in response to complaints or at the direction of the Loft Board or appropriate staff supervisors to determine whether violations of the Loft Board Minimum Housing Maintenance Standards exist. Upon a finding of violation, a notice of violation shall be issued to the landlord or his agent, describing the violation and the unit in which it exists, specifying the section of the Minimum Housing Maintenance Regulations violated, and establishing the maximum period of time permissible for cure of such violation. A copy of such notice of violation shall be left with an authorized person in charge at the premises, if such person is present, or posted in a conspicuous public place at the premises. In addition, a second copy of such notice of violation shall be sent by regular mail to the owner of record of the premises, or his designated agent, as indicated on the Interim Multiple Dwelling Registration form filed with the Loft Board. A copy of such notice of violation shall also be sent by regular mail to the tenant or tenants who made the original complaint.

Such notices of violation shall provide a minimum of seven days from the date of mailing to cure the violation.

(3) **Re-Inspections and issuance of notices to appear for a hearing.** A reinspection may be conducted to determine whether a violation has been cured at any time after the period for cure specified in the original notice of violation has elapsed. If the violation has not been cured, a notice to appear at a Loft Board hearing shall be issued. Such notice shall contain:

(i) a clear and concise statement sufficient to inform the respondent of the essential facts concerning the violation and the unit in which it exists;

(ii) specification of the section of the Minimum Housing Code Standards allegedly violated;

(iii) information as to the maximum penalty assessable if the facts are found to be as alleged in whole or in part;

(iv) specification of the time and place of the hearing;

(v) advice that respondent is entitled to be represented by counsel, to present evidence and to examine and cross-examine witnesses;

(vi) advice of respondent's right to file with the Loft Board an answer admitting, denying or admitting the violation with an explanation, prior to or at the hearing.

Such notice of hearing shall be served by leaving a copy with an authorized person in charge at the premises, or, in

the absence of such person, by posting in a conspicuous public place at the premises. In addition, a second copy of such notice of hearing shall be sent by regular mail to the owner of record of the premises, or his designated agent, as indicated on the Interim Multiple Dwelling Registration form filed with the Loft Board.

A copy of the notice of hearing shall also be sent by regular mail to the tenant or tenants of any units where violations which are the subject of such hearing are alleged to have occurred.

(4) **Hearings.** Hearings will be conducted by staff hearing examiners or OATH Administrative Law Judges, who will determine whether each violation alleged is sustained by the evidence, whether the landlord-respondent is responsible for providing the particular service in question, and whether the landlord- respondent has made good faith efforts to provide such service. Formal rules of evidence shall not apply to such hearings. Where a hearing is conducted by an OATH Administrative Law Judge, such hearing shall be conducted in accordance with the procedures governing such hearings before the Loft Board.

When the hearing examiner or OATH Administrative Law Judge makes a finding that the violation exists and that the landlord is responsible, he or she shall impose a penalty in accordance with the recommended range of penalties promulgated by the Loft Board. The hearing examiner shall be authorized to suspend the penalty when a good faith effort to provide services is demonstrated.

The Loft Board shall have the burden of proving the factual allegations contained in the notice of hearing by a fair preponderance of the evidence; however, each notice of hearing shall be maintained by the Board as a record kept in the regular course of business and shall be prima facie proof of the facts contained therein.

Hearings shall be electronically recorded and the original recording shall be part of the record and the sole official transcript of the proceeding.

A written decision sustaining or dismissing each allegation in the notice of hearing shall be rendered by the hearing examiner or OATH Administrative Law Judge promptly after the conclusion thereof. Each decision, a copy of which shall be served forthwith on the respondent by regular mail, shall contain brief findings of fact, conclusions of law, and, where appropriate, an order imposing a civil penalty.

(5) **Appeals to the Board.** An appeal from a determination of a hearing officer issued pursuant to this section 2-04 shall be brought in accordance with the provisions of section 1-07.1 of these rules.

(6) **Willful violations of the standards.** Where a hearing examiner or OATH Administrative Law Judge determines that violations of the Minimum Housing Maintenance Standards are willful on the part of the landlord, the hearing examiner or OATH Administrative Law Judge shall include in any order issued, a finding that the building in which such violations exist shall be deemed not to be in compliance with Article 7-C, for purposes of assertion of the landlord's rights under Multiple Dwelling Law §285(l).

A second finding sustaining a violation for the same condition within a 6-month period, shall be presumed willful for purposes of this paragraph (6).

A finding that a building is not in compliance with Article 7-C because of a willful violation of the Minimum Housing Maintenance Standards may be removed by the landlord coming forward to request a re-inspection to confirm that the violation has been corrected. If the Loft Board staff person conducting such inspection determines that the violation or violations have been corrected, and so certifies, a copy of his or her inspection report shall be filed with the prior order and the building shall be deemed in compliance with Article 7-C for purposes of MDL §285(l).

A finding of a willful violation of Minimum Housing Maintenance Standards will be considered as evidence of harassment of residential tenants by the landlord.

(7) **Outstanding, unpaid fines.** The registration as an IMD shall not be renewed for any building for which fines have been imposed, for violations of the Minimum Housing Maintenance Standards, until such fines are paid in full.

(8) **Range of fines for violations.**

Section	Violation	Range of Fines
2-04(b)(1)	Failure to provide or maintain a safe water supply or plumbing and drainage systems	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(2)	Failure to provide adequate heat	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(3)	Failure to supply hot water	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(4)	Failure to maintain electrical service to residential units	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(5)	Failure to maintain gas service in good working order	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(6)	Failure to provide smoke detectors	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(7)	Failure to provide lighting in public areas of the building	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(8)	Improper maintenance of entrance door security; failure to provide keys	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(9)	Failure to provide or improper maintenance of elevator service	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(10)	Failure to provide window guards	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(c)	Failure to provide other minimum housing maintenance services	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (e) amended City Record Dec. 23, 1994 eff. Jan. 22, 1995.

Subd. (e) par (5) repealed and added City Record July 15, 1998 eff. Aug. 14, 1998. [See T29 §1-07.1 Note 1]

Subd. (e) par (8) amended City Record Aug. 21, 2006 §1, eff. Sept. 20, 2006. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 21, 2006:

The Loft Law fine schedule, established on the basis of authority granted to the Loft Board by §282 of the Multiple Dwelling Law, has not been updated since the inception of the law (September 30, 1982). The proposed increases in the fine schedule are modest in comparison to similar increases in City, State, and Federal statutes over the same time period.

CASE AND ADMINISTRATIVE NOTES

¶ 1. After trial on one diminution of services application, while the Loft Board's decision on that application was pending, a second diminution of services application, based on allegations that the same conditions remained after trial on the first application, was dismissed without prejudice. Unless the Loft Board decides the first application by issuing an order requiring the landlord to restore services, and until a reasonable time thereafter is afforded for the landlord to comply with that order, the second diminution of services application is premature. Matter of Davies, OATH Index No. 888/97 (Jan. 3, 1997), aff'd, Loft Bd. Order No. 2084 (Mar. 20, 1997).

¶ 2. Because the only relief available in a tenant-initiated diminution of services application is prospective-i.e., an order requiring the landlord to restore services-the relevant issue at trial of a diminution of services application is whether services are diminished as of the time of trial. Past diminution of services that have been restored before trial cannot logically be the subject of a prospective order to restore services. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 3. Because a willfulness finding is not a remedy available in a tenant-initiated diminution of services application, the state of mind of the landlord and the reasons for not providing required services are largely irrelevant. Tenants need not show that the owner intentionally or maliciously failed to provide services required by this section. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 4. This section prohibits the diminution of services that were actually provided after the lease expired, even if the lease did not require the building owner to provide such services. Matter of 29 John Street Tenants' Association, OATH Index No. 1982/96 (Nov. 20, 1996), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2058 (Jan. 30, 1997).

¶ 5. Although the remedies available in a Loft Board-initiated enforcement proceeding may differ from those available in a tenant-initiated diminution of services application, the permissible scope of the two types of proceedings is the same. That is, any item that would constitute a violation in an enforcement proceedings would constitute a tenant-actionable diminution of services. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 6. Building owners are obligated to provide the services enumerated in paragraph (b) of this section, as well as services required by leases, rental agreements or otherwise pursuant to paragraph (c) of this section, including services mandated by the statutory warranty of habitability, which is deemed to be incorporated into any residential lease or rental agreement. Failure to provide any of these services is actionable by a diminution of services application. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 7. The alleged failure of a building owner to comply with provisions of the Loft Board's rules other than this section is not properly the subject of a diminution of services application. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 8. Pursuant to paragraph (a) of this section, a diminution of services application may be brought only by a residential occupant protected by the Loft Law. Matter of 29 John Street Tenants' Association, OATH Index No. 1982/96 (Nov. 20, 1996), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2058 (Jan. 30, 1997).

¶ 9. The Loft Board lacks authority to award a rent reduction to tenants who prevail on a diminution of services application. Matter of 29 John Street Tenants' Association, OATH Index No. 1982/96 (Nov. 20, 1996), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2058 (Jan. 30, 1997).

¶ 10. Whether a building owner could include the costs of installing individual heating units and electrical meters as code compliance costs pursuant to §2-01(i) of this chapter was not determined as part of the tenants' diminution of services application pursuant to this section, but was deferred until the owner applies for a code compliance rent adjustment. Matter of 29 John Street Tenants' Association, OATH Index No. 1982/96 (Nov. 20, 1996), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2058 (Jan. 30, 1997).

¶ 11. The only relief that tenants may obtain in a diminution of services application against their landlord is a Loft Board order requiring the landlord to restore the improperly diminished services. Relief may not include damages, rent abatements, fines, or willfulness findings. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 12. Due in part to the landlord's reliance on a water pump that cannot operate 24 hours a day, water pressure was inadequate under subparagraph (b)(1) of this section, which requires that adequate water pressure be maintained "at all times." Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 13. Inadequate provision for ordinary maintenance and repair constituted a diminution of services. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 14. A landlord-tenant agreement requiring the landlord to restore freight elevator service, without stating a deadline for such restoration, was not a waiver of the tenants' right to such service for any period of time, and was not intended as an open-ended, non-binding commitment by the landlord. Therefore, the landlord's failure to provide freight elevator service constituted a diminution of services pursuant to subparagraph (b)(9) of this section. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 15. Although subparagraph (b)(9) of this section prohibits a landlord from reducing or eliminating only freight elevator service that was legal, clauses in leases and in a landlord-tenant agreement requiring the provision of freight elevator service are presumed to have contemplated the provision of legal elevator service. Therefore, because the landlord in effect had contracted to provide legal freight elevator service, the failure to do so constituted a diminution of services. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 16. Noise from a performance art space in a loft building caused disturbances to the residential tenants in their use of their lofts that were not **de minimis,** but occurred regularly, frequently, and late at night, disturbed the ordinary and reasonable uses of a residential tenancy, and therefore constituted a diminution of services notwithstanding the absence of decibel readings. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 17. The compromise of building security caused by a commercial tenant opening the building doors to the public during performances in the commercial tenant's space constituted a diminution of services pursuant to subparagraph (b)(8) of this section. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 18. Noise and security problems created by a commercial tenant were legally attributable to the building owner, and constituted an actionable diminution of services. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 19. Where freight elevator service was not required by the lease in effect as of the effective date of the Loft Law, and had not actually been provided since before that lease was executed in 1979, failure to provide freight elevator service was not a diminution of services. Matter of Ando, OATH Index No. 1829/96 (Sept. 17, 1996), aff'd, Loft Bd. Order No. 2036 (Nov. 21, 1996).

¶ 20. Although a lease rider arguably required the owner to restore the freight elevator and perform work, at the tenants' expense, the tenants waived their right to have freight elevator service restored when three of the four tenants declined to pay the expenses for the restoration work, and when the tenants took no steps to enforce the lease rider, even after receiving notice that the owner intended to permanently remove the freight elevator. Matter of Ando, OATH Index No. 1829/96 (Sept. 17, 1996), aff'd, Loft Bd. Order No. 2036 (Nov. 21, 1996).

¶ 21. Enforcement proceedings pursuant to paragraph (e) of this section, which may result in imposition of fines against landlords and findings of willful violations of the minimum housing maintenance standards, may only be brought by the Loft Board, and not by tenants. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 22. A tenant is not a party to a Loft Board-initiated enforcement proceeding pursuant to paragraph (e) of this section, and therefore lacks standing to oppose the Loft Board's motion to withdraw one of the violations underlying the proceeding. Loft Board v. Tekosky, OATH Index No. 470/97 (Apr. 18, 1997).

¶ 23. Breaches of the statutory warranty of habitability constituted violations of the minimum housing maintenance standards pursuant to paragraph (c) of this section. Loft Board v. Difar Realty Corp., OATH Index Nos. 1970-71/96 (Aug. 14, 1996).

¶ 24. Violations of applicable housing codes or other laws constitute breaches of the statutory warranty of habitability, provided that those violations are not **de minimis,** and therefore such violations also constitute violations of the minimum housing maintenance standards pursuant to paragraph (c) of this section. Loft Board v. Difar Realty Corp., OATH Index Nos. 1970-71/96 (Aug. 14, 1996).

¶ 25. Pursuant to paragraph (c) of this section, a building owner is obligated to keep the premises in good repair, except that it is the tenants' obligation to maintain and repair installations made by residential tenants, internal to their lofts, where the tenants leased raw space and did their own renovations. Loft Board v. Difar Realty Corp., OATH Index Nos. 1970-71/96 (Aug. 14, 1996).

¶ 26. For five violations pertaining to maintenance and repair of loft unit windows, the penalty was imposition of the maximum fine of $500 per violation, and the building owners were ordered to cure the violations within 30 days. Loft Board v. Difar Realty Corp., OATH Index Nos. 1970-71/96 (Aug. 14, 1996).

¶ 27. For failure to maintain a fire stairs tread in a safe condition, the owner was fined the maximum of $500, and ordered to cure the violation within 30 days. Loft Board v. Difar Realty Corp., OATH Index Nos. 1970-71/96 (Aug. 14, 1996).

¶ 28. Based on the building owner's many years of failing to supply required elevator service, the violation was found to be willful and the owner was fined the maximum of $500 and was ordered to cure the violation within 30 days. Loft Board v. Bramwill El Corp., OATH Index No. 1967/96 (Sept. 18, 1996).

¶ 29. Settlement of a Loft Board-initiated enforcement proceeding pursuant to paragraph (e) of this section allowed the building owner additional time to cure the 13 violations of the minimum housing maintenance standards at issue and

provided for imposition of penalties for violations not cured within that additional time. Upon expiration of the additional time, six violations remained uncured, five of which concerned defective or inoperable windows in loft units and one of which concerned a damaged wood floor in a loft unit. The maximum penalty of $500 was imposed for each violation, for a total fine of $3,000, based on the lengthy period of time since the violations were issued, the unexplained lack of any work to cure the violations, the seriousness of the neglect of the conditions at issue and their immediate need for attention. Loft Board v. Berger, OATH Index No. 468/97 (Feb. 19, 1997).

¶ 30. Settlement of a Loft Board-initiated enforcement proceeding pursuant to paragraph (e) of this section allowed the building owner additional time to cure the inadequacy of heat provided to one of the loft units. After that additional time, the inadequacy remained, and the penalty imposed was a $500 fine, the maximum pursuant to subparagraph (e)(8) of this section. Loft Board v. BLF Realty Holding Corp., OATH Index No. 1003/97 (July 17, 1997).

¶ 31. The severity of the building owner's continuing failure to provide freight elevator service was not mitigated by the complaining tenant's persistent tampering with the elevator, which caused the elevator to break down, because the tenant's tampering was caused by the owner's installation of a locking device that improperly deprived the tenant of elevator service. The penalty imposed for the violation of minimum housing maintenance standards was $350, pursuant to subparagraph (e)(8) of this section. Loft Board v. BLF Realty Holding Corp., OATH Index No. 1289/97 (June 2, 1997).

¶ 32. In a Loft Board-initiated enforcement proceeding, the maximum penalty pursuant to subparagraph (e)(8) of this section, a $500 fine, was imposed for a building owner's failure to provide heat and hot water to a residential unit during March. Loft Board v. G.J.'s Realty Corp., OATH Index No. 1670/97 (June 30, 1997).

¶ 33. A building owner's failure to replace broken glass in a skylight in a public hallway was penalized by imposition of a $100 fine pursuant to subparagraph (e)(8) of this section. Loft Board v. G.J.'s Realty Corp., OATH Index No. 1670/97 (June 30, 1997).

¶ 34. For two violations of the minimum housing maintenance standards, one pertaining to a defective skylight in a tenant's loft unit, and one pertaining to a roof leak in the same unit, the maximum penalty of $500 per violation was imposed pursuant to subparagraph (e)(8) of this section, because, even after service of the notice of violation and the notice of hearing the building owner had not communicated with the tenant concerning repairs. Loft Board v. Geulah Realty, OATH Index No. 1968/96 (Oct. 4, 1996).

¶ 35. For two violations of the minimum housing maintenance standards, one pertaining to broken glass in a loft unit's skylight and one pertaining to a roof leak in the same unit, each violation being a second offense pursuant to subparagraph (e)(8) of this section, the penalty imposed was the maximum, or $750 per violation, for a total fine of $1,500. Loft Board v. Guelah Realty, OATH Index No. 1287/97 (Apr. 4, 1997).

¶ 36. Two violations of the minimum housing maintenance standards were found to be willful pursuant to subparagraph (e)(6) of this section because each violation was the second finding of the same condition within a six-month period. Loft Board v. Guelah Realty, OATH Index No. 1287/97 (Apr. 4, 1997).

¶ 37. A missing air vent cover in the bathroom of a loft unit was not a violation of the minimum housing maintenance standards pursuant to paragraph (c) of this section, absent proof that the matter had substantial effect on the habitability of the unit and was not **de minimis,** and absent proof that the vent was not installed by the tenant and therefore was not the tenant's responsibility. Loft Board v. Difar Realty Corp., OATH Index Nos. 1970-71/96 (Aug. 14, 1996).

¶ 38. Three violations of Minimum Housing Maintenance Standards were outstanding for more than one year without any effort by owner to cure. Maximum fine of $500 imposed for each. **Loft Bd. v. Evergreen Realty,** OATH Index No. 671/99 (Nov. 2, 1998).

¶ 39. Maximum fine of $500 imposed for each of two serious violations, a leaking roof and defective skylight, and owner ordered to cure conditions. **Loft Bd. v. Geulah Realty,** OATH Index No. 1968/96, mem. dec. (Oct. 4, 1996).

¶ 40. Owner is fined for three outstanding violations of the Minimum Housing Maintenance Standards, including defective plaster wall, defective ceiling tiles and rodent infestation. The maximum fine of $500 is imposed for rodent infestation due to the health hazard posed and owner's failure to adequately address the violation. The other two violations were minor in nature, the owner undertook to repair them and they were not hazardous, thus a $300 fine is imposed for each. **Loft Bd. v. Centry Realty, Inc.,** OATH Index No. 1673/97 (Mar. 30, 1998).

¶ 41. Violations of Minimum Housing Maintenance Standards, a leaking roof and defective skylight, constituted breach of statutory warranty of habitability under Real Property Law section 235-b(1), which extends to residential tenants of interim multiple dwellings pursuant to this section. **Loft Bd. v. Geulah Realty,** OATH Index No. 1968/96, mem. dec. (Oct. 4, 1996).

¶ 42. Once evidence establishes that violations existed, respondent's efforts to cure the violations after the commencement of an enforcement proceeding can only bear upon the fine to be imposed, even if those efforts were successful. **Loft Bd. v. Centry Realty, Inc.,** OATH Index No. 1673/97 (Mar. 30, 1998).

¶ 43. Petitioner established that the owner of loft buildings neglected violations for almost two years. The owner failed to provide window guards as required by subparagraph (b)(10) and failed to repair roof leaks, a violation of the statutory warranty of habitability, thus constituting a diminution of services under subparagraph ;cw). Administrative law judge found that the maximum fine of $500 per violation was appropriate because of the duration and seriousness of the violations. Owner ordered to cure violations within 30 days. **Loft Bd. v. Grand Morgan Realty Corp.**, OATH Index No. 2240/99, mem. dec. (Aug. 19, 1999).

¶ 44. In a default proceeding, owner had leaky and defective boiler in the cellar, in violation of subparagraph (b)(2)(v), which requires that all central heating systems be in proper working order. Owner was fined $400. **Loft Bd. v. Kang**, OATH Index No. 2236/99, mem. dec. (Aug. 18, 1999).

¶ 45. In a default proceeding, respondent owner's building had a leaky roof over the kitchen of a unit, in violation of this section. Testimony established that it was a longstanding problem and owner had made no effort to cure violation upon reinspection. Accordingly, a maximum fine of $500 was imposed. **Loft Bd. v. Song**, OATH Index No. 2237/99, mem. dec. (Aug. 11, 1999).

¶ 46. Violations for broken window glass and erosion of one metal ceiling were not addressed by owner upon reinspection. Because these were first violations by this owner, the administrative law judge found that the infractions were non-willful and assessed a fine of $300 per violation. **Loft Bd. v. Noah Trading Co.**, OATH Index No. 1588/99, mem. dec. (Apr. 27, 1999).

¶ 47. Maximum fine of $500 was imposed for each of six violations: eroded metal cornice, eroded plaster, unpainted ceilings, eroded mortar joints and bricks, eroded flashing, and broken wire glass. Inasmuch as violations were willful, the building was deemed to be out of compliance with Article 7-C for purposes of assertion of the landlord's rights under Multiple Dwelling Law section 285(1), pursuant to paragraph (6) of this rule. **Loft Bd. v. Knickerbocker Paper Recycling**, OATH Index No. 2241/99, mem. dec. (Sept. 17, 1999).

¶ 48. Cracks in glass roof were a violation of the statutory warranty of habitability and the building's proprietary lease where, pursuant to the lease, the owner was responsible for the maintenance of the building's roof. Administrative law judge also found that the violation of the warranty of habitability was more than **de minimus**. Under Real Property Law section 235-b(1), the warranty of habitability has three components: (1) the owner must keep the leased premises and attendant common areas "fit for human habitation"; (2) the owner must keep those areas "fit for the uses reasonably intended by the parties"; and (3) the owner must keep those areas free from "any conditions which would be dangerous, hazardous or detrimental to [the occupant's] life, health or safety." Cracks in a glass roof violate all three elements

enumerated above. Petitioner presented no evidence that violation was willful pursuant to subparagraph (e)(6). Given that the tenant withheld rent and had a history of refusing access to those seeking to make repairs in her unit, a $100 fine was imposed and the owner was ordered to cure the violations. **Loft Bd. v. 85-87 Mercer Street Associates, Inc**., OATH Index No. 2005/99, mem. dec. (Sept. 30, 1999).

¶ 49. In a Board-initiated proceeding to determine which of two sets of proposed legalization plans should be adopted, the owner was required to modify plans to provide for restoration of freight elevator service. Although tenant's lease did not provide for freight elevator service to the tenant, owner was required to provide service where it was continuously provided during the lease period and for several years after its expiration pursuant to subparagraph (b)(9) and ;cw) of this section, which prohibit the diminution of legal freight elevator service. Owner's "conscious unawareness" of tenant use did not shield him from obligation to provide services. **Matter of 24 Harrison Street**, OATH Index No. 1120/96 (Feb. 12, 1999), **aff'd**, Loft Bd. Order No. 2380 (Mar. 23, 1999).

¶ 50. In default proceeding, administrative law judge imposed the maximum fine of $500 for a first time violation of the Loft Board's minimum housing maintenance standards due to owner's failure to provide running water for a three-month duration, and the owners' failure to date to make any effort to remedy the condition or to respond to the tenant, the Loft Board or OATH in regard to the condition. **Loft Board v. Hauser & Arnold Industries,** OATH Index No. 1021/00, mem. dec. (Jan. 28, 2000).

¶ 51. On owner's default, Loft Board proved the amended violations and the owner's willful failure to cure them for more than three months. Inasmuch as violations are willful, building is deemed to be out of compliance with Article 7-C for purposes of assertion of the landlord's rights under Multiple Dwelling Law § 285 (1), pursuant to 2-04 (e)(6). Administrative law judge imposed total fine of $1,000. **Loft Board v. Rahman New York, Inc.,** OATH Index No. 2336/00, (Aug. 31, 2000)

¶ 52. Administrative law judge required IMD owner to continue to supply electricity to tenant without charge where this arrangement continued for the past twelve years. The owner's application to pass along this cost to protected occupant was not supported by the Loft Board's rent adjustment regulations nor by its housing maintenance regulations. **See** Multiple Dwelling Law §286; 29 RCNY §§ 2-04(c)), 2-06 (July 31, 1999). The judge rejected the owner's argument that it could now invoke a provision in a 1995 lease, providing for the right to discontinue supplying electrical services, because it had expired and was no longer enforceable. Moreover, Loft Board precedent has required the continuation of services where those services have been provided after the expiration of the lease under 2-04(c). **Matter of 180 Duane Street, LLC,** OATH Index No. 1468/00 (June 9, 2000), **aff'd,** Loft Bd. Order No. 2534 (June 29, 2000).

¶ 53. New owner's legalization plan, which omitted the roof, unreasonably interfered with tenant's occupancy and constituted a diminution of services where tenant has resided in unit for sixteen years and during that time has had unfettered use of a roof adjoining her apartment. Notwithstanding the leases that governed tenant's tenancy between 1984 and 1996 made no mention of the roof, long-term use in the circumstances of this case requires a finding of diminution of services in violation of 2-04(c). **Matter of McGehee,** OATH Index No. 1306/00 (Dec. 1, 2000), **aff'd,** Loft Bd. Order No. 2599 (Dec. 19, 2000).

¶ 54. Subsection (b)(9) of the Loft Board's minimum housing maintenance standards prohibit an owner from diminishing legal freight or passenger elevator service provided for in the lease. **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 55. Missing window guards, a broken skylight and leaking roof constitute violations of Loft Board's minimum housing maintenance standards, pursuant to subsections (c) and (d) of this section (incorporating warranty of habitability into housing maintenance standards). **Loft Bd. v. Lipkis,** OATH Index No. 1657/01 (Oct. 22, 2001).

¶ 56. Hiring of security guard and adoption of guest sign-in policy was reasonable, given landlord's duty to provide

appropriate controls on public access to residential portions of the building (29 RCNY § 2-04(b)(8)). **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 57. Loft Board failed to prove that legal passenger elevator services were provided to residential occupants on June 21, 1982, and therefore violation alleging improper discontinuance of service was dismissed. **Loft Bd. v. Rudd Realty Management,** OATH Index No. 289/03, mem. dec. (Dec. 11, 2002).

¶ 58. Loft Board failed to show that leases in effect during the window period permitted passenger elevator use by the tenants, and therefore violation alleging improper diminution of lease services pursuant to subsection (c) of this section was dismissed. **Loft Bd. v. Rudd Realty Management,** OATH Index No. 289/03, mem. dec . (Dec. 11, 2002).

¶ 59. For a first finding of a violation under subparagraph (e) of this rule, the maximum penalty which can be imposed is $500 per violation. **Loft Bd. v. Kates,** OATH Index No. 1861/02, mem. dec. (Nov. 4, 2002).

¶ 60. Administrative law judge held that Loft Board rules do not mandate tenant dominion over the thermostat controls to ensure that temperature requirements are carried out. **Matter of Bernstein,** OATH Index No. 1710/02 (Aug. 1, 2003), **aff'd,** Loft Bd. Order No. 2823 (Oct. 6, 2003).

¶ 61. Administrative law judge held that no intercom system required where Loft Board rules only require that the landlord "properly maintain all entrance door security and at a minimum one door at each entrance must have a lock." **Matter of Bernstein,** OATH Index No. 1710/02 (Aug. 1, 2003), **aff'd,** Loft Bd. Order No. 2823 (Oct. 6, 2003).

¶ 62. Administrative law judge held that tenant was not legally entitled to freight elevator service absent an agreement between the owner and the tenants requiring that the landlord provide freight elevator service as of June 21, 1982, the effective date of the Loft Law. **Matter of Bernstein,** OATH Index No. 1710/02 (Aug. 1, 2003), **aff'd,** Loft Bd. Order No. 2823 (Oct. 6, 2003).

¶ 63. Administrative law judge found that the practice of leaving the front door of a loft building open until 9 p.m. every night for the commercial tenant constituted a diminution of services. **Matter of Bernstein,** OATH Index No. 1710/02 (Aug. 1, 2003), **aff'd,** Loft Bd. Order No. 2823 (Oct. 6, 2003).

¶ 64. In consolidated Loft Board diminution of services and harassment applications, administrative law judge found that the current owner diminished elevator services that had been provided by predecessor owner as of the effective date of the Loft Law, June 21, 1982. **Matter of Rebo,** OATH Index Nos. 924/03 & 926/03 (Dec. 18, 2003), **aff'd,** Loft Bd. Order No. 2840 (Jan. 15, 2003).

¶ 65. A fifth floor tenant filed an application with the Loft Board alleging that leaks in his loft unit constituted a diminution of services. A Loft Board enforcement proceeding is not the exclusive remedy for a building maintenance problem; where the problem constitutes a reduction in services which the tenant originally possessed, the tenant may file a diminution of services application under subsections (c) and (d) of this section. Based upon the undisputed evidence presented at the hearing of persistent leaks in the unit, the administrative law judge recommended that the Loft Board grant the tenant's application, and that the condominium be ordered to repair the roof. **Matter of Reginato,** OATH Index No. 750/03 (May 29, 2003), **aff'd,** Loft Bd. Order No. 2806 (June 19, 2003).

¶ 66. Administrative law judge found no diminution of services where building superintendent's knowledge that the tenants had operated the elevators between 1980 and June 21, 1982, could not be imputed to owner because the superintendent lacked authority to grant consent to 24-hour elevator service and because, upon being informed of the tenants' operation of the elevators, the owner promptly locked the elevators so the tenants could no longer use them. **Matter of Hennen,** OATH Index No. 925/03 (Apr. 23, 2003), **aff'd,** Loft Bd. Order No. 2833 (Nov. 13, 2003).

¶ 67. Administrative law judge held that owner's plan to eliminate access to the neighbor's area by erecting a wall

as required for legalization was not a diminution of services under subsection (d)(2)(iv) of this section where owner had no part in providing the space the applicant seeks to have taken from her neighbor. **Matter of Vander Heyden,** OATH Index No. 438/03 (Apr. 22, 2003), **aff'd,** Loft Bd. Order No. 2799 (May 15, 2003).

¶ 68. Administrative law judge held that owner's revised plans met all of the objections raised by the window period tenant in the unreasonable interference and diminution of services applications. **Matter of Vander Heyden,** OATH Index No. 438/03 (Apr. 22, 2003), **aff'd,** Loft Bd. Order No. 2799 (May 15, 2003).

¶ 69. Notwithstanding agreement that provided that the owner may subject the elevator to "reasonable regulation," administrative law judge found that owner diminished freight elevator service in violation of 29 RCNY 2-04(c) when it padlocked elevator which had been available to tenants on a twenty-four hour per day, seven day per week basis since prior to the window period. **9-01 44TH Drive Tenants Association v. Corastor Holding Co., Inc.**, OATH Index No. 224/04 (Jan. 21, 2004), **aff'd**, Loft Bd. Order No. 2851 (Mar. 18, 2004).

¶ 70. The Loft Board has never stated that a diminution of services claim pursuant to subsection (c) of this section must be based on a violation of a lease, building code provision, or Loft Board housing maintenance rule. A diminution claim may be based upon a decline in the quality of a service which had been provided-in this case, damaged windows which were not repaired. **Matter of Tenants of 13 East 17th Street**, Loft Bd. Order No. 3034 (Apr. 20, 2006), **adopting in part, rejecting in part**, OATH Index Nos. 1343/03, 1354/03, 1357/03 (Aug. 17, 2005).

¶ 71. Loft Board rejected ALJ's ruling that the relevant date for determining whether services were provided is May 1, 1987 because the building was covered on that date, pursuant to the 1987 amendments to the Loft Board. Instead the Board holds that the relevant date is June 21, 1982, even for buildings, like this one, which were first eligible for coverage in 1987. **Matter of Maugenest**, Loft Bd. Order No. 3125 (Nov. 16, 2006).

¶ 72. Only the Loft Board may file an application under subsection (e) of this section alleging violations of housing maintenance standards. Tenant-initiated applications concerning housing maintenance standards are limited to diminution of services claims under subsection (c) of this section. **Matter of Ashley**, Loft Bd. Order No. 3350 (Oct. 18, 2007), **adopting in part, rejecting in part**, OATH Index No. 1061/06 (Apr. 16, 2007).

¶ 73. The imposition of a fine is not an available remedy in a tenant-initiated diminution of services application pursuant to subsection (c) of this section. A Loft Board enforcement application for violations of the minimum housing standards and a tenant-initiated diminution of services application have different remedies. The authority to impose fines for violations of the minimum housing standards is derived from subsection (e) of this section, which relates only to Loft Board initiated applications, not tenant initiated ones. **Turner v. M-Raj 114 Franklin Street, LLC**, OATH Index No. 1787/07 (Oct. 17, 2007), **adopted**, Loft Bd. Order No. 3419 (Mar. 20, 2008).

¶ 74. Services provided by the lease terms are presumed legal or are required to be brought up to code. The owner has an obligation to provide legal elevator service regardless of whether the previous use was legal. **Matter of 25 Jay Street Tenants Assoc**., OATH Index No. 1210/07 (July 19, 2007), **adopted**, Loft Bd. Order No. 3418 (Mar. 20, 2008).

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-05 Registration.

(a) **Definitions.**

Landlord. As used in these regulations, the term "landlord" shall mean the owner of an interim multiple dwelling, the lessee of a whole building part of which is an interim multiple dwelling, or the agent or other person having control of such a dwelling.

Residential Occupant. As used in these regulations, the term "residential occupant" shall mean an occupant of an interim multiple dwelling eligible for protection under Article 7-C of the New York State Multiple Dwelling Law.

(b) **Procedure.** The following "Information and Instruction to Owners, Lessees and Agents of Interim Multiple Dwellings" constitute the procedures for registration of Interim Multiple Dwellings pursuant to §284(2) of Article 7-C of the New York State Multiple Dwelling Law. Applications for registration shall be in a form promulgated by the Loft Board.

Instruction-Interim Multiple Dwelling Registration Application-Part A.

(1) Print, using black ink only, all information in completing the registration form. Detach this information and instruction sheet and return copies of the form, when completed to: "I.M.D." REGISTRATION, New York City Loft Board.

Registration forms must be filed for all Interim Multiple Dwellings by January 31, 1983 to avoid payment of an

initial registration fee.

(2) The information requested on the registration form and Rider(s) are required pursuant to §§284(2) and 325 of the New York State Multiple Dwelling Law. Additional information may be required pursuant to rules and regulations which shall be promulgated by the New York City Loft Board.

(3) NO FEE is required if application is filed by January 31, 1983. However, a fee may be imposed if registration forms are filed after January 31, 1983. A renewal registration fee may be established by the Loft Board pursuant to §282 of the Multiple Dwelling Law.

(4) Completion and submission of this application does not constitute a waiver of the applicant's right to contest before the Loft Board the coverage of the premises described herein under Article 7-C of the Multiple Dwelling Law as an interim multiple dwelling. Nor shall the act of filing of the registration application constitute evidence before the Loft Board that the premises described herein are an interim multiple dwelling.

(5) Any and all applications to contest coverage of buildings or individual units under Article 7-C by owners, lessees or agents must be received by the Loft Board within 30 days of the issue date of the IMD registration number or within 30 days after promulgation of coverage regulations by the Loft Board, whichever is later.

Applications, by letter in duplicate, must set forth the extent of coverage being contested and set forth the facts and rationale upon which coverage is being contested. Notice of the filing of the application must be served on ALL residential, commercial and manufacturing occupants of the building and the application to the Loft Board must state that such service has been made. The notice of application must state that copies of the full application are available for inspection at the Loft Board and that a copy of the full application will be furnished by the landlord upon the written request of an occupant. Until the Loft Board determines otherwise by rule or regulation, service shall be effected in the manner prescribed by Real Property Actions and Proceedings Law §735. Failure of an owner, lessee or agent to contest coverage within 30 days of the issuance of an IMD Registration Number or within 30 days of the promulgation of coverage regulations by the Loft Board, whichever is later, precludes said applicant from contesting coverage.

It is the intent of the Loft Board to provide those wishing to contest coverage an opportunity to do so within 30 days after the promulgation of regulations which directly address the issue upon which the coverage dispute or contestation is predicated.

(6) Please be advised that other affected parties may apply for or contest coverage under Article 7-C. Such applications should be made following the procedures set forth in §2-05(b)(5) above except that notice of filing of the application must be served on the landlord not the occupants.

(7) Registration applications, if accepted by the Loft Board, will be effective until such time as determined by the New York City Loft Board.

(8) **Applications must be completed in its entirety.** Legible copies of the current lease, or, where there is no current lease, the most recent lease agreement (including all executed riders, amendments, modifications and extensions) for all residentially occupied units must be attached regardless of the commercial, residential or manufacturing nature of the lease. If no lease exists or existed, attach a signed statement outlining the most recent rental agreement.

For cooperatives, legible copies of one of the proprietary leases and of all coversheets for all units must be attached. If any units are rented, attach copies of those subleases or rental agreements. For condominiums, legible copies of all leases for units that are rented must be attached.

All personal and confidential information on leases (including all information which could lead to the identification of the premises, landlords and occupants) will not be available under the Freedom of Information Act.

An application will not be accepted, and an IMD Registration Number will not be assigned, unless all questions are answered in full and all required leases are attached. If a particular question or piece of information is inapplicable or not available enter Not Applicable, and attach a signed statement explaining the reasons. The content of an application will be reviewed prior to acceptance.

Enter the number of units occupied for residential purposes by families living independently from one another and the number of floors in the building. A family may consist of a person or persons, regardless of whether they are related by marriage or ancestry. Enter the number of residentially occupied units on each floor so occupied. Rider A which specifically identifies each of the units in the building must be completed and returned with the application.

(9) The acceptance of the registration application in no way legalizes the occupancy. If the application is accepted, a copy of the form with the assigned I.M.D. Registration Number will be returned to you. That number must be included on all future correspondence with the office. The Loft Board reserves the right to reject, revoke or amend an I.M.D. Registration Number.

(10) For each building potentially subject to Article 7-C, the owner, the lessee of the whole building and the agent or other person having control of the premises must each file a separate registration application. If the building is known by other addresses, list them on a separate sheet of paper and attach to the application.

If the owner, lessee, agent or other person is a corporation, other than a corporation listed as exempt from the provisions of the Multiple Dwelling Law §325, the names, business and residence addresses and phone numbers of its officers must be listed on the form.

Other officers, including treasurer or chief fiscal officer, and stockholders who own or control at least 10 percent of the corporation's stock must be listed on a separate attachment.

If the owner, lessee, agent or other person is other than an individual or a corporation, the names, business and residential addresses and phone numbers for each general partner or participant in a partnership or joint venture must be listed on a separate attachment.

At least one of the phone numbers entered on the form must be a confidential telephone number where a responsible party can reasonably be expected to be reached at all times for emergencies. Such number(s) must be within 50 miles radius of New York City limits and must be indicated on a separate signed sheet of paper and attached to the application.

(11) All owners, lessees of whole buildings, and agents or other persons having control of the premises who file for I.M.D. Registration Numbers agree to provide the minimum housing maintenance standards established or to be established by the Loft Board to all residentially occupied units for as long as the I.M.D. Registration Number is valid.

(12) The "managing agent" defined as the person in control of and responsible for the maintenance and operation of the dwelling, must be an individual over 21 years of age with a business office or residence in New York City.

(13) An identification sign containing the building address, the I.M.D. Registration Number assigned by the Loft Board for the purpose of identifying the building and the owner and managing agent shall be posted in every interim multiple dwelling with five (5) business days after the issuance of the I.M.D. Registration Number. A sample sign with instructions will be sent to you when the IMD Number is issued.

(14) If additional space is required to respond to any of the questions, attach a signed separate sheet of paper identifying the questions(s) being answered.

(c) **Rent claims.** Landlords of interim multiple dwellings for which an IMD Registration Number has been issued, shall be deemed to be compliance with the registration provisions of Article 7-C and shall be entitled to claim rents

becoming due after the date of issuance of the IMD Registration Number, in summary proceedings, pursuant to §285(1) of Article 7-C of the Multiple Dwelling Law.

Finding that there are a significant number of ongoing disputes between landlords and residential occupants in loft dwellings over payment of past due rents and that Article 7-C did not intend to authorize landlords to recover past due rents from residents occupying premises which may not qualify for coverage under Article 7-C, the Loft Board believes that landlords' right to recover for past due rents pursuant to §285(1) of the Multiple Dwelling Law should be stayed until the question of coverage of an IMD has been resolved.

Landlords who waive their right to contest coverage by executing a written waiver in a form acceptable to the Loft Board or whose coverage dispute has been resolved by a determination that the premises in question are covered by Article 7-C and who have met the requirements of subdivision (b) of this section shall be deemed in full compliance with the registration provisions of Article 7-C in order to claim past due rent payable from residential occupants pursuant to §285(1) of the Multiple Dwelling Law.

(d) **Confidentiality of lease information.** All personal and confidential information in leases submitted with registration applications pursuant to this section (including all information which could lead to the identification of the premises, landlords, and tenants) shall be confidential pursuant to the Freedom of Information Law (Public Officers Law §84, et. seq.). Filed with the City Clerk: August 2, 1983.

(e) Effective July 27, 1987, Article 7-C of the Multiple Dwelling Law was amended, in part, to extend coverage to certain residentially occupied buildings, structures or portions thereof that were excluded from the protections of Article 7-C because they did not meet the zoning requirements of MDL §§281(2)(i), (iii) or (iv). Now, pursuant to MDL §281(4), any building, structure or portion thereof which contains units that were residentially occupied on May 1, 1987, since December 1, 1981, that were used for residential purposes since April 1, 1980, is an interim multiple dwelling covered by Article 7-C regardless of the zoning requirements of MDL §§281(2)(i), (iii) and/or (iv), if the building otherwise meets the criteria set forth in MDL §281(1). MDL §281(1) defines an "interim multiple dwelling" as a building, structure or portion thereof which at any time was occupied for manufacturing, commercial or warehouse purposes; on December 1, 1981 was occupied for residential purposes since April 1, 1980 as the residence or home of any three or more families living independently of one another; lacks a certificate of compliance or occupancy pursuant to MDL §301. Pursuant to MDL §281(4), an interim multiple dwelling shall include any building within the City of New York which meets these qualifications, regardless of whether there are currently three or more qualifying units. Thus, a reduction in the number of occupied residential units in a building after December 1, 1981 since April 1, 1980, shall not result in the elimination of the protections of Article 7-C to any remaining residential occupants qualified for such protection whose units were residentially occupied on May 1, 1987 since April 1, 1980.

(1) The provisions of these rules, §2-05, shall be fully applicable to interim multiple dwellings or additional covered units, which are subject to coverage under Article 7-C pursuant to MDL §281(4), except as provided below:

(i) MDL §284(2) requires registration of all interim multiple dwellings within sixty days of the date of the enactment. Interim multiple dwellings or additional covered units subject to Article 7-C solely pursuant to MDL §281(4) shall be registered on or before September 25, 1987. The initial registration period ends on June 30, 1988. Thereafter, renewal of registration pursuant to §2-11(b)(1)(i)(A) shall be required annually. Prior to the processing of the registration renewal application, the owner, lessee of a whole building and the agent are required to pay all unpaid registration fees for prior registration periods at the rate then established by the Loft Board.

(ii) In addition to the requirements set forth in §2-05(b)(8) of these rules, the landlord shall submit legible copies of all leases (including all executed riders, amendments, modifications and extensions) for residentially occupied units for the period April 1, 1980 through May 1, 1987.

(f) No applications filed by a landlord of an interim multiple dwelling shall be processed by the Loft Board unless

the registration renewal is current on the date of filing of such application.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Open par repealed City Record Oct. 15, 2001 eff. Nov. 14, 2001. [See T29 §1-06.1 Note 1]

Open par added City Record Nov. 4, 1993 eff. Dec. 4, 1993.

Subds. (e), (f) added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. This section does not provide for tenant participation in a building owner's application for IMD registration or renewal of such registration; therefore, tenants lack standing in any administrative tribunal to contest such applications or to challenge the Loft Board staff's approval of such applications. Matter of Barth, OATH Index No. 1574/97 (June 27, 1997), aff'd, Loft Bd. Order No. 2137 (Aug. 28, 1997).

¶ 2. Where a building owner registered the building, including the second floor loft unit, and failed pursuant to subparagraph (b)(5) of this section to file a timely challenge to Loft Law coverage of the building or of the unit, the owner may not contest coverage of the unit as a defense to an application by the tenant of that unit for a rent reduction and overcharge refund. Matter of Katz, OATH Index No. 1648/96 (Sept. 10, 1996), aff'd, Loft Bd. Order No. 2037 (Nov. 21, 1996).

¶ 3. In a coverage case, petitioner made a pre-trial motion to preclude the owner from controverting statements made in initial Loft Board registration, to wit, two units were residentially occupied during the window period. Administrative law judge found that reliance on the registration application as an admission of residential occupancy during the required period to be contrary to subsection (b)(4) of this section. Judge held that owner's statements on coverage application have evidentiary standing with the implication that the owner should be allowed to explain his reasons for making the assertions in his application. **Matter of Wynkoop,** OATH Index No. 354/02, mem. dec. (Jan. 30, 2002).

¶ 4. Upon abandonment finding, residential units remain subject to the annual registration requirements set forth in subsection (e)(1)(i) of this section. **Matter of Tylawsky,** OATH Index No. 601/02 (Feb. 27, 2002), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2723 (Apr. 18, 2002).

¶ 5. Abandonment of interim multiple dwelling annulled where landlord had not registered the loft as an interim multiple dwelling or paid the annual registration fees, as required by 29 RCNY 2-05. **Matter of EPDI Associates**, OATH Index No. 600/02 (Jan. 9, 2002), **aff'd**, Loft Bd. Order No. 2714 (Mar. 14, 2002), **remanded, Conley v. New York City Loft Bd.**, Sup. Ct. N.Y. Co. Index No. 113879/02 (Dec. 9, 2002)(Shafer, J.), **modified**, 5 A.D.3d 175, 772 N.Y.S.2d 519 (1st Dep't 2004).

¶ 6. Voluntary registration is the equivalent of a Loft Board finding of coverage. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-06 Interim Rent Guidelines.

(For time limitations on filing applications for rent overcharges, see §1-06.1 of the Loft Board rules).

(a) **Coverage.** (1) These rent guidelines apply to units of interim multiple dwellings ("IMDs"), as defined in §281 of Article 7-C, with residential occupants qualified for protection pursuant to the article, who

(i) do not have a lease or rental agreement in effect on the date of this order, December 21, 1982 or

(ii) whose leases or rental agreements are in effect on December 21, 1982, but expire prior to the IMD's compliance with the safety and fire protection standards of Article 7-B of the Multiple Dwelling Law. These guidelines apply only to IMD's which have registered with the Loft Board.

(2) "Lease or rental agreement in effect" shall mean

(i) a written lease or rental agreement;

(ii) an oral agreement for a rental period of one year or less, provided that

(A) there has been a change from the previous rent, confirmed by rent checks tendered by the residential occupant and accepted by the landlord within the year prior to this order or

(B) there has been a substantial change in the level of services agreed to be provided within one year prior to this order.

(b) **Effective date.** The effective date of these rent increases for registered IMD's will be the next regular rent payment date following December 21, 1982, or following the expiration of the lease or rental agreement, whichever is later.

If application for registration is received by the Loft Board on or before January 31, 1983, and written request for the increase is made of the residential occupant within 30 days of the issuance of an IMD registration number, such increase shall be retroactive to the effective date of the increase.

If application for registration is received by the Loft Board after January 31, 1983, and written request for the increase is made of the residential occupant within 30 days of the issuance of an IMD registration number, and the lease or rental agreement has expired, such increase shall be retroactive to the first regular rent payment date following submission of the registration application.

At the option of the residential occupant, such retroactive increases may be paid over the same number of months as they accrued. Except as indicated above, the rent increases shall apply prospectively only.

(c) **Amount of increases.** For purposes of these rent guidelines, the following percentages shall be calculated upon the total rent for the residential occupant, including both base rent and escalators. "Escalators" are lease or rental agreement provisions which provide for a residential occupant's payment as rent or additional rent charges based on, but not limited to: real estate taxes; heating fuel; labor; water and sewer; insurance; vault tax; and any cost-of-living increase formulas. Such provisions as relate to gas, electricity and steam charges are excluded from this definition of total rent and these utility escalators, when based on a fair calculation of the occupant's usage, shall be the only escalators permitted following the effective date of the rent increase provided they were part of the lease or rental agreement in effect on December 21, 1982.

Rent levels for units covered by this order shall reflect no more than the following maximum percentage increases, calculated as of the effective date of this order to such unit:

(1) For units where the last increase in total rent or a utility escalator pursuant to a lease or rental agreement tendered by the tenant and accepted by the landlord was:

(i) Subsequent to December 31, 1979: the maximum permissible increase shall be 7 percent of the total rent as defined above.

(ii) Between January 1, 1977 and December 31, 1979: the maximum permissible increase shall be 22 percent of the total rent defined above.

(iii) Before January 1, 1977: the maximum permissible increase shall be 33 percent of the total rent as defined above.

(2) For units which have had no rent increases since the inception of the lease or rental agreement between the residential occupant and landlord, the maximum percentage increases contained in category (i), (ii), and (iii) above shall be based upon the date of inception of the lease or rental agreement.

(3) For units where the current or most recent lease or rental agreement does not contain any escalator provisions and where the last rent increase was not an escalator adjustment, a surcharge of 2 percent for category (i), 4 percent for category (ii), and 6 percent for category (iii) may be added to the percentage increases. These rent increases shall be a permanent part of the rent.

(d) **Vacancy allowance.** The Loft Board reserves the right to address a vacancy allowance when it discusses fixture fee procedures.

(e) **Subtenancy allowance.** The Loft Board reserves the right to address a subtenancy allowance when it discusses coverage procedures.

HISTORICAL NOTE

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CASE AND ADMINISTRATIVE NOTES

¶ 1. The "Loft Board Interim Rent Guidelines" and "Loft Board Order No. 1" were predecessor versions of this section, which was codified pursuant to the City Administrative Procedure Act. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 2. Where the most recent lease for a loft unit contained escalator provisions, the building owner is not entitled to a rent increase surcharge pursuant to subparagraph (c)(3) of this section, even though the rent escalators provided for in the most recent lease were never enforced. Matter of Longfellow Properties, Inc., OATH Index No. 1780/96 (Nov. 4, 1996), aff'd, Loft Bd. Order No. 2057 (Jan. 30, 1997).

¶ 3. Where available evidence reliably shows the amounts of real estate tax escalators actually billed and paid on a regular basis, the amount of the real estate tax escalator for purposes of paragraph (c) of this section is the first regular payment of real estate tax after the expiration of the last lease. However, where such reliable evidence does not exist, the real estate tax escalator may be calculated by adding the real estate tax escalator payments proved to have been made during the last year of the last lease, and dividing by 12. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 4. Water and sewer escalators pursuant to paragraph (c) of this section may not be fixed based solely on evidence of payments over a three-month period, because water usage may be seasonal to some extent. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 5. Where the available evidence indicated that water and sewer escalators were not reliably and regularly billed, the water and sewer escalator pursuant to paragraph (c) of this section was calculated by adding the amounts actually billed and paid during the last 12 months of the last lease and dividing by 12, not by reference to the greater amounts that could have been billed pursuant to the lease. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 6. Gas escalators are not included in the calculation of total rent, and therefore do not affect the rent increases calculated as a percentage of that total rent, pursuant to paragraph (c) of this section. However, as long as the building owner continues to be billed for gas usage within the tenants' units, the owner is entitled to pass that cost along to the tenants, provided that the pass-along is based on a fair calculation of the occupants' usage. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 7. A rent increase pursuant to this section is due beginning with the next regular rent payment date after a building owner submits a written demand for the rent increase to the tenants. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 8. Pursuant to subparagraph (a)(1)(ii) of this section, a building owner was not entitled to a rent increase under

this section for a unit that was not included in the building owner's IMD registration. Matter of Teitelbaum, OATH Index No. 894/97 (May 30, 1997), aff'd, Loft Bd. Order No. 2133 (Aug. 28, 1997).

¶ 9. This section provides for rent increases for protected occupants of covered loft units regardless whether the occupants are prime lessees pursuant to §2-09(c)(6)(ii)(B) of this chapter or sublessees pursuant to §2-09(c)(6)(i) of this chapter. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 10. Unit registration is a prerequisite to obtaining a rent increase under this section. **Matter of Teitelbaum,** OATH Index No. 894/97 (May 30, 1997), **aff'd,** Loft Bd. Order No. 2133 (Aug. 28, 1997). Exception exists where owner had good faith belief unit was registered and otherwise went forward with compliance under the Loft Law, including procuring a residential certificate of occupancy. **Matter of M.R.A. Realties,** OATH Index No. 1317/98 (Dec. 2, 1998), **aff'd in part, modified on other grounds,** Loft Bd. Order No. 2369 (Feb. 23, 1999).

¶ 11. Calculation of base rent includes the escalators billed and paid during the last month of the lease in effect on December 21, 1982. **Matter of M.R.A. Realties,** OATH Index No. 1317/98 (Dec. 2, 1998), **aff'd in part, modified on other grounds,** Loft Bd. Order No. 2369 (Feb. 23, 1999).

¶ 12. Lapse in registration since 1990 does not bar the owner from taking the allowed rent increase where the two increases which comprised the allowable seven percent increase under Loft Board Order No. 1 were taken while the unit was still registered. **Matter of M.R.A. Realties,** OATH Index No. 1317/98 (Dec. 2, 1998), **aff'd in part, modified on other grounds,** Loft Bd. Order No. 2369 (Feb. 23, 1999).

¶ 13. A construction allowance spread over initial two-year term of lease, which was clearly intended to compensate tenants for up-front construction costs, does not permanently reduce monthly rental in the event of lease renewal. **Matter of 33 Union Square West,** OATH Index No. 732/98 (July 6, 1998), **aff'd,** Loft Bd. Order No. 2286 (Sept. 24, 1998).

¶ 14. The final rent provided for by the lease in effect on December 21, 1982, not the amount actually paid by tenant when tenant returned to unit in February 1983 following a fire, prevails in setting the base rent. **Matter of 33 Union Square West,** OATH Index No. 732/98 (July 6, 1998), **aff'd,** Loft Bd. Order No. 2286 (Sept. 24, 1998).

¶ 15. Actions of receivers in foreclosure, in accepting rent checks from tenants, did not operate to waive mortgagee's or subsequent owner's right to maximum statutory increase under Loft Board Order No. 1, where applicants made no showing of actual knowledge of receiver. **Matter of 33 Union Square West,** OATH Index No. 732/98 (July 6, 1998), **aff'd,** Loft Bd. Order No. 2286 (Sept. 24, 1998).

¶ 16. Owner applied for a Rent Guidelines Board increase pursuant to section 2-01(i) of this title. In calculating the initial legal regulated rent, the percentage increase the owner is entitled to is calculated, pursuant to this section, on the total rent of the IMD unit, which includes the base rent as set forth in a lease agreement and subsequent riders, and escalator payments, here an agreed to percentage of the increase in real estate taxes. **Matter of Sayage,** OATH Index No. 1505/98 (Aug. 28, 1998), **aff'd,** Loft Bd. Order No. 2325 (Oct. 27, 1998).

¶ 17. Current owner is not precluded from asserting Loft Board Order No. 1 increases where prior letter agreement set the base rent and 6% increase under Multiple Dwelling Law section 286(2) but was silent on owner's right to any other increases despite not demanding the LBO No. 1 increase. **Matter of 473-475 Broadway, LLC,** OATH Index No. 761/98, mem. dec. (Apr. 22, 1998) incorporated in OATH Index No. 761/98 (May 22, 1998), **aff'd,** Loft Bd. Order No. 2267 (June 25, 1998).

¶ 18. After Loft Board upheld administrative law judge's determination of coverage and abandonment, matter was remanded for determination of legal regulated rent, and overcharges, if any. Administrative law judge finds that applicants are entitled to overcharges which preceded finding of abandonment, as well as prospective rent regulation,

citing **Matter of White,** Loft Bd. Order No. 2194, 17 Loft Bd. Rptr. 386 (Dec. 18, 1997). Because owner did not register building until April 1998 and unit until August 1998, he is not entitled to section 2-12 increases until September 1998. Because owner has not made demand therefor, he is not entitled to any section 2-06 increases. Administrative law judge calculates the overcharge to be $29,610.00, and rent is set at $127.20. **Matter of DeLong,**, OATH Index No. 1165/00 (Nov. 1, 2000) (Loft Board subsequently dismissed the portion of the application which had been remanded, based upon a settlement executed by the parties).

¶ 19. After Loft Board upheld administrative law judge's determination of coverage and administrative law judge's denial of trial application to set rent, as no notice was given to defaulting owner (OATH Index No.1897/99), protected tenant filed petition for determination of legal regulated rent. Owner again defaulted. Rent is set at $600.00 per month, reflecting two-thirds of the monthly rent of the protected tenant in occupancy on December 21, 1982, for three floors (basement, first and second floors), as coverage here was granted applicant only as to first and second floors. Although sophisticated lease terms, which provide for performance of work and passage of title to fixtures, in exchange for twenty-year lease at a fixed monthly rent, suggests that there has been a waiver of rent regulation, lease term explicitly preserves all rights under the Loft Law to tenant. This includes the right to rent regulation. **Matter of Rolf,** OATH Index No. 135/01 (Nov. 30, 2000), **aff'd,** Loft Bd. Order No. 2598 (Dec. 19, 2000).

¶ 20. A lease included a provision giving the tenants an option to renew for an additional two years at the original rent plus a cost of living adjustment. In December 1983, the tenant exercised the option and began paying a 40% rent increase. The administrative law judge granted the tenant's rent adjustment application, which set the initial base rent of IMD units at "the next regular rent payment date following December 21, 1982, or following the expiration of the lease or other rental agreement, whichever is later." The maximum legal rent was set at $1,676.54 and overcharges of $14,151.18 were awarded. **Matter of Bolotowsky,** OATH Index No. 441/03 (Jan. 16, 2003), **aff'd,** Loft Bd. Order No. 2777 (Feb. 6, 2003), **aff'd sub nom. Matter of Two Spring Associates v. New York City Loft Bd.,** 2 Misc.3d 530, 773 N.Y.S.2d 525 (Sup. Ct. N.Y. Co. 2003).

¶ 21. Tenants filed a rent overcharge application with the Loft Board contending that the owner overcharged them in excess of that allowed by this rule. The administrative law judge set the current legal rent at $664.36, based on the base rent on December 21, 1982, a 9% increase based on Loft Board Order No. 1, and a 6% increase based on filing the alteration application. The judge recommended that the tenants be awarded overcharges in the amount of $24,669. The Loft Board modified the judge's recommended amount to $35,169.40 because the owner was not entitled to an offset of the rent that the tenant collected from the sub-lessee. **Matter of Edidin,** OATH Index No. 1590/03 (Nov. 18, 2003), **aff'd in part, modified in part,** Loft Bd. Order No. 2845 (Feb. 19, 2004).

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-06.1

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-06.1 Interim Rent Guidelines (II).

(a) **Coverage.** (1) These rent guidelines apply to interim multiple dwelling ("IMD") units, as defined in §281 of Article 7-C of the Multiple Dwelling Law, which:

(i) are subject to Article 7-C solely pursuant to MDL §281(4); and

(ii) are registered with the Loft Board; and

(iii) have a residential occupant qualified for protection pursuant to Article 7-C of the Multiple Dwelling Law, who

(A) did not have a lease or rental agreement in effect on July 27, 1987; or

(B) had a lease or rental agreement in effect on July 27, 1987, which expired prior to October 29, 1992 and prior to the IMD unit's compliance with the safety and fire protection standards of Article 7-B of the Multiple Dwelling Law; or

(C) had a lease or rental agreement in effect on July 27, 1987, which is still in effect on October 29, 1992, but which expires prior to the IMD unit's compliance with the safety and fire protection standards of Article 7-B of the Multiple Dwelling Law.

(2) "Lease or rental agreement" shall mean

(i) a written lease or rental agreement; or

(ii) an oral agreement for a rental period of one year or less, provided that

(A) there had been a change from the previous rent, confirmed by rent checks tendered by the residential occupant and accepted by the landlord within the year prior to July 27, 1987, or

(B) there had been a substantial change in the level of services agreed to be provided within the year prior to July 27, 1987.

(b) **Effective date.** The effective date of these rent increases for registered IMDs will be the next regular rent payment date following October 29, 1992.

Where written request for the increase is made of the residential occupant within 30 days of the issuance by the Loft Board of an IMD registration number, such increase shall be retroactive to the first regular rent payment date following the submission of the registration application to the Loft Board. However, any such increase shall not be retroactive to a date earlier than October 29, 1992.

Except as indicated above, the rent increases shall apply prospectively only.

(c) **Amount of increases.** For purposes of these rent guidelines, the following percentages shall be calculated upon the total rent for the residential occupant, including both base rent and escalators. "Escalators" are lease or rental agreement provisions which provided for a residential occupant's payment as rent or additional rent charges based on, but not limited to: real estate taxes; heating fuel; labor; water and sewer; insurance; vault tax; and any cost-of-living increase formulas. Such provisions as relate to gas, electricity and steam charges are excluded from this definition of total rent and these utility escalators, when based on a fair calculation of the occupant's usage, shall be the only escalators permitted following the effective date of the rent increase provided they were part of the last lease or rental agreement in effect on or before July 27, 1987. Total Rent is the amount in base rent and escalators due the landlord from the tenant during the last payment period pursuant to a lease or rental agreement in effect on July 27, 1987, except that the total rent attributable to escalators shall only include the amount demanded by the landlord and paid by the tenant pursuant to said lease or rental agreement. Where no lease or rental agreement was in effect on July 27, 1987, total rent is the rental amount paid by the tenant to the landlord on or before July 27, 1987 pursuant to the last lease or rental agreement in effect.

Rent levels for units covered by this order shall reflect no more than the following maximum percentage increases, calculated as of the effective date of this order to such unit:

(1) For units where the last increase in total rent or a utility escalator pursuant to a lease or rental agreement tendered by the tenant and accepted by the landlord was:

(i) Subsequent to October 29, 1990: there will be no increase permitted above the total rent as defined above.

(ii) Between October 29, 1988 and October 29, 1990: the maximum permissible increase shall be 7 percent of the total rent as defined above.

(iii) Between October 29, 1986 and October 28, 1988: the maximum permissible increase shall be 16 percent of the total rent defined above.

(iv) Between October 29, 1984 and October 28, 1986: the maximum permissible increase shall be 24 percent of the total rent defined above.

(v) Before October 29, 1984: the maximum permissible increase shall be 33 percent of the total rent as defined above.

(2) For units which have had no rent increases since the inception of the last lease or rental agreement between the

residential occupant and landlord, the maximum percentage increases contained in category (ii), (iii), (iv), and (v) above shall be based upon the date of inception of the last lease or rental agreement.

These rent increases shall be a permanent part of the rent.

(d) **Overcharges and Penalties.** Rent payments made prior to the date of adoption of this rule in excess of the amount prescribed by this rule, or §2-06 of these rules, constitute an overcharge, which may be paid at the owner's option either in a lump sum or as a subtraction from the legal monthly rent payments at a rate equal to 20 percent of the legal rent permitted under this rule as of the date of adoption of this rule (October 29, 1992) until payment of the full overcharge is completed. No trebel damages shall be prescribed by this rule or §2-06.

HISTORICAL NOTE

Section added City Record Dec. 4, 1992 eff. Jan. 3, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Although a building owner must ordinarily serve a demand for a rent increase pursuant to §2-06 or this section, the owner is entitled, despite the lack of such demand, to offset the amount of rent that could have been demanded against the amount due to a tenant who filed a rent overcharge application. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 2. Where the rent billed for a loft unit was increased in 1986, 1988, 1989, 1991, 1993, 1995 and 1996, but the tenant succeeded in invalidating those increases by filing a rent overcharge application, the owner was entitled to a 24 percent rent increase pursuant to subparagraph (c)(1)(iv) of this section. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 3. Owner who had not registered the building as an IMD with the Loft Board was not entitled to any rent increases pursuant to this section. **Matter of Tenants of 323-325 W. 37th Street**, OATH Index No. 692/06 (May 18, 2007).

¶ 4. Owner's request for an offset to overcharge for rent paid by roommates is denied. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

¶ 5. Current owner is not entitled to offset overcharges collected by the former owner. He may seek indemnification from his predecessor. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-07 Sales of Improvements.

(a) **Definitions.**

Fair market value. "Fair Market Value" is the value established by a bona fide offer to purchase improvements from a prospective tenant, unless the Loft Board finds, upon application of an owner challenging such offer as not representing fair market value, that the offer does not represent the value of the improvements as determined after the Board's consideration, as further set forth in §2-07(g) herein,

(i) for such improvements as were purchased by the outgoing tenant, of the amount paid by the outgoing tenant, less depreciation for wear and tear and age, to the prior tenant or to the owner, or to both, for purchase of improvements, and

(ii) for such improvements, as were made by the outgoing tenant, of the replacement cost of such improvements, less depreciation for wear and tear and age. If no such offer is made or available, the value shall be established by agreement of the parties or pursuant to an application to the Loft Board, which shall determine the value in accordance with the criteria and procedures set forth herein.

Improvements. "Improvements" are the fixtures, alterations and development of a unit in an interim multiple dwelling which were made or purchased by a residential tenant who is qualified for protection under Article 7-C.

(i) "Fixtures" are defined as that which is fixed or attached to real property permanently as an appendage and shall include, but not be limited to, the following: kitchen installations, including stoves, sinks, counters, and built-in

cabinets; bathroom installations, including sinks, toilets, bathtubs, and showers; other installations, including partitions, ceilings, windows, and floors, including tiling; built-in shelves; plumbing and utility risers; electrical work; heating units; and hot water heaters.

(ii) "Alterations and development" shall include, but not be limited to the following: demolition work, including debris removal; repair (other than normal recurring maintenance) and renovation of ceiling, walls, windows, and floors; design; labor; equipment rental; design including professional fees paid to architects and designers in connection with the improvements; and such removable personal property as was reasonable to establish residential use, such as a refrigerator and dishwasher.

Improvements shall not include other removable household furnishings, such as rugs, tables, and chairs, nor statutory rights pursuant to Article 7-C, neither of which may be the subject of a sale pursuant to §286(6) of the Multiple Dwelling Law ("MDL").

Multiple dwelling unit. A multiple dwelling unit (also, "IMD unit" or "unit") is a residential unit in an interim multiple dwelling as defined by MDL §281 and Loft Board Coverage regulations, which unit is registered with the Loft Board as required by regulations relating to registration of interim multiple dwellings at the time of service on the owner of the Improvement Sales Disclosure Form as required herein. Included are units in multiple dwellings which were formerly registered as IMD's and have subsequently been legalized.

(b) **Notice: form and time requirements.** All notices, requests, responses and stipulations served by owners and tenants pursuant to these regulations shall be in writing, with a copy delivered or mailed to the Loft Board, accompanied by proof of service. Service by the parties shall be effected either (1) by personal delivery or (2) by certified or registered mail, return receipt requested, with an additional copy sent by regular mail. Unless otherwise agreed in writing by the parties, with notice to the Loft Board, these communications shall be delivered or sent to the outgoing tenant and to the prospective tenant at the respective addresses specified on the Improvements Sale Disclosure Form, described herein; and to the owner via the registrant of the IMD unit at the address indicated on the IMD registration form unless the owner informs the Loft Board, in writing, of an alternate party or address, or both, to be contacted regarding a sale of improvements. Proof of service shall be in the form of a verified statement of the person who effected service, setting forth the time, place and other details of service, if service was made personally, or by copies of the return receipt and verified statement of mailing, if service was performed by mail. Communications by the Loft Board pursuant to these regulations will be sent by regular mail to the addresses indicated above.

Service shall be deemed effective upon personal delivery or five days following service by mail. Deadlines provided herein are established pursuant to the effective date of service.

(c) **Modifications on consent, change of address.** Deadlines, herein may be modified, applications may be withdrawn, and disputes may be resolved, by written agreement of the parties, subject to Loft Board approval. Parties may change their address upon service of written notice to the other parties and the Loft Board and such notice shall be effective upon personal delivery or five days following service by mail.

(d) **Parties.** Unless otherwise indicated herein, in cases involving an offer to purchase improvements, parties shall be limited to the owner and the outgoing tenant, except that a prospective tenant tendering an offer to purchase improvements shall be a party to cases involving issues of the **bona fides** of an offer.

(e) **Sales not subject, or partially subject, to these regulations.** These regulations do not apply to IMD units which have never been registered with the Loft Board. Any sales of improvements which take place in such units prior to registration do not constitute sales pursuant to §285(6) of the MDL.

These regulations do not apply to units which the Board has determined not to be covered by Article 7-C of the MDL.

These regulations also do not apply to sales of improvements between co-tenants of an IMD unit, where at least one of the co-tenants is remaining in occupancy and is an occupant qualified for the protection of Article 7-C. Also, compensation to prime lessees by subtenants or assignees who are residential occupants, pursuant to the section of the regulations on Subletting and Similar Matters regarding the prime lessee's right to compensation for costs incurred in developing residential unit(s), shall not constitute sales pursuant to §286(6). After such compensation has been made, where required under such section, the residential occupant shall have the right to sell the improvements in the unit pursuant to §286(6) and these Regulations. (See the section of Subletting and Similar Matters regulations regarding residential occupant's rights to sale of improvements pursuant to §286(6) of the MDL).

In a unit which has been determined by the Loft Board to be covered by Article 7-C, or has previously been registered with the Loft Board, but which is not registered in accordance with §2-07(a) "Interim Multiple Dwelling Unit" above, or with the New York State Division of Housing and Community Renewal (DHCR), a sale of improvements shall constitute the one-time-only sale as provided by §286(6) but it shall not be subject to the owner's right to challenge except on grounds of suitability of the prospective tenant which challenge must take place in a court of competent jurisdiction.

(f) **Applicability.** These rules shall apply to sales which occur on or after March 23, 1985, except as provided in §2-07(e), and except that the definition of the term "fair market value" set forth in subdivision (a) of this section, as amended effective on February 16, 1996, shall apply only to sales of improvements with respect to which a Disclosure of Sale Form was filed with the Loft Board on or after February 16, 1996. For the rules applicable to sales which occurred prior to March 23, 1985, see §2-07(h).

(1) **Right to sell.** The residential occupant of an IMD unit which is qualified for protection under Article 7-C, including such unit which has been legalized and is registered with DHCR, may sell the improvements of the unit to the owner or to a prospective tenant, subject to the procedures established herein. This right to sell may be exercised only once for each IMD unit. Such improvements must be offered to the owner for an amount equal to their fair market value as defined in §2-07(a) "Fair Market Value" above, prior to their sale to a prospective tenant, as provided herein.

(2) **Offers to sell to prospective tenant.** An outgoing tenant in an IMD unit, proposing to sell improvements to a prospective tenant, shall comply with the following procedures at least 30 days in advance of the date of closing or consummation of the proposed sale: (i) (A) The outgoing tenant shall notify the owner of his or her intent to move and to sell improvements, and the identity of the prospective tenant on an Improvements Sale Disclosure Form ("Disclosure Form"), as prescribed by the Loft Board, providing the following information to the owner:

(a) a list and description of the improvements

(1) installed and

(2) purchased by the outgoing tenant, with accompanying proof of payment; **(b)** a written copy of the offer, verified by the prospective tenant, to purchase such improvements, which includes all terms and conditions of the offer;

(c) identification of such prospective tenant by name, current business and home addresses and such other address, if any, as such prospective tenant elects for purposes of delivery of notices and communications, and telephone numbers;

(d) an affirmation by the outgoing tenant that he or she installed or purchased the improvements offered for sale, or if not, that he or she is authorized to sell the improvements on behalf of any other parties having ownership interest in such improvements, accompanied by appropriate evidence of such authorization;

(e) an affirmation by the prospective tenant that he or she has received and reviewed the Disclosure Form;

(f) provision of three reasonable dates and times at which inspection of the improvements by the owner or the

owner's designee, or both, would be available, within 10 days of service of the Disclosure Form

(B) The Disclosure Form shall also include the following advisories to the prospective tenant:

(a) the improvements for sale are limited to those items listed and described by the outgoing tenant;

(b) the prospective tenant is purchasing absolute title to all removable personal property and the use and enjoyment for the duration of the prospective tenancy of all other property deemed improvements pursuant to these regulations; the owner shall be responsible for maintenance of improvements deemed fixtures pursuant to these regulations except that some improvements may be altered or removed pursuant to code compliance and requirements;

(c) the right to sell improvements may be exercised only once for the unit and an incoming tenant cannot re-sell them except for removable personal property;

(d) the prospective tenant, upon consummation of the sale of improvements, assumes the right and obligations of the outgoing tenant as an occupant qualified for protection under Article 7-C;

(e) the amount of the rent and a statement as to the types of further increases which may be applicable to IMD units pursuant to terms of the Loft Board's interim rent guidelines, pass-throughs of costs determined pursuant to Code Compliance regulations, or rent increases pursuant to the Rent Guidelines Board's orders;

(f) if the building has not been issued a residential certificate of occupancy for its IMD units at the time of the offer to purchase, it remains subject to the requirement of Article 7-C and Loft Board Compliance regulations that such units be brought into compliance; **(g)** Article 7-C provides that the costs of legalization as determined by the Loft Board are passed through to the tenants and may result in increased rent above the base rent over a 10 or 15 year period;

(h) the offer is subject to the owner's right to purchase the improvements for an amount equal to their fair market value, to challenge the offer as provided in §2-07(g) of these regulations, and to consent to the prospective tenant, provided that consent may not be unreasonably withheld;

(i) rent regulation as provided for in Article 7-C is scheduled to expire on May 31, 2006, pursuant to section 3 of part T of chapter 61 of the Laws of 2005, and may or may not be renewed or amended by the legislature of the State of New York;

(j) the opportunity for decontrol or market rentals, if an owner purchases improvements, may not be available in a building when an owner has been found guilty by the Loft Board of harassment of tenants subject to regulations to be adopted by the Loft Board.

(ii) The original of the Disclosure Form, completed and executed, shall be filed with the Loft Board, together with proof of service. Within 10 days of receipt of such form, the Loft Board staff shall determine whether a sale for the unit in question has been previously recorded at the Board's offices. If such a sale has been recorded, the parties will be so notified and the proposed sale will not be permitted to proceed.

(3) **Owner's response to offer and proposed tenant.** Within 10 days of service of the Disclosure Form, the owner may request of the outgoing and prospective tenants such additional information as will enable the owner to decide whether or not to purchase the improvements, and to determine the suitability of the prospective tenant. In such response the owner must affirm that the subject unit is currently registered with the Loft Board or DHCR and was registered at the time of service of the Disclosure Form and that he or she either owns the premises or is authorized to act on behalf of the owner in this matter. Any request by the owner for additional information from the outgoing tenant shall not be unduly burdensome. Requests for additional information regarding a decision whether to purchase the improvements must be relevant to the criteria set forth for making such determination in §2-07(g) below. If the owner submits further requests for information regarding the purchase of improvements, determined by the Loft Board to be

unduly burdensome, such owner may forfeit his/her right to purchase the improvements in question.

Within 20 days of service of the Disclosure Form, or of the additional information reasonably requested by the owner, whichever is later, the owner shall notify the outgoing and prospective tenant, of the owner's

(i) acceptance and commitment to purchase at the offered price,

(ii) consent to the proposed tenant and sale or

(iii) rejection of the offer based on one or more of the grounds for challenge enumerated in §2-07(g)(2) herein by service upon the outgoing and prospective tenants of a challenge application and by filing with the Loft Board a copy of said challenge. If one of the grounds for challenge is the unsuitability of the prospective tenant, the owner must initiate any action based on that ground in a court of competent jurisdiction, and shall so inform the Loft Board in writing.

If the owner rejects the offer, the notice shall elaborate the grounds therefor. If the rejection is based on the claim that the offer exceeds the fair market value of these improvements, the rejection shall include the owner's fair market valuation of the improvements and the owner's commitment to purchase if the fair market value is determined to be no greater than such valuation. If the rejection is based on the owner's claim that (s)he made or purchased the improvements, the rejection shall indicate which improvements are so claimed and include proof thereof.

Failure of the owner to file a complete application, including payment of a fee of $800.00 to cover the full cost of an appraiser selected by the Board, with the Loft Board, with copies to the outgoing and prospective tenants, within the time for response prescribed in §2-07(f)(3) above, shall be deemed an acceptance of the proposed sale except if the owner's challenge is on the ground of the unsuitability of the prospective tenant, the owner must initiate any action based on that ground in a court of competent jurisdiction and shall so inform the Loft Board in writing within the time period for response prescribed in §2-07(f)(3).

(4) **Acceptance of prospective tenant through owner's consent to tenant's purchase or through owner's failure to respond.** An owner's failure to send a complete notice of acceptance or rejection within the time provided above, or such other time as mutually agreed upon, shall be deemed an acceptance of the proposed sale and tenant. In such a case, or when the owner consents to the proposed tenant, said tenant shall assume the rights and obligations of the outgoing tenant as an occupant qualified for protection under Article 7-C, upon the consummation of the sale and compliance with the other provisions of these regulations. Such tenant shall be permitted to commence residency, notwithstanding the lack of a residential certificate of occupancy covering the unit. He or she shall pay the rent previously charged to the outgoing tenant, including any applicable pass-throughs determined pursuant to Code Compliance regulations plus:

(i) any increases permissible pursuant to the Loft Board's interim rent guidelines if such increases have not already been imposed; or

(ii) any increases pursuant to the Rent Guidelines Board's orders, if applicable.

(5) **Owner's purchase of improvements.** If the owner elects to purchase the improvements in an IMD unit in accordance with the terms of the offer, the owner shall notify the outgoing tenant and the prospective tenant of such commitment as required in §2-07(f)(3) above, and shall meet the terms of the offer within 30 days of service of such commitment upon the outgoing tenant. Failure by the owner to consummate such a commitment within such 30-day period shall be deemed a waiver of the owner's right to purchase the improvements at an amount equal to their fair market value.

Upon consummation of the purchase by the owner and compliance with the filing provisions of these regulations, any unit subject to rent regulation solely by reason of Article 7-C of the MDL, and not receiving any benefits of real estate tax exemption or tax abatement, shall be exempted from the provisions of Article 7-C requiring rent regu- lation,

(i) if such building had fewer than six residential units on June 21, 1982, and on July 27, 1987; or

(ii) if the unit was purchased by the owner pursuant to these rules before July 27, 1987 and the building had fewer than six residential units on June 21, 1982, but six or more residential units on July 27, 1987.

Otherwise, upon consummation of the purchase by the owner any unit subject to rent regulation solely by reason of Article 7-C of the MDL, and not receiving any benefits of real estate tax exemption or tax abatement, shall be subject to subsequent rent regulation after being rented at market value, if such building had six or more residential units on June 21, 1982 or on July 27, 1987.

These exemptions from rent regulation shall not be available in a building when an owner has been found guilty by the Loft Board of harassment of tenants pursuant to §2-02. This restriction shall apply to any sale of improvements that takes place on or after the date of the order containing the finding of harassment until such time as the order may be terminated by the Loft Board in accordance with §2-02(d)(2).

(g) **Challenges to proposed sales of improvements.** (1) **Procedures.** (i) An owner of an IMD unit who is contesting the proposed sale of improvements shall apply to the Loft Board for a determination within 20 days of service of the Disclosure Form, or within such additional period as provided pursuant to §2-07(f)(3) above, and at such time shall pay the mandated filing fee.

Filing of an application which is found by the Loft Board to be frivolous may constitute harassment, with the consequences provided in §2-07(f)(5) herein. An objection to the sale may be found to be frivolous on grounds including, but not limited to, the following: that it was filed without a good faith intention to purchase the improvements at fair market value or that the owner's valuation of the improvements has no reasonable relationship to the fair market value, as determined by the Loft Board.

(ii) Recognizing the necessity that sales of improvements occur without undue delays, the Loft Board will process challenges to such sales pursuant to the following expedited procedures:

(A) The owner shall serve the outgoing tenant and prospective tenant with a copy of the owner's challenge application, upon such forms as are established by the Loft Board, and shall file two copies of the application at the Loft Board, with proof of service.

(B) Three copies of any written answers from the outgoing and prospective tenants in response to the challenge application must be served on the Loft Board at its offices within five business days of receipt of such challenge application.

The outgoing tenant's answer shall include three available dates and times during regular business hours within 10 days of the date of filing of the answer with the Board during which the improvements will be available to be inspected by a Board-appointed appraiser.

Appraisers shall be appointed by the Loft Board and shall be suitably qualified in valuing improvements and shall be a Registered Architect, a Professional Engineer or a New York State Certified General Real Estate Appraiser. Appraisers shall sign a written statement agreeing to adhere to the appraisal standards and procedures adopted by the Board.

The Loft Board shall serve a copy of the answer on the owner and on the prospective tenant. The Board shall also notify the owner, outgoing tenant and prospective tenant of an inspection date at one of the times designated by the outgoing tenant, or at another time fixed by the Board if none of the proposed dates is mutually convenient. Following such an inspection, a copy of the appraiser's findings shall be mailed to the three parties. A hearing date shall be fixed at a date no fewer than eight days nor more than fifteen days from the mailing by the Loft Board of the answer or, if applicable, the appraiser's report, whichever is later. There shall be no more than one adjournment per party, limited to

seven days, for good cause shown. Except as provided herein, the requirements of the Loft Board's rules and regulations for Internal Board Procedures shall apply.

If a challenge application results in an order by the Loft Board determining that the offer constitutes fair market value, the owner may exercise the right to purchase improvements at that price or, if the determination is that the offer does not constitute fair market value, at the price determined to constitute fair market value. The owner shall notify the outgoing tenant within 10 days of service of the Loft Board's order determining fair market value of the owner's intent to purchase at such price less half the cost of the appraisal and shall consummate the purchase within 10 days of such notice to the outgoing tenant, except that where the fair market value determination is less than the offered price received by the outgoing tenant, the outgoing tenant may decline to sell the improvements. The Loft Board's order determining fair market value shall constitute the price at which the outgoing tenant must first offer to sell the previously offered improvements to the owner for a period of two years from the issuance of the Loft Board order.

(iii) If the owner elects not to purchase at the Board-determined fair market value, the outgoing tenant may sell to a prospective tenant without challenge by the owner to the fair market value of the offer. The owner's failure to consummate a purchase, following notice of intent to purchase, within the period prescribed above, shall be deemed an election not to purchase.

(2) **Grounds for challenge.** A challenge fully setting forth the owner's claims may be filed on the following grounds:

(i) The offer is not a bona fide, arms-length offer which discloses to the owner all its terms and conditions.

(ii) Some or all of the improvements offered for sale were made or purchased by the owner, not the outgoing tenant, with the specificity required in §2-07(f)(3) above.

(iii) The offer exceeds fair market value as determined in accordance with the following standards:

(A) A **bona fide** offer to purchase improvements made or purchased by the outgoing tenant shall be presumed to represent fair market value.

(B) The presumption may be rebutted if the owner establishes that

(a) for such improvements as were purchased by the outgoing tenant, the offer exceeds the amount paid to the owner or to the former tenant, or both, for such improvements; or

(b) for such improvements as were made by the outgoing tenant, the offer exceeds the replacement cost of the improvements less depreciation for wear and tear and age.

(C) Noncompliance of the improvements with the building code or other applicable laws or regulations shall not be considered in diminution of the amount paid or the replacement costs for improvements made or purchased prior to March 23, 1985.

If a basis of a challenge is the unsuitability of the prospective tenant, the owner must initiate any action based on that ground in a court of competent jurisdiction; such challenge will not be entertained by the Loft Board.

(h) **Sales which occurred prior to the effective date of these regulations.** (1) For sales which occurred prior to March 23, 1985, the provisions of this section shall apply as follows:

(i) Where application for registration as an IMD was received on or before January 31, 1983, sales of improvements consummated on or after June 21, 1982 shall be subject to the rights and obligations set forth in paragraphs (2) and (3) of this subdivision (h).

(ii) Where application for registration as an IMD was received after January 31, 1983, sales of improvements consummated after receipt of such application, but prior to March 23, 1985, shall be subject to the rights and obligations set forth in paragraphs (2) and (3) of this subdivision (h).

(iii) Where sales of improvements were consummated for IMD units, prior to application for registration and prior to March 23, 1985, these regulations do not apply and such sales do not constitute the one-time only sales permitted pursuant to §286(6) of the MDL.

(2) **Prior sales without offer to owner or without acceptance.** If the sale of improvements in an IMD unit to an incoming tenant has occurred prior to March 23, 1985, and is subject to the provisions of this subsection (see subparagraphs (1)(i) and (1)(ii) of this subdivision (h)), either without their first having been offered for purchase to the owner, or with the owner having contested the sale in writing, the owner must be afforded the opportunity to purchase the improvements at an amount equal to their fair market value, except that if the owner has accepted rent from the incoming tenant who purchased the improvements, such owner may purchase the improvements at the price paid by such incoming tenant, which shall be deemed to constitute fair market value, and may not challenge that price as in excess of fair market value.

(i) Where the owner has retained his/her right to purchase pursuant to this paragraph (2), and may wish to purchase the improvements, and the unit is registered with the Loft Board or with DHCR the owner must serve the purchasing tenant with a notice of his/her interest in purchasing the improvements no later than 90 days from the effective date of this regulation. The tenant must serve the owner with a notice describing the improvements purchased together with proof of payment of the amount paid to the outgoing tenant, within 15 days of service of notice by the owner. Within 30 days of receipt of this information, the owner shall send a notice to the tenant of the owner's

(A) commitment to purchase at such price,

(B) challenge to the fair market value of the improvements, unless such challenge is barred by the owner's acceptance of rent from the incoming tenant, or

(C) acceptance of the sale and tenancy, and such notice or failure to respond shall be of the same form, effect and consequences as if provided pursuant to §§2-07(f)(3)-(5) above.

(ii) Where the owner consummates a purchase of improvements pursuant to this section,

(A) the tenant shall have the right to remain in occupancy at the rent previously paid and accepted by the owner for 120 days, commencing on the first rent payment date following owner purchase, after which such tenant must either vacate the premises or agree to pay the rent set by the owner, with subsequent rent regulation, if applicable; or

(B) if the owner has not been accepting rent from such tenants, the tenant shall have the right to remain for 60 days commencing on the first rent payment date following owner purchase, provided that use and occupancy is tendered by the tenant in the amount of rent paid by the last tenant, after which such tenant must vacate the premises or agree to pay the rent set by the owner, with subsequent rent regulation, if applicable.

(3) **Prior sales of improvements with offer to owner.** (i) If the sale of improvements in an IMD unit has occurred prior to March 23, 1985, and is subject to the provisions of this section (see §§2-07(h)(1)(i) and (ii) above), either

(A) to the owner, or

(B) to a prospective tenant where the owner has declined to purchase but did not claim in writing that the purchase price was in excess of the fair market value, a Loft-Board-approved Sales Record shall be filed with the Loft Board within 30 days of the effective date of this regulation. Any transaction which is the subject of a Record filed in compliance with this section shall be deemed valid and shall constitute the one-time-only sale authorized by §286(6) of

the Multiple Dwelling Law, regardless of whether it was conducted in accordance with the procedures for sales of improvements described herein.

(ii) If a tenant claims that a sale of improvements prior to March 23, 1985 did not yield fair market value and that tenant was denied rights under the statute, such a challenge must be brought in a court of competent jurisdiction and will not be entertained by the Loft Board except that if such tenant claims harassment the Loft Board may entertain such claim pursuant to Loft Board regulations on harassment.

(i) **Fair market value of improvements; hardship exemptions, vacate orders, owner occupancy.** In the event that the failure of an owner to comply with the legalization deadlines mandated by MDL §284(1)(i) or MDL §284(1)(ii) results in a municipal vacate order pursuant to MDL §284(1)(iv), or in the event of the granting by the Loft Board of a hardship exemption pursuant to MDL §285(2), or in the event that the owner successfully obtains the right to occupy former IMD units under the provisions of the Rent Stabilization Law and the Rent Stabilization Code §§2524.4(a) and 2525.6, an occupant qualified for Article 7-C protections may apply to the Loft Board for a determination of fair market value of improvements and reasonable moving expenses. As further provided in MDL §284(1)(iv), any such vacate order is to be deemed an order to correct the non-compliant conditions, subject to the provisions of Article 7-C, and the occupant shall have the right to reoccupy the unit when the condition has been corrected and shall be entitled to all applicable protections of Article 7-C. The Board shall determine fair market value in accordance with this section except that the tenant shall be the applicant, affected parties shall be limited to the owner and tenant, and the tenant shall offer proof of reasonable moving expenses as well as both parties offering proof as to the value of the improvements. Upon a finding by the Board of the fair market value of the improvements and of reasonable moving expenses, it shall order the owner to pay such amounts to the tenant plus an amount equal to the application fee.

(j) **Filing of sale record.** (1) Except as provided in paragraph (2) below, within 30 days of the sale of improvements in a unit pursuant to Multiple Dwelling Law §286(6) or of March 23, 1985, whichever is later, the owner, if such owner purchased the improvements shall file a Loft Board-approved Sale Record, which provides the following information: address of IMD and location of unit; name and telephone number of incoming tenant; description of improvements conveyed; purchase price and purchaser; and rent. Failure by the owner to file the required Sale Record within 30 days of the sale of improvements will subject the owner to a civil penalty up to $1,000 as determined by the Loft Board.

(2) If a tenant purchases improvements subsequent to March 23, 1985, no further filing is required. Unless the Loft Board is otherwise informed, receipt by the Loft Board of a Disclosure Form shall be presumed to be notice that a sale to the prospective tenant identified therein has taken place, 60 days following receipt of such Disclosure Form, or 60 days following the last deadline modification approved by the Loft Board. If no sale has occurred, the outgoing tenant shall so inform the Board within 60 days of such time. If the outgoing tenant fails to advise the Board within the prescribed 60 days that no sale has taken place, such tenant may nevertheless rebut the presumption by filing an application for improvement sales consisting of another Disclosure Form, the filing fee for a sale of improvements application of $800.00, and an affirmation by the outgoing tenant that the prior proposed sale did not occur, that the tenant has remained in occupancy of the unit and that no sale of improvements in the unit has occurred.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) "Fair Market Value", pars (i)-(ii) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996.

[See Note 1]

Subd. (e) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

Subd. (f) amended City Record May 8, 1997 eff. June 7, 1997. [See T29 §2-01 Note 2]

Subd. (f) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996.

Subd. (f) par (2) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

Subd. (f) par (2) subpar (i) clause (B) subclause (i) amended City Record Nov. 3, 2005 §4, eff. Dec. 3, 2005. [See T29 §2-01 Note 6]

Subd. (f) par (2) subpar (i) clause (B) subclause (i) amended City Record Aug. 22, 2003 eff. Sept. 21, 2003. [See T29 §2-01 Note 5]

Subd. (f) par (2) subpar (i)(B)(i) amended City Record Jan. 14, 2000 eff. Feb. 13, 2000. [See T29 §2-01 Note 2]

Subd. (f) par (2) subpar (i)(B)(i) amended City Record May 8, 1997 eff. June 7, 1997. [See T29 §2-01 Note 2]

Subd. (f) par (3) amended City Record jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

Subd. (f) par (5) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (g) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

Subd. (h) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

Subd. (i) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

Subd. (j) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 17, 1996:

Section 282(d) of the Multiple Dwelling Law ("MDL") provides, in pertinent part, that the New York City Loft Board has the authority to issue and enforce rules and regulations on the hearing of complaints and applications made to it and on rules and regulations governing compliance with MDL Article 7-C, the "Loft Law". Pursuant to this authority, the Loft Board has previously issued rules relating to Sales of Improvements, 29 RCNY §2-07.

The Loft Board is amending its rules regarding sales of improvements to address issues that have arisen since these rules were enacted in 1985. The most significant issue is the depreciation of these improvements due to wear, and tear and age. In 1985 many of the improvements that were installed were relatively new. In 1995 they are considerably older and the Board recognizes that depreciation has had a significant impact upon value.

The Board also added language to acknowledge the validity of sales of improvements that occur after a unit has been legalized and registered at the New York State Division of Housing and Community Renewal and for instances where a tenant is evicted pursuant to principal vacate orders or owner occupancy proceedings.

Pursuant to the above-cited authority, the proposed amendments to rules relating to Sales of Improvements, 29 RCNY §2-07, will further the goals of MDL Article 7-C insofar as they clarify the rights of owners and tenants in an increasing number of IMD units that are becoming legalized and registered with DHCR.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The owner's failure to act within 20 days to either match the offer made by the incoming tenant or to challenge the fair market value before the Loft Board or the suitability of the incoming tenant in court, results in the owner's acceptance of the incoming tenant and the sale of improvements to them. Ross v. Wolfe, 641 N.Y.S.2d 303 (App.Div. 1st Dept. 1996); accord, Mark-Holli Realty, Inc. v. New York City Loft Board, 205 A.D.2d 399, 613 N.Y.S.2d 588 (1st Dept. 1994).

¶ 2. Pursuant to subparagraph (h)(1)(iii) of this section, an alleged sale of improvements during July or August 1982 did not constitute the one-time sale permitted by §286(6) of the Multiple Dwelling Law, because the sale was consummated before application for registration and before March 23, 1985. Matter of Perkins, OATH Index No. 1988/96 (May 1, 1997), aff'd, Loft Bd. Order No. 2122 (June 26, 1997).

¶ 3. Where the prime tenant purchased the fixtures of one of his subtenants in October 1982, and the building owner registered the building as an IMD by registration dated January 31, 1983 but received by the Loft Board on February 2, 1983, the sale of improvements was governed by subparagraph (h)(1)(iii) of this section, and therefore the sale of improvements did not constitute the one-time sale permitted pursuant to §286(6) of the Multiple Dwelling Law. Matter of Longfellow Properties, Inc., OATH Index No. 1780/96 (Nov. 4, 1996), aff'd, Loft Bd. Order No. 2057 (Jan. 30, 1997).

¶ 4. Where improvements to a loft unit were made by an earlier tenant, and were neither made by nor purchased by the subsequent tenant of the unit, the subsequent tenant is not entitled under this section to sell the improvements. Matter of Sansone, OATH Index No. 1125/96 (Mar. 27, 1996), aff'd, Loft Bd. Order No. 1955 (Apr. 25, 1996).

¶ 5. Applicant's express sale of rights pursuant to Multiple Dwelling Law section 286(12) and sale of fixtures pursuant to Multiple Dwelling Law section 286(6) to prior landlord operated to deregulate the entire third floor of premises, pursuant to paragraph (5) of this section. **Matter of Fergusson**, OATH Index No. 923/99 (June 11, 1999), **aff'd**, Loft Bd. Order No. 2440 (Nov. 1, 1999).

¶ 6. Multiple Dwelling Law section 286(6) and this rule provide that an outgoing residential tenant qualified for protection under the Loft Law may sell improvements to the incoming tenant, subject to the owner's right of first refusal. However, neither the law nor rule extend such right to the estate of a deceased tenant. Thus, the protected occupant's estate was not entitled to the value of improvements. **Matter of 595 Broadway Associates,** OATH Index No. 1083/02 (Nov. 7, 2002), **aff'd,** Loft Bd. Order No. 2770 (Jan. 9, 2003).

¶ 7. Sale of fixtures between outgoing and incoming tenants found invalid where co-owner had delivered a valid notice exercising its right to purchase unit's rights and improvements pursuant to subdivision (f)(5) of this section and the statutory right of owners to purchase improvements. **Matter of 79 Warren Street Associates**, LLC OATH Index Nos. 749/03, 1523/03 (Jan. 13, 2004), **aff'd**, Loft Bd. Order No. 2852 (Mar. 18, 2004).

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-08 Coverage and Issues of Status.

Registration as an interim multiple dwelling (hereinafter IMD) with the New York City Loft Board (hereinafter Loft Board) shall be required when a building, structure or portion thereof meets the criteria for an IMD set forth in §281 of Article 7-C of the Multiple Dwelling Law as further delineated in the following regulations.

(a) **Definitions.**

Building.

(i) As defined in §12-10 of the Zoning Resolution, a building is any structure which:

(A) is permanently affixed to the land

(B) has one or more floors and a roof

(C) is bounded by either open area or the lot lines of a zoning lot

(D) may be a row of structures and have one or more structures on a single zoning lot.

(ii) In deciding whether a structure is a single building, as distinguished from more than one building for purposes of IMD determination, the Loft Board shall employ the definition set forth above and consider **inter alia** the following factors:

(A) whether the structure is under common ownership;

(B) whether contiguous portions of the structure

within the same zoning lot are separated by individual load-bearing walls, without openings for the full length of their contiguity, as distinguished from non-loadbearing partitions;

(C) whether the structure has been operated as a single entity, having one or more of the following:

(a) a common boiler;

(b) a common sprinkler system;

(c) internal passageways;

(d) other indicia of operation as a single entity.

(D) whether the owner or a predecessor has at any time represented in applications or other official papers that the structure was a single building;

(E) whether a single certificate of occupancy has been requested or issued for the structure; the pattern of usage of the building during the period from April 1, 1980, to December 1, 1981.

Grandfathering. For purposes of these regulations, "grandfathering" means the administrative process by which a residential unit, located where residential use is not otherwise permitted by the Zoning Resolution, is determined by the agency designated in the Zoning Resolution, to have been residentially occupied on a specified date, and is therefore a legal residential use as of right, eligible for Article 7-C coverage.*3 Grandfathering may also be accomplished by a special permit process defined in subdivision (ii) below, which requires a further discretionary approval in addition to determination of occupancy on a specified date.

(i) **Minor modification and an administrative certification.** A "minor modification" and an "administrative certification" as found in §281(2)(i) of the Multiple Dwelling Law are terms which refer to various procedures which may be specified in the Zoning Resolution in addition to the grandfathering determinations of occupancy, concerning non-discretionary actions by the agency to which an application must be made.

(ii) **Special permit.** A "special permit" as found in §281(2)(iv) of the Multiple Dwelling Law is a term referring to a grandfathering procedure specified in the Zoning Resolution which involves a discretionary determination and approval by the City Planning Commission, to which the application must initially be made, and by the Board of Estimate.**4

Residential unit. For purposes of these regulations the residence or home of a "family" as defined in Multiple Dwelling Law §4(5)***5 shall be deemed a residential unit.

In order to qualify as a residential unit, the unit must have attributes of independent living such as:

A separate entrance providing direct access to the unit from a street or public area, such as a hallway, elevator or stairway within a building;

One or more rooms arranged to be occupied by the members of a family, which room or rooms are separated and set apart from all other rooms within a building; and

Such other indicia of independent living which demonstrate the unit's use as a residence of a family.

Study area. A study area as found in §281(2)(iii) of the Multiple Dwelling Law is a term referring to an area, defined in §42-02 of the Zoning Resolution, which is currently zoned as manufacturing and under study by the City Planning Commission for a determination of the appropriateness of the zoning.

(b) **Certificate of occupancy.** (1) Registration as an IMD of any building, structure or portion thereof for which a final, as distinguished from a temporary, residential certificate of occupancy was issued pursuant to §301 of the Multiple Dwelling Law prior to June 21, 1982, shall not be required for such units designated as residential on the certificate of occupancy. Such units shall be exempt from Article 7-C coverage unless the certificate of occupancy is revoked.

(2) Registration as an IMD with the Loft Board shall be required of:

(i) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in §281 of the Multiple Dwelling Law and these regulations, for all residentially-occupied units which lacked a final residential certificate of occupancy issued pursuant to §301 of the Multiple Dwelling Law prior to June 21, 1982. Issuance of a residential certificate of occupancy for such units on or after June 21, 1982, will not be the basis for exemption from Article 7-C coverage;

(ii) Any building, structure or portion thereof which meets the criteria for an IMD set forth in §281 of the Multiple Dwelling Law and these regulations, for all residentially occupied units which obtained a temporary, but not final, residential certificate of occupancy issued pursuant to §301 of the Multiple Dwelling Law prior to June 21, 1982. Issuance of a temporary residential certificate of occupancy for such units prior to June 21, 1982, will not be the basis for exemption from Article 7-C coverage if on or after June 21, 1982 a period of time of any length existed for whatever reason whatsoever during which a temporary or final certificate of occupancy issued pursuant to §301 of the Multiple Dwelling Law was not in effect for such units.

(iii) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in §281 of the Multiple Dwelling Law and these regulations, for all residentially occupied units for which a temporary or final residential certificate of occupancy has been revoked. The prior issuance of a temporary or final certificate of occupancy which has been revoked for such units will not be the basis for exemption from Article 7-C coverage.

(c) **Qualifying period of occupancy.** (1) Registration as an IMD with the Loft Board shall be required of any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in §281 of the Multiple Dwelling Law and these regulations, and had at least three units residentially occupied on December 1, 1981, since April 1, 1980. If the building, structure or portion thereof contained three units so occupied on December 1, 1981, and on April 1, 1980, and such residential use is permissible under the Zoning Resolution as of right, or through grandfathering, or the units are in a study area as defined in §2-08(a) "Study area" of these regulations, there shall be a presumption that the building is an IMD and that such units are covered under Article 7-C. However, if there is a determination by the Loft Board that there was a bona fide change to exclusively non-residential use in a unit between April 1, 1980, and December 1, 1981, such unit shall not be counted for purposes of determining whether the building is an IMD. The occupant of any unit which changed to a bona fide exclusively non-residential use, must have been a party distinct and independent of the owner of the building for the presumption of IMD coverage to be rebutted.

(2) Registration as an IMD with the Loft Board shall also be required of any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in MDL §281 and these rules, that had one or more units residentially occupied on May 1, 1987, since December 1, 1981, that was occupied for residential purposes since April 1, 1980, regardless of whether residential use is permitted under the Zoning Resolution as of right, or through grandfathering as defined in §2-08(a) "Grandfathering" of these rules, or because the building is located in a study area as defined in §2-08(a) "Study area" of these rules. Residential occupancy of one or more units of the building, structure or portion thereof, as described in this paragraph, on May 1, 1987, on December 1, 1981 and on April 1, 1980, shall create a presumption that the building is an IMD or that such unit or units are covered under Article 7-C. However, if

there is a determination by the Loft Board that there was a bona fide change to exclusively non-residential use in a unit between April 1, 1980, and December 1, 1981 or between December 1, 1981 and May 1, 1987, such unit shall not be counted for purposes of determining whether the building is an IMD. The occupant of any unit which changed to a bona fide exclusively non-residential use must have been a party distinct and independent of the owner of the building for the presumption of IMD coverage to be rebutted.

(3) Neither vacancies of any duration for units residentially occupied on December 1, 1981, and on April 1, 1980 as set forth in §2-08(c)(1), or for units occupied on May 1, 1987, on December 1, 1981 and on April 1, 1980 as set forth in §2-08(c)(2), nor a change or changes or residential occupants in such units during the intervening period(s) will be the basis for exemption from Article 7-C coverage.

(d) **Calculation of residential units.** (1) Registration as an IMD with the Loft Board shall be required of any building, structure or portion thereof which has a minimum of three residential units, except as provided in subparagraph (v) of paragraph 1 of this subdivision, and which otherwise meets the criteria for an IMD set forth in §281 of the Multiple Dwelling Law and these regulations. For purposes of counting to determine whether a building qualifies as an IMD and must be registered, the term "residential unit" shall include:

(i) Any unit which meets the criteria of §281(1) of the Multiple Dwelling Law in that:

(A) a portion of the building or structure within which the unit is located was occupied at any time for manufacturing, commercial or warehouse purposes;

(B) it lacked a residential certificate of occupancy pursuant to §301 of the Multiple Dwelling Law as further delineated in §§2-08(b)(1) and (2) of these regulations;

(C) it was occupied for residential purposes on December 1, 1981, since April 1, 1980, as further delineated in §2-08(c) of these regulations; and

(D) it is located in a geographical area in which the Zoning Resolution permits residential use as of right or in which the residential use may become a use as of right as a result of approval of a grandfathering application, in accordance with §281(2)(i) or (iv) of the Multiple Dwelling Law as defined in §2-08 (a) "Grandfathering" of these regulations; or is located in a study area designated by the Zoning Resolution for possible rezoning to permit residential use, in accordance with §281(2)(iii) of the Multiple Dwelling Law, as defined in §2-08(a) "Study area" of these regulations;

(ii) Any unit designated as "Artist in Residence"

(A.I.R.) pursuant to directives of the Department of Buildings, creating such status;

(iii) Any unit designated as "joint living work quarters for artists" pursuant to the Zoning Resolution;

(iv) Any unit residentially-occupied by a subtenant or assignee of the prime tenant of such unit.

(v) Registration as an IMD with the Loft Board shall also be required of any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in MDL §281, which has one or more residential units that were residentially occupied on May 1, 1987, since December 1, 1981, that were occupied for residential purposes since April 1, 1980, as further delineated in §2-08(c)(2) of these rules, regardless of whether the building is located in a geographical area in which the Zoning Resolution permits residential use as of right, or through grandfathering as defined in §2-08(a) "Grandfathering" of these rules or because the building is located in a study area as defined in §2-08(a) "Study area" of these rules. However, for a unit to qualify as a "residential unit" pursuant to this subparagraph, the building in which it is located must meet the criteria of MDL §§281(1) and 282(2)(ii) in that: (A) a portion of the building or structure was occupied at any time for manufacturing, commercial or warehouse purposes; (B) the building

lacked a residential certificate of occupancy pursuant to MDL §301 as further delineated in §§2-08(b)(1) and (2) of these rules; (C) it contained at least three units residentially occupied on December 1, 1981, since April 1, 1980; and (D) it is not municipally owned.

(2) For purposes of counting to determine whether a building qualifies as an IMD and is covered under Article 7-C, residential units described as follows shall not be included: (i) Any units designated as residential on a final certification of occupancy issued pursuant to §301 of the Multiple Dwelling Law prior to June 21, 1982;

(ii) Any units designated as "joint living work quarters for artists" on a final certificate of occupancy issued prior to June 21, 1982;

(iii) Any units designated for a commercial use with an accessory residential use on a final certificate of occupancy issued prior to June 21, 1982.

(e) **Zoning regulations.** (1) Registration as an IMD shall be required of any building, structure or portion thereof, which meets the criteria for an IMD as set forth in §281(1) of the Multiple Dwelling Law and the regulations issued pursuant thereto, except that any building located in a zoning district designated as manufacturing in the Zoning Resolution, for which district there are no "grandfathering" provisions as defined in these regulations shall not qualify as an IMD. This exception, however, shall not apply to buildings, structures or portions thereof which otherwise meet the criteria of §281(1) for an IMD, if such building is located in a "Study area" as defined in §2-08(a)&#34§udy area" of these regulations and the registration of such building shall be required. This exception shall also not apply to buildings, structures or portions thereof which otherwise meet the criteria of MDL §281(1), if such building also meets the requirements of MDL §281(4) and the rules issued pursuant thereto. Except for a building or structure or portion thereof which qualifies for coverage under Article 7-C solely by reason of MDL §281(4), the zoning regulations and the grandfathering provisions for the district in which a building or structure is located will determine whether and when the owner of such building, which otherwise meets the criteria for an IMD set forth in §281(1) and the regulations issued pursuant thereto, is mandated to meet the compliance requirements for legalization set forth in ;st284(1).

(2) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in §281(1) of the Multiple Dwelling Law and these regulations and is located in an area which permits residential use as of right, shall be obligated to meet the compliance requirements for legalization by the dates designated in §284(1), except as provided in §§2-08(e)(4)(i) and (iii) infra and as further delineated in §2-01(a) of these rules. The term "residential use as of right" as employed in §281(2) of Article 7-C means that the zoning regulations permit residential use without requiring further approvals pursuant to the Zoning Resolution.

(3) Any unit designated as "joint living work quarters for artists" in a zoning district which does not otherwise permit residential use as of right and which is currently occupied by a resident or residents who cannot qualify as certified artists, as defined in 7-C, if the building in which such unit is contained, otherwise meets the criteria for an IMD set forth in §281(1) of the Multiple Dwelling Law and these regulations. The non-artist status of the current occupant shall not be the basis for exemption from Article 7-C coverage including the legalization requirements of §284(1). At the time of issuance of the final certificate of occupancy, the occupant of such a unit must be in compliance with the Zoning Resolution or the unit must be vacant.

(4) **Legalization compliance timetable.**

(i) For any building, structure or portion thereof, which contains fewer than three residential units as of right and one or more units eligible for coverage by employing one of the grandfathering procedures set forth in §§281(2)(i) or (iv) of the Multiple Dwelling Law and defined in §2-08(a) "Grandfathering" (i) and (ii) of these regulations, the timing of the compliance requirements of §284(1) of the Multiple Dwelling Law shall commence upon approval of the grandfathering application of the unit which becomes the third eligible residential unit for purposes of calculation of units qualifying the building as an IMD.

(ii) For any registered building in the category described in §2-08 (e)(4)(i) of these regulations, for which denial of a grandfathering application reduces the number of qualifying residential units below three, IMD status for such building expires and the other residential units in such building cease to be covered by Article 7-C, unless the building qualifies for coverage under Article 7-C pursuant to MDL §281(4) and the rules issued pursuant thereto.

(iii) Any building, structure or portion thereof which contains three or more residential units as of right, and one or more additional units eligible for coverage by employing one of the grandfathering provisions of §§281(2)(i) or (iv) of the Multiple Dwelling Law, shall be obligated to meet the compliance requirements for legalization by the dates designated in §284(1) of the Multiple Dwelling Law, as further delineated in §2-01(a) issued pursuant thereto, for such as of right residential units. The timing of the compliance requirements for the other eligible units shall commence as follows:

(A) Where an application for grandfathering for such unit is made pursuant to one of the procedures designated as a "minor modification" or "administrative certification" in §281(2)(i) of the Multiple Dwelling Law, upon a determination of residential occupancy on the date designated in the particular grandfathering provision of the Zoning Resolution;

(B) Where an application for grandfathering for such unit is made pursuant to a "special permit application as designated in §281(2)(iv) of the Multiple Dwelling Law, upon the granting of such special permit.

(iv) For any unit eligible for coverage by employment of one of the grandfathering procedures set forth in §§281(2)(i) or (iv) of the Multiple Dwelling Law and defined in §§2-08(a) "Grandfathering" (i) and (ii), the final denial of a grandfathering application or the failure to apply for grandfathering within the time period specified in the Zoning Resolution will terminate coverage for such unit unless such unit qualifies for coverage under Article 7-C pursuant to MDL §281(4).

(v) For any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in §281(1) of the Multiple Dwelling Law and these regulations, but is located in an area designated by the Zoning Resolution as a study area, the timing of the compliance requirements of §284(1) shall commence upon rezoning of such study area to permit residential use as of right. If the rezoning permits residential use only through grandfathering procedures, the timing of the compliance requirements of §284(1) and the rules issued pursuant thereto shall commence upon the approval of the grandfathering application of the unit which becomes the third eligible residential unit for purposes of calculation of units qualifying the building as an IMD.

For any registered building in a study area as described in §2-08(a) "Study area" of these regulations, for which the City Planning Commission has approved neither rezoning nor grandfathering by December 31, 1983, IMD status for such building expires and all of the units in such building cease to be covered by Article 7-C, unless there is a recommended extension of such deadline by the City Planning Commission. If the Board of Estimate disapproves rezoning for residential use or grandfathering or the extension of such deadline, IMD status for such building expires and all the units in such building cease to be covered by Article 7-C.

However any building, structure or portion thereof which ceased to be covered under Article 7-C as a result of the failure to rezone the study area, permit grandfathering or to extend the deadlines as set forth in the foregoing paragraph shall be covered by Article 7-C if it meets the criteria of MDL §281(4) of the Multiple Dwelling Law.

(f) **Municipally owned buildings.** (1) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD as set forth in §2-09(1) of the Multiple Dwelling Law and these regulations, but is municipally owned, shall be exempt from coverage of Article 7-C.

(2) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD as set forth in §281(1) of the Multiple Dwelling Law and these regulations, formerly municipally owned, but for which title passed to a private owner, shall be required to register as an IMD. The former ownership by the municipality shall not be the basis for

exemption from Article 7-C coverage.

(g) **Accreted units.** (1) In a building, structure or portion thereof which meets the criteria of §§281(1) and 281(2) or 281(4) of the Multiple Dwelling Law and these regulations, thereby qualifying as an IMD, the occupant or occupants of any additional unit residentially occupied for the first time after April 1, 1980 but prior to April 1,1981 in such IMD may also be covered under Article 7-C.

In order to qualify for coverage, the occupancy of such unit must be permissible under the Zoning Resolution. For purposes of §2-09(3) of the Multiple Dwelling Law, occupancy of such additional units shall be deemed permissible if:

(i) the unit is located in a zoning district where residential use as of right is permitted under the Zoning Resolution; or

(ii) the unit is designated as "joint living work quarters for artist" in a zoning district which does not otherwise permit residential use as of right, regardless of whether the occupant or occupants qualify as "certified artists" as defined in §12-10 of the Zoning Resolution; or

(iii) the unit can qualify as having a legal residential use pursuant to one of the grandfathering provisions of the Zoning Resolution, as defined in §2-08(a)"Grandfathering" of these regulations; or

(iv) the unit is in a study area, as defined in §2-08(a) "Study area" of these regulations, for which the City Planning Commission has approved either rezoning for residential use or grandfathering by December 31, 1983.

(2) Registration of such accreted units as part of the IMD shall be required for all units that qualify for Article 7-C coverage.

(3) Where a building, structure or portion thereof meets the criteria of §§281(1) and 281(2) or 281(4) of the Multiple Dwelling Law and these regulations, thereby qualifying as an IMD, it must be registered with the Loft Board. A decrease in the number of residentially occupied units in a building which qualifies for coverage pursuant to §§281(1) and 281(2) to fewer than three after December 1, 1981 will not be the basis for exemption from IMD coverage. However, the discontinuance of residential occupancy after December 1, 1981, but prior to May 1, 1987, of a unit which qualifies for coverage under Article 7-C solely by reason of MDL §281(4) will result in such unit being exempt from IMD coverage. Remaining residentially occupied units, limited to units in existence during the qualifying period of occupancy, set forth in §281(1)(iii) or 281(4) of the Multiple Dwelling Law, as further delineated in §2-08(c) of these regulations, and accreted units as defined in §281(3) of the Multiple Dwelling Law and §2-08(g)(1) of these regulations, shall be entitled to the protections of Article 7-C, including the legalization requirements of §284(1) of the Multiple Dwelling Law.

(h) **Non-covered units in an IMD.** (1) Any space in an IMD which was not previously occupied residentially on or before June 21, 1982, and is subsequently converted to residential use, is not covered by Article 7-C, and the owner of such space must obtain a residential certificate of occupancy before permitting the commencement of such occupancy.

(2) Notwithstanding that a building qualifies as an IMD, any unit first occupied residentially on or after April 1, 1981, is not covered under Article 7-C. Occupants of any such unit are not entitled to the protections of Article 7-C. Residential occupancy of such unit shall not be permitted unless a residential certificate of occupancy is obtained.

(i) **De facto multiple dwellings.** Registration as an IMD with the Loft Board shall be required of any building, structure or portion thereof judicially determined to be a **de facto** multiple dwelling, which otherwise meets the criteria for an IMD, as set forth in §281 of the Multiple Dwelling Law and these regulations. Such prior judicial determination will not be the basis for exemption from Article 7-C coverage.

(j) Reserved.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Open par amended City Record Mar. 30, 2001 eff. Apr. 29, 2001. [See T29 §2-08.1 Note 1]

Subd. (c) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (d) par (1) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (e) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (g) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (j) redesignated §2-08.1 City Record Mar. 30, 2001 eff. Apr. 29, 2001. [See T29 §2-08.1 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Apparently, the loft law and regulations do not mandate the eviction of a loft tenant who has been overcharging subtenants. The court decided that, in any event, the alleged overcharge was not such an egregious act as to warrant eviction of the tenant. Ariel Assocs. v. Brown, N.Y.L.J., Sept. 18, 1997, page 29, col. 6 (Civ.Ct. New York Co.).

¶ 2. At trial in a tenant's coverage application pursuant to this section, evidence in support of the building owner's position that a loft unit was too small to be legalized and that the unit could not be configured to comply with building and fire codes was precluded, and those issues were deferred to subsequent legalization proceedings. Matter of DeGraw, OATH Index No. 625/96 (Jan. 17, 1996), report and recommendation (Apr. 25, 1997), remanded on other grounds, Loft Bd. Order No. 2114 (May 22, 1997), supplemental report and recommendation (June 17, 1997), aff'd, Loft Bd. Order No. 2126 (Aug. 28, 1997).

¶ 3. Where a loft unit was subdivided into two separate units by the original prime tenants in 1979, and each of the two units had its own kitchen, bathroom and elevator access, the two units were separate residential units pursuant to paragraph (a) of this section, even though the units were registered with the Loft Board as a single unit, they shared utility accounts, one mailbox, and one hot water heater, and one of the units lacked separate access to the stairway and fire escape. Matter of DeGraw, OATH Index No. 625/96 (Apr. 25, 1997), remanded on other grounds, Loft Bd. Order No. 2114 (May 22, 1997), supplemental report and recommendation (June 17, 1997), aff'd, Loft Bd. Order No. 2126 (Aug. 28, 1997).

¶ 4. Installation of a bedroom in a loft unit used primarily for an art studio was not sufficient to create a residential unit pursuant to paragraph (a) of this section, where the unit lacked a bathroom, kitchen, running water, appliances or fixtures. Matter of Wada, OATH Index No. 1519/96 (July 25, 1997), aff'd, Loft Bd. Order No. 2156 (Oct. 10, 1997).

¶ 5. Where a loft unit in a building otherwise covered by the Loft Law was first occupied residentially in the fall of 1980, and that unit was divided in half and one half was sublet on July 21, 1981, to a residential occupant who lived there continuously thereafter, that occupant's portion of the original unit was covered by the Loft Law as an accreted unit pursuant to paragraph (g) of this section, and the occupant was protected pursuant to §2-09(b) of this chapter. Matter of Jemison, OATH Index No. 618/96 (Feb. 23, 1996), aff'd, Loft Bd. Order No. 1942 (Mar. 28, 1996).

¶ 6. Unit was abandoned pursuant to section 2-10(f) of this title when tenant was evicted due to non-payment of rent, but under subparagraph (j)(2) of this section the unit remains subject to all the requirements of Article 7-C,

including rent regulation, unless and until owner complies with the conditions for deregulation under this section. **Matter of Freiman Coated Fabric Corp.,** OATH Index No. 988/98, amended report (Apr. 7, 1998), **aff'd,** Loft Bd. Order No. 2281 (Sept. 24, 1998).

¶ 7. Where a tenant, who was a professional artist, obtained employment in the Woodstock, New York area, registered her car from the upstate address and represented to the insurance company that the car would be garaged upstate (thus obtaining less expensive insurance), and subscribed to an internet service in the Woodstock area but not in New York City, the court held that the tenant did not maintain the loft apartment as a primary residence. Prince v. Brisson, N.Y.L.J., Oct. 17, 2001, page 23, col. 5 (Civ.Ct. Kings Co.).

¶ 8. Tenant's application for protected occupant status as to three floors of the premises was granted in part and denied in part, where tenant failed to show that one floor, the basement, was occupied during the window period. The Loft Board, in a prior case, had found window period occupancy as to the other units on the first and second floors. **Matter of Rolf**, OATH Index No. 1897/99 (July 1, 1999), **aff'd**, Loft Bd. Order No. 2431 (Oct. 1, 1999).

¶ 9. Successor tenants' coverage application was denied where they took occupancy pursuant to a commercial lease after the owner had decovered the unit by filing with the Loft Board and the Department of City Planning a restrictive declaration pursuant to section 2-08.1 (formerly section 2-08(j)) following the eviction of the previous residential tenant. **Matter of Fahrer**, OATH Index No. 1405/99 (Oct. 26, 1999), **aff'd**, Loft Bd. Order No. 2484 (Feb. 22, 2000).

¶ 10. Determination of coverage involves a case by case analysis of the sufficiency of the indicia of residential use as a whole. No one factor is dispositive. Administrative law judge found sufficient indicia of conversion of the loft to residential use during such period, where tenant built a loft bed; erected L-shaped sheet rock walls and hung a heavy curtain to enclose his living area; had residential phone service; had various personalty in the loft including, a table, chairs, hot plates, refrigerator, and stereo; installed a mail slot to receive mail; installed a bathtub for his exclusive use; entertained guests in the loft; used a separate door from the one used by the commercial tenant to enter the loft; and produced documentary evidence such as W-2 forms, bank statements and telephone receipt, to establish the loft as his primary residence. Fact that tenant had to share a bathroom with the commercial tenant in the larger commercial space, had to walk through the factory space to exit the loft, occupied only a third of the loft, cooked on a hot plate, had no hot water, no stove, no shower, and had no separate gas or plumbing lines in his living cubicle, did not preclude finding of residential use. **Matter of South 11th Street Tenants' Association**, OATH Index Nos. 1242-44/96 (Mar. 30, 1999), **aff'd**, Loft Bd. Order No. 2397 (Apr. 29, 1999).

¶ 11. Administrative law judge directed grant of decoverage application where applicant demonstrated that all formerly residential units at the premises were no longer residentially occupied and that there have been no findings of harassment against the landlord. **Matter of Bradley Acquisition, LLC,** OATH Index No. 1712/02 (Aug. 22, 2002), **aff'd,** Loft Bd. Order No. 2754 (Oct. 2, 2002).

¶ 12. Administrative law judge rejected owner's motion to dismiss petition based on laches and estoppel as the Loft Law does not contain a limitation period for applications to add an accreted unit to a previously registered Interim Multiple Dwelling pursuant to subsection (g) of this section. **Matter of Van Derbeek,** OATH Index No. 1972/01 (Feb. 13, 2002), **aff'd,** Loft Bd. Order No. 2717 (Mar. 14, 2002).

¶ 13. Administrative law judge dismissed an application to add petitioner's unit to the covered units in the building as an accreted unit pursuant to subsection (g)(1) of this section where petitioner could present no documentary evidence to corroborate his claim that the unit was residentially occupied after April 1, 1980 but prior to December 1, 1981. **Matter of Maio,** OATH Index No. 1294/02 (July 12, 2002), **aff'd,** Loft Bd. Order No. 2755 (Oct. 2, 2002).

¶ 14. Voluntary registration is the equivalent of a Loft Board finding of coverage. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

FOOTNOTES

3

[Footnote 3]: *** Grandfathering procedures in this classification are designated in the Zoning Resolution and include, but are not limited to §§11-27, 11-28, 15-021(c), 15-021(d), 15-215, 41-141, 42-111D(1)(f), 111-201(a), and 111-201(b); as of April 7, 1983. As well as other sections that will be adopted in the future.

4

[Footnote 4]: *** Grandfathering procedures in this classification are designated in the Zoning Resolution and include, but are not limited to §74-782; as of April 7, 1983. As well as other sections that will be adopted in the future.

5

[Footnote 5]: *** A "family" is either a person occupying a dwelling and maintaining a household, with two or more persons living together and maintaining a common household; not to exceed four boarders, roomers or lodgers; or a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers, or lodgers. See §4(5).

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-08.1

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-08.1 Eviction of Residential Occupants.

(a) **Grounds for eviction.** The landlord of an IMD registered with the Loft Board may bring eviction proceedings against the residential occupant of a unit in a court of competent jurisdiction on any of the following grounds:

(1) that the unit is not the primary residence of such residential occupant, except that where a lease or rental agreement is in effect between the landlord and such residential occupant, the landlord may not seek to evict such occupant until such lease or rental agreement is no longer in effect; or

(2) that the residential occupant is committing or permitting a nuisance in such unit; or is maliciously or by reason of gross negligence substantially damaging the building; or his or her conduct is such as to interfere substantially with the comfort and safety of the landlord or of the other occupants of the same building or of adjacent buildings or structures; or

(3) any of the grounds for eviction specified in the Real Property Law or the Real Property Actions and Proceedings Law, to the extent that such grounds are not inconsistent with Article 7-C and any regulations promulgated by the Loft Board.

(b) **Effect of eviction.** Any unit which becomes vacant as a result of the eviction of a protected occupant or occupants pursuant to §2-08.1(a), supra, of these rules shall remain subject to all the requirements of Article 7-C, and rules and orders of the Loft Board, including the legalization requirements of §284 of the Multiple Dwelling Law and rent guidelines issued by the Loft Board, except that the landlord may convert such unit to a non-residential conforming use, provided that the landlord file with the Loft Board a certified copy of an irrevocable recorded covenant in form

satisfactory to the Loft Board, enforceable by the City of New York for fifteen (15) years from the date of recording, that the unit will not be re-converted to residential use during such time. When the conversion of such unit to a non-residential conforming use reduces the number of qualifying units below three, however, IMD status for such building and the remaining residential units covered under Article 7-C in such building, shall not be affected.

(c) **Succession rights.** (1) Any family member, as defined in paragraph (3) of this subdivision, shall not be evicted under subparagraph (a) of §2-08.1 where the protected occupant has permanently vacated the IMD unit and such family member has resided with the protected occupant in the unit as a primary residence for a period of no less than two years, or where such person is a "senior citizen" or a "disabled person," as defined in paragraph (3) of this subdivision, for a period of no less than one year, immediately prior to the permanent vacating of the unit by the protected occupant, or from the inception of the occupancy or commencement of the relationship, if for less than such periods. The minimum periods of required residency set forth in this subdivision shall not be deemed to be interrupted by any period during which the "family member" temporarily relocates because he or she:

(i) is engaged in active military duty;

(ii) is enrolled as a full time student;

(iii) is not in residence at the unit pursuant to a court order not involving any term or provision of the lease, and not involving any grounds specified in the Real Property Actions and Proceedings Law;

(iv) is engaged in employment requiring temporary relocation from the housing unit; (v) is hospitalized for medical treatment; or

(vi) has such other reasonable grounds that shall be determined by the Loft Board upon application by such person.

(2) On a form prescribed by the Loft Board, a protected occupant may, at any time, advise the landlord of, or a landlord may at any time, request from the protected occupant, the information required in subparagraphs (i) through (iv) of this paragraph (2). Failure of the protected occupant to provide such information to the landlord, regardless of whether the landlord requests the information, shall place upon all such persons not so made known to the landlord, who seek to exercise the right to protection from eviction as provided for in this subdivision, the affirmative obligation to establish such right. Such required information is as follows:

(i) the names of all persons other than the protected occupant who are residing in the unit; and

(ii) if such other person is a "family member" as defined in paragraph (3) of this subdivision; and

(iii) if such other person is, or upon the passage of the applicable minimum period of required residency, may become a person entitled to protection from eviction pursuant to paragraph (1) of this subdivision, and the date of the commencement of such person's primary residence with the protected occupant; and

(iv) if such other person is a "senior citizen" or a "disabled person" as defined in paragraph (3) of this subdivision.

(3) For the purposes of this subdivision:

(i) "family member" is defined as a husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the protected occupant; or any other person residing with the protected occupant in the IMD unit as a primary residence who can prove emotional and financial commitment, and interdependence between such person and the protected occupant. Although no single factor shall be solely determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed, may include, without limitation, such factors as listed below. In no event would evidence of a sexual relationship between

such persons be required or considered.

(A) longevity of the relationship;

(B) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;

(C) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;

(D) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;

(E) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, conferring upon each other a power of attorney and/or authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, etc.;

(F) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;

(G) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;

(H) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long-term, emotionally committed relationship;

(ii) a "senior citizen" is defined as a person who is sixty-two years of age or older;

(iii) a "disabled person" is defined as a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which substantially limit one or more of such person's major life activities.

(4) Any persons in occupancy of an IMD unit on or after the effective date of this rule who has then been in occupancy for the minimum periods of required residency set forth in this subdivision shall have the benefits of succession rights.

HISTORICAL NOTE

Section amendment republished City Record Apr. 4, 2001 to correct a typographical error in City

Record Mar. 30, 2001.

Section designated (formerly §2-08(j)) and amended City Record Mar. 30, 2001 eff. Apr. 29, 2001.

[See Note]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 4, 2001 and Mar. 30, 2001:

This rule codifies the Loft Board's position, previously set forth in Board decisions, that the family members who

live with a protected occupant in the two years preceding a protected occupant's permanent vacancy from the IMD unit shall be protected from eviction. In addition, senior citizens and disabled persons who live with a protected occupancy in the one year preceding the protected occupant's permanent vacancy from the IMD unit are protected from eviction. The rule tracks the tenant succession law as it applies to rent stabilized units.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where a loft unit was abandoned pursuant to §2-10(f) of this chapter eight months before the landlord obtained a Civil Court judgment of possession, paragraph (j) (now §2.08.1) of this section, which applies to loft vacancies which occur due to eviction, was inapplicable. Matter of Kangs Heritage Management Corp., OATH Index No. 762/98 (Dec. 19, 1997), aff'd, Loft Bd. Order No. 2221 (Feb. 26, 1998).

¶ 2. Successor tenants' coverage application was denied where they took occupancy pursuant to a commercial lease after the owner had decovered the unit by filing with the Loft Board and the Department of City Planning a restrictive declaration pursuant to this section following the eviction of the previous residential tenant. **Matter of Fahrer**, OATH Index No. 1405/99 (Oct. 26, 1999), **aff'd**, Loft Bd. Order No. 2484 (Feb. 22, 2000).

¶ 3. Generally, abandonment cannot be found based on an eviction due to the lack of a voluntary relinquishment of possession. However, administrative law judge found abandonment based on petitioner's sufficient, reliable and unrebutted evidence establishing that the subject unit was abandoned by two of three sequential residential occupants following the eviction of the window period residential occupant by the former landlord of the building. **Matter of Mervin,**OATH Index No. 1965/01 (Nov. 8, 2001), **aff'd,** Loft Bd. Order No. 2689 (Nov. 29, 2001).

¶ 4. To qualify as a residential unit under this section, the unit must have attributes of "independent living". Coverage application where the contested issue was whether a particular unit was residentially occupied during the window period. Application was denied based on finding that tenant only proved, at most, that he resided in the loft a few days per month during the window period, thus falling short of establishing the unit had the attributes of "independent living" necessary to support a finding of coverage. **Matter of Addis**, OATH Index No. 1574-75/02 (Nov. 25, 2002), **aff'd**, Loft Bd. Order No. 2772 (Jan. 9, 2003), **reconsideration denied**, Loft Bd. Order No. 2954 (Sept. 15, 2005).

¶ 5. Wife of protected occupant, who was not named on lease, was not entitled to protected status, but she may have succession rights which would protect her from eviction. **Matter of Tenants of 323-325 W. 37th Street**, OATH Index No. 692/06 (May 18, 2007).

¶ 6. Once an IMD unit becomes vacant following an eviction, the owner can choose to lease the unit to a new residential tenant or it may convert the property to conforming non-residential use and file a restrictive covenant. Where the owner did not file the restrictive covenant until well after leasing the unit to new tenants, who took occupancy and paid rent (at a higher rate), the unit was not removed from regulation when the restrictive declaration was filed. **Rader v. Grand Morgan Realty Corp**., OATH Index Nos. 207/08 & 208/08 (Jan. 4, 2008).

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-09 Subletting and Similar Matters.

(a) **Definitions.**

Prime lessee. As used in these regulations, the term "prime lessee" shall mean the party with whom the landlord entered into a lease or rental agreement for use and occupancy of a portion of an IMD, which is being used residentially, regardless of whether such lessee is currently in occupancy or whether such lease remains in effect.

Privity. As used in these regulations, the term "privity" shall mean a direct contractual relationship between two parties, which may be established explicitly, implicitly or by operation of law.

Tenant. Where the term "tenant" is used in Article 7-C of the Multiple Dwelling Law, to refer directly or implicitly to a residential tenant, it is deemed interchangeable with the use of the word "occupant" in Article 7-C.

(b) **Occupant qualified for possession of residential unit and protection of Article 7-C.**

(1) Except as otherwise provided herein, the occupant qualified for protection under Article 7-C shall be the residential occupant in possession of a residential unit, covered as part of an IMD.

(2) If the residential occupant in possession of a covered residential unit is not the prime lessee, the lack of consent of the landlord to a sublet, assignment or subdivision establishing such occupancy shall not affect the rights of such occupant to the protections of Article 7-C, provided that such occupant was in possession of such unit prior to June 21, 1982, or prior to July 27, 1987 for an IMD unit subject to Article 7-C solely by reason of MDL §281(4) and the rules

issued pursuant thereto.

(3) When a residential occupant took possession of a residential unit covered as part of an IMD, on or after June 21, 1982, or on or after July 27, 1987 for an IMD unit subject to Article 7-C solely by reason of MDL §281(4) and the rules issued pursuant thereto, such occupant shall be qualified for the protection of Article 7-C if:

(i) he/she is a prime lessee with a lease currently in effect or, if he/she took possession, with the consent of the landlord, as a statutory tenant pursuant to Article 7-C, without the issuance of a new lease; or

(ii) he/she is the assignee of a prime lessee and such assignment was consented to by the landlord; or

(iii) prior to establishment of such occupancy, the landlord was offered the opportunity to purchase improvements pursuant to §286(6) of the MDL and regulations promulgated pursuant thereto.

(4) The prime lessee, or sublessor who is not the prime lessee, shall be deemed the residential occupant qualified for the protection of Article 7-C, if he/she can prove that the residential unit covered as part of an IMD is his/her primary residence, even if another person is in possession. If the prime lessee or sublessor fails to prove that such unit is his or her primary residence, the rights of such person to recover such a unit are extinguished. The prime lessee or sublessor must exercise, in a court of competent jurisdiction, his/her right to recover such unit upon expiration or termination of the sublease under the terms of which he/she is the immediate overtenant or where such sublease is no longer in effect, on or before December 24, 1983, whichever is later, except that, for IMD units that are subject to Article 7-C solely by reason of MDL §281(4) and the rules issued pursuant thereto, the primary lessee or sublessor must exercise his/her right upon expiration or termination of the sublease or where such sublease is no longer in effect, on or before February 21, 1993, whichever is later.

(5) In an IMD where a prime lessee is in possession of a portion of the space which he or she leased from the landlord, such prime lessee shall be entitled to remain in possession, and be qualified for the protections of Article 7-C, only with respect to the portion of such space which he or she occupied as a residential unit (including any portion thereof used for home occupations or as the working portion of a joint-living-working quarters for artists), and shall not be entitled to claim any of the remaining space as a primary residence against the occupant of any other residential unit within such space, except to the extent provided for in §2-09(c)(5) of these regulations, below, of these regulations and not withstanding the provisions of §§2-09(b)(3) and (b)(4) above. The current residential occupants of the remaining units created through subdivision shall be qualified for protection under Article 7-C with regard to their respective residential units covered by Article 7-C, except as provided in §§2-09(b)(3) and (b)(4), above, of these regulations.

(c) **Rights, obligations and legal relationships among the parties.**

(1) **Legalization and cost of legalization.** The landlord of an IMD is responsible for legalization pursuant to §284 of the MDL, for all covered residential units, regardless of whether the occupant is the prime lessee or a person or persons with whom the prime lessee entered into an agreement permitting such persons to occupy units in space covered by the prime lease. The costs of legalization as reflected in rent adjustments made pursuant to §286(5) of the MDL, apportioned among covered residential units, shall be borne directly by the residential occupants qualified for protection of such units.

(2) **Privity.**

(i) The residential occupant qualified for protection, if other than the prime lessee, shall be deemed to be in privity with the prime lessee if either:

(A) there is a lease or rental agreement in effect regarding the residential unit between the prime lessee and the residential occupant; or

(B) there is a lease or rental agreement in effect regarding the residential unit or the space in which it is located, between the landlord and the prime lessee. No lease or rental agreement between the prime lessee and the residential occupant, shall have any force or effect beyond the term of the lease or rental agreement between the prime lessee and the landlord except as provided in §§2-09(c)(6) or (c)(7) herein of these regulations.

(ii) The prime lessee and the landlord shall be deemed in privity when there is a lease or rental agreement in effect between them.

(iii) The residential occupant and the landlord shall be deemed in privity when the residential occupant is the prime lessee; or when the lease or rental agreement between the prime lessee and the landlord, covering the residential occupant's unit or the space in which it is located, is no longer in effect. All leases or rental agreements (except subleases entered into pursuant to §226-b of the RPL and §2-09(c)(4), below, of these regulations promulgated pursuant thereto), which have not expired shall be deemed to be no longer in effect upon certification by the Department of Buildings of the landlord's compliance with the fire and safety protection standards of Article 7-B, and at that time a residential lease subject to the emergency tenant protection act of nineteen seventy-four must be offered to the residential occupant, pursuant to §286(3) of the MDL.

(3) **Services.**

(i) When the landlord and residential occupant are in privity, the landlord shall be responsible for meeting the minimum housing maintenance standards established by the Loft Board.

(ii) When the prime lessee and the residential occupant are in privity there shall be no diminution of services from the prime lessee to the residential occupant. The prime lessee shall be responsible for meeting the minimum housing maintenance standards established by the Loft Board to the extent such standards are required pursuant to lease or rental agreement and to the extent such services are within the control of the prime lessee. Otherwise, such services shall be provided by the landlord.

(4) **Subletting rights of occupants qualified for protection under Article 7-C.**

(i) All occupants qualified for protection under Article 7-C shall have the right to sublet their units pursuant to and in accordance with the procedures specified in §226-b of the Real Property Law, notwithstanding that such occupants may reside in an interim multiple dwelling (IMD) having fewer than 4 residential units, and that such occupants may not have a current lease or rental agreement in effect. The residential occupant of a unit in a subdivided space, who is not in privity with the landlord, must obtain the consent of both the prime lessee of such space and the landlord to a proposed sublet of such unit, which may not be unreasonably withheld in accordance with §226-b of the Real Property Law.

(ii) In addition, the right to sublet shall be subject to the following provisions:

(A) The rental charged to the subtenant may not exceed the legal rent, as established pursuant to Article 7-C and these regulations, plus a ten percent surcharge payable to the residential occupant if the unit sublet is furnished with the residential occupant's furniture;

(B) The residential occupant must be able to establish that the residential unit is his/her primary residence;

(C) The residential occupant may not sublet the unit for more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the termination date of the proposed sublease;

(D) The term of the proposed sublease may extend beyond the term of the residential occupant's lease, if such a lease is in effect, or beyond the date of the Department of Buildings certification of the landlord's compliance with Article 7-B of the Multiple Dwelling Law. In such event, such sublease shall be subject to the residential occupant's

right to continued occupancy pursuant to Article 7-C of the Multiple Dwelling Law or the right of such residential occupant to issuance of a lease upon Article 7-B compliance. It shall be unreasonable for a landlord to refuse to consent to a sublease solely because the residential occupant has no lease or rental agreement in effect or because such sublease extends beyond the residential occupant's lease or beyond the anticipated date of 7-B compliance.

(E) Where a residential occupant violates the provisions of subparagraph (i) of this paragraph, the subtenant shall be entitled to damages of three times the overcharge and may also be awarded attorney's fees and interest from the date of the overcharge at the rate of interest payable on a judgment pursuant to §5004 of the CPLR.

(F) The provisions in subparagraphs (ii)(A) through (E) of this paragraph (4) shall apply to all subleases commencing on or after the effective date of these regulations. Subleases entered into on or after June 21, 1982, but prior to the effective date of these regulations, shall not be subject to subparagraphs (ii)(A), (C) and (E) of this paragraph (4), but shall be subject to subparagraphs (ii)(B) and (D) of this paragraph (4) and the provisions of Section 226-b of the Real Property Law, in effect at the time of the commencement of the sublease.

(G) Notwithstanding the provisions of subparagraph (ii)(F) of this paragraph (4), the provisions in subparagraphs (ii)(A) through (E) of this paragraph (4) shall apply to all subleases for IMD units which are subject to Article 7-C solely by reason of MDL §281(4) commencing on or after November 23, 1992. Subleases for such units entered into on or after July 27, 1987, but before November 23, 1992, shall not be subject to subparagraphs (ii)(A), (C) and (E) of this paragraph (4), but shall be subject to subparagraphs (ii)(B) and (D) of this paragraph (4) and the provisions of §226-b of the Real Property Law, in effect at the commencement of the sublease.

(iii) If any clause, sentence, paragraph, subdivision or part of this §2-09(c)(4) of these regulations shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall render invalid this entire section on subletting rights of residential occupants.

(5) **Prime lessee's right to recover subdivided space.**

(i) Where the prime lessee is the residential occupant of a portion of the space he/she has leased from the landlord and the lease or rental agreement between the prime lessee and the landlord is in effect, the prime lessee may recover for his/her own personal use a residential unit located within such space voluntarily vacated by the residential occupant prior to the establishment of privity between such residential occupant and the landlord. The right to recover space pursuant to this regulation shall not be available to a prime lessee found by the Loft Board to be guilty of harassment of any residential occupant(s). The recovered space shall be deemed part of the prime lessee's residential unit, and in no event shall the prime lessee relet such space for any purposes whatsoever, except that he/she shall have the same rights to sublet his/her entire residential unit as provided in §2-09(c)(4) of these regulations.

Where a prime lessee waives his/her right to recover a residential unit in space leased by a prime lessee and vacated by the residential occupant, the prime lessee may sell improvements to the unit made or purchased by him/her to an incoming tenant, provided that the prime lessee shall first offer the improvements to the landlord for an amount equal to their fair market value pursuant to §286(6) of the MDL and regulations promulgated pursuant thereto. The incoming tenant shall be in privity with the landlord, and the initial maximum rent shall be determined in accordance with §2-09(c)(6)(ii)(A) of these regulations, if the incoming tenant purchases the improvements; or the rent due shall be the initial market rental (subject to subsequent rent regulation if the IMD has six or more residential units) if the landlord purchases the improvements.

(ii) Where the prime lessee is the residential occupant of a portion of the space he/she has leased from the landlord and the lease or rental agreement between the prime lessee and the landlord is in effect, the prime lessee may recover for his/her own personal use a residential unit located within such space, if the residential occupant of such unit agrees to the purchase by the prime lessee of such occupant's rights in the unit. The recovered space shall be deemed part of the prime lessee's residential unit, and in no event shall the prime lessee relet such space for any purpose whatsoever,

except that he/she shall have the same rights to sublet his/her entire residential unit as provided in §2-09(c)(4) of these regulations. Where the lease or rental agreement between the prime lessee and the landlord is no longer in effect, the prime lessee's right to recover space pursuant to this subsection shall expire on July 5, 1988 or, for an IMD unit subject to Article 7-C solely by reason of MDL §281(4), on January 22, 1993.

(iii) Where the prime lessee is the residential occupant of a portion of subdivided space as his/her primary residence, which he/she rented from the landlord, the prime lessee shall be entitled to recover as part of his/her primary residence a residential unit, located within the space, occupied by another person or persons, if such prime lessee can establish that:

(A) there was an express written agreement between the prime lessee and the occupant of such space, other than the mere expiration of the lease, entitling the prime lessee to recover such space, and that the prime lessee has not taken actions inconsistent with exercising the option entitling him/her to recover such space;

(B) the prime lessee has occupied the entire demised premises as his/her own primary residence for at least one year prior to the subdivision and subletting of the unit;

(C) the prime lessee has a compelling need to recover such space; and

(D) the prime lessee has not been guilty of harassment of residential occupants.

Space recovered pursuant to this provision shall be deemed part of the prime lessee's residential unit, and in no event shall the prime lessee relet such recovered space for any purpose whatsoever, except that he/she shall have the same rights to sublet his/her entire residential unit as provided in §2-09(c)(4) above, of these regulations, provided, however, that no such sublet shall be permitted for the first two years after recovery. The prime lessee shall have the right to make a claim to recover space pursuant to this provision, before the Loft Board, where there is a lease or rental agreement in effect between him/her and the landlord, or, where such an agreement is no longer in effect, on or before July 5, 1988 or, for an IMD unit subject to Article 7-C solely by reason of MDL §281(4), on or before January 22, 1993.

(6) **Rent.**

(i) When the residential occupant is in privity with the prime lessee, the maximum permissible rent payable by such occupant to the prime lessee shall be the rent established in such occupant's lease or rental agreement, subject to the limitations in applicable Loft Board Interim Rent Guidelines or, if such lease or rental agreement is no longer in effect, in accordance with §2-06 or, for an IMD unit subject to Article 7-C solely by reason of MDL §281(4), in accordance with §2-06.1.

(ii) When the residential occupant is in privity with the landlord, such occupant shall pay rent as follows:

(A) if the residential occupant is other than the prime lessee, the maximum rent shall be the amount last regularly paid under the terms of the lease or rental agreement with the prime lessee, or the sublessor, if other than the prime lessee, plus any increases permissible and subject to any limitations under §2-06 or, for an IMD unit subject to Article 7-C solely by reason of MDL §281(4), under §2-06.1, and any other relevant orders of the Loft Board.

(B) if the prime lessee is the residential occupant of the entire space leased from the landlord, the maximum rent shall be the amount specified in the lease or rental agreement, subject to any limitations in applicable Loft Board Interim Rent Guidelines or, if the lease or rental agreement is no longer in effect, the amount permissible pursuant to §2-06 or, for an IMD unit subject to Article 7-C solely by reason of MDL §281(4), the amount permissible pursuant to §2-06.1, and any other relevant orders of the Loft Board.

(C) **(a)** if the prime lessee is the residential occupant of a portion of the space leased from the landlord and the lease or rental agreement between the prime lessee and the landlord is in effect for the entire space, the maximum rent

shall be the amount specified in the lease or rental agreement for the entire space and any permissible increases pursuant to any relevant orders of the Loft Board.

(b) if the prime lessee is the residential occupant of a portion of the space leased from the landlord and the lease or rental agreement between the prime lessee and the landlord is no longer in effect for a residential unit or units located in a portion of such space, because privity has been established between the residential occupant(s) of such unit or unit(s) and the landlord pursuant to §2-09(c)(5)(i), above, of these regulations, the rent due shall be based on the rent paid by the prime lessee to the landlord under the most recent rental agreement for the entire space plus any increases permissible under §2-06 or, for any IMD unit(s) subject to Article 7-C solely by reason of MDL §281(4), under §2-06.1, and any other relevant orders of the Loft Board. The maximum rent from the prime lessee to the landlord shall be an amount equal to the percentage of the rent so calculated, equivalent to a fraction, the numerator of which is the square footage of

(1) the leased space occupied by the prime lessee's unit plus

(2) any other unit regarding which he/she remains in privity with the residential occupant, and the denominator of which is the square footage leased from the landlord.

(D) **(a)** if the prime lessee is the residential occupant of a portion of the space leased from the landlord, but the lease or rental agreement for all other units within the space is no longer in effect because the occupants of such units have entered into privity with the landlord, the maximum rent shall be based on the rent paid by the prime lessee to the landlord under the most recent rental agreement for the entire space plus any increases permissible under §2-06 or, for any IMD unit(s) subject to Article 7-C solely by reason of MDL §281(4), under §2-06.1, and any other relevant orders of the Loft Board. The maximum legal rent from the prime lessee to the landlord shall be an amount equal to the percentage of the rent so calculated, equivalent to a fraction, the numerator of which is the square footage of the leased space which his or her unit occupies and the denominator of which is the entire space leased from the landlord.

(b) where the rent paid by the residential occupant(s) of such space who were in privity with the prime lessee to the prime lessee and the prime lessee's proportionate share of the rent as calculated under §2-09(c)(6)(ii)(D)(**a**) above (without inclusion of any increases permissible under Loft Board Interim Rent Guidelines or other relevant orders of the Loft Board), are greater than the amount of rent specified in the most recent lease or rental agreement for the entire space between the prime lessee and the landlord or, if applicable, the amount of rent as calculated under §2-09(c)(6)(ii)(C)(**b**), the excess amount shall be treated as follows:

It shall be the landlord's option to either:

(1) reduce the monthly legal rent due from the prime lessee by one-half of such excess amount as calculated on a monthly basis, but in no event shall the monthly legal rent be less than $100; or

(2) make a single lump sum payment to the prime lessee equal to one-half of the monthly excess amount multiplied by 36. The landlord may exercise his/her option to make a single, lump sum payment at any point. If the landlord chooses the option of a single lump sum payment, at a point after the prime lessee has commenced paying a rent calculated under subparagraph (**1**) above, the single payment due the prime lessee from the landlord shall not be diminished by the amount of the prior reductions in rent. Upon payment of the single lump sum payment the landlord may increase the prime lessee's monthly rent to the maximum amount allowable under §2-09(c)(6)(ii) (D)(**a**), above. Any prime lessee found guilty of harassment of any residential occupant shall not be entitled to the rent reduction or single lump sum payment provided for in subparagraphs (1) and (2) above.

(3) The rent adjustments of this subparagraph (D) and subparagraph (A) shall apply to the next regular rent payment due on or after July 5, 1988, or the next regular rent payment due on or after January 22, 1993 for IMD units subject to Article 7-C solely pursuant to MDL §281(4), if the lease or rental agreement between the prime lessee and the landlord is no longer in effect. Otherwise the rent adjustments shall apply to the next regular rent payment due after

such lease or rental agreement, or portion thereof, is no longer in effect, but in no event earlier than July 5, 1988, or, for IMD units subject to Article 7-C solely by reason of MDL §281(4), no earlier than January 22, 1993.

(7) **Prime lessee's or sublessor's right to compensation for costs incurred in developing residential unit(s).**

(i) Where a prime lessee or sublessor who is not the prime lessee has incurred costs for improvements made or purchased in developing residential unit(s) in any space for which he/she had or has a lease or rental agreement and for which he/she is not the residential occupant qualified for protection under Article 7-C, such prime lessee or sublessor shall be entitled to recover from the residential occupant(s) compensation for the prime lessee's or sublessor's actual costs incurred in developing the residential unit in question.

(ii) The prime lessee or sublessor and the residential occupant may agree to payment of such compensation upon any terms that are mutually acceptable, at any time prior to the deadline for the filing of an application as described in subdivision (iii) below. All such agreements shall be submitted to the Loft Board within 90 days of their execution.

(iii) If the parties are unable to agree upon the amount and terms of compensation prior to the establishment of privity between the residential occupant and the landlord, as defined in §2-09(c)(2) of these regulations, the prime lessee or sublessor or the residential occupant may apply to the Loft Board for resolution of any dispute over compensation of the prime lessee or sublessor any time after the residential unit has been registered with the Loft Board without timely contest of coverage or determined to be covered by the Loft Board or a court of competent jurisdiction, but no later than 180 days after:

(A) the establishment of privity between the residential occupant and the landlord, or

(B) May 6, 1988, or

(C) the landlord's registration of the residential unit without timely contest of coverage or the determination of coverage of the residential unit by the Loft Board or a court of competent jurisdiction, or

(D) for any IMD unit(s) subject to Article 7-C solely by reason of MDL §281(4), November 23, 1992, whichever is the latest. The application shall comply with the regulations of the Board governing applications, except that, for purposes of §l-06(a) of such regulations, the affected parties shall be limited to the prime lessee or sublessor, the residential occupant, and the owner. The application shall also comply with the regulations of the Board governing fees.

(iv) The Loft Board shall first determine whether any compensation is due the prime lessee or sublessor, based on consideration of the following factors:

(A) whether the prime lessee or sublessor incurred any costs as defined below in subdivision (v)(A), allocable to the particular unit in question; and

(B) whether the prime lessee or sublessor has already been compensated in accordance with the terms of a prior agreement. The amount of rent paid to the prime lessee or sublessor in excess of the amount which would represent a proportionate share of the rent paid by the prime lessee to the landlord, based on the percentage of the total floor space occupied, shall not be credited towards such compensation of the prime lessee or sublessor, in the absence of a specific agreement.

(v) If it is determined that the prime lessee or sublessor did incur costs for improvements for which he or she has not yet been compensated, the Board shall determine the amount due in accordance with the following criteria:

(A) all improvements as defined in the Board's regulations on Sales of Improvements shall be compensable;

(B) the Board shall establish the value of such improvements by determining the actual costs incurred for the improvements;

(C) compensation determined to be due shall be made in accordance with a payment schedule agreed to by the prime lessee or sublessor and the residential occupant, or, if no agreement is reached, a payment schedule not to exceed 6 months set by the Board, contained in the Board's order.

(vi) Compensation made pursuant to this paragraph (7) shall provide residential occupants the opportunity to purchase improvements but shall not constitute the sale of improvements pursuant to §286(6) of the MDL.

(vii) (A) A residential occupant may offer the landlord the opportunity to compensate the prime lessee or sublessor for costs incurred for improvements made or purchased in developing a residential unit. The compensation to be paid is the amount determined by agreement of the prime lessee or sublessor, and the residential occupant, pursuant to subparagraph (7)(ii) above or as determined by the Loft Board pursuant to subparagraph (7)(v) above. If the landlord chooses to pay this compensation to the prime lessee or sublessor, the residential occupant remains the occupant qualified for Article 7-C protection, except that he/she forfeits the right to sell improvements pursuant to §286(6) of the MDL. Compensation of the prime lessee or sublessor by the landlord shall not affect the rent due from the residential occupant;

(B) if the landlord compensates the prime lessee or sublessor pursuant to this subdivision, the prime lessee or sublessor shall have no right to recover the unit for his/her own personal use pursuant to §§2-09(b)(4) and (c)(5) of these regulations. When the residential occupant vacates the unit, the landlord shall be entitled to lease the unit at market rent, absent a finding by the Loft Board of harassment by the landlord of occupants; (C) if the landlord declines the opportunity to compensate the prime lessee or sublessor, the residential occupant remains responsible for the compensation payment established by agreement of the prime lessee or sublessor and the residential occupant pursuant to subparagraph (7)(ii) above or as determined by the Loft Board pursuant to subparagraph (7)(v) above.

(8) **Residential occupant's right to sale of improvements pursuant to §286(6) of the MDL.** The residential occupant shall be entitled to sell pursuant to §286(6) of the MDL and Loft Board regulations on Sales of Improvements all improvements to his/her unit made or purchased by him/her:

(i) upon the filing of an agreement pursuant to §2-09(c)(7)(ii), or

(ii) following a Board determination of an application filed pursuant to §2-09(c)(7)(iii), or

(iii) upon the expiration of the deadline for filing such application, if none has been filed.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (c) par (4) subpar (ii) clause (G) added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (c) pars (5), (6), (7) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The NYC Loft Boards administrative decision that petitioner did not establish by credible evidence that he was the residential occupant in possession prior to June 21, 1982 and thus was not a protected residential occupant of the unit under Loft Law, RCNY 2-09(b)(2), was supported by the evidence. Infrequent occasional use is not a residency under Loft Law protection. Matter of Elliot v. NYC Loft Board, 205 AD2d 460 [1994], 613 NYS2d 907.

¶ 2. The regulation provides coverage for a residential occupant in possession of a covered residential unit, even if the occupant is not a prime tenant, and even if the landlord did not consent to a sublet, assignment or subdivision, so

long as the occupant was in possession prior to July 27, 1987. The regulation applies whether or not the landlord had knowledge of the facts and whether or not there was a formal assignment or sublease. 545 Eighth Avenue Associates v. New York City Loft Board, 647 N.Y.S.2d 223 (App.Div. 1st Dept. 1996).

¶ 3. Where a landlord leased a loft unit to a residential tenant after June 21, 1982, and the tenant's brother took occupancy along with the tenant but without the landlord's consent, the tenant's brother was not a prime lessee and was not a protected occupant pursuant to subparagraph (b)(3) of this section. **Matter of Zabari,** OATH Index No. 419/96 (Oct. 16, 1995), **aff'd,** Loft Bd. Order No. 1899 (Jan. 4, 1996), **aff'd,** Index No. 107964/96 (Sup. Ct. N.Y. Co. Feb. 11, 1997).

¶ 4. A residential occupant who moved into a loft unit in 1986 without the building owner's consent was not a protected occupant pursuant to this section notwithstanding the owner's knowledge that she was living in the unit and notwithstanding the occupant's alteration and improvement of the unit at her own expense. Matter of McLean, OATH Index No. 105/96 (June 25, 1996), aff'd, Loft Bd. Order No. 2000 (Sept. 26, 1996).

¶ 5. Acceptance by the receiver of a building in foreclosure of nine monthly rent payments from a loft unit subtenant did not constitute consent by the building owner to possession of the loft unit by the subtenant pursuant to subparagraph (b)(3)(i) of this section, because the receiver accepted the rent as an accommodation to the prime tenant, and because the receiver's interest was in maintaining a steady cash flow to service the building. Matter of DeGraw, OATH Index No. 625/96 (Apr. 25, 1997), remanded on other grounds, Loft Bd. Order No. 2114 (May 22, 1997), supplemental report and recommendation (June 17, 1997), aff'd, Loft Bd. Order No. 2126 (Aug. 28, 1997).

¶ 6. A loft unit was subdivided into two separate units before the effective date of the Loft Law, and the smaller of those units was used commercially from then until 1992, when a tenant took occupancy pursuant to a commercial lease and used the unit both commercially and residentially. However, because the building owner did not know of and had not consented to the residential use of the smaller unit, the occupant of the smaller unit was not a protected residential occupant pursuant to subparagraph (b)(3)(i) of this section. Matter of Wada, OATH Index No. 1519/96 (July 25, 1997), aff'd, Loft Bd. Order No. 2156 (Oct. 10, 1997).

¶ 7. A building owner's consent to occupancy as a subtenancy does not confer protected occupancy on the subtenant pursuant to subparagraph (b)(3)(i) of this section, which requires either a prime lease or the owner's consent to a statutory tenancy. Matter of Nolan, OATH Index No. 1730/97 (Sept. 2, 1997), aff'd, Loft Bd. Order No. 2161 (Oct. 10, 1997).

¶ 8. Where a prime lessee of a loft unit remained in possession of a portion of the original unit after the unit was subdivided into two units, and the prime lessee assigned her rights in the original unit, the assignee took rights only to the portion of the original unit that the assignor had occupied, because the assignor had no right of possession in the other portion of the original unit, and thus could not assign such rights to a new occupant pursuant to subparagraph (b)(3) of this section. Matter of DeGraw, OATH Index No. 625/96 (Apr. 25, 1997), remanded on other grounds, Loft Bd. Order No. 2114 (May 22, 1997), supplemental report and recommendation (June 17, 1997), aff'd, Loft Bd. Order No. 2126 (Aug. 28, 1997).

¶ 9. In the case of a loft building owned by a cooperative corporation, the proprietary lessee of a loft unit is the prime lessee, and the cooperative corporation is the building owner, for purposes of subparagraph (b)(3) of this section. Matter of Nolan, OATH Index No. 1730/97 (Sept. 2, 1997), aff'd, Loft Bd. Order No. 2161 (Oct. 10, 1997).

¶ 10. Where a prime lease covering three units of a loft building expired before the effective date of the Loft Law, the building owner came into privity, pursuant to paragraph (a) of this section, with each of the three occupants of the three units by operation of law upon the effective date of the Loft Law. Matter of Longfellow Properties, Inc., OATH Index No. 1780/96 (Nov. 4, 1996), aff'd, Loft Bd. Order No. 2057 (Jan. 30, 1997).

¶ 11. Pursuant to subparagraph (c)(5)(ii), a former prime lessee enjoyed the right to buy improvements from his

former subtenant occupying a portion of the prime lease space and take possession of the formerly sublet unit at any time until July 5, 1988, provided that he combined the formerly sublet unit with his own portion of the prime lease space and used the combined units thereafter as a single residential unit. Matter of Longfellow Properties, Inc., OATH Index No. 1780/96 (Nov. 4, 1996), aff'd, Loft Bd. Order No. 2057 (Jan. 30, 1997).

¶ 12. Where the two residential occupants of a loft unit asserted that they were subtenants of a partnership in which they were the sole partners, the alleged prime tenancy of the partnership was illusory. Therefore, the residential occupants were prime tenants with base rent calculated pursuant to subparagraph (c)(6)(ii)(D)(a) of this section, not subtenants with base rent calculated pursuant to subparagraph (c)(6)(i) of this section. Matter of Seril, OATH Index No. 1821/96 (Feb. 10, 1997), aff'd, Loft Bd. Order No. 2088 (Mar. 20, 1997).

¶ 13. Where an owner leased a loft unit to a residential tenant after June 21, 1982, and the tenant's brother took occupancy along with the tenant but without the owner's consent, the tenant's brother was not a prime lessee and was not a protected occupant pursuant to subparagraph (b)(3) of this section. Matter of Zabari, OATH Index No. 419/96 (Oct. 16, 1995), aff'd, Loft Bd. Order No. 1899 (Jan. 4, 1996), aff'd sub nom. Zabari v. New York City Loft Board, Index No. 107964/96 (Sup. Ct. N.Y. Co., Feb. 11, 1997), rev'd in part on other grounds, _____ AD2d _____, 666 NYS2d 599 (1st Dept. 1997).

¶ 14. The Loft Board regulations do not provide for eviction of a prime tenant in the case of an overcharge of a subtenant. However, the subtenant can maintain an action for damages against the prime tenant. Prince v. Brisson, N.Y.L.J., Oct. 17, 2001, page 23, col. 5 (Civ.Ct. Kings Co.).

¶ 15. An application for protected occupant status as to three floors of the premises was granted in part and denied in part where applicant failed to show as to one floor, the basement, that the unit was occupied during the window period. The Loft Board, in a prior case, had found window period occupancy as to the other units on the first and second floors. **Matter of Rolf**, OATH Index No. 1897/99 (July 1, 1999), **aff'd**, Loft Bd. Order No. 2431 (Oct. 1, 1999).

¶ 16. Administrative law judge summarily grants tenant's application for coverage pursuant to subparagraph (b)(2) of this section, where owner's answer conceded that the tenant, while not a prime lessee, took residential occupancy of the unit prior to June 21, 1982. The owner, over the opposition of the tenant and the prime lessee, sought a hearing to determine the rights, if any, of the prime lessee. Administrative law judge rejected the owner's request, ruling the prime lessee's rights, if any, were not a proper subject of the application and should be determined in a different proceeding. **Matter of Krukowski**, OATH Index No. 924/99 (Feb. 4, 1999), **aff'd**, Loft Bd. Order No. 2382 (Mar. 23, 1999).

¶ 17. Tenants' coverage application granted where owner and tenants orally agreed that tenancy would be for one year, after which they would discuss the tenants continued rental of the unit and rent payment and the owner accepted the rent until the tenants began withholding rent. Absent a prior finding of abandonment, the residential occupancy of a unit continues to afford potential protected occupancy pursuant to subparagraph (b)(3) of this section. **Matter of DeLong**, OATH Index No. 266 & 518/99 (Oct. 4, 1999), **aff'd and remanded**, Loft Bd. Order No. 2457 (Dec. 13, 1999), **application for reconsideration denied**, Loft Bd. Order No. 2500 (Mar. 30, 2000), **on remand**, OATH Index No. 1165/00 (Nov. 1, 2000).

¶ 18. An uncontested application for protected occupant status demonstrated tenant resided in loft unit since 1980 with her "significant other," who was the lessee of record of the premises. Administrative law judge finds that petitioner resided in the unit prior to June 21, 1982, as part of a nontraditional family and, thus, is entitled to the protection of Article 7-C. **Matter of Lagmon**, OATH Index No. 539/00 (Dec. 8, 1999), **aff'd**, Loft Bd. Order No. 2473 (Jan. 25, 2000).

¶ 19. In a default proceeding, administrative law judge determines that residential occupant is not entitled to protected occupant status based upon the Loft Board's 1994 determination that the unit had been abandoned. **Matter of Dubbeldam,** OATH Index No. 529/00 (Jan. 24, 2000), **aff'd,** Loft Bd. Order No. 2490 (Feb. 22, 2000).

¶ 20. A loft tenant who charges a subtenant a rent in excess of the legal regulated rent can be evicted for unlawful profiteering. BLF Realty Holding Co. v. Kasher, 299 A.D.2d 87, 747 N.Y.S.2d 457 (1st Dept. 2002).

¶ 21. Administrative law judge found that occupants, who are not prime lessees, established their protected occupant claim through testimony and corroborating documentary evidence that they have occupied the unit residentially throughout the window period and up through the present. **Matter of Van Derbeek,** OATH Index No. 1972/01 (Feb. 13, 2002), **aff'd,** Loft Bd. Order No. 2717 (Mar. 14, 2002).

¶ 22. Pursuant to subsection (b)(3)(i) of this section, a tenant, like petitioner, who takes occupancy after June 21, 1982, must show s/he did so with the owner's consent. Where an owner rents out an IMD unit with its attributes of independent living intact and the tenant actually uses the unit as a residence, section 2-09(b)(3) does not require the owner's explicit consent to that residential use to confer Loft Law coverage; consent to the occupancy alone is sufficient. **Matter of McIntosh,** OATH Index No. 604/02 (Oct. 15, 2002), **aff'd,** Loft Bd. Order No. 2763 (Nov. 19, 2002).

¶ 23. In default proceeding, administrative law judge applied formula set forth under subsections (c)(6)(ii)(D)(b)(1), (2) of this section to determine petitioner's rent after he sublet 52% of the space he originally leased. **Matter of Blakeley,** OATH Index No. 753/03 (Feb. 7, 2003), **aff'd in part, modified in part,** Loft Bd. Order No. 2786 (Mar. 7, 2003).

¶ 24. A loft building owner sought to have the second floor unit removed from Loft Law coverage. The administrative law judge found that second floor tenants were protected occupants because a post-June1982 lease was issued to the tenants, and that the unit had not been deregulated by virtue of a sale of rights, sale of fixtures, or abandonment of the unit by the prior protected tenants. Thus, the tenants were entitled to protected status and regulated rent. **Matter of Andrew Bradfield, LLC,** OATH Index No. 1345/03 (Nov. 18, 2003), **aff'd in part, modified in part,** Loft Bd. Order No. 2845 (Feb. 19, 2004).

¶ 25. In one case, there was evidence that the prime tenants of three loft units engaged in rent profiteering after long ago vacating the premises and that the owner dealt directly with the occupants (nominally subtenants) over the last decade, billing for and collecting electricity charges from at least one of the occupants and designating one of the occupants as a fire marshal on his or her respective floor. Under those facts, the court found that there was a sufficient basis for further discovery as to whether the subtenancies were illusory and thus whether the occupants were entitled to protection under Article 7C of the Multiple Dwelling Law. 545 Eighth Ave. Assocs., L.P. v. Shanaman, 12 Misc.3d 66, 819 N.Y.S.2d 813 (App.Term 1st Dept. 2006).

¶ 26. Wife of protected occupant, who was not named on lease, was not entitled to protected status, but she may have succession rights which would protect her from eviction. **Matter of Tenants of 323-325 W. 37th Street**, OATH Index No. 692/06 (May 18, 2007).

¶ 27. Pursuant to subsection (b)(3)(i) of this section, tenants who took possession of a covered residential unit after the relevant window period were protected occupants as they took possession with consent of the landlord. **Rader v. Grand Morgan Realty Corp**., OATH Index Nos. 207/08 & 208/08 (Jan. 4, 2008).

¶ 28. Pursuant to subsection (b)(3) (i) of this section, tenants who took occupancy of a covered residential unit after the relevant window period were protected occupants as they took possession pursuant to a lease agreement. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

¶ 29. In a building covered by section 281(4) of the Multiple Dwelling Law, occupants of covered units who had post-window period (July 27, 1987) leases issued to them by the owner are qualified for protection pursuant to subsection (b)(3)(i) of this section. **Matter of Tenants of 325 West 37th Street**, OATH Index No. 692/06 (May 18, 2007), **adopted in relevant part, modified in part**, Loft Board Order No. 3457 (Sept. 18, 2008).

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-10 Sales of Rights.

(a) **Right to sell.** The residential occupant of an IMD unit may sell the rights afforded such occupant pursuant to Article 7-C to the owner of the IMD or the owner's authorized representative, which shall include a net lessee provided that, with respect to sales which occur on or after March 16, 1990, or with respect to sales in units subject to Article 7-C solely pursuant to MDL §281(4), which occur on or after November 23, 1992, the authorized representative files with the Loft Board written proof of authorization from the owner for such sale on a form issued by the Loft Board. Except as provided in §2-10(c) and (d) herein, a sale pursuant to §286(12) of Article 7-C of the Multiple Dwelling Law shall constitute a sale of all rights in the unit.

(b) **Filing requirement for sales which occur on or after the effective date of these regulations.** For sales which occur on or after the effective date of these regulations, the owner or its authorized representative must file with the Loft Board a record of such sale, on a form issued by the Loft Board, and executed by the owner or its authorized representative and the occupant or the occupant's attorney. Failure by the owner or the owner's authorized representative to file a record of sale within 30 days of the date of the sale may subject the owner to a civil penalty up to $1,000, as determined by the Board.

(c) **Effect of sales.** (1) **Non-Residential use.**

(i) If the unit to be used for non-residential purposes, the owner is relieved of its obligations to comply with the requirements of Article 7-C of the Multiple Dwelling Law regarding such unit. The non-residential use must conform with applicable provisions of the Zoning Resolution and the Administrative Code, and with any existing Certificate of Occupancy for the unit, or other source of legal authorization for such use. The unit may not be converted to

non-residential use if there is a harassment finding by the Loft Board as to any occupant(s) of the unit which the Board has not terminated pursuant to §2-02(d)(2) of the Board's Harassment Regulations.

(ii) Prior to such change of use, the owner or its authorized representative must file with the Loft Board a declaration of intent on a form issued by the Loft Board stating that the unit will only be occupied for a conforming non-residential use. Within 30 days of the Board's receipt of such filing, the Loft Board shall conduct or cause to be conducted an inspection of the premises to verify that all fixtures, as defined in §2-06(a) "Improvements" of the Board's Sales of Improvements Regulations, which were constructed or installed without necessary approvals by appropriate government agencies and for which such approvals have not been secured, or which are intended primarily for residential occupancy, have been removed or approved. The results of this inspection shall be reported to the owner or its authorized representative within 30 days of the inspection, and approval of the non-residential conversion shall be granted promptly when the removal of these fixtures has been verified. Disputes shall be resolved by application to the Loft Board.

(iii) Prior to approval by the Loft Board, as set forth in §2-10(c)(1)(i), the owner remains subject to all the requirements of Article 7-C, and regulations and orders of the Board, including the legalization requirements of Multiple Dwelling Law §284, as set forth in §2-10(c)(2) herein.

(iv) When the conversion of such unit to a non-residential conforming use reduces the number of IMD units below three, the IMD status for such building and for the remaining IMD units in such building, and the protections afforded protected occupants thereof, shall not be eliminated.

(v) Notwithstanding the provisions of §2-01(l) of the Board's Code Compliance Regulations, if conversion of such a unit to a non-residential conforming use increases the costs of legalization under Multiple Dwelling Law §284 for the remaining IMD units, such increased costs shall be borne by the owner and may not be passed through remaining residential occupants pursuant to Article 7-C and the Board's Code Compliance Regulations.

(2) **Residential use.** If the unit is to remain residential, the owner remains subject to all the requirements of Article 7-C, and regulations and orders of the Board, including the legalization requirements of Multiple Dwelling Law §284, except that the unit is no longer subject to rent regulation where coverage under Article 7-C was the sole basis for such rent regulation, provided that there is no finding by the Loft Board of harassment as to any occupant(s) of the unit which has not been terminated pursuant to §2-02(d)(2) of the Board's Harassment Regulations. During the period of its IMD status, the IMD unit may be converted to non-residential use, as set forth in §2-10(c)(1) of these regulations, except that a harassment finding made after a sale shall not bar conversion of the unit to non-residential use.

(3) **Terminations of harassment.** As provided in §2-02(d) (2)(ii) of the Board's Harassment Regulations for sales of improvements, an order terminating a Loft Board finding of harassment shall apply prospectively only. The owner shall not be relieved of the requirements of Article 7-C, including rent regulation, nor may the owner convert the unit to non- residential use, when a sale of rights pursuant to §286(12) for the unit has taken place during the period from the date of the order finding harassment as to any occupant(s) of the unit to the date of the order terminating such finding.

(d) **Sales which occurred prior to the effective date of these regulations.**

(1) No sale or agreement made prior to June 21, 1982, or prior to July 27, 1987 for units subject to Article 7-C solely pursuant to MDL §281(4), in which an occupant purported to waive rights under the statute shall be accorded any force or effect.

(2) By June 14, 1990, the current owner or its authorized representative shall file with the Loft Board a record of any sale pursuant to §286(12) which occurred prior to March 16, 1990 and after June 21, 1982, on a form issued by the Loft Board. Except that for sales pursuant to MDL §286(12) of units subject to Article 7-C solely pursuant to MDL §281(4) which occurred after July 27, 1987, but before November 23, 1992, the current owner or its authorized representative shall file a record of such sale with the Loft Board on the prescribed form on or before February 21,

1993. Such form shall be executed by the current owner or its authorized representative and the occupant who sold such rights. If the occupant fails or refuses to execute such form, the owner or its authorized representative shall file such form and submit a sworn statement identifying the occupant, describing the efforts to locate the occupant or the reasons given by such occupant for refusal to execute the form. Such record of sale shall also contain a sworn statement by the owner or its authorized representative, on a form issued by the Loft Board, as to the current use and occupancy of the unit, and if such record discloses that a unit is being used non-residentially, it shall also contain a sworn declaration by the owner or its authorized representative that the current use is consistent with applicable provisions of the Zoning Resolution and the Administrative Code, and in conformity with any existing Certificate of Occupancy, or other source of legal authorization for such use. Any unit identified in such record as being used non-residentially is subject to inspection to determine its compliance with the requirements set forth in §2-10(c)(1)(ii) of these regulations, except that such inspection shall take place within 90 days of the Loft Board's receipt of such filing.

(3) Failure by the owner or the owner's authorized representative to file a record of sale by June 14, 1990, or by February 21, 1993 for sales of units subject to Article 7-C solely pursuant to MDL §281(4), may subject the owner to a civil penalty up to $1,000, as determined by the Board. The Loft Board shall also cause units to be inspected for which a sale of rights has occurred prior to the effective date of these regulations and a Board-issued record of sale has not been timely filed to determine the current space.

(4) During the period of IMD status units used residentially may be converted to non-residential use, as set forth in §2-10(c)(1) of these regulations, except that a harassment finding made after a sale shall not bar conversion of the unit to non-residential use. Prior to such conversion, the owner remains subject to all the requirements of Article 7-C, and regulations and orders of the Board, including the legalization requirements of Multiple Dwelling Law §284, except that the unit is no longer subject to rent regulation where coverage under Article 7-C was the sole basis for such rent regulation. Units used non-residentially must conform with applicable provisions of the Zoning Resolution and the Administrative Code, and with any existing Certificate of Occupancy for the unit, or other source of legal authorization for such use.

(e) **No right to sale of improvements or rights after a sale pursuant to §286(12) has occurred.** For any sale pursuant to §286(12), the unit subject to such sale may not be the subject of another sale pursuant to §286(12); nor may such unit be the subject of a subsequent sale of improvements pursuant to §286(6) of the MDL.

(f) **Abandonment of IMD unit.** (1) An owner or its authorized representative may apply to the Loft Board for a determination that the occupant of an IMD unit has abandoned the unit and no sale of rights pursuant to Multiple Dwelling Law §286(12) or sale of fixtures pursuant to Multiple Dwelling Law §286(6) has been executed, provided there has been no finding of harassment as to any occupant(s) of the unit which has not been terminated pursuant to §2-02(d)(2) of the Board's Harassment Regulations.

(2) Abandonment shall be defined as the relinquishment of possession of a unit and all rights relating to a unit either (i) voluntarily, with the intention of never resuming possession or reclaiming the rights surrendered, or (ii) by the death of the IMD tenant, provided no family member, as defined in 29 RCNY §2-08.1(c)(3), is denied the benefits of succession rights in accordance with 29 RCNY §2-08.1.

(3) To be considered timely, an owner's application alleging abandonment must be filed with the Loft Board within one year of the date the owner knew or should have known that the IMD tenant vacated the unit.

(4) In deciding whether a unit has been abandoned pursuant to subparagraph (i) of paragraph (2) above, the Loft Board may consider, inter alia, the following factors:

(i) the length of time since the occupant allegedly abandoned the unit;

(ii) whether the occupant owed rent as of the time the occupant allegedly abandoned the unit and whether court proceedings to attempt to collect this rent have been installed;

(iii) whether the occupant's lease for the unit has expired;

(iv) whether the occupant provided notice of an intent to vacate or requested permission to sublet the unit for a specific period of time;

(v) whether the unit contained improvements which were made or purchased by the occupant and whether the occupant was reimbursed for those improvements;

(vi) whether any prior harassment findings have been made by the Loft Board concerning the occupant(s) of the unit or whether any harassment application remains pending;

(vii) whether any violations or notices to appear pursuant to the Loft Board's Minimum Housing Maintenance Standards have been issued;

(viii) whether the owner has made affirmative efforts to locate the occupant to attempt to purchase rights pursuant to Multiple Dwelling Law §286(12) or improvements pursuant to Multiple Dwelling Law §286(6); and

(ix) whether an inspection of the unit by the Loft Board staff indicates that the unit is presently vacant.

(5) In determining whether abandonment has occurred as a result of the death of an IMD tenant as set forth in subparagraph (ii) of paragraph (2) above, proof of the death of such tenant of an IMD unit shall be made by the presentation of a death certificate, the testimony of a relative of the occupant alleged to be dead, or any other trustworthy evidence.

(6) If the owner's application alleging abandonment is granted by the Loft Board and if the unit is to be used for non-residential purposes, the owner or its authorized representative must comply with §2-10(c)(1) of these regulations.

(7) (i) Upon compliance with these specified provisions of §2-10(c)(1) with regard to units to be used for non-residential purposes, the legal effect of the Loft Board's determination of abandonment shall be the same as that of a sale of rights as provided in §2-10(c) of these regulations.

(ii) Upon the Loft Board's granting of the owner's application alleging abandonment with regard to units to remain residential, the legal effect of the Loft Board's determination of abandonment shall be the same as that of a sale of rights as provided in §2-10(c) of these regulations but only if and when:

(A) on or prior to the date of the Loft Board's granting of the owner's application alleging abandonment, the owner has obtained a certificate of occupancy for the affected building and filed an application seeking a final rent order and/or removal from the Loft Board's jurisdiction; or

(B) within one year after the date of the Loft Board's granting of the owner's application alleging abandonment, or prior to the expiration of the code compliance deadline for obtaining a certificate of occupancy in effect on the date of the Loft Board's granting of such application (as such code compliance deadline may be extended pursuant to 29 RCNY §2-01(b)), whichever is earlier, the owner has obtained a certificate of occupancy for the affected building and has filed an application seeking a final rent order and/or removal from the Loft Board's jurisdiction.

(8) If, whenever an IMD unit becomes vacant without a prior sale of rights or improvements and subparagraph (i) of paragraph (7) does not apply, an owner fails to meet either the criteria set forth in §2-10(f)(7)(ii)(A) or the criteria set forth in §2-10(f)(7)(ii)(B), the unit shall remain residential and the owner shall not be permitted to re-rent the unit at a market rate. Additionally, the owner shall provide any incoming tenant(s) with written notice that the rent for the IMD unit may increase to a market rate if and when the owner complies with the criteria set forth in §2-10(f)(7)(ii)(A) or §2-10(f)(7)(ii)(B). Such written notice to an incoming tenant or tenants shall include a copy of this subdivision (f) and a copy of the Loft Board order granting the abandonment application, (if any). If an owner re-rents the unit at a market

rate in violation of this provision, the in-coming tenant(s) may challenge such rent by filing an application alleging a rent overcharge with the Loft Board.

(9) New paragraphs (3) and (8), and the amendments to paragraph (7) made by the rulemaking that added this paragraph, shall apply only to those IMD units for which applications alleging abandonment are filed more than six (6) months after the effective date of this paragraph.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (d) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (f) amended City Record Sept. 8, 2006 §1, eff. Oct. 8, 2006. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 8, 2006:

The abandonment provisions set forth in 29 RCNY §2-10(f) are being amended to further encourage owners of interim multiple dwellings ("IMD") to comply with the legalization requirements of the Loft Law.

One of the main purposes of the Loft Law is to require owners to bring their buildings up to the minimum standards of the New York City residential building code. This purpose is not served by allowing owners to rent abandoned IMD units at a market rent without also requiring them to obtain a residential certificate of occupancy. The proposed rule would prohibit owners from enjoying the benefits of a deregulated IMD unit as a result of abandonment without undertaking the necessary and reasonable steps to legalize their buildings in accordance with the Multiple Dwelling Law §284(1). Until such steps are taken, owners also would be required to provide notice to new tenants that rents for the relevant units may increase to market rate if the abandonment determination becomes effective.

The proposed rule also would codify Loft Board precedent defining the death of an IMD tenant as an abandonment of the IMD unit. Further, it would establish a deadline for the filing of an abandonment application to prevent the loss of witnesses and other evidence relevant to the resolution of the application.

Finally, the proposed rule would in effect require the Loft Board to make two determinations in processing abandonment applications. First, the Loft Board would determine whether sufficient proof had been offered to conclude that an IMD tenant abandoned a unit. Second, the Loft Board would determine, in those instances where the abandonment application is granted, whether the effect of the abandonment finding will be the deregulation of the unit based on the owner's actual completion of the necessary legalization work in the affected building.

By conditioning the benefit of a deregulated IMD unit on the fulfillment of the obligation to legalize the building in question, the proposed rule will serve as a valuable tool for furthering the goals of the Loft Law.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where the Loft Law was the sole basis for rent regulation of a loft unit, the unit was found by the Loft Board to be abandoned pursuant to paragraph (f) of this section, and the unit was leased after the abandonment for residential use, the sole legal effect of the abandonment finding was termination of rent regulation of the unit, and all other statutory and regulatory requirements under the Loft Law remained applicable. **Matter of Zabari,** OATH Index No. 419/96 (Oct. 16, 1995), **aff'd,** Loft Bd. Order No. 1899 (Jan. 4, 1996), **aff'd,** Index No. 107964/96 (Sup. Ct. N.Y. Co. Feb. 11, 1997).

¶ 2. Pursuant to subparagraph (f)(5) of this section, the Loft Board's finding that a loft unit had been abandoned terminated rent regulation as to that unit as of the date of the Board's finding, not retroactively to the date of the actual abandonment. Matter of Zabari, OATH Index No. 419/96 (Oct. 16, 1995), aff'd, Loft Bd. Order No. 1899 (Jan. 4, 1996), aff'd sub nom. Zabari v. New York City Loft Board, Index No. 107964/96 (Sup. Ct. N.Y. Co., Feb. 11, 1997), rev'd in part on other grounds, _____ AD2d _____, 666 NYS2d 599 (1st Dept. 1997).

¶ 3. Failure of the Loft Board to conduct an inspection of a loft unit following a sale of rights pursuant to subparagraph (d)(2) of this section did not alter the effect of the sale of rights. Matter of Perry, OATH Index No. 583/97 (Oct. 20, 1997), aff'd, Loft Bd. Order No. 2193 (Dec. 18, 1997).

¶ 4. Following a sale of rights by a residential tenant of a loft unit, the next two tenants of the unit were commercial. The third tenant took occupancy pursuant to a commercial lease, but brought an application for a declaration that he was a protected residential occupant of the unit. Pursuant to subparagraph (c)(1) of this section, the unit was exempt from coverage by the Loft Law, and the current tenant was not entitled to the protections of the Loft Law, including rent regulation. Matter of Perry, OATH Index No. 583/97 (Oct. 20, 1997), aff'd, Loft Bd. Order No. 2193 (Dec. 18, 1997).

¶ 5. Following the Loft Board's adoption of abandonment rules (paragraph (f) of this section), an abandonment is no longer to be construed as a constructive sale of fixtures, with the sale price deemed to be paid from the unpaid rent. Matter of Sansone, OATH Index No. 1125/96 (Mar. 27, 1996), aff'd, Loft Bd. Order No. 1955 (Apr. 25, 1996).

¶ 6. Where a loft unit remains in residential use after a finding of abandonment, the effect of the abandonment finding is the same as the effect of a sale of rights: the rent is deregulated. Matter of Knickerbocker Paper Recycling Co., OATH Index No. 1729/97 (Oct. 6, 1997), aff'd, Loft Bd. Order No. 2181 (Oct. 30, 1997); see also Matter of Sansone, OATH Index No. 1125/96 (Mar. 27, 1996), aff'd, Loft Bd. Order No. 1955 (Apr. 25, 1996).

¶ 7. In the case of an abandonment pursuant to paragraph (f) of this section, rent deregulation became effective on the Loft Board's determination of abandonment, not retroactively, on the date of the abandonment itself. Matter of Sansone, OATH Index No. 1125/96 (Mar. 27, 1996), aff'd, Loft Bd. Order No. 1955 (Apr. 25, 1996).

¶ 8. Use of a loft unit as a joint living/work quarters does not constitute non-residential use exempting the unit from legalization requirements pursuant to paragraph (c) of this section. Matter of Rava, OATH Index No. 1237/96 (Apr. 17, 1996), aff'd, Loft Bd. Order No. 1998 (Sept. 26, 1996).

¶ 9. A building owner's abandonment application was not rendered moot by the owner's entry into a residential lease with a new tenant during the pendency of the application. Matter of O'Connell, OATH Index No. 393/97 (Nov. 12, 1996), aff'd, Loft Bd. Order No. 2050 (Jan. 9, 1997); Matter of Rava, OATH Index No. 1237/97 (Apr. 17, 1996), aff'd, Loft Bd. Order No. 1998 (Sept. 26, 1996).

¶ 10. A covered unit was abandoned pursuant to paragraph (f) of this section, when, after the death of the protected occupant in 1991, the daughter of the deceased removed her mother's possessions from the unit and surrendered the unit by turning over the keys to the landlord. Matter of 303 Park Avenue South Associates, OATH Index Nos. 1727-28/97 (July 30, 1997), aff'd, Loft Bd. Order No. 2157 (Oct. 10, 1997).

¶ 11. The death in 1993 of the sole occupant of a covered unit, and the absence of any claim on the unit after his death, constituted an abandonment of the unit. Matter of 303 Park Avenue South Associates, OATH Index Nos. 1727-28/97 (July 30, 1997), aff'd, Loft Bd. Order No. 2157 (Oct. 10, 1997).

¶ 12. Loft unit was abandoned pursuant to paragraph (f) of this section upon the death of the protected occupant in 1993, followed by the return of the unit key from the occupant's estate to the owner. Matter of Knickerbocker Paper Recycling Co., OATH Index No. 1729/97 (Oct. 6, 1997), aff'd, Loft Bd. Order No. 2182 (Oct. 30, 1997).

¶ 13. Where the window period occupant of a loft unit died in or about 1983, and the subsequent residential occupant of the unit has been adjudicated not to be a protected occupant of the unit, the unit was abandoned pursuant to paragraph (f) of this section. Matter of BLF Realty Holding Corp., OATH Index No. 990/97 (May 7, 1997), aff'd, Loft Bd. Order No. 2120 (June 26, 1997).

¶ 14. Upon the death in 1988 of a covered unit's protected occupant, the administrator of the occupant's estate stated his intention to forego any claim concerning the unit, thereby abandoning the unit pursuant to paragraph (f) of this section. Matter of Ebbetts Partners, OATH Index No. 1460/97 (May 30, 1997), aff'd, Loft Bd. Order No. 2140 (Aug. 28, 1997).

¶ 15. The death of the tenant of a loft unit, after which no other person claimed the right to occupy the unit, constituted an abandonment of the unit pursuant to paragraph (f) of this section. Matter of O'Connell, OATH Index No. 393/97 (Nov. 12, 1996), aff'd, Loft Bd. Order No. 2050 (Jan. 9, 1997).

¶ 16. The death of the residential occupant of a loft unit, followed by the grant of permission by the father of the deceased tenant to the building owner to take possession of the unit, constituted an abandonment of the unit pursuant to paragraph (f) of this section. Matter of Ayala, OATH Index No. 760/96 (Jan. 29, 1996), aff'd, Loft Bd. Order No. 1915 (Feb. 29, 1996).

¶ 17. The protected occupant of a covered unit abandoned the unit, pursuant to paragraph (f) of this section, by leaving without notice in 1982, after which he was not seen or heard from. Matter of Ebbetts Partners, OATH Index No. 1460/97 (May 30, 1997), aff'd, Loft Bd. Order No. 2140 (Aug. 28, 1997).

¶ 18. The two window period residents of a loft unit having moved out, and one having agreed with the landlord to hold each other harmless and go their separate ways, and the residents having not been seen since 1988, the unit was abandoned pursuant to paragraph (f) of this section. Matter of Ebbetts Partners, OATH Index No. 1460/97 (May 30, 1997), aff'd, Loft Bd. Order No. 2140 (Aug. 28, 1997).

¶ 19. The window period residential occupant of a loft unit, who lived rent-free in exchange for superintendent services to the owner of the building, moved out when the owner sold the building in 1988, and thereby abandoned the unit pursuant to paragraph (f) of this section. Matter of Ebbetts Partners, OATH Index No. 1460/97 (May 30, 1997), aff'd, Loft Bd. Order No. 2140 (Aug. 28, 1997).

¶ 20. Where a building was vacated after a fire in or about 1988, and, after rehabilitation of the building, commercial and residential tenants were permitted to return, the failure of one tenant to return to his unit or otherwise to communicate with the owner constituted an abandonment of that unit pursuant to paragraph (f) of this section. Matter of Cika Realty Co., OATH Index No. 1123/96 (Mar. 13, 1996), aff'd, Loft Bd. Order No. 1943 (Mar. 28, 1996).

¶ 21. The departure in 1993 of the protected occupant of a loft unit, leaving the unit in poor condition and owing rent, constituted an abandonment of the unit pursuant to paragraph (f) of this section. Matter of Ovid, LLC, OATH Index No. 586/97 (Jan. 16, 1996), aff'd, Loft Bd. Order No. 2079 (Feb. 27, 1997).

¶ 22. A residential occupant's voluntary conduct of criminal and dangerous activities constituting a public nuisance in his loft unit, his failure to appear in a Supreme Court action brought by the City of New York seeking closure of the loft unit due to the illegal use of the unit, and the Supreme Court's issuance of a temporary order of closure, constituted an abandonment of the unit. Matter of Kangs Heritage Management Corp., OATH Index No. 762/98 (Dec. 19, 1997), aff'd, Loft Bd. Order No. 2221 (Feb. 26, 1998).

¶ 23. A tenant who moved out of his loft unit during a rent dispute with the building owner, and whose attorney wrote to the owner's attorney unequivocally stating that the tenant was relinquishing possession of the unit with no intention of resuming possession, thereby abandoned the unit pursuant to paragraph (f) of this section. Matter of Sansone, OATH Index No. 1125/96 (Mar. 27, 1996), aff'd, Loft Bd. Order No. 1955 (Apr. 25, 1996).

¶ 24. Absent proof that no finding of harassment had been made against the owner as to the unit for which the abandonment determination was sought, and absent proof that no sale of rights or fixtures had been executed for the unit, the abandonment application was denied pursuant to subparagraph (f)(1) of this section. Matter of Amalgamated Union Local 5, OATH Index No. 1127/96 (Mar. 19, 1996), aff'd, Loft Bd. Order No. 1957 (Apr. 25, 1996).

¶ 25. Because a Civil Court disposition of a non-payment action against the current residential occupants of a loft unit, finding that a prior occupant of the unit had not abandoned the premises, precluded re-litigation of the identical abandonment issue in an application to the Loft Board pursuant to paragraph (f) of this section, the current occupants' defense of collateral estoppel was sustained, and the abandonment application was denied. Matter of M.R.A. Realties, Inc., OATH Index No. 991/97 (Oct. 20, 1997), aff'd, Loft Bd. Order No. 2192 (Dec. 18, 1997).

¶ 26. The scope of a waiver of Loft Law rights is determined by the intention of the parties to the waiver agreement, as manifested in the contract language. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 27. If a waiver agreement indicates, either by its express language or by its clear import, that the parties to the agreement intended that the waiver include rights that were unknown at the time of the agreement, or even rights that had not accrued at the time of the agreement, that waiver agreement will be honored. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 28. The prohibition contained in subparagraph (d)(1) of this section, against pre-1987 waivers of rights for units covered by the Loft Law solely due to the 1987 amendments to that law, was a valid exercise of the Loft Board's broad rule-making authority. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 29. A 1985 landlord-tenant agreement providing for rent regulation pursuant to the Rent Stabilization Law rather than the Loft Law, in the event that the building were declared to be covered by the Loft Law, clearly indicated an intention by the parties to the agreement to waive rent regulation pursuant to the 1982 Loft Law, but did not clearly indicate an intention to waive rent regulation pursuant to the 1987 amendments to the Loft Law. Moreover, even had the parties intended to waive Loft Law rent regulation pursuant to future amendments to the Loft Law, the waiver would have been invalid pursuant to subparagraph (d)(1) of this section. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 30. Although a tenant waited nine years to assert the right to rent regulation conferred by the 1987 amendments to the Loft Law, during which time she entered into a series of leases for rental amounts more than the regulated rent would have been, the tenant did not thereby waive her right to rent regulation pursuant to this section. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 31. A tenant's voluntary payment of rents billed by the building owner did not constitute a waiver of the tenant's right to rent regulation under the Loft Law, and therefore the tenant's rent overcharge application was granted. Matter of Teitelbaum, OATH Index No. 894/97 (May 30, 1997), aff'd, Loft Bd. Order No. 2133 (Aug. 28, 1997).

¶ 32. Where a 1991 settlement of coverage litigation between the building owner and certain tenants provided for specified rental amounts for the period from April 1991 to March 1994, and provided for rental amounts thereafter at the March 1994 rate "subject to further order of the Loft Board," the settlement did not operate as a waiver of the tenants' right to rent regulation altogether, but a waiver of the tenants' right to seek a lower base rent than the rental amounts provided in the settlement. Matter of Bordes, OATH Index No. 1143/97 (June 23, 1997), aff'd, Loft Bd. Order No. 2134 (Aug. 28, 1997).

¶ 33. A tenant's representation as part of a 1987 settlement of coverage litigation that he would interpose no claim in any forum that he uses his loft unit for residential purposes constituted a waiver of the tenant's right to seek protected occupancy status or rent regulation for his loft unit. Matter of Muntadas, OATH Index No. 1180/95 (May 29, 1996), aff'd, Loft Bd. Order No. 2030 (Nov. 21, 1996), reconsideration denied, Loft Bd. Order No. 2170 (Oct. 30, 1997).

¶ 34. Where a loft unit was found by the Loft Board to have been abandoned pursuant to paragraph (f) of this section, and the unit was leased after the abandonment for residential use, the sole legal effect of the abandonment finding was the termination of rent regulation of the unit, and all other statutory and regulatory requirements under the Loft Law remained applicable. Matter of Zabari, OATH Index No. 419/96 (Oct. 16, 1995), aff'd, Loft Bd. Order No. 1899 (Jan. 4, 1996), aff'd sub nom. Zabari v. New York City Loft Board, Index No. 107964/96 (Sup. Ct. N.Y. Co., Feb. 11, 1997), rev'd in part on other grounds, _____ AD2d _____, 666 NYS2d 599 (1st Dept. 1997).

¶ 35. Administrative law judge grants owner's application to amend the Loft Board registration and remove IMD unit from coverage, where residential occupants of unit sold their rights to the owner in the interim, the owner filed a sales record and declaration of intent with the Loft Board in accordance with Multiple Dwelling Law section 286, and the Loft Board's inspection report indicated the unit was converted to non-residential use. **Matter of 303 Park Avenue South Associates,** OATH Index No. 128/98 (Nov. 12, 1997), **aff'd in part, modified in part, and remanded,** Loft Bd. Order No. 2209 (Jan. 22, 1998), **on remand,** OATH Index No. 1093/98 (May 12, 1998), **aff'd,** Loft Bd. Order No. 2266 (June 25, 1998).

¶ 36. Prior sale of rights to owner precludes rent overcharge claim by subsequent tenant because such a sale of rights in an interim multiple dwelling, which remains residential, removes the unit from rent regulation pursuant to Multiple Dwelling Law section 286(12) and subparagraph (c)(2) of this section. **Matter of Block,** OATH Index No. 434/98 (Mar. 11, 1998), **aff'd,** Loft Bd. Order No. 2247 (May 28, 1998).

¶ 37. Abandonment applications granted where evidence established that empty fourth floor unit was last occupied by a now deceased tenant. **Matter of 645-647 Broadway Realty, LLC,** OATH Index No. 1501/98 (July 22, 1998), **aff'd,** Loft Bd. Order No. 2294 (Sept. 24, 1998).

¶ 38. Abandonment applications granted for that portion of space not previously the subject of a sale of rights. **Matter of 291 Seventh Avenue, LLC,** Loft Bd. Order No. 2360 (Jan. 28, 1999), **aff'g on other grounds** OATH Index Nos. 730-31/99 (Dec. 7, 1998).

¶ 39. A landlord argued that under 29 RCNY Sec. 2-10(c)(2), once the fixtures of a loft unit were sold, the unit was removed from the rent stabilization system once and for all. The court, however, held that even though the unit might no longer be stabilized under the provisions of the Loft Law, it might still qualify for stabilization under the Emergency Protection Act of 1974. 182 Fifth Ave. LLC v. Design Development Concepts, N.Y.L.J., Dec. 12, 2001, page 18, col. 2, Sup.Ct. New York Co.

¶ 40. The failure to comply with 29 RCNY Sec. 2-10(d), which requires registration with the Loft Board of a sale of improvements, will result in a civil penalty imposed by the Loft Law, but will not result in nullification of the sale. 182 Fifth Ave. LLC v. Design Development Concepts, N.Y.L.J., Dec. 12, 2001, page 18, col. 2 (Sup.Ct. New York Co.).

¶ 41. Abandonment application established that the unit was abandoned by the death of the prior residential tenant. **Matter of Marcus**, OATH Index No. 2123/99 (Oct. 26, 1999), **aff'd**, Loft Bd. Order No. 2456 (Dec. 13, 1999).

¶ 42. Abandonment application granted where the owner's evidence showed that the unit had been vacant since the death of the previous residential tenant and there were no harassment findings or housing maintenance violations. **Matter of 458 West Broadway, LLC**, OATH Index No. 273/00 (Oct. 8, 1999), **aff'd**, Loft Bd. Order No. 2445 (Nov. 1, 1999).

¶ 43. Abandonment found where the evidence indicated that the occupant of a fourth floor unit died and unit was vacant when petitioner purchased the building. **Matter of Bahia Mehmet Bin Chambi**, OATH Index No. 1126/98 (May 5, 1998), **aff'd**, Loft Bd. Order No. 2265 (June 25, 1998). ¶ 44. Upon the protected occupant's default, an application for abandonment of residential unit was granted where the owner established that occupant/tenant had been gone from the premises since sometime in 1996; left owing $12,000 in rent; there was no indication that tenant intended to return; there had been no attempt to buy fixtures or improvements from the tenant; there were no outstanding harassment complaints pertaining to this building; and there were no outstanding violations of minimum housing maintenance standards. **Matter of Hyung-Hyang Realty Corp**., OATH Index No. 2124/99 (Sept. 22, 1999), **aff'd**, Loft Bd. Order No. 2124/99 (Nov. 1, 1999).

¶ 45. Abandonment application granted where no valid sale of rights was found. Whether a pre-registration sale of rights (29 RCNY § 2-10(d)), as opposed to a sale of improvements (29 RCNY §§ 2-07(e), 2-07(h)(1)(iii)), qualifies to de-regulate a unit, need not be determined since there was insufficient proof that the parties intended a sale of rights. **Matter of 103 West 27th Street Realty Corp**., OATH Index No. 1409/99 (May 21, 1999), **aff'd**, Loft Bd. Order No. 2420 (June 25, 1999).

¶ 46. Abandonment application granted on default, where the tenant of record had left without notice three years earlier, left nothing of value behind and current whereabouts were unknown. **Matter of OVID, LLC**, OATH Index No. 586/97 (Jan. 16, 1997), **aff'd**, Loft Bd. Order No. 2079 (Feb. 27, 1997).

¶ 47. Abandonment found where the occupant/tenant had been gone from the premises, there was no indication that the tenant intended to return, tenant vacated before finalizing buy-out, no fixtures were left in the unit, there was no evidence of outstanding harassment complaints pertaining to the building, and there were no outstanding violations of minimum housing standards. **Matter of Big Greene, LLC**, OATH Index No. 274/00 (Dec. 22, 1999), **aff'd**, Loft Bd. Order No. 2505 (Mar. 30, 2000).

¶ 48. Where an owner filed an abandonment application but argued, in the alternative, that a sale of rights had occurred, the administrative law judge found that an estate of a deceased tenant cannot sell rights. However, an abandonment was proven and the application was granted. **Matter of 107 West 26th** Street Owners Corp., OATH Index No. 716/00 (Dec. 17, 1999), **aff'd**, Loft Bd. Order No. 2485 (Feb. 22, 2000).

¶ 49. Abandonment found where the evidence indicated that the second floor unit was previously occupied by a residential tenant, but at the time petitioner assumed ownership the unit was vacant. **Matter of 42 West 29th** Street, OATH Index No. 1206/99 (Apr. 14, 1999), **aff'd**, Loft Bd. Order No. 2401 (May 25, 1999).

¶ 50. Tenants filed coverage and rent adjustment applications and the owner filed a cross-application for abandonment. Administrative law judge granted the coverage application finding that the tenants took occupancy of a covered IMD unit with the consent of the owner. Administrative law judge found that previous protected occupant had abandoned the unit before petitioners took occupancy, but the unit remained residentially occupied and subject to the Loft Law, because the owner had failed to take the steps required by section 2-10(c)(1)(ii) to convert the unit to non-residential use. Pursuant to subparagraph (f)(5) of this section, removal from rent regulation occurs upon the Loft Board's granting of an owner's abandonment application, **i.e**., a finding of abandonment is not given retroactive effect; therefore, tenants retained a viable overcharge claim. Although a finding of abandonment by the Loft Board usually removes a unit from rent regulation, relying on **Matter of White**, Loft Bd. Order No. 2194 (Dec. 18, 1997), the administrative law judge ruled that should not occur here, where the abandonment application was filed years after the fact and only in response to petitioners' overcharge application. **Matter of DeLong**, OATH Index No. 266/99, **aff'd and remanded**, Loft Bd. Order No. 2457 (Dec. 13, 1999), **application for reconsideration denied**, Loft Bd. Order No. 2500 (Mar. 30, 2000), **on remand**, OATH Index No. 1165/00 (Nov. 1, 2000).

¶ 51. Administrative law judge found insufficient evidence that former tenant had sold his rights to the former owner. The sale occurred before the building was registered as an IMD and the brief written agreement merely provided

that the tenant would vacate the premises by a certain date in exchange for $14,000, without mention of the Loft Law or Loft Law rights. **Matter of 103 West 27th Street Realty Corp**., OATH Index No. 1409/99 (May 21, 1999), **aff'd**, Loft Bd. Order No. 2420 (June 25, 1999).

¶ 52. Administrative law judge denied tenant's application for protected occupancy rights to the entire third floor of an IMD, finding the applicant and two former co-occupants of the floor had sold their rights and fixtures to the former landlord, and the sales operated to deregulate the entire third floor of premises. **Matter of Fergusson**, OATH Index No. 923/99 (June 11, 1999), **aff'd**, Loft Bd. Order No. 2440 (Nov. 1, 1999).

¶ 53. Whether a pre-registration sale of rights (29 RCNY § 2-10(d)), as opposed to a sale of improvements (29 RCNY §§ 2-07(e), 2-07(h)(1)(iii)), qualifies to de-regulate a unit, did not have to be determined since there was insufficient proof that the parties intended a sale of rights. Where no valid sale of rights was found, the abandonment application was granted. Matter of 103 West 27th Street Realty Corp., OATH Index No. 1409/99 (May 21, 1999), **aff'd**, Loft Bd. Order No. 2420 (June 25, 1999).

¶ 54. Owner filed an abandonment application but argued, in the alternative, that a sale of rights had occurred. Administrative law judge found that an estate of a deceased tenant cannot sell rights. However, an abandonment was proven, and therefore, the application was granted. **Matter of 107 West 26th Street Owners Corp.,** OATH Index No. 716/00 (Dec. 17, 1999), **aff'd**, Loft Bd. Order No. 2485 (Feb. 22, 2000).

¶ 55. A finding of abandonment removes the unit from rent regulation. **Matter of Dubbeldam,** OATH Index No. 529/00 (Jan. 24, 2000), **aff'd,** Loft Bd. Order No. 2490 (Feb. 22, 2000).

¶ 56. Administrative law judge found evidence sufficient to grant the abandonment application for all four units where evidence indicated that one tenant had departed in the face of an eviction, that one tenant had departed after being hospitalized, and that the last residential tenant of the other currently vacant units had died before the current owner purchased the premises. None of the units contained improvements. There were also no harassment findings against the owner and no housing maintenance violations. **Matter of Dadon,** OATH Index No. 2014/00 (Dec. 27, 2000), **aff'd,** Loft Bd. Order No. 2612 (Mar. 9, 2001).

¶ 57. Owner provided sufficient basis for granting of abandonment application based upon death of protected occupant of IMD unit. **Matter of Mak (JSM Properties Inc.),** OATH Index No. 531/00 (Jan. 10, 2000), **aff'd,** Loft Bd. Order No. 2491 (Feb. 22, 2000).

¶ 58. Administrative law judge recommends finding of abandonment based upon evidence, which established that occupant/tenant had been gone from the premises since 1991 and indicated that he would not return. **Matter of 315 Church Street Corp.,** OATH Index No. 934/00 (Mar. 13, 2000), **aff'd,** Loft Bd. Order No. 2522 (Apr. 27, 2000).

¶ 59. Notice was mailed to the affected tenant with an instruction that failure to answer would result in a declaration of default. Envelope was returned by the postal service marked, "Forwarding Order Expired." Tenant filed no answer and made no appearance and was declared in default. Administrative law judge found that credible evidence from building manager established that occupant/tenants had been gone from the premises since mid-1995; there was no indication that tenants intended to return; tenants vacated before finalizing buy-out that had been discussed; no fixtures were left in the unit; there was no evidence of outstanding harassment complaints pertaining to this building; and there were no outstanding notices of violation of minimum maintenance standards. **Matter of Big Greene, LLC.,** OATH Index No. 274/00 (Feb. 10, 2000), **aff'd,** Loft Bd. Order No. 2505 (Mar. 30, 2000).

¶ 60. Administrative law judge denies application filed by current owner, which sought a finding that former owner-occupants had abandoned their units. The Multiple Dwelling Law does not extend its protection to owner-occupants. **Matter of 70 W. 38th St. Co.,** OATH Index No. 933/00 (May 18, 2000), **aff'd,** Loft Bd. Order No. 2533 (July 18, 2000).

¶ 61. Administrative law judge found that owner did not convert the residential IMD unit to a non-residential unit by filing a declaration of intent with the Loft Board. Administrative law judge did not give effect to the declaration because the owner did not remove all of the fixtures, as required by 29 RCNY § 2-10(c)(1)(ii), and because he had acted contrary to the declaration by continuing to acquiesce to residential use. **Matter of Dubbeldam,** OATH Index No. 529/00 (Jan. 24, 2000), **aff'd,** Loft Bd. Order No. 2490 (Feb. 22, 2000).

¶ 62. Loft Board rule 2-10(f)(1) does not permit an abandonment finding where a sale of rights agreement has been executed. **Matter of Vitale,** 1467/00, supp. rep. (Apr. 3, 2000), **aff'd,** Loft Bd. Order No. 2531 (June 29, 2000).

¶ 63. A tenant ceased occupying the unit as a primary residence and sublet the unit without permission. Owner brought holdover proceeding in housing court against the protected tenant and subtenant. Owner obtained a default judgment against the tenant and executed stipulation with subtenant, whereby subtenant agreed to surrender possession to the owner within nine months, the judge recommended that the abandonment application be granted. Because protected tenant had vacated the unit before a warrant of eviction was executed, abandonment regulation (29 RCNY § 2-10(f)) applied, not regulation governing eviction of residential occupants (29 RCNY § 2-08(j)(2)). Therefore, if the owner elects to let the unit residentially, all of the requirements of the Loft Law will apply, except the unit will be removed from rent regulation. 29 RCNY § 2-10(f)(5); 29 RCNY § 2-10(c)(2). **Matter of Twenty-Nine Second, LLC,** OATH Index No. 1431/01 (Apr. 3, 2001).

¶ 64. Seven units were found to have been abandoned as defined by section 2-10(f) where the entire building has been vacant for years. Past inspections by the building architect and the Loft Board's Director of Enforcement noted the building's dilapidated condition and lack of indicia of any residential use. **Matter of Greenwich Associates, LLC,** OATH Index No. 1193/01 (Mar. 1, 2001).

¶ 65. An abandonment application was granted where first floor unit of premises had been occupied commercially for some twenty years and where testimony of owner and tenants established that it had never been occupied residentially. **Matter of Noah Trading Co.,**, OATH Index No. 1675/01 (June 25, 2001), **aff'd,** Loft Bd. Order No. 2688 (Nov. 29, 2001).

¶ 66. The owner was excused from fully addressing several of the abandonment factors set forth in section 2-10(f)(3) of the Loft Board's rules where the prior eviction occurred under former owner's operation of building. **Matter of Mervin,** OATH Index No. 1965/01 (Nov. 8, 2001), **aff'd,** Loft Bd. Order No. 2689 (Nov. 29, 2001).

¶ 67. Petitioner submitted sufficient reliable proof showing that the last occupant of a covered residential unit abandoned the unit. Abandonment occurred shortly after occupant's appeal of Loft Board Order No. 1321, finding the unit, but not the occupant, covered under the Loft Law, was denied. **Matter of 38 Walker Street, LLC,** OATH Index No. 1430/01 (Aug. 24, 2001), **aff'd,** Loft Bd. Order No. 2669 (Oct. 10, 2001).

¶ 68. Abandonment application granted where evidence indicated that the unit was previously occupied by a residential tenant who vacated the premises owing thousands of dollars in back rent and the value of fixtures she left behind did not cover the back rent or repairs. **Matter of Life Realty Partners, L.P.,** OATH Index No. 1674/01 (Oct. 12, 2001), **aff'd,** Loft Bd. Order No. 2687 (Nov. 29, 2001).

¶ 69. The determination of whether an interim multiple dwelling is considered abandoned rests within the purview of the New York City Loft Board. Where an abandonment proceeding was already pending before the Loft Board, it was proper for the Supreme Court to dismiss an action to compel a determination of plaintiff's claim to an interim multiple dwelling, wihtout prejudice to restoring the action following resolution of the administrative proceeding. EPDI Assoc. v. Conley, 776 N.Y.S.2d 902 (App.Div. 1st Dept. 2004).

¶ 70. Abandonment application denied where the owner established that 1983 occupants no longer lived in the units, but failed to provide sufficient proof as to the circumstances under which they left the building, as contemplated by the factors set forth in subsection (3) of this rule. **Matter of 117 Hester Realty, LLC,** OATH Index No. 2026/06

(Sept. 26, 2006), **adopted**, Loft Bd. Order No. 3139 (Jan. 18, 2007).

¶ 71. Abandonment application denied where the owner established that unit had been commercially occupied since 1992, and that there has been no prior findings or harassment, where the owner offered no evidence relating to the other factors set forth in subsection (3) of this rule. **Matter of MAS, LLC,** OATH Index No. 445/07 (Oct. 24, 2006).

¶ 72. Subsection (f) of this rule, as amended, now requires abandonment applications to be filed within one year of the date the owner knew or should have known a unit was abandoned. The amendment applies to all abandonment applications filed after April 8, 2007. ALJ dismissed application filed on July 12, 2007, because the owner knew or should have known the unit was vacant when the building was purchased, over twenty years ago. **Matter of 103 W. 27th Street Realty, Inc.**, OATH Index No. 868/08 (Nov. 21, 2007).

¶ 73. ALJ rejected an IMD owner's assertion that because it filed its abandonment application within one year of the date the owner had purchased the building, the application was timely, even though the protected tenant had vacated the abandoned unit over twenty years earlier. Under paragraph (f)(3) of this section, all abandonment applications must be filed within one year of the date the owner knew or should have known that the tenant vacated the unit. Therefore, the one-year time limit for filing under this section began running in 1983, the date the prior owner knew that the tenant abandoned the unit. Because a new owner of a building generally steps into the shoes of the prior owner, the ALJ found that the application for a finding of abandonment was untimely and should be dismissed. **Matter of Johnson**, OATH Index No. 967/08 (Jan. 7, 2008).

¶ 74. Abandonment application granted where proof showed that protected tenant had vacated the unit to pursue an employment opportunity outside of New York. **Matter of 20 Beaver Street, LLC**, OATH Index No. 691/06 (June 25, 2007), **adopted**, Loft Bd. Order No. 3436 (May 15, 2008).

¶ 75. Abandonment application denied where owner's sole witness knew little about the circumstances surrounding the protected tenant's vacatur of the unit and did not explain what efforts, if any, the owner made to obtain additional information from the man who had owned the building at the time the tenant departed. **Matter of Aulisa**, Loft Bd. Order No. 3437 (May 15, 2008), **rejecting,** OATH Index No. 1816/06 (Aug. 4, 2006).

¶ 76. Abandonment not found where prior tenant departed the unit in accord with its lease, gave advance notice, and did not owe back rent. Loft Board Order distinguishes between turnover of tenants, which occurred here, and abandonment of unit, which did not occur. **Matter of 67 Vestry Street, LLC**, Loft Bd. Order No. 3476 (Nov. 20, 2008), **adopting on other grounds,** OATH Index Nos. 1818/06 & 2095/06 (Sept. 20, 2006).

¶ 77. Although death of tenant would constitute an abandonment, the Loft Board denied an application where the owner listed former tenants as deceased but failed to provide any documentary evidence that the former tenants were actually deceased. **Matter of L & F Realty Corp**., OATH Index No. 796/07 (Jan. 4, 2007), **adopted**, Loft Bd. Order No. 3478 (Nov. 20, 2008).

Rules of the City of New York

29 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-11 Fees.

(a) **Collection of fees.** The Loft Board shall charge and collect reasonable fees in the execution of its responsibilities. The Loft Board may, by amending these regulations, add to, delete from or modify the types of applications for which fees are charged and/or revise the amount of the fee imposed.

(b) **Schedule of reasonable fees.** (1) **Registration and Code Compliance Monitoring fee.**

(i) The filing fee for registration and code compliance monitoring shall be $500.00 per residentially occupied unit.

(A) Registration of a building or a part thereof as an interim multiple dwelling (IMD) by the owner, lessee of a whole building, and the agent is required annually. The annual period shall begin on July 1 of each year and end on June 30 of the following year. If more than one registration application is filed for a building, the filing fee for the residentially occupied units therein shall be charged only once during any annual period.

(B) Landlords filing annual renewal registration applications, which become effective on July 1, 1983 and annually thereafter, shall be required to pay the registration filing fee prior to the processing of the application.

(C) Registration as an IMD shall not be issued to or renewed for an owner of a building against whom a fine has been imposed for any violation of these rules or against whom any late-filing fee has been imposed pursuant to §2-11(b)(1)(i)(D), unless or until such fine and late-filing fee has been paid, or such owner has entered into, and is in compliance with, an installment agreement, payment plan or other similar arrangement for the payment of such fine. Registration as an IMD shall not be issued to or renewed for an owner of a building unless and until all prior unpaid

registration fees and late-filing fees (if any) have been paid.

(D) If the annual renewal registration application and fee are not submitted by July 31 of each year in which they are required to be submitted, the Loft Board shall assess the owner a late filing fee of $25.00 for the month of July for each residentially occupied unit. Thereafter the Loft Board shall assess the owner an additional late filing fee of $5.00 per residentially occupied unit for each month or portion of a month until the date when the application is submitted and the fee is paid.

(2) **Code compliance applications.**

(i) The filing fee for an application for rent adjustments based upon the costs of compliance with Article 7-B of the Multiple Dwelling Law, or of obtaining a final residential certificate of occupancy, or both shall be $100.00 for each residentially occupied unit listed in the application.

(ii) The filing fee for an application for certification of estimated future rent adjustments shall be $75.00 for each residentially occupied unit listed in the application.

(3) **Article 7-C coverage applications.**

(i) The filing fee for an application, filed by either the landlord or by the tenant, for coverage of any building or part thereof, pursuant to Article 7-C of the Multiple Dwelling Law shall be $25.00 for each unit listed in the application.

(4) **Rent dispute applications.**

(i) The filing fee for an application, filed by either the landlord or tenant, disputing base rent or rent increases, not including rent adjustments based on costs of code compliance which are governed by §2-11(b)(3) of these regulations, shall be $50.00.

(5) **Sales of improvements applications.** (i) **Filing fees for landlords.**

(A) The filing fee for a sales of improvements application filed with the Loft Board before the effective date of these rules by a landlord or tenant shall be $300.00.

(B) The filing fee for any such application filed by the landlord with the Loft Board on or after the effective date of these rules shall be $500.00.

(ii) There is no fee for filing a Disclosure Form or Sales Record.

(6) **Housing maintenance applications.**

(i) The filing fee for an application filed by a tenant for violation of the minimum housing maintenance standards or by a landlord disputing its responsibility for providing any such service is $50.00.

(7) **Article 7-C compliance applications.**

(i) The filing fee for an application filed by a tenant or landlord concerning the landlord's compliance with Article 7-C is $50.00.

(8) **Tenant harassment applications.**

(i) The filing fee for an application filed by a tenant complaining of harassment is $100.00.

(9) **Tenant code compliance work plan.**

(i) The filing fee for an alternate code compliance work plan or for a waiver to allow late filing of an alternate code compliance work plan by a tenant is $50.00.

(ii) There is no filing fee for code compliance work plans filed by the landlord.

(10) **Interference with use applications.**

(i) The filing fee for an application filed by a tenant for unreasonable interference with use by the landlord in code compliance work is $50.00.

(11) **Landlord access applications.**

(i) The filing fee for an application filed by the landlord for an access order by the Board to permit access to tenants' units to perform code compliance work following tenants' refusal of such access is $50.00.

(12) **Landlord hardship applications.**

(i) The filing fee for an application filed by the landlord for a hardship exemption from Article 7-C is $1,000.00.

(13) **Decoverage applications.**

(i) The filing fee for an application filed by the landlord for an exemption from legalizing nonconforming units (decoverage) is $200.00.

(14) **Appeals to the Board of Administrative Decisions.**

(i) The filing fee for an application to appeal the Board's administrative decisions, such as a request for an extension denied by the staff, is $100.00.

(15) **Reconsideration applications.**

(i) The filing fee for an application for reconsideration is $100.00.

(16) **Abandonment applications.**

(i) The filing fee for an application for a determination that the occupant of an IMD unit has abandoned the unit is $100.00.

(17) **Sublessee-prime lessee compensation applications.**

(i) The filing fee for an application to determine the value of improvements installed in a unit for which the prime lessee is not the residential occupant qualified for protection is $500.00.

(18) **Extension applications.**

(i) The filing fee for an extension application is $50.00.

(19) **Other applications.**

(i) The filing fee for other applications filed with the Loft Board is $50.00.

(c) **Procedures for collection of fees.** The procedure for collection is as follows:

(1) The fee is due and payable upon the filing of the application. Payment may be made in person or by mail, by

certified check, teller check or money order made payable to the City Collector, at the offices of the Loft Board. Upon receipt of payment, the Loft Board will send proof of payment to the applicant.

(2) The application will not be processed until the fee is received. Applications received without the fee will not be considered final until payment is received. Applications will be administratively dismissed if proper payment is not received on due notice within one month.

(d) **Applicability.** This fee schedule will apply to all applications received in person or postmarked on or after January 1, 1991.

(e) **Waiver of fees for indigent persons.** (1) A party may apply to the Loft Board for a full waiver of fees for applications required by these rules on the basis of indigency. There shall be no waiver of fees required for registration applications set forth in §2-11(b)(i) of these rules.

(2) **Procedure for applying for waiver of fees.**

(i) The application for waiver of fees shall be on a form prescribed by the Loft Board. In the absence of such form, application shall be made by letter setting forth all pertinent information (name, address, building address, IMD registration number, if applicable, kind of application for which waiver is requested) and shall be accompanied by the affidavit required by §2-11(e)(2)(ii) of these regulations.

(ii) The application for waiver of fees shall be accompanied by an affidavit setting forth the amount and all sources of applicant's income, any property owned and the value thereof, a statement stating why a waiver of fees is requested, and any other facts that will be helpful to the Loft Board in determining whether such application should be granted.

(iii) The application for waiver of fees shall also be accompanied by a proof of service of said application for waiver of fees and accompanying affidavit on all affected parties.

(3) The application for waiver of fees must be received by the Loft Board no later than thirty days after the filing of an application.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) par (1) heading amended City Record Sept. 30, 2008 §1, eff. Oct. 30, 2008. [See Note 4]

Subd. (b) par (1) subpar (i) open par amended City Record Sept. 30, 2008 §1, eff. Oct. 30, 2008.

[See Note 4]

Subd. (b) par (1) subpar (i) [There is no subpar (ii) to par (1)] open par amended City Record Dec.

5, 2006 §1, eff. Jan. 4, 2007. [See Note 2]

Subd. (b) par (1) subpar (i) [There is no subpar (ii) to par (1)] opening par amended City Record

May 11, 2004 eff. June 10, 2004. [See Note 1]

Subd. (b) par (1) subpar (i) clauses (A), (C) amended City Record May 19, 2008 §1, eff. June 18,

2008. [See Note 3]

Subd. (b) par (1) subpar (i)(C) added City Record May 8, 1997 eff. June 7, 1997. [See T29 §2-01

Note 2]

Subd. (b) par (1) subpar (i) clause (D) added City Record May 19, 2008 §1, eff. June 18, 2008. [See

Note 3]

Subd. (b) par (18) added City Record May 8, 1997 eff. June 7, 1997. [See T29 §2-01 Note 2]

Subd. (b) par (18) subpar (i) added City Record May 8, 1997 eff. June 7, 1997. [See T29 §2-01

Note 2]

Subd. (b) par (19) renumbered (formerly (18)) City Record May 8, 1997 eff. June 7, 1997.

Subd. (c) par (1) amended City Record Dec. 5, 2006 §2, eff. Jan. 4, 2007. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record May 11, 2004:

Section 282 of the Multiple Dwelling Law ("MDL") provides, in pertinent part, that the New York City Loft Board has the authority to charge and collect reasonable fees in the execution of its responsibilities. Pursuant to this authority the Loft Board has collected annual registration fees since 1983.

This amendment will increase registration fees from $50 to $100 per residentially occupied unit.

This increase is necessary to provide the staffing, facilities, equipment and other resources required in order for the Loft Board (1) to serve the needs of landlords and tenants still under its jurisdiction, and (2) to fulfill its obligation to the public to legalize all remaining interim multiple dwellings still under its jurisdiction.

2. Statement of Basis and Purpose in City Record Dec. 5, 2006: Although the annual fee for the registration of IMD buildings was increased in 2004 (for the first time since 1992), an additional increase is necessary to support the operations of the Loft Board, which are mandated by statute.

3. Statement of Basis and Purpose in City Record May 19, 2008: Pursuant to §2-11 of the rules of the Loft Board, landlords whose buildings are registered as interim multiple dwellings ("IMDs") are required to renew their registration annually beginning on July 1 of each year. A filing fee specified in §2-11 is charged for each residentially occupied unit in an IMD. The late submission of registration renewal application and fees, that is, submission after the start of the filing period on July 1, has unfortunately reached such an extent that the Board has incurred significant enforcement costs in ensuring compliance with its requirements. The Board is therefore constrained to meet these expenses by imposing a late-filing fee for applications submitted after July 31.

4. Statement of Basis and Purpose in City Record Sept. 30, 2008: Pursuant to §2-11 of the rules of the Loft Board, landlords whose buildings are registered as interim multiple dwellings ("IMDs") are required to renew their registration annually beginning on July 1 of each year. A filing fee specified in §2-11 is charged for each residentially occupied unit in an IMD. Although the annual fee for the registration of IMD buildings was increased in 2006 an additional increase is necessary to support the operations of the Loft Board, which are mandated by statute. The Board is therefore constrained to meet these expenses by increasing the filing fee for annual registrations submitted after July 1, 2009.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The rule does not limit a contractor's common-law liability for affirmative acts of negligence which result in the creation of a dangerous condition upon a public street or sidewalk. Ingles v. City of New York, 309 A.D.2d 835,

766 N.Y.S.2d 80 (2d Dept. 2003).

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-12 MDL §286(2)(ii) Rent Adjustments.

(a) **Definitions.**

Alteration application. "Alteration application" shall mean an application accepted for filing by the Department of Buildings of the City of New York ("DOB") specifying the work to be undertaken to obtain a certificate of occupancy for an interim multiple dwelling ("IMD") unit, as defined in §281 of the Multiple Dwelling Law, ("covered unit") for residential or joint living-work quarters for artists usage ("residential certificate of occupancy").

Alteration permit. "Alteration permit" shall mean a building permit issued by DOB authorizing the owner to make the alterations set forth in the approved alteration application which are necessary to obtain a residential certificate of occupancy for a covered unit.

Article 7-B compliance. "Article 7-B compliance" shall mean compliance with the fire protection and safety standards of Article 7-B of the Multiple Dwelling Law, or alternative building codes as authorized by MDL §287. Article 7-B compliance shall be evidenced by DOB's issuance of a final residential certificate of occupancy, or by DOB's issuance of a final residential certificate of occupancy after June 21, 1992, or by DOB records demonstrating that the alterations necessary for issuance of a residential certificate of occupancy have been completed, or by the filing with the Loft Board of a sworn statement by a registered architect or professional engineer stating that the IMD has achieved Article 7-B compliance and the date of such compliance.

(b) **Eligibility requirements.** The owner of an IMD is eligible for one or more rent adjustments pursuant to MDL §286(2)(ii) if all the following conditions are met:

(1) The residential unit for which the rent adjustment is sought is covered under Article 7-C of the Multiple Dwelling Law;

(2) The IMD in which the covered residential unit is located is registered with the Loft Board;

(3) A final certificate of occupancy permitting residential occupancy of the covered unit was not issued on or before June 21, 1992;

(4) The residential unit was not rented at market value between June 21, 1982 and June 21, 1992 as a result of a sale of improvements pursuant to MDL §286(6) or sale of rights pursuant to MDL §286(12) and Loft Board rules issued pursuant thereto; and

(5) The owner meets or has already met one or more of the code compliance obligations set forth in MDL §284(1) which requires that the owner file an alteration application; obtain an approved alteration permit; and achieve Article 7-B compliance.

An eligible owner is entitled to one or more of the applicable rent adjustments as set forth in subdivisions c through e of §2-12 of these rules.

(c) **Alteration application rent adjustment.** (1) An owner who otherwise meets the eligibility requirements of §2-12(b) of these rules and who filed an alteration application with DOB prior to June 21, 1992 is entitled to a six percent (6%) increase over the maximum rent permissible under Loft Board rules for the covered residential unit on June 21, 1992.

(2) An owner who otherwise meets the eligibility requirements of §2-12(b) of these rules and who files an alteration application with DOB on or after June 21, 1992 is entitled to a six percent (6%) increase over the maximum rent permissible under Loft Board rules for the covered residential unit on the date the alteration application is filed.

(d) **Alteration permit rent adjustment.** (1) An owner who otherwise meets the eligibility requirements of §2-12(b) of these rules and who obtained an alteration permit prior to June 21, 1992 is entitled to a fourteen percent (14%) increase over the maximum rent permissible under Loft Board rules for the covered residential unit on June 21, 1992.

(2) An owner who otherwise meets the eligibility requirements of §2-12(b) of these rules and who obtains an alteration permit from DOB on or after June 21, 1992 is entitled to an eight percent (8%) increase over the maximum rent permissible under Loft Board rules for the covered residential unit on the date the alteration permit is issued by DOB.

(e) **Article 7-B compliance rent adjustment.** (1) An owner who otherwise meets the eligibility requirements of §2-12(b) of these rules and who achieved Article 7-B compliance prior to June 21, 1992 is entitled to a twenty percent (20%) increase over the maximum rent permissible under Loft Board rules for a covered residential unit on June 21, 1992.

(2) An owner who otherwise meets the eligibility requirements of §2-12(b) of these rules and who achieves article 7-B compliance on or after June 21, 1992 is entitled to a six percent (6%) increase over the maximum rent permissible under Loft Board rules for the covered residential unit on the date Article 7-B compliance is achieved.

(f) **Payment of rent adjustments.** Payment of rent adjustments based on filing an alteration application, obtaining an alteration permit or achieving Article 7-b compliance shall commence the month immediately after the month the alteration application is filed, the alteration permit is obtained or Article 7-B compliance is achieved, or on July 1, 1992, whichever is later.

(g) **Effect on other rent increases and base rent.** (1) Rent adjustments pursuant to this section shall be in addition to any rent increases which an owner is entitled to pursuant to §2-06 or §2-06.1 (Interim Rent Guidelines), or §2-01(m) (Code Compliance Work-Initial legal regulated rents) of these rules.

(2) The base rent for covered units shall be the amount of rent after rent adjustments pursuant to this section are implemented.

(3) Rent adjustments pursuant to this section shall be effective upon filing an alteration application, obtaining an alteration permit or Article 7-B compliance regardless of the subsequent expiration of said alteration application, alteration permit or temporary certificate of occupancy, or the filing of a further qualifying alteration application for the building. If the Loft Board or a court of competent jurisdiction determines the sworn statement of Article 7-B compliance was erroneous, all rent increases based on such statement shall be nullified.

HISTORICAL NOTE

Section added City Record Sept. 17, 1993 eff. Oct. 17, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1. No demand for legalization milestone rent increases pursuant to this section is necessary. Instead, such rent increases accrue automatically, and may be assessed retroactively. Matter of Longfellow Properties, Inc., OATH Index No. 1780/96 (Nov. 4, 1996), aff'd, Loft Bd. Order No. 2057 (Jan. 30, 1997); Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 2. Where a building owner applied for and obtained an alteration permit before June 21, 1992, the owner was entitled, as of July 1, 1992, to a 14 percent rent increase pursuant to subparagraph (d)(1) of this section, not to sequential six percent and eight percent increases pursuant to subparagraphs (c)(1) and (d)(1) of this section. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (May 20, 1997).

¶ 3. Where a building owner leased a loft unit at market value beginning in 1983, but in 1988 the Loft Board granted the lessee's rent overcharge application and ordered that the rent be reduced to the regulated rent, the unit was not exempt from legalization milestone rent increases pursuant to subparagraph (b)(4) of this section. Matter of Greenfield, OATH Index No. 1234/96 (Sept. 20, 1996), aff'd, Loft Bd. Order No. 2033 (Nov. 21, 1996).

¶ 4. The alleged failure of a building owner to maintain the building properly did not constitute a valid basis to object to legalization milestone rent increases pursuant to this section. Matter of Greenfield, OATH Index No. 1234/96 (Sept. 20, 1996), aff'd, Loft Bd. Order No. 2033 (Nov. 21, 1996).

¶ 5. Correspondence between former owner's attorney and covered tenants' attorney is binding agreement resolving rent dispute. Successor owner is not entitled to correct unilateral "mistake" by former owner in calculating the rent. Former owner was not precluded from agreeing to lower rents than the maximum permissible rent under the Board's regulations. **Matter of 473-475 Broadway, LLC,** OATH Index No. 761/98, mem. dec. (Apr. 22, 1998) incorporated in OATH Index No. 761/98 (May 22, 1998), **aff'd,** Loft Bd. Order No. 2267 (June 25, 1998).

¶ 6. Owner is not entitled to any code compliance increases under Multiple Dwelling Law section 286(2)(ii) where a final certificate of occupancy permitting residential occupancy of the covered unit was issued in March 1990. **Matter of M.R.A. Realties,** OATH Index No. 1317/98 (Dec. 2, 1998), **aff'd in part, modified on other grounds,** Loft Bd. Order No. 2369 (Feb. 23, 1999).

¶ 7. Administrative law judge found that the language of stipulation, settling prior proceedings between the parties,

specifically allowed for legalization increases in rent for obtaining an alteration application, pursuant to Multiple Dwelling Law section 286(2)(ii)(B). Administrative law judge rejected petitioner's claim that the increase was barred by subparagraph (b)(4) of this section, which prohibits an owner from taking legalization increases if the unit leased at market rent between June 21, 1982 and June 21, 1992. **Matter of Davidson,** OATH Index No. 900/98 (Oct. 15, 1998), **aff'd,** Loft Bd. Order No. 2381 (Mar. 23, 1999).

¶ 8. Unilateral mistake by former owner in the calculation of base rents and 6% increase for filing alteration application pursuant to Multiple Dwelling Law section 286(2)(ii)(A), is not a ground to undo a valid agreement, absent legally sufficient allegations that the mistake was induced by fraud by the other party. **Matter of 473-475 Broadway, LLC,** OATH Index No. 761/98, mem. dec. (Apr. 22, 1998) incorporated in OATH Index No. 761/98 (May 22, 1998), **aff'd,** Loft Bd. Order No. 2267 (June 25, 1997).

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***** Current through December 2009 ****

29 RCNY 2 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

APPENDIX A DEPARTMENT OF BUILDINGS MEMORANDUM: EXTENSIONS OF APPROVAL OF APPLICATIONS (DIRECTIVE NO. 17 OF 1971)

APPENDIX A DEPARTMENT OF BUILDINGS MEMORANDUM: EXTENSIONS OF APPROVAL OF APPLICATIONS (DIRECTIVE NO. 17 OF 1971)

The City of New York HOUSING AND DEVELOPMENT ADMINISTRATION Department of Buildings

DEPARTMENTAL MEMORANDUM DATE: October 5, 1971

TO: Borough Superintendents

FROM: Director of Operations, Thomas V. Burke

SUBJECT: Extensions of Approval of Applications

The following procedure, for the purpose of uniformity, shall be instituted in regard to reinstatement of an application filed on or after December 6, 1969, which has expired under §§26-109 or 26-118.6 [now §27-155 or §27-196] of the Administrative Code (new Building Code.)

Condition Expiration Date Reinstatement

Partial disapproval. No further action within 1 year after submission. Date of submission, plus 12 months Within 2 years of date of submission.

Approved application. No permit obtained within 1 year after approval. Date of approval, plus 12 months Within 2

years of date of approval.

Permit issued. No work commenced within year. Date of issuance, plus 12 months. Within two years of date of issuance of permit.

Permit issued, and work commenced within 1 year. Suspended or abandoned for 12 months thereafter. Date of suspension or abandonment of work plus 12 months Within 2 years of date of issuance of permit.

In the case of applications disapproved in whole or in part, extensions of time shall be for 12 month periods, which can be renewed upon reasonable cause.

The above listed requirements shall be applicable to all applications filed on or after December 6, 1969, regardless of whether the scope of work is in accordance with provisions of the new Building Code (Local Law 76/68), or in accordance with applicable laws in existence prior to December 6, 1968.

Requests for reinstatement shall be made by amendment. The required reinstatement fee (which shall be considered a new filing fee) shall be paid prior to accepting the amendment for processing. Examiners are cautioned to check particularly the effect of amendments to the Zoning Resolution or Building Code, change of street status or legal grade, installation of a new sewer, designation as a Landmark or within an Urban Renewal area, or an Unsafe Building violation.

Applications filed prior to December 6, 1969, for examination for compliance with the new Building Code shall also be subject to the above mentioned requirements.

Amendments or amended plans submitted after expiration shall not be considered unless accompanied by a simultaneous request for reinstatement.

Applications filed prior to December 6, 1969, for examination for compliance with the 1938 Building Code shall be governed by the provisions of Directive No. 15/69.

Directive No. 45/57 is hereby repealed.

Applications for capital construction projects shall not be expired without the approval of the Borough Superintendent.

Thomas V. Burke, P.E.

Director of Operations

TVB/IEM/SL

cc: Comm. J. Stein Exec. staff Industry

APPENDIX B

DEPARTMENT OF BUILDINGS MEMORANDUM:

TENANT SAFETY PLAN

DEPARTMENT OF BUILDINGS

(Directive #2/1984)

EXECUTIVE OFFICES

120 WALL STREET, NEW YORK, N.Y. 10005

ROBERT ESNARD, R.A., Commissioner

CAROL FELSTEIN

Deputy Commissioner

Date: January 6, 1984

To: Borough Superintendents

From: Carol Felstein

Re: Tenant Safety Plan

The question of defining the necessary elements of a tenant safety plan has arisen in regard to two recent directives, i.e. implementation of Local Law 19 of 1983 regarding permits for conversion of SRO facilities (directive of August 10) as well as a directive of July 28 regarding rehabilitation of occupied buildings and arson-prone buildings. At a minimum, the tenants safety plan must make provisions for:

(1) **Egress** At all times in the course of construction provision is made for adequate egress, as required by the Code. Required egress must not be obstructed at any time.

(2) **Fire Safety** All necessary laws and controls as well as any additional safety measures necessitated by the construction shall be strictly observed.

(3) **Health Requirements** Provision for control of dust, disposal of construction debris, pest control and maintenance of sanitary facilities, and limitation of noise to acceptable levels shall be included.

(4) **Services** Continuation of essential services as required by the New York City Building Code and Housing Code and the State Multiple Dwelling Law.

(5) **Structural Stability** No work to be done where there might be any danger to occupants due to structural work.

(6) **Controlled Inspection** Everything should be under controlled inspection.

(7) **Plans** Plans submitted by the applicant shall show compliance with the above items during construction. Details such as temporary Fire-Rated Assemblies and Opening Protectives shall be included.

The applicant must provide a notarized statement that the above conditions will be met.

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RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-01 Adjustment for Renewal Leases (Apartments).

Where heat is provided or required to be provided to a dwelling unit by an owner from a central or individual system at no charge to the tenant, the adjustments are as follows:

-For a one-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 4.5%

-For a two-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 8.5%

Provided, however, that where the most recent vacancy lease was executed six years or more prior to the date of the renewal lease under this Order, the following shall instead apply:

-For a one-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 4.5% or $45, whichever is greater.

-For a two-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 8.5% or $85, whichever is greater.

Where heat is neither provided nor required to be provided to a dwelling unit by an owner from a central or individual system, the adjustments are as follows:

-For a one-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 4.0%

-For a two-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 8.0%

Provided, however, that where the most recent vacancy lease was executed six years or more prior to the date of the renewal lease under this Order, the following shall instead apply:

-For a one-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 4.0% or $40, whichever is greater.

-For a two-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 8.0% or $80, whichever is greater.

Adjustments for renewal leases shall also apply to dwelling units in a structure subject to the partial tax exemption program under §421a of the Real Property Tax Law, or in a structure subject to §423 of the Real Property Tax Law as a Redevelopment Project.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-02 Vacancy Allowance for Apartments.

No vacancy allowance is permitted except as provided by §§19 and 20 of the Rent Regulation Reform Act of 1997.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

Rules of the City of New York

***** Current through December 2009 ****

30 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-03 Additional Adjustment for Rent Stabilized Apartments Sublet Under §2525.6 of the Rent Stabilization Code.

In the event of a sublease governed by subdivision (e) of §2525.6 of the Rent Stabilization Code, the allowance authorized by such subdivision shall be 10%.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the

Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-04 Adjustments for Lofts (Units in the Category of Buildings Covered by Article 7-C of the Multiple Dwelling Law).

The Rent Guidelines Board adopts the following levels of rent increase above the "base rent", as defined in §286, subdivision 4, of the Multiple Dwelling Law, for units to which these guidelines are applicable in accordance with Article 7-C of the Multiple Dwelling Law:

-For one-year increase periods commencing on or after October 1, 2008 and on or before September 30, 2009: 3.5%

-For two-year increase periods commencing on or after October 1, 2008 and on or before September 30, 2009: 6.5%

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-05 Vacant Loft Units.

No vacancy allowance is permitted under this Order. Therefore, except as otherwise provided in §286, subdivision 6, of the Multiple Dwelling Law, the rent charged to any tenant for a vacancy tenancy commencing on or after October 1, 2008 and on or before September 30, 2009 may not exceed the "base rent" referenced above plus the level of adjustment permitted above for increase periods.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as

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The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-06 Fractional Terms.

For the purposes of these guidelines any lease or tenancy for a period up to and including one year shall be deemed a one-year lease or tenancy, and any lease or tenancy for a period of over one year and up to and including two years shall be deemed a two-year lease or tenancy.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

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CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-07 Escalator Clauses.

Where a lease for a dwelling unit in effect on May 31, 1968 or where a lease in effect on June 30, 1974 for a dwelling unit which became subject to the Rent Stabilization Law of 1969, by virtue of the Emergency Tenant Protection Act of 1974 and Resolution Number 276 of the New York City Council, contained an escalator clause for the increased costs of operation and such clause is still in effect, the lawful rent on September 30, 2008 over which the fair rent under this Order is computed shall include the increased rental, if any, due under such clause except those charges which accrued within one year of the commencement of the renewal lease. Moreover, where a lease contained an escalator clause that the owner may validly renew under the Code, unless the owner elects or has elected in writing to delete such clause, effective no later than October 1, 2008 from the existing lease and all subsequent leases for such dwelling unit, the increased rental, if any, due under such escalator clause shall be offset against the amount of increase authorized under this Order.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

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The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-08 Special Adjustments Under Prior Orders.

All rent adjustments lawfully implemented and maintained under previous apartment orders and included in the base rent in effect on September 30, 2008 shall continue to be included in the base rent for the purpose of computing subsequent rents adjusted pursuant to this Order.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

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of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-09 Special Guideline.

Under §26-513(b)(1) of the New York City Administrative Code, and §9(e) of the Emergency Tenant Protection Act of 1974, the Rent Guidelines Board is obligated to promulgate special guidelines to aid the State Division of Housing and Community Renewal in its determination of initial legal regulated rents for housing accommodations previously subject to the City Rent and Rehabilitation Law which are the subject of a tenant application for adjustment. The Rent Guidelines Board hereby adopts the following Special Guidelines:

For dwelling units subject to the Rent and Rehabilitation Law on September 30, 2008, which become vacant after September 30, 2008, the special guideline shall be:

(1) 50% above the maximum base rent, or

(2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to §8(c)(1) of the United States Housing Act of 1937 (42 U.S.C. §1437f[c][1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on October 1, 2008.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-10 Decontrolled Units.

The permissible increase for decontrolled units as referenced in Order 3a which become decontrolled after September 30, 2008, shall be:

(1) 50% above the maximum base rent, or

(2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to §8(c)(1) of the United States Housing Act of 1937 (42 U.S.C. §1437f[c][1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on October 1, 2008.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

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The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-11 Credits.

Rentals charged and paid in excess of the levels of rent increase established by this Order shall be fully credited against the next month's rent.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

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Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-01 Adjustment for Renewal Leases (Apartments).

Together with such further adjustments as may be authorized by law, the annual adjustment for renewal leases for apartments shall be:

Where heat is provided or required to be provided to a dwelling unit by an owner from a central or individual system at no charge to the tenant, the adjustments are as follows:

-For a one-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 3%

-For a two-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 6%

Provided, however, that where the most recent vacancy lease was executed six years or more prior to the date of the renewal lease under this Order, the following shall instead apply:

-For a one-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 3% or $30, whichever is greater.

-For a two-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 6% or $60, whichever is greater.

Where heat is neither provided nor required to be provided to a dwelling unit by an owner from a central or individual system, the adjustments are as follows:

-For a one-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 2.5%

-For a two-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 5%

Provided, however, that where the most recent vacancy lease was executed six years or more prior to the date of the renewal lease under this Order, the following shall instead apply:

-For a one-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 2.5% or $25, whichever is greater.

-For a two-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 5% or $50, whichever is greater.

These adjustments shall also apply to dwelling units in a structure subject to the partial tax exemption program under §421a of the Real Property Tax Law, or in a structure subject to §423 of the Real Property Tax Law as a Redevelopment Project.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 16, 2009 eff. Aug. 15, 2009. Note: Statement of Basis and Purpose in City Record July 16, 2009:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-02 Vacancy Allowance for Apartments.

No vacancy allowance is permitted except as provided by §§19 and 20 of the Rent Regulation Reform Act of 1997.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 16, 2009 eff. Aug. 15, 2009. Note: Statement of Basis and Purpose in City Record July 16, 2009:

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The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-03 Additional Adjustment for Rent Stabilized Apartments Sublet Under §2525.6 of the Rent Stabilization Code.

In the event of a sublease governed by subdivision (e) of §2525.6 of the Rent Stabilization Code, the allowance authorized by such subdivision shall be 10%.

HISTORICAL NOTE

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FOOTNOTES

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-04 Adjustments for Lofts (Units in the Category of Buildings Covered by Article 7-C of the Multiple Dwelling Law).

The Rent Guidelines Board adopts the following levels of rent increase above the "base rent", as defined in §286, subdivision 4, of the Multiple Dwelling Law, for units to which these guidelines are applicable in accordance with Article 7-C of the Multiple Dwelling Law:

-For one-year increase periods commencing on or after October 1, 2009 and on or before September 30, 2010: 3%

-For two-year increase periods commencing on or after October 1, 2009 and on or before September 30, 2010: 6%

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-05 Vacant Loft Units.

No vacancy allowance is permitted under this Order. Therefore, except as otherwise provided in §286, subdivision 6, of the Multiple Dwelling Law, the rent charged to any tenant for a vacancy tenancy commencing on or after October 1, 2009 and on or before September 30, 2010 may not exceed the "base rent" referenced above plus the level of adjustment permitted above for increase periods.

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-06 Fractional Terms.

For the purposes of these guidelines any lease or tenancy for a period up to and including one year shall be deemed a one-year lease or tenancy, and any lease or tenancy for a period of over one year and up to and including two years shall be deemed a two-year lease or tenancy.

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-07 Escalator Clauses.

Where a lease for a dwelling unit in effect on May 31, 1968 or where a lease in effect on June 30, 1974 for a dwelling unit which became subject to the Rent Stabilization Law of 1969, by virtue of the Emergency Tenant Protection Act of 1974 and Resolution Number 276 of the New York City Council, contained an escalator clause for the increased costs of operation and such clause is still in effect, the lawful rent on September 30, 2009 over which the fair rent under this Order is computed shall include the increased rental, if any, due under such clause except those charges which accrued within one year of the commencement of the renewal lease. Moreover, where a lease contained an escalator clause that the owner may validly renew under the Code, unless the owner elects or has elected in writing to delete such clause, effective no later than October 1, 2009 from the existing lease and all subsequent leases for such dwelling unit, the increased rental, if any, due under such escalator clause shall be offset against the amount of increase authorized under this Order.

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§2-08 Special Adjustments Under Prior Orders.

All rent adjustments lawfully implemented and maintained under previous apartment orders and included in the base rent in effect on September 30, 2009 shall continue to be included in the base rent for the purpose of computing subsequent rents adjusted pursuant to this Order.

HISTORICAL NOTE

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FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 16, 2009 eff. Aug. 15, 2009. Note: Statement of Basis and Purpose in City Record July 16, 2009:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration

of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

Rules of the City of New York

***** Current through December 2009 ****

30 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-09 Special Guideline.

Under §26-513(b)(1) of the New York City Administrative Code, and §9(e) of the Emergency Tenant Protection Act of 1974, the Rent Guidelines Board is obligated to promulgate special guidelines to aid the State Division of Housing and Community Renewal in its determination of initial legal regulated rents for housing accommodations previously subject to the City Rent and Rehabilitation Law which are the subject of a tenant application for adjustment. The Rent Guidelines Board hereby adopts the following Special Guidelines:

-For dwelling units subject to the Rent and Rehabilitation Law on September 30, 2009, which become vacant after September 30, 2009, the special guideline shall be:

(1) 50% above the maximum base rent, or

(2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to §8(c)(1) of the United States Housing Act of 1937 (42 U.S.C. §1437f[c][1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on October 1, 2009.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 16, 2009 eff. Aug. 15, 2009. Note: Statement of Basis and Purpose in City Record July 16, 2009:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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***** Current through December 2009 ****

30 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-10 Decontrolled Units.

The permissible increase for decontrolled units as referenced in Order 3a which become decontrolled after September 30, 2009, shall be:

(1) 50% above the maximum base rent, or

(2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to §8(c)(1) of the United States Housing Act of 1937 (42 U.S.C. §1437f[c][1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on October 1, 2009.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 16, 2009 eff. Aug. 15, 2009. Note: Statement of Basis and Purpose in City Record July 16, 2009:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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***** Current through December 2009 ****

30 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-11 Credits.

Rentals charged and paid in excess of the levels of rent increase established by this Order shall be fully credited against the next month's rent.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 16, 2009 eff. Aug. 15, 2009. Note: Statement of Basis and Purpose in City Record July 16, 2009:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the

Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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***** Current through December 2009 ****

30 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 3*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Hotel Order #38]

§3-01 Applicability.

This order shall apply to units in buildings subject to the Hotel Section of the Rent Stabilization Law (§§26-504(c) and 26-506 of the N.Y.C. Administrative Code), as amended, or the Emergency Tenant Protection Act of 1974 (L.1974, c.576 §4 [§5(a)(7)]). With respect to any tenant who has no lease or rental agreement, the level of rent increase established herein shall be effective as of one year from the date of the tenant's commencing occupancy, or as of one year from the date of the last rent adjustment charged to the tenant, or as of October 1, 2008, whichever is later. This anniversary date will also serve as the effective date for all subsequent Rent Guidelines Board Hotel Orders, unless the Board shall specifically provide otherwise in the Order. Where a lease or rental agreement is in effect, this Order shall govern the rent increase applicable on or after October 1, 2008 upon expiration of such lease or rental agreement, but in no event prior to one year from the commencement date of the expiring lease, unless the parties have contracted to be bound by the effective date of this Order.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing hotel units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

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***** Current through December 2009 ****

30 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 3*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Hotel Order #38]

§3-02 Rent Guidelines for Hotels, Rooming Houses, Single Room Occupancy Buildings and Lodging Houses.

Pursuant to its mandate to promulgate rent adjustments for hotel units subject to the Rent Stabilization Law of 1969, as amended, (§26-510(e) of the N.Y.C. Administrative Code) the Rent Guidelines Board hereby adopts the following rent adjustments:

The allowable level of rent adjustment over the lawful rent actually charged and paid on September 30, 2008 shall be:

(1) Residential Class A (apartment) hotels: 4.5%

(2) Lodging houses: 4.5%

(3)

Rooming houses (Class B buildings containing less than 30units): 4.5%

(4) Class B hotels: 4.5%

(5) Single Room Occupancy buildings (MDL §248 SROs): 4.5%

Except that the allowable level of rent adjustment over the lawful rent actually charged and paid on September 30,

2008 shall be 0% if permanent rent stabilized or rent controlled tenants paying no more than the legal regulated rent, at the time that any rent increase in this Order would otherwise be authorized, constitute fewer than 85% of all units in a building that are used or occupied, or intended, arranged or designed to be used or occupied in whole or in part as the home, residence or sleeping place of one or more human beings.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

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30 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 3*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Hotel Order #38]

§3-03 New Tenancies.

No "vacancy allowance" is permitted under this Order. Therefore, the rents charged for tenancies commencing on or after October 1, 2008 and on or before September 30, 2009 may not exceed the levels over rentals charged on September 30, 2008 permitted under the applicable rent adjustment provided above.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing hotel units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended.

The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

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***** Current through December 2009 ****

30 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 3*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Hotel Order #38]

§3-04 Additional Charges.

It is expressly understood that the rents collectible under the terms of this Order are intended to compensate in full for all services provided without extra charge on the statutory date for the particular hotel dwelling unit or at the commencement of the tenancy if subsequent thereto. No additional charges may be made to a tenant for such services, however such charges may be called or identified.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing hotel units subject to the

Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

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30 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 4*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Hotel Order #39]

§4-01 Applicability.

This order shall apply to units in buildings subject to the Hotel Section of the Rent Stabilization Law (§§26-504(c) and 26-506 of the N.Y.C. Administrative Code), as amended, or the Emergency Tenant Protection Act of 1974 (L.1974, c.576 §4 [§5(a)(7)]). With respect to any tenant who has no lease or rental agreement, the level of rent increase established herein shall be effective as of one year from the date of the tenant's commencing occupancy, or as of one year from the date of the last rent adjustment charged to the tenant, or as of October 1, 2009, whichever is later. This anniversary date will also serve as the effective date for all subsequent Rent Guidelines Board Hotel Orders, unless the Board shall specifically provide otherwise in the Order. Where a lease or rental agreement is in effect, this Order shall govern the rent increase applicable on or after October 1, 2009 upon expiration of such lease or rental agreement, but in no event prior to one year from the commencement date of the expiring lease, unless the parties have contracted to be bound by the effective date of this Order.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

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30 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 4*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Hotel Order #39]

§4-02 Rent Guidelines for Hotels, Rooming Houses, Single Room Occupancy Buildings and Lodging Houses.

Pursuant to its mandate to promulgate rent adjustments for hotel units subject to the Rent Stabilization Law of 1969, as amended, (§26-510(e) of the N.Y.C. Administrative Code) the Rent Guidelines Board hereby adopts the following rent adjustments:

The allowable level of rent adjustment over the lawful rent actually charged and paid on September 30, 2009 shall be:

(1) Residential Class A (apartment) hotels: 0%

(2) Lodging houses: 0%

(3)

Rooming houses (Class B buildings containing less than 30units): 0%

(4) Class B hotels: 0%

(5) Single Room Occupancy buildings (MDL §248 SROs): 0%

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

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30 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 4*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Hotel Order #39]

§4-03 New Tenancies.

No "vacancy allowance" is permitted under this Order. Therefore, the rents charged for tenancies commencing on or after October 1, 2009 and on or before September 30, 2010 may not exceed the levels over rentals charged on September 30, 2009 permitted under the applicable rent adjustment provided above.

HISTORICAL NOTE

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FOOTNOTES

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30 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 4*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Hotel Order #39]

§4-04 Additional Charges.

It is expressly understood that the rents collectible under the terms of this Order are intended to compensate in full for all services provided without extra charge on the statutory date for the particular hotel dwelling unit or at the commencement of the tenancy if subsequent thereto. No additional charges may be made to a tenant for such services, however such charges may be called or identified.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

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Rules of the City of New York

31 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 31 Mayors Office of Homelessness and Single Room Occupancy

CHAPTER 1 ELIGIBILITY OF HOMELESS FAMILIES AND INDIVIDUALS TO RENT CITY-OWNED APARTMENT

§1-01 Eligibility.

(a) Apartments in City-owned buildings may be viewed and rented by families who have been homeless for at least twelve months.

(b) Priority for such housing among eligible families shall be based on length of stay in City-sponsored emergency housing. Families with a longer cumulative stay in such housing shall have a priority for viewing and renting City-owned apartments. In determining the length of stay for this purpose, stays in Tier I or Tier II shelters, Family Centers, hotels (when family has been in continuous receipt of hotel/motel allowance), or City sponsored battered women's programs shall be cumulated. Where a family has a break in residence in excess of 30 days their length of stay should be calculated from the first day of their return to any of the above facilities.

(c) Exceptions to the policy stated in paragraphs (a) and (b) may be granted in exigent circumstances by the Mayor's office or Homelessness and SRO Housing Services. An exception may be granted only if residence in any facility listed in paragraph (b) would pose a serious and present danger to the life, safety or health of a family member and there is no alternative housing available for the family.

(d) Smaller apartments suitable for only single individuals may be assigned to appropriate homeless individuals. They shall be assigned to appropriate homeless individuals:

(1) to foster and encourage independence by shelter residents participating in employment programs, and

(2) to address the special medical needs of an individual who may benefit from housing outside of the shelter system, as determined by ERA in conjunction with a designee of the Mayor's Office on Homelessness and SRO Housing Services.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 1 FERRY TERMINALS AND VESSELS

§1-01 Definitions.

Commissioner. "Commissioner" means the Commissioner of Transportation or his/her designee, or any successor in function to the Commissioner of any successor agency thereof.

Department. "Department" means the Department of Transportation of the City of New York and any successor agency thereof.

Ferry. "Ferry" means any vessel that transports passengers or vehicles pursuant to a regular schedule in either direction between the Borough of Manhattan and the Borough of Staten Island and is owned and operated by the City of New York.

Manager. "Manager," with respect to the terminals (as defined herein), means the Chief Operating Officer, Executive Director of Safety and Security, Director of Terminal Operations, Director of Ferry Operations, Facility Security Officer, Ferry Terminal Manager, Safety Manager, Security Inspector and Ferry Terminal Supervisor as designated by the Department to exercise the powers and functions vested in him/her by these rules in either terminal, and his/her duly designated representatives, and, with respect to the ferries, means the Captain designated by the Department of Transportation to exercise the powers and functions vested in him/her by these rules and general maritime law aboard any ferry, and his/her duly designated representatives.

Motor vehicle. "Motor vehicle" means any automobile, truck, bus, motorcycle, moped, or other vehicle that is propelled by any power other than muscular power.

Owner. "Owner" means any person owning, operating, or having the use of a vehicle (as defined in §159 of the New York Vehicle and Traffic Law), bicycle or any other personal property.

Permission. "Permission" means permission or authorization granted by the Commissioner or Manager except where otherwise specifically provided.

Permit. "Permit" means, unless otherwise herein provided, any written authorization issued by or under the authority of the Commissioner or Manager for a specialized privilege, permitting the performance of a specified act or acts in the terminals or on the ferries.

Person. "Person" means any natural person, corporation, society, organization, incorporated or unincorporated association, form, or partnership, and shall include any assignee, receiver, trustee, executor, administrator or similar representative appointed by a court, and shall mean the United States of America or any political subdivision thereof, or any foreign government or political subdivision thereof.

Person with a Disability. A person with a disability is an individual with a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Personal audio device. "Personal audio device" means a portable sound reproduction device as normally and customarily used for personal purposes, including but not limited to a personal radio, phonograph, television receiver, tape recorder, cassette player, compact disc player, or mp3 player.

Police officer. "Police officer" means any member of the Police Department of the City of New York and any person designated as a peace officer pursuant to section 2.10 of the New York State Criminal Procedure Law when acting pursuant to his/her special duty in or at the terminals or on the ferries.

Rule. "Rule" means, unless otherwise herein provided, any rule promulgated pursuant to §2903(c) of the New York City Charter and in compliance with the requirements of Chapter 45 of the New York City Charter.

Service animal. A "service animal" is any animal that is specifically trained to provide assistance to a person with a disability.

Sound reproduction device. "Sound reproduction device" means any device intended primarily for the production or reproduction of sound, including, but not limited to, any radio receiver, phonograph, television receiver, musical instrument, tape recorder, or electronic sound amplifying system.

Storage. "Storage" means the use of space on the ferries or in the ferry terminals to keep materials or possessions.

Terminals. "Terminals," used in the plural, includes both the ferry terminal located at Whitehall Street in the Borough of Manhattan and the ferry terminal located at St. George in the Borough of Staten Island. "Terminals" shall also include the other ferry terminals and landings owned and/or operated by the Department. Each terminal may also be referred to herein by its specific location, in which case "terminal" shall mean only the terminal referred to. Each terminal may have a different Manager. "Terminal" includes areas approaching the ferry slips and all other city-owned real property upon which the terminal building is situated, and the surrounding grounds thereof as designated on the city map.

HISTORICAL NOTE

Section amended City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010. [See T34 §1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Person w/disability definition added City Record Dec. 16, 2005 §1, eff. Jan. 15, 2006. [See Note 1]

Service animal definition added City Record Dec. 16, 2005 §1, eff. Jan. 15, 2006. [See Note 1]

Storage definition amended City Record Sept. 1, 1993 eff. Oct. 1, 1993.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 16, 2005:

The Commissioner of the Department of Transportation is authorized to maintain and operate the ferries of the city and to be responsible for all ferry boats, ferry houses, ferry terminals and equipment thereof pursuant to §§1043 and 2903(c) of the New York City Charter.

Section 1-01 of Title 34 of the Official Compilation of the Rules of the City of New York provides definitions related to Chapter 1: Ferry Terminals and Vessels.

Definitions are being added to define terms related to compliance with the Americans with Disabilities Act. A previous rule on the Staten Island Ferry allowed no pets on the ferry with the exception of pets in cages and "seeing eye" dogs. According to ADA mandates service animals must be accommodated in all public places/transportation conveyances without exception. Service animals are not limited to Seeing Eye dogs.

Section 1-02 of Title 34 of the Official Compilation of the Rules of the City of New York delineates rules of conduct for users of the Ferry facilities and vessels.

Subdivision (d) of §1-02 is being amended to provide procedures for the stowing of bicycles during the transit of passengers on the Ferry and for removal, reclamation and storage of bicycles abandoned on the Ferry. Unattended bicycles left continuously on the bicycle racks for more than one hour may be removed from the ferry. To reclaim a bicycle, the owner may call 311 within 10 days. After 10 days, bicycles will be considered abandoned and may be transferred to the NYPD Property Clerk for disposal pursuant to law (General Municipal Law §250 and NYC Administrative Code §10-106).

Subdivision (n) of §1-02 is being amended so that the written rules reflect the Ferry Division's compliance with the Americans with Disabilities Act regarding service animals, which are no longer limited to guide dogs, and to provide a more healthful facility for the use of ferry riders by prohibiting activities that may encourage birds, scavengers or rodent populations in the Ferry Division facilities or vessels. Commuters are directed not to feed the pigeons in the terminals and on the boats.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 1 FERRY TERMINALS AND VESSELS

§1-02 Prohibited Uses.

(a) **Gambling prohibited.** No person shall gamble or conduct or engage in any game of chance in the terminals or on the ferries unless such game of chance is permitted by local, state or federal law and has been approved by the Commissioner.

(b) **Defacing or damaging terminals or ferries or property therein prohibited.** No person shall deface, mark, break, or otherwise damage any part of the terminals or ferries or any property thereat. No person shall remove, alter or deface any barricade, fence or sign in the terminals or on the ferries.

(c) **Creation of obnoxious odors, noxious gases, smoke or fumes prohibited.** No person shall create, or permit any vehicle or machine of which he/she is in charge to create obnoxious odors, noxious gases, or excessive smoke or fumes in the terminals or on the ferries.

(d) **Bathing prohibited.** No person shall bathe, shower, shave, launder or change clothes or remain undressed in any public restroom, sink, washroom or any other area in the terminals or on the ferries.

(e) **Smoking or carrying lighted cigars, cigarettes, pipes, etc. in certain areas prohibited.** No person shall smoke or carry lighted cigars, cigarettes, pipes, matches or any naked flame in areas of the terminals or ferries where smoking is prohibited by the Department or by law, ordinance, rules or regulations of the United States government, the State of New York or the City of New York.

(f) **Noxious conduct.** No person shall urinate or defecate in any part of the terminals or ferries other than in a

urinal or toilet intended for that purpose. No person shall spit upon the public surfaces of the terminals or ferries including the floors and furniture.

(g) **Lying down prohibited; sitting restricted.** No person shall lie down in any place, including benches or seating facilities, within the terminals or on the ferries. No person shall be seated in the terminals or on the ferries except upon seating facilities provided for that purpose. No person shall occupy more than one seat. No person shall place personal belongings on seating facilities so as to interfere with their use by other persons.

(h) **No skateboarding, rollerskating, rollerblading or bicycle riding.** No person shall skateboard, roller skate, roller blade or ride a bicycle, scooter or any other vehicle or device except a wheelchair or other similar device used to assist a person with a disability and/or required for transit on or through any part of the terminals or ferries. Bicycles and non-motorized scooters must be walked through the terminals and ferries.

(i) **Noise.** No person shall make, continue, cause or permit to be made or continued any unreasonable noise in the terminals or on the ferries. Unreasonable noise shall mean any excessive or unusually loud sound that disturbs the peace, comfort or repose of a reasonable person of normal sensitivities, injures or endangers the health or safety of a reasonable person of normal sensitivities, or which causes injury to plant or animal life, or damage to property or business. Unreasonable noise shall include, but shall not be limited to sound that exceeds the following prohibited noise levels:

(1) Sound attributable to the source measured at a level of 7dB(A) or more above the ambient sound level at or after 10:00 p.m. and before 7:00 a.m., as measured at any point within a receiving property, as defined in §24-203 of the Administrative Code of the City of New York, or as measured at a distance of 15 feet or more from the source in a terminal or on a ferry.

(2) Sound attributable to the source measured at a level of 10dB(A) or more above the ambient sound level at or after 7:00 a.m. and before 10:00 p.m., as measured at any point within a receiving property, as defined in §24-203 of the Administrative Code of the City of New York, or as measured at a distance of 15 feet or more from the source in a terminal or on a ferry.

(3) Sound attributable to a personal audio device with personal earphones such that sound from such earphones is plainly audible to another individual at a distance of five feet or more from the source.

(j) **Disorderly behavior.** No person shall engage in disorderly behavior in the terminals or on the ferries, such as, but not limited to the following:

(1) fighting or assaulting any person; or

(2) interfering with, encumbering, obstructing or rendering dangerous any part of the ferry or terminal; or

(3) obstructing pedestrian or vehicular traffic; or

(4) climbing upon any wall, fence, shelter or any structure not specifically intended for climbing purposes; or

(5) engaging in any form of sexual conduct, as that term is defined in §130.00 of the New York State Penal Law; or

(6) engaging in a course of conduct or committing acts that endanger the safety of others; or

(7) engaging in any other course of conduct or committing acts disruptive to crew members, which obstructs or impairs their ability to carry out their duties; or

(8) engaging in any other course of conduct or committing acts against other passengers, which disturbs the peace,

comfort or repose of a reasonable person of normal sensitivities, injures or endangers the health or safety of a reasonable person of normal sensitivities; or which causes injury to plant or animal life, or damage to property or business.

(k) **Controlled substances.** No person shall possess, distribute, sell or solicit or consume any controlled substance or marihuana, as those terms are defined in §220.00 of the New York State Penal Law, on any ferry or in any terminal.

(l) **Loitering.** No person shall engage in loitering as defined in §§240.36 or 240.37 or subdivisions 2,4, 5 or 6 of §240.35 of the New York State Penal Law on any ferry or in any terminal.

(m) **Unlawful exposure.** No person shall appear in public on any ferry or in any terminal in such a manner that his/her genitalia are unclothed or exposed.

(n) **Fishing.** No person shall fish from any ferry or terminal.

HISTORICAL NOTE

Section amended City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010. [See Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (d) amended City Record Dec. 16, 2005 §2, eff. Jan. 15, 2006. [See T34 §1-01 Note 1] This subd. was repealed City Record Dec. 24, 2009.

Subd. (n) amended City Record Dec. 16, 2005 §2, eff. Jan. 15, 2006. [See T34 §1-01 Note 1] This subd. was repealed City Record Dec. 24, 2009.

Subd. (aa) amended City Record Sept. 1, 1993 eff. Oct. 1, 1993. This subd. was repealed City Record Dec. 24, 2009.

Subd. (dd) added City Record Dec. 10, 1993 eff. Jan. 9, 1994. This subd. was repealed City Record Dec. 24, 2009.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 24, 2009:

The Commissioner of Transportation is authorized to promulgate rules regarding ferries and their related facilities in the City pursuant to §2903(c) of the New York City Charter.

Chapter 1 of Title 34 of the Rules of the City of New York (RCNY) is being amended to update and revise the current rules regarding the ferry terminals and vessels under the jurisdiction of the Department. In the past few years, the ferry terminals and vessels have undergone some operational changes and enhancements, including the United States Coast Guard-approved Staten Island Ferry Combined Facility and Vessel Security Plan. As a result, certain rules are now obsolete while other rules are in need of being updated or established.

Specifically, the Ferry Rules of Conduct as currently codified in §1-02 of the RCNY are posted on the Staten Island Ferry vessels and throughout the St. George and Whitehall ferry terminals to ensure the safety, security, and comfort of passengers and employees. The Staten Island Ferry carries approximately 65,000 passengers a day. The Department wishes to continue to prohibit unsafe and disruptive behavior and to maintain good order, as required under general maritime law. In addition, the proposed rule would apply the Rules of Conduct to City-owned ferry landings and terminals. The definition in §1-01 of the current rules excludes the City-owned ferry landings and terminals, which

host the operations of several of the City's private ferries. Private ferry operators transport approximately 25,000 passengers a day and are an important component of the City's mass transportation system. As is the case with the Staten Island Ferry terminals, it is important to maintain a safe and secure environment in all of the City-owned ferry facilities.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 1 FERRY TERMINALS AND VESSELS

§1-03 Regulated Uses.

(a) **Permission to use terminals and ferries is conditional.** Any permission granted by the Department directly or indirectly, expressly or by implication, to any person to enter upon or use the terminals or ferries, or any part thereof, is conditioned upon acceptance of and compliance with this chapter, as from time to time may be amended, and entry upon or into the terminals or ferries by any person shall be deemed to constitute an agreement by such person to comply with such rules; provided, further, that such rules shall apply to premises or spaces occupied or used under the provisions of a written agreement made with the Department unless provision is made therein that such rules do not apply.

(b) **Permits.**

(1) When any provision of this section requires a permit as a condition to the performance of an act or activity, no such act or activity shall be implemented or commenced prior to the receipt of written authorization from the Commissioner.

(2) A permit may be granted upon such terms and conditions as the Commissioner shall reasonably impose and shall authorize the permitted acts or activities only insofar as they are performed in strict accordance with the terms and conditions thereof.

(3) Permits shall be applied for on forms prepared and provided by the Department, which forms shall require such information as the Department may deem appropriate for the review and evaluation of the permit application. Applications must be received at least two business days prior to the requested date of the act or activity.

(4) No person shall conduct any activity for which a permit is required unless:

(i) such permit has been issued;

(ii) all terms and conditions of such permit have been complied with; and

(iii) the permit is kept on site, so it is available for inspection by Department employees or a police officer.

(5) Upon application, the Commissioner may deny a permit if:

(i) an applicant was previously granted a permit and on that prior occasion, knowingly violated a material term or condition of the permit, these rules or applicable law;

(ii) the date, time, and/or location requested have been previously allotted; or

(iii) the issuance of the permit would cause the existence of a dangerous condition or a condition that would interfere with operations or traffic in the terminals or on the ferries.

(6) If a permit application is denied, the applicant may, within three business days of such denial, appeal the determination by written request filed with the designated appeals officer who may reverse, affirm or modify the original determination and provide a written explanation of his or her finding. However, if a permit application is denied three business days or less prior to the requested date of the act or activity, the applicant shall have one day from the date such denial is mailed or otherwise delivered to the applicant to appeal such denial. The Department shall render a decision on such appeal as soon as is reasonably practicable.

(7) The Commissioner may, after giving the permittee reasonable notice and an opportunity to be heard, revoke or refuse to renew a permit (i) for failure to comply with the terms and conditions of such permit, these rules or other applicable law in carrying out the activity for which the permit was issued; (ii) whenever there has been any false statement or any misrepresentation as to material fact in the permit application or accompanying documents upon which the issuance of the permit is based; or (iii) whenever a permit has been issued in error contrary to paragraph 5 of subdivision b of this section.

(8) The Commissioner may delay or postpone the issuance of any permit or may temporarily suspend any permit already granted in the event of emergencies, such as snowstorms, traffic accidents, power failures, transportation strikes or other conditions which affect the traffic flow in any of the areas covered by the permit such that conduct of the activities would create a dangerous condition or would interfere with traffic in the terminals or on the ferries.

(c) **Use of terminals or ferries may be denied persons violating laws or rules.** The Manager shall have the authority to deny use of the terminals or ferries to any individual violating Department rules or laws, ordinances or regulations of the United States government, the State of New York, or the City of New York, which relate to conduct in public places or in the terminals or the ferries.

(d) **Restricted areas and times.** Permission to enter certain areas of the terminals or ferries is restricted as follows:

(1) No person, except a person assigned to duty therein or a police officer, shall enter, without permission, any area of the terminals or ferries posted as being restricted to the public. If permission to enter a restricted area is granted, such permittee shall be monitored and/or escorted at all times in accordance with the Maritime Transportation Security Act.

(2) In the event that portions of the terminals are closed to all members of the general public, any person shall, when entering or remaining in such portions of the terminals, exhibit such authorization as shall be prescribed by the Commissioner. Effective September 25, 2008 and in accordance with the Maritime Transportation Security Act, all individuals in restricted areas must display at all times a Transportation Worker Identification Credential or other authorized identification credential, including those issued to police officers.

(e) **Unattended property.**

(1) No person shall leave any property unattended in the terminals or on the ferries.

(2) Unattended property will be removed and transferred to the Staten Island Ferry's Lost and Found.

(3) Bicycles shall be stowed at the designated bicycle areas. Bicycles left on racks at the terminal for longer than 48 hours shall be deemed abandoned and will be removed and may be transferred to the Property Clerk of the New York City Police Department or other appropriate location.

(4) Owners of reclaimed property may be assessed a removal and/or storage fee.

(f) **Distribution of commercial printed materials.** No person shall, for commercial purposes, post, distribute or display signs, advertisements, circulars or printed or written material in the terminals or on the ferries without having been granted a permit by the Commissioner.

(g) **Distribution of noncommercial printed material and carrying of placards.** No person shall engage in the noncommercial distribution of leaflets, the setting up of card tables to aid in that distribution, the carrying of placards or the posting or displaying of noncommercial signs in the terminals or on the ferries without having been granted a permit by the Commissioner. No person shall distribute leaflets or other materials by leaving them unattended in the terminals or on the ferries.

(h) **Distribution of food, clothing, packages, or other non-printed items.** No person shall engage in the distribution of any food, clothing, packages, or any other non-printed items, or in the setting up of card tables to aid in that distribution in the terminals or on the ferries without having been granted a permit by the Commissioner. No person shall distribute such items by leaving them unattended in the terminals or on the ferries.

(i) **Sale of merchandise, solicitation of trade, entertainment or solicitation of contributions.**

(1) No person, unless duly authorized by the Commissioner shall, in or upon any area, platform, stairway, waiting room, appurtenance, or any other area of the terminals or ferries,

(i) sell or offer for sale any article of merchandise, or

(ii) solicit any business, service or trade, including the carrying of baggage for hire or the shining of shoes.

(2) No person shall engage in (i) the entertainment of persons by singing, dancing or playing any musical instrument or (ii) the solicitation of contributions in the terminals or on the ferries without having been granted a permit by the Commissioner.

(j) **Assemblies, meetings, exhibitions.**

(1) No person shall hold or sponsor any assembly, meeting, exhibition or other event without written approval from the Commissioner or his/her designee. A gathering of 10 or more people shall constitute an assembly or meeting.

(2) No person shall erect any structure, stand, booth, platform or exhibit in connection with any assembly, meeting, exhibition or other event without written approval from the Commissioner or his/her designee.

(k) **Refuse to be deposited in appropriate receptacles.** No person shall throw, discharge or deposit trash, garbage, waste, oil or other petroleum products or any other waste material into the harbor or into or upon any portion of the terminals or ferries except by depositing such material in receptacles provided therefor. The placement of all such receptacles shall be subject to the approval of the Manager. No person shall remove refuse or other material from such receptacles except as authorized by the Manager.

(l) **Animals barred.** No person, except a police officer or another person authorized by the Manager, shall enter the terminals or ferries with any animal except a service animal or an animal properly restrained for transport subject to the discretion of the Manager. No person shall feed any animal, including unconfined squirrels and birds, within the terminals or on any ferry.

(m) **Passage through boarding doors restricted.** No person shall pass through the boarding doors to the ferries except:

(1) persons employed by or doing business with a concessionaire whose duties require such passage;

(2) authorized representatives of the Department of Transportation;

(3) persons having permission;

(4) police officers;

(5) firefighters and emergency medical technicians employed by the New York City Fire Department; and

(6) passengers immediately prior to boarding a ferry or immediately after leaving a ferry.

(n) **Photography or filming.**

(1) For purposes of this subdivision, "photography or filming" shall include the taking of photographs; the making of motion pictures; the use and operation of television cameras, transmitting television equipment, or radio remotes; or load-ins or load-outs supporting indoor performances.

(2) A permit from the Mayor's Office of Film, Theatre and Broadcasting (MOFTB) and a separate permit from the Commissioner are both required in circumstances under which a permit from MOFTB is required by its rules.

(3) As is the case with photography or filming on City streets, sidewalks or other pedestrian passageways, a permit is not required in those instances where a handheld device (with or without a tripod) is used, except when the use of such handheld device (with or without a tripod) unreasonably interferes with the use of the ferry terminal or ferry. For purposes of this subdivision, "unreasonable interference" means the assertion of exclusive use by any means, including physical or verbal, of an area that consists of a radius greater than five feet from where the individual engaged in photography or filming is located. Where such exclusive use is asserted, the individual engaged in photography or filming shall obtain a permit from the Commissioner.

(4) For purposes of this subdivision, standing in a ferry terminal or on a ferry while using a handheld device (with or without a tripod) and not otherwise asserting exclusive use by any means, including physical or verbal, of an area that consists of a radius greater than five feet from where the individual engaged in photography or filming is located, is not activity that requires a permit from MOFTB or the Commissioner.

(o) **Fire.** No person shall cook, light a fire or otherwise create a fire in any part of the terminals or ferries, except as authorized by the Commissioner.

(p) **Alcoholic beverages.** No person shall drink or carry any open alcoholic beverage in any part of the terminals, except on the premises of a concession or retail establishment duly licensed for the sale of alcoholic beverages if permitted therein by the concessionaire or leasee. Alcoholic beverages may be purchased and consumed from the concessionaire aboard a ferry in accordance with all federal, state and local laws and rules. It shall be a violation of these rules for any person to enter and/or remain in the terminals and/or aboard a ferry under the influence of alcohol, to the degree that he or she may endanger himself or herself, other persons or property, or unreasonably annoy persons in his or her vicinity.

(q) **Carrying of firearms or other weapons.** No person, shall, without the permission of the Manager, bring into or carry in the terminals or on the ferries any firearms or other weapons; provided, however, that this subdivision shall not apply to police officers and other persons authorized by federal, state or local law to carry firearms or other weapons.

(r) **Permission required to bring into or carry explosives, acids, inflammables, compressed gases, etc.** No person shall bring into or carry in the terminals or on the ferries any explosives, acids, inflammables, compressed gases or articles or materials having or capable of producing strong offensive odor, or articles or materials likely to endanger persons or property, except with permission of the Chief Operating Officer or the Executive Director of Safety and Security. No person shall bring or cause to be brought into or kept in the terminals any signal flare or any container filled with or which has been emptied or partially emptied of oil, gas, petroleum products, paint or varnish, except with permission of the Chief Operating Officer or the Executive Director of Safety and Security. Bringing into the terminals or on the ferries without special permission gasoline or other motor fuel contained in tanks permanently attached to vehicles and not under pressure shall not be an infraction of this regulation.

(s) **Unauthorized interference with or use of terminal or ferry systems or equipment prohibited.** No person shall do or permit to be done anything which may interfere with the effectiveness or accessibility of any means of escape, the fire protection system, sprinkler system, drainage system, alarm system, telephone system, public announcement and intercommunication system, plumbing system, air-conditioning system, ventilation system, fire hydrants, hoses, fire extinguishers, or other mechanical system, facility or equipment installed or located in the terminals or on the ferries; including closed circuit television cameras and monitors, signs and notices; nor shall any person operate, adjust or otherwise handle or manipulate, without permission, any of the aforesaid systems or portions thereof, or any machinery, equipment or other devices installed or located at the terminals or on the ferries. Tags showing date of last inspection attached to units of fire extinguishing equipment shall not be removed therefrom nor shall any person plug a television, radio or other electrical device into any outlet or connect any device to any utility at or in the terminals or on the ferries.

(t) **Storage.** Storage of materials or possessions of any kind either on the ferries or in the ferry terminals is strictly prohibited at all times. Any materials or possessions stored on the ferries or ferry terminals will be disposed of promptly. This provision shall not apply to any authorized storage by a lessee, concessionaire or contractor pursuant to an agreement with the Department.

(u) **No sound reproduction devices.** Except with prior permission of the Commissioner, no person shall operate or use any sound reproduction device in the terminals or on the ferries, other than a personal audio device with personal earphones such that sound from such earphones is not plainly audible to another individual at a distance of five feet or more from the source.

(v) **Use of lighting or sound reproduction equipment.** No person shall without specific authorization from the Commissioner operate or use or cause to be operated or used any lighting or sound reproduction device for commercial or business advertising purposes or for the purpose of attracting attention to any performance, show, sale or display of merchandise, or any business enterprise, in front or outside of any building, place or premises in the terminals or on the ferries.

HISTORICAL NOTE

Section added City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010. [See T34

§1-02 Note 1]

DERIVATION

Subd. (e) former §1-02(d) amended City Record Dec. 16, 2005 §2, eff. Jan. 15, 2006. [See T34 §1-01 Note 1]

Subd. (h) former §1-02(dd) added City Record Dec. 10, 1993 eff. Jan. 9, 1994.

Subd. (l) former §1-02(n) amended City Record Dec. 16, 2005 §2, eff. Jan. 15, 2006. [See T34 §1-01 Note 1]

Subd. (t) former §1-02(aa) amended City Record Sept. 1, 1993 eff. Oct. 1, 1993.

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***** Current through December 2009 ****

34 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 1 FERRY TERMINALS AND VESSELS

§1-04 Vehicles.

No vehicles shall be permitted on the ferries except with permission from the Chief Operating Officer.

HISTORICAL NOTE

Section renumbered and amended (former §1-03) City Record Dec. 24, 2009

§1, eff. Jan. 23, 2010. [See T34 §1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

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34 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 1 FERRY TERMINALS AND VESSELS

§1-05 Elevators, Escalators, and Loading Docks.

(a) **Freight prohibition.** Passenger elevators and escalators may not be used to carry freight.

(b) **Causing an elevator or escalator to stop.** No unauthorized person shall cause an elevator or escalator to stop by means of any emergency stopping device unless continued operation would appear to result in probable injury to a person or persons. Any such stoppage should be reported immediately to the Manager.

(c) **Truck loading docks.** Truck loading docks located in the terminals are designed to accomplish the immediate transfer of merchandise between the freight elevators and trucks. All persons will confine their use of the docks to such purpose as directed by the Manager. No storage or holding of merchandise on the truck loading docks awaiting the arrival of trucks or awaiting transfer to premises or space at the terminals will be permitted.

HISTORICAL NOTE

Section renumbered and amended (former §1-04) City Record Dec. 24, 2009

§1, eff. Jan. 23, 2010. [See T34 §1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Section 1-05 Staten Island Ferry Vehicular Fares repealed City Record Dec. 24, 2009, in original publication July

1, 1991, amended City Record May 26, 1994.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 1 FERRY TERMINALS AND VESSELS

§1-06 Penalty.

Failure to comply with these rules or the terms or conditions of any permit issued shall be punishable as provided in the administrative code of the city of New York.

HISTORICAL NOTE

Section added City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010. [See T34

§1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Former §1-06 Student Passes repealed City Record Dec. 24, 2009.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-01 Definitions.

Administrative Code. The term "Administrative Code" means the Administrative Code of the City of New York.

Block Segment. The term "Block Segment" means the linear stretch of the street between the curblines of the cross streets that intersect such block.

Commissioner. The term "Commissioner" means the Commissioner of the Department of Transportation or his or her authorized designee.

Corrective action request or CAR. The term "corrective action request" or "CAR" means a formal notice by the Department that work performed and/or a condition created or maintained on a street is in violation of these rules or other applicable law with a request that action be taken by the person to whom such notice is addressed to correct the work and/or the condition so described.

Department. The term "Department" means the Department of Transportation.

Designated field headquarters. The term "designated field headquarters" means an office maintained at the work site, unless some other location is approved by the Department.

Embargo period. The term "embargo period" means a period of time designated by the OCMC during which there shall be a temporary suspension of work (except for emergency work) due to a holiday, special event or emergency.

Emergency. The term "emergency" means a situation endangering the public safety or causing or likely to cause

the imminent interruption of service required by law, contract or franchise to be continuously maintained.

Emergency work. The term "emergency work" means work necessary to correct a situation endangering the public safety or causing or likely to cause the imminent interruption of service required by law, contract or franchise to be continuously maintained, for example, by a government agency, a public utility, a franchisee, etc. Such term shall not include work on new construction, regrades of existing hardware, continuation of an existing permit that has expired or will expire imminently or any other work which is not necessary to correct a condition likely to cause such imminent interruption.

Intersection. The term "Intersection" means the area contained within the grid created by extending the curblines of two or more streets at the point at which they cross each other.

OCMC. The term "OCMC" means the Office of Construction Mitigation and Coordination, a unit within the Department which is responsible for providing traffic stipulations and coordinating construction activity on City streets.

Protected street. The term "protected street" means a street which has been resurfaced or reconstructed within five years prior to the date of application for a permit.

Roadway. The term "roadway" means that portion of a street designed, improved or ordinarily used for vehicular travel, exclusive of the shoulder and slope.

Sidewalk. The term "sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

Specifications. The term "specifications" means the standard specifications available from the Department indicating required construction materials.

Standards. The term "standards" means the standard details of construction, available from the Department, which contains drawings showing required dimensions of items to be constructed.

Street. The term "street" means a public street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, viaduct, square or place, except marginal streets.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Block Segment added City Record May 7, 2001 §1, eff. June 6, 2001.

Embargo period amended City Record Feb. 25, 2000 §1, eff. Mar. 26, 2000.

Intersection added City Record May 7, 2001 §1, eff. June 6, 2001.

OCMC redesignated and amended (formerly MTCCC) City Record Feb. 25, 2000 §1, eff. Mar. 26,

2000. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 25, 2000:

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and

highways in the City pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code.

Recently the Department changed the name of the unit known as the Mayor's Traffic and Construction Coordinating Council (MTCCC) to the Office of Construction Mitigation and Coordination (OCMC). Various sections are being revised to reflect this change.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers

to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

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34 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-02 Permits.

(a) **Initial permit application.** The following information shall be provided to the Department upon initial application for a permit under these rules and shall be updated as necessary and refiled annually:

(1) **If the applicant is a corporation:**

(i) address and telephone number of applicant;

(ii) name and telephone number of a contact person in the event of an emergency;

(iii) affidavit acknowledging incorporation and a certified copy of the certificate of incorporation, and proof of registration with the New York State Department of State, Office of the Secretary of State. When completing the permit application, applicants must supply the Department with the identical identifying information, including but not limited to the company name, as they have provided to the New York State Department of State, Office of the Secretary of State;

(iv) names of corporate officers;

(v) names of two agents/employees designated to receive summonses or notices of violation or other notices required by these rules or other provisions of law;

(vi) New York City plumber's license certificate or other license numbers, if applicable;

(vii) name(s) of representative(s) authorized to obtain permit(s) on behalf of the applicant;

(viii) employer identification number;

(ix) e-mail address, if any.

(2) **All other applicants:**

(i) address and telephone number of applicant;

(ii) name(s) of representative(s) authorized to obtain permit(s) on behalf of the applicant;

(iii) New York City plumber's license certificate or other license numbers, if applicable;

(iv) employer identification number;

(v) e-mail address, if any.

(3) **Insurance and indemnification requirements (for all applicants):**

(i) Each applicant shall, before applying for a permit, obtain a Commercial General Liability (CGL) insurance policy or policies satisfying the requirements of this subparagraph. All CGL insurance policies, whether primary, excess or umbrella, shall:

(A) be issued by a company or companies that may lawfully issue the required policy and has an A.M. Best rating of at least A-VII or a Standard and Poor's rating of at least AA.

(B) provide coverage to protect the City of New York ("City") and the applicant from claims for property damage and/or bodily injury, including death, which may arise from any operations performed by or on behalf of the applicant for which the Department has issued it a permit;

(C) provide coverage at least as broad as that provided by the most recent edition of ISO Form CG 0001;

(D) provide coverage for completed operations;

(E) provide coverage of at least $1,000,000 combined single limit per occurrence, except that with respect to applications for permits to place a crane on a street, such minimum amount shall be no less than $3,000,000 combined single limit per occurrence;

(F) provide that the City and its officials and employees are Additional Insureds with coverage at least as broad as set forth in ISO Form CG 2026 (11/85 ed.);

(G) provide that the limit of coverage applicable to the Named Insured is equally applicable to the City as Additional Insured.

(H) This policy shall not be cancelled or terminated, or modified or changed in a way that affects the City by the issuing insurance company unless thirty (30) days prior written notice is sent to the Named Insured and the Commissioner of the New York City Department of Transportation, except that notice of termination for non-payment may be made on only ten (10) days written notice.

(I) If the permit applicant has applied for more than one thousand permits in the previous calendar year, the insurance policy shall contain each of the following endorsements;

(1) If and insofar as knowledge of an "occurrence", "claim", or "suit" is relevant to the City as Additional Insured

under this policy, such knowledge by an agent, servant, official or employee of the City of New York will not be considered knowledge on the part of the City of the "occurrence", "claim", or "suit" unless notice thereof is received by the: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department; and

(2) Any notice, demand or other writing by or on behalf of the Named Insured to the insurance company shall also be deemed to be a notice, demand or other writing on behalf of the City as Additional Insured. Any response by the Insurance Company to such notice, demand or other writing shall be addressed to the Named Insured and to the City at the following address: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(ii) Each applicant shall, before applying for a permit, obtain Workers Compensation insurance in accordance with the laws of the State of New York from a licensed insurance company.

(iii) Each applicant shall, before applying for a permit, file with the Department proof that the applicant has insurance in place that provides coverage set forth in this subdivision with respect to the permit period. If the applicant chooses to meet this proof with an insurance certificate, the insurance certificate shall set forth the coverage provided, state that completed operations coverage is included and that the City is an additional insured, and shall be accompanied by a sworn statement in a form prescribed by the Department from the insurer or from a licensed insurance broker certifying that the insurance certificate is accurate in all material respects, and that the described insurance is in effect.

(iv) An applicant may obtain insurance policies applicable to more than one permit application, in which case the proof pursuant to subparagraph (iii) shall state that the policies cover all such permits in specified boroughs, or throughout the City.

(v) The applicant shall provide a copy of any required policy within thirty days of a request for such policy by the Department or the New York City Law Department.

(vi) In its sole discretion, the Department may allow applicants that frequently seek permits to self-insure, provided that the applicant:

(A) presents proof of excess or umbrella CGL coverage applicable to its operations under such permits;

(B) certifies that it has a self-insurance program in place that satisfies the requirements contained in subparagraph (i) and will continue it for the life of the permit and the Guarantee Period, as defined in subparagraph (ii) of paragraph (16) of subdivision (e) of §2-11 of these rules;

(C) agrees to provide the same defense of any suit against the City that alleges facts that bring the suit within the scope of the coverage required in subparagraph (i) as an insurer would be obligated to provide under the laws of New York;

(D) submits a statement, signed by a person authorized to bind the applicant and acknowledged by a notary public, in which the applicant agrees to assume full liability for satisfying all obligations set forth in this subparagraph (vi), and

(E) provides the Department with the name and address of the office or official of its self-insurance program who is responsible for satisfying the self insurance obligations.

(vii) The permittee shall maintain insurance throughout the Guarantee Period, as defined in subparagraph (ii) of paragraph (16) of subdivision (e) of §2-11 of these rules, satisfying the requirements in subparagraph (i) of this paragraph and providing coverage to protect the City, the Department and the applicant from all claims for property damage and/or bodily injury, including death, which may arise from any defects discovered during such Guarantee Period.

(viii) The permittee shall notify in writing the CGL insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any loss, damage, injury, or accident, and any claim or suit arising from any operations performed by or on behalf of the permittee for which the Department has issued it a permit, immediately, but not later than 20 days after such event. The permittee's notice to the CGL insurance carrier must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Named Insured." The permittee's notice to the insurance carrier shall contain the following information: the name of the permittee, the number of the permittee, the date of the occurrence, the location (street address and borough) of the occurrence, and the identity of the persons or things injured, damaged or lost.

(ix) The permittee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements), known or unknown, contingent or otherwise, allegedly arising out of or in any way related to the operations of the permittee and/or its failure to comply with any of the requirements set forth herein or law. Insofar as the facts and law relating to any claim would preclude the City and its officials and employees from being completely indemnified by the permittee, the City and its officials and employees shall be partially indemnified by the permittee to the fullest extent provided by law.

(x) A failure by the City of New York or the Department to enforce any of the foregoing requirements shall not constitute a waiver of such requirement or any other requirement.

(4) **Permit bonds.**

(i) A permit bond shall be submitted by all permittees to the permit office at the time of permit issuance to cover all costs and expenses that may be incurred by the City as a result of the activity for which the permit is issued or for the purpose of otherwise safeguarding the interests of the City. The permit bond shall be in the form prescribed by the Department. Such permit bonds described above shall cover all permitted activities described herein.

(ii) For a permit bond submitted for the purpose of performing street openings and excavations pursuant to §2-11 of these rules, such permit bond shall be submitted in the amount of $10,000.00 for a single location within the City of New York per calendar year, $25,000.00 for two to fifty locations within the City of New York per calendar year, and $50,000.00 for fifty-one to one hundred locations within the City of New York per calendar year. Permittees who are issued permits for more than one hundred locations per calendar year shall submit a permit bond in the amount of $100,000.00.

(iii) Bonds shall be valid through the permit's guarantee period as set forth in these rules.

(iv) The issuer of the bond shall give the Department at least 30 days written notice prior to expiration or cancellation of such bond.

(v) A receipt demonstrating full payment of the bond shall be filed with the Department.

(vi) A separate bond need not be filed for each location, provided such coverage is in force for all operations in the entire borough, City or state.

(vii) A notice of continuation of certificate shall be received every calendar year for the continuation of an existing bond.

(viii) Effective July 1, 2008, for a permit bond submitted pursuant to subparagraph (ii) above, such permit bond shall be submitted in the amount of $10,000.00 for a single location within the City of New York per calendar year, $50,000.00 for two to fifty locations within the City of New York per calendar year, and $100,000.00 for fifty-one to one hundred locations within the City of New York per calendar year. Effective July 1, 2008, permittees who are issued permits for more than one hundred locations per calendar year shall submit a permit bond in the amount of $250,000.00.

(ix) For permits with the exception of those set forth in subparagraph (ii) above and sidewalk construction permits issued pursuant to §2-09 of these rules, a permit bond shall be submitted in the amount of $5,000 for a single location within the City of New York per calendar year or in the amount of $25,000 for multiple locations within the City of New York per calendar year. In the event that a permittee will also secure street opening and excavation permits within the City of New York during the same calendar year, the permittee's compliance with subparagraph (ii), or effective July 1, 2008 with subparagraph (iii), above shall be sufficient to demonstrate compliance with this section.

(5) **Deposits.**

(i) A deposit of $5,000.00, in the form of money order or certified check, shall be required from permittees when outstanding balances for permit fees, backcharge fees, corrective action requests (CARs) or other charges exceed $3,000.00 for a period longer than forty-five (45) calendar days.

(ii) Such permittees shall maintain a deposit balance of $5,000.00 at all times until the deposit is refunded pursuant to subparagraph (iv), below. If the balance of such cash deposit falls below $5,000.00, all review of permit applications and permit issuance may cease, except in cases of emergency work.

(iii) Any amounts owed by permittees for permit fees, CAR fees, backcharge fees or other charges payable pursuant to law for a period longer than forty-five (45) calendar days shall be deducted from the deposit after notice to the permittee.

(iv) Deposits shall be refunded after one year (365 consecutive calendar days) of full compliance with all applicable laws, rules and specifications.

(b) **General conditions for all permits.** (1) Permit applications for the following work shall be reviewed by OCMC prior to the issuance of permits:

(i) work to be performed for sewer and water system construction;

(ii) work to be performed in Manhattan;

(iii) work required on primary and secondary arteries;

(iv) permits to close streets;

(v) permits for placement of commercial refuse containers in Manhattan;

(vi) any other activity deemed necessary by the Commissioner.

(2) **Permits for emergency work.** Permits for emergency work shall be issued in accordance with §2-11 of these rules.

(3) Before issuing a permit the Department may demand that permittee show proof of required approvals from other governmental entities.

(4) **Street closings lasting more than 180 days.** Permits that will result in a publicly mapped street being fully closed for more than 180 consecutive calendar days shall be issued in accordance with all the requirements of §2-16 of these rules.

(c) **Display of permits and signs at work site.** (1) Unless otherwise authorized, permits shall be kept at the work site or designated field headquarters at all times and shall be made available for inspection upon request of any police officer or any authorized employee of the Departments of Environmental Protection, Buildings, Police and Transportation or any other City employees specifically authorized by the Commissioner to enforce these rules.

(2) Permittees shall display signs at the work site or at 100 foot intervals along a series of excavations or continuous cut indicating the name of the permittee conducting the work, the name of the entity for whom the work is being conducted and, if applicable, the name(s) of the subcontractor(s). Such signs shall include:

(i) permittee's telephone number for complaints;

(ii) contractor's telephone number, if not the permittee;

(iii) the permit number;

(iv) the purpose of the street opening; and

(v) the start and scheduled completion dates of the work.

(3) Signs shall be conspicuously displayed and shall face the nearest curb line. Such signs shall be clear, readable and in letters at least $1^1/_2$ inches in height and shall conform to the Department's specifications.

(4) Permittees will be required to post Project Informational Signs for any project with a projected completion time of three months or more, or as otherwise directed by the Commissioner. Signs shall be kept in readable, good condition.

(5) Sign size, content and graphics will conform to "Project Information Sign" specifications which is available at the Department Permit Offices and also on the Department website. Sign content shall include the following:

(i) the name of the street on which the work is being performed;

(ii) the nature of the work (i.e., major reconstruction project, sewer work, new building, water shaft, or transit work major utility installation);

(iii) a brief description of the work. For building operations, permittees must include: type of work (i.e. new building, major renovation), building use (commercial or residential), size. For street/roadway work information permittees must include: the type of work being performed (i.e. upgrade of water supply, new transit station or transit line, upgrade of existing transit station or transit line, and upgrade of sewer system), roadway reconstruction with added amenities, and the quality of life benefits resulting from project;

(iv) the scheduled completion date of the project;

(v) project name, or if a governmental project, the project identification number;

(vi) contact information for the construction company performing the work, and a telephone number and/or a web site for more information.

(d) **Corrective action request (CAR).** (1) A CAR may be served either personally, by mail and/or by e-mail on the person responsible for the work and/or the condition which requires correction at his or her last known address, e-mail address or at the address or e-mail address for such person contained in the records of the Department. Where a CAR is served for a violation of §19-147 of the Administrative Code, in the case of a utility company, the CAR may be given orally or in writing to a person or at a place designated by the utility and the utility shall respond within twenty-four (24) hours.

(2) Any corrective action required by the CAR shall be performed within thirty (30) days of the issuance of the CAR unless such issuance is protested as provided herein.

(3) Within fourteen (14) days after the date of mailing of the CAR, unless a different time is specified on the CAR or in these rules, the respondent may protest the issuance of the CAR in the manner directed on the CAR.

(4) Protests shall be reviewed by the Department and a final determination regarding the protest shall be made within a reasonable period of time.

(5) If a protest is denied, any corrective action required by the CAR shall be performed within thirty (30) days after the date of such denial.

(6) In the event that the original permit has expired before the corrective action is undertaken and an additional excavation is necessary, a new permit shall be obtained in order to complete the required work. The new permit shall not affect the guarantee period, which will relate back to the original permit. If a permittee is performing restoration work that does not entail an additional excavation or re-grading of hardware, a new permit shall not be required by the Department.

(7) Where a CAR relates to a violation of §19-147 of the Administrative Code and no corrective action is taken within the applicable time or where an imminent danger to life or safety exists, the Department may perform the work required by a CAR or the work necessary to avert the danger and charge the cost to the person responsible for restoring, replacing or maintaining the pavement, sidewalk, curb, gutter or street hardware in accordance with such section.

(8) Notwithstanding the above, where a condition exists that creates an imminent danger to pedestrians or vehicles, the Department may issue a priority CAR, which shall require corrective action to be taken within three (3) hours of issuance of the CAR by telephone call. The Department may also issue a priority CAR via email requiring corrective action to be taken within three (3) hours of issuance; however, should a priority CAR be issued via email, a follow-up telephone call must also be placed to the permittee.

(9) In the event that a CAR is issued within the guarantee period, the corrective action shall still be taken even after the expiration of the guarantee period.

(e) **Orders.** (1) Except as otherwise provided by these rules or other applicable law, any orders issued by the Commissioner may be served personally or by mail addressed to the last known address of the person to whom the order is directed or to the address for such person set forth in the records of the Department or by delivery or mailing to a person or a location designated by the person to whom the order is directed.

(2) Except as otherwise provided by these rules, a person to whom an order is directed shall have an opportunity to be heard within five business days after a timely request for such opportunity is received by the Department. A request shall be made within the time and in the manner directed on the order. If, after considering the written objections of the respondent, the Commissioner affirms the order, the work required by the order shall be completed within 30 days after notice of such determination is mailed to the respondent.

(3) Notwithstanding the foregoing provisions, an order to cease and desist may be given orally or in writing to the persons executing the work and shall require immediate compliance therewith.

(4) In accordance with §19-151 of the Administrative Code where a respondent fails to comply with an order issued by the Commissioner, including an order to cease and desist, within the applicable time, the Commissioner may execute the work required to be executed in such order. All costs and expenses of the City for such work may be recovered from the persons who are found to be liable for the violation.

(5) In addition, failure to comply with an order issued by the Commissioner may result in criminal or civil penalties in accordance with §19-149 or 19-150 of the Administrative Code.

(f) **Fees.** (1) The fees for permits and CARs are specified in §2-03 of these rules.

(2) Permits shall be valid for fifteen calendar days, unless otherwise specified on the permit. Permits may be extended for 14 days upon presentation of proof that circumstances beyond the permittee's control caused a delay in the

work and payment of an additional fee. In the event a permittee fails to complete the work within the time period specified in the permit, another permit may be issued for a period of time to be specified by the Commissioner. There shall be a separate permit fee for each such additional permit.

(3) Payment of all fees shall be received upon application for the permit or, where applicable, no later than thirty calendar days after the billing date.

(g) **Notice of street operations.** (1) Permittees and owners of underground facilities shall comply with state Industrial Code Rule No. 53 relating to Construction, Excavation and Demolition Operations at or Near Underground Facilities.

(2) Permittees shall notify the Police Department and the communications center of the Fire Department of all construction activities requiring street closing at least twenty-four hours in advance of the commencement of non-emergency work.

(3) In the event that any non-emergency construction work results in the closing of

(i) more than two-thirds (2/3) of the moving lanes per direction on any street for more than 15 minutes per hour between the hours of 1 a.m. and 5 a.m., or

(ii) half (50%) or more of the moving lanes per direction on any street or limited access roadway, for a duration of more than four minutes or two traffic light cycles of the nearest traffic signal, whichever is less, during all other hours,

the permittee shall post at the site of the closing a public notification seven (7) calendar days prior to such closing in a manner directed by OCMC.

(h) **Work site safety.** All obstructions on the street shall be protected by barricades, fencing, railing with flags, lights, and/or signs, placed at proper intervals and at prescribed hours in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices. During twilight hours the flags shall be replaced with amber lights. Permittees shall also comply with any additional work site safety requirements set forth in these rules or in the permit.

(i) **Waivers.** (1) Except where expressly prohibited by law, the Commissioner may, in his/her discretion, waive or modify these rules, in the interests of public safety and convenience.

(2) Requests for waivers shall be submitted in writing to the Commissioner.

(j) **Suspension of application review.** The Commissioner may suspend review of applications for permits pending:

(1) payment by an applicant of outstanding fines, civil penalties or judgments imposed or entered against such applicant by a court or the environmental control board,

(2) payment by an applicant of outstanding fees or other charges lawfully assessed by the Commissioner against such applicant pursuant to these rules or other applicable law and/or

(3) satisfactory compliance by an applicant with a CAR or order issued by the Commissioner.

(k) **Permit revocation and refusal to renew permit.** (1) The Commissioner may, after giving the permittee notice and an opportunity to be heard, revoke or refuse to renew a permit:

(i) for failure to comply with the terms or conditions of such permit, these rules or other applicable law in carrying out the activity for which the permit was issued;

(ii) whenever there has been any false statement or any misrepresentation as to a material fact in the application or accompanying papers upon which the issuance of the permit was based; or

(iii) whenever a permit has been issued in error and the conditions are such that the permit should not have been issued.

(2) Prior to taking any of the actions listed in paragraph (1) above, the Commissioner shall give the permittee an opportunity to be heard upon not less than two days notice.

(3) Notwithstanding any inconsistent provision of paragraph (2) above, if the Commissioner determines that an imminent peril to life or property exists, the Commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to such revocation. Upon request of the permittee, the Commissioner shall afford the permittee an opportunity to present his or her objections to such action within five days after such request is received by the Department.

(l) **Refusal to issue permit.** The Commissioner may refuse to issue a permit to an applicant:

(1) who has exhibited a pattern of disregard for the rules or orders of the Department or the terms or conditions of permits issued by the Department or for other applicable law,

(2) who has been found liable by a court or in a proceeding before the environmental control board of a violation of a rule or order of the Department or the terms or conditions of a permit issued by the Department or other applicable law, which violation caused an imminent peril to life or property.

(m) **Embargo periods.** (1) All routine work shall be suspended during an embargo period unless approval for the work is granted by OCMC. Such suspension shall not apply to emergency work, for which an emergency number shall be obtained by the permittee pursuant to the provisions of §2-11 of these rules. Information regarding embargo periods is on file at each borough permit office and is available upon request. It is the responsibility of each permittee to obtain such information prior to the commencement of any work. It shall be a violation of these rules to do any work on the street during an embargo period without the prior approval of OCMC or an emergency number.

(2) A request for approval to work during an embargo shall be submitted on a form provided by the Commissioner, along with a fee as specified in §2-03 of these rules. Payment of the application fee shall not guarantee that approval to work during the embargo period will be granted and application fee is in addition to any required permit fees.

(n) **Voiding and reissuing of permits.** Permits may be voided and reissued only within three business days of issuance. See §2-03 for the fee for reissuance. Permits reissued after three business days shall be subject to the full permit fee.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Subd. (a) pars (1), (2) amended City Record June 7, 2007 §1, eff. July 7, 2007. [See Note 5]

Subd. (a) par (3) amended City Record Apr. 1, 2009 §1, eff. May 1, 2009. [See Note 7]

Subd. (a) par (3) repealed and added City Record Dec. 23, 2005 eff. Jan. 22, 2006. [See Note 3]

Subd. (a) par (3) subpar (i) open par amended City Record Mar. 3, 2003 eff. Apr. 2, 2003. [See

Note 1]

Subd. (a) par (4) heading amended City Record Feb. 8, 2007 §1, eff. Mar. 10, 2007. [See Note 4]

Subd. (a) par (4) subpars (i), (ii) amended City Record Sept. 14, 2007 §1, eff. Oct. 14, 2007. [See Note 6]

Subd. (a) par (4) subpars (i), (ii) amended City Record Feb. 8, 2007 §1, eff. Mar. 10, 2007. [See Note 4]

Subd. (a) par (4) subpars (viii), (ix) added (as subpars (iii), (iv)) City Record Sept. 14, 2007 §1, eff. Oct. 14, 2007. [See Note 6]

Subd. (b) par (1) amended City Record Feb. 25, 2000 §2, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (b) par (3) added City Record May 7, 2001 §2, eff. June 6, 2001. [See Note 2]

Subd. (b) par (4) added City Record Aug. 30, 2005 §1, eff. Sept. 29, 2005. [See T34 §2-16 Note 1]

Subd. (c) pars (4), (5) added City Record June 7, 2007 §2, eff. July 7, 2007. [See Note 5]

Subd. (d) amended City Record June 7, 2007 §3, eff. July 7, 2007. [See Note 5]

Subd. (g) par (2) amended City Record Dec. 21, 2001 eff. Jan. 20, 2002.

Subd. (g) par (3) added City Record Dec. 21, 2001 eff. Jan. 20, 2002.

Subd. (m) amended City Record June 7, 2007 §4, eff. July 7, 2007. [See Note 5]

Subd. (m) amended City Record Feb. 25, 2000 §3, eff. Mar. 26, 2000.

DERIVATION

Section 2-02 was derived from former §§2-28 and 2-29 from original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 3, 2003:

The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to section 2903 of the New York City Charter and Title 19 of the New York City Administrative Code.

Subparagraph (i) of paragraph (3) of subdivision (a) of section 2-02 is being amended to add a requirement that a copy of the insurance certificate be submitted along with the original for record keeping purposes.

2. Statement of Basis and Purpose in City Record May 7, 2001: Section 2-02 of the Highway Rules is being amended to allow the Agency to better regulate the issuance of permits. The proposed rule allows the Department to demand that permittees show proof of required approvals from other governmental entities as a condition for issuing a Departmental permit. This revision should heighten public safety by allowing the Department to insure that permittees secure approval from other governmental entities as required.

3. Statement of Basis and Purpose in City Record Dec. 23, 2005: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Paragraph (3) of subdivision (a) of §2-02 is being amended to clarify the insurance and indemnification requirements for our permit applicants and also to enhance the protection to the City. Permit applicants may now use a standard ISO form which contains the coverage required by the Department and permit applicants may now use out-of-state insurers. The requirements are also more in-line with insurance requirements from other City agencies. Additionally, the amendment provides a procedure for applicants with self-insured programs.

4. Statement of Basis and Purpose in City Record Feb. 8, 2007: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Subparagraphs (i) and (ii) of paragraph (4) of subdivision (a) of §2-02 are being amended to ensure that the City's possible exposure as a result of a permittee's activities is sufficiently covered. The current permit bonds required in the rule are insufficient to cover the City's costs and expenses in the event that a permittee fails to meet its obligations under the permit. This amendment is being promulgated to coincide with some of the permit bond revisions recommended by the City of New York's consultants during a value engineering exercise. The changes in the permit bond will assist in greater quality assurance from the permittee. In addition, this amendment is required to ensure that the permittee utilizes the permit bond required by the Department. The Department has made several amendments to the rule as a result of both written and oral comments received pursuant to the publication on October 19, 2006 of the Notice of Opportunity to Comment on proposed rulemaking. In response to comments that the originally proposed increases to the required bond amounts may cause a hardship to smaller companies applying for permits, the Department has revised the required amounts of the permit bonds by adding two additional threshold categories. The Department will now require a $50,000 bond for contractors securing two to fifty permits per calendar year. Contractors who take out fifty-one to one hundred permits per calendar year must obtain a bond in the amount of $100,000. The Department has elected to maintain the current requirement that bond issuers must provide the Department with thirty days of written notice prior to the cancellation or expiration of the bond, as opposed to sixty days. Finally, the Department will maintain the current guarantee periods for protected and non-protected streets. Thus, the guarantee period for protected streets shall remain five years, while the period for non-protected streets shall remain three years.

5. Statement of Basis and Purpose in City Record June 7, 2007: The Commissioner of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. These rules are being amended to achieve several purposes: to enhance and clarify existing rules; to enhance vehicular and pedestrian safety, and to provide methods of enforcement for the rules. Finally, these amendments will better protect the City's investment in the roadways throughout the five boroughs. Subdivision (a) of §2-02 is being amended to add that an applicant must supply an e-mail address, if available, in order to facilitate Department contact with permittees. Subdivision (a) is also being amended to require permittees to submit proof of registration with the New York State Secretary of State to the Department, to ensure that permittees file the identical information provided to the Secretary of State on all permit applications submitted to the Department, and to ensure that permittees provide the Department with consistent and correct identifying information. Subdivision (c) of §2-02 is being amended to require permittees to place informational signs at the site of construction projects lasting in excess of three months, in order to give the public vital information regarding ongoing construction. Subdivision (d) of §2-02 is being amended to add e-mail as a method of serving corrective action requests. Subdivision (d) is also being amended to clarify that corrective action must be performed within 30 days of the issuance of the CAR, unless protested, and to create a category of priority CAR for conditions that create an imminent danger. Subdivision (d) is also being amended to provide that corrective action must still be taken after the guarantee period on a particular roadway expires. Subdivision (m) of §2-02 is being amended to provide for a procedure and a fee for an application to work during an embargo period. The procedure and fees are designed to ensure that work during an embargo period is indeed necessary, and prevents the expenditure of Department time and resources to evaluate applications for work that is not critical. Such work could already be approved by the Department under the current rules. Section 2-03 is being

amended to add a fee for an application for work during an embargo and one for installing or changing markings, signs and supports during construction, in order to provide the public with an updated, current schedule of fees. Subdivision (h) of §2-04 is being amended in order to be consistent with recent changes to insurance requirements for all permits contained in §2-02(3). Subdivision (d) of §2-05 is being amended to delete an exemption for permittees storing material with a street opening permit, because such storage is covered under §2-11. Paragraph (2) of subdivision (d) of §2-05 is being amended to add requirements that specifically detail the necessary planking, skids, and/or plating required when placing a container upon the roadway, and to identify who is responsible for placement of necessary planking, skids and/or plating for protection of the roadway. Paragraph (2) of subdivision (d) is also being amended to state that the protective covering placed underneath a container cannot exceed the perimeter of the container. Paragraph (1) of subdivision (a) of §2-07 is being amended to add a requirement that entities who put out tool carts must have their name, address and telephone number on the cart to facilitate the Department's identification of permittees. Subdivision (b) of §2-09 is being amended to correct a typographical error. Subdivision (f) of §2-09 is being amended in order to be consistent with recent changes to insurance requirements for all permits contained in §2-02(3). Subdivision (f) of §2-09 is also being amended to allow for the use of approved volumetric mixers for concrete for sidewalks. The use of these mixers has become increasingly common in this kind of work. Paragraph (1) of subdivision (d) of §2-11 is being amended to add a requirement that the Division of Bridges be informed and approve of proposed work within 100 feet of a bridge in order to ensure that the applicant arranges the work so as to avoid damaging the bridge or is given appropriate specifications to restore the structure. Subdivision (d) of §2-11 is also being amended by adding a new paragraph (3) to require submission of a protected street determination form for approval prior to obtaining permits if curb to curb restoration will be performed on over 50% of a street segment. The form will be used to allow the Department to regulate future street openings on those streets more effectively. Subparagraph (i) of paragraph (8) of subdivision (e) of §2-11 is being amended to allow asphalt millings to be used as backfill material in order to conform to Local Law 45 of 2003, which allows for such use. Subparagraph (vi) of paragraph (8) of subdivision (e) of §2-11 is being amended to ensure that the rule will apply during the life of the guarantee period. Temporary restoration applied only during the life of the permit, and did not apply after the expiration of the permit and during the life of the guarantee period. This will ensure that restoration requirements are imposed upon permittees during the guarantee period. Subparagraph (ii) of paragraph (10) of subdivision (e) of §2-11 is being amended to remove vague language stating that a plate must overlap the edges, and to specify the amount of overlap required by the Department for permittees to place steel plates on the streets, so that the street opening is fully covered. Subparagraph (iii) of paragraph (10) of subdivision (e) of §2-11 is being amended to include "spiking" and "pinning" as methods of securing steel plates in order to prevent the plates from shifting, and to specify the required filling method for any holes resulting from spiking and pinning. Subparagraph (v) of paragraph (10) of subdivision (e) of §2-11 is being amended to delete an obsolete reference and to specify that adherence to federal manual on uniform traffic control devices is required, in order to create a standard for the size and placement of signs referencing plating and decking. Subparagraph (ii) of paragraph (12) of subdivision (e) of §2-11 is being amended to require that permittees must re-dig any backfill on a non-protected street if the restoration sinks more than two inches during the guarantee period, which will create conformity to similar requirements for a protected street. Subparagraph (iv) of paragraph (12) of subdivision (e) of §2-11 is being amended to delete the reference to machine excavations and to add the language, "after the required cutbacks" to ensure that permittees make proper restoration of street cuts regardless of whether the opening was excavated via machine or other means. Subparagraph (v) of paragraph (12) of subdivision (e) of §2-11 is being deleted in order to clarify that excavations within 3 feet of each other must be repaired integrally, to ensure that permittees properly restore street openings. Subparagraph (x) of paragraph (12) of subdivision (e) of §2-11 is being amended by adding a requirement that a permit be obtained prior to changing or installing any markings, signs or supports during construction and that such signs, markings or supports be removed prior to permit expiration. This is to create a formal process for removing temporary signs and markings and to create a method of enforcement. In addition, the usage of temporary asphalt during the winter months has been clarified. Paragraph (12) of subdivision (e) of §2-11 is also being amended by adding a new subparagraph (xii) that requires permittees to return the protected street determination form required in §2-11(d)(3) to the Department within 24 hours of completing work on a street that is to be protected so that the Department may better regulate future street openings on those streets. Paragraph (14) of subdivision (e) of §2-11 is being amended to clarify the colors and uses of codes and markers used to identify permittees once they leave the work site, to facilitate the

Department's identification and contact of those permittees in the event of problems. Subparagraph (vii) of paragraph (4) of subdivision (f) of §2-11 is being amended to include a requirement that the permanent restoration of a protected street shall be flushed with the surrounding pavement on all sides of the restoration, which will create smoother roadway surfaces. The subparagraph is also being amended in order to clarify that permittees are required to install properly compacted backfill on non-protected streets in the event that a permanent restoration sinks, as is also required on protected streets.

6. Statement of Basis and Purpose in City Record Sept. 14, 2007: The Commissioner of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903(b) of the New York City Charter and Title 19 of the New York City Administrative Code. The rule is being amended to systematically phase in higher bond amounts and to accommodate an orderly transition for the permittees and the surety industry to the bond requirements. DOT intends to reduce the penal amounts for the required permit bonds until July 1, 2008. The Department believes that this bond requirement is commensurate with the risk of potential damage to City streets occasioned by street openings and excavations. This rule is further being amended to allow permittees securing permits for building operations and construction activity (except sidewalk construction) that do not require a street opening to submit a bond to the Department in a lower amount. This distinction recognizes that street openings have the potential to cause greater damage to City streets than most other permitted activities; thus, permittees performing such work must submit a bond that adequately covers this risk. If a permittee performs building operation and construction activity (except sidewalk construction) and additionally must perform a street opening, the Department will require that permittee to submit a bond in the amount required for street openings.

7. Statement of Basis and Purpose in City Record Apr. 1, 2009: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Paragraph (3) of subdivision (a) of §2-02 is being amended to set forth an industry standard ISO form which provides a reference for permit applicants and their brokers and insurers as to what would constitute sufficient insurance coverage to cover the liability assumed by the permit applicant when obtaining a permit. This amendment also eliminates the requirement for specific notice endorsements for most permit applicants to reduce burdens that small businesses may face in procuring insurance that includes the specific notice endorsements. In addition, this amendment provides minor corrections and clarifications of the rule relating to insurance requirements.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular,

rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-03 Schedule of Fees.

All fees shall be paid in accordance with the following fee schedule:

Permit or Activity	Fee	Other Charges	Maximum Duration per Permit	Maximum Distance per Permit	Maximum Width per Permit
Street Opening Permits-General:					
Normal street	$135.00		15 days	300 linear ft.(lin. ft.)	12 feet
Protected street	$135.00	$245.00inspectionfee	15 days	300 lin. ft.	12 feet
Emergency work	$45.00		2 businessdays	300 lin. ft.	12 feet
Specific Types of Street Opening Permits:					
Open sidewalk to install foundation		$135.00	30 days	300 lin. ft.	sidewalk (SW) width
Major installations-electric conduit		$135.00,$380.00protectedstreet	30 days (90 days with OCMC approval.)	300 lin. ft.	12 feet
Major installations-gas		$135.00,$380.00protected	30 days (90 days with OCMC ap-	300 lin. ft.	12 feet

pipe	street	proval.)		
Major installations-steam pipe	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	300 lin. ft.	12 feet
Major installations-telephone line	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	300 lin. ft.	12 feet
Transformer vault-in roadway	$135.00,$380.00protected street	15 days to 30 days	300 lin. ft.	variable
Transformer vault-in sidewalk	$135.00	15 days to 30 days	300 lin. ft.	SW width
Installation and/or Removal of poles	$135.00	30 days	2 sw flags	SW width
Major installations-water	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	300 lin. ft.	12 feet
Major installations-cable	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	300 lin. ft.	12 feet
Major installations-sewer	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	300 lin. ft.	12 feet
Rapid transit construct/ alteration	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	300 lin. ft.	Variable or SW width
Installation of public telephone stanchion	$135.00	30 days	Not Applicable	SW width
Installation of newsstand	$135.00	30 days	As per approved plans	As per approved plans
Repair water connections/ mains	$135.00,$380.00protected street	$10.00 minimum for tunneling and/or jacking. Excess over 1st 10 ft., $1.00 per ft.	15 days to 30 days	300 lin. ft.	12 feet
Repair sewer connections/ main	$135.00,$380.00protected street	15 days to 30 days	300 lin. ft.	12 feet
Repair water and sewer connection/ mains	$135.00,$380.00protected street	15 days to 30 days	300 lin. ft.	12 feet
Install or replace fuel oil line	$135.00	15 days	300 lin. ft.	SW width
Vault construction, alteration, or repair	$135.00	30 days	300 lin. ft.	As per approved plan
Reset, replace, install or repair curb	$135.00	30 days	As required, up to 300 lin. ft.	Not applicable
Pave roadway	$135.00	15 days	300 lin. ft. & as per approved plan	As per approved plan
Tree pit	$135.00	30 days	300 lin. ft.	Variable based on SW width

Construct or alter utility access chamber	$135.00,$380.00protected street	15 days	300 lin. ft.	12 feet
Adjust hardware casting	$135.00	15 days	300 lin. ft.	12 feet
Access to utility chamber in restricted zone during restricted hours	$30.00	Uninterrupted emergency period	300 lin. ft.	12 feet
Repair gas connections/mains	$135.00,$380.00protected street	30 days	300 lin. ft.	12 feet or SW width
Repair steam connection/ mains	$135.00,$380.00protected street	30 days	300 lin. ft.	12 feet or SW width
Repair electric/communication lines	$135.00,$380.00protected street	30 days	300 lin. ft.	12 feet or SW width
Test pits, cores or boring	$135.00,$380.00protected street	15 days	300 lin. ft.	Not applicable
Conduit construction (cable, telecommunication) & franchise	$135.00,$380.00protected street	15 days	300 lin. ft.	12 feet
Major installation-franchise	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	As per approved plans	As per approved plans
Erect canopy	$135.00	30 days	Not applicable	SW width
Install street furniture	$135.00	30 days	Not applicable	Not applicable
Land fill	$135.00	Inspection fee of $25.00 for 1st 400 cubic yards. Excess over 400 cy at $0.05 per cy.	30 days	Not applicable	Not applicable
Private sewer	$135.00,$380.00protected street	30 days	300 lin. ft.	12 feet
Install fence	$135.00	30 days	300 lin. ft.	Not applicable
Install traffic signals	$135.00,$380.00protected street	30 days	300 lin. ft.	Not applicable
Install or repair petroleum pipelines/monitoring and recovery systems	$135.00,$380.00protected street	30 days	300 lin. ft.	12 feet or SW width
Installation of fire alarm box	$135.00	30 days	Not applicable	SW width
Fee for review of request to work during an embargo period	$135.00			
Installation of bus shelter	$135.00	30 days	As per Division of Franchises	As per Division of Franchises

Construction Activity Permits

Types of Construction Activity Permits:

Place material on street	$50.00	$30.00 per month inspection fee	3 months	300 linear ft. but not more than 80% frontage may be encumbered.	8 feet
Crossing sidewalk	$50.00	3 months	2 crossings at 12 ft. wide within 300 linear ft.		SW width
Place crane on street	$50.00 per week or part thereof.	$100.00 inspection fee	1 week	Variable	Not more than one third width of roadway
Place equipment other than crane on street	$50.00	3 months	300 lin. ft.	12 feet	
Place shanty or trailer on street	$50.00	3 months	Variable	12 feet	
Temporary pedestrian walk in roadway	$50.00	3 months	300 lin. ft.		
Install or change pavement markings, construction signs and supports	$50.00	90 days			
Hang temporary festoon/holiday lighting and/or other temporary lighting	$50.00	90 days			
Install decorative planters on street	$50.00	1 year			
Install bicycle rack	$50.00	1 year			
Temporary closing of roadway	$50.00	3 months			
Temporary sidewalk closing	$50.00	3 months			
Placement of containers for construction waste debris	$50.00	90 days	300 lin. ft.	12 feet	

Sidewalk Construction Permits:

Repair/construct sidewalk	$70.00	30 days	300 lin. ft. or per block and lot	SW width

Licenses:

Vault License	$35.00	$2.00 per sq. ft.	
Canopy Permits	$50.00	1 year	
Canopy in connection with a sidewalk cafe license	$25.00	1 year	

Miscellaneous Charges and Fees:

Subpoenas	$15.00	
Removal of banners, canopies, signs and other encroachments and ob-		cost of labor and materi-

structions			als	
Storage fee for removed banners, canopies, signs and other encroachments and obstructions			$15.00 per day	
CARs	$40.00			
Backcharges and JETS	$134.00 per sq. yd.			
Extension of Permit	$40.00	14 days		
Place commercial refuse container on street	$30.00 per year			12 feet
Application review fee for placement of commercial refuse container on street in restricted area as defined in §2-14(f)(4)			$30.00 per application	
Reissuance of permit within three business days	$15.00	duration of original permit		
Renew temporary security structure	$50.00	Six months	300 lin. ft.	Not applicable
Filing of Sidewalk, Curb and Roadway Application (SCARA)-Plan Type A			No fee	one year
Filing of SCARA-Plan Type B	$35.00 filing fee			one year
Filing of SCARA-Plan Type C	$2.00 per lin. ft.			one year
Filing of SCARA-Plan Type D	$4.00 per lin. ft.			one year
Filing of SCARA-Plan Type E	$4.00 per lin. ft.			one year
Filing of SCARA-Plan Type F	$8.00 per lin. ft.			one year
Install temporarysecurity structure	$50.00	One year	300 lin. ft.	Not applicable
City adjustment ofstreet hardware tomeet pavement	$125.00	Not applicable	Not applicable	Notapplicable

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Backcharges and JETS amended City Record Sept. 7, 2006 eff. Oct. 7, 2006. [See Note 6]

CARs amended City Record Apr. 20, 2009 §1, eff. May 20, 2009. [See Note 7]

City adjustment of street hardware to meet pavement added City Record May 5, 2004 eff. June 4, 2004. [See Note 3]

Fee for review . . . embargo period added City Record June 7, 2007 §5, eff. July 7, 2007. [See T34 §2-02 Note 5]

Filing of builder's paving plan repealed City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Filing of SCARA-Plan Type B added City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Filing of SCARA-Plan Type C added City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Filing of SCARA-Plan Type D added City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Filing of SCARA-Plan Type E added City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Filing of SCARA-Plan Type F added City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Filing of Sidewalk Curb and Roadway Application (SCARA)-Plan Type A added City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Hang temporary festoon . . . lighting amended City Record Oct. 14, 2005 eff. Nov. 13, 2005. [See Note 5]

Hang temporary festoon . . . lighting amended City Record Apr. 13, 2005 §1, eff. May 13, 2005. [See Note 4]

Install or change . . . supports added City Record June 7, 2007 §6, eff. July 7, 2007. [See T34 §2-02 Note 5]

Install temporary security structure added City Record Oct. 27, 2003 eff. Nov. 26, 2003. [See T34 §2-10 Note 1]

Installation and/or Removal of poles (formerly Installation) amended City Record May 7, 2001 §3, eff. June 6, 2001. [See Note 2]

Major installation-franchise conduit amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Major installations-cable amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Major installations-electric conduit amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Major installations-gas pipe amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Major installations-sewer amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Major installations&mdash§eam pipe amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 ;st2-01 Note 1]

Major installations-telephone line amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Major installations-water amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34

§2-01 Note 1]

Rapid transit construct/alteration amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Renew temporary security structure added City Record June 27, 2005 §1, eff. July 27, 2005. [See T34 §2-10 Note 2]

DERIVATION

Section 2-03 was derived from former §§2-26 and 2-27 from original publication July 1, 1991.

Section 2-26 was amended in City Records July 10, 1991 and Oct. 6, 1996. Section 2-27

was amended in City Record Oct. 6, 1996.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 17, 2000:

Section 2-03 is being revised to reflect fees that are based on the complexity of the proposed sidewalk, curb or roadway project.

2. Statement of Basis and Purpose in City Record May 7, 2001: Section 2-03 is being amended to require a permit to be obtained for pole removal. This will enable the Department to better regulate such activity by giving the Department notice of pole removals.

3. Statement of Basis and Purpose in City Record May 5, 2004: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Section 2-03 is being amended to add a fee to cover the City's cost of adjusting private companies' street hardware to meet the roadway pavement after resurfacing work is done. The charge will be billed to the companies on whose behalf the City performs this adjustment work.

4. Statement of Basis and Purpose in City Record Apr. 13, 2005: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Section 2-03 is being amended to increase the duration and distance covered by a permit for hanging temporary festoon/holiday lighting and/or other temporary lighting. Subdivision (e) of §2-14 is being amended to enable the Department to more closely monitor the installation of temporary festoon/holiday lighting and/or other temporary lighting to ensure its safety and compliance with all applicable rules.

5. Statement of Basis and Purpose in City Record Oct. 14, 2005: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Section 2-03 is being amended to adjust the permit fee for hanging temporary festoon/holiday lighting and/or temporary lighting. A flat $50 permit fee will now

cover all such lights installed by one entity. Installing such lighting benefits the City, individual communities, and the Business Improvement Districts in terms of increased retail sales, tourism and enhancement of neighborhood pride. Upon further consideration, the $50 per block face fee appears to be financially overburdensome. Accordingly, the rule is being amended to revert to the flat permit fee of $50.

6. Statement of Basis and Purpose in City Record Sept. 7, 2006: The Commissioner of the Department of Transportation is authorized to promulgate rules relating to fees collected by the Department of Transportation pursuant to §2903(b) of the New York City Charter and Title 19 of the New York City Administrative Code. Section 2-03 is being amended to increase the fees collected for backcharges and JETS. This fee allows the Department of Transportation to recover the cost of temporarily restoring street defects caused by private entities, such as a plumbers and/or utility companies. The administrative fee currently charged no longer accurately reflects administrative and labor costs incurred in performing the required emergency repair work.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices

and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-04 Canopies.

(a) **Permit required.** No person shall erect or maintain a canopy over the sidewalk without obtaining a permit from the Commissioner. The canopy shall be adequate for public safety and convenience and shall respect the special circumstances of the particular site or street and shall not detract from public use of the sidewalk. Canopy permits may be issued for the entrance to a building, or place of business within a building.

(b) **Permit fees.** (1) The fee for the issuance of a canopy permit shall be $50 per year.

(2) The fee for the issuance of a canopy permit in connection with a sidewalk cafe license shall be $25.

(c) **Conditions.** (1) Canopy permits shall not be issued for:

(i) placement on streets listed in subdivision f of this section;

(ii) placement within the following: fifteen feet of fire hydrants or bus stop zones; beneath a fire escape or so located as to obstruct operation of fire escape drop ladders or counter-balanced stairs or so as to obstruct any exit from a building; within the area created by extending the building line to the curb (the "corner") or within the area from ten feet of either side of the corner (the "corner quadrant"); five feet of tree pit edges, four feet of street lights and utility hole or transformer vault covers or gratings; three feet of parking meters; or

(iii) placement without written approval from the property owner; or

(iv) placement without written approval from the Department of Consumer Affairs for locations licensed by the

Department of Consumer Affairs; or

(v) placement at locations deemed by the Commissioner as inadequate with respect to public safety and convenience.

(2) Canopies shall not be permitted above underground street access covers, vault covers, gratings, or cellar doors which require access.

(3) Canopy design and construction shall be in accordance with the Department's standard details of construction.

(4) Owners shall be responsible for the removal of a canopy within ten days when so directed by the Commissioner for necessary street construction.

(5) Advertising on a canopy is prohibited. The house or street number and/or firm name or filed trade name may appear on a canopy as prescribed by the Zoning Resolution of the City of New York. However, descriptive words contained in the firm name or filed trade name tending to advertise the business conducted on the premises are prohibited. Lettering may include logo art for the purpose of business identification only.

(6) All canopy permits shall be posted in a conspicuous place at the entrance for which the permit is issued.

(d) **Maintenance.** (1) Canopies shall be well maintained at all times.

(2) The covering shall be kept clean, free from accumulation of snow and ice and free from rips and tears, discoloration, fading, sagging, graffiti, etc.

(3) Canopies with metal frameworks shall be painted as needed, but at least every five years.

(4) All structural members shall be kept free of rust and surface imperfections (smooth to the touch).

(e) **Permit expiration, renewal and transferability.**

(1) Each permit shall expire one year from the date of issuance, unless revoked sooner by the Commissioner. Applications for renewal of canopy permits shall be made at least one month prior to permit expiration dates.

(2) Canopy permits shall not be transferable from person to person or from the location of original issue.

(3) Notwithstanding any inconsistent provision of this section relating to the location of a canopy, where a permit was issued for a canopy erected prior to May 19, 1995 under the rules in effect prior to that date, a renewal permit may be issued for the continued maintenance of such canopy at such location provided that:

(i) The canopy is at the same location and was not altered on or after May 19, 1995;

(ii) The canopy is not on a street listed as restricted in subdivision f of this section; and

(iii) The department performs an on-site inspection and determines that the canopy does not present a hazard to public safety and convenience. For the purposes of this provision, hazards for which the department will refuse the renewal of a permit shall include, but not be limited to, the location of a canopy within fifteen feet of a fire hydrant or bus stop, beneath or obstructing a fire escape or within a corner or corner quadrant.

(f) **Placement of canopies.** The following categories of restricted streets are established:

(1) **Fully Restricted Streets.** No canopy may be erected or maintained on the below listed streets:

(i) **Borough of Manhattan:**

(A) Fifth Avenue: West 34th Street to West 59th Street

(B) Sixth Avenue: West 34th Street to West 59th Street

(C) 34th Street: West side of Fifth Avenue to East side of Eighth Avenue

(D) 42nd Street: East side of Eighth Avenue to West side of Third Avenue

(E) Seventh Avenue: South side of 33rd Street to North side of 34th Street

(F) Broadway: Chambers Street to Battery Place

(G) Whitehall Street: Beaver Street to Water Street

(H) Wall Street: Broadway to South Street

(I) Broad Street: Wall Street to Water Street

(J) Sixth Avenue: West 4th Street to West 8th Street

(K) West 8th Street: Sixth Avenue to Fifth Avenue

(L) East 8th Street: Fifth Avenue to Fourth Avenue

(M) Astor Place: Broadway to 3rd Avenue

(N) St. Mark's Place: 3rd Avenue to 2nd Avenue

(O) 72nd Street: Broadway/Amsterdam Avenue to Columbus Avenue

(2) **Partially Restricted Streets.** The erection or maintenance of canopies on the streets listed below is limited to one building entrance only, except that hotels and apartment houses may erect and maintain canopies over all their entrances and restaurants may erect and maintain a canopy over one entrance separate and distinct from the building entrance, if any.

(i) **Borough of Manhattan**

(A) Fifth Avenue: West 12th Street to West 34th Street

(B) Madison Avenue: East 23rd Street to East 96th Street

(C) Park Avenue: East 46th Street to East 60th Street

(D) 43rd Street to 60th Street: Sixth Avenue to Lexington Avenue

(E) Riverside Drive: George Washington Bridge to West 135th Street

(F) Morningside Avenue: West 116th Street to West 125th Street

(G) Central Park West: West 60th Street to West 75th Street

(H) South Street Seaport

(I) Nassau Street Mall

(ii) **Borough of Brooklyn**

(A) Ocean Parkway: Belt Parkway to Prospect Park

(B) Ocean Avenue: Flatbush Avenue to Avenue Z

(C) Plaza Street: Eastern Parkway to Prospect Park West

(D) Eastern Parkway: Plaza Street to Ralph Avenue

(E) Fulton Street Mall

(F) Stuyvesant Avenue: Fulton Street to Madison Avenue

(G) Kings Highway: Bay Parkway to Rockaway Parkway

(iii) **Borough of the Bronx**

(A) Grand Concourse: 158 Street to 179 Street

(B) Pelham Parkway: Cruger Avenue to Hutchinson River Parkway

(iv) **Borough of Queens**

(A) Jamaica Avenue: 168 Street to Cross Island Parkway

(B) Hillside Avenue: 179 Street to the City Line

(v) **Borough of Richmond**

(A) Hylan Boulevard: Fingerboard Road to Tysens Lane

(B) Victory Boulevard: Bay Street to Willowbrook Road

(C) Richmond Avenue: Richmond Terrace to Forest Avenue

(D) New Dorp Lane: Richmond Road to Hylan Boulevard

(g) **Design criteria.** (1) **Size limitations of canopies.**

(i) **Width.** Canopy width is limited to the width of the building entrance or the place of business, as defined by the doors leading into the building or place of business, but in no case shall the width be less than 4 feet nor more than 10 feet, unless authorized in writing by the Commissioner or as required by the Commissioner.

(ii) **Height.** The bottom of any portion of the canopy covering shall not be less than eight feet above the sidewalk and the top of any portion of the canopy covering shall not exceed 12 feet above the sidewalk, unless authorized in writing by the Commissioner.

(iii) **Length.** The canopy shall extend from the building line to within a minimum of eighteen inches and a maximum of twenty-four inches from the face of the curb line.

(2) Canopy design and construction shall conform to Standard Details of Construction H 1029. Canopy shall be fully roofed.

(3) Certification by the manufacturer that the covering is flameproof shall be submitted with the permit application.

Where certification is unobtainable from the manufacturer, certification by the installer may be submitted instead.

(4) **Lettering on covering.**

(i) The height of lettering on any side of a canopy shall not exceed 12 inches, as specified in the Zoning Resolution.

(ii) The painting, imprinting, or stenciling authorized in the above paragraph (4)(i) shall be limited to a single horizontal line of lettering, and with a cumulative surface area not exceeding twelve (12) square feet per side. It shall be lawful to paint, imprint or stencil directly upon a canopy within the character and area limitations prescribed by the Zoning Resolution of the City of New York.

(5) **Lighting and Illumination.**

(i) The area under the canopy shall be lighted to a minimum of thirty foot candles when the canopy is within twenty feet of a lamppost. Illumination shall be limited to the underside of the canopy. Neon lights are not permitted. Fluorescent light fixtures shall have the bulbs covered so they are not visible. Illumination sources shall be installed so that they do not protrude below the bottom of any portion of the canopy covering.

(ii) All electrical work shall be done by a licensed electrician.

(6) Side curtains are not permitted.

(7) Supporting framework shall be constructed of metal members.

(i) Vertical uprights shall be of sufficient size and strength and shall be no less than a standard steel pipe, one and one-quarter inches in diameter and not exceeding three inches in diameter. Where a special construction is used instead of pipe, the design shall be equivalent to the above valid minimum pipe standard approved by the Commissioner. The vertical uprights shall be imbedded in an independent concrete footing of adequate size, designed to sustain all anticipated loads.

(ii) Intermediate vertical upright supports are not permitted except for additional upright supports at the face of the building. Such additional upright supports shall not extend more than 18 inches of the property line.

(iii) Diagonal bracing at vertical upright supports is not permitted, except where required for wind bracing. Permissible wind bracing supports shall be constructed parallel to the curb line and shall extend outward no more than eighteen inches from the vertical upright.

(h) **Application.** (1) Applications for canopy permits shall include:

(i) A statement of the basic construction details including the following:

(A) type, description and color of the canopy covering;

(B) type, diameter and gauge of all supporting members;

(C) description of the frame, wind bracing assembly and sidewalk and building fastenings;

(D) description of proposed lettering on canopy covering, including exact wording and dimensions thereof;

(E) five inch by seven inch photograph of the proposed site.

(ii) A sketch showing the canopy dimensions, location and all street facilities within fifteen feet of both sides of the canopy.

(iii) A certificate that the covering is flameproof.

(iv) Consent of the Landmarks Preservation Commission for the erection of a canopy in a designated landmark historic district or attached to a building that has Landmark's historic designation.

(v) Reserved.

(2) **Permit requirements.** All permits are subject to applicable provisions contained in §2-02 of these rules.

(i) **Removal of unauthorized canopies.** Pursuant to §19-124 of the Administrative Code, the Commissioner may serve an order upon the owner of any premises requiring the removal of any unauthorized canopy. Upon the owner's failure to comply with such order within the time specified, the Commissioner may remove such canopy or cause the same to be removed, at the owner's sole cost and expense.

(j) **Miscellaneous.** No attachments of any kind or in any manner are permitted on a canopy, including, but not limited to:

(1) Temporary or permanent signs

(2) Balloons

(3) Streamers

(4) Flags

(5) Banners

(6) Pennants

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Subd. (c) par (1) amended City Record May 7, 2001 §4, eff. June 6, 2001. [See Note 1]

Subd. (e) amended City Record May 7, 2001 §5, eff. June 6, 2001. [See Note 1]

Subd. (f) par (1) subpar (i) clause (O) added City Record May 22, 1998 eff. June 21, 1998.

Subd. (f) par (1) subpar (ii) repealed City Record Feb. 25, 2000 §5, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (h) par (1) subpar (v) repealed City Record June 7, 2007 §7, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (h) par (2) added City Record June 7, 2007 §7, eff. July 7, 2007. [See T34 §2-02 Note 5]

DERIVATION

Section was derived from former §2-03 from original publication. Such §2-03 was amended in

City Records Apr. 9, 1995, Dec. 15, 1996 and May 22, 1998.

NOTE

1. Statement of Basis and Purpose in City Record May 7, 2001:

Section 2-04 is being amended in order that the Agency may better regulate the issuance of canopy permits. The proposed rules prohibit the placement of canopies under fire escapes or obstructing the use of fire escape drop ladders, counter-balanced stairs, and any building exits. The revision brings the current Highway Rules into compliance with the New York City Administrative Code, Title 19, §19-124(f). Additionally, this revision heightens public safety since canopies obstructing the use of fire escapes and building exits would render such fire escapes and building exits inoperable.

Additionally, the proposed rules enable the Department to renew permits for canopies constructed and approved before May 19, 1995 without imposing the newer construction restrictions, so long as a Department Inspector inspects the canopy and determines that such canopy does not present any hazards to public safety and convenience.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-05 Construction Activity.

(a) **Permit required.** (1) A separate construction activity permit is required for each of the following activities, except where otherwise provided by these rules or by permit stipulations:

(i) Placing construction material on street during working hours

(ii) Placing construction equipment other than cranes or derricks on the street during working hours

(iii) Temporarily closing sidewalk

(iv) Constructing temporary pedestrian walk in roadway

(v) Temporarily closing roadway

(vi) Placing shanty or trailer on street

(vii) Crossing a sidewalk

(viii) Placing crane or derrick on street during working hours

(ix) Storing construction material on the street during non-working hours

(x) Storing construction equipment on the street during non-working hours

(2) Permits for construction activity involving building operations shall be obtained only by the general contractor or the construction manager.

(b) **Permit requirements.** All permits are subject to applicable provisions contained in §2-02 of these rules.

(c) **Conditions.** (1) Permits shall be kept on the job site or at the designated field headquarters at all times and shall be made available for inspection.

(2) All obstructions on the street shall be protected by barricades, fencing, railing with flags, lights, and/or signs, placed at proper intervals and at prescribed hours in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices. During twilight hours the flags shall be replaced with amber lights.

(3) All permittees shall notify the Police Department and the communications center of the Fire Department of all construction activities requiring street closing at least twenty-four hours in advance of the commencement of non-emergency work.

(4) Permittees may be required to obtain approval(s) from OCMC or from a designee of the Commissioner.

(5) All permittees shall comply with the provisions of subdivision (g) of §2-02 of these rules, if applicable.

(d) **Conditions for the placement or storage of construction material and equipment (other than cranes) on the street.** (1) Sidewalks shall be kept clear for pedestrian passage and the curbline shall be kept clear and unobstructed for drainage purposes.

(2) The street shall be protected with proper covering to prevent damage; e.g.: planking, skids, plating, pneumatic tires, before construction material or equipment, including containers are placed on the street. All planking and skids for containers must be a minimum of $1\frac{1}{2}$" to a maximum of 3" thick. Overall size must be a minimum of 12"×12" and the placement of the protective covering must not exceed the outer dimensions of the container. Protection shall be placed directly under each steel wheel or roller of the container to adequately distribute the weight. Placement of all protection shall be done upon delivery by the managing agent, distributor, or owner of the container.

(3) The name, address and telephone number of the owner shall be printed on two sides of each container used for construction debris.

(4) Each container shall be stored in an area designated by the Commissioner for the storage of construction material.

(5) All containers shall be clearly marked on all four sides with high intensity fluorescent paint, reflectors, or other markings capable of producing a warning glow when struck by the head lamps of a vehicle or other source of illumination at a distance of three hundred feet.

(6) No temporary hoist or scaffold shall be erected on or over a roadway without review of site plans by OCMC, approval of such plans by the Commissioner and a permit from the Department of Buildings.

(7) No temporary fence which extends more than three feet onto the street shall be erected on the sidewalk without the Commissioner's approval of the location and a permit from the Department of Buildings.

(8) Construction material or equipment shall not be stored or placed within:

(i) five feet of railroad tracks;

(ii) three feet of any city-owned electrical systems equipment including, but not limited to, signal and lamp posts, ITS systems, cameras, panel and/or junction boxes, provided that access to the equipment is maintained at all times;

(iii) fifteen feet of hydrants;

(iv) the area created by extending the building line to the curb (the "corner") or within the area from ten feet of either side of the corner (the "corner quadrant");

(v) any "No Standing" zone.

(9) Permittees shall comply with all rules or permit conditions relating to interference with access to subway facilities, fire alarms, street signs, parking meters, emergency telephones, water main valves, utility facilities and any city-owned electrical equipment including, but not limited to, cameras, ITS, street light and signal poles, panel and/or junction boxes.

(10) Space shall be provided within the storage area for loading and unloading construction materials and for all other permissible operations.

(11) The storage area shall be clearly delineated on all sides with barricades, fencing, railing or other safety devices reflectorized and/or illuminated in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices.

(12) For the purpose of mixing mortar, concrete or other materials, or to bend steel reinforcement bars, surface protection shall be provided.

(13) Mortar boxes for hand mixing shall not extend beyond the area permitted for the storage of materials on the street.

(14) Storage space shall not exceed eighty percent of each linear frontage of the plot on which the buildings are to be constructed, altered or demolished; nor shall more than one-third of the roadway width, with a maximum of one lane measured from the curb, be encumbered with construction material unless a street closing permit is obtained.

(15) The Commissioner may direct that construction material stored or placed within the street line, particularly in a critical area, be confined to the sidewalk frontage area where the building is to be constructed, altered or demolished. The permittee shall enclose the sidewalk storage area with a four foot high barricade or fence in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices and shall provide adequate lighting and a minimum of five feet of clear pedestrian passage. A temporary partial sidewalk closing permit shall be required.

(16) All equipment hoses, cables, or wires carried overhead across the sidewalk shall have fourteen (14) feet minimum clearance.

(17) All equipment hoses, cables, or wires placed on the sidewalk while in use shall be bridged and protected by warning signs and/or lights.

(18) A construction activity permit shall be required for a truck crane (boom truck) with telescopic, hydraulic or folding booms, over fifty feet and not more than one hundred thirty-five feet with a maximum rated capacity of three tons. A valid copy of a current "Crane Approval and Operations Certificate (CD)" shall be obtained from the Department of Buildings when a "Certificate of On-site Inspection" is not required.

(e) **Temporarily closing sidewalk.** A temporary partial sidewalk closing permit shall be required when more than three feet from the property line is obstructed by a fence. A temporary full sidewalk closing permit shall be required when a minimum clear sidewalk passage of five feet cannot be maintained for pedestrians.

(f) **Temporary pedestrian walkway in roadway.** (1) The Commissioner may require permittees to construct temporary pedestrian walkways on the roadway when adequate pedestrian passage cannot be maintained on the sidewalk.

(2) If a pedestrian walkway in the roadway is not required, warning signs advising pedestrians to use the opposite sidewalks shall be placed and maintained at each corner or as otherwise directed.

(g) **Temporarily closing roadway.** (1) A roadway closing permit is required for closing one or more lanes of the roadway.

(2) A roadway closing permit is required during blasting operations and the firing of shots.

(h) **Placement of shanties or trailers on the street.** (1) A permit shall be required to place a construction shanty, trailer, or similar structure on the street.

(2) Placement of shanties or trailers is subject to the same restrictions as the placement of equipment.

(3) Construction shanties or trailers shall be placed within the storage area provided for construction materials.

(4) Shanties and trailers shall be removed from the street when the building structure first floor level is covered by a roof, second floor or a second floor slab, unless otherwise directed by the Commissioner.

(5) Use of a shanty or trailer anywhere on a street as a renting or sales office shall be prohibited.

(6) No lettering or symbols shall be placed on a shanty or trailer except for the name and telephone number of the contractor.

(7) The shanty or trailer shall be lighted or have reflectorized striping on the exterior.

(i) **Crossing a sidewalk.** (1) A permit for crossing a sidewalk shall be obtained for the delivery or removal of any construction material or equipment on the street by vehicle or motorized equipment across a sidewalk where there is no approved drop curb (driveway).

(2) A maximum of two sidewalk crossings shall be allowed per each three hundred linear feet.

(j) **Placement of cranes and derricks on street.** For the purposes of these rules the terms "crane" and "derrick" shall be as defined in the New York City building code.

(1) **Permit requirements.**

(i) **Building operations.**

(A) A crane permit shall be required for all cranes and derricks operating in the street on building construction or related activity under the jurisdiction of the Department of Buildings, with the exception of: truck cranes with telescopic, hydraulic or folding booms, over fifty feet and not more than one hundred thirty-five feet with a maximum rated capacity of three tons, for which a construction activity permit has been issued.

(B) A crane permit shall be required for assist cranes with a maximum rated capacity greater than twenty tons to assemble, operate, or disassemble any crane on a street. Assist cranes with a maximum rated capacity of twenty tons or less shall require a Construction Activity Permit.

(C) All permittees shall comply with the rules for power operated cranes, derricks and cableways of the Department of Buildings.

(ii) **Street operations.**

(A) A crane permit shall be required for all cranes and derricks operating in the street with a maximum rated capacity greater than twenty (20) tons and which are not related to building operations.

(B) A construction activity permit shall be required for all cranes and derricks with a rated capacity of twenty tons or less when used for street related activity and where the activity is not under the jurisdiction of the Department of Buildings. A written statement shall be submitted by the owner of the structure, building or premises, general contractor, construction manager, or authorized agent stating that he/she visited the site and that there are no excavations or retaining walls and that no vaults or subsurface construction exists at the site. If there are excavations, retaining walls, vaults or subsurface construction existing at the site, then an affidavit shall be submitted from a Professional Engineer indicating (1) that the sidewalk or roadway and the supporting sub-grade can safely bear the crane and crane load, (2) that any existing vaults or other subsurface structures are capable of supporting the crane and load, and (3) that the sheeting or retaining walls supporting any excavations adjoining the street area are capable of supporting the crane and load.

(2) **Application.** All applicants for a permit shall file the following:

(i) A standard application including the following information:

(A) location of the work site;

(B) nature of the work to be performed;

(C) date of commencement of crane operation and estimated completion date; (D) length of the crane's boom. (Approval of the Department of Buildings is required for cranes with booms over two hundred fifty feet in length, contingent upon passing a satisfactory assembled inspection for each phase. For such cranes, a special review and approval meeting must be held with the Department of Buildings and the applicant.);

(E) model and serial numbers of cranes to be used;

(F) crane/derrick application form #M12;

(G) approval or permit from the Department of Buildings in the case of new structures, renovations or modifications made to a building, or placement of a sign structure; and

(H) daily or annual overdimensional permit.

(ii) A sketch showing:

(A) proposed location of the crane in the work area;

(B) area to be designated for pedestrian passageway;

(C) measures to be taken from safeguarding and protecting pedestrians and for maintaining vehicular traffic, including OCMC stipulations.

(iii) The following documentation from the Department of Buildings:

(A) "Crane Approval and Operations Certificate (CD)" (for all cranes and derricks).

(B) "Application for a Certificate of On-Site Inspection (Crane Notice)".

(C) All plans/amendments related to the operation and movement of the crane.

(3) **Placement.** All cranes may be placed partially or entirely on the street, in the discretion of the Commissioner, subject to the following conditions and requirements:

(i) A crane shall not occupy more than one third of the roadway width except in accordance with the stipulations

set forth in the street closing permit.

(ii) The extreme outer limit of the crane, in any operating or storage position, shall be at least twelve feet from the opposite curb. The Commissioner may issue a street closing permit when a minimum of twelve feet cannot be maintained.

(iii) Cranes equipped with steel tracks shall be supported by:

(A) steel plates; or

(B) timber platforms not less than six inches thick and covering the entire base of the crane.

(iv) The crane and loads shall not exceed 3,500 lbs. per square foot.

(v) For cranes equipped with rubber tires:

(A) the pressure applied to the street surface through outriggers or other elements of the crane shall not exceed 3,500 lbs. per square foot;

(B) the pressure shall be distributed by timber mats, wood planking or steel plates, extending not less than twelve inches beyond the base of the outriggers on all sides and sufficiently thick to uniformly distribute the load pressure including the weight of the crane.

(vi) Each permittee shall ensure that the surface upon which the crane will rest is capable of supporting the above pressures. The permittee shall further expand the size and thickness of the timber platforms, mats and steel plates beyond the minimum requirements stipulated above for all types of cranes, so as not to exceed the bearing capacity of the street. This shall apply to structural streets and streets over underground facilities/structures as well.

(vii) An alternate means of distributing the load may be approved by the Department of Buildings when a "Certificate of On-Site Inspection" is required.

(viii) When any part of the crane requiring a "Certificate of On-Site Inspection" is placed on the street, a statement by a New York State licensed professional engineer shall be filed with the Borough Permit Office certifying:

(A) that the street area and the supporting subgrade can bear the crane load safely. Should the street condition require that the crane and load be distributed over a larger area than afforded by the elements of the crane, the New York State licensed professional engineer shall furnish full dimensional details of load distribution;

(B) that the engineer has taken all necessary measures to ascertain that there is no vault underneath the sidewalk area or that if a vault does exist its roof is sufficiently strong to support the load to be imposed thereon.

(C) that the sheeting or retaining walls supporting any excavations adjoining the street bearing the load capacity are capable of supporting the area carrying the crane and load. When the crane is used to excavate adjacent to itself, the New York State licensed professional engineer shall specify the sheeting or retaining wall reinforcement required to support the crane and load.

(4) **Master or special rigger/sign hanger.** A "Certificate of Crane On-Site Inspection" is not required for a master or special rigger or a master or special sign hanger working within the purview of his/her license issued by the New York City Department of Buildings. Permissible work under the supervision of a master or special rigger or a master or special sign hanger includes:

(i) the hoisting or lowering of any article on the outside of any existing/completed building;

(ii) the removal or installation of boilers and tanks; and

(iii) the erection, maintenance or removal of signs or sign structures.

(5) **Safety requirements.**

(i) For purposes of safety, a flagperson(s) shall be assigned at all times during the operation of the crane to coordinate all crane operations with pedestrian and vehicular traffic and to give proper warnings to the crane operator. Exceptions may be granted under the following conditions:

(A) Where OCMC traffic stipulations provide for the crane to be operated in an area that has been closed to vehicular and pedestrian traffic, and

(B) Where the full outward swing of the crane actually does not exceed beyond the barricade and the sidewalk area within the swing of the crane carriage or boom is securely barricaded in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices to prevent pedestrian traffic or an adequate covered pedestrian walkway is provided.

(ii) When a crane is stored on a street it shall be clearly marked with adequate lighting or with high intensity fluorescent paint, reflectors, or other markings capable of producing a warning glow when struck by the head lamps of a vehicle or other source of illumination up to a distance of three hundred feet.

(iii) It shall be unlawful for any person other than a crane operator licensed by the Department of Buildings to operate a crane on a street.

(6) Permits for the placements of a crane on the street may be issued for the area from the northern street line of 66th Street to the extreme southernmost tip of Manhattan as specified on the map in subdivision l and in the following limited cases:

(i) When erecting from the street:

(A) a tower or climbing crane which will be operated within building site property lines; or

(B) a temporary platform or permanent plaza within a building site for the placement of a street crane.

(ii) When erecting a structure/building on a building site from the street within one hundred and ten working days when use of a tower or climbing crane is not practicable.

(iii) Temporary crane permits are issued for the erection of a structure for a maximum of one hundred ten working days. Crane usage shall be apportioned between the various stages of erection by the building owner, the general contractor or the construction manager. A working day is defined as each day covered by an active permit, not by the days a crane operates. Several cranes operating simultaneously at the same site shall be credited with one working day for each day covered by the active permit. The one hundred and ten day limit shall not be exceeded. However, extensions may be granted by the Commissioner in extraordinary circumstances.

(iv) Permittees shall be required to delineate the street area authorized for use in blue thermoplastic tape or paint. Upon expiration or revocation of the permit, the permittee shall remove the paint or markings and restore the area to its original condition.

(7) **Letter of Credit.** To ensure full compliance with all crane permit terms and stipulations the following requirements and procedures apply:

(i) Permittees are required to file a $40,000 Irrevocable Stand-by Letter of Credit.

(ii) The form of the Letter of Credit and the bank upon which it is drawn shall be approved by the Commissioner.

(iii) The term of such Letter of Credit shall be at least one year. Such Letter of Credit may cover multiple crane permit locations.

(iv) If the permittee fails to remove a crane when required or otherwise violates a permit condition, the terms of the Letter of Credit shall provide that the Commissioner may demand a payment of $1,000 a day for the first five days and $2,500 for each day thereafter.

(v) A Letter of Credit shall not be required in the following circumstances:

(A) contractors with licensed operators performing rigging operations, i.e. hoisting or lowering materials or equipment on or off existing buildings;

(B) in special cases, contractors with licensed operators performing rigging operations in conjunction with new building construction;

(C) contractors with licensed operators performing work on elevated railroad or bridge structure engaged in street construction such as pavement removal, trenching or bulkheading, or in the installation and/or repair of underground shafts, sewers and water facilities.

(k) **Format to be used for Irrevocable Stand-By Letter of Credit.**

Beneficiary

The City of New York

Department of Transportation

Manhattan Street Maintenance Office

Battery Maritime Building, 4th floor

New York, New York 10004

Sir/Madam:

By order of our client (name and address of Permittee), we issue this Stand-By Irrevocable Letter of Credit No. . . . . in your favor for $40,000.00 (Forty Thousand U.S. Dollars) effective immediately for our client's performance under the required Crane Permit(s) for the placement of cranes at the following location(s):

Funds under this Irrevocable Letter of Credit are available by Sight Draft drawn on us accompanied by:

1. A statement signed by the Commissioner of the New York City Department of Transportation or an authorized representative stating that:

"(Permittee Name) has failed to comply with the terms and conditions agreed to under the permit(s) issued or has failed to remove a crane when required. For this violation the City of New York, acting through its Department of Transportation, is demanding a payment of $1,000.00 (One Thousand U.S. Dollars) a day for the first five days of violation. After five days, payment for the continuing violation is $2,500.00 (Two Thousand Five Hundred U.S. Dollars) a day." "This(these) violation(s) has(have) existed for . . . days and demand is now made for payment of (enter total amount). We have notified (Permittee name and address) in writing that this certification is being presented."

2. A copy of notice given to (Permittee name) referred to in No. 1 above.

3. The original of this Irrevocable Letter of Credit and Amendments, if any.

The Sight Draft shall bear the following clause:

"DRAWN UNDER (Bank Name), LETTER OF CREDIT NUMBER . . . . . DATED . . . . . ."

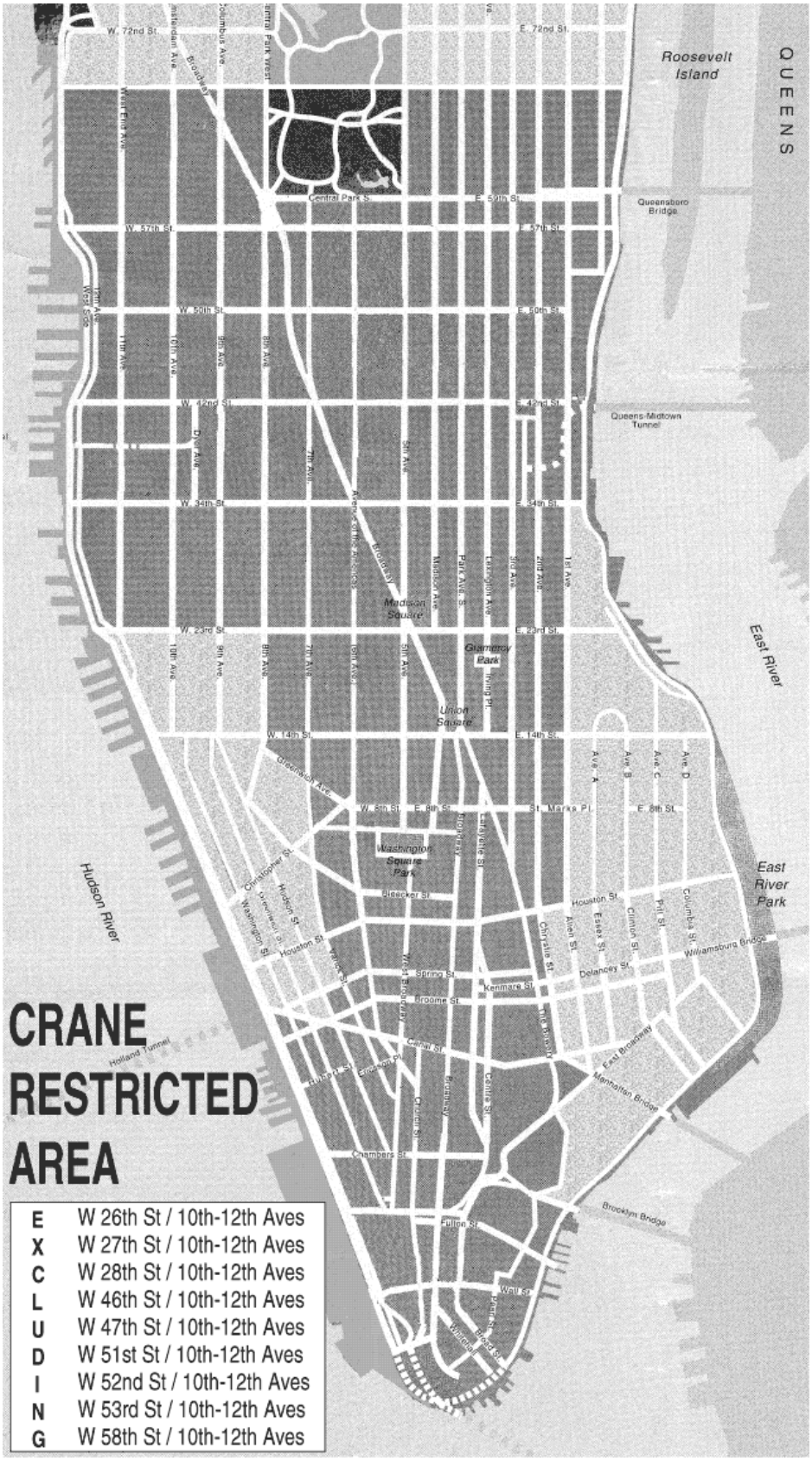
This Irrevocable Letter of Credit expires at (Bank office address) at the close of business on . . . . .

This Irrevocable Letter of Cedit sets forth in full the terms of our undertaking and such undertaking shall not in any way be modified, amended, or amplified by reference to any document, instrument or agreement referred to herein or to which this Irrevocable Letter of Credit relates and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

We agree with you that drafts drawn in compliance with the terms of this Credit shall be honored on presentation.

This Irrevocable Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.

(l) **Crane Restricted Area**


CRANE
RESTRICTED
AREA
EXCLUDING
W 26th St / 10th-12th Aves
W 27th St / 10th-12th Aves
W 28th St / 10th-12th Aves
W 46th St / 10th-12th Aves
W 47th St / 10th-12th Aves
W 51st St / 10th-12th Aves
W 52nd St / 10th-12th Aves
W 53rd St / 10th-12th Aves
W 58th St / 10th-12th Aves
Roosevelt Island
QUEENS
East River
Hudson River
East River Park
Madison Square
Union Square
Gramercy Park
Washington Square Park
Queensboro Bridge
Queens-Midtown Tunnel
Williamsburg Bridge
Manhattan Bridge
Brooklyn Bridge
Holland Tunnel
W. 72nd St.
E. 72nd St.
Central Park S.
E. 59th St.
W. 57th St.
E. 57th St.
W. 50th St.
E. 50th St.
W. 42nd St.
E. 42nd St.
W. 34th St.
E. 34th St.
W. 23rd St.
E. 23rd St.
W. 14th St.
E. 14th St.
W. 8th St.
E. 8th St.
St. Marks Pl.
Houston St.
Delancey St.
Broome St.
Canal St.
Chambers St.
Fulton St.
Wall St.
Bleecker St.
Spring St.
Kenmare St.
Grand St.
Division St.
Worth St.
Vesey St.
Barclay St.
Park Pl.
Dey St.
Cortlandt St.
Thomas St.
Murray St.
Warren St.
Albany St.
Liberty St.
Rector St.
Carlisle St.
Greenwich St.
Hudson St.
Washington St.
Christopher St.
West St.
Varick St.
Lafayette St.
Bowery
Chrystie St.
Allen St.
Essex St.
Clinton St.
Pitt St.
Columbia St.
Ave. A
Ave. B
Ave. C
Ave. D
1st Ave.
2nd Ave.
3rd Ave.
Lexington Ave.
Park Ave. S.
Madison Ave.
5th Ave.
6th Ave.
7th Ave.
8th Ave.
9th Ave.
10th Ave.
11th Ave.
Dyer Ave.
West End Ave.
Riverside Dr. West End
Columbus Ave.
Amsterdam Ave.
Central Park West
Broadway
Irving Pl.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Subd. (c) par (4) amended City Record Feb. 25, 2000 §6, eff. Mar. 26, 2000.

Subd. (c) par (5) added City Record Dec. 21, 2001 §2, eff. Jan. 20, 2002.

Subd. (d) par (2) amended City Record June 7, 2007 §8, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (d) par (6) amended City Record Feb. 25, 2000 §7, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (d) par (8) amended City Record June 7, 2007 §9, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (d) par (8) subpar (ii) amended City Record Nov. 3, 2004 §1, eff. Dec. 3, 2004. [See Note 1]

Subd. (d) par (9) amended City Record Nov. 3, 2004 §2, eff. Dec. 3, 2004. [See Note 1]

Subd. (d) par (16) amended City Record Nov. 3, 2004 §3, eff. Dec. 3, 2004. [See Note 1]

Subd. (j) par (2) subpar (ii) clause (C) amended City Record Feb. 25, 2000 §8, eff. Mar. 26, 2000.

[See T34 §2-01 Note 1]

Subd. (j) par (5) subpar (i) clause (A) amended City Record Feb. 25, 2000 §9, eff. Mar. 26, 2000.

[See T34 §2-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 3, 2004:

The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2093 of the New York City Charter and Title 19 of the New York City Administrative Code.

Section 2-05 of Title 34 of the Official Compilation of the Rules of the City of New York regulates the placement of construction material, by private contractors, on areas under the jurisdiction of the Department.

Subparagraph (ii) of paragraph (8) and paragraph (9) of subdivision (d) of §2-05 are being amended to include additional city-owned electrical equipment in this rule and expand the access areas to it during construction.

Paragraph (16) of subdivision (d) of §2-05 is being amended to provide a safer passage for pedestrian traffic on the sidewalk.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2

included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-06 Land Contour Work.

(a) **Permit required.** (1) A permit shall be obtained from the Commissioner to perform land contour work which includes the clearing, grubbing, grading, filling or excavation of vacant lots and other specified land parcels.

(2) The provisions of these rules are also applicable to the disposal site for excavated materials.

(3) All permits are subject to applicable provisions contained in §2-02 of these rules.

(b) **Conditions.** (1) No condition shall be created or maintained that interferes with or obstructs existing drainage, unless an alternate drainage plan is provided for in the above plans, subject to approval by the Department of Environmental Protection. The applicant shall provide for conduction of surface waters as required by the Commissioner to the nearest approved Department of Environmental Protection collection point.

(2) Watercourses, drainage ditches, conduits and other like or unlike means of carrying off water or disposing of surface water shall not be obstructed by refuse, waste, construction materials, earth, stones, tree stumps, branches, or by any other means that may interfere with surface drainage or cause the impoundment of surface waters either within or beyond the area where land contour work is performed.

(3) All excavations shall be drained. The drainage shall be maintained until the completion of the excavation and pumping shall be used where necessary.

(4) Fill material shall consist of inert, inorganic matter, suitably compacted. No materials shall be used other than

clean earth, ashes, dirt, concrete, rock, gravel, stone, slag, or sand. Rocks and masonry shall not be larger than one-quarter of a cubic yard. No material larger than three inches in dimension may be placed within two feet of the surface. For public safety and health, the Commissioner may require a smooth graded surface treated according to the Department specifications with asphalt paving mixture, compacted cinders, stone screening, soil cement mixtures, or seeded or sodded lawn treatment, or other material as required by the Commissioner.

(5) Sodding or planting, where required, shall be completed within thirty days of work completion or as may be permitted by the Commissioner. Safeguards shall be provided to prevent soil erosion in the interval preceding sodding or planting.

(6) Work beyond lot lines shall be subject to the requirements of these rules.

(7) A minimum safety factor of two shall be used against earth slides within the property and the adjacent property. Where two parallel streets are at unequal elevations, the land grading between these two streets generally should be at a constant slope. Where possible the ground should be graded back from the front property line at a grade level with the street for a distance equal to the normal zoning set-back requirement but not less than twenty-five feet before commencing a slope.

(c) **Exceptions.** A permit is not required for grading work to be performed pursuant to a Department of Buildings permit for the erection of one or more structures, provided that the permit authorizes the grading, and that the work is performed entirely within the building site area.

(d) **Application.** (1) The application shall state the following:

(i) name of the land surveyor or New York State licensed professional engineer;

(ii) description of the land contour work;

(iii) work limits and number of linear feet in the work area;

(iv) cubic yards of fill to be placed;

(v) that work areas exceeding ten thousand square feet shall be supervised by a New York State licensed professional engineer. The application shall note the name, address, and telephone number of the New York State licensed professional engineer;

(vi) whether streets adjacent to the land are finally mapped and with whom title of the streets is vested. Prescriptive streets as determined by the corporation counsel shall be deemed as finally mapped.

(2) Applicants for a Land Contour permit shall be the property owner or the owner's authorized representative. The permit application shall be accompanied by:

(i) a statement of property ownership or of authorization by the property owner if work is to be performed by a contractor;

(ii) a statement from the surveyor or New York State licensed professional engineer which states that the work will not cause adverse drainage conditions to the property and adjacent land;

(iii) a plan prepared by a land surveyor or New York State licensed professional engineer.

(3) Applicants shall submit a plan at a minimum scale of 1"=50' or the scale required by the Commissioner. The original mylar plus one paper print filed at the time of permit application shall be drawn according to the Commissioner's standards. The plans shall show the following:

(i) name of the land surveyor or New York State licensed professional engineer;

(ii) existing watercourses, drainage ditches, conduits and other drainage facilities, or like or unlike means of carrying off water, or disposing of property surface water, and the area three hundred feet beyond the property and any additional information as required by the Commissioner;

(iii) existing and proposed grades of the area to be filled or excavated, plotted in contours spaced at five feet intervals or at other intervals as required by the Commissioner; (iv) direction of all surface water flow before and after completion of land contour work;

(v) statement of the slopes to be maintained and a cross section of the slopes; (vi) soil investigation, including, but not limited to, locating the elevation of the ground water table, whenever required by the Commissioner;

(vii) lines and grades of abutting streets which are legally mapped;

(viii) profile of the existing grade, legal grade and final grade of the abutting street;

(ix) substitute for existing drainage as noted below, subject to approval of the Department of Environmental Protection:

(A) interference with or obstruction of surface course causing drainage to flow in a direction other than a general direction and drainage pattern existing prior to the land contour work tending to cause impoundment or flooding either within or beyond the area on which contour work is performed;

(B) increase of surface course drainage in the direction and drainage pattern existing prior to the land contour work tending to cause impoundment or flooding either within or beyond the area in which contour work is performed; and

(C) interference or obstruction of existing watercourses, drainage ditches, conduits and other like or unlike means of carrying off water or disposing of surface water;

(x) proposed provisions for maintenance of existing drainage or for any substitute that shall drain the property adequately and shall provide safeguards against health hazards according to criteria established in consultation with the Department of Health as noted below:

(A) flooding: proposed provisions to eliminate existing conditions of surface water impoundment. The entire area under examination shall be provided within the property. The plans shall indicate the provisions taken to avoid direct flooding of adjacent properties or intrusion of surface water to existing or planned individual sewage disposal systems; and

(B) small water impoundment: proposed provisions to avoid small water impoundment which may become the breeding area or harborage of insects and other pests. Pests are defined as members of the class insecta and members of the Phylum Arthropoda including spiders, mites, ticks, mosquitoes, centipedes and wood lice.

(xi) provisions for disposal of excavation material.

(4) Certification shall be required from a New York State licensed professional engineer that drainage for a three hundred foot radius around the site will not be adversely affected by grading, and that existing watercourses, if any, will not be disturbed.

(e) **Approval required.** (1) Sites designated as Wetlands shall have prior approval from the New York State Department of Environmental Conservation.

(2) Sites in designated Natural Areas or in South Richmond shall require prior approval from the City Planning

Commission.

(3) The Commissioner may require that land contour plans be reviewed and approved by the Department of Environmental Protection.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

DERIVATION

Section 2-06 was derived from former §2-12 from original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may

contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

34 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-07 Underground Street Access Covers, Transformer Vault Covers and Gratings.

(a) **General conditions.** (1) Except for work on the critical roadways during restricted times listed in subdivision c of this section, and subject to these rules, underground street access covers, transformer vault covers and gratings may be opened to perform subsurface work without the prior authorization of the Department. During a Department declared embargo, sidewalks shall be included in the restrictions listed in paragraph (5) of subdivision (c) of this section.

(2) Except when emergency work is being performed, if excessive traffic congestion occurs on a roadway where underground street access covers, transformer vault covers or gratings have been opened, any police officer or other person authorized to enforce these rules may direct that the cover or grating openings be closed and the encumbered traffic lane opened until the congestion abates. It shall be a violation of these rules to disobey such a direction.

(3) The opening of covers and gratings shall not restrict more than a maximum of 11 feet of roadway. If such opening results in a full roadway closure, the Police Department, the Communication Centers of the Fire Department and the Department of Transportation shall be notified simultaneously with the closing. If such opening falls under the provisions of subdivision (g) of §2-02 of these rules, the entity opening the covers or gratings shall comply with all the requirements of such subdivision.

(4) Except for emergency work or where required due to the nature of the work, no more than two consecutive covers or gratings shall be opened at any time on a block segment, including the adjacent intersection.

(5) A permit is required to store material or equipment on the street during non-working hours whether or not the cover or grating opening is in a critical roadway. No such permit shall be required to store tool carts on the sidewalk. No

tool cart shall be stored on a sidewalk unless a minimum passage of five feet is maintained on the sidewalk for pedestrians. No tool cart stored on a sidewalk shall obstruct any hydrant, bus stop or driveway. A permit is required to store tool carts on the roadway. All tool carts shall display the name, address and telephone number of the entity that placed them on the sidewalk or roadway.

(6) Where subsurface work requiring the opening of covers and gratings on a sidewalk is performed and a five foot minimum passageway on the sidewalk cannot be maintained for pedestrians, a temporary sidewalk closing permit shall be obtained.

(7) Flagpeople. Permittees whose work results in the closing of a moving traffic lane, which requires traffic to be diverted to another lane, shall, at all times while actively working at the site, post a flagperson or utilize an authorized plan for the maintenance and protection of traffic at the point where traffic is diverted to assist motorists and pedestrians to proceed around the obstructed lane.

(b) **Maintenance requirements.** (1) The owners of covers or gratings on a street are responsible for monitoring the condition of the covers and gratings and the area extending twelve inches outward from the perimeter of the hardware.

(2) The owners of covers or gratings shall replace or repair any cover or grating found to be defective and shall repair any defective street condition found within an area extending twelve inches outward from the perimeter of the cover or grating.

(3) Street hardware shall be flush with the surrounding street surface. Street hardware which is greater than $^{1}/_{2}$" above or below the street surface as measured by a six foot straight edge centered on the hardware shall be replaced or adjusted at the owner's expense.

(4) Owners of underground facilities shall only use covers with their name or registered markings clearly displayed for identification purposes. Owners shall have one year from the date of the adoption of this paragraph to be in full compliance with this paragraph.

(5) Covers shall be clearly identified with markings that are registered with the Department. The owners of covers which are in good condition but lack identifying markings shall place the assigned color code or tag next to the cover or grating in lieu of replacement.

(6) Underground street access covers, transformer vault covers, and gratings shall not be placed in any street over an opening unless they are of a type approved by the Commissioner.

(c) **Work in critical roadways.** (1) Except as otherwise provided in paragraphs 2 and 3 of this subdivision, no person shall perform subsurface work requiring cover and grating openings in the critical roadways listed in paragraph 5 of this subdivision at the locations and during the hours specified in such paragraph.

(2) No person shall perform emergency work requiring cover or grating openings in the critical roadways listed in paragraph 5 of this subdivision at the locations and during the hours specified in such paragraph without an emergency authorization number from the Department.

(3) Notwithstanding the foregoing provisions, subsurface work requiring cover or grating openings may be performed at any time in traffic lanes which are obstructed by street construction authorized by the Commissioner, i.e., by the installation of water mains, sewers, street lighting, traffic control devices, cranes, construction debris containers, or other construction equipment.

(4) Authorization for emergency work requiring cover and grating openings in critical roadways during restricted hours.

(i) An authorization number shall be obtained by the owner of the cover or grating or the authorized agent of the owner by faxing the required DOT request for authorization number form to the Department's Emergency Authorization Unit, unless otherwise directed by the Commissioner. Required information shall include, but not be limited to the following:

(A) Name of permittee

(B) Permittee ID #

(C) Location of emergency (including borough)

(D) Type of emergency (including interruption of service)

(ii) Authorization numbers shall be kept on site and shall be presented upon the request of any police officer or other City employee authorized by the Commissioner to enforce these rules. Any additional information regarding the emergency work that is requested at the site by a Department inspector shall be provided by the permittee and/or the persons performing such work.

(iii) The fee for obtaining an authorization number shall be thirty dollars ($30.00). Such fee shall be paid within fifteen days of billing. The owner shall be responsible for payment of all fees imposed pursuant to this paragraph.

(iv) Emergency work shall be performed on an around-the-clock basis until the emergency is eliminated, at which time the emergency authorization number expires, as specified in subparagraph (ii) of paragraph (2) of subdivision (g) of §2-11 of these rules.

(v) The person performing such emergency work shall inform the Department's Emergency Authorization Unit within twelve hours of the completion of such emergency work.

(5) Critical roadways: Work restrictions apply Monday through Friday (except for the holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day) at the locations (including intersections) and during the hours listed below:

(i) Manhattan

(A) **East/West Roadways-Restricted Access 7:00 AM to 8:00 PM**

1. 8th Street-Avenue of the Americas to Third Avenue

2. 9th Street-Avenue of the Americas to First Avenue

3. 14th Street-Joe DiMaggio Highway to FDR Drive

4. 20th Street-Avenue C to First Avenue

5. 23rd Street-Joe DiMaggio Highway to FDR Drive/Avenue C

6. 25th Street-FDR Drive to First Avenue

7. 30th Street-Joe DiMaggio Highway to FDR Drive

8. 31st Street-Tenth Avenue to Second Avenue

9. 32nd Street-Seventh Avenue to Second Avenue

10. 33rd Street-Joe DiMaggio Highway to First Avenue
11. 34th Street-Joe DiMaggio Highway to FDR Drive
12. 35th Street-Eleventh Avenue to FDR Drive
13. 36th Street-Eleventh Avenue to FDR Drive
14. 37th Street-Eleventh Avenue to FDR Drive
15. 38th Street-Eleventh Avenue to FDR Drive
16. 39th Street-Joe DiMaggio Highway to First Avenue
17. 40th Street-Joe DiMaggio Highway to First Avenue
18. 41st Street-Joe DiMaggio Highway to Avenue of the Americas
19. 42nd Street-Joe DiMaggio Highway to FDR Drive
20. 43rd Street-First Avenue to Lexington Avenue
21. 43rd Street-Vanderbilt Avenue to Joe DiMaggio Highway
22. 44th Street-First Avenue to Lexington Avenue
23. 44th Street-Vanderbilt Avenue to Joe DiMaggio Highway
24. 45th Street-First Avenue to Joe DiMaggio Highway
25. 46th Street-First Avenue to Eighth Avenue
26. 47th Street-First Avenue to Eighth Avenue
27. 48th Street-First Avenue to Eighth Avenue
28. 49th Street-FDR Drive to Joe DiMaggio Highway
29. 50th Street-Beekman Street to Joe DiMaggio Highway
30. 51st Street-First Avenue to Eighth Avenue
31. 52nd Street-First Avenue to Eighth Avenue
32. 53rd Street-FDR Drive to Eighth Avenue
33. 54th Street-First Avenue to Eighth Avenue
34. 55th Street-Sutton Place to Joe DiMaggio Highway
35. 56th Street-Sutton Place to Joe DiMaggio Highway
36. 57th Street-Sutton Place to Joe DiMaggio Highway
37. 58th Street-Sutton Place to Eleventh Avenue

38. 59th Street-Fifth Avenue to Sutton Place

39. 59th Street-Miller Highway to Columbus Avenue

40. 60th Street-FDR Drive to Fifth Avenue

41. 61st Street-FDR Drive to Fifth Avenue

42. 62nd Street-FDR Drive to Fifth Avenue

43. 63rd Street-FDR Drive to Fifth Avenue

44. 65th Street-Central Park West to Fifth Avenue (Transverse Roadway)

45. 65th Street-West End Avenue to York Avenue

46. 66th Street-Central Park West to Fifth Avenue (Transverse Roadway)

47. 66th Street-West End Avenue to York Avenue

48. 71st Street-FDR Drive to York Avenue

49. 72nd Street-Central Park West to Fifth Avenue (Transverse Roadway)

50. 72nd Street-Central Park West to Henry Hudson Parkway

51. 72nd Street-Park Avenue to Fifth Avenue

52. 73rd Street-FDR Drive to York Avenue

53. 79th Street-Central Park West to Fifth Avenue (Transverse Roadway)

54. 79th Street-Henry Hudson Parkway to Broadway

55. 79th Street-Park Avenue to Fifth Avenue

56. 79th Street-York Avenue to FDR Drive

57. 81st Street-Amsterdam Avenue to Central Park West

58. 84th Street-Park Avenue to Fifth Avenue

59. 85th Street-Park Avenue to Fifth Avenue

60. 86th Street-Amsterdam Avenue to Central Park West

61. 86th Street-Central Park West to Fifth Avenue (Transverse Roadway)

62. 92nd Street-FDR Drive to First Avenue

63. 95th Street-Riverside Drive to Broadway

64. 96th Street-FDR Drive to Fifth Avenue

65. 96th Street-Henry Hudson Parkway to Central Park West

66. 97th Street-Central Park West to Fifth Avenue (Transverse Roadway)

67. 97th Street-FDR Drive to Fifth Avenue

68. 97th Street-Henry Hudson Parkway to Central Park West

69. 106th Street-First Avenue to FDR Drive

70. 116th Street-First Avenue to FDR Drive

71. 125th Street-Henry Hudson Parkway to FDR Drive

72. 135th Street-St. Nicholas Avenue to Harlem River Drive

73. 138th Street-Malcolm X Boulevard to Harlem River Drive

74. 145th Street-Riverside Drive to Harlem River Drive

75. 155th Street-Riverside Drive to Harlem River Drive

76. 158th Street-Henry Hudson Parkway to Broadway

77. 165th Street-Riverside Drive to Broadway

78. 178th Street-Fort Washington Avenue to Amsterdam Avenue

79. 179th Street-Fort Washington Avenue to Amsterdam Avenue

80. 181st Street-Riverside Drive to Amsterdam Avenue

81. 207th Street-Broadway to Ninth Avenue

82. Ann Street-Park Row to Gold Street

83. Avenue of the Finest-Rose Street to Pearl Street

84. Barclay Street-West Street to Broadway

85. Battery Place-West Street to Broadway

86. Bayard Street-Baxter Street to Bowery

87. Beach Street-Varick Street to Avenue of the Americas

88. Beekman Street-Park Row to South Street

89. Broome Street-Varick Street to Clinton Street

90. Canal Street-West Street to Essex Street/East Broadway

91. Catherine Street-Bowery/Division Street to South Street

92. Central Park South-Broadway to Fifth Avenue

93. Chambers Street-River Terrace to Centre Street

94. Christopher Street-Joe DiMaggio Highway to Greenwich Avenue/Avenue of the Americas

95. Clarkson Street-Joe DiMaggio Highway to Seventh Avenue

96. Cartlandt Street-Church Street to Broadway

97. Delancey Street-Clinton Street to Bowery

98. Dey Street-Church Street to Broadway

99. Division Street-Bowery to Canal Street

100. Dominick Street-Avenue of the Americas to Hudson Street

101. Dover Street-Pearl Street to South Street

102. Dover Street-Pell Street to Bowery

103. Duane Street-Greenwich Street to Lafayette Street

104. Dyckman Street-Henry Hudson Parkway to Harlem River Drive

105. East Broadway-St. James Place to Grand Street

106. East Drive-Central Park South to Central Park North

107. Exchange Alley-Broadway to Hanover Street

108. Frankfort Street-Park Row to Pearl Street

109. Fulton Street-Church Street to South Street

110. Grand Street-Varick Street to South Street

111. Harrison Street-West Street to Hudson Street

112. Hester Street-Centre Street to Essex Street

113. Houston Street-Joe DiMaggio Highway to FDR Drive

114. John Street-Broadway to South Street

115. Kenmare Street-Lafayette Street to Bowery

116. Liberty Street-South End Avenue to Pearl Street

117. Madison Street-Avenue of the Finest to Grand Street

118. Maiden Lane-Broadway to South Street

119. Montgomery Street-East Broadway to South Street

120. Murray Street-North End Avenue to Broadway

121. Park Place-Greenwich Street to Broadway

122. Pearl Street-Lafayette Street to St. James Place

123. Pine Street-Broadway to South Street

124. Reade Street-Greenwich Street to Centre Street

125. Rector Street-West Street to Broadway

126. Robert F. Wagner Senior Place-Pearl Street to South Street

127. Spring Street-Joe DiMaggio Highway to Bowery

128. Spruce Street-Park Row to Gold Street

129. St. Marks Place-Third Avenue to First Avenue

130. Thomas Street-Hudson Street to Broadway

131. Vesey Street-North End Avenue to Broadway

132. Walker Street-Beach Street to Canal Street

133. Wall Street-Broadway to South Street

134. Warren Street-Greenwich Street to Broadway

135. Watts Street-Broome Street to Hudson Street

136. West Drive-Central Park South to Central Park North

137. Worth Street-Hudson Street to Park Row (Chatham Square)

Note: All service roads abutting highways, parkways, expressway, etc. are considered to be critical streets from 7:00 AM to 8:00 PM.

(B) **North/South Roadways-Restricted Access 7:00 AM to 8:00 PM**

1. Allen Street-East Broadway to Houston Street

2. Amsterdam Avenue-59th Street to 72nd Street

3. Avenue C-14th Street to 34th Street

4. Avenue of the Americas-Church Street to Central Park South

5. Battery Park Underpass-Joe DiMaggio Highway to South Street

6. Bowery-Worth Street to Third Avenue/6th Street

7. Broad Street-South Street to Wall Street

8. Broadway-Battery Place to 79th Street

9. Central Park West-59th Street to 66th Street

10. Centre Street-Park Row to Kenmare Street
11. Chrystie Street-Canal Street to Houston Street
12. Church Street-Liberty Street to Canal Street
13. Cleveland Place-Kenmare Street to Lafayette Street
14. Clinton Street-Grand Street to Broome Street
15. Columbus Avenue-59th Street to 66th Street
16. Eighth Avenue-Hudson Street to Central Park South
17. Eleventh Avenue-Joe DiMaggio Highway to 59th Street
18. Essex Street-Canal Street to Houston Street
19. FDR Drive-Whitehall Street to 125th Street
20. Fifth Avenue-Washington Square North to 139th Street
21. First Avenue-Houston Street to 66th Street
22. First Avenue Tunnel-41st Street to 49th Street
23. Fourth Avenue-Bowery to 14th Street
24. Gold Street-Maiden Lane to Frankfort Street
25. Greenwich Street-Battery Place to Gansevoort Street
26. Harlem River Drive-125th Street to Dyckman Street
27. Henry Hudson Parkway-59th Street to Henry Hudson Bridge
28. Hudson Street-Chambers Street to 14th Street
29. Irving Place-14th Street to 20th Street
30. Joe DiMaggio Highway-Battery Place to 59th Street (*Restricted Access 6:00 AM to 8:00 PM)
31. Lafayette Street-Centre Street to 8th Street
32. LaGuardia Place-Houston Street to Washington Square South
33. Lexington Avenue-Gramercy Park North to 129th Street
34. Madison Avenue-23rd Street to 138th Street
35. Nassau Street-Wall Street to Spruce Street
36. Ninth Avenue-Gansevoort Street to 59th Street
37. Norfolk Street-Grand Street to Delancey Street

38. Park Avenue-42nd Street to 66th Street

39. Park Avenue South-17th Street to 42nd Street

40. Park Avenue Tunnel-33rd Street to 40th Street

41. Park Row-Broadway to Worth Street

42. Pearl Street-State Street to Lafayette Street

43. Pike Street-South Street to East Broadway

44. Second Avenue-Houston Street to 66th Street

45. Seventh Avenue-11th Street to Central Park South

46. Seventh Avenue South-Houston Street to 11th Street

47. South Street-Whitehall Street to Montgomery Street

48. St. James Place-Pearl Street to Bowery

49. State Street-Whitehall Street to Battery Place

50. Suffolk Street-Grand Street to Delancey Street

51. Sutton Place/Sutton Place South-53rd Street to 59th Street

52. Tenth Avenue-Joe DiMaggio Highway to 59th Street

53. Third Avenue-Bowery/6th Street to 66th Street

54. Trinity Place-Morris Street to Liberty Street

55. Union Square East-14th Street to 17th Street

56. Union Square West-14th Street to 17th Street

57. University Place-8th Street to 14th Street

58. Vanderbilt Avenue-42nd Street to 47th Street

59. Varick Street-West Broadway to Houston Street

60. Washington Street-Joseph P. Ward Street to 14th Street

61. Water Street-Whitehall Street to Fulton Street

62. West Broadway-Vesey Street to Houston Street

63. West End Avenue-59th Street to 72nd Street

64. Whitehall Street-South Street to Broadway

65. William Street-Broad Street to Spruce Street

66. York Avenue-59th Street to 73rd Street

Note: All service roads abutting highways, parkways, expressway, etc. are considered to be critical streets from 7:00 AM to 8:00 PM.

(C) **North/South Roadways-Restricted Access 7:00 AM to 10:00 AM/4:00 PM to 8:00 PM**

1. Adam Clayton Powell Boulevard-Central Park North to 155th Street

2. Amsterdam Avenue-72nd Street to 181st Street

3. Broadway-79th Street to Ninth Avenue/Harlem River

4. Dyckman Street-Harlem River Drive to Henry Hudson Parkway

5. East End Avenue-79th Street to 90th Street

6. FDR Drive Southbound Service Road-92nd Street to 97th Street

7. First Avenue-66th Street to 125th Street

8. Fort Washington Avenue-Broadway/158th Street to 181st Street

9. Lenox Avenue-Central Park North to 145th Street

10. Riverside Drive-72nd Street to Dyckman Street

11. Second Avenue-66th Street to 128th Street/Harlem River Drive

12. St. Nicholas Avenue-Central Park North to 181st Street

13. Tenth Avenue-Dyckman Street to Broadway

14. Third Avenue-66th Street to 128th Street

15. West End Avenue-72nd Street to 106th Street

16. York Avenue-73rd Street to 92nd Street

(D) **North/South Roadways-Restricted Access 7:00 AM to 10:00 AM**

1. Central Park West (southbound)-110th Street/Cathedral Parkway to 72nd Street

2. Columbus Avenue (southbound)-Cathedral Parkway/110th Street to 66th Street

3. Frederick Douglass Boulevard (southbound)-155th Street to 110th Street

4. Park Avenue (southbound)-135th Street/Harlem River Drive to 66th Street

(E) **North/South Roadways-Restricted Access 4:00 PM to 8:00 PM**

1. Central Park West (northbound)-72nd Street to 110th Street/Cathedral Parkway

2. Frederick Douglass Boulevard (northbound)-110th Street/Cathedral Parkway to 155th Street

3. Park Avenue (northbound)-66th Street to 135th Street/Harlem River Drive

(ii) Brooklyn

(A) **Restricted Access 7:00 AM to 7:00 PM**

1. Adams Street-Fulton Street to Prospect Street

2. Belt Parkway (Shore Parkway)-Gowanus Expressway to Queens County Line

3. Boerum Place-Atlantic Avenue to Fulton Street

4. Brooklyn-Queens Expressway-Gowanus Expressway to Kosciusko Bridge

5. Cadman Plaza West-Old Fulton Street to Pierrepont Street

6. Court Street-Pierrepont Street to Atlantic Avenue

7. DeKalb Avenue-Carlton Avenue to Fulton Street

8. Flatbush Avenue-Concord Street/Manhattan Bridge to Grand Army Plaza

9. Fourth Avenue-Shore Road to Flatbush Avenue

10. Furman Street-Old Fulton Street to Atlantic Avenue

11. Gowanus Expressway-Verrazano Bridge to Brooklyn-Queens Expressway/Battery Tunnel

12. Hamilton Avenue-Third Avenue to Van Brunt Street

13. Hicks Street East (northbound)-Hamilton Avenue to Atlantic Avenue

14. Jackie Robinson Parkway-Jamaica Avenue to County Limits

15. Jay Street-Fulton Street to Prospect Street

16. Joralemon Street-Clinton Street to Flatbush Avenue

17. Myrtle Avenue-Jay Street to Carlton Avenue

18. Nostrand Avenue-Kings Highway to Flatbush Avenue

19. Ocean Parkway-Church Avenue to Brighton Beach Avenue

20. Old Fulton Street-Furman Street to Cadman Plaza West

21. Prospect Expressway-Gowanus Expressway to Church Avenue

22. Sands Street-Navy Street to Adams Street

23. Smith Street-Atlantic Avenue to Fulton Street

24. Third Avenue-65th Street to Flatbush Avenue

25. Tillary Street-Cadman Plaza West to Navy Street

26. Willoughby Street-Carlton Avenue to Adams Street

Note: All service roads abutting highways, parkways, expressway, etc. are considered to be critical streets from 7:00 AM to 7:00 PM.

(B) **Restricted Access 7:00 AM to 10:00 AM/4:00 PM to 7:00 PM**

1. 17th Street-Third Avenue to Fifth Avenue

2. 39th Street-Second Avenue to Dahill Road

3. 65th Street-Second Avenue to Avenue P

4. 86th Street-Fourth Avenue to McDonald Avenue

5. 92nd Street-Seventh Avenue to Fourth Avenue

6. Atlantic Avenue-Furman Street to Eldert Lane

7. Avenue U-Ocean Parkway to Ralph Avenue

8. Bay Parkway-Shore Parkway to Ocean Parkway

9. Bay Ridge Avenue-Shore Road to Seventh Avenue

10. Bedford Avenue-Flatbush Avenue to Broadway

11. Borinquen Place-Union Avenue to Marcy Avenue

12. Brighton Beach Avenue-Ocean Parkway to Coney Island Avenue

13. Broadway-Kent Avenue to Jamaica Avenue

14. Bushwick Avenue-Jamaica Avenue to Metropolitan Avenue

15. Caton Avenue-Fort Hamilton Parkway to Bedford Avenue

16. Church Avenue-Chester Avenue to Kings Highway

17. Columbia Street-Atlantic Avenue to Hamilton Avenue

18. Coney Island Avenue-Park Circle to Brighton Beach Avenue

19. Cooper Street-Broadway to Irwin Avenue

20. Cropsey Avenue-14th Avenue to Neptune Avenue

21. Division Street-Kent Avenue to Williamsburg Street East

22. Eastern Parkway-Grand Army Plaza to Atlantic Avenue

23. Emmons Avenue-Shore Boulevard to Knapp Street

24. Empire Boulevard-Flatbush Avenue to Utica Avenue

25. Fifth Avenue-Fourth Avenue/97th Street to Flatbush Avenue
26. Flatbush Avenue-Grand Army Plaza to Gil Hodges Memorial Bridge
27. Flatlands Avenue-Kings Highway to Pennsylvania Avenue
28. Flushing Avenue-Carlton Avenue to Cypress Avenue
29. Fort Hamilton Parkway-92nd Street to Park Circle
30. Fulton Street-Flatbush Avenue to Broadway
31. Gerritsen Avenue-Avenue U to Nostrand Avenue
32. Grand Street-Roebling Street to Gardner Avenue
33. Greenpoint Avenue-Manhattan Avenue to Kingsland Avenue
34. Havemeyer Street-Broadway to Metropolitan Avenue
35. Highland Boulevard-Bushwick Avenue to Robert Place
36. Humboldt Avenue-Greenpoint Avenue to Maspeth Avenue
37. Jamaica Avenue-Broadway to Eldert Lane
38. Kent Avenue-Williamsburg Street West to Calver Street
39. Kings Highway-Avenue P to Eastern Parkway
40. Kingsland Avenue-Greenpoint Avenue to Maspeth Avenue
41. Knapp Street-Emmons Avenue to Nostrand Avenue
42. Liberty Avenue-Eastern Parkway to 75th Street
43. Linden Boulevard-Bedford Avenue to 78th Street
44. Manhattan Avenue-Broadway to Commercial Street
45. Marcy Avenue-Broadway to Metropolitan Avenue
46. Marcy Avenue-Fulton Street to Flushing Avenue
47. McGuinness Boulevard-Ash Street/Pulaski Bridge to Meeker Avenue
48. Meeker Avenue-Gardner Avenue to Metropolitan Avenue
49. Metropolitan Avenue-Kent Avenue to Scott Avenue
50. Myrtle Avenue-Carlton Avenue to Wychoff Avenue
51. Nassau Street-Flatbush Avenue to Carlton Avenue
52. Neptune Avenue-Cropsey Avenue to Shore Boulevard

53. New Utrecht Avenue-86th Street to 39th Street

54. New York Avenue-Foster Avenue to Fulton Street

55. North Conduit Avenue-Atlantic Avenue to Sutter Avenue

56. Nostrand Avenue-Emmons Avenue to Kings Highway

57. Ocean Avenue-Emmons Avenue to Flatbush Avenue

58. Park Avenue-Navy Street to Classon Avenue

59. Parkside Avenue-Park Circle to Ocean Avenue/Flatbush Avenue

60. Pennsylvania Avenue-Belt Parkway to Jamaica Avenue

61. Prospect Avenue-Fort Hamilton Parkway to Third Avenue

62. Ralph Avenue-Avenue U to Flatlands Avenue

63. Remsen Avenue-Seaview Avenue to Utica Avenue

64. Rockaway Parkway-Canarsie Veteran's Circle to East New York Avenue

65. Rodney Street-Broadway to Metropolitan Avenue

66. Roebling Street-South 5th Street to Metropolitan Avenue

67. Second Avenue-Wakeman Place to 60th Street

68. Seventh Avenue-86th Street to 65th Street

69. South Conduit Avenue-Atlantic Avenue to Sutter Avenue

70. Stillwell Avenue-Surf Avenue to Avenue P

71. Surf Avenue-West 17th Street to Ocean Parkway

72. Third Avenue-Shore Road to 65th Street

73. Utica Avenue-Flatbush Avenue to Eastern Parkway

74. Washington Avenue-Lincoln Road to Flushing Avenue

(C) **Restricted Access 7:00 AM to 10:00 AM**

1. Hicks Street-Atlantic Avenue to Old Fulton Street

2. Smith Street-Hamilton Avenue to Atlantic Avenue

(D) **Restricted Access 4:00 PM to 7:00 PM**

1. Court Street-Atlantic Avenue to Hamilton Avenue

2. Hicks Street West (southbound)-Congress Street to Hamilton Avenue

(iii) Bronx

(A) **Restricted Access 7:00 AM to 7:00 PM**

1. Bronx River Parkway-Bruckner Expressway to 238th Street

2. Bruckner Boulevard-Third Avenue to Bronx River Avenue

3. Bruckner Expressway-Major Deegan Expressway to Hutchinson River Parkway

4. Cross Bronx Expressway-Throgs Neck Expressway to Major Deegan Expressway

5. East 138th Street-Exterior Street to Bruckner Boulevard

6. Henry Hudson Parkway-Henry Hudson Bridge to Westchester County Line

7. Hutchinson River Parkway-Bronx-Whitestone Bridge to Westchester County Line

8. Major Deegan Expressway-Bruckner Expressway to Westchester County Line

9. Mosholu Parkway-Henry Hudson Parkway to Dr. Theodore Kazimiroff Boule- vard

10. New England Thruway-Hutchinson River Parkway to Westchester County Line

11. Sheridan Expressway-Bruckner Expressway to Cross Bronx Expressway

12. Throgs Neck Expressway-Throgs Neck Bridge to Bruckner Expressway

Note: All service roads abutting highways, parkways, expressway, etc. are considered to be critical streets from 7:00 AM to 7:00 PM.

(B) **Restricted Access 7:00 AM to 10:00 AM/4:00 PM to 7:00 PM**

1. Bailey Avenue-Sedgwick Avenue to Van Cortlandt Park South

2. Barretto Avenue-Garrisson Avenue to Bruckner Boulevard

3. Bartow Avenue-Gun Hill Road to Hutchinson River Parkway East

4. Baychester Avenue-East 241st Street to Hutchinson River Parkway West

5. Boston Road-Third Avenue to Ropes Avenue

6. Broadway-West 225th Street to West 262nd Street

7. Bronx Boulevard-East 233rd Street to Burke Avenue

8. Bronx Park East-Burke Avenue to White Plains Road

9. Bronx River Avenue-Story Avenue to Westchester Avenue

10. Bruckner Boulevard-Bronx River Avenue to Westchester Avenue

11. Brush Avenue-Cross Bronx Expressway to Lafayette Avenue

12. Burnside Avenue-Sedgwick Avenue to Webster Avenue

13. Castle Hill Avenue-East Tremont Avenue to Hart Street

14. City Island Avenue-Sutherland Street to Belden Street

15. City Island Road-Pelham Parkway to Sutherland Street

16. Conner Avenue-Tillotson Avenue to East 233rd Street

17. Co-op City Boulevard-Tillotson Avenue to Bartow Avenue

18. Dewey Avenue-Balcom Avenue to Hollywood Avenue

19. Dr. Theodore Kazimiroff Boulevard-East Fordham Road to Bronx Park East

20. Dyre Avenue-Lustre Street to Boston Road

21. East 149th Street-River Avenue to Southern Boulevard

22. East 161st Street-Jerome Avenue to Third Avenue

23. East 163rd Street-Webster Avenue to Bruckner Boulevard

24. East 177th Street-Ferris Avenue to Harding Avenue

25. East 177th Street-Rodman Place to Rosedale Avenue

26. East 222nd Street-Bronx Boulevard to Baychester Avenue

27. East 233rd Street-Jerome Avenue to Boston Road

28. East 241st Street-Bullard Avenue to Baychester Avenue

29. Eastchester Road-East 222nd Street to Williamsbridge Road

30. Edson Avenue-Boston Road to East Gun Hill Road

31. Edward L. Grant Highway-Jerome Avenue to University Avenue

32. Featherbed Lane-University Avenue to Macombs Road

33. Ferris Avenue-Bronx Whitestone Bridge Plaza to Lafayette Avenue

34. Fordham Road-Cedar Avenue to Boston Road

35. Garrisson Avenue-Leggett Avenue to Edgewater Road

36. Grand Avenue-Macombs Road to West 177th Street

37. Grand Concourse-138th Street to Mosholu Parkway

38. Gun Hill Road-Mosholu Parkway Service Road to Stillwell Avenue

39. Hunts Point Avenue-Halleck Street to Bruckner Boulevard

40. Hutchinson River Parkway East-Baychester Avenue to Bartow Avenue

41. Hutchinson River Parkway West-Baychester Avenue to Bartow Avenue

42. Jarvis Avenue-Burke Avenue to Country Club Road

43. Jerome Avenue-East 161st Street to East 233rd Street

44. Kingsbridge Road-Bailey Avenue to East Fordham Road

45. Lafayette Avenue-Brush Avenue to Ellsworth Avenue

46. Lafayette Avenue-Edgewater Road to Bruckner Boulevard

47. Leggett Avenue-Garrisson Avenue to Bruckner Boulevard

48. Longwood Avenue-Garrisson Avenue to Bruckner Boulevard

49. Melrose Avenue-East 149th Street to Brook Avenue

50. Metropolitan Avenue-Westchester Avenue to Castle Hill Avenue

51. Middletown Road-Westchester Avenue to Bruckner Boulevard

52. Morris Park Avenue-East 177th Street to Eastchester Road

53. Mosholu Avenue-West 254th Street to Broadway

54. Mosholu Parkway Service Road-Webster Avenue to West Gun Hill Road/Van Cortlandt Park South

55. Nereid Avenue-Bronx Boulevard to Seton Avenue

56. Pelham Parkway-Boston Road to Burr Avenue

57. Pelham Parkway-Hutchinson River Parkway to City Island Road

58. Riverdale Avenue-West 252nd Street to West 263rd Street

59. Rosedale Avenue-Sound View Avenue to East Tremont Avenue

60. Sedgwick Avenue (Dr. Martin Luther King Boulevard)-Jerome Avenue to Mosholu Parkway

61. Shore Road-City Island Road to Park Drive

62. Sound View Avenue-Metcalf Avenue to White Plains Road

63. Southern Boulevard-Bruckner Boulevard to East Fordham Road

64. Third Avenue-Bruckner Boulevard to Webster Avenue/West Fordham Road

65. Throgs Neck Boulevard-Harding Avenue to Layton Avenue

66. Tillotson Avenue-Eastchester Road to Hutchinson Avenue

67. Tremont Avenue-Sedgwick Avenue to Schurz Avenue

68. Union Port Road-White Plains Road to Westchester Avenue

69. University Avenue-Sedgwick Avenue (Dr. Martin Luther King Boulevard) to Kingsbridge Road

70. Van Cortlandt Park South-Broadway to Mosholu Parkway Service Road

71. Webster Avenue-Brook Avenue to Nereid Avenue

72. West 225th Street-Broadway to Bailey Avenue

73. West 230th Street-Broadway to Bailey Avenue

74. West 230th Street-East Henry Hudson Parkway to West Henry Hudson Parkway Service Roads

75. West 231st Street-Broadway to Bailey Avenue

76. West 232nd Street-East Henry Hudson Parkway to West Henry Hudson Parkway Service Roads

77. West 233rd Street-Broadway to Bailey Avenue

78. West 234th Street-Broadway to Bailey Avenue

79. West 238th Street-Broadway to Bailey Avenue

80. West 239th Street-East Henry Hudson Parkway to West Henry Hudson Parkway Service Roads

81. West 246th Street-East Henry Hudson Parkway to West Henry Hudson Parkway Service Roads

82. West 252nd Street-East Henry Hudson Parkway to West Henry Hudson Parkway Service Roads

83. West 256th Street-East Henry Hudson Parkway to West Henry Hudson Parkway Service Roads

84. Westchester Avenue-Third Avenue to Bruckner Expressway

85. White Plains Road-East 243rd Street to Sound View Avenue

86. Whitlock Avenue-Westchester Avenue to East 163rd Street

87. Williamsbridge Road-White Plains Road to Westchester Avenue

88. Willis Avenue-Bruckner Boulevard to 149th Street

(iv) Queens

(A) **Restricted Access 7:00 AM to 7:00 PM**

1. Belt Parkway-Laurelton Parkway to Brooklyn County Line

2. Brooklyn-Queens Expressway-Kosciusko Bridge to Grand Central Parkway

3. Clearview Expressway-Cross Island Parkway to Grand Central Parkway

4. Cross Island Parkway-Bronx-Whitestone Bridge Approach to Southern State Parkway

5. Grand Central Parkway-Triboro Plaza to Nassau County Line

6. Jackie Robinson Parkway-Brooklyn County Line to Grand Central Parkway/Van Wyck Expressway Interchange

7. JFK Expressway-Belt Parkway to JFK Airport

8. Laurelton Parkway-Southern State Parkway to Belt Parkway

9. Long Island Expressway-Brooklyn-Queens Expressway to Nassau County Line (*Restricted Access 6:00 AM to 8:00 PM)

10. Nassau Expressway-Rockaway Boulevard to Belt Parkway

11. Queens Plaza North-Northern Boulevard to Crescent Street

12. Queens Plaza South-Crescent Street to Jackson Avenue

13. Van Wyck Expressway-Grand Central Parkway/Whitestone Expressway to JFK Airport

14. Whitestone Expressway-Cross Island Parkway to Grand Central Parkway/Van Wyck Expressway Interchange

Note: All service roads abutting highways, parkways, expressway, etc. are considered to be critical streets from 7:00 AM to 7:00 PM.

(B) **Restricted Access 7:00 AM to 10:00 AM/4:00 PM to 7:00 PM**

1. 14th Avenue-College Point Boulevard to Francis Lewis Boulevard

2. 21st Street-Borden Avenue to Ditmars Boulevard

3. 27th Street-Queens Plaza South to 44th Drive

4. 31st Drive-Astoria Boulevard to Ditmars Boulevard

5. 31st Street-39th Avenue to Ditmars Boulevard

6. 34th Avenue-Vernon Boulevard to Northern Boulevard

7. 37th Avenue-108th Street to 114th Street

8. 37th Avenue-College Point Boulevard to Union Avenue

9. 38th Avenue-College Point Boulevard to Union Avenue

10. 39th Avenue-College Point Boulevard to Union Avenue

11. 39th Street-Northern Boulevard to Hunters Point Avenue

12. 44th Drive-Vernon Boulevard to Jackson Avenue

13. 48th Street-Greenpoint Avenue to Northern Boulevard

14. 49th Avenue-Vernon Boulevard to 21st Street

15. 50th Avenue-Vernon Boulevard to 21st Street

16. 51st Avenue-Hunters Point Avenue to 58th Street

17. 58th Street-Maspeth Avenue to Queens Boulevard

18. 69th Road-Queens Boulevard to Park Drive East

19. 69th Street-Broadway to Metropolitan Avenue

20. 73rd Avenue-Kissena Boulevard to Springfield Boulevard

21. 80th Street-Cooper Avenue to Furmanville Avenue

22. 82nd Street-Ditmars Boulevard to Roosevelt Avenue

23. 94th Street-Ditmars Boulevard to 32nd Avenue

24. 108th Street-Astoria Boulevard to Queens Boulevard

25. 114th Street-Northern Boulevard to 44th Avenue

26. 130th Avenue-238th Street to Brookville Boulevard

27. 130th Street-South Conduit Avenue to North Conduit Avenue

28. 150th Street-Rockaway Boulevard to South Conduit Avenue

29. 164th Street-Hillside Avenue to Northern Boulevard

30. 225th Street-North Conduit Avenue to South Conduit Avenue

31. Archer Avenue-138th Street to Merrick Boulevard

32. Astoria Boulevard-82nd Street to Northern Boulevard

33. Astoria Boulevard North-31st Street to 82nd Street

34. Astoria Boulevard South-31st Street to 82nd Street

35. Atlantic Avenue-Eldert Lane to 94th Avenue

36. Beach 20th Street-Seagirt Boulevard to Mott Avenue

37. Beach Channel Drive-Cronstone Avenue to Horton Avenue

38. Bell Boulevard-158th Street to 86th Avenue

39. Booth Memorial Avenue-College Point Boulevard to Long Island Expressway

40. Borden Avenue-Vernon Boulevard to Greenpoint Avenue

41. Braddock Avenue-Springfield Boulevard to Jericho Turnpike

42. Broadway-Vernon Boulevard to Queens Boulevard

43. Brookville Boulevard-South Conduit Avenue to Francis Lewis Boulevard

44. Caldwell Avenue-69th Street to Dry Harbor Road

45. Central Avenue-Mott Avenue to Virginia Street

46. College Point Boulevard-14th Avenue to Long Island Expressway

47. Commonwealth Boulevard-Littleneck Parkway to Hillside Avenue

48. Continental Avenue-Metropolitan Avenue to Queens Boulevard

49. Cooper Avenue-Irving Avenue to Woodhaven Boulevard

50. Crescent Street-39th Avenue to 44th Drive

51. Cronston Avenue-Beach 169th Street to Beach Channel Drive

52. Cross Bay Boulevard-Woodhaven Boulevard to Rockaway Beach Boulevard

53. Cypress Hills Street-Fresh Pond Road to Jamaica Avenue

54. Ditmars Boulevard-21st Street to Astoria Boulevard

55. Douglaston Parkway-Northern Boulevard to Winchester Boulevard

56. Dry Harbor Road-Furmanville Avenue to Woodhaven Boulevard

57. Edgemere Avenue-Fernside Place to Rockaway Beach Boulevard

58. Eliot Avenue-Metropolitan Avenue to Queens Boulevard

59. Elmhurst Avenue-108th Street to Broadway

60. Farmers Boulevard-Hollis Avenue to Rockaway Boulevard

61. Flushing Avenue-Cypress Avenue to Grand Avenue

62. Francis Lewis Boulevard-15th Avenue to Hooks Creek Boulevard

63. Fresh Pond Road-Maspeth Avenue to Myrtle Avenue

64. Grand Avenue-47th Street to Queens Boulevard

65. Greenpoint Avenue-Review Avenue to Queens Boulevard

66. Guy R. Brewer Boulevard-Jamaica Avenue to Rockaway Boulevard

67. Hempstead Turnpike-Jamaica Avenue to Cross Island Parkway

68. Hillside Avenue-Myrtle Avenue to Langdale Street

69. Hollis Avenue-Jamaica Avenue to Springfield Boulevard

70. Hollis Court Boulevard-Utopia Parkway to Francis Lewis Boulevard

71. Hollis Hill Terrace-73rd Avenue to 86th Avenue

72. Home Lawn Street-Hillside Avenue to 82nd Road

73. Hook Creek Boulevard-Francis Lewis Boulevard to Merrick Boulevard

74. Hoyt Avenue North-21st Avenue to 31st Street

75. Hoyt Avenue South-21st Avenue to 31st Street

76. Hunters Point Avenue-21st Street to 51st Avenue

77. Jackson Avenue-51st Avenue to Queens Boulevard

78. Jamaica Avenue-Eldert Lane to Jericho Turnpike

79. Jewel Avenue-108th Street to 73rd Avenue

80. Junction Boulevard-32nd Avenue to Queens Boulevard

81. Kissena Boulevard-Main Street to Parsons Boulevard

82. Laurel Hill Boulevard-Review Avenue to Queens Boulevard

83. Lefferts Boulevard-South Conduit Avenue to Queens Boulevard

84. Liberty Avenue-75th Street to Farmers Boulevard

85. Linden Boulevard-Rockaway Boulevard to Cross Island Parkway

86. Linden Place-23rd Avenue to Northern Boulevard

87. Little Neck Parkway-Jamaica Avenue to Marathon Parkway

88. Main Street-Northern Boulevard to Queens Boulevard

89. Marathon Parkway-Littleneck Parkway to Commonwealth Boulevard

90. Maurice Avenue-Maspeth Avenue to 69th Street

91. Merrick Boulevard-Hillside Avenue to Hook Creek Boulevard

92. Metropolitan Avenue-Onderdonk Avenue to Jamaica Avenue

93. Myrtle Avenue-Wychoff Avenue to Jamaica Avenue

94. North Conduit Avenue-Sutter Avenue to Hook Creek Boulevard

95. Northern Boulevard-Queens Plaza North to City Limits

96. Park Drive East-Union Turnpike to 136th Street

97. Parsons Avenue-Parsons Boulevard to Utopia Parkway

98. Parsons Boulevard-North Drive to Jamaica Avenue

99. Queens Boulevard-Jackson Avenue to Jamaica Avenue

100. Queens Plaza East-Queens Boulevard to 39th Avenue

101. Queens Plaza North-Crescent Street to 21st Street

102. Queens Plaza South-Vernon Boulevard to Crescent Street

103. Rockaway Beach Boulevard-Beach 149th Street to Beach Channel Drive

104. Rockaway Boulevard-Eldert Lane to 3rd Street

105. Rockaway Freeway-Beach Channel Drive to Regina Avenue

106. Rockaway Point Boulevard/Rockaway Breezy Boulevard-Beach 222nd Street to Beach 193rd Street

107. Roosevelt Avenue-Queens Boulevard to Northern Boulevard

108. Sanford Avenue-College Point Boulevard to Northern Boulevard

109. Seagirt Boulevard-Edgemere Avenue to Beach 6th Street

110. Skillman Avenue-Hunters Point Avenue to Roosevelt Avenue

111. South Conduit Avenue-Sutter Avenue to Hook Creek Boulevard

112. South Road-Sutphin Boulevard to Liberty Avenue

113. Spencer Avenue-86th Avenue to Springfield Boulevard

114. Springfield Boulevard-Northern Boulevard to 47th Avenue

115. State Road-Beach 193rd Street to Beach 169th Street

116. Steinway Street-Ditmars Boulevard to Northern Boulevard

117. Sutphin Boulevard-Hillside Avenue to Rockawy Boulevard

118. Thomson Avenue-Jackson Avenue to Van Dam Street

119. Union Street-Sanford Avenue to Willets Point Boulevard

120. Union Turnpike-City Limits to Myrtle Avenue

121. Union Turnpike-Myrtle Avenue to Langdale Street

122. Utopia Parkway-14th Avenue to 82nd Road

123. Van Dam Street-Greenpoint Avenue to Skillman Avenue

124. Vernon Boulevard-21st Street to 51st Avenue

125. West Alley Road-230th Street to Douglaston Parkway

126. Willets Point Boulevard-Union Street to Utopia Parkway

127. Woodhaven Boulevard-Queens Boulevard to Liberty Avenue

128. Yellowstone Boulevard-Woodhaven Boulevard to Queens Boulevard

(v) Staten Island

(A) **Restricted Access 7:00 AM to 7:00 PM**

1. Amboy Road-Richmond Road to Arden Avenue

2. Arthur Kill Road-Richmond Road to Bloomingdale Road

3. Bay Street-School Road to Richmond Terrace

4. Forest Avenue-Victory Boulevard to Richmond Avenue

5. Forest Hill Road-Richmond Avenue to Willowbrook Road

6. Hylan Boulevard-Midland Avenue to Tysens Lane

7. Richmond Road-Targee Street to Arthur Kill Road

8. Richmond Terrace-Bay Street to Morningstar Road

9. Staten Island Expressway-Verrazano Narrows Bridge to Goethals Bridge

10. Todt Hill Road-Richmond Road to Westwood Avenue

11. Travis Avenue-Richmond Avenue to South Avenue

12. Victory Boulevard-Bay Street to West Service Road

13. West Shore Expressway-Richmond Parkway to Staten Island Expressway

14. Woolley Avenue-Willowbrook Road to North Gannon Avenue

Note: All service roads abutting highways, parkways, expressway, etc. are considered to be critical streets from 7:00 AM to 7:00 PM.

(B) **Restricted Access 7:00 AM to 10:00 AM/4:00 PM to 7:00 PM**

1. Amboy Road-Arden Avenue to Main Street

2. Arden Avenue-Hylan Boulevard to Arthur Kill Road

3. Arthur Kill Road-Bloomingdale Road to Main Street

4. Bloomingdale Road-Amboy Road to Arthur Kill Road

5. Bradley Avenue-Brielle Avenue to Victory Boulevard

6. Brielle Avenue-Manor Road to Rockland Avenue

7. Castleton Avenue-Jersey Street to Port Richmond Avenue

8. Clarke AvenueAmboy Road to Arthur Kill Road

9. Clove Road-Hylan Boulevard to Richmond Road

10. Clove Road-Narrows Road South to Richmond Terrace
11. Dr. Martin Luther King Jr. Expressway-Victory Boulevard to Bayonne Bridge
12. Fahy Avenue-South Avenue to Richmond Avenue
13. Fingerboard Road-Hylan Boulevard to Bay Street
14. Forest Avenue-Richmond Avenue to South Avenue
15. Giffords Lane-Amboy Road to Arthur Kill Road
16. Goethals Road North-Richmond Avenue to Western Avenue
17. Howard Avenue-Clove Road to Louis Street
18. Huguenot Avenue-Hylan Boulevard to Arthur Kill Road
19. Hylan Boulevard-Bay Street to Midland Avenue
20. Hylan Boulevard-Tysens Lane to Arden Avenue
21. Jewett Avenue-Victory Boulevard to Richmond Terrace
22. Korean War Memorial Parkway/Richmond Parkway-Outerbridge Crossing to Arthur Kill Road
23. Little Clove Road-Clove Road to Victory Boulevard
24. Manor Road-Rockland Avenue to Forest Avenue
25. Midland Avenue-Father Capodanno Boulevard to Richmond Road
26. Morningstar Road-Forest Avenue to Richmond Terrace
27. Narrows Road North-Fingerboard Road to Clove Road
28. Narrows Road South-Clove Road to Lily Pond Avenue
29. Nelson Avenue-Hylan Boulevard to Amboy Road
30. New Dorp Lane-Mill Road to Richmond Road
31. North Gannon Avenue-Slosson Avenue to Victory Boulevard
32. Ocean Terrace-Manor Road to Milford Drive
33. Page Avenue-Hylan Boulevard to South Bridge Street
34. Port Richmond Avenue-Forest Avenue to Richmond Terrace
35. Richmond Avenue-Arthur Kill Road to Forest Avenue
36. Richmond Avenue-Hylan Boulevard to Arthur Kill Road
37. Richmond Hill Road-Richmond Road to Richmond Avenue

38. Richmond Terrace-South Avenue to Morningstar Road

39. Rockland Avenue-Richmond Road to Richmond Avenue

40. Schmidts Lane-Manor Road to Slosson Avenue

41. Seguine Avenue-Hylan Boulevard to Amboy Road

42. Slosson Avenue-Westwood Avenue to Martling Avenue

43. South Avenue-Chelsea Road to Richmond Terrace

44. South Gannon Avenue-Victory Boulevard to Manor Road

45. West Fingerboard Road-Hylan Boulevard to Richmond Road

46. Western Avenue-Gulf Avenue to Richmond Terrace

47. Willowbrook Road-Victory Boulevard to Forest Avenue

48. Windsor Road-Little Clove Road to Slosson Avenue

(C) **Restricted Access 7:00 AM to 10:00 AM**

1. Father Capodanno Boulevard (northbound)-Midland Avenue to Ocean Avenue

2. Lily Pond Avenue (northbound)-Ocean Avenue to Tompkins Avenue

3. School Road (northbound)-Tompkins Avenue to Bay Street

4. Targee Street-Richmond Road to Van Duzer Street

(D) **Restricted Access 4:00 PM to 7:00 PM**

1. Ebbitts Street-Mill Road to Hylan Boulevard

2. Father Capodanno Boulevard (southbound)-Ocean Avenue to Lincoln Avenue

3. Lily Pond Avenue (southbound)-Tompkins Avenue to Ocean Avenue

4. Lincoln Avenue-Father Capodanno Boulevard to Hylan Boulevard

5. School Road (southbound)-Bay Street to Tompkins Avenue

6. St. Paul's Avenue-Hyatt Street to Van Duzer Street

7. Tysens Lane-Mill Road to Hylan Boulevard

8. Van Duzer Street-St. Paul's Avenue to Richmond Terrace

HISTORICAL NOTE

Section amended City Record Dec. 21, 2001 §3, eff. Jan. 20, 2002. [See Note 1]

Subd. (a) par (5) amended City Record June 7, 2007 §10, eff. July 7, 2007. [See T34 §2-02 Note 5]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 21, 2001:

Section 2-07 of the Highway Rules is being amended in order that the Agency may better monitor the opening of underground street access covers, gratings and transformer vaults during emergencies in restricted areas (now called critical roadways) during restricted times. The access covers were changed from "utility" to "underground street" to reflect the fact that many of these covers now belong to entities other than utilities, such as cable and telecommunications companies. The proposed rules require permittees to fax their emergency number requests to the Department. Permittees are also required to notify the Department as well as the Police and Fire Departments when the work results in a full roadway closing. Permittees must post a flagperson or utilize an approved traffic maintenance and protection plan for enhanced traffic mitigation and vehicular/pedestrian safety while actively working where the work results in the closing of a traffic lane.

The proposed rules amend §2-07(c)(5)(i), which lists the times and days on which work in subsurface installations is restricted on critical streets in the City. This revision is part of the Department's ongoing efforts to improve air quality and should significantly contribute to attainment of National Ambient Air Quality Standards since traffic congestion resulting from lane closures due to access cover openings will decrease. These proposed changes will afford permittees increased access as fewer streets will remain restricted and time of day restrictions have been decreased for some streets.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-08 Newsracks.

(a) **Definitions.** For purposes of this section, the following terms shall have the following meanings:

(1) Newsrack. "Newsrack" shall mean any self-service or coin-operated box, container or other dispenser installed, used or maintained for the display, sale or distribution of newspapers or other written matter to the general public.

(2) Person. "Person" shall mean a natural person, partnership, corporation, limited liability company or other association.

(3) Sidewalk. "Sidewalk" shall mean that portion of a street between the curb lines or the lateral lines of a roadway and the adjacent property lines, but not including the curb, intended for the use of pedestrians.

(4) Crosswalk. "Crosswalk" shall mean that part of a roadway, whether marked or unmarked, which is included within the extension of the sidewalk lines between opposite sides of the roadway at an intersection.

(5) Crosswalk area. "Crosswalk area" shall mean that area of the sidewalk bounded by the extension of the lines of a crosswalk onto the sidewalk up to the building or property line.

(6) Corner area. "Corner area" shall mean that area of a sidewalk encompassed by the extension of the building lines to the curb on each corner.

(7) Board. "Board" shall mean the environmental control board of the city of New York.

(8) Multiple-vending newsrack. A newsrack designed to hold two or more different publications.

(9) Owner. When applied to newsracks, "owner" shall mean a person who owns or is in control of one or more newsracks placed, installed or maintained on a sidewalk. Each newsrack shall have a single owner for purposes of complying with this section and the provisions of §19-128.1 of the New York City Administrative Code.

(b) **Placement.** (1) **Manner.**

(i) Newsracks shall be weighted down on all sidewalks in such a way as to insure that the newsrack cannot be tipped over.

(ii) Newsracks shall not be bolted to the sidewalk, except that multiple-vending newsracks may be bolted pursuant to a permit from the Department, except as provided in paragraph 2 of this subdivision b.

(iii) A newsrack may not be chained to property owned or maintained by the city, except that newsracks may be chained to lampposts (except for decorative lampposts). A newsrack so chained must not be in an unlawful location as specified in subdivision (c) of this section. To the extent an owner seeks to chain such newsrack to property not owned or maintained by the city, the consent of the owner of or person responsible for such property is required. In all cases where the use of chains to secure newsracks is permitted, such chains shall be made of galvanized steel with a plastic or rubber protective coating, at least 0.14 inches thick, and shall allow a distance of no more than eight (8) inches between the newsrack and the street furniture to which it is chained.

(2) **Distinctive sidewalks.** Multiple-vending newsracks may be bolted to sidewalks comprised of distinctive material, including, but not limited to, granite, terrazzo or bluestone, pursuant to a permit from the Department and provided that the written permission of the property owner or other entity that installed the distinctive sidewalk is obtained in advance of such bolting.

(3) **Sidewalk repair and restoration.** An owner shall be responsible for any damage caused or repairs necessitated by the installation, presence or maintenance of such newsrack. Such owner also shall be responsible for any damage caused or repairs necessitated by the removal of a newsrack by either such owner or by an authorized officer or employee of the Department or of any city agency who is designated by the Commissioner, or by a police officer. Such repairs shall be made promptly and in accordance with the Department's specifications.

(4) **Notification to the Department of location of newsracks.**

(i) Where a newsrack has been placed or installed on a sidewalk before September 13, 2004, the owner shall, by November 1, 2004, have notified the Department by facsimile, electronically or by other means as directed by the Commissioner and on a form approved or provided by the Commissioner, of

(A) the location of such newsrack;

(B) the name of the newspaper(s) or written matter to be offered for distribution in such newsrack; and

(C) the name, address, telephone number, and e-mail address of the owner. The name and address shall be identical to the name and address for mailing of process in the owner's Certificate of Incorporation or Application for Authority to do business in New York State. The owner shall represent that such newsracks comply with the provisions of this section and §19-128.1 of the New York City Administrative Code.

(ii) Any other owner shall, at least seven (7) days prior to the installation of its first newsrack, provide to the Department the indemnification notification and insurance certification required pursuant to subdivision f of this section and the information required in clauses (B) and (C) of subparagraph (i) of this paragraph.

(iii) Subsequent to the initial notification required by subparagraphs (i) and (ii) of this paragraph, notification shall

be made on an annual basis by November 1 of each year and shall include the information in clauses (A), (B), and (C) of subparagraph (i) of this paragraph.

(iv) If the number of newsracks owned or controlled by an owner increases or decreases by ten (10) percent or more of the number of newsracks that have been included in the most recent notification required to be submitted by such owner, such owner shall also be required to submit the information in clauses (A), (B), and (C) of subparagraph (i) of this paragraph within seven (7) days of such change.

(v) An owner shall advise the Department of any change in his, her or its name, address, telephone number, or email address within seven (7) days of such change including any changes to the Certificate of Incorporation or Application for Authority to do business in New York State.

(c) **Unlawful locations.** No owner shall install, use or maintain any newsrack in any of the following locations:

(1) within fifteen (15) feet of any fire hydrant;

(2) in any driveway or within five (5) feet of any driveway;

(3) in any curb cut designed to facilitate street access by disabled persons or within two feet of any such curb cut;

(4) within fifteen (15) feet of the entrance or exit of any railway station or subway station, except that a newsrack that otherwise complies with this subdivision may be placed against the rear of the station entrance or exit, but not against the sides;

(5) within any bus stop;

(6) within a crosswalk area;

(7) within a corner area or within five (5) feet of any corner area;

(8) on any surface where such installation or maintenance will cause damage to or interference with the use of any pipes, vault areas, telephone or electrical cables or other similar locations;

(9) on any cellar door, grating, utility maintenance cover or other similar locations;

(10) on, in or over any part of the roadway of any public street;

(11) unless eight (8) feet of sidewalk width is preserved for unobstructed pedestrian passage;

(12) in any park or on any sidewalk immediately contiguous to a park where such sidewalk is an integral part of the park design;

(13) on any area of lawn, flowers, shrubs, trees or other landscaping or in such a manner that use of the newsrack would cause damage to such landscaping;

(14) where such placement, installation or maintenance endangers the safety of persons or property;

(15) at any distance less than eighteen (18) inches or more than twenty-four (24) inches from the face of the curb, measured to the side of the newsrack closest to the curb (This paragraph shall not apply to a newsrack placed against the rear of the entrance or exit of a subway or railway as provided in paragraph 4, above.);

(16) within five (5) feet of a canopy; and

(17) within fifteen (15) feet of a sidewalk newsstand.

(d) **Size, shape and appearance.**

(1) **Dimensions.** No newsrack may be higher than fifty (50) inches, wider than twenty-four (24) inches or deeper than twenty-four (24) inches. Notwithstanding the above, no multiple-vending newsrack shall be higher than sixty (60) inches, wider than ninety (90) inches or deeper than thirty-six (36) inches.

(2) **Identifying information required.** The owner shall affix his, her or its name, address, telephone number and e-mail address, if any, on the newsrack in a readily visible location and shall conform such information to any changes required to be reported to the department in accordance with the provisions of paragraph (4) of subdivision (b) of this section. In no event shall a post office box be considered an acceptable address for purposes of this paragraph.

(3) **Advertisements prohibited.** The surfaces of the newsrack shall not include any advertisement, whether painted, posted, or otherwise affixed thereto, or be used for promotional purposes, except for announcing the name and/or website of the newspaper or other written matter offered for distribution in such newsrack.

(4) **Electricity.** No electricity shall be run into a newsrack nor shall any connection for electrical purposes be installed in or on a newsrack.

(e) **Maintenance.** The owner shall be responsible for the following:

(1) **Certification.** The owner shall certify to the commissioner on forms prescribed by the commissioner that each newsrack has been repainted, or that best efforts have been made to remove graffiti and other unauthorized writing, painting, drawing or other markings or inscriptions, at least once during the immediately preceding four (4) month period. Such certification shall be submitted on January 15, May 15 and September 15 of each year for the four (4) month period ending on the last day of the preceding month. A separate certification form shall be submitted for the newsracks dispensing a particular publication.

(2) **Logs and records.** Each owner shall maintain for each publication a separate log in which the measures taken to remove graffiti and other unauthorized writing, painting, drawing or other markings or inscriptions and the dates and times when they are taken are recorded in accordance with a format approved or set forth by the commissioner. Records shall be maintained for a period of three (3) years documenting the use of materials, employees, contractors, other resources and expenditures used for the purpose of demonstrating the repainting or best efforts to remove graffiti and other unauthorized writing, painting, drawing or other markings or inscriptions. Such logs and records shall be made available to the department for inspection and copying during normal and regular business hours and shall be delivered to the department upon request.

(3) **Refuse.** No refuse shall accumulate in a newsrack nor shall any newsrack deteriorate into an unsanitary condition. The owner shall remove refuse within forty-eight (48) hours of receipt of a notice of correction from the Commissioner, which shall be deemed to have been received five (5) days from the date on which it was mailed by the Commissioner.

(4) **Damage.** A damaged newsrack or one in need of repair shall be repaired, replaced or removed within seven (7) business days of receipt of a notice of correction regarding such damage or need for repair, except that if such damaged newsrack poses a danger to persons or property, it shall be made safe within twenty-four (24) hours following receipt of such notice of correction, which shall be deemed to have been received five (5) days from the date on which it was mailed by the Commissioner.

(5) **Continuous use.** In no event shall the owner fail to keep such newsrack supplied with written matter for a period of more than seven (7) consecutive days without securing the door so as to prevent the deposit of refuse therein. Notwithstanding the securing of the door, in no event shall such newsrack remain empty for a total period of more than thirty (30) consecutive days. Any newsrack empty for longer than such period shall be deemed abandoned.

(f) **Indemnification and insurance.**

(1) **Indemnification.** The owner of a newsrack placed or installed on any sidewalk shall indemnify and hold the City harmless from any and all losses, costs, damages, expenses, claims, judgments or liabilities that the City may incur by reason of the placement, installation or maintenance of such newsrack, except to the extent such damage results from the negligence or intentional act of the city. In addition to the insurance certificate submitted pursuant to paragraph 3 of this subdivision f, the owner shall submit by regular mail an indemnification notification on a form provided by the Commissioner.

(2) **Insurance.** The owner shall procure and maintain, for as long as the newsrack remains on City property, a commercial general liability insurance policy from an insurer licensed to do business in the State of New York in his or her or its name, which names the City of New York, its departments, boards, officers, employees and agents as additional insureds for the specific purpose of indemnifying and holding harmless those additional insureds from and against any losses, costs, damages, expenses, claims, judgments or liabilities that result from or arise out of the placement, installation and/or maintenance of such newsrack. The minimum limits of such insurance coverage shall be no less than $300,000 combined single limit for bodily injury, including death, and property damage, dedicated exclusively to the liabilities relating to such newsracks, except that any person who maintains an average of 100 or more newsracks at any one time shall maintain a minimum insurance coverage of $1 million dedicated exclusively to such liabilities. All insurance policies shall be endorsed to provide that (a) the City shall have no obligation whatever to provide notice to the insurance company of any occurrence or claim, and that the City's notice to the insurance company of the commencement of a lawsuit against the City, if required, shall be deemed timely if received within 180 days thereof; and (b) notice by any other insured of the commencement of any lawsuit against such insured shall constitute notice on behalf of the City as well.

(3) **Insurance certificate.** An insurance certificate shall be submitted to the Commissioner by the owner within sixty (60) days after the effective date of §19-128.1 of the New York City Administrative Code, and thereafter, by December 31 of each year or by the expiration date of the policy, whichever is earlier, certifying that the insurance required by paragraph 2 of this subdivision f is in place for all newsracks owned by such person. When a newsrack that is not covered by such insurance is placed or installed on a sidewalk after the effective date of such §19-128.1, the owner shall, within sixty (60) days after the effective date of §19-128.1 of the New York City Administrative Code or within ten (10) days of the installation of such newsrack, whichever is later, provide to the Department the insurance certification required pursuant to this subdivision f. Acceptance by the Commissioner of any insurance certificate, whether or not conforming to the requirements of paragraph 2 of this subdivision f, shall not relieve the owner of his, her or its obligation to actually provide such insurance. The certificate shall provide that no cancellation, termination or alteration shall be made without thirty (30) days' advance written notice to the Department.

(g) **Violations and removal.** Violations of the provisions of §19-128.1 of the Administrative Code or these rules shall be enforced and the newsracks shall be removed by the Commissioner pursuant to provisions of subdivision f of such §19-128.1 and any other applicable provisions of law. The City shall charge the owner for the cost of removal and storage. The charge for removal shall be $50 per newsrack. The storage charge shall be $1.40 per newsrack per day.

(h) **Notices.** All notices of violation required to be served on the owner pursuant to these rules or §19-128.1 of the Administrative Code shall be served as required by law. Notices of correction shall be served upon the address provided pursuant to the registration provisions in these rules. In the absence of the required registration information, service shall be made on the entity identified on the newsrack or in the publication found in the newsrack.

HISTORICAL NOTE

Section repealed and added City Record Mar. 7, 2003 eff. Apr. 6, 2003. [See Note 1]

Section in original publication July 1, 1991.

Subd. (a) par (9) added City Record Oct. 20, 2004 §1, eff. Nov. 19, 2004. [See Note 2]

Subd. (b) par (1) subpar (iii) amended City Record Oct. 20, 2004 §2, eff. Nov. 19, 2004. [See Note 2]

Subd. (b) pars (3), (4) amended City Record Oct. 20, 2004 §3, eff. Nov. 19, 2004. [See Note 2]

Subd. (c) open par amended City Record Oct. 20, 2004 §4, eff. Nov. 19, 2004. [See Note 2]

Subd. (d) par (2) amended City Record Oct. 20, 2004 §5, eff. Nov. 19, 2004. [See Note 2]

Subd. (e) amended City Record Oct. 20, 2004 §6, eff. Nov. 19, 2004. [See Note 2]

Subd. (f) amended City Record Oct. 20, 2004 §7, eff. Nov. 19, 2004. [See Note 2]

Subd. (g) amended City Record Oct. 20, 2004 §8, eff. Nov. 19, 2004. [See Note 2]

Subd. (h) amended City Record Oct. 20, 2004 §9, eff. Nov. 19, 2004. [See Note 2]

DERIVATION

Section 2-08 derived generally from former §§2-08 and 2-09 from original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 7, 2003:

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter.

On August 27, 2002, Mayor Bloomberg signed Local Law 23, adding a new §19-128.1 which provides for the regulation of newsracks. The law goes into effect 180 days after its enactment. The Department of Transportation is authorized to take any administrative actions necessary prior to that date to put the provisions of the law into effect. These rules serve to clarify and add detail to the provisions of Local Law 23, specifically with respect to chaining, notification and insurance.

2. Statement of Basis and Purpose in City Record Oct. 20, 2004: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. On July 12, 2004, Mayor Bloomberg signed Local Law No. 36, which amended §19-128.1 of the Administrative Code. These rules serve to conform the Department's rules to the new law. Subdivision (a) of §2-08 is being amended to include a definition of the term "owner" in order to ensure that only one entity/individual is responsible for all Department requirements regarding newsracks. Subparagraph (iii) of paragraph (1) and paragraph (3) of subdivision (b), subdivision (c), subdivision (f), subdivision (f), subdivision (g) and subdivision (h) of §2-08 are being amended to conform with the new definition of "owner." Paragraph (4) of subdivision (b) of §2-08 is being amended to reduce the number of times that the Department must be notified of the location of newsracks in accordance with Local Law No. 36. Paragraph (2) of subdivision (d) of §2-08 is being amended to require conformance with all notification requirements regarding the location of newsracks. Subdivision (e) of §2-08 is being amended to eliminate previous cleaning requirements and to require a newsrack owner to certify that best efforts have been taken to maintain the newsrack(s) and to keep logs and records detailing the measures taken to maintain such newsrack(s) in accordance with Local Law No. 36.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

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Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-09 Sidewalk, Curb and Roadway Work.

(a) **Compliance with requirements.** Owners or builders installing or repairing roadway pavement, sidewalk and curb in connection with uses other than those requiring a Certificate of Occupancy (C of O) or letter of completion from the New York City Department of Buildings shall comply with the following requirements:

(1) The Sidewalk, Curb & Roadway Application (SCARA) and all appropriate forms, plans and certifications shall be submitted to the Department.

(2) All public infrastructure work shall be designed and installed in compliance with current highway engineering practice, the latest version of this publication, and the latest versions of these other Department publications: Standard Details of Construction, Standard Specifications, and Instructions for Filing Plans & Guidelines for the Design of Sidewalks, Curbs, Roadways and Other Infrastructure Components.

(b) **Professional self-certification.** (1) A property owner may install the required street infrastructure without prior review of the plan(s) by the Department under a process of professional self-certification. Plan review by the Department will not be required when a Professional Engineer, Registered Architect or Registered Landscape Architect self-certifies that the proposed infrastructure work complies strictly with the requirements of the publications listed above in paragraph (2) of subdivision (a) of this section and meets or exceeds the Department's standards and specifications.

(2) If a submittal is not professionally self-certified, full Department review and approval must be obtained before work can begin.

(c) **Coordination with capital projects-all city, state and federal agencies and public authorities.** In some cases, the required infrastructure work may be proposed for installation by an agency or authority under a capital improvement project. It shall be the sole responsibility of every applicant to examine all capital plans to see whether any such work is planned. If so, the applicant shall coordinate the improvements with the appropriate agency or authority.

(d) **Required submissions.** (1) Every applicant shall submit three (3) original SCARAs (no photocopies) for each project. See Instructions for Filing Plans & Guidelines for the Design of Sidewalk, Curbs, Roadways and Other Infrastructure Components.

(2) Every applicant shall submit the following:

(i) The correct Plan Type as required by SCARA.

(ii) The correct Certification Block as required by SCARA.

(iii) Written approval from the Landmarks Preservation Commission or the Art Commission of the City of New York, if applicable (applicant must check to see if the project is in a landmarked area or historic district).

(iv) Material testing, if required by SCARA.

(v) Maintenance agreement, if required by SCARA.

(vi) Statement of Professional Certification to accompany SCARA (optional).

(e) **Waiver.** (1) A property owner may request a waiver of any requirement of the Department.

(2) The request shall be prepared in writing by a professional architect, engineer or landscape architect and shall have an original seal and signature affixed.

(3) It shall be submitted to the Department's Bureau of Permit Management & Construction Control.

(4) Supplementary materials must be submitted to support the waiver request, such as maps, drawings, traffic reports, calculations, affidavits, etc. No consideration will be given without complete and adequate documentation.

(5) A waiver may be granted at the discretion of the Commissioner, except where prohibited by law.

(f) **Sidewalk.** (1) **Property owners' responsibility.** Property owners shall, at their own cost, install, repave, reconstruct and maintain in good repair, at all times, the sidewalk abutting their properties, including, but not limited to the intersection quadrant for corner property, in accordance with the specifications of the Department. Upon failure of a property owner to install, repave, reconstruct or repair the sidewalk pursuant to a Notice of Violation issued by the Department after an inspection, the Department may perform the work or cause it to be performed and shall bill the property owner pursuant to §19-152 of the New York City Administrative Code. If the property owner wishes to protest the violation, he/she may make a request at the appropriate borough office within the time specified in the notice of violation and the Department shall provide a reinspection by a different departmental inspector than the one who conducted the first inspection. The findings of the second inspection supersede the findings of the first inspection.

(2) **Permit required.**

(i) A permit is required to install, repave, reconstruct or repair any sidewalk where the work involves an area of more than twenty-five square feet. Where the work involves an area of twenty-five square feet or less, a permit is only required where the purpose of the work is to remove a violation.

(ii) A sidewalk closing permit shall be required if a minimum width of five feet cannot be maintained on the

sidewalk for unobstructed pedestrian passage.

(iii) An applicant shall file:

(A) An application for a sidewalk construction permit stating the location of the sidewalk work, including driveway, if applicable, and the start and estimated completion dates. All subway gratings, utility covers and castings situated in the sidewalk area which are not at proper grade or are in a dangerous condition shall be noted in the application;

(B) A plan for the restoration of the sidewalk, approved by the Department of Buildings, where the existing sidewalk is the structural roof of a vault or other opening.

(iv) An owner of the abutting property who files an affidavit stating therein that he/she will not employ any person or persons to repair the sidewalk for him/her, shall not be required to submit a commercial general liability insurance policy or workers' compensation insurance.

(3) **Permit requirements.** All permits are subject to applicable provisions contained in §2-02 of these rules.

(4) **General sidewalk requirements.**

(i) Except as otherwise authorized, all sidewalks shall be concrete. Sidewalks shall consist of a single course of concrete, 4" in thickness, laid upon a foundation 6" in thickness; in driveways and corner quadrants the concrete slab shall be 7" in thickness.

(ii) The foundation material shall consist of clean $^{3}/_{4}$" broken stone, recycled concrete, gravel or clean granular materials meeting the standard specifications. The foundation material shall be tamped and compacted according to the specifications.

(iii) The sidewalk shall be constructed of New York City Mix Design Number B3200 concrete mix as per the specifications. The concrete shall be bought from a concrete plant approved by the New York State Department of Transportation or from an approved volumetric mixer. Any permittee placing 150 square feet or less of sidewalk may request approval to use a portable mixer from the Department.

(iv) **Sidewalk cores.**

(A) Cores shall be required for all sidewalks in excess of 100 lineal feet. A core shall be required for each 500 square feet of sidewalk or fraction thereof. A minimum of 2 cores is required. Core evaluation reports by an approved laboratory shall be submitted to the Department.

(B) In the case of a one- or two-family dwelling on a corner lot and/or where the length of the sidewalk on each side is less than 100 lineal feet, the cores may be waived, provided that an affidavit of a Professional Engineer or Registered Architect who supervised the construction certifies that the work conforms with the specifications, and material delivery slips are submitted. (Delivery slips are to be signed by an authorized representative of the contractor.)

(C) If the results of the cores meet the Department's requirements, the applicant shall file an affidavit from a Licensed Surveyor, Registered Architect or Professional Engineer certifying that the sidewalk, curb and roadway have been installed in conformance with the submitted SCARA plan. A final survey showing the actual grades as built shall be filed with the Department and the topographical Bureau of the office of the applicable Borough President.

(v) Expansion joints are typically placed at 20' intervals and at the property or lot line. Expansion joints shall be placed between curb and sidewalk. Expansion joints shall be placed between concrete of different thicknesses or to match existing expansion joints. Every effort shall be made to isolate sidewalk hardware or other fixed objects in the sidewalk such as fire hydrants and electrical boxes with expansion material. Expansion joint filler material shall be

placed to full depth of sidewalk.

All expansion joints shall be recessed $^1/_2$" below finished sidewalk surface and sealed with Department specified sealer as soon as practical. The sealer should be applied carefully to avoid over-spilling onto sidewalk surface area. The joints are to be flush with the finished surface. Joints shall not be sealed during freezing temperatures.

(vi) The concrete shall be poured and finished in accordance with the specifications.

(vii) Flags shall be 5' × 5' where feasible. The following methods of scoring shall be employed unless otherwise approved by the Commissioner: The frontage of each building shall be divided by five. If it is exactly divisible, all flags shall be 5' wide; if not, the flags shall be plus or minus in an amount which will make them as near to 5' as possible. Cross flag scoring shall be at 90 degrees to the building line and curb. The flag markings along the sidewalk between the curb and property line shall be parallel with the property line and curb and be uniformly 5' apart commencing at the property line, with the odd flag width, if any, nearest the curb.

(viii) All flags containing substantial defects shall be fully replaced. Patching of individual flags is not permitted.

(ix) When an existing concrete sidewalk is to be replaced and the foundation material meets specifications, the foundation material can be retained and graded to the required subgrade. Any foundation material not meeting specification shall be removed.

(x) Sidewalk grades: Unless the Department grants a waiver of grade, permanent sidewalks shall be laid to the legal curb grades.

(xi) Transverse slope: Sidewalks shall be laid to pitch from the building line toward the curb except in special cases as noted. The minimum slope, calculated on a line perpendicular to the curb, shall be 1" in 5', and the maximum shall be 3" in 5'. Minimum slopes shall be used wherever possible.

Note: The maximum transverse slope permitted for vault lights, covers, gratings and other sidewalk structures is $1^3/_4$" in 5'.

(xii) **Longitudinal slope:** The longitudinal slope of the sidewalk shall be uniform and parallel to the curb at the curb's proper grade.

(xiii) **Corner treatment:** The two slope lines meeting at the intersection of the two building lines shall drop from a common point at the building corner toward their respective curbs at a rate within the limits prescribed by these regulations. If this is not possible, the applicant shall submit sketches or drawings, in duplicate, showing the method of treatment proposed, to the Commissioner for approval.

(xiv) **Pedestrian ramps:** Any person constructing, reconstructing or repairing a corner shall install pedestrian ramps in accordance with the specifications and in accordance with the latest revision of Standard Drawing H-1011.

(xv) **Adjoining existing and new sidewalks:** Junctions and transitions between new sidewalk and existing walk shall conform to the specifications.

(xvi) **Distinctive sidewalk:**

(A) A sidewalk of a distinctive design or material may be permitted and shall harmonize with the architecture of the abutting building and/or area. The property owner or designated representative shall submit to the Department for approval: detailed plans, applicable fee, the Distinctive Sidewalk Improvement Maintenance Agreement (DSIMA) and material samples of the proposed sidewalk.

(B) The distinctive sidewalk shall be repaired in kind or be replaced in its entirety with concrete. Changes to

existing materials require a new DSIMA.

(C) The distinctive sidewalk shall be approved by the Art Commission prior to installation.

(xvii) **Sidewalk hardware and structures:**

(A) Cellar doors, gratings, underground street access covers or other similar items shall not be placed in the sidewalk unless they are of a type approved by the Department of Buildings.

(B) Any abandoned structures shall be removed and replaced with concrete side- walk.

(C) Where the existing sidewalk is the structural roof of a vault or other opening, a plan approved by the Department of Buildings, along with vault plans as required by §2-13 of these rules, shall be filed for the restoration of the sidewalk.

(D) If a sidewalk improvement is in the vicinity of subway gratings or over a subway structure, the permittee shall obtain the approval of the New York City Transit Authority prior to the commencement of any work.

(xviii) **Historic Districts:**

(A) In Historic Districts, property owners shall obtain written approval from the Landmarks Preservation Commission prior to the repair or replacement of sidewalks. All work shall be done in compliance with the rules of the Landmarks Preservation Commission, and in accordance with the specifications.

(B) In Historic Districts gratings, bullseyes, vault lights, iron doors and other similar structures situated in the sidewalk shall not be removed without the authority of the Landmarks Preservation Commission.

(xix) No person shall deface any sidewalk by painting, printing or writing names or advertisements, placing other inserts, attaching, in any manner, any advertisement or other printed matter, or by drawing, painting or discoloring such sidewalk, except as required by State of New York Industrial Code Rule 53 relating to Construction, Excavation and Demolition Operations at or near Underground Facilities.

(xx) **Tree pits and trees:**

(A) No trees shall be planted in the sidewalk area unless a Street Opening Permit is issued by the Department. No such permit shall be issued by the Department unless the prior written consent of the Department of Parks and Recreation authorizing the tree planting is furnished. Tree pits shall be constructed in accordance with the specifications.

(B) The soil level in the completed tree pits, including any paved surface, shall be flush with the sidewalk area and the maximum dimensions of the tree pit shall be 5' × 5'.

(C) No trees within the sidewalk area shall be disturbed or removed without the permission of the Department of Parks and Recreation.

(D) No trees or tree pits shall be installed in Historic Districts without a report from the Landmarks Preservation Commission.

(5) **Substantial defects.** Any of the following conditions shall be considered a substantial defect.

(i) One or more flags missing or sidewalk never built.

(ii) One or more flag(s) cracked to such an extent that one or more pieces of the flag(s) may be loosened or readily

removed.

(iii) An undermined flag below which there is a visible void or a loose flag that rocks or seesaws.

(iv) A trip hazard where the vertical differential between adjacent flags is greater than or equal to $^1/_2$" or where a flag contains one or more surface defects of one inch or greater in all horizontal directions and is $^1/_2$" or more in depth.

(v) Improper slope, which shall mean (i) a flag that does not drain toward the curb and retains water, (ii) flag(s) that shall be replaced to provide for adequate drainage or (iii) a cross slope exceeding established standards.

(vi) Hardware defects, which shall mean (i) hardware or other appurtenances not flush within $^1/_2$" of the sidewalk surface or (ii) cellar doors that deflect greater than 1" when walked on, are not skid resistant or are otherwise in a dangerous or unsafe condition.

(vii) A defect involving structural integrity, which shall mean a flag that has a common joint, which is not an expansion joint, with a defective flag and has a crack that meets the common joint and one other joint.

(viii) Non-compliance with Department specifications for sidewalk construction.

(ix) Patchwork, which shall mean (i) less than full-depth repairs to all or part of the surface area of broken, cracked or chipped flag(s) or (ii) flag(s) partially or wholly constructed with asphalt or other unapproved non-concrete material; except that patchwork resulting from the installation of canopy poles, meters, light poles, signs and bus stop shelters shall not be subject to this provision unless the patchwork constitutes a substantial defect as set forth in subparagraphs (i) through (viii) of this paragraph.

(g) **Curb (concrete, steel faced, stone).** (1) **General permit conditions.**

(i) The permittee shall complete all curb construction or installation before commencing any roadway paving operation or sidewalk construction, unless otherwise permitted by the Department.

(ii) All curbs more than 20 feet in length shall be built according to specifications. A Street Opening Permit is required.

(iii) Curbs less than 20 feet in length shall be built in accordance with Standard Detail H-1054. No Street Opening Permit is required if done in conjunction with a sidewalk repair permit.

(iv) Permits for the construction or installation of drop curbs and concrete driveways shall not be issued unless authorized by a permit from the Department of Buildings.

(v) All curbs shall be built according to specifications.

(2) **Recess in vault for curbs.** Where a vault extends to the curb line, the permittee shall provide a recess for its entire length in which the curb may be set or reset. See the Standard Drawing on file with the Department.

(3) **Permit requirements.** All permits are subject to applicable provisions contained in §2-02 of these rules.

(4) No person shall deface any curb by painting, printing or writing names or advertisements, placing other inserts, attaching, in any manner, any advertisement or other printed matter, or by drawing, painting or discoloring such curb.

(5) **General provisions for construction.** Concrete curbs shall be 6 inches wide at the top, 8 inches wide at the bottom and 18 inches deep, or equal to the standards, measured on the back. All construction is to be at legal line and grade, or at any other line and grade approved by a Department engineer, and according to the specifications. Penetration of broken stone base will not be allowed unless the outside temperature is 50 degrees Fahrenheit or above.

(h) **Roadway.** (1) Roadway pavement shall be 2 inches of asphaltic concrete wearing surface on a 4-inch penetrated broken stone base or a 4-inch compacted plant mixed binder base. Where the existing roadway is asphaltic concrete wearing course on a concrete base, restoration shall consist of matching the existing thickness but in no case shall there be less than 3 inches of asphaltic concrete wearing course on a 6-inch concrete base on compacted earth. Where soil conditions require, the base shall be constructed of such materials and depth as is acceptable to the Department.

(2) The roadway shall be paved at a minimum from the curb line to 5 feet beyond the center of the legal roadway width in front and on the sides of the property of the applicant. In no case shall the width of required roadway paving be less than 20 feet. Beyond the front of the property, there shall be access over a hard surface road to the nearest completed paved street system. If this does not exist, the applicant shall provide a pavement of at least 2 inches of asphaltic concrete graded to meet the existing paved street system. The width of such paving shall be at least 20 feet.

(3) **Roadway cores.**

(i) Cores shall be required for all roadway pavement in excess of 100 lineal feet. A core shall be taken by the applicant for every 700 square yards of paved roadway or fraction thereof, in such manner as directed by the supervising engineer. A minimum of 2 cores is required. Core evaluation reports by an approved laboratory shall be submitted to the Department or self certified by a Professional Engineer or Registered Architect.

(ii) Where the length of roadway pavement is less than 100 lineal feet, the requirement of cores may be waived provided that an affidavit of a Professional Engineer or Registered Architect who supervised the construction certifies that the work conforms with the specifications, and material delivery slips are submitted. (Delivery slips are to be signed by an authorized representative of the contractor.)

(iii) If the results of the cores meet the Department's requirements, the applicant shall file an affidavit from a Licensed Surveyor, Registered Architect or Professional Engineer certifying that the sidewalk, curb and roadway have been installed in conformance with the legally established grades as built under the terms of the permit. A final survey showing the actual grades as built shall be filed with the Department's borough office and the Topographical Bureau of the office of the applicable Borough President.

(4) The Department will issue a letter of acceptance for maintenance subject to the guarantee period of the roadway pavement, to the builder or developer if the roadway pavement meets the requirement of the permit and the specifications.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section amended City Record Mar. 17, 2000 §2, eff. Apr. 16, 2000. [See Note 1]

Section in original publication July 1, 1991.

Subd. (b) par (1) amended City Record June 7, 2007 §11, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (f) par (2) amended City Record May 7, 2001 §6, eff. June 6, 2001. [See Note 2]

Subd. (f) par (2) subpar (iii) amended City Record June 7, 2007 §12, eff. July 7, 2007. [See T34

§2-02 Note 5]

Subd. (f) par (4) subpar (iii) amended City Record June 7, 2007 §13, eff. July 7, 2007. [See T34

§2-02 Note 5]

DERIVATION

Section 2-09 was derived in part from former §§2-02, 2-16 and 2-31 from original publication July

1, 1991. Former §2-02 was amended in City Records Apr. 10, 1991 and July 10, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 17, 2000:

Section 2-09 is being amended and §2-16 is being deleted to reflect the streamlining of the unit and process formerly known as builders pavement. Many of the provisions of §2-16 have been incorporated into §2-09, including all the SCARA requirements. Obsolete provisions in §2-16 were deleted.

2. Statement of Basis and Purpose in City Record May 7, 2001: Section 2-09 is being amended to require property owners to obtain a permit for sidewalk work, even if the area of work is less than 25 square feet, where the purpose of the work is to remove a violation, thus enabling the Department to inspect and remove sidewalk violations.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an

opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-10 Street Furniture.

(a) **Permit Required.** (1) See Revocable Consent Rules, Chapter 7 of this Title 34, for street furniture other than bicycle racks, small planters and non-electrical sidewalk sockets.

(2) The Commissioner may issue permits for the placement or installation of bicycle racks, planters smaller than four square feet or two feet in diameter, as measured on a horizontal plane, non-electrical sidewalk sockets and temporary structures placed on sidewalks for security purposes.

(3) It shall be a violation of these rules to erect, place or install street furniture without a revocable consent pursuant to Chapter 7 of this Title or a permit pursuant to this section.

(b) **Permit Requirements.** All permits are subject to applicable provisions contained in §2-02 of these rules.

(c) **General Conditions.** (1) Eight feet or one-half the sidewalk width, whichever is greater, shall be maintained by the permittee for unobstructed pedestrian passage.

(2) Street furniture shall not be placed at the curb directly opposite a building entrance or cellar door. Street furniture at the building line shall not be installed within three feet of a building entrance or cellar door.

(3) Unless otherwise authorized by the Commissioner in writing, street furniture shall not be installed within:

15 feet of Subway Entrance and Exit Stairs

15 feet of Bus Stop Zone

15 feet of Newsstand

15 feet of Fire Hydrant

10 feet of either side of the area created by extending the building line to the curb (the "corner")

8 feet of Bicycle Rack

7 feet of Driveway

5 feet of Cafe

5 feet of Bench

5 feet of Tree (without tree pit)

5 feet of Standpipe

4 feet of Telephone Booth/Pedestal

4 feet of Mailbox

4 feet of Street Light

4 feet of Parking Meter

4 feet of News Racks

4 feet of Utility Poles

4 feet of other street furniture authorized by applicable law or rule

3 feet of Canopy

3 feet of Utility Hole or Transformer Vault Cover

3 feet of Grating

3 feet of Sign Pole

3 feet of Edge of Tree Pit

(4) Street furniture shall be placed at least eighteen inches but no more than twenty-four inches from the face of the curb.

(5) Permittees shall be responsible for all repairs to streets damaged due to the placement, installation or removal of street furniture.

(6) Permittees shall be responsible for all street furniture maintenance.

(7) Placement of street furniture on distinctive sidewalks requires the written approval of the property owner.

(8) Permits shall expire one year after date of issuance, unless revoked sooner by the Commissioner.

(9) Permits are subject to review and approval each year prior to renewal.

(10) All street furniture permits are subject to the requirements of the Americans With Disabilities Act.

(d) **Application.** (1) Applications shall be reviewed individually for each location, shall be subject to approval by the Commissioner, and shall include a sketch with the following information:

(i) lot and block number(s) and address(es) of the property;

(ii) property lines and sidewalk dimensions;

(iii) existing topographical conditions, including but not limited to items listed in (c)(3); and

(iv) existing vaults and areaways.

(2) Written approval from the Arts Commission and/or Landmarks Preservation Commission shall be obtained where required.

(3) Permittees shall obtain the written approval of the property owner.

(e) **Design Criteria.** (1) Advertisements shall not be placed on street furniture.

(2) Street furniture finishes shall be graffiti retardant.

(3) Street furniture design shall be such that both the body and base are not conducive to trapping debris.

(f) **Planters.** (1) Planters shall be no more than three feet in height and shall be spaced at intervals of four feet or more unless otherwise directed.

(2) Planters shall not occupy an area of more than four square feet or two feet in diameter. For larger planters see Revocable Consent Rules, Chapter 7 of this title.

(3) Planters shall be placed with the face or outer edge eighteen inches from the face of the curb or no more than three feet from the building line.

(4) Applicants shall adhere to the New York City Department of Parks and Recreation's applicable standards for acceptable trees in planters.

(5) Planters shall be maintained with live plants at all times and be kept free of debris.

(g) **Non-electrical Sidewalk Sockets.** Veteran organizations of the Armed Services may, with the consent of the Commissioner and owners of the abutting property, place flagpole sockets at least five feet apart and at least eighteen inches, but no more than twenty-four inches, from the face of the curb. When the sidewalk socket does not have a flagpole in it, it shall be capped or covered and flush with the sidewalk.

(h) **Bicycle Racks.** No person shall install a bicycle rack without a permit. All racks shall be installed in compliance with the bicycle rack clearances, which may be obtained from the Department's permit office. Based on sound engineering judgment and where pedestrian volume will allow, the minimum clearances may be waived. A site request that adheres to minimum clearances shall be denied where the bicycle rack would interfere with the safe passage of pedestrians.

(i) **Maintenance Required by the Permittee or Property Owner.** (1) Street furniture shall be maintained in a safe condition at all times.

(2) Street furniture shall be graffiti and litter free at all times.

(3) The Department may order the repair, replacement or removal of unsafe or defective street furniture.

(4) Non-compliance shall result in permit revocation pursuant to §2-02 of these rules.

(j) **Temporary security structures.**

(1) Notwithstanding any inconsistent provision of these or any other rules, the Commissioner may issue a permit for a period of one year for temporary structures placed on sidewalks for security purposes. Such structures shall include, but not be limited to, concrete barricades, large planters and fencing.

(2) Notwithstanding any inconsistent provision of these rules, for the purposes of this subdivision, the standards and clearances in Chapter 7 of this title shall apply. For concrete barricades the standards for planters in Chapter 7 shall apply.

(3) A permit issued pursuant to this subdivision may be revoked or modified at will by the Department.

(4) Such permit may be renewed for a maximum of two consecutive six-month periods. The approval of the New York City Art Commission shall be obtained prior to the grant of a renewal.

(5) At the expiration of the permit and any renewal, if applicable, the person or entity wishing to continue to maintain such structures shall do so only pursuant to a revocable consent obtained from the Department pursuant to the provisions of Chapter 7 of this title.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record Oct. 27, 2003 eff. Nov. 26, 2003. [See Note 1]

Subd. (j) amended City Record June 27, 2005 §2, eff. July 27, 2005. [See Note 2]

Subd. (j) added City Record Oct. 27, 2003 eff. Nov. 26, 2003. [See Note 1]

DERIVATION

Section 2-10 derived generally from former §§2-07 and 2-08 from original publication July

1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 27, 2003:

The Commissioner of Transportation is authorized to promulgate regulations regarding City streets and sidewalks pursuant to section 2903 of the New York City Charter and Title 19 of the New York City Administrative Code.

The Commissioner is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of the New York City Charter.

Section 2-03 is being amended to add a fee for installation of temporary security structures. Section 2-10 is being

amended to add temporary security structures to the list of items for which the Commissioner may issue permits. Section 7-04 is being amended to add a reference to permits for temporary security structures.

There has recently been increased interest from property owners in placing concrete structures on the sidewalk for security purposes. The Department wishes to oversee and respond relatively promptly to what is being placed on the sidewalks without creating a process that is overly time-consuming and onerous. A non-renewable, one-year permit will allow these items, which are generally of a temporary, stopgap nature intended to meet legitimate security concerns, to be placed on sidewalks expeditiously, while more planned and permanent structures are pursued. At the expiration of the one-year period, a revocable consent must be obtained for the more planned and designed security structure as for other street furniture.

2. Statement of Basis and Purpose in City Record June 27, 2005: The Commissioner of Transportation is authorized to promulgate regulations regarding City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Section 2-03 is being amended to add a fee for the renewal of permits for the installation of temporary security structures. Subdivision j of §2-10 is being amended to allow for a maximum of two six-month permit renewals, provided Art Commission approval is obtained first. The Department has determined that the process for obtaining revocable consents can be lengthy since both the Department of City Planning and the Art Commission are involved in providing approvals. Consequently, the Department wishes to allow entities to have additional time to complete the consent process by allowing for limited renewals of the temporary security structure permits.

FOOTNOTES

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[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-11 Street Openings and Excavations.

(a) **Permit Required.** (1) No excavations shall be made in any street unless a Street Opening Permit is obtained.

(i) For plumbing work requiring a street opening or excavation, a Street Opening Permit will only be issued to a licensed master plumber as defined in §26-141 of the Administrative Code.

(A) The licensed master plumber shall be required to provide a valid New York City licensed master plumber's certificate issued by the New York City Department of Buildings. The licensed master plumber shall also present a copy of any documentation issued by the New York City Department of Environmental Protection regarding the plumbing work that is to be conducted. These items must be submitted to the Department before the Department approves the Street Opening Permit.

(B) The Commissioner may suspend review of applications for permits under this subparagraph, revoke or refuse to renew a permit, or refuse to issue a permit to any applicant, pursuant to the provisions of §2-02(j), 2-02(k), or 2-02(l) of these rules.

(ii) Notwithstanding the provisions of subparagraph (i) of this paragraph, for any work performed pursuant to a valid contract with a local or state governmental entity requiring a street opening or excavation, a Street Opening Permit will be*2 only be issued to the contractor retained by the local or state governmental entity to perform the work requiring the street opening or excavation.

(2) Prior to any excavation or street opening pursuant to a franchise or revocable consent, all permits required by

these rules shall be obtained.

(3) Street Construction in Historic Districts. No planned street construction, reconstruction or maintenance operation shall be undertaken in a designated historic district unless preapproved in writing by the Landmarks Preservation Commission. The provisions of subdivision (g) of this section also apply.

(b) **Permit requirements.**

(1) All permits are subject to applicable provisions contained in §2-02 of these rules.

(2) A Permittee shall obtain a separate permit for each 300 linear feet of a block segment and for each intersection where work is to be performed.

(c) **Conditions.** (1) **Proper notification.** Permittees and owners of underground facilities shall comply with State of New York Industrial Code Rule 53 relating to Construction, Excavation and Demolition Operations at or near Underground Facilities. Permittees shall take the precautions necessary to protect such pipes, mains, conduits, and other appurtenances at their own expense.

(2) All work shall be done in accordance with the specifications and the provisions of this §2-11.

(3) All debris on the street shall be removed at the expiration of the permit, unless otherwise stipulated.

(d) **Application.** (1) Applications shall include:

(i) a description of the work to be performed;

(ii) the reason for the work;

(iii) the street address including the nearest cross streets where the excavation or street opening is to be made;

(iv) a sketch indicating the size and location of the proposed opening(s) which shall include:

(A) the distance in feet from the nearest intersection and from the nearest curbline;

(B) the dimensions of the opening including length and width; and

(C) the existing parking restrictions.

(v) the start and estimated completion dates;

(vi) the type of pavement or surface to be opened;

(vii) whether the proposed work will be on a protected street (if so, the provisions of the subdivision (f) of this section apply);

(viii) the name and address of the compaction testing company or laboratory, as required;

(ix) the name of the contracting City agency, contract number, and OCMC reference number, if applicable; and

(x) whether the proposed work will be within 100 feet on, above or below or in either direction of any portion of a bridge, tunnel, underpass or overpass (if so, approval from the Division of Bridges shall be obtained). For purposes of this section "portion" shall include, but not be limited to, approach slabs, retaining walls, and column supports. The method of excavation and final restoration shall be determined by the Division of Bridges.

(2) No trees within the sidewalk area shall be disturbed or removed without the permission of the Department of Parks and Recreation.

(3) A permittee performing curb to curb restoration on more than fifty (50) percent of a block segment on a non-protected street shall submit a protected street determination form to the Department for approval prior to obtaining any necessary permits. Such form shall be attached to the permit application. This requirement shall not apply to permittees performing work for the Department or for the Department of Design and Construction.

(e) **Excavation and Restoration Requirements.** (1) **Proper Notice.**

(i) Permittees shall notify the Police Department and the Communications Centers of the Fire Department and the Department of Transportation of construction and street operations which require street closing permits at least twenty-four hours in advance of the commencement of non-emergency work.

(ii) All permittees shall comply with the provisions of subdivision (g) of §2-02 of these rules, if applicable.

(2) **Breaking Existing Pavement.** Precutting of pavement wearing course and base shall be required for pavement removal. The use of a "Ram Hoe" or truck mounted pavement breaker is not permitted, unless otherwise authorized. Only hand held tools may be used for this purpose. This applies to all streets at all times. The permittee shall be responsible for keeping the construction area as clean and neat as possible during the permit life. No material shall restrict water flow in gutters. All possible arrangements for the safety of the general public shall be maintained. Every effort shall be made to keep the pavement opening dimensions to an absolute minimum.

(3) **Excavation.**

(i) Sheeting and Bracing. The sides of every open excavation five feet or more in depth shall be securely held by adequate timber, sheeting and bracing where the earth is not sloped to the angle of repose of the material, and where unsafe conditions are created due to composition of the soil, climatic conditions, depth of excavation or construction operations.

(ii) Tunneling or Jacking. No person shall make any installation or repair between two or more street openings by means of tunneling or jacking, without a permit.

Tunneling or jacking may be permitted for the installation or replacement of a lateral connection provided the opening does not exceed eight inches in diameter. Full trenching shall be required for all waste line repair/connections.

(4) **Traffic Maintenance.**

(i) No more than one lane of traffic may be obstructed, except as provided by OCMC stipulations, or as otherwise authorized by the Commissioner.

(ii) All unattended street openings or excavations in a driving lane, including intersections, shall be plated, except as otherwise directed by the Commissioner. The Commissioner may require all street openings and excavations at any location to be plated when no work is in progress. In the case of gas or steam leaks, barricades in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices shall be used until the leak is corrected.

(iii) Barricades, signs, lights and other approved safety devices shall be displayed in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices.

(iv) The permit may restrict street operations and construction within critical areas to nights, weekends, or off-traffic hours. (Hours other than weekdays 7 a.m.-6 p.m. will require a noise variance granted by OCMC.)

(v) **Flagpeople.** Permittees whose work results in the closing of a moving traffic lane, which requires traffic to be

diverted to another lane, shall, at all times while actively working at the site, post a flagperson or utilize an authorized plan for the maintenance and protection of traffic at the point where traffic is diverted to assist motorists and pedestrians to proceed around the obstructed lane.

(5) **Temporary Closing of Sidewalks.** A minimum of five feet sidewalk width of unobstructed pedestrian passageway shall be maintained at all times. Where openings and excavations do not allow for five feet of unobstructed pedestrian passageway, a temporary sidewalk closing permit is required.

(6) **Work Site Maintenance.**

(i) All excavated material shall be either removed from the site or stockpiled at a designated curb, properly barricaded in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices and stored to keep gutters clear and unobstructed in accordance with §2-05 of these rules.

(ii) All obstructions on the street shall be protected by barricades, fencing, or railing, with flags, lights, or signs in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices placed at proper intervals and during the hours prescribed. During twilight hours the flags shall be replaced with amber lights.

(7) **Storage of Materials.**

(i) A street opening permit includes permission to store construction materials in a designated area adjacent to the permitted worksite.

(ii) No separate permit shall be required for the storage of equipment, excluding cranes, in a designated area in compliance with any applicable stipulations on the permit.

(iii) The designated storage area(s) are subject to review and approval by OCMC.

(8) **Backfill and Compaction.**

(i) Upon completion of repairs in a street, permittees shall backfill street openings and excavations in a manner in accordance with the specifications. All materials used for backfill shall be free from bricks, blocks, excavated pavement materials and/or organic material or other debris. Notwithstanding the above, asphalt millings may be used as a backfill material.

(ii) Backfill material shall be deposited in horizontal layers not exceeding twelve inches in thickness prior to compaction. A minimum of ninety-five percent of Standard Proctor Maximum Density will be required after compaction.

(iii) When placing fill or backfill around pipes, layers shall be deposited to progressively bury the pipe to equal depths on both sides. Backfill immediately adjacent to pipes and conduits shall not contain particles larger than three inches in diameter.

(iv) Compaction shall be attained by the use of impact rammers, plate or small drum vibrators, or pneumatic button head compaction equipment. Hand tamping shall not be permitted except in the immediate area of the underground facility, where it shall be lightly hand tamped with as many strokes as required to achieve maximum density. The definition of the "immediate area" shall be a maximum of eighteen inches from the facility.

(v) Where sheeting has been used for the excavation it shall be pulled when the excavation has been filled or backfilled to the maximum unsupported depth allowed by the New York State Department of Labor, Industrial Code Rule 23 and Title 29, Code of Federal Regulations, Part 1926, Safety and Health Regulations for Construction. Where a difference exists between regulations, the more stringent requirements shall apply.

(vi) As a measure of maximum density achieved for restoration, the pavement surface shall not sink more than two inches from the surrounding existing surface during the life of the restoration. More than two inches of settlement shall be deemed a failure of the compaction of the backfill and cause the removal of said backfill to the subsurface facility and new fill installed and properly compacted.

(vii) The permittee shall be required to furnish the Department with copies of in-process compaction reports certified by a Professional Engineer as to the compliance with the requirement of the aforementioned backfill requirements. This certified compaction report shall be submitted along with the cutform for every tenth street opening permit issued to the permittee or as directed by the Commissioner.

(9) **Temporary Asphaltic Pavement.**

(i) Immediately upon completion of the compaction of the backfill of any street opening, the permittee shall install a temporary pavement of an acceptable asphalt paving mixture not less than four inches in thickness after compaction, flush with the adjacent surfaces.

(ii) The permittee has the option of installing full depth pavement using an acceptable asphalt paving mixture immediately upon completion of the compaction of the backfill, excluding reconstructed protected streets and full-depth concrete roadways.

(iii) Upon the expiration of the permit, all equipment, construction materials and debris shall be removed from the site, unless otherwise stipulated.

(iv) When final restoration is to be done, the materials are to be removed with hand tools to a depth necessary to accomplish the final restoration.

(10) **Plating and Decking.**

(i) All plating and decking installed by the permittee shall be made safe for vehicles and/or pedestrians and shall be adequate to carry the load.

(ii) The size of the plate or decking must extend a minimum of 12 inches beyond the edge of the trench, be firmly placed to prevent rocking, and be sufficiently ramped, covering all edges of the steel plates to provide smooth riding and safe condition.

(iii) All plating and decking shall be fastened by splicing, spiking, pinning, countersinking or otherwise protected to prevent movement. When the plates are removed all pins and spikes must be removed and the holes must be filled with a fine asphalt concrete mix.

(iv) Where deflection is more than $^{3}/_{4}$", heavier sections of plates or decking or intermediate supports shall be installed.

(v) All permittees who install plating and decking during the winter months shall either post signs at the site indicating "Steel Plates Ahead Raise Plow" or shall countersink said plates flush to the level of the roadway. All signs shall be of the size and type specified in the most current edition of the Federal Manual on Uniform Traffic Control Devices. These signs shall be placed on the sidewalk, adjacent to the curb, facing vehicle traffic five feet prior to the plates. On two-way streets, signs shall be placed on both sides of the street five feet prior to the plates.

(vi) All plating and decking shall have a skid-resistant surface equal to or greater than the adjacent existing street or roadway surface, but in no event less than a New York State skid resistance number of 0.36.

(11) **Base.**

(i) Concrete and asphalt base material shall conform with Department specifications.

(ii) Concrete base shall be properly plated except where other stipulations have been granted in writing by OCMC.

(iii) Concrete for base shall be plated in a driving lane and intersections or barricaded in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices in a parking lane for a minimum of three days to permit proper cure of concrete, unless otherwise specified by the Department.

(iv) Hot asphalt binder materials may be used in place of concrete for non-protected and/or resurfaced streets at a thickness ratio of one and one-half inch of asphalt for every inch of concrete.

(v) The concrete base shall be restored at the same grade as the existing base; at no time may it be brought up to the asphalt course unless authorization has been granted by the Commissioner.

(vi) At no time will asphalt other than binder be permitted as a base course, unless otherwise authorized by the Commissioner.

(vii) Conduit or pipes shall be installed at a minimum depth of 18 inches from the surface of the roadway, or below the base, whichever is greater. Where conduits and pipes cannot be installed at the required minimum depth, protective plating shall be installed over the facilities upon written request from the permittee and receipt of written approval of the Department.

(12) **Wearing Course.**

(i) Wearing course material shall conform to the Department's specifications.

(ii) The finished grade of the wearing course shall be flush with surrounding pavement on all sides of the cut; the restored wearing course shall extend for a distance of six inches (6") beyond the edge of the base course. In the event a permanent restoration pavement installed settles more than two inches (2") below the surrounding existing surface during the life of the guarantee period, this shall be deemed a failure of the backfill compaction, in which case, the permittee shall remove all of the failed backfill, down to the subsurface facility, and install new, properly compacted backfill.

(iii) The minimum thickness of the wearing course on full depth asphalt restoration shall be two inches (2").

(iv) When more than one roadway opening is made against a single permit and the openings are less than three feet apart after the required cutbacks, the existing wearing course between such openings shall be restored integrally with the opening wearing course restoration, in accordance with the current Standard Detail H-1042.

(v) When a street opening is twelve inches or less from the curb, the entire pavement between the opening and the curb shall be excavated and replaced in kind, in accordance with the current Standard Detail H-1042. The pavement base shall be inspected and repaired where necessary and a new wearing course shall be installed from the curb to the street opening. The areas described above shall be included in the permittee's guarantee.

(vi) Whenever any street is excavated, the permittee shall restore such street in kind as to material type, color, finish or distinctive design.

(vii) Pavements shall be restored in kind in designated historic districts and on streets constructed with cobblestones or other distinctive pavements, or as directed by the Commissioner.

(viii) The wearing course shall be properly sealed completely at the edges of the cut with liquid asphaltic cement ironed in with a heated smoothing iron or by means of infrared treatment to prevent water seepage into the pavement.

(ix) Permittees shall be required to obtain a permit for any changes to, or installation of temporary roadway pavement markings and temporary construction, parking or regulatory signs and supports, including, but not limited to, crosswalks and lane lines. Unless otherwise directed by the Commissioner, all roadway pavement markings, including but not limited to, crosswalks and lane lines, and any parking or regulatory signs or supports shall be replaced in kind to Department specifications. All construction signs and supports and pavement markings shall be removed prior to the expiration of the permit.

(x) Final (permanent) restorations shall be completed within ten (10) working days of the expiration of the permit. During winter months, temporary asphalt and pavement markings shall be placed at the expiration of the permit and maintained until such time as the final restoration may be completed.

(xi) For trenches on protected streets, six inches (6") of base and six inches (6") of the wearing course shall be cut back on both sides of the trench. For trenches on non-protected streets, six inches (6") of the wearing course shall be cut back on both sides of the trench, provided, however, that the total cut is a minimum of eighteen inches (18") wide.

(xii) Any permittee performing work on a street pursuant to paragraph (3) of subdivision (d) of this section shall notify the Department within twenty-four (24) hours of the completion of the work on the same protected street determination form as submitted with the permit application pursuant to such paragraph (3) of subdivision (d) of this section.

(13) **Concrete Pavements.**

(i) When street openings are made in concrete pavements, the pavements shall be saw cut full depth for the entire perimeter of the street opening.

(ii) The concrete restoration shall have the same depth, strength and finish as the original pavement.

(iii) The restoration area shall be plated and maintained until enough strength has developed to sustain traffic without deleterious effect to the roadway.

(iv) Reinforcing shall be replaced in kind and spliced as per specifications for reinforced concrete pavement.

(v) Asphalt restorations will not be permitted in concrete streets or concrete bus stop areas.

(14) **Color Coding.**

(i) At each excavation, the permittee shall either paint temporary circles or install permanent colored markers as required in this paragraph, for the purpose of easily identifying the permittee's openings and restorations.

(ii) If the work is not complete, upon leaving the site the permittee shall paint three inch (3") circles adjacent to the cut, in the area closest to the curb line, in accordance with the placement and color requirements as specified below.

(iii) Upon completion of the restoration, the permittee shall install colored markers as specified below, unless another method is approved by the Department. Permittees shall be required to maintain these markers throughout the guarantee period.

(iv) **Placement of Coding and Markers.**

(A) Permanent markers shall be imbedded at zero grade tolerance, or slightly below, in the new asphalt or concrete without the use of nails and shall be of one piece construction.

(B) For cuts or trenches ten feet (10') or less, one temporary painted circle or permanent colored marker shall be placed in the linear center of the cut.

(C) For cuts or trenches up to fifty feet (50'), one temporary painted circle or permanent colored marker shall be placed at each end of the excavation.

(D) For cuts or trenches over fifty feet (50'), temporary painted circles or permanent colored markers shall be placed every twenty-five (25) linear feet maximum and one shall be placed at each end of the excavation.

(v) Such markers shall be in the shape of a circle measuring between one and one-half inches ($1\frac{1}{2}$") and three-inches (3") in diameter, color-coded as specified below, and shall include only the permittee's five-digit identification number and the two-digit year, unless other information is approved by the Department. The two-digit year shall be placed in the center of the marker, and the five-digit identification number shall be placed above the two-digit year.

(vi) **Specifications.** Such markers shall also be UV-stable and designed not to fade significantly.

(vii) Color codes shall be assigned through Quality Control Procedure Q.P. 3 for permittees other than those listed below. Final pavement markers may be used as an alternative to color codes provided such use is approved by the Department.

(A) Verizon-Cherry red marker

(B) Empire City Subway-Chrome yellow marker

(C) Consolidated Edison Co.-Light blue marker

(D) Keyspan-White marker

(E) Plumbers (water or sewer)-Green marker

(F) Signals and Street Lights-Orange marker

(G) Long Island Power Authority-Yellow marker

(H) Metropolitan Transit Authority-Purple marker

(I) Buckeye Pipe Line-Chrome yellow marker

(J) Fire Department-Purple marker

(K) Cable T.V.-Regal blue marker

(15) **Quality Control Program Requirement for Roadways.**

(i) All permittees engaged in street openings, shall complete the work so as to provide smooth riding surfaces throughout the guarantee period on their respective restorations.

(ii) A documented quality history of restoration shall be maintained by the responsible permittee. This information should show that inspections are made at some optimum intervals to assure conformance to the guarantee.

(iii) Quality Control Program information shall be made available to the Bureau upon request.

(iv) The use of experimental methods or materials may be authorized under selective conditions, upon application to the Bureau for approval prior to use on the City streets.

(v) Any permittee may file a proposed Quality Control Program with the Commissioner for approval. The

Commissioner may waive any of the foregoing specification requirements as part of an approved program of Quality Control. Any waiver so granted shall remain in effect as long as the approved program is implemented in a manner satisfactory to the Commissioner or until the Commissioner's approval is rescinded.

(16) **Other Requirements.**

(i) Street Opening Location Form ("Cutforms")

(A) Permittees shall maintain a street opening location form ("cutform") at their office and shall provide this form to the department upon request. Such cutform shall include the following information:

1. a sketch showing the exact dimensions and location of the restored area, and a description of the opening or trench defined by distance in feet from the nearest intersection and from the nearest curbline;

2. the street opening permit number;

3. the date of completion of the final restoration;

4. the name of the final pavement restoration contractor; and

5. a compaction report certified by a New York State licensed professional engineer.

(B) Failure to submit a cutform upon request may jeopardize future permit requests and may subject permittees to summonses.

(ii) **Guarantee period.** Permittees shall be responsible for permanent restoration and maintenance of street openings and excavations for a period of three years on unprotected streets, and up to five years on protected streets commencing on the restoration completion date. This period shall be the guarantee period.

(iii) Permittees shall comply with all applicable sections of these rules, the specifications, and all other applicable laws or rules.

(f) **Excavations and Street Openings in Protected Streets.** No street opening activity shall be allowed, except for emergency work or as authorized by the Commissioner, in a protected street for a period of five years from the completion of the street improvement. In addition to this subdivision (f), all provisions of §2-11 shall apply to protected streets.

(1) **Permit Issuance.** No permit to use or open any street, except for emergency work, shall be issued to any person within a five year period after the completion of the construction of a capital project relating to such street requiring resurfacing or reconstruction unless such person demonstrates that the need for the work could not have reasonably been anticipated prior to or during such construction. Notwithstanding the foregoing provision, the Commissioner may issue a permit to open a street within such five year period upon a finding of necessity therefor.

(2) **Conditions.** Permittees shall be responsible for contacting the Department of Design and Construction to determine whether a street is scheduled to be rebuilt under a street reconstruction project. Notwithstanding the foregoing provision, a permittee performing emergency work need not contact such Department.

(3) **Application.**

(i) Permittees shall include on the application the justification for any street opening activities on protected streets.

(ii) The permittee shall attach the "Protected Street Opening Permit Application Attachment" to the Street Opening permit application prior to obtaining the permit.

(4) **Restorations.**

(i) No backfill of any opening or excavation on a protected street shall be performed unless the permittee notifies the Department at least two hours prior to the scheduled start time for the backfill except as otherwise authorized by the Commissioner. In no case shall the permittee commence the backfill prior to the scheduled start time. For the base and wearing course, the permittee shall fax its daily paving schedule to the Department prior to commencing work. In addition, during the backfill and compaction phase of the work, permittees must provide, on site, a certified compaction tester from an approved laboratory or a licensed certified tester to test that the compaction of the backfill is in accordance with the Department's rules and specifications.

(ii) The Department may inspect any phase of the work, including but not limited to, initial excavation, backfill and compaction, performance of required cut backs, and final restoration.

(iii) A certification issued by a New York State licensed professional engineer shall be provided to the Department within thirty days of completion of work on protected streets. The certification shall state that the type of work performed was as described in the permit application, and that all phases of the restoration were performed in accordance with Department rules and specifications.

(iv) Permittees shall be responsible for the proper repair of the street opening or excavation for a period of three years from the date of completion or for the duration of the protected street guarantee period, whichever is longer.

(v) All restorations shall conform with the latest version of Department standard details 1042A and 1042B.

(vi) Where street openings cannot be confined to within 8 feet of the curb line, including the required cut back, and/or within the sidewalk area, full curb to curb roadway restoration shall be required where protected street status has been in effect for 18 months or less, unless otherwise directed by the Commissioner.

(vii) The permanent restoration shall be flushed with the surrounding pavement on all sides of the restoration. In the event a permanent restoration pavement installed in violation of the provisions of subparagraph (i) of this paragraph (4) settles more than two inches (2") below the surrounding existing surface during the life of the guarantee period, this shall be deemed a failure of the backfill compaction, in which case, the permittee shall remove all of the failed backfill, down to the subsurface facility, and install new, properly compacted backfill.

(g) **Emergency Street Openings and Excavations.** (1) **Permit Requirements.**

(i) No person shall perform emergency work without obtaining an emergency number from the Department. Permittees shall fax the Emergency Street Opening Permit request form to the Department's Emergency Authorization Unit to obtain an emergency permit number, unless otherwise directed by the Commissioner.

(ii) An emergency permit number may be requested only for emergency work performed on existing services. An emergency permit number shall not be obtained for work to be performed pursuant to a CAR.

(2) **Conditions.**

(i) A permittee shall begin emergency work within two hours after obtaining an emergency permit number.

(ii) A permittee shall perform emergency work on an around-the-clock basis until the emergency is eliminated, unless otherwise directed by the Commissioner. Once the emergency is eliminated on a critical roadway listed in subdivision (c) of §2-07 of these rules, the permittee shall suspend work, restore the full width of the roadway and resume work, if necessary, during the nonrestricted hours indicated in that subdivision. Such resumption of work shall only be undertaken within the 48-hour duration of the emergency permit number. A permittee working with an emergency number on a roadway other than a critical roadway may suspend or resume work at any time within the

48-hour period covered by the emergency number.

(iii) No more than one lane of traffic may be obstructed, however, if an emergency street opening is larger than 8 feet by 10 feet, permittee may occupy up to a maximum of 12 feet on one side of the opening and a maximum of 6 feet on the other side.

(iv) All unattended street openings or excavations in a driving lane, including intersections, shall be plated, except as otherwise directed by the Commissioner. The Commissioner may require all street openings and excavations at any location to be plated when no work is in progress. In the case of gas or steam leaks, barricades in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices shall be used until the leak is corrected.

(v) Barricades, signs, lights and other approved safety devices shall be displayed in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices.

(vi) A minimum of five feet sidewalk width of unobstructed pedestrian passageway shall be maintained at all times. Where openings and excavations do not allow for five feet of unobstructed pedestrian passageway, pedestrians shall be directed by signs to the opposite sidewalk.

(vii) No private vehicles shall be kept within the work area.

(viii) A permittee shall submit an application for a regular permit, and for Landmarks Preservation Commission permits if applicable, within two business days of receiving an emergency permit number.

(ix) Restorations shall be made with in-kind materials.

(x) Emergency work in the African Burial Ground and Commons Historic District areas, requires the permittee excavate with utmost caution and the permittee shall not remove any excavation or debris from the site prior to Landmarks Preservation Commission's review of the excavation.

(xi) If any emergency street opening results in a width of less than 11 feet in each direction for vehicular traffic, this shall be deemed a full roadway closure. In such case, the Police Department, the Communication Centers of the Fire Department and the Department of Transportation shall be notified simultaneously with the closing.

(xii) Emergency permit numbers shall be kept on site and shall be presented upon the request of any police officer or other City employee authorized by the Commissioner to enforce these rules. Any additional information regarding the emergency work that is requested at the site by a Department inspector shall be provided by the permittee and/or the persons performing such work.

(xiii) Flagpeople. Permittees whose work results in the closing of a moving traffic lane, which requires traffic to be diverted to another lane, shall, at all times while actively working at the site, post a flagperson or utilize an authorized plan for the maintenance and protection of traffic at the point where traffic is diverted to assist motorists and pedestrians to proceed around the obstructed lane.

(xiv) All permittees shall comply with the provisions of subdivision (g) of §2-02 of these rules, if applicable.

(3) **Application.** When applying for an emergency permit number by fax, a permittee shall submit all information required by the Department. This information includes, but is not limited to, the following:

(i) Name of permittee

(ii) Permittee ID #

(iii) Location of emergency (including borough)

(iv) Type of emergency (including interruption of service)

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Subd. (a) par (1) amended City Record Sept. 7, 2006 eff. Oct. 7, 2006. [See Note 4]

Subd. (b) amended City Record May 7, 2001 §7, eff. June 6, 2001. [See Note 2]

Subd. (d) amended City Record June 7, 2007 §14, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (d) par (1) subpar (ix) amended City Record Feb. 25, 2000 §10, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (d) par (1) subpar (x) amended City Record Sept. 1, 2009 §1, eff. Oct. 1, 2009. [See Note 5]

Subd. (e) par (1) amended City Record Dec. 21, 2001 §4, eff. Jan. 20, 2002. [See Note 1]

Subd. (e) par (4) subpars (i), (iv) amended City Record Feb. 25, 2000 §11, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (e) par (4) subpar (v) amended City Record Dec. 21, 2001 §5, eff. Jan. 20, 2002. [See Note 1]

Subd. (e) par (7) subpar (iii) amended City Record Feb. 25, 2000 §12, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (e) par (8) subpars (i), (vi) amended City Record June 7, 2007 §15, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (e) par (10) amended City Record June 7, 2007 §16, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (e) par (10) subpar (vi) added City Record May 7, 2001 §8, eff. June 6, 2001. [See Note 2]

Subd. (e) par (11) subpar (ii) amended City Record Feb. 25, 2000 §13, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (e) par (11) subpar (vii) amended City Record May 7, 2001 §9, eff. June 6, 2001. [See Note 2]

Subd. (e) par (12) amended City Record June 7, 2007 §17, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (e) par (14) amended City Record June 7, 2007 §18, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (e) par (16) subpar (i) amended City Record Mar. 12, 2004 eff. Apr. 11, 2004. [See Note 3]

Subd. (f) par (4) amended City Record May 7, 2001 §10, eff. June 6, 2001. [See Note 2]

Subd. (f) par (4) subpar (vii) amended City Record June 7, 2007 §19, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (g) amended City Record Dec. 21, 2001 §6, eff. Jan. 20, 2002. [See Note 1]

DERIVATION

Section 2-11 derived from former §2-13 from original publication July 1, 1991. Former §2-13 was amended in City Records Sept. 19, 1996 and Jan. 22, 1997.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 21, 2001:

Section 2-11(e) has been revised to reflect that a flagperson or an authorized plan for traffic maintenance and protection is required at all times while actively working, in the interests of public safety.

Section 2-11(g) has been revised to change the name of the DOT unit which receives requests for emergency numbers from the Communications Center to the Emergency Authorization Unit. Requests will be received on a 24 hour basis. In addition, many of the requirements added to §2-07 regarding emergency work have been added to §2-11 and permittees working with emergency permit numbers have been given more flexibility regarding emergency work.

2. Statement of Basis and Purpose in City Record May 7, 2001: Subdivision b of §2-11 is being amended to alert Permittees to the necessity of obtaining separate permits for each block segment and intersection. Paragraph 10 of subdivision e of §2-11 is being amended to provide for the safe movement of pedestrians, cyclists and others around work sites that contain steel plates and decks. Paragraph 11 of subdivision e of §2-11 is being amended to establish a minimum depth for the installation of conduits and pipes beneath the surface of roadways. This amendment will ensure that conduits and pipes are protected from damage caused by excavation, street openings, resurfacing, reconstruction and vehicular traffic. The Department has become aware of an increase in the number of non-emergency street openings in protected streets. Paragraph 4 of subdivision f of §2-11 is being amended to allow the Department to better monitor restoration activity in protected streets. A new subparagraph vi is proposed in order to maximize the integrity of protected streets by setting forth opening and restoration guidelines for streets which have been reconstructed within 18 months of the present street opening. Where work cannot be performed within 8 feet of curbs or be confined to sidewalks, permittees will be required to restore the street from curb to curb. Finally, a new subparagraph vii is proposed to require permittees to maintain permanent restorations of protected streets in the same manner that they are required to maintain permanent restorations of non-protected streets.

3. Statement of Basis and Purpose in City Record Mar. 12, 2004: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to section 2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Subparagraph (i) of paragraph (16) of subdivision (e) of section 2-11 is being amended to require permittees to retain cutforms at their offices instead of submitting them to the Department. This will reduce the amount of paperwork and record keeping for the Department and reduce the filing burden on permittees.

4. Statement of Basis and Purpose in City Record Sept. 7, 2006: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Paragraph (1) of subdivision (a) of §2-11 is being amended to add subparagraphs (i) and (ii). Subparagraph (i) provides that Street Opening Permits will only be issued to a company affiliated with a master plumber's license and outlines the circumstances under which the Department may suspend review of an application for a permit, revoke or refuse to renew a permit, or refuse to issue a permit to a licensed master plumber or affiliated companies of the licensed master plumber company pursuant to specific provisions contained within existing rules. Subparagraph (i) also requires a licensed master plumber or a company affiliated with the master plumber's license to provide the certificate issued to such company by the New York City Department of Buildings and additional documentation from the New York City Department of Environmental Protection before the Department issues a Street Opening Permit. Subparagraph (ii) provides that where a Street Opening Permit is necessary for any work performed pursuant to a valid contact with a local or state governmental entity, the Street Opening Permit will be issued to the general contractor performing work. Currently, when a street requires excavation for the purposes of conducting plumbing work, a permit is issued directly to the excavators. These subcontractors performing excavation work are not required to hold professional licenses and sometimes do not restore the streets that they have excavated to the satisfaction of the Department. This amendment is being proposed to change the Department's permit process in order to ensure stricter compliance with agency requirements for restoring the

streets, and to impose this responsibility directly upon licensed master plumbers in the manner similar to requirements already imposed upon other corporate entities.

5. Statement of Basis and Purpose in City Record Sept. 1, 2009: The Commissioner of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903(b) of the New York City Charter and Title 19 of the New York City Administrative Code. There are many structures that constitute bridges within the City, but this designation is not always obvious to a contractor who may wish to perform excavations in the vicinity thereof. This rule is being amended to provide additional safeguards to the structural integrity of bridges, tunnels, underpasses and overpasses under the jurisdiction of the Department, and to better regulate excavations and restorations performed near bridges and on their outlying support structures.

CASE NOTES

¶ 1. The rule does not limit a contractor's common-law liability for affirmative acts of negligence which result in the creation of a dangerous condition upon a public street or sidewalk. Ingles v. City of New York, 309 A.D.2d 835, 766 N.Y.S.2d 80 (2d Dept. 2003).

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).
2

[Footnote 2]: * So in original.

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Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-12 Vacant Lots.

(a) **Property owners' responsibility.** Whenever the Commissioner shall so order or direct, property owners shall, at their own expense:

(1) fence any vacant lot(s);

(2) fill any sunken lot(s) in compliance with §2-06 or other requirements of these rules;

(3) cut down any raised lot(s) in accordance with the specifications of the Department and §2-02 of these rules.

(b) **Failure to comply.** Upon the property owner's failure to comply with the requirements of paragraph (a), above, the Department may perform the work or cause it to be performed, the cost of which, together with the administrative expenses, shall constitute a debt recoverable from the owner by lien on the property affected, pursuant to §19-152 of the Administrative Code.

(c) **Reinspection.** Upon request of the property owner to the appropriate borough office, the Department shall provide a reinspection by a different departmental inspector than the one who conducted the first inspection.

(d) **Permit requirements.** The property owner shall obtain a permit from the Department before performing any work pursuant to this section. All permits are subject to applicable provisions contained in §2-02 of these rules.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

DERIVATION

Section 2-12 was derived from former §2-11 from original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on

the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-13

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-13 Vaults.

(a) **Vault defined.** A vault is any opening below the surface of the street and outside the property line that is covered over.

(b) **Exceptions.** This §2-13 shall not apply to:

(1) Openings that are used exclusively as places for egress or ingress by means of steps to the cellar or basement of any building.

(2) Openings that are used primarily for light and ventilation.

(3) Openings constructed or maintained by utility companies, which are regulated under a separate agreement with the City.

(4) Subways, railroads and related structures that are controlled by a public authority.

(c) **License required.** A license shall be obtained prior to construction of a new vault or enlargement of an existing vault. A revocable consent shall be required for any vault that extends further than the line of the sidewalk or curbstone of any street.

(d) **Permit required.** No vault shall be constructed, altered or repaired unless a street opening permit is obtained from the Department upon payment of the established fee.

(e) **Applications.** (1) All applicants for a license and/or permit to construct, maintain, alter or repair a vault shall file a written application signed by the applicant, stating the dimensions of the vault, the number of square feet required and four $8^{1}/_{2}$" × 14" cloth copies of a plan. For existing vault repairs, blueprints may be submitted in lieu of cloth copies of the plan at the discretion of the Commissioner. Plans shall include:

(i) The address and the tax lot and block number of the vault property location.

(ii) The distance from the lot property line to the nearest corner property line.

(iii) All frontages, lot lines, and line of building abutting the street.

(iv) All distances from the lot line to the existing curb line (existing width of sidewalk).

(v) The dimensions of the vault at the outer perimeter of the walls, the depth of the vault, and the composition and thickness of the vault walls (top and cross sections).

(vi) Location of all existing or proposed steps, gratings, open areas, coal holes/chutes/slides, entrances, cellar doors, building encroachments, and all other installations in the sidewalk area.

(vii) Details and location of all manhole access covers to a boiler or underground tank, to be installed in accordance with the specifications.

(viii) Approved Department of Buildings plan.

(ix) For existing vaults, verification of annual vault charge return.

(x) For a new vault or an enlargement of an existing vault, a copy of the license agreement filed with the Division of Franchises, Concessions and Consents of the Depart- ment.

(2) All applicants shall comply with the requirements of §2-02 of these rules.

(f) **Adjustments to license fee.** When subsequent measurements indicate that more or less space has been taken for the construction of a vault than that originally paid for, an adjustment of fees shall be made pursuant to §19-117(e) and (f) of the Administrative Code.

(g) **Limitations.** No vault shall extend closer than seven feet to the established curb line unless otherwise authorized by the Commissioner. Such authorization may be granted based upon:

(1) Special conditions cited by the applicant and,

(2) Additional construction requirements, including, but not limited to:

(i) A waterproofed recess in the vault roof adequate to receive a standard curb for the entire length at which the curb may be set or reset in accordance with the Department's standard sidewalk width even in cases where the existing or proposed sidewalk width does not conform to that standard width.

(ii) A strengthening of the vault roof to sustain live loads of six hundred pounds or more per square foot.

(iii) Adequate waterproofed recesses to accommodate existing or proposed street lights, hydrants, traffic signals and other street appurtenances to the Department's standard sidewalk width even in cases where the existing or proposed curb line does not conform to that standard width.

(h) **Curb.** No vault shall extend beyond the established line of the curb.

(i) **Arched or covered vault.** No new vault is to be arched or covered unless the owner or applicant shall have had the vault first measured by a duly licensed surveyor who shall deliver to the Department a certificate signed by him or her specifying the area of the vault, together with a diagram showing the dimensions thereof, including its sustaining walls, the location of the vault in relation to the building, curb line, and the nearest street corner intersection, the house number, the tax lot and the block numbers of the plot and all details as to sidewalk covering; in the case of an existing vault, the person claiming the right to the use thereof shall furnish a similar certificate and diagram, except that in such case the measurement shall exclude the sustaining walls if it is impracticable for the surveyor to measure the thickness. See §19-117(d) of the Administrative Code.

(j) **Hoistway openings.** No opening in the sidewalk area shall be constructed for the accommodation of any elevator or lift, whether manually or power operated. Existing hoistway openings in the sidewalk may be continued but shall not be enlarged in buildings erected before July first nineteen hundred fifty-seven, provided such openings are equipped with approved type doors located flush with the sidewalk and equipped with elevators. These hoistway openings with elevators may be relocated provided the total number of sidewalk elevators serving the building is not increased. Relocated elevators may not project more than five feet from the building line into the sidewalk area.

(k) **Boiler room exit.** An exit in the sidewalk area may be constructed and maintained above a steam boiler room. The door over such exit shall be three feet parallel to the building line and two feet at right angles thereto. The cover shall be adjacent to the building line and shall be hinged on the side nearest the curb allowing for it to be open slightly less than ninety degrees with the horizontal. An iron ladder permanently fixed in position shall be installed.

(l) **Sidewalks over vaults.** (1) A standard specification concrete sidewalk of four inch minimum thickness shall be installed over the structural roof slab of the vault and in conjunction with the structural roof slab shall be able to sustain a minimum live load of six hundred pounds per square foot. In no case shall the new sidewalk serve as the structural roof of the vault.

(2) The licensee shall be responsible for repairing and maintaining the sidewalk covering the roof of a vault in a safe condition. The Commissioner may order a licensee to repair defects in vault coverings, including defective sidewalk flags, in accordance with subdivision (b) of §19-151 of the Administrative Code.

(m) **Doors and gratings.** (1) All gratings or doors covering openings or roofs of vaults on the sidewalk shall be so constructed as to sustain a minimum live load of six hundred pounds per square foot.

(2) Doors and gratings in sidewalk are not permitted in front of any entrances, including building, store and delivery.

(3) All doors and grating and related hardware shall be flush with the sidewalk.

(4) Door and grating material and design shall be approved by the Department of Buildings.

(n) **Defective covers.** The Commissioner may order defective vault covers, doors, gratings and adjacent areas which are broken or present a slippery surface to be made safe immediately by the owner and replaced in accordance with Department standards in accordance with subdivision (b) of §19-151 of the Administrative Code.

(o) **Abandoned vaults.** The Commissioner may order the vault licensee and/or the owner of the premises to fill in an abandoned vault in accordance with subdivision (b) of §19-151 of the Administrative Code as hereinafter provided. The vault shall be filled in with clean, incombustible material, attaining proper compaction standards. Where such structures adjoin the curb, the enclosing walls shall be cut down to a depth of two feet below the curb and the roof shall be removed. Proper steps shall be taken to allow for the drainage of water through the vault floor.

(p) **Historic districts.** All work on vaults in historic districts shall be approved by the Landmarks Preservation Commission prior to the commencement of the work.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

DERIVATION

Section 2-13 was derived from former §2-24 from original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-14

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-14 Miscellaneous.

(a) **Public pay telephones.** (1) An application for a permit for public pay telephones and related equipment shall be made to the Department of Information Technology and Telecommunications (DOITT) pursuant to Chapter 4 of Title 23 of the Administrative Code and pursuant to Chapter 6 of Title 67 of the Rules of the City of New York.

(2) A street opening permit for installation of a public pay telephone line or stanchion shall be obtained from the Department, pursuant to §2-02, after obtaining a permit from DOITT. Fees shall be paid pursuant to §2-03 of these rules.

(3) A street opening permit shall be obtained for the removal of a public pay telephone stanchion and the restoration of the sidewalk. Such sidewalk restoration shall be performed in accordance with the Department's specifications.

(b) **Banners.** (1) **Permit required.**

(i) The Commissioner may issue permits for the display of banners promoting cultural exhibits and events or public or historical events which foster tourism and/or enhance the image of the City. The Commissioner may issue permits to business improvement districts (BIDs), local development corporations (LDCs) or other organizations that have received Commercial Revitalization Program funds (CRP fund recipients) from the Department of Business Services within the past year for the display of banners within the BID, LDC or CRP fund recipient's area that are designed to provide information about such BID, LDC or CRP fund recipient's area to the general public.

(ii) No person shall install, place, affix or attach a banner on any property within the jurisdiction of the Department without first obtaining a permit from the Commissioner.

(iii) No person shall install, place, affix or attach a banner on any property within the jurisdiction of the Department which contains a sponsor trade name or logo without the specific prior authorization of the Commissioner.

(2) **General conditions.**

(i) The number of banners to be installed and the location of each banner shall be approved by the Commissioner prior to installation. All requested locations may not be approved.

(ii) Banners shall be placed within a one block radius of the event unless otherwise authorized by the Commissioner.

(iii) Horizontal banners, including banners hung across a street, are not permitted.

(iv) Vertical banners shall be not more than 3 feet wide and not more than 8 feet in height. All such banners shall have 6 slits to allow air passage. Two banners per pole are allowed only if they collectively do not exceed 24 square feet. For existing banners only, two banners per pole not exceeding 30 square feet collectively may be allowed by the Commissioner in his/her discretion. Each such banner shall have 3 slits to allow air passage. The bottom portion of a banner shall be not less than 18 feet above the roadway.

(v) Banners shall contain no advertisements. The trade name(s) or logo(s) of the sponsor(s) of the event may be placed on the banner but shall occupy no more than 10% of the banner in total. Corporate sponsor's trade name(s) or logo(s) shall be located on the lower portion of the banner.

(vi) All applicants shall submit a final graphic of the banner prior to the issuance of a permit. It shall be a condition of each permit that the banner is in compliance with the final graphic.

(vii) Applications for banner permits shall be submitted no fewer than 45 days prior to the planned installation date.

(viii) Applicants shall be responsible for inspecting banners and poles and replacing and/or removing banners that are torn, defaced or in general disrepair, including rigging.

(3) **Installation, maintenance and removal.**

(i) Drilling of lamppost or welding of bracket supports is not permitted. All mounting hardware must be of a corrosion resistant material.

(ii) Banners shall not be attached to any traffic signal posts containing an electrical traffic control device. Banners shall not be installed so as to obstruct the visibility of signs or signals which may be attached to other lampposts.

(iii) Banners shall not be placed on lampposts designated as landmarks by the Landmarks Preservation Commission. Banners shall not be placed on ornamental signposts without meeting specific permit stipulations.

(iv) Banners and any installation apparatus shall be removed immediately upon the expiration of the term of the permit, except where a permit extension has been granted by the Commissioner.

(4) **Duration and renewal of permits.** Banner permits shall remain in effect for a period of 30 days including installation and removal, and may be renewed up to two times at the discretion of the Commissioner.

(5) **Duration and renewal of permits granted to BIDs, LDCs or CRP fund recipients.** Permits granted to BIDs,

LDCs or CRP fund recipients may remain effective for up to 90 days and may be renewed at the discretion of the Commissioner.

(6) **Revocation.** Banner permits are revocable at will by the Commissioner.

(c) **Bandstands and temporary platforms.** (1) No person shall erect or maintain a temporary platform or bandstand on the street unless the structure has been approved by the Department of Buildings and a permit has been issued by the Commissioner.

(2) Applicants for a permit to erect or maintain a temporary platform or bandstand shall file a commercial general liability insurance policy, as provided in §2-02, with the Commissioner.

(d) **Helicopter lifts.** A street closing permit for the closing of streets along the route of a helicopter lift shall be required for contractors with licensed operators performing helicopter rigging operations on construction sites. The permit is subject to the following requirements:

(1) a permit for Aviation Operation, External Lift Operation, from the Public Transportation Safety Unit of the Fire Department and

(2) a signed and notarized Indemnification and Hold Harmless Agreement.

(e) **Temporary Festoon/Holiday Lighting and/or other Temporary Lighting.**

(1) No individuals shall be permitted to hang temporary festoon/holiday lighting and/or other temporary lighting from lampposts or poles containing electrical traffic control devices.

(2) Groups, including but not limited to, Business Improvement Districts, Block Associations and Chambers of Commerce shall be permitted to hang temporary festoon/holiday lighting and/or other temporary lighting from lampposts, provided the following conditions are met:

(i) All temporary festoon/holiday lighting and/or other temporary lighting, their attachments, accessories, installations, and methods of attachment shall be in compliance with the applicable requirements of these rules, the New York City Electrical Code (Chapter 3 of Title 27 of the Administrative Code) and the rules of the New York City Department of Buildings.

(ii) A letter requesting permission to hang temporary festoon/holiday lighting and/or other temporary lighting shall be sent to the Department's Street Lighting Unit each year, 60 days before the holiday or event by the sponsoring group. Such letter shall state the anticipated installation and removal dates of the lighting, the proposed location(s) where the lights shall be installed including the number of block faces of streets to be used, and the number of lampposts to be affected, including those from which power is to be drawn and those that are to be used only as an attachment for the temporary lighting.

(iii) The Street Lighting Unit shall provide a disposition in writing. If approved, the sponsoring group or its electrical contractor shall submit such disposition from the Street Lighting Unit to the Department of Buildings when applying for a Certificate of Electrical Inspection.

(iv) The sponsoring group shall hire an electrical contractor licensed by the City to furnish and install a Ground Fault Circuit Interrupter (GFCI) weatherproof receptacle and install the lighting fixtures and supporting equipment. The GFCI shall be installed near the top of the shaft of the lamppost from which the power is to be drawn.

(v) The sponsoring group or its electrical contractor shall be responsible for the maintenance and replacement, as necessary, of the weatherproof receptacles.

(vi) The sponsoring group or its electrical contractor shall obtain a Certificate of Electrical Inspection from the Department of Buildings prior to applying for a permit from the Department.

(vii) The sponsoring group shall make arrangements with the appropriate electric utility company to pay for the electricity that will be used to illuminate the temporary festoon/holiday lighting and/or other temporary lighting.

(viii) The sponsoring group shall obtain and maintain in force an insurance policy as provided in §2-02 of these rules and shall indemnify and hold the City harmless from any and all claims for personal injury or property damage arising from the installation, maintenance, operation and eventual removal of the temporary festoon/holiday lighting and/or other temporary lighting.

(ix) A permit to hang temporary festoon/holiday lighting and/or other temporary lighting shall be obtained from the Department of Transportation, prior to commencing work, upon the showing of the letter of consent from the Street Lighting Unit and the Certificate of Electrical Inspection from the Department of Buildings pursuant to subparagraphs (iii) and (vi) of this paragraph.

(x) Temporary festoon/holiday lighting and/or other temporary lighting with necessary feed wires and supports may be permitted over sidewalks for a period not to exceed 90 days, provided they do not interfere with the free use of fire escapes and drop ladders. All such electrical construction shall be removed within the time stated on the permit, excluding the authorized GFCI weatherproof receptacle. The receptacle shall be permitted to remain provided that it is properly maintained. Any receptacle(s) not properly maintained shall be removed, within one (1) to ten (10) days of notice from the Department, as directed by the Department, by the sponsoring group at its sole cost and expense. In the event that the sponsoring group fails to remove the receptacle(s) or in the case of an emergency, the Department may remove such receptacle(s) and charge the cost of removal to the sponsoring group.

(xi) Prior to commencing any work, the electrical contractor shall test each pole for stray voltage. if a pole tests positive, the electrical contractor shall contact the Department and Con Edison immediately and shall report such test result and the location of the pole. The electrical contractor shall wait for clearance from the Department and Con Edison prior to the commencement of work.

(xii) After completing the installation of the temporary festoon/holiday lighting and/or other temporary lighting, the electrical contractor shall retest each pole for stray voltage. If a pole tests positive, the electrical contractor shall contact the Department and Con Edison immediately and shall report such test result and the location of the pole.

(xiii) The electrical service shall not exceed 120 volts and shall not be fused larger than fifteen (15) amperes.

(xiv) The installation of temporary festoon/holiday lighting and/or other temporary lighting shall comply with the minimum height clearances below:

Nature ofCrossing Conductors Guys, Spans, Messengers

Under300 Volts 300 Volts to750 Volts 750 Volts to15,000 Volts 15,000 Volts to33,000 Volts

Above track rails of freightrailroads. 27 feet 27 feet 28 feet 30 feet

Above track rails of elevated railways. 25 feet 25 feet 25 feet 25 feet

Above track rails of surface railways. 22 feet 22 feet 25 feet 25 feet

Above roadways of streets, etc. 18 feet 18 feet 20 feet 22 feet

Above spaces or ways accessible to pedestrians only, i.e., sidewalks and alleyways. 14 feet**For guys, 8 feet shall be sufficient for anchor guys not crossing pathways. 18 feet 20 feet 22 feet

(xv) Temporary festoon/holiday lighting and/or other temporary lighting, strings or messengers shall not be supported by or secured to any fire escape or drainpipe. They shall be insulated from their supports by strain insulators.

(xvi) Streamers, messengers or supports shall not be attached to or supported from electric, light, telephone, communications or trolley poles or lines without permission from the owners.

(xvii) Any sponsoring group and/or electrical contractor who fails to comply with the requirements of this subdivision shall be excluded from the permit process for temporary festoon/holiday lighting and/or other temporary lighting for the following year or seasonal cycle, or other period of time as determined by the Department.

(xviii) Requests to make adjustments to the work performed shall be approved by the Department.

(xix) The Department may mandate that changes be made to the work performed.

(xx) The electrical contractor shall test each pole for stray voltage after removing the temporary festoon/holiday lighting and/or other temporary lighting equipment in compliance with the permit limits. If a pole tests positive, the electrical contractor shall contact the Department and Con Edison immediately and shall report such test result and the location of the pole.

(xxi) At the completion of the work, a letter shall be sent to the Department certifying that the work was conducted in accordance with all rules and regulations.

(f) **Commercial refuse containers.** Commercial refuse containers are containers to be placed on the public roadways temporarily, the use of which is not related or connected to any use or activity for which a construction activity permit shall be obtained from the Department. Commercial refuse containers shall not be used for the storage of putrescible waste.

(1) No commercial refuse container shall be placed on the street unless the owner has registered the container and obtained a permit from the Department.

(2) Upon registration, the Department shall issue a permit to the owner of the container company which lists identification numbers for each registered container. The identification numbers shall be printed on stickers which shall be obtained by container company owners, validated at the nearest Department borough permit office and shall be placed conspicuously on two sides of the containers. Specifications for the stickers shall be available at the permit offices.

(3) Permits to place commercial refuse containers on the street temporarily shall be valid for one year. Information regarding the number of containers owned by each company shall be updated as necessary and the permit shall be updated containing the new registration numbers for any additional containers.

(4) Commercial refuse containers shall not be stored or placed within:

(i) any "No Stopping," "No Standing" or "No Parking Anytime" areas;

(ii) fifteen feet of hydrants;

(iii) the area created by extending the building line to the curb (the "corner") or the area from ten feet from either side of the corner (the "corner quadrant");

(iv) four feet of lampposts;

(v) five feet of railroad tracks.

In exceptional circumstances, the Commissioner may grant permission to store or place containers in the areas specified in items (i) through (v), above. An application for such permission shall be made to OCMC indicating the need for such placement.

(5) Storage of commercial refuse containers shall not interfere in any way with subway facilities, hydrants, fire alarms, traffic signals, street signs, bus stops or shelters, trees, parking meters, emergency telephones, water main valves or gas shut-off valves, unless permission is obtained from the appropriate City Department.

(6) The name, address and telephone number of the owner shall be printed on two sides of each container.

(7) Each container shall be stored flush with the curb and extend no more than eight feet.

(8) The street under all containers shall be shielded by roadway protection to prevent damage to streets.

(9) All containers shall be clearly marked on all four sides with high intensity reflective paint, reflectors, or other markings capable of producing a warning glow when struck by the head lamps of a vehicle or other source of illumination at a distance of three hundred feet.

(10) No container shall be left in one location for more than seventy-two continuous hours.

(11) Sidewalks, gutters, crosswalks and driveways shall at all times be kept clear and unobstructed and all dirt, debris and rubbish shall be promptly removed therefrom.

(g) **Storage boxes.** No person shall place on any street a box for the purpose of storing written matter or any other type of material or attach such box to any item of street furniture or to the pavement in any way.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Subd. (e) amended City Record Apr. 13, 2005 §2, eff. May 13, 2005. [See T34 §2-03 Note 4]

Subd. (f) par (4) closing par amended City Record Feb. 25, 2000 §14, eff. Mar. 26, 2000. [See T34

§2-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02,

Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

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Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-15

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-15 Removal of Unauthorized Encroachments.

(a) The Commissioner may serve an order upon a property owner to remove or alter any unauthorized projection, encroachment or encumbrance on or in front of his premises within a period to be specified in such order; such order shall be served personally, or by leaving it at the house or place of business of the owner, occupant or person having charge of the house or lot in front of which the projection, encroachment or encumbrance may be, or by posting such order thereon.

(b) Where a property owner fails to alter or remove the encroachment, encumbrance or projection within the time specified in the order, the Commissioner may remove or alter or cause such encroachment, encumbrance or projection to be removed or altered at the expense of the owner or constructor thereof, who shall be liable to the City for all expenses that it may incur by such removal or alteration, together with the penalties prescribed by §19-150 of the Administrative Code, to be recovered with costs of suit.

(1) In addition to any other remedies or penalties, whenever such removal, alteration, repair and restoration is undertaken by the Commissioner he or she may certify separately the cost and expense of such removal, alteration, repair and restoration to the Commissioner of Finance, who shall charge the amount of such costs and expenses against the property upon and with respect to which the work was performed. Each such charge shall be a lien upon the property or premises in respect to which the same shall have been made, which lien shall have priority over all other liens and encumbrances except taxes and assessments for other public or local improvements, sewer rents, water rents and interest or penalty thereon levied or charged pursuant to law.

(2) As an alternative to the remedies prescribed above, the Commissioner may in his or her discretion institute

through the Corporation Counsel any appropriate action or proceeding at law against such owner for the recovery of the costs and expenses of such removal, alteration, repair and restoration undertaken by the Commissioner, as provided in §19-133 of the Administrative Code.

(c) In addition, failure to comply with an order issued by the Commissioner may result in criminal or civil penalties in accordance with §19-149 or 19-150 of the Administrative Code.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

34 RCNY 2-16

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-16 Street Closings Lasting More Than 180 Days.

(a) Prior to the issuance of a permit that will result in a publicly mapped street being fully closed for more than 180 consecutive calendar days an applicant shall submit a Community Reassessment, Impact and Amelioration (CRIA) statement to the Department for its approval. Without such approval by the Department, the Department may refuse to issue a permit. This provision shall apply to single permits or to a combination of permits that would result in such full street closure for a total of more than 180 consecutive calendar days.

(b) Any individual or entity that effectuates the closure of a street for more than 180 consecutive calendar days for which a permit from the Department is not required, with the exception of such street closures initiated by a local law enforcement agency, shall comply with all provisions of this section.

(c) The CRIA statement shall contain the following:

(1) the objectives of the closure and the reasons why the continued street closure is necessary to attain those objectives;

(2) identification of the least expensive alternative means of attaining those objectives and the costs of such alternatives, or a statement and explanation as to the unavailability of such alternatives;

(3) how the continued street closure will impact access and traffic flow to and within the surrounding community, including but not limited to, access to emergency vehicles, residences, businesses, facilities, paratransit transportation and school bus services; and

(4) any recommendations to mitigate adverse impact and increase access to and within the area.

(d) The requirement for the issuance of a CRIA statement as described in this subdivision may be satisfied by delivery of an environmental assessment statement or environmental impact statement conducted pursuant to CEQR rules, that has been approved by the Department.

(e) The individual or entity requesting a street closure as provided for in this section shall attend and assist the Department at the public forum held pursuant to the requirements of §19-107(b) of the Administrative Code of the City of New York and any other public forum resulting from the street closure upon request from the Department, and shall assist the Department in producing responses to any and all issues raised pursuant to such public forum(s).

(f) The Department may require the individual or entity requesting such street closure to issue the Department approved CRIA, environmental assessment statement or environmental impact statement to the community board and the council member in whose district the street is located.

HISTORICAL NOTE

Section added City Record Aug. 30, 2005 §2, eff. Sept. 29, 2005. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 30, 2005:

The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code.

Section 19-107(b) of the Administrative Code of the City of New York was recently amended to require the production of a CRIA statement, or, in the alternative, an environmental assessment statement or environmental impact statement whenever there is a planned full street closing that lasts a total of more than 180 consecutive calendar days. Accordingly, §2-02(b) is being amended and a new §2-16 is being added to require entities wishing to close a street for more than 180 consecutive calendar days to produce the CRIA statement, or, in the alternative, an environmental assessment statement or environmental impact statement.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-16

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-16 Builders' Pavements. [Repealed]

HISTORICAL NOTE

Section repealed City Record Mar. 17, 2000 §3, eff. Apr. 16, 2000. Section was incorporated into

§2-09. [See Note to §2-09]

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

FOOTNOTES

1

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Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-17

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-17 Adjudications.

New York City Department of Transportation adjudications regarding the fitness and discipline of agency employees will be conducted by the Office of Administration Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Commissioner.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

DERIVATION

Section 2-17 was derived from former §2-35 from original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2

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Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-18

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-18 Newsstands.

Incorporation by Reference of Rules Promulgated by the New York City Department of Consumer Affairs. The rules related to newsstands promulgated by the Department of Consumer Affairs in Subchapter G of Chapter 2 of Title 6 of the Rules of the City of New York are hereby incorporated by reference into this Chapter as rules of the Department of Transportation.

HISTORICAL NOTE

Section added City Record Feb. 29, 2008 §1, eff. Mar. 30, 2008. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 29, 2008:

Local Law No. 64 for the year 2003, which became effective October 29, 2003, revised requirements governing the siting, construction and process for approving applications for licenses to operate newsstands or for renewals thereof. It also authorized the granting of a franchise to construct, install and maintain newsstands in the City of New York, and the procedure for such franchise to replace the stands used by newsstand licensees. To implement the revisions enacted by Local Law No. 64, the Department of Consumer Affairs repeals the current Subchapter G of Chapter 2, Title 6 of the Rules of the City of New York governing newsstands, and promulgates a new Subchapter G.

The Department of Transportation incorporates by reference the Rules concerning newsstands promulgated by the

Department of Consumer Affairs since these Rules implicate the Department of Transportation's responsibilities concerning newsstands. Specifically, the Department of Transportation must inspect proposed and existing newsstand locations to conduct pedestrian levels of service analyses and ensure the maintenance of a clear path for unobstructed pedestrian traffic on the sidewalk. The Department of Transportation must also inspect newsstands in connection with applications submitted to the Department of Consumer Affairs for the renewal of licenses permitting the operation of such newsstands. Thus, the Department of Transportation adopts the following Rule.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on

the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-19

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-19 Bicycle Access in Office Buildings.

(a) **Definitions.** For purposes of this section, the following terms shall have the following meanings:

(1) Accessible Level. "Accessible level" shall mean one that facilitates the approach, entry or use for bicyclists on whose behalf the tenant or subtenant has requested bicycle access.

(2) Available. "Available" shall mean accessible for use by bicyclists on whose behalf the tenant or subtenant has requested bicycle access.

(3) Control. "Control" shall mean to exercise legal authority over through deed, permit, lease, contract or otherwise.

(4) Covered. "Covered" shall mean enveloped by a roof or functional equivalent. For purposes of this definition, "roof" shall mean the outer cover and its supporting structures on the top of a building.

(5) Indoor. "Indoor" shall mean situated in the interior of or within a building that is within three blocks or seven hundred fifty feet, whichever is less, of the building for which a bicycle access plan is requested.

(6) Off-street. "Off-street" shall mean located in an area other than the roadway or the public sidewalk within three blocks or seven hundred fifty feet, whichever is less, of the building for which a bicycle access plan is requested.

(7) Secure. "Secure" shall mean that (i) the entry to or exit from the alternate bicycle parking is locked or supervised by building personnel and permitted only to (A) the owner, lessee, manager or such other person who

controls such building and their agents, and (B) bicycle owners on whose behalf the tenant or subtenant has requested bicycle access, and (ii) a bicycle owner can lock a bicycle to a fixed object (including, but not limited to, a bicycle rack) such that the bicycle is protected from damage or theft.

(b) **Bicycle Access Plan.**

(1) **Request for Bicycle Access.**

(i) The tenant or subtenant of an office building, as defined in Administrative Code §28-504.1, may submit a request for bicycle access, in writing on a form provided by the Department, to the owner, lessee, manager or other person who controls such office building. Such request shall be submitted by certified mail, return receipt requested.

(ii) The tenant or subtenant shall file a copy of any request for bicycle access with the Department. Such request may be filed electronically by submitting it through the Department's website (www.nyc. govbikesinbuildings) or by submitting such request by regular mail to the Department of Transportation, 55 Water Street, 6th Floor, New York, NY 10041, Attention: Bikes in Buildings Program.

(iii) The owner, lessee, manager, or other person who controls such office building shall complete and implement a bicycle access plan for such building within thirty (30) days after receipt of a written request from such tenant or subtenant of such building.

(iv) The owner, lessee, manager or other person in control of the building may request an exception to the requirements of Administrative Code §28-504.3 in accordance with subdivision (d) of this section.

(2) **Contents of Bicycle Access Plan.**

(i) **Requirements.** The bicycle access plan prepared by the owner, lessee, manager or other person who controls a building shall, for bicyclists on whose behalf the tenant or subtenant has requested bicycle access, include but not be limited to:

A. the location of entrances within or to the building;

B. the route to elevator(s) that accommodate bicycle access;

C. the regular hours of operation of the elevator(s);

D. such other information as is deemed to be appropriate by and for the particular building; and

(ii) For purposes of these rules it shall be presumed that if a freight elevator in the building is available for carrying freight, it is available for carrying a bicycle for purposes of providing bicycle access.

(iii) Bicycle access shall be available, at minimum, during the regular operating hours of the freight elevator in the event that such elevator is used for bicycle access.

(iv) Upon receiving and reviewing its copy of a request for a bicycle access plan that has been filed in accordance with subparagraph (ii) of paragraph one of subdivision (b) of this section, the Department may require that additional information be included in the plan because it has determined that such information is appropriate for the particular building in question.

(c) **Amendments to plan.** The owner, lessee, manager, or other person who controls a building shall either create a new plan or amend a plan as needed (1) to address changed circumstances which warrant a revision in a particular tenant's or subtenant's plan, or in a plan that is applicable to all tenants; or (2) to accommodate new requests from other tenants or subtenants requesting bicycle access. Should such owner, lessee, manager, or other such person who controls

a building elect to amend a bicycle access plan pursuant to this section, such plan shall be amended within thirty (30) days of receiving a request for bicycle access. Any amendments that may materially affect the bicycle access plan shall be completed and implemented within thirty (30) days of the changed circumstances or to accommodate new requests from other tenants or subtenants requesting bicycle access, and do not preclude the requirement to comply with the provisions of this section. All amendments shall be filed with the Department pursuant to the provisions of subdivision (h) of this section.

(d) **Exceptions.**

(1) Bicycle access need not be provided if an owner, lessee, manager or other person who controls a building applies to the Commissioner for, and is granted, a letter of exception as set forth below. Such request shall be sent by certified mail, return receipt requested within fifteen (15) days of receipt of a request for a bicycle access plan to the Department of Transportation, 55 Water Street, 6th Floor, New York, NY 10041, Attention: Bikes in Buildings Program, and certifies the following:

(i) the building's freight elevator is not available because unique circumstances exist involving substantial safety risks directly related to the use of such elevator pursuant to Administrative Code §28.504.4(1) ("Exception 1"); or

(ii) there is sufficient secure alternate covered off-street no-cost bicycle parking within three blocks or seven hundred fifty (750) feet, whichever is less; or there is sufficient secure alternate indoor no-cost bicycle parking available on the premises or within three blocks or seven hundred fifty (750) feet, whichever is less, of such building to accommodate all tenants or subtenants of such building requesting bicycle access pursuant to Administrative Code § 28.504.4(2) ("Exception 2"). The number of bicycle parking spaces available shall be at least equal to the number of bicycles contained in the bicycle access tenant requests.

(2) A request for Exception 1 shall include the basis for requesting such an exception and shall also include but not be limited to the following supporting documentation:

(i) A certification from a professional engineer who is licensed and registered in New York State. Such certification shall include but not be limited to the following facts:

(A) The date the building was constructed;

(B) The date the elevator was installed;

(C) The method of elevator door closing;

(D) Whether the elevator is self-service or there is an operator;

(E) Whether there is a car top;

(F) Whether there is a car gate or door; and

(G) The professional engineer's license number.

(ii) Upon receiving and reviewing a request based on Exception 1, the Department may require that additional information be submitted in support of the request because it has determined that such information is appropriate for the particular building in question.

(3) A request for Exception 2 shall include the basis for requesting such an exception and shall also include but not be limited to the following supporting documentation:

(i) Proof that secure alternate covered off-street no-cost bicycle parking or secure alternate indoor no-cost bicycle

parking is available to or under the control of the owner, lessee, manager or other person who controls the building. Such proof may include but not be limited to a copy of a deed, lease, title, permit or contract evidencing such control.

(ii) The route to the secure alternate covered off-street no-cost bicycle parking that is within three blocks or seven hundred fifty (750) feet, whichever is less; or the route to the secure alternate indoor no-cost bicycle parking available on the premises or is within three blocks or seven hundred fifty (750) feet, whichever is less, of such building.

(iii) Upon receiving and reviewing a request based on Exception 2, the Department may require that additional information be submitted in support of the request because it has determined that such information is appropriate for the particular building in question.

(4) Pending the Department's inspection, review and determination of a request for a letter of exception, an owner, lessee, manager or other person who controls a building shall be exempt from complying with the requirements of this section.

(e) **Inspection and Determination.**

(1) If Exception 1 is sought: After conducting an inspection of the building and freight elevator, the Commissioner of the Department of Buildings shall thereafter issue a final determination to the Department as to whether to grant Exception 1. Such final determination shall be included in the Department's letter of exception or denial sent to the owner, lessee, manager, or other person who controls the building.

(2) If Exception 2 is sought: After conducting an inspection in consultation with the Department of Buildings of the secure alternate covered off-street no-cost bicycle parking or the secure alternate indoor no-cost bicycle parking, the Commissioner shall thereafter issue a final determination as to whether to grant Exception 2.

(3) A letter of exception or denial shall be sent by the Department by certified mail, return receipt requested, to the owner, lessee, manager, or other person who controls the building.

(4) If a letter of denial is sent, a bicycle access plan shall be posted within twenty (20) days of receipt of such letter.

(f) **Posting.**

(1) Every owner, lessee, manager or other person who controls a building for which a bicycle access plan has been adopted shall post in such building either a current bicycle access plan or a notice in the building lobby indicating that the plan is available in the building manager's office upon request. The posting of such plan or notice shall be made within five (5) days of implementation of such plan.

(2) Every owner, lessee, manager or other person who controls a building for which an exception to the bicycle access plan requirement has been granted shall post in such a building the letter of exception provided by the Commissioner pursuant to subdivision (d) of this section, or a notice in the building lobby indicating that such letter of exception is available in the building manager's office upon request. The posting of such letter or notice shall be made within five (5) days of receipt of such letter of exception.

(3) Bicycle access plans, letters of exception and notices of availability of either such documents shall be made available to the Department, the Department of Buildings or authorized representatives of any other City agency upon request.

(g) **Filing of bicycle access plan and subsequent amendments with the Department.** A bicycle access plan shall be filed with the Department by electronic submission through the Department's website (www.nyc.gov/bikesinbuildings) or by regular mail to the Department of Transportation 55 Water Street, 6th Floor,

New York, NY 10041, Attention: Bikes in Buildings Program, within ten (10) days of implementation of such plan. Should the owner, lessee, manager or other person who controls a building amend their bicycle access plan pursuant to subdivision (c) of this section, such amendment shall be filed with the Department as outlined above within ten (10) business days of completion and implementation of such amendment.

HISTORICAL NOTE

Section added City Record Dec. 11, 2009 §1, eff. Dec. 11, 2009 per City Record notice. [See

Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 11, 2009:

The Commissioner of the New York City Department of Transportation (DOT) is authorized to promulgate rules pursuant to Section 2903 of the New York City Charter.

Chapter 2 of Title 34 of the Rules of the City of New York (RCNY) is being amended to comply with Local Law 52 of 2009, which statute relates to bicycle access to office buildings. DOT is promulgating these rules to set forth the procedures for implementing bicycle access as contemplated in Local Law 52. Furthermore, in response to comments received at the public hearing, DOT revised the rule to provide building owners with the option of either amending an existing bicycle access plan or creating a new plan to address changed circumstances or new tenant requests. Finally, this rule will be codified in newly created §2-19 of Title 2, Chapter 34 of the Rules of the City of New York.

Finding of Substantial Need for Earlier Implementation

Chapter 5 of Title 28 of the New York City Administrative Code was amended by Local Law No. 52 of 2009, signed into law on August 13, 2009 and effective December 11, 2009. Local Law 52 added a new Article 504 that relates to the provision of bicycle access in office buildings. These rules set forth the process that commercial buildings must follow in providing bicycle access to tenants, or obtaining an exception from these requirements, as set forth in the new law. A public hearing on these proposed rules was held on November 23, 2009.

The City wishes to further encourage both the use of bicycles as a mode of transportation and the reduction of vehicular traffic within New York City, consistent with the goals described in PlaNYC. Thus, immediate implementation of this rule amendment is necessary to effectuate the purpose of the local law, and also facilitate the prompt enforcement of these rules by the New York City Departments of Transportation and the New York City Department of Buildings at the time Local Law 52 takes effect.

Therefore, pursuant to section 1043(e)(1)(c) of the New York City Charter, the Department of Transportation finds that there is a substantial need for the earlier implementation of the Rules Relating to Providing Bicycle Access in Office Buildings. Consequently, the attached "Rules Relating to Providing Bicycle Access in Office Buildings", containing amendments incorporated after the public hearing and explained in the Statement of Basis and Purpose, shall be effective upon its final publication in the **City Record,** and the requirement that thirty days first elapse after such publication shall not apply.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2

included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-01 Words and Phrases Defined.

(a) **Vehicle and Traffic Law definitions apply.** Whenever any words and phrases used in these rules are not defined herein but are defined in Article 1 of the New York State Vehicle and Traffic Law, any such definition shall be deemed to apply to such words and phrases used herein.

(b) **Definitions.** The following words and phrases, when used in these rules, shall, for the purpose of these rules, have the meanings respectively ascribed to them as follows:

Bicycle. A "bicycle" shall mean every two- or three-wheeled device upon which a person or persons may ride, propelled by human power through a belt, a chain or gears, with such wheels in a tandem or tricycle, except that it shall not include such a device having solid tires and intended for use only on a sidewalk by pre-teenage children.

Bus. A "bus" shall mean every motor vehicle having a seating capacity of more than fifteen adults, in addition to the operator, and used for the transportation of persons, and every charter bus, interstate bus, intrastate bus, school bus and sight-seeing bus, regardless of seating capacity, as defined below.

(i) **Charter bus.** A "charter bus" shall mean a bus engaging in a specific or special trip in the nature of an excursion or outing, for which it has been hired or otherwise engaged by oral or written contract for the exclusive use of the charterer.

(ii) **Interstate bus.** An "interstate bus" shall mean a bus which operates between a point within the City of New York and a point outside the State of New York.

(iii) **Intrastate bus.** An "intrastate bus" shall mean a bus which operates only in the State of New York between a point within the City of New York and a point outside the City of New York.

(iv) **School bus.** A "school bus" shall mean every motor vehicle regardless of seating capacity owned by a public or governmental agency or private school and operated for the transportation of pupils, teachers and other persons acting in a supervisory capacity, to or from school or school activities or privately owned and operated on a regular basis for compensation for the transportation of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities.

(v) **Sight-seeing bus.** A "sight-seeing bus" shall mean a bus for hire carrying passengers from a fixed point in the City of New York, at which point the passengers embark and are generally discharged to a place or places of interest or amusement in the City of New York, and including a charter bus, as defined in these rules, when engaged in a sight-seeing operation.

Commercial vehicle. (i) For purposes of parking, standing and stopping rules, a vehicle shall not be deemed a commercial vehicle or a truck unless:

(A) it bears commercial plates; and

(B) it is permanently altered by having all seats and seat fittings, except the front seats, removed to facilitate the transportation of property, except that for vehicles designed with a passenger cab and a cargo area separated by a partition, the seating capacity within the cab shall not be considered in determining whether the vehicle is properly altered; and

(C) it displays the registrant's name and address permanently affixed in characters at least three inches high on both sides of the vehicle, with such display being in a color contrasting with that of the vehicle and placed approximately midway vertically on doors or side panels.

(ii) For the purposes of rules other than parking, stopping and standing rules, a vehicle designed, maintained, or used primarily for the transportation of property, or for the provision of commercial services and bearing commercial plates shall be deemed a commercial vehicle.

(iii) Vehicles bearing commercial or equivalent registration plates from other states or countries shall not be deemed trucks or commercial vehicles unless they are permanently altered and marked as required in (i)(B) and (C) of this definition, above.

Commissioner. The "Commissioner" shall mean the Commissioner of the New York City Department of Transportation or his/her authorized designee.

Commuter Van. A van, which: (i) is used as part of a commuter van service as defined in section 19-502(q) of the New York City Administrative Code; (ii) has a seating capacity of at least nine passengers but not more than twenty passengers or such greater capacity as the Taxi and Limousine Commission may establish by rule; (iii) carries passengers for hire in the City; (iv) is duly licensed as a commuter van by the Taxi and Limousine Commission; and (v) is not permitted to accept hails from prospective passengers in the street.

Crosswalk.

(i) **Marked crosswalk.** That part of a roadway defined by two parallel lines or highlighted by a pattern of lines (perpendicular, parallel or diagonal used either separately or in combination) that is intended to guide pedestrians into proper crossing paths.

(ii) **Unmarked crosswalk.** That part of a roadway, other than a marked crosswalk, which is included within the

extensions of the sidewalk lines between opposite sides of the roadway at an intersection, provided that (A) the roadway crosses through the intersection rather than ending at the intersection, and/or (B) all traffic on the opposing roadway is controlled by a traffic control device.

Cruising. The term "cruising" shall mean the movement of any vehicle on any street in search of prospective passengers who may wish to hire the vehicle.

Driveway. Every entrance or exit authorized pursuant to applicable law and used by vehicular traffic to or from lands or buildings abutting a roadway.

D/S Decals. "D/S Decals" shall mean valid non-transferable service vehicle decals or delivery vehicle decals issued by the City of New York that are affixed to the inside of the operator's side of the windshields of vehicles bearing "A", "C" or "D" series license plates issued by the U.S. Department of State.

Emergency vehicle (authorized). An "emergency vehicle (authorized)" shall mean every police vehicle, fire vehicle, emergency ambulance service vehicle, and every other emergency vehicle as defined in §101 of the Vehicle and Traffic Law.

For-hire vehicle. A "for-hire vehicle" shall mean a motor vehicle, licensed by the Taxi and Limousine Commission, for hire in the City, used for the carriage of passengers by prearrangement only and designed to carry fewer than nine passengers, including but not limited to livery vehicles, and excepting taxis or wheelchair accessible vans.

High Occupancy Vehicle (HOV). HOV shall mean a vehicle, except a truck as defined in §4-13(a)(1) of these rules, with two or more occupants, the number of which is specified by signs placed on express lanes on highways or bridges, pursuant to §4-07(k) of these rules.

Holidays. A "holiday," when used on traffic control devices, shall mean the days on which the following holidays are officially celebrated: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Horse drawn vehicle. A "horse drawn vehicle" shall mean a vehicle drawn by a horse and used for the carriage of passengers for compensation. Where signs limit parking to horse drawn vehicles, only those vehicles licensed by the New York City Department of Consumer Affairs will be permitted.

Impounded vehicle. A vehicle is considered "impounded" when the City of New York takes it into custody by taking any action inconsistent with the free use of the vehicle by the motorist, including, but not limited to, beginning to attach an immobilization device such as a "boot" or a hook on a Department of Transportation tow truck to the vehicle.

Law enforcement officer. A "law enforcement officer" shall mean a police officer or any authorized agent of the Department of Transportation.

Limited use vehicle. A "limited use vehicle" shall mean a motor vehicle, other than a motorcycle, which has a maximum performance speed of not more than forty miles per hour.

Marginal street. A "marginal street" shall mean any street, road, place, area or way adjoining or adjacent to waterfront property and designated as a marginal street, wharf or place on a plan or map adopted pursuant to law.

Motor vehicle. A "motor vehicle" shall mean every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power, except as otherwise provided in §125 of the Vehicle and Traffic Law.

Official time standard. The term "official time standard" shall mean whenever certain hours are named in these

rules or on traffic control devices they shall mean standard time or daylight-saving time, whichever may be in current use in this city.

Parking. "Parking" shall mean the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

Passenger car. The term "passenger car" when used on traffic control devices, shall mean a motor vehicle designed and used for conveying not more than eight people and shall include motorcycles designed and used only for conveying people.

Service vehicle. A "Service vehicle" shall mean a commercial vehicle used for providing commercial services other than making pickups and deliveries, but shall not include a vehicle bearing "A", "C" or "D" series license plates issued by the U.S. Department of State and displaying a valid non-transferable service vehicle decal issued by the City of New York that is affixed to the inside of the operator's side of the windshield.

Sidewalk. A "sidewalk" shall mean that portion of a street, whether paved or unpaved, between the curb lines or the lateral lines of a roadway and the adjacent property lines intended for the use of pedestrians. Where it is not clear which section is intended for the use of pedestrians, the sidewalk will be deemed to be that portion of the street between the building line and the curb.

Standing. The term "standing" shall mean the stopping of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

Stopping. The term "stopping" shall mean any halting, even momentarily of a vehicle, whether occupied or not.

Taxi. A "taxi" shall mean a motor vehicle used for the carriage of passengers for compensation, equipped with a taxi meter, painted yellow and displaying a current medallion issued by the New York City Taxi and Limousine Commission.

Transitway. A "transitway" shall mean any roadway or series of roadways designated for the exclusive use of buses or taxis or such other designated high occupancy vehicles as may be permitted, during certain hours of the day, with access to such roadway(s) limited to one block thereof to other vehicles for the purpose of delivery of goods or services or the picking up or dropping off of passengers.

Truck. For the purposes of parking, standing and stopping rules, a "truck" is a commercial vehicle, as defined in paragraph (i) of the definition of commercial vehicle, above, except that, for the purposes of parking, standing and stopping rules in the area bounded by 35th Street on the south, 41st Street on the north, Avenue of the Americas on the east, and 8th Avenue on the west, all inclusive, in the Borough of Manhattan, between the hours of 7 a.m. to 7 p.m., a vehicle shall not be deemed a truck unless it complies with the provisions of §4-13(a)(1) of these rules.

Vehicle. A "vehicle" shall mean every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

Waterfront property. The term "waterfront property" shall mean all waterfront property, city or privately owned, between salt water and the next adverse owner. An adverse owner is the first private owner of property not designated as waterfront property.

Wharf property. The term "wharf property" shall mean all wharves, piers, decks and bulkheads and structures thereon and slips and basins, the land beneath any of the foregoing, and all rights, privileges and easements appurtenant thereto and land under water in the port of the City of New York, and such upland or made land adjacent thereto owned by the City of New York as is vested in or may be assigned to the Department of Business Services of the City of New

York.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (b) Crosswalk amended City Record Nov. 26, 2008 §1, eff. Dec. 26,

2008. [See Note 6]

Subd. (b) Commercial Vehicle par (i) amended City Record Dec. 12, 2005 §1, eff. Jan. 11, 2006.

[See Note 5]

Subd. (b) Commercial Vehicle par (iii) amended City Record Mar. 28, 2005 §1, eff. Apr. 27, 2005.

[See Note 2]

Subd. (b) "Commuter Van" definition added City Record Oct. 7, 1996 eff. Nov. 6, 1996. [See

Note 1]

Subd. (b) Crosswalk amended City Record June 8, 2005 §1, eff. July 8, 2005. [See Note 4]

Subd. (b) Driveway added City Record Apr. 12, 2005 §1, eff. May 12, 2005. [See Note 3]

Subd. (b) D/S Decals added City Record May 9, 2003 §2 eff. June 8, 2003. [See T34 §4-08 Note 27]

Subd. (b) High Occupancy Vehicle (HOV) added City Record Jan. 25, 2002 §1, eff. Feb. 24, 2002.

[See T34 §4-07 Note 1]

Subd. (b) Service vehicle amended City Record May 9, 2003 §1, eff. June 8, 2003. [See T34 §4-08

Note 27]

Subd. (b) Truck amended City Record Mar. 28, 2005 §1, eff. Apr. 27, 2005. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 7, 1996:

The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter.

Sections 4-01(b), 4-08(c) and 4-11(c) are being amended to establish regulations for commuter vans similar to those for bus stops. In certain congested areas of the City, many types of vehicles such as buses, vans, taxis, liveries and delivery trucks, compete for curb space to load and unload passengers and goods. The large number of these vehicles has created safety hazards for people who utilize these services in these areas. The proposed rules are intended to eliminate the competition among the different types of vehicles by setting aside space specifically for vans and for-hire vehicles. The stops will allow van and for-hire vehicle operators to load and unload passengers safely without having to compete with all the other vehicles.

Section 4-10(c) is being amended to specify that for safety reasons, whenever possible, buses should only pick up and discharge passengers within twelve inches of the curb.

2. Statement of Basis and Purpose in City Record Mar. 28, 2005: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. Subdivision b of §4-01, subdivisions a, g, k, l and m of §4-08 and subdivision f of §4-15 are being amended to delete or amend incorrect references. Subdivision b of §4-02 is being amended to delete the public health restriction on the commissioner's discretion to suspend these rules, as it does not really apply to this department, and to add public convenience as a reason the commissioner may suspend rules. Subdivision f of §4-08 is being amended to delete the references to §4-08(e) as it is not possible to be in compliance with (f)(1) and (e)(1) and (9) at the same time. Subdivisions h and i of §4-08 are being amended to clarify the requirements in areas controlled by Muni-Meters. Paragraph 3 of subdivision h is also being amended to reflect that electronic meters, which are more common now, are more likely to fail than to have broken parts.

3. Statement of Basis and Purpose in City Record Apr. 12, 2005: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking in the City pursuant to §2903 of the New York City Charter. Subdivision (b) of §4-01 is being amended to add a definition of "driveway." Paragraph (2) of subdivision (f) of §4-08 is being amended to facilitate parking in front of driveways that have been rendered unusable by building renovation.

4. Statement of Basis and Purpose in City Record June 8, 2005: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. The definition of "crosswalk" in subdivision (b) of §4-01 is being amended to separate marked from unmarked crosswalks. Paragraph (4) of subdivision (e) of §4-08 of Title 34 of the Rules of the City of New York prohibits stopping, standing or parking at intersections, except for "T"-intersections. However, paragraph (5) of that same subdivision (e) prohibits stopping, standing or parking in crosswalks. Separating the definition of crosswalk into marked and unmarked crosswalks makes clear that unmarked crosswalks do not exist at two of the three crossings in a "T"-intersection. This is because the roadway that ends at a "T"-intersection has no "opposite side" across the intersection. Therefore, in the absence of a marked crosswalk, parking is permitted all along the top of a "T"-intersection, which is not interrupted by another roadway.

5. Statement of Basis and Purpose in City Record Dec. 12, 2005: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. Subdivision (b) of §4-01 and subdivision (k) of §4-08 are being amended to clarify that a vehicle that has a cab with a rear bench or seat(s) behind the front seats is still properly altered and may be considered a commercial vehicle for the purposes of these rules. These types of vehicles are increasingly common. Therefore, these amendments are being proposed to eliminate any confusion in enforcement of the commercial vehicle parking rules.

6. Statement of Basis and Purpose in City Record Nov. 26, 2008: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. The definition of "Crosswalk" set forth in subdivision (b) of §4-01 of the Traffic Rules and Regulations is being amended to more clearly define unmarked crosswalks, differentiating pedestrian ramps that lead to such crosswalks from other pedestrian ramps for enforcement purposes. Paragraph (7) of subdivision (f) of §4-08 of Title 34 of the Rules of the City of New York prohibits stopping, standing or parking in front of pedestrian ramps intended for the crossing of individuals. The amendment to this paragraph clarifies that the prohibition only applies to pedestrian ramps that lead people to crosswalks, and that motorists may park their vehicles in front of other pedestrian ramps. The amendment will improve enforcement of the Traffic Rules and Regulations with respect to such pedestrian ramps by making such enforcement more clear and consistent.

Rules of the City of New York

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34 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-02 Compliance With and Effect of Traffic Rules.

(a) **Applicability of rules.** The provisions of these rules apply to all vehicles, operators of vehicles, bicycles, operators of bicycles and pedestrians upon highways, parkways, shopping center parking lots and municipal areas including public housing, public hospital parking lots, and municipal lots and garages. These rules also apply on wharf property and marginal streets, in off-street parking facilities operated by the Department of Transportation, on vacant lots, and upon private roads open to public motor vehicle traffic, which for the purpose of application of these rules shall be considered streets, highways or parkways, except where a different place is specifically referred to.

(b) **Suspension of rules.** The Commissioner may, at his/her discretion, suspend any regulation contained herein in situations involving public safety and convenience.

(c) **Dangerous driving.** No person shall operate a vehicle in a manner that will endanger any person or property.

(d) **All persons are required to comply with traffic rules.**

(1) **Exceptions.** It is a traffic infraction for any person, including government employees, to do any act forbidden by or fail to perform any act required by these rules, except as otherwise provided herein.

(i) **Authorized emergency vehicles.** The operator of an authorized emergency vehicle when involved in an emergency operation as defined in §114-b of the Vehicle and Traffic Law may exercise the privileges set forth in §1104 of the Vehicle and Traffic Law, subject to the conditions set forth therein.

(ii) **Traffic/parking control vehicles.** Unless specifically made applicable, the provisions of these rules shall not apply to operators of designated traffic or parking control vehicles, including, but not limited to, tow trucks, while actually engaged in activities necessary to perform their duties.

(iii) **Snow plows, sand spreaders, sweepers and refuse trucks.**

(A) The operator of a New York City Department of Sanitation snow plow, sand spreader, or sweeper, and the operator of a Department of Transportation vehicle when performing the same function, while in the performance of his/her duty and acting under the orders of his/her superior may make such turns as are necessary and proceed in the direction required to complete his/her cleaning, snow removal, or sand spreading operations subject to §1102 of the Vehicle and Traffic Law. The provisions of this subparagraph shall not apply while traveling to or from such work locations.

(B) The operator of a New York City Department of Sanitation refuse truck may temporarily stand on the roadway side of a vehicle parked at the curb, provided that no curb space is available within fifteen feet, while expeditiously loading refuse, subject to §1102 of the Vehicle and Traffic Law.

(iv) **Highway workers.** Unless specifically made applicable, the provisions of these rules shall not apply to persons, teams, motor vehicles, and other equipment actually engaged in work authorized by the City of New York, the State of New York or the federal government while on a highway. Section 1103 of the Vehicle and Traffic Law is applicable to any person or team or any operator of a motor vehicle or other equipment while actually engaged in work on a highway. As §1103 of the Vehicle and Traffic Law provides, such persons are not relieved from the duty to proceed at all times during all phases of such work with due regard for the safety of all persons nor shall the foregoing provisions of this subparagraph protect such persons or teams or such operators of motor vehicles or other equipment from the consequences of their reckless disregard for the safety of others.

(v) **Highway inspection and quality assurance vehicles, compliance inspection unit and street assessment unit vehicles.** Unless specifically made applicable, the provisions of these rules which relate to parking and standing shall not apply to operators of New York City Department of Transportation highway inspection vehicles, compliance inspection vehicles, and street assessment vehicles while actually engaged in activities necessary to perform their duties.

(2) **Public employees.** The provisions of these rules shall apply to the operator of any vehicle owned by or used in the service of the United States Government, New York State, New York City, or other states, cities, or any borough, and it shall be unlawful for any such operator to violate any of the provisions of these rules except as otherwise permitted by law.

(e) **State law provisions superseded.** Pursuant to authority provided by §1642 of the Vehicle and Traffic Law, the following provisions of such law shall not be effective in the City of New York: §§1112, 1142(b), 1150, 1151, 1152, 1153, 1156(b), 1157, 1171, 1201, 1202, and 1234.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (b) amended City Record Mar. 28, 2005 §2, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (d) par (1) amended City Record Feb. 28, 2000 eff. Mar. 29, 2000. [See Note 1]

Subd. (d) par (1) subpar (iv) amended City Record Sept. 18, 2007 §1, Oct. 18, 2007. [See Note 4]

Subd. (e) amended City Record May 9, 2003 eff. June 8, 2003. [See Note 3]

Subd. (e) amended City Record Nov. 23, 1998 eff. Dec. 23, 1998. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 28, 2000:

The Commissioner of the Department of Transportation is authorized to promulgate rules relating to the movement of vehicles pursuant to §2308 of the New York City Charter and §1642 of the State Vehicle and Traffic Law.

This rule is being proposed in order to facilitate the enforcement by the Department of applicable laws and rules relating to street construction. The functions performed by the operators of Highway Inspection and Quality Assurance (HIQA) vehicles are similar to those performed by the Traffic Intelligence Division (TID) of the Police Department. This rule will afford HIQA vehicles the same privileges accorded to TID vehicles while in the performance of their duties. In addition to the enforcement of rules and laws regarding construction, which contributes to vehicular as well as pedestrian safety, the HIQA unit responds to emergencies such as street collapses, water main breaks, building operations, falling debris, and any other emergency condition which would hinder the flow of traffic and/or cause closure of major roadways. As such, exempting these vehicles from compliance to the Traffic rules will greatly enhance the performance of the duties of the operators of these vehicles. The Compliance Inspection Unit and the Street Assessment Unit vehicles perform tasks such as collection of field information about streets and sidewalks, such as travel times, vehicle classifications, turning movements at intersections and pothole identification surveys.

2. Statement of Basis and Purpose in City Record Nov. 23, 1998: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to secton 2903(a) of the New York City Charter. Currently there are no enforceable provisions requiring pedestrian use of sidewalks or regulating driving on controlled-access highways in the City. The provisions of sections 1130 and 1156(a) of the Vehicle and Traffic Law (VTL) that regulate such activities throughout the rest of the State do not apply in New York City. These sections of the VTL are currently superseded by City rules adopted pursuant to VTL section 1642. The purpose of this proposed rule is to conform City traffic regulations with State law by deleting these VTL provisions from the list of VTL provisions which are superseded by City rules. This rule also deletes subdivisions (l) and (m) of section 4-07 from the City traffic rules. Subdivision (l) relates to the designation of special use lanes on the Gowanus. This provision is no longer necessary because the Gowanus now has a contraflow lane. Subdivision (m) relates to a pilot program that expired in 1997.

3. Statement of Basis and Purpose in City Record May 9, 2003: The Commissioner of Transportation is authorized to regulate vehicular traffic pursuant to section 2903(a) of the New York City Charter. A review of the provisions of section 1642 of the Vehicle and Traffic law (VTL) has shown that section 1642 does not allow cities with a population in excess of one million to supersede provisions regarding speed, unless it is to establish minimum speed limits. Consequently, the City cannot supersede the provisions of section 1180 regarding maximum speeds and that section would apply in the City. Paragraph 3 of section 4-06 is being deleted because this paragraph duplicates the provisions of VTL section 1180(a) and is, therefore, unnecessary.

4. Statement of Basis and Purpose in City Record Sept. 18, 2007: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding traffic operations in the City pursuant to §2903(a) of the New York City Charter. Subparagraph (iv) paragraph (1) of subdivision (d) of §4-02 is being amended to clarify the applicability of §1103 of the Vehicle and Traffic Law in the City of New York. More specifically, the rule is being amended to make clear that the recklessness standard set forth in §1103 applies to highway workers.

CASE AND ADMINISTRATIVE NOTES

¶ 1. See Tapia v. Royal Bus Tours, 2008 N.Y. Slip Op. 51292U, 2008 N.Y. Misc. Lexis 3694 (Sup.Ct. Queens Co.), discussed in note 1 of 34 RCNY 4-07.

Rules of the City of New York

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34 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-03 Traffic Signals.

(a) **Traffic control signals.** Whenever traffic is controlled by traffic control signals exhibiting different colored lights successively, the following colors shall indicate and apply to operators of vehicles and to pedestrians, except as superseded by pedestrian control signals, as follows:

(1) **Green alone:** (i) Vehicular traffic facing such signals may proceed straight through or turn right or left unless a sign at such place prohibits any such movement. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(ii) Pedestrians facing such signal may proceed across the roadway within any crosswalk.

(2) **Steady yellow alone, dark period, or red-green combined when shown following the green signal:**

(i) Vehicular traffic facing such signal is thereby warned that the red signal will be exhibited immediately thereafter and such vehicular traffic shall not enter the intersection when the red signal is exhibited.

(ii) Pedestrians facing such signal are thereby warned that there is insufficient time to cross the roadway, and shall not enter or cross the roadway. Pedestrians already in the roadway shall proceed to the nearest safety island or sidewalk.

(3) **Steady red alone:** (i) Vehicular traffic facing such signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to

proceed is shown.

(ii) Notwithstanding the foregoing provisions of this subdivision (a), or any provisions of state law, an operator approaching an intersection where a sign authorizes right or left turns on red signal may make such turn after coming to a complete stop, but shall yield the right of way to all vehicles and pedestrians lawfully within the intersection.

(iii) Pedestrians facing such signal shall not enter or cross the road way.

(4) **Arrows.** When colored lights shaped as arrows are used as traffic control signals, arrows pointing to the right shall apply to operators intending to enter the intersection to turn to the right, arrows pointing vertically shall apply to operators intending to enter the intersection to proceed straight through, and arrows pointing to the left shall apply to operators intending to enter the intersection to turn to the left. The colors of arrows shall have the same meanings as colors of traffic signal lights, but shall apply only to operators intending to enter the intersection to proceed in the direction controlled by the arrow.

(5) **Signs.** Operators shall comply with signs that refer to traffic control signals at places other than the intersections at which such signals are located, for example, "Stop here on red."

(6) **Signals not at intersections.** In the event an official traffic control signal is erected and maintained at a place other than an intersection, all the provisions of this subdivision (a) shall be applicable, except those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(7) **Nonfunctioning signals.** Vehicular traffic facing a signal that is not working shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall proceed with caution through the intersection.

(b) **Blinking traffic control signals.** (1) **Red.** Vehicular traffic facing such signals shall come to a complete stop and shall proceed only after yielding to any vehicles approaching from the cross street.

(2) **Yellow.** Vehicular traffic facing such signals shall proceed with caution through the intersection.

(c) **Pedestrian control signals.** Whenever pedestrian control signals are in operation, exhibiting the words "WALK" and "DON'T WALK" successively, the international green or red hand symbols, figures or any other internationally recognized representation concerning the movement of pedestrians, such signals shall indicate as follows:

(1) **WALK, green hand symbol or green walking figure.** Pedestrians facing such signal may proceed across the roadway in the direction of the signal in any crosswalk. Vehicular traffic shall yield the right of way to such pedestrians.

(2) **Flashing DON'T WALK, red hand symbol or red standing figure.** Pedestrians facing such signal are warned that there is insufficient time to cross the roadway and no pedestrian shall enter or cross the roadway. Pedestrians already in the roadway shall proceed to the nearest safety island or sidewalk. Vehicular traffic shall yield the right of way to such pedestrians.

(3) Steady DON'T WALK red hand symbol or red standing figure. Pedestrians facing such signal shall not enter or cross the roadway.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (a) par (7) added City Record Mar. 3, 2004 §1, eff. Apr. 2, 2004. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 3, 2004

Subdivision (a) of section 4-03 is being amended to add a provision addressing what action traffic should take when facing a nonfunctional traffic signal.

CASE NOTES

¶ 1. Pedestrian must be "lawfully within the intersection" pursuant to New York City Traffic Regulations §30(a) (34 RCNY 4-03(a)(1)(i)) to have the right of way over vehicular traffic turning with a green light. Although witnesses testified plaintiff was in the crosswalk after having been struck by a bus, the critical question was where he was when the bus began to turn. Brito v. Manhattan & Bronx Surface Tr. Oper. Auth., 188 AD2d 253 [1993].

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34 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-04 Pedestrians.

(a) **Pedestrians subject to traffic rules, except as otherwise provided herein.** Pedestrians shall be subject to traffic control signals and pedestrian control signals as provided in §§4-03(a) and 4-03(b) of these rules and to the lawful orders and directions of any law enforcement officer, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this section.

(b) **Right of way in crosswalks.** (1) **Operators to yield to pedestrians in crosswalk.** When traffic control signals or pedestrian control signals are not in place or not in operation, the operator of a vehicle shall yield the right of way to a pedestrian crossing a roadway within a crosswalk when the pedestrian is in the path of the vehicle or is approaching so closely thereto as to be in danger.

(2) **Pedestrians shall not cross in front of oncoming vehicles.** Notwithstanding the provisions of (1) of this subdivision (b), no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the operator to yield.

(3) **Vehicles stopped for pedestrians.** Whenever any vehicle is stopped at a crosswalk to permit a pedestrian to cross the roadway, the operator of any other vehicle approaching from the rear in the same or adjacent lanes shall not overtake and pass such stopped vehicle.

(c) **Restrictions on crossings.** (1) No pedestrian shall enter or cross a roadway at any point where signs, fences, barriers, or other devices are erected to prohibit or restrict such crossing or entry.

(2) No pedestrian shall cross any roadway at an intersection except within a cross- walk.

(3) No pedestrian shall cross a roadway except at a crosswalk on any block in which traffic control signals are in operation at both intersections bordering the block.

(d) **Operators to exercise due care.** Notwithstanding other provisions of these rules, the operator of a vehicle shall exercise due care to avoid colliding with any pedestrian.

(e) **Hitch-hiking and soliciting prohibited.** (1) **Talking or selling.** No person shall stand in the roadway to talk with or sell or offer to sell anything to an occupant of any vehicle.

(2) **Soliciting rides.** No person shall solicit a ride from the occupant of a vehicle by word or gesture.

(3) **Washing, polishing, cleaning and assisting parking.** No person shall approach an operator or other occupant of a passenger vehicle on any street, while the vehicle has stopped temporarily, is about so to stop, is parked or is about to be parked, for the purpose of washing, polishing, or cleaning such vehicle or any part of it, or offering to do so. Nor shall any person approach an operator or other occupant of a passenger vehicle for the purpose of directing it to a place for parking on any street or assisting in such parking, or offering any other service in relation to such vehicle, or soliciting a gratuity, except services rendered in connection with emergency repairs at the request of the operator of the vehicle.

(4) **Opening or closing doors.** No person, other than an occupant or prospective occupant of a passenger vehicle on a street, shall open, hold open, or close, or offer to open, hold open, or close any door of the vehicle. This provision shall not apply to such acts when intended purely as a social amenity without expectation or acceptance of a gratuity, nor to doormen or other persons employed by owners, occupants, or managers of abutting premises to render such service, nor when such service is incidental to other legitimate service being rendered to such an occupant or prospective occupant of a passenger vehicle.

(5) **Hailing taxis.** Unless asked to do so without advance solicitation (direct or implied), no person shall hail or procure for another, not in his or her social company, a taxi or other passenger vehicle.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (c) par (3) added City Record Mar. 27, 1998 eff. Apr. 26, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 27, 1998:

The Commissioner of the Department of Transportation is authorized to regulate the movement of vehicular and pedestrian traffic pursuant to section 2903 of the New York City Charter. The purpose of this rule is to enhance pedestrian and vehicular safety by providing that pedestrians shall cross the street only at crosswalks on blocks with traffic control signals in operation at the intersections bordering the blocks.

Currently, traffic rules clearly prohibit pedestrians from crossing against a traffic control signal or pedestrian control signal, crossing a roadway where signs or barriers prohibit such crossing and crossing at an intersection outside a crosswalk. However, a significant number of fatalities occur as a result of pedestrians crossing heavy traffic blocks at other than crosswalks. The Department believes that compliance with the proposed rule will significantly enhance safety for both pedestrians and motorists.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Violation of Admin. Code § 4-04(c)(2) constitutes only some evidence of negligence and does not constitute negligence per se. **Schneider v. Diallo,** 14 A.D.3d 445, 788 N.Y.S.2d 366 (1st Dept. 2005).

34 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-05 Turns.

(a) **Compliance with turning restrictions.** Whenever a traffic control device regulates any turn or other movement at an intersection or other location, no operator of any vehicle shall disregard the direction of such device, unless directed to do so by a law enforcement officer.

(b) **Limitations on turning around.** (1) The operator of any vehicle shall not make a U-turn upon any street in a business district, as defined in §105 of the Vehicle and Traffic Law.

(2) The operator of a vehicle shall not make a U-turn upon any street outside a business district unless such turn is made without interfering with the right of way of any vehicle or pedestrian.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

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34 RCNY 4-06

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-06 Speed Restrictions.

(a) **Maximum speed limits and basic rule.** (1) No person shall drive a vehicle at a speed greater than thirty miles per hour except where official signs indicate a different maximum speed limit.

(2) Where official signs are posted indicating a maximum speed limit, no person shall drive a vehicle at a speed greater than such maximum speed limit.

(3) Reserved.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (a) par (3) repealed City Record May 9, 2003 eff. June 8 2003. [See T34 §4-02 Note 3]

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34 RCNY 4-07

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-07 Other Restrictions on Movement.

(a) **Yield signs.** The operator of a vehicle approaching a YIELD or YIELD-RIGHT-OF-WAY sign shall slow to a reasonable speed for existing conditions of traffic and visibility, stopping if necessary, and shall yield the right-of-way to all traffic on the intersecting street which is so close as to constitute an immediate hazard. Proceeding past such sign with resultant collision or other impediment or interference with traffic on the intersecting street shall be deemed prima facie evidence of a violation of this rule.

(b) **Obstruction of traffic.** (1) **Traffic lane.** No person shall operate a vehicle in a manner which obstructs traffic in lanes specifically designated for the movement of traffic. Such lanes include, but are not limited to, no standing zones and no stopping zones.

(2) **Spillback.** No operator shall enter an intersection and its crosswalks unless there is sufficient unobstructed space beyond the intersection and its crosswalks in the lane in which he/she is traveling to accommodate the vehicle, notwithstanding any traffic control signal indication to proceed.

(c) **Restrictions on crossing sidewalks.** (1) **Driveways.** No person shall drive within any sidewalk area except at a permanent or temporary driveway.

(2) **Avoiding intersections.** No person shall drive across a sidewalk or upon a driveway in order to avoid an intersection.

(3) **Bicycles and limited use vehicles.**

(i) No person shall ride or operate a bicycle upon any sidewalk area unless permitted by sign. This prohibition shall not apply to the operation of bicycles with wheels of less than 26 inches in diameter upon the sidewalk by children of 12 years or less in age.

(ii) No person shall ride, park or operate a limited use vehicle within any sidewalk area except where permitted by sign. This prohibition shall not apply to the pushing of a limited use vehicle within a sidewalk area or to the pushing of such a vehicle to an authorized parking area.

(d) **Restrictions on backing.** No person shall back a vehicle into an intersection or over a crosswalk and shall not in any event or at any place back a vehicle unless such movement can be made in safety.

(e) **Play streets.** Whenever authorized signs are erected indicating any street or part thereof as a play street or play area, no person shall drive a vehicle upon any such street or area between 8 a.m. and one-half hour after sunset, unless other hours are prescribed by signs, except operators of vehicles having business or whose residences are within such restricted area. Any such operator shall exercise the greatest care in driving upon any such street.

(f) **Restrictions on learners.** (1) An operator with a learner's permit shall not operate a motor vehicle in any park, on any play street, or along any block in which there is an entrance to a public playground or park.

(2) The licensed operator accompanying an operator with a learner's permit shall not permit such learner to violate paragraph (f)(1), above.

(g) **Following emergency vehicles prohibited.** The operator of any vehicle other than one on official public business shall not follow any emergency vehicle traveling in response to an emergency call closer than 200 feet, nor drive into nor park such vehicle within the block where such emergency work is in progress.

(h) **Driving on divided highways.** (1) Whenever any highway is divided into two or more roadways by an intervening space, physical barrier, or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic control devices or law enforcement officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection, as established, unless specifically authorized by public authority.

(2) No vehicle shall make a U-turn on a divided highway, except where permitted by sign or at the direction of a law enforcement officer.

(i) **Towing of vehicles on parkways, expressways, drives, highways, interstate routes, thruways, and bridges.** (1) **Restrictions.** No person shall cause or permit a disabled vehicle to be towed except by a tow truck under permit issued by the commissioner of the Police Department, or by a Police Department tow truck and then only by such tow truck on the main roadway, including the berm or shoulder adjacent to said roadways or entrances and exits of the following parkways, expressways, thruways, and bridges:

Belt Parkway System

Bronx River Parkway

Cross Island Parkway

Grand Central Parkway

Henry Hudson Parkway

Hutchinson River Parkway

Jackie Robinson Parkway

Laurelton Parkway

Mosholu Parkway Extension

Richmond Parkway

Shore Parkway

Southern Parkway

Brooklyn-Queens Expressway

Bruckner Expressway

Clearview Expressway

Cross Bronx Expressway and Extension

Franklin Delano Roosevelt Drive

Gowanus Expressway

Harlem River Drive

Long Island Expressway

Major Deegan Expressway

Martin Luther King Expressway

Miller Highway

Nassau Expressway

Northern Boulevard from Astoria Boulevard and Ditmars Boulevard Entrance to Linden Place Exit

Governor Thomas E. Dewey Thruway (New England Section)

Prospect Expressway

Route 25A (Elevated Section) from 112th Place to 126th Street

Sheridan Expressway

Staten Island Expressway

Throgs Neck Expressway

Van Wyck Expressway and Extension

West Shore Expressway

Whitestone Expressway

Brooklyn Bridge

Manhattan Bridge

Queensboro Bridge

Williamsburg Bridge

Alexander Hamilton Bridge

Eastern Boulevard (Bruckner Boulevard) Bridge

Hutchinson River Parkway Extension Bridge

Kosciuszko Bridge

Midtown Highway Bridge

Mill Basin Bridge

Third Avenue Bridge between Manhattan and Bronx

Unionport Bridge

Whitestone Expressway Bridge

Willis Avenue Bridge

(2) **Police commissioner may waive requirements.** The commissioner of the Police Department in his/her discretion may waive and reimpose the requirement for a permit in the case of any specific bridge, highway, parkway, expressway, drive, interstate route and thruway.

(3) **Road service and towing rates.** For the pupose of this paragraph, road service shall mean service performed that will enable a vehicle to continue under it's own power.

(i) **Road service, all vehicles**

[See tabular material in printed version]

(ii) **Passenger cars, hoist and tow, per mile and storage fees.** Hoist and tow fees, per mile fees, and storage fees for all passenger cars towed pursuant to arterial tow service permits in the City of New York, shall be those provided for such services in subdivisions a and b of §2-368 of subchapter EE of title 6 of the rules of the city of New York.

(iii) **Vehicles other than passenger cars**

(A) Any vehicle with a maximum gross vehicle weight over 4,500 lbs. and under 10,000 lbs.

[See tabular material in printed version]

(B) Any two axle truck or bus with a maximum gross vehicle weight from 10,000 to 18,000 lbs.

[See tabular material in printed version]

(C) Any two axle truck or bus with a maximum gross vehicle weight from 18,000 to 26,000 lbs.

[See tabular material in printed version]

(D) Any truck, bus or tractor trailer with a maximum gross vehicle weight above 26,000 lbs.

[See tabular material in printed version]

(E) Labor per 1/4 hour per truck or per person or tow operator

$50.00

Applies only to vehicles over 4,500 lbs. in the following situations: overturned, wedged on guardrails, off-road recovery (embankment) and may apply to jackknifed, wedged under overpass/bridge, or broken/defective axle in which recovery (off-loading or positioning) must be performed prior to actual tow.

(F) Special equipment such as fork lifts, cranes, loading equipment, trailer, tractor, front end loaders and dump trucks will be considered rented equipment. The cost for such equipment will be billed on a daily basis with the approval of the Department.

(G) Tire service. If subcontracting to a tire company is required for on-road service, the tow vehicle must remain on the scene. Billing will be calculated for actual work time at $100.00 per hour. Subcontracting for off-roadway service, no tow truck required to remain on scene: a one-time charge of $55.00.

(j) **Yearly and single issue permits for use of roadways.**

(1) **General information.** Vehicles normally prohibited from roadways may be issued yearly or single-use permits by the Department of Transportation upon application in writing. Such permits must be displayed so that they are visible through the windshield. The Commissioner or his/her designee may charge a fee for such permits equal to the cost of administering the permit program.

(2) **Eligible groups and vehicles.** Yearly permits are available to the following, as well as to any other groups or vehicles specified by the Commissioner or his/her designee:

(i) companies that transport passengers to and from airports;

(ii) commuter and shuttle services;

(iii) ambulettes;

(iv) school bus companies;

(v) buses;

(vi) medical, blood and human service programs;

(vii) not-for-profit groups going to and from special events;

(viii) vehicles that service businesses accessible only by use of parkways; and (ix) service vehicles that repair and maintain highways and highway facilities.

(3) **Authorized roadways.** Yearly and single issue permits will be granted only for the following parkways or any other area designated by the Department of Transportation: (i) Belt Parkway: Except that the roadway between Knapp Street and Rockaway Parkway is limited to vehicles weighing under 5 tons when fully loaded.

(ii) Bronx River Parkway

(iii) Cross Island Parkway

(iv) Eastern Parkway

(v) Grand Central Parkway: Between the TriBoro Bridge and the Van Wyck Expressway

(vi) Harlem River Drive

(vii) Henry Hudson Parkway

(viii) Hutchinson River Parkway

(ix) Mosholu Parkway

(x) Pelham Parkway

(xi) Richmond Parkway

(xii) Willowbrook Parkway

For reasons of safety, the use of these roadways may be limited.

(4) **Duration.** Permits are issued for the minimum hours and days essential for the activity. Bus permits are valid only while transporting passengers. Yearly permits are issued on an annual basis on dates determined by the Department of Transportation. These permits are renewable by reapplication in writing to the Department of Transportation. The Commissioner or his/her designee may, at his/her discretion, issue, extend or revoke any permit.

(k) **Express lanes on limited access highways.** (1) **Restrictions.** Wherever signs are erected on highways or bridges giving notice of express lanes, no person shall operate a vehicle other than a vehicle as specified in paragraph (2) of this subdivision, a medallion taxi or a for-hire vehicle with at least one passenger as specified in paragraph (3) of this subdivision, an emergency vehicle as specified in paragraph (4) of this subdivision, or a vehicle classified as an HOV, with or without EZPASS as specified on such sign, within a designated express lane on a highway or bridge during the hours specified on such signs.

(2) **Buses, out-of-state bus equivalents, Access-A-Ride vehicles, ambulettes and wheelchair accessible vans.** Vehicles registered as buses in New York State, vehicles registered out-of-state that are equivalent to New York State registered buses, all vehicles authorized by the Metropolitan Transportation Authority New York City Transit ("MTA/NYCT") to provide Access-A-Ride service, ambulettes, wheelchair accessible vans, and motorcycles shall be eligible to use express lanes on highways or bridges pursuant to this subdivision as follows:

(i) The owner or operator of any vehicle registered as a bus in New York State shall be able to provide proof of:

(A) operating authority issued by one or more of the following as required: the appropriate New York City agency, department or authority; the New York State Department of Transportation; or the Interstate Commerce Commission; and

(B) current valid vehicle registration indicating New York State bus or official license plates; and

(C) minimum vehicle seating capacity of 16 passengers not including the operator; and

(D) seating capacity consistent with the seating capacity set forth in the appropriate grant of operating authority; and

(E) valid insurance consistent with state requirements.

(ii) The owner or operator of any vehicle registered out-of-state that is equivalent to a New York State registered bus shall be able to provide proof of:

(A) operating authority issued by one or more of the following as required: the appropriate New York City agency, department or authority; the appropriate out-of-state authorizing agency, department or authority; or the Interstate Commerce Commission; and

(B) current valid vehicle registration indicating license plates equivalent to New York State bus or official license plates; and

(C) minimum vehicle seating capacity of 16 passengers not including the operator; and

(D) seating capacity consistent with the seating capacity set forth in the appropriate grant of operating authority; and

(E) valid insurance consistent with State requirements.

(iii) The owner or operator of any vehicle authorized by the Metropolitan Transportation Authority New York City Transit ("MTA/NYCT") to provide Access-A-Ride service, ambulette or wheelchair accessible van shall be able to provide proof of:

(A) operating authority issued by one or more of the following as required: the New York City Taxi and Limousine Commission; the New York State Department of Transportation; or the Interstate Commerce Commission; and

(B) current valid vehicle registration; and

(C) seating capacity consistent with the seating capacity set forth in the applicable grant of operating authority, where such grant specifies a seating capacity; and

(D) valid insurance consistent with state requirements.

(iv) The owner or operator of any vehicle registered as a motorcycle in New York State shall be able to provide proof of:

(A) current valid vehicle registration; and

(B) valid insurance consistent with State requirements.

(3) **Taxis and for-hire vehicles.** Medallion taxis and for-hire vehicles duly licensed by the New York City Taxi and Limousine Commission carrying at least one passenger shall be allowed to use express lanes on highways or bridges. Medallion taxis and for-hire vehicles without passengers shall not be allowed to use express lanes on highways or bridges. Medallion taxis and for-hire vehicles without passengers shall not be allowed to use express lanes on highways or bridges.

(4) **Emergency vehicles.** Emergency vehicles responding to emergencies shall be allowed to use express lanes on highways or bridges. Emergency vehicles not responding to emergencies shall not be allowed to use express lanes on highways or bridges.

(l) **Use of the Grand Central Parkway by certain vehicles.** Notwithstanding any other provision of these rules to the contrary, single-unit vehicles with no more than three axles and ten tires may operate in both directions on the roadway of the Grand Central Parkway, between the Triborough Bridge and the western leg of the Brooklyn-Queens Expressway. Buses will continue to be prohibited from operating on the Grand Central Parkway without consent.

(m) Reserved.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (i) par (1) amended City Record Dec. 11, 1998 eff. Jan. 10, 1999. [See Note 3]

Subd. (i) par (2) amended City Record Dec. 11, 1998 eff. Jan. 10, 1999. [See Note 3]

Subd. (i) par (3) subpar (i) amended City Record July 25, 1996 eff. Aug. 24, 1996. [See Note 4]

Subd. (i) par (3) subpar (iii) repealed and added City Record July 25, 1996 eff. Aug. 24, 1996. [See Note 4]

Subd. (k) amended City Record Jan. 25, 2002 §2, eff. Feb. 24, 2002. [See Note 1]

Subd. (k) amended City Record Mar. 11, 1994 eff. Apr. 10, 1994.

Subd. (k) par (1) amended City Record May 17, 2000 eff. June 16, 2000. [See Note 2]

Subd. (k) par (2) amended City Record May 2, 2008 §1, eff. June 1, 2008. [See Note 10]

Subd. (k) par (3) amended City Record May 17, 2000 eff. June 16, 2000. [See Note 2]

Subd. (l) amended City Record Oct. 1, 2004 eff. Oct. 31, 2004. [See Note 9]

Subd. (l) added City Record Oct. 3, 2003 eff. Nov. 2, 2003. [See Note 8]

Subd. (l) repealed City Record Nov. 23, 1998 eff. Dec. 23, 1998. [See T34 §4-02 Note 2]

Subd. (m) repealed City Record Nov. 23, 1998 eff. Dec. 23, 1998. [See T34 §4-02 Note 2]

Subd. (m) par (i) added City Record June 19, 1996 eff. July 19, 1996. [See Note 5]

Subd. (m) par (i) repealed City Record Oct. 25, 1995 eff. Nov. 24, 1995. [See Note 6]

Subd. (m) par (i) added City Record Aug. 2, 1995 eff. Sept. 1, 1995. [See Note 7]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 25, 2002:

The Commissioner of the Department of Transportation is authorized to regulate traffic pursuant to §2903(a) of the New York City Charter.

Section 4-01(b) is being amended to add a definition of high occupancy vehicles.

Section 4-07(k)(1) is being amended to allow the placement of signs permitting use of designated express lanes on highways by high occupancy vehicles and to delete the references to written authorization and to limited access highways, which are no longer required.

Section 4-07(k)(2) is being amended to reflect the fact that the Access-A-Ride program is now being run by the Metropolitan Transportation Authority New York City Transit and not the New York City Department of Transportation. This paragraph is also being amended to delete the reference to applications for written authorization, which is no longer required.

Section 4-07(k)(3) and (k)(4) are being amended to add bridges as potential roads where express lanes may be designated.

2. Statement of Basis and Purpose in City Record May 17, 2000: The Commissioner of the Department of Transportation is authorized to regulate traffic pursuant to §2903(a) of the New York City Charter. Section 4-07(k) is being amended to allow for-hire vehicles with passengers to use the express lanes on limited access highways in order to give priority to vehicles being used for a transit purpose.

3. Statement of Basis and Purpose in City Record Dec. 11, 1998: The Commissioner of the Department of Transportation is authorized by section 2903 of the New York City Charter and Section 1642 of the New York State Vehicle and Traffic Law to provide for the towing of vehicles on the arterial highways in the City. In 1996, the management of the arterial tow program was transferred to the Police Department along with other traffic enforcement functions. Paragraphs (1) and (2) of subdivision (i) of section 4-07 are being amended to reflect that the tow truck permits are now awarded by the Police Commissioner and that the Police Department rather than the Department of Transportation shall maintain its own tow trucks for such purposes. In addition, the rule is being amended to reflect that the name of the Interboro Parkway was changed to the Jackie Robinson Parkway by State law in 1997.

4. Statement of Basis and Purpose in City Record July 25, 1996: The Commissioner of the Department of Transportation is authorized by section 2903 of the New York City Charter and Section 1642 of the New York State Vehicle and Traffic Law to provide for the fees allowed to be charged by the tow firms operating under Department of Transportation permits on the arterial highways in the City. Section 4-07(i)(3)(i) is being amended to clarify that only a jump start is intended to be permitted. A battery charge could imply removal of the battery, which is inappropriate on the side of the road. Section 4-07(i)(3)(iii) is being amended to alleviate any areas of confusion as to what amount could be charged and in what circumstances, which occasionally led to different rates for similar work. These new rates will allow for uniformity in the charges by tow companies.

5. Statement of Basis and Purpose in City Record June 19, 1995: The Commissioner of the Department of Transportation is authorized to regulate the movement of vehicular traffic pursuant to Section 2903 of the New York City Charter and section 1642 of the Vehicle and Traffic Law. This rule is proposed in order to reduce traffic congestion and improve air quality and vehicular and pedestrian safety by removing small commercial vehicles from local streets in residential neighborhoods. A six month pilot program from July 22, 1996 through January 21, 1997, will be undertaken allowing small commercial vehicles to utilize a segment of the Grand Central Parkway. Step vans continue to be prohibited from this parkway. After the first $4\frac{1}{2}$ months of the pilot program, DOT will conduct a comprehensive data collection and evaluation effort to determine the impacts of the pilot program on traffic circulation, safety, and community life on the Grand Central Parkway and the adjacent local street network. This analysis will include a preliminary data collection effort conducted after the first 2 months to determine initial usage. The pilot program will end at the conclusion of the six month period, after which a final report will be forwarded to the Borough President and other elected officials for their evaluation.

6. Statement of Basis and Purpose in City Record Oct. 25, 1995: The Commissioner of the Department of Transportation is authorized to regulate the movement of vehicular traffic pursuant to Section 2903 of the New York City Charter and section 1642 of the Vehicle and Traffic Law. This rule which established a pilot program for allowing certain commercial vehicles on a segment of the Grand Central Parkway is being repealed as the Agency has decided not to proceed with the pilot program at this time.

7. Statement of Basis and Purpose in City Record Aug. 2, 1995: The Commissioner of the Department of

Transportation is authorized to regulate the movement of vehicular traffic pursuant to Section 2903 of the New York City Charter and section 1642 of the Vehicle and Traffic Law. This rule is proposed in order to reduce traffic congestion and improve air quality and vehicular and pedestrian safety by removing small commercial vehicles from local streets in residential neighborhoods. A twelve month pilot program from September 6, 1995 through September 5, 1996, will be undertaken allowing small commercial vehicles to utilize a segment of the Grand Central Parkway. The purpose of the program is to measure the impacts on traffic circulation, safety, and community life by removing some of the commercial traffic from the local streets. The program will also expedite the movement of goods by permitting small commercial vehicles on parkways. Based upon a written comment received, the description of the height and weight dimensions of the vehicles which will be allowed to use the Grand Central Parkway during the pilot program has been modified by adding the words "including cargo" for clarity. In addition the descriptive words "maximum cargo volume of 400 cubic feet" have been deleted as they are superfluous for the purpose of defining the dimensions of the vehicles.

8. Statement of Basis and Purpose in City Record Oct. 3 2003: The Commissioner of Transportation is authorized to regulate the movement of vehicular traffic on parkways within New York City pursuant to Section 2903(a) of the New York City Charter. This rule is proposed in order to reduce traffic volume exiting from the Triborough Bridge to the local street system in Astoria, Queens. Preliminary estimates of this agency are that approximately 3,150 (or 70%) of the 4,500 commercial vehicles that currently exit each day at the Hoyt Avenue South/29th Street exit of the Triborough Bridge would be able to stay on the Grand Central Parkway to the entrance ramp of the Brooklyn-Queens Expressway. The portion of the Grand Central Parkway which would be opened to trucks in this pilot program is very short, approximately three-quarters of a mile. This agency anticipates that the pilot program proposed herein will reduce congestion and conflicts and improve traffic safety not only at the Hoyt Avenue South/29th Street exit, but also along Astoria Boulevard South. Buses will continue to be prohibited from using this roadway. The Department will monitor the impact and effectiveness of the pilot program. The pilot program will end at the conclusion of the 12-month period.

9. Statement of Basis and Purpose in City Record Oct. 1, 2004: The Commissioner of Transportation is authorized to regulate the movement of vehicular traffic on parkways within New York City pursuant to §2903(a) of the New York City Charter. On October 3, 2003, the Department of Transportation adopted a rule creating a 12-month pilot program to reduce traffic volume exiting from the Triborough Bridge to the local street system in Astoria, Queens by opening approximately three-quarters of a mile of the Grand Central parkway to trucks. The rule became effective on November 3, 2003. On July 27, 2004, Governor Pataki signed chapter 223 of the laws of 2004, which specifically authorizes the New York City Department of Transportation to adopt a permanent rule allowing single-unit commercial vehicles with no more than three axles and ten tires on the part of the Grand Central Parkway, between the Triborough Bridge and the western leg of the Brooklyn-Queens Expressway. Consequently, the pilot program is hereby made permanent.

10. Statement of Basis and Purpose in City Record May 2, 2008: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. Subdivision (k) of §4-07 is being amended to bring New York City's Traffic Rules in compliance with federal law that permits motorcycles to operate on highways receiving federal funding. Title 23, §102(a) of the United States Code states in relevant part that "no State or political subdivision of a State may enact or enforce a law that applies only to motorcycles and the principal purpose of which is to restrict the access of motorcycles to any highway or portion of a highway for which Federal-aid highway funds have been utilized for planning, design, construction, or maintenance." As express lanes within New York City receive federal funding, the Department is amending rules to permit motorcycles to travel upon them. Furthermore, Title 23, §166 of the United States Code states that "the State agency shall allow motorcycles . . . to use the HOV facility. A State agency may restrict the use of the HOV facility by motorcycles . . . if the agency certifies to the Secretary that such use would create a safety hazard and the Secretary accepts the certification." The Secretary of the U.S. Department of Transportation has not accepted DOT's certification, as required by the statute.

CASE NOTES

¶ 1. While a pedestrian's crossing of the West Side Highway in violation of this regulation is evidence of

negligence, that violation is not in itself sufficient to warrant summary judgment in favor of the defendant in the pedestrian's personal injury case. The manner in which the accident happened was held to be a question of fact. Romeo v. DeGennaro, 255 A.D.2d 208, 680 N.Y.S.2d 235 (App. Div. 1st Dept. 1998).

¶ 2. A bicycle rider is subject to the same rights and duties as the driver of a vehicle, and does not have the special privileges afforded pedestrians. Tapia v. Royal Bus Tours, 2008 N.Y. Slip Op. 51292U, 2008 N.Y. Misc. Lexis 3694 (Sup.Ct. Queens Co.), discussed in note 1 of 34 RCNY 4-07.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-08

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-08 Parking, Stopping, Standing.

(a) **General provisions.** (1) **Compliance with rules.** No person shall stop, stand or park a vehicle, whether attended or unattended, other than in accordance with authorized signs, pavement markings, or other traffic control devices, unless necessary to avoid conflict with other traffic or in compliance with law or direction of any law enforcement officer or other person authorized to enforce these rules.

(i) **Sign placement.** For purposes of this §4-08, one authorized regulatory sign anywhere on a block, which is the area of sidewalk between one intersection and the next, shall be sufficient notice of the restriction(s) in effect on that block.

(2) **Stopping prohibited.** When stopping is prohibited by signs or rules, no person shall stop, stand or park a vehicle, whether attended or unattended.

(3) **Standing prohibited.** When standing is prohibited by signs or rules, no person shall stop a vehicle, attended or unattended, except temporarily for the purpose of and while actually engaged in expeditiously receiving or discharging passengers.

(4) **Parking prohibited.** When parking is prohibited by signs or rules, no person shall stop a vehicle, attended or unattended, except temporarily for the purpose of and while expeditiously receiving or discharging passengers or loading of unloading property to or from the curb.

(5) **Vehicles prohibited on berms and shoulders.** Stopping, parking or operating a motor vehicle is prohibited on

the berm or shoulder adjacent to a parkway or a highway as specified in §4-07(i) of these rules, except for emergency purposes.

(6) **Paper or other temporary signs.** Any paper or other temporary signs posted by authorized law enforcement agencies shall supersede all existing posted rules for the days and times specified. Regulations placed inside parking meters by the Department of Transportation so as to cover rate plates and the inside of the dome of the meter shall supersede all existing posted rules for the time the insert remains in the parking meter.

(7) **Holiday suspensions of parking rules.** (i) Major legal holidays. Except as provided in subparagraph (ii), of this paragraph, stopping, standing, or parking rules that are indicated on official signs shall be suspended on the days on which the following major legal holidays are officially observed by the City of New York: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. In addition, if New Year's Day, Independence Day or Christmas Day is officially observed on a day other than January 1, July 4 or December 25, respectively, then major legal holiday rules shall be in effect both on the official day of observance and on the traditional day of observance.

(ii) **Exception.** Parking, standing and stopping rules that are indicated on official signs shall remain in effect on the dates of both official and traditional observance of the above-listed major legal holidays only in areas where signs indicate that parking, standing and stopping rules are in effect seven days a week, provided, however, that the activation of meters that are required by posted sign to be activated seven days a week shall be suspended on major legal holidays pursuant to subparagraph (i).

(iii) **Street cleaning rules suspended.** (A) Street cleaning parking rules are suspended on the days listed in subparagraph (i) of this paragraph, and on the following holidays: Yom Kippur, Rosh Hashanah, Ash Wednesday, Holy Thursday, Good Friday, Ascension Thursday, Feast of the Assumption, Feast of All Saints, Feast of the Immaculate Conception, first two days of Succoth, Shemini Atzereth, Simchas Torah, Shavuot, Purim, Orthodox Holy Thursday, Orthodox Good Friday, first two and last two days of Passover, Idul-Fitr, Idul-Adha, Asian Lunar New Year, on all state and national holidays, on the following additional legal holidays: Martin Luther King, Jr.'s Birthday, Lincoln's Birthday, President's Day, Columbus Day-observed, Election Day, and Veteran's Day, and on such other days as announced by the Commissioner or his/her designee.

(B) For the purposes of this subparagraph (iii), street cleaning parking rules shall mean those rules (a) on posted signs consisting of the letter "P" with a broom through it or (b) except as otherwise provided in item (D) of this subparagraph, on posted signs containing "No Parking" rules restricting parking on one day per week or on alternate days.

(C) "No Parking" street cleaning rules, located in parking meter zones, are suspended on the days on which street cleaning rules are suspended and on such other days as announced by the Commissioner or his/her designee. Suspension of street cleaning rules does not affect the requirement of activating the meter during the hours that such meter is in effect.

(D) Posted signs restricting parking for a period of six or more consecutive hours on one day per week or on alternate days are not street cleaning parking rules. However, such restrictions are suspended on the days that street cleaning rules are suspended.

(8) **Disabled vehicles.** A vehicle that becomes disabled must be pushed to the side of the road so that it obstructs traffic as little as possible, and must be removed expeditiously.

(9) **Immobilization and towing of illegally parked vehicles.** (i) **Time and manner of immobilization.** Any illegally parked vehicle found parked at any time upon any public highway in the City may, by or under the direction of any person authorized by the Commissioner, be immobilized in such manner as to prevent its operation, and thereafter may be removed to a tow pound as provided in these rules; provided, however, that no such vehicle shall be

immobilized by any means other than by the use of a device or other mechanism which will cause no damage to such vehicle unless such vehicle is moved while such device or mechanism is in place.

(ii) **Notice.** Notice of immobilization pursuant to this paragraph shall be placed in a conspicuous place on the vehicle. Such notice shall contain:

(A) a warning that any attempt to move the vehicle may result in damage to the vehicle; and

(B) the time, place and manner in which the vehicle may be redeemed.

(iii) **Immobilization fee.** The registrant of an immobilized vehicle which has not yet been removed to a tow pound pursuant to these rules, or any other person authorized by the registrant of such vehicle, may secure the release of the vehicle upon satisfaction of all parking summonses in judgment, if any, for which the registrant of the immobilized vehicle is liable and payment of an immobilization fee of $185.00.

(iv) **Applicable rules.** Where a vehicle has been both immobilized and towed, the owner shall be subject to both the immobilization requirements of this paragraph, and all applicable provisions of these rules.

(v) **Right to immediate hearing.** The registrant, title holder or operator of any vehicle that has been immobilized shall have the right to an immediate hearing during regular business hours at the Parking Violations Bureau in relation to the immobilization.

(vi) **Removal fee.** The fee for removal of illegally parked vehicles to a tow pound shall be determined in accordance with the following fee schedule. Said fee shall be payable before such vehicles are released.

(A) The removal fee for Regular Towing shall be $185.00 and shall apply to any vehicle that has a gross vehicle weight less than 6,500 pounds, that may be towed through the use of a single tow truck not weighing more than eight tons.

(B) The removal fee for Heavy Duty Towing shall be $370.00 and shall apply to any vehicle that has a gross vehicle weight of 6,500 pounds or greater, and/or requires either more than one tow truck or a single tow truck which weighs in excess of eight tons, in order to be towed.

(vii) **Storage fee.** In addition to the removal fee set forth in subparagraph (vi) of this paragraph (9), there shall be a storage fee of $20.00 for each day such vehicle remains in the possession of the city, up to and including the day such vehicle is released. Said fee shall be payable before such vehicle is released.

(viii) **Vehicles not removed considered abandoned.** Any vehicle which is not removed from city property within 10 days following the mailing of a request to remove it shall be deemed to be an abandoned vehicle pursuant to paragraph (d) of subdivision 1 of §1224 of the Vehicle and Traffic Law and shall be disposed of by the Commissioner pursuant to such law. Such request shall be sent by certified or registered mail, return receipt requested, to the registered owner of the vehicle, at the address contained on the registration of such vehicle.

(ix) **Release of vehicle in process of being removed.** When a vehicle has been hooked to a tow truck in preparation for removal toa pound but the owner or other person lawfully entitled to posession of such vehicle appears and requests the release of such vehicle before the tow truck is in motion, such vehicle shall be unhooked and released, provided, however, that the person to whom such vehicle is released must execute a binding agreement consenting to pay the vehicle release penalty as set forth in subparagraph (x) of this paragrph (9) within thirty days from the date of such agreement and, in the event of non-payment, to the imposition of additional penalties in accordance with subparagraph (xi) of this paragraph (9); and provided further that such person present a current valid driver's license and either registration for the vehicle, title to the vehicle, insurance identification and keys for the vehicle, a rental agreement and keys for the vehicle in case of a rental vehicle, or company identification and keys for the vehicle in the

case of a commercial vehicle.

(x) **Vehicle release penalty.** The penalty for the release of an illegally parked vehicle under the circumstances permitted by subparagraph (ix) of this paragraph (9) shall be $100.00 for illegally parked vehicles which meet the criteria contained in subparagraph (vi)(A) of this paragraph (9), and $200.00 for illegally parked vehicles which meet the criteria listed in subparagraph (vi)(B) of this paragraph (9). This fee is in addition to any other monetary fine(s) and penalty(ies) permitted by law for the underlying parking violation(s); provided, however, that in no event shall a vehicle release penalty be imposed if the underlying parking violation or, in the case of multiple parking violations, all underlying parking violations, is (are) dismissed by the Parking Violations Bureau.

(xi) **Non-payment of vehicle release penalty.** The Parking Violations Bureau may, in accordance with law, prescribe additional penalties for non-payment of the vehicle release penalty set forth in sub-paragraph (x) of this paragraph (9) and enter and enforce default judgements for such vehicle release penalty and additional penalties.

(10) **Notification stickers.** (i) **Issued by Traffic Enforcement Agents.** When stopping, standing or parking is prohibited by sign or rule and an unattended vehicle is stopped, standing or parked so as to interfere with the free flow of traffic, Traffic Enforcement Agents are hereby authorized to affix a sticker on the operator's side back seat window of the vehicle informing the operator of said violation and interference. The dimensions of the sticker shall be 8 1/2" by 11" with the words:"This vehicle violates New York City Traffic Rules. The resulting obstruction of traffic caused unnecessary delays." The words "New York City Department of Transportation" shall also appear on the sticker.

(ii) **Issued by the Department of Sanitation.** When parking is prohibited by sign or rule and an unattended parked vehicle interferes with the cleaning of the streets by the Department of Sanitation, the Commissioner of Sanitation is hereby authorized to affix a sticker on the operator's side back seat window of the vehicle informing the operator of said violation and interference. The dimensions of the sticker shall be 8 1/2" by 11" with the words: "This vehicle violates New York City Traffic Rules. As a result, this street could not be properly cleaned. A cleaner New York is up to you." The words "New York City Department of Sanitation" shall also appear on the sticker.

(iii) **Issued by the Fire Department.** When an unattended vehicle is parked, standing or stopped in violation of subdivision (e), paragraph (2) below, and obstructs access to any fire hydrant, the Commissioner of the Fire Department is hereby authorized to affix a sticker on the operator's side back seat window of the vehicle, informing the operator of said violation and obstruction. The dimensions of the sticker shall be 81/2" by 11" with the words: "This vehicle violates New York City Traffic Rules and is obstructing a fire hydrant. As a result, the violator is jeopardizing the life and property of the general public." The words "Fire Department of New York" shall also appear on the sticker.

(iv) **Issued by MTA New York City Transit Managers.** When standing is prohibited by a bus stop sign and an unattended vehicle other than an authorized bus is standing in such bus stop so as to interfere with the free movement of buses into such bus stop in violation of §4-08(c)(3) of these rules, MTA New York City Transit Managers are hereby authorized, only after having issued a summons to such vehicle, to affix a sticker on the driver side backseat window of the vehicle informing the operator of said violation and interference. The dimensions of the sticker shall be $8^1/_2$ inches by 11 inches and shall include the words: "This vehicle violates New York City Traffic Rules. The resulting obstruction of traffic causes delay, safety hazards, and interferes with accessibility of the bus to passengers." The words "MTA New York City Transit" also shall appear on the sticker.

(11) **Restricted area.** The Parking Violations Bureau shall be authorized to establish a separate fine schedule for violations committed in the restricted area, as defined herein. Such fine schedule may be higher than the fine schedule for violations committed outside the restricted area. As used herein, restricted area shall mean all of Manhattan, south from the north building line on 96th Street but excluding all of Central Park.

(12) **In-vehicle parking system.**

(i) **Definition.** Whenever these rules refer to an in-vehicle parking system ("IVPS"), such term shall refer

collectively to the electronic component, the electronic debit card that is inserted into the electronic component to activate it, and the windshield sticker that must be displayed on the vehicle, all as further described in this section. All components of the IVPS are non-transferable and must be activated, installed, displayed, or otherwise operated in the manner set forth in these rules in order for use of the IVPS to be valid.

(A) **Electronic component.** The electronic component of an IVPS is a small portable electronic module slightly larger than a pocket calculator that is designed to be placed on top of a vehicle's dashboard behind the windshield, capable of reading and writing to and from an electronic debit card, and incorporating an electronic display on which information can be seen readily. Unless otherwise required by law or rule, only one electronic component will be issued to the registered owner of the vehicle(s) in which the IVPS is to be used. Each electronic component shall be numerically keyed to the electronic debit card and all windshield stickers of the IVPS to which it is issued.

(B) **Electronic debit card. (a)** A card, whether or not prepaid, capable of being programmed to allow a user to activate an IVPS for a particular purpose when read by the electronic component.

(b) Each electronic debit card shall be numerically keyed to the electronic component of the IVPS to which it is issued.

(C) **Windshield sticker(s). (a)** Windshield stickers must be displayed on the right side of the windshield in each vehicle in order for an IVPS to be valid.

(b) Each windshield sticker shall be numerically keyed to the electronic component of the IVPS to which it is issued.

(c) Unless otherwise required by law or rule, at the request of the registered owner of the vehicle(s) in which the IVPS will be used, a maximum of ten (10) windshield stickers will be issued to such person.

(ii) **Use of in-vehicle parking systems.** In-vehicle parking systems may only be used:

(A) to park in a space regulated by a parking meter instead of using another authorized method of payment as defined in subdivision (h) paragraph (7) of this section of these rules; or

(B) in conjunction with the issuance of a permit pursuant to subdivision (o) of this section of these rules instead of a permit card.

(iii) **Issuance of in-vehicle parking systems.**

(A) **Issuance. (a)** IVPS applications shall be issued by the Bureau of Parking, Permit Section, and must be submitted by mail, including the following information about the applicant, in addition to any other information required on the application.

(1) Name.

(2) Home (or mailing) address.

(3) Evening telephone number.

(4) Daytime telephone number.

(5) Copy of valid driver's license.

(6) Copy of valid vehicle registration for each vehicle (to a maximum of ten) in which the IVPS will be used.

(b) [Reserved]

(c) In addition to prepaid electronic debit cards, as described below, applicants shall receive:

(1) One electronic component.

(2) One windshield sticker for each vehicle for which a valid registration is shown.

(d) Electronic debit cards shall be sold by the Bureau of Parking, Permit Section, by mail, in various denominations and must be prepaid by certified check or money order of the value of the electronic debit card(s) sought to be purchased.

(e) IVPSs and electronic debit cards shall be mailed to applicants via certified mail; provided, however, that an applicant may request that they be picked up by the applicant at the Bureau of Parking, Permit Section, upon presentation by the applicant of his/her valid driver's license.

(B) **Fees.** There shall be a deposit fee of one hundred dollars ($100) payable by certified check or money order, for each IVPS, which fee shall be refunded when the IVPS is returned to the Department. Destruction of, damage to, loss or theft of the electronic component of the IVPS shall result in the automatic forfeiture of the deposit fee.

(b) **Violation of posted no stopping rules prohibited.** When official signs, markings or traffic-control devices have been posted prohibiting, restricting or limiting the stopping of vehicles, no person shall stop, stand or park any vehicle in violation of the restrictions posted on such signs, markings or traffic-control devices.

(c) **Violation of posted no standing rules prohibited.** When official signs, markings or traffic-control devices have been posted prohibiting, restricting or limiting the standing of vehicles, no person shall stand or park any vehicle in violation of the restrictions posted on such signs, markings or traffic-control devices, except as otherwise provided herein:

(1) **No standing (snow emergency).** When the Commissioner declares a state of snow emergency, no person shall stand or park a vehicle upon a street designated by signs as a snow street, or upon any other area referred to in §4-12(k)(1) of these rules and except as otherwise provided therein.

(2) **No standing-taxi stand.** No person shall stand or park a vehicle other than a taxi in a taxi stand when any such stand has been officially designated and appropriately posted except that the operator of a vehicle may temporarily stand therein for the purpose of expeditiously receiving and discharging passengers provided such standing does not interfere with any taxi about to enter or leave such zone.

(3) **No standing-bus stop.** No person shall stand or park a vehicle other than an authorized bus in its assigned bus stop when any such stop has been officially designated and appropriately posted except that the operator of a vehicle may temporarily stand therein for the purpose of expeditiously receiving and discharging passengers provided such standing does not interfere with any bus about to enter or leave such zone.

(4) **No standing except authorized vehicles.** Except as provided in paragraph (8) of this subdivision, where a posted sign reads "No Standing Except Authorized Vehicles," no vehicles, except those designated by a rider attached to such sign, may stand or park in that area.

(5) **No standing-hotel loading zone.** No person shall stand or park a vehicle in such zone except temporarily for the purpose of and while actually engaged in receiving or discharging passengers and their personal baggage at hotels.

(6) **No standing-commuter van stop.** No person shall stand or park a vehicle other than a commuter van in a commuter van stop when such a stop has been officially designated and appropriately posted, except that an operator of such other vehicle may temporarily stand therein for the purpose of expeditiously receiving or discharging passengers

provided such standing does not interfere with any commuter van about to enter or leave such zone.

(7) **No standing-for-hire vehicle stop.** No person shall stand or park a vehicle other than a for-hire vehicle in a for-hire vehicle stop when such a stop has been officially designated and appropriately posted, except that an operator of such other vehicle may temporarily stand therein for the purpose of expeditiously receiving or discharging passengers provided such standing does not interfere with any for-hire vehicle about to enter or leave such zone.

(8) No standing except certain diplomatic and consular vehicles.

(i) Where a posted sign reads "No Standing Except Vehicles with Consul-C or Diplomat-A&D License Plates D/S Decals Only", no person may stand or park a vehicle in such area except as follows:

(A) a person may stand or park a vehicle in such area if such vehicle bears "A", "C" or "D" series license plates issued by the U.S. Department of State, such vehicle displays a valid non-transferable service vehicle decal issued by the City of New York that is affixed to the inside of the operator's side of the windshield, and such person is authorized to park or stand in a space in such area by the foreign mission or consulate that has been allocated such space by the Department; or

(B) a person may stand a vehicle temporarily (no more than thirty (30) minutes) in such area for the purpose of and while actually engaged in delivering, loading or unloading for official business if such vehicle bears "A", "C" or "D" series license plates issued by the U.S. Department of State, such vehicle displays a valid non-transferable delivery vehicle decal issued by the City of New York that is affixed to the inside of the operator's side of the windshield, such person is authorized to stand in a space in such area by the foreign mission or consulate that has been allocated such space by the Department, and a delivery is being made to such foreign mission or consulate.

(ii) Where a posted sign reads "No Standing Except Vehicles with Consul-C or Diplomat-A&D License Plates Delivery Decal Required 30 Minute Limit", no person may stand or park a vehicle in such area except a person may stand a vehicle temporarily (no more than thirty (30) minutes) in such area for the purpose of and while actually engaged in delivering, loading or unloading for official business if such vehicle bears "A", "C" or "D" series license plates issued by the U.S. Department of State and displays a valid non-transferable delivery vehicle decal issued by the City of New York that is affixed to the inside of the operator's side of the windshield.

(d) **Violation of posted no parking rules prohibited.** When official signs, markings or traffic control devices have been posted prohibiting, restricting or limiting the parking of vehicles, no person shall park any vehicle in violation of the restrictions posted on such signs, markings or traffic control devices, except as otherwise provided herein:

(1) **No parking-street cleaning.** No person shall park a vehicle in violation of officially posted street cleaning rules, as defined in subsection (a)(7)(ii) of these rules, unless such rules have been suspended by the Commissioner or his/her designee pursuant to subsection (a)(7) of these rules.

(2) **No parking-taxi stand.** No person shall park a vehicle other than a taxi in a taxi stand when any such stand has been officially designated and appropriately posted except that the operator of a passenger or commercial vehicle may temporarily stop or stand therein provided such stopping or standing does not interfere with any taxi about to enter or leave such zone.

(3) **No parking except handicapped permits (off-street).** (i) No person shall park a vehicle in any off-street parking space designated for use by the handicapped pursuant to §1203-c of the Vehicle and Traffic Law, or designated by blue painted lines or markings displaying the international symbol of access unless:

(A) Such person is, or is transporting, a handicapped permittee and displays a state special vehicle identification permit issued by the Commissioner of Motor Vehicles or

(B) Such vehicle is registered in accordance with §404-a of the Vehicle and Traffic Law and is being used for the transportation of handicapped persons, or

(C) Such vehicle displays a special license plate or parking permit issued by any governmental entity subject to the laws of the United States, or a foreign country for the purpose of granting special parking privileges to people with disabilities.

(ii) Handicapped plates or permits issued by New York State or by any other state, district, territory or other governmental entity or foreign country shall be valid only in designated off-street parking areas. They are not valid in on-street parking areas.

(4) **Official markings.** When markings upon the curb or the pavement of a street designate a parking space, no person shall stand or park a vehicle in such designated parking space so that any part of the vehicle occupies more than one space or protrudes beyond the markings designating such a space, except that a vehicle which is of a size too large to be parked within a single designated parking space shall be parked with the front bumper at the front of the space with the rear of the vehicle extending as little as possible into the adjoining space to the rear, or vice-versa. Notwithstanding the above, no vehicle that is too long and/or too wide to be parked within a single designated parking space shall be parked in such a space which is designated for angle parking.

(5) **No parking except authorized vehicles.** Where a posted sign reads "No Parking Except Authorized Vehicles," no vehicles, except those designated by a rider attached to such sign, may park in that area.

(6) **No parking-hotel loading zone.** No person shall park a vehicle in such zone except temporarily for the purpose of and while actually engaged in receiving or discharging passengers and their personal baggage at hotels.

(e) **General no stopping zones (stopping, standing and parking prohibited in specified places).** No person shall stop, stand, or park a vehicle in any of the following places, unless otherwise indicated by posted signs, markings or other traffic control devices, or at the direction of a law enforcement officer, or as otherwise provided in this subdivision:

(1) **Traffic lanes.** In any lane intended for the free movement of vehicles, except a lane immediately adjacent to the curb, unless such lane is designated by signs as a traffic lane, and except as otherwise provided in subdivision (f), paragraph (1) below. In no instance shall a vehicle extend more than 8 feet from the nearest curb.

(2) **Hydrants.** Within fifteen feet of a fire hydrant, unless otherwise indicated by signs, or parking meters, except that during the period from sunrise to sunset if standing is not otherwise prohibited, the operator of a passenger car may stand the vehicle alongside a fire hydrant provided that the operator remains in the operator's seat ready for immediate operation of the vehicle at all times and starts the motor of the car on hearing the approach of fire apparatus, and provided further, that the operator shall immediately remove the car from alongside the fire hydrant when instructed to do so by any member of the police, fire, or other municipal department acting in his/her official capacity.

(3) **Sidewalks.** On a sidewalk.

(4) **Intersections.** Within an intersection, except on the side of a roadway opposite a street which intersects but does not cross such roadway and except as provided in paragraph (5), below.

(5) **Crosswalks.** In a crosswalk.

(6) **Street excavations.** Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct any traffic lane.

(7) **Tunnels and elevated roadways.** Within a highway tunnel or upon an elevated or controlled access roadway

when all lanes are normally available for moving traffic.

(8) **Divided highways.** Parking, standing and stopping are prohibited alongside the median dividing a highway into two or more separate roadways. However, alongside the medians of certain segments of such divided highways, the department may post signs restricting parking, standing and stopping alongside the medians of such segments only on specified days and/or hours. Wherever such signs are so posted on a segment of a divided highway, parking, standing and stopping are permitted alongside the median of such segment on the days and/or hours when parking, standing and stopping are not specifically prohibited by such signs. On segments of such highway where such signs are not posted, parking, standing and stopping alongside the median are prohibited at all times. For the purposes of this paragraph, a segment of a divided highway is the area of such highway between adjacent intersections.

(9) **Bicycle lanes.** Within a designated bicycle lane.

(10) **Restricted use and limited use streets.** On any street designated as a restricted use street or a limited use street as defined in §4-12(r)(4) of these rules, except as otherwise provided in §4-12(r)(1).

(11) **Major roadways.** On the improved or paved roadway of any of the arteries set forth in §4-07(i) of these rules, or on improved or paved roadways in a park or in parks, for the purpose of removing or replacing a flat tire, unless permitted by posted signs. For the purposes of this rule, a vehicle is considered to be on the improved or paved roadway unless the vehicle is completely off such roadway.

(12) **Obstructing traffic at intersection.** When vehicular traffic is stopped on the opposite side of an intersection, no person shall drive a vehicle into such intersection, except when making a turn, unless there is adequate space on the opposite side of the intersection to accommodate the vehicle the person is driving, notwithstanding the indication of a traffic control signal which would permit the person to proceed.

(f) **General no standing zones (standing and parking prohibited in specified places).** No person shall stand or park a vehicle in any of the following places, unless otherwise indicated by posted signs, markings or other traffic control devices, or at the direction of a law enforcement officer:

(1) **Double parking.** On the roadway side of a vehicle stopped, standing, or parked at the curb, except a person may stand a commercial vehicle alongside a vehicle parked at the curb at such locations and during such hours that stopping, standing, or parking is not prohibited, while expeditiously making pickups, deliveries or service calls, provided that there is no unoccupied parking space or designated loading zone on either side of the street within 100 feet that can be used for such standing, and provided further that such standing is in compliance with the provisions of §1102 of the State Vehicle and Traffic Law. A person may stand a commercial vehicle along the roadway side of a bicycle lane provided all other conditions of this paragraph are met. For the purposes of this paragraph (f)(1), "expeditiously making pick-ups, deliveries or service calls" shall mean that any period of inactivity at the pick-up, delivery or service-call location does not exceed 30 minutes. However, such definition shall in no way limit the discretion of the Department of Finance Adjudication Tribunal to determine whether a violation of this paragraph has occurred.

(2) **Driveways.** In front of a public or private driveway, except that it shall be permissible for the owner, lessor or lessee of the lot accessed by a private driveway to park a passenger vehicle registered to him/her at that address in front of such driveway, provided that such lot does not contain more than two dwelling units and further provided that such parking does not violate any other provision of the Vehicle and Traffic Law or local law or rule concerning the parking, stopping or standing of motor vehicles. The prohibition herein shall not apply to driveways that have been rendered unusable due to the presence of a building or other fixed obstruction and, therefore, are not being used as defined in §4-01(b) of these rules.

(3) **Parks.** In any park between one-half hour after sunset and one-half hour before sunrise, except at places designated or maintained for the parking of vehicles.

(4) **Bus lane.** In any lane designated for the exclusive use of buses.

(5) **Railroad crossings.** Within fifty feet of the nearest rail of a railroad crossing.

(6) **Safety zones.** In a safety zone, between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone.

(7) **Pedestrian ramps.** Alongside or in a manner which obstructs a curb area which has been cut down, lowered or otherwise constructed or altered to provide access for persons with disabilities at a marked or unmarked crosswalk as defined in subdivision (b) of §4-01 of this chapter. A person may stop, stand or park a vehicle alongside or in a manner which obstructs a pedestrian ramp not located within such crosswalk, unless otherwise prohibited.

(g) **General no parking zones (parking prohibited in certain places)**. No person shall park a vehicle in any of the following places, unless otherwise indicated by posted signs, markings or other traffic control devices:

(1) **Emergency sites.** Within a block where emergency work is in progress, except that the operator of any vehicle on official public business related to the emergency may park such vehicle at such sites.

(2) **Vacant lots.** In a vacant lot, unless the operator of the vehicle has the written permission of the lot's owner so to park and has otherwise complied with §§10-112 and 10-113 of the Administrative Code.

(3) **Marginal street and waterfronts.** On a marginal street or waterfront, as defined in §4-01(b) of these rules.

(h) **On-street and off-street metered zones.** (1) **Activation of meter or in-vehicle parking system.** No person shall park a vehicle, whether attended or not, in any parking space regulated by a parking meter that indicates by signal that the lawful parking time in such space has expired without (i) properly activating the meter by depositing the appropriate currency therein or otherwise making appropriate payment by an authorized method as described in this section and performing any other act necessary to activate the meter or (ii) properly activating an IVPS. The registration numbers of the electronic component, the electronic debit card, and all related windshield stickers comprising an IVPS must match in order for such system to be considered properly activated. This provision shall not apply to the act of parking or the time necessary to activate the meter or an IVPS immediately. A person may park at a meter without depositing a coin, using another authorized method of payment, or activating an IVPS, if there is an unexpired interval of time shown on the meter but only if the vehicle is moved before the expiration of such interval. However, such person may reactivate the meter or activate an IVPS upon expiration of the time remaining on the meter but in no event may that person remain at the space in excess of the specified time limits applicable to the parking meter zone in which such meter is located.

(2) **Expired meters or in-vehicle parking systems.** No person shall allow a vehicle within his/her control to be parked in any such parking meter space during the restricted and regulated time applicable to the parking meter zone in which such meter is located while the parking meter for such space indicates by signal or a properly activated IVPS shows that the lawful parking time in such space has expired. This provision shall not apply to the act of parking or the time necessary to deposit immediately thereafter a coin or coins or to use another authorized method of payment, in such meter and to perform any other act prescribed on the meter which may be required to place the meter in operation or to activate an IVPS. If an IVPS is used, such system shall be the only valid indicator of whether lawful parking time in a space is available or has expired, because the meter in all such cases will indicate that the time has expired.

(3) **Parking at broken or missing meters.**

(i) A person shall be allowed to park at a missing or broken meter up to the maximum amount of time otherwise lawfully permitted at such meter.

(ii) Where parking spaces in a parking field or on a block are controlled by "Muni-Meters," and a "Muni-Meter" is

broken or missing, the person seeking to purchase a parking receipt shall use a functional "Muni-Meter" in the same parking field or on the same block, to purchase a parking receipt and shall display it pursuant to paragraph 10 of this subdivision.

If all muni-meters in a parking field or on a block are missing or broken, a person shall be allowed to park in such parking field or on such block up to the maximum amount of time otherwise lawfully permitted by such muni-meters in such controlled parking field or block. For purposes of this section, "muni-meter" shall mean an electronic parking meter that dispenses timed receipts that must be displayed in a conspicuous place on a vehicle's dashboard.

(4) **Oversize vehicles.** When a vehicle is too large to be parked within a single parking meter space, it shall be parked with the front section alongside the forward meter. If the operator of the vehicle is using coins or another authorized method of payment other than an IVPS, such forward meter shall be operated and shall determine when the lawful parking time has expired. If the operator of the vehicle is using an IVPS, it shall be activated and shall determine when the lawful parking time has expired.

(5) **Time allowed at parking meters; feeding meters or reactivation of in-vehicle parking systems prohibited.** (i) No person shall park a vehicle in a parking meter space for more than one time period lawfully permitted in that parking meter zone, nor shall any person deposit any additional coin or coins or use another authorized method of payment for the purpose of extending such time.

(ii) No person shall activate an IVPS for a time period longer than one time period lawfully permitted in that parking meter zone, nor shall any person activate or reactivate an IVPS for the purpose of extending such time. Where a person uses less time than the time activated on an IVPS, the cost of the time not actually used shall be credited back to the electronic debit card when such card is next used to activate the electronic component of the IVPS.

(6) **Restrictions and limitations.** The provisions of this subdivision (h) shall not relieve any person of the duty to observe other and more restrictive provisions prohibiting, restricting, or limiting the stopping, standing, or parking of vehicles in specified places or at specified times.

(7) **Authorized payment methods; counterfeits prohibited.** (i) Authorized payment methods. Parking meters shall be activated by the insertion of a coin or coins of United States currency, by the insertion of a token issued by the Metropolitan Transportation Authority New York City Transit ("MTA/NYCT") where authorized by sign or other official indicator, or by the insertion of an electronic debit card. Parking at an on-street meter also may be paid for by the activation of a valid IVPS.

(ii) No person shall deposit or attempt to deposit in any parking meter any slug, button, or any other unauthorized device or substance as a substitute for coins of United States currency or a token issued by MTA/NYCT, nor shall any person use an IVPS or electronic debit card not issued pursuant to this section.

(8) **Displaying, selling or offering merchandise for sale prohibited.** No peddler, vendor, hawker or huckster shall park a vehicle at a metered parking space for purposes of displaying, selling, storing or offering merchandise for sale from the vehicle.

(9) **Parking by disabled persons permitted.** Rules pertaining to the use of parking meter zones shall not apply to vehicles operated by disabled persons duly displaying New York City special parking identification permits issued by the Department of Transportation pursuant to §4-08(o) of these rules, other than at those periods of time when no standing and no stopping restrictions are in effect in the metered zones.

(10) **"Muni-Meters."**

(i) No person shall, in any parking space controlled by a "Muni-Meter," park a vehicle without first purchasing the amount of parking time desired from such machine.

(ii) No person shall, in any parking space controlled by a "Muni-Meter," park a vehicle without displaying a payment receipt in the windshield, where such requirement is indicated by posted signs.

(iii) No person shall, in any parking space controlled by a "Muni-Meter," which allows a person to purchase the amount of parking time desired from a machine that dispenses a receipt or tag to be displayed in the windshield, park a vehicle in excess of the amount of time indicated on such receipt or tag, or on posted signs.

(i) **Municipal off-street parking facilities.** (1) **Parking fees.** No person shall park a vehicle without paying the appropriate fee in accordance with authorized fee schedules posted on the facility.

(2) **Hours of operation.** No person shall park a vehicle before the opening hour or after the closing hour, as specified on authorized signs.

(3) **"Muni-Meters."**

(i) No person shall, in any parking space controlled by a "Muni-Meter," park a vehicle without first purchasing the amount of parking time desired from such machine.

(ii) No person shall, in any parking space controlled by a "Muni-Meter," park a vehicle without displaying a payment receipt in the windshield, where such requirement is indicated by posted signs.

(iii) No person shall, in any facility using the "Muni-Card" system, which allows a person to purchase the amount of parking time desired from a machine that dispenses a receipt or tag, park a vehicle in excess of the amount of time indicated on such receipt or tag, or on posted signs.

(4) **Parking in a dangerous manner.** No person shall park a vehicle in a manner that will endanger any person or property.

(5) **Operator responsible for loss.** The operator enters the facility at his/her own risk and the City of New York shall not be responsible for any injury or loss due to fire, theft, accident, or other causes.

(6) **Angle parking.** No vehicle that is too long and/or too wide to be parked within a single designated parking space shall be parked in such a space which is designated for angle parking.

(j) **Standing or parking vehicles that violate registration and inspection rules are covered or have the VIN obscured.** (1) **Vehicles must be properly registered.** No person shall stand or park a vehicle bearing a New York license plate or plates unless it is properly registered in accordance with the laws and rules of New York.

(2) **Valid plates must be properly displayed.** No person shall stand or park a vehicle unless it properly displays the current plate or plates issued to it. For the purposes of this paragraph (j)(2), New York plates shall not be deemed properly displayed unless they are conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened so as to prevent the same from swinging and placed, whenever reasonably possible, not higher than 48 inches and not lower than 12 inches from the ground, and they are kept clean and in a condition so as to be readable and shall not be covered by glass or any plastic material, and the view thereof shall not be obstructed by any part of the vehicle or by anything carried thereon. New York dealer or transporter plates issued pursuant to §415 of the Vehicle and Traffic Law shall be deemed properly displayed if the one plate issued is placed on the rear of the vehicle as described above. New York motorcycle plates and plates from other states shall be deemed properly displayed if at least one plate is fastened on the rear of the vehicle.

(3) **Vehicles must display valid registration sticker.** No person shall stand or park a vehicle bearing a New York plate or plates unless it properly displays a current registration sticker.

(4) **Improper stickers prohibited.** No person shall stand or park a vehicle bearing a New York plate or plates

displaying an expired, mutilated, void, imitation, counterfeit or inappropriate New York registration sticker.

(5) **Registration plates, stickers, and tags must match.** No person shall stand or park a vehicle bearing registration plates, stickers, and tags that do not match as to information contained thereon.

(6) **Vehicles must display valid inspection sticker.** No person shall stand or park a vehicle bearing New York plates unless it is properly inspected and properly displays a current inspection sticker or certificate, in accordance with §306(b) of the Vehicle and Traffic Law unless it bears New York dealer or transporter plates pursuant to §415 of the Vehicle and Traffic Law.

(7) **Improper inspection stickers prohibited.** No person shall stand or park a vehicle bearing New York plates displaying any mutilated, imitation or counterfeit of an official certificate of inspection.

(8) **Vehicle covers prohibited.** No person shall stand or park a vehicle having a cover on it that obscures the make, color, vehicle identification number (VIN), license plates and/or registration and inspection stickers, and/or restricts entry to the vehicle, if such vehicle is standing or parked in violation of posted rules.

(9) **Obscuring VIN prohibited.** No person shall stand or park a vehicle that has the vehicle identification number obscured in any manner.

(k) **Special rules for commercial vehicles.** (1) **Parking of unaltered commercial vehicles prohibited.** No person shall stand or park a vehicle with commercial plates in any location unless it has been permanently altered with all seats and rear seat fittings, except the front seats, removed, except that for vehicles designed with a passenger cab and a cargo area separated by a partition, the seating capacity within the cab shall not be considered in determining whether the vehicle is properly altered, and has the name and address of the owner as shown on the registration certificate plainly marked on both sides of the vehicle in letters and numerals not less than three inches in height, in compliance with §10-127 of the Administrative Code and is also in compliance with paragraph (i) of the definition of commercial vehicle as set forth in §4-01 of these rules.

(2) **No standing except trucks loading and unloading.** Where a posted sign reads "No Standing Except Trucks Loading and Unloading," no vehicle except a commercial vehicle or a service vehicle as defined in §4-01(b) of these rules, may stand or park in that area, for the purpose of expeditiously making pickups, deliveries or service calls, and except that in the area from 35th St. to 41st St., Avenue of the Americas to 8th Avenue, inclusive, in the Borough of Manhattan, between the hours of 7 a.m. and 7 p.m., no vehicle except a truck as defined in §4-13(a)(1) of these rules may stand or park for the purpose of expeditiously making pickups, deliveries, or service calls.

(3) **Angle standing or parking of commercial vehicles.** Commercial vehicles standing or parking in authorized areas shall not be placed at an angle to the curb unless such positioning is essential for loading or unloading and then only for such period of time actually required for such purposes provided that a sufficient space shall be left clear for the passage of a vehicle between the angle-parked vehicle and the center of the street, the opposite curb or a vehicle parked or standing thereat, whichever is closest. In no event shall an angle-parked vehicle occupy more than a parking lane, plus one traffic lane.

(4) **Parking of trailers.** (i) No person shall park any trailer or semi-trailer on any street or arterial highway, except while loading or unloading at off-street platforms, unless such trailer or semi-trailer is attached to a motor vehicle capable of towing it.

(ii) Notwithstanding the provisions of paragraph (i) above, where posted signs permit, a trailer or semi-trailer may park while unattached to a motor vehicle capable of towing it on streets in industrial zoned property as defined in the Zoning Resolution. Such trailers or semi-trailers may park for the length of time indicated on the posted signs. An owner of a trailer or semi-trailer parked pursuant to this provision shall protect the streets from damage that may be caused by parking the unattached trailer. All doors located on such trailers or semi-trailers must be locked while the

trailers are parked.

(5) **Street storage of commercial vehicles prohibited.** When parking is not otherwise restricted, no person shall park a commercial vehicle in any area, including a residential area, in excess of three hours.

(6) **Nighttime parking of commercial vehicles prohibited.** No person shall park a commercial vehicle on a residential street, between the hours of 9 p.m. and 5 a.m. Where a commercial vehicle is parked in violation of this paragraph, it shall be an affirmative defense to said violation, with the burden of proof on the person who received the summons, that he or she was actively engaged in business at the time the summons was issued at a premises located within three city blocks of where the summons was issued. This paragraph shall not apply to vehicles owned or operated by gas or oil heat suppliers or gas or oil heat systems maintenance companies, the agents or employees thereof, or any public utility.

(7) **Vehicles equipped with platform lifts.** Commercial vehicles may not be parked on any city street with a platform lift set in a lowered position while the vehicle is unattended.

(l) **Blue zone, midtown, and other special zones.** (1) **Blue zone.** No person shall park a vehicle upon any of the streets within the area designated as the "Blue Zone," Monday through Friday from 7 a.m. to 7 p.m., except as otherwise posted along the perimeter of and inside the designated area, or when necessary to avoid conflict with other traffic or in compliance with law or upon the direction of any law enforcement officer authorized to enforce these rules. Said area is indicated by a blue line painted parallel to the curb and is bounded by the northern property line of Frankfort Street, the northern property line of Dover Street, the eastern property line of South Street, the western property line of State Street, the centerline of Broadway, and the centerline of Park Row.

(2) **Special midtown rule: method of parking.** Except where otherwise restricted, between the hours of 7 a.m. and 7 p.m. daily, except Sundays, from 14th to 60th Streets, 1st to 8th Avenues, all inclusive, in the Borough of Manhattan, no operator of a vehicle or combination of vehicles used for transportation of merchandise shall stop, stand, or park in any of the streets herein designated, other than parallel and close to the curb, and occupy no more than ten feet of roadway space from the nearest curb, and in no case shall any such vehicle be backed in at an angle to the curb.

(3) **Special midtown rule: standing time limit.**

(i) Between the hours of 7 a.m. and 7 p.m., daily except Sundays, from 14th to 60th Streets, 1st to 8th Avenues, all inclusive, in the Borough of Manhattan no operator shall stand a vehicle or combination of vehicles for the purpose of making pickups, deliveries or service calls in any one block of streets herein designated for a period of more than three hours unless otherwise posted. A vehicle or combination of vehicles not being used for expeditious pickups, deliveries or service calls is deemed to constitute a parked vehicle subject to parking rules applicable to that particular location.

(ii) Commercial parking meter area. Notwithstanding the provisions of subparagraph (i) of this paragraph, where signs are posted regulating the use of the curb by commercial vehicles it shall be unlawful to stand a vehicle in any space on a block unless such vehicle is a "commercial vehicle" as defined in §4-01(b)(i) of this chapter or a vehicle with a valid "combination" registration from another state, and unless such space is controlled by a parking meter. The maximum time for such metered parking on a single block shall be a total of three hours, unless otherwise indicated by a posted sign. The provisions of subdivision (h) of this section shall apply to commercial vehicles parked at a parking meter, including a "Muni-Meter," pursuant to this paragraph.

(4) **Parking in garment district restricted to trucks.** Notwithstanding any provisions of these rules to the contrary, no vehicles except trucks and vans bearing commercial plates shall stand at the curb for the purpose of expeditiously loading and unloading between the hours of 7 a.m. and 7 p.m. daily, including Sundays, from 35th Street to 41st Street, between Avenue of the Americas and 8th Avenue, all inclusive, in the Borough of Manhattan. For the purpose of this paragraph (4), passenger vehicles, or station wagons bearing commercial plates shall not be deemed trucks or vans.

(5) **Parking restricted in limited truck zones.** No operator of truck shall stop, stand or park his/her vehicle upon any streets designated as "Limited Truck Zones," except for the purpose of making a delivery, loading or servicing within said zone, and except as otherwise provided in §4-13(d)(3) of these rules.

(m) **Additional parking rules.** (1) **Wrong way parking prohibited.** Except where angle parking is authorized, every vehicle stopped, standing, or parked partly upon a roadway shall be so stopped, standing or parked parallel to the curb or edge of the roadway. On a one-way roadway such vehicle shall be facing in the direction of authorized traffic movement; on a two-way roadway such vehicle shall be facing in the direction of authorized traffic movement on that portion of the roadway on which the vehicle rests.

(2) **Angle standing or parking.** No person shall place a vehicle at an angle to the curb, except when such angle placement is authorized by these rules or by signs or markings. Notwithstanding the above, no vehicle that is too long and/or too wide to be parked within a single designated parking space shall be parked in such a space which is designated for angle parking.

(3) **Angle parking of motorcycles, motor scooters and mopeds.** A person shall be permitted to park a motorcycle, motor scooter or moped at an angle to the curb at times and at places when and where parking is permitted but only in such manner that at least one wheel shall touch the curb. In no event shall any portion of the motorcycle, motor scooter or moped be more than 6 feet from the curb.

(4) **Parking of doctors' and dentists' vehicles.** Where parking is prohibited by signs, but not where stopping or standing is prohibited, a duly licensed physician or dentist may park his/her motor vehicle, identified by "MD," "OP" or "DDS" New York registration plates, on a roadway adjacent to hospitals or clinics for a period not to exceed three hours. For the purposes of this paragraph, only those portions of a roadway corresponding to the shaded areas on the diagrams below shall be considered adjacent to a hospital or clinic. At other locations where parking is prohibited by signs, but not where stopping or standing is prohibited, a duly licensed physician may park his/her motor vehicle, identified by "MD" or "OP" New York registration plates, for a period not to exceed one hour while actually attending to a patient in the immediate vicinity.

(5) **Bus parking on streets prohibited.** No person shall park a bus at any time on any street within the City of New York, unless authorized by signs, except that a charter bus may park where parking is otherwise permitted at its point of origin or destination. No operator of a bus shall make a bus layover, except as otherwise provided in §4-10(c) of these rules. Notwithstanding any local law or rule to the contrary, but subject to the provisions of the Vehicle and Traffic Law, it shall be permissible for a school bus owned, used or hired by a public or nonpublic school to park at any time, including overnight, upon any street or roadway, provided said bus occupies a parking spot in front of and within the building lines of the premises of the public or nonpublic school.

(6) **Time limits.** Where signs are erected specifying time limits on standing or parking, no person shall stand or park any vehicle in excess of the time so prescribed.

(7) **Emergency ambulance service vehicles.** The operator of an ambulance, as defined in section 100-b of the Vehicle and Traffic Law, while awaiting an emergency call, may park at meters, truck loading and unloading zones, and "NO PARKING" areas not specifically designated for other vehicles. (i.e. authorized zones).

(8) **Street storage of boat trailers, mobile homes and mobile medical diagnostic vehicles prohibited.** No person shall park any boat trailer (with or without a boat attached), mobile home or mobile medical diagnostic vehicle in any area, on any street, in excess of 24 hours.

(9) **Street storage of vehicles prohibited.** When parking is not otherwise restricted, no person shall park any vehicle in any area, including a residential area, in excess of seven consecutive days.

(n) **Special restrictions on parking.** (1) **Parking for sales purposes prohibited.** No person regularly engaged in

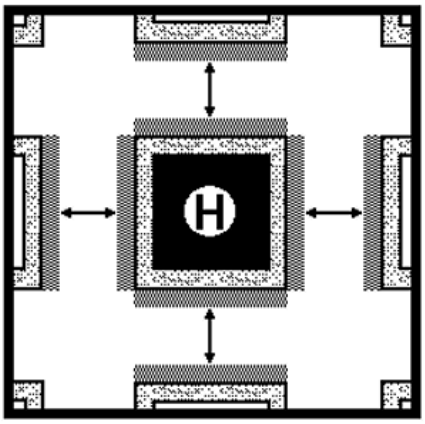
the sale of vehicles shall park a vehicle upon any roadway or off-street parking facility for the principal purpose of displaying such vehicle for sale.

(2) **Parking for certain purposes prohibited.** No person regularly engaged in the repair of vehicles shall park a vehicle upon any roadway or off-street parking facility for the principal purpose of washing, greasing, or repairing such vehicle, except repairs necessitated by an emergency.

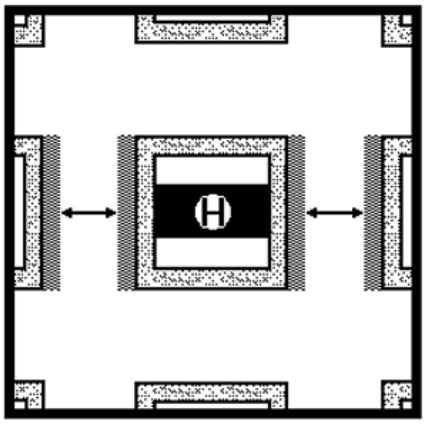
(3) **Parking for the purposes of commercial advertising prohibited.** No person shall stand or park a vehicle on any street or roadway for the purpose of commercial advertising, as defined in §4-12(j)(1) of these rules, except as otherwise provided in that section.

(4) **Peddlers, vendors and hawkers restricted.** No peddler, vendor, hawker, or huckster shall permit his car, wagon, or vehicle to stand on any street when stopping, standing, or parking is prohibited or on any street within 25 feet of any corner of the curb or to stand at any time on any sidewalk or within 500 feet of any public market or within 200 feet of any public or private school.

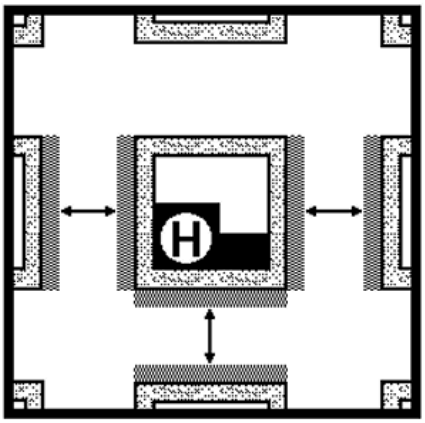
(5) **Unattended motor vehicles.** No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the vehicle, and effectively setting the brake provided, however, the provision for removing the key from the vehicle shall not require the removal of keys hidden from sight about the vehicle for convenience or emergency.



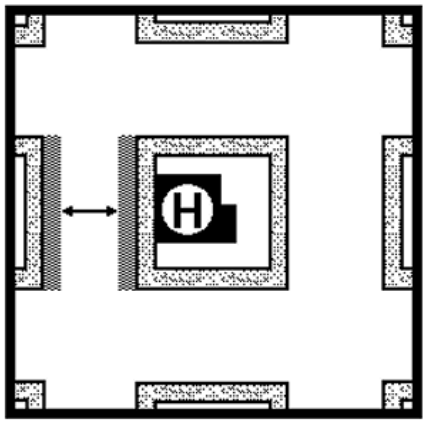
Hospital occupies full square block.



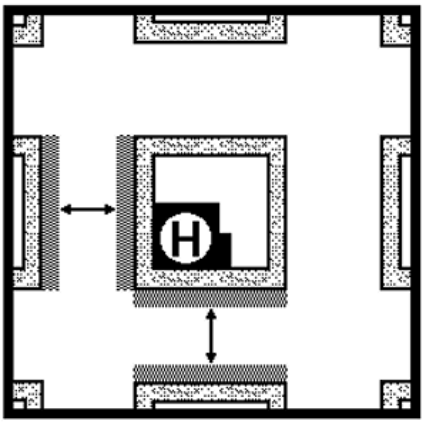
Hospital in mid block.



Hospital occupies part of block.



Hospital in part of mid block



Hospital in corner of block

Shaded areas are considered adjacent.

(6) **Moving parked vehicle.** No person shall move a vehicle not lawfully under his/her control into any position where stopping, standing, or parking would be unlawful.

(7) **Unofficial reserving of parking space.** It shall be unlawful for any person to reserve or attempt to reserve a parking space, or prevent any vehicle from parking on a public street through his/her presence in the roadway, the use of hand-signals, or by placing any box, can, crate, handcart, dolly or any other device, including unauthorized pavement, curb or street markings or signs in the roadway.

(8) **Vehicles must have proper equipment.** No person shall stand or park a motor vehicle, motorcycle or limited use vehicle on any street at any time unless it is equipped with head lamps, rear lamps, reflectors and any other equipment required by any provision of the Vehicle and Traffic Law.

(o) **Permits.** For purposes of this section, a "permit" is the authorization granted by the Department to qualified individuals for special parking privileges as set forth in this subdivision. At the discretion of the Department, a permit may be represented by a permit card inscribed with information that describes the specific parking privileges it authorizes or by an IVPS programmed to contain the same information. Where this rule states that a permit must be displayed in the vehicle, a permittee using a permit card must place it in the appropriate place in a vehicle; a permittee using an IVPS must activate the system before so displaying it, in order to authorize parking pursuant to the permit. The registration numbers of the electronic component, the electronic debit card, and all related windshield stickers comprising an IVPS must match in order for such system to be considered properly activated.

(1) **Permits for people with disabilities.** (i) **Authorized parking areas.** An operator of a vehicle bearing a valid New York City Special Parking Identification permit may park:

(A) in any "No Parking" zone, including those marked "except authorized vehicles,"

(B) in any "No Standing Except Authorized Vehicles" zone,

(C) at parking meters without using an authorized payment method, and

(D) in "No Standing Except Trucks Loading and Unloading" zones.

Such special parking permit shall be displayed so that it is visible through the windshield. An IVPS must be activated to authorize parking.

(ii) **Prohibited parking areas.** Such special parking identification permits do not authorize parking:

(A) in a bus stop,

(B) in a taxi-stand,

(C) within 15 feet of a fire hydrant,

(D) in a fire zone,

(E) in a driveway,

(F) in a crosswalk,

(G) in a no stopping zone,

(H) in a no standing zone, or

(I) double parking.

(iii) **Issuance of permits.** The Special Parking Identification permit shall be issued by the Commissioner or his/her designee to a New York City resident certified by the Department of Health or a provider designated by the Department or the Department of Health, who shall make such certification in accordance with standards and guidelines prescribed by the Department of Health, as having a permanent disability seriously impairing mobility, who requires the use of a private automobile for transportation and to a non-resident similarly certified who requires the use of a private automobile for transportation to a school in which such applicant is enrolled or to a place of employment. A permit shall also be issued to such person upon application made on such person's behalf by a parent, spouse, domestic partner as defined in New York City Administrative Code §1-112(21), guardian, or other individual having legal responsibility for the administration of such person's day to day affairs. The permit may include no more than ten (10) license plate numbers for the vehicle(s) which will be used to transport the permittee. Upon application for a permit, applicant shall submit to the department a copy of the vehicle registration for each license plate which will be registered on the permit. Any vehicle displaying such a permit shall be used exclusively in connection with parking a vehicle in which the person to whom it has been issued is being transported or will be transported within a reasonable period of time.

(iv) **Replacement permits.** In case of a lost or stolen permit, the permittee must, upon request for a replacement, submit to the department a copy of a valid police report. In case of a stolen vehicle which is registered on the permit, permittee must submit to the department a copy of a valid police report. In the event a vehicle registered on the permit is unable to be used as a result of an accident or mechanical defect, a substitution of plates will be permitted only if the permittee has three or fewer plates registered on the permit. The permittee must provide proof to the department of the inability to use the vehicle. If the permittee has four or more plates registered on the permit, no temporary substitution will be allowed.

(v) **Revocation.** Any abuse by any person of any privilege, benefit or consideration granted by such permit, shall be sufficient cause for revocation of said permit.

(2) **Municipal parking permit.** A municipal parking permit licenses the permittee to park one automobile at the permittee's risk in the area designated by signs. Fees charged are for the use of a parking space in the designated facility only. Only a license to park is granted by this permit and no bailment is created. The Department of Transportation assumes no responsibility for loss due to fire, theft, collision or otherwise to the car or its contents.

(i) A municipal parking permit must be displayed when parked in authorized spaces, and in such a manner that the permit is visible through the left side of the windshield. An IVPS must be activated to authorize parking.

(ii) A municipal parking permit is to be displayed only on vehicles bearing license plate numbers on file at the Bureau of Parking. For license plate changes call the Permit Section of the Bureau of Parking, weekdays (10 AM to 4 PM).

(iii) A municipal parking permit is to be displayed only when a vehicle is parked in areas reserved for use of this permit.

(iv) Failure to comply with the above regulations will result in a summons.

(3) **Yearly permits for parking in contradiction to rules on city streets.** Yearly permits are issued on dates determined by the Department of Transportation or any other agency authorized by the Department to non-profit organizations needing to park in contradiction to parking rules when the vehicle is essential to the performance of their organizational functions. These organizations generally are medical, blood, government and human service programs. Such permits shall be displayed so that they are visible through the windshield. An IVPS must be activated to authorize parking.

(i) **Parking permitted.** Parking with yearly permits is permitted in areas specified on or programmed into the permit and may include some or all of the following:

(A) Meters.

(B) Truck loading and unloading zones.

(C) No Standing/Parking Except Authorized Vehicles, when the permit matches the signs, and

(D) "No Parking" areas.

(ii) **Parking not permitted.** Parking with yearly permits is not permitted at:

(A) "No Standing" areas.

(B) "No Stopping" areas.

(C) Fire hydrants.

(D) Bus stops.

(E) Double parking.

(F) Driveways.

(G) Bridges and highways, and

(H) Areas where a traffic hazard would be created.

(iii) **Duration.** Yearly permits are issued for the minimum hours and days essential for the activity. Such permits are issued on an annual basis on dates determined by the Department of Transportation. The Commissioner or his/her designee may, at his/her discretion, issue, extend or revoke these permits.

(4) **Single issue permits for parking in contradiction to rules on city streets.** Single issue permits are issued by the Department of Transportation or any other agency authorized by the Department to for-profit and not-for-profit medical, blood and human service programs; press events; and concerts, film production companies, special events and emergencies. Such permits shall be displayed so that they are visible through the windshield. An IVPS must be activated to authorize parking.

(i) **Information required.** The request for such a single issue permit shall be made in writing to the Department of Transportation and must include:

(A) Date(s) of the event,

(B) Hours,

(C) Location,

(D) Number and size of vehicles, and

(E) License plates or identifying markings of the vehicles.

(ii) **Parking permitted.** Parking with single issue permits is permitted in areas specified on or programmed into the permit and may include some or all of the following:

(A) Meters.

(B) Truck loading and unloading zones.

(C) No Standing/Parking Except Authorized Vehicles, and

(D) "No Parking" areas.

(iii) **Parking not permitted.** Parking with single issue permits is not permitted at:

(A) "No Standing" areas.

(B) "No Stopping" areas.

(C) Fire hydrants.

(D) Bus stops.

(E) Double parking.

(F) Driveways.

(G) On bridges and highways, and

(H) Areas where a traffic hazard would be created.

(iv) **Duration.** Single issue permits are issued for the minimum hours and days essential for the event. The Commissioner or his/her designee may, at his/her discretion, issue, extend or revoke these permits.

(5) **Clergy parking permits.** (i) **Definitions.**

Hospital. A general hospital, nursing home or hospice inpatient facility certified pursuant to the public health law or a psychiatric center established pursuant to §7.17 of the mental hygiene law.

House of worship. A building or space owned or leased by a religious corporation or association of any denomination or used by a religious corporation or association of any denomination pursuant to the written permission of the owner thereof, which is used by members principally as a meeting place for divine worship or other religious observances presided over by a member of the clergy and which is classified in occupancy group F-1(b) pursuant to article eight of subchapter three of chapter one of title twenty-seven of the New York City Administrative Code. Such term shall not include a dwelling unit as defined in the housing maintenance code.

Member of the clergy. A clergyperson or minister as defined in the religious corporations law including, but not limited to, a pastor, rector, priest, rabbi or imam who officiates at or presides over services on behalf of a religious corporation or association of any denomination. Such term shall not include clergy who derive their principal income from any other occupation or profession or who do not officiate at or preside over services on behalf of a religious corporation or association of any denomination.

Passenger car. Notwithstanding any other provision of these rules, for the purposes of this paragraph (5), a passenger car shall mean a motor vehicle designed and used for carrying not more than fifteen people, including the driver. Such term shall not include a vehicle licensed to operate pursuant to chapter five of title 19 of the New York City Administrative Code or a commercial vehicle as defined in §19-170 of the Code.

(ii) **Application requirements.**

(A) The religious corporation or association applying for a permit on behalf of a member of the clergy shall submit an application on a form to be provided by the department and signed by an officer of the corporation or association or

by a person otherwise authorized to act on behalf of the corporation or association. Such application shall be accompanied by a copy of a deed or lease and a certificate of occupancy indicating classification in occupancy group F-1(b) (plus the type of house of worship) for the New York City house of worship used by the religious corporation or association. In the absence of a deed or lease, the religious corporation or association shall submit a sworn written statement of the owner of the house of worship attesting to the fact that said religious corporation or association has the permission of said owner to use the premises as a house of worship. In the event a house of worship was constructed prior to the existence of a certificate of occupancy or occupancy group F-1(b) so that a certificate of occupancy is not available, the religious corporation or association shall submit such other documentation as the department may require.

(B) The religious corporation or association shall, on behalf of a clergy member, submit a copy of title, registration or lease in the clergy member's name for a New York State registered vehicle to be covered by a permit. Such religious association or corporation shall, on behalf of a member of the clergy, also submit a copy of a current automobile insurance identification card for such vehicle.

(C) The religious corporation or association shall certify on a form provided by the Department that only the member of the clergy on whose behalf the application is made will use such permit, that such use will occur only while the member of the clergy is performing official duties at the house of worship at whose services such member of the clergy officiates or presides or while performing such official duties at a hospital, that such member of the clergy derives his/her principal income from officiating at or presiding over services on behalf of said religious corporation or association, that such member of the clergy possesses a valid New York State driver's license and that such member of the clergy otherwise qualifies for the benefits of this permit.

(D) In addition, the religious corporation or association shall submit any other documents deemed necessary by the Department.

(iii) **Parking permitted.** Parking is permitted only in "No Parking" areas designated by posted sign for up to four hours on a roadway adjacent to the house of worship's address as it appears on the permit or for up to three hours on a roadway adjacent to a hospital when the clergy member is performing official duties at such hospital. For the purposes of this paragraph, only those portions of a roadway corresponding to the shaded areas on the diagrams shall be considered adjacent to a house of worship or hospital.

(iv) **Issuance of permit.** Only one permit shall be issued to any religious corporation or association. The front of such permit shall include the license plate numbers of up to three passenger cars, as defined in subparagraph (i), above, that are owned, registered or leased by the members of the clergy for whose benefit the religious corporation or association has applied for such permit. No permit shall be issued with the license plate number of any vehicle that has one or more summonses in judgment according to the records of the New York City Parking Violations Bureau.

(v) **Duration.** Permits issued in accordance with this paragraph (5) shall be valid for one year, unless revoked pursuant to subparagraph (viii).

(vi) **Renewal.** Sixty days prior to the expiration of the permit, the religious corporation or association may apply for a renewal by completing a form provided by the Department.

(vii) **Replacement permits.**

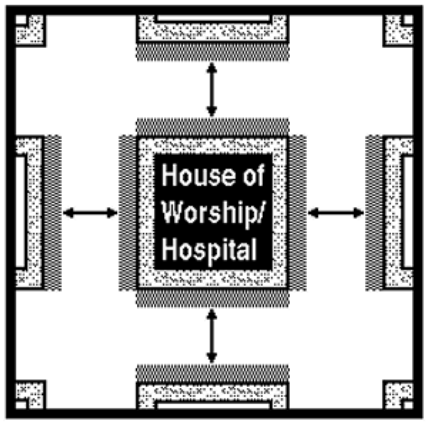
(A) In case of a lost or stolen permit, the religious corporation or association shall, upon request for a replacement, submit to the Department a copy of a valid police report. In the case of a stolen vehicle containing a permit that was also stolen, the religious corporation or association shall submit a copy of a valid police report for the stolen vehicle, which report also lists the permit as stolen.

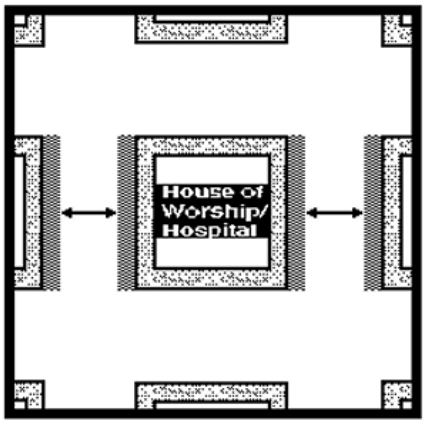
(B) To receive a replacement permit with a changed license plate number or an additional plate number up to a total of three, the religious corporation or association shall supply the documentation required by subparagraphs (B), (C)

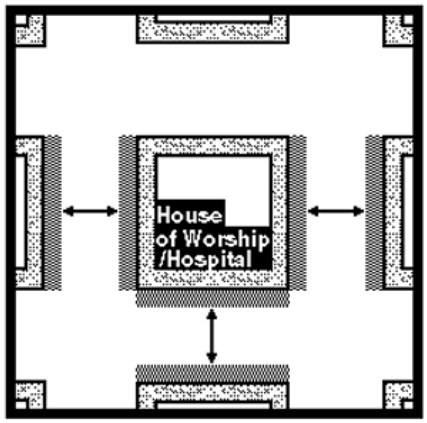
and (D) of paragraph (ii), above, in addition to the police report, if applicable. Changes to the permit may only be made by the Department.

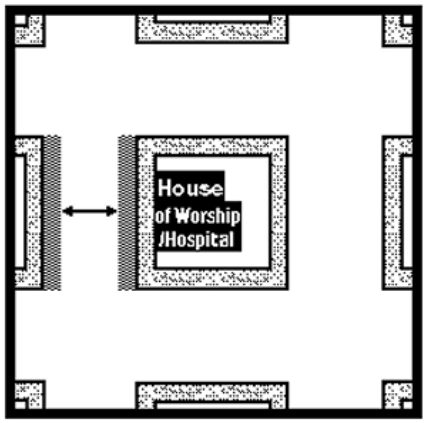
(viii) **Revocation.** A member of the clergy who engages in or allows the improper use or alteration of a permit issued pursuant to this paragraph may be excluded from the benefits of this paragraph. The department shall mail written notice to the religious corporation or association with which such clergy member is associated of the improper use of a permit issued to such corporation or association. The religious corporation or association may submit a response within ten days of the date of mailing of such notice. After ten days from the date of mailing of such notice, the department may send notice to the religious corporation or association of the exclusion of a member from the permit and the corporation or association shall forthwith return the permit to the department. If the permit contains more than one license plate number, the license plate number of the vehicle of the excluded member shall be deleted and the department shall promptly reissue the permit with the remaining license plate numbers. If the permit contains only the license plate number of the excluded member, the religious corporation or association may submit an application for a new permit pursuant to this paragraph. The member of the clergy who engaged in or allowed such improper use shall not be eligible for inclusion in any future application submitted pursuant to this paragraph.

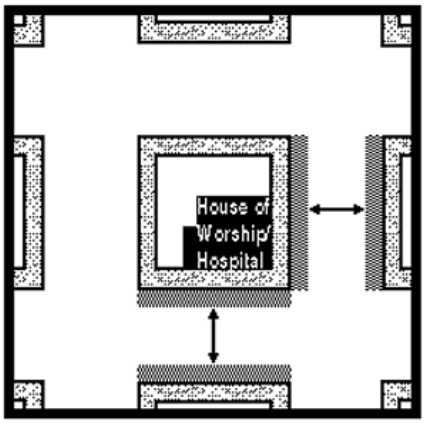
(p) **Engine idling.** (1) **Idling of vehicle engines prohibited.** Except as provided for buses in paragraph (p)(2) hereof, no person shall cause or permit the engine of any vehicle, other than a legally authorized emergency motor vehicle, to idle for longer than three minutes while parking, standing or stopping unless the engine is being used to operate a loading, unloading or processing device.











Shaded areas are considered adjacent.

(2) **Idling of bus engines prohibited.** No person shall cause or permit the engine of any bus to idle at a layover or terminal location, whether or not enclosed, when the ambient temperature is in excess of forty (40) degrees Fahrenheit. When the ambient temperature is forty (40) degrees Fahrenheit or less, no person shall cause or permit any bus to idle for longer than three minutes at any layover or terminal location. For the purpose of this rule, at a layover or terminal location a bus engine shall not be deemed to be idling if the operator is running the engine in order to raise the air pressure so as to release the air brakes, provided however, that this shall not exceed a period of three minutes.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 27, 1993 eff. Aug. 26, 1993.

Subd. (a) par (6) amended City Record Nov. 18, 2003 eff. Dec. 18, 2003. [See Note 25]

Subd. (a) par (7) amended City Record Nov. 22, 1995 eff. Dec. 22, 1995. [See Note 8]

Subd. (a) par (7) amended City Record July 27, 1993 eff. Aug. 26, 1993.

Subd. (a) par (7) subpar (ii) amended City Record Mar. 3, 2004 §2, eff. Apr. 2, 2004. [See Note 29]

Subd. (a) par (7) subpar (iii) amended City Record Sept. 3, 1996 eff. Oct. 3, 1996. [See Note 9]

Subd. (a) par (7) subpar (iii) clause (A) amended City Record Dec. 5, 2003 eff. Jan. 4, 2004. [See Note 28]

Subd. (a) par (7) subpar (iii)(C) amended City Record Oct. 17, 1997 eff. Nov. 16, 1997. [See Note 11]

Subd. (a) par (7) subpar (iii) clause (C) amended City Record Dec. 12, 1994 eff. Jan. 11, 1995.

Subd. (a) par (7) subpar (iii)(D) amended City Record Aug. 14, 1997 eff. Sept. 13, 1997. [See Note 12]

Subd. (a) par (9) subpar (ii) amended City Record Mar. 28, 2005 §3, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (a) par (9) subpar (iii) amended City Record Oct. 22, 2002 §1, eff. Nov. 21, 2002. [See Note 6]

Subd. (a) par (9) subpar (iv) amended City Record Mar. 28, 2005 §3, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (a) par (9) subpar (vi) amended City Record Oct. 22, 2002 §2, eff. Nov. 21, 2002. [See Note 6]

Subd. (a) par (9) subpar (vii) amended City Record Oct. 22, 2002 §3, eff. Nov. 21, 2002. [See Note 6]

Subd. (a) par (9) subpar (vii) amended City Record Feb. 4, 1993 eff. Mar. 2, 1993.

Subd. (a) par (9) subpar (ix) added City Record Oct. 20, 1993 eff. Nov. 19, 1993.

Subd. (a) par (9) subpar (x) amended City Record Oct. 22, 2002 §4, eff. Nov. 21, 2002. [See Note 6]

Subd. (a) par (9) subpars (x), (xi) added City Record Oct. 20, 1993 eff. Nov. 19, 1993.

Subd. (a) par (10) subpar (iv) added City Record Oct. 22, 2001 eff. Nov. 21, 2000. [See Note 5]

Subd. (a) par (12) added City Record Feb. 25, 1997 eff. Mar. 27, 1997. [See Note 13]

Subd. (c) par (4) amended City Record May 9, 2003 §3, eff. June 8, 2003. [See Note 27]

Subd. (c) par (6)-(7) added City Record Oct. 7, 1996 eff. Nov. 6, 1996. [See T34 §4-01 Note 1]

Subd. (c) par (8) added City Record May 9 2003 §4, eff. June 8, 2003. [See Note 27]

Subd. (d) par (3) amended City Record Apr. 9, 1993 eff. May 9, 1993.

Subd. (d) par (4) amended City Record Mar. 3, 2004 §3, eff. Apr. 2, 2004. [See Note 29]

Subd. (e) opening par amended City Record Oct. 29, 1999 eff. Nov. 28, 1999. [See Note 1]

Subd. (e) par (4) amended City Record June 8, 2005 §2, eff. July 8, 2005. [See T34 §4-01 Note 4]

Subd. (e) par (6) amended City Record Apr. 9, 1996 eff. May 9, 1996. [See Note 14]

Subd. (e) par (6) amended City Record Nov. 24, 1995 eff. Dec. 24, 1995. [See Note 15]

Subd. (e) par (8) amended City Record Oct. 29, 1999 eff. Nov. 28, 1999. [See Note 2]

Subd. (e) par (12) added City Record Aug. 28, 2008 §1, eff. Aug. 28, 2008 per City Record notice. [See Note 31]

Subd. (f) par (1) amended City Record Jan. 11, 2007 §1, eff. Feb. 10, 2007. [See Note 30]

Subd. (f) par (1) amended City Record Mar. 28, 2005 §4, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (f) par (1) amended City Record Apr. 9, 1996 eff. May 9, 1996. [See Note 14]

Subd. (f) par (1) amended City Record July 27, 1993 eff. Aug. 26, 1993.

Subd. (f) par (2) amended City Record Apr. 12, 2005 §2, eff. May 12, 2005. [See T34 §4-01 Note 3]

Subd. (f) par (2) amended City Record Oct. 15, 1996 eff. Nov. 14, 1996. [See Note 16]

Subd. (f) par (7) amended City Record Nov. 26, 2008 §2, eff. Dec. 26, 2008. [See T34 §4-01 Note 6]

Subd. (f) par (7) added City Record Oct. 15, 1996 eff. Nov. 14, 1996. [See Note 16]

Subd. (g) amended City Record Apr. 17, 1991 eff. May 17, 1991.

Subd. (g) par (3) amended City Record Mar. 28, 2005 §5, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (h) amended City Record Feb. 25, 1997 eff. Mar. 27, 1997. [See Note 13]

Subd. (h) par (3) amended City Record Feb. 18, 2009 §1, eff. Mar. 20, 2009. Note bill section erroneously referred to this as Subd. (e) par (3). [See Note 32]

Subd. (h) par (3) amended City Record Sept. 6, 2000 eff. Oct. 6, 2000. [See Note 3]

Subd. (h) par (3) subpar (i) amended City Record Mar. 28, 2005 §6, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (h) par (3) subpar (iii) open par amended City Record Mar. 28, 2005 §6, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (h) par (10) amended City Record Mar. 28, 2005 §7, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (h) par (10) added City Record Dec. 14, 1995 eff. Jan. 13, 1996. [See Note 17]

Subd. (i) par (3) amended City Record Mar. 28, 2005 §8, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (i) par (3) amended City Record Dec. 14, 1995 eff. Jan. 13, 1996. [See Note 17]

Subd. (i) par (4) repealed City Record Dec. 14, 1995 eff. Jan. 13, 1996. [See Note 17]

Subd. (i) par (5) renumbered (4) City Record Dec. 14, 1995 eff. Jan. 13, 1996. [See Note 17]

Subd. (i) par (6) renumbered (5) City Record Dec. 14, 1995 eff. Jan. 13, 1996. [See Note 17]

Subd. (i) par (6) added City Record Mar. 3, 2004 §4, eff. Apr. 2, 2004. [See Note 29]

Subd. (j) amended City Record Nov. 30, 1993 eff. Dec. 30, 1993.

Subd. (k) par (1) amended City Record Dec. 12, 2005 §2, eff. Jan. 11, 2006. [See T34 §4-01 Note 5]

Subd. (k) par (1) amended City Record July 14, 2000 eff. Aug. 13, 2000. [See Note 2]

Subd. (k) par (2) amended City Record Mar. 28, 2005 §9, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (k) par (2) amended City Record July 27, 1993 eff. Aug. 26, 1993.

Subd. (k) par (4) amended City Record June 3, 1996 eff. July 3, 1996. [See Note 18]

Subd. (k) par (6) amended City Record Mar. 28, 2005 §9, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (k) par (7) added City Record Dec. 4, 1995 eff. Jan. 3, 1996.

Subd. (l) par (3) amended City Record Sept. 6, 2000 eff. Oct. 6, 2000. [See Note 3]

Subd. (l) par (3) subpar (ii) amended City Record Aug. 15, 2003 eff. Sept. 14 2003. [See Note 26]

Subd. (l) par (3) subpar (ii) amended City Record Apr. 10, 2003 eff. Apr. 10, 2003. [See Note 7]

Subd. (l) par (3) subpar (ii) amended City Record July 20, 2001 eff. Aug. 19, 2001. [See Note 4]

Subd. (l) par (4) amended City Record Jan. 24, 1997 eff. Feb. 23, 1997. [See Note 20]

Subd. (l) par (5) amended City Record Mar. 28, 2005 §10, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (m) amended City Record Sept. 17, 1993 eff. Oct. 17, 1993.

Subd. (m) par (2) amended City Record Mar. 3, 2004 §5, eff. Apr. 2, 2004. [See Note 29]

Subd. (m) par (3) amended (as par 4) City Record July 27, 1993 eff. Aug. 26, 1993.

Subd. (m) par (4) amended City Record Mar. 28, 2005 §11, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (m) par (4) amended (as par 6) City Record Apr. 4, 1993 eff. May 4, 1993.

Subd. (m) par (7) added (as par 9) City Record Oct. 7, 1992 eff. Dec. 6, 1992.

Subd. (m) par (8) added City Record Sept. 3, 1996 eff. Oct. 3, 1996. [See Note 10]

Subd. (m) par (9) added City Record June 13, 1997 eff. July 13, 1997. [See Note 21]

Subd. (m) par (5) amended City Record Dec. 24, 1992 eff. Jan. 23, 1993.

Subd. (o) amended City Record Feb. 25, 1997 eff. Mar. 27, 1997. [See Note 13]

Subd. (o) par (1) amended City Record Dec. 5, 1995 eff. Jan. 4, 1996. [See Note 23]

Subd. (o) par (1) subpar (iii) amended City Record Dec. 21, 1998 eff. Jan. 20, 1999. [See Note 22]

Subd. (o) par (5) added City Record Apr. 2, 1997 eff. May 2, 1997. [See Note 24]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 29, 1999:

The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to §2903(a) of the New York City Charter.

Section 4-08(e)(8) is being amended to clarify that the Department's intent along certain divided highways is to prohibit parking only during certain days and/or hours and allow parking the rest of the time. The rule would still prohibit parking, standing or stopping at all times along the medians of divided highways where there is no sign.

2. Statement of Basis and Purpose in City Record July 14, 2000: The Commissioner of the Department of Transportation is authorized to regulate traffic pursuant to §2903(a) of the New York City Charter. Section 4-08(k) is being amended to clarify the requirements for altering a commercial vehicle for parking purposes.

3. Statement of Basis and Purpose in City Record Sept. 6, 2000: The Commissioner of the Department of Transportation is authorized by §2903 of the New York City Charter and §1642 of the New York State Vehicle and Traffic Law, and in accordance with §1043 of the Charter, to regulate parking, standing, and stopping of vehicles in the City of New York. By creating a Pilot Program for metered commercial parking areas, this amendment will help alleviate a serious problem in Manhattan-the severe traffic congestion caused by commercial vehicles that double park and stand in the area for long periods. By creating a metered parking area specifically designated for such vehicles, with a three-hour time limit on a block (both sides of a single street constitute a "block"), traffic flow should be greatly enhanced. Additionally, enforcement currently is very difficult; creating metered parking areas for these vehicles will provide easily tracked time frames for enforcement personnel. The initiative is being implemented as a Pilot Program for a period of eighteen months in order to test its efficacy and effect on traffic flow and enforcement. This rule also clarifies the procedures to be followed when a driver seeks to park at a space controlled by a broken or missing "Muni-Meter."

4. Statement of Basis and Purpose in City Record July 20, 2001: The Commissioner of the Department of Transportation is authorized by §2903 of the New York City Charter and §1642 of the New York State Vehicle and Traffic Law, and in accordance with §1043 of the Charter, to regulate parking, standing, and stopping of vehicles in the City of New York. An on-going Pilot Program for metered commercial parking areas in a limited area in Manhattan appears to be effective. By expanding the Pilot Program to a larger geographical area, this amendment will further aid the City in studying the effect of metered commercial parking in alleviating traffic congestion.

5. Statement of Basis and Purpose in City Record Oct. 22, 2001: Cars parked illegally in bus stops force buses to stop in lanes carrying moving traffic. This delays traffic and creates the potential for rear-end collisions and accidents involving cars attempting to pull around buses. The gap between the roadway and the first step in the bus is uncomfortable for boarding and alighting passengers to negotiate, and the elderly and disabled can encounter significant difficulties. For wheelchair users, it may be impossible to negotiate the curb to board the bus. For these reasons, it is imperative that vehicle operators clearly receive the message that they must not block bus access to bus stops. One way that MTA New York City Transit personnel with summons issuance authority can reinforce the importance of this requirement is by affixing notices on the driver side backseat windows of violators. The Department of Sanitation has similar authority to use against violators of street cleaning regulations. The notice would not interfere with driving, nor would it damage the vehicle to which it is applied, but it would give highly conspicuous notice to the operators of offending vehicles who are contemptuous of the rights of others that the City takes bus stop violations seriously.

6. Statement of Basis and Purpose in City Record Oct. 22, 2002: These rules set forth amendments to existing New York City Department of Transportation rules to raise the fees charged for illegally parked vehicles which are immobilized, towed, stored, and released, and to add new fees for towing or releasing heavy duty vehicles. The immobilization (booting) fee would increase from $75 to $185. Regular towing fees would be raised from $150 to $185. The storage fee would increase from $15 to $20. The vehicle release fee would increase from $75 to $100. Two new fees would be added, heavy duty towing and heavy duty release, at $370 and $200 respectively. In order to ensure that roadways and traffic lanes are open for efficient traffic flow, and especially to ensure that emergency vehicles such as fire engines, police vehicles and ambulances have swift and unobstructed movement through city streets to sites of emergencies, the City of New York maintains a Violation Tow Program to deter illegal parking and to remove illegally parked vehicles. The fees charged to persons who violate the parking rules were last fixed in 1989 and consequently do not reflect increased personnel and office equipment/space costs. Therefore, at present, the public and not the violator pays the difference between what the fees bring in and what is needed to pay for the program. The fee increases are based on User Service Cost Analyses of the New York City Office of Management and Budget to ensure that the fees charged are commensurate with the administrative costs needed to run the program. The two new fees for heavy duty towing and heavy duty release reflect the additional expense of utilizing heavier towing equipment, requiring more

highly trained and qualified personnel, and the need for more space at the tow pound to store heavy or large vehicles and trucks.

7. Statement of Basis and Purpose in City Record Apr. 10, 2003: The Commissioner of the Department of Transportation is authorized to regulate parking, standing, and stopping of vehicles in the City of New York pursuant to §2903 of the New York City Charter and §1642 of the New York State Vehicle and Traffic Law. Section 4-08(l)(3)(ii) is being amended to extend a program for commercial parking in part of Manhattan. NYC Department of Transportation: I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, that there is a substantial need for implementation of the rule extending the commercial parking meter program upon publication of its Notice of Adoption in the City Record. The implementation of such rule upon publication is necessary because the pilot program expired April 1 and the Department wishes to continue it.

Iris Weinshall Apr. 7, 2003

8. Statement of Basis and Purpose in City Record Nov. 22, 1995: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(a)(7) is being amended to clarify the term "legal holidays" because the fact that there are some listed in subparagraph (i) and others listed in subparagraph (iii)(A) and (C) was causing confusion to the motoring public. Also, subparagraph (iii)(C) is being amended to clarify that the parking meter zones where No Parking rules are suspended are on-street metered zones, not those in municipal parking lots.

9. Statement of Basis and Purpose in City Record Sept. 3, 1996: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(a)(7)(iii) is being amended to clarify what rules are suspended on days when street cleaning rules are suspended. The "No Parking 8 a.m. to 6 p.m." rule exists for traffic mobility purposes only. However, it was causing confusion because some signs only list one day or alternating days that the rule is in effect, thereby putting it into the category of street cleaning rule under subparagraph (iii)(B) and making it unclear whether the rule should be suspended along with other street cleaning rules. This amendment clarifies that the 8-6 rule should not be suspended on days when street cleaning rules are suspended.

10. Statement of Basis and Purpose in City Record Sept. 3, 1996: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(m) is being amended by adding a new paragraph (8) prohibiting the leaving of certain types of vehicles on any street for more than 24 hours. The prohibition on leaving non-commercial vehicles on any street for more than 24 hours was repealed in 1993 for lack of enforcement. Since then, quality of life issues have arisen that may best be addressed by this 24-hour limit. Such issues include boat owners in residential areas attaching their boat trailers to licensed vehicles and storing them indefinitely on the streets and medical diagnostic vehicles being used as extensions of medical offices and remaining on the street for long periods of time.

11. Statement of Basis and Purpose in City Record Oct. 17, 1997: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(a)(7)(iii)(C) is being amended to conform to the suspension schedule for other alternating restrictions. This amendment will suspend rules restricting parking at meters before the time when the meters go into effect on religious as well as legal holidays.

12. Statement of Basis and Purpose in City Record Aug. 14, 1997: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(a)(7)(iii)(D) is being amended to clarify that all alternating restrictions, and not just the "No Parking 8 a.m. to 6 p.m." rule, are also suspended on days when street cleaning rules are suspended. This proposed amendment would cover signs restricting parking for six or more hours (e.g. 10 a.m. to 4 p.m., 8 a.m. to 6 p.m., etc.) This change is needed because motorists are confused over what exactly is suspended on what days.

13. Statement of Basis and Purpose in City Record Feb. 25, 1997: In-vehicle Parking Systems ("IVPSs") are small portable electronic components slightly larger than pocket calculators that are designed to be placed on top of a vehicle's dashboard behind the windshield and which can be used instead of traditional paper permits or instead of depositing coins in parking meters. IVPSs are capable of reading and writing to and from a free or pre-paid electronic debit card, and incorporate an electronic display on which information can be readily seen by enforcement agents. DOT plans to conduct an IVPS pilot demonstration comprised of consecutive phases, each of which will last four months. While the pilot parameters are still under discussion, it appears likely that it will begin with holders of certain official City parking permits. The pilot will then be expanded to include volunteer private automobile drivers who will use the IVPSs instead of coins at existing on-street parking meters around the City, subject to the same time restrictions as other parkers at those locations. If the pilot program is deemed successful, the use of IVPSs will likely be expanded to permanent use for a broader number of permits and for more users of parking meters. The Department of Transportation is introducing the use of IVPSs to provide for a higher level of customer service. IVPSs do not require drivers to carry coins and can result in reduced parking costs by crediting parkers for unused prepaid parking time. IVPSs also will help reduce public confusion regarding parking regulations, because the electronic component of the IVPS will be programmed to reflect the parking regulations for each zone. When the user activates the system and inputs the parking zone, the IVPS automatically knows how much time is allowed at that spot, at that time, on that day, and credits the parker with the maximum allowable parking time. If the parker returns before the time has expired, the unused time is credited back to the IVPS when the electronic debit card is next inserted, so there is a savings to the driver that cannot be achieved with the use of coins inserted into the meter.

14. Statement of Basis and Purpose in City Record Apr. 9, 1996: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(e)(6) is being amended to effect the repeal of recent changes to the rule because further discussion is needed to determine which types of vehicles may be allowed in street excavation areas in order to perform construction-related activities. Section 4-08(f)(1) is being amended to correct an oversight. The reference to section 4-08(m)(1) should have been removed when that section, which related to parking more than twelve inches from the curb, was repealed in 1993.

15. Statement of Basis and Purpose in City Record Nov. 24, 1995: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(e)(6) is being amended to enable the Department to issue summonses to contractors who block off a greater area of a street than they need for the actual work to be performed and store their private vehicles in that extra space. Since such parking does not obstruct a traffic lane because the excavation already prevents traffic from using the lane, these private vehicles are not parked in violation of this paragraph as it is currently written. The public should not be inconvenienced by having to avoid a greater obstruction than necessary so that contractors can park all day in the middle of the street.

16. Statement of Basis and Purpose in City Record Oct. 15, 1996: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter and section 1642 of the Vehicle and Traffic Law. Section 4-08(f)(2) is being amended to separate pedestrian ramps from driveways because section 237(2)(a) of the State Vehicle and Traffic Law provides for higher fines for violations involving areas for the disabled. A new paragraph (7) is, therefore, being added to make it a separate violation to stand in front of a pedestrian ramp.

17. Statement of Basis and Purpose in City Record Dec. 14, 1995: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 408(h)(10) is being added because motorists who purchase parking time may not park in excess of the amount of time indicated on the receipt or tag. Unlike parking at all but one off-street facilities, motorists are required to display payment receipts at municipal on-street parking spaces. Section 408(i)(3) and (i)(4) are being amended in order to eliminate a requirement which is not necessary for the proper enforcement of parking at Municipal lots using the "Muni-Card" system, namely the display of the receipt or tag in the windshield in off-street parking facilities.

18. Statement of Basis and Purpose in City Record June 3, 1996: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903 of the New York City Charter. This rule is proposed in order to improve the economic atmosphere in the city for manufacturing and distributions firms. The current rule which prohibits the parking of detached trailers on city streets, causes considerable hardship to many companies as it precludes the most efficient use of time regarding loading of trailers. Allowing detached trailers or semi-trailers to park while unattached to a cab in industrial zoned property will facilitate the expeditious movement of goods and relieve the undue burden placed on many firms by the current rule. Properties designated for industrial use are defined in the zoning resolution. The areas which the rule change will affect are industrial properties which have extremely wide streets and are not located near residential areas.

19. Statement of Basis and Purpose in City Record Dec. 4, 1995: The Commissioner of the Department of Transportation is authorized to regulate the parking, stopping and standing of vehicles pursuant to section 2903 of the New York City Charter. This rule is proposed in order to prevent operators from leaving the platform lift in a lowered position while the vehicle is unattended. Leaving platform lifts in a lowered position is a safety hazard, prevents unlawfully parked vehicles from being towed, and can be used for the purpose of unlawfully reserving parking spaces. The proposed rule will assist in eliminating these undesirable situations.

20. Statement of Basis and Purpose in City Record Jan. 24, 1997: The Commissioner of the Department of Transportation is authorized to regulate the parking, stopping and standing of vehicles pursuant to section 2903 of the New York City Charter. This rule will allow for the standing of all trucks and vans with commercial plates to load and unload in the garment district between the hours of 7 a.m. and 7 p.m. daily.

21. Statement of Basis and Purpose in City Record June 13, 1997: The Commissioner of the Department of Transportation is authorized to adopt rules regarding the parking of vehicles pursuant to section 1642 of the New York State Vehicle and Traffic Law and section 2903 of the New York City Charter. This rule is proposed in order to prohibit motorists from storing vehicles on the streets for extended periods of time in certain neighborhoods throughout the City, where the Department of Sanitation has determined that street cleaning rules, which require the limited parking of vehicles, do not apply.

22. Statement of Basis and Purpose in City Record Dec. 21, 1998: Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residdents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City housing authority and the department of housing preservation and development. By the end of April, 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55% of those registered domestic partners were heterosexual couples, and less than 45% were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees. On July 7, 1998, the Mayor signed into law Local Law No. 27 of 1998 to incorporate the provisions of these orders into the New York City Charter and the Administrative Code of the City of New York. Consistent with the intent of such orders and subject to applicable federal or state law, Local Law No. 27 of 1998 also extended to domestic partners the various provisions applicable to spouses in the New York City Charter and the Administrative Code of the City of New York. In accordance with Local Law No. 27 of 1998, and pursuant to the authority vested in the Commissioner of Transportation by section 2903(a) of the New York City Charter, and in accordance with Section 1043 of the Charter, the Commissioner of Transportation is now acting to provide that a rule applicable to spouse should now be extended to domestic partners.

23. Statement of Basis and Purpose in City Record Dec. 5, 1995: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City

Charter. Section 4-08(o)(1) is being amended by adding three new subparagraphs to bring the rule into compliance with amendments to subparagraphs (a) and (c) of paragraph (15) of subdivision (a) of section 2903 of the Charter. These amendments were passed by the City Council in April of 1995 and approved in May. They went into effect in September of 1995.

24. Statement of Basis and Purpose in City Record Apr. 2, 1997: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(o) is being amended to conform to a local law enacted in August of 1996. This local law added a new section 19-162.1 to the New York City Administrative Code allowing clergy to park in certain areas for a prescribed amount of time adjacent to hospitals and houses of worship.

25. Statement of Basis and Purpose in City Record Nov. 18 2003: The commissioner of the Department of Transportation is authorized to regulate parking, standing and stopping of vehicles in the City of New York pursuant to section 2903 of the New York City Charter and Section 1642 of the New York State Vehicle and Traffic Law. The Department of Transportation issues meter inserts which either say "No Standing" or "No Parking". The purpose of these inserts is to prohibit parking when meters are temporarily taken out of service for particular purposes, including, but not limited to, construction, bus stops, taxi stands, authorized mobile health vans and movie shoot vehicles. The inserts are used in order to avoid removing existing posted regulations.

26. Statement of Basis and Purpose in City Record Aug. 15 2003: The Commissioner of the Department of Transportation is authorized to regulate parking, standing, and stopping of vehicles in the City of New York pursuant to section 2903 of the New York City Charter and Section 1642 of the New York State Vehicle and Traffic Law. Section 4-08(l)(3)(ii) is being amended to expand a program for commercial parking to the whole city in order to enhance curb space usage and efficiency, insure appropriate space turnover, improve compliance with the traffic regulations and improve traffic flow.

27. Statement of Basis and Purpose in City Record May 9, 2003: The Commissioner of Transportation is authorized to make rules and regulations for the conduct of vehicular traffic in the City pursuant to section 2903(a) of the New York City Charter. Sections 4-01, 4-08 and 4-11 of Title 34 of the Rules of the City of New York are being amended to conform the rules to an agreement reached between the City and the United States Department of State regarding the standing and parking of diplomatic and consular vehicles issued "A," "C" or "D" series license plates by the Department of State. In addition, the section heading of section 4-11 has been amended to include a reference to "Commuter Vans", which are addressed in that section. This amendment is a technical correction unrelated to the agreement the City and the State Department.

28. Statement of Basis and Purpose in City Record Dec. 5, 2003: The Commissioner of Transportation is authorized to make rules and regulations for the conduct of vehicular traffic in the City pursuant to section 2903(a) of the New York City Charter. Subparagraph (iii) of paragraph (7) of subdivision (a) of section 4-08 is being amended to reflect recent amendments to the Administrative Code passed by the City Council that added three holidays to the list of those on which parking rules are suspected and to reflect the fact that Washington's Birthday is now celebrated on President's Day.

29. Statement of Basis and Purpose in City Record Mar. 3, 2004: Paragraph 7 of subdivision (a) of section 4-08 is being amended to provide that meter rules, even those in effect seven days a week, are suspended on major legal holidays. Paragraph 4 of subdivision (d), subdivision (i) and paragraph 2 of subdivision (m) of section 4-08 are being amended to clarify that a vehicle shall not be angle parked if it is too long or too wide to fit into one space as it would cause an impediment to traffic and deprive other motorists of public parking spaces.

30. Statement of Basis and Purpose in City Record Jan. 11, 2007: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. Paragraph (1) of subdivision (f) of §4-08 is being amended to clarify the meaning of "expeditiously

making pick-ups, deliveries, or service calls" for the purposes of double parking for commercial vehicles. This clarification will primarily benefit the public by providing a time frame for such deliveries, pick-ups, and service calls. It will also benefit administrative law judges interpreting whether a delivery was made in an expeditious manner, and will also benefit the police department in their enforcement of this provision.

31. Statement of Basis and Purpose in City Record Aug. 28, 2008: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. Subdivision (e) of §4-08 is being amended to incorporate recent amendments to the New York State Vehicle & Traffic Law. The Governor of the State of New York recently signed legislation specifying that, in cities with a population of one million or more, blocking an intersection can be adjudicated as a parking violation. The Department is amending the Traffic Rules to implement this change, and to facilitate effective enforcement by the New York City Police Department. Statement of Substantial Need for Earlier Implementation Chapter 241 of the Laws of 2008 added a new subdivision 2-a to §236 of the Vehicle and Traffic Law ("VTL"), which provides that in the City of New York, a violation of §1175 of the Vehicle and Traffic Law is to be considered a parking violation in addition to being a moving violation. VTL §1175 prohibits a driver from driving a vehicle into an intersection when traffic is stopped on the opposite side of the intersection and there is not adequate space on the opposite side of the intersection to accommodate the vehicle ("blocking the box"), unless the driver is making a turn. Pursuant to the New York City Charter, parking, stopping and standing regulations are established by rule of the Department of Transportation. This amendment to the Rules Relating to General No Stopping zones incorporates VTL §1175 into DOT's Traffic Rules and establishes "blocking the box" as a parking violation therein. As traffic congestion continues to be a significant problem in New York City, immediate implementation of this rule amendment is necessary to facilitate the prompt enforcmeent of the new violation by the New York City Police Department. Therefore, pursuant to §1043(e)1(c) of the New York City Charter, the Department of Transportation hereby finds that there is a substantial need for the earlier implementation of the amendment to the Rules Relating to General No Stopping Zones. Consequently, the attached amendment to the Rules Relating to General No Stopping Zones shall be effective upon the final publication of the amendment in the City Record, and the requirement that thirty days first elapse after such publication shall not apply.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Due to a two-vehicle accident, the defendant motorists were stopped, blocking part of an intersection. The injured plaintiff's vehicle was struck by a third vehicle as plaintiff was attempting to get his vehicle around the blocked area. Plaintiff alleged that the defendants' failure to remove their vehicles from the intersection constituted a violation of Section 4-08 and was the proximate cause of the accident. The court, however, held that since, after the defendants' vehicles were immobilized after their collision, and the defendants expeditiously moved their vehicles once the police arrived and a tow truck was made available, the defendants did not stop, stand or park their vehicles in violation of the statute. Thus, the court dismissed the action against these defendants. Siegel v. Boedigheimer, 743 N.Y.S.2d 137 (App.Div. 2d Dept. 2002).

¶ 2. A violation of a statutory prohibition on double parking is some evidence of negligence. Murray-Davis v. Rapid Armored Corp., 300 A.D.2d 96, 752 N.Y.S.2d 37 (1st Dept. 2002). See also Lau v. Doe, 2002 WL 32068294 (App. Term 2d & 11th Judic. Dists.).

¶ 3. In one case, a vehicle operated by the defendant was sideswiped, and swerved across a lane and into a cement median divider. The vehicle came to rest with its left fender impacted against the divider, and its body extending out, blocking two lanes of moving traffic. Several other impacts by other vehicles followed, one of which involved the taxi cab in which plaintiff was a passenger. The court held that, in order for defendant to avoid negligence liability for his failure to remove the vehicle from this dangerous place, defendant had the burden of proving that his vehicle was disabled or that he was unable to move it before the next impact occurred. Eltahan v. Rejouis, 776 N.Y.S.2d 833 (2d Dept. 2004).

¶ 4. 34 RCNY 4-08(e)(5) can furnish a basis for liability if a defendant was negligent in stopping his vehicle in a

crosswalk and such negligence was the proximate cause of plaintiff's injuries. Thomas v. Vezza, 29 A.D.3d 678, 815 N.Y.S.2d 154 (2d Dept. 2006).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-09

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-09 Equipment.

(a) **Brakes.** No person shall operate or park a motor vehicle unless such vehicle is in compliance with §375(1) of the Vehicle and Traffic Law.

(b) **Lights while driving.** (1) When the display of head lamps is required, no operator shall operate the vehicle with parking lights only. The operator shall use the lower beam of multiple beam head lamps, except that the upper beam may be used where the street is not lighted sufficiently to reveal any person, vehicle or substantial object straight ahead of such vehicle for a distance of at least 350 feet, and provided that there is no vehicle within 500 feet approaching from the direction ahead.

(2) No person shall operate a motor vehicle or motorcycle on any street at any time unless it is equipped with head lamps, rear lamps and reflectors complying with the provisions of §§375(2) and 376 of the Vehicle and Traffic Law.

(c) **Colored lights prohibited.** No operator of a motorcycle or motor vehicle, other than authorized emergency vehicles, shall operate said vehicle when displaying other than white or yellow lights visible from in front of the vehicle. No operator of an authorized emergency vehicle shall operate said vehicle when displaying other than white or yellow lights visible from in front of the vehicle except when actually engaged in emergency service.

(d) **Lights on horse-drawn vehicles and pushcarts.** No person shall drive a horse-drawn vehicle or propel a pushcart in the roadway between sunset and sunrise unless such vehicle or cart displays a white or yellow light visible from 200 feet directly in front and a red light visible from 200 feet directly to the rear.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-10

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-10 Buses.

(a) **Franchise regulations.**

(1) **Franchise required.** No person shall operate or cause to be operated on any street a bus for the operation of which a franchise, consent, or certificate of convenience and necessity, order, or other authorization of any municipal, state, or federal authority is required, unless such franchise, consent, certificate of convenience and necessity, order or other authorization shall have been obtained. No person shall operate or move or cause to be operated or moved on any street a bus operating pursuant to a certificate of convenience and necessity, order or other written authorization of any state or federal authority for which operation of a franchise or consent of the Department of Transportation of the City of New York is not required, unless there shall be filed with the Commissioner, not later than two weeks after issuance, duly authenticated copies of such certificates, orders, authorizations and amendments thereto.

(2) **Franchise not required.** Every person applying to any governmental authority other than the City of New York for authorization to operate a bus into or through the City of New York, for which operation or a franchise or consent of the Department of Transportation of the City of New York is not required, shall, within ten days after the date of submitting such application to such governmental authority, file a duly authenticated copy thereof with the Commissioner, and attach thereto a statement setting forth the address, by street and number, of any proposed off-street terminal or terminals to be used within the City of New York.

(b) **Designated routes.** No person shall operate or cause to be operated on any street a bus operating pursuant to a franchise or consent of the Department of Transportation of the City of New York which designates the route to be followed, except on the route so designated. No person shall operate or cause to be operated on any street any other bus,

other than a charter bus, except over a route designated by the Commissioner in writing.

(c) **Pickup and discharge of passengers and layovers.** (1) Pickup and discharge of passengers at designated bus stops. Except as provided in paragraph (2) below, no operator of a bus shall pick up or discharge passengers on a street except at a bus stop designated by the Commissioner in writing. Only buses designated by the Commissioner in writing may stop at such locations. A charter bus may stop on the highway at points of origin and destination for the purpose of expeditiously receiving or discharging passengers, except where prohibited by sign or by the Commissioner. While engaging in the picking up or discharging of passengers, buses must be within twelve inches of the curb and parallel thereto, except where a bus stop is physically obstructed.

(2) Pickup and discharge of passengers at locations other than designated bus stops.

(i) (A) At times and along those portions of bus routes designated by the Commissioner, the operator of a bus authorized to operate in the City of New York that provides local or express service along a bus route may discharge a passenger, on such passenger's request, at a curbside location other than a bus stop as described in paragraph (1) above, provided that such location affords the alighting passenger a safe point of departure from the bus and provided that complying with such request will not interfere with the flow of traffic.

(B) Prospective passengers shall be picked up only at a bus stop as provided in paragraph (1) above.

(C) The provisions of this subparagraph (i) shall be clearly posted, in a format approved by the Commissioner, in all buses authorized to discharge passengers between designated stops.

(ii) A charter bus may stop on the highway at points of origin and destination for the purpose of expeditiously receiving or discharging passengers, except where prohibited by sign or by the Commissioner.

(3) **Layovers.** No operator of a bus shall make a bus layover, except in locations designated by sign or by the Commissioner in writing. For the purposes of this rule, layover is defined as follows: for a bus without passengers a layover consists of waiting at a curb or other street location; for a bus with passengers a layover consists of waiting at a curb or other

street location for more than five minutes. The Commissioner may define the terms, including duration and authorized companies, for use of layover areas.

(d) **Approved bus terminals.** No person shall operate or cause to be operated on any street any intrastate or interstate bus unless such intrastate or interstate bus operates from an off-street terminal or terminals duly approved by the proper authorities of the City of New York.

(e) **Routes.** (1) Operators of empty buses and buses with "charter," "special," "contract carriage" or similar non-route specific authority given by the City of New York, the Department of Transportation, the Interstate Commerce Commission, or other legally authorized body, must adhere to the truck routes as described in §4-13 of these rules, or other additional bus routes, except that an operator may operate on a street not designated as a truck route or bus route for the purpose of arriving at his/her destination. This shall be accomplished by leaving a designated truck route or bus route at the intersection that is nearest to his/her destination, proceeding by the most direct route, and then returning to the nearest designated truck route or bus route by the most direct route. If the operator has additional destinations in the same general area and there is no designated truck route or bus route that can be taken to the next destination, the operator may proceed to his/her next destination without returning to a designated truck route or bus route. The operator shall have in his/her possession throughout each trip a route slip, or similar document, showing the points of origin and destination of the trip. Upon the request of a law enforcement officer, or other authorized person, the bus operator shall present for inspection the above stated document or documents.

(2) Notwithstanding the provisions of §4-10 paragraph (e)(1) above, no operator of a bus as described in paragraph

(1) shall operate his/her vehicle upon any of the streets within the area served by the limited local truck route network in Staten Island as described in §4-13(c) of these rules, except for the purpose of arriving at a destination within the area served by the network. This shall be accomplished by using a designated truck route or bus route to the closest limited local truck route to the destination, using this limited local truck route to the intersection that is nearest to the destination. The operator shall then continue via the most direct route to the closest designated limited local truck route and then to the closest designated truck route or bus route. If the operator has additional destinations in the same general area, and there is no designated truck route, limited local truck route, or bus route that can be taken to the next destination, he/she may proceed to his/her next destination without returning to a designated limited local truck route.

(f) **Required inspection of buses.** No person shall operate or cause to be operated on any street any bus required by law, ordinance, resolution, or rule of any municipal, state, or federal authority to display a certificate, disc, sticker, poster, or other insignia evidencing that such bus has been inspected and is mechanically fit, or has been bonded or insured, or that prescribed fees have been paid, unless such a certificate, disc, sticker, poster or other insignia, currently valid, shall be displayed in the lower right hand corner of the interior surface of the windshield of such bus. In the event it is required that any writing be placed on any such certificate, disc, sticker, poster, or other insignia by someone other than a public official, no person shall operate or move or cause to be operated or moved on any street any such bus unless such writing shall have been placed on such certificate, disc, sticker, poster, or other insignia in black ink and in letters or numbers no less than one inch in height and three-fourths of an inch in width.

(g) **Leased and rented buses.** No person shall operate or cause to be operated a bus leased, rented, or borrowed from another person unless there is marked on the side of the bus in letters at least three inches in height the words "chartered by" followed by the name of the person operating such leased, rented, or borrowed bus. Notwithstanding the foregoing, buses leased, rented or borrowed from the City of New York shall not be required to have such markings.

(h) **Limitation on backing buses.** No person shall back any bus from or into any street or across or along any sidewalk.

(i) **Bus parking on streets prohibited.** No person shall park a bus at any time on any street within the City, unless authorized by signs, except that a charter bus may park where parking is otherwise permitted at point of destination.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (c) amended City Record Nov. 3, 1993 eff. Dec. 3, 1993.

Subd. (c) par (1) amended City Record Oct. 7, 1996 eff. Nov. 6, 1996. [See T34 §4-01 Note 1]

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34 RCNY 4-11

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-11 Taxis, Commuter Vans, For-Hire and Certain Diplomatic and Consular Vehicles.

(a) **Standing.** No operator of a taxi, while awaiting employment shall stand his/her vehicle in any street except:

(1) At an authorized taxi stand.

(2) In front of fire hydrants where standing or stopping is not prohibited by signs or rules, provided that the operator remains in the operator's seat ready for immediate operation of the taxi at all times and starts the motor on hearing the approach of fire apparatus, and provided further, that the operator shall immediately remove the taxi from in front of the fire hydrant when instructed to do so by any member of the police, fire, or other municipal department acting in his/her official capacity.

(3) In the area of the Borough of Manhattan, bounded by the north side of 60th Street, the east side of First Avenue, the south side of 14th Street and the west side of Eighth Avenue, on those streets where "No Standing Except Trucks Loading or Unloading" is posted and in effect, the operator of a taxi, while waiting for a passenger, may stand for the period of one traffic signal cycle, provided that no taxi shall stand in any area where parking is restricted to diplomatic or other classes of vehicles and provided further that the operator remains in attendance at the vehicle and shall immediately remove it when instructed to do so by any law enforcement officer.

(b) **Cruising prohibited.** An operator of a vehicle other than a taxi shall not operate his/her vehicle along a street for the purpose of soliciting passengers or searching for passengers.

(c) **Pickup and discharge of passengers by taxis, commuter vans and for-hire vehicles.** Operators of taxis,

commuter vans and for-hire vehicles may, in the course of the lawful operation of such vehicles, temporarily stop their vehicles to expeditiously pick up or discharge passengers at the curb in areas where standing or parking is prohibited. Taxis, commuter vans and for-hire vehicles, while engaged in picking up or discharging passengers must be within 12 inches of the curb and parallel thereto, but may stop or stand to pick up or discharge passengers alongside a vehicle parked at the curb only if there is no unoccupied curb space available within 100 feet of the pickup or discharge location; however, picking up or discharging passengers shall not be made:

(1) Within a pedestrian crosswalk.

(2) Within an intersection, except on the side of a roadway opposite a street which intersects but does not cross such roadway.

(3) Alongside or opposite any street excavation when stopping to pick up or discharge passengers obstructs traffic.

(4) Under such conditions as to obstruct the movement of traffic and in no instance so as to leave fewer than 10 feet available for the free movement of vehicular traffic.

(5) Where stopping is prohibited.

(6) Within a bicycle lane.

(7) Within horse-drawn carriage boarding areas.

(d) **Pickup and discharge of passengers by certain diplomatic and consular vehicles.** A vehicle bearing "A", "C" or "D" series license plates issued by the U.S. Department of State and displaying a valid non-transferable service vehicle decal issued by the City of New York that is affixed to the inside of the operator's side of the windshield shall be treated like a for-hire vehicle while actively engaged in and for the purpose of expeditiously picking up or discharging passengers, in a manner that does not obstruct traffic, provided that the operator of such vehicle bearing such "A" "C" or "D" series license plates and displaying such non-transferable service vehicle decal:

(1) may not pick up or discharge passengers in a for-hire vehicle stop;

(2) remains in attendance at the vehicle; and

(3) shall immediately remove such vehicle when instructed to do so by any law enforcement officer.

HISTORICAL NOTE

Section heading amended City Record May 9, 2003 §5, eff. June 8, 2003. [See T34 §4-08 Note 27]

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (c) amended City Record Oct. 7, 1996 eff. Nov. 6, 1996. [See T34 §4-01 Note 1]

Subd. (d) added City Record May 9, 2003 §6, eff. June 8, 2003. [See T34 §4-08 Note 27]

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34 RCNY 4-12

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-12 Miscellaneous.

(a) **Compliance with directions of law enforcement officers.** (1) An operator must at all times comply with any direction given by a law enforcement officer, a bridge and tunnel officer of the Port Authority of New York and New Jersey, or an officer of the Triborough Bridge and Tunnel Authority authorized to enforce these rules, or a school crossing guard by hand, voice, whistle or mechanical device.

(2) A law enforcement officer, school crossing guard or a bridge and tunnel officer may disregard any traffic light signal or rule in order to expedite the movement of traffic or to safeguard pedestrians or property.

(3) Vehicle operators must present and/or surrender their operator's license, vehicle registration and insurance documents upon request of a law enforcement officer.

(b) **Passengers in vehicle.** No person shall ride in any place or in any part of a vehicle except that provided for passenger carrying purposes, nor shall he/she permit any part of his/her body to extend outside of any part of a vehicle, except when required to extend the hand to indicate an intention to turn, slow down, stop, or start from the curb.

(c) **Getting out of vehicle.** No person shall get out of any vehicle from the side facing on the traveled part of the street in such manner as to interfere with the right of the operator of an approaching vehicle or a bicycle.

(d) **Fire drill line.** The operator of any vehicle, except authorized emergency vehicles, shall not drive through or approach within one hundred feet of a line of children during a fire drill, nor interfere with, hinder, obstruct, or impede in any way whatsoever any such fire drill.

(e) **Operator's hand on steering device.** No person shall operate or ride a motor vehicle or bicycle without having his/her hand on the steering device or handle bars. A person riding or leading a horse or driving a horse-drawn carriage shall have the reins in his/her hand continuously.

(f) **Unbridled horse.** No person shall leave a horse unbridled or unattended in a street or unenclosed place unless the horse is securely fastened, or harnessed to a vehicle with wheels so secured as to prevent it from being dragged faster than a walk.

(g) **Peddlers.** No peddler, vendor, hawker, or huckster shall stop or remain or permit any cart, wagon, or vehicle owned or controlled by him/her, to stop, remain upon or otherwise encumber any street in front of any premises if the owner or lessee of the ground floor thereof objects. No peddler, vendor, hawker, or huckster shall permit his cart, wagon, or vehicle to stand on any street when stopping, standing, or parking is prohibited or on any street within 25 feet of any corner of the curb or to stand at any time on any sidewalk or within 500 feet of any public market or within 200 feet of any public or private school.

(h) **Reporting accidents by operators of other than motor vehicles.** The operators of any bicycle or vehicle other than a motor vehicle involved in an accident resulting in death or injury to a person or damage to property must stop and give their names and addresses and information concerning liability insurance coverage to the party sustaining injuries or damage, and in the case of death or injury, he/she must, in addition to the above, without delay report the accident to the nearest police station, unless he/she has supplied the information to a police officer on the scene. Accidents involving motor vehicles must be reported as required by the Vehicle and Traffic Law.

(i) **Horn for danger only.** No person shall sound the horn of a vehicle except when necessary to warn a person or animal of danger.

(j) **Commercial advertising vehicles.** (1) **Restrictions.** No person shall operate, stand, or park a vehicle on any street or roadway for the purpose of commercial advertising. Advertising notices relating to the business for which a vehicle is used may be put upon a motor vehicle when such vehicle is in use for normal delivery or business purposes, and not merely or mainly for the purpose of commercial advertising, provided that no portion of any such notice shall be reflectorized, illuminated, or animated, and provided that no such notice shall be put upon the top of the vehicle and that no special body or other object shall be put upon vehicles for commercial advertising purposes. Advertisements may be put upon vehicles licensed by the New York City Taxi and Limousine Commission in accordance with the Commission's rules.

(2) **Buses and Sanitation Vehicles.** Notwithstanding the foregoing provisions of this subdivision (j), buses operated pursuant to a franchise or consent from the Department of Transportation of the City of New York, and cleaning and collection vehicles owned or operated by the New York City Department of Sanitation may display commercial advertisements, including reflectorized and illuminated advertisements, on the exterior surface areas of such vehicles and may have installed on such vehicles the necessary frames, supports and related appurtenances in order to display such advertisements.

(k) **Snow Emergency.** (1) **Standing and Parking Prohibited.** When the Commissioner declares a state of snow emergency, no person shall stand or park a vehicle upon a street designated by signs as a snow street, or upon any part of the right of way, including the berm or shoulder adjacent to the roadways, entrances and exits of the expressways, parkways, bridges and tunnels set forth in §4-07 subdivision (i) of these rules, except in such areas and for such purposes as shall be designated by the Commissioner, until the Commissioner declares the prohibition of such standing or parking terminated. On certain designated snow streets, posted signs may prohibit parking on only one side of the street.

(2) **Operating vehicles prohibited.** When the Commissioner declares a state of snow emergency, no person shall operate a vehicle upon a street designated by signs as a snow street or upon any part of the right of way, including the

berm or shoulder adjacent to the roadways, entrances, and exits of the expressways, parkways, bridges and tunnels set forth in §4-07 subdivision (i) of these rules unless the drive, traction or powered wheels of said vehicle are equipped with skid chains or snow tires, until the Commissioner declares the state of snow emergency terminated.

(3) **Snow tires defined.** For the purposes of this rule, snow tires are defined as:

(i) Any radial tire (a radial tire is a tire in which the ply cords, extending to the beads, are nearly at right angles to the center line of the tread).

(ii) Any tire with tread which has ribs, lugs, blocks or buttons arranged in a generally discontinuous pattern; when inflated, a substantial number of the lug, block or rib edges in the tread design are at an angle greater than 30 degrees to the tire circumferential center line; and, on at least one side of the tread design, have shoulder lugs that protrude at least one-half inch in a direction generally perpendicular to the direction of travel.

(iii) Any tire labelled on the sidewall with the words "MUD AND SNOW" or any contraction using the letters "M" and "S" (e.g. MS, M/S, M-S or M&S).

(4) **Worn or damaged tires.** Worn or damaged tires which no longer provide effective traction shall not constitute snow tires within the meaning of this section regardless of their original classification or designation.

(5) **Use of parkways by certain vehicles.** Notwithstanding any other provision of these rules, during snow emergencies declared by the Commissioner, commercial vehicles owned or operated by oil heating companies that are no more than 7 feet in height, no more than 8,500 pounds in maximum gross weight, and have no more than two axles and four tires may travel on parkways and other roadways where commercial vehicles are normally prohibited when such vehicles are responding to heat emergencies which require the repair of heating and hot water equipment. Such vehicles must abide by all posted weight limits and clearances on such roadways.

(l) **Emergency repairs.** No person shall solicit or render repair service or push or tow any vehicle on any part of the right of way, including the berm or shoulder adjacent to the roadways, entrances and exits of the expressways and parkways, and bridges enumerated in §4-07 subdivision (i) of these rules, except persons and vehicles operating pursuant to a permit issued by the Commissioner. This subdivision (l) shall not be deemed to prohibit emergency repairs by the occupants of a disabled vehicle.

(m) **Bus lane restrictions on city streets.** When signs are erected giving notice of bus lane restrictions, no person shall drive a vehicle other than a bus within a designated bus lane during the hours specified, except that a person may use such bus lane in order to make the first available right hand turn where permitted into a street, private road, private drive, or an entrance to private property in a safe manner or when necessary to avoid conflict with other traffic or at the direction of a law enforcement officer. Notwithstanding any provision of this subdivision, no person shall drive a vehicle other than a bus in the bus lane on Madison Avenue for the purpose of making a right hand turn during the restricted hours specified by sign between 42nd street and 59th street. During such restricted hours, the first permissible right hand turn for vehicles other than buses is at 60th street, except that a taxicab carrying a passenger may use the bus lane to make a right hand turn at 46th street.

(n) **Work affecting traffic.** The rules contained in the New York State Manual on Uniform Traffic Control Devices shall be complied with by public and private organizations when temporary disruption of street traffic is required for street repaving or repairs, subsurface utility line installations or other repairs and similar projects.

(o) **Use of roadways.** (1) **Pedestrians, horses, bicycles and limited use vehicles prohibited.** In order to provide for the maximum safe use of the expressways, drives, highways, interstate routes, bridges and thruways set forth in §4-07 subdivision (i) of these rules and to preserve life and limb thereon, the use of such highways by pedestrians, riders of horses and operators of limited use vehicles and bicycles is prohibited, unless signs permit such use.

(2) **Flat tires.** No operator shall stop on the improved or paved roadway of any of the arteries set forth in §4-07 subdivision (i) of these rules, for the purpose of removing or replacing a flat tire. No person shall remove or

replace a flat tire unless the vehicle is completely off the improved or paved roadway so that no part of the vehicle or person is exposed to passing vehicles.

(p) **Bicycles.** (1) **Bicycle riders to use bicycle lanes.** Whenever a usable path or lane for bicycles has been provided, bicycle riders shall use such path or lane only except under any of the following situations:

(i) When preparing for a turn at an intersection or into a private road or driveway.

(ii) When reasonably necessary to avoid conditions (including but not limited to, fixed or moving objects, motor vehicles, bicycles, pedestrians, pushcarts, animals, surface hazards) that make it unsafe to continue within such bicycle path or lane.

(2) **Driving on or across bicycle lanes prohibited.** No person shall drive a vehicle on or across a designated bicycle lane, except when it is reasonable and necessary:

(i) to enter or leave a driveway; or

(ii) to enter or leave a legal curbside parking space; or

(iii) to cross an intersection; or

(iv) to make a turn within an intersection; or

(v) to comply with the direction of any law enforcement officer or other person authorized to enforce this rule; or

(vi) to avoid an obstacle which leaves fewer than ten feet available for the free movement of vehicular traffic.

Notwithstanding any other rule, no person shall drive a vehicle on or across a designated bicycle lane in such manner as to interfere with the safety and passage of persons operating bicycles thereon.

(3) **Bicycles permitted on both sides of 4O-foot wide one-way roadways.** Any person operating a bicycle upon a roadway that carries traffic in one direction only and is at least 40 feet wide may ride as near as is practicable to either the left or the right hand curb or edge of such roadway, provided that bicycles are not prohibited from using said roadway.

(4) **Bicycle safety poster.**

(i) Every person, firm, partnership, joint venture, association or corporation which engages in the course of its business, either on behalf of itself or others, in delivering packages, parcels, papers or articles of any type by bicycle shall post one or more bicycle safety posters at each employment site.

(ii) The bicycle safety poster shall be in English, Spanish and any other language spoken predominately by any bicycle operator utilized by the business. It shall be clear and conspicuous to the bicycle operators and patrons of the business.

(iii) The poster shall be at least eleven (11) inches by seventeen (17) inches in size. It shall be printed with dark colored ink on durable material with a light colored background. The titles on the poster shall be a minimum of 0.3 inches or twenty-one (21) point font and must be accommodated on only one line. The headings on the poster shall be a minimum of 0.25 or eighteen (18) point font and must be accommodated on only one line. The lettering on the rest of the poster shall be a minimum of 0.22 inches in height or sixteen (16) point font.

(iv) A model of the poster shall be made available on the Department of Transportation's website.

(v) The poster shall include the following:

(A) Responsibilities of Commercial Bicycle Operators:

Obey Traffic Signs and Signals.

· Bicyclists are subject to all applicable New York state and local laws, rules and regulations, including NYC Traffic Rules.

Wear a Helmet.

· While working, commercial bicyclists must wear a properly fitted bicycle helmet.

Never Ride Against Traffic.

· Bicyclists cannot ride against the flow of traffic. Ride with traffic to avoid accidents.

· If available, bicyclists must use bicycle lanes.

Stay Off Sidewalks and Limited Access Roadways.

· Bicycles are not permitted on sidewalks unless bicycle wheels are less than 26 inches in diameter and the rider is 12 years or younger, or if signs allow.

· Bicycles are also prohibited on expressways, drives, highways, interstate routes, bridges and thruways, unless authorized by signs.

Be Safe.

· Yield to pedestrians.

· Bicyclists must have at least one hand on the steering device or handlebars at all times.

· Bicyclists cannot wear more than one earphone attached to a radio, tape player or other audio device while riding.

· No attaching of a bicycle to another vehicle being operated on the roadway.

· Any bicyclist involved in an accident resulting in a death or injury to a person or damage to property must stop and give their name, address, insurance information, etc., and must report the accident to the police department.

Be Visible.

· It is advisable to ensure visibility at night by wearing light-toned clothing with reflective tape material.

· From dusk to dawn, bicyclist must use a white headlight and red taillight.

Be Prepared.

· Bicycle operators must wear upper body apparel with the business' name and the operator's identification number.

· Bicycle operators must also carry and produce, on demand, a numbered business ID card with the operator's photo, name, home address and business' name, address and phone number. It is recommended that the operator also carry a second form of photo identification.

(B) Responsibilities of Business Owners Who Employ Bicycle Operators:

Businesses must provide their bicycle operators with the following:

· A bicycle helmet in good condition, which properly fits the operator;

· Upper body apparel with the business' name and operator's identification number;

· Numbered business ID card with the operator's photo, name, home address and the business' name, address and phone number;

· A white headlight and red taillight;

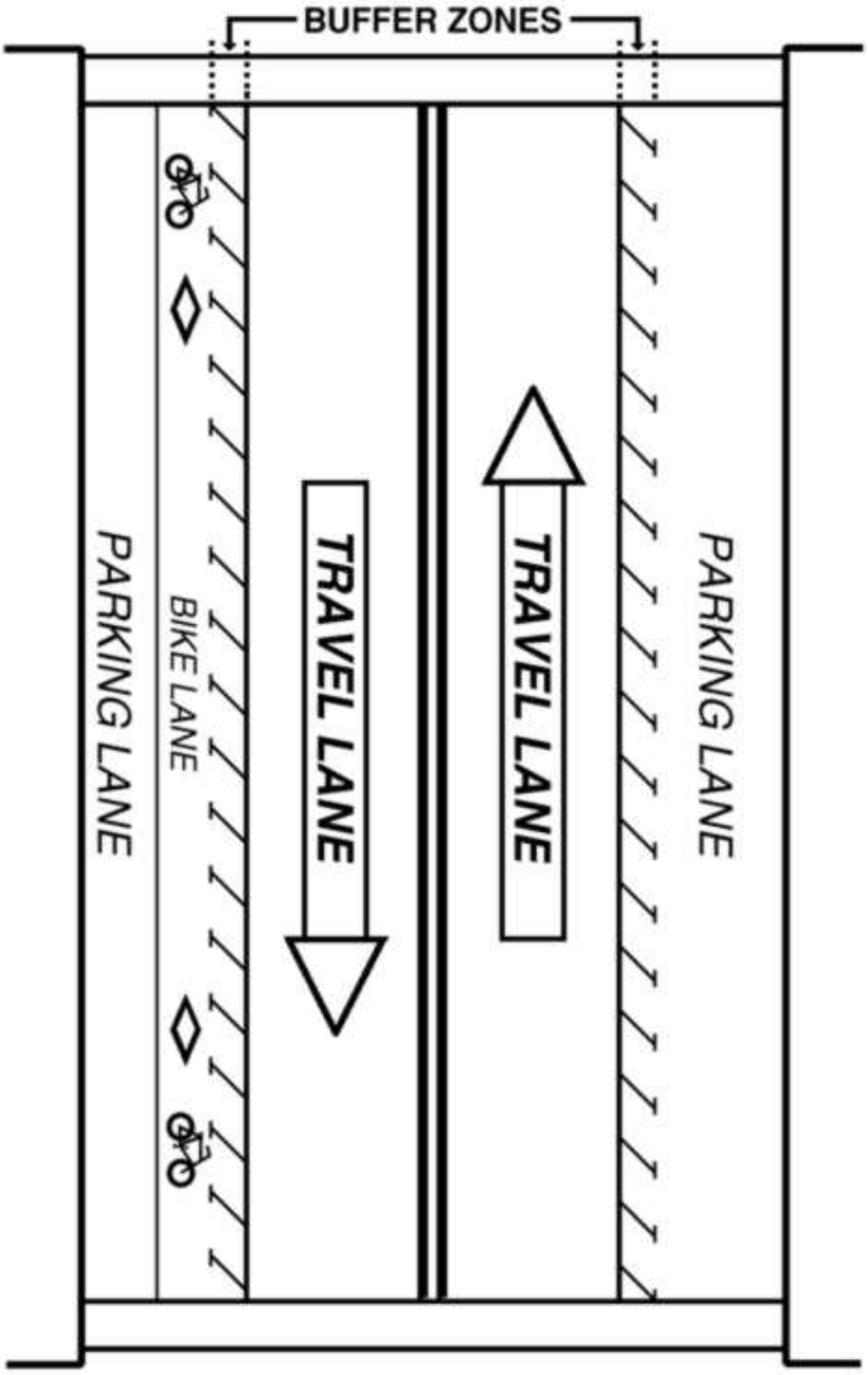
· A bell or other audible signal (not whistle);

· Working brakes;

· Reflective tires and/or other reflective devices on new bicycles.

Businesses must maintain a log book, which must be available for inspection during regular and usual business hours.

Some of the responsibilities listed above are imposed by law and failure to comply with them may subject violators to legal sanctions.


BUFFER ZONES
PARKING LANE
BIKE LANE
PARKING LANE
TRAVEL LANE
TRAVEL LANE

(q) **Transportation of radioactive materials.** Shipments of radioactive materials meeting or exceeding the specifications of "large quantities" and/or "fissile Class III" as specified by the Interstate Commerce Commission and the Nuclear Regulatory Commission, shall follow the same truck routes designated for vehicles having an overall length of 33 feet or more, in §4-13 of these rules. All such shipments are required to be so classified under the NRC license or contract before being shipped and the carrier shall obtain the proper classification. All vehicles carrying such shipments shall adhere to the rules of the fire department, the Department of Environmental Protection and §175.111 of the New York City Health Code.

(r) **Restricted use and limited use streets.**

(1) **Restrictions.** No operator of a vehicle or combination of vehicles shall operate, enter, stop, stand or park any such vehicle on any street designated as a restricted use street or a limited use street by the Department of Transportation, unless such vehicle or combination of vehicles

(i) is being used for the purpose of loading or unloading at premises legally utilizing an entrance, loading bay or elevator that fronts upon said street during authorized hours or,

(ii) is a bus traversing a route, franchised by the Department of Transportation, which includes said street, and the vehicle stands only at a designated bus stop or,

(iii) is a maintenance or utility vehicle operated or engaged by proper authority for the purpose of construction or maintenance of said street or any utility located on, above or below the street surface or for the construction or maintenance of any structure located on said street.

(2) **Driving across permitted.** Notwithstanding any other provision stated herein, the operator of any vehicle may drive across any restricted use or limited use street that intersects the street along which he is travelling.

(3) **Commissioner may suspend.** The commissioner, upon 24 hours' notice to the public, may suspend the application of this subdivision (r) for a specified period or indefinitely. If suspended for a specific period, the provisions of this subdivision (r) shall become effective at the termination of such period. If suspended indefinitely, the provisions of this subdivision (r) shall become effective upon order of the Commissioner and 48 hours notice to the public.

(4) **Definitions.** For the purpose of this subdivision (r), a restricted use street is a legally mapped street to be permanently closed to motor vehicles by the Department of Transportation, except as provided herein, and open to use by pedestrians. A limited use street is a legally mapped street to be temporarily closed to motor vehicles by the Department of Transportation, except as provided herein, and in accordance with lawfully authorized signs or other traffic control devices.

(s) **Crossing buffer zones.** (1) For the purposes of this subdivision, a buffer zone is defined as an area in the roadway, created by white lines, that is used to separate a parking lane from a travel lane or a bicycle lane from a travel lane, as indicated on the diagram below.

(2) No person shall drive a motor vehicle on or across a designated buffer zone, except when it is reasonable and necessary to enter or leave a legal curbside parking space or a driveway.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Section amended City Record June 16, 1995 eff. July 16, 1995.

Subd. (k) par (1) amended City Record Jan. 21, 1997 eff. Feb. 20, 1997.

Subd. (k) par (5) added City Record Dec. 9, 1996 eff. Jan. 5, 1997.

Subd. (m) amended City Record May 15, 1996 eff. June 14, 1996.

Subd. (p) par (4) added City Record July 30, 2007 §1, eff. Aug. 29, 2007. [See Note 1]

Subd. (s) added City Record July 29, 1998 eff. Aug. 28, 1998.

NOTE

1. Statement of Basis and Purpose in City Record July 30, 2007:

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter.

Subdivision (p) of §4-12 is being amended to add the requirements set forth in §10-157.1 of the Administrative Code of the City of New York, added by Local Law No. 10 of 2007. This new section of the Administrative Code requires the Department to effectuate the rules and regulations governing the content, size and manner of display of a poster setting forth bicycle safety procedures. The poster must be placed at commercial business locations where the business is engaged in delivering packages, parcels, papers or articles of any type by bicycle.

An English language model of the poster required by this proposed rule will be made available and model posters in other languages, including but not limited to, Spanish, Chinese, Korean and Russian, may be made available on the Department's website.

CASE AND ADMINISTRATIVE NOTES

¶ 1. An off duty police officer who obstructed traffic on the Brooklyn Bridge while engaged in a demonstration was found guilty of conduct unbecoming a police officer. Loeffel v. Kelly, 214 A.D.2d 431, 625 N.Y.S.2d 39 (1st Dept. 1995).

¶ 2. A company which allegedly operated vehicles used solely for the purpose of displaying commercial advertising, challenged the regulation as being an unconstitutional restriction upon commercial speech. The court, however, upheld the regulation, citing the city's substantial interest in controlling the flow of traffic. People v. Target Advertising, Inc., N.Y.L.J., May 26, 2000, page 28, col. 1 (Crim.Ct. New York Co.).

¶ 3. The statute prohibits vehicles which contain advertisements for businesses other than the business of the owner of the vehicle. One defendant, who was charged with a violation, claimed that the statute violated the First Amendment of the U.S. Constitution, and was void by reason of vagueness in violation of the Due Process clause of the Constitution. First, defendant argued that the statute was unconstitutional on its face, since it did not differentiate between ordinary commercial advertising (such as the type present on the defendant's vehicle) and advertisements covering political campaigns and non-profit public service groups. The court, however, held that since the rule by its own terms was not applicable to non-commercial speech, it was not unconstitutional on its face. The defendant next argued that the rule impermissibly differentiated between people based on the content of the message, but the court rejected this argument. The sovereign can lawfully regulate the time, place and manner of commercial speech (not its content) to effectuate a significant governmental interest. That interest, in this case, was to regulate traffic, and there was no intent to suppress a particular message. In other words, the statute was content neutral, in the sense that no one was permitted to advertise someone else's product but everyone was permitted to advertise one's own product. The court also rejected the "void for vagueness" argument, stating that "commercial speech" has been well defined in prior cases, so that defendant should be able to ascertain the types of advertisements which are permitted or prohibited (for example, defendant can lawfully

carry advertisements for political candidates or groups such as Unicef or Red Cross). People v. Professional Truck Leasing Systems, Inc., N.Y.L.J., Sept. 1, 2000 page 27, col. 5 (Crim.Ct. New York Co.); aff'd 190 Misc.2d 806, 737 N.Y.S.2d 767 (App.Term 1st Dept. 2002). Another court reached a similar result in People v. Target Advertising, 184 Misc.2d 903, 708 N.Y.S.2d 597 (Crim.Ct. New York Co. 2000); in that case, the court held that the rule directly advanced the City's interest in controlling traffic, since the ban on the use of advertising-only vehicles lessened the amount of potential traffic on City streets.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-13

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-13 Truck Routes.

(a) **General provisions.** (1) **Definitions.** For the purpose of these rules, a truck is defined as any vehicle or combination of vehicles designed for the transportation of property, which has either of the following characteristics: two axles, six tires; or three or more axles

(2) **Exceptions.** These rules do not apply to authorized emergency vehicles and authorized public utility company vehicles engaged in an emergency operation as defined in §114-b of the Vehicle and Traffic Law.

(3) **Enforcement.** An operator of any truck as defined above shall have in his/her possession throughout each trip a bill of lading, or similar document, showing the points of origin and destination of the trip. Upon the request of a law enforcement officer or other authorized person, the truck operator shall present for inspection the above stated document or documents.

(b) **Truck routing rules for the Borough of Queens.** (1) **Through trucks.** An operator of any truck as defined above, having neither an origin nor a destination within the Borough of Queens shall restrict the operation of such vehicle to those street segments on the following list. These are designated as "Through Truck Routes." All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Through Truck Route Network

Street	Limits
Astoria Blvd. (North and South)	29th St. to Northern Blvd.

Atlantic Avenue	Kings County Line to Van Wyck Expressway
Beach Channel Drive	Marine Pkway Bridge to Nassau County Line
Braddock Avenue	Hillside Avenue to Jamaica Avenue
Bradley Avenue	Greenpoint Avenue to Van Dam Street
Bridge Plaza	Queensboro Bridge to Jackson Avenue
Brooklyn-Queens Expressway	Kings County Line to Astoria Boulevard (North and South)
Clearview Expressway	Throgs Neck Bridge to Hillside Avenue
Crescent Street	41st Avenue to Bridge Plaza
Cross Island Parkway Service Roads	Whitestone Expressway to Francis Lewis Boulevard
Flushing Avenue	Kings County Line to Grand Avenue
Francis Lewis Boulevard	Cross Island Parkway Service Road to Springfield Boulevard
Grand Avenue	Kings County Line to Long Island Expressway
Grand Central Parkway	Triborough Bridge to the Brooklyn-Queens Expressway (western leg)
Greenpoint Avenue	Van Dam Street to Queens Boulevard
Hempstead Avenue	Jamaica Avenue to Nassau County Line
Hillside Avenue	Myrtle Avenue to Nassau County Line
Hoyt Avenue (North and South)	Astoria Boulevard to 21st Street
Jackson Avenue	Borden Avenue to Northern Boulevard
Jamaica Avenue	Francis Lewis Boulevard to Nassau County Line
Linden Boulevard	Kings County Line to North and South Conduit Avenue
Long Island Expressway	Queens Midtown Tunnel to Nassau County Line
Myrtle Avenue	Kings County Line to Hillside Avenue
North and South Conduit Avenue (Sunrise Highway	Linden Boulevard to Nassau County Line
Northern Boulevard	Jackson Avenue to Nassau County Line
Queens Boulevard	Jackson Avenue to Hillside Avenue
Rockaway Boulevard	North and South Conduit Avenue to Nassau County Line
Springfield Boulevard	Jamaica Avenue to North and South Conduit Avenue
Thomson Avenue	Jackson Avenue to Queens Boulevard
Van Dam Street	Greenpoint Avenue to Queens Boulevard
Van Wyck Expressway	Whitestone Expressway to North and South Conduit Avenue
Whitestone Expressway	Whitestone Bridge to Astoria Boulevard
21st Street	Borden Avenue to 24th Avenue
24th Avenue	21st Street to 29th Street
29th Street	24th Avenue to Astoria Boulevard
41st Avenue	21st Street to Crescent Street
213th Street	Hempstead Avenue to Jamaica Avenue

(2) **Local trucks.** An operator of any truck as defined in paragraph (a)(1) above, with an origin or destination for the purpose of delivery, loading or servicing within the Borough of Queens, shall only operate such vehicle over the following listed streets, except that an operator may operate on a street not designated below for the purpose of arriving at his/her destination. This shall be accomplished by leaving a designated truck route at the intersection that is nearest and provides the most direct route to his/her destination, proceeding by the most direct route while observing existing street directions and turn restrictions, and then returning to the nearest designated truck route by the most direct route. If the operator has additional destinations in the immediate vicinity, he/she may proceed by the most direct route to his/her next destination without returning to a designated truck route, provided that the operator's next destination does not require that he/she cross a designated truck route. All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Local Truck Route Network

Street	Limits
Astoria Blvd. (North and South)	8th Street to Northern Boulevard
Atlantic Avenue	Kings County Line to Van Wyck Expressway
Baisley Boulevard	Rockaway Boulevard to Merrick Boulevard
Beach Channel Drive	Marine Pkway Bridge to Nassau County Line
Borden Avenue	2nd Street to Greenpoint Avenue
Braddock Avenue	Hillside Avenue to Jamaica Avenue
Bradley Avenue	Greenpoint Avenue to Van Dam Street
Bridge Plaza	Queensboro Bridge to Jackson Avenue
Broadway	Vernon Boulevard to Queens Boulevard
Brooklyn-Queens Expressway	Kings County Line to Astoria Boulevard (North and South)
Central Avenue	Myrtle Avenue to Cooper Avenue
Clearview Expressway	Throgs Neck Bridge to Hillside Avenue
Clintonville Street	Cross Island Parkway South Service Road to 7th Avenue
College Point Avenue	Long Island Expressway to 14th Avenue
Cooper Avenue	Kings County Line to Woodhaven Boulevard
Crescent Street	41st Avenue to Bridge Plaza
Cross Bay Boulevard	Liberty Avenue to Beach Channel Drive
Cross Island Pkwy. Service Rds.	Whitestone Expressway to Francis Lewis Boulevard
Cypress Avenue	Flushing Avenue to Cooper Avenue
Ditmars Boulevard	49th Street to Hazen Street
Ditmars Boulevard	81st Street to 23rd Avenue
Dunkirk Street	Liberty Avenue to Linden Boulevard
Farmers Boulevard	Liberty Avenue to North and South Conduit Avenue
Flushing Avenue	Kings County Line to Grand Avenue
Francis Lewis Boulevard	Cross Island Parkway Service Roads to Springfield Boulevard
Fresh Pond Road	Flushing Avenue to Myrtle Avenue
Grand Avenue	Kings County Line to Queens Boulevard
Greenpoint Avenue	Van Dam Street to Queens Boulevard
Guy R. Brewer Boulevard	Liberty Avenue to North and South Conduit Avenue
Hazen Street	20th Avenue to Astoria Boulevard
Hempstead Avenue	Jamaica Avenue to Nassau County Line
Hillside Avenue	Myrtle Avenue to Nassau County Line
Hoyt Ave. (North and South)	Astoria Boulevard to 21st Street
Jackson Avenue	Borden Avenue to Northern Boulevard
Jamaica Avenue	Merrick Boulevard to Nassau County Line
Junction Boulevard	32nd Avenue to Queens Boulevard
Kissena Boulevard	Main Street to Parsons Boulevard
Laurel Hill Boulevard	Review Avenue to 54th Avenue
Liberty Avenue	Van Wyck Expressway to Farmers Boulevard
Linden Boulevard	Kings County Line to North and South Conduit Avenue, and Newburg Street to Farmers Boulevard
Linden Place	Whitestone Expressway to Northern Boulevard
Long Island Expressway	Queens Midtown Tunnel to Nassau County Line
Main Avenue	Vernon Boulevard to Astoria Boulevard
Main Street	Northern Boulevard to Queens Boulevard
Maurice Avenue	L.I.E. to 56th Terrace
Maspeth Avenue	49th Street to 48th Street
Merrick Boulevard	Hillside Avenue to Nassau County Line

Metropolitan Avenue	Kings County Line to Hillside Avenue
Myrtle Avenue	Kings County Line to Hillside Avenue
North and South Conduit Avenue (Sunrise Highway)	Linden Boulevard to Nassau County Line
Northern Boulevard	Jackson Avenue to Nassau County Line
Parsons Boulevard	Kissena Boulevard to Union Turnpike
Queens Boulevard	Jackson Avenue to Hillside Avenue
Review Avenue	Borden Avenue to Laurel Hill Boulevard
Rockaway Boulevard	Atlantic Avenue to Nassau County Line
Roosevelt Avenue	Queens Boulevard to Main Street
Rust Street	58th Street to Flushing Avenue
Rust Street	56th Terrace to 58th Street
Springfield Boulevard	Jamaica Avenue to North and South Conduit Avenue
Steinway Street	Northern Blvd. to Astoria Blvd. North
Steinway Street	Astoria Blvd. North to 19th Avenue
Sutphin Boulevard	94th Avenue to Liberty Avenue
Thomson Avenue	Jackson Avenue to Queens Boulevard
Union Turnpike	Myrtle Avenue to Nassau County Line
Van Dam Street	Queens Boulevard to Greenpoint Avenue
Van Wyck Expressway	Whitestone Expressway to John F. Kennedy International Airport
Vernon Boulevard	Borden Avenue to 8th Street
Whitestone Expressway	Whitestone Bridge to Astoria Boulevard
Willets Point Boulevard	Roosevelt Avenue to Northern Boulevard
Woodhaven Boulevard	Liberty Avenue to Queens Boulevard
8th Street	Astoria Boulevard to Vernon Boulevard
14th Road	College Point Boulevard to 110th Street
14th Avenue	Cross Island Parkway Service Road to Whitestone Expressway and College Point Boulevard to 110th Street
15th Avenue	College Point Boulevard to 1l0th Street
19th Avenue	Steinway Street to 81st Street
20th Avenue	21st Street to Hazen Street
20th Avenue	Whitestone Expressway to College Point Boulevard
21st Street	Borden Avenue to 20th Avenue
23rd Avenue	Astoria Boulevard South to Ditmars Boulevard
24th Avenue	21st Street to 29th Street
29th Street	24th Avenue to Astoria Boulevard
39th Street	Queens Boulevard to Northern Boulevard
41st Avenue	21st Street to Crescent Street
43rd Street	53rd Avenue to 54th Avenue
47th Street	Grand Avenue to 58th Road
48th Street	Long Island Expressway to 55th Avenue
48th Street	Maspeth Avenue to 58th Road and 55th Avenue to 56th Road
49th Street	Ditmars Boulevard to Astoria Boulevard
49th Street	Maspeth Avenue to 56th Road
53rd Avenue	43rd Street to 48th Street
54th Avenue	Laurel Hill Boulevard to 43rd Street
54th Street	Flushing Avenue to Grand Avenue
55th Avenue	48th Street to 58th Street
55th Street	Flushing Avenue to Grand Avenue
56th Drive	56th Road to 58th Street

56th Road	Laurel Hill Boulevard to 56th Drive
56th Road	56th Drive to 56th Terrace
57th Place	Maspeth Avenue to Rust Street
58th Road	47th Street to 48th Street
58th Street	Queens Boulevard to Maspeth Avenue
62nd Drive	Junction Boulevard to Queens Boulevard
69th Street	Long Island Expressway to Metropolitan Ave.
94th Avenue	Van Wyck Expressway to Sutphin Boulevard
94th Street	La Guardia Airport to 32nd Avenue
108th Street	Astoria Boulevard to Queens Boulevard
110th Street	14th Avenue to 15th Avenue
126th Street	Northern Boulevard to Roosevelt Avenue
154th Street	Cross Island Parkway North Service Road to 10th Avenue
168th Street	Merrick Boulevard to Hillside Avenue
213th Street	Hempstead Avenue to Jamaica Avenue

(c) **Truck routing rules for the Borough of Staten Island.** (1) **Through trucks.** An operator of any truck as defined in paragraph (a)(1) above, having neither an origin nor a destination within the Borough of Staten Island, shall restrict the operation of such vehicle to those street segments on the following list. These are designated as "Through Truck Routes." All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Through Truck Route Network

Street	Limits
Richmond Parkway	Outerbridge Crossing to West Shore Expressway
Staten Island Expressway	Goethals Bridge to Verrazano Narrows Bridge
West Shore Expressway	Staten Island Expressway to Richmond Parkway
Willowbrook Expressway	Staten Island Expressway to Bayonne Bridge

(2) **Local trucks.** (i) **2 axles, 6 tires.** An operator of any truck as defined in paragraph (a)(1) above, with 2 axles, 6 tires and having an origin or destination for the purpose of delivery, loading or servicing within the Borough of Staten Island, shall only operate such vehicle over the following listed "Local Truck Routes" and "Limited Local-Truck Routes," except that an operator may drive on a street not designated below for the purpose of arriving at his/her destination. This shall be accomplished by leaving a designated truck route at the intersection which is nearest and provides the most direct route to his/her destination, proceeding by the most direct route while observing existing street directions and turn restrictions, and then returning to the nearest designated truck route by the most direct route. If the operator has additional destinations in the immediate vicinity, he/she may proceed by the most direct route to his/her next destination without returning to a designated truck route, provided that the operator's next destination does not require that he/she cross a designated truck route. All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

(ii) **3 or more axles.** An operator of any truck as defined in paragraph (a)(1) above, with 3 or more axles, and having an origin or destination for the purpose of delivery, loading or servicing within the Borough of Staten Island, shall only operate such vehicle over the following listed "local truck routes," except under the conditions described in subparagraph (2)(i), above.

Local Truck Route Network

Street	Limits

Amboy Road	Richmond Road to Wards Point Avenue
Arden Avenue	Veterans Road West to Hylan Boulevard
Arthur Kill Road	Richmond Road to Main Street
Bay Street	Richmond Terrace to School Road
Bloomfield Avenue	Chelsea Road to Gulf Avenue
Bloomingdale Road	Amboy Road to Boston Avenue
Boscombe Avenue	Page Avenue to Weiner Street
Bradley Avenue	South Gannon Avenue to Victory Boulevard
Broad Street	Van Duzer Street to Bay Street
Broadway	Forest Avenue to Richmond Terrace
Buel Avenue	Hylan Boulevard to Richmond Road
Castleton Avenue	Jewett Avenue to Jersey Street
Castleton Avenue	Jewett Avenue to Port Richmond Avenue
Chelsea Road	Meredith Avenue to Bloomfield Avenue
Clarke Avenue	Richmondtown Road to Amboy Road
Clove Road	Narrows Road South to Richmond Terrace
Draper Place	Richmond Avenue to Richmond Avenue
Drumgoole Road East	Bloomingdale Road to Richmond Avenue
Drumgoole Road West	Arthur Kill Road to Veterans Road
Ebbitts Avenue	Hylan Boulevard to Mill Road
Edgewater Street	Bay Street to Hyland Boulevard
Edward Curry Avenue	Chelsea Road to South Avenue
Englewood Avenue	Veterans Road West to Veterans Road East
Fahy Avenue	Bengal Avenue to Lamberts Lane
Father Capodanno Blvd. (Seaside Blvd.)	Midland Avenue to Lily Pond Avenue
Forest Avenue	Western Avenue to Victory Boulevard
Foster Road	Woodrow Road to Amboy Road
Front Street	Bay Street to Murry Hulbert Avenue
Giffords Land	Arthur Kill Road to Amboy Road
Glen Street	Edward Curry Avenue to Fahy Avenue
Goethals Road North	Western Avenue to West Caswell Avenue
Gulf Avenue	Forest Avenue to West Shore Expressway
Guyon Avenue	Hylan Boulevard to Amboy Road
Huguenot Avenue	Arthur Kill Road to Hylan Boulevard
Hylan Boulevard	Satterlee Avenue to Steuben Street, and Narrows Road South to Edgewater Street
Jersey Street	Richmond Terrace to Victory Boulevard
Jewett Avenue	Richmond Terrace to Victory Boulevard
Justin Avenue	Amboy Road to Hylan Boulevard
Lamberts Lane	Fahy Avenue to Victory Boulevard
Lily Pond Avenue	School Road to Father Capodanno Boulevard (Seaside Boulevard)
Lincoln Avenue	Hyland Boulevard to Richmond Road
Little Clove Road	Renwick Avenue to Narrows Road North
Main Street	Arthur Kill Road to Hylan Boulevard
Manor Road	Schmidts Lane to Victory Boulevard
Midland Avenue	Richmond Road to Father Capodanno Boulevard (Seaside Boulevard)
Milford Drive	Renwick Avenue to Clove Road
Mill Road (Old Mill Road)	Tysens Lane to New Dorp Lane
Morley Avenue	Richmond Road to Richmond Road

Morningstar Road	Richmond Terrace to Richmond Avenue
Narrows Road North	Verrazano Narrows Bridge to Little Clove Road
Narrows Road South	Clove Road to Verrazano Narrows Bridge
Nelson Avenue	Amboy Road to Hylan Boulevard
New Dorp Lane	Mill Road to Hylan Boulevard
North Bridge Street	Veterans Road West to Arthur Kill Road
North Gannon Avenue	Slosson Avenue to Willow Road East
Page Avenue	South Bridge Street to Hylan Boulevard
Renwick Avenue	Milford Drive to Little Clove Road
Richmond Avenue	Hylan Boulevard to Forest Avenue, and Forest Avenue to Richmond Terrace
Richmond Parkway	Outerbridge Crossing to West Shore Expressway
Richmond Road	Van Duzer Street to Morley Avenue and Morley Avenue to Arthur Kill Road
Richmond Terrace	Western Avenue to Bay Street
Richmond Valley Road	Arthur Kill Road to Page Avenue
Rossville Avenue	Arthur Kill Road to Woodrow Road
St. Pauls Avenue	Van Duzer Street to Van Duzer Street
Schmidts Lane	Manor Road to Slosson Avenue
School Road	Lily Pond Avenue to Bay Street
Seaview Avenue	Father Capodanno Boulevard (Seaside Boulevard) to Hylan Boulevard
Seguine Avenue	Amboy Road to Hylan Boulevard
Sharrott Avenue	Amboy Road to Hylan Boulevard
Sharotts Road	Veterans Road East to Veterans Road West
Slosson Avenue	Victory Boulevard to Schmidts Lane
South Avenue	Richmond Terrace to Chelsea Road
South Bridge Street	Arthur Kill Road to Page Avenue
South Gannon Avenue	Victory Boulevard to Manor Road
Staten Island Expressway	Goethals Bridge to Verrazano Narrows Bridge
Steuben Street	Hylan Boulevard to Narrows Road South
Targee Street	Van Duzer Street to Richmond Road
Tompkins Avenue	Hylan Boulevard to Broad Street
Trantor Place	Walker Street to Willowbrook Expressway entrance ramp
Travis Avenue	South Avenue to Draper Place
Tyrellan Avenue	Boscombe Avenue to Veterans Road West
Tysens Lane	Mill Road to Hylan Boulevard
Vanderbilt Avenue	Richmond Road to Bay Street
Van Duzer Street	Richmond Road to Victory Boulevard
Van Duzer St. Extension	Van Duzer Street to Bay Street
Veterans Road East	Drumgoole Road West to Sharrotts Road, and Bloomingdale Road to Arthur Kill Road
Veterans Road West	Arden Road to Bloomingdale Road, and Sharrotts Road to Arthur Kill Road
Victory Boulevard	West Shore Expressway to Bay Street
Walker Street	Morningstar Road to Richmond Avenue
West Caswell Avenue	Goethals Road North to Willow Road West
West Shore Expressway	Staten Island Expressway to Richmond Parkway
Western Avenue	Forest Avenue to Richmond Terrace
Willow Road East	North Gannon Avenue to Forest Avenue
Willow Road West	Forest Avenue to West Caswell Avenue
Willowbrook Expressway	Victory Boulevard to Bayonne Bridge
Woodrow Road	Bloomingdale Road to Arthur Kill Road
Woolley Avenue	South Gannon Avenue to Victory Boulevard

Limited Local Truck Route Network

Street	Limits
Bradley Avenue	Brielle Avenue to South Gannon Avenue
Brielle Avenue	Rockland Avenue to Manor Road
Forest Hill Road	Richmond Hill Road to Willowbrook Road
Manor Road	Brielle Avenue to Schmidts Lane
Ocean Terrace	Manor Road to Todt Hill Road
Richmond Hill Road	Richmond Avenue to Forest Hill Road
Richmond Road	Rockland Avenue to Morley Avenue
Rockland Avenue	Richmond Avenue to Richmond Road
Slosson Avenue	Schmidts Land to Todt Hill Road
Todt Hill Road	Slosson Avenue to Richmond Road
Woolley Avenue	Willowbrook Road to South Gannon Avenue

(d) **Truck routing rules for the Borough of Manhattan.** (1) **Through trucks.** An operator of any truck as defined in paragraph (a)(1) above, having neither an origin nor a destination within the Borough of Manhattan, shall restrict the operation of such vehicle to those street segments designated on the following list as "Through Truck Routes." All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Through Truck Route Network

Street	Limits
Allen Street	Delancey Street to Houston Street
Avenue of the Americas	West Broadway to Houston Street
Beach Street	West Broadway to Varick Street
Canal Street	Manhattan Bridge to West Street
Chrystie Street	Delancey Street to Houston Street
Delancey Street	Williamsburg Bridge to Bowery
Dyer Avenue	34th Street to Lincoln Tunnel
Dyer Avenue	Lincoln Tunnel to 42nd Street
Houston Street	Allen Street to Varick Street
Hudson Street	Laight Street to Holland Tunnel Entrance
Kenmare Street	Bowery to Lafayette Street
Lafayette Street	Kenmare Street to Canal Street
Laight Street	Varick Street to Canal Street
**Queens Midtown Tunnel	34th Street to Tunnel Approach
**Queens Midtown Tunnel	34th Street to Tunnel Exit
Trans-Manhattan Expway	Alexander Hamilton Bridge to George Washington Bridge
Varick Street	Houston Street to Holland Tunnel Entrance
Walker Street	Canal Street to West Broadway
West Broadway	Beach Street to Avenue of the Americas
West Street	Brooklyn Battery Tunnel to Gansevoort Street
11th Avenue	Gansevoort Street to 22nd Street
11th Avenue	34th Street to 42nd Street
12th Avenue	22nd Street to 34th Street
**34th Street	Queens Midtown Tunnel Entrance to Dyer Avenue
34th Street	Dyer Avenue to 12th Avenue
40th Street	Lincoln Tunnel entrance to 11th Avenue

42nd Street	Dyer Avenue to 11th Avenue

** All through trucks are prohibited from 34th Street between the Queens Midtown Tunnel and Dyer Avenue between the hours of 11:00 A.M. and 6:00 P.M.

(2) **Local trucks.** An operator of any truck as defined in paragraph (a)(1) above, having an origin or destination for the purpose of delivery, loading or servicing within the Borough of Manhattan, shall restrict the operation of such vehicle to those street segments designated on the following list as "Local Truck Routes," except that an operator may operate on a street not designated below for the purpose of leaving his/her origin or arriving at his/her destination (subject to restrictions specified in §4-13(d)(3) through §4-13(d)(5) of these rules). This shall be accomplished by leaving a designated truck route at an intersection that is nearest and provides the most direct route to his/her destination, proceeding by the most direct route while observing existing street directions and turn restrictions, and then returning to the nearest designated truck route by the most direct route. If the operator has additional destinations in the immediate vicinity, he/she may proceed by the most direct route to his/her next destination without returning to a designated truck route, provided that the operator's next destination does not require that he/she cross a designated truck route. All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Local Truck Routes

Street	Limits
Adam Clayton Powell, Jr., Blvd.	Central Park North to 155th Street
Allen Street	Division Street to Houston Street
Amsterdam Avenue	59th Street to 181st Street
Avenue of the Americas (6th Avenue)	Church Street to 31st Street
Barclay Street	Broadway to West Street
Battery Park Underpass	South Street to West Street
Battery Place	State Street to West Street
Beach Street	West Broadway to Varick Street
Bowery	St. James Place to Cooper Square
Broadway	State Street to 14th Street
Broadway	17th Street to 31st Street
Broadway	Columbus Circle to 230th Street
Broome Street	Centre Street to Watts Street
Canal Street	Chrystie Street to West Street
Canal Street	Chrystie Street to Forsyth Street
Cathedral Parkway (110th Street)	8th Avenue to Broadway
Central Park North	Adam Clayton Powell, Jr., Blvd. to 8th Ave.
Central Park South	Columbus Circle to Grand Army Plaza
Central Park Traverse Roads 1, 2, 3 & 4	Fifth Avenue to Central Park West
Central Park West	81st Street to 82nd Street
Centre Street	Canal Street to Broome Street
Chrystie Street	Canal Street to Houston Street
Church Street	Liberty Street to Avenue of the Americas
Clarkson Street	7th Avenue South to West Street
Columbus Avenue	59th Street to Cathedral Parkway
Columbus Circle	Entire Length
Cooper Square	Bowery to Third Avenue
Delancey Street	Williamsburg Bridge to Bowery
Division Street	Bowery to Pike Street

Dyer Avenue	Lincoln Tunnel to 42nd Street
Dyer Avenue	Lincoln Tunnel to 34th Street
Forsyth Street	Division Street to Canal Street
Fort Washington Avenue	178th Street to 181st Street Avenue
Grand Street	Allen Street to West Broadway
Greenwich Avenue	Avenue of the Americas to 8th Avenue
Houston Street	1st Avenue to West Street
Hudson Street	Worth Street to 8th Avenue
Kenmare Street	Bowery to Lafayette Street
Lafayette Street	Kenmare Street to Canal Street
Laight Street	Varick Street to Canal Street
Lexington Avenue	23rd Street to 125th Street
Lincoln Tunnel Access	30th Street to Lincoln Tunnel
Madison Avenue	84th Street to 86th Street
Madison Avenue	96th Street to 97th Street
Madison Avenue	125th Street to Madison Avenue Bridge
Maiden Lane	South Street to Water Street
Nagle Avenue	Broadway to l0th Avenue
Pearl Street	Water Street to St. James Place
Pike Slip	South Street to Cherry Street
Pike Street	Cherry Street to Division Street
Queens Midtown Tunnnel Approach	34th Street to Tunnel
Queens Midtown Tunnel Exit	34th Street to Tunnel
St. James Place	Pearl Street to Bowery
South Street	State Street to Pike Slip
State Street	South Street to Broadway
Trans-Manhattan Expway	Alexander Hamilton Bridge to George Washington Bridge
Trinity Place	Brooklyn Battery Tunnel to Liberty Street
Union Square East	14th Street to 17th Street
Varick Street	West Broadway to 7th Avenue South
Vesey Street	Broadway to West Street
Walker Street	Canal Street to West Broadway
Water Street	State Street to Pearl Street
Watts Street	Broome Street to Holland Tunnel entrance
West Broadway	Worth Street to Varick Street
West Broadway	Beach Street to Grand Street
West Street	Battery Park Underpass to Gansevoort Street
Worth Street	St. James Place to Hudson Street
1st Avenue	Houston Street to Willis Avenue Bridge
2nd Avenue	Houston Street to 128th Street
3rd Avenue	Cooper Square to 125th Street
5th Avenue	22nd Street to 26th Street
5th Avenue	85th Street to 86th Street
5th Avenue	125th Street to 138th Street
6th Avenue (Avenue of the Americas)	Church Street to 31st Street
7th Avenue	14th Street to 31st Street
7th Avenue South	Varick Street to 14th Street
8th Avenue	Hudson Street to Columbus Circle
8th Street	Avenue of the Americas to Broadway
9th Avenue	14th Street to 59th Street

l0th Avenue	Little West 12th Street to 59th Street
l0th Avenue	Nagle Avenue to Broadway
11th Avenue	Gansevoort Street to 57th Street
11th Ave. service road	Gansevoort Street to 23rd Street
12th Avenue	22nd Street to 59th Street
14th Street	1st Avenue to 11th Avenue
15th Street	9th Avenue to 11th Avenue
17th Street	Union Square East to Broadway
22nd Street	5th Avenue to Broadway
23rd Street	1st Avenue to 12th Avenue
26th Street	5th Avenue to Broadway
30th Street	Broadway to 11th Avenue
31st Street	3rd Avenue to l0th Avenue
34th Street	1st Avenue to 12th Avenue
36th Street	Queens Midtown Tunnel entrance to 2nd Ave.
40th Street	Lincoln Tunnel entrance to 11th Avenue
41st Street	9th Avenue to Lincoln Tunnel entrance
42nd Street	1st Avenue to 12th Avenue
57th Street	1st Avenue to 12th Avenue
59th Street	1st Avenue to Grand Army Plaza
60th Street	1st Avenue to Lexington Avenue
65th Street	1st Avenue to 5th Avenue
65th Street	Central Park West to Amsterdam Avenue
66th Street	1st Avenue to 5th Avenue
66th Street	Central Park West to Amsterdam Avenue
75th Street	Amsterdam Avenue to Broadway
79th Street	1st Avenue to 5th Avenue
79th Street	Columbus Avenue to Broadway
81st Street	Central Park West to Columbus Avenue
82nd Street	Central Park West to Broadway
84th Street	Madison Avenue to 5th Avenue
86th Street	1st Avenue to 5th Avenue
86th Street	Central Park West to Broadway
96th Street	1st Avenue to 5th Avenue
96th Street	Central Park West to Broadway
97th Street	Madison Avenue to 5th Avenue
97th Street	Central Park West to Broadway
116th Street	1st Avenue to Adam Clayton Powell, Jr., Blvd.
124th Street	1st Avenue to Triborough Bridge entrance
125th Street	1st Avenue to Broadway
128th Street	2nd Avenue to 3rd Avenue Bridge
138th Street	Madison Avenue Bridge to 5th Avenue
145th Street	145th Street Bridge to Broadway
155th Street	Macombs Dam Bridge to Broadway
178th Street	Amsterdam Avenue to George Washington Bridge exit
179th Street	Amsterdam Avenue to George Washington Bridge entrance
181st Street	Washington Bridge to Fort Washington Ave.
207th Street	University Heights Bridge to Broadway
215th Street	Tenth Avenue to Broadway

(3) **Limited truck zones.** (i) **Restrictions.** Notwithstanding the provisions of paragraphs (a), (d)(1) and (d)(2) of this section, no operator of a truck as defined in paragraph (a)(1) of this section shall operate, enter, stop, stand or park his/her vehicle upon any of the streets designated on the following list as "Limited Truck Zones" except for the purpose of making a delivery, loading or servicing within said zone. This shall be accomplished by leaving a designated truck route at the intersection that is nearest and provides the most direct route to his/her destination, proceeding by the most direct route while observing existing street directions and turn restrictions, and then returning to the nearest designated truck route by the most direct route. If the operator has additional destinations in the immediate vicinity, he/she may proceed by the most direct route to his/her next destination without returning to a designated truck route provided that the operator's next destination does not require that he/she cross a designated truck route.

(ii) **Time period.** 24 hours per day, 7 days per week.

(iii) **Zones**

Zone A-**Chelsea** Bounded by the northern property line of 16th Street, the eastern property line of Ninth Avenue, the northern property line of 18th Street, the eastern property line of Tenth Avenue, the southern property line of 30th Street, the western property line of Eighth Avenue, the southern property line of 25th Street, the western property line of Seventh Avenue, the northern property line of 19th Street and the western property line of Eighth Avenue. Trucks passing completely through the designated area, or entering it for the purpose of reaching or leaving a street within these boundaries, are permitted to traverse 23rd Street, Eighth Avenue and Ninth Avenue only.

Zone B-**Chinatown** Bounded by the northern property line of Worth Street, the eastern property line of Baxter Street, the southern property line of Canal Street, the western property line of the Bowery, and the western property line of Chatham Square.

Zone C-**Greenwich Village** Bounded by the northern property line of Spring Street, the eastern property line of Varick Street, the eastern property line of Seventh Avenue South, the northern property line of Clarkson Street, the eastern property line of Hudson Street, the northern property line of Morton Street, the eastern property line of Washington Street, the southern property line of Gansevoort Street, the southern property line of 14th Street, the western property line of Avenue of the Americas, the southern property line of 12th Street, the western property line of University Place, the southern property line of 8th Street, the western property line of Mercer Street, the northern property line of Houston Street, and the western property line of West Broadway. Trucks passing completely through the designated area, or entering it for the purpose of reaching or leaving a street within these boundaries, are permitted to traverse Avenue of the Americas, Eighth Avenue, Eighth Street, Greenwich Avenue, Hudson Street (Northbound only), Seventh Avenue South, Varick Street and Houston Street only. Trucks with neither an origin nor a destination within Manhattan are restricted to Houston Street and Avenue of the Americas between Spring and Houston Streets only.

Zone D-**Little Italy** Bounded by the northern property line of Canal Street, the eastern property line of Centre Street, the eastern property line of Cleveland Place, the eastern property line of Lafayette Street, the southern property line of Houston Street and the western property line of Bowery. Trucks passing completely through the designated area, or entering it for the purpose of reaching or leaving a street within these boundaries, are permitted to traverse Grand Street, Kenmare Street and Canal Street only. Trucks with neither an origin nor a destination within Manhattan are restricted to Canal Street only.

Zone E-**Lower East Side** Bounded by the northern property line of Senator Robert F. Wagner Place, the eastern property line of St. James Place, the eastern property line of East Broadway, the southern property line of Montgomery Street, and the western property line of South Street. Trucks passing completely through the designated area, or entering it for the purpose of reaching or leaving a street within these boundaries, are permitted to traverse Pike Slip and Pike Street only.

(4) **Special garment center rule.**

(i) **Restrictions.** Notwithstanding the provisions of paragraphs (a), (d)(1) and (d)(2) of this section, no operator of a truck as defined in paragraph (a)(1) of this section shall operate, enter, stop, stand or park his/her vehicle upon any of the streets included within the boundaries designated below except for the purpose of making a delivery, loading or servicing on said streets. An operator shall not enter a street within the designated boundaries for the sole purpose of gaining access to a designated truck route, or to an adjacent street within said boundaries.

(ii) **Time period.** 9:00 A.M. to 5:00 P.M., Monday through Friday.

(iii) **Boundaries.** Bounded by the northern property line of 34th Street, the eastern property line of Eighth Avenue, the southern property line of 42nd Street and the western property line of Avenue of the Americas. Trucks passing completely through the designated area, or entering it for the purpose of reaching or leaving a street within these boundaries, are permitted to traverse Seventh Avenue and Broadway only.

(5) **Operation of vehicles 33 feet or more in length restricted.** Notwithstanding the provisions of §§4-08(1)(2) and (3) and 4-13 of these rules, no operator of a vehicle or combination of vehicles used for the transportation of merchandise, having an overall length of 33 feet or more including load and bumpers, shall operate, enter, traverse, stop, stand, or park any such vehicle or combination of vehicles upon any of the streets included in the area bounded by the south property line of West 42nd Street, the west property line of 5th Avenue, the north property line of West 34th Street, and the east property line of 9th Avenue, all in the Borough of Manhattan, between the hours of 8 a.m. and 10 a.m., and between 12 noon and 6 p.m., Monday through Friday inclusive, except that the operator of any such vehicle or combination of vehicles who has lawfully entered this area may allow such vehicle or combination of vehicles to remain therein while being expeditiously loaded or unloaded, but must remove same therefrom before 12 noon, and provided that any vehicle or combination of vehicles 33 feet or more in length may enter such area in order to reach an off-street parking facility or terminal therein where such parking facility or terminal is sufficient in size to accommodate the vehicle or combination of vehicles, and where no waiting, loading, or unloading on the street by such vehicle or combination of vehicles will take place. Such vehicle or combination of vehicles may not stop between an entry point into the area and its destination for any purpose other than to conform with traffic rules.

(6) **Special rules for vehicles 33 feet or more in length in the financial district and midtown core.** (i) **Financial district.**

(A) **Time period.** 11:00 A.M. to 2:00 P.M., Monday through Friday.

(B) **Restrictions.** Notwithstanding the provisions of subdivisions (a), (d)(1) and (d)(2) of this section, no operator of a vehicle having an overall length of 33 feet or more shall enter his/her vehicle upon any of the streets included within the boundaries designated below.

(C) **Exceptions.** Trucks having an overall length of 33 feet or more whose operator has in his/her possession a special permit issued by the Department of Transportation.

(D) **Boundaries.** Bounded by the eastern property line of Whitehall Street, the eastern property line of Broadway, the eastern property line of Park Row, the southern property line of Frankfort Street, the western property line of Pearl Street, and the western property line of Water Street.

(ii) **Midtown core.** (A) **Time period.** 12:00 Noon to 6:00 P.M. Monday through Friday.

(B) **Restrictions.** Notwithstanding the provisions of paragraphs (a) and (d)(1), through (d)(4) of this section, no operator of a vehicle having an overall length of 33 feet or more shall enter his/her vehicle upon any of the streets included within the boundaries designated below.

(C) **Exceptions.** Vehicles having an overall length of 33 feet or more whose operator has in his/her possession a special permit issued by the Department of Transportation.

(D) **Boundaries.** Bounded by the northern property line of 42nd Street, the eastern property line of Seventh Avenue, the southern property line of Central Park South, the southern property line of 59th Street, and the western property line of Third Avenue. Trucks having an overall length of 33 feet or more passing completely through the designated area are permitted to traverse 57th Street and Lexington Avenue only.

(e) **Truck routing rules for the Borough of Brooklyn.** (1) **Through trucks.** An operator of any truck as defined in paragraph (a)(1) above, having neither an origin nor a destination within the Borough of Brooklyn, shall restrict the operation of such vehicle to those street segments on the following list. These are designated as "Through Truck Routes." All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Through Truck Route Network

Street	Limits
Atlantic Avenue	Columbia Street to Queens County Line
Brooklyn-Queens Expressway	Gowanus Expressway to Queens County Line
Brooklyn-Queens Expressway Ramp	Williamsburg Bridge to Brooklyn-Queens Expressway
Church Avenue	McDonald Avenue to Flatbush Avenue
Columbia Street	Atlantic Avenue to Brooklyn-Queens Expressway Ramps North to Congress Street
Conduit Boulevard	Atlantic Avenue to Queens County Line
Flatbush Avenue	Fulton Street to Atlantic Avenue and Church Avenue to Marine Parkway Bridge
Flatbush Avenue Extension	Manhattan Bridge to Fulton Street
Gowanus Expressway	Brooklyn Battery Tunnel to Verrazano Narrows Bridge
Jay Street	Manhattan Bridge Exit Ramp to Sands Street
McDonald Avenue	l0th Avenue to Church Avenue
Prospect Expressway	Gowanus Expressway to Church Avenue
Sands Street	Jay Street to Brooklyn-Queens Expressway Entrance
Tillary Street	Flatbush Avenue Extension to Brooklyn-Queens Expressway Ramps
3rd Avenue	Flatbush Avenue to Atlantic Avenue
l0th Avenue	Prospect Expressway Exit Ramp to McDonald Avenue

(2) **Local trucks.** An operator of any truck as defined in paragraph (a)(1) above, with an origin or destination for the purpose of delivery, loading or servicing within the Borough of Brooklyn, may only operate such vehicle over the following listed streets, except that an operator may operate on a street not designated below for the purpose of arriving at his/her destination. This shall be accomplished by leaving a designated truck route at the intersection that is nearest and provides the most direct route to his/her destination, proceeding by the most direct route while observing existing street directions and turn restrictions, and then returning to the nearest designated truck route by the most direct route. If the operator has additional destinations in the immediate vicinity, he/she may proceed by the most direct route to his/her next destination without returning to a designated truck route, provided that the operator's next destination does not require that he/she cross a designated truck route. All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Local Truck Route Network

Street	Limits

Adams Street	Sands Street to Front Street
Ainslie Street	Rodney Street to Union Avenue
Ash Street	McGuinness Boulevard to Commercial Street
Atlantic Avenue	Furman Street to Queens County Line
Avenue D	Linden Boulevard to Foster Avenue
Avenue M	Flatlands Avenue to Kings Highway
Avenue N	Kings Highway to Flatlands Avenue
Avenue T	Flatbush Avenue to Ralph Avenue
Avenue U	86th Street to East 55th Street
Bay Parkway	Kings Highway to Belt Parkway Eastbound Service Road
Bay Street	Columbia Street to Smith Street
Beard Street	Van Brunt Street to Otsego Street
Bedford Avenue	Rogers Avenue to Taylor Street
Bergen Street	3rd Avenue to 5th Avenue
Box Street	Commercial Street to McGuinnes Boulevard
Bridgewater Street	Norman Avenue to Varick Street
Broadway	Kent Avenue to Jamaica Avenue
Brooklyn-Queens Expressway	Gowanus Expressway to Queens County Line
Brooklyn-Queens Expressway Access Ramp	Williamsburg Bridge to Brooklyn-Queens Expressway
Cadman Plaza West	Furman Street to Court Street
Caton Avenue	McDonald Avenue to Linden Boulevard
Cherry Street	Vandervoort Avenue to Varick Avenue
Church Avenue	Old New Utrecht Road to Linden Boulevard
Classon Avenue	Kent Avenue to Flushing Avenue
Clinton Street	Hamilton Avenue to Bay Street
Columbia Street	Atlantic Avenue to Irving Street; and Bay Street to Halleck Street
Commercial Street	Manhattan Avenue to Franklin Street
Concord Street	Flatbush Avenue Extension to Jay Street
Conduit Boulevard	Atlantic Avenue to Queens County Line
Coney Island Avenue	Caton Avenue to Neptune Avenue
Cooper Street	Broadway to Queens County Line
Court Street	Hamilton Avenue to Bay Street; and Cadman Plaza West to Atlantic Avenue
Cropsey Avenue	18th Avenue to Neptune Avenue
DeKalb Avenue	Nostrand Avenue to Flatbush Avenue Extension
Delavan Street	Columbia Street to Van Brunt Street
Driggs Avenue	South 4th Street to Broadway
East New York Avenue	Troy Avenue to Rockaway Avenue
Empire Boulevard	Flatbush Avenue to Utica Avenue
Flatbush Avenue	Fulton Street to Marine Parkway Bridge
Flatbush Avenue Extension	Manhattan Bridge to Fulton Street
Flatlands Avenue	Avenue N to Pennsylvania Avenue
Flushing Avenue	Navy Street to Queens County Line
Fort Hamilton Parkway	82nd Street to 92nd Street
Foster Avenue	Kings Highway to Remsen Avenue
Fountain Avenue	Linden Boulevard to Spring Creek Landfill Site
Franklin Street	Commercial Street to Kent Avenue
Freeman Street	Provost Street to McGuinness Boulevard
Front Street	Cadman Plaza West to Hudson Avenue
Fulton Street	Jewell Square to Pennsylvania Avenue

Furman Street	Cadman Plaza West to Atlantic Avenue
Gardner Avenue	Metropolitan Avenue to Grand Street
Gowanus Expressway	Brooklyn Battery Tunnel to Verrazano Narrows Bridge
Grand Street	Grand Street Extension to Queens County Line
Grand Street Extension	Havemeyer Street to Grand Street
Green Street	McGuinness Boulevard to Provost Street
Greenpoint Avenue	Van Dam Street to Queens Boulevard
Halleck Street	Otsego Street to Columbia Street
Hamilton Avenue	Van Brunt Street to 3rd Avenue
Havemeyer Street	Broadway to South 4th Street
Herkimer Street	Van Sinderen Avenue to Jewell Square
Hicks Street	Hamilton Avenue to Nelson Street
Hudson Avenue	Front Street to Navy Street
Irving Street	Van Brunt Street to Columbia Street
Jamaica Avenue	Broadway to Pennsylvania Avenue
Jay Street	Prospect Street to Fulton Street
Kane Street	Columbia Street to Van Brunt Street
Kent Avenue	Franklin Street to Myrtle Avenue
Kings Highway	Foster Avenue to Bay Parkway
Kingsland Avenue	Greenpoint Avenue to Norman Street
Lafayette Avenue	Flatbush Avenue to Nostrand Avenue
Lee Avenue	Taylor Street to Flushing Avenue
Linden Boulevard	Caton Avenue to Queens County Line
Lombardy Street	Vandervoort Avenue to Varick Avenue
Lorimer Street	Wallabout Street to Union Avenue
Louisiana Street	Vandalia Avenue to Seaview Avenue
Manhattan Avenue	Commercial Street to Greenpoint Avenue
Marcy Avenue	Metropolitan Avenue to Division Avenue
McDonald Avenue	20th Street to Shell Road
McGunness Boulevard	Ash Avenue to Meeker Avenue
Meeker Avenue	Metropolitan Avenue to Varick Avenue
Metropolitan Avenue	Kent Avenue to Queens County Line
Myrtle Avenue	Jay Street to Queens County Line
Nassau Street	Flatbush Avenue Extension to Flushing Avenue
Navy Street	Hudson Avenue to Tillary Street
Nelson Street	Hicks Street to Columbia Street
Neptune Avenue	Cropsey Avenue to Coney Island Avenue
Norman Avenue	North Henry Street to Bridgewater Street
North Henry Street	Greenpoint Avenue to Norman Street
North l0th Street	Union Avenue to Kent Avenue
North 11th Street	Kent Avenue to Union Avenue
Nostrand Avenue	Flushing Avenue to Flatbush Avenue
Old New Utrecht Road	Church Avenue to 14th Avenue
Paidge Avenue	McGuinness Boulevard to Provost Street
Pennsylvania Avenue	Jamaica Avenue to Vandalia Avenue; and Seaview Avenue to Spring Creek Landfill Site
Prospect Avenue	3rd Ave. to Prospect Expressway 4th Avenue Exit
Prospect Expressway	Gowanus Expressway to Church Avenue
Prospect Street	Cadman Plaza West to Jay Street
Provost Street	Paidge Avenue to Greenpoint Avenue

Ralph Avenue	Foster Avenue to Avenue T
Remsen Avenue	Empire Boulevard to Flatlands Avenue
Rockaway Avenue	Broadway to East New York Avenue
Rodney Street	Division Avenue to Metropolitan Avenue
Roebling Street	Metropolitan Avenue to South 5th Street; and Broadway to Lee Avenue
Rogers Avenue	Flatbush Avenue to Bedford Avenue
Sands Street	Adams Street to Navy Street
Schermerhorn Street	Smith Street to Flatbush Avenue
Seaview Avenue	Louisiana Avenue to Pennsylvania Avenue
Shell Road	McDonald Avenue to Neptune Avenue
Smith Street	Fulton Street to Atlantic Avenue; and Bay Street to 9th Street
South 3rd Street	Roebling Street to Grand Street Extension
South 4th Street	Rodney Street to Driggs Avenue
Taylor Street	Bedford Avenue to Lee Avenue
Terrace Place	McDonald Avenue to 11th Avenue
Tillary Street	Cadman Plaza West to Navy Street
Troy Avenue	East New York Avenue to Empire Boulevard
Union Avenue	North 11th Street to Lorimer Street
Utica Avenue	Atlantic Avenue to Flatbush Avenue
Van Brunt Street	Kane Street to Beard Street
Vandalia Avenue	Louisiana Avenue to Pennsylvania Avenue
Van Dam Street	Meeker Avenue to Bridgewater Street
Vandervoort Avenue	Meeker Avenue to Grand Street
Van Sinderen Avenue	Broadway to Herkimer Street
Varick Avenue	Lombardy Street to Meeker Avenue
Varick Street	Meeker Avenue to Bridgewater Street
Wallabout Street	Classon Avenue to Lorimer Street
Williamsburg Street East	Kent Avenue to Division Avenue
Williamsburg Street West	Park Avenue to Division Avenue
Woodhull Street	Hamilton Avenue Westbound to Hamilton Avenue Eastbound
York Street	Navy Street to Cadman Plaza West
1st Avenue	39th Street to 58th Street
2nd Avenue	58th Street to 60th Street
3rd Avenue	Flatbush Avenue to 65th Street
4th Avenue	Flatbush Avenue to 39th Street
5th Avenue	Atlantic Avenue to Bergen Street
6th Avenue	60th Street to 65th Street/Gowanus Expressway
7th Avenue	Prospect Expressway to 20th Street; and 65th Street to 92nd Street
9th Street	Clinton Street to 4th Avenue
l0th Avenue	Prospect Expressway to 20th Street
11th Avenue	18th Street to Terrace Place
14th Avenue	Church Avenue to 39th Street
18th Avenue	86th Street to Cropsey Avenue
20th Avenue	3rd Avenue to l0th Avenue
25th Street	Cropsey Avenue to 86th Street
39th Street	1st Avenue to 14th Avenue
43rd Street	3rd Avenue to 1st Avenue
58th Street	1st Avenue to 3rd Avenue
60th Street	2nd Avenue to 6th Avenue
65th Street	3rd Avenue to McDonald Avenue

86th Street	Fort Hamilton Parkway to l8th Avenue; and 25th Avenue toAvenue U
92nd Street	Fort Hamilton Parkway to 7th Avenue

(f) **Truck routing rules for the Borough of the Bronx.** (1) **Through trucks.** An operator of any truck as defined in paragraph (a)(1) above, having neither an origin nor a destination within the Borough of the Bronx, will restrict the operation of such vehicle to those street segments on the following list. These are designated as "Through Truck Routes." All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Through Truck Route Network

Street	Limits
Buckner Boulevard	Willis Avenue Bridge to Bruckner Expressway Approach
Bruckner Expressway	New England Thruway to Triborough Bridge
Cross Bronx Expressway	Alexander Hamilton Bridge to Cross Bronx Expressway
Cross Bronx Expressway	Cross Bronx Expressway to Extension Throgs Neck Expressway
East 135th Street	Major Deegan Expressway Westbound-Willis Avenue Exit to Third Avenue Bridge Approach
Exterior Street	Major Deegan Expressway Southbound-East 138th Street Exit to Third Avenue Bridge
Hutchinson River Parkway	Bruckner Expressway to Bronx-Whitestone Bridge
Major Deegan Expressway	City Line to Triborough Bridge
New England Thruway	City Line to Bruckner Expressway
Sheridan Expressway	Cross Bronx Expressway to Bruckner Expressway
Throgs Neck Expressway	Bruckner Expressway to Throgs Neck Bridge
Willis Avenue	Willis Ave. Bridge to East 135th Street

(2) **Local trucks.** An operator of any truck as defined in paragraph (a)(1) above, with an origin or destination for the purpose of delivery, loading or servicing within the Borough of the Bronx, will only operate such vehicle over the following listed streets, except that an operator may operate on a street not designated below for the purpose of arriving at his/her destination. This shall be accomplished by leaving a designated truck route at the intersection that is nearest and provides the most direct route to his/her destination, proceeding by the most direct route while observing existing street directions and turn restrictions, and then returning to the nearest designated truck route by the most direct route. If the operator has additional destinations in the immediate vicinity, he/she may proceed by the most direct route to his/her next destination without returning to a designated truck route, provided that the operator's next destination does not require that he/she cross a designated truck route. All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Local Truck Route Network

Street	Limits
Allerton Avenue	White Plains Road to Williamsbridge Road
Bailey Avenue	Van Cortlandt Park South to Sedgwick Ave.
Barry Street	Leggett Avenue to Oak Point Avenue
Bartow Avenue	East Gun Hill Road to Baychester Avenue
Baychester Avenue	East 241st Street to Edson Avenue, New England Thruway (Northbound) Bartow Avenue Exit to Co-op City Boulevard
Bergen Avenue	Willis Avenue to Westchester Avenue
Boone Avenue	West Farms Road to Whitlock Avenue
Boston Road	City Line to Bronx Park East, East Tremont Avenue to Third Avenue

Broadway	City Line to New York County Line
Bronx Park East	Boston Road to White Plains Road
Brook Avenue	Webster Avenue to Elton Avenue
Bruckner Boulevard (Northbound)	Third Avenue Bridge to Kearney Avenue, Kearney Avenue to MacDonough Place, MacDonough Place to Shore Road
Bruckner Boulevard (Southbound)	Shore Road to Third Avenue Bridge
Bruckner Expressway	New England Thruway to Triborough Bridge
Bryant Avenue	Bruckner Boulevard to Garrison Avenue
Castle Hill Avenue	East Tremont Avenue to Lacombe Avenue
City Island Avenue	City Island Road to Belden Street
City Island Road	Shore Road to City Island Avenue
Commerce Avenue	Westchester Avenue to Zerega Avenue
Conner Street	Provost Avenue to Tillotson Avenue
Cross Bronx Expressway	Alexander Hamilton Bridge to Cross Bronx Expressway Extension
Cross Bronx Expressway Eastbound Service Road	Park Avenue to Cross Bronx Expressway Eastbound Entrance Ramp, Harrod Avenue to Bruckner Interchange
Cross Bronx Expressway Extension	Cross Bronx Expressway to Throgs Neck Expressway
Cross Bronx Expressway Westbound Service Road	Bruckner Interchange to Westchester Avenue, Hugh J. Grant Circle to East 177th Street
Depot Place	Sedgwick Avenue to Exterior Street
Dickinson Avenue	West Gun Hill Road to Sedgwick Avenue
Dupont Street	Leggett Avenue to Oak Point Avenue
East Bay Avenue	Tiffany Street to Halleck Street
East Burnside Avenue	Jerome Avenue to Valentine Avenue
Eastchester Road	Boston Road to Williamsbridge Road
East Fordham Road	Jerome Avenue to Pelham Parkway
East Gun Hill Road	Jerome Avenue to New England Thruway
East Tremont Avenue	Valentine Avenue to Dewey Avenue
East 135th Street	Major Deegan Expressway Westbound-Willis Avenue Exit to Third Avenue Bridge Approach
East 138th Street	Madison Avenue Bridge to East River
East 148th Street	Third Avenue to Bergen Avenue
East 149th Street	145th Street Bridge to East River
East 150th Street	Third Avenue to Melrose Avenue
East 161st Street	Jerome Avenue to Elton Avenue
East 163rd Street	Elton Avenue to Stebbins Avenue, Stebbins Avenue to Hunts Point Avenue
East 167th Street	Jerome Avenue to River Avenue
East 174th Street	Webster Avenue to Park Avenue
East 175th Street	Cross Bronx Expressway (Westbound)-Webster Avenue Exit to Webster Avenue
East 177th Street	East Tremont Avenue to Cross Bronx Expressway Service Roads
East 233rd Street	Jerome Avenue to Boston Road
East 241st Street	White Plains Road to Baychester Avenue
Edgewater Road	Halleck Street to Bruckner Boulevard
Edson Avenue	Baychester Avenue to East Gun Hill Road
Edward L. Grant Highway	Washington Bridge to Jerome Avenue
Elton Avenue	East 163rd Street to East 161st Street
Exterior Street	Jerome Avenue to Third Avenue Bridge
Garrison Avenue	Leggett Avenue to Tiffany Street, Bryant Avenue to Edgewater Road
Givan Avenue	New England Thruway Southbound Service Road to Baychester Avenue

Halleck Street	Edgewater Road to Ryawa Avenue
Hollers Avenue	New England Thruway (Southbound)-Conner Street Exit to Conner Street
Hunts Point Avenue	Southern Boulevard to Bruckner Boulevard, Randall Avenue to Halleck Street, Ryawa Avenue to New Market Road
Hutchinson River Parkway and Southbound Service Road	Bruckner Interchange to Bronx-Whitestone Bridge
Jerome Avenue	City Line to Major Deegan Expressway Approaches at the Macombs Dam Bridge
Kearney Avenue	Bruckner Boulevard (Northbound) to Bruckner Boulevard (Northbound)
Lacombe Avenue	Soundview Avenue to Castle Hill Avenue
Lane Avenue (Westchester Square)	East Tremont Avenue to Westchester Avenue
Legget Avenue	Southern Boulevard to Randall Avenue
Macombs Dam Bridge Approach	Macombs Dam Bridge to Jerome Avenue
Major Deegan Expressway	City Line to Triborough Bridge
MacDonough Place	Bruckner Boulevard (Northbound) to Bruckner Boulevard (Northbound)
Melrose Avenue	Webster Avenue to Willis Avenue
Morris Park Avenue	Eastchester Road to East Tremont Avenue
Nereid Avenue	Webster Avenue to White Plains Road
New England Thruway	City Line to Bruckner Expressway
New England Thruway Southbound Service Road	Coroner Street to Givan Avenue
New Market Road	East Bay Avenue to Hunts Point Avenue
Oak Point Avenue	Barry Street to Halleck Street
Park Avenue	East 174th Street to Cross Bronx Expressway Eastbound Service Road
Pelham Parkway	East Fordham Road to White Plains Road
Pelham Parkway North	Eastchester Road to Boston Road
Pelham Parkway South	Boston Road to Eastchester Road
Provost Avenue	City Line to Conner Street
Randall Avenue	Leggett Avenue to Halleck Street, Cross Bronx Expressway Extension to East Tremont Avenue
River Avenue	Jerome Avenue to East 149th Street
Ryawa Avenue	Halleck Avenue to New Market Road
Sedgwick Avenue	Bailey Avenue to West Fordham Road-Jerome Avenue to Depot Place, Van Cortlandt Avenue West to Dickinson Avenue
Sheridan Expressway	East Tremont Avenue to Bruckner Expressway
Shore Road	Bruckner Expressway to City Island Road
Silver Street	Williamsbridge Road to East Tremont Avenue
Soundview Avenue	Bruckner Boulevard to Lacomb Avenue
Southern Boulevard	East Fordham Road to East 163rd Street, Leggert Avenue to East 149th Street
Stebbins Avenue	East 163rd Street to East 163rd Street
Third Avenue	Bruckner Boulevard to East Fordham Road
Throgs Neck Expressway	Bruckner Expressway to Throgs Neck Bridge
Tiffany Street	Bruckner Boulevard to Viele Avenue
Tillotson Avenue	Conner Street to Co-op City Boulevard
Truxton Street	Leggett Avenue to Oak Point Avenue
University Avenue	West Fordham Road to Washington Bridge
Valentine Avenue	East Burnside Avenue to East Tremont Ave.
Van Cortlandt Avenue West	Bailey Avenue to Sedgwick Avenue
Van Cortlandt Park South	Broadway to Bailey Avenue
Viele Avenue	Tiffany Street to Halleck Street

Webster Avenue	City Line to Melrose Avenue
West Burnside Avenue	University Avenue to Jerome Avenue
West Farms Road	East Tremont Avenue to Boone Avenue
West Fordham Road	University Heights Bridge to Jerome Avenue
West 230th Street	Broadway to Bailey Avenue
West Gun Hill Road	Dickinson Avenue to Jerome Avenue
Westchester Avenue	Third Avenue to Bruckner Boulevard
White Plains Road	City Line to Bruckner Boulevard
Whitlock Avenue	Boone Avenue to Bruckner Boulevard
Whittier Street	Bruckner Boulevard to Garrison Avenue
Williamsbridge	Boston Road to East Tremont Avenue
Willis Avenue	Willis Avenue Bridge to East 149th Street
Zerega Avenue	Westchester Avenue to Homer Avenue

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (b) par (1) open par. amended City Record Sept. 17, 2007 §1, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (1) Grand Central Parkway added City Record Sept. 17, 2007 §2, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) open par amended City Record Sept. 17, 2007 §3, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) 14th Road in Local Truck Route Network added City Record Aug. 14, 1997 eff. Sept. 13, 1997. [See Note 1]

Subd. (b) par (2) 81st Street in Local Truck Route Network repealed City Record Nov. 15, 1996 eff. Dec. 15, 1996.

Subd. (b) par (2) Cypress Avenue added City Record Sept. 17, 2007 §4, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) Flushing Avenue repealed City Record Sept. 17, 2007 §4, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) Fresh Pond Road (first entry) repealed City Record Sept. 17, 2007 §4, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) Fresh Pond Road (second entry) amended City Record Sept. 17, 2007 §4, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) Guy R. Brewer desig. and amended City Record Sept. 17, 2007 §4, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) New York Boulevard renamed City Record Sept. 17, 2007 §4, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) Linden Boulevard in schedule amended City Record Jan. 31, 1995 eff. Mar. 2, 1995.

Subd. (c) par (1) open par amended City Record Sept. 17, 2007 §5, eff. Oct. 17, 2007. [See Note 4]

Subd. (c) par (2) subpar (i) amended City Record Sept. 17, 2007 §6, eff. Oct. 17, 2007. [See Note 4]

Subd. (c) par (2) subpar (ii) Bengal Avenue repealed City Record Sept. 17, 2007 §7, eff. Oct. 17, 2007. [See Note

4]

Subd. (c) par (2) subpar (ii) Castleton Avenue (second entry) added City Record Feb. 9, 2009 §1, eff. Mar. 11, 2009. [See Note 5]

Subd. (c) par (2) subpar (ii) Ebbitts Avenue amended City Record Feb. 9, 2009 §1, eff. Mar. 11, 2009. [See Note 5]

Subd. (c) par (2) subpar (ii) Edward Curry Avenue added City Record Sept. 17, 2007 §7, eff. Oct. 17, 2007. [See Note 4]

Subd. (c) par (2) subpar (ii) Glen Street added City Record Sept. 17, 2007 §7, eff. Oct. 17, 2007. [See Note 4]

Subd. (c) par (2) subpar (ii) Local Truck Route Network heading desig. and amended City

Record Sept. 17, 2007 §7, eff. Oct. 17, 2007. [See Note 4]

Subd. (c) par (2) subpar (ii) Mill Road amended City Record Sept. 17, 2007 §7, eff. Oct. 17, 2007. [See Note 4]

Subd. (c) par (2) subpar (ii) New Dorp Lane amended City Record Feb. 9, 2009 §1, eff. Mar. 11, 2009. [See Note 5]

Subd. (c) par (2) subpar (ii) Richmond Valley Road added City Record Feb. 9, 2009 §1, eff. Mar. 11, 2009. [See Note 5]

Subd. (c) par (2) subpar (ii) Vernon Avenue repealed City Record Sept. 17, 2007 §7, eff. Oct. 17, 2007. [See Note 4]

Subd. (d) par (1) open par amended City Record Sept. 17, 2007 §8, eff. Oct. 17, 2007. [See Note 4]

Subd. (d) par (2) open par amended City Record Sept. 17, 2007 §9, eff. Oct. 17, 2007. [See Note 4] Note: The roman language laid out in this amendment did not entirely corresond to existing language. NYLP carries the amendment as laid out.

Subd. (d) par (2) Avenue of the Americas amended City Record Sept. 17, 2007 §10, eff. Oct. 17, 2007. [See Note 4]

Subd. (d) par (2) Cathedral Parkway amended City Record Sept. 17, 2007 §10, eff. Oct. 17, 2007. [See Note 4]

Subd. (d) par (2) Central Park Traverse . . . amended City Record Sept. 17, 2007 §10, eff. Oct. 17, 2007. [See Note 4]

Subd. (d) par (2) 6th Avenue added City Record Sept. 17, 2007 §10, eff. Oct. 17, 2007. [See Note 4]

Subd. (d) par (3) subpar (i) amended City Record Sept. 17, 2007 §11, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (1) open par amended City Record Sept. 17, 2007 §12, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (1) Gowanus Expressway amended City Record Sept. 17, 2007 §13, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) open par amended City Record Sept. 17, 2007 §14, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Avenue U amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Bay Parkway amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Brooklyn-Queens Expressway amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Columbia Street amended City Record Feb. 4, 2004 eff. Mar. 5, 2004. [See Note 2]

Subd. (e) par (2) Driggs Avenue amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (2) par (2) Gowanus Expressway amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Grand Street amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Kings Highway amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Pennsylvania Avenue amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Remsen Avenue amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Van Dam Street amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (1) open par amended City Record Sept. 17, 2007 §16, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) open par amended City Record Sept. 17, 2007 §17, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Barry Street added City Record June 21, 2004 eff. July 21, 2004. [See Note 3]

Subd. (f) par (2) Boston Road amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Broadway amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Bruckner Boulevard (Northbound) amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Bruckner Boulevard (Southbound) amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Bryant Avenue added City Record June 21, 2004 eff. July 21, 2004. [See Note 3]

Subd. (f) par (2) Castle Hill Avenue amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Dupont Street added City Record June 21, 2004 eff. July 21, 2004. [See Note 3]

Subd. (f) par (2) Garrison Avenue amended City Record June 21, 2004 eff. July 21, 2004. [See Note

3]

Subd. (f) par (2) Hunts Point Avenue amended City Record June 21, 2004 eff. July 21, 2004. [See

Note 3]

Subd. (f) par (2) Jerome Avenue amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Oak Point Avenue added City Record June 21, 2004 eff. July 21, 2004. [See

Note 3]

Subd. (f) par (2) Southern Boulevard amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Truxton Street added City Record June 21, 2004 eff. July 21, 2004. [See Note 3]

Subd. (f) par (2) Westchester Avenue amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) West Fordham Road amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) White Plains Road amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 14, 1997:

The Commissioner of the Department of Transportation is authorized to regulate traffic pursuant to section 2903(a) of the New York City Charter.

Section 4-13(b)(2) is being amended to add 14th Road to the Local Truck Route Network in the Borough of Queens in order to improve truck access to industrial and commercial facilities and to reduce truck traffic on narrow residential streets.

2. Statement of Basis and Purpose in City Record Feb. 4, 2004 The Commissioner of the Department of Transportation is authorized to regulate traffic pursuant to §2903(a) of the New York City Charter. Section 4-13(e)(2) is being amended in connection with the recommendations contained in the Red Hook Truck Study. The study recommends truck route changes in order to minimize truck traffic on residential streets, regulate truck traffic in Red Hook, and to improve circulation and safety of vehicular and pedestrian traffic in Red Hook. The recommendations were reviewed and approved by elected officials, the community board, and other interested groups.

3. Statement of Basis and Purpose in City Record June 21, 2004: The Commissioner of the Department of Transportation is authorized to regulate traffic pursuant to §2903(a) of the New York City Charter. Section 4-13(f)(2) is being amended to improve traffic circulation and safety and reduce truck traffic in residential areas.

4. Statement of Basis and Purpose in City Record Sept. 17, 2007: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. The Department of Transportation has undertaken a study of Truck Route Management and Community Impact Reduction. One goal of the study is to help improve the City's existing overall truck management framework. To assist in achieving this objective, the study recommends that the Department of Transportation amend specific provisions of Title 34, §4-13 of the Rules of the City of New York to ensure consistency and clarity among truck-related definitions, rules and regulations, and to ensure that changes made to the truck route network are accurately reflected. In addition, though height restrictions are eliminated from these rules in order to remove outdated and inconsistent information, trucks are still required to adhere to posted signs indicating any such restrictions on the City's streets and roadways.

5. Statement of Basis and Purpose in City Record Feb. 9, 2009: The Commissioner of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903(b) of the New York City Charter and Title 19 of the New York City Administrative Code. Castleton Avenue from Jewett Avenue to Port Richmond Avenue is being added as a local truck route in Staten Island to improve truck operations by allowing a connection to the Richmond Avenue local truck route. Westbound trucks at Castleton Avenue and Jewett Avenue are only allowed to turn left or right. If they turn right, they arrive at Jewett Avenue and Richmond Terrace which only allows right turns. The trucks are being forced into a circle as a result of the turn restrictions. By adding Castleton Avenue from Jewett Avenue to Port Richmond Avenue as a local truck route, truck operations will be improved in this area, and truck movements will be more efficient. Due to land use changes two local truck routes are being eliminated, specifically, New Dorp

Lane from Old Mill Road to Cedar Grove Avenue and Ebbitts Avenue from Old Mill Road to Cedar Grove Avenue. Adding Richmond Valley Road as a local truck route, between Arthur Kill Road and Page Avenue will allow for east-west connection between two north-south local truck routes.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-14

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-14 Parkways and Parks.

(a) **Parkways.** The following provisions shall govern the use of all parkways: (1) **Peddlers, vendors, hawkers and hucksters.** No peddler, vendor, hawker or huckster shall stop or remain on any part of the right of way or service roads or entrances.

(2) **Use of parkways restricted.** Commercial vehicles, pedestrians, horses, limited use vehicles and bicycles are prohibited on parkways.

(3) **Flat tires.** No operator shall stop his/her vehicle on the improved or paved roadway of a park or parkway for the purpose of removing or replacing a flat tire. No person shall remove or replace a flat tire unless the vehicle is completely off the improved or paved roadway so that no portion of the vehicle or the person is exposed to passing vehicles.

(b) **Restrictions on vehicles.** (1) **Commercial vehicles.** Commercial vehicles are prohibited from using any park, except under permit where necessary to make deliveries in such park. Wherever service roads adjoin the main roadway to a park such vehicles are required to use the service roads set apart for such use. In all cases such vehicles must enter the park from the nearest street intersection or entrance, in the direction of traffic, and leave by the nearest intersecting street or exit in the direction of traffic.

(2) **Business or advertising purposes.** Vehicles having any name, insignia, or sign painted or displayed thereon for business or advertising purposes are prohibited in parks or parkways except as provided in paragraph (b)(1), above.

(3) **Carriers of offensive refuse or heavy materials.** No garbage, ashes, manure, or other offensive material shall be carried through any park. When such refuse is to be removed from premises fronting on any park or improved or paved roadway in a park, the vehicle collecting it must leave the park or improved or paved roadway as soon as the collection has been accomplished, and within the time prescribed by the Commissioner of Parks.

(4) **Buses.** No persons shall, except under a permit, drive or operate a bus within any park or on a parkway. Charter buses will be permitted to operate between the shortest possible routes from outside a park to deliver or to pick up their passengers from a picnic, bathing or other recreation area only if a permit to enter the park has been issued to the person sponsoring the outing, picnic, etc. Buses must proceed over the route and to the parking space designated in the permit. Parking in the designated parking space will be limited to the time prescribed in the permit.

(5) **Hearses.** No hearse or other vehicles carrying or used for carrying the body of a dead person shall enter or be allowed in any park except by permit.

(c) **Restricted areas of parks.** No person shall, in any park, drive or operate a vehicle within or upon a safety zone, walk, bridle path or any part of any park designated or customarily used for such purposes. No person shall ride a bicycle, limited use vehicle, or scooter in any park, except in places designated for such riding; but persons may push such machines in single file to and from such places, except on beaches and boardwalks. No person shall ride a limited use vehicle upon any bicycle, pedestrian or bridle path or upon any street or walkway that has been set aside for bicycling while such designation is in effect. No wheelchairs shall be operated in any part of any park unless licensed by the Commissioner of Parks, except that invalids' wheelchairs may be pushed along the boardwalk and pedestrian walks. No person shall ride or lead a horse or other beast of burden in a park, except on a bridle path or along routes customarily used for access to and from bridle paths.

(d) **Projecting articles.** No person shall operate or drive in any park or parkway a vehicle containing any person or object projecting or hanging outside or on the top thereof; except that outdoor sports and recreation equipment such as skis, ski poles, fishing rods, beach chairs, beach umbrellas, tent poles, toboggans, and sleds may be carried on the rear of such vehicles or on a rack designed for the purpose and attached to the top thereof, provided that in all cases fastenings shall be secure and substantial, and provided that such equipment so carried shall in no case project more than 12 inches above the top or to the rear of such vehicle.

(e) **Driving off pavement.** (1) No vehicle shall be operated or driven off the improved or paved roadways of any park or parkway unless it is disabled.

(2) All stalled or disabled vehicles must be removed from paved roadways in parks and parkways so as to prevent obstruction of traffic. If not so removed by the owners then they may be removed by Department of Transportation forces or licensed tow operators at the expense of the owners and in such event neither the City nor such licensed tow operators shall be liable for damages caused to such vehicles during removal.

(3) No disabled vehicle shall be permitted to remain in a park for a longer period than two hours.

(f) **Parking.** No person shall, in any park area designated as a parking space,

(1) fail to comply with an order of a law enforcement officer or any park employee or disobey or disregard the notices, prohibitions, instructions or directions on any park sign or parking meter including the Rules of Museums or Zoological or Botanical Gardens, posted on the grounds or buildings of said institutions.

(2) between one-half hour after sunset and one-half hour before sunrise, stop or park in a vehicle, except at places designated or maintained therefor.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-15

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-15 Limitations Upon Dimensions and Weights of Vehicles.

(a) **Definitions.** (1) **Highway.** When used in this section, a highway shall mean the entire width between the boundary lines of every public way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and includes any street, avenue, road, square, place, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, viaduct, underpass and any private street open to public motor vehicle traffic.

(2) **Exception.** The provisions of this section shall not apply to any vehicle authorized by the Federal Surface Transportation Assistance Act of 1982, as amended, when such vehicle is operating pursuant to the provisions of such act.

(b) **Dimensions and weights of vehicles.** No person shall operate or move, or cause or knowingly permit to be operated or moved on any highway or bridge any vehicle or combination of vehicles of a size or weight exceeding the limitations provided for in this subdivision (b).

(1) **Width of vehicle.** The width of a vehicle, inclusive of load, shall not be more than eight feet except that the width of school buses and fire vehicles shall not exceed 98 inches and the width of buses having a carrying capacity of more than seven passengers shall not exceed 102 inches.

(2) **Height of vehicle.** The height of a vehicle from underside of tire to top of vehicle, including its load, shall not be more than 13 1/2 feet; provided, however, that air cargo carried in containers and pallets loaded onto flatbed trucks that thereby exceed such height may travel between any airport under the jurisdiction of the port of New York authority

and off-airport facilities involved in the handling of air cargo located within one mile of such airport on local routes to be designated by the Commissioner. Any such vehicle on such route shall not be required to obtain a permit for such travel.

(3) **Length of single vehicles.** The length of a single vehicle, inclusive of load and bumpers shall not be more than 35 feet. The provisions of this paragraph (3) shall not apply to semitrailers, fire vehicles, single unit buses having a capacity of more than fifteen passengers, provided the length of such buses does not exceed 45 feet; or articulated buses provided the length of such bus does not exceed 65 feet. Operators of buses longer than 45 feet in length may be required to demonstrate that on-street stops and terminal areas used by such buses are of sufficient length to accommodate them. In no case shall any bus that has a turning radius greater than 50 feet operate without a permit for such operation issued by the Commissioner;

(4) **Length of combinations of vehicles.** The total length of a combination of vehicles, inclusive of load and bumpers, shall not be more than 55 feet, except that the combination of vehicle, load and bumper of vehicles hauling poles, girders, columns or other similar objects of great length which are indivisible, shall not be more than 60 feet. The provisions of this paragraph (4) shall not apply to any fire vehicle or to a vehicle or combination of vehicles that is disabled and unable to proceed under its own power and is being towed for a distance of not more than ten miles for the purpose of repair or removal from the highway.

(5) **Number of wheels and axles.** In determining the number of wheels and axles on any vehicle or combination of vehicles within the meaning of this subdivision (b), only 2 wheels shall be counted for each axle, and axles that are fewer than 46 inches apart from center to center shall be counted as 1 axle. However, in the case of multiple tires or multiple wheels, the sum of the widths of all tires on a wheel or combination of wheels shall be taken in determining tire width.

(6) **Weight per inch of tire.** The weight per inch width of tire of any one wheel of a single vehicle or a combination of vehicles, equipped with pneumatic tires, when loaded, shall not be more than 800 pounds.

(7) **Weight on one wheel.** The weight on any one wheel of a single vehicle or a combination of vehicles, equipped with pneumatic tires, when loaded, shall not be more than 11,200 pounds.

(8) **Weight on one axle.** The weight on any one axle of a single vehicle or combination of vehicles, equipped with pneumatic tires, when loaded, shall not be more than 22,400 pounds.

(9) **Weight on two axles.** The weight on any two consecutive axles of a single vehicle or a combination of vehicles, equipped with pneumatic tires, when loaded, and when such axles are spaced fewer than 10 feet from center to center, shall not be more than 36,000 pounds. Axles shall be counted as provided in paragraph (5) of this subdivision (b).

(10) **Weight on three axles.** A single vehicle or a combination of vehicles having 3 axles or more and equipped with pneumatic tires, when loaded, may have a total weight on all axles not to exceed 34,000 pounds, plus 1,000 pounds for each foot and major fraction of a foot of the distance from the center of the foremost axle to the center of the rearmost axle. Axles shall be counted as provided in paragraph (5) of this subdivision (b). In no case, however, shall the total weight exceed 80,000 pounds without any tolerance for enforcement purposes.

(11) **Weight on solid rubber tires.** A vehicle or combination of vehicles equipped with any solid rubber tires shall not have a load weighing more than 80% of the total weight permitted in this subdivision (b) for pneumatic tires.

(12) **Width of tires.** For the purpose of this subdivision (b), the width of pneumatic tires shall be ascertained by measuring the greatest width of the tire casing when the tire is inflated. The width of solid rubber tires shall be ascertained by measuring the width of the tire base channel or between the flanges of the metal rim. No vehicle equipped with solid rubber tires, which has at any point less than 1 inch of rubber above the top or beyond the flange or

rim, shall be operated upon a public highway. The width of metal tires shall be ascertained by measuring the width of contact of the tire with the road surface.

(13) **Weight and height restrictions on bridges, viaducts and other structures.** No person shall operate or move a vehicle or combination of vehicles over, on or through any bridge, viaduct or other structures on any highway if the weight of such vehicle or combination of vehicles and load is greater than the posted capacity of the structure or exceeds the height of the posted clearance as shown by an official sign or other marking or device.

(14) **Other limits also in effect.** Nothing m this subdivision (b) shall be construed as preventing the enforcement of rules now in effect or hereafter promulgated by the Department of Transportation further limiting the size and weight of vehicles in designated areas.

(15) **Permits.** Upon application in writing showing good cause, the Commissioner may issue a permit to operate or move a vehicle or a combination of vehicles, the weights and dimensions of which exceed the limitations provided for in this subdivision (b), upon any highway under his/her jurisdiction. Every such permit may designate the route to be traversed and may contain any other restrictions or conditions deemed necessary by the Commissioner. Every such permit shall be carried on the vehicle to which it refers and shall be open to the inspection of any law enforcement officer or any inspector of the Bureau of Weights and Measures of the Department of Consumer Affairs of the City of New York. All permits issued shall be revocable by the Commissioner at his/her discretion without a hearing or the necessity of showing cause.

(i) If an operator of a vehicle with a gross weight of 300,000 pounds or more seeks to cross a bridge under the jurisdiction of the Department of Transportation of the City of New York, the operator must comply with the following:

(A) A load rating determined by a New York State licensed Professional Engineer with at least three years experience in the design, inspection and load rating of bridges must be submitted with the permit application. The information contained within such load rating shall include, but is not limited to: (1) the ratings for the inventory and operating level for all structural elements of the bridge so that the critical element of the bridge is identified; (2) the actual weight of the vehicle per axle and the actual axle spacing; and (3) the method used for establishing the capacity of the bridge(s). Load ratings shall be submitted for each bridge on the travel route. Load ratings should conform to "Level 1" load ratings pursuant to New York State Department of Transportation Engineering Instructions for Load Ratings and the latest edition of the American Association of State Highway and Transportation Officials (AASHTO) Condition Evaluation of Bridges. Each load rating must be stamped and certified by the licensed Professional Engineer who prepared it.

(B) Within one week from the vehicle's crossover of the bridge(s), the permittee must file a post inspection report of the bridge(s) with the Department. The post inspection report should analyze the structural integrity of the bridge(s), to the Department's satisfaction, as a result of the vehicle's crossover. If the post inspection report indicates any type of distress to the bridge(s), the permittee must rectify the distress and/or damage to the Department's satisfaction. The permittee may submit a pre-inspection report of the bridge's structural integrity for comparison purposes; otherwise the Department will use its latest biennial inspection reports for such purposes. Any pre or post inspection report must comply with the requirements set forth in the latest edition of the New York State Department of Transportation Bridge Inspection Manual. Any distress that is not identified in the pre-inspection report or the biennial inspection reports will be deemed to have been caused by the move.

(C) Should the permittee fail to comply with any of the requirements contained in this subparagraph, the Commissioner may refuse to issue future overweight and/or overdimensional vehicle permits to the permittee.

(ii) Reserved.

(16) **Permits for vehicles operating pursuant to governmental regulation.** (i) Where compliance with the requirements of a governmental regulatory agency necessitates exceeding the weight limitations provided herein, a

permit may be issued by the Commissioner on application therefor, for a vehicle to exceed such prescribed weight limitations to the extent necessary to meet the governmental regulatory requirements, but in no event shall the allowable total vehicle weight provided herein be exceeded.

(ii) The application shall include the type of vehicle, the manner and extent to which the weight limitations are to be exceeded, the design details causing such excess and a copy of the governmental regulatory agency requirements.

(17) **Fees.** An administrative fee of $35.00 shall be charged for each and every permit issued under this subdivision (b) unless otherwise provided by law. This fee shall not be refundable and is payable in addition to any other fees or charges provided for under the rules of the Department of Transportation.

(18) **Exemptions.** (i) **Fire Department vehicles.** The provisions of this subdivision (b) with respect to the limitations of the weight on axles shall not apply to vehicles of the Fire Department, but in no event shall the allowable total vehicle weight provided hereby be exceeded.

(ii) **Department of Sanitation vehicles.** The provisions of this subdivision (b) with respect to the width of a vehicle shall not apply to the sweepers of the Department of Sanitation, provided they do not exceed 11 feet in width.

(iii) **Vehicles working on highways.** The provisions of this subdivision (b) with respect to the width of a vehicle shall not apply to vehicles engaged in work on a highway.

(c) **Enforcement; measurement and weight of vehicles.** Any law enforcement officer or any inspector of the Department of Consumer Affairs of the City of New York having reason to believe that any vehicle or load is in violation of the restrictions in subdivision (b), above, is authorized to stop the vehicle on any public highway or private street open to public motor vehicle traffic and measure and weigh it by means of portable or stationary measures and scales. Any law enforcement officer or such inspector may require that the vehicle be driven to the nearest scales, if they are within 3 miles.

(d) **Responsibility for damages.** The owner and operator of any vehicle used in the business of a motor carrier, and the carrier, if the vehicle is actually engaged in the conduct of the business, shall be jointly and severally responsible for all damages, to any highway, bridge or culvert resulting from the movement over or under them of any such vehicle that violates any of the weight or size provisions of subdivision (b) above.

(e) **Special concrete plant.** Upon application in writing and for cause shown, the Commissioner may issue permits to exceed the maximum weight limits provided for in these rules for two- or three-axle vehicles operated in connection with the manufacture or supply of concrete for construction projects located in New York City, provided that such vehicles are registered to or leased by the owner of a manufacturing facility constructed subsequent to January 1, 1986 on land provided by the City for such purposes.

(f) **Annual overweight load permit.** (1) **Permits generally.** Except where inconsistent with any federal law, rule or regulation, the Commissioner may issue an annual oveweight load permit, as provided in subdivision fifteen of section three hundred eighty-five of the Vehicle and Traffic Law, to expire on the date of expiration of the registration of the vehicle, for any vehicle designed and constructed to carry loads that are not of one piece or item, which vehicle currently is registered in this State and operational on public highways in this State and which was registered in this State and operational on public highways in this State immediately prior to January first, nineteen hundred eight-six, in accordance with the following subparagraphs. The Commissioner also may issue an annual permit to a vehicle or combination of vehicles which replaces a vehicle, which vehicle or combination of vehicles was registered in this State and operational on public highways in this State immediately prior to January first, nineteen hundred eighty-six, provided the manufacturer's recommended maximum gross weight of the replacement vehicle or combination of vehicles does not exceed the weight for which a permit may be issued and the maximum load to be carried on the replacement vehicle or combination of vehicles does not exceed the maximum load which could have been carried on the vehicle being replaced or the registered weight of such vehicle, whichever is lower, in accordance with the

following subparagraphs. Motor carriers having apportioned vehicles registered under the international registration plan either must have a currently valid permit as of January first, nineteen hundred ninety-four or shall have designated New York as their base state under the international registration plan in order to be eligible to receive such permit.

If a permit holder operates a vehicle or combination of vehicles in violation of any posted weight restriction, the permit issued to such vehicle or combination of vehicles shall be deemed void as of the next day and shall not be reissued for a period of twelve calendar months; provided, however, that if such violation is adjudicated in favor of the permittee by the New York State Traffic Violations Bureau, the permit shall be reinstated immediately upon presentation of a copy of such judgment to the Commissioner.

(i) A permit may be issued for a vehicle having at least three axles and a wheelbase not exceeding forty-four feet nor less than seventeen feet or for a vehicle with a trailer not exceeding forty feet.

A permit may only be issued for such a vehicle having a maximum gross weight not exceeding seventy-nine thousand pounds and any tandem axle group weight shall not exceed fifty-nine thousand pounds, and any tridem shall not exceed sixty-four thousand pounds.

(ii) A permit may be issued only until December thirty-first, nineteen hundred ninety-nine for a vehicle or combination of vehicles that has been permitted within the past four years having five axles and a wheelbase of at least thirty-six and one-half feet. The maximum gross weight of such a vehicle or combination of vehicles shall not exceed one hundred five thousand pounds and any tandem axle group weight shall not exceed fifty-one thousand pounds.

A permit may be issued for a vehicle or combination of vehicles having at least five axles and a wheelbase of at least thirty feet. The maximum gross weight of such vehicle or combination of vehicles shall not exceed ninety-three thousand pounds and any tandem axle group weight shall not exceed forty-five thousand pounds and any tridem axle group weight shall not exceed fifty-seven thousand pounds.

(iii) A permit may be issued for a vehicle or combination of vehicles having at least five axles or more and a wheelbase of at least thirty-six and one-half feet, provided such permit contains routing restrictions.

Until December thirty-first, nineteen hundred ninety-four, the maximum gross weight of a vehicle or combination of vehicles permitted under this subparagraph shall not exceed one hundred twenty thousand pounds and any tandem or tridem axle group weight shall not exceed sixty-nine thousand pounds, provided, however, that any replacement vehicle or combination of vehicles permitted after January first, nineteen hundred ninety-five, shall have at least six axles, any tandem axle group shall not exceed fifty thousand pounds and any tridem axle group shall not exceed sixty-nine thousand pounds.

After December thirty-first, nineteen hundred ninety-four, the tridem axle group weight of any vehicle or combination of vehicles issued a permit under this subparagraph shall not exceed sixty-seven thousand pounds, any tandem axle group weight shall not exceed fifty thousand pounds and any single axle weight shall not exceed twenty-five thousand seven hundred fifty pounds.

After December thirty-first, nineteen hundred ninety-nine, all vehicles issued a permit under this subparagraph must have at least six axles.

(iv) A permit may be issued for a vehicle having two axles and a wheelbase not less than ten feet, with the maximum gross weight not in excess of one hundred twenty-five percent of the total weight limitation as set forth in subdivision ten of section three hundred eighty-five of the New York State Vehicle and Traffic Law. Furthermore, any axle weight shall not exceed twenty-seven thousand pounds.

(2) **Combination permits.** (i) Each power unit of a combination of vehicles must have its own annual overweight load permit. A power unit may be used to obtain any number of permits for different combinations of vehicles as long

as each permit has a maximum of five trailers per power unit. Only the first permit issued to a power unit pursuant to this paragraph is transferable pursuant to subparagraph (ii) of paragraph three of this subdivision.

(ii) A permit issued to a power unit for a combination of vehicles under subparagraph (i) of this paragraph may not be used for trailers other than those specifically listed on each permit.

(iii) All trailers must be listed on the corresponding permit by vehicle identification number (VIN), license plate number or trailer certificate of title number.

(iv) For each permit issued to a power unit for a combination of vehicles, up to five trailers will be listed with the payment of a $25.00 fee for each trailer other than the first trailer in addition to the permit fee set forth in subparagraph (ii) of paragraph six of this subdivision.

(3) **Replacement vehicle permits.** A "replacement vehicle" is a vehicle or combination of vehicles that replaces a vehicle with a current annual overweight load permit. A replacement vehicle may be eligible for an annual overweight load permit, subject to the following:

(i) A replacement vehicle or combination of vehicles may be eligible for an annual overweight load permit, provided the manufacturer's recommended maximum gross weight of the replacement vehicle or combination of vehicles does not exceed the weight for which a permit may be issued pursuant to this section and the maximum load to be carried on the replacement vehicle or combination of vehicles does not exceed the maximum load which could have been carried on the vehicle being replaced or the registered weight of such vehicle, whichever is lower.

(ii) Effective October 1, 1995, an annual overweight load permit may only be transferred to a replacement vehicle with the same registrant or transferred with the permitted vehicle as part of the sale or transfer of the permit holder's business. Acceptable forms of proof of the sale or transfer of the permit holder's business shall include, but not be limited to, a notarized statement, a statement attested to by at least two independent witnesses, a certified copy of the document of sale or transfer, a will or other official document disposing of the business. Only one permit issued to a power unit pursuant to paragraph two above is eligible for transfer.

(iii) **Banking.** (A) For purposes of this section, "banked weight" shall mean the New York State highest registered gross legal weight of a vehicle or combination of vehicles prior to April first, nineteen hundred eighty-seven; such vehicle or combination of vehicles must have been registered in New York State and operational on public highways in this State immediately prior to January first, nineteen hundred eighty-six in order to be part of the banked weight system.

(B) Excess weight capacity that can be banked arises from the following situations:

(a) a replacement vehicle has a gross vehicle weight less than the banked weight capacity of the replaced vehicle; or

(b) the statutory reduction in allowable maximum weights under the permit results in a permissible maximum weight less than the banked weight capacity; or

(c) there is a voluntary surrender of a permit or permits in order to obtain one or more replacement permits, and there is excess weight after the issuance of the new permit or permits; or

(d) there is a voluntary surrender of a permit without obtaining a new permit.

(C) Any vehicle whose permit has been surrendered voluntarily, and its weight banked, cannot obtain another annual overweight load permit.

(D) Banked weight can be used only to justify the acquisition of additional vehicles or combinations of vehicles

pursuant to this subdivision.

(a) Claims of replacement vehicle rights based on banked weight capacity must indicate the source of the banked weight capacity.

(b) The banked weight capacity for any replacement vehicle or combination of vehicles shall not exceed the allowable permitted weight for such replacement vehicle or combination of vehicles, and shall not exceed the gross weight capacity of the replaced vehicle or combination of vehicles.

(c) Unused banked weight capacity cannot justify a replacement vehicle or combination of vehicles that has a gross weight capacity greater than the replaced vehicle or combination of vehicles.

(d) Any replacement vehicle may be replaced pursuant to the provisions of this section; when a replacement vehicle; has been replaced it becomes ineligible for further annual overweight load permits pursuant to this section.

(E) If a permit is revoked pursuant to the provisions of this subdivision, the permitted weight cannot be banked.

(4) **Leasing.** (i) The lessor of a leased vehicle may obtain a permit for the vehicle pursuant to this subdivision (f).

(ii) The lessee of a leased vehicle who has an exclusive leasing arrangement that exceeds thirty days will be presumed to be the registrant for purposes of obtaining a permit, unless shown otherwise.

(iii) Where a leasing agreement is for thirty days or less, and the lessor has not obtained a permit for the leased vehicle, the lessee must obtain a single use permit for each day of operation of the leased vehicle pursuant to paragraph fifteen of subdivision (b) of this section.

(5) **Permit application.** (i) **General.** (A) Except as otherwise provided in this section for daily permits, eligible vehicles or combinations of vehicles exceeding allowable weights pursuant to law are required to obtain an annual overweight load permit from the Commissioner pursuant to this subdivision in order to operate on those highways under the jurisdiction of the Commissioner. An annual overweight load permit is not valid unless the vehicle or combination of vehicles is operated and maintained in accordance with the provisions of these Rules and with any other special requirements indicated on the permit.

(B) All applications must be on the forms prescribed by and available from the Commissioner.

(C) The permit application and procedures for granting permits shall be made available to a registrant upon request at the Department of Transportation, Authorized Permits and Parking Division, by mail or in person, and must be completed in all respects by the registrant or his legal representative. The applicant must be the registrant of the vehicle, except where there is a leased vehicle as provided in this subdivision.

(ii) **Proof of registration.** (A) All vehicles, including vehicles to be replaced, must have been registered in this State and operational on public highways in the State of New York immediately prior to January first, nineteen hundred eighty-six. To obtain a permit, the registrant must show proof of valid New York State registration for the vehicle or combination of vehicles and must maintain such New York State registration for the duration of the permit.

(B) The applicant must submit with his application a copy of the registration of each vehicle or replacement vehicle.

(C) The burden of proof in establishing the validity and existence of the New York State registration is upon the applicant.

(iii) **Identification of vehicle and load.** (A) The power unit shall be identified by make, year of manufacture, model number, vehicle identification number (VIN), and license plate number.

(B) The manufacturer's recommended gross weight rating and the registered gross vehicle weight shall be indicated on an annual overweight load permit application for replacement vehicles.

(C) Manufacturer's maximum axle weight(s), axle spacing, number of tires, and maximum tire load spacing shall be indicated on an annual overweight load permit application for all vehicles.

(iv) **Procedure.** The applicant must complete the required application information and submit the required number of copies of such application, together with the required permit fee(s), as well as any required documentation, to the Commissioner by mail or in person. All applications must be signed by the registrant or his legal representative.

(v) **Reapplication fee.** When a reapplication is made for a permit for the same vehicle or combination of vehicles that have been denied a permit, the initial annual vehicle fee shall be increased by $25.00.

(vi) **No refund after granting of permit.** No refund shall be made once an application for a permit has been filed and a permit granted by the Commissioner.

(vii) **False information voids permit.** Permits which have been issued on the basis of falsely stated information shall be null and void.

(viii) **New owners must obtain new permits.** If the registrant of the vehicle has been changed after a permit has been issued, the new owner(s) must obtain a modified permit.

(ix) **Permit application information.** (A) Registrants of vehicles eligibile for permits pursuant to this section must furnish to the Commissioner a certified copy of the vehicle's current New York State registration or registration pursuant to the international registration plan with New York State designated as the base state. The registrant also must provide a certified copy of the vehicle's registration, or other verifiable proof acceptable to the Commissioner, demonstrating that the vehicle was registered in New York State immediately prior to January first, nineteen hundred eighty-six; once such fact has been established with the Commissioner, subsequent permit applications do not require such proof, provided the most recent permit number for the vehicle is provided in the new permit application.

(B) The registrant must furnish to the Commissioner, vehicle measurements consisting of:

(a) Trailer length; and

(b) Number of axles; and

(c) Axle spacing; and

(d) Manufacturer's recommended gross vehicle weight; and

(e) Total wheelbase measurement (including tractor/steering axle); and

(f) Tire size and number of tires of each axle; and

(g) Manufacturer's maximum axle weight rating.

(6) **Fees.** (i) The following fees shall be charged and collected by the Commissioner for obtaining an annual overweight load permit. Fees shall be paid by money order, certified check, bank check, check drawn on a New York State bank, or a negotiable instrument acceptable to and made payable to the "New York City Department of Transportation." Fees must accompany each permit application. Improperly filed permit applications shall be subject to an administrative fee of $25.00.

(ii) The fee for an annual overweight load permit shall be $600 if for a period of six months or more. The fee for an

annual overweight load permit shall be $300 if for a period of less than six months.

(iii) If a check delivered to the Commissioner or his agent as payment of any fee for the registration of any vehicle or combination of vehicles is dishonored for insufficient funds, all permits issued in the name of that registrant shall be suspended and no other permit shall be issued to such person until full satisfaction of the fee is made and an additional fee of $25.00 is paid to the Commissioner. No such suspension shall be issued until thirty days after notification is mailed to the registrant at the address given on the application for the permit. If satisfaction is made within thirty days from the date of mailing of such notification, no suspension shall be issued and no additional fee shall be charged.

(g) **Crane Permits.** (1) Upon application in writing, the Commissioner may issue a special hauling permit to move certain mobile hoisting machines, also known as self-propelled cranes, the weight and dimensions of which exceed the limitations provided herein, upon any highway under his/her jurisdiction. Such hoisting machines shall be considered to constitute a nondivisible load.

(2) The special hauling permit, which shall expire on the 31st day of December next succeeding the date of issuance, may designate the route to be traversed and contain any other restrictions deemed appropriate by the Commissioner.

(3) The permittee shall be required to secure and maintain owners' protective liability and property damage insurance coverage in such amounts and upon such terms as deemed appropriate by the Commissioner.

(4) The fee for the issuance of such annual special hauling permit or renewal thereof shall be $100.00.

(h) **Vehicular weights on F.D.R. Drive.** No person shall operate or cause to be operated any vehicle in excess of 8000 lbs. (4 tons), including the weight of passengers and cargo, on the F.D.R. Drive northbound from 23rd Street to 63rd Street and the F.D.R. Drive southbound from 63rd Street to 23rd Street. These vehicles include, but shall not be limited to trucks, vans, government-owned vehicles, stretch limousines and buses. For the purposes of enforcement, signs need not be posted for this rule to be in effect.

(i) **Overdimensional and/or Overweight Vehicle Bulk Milk Permit.**

(1) **Permits Generally.**

(i) Except where inconsistent with any federal or state law, rule or regulation, the Commissioner may issue a permit, as provided for in paragraph (c) of subdivision fifteen of section three hundred eighty-five of the Vehicle and Traffic Law, to operate or move a combination of vehicles, which for the purpose of this rule shall be limited to one power unit and one trailer except as provided in subparagraph (viii) of paragraph (3) of this subdivision, designed and constructed to carry milk in bulk, the lengths and/or weights of which exceed the limitations provided in subdivision b of this section.

(ii) The permit shall authorize only the transportation of bulk milk within the City of New York to a milk processing facility located within the City of New York or the transportation by such a combination of vehicles out of the City of New York empty or carrying bulk cream, at weights not to exceed the limitations provided in subdivision b of this section, from the milk processing facility.

(iii) A permit issued pursuant to this subdivision shall designate a route approved by the Commissioner. A combination of vehicles operating under a permit issued pursuant to this subdivision may only travel along the route designated on the permit. There shall be one permit per combination of vehicles allowing the combination of vehicles to enter the City of New York and a separate permit allowing the combination of vehicles to leave the City of New York.

(iv) Combinations of vehicles designed and constructed to carry milk in bulk that exceed allowable lengths and/or weights pursuant to law are required to obtain a permit from the Commissioner pursuant to this subdivision in order to

operate on those highways under the jurisdiction of the Commissioner.

(v) No permit shall be issued for a combination of vehicles that exceeds 99,000 pounds.

(vi) Permits shall be issued on a quarterly basis.

(2) **Permit Application.**

(i) **Generally.**

(A) A permit issued pursuant to this subdivision is not valid unless the combination of vehicles is operated and maintained in accordance with the provisions of this subdivision and with any other special requirements indicated on the permit.

(B) The applicant shall be the registrant of the combination of vehicles except, in the case of a combination of vehicles leased pursuant to an exclusive leasing arrangement that exceeds thirty days, the applicant shall be the lessee. The applicant shall supply his/her Federal Tax ID number.

(C) The permit application and the procedures for granting permits shall be made available to an applicant upon request at the Department of Transportation, Division of Bridges, Truck Permit Unit, by mail, email or in person, and shall be completed in all respects by the applicant or his/her legal representative.

(D) All applications shall be on the forms prescribed by and available from the Commissioner.

(ii) **Identification of vehicle and load.** The power unit and trailer(s) shall be identified on the application by make, year of manufacture and license plate numbers and State.

(iii) **Vehicle Measurements.** Applicants shall furnish to the Commissioner all of the following vehicle measurements:

(A) Trailer length;

(B) Number of axles, including axle spacing and axle weights;

(C) Total wheelbase measurement (including tractor/steering axle);

(D) Overall width;

(E) Overall length;

(F) Overall height; and

(G) Total gross vehicle weight including load (tractor, trailer and load).

(iv) **Attestation.** Applicants shall furnish to the Commissioner a sworn and notarized statement attesting that the vehicles for which a permit application has been submitted will be used solely for the transport of bulk milk or cream.

(v) **Procedure.** The applicant shall complete the required application information and submit the required number of copies of such application, together with the required permit fee(s), as well as any required documentation, to the Commissioner by mail or in person. All applications shall be signed by the applicant or his/her legal representative.

(vi) **Reapplication Fee.** When a reapplication is made for a permit under this subdivision for the same combination of vehicles that has been denied a permit, the initial permit fee shall be increased by an administrative fee of $25 in accordance with subparagraph (vii) of paragraph (3) of this subdivision.

(vii) **No refund after granting of permit.** No refund shall be made once an application for a permit under this subdivision has been filed and a permit granted by the Commissioner.

(viii) **False information voids permit.** Permits that have been issued on the basis of falsely-stated information shall be null and void.

(ix) **New owners shall obtain new permits.** If the ownership of a combination of vehicles, or the identity of the lessee in the case of a combination of vehicles leased pursuant to an exclusive leasing arrangement that exceeds thirty days, changes after a permit under this subdivision has been issued, the new owner(s) or lessee(s) shall obtain a modified permit and shall pay the applicable quarterly fee specified in paragraph (3) of this subdivision.

(3) **Permit Fees.**

(i) The following fees shall be charged and collected by the Commissioner for obtaining a permit or modified permit, issued on a quarterly basis, pursuant to this subdivision. Fees shall be paid by money order, certified check, bank check, check drawn on a New York State bank, or a negotiable instrument acceptable to and made payable to the "New York City Department of Transportation." Fees shall accompany each permit application. The fee for a permit issued pursuant to this subdivision shall be $650 per combination of vehicles, except as otherwise provided in this subparagraph (3).

(ii) At the beginning of the third year following the effective date of this Rule:

(a) If the total number of permits pursuant to this subdivision issued to the applicant in the second year following the effective date of this Rule is at least 25% less than the total number of permits issued to the applicant in the first year following the effective date of this Rule ("the base-line year amount"), then the fee for a permit shall be $650 per combination of vehicles.

(b) Otherwise, the fee for a permit shall be $715 per combination of vehicles.

(iii) At the beginning of the fourth year following the effective date of this Rule:

(a) If the total number of permits pursuant to this subdivision issued to the applicant in the third year following the effective date of this Rule is at least 50% less than the base-line year amount, then the fee for a permit shall be $650 per combination of vehicles.

(b) Otherwise, the fee for a permit shall be $780 per combination of vehicles.

(iv) At the beginning of the fifth year following the effective date of this Rule:

(a) If the total number of permits pursuant to this subdivision issued to the applicant in the fourth year following the effective date of this Rule is at least 75% less than the base-line year amount, then the fee for a permit shall be $650 per combination of vehicles.

(b) Otherwise, the fee for a permit shall be $812.50 per combination of vehicles.

(v) At the beginning of the sixth year following the effective date of this Rule:

(a) If the total number of permits pursuant to this subdivision issued to the applicant in the fifth year following the effective date of this Rule is 100% less than the base-line year amount, the fee for a permit shall be $650 per combination of vehicles.

(b) Otherwise, the fee for a permit shall be $845 per combination of vehicles.

(vi) Permit fees specified in this paragraph shall apply separately to permits to enter the City of New York and permits to leave the City of New York.

(vii) Reapplication for a permit that has been denied shall be subject to an administrative fee of $25.

(viii) The permit fees provided in subparagraphs (i) through (v) of this paragraph shall apply to permits for one specific power unit and one specific trailer. Applicants may apply for a quarterly permit under this subdivision to attach up to four additional specific trailers to one specific power unit, provided that only one trailer may be used with such power unit at any given time. The fee for a multiple trailer-single power unit combination permit shall be $100 per quarter more than the permits fees provided in subparagraphs (i) through (v) of this paragraph.

(ix) If a check delivered to the Commissioner or his/her agent as payment of any fee for the permitting of any combination of vehicles is dishonored for insufficient funds, all permits issued in the name of that applicant shall be suspended and no other permit shall be issued to such person until full satisfaction of the fee is made and an additional fee of $25 is paid to the Commissioner. No such suspension shall be issued until thirty days after notification is mailed to the applicant at the address given on the application for the permit. If satisfaction is made within thirty days of mailing such notification, no suspension shall be issued and no additional fee shall be charged.

(4) **Expiration of Permit Program.** After the sixth year following the effective date of this Rule, no permit shall be issued.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (b) par (2) amended City Record Mar. 17, 1995 eff. Apr. 16, 1995.

Subd. (b) par (10) amended City Record Feb. 9, 2009 §1, eff. Mar. 11, 2009. [See Note 2]

Subd. (b) par (15) amended City Record Jan. 3, 2007 §1, eff. Feb. 2, 2007. [See Note 1]

Subd. (b) par (17) amended City Record May 13, 2009 §1, eff. June 12, 2009. [See Note 3]

Subd. (f) repealed and added City Record Mar. 27, 1995 eff. Apr. 26, 1995.

Subd. (f) par (4) subpar (iii) amended City Record Mar. 28, 2005 §12, eff. Apr. 27, 2005. [See T34

§4-01 Note 2]

Subd. (f) par (5) subpar (i) item (C) amended City Record Mar. 19, 2001 eff. Apr. 18, 2001.

Subd. (h) amended City Record Apr. 1, 1999 eff. May 1, 1999.

Subd. (i) added City Record June 17, 2009 §1, eff. July 17, 2009. [See Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 3, 2007:

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding traffic operations in the City pursuant to §2903(a) of the New York City Charter.

Paragraph (15) of subdivision (b) of §4-15 is being amended to require applicants filing for an overweight and/or overdimensional vehicle permit to file with their permit application an engineer's load rating for every bridge under the jurisdiction of the Department of Transportation which the applicant expects to cross. It also requires post inspection reports to be filed by the permittee's engineer for a structural integrity analysis of the bridge(s) crossed. This will expedite the permit process and safeguard the integrity of the bridges subjected to heavy loads.

2. Statement of Basis and Purpose in City Record Feb. 9, 2009: The Commissioner of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903(b) of the New York City Charter and Title 19 of the New York City Administrative Code. The Department is increasing the legal weight limit for trucks in order to comply with state-wide standards. Engineers within the Department currently use the same formula as those from the New York State Department of Transportation when evaluating the permissible weight of vehicles crossing structures in New York City. As State DOT permits weight of up to 80,000 pounds, the Department wants its rules to be accordingly consistent in order to minimize disruptions in interstate commerce.

3. Statement of Basis and Purpose in City Record May 13, 2009: The Commissioner of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. Section 4-15 is being amended to increase the fees collected for overweight and overdimensional truck permits. The fee currently charged by the Department no longer accurately reflects administrative and labor costs incurred in processing these permits.

4. Statement of Basis and Purpose in City Record June 17, 2009: The Commissioner of Transportation is authorized pursuant to Section 2903(a)(1) of the New York City Charter to promulgate rules and regulations for the conduct of vehicular and pedestrian traffic in the streets, squares, avenues, highways and parkways of the City of New York. This rule amends section 4-15 of Chapter 4 of Title 34 of the Rules of the City of New York by adding a new subdivision (i) to authorize the issuance of permits for overdimensional and/or overweight combinations of vehicles utilized by haulers of bulk milk. On a daily basis, over one hundred vehicles hauling bulk milk enter the City of New York to transport bulk milk to processing facilities and exit the City empty or carrying bulk cream. The vast majority of these vehicles currently exceed the length and weight limitations set forth in section 4-15 for vehicles operating or moving on highways or bridges in the City. These overdimensional and overweight trucks damage City streets and highways. At the same time, milk haulers will require additional time to convert their fleets to trucks that comply with the City's length and weight requirements. Section 385(15)(d) of the Vehicle and Traffic Law recognizes that milk haulers may be offered permits not available to other truck haulers. Thus, the Commissioner promulgates a rule that will provide the haulers of bulk milk an incentive to phase in, over a six-year period, the use of smaller trucks that, when carrying bulk milk or cream, would meet the City's length and weight limitations. To accomplish this goal, the rule authorizes the issuance of quarterly overdimensional and overweight permits over a period of six years and imposes a schedule of fees that increase if the applicant does not decrease the number of permits required by a certain percentage. The increases will be implemented beginning with those permits issued during the third year of the rule if the number of permits issued during the prior year has not decreased by a fixed percentage from the first year that the proposed rule is in effect. After the sixth year, no permits will be issued.

CASE NOTES

¶ 1. Absent reasonable suspicion of a vehicle violation involving excess weights of vehicles, a "routine traffic check" to determine whether the vehicle is in compliance with the law is permissible only when conducted according to non-arbitrary, non-discriminatory uniform procedures for detecting violations. Where there is no evidence that the petitioner was stopped pursuant to such a procedure, the charges of violation of Section 34 RCNY §4-15 must be dismissed. Casolino Interior Demolition Corp. v. Martinez, 29 A.D.3d 691, 814 N.Y.S.2d 720 (2nd Dept. 2006).

34 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-01 Definitions.

Access-a-Ride. "Access-a-Ride" is the service name of the City-sponsored program to provide transportation to eligible persons.

Advance-reservation trip. "Advance-reservation trip," means a one-way trip for which a reservation shall have been made in accordance with §5-03(b) hereof.

Carrier. "Carrier" means a company that has contracted with the City to provide Access-a-Ride transportation to eligible persons in a borough of the City.

Director. "Director" means the official of the City Department of Transportation whose duties consist of or include the management and oversight of Access-a-Ride, or his or her designee.

Eligible person. An "eligible person" means a transportation-disabled person who has been certified as eligible to participate in Access-a-Ride, in accordance with the requirements established by the Transportation Disabled Committee and set forth in the Access-a-Ride registration form.

Late cancellation. "Late cancellation" means any cancellation received by a carrier after 3:00 p.m. on the day preceding a scheduled subscription trip or advance-reservation trip.

No show. A "no show" means an occasion on which a participant has not cancelled a prescheduled subscription trip or advance-reservation trip and has subsequently failed to be present at the scheduled pick-up site as provided in

§5-05(a) hereof.

Office of Paratransit Operations. "Office of Paratransit Operations" means the City Department of Transportation's Office of Paratransit Operations, and any successor governmental office, bureau, or agency thereof.

Participant. "Participant" means an eligible person.

Subscriber. "Subscriber" means an eligible person who has been granted an Access-a-Ride subscription by the Office of Paratransit Operations.

Subscription trip. "Subscription trip" means a regularly scheduled one-way trip taken pursuant to an Access-a-Ride subscription.

Transportation Disabled Committee. "Transportation Disabled Committee" means the committee established pursuant to §15-b of the Transportation Law, and any successor committee, agency, bureau or entity thereof.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-02 [Reserved]

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-03 Subscription and Advance-Reservation Trips.

(a) **Subscriptions.** (1) Subscriptions shall be for not less than one one-way trip per week and not more than five round trips per week. The Office of Paratransit Operations may set an expiration date for each subscription, which in no case shall be later than three years after the date the subscription was granted.

(2) The Office of Paratransit Operations may hold one or more lotteries to select subscribers, in which case the lottery pool shall consist of all eligible persons who have applied for an Access-a-Ride subscription.

(b) **Advance-reservation trips.** An advance-reservation trip shall be reserved in advance by a participant not more than three days and not less than one day preceding the trip. Such trip may be provided on a space available basis. A participant may request a same-day trip, which trip the carrier shall also provide on a space-available basis.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 5-04

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-04 Cancellations.

(a) **Required notification of a cancellation**. A participant who for any reason is unable to take a scheduled trip shall notify the carrier no later than 3:00 p.m. on the day preceding the scheduled trip.

(b) **Repeated late cancellations.** Six or more late cancellations within a six-month period may result in the suspension of a participant from Access-a-Ride for up to one month, at the discretion of the Director.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 5-05

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-05 Participant Obligations For Pick-Up.

(a) **Pick-up time**. A participant shall wait at the prearranged pick-up site for at least five minutes before and at least thirty (30) minutes after the scheduled pick-up time.

(b) **Effect of a "no-show."** If there has been a "no-show" in the first part of a round trip, the carrier may automatically cancel the participant's return trip. The participant may request the carrier to reinstate the return trip, which trip the carrier shall provide on a space-available basis.

(c) **Repeated "no-shows."** Three or more "no-shows" within a six month period may result in the suspension of a participant from Access-a-Ride for up to one month, at the discretion of the Director.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

34 RCNY 5-06

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-06 Eligibility Review Board.

(a) There shall be in the Access-a-Ride program of the Department an eligibility review board (the "Board") consisting of the assistant director of Access-a-Ride, who shall be chairperson, and two persons who shall be appointed by the Director, who shall serve on the Board at the pleasure of the Director, without compensation, and who are not otherwise employed by the Department. One of such two members shall be one of the following: a licensed physician, a license occupational therapist, a licensed physical therapist, a licensed rehabilitation counselor, chiropractor, certified social worker (C.S.W.) or a registered nurse. The other member shall be an eligible passenger. The chairperson shall have the power to exercise or delegate any of his or her functions, powers or duties as chairperson and member of the Board to any employee of the Department, subject to the written approval of the Deputy Commissioner of Transit Operations.

(b) The Director may appoint an alternate member, who shall meet the qualification requirements of paragraph (a) of this section, for any member who is unable to attend a particular meeting. The Director may appoint a replacement member to fill any vacancy on the Board.

(c) A quorum shall consist of a majority of the members of the Board, and any decision of the Board shall be approved by vote of a majority of the board.

(d) Any person who is the subject of a decision of the Department for any of the reasons set forth below may request the Board to review such decision:

(1) a denial of participation in Access-a-Ride because of a decision that he or she does not meet the criteria for

eligibility; or

(2) a termination of participation in Access-a-Ride because of a decision that his or her application was not certified in accordance with the eligibility requirements established by the Transportation Disabled Committee; or

(3) a suspension or termination of participation in Access-a-Ride in accordance with the rules of the Access-a-Ride program.

(e) When a person requests Board review of a Department decision, the Board shall review written materials provided to the Board by the Department and the person who is making the request for review. The Board, in its sole discretion, may request additional information from the Department and/or the person making the request or may provide the person making the request an opportunity to appear before the Board.

(f) After reviewing all information provided, the Board shall make a recommendation to the director of Access-a-Ride, who shall make the final decision. The Director shall inform the person who made the request of the Department's final decision.

HISTORICAL NOTE

Section added City Record Apr. 10, 1991 eff. May 10, 1991.

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***** Current through December 2009 ****

34 RCNY 5-07

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-07 Participant Behavior.

(a) No participant shall perform any act which causes or may tend to cause harm, injury or damage to any other participant in Access-a-Ride, to an employee of an Access-a-Ride carrier or the Access-a-Ride program, or to any vehicle or other property of an Access-a-Ride carrier.

(b) No participant shall cause harm to or interfere with the safe and efficient operation of Access-a-Ride service.

(c) A violation of any of the provisions of this section by a participant may result in the suspension or termination of such participant from Access-a-Ride, at the discretion of the Director.

HISTORICAL NOTE

Section added City Record Oct. 25, 1991 eff. Nov. 24, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 6 GENERAL PROVISIONS

§6-01 Adjudications.

New York City Department of Transportation adjudications regarding the fitness and discipline of agency employees will be conducted by the Office of Administrative Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 7-01

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-01 Definitions.

Administrative Code. "Administrative Code" means the Administrative Code of the City of New York.

Charter. "Charter" means the New York City Charter.

Commissioner. "Commissioner" means the Commissioner of the Department of Transportation of the City of New York or his or her designee.

Department. "Department" means the Department of Transportation of the City of New York.

DCP. "DCP" means the Department of City Planning of the City of New York.

DoITT. "DoITT" means the Department of Information Technology and Telecommunications of the City of New York.

Improvement. "Improvement" means a tangible thing or object which may be installed on, over or under a street, or any private use of a street.

Public Service Corporation. "Public Service Corporation" means an entity subject to the jurisdiction of the Public Service Commission under the Public Service Law.

Revocable Consent. "Revocable Consent" means a grant of a right, revocable at will, (1) to any person to construct and use for private use pipes, conduits and tunnels under, railroad tracks upon, and connecting bridges over inalienable

property, (2) to an owner of real property or, with the consent of the owner, to a tenant of real property to use adjacent inalienable property for the purposes stated in §7-04 hereof or as may be permitted by rules of DoITT, or (3) to a public service corporation for facilities ancillary to, but not within, a franchise granted prior to July 1, 1990.

ULURP. "ULURP" means the Uniform Land Use Review Procedure as set out in §§197-c and 197-d of the Charter.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

DERIVATION

Former §7-01 Definitions amended City Record Apr. 22, 1993 eff. May 22, 1993.

Section added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

The Commissioner of the Department of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

These proposed amendments are intended to update and simplify the rules. The standards and rates have been combined with the list of improvements for ease of reference. The rates have increased slightly more than the rate of inflation since they were last amended in 1990. In addition, these amendments streamline the approval process and make the rates and requirements more equitable for revocable consent applicants. After consultation with the Department of City Planning the Department of Transportation is proposing standards for the following improvements: bench, fenced or walled-in area, flagpoles, stoop in landmark district or at landmark building, planted area, planter, post, pole or bollard, accessibility ramp, sockets for poles or stanchions, stoop, step or other entrance detail, street lamp, trash receptacle container and litter receptacle for public use.

On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 7-02

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-02 Requirement to Obtain a Revocable Consent.

No person or entity shall install or maintain any of the improvements listed in §7-04 of these rules without first obtaining a revocable consent from the Department. The Department shall not issue a revocable consent for any improvement which, in the judgment of DCP, has land use impacts or implications, unless such revocable consent has been reviewed and approved pursuant to ULURP. Revocable consents may not be assigned, transferred or otherwise conveyed without the prior written approval of the Commissioner.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7 footnote]

DERIVATION

Former §7-02 Private Improvements Eligible for Revocable Consents amended City Record Apr. 22, 1993 eff. May 22, 1993.

Section added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

The Commissioner of the Department of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

These proposed amendments are intended to update and simplify the rules. The standards and rates have been combined with the list of improvements for ease of reference. The rates have increased slightly more than the rate of inflation since they were last amended in 1990. In addition, these amendments streamline the approval process and make the rates and requirements more equitable for revocable consent applicants. After consultation with the Department of City Planning the Department of Transportation is proposing standards for the following improvements: bench, fenced or walled-in area, flagpoles, stoop in landmark district or at landmark building, planted area, planter, post, pole or bollard, accessibility ramp, sockets for poles or stanchions, stoop, step or other entrance detail, street lamp, trash receptacle container and litter receptacle for public use.

On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

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34 RCNY 7-03

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-03 DCP Review.

(a) The Department shall submit to DCP petitions for those improvements listed in §7-04(a) of these rules that do not meet the locational or dimensional standards in such §7-04(a). The Department shall also submit to DCP all petitions for the following improvements: bridge, above-ground cable, guard booth, information sign/kiosk, parking area for private use, and above-ground pipe/fuel line.

(b) DCP shall review each petition submitted by the Department to determine whether or not a proposed revocable consent has land use impacts or implications and whether, as a result, ULURP applies, and shall notify the Department of its determination. The Department shall notify the petitioner of the determination by DCP regarding the applicability of ULURP and shall stay its final decision pending ULURP approval.

(c) If ULURP is required, the petitioner shall obtain information and application forms pertaining to ULURP from DCP and file a ULURP application with DCP in accordance with the rules governing ULURP.

(d) No revocable consent shall be granted by the Department if the application for such consent has been disapproved pursuant to ULURP. A revocable consent may be granted by the Department if the application for such consent has been approved pursuant to ULURP or if DCP determines the proposed improvement has no land use impacts.

(e) The Department shall submit to DCP for review any petition for a renewal or amendment for an improvement listed in §7-04(a) of these rules where:

(1) such renewal or amendment includes a modification that does not meet a locational or dimensional standard in §7-04(a) or increases the degree of non-compliance with such locational or dimensional standard; or

(2) such petition is for a bridge, above-ground cable, guard booth, information sign/kiosk, parking area for private use, above-ground pipe/fuel line, and the renewal or amendment includes a modification to the location or an increase in the dimension of such improvement; or

(3) such petition is for a renewal or amendment of a consent that was approved by the City Planning Commission for a specific term, and the renewal or amendment would extend the consent beyond the term approved by the Commission.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

DERIVATION

Former §7-03 Processing Fees for Revocable Consents added City Record May 31, 1991 eff. June

30, 1991.

Subd. (a) amended City Record Apr. 22, 1993 eff. May 22, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

The Commissioner of the Department of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

These proposed amendments are intended to update and simplify the rules. The standards and rates have been combined with the list of improvements for ease of reference. The rates have increased slightly more than the rate of inflation since they were last amended in 1990. In addition, these amendments streamline the approval process and make the rates and requirements more equitable for revocable consent applicants. After consultation with the Department of City Planning the Department of Transportation is proposing standards for the following improvements: bench, fenced or walled-in area, flagpoles, stoop in landmark district or at landmark building, planted area, planter, post, pole or bollard, accessibility ramp, sockets for poles or stanchions, stoop, step or other entrance detail, street lamp, trash receptacle container and litter receptacle for public use.

On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

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***** Current through December 2009 ****

34 RCNY 7-04

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-04 Eligible Improvements; Standards; Annual Rates.

(a) The Commissioner may, in his or her discretion, grant, renew, modify, or rescind revocable consents for any of the improvements listed in this subdivision to be constructed or maintained on, over, or under City streets, in accordance with the requirements set forth in §364 of the Charter. Except as otherwise provided, annual compensation for the improvements listed in this subdivision shall be as set forth herein and, unless otherwise provided, shall not increase during the term of the revocable consent.

(1) **Accessibility lift to provide access for people with disabilities.**

(i) **Standard.** The lift shall be stored at the building end of its run and shall include appropriate safety devices. The lift shall not extend more than five and one half feet in the direction of the curb from the base of the steps when in use. In no instance shall the lift or any portion thereof extend beyond the curbline when in use.

(ii) **Annual rate.** $25. The annual fee for an accessibility lift shall be in addition to the normal fee for a stoop or stairway.

(2) **Bench.**

(i) **Standard.** No bench shall be greater than six feet in length. Benches greater than four feet in length shall be designed to discourage people from reclining. Benches adjacent and parallel to the building shall be installed no more than six inches from the building face and, if multiple benches are installed, they shall be at least three feet apart. A bench which is not anchored to the sidewalk shall be placed against the building face during hours that the benefited

property is open to the public and shall be stored inside the building when the building is closed.

(ii) **Annual rate.** $150.

(3) **Bridge.**

(i) To be referred to DCP to determine whether the improvement has land use impacts.

(ii) **Annual rate.** See §7-10. If the structure is not in use, the rate shall be 10% of the rate in effect pursuant to the formulas described in §7-10.

(4) **Cable, above-ground.**

(i) To be referred to DCP to determine whether the improvement has land use impacts.

(ii) **Annual rate.** See §7-10.

(5) **Cellar door, including stair.**

(i) **Standard.** All cellar doors required by §27-292(b)(4) of the Administrative Code shall be constructed pursuant to the requirements of the Administrative Code.

(ii) **Annual rate.** See §7-10.

(6) **Clock.**

(i) **Standard.** The base shall be no more than 18 inches in diameter. The lowest portion of the clock face shall be at least eight feet above the sidewalk. The overall height of the clock shall not exceed 15 feet. The clockface shall be no more than two feet in diameter. Time shall be maintained accurately. The name or logo and address of the adjacent premises may be displayed on the clockface; however, the total display space shall be no greater than one third of the square footage of the clockface.

(ii) **Annual rate.** $300.

(7) **Conduit and underground cable.**

(i) **Standard.** All conduit shall be underground.

(ii) **Annual rate.** See §7-10.

(8) **Electrical socket.**

(i) **Standard.** All electrical sockets shall be installed pursuant to the requirements of the New York City Department of Buildings.

(ii) **Annual rate.** $25.

(9) **Enclosure for trash receptacle, adjoining a building, for private use.**

(i) **Standard.** The enclosure shall be of non-flammable construction and shall be rodent proof. The enclosure shall be between three feet and five feet high, except in areas in the Bronx, Queens, Brooklyn and Staten Island zoned for manufacturing, mixed-use (MX), special purpose districts which allow manufacturing, or for automotive or other heavy commercial uses (C8), where the enclosure shall be between three feet and ten feet high, and shall be securely affixed to the sidewalk, fence, building, or other appropriate fixture.

(ii) **Annual rate.** The greater of $5 per square foot of area, as projected onto a horizontal plane or $25, except in areas zoned for manufacturing, where the annual rate shall be $1 per square foot of area, as projected onto a horizontal plane.

(10) **Fenced or walled-in area, including the enclosing structure, not used for planting or parking, including a fenced or walled-in area containing a drainage basin or a shopping cart storage area.** An area enclosed by a privately installed guard rail shall be deemed a fenced-in area and shall be subject to the standards below. Fences may be approved for no more than one year pursuant to the provisions in §2-10(j) of Chapter 2 of this Title 34, provided the placement of such fences is for temporary security purposes.

(i) **Standard.**

(A) The fence shall be no fewer than three and no greater than four feet high in residential and commercial zoning districts and shall be no fewer than three and no greater than ten feet high in manufacturing zoning districts, as such zoning districts are set forth in the Zoning Resolution, except that athletic play field fences may extend as high as 15 feet. Smooth edged finials may be attached to fence posts up to a maximum height of four feet, six inches in residential or commercial zoning districts. No chisel points or spikes shall be included on fences shorter than eight feet, except as approved by the Landmarks Preservation Commission.

(B) The fence shall be constructed of non-flammable, non-wood material. The use of opaque material (such as masonry) is limited to the base of the fence up to 21 inches in height and to vertical columns spaced at least five feet apart. Solid or opaque materials may comprise no more than 35 percent of the total vertical area of the fence above any opaque base. For metal fences, picket interspace shall measure between four and five and three-quarters inches, and picket width may measure up to one inch wide. Chain-link, where approved, shall have a two inch mesh and shall not include screening. Barbed wire is permitted in manufacturing zoning districts only. Razor wire is prohibited.

(C) No sign shall be attached to a fence.

(ii) **Annual rate.**

(A) Except as provided in §7-04(a)(10)(ii)(B), below, the first year's annual rate shall be the greater of $1500 or (C × L × 0.16 × A), as defined in §7-10(a) of these rules, and subsequent years' rates shall be determined in accordance with §7-10(c) of these rules.

(B) For non-commercial use connected to a residential building of six or fewer units, the greater of $100 or (C × L × 0.01 × A), as defined in §7-10(a) of these rules.

(11) **Flagpole.**

(i) **Standard.** The base shall be no larger than 18 inches in diameter and no fewer than 30 inches in height.

(ii) **Annual rate.** None (pursuant to §19-125(e) of the Administrative Code).

(12) **Guard booth.**

(i) To be referred to DCP to determine whether the improvement has land use impacts.

(ii) **Annual rate.** See §7-10.

(13) **Information sign or kiosk.**

(i) To be referred to DCP to determine whether the improvement has land use impacts.

(ii) **Annual rate.** See §7-10.

(14) **Litter receptacle for public use.**

(i) **Standard.** The litter receptacle shall be constructed of non-flammable, non-wood material and shall be securely affixed to the sidewalk or sufficiently heavy to prevent movement without considerable force. The minimum height of the receptacle shall be two feet, six inches, the maximum height shall be four feet and the maximum width shall be three feet, with an overall area not to exceed nine square feet. No side of the receptacle shall exceed three feet in width. The litter receptacle may include the grantee's logo and/or building or institution name no greater than one square foot in size, if the receptacle is adjacent to the named property.

(ii) **Annual rate.** $25.

(15) **Overhead Building Projection in excess of that allowed by the Administrative Code.**

(i) **Standard.** Overhead building projections shall be permitted over the street provided the minimum height above the siewalk is ten feet and the depth of the projection does not exceed three feet ten inches, inclusive of any depth permitted by §27-313(a) of the Administrative Code, to a height 30 feet above the sidewalk. Above 30 vertical feet the permitted depth shall be four feet, ten inches, inclusive of any depth permitted by the Administrative Code. Except for architectural details such as cornices, brackets and belt courses, which may extend across the full street frontage of a building, projections shall not have an aggregate width at any level of the building greater than 50 percent of the building frontage. Projections containing floor area shall be referred to DCP.

(ii) **Annual rate.** See §7-10.

(16) **Parking area for private use for non-residential property (if there is no charge to vehicle operator).**

(i) To be referred to DCP to determine whether the improvement has land use impacts.

(ii) **Annual rate.** The first year's annual rate shall be the greater of $600 or (C × L × 0.36 × A), as defined in §7-10(a) of these rules, and subsequent years' rates shall be determined in accordance with §7-10(c).

(17) **Pipe or fuel pipeline, above-ground.**

(i) To be referred to DCP to determine whether the improvement has land use impacts.

(ii) **Annual rate.** See §7-10. If the grantee is not using the structure, the Department may set rates without reference to the formulas described in §7-10.

(18) **Planted area, including any surrounding fence or wall.**

(i) **Standard.** Live vegetation shall occupy 80 percent of the area. No vegetation may overhang a sidewalk beyond the boundary of the planted area, including any fence, unless the overhanging vegetation is at least eight feet above the adjacent sidewalk area. No rocks, timbers, wickets (hoops) or other trip hazards shall serve as a border. Any surrounding fence or wall shall conform to the standards provided in item (10), above.

(ii) **Annual rate.** The greater of $2 per square foot of area, as projected onto a horizontal plane, or $25.

(19) **Planter that is larger than two feet in diameter or that occupies more than four square feet in area.** Planters may be approved for no more than one year pursuant to the provisions in §2-10(j) of Chapter 2 of this Title 34, provided the placement of such planters is for temporary security purposes. (Smaller planters may be approved through a permit obtained from the Department.)

(i) **Standard.**

(A) The planter shall be no fewer than 18 and no greater than 48 inches high. The maximum area, measured at the planter's widest point, shall be 25 square feet, and the maximum dimension of the planter shall be five feet along the side which is perpendicular to the curb or eight feet along the side which is parallel to the curb. (Planters installed against the building face may be continuous.)

(B) If a planter is proposed to be placed above a sidewalk vault, a professional engineer shall certify that the sidewalk can support a 600-pound per square foot live load.

(C) No planter shall be constructed of wood. Wood cladding of other planter types is permitted if such cladding is fireproof and graffiti resistant. Concrete tubs, two inches thick, are recommended.

(D) The Department recommends the planting of small shrubs and flowers as they require less maintenance and are hardier than small trees. No woody growth shall overhang the edge of the planter. Suggested tree species for planters are: Crab Apples (Florida Snow Drift); Euonymus Pateris (Shrub); Taxus O. Densifornius (Japanese Yew); Scotch Pine; Austrian Pine; Ilex Meserva; Cornus Mass (Corneliean Dogwood); Syringia Reticulata (Japanese Tree Lilac); Prunus Sargentii (Columnaris); Acer Ginnala (Amur Maple); Acer Truncatum; Viburnum Sieboldii (Tree Form Viburnum).

(E) Planters shall be maintained, shall contain live plants at all times and shall be kept free of debris and graffiti.

(ii) **Annual rate.** The greater of $2 per square foot of area as projected onto a horizontal plane, or $25 per planter.

(20) **Post, pole or bollard not otherwise governed by permit procedures contained in §19-125 of the Administrative Code.**

(i) **Standard.** The post, pole or bollard shall be no fewer than 30 inches high, no greater than 48 inches high, and no greater than 18 inches in diameter. If more than one post, pole or bollard is to be installed, they shall be at least four feet apart and shall not be joined with horizontal members. If a concrete-filled pipe design is used, it shall be capped or smoothed.

(ii) **Annual rate.**

(A) $125 each, minimum of $500 per consent.

(B) Post, pole or bollard adjacent to a building containing a marquee pursuant to a permit granted by the Department of Buildings, $25 each, minimum of $100 per consent.

(21) **Public service corporation facility ancillary to, but not within, a franchise granted prior to July 1, 1990.**

(i) **Standard.** Refer to standards in this section for individual structures.

(ii) **Annual rate.** See §7-10. This rate shall not apply to revocable consents approved as provided in subdivision (b) of this section.

(22) **Railroad tracks for private use.**

(i) **Standard.** Railroad tracks shall be located in an M or C8 zoning district outside any area improved for vehicular or pedestrian use, except that tracks may cross an existing or future driveway with the permission of the property owner served by such driveway.

(ii) **Annual rate.** The first year's annual rate shall be the greater of $500 or ($C \times L \times 0.04 \times A$), as defined in §7-10(a) of these rules, and subsequent years' rates shall be determined in accordance with §7-10(c).

(23) **Ramp intended to provide access for people with disabilities.**

(i) **Standard.**

(A) The Department may grant a revocable consent for a ramp which extends more than 44 inches from the building line for buildings erected prior to December 6, 1969, including any additional steps attached or ancillary to the ramp structure made necessary by the creation of the ramp. (§27-308 of the Administrative Code permits ramps to extend up to 44 inches from the building line for such buildings.) (Buildings erected after December 6, 1969 must contain ramps within the property line.)

(B) In the case of buildings erected between December 6, 1969 and September 5, 1987, the Department may grant a revocable consent for a ramp which extends more than 44 inches from the building line if the ramp will make a primary entrance to the building accessible.

(C) The ramp shall conform to the standards of the Americans With Disabilities Act, 36 CFR Part 1191, and §27-308 of the Administrative Code. A canopy may be erected above the ramp provided such canopy does not fully enclose the ramp and provided such ramp is adequately illuminated and complies with all other applicable regulations.

(ii) **Annual rate.** $25.

(24) **Retaining walls.**

(i) **Standard.** Retaining walls may be constructed only where warranted by existing grade or by a change in grade undertaken with prior approval by the Department of Buildings.

(ii) **Annual rate.** See §7-10.

(25) **Sidewalk plaque or logo.**

(i) **Standard.** The size of the logo or plaque shall not exceed nine square feet with a maximum dimension of three feet along any side. The plaque or logo shall be limited in design and content to a symbol or other element referring to or naming the adjoining property owner, a district organization, the district/neighborhood character, or consistent with an area-wide way-finding graphic design system. The plaque or logo shall consist of material that provides a stable, firm and slip-resistant surface and shall be installed flush with the sidewalk surface.

(ii) **Annual rate.** $300 per plaque or logo.

(26) **Socket with removable poles, posts, or similar devices, including any connecting devices such as ropes, ribbons, horizontal poles, and the area thereby enclosed.**

(i) **Standard.** Sockets shall be flush with the sidewalk and fitted with spring-mounted flush covers. Posts or poles shall be no fewer than 30 inches and no greater than 48 inches high, including any connecting devices.

(ii) **Annual rate.** The first year's annual rate shall be the greater of $750 or ($C \times L \times 0.16 \times A$), as defined in §7-10(a) of these rules, where A is the area of the enclosed area, and subsequent years' rates shall be determined in accordance with §7-10(c).

(27) **Stoop, step, ramp, vestibule or other entrance detail extending beyond limits set in Articles 8 and 9 of Subchapter 4 of Chapter 1 of Title 27 of the Administrative Code, other than a ramp described in §7-04(a)(23) hereof or a stoop or other improvement described in §7-04(a)(29) hereof.**

(i) **Standard.** Such structures shall be constructed pursuant to the requirements of the New York City Department of Buildings and shall have a maximum width of eight feet and shall extend as far as such structures on adjacent

buildings.

(ii) **Annual rate.** See §7-10.

(28) **Stoop or any other improvement eligible for a revocable consent pursuant to these rules and adjacent to a building which is located within a designated New York City historic district or which is a designated New York City landmark.**

(i) Standard. No revocable consent shall be granted for such a structure located in a designated New York City historic district or attached to a designated New York City landmark building without the prior written approval of the Landmarks Preservation Commission pursuant to Chapter 3 of Title 25 of the Administrative Code. Refer to standards in this section for individual structures.

(ii) **Annual rate.** $25 for residential buildings with fewer than six units. For all other buildings, see the appropriate paragraph of this subdivision.

(29) **Street lamp or light fixture.**

(i) **Standard.** Street lamps or light fixtures which replace or augment existing lighting shall be placed and illuminated as approved by the Department's Division of Street Lighting. The base shall be no greater than 18 inches in diameter. Hours of illumination shall coincide with those of the City's street lights.

(ii) **Annual rate.** $150.

(30) **Tunnel.**

(i) **Standard.** All tunnels and related structures shall be constructed underground or within the adjacent building pursuant to the requirements of the New York City Department of Buildings.

(ii) **Annual rate.** See §7-10. If the structure is not in use, the rate shall be 10% of the rate in effect pursuant to the formulas described in §7-10.

(31) **Vault extending beyond the curbline or underground improvement not otherwise governed by license procedures contained in §19-117 of the Administrative Code.**

(i) **Standard.** All vaults shall be constructed underground pursuant to the requirements of the New York City Department of Buildings.

(ii) **Annual rate.** See §7-10.

(32) **Any improvement listed in §7-04 for which a consent is proposed to be granted where the grantee has filed an application concerning the subject property pursuant to §4-105 of the Administrative Code, or any improvement listed in §7-04 of these rules where the construction of such improvement was funded 50 percent or more by a City agency.**

(i) **Standard.** Refer to standards listed above for individual structures.

(ii) **Annual rate.** The Department may set rates for such consents without reference to the formulas described in §7-10; such rates shall be set forth in the agreements memorializing the consents.

(33) **Any improvement listed in §7-04 which has been approved for use for security purposes by the New York City Police Department.**

(i) **Standard.** Refer to standards listed above for individual structures.

(ii) **Annual rate.** None.

(b) **Other improvements approved by the Board of Estimate.** Revocable consents that were granted by the Board of Estimate prior to July 1, 1990 for private improvements which are not listed in subdivision (a) above may be renewed, amended, or revoked by the Commissioner in his or her sole discretion, provided that any renewal or amendment shall be submitted to DCP when required pursuant to §7-03 of these rules. In each year of such consent, the annual rate shall increase by the average of the Consumer Price Index for All Urban Consumers in New York and New Jersey published by the U.S. Department of Labor's Bureau of Labor Statistics ("CPI") increase for the ten years prior to the date of the renewal of the consent.

(c) **Compliance with requirements.** All improvements for which a revocable consent is granted shall comply with the general conditions in §7-06 of these rules.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

Subd. (a) par (3) amended City Record July 26, 2005 eff. Aug. 25, 2005. [See Note 1]

Subd. (a) par (9) amended City Record July 26, 2005 eff. Aug. 25, 2005. [See Note 1]

Subd. (a) par (10) amended City Record Oct. 27, 2003 §4, eff. Nov. 26, 2003. [See T34 §2-10

Note 1]

Subd. (a) par (19) amended City Record Oct. 27, 2003 §4, eff. Nov. 26, 2003. [See T34 §2-10

Note 1]

Subd. (a) par (19) subpar (ii) amended City Record July 26, 2005 eff. Aug. 25, 2005. [See Note 1]

Subd. (a) par (25) subpar (ii) amended City Record July 26, 2005 eff. Aug. 25, 2005. [See Note 1]

Subd. (a) par (28) par heading, subpar (ii) amended City Record July 26, 2005 eff. Aug. 25, 2005.

[See Note 1]

Subd. (a) par (30) subpar (ii) amended City Record July 26, 2005 eff. Aug. 25, 2005. [See Note 1]

Subd. (a) par (32) par heading amended City Record July 26, 2005 eff. Aug. 25, 2005. [See Note 1]

Subd. (a) par (33) added City Record Oct. 17, 2005 §1, eff. Nov. 16, 2005. [See Note 2]

DERIVATION

Former §7-04 became §7-05.

See Derivation for §7-02 for this section.

NOTE

1. Statement of Basis and Purpose in City Record July 26, 2005:

The Commissioner of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to §364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

The annual rates for a bridge, planter, sidewalk plaque or logo, stoop and step or other entrance detail and tunnel rules are amended to more accurately reflect how the rates are calculated. Paragraph thirty-two, which refers to improvements funded 50% or more by a government agency, is being amended to read City agency to reflect current Department policy.

After consultation with the Department of City Planning, the Department is also proposing to amend standards for trash receptacle containers. This rule is being amended to allow for larger trash receptacle containers in districts zoned for manufacturing and in other districts that allow manufacturing because these types of districts have different needs than other districts. It is anticipated that this change will better fit the intent of the original rule as applied to manufacturing districts and other districts that allow manufacturing.

2. Statement of Basis and Purpose in City Record Oct. 17, 2005: The Commissioner of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to §364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation. Security concerns have grown citywide, as have the number of buildings installing structures for security purposes. The Department will grant consents for structures approved for these purposes by the Police Department and will not charge either an annual rate or a filing fee.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

The Commissioner of the Department of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

These proposed amendments are intended to update and simplify the rules. The standards and rates have been combined with the list of improvements for ease of reference. The rates have increased slightly more than the rate of inflation since they were last amended in 1990. In addition, these amendments streamline the approval process and make the rates and requirements more equitable for revocable consent applicants. After consultation with the Department of City Planning the Department of Transportation is proposing standards for the following improvements: bench, fenced or walled-in area, flagpoles, stoop in landmark district or at landmark building, planted area, planter, post, pole or bollard, accessibility ramp, sockets for poles or stanchions, stoop, step or other entrance detail, street lamp, trash receptacle container and litter receptacle for public use.

On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-05 Revocable Consents for Telecommunications Purposes.

Petitions for revocable consents for telecommunications purposes shall be reviewed and may be granted by DoITT, subject to approval by the Department and review by DCP, where appropriate. Petitions for such consents shall be filed with the Department and shall be forwarded by the Department to DoITT for processing. Petitioners shall submit any additional information which may be required by DoITT.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

DERIVATION

Former §7-05 became §7-09.

This section derived from former §7-04 added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003.
Note: Statement of Basis and Purpose of Proposed Rules.

The Commissioner of the Department of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

These proposed amendments are intended to update and simplify the rules. The standards and rates have been combined with the list of improvements for ease of reference. The rates have increased slightly more than the rate of inflation since they were last amended in 1990. In addition, these amendments streamline the approval process and make the rates and requirements more equitable for revocable consent applicants. After consultation with the Department of City Planning the Department of Transportation is proposing standards for the following improvements: bench, fenced or walled-in area, flagpoles, stoop in landmark district or at landmark building, planted area, planter, post, pole or bollard, accessibility ramp, sockets for poles or stanchions, stoop, step or other entrance detail, street lamp, trash receptacle container and litter receptacle for public use.

On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

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***** Current through December 2009 ****

34 RCNY 7-06

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-06 General Conditions.

(a) **Advertising prohibited.** No advertising shall appear on any improvement which is the subject of a revocable consent agreement.

(b) **Maintenance.** Graffiti shall be removed within seven days of appearance. Art Commission approved colors shall be used and maintained. Sidewalks fronting the entire property must be in good condition, without violations or illegal encroachments.

(c) **Clearances for above-ground structures.**

(1) **Corner clearance policy.** No revocable consent will be granted for above-ground structures located within the corner quadrant (the area ten feet from either side of the area created by extending the building line to the curb) pursuant to Executive Order #22 of 4/13/95, as amended.

(2) Improvements shall be at least 18 inches from the curb line (front face of curb).

(3) **Clear path.** A straight unobstructed path ("clear path") for pedestrian circulation on the sidewalk shall remain after the installation of the improvement. The minimum width of the clear path shall be the greater of eight feet or one-half of the sidewalk width. The minimum width of the clear path shall be the greater of ten and one-half feet or one-half of the sidewalk width where a bench, information kiosk or bicycle rack with bicycles parallel to the curb or a queuing area enclosed by poles abuts the clear path. The minimum width of the clear path shall be the greater of $12^{1}/_{2}$ feet or one-half of the sidewalk width where a bicycle rack with bicycles perpendicular to the curb abuts the clear path.

The clear path shall be maintained for 15 feet to either side of the improvement. When possible, the improvement shall abut, be aligned with, or be located between other major obstructions such as subway entrances, bus stop shelters, newsstands, and sidewalk cafes.

(4) Improvements shall not be located under fire escapes.

(5) (i) The following minimum distances shall be required between the revocable consent improvement and the specified element or object, except as otherwise specified herein:

Subway Entrance (open side)

15'

Sidewalk Cafes

15'

Newsstand

15'

Bus Stop (with/without shelter)

15'

Fire Hydrant/Standpipe

10'

Driveway 10'

Bicycle Rack (including all bicycles)

8'

Street Tree

5'

Bench

5'

Principal Building Entrance

5'

Ramp intended to provide access for people with disabilities

5'

Subway Entrance (closed end or side)

5'

Public Telephone

5'

Planters on the sidewalk not adjacent to the building fa;alcade

5'

Mail Box

4'

Street Lights

4'

Parking Meters

4'

Edge of Tree Pit

3'

Street Signs

3'

Utility Hole Covers, Cellar Doors, Areaways

3'

Transformer Vault, Sidewalk Grates

3'

All Other Legal Street Furniture

5'

(ii) Benches, information kiosks, litter receptacles, mail boxes, planters and public telephones may be located in an aligned grouping with a reduced minimum clearance between them of three feet. Other structures may be incorporated into such groupings provided the minimum clearances in subparagraph (i) above are provided. In no case shall such groupings extend for a length greater than 30 feet along the sidewalk. The listed elements may also be combined, without separation, into a single structure provided the overall length of such unitary structure and any other of the listed elements outside the grouping or unitary structure shall be no more than 15 feet. In no case shall a grouping or unitary structure be less than 15 feet from another grouping or unitary structure.

(d) **Waiver.**

(1) Where strict compliance with these rules shall create undue hardship, the Commissioner may waive or modify these rules, in specific cases, except where prohibited by law, if in his/her opinion, the public health, safety and general welfare will not be endangered thereby. The petitioner shall request such waiver in writing and shall provide any information requested by the Department which may assist the Commissioner in his or her determination.

(2) Notwithstanding the above provisions, prior to waiving the standards or rules related to the location or dimensions of improvements, the Department shall refer the proposed change to DCP for review.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

DERIVATION

Former §7-06 Consent Solely for Benefit of Petitioner added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

The Commissioner of the Department of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

These proposed amendments are intended to update and simplify the rules. The standards and rates have been combined with the list of improvements for ease of reference. The rates have increased slightly more than the rate of inflation since they were last amended in 1990. In addition, these amendments streamline the approval process and make the rates and requirements more equitable for revocable consent applicants. After consultation with the Department of City Planning the Department of Transportation is proposing standards for the following improvements: bench, fenced or walled-in area, flagpoles, stoop in landmark district or at landmark building, planted area, planter, post, pole or bollard, accessibility ramp, sockets for poles or stanchions, stoop, step or other entrance detail, street lamp, trash receptacle container and litter receptacle for public use.

On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 7-07

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-07 Application Requirements.

(a) **Petition form.** An application for a new revocable consent or for a renewal, modification, assignment or rescission of an existing revocable consent shall be made on a petition form obtained from the Department, and shall be signed by the petitioner or a person authorized to enter into binding agreements on behalf of the petitioner. In the case of a new consent, the petitioner shall submit the original plus ten copies of the completed form; in the case of a renewal, modification, assignment or rescission, petitioner shall submit the original plus five copies.

(b) **Business certificates.** The petitioner shall submit a copy of any applicable business certificate, such as a certificate of incorporation or partnership certificate. With respect to petitions for an assignment or transfer of a revocable consent, the petitioner shall submit a copy of the business certificate of the assignee or transferee.

(c) **Plans.**

(1) Paper or mylar prints of a plan shall be submitted in the equivalent number of prints as are required for the petition form. Each plan print shall measure 18 by 24 inches unless otherwise authorized by the Department.

(2) The plan shall bear the seal of a Professional Engineer or Registered Architect licensed by the State of New York.

(3) The plan shall be drawn to scale and shall indicate the block and lot number of the property of the petitioner. The plan shall indicate in detail the method of construction, applicable technical information, and the materials to be used. A title box shall be placed on the right hand side of each sheet containing the words "Plan Showing Location of

Proposed (structure type) to be Constructed in (name of street), Borough of (borough), to Accompany Application of (petitioner's name), dated (petition date), to the Department of Transportation of the City of New York" and shall indicate the date it was prepared and any subsequent revisions.

(4) All details of existing structures shall be shown in standard line thickness. All proposed new construction and existing structures which are the subject of the petition shall be plainly shown in red. Proposed removals or relocations, if any, of existing conduits, pipes lines, or other structures shall be clearly indicated by red dashed lines.

(5) The plan shall show the building lines and curb lines, railroad tracks, and, if applicable, any electrical conduits, sewers and other substructures in the street which may be affected in any manner by the proposed construction. All such information shall be obtained and verified by the petitioner. The location, character and dimensions of all such structures and substructures shall be accurately shown and indicated by dimensions on the plan.

(6) The plan shall include longitudinal and transverse sections to show the relative position of the existing structures in the street and the proposed new construction.

(7) The applicant shall provide photographs of the existing conditions and may be required to provide photo simulations of the proposed structure and its surroundings as they would appear after installation.

(8) The plan shall also include the Profesional Engineer's or Registered Architect's estimate of the current cost to remove or deactivate the proposed improvement and restore all sidewalks and pavements to current Department standards for new construction. Alternatively, the cost of removal may be provided on a separate sheet of paper provided that it is signed and sealed by a Professional Engineer or Registered Architect.

(9) Following the installation of any improvement for which a consent has been granted, the petitioner shall submit to the Department two copies of a plan indicating the "as built" condition. Such plan shall include any changes approved by the Department, with any deviations from the original plan shown by a double red line. Such plan shall be signed, sealed and dated by a Professional Engineer, Registered Architect or a Licensed Land Surveyor and shall include a certification which reads: "This drawing represents the as-built condition and shows the actual location of all subsurface conditions uncovered during this installation."

(d) **Pedestrian congestion.** The Department may require a petitioner to submit additional information concerning pedestrian density and volume as well as the width of the usable pedestrian path at the site of a proposed revocable consent structure. The Department may require that such information include a pedestrian flow analysis conducted according to the performance standards described in the Transportation Research Board's Highway Capacity Manual chapter on pedestrian flow.

(e) **Additional copies and information.** Upon the request of the Department, the petitioner shall provide additional copies of the petition and/or plan. The petitioner shall also provide any additional supporting information requested by the Department or by DCP, where referral has been made to DCP.

(f) **Waiver of plan requirements.** For petitions concerning minor improvements, such as planters, trash and litter receptacles, or benches, the Department may waive the requirement that the plan be prepared by a Professional Engineer or Registered Architect where such submission is not otherwise required by law, and where the petitioner has requested a waiver in writing.

(g) **Exception.** The requirements of this section shall not apply to revocable consents for public service corporation facilities ancillary to, but not within, a franchise, if the revocable consent covers multiple structures whose locations are not known at the time of the granting of the consent. Plans for each such structure shall be submitted prior to construction and shall meet the requirements of Chapter 2 of Title 34 of the Rules of the City of New York.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

DERIVATION

Former §7-07 Applicability of the Uniform Land Use Review Procedure added City Record May 31, 1991 eff. June 30, 1991, Subd. (a) amended City Record Apr. 22, 1993 eff. May 22, 1993.

This section was derived from former §7-08 amended City Record Apr. 22, 1993 eff. May 22, 1993, added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

The Commissioner of the Department of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

These proposed amendments are intended to update and simplify the rules. The standards and rates have been combined with the list of improvements for ease of reference. The rates have increased slightly more than the rate of inflation since they were last amended in 1990. In addition, these amendments streamline the approval process and make the rates and requirements more equitable for revocable consent applicants. After consultation with the Department of City Planning the Department of Transportation is proposing standards for the following improvements: bench, fenced or walled-in area, flagpoles, stoop in landmark district or at landmark building, planted area, planter, post, pole or bollard, accessibility ramp, sockets for poles or stanchions, stoop, step or other entrance detail, street lamp, trash receptacle container and litter receptacle for public use.

On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

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RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-08 Filing Fees.

(a) **General information.** Filing fees for petitions shall be submitted with the petition form and any required plans or supporting documents. Filing fees shall be non-refundable.

(b) **Specified improvements.** The filing fees listed in this paragraph shall apply to petitions for the following specified types of improvements: accessibility lift; bench; enclosure for trash receptacle; litter receptacle; planted area; planter; ramp intended to provide access for people with disabilities; stoop or step; or any improvement which has been approved by the Landmarks Preservation Commission:

(1) initial petition

$100.00

(2) renewal

100.00

(3) modification

100.00

(4) assignment or transfer

100.00

(5) recission

100.00

(c) **All other improvements, except for improvements approved for use for security purposes by the New York City Police Department.**

(1) initial petition

750.00

(i)

initial petition with a Special Street Plan Type F application with proof of payment of a fee in excess of $650.00

100.00

(2) renewal

500.00

(3) modification

(i) contractual

375.00

(ii) structural

550.00

(4) assignment or transfer

200.00

(5) rescission

375.00

(d) **Improvements approved for use for security purposes by the New York City Police Department.** Filing fees shall not apply to any improvements approved for use for security purposes by the New York City Police Department.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

Subd. (b) heading, open par amended City Record Oct. 17, 2005 §2, eff. Nov. 16, 2005. [See T34

§7-04 Note 2]

Subd. (c) heading amended City Record Oct. 17, 2005 §2, eff. Nov. 16, 2005. [See T34 §7-04 Note 2]

Subd. (d) added City Record Oct. 17, 2005 §3, eff. Nov. 16, 2005. [See T34 §7-04 Note 2]

DERIVATION

Former §7-08 became §7-07.

See Derivation for §7-03 for fee history.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

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34 RCNY 7-09

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-09 Action by the Department.

(a) The Department shall, within 30 calendar days of receipt of a complete petition for a revocable consent, forward a copy of such petition to: the Borough President for the borough in which the proposed improvement is to be located; all Community Boards in whose districts the proposed improvement is to be located; DCP, if required to do so pursuant to §7-03; and all other City agencies affected by the proposed consent. The Department shall allow 30 calendar days for the Borough President, Community Board, and other affected agencies to comment on the petition.

(b) The Department shall inform the petitioner in writing of all objections. Review of the petition shall be stayed until all objections are resolved. The petitioner shall be given the opportunity to revise the petition or plan in order to resolve the objection(s). If any objection has not been resolved within 90 days from the date the petitioner was informed of the latest objection, such petition may, in the discretion of the Department, be deemed to have been withdrawn.

(c) Prior to granting any revocable consent or renewal or modification to the location or an increase in the dimension of an improvement, the Department shall hold a public hearing on the terms and conditions of the proposed revocable consent agreement. Notice of such hearing shall be published by the Department at the expense of the petitioner in accordance with §371 of the Charter.

(d) Notwithstanding the foregoing, the Department may deny a petition for a revocable consent without a hearing if, in the sole judgement of the Commissioner, the grant of such consent would interfere with the use of the inalienable property of the City (including streets and sidewalks) for public purpose or would otherwise not be in the best interest of the City.

(e) The revocable consent agreement shall be filed by the Department with the appropriate County Clerk.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

DERIVATION

This section was derived from former §7-05 added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

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RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-10 Annual Rate Schedule for Revocable Consent Improvements.

For all improvements that do not have an annual rate set forth in §7-04(a), the annual rate of compensation for the first year of the term of each revocable consent shall be calculated in accordance with the following:

(a) **Definitions and variables.**

"A" means the maximum area of the improvement for which a consent has been or is proposed to be granted, as projected onto a horizontal plane (the "footprint").

"Benefited Property" means the real property which is adjacent to the improvement for which a revocable consent has been or is proposed to be granted, and which is benefited by the improvement.

"C" means 100 percent plus the percent change (plus or minus) in the Consumer Price Index for All Urban Consumers in New York and New Jersey published by the U.S. Department of Labor's Bureau of Labor Statistics ("CPI") on July 1 of the year for which the revocable consent annual rate is being calculated, compared to the CPI on July 1, 2003.

"E" means the standard escalating factor, which shall be a percentage equal to the average annual percentage increase in the CPI for the ten years immediately preceding the year for which the standard escalating factor is being determined; the Department shall determine the standard escalating factor on July 1 of the year to be applied to all consents granted or renewed between that July 1 and the next succeeding June 30, inclusive.

"L" means the Current Transitional Assessed Value or the Actual Assessed Value, whichever is lower, of the Benefited Property, in its unimproved state (in dollars and cents per square foot); provided, however, that if there is more than one Benefited Property, "L" shall be equal to the average of the Current Transitional Assessed Values of all the Benefited Properties in their unimproved states (in dollars and cents per square foot). Note: For cables contained within conduit owned by another entity, L=0.

"M" means the applicable multiplier. For pipes and conduits with up to 25 square feet in cross-sectional area, the applicable multiplier is 0.04. For all other improvements, the applicable multiplier is 0.08.

"Minimum Annual Charge" shall be assessed as follows: For improvements having a maximum cross-sectional area greater than four square feet, the Minimum Annual Charge shall be $3,000. For improvements having a maximum cross-sectional area of four square feet or less, the Minimum Annual Charge is $1,500, except that pipes and conduits having an outside diameter of three inches or less (inclusive of any protective sheath or casing) shall be assessed a Minimum Annual Charge of $750.

"R1" means the rate of compensation for the first year of the revocable consent agreement which shall be determined in accordance with §7-10(b), below.

"V" means the rate (in dollars and cents) obtained from Table A relating to the volume occupied by the improvement. For improvements exceeding nine feet in height, the computation will be made in units up to nine feet in height and then added together.

(b) **Rate for first year.** R1 shall equal C[V + (L × M × A)], or the Minimum Annual Charge, whichever is greater.

(c) **Rate for each subsequent year.**

second year = R1 + (E × R1)

third year = R1 + (2E × R1)

fourth year = R1 + (3E × R1)

fifth year = R1 + (4E × R1)

sixth year = R1 + (5E × R1)

seventh year = R1 + (6E × R1)

eighth year = R1 + (7E × R1)

ninth year = R1 + (8E × R1)

tenth year = R1 + (9E × R1)

(d) **Consents granted on or prior to June 30, 1991.** For those consents granted on or before June 30, 1991 which provide for annual fees to be computed based upon the rate schedule currently in effect, annual compensation shall equal R1 as calculated pursuant to §7-10(b).

(e) **Revenue.** All revocable consent revenue shall be collected by the Department.

Table A

Length	Cross-Section Area Up to 1.4 sq.	1.4 to 4	4 to 20 sq.	20 to 81	81 to 162 sq.	162 to 243	Smaller Pipes up to 3"

in feet	ft.	sq. ft.	ft.	sq. ft.	ft.	sq. ft.	
Up to 100'	$13.90 per ft.	$27.83 per ft.	$34.78 per ft.	$41.72 per ft.	$69.56 per ft.	$83.48 per ft.	$7.26 per ft.
100'-150'	$1,390 + $8.17 per ft. over 100 ft.	$2,783 + $16.35 per ft. over 100 ft.	$3,478 + $20.43 per ft. over 100 ft.	$4,172 + $24.51 per ft. over 100 ft.	$6,956 + $40.87 per ft. over 100 ft.	$8,348 + $49.04 per ft. over 100 ft.	$726 + $4.26 per ft. over 100 ft.
150'-200'	$1,799 + $7.72 per ft. over 150 ft.	$3,600 + $15.45 per ft. over 150 ft.	$4,499 + $19.30 per ft. over 150 ft.	$5,397 + $23.16 per ft. over 150 ft.	$9,000 + $38.62 per ft. over 150 ft.	$10,800 + $46.34 per ft. over 150 ft.	$939 + $4.03 per ft. over 150 ft.
200'-250'	$2,185 + $7.29 per ft. over 200 ft.	$4,373 + $14.59 per ft. over 200 ft.	$5,464 + $18.23 per ft. over 200 ft.	$6,555 + $21.87 per ft. over 200 ft.	$10,931 + $36.46 per ft. over 200 ft.	$13,117 + $43.76 per ft. over 200 ft.	$1,140 + $3.80 per ft. over 200 ft.
250'-300'	$2,549 + $6.83 per ft. over 250 ft.	$5,102 + $13.67 per ft. over 250 ft.	$6,376 + $17.08 per ft. over 250 ft.	$7,649 + $20.49 per ft. over 250 ft.	$12,754 + $34.16 per ft. over 250 ft.	$15,305 + $41.00 per ft. over 250 ft.	$1,330 + $3.56 per ft. over 250 ft.
300'-350'	$2,891 + $6.40 per ft. over 300 ft.	$5,786 + $12.81 per ft. over 300 ft.	$7,230 + $16.00 per ft. over 300 ft.	$8,673 + $19.20 per ft. over 300 ft.	$14,462 + $32.01 per ft. over 300 ft.	$17,355 + $38.42 per ft. over 300 ft.	$1,508 + $3.34 per ft. over 300 ft.
350'-400'	$3,211 + $5.94 per ft. over 350 ft.	$6,426 + $11.89 per ft. over 350 ft.	$8,030 + $14.85 per ft. over 350 ft.	$9,633 + $17.82 per ft. over 350 ft.	$16,062 + $29.71 per ft. over 350 ft.	$19,276 + $35.66 per ft. over 350 ft.	$1,675 + $3.10 per ft. over 350 ft.
400'-450'	$3,508 + $5.70 per ft. over 400 ft.	$7,021 + $11.41 per ft. over 400 ft.	$8,772 + $14.25 per ft. over 400 ft.	$10,524 + $17.10 per ft. over 400 ft.	$17,548 + $28.51 per ft. over 400 ft.	$21,059 + $34.22 per ft. over 400 ft.	$1,830 + $2.97 per ft. over 400 ft.
450'-525'	$3,793 + $5.21 per ft. over 450 ft.	$7,591 + $10.43 per ft. over 450 ft.	$9,485 + $13.03 per ft. over 450 ft.	$11,379 + $15.63 per ft. over 450 ft.	$18,973 + $26.06 per ft. over 450 ft.	$22,770 + $31.28 per ft. over 450 ft.	$1,979 + $2.72 per ft. over 450 ft.
525'-600'	$4,183 + $4.33 per ft. over 525 ft.	$8,373 + $9.48 per ft. over 525 ft.	$10,462 + $11.85 per ft. over 525 ft.	$12,551 + $14.22 per ft. over 525 ft.	$20,928 + $23.71 per ft. over 525 ft.	$25,116 + $28.45 per ft. over 525 ft.	$2,183 + $2.47 per ft. over 525 ft.
600'-30,000'	$4,508 + $4.33 per ft. over 600 ft.	$9,084 + $8.66 per ft. over 600 ft.	$11,351 + $10.83 per ft. over 600 ft.	$13,618 + $12.99 per ft. over 600 ft.	$22,706 + $21.66 per ft. over 600 ft.	$27,249 + $25.99 per ft. over 600 ft.	$2,368 + $2.26 per ft. over 600 ft.
For More Than	$134,408 + $2.82 per ft. over 30,000 ft.	$268,884 + $5.64 per ft. over 30,000 ft.	$336,251 + $7.05 per ft. over 30,000 ft.	$403,318 + $8.46 per ft. over 30,000 ft.	$672,506 + $14.11 per ft. over 30,000 ft.	$806,949 + $16.93 per ft. over 30,000 ft.	$70,168 + $1.47 per ft. over 30,000 ft.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7 footnote]

DERIVATION

Former §7-09 amended City Record Apr. 22, 1993 eff. May 22, 1993, added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

The Commissioner of the Department of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

These proposed amendments are intended to update and simplify the rules. The standards and rates have been combined with the list of improvements for ease of reference. The rates have increased slightly more than the rate of inflation since they were last amended in 1990. In addition, these amendments streamline the approval process and make the rates and requirements more equitable for revocable consent applicants. After consultation with the Department of City Planning the Department of Transportation is proposing standards for the following improvements: bench, fenced or walled-in area, flagpoles, stoop in landmark district or at landmark building, planted area, planter, post, pole or bollard, accessibility ramp, sockets for poles or stanchions, stoop, step or other entrance detail, street lamp, trash receptacle container and litter receptacle for public use.

On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

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***** Current through December 2009 ****

34 RCNY 8-01

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CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-01 Background and Authority.

Section 182(d)(1)(B) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7511(a)(d)(1)(B), requires states with severe or extreme nonattainment areas for ozone to revise their state implementation plans by adopting new regulations to reduce work-related vehicle trips and miles traveled by employees. The New York State Consolidated Metropolitan Statistical Area, which includes New York City was designated by the Federal Environmental Protection Agency ("EPA") as a severe ozone nonattainment area, 40 C.F.R. §81.333. Section 14(31) of the New York State Transportation Law authorizes the State Department of Transportation to promulgate rules and regulations to implement the requirements of §182(d)(1)(B) of the Clean Air Act Amendments and to establish an employee commute options ("ECO") program. The state rules require employers of one hundred or more employees at work locations within severe ozone nonattainment areas in New York State to develop and implement employee trip reduction programs and to make a good faith effort to achieve a twenty-five percent increase in average vehicle occupancy for commuting trips by November 15, 1996. The state transportation law and the rules promulgated pursuant to it also delegate the local administration of the program to counties in the severe ozone nonattainment areas and pursuant to such delegation, the New York City Department of Transportation ("the Department") has been designated the local administrative agency.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

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***** Current through December 2009 ****

34 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-02 Applicability.

This chapter shall apply to any affected employer in the City of New York who is subject to the ECO rules of the New York State Department of Transportation, codified at 17 NYCRR Part 38. This chapter shall apply with respect to any and all affected worksites. Pursuant to 17 NYCRR §38.4(b)(3), the counties of New York (Region 1) and Bronx, Kings, Queens, and Richmond (Region 2) shall be consolidated into a single region consisting of the subregions identified in table one below.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

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***** Current through December 2009 ****

34 RCNY 8-03

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-03 Definitions.

For purposes of ECO, the definitions set forth in 17 NYCRR Part 38 shall apply; provided, however, that in this chapter, "Commissioner" shall mean the Commissioner of the New York City Department of Transportation and "Department" shall mean the New York City Department of Transportation.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

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***** Current through December 2009 ****

34 RCNY 8-04

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§8-04 AVO Subregions.

The Average Vehicle Occupancy ("AVO") subregions established pursuant to 17 NYCRR Part 38.4(c) are specified in table one below.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

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§8-05 Target APOs.

The specific target Average Passenger Occupancy ("APO") for each subregion is specified in Table one below.

Table 1

Average Vehicle Occupancy and Target

Average Passenger Occupancy by Subregion

Subregion Number	Boro/County	Subregion Name	1994 AVO	Target APOs	
33	M	Times Square		9.08	9.98
31	M	Plaza		8.84	9.73
36	M	Madison Square		7.59	8.35
39	M	Battery Park		6.78	7.46
26	M	Fifth Avenue		6.42	7.06
29	M	Central Park West		5.88	6.47
32	M	Queensboro Bridge		5.58	6.13
35	M	Stuyvesant Square		5.24	5.77
34	M	Chelsea		5.20	5.71
37	M	Greenwich Village		5.16	5.67
28	M	Manhattanville		5.05	5.56
30	M	Lincoln Square		4.30	4.73

27	M	Yorkville	4.16	4.57
24	M	Mt. Morris Park	3.78	4.16
23	M	Columbia University	3.70	4.07
38	M	Lower East Side	3.66	4.03
22	M	Harlem	3.58	3.93
79	K	Brooklyn Heights	3.37	3.71
80	K	Brooklyn CBD	3.36	3.69
82	K	Park Slope	3.21	3.53
20	M	Washington Heights	3.15	3.46
21	M	City College	3.06	3.37
25	M	Harlem Bridge/ Jefferson Park	2.80	3.11
19	M	Inwood	2.75	3.06
83	K	Sunset Park	2.71	3.02
74	K	Ft. Greene Park	2.68	2.99
72	K	Williamsburg	2.52	2.83
15	B	North New York	2.49	2.80
11	B	High Bridge	2.47	2.78
7	B	Fordham Heights	2.46	2.77
76	K	Stuyvesant/ Eastern Parkway	2.42	2.73
1	B	Riverdale	2.40	2.71
3	B	Jerome Park	2.35	2.66
84	K	Kensington	2.30	2.61
85	K	Flatbush	2.28	2.59
75	K	Bushwick	2.27	2.58
8	B	Bronx Park	2.26	2.57
58	Q	Elmhurst	2.25	2.56
87	K	South Greenfield	2.23	2.54
86	K	Holy Cross	2.19	2.50
6	B	Baychester/City Island	2.18	2.49
61	Q	Long Island City	2.17	2.48
14	B	Park Versailles	2.16	2.47
55	Q	Ridgewood	2.15	2.46
92	K	Bensonhurst	2.13	2.44
66	Q	Richmond Hill	2.12	2.43
77	K	Bronsville	2.12	2.43
96	K	Coney Island	2.11	2.42
16	B	St. Mary's Park	2.11	2.42
47	Q	Corona	2.10	2.41
57	Q	Forest Hills	2.09	2.40
52	Q	Jamaica	2.05	2.36
62	Q	Sunnyside	2.05	2.36
81	K	South Brooklyn	2.04	2.35
71	K	Greenpoint	2.04	2.35
91	K	Borough Park	2.03	2.34
90	K	Bay Ridge	2.03	2.34
13	B	Morrisania	2.02	2.33
5	B	Williamsbridge	2.02	2.33
60	Q	Astoria	2.01	2.32
93	K	Gravesend/Neck Road	2.01	2.32
4	B	Gun Hill Road	2.00	2.31

88	K	Flatlands	1.99	2.30
56	Q	Nassau Heights	1.99	2.30
70	Q	Far Rockaway	1.97	2.28
73	K	English Kills	1.95	2.26
78	K	Highland Park	1.94	2.25
9	B	Union Port	1.93	2.24
	Q	Neponsit/Hammels	1.91	2.22
95	K	Sea Gate	1.89	2.20
41	Q	Whitestone	1.89	2.20
12	B	Throg's Neck/ Pelham Bay Park	1.88	2.19
59	Q	Jackson Heights	1.87	2.18
46	Q	Flushing	1.86	2.17
63	Q	Woodside	1.84	2.15
10	B	Westchester Heights	1.81	2.12
2	B	Edenwald/Woodlawn	1.80	2.11
53	Q	Hollis	1.78	2.09
42	Q	Cunningham Park	1.76	2.07
17	B	Hunt's Point	1.71	2.02
18	B	Clason Point	1.70	2.01
94	K	Mill Basin/Canarsie	1.70	2.01
50	Q	St. Albans/Springfield	1.70	2.01
45	Q	College Point	1.69	2.00
65	Q	Woodhaven/Ozone Park	1.69	2.00
48	Q	Flushing South	1.63	1.94
51	Q	South Jamaica	1.62	1.93
97	S	Brighton	1.59	1.90
49	Q	Queens Village	1.58	1.89
54	Q	Maspeth	1.58	1.89
89	K	Spring Creek Basin	1.57	1.88
43	Q	Douglaston	1.56	1.87
69	Q	Arverne	1.55	1.86
98	S	Stapleton	1.52	1.83
44	Q	Bellerose	1.51	1.82
40	Q	Bayside	1.49	1.80
99	S	Port Richmond	1.48	1.79
64	Q	Howard Beach/ Laurelton/Rosedale	1.47	1.78
103	S	Great Kills	1.31	1.62
100	S	Dongan Hills	1.31	1.62
67	Q	South Laurelton	1.23	1.53
102	S	Travis	1.22	1.53
104	S	Tottenville/Prince's Bay	1.22	1.52
101	S	Mariner's Point	1.22	1.52

AVO AND TARGET APO METHODOLOGIES

ESTABLISHING AVO VALUES

The 1994 AVO values were established by applying the methodolgy mandated by the New York State Dept. of Transportation Employee Commute Options Regulations. These Regulations require the use of United States Census Journey-to-Work data for 1980 and 1990 to estimate the number of employees and the number of vehicles used to get to

work in 1994. The method consists of subtracting 1980 total workers from 1990 total workers, and dividing the result by the number of years (ten, in this case), thereby yielding an "annual change." This "annual change" then is used to project the number of employees for 1994 by adding the "annual change" multiplied by the number of years (four, in this case) to 1990 total workers.

A comparable process is used to estimate the number of vehicles used to get to work. The projected number of workers in 1994 then is divided by the projected number of commuter vehicles in 1994 to establish the 1994 AVO. It is important to note that these projected numbers are not intended to represent actual employment or vehicle numbers for 1994, but are solely for the purpose of establishing an AVO.

ESTABLISHING TARGET APOs

Target APOs are also derived following the methodology mandated by the New York State Regulations. The target APO for the region equals the regional AVO multiplied by 1.25. Reaching the APO target is equivalent to reducing the number of vehicles to the "permitted" number. The "permitted number" of vehicles equals the number of employees at all worksites with 100 or more employees, divided by the target APO. We are required to calculate the number of "permitted" vehicles in order to determine whether achieving Target APOs for all the subregions taken together would reduce the number of commuter vehicles to the level required to meet the APO Target for the region.

Target APOs for each subregion were established by increasing the AVO for each subregion by between 10 and 25%.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

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34 RCNY 8-06

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CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-06 Schedule for Submission of Initial Compliance Plans.

(a) For each affected worksite, the affected employer shall prepare and submit to the Department an initial compliance plan not later than November 15, 1994.

(b) Plans submitted earlier than November 15, 1994, pursuant to the schedule set forth in §8-08 below, shall be eligible for a reduction in fees as set forth in that section.

(c) A plan shall be deemed submitted upon receipt by the Department.

(d) An affected employer shall submit a revised initial compliance plan if the circumstances warrant, subject to the approval of the Commissioner. The Commissioner shall notify the affected employer of approval or rejection of the revised plan within thirty (30) days of filing of such revised plan.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 8-07

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-07 Scedule for Submission of Compliance Plan Updates and Maintenance Reports.

(a) For each affected worksite, the affected employer shall prepare and submit to the Department a compliance plan update or maintenance report not later than November 15, 1996.

(b) Plans submitted earlier than November 15, 1996, pursuant to the schedule set forth in §8-08 below, shall be eligible for a reduction in fees as set forth in that section.

(c)(1) Affected employers who have not achieved the target APO must submit compliance plan updates annually.

(2) Affected employers who have achieved the target APO must submit maintenance reports biannually on the anniversary of their initial submission, starting in 1996.

(d) An affected employer shall submit a revised compliance plan update or maintenance report if the circumstances warrant, subject to the approval of the Commissioner.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

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34 RCNY 8-08

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CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-08 Fees.

(a) Each affected employer shall submit its annual fee on the date its initial compliance plan is submitted, and thereafter on each subsequent anniversary of such date.

(b) Fees are as follows:

(1) for employers with one thousand one (1,001) or more affected employees, the fee shall be two thousand dollars ($2000.00);

(2) for employers with five hundred one (501) to one thousand (1,000) affected employees, the fee shall be twelve hundred dollars ($1200.00);

(3) for employers with two hundred fifty-one (251) to five hundred (500) affected employees, the fee shall be six hundred dollars ($600.00);

(4) for employers with thirty-three (33) to two hundred and fifty (250) affected employees, the fee shall be three hundred dollars ($300.00);

(c) Fees shall be reduced by fifty percent (50%) of the amount due for all affected employers submitting plans not later than August 15 of the year a submission is due. Fees shall be reduced by thirty-three and one third percent (33 1/3%) of the amount due for all affected employers submitting plans not later than September 15 of the year a submission is due. Fees shall be reduced by twenty percent (20%) of the amount due for all affected employers

submitting plans not later than October 15 of the year submission is due. Fee reductions shall be available only in years when such plans are required to be filed.

(d) An affected employer filing a consolidated plan or report shall submit a fee equal to the total of the fees that the affected employer would pay if filing separate plans or reports for each affected worksite.

(e) Fees shall be in the form of a company check, bank check, money order, or other form of payment acceptable to the commissioner, made payable to the New York City Department of Transportation. Cash and credit card payments shall not be accepted.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Subd. (b) amended City Record Nov. 10, 1994 eff. Dec. 10, 1994.

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***** Current through December 2009 ****

34 RCNY 8-09

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-09 Penalties.

(a) The Department shall send a notice of violation fo any provision of this chapter by registered mail to the affected employer. Such notice shall specify the nature of the violation and the fine due.

(b) Failure of an affected employer to comply with the requirements specified in the rules of the ECO program at 17 NYCRR §38.11(a) shall constitute a violation of such rules. The civil penalty for each violation shall be no less than fifty cents ($.50) and no more than one dollar ($1.00) per employee per day for each affected work site, not to exceed five hundred dollars ($500.00) per day for each affected worksite.

(c) Failure of an affected employer to register pursuant to 17 NYCRR §38.3(b) shall constitute a violation of such rules. The penalty for such violation shall not exceed one dollar ($1.00) per employee per day for each affected work site, not to exceed five hundred dollars ($500.00) per day for each affected worksite.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

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34 RCNY 8-10

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-10 Department Conference.

(a) Any affected employer who receives a notice of violation may request a conference with the Commissioner or his/her representative at which the employer shall have the opportunity to explain or justify the actions that are the subhect of the notice. Such request must be made in writing and sent by registered mail within thirty (30) days of the date of receipt of such notice. If a conference is not requested, the full amount of the penalty shall be due not later than thirty days from the receipt of the notice.

(b) Any employer who, within thirty (30) days of the date of any notice of violation, fails either to pay the penalty stated in the notice or request a conference with the Department in writing, shall be liable for the penalties specified in the notice. Such employer shall be liable for additional penalties for the continuing violation of the rule until the violation is corrected.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

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34 RCNY 8-11

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-11 Hearings.

(a) Any affected employer who has received a notice of violation from the Department, has had a Department conference, and does not consent to a settlement agreement with a settlement officer, may appeal the determination of the Department, as provided in 17 NYCRR §38.13, by requesting a hearing with the New York City Office of Administrative Trials and Hearings ("Oath"). A petition appealing the determination, as well as a copy of the notice of violation, and the factual findings and decision of the Department shall be filed with OATH, with proof that copies were sent to the Department, not later than fifteen (15) days after the date of the settlement offer of the Department.

(b) Hearings to review decisions of the Department shall be conducted by OATH in accordance with its rules of practice and procedure, except that for the purposes of this chapter, (i) the petition shall be deemed to consist of the notice of violation and the factual findings and decision of the Department filed by the affected employer, (ii) the answer shall be deemed to consist of the employer's petition appealing the decision, (iii) the Department shall be deemed the petitioner, and (iv) the affected employer shall be deemed to be the respondent. Notwithstanding the provisions of §1-23, subdivision (a) of OATH's rules (48 RCNY §1-23, subdivision (a)), the Department shall not be required to serve the petition on the respondent. Notwithstanding the provisions of §1-26, subdivision (d) of OATH's rules (48 RCNY §1-26, subdivision (d)), the employer shall not place the case on OATH's trial or conference calendar **ex parte.**

(c) The proceeding at OATH shall be **de novo** and the determination of OATH shall be final.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 8-12

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-12 Post Hearing Relief.

An employer may make a motion to reopen a proceeding at OATH if such employer alleges that the violation that is the subject of the proceeding has been cured and that the Department has rejected such determination.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

34 RCNY 8-13

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-13 Severability.

If any provision of this rule is deemed to be invalid or unenforceable by any court of competent jurisdiction, such provision shall be severed from this rule and the remainder of this rule shall continue in full force and effect.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

35 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-01 Definitions.

Accessible taxicab. An "accessible taxicab" is a taxicab that complies with section 3-03.2 of this title.

Adequate Mail Notice to Claimant. "Adequate mail notice to claimant" shall mean for the purposes of §1-81 of this chapter, notice by certified mail, return receipt requested, with a copy by regular mail and with a copy to the Commission, attention legal department, transfer division, to holders of claims that may be excess claims as follows, provided that proof of attempted mailing is provided to the Chairperson:

(1) to a holder of a claim as may be disclosed by the lien, judgment and lawsuit searches required to be obtained in §1-80.1(p) of this chapter, to the address for such claimant disclosed by such search and, if such notice is returned as non-deliverable, to any other address for such claimant or attorney of record of such claimant as disclosed by such search, with such notice to be deemed given if attempts to mail are made to all such addresses even if any such notice is returned as non-deliverable;

(2) to a holder of a claim as may be disclosed by a prior claim letter or a valid claim letter, to the address for such claimant as disclosed by such letter and to the sender of the letter, or, if there is no such address disclosed for the claimant, to the address of the sender of such letter, or such address as the sender may provide, with such notice to be deemed given if an attempt is made to mail to such address even if any such notice is returned as non-deliverable; provided that, if the sender provides another address for the claimant (or recipients at any such subsequent address provide a further address for claimant), notice must be mailed to all such other, subsequently provided, addresses;

(3) to a holder of a claim as may be disclosed by tort letters provided as required in §1-80.1(q) of this chapter, to

the address as may be disclosed in, by or through any such tort letter, or to any counsel of record as may be disclosed in, by or through such tort letter, or, if neither is indicated, by consultation with the insurers providing the tort letters as to either an address of a claimant or a counsel of record for such claimant as obtained therefrom, with such notice to be deemed given, even if any such notice is returned as non-deliverable after two mailings; provided that, if any recipient of such notice provides another address for the claimant (or recipients at any such subsequent addresses provide a further address for claimant), notice must be mailed to all such other, subsequently provided addresses; provided, further however, if no address for either a claimant or claimant's counsel or representative can be obtained, public notice of the contents of the notice must be provided by running the notice in The New York Times and The New York Law Journal as a public notice for one business day (that is, not a Saturday, Sunday, or public holiday).

Agent. An individual, partnership, or corporation that acts, by employment, contract or otherwise, on behalf of one or more owners to operate or provide for the operation of a licensed vehicle in accordance with the requirements of these rules. The term "agent" shall not include an attorney or representative who appears on behalf of one or more owners before the Commission or the TLC hearing tribunal, and taxicab drivers licensed pursuant to Chapter 5, Title 19 of the Administrative Code when acting in that capacity.

Applicant. (a) An "applicant" is an individual, partnership, limited liability company or corporation seeking a license for a medallion taxicab.

(b) Whenever within this chapter reference is made to the partners, general partners, shareholders and/or officers of an applicant, such reference shall also include the members and managing members of any applicant which is a limited liability company.

Association. An "association" is a group of owners which has registered its name and business address with the Commission and furnished a copy of its emblem, if any.

Chairperson. The "Chairperson" shall mean the Chairperson of the Commission, or his or her designee.

Chauffeur's license. A "chauffeur's license" is a valid license of the State of New York to operate a vehicle for hire, or a valid license of similar class from another state of which the licensee is a resident.

Claim Letter. A "claim letter" is a letter asserting a possible excess claim against an owner of a taxicab medallion or against the taxicab medallion itself. Claim letters which are neither prior claim letters nor valid claim letters will not be considered for purposes of the escrow determination to be made in §1-81 of this chapter.

Clean air taxicable. A "clean air taxicab" is a taxicab that complies with section 3-03.3 of this title.

Commission. "Commission" means the New York City Taxi and Limousine Com- mission.

Compliance date. The compliance date for the installation of taxicab technology systems in medallion taxicabs shall be the date of the first regularly scheduled inspection for each taxicab on or after October 1, 2007, unless extended pursuant to section 1-11(g) of this chapter.

Driver. A "driver" is a person licensed by the commission to drive a medallion taxicab in the City of New York.

Escrow Amount. The "escrow amount" is the amount for which an escrow account is required to be established in order to satisfy one or more excess claims. The escrow amount will be determined as set forth in §1-81 of this chapter and shall not in any event exceed the maximum escrow amount.

Excess Claim. An "excess claim" is a tort claim asserted against the owner of a taxicab medallion for an amount in excess of the amount covered by an insurance policy in effect at the time the claim arose.

Fair Market Value. The "fair market value" in reference to the transfer of a taxicab medallion shall be the average

value for arms-length transactions for similar medallions for the prior calendar month as maintained by the Commission.

Fleet. A "fleet" is a corporate entity or limited liability company:

(1) organized for the ownership or operation of twenty-five (25) or more taxicabs;

(2) which are dispatched from a single location serving as both garage and office of record, which has been approved by the Commission as adequate for the storage, maintenance, repair and dispatch of the fleet taxicabs; and

(3) which has a dispatcher on the premises at least eighteen (18) hours every day, who is responsible for assigning drivers to fleet taxicabs.

Independent taxicab owner. An "independent taxicab owner" is an individual, partnership, limited liability company or corporation owning only one medallion taxicab in the City of New York.

Licensed vehicle. A "Licensed vehicle" is a medallion taxicab authorized by the Commission to accept passengers for hire.

Long-term driver. A long-term driver is a licensed taxi driver who meets all of the following conditions: The driver must be:

(1) A steady driver, who drives the taxicab at the rate of at least 160 hours per month; and

(2) A named driver, who is named on the rate card pursuant to Rules 1-47 and 1-48; and

(3) Either an owner of the medallion (including a shareholder in a corporation owning the medallion) or a lessee of the medallion pursuant to a lease with a term of no less than five months; and

(4) A long-term driver on no more than one taxicab.

Mailing address. A "mailing address" is the address designated by the owner for the mailing of all notices and correspondence from the commission and for service of summonses. A post office box is not acceptable. An owner may designate the address of the owner's agent as the owner's mailing address.

Market Value. The "market value" in reference to the transfer of a taxicab medallion shall mean the consideration for the transfer unless the transfer is for less than fair market value, in which case the "market value" shall be the fair market value of the medallion being transferred.

Maximum Escrow Amount. The "maximum escrow amount" equals the greater of (a) the market value of a taxicab medallion being transferred less the value of any debt or liens secured by such medallion and the costs of transfer (including the costs of any foreclosure or similar action and any outstanding fines or fees owed to the Commission or the Parking Violations Bureau) or (b) the market value of a taxicab medallion being transferred less the value of any debt or liens secured by such medallion and the costs of transfer (including the costs of any foreclosure or similar action and any outstanding fines or fees owed to the Commission or the Parking Violations Bureau) PLUS the value of any proceeds of any refinancing received by the owner which was not used to reduce any previously existing debt or liens secured by such medallion following the date of an occurrence of an alleged tort involving the taxicab which tort gives rise to a potential excess claim, except that in a transfer resulting from a sale by a lender or judgment creditor, the maximum escrow amount in respect of proceeds of sale held by such lender or creditor shall not exceed (a).

Medallion. A "medallion" is a plate issued by the Commission as the physical evidence of a taxicab license, and affixed to the outside of such taxicab.

Merchant. A "merchant" is an individual or business entity licensed by the Commission that contracts with a merchant bank provider of credit/debit card services and other merchant account related services, which merchant bank provider is approved by the Commission as a subcontractor to one or more taxicab technology service providers for the purpose of providing in-cab payment of taxicab fares, surcharges, tolls and tips by credit/debit cards.

Minifleet. A "minifleet" is a limited liability company or corporation licensed by the Commission to own and operate two (2) or more taxicabs.

MTA Tax. The "MTA Tax" is the 50-cent tax on taxicab trips that is imposed by article 29-A of the New York State Tax Law.

Owner. (a) An "owner" is an individual, partnership, limited liability company or corporation licensed by the Commission to own and operate a medallion taxicab or taxicabs. A trust, foundation, or non-profit or not-for-profit entity may not be an owner and may not own any interest in an owner except as specifically provided in this chapter.

(b) Whenever within this chapter reference is made to the partners, general partners, shareholders and/or officers of an owner, such reference shall also include the members and managing members of any owner which is a limited liability company.

Passenger. A "passenger" is any individual seated in a taxicab for travel for hire to a given destination.

Prior Claim Letter. A "prior claim letter" is a claim letter received by the Commission prior to February 1, 2009.

Prospective passenger. A "prospective passenger" is a person who has hailed or sought to hire a taxicab for the purpose of being transported to a destination, or one who is awaiting the arrival of a radio dispatched taxicab and who is not seated in the taxicab.

Rate card. A "rate card" is a card issued by the Commission for each medallion taxicab, which displays the taxicab license number, rates of fare, and such other data as the Commission may prescribe.

Renewal applicant. A "renewal applicant" is an owner seeking a renewal of a valid taxicab license.

Standby vehicle. A "standby vehicle" is any vehicle approved by the Commission for use as a replacement vehicle.

Taxicab. A "taxicab" is a motor vehicle licensed by the Commission to carry passengers for hire, designed to carry a maximum of five (5) passengers, and authorized to accept hails from prospective passengers in the street. As used in these rules the term taxicab also includes the license issued by the Commission to operate the motor vehicle as a taxicab.

Taxicab drivers license. A "taxicab driver's license" is the authority granted by the Commission to an individual to drive a taxicab in the City of New York.

Taxicab license. A "taxicab license" is the authority granted by the Commission to an owner to operate a designated vehicle as a taxicab in the City of New York.

Taxicab technology service provider. A "taxicab technology service provider" is a vendor who has contracted with the Commission to install and maintain the taxicab technology system in taxicabs.

Taxicab technology system. The "taxicab technology system" is hardware and software that provides the following four core services (collectively "four core services"): (i) allows credit, debit and prepaid card payment required by section 3-03(e)(7) of this title, (ii) text messaging required by section 3-03(e)(8) of this title, (iii) trip data collection and transmission required by section 3-06 of this title, and (iv) data transmission with the passenger information monitor required by section 3-07 of this title.

Taximeter. A "taximeter" is an instrument or device approved by the Commission by which the charge to a passenger for hire of a licensed taxicab is automatically calculated and on which such charge is plainly indicated.

Taxpayer. "Taxpayer" is a person or entity who is liable under article 29-A of the New York State Tax Law to pay the MTA Tax to the New York State Department of Taxation and Finance.

Tort Letter. A "tort letter" is a statement from the insurer of a taxicab as to whether or not the insurer is aware of excess claims against the taxicab medallion or its owner.

Transfer. A "transfer" is a conveyance of an interest in a taxicab license or interest in a limited liability company owning a taxicab license or stock in a corporation owning a taxicab license, from one party to another.

Transferee. A "transferee" is an applicant approved by the Chairperson to own and operate a medallion taxicab which is acquiring an interest, either directly or indirectly, in a taxicab license pursuant to §§1-80, 1-80.1 and 1-80.2 of this chapter. A secured lender foreclosing upon, repossessing, or otherwise realizing against its security interest in, a taxicab license is not a transferee provided that such lender places the medallion in storage as required by §1-80.2(c) of this chapter.

Transfer form. A "transfer form" is a document, kept in a standby vehicle with an SBV rate card when such standby vehicle is used as a replacement vehicle, containing the medallion number and SBV number.

Trip record. A "trip record" also known as a trip sheet or trip log, is the written, computerized, automated and/or electronic accounting of a taxicab ride. The trip data to be transmitted or recorded shall include the taxicab license number (medallion number); the taxicab driver's license number; the location of trip initiation; the time of trip initiation; the number of passengers; the location of trip termination; the time of trip termination; the itemized metered fare for the trip (tolls, surcharge, and tip if paid by credit or debit card); the distance of the trip, the trip number, the method of payment, the total number of passengers, as well as such other information as may be required by the Commission. The data captured by the trip record may be stored in paper, electronic or such other form as approved by the Commission. Trip record information shall be available to the TLC, the taxicab driver, medallion owner, taxicab owner and/or leasing agent at the end of each shift and/or lease term. The trip record shall be kept in an approved archived form for a minimum of three years after the data of the taxicab ride.

Valid Claim Letter. A "valid claim letter" is a claim letter which is not a prior claim letter, and which must (a) be dated no more than one year prior to the date of submission to the Chairperson of the documentation seeking approval for a proposed transfer of a taxicab medallion as set forth in this chapter, (b) set forth a minimum claim amount in an amount sufficient to be an excess claim, (c) include a copy of the police report regarding the incident in question, and (d) include a representation by the sender that the party against which the excess claim has been asserted has been provided with a copy of the claim letter.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

Accessible taxicab added City Record May 23, 2007 §1, eff. June 22, 2007. [See T35 §1-35 Note 1]

Agent amended City Record Mar. 29, 1996 §2, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Adequate . . . Claimant added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Agent added City Record Oct. 30, 1995 §1, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

Applicant amended City Record June 20, 2006 §1, eff. July 20, 2006. [See Note 2]

Association amended City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Chairperson added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Chauffeur's license amended City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Claim Letter added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Clean air taxicab added City Record May 23, 2007 §1, eff. June 22, 2007. [See T35 §1-35 Note 1]

Coach repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Compliance date added City Record June 12, 2007 §1, eff. July 12, 2007. [See Note 3]

Escrow Amount added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Excess Claim added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Fair Market Value added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Fleet amended City Record June 20, 2006 §2, eff. July 20, 2006. [See Note 2]

Fleet added City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Independent taxicab owner amended City Record June 20, 2006 §3, eff. July 20, 2006. [See Note 2]

Lease card repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Log book repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Long-term driver added City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See T35 §1-78 Note 1]

Mailing address amended City Record Oct. 30, 1995 §1, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

Market Value added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Maximum Escrow Amount added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Merchant added City Record June 12, 2007 §1, eff. July 12, 2007. [See Note 3]

Minifleet amended City Record June 20, 2006 §4, eff. July 20, 2006. [See Note 2]

Minifleet added City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

MTA Tax added City Record Sept. 25, 2009 §1, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Office of record repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Owner amended City Record Dec. 24, 2008 §2, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Owner amended City Record June 20, 2006 §5, eff. July 20, 2006. [See Note 2]

Prior Claim Letter added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Taxicab fleet repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Taxicab minifleet repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Taxicab technology service provider added City Record June 12, 2007 §1, eff. July 12, 2007. [See Note 3]

Taxicab technology service added City Record June 12, 2007 §1, eff. July 12, 2007. [See Note 3]

Taxpayer added City Record Sept. 25, 2009 §1, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Tort Letter added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Transfer amended City Record June 20, 2006 §6, eff. July 20, 2006. [See Note 2]

Transferee added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Trip record amended City Record May 11, 2005 §17, eff. June 10, 2005. [See T35 §3-03 Note 10]

Two-way radio communication system repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Valid Claim Letter added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 29, 1995:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgation amends the Drivers Rules in the following manner: nine penalties are eliminated; drivers are able to go off-duty for more than an hour; drivers are not responsible if an owner placed unauthorized signs in taxi or failed to place required signs; the penalty for failure to safeguard the hack license is eliminated, as that is a summons which drivers often find galling, as it penalizes them for mishaps.

The promulgation amends the Owners Rules in the following manner: nine penalties are eliminated and five changed to permit guilty pleas by mail instead of requiring personal appearances at hearings; requirement that owners must sign trip sheets daily is eliminated; owners will take possession of trip records on a weekly basis; taxis may be driven to a repair facility by someone other than a licensed taxi driver; less restrictive rules for markings and emblems.

In addition, unnecessary definitions and duplicative sections are eliminated from both sets of rules.

The purpose of the promulgation is to simplify and consolidate the Taxicab Owners and Drivers Rules. Streamlining and clarifying the regulations, we believe, better enables the individuals working in the taxi industry to be aware of and follow the requirements. The proposed changes would also present clearer guidelines for enforcement personnel and the TLC adjudications tribunal.

The proposal did not appear in a regulatory agenda for the agency. The preparation of an agenda for this fiscal year was postponed, until after the appointment of a new Chairman. The new Chairman has established this proposal as a priority.

2. Statement of Basis and Purpose in City Record June 20, 2006: The rules amend existing rules to allow limited liability companies to own and operate taxicab medallions. In addition, the rules provide that members and managing members of such limited liability companies will be subject to the same requirements as are partners, shareholders, officers and directors of corporate and partnership owners and operators of taxicab medallions, for all purposes of the Taxicab Owners Rules, including with respect to fitness to own taxicab medallions. The prior rules provide that taxicab medallions may be owned by individuals, partnerships and corporations. The governing statute, §19-502(i) of the New York City Administrative Code, authorizes a broader scope of entities that may own taxicab medallions: "any person, firm, partnership, corporation or association." The limited liability company structure may offer certain advantages for some owners when compared with the personal, partnership or corporate forms of ownership-in particular, industry representatives have indicated that the limited liability company structure can have tax advantages over other forms of taxicab medallion ownership. At the same time, based on review of the law governing limited liability companies, the Taxi and Limousine Commission believes that taxicab medallion owners' use of the limited liability company structure will not impair the Commission's ability to regulate and monitor the taxicab industry.

3. Statement of Basis and Purpose in City Record June 12, 2007: These rules revise the existing Taxi and Limousine Commission ("TLC") rules applicable to the requirements of the taxicab technology system, which consists of hardware and software that allows credit and debit card payment of taxicab fares, text messaging to taxicab drivers, electronic taxicab trip data collection and transmission, and data transmission to a passenger information monitor. The rules provide exemptions from the system installation requirement to taxicabs that will be retired within six (6) months following the installation date, and provide that any taxicab technology service provider who has contracts for installation of the taxicab technology systems in more than three thousand (3,000) taxicabs may, upon prior written approval from the Chairperson, or his or her designee, extend the date for each taxicab to receive such taxicab technology system to the next date that each such taxicab is due for inspection at the TLC's Safety and Emissions Facility following February 1, 2008. The taxicab technology system is in development by vendors pursuant to contracts with the TLC. These rules require installation of the taxicab technology system in taxicabs on the date of the first regularly scheduled inspection for each taxicab on or after October 1, 2007, unless the taxicab is exempt. The rules allocate responsibility for the operation and maintenance of the taxicab technology system among the taxicab driver, owner and agent, and require the driver, owner and agent to report malfunctions in the taxicab technology system within prescribed times after the malfunction is discovered or should reasonably have been discovered. Provided that those reporting requirements are met, the rules allow continued operation of the taxicab, with a written trip sheet if the electronic trip data collection is malfunctioning, for up to 48 hours after the malfunction is reported. If the taximeter fails to operate, however, the taxicab is prohibited from picking up a passenger. Further, if the taxicab technology system in a particular taxicab requires six or more repairs within any thirty-day period, the taxicab must promptly be brought for inspection to, or an inspection must be scheduled with, the TLC Safety and Emissions Facility. Pursuant to the contracts between the Commission and the taxicab technology service providers, the service providers are subject to audits by the City and the Commission, and they are required to provide the City and the Commission with periodic reports and reasonable access to the service providers' performance measurement and management reporting tools. The rules increase from two to six the number of different fare calculations that the taximeter must be capable of processing. Existing rules require that the taximeter be capable of processing the regular fare pursuant to section 1-70 of the TLC rules, and the flat fare between Kennedy Airport and Manhattan pursuant to section 1-69 of the TLC rules. These rules require that the taximeter be capable of processing the fare to Newark Airport pursuant to section 1-73 of the TLC rules, the adjustment of the metered fare to points in Westchester and Nassau counties pursuant to section 1-73(b) of the TLC rules, the negotiated flat fares to points outside New York City other than the Newark Airport and Westchester and Nassau counties pursuant to section 1-73(a) of the TLC rules, and flat fares per person for group rides pursuant to section 1-71 of the TLC rules. The rules also require taxicabs equipped with taxi technology systems to display signs or logos identifying the credit and debit cards that are accepted for payment on the passenger information monitor screen and to permit advertising on the passenger information monitor screen. The rules also require that the taxicab technology system ports and peripheral connections be secured from tampering and that the connections to the taximeter harness, roof light wires and pulse wires use switches, wiring and wire caps meeting the specifications of the Society of Automotive Engineers. The rules at Sections 1-85(b) and 12-06(u)(4) contained a cap of 5 % that medallion owners, or

their agents, would be able to charge drivers for credit/debit card transactions. The rules set forth terms that explicitly require that each taximeter approved by the Commission be capable of transferring data and communicating with the taxicab technology system of all taxicab technology service providers that have chosen to interface with the taximeter. Section 15-44, added by the rules, requires that taximeter businesses which manufacture taximeters make available to taxicab technology service providers certain of their taximeter specifications, subject to appropriate confidentiality obligations, to enable the taxicab technology service providers to effect an interface between their systems and each taximeter; or, alternately, that the taxicab technology service providers make available to taximeter businesses which manufacture taximeters certain of their system specifications, again subject to appropriate confidentiality obligations, to enable the taximeter businesses to effect an interface between their taximeters and each of the taxicab technology systems. The rules also make clear that, effective July 18, 2007, manufacturers of taximeter devices must be licensed by the TLC in order for their taximeters to be installed or maintained in taxicabs licensed by the TLC. Development and implementation of the taxicab customer service enhancements has made it clear that manufacturers of taximeters must work with the taxicab technology service providers, which are TLC contractors, to ensure that all equipment interfaces properly. The Commission achieves this purpose by requiring manufacturers to hold a license and to implement the interface requirements set forth in section 15-44 of the TLC rules. To alleviate difficulties in licensing manufacturing entities which may not be located in New York City, the Commission allows that a manufacturer may meet its licensing requirement by designating a representative to hold a license on its behalf. Any representative designated must hold, and will be deemed to hold, all the necessary authority to carry out the manufacturer's duties as a licensee, including duties regarding interface requirements. The licensing of a representative shall not relieve a manufacturer of its duties with respect to such requirements.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-02 General Provisions for Licensing.

(a) An applicant for a taxicab license shall file an application jointly with the transferor of the license.

(b)(1) An individual, the members of a partnership, or the officers and shareholders of a corporation, applying for a taxicab license must provide to the Commission proof of identity in the form of

(i) A valid form of photo identification issued by the United States, any state or territory thereof or any political subdivision of such state or territory, and

(ii) A valid, original social security card.

(2) An individual, the members of a partnership, or the officers and shareholders of a corporation applying for a taxicab license or its renewal

(i) must be at least 18 years of age; and

(ii) must be of good moral character.

(c) The applicant must demonstrate to the satisfaction of the commission:

(1) that he is qualified to assume the duties and obligations of an owner of a taxicab license;

(2) that he is the owner of a vehicle meeting all requirements of the commission and those of all other

governmental agencies having concurrent jurisdiction;

(3) that he has liability insurance coverage by bond or policy as required by the State of New York and the rules of the Commission;

(4) that he has the certificate of title or photostat thereof and the certificate of registration, both of which must be in the name of the applicant unless title is retained by a lessor or conditional vendor; and

(5) that he has furnished to the Commission all required information concerning the financing of the purchase price of the medallion and/or taxicab.

(6) in the case of an applicant on or after January 7, 1990 to acquire a medallion owned by an independent taxicab owner, that he possesses a current taxi driver's license issued by the Commission and represents that he will drive the taxicab himself in fulfillment of the service requirements of §l-09(b). In the event that the applicant is a corporation or partnership, then one shareholder or partner, as the case may be, must fulfill this requirement.

(d) An individual, the members of a partnership, and officers and shareholders of a corporation applying for an owner's license shall be fingerprinted. Fingerprinting shall also be required of new officers and shareholders of a corporation holding a taxicab license, and of the officers and shareholders of a management company which operates a taxicab fleet. An individual, the members of a partnership and officers and shareholders of a corporation, who provide funds for any owner, shall also be fingerprinted, unless such provider is a licensed bank or loan company. The requirements of this paragraph may be waived by the Commission in its discretion. All such fingerprints must be submitted in the manner prescribed by the Chairperson prior to the approval of the application for ownership of any interest in any medallion and each person fingerprinted must pay any required fees or costs for the taking and processing of fingerprints and securing criminal history records from the New York State Division of Criminal Justice Services, provided that, if any person required to be fingerprinted hereby has an electronic fingerprint record made no earlier than one year prior to the date of the proposed transfer on file with the Commission, such person need not submit an additional set of fingerprints.

(e) If the owner is a partnership, it shall file with its license application a certified copy of the partnership certificate from the clerk of the county where the principal place of business is located.

(f) No corporate or trade name will be accepted by the Commission which is similar to a name already in use by another owner.

(g) If the applicant is a corporation, it shall file with its license application a certified copy of its certificate of incorporation. A list of officers and shareholders and a certified copy of the minutes of the meeting at which the current officers were elected shall also be furnished. Each officer or shareholder shall disclose to the Commission each medallion in which he or she has any interest whatsoever, including but not limited to, any interest as individual owner, partner, shareholder, director or officer. Such disclosure shall be made upon original application for a vehicle license, upon application for renewal of such license, and upon application for transfer of such license.

(h) An applicant or renewal applicant shall not offer or give any gift or gratuity to any employee, representative or member of the Commission, or any public servant, and shall immediately report to the inspector general of the Commission or to the New York City Department of Investigation any request or demand for any gift or gratuity by any employee, representative or member of the Commission, or any public servant.

(i) If the Commission determines that the applicant has failed to meet the requirements for a taxicab license it may deny the license or its renewal and specify in writing to the applicant the reason for such denial.

(j) Any material falsification contained in an original or renewal application for a license, any failure to notify the commission of any material change in the information contained therein or any attempt by an owner or applicant to

conceal the identity of a party having an interest in the ownership of a taxicab shall be cause for denial of such application or revocation or suspension of such license, in addition to any other sanctions imposed by the Commission.

(k) If at anytime during the term of the taxicab owner's license the Commission becomes aware of information that the owner no longer meets the requirements for a taxicab owner's license the Commission may deny his renewal application or suspend or revoke his license.

(l) Each individual medallion owner, member of a partnership owning one or more medallion taxicabs, or shareholder, director or officer of any corporation owning one or more medallion taxicabs shall furnish to the Commission a financial disclosure statement, executed under oath, together with all attachments and documentation required by the Commission. This disclosure statement will be completed on a form provided by the Commission, and shall include but not be limited to the entire disclosure of assets, liabilities, income and net worth of the owner, partner, shareholder, officer or director.

(m) Each individual applicant and renewal applicant shall submit with his or her application the child support certification required by New York General Obligation Law §3-503.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

Subd. (b) amended City Record Oct. 31, 2006 §1, eff. Nov. 30, 2006. [See Note 2]

Subd. (c) par (3) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 2]

Subd. (d) amended City Record Dec. 24, 2008 §3, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Subd. (g) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 1]

Subd. (l) added City Record June 26, 1998 eff. July 26, 1998. [See Note 1]

Subd. (m) added City Record Dec. 24, 2008 §4, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1998:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, which permits TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b)(13) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The regulations require corporate officers or directors and shareholders of corporations owning medallions to reveal their ownership interests in other medallions to the Commission. It also requires all medallion owners to disclose financial information concerning assets, liabilities, income and expenses, to the Commission.

The purpose of these regulations is to enable the Commission to identify officers, directors and shareholders who possess multiple ownership interests in corporations which own medallion taxicabs. This regulation will assist the Commission in protecting the riding public by assuring that beneficial ownership interests in medallion taxicabs are

fully disclosed. The Commission will now be able to determine: (1) who are the true owners of each licensed medallion; and (2) how many medallions are owned, in whole or in part, by each individual.

The regulation requiring financial disclosure will enable the Commission to protect the public by assuring that medallion owners have sufficient income and assets to operate their businesses, and sufficient assets available to protect the public in the event of serious personal injury and/or other loss where the medallion owner is held liable. The Commission is charged with the responsibility of making certain that persons who have ownership interests in medallion taxicabs have sufficient resources to enable them to operate their taxicabs safely and responsibly.

In addition, this information will enable the Commission to assure that persons who have financial interests other than ownership in medallion taxicabs, such as creditors, financiers and lienholders, are identified and known to the Commission. This will enable the Commission to protect the riding public by preventing fraud, undisclosed interests in medallions, and other forms of abuse.

2. Statement of Basis and Purpose in City Record Oct. 31, 2006: The rules amend existing Taxi and Limousine Commission ("TLC") rules to eliminate the requirement that applicants for certain licenses issued by the TLC must prove their citizenship or residency status in order to obtain licenses. This change is made to enhance consistency of application requirements for the various licenses issued by TLC. The rules as amended would preserve the TLC's ability to verify the identity of those applicants who formerly had to prove their citizenship or residency status. Verifying identity is crucial to the completion of accurate background checks and fitness assessments, and therefore is necessary to protect the public interest in the safety and integrity of operations of the for-hire transportation industry. The rules provide that each applicant must establish his or her identity by producing a government-issued photo ID and an original social security card. These standards apply to applicants who are individuals, and to partners, officers, members and/or shareholders of applicants who are partnerships or corporations. These rules leave unchanged the TLC's ability to fingerprint applicants for the purpose of conducting criminal background checks.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The regulation requiring financial disclosure from taxi cab owners, members of partnerships, or shareholders, directors or officers of corporations owning medallions, has been upheld. The regulation furthers legitimate governmental objectives of assuring sufficient information to identify taxi cab owners who have abused the corporate form by fragmenting their ownership into many undercapitalized corporations in order to shield assets from persons injured as a result of negligence. New York City Committee for Taxi Safety v. New York City Taxi and Limousine Commission, 256 A.D.2d 136, 681 N.Y.S.2d 509 (App. Div. 1st Dept. 1998).

¶ 2. Medallion owners brought a challenge to the financial disclosure regulations, claiming that the Taxi and Limousine Commission (TLC) lacked statutory authority to enact the regulation and that the regulation was an unconstitutional infringement on the right of privacy. The court, however, said that the TLC had the necessary authority. Specifically, under City Charter Section 2303, the TLC was given authority to enact regulations relating to financial responsibility of owners. The court also held that the regulations did not violate the right of privacy. In any privacy case, the court said, it was necessary to balance the right to be left alone, against the value of disclosure as a remedy for adverse social conditions. The plaintiffs had cited a number of cases in which financial disclosure requirements for public employees had been upheld, and sought to distinguish them on the grounds that they were private businesses or individuals. The court, however, said that while taxi owners might not be in the same category as public employees, they had chosen to enter a highly regulated industry. Thus, the court applied an "intermediate scrutiny" standard to the constitutional challenge. Under that standard, the regulation was to be upheld if it was designed to further a substantial governmental interest and did not land wide of any reasonable mark in making the classifications. The regulation had a legitimate objective-to insure that owners were adequately capitalized to operate the business safely and to satisfy any tort judgments obtained by persons injured in accidents involving taxi cabs. Even though, as pointed out by the owners, the regulations did not specify a minimum capitalization requirement, they were needed to insure that the corporate form was not being abused. The information should be made available to persons

injured in accidents involving cabs owned by undercapitalized corporations. In other words, the injured persons would need that information in order to prove, if they could, that the corporation was being used to conduct personal business and that there was a basis for piercing the corporate veil. The owners also challenged those parts of the regulation that potentially permitted members of the public to obtain the financial information through a Freedom of Information Law (FOIL) request. The court did not reach this issue, since the TLC promised to implement procedures under which sensitive information would not be released to people not involved in TLC work. If the TLC later fails to safeguard owners' privacy, a new challenge can be expected. Statharos v. New York City Taxi & Limousine Commission, 198 F.3d 317 (2d Cir. 1999).

¶ 3. TLC inspector's testimony that taxicab owners had bribed him to pass taxicabs at inspection was insufficient to establish the charge under section 1-02(k) due to the inconsistencies in and lack of credibility of the Inspector's testimony. **Taxi and Limousine Comm'n v. Chrisanthos, Inc.,** OATH Index Nos. 1626-32/95 (July 21, 1998).

¶ 4. Taxicab owner's license should be revoked based on a finding that he attempted to bribe a TLC inspector to pass his taxicab at inspection. **Taxi and Limousine Comm'n v. N & J Taxi, Inc.,** OATH Index Nos. 1542-53/95 (Jan. 9, 1996), **aff'd in part, remanded on other grounds sub nom. Statharos v. NYC Taxi & Limousine Comm'n,** 269 A.D.2d 280, 703 N.Y.S.2d 461 (1st Dep't 2000). The court had affirmed the administrative law judge's findings of fact but remanded on penalty, holding that one of the owner-driver respondent's had not been given notice in the petition that ownership of his taxicab medallion was at risk. After a hearing on remand, the administrative law judge adhered to her original recommendation that the owner's license be revoked and that he be forced to divest himself of all ownership interest he may have in any corporation owning a taxicab medallion.

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***** Current through December 2009 ****

35 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-03 Standards and Criteria for Ownership.

(a) All medallion transfers together with all transferees, owners or officers of transferees must be approved by the Taxi and Limousine Commission. Otherwise, transfer will not be effective.

(b) Corporate officers are subject to the same standards and criteria as are individual owners. Corporate officers will not be recognized by the Commission unless they have met with the approval of the Commission. It is a violation of the owners rules for a corporate owner to appoint a new officer without the approval of the Commission; and upon a finding of guilt, an appropriate penalty will be imposed. Temporary approval contingent on final approval may be permitted in cases in which an officer has resigned or died and another individual must be able to continue the regular daily operation of the owner corporation.

(c) The standards and criteria for ownership are to be equally applicable when the stock or shares of a corporate owner are held by another corporation or by an association. Each principal, shareholder, and officer of an entity succeeding in interest to any party must be approved by the Commission, and particularly before that entity can purchase an interest in an additional medallion.

(d) The following criteria shall be considered by the TLC in granting permission to own a medallion or additional medallions. For purposes of this subdivision, the term applicant refers to both an individual and to officers and shareholders of a legal entity.

(1) Applicant's criminal history will be considered in a manner consistent with the Corrections Law of the State of New York.

(2) Applicant's TLC and DMV records. TLC History Check will determine whether a prospective owner has owned or currently owns other medallions, directly or as a shareholder, or has been an officer of such a corporation; or possessed or currently possesses a TLC driver license. Ownership or transfer will not be approved if in the past two years, the prospective owner has been found guilty of rule violations involving:

(i) assaultive behavior toward a passenger, official or member of the public in connection with any matter relating to a taxicab,

(ii) any instance of bribery or unlawful gratuity toward a city employee not otherwise covered in §l-03(d)(1), above,

(iii) providing TLC with false information,

(iv) two or more passenger service refusals,

(v) two or more incidents of overcharging, as a driver,

(vi) three failures to respond to an official communication,

(vii) three or more vehicle safety violations for a particular taxicab, or

(viii) ten or more outstanding unexcused failures to appear at scheduled TLC hearings or unsatisfied TLC fines that remained or remain unsatisfied until renewal, or, if other than personal summons, was a stockholder or officer of such an entity.

A prospective owner or shareholder will not be approved to own another medallion, hold stock or be an officer in another corporate medallion owner if he has evidenced a chronic disregard for the rules and regulations that impact on the welfare, safety or security of the riding public.

(3) A medallion owner, stockholder or owner of any type of interest in a taxicab license must be at least eighteen (18) years of age. Stock or membership interests in a limited liability company may be owned in the form of a formal trust for the benefit of a minor who retains equitable interest, only as provided by §1-82(d) of this chapter.

(4) If an owner dies or is declared incompetent by a court of competent jurisdiction, the interest in the medallion or the medallion owning entity must be transferred to an owner approved as required by this chapter and meeting the requirements of §§1-02, 1-03, 1-80, 1-80.1, 1-80.2 and 1-81 of this chapter or must be operated by an administrator, executor, conservator or guardian as provided in §1-82 of this chapter.

(5) An independent taxicab owner must also possess a taxi driver's license issued by the Commission, and for any individual medallion transferred on or after January 7, 1990, he must represent that he will drive the taxi himself in fulfillment of the service requirements of §l-09(b). In the event that the independent taxicab owner is a corporation or partnership, then one shareholder or partner, as the case may be, must fulfill this requirement.

(e) In addition to the foregoing, the Commission will require shareholder responsibility as follows:

A stockholder in a closed corporation that owns a medallion will be personally accountable for adherence to TLC regulations and relevant law directly and uniquely pertaining to medallion ownership.

The Commission will require that prior to approval of any future stock transfers or medallion transfer to a closed corporate owner that all stockholders execute a personal assumption of all the duties and responsibilities in the Commission's Owners Rules and Regulations including personal indemnification for all unpaid Commission fines or fees regarding the medallion or medallions owned by the corporation. This will be the assumption and indemnification agreement.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

Subd. (d) amended City Record Dec. 29, 1995 §2, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (d) par (3) amended City Record Dec. 24, 2008 §5, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Subd. (d) par (4) amended City Record Dec. 24, 2008 §6, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

DERIVATION

Former §1-03 subds. (l), (m) added City Record Jan. 2, 1992 eff. Feb. 1, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Testimony from TLC inspector, who admitted that he accepted bribes from those who presented taxicabs to him for inspection, was found insufficient to establish charges that taxi owners had bribed the inspector, due to inconsistencies in the inspector's testimony and other problems with his credibility. **Taxi and Limousine Comm'n v. Chrisanthos, Inc.,** OATH Index Nos. 1626-32/95 (July 21, 1998).

¶ 2. TLC inspector's testimony was found to be sufficient to establish that medallion owners attempted to bribe the inspector. **Taxi and Limousine Comm'n v. N & J Taxi, Inc.,** OATH Index Nos. 1542-53/95 (Jan. 9, 1996), **aff'd in part, remanded on other grounds sub nom. Statharos v. NYC Taxi & Limousine Comm'n,** 269 A.D.2d 280, 703 N.Y.S.2d 461 (1st Dep't 2000).

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35 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-04 License Fees.

(a) Pursuant to §19-504(b) of the Administrative Code of the City of New York, the license fee for each taxicab and coach shall be five hundred fifty dollars ($550) annually, pro rated if the license period is for a period other than one year.

(b) Except as set forth in subdivision (e), a license to operate a taxicab shall be for a term of two years and shall expire on May 31 each alternate year. The Chairman may, however, extend the effectiveness of a taxicab license until the completion of the next scheduled inspection of the taxicab, or until such other time as may be appropriate in the administration of the renewal of taxicab licenses.

(c) Unless the time to renew the license has been extended by the Chairman, an owner shall be responsible for filing a completed renewal application for the vehicle license together with the required fee no later than April 30 of each year in which a license is scheduled to expire. It shall be the owner's responsibility to obtain said renewal application in order to comply with the filing requirements described above.

(d) Pursuant to §19-504(j) of the Administrative Code of the City of New York, the fee for replacement of a medallion "tin" when such medallion is replaced shall be ten dollars ($10).

(e) Taxicab licenses expiring on May 31, 2003 shall be renewed for one year, except for licenses containing the letters A, E, J, and N in their license designation, which shall be renewed for two years. Taxicab medallion licenses expiring on May 31, 2004 shall be renewed for one year, except for licenses containing the letters B, F, K and P, which shall be renewed for two years. Taxicab medallion licenses expiring on May 31, 2005 shall be renewed for one year,

except for licenses containing the letters A, C, E, G, J, L, N, W, and all Standby Vehicles, which shall be renewed for two years. All taxicab licenses expiring on or after May 31, 2006 shall be renewed for two years.

HISTORICAL NOTE

Section amended City Record Apr. 8, 2003 §1, eff. May 8, 2003. [See Note 1]

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Apr. 8, 2003:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under §2303(b)(5) of such Charter, authorizing the TLC to promulgate rules and regulations relating to issuance of licenses to owners of taxicabs; under §19-504(b) of the Administrative Code of the City of New York, authorizing the TLC to issue taxicab licenses for a period of at least one, but not more than two years.

The rules of the Commission currently provide that all taxicab licenses are issued for a one-year period and expire on May 31st of each year. Most other licenses issued by the TLC are valid for two years.

This amendment provides that taxicab licenses are renewed on a biennial basis. All licenses would continue to expire on May 31st. A phase in of this requirement over a three-year period will enable the TLC to process these transactions without an increase in staff and other resources, and ultimately, approximately one-half of all licenses would be subject to renewal each year.

The issuance of two-year taxicab licenses will reduce the number of renewals processed each year, and will conform the procedures for processing renewals of taxicab licenses with the procedures for processing the renewal of other licenses issued by the TLC.

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35 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-05 Inspection Fees.

(a) The fee payable to TLC for the inspection required for the issuance of a certificate of inspection of a taxicab, inclusive of the issuance of such certificate, shall be fifty dollars ($50).

(b) An owner shall pre-pay upon license renewal the inspection fees, set by §l-05(a), for the three inspections per year required by §l-10(b). Pre-payment for each inspection scheduled during renewal period shall be made in connection with an application for renewal of a taxicab license and shall be a condition for license renewal.

(c) If any taxicab fails to pass any of the inspections required by §l-10(b), it shall be reinspected for no additional fee. If any taxicab fails to pass such reinspection, it shall be reinspected a second time for an additional fee of thirty-five dollars ($35). If any taxicab fails to pass such second reinspection, it shall be reinspected a third time. No additional fee shall be charged for third or subsequent reinspections.

HISTORICAL NOTE

Section amended City Record Apr. 8, 2003 §2, eff. May 8, 2003. [See §1-04 Note 1]

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

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35 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-06 Administrative Fees.

(a) Pursuant to §19-504(k) of the Administrative Code of the City of New York, the fee for replacement of license plates issued by the New York State Department of Motor Vehicles shall be twenty-five dollars ($25) per vehicle.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

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35 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-07 Licensing Requirements.

(a) A taxicab in operation for hire shall be currently licensed by the Commission and have a current medallion affixed thereto.

(b) An owner who is not currently licensed shall not advertise or hold himself out as doing business as a "taxi," "taxicab" or "hack" service.

(c) A taxicab may be operated only while the registration of the vehicle remains valid. Operation of a vehicle without a valid registration shall constitute operation without a Commission-issued license in violation of §19-506 of the Administrative Code of the City of New York, regardless of whether a Commission-issued license had previously been obtained while a registration was valid.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

Subd. (c) added City Record Nov. 2, 2006 §1, eff. Dec. 2, 2006. [See Note 1]

DERIVATION

Former §1-07 subd. (v) par (3) added City Record Jan. 2, 1992 eff. Feb. 1, 1992.

NOTE

1. Statement of Basis and Purpose in City Record Nov. 2, 2006:

These rules create procedures for suspending licenses pending compliance with applicable rules, as an alternative to the existing procedure for suspending licenses pending revocation of those licenses. This rulemaking follows the pattern of recently promulgated amendments to the Commission's drug testing rules, which provided for suspension of licensees who fail to submit to required annual drug testing-the new rule provides for suspension pending compliance as an alternative to suspension pending revocation. This rulemaking creates the alternative of suspension pending compliance for several rules violations involving pre-hearing suspensions, in order to protect against an imminent threat to the health and safety of the riding public.

Because the suspensions are pre-hearing, prompt post-suspension review of the suspension is provided for in these rules. Section 8-17(a) provides for post-suspension review based on the submission of papers, and is applicable only to a suspension imposed for failure to submit to required annual drug testing. Section 8-17(b) provides for post-suspension hearings, and is applicable to all other summary suspensions that are imposed pending compliance. Both §8-17(a) and §8-17(b) provide deadlines within which the suspended licensee may contest the suspension. Where a suspension is imposed and a summons is issued for the same violation, the hearing on the summons will be consolidated with any hearing on the suspension pursuant to §8-17(b). Each rule that may result in a summary suspension pending compliance includes a reference to 8-17(a) or (b) in the penalty in these rules.

In addition to or instead of contesting a summary suspension that is imposed pending compliance, a licensee has the alternative of complying with the underlying rule, and demonstrating compliance to the Commission, whereupon the suspension will be lifted without a hearing, and regardless of whether a hearing has been scheduled or has been held.

Other substantive changes in these rules include:

· Elimination of suspensions for failure to comply with Commission rules requiring personal appearances at hearing. This requirement is eliminated in anticipation of future rulemaking to substitute fixed fines for "range fines," which were the reason underlying the personal appearance requirements.

· Amendment of §8-15 to provide for pre-hearing suspension of a licensee pending a fitness hearing, where the licensee fails a drug test and the licensee's continued operation would pose a threat to the public safety. As with other summary suspensions, the amendment provides for prompt post-suspension process-in this case, a prompt fitness hearing.

· Explicit provision for summary suspension pending revocation where the licensee is arrested on charges that are relevant to the licensee's qualification for licensure and pose a threat to public health or safety. Prompt post-suspension challenges are provided for, and a revocation proceeding must be commenced, or the suspension lifted, promptly upon notice to the Commission of disposition of the criminal proceedings.

· Provision that holders of probationary taxicab driver licensees must complete their continuing education requirements within a prescribed time, and that failure to do so results in expiration of their licenses.

· Elimination of the existing rule requiring surrender of a license as a precondition to appearing at a hearing. The new rule requires only that photo identification be shown, in conformance with current practice.

· Rule 8-11(e) is deleted and instead incorporated into each penalty table, to make the requirement of paying fines more clear throughout the rules.

Finally, this rulemaking corrects various typographical errors, eliminates references only to the male pronoun, and provides for more consistent usage of terms.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-08 [Reserved]

HISTORICAL NOTE

Section repealed and reserved City Record Dec. 29, 1995 §3, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

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35 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-09 Service Requirements.

(a) A taxicab fleet or minifleet owner shall operate each taxicab or its replacement standby vehicle of such fleet for a minimum of two (2) shifts of nine (9) hours each day including weekends and holidays.

(b) An independent owner, while not required to double shift his vehicle, is nevertheless required to provide service to the public on a regular basis. An independent owner must provide service for at least two hundred ten (210) nine (9) hour shifts in every calendar year. An independent owner who obtained the medallion through a transfer on or after January 7, 1990 must drive the taxicab himself to fulfill the above-stated requirement. In the event that the independent taxicab owner is a corporation or partnership, then one shareholder or partner, as the case may be, must fulfill such requirement. Upon written request by an owner, the Commission may waive or modify the requirements of this rule, for a limited time, for good cause shown.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

DERIVATION

Former §1-09 subd. (e) amended City Record Jan. 2, 1992 eff. Feb. 1, 1992.

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35 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-10 Taxicab Inspections.

(a) No new or replacement taxicab shall operate for hire unless it has been inspected and approved by the Commission.

(b) An owner shall have his taxicab inspected every four months at a date and time designated by the Commission and at any other time deemed necessary by the Commission.

(c) An owner shall comply with all notices and directives to correct defects in taxicabs.

(d) An owner shall repair or replace a taxicab when the Commission determines that the vehicle is unsafe or unfit for use as a taxicab, and directs the owner to remove it from service. The owner shall surrender the medallion and rate card to the Commission for storage and shall be suspended pursuant to §8-17(b) of this title.

HISTORICAL NOTE

Section amended City Record Nov. 2, 2006 §2, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

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35 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-11 Vehicle Condition.

(a) While a taxicab is in operation, all equipment, including brakes, tires, lights and signals must be in good working order and meet all requirements of the New York State Vehicle and Traffic Law, the Commission, and sections 3-03 and/or 3-03.1 or 3-03.2 of this title and these rules.

(b) The taxicab's exterior and interior must be clean.

(c) The medallion number on the front and rear of the roof light must be clean and unobstructed so that the medallion number is plainly visible.

(d) The trunk compartment must be capable of securely holding passengers' baggage.

(e) (i) For any taxicab that is required to be equipped with the taxicab technology system, such equipment shall at all times be in good working order and each of the four core services shall at all times be functioning. (ii) In the event of any malfunction or failure to operate of such taxicab technology system, the owner shall file an incident report with the authorized taxicab technology service provider promptly and in no event more than two (2) hours following the owner's discovery of such malfunction or failure to operate or such time as the owner reasonably should have known of such malfunction or failure to operate. If the driver or taxicab agent previously filed a timely incident report regarding such malfunction or failure to operate, the owner shall not be required to file a separate incident report but shall obtain an incident report number from the driver, agent or authorized taxicab technology service provider. The owner shall meet, or shall instruct the taxicab agent to meet the appointment for repair scheduled by the authorized taxicab technology service provider following the filing of an incident report with such authorized taxicab technology service provider. A

taxicab in which any of the four core services of the taxicab technology system, or any part thereof, are not functioning shall not operate more than forty-eight (48) hours following the timely filing of an incident report by the owner, driver or agent.

(f) The owner of any taxicab required to be equipped with the taxicab technology system shall equip such taxicab, except as provided in subdivision (g) of this section, with a taxicab technology system as set forth in sections 3-03(e)(7) and (8), 3-06 and 3-07 of this title.

(g) The owner of any taxicab required to be equipped with a taxicab technology system shall contract to procure such equipment on or before August 1, 2007. Except as provided in this subdivision, the owner shall install a taxicab technology system no later than the compliance date set forth in section 1-01 of this chapter. Taxicabs that are to be retired within six (6) months of the compliance date for each such taxicab shall be exempt from the requirement that the taxicab technology system be installed in the taxicab. If any taxicab technology service provider contracts to provide more than three thousand (3,000) taxicabs with its taxicab technology system on or before August 1, 2007, the date by which each such taxicab is required to be equipped with such taxicab technology system may, upon prior written approval from the Chairperson, or his or her designee, be extended to each such taxicab's first scheduled inspection at the Commission's Safety and Emissions Facility on and after February 1, 2008.

(h) The owner of any taxicab requiring six (6) or more repairs of the taxicab technology system in any thirty (30) day period shall promptly take such vehicle for inspection to, or schedule an inspection with, the Commission's Safety and Emissions Facility. Such requirement shall not apply to the owner if compliance is made by the driver or agent of such vehicle.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

Subd. (a) amended City Record June 12, 2007 §2, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 1]

Subds. (e), (f) amended City Record June 12, 2007 §2, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subds. (e), (f) added City Record Apr. 14, 2004 §3, eff. May 14, 2004. [See T35 §3-03 Note 8]

Subds. (g), (h) added City Record June 12, 2007 §2, eff. July 12, 2007. [See T35 §1-01 Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 29, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgated amendments are technical changes to the Taxicab Owners Rules which correspond with rules recently adopted by the Commission. At the Commission meeting held on January 25, 1996, the taxicab rate of fare was increased and the Taxicab Specifications were renumbered. The amendments change the references to the Taxicab

Specifications to reflect the new section numbers, and ensure that the Taxicab Marking Specifications correspond to the increased taxicab rate of fare.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-12 Illumination.

(a) When a taxicab is in operation for hire after sunset, the following items must be illuminated so that they are clearly visible from the rear seat:

(1) the face of the taximeter;

(2) the taxicab driver's license; and

(3) the rate card.

(b) The dashboard dimmer switch or any other device may not control the candlepower of the roof light, taximeter light, card frame light or interior lighting.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

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35 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-13 Optional Equipment.

(a) A taxicab may be equipped with a two-way radio only in the Citizens Radio Service and only on the forty frequencies, within allowed deviation, specifically authorized under the rules of the Federal Communications Commission. Emissions, transmission power and antenna length shall be in accordance with limits established by the rules of the Federal Communications Commission. Such two-way radio may not be used for purposes of dispatch or passenger reservations.

(b) (1) A taxicab may be equipped with a cellular telephone which is accessible for passenger use and driver use by use of a credit card and by use of a calling card. Such cellular telephone may also be accessible by third party billing.

Such a cellular telephone must be of a make and type acceptable to the Commission, and installed in a manner approved by the Commission. Such a cellular telephone must be equipped with an emergency 911 feature, which does not require a telephone card or a credit card to operate. Such a cellular telephone shall not receive incoming telephone calls.

(2) Such a cellular telephone shall not be used for purposes of dispatch or passenger reservations.

(3) An owner of a taxicab equipped with a cellular telephone shall not charge a passenger or a driver a fee to use such telephone.

(4) A taxicab equipped with a cellular telephone must display a sign describing the cost per telephone call in the interior of the taxicab next to the telephone, in accordance with §1-36.

(5) A taxicab equipped with a cellular phone may indicate that a telephone is available with a sign on the exterior of the taxicab, in accordance with §1-36.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section repealed and added City Record Mar. 6, 1992 eff. Apr. 5, 1992.

Section in original compilation July 1, 1991.

Subd. (a) amended City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Subd. (c) repealed City Record Feb. 8, 1994 eff. Mar. 6, 1994.

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***** Current through December 2009 ****

35 RCNY 1-14

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-14 Air Conditioning.

(a) Each taxicab commencing with the 1990 model year and for all model years thereafter shall be equipped with an operable air conditioning system; when the vehicle is also equipped with a partition, the air conditioning system must be able to provide cool air to the rear passenger area.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

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35 RCNY 1-15

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-15 Safety Belts.

(a) All seat belts and shoulder belts shall be clearly visible, accessible and in good working order.

(b) Each taxicab commencing with the 1990 model year and for all model years thereafter shall in addition to seat belts for each seating position and shoulder belts for both outside front seat positions be equipped with shoulder belts for both outside passenger rear seat positions.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

DERIVATION

Former §1-15 subd. (a) amended City Record Feb. 22, 1993 eff. Mar. 20, 1993. Subds. (k), (l) added City Record Mar. 6, 1992 eff. Apr. 5, 1992.

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***** Current through December 2009 ****

35 RCNY 1-16

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-16 Structural Changes.

(a) An owner, without the Commission's written approval, shall make no structural change in a taxicab deviating from the Commission taxicab specifications.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

DERIVATION

Former §1-16 amended City Record Mar. 6, 1992 eff. Apr. 5, 1992.

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***** Current through December 2009 ****

35 RCNY 1-17

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-17 Partition.

(a) An owner shall equip all taxicabs, except as provided in subdivision (b) of this section, with a partition that meets the specifications set forth in section 3-03(e)(3)(i) of this title and with provision for air conditioning for the rear passenger compartment, as set forth in section 3-05 of this title.

(b) An owner of an independent taxicab or a shareholder of a corporation owning one or more medallions shall be exempt from the provisions of subdivision (a) if:

(1) the taxicab is driven by the medallion owner or corporate shareholder(s), and

(2) the rate card lists only the persons named in subdivision (1) as driver(s), and

(3) the taxicab is equipped with a cellular telephone which has an emergency dialing feature, in accordance with section 1-13(b) of this chapter, and the taxicab is equipped with some other device specifically approved by the Commission to satisfy this requirement in addition to the trouble light required by section 1-18(a) of this chapter, and

(4) the owner has not previously been in violation of this rule with respect to the subject medallion, and

(5) the owner has applied for and received a certification of exemption from the Commission. Notwithstanding compliance with above conditions, if a partition is the only approved location for display of the rate card and driver license in a particular model of automobile, then a partition is required.

(c) A taxicab that is equipped with factory installed curtain airbags shall be equipped with a partition which shall

not extend the full width of the interior of the taxicab, but instead shall allow a space of six inches at each side, sufficient to permit proper deployment of the curtain airbags, and shall conform in all other respects with the applicable requirements of section 3-03(e)(3)(i) of this title.

(d) Where section 3-03(e)(3)(v) of this Title applies, the taxicab shall be equipped with a cellular telephone as set forth in subdivision (b) of this section and an in-vehicle camera system that meets the specifications set forth in such section 3-03(e)(3)(v), in addition to the trouble light required by section 1-18(a) of this chapter.

(e) An in-vehicle camera system shall be installed and maintained by the manufacturer's authorized installer and shall be in good working order.

(f) Each taxicab equipped with an in-vehicle camera system shall display decals on each rear passenger window, visible to the outside, that contain the following information: "This vehicle is equipped with camera security. YOU WILL BE PHOTO- GRAPHED."

HISTORICAL NOTE

Section amended City Record Apr. 23, 2007 §1, eff. May 23, 2007. [See Note 4]

Section amended City Record June 1, 2000 §1, eff. July 1, 2000. [See Note 2]

Section amended City Record May 3, 2000 §2, eff. June 2, 2000. This Emergency Rule was also

added in City Record Apr. 21, 2000 eff. May 21, 2000. [SeeNote 1]

Section amended City Record Dec. 29, 1995 §4, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section added City Record Feb. 8, 1994 eff. Mar. 6, 1994.

Section heading changed to include "in-vehicle camera system", an inadvertent error.

Subd. (a) amended City Record Dec. 18, 2007 §1, eff. Jan. 17, 2008. [See Note 5]

Subd. (a) amended City Record May 26, 2006 §1, eff. June 25, 2006. [See Note 3]

Subd. (a) amended City Record June 3, 1998 eff. July 3, 1998. [See T35 §3-05 Note 1]

Subd. (a) amended City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §3-03 Note 3]

Subd. (c) added City Record May 26, 2006 §2, eff. June 25, 2006. [See Note 3]

NOTE

1. Statement of Basis and Purpose in City Record May 3, 2000:

In accordance with §1043(h)(1) of the New York City Charter, the Taxi and Limousine Commission ("Commission") hereby makes the following finding of imminent and immediate threat to public health, safety, and property, and the provision of a necessary public service.

Since January 1, 2000, seven (7) for-hire vehicle drivers have been murdered while operating livery vehicles in the City of New York. In addition, eleven (11) for-hire vehicle drivers were killed during 1999. The recent increase in crimes committed against for-hire vehicle drivers has occurred at a time when overall crime rates, and in particular, crimes committed against medallion taxicab drivers, has been steadily declining.

Since March 1, 1996, the Taxi and Limousine Commission has mandated that virtually all New York City taxicabs be equipped with protective partitions. In March 2000, the Commission also approved an in-vehicle security camera as an alternative to the partition. Since partitions or other security devices have become mandatory in taxicabs, there has been a significant decrease in the number of crimes committed against taxicab drivers.

On June 1, 1997, a rule mandating partitions in certain for-hire vehicles became effective. Although the rule mandates that all for-hire vehicles be equipped with a partition, unless the vehicle owner qualifies for one of the enumerated exemptions, most for-hire vehicles have not been equipped with partitions or other security devices.

Section 6-13(a)(2) of the for-hire vehicle rules provides that a vehicle owner shall be exempt from the partition requirement if, **inter alia,** the vehicle is driven exclusively by the owner. A similar exemption exists in the Taxicab Owners' Rules, §1-17(b). Since approximately ninety (90%) percent of all for-hire vehicles, and a smaller but significant number of taxicabs are driven by owner-operators, a substantial percentage of vehicles transporting passengers for hire are presently exempt from the partition requirement. This exemption was created because many taxicab and for-hire vehicle owners also use their vehicles as private and family vehicles, and the Commission had allowed such owner/operators the option to purchase partitions to protect themselves. However, many taxicab and for-hire vehicle owners place themselves at risk by not installing protective equipment in their vehicles where such equipment has been proven to be an effective deterrent to crime.

Independent studies have clearly demonstrated that the installation of partitions has reduced the number of crimes committed against taxicab and for-hire vehicle drivers. Accordingly, mandating the use of such devices will have a positive effect on reducing crimes committed against the drivers of such vehicles.The mandatory use of partitions or other safety devices is directly related to public safety. In light of the recent increase in the number of serious crimes committed against such drivers, immediate action is necessary.

On April 18, 2000, the Commission found an imminent threat to public health and safety, and voted to amend its Rules to eliminate the provisions that exempted for-hire vehicles and medallion taxicabs driven exclusively by owner-operators from the mandatory partition requirement.

It is hereby certified that the immediate effectiveness of rule amendments eliminating certain exemptions to the requirement for the mandatory installation of protective partitions or other security equipment in for-hire vehicles, as provided herein, is necessary to address an immediate threat to public safety.

. . . . . .

Statement of Basis and Purpose The emergency rule adopted herein by the New York City Taxi and Limousine Commission ("TLC") is promulgated pursuant to §1043(h)(1) of the Charter of the City of New York, authorizing the Commission to promulgate emergency rules upon a declaration of an emergency relating to the public health, safety or welfare, or the provision of public services; §2303(a) of the Charter of the City of New York, which permits the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under §19-503 [City Record Apr. 21, 2000 read "§§19-503 and 19-503.1-Editor] of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. In accordance with §1043(h)(1) of the New York City Charter, the TLC has made a finding of imminent and immediate threat to public health, safety, and property, and to the provision of a necessary public service. ["This finding has been approved by the Mayor." This sentence is in City Record Apr. 21, 2000.] On June 1, 1997, a rule mandating partitions in certain for-hire vehicles became effective. Although the rule mandates that all for-hire vehicles be equipped with a partition, unless the vehicle owner qualifies for one of the enumerated exemptions, most for-hire vehicles have not been equipped with partitions or other security devices. Sections 1-17(b) of the Taxicab Owners' Rules and 6-13(a)(2) of the For-Hire Vehicle Rules provide that a vehicle owner may be exempt from the partition requirement if, **inter alia,** the vehicle is driven exclusively by the

owner. Since approximately ninety (90%) percent of all for-hire vehicles are driven by owner-operators, the vast majority of for-hire vehicles are presently exempt from the partition requirement. In addition, a substantial number of taxicabs are driven exclusively by the vehicle owner or long-term lessee ["long term lessee" reads "shareholder" in City Record Apr. 21, 2000], and are exempt from this requirement. This exemption was created because many for-hire vehicle owners and individually-owned taxicabs also use their vehicles as private and family vehicles, and the Commission allowed such owner/operators the option to choose to purchase partitions to protect themselves. Many taxicab and for-hire vehicle owners have placed themselves at risk by not installing protective equipment in their vehicles, where such equipment has been proven to be an effective deterrent to crime. Independent studies have clearly demonstrated that the installation of partitions has reduced the number of crimes committed against taxicab and for-hire vehicle drivers. Accordingly, eliminating exemptions from the mandatory use of partitions or other security devices will promote driver safety. Taxicabs that are presently mandated to have partitions shall not be relieved of this requirement through the installation of an in-vehicle camera or other approved security device. Taxicabs presently not required to have partitions could comply with this rule through the installation of either a partition or an approved security device.

2. Statement of Basis and Purpose in City Record June 1, 2000: This Rule by the New York City Taxi and Limousine Commission ("TLC") is promulgated pursuant to authority conferred under §2303(a) of the Charter of the City of New York, which permits the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under §§19-503 and 19-503.1 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. In 1996, the Taxi and Limousine Commission mandated that most taxicabs be equipped with partitions. Immediately after the enactment of this Rule, the number of violent crimes committed against taxicab drivers dropped significantly. On June 1, 1997, a Rule mandating partitions in certain for-hire vehicles became effective. That Rule requires that all for-hire vehicles be equipped with a partition, unless the vehicle owner qualifies for one of the enumerated exemptions. Section 6-13(a)(2) of the For-Hire Vehicle Rules provides that a vehicle owner may be exempt from the partition requirement if, **inter alia,** the vehicle is driven exclusively by the owner. Since most for-hire vehicles qualify for an exemption from the partition requirement since they are driven exclusively by the vehicle owner, relatively few for-hire vehicles have been equipped with partitions or other security devices. Section 1-17(b) of the Taxicab Owners' Rules also exempts certain taxicabs driven exclusively by the vehicle owner or a shareholder in the corporation owning taxicabs from the mandatory partition requirement. These exemptions to the partition requirements were enacted primarily because many for-hire vehicle owners and individually-owned taxicabs also use their vehicles as private and family vehicles, and the Commission allowed such owner/operators the option to choose to purchase partitions to protect themselves. Many taxicab and for-hire vehicle owners have placed themselves at risk by not installing protective equipment in their vehicles, where such equipment has been proven to be an effective deterrent to crime. A recent increase in the number of assaults and violent crimes committed against drivers of for-hire vehicles prompted the Commission to issue a declaration of an immediate and imminent threat to the public health and safety on April 18, 2000, which was approved by the Mayor. The Commission also adopted an Emergency Rule pursuant to §1043(h) of the New York City Charter, repealing both the taxicab and the for-hire vehicle owner-operator exemptions to the partition requirement. The Rule promulgated herein adopts the text of this Emergency Rule as a final Rule of the Commission. Independent studies have clearly demonstrated that the installation of partitions has reduced the number of crimes committed against taxicab and for-hire vehicle drivers. Accordingly, eliminating exemptions from the mandatory use of partitions or other security devices will promote driver safety. Taxicabs that are presently mandated to have partitions shall not be relieved of this requirement through the installation of an in-vehicle camera. Taxicabs presently exempt from the partition requirement may comply with this Rule through the installation of either a partition or the in-vehicle camera, presently approved by the Commission as an alternative safety device, or another security device that may be approved by the Commission in the future. For-hire vehicles that are not equipped with partitions may install either a partition or an approved in-vehicle camera to comply with the requirements of this Rule.

3. Statement of Basis and Purpose in City Record May 26, 2006: This rulemaking amends existing rules requiring

installation of partitions in taxicabs, to create an exception for taxicabs that are equipped with factory installed curtain airbags. Taxi and Limousine Commission ("Commission") staff have found that partitions that conform to existing rules will impede the proper deployment of curtain airbags that are factory installed in 2006 Toyota Sienna minivans, a vehicle model that is approved for use as a taxicab pursuant to §3-03(c)(7) of the Commission's rules, thereby reducing or eliminating the safety value of those curtain airbags, and creating additional risk of injury to the driver and passengers of a taxicab in the event of an accident. In order to permit proper deployment of curtain airbags, this rule allows the owner of a taxicab equipped with factory installed curtain airbags to install a modified partition or to install no partition, and requires the owner in either event to install a cellular telephone with an emergency dialing feature and a security camera system approved by the Commission pursuant to §1-17(b)(3) of the Commission's rules. This rule further provides that the penalty for installation of an improper partition or for the failure to install a proper cellular telephone and security camera system is the same as the penalty provided in existing rules for failure to install a proper partition.

4. Statement of Basis and Purpose in City Record Apr. 23, 2007: The rules promulgated herein enhance and clarify the requirements for security equipment in taxicabs and for-hire vehicles. Existing rules require, with certain exceptions, that taxicabs be equipped with partitions, and that each taxicab without a partition be equipped with a cellular telephone that has an emergency dialing feature, and with "some other device specifically approved by the commission" (section 1-17(b)(3)). Existing rules provide that a for-hire vehicle affiliated with a livery base station must have either a partition or both an FCC commercial two-way radio with an emergency button and "[s]ome other device specifically approved by the Chairperson" (section 13(a)(3)(ii)). The only device the Commission has approved pursuant to section 1-17(b)(3) and the only device the Chairperson has approved pursuant to section 6-13(a)(3)(ii) is an in-vehicle camera system. Therefore, the rules promulgated herein specify that the "other device" for taxicabs and liveries that are not furnished with partitions must be an in-vehicle camera system. In addition, the rules promulgated herein add an alternative in the for-hire vehicle rules to the outmoded FCC commercial two-way radio, specifically a cellular telephone with an emergency dialing feature. The rules promulgated herein also provide further specifications for the transparent portions and protective plate of partitions. Existing taxicab rules require that a partition have a protective plate as part of the partition and a bullet-resistant, clear and scratch-resistant material for the transparent portion of the partition, and further require that the partition allow passengers to pay fares either by cash or by credit card should the taxicab be capable of accepting credit card payments. The rules promulgated herein for taxicabs require the transparent portion of partitions be a mar-resistant polycarbonate that shall be not less than 0.375 inch thick and a protective plate that shall be constructed of a 0.085 inch thick ballistic steel or its equivalent. Existing rules for for-hire vehicles require that a partition have a protective plate and a transparent portion of the partition that is made of lexan, margard or other polycarbonate material not less than 0.375 inch thick. The rules promulgated herein for for-hire vehicles delete the two brand name polycarbonates, lexan and margard, and require that the polycarbonate material be mar-resistant, and further that the partition allow passengers to pay fares either by cash or by credit card should the livery vehicle be capable of accepting credit card payments. In addition, the rules promulgated herein allow for a new L-shaped partition that separates the driver from both front-seat and rear-seat passengers and a new partition that accommodates curtain airbags, as alternatives to the traditional flat partition that separates the front and rear areas of the vehicle. An L-shaped partition model was approved by the Commission on September 14, 2006, and the partition model for vehicles that are factory-equipped with curtain airbags was approved on December 14, 2006. The rules promulgated herein codify those approvals. Presently, taxicabs that are equipped with factory installed curtain airbags are exempted by existing rules from the partition requirement, and the for-hire vehicle rules are silent as to vehicles with curtain airbags. The rules promulgated herein require partitions for all such taxicabs and for all such for-hire vehicles which are not equipped with a cellular telephone with an emergency dialing feature and an in-vehicle camera system. On and after the effective date of the rules promulgated herein, a taxicab or for-hire vehicle affiliated with a livery base station, when its existing partition is required to be replaced or when a partition is installed (including, but not limited to, at hack-up or first licensing), must be equipped with a partition that meets or exceeds the new specifications, unless the taxicab or for-hire vehicle is exempt from the partition requirement and complies with the alternative requirements. Finally, on and after the effective date of the rules promulgated herein, a taxicab or a for-hire vehicle that does not have a partition, when its existing in-vehicle camera system is required to be replaced or when an in-vehicle camera system is installed (including,

but not limited to, at hack-up or first licensing), shall have installed an in-vehicle camera system that complies with these rules. Some taxicabs may have in-vehicle camera systems that comply with the specifications promulgated herein. Others may need expanded memory and, therefore, may require upgrades to comply with these rules. Similarly, in-vehicle camera systems previously approved for use in for-hire vehicles do not have sufficient memory to comply with the rules promulgated herein. Therefore, on and after the effective date of these rules, when in-vehicle camera systems are required to be replaced or installed, those systems previously approved for for-hire vehicles will require upgrades, if available, or replacement. The rules promulgated herein do not alter the exemptions from the partition requirement for taxicabs that are subject to existing rules, with the exception of taxicabs equipped with factory-installed curtain airbags. Existing rules exempt the following taxicabs from the partition requirement: owner driven taxicabs (section 1-17(b)), taxicabs equipped with factory-installed curtain airbags (section 1-17(c)) and hybrid electric taxicabs (section 3-03.1(c)(10)). Now that there is an approved partition that can accommodate the deployment of curtain airbags, the rules promulgated herein require that such a partition be placed in taxicabs and for-hire vehicles equipped with factory-installed curtain airbags, unless they are otherwise exempt. Existing rules exempt the following for-hire vehicles from the partition requirement: for-hire vehicles affiliated only with black car and/or luxury limousine base stations (section 6-13(a)(2)), and for-hire vehicles equipped with in-vehicle camera systems and two-way radios (section 6-13(a)(3)). The rules promulgated herein for for-hire vehicles add a cellular telephone with an emergency dialing feature as an alternative to the two-way radio. The rules promulgated herein also require that taxicabs and for-hire vehicles equipped with in-vehicle camera systems be provided with decals on the rear passenger windows advising that the vehicle is equipped with camera security and that passengers will be photographed. Section 3-03(e)(3)(v)(U) of the rules promulgated herein was amended after publication in order to permit not only manufacturer authorized installers of in-vehicle camera systems that were also taximeter businesses licensed by the Commission but also such installers who are currently licensed by the Department of Consumer Affairs to install, repair or modify such systems. Further, section 3-03(e)(3)(v)(V) of these rules was amended to provide that within fourteen (14) calendar days after installation, repair or modification, rather than upon installation, repair or modification, a notarized affidavit signed by a manufacturer's authorized installer attesting to the proper functionality of the in-vehicle camera system shall be provided to the Commission by the authorized installer.

5. Statement of Basis and Purpose in City Record Dec. 18, 2007: The rule promulgated herein requires that taxicabs, other than accessible taxicabs, put into service beginning on October 1, 2008, must have a minimum rating of 25 miles per gallon in city driving and beginning on October 1, 2009, must have a minimum rating of 30 miles per gallon in city driving. In order to enable taxicabs to satisfy that standard, taxicabs will be permitted to meet the smaller vehicle specifications currently in place for hybrid electric vehicles (section 3-03.1(c)). The rule also specifically permits the operation of taxicabs fueled only by Compressed Natural Gas if such vehicles are originally manufactured vehicles and meet other requirements of the taxicab specifications. Only accessible vehicles as defined in section 3-03.2 are exempt from these minimum gas mileage requirements. The city gas mileage rating of a vehicle is determined pursuant to chapter 329 of title 49 of the United States Code and regulations promulgated pursuant thereto. Ratings for 2008 model vehicles are available at **http://www.fueleconomy.gov/feg/FEG2008.pdf,** and it is anticipated that the 2009 ratings will be available at a similar Web site. When fully phased in, the rule is expected to result in savings of more than $4,500 in gasoline costs per vehicle per year. Therefore, the rule is expected to result in industry-wide gasoline savings of approximately $60,000,000 per year. These savings are expected to increase the economic health of the industry by decreasing driver costs and increasing medallion value, and to further benefit the public by reducing upward pressure on taxicab fares. In light of recent advancements in the design of driver-passenger partitions, the new higher-mileage taxicabs put into service pursuant to this rule will not be exempt from partition requirements. In addition, the rule eliminates the exemption from partition requirements for hybrid electric taxicabs. When the use of hybrid electric vehicles as taxicabs was first approved by the Commission in September 2005, there was no existing partition design that would retain sufficient passenger legroom in the smaller vehicles. However, experience with an "L-shaped" partition, first approved by the Commission in September 2006, and subsequently incorporated into the Commission's rules in April 2007, has resolved this concern. Therefore, given the importance of driver safety, and given the demonstrated effectiveness of partitions over the years in furthering driver safety, the rule requires partitions in smaller vehicles that already operate as hybrid electric taxicabs and will operate under the rule as higher mileage

taxicabs. The exemption from partition requirements for owner-driven taxicabs that deploy security camera systems (section 1-17(b)) is not affected by this rule.

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35 RCNY 1-18

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-18 Trouble Lights.

(a) An owner shall equip all taxicabs with a help or distress signaling light system in accordance with §3-03(e)(3)(ii) of the Taxicab Specifications.

HISTORICAL NOTE

Section added City Record Feb. 8, 1994 eff. Mar. 6, 1994.

Subd. (a) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See T35 §1-11 Note 1]

Subd. (a) amended City Record Dec. 29, 1995 §5, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

CASE NOTES

¶ 1. Taxi cabs are equipped with distress lights, which are designed for alerting police when a driver is in danger. Where a taxi driver accidentally activated the car's distress light, the police officer reasonably believed that the taxi was in distress. Thus, the officer had justification to stop the cab and direct defendant to step out of the cab. The officer had the right to conduct a search of defendant when he noticed a bulge in defendant's pocket. Thus, in a prosecution for weapons possession, a motion to suppress the gun evidence was denied. People v. Rennie, 2003 WL 145541 (Sup.Ct. Kings Co.).

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CHAPTER 1 TAXICAB OWNERS RULES

§1-19 Electrical Dual Message Taxi Reminder Voice. [Repealed]

HISTORICAL NOTE

Section repealed City Record Apr. 8, 2003 §1, eff. May 8, 2003. [See Note 1]

Section amended City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §3-03 Note 4]

Section added City Record Mar. 29, 1996 §2, eff. Apr. 30, 1996. [See T35 §3-03 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 8, 2003:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which authorizes the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the City; under §2303(b)(2) of such Charter, which authorizes TLC to establish standards of safety, design and comfort for vehicles licensed by the TLC; §2303(b)(11) of such Charter, which authorizes the TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under §19-503 of the Administrative Code of the City of New York, which authorizes the Commission to promulgate rules to further the objectives of the Charter and the Administrative Code.

This promulgation repeals the requirement contained in TLC Rules and the Taxicab Specifications that each

taxicab be equipped with an electronic dual message taxi reminder voice.

Since 1997, the Rules of the TLC have required that each taxicab be equipped with an electronic dual message taxi reminder voice. After the taximeter is engaged, the electronic message reminds passengers to fasten their seat belts. At the conclusion of the trip, passengers are reminded through the electronic voice to take their receipt and personal property before leaving the taxicab. The purpose of this rule was to encourage passengers to wear seat belts while riding in taxicabs, as well as to take their receipt and remember their property.

According to surveys of passengers conducted both by the TLC and by other entities, most passengers in taxicabs do not wear seat belts despite the electronic taxi reminder message. A recent TLC survey of passengers also indicates that most passengers do not find the electronic message to be helping in reminding them to fasten their seat belts, remember their receipt or take their property. Furthermore, according to this survey, most passengers found the messages to be annoying.

The Rules of the Commission require that each taxicab be equipped with seat belts that are accessible, visible and in good working order. The Commission believes that the message to advise passengers of the benefits of wearing seat belts can be better achieved through improved signage in taxicabs, and through training drivers on the importance of communicating the importance of wearing seat belts to their passengers. TLC rules require that a driver provide the passenger a receipt at the conclusion of the trip, even if the passenger does not request a receipt. Therefore, the electronic reminder to take a receipt is not necessary.

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§1-20 Taximeters.

(a) An owner shall equip the taxicab with a taximeter subject to the following conditions:

(1) it shall be of a make and type acceptable to the Commission;

(2) Reserved.

(3) it shall be affixed to the vehicle's dashboard so as to be clearly readable and visible to all passengers in the vehicle;

(4) its serial number shall be the same as that shown on the rate card assigned to the taxicab; or entered on the rate card by an authorized meter shop; and

(5) tire size shall be the same as that for which the taximeter is calibrated, as indicated by the rate card.

(b) A taxicab shall be equipped with a taximeter which shall be in good working condition and shall accurately compute the rate of fare currently established by the commission. Penalties for violation are as follows:

(1) The penalty is $50, if the meter is found to be at least 52.8 feet (one percent) inaccurate, but less than 264 feet (five percent) inaccurate in computing distance, or more than one percent but less than five percent inaccurate in computing time.

(2) The penalty is $200, if the meter is found to be at least 264 feet (five percent) inaccurate, but less than 528 feet

(ten percent) inaccurate in computing distance, or more than five percent but less than ten percent inaccurate in computing time.

(3) The penalty is $300, if the meter is found to be at least 528 feet (ten percent) inaccurate in computing distance or ten percent inaccurate in computing time, for a first violation.

The penalty is $600, if the meter is found to be at least 528 feet (ten percent) inaccurate in computing distance or ten percent inaccurate in commuting time, for a second and subsequent violation within thirty-six months.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 effl May 30, 1992.

Section amended City Record Aug. 4, 1995 §1, eff. Sept. 6, 1995. [See Note 1]

Subd. (a) amended City Record Dec. 29, 1995 §6, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 4, 1995:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The purpose of the amendment is to protect the riding public from overcharges due to inaccurate meters and tampered meters. The amendment increases the penalty for owners whose meters are found to be fast or in any way tampered or altered when tested by the TLC.

Upon consideration of public comments, the increases in the penalties were changed.

First, the thresholds for violation were raised. The thresholds for higher penalties were established for meters that are five percent fast and ten percent fast, rather than at the original proposed thresholds of three and five percent fast. This change was made to make the penalties relate more closely to perceivable variations in the meter's rate of advance.

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§1-21 Taximeter Installation.

(a) All taximeter seals shall be installed by a licensed taximeter repair shop or agent of the Commission.

(b) The pinion gear shall be sealed with a cap seal or such other seal as approved by the Chairman or his designee, in such manner that the pinion gear can not be removed or changed without breaking or otherwise damaging the seal.

(c) The wiring harness leading from the taximeter to the speed sensor shall be of one piece construction with no intervening connectors, splices, "Y" connections, or direct or indirect interruptions or connections of any kind whatsoever.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record Dec. 29, 1995 §7, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) amended City Record Dec. 29, 1995 §7, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (d) repealed City Record Aug. 4, 1995 §3, eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Medallion owner, who leased medallion through agent leasing broker to drivers held liable for meter

acceleration device found in taxicab during inspection pursuant to section 1-23(a) of owner's rules, which imposes strict liability upon medallion owners even where, as here, the owner claims he was unaware of the violation. **Taxi and Limousine Comm'n v. Hom,** OATH Index Nos. 433 & 435/99 (Oct. 28, 1998).

¶ 2. Medallion owner, who actively managed the medallion from its garage, was strictly liable under section 1-23(a) where unauthorized meter acceleration device had been installed in the taxi. Forced divestiture of one medallion and a $5,000 fine is imposed for the corporate owner. **Taxi and Limousine Comm'n v. Mohammad,** OATH Index Nos. 173-75/99 (Oct. 6, 1998).

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CHAPTER 1 TAXICAB OWNERS RULES

§1-22 Defective Taximeter or Taximeter Installation.

(a) A taxicab shall not be in service for hire with a defective taximeter or taximeter installation. Whenever a taximeter or its installation is defective or whenever a taximeter computes an inaccurate rate of fare, the owner shall have it repaired, tested and certified at a licensed taximeter business or replaced by such taximeter business with an approved taximeter which has been inspected, tested and sealed and the taximeter/vehicle assembly shall be tested and certified in accordance with Commission regulations.

(b) No adjusted, repaired or recalibrated taximeter or appurtenance of a taximeter shall be installed in a taxicab unless the adjustment, repair or recalibration was done at a licensed taximeter repair shop or other authorized facility; the owner is responsible for any installation which violates this rule.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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§1-23 Tampering Prohibited.

(a) Unless authorized by the Commission no person shall tamper with, alter, repair or attempt to repair the taximeter or the taxicab technology system, or any seal affixed to the taxicab by a licensed taximeter repair shop or other authorized facility, cable connection or electrical wiring thereof or make any change in the vehicle's mechanism or its tires which would affect the operation of the taximeter or the taxicab technology system; the owner is responsible for any tampering, alteration or any unauthorized repair or attempt to repair.

(b) It shall be an affirmative defense to a violation of section 1-23(a) that the owner: (1) did not know of or participate in the alleged taximeter or taxicab technology system tampering; and (2) exercised due diligence to ensure that taximeter-tampering or tampering with the taxicab technology system does not occur. Examples of an owner's due diligence shall include, but are not limited to: (A) giving drivers a clear warning that violations of the taximeter or taxicab technology system tampering rules will result in the immediate termination of any lease agreement, the reporting to the Commission of driver tampering and the Commission's probable revocation of the driver's taxicab driver's license; (B) including on any written lease agreement provisions containing the warnings against violation of meter and taxicab technology system tampering rules; (C) stamping warnings regarding the illegality of meter and taxicab technology system tampering on the trip records issued, if applicable, to all drivers of an owner's taxicabs; (D) requiring management personnel or mechanics to periodically check for proper odometer and meter mileage comparisons in order to determine if there are inappropriate disparities between the two sets of figures; (E) conducting periodic random inspections of the taxicab meter and wiring and of the taxicab technology system for all such owner's taxicabs to detect any evidence of violation of meter or taxicab technology system tampering rules; and (F) having all of such owner's taxicabs inspected by a licensed meter shop once every inspection cycle.

HISTORICAL NOTE

Section amended City Record June 12, 2007 §3, eff. July 12, 2007. [See T35 §1-01 Note 3]

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record Aug. 4, 1995 §5, eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

Subd. (b) added City Record Jan. 31, 2000 §1, eff. Mar. 1, 2000. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 31, 2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which authorizes the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under §2303(b) of such Charter, which authorizes the TLC to promulgate rules and regulations reasonably necessary to exercise the authority conferred upon it by the Charter; under §19-503 of the Administrative Code of the City of New York, which authorizes the Commission to promulgate rules to further the objectives of the Charter and the Administrative Code; under §19-506 of said Code, authorizing it to impose reasonable penalties for violations of its rules; and under §§19-507.1(g) and (h) of said Code, enumerating certain affirmative defenses to the charge of taximeter tampering.

These rule amendments set forth certain affirmative defenses that may be raised in defense of a charge of taximeter tampering against a taxicab owner or driver, and create an affirmative obligation to report evidence of taximeter tampering to the Commission.

Local Law No. 20 of 1999 amended the Administrative Code of the City of New York to add certain enumerated affirmative defenses that may be asserted in defense of a charge of taximeter tampering. These defenses are set forth in the Code, and permit a respondent to assert as an affirmative defense that: (a) he or she did not know of or participate in the taximeter tampering; and (b) he or she exercised due diligence to ensure that taximeter tampering does not occur. With respect to allegations of taximeter tampering against owners, the Code enumerates examples of the exercise of due diligence.

This rule amendments conform the language of the Commission rules with respect to taximeter tampering with the Administrative Code by including the affirmative defenses in the appropriate rule relating to taximeter tampering. The language in the proposed rule is substantially identical to the language with respect to affirmative defenses set forth in the Code.

The amendments also impose upon Taxicab Owners and Drivers an affirmative obligation to report evidence of taximeter tampering to the Commission. Under the existing rules of the Commission, licensed taximeter businesses are required to notify the Commission whenever evidence of tampering is discovered with respect to a taximeter and/or its wiring. The proposed penalty for a violation of this rule is identical to the penalty provided for similar misconduct in the Taximeter Business Regulations.

This reporting requirement will enable the Commission to protect the public through enhanced enforcement of its rules prohibiting taximeter tampering.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of this section, as well as §§1-60(b), 1-67(a), 2-26(d), 2-30(a), 2-31(a),

2-61(a) and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

¶ 2. A taxicab owner is strictly liable for meter tampering pursuant to this section, even if the owner had no knowledge of that tampering. Taxi and Limousine Commission v. Mayfield Cab Corp., OATH Index No. 1378/95 (Aug. 2, 1996).

¶ 3. Medallion owner, who leased medallion through agent leasing broker to drivers held liable for meter acceleration device found in taxicab during inspection pursuant to section 1-23(a) of owner's rules, which imposes strict liability upon medallion owners even where, as here, the owner claims he was unaware of the violation. **Taxi and Limousine Comm'n v. Hom,** OATH Index Nos. 433 & 435/99 (Oct. 28, 1998).

¶ 4. Medallion owner, who actively managed the medallion from its garage, was strictly liable under section 1-23(a) where unauthorized meter acceleration device had been installed in the taxi. Forced divestiture of one medallion and a $5,000 fine is imposed for the corporate owner. **Taxi and Limousine Comm'n v. Mohammad,** OATH Index Nos. 173-75/99 (Oct. 6, 1998).

¶ 5. Although no zapper was found in respondent's taxicab, the meter pulse wires had been tampered with. Administrative law judge found that notwithstanding the absence of evidence as to the presence of a zapper, under the TLC rules, the wire configuration and tape on the meter connections were sufficient to sustain the charges, where respondent was the sole owner/driver of the medallion. **Taxi and Limousine Comm'n v. Singh**, OATH Index No. 1174/99 (July 13, 1999).

¶ 6. Where indicia of tampering was found, meter wiring pulse divider was missing its seal and exposed pulse wires were lying flat against metal bracket attached to meter, respondent was found in violation of paragraph (a) of this section. As an owner, respondent is held strictly liable for meter tampering. **Taxi and Limousine Comm'n v. Boodhram**, OATH Index No. 761/99 (Jan. 29, 1999), **modified on penalty**, Comm'n Dec. (Mar. 25, 1999).

¶ 7. **But see**, Administrative Code section 19-507.1 (added by Local Law 20/1999), which provides that it shall be an affirmative defense for a taxi owner or driver charged with meter tampering that the owner or driver did not know of or participate in the meter tampering and exercised due diligence to ensure that meter tampering does not occur.

¶ 8. Where a zapper device, used to accelerate taximeters, was concealed inside the driver's side door of a taxicab and where the inspector observed that a portion of the pulse wire was bare, three drivers were found to have violated this section. The visibly exposed pulse wire gave the three drivers, one of whom was the medallion owner, "reason to know that the taxicab's equipment had been tampered with by another driver." Revocation of three drivers' licenses and forced sale of the medallion imposed. **Taxi and Limousine Comm'n v. Singh**, OATH Index Nos. 828-30/99 (Apr. 15, 1999), **modified on penalty**, Comm'n Decision (May 20, 1999).

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§1-24 Operation of the Rooflight.

(a) While a taxicab is in operation for hire, the "Off Duty" sign may not be illuminated in any way other than by a manually operated switch on the taxicab dashboard.

(b) The taxicab roof light shall be automatically controlled by the operation of the taximeter so that it is lighted only when the taximeter is in an off position and unlighted when the taximeter is in a recording position. An owner shall not tamper with the operation of the taxicab's rooflight.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (b) amended City Record Dec. 29, 1995 §8, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (c) repealed City Record Dec. 29, 1995 §8, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

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§1-25 Taximeter Inspection.

(a) A taxicab's taximeter shall be tested by personnel authorized by the commission for accuracy over a measured mile course and its installation shall be tested by such personnel for compliance with the rules of the Commission. The results of such test shall be indicated on the rate card:

(1) within one year of the date of the last test;

(2) whenever a taximeter is installed in a vehicle;

(3) when the transmission, pinion gear or differential is altered, repaired or replaced; (4) when a change is made in any other part of the taxicab that may affect the meter reading; and

(5) at any other time required by the Commission.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Section amended City Record Dec. 29, 1995 §9, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. A taxicab owner has a non-delegable duty to ensure compliance with the taximeter inspection requirements of

this section, and is strictly liable for violations of that duty, even if the owner has no knowledge of such violations. Taxi and Limousine Commission v. Mayfield Cab Corp., OATH Index No. 1378/95 (Aug. 2, 1996).

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CHAPTER 1 TAXICAB OWNERS RULES

§1-26 Taxicab Identification Braille and Raised Lettering Plaques.

(a) As of October 1, 1997, an owner shall equip all taxicabs with a Taxicab Identification Braille Plaque and a Taxicab Identification Raised Lettering Plaque, in conformance with the following specifications:

(1) The Taxicab Identification Braille Plaque shall be made of .040 gauge aluminum with a matte finish and measure three and a quarter inches in length by one and three quarter inches in height, with radius corners. The plaque shall state, in Raster Braille grade two, the medallion number centered on the first line, the word "COMPLAINTS" centered on the second line, and the telephone number "212 NYC TAXI" centered on the third line. The plaque shall be permanently affixed on the door armrest of the horizontal plane of the right rear door, or another location approved by the Chairperson.

(2) The Taxicab Identification Raised Lettering Plaque shall be made of one eighth of an inch thick black acrylic plastic and measure eleven inches in length and five inches in height, with radius corners and four holes (one in each corner) for attachment with screws. The plaque shall state, in one inch high white Helvetica lettering that is permanently affixed, the medallion number centered on the first line, the word "COMPLAINTS" centered on the second line, and the telephone number "212 NYC TAXI" centered on the third line with appropriate spacing between the three words. The plaque shall be permanently affixed on the rear of the front right passenger seat or partition, not more than six inches below the lexan or polycarbonate portion of the partition.

HISTORICAL NOTE

Section added City Record July 8, 1997 eff. Aug. 11, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 8, 1997:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The rule requires taxicabs to be equipped with two Taxicab Identification Braille and Raised Lettering Plaques. The plaques will aid passengers who are blind and visually impaired to identify the taxicab they are riding in.

The purpose of this rule is to provide blind and visually impaired passengers with an opportunity to file complaints with the TLC if they are dissatisfied with their ride, and to report lost property.

Based on public comment, the rule was amended to provide for two separate plaques, one in Braille and one in raised lettering, for easier reading. The rule was further amended to provide that an offense of a missing plaque would not result in a fine if corrected within forty-eight hours.

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§1-27 [Reserved]

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§1-28 [Reserved]

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§1-29 [Reserved]

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§1-30 [Reserved]

HISTORICAL NOTE

Section repealed City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-31

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CHAPTER 1 TAXICAB OWNERS RULES

§1-31 Attaching, Removing or Transferring a Medallion.

(a) An owner may not affix, remove or transfer a medallion to a new or replacement vehicle, without prior authorization of the commission, except that an owner may affix additional bolts to a medallion in order to further secure it.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-32

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§1-32 Unauthorized Rate Card Entries.

(a) An owner shall not make an unauthorized entry on a taxicab's rate card, or change, deface, conceal or obliterate any entry thereon, or allow a rate card to be displayed that contains erroneous information.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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§1-33 Medallion and Rate Card to be Surrendered.

(a) An owner, who has been notified that his license has been suspended or revoked, shall surrender to the Commission his medallion and rate card within forty-eight (48) hours of such notice.

(b) An owner shall surrender his medallion and rate card for storage prior to the sale of his taxicab or its removal from service for a period of thirty (30) consecutive days or more.

(c) An owner shall immediately surrender to the Commission for replacement an unreadable rate card or a damaged medallion.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (c) amended City Record Dec. 29, 1995 §10, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

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§1-34 [Reserved]

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CHAPTER 1 TAXICAB OWNERS RULES

§1-35 Markings and Advertising.

(a) An owner of a taxicab shall apply taxicab markings approved by the Commission, specifically, two taxicab logo decals, two rate of fare decals, two medallion number decals and two checkerboard stripe decals, to such taxicab at the locations described in section 1-36 of this chapter. An owner of a taxicab shall obtain the approved taxicab markings from a person or entity authorized by the Commission to print and distribute such decals. A depiction of the decals described herein and a list of persons authorized to print and distribute such decals shall be available on the Commission's website and/or through other means determined by the Commission and announced on its website. Authorized stand-by vehicles shall display SBV number decals in lieu of the medallion number decals.

(b) An owner shall not display any lettering, emblem, or advertising of any kind on the exterior of a taxicab, its windows or an exterior accessory, by means of paint, stencil, decal, sticker, or otherwise, unless authorized by the Commission, except:

(1) the taxicab markings specified in subdivision (a) of this section;

(2) such inscriptions as are permitted or required by these rules or the Commission's Marking Specifications for Taxicabs;

(3) such advertising as may be authorized by the Commission on the vehicle's rate card;

(4) Reserved.

(5) for an accessible taxicab, insignia, the designs of which shall be provided by the Commission on its website or through other means it deems appropriate as set forth on its website, that identify the vehicle as an accessible taxicab. Such insignia shall be located on the exterior of the C-pillars of a sedan or an SUV or on the exterior of the D-pillars of a minivan, on both sides of such taxicab, and shall be visible to passengers entering the accessible taxicab and shall also be located on the middle of the hood of such taxicab so as to be visible to passengers hailing or approaching such taxicab; and

(6) for a clean air taxicab, insignia, the design of which shall be provided by the Commission on its website or through other means it deems appropriate as set forth on its website, that identify the vehicle as a clean air vehicle. Such insignia shall be located on the exterior of the C-pillars of a sedan or an SUV or on the exterior of the D-pillars of a minivan, on both sides of such taxicab, and shall be visible to passengers entering the clean air taxicab.

Such inscriptions and advertising shall be maintained in good condition.

(c) An owner shall not display inside a taxicab any advertising or other notice not specifically authorized by these rules or the Commission's Marking Specifications for Taxicabs unless approved by the Commission, except:

(1) industry signage/logos of all credit/debit cards accepted by the taxicab technology system, all of equal size, shown in the information content on the passenger information monitor screen; and

(2) advertising in the information content on the passenger information monitor screen as set forth in section 1-36 of this chapter and in section 3-07 of this title.

(d) An owner shall not display emblems on his vehicle's exterior, other than an emblem identifying the owner, an association of owners, a taxicab drivers' union, or the taxicab manufacturer. Such emblems shall conform to the Marking Specifications for Taxicabs and shall be subject to the approval of the Commission. No more than two of the same emblem may be displayed on a taxicab, unless otherwise authorized by the Commission.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record June 20, 2007 §1, eff. July 20, 2007. [See Note 2]

Subd. (a) amended City Record July 15, 1992 eff. Aug. 14, 1992.

Subd. (b) amended City Record June 20, 2007 §1, eff. July 20, 2007. [See Note 2]

Subd. (b) amended City Record Dec. 29, 1995 §11, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) par (2) amended (as par (3)) City Record May 23, 2007 §2, eff. June 22, 2007. [See Note 1]

Subd. (b) par (3) amended (as par (4)) City Record May 23, 2007 §2, eff. June 22, 2007. [See Note 1]

Subd. (b) par (5) amended City Record Sept. 16, 2008 §1, eff. Oct. 16, 2008. [See Note 3]

Subd. (b) par (5) added City Record May 23, 2007 §2, eff. June 22, 2007. [See Note 1]

Subd. (b) par (6) added City Record May 23, 2007 §2, eff. June 22, 2007. [See Note 1]

Subd. (c) amended City Record June 12, 2007 §4, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (d) amended City Record Dec. 29, 1995 §11, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (e) repealed City Record Dec. 29, 1995 §11, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (f) repealed City Record Dec. 29, 1995 §11, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 23, 2007:

These rules implement Local Laws 54 and 55 for the Year 2006, which added §§19-514(h) and (i) and 19-536 of the Administrative Code of the City of New York, requiring that each Taxi and Limousine Commission-licensed accessible or clean air vehicle be marked with two insignia identifying it as an accessible or clean air vehicle. The rules incorporate the statutory definition of a clean air vehicle, which apply to taxicabs and for-hire vehicles. The rules retain the existing definition of an accessible taxicab (§3-03.2 of the Commission's rules) and add a definition of an accessible for-hire vehicle.

The rules provide that a clean air vehicle insignia design and an accessible vehicle insignia design will be made available on the Commission's website or by other means the Commission deems appropriate as set forth on its website. The insignia will be posted on the exterior of the C-pillars of a sedan or an SUV or on the exterior of the D-pillars of a minivan, on both sides of the accessible vehicle visible to passengers entering the vehicle.

In addition, pursuant to the Administrative Code provisions, the rules require that the owner of a clean air taxicab dislay in the rear passenger compartment, visible to all passengers in the back seat, passenger information to be provided by the Commission. That information shall include identification of the clean air taxicab as a clean air vehicle, the Commission's Web page address, and, to the extent practicable, the estimated air quality benefits associated with the use of such vehicle and the type of fuel used to power such vehicle.

2. Statement of Basis and Purpose in City Record June 20, 2007: The rules promulgated herein enhance the visibility of medallion taxicabs, making them more identifiable to the riding public and making the exterior posted rates of fare and medallion number decals more easily visible to the passengers entering the taxicabs. The rules promulgated herein require that taxicab logo decals be placed on the front doors of medallion taxicabs, rather than on the rear doors, and rate of are decals be placed on the rear doors of taxicabs, rather than on the front doors, permitting the rate of fare to be observed by the passengers entering through rear doors. The rules promulgated herein also require that checkerboard stripe logo decals to be placed horizontally on the rear quarter panels of the vehicle, just below the window, increasing the visibility of medallion taxicabs. The medallion number decals shall be placed forward of and aligned with the checkerboard stripe decals so that the two decals appear to be one stripe. The decals shall be of the non-detachable type only.

3. Statement of Basis and Purpose in City Record Sept. 16, 2008: Pursuant to Local Law 55 of 2006 (Administrative Code §19-514, subd. h), existing Taxi and Limousine Commission ("Commission") rules require markings on wheelchair accessible taxicabs, specifically on the C-pillars of a sedan or an SUV or D-pillars of a minivan. Feedback from taxicab passengers who use wheelchairs indicates that these markings may not always be sufficiently visible to passengers attempting to hail wheelchair accessible taxicabs. Therefore, this promulgated rule requires an additional marking to be placed in the middle of the hood of the taxicab. As with the previous markings, the new marking will be designed by the Commission. The Commission intends to use a larger marking for the hood than is used for the pillars, in order to enhance the visibility of wheelchair accessible taxicabs for street hails.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-36 Marking Specifications for Taxicabs Inscription Location Size.

Inscription	Location	Size
(a) Rate of fare decals (required). (Non-detachable type only.)	Both rear doors centered left to right and located in the upper half of the flat surface between the bottom edge of the door and the door handle.The base line of the rate of fare and taxicab logo decals shall be parallel and the same distance to the bottom door edge.	The size of the approved rate of fare decals shall be determined by the Commission.
(b) Taxicab logo decals (required)(Non-detachable type only.)	Both front doors centered left to right and located in the upper half of the flat surface between the bottom edge of the door and the door handle.The base line of the rate of fare and taxicab logo decals shall be parallel and the same distance to the bottom door edge.	The size of the taxicab logo decals shall be determined by the Commission.
(c) Medallion number (required)	Front and rear of roof light.	23/4" to 3" high letters 1/2" thick.
(d) "OFF DUTY" (required)	Each end of roof light.	11/4" high letters 1/4" thick.
(e) "Owner-Driver" (optional)(Detachable signs suspended from door frames are not permitted.)	Rear of taxi.	3" maximum height.
(f) EMBLEMS (Optional)	On rear baggage compartment in lower right corner of deck	2" high letters 1/4" thick.

(1) Fleet Owner (2) Owner Association (3) Taxicab Drivers' Union insignia (4) Taxicab manufacturer	lid. Consult the Commission if contour of lid requires another location on the lid.	Avoid overcrowding.
(g) Medallion number, interior. (required) Maybe a one-piece decal or astencil. The numbermust be of a colorcontrasting with theseat, to provide for easylegibility.	On the back of the front seat. The top of the number shall be located not more than two inches below the top of the front seat.	Numbers and letter shall be 3" minimum in height.
(h) Passenger Information Sign. (required) Shall contain the information required by the Chairman or his designee.	On the back of the front seat or on a safety partition, displayed in a manner which is clearly visible to the passengers in the back seat. If the taxi is equipped witha safety partition, the passenger information sign may be placed on the partition behind the driver's head, but no higher than a headrest would be.	Approximately 12" wide by 6" high.
(i) "Drivers Wanted" sign. May include the telephone number of the owner. (Optional)	Rear of taxi.	No more than 24" wide by 3" high.
(j) "If this taxi is parked for over 24 hours, please call owner at (telephone number)..." (Optional)	Rear of taxi or horizontal on dashboard.	No more than 24" wide by 3" high.
(k) Rate for cellular connections to telephone network, plus a statement that telephone network charges would be additional. (required for taxicabs equipped with cellular telephones)	Interior of passenger compartment.	To be approved by the Commission.
(l) Telephone available, or similar language or symbol (optional)	Exterior, on a door or a side window.	4" by 6" or smaller.
(m) Brand name of passenger information monitor manufacturer or taxicab technology service provider	On the bezel of the frame of the passenger information monitor	Not to exceed 11/4" in height and 4" in length
(n)* This[See Footnote 1] vehicle is equipped with camera security. YOU WILL BE PHOTOGRAPHED." (Decal; non-detachable type only.)	On each rear passenger window	Letters shall be at least one-half inch high.
(n)* Medallion number decals (required). (Non-detachable decals only.)	Immediately before the checkerboard stripe decal so that the two decals appear to be one stripe. The decals shall be applied to both rear quarter panels, just be-	The size of the medallion number decals shall be determined by the Commission.

	low the rear windows or following the line created by the bottom edge of the windows, such that the number and checkerboard are aligned and appear to be one stripe.On some vehicles, such as minivans, the medallion number may be placed at the rear of the sliding door, but must still align with the checkerboard stripe.	
(o) Checkerboard stripe decals (required). (Non-detachable decals only.)	Immediately behind the medallion number decal so that the two decals appear to be one stripe. The decals shall be applied to both rear quarter panels, just below the rear windows or following the line created by the bottom edge of the windows, such that the number and checkerboard are aligned and appear to be one stripe.The tailing end of the checkerboard may be shortened, if necessary, on vehicles with short quarter panels.	The size of the checkerboard stripe decals shall be determined by the Commission.
(p) Drivers are not allowed to use cell phones or handheld electronics. Decal or sticker shall be issued by the Commission.	Interior of passenger compartment, plainly visible to passengers.	As issued by the Commission.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record June 20, 2007 §2, eff. July 20, 2007. [See T35 §1-35 Note 2]

Subd. (a) amended City Record Oct. 31, 2006 §3, eff. Nov. 30, 2006. [See T35 §1-69 Note 4]

Subd. (a) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See T35 §1-11 Note 1]

Subd. (b) amended City Record June 20, 2007 §2, eff. July 20, 2007. [See T35 §1-35 Note 2]

Subd. (e) amended City Record June 20, 2007 §2, eff. July 20, 2007. [See T35 §1-35 Note 2]

Subd. (f) amended City Record June 20, 2007 §2, eff. July 20, 2007. [See T35 §1-35 Note 2]

Subd. (f) amended City Record Dec. 29, 1995 §12, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (g) amended City Record Dec. 29, 1995 §12, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (h) amended City Record Dec. 29, 1995 §12, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subds. (k), (l) added City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Subd. (m) added City Record June 12, 2007 §5, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (n) (laid out first) added City Record Apr. 23, 2007 §2, eff. May 23, 2007. [See T35 §1-17 Note 4]

Subd. (n) (laid out second) added City Record June 20, 2007 §2, eff. July 20, 2007. [See T35 §1-35

Note 2]

Subd. (o) added City Record June 20, 2007 §2, eff. July 20, 2007. [See T35 §1-35 Note 2]

Subd. (p) added City Record Dec. 30, 2009 §1, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

FOOTNOTES

1

[Footnote 1]: * There are two subdivision (n)s.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-37 E-Z Pass Required.

(a) An owner shall participate in the E-Z Pass New York Program. An owner shall maintain a current account with the Metropolitan Transportation Authority, Triborough Bridge and Tunnel Authority ("MTA Bridges and Tunnels") E-Z Pass New York Program with a sufficient balance as required by said program. An owner shall have available at least one E-Z Pass tag for each medallion.

(b) An owner shall equip all taxicabs with an E-Z Pass tag provided by the MTA Bridges and Tunnels, which shall be attached as required by MTA Bridges and Tunnels, unless a driver has elected to use his own E-Z Pass tag as permitted pursuant to Rule 2-27(d).

(c) An owner shall be reimbursed by a driver for any discount toll amount incurred during the driver's shift through use of the E-Z Pass at the conclusion of the shift or lease period, or if not so reimbursed, may deduct said amount from any replenishment account established pursuant to Rule 1-83. However, an owner may not require the driver to reimburse more than the E-Z Pass discount toll amount.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §1, eff. Dec. 31, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 1, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which authorizes the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under §2303(b) of such Charter, which authorizes the TLC to promulgate rules and regulations reasonably necessary to exercise the authority conferred upon it by the Charter; under §19-503 of the Administrative Code of the City of New York, which authorizes the Commission to promulgate rules to further the objectives of the Charter and the Administrative Code; and under §19-506 of said Code, which authorizes the Commission to impose reasonable penalties for violations of its rules.

These rule amendments require that all medallion taxicab owners equip their vehicles with an E-Z Pass tag and maintain a current account with the Metropolitan Transportation Authority, Triborough Bridge and Tunnel Authority ("MTA Bridges and Tunnels") E-Z Pass Program. All taxicab drivers operating for hire shall be required to use E-Z Pass when crossing New York City toll bridges and tunnels and to not charge passengers a toll amount in excess of the discounted E-Z Pass rate. The E-Z Pass tag must be attached to the inside of the windshield, behind the rearview mirror of the taxicab, or as otherwise required by the MTA Bridges and Tunnels E-Z Pass Program.

Drivers are required to ensure that a taxicab is equipped with E-Z Pass and would be required to use the E-Z Pass. Passengers could not be charged an amount in excess of the E-Z Pass charge. A driver using E-Z Pass and charging a passenger the full toll fare is committing an act in violation of the Taxicab Drivers' Rules which prohibit charging a passenger a fare in excess of the approved rate of fare. Drivers are also required to record tolls incurred on their trip sheets to assist the E-Z Pass tag holders in maintaining records of charges incurred.

Participation in the E-Z Pass program will benefit New York City in several ways. First and foremost, customer satisfaction would be improved. The electronic toll collection system has proven to be a faster and more convenient method of crossing bridges and tunnels. The use of E-Z Pass and express lanes help to alleviate delays at tollbooths. In addition, using E-Z Pass is a less expensive method for the passenger due to the discounted toll charge. Furthermore, E-Z Pass users will be reducing auto emissions attributable to idling in line at tollbooths, thereby improving the City's air quality.

Original rule proposals were published in the City Record on August 23, 1999. Additional amendments were published on September 27, 1999.

In response to public comments received by the Commission at its August 23, 1999 [meeting], the Commission published additional amendments that authorize the establishment of a replenishment account that could be used by owners for reimbursement of toll charges incurred by the driver but not paid to the owner. The rules permit an E-Z Pass tag holder to require drivers to establish an E-Z Pass replenishment account of up to $10 per shift (not to exceed a total of $100) from a driver. An E-Z Pass tag holder may also seek restitution from a driver for tolls that were collected by him but not reimbursed to the tag holder. A driver may also seek restitution from an owner who fails to return any excess amount in the replenishment accounts to the driver.

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§1-38 [Reserved]

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§1-39 [Reserved]

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CHAPTER 1 TAXICAB OWNERS RULES

§1-40 Insurance Coverage.

(a) An owner shall comply with the New York State Vehicle and Traffic Law and the New York State Insurance Law regarding coverage by bond or policy of liability insurance and all other forms of insurance required by law.

(b) An owner shall notify the Commission, in connection with an application for renewal of a taxicab license each year, of the name and address of the carrier and the number of the policy for each taxicab owned by him, and submit proof of such coverage. The provision of such insurance information shall be a condition for license renewal.

(c)(1) An owner shall immediately report to his/her insurance carrier, in writing all accidents involving his/her taxicab which are required to be reported to the insurance carrier.

(2) An owner shall immediately report to the Commission, in writing, all accidents involving his or her taxicab which are required to be reported to the Department of Motor Vehicles pursuant to §605 of the Vehicle and Traffic Law. A copy of any report furnished to the Department of Motor Vehicles pursuant to law shall be furnished to the Commission within ten (10) days of the date by which the owner is required to file such report with the Commission of Motor Vehicles.

(d) Notwithstanding any inconsistent provision of subdivision a of this rule, each owner shall, for each taxicab owned by him, maintain for purposes of insurance or other financial security, coverage in an amount not less than $200,000 per person, payable for those expenses specified in paragraphs 1, 2 and 3 of subdivision a of §5102 of the New York State Insurance Law, and coverage in an amount of not less than $100,000 minimum liability and of not less than $300,000 maximum liability for bodily injury or death, as said terms are described and defined in §370(1) of the

Vehicle and Traffic Law.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (c) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 1]

Subd. (d) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (d) relettered (former subd. (e)) City Record July 12, 1993 eff. Aug. 11, 1993.

Subd. (d) repealed City Record July 12, 1993 eff. Aug. 11, 1993.

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1998:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under sections 2303(b)(2) and (7) of such Charter, authorizing TLC to regulate insurance and standards of service; under section 2303(b)(13) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred uon it by the Charter.

The regulations require owners of medallion taxicabs and for-hire vehicles to furnish the Commission with copies of reports of accidents involving their vehicles which are presently required to be filed with the Department of Motor Vehicles. The purpose of the regulation is to ensure public safety by enabling the Commission to maintain accurate and complete records of accidents involving medallion taxicabs and for-hire vehicles, and to enable the Commission to identify and take appropriate action against licensees who engage in unsafe driving practices which cause accidents.

The Department of Motor Vehicles receives required reports from motorists involved in accidents. That agency compiles accident data and makes it available to the Commission. The Commission does not have access to the most recent accident data involving taxicabs since the Department of Motor Vehicles is approximately two years late in compiling statistical reports on accident data involving Commission licensees.

The regulation enacted by the TLC does not create an additional reporting requirement upon medallion taxicab and for-hire vehicle owners. This regulation mandates that a copy of the report required to be filed with the Department of Motor Vehicles also be filed with the Commission. This will enable the TLC to obtain current, up-to-date, accurate information concerning accidents involving its licensees.

Furthermore, the For-Hire Vehicle Rules would be amended to conform to the existing requirement in the Taxicab Owners Rules that vehicle owners immediately report, in writing, all accidents involving said vehicle that are required to be reported to the insurance carrier. A rule requiring medallion owners to report accidents to their insurance carriers is already in effect. A similar rule covering owners of for-hire vehicles is necessary to assure that individuals involved in accidents are not denied coverage because no accident report was filed, a situation which could result in a failure to cooperate with the insurance carrier.

2. Statement of Basis and Purpose in City Record June 26, 1998: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b)(7) of such Charter, authorizing TLC to establish insurance and

financial responsibility requirements for vehicles under its jurisdiction; under section 2303(b)(13) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The regulations require owners of both medallion taxicabs and for-hire vehicles to obtain and maintain higher levels of liability insurance than presently required by TLC rules and New York State Law. This insurance would be available to passengers and drivers injured in an accident resulting from the use or operation of the insured vehicle. The purpose of the regulation is to protect the public by assuring that medallion and for-hire vehicle owners maintain reasonable levels of insurance reasonably sufficient to satisfy claims of those injured as a result of accidents involving their vehicles. The levels presently mandated by New York State Law and TLC regulations are substantially lower than those levels required by many other cities, and are inadequate to satisfy the claims of many accident victims. A study conducted by the Commission revealed that the mandatory levels of insurance which are required by the TLC for taxicabs and for-hire vehicles are substantially lower than those required by other major cities, such as Chicago, Los Angeles, and San Francisco. Many victims of accidents involving taxicabs or for-hire vehicles are not adequately compensated for their injuries. Most larger cities, as well as smaller cities within New York State, require licensed taxicabs to maintain levels of insurance which are higher than the State statutory minimums. The Commission has raised both the level of required no-fault insurance and liability insurance. The increase in no-fault insurance will not provie a remedy to pedestrians who are injured since supplemental no-fault coverage is not available to them, pursuant to New York State insurance regulations. The higher levels of insurance mandated herein are comparable to the levels of coverage many motorists in the State voluntarily purchase; this level is still below the levels commonly purchased by private commercial common carriers such as trucking and bus companies. The Commission has considered the cost of additional insurance coverage to owners of vehicles, and notes that although there is an increased cost, this increase may be offset by general reductions in the cost of insurance which would occur as the quality of the driver pool is improved, through other initiatives such as mandatory defensive driving courses, probationary licenses, and stricter penalties for traffic offenses.

CASE NOTES

¶ 1. The constitutionality of Sec. 1.40(d), which relates to insurance requirements, has been upheld. United Car & Limousine Foundation, Inc. v. New York City Taxi and Limousine Comm., 178 Misc.2d 734, 680 N.Y.S.2d 815 (Sup.Ct. New York Co. 1998).

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§1-41 Double Shift Insurance Coverage.

(a) An independent taxicab owner operating the taxicab for more than one shift daily, and a taxicab fleet or mini fleet shall continuously maintain double shift insurance coverage.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-42

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CHAPTER 1 TAXICAB OWNERS RULES

§1-42 Cancellation or Change of Insurance.

(a) An owner within seventy-two (72) hours of receipt of notice shall notify the Commission in writing of the cancellation of the required liability insurance or change of insurance carrier or policy number of his insurance.

(b) An owner who has received notice that his liability insurance is to be terminated shall surrender his rate card and medallion to the Commission on or before the termination date of the insurance, unless he submits proof of new insurance effective on the date of termination of the old policy.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-43

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Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-43 Workers' Compensation Coverage.

(a) An owner shall comply with all workers' compensation laws.

(b) An owner shall maintain on file with the Commission a current Certificate of Workers' Compensation Coverage, or a current, valid exemption from the requirement of workers' compensation coverage.

(c) An owner shall designate the Commission as a certificate holder to receive all notices concerning the workers' Compensation policy.

(d) Upon filing with the Workers' Compensation Board to end the disembursement of benefits for a driver due to recovery from a disabling work-related injury and readiness to work, an owner shall provide the driver with documentation that benefits have ceased in order for the Commission to return such driver's license.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (d) added City Record Sept. 13, 1993 eff. Oct. 13, 1993.

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35 RCNY 1-44

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Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-44 Dispatch of Taxicab.

(a) An owner shall not dispatch a taxicab from a public street or other public area if such dispatch will prevent the flow of pedestrians and/or vehicular traffic, or cause inconvenience or annoyance to the public.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-45

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CHAPTER 1 TAXICAB OWNERS RULES

§1-45 Maintaining a Business Premise.

(a) Any agent, any owner who leases or otherwise dispatches one or more taxicabs for return at the end of a shift, and any business entity in which a principal holds in the aggregate a substantial interest in taxicab medallions, shall maintain a business premise in a location zoned for the operation of a business, with:

(1) Sufficient off-street space at or near its business premise to store the lesser of 25 vehicles or the following: fifty percent of the taxicabs leased or otherwise dispatched on a daily or a shift basis, plus five percent of the taxicabs leased for longer than one day;

(2) Sufficient office space to conduct business, where all records required by the Commission, including trip sheets and driver records, are kept;

(3) Regular business hours, including the hours of 9:00 a.m. through 5:00 p.m. for every weekday; and

(4) A business address and telephone number on file with the Commission.

(b) For purposes of this section, a "principal" shall mean a person who holds an equity interest in an entity or who is an officer of a corporation; and "substantial interest in taxicab medallions" shall mean either

(1) ownership of 25 percent or more of the stock in one or more corporations which own medallions, or a partnership interest in one or more partnerships which own medallions, or any other form of full or partial ownership, such that the number of medallions in which the principal has a direct or indirect equity interest exceeds three, or

(2) a position or positions as an officer of one or more corporations which in the aggregate have a direct or indirect equity interest in more than three medallions.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record Oct. 30, 1995 §5, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

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35 RCNY 1-46

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Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-46 Authorized Taxi Drivers.

(a) No taxicab shall be operated for hire unless the driver has in his or her possession a current valid taxicab driver's license.

(b) An owner may permit a person who does not possess a taxicab driver's license to drive the vehicle only under the following limited circumstances:

(1) The vehicle is being driven to or from the Commission's centralized taxicab inspection facility or a repair facility;

(2) The off-duty light is illuminated; a current written trip record signed by the owner is in the taxicab or print out of an electronic trip record indicating "Off-Duty" and the reason; and the rear doors are locked;

(3) The person driving the vehicle is licensed to drive a motor vehicle; and

(4) The person driving the vehicle is not a person whose taxicab driver's license is suspended or revoked.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record May 11, 2005 §18, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (b) amended City Record Dec. 29, 1995 §13, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) par (2) amended City Record May 11, 2005 §18, eff. June 10, 2005. [See T35 §3-03 Note 10]

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35 RCNY 1-47

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-47 Driver of Record.

(a) An owner shall not authorize or allow a driver to operate a taxicab unless either:

(1) the driver's name has been entered on the rate card by the Commission and a lease driver is not operating beyond the lease expiration date entered on the rate card, or

(2) "Unspecified Drivers," has been entered on the rate card by the Commission.

(b) An owner shall not authorize or allow a lessee of a taxicab to sublease the taxicab to another party.

(c) An owner shall keep accurate records of the driver for each shift.

(d) An owner shall maintain on file with the Commission a current driver authorization statement indicating whether the taxicab will be:

(1) operated by named drivers of record, including, when applicable, the owner or officers of the owner corporation, or

(2) operated by "unspecified drivers."

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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CHAPTER 1 TAXICAB OWNERS RULES

§1-48 Named Driver.

(a) If an owner elects to lease to named drivers, the owner shall file a driver authorization statement for each lessee, prior to the lessee's taking possession of the taxicab. The owner must file the driver authorization statement with the Commission in person or by power of attorney. The driver authorization statement shall be signed by both parties and shall include but not be limited to:

(1) the date of execution of the lease;

(2) the names and addresses of the lessor and lessee and their social security or federal tax identification numbers;

(3) the medallion and license plate numbers of the leased taxicab; its vehicle identification number and titled owner;

(4) the term of the lease;

(5) the name and address of the auto liability and workers' compensation insurance carriers, the policy numbers and expiration dates;

(6) the name, address and telephone number of the owner's agent, if such agent arranged or manages the lease; and

(7) the charges to lessee.

(b) If a lease or its renewal, the disclosure of which is required pursuant to subsection (a) herein, is terminated for

any reason, the lessor shall notify the Commission in writing within forty-eight hours of such termination, unless exempted by the Commission.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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CHAPTER 1 TAXICAB OWNERS RULES

§1-49 Unspecified Drivers.

(a) If an owner elects to operate with unspecified drivers, the owner shall file with the Commission, with the driver authorization statement, a copy of a master lease, employment agreement and/or union contract, together with evidence that the owner has unnamed driver insurance for the vehicle.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-50

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CHAPTER 1 TAXICAB OWNERS RULES

§1-50 Leasing a Taxicab.

(a) The Commission will enter on the rate card the owner's choices pursuant to §1-47(d), including, when applicable, the named drivers of record and the expiration dates of applicable leases.

(b) An owner may lease a taxicab to a licensed taxicab driver, or to licensed drivers working different shifts or days, if the owner is in compliance with the provisions of this rule. Regardless of the terms of the lease, the owner is responsible for complying with all laws, rules and regulations governing owners.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-51

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CHAPTER 1 TAXICAB OWNERS RULES

§1-51 Driver's Workshift.

(a) An owner shall not require a driver to operate one or more taxicabs for more than twelve (12) consecutive hours.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-52

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CHAPTER 1 TAXICAB OWNERS RULES

§1-52 Required to be Present in the Taxicab.

(a) The following shall be present in the taxicab while it is in operation for hire:

(1) the driver's written trip record, also known as a "trip sheet" until the taxicab is required to be equipped with the taxicab technology system and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider, as set forth in section 1-11(e) of this chapter;

(2) the taxicab driver's license;

(3) the rate card in the frame alongside the frame for the taxicab driver's license.

(4) an insurance card or photostat thereof, unless the owner is self insured and has noted this fact on the rate card along with any other information required by the commission; and

(5) all notices required to be posted in the taxicab, including, but not limited to information provided by the Commission to the owner of a clean air taxicab which shall be displayed in the rear passenger compartment of such taxicab, visible to all rear seat passengers, by printed notice prior to the date when a personal information monitor (PIM) is required to be installed in taxicabs and thereafter in content displayed on the PIM, and which (i) identifies such taxicab as a clean air vehicle, (ii) includes the address of the Commission web page(s) and (iii) includes, to the extent practicable, estimated air quality benefits associated with the use of such vehicle and the type of fuel used to power such vehicle.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) par (1) amended City Record June 12, 2007 §6, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) par (1) amended City Record May 11, 2005 §19, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (a) par (5) amended City Record May 23, 2007 §3, eff. June 22, 2007. [See T35 §1-35 Note 1]

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CHAPTER 1 TAXICAB OWNERS RULES

§1-53 Trip Records. [Repealed]

HISTORICAL NOTE

Section repealed and reserved City Record Dec. 29, 1995 §14, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-54

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CHAPTER 1 TAXICAB OWNERS RULES

§1-54 Completion of the Workshift. [Repealed]

HISTORICAL NOTE

Section repealed and reserved City Record Dec. 29, 1995 §15, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-55

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CHAPTER 1 TAXICAB OWNERS RULES

§1-55 Reporting Requirements.

(a) **Passenger lost property.** (1) Passenger lost property found in a taxicab shall be taken without delay to the police precinct in which the garage is located unless it can be returned to its rightful owner within a reasonable time.

(2) The owner shall promptly inform the Commission of any property which has been taken to a police precinct pursuant to §1-55(a).

(b) **Address and Telephone Number.**

(1) Each owner shall maintain a mailing address as defined in Section 1-01. In addition, each owner shall maintain such owner's personal address and a telephone number where such owner can be reached directly, on file with the Commission. This requirement of a personal address may not be satisfied by filing the address and telephone number of an agent or any other indirect means of reaching the owner. The Commission is not required to send any communication to the owner's personal address, except as provided in Section 1-77(b)(5). It is otherwise in the Commission's sole discretion as to when, and if, any communications will be sent to the owner's personal address.

(2) An owner shall appear at the Commission, in person with the rate card of every vehicle which he or she owns, to report a change of office of record or mailing address, within seventy-two (72) hours of such change, exclusive of weekends and holidays. Any notice from the Commission shall be deemed sufficient if sent to the mailing address furnished by the owner.

(3) An owner shall maintain on file with the Commission a current telephone number (which must be connected to

an answering machine or recording device), pager number, answering service telephone number or similar means of telephone contact, so that the owner may be reached by the Commission on a twenty-four hour basis.

(4) An owner must respond to any telephone or pager contact from the Commission within forty-eight hours, seven days a week.

(c) **Conviction of a felony or misdemeanor.** An owner, including a member of a partnership or any officer or shareholder of a corporation, shall immediately notify the Commission of his conviction of a felony or misdemeanor. Such notification shall be in writing and must be accompanied by a certified copy of the certificate of disposition issued by the Clerk of the Court.

(d) **Lost license plates.** An owner shall report to the Commission the replacement of any lost or stolen New York State license plates within forty-eight (48) hours, exclusive of weekends and holidays, after obtaining such plates.

(e) **Lost medallion or rate card.** An owner shall notify the Commission and the police department, within forty-eight (48) hours exclusive of weekends and holidays, of the theft, loss or destruction of any medallion or rate card, and furnish such affidavit or information as may be required including the police receipt number; a substitute medallion and rate card will be issued by the Commission.

(f) **Found medallion or rate card.** An owner shall notify the Commission and the police department within twenty-four (24) hours exclusive of weekends and holidays, when any medallion or rate card that was reported as stolen or lost is located or returned, and shall furnish such affidavit or information as may be required.

(g) **Lost taximeter. If** a taximeter is lost, stolen or damaged beyond repair, the owner shall notify the Commission and the police department, within forty-eight (48) hours exclusive of weekends and holidays, of the loss, theft or destruction, and shall furnish such affidavit or information as the Commission may require.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (b) amended City Record June 26, 1998 eff. July 26, 1998.

Subd. (b) par (1) amended City Record Oct. 30, 1995 §2, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

Subd. (b) par (2) amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Subd. (b) par (3) added City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (b) par (4) amended City Record Jan. 31, 2000 §1, eff. Mar. 1, 2000. [See Note 1]

Subd. (b) par (4) added City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (c) amended City Record Dec. 29, 1995 §16, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 31, 2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the City; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations relating to standards and conditions of service which

are reasonably designed to carry out its purposes; §2303(c) of such Charter, establishing certain procedures regarding the conduct of the Commission's adjudications tribunal; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-506 of such Code, authorizing the Commission to adopt regulations governing the transportation of passengers for hire; and under §19-507.3 of such Code, which sets forth mandatory response times for owners who receive messages from the Commission.

The regulations require the owner of each For-Hire Vehicle, Paratransit Service Vehicle and Commuter Van, as well as the owner of each base licensed by the Commission to maintain a telephone or pager number with the Commission and to respond to any telephone or pager message received from the Commission within forty-eight (48) hours. Current rules impose this requirement upon taxicab medallion owners and require that such communication be responded to within twenty-four (24) hours.

The present rule with respect to medallion owners was adopted as part of the regulatory reforms of the Commission approved on May 28, 1998 and effective July 26, 1998. The purpose of the rule is to ensure that the Commission can make prompt contact with a taxicab owner for a regulatory purpose requiring an immediate response. Local Law No. 20 of 1999, signed into law on May 26, 1999, added a new §19-507.3 to the Administrative Code that changed the mandatory response time for owners from twenty-four (24) to forty-eight (48) hours. The rule change proposed herein conforms the Commission Rules to the Administrative Code with respect to medallion owners.

This rule adds an identical requirement upon other vehicle and base licensees of the Commission. The purpose of this change is to provide for uniformity in the rules governing Commission licensees and to ensure that all vehicle owners and bases licensed by the Commission may be reached quickly whenever there is a need for immediate response.

2. Statement of Basis and Purpose in City Record June 26, 1998: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under Section 2303(b)(2) of such Charter, authorizing the TLC to promulgate rules and regulations relating to standards and conditions of service which are reasonably designed to carry out its purposes; and under Section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter. The regulation promulgated herein requires that medallion owners: (1) keep a current telephone number together with answering machine, pager number or answering service telephone number on file with the Commission, so that the Commission may contact any medallion owner in an emergency or for any other important purpose; and (2) respond to any Commission telephone call within twenty-four (24) hours of receipt of the message for the purpose of resolving the exigent situation in a timely manner. This regulation enables the Commission to communicate with medallion owners quickly whenever an emergency situation arises. It is not the intent of the Commission to use telephone communication entailed by this rule where mail correspondence would be sufficient. Emergency situations may include information that the owner's taxicab was involved in an accident or crime, that property was lost, or where immediate contact with the owner is essential to complete a Police or other investigation. The cost to individual owners in complying with this regulation is minimal since owners are already required to provide the Commission with a telephone number.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The Commission is entitled to presume that an address filed by a medallion owner pursuant to subparagraph (b)(1) of this section is an address at which the owner can be reached. A medallion owner's failure to respond to a Commission notice sent to the address filed by the medallion owner is not excusable on the ground that the address actually belonged to the medallion owner's fleet manager, who failed to forward the notice. Taxi and Limousine Commission v. Borko, OATH Index No. 1117/94 (Aug. 8, 1994).

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35 RCNY 1-56

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§1-56 Records.

(a) A fleet or mini-fleet owner shall maintain for a period of three years a written record of every shift setting forth the following information for each taxicab: the driver's name, the taxicab driver's license number, the state license plate number, the medallion number, the time of leaving garage, and the exact time of return.

(b) An owner shall maintain for a period of three (3) years, the following additional records:

(1) drivers' electronic or written trip records;

(2) receipts and disbursements from the taxicab operations;

(3) payments to drivers;

(4) mileage record of each vehicle;

(5) Workers' compensation insurance coverage, if any;

(6) liability insurance coverage; and

(7) such other information as the Commission may require.

(c) An owner shall make available to a driver any records which the owner is required to maintain, or photocopies thereof, which the driver may be required to present to the Commission or any other governmental agency.

(d) (1) An owner shall not knowingly transmit false information to the electronic trip data record keeper for entry on the electronic trip record nor make erasures or obliterations on a written trip record, or other record which he or she is required to maintain. If a wrong entry is made on any such electronic or written record, the driver or owner shall correct it on the electronic record or written record and record the date, time, and reason for the change so long as a record of the manually changed entry exists.

(2) Trip records shall not be changed, either in whole or in part, unless authorized by the Commission.

(e) An owner shall take possession of the written trip records from the driver on a weekly basis, until the taxicab is required to be equipped with the taxicab technology system and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider, as set forth in section 1-11(e) of this chapter.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record Dec. 29, 1995 §17, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) amended City Record May 11, 2005 §20, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (b) amended City Record Dec. 29, 1995 §17, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (d) amended City Record May 11, 2005 §20, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (d) amended City Record Dec. 29, 1995 §17, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (e) amended City Record June 12, 2007 §7, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (e) amended City Record May 11, 2005 §20, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (e) added City Record Dec. 29, 1995 §17, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

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CHAPTER 1 TAXICAB OWNERS RULES

§1-57 Driver as Agent for Service of Notices.

(a) An owner shall designate each and every driver who operates his taxicab as his agent for accepting service by commission personnel of notices to correct defects in the taxicab. Delivery of such notice to a driver shall be deemed proper service of the notice on the vehicle's owner.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Section amended City Record Dec. 29, 1995 §18, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

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CHAPTER 1 TAXICAB OWNERS RULES

§1-58 [Reserved]

HISTORICAL NOTE

Section repealed and reserved City Record Oct. 30, 1995 §3, eff. Nov. 7, 1995. [See T35 §1-59 Note 1]

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-59

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CHAPTER 1 TAXICAB OWNERS RULES

§1-59 Stand-By Vehicles.

(a) Each fleet may maintain stand-by vehicles ("SBVs"), equal in number to ten percent (10%) of all currently licensed taxicabs owned or operated by the fleet. (If ten percent [10%] of the fleet does not equal a whole number, the number shall be rounded to the nearest digit.) A stand-by vehicle may be dispatched in place of a currently licensed taxicab only when the currently licensed taxicab is out of service for repairs or for required inspection. An SBV vehicle may be used to replace a vehicle that has been stolen or permanently retired from service for no more than thirty (30) days from the date of such theft or retirement. When a stand-by vehicle is dispatched, the medallion and medallion number in the roof light shall be transferred from the out-of service taxicab to the stand-by vehicle. A stand-by vehicle shall not be dispatched unless there is also present in the vehicle the SBV transfer form and SBV rate card.

(b) Reserved.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record July 15, 1992 eff. Aug. 14, 1992.

Subd. (b) repealed City Record Mar. 27, 2000 eff. Apr. 26, 2000. [See Note 1]

Subd. (b) added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 27,2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which authorizes the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the City; under §2303(b)(11) of such Charter, which authorizes TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; under §19-503 of the Administrative Code of the City of New York, which authorizes the Commission to promulgate rules to further the objectives of the Charter and the Administrative Code; and under §19-506 of said Code, which authorizes the Commission to impose penalties for the failure to comply with a Rule of the Commission.

This Rule repeals the requirement contained in TLC Rules that all stand-by vehicles be fueled by Compressed Natural Gas (CNG).

The Rules of the TLC permit fleets to maintain stand-by vehicles (SBVs) in a number equal to ten (10%) percent of the number of taxicabs licensed by the fleet. These SBVs may be dispatched in place of a licensed taxicab when the vehicle is out of service for either repairs or a required TLC inspection. On March 1, 1996, TLC Rule 1-59(b) became effective. This Rule provided that, effective December 31, 1997, all SBVs must be fueled by CNG.

On December 16, 1999, the TLC held a public hearing to review the effectiveness of the CNG vehicle program. The TLC heard testimony and received written comments from the taxicab industry (including taxicab owners and drivers), the black car and limousine industry, the livery industry, government officials, various gas and utility companies, as well as other individuals and organizations. These comments indicated that there are problems associated with the present CNG program, including the lack of a sufficient number of twenty-four (24) hour fueling sites, the lack of sites in locations near taxicab garages, the extensive amount of time needed to refuel CNG vehicles, cost and maintenance issues relating to the vehicles, and the unwillingness of taxicab drivers to lease such vehicles because of the additional time needed to fuel the vehicles. Other persons provided testimony in favor of the CNG program, noting the positive impact such a program has upon the environment.

After review of the testimony, the TLC has voted to repeal the mandatory CNG vehicle usage for SBVs, while retaining provisions in the Rules encouraging the voluntary use of CNG-powered vehicles. The TLC promulgates this change because while it encourages the use of CNG-powered vehicles as a measure to protect the environment, the Agency also recognizes the practical difficulties incurred by Owners in maintaining such vehicles at the present time.

2. Statement of Basis and Purpose in City Record Jan. 30, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The purpose of the regulations is to establish a significant number of taxicabs that are fueled by Compressed Natural Gas (CNG). Federal funding is available to equip taxicabs with CNG fueling systems. However, there has been hardly any use by taxicab owners of these available funds. An important issue is coordinating CNG fueling stations with CNG powered vehicles. It appears to be a classic situation of the cart before the horse, except that the horsepower here would be provided by CNG. Convenient fueling stations are necessary to interest taxicab owners in using CNG. The participation of taxicab owners is necessary to make investments in fueling stations worthwhile for the providers of CNG within the City, which include Brooklyn Union Gas and Con Edison. Stand-by vehicles are used by taxicab fleets as temporary replacements for vehicles out of service for repairs. At present, about 150 stand-by vehicles are in use. Present rules would permit as many as 200 stand-by vehicles. The decision to use stand-by vehicles is discretionary with fleet operators. By requiring that stand-by vehicles must be fueled by CNG, the regulations would establish between 120 and 150 CNG powered taxicabs. If those vehicles are among the first 300 taxicabs using CNG, the federal

funds to install the CNG fuel systems would be available for them. The regulations provide nearly two years before the CNG requirement for stand-by vehicles would take effect. This is intended to provide ample time for adequate CNG fueling stations to be built. The fundamental purpose of this measure is to explore means to improve the City's air quality. In response to public comments, the proposal was changed to allow for a reserve tank of gas to be used in instances where the taxi is unable to immediately refuel with compressed natural gas.

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§1-60 Compliance with Law and Proper Conduct.

(a) An owner shall comply with the Commission's taxicab specifications, the Marking Specifications for Taxicabs, all pertinent provisions of the Administrative Code and other laws, rules or regulations governing taxicab owners.

(b)(1) An owner, while performing his duties and responsibilities as a taxicab owner, shall not commit or attempt to commit, alone or in concert with another, any act of fraud, misrepresentation or larceny against a passenger, Commission representative, public servant or any other person.

(2) An owner, while performing his duties and responsibilities as a taxicab owner, shall not commit or attempt to commit, alone or in concert with another, any willful act of omission or commission which is against the best interests of the public, although not specifically prescribed in these rules.

(c) An owner shall not use or permit any other person to use his taxicab, garage or office of record for any unlawful purpose.

(d) An owner shall not conceal any evidence of crime connected with his taxicab, garage or office of record.

(e) An owner shall report immediate to the policy any attempt to use his taxicab to commit a crime or escape from the scene of a crime.

HISTORICAL NOTE

Section amended City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (b) amended City Record Aug. 10, 1998 §1, eff. Sept. 9, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 10, 1998:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under section 2303(b)(2) of such Charter, authorizing the TLC to regulate standards of service; under section 2303(b)(13) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under section 19-505 of said Administrative Code, authorizing the TLC to issue taxicab drivers licenses, for-hire vehicle drivers licenses and paratransit vehicle drivers licenses.

The rule amendments change the existing rules for taxicab and for-hire vehicle owners and drivers which prohibit fraud, misrepresentation, larceny or other actions against the best interest of the public, by dividing each rule into two subdivisions: one, prohibiting fraud, misrepresentation and larceny against either the Commission, a passenger, or another member of the public; and the other, prohibiting acts of commission or omission which are not otherwise prohibited by the rules but which are against the best interests of the public. The first subdivision, which would prohibit the most serious offenses acts of larceny or fraud against the Commission or the public, would carry a penalty which can include the possibility of a substantial fine, suspension or revocation. The second subdivision would carry a lower monetary penalty, but would also include the possibility of suspension or revocation.

The purpose of these rule changes is to protect the riding public from serious acts committed by owners and drivers of taxicabs and for-hire vehicles by enabling the Commission to impose severe penalties, up to and including license revocation, against those who commit serious acts of fraud or larceny against the Commission or the public. The rule, as presently drafted, is very broad. Its provisions apply to both egregious forms of misconduct and less serious offenses. Establishing two separate classifications of offenses, with different penalties, enables the Commission to better protect the public by ensuring that the penalties imposed under these rules are proportionate to the offense and have a significant deterrent effect.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Submission of forged workers' compensation insurance certificates by or on behalf of a medallion owner violated this section. Taxi and Limousine Commission v. Borko, OATH Index No. 1117/94 (Aug. 8, 1994).

¶ 2. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of paragraph (b) of this section, as well as §§1-23, 1-67(a), 2-26(d), 2-30(a), 2-31(a), 2-61(a) and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

¶ 3. Medallion owner, who leased medallion through agent leasing broker to drivers, held liable for meter acceleration device found in taxicab during inspection pursuant to section 1-23(a) of owner's rules, which imposes strict liability upon medallion owners even where, as here, the owner claims he was unaware of the violation. **Taxi and Limousine Comm'n v. Hom,** OATH Index Nos. 433 & 435/99 (Oct. 28, 1998).

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35 RCNY 1-61

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-61 Unlawful Acts.

(a) An owner shall not present a vehicle for inspection unless it is in fact the vehicle that is licensed by the Commission or use false credentials in presenting a vehicle for inspection, or avoid or seek to avoid inspection of a licensed vehicle by any other means contrary to law or regulation of the Commission.

(b) An owner shall not operate or present for inspection a vehicle in which the Vehicle Identification Number has been loosened and reattached, or switched from another vehicle or otherwise altered in a manner not in compliance with Article 17 of the New York State Vehicle and Traffic Law.

(c) An owner shall not present documents to the Commission which falsely purport to indicate that liability insurance and/or Workers' Compensation insurance requirements have been met.

(d) An owner shall not bribe or attempt to bribe nor proffer any gratuity whatsoever to any employee, representative or member of the Commission in return for favorable or preferential treatment.

(e) An owner shall not file with the Commission any statement required to be filed pursuant to Rule 1-02(g) or Rule 1-02(l) which he or she knows or reasonably should have known to be false, misleading, deceptive or materially incomplete.

HISTORICAL NOTE

Section amended City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (e) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-02 Note 1]

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35 RCNY 1-62

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-62 Gifts Prohibited.

(a) An owner shall not offer or give any gift or gratuity to any employee, representative or member of the Commission, any public servant or any dispatcher employed at a public transportation facility.

(b) An owner shall immediately report to the Commission and the NYC Department of Investigation any request or demand for a gift, gratuity or thing of value by any employee, representative or member of the Commission or any public servant or any dispatcher employed at a public transportation facility or authorized group-ride taxi line.

(c) An owner, when the taxicab is in his possession, shall remove all currency from the taxicab's interior prior to its inspection by any Commission personnel.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Testimony from TLC inspector, who admitted that he accepted bribes from those who presented taxicabs to him for inspection, was found insufficient to establish charges that taxi owners had bribed the inspector, due to inconsistencies in the inspector's testimony and other problems with his credibility. **Taxi and Limousine Comm'n v. Chrisanthos, Inc.,** OATH Index Nos. 1626-32/95 (July 21, 1998).

¶ 2. TLC inspector's testimony was found to be sufficient to establish that medallion owners attempted to bribe the

inspector. **Taxi and Limousine Comm'n v. N & J Taxi, Inc.,** OATH Index Nos. 1542-53/95 (Jan. 9, 1996), **aff'd in part, remanded on other grounds sub nom. Statharos v. NYC Taxi & Limousine Comm'n,** 269 A.D.2d 280, 703 N.Y.S.2d 461 (1st Dep't 2000).

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-63 Abuse and Physical Force Prohibited.

(a) An owner, while performing his duties and responsibilities as a taxicab owner, shall not threaten, harass or abuse any governmental or commission representative, public servant or other person.

(b) An owner, while performing his duties and responsibilities as a taxicab owner, shall not use any physical force against a Commission representative, public servant or other person.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-64 Solicitation Prohibited.

(a) An owner shall not, in any manner, cause any service or merchandise to be sold or advertised to any passenger, nor make any arrangement with the owner, manager or employee of any restaurant, bar, night club, cabaret, dance hall, hotel, or like places, or any premises maintained in violation of law, for which the owner agrees that she/he, his/her drivers and/or agents shall solicit or recommend patronage for such places, without prior, written, approval of the commission.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-65

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-65 Participation in Procession and Parades Prohibited. [Repealed]

HISTORICAL NOTE

Section repealed and reserved City Record Dec. 29, 1995 §19, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-66

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-66 Commercial Use Motor Vehicle Tax Stamp.

(a) An owner shall affix to the lower right side of the taxicab windshield, so as to be plainly visible, a current New York City commercial use motor vehicle tax stamp.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-67

RULES OF THE CITY OF NEW YORK

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CHAPTER 1 TAXICAB OWNERS RULES

§1-67 Cooperating with TLC.

(a) An owner shall cooperate with all law enforcement officers, authorized representatives of the Commission and the NYC Department of Investigation, and shall comply with all reasonable requests, including, but not limited to giving, upon request, his or her name and medallion number and exhibiting his or her rate card, required electronic and/or written trip records, log books, and other documents required to be maintained by the owner.

(b) An owner shall notify the Commission by telephone immediately, and in writing within twenty-four (24) hours, upon the discovery of any of the following:

(1) That any taximeter other than the taximeter approved by the Commission and indicated on the rate card, has been installed in such owner's taxicab;

(2) That any taximeter seal in such owner's taxicab has been removed or tampered with;

(3) That any unauthorized device has been connected to any taximeter, any seal, cable connection or electrical wiring, in such owner's taxicab, which may affect the operation of the taximeter;

(4) That any intervening connections, splices, "Y" connections or direct or indirect interruptions or connections of any kind whatsoever have been discovered on any wiring harness attached to the taximeter in such owner's taxicab.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record May 11, 2005 §21, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (b) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §1-23 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of this section, as well as §§1-23, 1-60(b), 2-26(d), 2-30(a), 2-31(a), 2-61(a) and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

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35 RCNY 1-68

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-68 Compliance with Communications, Directives and Summonses.

(a) An owner shall promptly answer and comply with all questions, communications, directives and summonses from the commission or its representatives and the NYC Department of Investigation or its representatives.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Medallion owner's submission of certain documentation more than 30 days after receipt of Commission directive, which instructed owner to supply the documentation within 10 days, did not constitute "prompt" compliance as required by this section. **Taxi & Limousine Comm'n v. Nitram Cab Corp.**, OATH Index No. 2809/08 (Aug. 4, 2008), **adopted**, Comm'r/Chair's dec. (Sept. 8, 2008).

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35 RCNY 1-69

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-69 Flat Rates from Kennedy Airport to Manhattan.

(a) Notwithstanding the rate of fare set forth in §1-70(a) and (b), the fare for a trip between Kennedy Airport and Manhattan shall be a flat rate of Forty-five Dollars ($45), plus any tolls; and beginning on November 1, 2009, plus the MTA Tax of fifty cents per trip.

(1) The surcharge set forth in §1-70(b) shall not be added to this flat rate.

(2) The taximeter shall reflect that this trip is a flat fare.

(b) If passengers request multiple stops on a trip from Kennedy Airport to Manhattan, the fare shall be as follows: the first stop in Manhattan is paid in accordance with subdivision (a) of this section; the meter is then turned on for a separate trip at the rate of fare as set forth in §1-70, and the total on the meter is paid at the last stop by the remaining passenger. (For example, if three passengers request stops at 42nd St., 18th St. and 4th St., then $45.50 will be collected at 42nd St. and the meter will be turned on. When the second passenger exits at 18th St., the meter remains on, and no money is paid to the driver. The passenger dropped off at 4th St. must pay the fare on the meter.)

(c) All trips between Kennedy Airport and a borough other than Manhattan shall continue to be governed by the meter rate of fare as set forth in §1-70.

(d) The Chairperson is authorized to suspend the enforcement of this provision at any time, if in the judgment of the Chairperson such a suspension is necessary to preserve adequate levels of service to and from Kennedy Airport.

HISTORICAL NOTE

Section amended City Record Oct. 31, 2006 §1, eff. Nov. 30, 2006. [See Note 4]

Section amended City Record Apr. 2, 2004 §1, eff. May 2, 2004. [See T35 §1-70 Note 2]

Section added City Record Dec. 29, 1995 §1, eff. Jan. 30, 1996. [See Note 2]

Section amended City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 3]

Subd. (a) amended City Record Sept. 25, 2009 §2, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (a) amended City Record May 31, 2001 eff. June 30, 2001. [See Note 1]

Subd. (b) amended City Record Sept. 25, 2009 §2, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (b) amended City Record May 31, 2001 eff. June 30, 2001. [See Note 1]

Subd. (d) amended City Record Apr. 29, 1996 eff. May 31, 1996.

NOTE

1. Statement of Basis and Purpose in City Record May 31, 2001:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; §2303(b) of such Charter, authorizing the TLC to enact rules and regulations relating to standards and conditions of service which are reasonably designed to carry out its purposes; §2304(b) of such Charter, authorizing the Commission to establish rates of fare for taxicabs; and §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter.

The regulations promulgated herein raise the flat fare rate for a trip from Kennedy Airport in Manhattan from the present rate of $30, to a rate of $35, exclusive of tolls. The $30 flat fare rate has been in effect since April 29, 1996.

The Commission adopted the JFK flat fare rate in 1996 to provide passengers with a consistent and uniform fare that approximated the average cost of a metered trip from Kennedy Airport to typical destinations in Manhattan, taking into account differences in traffic conditions and other variables such as the selection of a faster, but longer alternative route by drivers or passengers. The flat fare was also adopted in 1996 to prevent overcharging of passengers by drivers. The purpose of this increase in the flat fare rate by $5 per trip is to more closely approximate the average cost of a metered trip between Kennedy Airport and various locations in Manhattan, based upon average distance and time traveled. Since 1996, the Commission has conducted analyses of sample trips from Kennedy Airport to various destinations in midtown, lower and upper Manhattan. The results of these studies demonstrate that the average recorded meter charge for trips to midtown Manhattan was approximately $30. However, fares for trips to destinations in lower Manhattan averaged in excess of $35, while fares for trips to destinations in the northern end of Manhattan were approximately $35.

Lower Manhattan has developed in recent years into a primary residential and commercial area. In 1970, the Community Planning District comprising lower Manhattan (generally below the City Hall area) had a population of approximately 6,000 persons. By 1990, the population had increased in excess of 25,000, and preliminary census data for the year 2000 indicates that more than 30,000 people now live in lower Manhattan-a five-fold increase in thirty years. This demographic change has significantly impacted upon the use of taxicabs to destinations in lower Manhattan.

This rule establishes a flat fare rate that is more equitable to drivers transporting passengers traveling to destinations in upper and lower Manhattan. The existing flat fare structure does not adequately compensate drivers who are required to transport passengers to such destinations. By providing a flat fare rate that adequately compensates drivers for time and distance traveled with respect to trips to these destinations, drivers may also have a greater incentive to provide service at Kennedy Airport and seek fares to these destinations.

Accordingly, an increase in the flat fare rate is justified, consistent with the purposes of the Rule, to ensure that passengers traveling between Kennedy Airport and Manhattan are charged a fare that closely approximates the average metered fare for an average trip to destinations throughout Manhattan.

2. Statement of Basis and Purpose in City Record Dec. 29, 1995: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 2304(b) of such Charter, authorizing TLC to prescribe the rates of fare which may be charged for each type of service rendered; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The purpose of the promulgated regulations is to reduce the incidence of overcharges to visitors to this City who arrive through Kennedy Airport. It is the experience of the Commission that a small group of drivers who seek to overcharge their passengers concentrate much of their effort on Kennedy Airport. The drivers who overcharge may hope that language confusion, and the novelty of some passengers' first transactions in American currency will provide opportunities to cheat passengers. The relatively lengthy trip from Kennedy Airport to Manhattan may enhance opportunities to boost a fare by manipulating the meter. There is more time to use a meter zapper (which sends an electronic signal causing the meter to skip forward). A meter that is set fast will accrue a larger overcharge during a lengthier trip. Some drivers may seek opportunities to take passengers who are new to the City on circuitous and more costly routes. Those drivers may also hope that a passenger who is soon returning to a distant home is less likely to pursue a complaint against the driver with TLC. For all these reasons, overcharges from Kennedy Airport are persistently the most serious instances of overcharges. By setting a fixed fare, and working with the Port Authority to adequately inform the arriving visitors of the flat fares for taxis, TLC should be able to reduce the serious instances of overcharges. A meter zapper or a fast meter would be useless in the context of a flat rate of fare that is understood by the passenger. Circuitous routes would be pointless too. Those few fraudulent drivers would be less able to trick a passenger who has information about the flat fare. The promulgated flat rates are based on empirical study of metered trips made under a variety of conditions, including time of day, traffic and weather. The rate is set at an average fare. The regulation is in the form of an experimental 120-day trial period in order to ascertain whether the flat fare will improve service, or if there may be negative consequences. This reflects concern that if a flat fare is believed by drivers to be insufficient, then drivers may be less likely to await passengers at Kennedy Airport. That is not to suggest that many drivers cheat; rather, the question is whether drivers will be concerned about uncompensated time spent awaiting passengers or stuck in traffic from Kennedy Airport. An average fare may be regarded by drivers as inadequate, based on drivers' anecdotal recollections of some better fares. It is hoped that drivers will also recall the fares that were lower than the flat rate, and will continue to serve Kennedy Airport in appropriate volume. A flat fare may have competitive consequences among modes of travel, and that effect too needs to be evaluated. Subsection (b) was added to proposed rule 1-69 in order to clarify that the flat fare is not to be collected as a group ride. That is, multiple passengers are not to be charged $30 each. Once the first passenger exits in Manhattan, the flat rate should be paid, and the meter is turned on. The last remaining passenger must pay the amount shown on the meter. Amendment of Section 2-33(a) was added in order to avoid any possible dispute or confusion which may occur between the driver and the passengers at the end of the trip if the metered rate of fare is substantially different from the flat rate of fare.

3. Statement of Basis and Purpose in City Record July 1, 1996: Section 4. The Commission shall review the flat fare program as of October 1, 1996, and every six months thereafter. The Commission shall consider factors including the demand for taxis and the availability of taxis at Kennedy Airport, the wait times for drivers in airport holding areas

awaiting passengers, traffic and other factors affecting the time required for a trip to Manhattan, competitive conditions relating to alternative modes of service, and the experience of drivers and consumers. The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 2304(b) of such Charter, authorizing TLC to prescribe the rates of fare which may be charged for each type of service rendered; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The promulgated regulations establish a permanent flat fare from Kennedy Airport to Manhattan. An experiment was established beginning on January 30, 1996, and the initial results indicate that the flat fare has been successful. The experiment will "sunset" on July 31, 1996, and this rulemaking establishes a permanent program beyond that date. The purpose of the flat fare is to reduce the incidence of overcharges to visitors to this City who arrive through Kennedy Airport. It is the experience of the Commission that a small group of drivers who seek to overcharge their passengers concentrate much of their effort on Kennedy Airport. The drivers who overcharge may hope that language confusion, and the novelty of some passengers' first transactions in American currency will provide opportunities to cheat passengers. The relatively lengthy trip from Kennedy Airport to Manhattan may enhance opportunities to boost a fare by manipulating the meter. There is more time to use a meter zapper (which sends an electronic signal causing the meter to skip forward). A meter that is calibrated fast will automatically accrue a larger overcharge during a lengthier trip. Some drivers may seek opportunities to take passengers who are new to the City on circuitous and more costly routes. Those drivers may also hope that a passenger who is soon returning to a distant home is less likely to pursue a complaint against the driver with TLC. For all these reasons, overcharges from Kennedy Airport are persistently the most serious instances of overcharges. By setting a fixed fare, and working with the Port Authority to adequately inform the arriving visitors of the flat fares for taxis, TLC should be able to reduce the serious instances of overcharges. A meter zapper or a fast meter would be useless in the context of a flat rate of fare that is understood by the passenger. Circuitous routes would be pointless too. Those few fraudulent drivers would be less able to trick a passenger who has information about the flat fare. There are several changes to the regulations that were adopted as an experiment. One change is that the meter be equipped to reflect that the trip is a flat fare. Taximeters will be required to be capable of operating with either of two alternative rates of fare. This will provide the passenger with a printed receipt from a flat fare ride. This change in the meter specifications will require some taxicab operators to replace their meters and require all taxicab operators to reprogram their meters.

4. Statement of Basis and Purpose in City Record Oct. 31, 2006: The rules alter the existing rates of fare for taxicabs in two respects. First, the rules create a new flat fare for rides originating from any point in Manhattan to John F. Kennedy International (JFK) Airport. The flat fare will be $45, the same as is provided by existing rules for rides from JFK Airport to any point in Manhattan. Second, the rules adjust the metered rate of fare by changing from 20 cents to 40 cents the rate for time during which the taxicab is standing still or moving less than twelve miles per hour. The purposes of these changes are to promote taxicab service to tourists, and thereby to promote tourism, and to bring fare calculations into closer alignment with fare calculations in use in other major cities around the country. In addition, the adjustment to the rate of fare for waiting time increases the effective hourly rate for waiting time to approximate the existing effective hourly rate for time when the taxicab is moving normally. This adjustment thus enhances the equity of the fare structure, treating more equitably taxicab drivers whose fares on a particular day may happen to involve disproportionate amounts of waiting time.

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35 RCNY 1-70

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CHAPTER 1 TAXICAB OWNERS RULES

§1-70 Metered Rate of Fare.

(a) **Metered rate of fare.** The rate of fare for taxicabs shall be as follows, regardless of the number of passengers or stops:

(1) The charge for the initial unit is $2.50.

(2) The charge for each additional unit is $.40.

(3) The unit of fare is:

(i) one-fifth of a mile, when the taxicab is travelling at 12 miles an hour or more; or

(ii) 60 seconds (at a rate of forty cents per minute), when the taxicab is travelling at less than 12 miles an hour.

(4) The taximeter shall combine fractional measures of distance and time in accruing a unit of fare. Any combination of distance or time specified in paragraph (3) above shall be computed by the taximeter in accordance with Handbook 44 of the National Institute of Standards and Technology.

(5) The fare shall include pre-assessment of the unit currently being accrued; the amount due may therefore include a full unit charge for a final, fractional unit.

(b) **Surcharge.** In addition to the rate of fare set forth in §1-70(a), all taxicabs shall charge One Dollar ($1.00) for all trips beginning after 4:00 p.m. and before 8:00 p.m., weekdays, excluding legal holidays, and fifty cents ($.50) for

all trips beginning after 8:00 p.m. and before 6:00 a.m. on all days, including weekends and holidays.

(c) In addition to the rate of fare set forth in §1-70(a) and, if applicable, the surcharge set forth in §1-70(b), all taxicabs shall charge, beginning on November 1, 2009, the MTA Tax of fifty cents per trip on any trip that originates in New York City and terminates either in New York City or in the county of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk or Westchester.

HISTORICAL NOTE

Section amended City Record Oct. 31, 2006 §2, eff. Nov. 30, 2006. [See T35 §1-69 Note 4]

Section amended City Record Apr. 2, 2004 §2, eff. May 2, 2004. [See Note 2]

Section amended City Record Jan. 30, 1996 §1, eff. Mar. 1, 1996. [See Note 1]

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (c) added City Record Sept. 25, 2009 §3, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 30, 1996:

Section 2. The amended provisions of Rule 1-70 shall take effect on March 1, 1996; provided however, that if the provisions of proposed Rule 1-78, concerning limits as to the lease prices that owners may charge to drivers, are for any reason declared invalid by a court of competent jurisdiction, then the metered rate of fare set forth above in proposed Rule 1-70 shall be void, and the metered rate of fare shall revert to that in effect prior to March 1, 1996.

The Taxi and Limousine Commission ("TLC") promulgates such regulations pursuant to the authority vested in the TLC under Charter sections 2303(a), 2303(b) and 2304; and under section 19-503 of the Administrative Code of the City of New York.

The purpose is to provide increases in earnings to taxi drivers and operators, to maintain and improve levels of service after nearly six years without an increase.

The fare increase is estimated to increase the fare for an average trip of 2.64 miles by 20%. Nearly half the increase for the average trip is concentrated in the "drop," the cost of the first unit, when the meter is first engaged. That increases from $1.50 to $2.00. The price per each subsequent one-fifth of a mile increases by five cents, from $0.25 to $0.30. A 2.64 mile trip will cost $0.70 cents more for the first mile, $0.25 more for the second mile, and $0.15 more for the final 0.64 miles. Both calculations assume 306 seconds of waiting time in the average trip, for a constant cost of $1.00. The total is an increase of $1.10 above the previous average fare of $5.50.

Waiting time is unchanged, at twenty cents per minute. However, the waiting time equal to a unit of meter operation (thirty cents) is ninety seconds, rather than seventy-five seconds as at present (when a unit of distance costs twenty-five cents). The current rate posted on taxicabs for waiting time, twenty cents per minute, remains unchanged.

In an average shift of thirty trips, the total increase in revenue would be $33.

Increases in the costs of vehicles and increases in insurance costs, related in part to part to higher levels of insurance coverage required by New York State as of January 1, 1996, are among the items necessitating a fare increase to maintain and improve levels of service.

A key purpose of the proposal is to improve taxicab service and safety by retaining experienced taxi drivers.

Higher earnings are a major component of retaining experienced drivers. TLC studies have found that experienced drivers receive substantially fewer summonses than new drivers. That is an indication of better service. In taxi operations, a better worker is more knowledgeable, more courteous, and a safer driver.

Public safety is directly related to working conditions, particularly earnings. Over the past several years, passenger complaints about the driver's operation of the vehicle have risen. In that same period, drivers' real earnings have actually declined. (Lease rates have risen while the rate of fare has remained constant and the volume of business has remained steady or declined. This has resulted in lower earnings for drivers.) The most direct relationship between earnings and driving safety is the pressure a driver may feel to go faster, and to be bolder in traffic in an effort to proceed faster than the flow of traffic, in order to carry more fares and maximize income. Steady or higher earnings would help alleviate that immediate pressure. The indirect benefit-that is, the benefit of retaining experienced drivers-may be much greater. Higher earnings should encourage drivers to remain in the business.

The accompanying proposal that would cap the lease rates charged to drivers is so central to the Commission's analysis of the industry and its needs, that the Commission has made the increase in the taxi rate of fare contingent upon the continued applicability of the cap on lease prices. If the provisions of the proposed rules concerning limits as to lease prices are for any reason declared invalid by a court of competent jurisdiction, then the rate of fare shall revert to its current level, erasing the proposed increase in the fare. In the Commission's analysis, driver quality must improve. To accomplish that, the earnings of drivers must increase enough to retain experienced drivers. In the context of a government limit on the number of taxicab licenses, the Commission is compelled to balance the market forces by capping lease prices.

2. Statement of Basis and Purpose in City Record Apr. 2, 2004: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under Section 2303(b)(1) of such Charter, authorizing the TLC to adopt rules and regulations relating to taxicab fares, and Section 2304 of said Charter, which authorizes the TLC to establish rates of fare for taxicabs. On December 19, 2003, the TLC accepted for consideration two rulemaking petitions relating to amending the rules setting forth the rate of fare that may be charged by taxicab owners. One petition, filed by the Metropolitan Taxicab Board of Trade (MTBOT), requested that taxicab fares be increased as follows: · The initial "drop" be increased from $2.00 to $2.50;

· Mileage change be increased from $.30 per 1/5 mile to $.30 per 1/6 mile;

· Waiting time be increased from $.30 per 90 seconds to $.30 per 60 seconds.

The MTBOT proposal also requested that the flat fare for trips from JFK Airport to Manhattan be increased from $35 to $49.

On the same date, the TLC accepted for consideration a rulemaking petition from the Taxi Workers' Alliance (TWA) which requested that taxicab fares be increased as follows:

· Mileage change be increased from $.30 per 1/5 mile to $.40 per 1/5 mile;

· Waiting time be increased from $.30 per 90 seconds to $.40 per 45 seconds.

The TWA made no request for an increase in the initial drop, but requested that the flat fare for trips from JFK to Manhattan be increased from $35 to $45.

Each petitioner supplied certain income, expense and other data which was used to evaluate the fare increase proposals. The TLC also reviewed other data, including, but not limited to, taxicab fares in other cities, comparable fares for other modes of public transportation, return on investment, ridership data, income and expense data, and

projections with respect to industry conditions that may occur after a fare increase is implemented. Such criteria are set forth in the New York City Charter as factors which may be considered by the Commissioners. After careful review of all of the data submitted herein, as well as the public comments received and the testimony given at the March 30, 2004 public hearing the TLC is promulgating adjustments to the rate of fare which could restore the relationship between taxicab fares with other modes of transportation; provide drivers with incomes that are comparable with similar occupations; and create relationships between the different industry segments that facilitate the delivery of the desired quality and quantity of taxicab service. The Commission reviewed the evidence submitted and determined that the evidence supports an increase in the rate of fare.

Although both petitioners have requested that the fare calculated for waiting time, or time when the vehicle is in heavy traffic, be increased, the TLC has not adjusted the rate of fare for waiting time. Rather, the TLC has promulgated a $1.00 per trip surcharge for the evening rush hours, from 4:00 p.m. to 8:00 p.m. During these hours, there is often an imbalance between supply and demand. The imposition of a surcharge during these hours seeks to reestablish a balance between supply and demand by providing an incentive for drivers to work during these hours. Although the TLC initially proposed that the fifty-cent night surcharge, in effect from 8:00 p.m. until 6:00 a.m. be eliminated, the Commissioners retained this surcharge as an incentive for drivers to work during these evening and nightime hours after receiving public comment and testimony in support.

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***** Current through December 2009 ****

35 RCNY 1-71

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-71 Group Rides.

(a) [Reserved]

(b) **Group ride fare from York Avenue.** Notwithstanding the rate of fare set forth in §1-70(a) and (b), the fare for trips made pursuant to a group riding plan from York Avenue to the Financial District shall be as follows for each passenger: $6.00. In addition, there may be such fee for dispatch services as the Commission may determine.

(c) **Experimental Group Ride Programs.**

(1) The Chairperson shall have the authority to recommend, subject to Commission approval, additional experimental group riding plan pickup locations on a temporary basis as pilot programs to determine the effectiveness of each such group riding plan. The Chairperson shall also have the authority to recommend, subject to Commission approval additional group riding plans on a temporary basis for a limited period of time to respond to demand created by special events or unique circumstances. Such pickup locations shall be established for the transportation of more than one passenger from a common location to destinations within a specified common geographic area. Notwithstanding the rate of fare set forth in §1-70(a) and (b), the fare charged each passenger shall be set by the Commission and shall be less than the average metered rate of fare for such trip.

(2) Any group ride plan established by the Commission pursuant to this subdivision shall terminate one year after the date such plan was established, unless: (i) final rulemaking has been enacted establishing the group riding plan location and rate of fare; or (ii) the Commission has determined that it is in the best interest of the Commission to extend the group riding plan pilot program for an additional definite period of time not to exceed one year. The

Commission may discontinue any group riding plan that has not been the subject of final rulemaking upon a determination, in its sole discretion, that continuation of such plan is not in the best interest of the public.

(d) **MTA Tax.** The fare for any passenger paying the MTA Tax for any group ride trip will be reduced by the amount of the MTA Tax paid. Therefore, all passengers in a particular group ride plan will pay the same total amount. (Example: If three passengers are taking a group ride for which the fare is $6.00 per person, the fare will be adjusted so that the total fare for all three passengers equals $17.50 plus the $0.50 MTA Tax.)

HISTORICAL NOTE

Section added City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Subd. (a) repealed City Record Dec. 30, 2009 §1, eff. Jan. 29, 2010. [See Note 2]

Subd. (b) amended City Record Sept. 25, 2009 §4, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (c) added City Record Apr. 14, 2004 §1, eff. May 14, 2004. [See Note 1]

Subd. (d) added City Record Sept. 25, 2009 §4, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 14, 2004:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under §2303(b)(1) of such Charter, authorizing the TLC to adopt rules and regulations relating to taxicab fares, and §2303(b)(9) of said Charter, authorizing the TLC to develop a broad transportation policy through the experimentation with respect to modes of service and manners of operation which may, for a limited period of time, depart from the requirements of the Charter, Administrative Code, or rules of the Commission.

The Commission has established rates of fare for passengers in licensed taxicabs. Such rates are typically established on a per trip basis; the driver is not permitted to collect separate fares from each passenger. The TLC has, through rulemaking, established fare structures that depart from the metered rate of fare. One such fare structure is the flat fare rate for trips from Kennedy Airport to Manhattan. The TLC has also promulgated rules authorizing the establishment of group riding locations, where passengers traveling to an essentially common destination may share a taxicab and be charged a flat rate which is below the average metered rate of fare. Such group riding locations have been permitted for trips between LaGuardia Airport and Manhattan, as well as for trips between York Avenue, on the upper East side of Manhattan, and the Financial District in lower Manhattan. The York Avenue group riding plan is heavily used in the morning rush hours, while the LaGuardia plan is not active.

The TLC intends to expand group riding plans to include other locations throughout the City. Group ride locations may serve to complement existing transportation modes to accommodate passengers travelling between a common origin and a common destination in areas where there is a lack of existing mass transit, similar to the existing group ride location established to transport passengers between York Avenue on the Upper East Side and the Financial District during the morning rush hour period. Other factors may be relevant in determining the success and effectiveness of a group ride program. Accordingly, the TLC hereby authorizes the Chairperson to propose group riding locations to the Commission, which will then review such recommendations and, if adopted, set fares, on an experimental basis for a limited period of time. In addition, the Commission is hereby authorized to establish temporary group ride locations to respond to unique temporary circumstances, such as special events. The establishment of these pilot programs will enable the Commission to monitor demand for service as well as the willingness of the industry to provide service at

these locations prior to commencing rulemaking to permanently establish these group riding plan locations and fares. The regulation will require that within one year of the establishment and operation of such a location, the Commission must either permanently establish the plan and fare through rulemaking, or terminate the plan. The rule also authorizes the Commission to extend the pilot program for an additional period of time if it is necessary to further evaluate the effectiveness of the location.

2. Statement of Basis and Purpose in City Record Dec. 30, 2009: Since 1993, Taxi and Limousine Commission rules have permitted three different group ride fares from LaGuardia Airport to specified areas in Manhattan. However, these group rides are no longer used. The LaGuardia group rides were put in place at a time when there was a shortage of taxicabs at LaGuardia, which is no longer the case. Therefore, the TLC and the Port Authority agree there is no longer a need for this group ride rate. The TLC is interested in studying, by means of a pilot program, whether a different group ride structure might attract more passenger interest. For instance, it may be that there are shortages of taxicabs at the airport at certain times of day, or at certain locations such as the Marine Air Terminal, where many commuters arrive on shuttle flights. Also, it may be that business travelers who are heading to similar destinations in the Manhattan Business District may be interested in a group ride program. The repeal of the existing unused group ride structure is necessary to facilitate such future pilot programs.

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35 RCNY 1-72

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-72 Tolls.

(a) On all trips within the City of New York, any bridge and tunnel tolls to the destination shall be reimbursed by the passenger, who shall be so informed before the start of the trip. The amount of the reimbursement shall not exceed the E-Z Pass toll amount. Said reimbursement shall be remitted to the E-Z Pass tag holder by the driver.

(b) On all trips within the City of New York, there shall be no reimbursement for return tolls except for trips over the Cross Bay Veterans, and Marine Parkway-Gil Hodges Memorial Bridges. The amount of the reimbursement shall not exceed the E-Z Pass toll amount. Said reimbursement shall be remitted to the E-Z Pass tag holder by the driver.

(c) On trips beyond the City of New York, all necessary tolls to and from the destination shall be paid by the passenger. If E-Z Pass is used on tolls on trips beyond the City of New York, the amount of the reimbursement shall not exceed the E-Z Pass toll amount. Said reimbursement shall be remitted to the E-Z Pass tag holder by the driver.

(d) A driver who charges a passenger an amount in excess of the E-Z Pass toll amount shall be guilty of an overcharge as prohibited by §2-34(a). A driver who fails to reimburse an E-Z Pass tag holder for all toll charges incurred, including toll charges for which there is no passenger reimbursement, shall be subject to the provisions of §2-25(i). In addition to any other penalty permitted, the Commission may order restitution to a passenger or the E-Z Pass tag holder.

HISTORICAL NOTE

Section amended City Record Dec. 1, 1999 §2, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

Section added City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-73

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-73 Trips Beyond the City.

(a) For a trip beyond the limits of the City of New York, except for the Counties of Westchester or Nassau, or the facilities of the Port Authority of New York and New Jersey at Newark Airport, the fare shall be a flat rate. (A flat rate is a definite amount fixed between the driver and the passenger at the start of the trip. For example, "$20" is a flat rate. "Double the meter" is not a flat rate and is not the proper fare.) Beginning on November 1, 2009, the MTA Tax of fifty cents per trip shall be added to the total fare on any trip that originates in New York City and terminates either in New York City or in the county of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk or Westchester.

(b) For a trip to the Counties of Westchester or Nassau the fare shall be:

(1) the amount shown on the taximeter for that portion of the trip that is inside the City limits, plus twice the amount shown on the meter for that portion of the trip that is outside the City limits;

(2) all necessary tolls to and from the destination shall be paid by the passenger; and

(3) beginning on November 1, 2009, the MTA Tax of fifty cents per trip shall be added to the total fare.

(c) For a trip to Newark Airport the fare shall be:

(1) the amount shown on the taximeter plus a surcharge of $15.00; and

(2) all necessary tolls to and from the destination shall be paid by the passenger.

(d) Any continuous trip where the point of origin and the destination are both within the limits of the City of New York shall not be considered a trip beyond the City limits, even though the shortest and most direct route requires traveling outside such limits but within continuous counties. For such a trip the meter must be kept in the recording position throughout.

HISTORICAL NOTE

Section added City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Subd. (a) amended City Record Sept. 25, 2009 §5, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (b) amended City Record Sept. 25, 2009 §5, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (c) amended City Record Apr. 2, 2004 §3, eff. May 2, 2004. [See T35 §1-70 Note 2]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Because Belmont Park lies mostly within Nassau County, it was proper pursuant to subparagraph (b)(1) of this rule for a taxicab driver to charge a passenger a fare equal to the amount shown on the meter for the portion of the trip inside city limits plus twice the amount shown on the meter for the portion of the trip outside the city limits. Taxi and Limousine Commission v. Panic, OATH Index No. 1875/96 (Aug. 28, 1996), modified as to penalty, Comm'n Decision (Nov. 7, 1996).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-74

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-74 Luggage; Mobility Aids.

(a) There shall be no charge for handling steamer trunks or other luggage or belongings, wheelchairs, crutches, three-wheeled motorized scooters and other mobility aids transported in the interior of the taxicab, or for use of the taxicab's trunk.

HISTORICAL NOTE

Section amended City Record July 8, 1997 eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Section added City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-75

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-75 Owner's Direct Operational Responsibility.

(a) Except as otherwise provided in §1-76 of these rules, an owner shall operate a taxicab through personal observation of the vehicle, personal oversight of compliance with inspection, insurance and all other regulatory requirements, and personal communication with drivers. An owner may, however, utilize employees or a licensed agent to perform any or all such functions. The use of an employee or agent shall not relieve an owner of any obligation under these rules. An owner remains fully accountable for any violations of commission rules, committed by any employee or agent in the operation of such owner's medallion.

HISTORICAL NOTE

Section added City Record Oct. 30, 1995 §6, eff. Nov. 27, 1995. [See Note 1]

Subd. (a) amended City Record Mar. 29, 1996 §3, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 30, 1995:

Section 9. This proposal shall take effect thirty days after its promulgation, except that the requirements limiting the use of an agent who does not have the requisite business premises shall take effect on February 1, 1996. Furthermore, the requirement of Section 1-76(c), shall take effect as to each owner only upon the expiration of any management contract that is outstanding as of December 1, 1995, but shall take effect in no case later than February 1,

1996.

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The amendments require that taxi owners either operate their taxicabs themselves, through direct participation in operation of the vehicle, selection of drivers and compliance with regulatory requirements, or else operate through a designated agent. Designation of an agent would not relieve an owner of the responsibilities of a licensee. An owner would be limited to having only one agent for a taxicab. Under certain circumstances, the Commission could direct owners not to use an agent who has been involved in serious misconduct.

The purpose of the amendments is to establish controls concerning the use of agents who manage taxicabs on an owner's behalf. The most common form of agency is the use of lease managers, who "lease" the medallion from the taxicab licensee. That "lease" is similar to a management contract. The lease manager then leases the medallion to taxi drivers.

Lease managers have become a major element of the taxi industry, operating a substantial percentage of the taxicabs in service. A Commission study in May 1994 found that 2,730 cabs were operated by management companies whose insurance policies permit any licensed driver to drive the cabs. There were 29 such management companies running at least 25 cabs, and 37 other companies that operated between 5 and 24 taxis. In addition, 2,370 taxis were leased to named drivers for periods of weeks or months. A significant portion of those longer term leases are also handled by lease management companies.

Taxi fleets operated 2,620 cabs out of 28 fleet garages, in May 1994. A portion of those fleet cabs are not owned by the fleet, but instead are managed by the fleet operator as the agent of the medallion owners.

These figures suggest that roughly half of the 11,787 taxis in service are now operated by agents for the owners.

Although the question of agency is usually discussed within the taxi industry in terms of "lease managers," these proposed rules would also apply to any fleet, broker, or other entity which operates medallions that the entity does not own.

The growth of agency relationships in the taxi industry has, in practice, diffused owner responsibility for the operation of taxicabs. To provide continued standards of responsibility for public safety, the Commission has adhered to the fundamental policy of Rule 1-58(a), "The designation of an agent shall not relieve the owner of any obligations under these rules." That provision is preserved in Rule 1-75(a). In the Commission's view, a medallion owner is the holder of a public license to operate a taxicab, and cannot escape the responsibilities of a licensee by using an agent. The Commission holds the licensee strictly accountable for the operation of a taxicab. The Commission considers the operation of a taxicab to include all aspects of service, including compliance with insurance and other regulatory requirements. The Commission's answer to the diffusion of responsibility, is that the licensee remains fully responsible. The Commission has followed that principle in a recent series of cases concerning vehicle-switching and insurance fraud.

The Commission needs an additional measure, to maintain standards of responsibility. In the recent cases involving vehicle-switching and insurance fraud, the Commission held absentee owners of taxicabs responsible for the actions of their agents, and punished the owners with substantial fines or ordered them to divest their medallions. Meanwhile, their agents have continued to operate those owners' taxis and many others, because the Commission has lacked rules requiring owners to refrain from making use of particular agents. In the Commission's view, this is a serious gap in its

ability to regulate the provision of transportation for hire in New York City.

The Regulations enable the Commission to determine when, on the basis of an agent's misconduct, owners may not enter into or continue in any business relationship with that agent. The proposal provides for an opportunity for the agent to be heard as to the circumstances of the violation, prior to the issuance of such a direction to owners, except in cases requiring immediate action to protect the public health, safety or welfare. The direction not to use an agent may include a directive not to use certain principals in the agent. The purpose of that provision is to prevent the use of multiple enterprises to mask the continuing role of persons involved in misconduct in taxicab operations.

The promulgated regulations permit an owner to designate only one agent for the owner's taxicabs. Furthermore, the owner's designation of an agent cannot be delegated by the agent to another party. In the recent series of cases, a substantial portion of the taxi owners had contracted with one company to manage their medallions, but another company was actually operating them. In the Commission's view, these multiple relationships contributed to the diffusion of responsibility for the safe operation of taxicabs.

The minifleet, a corporation which owns only a few medallions, is a common form of ownership in the taxicab industry. Persons who hold beneficial interests in numerous medallions typically establish several minifleet corporations, each of which is the owner of a few medallions. Under the proposal, each taxicab minifleet could have only one agent to operate the taxicabs owned by the minifleet. The purpose is to simplify accountability. However, a person who owns more than one minifleet could use different agents for each minifleet, because each minifleet is a separate owner.

Based on public comments, several changes were made to the proposed regulations.

- The term "agent" has been further clarified. An agent acts ". . . to operate or provide for the operation of a licensed vehicle . . .". The term is not intended to cover such persons as a bookkeeper or auto mechanic who may work for a variety of owners in the limited capacity of their trade. - Certain draft provisions concerning persons who own less than 10% of the stock in an ownership corporation have been deleted. Those provisions were considered confusing and unnecessary. - The effective date for the requirement that an owner cannot use more than one agent has been extended for certain owners who already have outstanding contractual arrangements with their agents. Such owners are given until February 1, 1996 to comply with this requirement. This is approximately a ninety day period, which will provide time to alter present business arrangements. - The requirement that owners may only designate agents who maintain specified business premises has likewise been given an effective date of February 1, 1996, approximately three months from promulgation of the rule. - The requirement in Section 1-77(a)(3), that owners may only designate agents who provide certain information to the Commission, has been clarified to include specifically information as to the identity of principals of the agent. - The penalty for non-compliance of Rule 1-77(c) has been deleted. No penalty is necessary to accomplish its purpose.

The proposal does not appear in a regulatory agenda for the agency. The preparation of an agenda for this fiscal year was postponed, until after the appointment of a new Chairman. The new Chairman has established this proposal as an immediate priority.

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35 RCNY 1-76

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-76 Owners Who Use Agents.

(a) An owner may designate an agent to act on the owner's behalf to operate a licensed vehicle and perform all functions incident thereto. Such agent shall be licensed by the Commission in accordance with §19-530 of the Administrative Code. Such designation shall be in effect until revoked by the owner and the Commission is notified, or until such agent's license is suspended or revoked by the Commission.

(b) An owner who uses an agent shall file a designation of the agent with the Commission, prior to use of such agent.

(c) An owner shall not designate or use more than one agent for such owner's taxicabs. Minifleet taxicabs may be split, each to a different agent, to comply with the terms of a management contract in effect prior to February 1, 1996, but in no case may such taxicabs be split among agents after December 31, 1996. Upon the expiration of such a contract, the minifleet taxicabs must be managed by no more than one agent. At all times, an owner shall comply with the requirement that no more than one agent shall be designated for a taxicab.

HISTORICAL NOTE

Section amended City Record Mar. 29, 1996 §4, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Section added City Record Oct. 30, 1995 §6, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

Rules of the City of New York

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35 RCNY 1-77

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-77 Limitations on an Owner's Use of an Agent.

(a) An owner may designate or use an agent, only if the agent:

(1) shall operate the taxicab through personal observation of the vehicle, personal oversight of compliance with inspection, insurance and all other regulatory requirements, and personal communications with drivers. An agent may, however, utilize employees to assist in fulfilling such functions, to the extent consistent with the terms of the owner's designation of the agent. The owner's designation of an agent shall be ineffective if delegated by the agent to another party; and

(2) shall maintain a business premises which meets the requirements of §1-45(a) and §12-05 of these rules.

(b) An owner may not designate or continue to use an agent, if the Commission has notified the owner that the specified agent's license is suspended or revoked.

(c) The Commission shall direct owners not to continue to use a specified agent, by mailing to the owner's personal address, if such owner is currently using such specified agent. The Commission shall further maintain on file a list of all agents with respect to whom such directives have been issued and are currently in effect, and shall make such list available for inspection by any person. Any owner who, notwithstanding the availability of such list, seeks to designate an agent who has been the subject of a directive not to designate shall be notified of such directive by the Commission at the time the designation is filed.

(d) No contract or other agreement entered into by an owner with an agent shall include a provision which purports

to supersede or impair the effectiveness, in whole or in part, of the provisions of this rule.

HISTORICAL NOTE

Section amended City Record Mar. 29, 1996 §5, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Section added City Record Oct. 30, 1995 §6, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-78

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-78 Limitations on Standard Lease Rates Charged to Drivers.

(a) **Standard Lease Cap.** An owner of a taxicab may charge a lease rate to a driver that is not greater than the Standard Lease Cap.

(1) The Standard Lease Cap for a medallion and vehicle for one twelve-hour shift shall not exceed:

(i) $105, for all day shifts;

(ii) $115, for the night shift on Sunday, Monday and Tuesday;

(iii) $120, for the night shift on Wednesday;

(iv) $129, for the night shifts on Thursday, Friday and Saturday.

(2) The Standard Lease Cap for a medallion and vehicle for one shift for a week or longer shall not exceed $666 weekly.

(3) **Cost adjustments.** The Standard Lease Caps set forth in paragraphs one and two of this subdivision shall be adjusted as follows:

(i) For a vehicle that is hacked up pursuant to section 3-03.1 of this title, including a vehicle that is authorized by section 3-03(c)(10) of this title, the Standard Lease Cap shall be adjusted upward by $3 per shift ($21 per week).

(ii) For a vehicle that is hacked up pursuant to section 3-03 of this title, excluding section 3-03(c)(10) of this title, the Standard Lease Cap shall be adjusted downward by $4 per shift ($28 per week) beginning on May 1, 2009, by $8 per shift ($56 per week) beginning on May 1, 2010, and by $12 per shift ($84 per week) beginning on May 1, 2011.

(4) Limits on Additional Charges. No owner, including any employee or agent of an owner, may charge to or accept from a driver any payment of any kind, such as a tax, surcharge, pass-along, tip or fee of any kind, for the lease of a medallion or of a medallion and a vehicle, other than a lease amount no greater than the applicable Standard Lease Caps set forth in paragraphs one and two of this subdivision, plus

(i) a credit card pass-along no greater than permitted by section 1-85(b) of this chapter;

(ii) a security deposit no greater than permitted by section 1-79(c) of this chapter, less any deductions permitted by section 1-79(a) of this chapter;

(iii) the discount toll amount for use of the EZ-Pass as permitted by sections 1-37 and 1-83 of this chapter;

(iv) a late charge not to exceed $25 for any shift; and

(v) a reasonable cancellation charge, subject to the provisions of section 1-79.1(b)(6) of this chapter; and

(vi) parking tickets and red light violations permitted to be deducted from the security deposit pursuant to section 1-79(a)(3) and (4) of this chapter provided that the lessor and agent of the lessor permits the driver to challenge such tickets and violations.

(vii) If the owner or agent is a Taxpayer who is liable for the MTA Tax, the owner or agent may collect the MTA Tax due from the driver by, first, deducting the MTA Tax due from credit card reimbursements due to the driver pursuant to §1-78(d); second, deducting any additional MTA Tax due from the driver's security deposit pursuant to §1-79(a)(5); and third, charging the driver for any remaining MTA Tax due.

(viii) The lease of a medallion and vehicle under paragraphs one and two of this subdivision includes service and maintenance. Service and maintenance of the vehicle is the responsibility of the lessor of the medallion and vehicle and the lessor and an agent of lessor may not charge the lessee for service and maintenance costs for the vehicle.

(5) (i) The Standard Lease Cap for a medallion only, covering the entire time during a week or longer, shall not exceed $800 weekly.

(ii) **Cost adjustment.** The Standard Lease Cap set forth in subparagraph (i) of this paragraph shall be adjusted as follows:

For a vehicle that is hacked up pursuant to section 3-03.1 of this title, including a vehicle that is authorized by section 3-03(c)(10) of this title, the Standard Lease Cap shall be adjusted upward by $42 per week.

(iii) **Maintenance.** The lease of a medallion under this paragraph does not include, and does not require a medallion owner or its agent to provide, service and maintenance of the vehicle. A medallion owner or an agent of the medallion owner must not require the lessee to obtain service and maintenance from any particular provider, including, but not limited to the medallion owner or an agent of the medallion owner.

(c) The provisions of this rule do not apply to owners and lease drivers whose business relationship is governed by the terms of a collective bargaining agreement which regulates the subject of lease prices.

(d) **Credit Card Charges.** (1) An owner or the owner's agent must pay a driver daily in cash the driver's receipts that are charged to a credit card on that day, less only a credit card pass-along no greater than permitted by section 1-85(b) of this chapter for any lease under paragraphs one or two of subdivision (a) of this section. For all other leases,

an owner or an owner's agent must pay the driver in cash no less often than weekly the driver's receipts that are charged to a credit card, less only a credit card pass-along no greater than permitted by section 1-85(b) of this chapter.

(2) If any owner or owner's agent is a Taxpayer, then the owner or owner's agent may deduct from the driver's credit card receipts payable under this subdivision (d) the amount due for the MTA Tax as a result of the trips driven by the driver.

HISTORICAL NOTE

Section amended City Record Apr. 1, 2009 §1, eff. May 1, 2009. [See Note 4]

Section repealed and added City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See Note 1]

Section added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See Note 2]

Subd. (a) amended City Record Apr. 2, 2004 §1, eff. May 2, 2004. [See Note 3] (Note internal renumbering by Law Department per Charter §1045(b))

Subd. (a) par (4) subpar (vii) added City Record Sept. 25, 2009 §6, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (a) par (4) subpar (viii) renumbered (former subpar (vii)) City Record Sept. 25, 2009 §6, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (b) repealed City Record Apr. 2, 2004 §1, eff. May 2, 2004. [See Note 3]

Subd. (d) amended City Record Sept. 25, 2009 §6, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 2, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgated regulatons are intended to resolve certain issues which a group of taxi lease managers had raised in two lawsuits and before the City Council.

The promulgated regulations provide a more flexible cap on lease prices, which allows greater flexibility in business practices in the taxi industry. The regulations extend the period of operation for some taxicabs before their mandatory retirement dates. The regulations also provide enhanced incentives for taxi operators using compressed natural gas for fuel.

The upper limit on taxi lease rates.

The promulgated regulations establish Standard Lease Caps, at fixed prices, which could be used by any taxi operator. This provision supplements the current rule, which fixes a Baseline Lease Cap for each medallion. The

Standard Lease Cap is within the range of lease rates permissible for numerous medallions pursuant to their Baseline Lease Cap. It does not raise, therefore, the cap on prices available in the taxi leasing market. It does permit operators whose prior lease rates were below average to raise their lease rates to match the higher end operators. This reflects the higher operating requirements established in 1996 by Commission regulations. The higher end lease prices were obtained by taxi operators who could offer a new car to drivers. The taxi operators who offered used cars at lower rates must be able to reach the lease rate level of those operators providing newer cars, now that they must also provide newer cars.

The current TLC regulations forbid operators to change the terms of the current leases in effect for each medallion. The consequence is a freeze on each medallion's manner of operation. Such a freeze was necessary in the first phase of a lease cap, to assure that hidden charges or reduced services did not subvert the limitation on lease rates. In that regard, the freeze was successful. However, a continued freeze on each medallion's manner of operation is not in the public interest, as it inhibits change in the taxi industry.

Under the promulgated rule, an operator could change the manner of operation, for example, from daily shift operation to long-term leasing. The operator must, however, set the lease price within the limitation of the Standard Lease Cap.

The Standard Lease Cap for one shift was modified, based on written comment. Current lease prices for the night shifts on Thursday, Friday and Saturday are higher than $103. The Standard Lease Cap was modified to reflect what is currently charged pursuant to the Baseline Lease Cap. The rule was also modified to state that only operators of taxicabs of model year 1994 or newer taxicabs are permitted to use the Standard Lease Cap rather than the Baseline Lease Cap. In the Commission's view, the higher prices that may be permitted under the Standard Lease Cap should only be available when an operator has a new car. The 1994 model was still among the new cars as of the Baseline Period ending in September 1995. Those owners who operated new cars immediately prior to the new car requirement are thereby eligible for the Standard Lease Cap.

Deleted from the final rule is a provision which would have provided a 17% baseline lease cap to the operators of the oldest vehicles, upon hacking up new vehicles. The provision stirred misapprehension that the lease cap was being raised across the board to 17%. That was not the case. The provision applied only to a small group of operators. They may still utilize the Baseline Lease Cap, and when they field a new vehicle they may utilize the Standard Lease Cap.

The Baseline Lease Cap remains as an alternative for those operators who under current regulations would be permitted rates higher than the new Standard Lease Cap. Consequently, no operator's lease cap is reduced by the proposal.

The promulgated regulations provide that the Commission shall not lower lease rate caps unless there is substantial evidence in the record that costs for affected taxi operators have decreased. The rule establishes periodic review of operating expenses in the taxi industry. The first such review shall be held no later than March 1998, and thereafter at least once every two years. This provision does not limit the rights of taxi owners pursuant to the City Charter to petition for rule changes at any time.

The promulgated rule, in this connection, deletes a requirement for a certain report due in March 1997. An extended period of litigation and negotiations, with continued consideration of operating methods and expenses, and retaining experienced drivers, has led to these proposed changes in TLC rules. That review process obviates the need for any further report by March 1997.

Vehicle Retirement Schedule

The Commission has found that the new car requirement has led to rapid and significant improvements in the age and quality of taxicab rolling stock. The Commission believes that even with the promulgated changes in the mandatory vehicle retirement schedule, the pace of improvements will remain rapid. By no longer permitting the hack-up of used

police cars, the Commission has quickly established a higher proportion of new cars. The new cars are much superior to used vehicles in vehicle emission rates, especially during the first two years of operation as taxis. Commission data shows that a vehicle that is just a few years old emits four times as much pollution as a car in its first year of operation.

The Commission has focused on the role of the so-called "Driver Owned Vehicles" or "DOV", and has concluded that the DOV terminology fails to describe actual operating practices. In many cases the DOV is not owned by the driver, who is simply leasing the vehicle under a separate contract which contains an option to purchase the vehicle. In the promulgated regulations the operative term replacing "driver owned vehicle" is simply "Long-Term Driver". The retirement schedule recognizes that a vehicle driven regularly by a Long-Term river is more likely to be well maintained than is a vehicle operated by many different drivers. A Long-Term Driver is defined as a steady driver who drives at the rate of at least 160 hours a month, who is named on the rate card as a regular driver, and who is either a medallion owner or the holder of a lease with a term of at least five months. The number of hours of driving required was raised, based on comments, from 128 hours to 160 hours a month. This better reflects a full-time operator. Similarly, the rule was clarified to state that a person can be a long-term driver for only one taxicab.

A vehicle hacked-up on or after March 1, 1996 which is driven by at least one Long-Term Driver must be retired five years after hack-up. All other vehicles must be retired within three years of hack-up.

There is a transitional provision, which allows those operators who hacked-up new cars since March 1, 1996 to begin using a Long-Term Driver no later than March 1, 1997 and still receive the five year retirement schedule. Those vehicles may be operated without Long-Term Drivers until March 1, 1997. After that date, a new car must always be driven by at least one Long-Term Driver in order to qualify for the five year retirement schedule. A period without a Long-Term Driver is one in which care and maintenance are not appropriate for the longer retirement schedule.

The additional years of operation for a vehicle driven by a Long-Term Driver also serves as a powerful incentive to operate with such drivers. This should enhance the market value of steady drivers, improving their earnings and working conditions. The Commission has found that experienced, steady drivers receive the fewest summonses, a strong indicator that they are the best, safest drivers. Emphasis on the role of long-term drivers therefore enhances public safety.

The promulgated regulations provide a simpler and slower schedule for the retirement of vehicles that were already in service as taxicabs prior to March 1, 1996. The promulgated regulations use one schedule for all such vehicles of the same model year. This eliminates the difficult task of determining retirement dates for vehicles based on prior use, as the current regulations require. The retirement schedule is also extended somewhat. The first retirement period was to have begun on November 1, 1996. That period is postponed until the period beginning April 1, 1997. Similar extensions for newer models extend their permitted usage by six to twelve months. This provides more time for owners to form capital to meet the new car requirement.

The Commission expects that this extension would not significantly slow the transition to new cars.

Incentives for Compressed Natural Gas

The promulgated regulations provide enhanced incentives for vehicles using Compressed Natural Gas. The incentive is two additional years of operation before mandatory retirement. The incentive is offered for new vehicles. It is also offered for vehicles of model year 1995 and 1996 that convert to CNG use before April 1, 1997. The purpose of these incentives is to promote the use of a fuel which emits substantially less pollution. This improvement in emissions meets a key objective of a mandatory vehicle retirement schedule.

This provision was modified, based on TLC staff comment, to offer the incentive for vehicles which are converted to CNG within six months of hack-up. This change is based on experience that conversions to CNG are being made after solicitations of the owners of newly hacked-up cars. Owners are not converting to CNG prior to hack-up.

Conclusion

The promulgated regulations satisfy the most serious concerns within the taxi industry about the 1996 taxi reforms. The promulgated regulations preserve the essential features of these reforms and consolidate their achievements.

The regulations were not included in a regulatory agenda. They are a consequence of review pursuant to negotiations of matters in litigation.

2. Statement of Basis and Purpose in City Record Jan. 30, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The adopted regulations cap the lease rates that owners could charge to drivers for the use of a licensed taxicab. The cap applicable to each owner is based on that owner's highest lease charges for that medallion during 1995, through September 30, 1995. The cap limits any increases in the lease price to no more than fourteen percent above the medallion's previous lease rate. The fourteen percent figure is intended to provide roughly a 60-40 split between driver and owner of the fare increase. The fare increase, which is provided in a separate rule proposal, is estimated to increase taxi revenue by $33 per shift. That estimate is based upon a $1.10 increase in the fare for an average trip, and an average of thirty trips per shift. The purpose of the adopted regulations is to improve taxicab service and safety by retaining experienced taxi drivers. Higher earnings are a key component of retaining experienced drivers. TLC studies have found that experienced drivers receive substantially fewer summonses than new drivers. That is an indication of better service. In taxi operations, a better worker is more knowledgeable, more courteous, and a safer driver. Public safety is directly related to working conditions, particularly earnings. Over the past several years, passenger complaints about the driver's operation of the vehicle have risen. In that same period, drivers' real earnings have actually declined. (Lease rates have risen while the rate of fare has remained constant and the volume of business has remained steady or declined. This has resulted in lower earnings for drivers.) The most direct relationship between earnings and driving safety is the pressure a driver may feel to go faster, and to be bolder in traffic in an effort to proceed faster than the flow of traffic, in order to carry more fares and maximize income. Steady or higher earnings would help alleviate that immediate pressure. The indirect benefit-that is, the benefit of retaining experienced drivers-may be much greater. Higher earnings should encourage drivers to remain in the business. The cap on lease rates will affect the taxi labor market in conjunction with other TLC initiatives. The Commission has recently taken over the testing of applicants for taxi driver licenses. Previously, the tests were administered by the taxi schools which the TLC requires applicants to attend to qualify for a license. Perhaps the schools had a competitive incentive to pass their students in order to attract more applicants into their respective schools. Perhaps TLC then did not express a high enough standard to the schools. For whatever reason, only two percent (2%) of applicants failed the tests given by the schools. Over the years, passengers continued to complain that drivers did not adequately know the City or even conversational English. The test that TLC administers is now failing over thirty percent (30%) of applicants. This has reduced the influx of new drivers. Applications for licenses have also declined. The influx of new, inexperienced drivers has previously tended to keep the price of labor low in the taxi industry. Experienced drivers could not continue the stressful job of taxi driving for sustained periods in the face of the downward pressure on earnings (the upward pressure on lease rates) from a continually arriving pool of further applicants. The labor market for taxi drivers has long been unbalanced to the disadvantage of drivers, with serious consequences for taxi service and public safety. The supply of jobs-opportunities to drive a taxicab for a shift-has remained fixed, due to the limit on the number of medallions. There has been no limit on the number of new drivers seeking work. Experienced drivers have been pushed out of the industry by low wages resulting from the government created imbalance of supply and demand. These TLC initiatives-stricter standards for new applicants, and higher earnings for qualified drivers, are intended to retain experienced drivers, providing better and safer taxi service. This new regulation capping the lease rates is so central to the Commission's analysis of the industry and its needs, that the Commission has made the increase in the taxi rate of fare contingent upon the continued applicability of this cap on

lease prices. If the provisions of this new regulation concerning limits as to lease prices are for any reason declared invalid by a court of competent jurisdiction, then the rate of fare shall revert to its current level, erasing the proposed increase in the fare. That provision appears in the companion proposal concerning the taxicab rate of fare. In the Commission's analysis, driver quality must improve. To accomplish that, the earnings of drivers must increase enough to retain experienced drivers. In the context of a government limit on the number of licenses, the Commission is compelled to balance the market forces by capping lease prices. The cap on lease prices is only an upper limit. Market forces, related to a declining rate of influx of new taxi drivers, may create competitive conditions which cause owners to attract drivers by raising their lease prices by less than the permitted amount. These regulations require the Chairman to study the effects of the cap during its first year in effect, and to report to the Commission no later than March 15, 1997. That report will evaluate the extent to which the Commission's policy objective of improving taxi service and public safety by retaining more experienced drivers has been met. Several changes were made to the proposal in response to public comments. The proposal was amended by limiting any increases over baseline leases to no more than fourteen percent, rather than limiting increases to no more than $13 per shift. The reason for the change is that there are too many varying leases, such as medallion leasing with and without a vehicle, to fix specific dollar amounts by regulation. For similar reasons, the language explaining the term equivalent lease was added. In addition, the baseline period was changed from December 15, 1995 to September 30, 1995 in order to counteract any lease prices which were deliberately increased in anticipation of the proposed regulations being adopted. These regulations do not override any collective bargaining agreement in effect between taxi owners and lease drivers. The only such agreement now in effect is between the fleet owners in Metropolitan Taxicab Board of Trade and the members of Local 3036, Taxi Drivers and Allied Workers Union, SEIU, AFL-CIO.

3. Statement of Basis and Purpose in City Record Apr. 2, 2004: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, and by §19-503 of the Administrative Code, which authorizes the TLC to promulgate regulations to implement provisions of the Charter. In 1996, the TLC first promulgated regulations establishing maximum lease rates that may be charged drivers who lease taxicabs by the shift, or for longer periods. Section 1-78(e) of the Taxicab Drivers' Rules permit the TLC to raise or lower this lease cap upon a demonstration of substantial evidence of increased or reduced operating expenses of the affected medallion owners. If the TLC proposes to increase the maximum lease rates, a review shall also include, but not limited to, the effects on driver earnings and the retention of experienced drivers. The TLC received two rulemaking petitions, each of which have requested adjustments to the maximum lease rates charged by taxicab owners. One petition, filed by the Metropolitan Taxicab Board of Trade ("MTBOT"), has requested that maximum lease rates be increased for all shifts; the other petition, filed by the Taxi Workers' Alliance ("TWA"), has requested maximum lease rate reductions. The TLC has considered the two petitions, and it has reviewed the data submitted by the petitioners. Lease rates have remained constant since 1996, despite increases in many of the expenses incurred by taxicab owners. The data submitted by the owners' groups filing a petition has indicated that an increase in maximum lease rates would be needed to compensate owners for these increases in expenses such as vehicle replacement, insurance and maintenance. However, a substantial increase in lease rates would have an adverse impact upon a driver's income. The TLC initially proposed lowering the maximum lease rate for two shifts during which it appeared that drivers earn a lower income, in order to encourage drivers to provide service to the public during these periods. The TLC also initially proposed raising the lease cap during certain other shifts, resulting in an overall increase in maximum lease rates of approximately 3.4%. The TLC also proposed an increase in weekly lease rates that is proportionate to the increase in daily rates. After reviewing the public comments received and testimony given at the public hearing held on March 30th, the Commissioners voted to make some adjustments to the proposed maximum lease rates to ensure that taxicab owners would be adequately compensated for the additional expenses they had incurred since maximum lease rates were established in 1996. To this end, the Commission approved an overall increase in maximum lease rates of approximately eight percent (8%). The TLC further notes that taxicab owners and drivers are free to agree upon lease rates that are below the maximum set by regulation. Many garages have reported to the TLC that the actual lease rates charged are lower than the maximum set by TLC rules for a majority of shifts.

4. Statement of Basis and Purpose in City Record Apr. 1, 2009: These rules modify existing Taxi and Limousine Commission rules governing taxicab leasing in several respects. In light of the determination in **Metropolitan Taxicab Board of Trade v. City of New York**, 08 Civ. 7837 (PAC) (Oct. 31, 2008), these rules rescind the existing rules mandating that taxicabs hacked up beginning on October 1, 2008, must be city-rated at or above 25 miles per gallon, and that taxicabs hacked up beginning on October 1, 2009, must be city-rated at or above 30 miles per gallon. In the place of that rescinded requirement, the new rules alter the maximum lease rates in such a way as to create incentives for taxicab owners to buy cleaner vehicles. Specifically, the proposed rules permit owners of medallions used for hybrid electric taxicabs and "clean diesel" taxicabs to charge $3.00 per shift more than the maximum lease rate that would otherwise be allowed. Similarly, owners of less clean taxicabs will, after a phase-in period, be permitted to charge $12.00 per shift less than the maximum lease rate that would otherwise be allowed. Lease rates for wheelchair accessible taxicabs will remain unchanged. Under existing rules, a taxicab owner who purchases a vehicle that is costly to run does not bear the gasoline costs incurred in the operation of that vehicle. Instead, gasoline costs are borne by the drivers, who may have no voice in the owner's choice of vehicles. These newly promulgated rules are intended to place gasoline costs on the owner who chooses the vehicle. An owner who chooses a vehicle which is also a fuel efficient vehicle will be able to realize greater lease income than an owner who chooses a less efficient vehicle, while the expenses of leasing drivers will be roughly equal regardless of the taxicab owner's vehicle choice. The newly promulgated rules also specify that owners and agents may not add costs to the lease, other than charges specifically provided for by Commission rules. Therefore, under the new rules, the maximum lease rates cap the total of all charges, other than the credit card pass-along and the security deposit, a late charge and a reasonable cancellation charge (subject to certain required contract provisions) that an owner or agent may charge to a leasing driver. In addition, the new rules specify that owners and agents must settle credit card charges with drivers, in cash, on a daily or weekly basis. The newly promulgated rules formalize the leasing relationship in several respects. A lease, including any amendment to a lease, is required to be in writing and signed by the leasing driver; to contain an itemization of all charges; and to clearly state a lease term; and, if a cancellation charge is permitted, to contain certain provisions regarding cancellation. Similarly, the rules require that owners and agents provide leasing drivers with receipts for all payments made leasing drivers. The rules further expressly prohibit retaliation by an owner against a driver for filing a complaint alleging in good faith an owner's violation of the TLC's lease rules. In view of TLC's experience that drivers are extremely reluctant to file such complaints for fear of such retaliation, the proposed penalty for retaliation is $1,000. Finally, the new rules make two procedural changes in the Commission's existing rules. While owners and drivers could continue to petition for changes to lease caps, the Commission, on its own initiative, would be able to modify lease caps, by rulemaking, on the basis of its assessment of appropriate policy considerations. The rules also eliminate the requirement that a complaint for a violation of a lease cap provision can be made only by the driver subject to the lease. Drivers may be reluctant to report lease cap violations due to concerns about retribution and blacklisting. Effective enforcement of lease caps requires that complaints of violations be investigated actively, regardless of the source of the information.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-78.1

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-78.1 Changes to Lease Caps.

(a) During March of each even-numbered year, the Commission shall hold a public hearing and solicit written comment as to operating expenses, driver earnings, the retention of experienced drivers in the taxi industry, and other matters relevant to the setting of lease caps, for purposes of considering changes to the Standard Lease Caps set forth in section 1-78 of this chapter.

(b) Notwithstanding the provisions of subdivision (a) of this section, the Commission may initiate lease cap changes at any time, based on the Commission's assessment of appropriate policy considerations.

HISTORICAL NOTE

Section added City Record Apr. 1, 2009 §2, eff. May 1, 2009. [See T35 §1-78 Note 4]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-79

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-79 Limitations on Security Deposits Required of Drivers.

(a) An owner may include in a lease a provision for a security deposit from the driver, in addition to lease payments, subject to the limitations of this paragraph. At the termination or expiration of a lease an owner may be reimbursed from the security deposit for:

(1) any unpaid but owing lease charges;

(2) damage to the vehicle, if the lease clearly and prominently states that the driver is responsible for damage;

(3) any parking tickets issued during the lease;

(4) any red light violations issued to the owner during the lease, pursuant to the N.Y.C. Dept. of Transportation's camera surveillance system; and

(5) if the owner or agent is a Taxpayer liable for the MTA Tax, any MTA Tax remaining due from the driver after deductions from credit card reimbursements due to the driver.

(b) An owner shall not withhold or deduct from a security deposit any reimbursement additional to those specified in subdivision (a). An owner shall not require a driver to pay any summons that is written to the owner as respondent, other than those specified in subdivision (a).

(c) An owner shall not require a driver to post any security deposit that is greater in amount than the rate for one lease term. However, if the lease term is for more than one week, an owner shall not require a driver to pay a security

deposit in an amount greater than the lease rate for one week. Examples:

(1) An owner who leases a taxicab for one shift at the rate of $80 per shift may require up to an $80 security deposit.

(2) An owner who leases a taxicab or medallion for one week at the rate of $500 a week may require up to a $500 security deposit.

(3) An owner who leases a taxicab for six months at the rate of $2,000 a month may require up to a $500 security deposit.

(d) An owner shall provide written receipts for any security deposits made by a driver. An owner shall provide a driver with a written itemization of any items withheld or deducted from a security deposit. An owner shall return a security deposit either by check or by cash exchanged for a written receipt from the driver. An owner shall return a security deposit no later than thirty days after the end of the lease term.

(e) An owner who requires a security deposit shall deposit same in an interest-bearing account in a bank or credit union within the City of New York, which account is devoted to security deposits and not commingled with funds of the owner. The owner shall indicate in writing provided to the driver the name and address of such bank or credit union and the applicable account number. Interest on such security deposit shall accrue to the benefit of the driver furnishing the security, except, however, that the owner may retain one percentage point of any interest, as compensation for bookkeeping expenses.

(f) The provisions of this section do not apply to owners and lease drivers whose business relationship is governed by the terms of a collective bargaining agreement which regulates the subject of security deposits.

HISTORICAL NOTE

Section added City Record Dec. 29, 1995 §1, eff. Jan. 30, 1996. [See Note 1]

Subd. (a) pars (3), (4) amended City Record Sept. 25, 2009 §7, eff. Oct. 25, 2009. [See T35 §15-15

Note 1]

Subd. (a) par (5) added City Record Sept. 25, 2009 §7, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 29, 1995:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The regulations limit the amounts of security deposits that owners may require of drivers. Such deposits may be no larger than the lease rate for one lease term. However, if the lease term is longer than one week, the deposit may be no larger than the rate for one week. The regulations also limit the items which may be deducted by an owner from security deposits.

The promulgated regulations are intended to reduce the incidence of abuses of security deposits. TLC staff have

been conducting informal mediation of numerous complaints by drivers of security deposit abuses. In some instances, the driver complaints have been unfounded. In other instances, drivers have not been returned their money as properly due. Abuses, real or apparent, may cause drivers to leave the taxi industry.

A common practice, which the Commission wishes to prevent, is for the owner to require the driver to pay any summonses that are written to the owner as respondent during the driver's lease term. In the Commission's view, a summons written to a taxicab owner reflects the owner's responsibility for the operation of the taxicab. The Commission's summonses of an owner are intended to reflect violations that are the owner's responsibility.

The promulgated regulations prevent an owner from assessing a driver for most summonses written to the owner. However, an owner could require a driver to pay parking summonses. Those summonses are written to the vehicle's registered owner, the medallion owner, although the parking violation was committed by the driver. The rules also permit an owner to assess a driver for any red light violations issued to the owner during the lease, pursuant to the N.Y.C. Dept. of Transportation's camera surveillance system. Those summonses are issued to the vehicle's registered owner, the medallion owner, as identified by the license plate shown in photographs. The driving violation, however, was committed by the driver.

The promulgated rules permit an owner to assess a driver for damage if the lease clearly and prominently states that the driver is responsible for damage.

The regulations require that security deposit transactions be made in writing, to improve accountability and clarify the transactions in some cases. It requires that the security deposit be returned within thirty days of the end of the lease term.

The regulations require that security deposits be kept in interest-bearing accounts, and that the interest be paid to drivers, although the owner is permitted to retain one percentage point of the interest to compensate the owner for bookkeeping expenses.

The regulations provide penalties for violations of the requirements and provides for restitution to the driver for prohibited charges. Penalties are necessary to enforce the cap on lease prices and the limits on security deposits.

The new regulations do not override any collective bargaining agreement in effect between taxi owners and lease drivers. The only such agreement now in effect is between the fleet owners in Metropolitan Taxicab Board of Trade and the members of Local 3036, Taxi Drivers and Allied Workers Union, SEIU, AFL-CIO.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-79.1

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-79.1 Lease Terms and Form of Lease.

(a) Every lease entered into pursuant to section 1-78 of this chapter, including any amendment to such lease, must be in writing, and must be signed by the owner or a person duly authorized to act on behalf of the owner, and by the leasing driver or drivers. A copy of the fully executed lease must be provided to the leasing driver or drivers.

(b) Every such lease must contain the following terms:

(1) **The length of the lease.** The lease must state the beginning date and time of the lease and the ending date and time of the lease. A weekly lease must run for seven consecutive calendar days. A shift must run for 12 consecutive hours.

(2) **Itemization of the costs covered by the lease.** The lease must state the total lease amount, and an itemization of that total cost. The itemization must separately state the amount of the lease that applies to the medallion and the amount if any that applies to the vehicle.

(3) **Other costs.** The lease must state the amounts if any of the security deposit, the percentage credit card pass-along and any other costs that the driver will be charged.

(4) **Notices.** For each cost itemized pursuant to paragraphs two and three of this subdivision, the lease must include a reference to the Commission rule authorizing the imposition of such cost on the driver. The lease must either recite the complete text of each such rule or state the address of the Commission's Web page on which the rule is published.

(5) **Overcharges.** Every lease must contain clearly legible notice that overcharges are prohibited by the Commission's rules, and that complaints of overcharges may be made in writing to the Commission or by telephone call to 311.

(6) **Cancellation charges.** Any cancellation charge contained in the lease must be reasonable, and will not be permitted unless the lease also provides that

(i) no cancellation charge may be charged to driver if the medallion owner or its agent demands the return of the medallion and the driver is not late in making lease payments at the time of such demand;

(ii) if an agent demands the return of a medallion upon the request of an owner, the driver has the right to request that the agent supply a replacement medallion and, if a medallion is provided through the agent, the driver will not be responsible for the costs of hacking up a replacement vehicle; and

(iii) when a cancellation payment is made, the driver's obligation to make lease payments terminates upon such payment.

(7) Deposit information. Each lease must include the information regarding deposits required by section 1-79(e) of this chapter.

HISTORICAL NOTE

Section added City Record Apr. 1, 2009 §3, eff. May 1, 2009. [See T35 §1-78 Note 4]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-79.2

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-79.2 Receipts.

A driver shall be given a written receipt for every payment made to or deduction taken by the owner, or any person acting on behalf of the owner. The receipt must include the name of the driver and the number of the medallion subject to the lease. The receipt shall clearly state the date of the payment or deduction, the name of the person who accepted the payment or the deduction, the amount of the payment or deduction, the purpose of the payment or the deduction, and the number of the section of this chapter that authorizes the payment or deduction.

HISTORICAL NOTE

Section added City Record Apr. 1, 2009 §3, eff. May 1, 2009. [See T35 §1-78 Note 4]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-79.3

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-79.3 Retaliation.

An owner may not act in retaliation against any driver for making a good faith complaint against any owner for violation of sections 1-78 through section 1-79.3 of this chapter. "Retaliation" shall be broadly construed, and shall include imposing any adverse condition or consequence on the driver or withholding or withdrawing any beneficial condition or consequence from the driver.

HISTORICAL NOTE

Section added City Record Apr. 1, 2009 §3, eff. May 1, 2009. [See T35 §1-78 Note 4]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-80

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-80 General Provisions Concerning Medallion Transfers.

(a) Transfer of a taxicab license may be accomplished by purchase, gift, bequest, operation of law, acquisition of the stock or assets of a corporation, or acquisition of membership interests in or assets of a limited liability company and only with the written approval of the Chairperson as to the transferee. Any transfer of any interest in a taxicab license, whether in whole or in part, and whether directly or indirectly, is subject to the provisions of this section. Any proposed transferee of any direct or indirect interest in a taxicab license must apply for a taxicab license and must comply with the provisions of this chapter and meet the qualifications and requirements for ownership and operation of a medallion taxicab as set forth in this chapter, including those contained in §§1-02 and 1-03 of this chapter, the tort claim provisions contained in §1-81 of this chapter, and the medallion transfer provisions in this section and §§1-80.1 and 1-80.2.

(b) No person or entity shall attempt to transfer or participate in the transfer of any taxicab medallion without fulfilling the requirements of subdivisions (c) and (d) of this section, as applicable to such person, and obtaining the written approval of the Chairperson for such transfer. Submission to the Chairperson of an application to transfer a taxicab medallion shall not be a violation of this subdivision.

(c) An applicant for a taxicab license which is a transferee, or an applicant which is an executor, administrator, conservator or guardian seeking to operate a taxicab under the provisions of §1-82 (c) of this chapter, in order to complete the transfer of such license to applicant pursuant to this section, must appear in person as directed by the Chairperson, except that an applicant (or as to any shareholder, partner or member of an applicant who is required to appear by the following sentence) who (i) holds an existing, continuing license from the Commission, and (ii) has an electronic fingerprint record made no earlier than one year prior to the date of the transfer on file with the Commission,

may appear by power of attorney. If the applicant is a corporation, partnership or limited liability company, applicant must be represented in such appearance by all individual shareholders, general partners, or members, except those to whom the exception in the preceding sentence is applicable.

(d) A transfer of the interest in the taxicab license shall be complete and effective upon the Chairperson's approval of the applicant's application, the appearance of the transferee as required in subdivision (c) of this §1-80, payment of any New York City taxicab license transfer tax due as required in subdivision (h) of this §1-80 and in subdivision (m) of §1-80.1 of this chapter, the transferor's and the transferee's fulfillment of the requirements as to tort liabilities set forth §1-81 of this chapter and the fulfillment by the parties of the applicable medallion clearance requirements of §1-80.2 of this chapter.

(e) Each transferee of a taxicab medallion must place the medallion into service with a vehicle eligible for use as a taxicab under chapter 3 of this title and which has been hacked up as that term is used in §3-01(a) of this title within seven (7) days of the effectiveness of the transfer of the taxicab. Each applicant which is an executor, administrator, conservator or guardian seeking to operate a taxicab under the provisions of §1-82 (c) of this chapter must place the medallion into service with a vehicle eligible for use as a taxicab under chapter 3 of this title and which has been hacked up within seven (7) days of approval of the application.

(f) No voluntary transfer or sale of a taxicab license may be made if a judgment has been filed within the City of New York against the holder of a license and remains unsatisfied and notice of said judgment has been filed with the Chairperson, except that a transfer may be permitted if an appeal is pending from an unsatisfied judgment and a bond is filed in an amount sufficient to satisfy the judgment but not to exceed the fair market value of the medallion or medallions being transferred. A transfer may also be permitted without filing a bond provided that all the judgment creditors of unsatisfied judgments file written permission for such a transfer with the Chairperson or provided that the proceeds of sale are paid into court or held in escrow, on terms and conditions approved by the Chairperson.

(g) An owner's interest in such a taxicab license may be transferred involuntarily and disposed of by public or private sale in the same manner as personal property. However, upon such involuntary transfer, the owner's license shall immediately be cancelled. A new license shall be issued to the purchaser or his or her vendee when the transfer is effective as provided in subdivision (d) of this section, provided that (i) such purchaser or vendee has qualified as a transferee under and met the requirements as provided in this §§1-80 through 1-80.2 of this chapter and (ii) the tort liability requirements of §1-81(e) of this chapter have been met or are met at the time of such transfer; except that if the involuntary transfer is by reason of a tort judgment against an involuntary transferor, no bond need be provided with respect to the same judgment.

(h) A transferee of a taxicab license must satisfy his or her transfer tax liability as determined by the Department of Finance pursuant to Title 11 of the Administrative Code, prior to or at the time of transfer.

(i) A transfer of the taxicab license of an independent taxicab owner shall be made only to a transferee that will be an independent taxicab owner; similarly, the transfer of the license of a fleet or minifleet taxicab owner shall be made only to transferee that will be a minifleet or fleet owner.

(j) An independent taxicab owner may not have a financial interest in any other taxicab; a taxicab fleet or minifleet, including any officer, director, partner, and/or member of an owner thereof, may not have a financial interest in an independently owned taxicab. For purposes of this subdivision, "financial interest" shall mean any direct or indirect ownership interest or any interest given or received as a pledge or security or subject to a security agreement to secure any financing or obligation.

(k) **Conditional sales agreements.** (1) No transfer of an interest in a taxicab medallion through a conditional sales agreement shall be effective until the requirements of §§1-02, 1-03, 1-80, 1-80.1, 1-80.2 and 1-81 of this chapter have been fulfilled and the vendee has qualified as a transferee under this §1-80. Any fines or penalties imposed against the

taxicab license for violations occurring during the term of any conditional sales agreement shall remain the responsibility of the seller until the transfer is effective under subdivision (d) of this §1-80.

(2) Parties to a conditional sales agreement are subject to the "lease cap" provisions of §1-78 of this chapter.

(3) Parties to a conditional sales agreement shall provide the Chairperson with a disclosure statement indicating the terms of agreement.

(4) The vendor party to a conditional sales agreement shall notify the Chairperson in writing of any repossession by the vendor of the taxicab within seventy-two (72) hours exclusive of weekends and holidays.

(5) For purposes of this subdivision, "conditional sales agreement" shall mean an agreement for the transfer of a taxicab medallion for which the effectiveness as between the parties is contingent upon the completion and/or satisfaction of certain conditions, including, but not limited to, the completion of payment of financial consideration.

(l) **Applicability.** (1) Any person seeking to become a transferee of an interest in a taxicab license, including a person acquiring a taxicab license from or through a secured lender as a result of a foreclosure, repossession, or other realization upon security, must comply with the provisions of this section, must meet the standards and criteria for ownership of a taxicab medallion as set forth in §§1-02 and 1-03 of this chapter, must provide the documentation required in §§1-80.1 and 1-81 of this chapter, except if such person seeks to become a transferee of a medallion acquired pursuant to an auction of taxicab medallions under chapter 13 of this title, such person need not comply with §§1-80.1(m)-(n), 1-80.1(p)-(r) and 1-81 of this chapter, although any subsequent proposed transferee therefrom must so comply.

(2) Any seller or transferor of an interest in a taxicab medallion (other than a secured lender foreclosing upon or repossessing its security) must comply with the provisions of §§1-80.2 and 1-81 of this chapter.

(3) Any secured lender foreclosing upon, repossessing, or otherwise realizing upon its security in a taxicab license and not seeking to be a transferee is not required to comply with these provisions or with §§1-80.1, 1-80.2 and 1-81 of this chapter except to the extent required in §§1-80.1(n), 1-80.2(c) and 1-81 (e) of this chapter, although any proposed transferee acquiring an interest from or through such lender must so comply.

(4) Any administrator, executor, conservator or guardian seeking authority to operate a taxicab medallion must comply with the provisions of §1-82 of this chapter as must any distributee from an estate or trust as permitted by this chapter.

HISTORICAL NOTE

Section repealed and added City Record Dec. 24, 2008 §§7, 8, eff. Jan. 23, 2009. [See Note 1]

DERIVATION

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 24, 2008:

These rules amend the provisions of chapter 1 of Title 35 of the Rules of the City of New York (the "Taxicab Owner's Rules") to revise and clarify procedures regarding the medallion transfer process. The rules specify the documents to be submitted in order to obtain approval of the transfer and enumerate the requirements a proposed transferee of an interest in a taxicab medallion must fulfill in order to qualify to own a taxicab medallion. In addition, the rules provide procedures to be followed in the event the owner of an interest in a taxicab medallion dies or is

declared incompetent, and set forth the circumstances under which the taxicab may be operated by the estate or guardian and what must happen before a successor may be qualified to operate the taxicab and hold the taxicab license. Finally, the rules set forth procedures by which possible claims against a transferring medallion interest owner or that owner's taxicab may be addressed consistent with the provisions of §19-512 of the Administrative Code. These rules provide that transferring owners must establish an escrow account to satisfy tort claims, in excess of insurance amounts, that have been asserted against them. In most cases, the amount placed into the escrow account will not exceed the transferor's "equity" in the medallion (that is, the value of the transfer minus pre-existing secured debt). Transferors objecting to the amounts of claims asserted against them may have these amounts determined (for purposes of establishing the appropriate escrow amount) in an administrative proceeding before OATH upon giving proper notice to the claimants. These rules are intended to be consistent with the requirements of §7-201 of the New York General Obligations Law and the provisions of the New York Uniform Commercial Code. These rules, as designed, replace the previous transfer rules which appeared at §1-80 through §1-82 of the Taxicab Owner's Rules. In addition, the rules amend provisions of the Taxicab Agents' rules appearing at Chapter 12 of Title 35 of the Rules of the City of New York to provide that taxicab agents have a duty to notify the Commission of the death or incompetency of an owner of an interest in a taxicab medallion.

These rules were proposed to codify, and in some cases to streamline, Taxi and Limousine Commission processes with respect to the transfers of taxicab medallions and, in particular, to make clear in the Taxicab Owners Rules, the documents and processes required to complete a transfer. In addition, the rules are intended to create a procedure by which the amount of possible tort claims outstanding in excess of insurance proceeds in respect of a medallion being transferred are evaluated and provided for, in a manner consistent with the requirements of law, and actual conditions existing within the taxicab industry.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-80.1

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-80.1 Documentation and other Requirements for Qualification as a Transferee.

An applicant for a taxicab license, in order to qualify for ownership of a medallion taxicab as a transferee under §1-80 of this chapter, shall include the following with his, her or its application for a taxicab license:

(a) a completed application in form prescribed by the Chairperson;

(b) payment of the fees in the amount of

(i) fifty dollars, in accordance with §19-504(h) of the Administrative Code of the City of New York, for the transfer of a medallion or license from one vehicle to another, where applicable; and

(ii) one hundred sixty dollars, in accordance with §19-512(d) of the Administrative Code of the City of New York, which must be paid upon submission of the application provided for in subdivision (a) of this section for the transfer of (a) the owner's interest in a taxicab license, or (b) stock in a corporation or membership interests in a limited liability company which is an owner of a taxicab license or an interest therein.

(c) payment of the license and inspection fees required pursuant to §§1-04 and 1-05 of this chapter;

(d) proof of identity in the form prescribed in §1-02(b) of this chapter, including the identity of all partners of a partnership, officers and shareholders of a corporation, and members and managing members of a limited liability company and disclosure of any trade name or entity name under which the owner intends to operate;

(e) if the applicant is acquiring an interest in a medallion from an independent taxicab owner, a current, valid

number of a taxicab driver's license issued by the Commission to the person who will fulfill the service requirements of §1-09(b) of this chapter;

(f) proof of purchase in the form of a bill of sale of vehicle eligible to be used as a taxicab under chapter 3 of this title or an affidavit from the applicant specifying that the applicant will have a vehicle eligible to be used as a taxicab under chapter 3 of this title within seven days following the effectiveness of the transaction, pursuant to §1-80(d) of this chapter;

(g) proof of payment of any outstanding fines or fees owed to the Commission, the Parking Violations Bureau, or the successors thereto by the applicant, or any officers, shareholders, partners or members thereof;

(h) documentation in form satisfactory to the Chairperson detailing the sources of the applicant's funds used in the transaction including

(i) copies of bank account passbooks or bank statements;

(ii) affidavit explaining cash sums and deposits over $10,000 paid to or by the applicant within six months prior to the date of submission of documentation required in this section;

(iii) affidavits from donors of any gifts;

(iv) statements from secured and/or unsecured lenders detailing amounts lent, security if any, and terms of payment; and

(v) copies of IRS Form 8300 filed by any broker in respect of funds received in the context of the transaction.

(i) if the applicant is a corporation,

(i) in the case of a corporation that is a newly formed corporation, the filing receipt of the certificate of incorporation and a copy of the certificate of incorporation;

(ii) in the case of a corporation that is not a newly formed corporation, either the filing receipt of the certificate of incorporation together with a copy of the certificate of incorporation or, alternatively a certified copy of the certificate of incorporation;

(iii) a copy of the resolution of or action by the incorporators, shareholders or directors electing officers of the corporation; and

(iv) a list of stockholders, including number of shares owned.

(j) if the applicant is a partnership,

(i) a copy of the applicant's certificate of partnership; and

(ii) a list of the partners, including the percentages owned.

(k) if the applicant is a limited liability company,

(i) a copy of the applicant's articles of organization;

(ii) a copy of the applicant's operating agreement; and

(iii) a list of the members, including the percentages owned.

(l) if the applicant is a partnership, corporation or limited liability company not organized under the laws of the State of New York, in addition to the foregoing, proof of authorization of such entity to operate in New York State.

(m)(i) payment of the New York City taxicab license transfer tax due in connection with the transfer and/or

(ii) if the transfer is by a gift or is for less than market value, a New York City Department of Finance Waiver letter, together with any documentation referred to therein.

(n) if the transfer is the result of a foreclosure or similar action by a creditor,

(i) a hypothecation agreement, stock pledge or stock pledge agreement if the transfer is occurring by transfer of, or foreclosure upon, stock;

(ii) a UCC Article 9 Foreclosure "Affidavit of Disbursements" showing that all claims have been satisfied or will be satisfied or acceptable documentation regarding any claims not satisfied;

(iii) copies of UCC-1 filings (including file stamp or file number) filed against the owner or owner's interest in the medallion;

(iv) copies of all security agreements involved in the transfer in respect of the lenders' interests in the medallion;

(v) bill of sale, if any, or proof of other transfer in respect of any security agreement;

(vi)(A) proof of advertisement of the auction together with the attendance sheet or

(B) a copy of the Notice of Sale;

(o) an affidavit or affirmation under penalty of perjury from the applicant in a form approved by the Chairperson that the applicant does not rely upon the actions or determination of the Commission with respect to the medallion. In addition, if circumstances warrant, the applicant will provide an affidavit or affirmation in a form approved by the Chairperson as to other matters pertaining to documentation.

(p) copies of a New York State UCC lien search, together with a lawsuit and judgment search for all counties in which the transferor has been domiciled for the shorter of either five (5) years prior to the transfer or while owning an interest in the medallion(s) being transferred, which searches shall also provide copies of all active records, together with an affidavit or affirmation under penalty of perjury executed by the transferor and the applicant that they have reviewed all such searches and are familiar with the contents thereof, and warranting that all disclosed liens and judgments will be satisfied prior to or from the proceeds of the transfer, included in the escrow amount, or assumed by the applicant, together with a copy of the results of such lien search.

(q) tort letters from the transferor's insurer covering the shorter of (i) six years prior to the date of the proposed effective date of transfer, as set forth in §1-80 (d) of this chapter or (ii) the transferor's period of ownership of the taxicab medallion, down to and including the date that the medallion is placed into storage as required by §1-80.2 of this chapter, or if not placed into storage, the date prior to the proposed effective date of transfer, together with such documentation as may be required in respect of potential excess claims as may be disclosed thereby, together with any information held by the applicant or transferor regarding any potential excess claims or as may be necessary to determine the escrow amount for the purposes of §1-81 of this chapter. If tort letters are not available, or such letters as are available indicate a lapse in coverage during such six year period, or a secured lender is transferring an interest in a taxicab medallion as a result of foreclosure, repossession, or other realization upon its security and has not obtained tort letters, the provisions of §1-81(e) of this chapter regarding the establishment of the escrow amount in the absence of tort letters, shall apply.

(r) if the applicant seeks to purchase an interest in a corporation, partnership, or limited liability company that

owns a taxicab medallion or medallions, such applicant must also furnish with respect to such entity the documents required in subdivisions (i), (j), (k), and (l) of this section;

(s)(i) the transferor must provide proof of notice of the transfer to the taxicab technology service provider that holds the contract for the taxicab technology system for such medallion pursuant to §1-11(g) of this title. The notice must be mailed to the taxicab technology service provider at the address specified in the contract at least thirty days prior to the date of the proposed transfer by certified mail, return receipt requested. Proof of notice shall consist of a copy of the notice, a copy of the certified mail receipt and an affidavit or affirmation under penalty of perjury verifying the mailing;

(ii) the transferor must also provide, on a form prescribed by the Chairperson, a statement of intent regarding the contract for the taxicab technology system, stating the transferor's intention to (A) either cancel the contract or assign the contract to the transferee, and (B) either return the taxicab technology system to the taxicab technology service provider if the transferor does not own that equipment, or, if the transferor does own that equipment, retain the taxicab technology system or transfer the equipment to the transferee;

(iii) the transferee must also provide, on a form prescribed by the Chairperson, a statement that either (A) states the transferee's intent to assume the transferor's contract for the taxicab technology system or (B) identifies the approved taxicab technology service provider with which the transferee intends to enter into a contract for the taxicab technology system.

(t) such other documentation as may be required by the Chairperson in order to assist in the determination whether the proposed transferee meets the criteria for licensing and ownership of a taxicab medallion, including as set forth in §§1-02, 1-03, 1-80, 1-80.1, 1-80.2 or 1-82 of this chapter.

HISTORICAL NOTE

Section added City Record Dec. 24, 2008 §8, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-80.2

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-80.2 Medallion Clearance.

Pursuant to the transfer of any interest in a taxicab license and before the transfer can be effective, the transferor of the interest in the taxicab license must, or must cause the owner of the taxicab license to:

(a) place the medallion in storage with the Chairperson for at least seven (7) days not counting the day it is put in storage or the day the clearance is given; except that a medallion owned by a corporation, or limited liability company need not be placed in storage if the transfer is to be effected by a transfer of stock or membership interests therein; and

(b) clear all open items (including response to all summons issued by the Commission, payment of all outstanding fines and penalties due to the Commission, the Parking Violations Bureau, or the successors thereto, and completion of all uncompleted renewal requirements) against the medallion or the owner of the medallion or the officers, shareholders, partners or members of the owner, as well as any fines and penalties against the owner's taxicab drivers license (including those of any officer, shareholder, partner or member of the owner).

(c) Any secured lender which is foreclosing upon, repossessing or otherwise realizing upon its security in respect of any taxicab license must, upon obtaining possession of the medallion, place the medallion in storage with the Chairperson.

HISTORICAL NOTE

Section added City Record Dec. 24, 2008 §8, eff. Jan. 23, 2008. [See T35 §1-80 Note 1]

DERIVATION

Former §1-81 repealed City Record Dec. 24, 2008 §7; added City Record Apr. 30, 1992.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-81

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-81 Tort Claims and Medallion Transfers.

(a) An applicant for a taxicab license, in order to be qualified as a transferee, shall supply proof to the Chairperson that the applicant or the transferor has filed a bond with the Chairperson to cover all outstanding tort liabilities of the vendor or transferor; however this requirement shall not apply to an applicant who is a legatee or distributee of a decedent's estate owning a taxicab license.

(b) In lieu of filing a bond as provided in subdivision (a) of this section, the applicant or his or her transferor may establish an escrow account in the amount of the escrow amount, not to exceed the maximum escrow amount, to satisfy excess claims. No transfer of the taxicab medallion(s) may occur until the bond is posted, or the escrow account is established, and the escrow agent has given an undertaking to the Chairperson to establish the escrow account and hold it on the terms required by this section, with confirmation of the establishment to occur in writing within five (5) days of such establishment, or it is determined by the Chairperson that none of the foregoing is required as provided in this section.

(c) Establishing the claim amount.

(i) The transferor must first attempt to establish the amount of each claim that is a potential excess claim for purposes of determining the escrow amount by the following process:

(A) The transferor must request copies of claim letters held in the Commission's medallion file.

(B) The transferor must notify the holder of each potential excess claim that may be indicated by either a valid

claim letter, a prior claim letter, a tort letter, or the lien, judgment and lawsuit searches required to be obtained in §1-80.1(p) of this chapter of the escrow amount transferor proposes to establish in respect of such claim. The transferor must provide adequate mail notice to such claimant by certified mail, return receipt requested, with a copy by regular mail and with a copy mailed to the Commission, to the attention of the legal department, transfer division. The transferor must provide to the Chairperson proof of mailing of all such notices in the form of copies of the mailing receipts together with an affidavit or affirmation under penalty of perjury verifying the mailing.

(C) The transferor's notice shall be of a form approved by the Chairperson:

(1) The notice to each potential claim holder must state whether such holder's claim is believed by the transferor to be a potential excess claim or not and must state a specific dollar amount (including $0) proposed to be established as the escrow amount for such claim.

(2) Such notice must further state that the claimant has thirty days from the date of the notice to object thereto, by notice to the transferor, with a copy of such notice to be provided to the Commission, to the attention of the legal department, transfer division.

(3) Such notice must further state that failure of the Commission to receive the claimant's objection within such thirty day period shall be deemed acceptance of the transferor's proposal regarding the escrow amount to be established for such claim.

(4) Such notice must further state that the claimant's acceptance of, or failure to object to, the transferor's proposed escrow amount for such claim shall not prejudice any rights, claims, or remedies the claimant may have against the transferor.

(5) Failure of the claimant to object to the transferor's proposed escrow amount within thirty (30) days of the transferor's notice provided pursuant to this paragraph (c)(i) (and the Commission's non-receipt of an objection shall be deemed a failure to object) shall be deemed acceptance of the proposed escrow amount in respect of such claim. Claimant's objection to the transferor's proposed escrow amount must state the basis for such objection.

(ii) If claimant objects to the transferor's proposed escrow amount as to such claim, the Chairperson shall refer the matter to the New York City Office of Administrative Trials and Hearings (OATH) to determine the amount of the claimant's claim to be included in the escrow amount.

(A) In any proceeding before OATH to determine the amount of the claim to be included in the escrow amount, OATH's rules of practice shall govern. In determining the amount of the claim to be included in the escrow amount, OATH shall apply principles of tort law.

(B) For the purposes of such proceeding, the transferor shall be the respondent and the transferor's notice containing the proposed escrow amount as provided in paragraph (c)(i) of this subdivision shall be the answer and the claimant shall be the petitioner and the claimant's objection required by this paragraph (c)(ii) shall be the petition. In the proceeding, the petitioner shall have the burden of proof that the claim is an excess claim. The administrative law judge assigned by OATH to decide the matter shall issue a determination which shall be a final determination.

(iii) At any time, the transferor and the claimant may agree as between themselves as to the amount of the claim for purposes of establishing the escrow amount in respect of such claim. Such agreement must be executed by both parties and a copy of such agreement must be provided to the Chairperson.

(d) The Chairperson shall determine the required escrow amount following completion of the steps set forth in subdivision (c) of this section as to each claim, except for those claims for which a determination was made by an administrative law judge at OATH. This determination shall be based upon the transferor's proposed amount in the event that the claimant agrees, or does not object, to such proposed amount as provided in paragraph (i) of subdivision

(c) of this section or the parties' agreement as to the proposed amount as provided in paragraph (iii) of subdivision (c) of this section. If an administrative law judge at OATH has made a determination as to any claim, as provided in paragraph (ii) of subdivision (c) of this section, the escrow amount for such claim shall be the amount as set forth in such determination. The determination shall be a final agency determination as to the amount of the claim to be used in determining the escrow amount, although nothing contained in these rules or in any such determination is intended to be, and shall not be, determinative as to the actual merits of the claim.

(e) If tort letters cannot be obtained for all or any part of the period for which they are required to be provided in §1-80.1(q) of this chapter, or if a secured lender seeking to transfer an interest in a taxicab medallion pursuant to a foreclosure, repossession or other realization upon its security has not obtained such tort letters, no transfer may occur unless an escrow account is established as provided in subdivision (f) of this section in the maximum escrow amount. Notwithstanding the provisions of subdivision (f) of this section, such escrow account must be maintained for not less than the shorter of six (6) years following the date of the transfer, or until such date that tort letters can be obtained and the transferor has validated the appropriate escrow amount to be established for any possible excess claims disclosed as required in this section and the Chairperson has determined the escrow amount for each such claim as provided in subdivision (d) of this section (with any such resulting escrow amounts to be held as required by subdivision (f) of this section).

(f) Once the escrow amount has been determined, an escrow account in the amount of the escrow amount shall be established from the proceeds of the transfer or other resources of the transferor, provided that no transfer may be effective as provided in §1-80 (d) of this chapter until either such escrow account is established or the holder of the escrow account has given to the Chairperson an undertaking to establish the escrow account, to hold it on the terms required by this section, with written confirmation of the establishment to occur in writing within five (5) days of such establishment. The account established may be held by any of counsel for the claimant, the transferor, or otherwise as the claimant and transferor agree, although the parties must advise the Chairperson as to the holder of such account, and such account will be maintained until all the claims represented therein are satisfied or released, although amounts in the escrow account allocable to specific claims may be released upon satisfaction of, or in satisfaction of, such specific claims. Any person or entity seeking a release of escrowed funds from the escrow account shall provide proof of release, satisfaction or dismissal of the underlying claim or agreement of the parties as to resolution of such claim, or a judgment of a court directing payment of all or part of the escrow amount to a party, and if the evidence is an order of a court, such order must constitute a final order, which must be fully executed and, if appropriate filed or entered. No funds shall be released from the escrow account without the prior written approval of the Chairperson.

HISTORICAL NOTE

Section repealed and added City Record Dec. 24, 2008 §§7, 8, eff. Jan. 23, 2009. [See T35 §1-80

Note 1]

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35 RCNY 1-82

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-82 Special Provisions Regarding Estates and Incompetency.

(a) When a medallion or stock or membership interests in a corporation or limited liability company owning a medallion is distributed from an estate to a legatee or distributee, the recipient of such interest must qualify as a transferee under §1-80 and must fulfill the requirements of §§1-02, 1-03, 1-80, 1-80.1 and 1-80.2 of this chapter and the following additional documents shall be submitted to the Commission:

(1) a certified copy of the death certificate of the former owner listed with the Commission;

(2) a certified copy of letters testamentary or letters of administration, and, if the estate is not a New York estate, a certified copy of ancillary letters testamentary or letters of administration covering the estate's New York property; and all such letters must have been issued no earlier than six months prior to the date of submission and must be either (i) unqualified as to the amount of estate assets which the executor or administrator is authorized to administer and distribute or transfer or (ii) if qualified as to amount, such amount must be in excess of the value of the medallion(s) to be operated or transferred, as the case may be; and

(3) a copy of the will, if any, certified by the appropriate surrogate or probate court.

(b) Upon the death of an owner of an interest in a taxicab medallion, or upon a declaration of incompetence or the appointment of a guardian for such owner by a court of competent jurisdiction, the medallion may continue to be operated by the estate or executor or administrator of such owner's estate or conservator, guardian, or such other representative, as the case may be for a period of up to one hundred twenty (120) days following the death or date of declaration of incompetence of the owner, provided that such medallion is operated pursuant to an agreement with an

agent licensed by the Commission. If, during such 120 day period, an executor, administrator, conservator, guardian or other representative is appointed, such representative shall have sixty (60) days from the date of appointment to be approved to operate the medallion as provided in subdivision (c) of this section. If the decedent, or the incompetent owner, was an independent taxicab owner, the service requirements of §1-09(b) of this chapter are waived during the 120 day period, and, if a representative is appointed within such period, during the 60 day period following the appointment thereof. Thereafter, neither the estate nor such representative may continue to operate the medallion and the medallion must be placed in storage until either an executor, an administrator, conservator, guardian or new owner has qualified to operate the medallion as provided in subdivision (c) of this section. If no representative qualifies to operate the medallion as provided in subdivision (c) of this section within one hundred eighty (180) days of the death of the previous owner or the declaration of incompetence or disability of the owner, the interest of such owner must be transferred to a transferee who has received the approval of the Chairperson following submission of an application to own a taxicab license and compliance with the provisions of §§1-02, 1-03, 1-80, 1-80.1, 1-80.2 and 1-81 of this chapter. Notice of the death or incompetence of a medallion owner must be given to the Chairperson promptly upon such occurrence.

(c) Except as provided in subdivision (b) of this section, an executor, administrator, conservator, or guardian may continue the operation of a taxicab beyond the one hundred twenty-day period provided for in such subdivision only with approval of the Chairperson as to his or her qualifications. The executor, administrator, conservator or guardian must apply for such approval by submitting an application for a taxicab license and complying with the applicable provisions of §§1-02, 1-03, 1-80 and 1-80.1 of this chapter and must submit in addition the documentation set forth in subdivision (a) of this section if the applicant is an executor or administrator, or a copy of an order of a court of competent jurisdiction if applicant is a conservator or guardian. Notwithstanding anything else contained within this section, if neither an executor, administrator, conservator, guardian or a new owner has qualified to operate the taxicab within one hundred eighty days following the death of the previous owner, or the date of a judicial declaration of incompetence or disability of the owner, the taxicab may not be operated and the medallion must be placed into storage until a representative or transferee has qualified to operate the taxicab. A representative for an independent taxicab owner which qualifies to operate the taxicab must also meet the service requirements set forth in §1-09(b) of this chapter.

(d) A distribution of an ownership interest in a taxicab medallion may be made from an estate to a trust only if the distribution is of stock of a corporation or membership interests in a limited liability company distributed to a trust for the benefit of a minor. The interest in the taxicab medallion must be distributed out of the trust within 60 days following the date on which the beneficiary reaches the age for ownership of a taxicab medallion required by this chapter, and at the time of such distribution, such beneficiary must qualify as a transferee and be approved as an owner under, and fulfill the requirements of, §§1-02, 1-03 1-80, 1-80.1, 1-80.2 and 1-81 of this chapter if such beneficiary is to retain an interest upon its distribution. Notice must be given to the Chairperson promptly upon the beneficiary reaching the age for ownership of a taxicab medallion.

HISTORICAL NOTE

Section repealed and added City Record Dec. 24, 2008 §§7, 8, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

DERIVATION

Former §1-82 added City Record Apr. 30, 1992 eff. May 30, 1992.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-83

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-83 E-Z Pass Replenishment Account.

An owner or agent dispatching a vehicle equipped with an E-Z Pass for one or more shifts may require a driver, in addition to any other payment or account authorized herein, to maintain an E-Z Pass replenishment account with the E-Z Pass tag holder. The amount permitted to be maintained in this account shall not exceed ten ($10) dollars per twelve (12) hour shift included within a lease period, to a maximum of one hundred ($100) dollars for any driver. An owner or agent shall collect from this account any tolls paid by said owner or agent through the driver's use of the E-Z Pass tag assigned to a taxicab operated by the driver, which have not been otherwise reimbursed to the owner or agent. The owner or agent shall return any funds held in the replenishment account not used to reimburse the owner or agent as authorized by this Section, to a driver, upon demand, within thirty (30) days after the termination of the driver's lease with the owner or agent.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-84

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-84 Special Procedures Relating to the Transfer of Taxicab Medallions While Revocation Proceedings are Pending.

Where the Commission has commenced a revocation proceeding against a medallion owner, the owner may not transfer his taxicab license during the course of the proceedings without the written permission of the Chairperson. The Chairperson may require that such a sale may not be made to a relative of the medallion owner, nor to any other person or entity affiliated with the owner. The Chairperson may require that, as a condition of granting such permission, an ascrow be held in an amount to be determined by the Chairperson after an approved closing in order to satisfy any fines subsequently levied against the owner.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §1, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-85

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-85 Limitations on Credit and Debit Card Transaction Fees.

(a) A merchant shall not charge a mark-up to any passenger for credit/debit card transactions.

(b) A merchant who is an owner may charge a mark-up to a driver licensed by the Commission of not more than five percent (5%) of the total credit/debit charges incurred during the driver's shift.

HISTORICAL NOTE

Section added City Record June 12, 2007 §8, eff. July 12, 2007. [See T35

§1-01 Note 3]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-85

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-85 Procedures in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Subd. (c) amended City Record Mar. 29, 1996 §7, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Subd. (c) amended City Record Oct. 30, 1995 §8, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

Subd. (e) amended City Record May 15, 1995 §1, eff. June 19, 1995. [See Note 1]

Subd. (h) amended City Record Mar. 17, 1993 eff. Apr. 16, 1993.

NOTE

1. Statement of Basis and Purpose in City Record May 15, 1995:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The purpose of the amendments is to limit the period of time within which a motion to vacate a default judgment will be accepted by the TLC hearings tribunal, except in instances where a question of jurisdiction exists. This amendment will permit the closure of many matters which otherwise would remain open indefinitely, pending a potential motion to vacate a decision made at inquest upon the default of respondent. Further technical amendments to the rules governing default judgments are being made to preserve consistency.

CASE NOTES

¶ 1. Where respondent was found guilty of knowingly submitting fraudulent receipts, the Taxi and Limousine Commission can requiring respondent to divest itself of all remaining medallions. Since the respondent had a history of violations, and the fraud impacted directly on public safety, the penalty of divestiture was not so grossly disproportionate to the offense as to be shocking to one's sense of fairness. King Victor Taxi Corp. v. New York City Taxi & Limousine Commission, 654 N.Y.S.2d 358 (App.Div. 1st Dept. 1997).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-86

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-86 Penalties for Violation of Rules Governing Owners of Medallion Taxicabs.

Rule No.	PenaltyAll fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	PersonalAppearance-Required
§1-04(c)	$50-350 and/or suspension up to 30 days	Yes
§1-07(a)	$50-350 and/or suspension up to 30 days	Yes
§1-07(b)	$50-350 and/or suspension up to 30 days	Yes
§1-07(c)	$100-$350 and/or suspension up to 30 days; summary suspension until compliance pursuant to §8-17(b) of this title.	Yes
§1-09(a)	$75	No
§1-09(b)	$100-350 and/or suspension up to 30 days	Yes
§1-10(a)	$100 and seizure of the vehicle.	No
§1-10(b)	$100 and summary suspension until compliance pursuant to §8-17(b) of this title. If the failure to inspect extends 31 days after the scheduled inspection date or the date of an order to inspect or reinspect on other than the tri-annual schedule, $100-250 and summary suspension until compliance pursuant to §8-17(b) of this title. If the failure to inspect extends 61 days after the scheduled inspection date or the date of an order to inspect or re-inspect on other than the tri-annual schedule, $250-500 and summary suspension until	YesRate card must be brought.

	compliance pursuant to §8-17(b) of this title. If the failure to inspect extends 121 or more days after the scheduled inspection date or the date of an order to inspect or re-inspect on other than the tri-annual schedule, $500 and/or revocation. For failure to have the vehicle inspected on a tri-annually scheduled date, (or for failure to re-inspect after failing such inspection) an owner could be found in violation of this rule up to four times in the course of 121 days: for failure to inspect within 30 days, within 61-120 days, and for more than 120 days. In addition, the owner could also and concurrently be found in violation of any order(s) to have the vehicle inspected that may be issued in the course of street enforcement, without limit as to number.	
§1-10(c)	$50 and suspension after the hearing until the defective condition is corrected.	No
§1-10(d)	$100-350 and/or suspension up to 30 days; summary suspension until compliance pursuant to §8-17(b) of this title.	Yes
§1-11(a)	$100	No
§1-11(b)	$25	No
§1-11(c)	$50	No
§1-11(d)	$75	No
§1-11(e)(i)	$250 and suspension until compliance.	Yes
§1-11(e)(ii)	$250 and suspension until compliance	Yes
§1-11(f)	$1,000 and suspension until compliance.	Yes
§1-11(g)	$250 and suspension until compliance.	Yes
§1-11(h)	$250	No
§1-12(a)(1)	$25	No
§1-12(a)(2)	Notice to correct within 10 Days failure to comply with such notice shall be a violation of §l-68(a).)	N/A
§1-12(a)(3)	Notice to correct within 10 Days (failure to comply with such notice shall be a violation of §l-68(a).)	N/A
§1-12(b)	$50-350 and/or suspension up to 30 days	Yes
§1-13(a)	$100-350 and/or permanent removal of radio	Yes
§1-13(b)(1)	$100-350 and/or permanent removal of telephone	Yes
§1-13(b)(2)	$100-350 and/or permanent removal of telephone	Yes
§1-13(b)(3)	$100-350 and/or permanent removal of telephone	Yes
§1-13(b)(4)	$100	No
§1-14(a)	The penalty for failure to comply with this rule shall be $50 per day, except that where the system is installed and malfunctioning, a notice to correct within ten days shall be issued.	No
§1-15(a)(1)	$100-250	Yes
§1-15(a)(2)	$100-250	Yes
§1-16(a)	$100	No
§1-17(a)	$300 and suspension until the condition is corrected	Yes
§1-17(c)	$300 and suspension until the condition is corrected.	Yes
§1-17(d)	$50	No
§1-17(e)	$50	No
§1-17(f)	$50	No
§1-18(a)	$100 and suspension until the condition is corrected	Yes
§1-19(a)	$100 if no device. Notice to correct within 10 days if device is non-functioning. (Failure to comply with such notice shall be a violation	No

	of Rule 1-68(a)).	
§1-20(a)(1)	$50	No
§1-20(a)(3)	$50	No
§1-20(a)(4)	$500	No
§1-20(a)(5)	$50	No
§1-20(b)(1)	$50	No
§1-20(b)(2)	$200	No
§1-20(b)(3)	$300 for a first violation. $600 for a second and subsequent violation within 36 months.	Yes
§1-21(a)	$500	Yes
§1-21(b)	$500	Yes
§1-21(c)	$500	Yes
§1-22(a)	$100	No
§1-22(b)	$75	No
§1-23(a)	$250-1,500 and/or suspension up to 30 days. Summary suspension until compliance pursuant to §8-17(b) of this title.	Yes
§1-24(a)	$75	No
§1-24(b)	$50-350 and/or suspension up to 30 days	Yes
§1-25(a)(1)	$100	No
§1-25(a)(2)	$100	No
§1-25(a)(3)	$50	No
§1-25(a)(4)	$50	No
§1-25(a)(5)	$100	No
§1-26(a)	$100No penalty for missing plaque, if condition is corrected within forty-eight hours.	No
§1-30(a-e)	N/A	
§1-31(a)	$100-350 and/or suspension up to 30 days	Yes
§1-32(a)	$100	No
§1-33(a)	$100	Yes
§1-33(b)	$100	No
§1-33(c)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of §1-68(a).)	N/A
§1-35(a)	$75	No
§1-35(b)(1), (2), (3) and (4)	$25	No
§1-35(b)(5) and (6)	$75	No
§1-35(c)	$50	No
§1-35(d)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of §1-68(a).)	N/A
§1-36	N/A	
§1-37(a)	$100 and suspension until compliance	Yes
§1-37(b)	$100 and suspension until compliance	Yes
§1-37(c)	$250	No
§1-40(a)	$150-350 and/or suspension up to 30 days	Yes
§1-40(b)	$100	Yes
§1-40(c)(1)	$500-1,000	Yes
§1-40(c)(2)	$150 and $25 for each day of violation thereafter and suspension until compliance	Yes
§1-40(d)	$350 and suspension until compliance	Yes
§1-41(a)	$50-350 and/or suspension up to 30 days	Yes

§1-42(a)	$100	No
§1-42(b)	$50	No
§1-43(a)	$25 for each day in violation	Yes
§1-43(b)	$200	No
§1-43(c)	$200	No
§1-43(d)	$100-250	Yes
§1-44(a)	$100	No
§1-45(a)(1)	suspension until condition is corrected	Yes
§1-45(a)(2)	suspension until condition is corrected	Yes
§1-45(a)(3)	$100	No
§1-45(a)(4)	$100	No
§1-45(b)	N/A	
§1-46(a)	$100-350 and/or suspension up to 30 days	Yes
§1-46(b)	$100-350 and/or suspension up to 30 days	Yes
§1-47(a)	suspension until compliance, and $75-150 for first violation $150-300 for second violation $300-500 for third violation within 24 months	Yes
§1-47(b)	suspension until compliance, and $75-150 for first violation $150-300 for second violation $300-500 for third violation within 24 months	Yes
§1-47(c)	$250	No
§1-47(d)	$250-500 and suspension until compliance	Yes
§1-48(a)	$250-500 and suspension until compliance	No
§1-48(b)	$100	Yes
§1-48(c)	$250-500 and suspension until compliance	Yes
§1-50	N/A	
§1-51(a)	$50	No
§1-52(a)	$25 for violation of each subdivision hereof.	No
(1-4)	No fine for violation of this rule shall exceed $75.	
§1-52(a)(5)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of §1-68(a).)	N/A**
§1-54(a)(1)	$25-250	Yes
§1-54(a)(2)	$25	No
§1-54(b)(1)	$100	No
§1-54(b)(2)	$100	No
§1-54(c)	$50-250	Yes
§1-54(d)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of §1-68(a).)	N/A**
§1-55(b)(3)	$100	No
§1-55(b)(4)	$500	No
§1-55(e)	$200	No
§1-55(f)	$200 for the first violation. $350-500 for the second or subsequent violation within 36 months.	No
§1-55(g)	$100	No
§1-56(a)	$25	No
§1-56(b)(1-7)	$50 for violation of each subdivision hereof.	No
§1-56(c)	$50	No
§1-56(d)(1)	$50	No
§1-56(d)(2)	$100-350 and/or suspension up to 30 days	No
§1-56(e)	$25	No

§1-57(a)	N/A	
§1-59(a)	$50-350 and/or suspension up to 30 days	Yes
§1-60(a)	$50	No
§1-60(b)(1)	$350-1,000 and/or suspension up to 60 days or revocation	Yes
§1-60(b)(2)	$150-350 and/or suspension up to 30 days or revocation	Yes
§1-60(c)	$350-1,000 and/or suspension up to 30 days or revocation	Yes
§1-60(d)	$350-1,000 and/or suspension up to 30 days or revocation	Yes
§1-60(e)	$100-350 and/or suspension up to 30 days	Yes
§1-61(a)	Mandatory divestiture of any and all taxicab licenses held by the owner, and any held by a director, officer or stockholder of the owner, plus a fine of up to $10,000 per medallion implicated in the violation.	Yes
§1-61(b)	Mandatory divestiture of any and all taxicab licenses held by the owner, and any held by a director, officer or stockholder of the owner, plus a fine of up to $10,000 per medallion implicated in the violation.	Yes
§1-61(c)	Mandatory divestiture of any and all taxicab licenses held by the owner, and any held by a director, officer or stockholder of the owner, plus a fine of up to $10,000 per medallion implicated in the violation.	Yes
§1-61(d)	Mandatory divestiture of any and all taxicab licenses held by the owner, and any held by a director, officer or stockholder of the owner, plus a fine of up to $10,000 per medallion implicated in the violation.	Yes
§1-61(e)	A fine of up to $10,000 per medallion implicated in the violation and/or mandatory divestiture of any and all interests in any taxicab licenses held by the owner, shareholder, officer, director or partner in violation.	Yes
§1-62(a)	Revocation and $10,000	Yes
§1-62(b)	$100	No
§1-62(c)	$50	No
§1-63(a)	$350-1,000 and/or suspension up to 30 days or revocation	Yes
§1-63(b)	$500-1,500 and/or suspension up to 60 days or revocation	Yes
§1-64(a)	$50-200	Yes
§1-65(b)	$50-200	Yes
§1-66(a)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of §1-68(a).)	N/A**
§1-67(a)	$50-350	Yes
§1-67(b)	$500-1,500 and/or suspension up to 60 days or revocation	Yes
§1-68(a)	$200 and suspension until compliance	Yes
§1-76(a)	$500-1,000 and/or suspension up to thirty days	Yes
§1-76(b)	$200	No
§1-76(c)	$200	No
§1-77(a)	$200	No
§1-77(b)	$500-1,000 and/or suspension up to thirty days	Yes
§1-78(a)	First violation $500 Second and subsequent violations: $1,000 and/or suspension of the medallion for up to thirty days In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the	Yes

	driver, equal to the excess that was charged to the driver.	
§1-78(a)(4)	First violation $500Second and subsequent violations:$1000 and/or suspension of the medallion for up to thirty days.In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess that was charged to the driver.	Yes
§1-78(b)(i)	[Repealed]	
§1-78(b)(3)	[Repealed]	
§1-78(d)	$100	No
§1-79.1(a)	$500	No
§1-79.1(b)	First violation $500Second and subsequent violations:$1000 and/or suspension of the medallion for up to thirty days. In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess or non-authorized charge that was charged to the driver.	Yes
§1-79.2	$50 plus driver gets free shift.	
§1-79.3	$1,000	No
§1-79(b)	First violation $250 Second violation $350 Third and subsequent violations:$500 and/or suspension of the medallion for up to thirty days In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess that was withheld from the driver, or equal to the amount that the driver paid, at the requirement of the owner, to satisfy any summons against the owner.	Yes
§1-79(c)	$200	No
§1-79(d)-(e)	$50	No
§1-80(b)	$10,000 per entity, per medallion and attempted transfer invalid; penalty applicable to person or persons (transferor, transferee or both) whose actions constituted violation; revocation may be ordered.	No
§1-80(e)	$250	No
§1-81(f)	$10,000	No
§1-82(b)	$250 for failure to notify; revocation may be ordered if medallion operated beyond, or not transferred by, the periods specified.	No
§1-82(d)	$250	No
§1-83	$250 plus restitution to the driver of any replenishment account improperly retained by an owner or agent.	Yes
§1-85(a) and (b)	First violation: $200. Second violation: $300. Third violation: $500. In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the passenger or driver, equal to the excess amount that was charged to the passenger or driver.	Yes
§1-87	See chapter 16 of this title	See chapter 16 of this title

**Not Applicable

HISTORICAL NOTE

Section amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Section heading amended City Record Apr. 1, 2009 §4, eff. May 1, 2009. [See T35 §1-78 Note 4]

Penalty column heading amended City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Table amended in part City Record Sept. 28, 1994 eff. Oct. 31, 1994.

§1-07(c) added City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§1-08(a) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-10(a) amended City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§1-10(b) amended City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§1-10(c) amended City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§1-10(d) amended City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§1-11(a) amended City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-11(c) amended City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-11(e)(i) added City Record June 12, 2007 §9, eff. July 12, 2007. [See T35 §1-01 Note 3]

§1-11(e)(ii) added City Record June 12, 2007 §9, eff. July 12, 2007. [See T35 §1-01 Note 3]

§1-11(f) added City Record June 12, 2007 §9, eff. July 12, 2007. [See T35 §1-01 Note 3]

§1-11(e), (f) repealed City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1] This repeal was overlooked in City Record June 12, 2007 amendment.

§1-11(e), (f) added City Record Apr. 14, 2004 §5, eff. May 14, 2004. [See T35 §3-03 Note 8]

§1-11(g) added City Record June 12, 2007 §9, eff. July 12, 2007. [See T35 §1-01 Note 3]

§1-11(h) added City Record June 12, 2007 §9, eff. July 12, 2007. [See T35 §1-01 Note 3]

§1-16(a) amended City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-17(a) added City Record Feb. 8, 1994 eff. Mar. 6, 1994.

§1-17(c) added City Record May 26, 2006 §3, eff. June 25, 2006. [See T35 §1-17 Note 3]

§1-17(d) added City Record Apr. 23, 2007 §3, eff. May 23, 2007. [See T35 §1-17 Note 4]

§1-17(e) added City Record Apr. 23, 2007 §3, eff. May 23, 2007. [See T35 §1-17 Note 4]

§1-17(f) added City Record Apr. 23, 2007 §3, eff. May 23, 2007. [See T35 §1-17 Note 4]

§1-18(a) added City Record Feb. 8, 1994 eff. Mar. 6, 1994.

§1-19(a) added City Record Mar. 29, 1996 eff. Apr. 28, 1996. [See T35 §3-03 Note 2]

§1-20(a)(2) repealed City Record Aug. 4, 1995 eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

§1-20(b)(1) added City Record Aug. 4, 1995 eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

§1-20(b)(2) added City Record Aug. 4, 1995 eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

§1-20(b)(3) added City Record Aug. 4, 1995 eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

§1-21(d) repealed City Record Aug. 4, 1995 eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

§1-23(a) amended City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§1-23(a) amended City Record Aug. 4, 1995 eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

§1-24(c) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-26(a) added City Record July 8, 1997 eff. Aug. 11, 1997. [See T35 §1-26 Note 1]

§1-35(b)(1), (2), (3) and (4) so designated and amended City Record May 23, 2007 §4, eff. June 22, 2007. [See T35 §1-35 Note 1]

§1-35(b)(5) and (6) added City Record May 23, 2007 §4, eff. June 22, 2007. [See T35 §1-35 Note 1]

§1-35(e) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-35(f) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-37(a) added City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§1-37(b) added City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§1-37(c) added City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§1-40(c)(1) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 1]

§1-40(c)(2) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 1]

§1-40(d) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 2]

§1-40(d) amended City Record July 12, 1993 eff. Aug. 11, 1993.

§1-43(b) amended City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-43(c) amended City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-43(d) amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

§1-53(a)(1-5) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-54(a) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-54(b) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-55(b)(3) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-55 Note 2]

§1-55(b)(4) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-55 Note 2]

§1-56(b)(1-7) amended City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-56(e) added City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-58(a) repealed City Record Oct. 30, 1995 §4, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-58(b) repealed City Record Oct. 30, 1995 §4, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-58(c) repealed City Record Oct. 30, 1995 §4, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-60(b)(1) amended City Record Aug. 10, 1998 eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

§1-60(b)(2) added City Record Aug. 10, 1998 eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

§1-60(c) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

§1-60(c) amended City Record Sept. 28, 1994 eff. Oct. 28, 1994.

§1-60(d) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

§1-60(d) amended City Record Sept. 28, 1994 eff. Oct. 28, 1994.

§1-60(e) amended City Record Sept. 28, 1994 eff. Oct. 28, 1994.

§1-61(a)(b)(c)(d) amended City Record Sept. 28, 1994 eff. Oct. 28, 1994.

§1-61(e) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-02 Note 1]

§1-62(a) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

§1-63(a) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

§1-63(b) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

§1-65(a) repealed City Record Dec. 29, 1995 §20, Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-67(b) added City Record Jan. 31, 2000 §3, eff. Mar. 1, 2000. [See T35 §1-23 Note 1]

§1-68(a) amended City Record Dec. 1, 1999 eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

§1-76(a) added City Record Mar. 29, 1996 eff. Apr. 28, 1996. [See T35 Chapter 12 footnote]

§1-76(b) added City Record Oct. 30, 1995 §7, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-76(c) added City Record Oct. 30, 1995 §7, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-77(a) added City Record Oct. 30, 1995 §7, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-77(b) added City Record Oct. 30, 1995 §7, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-78(a) amended City Record Mar. 29, 1996 eff. Apr. 28, 1996. [See Note 1]

§1-78(a) added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §1-78 Note 2]

§1-78(a)(4) added City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-78(b) added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §1-78 Note 2]

§1-78(b)(i) repealed City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-78(b)(1) amended City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See T35 §1-78 Note 1]

§1-78(b)(3) repealed City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-78(b)(3) amended City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See T35 §1-78 Note 1]

§1-78(d) added City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-79(b) added City Record Dec. 29, 1995 §2, eff. Jan. 28, 1996. [See T35 §1-79 Note 1]

§1-79(c) added City Record Dec. 29, 1995 §2, eff. Jan. 28, 1996. [See T35 §1-79 Note 1]

§1-79(d)-(e) added City Record Dec. 29, 1995 §2, eff. Jan. 28, 1996. [See T35 §1-79 Note 1]

§1-79.1(a) added City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-79.1(b) added City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-79.2 added City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-79.3 added City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-80(b) added City Record Dec. 24, 2008 §9, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

§1-80(e) added City Record Dec. 24, 2008 §9, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

§1-81(f) added City Record Dec. 24, 2008 §9, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

§1-82(b) added City Record Dec. 24, 2008 §9, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

§1-82(d) added City Record Dec. 24, 2008 §9, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

§1-83 added City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§1-85(a) and (b) added City Record June 12, 2007 §9, eff. July 12, 2007. [See T35 §1-01 Note 3]

§1-87 added City Record Nov. 23, 2007 §1, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 29, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are

authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgated amendment increases the penalties for violation of the rule establishing a cap on the lease rates that owners could charge to drivers for the use of a licensed taxicab. The cap limits any increases in the lease price to no more than fourteen percent above the medallion's lease rate in effect on September 30, 1995.

The purpose of the amendment is to ensure compliance with the lease cap by increasing the penalties for violation of the rule.

2. Statement of Basis and Purpose in City Record June 26, 1998: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under Section 2303(b)(13) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purpose; under Section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter, and under Section 19-506 of said Administrative Code, authorizing the TLC to issue taxicab drivers licenses, for-hire vehicle driver licenses and paratransit vehicle drivers licenses. For serious acts committed against the riding public, Commission representatives and public servants, the current rules impose minimal fines with the possibility of a short term thirty day suspension. The amendments increase the monetary fines and impose suspensions, discretionary revocations, and in certain cases mandatory license revocation for serious offenses. The increased penalties involve amendments to the Taxicab Owners, Taxicab Drivers and For-Hire Vehicle Rules and apply to the violation of the following rules:

· **Using a taxicab, garage or office for any unlawful purpose** {Taxicab Owners Rule 1-60(c)};

· **Concealing evidence of a crime** (Taxicab Owners Rule 1-60(d); Taxicab Drivers Rule 2-61(c));

· **Offering gifts to Commission representatives, employees, public servants, dispatchers** (Taxicab Owners Rule 1-62(a); Taxicab Drivers Rule 2-62(a); FHV Rule 6-18(a));

· **Abuse, threats and harassment toward Commission representatives, public servants, passengers or other persons** (Taxicab Owners Rule 1-63(a); Taxicab Drivers Rule 2-60(a); FHV Rule 6-18(i));

· **Use of physical force against Commission representatives, public servants, passengers or other persons** (Taxicab Owners Rule 1-63(b); Taxicab Drivers Rule 2-60(b); FHV Rule 6-18(f));

· **Permitting another to use one's hack license** (Taxicab Driver Rule 2-13(b));

· **Driving while ability is impaired by drugs or alcohol** (Taxicab Driver Rule 2-20(a));

· **Discrimination by base owner against people with disabilities** (FHV Rule 6-07(e));

· **Base owner knowingly dispatches vehicle operated by a driver under the influence of drugs or alcohol** (FHV Rule 6-12(k)(3));

· **FHV driver refuses to transport a disabled person** (FHV Rule 6-16(1)).

The penalty of mandatory revocation, where required, empowers the Commission to remove from the industry those licensees who endanger the safety of the public. It also creates consistency and uniformity in the treatment of the

most serious offenders, since the Commission usually seeks discretionary revocation in such cases. Increasing monetary penalties and providing for the possibility for license suspensions or revocations in other cases will deter licensees from committing serious acts against the riding public, Commission representatives and other public servants.

Certain of these rule violations result in few convictions each year but are nonetheless serious. Others, such as Rules 2-60(a) and (b), which prohibit harassment or physical force against passengers or others, continue to occur with frequency. In 1997 alone, there were 464 convictions for violations of one of these two rules. The Commission believes that increasing the penalties for violations will have a significant deterrent effect and a positive impact upon public safety.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-87

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-87 Owners of Accessible Taxicabs.

An owner of an accessible taxicab medallion must also comply with chapter 16 of this title.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §2, eff. Dec. 23, 2007. [See

Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 23, 2007:

These rules are designed to provide for the dispatch of accessible taxicabs and participating wheelchair accessible liveries to provide transportation for hire to passengers who use wheelchairs. The provisions of these rules are authorized by section 2303 of the New York City Charter and section 19-503 of the Administrative Code of the City of New York.

These rules accompany and implement a two-year demonstration project for dispatch technology and service. Although the program is a demonstration project, a successful result may lead to a permanent implementation following the conclusion of the demonstration project or earlier. Among other things, the project and these rules, which implement the project for TLC licensed drivers and vehicles, represent an effort to match wheelchair accessible taxicabs (which have entered or will enter service through recent auctions of taxicab medallions) with passengers who require the

service of such taxicabs.

The program is intended to permit passengers in wheelchairs seeking transportation to call New York City's 311 system and obtain referral to a dispatcher selected by the TLC to match service requests with the nearest available accessible vehicles and dispatch vehicles in response to those requests. These rules would implement this program.

Under the rules, wheelchair accessible taxicabs and participating wheelchair accessible liveries must accept dispatches from the central dispatcher designated by the TLC to provide transportation to persons in wheelchairs. Each vehicle must have equipment provided by the dispatcher in order for the vehicle to receive the dispatch. Drivers of these vehicles must provide the transportation as well as relaying certain information to the dispatcher for tracking purposes. Since fares will be metered, all accessible vehicles participating in the program must contain a taximeter.

Operators of participating vehicles must be trained in use of the dispatch equipment and passenger assistance techniques. The driver must obtain a certificate of completion from the training courses in addition to holding the appropriate license approved by the Commission prior to operating an accessible vehicle.

A driver must assist and secure a passenger in a wheelchair along with any packages he/she may have into and out of the vehicle. Drivers of accessible vehicles are expected to be available to accept dispatches to provide transportation for persons in wheelchairs during their shifts. Failure to accept dispatches will be seen as a failure to participate in the program and may result in penalties.

Passengers using the program must be able to be at the curb at the time specified for pick up by the dispatcher. The cost of the rides will be based on a metered fare corresponding to taxicab fares, and participating wheelchair accessible liveries must install taximeters to be used for dispatched rides. Taximeters installed in participating livery vehicles are intended to be used solely during rides originating with the dispatch program.

If a dispatch has been requested and no passenger at the pick up location is in a wheelchair, the driver may refuse to provide the transportation or, in the alternative, charge twice the metered fare (including any wait time) for the transportation. A driver may turn the meter on at the later to occur of the driver's arrival at the pick up location or the time of pick-up indicated by the dispatcher. The fare will include wait time necessary for the passenger to arrive curbside and enter the vehicle.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-01 Definitions.

Accessible taxicab. An "accessible taxicab" is a taxicab that complies with section 3-03.2 of this title.

Applicant. An "applicant" is a person seeking a license from the Commission to drive a taxicab in the City of New York.

Chauffeur's license. A "chauffeur's license" is a valid license of the State of New York to operate a vehicle for hire or a valid license of similar class from another state of which the licensee is a resident.

Commission. The "Commission" is the New York City Taxi and Limousine Com- mission.

Driver. A "driver" is a person licensed to drive a medallion taxicab in the City of New York.

Licensed vehicle. A "licensed vehicle" is a taxicab or coach authorized to accept passengers for hire pursuant to these Rules and the Administrative Code of the City of New York.

Mailing address of driver. The "mailing address of driver" is the address designated by the driver for the mailing of all notices and correspondence from the Commission and for service of summonses. However, a driver may also designate a post office box number address as a mailing address.

Medallion. A "medallion" is the plate issued and affixed by the Commission for displaying the license number of a taxicab on the outside of the vehide.

MTA Tax. The "MTA Tax" is the 50-cent tax on taxicab trips that is imposed by article 29-A of the New York State Tax Law.

Occupant classification system. An "occupant classification system" is a device that is placed by the original equipment manufacturer within a vehicle seat that detects whether a person is occupying the seat and detects the mass or weight of that person, for purposes of deploying an airbag protecting a passenger in that seat, in the event of a collision, with high force, low force, or not at all.

Passenger. A "passenger" is any individual who has hired or attempted to hire a taxicab for travel to a destination.

Person with a Disability. A person with a disability is an individual with a physical or mental impairment or incapacity, including a person who uses a wheelchair, crutches, three-wheeled motorized scooter, other mobility aid, or a service animal, but who can transfer from such a mobility aid to a taxicab with or without reasonable assistance.

Portable or hands-free electronic device. A "portable or hands-free electronic device" is any electronic device able to:

1. make a wireless telephone call

2. send or receive a text message

3. allow its user to speak on the telephone hands-free or operate a device by voice command, even when otherwise allowed by New York State law

4. act as a personal assistant (PDA)

5. send and or receive data from the internet or from a wireless network

6. act as a laptop computer or portable computer

7. receive or send pages

8. allow two-way communications between different people or parties

9. play electronic games

10. play music or video; or

11. make or display images; or

12. any combination of the above

This definition is to be liberally construed in light of its purpose to minimize the distraction of drivers, and in recognition of the rapid development of electronic technologies and proliferation of electronic devices that may be made available in the future that similarly transfer digital images, sounds or messages.

"Portable or hands-free electronic device" does not include: (1) any device the use of which while driving is specifically authorized by TLC rules, or (2) the use of a global positioning navigation system ("GPS") which uses voice functions to convey directions, so long as the driver is not inputting data unless legally standing or parked and the GPS is not capable of being used as a cell phone or other portable or hands-free electronic device.

Rate card. A "rate card" is a card issued by the Commission for a taxicab which displays the taxicab's license number, rates of fare and such other data as the Commission may prescribe.

Renewal applicant. A "renewal applicant" is a person seeking to renew a taxicab driver's license within the time period established by the Commission.

Service Animal. A service animal is a guide dog, signal dog or any other animal trained specifically to work or to perform tasks for an individual with a disability, including, but not limited to, guiding individuals with visual impairments, alerting individuals with hearing impairments to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or retrieving dropped items.

Side Airbag. A "side airbag" is an airbag located by the original equipment manufacturer in a vehicle seat, and such airbag inflates between the seat occupant and the door.

Taxicab. A "taxicab" is a motor vehicle licensed and approved by the Commission to carry no more than five (5) passengers and authorized to accept hails from persons in the street.

Taxicab technology service provider. A "taxicab technology service provider" is a vendor who has contracted with the Commission to install and maintain the taxicab technology system in taxicabs.

Taxicab technology system. The "taxicab technology system" is hardware and software that provides the following four core services (collectively "four core services"): (i) credit, debit and prepaid card payment required by section 3-03(e)(7) of this title, (ii) text messaging required by section 3-03(e)(8) of this title, (iii) trip data collection and transmission required by section 3-06 of this title, and (iv) data transmission with the passenger information monitor required by section 3-07 of this title.

Taximeter. A "taximeter" is an instrument or device approved by the Commission by which the charge to a passenger of a taxicab is automatically calculated and on which such charge is plainly indicated.

Taxpayer. "Taxpayer" is a person or entity who is liable under article 29-A of the New York State Tax Law to pay the MTA Tax to the New York State Department of Taxation and Finance.

Trip record. A "trip record" also known as a trip sheet or trip log, is the written, computerized, automated and/or electronic accounting of a taxicab ride. The trip data to be transmitted or recorded shall include the taxicab license number (medallion number); the taxicab driver's license number; the location of trip initiation; the time of trip initiation; the number of passengers; the location of trip termination; the time of trip termination; the itemized metered fare for the trip (tolls, surcharge, and tip if paid by credit or debit card); the distance of the trip, the trip number, the method of payment, the total number of passengers, as well as such other information as may be required by the Commission. The electronic capture of required trip record data shall commence no later than the compliance date set forth in section 1-01 of this title. Trip record information shall be available to the TLC, the taxicab driver, medallion owner, taxicab owner and/or leasing agent upon reasonable demand based upon parameters set between the TLC and approved vendor(s). The trip record shall be kept in an approved archived form for a minimum of three years after the date of the taxicab ride.

Weapon. A weapon is any firearm (as defined in the New York State Penal Law) for which a license has not been issued as provided in the New York State Penal Law and the Administrative Code of the City of New York, electronic dartgun, gravity knife, switchblade knife, cane sword, billy, blackjack, bludgeon, metal knuckles, chuka stick, sandstick, slingshot, pilum ballistic knife, sand bag, sand club, wrist brace type slingshot, shirken, kung fu star, dagger, dangerous knife, dirk, razor, stiletto, imitation pistol or any other instrument or thing whether real or simulated, and capable of inflicting or threatening bodily harm, including but not limited to any other weapons, the possession of which is prohibited pursuant to the New York State Penal Law.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Accessible taxicab added City Record Nov. 23, 2007 §3, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Chauffeur's license amended City Record Dec. 29, 1995 §21, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Handicapped person repealed City Record Dec. 29, 1995 §21, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

MTA Tax added City Record Sept. 25, 2009 §8, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Occupant classification system added City Record Oct. 1, 2008 §1, eff. Oct. 1, 2008 per City Record notice. [See T35 §2-26 Note 1]

Person with a Disability added City Record July 8, 1997 eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Portable or hands-free electronic device added City Record Dec. 30, 2009 §2, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Service Animal added City Record July 8, 1997 eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Side airbag added City Record Oct. 1, 2008 §1, eff. Oct. 1, 2008 per City Record notice. [See T35 §2-26 Note 1]

Taxicab technology service provider added City Record June 12, 2007 §10, eff. July 12, 2007. [See T35 §1-01 Note 3]

Taxicab technology system added City Record June 12, 2007 §10, eff. July 12, 2007. [See T35 §1-01 Note 3]

Taxpayer added City Record Sept. 25, 2009 §8, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Trip record amended City Record June 12, 2007 §10, eff. July 12, 2007. [See T35 §1-01 Note 3]

Trip record amended City Record May 11, 2005 §4, eff. June 10, 2005. [See T35 §3-03 Note 10]

Weapon amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-25 Note 2]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Administrative law judge determines that pepper spray is a weapon. **Taxi and Limousine Comm'n v. Dianis,** OATH Index No. 1832/00 (Apr. 10, 2000).

Rules of the City of New York

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35 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-02 Requirements for a Taxicab Driver's License to Operate a Medallion Taxicab.

(a) An applicant for a taxicab driver's license:

(1) must be at least 19 years of age;

(2) if an applicant for an original license, must provide to the Commission proof of identity in the form of

(i) A valid form of photo identification issued by the United States, any state or territory thereof, or any political subdivision of such state or territory; and

(ii) A valid, original social security card;

(3) must be a holder of a valid New York State chauffeur's license, or a holder of an equivalent class of valid license from another state of which he or she is a resident and who provides the Commission with an abstract of his or her driving record from that state. For the purposes of these rules, a valid chauffeur's license, or a license of an equivalent class, shall mean a license, issued by the New York State Department of Motor Vehicles or by the agency of another state which issues such license, which is neither probationary, suspended, revoked, conditional, nor restricted as to use for violations of traffic laws or regulations.

(4) must be of sound physical condition as certified to by a physician licensed to practice in New York State or in the state in which the applicant resides, on forms provided by the Commission. If the Commission has cause to believe that an applicant or driver has a physical or mental impairment that renders him or her unfit for the safe operation of a

taxicab, it may direct the applicant or driver to appear before a duly licensed physician designated by the Commission, for an examination of his physical or mental condition. Failure to appear as directed may lead to suspension or revocation of an existing license;

(5) must not be addicted to the use of drugs or intoxicating liquors;

(6) must be able to speak, read, write and understand the English language;

(7) must be of good moral character;

(8) must be familiar with the geography, streets and traffic regulations of the City of New York and the rules and regulations of the New York City Taxi and Limousine Commission, as well as the Vehicle and Traffic Law of the State of New York;

(9) must be the holder of a certificate of attendance for the required hours of instruction in taxi related subjects at a school approved by the Commission; and

(10) must be the holder of a certificate of completion for the required hours of instruction in a defensive driving course from a school, facility or agency authorized by the Commission and certified by the New York State Department of Motor Vehicles. The course must have been completed within six (6) months prior to the date of application.

(b) An application for a taxicab driver's license must be signed by the applicant and filed by him in person with the Commission, on the forms provided by the Commission. An applicant for a taxicab operator's license shall agree that service of any paper, notice, letter, summons, complaint or legal process of any kind or nature may be made by the City of New York, or any department thereof, upon the person to whom the license is issued by leaving a copy of any such paper, notice, letter, summons, complaint or legal process with any member of his or her family or other person with whom he or she may reside at the address listed in his or her application.

(c) An applicant is required to be fingerprinted and to pass all prescribed tests, both oral and written, as administered by the Commission or at its direction.

(d) Any member of the New York City Police Department, applying for a taxicab driver's license, and satisfying all the requirements herein for such a license, must present a letter from his commanding officer approving such application.

(e) Any material falsification contained in an original or renewal application for a license or any failure to notify the Commission of any material change in the information contained therein, shall be cause for denial, suspension or revocation of such license, in addition to any other sanctions imposed by the Commission.

(f) If at any time during the term of the taxicab driver's license the Commission becomes aware of information that the driver no longer meets the requirements for a taxicab driver's license, the Commission may deny his renewal application or suspend or revoke his license.

(g) An applicant or renewal applicant or any person acting on his behalf shall not offer or give any gift, gratuity or thing of value to any employee, representative or member of the Commission, or any public servant. An applicant or renewal applicant shall immediately report to the Inspector General of the Commission any request or demand for any gift, gratuity or thing of value by any employee, representative or member of the Commission, or any public servant.

(h) If the Commission determines that the applicant has failed to meet the requirements for a taxicab driver's license it will deny the license or its renewal and specify in writing to the applicant the reason for such denial.

(i) An applicant for a taxicab driver's license, other than an applicant who is a City of New York Police Officer, shall be tested, at the applicant's expense, for drugs or controlled substances, as set forth in §3306 of the Public Health

Law. Such testing shall be performed by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. A positive test shall result in the denial of a new application. Said determination shall be a final agency decision. A renewal applicant must be tested for drugs in accordance with §2-19(b) of this chapter.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Section heading amended City Record Dec. 29, 1995 §22, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (a) amended City Record Oct. 31, 2006 §2, eff. Nov. 30, 2006. [See T35 §1-02 Note 2]

Subd. (a) amended City Record Dec. 29, 1995 §22, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (a) par (3) amended City Record July 15, 1999 §1, eff. Aug. 14, 1999. [See Note 1]

Subd. (a) par (8) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (a) par (9) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (a) par (10) added City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (i) amended City Record Feb. 14, 2006 §6, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

Subd. (i) amended City Record Oct. 31, 2000 §2, eff. Nov. 30, 2000. [See T35 §2-03 Note 1]

Subd. (i) amended City Record Apr. 12, 1999 §1, eff. May 12, 1999. [See T35 §2-19 Note 1]

Subd. (i) added City Record June 26, 1998 eff. July 26, 1998. [See Note 3]

DERIVATION

Former §2-02 subd. (j) amended City Record Jan. 2, 1992 eff. Feb. 1, 1992.

NOTE

1. Statement of Basis and Purpose in City Record July 15, 1999:

The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the City, under §2303(b)(2) of such Charter, authorizing the TLC to promulgate rules relating to the standards and conditions of service, under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules necessary to exercise authority conferred upon it by the Charter, and under §19-505 of said Code, authorizing the Commission to establish qualifications for licensure.

The rule changes set forth herein establish uniform standards for the licensure of taxicab, for-hire vehicle, and paratransit services drivers, and prohibit such drivers from obtaining a TLC license while they hold a probationary, restricted, or conditional license issued by the New York State Department of Motor Vehicles or an equivalent agency of another State.

The purpose of these amendments is to protect public safety by ensuring that Commission licensees hold valid, unrestricted licenses. State law already precludes most holders of restricted or conditional licenses from obtaining TLC licenses. The amendments proposed herein would also prohibit the holders of probationary licenses from obtaining a TLC license until their probationary period has expired. Probationary licensees are newly licensed individuals. In most cases, probationary licensees have less than six months of driving experience. Prohibiting probationary drivers from holding TLC licenses will ensure that a licensee will have at least a minimum amount of driving experience, and will have demonstrated a satisfactory driving record.

No provision has been made for amending the commuter van rules since commuter van drivers are presently subject to the more rigorous requirements of Article 19-A of the Vehicle and Traffic Law.

2. Statement of Basis and Purpose in City Record June 26, 1998: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under section 2303(b)(2) of such Charter, authorizing TLC to promulgate rules and regulations reasonably related to safety and service quality; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The regulation requires all taxicab drivers and for-hire vehicle drivers to complete a Defensive Driving Program authorized by the Commission. New applicants for a taxicab or for-hire vehicle driver's license would be required to have completed this course within six (6) months prior to the date of application. Licensed taxicab and for-hire vehicle drivers would be required to complete the course every three (3) years. The purpose of the regulation is to promote the safety of drivers, passengers and the general public, by ensuring that taxicab drivers and for-hire vehicle drivers are skilled in defensive driving and other safe driving techniques. The course is the same as now required for all new licensees by the New York State Department of Motor Vehicles, and enables drivers to receive benefits on their DMV licenses, such as point reductions, and to receive a discount on their motor vehicle insurance premiums. Independent studies conducted by the State of New York have determined that participants in such defensive driving programs tend to be safer drivers.

3. Statement of Basis and Purpose in City Record June 26, 1998: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under Section 2303(b)(2) and (13) of such Charter authorizing the TLC to promulgate rules and regulations related to safety and standards of service which are reasonably designed to carry out its purpose; and under Section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The amendments require the testing of new and renewal applicants for taxicab and for-hire vehicle driver's licenses for drugs and other controlled substances. The drugs and controlled substances that would be tested for include those listed in Section 3306 of the New York State Public Health Law. The possession or use of these substances is prohibited by law. A positive test result would lead to the denial of a new license application, and may lead to the denial of a renewal application following a hearing. In addition, if the Commission has reasonable suspicion to believe that a licensed taxicab or for-hire vehicle driver is impaired due to ingestion of a drug or other controlled substance and unable to drive his taxicab or for-hire vehicle safely, the Commission may direct that the driver be tested for such impairment. If the results of said test(s) or examination(s) are positive, the driver's license may be revoked following a hearing. Furthermore, if the taxicab or for-hire vehicle driver fails to be tested or examined as directed, the driver's license may be suspended or revoked. The regulations promulgated by the Commission are similar in content to the mandatory drug testing provisions contained in the United States Department of Transportation (USDOT) regulations mandating drug testing for individuals who hold safety related positions with public transportation systems. The method of drug testing proposed by the Commission, urinalysis, is the least expensive or personally intrusive, and most reliable test presently available. Except for new and renewal applicants, drug testing for other licensees will be conducted only where there is a reasonable basis to believe the individual is using an illicit drug. Such reasonable basis must be articulated, based

upon objective criteria. The regulations also prohibit taxicab or for-hire vehicle drivers from operating their taxicab or for-hire vehicle while their ability is impaired by liquor, drugs or other controlled substances, and prohibit the use or consumption of drugs, alcohol or other controlled substances within six (6) hours of operating their vehicle. This portion of the proposed regulation is similar to New York State Vehicle and Traffic Law ("VTL") Section 509-L, which provides that no bus driver shall consume a drug, controlled substance or an intoxicating liquor regardless of its alcoholic content for six hours prior to going on duty or operating or physically controlling a bus. It is also similar to the USDOT regulations which prohibit employees of mass transit systems in safety related functions from consuming alcohol within four (4) hours of performing such duties. The regulations also impose a penalty of mandatory revocation of a hack or for-hire vehicle operator's license for a conviction of operating a vehicle while impaired, or operating a vehicle within six (6) hours of consuming intoxicating liquor, drugs or other controlled substances. The purpose of these proposed amendments to TLC regulations is to promote the safety of passengers and the general public by ensuring that taxicab and for-hire vehicle drivers are not operating their vehicles when they are unfit because of impairment caused by drug, controlled substance or alcohol use. The regulations clearly establish a Commission policy of zero tolerance for licensees who use illegal substances, or who operate their vehicles while their ability to do so is impaired by substances, whether or not illegal.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-03 Driver License Applicant Training.

(a) Except as set forth in subdivisions (c) and (d) of this section, all applicants for a taxicab driver's license are required to attend and pass an authorized course of training in taxi-related subjects. This course shall contain eighty (80) hours of instruction. The course shall include, but not be limited to, instruction on Commission rules and procedures, geography, map reading skills, driver/passenger relations and courtesy, as well as any other material deemed appropriate or relevant by the Commission. An applicant must successfully complete such course, and pass an examination administered by the Commission on mandatory subjects, as well as proficiency in the English language, as a prerequisite to obtaining a taxicab driver's license.

(b) Providers of authorized training services must be approved by the Commission and must administer the curriculum required by the Commission as set forth in subdivision (a) or (c). The Commission must also approve any and all charges to applicants by authorized providers of training services.

(c) Applicants who are City of New York Police Officers shall be exempt from the course requirement as set forth in subdivision (a). Such applicants must pass an examination administered by the Commission as a prerequisite to obtaining a taxicab driver's license.

(d) Any applicant for a license under this chapter who previously held a taxicab driver's license pursuant to this chapter and who had previously met the requirements of §2-03(a) of this chapter shall not be required to meet such requirements again and shall be deemed to have fulfilled the pre-requisite to obtaining a taxicab driver's license as specified in §2-03(a) of this chapter, provided that

(1) Such applicant's prior taxicab driver's license expired solely because the applicant was not available to timely renew such license because the applicant was on active military service, and not as a result of any action taken or commenced by the Commission to suspend, revoke, or otherwise terminate such license;

(2) Such applicant's military service commenced prior to the expiration date of his or her prior license and such applicant applies for a new taxicab driver's license under these rules within ninety (90) days of completing active military service, and in no event later than three (3) years following expiration of the prior license, and applicant provides proof of the dates of active military service; and

(3) Such applicant meets all other requirements for obtaining a new taxicab driver's license.

HISTORICAL NOTE

Section amended City Record Oct. 31, 2000 §1, eff. Nov. 30, 2000. [See Note 1]

Section amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section amended City Record Apr. 30, 1992 eff. May 30, 1992.

Section in original publication July 1, 1991.

Subd. (a) amended City Record May 26, 2006 §1, eff. June 25, 2006. [See Note 3]

Subd. (a) par (1) amended City Record Dec. 29, 1995 §23, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) par (1)-(3) amended City Record Dec. 29, 1995 §23, eff. Feb. 1, 1996. [See T35 §1-01

Note 1]

Subd. (c) repealed City Record Dec. 29, 1995 §23, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (d) added City Record May 26, 2006 §2, eff. June 25, 2006. [See Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 31, 2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which permits TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the City; under §2303(b)(5) of such Charter, authorizing TLC to promulgate rules and regulations regarding the licensing of taxicab and for-hire vehicle drivers; under §2303(b)(13) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under §19-505 of said Code, authorizing the TLC to promulgate Rules with respect to conditions for driver licensing.

The regulations shall exempt currently employed City of New York Police Officers from the 80-hour course requirement set forth in 35 RCNY §2-03, provided that they pass an examination administered by the Commission.

The purpose of this Rule amendment is to encourage Police Officers to apply for taxicab drivers' licenses by exempting such applicants from Commission course requirements.

Police Officers would also be exempt from mandatory drug testing applicable to both taxicab and for-hire vehicle drivers since such Officers are subject to random drug testing as a condition of their employment.

2. Statement of Basis and Purpose in City Record Oct. 21, 1998: The regulation promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under section 2303(a) of the Charter of the City of New York, which permits TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b)(5) of such Charter, authorizing TLC to promulgate rules and regulations regarding the licensing of taxicab drivers; under section 2303(b)(13) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The adopted rule replaces the series of fourteen (14), forty (40) and eighty (80) hour applicant training classes presently being offered with one standardized eighty (80) hour class required of all applicants. Applicants for a taxicab driver's license are currently administered an English proficiency test by the Commission upon submission of their application. The examination is administered in two parts: (1) applicants who pass only the first component of the exam qualify for the 80 hour course; and (2) applicants who pass both the first and second portions of the exam qualify for the 40 hour course. An applicant who fails both portions of the exam does not qualify for either the 40 hour or the 80 hour course, and he or she is eligible to be re-tested after three months. The 40-hour course emphasizes taxi related subjects, including map reading and geography. The 80-hour course includes instruction in English language skills, as well as the same taxi related subjects that are covered in the 40 hour course. In addition, applicants may also qualify for a 14-hour advanced placement course-a condensed course which emphasizes geography and TLC regulations. Very few applicants have qualified for the 14-hour advanced placement class. This rule standardizes the applicant testing process by requiring that all applicants enroll in and complete a comprehensive, eighty (80) hour training class. This class will expand and intensify instruction on such topics as geography and map reading, which would assure the driver's familiarity with New York City locations. It will also include extensive instruction on route design, passenger courtesy, and familiarity with TLC rules and the consequences of violating them. Changes in the rules recently enacted by the Commission will be highlighted in this course. Instruction in these subjects is particularly important in light of the recent rule changes mandating more serious penalties, including possible suspension or revocation of licenses, for certain TLC rule violations. The Commission will no longer provide instruction in English language skills as part of the applicant training process. This change is consistent with existing TLC rules, which make English proficiency a prerequisite for licensure. In order to assure integrity and proper control over the issuance of licenses, the Commission will incorporate an English proficiency component into the final examination covering taxi-related subjects, upon the completion of the eighty (80) hour course of study. This rule abolishes both the 40 hour class and the 14 hour Advanced Placement class, replacing it with a standardized 80 hour course for all applicants. This change is necessary because the material to be taught to all applicants, includding essential taxi-related skills such as map reading and geography, driver courtesy, route design, and knowledge of TLC rules and procedures, cannot be adequately covered in less than eighty- (80) hours of instruction. The rule amendment also deletes references to the fee schedule charged for the course by the TLC approved taxi schools, thereby enabling the Commission to adjust the course fee, as necessary, without a rule amendment. The deletion of the fee schedule allows the Commission to exercise agency discretion and flexibility in its dealings with the taxi schools, so that it may administratively monitor limitations on the fees charged to taxicab driver applicants, as part of its oversight and control of the quality of the education offered by the designated schools.

3. Statement of Basis and Purpose in City Record May 26, 2006: The rules amend previously existing Taxi and Limousine Commission ("TLC") rules in two respects. First, the rules alter license application requirements for taxicab drivers whose licenses expire because they are unable to file renewal applications due to active military service. Existing rules require a new applicant for a taxicab driver's license to complete 80 hours of instruction in taxi-related subjects and pass an examination as a pre-requisite to obtaining a taxicab driver's license. The amended rules waive this requirement for a taxicab driver who is unable to renew his or her driver's license due to active military service, provided that the driver files an application for a driver's license within 90 days of discharge from active military service, and within three years of expiration of his or her previous driver's license. The purpose of this change is to

allow taxicab drivers to resume taxicab service with a minimum of delay upon return from military duty. Second, the rules amend existing TLC rules to permit a licensed taxicab driver or for-hire vehicle driver to advance the date of expiration of his or her non-probationary license one time during the second year of any renewal period. Previously existing rules provide that a licensed taxicab or for-hire vehicle driver must submit a completed renewal application by the expiration date of the license to be renewed, and that such application must include drug testing performed no earlier than 30 days before the expiration date of the license to be renewed. Failure to take a drug test by the license expiration date or to renew within the prescribed time period results in expiration of the license; thereafter, in order to obtain a license, the applicant must complete the requirements for a new license, which are more extensive than the requirements for a renewal license. Experience has demonstrated that a significant number of taxicab and for-hire vehicle drivers are periodically absent from the New York City area for personal reasons, for extended periods of time. In some cases, those absences extend through the entire 30-day period during which the licensee must submit to drug testing and apply for license renewal, resulting in substantial inconvenience or even hardship to the licensee. The amended rules will permit a driver (other than a driver still in his or her probationary period) who is in the second year of a license and who might not be able to timely file a completed renewal application because of such an extended absence to advance his or her expiration date and complete the renewal application prior to the period of absence. The amended rules allow the licensee, upon submission of the prescribed form, to advance his or her license expiration date as of right one time during the second year of any renewal period, provided that the licensee has completed the drug test required for licensees in the first year of a two year license. The licensee's 30-day drug test window would be advanced to correspond to the advanced expiration date, and all other requirements of a license renewal application are retained. The renewal license then issued will be valid for two years from the advanced expiration date of the previous license. Finally, the rules enable those few drivers who are unable to take advantage of the foregoing because their licenses expire in the period between the date the revised drug test rules became effective on March 16, 2006 and June 23, 2006 to seek relief if they have been unable to take the drug test within the required time as a result of being absent from the New York City area. Under the rule, such drivers will have until September 15, 2006 to apply to the Chairperson or his or her designee for a six-month extension of time to renew their licenses. A driver seeking such an extension will be required to supply documentation demonstrating that the driver was absent from New York City during the time required for the taking of the drug test and was therefore not reasonably able to submit a completed license renewal application before the expiration of such holder's license. If a driver's request for an extension of time is granted, the driver must complete all requirements applicable to renewal license applicants and pay the late filing fee provided by the current rules. Such renewal applicants will be required to take their drug test no sooner than thirty days prior to the completion of the renewal application. A driver's license will remain expired until the renewal license is issued. This change is made to accommodate the small number of drivers who may not be able to advance their expiration dates as permitted by these amendments but whose licenses may have expired when they were unable to comply with the new drug test date requirements which became effective on March 16, 2006. Under current rules, a renewal applicant must file a completed application by the expiration date for his current license and such license will expire automatically if the drug test is not taken by such expiration date. Notice of Promulgation of Rules Notice is hereby given in accordance with §1043(e) of the Charter of the City of New York ("Charter") that the Taxi and Limousine Commission ("TLC") hereby promulgates rules altering license application requirements for taxicab drivers whose licenses expire because they are unable to file timely renewal applications due to active military service; and allowing licensed taxicabs and for-hire vehicle drivers to advance the dates of expiration of their non-probationary licenses one time during the second year of any renewal period. These rules are promulgated pursuant to §1043 of the Charter and §§19-503 and 19-505 of the Administrative Code of the City of New York. Proposed rules were published for comment in the City Record on April 7, 2006. A public hearing on those proposed rules was held before the TLC at its offices at 40 Rector Street, 5th Floor; New York, New York 10006 on May 11, 2006, and amendments to the proposed rules were made at the hearing. Pursuant to §1043(e)(1)(c) of the Charter, these rules will take effect 30 days following publication in the City Record.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Taxi driver's request for an adjournment to obtain an interpreter for his license revocation hearing is denied, where administrative law judge determined that driver was able to understand English and make himself understood;

administrative law judge also noted that taxi drivers are required to be proficient in English pursuant to section 2-03(a)(2). **Taxi and Limousine Comm'n v. Dimitrie,** OATH Index No. 1582/98 (Aug. 4, 1998).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-04 Probationary Licenses.

(a) An applicant will be issued a probationary license valid for a period of one year subsequent to the date the license was issued. The Commission will evaluate the applicant at the conclusion of the one-year probationary period, and will determine if renewal of the license is appropriate. In making such determination, the Commission may consider the driving record, any violation of the Taxicab Drivers Rules, or any other evidence that suggests that the driver no longer meets all requirements for a license.

(b) Issuance of a license following the probationary period will be automatically barred or the Commission may revoke a probationary license at any time if any of the following occurs during the probationary period:

(1) The driver is convicted of a crime in any jurisdiction.

(2) The driver is convicted of driving while impaired by alcohol or drugs.

(3) The driver is convicted of refusing to submit to a breathalyzer or other chemical test.

(4) The driver is convicted of leaving the scene of an accident.

(5) The driver accumulates eight or more points against his New York State Chauffeur's License or a comparable license issued by his State of residence, the total of which shall include points existing on the driver's State license prior to his or her application for a license with the Commission.

(6) The driver is convicted of three or more moving violations.

(7) The driver is convicted of two speeding violations.

(8) The driver accumulates four or more points in accordance with the Commission's persistent violator program described in Drivers Rule 2-70.

(9) The driver is convicted of two or more violations of Drivers Rules 2-34(a), 2-34(b), 2-50(a), or 2-50(b).

(c) For purposes of subdivision (b) of this rule, the Commission will consider the date of occurrence rather than the date of conviction when determining if a violation occurred within the probationary period.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1998 eff. July 26, 1998. [See Notes 1, 2]

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (a) amended City Record Nov. 2, 2006 §4, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

DERIVATION

Former §2-04 subd. (a) amended City Record Apr. 30, 1992 eff. May, 30, 1992.

NOTE

1. Former §2-04 Sponsored Taxicab Driver Applicants was repealed. Note Statement of Basis and Purpose in City Record June 26, 1998:

The rule deletion promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under Section 2303(a) of the New York City Charter, which empowers the TLC to regulate and supervise the business and industry of transportation of such persons by licensed vehicles for-hire in New York City; under Section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under Section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The Commission is deleting the rule concerning the sponsorship taxicab program, as it discontinued this program several years ago. The Commission further believes that no applicant should be permitted to drive a taxicab until all records of prior criminal acts and other licensing standards matters have been reviewed. The original purpose of the sponsorship program was to enable individuals to operate on a conditional basis while their license application was being processed. In the past, processing of license applications took several months because the New York State Division of Criminal Justice Services was unable to complete criminal background investigations of prospective licensees in an expeditious manner. The State is now able to process background investigations in several days; hence the TLC is able to process license applications more expeditiously than was previously the case. The sponsorship program is no longer necessary nor is it desirable since it enables individuals to transport passengers for hire before their criminal backgrounds have been investigated.

2. Statement of Basis and Purpose in City Record June 26, 1998: The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the New York City Charter, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in New York; under Section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under Section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred

upon it by the Charter. The rule promulgated herein provides for the issuance of a one-year probationary license to all new applicants. This regulation was patterned after the probationary driver program instituted by the New York State Department of Motor Vehicles, which permits the State to suspend the drivers licenses of new licensees who, in some instances, have committed only one traffic offense. The Commission is committed to raising the quality of service provided by taxicab and for-hire vehicle drivers, improving the driving habits of licensees, and identifying unsafe driving practices of licensees immediately after licensure. Under these regulations all new drivers will be closely scrutinized during the probationary period, and would not be able to renew their licenses as a matter of right. Drivers who are convicted of a crime, commit serious driving infractions, or repeatedly violate Commission rules will not be permitted to renew their licenses.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-05 License Fees.

(a) In accordance with §19-505(j) of the Administrative Code of the City of New York, the fee for a taxicab driver's license shall be sixty dollars ($60) annually.

(b) The fee for an original license or a renewal thereof shall be paid at the time of filing the applications and shall not be refunded in the event of disapproval of the application.

(c) A driver shall submit an application for renewal of his or her driver's license no later than the expiration date of the license. There shall be an additional fee of twenty-five dollars ($25) for late filing of a license renewal application where such filing is permitted by the Commission.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (c) amended City Record Dec. 29, 1995 §24, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-06 Administrative Fees.

(a) An additional fee of twenty-five dollars ($25) shall be paid for each license issued to replace a lost or mutilated license.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-07 Critical Driver Program

(a) The taxicab driver's license of any driver who, within a period of fifteen months, accumulates six or more points against his license issued by the Department of Motor Vehicles or an equivalent license issued by the driver's state of residence, unless previously revoked, shall be suspended for thirty days.

(b) The taxicab driver's license of any driver who, within a period of fifteen months, accumulates ten or more points against his license issued by the Department of Motor Vehicles or an equivalent license issued by the driver's state of residence shall be revoked.

(c) The Commission may at any time review the fitness of a driver to be licensed by the Commission in view of any moving violation, accident, or other driving related incident. Nothing contained herein shall preclude the imposition by the Commission of additional or more severe penalties, or any other action deemed appropriate, in accordance with the Rules of the Commission.

(d) For the purpose of this rule, the points assigned by the Department of Motor Vehicles for any violation shall be deemed to have been accumulated as of the date of occurrence of the violation.

(e) The relevant fifteen month period to be used for calculating any suspension or revocation imposed under subsection (a) or (b) herein shall be calculated from the date of the most recent occurrence which led to a conviction of a violation carrying points; provided however, that no action under subsection (a) or (b) shall be taken with regard to any violation carrying points which occurred prior to February 15, 1999.

(f) For the purpose of calculating penalties pursuant to subsection (a) or (b), herein, a driver who has accumulated points for multiple violations arising from a single incident shall be deemed to have accumulated points for the single violation with the highest point total.

(g) Any licensee who voluntarily attends and satisfactorily completes a motor vehicle accident prevention course approved by the Department of Motor Vehicles, and who furnishes the Commission with proof that the course was completed on or before August 31, 1999, shall have two (2) points deducted from the total number of points assessed for the purpose of determining any suspension or revocation pursuant to this Rule. No point reduction shall affect any suspension or revocation action which may be taken pursuant to these Rules prior to the completion of the course; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

(h) Any licensee who voluntarily attends and satisfactorily completes a motor vehicle accident prevention course approved by the Department of Motor Vehicles, and who furnishes the Commission with proof that the course was completed on or after September 1, 1999, shall have two (2) points deducted from the total number of points assessed pursuant to this Rule. No point reduction shall affect any suspension or revocation action taken pursuant to these Rules prior to the completion of the course. No person shall receive a point reduction pursuant to this subsection more than once in any eighteen month period; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

HISTORICAL NOTE

Section repealed City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Section amended City Record Jan. 31, 2000 §1, eff. Mar. 1, 2000. [See Note 1]

Section added City Record Jan. 15, 1999 eff. Feb. 14, 1999. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 31, 2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under §§19-507.1 and 19-507.2 of said Code, setting forth provisions for Persistent Violator and Critical Driver Programs.

The rules amend the Commission's Program for Persistent Violators of Taxicab Drivers Rules and For-Hire Vehicle Rules, as well as the Commission's Critical Driver Program to conform with amendments to the Administrative Code enacted into law on May 26, 1999. The period of time for review of a licensee record is reduced from eighteen (18) to fifteen (15) months under each program. In addition, under the Persistent Violator Program, the number of points needed to result in a license suspension is increased from five (5) to six (6) and for license revocation from eight (8) to ten (10). The rules also provide for the opportunity of a point reduction through the voluntary attendance at a safety-related course.

The purpose of these amendments is to conform the Commission rules to the provisions of the Administrative Code that became effective on May 26, 1999. The Administrative Code contains Critical Driver and Persistent Violator Programs that differ in certain respects from the programs previously set forth in Commission rules. The rules

promulgated herein adopt the changes contained in the Administrative Code as part of Commission Rules.

In addition, the rule amendments make changes in the number of points assigned for violations of certain Commission rules. These changes were made to provide consistency in the number of points assigned for equivalent violations of the Taxicab Drivers and For-Hire Vehicle Rules. In addition, points were assigned for certain serious violations that presently do not carry persistent violator points. The point schedule contained in the For-Hire Vehicle Rules is repromulgated in its entirety to add a reference description for each rule violation, thereby providing consistency with the Taxicab Drivers Rules.

2. Statement of Basis and Purpose in City Record Jan. 15, 1999: The rule promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under §2303(a) of the New York City Charter, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in New York City; under §2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under §19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The rules establish a "Critical Driver Program," by which the Commission will review all driving infractions by taxicab and for-hire vehicle drivers which result in the imposition of "points" under Part 131 of the Regulations of the Department of Motor Vehicles ("DMV"). Those taxicab and for-hire vehicle drivers who accumulate six or more points on their New York State Department of Motor Vehicle Driver's Licenses within 18 months will have their TLC taxicab or for-hire vehicle driver licenses suspended for 30 days. Taxicab or for-hire vehicle ("FHV") drivers who accumulate ten or more points within a period of 18 months will have their taxicab or for-hire vehicle driver licenses revoked. This action will be taken irrespective of any action taken by DMV with respect to the licensee's state-issued operator's license. The purpose of this rule is to protect public safety by suspending or revoking the licenses of individuals who have an unsatisfactory driving record. This rule will relate the existing DMV "point" system, whereby motorists convicted of certain moving violations are assigned points based upon the severity of the offense, to the motorists's TLC license. The number of points required for TLC action against an individual's hack or FHV operator's license is less than the number of points that would result in licensing action being taken by DMV. However, where DMV has assigned points for more than one violation arising out of a particular incident, only the violation carrying the greatest number of points will be used in calculating Critical Driver penalties. The result of this program will be to hold licensees of the Commission to a higher standard with respect to their TLC licenses than the DMV currently holds the general public with respect to state-issued driver's licenses. This higher standard is justified based upon the direct impact licensees of the Commission have upon public safety. A review of the driving records of TLC licensees indicates that a significant number of licensees have accumulated excessive points on their DMV licenses and are still permitted to hold both a State-issued driver's license and a TLC license. Many of these drivers have been involved in serious accidents causing personal injury and property damage. For example, there are more than 100 TLC licensees who have accumulated at least 17 points on their DMV licenses within the past eighteen months. No action against these licensees has been taken by DMV. The Commission believes that adoption of the Critical Driver Program will reduce accidents and compel taxi and livery drivers to obey traffic regulations and operate their vehicles safely. This rule amendment may also reduce insurance costs by creating a better pool of qualified drivers. The Commission believes that a direct correlation between a licensee's DMV record and his or her ability to safely operate a taxicab or for-hire vehicle has been clearly established. The proposed text of this rule was first published in the **City Record** on April 26, 1998. A public hearing on this proposal was held on May 28, 1998. The text of the proposed rule was redrafted to clarify language contained in the earlier draft and to respond to comments received by the Commission in writing and at the public hearing.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-08 Drivers of Accessible Taxicabs.

A driver of an accessible taxicab must also comply with chapter 16 of this title.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §4, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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***** Current through December 2009 ****

35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-08 [Reserved]

HISTORICAL NOTE

Section repealed City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (f) par (2) subpar (11) amended City Record Mar. 6, 1992 eff. Apr. 5, 1992.

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***** Current through December 2009 ****

35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-09 [Reserved]

HISTORICAL NOTE

Section repealed City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

35 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-10 Term of a License.

(a) The term of a taxicab driver's license shall be as follows:

(1) A license issued to a new applicant shall expire one year subsequent to the date the license was issued as provided in §2-04 of this chapter.

(2)(A) A license issued to a renewing applicant shall expire two years from the date on which the previous license expired. The Commission may, in its discretion, extend the expiration date of such license by up to an additional thirty-one days.

(B) The holder of a renewal license under subparagraph (a)(2)(A) of this paragraph who is in the second year of such license and who has completed the drug test required by §2-19(b)(1) of this chapter for licensees in the first year of such license, may, upon written request to the Chairperson, advance the expiration date of his or her license to any date prior to the scheduled expiration of such license. One such request may be made during the term for such license. The request must be made on a form to be prescribed by the Chairperson or his or her designee and must be submitted in accordance with instructions on that form.

(C) The holder of a license seeking to renew such license after advancing the expiration date thereof hereunder must comply with all requirements for renewal applicants, including with the requirements imposed by §§2-02, 2-11 and 2-19 of this chapter; notwithstanding the provisions of §2-19(b) of this chapter, the drug test provided for therein shall be performed no sooner than thirty (30) days prior to, and in any event no later than, such advanced expiration date. For purposes of §2-19(b) of this chapter, a licensee who has advanced his or her expiration date shall be treated as

being a licensee in the second year of a two-year license.

(D)(i) Notwithstanding the provisions of §2-05(c) of this chapter, the holder of a renewal license under subparagraph (a)(2)(A) of this paragraph that expires between March 16, 2006, and June 23, 2006, inclusive, may request an extension of the time to submit a license renewal application on the ground that the licensee was unable to submit to license renewal drug testing as required by §2-19(b)(1) of this chapter due to the licensee's absence from the New York City area during the entire time provided by that section for submission to such drug testing.

(ii) The request for an extension of time to submit a license renewal application shall be made in writing to the Chairperson or his or her designee and shall include documentation demonstrating that the holder of the license was absent from the New York City area during the entire time provided by §2-19(b)(1) of this chapter for submission to drug testing for the renewal of such license, and was therefore not reasonably able to submit a license renewal application before the expiration of such license.

(iii) Any such request for an extension of time must be received by the Chairperson or his or her designee no later than September 15, 2006. If the Chairperson or his or her designee grants the request, the licensee's time to submit an application for renewal of his or her license shall be extended to six months after the expiration of his or her license.

(iv) A license renewal application submitted by a licensee granted such an extension must comply with all requirements for renewal applications, including payment of the late-filing fee provided by §2-05(c) of this chapter, except that the drug test required by §2-19(b) of this chapter shall be taken no sooner than thirty (30) days prior to the completion of such license renewal application.

(v) The expiration of a license shall not be affected by the licensee's eligibility for an extension, or request for an extension, of the time to submit a license renewal application under this paragraph, and such license shall remain expired until a renewal license is issued under item (iv) of this subparagraph.

(3) A person who engages in a licensed activity after the expiration date of a license and before the issuance of a renewal license is engaged in unlicensed activity and may be subject to penalties pursuant to applicable statutes and regulations. Nothing contained herein shall prevent the Commission from taking any action pursuant to §2-04(b) with respect to conduct which occurred during the probationary period of a new applicant's license, either prior or subsequent to the expiration of the probationary period.

HISTORICAL NOTE

Section amended City Record Mar. 1, 1999 §1, eff. Mar. 31, 1999. [See Note 1]

Section amended City Record Dec. 29, 1995 §25, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (a) par (1) amended City Record Nov. 2, 2006 §5, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (a) par (2) amended City Record May 26, 2006 §3, eff. June 25, 2006. [See T35 §2-03 Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 1, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise

the business and industry of transportation of persons by licensed vehicles for-hire in the City; under §2303(b)(5) of such Charter, authorizing the TLC to adopt rules and regulations relating to issuance of licenses to drivers of taxicabs and for-hire vehicles; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-504(a)(1) of the Administrative Code of the City of New York, authorizing the Commission to issue for-hire vehicle licenses for a period of at least one (1), but not more than two (2) years; and under §19-505(g) of the Administrative Code of the City of New York, authorizing the TLC to issue taxicab driver's licenses and for-hire vehicle operator's permits for a period of at least one (1), but not more than three (3) years.

The rules of the Commission currently provide that all licenses issued by the Commission expire one year after issuance, and are renewable for additional one-year periods. The rules further provide that all licenses expire on the last day of each month, irrespective of the date issued.

This rule amendment provides that taxicab driver's licenses, for-hire vehicle permits and for-hire vehicle operator's permits, and paratransit service base and driver's licenses, would be initially issued and renewed for a period of two (2) years. The rule also provides that the license expiration date would be linked to the date of license issuance, in the case of a new applicant, or a date to be set by the Commission, in the case of a renewal applicant, instead of the last day of the month of issuance.

The existing rules place an unreasonable administrative burden upon the Licensing Division of the Commission. Since each license expires on the last day of a month, the Commission's licensing facility is expected to process a tremendous number of renewal applications at the end of each month. This volume creates delays and crowd control issues at the Commission's licensing facility, and does not provide for an efficient utilization of Commission personnel and other resources. The issuance of two (2) year new and renewal licenses will significantly reduce the number of persons appearing at the Commission's facility. Furthermore, setting the expiration date of a license at a date other than the end of the month will enable the Commission to better serve the public and to provide for the better utilization of resources.

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***** Current through December 2009 ****

35 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-11 Driver Continuing Education.

(a) All licensees are required to attend and satisfactorily complete an authorized course of training in taxi-related subjects prior to the expiration of their probationary license pursuant to §2-04 of this chapter. The course shall be a minimum of four hours and shall include an update of rule changes, a review of driver responsibilities and duties, driver-passenger relations, and an awareness of serving passengers with disabilities. A renewal applicant must successfully complete such course, as verified by the designated school, as a prerequisite to the first renewal of a taxicab driver's license. The course must be completed no sooner than sixty (60) days prior to, and in any event no later than the expiration date of the one-year probationary license.

(b) All licensed taxicab drivers with licenses expiring November 30, 1997 through October 31, 1998 are required to meet the course training certification requirement of section (a) with their renewal application, as if such application is their first renewal application.

(c) The authorized providers of a taxi driver refresher course shall charge each applicant enrolled in such course a fee of twenty dollars ($20).

(d) All renewal applicants are required to attend and complete a defensive driving course from a school, facility or agency authorized by the Commission and certified by the New York State Department of Motor Vehicles. A renewal applicant who submits a certificate of completion for an authorized defensive driving course completed less than three (3) years from the date of the renewal application shall be exempt from this requirement.

HISTORICAL NOTE

Section added City Record July 8, 1997 eff. Aug. 11, 1997. [See Note 1]

Section repealed and reserved City Record Dec. 29, 1995 §26, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (a) amended City Record Nov. 2, 2006 §6, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (a) amended City Record Apr. 12, 1999 §3, eff. May 12, 1999. [See T35 §2-19 Note 1]

Subd. (d) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record July 8, 1997:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 2304(b) of such Charter, authorizing TLC to prescribe the rates of fare which may be charged for each type of service rendered; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgated rule requires all taxicab drivers to pass a refresher course in taxi-related subjects prior to receiving their first renewal license. All current drivers must attend such a course within the next year. The purpose of this rule is to provide for the on-going training of drivers, in order to increase the level of service provided to the public.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-12 Valid License Required.

(a) A driver shall not operate a taxicab in the City of New York while his taxicab driver's license is revoked, suspended or expired.

(b)A driver shall not operate a taxicab without a valid New York State chauffeur's license or a valid license of similar class of the state of which he is a resident.

(c) A driver shall immediately surrender his taxicab driver's license to the Commission, upon the suspension or revocation of his chauffeur's license.

(d) A driver shall comply with all restrictions endorsed by the Commission upon his taxicab driver's license.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (b) amended City Record Nov. 2, 2006 §7, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Respondent taxi driver was issued a summons for operating a cab with a suspended hack license. His hack

license was suspended solely because his DMV chauffeur's license had been suspended for thirteen days four months before. Although DMV reinstated respondent's chauffeur's license, he did not check to make sure that the Commission reinstated his hack license. Administrative law judge dismissed the charge because respondent's chauffeur's license had in fact been reinstated when he was served with the summons and therefore the reason for the suspension of the hack license was no longer valid. Commission deemed license revoked as of January 1999 because during pendency of proceeding, respondent was convicted of a new violation at the Commission tribunal and also had a prior record. Commission deemed license revoked as of January 1999 because during pendency of proceeding, respondent was convicted of a new violation at the Commission tribunal and also had a prior record. **Taxi and Limousine Comm'n v. Younis**, OATH Index No. 624/99 (Feb. 24, 1999), **rev'd**, Comm'n Decision (Mar. 2, 1999).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-13

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-13 Improper Use of a License.

(a) A driver shall not apply for or accept more than one taxicab driver's license without the Commission's written permission.

(b) A driver shall not permit any other person to use the driver's taxicab driver's license while operating any vehicle.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (c) repealed City Record Dec. 29, 1995 §27, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Having falsely reported his original hack license lost, a taxicab driver's acceptance of a replacement hack license from the Commission constituted a violation of paragraph (a) of this section. Taxi and Limousine Commission v. Louis, OATH Index No. 1487/97 (Aug. 11, 1997).

¶ 2. Section 2-13(a) prohibits drivers from possessing more than one hack license. Driver violated section 2-13(a) and section 2-61(a) when he falsely reported his hack license stolen in order to obtain a replacement license and then

allowed an unauthorized person to use his replacement hack license, while respondent continued to use his original license. Revocation imposed. **Taxi and Limousine Comm'n v. Nawaz,** OATH Index No. 1433/97 (Jan. 28, 1998).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-14

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-14 License Must be Safeguarded.

(a) A driver, within seventy-two (72) hours exclusive of weekends and holidays, shall notify the Commission in writing of the loss or theft of his taxicab driver's license.

HISTORICAL NOTE

Section amended City Record Dec. 29, 1995 §28, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pursuant to this section, loss or theft of a hack license must be reported within 72 hours, excluding weekends and holidays. Where a taxicab driver lost his hack license on a Thursday and it was returned to him the following Tuesday, the recovery occurred within 72 hours of the loss as calculated pursuant to this section, and therefore the driver's failure to report the loss did not constitute a violation of this section. Taxi and Limousine Commission v. Ullah, OATH Index No. 1793/97 (Aug. 22, 1997).

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***** Current through December 2009 ****

35 RCNY 2-15

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-15 License Must be Readable.

(a) A driver shall immediately surrender for replacement and reissue, any unreadable or unrecognizable taxicab driver's license.

HISTORICAL NOTE

Section amended City Record Dec. 29, 1995 §29, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-16

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-16 Reporting Requirements.

(a) A driver shall report any change of mailing address to the Commission, either in person or by registered or certified mail, return receipt requested within seven (7) days exclusive of weekends and holidays. Any notice from the Commission shall be deemed sufficient if sent to the mailing address furnished by the driver.

(b) A driver shall submit four (4) new photographs to the Commission whenever his physical appearance has changed.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

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***** Current through December 2009 ****

35 RCNY 2-17

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-17 Vehicle Must be Licensed.

(a) A driver shall not knowingly operate a vehicle for hire unless such vehicle is properly licensed by the Commission.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Appointing a gypsy cab to look like a medallion cab, including use of yellow paint reserved for medallion taxis, violates this section as well as the general prohibition against fraud and misrepresentation in §2-61(a) of this title, warranting revocation of the respondent's hack license. Taxi and Limousine Commission v. Min, OATH Index No. 669/96 (Nov. 13, 1995).

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***** Current through December 2009 ****

35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-18 [Reserved]

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***** Current through December 2009 ****

35 RCNY 2-19

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-19 Drug Testing of Licensed Taxicab Drivers.

(a) If the Commission has reasonable suspicion to believe that a driver has a drug or controlled substance impairment that renders him or her unfit for the safe operation of a taxicab, it may direct that the driver be tested or examined for such impairment, at the driver's expense, by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. If the results of said test(s) or examination(s) are positive, the driver's license may be revoked after a hearing. Failure of a driver to be tested or examined as directed may lead to suspension or revocation of such driver's license in accordance with §8-16 of this title.

(b)(1) Notwithstanding the foregoing, each licensee, other than a licensee who is a City of New York Police Officer, also shall be tested annually, at the licensee's expense, for drugs or controlled substances, as set forth in §3306 of the Public Health Law. For licensees in the first year of a two-year license, such testing must occur no sooner than thirty (30) days prior to, and in any event no later than, the date one year prior to the expiration date of such license. For licensees in the second year of a two-year license, such testing must occur no sooner than thirty (30) days prior to, and in any event no later than the expiration date of such license. Such testing shall be performed by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health.

(2) If the results of said test are positive, the driver's license may be revoked after a hearing in accordance with §8-15 of this title.

(3) Failure of a licensee in the first year of a two-year license to be tested no sooner than thirty (30) days prior to, and in any event no later than, the date one year prior to the expiration date of such license shall result in suspension of the driver's license in accordance with §8-17 of this title. If such licensee undergoes the required testing within thirty

(30) days after the date one year prior to the expiration date of the current license, the suspension of the driver's license shall be lifted. If such licensee undergoes the required testing more than thirty (30) days after the date one year prior to the expiration date of the current license, such licensee shall also be required to pay a penalty of $200 to have the suspension of the driver's license lifted.

(4) Failure of a licensee in the second year of a two-year license to be tested by the expiration date of such license shall result in denial of a license renewal application, if any, and expiration of the license.

HISTORICAL NOTE

Section amended City Record Feb. 14, 2006 §1, eff. Mar. 16, 2006. [See Note 3]

Section amended City Record Nov. 21, 2005 §1, eff. Nov. 21, 2005 until Mar. 21, 2006 per Charter

§1043(h) 60 day extension notice in City Record Jan. 6, 2006. [See Note 1]

Section added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 3]

Subd. (b) amended City Record Oct. 31, 2000 §3, eff. Nov. 30, 2000. [See T35 §2-03 Note 1]

Subd. (b) added City Record Apr. 12, 1999 §2, eff. May 12, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 12, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under §2303(b)(5) of such Charter, authorizing the TLC to promulgate rules and regulations relating to issuance of licenses to drivers of taxicabs and for-hire vehicles; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under §19-505 of such Code, authorizing the Commission to establish criteria for licensure.

On February 18, 1999, the Commission adopted rules authorizing the issuance of two-year taxicab driver's licenses and for-hire vehicle operator's permits. The change in the term of licenses will have an impact upon the existing drug testing and continuing education requirements. Presently, applicants and licensees are tested annually for drugs and other controlled substances, in connection with the renewal of their licenses. New applicants are required to complete a continuing education program prior to the first annual renewal of their license.

The rule amendments set forth herein retain the annual drug testing requirement, notwithstanding the issuance of licenses for two year periods. In addition, newly-licensed taxicab drivers will still be required to complete the continuing education class within one year after obtaining a taxicab driver's license.

The purpose of these amendments is to ensure that existing driver continuing education and drug testing requirements remain unaltered, notwithstanding the issuance of taxicab driver's licenses and for-hire vehicle operator's permits for two-year periods.

2. Statement of Basis and Purpose in City Record Nov. 21, 2005: This rulemaking pursuant to §1043(h)(1) of the New York City Charter empowers the Taxi and Limousine Commission ("Commission") to impose fines on taxicab and for-hire vehicle drivers (collectively "licensees") for failure to take an annual drug test as required under the Commission's Rules. This rulemaking also establishes the procedure for suspension of licensees' driver's licenses following failure to comply with the annual drug test requirement. The rule provides that licensees who fail to undergo

annual drug testing shall have their driver's licenses suspended. Upon failure to be tested by the anniversary of the date of issuance of the current license, a licensee will not be allowed to operate a taxicab or a for-hire vehicle until he or she complies with the annual requirement and undergoes a drug test. This rule further clarifies that if the drug test result is positive, the licensee will undergo a fitness hearing to determine whether the license should be revoked. The rule establishes that if a licensee fails to take a drug test, the driver's license shall be summarily suspended. The Commission is required to notify the licensee either by personal service or by first class mail to the last mailing address filed with the Commission that the licensee's driver's license shall be suspended either immediately upon service of such notice if made by personal service, or five (5) days after the date of the mailing of such notice if mailed. The licensee is then given the opportunity to refute that suspension within ten (10) calendar days of such notice if such notice is given by personal service, or within fifteen (15) calendar days if such notice is sent by mail. Alternatively, instead of submitting documentation, a licensee may submit a guilty plea to the Commission, pay any applicable fine, comply with the underlying Rule or Administrative Code Section, and furnish proof of such compliance to the satisfaction of the Chairperson or his or her designee. If the licensee chooses to plead guilty, his or her opportunity to be heard shall be waived, and his or her suspension will be lifted upon the furnishing of the proof of compliance and the payment of a fine if applicable. If an ALJ determines that the licensee committed a violation by failing to take the drug test, or if the licensee waives the opportunity to be heard by failing to respond within ten (10) calendar days of personal service or fifteen (15) calendar days of the date of mailing if service is by mail, the penalty will be imposed and the suspension shall remain until the licensee complies with the requirement. An ALJ's determination is final, and the licensee may appeal the decision pursuant to §8-13 of the Commission Rules. Finally, to encourage prompt compliance with the drug test requirements, the rule provides that if a licensee who has failed to take his or her annual drug test by the anniversary of the date of the current license subsequently submits to such test within thirty (30) days of such anniversary, the suspension will be lifted, though a conviction will remain on the licensee's record. If a licensee waits to take the drug test until more than thirty (30) days after the anniversary of the issuance of the current license, the suspension will be lifted only after the licensee also pays a penalty of $200. Finding Pursuant to NYC Charter Section 1043(h)(1) I hereby make the following finding that a rulemaking pursuant to §1043(h)(1) of the New York City Charter relating to license suspension procedures for taxicab and for-hire vehicle drivers who fail to submit to required drug tests is necessary and proper. The Taxi and Limousine Commission licenses and regulates over 50,000 vehicles and approximately 100,000 drivers each year. Each day taxicabs and for-hire vehicles transport approximately 900,000 passengers. The vast number of New Yorkers affected by the use of taxicabs and for-hire vehicles requires that drivers be fit to operate such vehicles. A drug-free driving force ensures the health and safety of passengers, other motorists and pedestrians in the City of New York. The New York City Charter explicitly charges the Commission with the regulation and supervision of the industry of transportation of persons licensed by vehicles in the city, including the establishment of safety standards. City Charter §2303. The City Council previously established that taxicab and for-hire vehicle drivers must, as a requirement for licensure, not be addicted to the use of drugs or intoxicating liquors. Administrative Code §19-505(b)(6). Using such requirement as a guideline, the Commission required that all drivers must annually submit to a drug test as proof that they are not using drugs or alcohol. TLC Rules §2-19(b), 6-16(v). I find that this new procedure is necessary to ensure that the TLC licenses of drivers who fail to submit to their annual drug tests may be suspended immediately, pending their compliance with drug test requirements. THEREFORE, I find that the immediate effectiveness of a rule relating to the establishment of license suspension procedures for failure to be tested for drugs or controlled substances pursuant to Chapter 5 of Title 19 of the Administrative Code of the City of New York and §§2-19(b) and 6-16(v) of Title 35 of the Rules of the City of New York is necessary to address an imminent threat to health and safety. Dated: November 17, 2005

Matthew Daus, Chair Taxi and Limousine Commission Approved: Michael R. Bloomberg Mayor

3. Statement of Basis and Purpose in City Record Feb. 14, 2006: This rulemaking makes permanent the expedited rules promulgated pursuant to §1043(h)(1) of the New York City Charter on November 17, 2005. The rules empower the Taxi and Limousine Commission ("Commission") to impose fines on taxicab and for-hire vehicle drivers (collectively "licensees") for failure to take an annual drug test as required under the Commission's Rules. This rulemaking also establishes the procedure for suspension of licensees' driver's licenses following failure to comply with

the annual drug test requirement. In addition, the rules clarify the requirement that renewal applicants take a drug test no later than the expiration date of their driver's licenses, and the procedures that result from a failure to do so. The rule provides that licensees in the first year of a two-year license who fail to undergo annual drug testing shall have their driver's licenses suspended. Upon failure to be tested by the date one year prior to the expiration date of the current license, a licensee is not allowed to operate a taxicab or a for-hire vehicle until he or she complies with the annual requirement and undergoes a drug test. This rule further clarifies that if the drug test result is positive, the licensee will undergo a fitness hearing to determine whether the license should be revoked. The rule establishes that if a licensee in the first year of a two-year license fails to timely take a drug test, the driver's license shall be summarily suspended. The Commission is required to notify the licensee either by personal service or by first class mail to the last mailing address filed with the Commission that the licensee's driver's license shall be suspended either immediately upon service of such notice if made by personal service, or five (5) days after the date of the mailing of such notice if mailed. The licensee is then given the opportunity to refute that suspension within ten (10) calendar days of such notice if such notice is given by personal service, or within fifteen (15) calendar days of the date of mailing of the notice if such notice is sent by mail. Alternatively, instead of submitting documentation, a licensee may submit a guilty plea to the Commission, pay any applicable fine, comply with the underlying Rule or Administrative Code Section, and furnish proof of such compliance to the satisfaction of the Chairperson or his or her designee. If the licensee chooses to plead guilty, his or her opportunity to be heard shall be waived, and his or her suspension will be lifted upon the furnishing of the proof of compliance and the payment of a fine if applicable. If an ALJ determines that the licensee committed a violation by failing to take the drug test, or if the licensee waives the opportunity to be heard by failing to respond within ten (10) calendar days of personal service or fifteen (15) calendar days of the date of mailing if service is by mail, the penalty will be imposed and the suspension shall remain until the licensee complies with the requirement. An ALJ's determination is final, and the licensee may appeal the decision pursuant to §8-13 of the Commission Rules. To encourage prompt compliance with the drug test requirements, the rule provides that if a licensee who has failed to take his or her annual drug test one year prior to the expiration date of the current license subsequently submits to such test within thirty (30) days of such anniversary, the suspension will be lifted, though a conviction will remain on the licensee's record. If a licensee waits to take the drug test until more than thirty (30) days after the anniversary of the issuance of the current license, the suspension will be lifted only after the licensee also pays a penalty of $200. Finally, the rule provides that failure of a licensee in the second year of a two-year license to be tested by the expiration date of such license shall result in denial of any license renewal application and expiration of the license.

CASE NOTES

¶ 1. Documentary evidence was found sufficiently reliable, by itself without witness testimony, to establish prima facie case that licensee's urine tested positive for marijuana, which licensee failed to rebut. Documents included an affidavit from a toxicologist, with accompanying chain of custody form, toxicology reports and a confirmation from a medical review officer. Licensee was found unfit, license revocation recommended. **Taxi & Limousine Comm'n v. Shakoor**, OATH Index No. 860/08 (Nov. 30, 2007).

¶ 2. License revocation recommended under this section for driver who tested positive for marijuana. Driver failed to establish the affirmative defense of unknowing ingestion. **Taxi & Limousine Comm'n v. Moatassin**, OATH Index No. 643/08 (Oct. 29, 2007).

¶ 3. Taxi driver who tested positive for cocaine was found to be unfit; license revocation recommended. **Taxi & Limousine Comm'n v. Rodriguez**, OATH Index No. 950/08 (Nov. 19, 2007).

¶ 4. ALJ found Commission did not prove that urine sample that tested positive for marijuana was obtained from licensee and he recommended petition be dismissed. Commissioner/Chair found there was sufficient evidence in the record to find that the urine sample that tested positive had been obtained from the licensee and he imposed the penalty of license revocation. **Taxi & Limousine Comm'n v. Sajjad**, OATH Index No. 642/08 (Oct. 24, 2007), **rev'd**, Comm'r/Chair's Decision (Dec. 6, 2007).

¶ 5. In one case, a taxi driver, who allegedly tested positive for drugs, challenged the revocation of his license. The court held that 35 RCNY 2-19(b)(2) clearly puts licensees on notice that they are required to take annual drug tests, and upon failing such tests, their licenses may be revoked. In re Wai Lun Fung v. Matthew Daus, NYC Taxi and Limousine Comm., 45 AD3d 392, 846 N.Y.S.2d 104 (1st Dept. 2008).

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***** Current through December 2009 ****

35 RCNY 2-20

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-20 Driving While Impaired.

(a) A driver shall not operate a taxicab while his driving ability is impaired by either intoxicating liquor (regardless of its alcoholic content), drugs or other controlled substances, nor while driving such taxicab or for six hours prior to driving or occupying such taxicab shall he consume any intoxicating liquor regardless of its alcoholic content or any drugs or other controlled substances.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 3]

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35 RCNY 2-21

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-21 Safe Driving and Traffic Accidents.

(a) A driver shall not operate his taxicab in such manner or at a speed which unreasonably endangers users of other vehicles, pedestrians, or his passengers.

(b) A driver shall operate his taxicab at all times in full compliance with all New York State and New York City traffic laws, rules and regulations and all rules, regulations and procedures of the Port Authority of New York and New Jersey, the Triboro Bridge and Tunnel Authority, and any regulatory body or governmental agency having jurisdiction over motor vehicles, with respect to matters not otherwise specifically covered in these rules. Violations of the foregoing shall be classified as follows for purposes of this subdivision:

(1) Laws, rules or regulations governing stationary vehicles.

(2) Laws, rules or regulations governing moving vehicles, other than hazardous moving violations defined by paragraph (3) of this subdivision.

(3) Laws, rules or regulations governing moving vehicles which involve hazardous moving violations defined as follows:

(i) speeding;

(ii) failing to stop for school bus;

(iii) following too closely;

(iv) inadequate brakes (own vehicle);

(v) inadequate brakes (employer's vehicle);

(vi) failing to yield right of way;

(vii) traffic signal violation;

(viii) stop sign violation;

(ix) yield sign violation;

(x) railroad crossing violation;

(xi) improper passing;

(xii) unsafe lane change;

(xiii) driving left of center;

(xiv) driving in wrong direction;

(xv) leaving scene of an accident involving property damage or injury to animal.

(c) A driver who, knowingly or having cause to know that personal injury has been caused to another person or that damage has been caused to the property of another person due to an accident involving the driver's taxicab, shall, before leaving the place where said damage or injury occurred, stop, exhibit to such other person his chauffeur's license, taxicab driver's license, and rate card, and give to such other person, his name, residence address, chauffeur's license number, taxicab driver's number, and taxicab medallion number, as well as the name of the taxicab's insurance carrier and the insurance policy number.

(d) A driver, while operating a taxicab, shall immediately report to the owner of the vehicle any motor vehicle accident in which he is involved.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (b) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 1]

Subd. (b) amended City Record Dec. 29, 1995 §30, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1998:

The regulation promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under Section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under Section 2303(b)(2) of such Charter, authorizing the TLC to promulgate rules and regulations relating to standards and conditions of service; under section 2303(b)(13) of such Charter, authorizing TLC to promulgate rules and regulations which are reasonably designed to carry out its purposes; under Section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under Section 19-505 of said Administrative Code, authorizing the TLC to issue taxicab drivers licenses,

for-hire vehicle drivers licenses and paratransit vehicle drivers licenses.

The purpose of these rule changes is to protect the riding public from drivers who operate their vehicles in an unsafe manner, and to provide for a more equitable penalty structure for those convicted of violations. Presently, all violations of the Vehicle and Traffic Law ("VTL"), Traffic Regulations and TLC Rules governing moving vehicles are treated identically. The fine structure under this amendment will now create more stringent penalties for the most serious offenses. For example, operating a vehicle with defective equipment, such as an inoperable tail light, would carry a lower fine than a hazardous moving violation, such as passing a red light or speeding.

In addition, the penalty for violations of Rule 2-21(a) and 6-16(a), dangerous driving, has been substantially increased. During 1997, there were 573 convictions for dangerous driving. These licensees committed acts which were so reckless that they presented a danger to their passengers, other vehicles, or pedestrians. The penalty for this violation has been increased from the present maximum of $350 per offense, to a maximum of $1,000 per offense, together with the possibility of license suspension, or revocation for repeat offenders.

During 1997, there were more than 15,000 summonses issued for violations of the Vehicle and Traffic Law or other traffic regulations. More than 11,500 of these summonses ended in convictions. This is an increase of more than 5,000 over the previous year. While part of the increase relates to enhanced enforcement efforts, it is nonetheless evident that unsafe driving is a major concern of the Commission and the riding public. The minimum penalty for each violation hereunder has been increased; the penalty now will be proportionate to the offense committed. The likelihood of greater monetary penalties will be a deterrent to this form of misconduct by licensees.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Taxi driver did not violate section 2-21(a) when he used care backing up cab, even though irate pedestrian believed that he was driving recklessly. Charge dismissed. **Taxi and Limousine Comm'n v. Singh,** OATH Index No. 280/99 (Sept. 22, 1998).

¶ 2. Taxi driver violated section 2-21(a) by engaging in reckless driving when he pulled away with the cab door open and while a passenger inside the cab was still saying goodbye to a passenger outside the vehicle. **Taxi and Limousine Comm'n v. Singh,** OATH Index No. 1359/98 (May 4, 1998).

¶ 3. Petitioner was not required to prove the elements of reckless driving as set forth in the Vehicle and Traffic Law, even though the language of the reckless driving statute and Drivers Rule 2-21 (a), under which respondent Ghulam was charged, track one another. Given the different focus of the Drivers Rules and the nature of the agency's mission, the lesser negligence standard is all that need be applied under Driver Rule 2-21(b), **i.e.,** was respondent Ghulam's conduct "unreasonable" in the circumstances. That ruling was followed by the First Department on appeal, which held that the Commission was "in no way limited by judicial precedents arising under New York's reckless driving statute, notwithstanding the textual similarity between the statute and the regulations pursuant to which petitioner was administratively disciplined." **Taxi and Limousine Comm'n v. Akhter,** OATH Index Nos. 1237-38/98 (June 3, 1998), **Ghulam** (1238/98) **modified on penalty,** Comm'n decision (Oct. 1, 1998), **aff'd sub nom. Ghulam v. NYC Taxi and Limousine Comm'n,** 261 A.D.2d 309, 691 N.Y.S.2d 408 (1st Dep't 1999).

¶ 4. Petitioner cannot sanction one cab driver under rule 2-21(b) for his split-second reaction to an unexpected and unforeseen event, even if another driver might have reacted differently and been able to maintain control of the cab. Mere errors of judgment or actions that are reflexive or reactive in nature, do not constitute driver misconduct. Petitioner could sanction another cab driver under rule 2-21(b) because it proved that he made an unsafe lane change which caused his cab to collide with another cab. **Taxi and Limousine Comm'n v. Akhter,** OATH Index Nos. 1237-38/98 (June 3, 1998), **Ghulam** (1238/98) **modified on penalty,** Comm'n decision (Oct. 1, 1998), **aff'd sub nom. Ghulam v. NYC Taxi and Limousine Comm'n,** 261 A.D.2d 309, 691 N.Y.S.2d 408 (1st Dep't 1999).

¶ 5. Taxi driver violated paragraph (a) of this section when he unreasonably endangered a bicyclist by driving his

taxicab in her direct path. **Taxi and Limousine Comm'n v. Smith**, OATH Index No. 498/00 (Oct. 12, 1999).

¶ 6. Taxi driver operated his taxicab recklessly in that he moved it forward while the rear door was open thereby endangering a passenger in the rear seat. Taxi driver also failed to obey all traffic laws in that he proceeded through a red stop light (2-21(b)). **Taxi and Limousine Comm'n v. Appelbaum,** OATH Index No. 724/00 (Jan. 27, 2000).

¶ 7. Revocation of taxi license recommended where taxi driver, drove away with the rear door open, while the passenger attempted to retrieve her bag, and the passenger was thrown to the street. Driver was aware that passenger had fallen to the street as his taxicab drove away and refused to stop. **Taxi and Limousine Comm'n v. Yousaf,**, OATH Index No. 984/00 (Feb. 18, 2000).

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35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-22 [Reserved]

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35 RCNY 2-23

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-23 Driver's Shift.

(a) A driver shall not operate a taxicab for more than twelve (12) consecutive hours.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-24

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-24 Authorized Drivers.

(a) A driver shall not operate a taxicab unless either:

(1) the driver's name has been entered by TLC on the rate card, and a lease driver whose name is so entered is not operating past the expiration date for the lease; or

(2) the taxicab is operated by "Unspecified Drivers," and such fact has been noted by TLC on the rate card.

(b) A driver who is permitted to operate a taxicab pursuant to a lease from the taxicab owner shall not sublease the taxicab to another party.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-25

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-25 Driver's Shift Responsibilities.

(a) A driver, while operating a taxicab, shall not, without the Chairperson's written authorization, have in his or her possession or in the vehicle, a weapon as defined by §2-01 of these Rules, or any other instrument which is intended to be used as a weapon.

(b) A driver shall be clean and neat in dress and person. A driver may not wear as outer clothing: underwear, tank tops, tube tops, body shirts, swimwear, bathing trunks, or cut-off shorts.

(c) A driver shall not smoke in a taxicab.

(d) During the workshift a driver shall not allow another person to operate the taxicab or occupy the driver's seat, except in the event of an emergency.

(e) A driver while on duty shall not lock either of the rear doors except at a passenger's request or with his consent or for a reason specified in these rules. A driver may lock the front doors. However, this does not give drivers the right to refuse parties of four persons, in which one person must occupy the front seat.

(f) The driver shall comply with the Air Pollution Control Code of the City of New York, and shall not cause or permit the engine of his taxicab to idle for longer than three minutes.

(g) A driver shall not permit the taxicab to be operated for hire by another person who is not currently licensed by the Commission as a taxicab driver.

(h) A driver shall not use a portable or hands-free electronic device while operating a taxicab, unless such taxicab shall be lawfully standing or parked. "Use" of a portable or hands-free electronic device means that the driver is deploying any of the functions of the portable or hands-free electronic device, or has a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver's ear.

A driver may offer as an affirmative defense that he or she was using a portable or hands-free electronic device while operating a taxicab for the sole purpose of communicating with an emergency response operator that there exists an imminent threat to life or property, and that it was impossible for the driver to safely stop the vehicle before placing the call. The driver must provide documentary proof that the electronic communication was to an emergency response operator.

(i) A driver shall reimburse an E-Z Pass tag holder for all tolls paid through the use of the E-Z Pass immediately upon the return of the vehicle to the E-Z Pass tag holder or his agent at the end of the shift or lease period. If a driver has a replenishment account with the owner or agent pursuant to §1-83 of the Taxicab Owners rules, the driver shall be required to contribute to the reimbursement account any monies that have been depleted from the account to reimburse the owner or agent for E-Z Pass tolls paid by the owner or agent but not reimbursed.

(j) If the driver is not a Taxpayer who is liable for the MTA Tax, the driver shall forward to the Taxpayer the amount of fifty cents for each taxicab trip driven by the driver that originated in New York City and terminated either in New York City or in the county of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk or Westchester, no less often than weekly. A driver shall not collect the MTA Tax for any taxicab trip unless the trip originated in New York City and terminated either in New York City or in the county of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk or Westchester.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (b) amended City Record Dec. 29, 1995 §31, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (g) added City Record Dec. 29, 1995 §31, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (h) amended City Record Dec. 30, 2009 §3, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Subd. (h) added City Record May 27, 1999 §1, eff. June 26, 1999. [See Note 1]

Subd. (i) added City Record Dec. 1, 1999 §5, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

Subd. (j) added City Record Sept. 25, 2009 §9, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May. 27, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under §2303(b)(2) of such Charter, authorizing the TLC to promulgate rules and regulations relating to the standards and conditions of service; and under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter.

The rule changes set forth herein prohibit a taxicab, for-hire vehicle, paratransit, or commuter van driver from using a telephone while operating a vehicle licensed by the Commission.

The purpose of these amendments is to protect public safety. The use of telephones while driving a vehicle constitutes a serious safety risk. Telephone use while driving creates a distraction that prevents a driver from devoting his or her undivided attention to road conditions and the proper handling of the vehicle. A driver using a telephone while the vehicle is in operation is less able to maintain control of the vehicle than other operators and presents an increased risk of accidents to passengers, pedestrians and drivers. Since the rule amendment does not prohibit drivers from carrying cellular or other telephones in their vehicles, there is no adverse impact upon driver safety.

2. Statement of Basis and Purpose in City Record June 26, 1998: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under Section 2303(b)(2) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under Section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under Section 19-505 of said Administrative Code, authorizing the TLC to issue taxicab drivers licenses, for-hire vehicle drivers licenses and paratransit vehicle drivers licenses. The regulation prohibits drivers from carrying dangerous weapons and increases the penalty to mandatory revocation for any possession of either a weapon, as this term is defined in the Penal Law, or any other instrument intended to be used as a weapon, without the written permission of the Chairperson. The possession or carrying of any unlawful weapon or other dangerous object which is intended to cause harm in a taxicab cannot be condoned. The riding public should be assured of their personal safety when they are in a taxicab or for-hire vehicle operated by a driver duly licensed by the Commission. Previous initiatives adopted by the Commission, such as the mandatory partitions and trouble lights, provide for the safety of drivers and the riding public. A licensee who places the public at risk by carrying an illegal weapon or other dangerous instrument should not be permitted to operate a taxicab or other vehicle for-hire. During 1996 and 1997, there were approximately 50 convictions each year under these rules. Since the rule prohibits a driver from carrying not only any instrument prohibited by the Penal Law, but also any object which is intended to be used as a weapon, the TLC imposes a higher standard upon its licensees than the New York State Penal Law in light of a licensed driver's privilege to transport passengers, and the threat to the public safety which would be caused by any licensee carrying a dangerous instrument in a taxicab.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Respondent violated weapons rule, paragraph (a) of this section, by carrying mace. Commission authorization to carry the weapon was not in question because carrying Mace or pepper spray is illegal. **Taxi and Limousine Comm'n v. Dianis,** OATH Index No. 1832/00 (Apr. 10, 2000).

Rules of the City of New York

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35 RCNY 2-25.1

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-25.1 Additional penalties for use of a portable or hands-free electronic device while operating a taxicab.

(a) For purposes of this section, "portable or hands-free electronic device violation" shall mean a violation of §2-25(h) of this chapter or a violation of any state law or rule prohibiting or restricting the use of a portable or hands-free electronic device while driving, such violation having been adjudicated by a court or other tribunal having jurisdiction over such violations.

(b) Any taxicab driver who commits a portable or hands-free electronic device violation is required to attend and satisfactorily complete an authorized course of training in the dangers of driving while distracted by portable or hands-free electronic devices. The course shall be a minimum of one hour and shall include a review of the rules governing the use of portable or hands-free devices, and the dangers of driving while distracted. The course must be completed and verification of course completion provided by the designated school within sixty days of TLC's issuance of a directive to the taxicab driver that he or she is required to take such course.

HISTORICAL NOTE

Section added City Record Dec. 30, 2009 §4, eff. Jan. 20, 2010. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 30, 2009:

For more than ten years, Taxi and Limousine Commission rules have prohibited the Commission's licensed drivers

from using cell phones while driving. In May, 1999, the Commission was the first regulator in the country to ban hands-free cell phone use while driving. Despite enforcement of those rules, cell phone use remains a significant problem in the for-hire transportation industries. Moreover, the proliferation of both portable electronic devices and hands-free electronic devices in recent years demands that the Commission expand the prohibition beyond cell phones to other electronic devices. This rulemaking prohibits the use of portable or hands-free electronic devices while driving, and clarifies what constitutes use of such a device.

Recent studies have quantified the long-known dangers of driving while distracted by portable or hands-free electronic devices. Just one example is the Virginia Tech Transportation Institute's recently released study demonstrating that texting while driving increases a driver's collision risk 23-fold. In addition, the U.S. Department of Transportation's National Highway Traffic Safety Administration, as well as a study published by University of Utah psychologists, found that hands-free use of cell phones was no safer than handheld use. The studies concluded that the distracting effects of phone conversation are not mitigated by the use of hands-free devices.

This rule makes five changes to existing rules:

· The rule expands the Commission's prohibition of electronic devices from telephones to all portable and hands-free electronic devices.

· The rule expands the definition of "use" from using a telephone to using any of the functions of any portable or hands-free electronic device, or having a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver's ear.

· The rule increases the assessment of persistent violator points against taxicab and for-hire vehicle drivers who use portable or hands-free electronic devices. The base penalty is increased from two to three persistent violator points, which would apply to first and second offenses. For a third offense, the driver would be assessed four points. As a result, even if the driver had no other persistent violator points, the driver's license would be suspended for 30 days after a second violation, and the driver's license would be revoked after a third violation committed within 15 months.

· The rule requires a driver who commits a violation to take a new driver education course emphasizing the dangers of driving while distracted by portable or hands-free electronic devices.

· The rule requires a passenger information decal in taxicabs, highlighting the new restrictions against driver use of portable or hands-free electronic devices.

Following publication of the proposed rule, Commission staff concluded a number of meetings about the proposed rules with a number of industry groups, representing taxicab, livery, black car and luxury limousine businesses. The staff has concluded that, unlike the taxicab, paratransit and commuter van industries, the for-hire industries rely on industries of a requirement that the use of electronic devices must be deferred until the vehicle is standing or parked would substantially impair the operation of those businesses. Furthermore, staff research indicates that short, simple conversations regarding specific issues, such as vehicle dispatch, do not adversely affect the driver's ability to maintain road position (Briem & Hedman, **Behavioral Effects of Mobile Phone Use During Simulated Driving,** 1995; Rakauskas, Gugerty & Ward, **Effects of a Naturalistic Cell Phone Conversations on Driving Performance,** 2004). Other studies have shown that listening to verbal material, by itself, does not interfere with a driver's safe operation of the vehicle (Strayer & Johnston, **Dual-Task Studies of Simulated Driving and Conversing on a Cellular Telephone,** 2001). The scientific literature distinguishes such communications from conversations of greater duration and intensity, which dangerously distract drivers and slow their reaction times, whether the conversation is conducted by handheld or hands-free device.

Some for-hire vehicle bases rely on two-way radios, while others have upgraded to devices that are voice-activated or that use pre-programmed function keys. Based on a review of the scientific literature and the unique business needs of the for-hire vehicle industries, the proposed rule was revised to allow for-hire vehicle drivers to engage in short,

solely business-related communications in connection with a dispatch from a base, by means of two-way radios, or by means of a device that is mounted in a fixed position and utilizes one-touch pre-programmed buttons or voice communications.

In addition, in response to a large number of comments regarding the requirement that the engine must be turned off in order to use a portable or electronic device, Commission staff concluded that it is sufficient that the vehicle be lawfully parked or standing. (Of course, laws limiting vehicle idling still apply.) Staff also responded to comments regarding the requirement that a GPS device may only be used if the device does not use video or image functions; the rule now permits GPS devices which use voice functions so long as the device is not being used as a cell phone or other portable or hands-free electronic device. These changes in the rule apply to all industries.

The Commission intends to deploy these rule revisions in combination with enhanced enforcement efforts, to address the continuing problem of driving while distracted by the use of portable or hands-free electronic devices.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-26

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-26 Condition of Taxicab.

(a) A driver shall not operate a taxicab without continuing personal inspection and reasonable determination that all equipment, including brakes, tires, lights, signals and passenger seatbelts and shoulder belts are in good working order.

(b) A driver, during his workshift, shall keep the taxicab's interior clean.

(c) A driver, during his workshift, shall keep clean and free from obstruction the medallion number on the front and rear of the roof light so that the medallion number shall be plainly visible at all times.

(d) A driver shall not (1) operate a taxicab having any equipment or mechanical devices not specifically enumerated in these rules, unless authorized in writing by the Commission; (2) place a cushion or other orthopedic device on the seat portion of a taxicab seat that is equipped with an occupant classification system; or (3) place a back rest or other orthopedic device on the back portion of a taxicab seat that is equipped with side airbags.

(e) A driver shall not place any signs in a taxicab not specifically enumerated in these rules, unless authorized in writing by the Commission.

(f) (i) For any taxicab that is required to be equipped with the taxicab technology system, such equipment shall at all times be in good working order and each of the four core services shall at all times be functioning. (ii) In the event of any malfunction or failure to operate of such taxicab technology system, the driver shall file an incident report with the authorized taxicab technology service provider promptly and in no event more than one (1) hour following the driver's

discovery of such malfunction or failure to operate or such time as the driver reasonably should have known of such malfunction or failure to operate, or the end of the driver's shift, whichever occurs first. If the owner or taxicab agent previously filed a timely incident report regarding such malfunction or failure to operate, the driver shall not be required to file a separate incident report but shall obtain an incident report number from the owner, agent or taxicab technology service provider. A taxicab in which any of the four core services of the taxicab technology system, or any part thereof, are not functioning shall not operate more than forty-eight (48) hours following the timely filing of an incident report by the owner, driver or agent.

(g) If any passenger information monitor is not operational and can be made operational by the driver, the driver shall do so.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Subd. (b) amended City Record Dec. 29, 1995 §32, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (d) amended City Record Oct. 1, 2008 §2, eff. Oct. 1, 2008 per City Record notice. [See

Note 1]

Subd. (d) amended City Record July 12, 1993 eff. Aug. 11, 1993.

Subd. (e) amended City Record Dec. 29, 1995 §32, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (e) added City Record July 12, 1993 eff. Aug. 11, 1993.

Subd. (f) added City Record June 12, 2007 §11, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (g) added City Record June 12, 2007 §11, eff. July 12, 2007. [See T35 §1-01 Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 1, 2008:

Automobile manufacturers recently advised the Taxi and Limousine Commission that the operation of airbags can be affected by the post-manufacture installation of vinyl seat covers and by the use of back rests and similar devices. Therefore, three modifications of existing Commission rules relating to taxicabs are required:

First, the promulgated rules eliminate the requirement of post-manufacture installation of vinyl seat coverings for taxicab seats that are equipped with OCS technology and for seats that are equipped with side airbags, and require the removal of any post-manufacture vinyl coverings previously placed over seats equipped with OCS technology or with side airbags.

The installation of post-manufacture vinyl seat coverings may impair the operation of occupant classification systems (OCS) that detect the presence of children or small adults in seats. In the event of a collision, the OCS prevents the seat's airbag from deploying, or limits the force of the deployment of the airbag. This innovation reduces the risk of injury to small adults and children who are at heightened risk of injury from the regular deployment of airbags. Installation of post-manufacture vinyl seat coverings creates the risk that airbags will not deploy even when adults occupy the seats equipped with OCS devices.

Also, the addition of post-manufacture vinyl seat coverings may impair the deployment of side airbags installed in seats. Side airbags reduce the risk of injury incurred during a collision with the side of a vehicle.

Second, the promulgated rules prohibit the use of seat cushions or similar devices on seats equipped with OCS, in order to avoid interference with the proper functioning of OCS technology.

Third, the promulgated rules prohibit the use of back rests and similar devices in the seats of taxicabs equipped with seat-mounted side airbags in order to avoid interference with the proper deployment of those airbags.

Statement of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043(e)(1)(c) of the New York City Charter, that there is a substantial need for the implementation, immediately upon the publication in the **City Record** of its Notice of Adoption, of rules amending the specifications governing taxicabs set forth in §§2-26(d) and 3-03(e)(iv) of Title 35 of the Rules of the City of New York.

The amendments eliminate the requirement that taxicab seats be re-covered with vinyl upholstery, for seats that are equipped with occupant classification systems (OCS). The post-manufacture re-covering of OCS-equipped seats impairs the functioning of the OCS, which controls the deployment of the front airbags based on the OCS sensors' determination of the weight and position of the occupant of the seat. Impaired functioning of the OCS creates a risk in a collision that the airbags might deploy incorrectly, thereby endangering the occupant of the seat.

The amendments also prohibit the use of seat cushions and other orthopedic devices on the seat portion of taxicab seats that are equipped with OCS. This amendment is needed in order that the OCS functions properly regarding the deployment of airbags.

Finally, the amendments prohibit the use of back rests and other orthopedic devices on the backs of taxicab seats that are equipped with front seat-mounted side airbags. This amendment is necessary in order that the airbags be able to deploy unobstructed in the event of a collision.

The earlier implementation of these rules is necessary because they relate to the proper functioning of the newest vehicle safety technologies in taxicabs. Delay in the implementation of these rules would unnecessarily risk the safety of taxicab drivers and of passengers riding in the front seats of taxicabs.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of paragraph (d) of this section, as well as §§1-23, 1-60(b), 1-67(a), 2-30(a), 2-31(a), 2-61(a) and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

¶ 2. A taxicab driver's possession in her cab of a "zapper," a device that enables the driver to accelerate the cab's meter, constituted a violation of paragraph (d) of this section even if the device was not actually connected to the meter when found by a police officer. Taxi and Limousine Commission v. Decriollo, OATH Index No. 1480/97 (Sept. 4, 1997).

¶ 3. A taxicab driver's operation of his cab with a device that increased the meter's fare calculation by 30 cents for every second that the device was engaged constituted a violation of paragraph (d) of this section. Taxi and Limousine Commission v. Fisher, OATH Index No. 1733/97 (July 23, 1997).

¶ 4. Taxi driver is found to have overcharged two passengers based upon testimony from the passengers and meter

acceleration device found in the cab during an inspection following the passenger complaints. **Taxi and Limousine Comm'n v. Flores,** OATH Index No. 1652/98 (Aug. 7, 1998).

¶ 5. Operation of a taxicab by defaulting respondent, one of two drivers and owners of the cab, with a meter acceleration device known as a "zapper," constituted a violation of this section and several others, the penalty for which was revocation of respondent's hack license and forced sale of his medallion. **Taxi and Limousine Comm'n v. Hom,** OATH Index Nos. 433 & 435/99 (Oct. 28, 1998).

¶ 6. Taxi driver violated section 2-26(d) when he installed a switch which could deactivate the roof light and the meter. The opportunity to pick and choose customers, to refuse passengers and to accelerate the meter are major concerns for the Commission, hence the prohibition against such devices in section 2-26(a). Petitioner failed to prove, however, that the driver engaged in a scheme to defraud the public by possessing a "zapper," where the Commission inspector testified that the device would not accelerate the meter without a battery and no battery was found when the cab was stopped by police following a near accident. **Taxi and Limousine Comm'n v. Drumond,** OATH Index No. 1114/98 (May 12, 1998).

¶ 7. Driver found in violation of this section after equipment used for meter acceleration was found inside cab and in trunk of cab during inspection. It is fair to infer that the presence of the equipment in the cab was for the purpose of operating an illegal device, and that operation of the cab by both authorized drivers with the illegal device took place on and prior to the date of inspection. License revocation recommended and imposed. **Taxi and Limousine Comm'n v. Kewal**, OATH Index No. 938/99 (Apr. 13, 1999), **aff'd**, Comm'n Dec. (May 20, 1999).

¶ 8. Discovery of a visible zapper or meter acceleration device in a vehicle results in the revocation of the current taxi drivers' hack licenses, whether the drivers were driving the cab at the time of discovery or not. Pursuant to this section, drivers have a general obligation of "continuing personal inspection" and are prohibited from operating a taxicab "having any equipment or mechanical devices not specifically enumerated in these rules." **Taxi and Limousine Comm'n v. Kandov**, OATH Index Nos. 941-42/99 (May 12, 1999).

¶ 9. Inspection of taxicab revealed tampered meter harness wiring and presence of unauthorized meter acceleration device in a CB radio. Respondents, identified on the rate card as regular drivers of the taxicab in which the device had been placed at least 6 or 7 months earlier, and possibly longer, were liable for meter tampering and operating cab with unauthorized device and engaging in a scheme to defraud the public, on and prior to date of discovery by Commission investigator. **Taxi and Limousine Comm'n v. Zargar**, OATH Index Nos. 1130-31/99 (Mar. 9, 1999), **rev'd in part**, Comm'n Dec. (April 15, 1999).

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35 RCNY 2-27

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-27 Items Which Must be Present in the Taxicab.

(a) A driver shall not operate a taxicab unless the following are present in the taxicab: (1) The taxicab technology system as defined in section 2-01 of this chapter, provided, however, that, if the taxicab is not yet required to be equipped with such taxicab technology system and whenever such taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, the driver must maintain a written trip record also known as a "trip sheet," containing such information as required by sections 2-01 and 2-28(a) of this chapter and section 3-06(b) of this title.

(2) his taxicab driver's license in the appropriate frame;

(3) the rate card assigned to the taxicab, bearing the serial number of the taximeter, in the frame alongside the frame for his taxicab driver's license;

(4) a New York City five (5) borough indexed street map; and

(5) receipts for passengers.

(b) A driver shall not operate a taxicab after sunset unless all of the following items are illuminated so that they are clearly visible from the rear seat by a passenger with normal vision:

(1) the face of the taximeter;

(2) his taxicab driver's license; and

(3) the rate card.

(c) A driver shall not obstruct a passenger's view of any of the items required in a taxicab by these rules, including the taximeter.

(d) A driver shall not operate a taxicab for hire that is not equipped with an E-Z Pass tag and shall use E-Z Pass at all crossings within the jurisdiction of the Metropolitan Transportation Authority, Triborough Bridge and Tunnel Authority, where E-Z Pass is accepted. Nothing contained herein shall preclude a driver from using his personal E-Z Pass tag for any toll.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Dec. 29, 1995 §33, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (a) par (1) amended City Record June 12, 2007 §12, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) par (1) amended City Record May 11, 2005 §5, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (a) par (1) amended City Record Apr. 14, 2004 §6, eff. May 14, 2004. [See T35 §3-03 Note 8]

Subd. (a) par (1) amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Subd. (a) par (2) amended City Record June 7, 1994 eff. July 7, 1994.

Subd. (d) added City Record Dec. 1, 1999 §6, eff. Dec. 31, 1999 [See T35 §1-37 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Taxi driver is found to have obstructed view of taxi license in violation of paragraph ;cw) of this section where license was partially obscured with paper towel. **Taxi and Limousine Comm'n v. Tokosi,** OATH Index No. 513/00 (Feb. 18, 2000), **modified on penalty,** Comm'n Dec. (Apr. 12, 2000).

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***** Current through December 2009 ****

35 RCNY 2-28

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-28 Trip Records.

(a) Until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, a driver shall keep a written trip record in the taxicab as specified in section 2-27(a) and shall enter the following information legibly in ink, as follows:

(1) at the start of each trip, the starting time, specific location and the number of passengers;

(2) on completion of the trip, the destination, the time, the amount of the fare, and any tolls paid;

(3) the taximeter readings and the concluding time of his or her workshift;

(4) any toll bridges or tunnels used by the driver, whether or not with a passenger; and

(5) all other entries required by these rules.

(b) Until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, a driver shall, at the beginning of each workshift, sign and certify on the written trip record that, with the exception of the taxicab technology system, the taxicab and its equipment are in good working condition and

that, with the exception of such taxicab technology system, the items required in the taxicab are present, before operating the taxicab.

(c) For any taxicab that is required to be equipped with the taxicab technology system, a driver shall transmit to an electronic database all necessary corrections that need to be made to the electronic trip record. A driver shall at no time make erasures or obliterations on any written trip record, shall correct any wrong entry only by drawing a single line through the incorrect entry and recording the date, time and reason for the change, and shall not leave blank lines between entries on any written trip record.

(d) A driver shall at no time rewrite a written trip record either in whole or in part, unless authorized by the Commission.

(e) Until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, a driver shall submit his written trip sheet to the owner at the conclusion of the driver's shift or lease period. Whenever a taxicab's taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider, the driver must maintain written trip records during the forty-eight (48) hours immediately following the filing of such incident report.

HISTORICAL NOTE

Section amended (without laying out § heading) City Record June 12, 2007 §13, eff. July 12, 2007.

[See T35 §1-01 Note 3]

Section amended City Record May 11, 2005 §6, eff. June 10, 2005. [See T35 §3-03 Note 10]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Dec. 1, 1999 §7, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

Subd. (a) amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Subd. (b) amended City Record Dec. 29, 1995 §34, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (f) added City Record Dec. 1, 1999 §8, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. A driver's failure to record a trip on the trip sheet constitutes a violation of this section. Taxi and Limousine Commission v. Panic, OATH Index No. 1875/96 (Aug. 28, 1996), modified as to penalty, Comm'n Decision (Nov. 7, 1996).

¶ 2. Under sections 2-87 and 88, Commission has discretion to seek revocation for failing to make trip sheet entries in violation of 2-28(a)(4). **Taxi and Limousine Comm'n v. Baig,** OATH Index No. 1115/00 (Mar. 31, 2000), **modified on penalty,** Comm'n Dec. (July 25, 2000).

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Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-29 [Reserved]

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-30 Taximeter Condition.

(a) A driver shall not drive a taxicab unless all taximeter seals and cable housing seals are in good condition and pressed by the Commission or its authorized designee. The serial number of the taximeter must be the same as that shown on the rate card assigned to the taxicab.

(b) A driver shall not pick up or transport a passenger unless the taximeter is properly equipped with paper for the printing of receipts.

(c) A driver while on duty shall not operate a taxicab unless the rooflight is lit when the taximeter is not in use, and unlit when the taximeter is in use.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (b), (c) relettered and amended (former subds. (c), (d)) City Record Dec. 29, 1995 §35, eff.

Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) repealed City Record Dec. 29, 1995 eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of this section, as well as §§1-23, 1-60(b), 1-67(a), 2-26(d), 2-31(a), 2-61(a) and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

35 RCNY 2-31

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-31 Tampering with Taximeter, Taximeter Technology System and Rooflight Prohibited.

(a) A driver shall not operate a taxicab in which the taximeter or the seals affixed thereto by a licensed taximeter repair shop or the taxicab technology system have been tampered with, broken or altered in any manner. The operation of a taxicab with a broken taximeter seal shall give rise to a rebuttable presumption that the driver knew of the tampering or alteration and operated the taxicab with such knowledge.

(b) A driver shall not tamper with, repair or attempt to repair, or connect any unauthorized device to, the taximeter or the taxicab technology system, or any seal, cable connection or electrical wiring thereof, or make any change in the vehicle's mechanism or its tires which would affect the operation of the taximeter or the taxicab technology system.

(c) A driver shall not tamper with the roof light or any of the interior lights or connections except to replace a defective bulb or fuse. The rooflight of a taxicab shall be automatically controlled only by the movement of the taximeter button or ignition switch so that it is lighted only when the taximeter is in an off or "Vacant" position and unlighted when the taximeter is in a recording or "Hired" position. The operation of a taxicab with an unauthorized installation or device controlling interior or roof lighting shall give rise to a rebuttable presumption that the driver knew of the unauthorized installation or device and operated the taxicab with such knowledge.

(d) It shall be an affirmative defense to a violation of section 2-31(b) that the driver: (1) did not know of or participate in the alleged taximeter or taxicab technology system tampering; and (2) exercised due diligence to ensure that taximeter-tampering or tampering with the taxicab technology system does not occur.

HISTORICAL NOTE

Section heading amended City Record June 12, 2007 §14, eff. July 12, 2007. [See T35 §1-01 Note 3]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record June 12, 2007 §14, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (b) amended City Record June 12, 2007 §14, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (d) amended City Record June 12, 2007 §14, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (d) added City Record Jan. 31, 2000 §4, eff. Mar. 1, 2000. [See T35 §1-23 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of this section, as well as §§1-23, 1-60(b), 1-67(a), 2-26(d), 2-30(a), 2-61(a) and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

¶ 2. Operation of a taxicab by defaulting respondent, one of two drivers and owners of the cab, with a meter acceleration device known as a "zapper," constituted a violation of this section and several others, the penalty for which was revocation of respondent's hack license and forced sale of his medallion. **Taxi and Limousine Comm'n v. Hom,** OATH Index Nos. 433 & 435/99 (Oct. 28, 1998).

¶ 3. Where a zapper device, used to accelerate taximeters, was concealed inside the car door of a taxicab and where the inspector observed that a portion of the pulse wire was bare, three drivers violated this section. The visibly exposed wire gave the three drivers "reason to know that the taxicab's equipment had been tampered with by another driver." Administrative law judge recommended that the licenses of the three drivers be revoked and recommended forced sale of the medallion by the owner. **Taxi and Limousine Comm'n v. Singh**, OATH Index Nos. 828-30/99 (Apr. 15, 1999).

¶ 4. License revocation recommended where respondents operated taxicab with an unauthorized wire spliced into the pulse wire in violation of this section. **Taxi and Limousine Comm'n v. Kandov**, OATH Index Nos. 941-42/99 (May 12, 1999).

¶ 5. Testimony of overcharged passenger and tests on meter proved that respondent taxi driver operated cab while it was equipped with a meter acceleration device or zapper. **Taxi and Limousine Comm'n v. Ahmed**, OATH Index No. 2077/99 (July 22, 1999).

¶ 6. Inspection of taxicab revealed tampered harness wiring and presence of unauthorized meter acceleration device in a CB radio. Respondents, identified on the rate card as regular drivers of the taxicab in which the device had been placed at least 6 or 7 months earlier, and possibly longer, were liable for meter tampering, operating cab with unauthorized device and engaging in a scheme to defraud the public, on and prior to date of discovery by Commission investigator. **Taxi and Limousine Comm'n v. Zargar**, OATH Index Nos. 1130-31/99 (Mar. 9, 1999), **rev'd in part**, Comm'n Dec. (April 15, 1999).

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35 RCNY 2-32

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-32 If Taximeter or Credit/Debit Card Acceptance Equipment Is Defective During Shift.

(a) A driver shall not pick up or transport a passenger when the taximeter is defective, until it has been repaired at a licensed taximeter shop or replaced by such shop with a taximeter which has been inspected, sealed and approved within the preceding twelve (12) months. Until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, if the taximeter is equipped to accept credit or debit card payments for fares, a driver may not pick up or transport a passenger when the taximeter is incapable of accepting or processing credit or debit card transactions. When a taxicab is required to be equipped with the taxicab technology system, the driver may not pick up or transport a passenger when the system is incapable of accepting or processing credit or debit card transactions, unless: (i) in the event of any malfunction or failure to operate of the credit or debit card acceptance equipment, the driver promptly files an incident report with the authorized taxicab technology service provider, as set forth in section 2-26 of this chapter, and obtains an incident report number, and not more than forty-eight (48) hours have passed following the filing of such incident report, and (ii) the driver advises the passenger of the malfunction or failure to operate of the credit or debit card acceptance equipment prior to engaging the meter. In the event that the wireless payment equipment used to accept payment by credit and debit cards is inoperable at the destination of a trip as a result of a technical problem in the system's communication network that is not related to the equipment in the taxicab, the customer has the option of either (i) paying cash or (ii) requesting the taxicab driver continue to a location where the wireless payment system may communicate with its network. If a taximeter or its parts become defective during the driver's shift while a passenger is in the taxicab, or if the taxicab technology system or its parts become defective while a passenger is in the taxicab such that the driver is unable to inform the passenger of the proper fare, the driver shall immediately notify the passenger and offer him or her the option of continuing the trip with a mutually agreed upon reasonable fare, or terminating the trip and paying the fare shown on the taximeter to that point.

(b) Upon terminating a trip because of a defective taximeter or defective taxicab technology system, the driver shall illuminate the "Off Duty" light, lock the rear doors, transmit to an electronic database for entry on the electronic trip record that the taximeter and/or the taxicab technology system is defective or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taximeter technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report as set forth in section 2-26 of this chapter, enter on the written trip record that the taximeter and/or the taxicab technology system is defective. Whether or not the taxicab is required to be equipped with the taxicab technology system, the driver shall return the taxicab immediately to the garage of record or a licensed taximeter repair shop.

(c) A driver shall not charge a mark-up to any passenger for credit/debit card transactions.

HISTORICAL NOTE

Section amended City Record June 12, 2007 §15, eff. July 12, 2007. [See T35 §1-01 Note 3]

Section heading amended City Record Apr. 14, 2004 §7, eff. May 14, 2004. [See T35 §3-03 Note 8]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Apr. 14, 2004 §7, eff. May 14, 2004. [See T35 §3-03 Note 8]

Subd. (a) amended City Record Dec. 29, 1995 §36, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) amended City Record May 11, 2005 §7, eff. June 10, 2005. [See T35 §3-03 Note 10]

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§2-33 Taximeter Operation.

(a) When a taxicab is occupied by anyone in addition to the driver, the taximeter shall immediately be placed in the recording or "Hired" position and kept in that position until arrival at the destination, provided that if the passenger is not being charged a fare, the driver, in lieu of activating the meter, may illuminate the "Off Duty" light and transmit to an electronic database for entry on the electronic trip record that he or she is off duty and transporting a non-paying passenger and the details of time and distance of the free fare or until such time when a taxicab is required to be equipped with data collection and transmission equipment as described in Section 3-06 of the Taxicab Specifications enter on his or her written trip record that he or she is off duty and transporting a non-paying passenger and the details of time, distance and reason for the transportation without charge. When the taxicab is engaged in a flat fare trip from Kennedy Airport to Manhattan in accordance with Owners Rule 1-69, the driver shall not activate the meter, except in accordance with subdivision (b) of Rule §1-69, and shall transmit to an electronic database for entry on the electronic trip record or enter on the written trip record that this is a flat fare trip from Kennedy Airport and the details of time and distance. When a taxicab is occupied by a passenger who is a person with a disability, the driver shall place the taximeter in the recording or "Hired" position only after the passenger has safely entered the taxicab. A taxicab driver shall not place the taximeter in the recording or "Hired" position while the driver is assisting a person with a disability to enter the taxicab or while assisting with that passenger's mobility aid. Notwithstanding anything else contained in this section, a taxicab driver who is a driver of an accessible taxicab and who has accepted a dispatch of a wheelchair passenger pursuant to chapter 16 of this title shall turn on the meter as provided in section 16-08(d) of this title.

(b) Upon reaching the passenger's destination, the driver shall place the taximeter in a non-recording or "Time Off" position, inform the passenger of the fare due and leave the taximeter in a non-recording position until the fare is paid.

If the passenger is an individual with a disability who requires assistance to exit the taxicab, the driver shall place the taximeter in a non-recording position before assisting such passenger and shall leave the taximeter in a non-recording position until such passenger has paid the fare and safely exited the cab.

(c) Immediately after the passenger leaves the taxicab, the driver shall clear the taximeter, placing it in an off or "Vacant" position in which it must remain until the next passenger enters the taxicab.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Nov. 23, 2007 §5, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Subd. (a) amended City Record June 12, 2007 §16, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) amended City Record May 11, 2005 §8, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (a) amended City Record July 8, 1997 §3, eff. Aug. 11, 1997.[See T35 §4-01 Note 1]

Subd. (a) amended City Record July 1, 1996 eff. Aug. 1, 1996. [See T35 §1-69 Note 3]

Subd. (a) amended City Record Dec. 29, 1995 §2, eff. Jan. 28, 1996. [See T35 §1-69 Note 2]

Subd. (b) amended City Record July 8, 1997 §3, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

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CHAPTER 2 TAXICAB DRIVERS RULES

§2-34 Overcharges Prohibited.

(a) A driver shall not charge or attempt to charge a fare above the approved rates, as provided by these rules. A driver shall not impose or attempt to impose any additional charge for transporting a person with a disability, a service animal accompanying a person with a disability or a wheelchair or other mobility aid.

(b) A driver shall not collect or attempt to collect separate fares from individual passengers who have shared a taxicab for part or all of a trip unless such fares are specifically authorized as part of a group riding program established by the Commission.

(c) A driver shall give the correct change to a passenger who has paid the fare.

(d) A driver shall not ask a passenger for a tip nor indicate that a tip is expected or required.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Section amended City Record Feb. 22, 1993 eff. Mar. 22, 1993.

Subd. (a) amended City Record July 8, 1997 §4, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (e) repealed City Record Dec. 29, 1995 §37, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (f) repealed City Record Dec. 29, 1995 §37, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. An overcharge was not proven where a passenger complained to the taxi driver that the meter was too fast, the driver threatened the passenger, sped up, and refused to get off the highway at the exit the passenger requested. The passenger testified that after she complained about the meter being too fast, respondent violently denied it and terminated the ride without charging her at all. **Taxi and Limousine Comm'n v. Raoul**, OATH Index No. 752/99 (Feb. 8, 1999).

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CHAPTER 2 TAXICAB DRIVERS RULES

§2-35 Trips Beyond the City.

(a) For a trip beyond the limits of the City of New York, except for the counties of Westchester or Nassau, or the facilities of the Port Authority of New York and New Jersey at Newark Airport, the following shall be applicable:

(1) the driver shall not start the trip until agreement has been made on a flat rate, as set forth in Owner Rule §1-73;

(2) the driver shall place the taximeter in a recording position at the beginning of the trip, and the taximeter shall remain in such recording position for the entire trip;

(3) the out-of-City destination shall be transmitted to an electronic database upon arrival at the destination for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, entered on the written trip record; and

(4) the total charge shall be captured by an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, entered on the written trip record.

(b) For a trip to the counties of Westchester or Nassau, or Newark Airport, the following shall be applicable:

(1) the driver shall place the taximeter in a recording position at the start of the trip and shall keep the taximeter in the recording position at all times;

(2) the driver must inform the passenger of the rate of fare, set forth in Taxicab Owners Rule §1-73, before the start of the trip, and for a trip to the Counties of Westchester or Nassau he or she shall advise the passenger when the taxicab crosses the City limit;

(3) the driver must inform the passenger before the start of the trip that all necessary tolls to and from the destination shall be paid by the passenger; and

(4) the total charge shall be transmitted to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, entered on the written trip record.

HISTORICAL NOTE

Section amended City Record May 11, 2005 §9, eff. June 10, 2005. [See T35 §3-03 Note 10]

Section renumbered and amended (former §2-38) City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) pars (3), (4) amended City Record June 12, 2007 §17, eff. July 12, 2007. [See T35 §1-01

Note 3]

Subd. (b) par (4) amended City Record June 12, 2007 §17, eff. July 12, 2007. [See T35 §1-01

Note 3]

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§2-36 [Reserved]

HISTORICAL NOTE

Section repealed City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record June 26, 1992 eff. July 26, 1992.

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§2-37 [Reserved]

HISTORICAL NOTE

Section repealed City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record June 26, 1992 eff. July 26, 1992.

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§2-38 [Reserved]

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§2-39 Non-Paying Passengers.

(a) If a passenger refuses to pay the metered fare, the driver must place the meter in the off or "Vacant" position, illuminate the "Off Duty" light, transmit the relevant information and the amount of fare on the taximeter to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, enter the words "Off Duty" and the amount of fare on the taximeter on the written trip record. Whether or not the taxicab is required to be equipped with the taxicab technology system, the driver shall proceed directly to the nearest police precinct, present the facts to the police and follow their instructions for resolving the dispute.

HISTORICAL NOTE

Section amended City Record June 12, 2007 §18, eff. July 12, 2007. [See T35 §1-01 Note 3]

Section amended City Record May 11, 2005 §10, eff. June 10, 2005. [See T35 §3-03 Note 10]

Section added City Record June 26, 1992 eff. July 26, 1992.

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§2-40 [Reserved]

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§2-41 [Reserved]

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§2-42 Courteous.

(a) A driver shall be courteous to passengers.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A taxicab driver who, when questioned by a passenger about a delay, answered, "Do I want to sit in this street? I'm not making any money," did not violate the section. Taxi and Limousine Commission v. Rana, OATH Index No. 1396/96 (July 19, 1996).

¶ 2. Charge of directing abusive language towards the passenger in violation of 35 RCNY § 2-60(a) was conformed to proof of discourtesy in violation of 35 RCNY § 2-42. Administrative law judge credited the passenger's testimony that respondent had told her to shut up when she gave him her desired route. Administrative law judge found that the language used by respondent did not rise to the level of a 2-60(a) violation, because that rule addresses physical force and abuse. Nevertheless, the administrative law judge found that respondent's conduct amounted to a clear act of discourtesy, in violation of 2-42. **Taxi and Limousine Comm'n v. Ahmed**, OATH Index No. 1790/99 (May 3, 1999).

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35 RCNY 2-43

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§2-43 Seating.

(a) A driver shall not permit more than four (4) passen- gers to ride in a four (4) passenger taxicab, nor more than five (5) passengers in a five (5) passenger taxicab, except that an additional passenger must be accepted if such passenger is under the age of seven (7) and is held on the lap of an adult passenger seated in the rear.

(b) A passenger who is unable to enter or ride in the passenger part of the taxicab, must be permitted to occupy the front seat alongside the driver. If a passenger's luggage, wheelchair, crutches, other mobility aid or other property occupies the rear passenger part of the taxicab, a passenger must be permitted to occupy the front seat alongside the driver.

(c) A driver shall not pick up additional passengers except if the passenger who hired the taxicab requests that the driver do so.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (b) amended City Record July 8, 1997 §5, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (b) amended City Record Dec. 29, 1995 §38, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

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§2-44 Luggage and Property.

(a) Upon request of a passenger, the driver shall load or unload a passenger's luggage, wheelchair, crutches or other property in or from the taxicab's interior or trunk compartment, and shall secure such compartment.

(b) A driver shall not transport for hire any property, except blood or vital human organs, unless such property is in the possession of a passenger.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

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§2-45 Route and Method of Payment.

(a) A driver shall take a passenger to his destination by the shortest reasonable route unless the passenger requests a different route, or unless the driver proposes a faster alternative route which the passenger agrees to. The driver shall comply with all reasonable and lawful routing requests of the passenger.

(b) A driver shall comply with any request of a passenger during the trip to change his or her destination or terminate the trip, unless it is impossible or unsafe for the driver to comply with such request, and the passenger shall pay the amount shown on the taximeter until such time as the taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter or, after such time, the amount shown on the passenger information monitor, unless the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, or there is a discrepancy between the amount shown on the passenger information monitor and the taximeter. In that event, the passenger shall pay the amount shown on the taximeter, at the destination or time of termination.

(c) In a taxicab equipped with the taxicab technology system as defined in section 2-01 of this chapter or otherwise equipped to accept credit and debit card payment for fares, the driver shall comply with any request of a passenger as to the method for payment of the fare, whether in cash or by credit or debit card. Provided, however, that if such taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, the driver shall not be required to accept payment by credit or debit card.

HISTORICAL NOTE

Section heading amended City Record June 12, 2007 §19, eff. July 12, 2007. [See T35 §1-01 Note 3]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (b) amended City Record June 12, 2007 §19, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (c) added City Record June 12, 2007 §19, eff. July 12, 2007. [See T35 §1-01 Note 3]

CASE AND ADMINISTRATIVE NOTES

¶ 1. A driver who misrepresented to a passenger that he knew the route to the passenger's destination, and failed to deliver her to that destination, then charged the passenger for the trip, thereby violated paragraph (a) of this section. Taxi and Limousine Commission v. Panic, OATH Index No. 1875/96 (Aug. 28, 1996), modified as to penalty, Comm'n Decision (Nov. 7, 1996).

¶ 2. A taxicab driver's choice to drive south from 54th Street on Fifth Avenue rather than on Seventh Avenue or Broadway, based on the driver's knowledge of the usual traffic conditions in the area, did not constitute a violation of his obligation to take the shortest reasonable route pursuant to paragraph (a) of this section. Taxi and Limousine Commission v. Rana, OATH Index No. 1396/96 (July 19, 1996).

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§2-46 Reasonable Requests.

(a) A driver shall comply with all the reasonable requests of a passenger, including but not limited to giving upon request his name, his taxicab driver's license number and the medallion number.

(b) A driver shall give a passenger a receipt for payment of the fare at the end of the trip. Such a receipt shall state the date, time, medallion number, fare paid, extras and the Commission Complaint Department telephone number.

(c) All audio equipment controlled by the driver shall be turned on or off at the request of the passenger. The passenger shall have the right to select what is to be played on the audio equipment. Whether or not a taxicab is hired, an audio device shall be played at normal volume only, and all noise ordinances shall be complied with.

(d) An air conditioning device in a taxicab shall be turned on or off at the request of a passenger.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (b) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 29, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgated rules require that taxi drivers automatically provide passengers with a printed receipt at the end of the trip, rather than providing a receipt upon request. Similarly, taximeters must automatically print a receipt at the end of the trip.

The purpose of these amendments is to provide passengers with a written record of their trip, which will aid the passenger in making a complaint about the driver or the taxicab to the Commission, and will also help the passenger locate lost property.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Driver violated rule 2-46(b) when he refused to give a passenger a receipt upon request. **Taxi and Limousine Comm'n v. Hossain**, OATH Index No. 1296/99 (May 11, 1999).

¶ 2. Taxi driver unreasonably refused a passenger request to make two stops where passenger offered partial payment of the fair showing on the meter and gave assurances that he had every intention of returning to the taxi and continuing to the final destination. **Taxi and Limousine Comm'n v. Jaffar,** OATH Index No. 2174/00 (July 13, 2000).

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CHAPTER 2 TAXICAB DRIVERS RULES

§2-47 Change.

(a) A driver shall be required to accept United States currency.

(b) A driver must always be capable of making change of a $20 bill, provided that if the driver finds himself or herself unable to change a $20 bill during his or her workshift the driver may, with the passenger's consent, place the meter in an off or "Vacant" position, illuminate the "Off Duty" light, transmit the relevant information to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, make an appropriate written trip record entry. The driver shall then proceed to the nearest location where he or she may reasonably expect to obtain change.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Dec. 29, 1995 §39, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) amended City Record June 12, 2007 §20, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (b) amended City Record May 11, 2005 §11, eff. June 10, 2005. [See T35 §3-03 Note 10]

CASE AND ADMINISTRATIVE NOTES

¶ 1. For a taxicab driver who was unable to make change for a twenty-dollar bill in violation of paragraph (b) of this section, who spoke in a threatening manner to his passenger regarding payment of the fare in violation of §2-60(a) of this chapter, and who grabbed the passenger, threw him to the ground and attempted to kick him, in violation of §2-60(b) of this chapter, the penalty imposed was revocation of the driver's hack license. Taxi and Limousine Commission v. Kalontarov, OATH Index No. 1732/97 (Sept. 10, 1997).

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§2-48 [Reserved]

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§2-49 [Reserved]

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§2-50 Refusals.

(a) A driver shall not seek to ascertain the destination of a passenger before such passenger is seated in the taxicab.

(b) A driver shall not refuse by words, gestures or any other means, without justifiable grounds set forth in §2-50(e) herein, to take any passenger to any destination within the City of New York, the counties of Westchester or Nassau or Newark Airport. This includes a person with a disability and any service animal accompanying such person.

(c) A driver shall not require a person with a disability to be accompanied by an attendant. However, where a person with a disability is accompanied by an attendant, a taxicab driver shall not impose or attempt to impose any additional charge for transporting the attendant.

(d) A driver shall not refuse to transport a passenger's luggage, wheelchair, crutches, other mobility aid or other property.

(e) Justifiable grounds for the conduct otherwise prohibited by §§2-50(a), 2-50(b), 2-50(c) and 2-50(d) shall be the following:

(1) another passenger is already seated in the taxicab;

(2) a hail from another person has already been acknowledged by the driver, and that other person is being picked up or is about to be picked up. Provided, however, that a driver shall not acknowledge the hail of a prospective passenger over the hail of another prospective passenger with an intent to avoid transporting the passenger whose hail

was not acknowledged;

(3) the passenger is carrying, or is in possession of any article, package, case or container, other than a wheelchair or other mobility aid, which the driver may reasonably believe will cause damage to the interior of the taxicab, impair its efficient operation, or cause it to become stained or foul smelling;

(4) the driver is ending his or her workshift, has already illuminated the "Off Duty" sign, locked both rear doors, and has transmitted the relevant information to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, indicated on the written trip record that he or she is off duty and proceeding to his or her garage or home;

(5) it is necessary to take the taxicab out of service for one of the reasons specified in section 2-52(a) of this chapter, and the driver has already illuminated the "Off Duty" sign, transmitted the relevant information to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, made the appropriate written trip record entry, and the driver has further locked both rear doors;

(6) the driver is discharging his last passenger or passengers prior to going off duty, has already illuminated his "Off Duty" sign and transmitted the relevant information to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, made the appropriate written trip record entry;

(7) the passenger is escorting or accompanied by an animal which is not properly or adequately secured in a kennel case or other suitable container. This provision shall not apply to service animals accompanying people with disabilities;

(8) the destination is within the counties of Nassau or Westchester, or Newark Airport, and the driver has been operating the taxicab for more than eight (8) hours of any continuous twenty-four (24) hour period;

(9) the passenger is disorderly or intoxicated. Provided, however, that a driver shall not refuse to provide service to a person with a disability solely because such person's disability results in an appearance or involuntary behavior which may offend, annoy, or inconvenience the driver;

(10) a driver has a position on the "long haul" line at an airport taxi stand and the passenger desires "short haul" transportation and there is another taxicab available on the "short haul" line; or the driver has a position on the "short haul" line and the passenger desires "long haul" transportation and there is another taxicab available on the "long haul" line; or

(11) if the passenger has refused a request by the driver to obey the no-smoking requirement of law; the driver may discharge the passenger after asking the passenger to cease smoking in the taxicab, but if he does discharge the passenger it must be at a safe location.

HISTORICAL NOTE

Section amended City Record July 8, 1997 §6, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (e) pars (4), (5), (6) amended City Record June 12, 2007 §21, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (e) pars (4), (5), (6) amended City Record May 11, 2005 §12, eff. June 10, 2005. [See T35 §3-03 Note 10]

CASE AND ADMINISTRATIVE NOTES

¶ 1. A taxicab driver's termination of a trip due to a flat tire is permissible under paragraph (e) (formerly paragraph (d)) of this section. Taxi and Limousine Commission v. Rana, OATH Index No. 1396/96 (July 19, 1996).

¶ 2. In a default proceeding, the administrative law judge found that taxi driver violated section 2-50(b), when, while off-duty, he would not take a passenger to his requested downtown destination but was willing to take the passenger to either LaGuardia airport or midtown Manhattan. The administrative law judge held that limiting a passenger's destination in such a manner is equivalent to refusing to take a passenger to his destination. **Taxi and Limousine Comm'n v. Khan,** OATH Index No. 935/98 (Jan. 21, 1998).

¶ 3. See Padberg v. McGrath-McKechnie, 2002 WL 826795, N.Y.L.J., May 2, 2002, page 32, col. 1, U.S. Dist.Ct., E.D.N.Y., discussed under case note 2, 35 RCNY 2-61.

¶ 4. A refusal was proven where a passenger complained that the taxi driver's meter was too fast, the driver threatened the passenger, sped up, and refused to get off the highway at the exit the passenger requested. Pursuant to paragraph (b) of this section, drivers are prohibited from refusing to transport passengers to their requested destinations. **Taxi and Limousine Comm'n v. Raoul**, OATH Index No. 752/99 (Feb. 8, 1999).

¶ 5. Driver refused to transport a passenger to his destination, but the refusal was found to be not racially or ethnically motivated nor motivated by bias against a neighborhood. **Taxi and Limousine Comm'n v. Abubakar**, OATH Index No. 1174/00 (Feb. 29, 1999).

¶ 6. Where respondent took an alternate route despite having been told by the passenger to take another route, the taxi driver violated this section. When the passenger expressed a desire to terminate the ride and hail another cab, respondent stopped and as she was exiting, he accelerated, causing her to fall to the ground and respondent left the scene of the accident. **Taxi and Limousine Comm'n v. Ahmed**, OATH Index No. 1790/99 (May 3, 1999).

¶ 7. Taxi driver's fear that he would get lost in Staten Island is not a justification to refuse to transport a passenger. Taxi driver is expected to know the route or to at least be able to find it on a map if destination is within the five boroughs. **Taxi and Limousine Comm'n v. Ali,** OATH Index No. 1246/00 (Feb. 22, 2000), **penalty modified,** Comm'n Dec. (July 25, 2000).

¶ 8. Taxi driver found to have refused to pick up minority passengers in violation of §2-50(a), through Operation Refusal, a Commission and Police Department initiative. Administrative law judge recommended $350 fine, holding fine in that amount and not revocation to be the maximum penalty for a first refusal offense pursuant to section 19-507(b) of the Administrative Code. **Taxi and Limousine Comm'n v. Ouali,** OATH Index No. 1855/00 (May 3, 2000), **modified on penalty,** Comm'n Dec. (May 1, 2001).

¶ 9. Administrative law judge concluded that respondent refused to stop and pick up a passenger based on that passenger's race where the passenger was in respondent's direct line of vision, respondent briefly paused after making eye contact with the passenger, and respondent continued to drive fifty feet before stopping for another passenger. Drivers who refuse passengers based upon perceived or actual bias in any form should be penalized and need to

understand that such behavior while serving the public will not be tolerated. Administrative law judge recommends a fine of $500 and a 30-day suspension, the maximum permissible penalty for a second refusal offense pursuant to section 19-507(b) of the Administrative Code. **Taxi and Limousine Comm'n v. Hayat,** OATH Index No. 1834/00 (June 9, 2000), **modified on penalty,** Comm'n Dec. (May 10, 2001).

¶ 10. Commission is limited to imposition of mandatory penalties under Administrative Code section 19-507(b) for taxi driver's first refusal-to-take-passenger offense; revocation not available for a first offense. **Taxi and Limousine Comm'n v. Park,** OATH Index No. 1014/00, supp. rep. (Feb. 2, 2000), **modified penalty,** Comm'n Dec. (May 25, 2000).

¶ 11. Taxi driver's off-duty defense to refusal charge did not excuse refusal to pick up passenger where driver did not comply with the procedures for going off-duty. Administrative law judge recommended maximum fine of $350 for a first time refusal offense pursuant to §19-507(b) of the Administrative Code. **Taxi and Limousine Comm'n v. Azad,** OATH Index No. 1180/00 (Mar. 1, 2000), **modified on penalty,** Comm'n Dec. (May 1, 2001).

¶ 12. Taxi driver's simultaneous hail defense, §2-50(e), to refusal charge did not justify refusal to pick up passenger where driver did not pick up either passenger. **Taxi and Limousine Comm'n v. Islam,** OATH Index No. 1181/00 (May 1, 2000), **modified on penalty,** Comm'n Dec. (May 10, 2001).

¶ 13. Taxi driver was found not to have refused to intentionally transport a passenger where he saw another prospective passenger first. **Taxi and Limousine Comm'n v. Singh,** OATH Index No. 1173/00 (Apr. 19, 2000).

¶ 14. Pursuant to subsection (b) of this rule, a taxicab driver cannot refuse to take a passenger to any destination within New York City. An exception is provided in subsection (e)(9), which permits a driver to refuse to transport a passenger if the passenger is disorderly or intoxicated. A driver violated subsection (b) when he terminated a ride after going one block because the passenger and his date were kissing and embracing. Driver did not establish that the passengers were disorderly or intoxicated to the point that his refusal to transport them was justified under subsection (e)(9). **Taxi & Limousine Comm'n v. Hussein**, OATH Index No. 572/08 (Jan. 14, 2008).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-51 [Reserved]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-52

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-52 Off-Duty Procedure.

(a) Before going off duty a driver shall transmit the relevant information to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, shall enter on his or her written trip record the time, place and reason for going off duty; he or she shall illuminate the "Off Duty" light or display a "Relief Time" sign inside the windshield and visible from the street; and he or she shall lock the rear doors.

(b) Upon completion of the off duty activity a driver shall immediately transmit the relevant information to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, enter on his or her written trip record the time thereof. The driver shall then turn off the "Off Duty" light or remove the "Relief Time" sign, and return to service.

(c) When the taxicab is operated for personal use, a "Personal Use-Off Duty" entry shall be transmitted to an electronic database for entry on the electronic trip record or made on the written trip record, and the "Off Duty" light shall be illuminated.

(d) A driver shall illuminate the "Off Duty" light only by use of a manually operated switch on the taxicab dashboard.

HISTORICAL NOTE

Section amended City Record Dec. 29, 1995 §40, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subds. (a), (b) amended City Record June 12, 2007 §22, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subds. (a), (b), (c) amended City Record May 11, 2005 §13, eff. June 10, 2005. [See T35 §3-03 Note 10]

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***** Current through December 2009 ****

35 RCNY 2-53

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-53 Accepting Passengers While Off-Duty.

(a) A driver who has illuminated the "Off Duty" light may not solicit nor accept a passenger unless that driver is returning the taxicab to his or her garage or home and has transmitted the relevant information to an electronic database for entry on the electronic trip record or made a written trip record entry "Returning to garage (or home)" and the passenger's destination is directly en route thereto; when the last passenger is discharged, the driver shall lock the doors and return to his garage or home.

HISTORICAL NOTE

Section amended City Record May 11, 2005 §14, eff. June 10, 2005. [See T35 §3-03 Note 10]

Section added City Record June 26, 1992 eff. July 26, 1992.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-54

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-54 Solicitation of Passengers.

(a) A driver shall solicit a passenger only from the driver's seat and only with the words "taxi" or "cab" or "taxicab."

(b) A driver may not use another person, other than a dispatcher at an authorized group-ride taxi line, to solicit a passenger, nor suggest to a passenger that an additional person be accepted as a passenger, except that a driver of an accessible taxicab shall accept dispatches as provided by chapter 16 of this title.

(c) A driver shall not induce the hire of his taxicab by giving misleading information, including but not limited to, the times of arrival and departure of transportation facilities, the location of a building or place, or the distance between two points.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (b) amended City Record Nov. 23, 2007 §6, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-55

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-55 Solicitation Prohibited.

(a) A driver shall not solicit passengers within 100 feet of any bus stop, nor stop there unless hailed.

(b) A driver may not, in omnibus fashion, pick up passengers at one or more locations.

(c) A driver shall not solicit or cruise for the purpose of soliciting passengers: (1) at Kennedy, LaGuardia or Newark Airports; or

(2) within 100 feet of any authorized taxi stand; or

(3) within the private streets of Lincoln Center; or

(4) in any area of the City of New York where taxicab cruising is prohibited.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-56

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-56 Taxi Stands.

(a) A driver has the right to take a position on any taxi stand having a vacancy, and no other taxicab driver may interfere with that right.

(b) A driver may not occupy a taxi stand for the purpose of repairing his taxicab, except for minor emergency repairs.

(c) A driver shall not overcrowd, crash or back into a front position on a taxi stand; he shall take the rear position on the line formed at such a stand, unless it is a relief stand that has a vacancy.

(d) A driver may occupy a taxi stand only when he is on duty or when, for a period not to exceed one hour, he has gone off duty pursuant to §§2-52(a) through (c).

(e) The driver of each of the first two taxicabs on a taxi stand, other than a relief stand, shall remain in the driver's seat ready to accept passengers; any other driver on such a stand shall be no more than fifteen feet from his taxicab unless if he is off duty and the required "Off Duty" light or "Relief Time" sign is visibly displayed.

(f) The space immediately in front of a fire hydrant on a street, where parking is not prohibited, is an active taxi stand for one taxicab, except when forbidden by §2-55(c). However, the driver must be seated in his taxicab, ready for operation at all times.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

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***** Current through December 2009 ****

35 RCNY 2-57

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-57 Terminals.

(a) The rules regarding taxi stands also apply to special taxi stands and feed lines at air, rail, bus and ship terminals. Where taxicab holding areas are provided at such terminals, a driver, before leaving on relief time, shall park the taxicab in such holding area, to which he may not bring any passengers; upon returning, he shall take a rear position on the feed line.

(b) Where at an airport taxi stand, there is a choice of "long haul" and "short haul" lines available to the taxicabs, a driver already on the "short haul" line may not accept a passenger who desires "long haul" transportation if there is an available taxicab on the "long haul" line; and conversely a driver already on the "long haul" line may not accept a passenger who desires "short haul" transportation, if there is an available taxicab on the "short haul" line.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

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35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-58 [Reserved]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-59

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-59 Lost Property.

(a) The driver shall inspect the interior of the taxicab and the trunk compartment, if used, immediately after termination of each trip to Kennedy, La Guardia and Newark Airports.

(b) Property found by a driver in a taxicab shall be returned to the passenger if possible; otherwise it shall be taken without delay to the police precinct closest to where the passenger was discharged.

(c) If the property is not returned to the passenger, the driver shall promptly inform the Commission of the details regarding the found property and the police precinct where it is held.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Dec. 29, 1995 §41, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) amended City Record Dec. 29, 1995 §41, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-60

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-60 Abuse and Physical Force Prohibited.

(a) A driver shall not threaten, harass or abuse any passenger or any governmental or Commission representative, public servant or other person while performing his duties and responsibilities as a driver. A driver shall not distract or attempt to distract a service animal accompanying a person with a disability.

(b) A driver shall not use or attempt to use any physical force against a passenger, Commission representative, public servant or other person while performing his duties and responsibilities as a driver. A driver shall not harm or use physical force against or attempt to harm or use physical force against a service animal accompanying a person with a disability.

HISTORICAL NOTE

Section amended City Record July 8, 1997 §7, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Section added City Record June 26, 1992 eff. July 26, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. By verbally abusing, threatening and spitting on a Commission inspector at the Commission's offices, a driver committed conduct under this section warranting revocation of his hack license. **Taxi and Limousine Commission v. Vedrine,** OATH Index No. 1001/95 (Sept. 7, 1995).

¶ 2. For a taxicab driver who was unable to make change for a twenty-dollar bill in violation of §2-47(b) of this

chapter, who spoke in a threatening manner to his passenger regarding payment of the fare in violation of paragraph (a) of this section, and who grabbed the passenger, threw him to the ground and attempted to kick him, in violation of paragraph (b) of this section, the penalty imposed was revocation of the driver's hack license. Taxi and Limousine Commission v. Kalontarov, OATH Index No. 1732/97 (Sept. 10, 1997).

¶ 3. A taxicab driver who struck his passenger in the face violated paragraph (b) of this section, notwithstanding the fact that the passenger took the keys to the driver's cab during a dispute between them that arose from the driver's refusal to drive the passenger to her destination. Although the driver may have believed that the passenger was trying to do something more than take the keys from the cab, striking a passenger is not justified even in extreme circumstances, except in self-defense. Taxi and Limousine Commission v. Ramadan, OATH Index No. 1644/97 (July 22, 1997).

¶ 4. Taxi driver was found to have violated rule 2-60(b) when he punched a passenger in the head and face, knocking the passenger to the ground, during a fare dispute. License revocation imposed. **Taxi and Limousine Comm'n v. Belenky,** OATH Index No. 121/99 (Aug. 10, 1998).

¶ 5. Taxi driver, angry that female passenger, a professional magician, was entering his taxicab with birds used in her act, pulled the magician's assistant out of the cab and pushed the magician into the cab, locked the door and proceeded rapidly up Madison Avenue. As she screamed to be let out, the driver told the magician "Lady, I'm going to take you for a ride you're never going to forget." The magician's little finger was broken during the incident. Driver's conduct violated rules 2-60(a) and 2-60(b). License revocation imposed. **Taxi and Limousine Comm'n v. Abit-Osman,** OATH Index No. 1452/98 (July 31, 1998).

¶ 6. Taxi driver found to have struck passenger, without provocation, with a stick and a clipboard. License revocation imposed. **Taxi and Limousine Comm'n v. Mohamed,** OATH Index No. 1206/98 (May 8, 1998).

¶ 7. Taxi driver visited JFK Airport while off-duty to handle outstanding summonses incurred as a cab driver. Driver got into an argument with Commission personnel and then assaulted law enforcement personnel who were called to eject driver from the facility. The administrative law judge determined that the assault had a sufficient nexus to the driver's hack license since it occurred "while performing his duties and responsibilities as a driver" as defined by rule 2-60(a). The fact that the visit occurred while the driver was not on duty driving his cab was deemed to be inconsequential. License revocation imposed. **Taxi and Limousine Comm'n v. Khan,** OATH Index No. 333/99 (Dec. 14, 1998).

¶ 8. Taxi driver's use of force against pedestrian, if any, was found to be defensive and therefore not in violation of rule 2-60. Charge dismissed. **Taxi and Limousine Comm'n v. Singh,** OATH Index No. 280/99 (Sept. 22, 1998).

¶ 9. Driver violated rules prohibiting threats, harassment, abuse, and physical force on passengers after a passenger complained that the meter was too fast and the taxi driver told her, "I'll put you in jail before you get me in jail" and threatened her life. Taxi driver also pulled her arm to force her to exit the cab. **Taxi and Limousine Comm'n v. Raoul**, OATH Index No. 752/99 (Feb. 8, 1999).

¶ 10. Use of force against pedestrian was unjustified even if pedestrian provoked some response by striking cab window. Administrative law judge found that pedestrian's action was prompted by respondent's reckless driving. **Taxi and Limousine Comm'n v. Smith**, OATH Index No. 498/00 (Oct. 12, 1999).

¶ 11. License revocation imposed where taxicab driver was found to have physically assaulted a passenger by kicking her after a verbal dispute over his failure to follow her directions as to what route to take. **Taxi and Limousine Comm'n v. Mughal**, OATH Index No. 1939/99 (June 16, 1999), **aff'd**, Comm'n Dec. (Sept. 27, 1999).

¶ 12. Taxi driver was found to have caressed and rubbed the hands and inner thigh of an eighteen year-old female passenger without her consent, after offering her a free ride in the front seat of the cab. Administrative law judge rejected respondent's alibi defense and credited the complainant's unequivocal in-court identification of respondent.

License revocation recommended. **Taxi and Limousine Comm'n v. Rauf**, OATH Index No. 2033/99 (July 30, 1999).

¶ 13. Taxi driver violated this section where he pushed complaining witness' car three or four times with the bumper of the taxi, causing the complainant to get out and ask respondent why he continued to push his car, and where the respondent got out of the cab and punched the complainant in the face. License revocation recommended because of driver's actions and past driving record. **Taxi and Limousine Comm'n v. Singh**, OATH Index No. 618/00 (Dec. 20, 1999).

¶ 14. License revocation imposed where taxi driver was found to have screamed at female passenger to get out of the cab and threatened to hit her "in the face." **Taxi and Limousine Comm'n v. Verma**, OATH Index No. 1085/99 (Mar. 9, 1999), **aff'd**, Comm'n Dec. (Apr. 26, 1999).

¶ 15. License revocation imposed where respondent spoke lewdly to four young women in his cab and assaulted one of the them. **Taxi and Limousine Comm'n v. Kouyate**, OATH Index No. 152/00 (Aug. 13, 1999), **aff'd**, Comm'n Dec. (Oct. 27, 1999).

¶ 16. Taxi driver found to have violated section 2-60(a) when he cursed at passenger in annoyance over passenger having dozed off before giving him full and specific directions. **Taxi and Limousine Comm'n v. Tokosi,** OATH Index No. 513/00 (Feb. 18, 2000), **modified on penalty,** Comm'n Dec. (Apr. 12, 2000).

¶ 17. Administrative law judge found that taxi driver abused and harassed the female passenger in violation of section 2-60(a) by manipulating and exposing his penis in her presence. **Taxi and Limousine Comm'n v. Kumar,** OATH Index No. 499/00 (Jan. 31, 2000)

¶ 18. Respondent used physical force against a passenger when he accelerated his taxicab while the rear door was open, the result of which was that the door closed and passenger was restrained from exiting the taxi in violation of section 2-60(b). **Taxi and Limousine Comm'n v. Appelbaum,** OATH Index No. 724/00 (Jan. 27, 2000).

¶ 19. Taxi driver abruptly drove his cab forward, with passenger partially inside the cab and the rear door open, causing the passenger to fall to the street, in violation of paragraphs (a) and (b) of this section. **Taxi and Limousine Comm'n v. Yousaf,** OATH Index No. 984/00 (Feb. 18, 2000).

¶ 20. Belief that passenger is attempting to evade fare, no matter how reasonable or certain, does not justify resort to physical self-help. Proof of injury not required to establish a violation of section 2-60(b). **Taxi and Limousine Comm'n v. Tokosi,** OATH Index No. 513/00 (Feb. 18, 2000), **modified on penalty,** Comm'n Dec. (Apr. 12, 2000)

¶ 21. Petitioner's unrebutted evidence was sufficient to establish that respondent used intemperate language and, without provocation, struck a passenger in the face. The rule imposes an absolute prohibition on verbal abuse and/or the use of physical force against a passenger while on duty as a driver. **Taxi and Limousine Comm'n v. Jaffar,** OATH Index No. 2174/00 (July 13, 2000).

¶ 22. License revocation recommended for taxi driver, who was unhappy with a decision after a hearing, pushed and cursed at Commission employee and guard. Driver's conduct violated sections 2-60(a) and 2-60(b). **Taxi and Limousine Comm'n v. Nicolas,** OATH Index No. 1762/00 (Apr. 12, 2000).

¶ 23. In default hearing, agency convincingly proved through testimony of another cab driver that the respondent sprayed a Mace-like substance into his face after a minor traffic incident. Identity of respondent was not in question-other driver picked him out of photo array and management company certified he was driving the particular cab at the time of the incident. **Taxi and Limousine Comm'n v. Dianis,** OATH Index No. 1832/00 (Apr. 10, 2000).

¶ 24. Subsection (a) of this rule prohibits taxi drivers from threatening, harassing, or abusing passengers or other persons while performing their "duties and responsibilities as a driver." Taxi driver argued this section did not apply to a

dispute with a female motorist that occurred while he was off-duty, driving his wife to a train station. ALJ found the rule did apply and that the driver violated it when he cursed at the female motorist. The rule requires drivers to conduct themselves with appropriate deportment not only before passengers but also before "other persons." The judge inferred from the evidence that the driver was on duty before his wife called and asked him to take her to the train station. **Taxi & Limousine Comm'n v. Narcisse**, OATH Index No. 1998/07 (Aug. 16, 2007), **modified on penalty**, Comm'r/Chair Decision (Sept. 24, 2007).

¶ 25. Taxi driver found to have verbally harassed a passenger in violation of subsection (a) of this rule, but not to have assaulted the passenger in violation of subsection (b) of this rule. ALJ credited driver's testimony that he put his hand out at arm's length to avoid further confrontation, finding no intent to cause harm. Fine of $500 recommended for verbal harassment. **Taxi & Limousine Comm'n v. Conille**, OATH Index No. 361/08 (Nov. 15, 2007).

¶ 26. A licensed driver was charged with both verbal abuse and physical force against two fourteen year old female passengers. He pleaded guilty and surrendered his license pursuant to a stipulation under which he could reapply for a license after one year. The stipulation also said that if he reapplied, the application would be subject to a fitness review, that such review would consider the facts underlying the charges, and that there was no guarantee that the application would be approved. Petitioner waited three years before reapplying for a license. An administrative law judge reviewed the case, noted that only three years had elapsed since the incident, and found that petitioner was unfit to be a driver. The ALJ recommended that the application be denied, and the Commissioner agreed. The court upheld the denial of the application. Judicial review of an administrative determination is limited to whether this determination was arbitrary or capricious, or without a rational basis. The commission was free to weigh all the facts against petitioner, and consider any accomplishments made by the petitioner during the three year period that the petitioner's license was surrendered. The court agreed that the stipulation was based on serious misconduct which had occurred in the relatively recent past. In re Boutros Mankarios v. NYC Taxi and Limousine Comm. 2008 NY Slip Op. 2013, 49 AD3d 316, 853 NYS2d 69, 2008 NY App. Div. Lexis 1998.

¶ 27. Subsection (a) of this rule prohibits a driver from verbally abusing another person "while performing his duties and responsibilities as a driver." Driver charged with violation of this rule for cursing at another driver during an argument which ensued after a traffic incident. ALJ rejected driver's argument that the rule did not apply because the dispute occurred while he was off-duty. Regardless of whether the driver was on or off-duty, he was driving his taxi and he cursed at another person in a public place. Since the incident could reflect poorly on the Commission, it has an interest in regulating this conduct. **Taxi & Limousine Comm'n v. Sobczak**, OATH Index No. 1691/08 (Apr. 7, 2008), **modified on penalty**, Comm'r/Chair's dec. (May 9, 2008).

¶ 28.Announcing that "the time for more civilized drivers has come", Commissioner/Chair overrules **Taxi & Limousine Comm'n v. Baudin**, OATH Index No. 341/81 (Feb. 10, 1982), and progeny. In **Baudin**, the ALJ ruled that the use of profane language by a cab driver must be evaluated in the context of each case to determine whether such conduct goes beyond the mores of the community and "giving cognizance to the realities of life in New York City", and dismissed a charge that a taxi driver had violated this section when he used profanity during a fight with a pedestrian. **Taxi & Limousine Comm'n v. Sobczak**, Comm'r/Chair's dec. (May 9, 2008), **modifying on penalty** OATH Index No. 1691/08 (Apr. 7, 2008).

¶ 29. To the extent that prior precedent (**Taxi & Limousine Comm'n v. Baudin**, OATH Index No. 341/81 (Feb. 10, 1982), and progeny) could be read to exclude the penalty of license revocation for verbal abuse or harassment, those decisions were overruled by the Commissioner/Chair in **Taxi & Limousine Comm'n v. Sobczak**, Comm'r/Chair's dec. (May 9, 2008), **modifying on penalty** OATH Index No. 1691/08 (Apr. 7, 2008).

¶ 30. Commissioner/Chair imposed the penalty of a $1000 fine and a 30 day suspension for a taxi driver who cursed at another taxi driver following a traffic dispute. **Taxi & Limousine Comm'n v. Sobczak**, Comm'r/Chair's dec. (May 9, 2008), **modifying on penalty** OATH Index No. 1691/08 (Apr. 7, 2008).

¶ 31. The maximum suspension for a violation of subsection (a) of this section is thirty days. ALJ's recommendation of a ninety day suspension was impermissible. **Taxi & Limousine Comm'n v. Iqbal**, Comm'r/Chair's dec. (Nov. 25, 2008), **modifying on penalty** OATH Index No. 457/09 (Oct. 20, 2008).

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35 RCNY 2-61

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-61 Compliance with Law.

(a)(1) A driver, while performing his duties and responsibilities as a driver shall not commit or attempt to commit, alone or in concert with another, any act of fraud, misrepresentation or larceny against a passenger, Commission representative, public servant or any other person.

(2) A driver, while performing his duties and responsibilities as a taxicab driver, shall not commit or attempt to commit, alone or in concert with another, any willful act of omission or commission which is against the best interests of the public, although not specifically mentioned in these Rules.

(b) A driver shall not use or permit any other person to use his taxicab for any unlawful purpose.

(c) A driver shall not conceal any evidence of a crime nor voluntarily aid violators to escape arrest.

(d) A driver shall report immediately to the police any attempt to use his taxicab to commit a crime or escape from the scene of a crime.

(e) A driver shall, upon filing for Workers' Compensation benefits because of a disabling work-related injury, submit his or her driver's license to the Commission and cease driving, for so long as the driver claims a disability that prevents the driver from operating a taxicab. Such license shall not be returned until such driver presents to the Commission documentation of cessation of Workers' Compensation benefits due to recovery from such work-related disability, as provided in §1-43(d) of this title.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Aug. 10, 1998 §3, eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

Subd. (e) amended City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Subd. (e) added City Record Sept. 13, 1993 eff. Oct. 13, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Taxicab driver's license was revoked because evidence supported the determination that petitioner harassed, made sexual comments to and grabbed breast of female passenger in his taxicab. Taxicab Drivers rule 109 (35 RCNY 2-61(a)) prohibits driver, while performing his duties and responsibilities, from performing "any willful act of omission or commission which is against the best interests of the public, even though not specifically mentioned in these rules", is not unconstitutionally vague. Matter of Fernandez v. NYC Taxi & Limo. Comm., 193 AD2d 423 [1993].

¶ 2. Taxi driver violated this section in creating a disturbance in the Commission's offices, by swearing, yelling, threatening Commission employees, engaging in violent and tumultuous conduct, and refusing repeated lawful requests to leave the building. Taxi and Limousine Commission v. Cleef, OATH Index No. 306/95 (Oct. 12, 1994).

¶ 3. This rule, which prohibits a taxi driver from performing willful acts which are "against the best interests of the public," is broad enough to prohibit sexual harassment of and offensive touching of a female passenger. The court rejected a claim that the rule was unconstitutionally vague. Fernandez v. New York City Taxi and Limousine Commission, 193 A.D.2d 423 (1st Dept. 1993).

¶ 4. Appointing a gypsy cab to look like a medallion cab, including use of yellow paint reserved for medallion taxis, violates paragraph (a) of this section as well as §2-17 of this title, prohibiting the knowing operation of a vehicle for hire without a proper license, warranting revocation of the respondent's hack license. Taxi and Limousine Commission v. Min, OATH Index No. 669/96 (Nov. 13, 1995).

¶ 5. A taxicab driver who misrepresented to a passenger that he knew the route to the passenger's destination, then was unable to take her to that destination, violated paragraph (a) of this section. Taxi and Limousine Commission v. Panic, OATH Index No. 1875/96 (Aug. 28, 1996), modified as to penalty, Comm'n Decision (Nov. 7, 1996).

¶ 6. A taxicab driver who filed a report with the Commission falsely stating that his hack license had been lost, when in fact it had been forcibly taken by a passenger during a dispute, thereby committed the crime of offering a false instrument for filing in the second degree and a violation of paragraph (a) of this section. Taxi and Limousine Commission v. Ullah, OATH Index No. 1793/97 (Aug. 22, 1997).

¶ 7. A taxicab driver's false report to the Commission that his hack license had been lost constituted a violation of paragraph (a) of this section. Taxi and Limousine Commission v. Louis, OATH Index No. 1487/97 (Aug. 11, 1997).

¶ 8. Where a taxicab driver obtained a replacement hack license from the Commission by reporting that his original hack license had been lost, when in fact the original hack license had been confiscated by a police officer, the driver committed a violation of paragraph (a) of this section, the penalty for which was revocation of the hack license. Taxi and Limousine Commission v. Diallo, OATH Index No. 234/98 (Sept. 9, 1997).

¶ 9. Possession by a taxicab driver of a counterfeit hack license constituted a violation of paragraph (a) of this section, the penalty for which was revocation of the driver's hack license. Taxi and Limousine Commission v. Gondal, OATH Index No. 985/97 (Apr. 17, 1997).

¶ 10. Having obtained a replacement hack license by reporting his original hack license to be lost, the respondent posted as bond his superseded original hack license rather than his replacement license, in order to be able to continue driving his taxicab while his license was suspended. In addition, the respondent obtained a temporary hack license without disclosing his possession of the replacement hack license. Both acts constituted violations of paragraph (a) of this section, the penalty for which was revocation of the respondent's hack license. Taxi and Limousine Commission v. Mbaye, OATH Index No. 1749/97 (Sept. 11, 1997).

¶ 11. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of this section, as well as §§1-23, 1-60(b), 1-67(a), 2-26(d), 2-30(a), 2-31(a), and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

¶ 12. Taxicab driver's possession in her cab of a "zapper," a device that enables the driver to accelerate the cab's meter, constituted a violation of §2-26(d) of this title and paragraph (a) of this section, the penalty for which was revocation of the driver's hack license. Taxi and Limousine Commission v. Decriollo, OATH Index No. 1480/97 (Sept. 4, 1997).

¶ 13. Taxicab driver's forgery of a hack license constituted a fraud in violation of paragraph (a) of this section. Taxi and Limousine Commission v. Windell, OATH Index No. 1748/97 (July 11, 1997).

¶ 14. This rule, which states that drivers shall not engage in willful acts of commission or omission which is "against the best interests of the public," is not unconstitutionally vague. In this case, drivers disciplined for refusal of service had more than fair warning that such conduct could subject them to disciplinary action. Padberg v. McGrath-McKechnie, N.Y.L.J., May 2, 2002, page 32, col. 1, 2002 WL 826795, U.S. Dist.Ct., E.D.N.Y.

¶ 15. In Fernandez v. New York City Taxi & Limousine Commission, 193 A.D.2d 423, 597 N.Y.S.2d 337 (1st Dept. 1993), the court held that the "public interest" rule was not unconstitutionally vague as applied to driver who made sexual comments to and grabbed breasts of female passenger.

¶ 16. The TLC has the power to revoke a taxi driver's license even for a first-time refusal of service. Any unjustified service refusals by licensed taxicab drivers threatens the best interests of the public, since such refusals not only perpetuate the insidious problem of discrimination, but also adversely impact a vital and integral component of the transportation system of the city. Arif v. New York City Taxi & Limousine Commission, 3 A.D.3d 345, 770 N.Y.S.2d 344 (1st Dept. 2004). The Court of Appeals has granted leave to appeal.

¶ 17. In Lys v. New York City Taxi and Limousine Commission, N.Y.L.J., Jan. 31, 2002, page 21, col. 4, 2002 WL 338187 (Civ.Ct. New York Co.) the court held where a driver was accused of refusal of service, that the TLC could not summarily suspend the driver's license without a hearing. Moreover, the court held that a post-hearing suspension of the driver's license by reason of a first offense of service refusal unlawfully deprived the driver of the property right which the license represented. The penalties imposed were in excess of those called for by Admin. Code Sec. 19-507, which provided for a fine of between $250 and $350 for a first offense.

¶ 18. Taxi driver fraudulently claimed that his failure to appear at Commission hearing was because he had been a crime victim. The driver submitted altered police reports which falsely attested to his being a crime victim four days after the scheduled hearing. License revocation imposed. **Taxi and Limousine Comm'n v. Dimitrie,** OATH Index No. 1582/98 (Aug. 4, 1998).

¶ 19. Operation of a taxicab by defaulting respondent, one of two drivers and owners of the cab, with a meter acceleration device known as a "zapper," constituted a violation of this section and several others, the penalty for which was revocation of respondent's hack license and forced sale of his medallion. **Taxi and Limousine Comm'n v. Hom,** OATH Index Nos. 433 & 435/99 (Oct. 28, 1998).

¶ 20. The Commission proved that an unauthorized meter acceleration device had been installed in a taxi. The two named respondents were the full time drivers of the cab who had the motive and opportunity to tamper with the meter. Respondents' default permitted the administrative law judge to infer that neither driver had any defense to the evidence presented. Both drivers were found to have engaged in a scheme to defraud the riding public in violation of section 2-61. License revocation imposed. **Taxi and Limousine Comm'n v. Mohammad,** OATH Index Nos. 173-75/99 (Oct. 6, 1998).

¶ 21. Taxi driver is found to have overcharged two passengers based upon testimony from the passengers and meter acceleration device found in the cab during an inspection following the passenger complaints. License revocation imposed**. Taxi and Limousine Comm'n v. Flores,** OATH Index No. 1652/98 (Aug. 7, 1998).

¶ 22. Driver violated section 2-13(a) and section 2-61(a) when he falsely reported his hack license stolen in order to obtain a replacement license and then allowed an unauthorized person to use his replacement hack license, while respondent continued to use his original license. Revocation imposed. **Taxi and Limousine Comm'n v. Nawaz,** OATH Index No. 1433/97 (Jan. 28, 1998).

¶ 23. License revocation imposed for a taxi driver, operating his taxi while his license was suspended, who presented a fake (photocopy of original) hack license to a police officer when the officer served the driver with summonses. **Taxi and Limousine Comm'n v. Ilyas,** OATH Index No. 1574/98 (June 17, 1998).

¶ 24. Hearsay evidence, including an affidavit and several e-mails from a foreign passenger, proved that taxi driver had exposed himself to the female passenger. License revocation imposed. **Taxi and Limousine Comm'n v. Fernandez,** OATH Index No. 334/99 (Oct. 16, 1998).

¶ 25. License revocation recommended where undisputed evidence established that an unknown imposter represented himself to be respondent and presented respondent's hack license and DMV license in attempting to register for a course required for hack license renewal. **Taxi and Limousine Comm'n v. Elsayed**, OATH Index No. 462/99 (Jan. 11, 1999).

¶ 26. Respondent participated in a scheme to alter hack license and permit an unauthorized individual to drive a taxicab in violation of this section. **Taxi and Limousine Comm'n v. Shah**, OATH Index No. 514/99 (Jan. 27, 1999).

¶ 27. Respondents engaged in a scheme to defraud the public by operating taxicab while it was equipped with a zapper, or unauthorized device to accelerate the taximeter. **Taxi and Limousine Comm'n v. Kandov**, OATH Index Nos. 941-42/99 (May 12, 1999).

¶ 28. Respondents violated this section when they engaged in a scheme to ensure that they and others received passing grades on the drivers final licensing examination. Respondents, who denied any knowledge of or in involvement in the scheme, could not explain how the former employee could have been provided with their Commission-issued hack license numbers, taxi school each attended and other personal information without their knowledge and cooperation in the scheme. **Taxi and Limousine Comm'n v. Ghotra**, OATH Index Nos. 659 & 1938/99 (July 21, 1999).

¶ 29. Respondents, identified on the rate card as regular drivers of the taxicab in which the devices had been placed at least 6 or 7 months earlier, and possibly longer, were liable for meter tampering and operating cab with unauthorized device and engaging in a scheme to defraud the public, on and prior to date of discovery by Commission investigator. Inspection of taxicab revealed tampered harness wiring and presence of unauthorized meter acceleration device in a CB radio. **Taxi and Limousine Comm'n v. Zargar**, OATH Index Nos. 1130-31/99 (Mar. 9, 1999), **rev'd in part**, Comm'n Dec. (April 15, 1999).

¶ 30. There was insufficient evidence that a taxi driver bribed a Commission employee to secure a passing score on a drivers examination. Administrative law judge found that the employee's written statement, indicating only that she

accepted bribes from unidentified "middlemen" on behalf of forty drivers, was insufficient to sustain the allegations and recommended that the charges be dismissed. **Taxi and Limousine Comm'n v. Khan,** OATH Index No. 584/99 (Jan. 5, 1999).

¶ 31. License revocation recommended for taxi driver who abruptly drove his cab forward, with passenger partially inside the cab and the rear door open, causing the passenger to fall to the street, in violation of Drivers Rules section 2-61(a) and Vehicle and Traffic Law sections 600(2) and 1162. **Taxi and Limousine Comm'n v. Yousaf,** OATH Index No. 984/00 (Feb. 18, 2000).

¶ 32. Administrative law judge found that taxi driver manipulated and exposed his penis in the presence of a female passenger. **Taxi and Limousine Comm'n v. Kumar,** OATH Index No. 499/00 (Jan. 31, 2000).

¶ 33. In a default proceeding, administrative law judge found that taxi driver exposed his penis to a pedestrian and at the same time and place, punched that pedestrian. **Taxi and Limousine Comm'n v. Majeed,** OATH Index No. 1540/00 (Apr. 12, 2000).

¶ 34. Held, the Commission could not use its general rule prohibiting acts against the best interests of the riding public (§ 2-61(a)) as justification to revoke a license for a first-time service refusal offense, because service refusals are governed by a specific Administrative Code provision (§19-507) which contains a mandatory graduated penalty scheme limiting the penalty for a first offense to a fine. For service refusal, administrative law judge found violation of refusal rule (§2-50) but not a separate violation of rule 2-61(a). Administrative law judge recommended dismissal of section 2-61(a) violation. See e.g. **Taxi and Limousine Comm'n v. Ouali,** OATH Index No. 1855/00 (May 3, 2000), modified on penalty, Comm'n Dec. (May 1, 2001); **Taxi and Limousine Comm'n v. Mussa,** OATH Index No. 1053/00 (Feb. 2, 2000).

¶ 35. Violation of rules prohibiting driver or owner from acting against the best interest of the public may be found for conduct which is also prescribed by other rules where conflicting penalty provisions are not at issue. **Taxi and Limousine Comm'n v. Egalite,** OATH Index No. 1542/00 (Aug. 4, 2000) (citing **Taxi and Limousine Comm'n v. Jaffar,** OATH Index No. 2174/00 (July 13, 2000).

¶ 36. Driver's physical and verbal abuse of passenger was found to have violated both specific rule prohibiting abuse of passenger (§ 2-60) and catchall rule prohibiting conduct against the best interests of the public (§ 2-61(a)(2)). In cases involving service refusals, the general best interests rule can not be invoked in order to impose the penalty of license revocation in contravention of the specific graduated penalties set for refusals. Where conflicting penalty provisions are not at issue, findings of multiple rule violations may be made where the same conduct violates more than one provision or rule. **Taxi and Limousine Comm'n v. Jaffar,** OATH Index No. 2174/00 (July 13, 2000).

¶ 37. Respondent's race-based refusal to stop to pick up a passenger violated section 2-50(b), however, it does not generate a separate violation under section 2-61(a)(2). Section 2-61(a)(2) is a general provision that, by its own language, yields to the more specific rules regulating the conduct of drivers and is not applicable to respondent in the instant case. The concluding phrase, "although not specifically mentioned in these Rules," indicates that this section regulates conduct not otherwise articulated. This interpretation is in accord with general principles of statutory construction and applies here. **People v. Lawrence,** 64 N.Y.2d 200, 204, 485 N.Y.S.2d 233, 236 (1984); **People v. Mobil Oil Corp.,** 48 N.Y.2d 192, 200, 422 N.Y.S.2d 33, 38 (1979); N.Y. Statutes § 238 (McKinney Supp. 1999) (It is a well established principle in the construction of statutes that, whenever there is a general and a particular provision in the same statute, the general does not overrule the particular, but applies only where the particular enactment is inapplicable.); **Prospect v. Cohalan,** 109 A.D.2d 210, 216, 490 N.Y.S.2d 795, 799 (2d Dep't), **aff'd,** 65 N.Y.2d 867, 493 N.Y.S.2d 293 (1985). **Taxi and Limousine Comm'n v. Hayat**, OATH Index No. 1834/00 (June 9, 2000), **modified on penalty,** Comm'n Dec. (May 10, 2001).

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-62 Gifts Prohibited.

(a) A driver or any person acting on his behalf shall not offer or give any gift, gratuity or thing of value to any employee, representative or member of the Commission, or any public servant, or any dispatcher employed at a public transportation facility.

(b) A driver shall immediately report to the Commission and the NYC Department of Investigation any request or demand for a gift, gratuity or thing of value by any employee, representative or member of the Commission or any public servant or any dispatcher employed at a public transportation facility or authorized group-ride taxi line.

(c) A driver shall remove all currency from the taxicab's interior prior to its examination by any Commission personnel.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Testimony from TLC inspector, who admitted that he accepted bribes from those who presented taxicabs to him for inspection, was found insufficient to establish charges that taxi cab driver had bribed the inspector, due to inconsistencies in the inspector's testimony and other problems with his credibility. **Taxi and Limousine Comm'n v. Chrisanthos, Inc.,** OATH Index Nos. 1626-32/95 (July 21, 1998).

¶ 2. TLC inspector's testimony was found to be sufficient to establish that medallion owners attempted to bribe the inspector. **Taxi and Limousine Comm'n v. N & J Taxi, Inc.,** OATH Index Nos. 1542-53/95 (Jan. 9, 1996), **aff'd in part, remanded on other grounds sub nom. Statharos v. NYC Taxi & Limousine Comm'n,** 269 A.D.2d 280, 703 N.Y.S.2d 461 (1st Dep't 2000).

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-63 Conviction of a Crime.

(a) A driver shall notify the Commission in writing of his conviction of a crime within fifteen (15) days of such conviction, and he shall deliver to the Commission a certified copy of the certificate of disposition issued by the Clerk of the Court within fifteen (15) days of sentencing.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The fact that a taxi driver's criminal conviction was subject to a pending appeal did not relieve the driver of the obligation under this section to report his criminal conviction to the Commission. Taxi and Limousine Commission v. Ojo, OATH Index No. 949/94 (Aug. 4, 1994).

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Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-64 Participation in Processions and Parades. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 29, 1995 §42, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section added City Record June 26, 1992 eff. July 26, 1992.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-65 Merchandise Solicitation Prohibited.

(a) A driver shall not sell, advertise or recommend any service or merchandise to any passenger without prior written Commission approval.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-66 Cooperating with TLC.

(a) A driver shall, at all times, cooperate with all law enforcement officers, authorized representatives of the Commission, the NYC Department of Investigation, and dispatchers at public transportation terminals and at authorized group-ride taxi lines, and shall comply with all their reasonable requests, including but not limited to giving, upon request, his or her name and taxicab driver's license number and exhibiting the rate card, the required electronic or written trip record and, when the taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, if off duty produce the off-duty code receipt, and other documents required to be in his or her possession.

(b) A driver shall promptly answer and comply as directed with all questions, communications, directives and summonses from the Commission or its representatives and the NYC Department of Investigation or its representatives. A driver shall produce his or her taxicab driver's license and DMV license, required electronic or written trip records and, when the taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, if off duty produce the off-duty code receipt, or other documents whenever the Commission requires him or her to do so.

(c) A driver shall notify the Owner and the Commission by telephone immediately, and in writing within twenty-four (24) hours, upon the discovery of any of the following with respect to the following equipment:

(1) Any taximeter other than the taximeter approved by the Commission and indicated on the rate card, has been installed in the taxicab operated by the driver;

(2) Any taximeter seal in the taxicab operated by the driver has been removed or tampered with;

(3) Any unauthorized device has been connected to the taximeter, any seal, cable connection or electrical wiring of the taxicab operated by the driver, which may affect the operation of a taximeter;

(4) Any intervening connections, splices, "Y" connections or direct or indirect interruptions or connections of any kind whatsoever have been discovered on any wiring harness attached to the taximeter in the taxicab operated by the driver.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a), (b) amended City Record June 12, 2007 §23, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subds. (a), (b) amended City Record May 11, 2005 §15, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (c) added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §1-23 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of this section, as well as §§1-23, 1-60(b), 1-67(a), 2-26(d), 2-30(a), 2-31(a) and 2-61(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

¶ 2. Respondent was found to have failed to appear at a Commission hearing despite having received adequate notice of the hearing. Respondent's license was suspended after his default at the Commission hearing. Petitioner's proof of service showed notice was "unclaimed." Address to which notice was sent was the same address as multiple other notices, which respondent acknowledged receiving. **Taxi and Limousine Comm'n v. Shah**, OATH Index No. 514/99 (Jan. 27, 1999).

¶ 3. Taxicab drivers are required to comply with directives from the Commission and its representatives. Driver was found to have failed to comply with a directive to provide certain documents regarding a small claims judgment. The penalty for a proven violation of this rule is a $200 fine and license suspension until driver complies with directive. Suspension until compliance, without fine, is imposed where Commission requested only that sanction. **Taxi & Limousine Comm'n v. Hussain**, OATH Index No. 1297/08 (Jan. 11, 2008).

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§2-67 [Reserved]

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§2-68 [Reserved]

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§2-69 [Reserved]

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CHAPTER 2 TAXICAB DRIVERS RULES

§2-70 Program for Persistent Violators of Taxicab Drivers Rules (effective date, October 15, 1989).

(a) Any driver who has been found guilty of three or more violations that occurred within a fifteen month period and whose license has not been revoked shall be required to attend a remedial or refresher course and will accumulate one point on his taxicab driver's license. Any driver who does not complete such course upon notification by the Commission shall have his license suspended until compliance.

(b) Any driver who has accumulated six or more points against his taxicab driver's license within a fifteen month period and whose license has not been revoked shall have his license suspended for thirty days.

(c) Any driver who has accumulated ten or more points against his taxicab driver's license within a fifteen month period shall have his license revoked.

(d) For the purposes of subdivisions (a) through (c) of this section, a driver who has been found guilty of multiple violations arising from a single incident shall be deemed guilty of the single violation with the highest point total for purposes of this section.

(e) The minimum penalties set forth in subdivisions (a) through (c) of this section shall not preclude the imposition by the Commission of additional or more severe penalties in accordance with Rules of the Commission.

(f) The penalties set forth herein will be imposed following the hearing where the driver has been found in violation of rules that bring his accumulated point total to the level described in subdivisions (b) and (c). Persistent violator penalties will be in addition to those penalties imposed for the underlying rule violations.

(g) Rule violations that occurred prior to July 26, 1998 will not be deemed to have any point value for the purpose of imposing any persistent violator penalty under this section.

(h) The Schedule of Points is as follows:

Rule No.	Points	Reference Description
§2-12(a)	2	Operating a taxicab while taxi driver license is revoked, suspended or expired
§2-12(b)	2	Operating a taxicab without a valid class 1, 2, 3, or 4, or equivalent state driver license
§2-12(c)	1	Failure to surrender taxi driver license
§2-13(a)	3	Applying for or possession of more than one taxi driver license
§2-15(a)	1	Altered or mutilated taxi driver license
§2-17(a)	3	Operating an unlicensed vehicle
§2-21(a)	4	Reckless driving
§2-21(b)(3)		Hazardous moving violations as follows:
		Speeding:
§2-21(b)(3)(i)	3	1 to 10 miles above posted speed limit
	4	11 to 20 miles above posted speed limit
	5	21 to 30 miles above posted speed limit
	6	31 to 40 miles above posted speed limit
	8	41 or more miles above speed limit
§2-21(b)(3)(ii)	5	Failing to stop for school bus
§2-21(b)(3)(iii)	4	Following too closely
§2-21(b)(3)(iv)	4	Inadequate brakes (own vehicle)
§2-21(b)(3)(v)	2	Inadequate brakes (employer's vehicle)
§2-21(b)(3)(vi)	3	Failing to yield right of way
§2-21(b)(3)(vii)	3	Traffic signal violation
§2-21(b)(3)(viii)	3	Stop sign violation
§2-21(b)(3)(ix)	3	Yield sign violation
§2-21(b)(3)(x)	3	Railroad crossing violation
§2-21(b)(3)(xi)	3	Improper passing
§2-21(b)(3)(xii)	3	Unsafe lane change
§2-21(b)(3)(xiii)	3	Driving left of center
§2-21(b)(3)(xiv)	3	Driving in wrong direction
§2-21(b)(3)(xv)	3	Leaving scene of an accident involving property damage or injury to animal
§2-21(c)	3	Failure to stop after an accident
§2-21(d)	3	Failure to report accident to owner
§2-23(a)	1	Operation for more than 12 consecutive hours
§2-24(a)(1)	1	Driver's name not on rate card
§2-24(a)(2)	1	Vehicle operated by unspecified driver
§2-24(b)	2	Improper sublease
§2-25(e)	2	Locking rear doors while on duty
§2-25(g)	5	Permitting operation by unlicensed driver
§2-25(h)	3	Use of portable or hands-free electronic device while operating taxicab; first offense or second offense committed within any 15-month period
	4	Use of portable or hands-free electronic device while operating taxicab; third offense committed within any 15-month period
§2-26(d)	1	Operating taxicab with unauthorized equipment
§2-27(a)(2)	2	Operating a taxicab without taxi driver license in the display frame
§2-27(a)(3)	1	Operating a taxicab without a rate card
§2-30(a)	2	Operating taxicab with broken meter seals, or with unauthorized meter

§2-30(c)	1	Rooflight not illuminated
§2-31(a)	3	Operating with taximeter seals broken
§2-31(b)	3	Tampering with taximeter or equipment
§2-31(c)	3	Tampering with rooflight
§2-32(a)	1	Failure to follow prescribed procedure when taximeter becomes defective during a trip
§2-33(a)	1	Improper operation of rooflight
§2-33(c)	1	Improper operation of rooflight after passenger leaves taxicab
§2-34(b)	2	Collection of separate fares from individuals sharing a taxicab ride
§2-34(c)	2	Failure to give correct change
§2-35(a)(1-4)	2	Violation of rules applicable to trips beyond the limits of New York City
§2-35(b)(2)	2	Failure to inform a passenger of the rate of fare before the start of trips beyond the limits of New York City, or to inform a passenger when the taxi crosses the City limit
§2-42(a)	2	Discourteousness to passengers
§2-43(c)	2	Picking up additional passengers
§2-45(a)	2	Not using shortest reasonable route
§2-45(b)	2	Not complying with request to change destination
§2-46(a)	1	Failure to comply with a reasonable request from a passenger
§2-46(b)	1	Failure to give passenger a receipt
§2-52(a-b)	1	Abuse of procedure to go "OFF DUTY"
§2-53(a)	1	Abuses while "OFF DUTY"
§2-54(a)	1	Soliciting
§2-54(c)	3	Soliciting passenger by giving misleading information
§2-55(a)	1	Soliciting near bus stop
§2-55(c)(1-4)	1	Soliciting at airports, near taxi stand, et al.
§2-60(a)	3	Harassment
§2-60(b)	4	Physical abuse
§2-61(a)(1)	4	Fraud or larceny
§2-61(a)(2)	3	Action against the best interests of the public
§2-61(b)	3	Using taxicab for any unlawful purpose
§2-61(c)	3	Concealing evidence of a crime
§2-61(d)	3	Failure to report attempt to use taxi to commit crime
§2-62(b)	3	Failure to report request for gift/gratuity
§2-63(a)	3	Failure to notify TLC of criminal conviction
§2-66(a)	2	Failure to cooperate with law enforcement officials
§2-66(b)	2	Failure to comply with Commission request

(i) Any licensee who voluntarily attends and satisfactorily completes a remedial or refresher course approved by the Commission and who furnishes the Commission with proof that the course was completed on or before August 31, 1999, shall have two (2) points deducted from the total number of points assessed for the purpose of determining any suspension or revocation pursuant to this Rule. No point reduction shall affect any suspension or revocation action which may be taken pursuant to these Rules prior to the completion of the course; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

(j) Any licensee who voluntarily attends and satisfactorily completes a remedial or refresher course approved by the Commission, and who furnishes the Commission with proof that the course was completed on or after September 1, 1999, shall have two (2) points deducted from the total number of points assessed pursuant to this Rule. No point reduction shall affect any suspension or revocation action which may be taken pursuant to these Rules prior to the completion of the course. No person shall receive a point reduction pursuant to this subdivision more than once in any five year period.

(k) It shall be an affirmative defense that the act which formed the basis for the violation was beyond the control and influence of the taxicab driver.

HISTORICAL NOTE

Section amended City Record Jan. 31, 2000 §3, eff. Mar. 1, 2000. [See T35 §2-07 Note 1]

DERIVATION

Section amended City Record June 26, 1998 eff. July 26, 1998. [See Note 1]

Section added City Record June 26, 1992 eff. July 26, 1992.

§2-21(b)(3)(i) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(ii) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(iii) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(iv) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(v) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(vi) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(vii) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(viii) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(ix) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(x) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(xi) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(xii) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(xiii) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(xiv) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(xv) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

Subd. (h) §2-25(h) amended City Record Dec. 30, 2009 §5, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

§2-25(h) added City Record May 27, 1999 §2, eff. June 26, 1999. [See T35 §2-25 Note 1]

§2-30(b) amended City Record Dec. 29, 1995 §43, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§2-30(c) amended City Record Dec. 29 1995 §43, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§2-30(d) repealed City Record Dec. 29, 1995 §43, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§2-52(a-c) renamed 2-52(a-b) City Record Dec. 29, 1995 §43, eff. Feb. 1, 1996. [See T35 §1-01

Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1998:

The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the New York City Charter, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in New York City; under Section 2303(b)(2) of such Charter, which empowers the TLC to establish standards for service and safety under Section 2303(b)(13) of such Charter, which empowers the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under Section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The rules amend and reconstitute the TLC's Persistent Violator Program, replacing the current system where Taxicab Driver rule violations are assigned a class number with a point system. Also, a Persistent Violator Program with a similar point system is established for for-hire vehicle drivers.

The Commission currently has a Persistent Violator Program in place which imposes progressive penalties upon taxicab drivers who chronically violate Commission rules. The amendment simplifies the process by establishing a point system for certain rule violations. The most serious offenses are assigned the highest number of points. Some offenses are assigned no points; however, a driver convicted of any three rule violations within an 18 month period will be assigned one additional point. This new program identifies problem taxicab drivers more expeditiously, and unsafe drivers will be promptly suspended or removed from the industry. The Commission currently utilizes a cumbersome review process that involves classifying rule violations and counting the different classes of violations to determine if any of the six combinations of rule violations have been met. This process is administratively difficult to monitor and control. Hearings are then conducted in which an Administrative Law Judge reviews the accuracy of Commission records.

It is equally important to identify for-hire vehicle drivers who chronically violate Commission rules. The Commission, by adding a point based "Persistent Violator Program" to the For Hire Vehicle Rules, will be able to promptly identify and discipline problematic drivers.

2. Statement of Basis and Purpose in City Record Oct. 21, 1998: The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the New York City Charter, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in New York City; under Section 2303(b)(2) of such Charter, which authorizes the TLC to establish standards for service and safety under Section 2303(b)(13) of such Charter, which authorizes the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under Section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. On May 28, 1998, the TLC adopted changes to its rules which amended and reconstituted the TLC's Persistent Violator Program, replacing the system where taxicab driver rule violations are assigned a class number with a point system. In addition, a Persistent Violator Program with a similar point system was established for for-hire vehicle drivers. This amendment makes certain technical changes to the numbering of several rules. As part of the TLC Reforms adopted on May 28, 1998 by the Commission, certain traffic offenses were defined as hazardous moving violations and renumbered. These violations were assigned points pursuant to the Persistent Violator Program. For the purpose of clarity, the rule sections assigning points under the Persistent Violators Program are renumbered to conform to the changes in the hazardous moving violation sections.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The constitutionality of Sec. 2-70, which relates to points to be assigned to taxicab drivers for violations of proscribed conduct, has been upheld as a valid exercise of the police power. United Car & Limousine Foundation, Inc. v. New York City Taxi and Limousine Comm., 680 N.Y.S.2d 814 (Sup.Ct. New York Co. 1998).

¶ 2. Where a taxi driver accumulates 8 points within an 18 month period, suspension of the driver's license is mandatory, and the Taxi and Limousine Commission does not have discretion to impose a lesser penalty. Muscadi v. McGrath-McKechnie, N.Y.L.J., Dec. 20, 1999, page 33, col. 1 (Sup.Ct. Queens Co.).

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§2-71 [Reserved]

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§2-72 [Reserved]

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§2-75 [Reserved]

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§2-76 [Reserved]

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§2-77 [Reserved]

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§2-80 [Reserved]

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§2-81 [Reserved]

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§2-82 [Reserved]

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Title 35 Taxi and Limousine Commission

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§2-83 [Reserved]

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Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-84 [Reserved]

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35 RCNY 2-85

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-85 Procedures in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (c) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 1]

Subd. (e) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 1]

Subd. (e) amended City Record May 15, 1995 §2, eff. June 19, 1995. [See T35 §1-85 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 29, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The adopted regulations shorten the amount of notice required to be given for hearings on summonses written to drivers for traffic violations. The 15 day notice of hearing remains in effect for all other violations.

The purpose of the adopted regulations is to rapidly respond to public safety concerns. Drivers who are accused of driving in an unsafe manner could be dealt with in a speedy fashion. Timely response is an important element in the deterrence of misconduct.

Based on public comments, the proposal was revised to require five business days prior notice, rather than calendar days. This provides at least two additional days of prior notice. The rule was then clarified to specify as to other violations that calendar days will be counted, as at present. In addition, the rule allows respondents in this instance to adjourn the hearing up until the date of the hearing in order to provide ample opportunity to obtain counsel.

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35 RCNY 2-86

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Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-86 Penalties for Violation of Rules Governing Taxicab Drivers.

Rule No.	Penalty All fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	Personal Appearance-Required
§2-03(a)	$25	No
§2-03(b)	$25	No
§2-08	See chapter 16 of this title	No
§2-12(a)	$50-350 and/or suspension up to 30 days	Yes
§2-12(b)	$100-350 and/or suspension up to 30 days; summary suspension until compliance pursuant to §8-17(b) of this title. *Presentation of a valid license in effect on the date of the violation shall result in a dismissal of the charge.	Yes
§2-12(c)	$100	No
§2-12(d)	$50	No
§2-13(a)	$100-350 and/or suspension up to 30 days	Yes
§2-13(b)	Revocation and $10,000	Yes
§2-14(a)	$50	No
§2-15(a)	$50	No
§2-16(a)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of Rule 2-66(b).)	N/A**
§2-16(b)	$50	No

§2-17(a)	$25-350 and/or suspension up to 30 days	Yes
§2-19(b)(3)	Suspension until compliance (If compliance after 30 days, $200 penalty for reinstatement)	N/A**
§2-20(a)	Revocation	Yes
§2-21(a)	$350-1,000 and/or suspension up to 30 days or revocation if driver is found guilty of having violated this rule more than 3 times within an 18 month period.	Yes
§2-21(b)(1)	$50	No
§2-21(b)(2)	$150	No
§2-21(b)(3)	$250	No
§2-21(c)	$50-350 and/or suspension up to 30 days or revocation if driver is found guilty of having violated this rule more than 3 times within a 12 month period.	Yes
§2-21(d)	$50-350 and/or suspension up to 30 days	Yes
§2-23(a)	$25	No
§2-24(a)	$100-350. For the third or subsequent violation within 36 months, the license may also be suspended for up to 30 days.	Yes
§2-24(b)	$100-350. For the third or subsequent violation within 36 months, the license may also be suspended for up to 30 days.	Yes
§2-25(a)	Revocation	Yes
§2-25(b)	$25	No
§2-25(c)	For offenses occurring prior to July 26, 1999, $50 for the first conviction within a 12 month period and $150 for each subsequent violation. For offenses occurring on or after July 26, 1999, $150.	No
§2-25(d)	$50	No
§2-25(e)	$50-250 and/or suspension up to 30 days	Yes
§2-25(f)	$25	No
§2-25(g)	$100-350 and/or suspension up to 30 days	Yes
§2-25(h)	$200	No
§2-25(i)	$50 plus restitution to the E-Z Pass tag holder of any amount not reimbursed, and suspension until compliance with any restitution order	Yes
§2-26(a)	$25	No
§2-26(b)	$25	No
§2-26(c)	$50	No
§2-26(d)	$50-350 and/or suspension up to 30 days	Yes
§2-26(e)	$25	No
§2-26(f)(i)	$250 and suspension until compliance.	Yes
§2-26(f)(ii)	$250 and suspension until compliance.	Yes
§2-26(g)	$100	No
§2-27(a)(1)	$30	No
§2-27(a)(2)	$50	No
§2-27(a)(3)	$50	No
§2-27(a)(4)	$25	No
§2-27(a)(5)	$25	No
§2-27(b)	$25 for violation of each subdivision hereof.No fine for violation of this rule shall exceed $50.	No
§2-27(c)	$50	No
§2-27(d)	$50	No
§2-28(a)(1-5)	$15 per omitted entry on an electronic or written trip record; provided that the total penalty for violation of this rule shall not exceed $30 per electronic or written trip record	No
§2-28(b)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of Rule 2-66[b].)	N/A**

§2-28(c)	$25	No
§2-28(d)	$50	No
§2-28(e)	$100-350 and/or suspension up to 30 days	Yes
§2-28(f)	$50	No
§2-30(a)	$100	No
§2-30(b)	$100	No
§2-30(c)	$25	No
§2-31(a)	$50-350 and/or suspension up to 30 days	Yes
§2-31(b)	$50-350 and/or suspension up to 30 days	Yes
§2-31(c)	$50-350 and/or suspension up to 30 days	Yes
§2-32(a)	$50-350 and/or suspension up to 30 days	Yes
§2-32(b)	$50	No
§2-32(c)	First violation: $200; Second violation: $300; Third violation: $500; In addition to the penalty payable to the Commission, the administrative law judge may order the driver to pay restitution to the passenger, equal to the excess amount that was charged to the passenger.	Yes
§2-33(a)	$100 if the occupant is a paying passenger$25 if non-paying	No
§2-33(b)	$50	No
§2-33(c)	$100	No
§2-34(a)	*Mandatory penalties as set forth in §2-87	Yes
§2-34(b)	$50-150	Yes
§2-34(c)	$50-150	Yes
§2-34(d)	$50	No
§2-35(a)(1)	$100	No
§2-35(a)(2)	$100	No
§2-35(a)(3)	$25	No
§2-35(a)(4)	$25	No
§2-35(b)(1)	$100	No
§2-35(b)(2)	$25	No
§2-35(b)(3)	$25	No
§2-35(b)(4)	$25	No
§2-39(a)		N/A**
§2-42(a)	$150	No
§2-43(a)	$50	No
§2-43(b)	$75 for a violation involving a person $25 for a violation involving luggage	No
§2-43(c)	$100	No
§2-44(a)	$50	No
§2-44(b)	$100	No
§2-45(a)	$50-150	Yes
§2-45(b)	$50-200	Yes
§2-45(c)	$150-350	Yes
§2-46(a)	$50-100	Yes
§2-46(b)	$25	No
§2-46(c)	$25	No
§2-46(d)	$25	No
§2-47(a)	$100	No
§2-47(b)	$25	No

§2-50(a)	*Mandatory penalties as set forth in §2-87	Yes
§2-50(b)	*Mandatory penalties as set forth in §2-87	Yes
§2-50(c)	*Mandatory penalties as set forth in §2-87	Yes
§2-50(d)	*Mandatory penalties as set forth below	Yes
§2-50(e)		N/A**
§2-52(a)	$25	No
§2-52(b)	$25	No
§2-52(c)	$25	No
§2-52(d)	$75	No
§2-53(a)	$75	No
§2-54(a)	$50	No
§2-54(b)	$50	No
§2-54(c)	$50-200	Yes
§2-55(a)	$100	No
§2-55(b)	$100	No
§2-55(c)	$50	No
§2-56(a)	$100	No
§2-56(b)	$50	No
§2-56(c)	$50	No
§2-56(d)	$50	No
§2-56(e)	$50	No
§2-56(f)	$50	No
§2-57(a)	$50	No
§2-57(b)	$100	No
§2-59(a)	$25	No
§2-59(b)	$50-250	Yes
§2-59(c)	$25	No
§2-60(a)	$350-1,000 and suspension up to 30 days or revocation	Yes
§2-60(b)	$500-1,500 and/or suspension up to 60 days or revocation	Yes
§2-61(a)(1)	$350-1,000 and/or suspension up to 60 days or revocation	Yes
§2-61(a)(2)	$150-350 and/or suspension up to 30 days or revocation	Yes
§2-61(b)	$100-350 and/or suspension up to 30 days	Yes
§2-61(c)	$350-1,000 and/or suspension up to 30 days or revocation	Yes
§2-61(d)	$100-350 and/or suspension up to 30 days	Yes
§2-61(e)	$75-150	Yes
§2-62(a)	Revocation and $10,000	Yes
§2-62(b)	$100	No
§2-62(c)	$50	No
§2-63(a)	$50-250	Yes
§2-65(a)	$50	No
§2-66(a)	$50-350	Yes
§2-66(b)	$200 and suspension until compliance	Yes
§2-66(c)	$500-1,500 and/or suspension up to 60 days or revocation	Yes

**Not Applicable

HISTORICAL NOTE

Section amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record June 26, 1992 eff. July 26, 1992.

Penalty column heading amended City Record Nov. 2, 2006 §8, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§2-03(c) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-08 added City Record Nov. 23, 2007 §7, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

§2-11(a) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-12(b) amended City Record Nov. 2, 2006 §8, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§2-13(a) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-13(b) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§2-13(c) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-14(a) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-14(b) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-15(a) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-15(b) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-16(a) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-19(b)(3) added (Replaces §2-19(b)) City Record Feb. 14, 2006 §2, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

§2-19(b) added (temporarily) City Record Nov. 21, 2005 §2, eff. Nov. 21, 2005 until Mar. 21, 2006 per Charter §1043(h) and 60 day extension notice in City Record Jan. 6, 2006. [See T35 §2-19 Note 2]

§2-20(a) amended twice in City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 3 and T35 §1-86 Note 2]

§2-21(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§2-21(b)(1) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§2-21(b)(1) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-21(b)(2) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§2-21(b)(2) added City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-21(b)(3) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§2-25(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-25 Note 2]

§2-25(c) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §6-18 Note 1]

§2-25(g) added City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-25(h) added City Record May 27, 1999 §3 eff. June 26, 1999. [See T35 §2-25 Note 1]

§2-25(i) added City Record Dec. 1, 1999 §9, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§2-26(e) amended City Record July 12, 1993 eff. Aug. 11, 1993.

§2-26(f)(i) added City Record June 12, 2007 §24, eff. July 12, 2007. [See T35 §1-01 Note 3]

§2-26(f)(ii) added City Record June 12, 2007 §24, eff. July 12, 2007. [See T35 §1-01 Note 3]

§2-26(g) added City Record June 12, 2007 §24, eff. July 12, 2007. [See T35 §1-01 Note 3]

§2-27(a)(6) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-27(d) added City Record Dec. 1, 1999 §9, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§2-28(a)(1-5) amended City Record May 11, 2005 §16, eff. June 10, 2005. [See T35 §3-03 Note 10]

§2-28(a)(1-5) amended City Record Dec. 1, 1999 §9, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§2-28(f) added City Record Dec. 1, 1999 §9, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§2-30(b) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-30(c) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-30(d) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-32(c) added City Record June 12, 2007 §24, eff. July 12, 2007. [See T35 §1-01 Note 3]

§2-34(e) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-03(f) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-42(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §6-18 Note 1]

§2-45(c) added City Record June 12, 2007 §24, eff. July 12, 2007. [See T35 §1-01 Note 3]

§2-47(a) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-50(d) amended City Record July 8, 1997 §8, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

§2-50(e) added City Record July 8, 1997 §8, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

§2-52(b) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-52(c) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-52(d) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-52(e) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-52(f) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-60(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§2-60(b) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§2-61(a)(1) amended City Record Aug. 10, 1998 eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

§2-61(a)(2) added City Record Aug. 10, 1998 eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

§2-61(c) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§2-61(e) amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

§2-62(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§2-64(a) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-66(b) amended City Record Dec. 1, 1999 eff. Dec. 31, 1999. [Note 1]

§2-66(b) amended City Record July 12, 1993 eff. Aug. 11, 1993.

§2-66(b) amended City Record Dec. 1, 1999 eff. Dec. 31, 1999. [See Note 1]

§2-66(c) added City Record Jan. 31, 2000 §6, eff. Mar. 1, 2000. [See T35 §1-23 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 1, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of the transportation of persons by licensed vehicles for-hire in the city; under Section 2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under Section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under Section 19-506 of said Code, authorizing the Commission to impose penalties for violation of Commission Rules.

The rules promulgated herein amend the penalties for violation of various rules requiring licensees to comply with TLC directives, such as appearing at the TLC Adjudications Tribunal to answer summonses. The present range of fines are replaced with a set fine of $200. The current range of fines for these Rule violations are: from $75 to $350 for medallion taxicab owners, taxicab drivers, and commuter van operators; from $100 to $250 for for-hire vehicle licensees; and from $50 to $150 for Paratransit Vehicle Owners or Drivers. In addition, the penalty will continue to include suspension of a TLC license until compliance with TLC directives or until the respondent has answered the TLC summons.

These rule violations are cited when a licensee has failed to appear for a scheduled hearing or has failed to comply with a Commission request to supply information, such as a trip sheet, insurance or accident information, or the identity of a driver involved in an incident. Many of these requests directly impact upon passenger safety (such as requests made to an owner to identify a driver involved in an incident). A summons is issued in order to penalize the respondent for non-compliance and to compel the respondent to cooperate with the TLC. The respondent's license is then suspended until the summons is answered either through providing the required information, or in the case of a hearing default, payment of the fine or the filing of a motion to vacate the default.

The Commission is increasing the penalty for these rule violations in order to deter respondents from engaging in this type of misconduct. For example, during 1997, 497 summons were issued to medallion taxicab drivers, 2,947 summons were issued to medallion taxicab owners and approximately 55 summonses were issued to FHV licensees for failure to comply with TLC communications. These statistics do not include charges for failure to appear for a hearing at the TLC Adjudications Tribunal. During 1997 and 1998, approximately twenty (20%) percent of all respondents failed to appear for their scheduled hearings. In most cases, a fine of $75 was imposed upon an adjudication of guilt. By substantially increasing the penalty, the Commission anticipates increased compliance with Commission directives and communications, as well as an increased rate of appearances at hearings.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-87

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-87 Penalties Mandated by Local Law.

The following penalties shall apply to those violations committed on or after February 15, 1990.

(a) (1) Any driver who has been found to have violated a provision of §§2-34(a), 2-50(a), 2-50(b), 2-50(c) and 2-50(d) or any combination thereof, shall be fined not less than $200.00 nor more than $350.00. Any driver who has been found in violation of any of the provisions of such rules or any combination thereof, for a second time within a twenty-four month period, shall be fined not less than $350.00 nor more than $500.00, and the Commission may suspend the driver's license of such driver for a period not to exceed thirty days. The Commission shall revoke the driver's license of any driver who has been found to have violated any of the provisions of §§2-34(a), 2-50(a), 2-50(b), 2-50(c) and 2-50(d) or any combination thereof, three times within a thirty-six month period.

Nothing contained herein shall limit or restrict any other authority the Commission may have to suspend or revoke a driver's license.

(2) Notwithstanding the provisions of paragraph (a)(1) above, the Commission shall revoke the driver's license of any person found to have violated §2-34(a) by charging or attempting to charge a fare of ten dollars or more above the approved rate of fare for taxicabs.

(b) The twenty-four and thirty-six month periods referred to above are to be calculated with reference to the dates the violations occurred. The period begins to run from the date of the first violation. No violation committed prior to February 15, 1988 shall be counted as a prior violation.

(c) The Commission shall not issue any license to any person, who has had his taxicab driver's license revoked pursuant to §§2-34(a), 2-50(a), 2-50(b), 2-50(c) and 2-50(d) for a period of one year from the date of such revocation.

HISTORICAL NOTE

Section amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) par (1) amended City Record July 8, 1997 §9, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (c) amended City Record July 8, 1997 §9, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. See Padberg v. McGrath-McKechnie, 2002 WL 826795, N.Y.L.J., May 2, 2002, page 32, col. 1, U.S. Dist.Ct., E.D.N.Y., discussed at note 2 to 35 RCNY 2-61, and Lys v. New York City Taxi and Limousine Commission, N.Y.L.J., Jan. 31, 2002, page 21, col. 4, 2002 WL 338187 (Civ.Ct. New York Co.), discussed at note 3 of 35 RCNY 2-61.

¶ 2. Mandatory penalties for service refusal set forth in Administrative Code section 19-507(b) supersede any general discretionary authority to revoke respondent's license set forth in rule 2-87. **Taxi and Limousine Comm'n v. Baig,** OATH Index No. 1115/00 (Mar. 31, 2000), **modified on penalty,** Comm'n Dec. (July 25, 2000).

¶ 3. Commission has discretion to seek revocation for violations of section 2-28, which are not addressed by mandatory penalties under the Administrative Code. **Taxi and Limousine Comm'n v. Baig,** OATH Index No. 1115/00 (Mar. 31, 2000), **modified on penalty,** Comm'n Dec. (July 25, 2000).

¶ 4. Penalty for first time service refusal under this section is limited to a fine between $200 and $350. Maximum fine of $350 for refusal was recommended where verbal abuse and refusal were found to be egregious. **Taxi & Limousine Comm'n v. Hussein**, OATH Index No. 572/08 (Jan. 14, 2008).

¶ 5. Revocation and fines totaling $1550 were imposed upon a driver found to have verbally harassed a passenger, including use of racially discriminatory language, used a cell phone while driving, and refused to allow the passenger to pay with a credit card. **Taxi & Limousine Comm'n v. Iqbal,** OATH Index No. 457/09 (Oct. 20, 2008), **modified on penalty**, Comm'r/Chair's dec. (Nov. 25, 2008).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-88

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-88 Additional Penalties.

Violation of any of these rules may also lead to revocation or suspension of a taxicab driver's license and/or fines in excess of those set forth in the above §§2-86 and 2-87, as provided in the "Procedures In The Event Of A Violation Of Commission Rules." In addition, a driver may be required to obtain a certificate of attendance for the required hours of instruction in taxi related subjects at a school approved by the Commission. In addition to the penalties set forth above, the Commission may require a driver to return to the passenger the amount of any overpayment as determined by the hearing officer.

HISTORICAL NOTE

Section amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record June 26, 1992 eff. July 26, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Mandatory penalties for service refusal set forth in Administrative Code section 19-507(b) supersede any general discretionary authority to revoke respondent's license set forth in rule 2-88. **Taxi and Limousine Comm'n v. Baig,** OATH Index No. 1115/00 (Mar. 31, 2000), **modified on penalty,** Comm'n Dec. (July 25, 2000).

¶ 2. Commission has discretion to seek revocation for violations of section 2-28, which are not addressed by mandatory penalties under the Administrative Code. **Taxi and Limousine Comm'n v. Baig,** OATH Index No. 1115/00

(Mar. 31, 2000), **modified on penalty,** Comm'n Dec. (July 25, 2000).

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-01 Vehicle Hack-Up and Vehicle Transfer.

(a) "Hack-up" means to outfit a vehicle as a taxicab and obtain approval from the Commission for that vehicle to serve as a taxicab, for the first time. Hack-up requires compliance with:

(1) all specifications, outfitting requirements, and other requirements of Rule 3-03;

(2) all vehicle inspection requirements;

(3) all insurance requirements, meter and meter testing requirements, marking specifications, and other requirements of the Owner's Rules, as set forth in Chapter 1 of these Rules; and

(4) the requirements concerning a vehicle's age, as set forth in subdivisions (b) and (c) of this section.

(b) Except as otherwise provided in subsection 3-01 (c)*1 a vehicle may be hacked-up only if it is a new vehicle that meets all of the following requirements:

(1) It is purchased in the first sale from a licensed dealer or a manufacturer. An original of the manufacturer's certificate of origin (MSO) or of the certificate of title must be submitted, in addition to relevant documents of ownership.

(2) The vehicle must be of the latest model year available from the manufacturer or of the model year immediately preceding the latest. When a manufacturer ceases production of a model, then vehicles of the last two model years may only be hacked-up until September 30 of the calendar year two years subsequent to the designated model year. (For

example, if Chevrolet ceases production of the Caprice after the 1996 model, then a new vehicle of the 1996 Chevrolet Caprice may only be hacked-up until September 30, 1998.)

(3) The vehicle must have accumulated fewer than 500 miles traveled, at the time of hack-up.

(c) Upon hack-up, a vehicle may continue in service with the same medallion, so long as the vehicle passes inspection and has not yet met its retirement date, as specified in Rule 3-02.

(d) A vehicle that was hacked-up pursuant to subdivision (b) may be transferred to another medallion, with the approval of the Commission, only if the vehicle passes inspection, has not yet met its retirement date as specified in Rule 3-02, and meets the requirements of either subsection (1), (2), (3), or (4).

(1) **Repossessions.** The title owner at the time of transfer of the vehicle to another medallion has acquired the vehicle pursuant to a repossession sale by the previous owner's purchase money lender, and the repossession occurs within twenty-four months of hack-up.

(2) **Long-term drivers.** The title owner at the time of transfer of the vehicle to another medallion was a long-term driver of the vehicle, as defined in Rule 1-01, for at least five months of its operation under the previous medallion and will be a long-term driver under the new medallion.

(3) **Same medallion owner or agent.** The owner of the medallion or the owner's agent transfers the vehicle to another medallion operated by the same owner or agent.

(4) **Compressed natural gas vehicle.** The owner of a medallion or the owner's agent may transfer a vehicle fueled by Compressed Natural Gas to any other medallion owner or owner's agent.

(e) Upon inspecting a vehicle to authorize its transfer to another medallion pursuant to subdivision (f) (a "re-hack"), the Commission may charge an inspection fee of $50 as well as a $25 fee pursuant to Rule 1-06.

(f) Notwithstanding the foregoing, an Independent Taxicab Owner or a long-term driver, who is also the owner of a vehicle may apply to the Chairperson or his/her designee for an extension of the scheduled retirement date of said vehicle, for a period not to exceed twelve (12) months from the original retirement date. Such application shall comply with each of the following conditions:

(1) The vehicle owner shall submit a request in writing, together with any supporting documentation, to the Chairperson or his/her designee, at least thirty (30) days prior to the scheduled retirement date. This thirty (30) day requirement may be waived by the Chairperson or his/her designee upon a showing of a significant change in the vehicle owner's circumstances that occurred within thirty (30) days of the scheduled retirement date, or for other good cause demonstrated to the Chairperson.

(2) The vehicle owner must demonstrate an economic or other personal hardship which the Chairperson or his/her designee determines would create an undue burden upon the owner if the extension were not granted.

The Chairperson, or his/her designee, may grant an extension of up to twelve months from the original retirement date. The vehicle must continue to meet all safety and emissions requirements of the Commission. The Chairperson or his/her designee shall withdraw any such extension granted in the event the subject vehicle is determined by the Commission at any time to be unsafe for operation.

HISTORICAL NOTE

Section repealed and added City Record Jan. 30, 1996 eff. Mar. 1, 1996. Note internal relettering

by Law Department per Charter §1045(b). [See Note 3]

Subd. (c) relettered City Record Jan. 29, 2002 eff. Feb. 28, 2002. Formerly Subd. (d)

Subd. (d) relettered City Record Jan. 29, 2002 eff. Feb. 28, 2002. [See Note 1] Formerly Subd. (e) amended City Record June 1, 2000 and June 5, 2000 eff. July 1, 2000 [See Note 2]. Formerly Subd. (f) repealed & added City Record Dec. 2, 1996 eff. Jan. 1, 1997 [See T35 §1-78 Note 1], amended City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 4]

Subd. (e) relettered City Record Jan. 29, 2002 eff. Feb. 28, 2002. [See Note 1] Formerly Subd. (g) added City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See T35 §1-78 Note 1]

Subd. (f) added City Record Jan. 29, 2002 §2, eff. Feb. 28, 2002. [See Note 1]

DERIVATION

Section repealed and added City Record Mar. 20, 1992 eff. Apr. 19, 1992.

Section in original publication July 1, 1991.

Subd. (c) repealed City Record Jan. 29, 2002, eff. Feb. 28, 2002. [See Note 1]

Subd. (c) par (4) added City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See T35 §1-78 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 29, 2002:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York ("Charter"), empowering the TLC to regulate and supervise the business and industry of transporting passengers by licensed vehicles for-hire in the City; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §2303(b)(6) of such Charter, authorizing the TLC to establish requirements for safety, design and comfort of vehicles; and under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter.

The existing vehicle retirement rules, adopted by the Commission for vehicles placed in service after March 1, 1996, require that taxicabs be retired within thirty-six (36) months of hack-up if double-shifted and not driven exclusively by long-term drivers, and within sixty (60) months if not double-shifted, or if driven exclusively by long-term drivers. This regulation grants to the Chairperson of the TLC, or his/her designee the discretion to extend the time for which an Independent Taxicab Owner (defined in the Rules of the Commission as an individual, partnership or corporation owning one taxicab), or long-term driver who is also the owner of the vehicle (commonly referred to as a driver-owned vehicle, or "DOV"), may operate his vehicle, for up to twelve (12) months.

The purpose of the vehicle retirement provisions is to ensure public safety by requiring the regular replacement of taxicabs. Vehicles that are operated by Independent Taxicab Owners or by individuals who own their vehicles, but lease their medallions, are generally safer and better maintained than vehicles owned by fleets or minifleets, since these owner/operators have a direct, personal financial interest in the operation of the vehicle. In most cases, the owner drives the vehicle regularly. In addition, many of these vehicles are not double-shifted; fleets and minifleets must double-shift their vehicles. Under this rule, vehicles owned and operated by either Independent Taxicab Owners or long-term drivers become eligible for an additional period of time in which they may operate their vehicle (up to twelve (12) months).

Such vehicles must nonetheless continue to meet all TLC safety and emissions requirements and pass required inspections in order to remain in service.

In order to be considered for this extension the vehicle owner must make a written request to the Chairperson or his/her designee not less than thirty (30) days prior to the scheduled vehicle retirement date. This requirement may be waived for good cause by the Chairperson. The owner must demonstrate a **bona fide** economic or other personal hardship that would create an undue hardship upon the owner if the extension were not granted. If an extension is granted, the owner must continue to pass regular inspections; the Commission also reserves the right to withdraw the extension if the continued operation of the vehicle would create a safety risk to the public.

The Commission also repeals the provision in its rules that permit owners who demonstrate the existence of a unique, unforeseen and unforeseeable hardship to hack-up a vehicle that is up to two model years old. The creation of the new hardship extension permitted by this Rule proposal renders the existing provision obsolete.

This promulgation differs from the original Rule proposal published in the **City Record** on March 23, 2001. A provision requiring that the vehicle has passed each of its previous three inspections without any intervening failures was deleted, since that provision would have disqualified vehicle owners who failed initial inspections for minor defects unrelated to passenger safety and which were subsequently corrected. This change to the previous draft of the Rule was made in response to comments received by the Commission at a public hearing held on April 26, 2001. In addition, the original rule proposal was applicable exclusively to Independent Taxicab Owners. As revised, this rule would also enable long-term owner-drivers, who own their own vehicles but lease the medallion, to also apply for this exemption upon a showing of an economic or other hardship. Like Independent Taxicab Owners, these individuals have a personal interest in maintaining their vehicles safely.

Since the World Trade Center disaster of September 11, 2001, the Commission has received reports for each segment of the for-hire industries it regulates, including the medallion taxicab industry, that there is a decline in the number of passengers transported and revenues received by licensees. Many taxicab and vehicle owners report that their vehicles are being driven fewer miles, and that revenues are declining. Requiring such owners to purchase a new vehicle at this time could create a serious economic hardship, and owners who could demonstrate the existence of such a hardship could apply for a retirement extension. The enactment of this Rule proposal will provide needed financial relief to eligible Independent Taxicab Owners and "DOVs" without compromising public safety.

2. Statement of Basis and Purpose in City Record June 1, 2000: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the City; under §2303(b)(6) of such Charter, which authorizes TLC to set standards for the safety, design, comfort and convenience of vehicles; under §2303(b)(11) of such Charter, which authorizes the TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under §19-503(a) of the Administrative Code of the City of New York, which authorizes the Commission to promulgate rules to further the objectives of the Charter and the Administrative Code. This Rule amends the taxicab specifications that permit the transfer of a vehicle that was previously hacked-up pursuant to TLC rules, to another medallion. On December 16, 1999, the TLC held a public hearing to review the effectiveness of the current CNG vehicle program, which combines incentives, such as special vehicle retirement rules applicable to CNG vehicles, as well as mandates, such as the requirement, since repealed, that fleet maintained Stand-By Vehicles (SBVs) be fueled by CNG. The TLC heard testimony and received written comments from the taxicab industry which indicated that there were problems associated with the CNG program, including the lack of a sufficient number of twenty-four (24) hour fueling sites, the lack of sites in locations near taxicab garages, the extensive amount of time needed to re-fuel CNG vehicles, cost and maintenance issues relating to the vehicles, and the unwillingness of taxicab drivers to lease such vehicles because of the additional time needed to fuel the vehicles. Other persons provided testimony in favor of the CNG program, noting the positive impact such a program has upon the environment. After review of the testimony, the TLC voted to repeal the mandatory CNG vehicle usage for SBVs, while retaining existing provisions in the Rules encouraging the voluntary

use of CNG-powered vehicles. The TLC hereby amends the taxicab specifications to encourage continued voluntary usage of CNG vehicles. The TLC, from a policy standpoint, is committed to encouraging and promoting the voluntary use of CNG vehicles by its licensees. This Rule permits existing owners of vehicles fueled by CNG, which were originally hacked-up as new vehicles, to transfer these vehicles from one medallion owner to another, so long as the vehicle passes the required TLC inspection and meets vehicle retirement requirements. Generally, a medallion owner is required to "hack-up", or equip for service as a taxicab, only new vehicles. Exceptions presently exist in cases where the vehicle is repossessed by a lender, or is being transferred from one medallion operated by an owner or agent to another medallion owned by the same owner or agent. Under this amendment, a vehicle fueled by CNG could be transferred from one medallion owner to another, notwithstanding the fact that the vehicle does not otherwise qualify for a new vehicle "hack-up". This Rule would encourage the use of vehicles fueled by CNG since they could be sold or otherwise transferred to another taxicab owner or agent whose facilities might be more accessible to CNG fueling stations.

3. Statement of Basis and Purpose in City Record Jan. 30, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The new car requirement. The regulation will require that only new vehicles could be put into service as taxicabs. That would be a substantial change from current requirements, which permit used cars up to two years old to be put into service as taxicabs. The regulation will reduce the average age of the taxicab rolling stock in service in New York City. A higher prevalence of new cars would improve taxi service by providing a more comfortable ride, a safer trip, and lower emissions. These improvements reflect the better condition of a new vehicle as compared to a used car, and the improved emissions control systems of new cars. The Commission has documented that new cars in taxicab service pass the TLC inspections much more readily than the used cars now in operation. New cars also have significantly fewer failures of the emissions and the brake tests that are among the most important components of the inspection. The taxicab rolling stock has aged appreciably over the last several years. Taxicab owners have held onto their vehicles longer, making progressively more expensive repairs rather than retiring a vehicle. When they replace a vehicle, they may buy a used car rather than a new car. These make-do measures may be more expensive in the long run, but they may provide better cash flow to owners in the short run. Owners have felt the financial constraints of six years without a fare increase, and without a growth in ridership. They have maximized short run cash flow to the extent permitted by Commission rules. The result is a perceptible decline in taxicab service due to declining vehicle quality. A higher incidence of new vehicles will reduce the strain on the Commission's inspection facility; the strain has been caused in part by the higher failure rate for older cars and their consequent reinspection after further repairs by the owner. The original proposal was revised to clarify the provisions in Section 3-02(b)(2) concerning the Chevrolet Caprice. Additional time was provided to permit Chevrolet dealers to locate unsold Caprices and offer those cars to the New York City taxicab market. The vehicle retirement requirement. The regulation requires that vehicles be replaced after certain lengths of time in service as taxicabs. They would be retired regardless of whether they could still pass inspection. This proposal is a substantial change from the current rules, which permit a vehicle to remain in taxicab service so long at it can pass inspection. The purpose is to reduce the age of the taxicab rolling stock. A lower average age of vehicles would improve taxi service by providing a more comfortable ride, a safer trip, and lower emissions. These improvements reflect the better condition of newer vehicles, and the improved emissions control systems of newer cars. The improvements would be all the more striking, as vehicles that are retired would be replaced by completely new vehicles. Under the new regulation, a vehicle must be retired upon its retirement date, even if the vehicle would pass inspection. The inspection requirements set a minimum standard for vehicles. A vehicle retirement policy reaches beyond the "good enough" standard of passing inspection to reach a standard of excellence. A vehicle that cannot pass inspection must be retired, regardless of whether the retirement date has been reached. **Factors determining retirement** Retirement dates would depend on the following factors: - whether the vehicle is double-shifted or single-shifted. - whether or not the vehicle is driven by the owner of the medallion or vehicle. - participation in a pilot program using compressed natural gas as fuel - for vehicles currently in service, the model year

of the vehicle. - for vehicles currently in service, the inspection history of the vehicle in 1995. - for future vehicles, the number of months in service. **Double-shifted vehicles** All minifleet medallions are required to be double-shifted. Numerous independent medallions are also double-shifted; they are owned by persons who acquired the medallion prior to 1990. (In 1990, the Commission required that new owners of independent medallions must drive the taxicab themselves.) The new requirement for future vehicles is that double-shifted vehicles that are not owned by the driver must be retired within 36 months. This is a longer period than the 30 months first proposed; the six-month extension is intended to provide more time to amortize the expense of a new vehicle, based on numerous comments that the original proposal was too demanding financially. The six-month extension is 20% longer than the originally proposed period. The 36-month requirement would apply particularly to the fleets which own their vehicles and hire drivers on a daily shift basis. Some speakers commented that insomuch as several fleets retire their vehicles after 23 months, at present, this new requirement would work to extend the operation of heavily-used, double-shifted vehicles. They also commented that the proposal imposes no restriction upon the fleets. However, the fleets at present resell the vehicles to other taxicab operators, who hack-up the vehicle within the Commission's present 24 month limit on the age of vehicles at hack-up. The used taxicab, which was double-shifted for nearly two years, then re-enters the rolling stock of the industry and continues to operate for years to come. By retiring double-shifted vehicles after 36 months, the new requirement would in most cases shorten the period of use of heavily double-shifted vehicles. In reducing the resale market for used, fleet taxicabs, the requirement removes a considerable source of revenue from fleet operations. Numerous speakers have commented that a vehicle that is driven by the owner of the vehicle or the medallion is better operated than other vehicles. In respect of this widely and strongly held judgment, the Commission has provided an additional 12 months prior to retirement for those double-shifted vehicles that are driven by the owner. Their retirement date is 48 months. **A good inspection record** Numerous speakers also commented that medallion or vehicle owners who take good care of their cars deserve a longer period before vehicle retirement. In recognition that there is a wide disparity in maintenance and upkeep of vehicles, the Commission has modified the proposal, to provide an additional twelve months of operation to owners who had excellent inspection records in 1995. This record is defined as passing each of the three inspections conducted by TLC in 1995, on the first try, with no reinspection. The industry average is failure at 71% of initial inspections. This is a "grandfather" provision applicable to vehicles on the streets as taxicabs in 1995. It extends the period that current owners with excellent records utilize their current vehicles. There is no attempt to apply the concept to future inspections, out of concern that to do so would raise the stakes too much in TLC vehicle inspections. All parties would know that a discretionary failure on a relatively minor item could have serious financial repercussions for the owner. That situation would be hazardous to the integrity of the process. **CNG fuel** The proposal has been modified to extend the retirement date for certain CNG-fueled vehicles to 60 months, from the originally proposed 48 months. This is intended to preserve the incentive to participate in the CNG program, as the retirement date for gasoline-fueled vehicles is also extended. Retirement of future vehicles For double-shifted vehicles hacked up as taxicabs on or after March 1, 1996, which are not driven by the owner of the medallion or vehicle, the retirement date will begin thirty-six months after hack-up. Retirement will take place no later than the next regularly-scheduled, thrice-annual inspection of the vehicle by the Commission. To inspect each vehicle three times a year, the Commission has a four-month inspection cycle. A vehicle is inspected on a scheduled date within the cycle. The retirement date will average thirty-eight months from hack-up, and may extend as long as forty months, to reach the scheduled inspection date. For single-shifted vehicles driven by the owner of the vehicle or medallion, and hacked up on or after March 1, 1996, the retirement date will begin sixty months after hack-up. The retirement date will average sixty-two months from hack-up, and may extend as long as sixty-four months, to reach the scheduled inspection date. The Commission is currently encouraging taxicab operators to participate in a test of taxicabs powered exclusively by compressed natural gas (CNG). There is some reluctance to operate a vehicle which has relatively few refueling stations. The proposed rule would provide double-shifted, CNG-powered vehicles with a later retirement date, to offer longer utilization of CNG vehicles. That provides a business advantage of participating in the natural gas test. The enhanced usefulness of a vehicle that is participating in the test is the justification for providing a longer retirement date for double-shifted vehicles. The retirement date is not extended for independent medallions, because the sixty month retirement date is considered long enough, and because the CNG test focuses particularly on double-shifted vehicles, which are used so much more intensively and would provide quicker test results. Retirement of vehicles currently in operation as taxicabs. Vehicles in taxicab service as of March 1, 1996 would be retired according to their model year. That is a simpler

measure than ascertaining and applying the hack-up dates of nearly 12,000 cars. The retirement dates which the proposal would permit for current taxicabs extend longer than would be permitted for cars hacked-up after March 1, 1996. One reason for this provision is that a high percentage of the current rolling stock are old vehicles. Most would have to be replaced at once, if the retirement rates for future taxicabs were applied to current taxicabs. The new regulation does not require any vehicle to be retired before November 1, 1996. The purposes of this provision are:

to provide ample advance notice to owners that their vehicles must be replaced with new vehicles, so that they may plan financially for the change; and to provide time for the experiment with standard sedans and minivans (as described below) to proceed and be evaluated in a report of the Chairman, which would be due no later than July 31, 1996. That report would give owners information to help them choose a vehicle.

Beginning on November 1, 1996, all vehicles of model year 1992 or prior model years must be retired at their next scheduled inspection. Double-shifted taxicabs which are not driven by the owner would be replaced with new cars between November 1, 1996 and February 28, 1997. Taxicabs which are single-shifted or which are driven only by an owner of the medallion or vehicle would be replaced with new cars between April 1 and July 31, 1997. A vehicle of model year 1992 may have been purchased in the fall of 1991, and could have been in taxicab service for five years as of the fall of 1996. Earlier models of course may have been in taxi service longer. The number of vehicles which must be retired between November 1, 1996 and August 1, 1997 is quite large. Commission records indicate that some 4,000 vehicles now in service are of model year 1990 or earlier model years. About 1,000 vehicles are in each of the model years 1991 and 1992. The six thousand oldest vehicles-more than half the current taxi rolling stock-would have to be replaced with completely new vehicles by the summer of 1997. The number of vehicles in taxicab service that are more than five years old indicates that vehicle standards must change dramatically; it also indicates that any real change in standards will be dramatic. To field 6,000 completely new taxicabs in place of 6,000 taxicabs that are at least six years old would create substantial service improvement. The new regulation permits the Chairman to extend the retirement date for certain vintage cars. In the Chairman's discretion, that may apply to the four Checker cabs still in operation, which are each more than twenty years old. The purpose is to maintain this aspect of the public's comfort and convenience. It is a rare pleasure to see or ride in a vintage taxicab. Vehicle specifications. The new regulation revises the current vehicle specifications, to simplify and update the requirements. In most respects, the specifications are unchanged; many details can be eliminated, though, because they are superfluous in light of contemporary Federal and State requirements for motor vehicles. The new regulation continues to require that only heavy duty vehicles manufactured for taxicab, police or fleet service could be put into operation as taxicabs. However, the proposal would also authorize an experiment with standard sedans and minivans that meet certain minimum standards for interior space in the passenger compartment. The Chairman has initiated such an experiment pursuant to the Chairman's authority under current rules. By publishing the specific requirements of the present experiment, under authority of the Commission, it is intended to provide clear guidelines to the taxi industry. The proposal would require the Chairman to report to the Commission concerning the experiment no later than July 31, 1996, at least three months before owners must begin to replace the oldest taxicabs now in service. Establishing a maximum horsepower for new taxicabs. The new regulation establishes a maximum of 220 horsepower, for vehicles put into operation as taxicabs for the first time on or after February 1, 1996. The purpose is to improve public safety by reducing the ability of taxicabs to accelerate rapidly. This would inhibit the pattern of accelerating until braking, by which some taxi drivers seem to drive. It would inhibit the pattern of weaving in and out of lanes of traffic through sudden acceleration, which some drivers use to move faster than the flow of traffic. These patterns of driving are believed to cause accidents, and they alarm riders. These observations are based upon the Commission's considerable experience of passenger complaints. Unsafe driving has become the most frequent passenger complaint. Inhibiting these poor driving habits will improve passenger comfort and safety. The current models of the Chevrolet Caprice and the Ford Crown Victoria are available with standard engines that meet the proposed maximum of 220 horsepower. The requirement therefore does not constrain the industry's choice among vehicle models. The present ability of the taxi industry to outfit used police cars as taxicabs has in numerous instances resulted in the hack-up of powerful pursuit vehicles that were specially equipped for law enforcement emergency action. Taxi drivers do not need the same engine power as police officers. The Commission, working with the New York Police Department, is enhancing enforcement activity against driving violations by taxi drivers. The

proposal would complement the enforcement activities. Interior space requirements. The original proposal has been modified, to restore certain minimum dimensions of leg room, head room and seat width which are found in the current regulations. Public comment established that the EPA interior volume measurement of the passenger compartment was subject to too many variables to make it a sole and sufficient criterion of passenger comfort. The minimum dimensions set forth in the new regulation are found in the current regulations, along with numerous other requirements which have been deleted. The new regulation sets the minimum interior volume at 107 cubic feet. Among the vehicles that would meet that standard are the industry workhorses, the Chevrolet Caprice and the Ford Crown Victoria. The Commission is reluctant to authorize vehicles for service that are less roomy than the Caprice and the Crown Victoria, but the expected end to manufacture of those models necessitates consideration of alternatives. Among the standard sedans that would meet the interior volume standard are the Oldsmobile 88 and 98, and the Buick LeSabre. Those models, however, have not yet been brought forward for participation in the experiment with standard vehicles. Among the vehicles that would not meet the interior volume standard are the Chevrolet Lumina taxi package (100 cubic feet), and the Chrysler Concorde fleet package (104 cubic feet). Evaluation of a Lumina currently in operation pursuant to an experiment indicated that the Lumina was too small, in the judgment of TLC staff, when outfitted with the required partition. At a public hearing on November 9, 1995, representatives of Chevrolet were encouraged by the Chairman to outfit a Lumina with a less bulky partition, for further evaluation. The Concorde has not been made available yet for testing. The proposal would authorize the Chairman to experiment with the Concorde and with the Lumina, equipped with less bulky partitions, along with other vehicles. The Honda Odyssey minivan and the Ford Explorer sport/utility vehicle are also presently participating in an experiment. They meet the new standard for interior volume. Deletion of superfluous specifications. The current specifications were established early in the 1970's. Since then, automotive standards have advanced in many respects. Standard vehicles now have federally mandated safety features which make certain TLC requirements superfluous. In actual practice, TLC has in the past approved only the "taxi package" models that provide adequate head room and leg room. The Chevrolet Caprice and the Ford Crown Victoria have for a number of years been the only qualified vehicles. Certain obsolete specifications, such as that requiring a vent window in the driver's door, have remained on the books but have not been operative. Among the other provisions proposed for deletion are: - Dimensions for sun visors and rear view mirrors; - Requiring windshield wipers to have an intermittent mode; - Detailed specifications for turn signals; and - A ban on cloth upholstery. The current specifications contain detailed provisions concerning automotive emissions, which date from 1979. Those provisions require taxicabs to be equipped with the "California emissions package." That requirement is obsolete, in view of the New York State emissions package requirements for all new vehicles to be registered in the State. The "California package" is now essentially also a "New York State package." Detailed TLC specifications as to emission packages are superfluous in this context and are therefore omitted. TLC will inspect taxicabs to enforce the applicable State standards.

4. Statement of Basis and Purpose in City Record July 1, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The rulemaking refines certain details of the Commission's recently adopted rule, which requires that vehicles must be retired after stated periods of taxi service. The rulemaking defines who would be a "driver who owns the vehicle", and thereby eligible for a longer period of vehicle operation than are other taxicab owners. The use of the term "driver owned vehicle" or "DOV" by taxicab lease managers in public discussions applies much more widely than to the number of drivers who actually hold title to taxicab vehicles. Many drivers are making installment payments to purchase the vehicle from the title holder. The title holder in many cases is an affiliate of the lease manager. The Commission's rulemaking provides drivers who are making installment payments with the extended period of vehicle operation. Under the rulemaking, the Commission will not recognize conditional sales of taxicab vehicles, under which a driver who fails to make a payment may lose all rights in a vehicle, as situations in which a driver may be said in any way "to own the vehicle". A driver with only a conditional interest in the vehicle has not been shown to take the same care with maintenance and operation of the vehicle, as does a true owner. The rulemaking extends by four months the

period of time for operation of model years 1991 and 1992 vehicles which are driven by the owners. Instead of beginning on April 1, 1997, the retirement period for those vehicles would begin on August 1, 1997. The purpose of this extension is to spread out vehicle replacement over a slightly longer period of time, to promote an orderly replacement of taxicab rolling stock. Those two model years contain a total of nearly 2,000 vehicles. The rulemaking clarifies that the option to "re-hack" a vehicle by moving it from one medallion to another, under certain procedures, is available for cars in service prior to March 1, 1996 as well as new vehicles.

FOOTNOTES

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[Footnote 1]: * Note: This subd. (c) was repealed in City Record Jan. 29, 2002 eff. Feb. 28, 2002. It dealt with an exception to subd. (b) for ". . . extreme personal financial hardship . . ., such as a catastrophic illness . . ."

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-02 Vehicle Retirement.

(a) The following requirements shall apply to all vehicles hacked-up on or after March 1, 1996:

(1) A vehicle which is double-shifted and not driven by at least one long-term driver, as defined in §1-01 of this title, for any period of time on or after March 1, 1997, and is not in service solely as an authorized stand-by vehicle from the time the vehicle is hacked-up, must be retired from taxicab service and replaced no later than the first scheduled inspection of the vehicle occurring 36 months after the vehicle was hacked-up.

(2) All other vehicles must be retired from taxicab service and replaced no later than the first scheduled inspection of the vehicle occurring 60 months after the vehicle was hacked-up.

(3) Notwithstanding the foregoing provisions of this subdivision 3-02(a), any vehicle hacked-up on or after March 1, 1996 and before April 17, 2007 which, no later than six months after hack-up, is dedicated to operate on compressed natural gas (with a maximum reserve gas tank of five gallons) and which remains so dedicated thereafter, throughout its operation, has an extension of its retirement date by twenty-four additional months of taxicab service.

(4) Notwithstanding the foregoing provisions of this subdivision 3-02(a), the retirement date of any vehicle hacked-up on or after March 1, 1996 and before April 17, 2007, which is a minivan approved for use as a taxicab by the Commission, is extended by:

(i) twelve additional months of taxicab service if doubled-shifted and not driven by at least one long-term driver, as defined in Rule 1-01; or

(ii) eighteen additional months of taxicab service if not subject to subparagraph (i) of this paragraph. A taxicab whose retirement date has been extended in accordance with the provisions of this paragraph is not eligible for the extended vehicle lifetime provided for clean air and accessible taxicabs pursuant to paragraphs five through seven of this subdivision.

(5) Notwithstanding the foregoing provisions of this subdivision 3-02(a), the retirement date of any vehicle that is a level one or level two clean air taxicab as defined in §3-03.3 of this chapter or an accessible taxicab as defined in §3-03.2 of this chapter, and that is otherwise required under paragraph (1) of this subdivision)*2 to be retired from taxicab service and replaced no later than the first scheduled inspection of the vehicle occurring thirty-six months after the vehicle was hacked-up, is extended by twelve months.

(6) Notwithstanding the foregoing provisions of this subdivision 3-02(a), the retirement date of any vehicle that is a level one clean air taxicab as defined in §3-03.3 of this chapter or an accessible taxicab as defined in §3-03.2 of this chapter, and that is otherwise required under paragraph (2) of this subdivision to be retired from taxicab service and replaced no later than the first scheduled inspection of the vehicle occurring sixty months after the vehicle was hacked-up, is extended by twenty-four months.

(7) Notwithstanding the foregoing provisions of this subdivision 3-02(a), the retirement date of any vehicle that is a level two clean air taxicab as defined in §3-03.3 of this chapter and that is otherwise required under paragraph (2) of this subdivision to be retired from taxicab service and replaced no later than the first scheduled inspection of the vehicle occurring sixty months after the vehicle was hacked-up, is extended by twelve months.

(b) A vehicle which cannot pass inspection must be replaced, regardless of whether its retirement date has been reached. A vehicle which has reached its retirement date, including any extensions provided for in this section, must be retired, regardless of whether it may still pass inspection.

HISTORICAL NOTE

Section amended City Record Mar. 16, 2007 §1, eff. Apr. 15, 2007. [See Note 5]

Section repealed and added City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See T35 §1-78 Note 1]

Subd. (a) par (1) amended City Record Nov. 22, 2006, eff. Dec. 22, 2006. [See Note 4]

Subd. (a) par (4) amended City Record Arp. 3, 2009 §1, eff. May 3, 2009. [See Note 6]

Subd. (a) par (4) added City Record May 27, 1999 eff. June 26, 1999.[See Note 1]

Subd. (a) pars (5), (6), (7) amended City Record Apr. 3, 2009 §1, eff. May 3, 2009. [See Note 6]

Subd. (b) relettered (former subd. (c)) City Record Apr. 3, 2009 §1, eff. May 3, 2009. [See Note 6]

Subd. (b) repealed City Record Apr. 3, 2009 §1, eff. May 3, 2009. [See Note 6]

DERIVATION

Section repealed and added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §3-01 Note 3]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 2]

Subd. (c) amended City Record July 1, 1996 eff. Aug. 1, 1996. [See T35 §3-01 Note 4]

Subd. (e) amended City Record Aug. 30, 1996 eff. Oct. 1, 1996. [See Note 3]

Subd. (e) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 2]

Subd. (f) par (5) repealed and added City Record Feb. 8, 1994 eff. Mar. 6, 1994.

Subd. (f) par (5) amended City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (f) par (10) added City Record June 7, 1994 eff. July 7, 1994.

Subd. (i) added City Record July 1, 1996 eff. Aug. 1, 1996. [See T35 §3-01 Note 4]

NOTE

1. Statement of Basis and Purpose in City Record May 27, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §2303(b)(6) of such Charter, authorizing the TLC to establish requirements for safety, design and comfort of vehicles; and under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter.

Present vehicle retirement rules adopted by the Commission for vehicles placed in service after March 1, 1996, require that taxicabs be retired within thirty-six (36) months if double-shifted, and within sixty (60) months if not double-shifted. This regulation extends the time for which a minivan may be used in taxicab service by twelve (12) months if double-shifted, and by eighteen (18) months if not double-shifted.

The overall reaction of the public to the minivans approved by the Commission has been overwhelmingly positive. Information and correspondence from the public indicates consumer satisfaction in terms of comfort, convenience and design.

The purpose of the amendment promulgated herein is to encourage the continued purchase and use of minivans as taxicabs by reducing the cost of operation. By extending the period of time that a minivan may remain in taxicab service, the cost of ownership is reduced, thereby creating a financial incentive for taxicab owners to purchase minivans.

2. Statement of Basis and Purpose in City Record Mar. 29, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The purpose of amendments is to make several technical changes to the Taxicab Specifications adopted by the Commission on January 25, 1996. The technical changes involve the retirement of vehicles which operate on compressed natural gas. Vehicles operating on compressed natural gas may have a reserve gas tank of five gallons. In addition, 1995 and 1996 vehicles which are converted to compressed natural gas may operate until July 1, 2001.

3. Statement of Basis and Purpose in City Record Aug. 30, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed

vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The rulemaking extends the date that vehicles of 1995 and 1996 model years could be converted to operate on compressed natural gas, and receive an extension of their mandatory retirement date. This rulemaking provides an opportunity to those vehicle owners who did not take advantage of this program by the cut-off date of July 1, 1996. Such owners now have until November 1, 1996. The purpose of this rulemaking is to further encourage the use of compressed natural gas. Based upon public comment, the rule proposal was amended to allow vehicles of 1995 and 1996 model years to continue in service until July 1, 2002.

4. Statement of Basis and Purpose in City Record Nov. 22, 2006: The rule amends existing rules to provide that the vehicle retirement deadline for a stand-by vehicle is 60 months, instead of 36 months. As provided in §§1-01 and 1-59 of the rules of the Taxi and Limousine Commission (TLC), a stand-by vehicle is a vehicle that is hacked-up as a taxicab, and is used by fleets as a replacement vehicle when a taxicab is unavailable for use-for instance, due to repairs or inspection. The reason for the rulemaking is that TLC inspection data over the past several years shows that a stand-by vehicle accrues significantly less mileage and aging than a regular fleet taxicab. Therefore, a 60-month retirement deadline is more appropriate to the actual taxicab usage of a stand-by vehicle. The rule is intended to apply to stand-by vehicles that are in service as of the effective date of the rule, as well as to stand-by vehicles that are hacked-up on or after the effective date of the rule. However, only vehicles which are or have been hacked-up as a stand-by vehicle when new will be assigned a 60-month retirement deadline.

5. Statement of Basis and Purpose in City Record Mar. 16, 2007: The rulemaking amends existing taxicab specification rules to comply with Local Law 52 of 2006, by providing vehicle retirement extensions for eligible clean air and accessible taxicabs. The rule would apply to taxicabs hacked up on or after April 17, 2007, as well as clean air and accessible taxicabs in service as of that date. As mandated by Local Law 52 of 2006, the new rules create incentives for taxicab owners to use accessible and clean air taxicabs. In addition, in order to increase the value and maximize the impact of these incentives on the taxicab industry, the new rules repeal retirement extensions for other types of vehicles. The rules eliminate the extensions for CNG-powered vehicles and minivans hacked up on or after April 17, 2007. The CNG extension had been established ten years ago to encourage the use of clean air vehicles as taxicabs. The new rules are much more effective by targeting incentives based upon actual vehicle cleanliness, rather than simply fuel type. CNG vehicles currently in use as taxicabs would not qualify as Level 1 or Level 2 clean air taxicabs as defined by Local Law 52 and these new rules. The minivan extension had been established to encourage the use of a new type of vehicle as a taxicab. Minivans now make up more than ten percent of the taxicab fleet and therefore these incentives are no longer required. Finally, sections regarding taxicabs that are no longer in service would be deleted as obsolete.

6. Statement of Basis and Purpose in City Record Apr. 3, 2009: This rulemaking eliminated the requirement in TLC's rules that in order for accessible and clean air taxicabs to qualify for an additional twelve to twenty-four months, such vehicles must pass at least two of the inspections, not including reinspections, conducted at the Commission's inspection facility pursuant to §19-504 of the New York City Administrative Code during the twelve-month period immediately preceding the time at which such vehicle would otherwise be required to be retired pursuant to §3-02(a) of the TLC rules. In light of two years' experience with that rule, the TLC found that such a requirement is unnecessarily restrictive: a vehicle should not be forced into retirement because of minor inspection failures (broken headlight; seatbelt not properly affixed; etc.) that can easily be remedied for a follow-up inspection. The adopted rule does of course retain the requirement that a vehicle must pass inspections to remain on the road, regardless of its scheduled retirement date.

FOOTNOTES

2

[Footnote 2]: * No opening parenthesis.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-03 Taxicab Specifications.

(a) **Applicability.**

(1) These specifications shall apply to every motor vehicle which is to be outfitted as a taxicab and approved by TLC for service; on or after March 1, 1996.

(b) **General Requirements for Review of Vehicle Models.**

(1) The taxi shall conform to all applicable federal and New York State motor vehicle standards and requirements. Such standards include: seat belts for each seating position and shoulder belts for each outboard seating position; front disk brakes; and the vehicle emissions package requirements of New York State.

(2) The sponsor, either the manufacturer or his authorized sales agent, shall certify item by item that the candidate taxi meets all criteria herein. Where minimum or maximum is specified, the actual values of the taxi candidate must be given. The sponsor shall provide the Commission with a Motor Vehicle Manufacturer Association (MVMA) specifications form; a complete listing of interior dimensions on TLC form J-303 as measured on a bona fide example of the candidate vehicle; a complete listing of heavy duty equipment for the taxi vehicle; a list indicating the significance of characters in the Vehicle Identification Number (VIN); the manufacturer's repair shop manual for each candidate vehicle; and, upon request, full size layout drawings of the candidate vehicle. The sponsor shall provide an EPA Certificate of Conformity pertaining to the candidate taxi. The sponsor shall at his own expense, submit a bona fide example of the candidate vehicle for road testing and detailed measurements by Commission personnel or their authorized agents for the purpose of making objective judgments of the candidate vehicle model's conformance to these

specifications.

(3) After a model has been approved and examples of it are in service, the TLC reserves the right to require measurements of vehicles to ensure conformity with the model specifications. The cost of all tests shall be borne by the sponsor.

(4) The sponsor shall make provisions to immediately notify the commission of any vehicle safety recalls. In addition, the sponsor shall make provisions to have the Commission placed upon the mailing list for service bulletins and recalls.

(5) The manufacturer shall provide to the Chairman information as to the location of the confidential VINs for such model, pursuant to the manufacturer's confidentiality requirements for the provision of such information to law enforcement organizations.

(6) Experimental equipment designed to exceed existing safety standards is encouraged, but the Commission's Safety and Emissions Unit shall be kept fully informed of all such projects involving New York City taxicabs from inception to completion.

(7) The TLC reserves the right to approve limited quantities of vehicles which fail any of these specific rules provided only that the sponsor's vehicle is already purpose-built for taxi service, and therefore, substantially exceeds other criteria, or in the case where the sponsor wishes to demonstrate certain outstanding virtues that deserve to be tested in actual taxi service. The TLC further reserves the right to require detail changes to make a vehicle more suitable for New York City taxi service.

(c) **Vehicle Specifications.**

(1) The vehicle shall be manufctured with heavy-duty equipment for taxicab, police or fleet service, except as provided in paragraph (7). There shall be a term in the VIN or in a body tag, which distinguishes the taxicab, police or fleet package from the standard sedan on which it is based.

(2) The vehicle shall have EPA passenger compartment interior volume index of at least 107 cubic feet.

(3) The rear compartment of any sedan approved for use as a taxicab shall meet the following dimensions as defined by the Society of Automotive Engineers:

(i) Minimum effective legroom (L51) must be at least 43 inches.

(ii) Effective headroom (H63) must be at least 37.5 inches.

(iii) The seat depth (L16) must be at least 18 inches.

(4) The front compartment of any sedan approved for use as a taxicab shall meet the following dimensions:

(i) Effective headroom (H61) must be at least 37.5 inches.

(ii) Maximum effective legroom (L34) must be at least 42 inches.

(iii) Total legroom (the sum of L34 and L51) must be at least 85 inches.

(5) The vehicle shall be equipped with a factory installed air conditioning system. If the vehicle model has available air conditioning outlets for the rear seat area, then the vehicle shall be equipped with such outlets.

(6) The vehicle may not be equipped with an engine in which the maximum horsepower exceeds 220.

(7) The vehicle may be a sedan, which meets the requirements of paragraphs 2 through 6 of this subdivision, and of paragraph (1) of subdivision (d), or a minivan which has been approved by the Chairperson after a determination that the vehicle provides adequate safety and comfort to passengers, and which also meets the requirements of paragraphs 5 and 6 of this subdivision. If the Federal government or the Commission determines that any of such vehicles must be wheelchair accessible, then such vehicles shall be wheelchair accessible to the extent of such Federal or Commission determination and requirements.

(8) All windows of the vehicle must have a light transmittance of seventy (70) percent or more, with the exception of the uppermost six (6) inches of the front windshield.

(9) Beginning on October 1, 2008, a vehicle may be fueled only by Compressed Natural Gas if such vehicle is an originally manufactured vehicle and meets with the requirements of paragraphs (5) and (6) of this subdivision.

(10) Notwithstanding the foregoing provisions of this subdivision 3-03(c), a vehicle may be hacked up as a taxicab if the vehicle is powered by diesel fuel, and the vehicle otherwise meets the vehicle specifications provided in section 3-03.1(c) of this chapter, whether or not the taxicab is a hybrid electric vehicle.

(11) Repealed.

(d) **Experimental Vehicle Specifications.** Due to the limited production plans for "taxi package" vehicles, as well as an interest in testing features of standard production vehicles, including minivans, which are not "taxi package," the Chairman may conduct an experiment with vehicles meeting the following minimum specifications. The Chairman may, at his or her discretion, limit the number of vehicles participating in the experiment. The Chairman may, at his or her discretion, waive any particular requirement, if in his judgment the experiment may demonstrate certain outstanding virtues that deserve to be tested in actual taxi service. The Chairman shall report to the Commission concerning the experiment, no later than July 31, 1996.

(1) The vehicle shall be either a full size or larger four door sedan or a minivan equipped with at least four doors. Except for vehicles which are designed to be handicapped accessible, all doors shall open outward on hinges (not sliding doors), and the vehicle must be capable of carrying three passengers seated behind the driver. Any space which would otherwise be available to seat more than three passengers shall be used instead to provide luggage space.

(2) The vehicle shall have EPA passenger compartment interior volume index of at least 107 cubic feet.

(3) If the vehicle is equipped with shock absorbers, the rear shock absorbers must be of the heavy duty variety.

(4) The vehicle shall be equipped with a factory installed air conditioning system. If the vehicle model has available air conditioning outlets for the rear seat area, then the vehicle shall be equipped with such outlets.

(5) The vehicle may not be equipped with an engine in which the maximum horsepower exceeds 220.

(e) **Vehicle Modifications for Taxicab Service.**

(1) **Paint and Finish.**

(i) The exterior shall be painted taxi yellow, except for trim. Samples of paint color and code are to be submitted to the Commission for approval.

(ii) The front of the taxi, and especially the bumper, should be designed with strong emphasis on reducing injury to pedestrians. There shall be no unnecessary projections such as rigid hood ornaments.

(iii) The vehicle shall be provided with signs in conformance with the marking specifications, §1-36 of these rules.

(2) **Roof Light, Meter and Seals.**

(i) Provision shall be made for installing and adequately wiring a roof light of approved design on top of the roof.

(ii) Suitable wiring shall be provided for a pair of auxiliary turn signal lamps to be located adjacent to the roof light. These lamps shall not be activated with the brake lights.

(iii) A taximeter approved pursuant to Rule 3-04 shall be installed in a location which facilitates the driver's operation of it and any passenger's reading of the fare without interfering with the driver's safe operation of the taxi or the passenger's safety and comfort.

(iv) The taximeter shall be sealed with tamper resistant seals. The Commission will designate the type of seal, and will apprise the industry of the required locations for each taximeter approved pursuant to §3-04 of these rules.

(v) If the vehicle is equipped with a pinion gear, such pinion gear shall be sealed. The Commission will designate the type of tamper resistant seal to prevent removal or change of the pinion gear.

(3) **Security.**

(i) An owner shall install a partition that isolates the driver from the rear seat passengers or all passengers of the vehicle, in accordance with section 1-17 of this title. The purpose of the partition shall be to provide protection to the driver while ensuring passenger safety and enabling rear seat passengers to enjoy a clear and unobstructed view of the taxicab driver's license, rate card and front windshield.

(A) The partition shall consist of a transparent portion that shall extend from the ceiling to a point, as recommended by the Chairperson and approved by the Commission, based upon the make and model of the vehicle in service, that will provide passengers and drivers with maximum visibility. The transparent portion of the partition shall be constructed of a bullet-resistant material, recommended by the Chairperson and approved by the Commission, which is also clear and scratch-resistant.

(B) A protective plate shall join the transparent portion of the partition and extend from the lowest point of the transparent portion of the partition downward to the floor of the vehicle. The plate shall be constructed of a bullet-resistant material recommended by the Chairperson and approved by the Commission.

(C) Notwithstanding the provisions of clause (A) of this subparagraph, all taxicabs, except those that are exempt pursuant to section 1-17 of this title, when an existing partition is required to be replaced or when a partition is installed (including, but not limited to, at hack-up), shall be equipped with a partition, the transparent portion of which shall be constructed, at a minimum, of a mar-resistant polycarbonate and shall be not less than 0.375 inches thick, that will provide passengers and drivers with maximum visibility.

(1) For a flat partition and a partition for a taxicab with factory installed curtain airbags, the transparent portion shall extend from the ceiling to join or overlap with the protective plate of the partition.

(2) For an L shaped partition, on the side that is behind the driver, the transparent portion of the partition shall extend from the ceiling to join or overlap with the protective plate of the partition, and on the side that extends forward to back between the two front seats, the transparent portion of the partition shall extend from the ceiling to join or overlap with the protective plate of the partition on the right side of the center console located between the two front seats.

(3) The protective plate shall join or be overlapped by the transparent portion of the partition and shall extend from the point that the protective plate joins, or if overlapped by the transparent portion of the partition, the point that would be the point of joinder with the transparent portion of the partition, downward to the floor of the taxicab. The protective

plate shall be constructed of a 0.085 inch thick plate of ballistic steel or its equivalent installed inside and covering the entire back seat rest of the front seat which is exposed to the passenger compartment and, for an L shaped partition, on the right side of center console between the two front seats.

(4) Each partition shall have sufficient padding for the entire protective plate of the partition to prevent injury to any rear-seat passenger in case of an accident or sudden stopping and all surfaces shall be free of sharp and rough edges.

(5) There shall be no opening or gap between the partition and the body of the vehicle larger than one inch, except as set forth in section 1-17(c) of this title.

(6) No partition shall be installed unless it shall have the following features which do not compromise passenger or driver safety:

(A) A means for passengers and drivers to communicate with each other.

(B) The capacity for the passenger(s) to pay fares, either by cash, or by credit card if the taxicab is capable of accepting credit card payments, and for the passenger(s) to receive receipts for payments and transactions, while the passenger is in the rear passenger compartment.

(ii) No vehicle, other than a vehicle which is exempt from the partition requirements set forth in section 1-17 of these rules, may be hacked-up unless a new partition has been installed which complies with these specifications.

(iii) An owner shall equip all taxicabs with a help or distress signaling light system in accordance with the following specifications:

(A) The help or distress signaling light system shall consist of two turn signal type "lollipop" lights.

(B) One light shall be mounted on the front center of the vehicle, either on top of the bumper or forward or behind the grill. A second light shall be mounted on top of the rear bumper, to the left of the license plate.

(C) Each light shall be three to four inches in diameter, have a total rated output of thirty-two candle power and shall be the color amber or have an amber colored lens so that the light output of the device is the color amber at thirty-two candle power.

(D) The activator shall be installed within easy reach of the driver, shall be silent when operating, and shall be fully solid-state.

(E) The lights shall flash between 60 and 120 times per minute.

(F) The wiring shall not affect or interfere directly or otherwise with any wiring or circuitry used by the meter for measuring time or distance.

(iv) A door ajar notification light shall be provided which is located in front of the driver. This light shall turn on only when any door is not fully latched.

(v) When an existing in-vehicle camera system ("IVCS") is required to be replaced or when such system is installed (including, but not limited to, at hack-up), no such system shall be installed in any taxicab unless it meets the following specifications:

(A) The IVCS shall be connected to the vehicle battery, and the fuse for such connection shall be concealed in tamper-resistant housing.

(B) Wiring between the recording unit and camera head shall use registered jack (RJ) style connectors at either end

which shall be tamper-resistant.

(C) All electrical connections and wiring shall be protected from spike and dips in vehicle voltage.

(D) The camera head housing and brackets shall be tamper-proof and securely mounted to the right of the rear view mirror. The installation shall provide unobstructed vision for the driver.

(E) The camera's field of view shall include the full face of all occupants seated in passenger seats and facing forward.

(F) Images shall be recorded and stored in a unit separate from the camera head.

(G) The recording unit shall be concealed from view and fastened securely with tamper-resistant hardware.

(H) The IVCS shall provide a visual indication of system status that is located on the lower left portion of the dashboard, and is visible to the driver and law enforcement personnel inspecting the vehicle from outside of the driver door.

(I) The IVCS and components shall be sufficiently shock-resistant to withstand typical vehicle movement and collisions.

(J) The IVCS shall have a RS-232 connection or other means for secure image retrieval.

(K) Images shall be sharp, undistorted and enable the viewer to identify all passengers under all lighting conditions; for example, but not limited to, dark and bright light, daylight and backlight.

(L) Sensor resolution shall be, at a minimum, 510 by 480 pixels.

(M) Storage capacity shall be, at a minimum, 7000 images in an encrypted format, and all access to the storage unit shall result in the storage of an electronic "tag" including the installer identification number and date of the event.

(N) The IVCS shall have connection ports for a minimum of two (2) cameras.

(O) The IVCS shall have an event flag or panic button accessible to driver and located in an inconspicuous location.

(P) The IVCS shall record images and the following information for each image:

(a) Date and time;

(b) Taxicab medallion number;

(c) IVCS serial number; and

(d) IVCS indicator for event flags.

(Q) Image capture shall be linked to the following events: vehicle door openings and closings, meter engagement, event flag button activation and event flag in the test mode when the image(s) is/are recorded for inspection and test purposes. In the event of a panic button activation, systems shall record to protected memory a total of three (3) events that include, at a minimum, the previous 2.5 and subsequent 2.5 minutes immediately prior and subsequent to the button activation, at one frame per second.

(R) Image access shall be provided only to law-enforcement agencies including but not limited to the New York City Police Department;

(S) If the IVCS has a physical port for secure image retrieval it shall be located on the right side of the dashboard or in the trunk in an inconspicuous manner that is accessible to law enforcement personnel.

(T) When memory storage capacity is reached, the IVCS shall overwrite the oldest images as new images are recorded in sequence.

(U) Installations and repairs of IVCS may be done only by authorized installers approved by the manufacturer that are businesses currently licensed by the Department of Consumer Affairs or are taximeter businesses currently licensed by the Commission pursuant to chapter 15 of this title.

(V) Within fourteen (14) calendar days after installation, repair or modification, a notarized affidavit signed by a manufacturer's authorized installer attesting to the proper functionality of the IVCS shall be provided to the Commission by the authorized installer.

(W) A similar affidavit shall be provided annually by the authorized installer to the Commission and upon any repair to or change of the IVCS.

(4) **Credential Holders.**

(i) A credential holder shall be mounted on the right side of the dashboard, unless in the judgment of the Chairman, a dashboard mounting would be hazardous in a particular model of automobile. A model equipped with dual air bags is a model in which a dashboard mounting would be hazardous, unless in the judgment of the Chairman there is an alternative solution to the requirements of subdivision (ii).

(ii) A vehicle in which a dashboard mounting would be hazardous shall be equipped with a transparent partition and a protective plate, in accordance with §3-02(e)(3)(i), and shall have a TLC-approved credential holder frame mounted on the driver's side of the clear portion of the partition by either rivet and/or screw at least two inches above the frame supporting the clear portion of the partition and centered on the vehicle's steering column and/or the headrest on the driver's seat facing the rear passenger's compartment. The frame shall have a drop-in or slide-in slot accessible only from the driver's compartment for the rate card and the driver's license. The frame shall have sufficient illumination pursuant to Owners Rule 1-12(a). The frame shall be sufficiently padded so as not to cause injury to the driver.

(5) **Occupant accommodation.**

(i) There shall be a hold-open device on each door.

(ii) There shall be a door pull on each rear door. Assist straps shall be mounted either on each B-pillar or upon the partition. Both the door pulls and assist straps shall meet the impact requirements of federal MVSS 201. There shall be no coathook on the right-hand side.

(iii) There shall be an outboard armrest located appropriately for the driver and each outboard passenger.

(iv) The upholstery and trim shall be vinyl, shall meet or exceed all federal (MVSS) standards for vehicle seating including flame resistance. Notwithstanding the provision of this subparagraph, on the seats of a taxicab that are equipped with an occupant classification system as defined in §2-01 of this title, and on the seats of a taxicab that are equipped with side airbags, the upholstery shall be as provided by the original equipment manufacturer.

(v) A taxicab may not be equipped with power adjusted seats. A taxicab may be equipped with either bucket or bench seats, provided that the seats do not interfere with the partition and do meet all the requirements of the TLC. All replacement seats must be designed by the manufacturer for installation in the model and year of the vehicle in which the seats are installed.

(6) **Definitions.**

Taxicab technology service provider. A "taxicab technology service provider" is a vendor who has contracted with the Commission to install and maintain the taxicab technology system in taxicabs.

Taxicab technology system. The "taxicab technology system" is hardware and software that provides the following four core services (collectively "four core services"): (i) credit, debit and prepaid card payment required by section 3-03(e)(7) of this chapter, (ii) text messaging required by section 3-03(e)(8) of this chapter, (iii) trip data collection and transmission required by section 3-06 of this chapter, and (iv) data transmission with the passenger information monitor required by section 3-07 of this chapter.

(7) **Credit Card Acceptance Capability.** Each taxicab that is required to be equipped with the taxicab technology system as defined in section 3-03 of this chapter must be capable of accepting all major credit and debit cards which are accepted by such taxicab technology system as payment for fares. This specification shall be implemented no later than the compliance date set forth in section 1-01 of this title.

(8) **Text Messaging Equipment.** Each taxicab that is required to be equipped with the taxicab technology system as defined in section 3-03 of this chapter must be equipped with text messaging equipment enabling the driver to receive and send text messages. No text messaging equipment shall be installed unless it has been provided by a taxicab technology service provider and the equipment conforms with specifications set forth herein, meets appropriate safety standards, and fulfills the intended purposes for such equipment. No text messaging equipment shall be used in contravention of TLC Rules or for dispatch purposes. This specification shall be implemented no later than the compliance date set forth in section 1-01 of this title.

HISTORICAL NOTE

Section added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §3-01 Note 3]

Section heading amended City Record Apr. 1, 2009 §6, eff. May 1, 2009. [See T35 §1-78 Note 4]

Subd. (c) amended City Record Jan. 29, 2002 eff. Feb. 28, 2002. [See Note 1] Editor overlooked

changes which were not in brackets or italics which were determined to be inadvertent errors.

Subd. (c) amended City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 6]

Subd. (c) par (7) added City Record June 15, 1998 eff. July 15, 1998. [See Note 7]

Subd. (c) par (7) amended City Record July 8, 1997 eff. Aug. 11, 1997. [See Note 5]

Subd. (c) par (7) added City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 6]

Subd. (c) par (9) added City Record Dec. 18, 2007 §3, eff. Jan. 17, 2008. [See T35 §1-17 Note 5]

Subd. (c) par (10) amended City Record Apr. 1, 2009 §7, eff. May 1, 2009. [See T35 §1-78 Note 4]

Subd. (c) par (10) added City Record Dec. 18, 2007 §3, eff. Jan. 17, 2008. [See T35 §1-17 Note 5]

Subd. (c) par (11) repealed City Record Apr. 1, 2009 §7, eff. May 1, 2009. [See T35 §1-78 Note 4]

Subd. (c) par (11) added City Record Dec. 18, 2007 §3, eff. Jan. 17, 2008. [See T35 §1-17 Note 5]

Subd. (d) par (1) amended City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 6]

Subd. (e) par (3) amended City Record Apr. 23, 2007 §4, eff. May 23, 2007. [See T35 §1-17 Note 4]

Subd. (e) par (3) amended City Record Apr. 14, 2004 §§1, 2, eff. May 14, 2004. [See Note 9] All of paragraph (3) is laid out in supplement for consistency.

Subd. (e) par (3) subpar (i) clause (C) open par amended City Record Dec. 18, 2007 §2, eff. Jan. 17, 2008. [See T35 §1-17 Note 5]

Subd. (e) par (3) subpar (i) clause (C) open par amended City Record Dec. 18, 2007 §2, eff. Jan. 17, 2008. [See T35 §1-17 Note 5]

Subd. (e) par (5) subpar (iv) amended City Record Oct. 1, 2008 §3, eff. Oct. 1, 2008 per City Record notice. [See T35 §2-26 Note 1]

Subd. (e) par (5) subpar (iv) amended City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 6]

Subd. (e) par (5) subpar (vi) repealed City Record June 3, 1998 eff. July 3, 1998. [See T35 §3-05 Note 1]

Subd. (e) par (5) subpar (vi) added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See Note 3]

Subd. (e) par (6) added City Record June 12, 2007 §25, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (e) par (6) repealed City Record Apr. 8, 2003 §2, eff. May 8, 2003. [See T35 §1-19 Note 1]

Subd. (e) par (6) amended City Record Apr. 29, 1997 eff. June 1, 1997. [See Note 4]

Subd. (e) par (6) added City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 2]

Subd. (e) pars (7), (8) amended City Record June 12, 2007 §25, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (e) pars (7), (8) amended City Record May 11, 2005 §1, eff. June 10, 2005. [See Note 10]

Subd. (e) pars (7), (8) added City Record Apr. 14, 2004 §1, eff. May 14, 2004. [See Note 8]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 29, 2002:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York ("Charter"), empowering the TLC to regulate and supervise the business and industry of transporting passengers by licensed vehicles for-hire in the City; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §2303(b)(6) of such Charter, authorizing the TLC to establish requirements for safety, design and comfort of vehicles; and under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter.

These regulations amend the taxicab specifications to increase the minimum front and rear compartment legroom

requirements for sedans approved for use as taxicabs. The regulations also authorize the TLC Chair to approve minivans that may be used as taxicabs.

The Society of Automotive Engineers (SAE) has developed uniform interior and exterior measurements for motor vehicles. These SAE measurements are relied upon to ensure that vehicle dimensions of different vehicle models can be compared. The SAE has developed uniform measurements to determine both front and rear compartment passenger legroom, headroom and seat depth. These measurements are an indicator of vehicle size and passenger comfort. Minimum dimensions for headroom, legroom, and rear seat depth have been part of the TLC Specifications for taxicabs, and vehicles that do not meet these minimum size dimensions cannot be approved for use as taxicabs without specific approval from the TLC Chair.

These amendments to the Taxicab Specifications increase the interior front and rear passenger compartment legroom requirements. Front compartment minimum legroom dimensions are increased from 40 to 42 inches. Rear compartment minimum legroom requirements are increased from 37 to 43 inches.

The purpose of these amendments is to ensure that sedans authorized for use as taxicabs meet minimum standards for passenger comfort. There are currently available several sedan models available and suitable as taxicabs which meet these proposed minimum specifications for interior compartment legroom. These vehicles would provide a greater degree of passenger comfort than smaller sedans currently authorized for use as taxicabs provide. Vehicles with greater legroom are more comfortable, and provide ease in ingress and egress not available in smaller vehicles.

Additionally, these amendments authorize the TLC Chair to approve specific minivan models for use as taxicabs, after a determination that the vehicle meets reasonable safety and passenger comfort standards. Presently, the rules of the Commission, enacted in 1996, authorize three specific minivan/sport utility vehicle models to be used as taxicabs. The models that were approved in 1996 are no longer manufactured. Changes to these specific models have been made by their respective manufacturers, and these models are no longer suitable for use as taxicabs because of design changes.

There are other, newer minivan models that may be suitable for taxicab use. This regulation gives the TLC Chair the authority to approve specific models, after determining that these vehicles are safe and provide for adequate passenger comfort. Furthermore, the Chair could also disapprove models, previously suitable for use as taxicabs, that are no longer suitable for such use.

Minivans are exempted from the minimum headroom and legroom requirements set forth in subsections (3) and (4) of §3-03 of the Taxicab Specifications. SAE measurements for sedans are generally not comparable to minivans since minivans are generally built higher from the ground than sedans, have an open trunk compartment, and lack a transmission "hump". Accordingly, this rule provides the Chair with greater discretion in approving specific models that provide adequate passenger comfort and meet the Commission's safety requirements, even if these vehicles do not meet the specific headroom and legroom requirements applicable to sedans.

The Rule authorizing specific enumerated minivan models to be used as taxicabs was first approved by the Commission in 1996. Since the adoption of this Rule, there have been significant design changes made to these approved models, and they may no longer be suitable for use as taxicabs. Each year, manufacturers introduce new minivan models, change designs on existing models, and make other alterations which cause such models to be either more or less suitable for use as taxicabs. This Rule amendment authorizes the TLC Chair to approve those models which are best suited for use as taxicabs, and to remove from approval models that have been altered and are no longer suitable for taxicab use. Pursuant to authority conferred upon the TLC in the New York City Charter and the Rules of the Commission, the Chair may authorize the testing of new vehicles and equipment pursuant to pilot programs. If such a pilot program is successfully completed, the Chair could approve a vehicle for use as a taxicab. This amendment empowers the Chair to approve such models without separate rulemaking specific to manu- facturers or models.

2. Statement of Basis and Purpose in City Record Mar. 29, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The promulgated regulations require taxicabs to be equipped with an audible electronic device which will remind passengers to ask for a receipt and to take their belongings with them when they exit the vehicle. The purpose of the regulations is to reduce the large number of instances of lost property left in taxicabs. Every month, the TLC receives several thousand lost property inquiries. TLC believes a "talking taxi" reminder at the end of the trip will help reduce the number of instances of lost property. Based on public comments, the proposal was modified to permit operators an additional thirty days to install the device, until June 1, 1996. In addition, a nonfunctioning device was made a correctable condition which carries no penalty, but only requires compliance with a notice to correct.

3. Statement of Basis and Purpose in City Record Jan. 30, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. Commission regulations currently state that taxicabs must be equipped with air conditioning. The adopted further provide that the air conditioning actually reach the rear passenger compartment. The safety partitions installed in taxicabs in 1994 pursuant to Commission regulations have impeded the flow of air conditioning from the outlets in the front dashboard toward the rear passenger compartment. The amendments provide several options for taxicab owners to overcome this impediment to air flow. The proposal was amended in order to allow the Commission the opportunity to explore alternative mechanisms to permit air conditioning to reach the rear passenger compartment. A list of approved mechanisms will be established by April 1, 1996 and each owner with a taxicab equipped with a partition must install one of the approved mechanisms by May 15, 1996. The purpose of the regulations is to provide passengers with a more comfortable ride.

4. Statement of Basis and Purpose in City Record Apr. 29, 1997: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. Current regulations require that taxicabs be equipped with an audible electronic device which reminds passengers to ask for a receipt and to take their belongings with them when they exit the vehicle. The promulgated regulations require that the audible electronic device also be activated at the beginning of the trip to remind passengers to fasten their safety belts. The purpose of the regulations is to promote awareness that safety belts are available in taxicabs and should be worn by passengers. Based on public comment, the effective date for the requirement that all taxicab vehicles be equipped with the dual message device was extended until August 1, 1997. This provides the industry with over 100 days to come into compliance.

5. Statement of Basis and Purpose in City Record July 8, 1997: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the

Charter. The purpose of the amendments is to permit the Isuzu Oasis wagon to become a taxi. TLC organized an experimental operation of the vehicle model, and it was found to be a suitable taxi. The Isuzu Oasis meets the TLC's standards for interior volume, and enhances passenger comfort. The Isuzu Oasis is essentially the same vehicle, from the same assembly line, as the Honda Odyssey. The Odyssey was approved last year, after appropriate in-service testing. The TLC staff advises that the Isuzu Oasis has also passed a period of in-service testing. At present, there are approximately one hundred and thirty Odysseys and Isuzus in service as taxicabs.

6. Statement of Basis and Purpose in City Record July 1, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The purpose of the amendments is to permit two non-traditional taxi vehicles, the Honda Odyssey wagon and the Ford Explorer sport/utility vehicle, to become taxis. The present regulations provide full approval only to heavy-duty vehicles manufactured for police or taxi service. TLC organized an experimental operation of the two vehicle models, and both were found to be suitable taxis. They meet the standards for interior volume, and enhance passenger comfort. The Americans With Disabilities Act of 1990 ("ADA") provides that an entity providing transportation services, including a taxi service, when it acquires any "new van with a seating capacity of less than eight passengers including the driver," must ensure that such vehicle is fully accessible to persons with disabilities. 42 United States Code Sec. 12184(b)(3), (5). The term "van" is not defined for purposes of the above-quoted provision, and the United States Department of Transportation, the agency charged with implementing the transportation requirements of the ADA, has not yet determined whether the Honda Odyssey and the Ford Explorer are subject to that provision. In the event that these vehicles are determined to be "vans" for purposes of the ADA, they will be required to be made fully accessible to persons with disabilities, including persons in wheelchairs.

7. Statement of Basis and Purpose in City Record June 15, 1998: The regulation promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The regulation prohibits taxicabs from having more than a thirty (30) percent tint on any window in the vehicle with the exception of the uppermost six (6) inches of the front windshield which may have a tint greater than thirty (30) percent. The regulation is similar to New York State Vehicle and Traffic Law ("VTL") section 375, which states that no motor vehicle which operates upon any public highway, road or street shall have a light transmittance of less than seventy (70) percent on its front windshield or front side windows. The VTL allows a light transmittance of less than seventy (70) percent on the rear side windows of certain types of vehicles, and on the rear window of all motor vehicles if they are equipped with side mirrors giving the driver a clear and full view of the road and traffic conditions behind the vehicle. The regulation promulgated herein goes further than the VTL in that under no circumstance would a taxicab be allowed to have a light transmittance of less than seventy (70) percent on its rear side windows or its rear window. The purpose of the regulation is to promote the safety of drivers, passengers and the general public, by ensuring that taxicab drivers do not have their visibility impaired by excessive tint on the windows of their vehicles. The regulation also promotes the safety of police officers and TLC inspectors involved in taxicab enforcement by allowing them to see what activity is taking place within a stopped taxicab. Lastly, the regulation would make it more difficult for any criminal activity taking place within the taxicab to go unnoticed.

8. Statement of Basis and Purpose in City Record Apr. 14, 2004: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by

licensed vehicles for-hire in the City, under §2303(b)(6) of such Charter, authorizing the TLC to adopt regulations relating to taxicab safety, design and comfort; and §19-503(a) of the Administrative Code, authorizing the TLC to promulgate regulations necessary to exercise the authority conferred upon it under the Charter. The TLC amends the Taxicab Specifications to require that each taxicab be equipped with equipment which would enable the TLC to receive and collect trip data electronically from a taxicab. In addition, each taxicab is required to be capable of accepting major credit and debit cards from customers as an acceptable means of payment. These rules also require that each taxicab be equipped with a device to enable drivers to receive text messages, as well as a display map which would convey route and trip location information to passengers. Such technology will provide a number of advantages to the City, the industry and the riding public. This technology will enable the TLC to locate each taxicab at a given time and will assist in the recovery of lost property. The TLC receives, on average, more than 1,000 lost property reports each month. Currently, the TLC has no real-time method of communicating with the drivers of vehicles in which property was lost. A system that enables the TLC to promptly identify the vehicle in which the property was lost, and communicate quickly with the driver, will improve the chances that such property would be recovered. Technology is available to replace the hand-written trip sheets with an automatic data collection system. An automated collection of trip information, such as the date, time and location of each passenger pick-up and discharge, the number of passengers as well as the metered fare paid will provide a valuable resource for statistical purposes. The potential benefits of centralized data can include complex analysis of taxicab activity in the five boroughs for policy purposes, as well as the additional benefit of aiding in the recovery of lost property. In addition, a passenger monitor located in the rear of the taxicab will enable passengers to follow their route on a map. The rules also require that each taxicab have credit and debt card acceptance capabilities. Most major cities throughout the world permit the payment of taxicab fares by credit and/or debit cards. At this time, no more than 600 of the more than 12,000 New York City taxicabs are equipped with taximeters that accept credit cards. Mandating credit/debit card acceptance will provide convenience to passengers by providing a cashless method of payment. Since a period of time is needed to customize the technology necessary to equip each taxicab with the aforementioned enhancements this rule apples to vehicles placed into service or inspected after November 1, 2005. Because of the evolving nature of these technologies, it is necessary to allow the Commission some flexibility to approve the best systems and devices to implement the changes contemplated by these rules. Accordingly, the Commission has requested that the Chair present suggestions for approval to facilitate development and implementation of these technologies. The rule promulgated by the Commission was amended in light of comments received and testimony heard at the public hearing held on March 30th to clarify and expand the role of the TLC Board of Commissioners with respect to approving new equipment design and specifications for the manufacture and installation of equipment. Under these rules, the TLC Chair will make recommendations to the Commission with respect to the approval of taximeters and other technology systems that meet TLC specifications compatible with TLC internal software to ensure the uniform collection and processing of data, and the usability of transmitted data by the TLC.

9. Statement of Basis and Purpose in City Record Apr. 14, 2004: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under Section 2303(b)(6) of such Charter, authorizing the TLC to establish standards for vehicle safety, design and comfort; and under Section 19-503(a) of the Administrative Code, authorizing the TLC to promulgate regulations necessary to exercise the authority conferred upon it in the Charter. Section 1-17 of the Taxicab Owners' Rules requires each taxicab to be equipped with a partition that meets TLC Specifications, except for taxicabs operated exclusively by an owner-driver. These vehicles may be equipped with either a partition or an approved in-vehicle security camera. Section 3-03(e)(3)(i) sets forth the specifications for such a partition. The rules presently require that a partition by made of lexan, margard or another polycarbonate material. Lexan and margard are the trade names for bullet-resistant polycarbonate materials manufactured by General Electric. While these materials are durable and provide safety to the driver, lexan has the tendency to scratch and become opaque after a period of use. As the partition is no longer clear, the passenger's view of the driver's hack license and rate card, the meter, and the road through the front windshield could become compromised. Furthermore, the driver's view of the rear passenger compartment as well as his view through the rear view mirror, may likewise be affected. While margard, lexan product

treated with a scratch-resistant finish, represents an improvement over lexan, newer technologies may be developed in the future which would be superior with respect to both safety and clarity over the products presently on the market. In addition, there are other manufacturers who have developed suitable products that may be tested by the TLC. The TLC hereby repeals a portion of existing Rule 3-03(e)(3)(i) and replaces it with a rule to require an interior partition that is more durable and resistant to scratching, fading and clouding. The Chairperson is empowered to review partition design and make recommendations to the Commission for approval of partitions that meet functional specifications. This provides a better approach than listing specific approved products that may be used in partition manufacture and allows the Commission to more quickly adapt to evolving technology. Each taxicab is required to replace its existing partition with a new one that meets these specifications. In order to provide time for the industry to comply with this new requirement, it will not take effect until November 1, 2005. After that date, each owner hacking-up a new vehicle will be required to install a new partition that meets these specifications and is approved by the Commission. The rule promulgated by the Commission was amended in light of comments received and testimony heard at the public hearing held on March 30th to clarify and expand the role of the TLC Board of Commissioners with respect to approving new equipment design and specifications for the manufacture and installation of equipment.

10. Statement of Basis and Purpose in City Record May 11, 2005: The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under §2303(b)(6) of such Charter, to adopt rules relating to taxicab safety, design and comfort; and §19-503(a) of the Administrative Code, to promulgate rules necessary to exercise the authority conferred upon it under the Charter. On March 30, 2004, the TLC promulgated rules which amended the Taxicab Specifications to require that each taxicab be provided with equipment 1) enabling the TLC to receive and collect trip data electronically, 2) allowing drivers to accept major credit and debit cards from customers as a means of payment, 3) enabling drivers to receive text messages, and 4) equipping each taxicab with a monitor capable of displaying a map providing route and trip location information to passengers. Since the TLC recognized that a period of time would be necessary to customize the technology necessary to equip each taxicab with the aforementioned enhancements, these rules became applicable to vehicles placed into service or inspected after November 1, 2005. Also, upon promulgation of these rules, the Commission requested that the Chair present suggestions to facilitate development and implementation of these technologies. Accordingly, TLC staff conducted an extensive information gathering process including: the issuance of a Request for Information on June 21, 2004, an Informational Exchange Conference with potential vendors and taxicab industry leaders, passenger and driver focus groups and meetings with industry groups. On March 2, 2005, the TLC issued a Request for Proposal for NYC Medallion Taxicab Technology Enhancements to implement the promulgated rules. The due date for proposal submission was May 10, 2005 with an anticipated contract start date of August 1, 2005. The final rules would allow taxicab drivers to receive as well as send text messages provided that the text messaging not be used in contravention of TLC rules and not be used for dispatch purposes. The final rules make conforming changes to TLC rules to reflect electronic trip sheet data collection in lieu of written record keeping. The actual implementation date of these enhancements cannot be determined in advance, and therefore these final rules remove references to a deadline of November 1, 2005 and substantiate references to a deadline to be fixed by the Commission. The TLC recognizes the evolving nature of the technological improvements and the possibility that these improvements will offer previously unrealized revenue opportunities for medallion taxicab owners while improving the quality of service to the riding public. This revenue potential might also offset the costs of installing and maintaining the new equipment contemplated by the service enhancement rules. The TLC therefore desires to allow some flexibility in approving the best systems and devices to implement the changes contemplated by the service enhancement rules and the final rules revise the implementation date to a date that is agreed upon between the TLC and the authorized contractor(s). While the March 30, 2004 rules are silent on revenue enhancement as a criterion for selection of the newly mandated technologies, the TLC has determined that the unrealized revenue opportunities for medallion taxicab owners to be derived from the Passenger Information Monitor should be explored. The final rules therefore revise the service enhancement rules to authorize the display of TLC Public Service Announcements and limited commercial advertising and commercial sponsorships on the Passenger Information Monitor to offset costs and/or provide additional sources of revenue. The final rules include two additional clauses in Rule §3-07(e)(4) in §3. These additions were adopted to

clarify that it would be at the medallion owner's discretion to run advertising or media content. Adoption of these revisions do not require further notice and comment pursuant to §1043 of the New York City Charter, based on the consideration of relevant agency or public comments.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 3-03.1

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-03.1 Hybrid Electric Taxicab Specifications.

(a) The purpose of this section is to implement §19-533 of the Administrative Code, as enacted by local law 72 of 2005.

(b) As used in this section, the term "hybrid electric vehicle" shall mean a commercially available mass production vehicle originally equipped by the manufacturer with a combustion engine system together with an electric propulsion system that operates in an integrated manner.

(c) Any hybrid electric vehicle manufactured for the general consumer market shall be approved for hack-up, as that term is defined in §3-01(a) of this chapter, provided that such vehicle is presented for hack-up on or after the effective date of this rule, and provided that such vehicle meets all requirements for vehicle hack-up except the following:

(1) The hybrid electric vehicle shall not be required to be manufactured with heavy-duty equipment for taxicab, police or fleet service, notwithstanding the provisions of §3-03(c)(1) of this chapter;

(2) Minimum interior volume index shall be 101.5 cubic feet, notwithstanding the provisions of §3-03(c)(2) of this chapter;

(3) Minimum effective rear compartment legroom (L51) shall be 34.6 inches, notwithstanding the provisions of §3-03(c)(3)(i) of this chapter;

(4) Minimum effective rear compartment headroom (H63) shall be 37.1 inches, notwithstanding the provisions of §3-03(c)(3)(ii) of this chapter;

(5) Minimum effective front compartment legroom (L34) shall be 41.6 inches, notwithstanding the provisions of §3-03(c)(4)(ii) of this chapter;

(6) Minimum total legroom (the sum of L34 plus L51) shall be 76.2 inches, notwithstanding the provisions of §3-03(c)(4)(iii) of this chapter;

(7) The maximum horsepower shall be 268, notwithstanding the provisions of §3-03(c)(6) of this chapter;

(8) The hybrid electric vehicle shall have at least four doors, and shall be a minivan, a compact or larger sedan, or a sport utility vehicle, notwithstanding the provisions of §3-03(c)(7) and (d)(1) of this chapter; provided that a hybrid electric vehicle designated a sport utility vehicle by either the vehicle's manufacturer or by the National Highway Traffic Safety Administration must be equipped with running boards;

(9) A hybrid electric vehicle designated a sport utility vehicle by either the vehicle's manufacturer or by the National Highway Traffic Safety Administration shall have a rear window and left and right rear side windows with the greatest degree of light transmittance available from the manufacturer or by dealer option, but in no event less than 20 percent light transmittance, notwithstanding the provisions of §3-03(c)(8) of this chapter; and

(10) Repealed.

HISTORICAL NOTE

Section added City Record Sept. 16, 2005 eff. Oct. 16, 2005. [See Note 1]

Subd. (c) par (10) repealed City Record Dec. 18, 2007 §4, eff. Jan. 17, 2008. [See T35 §1-17 Note 5]

Subd. (c) par (10) amended City Record Apr. 23, 2007 §5, eff. May 23, 2007. [See T35 §1-17

Note 4]

Subd. (d) repealed City Record Mar. 16, 2007 §2, eff. Apr. 15, 2007. [See T35 §3-02 Note 5]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 16, 2005:

This rule is intended to implement §19-533 of the Administrative Code of the City of New York, as enacted by Local Law 72 of 2005. That law requires that the Taxi and Limousine Commission ("TLC") approve one or more hybrid electric vehicle models for use as taxicabs.

The TLC recognizes the great importance of hybrid electric vehicle technology, as described in §1 of Local Law 72 of 2005. The benefits of hybrid electric vehicle technology include economic, because of the recent escalation in the retail price of gasoline; environmental, because of the pollutants created by comparatively low-mileage gasoline-burning vehicles; and public health, because of the adverse consequences of those pollutants.

TLC Commissioners and TLC staff extensively reviewed available hybrid electric vehicle models with four or more doors, culminating in an on-site inspection of samples of those models on July 26, 2005. None of the hybrid electric vehicle models available for sale to consumers in the United States complies with all of the taxicab vehicle specifications stated in Chapter 3 of the TLC's rules (Title 35, Rules of the City of New York). Non-compliances include passenger and driver comfort specifications, most importantly legroom; safety specifications, such as untinted

windows and maximum horsepower; and durability specifications such as heavy-duty construction. Existing specifications must be modified to comply with the mandate of Local Law 72 of 2005. Therefore, realization of the economic, environmental, and public health benefits of hybrid electric technology requires tradeoffs with the other interests served by the TLC's vehicle specifications.

TLC staff identified only six hybrid electric vehicle models with four doors or more that are available on the consumer market in the United States: the Ford Escape/Mercury Mariner, the Honda Accord, the Honda Civic, the Lexus RX400H, the Toyota Highlander, and the Toyota Prius. The rule permits the hack-up of any of these six models. TLC staff research indicates that the number of available hybrid electric vehicle models will likely double in the 2007 model year.

TLC staff will monitor the implementation of this rule and recommend any amendments that might be warranted by experience with those vehicles in actual taxicab usage.

The final rule differs from the proposed rule in that §3-03.1(c)(2) was revised based upon consideration of a public comment.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 3-03.2

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-03.2 Accessible Taxicab Specifications.

(a) Definitions. For purposes of this section:

(1) The term "accessible taxicab" shall refer to a taxicab that complies with federal regulations promulgated pursuant to the Americans with Disabilities Act applicable to vans under 22 feet in length, by the federal Department of Transportation, in Code of Federal Regulations, title 49, parts 37 and 38, and by the federal Architectural and Transportation Barriers Compliance Board, in Code of Federal Regulations, title 36, sections 1192.23 et seq., and the Federal Motor Vehicle Safety Standards, Code of Federal Regulations, title 49, part 571, that is hacked-up, as that term is defined in §3-01(a) of this chapter, to an accessible medallion or any other medallion on or after June 25, 2006.

(2) The term "OEM" shall refer to the original equipment manufacturer of the accessible taxicab who either manufactures the accessible taxicab in compliance with the specifications in subdivisions (c) and (d) of this section or manufactures the accessible taxicab such that the chassis complies with the specifications in subdivision (c) of this section and approves a second-stage manufacturer who modifies the vehicle to comply with the specifications of subdivision (d) and, to the extent applicable, of subdivision (e) of this section.

(b) An accessible taxicab shall be approved for hack-up if:

(1) It is a vehicle other than a van the chassis for which as originally manufactured is designed to seat eight or more persons, a bus, or a minibus;

(2) It is capable of transporting at least one passenger using a common wheelchair as defined in Code of Federal

Regulations, title 49, §37.3;

(3) As presented for hack-up, it does not seat more than five passengers in all; and

(4) It complies with the requirements stated in subdivisions (c) and (d) of this section, and all other requirements for hack-up that are not inconsistent with the provisions of this section; provided, however, that an accessible taxicab that is also a hybrid electric vehicle must also comply with the requirements stated in §3-03.1 of this chapter.

(c) The chassis of the accessible taxicab as originally manufactured must meet the following general OEM specifications:

(1) The maximum horsepower shall be 240;

(2) The suspension shall utilize the OEM's suspension and steering components; and

(3) No bumper modifications are allowed, except as provided in subdivisions (e) and (f) of this section.

(d) The accessible taxicab as manufactured by the OEM or as modified by an OEM-approved second-stage manufacturer must meet the following specifications:

(1) The minimum ground clearance (measured from frame, loaded to gross vehicle weight rating (GVWR)) shall be 5 inches;

(2) The minimum passenger compartment length (measured from rear of driver's seat base to rear seat base) shall be 56 inches;

(3) The OEM floor of the accessible taxicab, if lowered, shall be lowered from the base of the firewall to the area immediately in front of the rear axle;

(4) If a lowered floor assembly is used in the accessible taxicab, it shall be stainless steel (16 gauge minimum), and shall meet or exceed the 1000 hour salt spray rating;

(5) If a lowered floor assembly is used in the accessible taxicab, a vapor-insulating barrier of $^1/_2$ inch marine grade plywood shall be applied over the lowered metal floor and thoroughly secured;

(6) The wheelchair ramp shall not block any part of the door or glass while in the stowed position;

(7) The wheelchair securement system shall be provided to hold a wheelchair or wheelchairs and shall be the system known as Q straint QRT Standard or equal;

(8) No anchor points shall project more than $^1/_8$ of an inch above the finished floor;

(9) If the accessible taxicab has a middle fold-up passenger seat, it shall have a folding mechanism and base plate and shall meet the requirements of the Federal Motor Vehicle Safety Standard No. 207, Code of Federal Regulations, title 49, §571.207;

(10) Any modifications to the rear air conditioning must be approved by the OEM;

(11) Any and all electrical wiring in the accessible taxicab, other than as provided by OEM who manufactured the chassis, shall be PVC or better insulated and color coded for positive identification; and

(12) The back-up alarm in the accessible taxicab shall be an electrically operated device that produces an intermittent audible signal when the accessible taxicab's transmission is shifted to reverse.

(e) A vehicle that complies with this section, except that the rear bumper has been cut or otherwise modified to allow the installation of a rear-entry ramp for wheelchair access, shall nonetheless be approved for hack-up as an accessible taxicab if:

(1) The rear bumper is reinforced and the rear bumper modification is approved by the OEM;

(2) The vehicle modifications meet or exceed any applicable Federal Motor Vehicle Safety Standards crash testing requirements;

(3) If the rear door lock mechanism of the vehicle is modified, the modification must meet or exceed Federal Motor Vehicle Safety Standards and the lock mechanism must be affixed to the vehicle chassis, not the ramp assembly, unless a secondary lock is provided that is affixed to the vehicle chassis.

(f) A vehicle that complies with subdivision (e) above, except that the second-stage manufacturer does not perform the rear bumper modification pursuant to OEM approval shall nonetheless be approved for hack-up as an accessible taxicab if the modifier retains a licensed professional engineer who has either a bachelor's degree or higher in mechanical engineering or has a bachelor's degree or higher in electrical engineering and at least three years' experience in automotive manufacturing, who separately certifies for each vehicle that the vehicle was modified in conformance with the design as tested pursuant to paragraph (e)(2) above and such certification is presented to the Commission upon presentation of the vehicle for certification and hack-up as an accessible taxicab.

HISTORICAL NOTE

Section added City Record May 26, 2006 eff. June 25, 2006. [See Note 1]

Subd. (a) par (2) amended City Record June 17, 2008 §1, eff. July 17, 2008. [See Note 2]

Subd. (c) par (3) amended City Record June 17, 2008 §1, eff. July 17, 2008. [See Note 2]

Subd. (e) added City Record June 17, 2008 §2, eff. July 17, 2008. [See Note 2]

Subd. (e) repealed City Record Mar. 16, 2007 §3, eff. Apr. 15, 2007. [See T35 §3-02 Note 5]

Subd. (f) added City Record June 17, 2008 §2, eff. July 17, 2008. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record May 26, 2006:

The rules provide specifications for taxicabs to be used with accessible medallions pursuant to §19-532(b) of the Administrative Code of the City of New York. The specifications are applicable to taxicabs that are hacked-up for use with accessible and other medallions on or after June 25, 2006. The specifications incorporate federal regulations promulgated pursuant to the Americans with Disabilities Act of 1990 ("ADA") applicable to vans under 22 feet in length, by the federal Department of Transportation, Code of Federal Regulations, title 49, parts 37 and 38, and by the federal Architectural and Transportation Barriers Compliance Board, Code of Federal Regulations, title 36, sections 1192.23 **et seq.** The purpose of the rules is to ensure that accessible taxicabs are accessible to passengers who use wheelchairs.

The rules require that an accessible taxicab be a vehicle other than a van the chassis for which as originally manufactured is designed to seat eight or more persons, a bus, or a minibus. The vehicle must meet the specifications either after original manufacture or after modification by a second-stage manufacturer that is approved by the original manufacturer. The Taxi and Limousine Commission staff has identified two vehicles currently in production that meet the specifications-the Chevrolet Uplander, as modified by Eldorado National and sold as the American PT, and as

modified by the Braun Corporation and sold as the Braun Entervan.

2. Statement of Basis and Purpose in City Record June 17, 2008: The promulgated rule expands the specifications for accessible taxicabs to allow the use of rear-entry vehicles that have been successfully tested in two pilot programs subsequent to the adoption of the current accessible taxicab specifications in March 2007. Specifically, the promulgated rule permits the use of accessible taxicabs that have been modified by the cutting of the rear bumper to allow the installation of rear entry wheelchair ramps. The two pilot programs involved ADA-compliant minivans, modified after original manufacture to allow for rear entry rather than side entry as is the case with previously approved accessible taxicabs. The rear-entry vehicles proved during the pilot programs to be widely popular with taxicab drivers and passengers who use wheelchairs, and were found to reduce substantially the wheelchair-using passengers' "loading time." Despite that success, the Taxi and Limousine Commission maintains its paramount concern with vehicle safety, which in the case of these vehicles focused on two points. First, the Commission insists on assurances that the alteration of the rear bumper would not compromise the crash worthiness of the accessible taxicab. The promulgated rule sets forth the requirements imposed to provide those assurances: reinforcement of the rear bumper; compliance with applicable Federal Motor Vehicle Safety Standards crash testing requirements; and modification, if any, of the rear door lock mechanism pursuant to applicable federal standards. Second, because both pilot programs involved second-stage modifications performed without the sponsorship and approval of the original vehicle manufacturer, the Commission insisted on assurances that each vehicle would be modified in conformance with the design as tested. The promulgated rule requires the second-stage modifier to retain a licensed professional engineer who has a bachelor's degree or higher in mechanical engineering or has such a degree in electrical engineering together with at least three years' demonstrable experience in automotive vehicle manufacturing to certify that each vehicle is so modified. At present, Commission staff is aware of two post-manufacture modifications of the Toyota Sienna that would meet the specifications in the promulgated rule. In addition, Commission staff is aware that a second-stage modification of the Dodge Caravan that would meet the specifications of the promulgated rule is under consideration.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 3-03.3

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-03.3 Clean Air Taxicab Specifications.

As used in this chapter, the term "clean air taxicab" shall mean any vehicle that is either a level one or a level two clean air taxicab, as follows:

(a) "Level one clean air taxicab" shall mean any vehicle approved for use by the Commission as a taxicab that receives an air pollution score of 9.5 or higher from the United States Environmental Protection Agency ("EPA") or its successor agency and is estimated to emit 5.0 tons or less of equivalent carbon dioxide per year by the United States Department of Energy ("DOE") or its successor agency; provided that such vehicle is powered by the fuel for which such vehicle meets the above-specified standards.

(b) "Level two clean air taxicab" shall mean any vehicle approved for use by the Commission as a taxicab that receives an air pollution score of 9.0 or higher from the EPA or its successor agency and is estimated to emit 6.4 tons or less of equivalent carbon dioxide per year by the DOE or its successor agency and that does not meet the definition of a level one clean air taxicab; provided that such vehicle is powered by the fuel for which such vehicle meets the above-specified standards.

(c) As used in this section and in Chapter 1 of this title, the term "clean air taxicab" shall mean any taxicab licensed by the Commission that receives an air pollution score of 9.0 or higher from the United States Environmental Protection Agency or its successor agency and is estimated to emit 6.4 tons or less of equivalent carbon dioxide per year by the United States Department of Energy or its successor agency; provided that such vehicle is powered by the fuel for which such vehicle meets the above-specified standards.

HISTORICAL NOTE

Section added City Record Mar. 16, 2007 §4, eff. Apr. 15, 2007. [See T35 §3-02 Note 5]

Subd. (c) added (as §3-03.3) City Record May 23, 2007 §5, eff. June 22, 2007. [See T35 §1-35 Note 1] [Note redesignated by the Law Department per Charter §1045(b)]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-04 Taximeter Specifications.

(a) The Unit must:

(1) be fully electronic.

(2) have all access points sealed by a licensed N.Y.C. taxi meter shop.

(3) have casing made of hard impenetrable plastic or metal.

(4) be capable of operating within a temperature range of -20F and +120F.

(5) automatically produce a printed receipt for passengers which indicates date, time, medallion number, fare paid, extras, and Commission telephone complaint number. This receipt shall have all readouts in a minimum of five figures including decimals eg. 000.00.

(6) be capable of releasing a printed receipt within 10 seconds.

(7) be capable of producing a printed receipt for Commission personnel which shows total mileage, total paid mileage, total trips and total units, and total extras. All these readouts must show a minimum of six digits exclusive of decimals eg. 999,999. This function shall be operated by a separate button or switch.

(8) have all seals indicating on the sealed surface the licensed meter shop by name and license number. If an adjustment can be made to any component affecting the performance of the printer, then provision shall be made for

applying a seal in a manner which requires the seal to be broken before an adjustment can be made.

(9) have an auxiliary power source which operates independently of the vehicle's electrical system contained in the unit and it shall operate the memory at its full capacity for a minimum of 2 years.

(10) have a memory which shall be non-erasable. Upon reaching the limits of any display, the unit shall be capable of turning over.

(11) have a fully programmable fare structure with low cost rate change capability.

(12) for 2 piece units, have a printer capable of interfacing with and recording information from a fully approved electronic taximeter.

(13) for 2 piece units, have all connections between display meter and the unit permanently sealed and tamper-proof by use of approved tubing or electrical conduits. The display unit must be unable to function if disconnected from the memory unit.

(14) be capable of automatically making meter display inoperable if printer paper is not available in the printing unit.

(15) have model and serial numbers appearing on the face of the unit. For 2 piece units, model and serial numbers must appear on the display unit and the printer unit.

(16) all operating buttons and/or switches related to passenger functions must appear on the face of the unit, must be properly illuminated, and must indicate its function.

(17) extras shall appear separately on the display as well as the receipt for passengers. Extra indicator must be illuminated when in operation.

(18) fare display shall remain on a total of 15 seconds from time the printer begins to print the customers receipt at the completion of the ride.

(19) fare display shall be clearly visible.

(20) receipt disposal unit must be visible to the passenger.

(21) all illuminated indicators must be of sufficient candlepower to be visible to the passenger.

(22) be permanently affixed to the vehicle in a location approved by the Commission.

(23) the rooflight must be controlled by the engaging of the meter.

(24) be capable of calculating and displaying the regular metered rate of fare required by section 1-70 of this title, the flat rate of fare for a trip from Kennedy Airport to Manhattan or from Manhattan to Kennedy Airport, as required by section 1-69(a) of this title, the rate of fare for a trip to or from Newark Airport, as required by section 1-73(c) of this title, the rate of fare for trips to Nassau and Westchester counties, as required by section 1-73(b) of this title, the negotiated flat fares to points outside New York City other than the Newark Airport and Westchester and Nassau counties, as required by section 1-73(b) of this title, and the flat fares per person for group rides, as required by section 1-71 of this title.

(25) for any taxicab required to be equipped with the taxicab technology system as defined in section 3-03 of this chapter, be capable of transferring data to the taxicab technology systems of all taxicab technology service providers which have chosen such taximeter, in order to allow credit and debit card payment required by section 3-03(e)(7) of this

chapter, text messaging required by section 3-03(e)(8) of this chapter, trip data collection and transmission required by section 3-06 of this chapter and communication with the passenger information monitor required by section 3-07 of this chapter. This specification, unless the taxicab is exempt pursuant to section 1-11(g) of this title, shall be implemented no later than the compliance date set forth in section 1-01 of this title.

(26) use switches, wiring and wire caps in all connections to the taximeter harness, roof light wires and pulse wires that meet specifications of the Society of Automotive Engineers, where such specifications are applicable. All of the taxicab technology system ports and peripheral connections shall be physically secured from tampering that could disrupt the functionality or compromise the integrity of the taximeter.

(b) In addition, taxi meters shall meet the specifications and tolerances published in the National Bureau of Standards Handbook 44.

(c) In addition to fulfilling the requirements of subsections 3-03(a) and (b), each unit must be approved by the State of New York Department of Agriculture and Markets.

(d) Each such unit submitted to the Commission for approval will be subject to the Commission's normal testing period of three months minimum.

HISTORICAL NOTE

Section heading amended City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §3-01 Note 3]

Section renumbered (formerly 3-03) City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §3-01 Note 3]

Subd. (a) par (5) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See T35 §2-46 Note 1]

Subd. (a) par (24) amended City Record June 12, 2007 §26, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) par (24) added City Record July 1, 1996 eff. Aug. 1, 1996. [See T35 §1-69 Note 3]

Subd. (a) par (25) added City Record June 12, 2007 §26, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) par (26) added City Record June 12, 2007 §26, eff. July 12, 2007. [See T35 §1-01 Note 3]

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***** Current through December 2009 ****

35 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-05 Air Conditioning Specifications.

(a) All vehicles shall be equipped with an air conditioner. The air conditioner must be in good working condition from May 1st through September 30th each year. In vehicles equipped with a partition, the air conditioner shall include either an Auxiliary Unit or a Patch Unit, as required for various classifications of vehicles by this section.

(b) An Auxiliary Unit has controls which passengers may operate in the rear passenger area. It either:

(1) was built into the vehicle by the vehicle manufacturer; or

(2) operates off the vehicle's compressor and by means of a secondary evaporator core placed in a location approved by the Commission, and outlets from that evaporator core to provide cool air directly to the rear passenger compartment; or

(3) is a unit approved by the Chairperson, based upon a finding in his or her sole discretion, as to the unit's equivalence to items (1) and (2) above in the delivery of cool air to the rear passenger compartment; its effects on driver and passenger safety; its noise; and its effect upon passenger comfort and convenience. The Chairperson may, in his or her sole discretion, permit the trial operation of units in a limited number of taxicabs, in order to make such a finding. The Chairperson may terminate the trial and direct the removal of units used in the trial.

(4) The Chairperson may attach further conditions and specifications for any Auxiliary Unit. The Chairperson may require the refitting of taxicabs equipped with a previously approved Auxiliary Unit, only if such refitting either: (a) would cost less than $100; or (b) is based upon the Chairperson's finding as to a safety hazard.

(c) A Patch Unit has a conduit from one or more air conditioner vents in the dashboard into the rear passenger compartment. A Patch Unit must be approved by the Chairperson, based upon a finding, in the Chairperson's sole discretion, as to the unit's effects on driver and passenger safety, its sufficiency in the delivery of cool air, its noise, and other effects upon passenger comfort and convenience. Without limiting the authority of the Chairperson to approve other units, or to withdraw or modify the approval of a unit, there are three currently approved Patch Units:

(1) The Overhead Patch Unit consists of a commercially available extension outlet, which is fixed to the vehicle above the partition.

(2) The Center Patch Unit consists of a duct with an outlet in the metal portion of the partition. Effective July 3, 1998, this unit shall not include a fan in the partition outlet, because such a fan may create air pressure conditions within the duct which adversely affect the delivery of cool air.

(3) The Side Patch Unit reroutes the hose(s) to provide cool air conditioning to vents under the two front seats. The cool air then flows via a duct to the extreme left and right sides of the partition with an outlet discharging cool air into the rear passenger compartment.

(4) The Chairperson may withdraw approval or attach further conditions, and may require the refitting of taxicabs fitted with the unit for which approval was withdrawn or further conditioned. Such determination shall be based upon a finding, in the Chairperson's sole discretion, as to the foregoing factors of safety, comfort and convenience. The Chairperson must provide owners with sixty days notice of any such refitting requirement and shall report the determination to the Commission.

(d) All vehicles hacked-up or re-hacked on or after July 3, 1998, and equipped with a partition shall be equipped with an Auxiliary Unit.

(e) All vehicles hacked-up prior to July 3, 1998 and equipped with a partition shall be equipped with either an Auxiliary Unit or a Patch Unit.

HISTORICAL NOTE

Section added City Record June 3, 1998 eff. July 3, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 3, 1998:

The regulations adopted by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

This rule establishes new specifications for air conditioning in all taxicabs equipped with a partition. All taxicabs hacked-up on or after July 3, 1998 are required to have an Auxiliary Unit, which would provide cool air to the rear compartment, either by means of a secondary evaporator core in a location approved by the Commission, or alternatively from rear outlets factory produced by the original vehicle manufacturer. The rule includes a mechanism for the Chairperson to approve other Auxiliary Units besides those specified.

Vehicles hacked-up before July 3, 1998 are required to have either an Auxiliary Unit or a Patch Unit. A patch unit may be an overhead extension outlet, a center duct with an outlet in the metal portion of the partition, or rerouted hosing

in certain models.

The rule does not require the refitting of any taxicab now in service except as it requires the removal of any fans from the partition outlets in the Center Patch Unit. A fan is not permitted in the partition outlet, based upon operational experience. When it operates at a different speed than the dashboard-controlled fan, an additional fan in the partition may increase the air pressure within the duct and impede the delivery of cool air. Fans that are currently installed in the Center Patch Units must be removed by July 3, 1998. Removing the fan would be a low cost modification.

The purpose of this rule is to provide an efficient and effective method of providing air conditioning to the rear passenger compartment.

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35 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-06 Specifications for the Collection and Transmission of Required Trip Data.

(a) All vehicles, except as provided in section 1-11(g) of this title, shall comply with the data collection and transmission requirements of this section. This specification shall be implemented no later than the compliance date set forth in section 1-01 of this title.

(b) Each taxicab shall be capable of transmitting data to the Commission or its designated repository at pre-determined intervals established by the Chairperson. All transmissions shall be in a format and manner approved by the Chairperson. The data to be transmitted shall include the taxicab license number; the taxicab driver's license number; the location of trip initiation; the time of trip initiation; the number of passengers; the location of trip termination; the time of trip termination; the metered fare for the trip; and the distance of the trip. All data transmitted to TLC will be sent in a secure format as approved by the Chairperson.

(c) To the extent necessary to facilitate data transfer, the Commission may mandate that each taxicab be equipped with external antennas.

(d) No equipment designed to comply with the provisions of this section shall be installed unless it has been approved by the Commission, based upon a determination that the unit and equipment conforms with the specifications as set forth herein, is safe, and fulfills the intended purposes for such equipment.

HISTORICAL NOTE

Section added City Record Apr. 14, 2004 §2, eff. May 14, 2004. [See T35 §3-03 Note 8]

Subd. (a) amended City Record June 12, 2007 §27, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) amended City Record May 11, 2005 §2, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (b) amended City Record May 11, 2005 §2, eff. June 10, 2005. [See T35 §3-03 Note 10]

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35 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-07 Passenger Information Monitor.

(a) All vehicles, except as provided in section 1-11(g) of this title, shall be equipped with a passenger information monitor which meets all the requirements of this section. This specification shall be implemented no later than the compliance date set forth in section 1-01 of this title.

(b) The passenger information monitor shall have the following minimum specifications or capabilities:

(i) Provide the passenger sitting in the rear of the vehicle with an unobstructed view of the monitor;

(ii) Be provided with a screen that is no less than ten (10) inches measured diagonally and placed in the rear passenger compartment of the taxicab; provided, however, for hybrid electric vehicles and other small clean air or low emission vehicles without a partition, licensed by the Commission for use as taxicabs, the screen size may be less than ten (10) inches but not less than five and one-half ($5^1/_2$) inches measured diagonally;

(iii) Display a map that indicates the current location of the vehicle as well as the route the vehicle has traveled from the point of trip initiation to the point of trip destination or termination;

(iv) Display without limitation the following: TLC Public Service Announcements (PSAs) including but not limited to the Passenger Bill of Rights, the Flat Fare Notice and any other TLC PSAs as designated by the Chairperson and, at the medallion owner's option, limited media content, which may include commercial advertising and commercial sponsorships as enumerated in the contract(s) between the TLC and taxicab technology service provider(s);

(v) Display itemized metered fare information at destination or termination of trip;

(vi) The capability for the passenger to turn off the monitor to a blank screen without illumination, after any TLC Public Service Announcements or any such other required information as designated by the Chairperson, which may remain visible or illuminated for all or a portion of the passenger trip. The monitor must also have the capability to re-illuminate upon disengagement of the meter to further display any additional TLC PSAs upon the passenger(s) leaving the taxicab. The monitor must also contain the capability for the passenger to control and/or mute the volume of content after any TLC Public Service Announcements or any such other required information as designated by the Chairperson.

(c) No passenger information monitor or related equipment shall be installed unless it has been provided by an authorized taxicab technology service provider on or before the compliance date set forth in section 1-01 of this title.

(d) If the credit/debit card acceptance equipment is not operational, but the passenger information monitor is operational, the passenger information monitor shall display the message, "Credit Card System Currently Not Available."

HISTORICAL NOTE

Section amended City Record May 11, 2005 §3, eff. June 10, 2005. [See T35 §3-03 Note 10]

Section added City Record Apr. 14, 2004 §4, eff. May 14, 2004. [See T35 §3-03 Note 8]

Subd. (a) amended City Record June 12, 2007 §28, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (b) open par amended City Record June 12, 2007 §28, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (b) pars (ii)-(v) amended City Record June 12, 2007 §28, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (c) amended City Record June 12, 2007 §28, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (d) added City Record June 12, 2007 §28, eff. July 12, 2007. [See T35 §1-01 Note 3]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-01 Definitions.

Applicant. An applicant is an individual applying for an original or renewal license for a paratransit vehicle and/or to operate such vehicle and/or to operate a paratransit base.

Base. A base is a central facility approved by the Commission which manages, organizes and/or dispatches a licensed vehicle or vehicles. This location should also be the official location on record with the New York State Department of Transportation.

Base Owner. A base owner is any individual, partnership or corporation licensed by the Commission to own and operate a base.

Chauffeur's license. Chauffeur's license means a valid New York State Chauffeur's license or its equivalent from another state of which the licensee is a resident.

Commission. Commission shall refer to the New York City Taxi and Limousine Commission.

Common carrier. A common carrier is a vehicle licensed by the state for public use in the conveyance of persons or property within New York State.

Dispatch of a paratransit vehicle. Dispatch of a paratransit vehicle is a dispatcher's instruction to a paratransit driver (usually by radio) directing the driver to provide service to a prospective passenger on a prearranged basis.

Driver. A driver is a person licensed by the Commission to drive a paratransit vehicle in the City of New York.

Fastening devices. A fastening device is a device, as approved by the New York State Department of Transportation, which will securely hold wheelchairs in position in a paratransit vehicle and will not cause a tripping hazard.

Electronic Trip Record System. The "electronic trip record system" is hardware and software that collects and stores the electronic trip record data required by section 4-09(gg). The specific locations and times of pick-up and drop-off and any other data that may be collected in the vehicle must be done contemporaneously with the trip.

Lease card. A lease card is a card issued to a lessee of a paratransit vehicle by the Commission, setting forth the name and address of the lessee, the period of the lease and any other information prescribed by the Commission.

Licensed vehicle. A licensed vehicle is a paratransit vehicle or ambulette authorized by the Commission to transport, by prearrangement and for hire, any person with a disability.

Mailing address. A mailing address is the address designated by the paratransit vehicle owner, base owner or driver for the receipt of all notices and correspondence from the Commission and for the receipt of service of summonses by the Commission. In the case of the base owner, the mailing address shall be the base address. In the case of the driver, it shall be the home address of the driver. In the case of the paratransit vehicle owner, an individual shall designate the home address of such individual or, if a partnership, of one of the partners and a corporation shall designate the address of the secretary of the corporation. However, the licensee may also designate a U.S. post office box number as a mailing address. Any notice from the Commission shall be deemed sufficient if sent to the address last furnished to the Commission by the paratransit vehicle owner, base owner or driver.

Owner. An owner is any individual, partnership, association, organization (including non-profit), or corporation licensed by the Commission to own a paratransit vehicle. Accordingly, under these rules, the term includes an agent or employee of such owner having authority to act on behalf of the owner, including a lessee of a paratransit vehicle.

Paratransit driver's license. A paratransit driver's license is a license issued by the Commission to persons who meet Commission qualifications as paratransit vehicle drivers.

Paratransit service. A paratransit service is a transportation service for persons with disabilities, including all ambulette services.

Paratransit vehicle. A paratransit vehicle is a wheelchair accessible van. For the purposes of these rules, this term shall include all ambulettes (whether wheelchair accessible or not).

Paratransit vehicle license. A paratransit vehicle license is a license issued by the Commission to an owner of a paratransit vehicle which displays the vehicle's license number and other data prescribed by the Commission which serves as evidence that the vehicle is licensed to operate in New York City.

Passenger. A passenger is any individual carried in a paratransit vehicle for travel for hire to a given destination.

Person with a disability. A person with a disability is an individual with a physical or mental impairment, including any person with a mobility impairment who uses a wheelchair, three-wheeled motorized scooter or other mobility aid, or is semi-ambulatory, and who cannot board, ride or disembark from a vehicle without the assistance of a wheelchair lift or other boarding assistance device.

Portable or hands-free electronic device. A "portable or hands-free electronic device" is any electronic device able to:

1. make a wireless telephone call

2. send or receive a text message

3. allow its user to speak on the telephone hands-free or operate a device by voice command, even when otherwise allowed by New York State law

4. act as a personal assistant (PDA)

5. send and or receive data from the internet or from a wireless network

6. act as a laptop computer or portable computer

7. receive or send pages

8. allow two-way communications between different people or parties

9. play electronic games

10. play music or video; or

11. make or display images; or

12. any combination of the above

This definition is to be liberally construed in light of its purpose to minimize the distraction of drivers, and in recognition of the rapid development of electronic technologies and proliferation of electronic devices that may be made available in the future that similarly transfer digital images, sounds or messages.

"Portable or hands-free electronic device" does not include: (1) any device the use of which while driving is specifically authorized by TLC rules, or (2) the use of a global positioning navigation system ("GPS") which uses voice functions to convey directions, so long as the driver is not inputting data unless legally standing or parked and the GPS is not capable of being used as a cell phone or other portable or hands-free electronic device.

Service Animal. A service animal is a guide dog, signal dog or any other animal trained specifically to work or to perform tasks for an individual with a disability, including, but not limited to, guiding individuals with visual impairments, alerting individuals with hearing impairments to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or retrieving dropped items.

Trip Record. A trip record, also known as a trip sheet, is a written document or data in electronic form setting forth or containing the origin and destination of each trip as well as other information required by the Commission pursuant to section 4-09(gg) of this chapter. Written trip records, when permitted by section 4-10(m) of this chapter, must be carried by the paratransit vehicle driver.

Weapon. A weapon is any instrument or thing whether real or simulated, capable of inflicting or threatening bodily harm.

Wheelchair accessible van (also known as paratransit vehicle). A wheelchair accessible van is any motor vehicle, equipped with a hydraulic lift or ramp(s) designed for the purpose of transporting persons who use wheelchairs or containing any other devices designed to permit access to and the transportation of a person with a disability.

HISTORICAL NOTE

Section amended City Record Aug. 17, 2007 §1, eff. Sept. 16, 2007. [See Note 2]

Section amended City Record July 8, 1997 §11, eff. Aug. 11, 1997. [See Note 1]

Section in original publication July 1, 1991.

Portable or hands-free electronic device added City Record Dec. 30, 2009 §6, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 8, 1997:

The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the of New York City Charter, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in New York City; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

Discrimination against persons with disabilities by providers of transportation for hire is clearly prohibited under New York City, New York State and federal law. Such providers may not deny to a disabled person, or offer on different terms, a service which is available to other members of the public and which such person, with reasonable accommodation, is able to use. This requirement of law applies to all vehicles licensed by TLC.

Certain requirements regarding taxicab service for persons with disabilities are set forth in TLC's Taxicab Drivers Rules, chapter 2 of Title 35 of the Rules of the City of New York. Therefore, if a person with a disability is unlawfully denied service or discriminated against in any other way by a taxicab driver, such person may, in addition to invoking the remedies otherwise available under federal, State and local law, file a complaint against the driver with the TLC Tribunal. No comparable requirement, however, was set forth in the rules applicable to other vehicles licensed by TLC. A person with a disability who is unlawfully denied service or otherwise discriminated against with regard to transportation in a for-hire vehicle, a paratransit vehicle or a commuter van thus had no basis for seeking recourse from this agency. The purpose of the rulemaking promulgated herein is to make more detailed and explicit the current requirements regarding taxicab service for people with disabilities and to establish comparable requirements applicable to other vehicles licensed by TLC.

2. Statement of Basis and Purpose in City Record Aug. 17, 2007: The rules amend existing Commission rules relating to paratransit vehicles and paratransit services in three respects. First, the rules govern the age of paratransit vehicles for the first time. Beginning on January 1, 2008, newly licensed paratransit vehicles and qualified replacement paratransit vehicles are required to have been driven less than 100,000 miles. There will be a phase in period annually reducing the permissible mileage on the paratransit vehicles to 50,000, 25,000 and on and after January 1, 2011, to less than 500 miles. To verify the mileage, the Commission at licensing will confirm that the paratransit vehicle's mileage indicated on the New York State Department of Transportation Form MC300, dated not more than one month prior to the Commission licensing, is in accord with the qualified replacement vehicle requirements of §4-18(j). Also, after a phase-in period ending January 1, 2012, paratransit vehicles are required to be retired no later than seven years after the vehicle was first licensed. The Commission may grant a retirement extension to the owner of a paratransit vehicle who demonstrates that a replacement vehicle is unavailable and a shipment date that is not more than sixty (60) days from the retirement date. The purposes of these rules are to enhance the safety of paratransit vehicles and to reduce the volume of pollutants created by those vehicles. Newer vehicles generally operate more safely and efficiently, and more recently manufactured vehicles are generally equipped with more recent safety and air quality technologies. Second, the rules require the conversion from written to electronic trip records by July 1, 2008. The purposes of these rules are to enhance the accountability of paratransit drivers to paratransit vehicle owners and paratransit bases, and to enhance the accountability of the paratransit industry as a whole to its customers and to the Commission, by creating a more accurate and reliable record of the paratransit vehicle's operations. The rules require a vehicle owner and a base owner to transmit electronic trip records to the Commission once a month. Third, the rules clarify the responsibilities of paratransit bases and paratransit vehicle owners. Existing rules specify the responsibilities of paratransit vehicle owners (§§4-09 to 4-11), and assume that the paratransit base owner and the paratransit vehicle owner are identical-which is

usually, but not always, the case. Therefore, the rules separately state the obligations of paratransit bases and paratransit vehicle owners. The rules also provide that service of notice from the Commission to a paratransit base is sufficient if sent to the last mailing address furnished to the Commission by the base owner and also that the Commission may deny a base owner's renewal application or suspend or revoke the base owner's license should the Commission become aware of information that the base owner no longer meets the requirements for a base license.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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***** Current through December 2009 ****

35 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-02 Term of Licenses.

(a) The term of every driver license and every base license issued by the Taxi and Limousine Commission under the Paratransit Services Rules shall be as follows:

(1) A license issued to a new applicant shall expire two years subsequent to the date the license was issued.

(2) A license issued to a renewing applicant shall expire two years from the date on which the previous license expired.

(b) A license issued to a new applicant for a vehicle license issued by the Taxi and Limousine Commission under the Paratransit Services Rules shall expire two years subsequent to the day the license was issued. A license issued to a renewal applicant for a vehicle license issued by the Taxi and Limousine Commission under the Paratransit Services Rules shall expire two years from the day on which the previous license expired. The Commission may, in its discretion, extend the expiration date of such license by up to an additional thirty-one days.

(c) A renewing applicant must file a completed renewal application on or before the expiration date of the license.

(d) A person who engages in a licensed activity after the expiration date of a license and before the issuance of a renewal license may be subject to penalties pursuant to applicable statutes and regulations.

HISTORICAL NOTE

Section amended City Record Mar. 1, 1999 §3, eff. Mar. 31, 1999. [See T35 §2-10 Note 1]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-03 Paratransit Driver's License.

(a) An applicant for a paratransit driver's license:

(1) must be at least 18 years of age;

(2) if an applicant for an original license, must provide to the Commission proof of identity in the form of

(i) A valid form of photo identification issued by the United States, any state or territory thereof, or any political subdivision of such state or territory; and

(ii) A valid, original social security card;

(3) must be tested and evince a vision of at least 20/40 in each eye (with corrective lenses if necessary);

(4) must be holder of a valid New York State Motorist License Class A, B, C, or E. For the purposes of these rules, a valid license shall mean a license, issued by the New York State Department of Motor Vehicles, which is neither probationary, suspended, revoked, conditional, nor restricted as to use for violations of traffic laws or regulations.

(5) must be of sound mental and physical condition and fit to safely operate and drive a vehicle for hire as certified to by a licensed physician on forms provided by the Commission. The Commission may direct the applicant or driver to appear before a duly licensed physician designated by the Commission, for an examination of his or her physical or mental condition, should the Commission have cause to believe that an applicant or driver has a physical or mental impairment that renders him or her unfit for the safe operation of a paratransit vehicle. An existing license may be

suspended or revoked if the driver fails to appear as directed,

(6) must not be addicted to drugs or alcohol;

(7) must be of good moral character (a certified court transcript of disposition is required if ever convicted of a crime);

(8) must be fingerprinted and photographed;

(9) must be able to understand, speak, read and write the English language;

(10) must be familiar with New York City geography, streets and traffic regulations, as well as New York State Vehicle and Traffic Law;

(11) must be qualified pursuant to Article 19-A of the New York State Vehicle and Traffic Law to drive a paratransit vehicle.

(b) A Commission application for a paratransit driver's license must be signed and filed by the applicant with the Commission. An applicant for a driver's license shall agree that service of any paper, notice, letter, summons, complaint or legal process of any kind or nature may be made by the City of New York, or any department thereof, upon the person to whom the license is issued by leaving a copy of any such paper, notice, letter, summons, complaint or legal process with any member of his or her family or other person with whom he or she may reside at the address listed as a mailing address in his or her application.

(c) All applicants are required to be fingerprinted and to pass all prescribed tests, administered by the Commission or at its direction.

(d) A member of the New York City Police Department, applying for a paratransit driver's license must satisfy all the requirements herein for such license and provide a letter from his commanding officer approving such application to the Commission.

(e) Material falsification contained in an original or renewal application for a license shall be cause for denial, suspension or revocation of such license, as well as any other sanctions imposed by the Commission.

(f) Failure to notify the Commission of any material change in the information contained in the license application shall be cause for denial, suspension or revocation of such license, as well as any other sanctions imposed by the Commission.

(g) The Commission may deny the renewal application or suspend or revoke the license of any driver who no longer meets the requirements for a paratransit driver's license.

(h) An applicant or any person acting on his behalf shall not offer or give any gift or gratuity to any employee, representative, public servant, or member of the Commission.

(i) An applicant shall immediately report to the Inspector General of the Commission or to the New York City Department of Investigation any request or demand for any gift, or gratuity by any employee, representative, public servant, or member of the Commission.

(j) If the applicant has failed to meet the requirements for a paratransit driver's license, the Commission will deny the license or its renewal and will specify the reason for the denial in writing to the applicant.

(k) If an application for a license or its renewal is denied, the applicant or driver shall be entitled to a hearing before the Commission at which he may be represented by an attorney or a non-attorney representative. However, the

Commission may, for cause, deny a non-attorney representative the opportunity to appear at such hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Section heading amended City Record Aug. 17, 2007 §2, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (a) amended City Record Oct. 31, 2006 §3, eff. Nov. 30, 2006. [See T35 §1-02 Note 2]

Subd. (a) par (4) amended City Record July 15, 1999 §3, eff. Aug. 14, 1999. [See T35 §2-02 Note 1]

Subd. (a) par (10) amended City Record Aug. 17, 2007 §2, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (a) par (11) added City Record Aug. 17, 2007 §2, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (b) amended City Record Aug. 17, 2007 §2, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

35 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-04 Paratransit Vehicle Licensing.

(a)(1) An individual, the members of a partnership, or the officers and shareholders of a corporation applying for an original paratransit vehicle license must provide to the Commission proof of identity in the form of

(i) A valid form of photo identification issued by the United States, any state or territory thereof, or any political subdivision of such state or territory; and

(ii) A valid, original social security card.

(2) An individual, the members of a partnership or the officers and shareholders of a corporation applying for a paratransit vehicle license or its renewal must

(i) have ownership in a wheelchair accessible vehicle;

(ii) be at least 18 years of age;

(iii) be of good moral character (a certified court transcript of disposition is required if ever convicted of a crime);

(iv) operate from a base that is licensed;

(v) have a valid certificate of Operating Authority for the City of New York issued by the New York State Department of Transportation.

(b) The applicant must also:

(1) complete required Commission application forms;

(2) be qualified to assume the duties and obligations of an owner of a paratransit vehicle license, thereby rendering him "fit" as determined by the Commission; criminal records, driving records, medical conditions, mental health, as well as prior or current drug or alcohol use will be scrutinized in determining fitness.

(3) demonstrate that the vehicle is in safe operating condition and meets all requirements of the Commission and all other governmental agencies having concurrent jurisdiction;

(4) prove that he has the required liability insurance coverage by bond or policy as determined by the State of New York;

(5) provide the certificate of title or a copy thereof and the certificate of registration, both of which must be in the applicant's name unless title is retained by a lessor or conditional vendor; provided, however, in addition to the terms set forth in this paragraph (b)(5), on and after January 1, 2008, the applicant must provide (i) the certificate of title or a copy thereof and (ii) the certificate of registration that evidences that the paratransit vehicle is of a model year that is not excluded by section 4-18 of this chapter and will not be required to be retired prior to the expiration of the two-year term of licensing.

(6) provide a copy of the motor vehicle tax stamp receipt, a current rate schedule and a New York State Department of Transportation inspection checklist and

(7) demonstrate that the vehicle will be dispatched from a place of business approved by the Commission as a base, unless the applicant has been exempted from this requirement by the Commission.

(c) Fingerprinting shall be required of all individuals, the members a partnership, and officers and shareholders of a corporation applying for or holding an owner's license. Also, any individual, members of a partnership and officers and shareholders of a corporation who provide funds to an owner shall be fingerprinted unless such provider is a licensed bank or loan company. The Commission has the discretionary right to waive any requirements of this subdivision (c).

(d) If the paratransit vehicle is leased, a copy of the leasing agreement must be filed with the license application.

(e) A partnership shall file a certified copy of the partnership certification from the County Clerk, with its license application.

(f) A corporation, shall file a certified copy of its certificate of incorporation, with its license application. The applicant shall also furnish a list of its shareholders and current officers.

(g) A corporate or trade name which is similar to a name already in use by another owner will not be accepted by the Commission.

(h) The Commission will deny the paratransit vehicle license or its renewal if it determines that the applicant has failed to meet the requirements, and will specify in writing to the applicant the reason for such denial.

(i) The Commission may deny an owner's renewal application or suspend or revoke the owner's paratransit vehicle license should the Commission become aware of information that the owner no longer meets the requirements for a paratransit vehicle owner's license.

(j) Failure to notify the Commission of any material change in the information contained in the paratransit vehicle license or any attempt by an owner or applicant to conceal the identity of a party having an interest in the ownership of a paratransit vehicle or another material falsification contained in an application shall be cause for denial of such

application or revocation or suspension of such license, in addition to any other sanctions imposed by the Commission.

(k) If an application for a paratransit vehicle license or its renewal is denied, the applicant or owner shall be entitled to a hearing before the Commission at which the applicant or owner may be represented by an attorney or a non-attorney representative. However, the Commission may, for cause, deny a non-attorney representative the opportunity to appear at such hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Section heading amended City Record Aug. 17, 2007 §3, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (a) amended City Record Oct. 31, 2006 §4, eff. Nov. 30, 2006. [See T35 §1-02 Note 2]

Subd. (b) par (5) amended City Record Aug. 17, 2007 §3, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (d) amended City Record Aug. 17, 2007 §3, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (i) amended City Record Aug. 17, 2007 §3, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (k) amended City Record Aug. 17, 2007 §3, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-05 Base License.

(a) The base must be located on commercial property or within a zone which permits a base operation, unless there are four vehicles or less in which case the base may be maintained at the base owner's residence.

(b) The base operation must be maintained as a separate entity.

(c) The base must maintain outside advertising stating the business name and telephone number and indicating to the public that it is a paratransit base.

(d) The base must maintain records of all paratransit vehicles dispatched.

(e) The applicant for the base license must complete and file the required Commission application form and also submit:

(1) a copy of the New York State Department of Transportation Certificate of public convenience and necessity to operate as a common carrier of passengers by motor vehicle (operating authority);

(2) if the base owner is a corporation, a copy of the filing receipt and the certificate of Incorporation;

(3) if the base owner is a partnership, a copy of the partnership agreement if such agreement exists;

(4) a copy of the current Rate Schedule;

(5) if an applicant for an original license, proof of identity of the owner, its partners if the owner is a partnership, and, if the owner is a corporation, officers and stockholders, in the form of

(i) A valid form of photo identification issued by the United States, any state or territory thereof, or any political subdivision or such state or territory; and

(ii) A valid, original social security card.

(f) Base owners, corporate officers and active stockholders must all be fingerprinted at the Commission.

(g) A base licensing application must be accompanied by at least one paratransit vehicle licensing application. A paratransit base may dispatch only Commission licensed paratransit vehicles.

(h) The Commission may deny a base owner's renewal application or suspend or revoke the base owner's license should the Commission become aware of information that the base owner no longer meets the requirements for a base license.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 17, 2007 §4, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (d) amended City Record Aug. 17, 2007 §4, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (e) amended City Record Oct. 31, 2006 §5, eff. Nov. 30, 2006. [See T35 §1-02 Note 2]

Subd. (e) par (3) amended City Record Aug. 17, 2007 §4, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (h) added City Record Aug. 17, 2007 §4, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-06 Paratransit Driver's Responsibility to the Commission.

PenaltyAll fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.

(a)	A driver shall answer and comply as directed with all questions, communications, directives, restrictions and summonses from the Taxi and Limousine Commission or its representatives. A driver shall produce his or her paratransit driver's license, chauffeur's license, trip records or any other documents when required by the Commission.	$200 and suspension until compliance. Personal Appearance Required.
(b)	A driver shall not operate a paratransit vehicle for hire within the City of New York, unless it is properly licensed by the Taxi and Limousine Commission.	See §4-05 Personal Appearance Required.
(c)	A driver of a New York City paratransit vehicle for hire must be duly licensed as a driver by the Commission.	$100-1st Offense$250-2nd Offense$350-3rd Offense$500-4th or more offensesw/in 12 months-PersonalAppearance Required.
(d)	A driver shall not operate a paratransit vehicle unless: (1) he or she possesses a paratransit driver's license;	(1) $100 Personal Appearance Required.

	(2) he or she possesses a valid New York State chauffeur's license or appropriate valid license of similar class of the state of which he or she is a resident;	(2) $100-$350 and/or suspension up to 30 days; summary suspension until compliance pursuant to§8-17(b) of this title.
	(3) the vehicle is adequately insured in accordance with New York State Law.	(3) $100 Personal Appearance Required.
(e)	A driver shall not operate a paratransit vehicle in New York City while his paratransit driver's license is revoked, suspended or expired.	$100-1st Offense$250-2nd Offense$350-3rd Offense4 or more offenseswithin 12 months-OATHPersonal Appearance Required.
(f)	A driver shall immediately report the suspension or revocation of his state chauffeur's license (or its equivalent) to the Commission, at which time he shall also surrender his paratransit driver's license to the Commission.	$15-$150 Personal Appearance Required.
(g)	A driver shall notify the Commission within fifteen (15) days if he is convicted of a crime and he shall deliver to the Commission a certified copy of the certificate of disposition issued by the Court clerk within fifteen (15) days of sentencing.	$25-$150 Personal Appearance Required.
(h)	A driver shall safeguard his or her paratransit driver's license and the paratransit vehicle license. Locking the paratransit vehicle with the paratransit driver's license and paratransit vehicle license therein during his or her shift shall be deemed compliance with this rule. However, leaving either or both of them in the paratransit vehicle while another possesses the paratransit vehicle is not deemed compliance.	$25 Personal Appearance Not Required.
(i)	A driver shall notify the Commission in writing, within seventy-two (72) hours, exclusive of weekends and holidays, of the loss, theft or mutilation of his paratransit driver's license.He must report in person when applying for a replacement, and he shall furnish new photographs, and any affidavits required by the Commission.	$25 Personal Appearance Not Required.
(j)	A driver shall not in any way alter, deface, mutilate or obliterate any portion of his paratransit driver's license or the attached photograph so as to make them unreadable or unrecognizable.	$50 Personal Appearance Not Required.
(k)	A driver shall immediately surrender any unreadable, unrecognizable, or mutilated paratransit driver's license to the Commission.	$25 Personal Appearance Not Required.
(l)	A driver's photograph on his or her paratransit driver's license shall accurately reflect his or her appearance, including such details as the wearing of glasses, hearing aid, mustache, beard, etc. Should the driver's appearance change, he or she must, without delay, submit four (4) new photographs to the Commission, and a new paratransit driver's license shall be issued.	$25 Personal Appearance Not Required.
(m)	A driver shall not allow anyone to use his or her paratransit driver's license and he or she shall not use another's paratransit driver's license.	$250 Personal Appearance Required.
(n)	A driver shall notify the Commission of any change of mailing address within 72 hours, exclusive of weekends and holidays, either in person or by registered or certified mail return receipt requested. This also applies to a change in any other information requested on the application. Any notice sent by the Commission shall be deemed sufficient if	$50 Personal Appearance Not Required.

	sent to the last mailing address furnished by the driver.	
(o)	A driver shall not carry a weapon while operating a paratransit vehicle without the Commission's written authorization.	$100 and/or suspension up to thirty (30) days Personal Appearance Required.
(p)	A driver shall not operate a paratransit vehicle or use it at any time to carry passengers unless it is in safe operating condition, and it meets and is operated under all the requirements of New York State and New York City vehicle and traffic laws, and all Commission requirements set forth in Chapter 4 of Title 35 of the Rules of the City of New York.	$50-$150 Personal Appearance Required.
(q)	A driver shall personally inspect and reasonably determine that all equipment, inclusive of brakes, tires, lights, signals, wheelchair ramps and fastening devices are in good working order, before operating such vehicle.	$15-$150 Personal Appearance Required.
(r)	The following items must be present in the paratransit vehicle prior to its operation:(1) the driver's paratransit driver's license;(2) the certification of registration or copy thereof;(3) the paratransit vehicle license or copy thereof;(4) an insurance card or copy thereof;(5) the lease card, if any, or copy thereof;(6) the written trip record;(7) any notices required to be posted in theparatransit vehicle. (8) Notwithstanding any provision of this subdivision and any other provision of these rules, on and after July 1, 2008, an electronic trip record system required by section 4-10(n), in lieu of the written trip record set forth in section 4-06(r)(6); however, if such system malfunctions, the malfunction is timely reported and the paratransit vehicle is operated for hire not more than three (3) business days before being repaired a written trip record shall be used.	(1-7) $15 for each violation of this rule. Personal Appearance Not Required. (8) $250 Personal Appearance Required.
(s)	A driver shall maintain all written trip records as follows:(1) all entries must be in ink and the trip record must be current;(2) at the beginning of each work shift the driver shall sign and certify on the trip record that the paratransit vehicle and its equipment are in good working condition and that all required items are present. One entry for an owner/driver will be deemed sufficient.(3) the trip record shall contain the trip record entries required by section 4-09(gg) of this chapter.Note: The Commission has discretionary power to waive any of these requirements upon showing by the owner that the required information is maintained and is readily accessible to the Commission.Notwithstanding the provisions of this subdivision and any other provision of these rules, the driver shall make all system entries that must be collected contemporaneously with the trip, such as the location and date and time of pick-up and drop-off. All other entries required by section 4-09(gg) may be provided by the dispatching base.	$50 for each violation of this rule; however no fine for a violation of this rule shall exceed $100 for each vehicle stop. Personal Appearance Not Required.
(t)	At any time, a driver shall correct in a written trip record wrong entries by drawing a single line through the incorrect written entry and initialing the correction. Also, a driver shall not make erasures or obliterations or leave any blank lines between entries on a written trip record. Electronic trip record data collected in the paratransit vehicle shall not be erased, deleted, altered, changed or obliterated. A driver shall report all necessary corrections to the base owner.	$30 Personal Appearance Not Required.
(u)	A driver shall attempt to procure comparable transportation for the balance of a passenger's trip, if the paratransit vehicle becomes inoperable while a passenger is in the vehicle. This does not apply if the passenger desires to find his own transportation.	$50-$150 Personal Appearance Required.
(v)	The driver shall not cause or permit the engine of his paratransit vehicle to idle unnecessarily for longer than three minutes and will adhere to the New York City Air Pollution Control Code.	$25 Personal Appearance Not Required.

(w)	A driver or any person acting as his representative shall not offer or give any gift, gratuity or thing of value to any Commission member, employee, or representative or any public servant.	$1,000 up to Revocation Personal Appearance Required.
(x)	A driver shall immediately report to the Commission any request or demand for a gift, gratuity or thing of value from him or his representative by any Commission member, employee, or representative or any public servant.	$1,000 up to Revocation Personal Appearance Required.
(y)	A driver shall submit an application for renewal of his license prior to its expiration date, unless the Commission extends the date.	$25 Personal Appearance Not Required.
(z) (1)	A driver shall not use a portable or hands-free electronic device while operating a paratransit vehicle, unless such paratransit vehicle shall be lawfully standing or parked. "Use" of a portable or hands-free electronic device means that the driver is deploying any of the functions of the portable or hands-free electronic device, or has a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver's ear.A driver may offer as an affirmative defense that he or she was using a portable or hands-free electronic device while operating a paratransit vehicle for the sole purpose of communicating with an emergency response operator that there exists an imminent threat to life or property, and that it was impossible for the driver to safely stop the vehicle before placing the call. The driver must provide documentary proof that the electronic communication was to an emergency response operator.(2) Additional penalties for use of a portable or hands-free electronic device while operating a paratransit vehicle.For purposes of this paragraph (z)(2), "portable or hands-free electronic device violation" shall mean a violation of §4-06(z)(1) of this chapter or a violation of any state law or rule prohibiting or restricting the use of a portable or hands-free electronic device while driving, such violation having been adjudicated by a court or other tribunal having jurisdiction over such violations.Any paratransit driver who commits a portable or hands-free electronic device violation is required to attend and satisfactorily complete an authorized course of training in the dangers of driving while distracted by portable or hands-free electronic devices. The course shall be a minimum of one hour and shall include a review of the rules governing the use of portable or hands-free devices, and the dangers of driving while distracted. The course must be completed and verification of course completion provided by the designated school within sixty days of TLC's issuance of a directive to the paratransit driver that he or she is required to take such course.	$200 Personal Appearance not Required.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Penalty column heading amended City Record Nov. 2, 2006 §9, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (a) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (a) amended City Record Dec. 1, 1999 §6, eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

Subd. (c) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (d) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

(Note: This amendment inadvertently overlooked City Record Nov. 2, 2006 amendment)

Subd. (d) amended City Record Nov. 2, 2006 §9, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (h) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (l) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (m) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (p) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (r) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (s) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (t) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (z) amended City Record Dec. 30, 2009 §7, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Subd. (z) added City Record May 27, 1999 §7, eff. June 26, 1999. [See T35 §2-25 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 4-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-07 Driver's Responsibilities When Operating the Vehicle.

		Penalty
(a)	(1) A paratransit driver shall not operate his vehicle in such manner at a speed which unreasonable endangers others or their property.	(1) $25-$250 and/or suspen- sion up to or thirty (30) days or revocation if driver is found guilty of having violated this rule more than 3 times in a twelve month period. Personal Appearance Required.
	(2) A paratransit driver shall stop and identify himself if he has cause to know that personal injury has been caused to another person or to another's property due to an accident or to deliberate act involving the paratransit vehicle. Before leaving the place of occurrence the paratransit driver shall stop, exhibit to such person or to a police officer on the scene his chauffeur's license, para-transit driver's license and insurance card (or copy thereof) and he will give to such person his name residence address, paratransit driver's number, paratransit vehicle identification number as well as	(2) $25-$250 and/or suspension up to thirty (30) days or revocation if driver is found guilty of having violated this rule more than three (3) times within a twelve (12)

	the name of the vehicle's insurance carrier and the insurance policynumber.	month period. Personal Appearance Required.
	(3) A driver shall operate his paratransit vehicle in full compliance with all New York State and City traffic laws, rules and regulations, as well as all applicable New York and New Jersey Port Authority and Triboro Bridge and Tunnel Authority rules and regulations and any other regulatory body or government agency having jurisdiction over motor vehicles.	(3) $25-$250 and/or suspension up to thirty (30) days or revocation if driver is found guilty of having violated this rule more than three (3)times within a twelve(12) month period.Personal Appearance Required.
	(4) A driver shall immediately report to the owner any accidents in which the driver and the paratransit vehicle are involved and shall notify his or her employer of any traffic infraction, accident or conviction(s) as required in section 509-i of Article 19A of the New York State Vehicle and Traffic Law.	(4) $25-$250 and/or suspension up to 30 days. Personal Appearance Required.
(b)	When operating a paratransit vehicle, a driver shall cooperate with all law enforcement officers and authorized representatives of the Commission, and upon request shall provide his name, paratransit driver's license number, the vehicle identification card, trip record and any documents required to be in his possession.	$15-$150 Personal Appearance Required.
(c)	A driver shall not operate a paratransit vehicle if his driving ability is impaired by either alcoholor or drugs, nor will he consume alcoholicbeverages or illegal drugs while occupying such vehicle.	$50-$300 and/or suspension or revocation. Personal Appearance Required.
(d)	A driver shall not permit any individual who is not currently licensed by the Taxi and Limousine Commission to operate the vehicle in which he or she is dispatched, unless directed to do so by the owner or his or her agents.	See §4-13 Personal Appearance Required.
(e)	A driver shall not operate a paratransit vehicle if he has been working for more than twelve (12) consecutive hours, however if a driver has accepted a passenger prior to the conclusion of the twelfth hour he may continue providing service to that passenger if he is alert enough to not unreasonably endanger himself or others.	$25 Personal Appearance Not Required.
(f)	A driver shall never carry more passengers than the capacity of the vehicle as determined by the State Department of Transportation.	$25 Personal Appearance Not Required.
(g)	A driver shall not commit or accept to commit, alone or in concert with another, any act of fraud, misrepresentation, larceny, or perform any willful act of omission or commission which is against the interest or the public, while performing his duties and responsibilities as a paratransit driver.	$25-$350 and/or suspension up to 30 days. Personal Appearance Required.
(h)	A driver shall not use or permit another person to use his paratransit vehicle for any unlawful purpose and shall immediately report to the police any criminal use or attempt thereof involving the vehicle.	$25-$350 and/or suspension up to 30 days. Personal Appearance Required.
(i)	A driver shall not put any unauthorized equipment, devices or signs on or in a paratransit vehicle during his workshift (excluding mobility devices, such as grab bars, or non-slip flooring). This includes all items not specifically enumerated in these rules, unless there is written authorization by the Commission.	$25-$200 and/or suspension up to 30 days. Personal Appearance Required.
(j)	(1) A driver shall be clean and neat in appearance when operating a paratransit vehicle for hire.	(1) $25 Personal Appearance Not Required.
	(2) A driver shall keep the paratransit vehicle clean and of good appearance during his workshift.	(2) $25 Personal Appearance Not Required.
(k)	A driver shall use written trip records while the electronic trip record system is not functioning and the vehicle is permitted to operate.	$250 Personal Appearance Not Required.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (4) amended City Record Aug. 17, 2007 §6, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (d) amended City Record Aug. 17, 2007 §6, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (k) added City Record Aug. 17, 2007 §6, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 4-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-08 Driver's Responsibilities to the Passengers.

		Penalty
(a)	(1) A driver shall be courteous to the public. (2) A driver shall comply with all lawful and reasonable requests of passengers, including but not limited to giving upon request his or her name, his or her paratransit driver's license number and the paratransit vehicle's license number.	(1) $25 Personal Appearance Not Required. (2) $50-$100 Personal Appearance Required.
(b)	A driver shall not threaten, harass or abuse any passenger, Commission representative, or any other person while performing his or her duties and responsibilities as a driver. A driver shall not distract or attempt to distract a service animal that is accompanying a person with a disability.	$50-$350 and/or suspension up to 30 days. Personal Appearance Required.
(c)	A driver shall not use or attempt to use any physical force against a passenger, Commission representative or any other person while performing his or her duties and responsibilities as a driver. A driver shall not harm or use physical force against or attempt to harm or to use physical force against a service animal that is accompanying a person with a disability.	$25-$350 and/or suspension up to 30 days or possible revocation (OATH) Personal Appearance Required.
(d)	A driver shall comply with a passenger's reasonable request to change his destination or terminate the trip unless it is impossible or unsafe for the driver to comply with such request in a non-emergency situation any such change or termination is contrary to the best interest of the other passengers.	$25-$150 Personal Appearance Required.
(e)	A driver shall provide all necessary and reasonable assistance to all passengers whether	$100-$350 and/or sus-

	ambulatory, or using a wheelchair or other mobility aid, to board the vehicle, to be secured therein, to depart from the vehicle and to be delivered to his destination. Such assistance also shall include ensuring that a service animal has boarded and exited the vehicle. (The driver is not required to assist passengers up or down the steps).	pension up to 30 days and possible revocation (OATH) Personal Appearance Required.
(f)	A driver shall only use wheelchair ramps and fastening devices which are functioning properly and are secure.	$25-$250 and/or suspension up to 30 days. Personal Appearance Required.
(g)	A driver shall not refuse, by words, gestures or any other means, without justifiable grounds as set forth in section 4-09(h) herein to provide transportation, when dispatched, for a person who has prearranged the trip and the destination is within the City of New York. This includes a passenger accompanied by a service animal.	See §4-13 Personal Appearance Required.
(h)	The following are justifiable grounds for conduct otherwise prohibited under section 4-09(g) of this chapter:(1) the passenger possesses a weapon, an article, package, case or container which the driver may reasonably believe will cause injuries to others or cause damage to the interior of the paratransit vehicle, impair its efficient operation, or cause it to become stained or foul smelling;(2) the passenger is intoxicated or disorderly. Provided, however, that a driver shall not refuse to provide service to a person with a disability solely because such person's disability results in an appearance or involuntary behavior that may offend, annoy, or inconvenience the driver or other employees of the paratransit service.(3) the passenger is accompanied by an animal which is not properly or adequately secured in a kennel case or other suitable container. This provision shall not apply to service animals accompanying people with disabilities.(4) the passenger is in need of emergency medical assistance.	No penalty applicable.
(i)	(1) A driver shall not refuse to transport a passenger's wheelchair, crutches, or other property.	(1) See §4-13 Personal Appearance Required.
	(2) When necessary or upon the passenger's request, the driver shall load or unload such property, within reason, in or from the paratransit vehicle.	(2) $50-$100 Personal Appearance Required.
(j)	A driver shall be diligent and reasonably punctual in picking up and transporting passengers.	$25 Personal Appearance Not Required.
(k)	A driver shall turn the radio on or off at the passenger's request. The passenger has the right to select the radio station, however, the radio volume shall be played at a reasonable level only, and the driver shall adhere to all noise ordinances.	$25 Personal Appearance Not Required.
(l)	A driver shall turn the air conditioning or heating device in a paratransit vehicle on or off at a passenger's request.	$25 Personal Appearance Not Required.
(m)	A driver shall not smoke when transporting a passenger, or while assisting him or out of the vehicle.	Personal Appearance Not Required.
(n)	A driver shall not charge or attempt to charge a fare above the approved rate of fare established by the owner and filed with the Commission. A driver shall not impose or attempt to impose any additional charge for transporting a person with a disability, a service animal accompanying a person with a disability or a wheelchair or other mobility aid.	See §4-13 Personal Appearance Required.
(o)	(1) A driver shall give a passenger who has paid the fare, the correct change.	(1) $25-$150 Personal Appearance Required.
	(2) A driver must always be capable of making change of a $20 bill, when providing service on a cash basis.	(2) $25 Personal Appearance Not Required.
(p)	A driver shall not ask or in any way indicate to a passenger that a tip is expected or required.	$50 Personal Appearance Not Required.
(q)	A driver shall give a passenger a receipt for payment of the fare at the end of the trip, when requested to do so by the passenger. Such report shall legibly state the date, time,	$25 Personal Appearance Not Required.

	paratransit vehicle plate number, name of the base, fare paid, extras and the Commission Complaint Department telephone number.	
(r)	A driver shall not sell, or advertise any service or merchandise to the passengers without prior written approval from the Commission.	$50 Personal Appearance Not Required.
(s)	A driver shall take passengers to their destination by the most reasonable route unless the driver or passenger requests a different route and it is consented to by all of the other passengers.	$25-$150 Personal Appearance Required.
(t)	A driver shall only pick up passengers on a prearrangement basis, he shall not solicit or respond to hails.	See §4-14 Personal Appearance Required.
(u)	(1) The driver shall inspect the interior of the paratransit vehicle after each trip and any property found shall be returned to the passenger if possible; otherwise it shall be taken immediately to the police precinct closest to where the passenger was discharged. (2) The driver shall promptly inform the Commission of any property found and the police precinct where it is held, if the property is not returned to the passenger.	(1) $50-$250 Personal Appearance Required. (2) $25 Personal Appearance Not Required.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (b) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (b) amended City Record July 8, 1997 §12, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (c) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (c) amended City Record July 8, 1997 §12, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (e) amended City Record July 8, 1997 §12, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (g) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (g) amended City Record July 8, 1997 §12, eff. Aug. 11, 1997.

Subd. (h) amended City Record July 8, 1997 §12, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (h) open par amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (h) par (2) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (i) par (1) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (n) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (n) amended City Record July 8, 1997 §12, eff. Aug. 11, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 4-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-09 Paratransit Vehicle Owner's and Base Owner's Responsibilities to the Commission.

PenaltyAn owner and a base owner shall each be separately responsible for compliance with and liable for violations of subdi-visions (a), (b), (c) and (d) and paragraph (k)(2).

(a)	An owner shall not allow to be dispatched, a base owner shall not dispatch and neither shall permit the operation of a paratransit vehicle for hire that is not currently licensed by the Commission as a paratransit vehicle.	See §4-13 Personal Appearance Required.
(b)	An owner shall only allow a paratransit vehicle to be dispatched and a base owner shall only dispatch a driver with a current paratransit driver's license.	See §4-13 Personal Appearance Required.
(c)	An owner shall not knowingly permit to operate and a base owner shall not dispatch a driver who does not have a current and valid state driver's license and neither shall employ a driver without complying with qualification procedures set forth in Section 509-d of Article 19-A of the New York State Vehicle and Traffic Law.	See §4-13 Personal Appearance Required.
(d)	An owner shall allow to be dispatched and a base owner shall dispatch a paratransit vehicle only from a base currently approved by the Commission, unless exempted by the New York State Department of Transportation.	$150 Personal Appearance Not Required.
(e)	A base owner must notify and get prior approval from the Commission before the base owner transfers, sells or assigns the base to another. The prospective new base owner must file the appropriate base license application form with the Commission. Should the Commission approve the sale of a base to another, the Commission will permit the transfer of the entire fleet to the new base as long as the vehicles meet the age/ retirement requirements set forth in section 4-18 of this chapter and the owner shall	$100 Personal Appearance Not Required.

	pay the paratransit affiliation fee to the TLC, if any is required.	
(f)	An owner and a base owner shall report any pertinent changes, including any changes regarding finances, ownership or title and registration, and for a base owner, a change in the base address, to the Commission within 72 hours. (Any notice or summons from the Commission shall be deemed sufficient if sent to the address last furnished by the owner and the base owner, respectively.)	$50 Personal Appearance Not Required.
(g)	A base owner shall maintain signage at the base, stating the base name and indicating to the public that it is a base.	$50 Personal Appearance Not Required.
(h)	An owner without a current paratransit vehicle license shall not advertise or hold the owner out as "having Paratransit Service" or comparable designation.	See §4-13 Personal Appearance Required.
(i)	A base owner shall not dispatch a paratransit vehicle unless the rate of fares for such vehicle has been filed with the Commission including minimum fare, different fares for different types of paratransit services, portal time, tolls and extra charges, if any.	$50 Personal Appearance Not Required.
(j)	A base owner shall file with Commission annually or whenever there is any change, the schedule of the rate of fare at least (ten) 10 days prior to the effective date.	$50 Personal Appearance Not Required.
(k)	(1) An owner shall comply with the Commission's Paratransit Vehicle Specifications and all other pertinent laws, rules or regulations governing owners.(2) An owner and a base owner shall comply with the Markings Specifications for paratransit vehicles.	$50 Personal Appearance Not Required.
(l)	A base owner operating a two-way radio service shall instruct the drivers and other employees on the rules of the Federal Communications Commission.	$50-$250 Personal Appearance Required.
(m)	An owner and a base owner shall each cooperate with all Commission enforcement officers and authorized representatives and shall comply with all their reasonable requests, including, but not limited to giving, upon request, the owner's or the base owner's name, the base license number and trip records, the paratransit vehicle license number and, for an owner the owner's paratransit vehicle license, and for a base owner the base license, and any other documents required to be maintained by the owner and base owner.	$15-$150 Personal Appearance Required.
(n)	An owner, applicant for a paratransit vehicle license, a base owner, or applicant for a base license shall not offer or give any gift or gratuity to any employee, representative or member of the Commission, or any public servant.	$1,000 up to revocation. Personal Appearance Required.
(o)	An owner or a base owner shall immediately report to the Commission any request or demand for a gift, gratuity, or thing of value from the owner or the base owner or a representative by any Commission member, employee, representative or any public servent.	$1,000 up to revocation. Personal Appearance Required.
(p)	An owner or a base owner shall not commit or attempt to commit, alone or in concert with another, any act of fraud, misrepresentation or larceny, perform any willful act of omission or commission which is against the best interests of the public while performing the owner's or base owner's respective duties and responsibilities as an owner or base owner.	$25-$350 and/or suspension up to 30 days. Personal Appearance Required.
(q)	An owner shall not use or permit another person to use his paratransit vehicle or garage for any unlawful purpose and shall immediately report to the police any criminal use or attempt thereof involving the vehicle or base.	$25-$350 and/or suspension up to 30 days. Personal Appearance Required.
(r)	An owner or a base owner, including a member of a partnership or any officer or shareholder of a corporation, shall notify the Commission within fifteen (15) days if he or she is convicted of a crime, and he or she shall deliver to the Commission a certified copy of the certificate of disposition issued by the court clerk within fifteen (15) days of the disposition.	$50-$250 Personal Appearance Required.
(s)	An owner and a base owner shall promptly answer and comply with all communications, directives, restrictions and summonses to each of them, respectively, from the	$200 and suspension until compliance. Per-

	Commission or its representatives.	sonal Appearance Required
(t)	A base owner shall be responsible for bringing to the attention of drivers and other employees, all rules governing the conduct of drivers while performing their duty as drivers and amendments thereof, and any other notices from the Commission. Also, a base owner shall be responsible for maintaining at the base a current copy of the Commission rules for the information of drivers and employees.	$50 Personal Appearance Not Required.
(u)	An owner shall be deemed to have designated every driver who operates his paratransit vehicle as his agent for accepting service by Commission personnel of notices to correct vehicle defects. Also, delivery of such notice to a driver shall be deemed proper service of the notice on the vehicle's owner.	No penalty applicable.
(v)	An owner shall surrender the owner's paratransit vehicle license to the Commission within forty-eight (48) hours, should such license be suspended or revoked.	$100 Personal Appearance Not Required.
(w)	An owner shall not make any unauthorized entry on a paratransit vehicle license or change, deface, conceal, obliterate or render unreadable any entry thereon.	See §4-13 Personal Appearance Required.
(x)	An owner shall immediately surrender an unreadable paratransit vehicle license to the Commission and will obtain a legible replacement.	$25 Personal Appearance Not Required.
(y)	An owner shall notify the Commission and the Police Department within forty-eight (48) hours exclusive of weekends and holidays of the theft, loss or destruction of a paratransit vehicle license or New York State license plates. The owner shall also furnish such affidavit or information as may be required including the police receipt number and a substitute paratransit vehicle license will be issued by the Commission.	$50 Personal Appearance Not Required.
(z)	An owner shall also report to the Commission the replacement of any New York State license plates within 48 hours, exclusive of weekends and holidays, after obtaining the new plates.	$50 Personal Appearance Not Required.
(aa)	An owner or a base owner shall submit an application for renewal of the owner's or the base owner's respective license prior to the expiration date of the license, unless the time to do so is extended by the Commission.	$25 Personal Appearance Not Required.
(bb)	A base owner shall only authorize the drivers the base owner dispatches to pick up passengers with a paratransit vehicle on a prearrangement basis and shall not allow them to solicit or respond to hails.	See §4-13 Personal Appearance Required.
(cc)	A base owner shall not require a driver to operate one or more paratransit vehicles more than twelve(12) consecutive hours; however, if a driver has accepted a passenger prior to the conclusion of the twelfth hour he or she may continue providing service to that passenger, if the driver is alert enough to not reasonably endanger himself, herself or others.	$50 Personal Appearance Not Required.
(dd)	(1) An owner shall maintain liability insurance for all paratransit vehicles and shall comply with all New York State Law regarding this coverage and will maintain at least the minimum amount prescribed by the New York State Department of Transportation. (2) An owner shall submit proof of liability insurance coverage to the Commission on or before the fifteenth (15th) day of January of each year, including the name and address of the carrier and the insurance policy number for each paratransit vehicle owned by him.	(2) $50 Personal Appearance Not Required.
(ee)	An owner shall notify the Commission in writing, within seventy-two (72) hours of receipt of notice, of a cancellation of the required liability insurance or a change of insurance carrier or the insurance policy number.	$100 Personal Appearance Not Required.
(ff)	An owner shall surrender the owner's paratransit vehicle license to the Commission prior to or on the termination date of the liability insurance, unless the owner is not notified or obtains new insurance which is effective on the termination date of the old	$100 Personal Appearance Not Required.

	policy.	
(gg)	An owner or the owner's specified agent shall only allow a paratransit vehicle to be dispatched after signing the owner's or agent's name to the written trip record.All trip records shall contain the following information:(1) the driver's paratransit driver's license number;(2) the paratransit vehicle's state license plate number;(3) the date and time of pick-up of passengers;(4) the date and time of drop-off of passengers;(5) the locations of pick-ups and drop-offs;(6) any other entries required by the Commission and local, state or federal law.	$50 for each violation of this rule; however no violation of this rule shall exceed $100 for each vehicle stop. Personal Appearance Not Required.
(hh)	When using written trip records the owner or the owner's agent shall examine the trip record, and shall enter, in ink, the date and time at the end of the driver's workshift. The owner or owner's agent shall also enter and sign a statement indicating that the driver's entries have been examined.	$25 Personal Appearance Not Required.
(ii)	(1) The owner shall correct wrong entries on a written trip record or other written records which the owner is required to maintain by drawing a single line through the incorrect entry and initialing the correction. Also, an owner shall not make erasures or obliterations or omit any essential information. On and after July 1, 2008, the owner and base owner shall make all necessary correction entries and addition entries that need to be made to the electronic trip record. The electronic trip record data collected in the paratransit vehicle shall not be erased, deleted, altered, changed or obliterated.	(1) $30 Personal Appearance Not Required.
	(2) An owner shall not rewrite a trip record in whole or in part, unless he has obtained prior Commission authorization.	(2) $75-$300 and/or suspension up to 30 days.
(jj)	An owner shall maintain and make available for inspection complete financial and other operational records for a period of three (3) years, including the following records:(1) vehicle liability insurance coverage; and(2) any other documents specifically prepared in conjunction with the operation of a paratransit service.A base shall maintain and make available for Commission inspection complete financial and other operational records for a period of three (3) years, including the following:	
	(1) the driver's trip records;(2) any workers' compensation insurance coverage; and(3) any other documents created or maintained in conjunction with the operation of a base.	$50 for violation of each subdivision hereof. Personal Appearance Not Required.
(kk)	An owner shall make any records which the owner is required to maintain, and a base owner shall make any records which the base is required to maintain, or photocopies thereof, available to a driver should the driver be required to present such documents to the Commission or any other governmental agency.	$50 Personal Appearance Not Required.
(ll)	A base owner shall comply with all provisions of the New York State Workers' Compensation Law and regulations promulgated thereunder with respect to the provision of coverage and benefits to eligible persons.	$25 for each day of non-compliance and either suspension until compliance or license revocation. Personal Appearance Required.
(mm)	(1) An owner and a base owner shall each maintain on file with the Commission a current telephone number (which must be connected to an answering machine or recording device), pager number, answering service number or similar means of telephone contact, so that the owner and base owner may each be reached by the Commission on a twenty-four hour basis.	$100 Personal Appearance Not Required.
	(2) An owner and a base owner must each respond to any telephone or pager contact from the Commission within forty-eight hours, seven days a week.	$500 Personal Appearance Not Required.
(nn)	On July 1, 2008, and thereafter, owners and base owners shall transmit electronically	For a violation that oc-

on a monthly basis to the Commission the electronic trip record data required by §4-09(gg).	curs on or before December 31, 2008, $250; otherwise $250 and suspension until compliance.Personal Appearance Not Required.

HISTORICAL NOTE

Section heading amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

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Penalty column heading amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

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Subd. (b) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (c) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (d) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (e) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (f) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (g) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (h) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (i) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (j) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (k) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (l) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (m) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (n) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (o) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (p) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (r) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (s) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (s) amended City Record Dec. 1, 1999 §7, eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

Subd. (t) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (v) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (w) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (x) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (y) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (aa) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (bb) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (cc) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (ff) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (gg) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (hh) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (ii) par (1) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (jj) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (kk) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (ll) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (ll) added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

Subd. (mm) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (mm) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

Subd. (nn) added City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-10 Owner's and Base Owner's Responsibilities for Paratransit Vehicle and Equipment.

PenaltyAn owner and a base owner shall be separately responsible for compliance with and liable for viola- tions of subdivisions (j), (k), (l) and (m) of this section.

(a)	An owner shall keep all for-hire vehicles clean, well-painted and of good appearance.	$25 Personal Appearance Not Required.
(b)	A base owner shall only dispatch a paratransit vehicle after the base owner inspects and reasonably determines that all equipment, including brakes, tires, lights, signals, wheelchair ramps, fastening devices, and heating and ventilation units are in good working order and meet all requirements of the New York State Vehicle and Traffic Law and these Commission rules. The owner shall be responsible for all repairs.	$50-$500 Personal Appearance Not Required.
(c)	An owner shall only allow paratransit vehicles to be dispatched which have been inspected and approved by the New York State Department of Transportation.	$100-$500 Personal Appearance Not Required.
(d)	An owner shall comply with the New York State Department of Transportation regulations and inspection requirements and schedules.	$100 Personal Appearance Not Required.
(e)	An owner shall make all repairs or alterations that the New York State Department of Transportation may require to meet their specifications or to maintain proper standards of safety and comfort. These repairs or alterations shall be made within the time period prescribed at state inspections.	$100 Personal Appearance Not Required.
(f)	An owner shall replace a paratransit vehicle when the New York State Department of Transportation Inspectorial Services determines that the vehicle is unsafe or unfit for	$100-$500 and/or suspension up to 30 days.

	use as a paratransit vehicle for hire and directs the owner to remove it from service immediately. Failure to comply with the order to replace the vehicle within one hundred and twenty (120) days of service thereof, shall be deemed by the Commission as abandonment of the paratransit vehicle license and revocation proceedings may be initiated.	Personal Appearance Required.
(g)	An owner is responsible for removing all official markings, when he sells or disposes of a paratransit vehicle, unless he obtains Commission approval in approved transfers.	$100 Personal Appearance Not Required.
(h)	An owner shall comply with all Commission notices, summons, and directives to correct defects in a paratransit vehicle.	$100 Personal Appearance Not Required.
(i)	An owner shall only allow to be dispatched paratransit vehicles having equipment and devices specifically required by the Vehicle and Traffic Law and the Commission for use of paratransit vehicles unless the owner obtains written authorization from the Commission (excluding mobility devices, such as grab bars or non-slip flooring).	$30-$300 and/or suspension up to 30 days. Personal Appearance Required.
(j)	An owner shall affix and a base owner shall be responsible for confirming that the vehicle has affixed a current New York City commercial use motor vehicle tax stamp to the lower right side of the paratransit vehicle windshield, so as to be plainly visible.	$25 Personal Appearance Not Required.
(k)	Prior to January 1, 2008, the owner shall affix and the base owner shall be responsible for confirming that the owner has affixed to the paratransit vehicle Commission identification stickers (exterior decals), the company name or trade name and other vehicle identification numbers and markings required by the Commission and New York State Law. Notwithstanding the provisions set forth in this subdivision (k), on and after January 1, 2008, the owner and base owner shall be responsible for:	
	(i) when the paratransit vehicle is first licensed by the Commission, having the mileage of the paratransit vehicle verified as being in accord with section 4-18(j) of this chapter, by producing to the Commission at licensing the New York State Department of Transpor- tation Form MC300 dated not more than one month prior to licensing indicating the vehicle mileage and,(ii) when the paratransit vehicle is first licensed by the Commission, its license is being renewed, or when otherwise necessary, having affixed to each paratransit vehicle a valid Commission decal so as to be plainly visible.	$50 Personal Appearance Not Required.
(l)	An owner and a base owner shall not display advertising on the exterior or interior of a paratransit vehicle unless the owner and base owner have first obtained Commission authorization.	$50 Personal Appearance Not Required.
(m)	An owner and a base owner shall only permit the operation and the dispatch of a paratransit vehicle when the following are present in the vehicle:(1) the driver's written trip record;(2) the driver's paratransit license;(3) the registration certificate or a photostat thereof; (4) the paratransit vehicle license or a photostat thereof;(5) the individual vehicle insurance card or photostat thereof; (6) the lease card or agreement, if any, or a photostat thereof;(7) all required notices; and(8) a two-way radio, if the base owner uses a radio system; and.(9) on and after July 1, 2008, an electronic trip record system in lieu of the written trip record set forth in paragraph (1) of this subdivision, unless such system malfunctions, the malfunction is timely reported to the Commission and the paratransit vehicle is operated for hire not more than three (3) business days before being repaired, during which time a written trip record shall be used.	$15 for each violation of this rule. Personal Appearance Not Required.
(n)	On July 1, 2008, and thereafter, owners and base owners shall install in all paratransit vehicles an electronic trip record system that collects electronic trip record data required by subdivision 4-09(gg) during and for each trip.	$250 and suspension until compliance. Personal Appearance Not Required.
(o)	(1) On July 1, 2008, and thereafter, an owner shall not allow to be dispatched and a base	(1) $500 Personal Ap-

owner shall not dispatch a paratransit vehicle unless the electronic trip record system in the paratransit vehicle required by subdivision (n) of this section is in good working order.	pearance Required.
(2) Should such system malfunction, the base owner shall report the malfunction to the Commission's Safety and Emissions Facility within twenty-four (24) hours of the time when the base owner knew or should have known of the malfunction, and the owner shall have the system repaired or replaced within three (3) business days of the report to Safety and Emissions. A paratransit vehicle in which the electronic trip record system is malfunctioning shall not be dispatched more than three (3) business days following the time when the malfunction was reported to Safety and Emissions.	(2) $250 Personal Appearance Required.

HISTORICAL NOTE

Section heading amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Section in original publication July 1, 1991.

Penalty column heading amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (b) amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (c) amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (i) amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (j) amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (k) amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (l) amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (m) amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (n) added City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (o) added City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-11

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-11 Owner's and Base Owner's Responsibilities to the Passengers and Public.

		Penalty
(a)	Owners and base owners shall be courteous toward passengers and the general public, including Commission personnel, while performing the owner's and the base owner's duties and responsibilities as an owner and a base owner.	$25 Personal Appearance Not Required.
(b)	An owner and a base owner shall not threaten, harass, or abuse any passenger, Commission representative, or any other person while performing the owner's and the base owner's duties and responsibilities as an owner and a	

		Penalty
	base owner. An owner and a base owner shall not harm or use physical force against or attempt to harm or use physical force against a service animal that is accompanying a person with a disability.	$50-$350 and/or suspension up to 30 days. Personal Appearance Required.
(c)	An owner and a base owner shall not use or attempt to use any physical force against a passenger, Commission representative, or any other person, while performing the owner's and the base owner's duties and responsibilities as an owner and a base owner. An owner and a base owner shall not harm or use physical force against or attempt to harm or use physical force against a service animal that is accompanying a person with a disability.	$20-$350 and/or suspension up to 30 days possible revocation (OATH) Personal Appearance Required.

(d)	An owner and a base owner shall:(1) Schedule the daily pickups of passengers and the dispatchment of a paratransit vehicle as expeditiously as possible, to prevent and avoid an unreasonably late pickup or no pickup.	(1) $25 Personal Appearance Not Required.
	(2) If such pickup is unreasonably delayed or cancelled, the owner or base owner shall promptly notify the waiting passenger of the delay or cancellation.	(2) $50 Personal Appearance Not Required.
(e)	An owner shall train or arrange for the training of every driver in the knowledge, expertise and skills to properly and safely assist any person with a disability or other passenger in and out of a paratransit vehicle, and how to properly utilize the wheelchair ramp, the fastening devices, and any safety precautions or other devices contained in the vehicle.	$50-$150 Personal Appearance Required.
(f)	An owner and a base owner shall monitor the behavior and conduct of the drivers toward the passengers. An owner and a base owner shall also investigate complaints by a passenger and shall take appropriate and reasonable action.	$50-$250 and/or suspension until a monitoring procedure is devised and/or other appropriate action is taken to the satisfaction of the Commission. Personal Appearance Required.
(g)	An owner shall not charge or attempt to charge a fare above the approved rate of fare currently filed with the Commission. An owner shall not impose or attempt to impose any additional charge for transporting a person with a disability, a service animal accompanying a person with a disability or a wheelchair or other mobility aid.	See §4-13 Personal Appearance Required.
(h)	An owner shall not refuse by words, gestures or any other means, without justifiable grounds to provide transportation to any orderly person, who has prearranged the trip and the destination is within New York City, unless he does not have a vehicle then available for the requested transportation.	See §4-13 Personal Appearance Required.
	Penalty	
(i)	(1) An owner shall inspect the interior of the paratransit vehicle after each workshift and any property found shall be taken without delay to the police precinct where the garage is located unless its rightful owner is known or can be found and is notified within a reasonable time.(2) The owner shall promptly inform the Commission of any property found and taken to a police precinct.	(1) $50-$250 Personal Appearance Not Required.

HISTORICAL NOTE

Section heading amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (b) amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (b) amended City Record July 8, 1997 §13, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (c) City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (c) amended City Record July 8, 1997 §13, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (d) amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (e) amended City Record July 8, 1997 §13, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (f) amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (g) amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (g) amended City Record July 8, 1997 §13, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (h) amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-12

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-12 Owners' and Drivers' Responsibilities for the Handling of Passengers with Infectious Diseases.

		Penalty
(a)	Owners and Drivers shall adhere to all Federal, State and City laws, rules and regulations, if any, in regard to the handling of passengers with infectious diseases.	$25-$1,000 Possible suspension or revocation (OATH) Personal Appearance Required.
(b)	Owners shall adhere to all Federal, State and City laws, rules and regulations, if any, in regard to any necessary provisions which must be provided to the drivers or passengers when transporting passengers with infectious diseases (eg. masks, gloves, etc.).	$25-$1,000 Possible suspension or revocation (OATH) Personal Appearance Required.
(c)	(1) Owners and Drivers shall adhere to all Federal, State, and City laws, rules and regulations, if any, in regard to the cleaning of paratransit vehicles after transporting passengers with infectious diseases and the disposal of any contaminated materials. Note: According to the New York City Emergency Medical Service and the New York State Department of Health, the following is an appropriate disinfectant solution: One (1) part sodium hypochlorite solution (bleach) to nine (9) parts water-fill the bucket with water first and then add the solution. *(This solution is incompatible with acids, organic material or reducing agents. Therefore, this solution should never be mixed with hydrogen peroxide, ammonia or any other cleansing agent.) (2) The owner must provide protective clothing, (goggles, gloves, gowns, and masks) to anyone under his employ who disinfects the vehicle.(3) if a stretcher is contaminated,	$25-$1,000 Possible suspension or revoca-

clean/disinfect by wiping, however, if it is saturated then dispose of it in an appropriate manner. Also, dispose of any contaminated linen.Note: Dispose of contaminated material by placing the items in a buff-colored impervious plastic bag and seal the bag and tag it as "contaminated" and dispose of the material in the manner approved at a local hospital.(4) in the case of gross contamination, where the vehicle is saturated or encrusted then the vehicle must be sterilized, through the use of steam gas or liquid agents.	tion (OATH) Personal Appearance Required.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Section title amended City Record July 8, 1997 §14, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (a) amended City Record July 8, 1997 §14, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (b) amended City Record July 8, 1997 §14, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (c) par (1) amended City Record July 8, 1997 §14, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-13 Mandatory Penalties.

(a) Any licensee who has been found to have violated a provision of sections 4-06(b), 4-07(d), 4-08(g), 4-08(i)(1), 4-08(n), 4-08(t), 4-09(a), 4-09(b), 4-09(c), 4-09(h), 4-09(w), 4-09(bb), 4-11(g), 4-11(h) or any combination thereof, shall be fined not less than $100 nor more than $350 for each violation for which a licensee is convicted. Any licensee who has been found in violation of any of the provisions of such rules or any combination thereof, for a second time within a twenty-four month period shall be fined not less than $350 nor more than $500. The Commission shall mandatorily revoke the driver's, the base owner's or the owner's license of any paratransit driver, base owner or owner who has been found to have violated any of the provisions of sections 4-06(b), 4-07(d), 4-08(g), 4-08(i)(1), 4-08(n), 4-08(t), 4-09(a), 4-09(b), 4-09(c), 4-09(h), 4-09(w), 4-09(bb), 4-11(g), 4-11(h) or any combination thereof, three times within a twenty-four month period. Nothing contained herein shall limit or restrict any other authority the Commission may have to suspend or revoke a paratransit driver's license.

(b) The twenty-four month period referred to above shall be calculated with reference to the date of the conviction of the violation.

(c) The Commission will not issue any license to any individual, corporation or partnership who/which has had his/its license revoked for a period of at least one year from the date of such revocation.

Any licensee who has had five (5) or more summonses issued to him that remain open and outstanding for a twelve (12) month period shall have his license automatically revoked at the end of said twelve month period. The twelve month period shall be calculated from the date of the issuance of the summons.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 17, 2007 §11, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-14

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-14 Procedures in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section in original publication July 1, 1991.

Subd. (e) amended City Record May 15, 1995 §5, eff. June 19, 1995. [See T35 §1-85 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-15

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-15 Seizure and Forfeiture of Unlicensed Paratransit Vehicles.

(a) **Seizure.** In accordance with §19-506(h) of the Administrative Code of the City of New York, any officer or employee of TLC designated by the Chairperson of TLC, and any police officer may, upon service of a summons for violation of subdivision b or c of §19-506 of the Administrative Code, seize any vehicle which such officer or employee has probable cause to believe is operated or offered to be operated without an appropriate vehicle license in violation of such subdivision b or c. A vehicle seized in accordance with such §19-506(h) shall be removed to a designated secured facility.

(b) **Summons and Notice of Seizure.**

(1) The officer or employee effecting seizure shall serve a summons for violation of subdivision b or c of §19-506 of the Administrative Code upon the owner of the seized vehicle, by service upon the owner or upon a person who uses such vehicle with the permission of the owner, express or implied.

(2) An officer or employee of TLC who effects seizure as described in §4-15(a) shall also deliver to the vehicle owner a notice of seizure, including identification of the seized vehicle and information concerning these regulations and the designated secured facility to which the vehicle was or will be taken. Such notice of seizure may be delivered in the same manner as service of the summons.

(3) An officer or employee of TLC shall also mail a notice of seizure to the owner of the vehicle. Any defect in delivery or mailing of a notice of seizure shall not affect the validity of service of a summons upon the owner as described in §4-15(b)(1) herein.

(c) Expedited hearing concerning a seized vehicle. The summons shall set forth a date and time for a hearing in the administrative tribunal of TLC. Such hearing shall be held within seven calendar days after seizure, or, if the seventh day is a Saturday, Sunday or City government holiday, no later than on the business day next following the seventh day.

(d) **Release of a seized vehicle prior to the scheduled hearing.**

(1) An owner of a vehicle is eligible for release of a seized vehicle prior to the scheduled hearing if the owner meets the following criteria: the owner has not been found in violation two or more times of subdivision b or c of §19-506 of the Administrative Code for acts committed on or after February 20, 1990 and within a thirty-six month period.

(2) An owner meeting the criteria of §4-15(d)(1) herein may obtain the release of the vehicle by appearing at the administrative tribunal with the notice of violation, on or before the scheduled hearing date, either to:

(i) Plead guilty, be determined by TLC staff as having met the criteria of §4-15(d)(1) herein and be assessed a civil penalty by an administrative law judge. TLC staff shall also determine the amount of removal and storage fees. The owner must pay in full the civil penalty and removal and storage fees. Upon such payment, TLC shall issue an order to release the vehicle. The owner or his agent may present the order at the designated secured facility to obtain the vehicle.

(ii) Be determined by TLC staff as having met the criteria of §4-15(d)(1) herein, and post a bond in the amount of the maximum civil penalty, plus removal and storage fees. Upon the posting of such bond, TLC shall issue an order to release the vehicle. The owner or his or her agent may present the order at the designated secured facility to obtain the vehicle.

(3) If the owner does not obtain the vehicle by the date specified in the order of release, the owner shall be responsible for any further storage fees, and payment of such fees shall be made before the release of the vehicle.

(4) A vehicle shall not be released from storage prior to the scheduled hearing if the owner fails to meet the criteria of §4-15(d)(1) herein.

(e) **Decisions at the expedited hearing.**

(1) If the administrative law judge dismisses the summons, the administrative law judge shall issue an order for release of the seized vehicle without removal and storage fees.

(2) If the administrative law judge finds that the owner was in violation and that this was not the third or subsequent violation by the owner of subdivision b or c of §19-506 of the Administrative Code committed on or after February 20, 1990 and within a thirty-six month period, the administrative law judge shall assess a civil penalty as provided in §19-506(e) of the Administrative Code, and TLC staff shall assess removal and storage fees. The owner must pay the civil penalty and removal and storage fees in order to obtain from TLC an order for release of the seized vehicle.

(3) If the administrative law judge finds that the owner was in violation and that this was the third or subsequent violation by the owner of subdivision b or c of §19-506 of the Administrative Code committed on or after February 20, 1990 and within a thirty-six month period, the administrative law judge shall set a civil penalty, as provided in §19-506(e) of the Administrative Code, and shall issue a notice to the owner and to the Chairperson of TLC or his or her designee that the vehicle is subject to forfeiture upon a judicial determination.

(4) **Inquest hearings.** If the owner of the seized vehicle fails to appear for the hearing, an inquest hearing will be held. An administrative law judge shall make a determination pursuant to paragraph (1), (2), or (3) of this subdivision (e). TLC will inform the respondent of the inquest determination by first class mail. The information mailed to the owner shall include the provisions of §4-15(i) herein concerning abandoned vehicles. The respondent may appear at

TLC offices within seven calendar days of such mailing to comply with the inquest determination or to move in the administrative tribunal to vacate such inquest determination. In the event that such inquest determination is vacated, the respondent shall be entitled to a hearing de novo on the original summons. Such hearing shall be scheduled within seven calendar days of the order vacating the inquest determination, or, if the seventh day is a Saturday, Sunday or City government holiday, no later than on the business day next following the seventh day.

(f) **Appeals.** If found in violation of subdivision b or c of §19-506 of the Administrative Code, an owner must pay the civil penalty together with removal and storage fees in order to appeal. However, if the decision to be appealed was made pursuant to §4-15(e)(3), the owner must pay only the civil penalty in order to appeal. If upon appeal the decision is reversed in whole or part, the owner shall receive a refund of the relevant civil penalty and fees.

(g) **Forfeiture.**

(1) In addition to the penalties set forth in §19-506(e) of the Administrative Code, if an owner is convicted in the criminal court or found in the TLC administrative tribunal to be in violation of subdivision b or c of §19-506 of the Administrative Code three or more times, and all of such violations were committed on or after February 20, 1990 and within a thirty-sixth month period, the interest of such owner in any vehicle used to commit such third or subsequent violation shall be subject to forfeiture upon notice and judicial determination.

(2) The Chairperson of the TLC or his or her designee shall determine whether to pursue the remedy of forfeiture. If such person determines not to pursue the remedy of forfeiture, the owner shall be so notified by first class mail. The owner may obtain an order of release of the vehicle by paying the civil penalty determined pursuant to §4-15(e)(3) together with removal and storage fees.

(3) A forfeiture proceeding shall be commenced by proper service upon the owner of a summons and other papers pursuant to the provisions of the civil practice law and rules.

(h) **Public sale pursuant to forfeiture.**

(1) After a judicial determination of forfeiture, but no sooner than thirty days after such determination and upon notice of at least five days, the TLC shall sell such forfeited vehicle at public sale, except as provided in paragraph (2) herein. Such notice of sale shall be published in the City Record or in a newspaper of general circulation, and shall also be mailed to any lienholder or mortgagee shown in the records of the jurisdiction which issued the number license plates on the vehicle.

(2) Any person, other than an owner whose interest is forfeited pursuant to §19-506 of the Administrative Code and these rules, who establishes a right of ownership in a vehicle, including a part ownership or security interest, shall be entitled to delivery of the vehicle if such person:

(i) redeems the ownership interest which was subject to forfeiture by payment to the city of the value thereof;

(ii) pays the reasonable expenses of the safekeeping of the vehicle between the time of seizure and such redemption; and

(iii) either

(A) asserts a claim in the forfeiture proceeding; or

(B) submits a claim in writing to the commission within thirty days after judicial determination of forfeiture.

(3) Notwithstanding paragraphs (1) and (2) of this subdivision (h), establishment of a right of ownership shall not entitle a person to delivery of a vehicle if TLC establishes in the forfeiture proceeding or in a separate administrative adjudication of a claim asserted pursuant to §4-15(h)(2)(iii) herein that the violations of subdivision b or c of §19-506 of

the Administrative Code upon which the forfeiture is predicated were expressly or impliedly permitted by such person.

(4) If a person asserts a claim pursuant to §4-15(h)(2)(iii)(B) herein, the TLC shall schedule an adjudication of such claim in its administrative tribunal. Notice of the hearing shall be mailed to the claimant at least ten business days in advance of the hearing. The administrative law judge shall rule as to whether the violations upon which the forfeiture was predicated were expressly or impliedly permitted by the claimant. If the administrative law judge finds that there was such permission by the claimant, the claim shall be denied.

(i) **Abandoned vehicles.**

(1) If an owner does not assert an interest in a seized vehicle by removing it from storage within the time periods specified in paragraph (2) of this subdivision (i), the vehicle shall be deemed abandoned. A declaration of such abandonment may be made by the deputy commissioner for legal affairs of TLC or his or her designee, without further hearing.

(2) A vehicle shall be deemed abandoned, pursuant to paragraph (1) herein, if an owner:

(i) has not removed the vehicle from storage within five days of obtaining an order of release pursuant to section 4-15(d) or (e) herein; or

(ii) has not paid the civil penalty and removal and storage fees within five days of a hearing determination of violation pursuant to §4-15(e)(2) herein, or within seven days after notice of an inquest determination of violation was mailed to the owner pursuant to §4-15(e)(4) herein; or

(iii) has not obtained an order vacating an inquest determination of violation and setting a hearing de novo, within seven days after notice of such inquest determination was mailed to the owner pursuant to §4-15(e)(4) herein; or

(iv) has not paid the civil penalty and removal and storage fees, within seven days after a notice that the TLC will not pursue the remedy of forfeiture was mailed to the owner pursuant to §4-15(g)(2) herein.

(3) In the event that a vehicle has been deemed abandoned pursuant to paragraphs (1) and (2) of this subdivision (i), TLC shall mail to the owner a notice that the vehicle has been recovered by TLC as an abandoned vehicle and that, if unclaimed, its ownership shall vest in TLC and it will be sold at public auction or by bid after ten days from the date such notice was mailed. Such notice shall also be mailed to any lienholder or mortgagee shown in the records of the jurisdiction which issued the number license plates on the vehicle.

(4) An owner, lienholder or mortgagee may claim the vehicle within ten days from the date that the notice described in paragraph (3) of this subdivision (i) was mailed, by paying the removal and storage fees due and, in the case of an owner, the civil penalty claimed as a lien by TLC on such vehicle.

(5) In the event that an abandoned vehicle is not claimed within ten days after the notice described in paragraph (3) of this subdivision (i) was mailed, ownership of the abandoned vehicle shall vest in TLC. TLC may sell an abandoned vehicle at public auction or by bid. Any proceeds from the sale, less expenses incurred for removal, storage and sale of the vehicle and less the civil penalty claimed as a lien by TLC, shall be held without interest for the benefit of the former owner of the vehicle for one year. If not claimed within such one year period, such proceeds shall be paid into the general fund by TLC.

(j) **Removal and storage fees.**

(1) The removal fee shall be one hundred fifty dollars ($150).

(2) The storage fee shall be ten dollars ($10) per day or such other amount as may be set by the New York City Department of Transportation.

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 29, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under section 19-506(h) of such Code, authorizing TLC to seize unlicensed wheelchair accessible vans.

The promulgated regulations implement Section 19-506(h)of the Administrative Code, which provides that unlicensed wheelchair accessible vans may be seized by the Commission and the New York City Police Department. The regulations delineate the procedures for the seizure and release of unlicensed wheelchair accessible vans; establish fees for the removal and storage of such vehicles; and provide for the forfeiture of vehicles which are not redeemed.

The purpose of the regulations is to provide TLC with the enforcement tools needed to combat the public safety problem of wheelchair accessible vans operating without a license.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-16 License Fees.

(a) Pursuant to §19-511 of the Administrative Code of the City of New York, the license fee for the operation of a wheelchair accessible van base is five hundred dollars ($500) annually.

(b) Pursuant to §19-504(b) of the Administrative Code of the City of New York, the license fee for each wheelchair accessible van shall be two hundred seventy-five dollars ($275) annually.

(c) Pursuant to §19-505(j) of the Administrative Code of the City of New York, the fee for a paratransit vehicle driver's license shall be sixty dollars ($60) annually.

(d) The fee for an original license or a renewal thereof shall be paid at the time of filing the applications and shall not be refunded in the event of disapproval of the application.

(e) There shall be an additional fee of twenty-five dollars ($25) for late filing of a license renewal application where such filing is permitted by the Commission.

(f) An additional fee of twenty-five dollars ($25) shall be paid for each license issue to replace a lost or mutilated license.

(g) Pursuant to §19-504(h) of the Administrative Code of the City of New York, a vehicle licensee may change the base with which it is affiliated, subject to the approval of the Commission and upon payment of a fee of twenty-five dollars ($25).

HISTORICAL NOTE

Section renumbered (formerly §4-15) City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See T35 §4-15 Note 1]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-17 Critical Driver Program.

(a) The paratransit driver's license of any driver who, within a period of fifteen months, accumulates six or more points against his license issued by the Department of Motor Vehicles, or an equivalent license issued by the driver's state of residence, unless previously revoked, shall be suspended for thirty days.

(b) The paratransit driver's license of any driver who, within a period of fifteen months, accumulates ten or more points against his license issued by the Department of Motor Vehicles, or an equivalent license issued by the driver's state of residence, shall be revoked.

(c) The Commission may at any time review the fitness of a driver to be licensed by the Commission in view of any moving violation, accident, or other driving related incident. Nothing contained herein shall preclude the imposition by the Commission of additional or more severe penalties, or any other action deemed appropriate, in accordance with the Rules of the Commission.

(d) For the purpose of this Rule, the points assigned by the Department of Motor Vehicles for any violation shall be deemed to have been accumulated as of the date of occurrence of the violation.

(e) The relevant fifteen-month period to be used for calculating any suspension or revocation imposed under subsection (a) or (b) herein shall be calculated from the date of the most recent occurrence which led to a conviction of a violation carrying points; provided however, that no action under subsection (a) or (b) shall be taken with regard to any violation carrying points which occurred prior to the effective date of this Rule.

(f) For the purpose of calculating penalties pursuant to subsection (a) or (b) herein, a driver who has accumulated points for multiple violations arising from a single incident shall be deemed to have accumulated points for the single violation with the highest point total.

(g) Any licensee who voluntarily attends and satisfactorily completes a motor vehicle accident prevention course approved by the Department of Motor Vehicles, and who furnishes the Commission with proof that the course was completed after the effective date of this Rule, shall have two (2) points deducted from the total number of points assessed pursuant to this Rule. No point reduction shall affect any suspension or revocation action taken pursuant to these Rules prior to the completion of the course. No person shall receive a point reduction pursuant to this subdivision more than once in any eighteen-month period, and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

HISTORICAL NOTE

Section added City Record Sept. 20, 1999 §1, eff. Oct. 20, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 20, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-506 of said Code, authorizing the Commission to adopt rules regulating the suspension or revocation of drivers' licenses issued by the Commission; and under §19-507.2 of said Code, setting forth a Critical Driver Program for licensees.

The rules adopt a Critical Driver Program for operators of Commuter Vans and Paratransit Services Vehicles, to conform with the program adopted by the Commission relating to Taxicab and For-Hire Vehicle drivers. This program was modified by changes to the Administrative Code enacted into law on May 26, 1999. A driver who accumulates six (6) or more points on his DMV license within fifteen (15) months shall have his TLC license suspended for thirty (30) days. A driver who accumulates ten (10) or more points within a fifteen month period shall have his TLC license revoked. The rules also provide the opportunity for a licensee to receive a two-point reduction through voluntary attendance at a safety-related course.

The purpose of these amendments is to conform Commission rules and standards applicable to paratransit services drivers and commuter van drivers to the rules presently applicable to Taxicab and For-Hire Vehicle drivers. This regulation protects the riding public by ensuring that drivers who have either multiple or serious convictions on their DMV licenses will not be permitted to transport members of the public for hire.

The regulations promulgated herein are more stringent than those applicable to commuter van drivers, and certain paratransit services drivers, pursuant to Article 19-A of the Vehicle and Traffic law, and will ensure that all licensees of the Commission are treated in the same manner.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-18 Vehicle Retirement and First Licensing.

(a) All paratransit vehicles first licensed by the Commission on or after January 1, 2008, shall meet the mileage specifications of a qualified replacement paratransit vehicle set forth in subdivision (j) of this section and shall comply with subdivision (h) of this section unless excepted pursuant to subdivision (i) of this section.

(b) All paratransit vehicles that are of model year 1998 or earlier must be retired from paratransit service no later than the expiration dates of their paratransit vehicle licenses on and after January 1, 2008.

(c) All paratransit vehicles that are of model year 2000 or earlier must be retired from paratransit service no later than the expiration dates of their paratransit vehicle licenses on and after January 1, 2009.

(d) All paratransit vehicles that are of model year 2002 or earlier must be retired from paratransit service no later than the expiration dates of their paratransit vehicle licenses on and after January 1, 2010.

(e) All paratransit vehicles that are of model year 2004 or earlier must be retired from paratransit service no later than the expiration dates of their paratransit vehicle licenses on and after January 1, 2011.

(f) On and after January 1, 2012, all paratransit vehicles shall be retired no later than seven (7) years after the vehicle was first licensed.

(g) A paratransit vehicle that cannot pass the New York State Department of Transportation inspection must be retired, regardless of whether its retirement date has been reached. A paratransit vehicle which has reached its

retirement date must be retired, regardless of whether it may still pass the New York State Department of Transportation inspection.

(h) When the paratransit vehicle is first licensed by the Commission, the Commission shall verify that the mileage on the New York State Department of Transportation Form MC300 for such vehicle, dated not more than one month prior to the paratransit vehicle licensing, accords with the specifications in subdivision (j) of this section.

(i) An owner may request an extension of a vehicle's retirement date no later than two months before that retirement date. The extension request must include documentation demonstrating that a new vehicle has been ordered but will not be delivered until after the retirement date, but no later than 60 days after the retirement date. The Commission's Chairperson, or his or her designee, may confirm the delivery date independently. Should the owner's documentation comply fully with the terms of this section and the compliant delivery date is confirmed, an extension of the vehicle's retirement date to the projected delivery date of the new vehicle shall be granted.

(j)(1) On and after January 1, 2008, all qualified replacement paratransit vehicles shall have been driven less than 100,000 miles;

(2) On and after January 1, 2009, all qualified replacement paratransit vehicles shall have been driven less than 50,000 miles;

(3) On and after January 1, 2010, all qualified replacement paratransit vehicles shall have been driven less than 25,000 miles; and

(4) On and after January 1, 2011, all qualified replacement paratransit vehicles be of the most recent model year or the immediately preceding model year and shall have been driven less than 500 miles.

HISTORICAL NOTE

Section added City Record Aug. 17, 2007 §12, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-01 Definitions.

Applicant. An applicant is an individual, partnership or corporation seeking a license as a taxicab broker.

Broker, taxicab. A taxicab broker is an individual, partnership or corporation, who may hereinafter be referred to as "broker," who, for another and whether or not acting for a fee, commission or other valuable consideration, acts as an agent or intermediary in negotiating the transfer of a taxicab license (medallion) or of stock of or in a corporation which holds a taxi license (medallion), and/or negotiating a loan secured or to be secured by an encumbrance upon or transfer of a taxicab license (medallion), or licensed vehicle.

Commission. Commission means the New York City Taxi and Limousine Com- mission.

Mailing address of broker. Mailing address of broker means the address, maintained by the broker as his principal place of business, and designated by him for the mailing of all notices and correspondence from the Commission and for service of summonses. However, a broker may also designate a post office box number address as a mailing address.

Medallion. A medallion is a plate issued by the Commission as the physical evidence of a taxicab license, and affixed to the outside of such taxicab.

Net listing. Net listing means an agency or other agreement whereby a prospective vendor of a taxicab or an interest therein, lists such taxicab or interest therein for sale with a licensed taxicab broker authorizing the sale thereof at a specified net amount to be paid to the seller and authorizing the broker to retain as commission, compensation, or otherwise, the difference between the price at which the taxicab or interest therein is sold and the specified net amount

to be received by the vendor.

Owner. Owner means an individual, partnership, limited liability company or corporation licensed by the Commission to own and operate a medallion taxicab or taxicabs.

Renewal applicant. Renewal applicant means a broker seeking a renewal of a valid taxicab broker's license.

Taxicab license. Taxicab license means the authority granted by the Commission to an owner to operate a designated vehicle as a taxicab in the City of New York evidenced by a medallion.

Transfer. A transfer is a conveyance of any interest in a taxicab license or stock in a corporation holding a taxicab license, from one party to another.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Owner amended City Record June 20, 2006 §7, eff. July 20, 2006. [See T35 §1-01 Note 2]

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-02 General Provisions for the Licensing of Taxicab Brokers.

(a)(1) An individual, the members of a partnership, or the officers and shareholders of a corporation, applying for a taxicab broker's license must provide proof of identity to the Commission in the form of:

(i) A valid form of photo identification issued by the United States, any state or territory thereof, or any political subdivision of such state or territory; and

(ii) A valid, original social security card.

(2) An individual, the members of a partnership, or the officers and shareholders of a corporation applying for a taxicab broker's license or its renewal:

(i) shall be at least twenty-one (21) years of age;

(ii) shall be of good moral character;

(iii) shall be able to speak, read, write and understand the English language; and

(iv) shall have actively participated in the taxicab brokerage business under the supervision of a licensed taxicab broker for a period of not less than one (1) year, or shall have had the equivalent experience in the general taxicab business for a period of at least two (2) years, the nature of which participation or experience shall be established by affidavit duly sworn to under oath and/or other and further proof as required by the Commission. This requirement may be waived by the Commission in its discretion.

(b) The applicant for a broker's license shall be in such form and detail as the Commission shall prescribe, and shall include the following:

(1) the place or places, with the street and number, where the business is to be conducted;

(2) the business or occupation theretofore engaged in by the applicant, or, if a partnership, by each member thereof, or, if a corporation, by each officer and shareholder thereof, for a period of two years immediately preceding the date of such application, setting forth the place or places where such business or occupation was engaged in and the name or names of employers, if any;

(3) if, in addition to services as a broker, the brokerage or any principal thereof will be acting as a lender, insurance broker or automobile dealer, or has a financial interest in such lender, insurance brokerage firm or automobile dealership, full information as to extent of such interest; and

(4) such further information as the Commission may require in order to determine if the applicant is qualified to assume the duties and obligations of a taxicab broker.

(c) The applicant shall deposit with the Commission a bond, in the penal sum of fifty thousand ($50,000) dollars, containing one or more sureties to be approved by the Commission. Such bond shall be payable to the City of New York and shall be conditioned that the license applicant or licensee will comply with the provisions of the Administrative Code and any rules or regulations of the Commission, and shall pay all fines imposed by the Commission and all judgments awarded for damages occasioned to any person by reason of any such licensee, his agents or employees, while acting within the scope of their employment, made, committed or omitted in the business conducted under such license, or caused by any other violation of Title 19, Chapter 5 of the Administrative Code in carrying on the business for which such license is granted. The term judgment shall include but not be limited to an order of an Administrative Law Judge of the Commission directing restitution to an aggrieved party. The broker is immediately liable for satisfaction upon determination of the fine or award judgment, or, if timely appeal is taken, upon final determination of the appeal.

(d) An individual, the members of a partnership, and officers and shareholders of a corporation, applying for a broker's license, shall be fingerprinted. Fingerprinting shall also be required of new officers and shareholders of such corporation. The Commission must be notified of any new officers or shareholders within five working days of their selection and continued use of the brokerage license may be permitted contingent upon completion of the background investigation. An individual, the members of a partnership and officers and shareholders of a corporation who provide funds for the brokers, shall be fingerprinted, unless such provider is a licensed bank or loan company. The requirements of this subdivision (d) may be waived by the Commission in its discretion.

(e) An attorney, applying for a taxicab broker's license, who demonstrates that he is a member in good standing of the Bar of the State of New York, need not submit proof as herein required by subdivisions (a) and (d) hereof.

(f) If the applicant is a partnership, it shall file with its license application a certificate from the clerk of the county where the principal place of business is located.

(g) No corporate or trade name will be accepted by the Commission which is similar to a name already in use by another taxicab broker.

(h) If the applicant is a corporation, it shall file with its license application a certified copy of its certificate of incorporation. A list of its officers and shareholders and a certified copy of the minutes of the meeting at which the current officers were elected shall also be furnished.

(i) An applicant or renewal applicant shall not offer or give any gifts or gratuity to any employee(s), representative(s) or member(s) of the Commission, any public servant(s) or other person(s) either to a specified

recipient or to a general group and whether or not the donor indicates an expectation of something in return in the course of occupation as a taxicab broker or applicant therefor, and shall immediately report to the Inspector General of the Commission any request or demand for any gift or gratuity by any employee(s), representative(s) or member(s) of the Commission, any public servant(s) or such other person(s).

(j) If the Commission determines that the applicant has failed to meet the requirements for a taxicab broker's license it will within a reasonable time deny the license or its renewal and specify in writing to the applicant the reason for such denial.

(k) Any material falsification contained in an original or renewal application for a license, any failure to notify the Commission of any material change in the information contained therein or any attempt by an applicant or broker to conceal the identity of a party having an interest, direct or indirect, in his business of taxicab brokerage shall be cause for denial of such application or revocation or suspension of such license, in addition to any other sanctions imposed by the Commission.

(l) Taxicab broker's licenses shall be issued as of January first and shall expire on December thirty-first next succeeding, unless sooner suspended or revoked by the Com- mission.

(m) If at any time during the term of the taxicab broker's license the Commission becomes aware of information that the broker no longer meets the requirements for a taxicab broker's license, the Commission may deny his renewal application, or suspend or revoke his license in the manner provided in the Procedures in the Event of a Violation of Commission Rules (§5-08).

(n) A taxicab broker's license issued to an individual may be used after the death of such licensee by his duly appointed administrator or executor in the name of the estate pursuant to authorization granted by the surrogate under the provisions of section two hundred fifteen-a of the surrogate's court act for a period of not more than one hundred twenty days from the date of death of such licensee in order to complete any unfinished taxicab transactions in the process of negotiation by the broker existing prior to his decease. The period of one hundred twenty (120) days may be extended upon application to the Commission, for good cause shown.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Oct. 31, 2006 §6, eff. Nov. 30, 2006. [See T35 §1-02 Note 2]

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-03 Taxicab Broker's License.

(a) An individual, partnership, or corporation shall not engage in the business or occupation of, or hold himself out or act temporarily as a taxicab broker in the City of New York unless currently licensed by the Commission.

(b) A broker shall conspicuously display a license or copy thereof at all times in every place of business maintained by such broker.

(c) A broker shall not display a taxicab broker's license which is expired, suspended, or revoked, but shall surrender same to the Commission immediately.

(d) A broker shall submit an application for renewal of the license no later than the expiration date of the license unless the time to do so is extended by the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-04 Office Procedure.

(a) A broker shall report to the Commission at its main administrative office, Legal Affairs, in person or by registered or certified mail return receipt requested, a change in his mailing address and in the address of any other office where his taxicab brokerage business is conducted, within seventy-two (72) hours, exclusive of weekends and holidays.

(b) A broker

(1) shall not request nor permit a party to sign a Power of Attorney or any other instrument in blank nor accept any such instrument signed in blank;

(2) if the broker shall request any instrument or document to be signed by any interested party and returned to said broker, the broker shall provide said interested party with a duplicate copy of the instrument for the party's own records. If any interested party attends a closing, at which time the interested party is presented with an instrument or other document for signature, the broker shall furnish such interested party with a photocopy of the signed instrument at the closing;

(3) upon completion of a closing, or other transaction, the broker shall, within ten (10) business days of such completion, deliver to the interested party copies of all other documents prepared by the broker or under the broker's supervision on behalf of such party;

(4) the broker shall request the party receiving such papers to acknowledge, in writing, receipt of same.

(c) A broker shall keep and maintain for a period of three (3) years the following records:

(1) the names and addresses of transferor(s), transferee(s), mortgagee(s), or other lien holder(s) if any;

(2) the purchase price;

(3) amount of deposit paid on contract;

(4) amount of commission paid to broker;

(5) expenses of procuring the mortgage loan, if any;

(6) closing statements; and

(7) listing placed with the broker.

(d) (1) A broker shall cooperate with all law enforcement personnel and authorized representatives of the Commission, and shall comply with all their reasonable requests.

(2) A broker shall answer and/or comply with all questions, communications, directives within seventy-two (72) hours of receipt from the Commission or its representatives. An emergency communication shall be answered immediately.

(3) A broker shall answer all summonses from the Commission on the scheduled date as same may be adjourned.

(4) A broker shall, upon demand, furnish to the Commission or its representatives for inspection all records and documents listed in §5-04(c).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) par (2), (3) amended City Record Dec. 18, 1992 eff. Jan. 17, 1993.

Subd. (c) par (6) amended City Record Dec. 18, 1992 eff. Jan. 17, 1993.

Subd. (c) par (7) added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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35 RCNY 5-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-05 Relationship to Parties of a Taxicab Transaction.

(a) (1) A broker shall not offer a taxicab for transfer unless he is authorized to do so by the owner.

(2) An owner may withdraw his authorization by giving written notice of such withdrawal to the broker except where an exclusive has been given for a fixed period.

(b) In all agreements obtained by a broker which provide for an exclusive listing of a taxicab, the broker shall have attached to the listing or printed in boldface type on the listing or printed on the reverse side of the listing and signed or initialed by the owner the following explanation in type size of not less than six point;

An "exclusive right to sell" listing, where the owner has surrendered to a specific broker the owners right to sell, means that if you, the owner of the taxicab medallion, find a buyer for your taxicab, or if another broker finds a buyer, you must pay the agreed commission to the present broker.

(c) A broker shall not be a party to an exclusive listing contract which shall contain an automatic continuation of the period of such listing beyond the fixed termination date set forth therein.

(d) A broker shall not induce any party to a contract for the transfer of a taxicab medallion to break such contract for the purpose of substituting in lieu thereof a new contract with another principal.

(e) A broker shall disclose the fact that in writing to his principals if, in addition to his services as a broker for their medallion transaction, he is acting also as a lender, insurance broker, automobile dealer or in any such other capacity, or

has a financial or other interest in such lender, insurance brokerage firm or automobile dealership.

(f) A broker shall not make or enter into a net listing contract for the transfer of a medallion or any interest therein unless it is part of a bulk transfer of ten (10) or more medallions owned by a fleet or minifleet and is completed within no more than six (6) months of the listing.

(g) A broker shall not accept any commission, rebate or profit on expenditures made by such broker for his principal without the latter's full knowledge and written consent which said consent shall be retained by the broker for a period of three years.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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35 RCNY 5-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-06 Standard of Conduct.

(a) A broker shall not directly or indirectly buy for himself any interest in a medallion listed with him without first disclosing such fact to the owner in writing.

(b) A broker shall not sell a medallion in which he owns an interest, unless he makes known to the vendee such interest in writing.

(c) (1) A broker with whom a medallion and rate card have been left for purposes of sale shall deliver said medallion and rate card to the Commission for placement into storage within 48 hours of receipt of same, exclusive of holidays or weekends.

(2) A broker shall not operate or cause to be operated any medallion delivered to him without the owner's knowledge and express written and duly acknowledged consent.

(d) (1) A broker, to whom money has been advanced on a contract by a transferee shall not pay over any part of such funds to the transferor or any other person without the written approval of the transferee.

(2) The broker shall not commingle such funds with his own, but shall deposit same promptly in a separate, Federally insured, special account.

(3) The broker, upon making such deposit, shall notify in writing the person who advanced the money, giving the name and address of the bank in which the money was deposited and the amount of such deposit.

(4) The broker shall not retain or benefit from accrued interest, if any, from such account, unless authorized, in writing by his principal.

(e) (1) Any advertisement placed by a broker shall indicate that the advertiser is a licensed broker.

(2) A broker shall not use deceptive or misleading advertising.

(f) A broker, while performing his duties and responsibilities as a taxicab broker, shall not commit or attempt to commit, alone or in concert with another, any act of fraud, material misrepresentation, dishonesty or larceny or perform any willful act of omission or commission which is against the best interests of the public.

(g) A broker, who arranges a loan for his principal shall give such principal a copy of the lender's commitment and of all other documents provided to the broker by the lender.

(h) A broker shall advise the parties to a sale, in writing, of their right to be represented by an attorney of their own choosing and/or an accountant with respect to such medallion transfer.

(i) (1) A broker within ten (10) business days after the completion of a closing (including the financial closing) shall provide his principal(s) and the Commission with a written closing statement setting forth the following:

(i) Names and addresses of seller(s) and purchaser(s).

(ii) Medallion(s) being sold.

(iii) Sales price.

(iv) Vehicle cost (if any).

(v) Amount of personal funds furnished by purchaser.

(vi) Names and addresses of lenders together with amount(s) of loans(s).

(vii) Broker's commission.

(viii) Itemization and explanation of all disbursements or payments made on behalf of such party.

(2) A broker shall, within ten (10) business days after completion of the financial closing, remit all monies due his principal(s).

HISTORICAL NOTE

Section in original publication July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-07 Responsibility to the Commission.

(a) A broker, his representative(s) and/or employee(s), shall not offer or give any gift or gratuity to any employee(s), representative(s) or member(s) of the Commission, or any public servant(s), either to a specified party or to a general group of persons and whether or not there is an expectation of something in return.

(b) A broker shall immediately report to the Commission or to the New York City Department of Investigation any request or demand for a gift or gratuity by any employee(s), representative(s) or member(s) of the Commission, or any public servant(s).

(c) A broker, including a member of a partnership or any officer or shareholder of a corporation or representative and/or employee thereof, shall immediately notify the Commission of his conviction of a crime. Such notification shall be in writing and must be accompanied by a certified copy of the certificate of disposition issued by the Clerk of the Court.

(d) A broker, his representative and/or employee shall not threaten, harass or abuse any governmental or Commission representative, public servant or other person, in the course of his occupation as a taxicab broker or representative and/or employee of a broker.

(e) A broker, his representative and/or employee shall not use or attempt to use any physical force against a Commission representative, public servant or other person in the course of his occupation as a taxicab broker, or representative and/or employee of a broker.

(f) A broker without the consent of the Commission, shall not employ or use the services of any individual whose license as a taxicab broker has been revoked or is suspended or who was the chief executive officer of a partnership or corporation whose license has been revoked or is suspended.

(g) No broker or attorney in the capacity of a broker, without the prior written consent of the Commission, shall act on behalf of any broker who has not been licensed by the Commission or whose license has been suspended or revoked.

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35 RCNY 5-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-08 Procedures in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section in original publication July 1, 1991.

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35 RCNY 5-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-09 Penalties for Violation of Rules Governing Taxicab Brokers.

Rule	Number	Penalty All fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	Personal Appearance Required
§5-03	(a)	$500-1500	Yes
	(b)	$100	No
	(c)	$500-1500	Yes
	(d)	$25	No
§5-04	(a)	$50-500 and/or suspension	Yes
	(b)(1)-(4)	$400-2000 and/or suspension	Yes
	(c)(1)-(7)	$250-1000	No
	(d)(1)	$500-1500 and/or suspension	Yes
	(d)(2)	$250-750 and/or suspension	No
	(d)(3)	$250-750 and/or suspension	No
	(d)(4)	$500-1500 and/or suspension	Yes
§5-05	(a)	$500-1000	Yes
	(b)	$100-500	Yes
	(c)	$100-750	No
	(d)	$100-750	Yes
	(e)	$250-2000	Yes
	(f)	$100-1000	Yes

	(g)	$250-2000	Yes
§5-06	(a)	$500-2000	Yes
	(b)	$250-750	Yes
	(c)	$250-1000	Yes
	(d)	$1000-2500 (1), (2) $100-500 (3), (4)	Yes
	(e)(1)	$100-750	Yes
	(e)(2)	$500-2000	No
	(f)	$100-2500 and/or suspension or revocation	Yes
	(g)	$400-2000 and/or suspension	Yes
	(h)	$500-1000	Yes
	(i)(1)	$500-2000	Yes
	(i)(2)	$1000-2500 and/or suspension or revocation	Yes
§5-07	(a)	$2000 and/or suspension or revocation	Yes
	(b)	$500-1000 and/or suspension or revocation	Yes
	(c)	$500-1000	Yes
	(d)	$1000-2500	Yes
§5-07	(e)	$2000-5000 and/or suspension or revocation	Yes
	(f)	$2500 and suspension	Yes
	(g)	$2500 and suspension	Yes

Violation of any of these rules may also lead to revocation or suspension of a taxicab broker's license.

Any discretionary suspension would be for a minimum of fifteen days.

HISTORICAL NOTE

Section amended City Record Dec. 18, 1992 eff. Jan. 17, 1993.

Section in original publication July 1, 1991.

Penalty column heading amended City Record Nov. 2, 2006 §10, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-01 Definitions.

Accessible vehicle. An accessible vehicle is a wheelchair accessible vehicle that is authorized by the Commission to transport passengers by prearrangement and for-hire and that meets the specifications and requirements for accessible vehicles pursuant to the Americans with Disabilities Act of 1990, as amended, and regulations promulgated pursuant thereto.

Affiliated driver. An affiliated driver is a person who drives a for-hire affiliated vehicle and who is required to be licensed by the Commission.

Affiliated vehicle. An affiliated vehicle is a for-hire vehicle other than a black car or a luxury limousine which a base station is authorized by the Commission to dispatch.

Base. A base is a base station, a black car base, or a luxury limousine base.

Base license. A base license is a license issued by the Commission for operation of a base.

Base owner. A base owner is an individual, partnership or corporation licensed by the Commission to operate a base.

Base station. A base station is a central facility which manages, organizes or dispatches affiliated vehicles licensed under Chapter 5 of Title 19 of the Administrative Code, not including luxury limousines or black cars.

Base station owner. A base station owner is any individual, partnership or corporation licensed by the Commission

to own and operate a base station.

Black car. A black car is a for-hire vehicle dispatched from a central facility whose owner holds a franchise from the corporation or other business entity which operates such central facility, or who is a member of a cooperative that operates such central facility, where such central facility has certified to the satisfaction of the Commission that more than ninety percent of the central facility's for-hire business is on a payment basis other than direct cash payment by a passenger.

Black car base. A black car base is a central facility which operates a two-way radio or other communications system used for dispatching or conveying information to drivers of black cars.

Chairperson. The Chairperson is the chairperson of the Commission, or his or her designee.

Chauffeur's license. A chauffeur's license is a valid chauffeur's license of the State of New York or a valid license of similar class from another state of which the licensee is a resident.

Clean air for-hire vehicle. A clean air for-hire vehicle is a for-hire vehicle licensed by the Commission that receives an air pollution score of 9.0 or higher from the United States Environmental Protection Agency or its successor agency and is estimated to emit 6.4 tons or less of equivalent carbon dioxide per year by the United States Department of Energy or its successor agency; provided that such vehicle is powered by the fuel for which such vehicle meets the above-specified standards.

Commission. Commission means the New York City Taxi and Limousine Com- mission.

Decal. A decal is a sticker issued by the Commission evidencing licensing of a for-hire vehicle.

Dispatch. A dispatch is a request for a driver by a base to provide transportation to a passenger who has previously arranged for such transportation with the base.

Driver. A driver is a person who drives a for-hire vehicle and who is required to be licensed by the Commission.

For-hire vehicle. A for-hire vehicle is a motor vehicle carrying passengers for hire in the City, with a seating capacity of twenty passengers or less, excluding the driver, with three (3) or more doors, other than a taxicab, coach, wheelchair accessible van, commuter van or an authorized bus operating pursuant to applicable provisions of law, and not permitted to accept street hails from prospective passengers in the street and required to be licensed by the Commission.

For-hire vehicle driver's license. A for-hire vehicle driver's license is a license issued by the Commission to persons who meet Commission qualifications as for-hire vehicle drivers.

For-hire vehicle permit. A for-hire vehicle permit is a permit issued by the Commission to a for-hire vehicle or base owner to allow a vehicle affiliated with a base to be dispatched by said base.

Issuing jurisdiction. An issuing jurisdiction is a county within New York State contiguous to the City of New York that requires issuance of a license, permit, registration, certification or other approval for a vehicle to perform the pre-arranged pick up or drop off of one or more passengers for compensation in such jurisdiction.

Issuing jurisdiction driver's license. An issuing jurisdiction driver's license shall mean a license, permit, registration, certification or other approval issued by an issuing jurisdiction to operate a vehicle for transportation for hire by pre-arrangement.

Issuing jurisdiction vehicle license. An issuing jurisdiction vehicle license shall mean a license, permit, registration, certification or other approval issued by an issuing jurisdiction to the owner of a vehicle used to provide

transportation for hire by pre-arrangement.

Line work. Line work is a type of pre-arranged service provided pursuant to a contract with a black car base in which the dispatch and passenger assignment are completed at the point of pick up by an employee or contractor of either the black car base or the contracting party.

Livery. Livery means a for-hire vehicle designed to carry fewer than six passengers, excluding the driver, which charges for service on the basis of flat rate, time, mileage, or zones.

Luxury limousine. A luxury limousine is a for-hire vehicle with a seating capacity of twenty passengers or less, excluding the driver, which is dispatched by its base from a central facility which has certified to the satisfaction of the Commission that more than ninety percent of its for-hire business is on a payment basis other than direct cash payment by a passenger, and whose passengers are charged on the basis of garage to garage service and on a flat rate basis or per unit of time or mileage, for which there is maintained personal injury insurance coverage of no less than five hundred thousand dollars per accident where one person is injured and one million dollars per accident for all persons injured in that same accident if said vehicle has a seating capacity of fewer than nine passengers, and which meets the minimum liability insurance requirements set forth in these rules if the vehicle has a seating capacity of ten or more passengers.

Luxury limousine base. A luxury limousine base is a central facility which operates a two-way radio or other communications system used for dispatching or conveying information to drivers of luxury limousines.

Mailing address. Mailing address means the address designated for the mailing of all notices and correspondence from the Commission and for service of summonses. In the case of the base, it shall be the base address. In the case of the driver, it shall be the home address of the driver.

Passenger. A passenger is a person who has engaged a for-hire vehicle for the purpose of being transported to a destination, or a person who is awaiting the arrival of a dispatched for-hire vehicle.

Penalty point. A penalty point is a non-monetary penalty assessed against either a base owner or the owner of a for-hire vehicle upon conviction for violation of certain provisions of this chapter.

Person with a disability. A person with a disability is an individual with a physical or mental impairment or incapacity, including any person who uses a wheelchair, three-wheel scooter, crutches, other mobility aid or a service animal, but who can transfer from such a mobility aid to a for-hire vehicle with or without reasonable assistance.

Portable or hands-free electronic device. A "portable or hands-free electronic device" is any electronic device able to:

1. make a wireless telephone call

2. send or receive a text message

3. allow its user to speak on the telephone hands-free or operate a device by voice command, even when otherwise allowed by New York State law

4. act as a personal assistant (PDA)

5. send and or receive data from the internet or from a wireless network

6. act as a laptop computer or portable computer

7. receive or send pages

8. allow two-way communications between different people or parties

9. play electronic games

10. play music or video; or

11. make or display images; or

12. any combination of the above

This definition is to be liberally construed in light of its purpose to minimize the distraction of drivers, and in recognition of the rapid development of electronic technologies and proliferation of electronic devices that may be made available in the future that similarly transfer digital images, sounds or messages.

"Portable or hands-free electronic device" does not include: (1) any device the use of which while driving is specifically authorized by TLC rules, or (2) the use of a global positioning navigation system ("GPS") which uses voice functions to convey directions, so long as the driver is not inputting data unless legally standing or parked and the GPS is not capable of being used as a cell phone or other portable or hands-free electronic device.

Qualified jurisdiction. A qualified jurisdiction is an issuing jurisdiction which meets the requirements for reciprocity set forth in §498 of the New York State Vehicle and Traffic Law.

Rooflight. Rooflight means equipment attached to the roof of a vehicle, or extending above the roofline of a vehicle, for the purpose of displaying any information. In any instance in which Commission rules permit a rooflight, the permitted rooflight shall be of a one-piece solid translucent material; it shall not approximate the shape or appearance of a taxi rooflight; it may bear only the name of the base with which the vehicle is affiliated, alone or with either a telephone number or a car number; and the name shall not include the words "hack," "taxi," "taxicab," "cab" or "coach."

Seating Capacity. Seating capacity shall include any plain view location which is capable of accommodating a normal adult, is part of an overall seat configuration and design and is likely to be used as a seating position while the vehicle is in motion. For the purpose of determining "seating capacity", the definition of "designated seating position" contained in the United States Department of Transportation Regulations as set forth in the Code of Federal Regulations, as may be amended from time to time, is hereby incorporated by reference.

Service animal. A service animal is a guide dog, signal dog or any other animal trained specifically to work or to perform tasks for a person with a disability, including, but not limited to, guiding individuals with visual impairments, alerting individuals with hearing impairments to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or retrieving dropped items.

Sponsor. Sponsor is a base owner who is licensed by the Commission and has entered into an agreement with a prospective driver, who, if licensed by the Commission, will be affiliated with said base for a stated period of time.

Vehicle owner. A vehicle owner is an individual, partnership or corporation in whose name a vehicle is titled. For purposes of these rules, the term shall also apply to the lessee of the vehicle from the titled owner. Service shall be deemed proper service on the vehicle owner if sent to the registrant or the lessee of the vehicle.

Weapon. A weapon is any firearm (as defined in the New York State Penal Law) for which a license has not been issued as provided in the New York State Penal Law and the Administrative Code of the City of New York, electronic dartgun, gravity knife, switchblade knife, canesword, billy, blackjack, bludgeon, metal knuckles, chuka stick, sandstick, slingshot, pilum ballistic knife, sand bag, sand club, wrist brace type slingshot, shirken, kung fu star, dagger, dangerous knife, dirk, razor, stiletto, imitation pistol or any other instrument or thing whether real or simulated and capable of

inflicting or threatening bodily harm, including but not limited to any other weapons, the possession of which is prohibited pursuant to the New York State Penal Law.

Wheelchair accessible livery. A wheelchair accessible livery shall mean a livery which meets the requirements of section 6-28(a) of this chapter and the owner of which vehicle has opted to participate in the dispatch program as set forth in chapter 16 of this title.

Wheelchair accessible vehicle. A wheelchair accessible vehicle is a for-hire vehicle which is designed for the purpose of transporting persons in wheelchairs or containing any physical device or alteration designed to permit access to and enable the transportation of persons in wheelchairs.

HISTORICAL NOTE

Section amended City Record July 5, 2002 eff. Aug. 4, 2002. Note: amendment inadvertantly

omitted definition of Commission. [See T35 §6-11 Note 1]

Section in original publication July 1, 1991.

Accessible vehicle added City Record May 23, 2007 §6, eff. June 22, 2007. [See T35 §1-35 Note 1]

Affiliated vehicle definition amended City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Base added City Record June 2, 2009 §1, eff. July 2, 2009. [See T35 §6-12 Note 4]

Base definition deleted City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Base license added City Record June 2, 2009 §1, eff. July 2, 2009. [See T35 §6-12 Note 4]

Base owner added City Record June 2, 2009 §1, eff. July 2, 2009. [See T35 §6-12 Note 4]

Base station definition added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Base station owner definition amended City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35

§6-04 Note 3]

Black car definition added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Black car base definition added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04

Note 3]

Chairperson added City Record June 2, 2009 §1, eff. July 2, 2009. [See T35 §6-12 Note 4]

Clean air for-hire vehicle added City Record May 23, 2007 §6, eff. June 22, 2007. [See T35 §1-35 Note 1]

Dispatch definition amended City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Fore-hire vehicle driver's license amended City Record June 2, 2009 §2, eff. July 2, 2009. [See T35 §6-12 Note 4]

For-hire vehicle permit City Record June 2, 2009 §2, eff. July 2, 2009. [See T35 §6-12 Note 4]

Handicapped person definition deleted City Record Apr. 29, 1997 eff. June 1, 1997. [See T35

§6-06 Note 1]

Issuing jurisdiction added City Record Nov. 22, 2006 §2, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Issuing jurisdiction driver's license added City Record Nov. 22, 2006 §2, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Issuing jurisdiction vehicle license added City Record Nov. 22, 2006 §2, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Line work added City Record May 23, 2008 §1, eff. June 22, 2008. [See T35 §6-09 Note 1]

Luxury limousine definition amended City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1] (Note, this amendment failed to pick-up the amend- ment made by City Record Sept. 27, 1996 eff. Oct. 30, 1996. Both amendments are included here) [See T35 §6-04 Note 3]

Luxury limousine base amended City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04

Note 3]

Penalty point added City Record June 2, 2009 §1, eff. July 2, 2009. [See T35 §6-12 Note 4]

Person with a disability definition amended City Record July 8, 1997 §15, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Person with a disability definition added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35

§6-06 Note 1]

Portable or hands-free electronic device added City Record Dec. 30, 2009 §8, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Qualified jurisdiction added City Record Nov. 22, 2006 §2, eff. Dec. 22, 2006. [See T35 §6-26

Note 1]

Rooflight definition amended City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Service animal definition added City Record July 8, 1997 §15, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Weapon definition amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-25 Note 2]

Wheelchair accessible livery added City Record Nov. 23, 2007 §8, eff. Dec. 23, 2007. [See T35

-87 Note 1]

Wheelchair accessible vehicle definition added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Base station owner was found to have operated a commuter van service without a license. The administrative law judge rejected owner's argument that the vehicle, a limousine with a seating capacity of ten, did not fit within the definition of either a luxury limousine (which is defined in section 6-01(a) as a for-hire vehicle designed to carry fewer

than nine passengers) or a commuter van (which is defined in section 9-01 as a for-hire motor vehicle having a seating capacity of at least nine passengers but not more than twenty passengers). The administrative law judge ruled that seating capacity, not physical shape of the vehicle, is the determinative factor. **Taxi and Limousine Comm'n v. Absolute Class Limousine, Inc.,** OATH Index No. 995/98 (Apr. 22, 1998).

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35 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-02 Terms of Licenses.

(a) The term of every driver and vehicle owner license issued by the Taxi and Limousine Commission under the For-Hire Vehicle Rules shall be as follows:

(1) A license issued to a new applicant for a for-hire vehicle driver's license shall expire one year subsequent to the date the license was issued as provided in §6-14.

(2)(A) A license issued to a renewing applicant for a for-hire vehicle driver's license shall expire two years from the date on which the previous license expired. The Commission may, in its discretion, extend the expiration date of such license by up to an additional thirty-one days.

(B) The holder of a renewal license under subparagraph (a)(2)(A) of this paragraph who is in the second year of such license and who has completed the drug test required by §6-16(v)(1) of this chapter for licensees in the first year of such license, may, upon written request to the Chairperson, advance the expiration date of his or her license to any date prior to the scheduled expiration of such license. One such request may be made during the term of such license. The request must be made on a form to be prescribed by the Chairperson or his or her designee and must be submitted in accordance with instructions on that form.

(C) The holder of a license seeking to renew such license after advancing the expiration date thereof hereunder must comply with all requirements for renewal applicants, including with the requirements imposed by §§6-02 and 6-16 of this chapter; notwithstanding the provisions of §6-16(v) of this chapter, the drug test provided for therein shall be performed no sooner than thirty (30) days prior to, and in any event, no later than, such advanced expiration date. For

purposes of §6-16(v) of this chapter, a licensee who has advanced his or her expiration date shall be treated as a licensee in the second year of a two-year license.

(D)(i) Notwithstanding the provisions of §6-02(a)(4) of this chapter, the holder of a renewal license under subparagraph (a)(2)(A) of this paragraph that expires between March 16, 2006, and June 23, 2006, inclusive, may request an extension of the time to submit a license renewal application on the ground that the licensee was unable to submit to license renewal drug testing as required by §6-16(v)(1) of this chapter due to the licensee's absence from the New York City area during the entire time provided by that section for submission to such drug testing.

(ii) The request for an extension of time to submit a license renewal application shall be made in writing to the Chairperson or his or her designee and shall include documentation demonstrating that the holder of the license was absent from the New York City area during the entire time provided by §6-16(v)(1) of this chapter for submission to drug testing for the renewal of such license, and was therefore not reasonably able to submit a license renewal application before the expiration of such license.

(iii) Any such request for an extension of time must be received by the Chairperson or his or her designee no later than September 15, 2006. If the Chairperson or his or her designee grants the request, the licensee's time to submit an application for renewal of his or her license shall be extended to six months after the expiration of his or her license.

(iv) A license renewal application submitted by a licensee granted such an extension must comply with all requirements for renewal applications, including payment of the late-filing fee provided by §6-03(e) of this chapter, except that the drug test required by §6-16(v) of this chapter shall be taken no sooner than thirty (30) days prior to the completion of such license renewal application.

(v) The expiration of a license shall not be affected by the licensee's eligibility for an extension, or request for an extension, of the time to submit a license renewal application under this paragraph, and such license shall remain expired until a renewal license is issued under item (iv) of this subparagraph.

(3)(A) A license issued to a new applicant for a for-hire vehicle license shall expire two years subsequent to the date the license was issued. A license issued to a renewing applicant for a for-hire vehicle license shall expire two years subsequent to the date on which the previous license expired. The Commission may, in its discretion, extend the expiration date of such license by up to an additional thirty-one days.

(B) A for-hire vehicle permit shall terminate prior to the expiration date upon revocation or surrender of the permit, or surrender of the vehicle's license plates to the applicable state department of motor vehicles, and such permit shall not thereafter be renewed or reinstated.

(4) (A) Prior to July 1, 2009, a renewing applicant must file a completed application on or before the expiration date of the license.

(B) (i) On and after July 1, 2009, a renewing applicant must file a completed application for renewal of a for-hire vehicle permit not less than thirty (30) days before the expiration date of the permit.

(ii) The Commission will permit a renewing applicant to file a completed application at any time up until the expiration date of the for-hire vehicle permit upon payment of a $25 late fee.

(iii) No renewal application will be accepted after the expiration date of the for-hire vehicle permit and such permit will expire and not be renewed.

(5) A person who engages in a licensed activity after the expiration date of a license and before the issuance of a renewal license is engaged in unlicensed activity and may be subject to penalties pursuant to applicable statutes and regulations. Nothing contained herein shall prohibit the Commission from taking any action pursuant to §6-14(b) with

respect to conduct which occurred during the probationary period of a new applicant's driver's license, either prior or subsequent to the expiration of the probationary period.

(6) All new applicants must attend and complete a defensive driving course from a school, facility or agency authorized by the Commission and certified by the New York State Department of Motor Vehicles. The course must have been completed within six (6) months prior to the date of application.

(7) All renewal applicants are required to attend and complete an authorized defensive driving course as described in subsection (5). A renewal applicant who submits a Certificate of Completion for an authorized defensive driving course completed less than three (3) years from the date of the renewal application shall be exempt from this requirement.

(b) The term of every base license issued by the Taxi and Limousine Commission under the For-Hire Vehicle Rules shall be as follows:

(1) A license issued to a new applicant applying for a license on or after July 1, 2009 shall expire three years subsequent to the last day of the month in which the new license is issued. (For example, a new applicant files on October 10, 2009 and TLC issues a license on March 24, 2010. That license would expire on March 31, 2013.)

(2) A license issued to a renewing applicant with a license expiring on or after July 1, 2009 shall expire three years from the date on which the previous license expired. (For example, a renewing applicant whose license expired on July 31, 2009 would receive a license expiring on July 31, 2012. An applicant who did not submit a completed renewal application until July 31, 2009 would still receive a license that expired on July 31, 2012, and may be subject to penalties pursuant to paragraphs (5) and (6) below.)

(3) Licenses issued prior to July 1, 2009 shall expire (A) two years from the date on which the previous license expired if a renewal license or (B) two years subsequent to the last day of the month in which the license was issued, if a new license.

(4) A renewing applicant for a base license must file a completed application by no later than sixty days before the expiration date of the license. A renewing applicant must pay a late fee of $25 with any late application filed later than 60 days before the expiration date of the license. No renewing applicant shall be permitted to file a renewal application after the date of expiration of its license. The license of a base which fails to file a completed renewal application prior to the expiration date of the base's license will expire and not be renewed.

(5) A person who engages in a licensed activity after the expiration date of a license and before the issuance of a renewal license is engaged in unlicensed activity and may be subject to penalties pursuant to applicable statutes and regulations, except as provided in paragraph (6).

(6) If timely application for renewal of the license has been made pursuant to Rule 6-02(b)(4), the Chairperson shall extend the effectiveness of the license pending the review of the renewal application. If a renewal license is subsequently issued in such case, its term shall expire as provided in paragraphs (2) and (3) above. If a renewal application is denied, the applicant shall not be considered to have been unlicensed prior to the date of denial of the renewal application.

(c) The Commission may deny an application for a license or renewal of a license or, after notice and hearing, revoke or suspend any license issued, if it finds that an applicant has made a material misstatement or misrepresentation on an application for such a license or the renewal thereof.

HISTORICAL NOTE

Section amended City Record Mar. 27, 1997 eff. May 1, 1997. [See Note 1]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Mar. 1, 1999 §2, eff. Mar. 31, 1999. [See T35 §2-10 Note 1]

Subd. (a) par (1) amended City Record Nov. 2, 2006 §11, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (a) par (2) amended City Record May 26, 2006 §4, eff. June 25, 2006. [See T35 §2-03 Note 3]

Subd. (a) par (2) amended City Record Aug. 29, 1997 eff. Oct. 1, 1997. [See T35 §6-20 Note 1]

Subd. (a) par (3) amended City Record June 2, 2009 §3, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (a) par (4) amended City Record June 2, 2009 §3, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (a) par (6), (7) added (as pars (5), (6)) City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 2]

Subd. (b) amended City Record June 2, 2009 §4, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (c) amended City Record Aug. 29, 1997 §4, eff. Sept. 28, 1997. [See T35 §6-20 Note 1]

Subd. (c) added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 27, 1997:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city, under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under section 19-511 of such Code, authorizing TLC to require base licenses "upon such terms as it deems advisable."

The promulgated rules establish two-year licenses for base stations, black car bases and luxury limousine bases. Local Law 51 of 1996 established a detailed review process for base station licenses that would be more appropriate to a two-year license. An annual license renewal requirement would be burdensome on both the applicant and the agency. For simplicity, a term is established for other base licenses that is equal to the term for base station licenses. Provision is made to continue the effectiveness of licenses during the renewal application review process, if the application is timely. The rule requires that an application for renewal must be made no less than sixty days prior to expiration of the license, to be considered timely. This is intended to establish adequate time for an orderly review process as required by local law, reducing the need to extend the effectiveness of licenses during the renewal application review process.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-03 License and Administrative Fees.

(a) Pursuant to section 19-511 of the Administrative Code of the City of New York, the license fee for the operation of a base station is five hundred dollars ($500) annually. The license fee for the operation of a black car base is five hundred dollars ($500) annually. The license fee for the operation of a luxury limousine base is five hundred dollars ($500) annually.

(b) Pursuant to §19-504(b) of the Administrative Code of the City of New York, the license fee for each for-hire vehicle shall be two hundred seventy-five dollars ($275) annually.

(c) Pursuant to §19-505(j) of the Administrative Code of the City of New York, the fee for a for-hire vehicle driver's license shall be sixty dollars ($60) annually.

(d) The fee for an original license or a renewal thereof shall be paid at the time of filing the application and shall not be refunded in the event of a disapproval of the ap- plication.

(e) There shall be an additional fee of twenty-five dollars ($25) for late filing of a license renewal application where such filing is permitted by the Commission.

(f) An additional fee of twenty-five dollars ($25) shall be paid for each license issued to replace a lost or mutilated license.

(g) Pursuant to §19-504(h) of the Administrative Code of the City of New York, a vehicle licensee may change the

base with which it is affiliated, subject to the approval of the Commission and upon payment of a fee of twenty-five dollars ($25).

(h) Pursuant to §19-504(k) of the Administrative Code of the City of New York, the fee for replacement of license plates issued by the New York State Department of Motor Vehicles shall be twenty-five dollars ($25) per vehicle.

HISTORICAL NOTE

Section heading amended City Record Apr. 29, 1997 eff. June 1, 1997.

Section renumbered (formerly §6-12) City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Section renumbered (formerly §6-11) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (h) added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-04 License to Operate a Base Station, Black Car Base or Luxury Limousine Base.

(a) (i) No person shall operate a base without a current and valid license from the Commission, which license is not suspended, revoked or expired. In addition to any penalties specified by this chapter, any person operating a base without a current and valid license, including a license which is suspended, revoked or expired shall be subject to penalties applicable to unlicensed operation. Subdivisions (b) through (d) and (f) and (g) and (j) of this section shall apply only to applicants for a base station license or renewal thereof, or to applicants for a change in base station location pursuant to §6-06(d) of this Chapter, except where otherwise noted.

(ii) For purposes of this subdivision (a), no suspension of a base license following a hearing under chapter 8 of this title shall be effective until notice of the suspension is given by the Commission. Such suspension shall be effective, for purposes of this subdivision (a), (A) ten days after mailing if service is made by certified mail, or (B) upon delivery if service is made by hand delivery. Where a base license is suspended for failure to pay a fine, the suspension shall be effective ten days after service of notice of the suspension, regardless of the method of service of the notice.

(b) (1) An applicant for a license to operate a base station shall demonstrate to the satisfaction of the Commission that the operator of the base station shall provide and utilize lawful off-street facilities for the parking and storage of the licensed for-hire vehicles that are to be dispatched from the base station equal to not less than one parking space for every two such vehicles or fraction thereof. The maximum permissible distance between the base station and such off-street parking facilities shall be one and one-half miles. The off-street parking facilities shall be in a location zoned for the operation of a parking facility.

(2) A license for a base station which was valid on September 18, 1996 shall only be renewed upon the condition

that within two years of such renewal the licensee shall provide off-street parking facilities as required by paragraph (1) of this subdivision. (Example: Base Station ABC license expires on May 31, 1997. Base Station ABC must have off-street parking by May 31, 1999 in order to renew at that time.)

(3) Notwithstanding the provisions of paragraphs (1) and (2), the Chairperson may reduce the number of required off-street parking spaces or may waive such requirement in its entirety upon a determination that sufficient lawful off-street parking facilities do not exist within the maximum permissible distance from the base station or an applicant demonstrates to the satisfaction of the Chairperson that complying with the off-street parking requirements set forth in paragraphs (1) and (2) would impose an economic hardship upon the applicant; except that the Chairperson shall not reduce or waive the off-street parking requirements where it has been determined in an administrative proceeding that the applicant, or a predecessor in interest, has violated any provision of section 6-05 of the rules of the Commission or any successor thereto, as such may from time to time be amended. A determination to waive or reduce the off-street parking requirements shall be made in writing, shall contain a detailed statement of the reasons why such determination was made and shall be made a part of the Commission's determination to approve an application for a base station license.

(4) No base station license shall be renewed where it has been determined after an administrative proceeding that the applicant has failed to comply with the off-street parking requirements set forth in paragraph (1) of this section or as they may have been modified pursuant to paragraph (3) of this section.

(c) (1) An applicant for a license to operate a base station shall demonstrate to the satisfaction of the Commission that he or she is fit to operate a base station. The Commission shall consider the ability of the applicant to adequately manage the base station, the applicant's financial stability and whether the applicant operates or previously operated a licensed base station and the manner in which any such base station was operated. The Commission shall also consider any relevant information maintained in the records of the Department of Motor Vehicles or the Commission.

(2) No license for a new base station shall be issued for a period of three years subsequent to a determination in a judicial or administrative proceeding that the applicant or any officer, shareholder, director or partner of the applicant operated a base station that had not been licensed by the Commission.

(3) An applicant for a license to operate a base station, black car base or luxury limousine base shall be fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services. The criminal history shall be reviewed in a manner consistent with Article 23-A of the New York State Correction Law. The applicant shall pay any processing fee required by the State. Fingerprints shall be taken of the individual owner if the applicant is a sole proprietorship; the general partners if the applicant is a partnership; the officers, principals, and stockholders owning more than ten percent of the outstanding stock of the corporation if the applicant is a corporation. If subsequent to the fingerprinting of the applicant or during the term of the license, one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this subdivision is changed or added, such applicant shall, within five days of such change or addition, file with the Commission an application for an approval of the change or addition of partners, officers, principals or stockholders on such forms as are prescribed by the Commission, and such new partners, officers principals or stockholders shall be fingerprinted in accordance with this subdivision. Alternatively, an applicant who plans to change or add one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this subdivision may require that such fingerprinting be done prior to the change or addition of such new partner, officer, principal or stockholder.

(d) (1) In reviewing an application for a license to operate a base station, the Chairperson shall examine and consider the adequacy of existing mass transit and mass transportation facilities to meet the transportation needs of the public, and any adverse impact that the proposed operation may have on those existing services. The Chairperson shall also consider the extent and quality of service provided by existing lawfully operating for-hire vehicles and taxicabs.

(2) In its review of an application for a license to operate a new base station and in its review of an application to

renew a base station license the Commission shall consider the possible adverse effects of such base station on the quality of life in the vicinity of the base station including, but not limited to, traffic congestion, sidewalk congestion and noise. In its review of an application to renew a base station license the Commission shall consider whether a determination has been made after an administrative proceeding that the operator has violated any applicable rule of the Commission.

(e) Prior to the issuance of a license for a base or the renewal of a valid base license, the applicant shall provide to the Commission a bond in the amount of five thousand dollars with one or more sureties to be approved by the Commission. Such bond shall be for the benefit of New York City and shall be conditioned upon the licensee complying with the requirement that the licensee dispatch only vehicles which are currently licensed by the Commission and which have a current New York City commercial use motor vehicle tax stamp and upon the payment by the licensee of all civil penalties imposed pursuant to any provision of this chapter. The bond must be maintained by the base owner for the term of the license. The bond shall further permit the Commission to draw upon the bond to satisfy any penalties incurred by the base for any violation of this chapter which have not been paid following the imposition of the penalty and the completion of any appeal. The Chairperson will give the base owner 30 days' notice prior to drawing upon the bond to satisfy any penalty. In the event that the Commission draws on the bond, the base owner shall be assessed one penalty point.

(f) Upon receiving an application for the issuance of a license for a new base station or for the renewal of a license for a base station pursuant to this section, the Commission shall, within five business days, submit a copy of such application to the City Council and to the district office of the City Council member and the community board for the area in which the base station is or would be located.

(g) (1) The determination by the Commission to approve an application for a license to operate a new base station or for the renewal of a license to operate a base station shall be made in writing and shall be accompanied by copies of the data, information and other materials relied upon by the Commission in making that determination. Such determination shall be sent to the City Council and to the district office of the Council member within whose district that base station is or would be located within five business days of such determination being made.

(2) Any determination by the Commission to approve an application for a license to operate a new base station or to renew a license to operate a base station shall be subject to review by the City Council, in accordance with section 19-511.1 of the Administrative Code of the City of New York.

(h)(1) Every black car base and luxury limousine base that is a "central dispatch facility", as said term is defined in New York Executive Law §160-cc, shall, as a condition of obtaining a license or of continued licensure, become a member of the New York Black Car Operators' Injury Compensation Fund, Inc. ("Fund"), and shall register with the Department of State as a Member of the Fund. This provision shall not apply to a black car or luxury limousine base that owns fifty (50%) percent or more of the vehicles it dispatches.

(2) Each base which is a central dispatch facility under New York State Executive Law §160-cc shall furnish to the Commission a copy of its certificate of registration with the Fund. Every such black car base and luxury limousine base shall, as a condition of licensure, pay to the Department of State all fees due to said Department as required pursuant to State law.

(3) Every black car base and luxury limousine base subject to the provisions of the Fund shall add the surcharge required by State law and established by the Fund, to each invoice and billing for services, and to each credit payment of services performed by a vehicle affiliated with the base where the call originated from a centralized dispatch facility located within the State of New York, or wherein the trip originated from a point within the State of New York.

(4) In accordance with New York State Executive Law §160-jj, every black car base and luxury limousine base shall remit to the Fund all surcharges due and owing pursuant to subdivision (3) by no later than the fifteenth day of the

month following the month in which the surcharge is collected by the black car base or luxury limousine base.

(5) Every black car base and luxury limousine base shall comply with all applicable provisions of law governing the New York Black Car Operators' Injury Compensation Fund, Inc., and all rules and regulations promulgated thereunder.

(i) Every base station shall comply with all provisions of the New York State Workers' Compensation Law and rules and regulations promulgated thereunder with respect to the provision of coverage and benefits to eligible persons.

(j) Each applicant for a base station license or for the renewal of a base station license or for a change of ownership of a base station license must submit a business plan for the base station with such application. Such business plan must, at a minimum, set forth:

(1) The business name, address, telephone number, email address and 24 hour contact number for the base station;

(2) The base station's methods and practices for ensuring compliance with the rules of this chapter by itself, its employees, owners of vehicles affiliated with the base station, and drivers operating such vehicles;

(3) Such base station's plans to operate within the scope of, and in compliance with, the Commission's rules and how the base station intends to prevent recurrence of violations of the rules of this chapter incurred during the ending licensing term and the term preceding the ending term; (4) Policies and procedures to ensure that affiliated vehicles will make use of the base station's off-street parking location, the address of the off-street parking location and such location's distance from the base station, and policies and procedures to ensure that affiliated vehicles not using the off-street parking location shall comply with all applicable traffic and parking regulations;

(5) The number of vehicles affiliated with the base station (or, in the case of an applicant for a new license, the number of vehicles anticipated to be affiliated with the base station upon licensure) and the average number of vehicles anticipated to be affiliated during the term of the license;

(6) The number of requests for transportation received and the number of trips dispatched on a daily basis (or, in the case of an applicant for a new license, the number of requests anticipated to be received and the number of trips anticipated to be dispatched), and the average number of trips anticipated to be dispatched during the term of licensure;

(7) A description of how calls will be answered, rides dispatched, and complaints handled;

(8) Hours of operation of the base and office hours;

(9) A fare schedule in a form and format prescribed by the Chairperson;

(10) A plan for assuring that affiliated vehicles and the drivers of such vehicles provide transportation only through pre-arrangement made with the base station and do not accept passengers by street hail or other than by dispatch by the base station; and

(11) Such other matters as may be required by the Chairperson or the Commission as a condition of renewal of a base station license in light of the specifics of the base station's application and operating history.

HISTORICAL NOTE

Section renumbered (formerly §6-03) City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06

Note 1]

Section added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See Note 3]

Subd. (a) amended City Record June 2, 2009 §5, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (a) amended City Record Sept. 20, 1999 §1, eff. Oct. 20, 1999. [See Note 2]

Subd. (e) amended City Record June 2, 2009 §6, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subds. (h), (i) added City Record Jan. 31, 2000 §1, eff. Mar. 1, 2000, redesignated by Law Department per Charter §1045. [See Note 1]

Subd. (j) added City Record June 2, 2009 §7, eff. July 2, 2009. [See T35 §6-12 Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 30, 2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under §2303(b)(2) of such Charter, authorizing the TLC to promulgate rules and regulations relating to the standards and conditions of service; and under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter.

The rule amendments require all commuter van services, paratransit services, base stations, black car bases, and luxury limousine bases to comply with the applicable provisions of the New York State Workers' Compensation Law and other laws governing the provision of Workers' Compensation benefits for drivers affiliated with such licensees.

Chapter 49 of the Laws of 1999 was signed by the Governor into law on May 25, 1999 and became effective June 24, 1999. This Law amended the Workers' Compensation Law and added a new article of the Executive Law, to create the New York Black Car Operators' Injury Compensation Fund, Inc. ("Fund"). This Fund was created to provide a mechanism to secure Workers' Compensation benefits for owner-operators and designated drivers of vehicles affiliated with black car and luxury limousine bases. All black car and luxury limousine bases that either operate a centralized dispatch facility in New York State, or that dispatch vehicles for the acceptance of passengers within the State, are subject to this Law, unless the facility owns fifty (50%) percent or more of the vehicles it dispatches. The Executive Law mandates that all centralized black car and luxury limousine dispatch facilities located or doing business within the State of New York become members of the Fund. Section 160-hh(2) of the Executive Law further requires that each such centralized dispatch facility become a member of the Fund as a condition of receiving and retaining a local license.

The Law also requires that a surcharge, determined by the Fund, be added to all invoices and charges for covered transportation services. The surcharges collected must be remitted to the Fund by the fifteenth day of the month following the imposition of the charge. The Law provides a mechanism for the Local licensing authority to conduct hearings to adjudicate violations of the Law.

The maximum proposed fines for violations of the rules relating to participation in the Fund and compliance with all regulations are provided in the New York State Executive Law. Section 160-oo of the Executive Law provides for a fine in an amount not to exceed ten thousand dollars for any violation of the Law. If the violation is for a failure to remit surcharges to the Fund, a fine of up to five thousand dollars for each twenty days the payment is overdue, together with restitution and interest, is provided for. In addition, the Executive Law provides for discretionary revocation of the licensee's Fund membership. Since Fund membership is a requirement for licensure, such action would effectively revoke the license of any base required to become a member of the Fund. The minimum fine of twenty-five dollars for each day of violation is identical to the fine presently in effect with respect to the Taxicab Owners' rule requiring compliance with the Workers' Compensation Laws.

The purpose of the rules amendments is to ensure that black car and luxury limousine bases licensed by the TLC become members of the Fund, pay the required registration fees, charge the required surcharges, and remit the proceeds to the Fund.

For-hire vehicle base stations that do not meet the statutory definition of a Central Dispatch Facility, commuter van services, and paratransit services are not required to become a part of the Fund. However, under the proposed rule amendments, each licensee must nevertheless demonstrate that it is in compliance with all provisions of the Workers' Compensation Laws, either by providing coverage for their drivers and other eligible employees, or by demonstrating that they have no employees required to be covered under the Law. An amendment to the Rules is promulgated to require that each such licensee demonstrate that it is in compliance with the Law. The fine imposed is identical to the fine imposed for a violation of the Taxicab Owners' Rules with respect to the failure to comply with the Workers' Compensation Laws.

The purpose of this amendment is to ensure that all licensees of the Commission comply with State laws governing the provision of Workers' Compensation benefits for covered employees.

2. Statement of Basis and Purpose in City Record Sept. 20, 1999: The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under §2303(b) of such Charter, authorizing the TLC to promulgate rules relating to the standards and conditions of service; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules necessary to exercise authority conferred upon it by the Charter; and under §19-511 of such Code, setting forth requirements for the licensing of base stations by the Commission. The rule modifications set forth herein simplify the procedures for the change of location for licensed car service bases. The rules no longer provide that a change in the location of a licensed car service base requires the owner to file a new base application. Rather, the Commission will now review the application for the proposed base location change, utilizing the criteria for review of the proposed location as set forth in the Administrative Code §19-511. The base owner shall still be required to establish that the base meets the off-street parking requirements at the new location. Furthermore, the Commission will continue to review the need for additional transportation at the proposed location and perform an assessment of the impact of the base upon the quality of life at the proposed location. The purpose of the rule amendment is to streamline the review process for licensed bases seeking to change location, and to promote the more efficient utilization of Commission's resources. This change also enables the Commission to process requests for approval to relocate licensed bases more quickly, thereby reducing the negative impact the approval procedure has upon the operation of bases and their ability to provide adequate service to the public.

3. Statement of Basis and Purpose in City Record Sept. 27, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-502 of the Administrative Code of the City of New York, which defines terms used in the Administrative Code; under section 19-503 of such Code, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; under section 19-506(e) of such Code, which establishes mandatory penalties for unlicensed operation; under 19-511 of such Code, authorizing the licensing of base stations; under section 19-511.1 of such Code, requiring TLC to forward determinations of base station licenses to the City Council; and under section 19-518 of such Code, governing the transfer of base station licenses. This rulemaking, in part, implements the provisions of Local Law 51 of 1996, which go into effect on September 18, 1996. The new law requires TLC to consider a number of factors in the licensing of base stations, such as adequate parking, the availability of mass transit, and quality of life issues. TLC's approval of an application, including a license renewal application, is subject to City Council review. The newly adopted law also increases the penalties for unlicensed operation of a base station and of a for-hire vehicle to $200-$1,500 per violation. This rulemaking also addresses a proposal which is not set forth in the local law but was recommended by an industry

panel. This proposal prohibits the use of meters. For-hire vehicle fares shall be set by distance or the use of fare zones. The purpose of this rule is to reduce the incidence of trips which respond to street hails and are not pre-arranged, contrary to the requirements of local law.

35 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-05 Transfer of Base Station Licenses.

(a) (1) (A) Any base station license or ownership interest in the licensee may be transferred to a proposed transferee who has demonstrated to the satisfaction of the Commission the qualifications to assume the duties and obligations of a base station owner provided that either the transferor or transferee shall have filed a bond to cover all the outstanding tort liabilities of the transferor arising out of the operation of a base station and the for-hire vehicle owners by the transferor which is in excess of the amount covered by any bond or insurance policy in effect pursuant to the New York State Vehicle and Traffic Law, and all outstanding fines, penalties and other liabilities which the transferor owes to the Commission shall have been satisfied. An application for approval of a transfer of an interest in a base station license or base station owner must include a business plan meeting the requirements of section 6-04(j) of this chapter. All such transfers and any changes in corporate officers or directors must be approved by the Commission in order to be effective and no such transfer or change shall be effective until approved and the Chairperson has given notice of the approval to the licensee. Furthermore, no application to approve a transfer of a base station license or an interest in a base station license or an interest in a base station owner shall be complete, and no approval of such application shall be effective, until both the transferor and transferee have appeared in person as directed by the Chairperson to complete the transfer, with such appearance to be in person for a party who is an individual, or by a general partner, if the party to the transfer is a partnership, or by an officer and stockholders holding a majority of the stock of the party, if the party to the transfer is a corporation.

(B) A base license or ownership interest in a black car base or luxury limousine base may be transferred to a proposed transferee who has demonstrated to the satisfaction of the Chairperson the qualifications to assume the duties and obligations of a base owner provided that all outstanding fines, penalties and other liabilities which the transferor

owes to the Commission shall have been satisfied. All such transfers and any changes in corporate officers or directors must be approved by the Chairperson and no such transfer or change shall be effective until approved and the Chairperson has given notice of the approval to the licensee. Furthermore, no application to approve a transfer of any black car base or luxury limousine base license or an interest in such a base license or an interest in the owner of such a base shall be complete, and no approval of such application shall be effective, until both the transferor and transferee have appeared in person as directed by the Chairperson to complete the transfer, with such appearance to be in person for a party who is an individual, or by a general partner, if the party to the transfer is a partnership, or by an officer and stockholders holding a majority of the stock of the party, if the party to the transfer is a corporation.

(2) No voluntary transfer of a base station license may be made if a judgment in favor of the City of New York or any agency thereof or any state or federal agency has been docketed with the clerk of any county within the City of New York against the licensee and remains unsatisfied, except that a transfer may be permitted if an appeal is pending from an unsatisfied judgment and a bond is filed in an amount sufficient to satisfy the judgment. A transfer may also be permitted without filing a bond provided that all the judgment creditors of a licensee file written permission for such a transfer with the Commission or that the proceeds from the transfer are paid into court or held in escrow on terms and conditions approved by the Commission which will have the effect of protecting the rights of all parties who may have an interest therein.

(b) In reviewing a proposed base station license transfer or transfer of the ownership interest in the license, the Commission shall consider:

(1) the criminal history of the proposed transferee and of the transferee's officers, shareholders, directors and partners, if any, or the proposed officer or directors, in a manner consistent with Article 23-A of the New York State Correction Law.

(2) any relevant information maintained in the records of the Department of Motor Vehicles or the Commission.

(3) transferee's financial stability.

(c) A transfer shall not be approved if in the past two years, the proposed transferee or any officer, shareholder, director or partner of the proposed transferee, where appropriate, has been found to have violated any law or rule involving:

(1) assaultive behavior toward a passenger, official or member of the public in connection with any matter relating to a for-hire vehicle;

(2) conviction for giving or offering an unlawful gratuity to a public servant, as defined in section 10.00 of the New York State Penal Law;

(3) providing the Commission with false information; or

(4) three unexplained failures to respond to an official communication of the Commission or the Department of Investigation which was sent via certified mail, return receipt requested.

(d) The fee for the transfer of a base station license or ownership interest in the licensee shall be $500.

(e) The Commission shall revoke any base station license for nonuse in the event it shall find after a hearing that the base station has not been in operation for sixty consecutive days, provided that such failure to operate shall not have been caused by strike, riot, war, public catastrophe or other act beyond the control of the licensee. The Commission shall also revoke, after a hearing, any base license in the event that the base location is not occupied by the base. Where the Commission finds that a particular base station cannot be operated due to an act beyond the control of the licensee, a temporary base station license shall be issued to the same licensee for an alternative location, provided that all other

requirements for such license are met and provided further that the unexpired term of the original license is six months or more. Such temporary base station license shall be for a term not to exceed 60 days. During the 60 day period, the base owner must either file an application to change the base location or must return to operation at the original base location and notify the Chairperson of the return. The temporary base station license will not be extended unless within the 60 day period the base owner either (1) files an application to change the base location and the Commission has not completed its review of the application within the 60 day period or (2) demonstrates that good cause exists for a further extension because the base owner requires additional time to return the base to the original location.

HISTORICAL NOTE

Section renumbered (formerly §6-04) City Record Apr. 29, 1997 eff. June 1, 1997.

Section added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (a) par (1) amended City Record June 2, 2009 §8, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (e) amended City Record June 2, 2009 §9, eff. July 2, 2009. [See T35 §6-12 Note 4]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-06 Base License Requirements.

A base station owner, black car base owner and luxury limousine base owner shall be responsible for compliance with the following provisions and shall be liable for violations thereof:

(a) A licensed base owner must at all times:

(1) Have at least ten (10) affiliated vehicles on or after January 1, 1988; however, a base that was first licensed prior to January 1, 1988, shall have at least five (5) affiliated vehicles.

(2) Maintain a principal place of business in a commercially zoned area, from which affiliated vehicles and drivers may be dispatched;

(3) Provide safe and adequate storage at such principal place of business for all business records which are required to be kept;

(4) Maintain an operable telephone at the base; and

(5) Provide a mechanism for transmitting trip request information to affiliated drivers.

(6) Conspicuously display within the base the current schedule of rates charged by the base;

(7) Conspicuously display the base name, any trade, business or operating name, and the TLC license number on the front or office door of the base's premises.

(8) Maintain and have available for inspection at the base the evidence of compliance with off street parking requirements in the form required by section 6-04(b)(1) of this chapter.

(b) (1) A base owner shall not hold himself out for business to the public as a for-hire service, which term shall include, but not be limited to, "livery," "car service," or "limousine," without applying for and obtaining a license issued by the Commission for that activity.

(2) A base owner shall not hold himself out for business as a "taxi" or "taxicab" service or in any way use the word "taxi," "taxicab," "cab," "hack" or "coach" to describe his business.

(3) A base owner shall file with the Commission the name, including any trade, business, or operating name used in the operation of the base or in promotions or advertising, and address of the base from which for-hire vehicles affiliated with such base are dispatched. The Chairperson may reject any such trade, business or operating name if, in the judgment of the Chairperson, such name is substantially similar to the trade, business or operating name of another base, and the base owner may not use such name. A base may use only one trade, business or operating name in its operations, including in its public communications, advertising, promotional activities, and passenger solicitation activities although a base may add an additional word such as "premium" or "select" to its approved trade name to promote a different level of service if the base offers multiple levels of service.

(4) Any trade, business or operating name approved by the Chairperson for one base may not be used by any other base, and such name will not be approved for use by any other base, unless both bases seeking to use the same trade, business or operating name share identical ownership.

(5) A base owner shall file with the Chairperson all contact information made available to or offered to the public for purposes of pre-arranging transportation for hire, including telephone numbers, Web sites and email addresses. Such telephone numbers, Web sites, email addresses and other contact information and methods may be used only with the name approved pursuant to paragraph (3) of this subdivision.

(6) A base owner shall file with the Chairperson the base's hours of operations and shall notify the Chairperson of any change in such hours of operation.

(c) A base owner shall conspicuously state in all advertising, whether print, broadcast, electronic and internet advertising and in all handbills, fliers, Web sites or other promotional materials and on all business cards and receipts that the base is licensed by TLC and shall include the number of the TLC license issued to the base in all such materials.

(d) A base owner who seeks to change the address of a base must apply for approval of the new location by the Commission. The proposed location must comply with all of the requirements of §6-04, except that if there has been no change in the ownership of the base, the requirements of §6-04(c) and (e) may be waived by the Commission. A base owner who moves a base to any location without the prior approval of the Commission is operating as an unlicensed base, and is subject to the penalties of §6-04(a).

(e) A base owner shall not transfer or assign the base owner's license to another without the Commission's written approval.

(f) A base owner shall not dispatch a for-hire vehicle from any location other than that specified in the base license, except that a wheelchair accessible livery may be dispatched as provided in chapter 16 of this title.

(g)(1) A base owner shall maintain on file with the Commission a current telephone number (which must be connected to an answering machine or recording device), pager number, answering service telephone number or similar means of telephone contact, so that the owner may be reached by the Commission on a twenty-four hour basis.

(2) An owner must respond to any telephone or pager contact from the Commission within forty-eight hours, seven

days a week.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See Note 1]

Subd. (a) pars (6), (7), (8) added City Record June 2, 2009 §10, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (b) par (3) amended City Record June 2, 2009 §11, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (b) pars (4), (5), (6) added City Record June 2, 2009 §11, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (c) amended City Record June 2, 2009 §12, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (d) amended City Record Sept. 20, 1999 §2, eff. Oct. 20, 1999. [See T35 §6-04 Note 2]

Subd. (f) amended City Record Nov. 23, 2007 §9, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Subd. (g) added City Record Jan. 31, 2000 §3, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

DERIVATION

Section derived from former §6-05.

Section repealed City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Section renumbered (formerly §6-03), heading amended, City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 1]

Subd. (a) par (1) amended City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (a) par (4) amended City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (ee) added (as Subd. (cc)) City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Subd. (m) amended City Record July 8, 1997 §16, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (s) par (4) added City Record July 8, 1997 §17, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (t) par (1) numbered and amended City Record Mar. 27, 1997 eff. May 1, 1997. [See Note 2]

Subd. (t) par (2) added City Record Mar. 27, 1997 eff. May 1, 1997.

NOTE

1. Statement of Basis and Purpose in City Record Apr. 29, 1997:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under §2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and

regulations necessary to exercise the authority conferred upon it by the Charter.

The rule reorganizes the For-Hire Vehicle Rules, for purposes of simplification and clari- fication.

After receiving public comments regarding the rule proposal, the following changes have been made: Rule 6-06(a)(1), the option of posting a bond to satisfy the ten-vehicle requirement was eliminated; recognizing a receipt for a vehicle license for ninety days was eliminated; and the penalty for violation of Rule 6-11(a) was changed to reflect Local Law 51 of 1996.

The Commission has not adopted at this time the portions of the proposal requiring permanent exterior markings identifying for-hire vehicle bases and display of FHV drivers licenses in a credentials holder; such proposals are still under consideration.

2. Statement of Basis and Purpose in City Record Mar. 27, 1997: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The promulgated rules increase penalties for violation of several for-hire vehicle rules by base owners. Those rules concern key requirements of vehicle and driver licensing, vehicle inspection and responsibility for quality of life violations. The following requirements have increased penalties: Rule 6-05(f)(2) prohibits bases from dispatching vehicles which fail to comply with the marking requirements and licensing requirements of the TLC; Rule 6-05(n) requires base owners to comply with TLC directives; Rule 6-05(s)(2) prohibits base owners from dispatching unlicensed drivers; Rule 6-05(t)(2) requires base owners to verify on a regular basis that affiliated vehicles display current inspection stickers; and Rule 6-05(v)(2) requires base owners to ensure that base personnel and drivers do not double park, park on the sidewalk, or otherwise park, stop or stand in a manner that violates traffic rules, or repair vehicles on the street, within the immediate area of the base. The purpose of the increase in penalties is to improve compliance by base owners. In addition, the promulgated rules require a base owner to monitor each vehicle's compliance with TLC inspection requirements on a continuing basis, rather than annually. Regular inspection of for-hire vehicles is done by inspection stations authorized by the N.Y.S. Department of Motor Vehicles. Local law requires that such inspections of for-hire vehicles be done three times a year. By making the base responsible for inspections on a continuing basis, the rule improves compliance with inspection requirements, further protecting the safety of the riding public.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Base station owners were found to have operated a base station at a location not approved by the Commission in violation of section 6-06(b)(1). The Commission proved that respondents dispatched for hire vehicles from a base located at an address other than the address which had been approved by the Commission in violation of section 6-06(f). Respondents also violated sections 6-06(f) and 6-04(a) by dispatching for hire vehicles while their base license had been suspended. **Taxi and Limousine Comm'n v. Absolute Class Limousine, Inc., OATH Index No. 995/98 (Apr. 22, 1998).**

§6-07 Operation of the Base.

A base station owner, black car base owner and luxury limousine base owner shall be responsible for compliance with the following provisions and shall be liable for violations thereof:

(a) A base station owner shall provide an accurate and binding price quote to any prospective passenger contacting the base for transportation to a specified destination and intermediate stop(s), and if the passenger engages to receive the transportation, the price for such transportation shall be the price quoted by the base unless the passenger changes the

destination or number of stops. A base owner shall not quote or charge a fare in excess of the fare prescribed by the schedule of the rates of fare on file with the Commission as required by section 6-08(c) of this chapter. A base owner shall be responsible for ensuring that transportation is provided only by pre-arrangement through the base.

(b) A base owner shall be responsible for overseeing the management of the base to ensure that base personnel, and the owners and drivers of vehicles affiliated with the base, whether on duty or not, do not, within the area set forth in paragraph (3), engage in any of the following activities:

(1) double park, park on the sidewalk, park across a driveway, park by or at a fire hydrant or bus stop, or otherwise park, stop or stand in a manner that violates the Vehicle and Traffic Laws of the State of New York and the New York City Traffic Rules; or

(2) engage in mechanical maintenance or repair of any vehicle, except to make such emergency repairs as may be necessary to move a disabled vehicle. A dead battery or a flat tire is an example of a disabling condition.

(3) The base owner's responsibilities pursuant to paragraphs (1) and (2) shall extend to the public streets and sidewalks on either side of the street, within the city block front where the base is located, including both sides of the street on which the base is located.

(4) A base owner shall further be responsible for ensuring that vehicles affiliated with the base or dispatched by the base and their drivers will obey all applicable traffic and parking regulations within the area set forth in paragraph 3.

(5) A base owner shall further be responsible for ensuring that vehicles affiliated with the base or dispatched by the base and their drivers when visiting the base will not create a nuisance such as by engaging in unnecessary horn honking, littering, or the playing of loud audio material within the area set forth in paragraph 3.

(c) A base owner shall maintain and enforce rules governing the conduct of affiliated drivers while performing their duty as for-hire vehicle drivers. Said rules shall be submitted in writing to the Commission when the base is licensed by the Commission, and within seven (7) days, exclusive of holidays and weekends, thereafter whenever said rules are updated or amended.

(d) Upon filing with the Workers' Compensation Board to end the disbursement of benefits for the driver of an affiliated vehicle who has recovered from a disability and is ready to return to work, a base owner shall provide the driver with documentation that benefits have ceased in order for the Commission to return such driver's license.

(e) A base owner shall not instruct, authorize or permit an affiliated driver to discriminate unlawfully against people with disabilities. Such discrimination includes, but is not limited to, refusing to serve people with disabilities, refusing to load and unload the mobility aids of people with disabilities, and imposing any charge in addition to the authorized fare for the transportation of people with disabilities, service animals, wheelchairs, or other mobility aids.

(f) Effective October 31, 2001, a base owner shall be responsible for providing transportation service to persons with disabilities. A base owner may fulfill this requirement either by:

(1) dispatching an affiliated accessible vehicle, upon request; or

(2) arranging for the dispatch of an accessible vehicle affiliated with another licensed base, upon request, if the base owner has entered into a contractual or other arrangement with such base for the provision of accessible vehicles to persons with disabilities. The Chairperson may, in his or her discretion, approve vehicles for the provision of accessible service that deviate from the requirements set forth in the Americans with Disabilities Act or the Regulations promulgated thereunder.

Whether a base owner dispatches an affiliated accessible vehicle, or arranges for the dispatch of vehicles affiliated

with another base, said base owner shall be responsible for the provision of "equivalent service" to persons with disabilities. This service equivalency requirement shall be met only if the service available to persons with disabilities, when viewed in its entirety, is provided in the most integrated setting to the needs of such individual and is equivalent to the service provided to other individuals with respect to the following service characteristics:

(a) Response time to requests for service;

(b) Fares charged;

(c) Hours and days of service availability;

(d) Ability to accept reservations;

(e) Restrictions based upon trip purpose;

(f) Other limitations on capacity or service availability.

(g) A base owner shall maintain and enforce rules and policies preventing vehicles affiliated with the base or dispatched by the base and drivers of such vehicles from accepting street hails.

(h) A base owner may terminate the affiliation of a vehicle only by (1) submitting to the Chairperson a signed and dated agreement in which the vehicle owner consents to such termination or (2) by giving the vehicle owner notice to the vehicle owner's address as on file with the Commission by certified mail with return receipt requested, together with proof of mailing of such notice, with copies of the notice and proof of mailing mailed to the Commission. Such termination will become effective upon the date of the vehicle owner's agreement if termination occurs by option (1) or the date of mailing if termination occurs by option (2).

(i) Notwithstanding the provisions of subdivision (h) of this section, a vehicle's affiliation with a base will terminate automatically upon revocation of the base's license, suspension of the base's license for a continuous period in excess of 30 days, or upon expiration of the base's license. In addition, a vehicle's affiliation with a base will terminate automatically upon expiration or revocation of such vehicle's for-hire vehicle permit.

(j) A base owner shall not dispatch a vehicle which is not affiliated with such base unless (1) the base is dispatching an accessible vehicle pursuant to contract as provided by section 6-07(f) or (2) the base is dispatching a vehicle affiliated with another licensed base and the customer is informed of the dispatch of the vehicle from the second base.

(k) A base owner shall be responsible for handling customer complaints when directed by the Chairperson and shall provide any information requested by the Chairperson regarding such complaints.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (a) amended City Record June 2, 2009 §13, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (b) open par amended City Record June 2, 2009 §15, eff. July 2, 2009. [See T35 §6-12

Note 4]

Subd. (b) par (3) amended City Record June 2, 2009 §14, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (b) pars (4), (5) added City Record June 2, 2009 §15, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (e) added City Record July 8, 1997 §17, eff. Aug. 11, 1997. Language juxtaposed by Taxi and Limousine Commission, pursuant to authority of City Corporation Counsel, to reflect major amendments and renumbering to Chapter 6 in City Record Apr. 29, 1997 and erroneously overlooked. [See T35 §4-01 Note 1]

Subd. (f) added City Record Dec. 19, 2000 §1, eff. Jan. 18, 2001. [See Note 1]

Subd. (f) par (2) amended City Record May 23, 2007 §7, eff. June 22, 2007. [See T35 §1-35 Note 1]

Subds. (g), (h), (i), (j), (k) added City Record June 2, 2009 §16, eff. July 2, 2009. [See T35 §6-12 Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 19, 2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under §2303(b)(6) of such Charter, authorizing the TLC to promulgate rules and regulations relating to requirements for the safety, design and comfort of vehicles; under §2303(b)(11) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out the purposes of the Charter; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under §19-503.1 of such Administrative Code, authorizing the TLC to promulgate regulations with respect to the standards of operation of for-hire vehicles.

This Rule amends the For-Hire Vehicle Rules to provide either accessible vehicles or alternative service to persons with disabilities, including passengers in wheelchairs.

The Commission recognizes a need for the provision of service to persons with disabilities. Present transportation service providers, including mass transit providers, do not offer adequate demand-responsive service to disabled persons. The Commission has had a continuing dialogue with representatives of the transportation industry and the disabled community in an attempt to ensure that providers of for-hire vehicle services meet their respective responsibilities to the disabled community. Several proposals for the provision of limited service have been requested by and submitted to the TLC; however, prior to and since proposing these rules, no acceptable comprehensive plan to provide equivalent service to persons with disabilities has been submitted.

The Rules governing the operation of For-Hire Vehicle, Black Car and Luxury Limousine Bases are amended to provide that such bases either dispatch affiliated accessible vehicles to transport persons with disabilities, or enter into an arrangement with another licensed base for the dispatch of accessible vehicles. A base that does not provide its own accessible vehicles to persons with disabilities may contract with another provider of accessible transportation to provide service to its disabled clients for the same price charged its other clients. Whether a base owner dispatches its own accessible vehicles, or enters into an arrangement with another base for the provision of such vehicles to its clients, it must provide equivalent service to persons with disabilities. Equivalent service is defined as service to persons with disabilities provided by the base receiving the original request for service at the same rate of fare, response time, and hours of service availability, as provided for non-disabled passengers.

Regulations promulgated by the United States Department of Transportation (USDOT), implementing the Americans With Disabilities Act (ADA), provide that demand-responsive transportation providers, such as taxicab and for-hire vehicle services, are subject to the provisions of the ADA. However, providers of transportation services

utilizing vehicles with a seating capacity of fewer than eight (8) persons are not required to purchase accessible automobiles or provide "equivalent service" as the term is defined in the Regulations promulgated pursuant to the ADA. ADA regulations applicable to taxicabs and for-hire vehicles prohibit the charging of a surcharge or premium fare to transport passengers with disabilities, prohibit service providers from discriminating against the disabled with respect to the provision of service, or the transportation of service animals or mobility aids, and prohibit service providers from requiring disabled persons to travel with an attendant.

Although not required to do so by the ADA, a number of Cities in the United States, as well as other Cities abroad, have already either mandated the use of accessible for-hire vehicles or have provided for voluntary conversion to accessible vehicles by for-hire vehicle service providers.

With the adoption of these Rules, the TLC would establish accessibility requirements that exceed those presently mandated by the ADA and the Regulations promulgated thereunder, by requiring an accessible vehicle be provided to any disabled person, upon request.

Since for-hire vehicles, black cars and luxury limousines accept passengers exclusively on the basis of prearrangement, the provision of service to the disabled can be accomplished either through the purchase of accessible vehicles or through permitting the base to enter into a contractual arrangement with another licensed base that will provide substantially equivalent service to the disabled. The definition of service equivalency contained in the proposed Rule is adopted from the standard set forth in the USDOT regulations relating to demand-responsive service. The application of factors such as the fares charged, the response time for service, the hours of service operation and any restrictions on the provision of service determines whether there is service equivalency between persons with and without disabilities.

Taxicabs respond exclusively to street hails; accordingly it does not appear feasible for a taxicab owner to enter into a contractual arrangement for the provision of equivalent service since equivalent service is, by its very nature, prearranged. The rules promulgated herein do not mandate that taxicabs be made accessible at this time, since there does not presently exist on the market an accessible vehicle which has been proven satisfactory for operation as a double-shifted taxicab for twenty-four (24) hours a day, seven (7) days a week. Vehicles are now being tested in various pilot programs which, if successful, would demonstrate that there are accessible vehicles available for use as taxicabs.

These Rules contain a provision that would authorize the Chairperson to approve vehicles that do not meet the accessibility requirements set forth in the ADA. The purpose of this provision is to give the Chairperson the flexibility to approve experimental vehicles that meet the needs of the disabled community but which may not completely comply with all of the technical specifications set forth in the United States Department of Transportation Regulations regarding accessible vehicles. The Chairperson may also adopt vehicle specifications that are more stringent than existing or future ADA vehicle specifications.

A public hearing was held on June 29, 2000, with respect to this proposal. Representatives from the disabled community were generally supportive of these Rules. Some advocates requested that a base owner be required to purchase a certain number or percentage of accessible vehicles. This request was not incorporated into these rules, since the provision allowing a base to enter into an arrangement with another base for the provision of accessible vehicles ensures that disabled persons would have equivalent access to for-hire vehicles at the same price, and with the same hours of opration and reliability of service, as other clients. However, comments were also received concerning language in the proposed Rule that would have authorized the Chairperson to exempt bases from the requirements set forth herein. This provision has been deleted since the rule already provides alternative means by which a base may comply with these requirements without purchasing accessible vehicles.

The provisions of these Rules would become effective October 31, 2001, to provide an opportunity for manufacturers to meet the demand for accessible vehicles and for service providers to comply with the requirements set forth herein.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The constitutionality of the statute has been upheld. The wheelchair accessibility rule creates an obligation to pay money, but does not constitute a protected property interest for purposes of the Takings Clause of the Fifth Amendment. The taxi owners retain their ability to continue to operate and have beneficial use of their for-hire livery base stations, since they can adjust their fees in order to recoup the cost of compliance with the new regulation. Promulgation of the wheelchair accessibility rule was proper as effectuating a substantial public purpose. **Transportation Unlimited v. New York City Taxi & Limousine Comm.,** 11 A.D.3d 384, 784 N.Y.S.2d 41 (1st Dept. 2004).

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35 RCNY 6-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-08 Base Record-Keeping and Notice Requirements.

A base station owner, black car base owner and luxury limousine base owner shall be responsible for compliance with the following provisions and shall be liable for violations thereof:

(a) Any notice from the Commission shall be deemed sufficient if sent to the last mailing address furnished by such base owner.

(b) On a quarterly basis, a base owner shall send the Commission a list of all affiliated drivers and affiliated for-hire vehicles. In addition to the quarterly report, a base owner may notify the Commission at any other time when a vehicle is no longer affiliated with his/her base; such notification shall be deemed a defense to any liability attaching to such owner for damage to persons or property caused by such vehicle subsequent to such notification.

(c) A base owner shall be responsible for filing with the Chairperson in a form and format prescribed by the Chairperson, the schedule of the rates of fare charged by such base, including any surcharges such as credit card fees. Such a schedule shall be filed whenever rates are changed and also annually, no later than the anniversary date of the license and, in any year in which the license expires, such schedule must be filed with the renewal application. A schedule must also be filed with any application to change the ownership or location of the base. Failure to file such schedule with a renewal application or an application to change ownership or location will result in denial of the application by the Chairperson.

(d) A base owner shall comply with all record-keeping procedures established and required by the Commission. The operational information required to be maintained, which is set forth in §6-08(e) below, shall be safeguarded and

maintained at the base for a period of six (6) months, except inspection records which are to be kept for twelve (12) months. All such records may be inspected by Commission representatives during regular business hours.

(e) A base owner shall be responsible for ensuring that the following records are kept for all dispatched calls:

(1) the date, the time, and location of the passenger to be picked up, the driver's for-hire operator's permit, and the permit number of the for-hire vehicle; and

(2) a list of all current affiliated vehicles, which includes information regarding the owner of the vehicle, including, but not limited to the owner's name, mailing address, and home telephone number, the vehicle's registration number, the vehicle's Commission permit number, the license plate number of the vehicle, the name of the vehicle's insurance carrier and the policy number, and the dates of inspection of the vehicle and the outcome of each said inspection.

(f) A base owner shall be responsible for maintaining paper or electronic records of all vehicles that are or have been affiliated with or dispatched by the base during the preceding 12 months, including dates of affiliation, vehicle identification numbers, Department of Motor Vehicles (or equivalent) registration numbers, for-hire vehicle permit numbers, and inspection records, together with the drivers of such vehicles including dates of operation, Department of Motor Vehicles license numbers, for-hire vehicle driver's license numbers and copies of forms affiliating and dis-affiliating vehicles.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (c) amended City Record June 2, 2009 §17, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (f) added City Record June 2, 2009 §18, eff. July 2, 2009. [See T35 §6-12 Note 4]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Livery driver's claim that the car service would carry a blank dispatch entry, without any pickup or drop-off information, because a specific driver was requested, was in direct violation of paragraph (e)(1) of this section, which requires base owners to keep records of all dispatches. **Police Dep't v. Moneta,** OATH Index No. 468/00 (Mar. 2, 2000).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-09 Black Car Vehicle Specifications.

(a) Beginning on January 1, 2010, no vehicle that is the subject of a new application for a for-hire vehicle permit shall be affiliated with a black car base unless the for-hire vehicle meets either the requirements of an accessible vehicle pursuant to §6-07(f) of this chapter or §3-03.2 of this title, or has a minimum city rating of twenty-five (25) miles per gallon as labeled pursuant to title 49, section 32908 of the United States Code and regulations promulgated pursuant thereto. For purposes of this subdivision, an application for a for-hire vehicle permit after a previous permit has expired will be considered a new application. For-hire vehicles that are affiliated with luxury limousine or livery bases are not subject to the requirements of this subdivision.

(b) Beginning on January 1, 2011, no vehicle that is the subject of a new application for a for-hire vehicle permit shall be affiliated with a black car base unless the for-hire vehicle meets either the requirements of an accessible vehicle pursuant to §6-07(f) of this chapter or §3-03.2 of this title, or has a minimum city rating of thirty (30) miles per gallon as labeled pursuant to title 49, section 32908 of the United States Code and regulations promulgated pursuant thereto. For purposes of this subdivision, an application for a for-hire vehicle permit after a previous permit has expired will be considered a new application. For-hire vehicles that are affiliated with luxury limousine or livery bases are not subject to the requirements of this subdivision.

(c) Only black car bases may dispatch vehicles to do line work and only for-hire vehicles that are affiliated with black car bases may perform line work.

HISTORICAL NOTE

Section added City Record May 23, 2008 §2, eff. June 22, 2008. [See Note 1]

Subd. (a) amended City Record Feb. 18, 2009 §1, eff. Mar. 20, 2009. [See Note 2]

Subd. (b) amended City Record Feb. 18, 2009 §1, eff. Mar. 20, 2009. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record May 23, 2008:

In December 2007, the Taxi and Limousine Commission (TLC) unanimously passed rules requiring new taxicabs to achieve a city mileage rating of 25 miles per gallon in October 2008, except for wheelchair accessible taxicabs. In October 2009, the standard will rise to 30 mpg. Almost 380 hybrid taxicabs were on the road when the taxicab proposal was announced last May. Now, as taxicab owners convert ahead of schedule, there are more than 975. They have proven their reliability during the three annual inspections, and the first 18 in the fleet have already logged over 200,000 miles as well as higher inspection passage rates than other vehicles. The TLC estimates that the rules will save a taxicab owner $11,000 per year in gas costs, for industry-wide savings of roughly $140 million per year. By 2013, virtually the entire taxicab fleet will be converted to higher mileage standards.

In February, the Mayor asked the TLC to require new black cars to meet fuel efficiency standards of 25 mpg in 2009 and 30 mpg in 2010. The promulgated rules considered today will also mandate vehicle retirement and provide protection for black car operators against competitors who operate less gasoline-efficient vehicles. To help drivers, the City has worked with the financial sector, auto dealers, and black car fleets to develop solutions that will finance the higher down payment. Pursuant to these rules, by 2013, nearly all black cars will meet the new standards. Mayor Bloomberg indicated the City's intention to complete the PlaNYC for-hire transportation initiative by working with the livery industry, again taking into account the unique aspects of that industry. The TLC's next course of action will be to develop a concrete plan to introduce similar standards for livery vehicles.

Responding to the Mayor's request, and to requests from users of black car services for rules requiring a better performing black car fleet and imposing a maximum age on black cars, the TLC promulgated rules that will amend existing TLC rules relating to black cars and black car service in three respects.

First, to create a better performing fleet, the promulgated rules provide that, beginning on January 1, 2009, applications for new TLC for-hire vehicle (FHV) permits for vehicles to be affiliated with black car bases must be for vehicles with city ratings of at least 25 miles per gallon. Beginning on January 1, 2010, such vehicles must have minimum city ratings of 30 miles per gallon.

The city mileage rating of a vehicle is to be determined pursuant to chapter 329 of title 49 of the United States Code and regulations promulgated pursuant thereto. Ratings for 2008 model vehicles are available at **http://www.fueleconomy.gov/feg/FEG2008.pdf**, and it is anticipated that the 2009 ratings will be available at a similar Web site.

Second, the promulgated rules set a maximum age of six model years for FHVs affiliated with black car bases. For vehicles currently in use as black cars, the rules provide a phase-in period that starts with the expiration of a vehicle's permit beginning January 1, 2009 (for vehicles of model years 2001 or earlier), and ends with the expiration of a vehicle's permit beginning January 1, 2013 for all for-hire vehicles in black car service.

For-hire vehicles solely affiliated with luxury and livery bases will not be subject to these minimum mileage requirements and vehicle retirement requirements. Vehicles that were formerly affiliated with black car bases may continue to be eligible for affiliation with livery and luxury limousine bases.

Third, to facilitate orderly dispatching, the promulgated rules provide that only FHVs affiliated with black car

bases are permitted to perform line work and only black car bases are able to dispatch vehicles to do line work. Line work is defined as a type of pre-arranged service provided pursuant to a contract with a black car base in which the dispatch and passenger assignment are completed at the point of pick up by an employee or contractor of either the black car base or the contracting party. Line work involves the pre-arranged dispatch of a number of vehicles to a specified location, where typically the vehicle and driver wait in a line to be assigned to a particular passenger or passengers. The TLC finds that line work is uniquely important to black car service and therefore should be reserved to black cars.

When fully phased in, the promulgated rules will yield a savings of more than $5,000 in gasoline costs per vehicle per year. Therefore, the promulgated rule will yield industry-wide savings from using less gasoline of approximately $50,000,000 per year. This better performance will increase the economic health of the industry by decreasing black car vehicle owner and driver costs and will further benefit black car users by reducing upward pressure on black car fares.

Following addresses concerns that were raised during the comment period on the proposed rules:

First, because the promulgated rules require a minimum mileage rating for black cars, a question was raised whether the rules are intended to preclude black cars with non-gasoline fueled engines. The answer is no. As technological advances continue, the TLC will continue to test and approve vehicle technologies such as hydrogen fuel-cell, clean diesel, compressed natural gas, electric battery cars, and other alternative fuel sources and technologies.

Second, a concern was expressed that black car owners may seek to avoid the obligation to convert to hybrid vehicles by re-licensing them as luxury limousines. Vehicle owners should be aware that TLC rules require that luxury limousines maintain:

· $200,000 in personal injury protection (PIP) insurance;

· Liability insurance of $500,000 per person; and

· Liability insurance of $1 million per accident for a limousine that seats fewer than nine passengers, $1.5 million per accident for a limousine that seats from nine to 15 passengers, and $5 million per accident for a limousine that seats more than 15 passengers.

TLC staff will vigilantly enforce the luxury limousine insurance requirements as a means to prevent any attempt by black car owners to pose as luxury limousines.

Third, a concern was expressed about the applicability of the promulgated rules to black cars affiliated with TLC-licensed black car bases that are located outside New York City, but which conduct point-to-point activity within the city. To clarify, these promulgated rules apply to all black car bases that are licensed by TLC, regardless of location. Likewise, luxury limousines affiliated with bases located outside New York City that pick-up and drop-off passengers within New York City are required to comply with the higher insurance requirements for luxury limousines, listed above.

Fourth, as when the Commission adopted minimum miles per gallon rules for taxicabs last year, a concern was expressed about the availability of vehicles that meet the 30 miles per gallon requirement that will come into play for black cars in January 2010, as well as the availability of adequate vehicle financing to fund the purchase of new vehicles. The TLC and the Mayor's office, in conjunction with the New York City Investment Fund and other private partners, have arranged for financing approaches to be available. Therefore, although the TLC fully expects that vehicle availability and affordable financing will not be an issue, TLC staff will closely monitor the situation and, if changes in today's rule become necessary, will recommend appropriate amendments.

Finally, a concern was expressed that section 6-09(a) and (b) might be misconstrued to mean that renewal of a black car vehicle permit constitutes a "new application" such that the vehicle must be retired. However, §6-09(a) and (b)

provide that submission of a black car vehicle permit application **after** expiration of the previous black car vehicle permit will not constitute a timely renewal application, and therefore will constitute a new application for purposes of determining the vehicle's retirement date. A timely renewal application-meaning a renewal application submitted before the expiration of the previous permit-will not constitute a "new application."

2. Statement of Basis and Purpose in City Record Feb. 18, 2009: In April 2008, the Taxi and Limousine Commission (TLC) promulgated rules requiring new black cars, except for wheelchair accessible vehicles, to achieve fuel efficiency standards of 25 mpg city rating in 2009 and 30 mpg city rating in 2010. To help drivers, the City worked with the financial sector, auto dealers, and black car fleets to develop solutions that would finance the higher down payment. After promulgation of those rules, the economic downturn hit this nation's economy and struck a major blow to financial and insurance firms who are among the primary customers of the black car industry and who would have provided the financing that TLC contemplated in promulgating those rules. As a result, providers of black car services were severely impacted. For these reasons, the TLC promulgated rules to delay by one year the mandate for 25 and 30 mpg black car vehicles and the black car retirement rules passed in April 2008. For-hire vehicles solely affiliated with luxury and livery bases are not subject to these minimum mileage requirements and vehicle retirement requirements. Vehicles that were formerly affiliated with black car bases may continue to be eligible for affiliation with livery and luxury limousine bases.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-10 Affiliation with Black Car Bases.

(a) All for-hire vehicles affiliated with black car bases that are model year 2001 or earlier must be retired from black car service no later than the expiration dates of their for-hire vehicle permits on and after January 1, 2010.

(b) All for-hire vehicles affiliated with black car bases that are model year 2003 or earlier must be retired from black car service no later than the expiration dates of their for-hire vehicle permits on and after January 1, 2011.

(c) All for-hire vehicles affiliated with black car bases that are model year 2005 or earlier must be retired from black car service no later than the expiration dates of their for-hire vehicle permits on and after January 1, 2012.

(d) All for-hire vehicles affiliated with black car bases that are model year 2006 or earlier must be retired from black car service no later than the expiration dates of their for-hire vehicle permits on and after January 1, 2013; provided, however, a for-hire vehicle that is five model years old upon its permit expiration on and after January 1, 2013, shall not be affiliated with a black car base after one year following such renewal.

(e) All for-hire vehicles affiliated with black car bases that are seven 7 model years old or older and are not specified in subdivisions (a), (b), (c) or (d) of this section must be retired from black car service no later than the expiration dates of their for-hire vehicle permits on and after January 1, 2014 and every year thereafter; provided that a for-hire vehicle that is six model years old upon its permit renewal on or after January 1, 2014 shall not be affiliated with a black car base after one year following such renewal.

(f) A for-hire vehicle affiliated with a black car base which has reached its retirement date must be retired from

black car service, regardless of whether it passes the New York State Department of Motor Vehicle inspection.

HISTORICAL NOTE

Section added City Record May 23, 2008 §2, eff. June 22, 2008. [See T35 §6-09 Note 1]

Subds. (a), (b), (c), (d), (e) amended City Record Feb. 18, 2009 §1, eff. Mar. 20, 2009. [See T35 §6-09 Note 2]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-11

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-11 For-Hire Vehicle Owner Licensing.

(a) A for-hire vehicle owner shall be responsible for having said for-hire vehicle licensed by the Commission. The Commission shall post on its Web site a list of vehicles holding current, valid permits. A for-hire vehicle owner shall not allow a vehicle to be dispatched unless the owner holds a current, valid for-hire vehicle permit for such vehicle which permit is not expired, suspended or revoked.

(b) A for-hire vehicle license shall be valid only while the registration of the vehicle remains valid. Operation of a vehicle without a valid registration is operation without a TLC license in violation of §19-506 of the Administrative Code, regardless of whether a TLC license had previously been obtained while a registration was valid. A for-hire vehicle owner shall immediately surrender his for-hire vehicle license to the Commission upon the expiration, restriction, suspension or revocation of his vehicle registration card.

(c) An owner of a for-hire vehicle shall not dispatch or permit another person to dispatch such vehicle unless it is affiliated with a licensed base and such dispatch is made from the base with which the vehicle is affiliated, except when a dispatch is made pursuant to section 6-07(f) of this chapter. Dispatch of a vehicle which is not affiliated with a licensed base and dispatch of a vehicle from a base with which the vehicle is not affiliated shall constitute unlicensed operation and subject the owner to any applicable penalties for unlicensed operation unless the dispatch is made as authorized by section 6-07(j) of this chapter.

(d) (1) A for-hire vehicle owner shall comply with the New York State Vehicle and Traffic Law and the New York State Insurance Law regarding coverage by bond or policy of liability insurance and all other forms of insurance required by law.

(2) A for-hire vehicle owner, which has received notice that its liability insurance is to be terminated, shall surrender its for-hire vehicle permit and decal(s) to the Commission on or before the termination date of the insurance, unless the vehicle owner submits proof of new insurance effective on the date of termination of the old policy before the termination of the policy.

(3) Within seven (7) days, exclusive of holidays and weekends, a for-hire vehicle owner shall notify the Commission in writing of any change in insurance carrier or coverage, specifying the name and address of the insurance carrier, new and former, and the number of the policy for each affiliated vehicle and submit proof of such coverage.

(4) **(a)** Notwithstanding any inconsistent provision of paragraph (d)(1) of this rule, each for-hire vehicle owner, other than the owner of a for-hire vehicle with a seating capacity of nine or more passengers, shall, for each vehicle owned, maintain for purposes of insurance or other financial security, coverage in an amount of not less than $200,000 per person, payable for those expenses specified in paragraphs 1, 2 and 3 of subdivision a of section 5102 of the New York State Insurance Law, and coverage in an amount of not less than $100,000 minimum liability, and of not less than $300,000 maximum liability for bodily injury and death, as said terms are described and defined in section 370(1) of the Vehicle and Traffic Law.

(b) Each owner of a vehicle for hire with a seating capacity of at least nine but not more than fifteen passengers shall, for each vehicle owned, maintain for purposes of insurance or other financial security, coverage in an amount of not less than $200,000 per person, payable for those expenses specified in paragraphs 1, 2 and 3 of subdivision a of section 5102 of the New York State Insurance Law, and coverage in an amount of not less than $1,500,000 minimum liability for bodily injury and death, as said terms are described and defined in section 370(1) of the Vehicle and Traffic Law.

(c) Each owner of a vehicle with a seating capacity of at least sixteen passengers shall, for each vehicle owned, maintain for purposes of insurance or other financial security, coverage in an amount of not less than $200,000 per person, payable for those expenses specified in paragraphs 1, 2 and 3 of subdivision a of section 5102 of the New York State Insurance Law, and coverage in an amount of not less than $5,000,000 minimum liability for bodily injury and death, as said terms are described and defined in section 370(1) of the Vehicle and Traffic Law.

(5) A for-hire vehicle owner shall immediately report to his/her insurance carrier, in writing all accidents involving his/her for-hire vehicle which are required to be reported to the insurance carrier.

(6) A for-hire vehicle owner shall immediately report to the Commission, in writing, all accidents involving his or her vehicle which are required to be reported to the Department of Motor Vehicles pursuant to §605 of the Vehicle and Traffic Law. A copy of any report furnished to the Department of Motor Vehicles pursuant to law shall be furnished to the Commission within ten (10) days of the date by which the owner is required to file such report with the Commissioner of Motor Vehicles.

(e) (1) No unauthorized entry shall be made on the for-hire vehicle permit or decal(s), nor shall any entry on the for-hire vehicle permit or decal(s) be changed or defaced.

(2) An unreadable for-hire vehicle permit or decal(s) shall immediately be surrendered to the Commission for replacement.

(3) A for-hire vehicle owner shall immediately notify the Commission of the theft, loss or destruction of a for-hire vehicle permit or decal(s) of said vehicle, furnish the Commission with an affidavit or information as may be required, and shall replace same.

(f) A for-hire vehicle owner shall be responsible for ensuring that the replacement of any lost or stolen New York State license plates is reported in writing to the Commission, within forty-eight (48) hours, exclusive of weekends and holidays, after obtaining such plates.

(g) A for-hire vehicle owner shall designate each and every driver who operates said vehicle as his agent for accepting service by Commission personnel of summonses or notices to correct defects in the vehicle. Delivery of such summons or notice to a driver shall be deemed proper service of the summons or notice on the vehicle owner. The Commission shall send a photocopy of any summons or notice to correct to the vehicle owner and the base owner of record. An applicant for a for-hire vehicle permit shall designate the vehicle operator or driver as agent for service of any and all legal process from the Taxi and Limousine Commission which may be issued against the title owner, registered owner, or lessee.

(h) A for-hire vehicle owner shall notify the Commission in person or by first class mail, within seven (7) days, exclusive of holidays and weekends, of any change of mailing address. Any notice from the Commission shall be deemed sufficient if sent to the last mailing address furnished by the for-hire vehicle owner.

(i) No for-hire vehicle shall be a two door vehicle.

(j) A for-hire vehicle owner shall comply with all Commission notices and directives to correct defects in said vehicle.

(k) A for-hire vehicle owner shall not permit said for-hire vehicle to be operated without daily personal inspection and reasonable determination that all equipment, including but not limited to, brakes, lights, signals and passenger seat belts and shoulder belts are in good working order and meet all the requirements of the New York State Vehicle and Traffic Law and these Rules.

(l)(1) A for-hire vehicle owner shall maintain on file with the Commission a current telephone number (which must be connected to an answering machine or recording device), pager number, answering service telephone number or similar means of telephone contact, so that the owner may be reached by the Commission on a twenty-four hour basis.

(2) An owner must respond to any telephone or pager contact from the Commission within forty-eight hours, seven days a week.

(m) The holder of a for-hire vehicle permit issued under this chapter shall satisfy any outstanding judgment and pay any civil penalty owed for a violation relating to traffic in a qualified jurisdiction or a violation of the regulations of a qualified jurisdiction.

(n) There shall not be more than one for-hire vehicle permit issued and in effect for any vehicle, as indicated by the vehicle identification number, at any one time.

(o) If the Commission receives a for-hire vehicle permit application for a vehicle, as indicated by the vehicle identification number, for which Commission records indicate that a previously issued for-hire vehicle permit is in effect and not expired, the holder of such previously issued permit shall be scheduled for a hearing to determine the fitness of such holder to hold such permit under section 8-15 of this title and the previously issued permit shall be revoked unless the holder demonstrates that the holder has transferred the permit to a new vehicle.

(p) The holder of a for-hire vehicle permit who wishes to transfer the permit to a new vehicle must file an application to transfer the permit within fifteen days after registering the new vehicle with the New York State Department of Motor Vehicles, or comparable agency of the state of registration. No such application will be approved until the permit holder presents the vehicle for inspection at the Commission's inspection facility.

(q) No for-hire vehicle permit shall be issued to any applicant if a previous for-hire vehicle permit held by the applicant was revoked by the Commission, until the applicant for such new permit has been determined fit to hold such permit following a determination of such applicant's fitness to hold a permit under section 8-15 of this title. For purposes of this subdivision and the review of fitness required for applicants under this paragraph, a previous permit

which has been revoked shall include any permit held by any partner, officer or shareholder of applicant, or by any entity in which any partner, officer, or shareholder of applicant was a partner, officer, or shareholder

(r) A for-hire vehicle permit shall be revoked for non-use pursuant to section 19-504(g) of the Administrative Code of the City of New York if:

(1) the permit holder fails to maintain a base affiliation as required by section 6-11(c) of this chapter for 60 days;

(2) the permit holder fails to maintain insurance coverage as required by section 6-11(d) of this chapter for 60 days; or

(3) the permit holder fails to comply with the inspection requirements as required by section 6-12(c) of this chapter for 60 days.

(s) Any owner of a for-hire vehicle the for-hire vehicle permit for which has been revoked by the Commission, has expired, or has been denied renewal, must surrender the permit to the Commission, and, if the vehicle is registered in New York State, must surrender the T&LC license plates to the New York State Department of Motor Vehicles, each within 10 days after such revocation, expiration, or denial.

(t) A for-hire vehicle may be affiliated with only one base at any time.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (a) amended City Record June 2, 2009 §19, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (c) amended City Record June 2, 2009 §20, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (d) amended City Record July 5, 2002 eff. Aug. 4, 2002. [See Note 1]

Subd. (d) par (2) amended City Record June 2, 2009 §21, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (d) par (4) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 2]

Subd. (d) pars (5), (6) added (as pars (4), (5)) City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 1]

Subd. (e) amended City Record June 2, 2009 §22, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (l) added City Record Jan. 31, 2000 §4, eff. Mar. 1, 2000. [See Note to T35 §1-55]

Subd. (m) added City Record Nov. 22, 2006 §3, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Subds. (n)-(t) added City Record June 2, 2009 §23, eff. July 2, 2009. [See T35 §6-12 Note 4]

DERIVATION

Section derived from former §6-07.

Section repealed City Record Apr. 29, 1997 eff. June 1, 1997.

Section renumbered (formerly §6-05) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04

Note 3]

Subd. (e) amended City Record July 8, 1997 §20 eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (aa) repealed and added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04

Note 3]

Subd. (aa) par (1)-(5) repealed City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (ff) added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

NOTE

1. Statement of Basis and Purpose in City Record July 5, 2002:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, permitting the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under §19-502(g) of the Administrative Code of the City of New York, authorizing the TLC to license and regulate for-hire vehicles with a seating capacity of up to twenty passengers, under §19-503 of said Code, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under Section 19-503.1 of said Code, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter to license and regulate vehicles for hire.

These rules amend the for-hire vehicle rules relating to the licensing and operation of vehicles for hire with a seating capacity of up to twenty passengers, excluding the driver. In December 2001, the City Council amended §19-502(g) of the Administrative Code to confer upon the TLC jurisdiction over the licensing and regulation of such vehicles. Prior to that date, the Commission was authorized to license and regulate for-hire vehicles, other than commuter vans, with a seating capacity of less than nine passengers.

These rules enact licensing requirements for these vehicles which have now been placed under TLC jurisdiction. Each vehicle must be licensed by the Commission and affiliated with a licensed base before it is permitted to accept passengers, by prearrangement, within the City of New York. Only a driver licensed by the Commission shall be authorized to transport passengers for hire in these vehicles. Some additional requirements have been promulgated with respect to these vehicles, including higher insurance requirements which reflect the additional number of passengers these vehicles may carry. These requirements are identical to the insurance requirements applicable to such vehicles engaging in interstate commerce. In addition, because such vehicles are often modified by after-market coachbuilders after manufacture, a requirement is contained in the rules providing that the vehicle length, width, weight or seating capacity may not be modified after manufacture unless the alteration is completed pursuant to a manufacturer-approved program. Presently, both General Motors and Ford Motor Company have approved after-market vehicle modification programs, and have designated coachbuilders approved to perform after-market modifications in accordance with these programs.

This rulemaking is a part of the TLC Regulatory Agenda for Fiscal Year 2003 published in the **City Record** on April 30, 2002.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-12

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-12 Conditions of Operation Relating to For-Hire Vehicles.

A base owner and a for-hire vehicle owner shall each be separately and independently responsible for compliance with the following provisions and liable for penalties for violation thereof. No for-hire vehicle permit shall be issued or renewed unless the for-hire vehicle is in compliance with the requirements of this section at the time of issuance or renewal. Each for-hire vehicle must be in compliance with the following at all times during which such vehicle has a for-hire vehicle permit:

(a)(1) A current, valid Commission license decal or decals, which are not expired, suspended or revoked, are affixed to the front right side of the windshield of the vehicle so as to be plainly visible.

(2)(i) Beginning on September 1, 2009, each vehicle must have three (3) current, valid and unexpired Commission license decals issued by the Commission.

(ii) One of these decals must be on the front lower right side of the windshield of the vehicle and one on the lower rear corner of each of the two rear quarter windows, or, if there are no rear quarter windows, on the lower rear window just above the rear door.

(iii) Each decal must be plainly visible.

(iv) Each decal must contain all information that may be required by the Chairperson, and must be completed correctly and legibly.

(3)(i) For any vehicle for which a new application or a renewal application is made, or which is a replacement vehicle, or which is changing its base affiliation, or which is changing its license plates, beginning on September 1, 2009, the vehicle must have three (3) current, valid and unexpired Commission license decals.

(ii) One of these decals must be on the front lower right side of the windshield of the vehicle and one on the lower rear corner of each of the two rear quarter windows, or, if there are no rear quarter windows, on the lower rear window just above the rear door.

(iii) Each decal must be plainly visible.

(iv) The decals must be affixed by Commission staff.

(v) When the for-hire vehicle is replaced or changes affiliation to a different base, or changes its license plates, such vehicle must be brought to the Commission's Safety and Emissions Division to have new decals placed on the vehicle by Commission staff.

(4) Single decal exception applicable only to luxury limousines. Any for-hire vehicle that is a luxury limousine must comply with all the provisions of this subdivision (a) except that such vehicle will only be required to have a single Commission decal affixed to the front lower right side of the windshield of the vehicle.

(b) A current, valid and unexpired registration sticker from an authorized state motor vehicle department is affixed to the left front windshield so as to be plainly visible.

(c) (1) A current, valid and unexpired New York State Department of Motor Vehicles inspection sticker, which is no fewer than eight (8) months from the month of expiration on the sticker, is affixed to the front left side of the windshield so as to be plainly visible.

(2) For-hire vehicles shall be inspected three times a year and at least once every four months.

(3)(i) **New Applications for For-Hire Vehicles That Are Model Year 1996 or Later.**

Beginning on September 1, 2009, and during such time as the Commission's Safety and Emissions Division is a Department of Motor Vehicles (DMV) certified inspection station, as a condition for issuance of a new for-hire vehicle permit or approval as a replacement vehicle, vehicles that are model year 1996 or later must be inspected at the Commission's Safety and Emissions Division within ten (10) days after the issuance of T&LC plates by DMV, or after the Commission's acceptance of the application for vehicles registered outside New York State, and, in either case, must pass such inspection within sixty (60) days after the date of the first scheduled inspection of such vehicle and before issuance of a new for-hire vehicle permit. The maximum number of inspections allowed in such sixty-day period is four (4) inspections. The maximum limit of 4 inspections which must occur within 60 days applies not only to the vehicle originally submitted for licensure but also to any replacement vehicle submitted. Failure of the vehicle originally submitted for licensure and of all replacement vehicles to pass an inspection four times within 60 days will result in denial of the application. Such inspection(s) shall comply with the vehicle inspection requirements set forth in section 301 of the Vehicle and Traffic Law and shall further inspect for compliance with the owner and vehicle requirements set forth in this chapter, and shall constitute one of the inspections required by section 19-504(f) of the Administrative Code and by paragraph (2) of this subdivision, unless the vehicle has accumulated fewer than 500 miles traveled at the time the vehicle arrives at the Commission's facility for inspection in which case the inspection will be only a visual inspection. The fee for such TLC inspections shall be the fee prescribed by regulation of the DMV for inspections pursuant to section 305 of the Vehicle and Traffic Law.

(ii) **New Applications for For-Hire Vehicles That Are Model Year 1995 or Earlier.**

Beginning on September 1, 2009, and during such time as the Commission's Safety and Emissions Division is a

DMV certified inspection station, as a condition for issuance of a new for-hire vehicle permit or approval as a replacement vehicle, vehicles that are model year 1995 and earlier must be inspected at the Commission's Safety and Emissions Division within ten (10) days after the issuance of T&LC plates by DMV, or after the Commission's acceptance of the application for vehicles registered outside New York State, and, in either case, must pass such inspection within sixty (60) days after the date of the first scheduled inspection of such vehicle and before issuance of a new for-hire vehicle permit. The maximum number of inspections allowed in such sixty-day period is four (4) inspections. The maximum limit of 4 inspections which must occur within 60 days applies not only to the vehicle originally submitted for licensure but also to any replacement vehicle submitted. Failure of the vehicle originally submitted for licensure and of all replacement vehicles to pass an inspection four times within 60 days will result in denial of the application. Such inspection(s) shall comply with the vehicle inspection requirements set forth in section 301 of the Vehicle and Traffic Law and shall further inspect for compliance with the owner and vehicle requirements set forth in this chapter, except that such inspections shall not include emissions testing and shall not constitute one of the inspections required by section 19-504(f) of the Administrative Code and by paragraph (2) of this subdivision. The fee for such TLC inspections shall be the safety inspection fee prescribed by regulation of the DMV for inspections pursuant to section 305 of the Vehicle and Traffic Law.

(4)(i) **Renewals for For-Hire Vehicles That Are Model Year 1996 or Later.**

Beginning on February 1, 2010, and during such time as the Commission's Safety and Emissions Division is a DMV certified inspection station, as a condition for renewal of a for-hire vehicle permit, vehicles that are model year 1996 or later must have been inspected at the Commission's Safety and Emissions Division and pass such inspection within thirty (30) days after the date of the first scheduled inspection of such vehicle and before a renewal permit will be issued. The maximum number of inspections allowed in such thirty-day period is four (4) inspections. The maximum limit of 4 inspections which must occur within 30 days applies not only to the vehicle originally submitted for licensure but also to any replacement vehicle submitted. Failure of the vehicle originally submitted for licensure and of all replacement vehicles to pass an inspection four times within 30 days will result in denial of the application. If a vehicle has not passed inspection by the permit expiration date, the vehicle shall not operate until it passes inspection. If a vehicle does not pass inspection within the thirty-day period, the vehicle shall not operate and the application shall be denied. Such inspection(s) shall comply with the vehicle inspection requirements set forth in section 301 of the Vehicle and Traffic Law and shall further inspect for compliance with the vehicle owner and for-hire vehicle requirements set forth in this chapter and shall constitute one of the inspections required by section 19-504(f) of the Administrative Code and by paragraph (2) of this subdivision. The fee for such TLC inspections shall be the fee prescribed by regulation of the DMV as set forth in paragraph (3)(i) of this subdivision.

(ii) **Renewals for For-Hire Vehicles That Are Model Year 1995 or Earlier.**

Beginning on February 1, 2010, and during such time as the Commission's Safety and Emissions Division is a DMV certified inspection station, as a condition for renewal of a for-hire vehicle permit, vehicles that are model year 1995 and earlier must have been inspected at the Commission's Safety and Emissions Division and pass such inspection within thirty (30) days after the date of the first scheduled inspection of such vehicle and before a renewal permit will be issued. The maximum number of inspections allowed in such thirty-day period is four (4) inspections. The maximum limit of 4 inspections which must occur within 30 days applies not only to the vehicle originally submitted for licensure but also to any replacement vehicle submitted. Failure of the vehicle originally submitted for inspection and of all replacement vehicles to pass an inspection four times within 30 days will result in denial of the application. If a vehicle has not passed inspection by the permit expiration date, the vehicle shall not operate until it passes inspection. If a vehicle does not pass inspection within the thirty-day period, the vehicle shall not operate and the application shall be denied. Such inspection(s) shall comply with the vehicle inspection requirements set forth in section 301 of the Vehicle and Traffic Law and shall further inspect for compliance with the vehicle owner and for-hire vehicle requirements set forth in this chapter, except that such inspections shall not include emissions testing and shall not constitute one of the inspections required by section 19-504(f) of the Administrative Code and by paragraph (2) of this subdivision. The fee for such TLC inspections shall be the safety inspection fee prescribed by regulation of the DMV as set forth in

paragraph (3)(ii) of this subdivision.

(d) For vehicles registered with the Department of Motor Vehicles prior to April 30, 1999, a current, valid and unexpired New York City commercial use motor vehicle tax stamp is affixed to the front right side of the windshield of the vehicle so as to be plainly visible. For vehicles registered after April 30, 1999, proof that the required commercial use motor vehicle tax for the current tax period has been paid.

(e)(1) The license plate number on said motor vehicle tax stamp, state registration and Commission decals each match, and match the license plates affixed to the vehicle.

(2) The last six digits of the vehicle identification number (VIN) on the Commission decals shall match the last six digits of the VIN on the state registration and match the VIN of the vehicle.

(3) A for-hire vehicle that is registered in New York State must have New York State license plates affixed to the vehicle that are embossed with the legend "T & LC."

(4) A base and/or a base owner shall not dispatch, and a for-hire vehicle owner shall not allow a vehicle to be dispatched:

(A) unless the vehicle is registered in New York State and has license plates embossed with the legend "T & LC", or unless the vehicle is registered in another state and complies with any applicable license plate requirements.

(B) unless the vehicle has a current, valid for-hire vehicle permit which has not expired, been suspended, or been revoked.

(f)(1) The marking requirements of the Commission:

(i) **Exterior Markings.** Beginning on July 1, 2009, the exterior markings of a for-hire vehicle must include: the name of the base station with which the vehicle is affiliated, the base station license number, and the base station telephone number, either (1) all in letters and numerals not less than one-and-one-half inches in height, on the exterior of a door or doors on both sides of the affiliated vehicle, below the windows and not less than six inches above the bottom of the door(s); (2) all in letters and numerals not less than one inch in height in one location on the rear of the affiliated vehicle below the rear window, and not less than six inches above the bottom of the rear of the vehicle, or (3) both on the doors and rear of the vehicle. The letters and numerals must be of a color contrasting with the color of the body of the vehicle to provide easy legibility. Lettering and numbering shall be spaced to provide easy legibility and, if placed on doors on both sides of the vehicle shall be identical on both sides of the livery. All decals shall have semi-permanent adhesive. Luxury limousines and black cars shall be exempt from the requirements of this subdivision (f)(1)(i).

(2) A vehicle owner may not display any advertising, either on the exterior or the interior of a for-hire vehicle, unless such advertising has been authorized by the Commission, and a permit has been issued to the owner in accordance with the provisions of the Administrative Code. The Commission shall not approve any advertising for the exterior of a for-hire vehicle that consists, in whole or in part, of roof top advertising.

(3) Any accessible vehicle licensed by the Commission shall display insignia, the design of which shall be provided by the Commission on its Web site or through means it deems appropriate as set forth on its Web site, that identify such vehicle as an accessible vehicle. Such insignia shall be located on the exterior of the C-pillars of a sedan or an SUV or on the exterior of the D-pillars of a minivan, on both sides of such vehicle, and shall be visible to passengers entering the accessible vehicle.

(4) Any clean air for-hire vehicle licensed by the Commission shall display insignia, the design of which shall be provided by the Commission on its Web site or through other means it deems appropriate as set forth on its Web site,

that identify such vehicle as a clean air vehicle. Such insignia shall be located on the exterior of the C-pillars of a sedan or an SUV or on the exterior of the D-pillars of a minivan, on both sides of such vehicle, and shall be visible to passengers entering the clean air for-hire vehicle.

(g) A for-hire vehicle shall not be equipped with a rooflight, except for a vehicle that operates primarily in Staten Island and is affiliated with a base located in Staten Island. A rooflight on such a Staten Island vehicle must meet the specifications set forth in the definition of "rooflight" in these rules.

(h) No for-hire vehicle shall be, in whole or in part, any shade of taxicab yellow.

(i) No for-hire vehicle shall be equipped with a meter, except a wheelchair accessible livery which is participating in the dispatch program as set forth in chapter 16 of this title.

(j) The provisions of this subdivision (j) apply to the base owner and the owner of the for-hire vehicle; the driver's responsibilities are set forth separately in subdivision 6-16(e) of this chapter.

(1) Before July 1, 2009 each for-hire vehicle must contain the following items in the right visor or on top of the right side of the dashboard or in the glove compartment:

(A) the certificate of registration or legible photostat thereof;

(B) the for-hire vehicle permit or legible photostat thereof; and

(C) the insurance card or legible photostat thereof.

(2) Beginning on July 1, 2009, each for-hire vehicle must contain the following items:

(A) in the right visor or on top of the right side of the dashboard or in the glove compartment:

(i) the certificate of registration or legible photostat thereof;

(ii) the insurance card or legible photostat thereof; and

(iii) the for-hire vehicle permit or legible photostat thereof.

(B) in a protective holder mounted behind the driver's seat in the vehicle (except as provided in subdivision (j)(4)):

(i) the for-hire vehicle driver's license of the driver.

(3) Beginning on September 1, 2009, each for-hire vehicle must contain the following items:

(A) in the right visor or on top of the right side of the dashboard or in the glove compartment:

(i) the certificate of registration or legible photostat thereof; and

(ii) the insurance card or legible photostat thereof.

(B) in a protective holder mounted behind the driver's seat in the vehicle (except as provided in subdivision (j)(4)):

(i) the for-hire vehicle driver's license of the driver; and

(ii) the for-hire vehicle permit.

(4) Exception regarding license and permit postings applicable only to Black Cars and Luxury Limousines. Any

for-hire vehicle which is either a black car or a luxury limousine must comply with all requirements of this subdivision (j) and display all items required to be displayed as of the dates specified, except that such vehicles will not be required to display the for-hire vehicle driver's license and the for-hire vehicle permit in a protective holder mounted behind the driver's seat in the vehicle provided that those items are displayed in the vehicle in a way so as to be clearly visible from the passenger seat and available for inspection by the passenger upon request.

(k) Livery Bill of Rights. Beginning on June 26, 2009 every livery owner must post a Livery Passengers' Bill of Rights in a form and format prescribed by the Commission, which shall be posted by the Commission on its Web site or through means it deems appropriate as set forth on its Web site. The Livery Passengers' Bill of Rights must be placed in a protective holder mounted behind the front passenger's seat of the vehicle.

HISTORICAL NOTE

Section amended City Record June 2, 2009 §24, eff. July 2, 2009. [See Note 4]

DERIVATION

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Open par amended City Record May 23, 2008 §3, eff. June 22, 2008. [See T35 §6-09 Note 1]

Subd. (d) amended City Record July 15, 1999 eff. Aug. 14, 1999. [See Note 2]

Subd. (e) par (3) added City Record Apr. 13, 2006 §1, eff. May 13, 2006. [See Note 3]

Subd. (f) amended City Record Sept. 20, 1999 §1, eff. Oct. 20, 1999. [See Note 1]

Subd. (f) pars (3), (4) added City Record May 23, 2007 §8, eff. June 22, 2007. [See T35 §1-35

Note 1]

Subd. (i) amended City Record Nov. 23, 2007 §10, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Subd. (n) added City Record July 5, 2002 §3, eff. Aug. 4, 2002. [See §6-11 Note 1]

Subd. (o) added City Record Nov. 22, 2006 §4, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Subd. (p) amended City Record Feb. 18, 2009 §2, eff. Mar. 20, 2009. This subdivision was bracketed out in amendment in City Record June 2, 2009. [See T35 §6-09 Note 2]

Subd. (p) added City Record May 23, 2008 §3, eff. June 22, 2008. [See T35

§6-09 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 20, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations relating to standards and conditions of service which are reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the

Charter; and under §19-525 of said Code, authorizing the Commission to issue advertising permits to licensed vehicles and promulgate rules and regulations with respect to such permits.

The regulations prohibit a for-hire vehicle from displaying any advertising on or in a licensed vehicle unless the owner has obtained an advertising permit issued by the Commission pursuant to §19-525 of the Administrative Code.

Section 19-525(a) of the Administrative Code authorizes the Commission to issue advertising permits to any vehicle licensed by the Commission. Currently, such permits are only issued to licensed medallion taxicabs. Existing rules of the Commission prohibit a taxicab from displaying any interior or exterior advertising without a permit, but are silent with respect to authorized advertising on for-hire vehicles. The rule set forth herein promotes consistency with respect to the regulation of advertising on both taxicabs and for-hire vehicles by allowing for-hire vehicles to display appropriate advertising after the owner has obtained a for-hire vehicle advertising permit from the Commission.

The rules of the Commission relating to advertising do not prohibit the indication of a base name or telephone number on the exterior of a vehicle, since such information is required to be displayed by the Commission pursuant to Rule 6-12(f), now redesignated as 6-12(f)(1). After public comment, the regulation was amended to prohibit the display of roof top advertising on for-hire vehicles. This change was made to the rule to maintain the clear physical distinctions between for-hire vehicles and taxicabs and to prevent confusion by the public between these two types of vehicles.

2. Statement of Basis and Purpose in City Record July 15, 1999: The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules relating to standards and conditions of service which are reasonably designed to carry out its purposes and under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules necessary to exercise authority conferred upon it by the Charter. The rule amendment eliminates the requirement that a for-hire vehicle display a commercial use motor vehicle tax stamp on the windshield. The proposed rule would provide that a for-hire vehicle could not be used for hire unless the required commercial use motor vehicle tax has been paid. Effective as of April 30, 1999, for-hire vehicle owners will no longer receive a commercial motor vehicle tax stamp from the New York City Department of Finance. Commencing on June 1, 1999 the tax will be collected directly by the New York State Department of Motor Vehicles upon the new or renewal registration of the vehicle. A current, valid registration will thereafter constitute proof of payment of the tax. Since most for-hire vehicles are registered in March, the commercial motor vehicle tax for the period ended May 31, 2000 will be paid directly to the Department of Finance. A tax stamp displayed upon the windshield will continue to be proof of payment of the commercial use motor vehicle tax for these vehicles. Accordingly, for this year, some For-Hire Vehicles ("FHVs") will continue to be required to display tax stamps on the windshield. For FHVs registered after June 1, 1999, a current, valid registration will constitute proof of payment of the tax. Since the Department of Finance will continue to collect the tax and issue tax stamps for medallion taxicabs, no change in the taxicab owners rules, with respect to the tax stamp requirement, has been promulgated.

3. Statement of Basis and Purpose in City Record Apr. 13, 2006: Section 6-12(e)(3) requires that licensed for-hire vehicles (liveries, black cars and luxury limousines) that are registered in New York State must have New York State license plates that are embossed with the legend "T&LC" below the license plate number, signifying licensure by TLC as for-hire vehicles. The requirement will apply to for-hire vehicles that are issued new or renewal for-hire vehicle licenses on or after May 10, 2006. Without this rule, for-hire vehicles registered at New York State addresses outside of New York City are able to obtain license plates that are embossed with the legend "livery" from New York State's Department of Motor Vehicles ("DMV"). DMV has indicated to TLC staff that it will honor the requirement in the rule that TLC-licensed for-hire vehicles must have the "T&LC" legend. Requiring all TLC-licensed for-hire vehicles to have "T&LC" embossed license plates would facilitate recognition of such vehicles by the public, TLC staff, insurance providers, and others. In particular, TLC staff research indicates that insurers recognize the "T&LC" license plate as an indication that the vehicle is TLC-licensed, and is therefore subject to the mandatory minimum insurance coverage requirements set forth in §6-11(d)(4) of TLC's rules. Such research further indicates that a for-hire vehicle with "livery"

license plates is not recognized by insurers as TLC-licensed, and therefore in some cases owners of such vehicles are able to purchase insurance coverage less than that mandated by TLC rules. Similarly, mandatory "T&LC" license plates will facilitate the collection of the applicable annual $400 commercial New York City motor vehicle tax, which in some cases has been evaded by owners of for-hire vehicles with "livery" license plates.

4. Statement of Basis and Purpose in City Record June 2, 2009: This rule amends chapter 6 of the Taxi and Limousine Commission's rules to strengthen oversight of the for-hire vehicle industry, to enhance the ties among bases and for-hire vehicle owners and FHV drivers, and to better communicate the legal status of for-hire vehicles to the public. This rule will require greater accountability of bases and vehicle owners for the lawful conduct of the for-hire business. The rule will reward greater accountability by enhancing the value of a base license. In particular, the rule would: As to vehicles: · require that each for-hire vehicle be inspected at the TLC's inspection facility at upon first licensure and upon license renewal. For vehicles that are model year 1996 or later, the TLC inspection will qualify as one of the three DMV inspections required annually. Upon initial licensure of a vehicle that has been driven less than 500 miles, the inspection can be a visual inspection only, and will not count as a DMV inspection. · set time limits during the application or renewal process by which the TLC inspection must be passed and require that each vehicle must pass within four tries. · require that license decals be placed on the vehicle by the TLC only after the vehicle has passed the TLC inspection or at any time a vehicle is replaced or changes affiliation. · require that, starting in September, 2009, vehicles (except luxury limousines) must have three exterior TLC decals. · enhance requirements for exterior base identification markings for each vehicle. · require the summary suspension pursuant to section 8-17(b) of any for-hire vehicle permit and the return of the TLC decal(s) at any time a vehicle is found to be unfit or unsafe at its inspection. · require that renewal applications for for-hire vehicle permits must be filed at least 30 days prior to permit expiration. Renewing applicants may file a renewal application after that date only upon payment of a $25 late fee and in no event later than the expiration date. · provide explicitly that for-hire vehicle permit termination includes revocation or surrender of the permit. · provide explicitly that a for-hire vehicle may be affiliated with only one base at any time. · prohibit a base and a vehicle owner from dispatching a for-hire vehicle from a base other than the base with which the vehicle is affiliated, although bases may dispatch vehicles from other bases provided that the customer is notified. · specify that applicants for for-hire vehicle permits with a prior history of vehicle permit revocation will be subject to a fitness hearing before any new permit can be issued. · impose penalties for vehicle owners if drivers accept street hails. · impose fixed penalties and suspension until compliance with respect to the for-hire vehicle permits for failure to have a valid TLC license decal on a vehicle. · require that vehicle owners who fail for any 60-day period to maintain affiliations or insurance or to comply with the inspection requirements, be subject to revocation under section 19-504(g) of the Administrative Code. · provide for the non-renewal of any for-hire vehicle permit if the vehicle is not in compliance with the requirements of section 6-12 of the TLC's rules at the time of renewal. · require for-hire vehicles to have heating and air conditioning. As to bases: · impose new requirements for bases seeking to terminate vehicle affiliations to reduce the possibility that licensed vehicles lack affiliations. · require base stations to submit business plans meeting certain minimum standards with license applications, renewal applications or applications for ownership changes. · enhance requirements regarding base use of trade names and telephone numbers, Web sites and contact information. · strengthen base record keeping requirements. · extend the term of base licenses to three years. · require base license renewal applications be filed 60 days prior to license expiration. · enhance requirements for bases with respect to filing their rates of fare with the Commission. · require livery bases to provide a price quote to prospective riders. · require bases to provide bonds. · require base owners to maintain lists of vehicles which are affiliated with the base and their drivers. · impose penalties for base station owners which fail to maintain a bond and for those who have failed to pay fines and penalties resulting in a draw on the bond. · add a fine for base owners who fail to meet requirements to provide transportation service to persons with disabilities. · provide that base transfers can occur only upon appearance of the transferor and transferee at the TLC and clarify that all base license transfers require TLC approval. As to bases and vehicles: · require revocation of base licenses and for-hire vehicle permits upon repeated convictions for violations of certain rules, in particular rules regarding the dispatch of unlicensed drivers. · specify that bases, vehicle owners and drivers cannot require passengers to share rides. · clarify that base owners and vehicle owners are separately and independently responsible for the conditions of operation of for-hire vehicles. · specify that base owners, vehicles and drivers are responsible for obeying traffic laws and not creating a nuisance while visiting a base.

As to drivers: · require the driver of a for-hire vehicle to keep the vehicle clean during his or her work shift. · require the driver of a for-hire vehicle to comply with passenger requests regarding heat, air conditioning and audio equipment. Finally, the rule provides for the posting of a Livery Passengers' Bill of Rights, as required by section 19-537 of the Administrative Code of the City of New York, recently added by local law (effective June 26, 2009).

CASE AND ADMINISTRATIVE NOTES

¶ 1. City Charter Sec. 2303, which requires the Taxi and Limousine Commission to serve notices of violations in the same manner as a summons, applies only to violations by unlicensed operators. Where the agency seeks to serve a licensed operator with notice of violations in connection with overdue vehicle inspections, service can be made by ordinary mail. Humming Bird Car Service, Inc. v. New York City Taxi and Limousine Commission, 184 Misc.2d 146, 706 N.Y.S.2d 850 (Sup.Ct. New York Co. 2000).

¶ 2. For hire driver failed to affix a valid TLC license decal on the windshield of his licensed for-hire vehicle in violation of paragraph (a) of this section. **Taxi and Limousine Comm'n v. Dadon,**, OATH Index No. 2147/00 (June 29, 2000), **modified on penalty,** Comm'r Dec. (Dec. 11, 2000).

¶ 3. For a period of time ending in 2002, the Taxi & Limousine Commission (TLC) had a practice of assessing multiple fines for violations of 35 RCNY 6-12 and 6-13, collecting the full statutory fine from each of the base station owner, the vehicle owner, and the vehicle lessee. A challenge to the statute alleged that the collection of three fines, instead one, constituted an excessive fine under the Eighth Amendment. The court, however, held that in the absence of an allegation that any of the individual fines was excessive, the collection of fines from multiple parties did not violate the Eighth Amendment. New York State Federation of Taxi Drivers, Inc. v. City of New York, 270 F.Supp.2d 340 (E.D.N.Y. 2003).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-12.1

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-12.1 Additional Conditions of Operation of For-Hire Vehicles and Bases.

A base owner and a for-hire vehicle owner shall each be separately and independently responsible for compliance with the following provisions and liable for penalties for violation thereof.

(a)(1) A base owner shall not dispatch or allow to operate, and a for-hire vehicle owner shall not allow to be dispatched or operated, a for-hire vehicle unless the driver's chauffeur's license is current and valid. For purposes of these rules, a valid chauffeur's license shall mean a license which is neither expired, suspended, revoked, conditional or restricted as to use by the New York State Department of Motor Vehicles or agency of another state which issued such license for violations of traffic laws or regulations. Each base owner and each for-hire vehicle owner is responsible for knowing the status of the state issued driver's license for any driver dispatched.

(2) A base owner shall not dispatch or allow to operate, and a for-hire vehicle owner shall not allow to be dispatched or operated, a vehicle unless the driver possesses a current for-hire vehicle driver's license issued by the Commission. For purposes of these rules, a current for-hire vehicle driver's license shall mean a license issued for the current time period which is neither suspended, revoked nor expired. The Commission shall post on its Web site a list of drivers and vehicles holding current, valid permits and licenses.

(3) A base owner and a for-hire vehicle owner shall not knowingly allow a for-hire vehicle to be operated by a driver who is under the influence of any drugs or alcohol or whose driving ability is in any way impaired.

(b)(1) No for-hire vehicle shall be driven when the Chairperson or the New York State Department of Motor Vehicles or a DMV inspection facility has determined that the vehicle is unsafe or unfit for use as a for-hire vehicle.

The for-hire vehicle permit shall be suspended pursuant to section 8-17(b) of this title upon such determination. In addition:

(2) If the Chairperson has determined that the vehicle is unsafe or unfit, the decals shall be confiscated by the Chairperson.

(3) If the New York State Department of Motor Vehicles or a DMV inspection facility other than the Commission has determined that the vehicle is unsafe or unfit, the vehicle owner must return the decals to the Chairperson within 72 hours of issuance of the determination.

(4) If the Chairperson has any reason to believe that any for-hire vehicle is unsafe or unfit for use, the Chairperson may order such vehicle to report to the Commission's inspection facility.

(c)(1) Each for-hire vehicle shall have all seat belts and shoulder belts clearly visible, accessible and in good working order.

(2) Each for-hire vehicle shall in addition to seat belts for each seating position and shoulder belts for both outside front seat positions be equipped with shoulder belts for both outside passenger rear seat positions.

(d) No for-hire vehicle shall be issued a permit or be used to transport passengers for hire in the City of New York if the vehicle has been altered after manufacture to increase its length, width, weight or seating capacity, or to modify its chassis and/or body design, unless the modification has been made in accordance with a program approved in advance by the original vehicle manufacturer, and the alteration has been performed by an entity approved and certified by the vehicle manufacturer to perform such alterations. An original, unaltered, approved vehicle modifier's certification sticker shall be affixed to the vehicle at a location to be determined by the Commission.

(e) Any officer or employee of the Commission designated by the Chairperson of the Commission, or any police officer, may conduct on-street inspections of vehicles providing transportation for hire and operating within New York City to assure compliance with all applicable laws and rules and may order the vehicle to report to the Commission's inspection facility.

(f) No for-hire vehicle owner shall permit his or her vehicle to transport passengers for hire other than through pre-arrangement with a base licensed by the Commission. A for-hire vehicle owner shall be liable for penalties for any violation of this section if the vehicle is used to transport passengers other than through pre-arrangement.

(g)(1) To be affiliated with a black car base, a vehicle owned or leased by a new applicant, beginning January 1, 2010, must meet the requirements set forth in section 6-09 and, beginning January 1, 2011, must meet the requirements set forth in section 6-10 of this chapter. For purposes of this paragraph (g)(1), a "new applicant" is the owner or lessee of a vehicle who does not hold a current for-hire vehicle permit for that vehicle.

(2) To be affiliated with a black car base, a vehicle owned or leased by a renewal applicant, beginning January 1, 2011, must meet the requirements set forth in section 6-10 of this chapter. For purposes of this paragraph (g)(2), a "renewal applicant" is the owner or lessee of a vehicle who holds a current for-hire vehicle permit for that vehicle and is affiliated with a black car base when the application is submitted.

(h) No base and no owner of a for-hire vehicle shall require that any prospective passenger must share a ride with another prospective passenger.

(i) The owner of a for-hire vehicle shall be responsible for ensuring that the driver and vehicle will obey all applicable traffic and parking regulations within the area set forth in section 6-07(b)(3) of this chapter.

(j) The owner of a for-hire vehicle shall be responsible for ensuring that the driver and the vehicle while stopped at

the base with which the vehicle is affiliated or by which the vehicle is dispatched will not create a nuisance such as by engaging in horn honking, littering, or the playing of loud audio material within the area set from in section 6-07(b)(3) of this chapter.

(k) The owner of a for-hire vehicle shall be responsible for ensuring that the vehicle is equipped with functioning heating and air conditioning equipment.

HISTORICAL NOTE

Section added City Record June 2, 2009 §25, eff. July 2, 2009. [See T35 §6-12 Note 4]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-13

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-13 Partitions, Cameras and Emergency Lights.

A for-hire vehicle base and a for-hire vehicle owner shall be jointly and severally responsible for compliance with the following provisions and liable for violation thereof. No for-hire vehicle shall be used in the course of operations of a for-hire vehicle service unless the vehicle is in compliance with the following:

(a) A for-hire vehicle, except as provided in paragraphs two and three of this subdivision, shall be equipped with a partition which isolates the driver from the rear seat passengers or all passengers present in such vehicle, as set forth in paragraph one of this subdivision.

(1) The partition shall be made of polycarbonate material not less than 0.375 inches thick extending upward from the back of the front seat to the ceiling of the vehicle. There shall be a provision for communication with passengers and for a money slot while the partition is closed. Such partition may be able to be partially opened by the driver, as long as the driver can fully close the partition at any time. A for-hire vehicle owner shall also equip the vehicle with a 0.085 inch thick plate of ballistic steel or its equivalent, installed inside the back rest of the front seat. The plate shall cover the complete back rest area which is exposed to the rear seat compartment. Provided, however, that, notwithstanding any other provision of these rules, all for-hire vehicles, except those that are exempt pursuant to paragraphs two or three of this subdivision, when an existing partition is required to be replaced or when a partition is installed (including, but not limited to, at first licensing), shall be equipped with a partition, the transparent portion of which shall be constructed, at a minimum, of a mar-resistant polycarbonate and shall be not less than 0.375 inches thick, that will provide passengers and drivers with maximum visibility.

(A) For a flat partition and a partition for a for-hire vehicle with factory installed curtain airbags, the transparent

portion of the partition shall extend from the ceiling to join or overlap with the protective plate of the partition.

(B) For an L shaped partition, on the side that is behind the driver, the transparent portion of the partition shall extend from the ceiling to join or overlap with the protective plate and on the side that extends forward to back between the two front seats, the transparent portion of the partition shall extend from the ceiling to join or overlap with the protective plate of the partition on the right side of the center console between the two front seats.

(C) The protective plate shall join or be overlapped by the transparent portion of the partition and shall extend from the point that the protective plate joins, or if overlapped by the transparent portion of the partition, the point that would be the point of joiner with the transparent portion of the partition, downward to the floor of the for-hire vehicle. The protective plate shall be constructed of a 0.085 inch thick plate of ballistic steel or its equivalent installed in and covering the complete back rest area of the front seat which is exposed to the rear seat compartment and, for an L shaped partition, on the right side of the center console between the two front seats.

(D) No partition shall be installed unless it shall have the following features which do not compromise passenger or driver safety:

(i) a means for passengers and drivers to communicate with each other; and

(ii) the capacity for the passengers to pay fares, either by cash or by credit card if the for-hire vehicle is capable of accepting credit card payments, and for the passengers to receive receipts for payments and transactions, while the passenger is in the rear passenger compartment.

(2) A for-hire vehicle shall be exempt from the requirements of paragraph (1) if the vehicle is affiliated only with a black car base or a luxury limousine base.

(3) A for-hire vehicle shall be exempt from the requirements of paragraph (1) if the vehicle is equipped with at least the following two safety devices:

(i) A FCC-licensed commercial two-way radio with an emergency button that would notify the dispatcher that the driver is in trouble or a cellular telephone which has an emergency dialing feature, and

(ii) Some other device specifically approved by the Chairperson to satisfy this requirement, in addition to the trouble light required by subdivision (b) of this section; provided, however, that, when an existing in-vehicle camera system is required to be replaced or when such system is installed in compliance with this paragraph, it shall meet the requirements set forth in section 3-03(e)(3)(v) of this title. Such for-hire vehicle shall further be equipped with the trouble light required by subdivision (b) of this section.

(b) The vehicle shall be equipped with a help or distress signaling light system, unless the owner is exempt pursuant to paragraph (7) of this subdivision. The light system shall be in accordance with the following specifications:

(1) The help or distress signaling light system shall consist of two turn signal type "lollipop" lights.

(2) One light shall be mounted on the front center of the vehicle, either on top of the bumper or forward or behind the grill. A second light shall be mounted on top of the rear bumper, to the left of the license plate.

(3) Each light shall be three to four inches in diameter, have a total rated output of thirty-two candle power and shall be the color amber or have an amber colored lens that the light output of the device is the color amber at thirty-two candle power.

(4) The activator shall be installed within easy reach of the driver and shall be silent when operating.

(5) The lights shall flash between 60 and 120 times per minute.

(6) The wiring shall not affect or interfere directly otherwise with any wiring or circuitry used by a meter for measuring time and distance.

(7) A vehicle shall be exempt from the requirements of this subdivision if the vehicle is affiliated only with a black car base or a luxury limousine base.

(c) Each for-hire vehicle equipped with an in-vehicle camera system shall display decals on each rear passenger window, visible to the outside, that contain the following information, in letters at least one-half inch high: "This vehicle is equipped with camera security. YOU WILL BE PHOTOGRAPHED."

HISTORICAL NOTE

Section heading amended City Record Apr. 23, 2007 §6, eff. May 23, 2007. [See T35 §1-17 Note 4]

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (a) amended City Record June 1, 2000 §2, eff. July 1, 2000. [See T35 §1-17 Note 2]

Subd. (a) amended City Record May 3, 2000 §1, eff. June 2, 2000. This Emergency Rule was also

enacted in City Record Apr. 21, 2000 eff. May 21, 2000. [See T35 §1-17 Note 1]

Subd. (a) open par amended City Record Apr. 23, 2007 §6, eff. May 23, 2007. [See T35 §1-17

Note 4]

Subd. (a) par (1) amended City Record Apr. 23, 2007 §6, eff. May 23, 2007. [See T35 §1-17 Note 4]

Subd. (a) par (3) amended City Record Apr. 23, 2007 §6, eff. May 23, 2007. [See T35 §1-17 Note 4]

Subd. (c) added City Record Apr. 23, 2007 §6, eff. May 23, 2007. [See T35 §1-17 Note 4]

CASE NOTES

¶ 1. See New York State Federation of Taxi Drivers, Inc. v. City of New York, 270 F.Supp.2d 340 (E.D.N.Y. 2003), discussed in note 3 of 35 RCNY 6-12.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-14

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-14 Probationary Licenses.

(a) An applicant will be issued a probationary license valid for a period of one-year subsequent to the date the license was issued. The Commission will evaluate the applicant at the conclusion of the one-year probationary period and will determine if renewal of the license is appropriate. In making such determination, the Commission may consider the driving record, any violation of the For-Hire Vehicle Rules, or any other evidence that suggests that the driver no longer meets all requirements for a license.

(b) Renewal of a probationary license will be automatically barred or the Commission may revoke a probationary license at any time if any of the following occurs during the probationary period:

(1) The driver is convicted of a crime in any jurisdiction.

(2) The driver is convicted of driving while impaired by alcohol or drugs.

(3) The driver is convicted of refusing to submit to a breathalyzer or other chemical test.

(4) The driver is convicted of leaving the scene of an accident.

(5) The driver accumulates eight or more points against his New York State Chauffeur's License or comparable license issued by his State of residence, the total of which shall include points existing on the driver's State license prior to his or her application for a license with the Commission.

(6) The driver is convicted of three or more moving violations.

(7) The driver is convicted of two speeding violations.

(8) The driver accumulated four or more points in accordance with the Commission's persistent violator program described in Rule 6-23.

(9) The driver is convicted of two or more violations of Rule 6-16(d), 6-16(f), or 6-16(g).

(c) For purposes of subdivision (b) of this rule, the Commission will consider the date of occurrence rather than the date of conviction when determining if a violation occurred within the probationary period.

HISTORICAL NOTE

Section added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-04 Note 2]

Subd. (a) amended City Record Nov. 2, 2006 §12, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

CASE NOTES

¶ 1. License revocation recommended under this section for a for-hire driver who was convicted during his probationary term of driving his private car while under the influence of alcohol. **Taxi & Limousine Comm'n v. Fuentes**, OATH Index No. 201/08 (Aug. 28, 2007); **Taxi & Limousine Comm'n v. Alexandridis**, OATH Index No. 202/08 (Aug. 28, 2007)(same).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-15

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-15 Driver License Requirements.

(a) (1) A driver shall not operate a for-hire vehicle unless he is licensed by the Commission and affiliated with a licensed base.

(2) A driver shall not operate a for-hire vehicle without a valid New York State chauffeur's license or a valid license of equivalent class of the state of which he is a resident. For the purposes of these rules, a valid chauffeur's license or a license of equivalent class shall mean a license which is neither probationary, suspended, revoked, conditional, nor restricted as to use by the New York State Department of Motor Vehicles or agency of another state which issued such license for violations of traffic laws or regulations.

(3) An applicant for a for-hire vehicle driver's license, other than an applicant who is a City of New York Police Officer, shall be tested, at the applicant's expense, for drugs or controlled substances, as set forth in §3306 of the Public Health Law. Such testing shall be performed by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. A positive test result shall result in the denial of a new application. Said determination shall be a final agency decision. A renewal applicant must be tested for drugs in accordance with §6-16(v) of this chapter.

(b) An applicant for a for-hire vehicle driver's permit shall agree that service of any paper, notice, letter, summons, complaint or legal process of any kind or nature may be made by the City of New York, or any department thereof, upon the person to whom the permit is issued by leaving a copy of any such paper, notice, letter, summons, complaint or legal process with any member of his or her family or any other person with whom he or she may reside at the address listed in his or her application.

(c) A driver shall immediately surrender his for-hire vehicle operator's permit to the Commission upon the restriction, suspension or revocation of his chauffeur's license.

(d) (1) A driver, within twenty-four (24) hours, exclusive of holidays and weekends, shall notify the Commission of the loss or theft of his for-hire vehicle operator's permit and shall replace said such permit.

(2) A driver shall not alter, deface, mutilate, or obliterate any portion of his for-hire vehicle operator's permit or the attached photograph.

(3) A driver shall immediately surrender to the Commission an unreadable or unrecognizable for-hire vehicle operator's permit and shall replace such permit.

(4) A driver shall not permit another person to use his for-hire vehicle operator's permit.

(e) An applicant for a for-hire operator's permit shall be fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services. The criminal history of any applicant, including a renewal applicant, shall be reviewed in a manner consistent with Article 23-A of the New York State Correction Law and the application of any applicant denied, or the for-hire operator's permit of any current holder shall be revoked, after notice and a hearing, following conviction of such applicant or holder for any serious criminal offense as set forth in §498.1(f)*1 of the New York Vehicle and Traffic Law. The applicant shall pay any processing fee required by the State. A driver shall immediately inform the Commission when convicted of any crime and shall supply the Commission with a certified copy of the Certificate of Disposition issued by the Clerk of the Court with respect to such conviction.

(f) A driver shall, upon filing for Workers' Compensation benefits because of a disabling work-related injury, submit the driver's for-hire vehicle driver's license to the Commission and cease driving, for so long as the driver claims a disability that prevents the driver from operating a vehicle for hire. Such license shall not be returned until such driver presents to the Commission documentation of cessation of Workers' Compensation benefits due to recovery from such work-related disability, as provided in §6-07(d) of this chapter.

(g) A driver shall notify the Commission in person or by first class mail, within seven (7) days, exclusive of holidays and weekends, of any change of mailing address. Any notice from the Commission shall be deemed sufficient if sent to the last mailing address furnished by the driver.

(h) The holder of a for-hire operator's permit issued under this chapter shall satisfy any outstanding judgment and pay any civil penalty owed for a violation relating to traffic in a qualified jurisdiction or a violation of the regulations of a qualified jurisdiction.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (a) par (2) amended City Record July 15, 1999 §2, eff. Aug. 14, 1999. [See T35 §2-02 Note 1]

Subd. (a) par (3) amended City Record Feb. 14, 2006 §7, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

Subd. (a) par (3) amended City Record Oct. 31, 2000 §4, eff. Nov. 30, 2000. [See T35 §2-03 Note 1]

Subd. (a) par (3) amended City Record Apr. 12, 1999 §4, eff. May 12, 1999. [See T35 §2-19 Note 1]

Subd. (a) par (3) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 3]

Subd. (e) amended City Record Nov. 22, 2006 §5, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Subd. (h) added City Record Nov. 22, 2006 §6, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

DERIVATION

Section derived from former §6-06.

Section repealed City Record Apr. 29, 1997 eff. June 1, 1997.

Section renumbered (formerly §6-04) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (j) amended City Record July 8, 1997 §18, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (t) added City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Subds. (u)-(x) added City Record July 8, 1997 §19, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Should be §498(1)(f).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-16

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-16 Conditions of Operation for For-Hire Vehicle Drivers.

(a) A driver shall not operate a for-hire vehicle in such a manner or at such a speed which endangers users of other vehicles, pedestrians or such driver's passengers.

(b) A driver who, knowing or having cause to know that personal injury or damage to property has been caused by the driver's culpability or due to an accident involving the driver's for-hire vehicle, shall, before leaving the place where such damage or injury occurred, exhibit to the person or persons who were injured or whose property was damaged the driver's chauffeur's license, for-hire vehicle operator's permit, and vehicle permit, and give to such other person or persons the driver's name, operator's permit number, and vehicle permit number, as well as the name of the vehicle's insurance carrier and the insurance policy number.

(c) A driver shall operate his for-hire vehicle at all times in full compliance with all New York State and New York City traffic laws, rules and regulations and all rules, regulations and procedures of the Port Authority of New York and New Jersey, the Triboro Bridge and Tunnel Authority, and any regulatory body or governmental agency having jurisdiction over motor vehicles, with respect to matters not otherwise specifically covered in these rules. Violations of the foregoing shall be classified as follows for purposes of this subdivision:

(1) Laws, rules or regulations governing stationary vehicles.

(2) Laws, rules or regulations governing moving vehicles, other than hazardous moving violations defined by paragraph (3) of this subdivision.

(3) Laws, rules or regulations governing moving vehicles which involve hazardous moving violations defined as follows:

(i) speeding;

(ii) failing to stop for school bus;

(iii) following too closely;

(iv) inadequate brakes (own vehicle);

(v) inadequate brakes (employer's vehicle);

(vi) failing to yield right of way;

(vii) traffic signal violation;

(viii) stop sign violation;

(ix) yield sign violation;

(x) railroad crossing violation;

(xi) improper passing;

(xii) unsafe lane change;

(xiii) driving left of center;

(xiv) driving in wrong direction;

(xv) leaving scene of an accident involving property damage or injury to animal.

(d) A driver shall not operate an unlicensed for-hire vehicle.

(e)(1) A driver must not operate a for-hire vehicle without a current, valid and unexpired for-hire vehicle permit decal or decals issued by the Commission. The decal shall be affixed to the front right side of the windshield of the vehicle and, if three decals are required, also on each of the two rear quarter windows. The decals must be plainly visible. In addition, until July 1, 2009 the following items shall be present in the for-hire vehicle:

(A) the driver's for-hire vehicle driver's license;

(B) the certificate of registration or legible photostat thereof;

(C) the for-hire vehicle permit or legible photostat thereof;

(D) the insurance card or legible photostat thereof;

(E) if such for-hire vehicle is used for providing pre-arranged transportation for hire between the City of New York and an issuing jurisdiction, a trip log conforming to the requirements of §6-25 of this chapter.

(2) Beginning on July 1, 2009, the driver's for-hire vehicle driver's license must be displayed in a protective holder mounted behind the driver's seat and the vehicle must contain all other items listed in paragraph (1) of this subdivision.

(3) Beginning on September 1, 2009 a driver must not operate a for-hire vehicle without three (3) current, valid

and unexpired for-hire vehicle license decals, issued by the Commission's Licensing Division, affixed, one to the front right side of the windshield of the vehicle and one to each of the two rear quarter windows, so as to be plainly visible, and the following items shall be present in the for-hire vehicle:

(A) in the right visor or on top of the right side of the dashboard or in the glove compartment:

(i) the certificate of registration or legible photostat thereof;

(ii) the insurance card or legible photostat thereof;

(B) in a protective holder mounted behind the driver's seat in the vehicle:

(i) the for-hire vehicle driver's license of the driver; and

(ii) the for-hire vehicle permit.

(C) if such for-hire vehicle is used for providing pre-arranged transportation for hire between the City of New York and an issuing jurisdiction, a trip log conforming to the requirements of §6-25 of this chapter.

(f) A driver shall not solicit or pick up passengers by means other than prearrangement through a licensed base, except that the driver of a wheelchair accessible livery may be dispatched as provided in chapter 16 of this title.

(g) A driver shall not pick up a passenger at an authorized taxi stand.

(h) A driver, while operating a for-hire vehicle, shall not, without the Chairperson's written authorization, have in his or her possession or in the vehicle, a weapon as defined by §6-01 of these Rules, or any other instrument which is intended to be used as a weapon.

(i) (1) A driver, whether in his vehicle or not, shall, at all times at all Port Authority of New York and New Jersey facilities, conduct himself and operate his vehicle in accordance with all rules and regulations and procedures of the Port Authority of New York and New Jersey.

(2) A driver shall at all times at all Port Authority of New York and New Jersey facilities remain inside his or her vehicle or with fifteen (15) feet thereof or in areas designated by the Port Authority of New York and New Jersey and shall not solicit or pick up passengers at any Port Authority of New York and New Jersey facility except by prearrangement.

(3) A driver shall comply with all Commission rules at all Port Authority of New York and New Jersey facilities.

(j) A driver shall not smoke in a for-hire vehicle.

(k) A driver shall not engage in mechanical maintenance or repair of any vehicle on public streets and sidewalks, except to make such emergency repairs as may be necessary to move a disabled vehicle. A dead battery or a flat tire is an example of a disabling condition.

(l) A driver shall not refuse to transport any person with a disability or any guide dog accompanying such person.

(m) A driver shall permit a passenger who is unable to enter or ride in the rear passenger part of the vehicle, to occupy the front seat alongside the driver.

(n) Upon request of a passenger, the driver shall load or unload a passenger's luggage, wheelchair, crutches or other property in or from the vehicle's interior or trunk compartment, and shall secure such compartment.

(o) A driver shall not charge or attempt to charge a fare above the pre-approved rate quoted by the dispatcher. A

driver shall not impose or attempt to impose any additional charge for transporting a person with a disability, a service animal accompanying a person with a disability or a wheelchair or other mobility aid. No passenger shall be asked or required to tip.

(p) A passenger who is unable to enter or ride in the rear seat of a for-hire vehicle must be permitted to occupy the front seat alongside the driver. If a passenger's luggage, wheelchair, crutches, three-wheeled motorized scooter, other mobility aid or other property occupies the rear seat of the for-hire vehicle, the passenger must be permitted to occupy the front seat alongside the driver.

(q) (1) A driver shall not refuse by words, gestures or any other means, without justifiable grounds set forth in subdivision (r) of this section, to provide transportaion, when dispatched, for a person who has prearranged the trip and the destination is within the City of New York, the counties of Westchester or Nassau or Newark Airport. This includes a person with a disability and any service animal accompanying such person.

(2) a driver shall not require a person with a disability to be accompanied by an attendant. However, where a person with a disability is accompanied by an attendant, a driver shall not impose or attempt to impose any charge in addition to the authorized rate of fare for transporting the attendant.

(3) A driver shall not refuse to transport a passenger's luggage, wheelchair, crutches, other mobility aid or other property.

(r) Justifiable grounds for the conduct otherwise prohibited by subdivision (q) of this section shall be the following:

(1) the passenger is carrying, or is in possession of any article, package, case or container, other than a wheelchair or other mobility aid, which the driver may reasonably believe will cause damage to the interior of the for-hire vehicle, impair its efficient operation, or cause it to become stained or foul smelling;

(2) the passenger is escorted or accompanied by an animal which is not properly or adequately secured in a kennel case or other suitable container. This provision shall not apply to service animals accompanying people with disabilities;

(3) the passenger is disorderly or intoxicated. Provided, however, that a driver shall not refuse to provide service to a person with a disability solely because such person's disabilty results in an appearance or involuntary behavior which may offend, annoy or inconvenience the driver; or

(4) if the passenger has refused a request by the driver to obey the no-smoking requirement of law, the driver may discharge the passenger after asking the passenger to cease smoking in the for-hire vehicle. Provided, however, that, if the driver discharges the passenger, it must be at a safe location.

(s) If the Commission has reasonable suspicion to believe that a driver has a drug or controlled substance impairment that renders him or her unfit for the safe operation of a for-hire vehicle, it may direct the driver to be tested or examined for such impairment, at such driver's expense, by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. If the results of said test(s) or examination(s) are positive, the driver's license may be revoked after a hearing. Failure of a driver to be tested or examined as directed may lead to suspension or revocation of such driver's license in accordance with §8-16 of this title.

(t) A driver shall not operate a for-hire vehicle while his driving ability is impaired by either intoxicating liquor (regardless of its alcoholic content), drugs or other controlled substances, nor while driving such for-hire vehicle or for six hours prior to driving or occupying such for-hire vehicle shall he consume any intoxicating liquor regardless of its alcoholic content or any drugs or other controlled substances.

(u) (1) A driver shall not use a portable or hands-free electronic device while operating a for-hire vehicle, unless such for-hire vehicle shall be lawfully standing or parked. "Use" of a portable or hands-free electronic device means that the driver is deploying any of the functions of the portable or hands-free electronic device, or has a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver's ear. "Use" of a portable or hands-free electronic device by a driver does not include a short, solely business-related communication in connection with a dispatch from a base using a FCC-licensed commercial two-way radio or if the electronic device used is mounted in a fixed position in the vehicle and is not hand-held, and if the communication is by voice or by use of one-touch pre-programmed buttons or function keys.

A driver may offer as an affirmative defense that he or she was using a portable or hands-free electronic device while operating a for-hire vehicle for the sole purpose of communicating with an emergency response operator that there exists an imminent threat to life or property, and that it was impossible for the driver to safely stop the vehicle before placing the call. The driver must provide documentary proof that the electronic communication was to an emergency response operator.

(2) Additional penalties for use of a portable or hands-free electronic device while operating a for-hire vehicle.

(i) For purposes of this paragraph (u)(2), "portable or hands-free electronic device violation" shall mean a violation of §6-16(u)(1) of this chapter or a violation of any state law or rule prohibiting or restricting the use of a portable or hands-free electronic device while driving, such violation having been adjudicated by a court or other tribunal having jurisdiction over such violations.

(ii) Any for hire vehicle driver who commits a portable or hands-free electronic device violation is required to attend and satisfactorily complete an authorized course of training in the dangers of driving while distracted by portable or hands-free electronic devices. The course shall be a minimum of one hour and shall include a review of the rules governing the use of portable or hands-free devices, and the dangers of driving while distracted. The course must be completed and verification of course completion provided by the designated school within sixty days of TLC's issuance of a directive to the for hire vehicle driver that he or she is required to take such course.

(v)(1) Notwithstanding the foregoing, each licensee, other than a licensee who is a City of New York Police Officer, also shall be tested annually, at the licensee's expense, for drugs or controlled substances, as set forth in §3306 of the Public Health Law. For licensees in the first year of a two-year license, such testing must occur no sooner than thirty (30) days prior to, and in any event no later than, the date one year prior to the expiration date of such license. For licensees in the second year of a two-year license, such testing must occur no sooner than thirty (30) days prior to, and in any event no later than the expiration date of such license. Such testing shall be performed by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health.

(2) If the results of said test are positive, the driver's license may be revoked after a hearing in accordance with §8-15 of this title. A finding that the driver has failed said test will result in revocation of the driver's license.

(3) Failure of a licensee in the first year of a two-year license to be tested no sooner than thirty (30) days prior to, and in any event no later than, the date one year prior to the expiration date of such license shall result in suspension of the driver's license in accordance with §8-17 of this title. If such licensee undergoes the required testing within thirty (30) days after the date one year prior to the expiration date of the current license, the suspension of the driver's license shall be lifted. If such licensee undergoes the required testing more than thirty (30) days after the date one year prior to the expiration date of the current license, such licensee shall also be required to pay a penalty of $200 to have the suspension of the driver's license lifted.

(4) Failure of a licensee in the second year of a two-year license to be tested by the expiration date of such license shall result in denial of a license renewal application, if any, and expiration of the license.

(w) A driver while stopped at the base with which the driver's vehicle is affiliated shall use the off-street parking

facilities required by section 6-04(b) of this chapter or, if not, shall comply with all applicable traffic and parking regulations.

(x) A driver while stopped at the base with which the driver's vehicle is affiliated must not create a nuisance such as by engaging in littering or the playing of loud audio material within the area set forth in section 6-07(b)(3) of this chapter. A driver must never engage in horn honking while stopped at the base.

(y) No driver of a for-hire vehicle shall require that any prospective passenger must share a ride with another prospective passenger.

(z) A driver during his or her workshift must keep the vehicle's interior clean and scent free.

(aa) All audio equipment controlled by the driver must be turned on or off at the request of the passenger. The passenger shall have the right to select what is played on the audio equipment. Whether or not the vehicle is hired, an audio device must be played at normal volume only, and all noise ordinances shall be complied with.

(bb) A driver must turn on or off heating or air-conditioning equipment at the request of the passenger.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (c) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

Subd. (e) amended City Record June 2, 2009 §26, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (e) amended City Record Nov. 22, 2006 §7, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Subd. (f) amended City Record Nov. 23, 2007 §11, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Subd. (h) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-25 Note 2]

Subd. (o) amended City Record June 2, 2009, 2009 §27, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subds. (o)-(r) added City Record July 8, 1997 §19, eff. Aug. 11, 1997. Language juxtaposed and redesignated by Taxi and Limousine Commission, pursuant to authority of City Corporation Counsel, to reflect major amendments and renumbering to Chapter 6 in City Record Apr. 29, 1997 and erroneously overlooked. [See T35 §4-01 Note 1]

Subd. (s) amended City Record Feb. 14, 2006 §3, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

Subds. (s), (t) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 3]

Subd. (u) amended City Record Dec. 30, 2009 §9, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Subd. (u) added City Record May 27, 1999 §4, eff. June 26, 1999. [See T35 §2-25 Note 1]

Subd. (v) amended City Record Feb. 14, 2006 §4, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

Subd. (v) amended (temporarily) City Record Nov. 21, 2005 §3, eff. Nov. 21, 2005 until Mar. 21, 2006 per Charter §1043(h) and 60 day extension notice in City Record Jan. 6, 2006. [See T35

§2-19 Note 2]

Subd. (v) amended (as subd. (s)) City Record Oct. 31, 2000 §5, eff. Nov. 30, 2000. [See T35 §2-03 Note 1]

Subd. (v) added City Record Apr. 12, 1999 §5, eff. May 12, 1999. Subdivision redesignated by Law Department per Charter §1045(b). [See T35 §2-19 Note 1]

Subd. (v) par (2) amended City Record Nov. 22, 2006 §11, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Subds. (w)-(bb) added City Record June 2, 2009 §28, eff. July 2, 2009. [See T35 §6-12 Note 4]

CASE AND ADMINISTRATIVE NOTES

¶ 1. For-hire vehicle driver threatened a passenger and drove in a manner that caused her to sustain physical injuries. Passenger credibly identified respondent as the driver of the vehicle. Respondent's version of events lacked credibility and was not supported by the documentary evidence he submitted. License revocation imposed. **Taxi and Limousine Comm'n v. Fofana**, OATH Index No. 151/00 (Oct. 15, 1999), **aff'd**, Comm'n Dec. (Jan. 5, 1999).

¶ 2. Driver asked passengers on trip from Newark airport to Manhattan for $45 instead of the pre-approved fare quoted by the dispatcher of $30 plus tolls and tip, in violation of paragraph (o) of this section. **Taxi and Limousine Comm'n v. Hadeir**, OATH Index No. 1560/99 (May 27, 1999), **modified on penalty**, Comm'n Dec. (July 12, 1999).

¶ 3. After spitting on TLC inspector, respondent, a for hire vehicle owner and operator, ran to his vehicle, accelerated and drove on the sidewalk to avoid traffic, which was unreasonable under the circumstances and endangered other vehicles and pedestrians. **Taxi and Limousine Comm'n v. Dadon,**, OATH Index No. 2147/00 (June 29, 2000), **modified on penalty,** Comm'r Dec. (Dec. 11, 2000).

¶ 4. Respondent, for hire vehicle owner and operator, violated a law governing stationary vehicles when he parked in a "No Standing" zone. **Taxi and Limousine Comm'n v. Dadon,** OATH Index No. 2147/00 (June 29, 2000), **modified on penalty,** Comm'r Dec. (Dec. 11, 2000).

¶ 5. For hire vehicle driver tested positive for cocaine, was found unfit and license revocation was recommended. **Taxi & Limousine Comm'n v. Almonte-Reynoso**, OATH Index No. 963/08 (Nov. 23, 2007).

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-17 Critical Driver Program.

(a) The for-hire vehicle driver's license of any driver who, within a period of fifteen months, accumulates six or more points against his license issued by the Department of Motor Vehicles or an equivalent license issued by the driver's state of residence, unless previously revoked, shall be suspended for thirty days.

(b) The for-hire vehicle driver's license of any driver who, within a period of fifteen months, accumulates ten or more points against his license issued by the Department of Motor Vehicles or an equivalent license issued by the driver's state of residence shall be revoked.

(c) The Commission may at any time review the fitness of a driver to be licensed by the Commission in view of any moving violation, accident, or other driving related incident. Nothing contained herein shall preclude the imposition by the Commission of additional or more severe penalties, or any other action deemed appropriate, in accordance with the Rules of the Commission.

(d) For the purpose of this rule, the points assigned by the Department of Motor Vehicles for any violation shall be deemed to have been accumulated as of the date of occurrence of the violation.

(e) The relevant fifteen month period to be used for calculating any suspension or revocation imposed under subsection (a) or (b) herein shall be calculated from the date of the most recent occurrence which led to a conviction of a violation carrying points; provided however, that no action under subsection (a) or (b) shall be taken with regard to any violation carrying points which occurred prior to February 15, 1999.

(f) For the purpose of calculating penalties pursuant to subsection (a) or (b), herein, a driver who has accumulated points for multiple violations arising from a single incident shall be deemed to have accumulated points for the single violation with the highest point total.

(g) Any licensee who voluntarily attends and satisfactorily completes a motor vehicle accident prevention course approved by the Department of Motor Vehicles, and who furnishes the Commission with proof that the course was completed, on or before August 31, 1999, shall have two (2) points deducted from the total number of points assessed for the purpose of determining any suspension or revocation pursuant to this Rule. No point reduction shall affect any suspension or revocation action which may be taken pursuant to these Rules prior to the completion of the course; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

(h) Any licensee who voluntarily attends and satisfactorily completes a motor vehicle accident prevention course approved by the Department of Motor Vehicles, and who furnishes the Commission with proof that the course was completed on or after September 1, 1999, shall have two (2) points deducted from the total number of points assessed pursuant to this Rule. No point reduction shall affect any suspension or revocation action taken pursuant to these Rules prior to the completion of the course. No person shall receive a point reduction pursuant to this subsection more than once in any eighteen month period; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

HISTORICAL NOTE

Section amended City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §2-07 Note 1]

Section added City Record Jan. 15, 1999 eff. Feb. 14, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 15, 1999:

The rule promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under §2303(a) of the New York City Charter, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in New York City; under §2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under §19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The rules establish a "Critical Driver Program," by which the Commission will review all driving infractions by taxicab and for-hire vehicle drivers which result in the imposition of "points" under Part 131 of the Regulations of the Department of Motor Vehicles ("DMV"). Those taxicab and for-hire vehicle drivers who accumulate six or more points on their New York State Department of Motor Vehicle Driver's Licenses within 18 months will have their TLC taxicab or for-hire vehicle driver licenses suspended for 30 days. Taxicab or for-hire vehicle ("FHV") drivers who accumulate ten or more points within a period of 18 months will have their taxicab or for-hire vehicle driver licenses revoked. This action will be taken irrespective of any action taken by DMV with respect to the licensee's state-issued operator's license.

The purpose of this rule is to protect public safety by suspending or revoking the licenses of individuals who have an unsatisfactory driving record. This rule will relate the existing DMV "point" system, whereby motorists convicted of certain moving violations are assigned points based upon the severity of the offense, to the motorists's TLC license. The number of points required for TLC action against an individual's hack or FHV operator's license is less than the number of points that would result in licensing action being taken by DMV. However, where DMV has assigned points for more than one violation arising out of a particular incident, only the violation carrying the greatest number of points will be used in calculating Critical Driver penalties. The result of this program will be to hold licensees of the Commission to a

higher standard with respect to their TLC licenses than the DMV currently holds the general public with respect to state-issued driver's licenses. This higher standard is justified based upon the direct impact licensees of the Commission have upon public safety.

A review of the driving records of TLC licensees indicates that a significant number of licensees have accumulated excessive points on their DMV licenses and are still permitted to hold both a State-issued driver's license and a TLC license. Many of these drivers have been involved in serious accidents causing personal injury and property damage. For example, there are more than 100 TLC licensees who have accumulated at least 17 points on their DMV licenses within the past eighteen months. No action against these licensees has been taken by DMV.

The Commission believes that adoption of the Critical Driver Program will reduce accidents and compel taxi and livery drivers to obey traffic regulations and operate their vehicles safely. This rule amendment may also reduce insurance costs by creating a better pool of qualified drivers. The Commission believes that a direct correlation between a licensee's DMV record and his or her ability to safely operate a taxicab or for-hire vehicle has been clearly established.

The proposed text of this rule was first published in the **City Record** on April 26, 1998. A public hearing on this proposal was held on May 28, 1998. The text of the proposed rule was redrafted to clarify language contained in the earlier draft and to respond to comments received by the Commission in writing and at the public hearing.

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35 RCNY 6-18

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-18 Personal Conduct of Licensees.

(a) No licensee shall offer or give any gift, gratuity or thing of value to any employee, representative or member of the Commission or any public servant.

(b) A licensee shall immediately report to the Commission any request or demand for a gift, gratuity or thing of value by any employee, representative or member of the Commission or any public servant.

(c) A licensee shall not offer or give any gift or gratuity or thing of value to a person or persons employed at any airport or other transportation terminal to provide ground transportation information services, dispatching service, security services, traffic and parking control or baggage handling whether or not such person or persons is employed by Port Authority of New York and New Jersey, LIRR, Metro-North or any similar entity.

(d)(1) A licensee, while performing his duties and responsibilities as a licensee, shall not commit or attempt to commit, alone or in concert with another, any act of fraud, misrepresentation or larceny against a passenger, Commission representative, public servant or any other person.

(2) A licensee, while performing his duties and responsibilities as a licensee, shall not commit or attempt to commit, alone or in concert with another, any willful act of omission or commission which is against the best interests of the public, although not specifically mentioned in these Rules.

(e) A licensee shall cooperate with all law enforcement officers and authorized representatives of the Commission, including but not limited to giving, upon request, his name, license number and other documents required to be in his

possession.

(f) A licensee shall not use or attempt to use any physical force against a passenger, Commission representative, public servant or other person, while performing his duties and responsibilities as a licensee or as a result of actions which occurred in connection with a licensee's performance of his duties as a licensee. A licensee shall not distract, harm or use physical force against or attempt to distract, harm or use physical force against a service animal accompanying a person with a disability.

(g) A licensee shall be responsible for answering truthfully and complying as directed with all questions, communications, directives, and summonses from the Commission or its representatives, as well as producing any licenses or other documents required to be kept by the Commission whenever the Commission requires him to do so, within ten days of notification. A base owner shall have an affirmative duty to aid the Commission in obtaining information sought by the Commission regarding drivers or vehicles affiliated with such base.

(h) Except as provided in Rule 6-15(e), a licensee shall be responsible for notifying the Commission within fifteen (15) calendar days after any felony conviction of the licensee, individually, or, in the case of a base, as a member of a partnership or any officer of a corporation. Such notification shall be in writing and must be accompanied by a certified copy of the certificate of disposition issued by the clerk of the court with respect to such conviction.

(i) A licensee shall not threaten, harass or abuse a passenger, Commission representative, public servant or other person, while performing his duties and responsibilities as a licensee. A licensee shall not harm or use physical force against or attempt to harm or use physical force against a service animal accompanying a person with a disability.

(j) A licensee shall be courteous to passengers.

(k) The owner or operator of a vehicle licensed by a qualified jurisdiction operating in the City of New York pursuant to §498 of the New York State Vehicle and Traffic Law must comply with the provisions of subdivisions (a) through (g) and (i) through (j) of this section as though such owner or operator was a "licensee" under this section.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (d) amended City Record Aug. 10, 1998 §5, eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

Subds. (f), (i) amended City Record July 8, 1997 §§16, 18 eff. Aug. 11, 1997. Language juxtaposed and amended by Taxi and Limousine Commission, pursuant to authority of City Corporation Counsel, to reflect major amendments and renumbering to Chapter 6 in City Record Apr. 29, 1997 and erroneously overlooked. [See T35 §4-01 Note 1]

Subd. (j) added City Record June 26, 1998 eff. July 26, 1998. [See Note 1]

Subd. (k) added City Record Nov. 22, 2006 §8, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1998:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the

business and industry of transportation of persons by licensed vehicles for hire in the city; under Section 2303(b)(2) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes and to regulate standards and conditions of service; and under Section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The regulations increase the penalties for discourteous conduct and smoking in a taxicab, increase the penalty for smoking in a for-hire vehicle, and prohibit discourteous conduct against passengers by for-hire vehicle operators.

The purpose of the regulations is to protect the riding public and enhance the quality of life for passengers who utilize taxicab or for-hire vehicle services. The existing rules of the Commission prohibit licensed medallion taxicab drivers from engaging in rude and discourteous conduct toward passengers. The present penalty of $25 is not a deterrent to such misconduct. Commission studies have shown a substantial increase in the number of convictions under this rule in recent years. There were 672 convictions for discourteous conduct during 1997, and 350 convictions for this violation during the first four months of 1998.

The penalty imposed for smoking in a taxicab or for-hire vehicle ($25) is inconsistent with provisions of the New York State Public Health Law and the New York City Indoor Clean Air Act, which impose higher penalties for similar misconduct. State and local laws carry penalties of at least $100 per violation for such activity. While state and local laws do not prohibit drivers from smoking in unoccupied taxicabs, there is a serious concern regarding the health risks of breathing second hand smoke in enclosed places, such as taxicabs. Convictions under the smoking rules increased by more than seventy (70%) percent in 1997, to 172 convictions for smoking in a taxicab or for-hire vehicle. The conviction data shows that smoking in taxicabs remains a serious health concern.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A driver of for-hire vehicles licensed pursuant to this chapter, who actually received a Commission summons to attend a licensing standards hearing but failed to appear at the hearing, thereby violated paragraph (g) of this section. Taxi and Limousine Commission v. Herrera, OATH Index No. 509/98 (Nov. 20, 1997).

¶ 2. Car service violated section 6-18(d), which prohibits acts against the best interest of the public, by permitting drug trafficking on its premises. License revocation imposed. **Taxi and Limousine Comm'n v. Haven Car Service Corp.,** OATH Index No. 652/99 (Jan. 22, 1999).

¶ 3. Respondent refused to comply with reasonable directions to produce his driver's credentials when pulled over for operating an unlicensed for-hire vehicle. Respondent shoved inspectors and resisted arrest. License revocation recommended for resisting authority and physical assault on inspectors. **Taxi and Limousine Comm'n v. Jacotin**, OATH Index No. 396/99 (Jan. 26, 1999).

¶ 4. For-hire vehicle driver threatened a passenger and drove in a manner that caused her to sustain physical injuries. Passenger credibly identified respondent as the driver of the vehicle. Respondent's version of events lacked credibility and was not supported by the documentary evidence he submitted. **Taxi and Limousine Comm'n v. Fofana**, OATH Index No. 151/00 (Oct. 15, 1999).

¶ 5. For-hire vehicle driver asked passengers on trip from Newark airport to Manhattan for $45 instead of the pre-approved fare of $30 plus tolls and tip quoted by the dispatcher. When passengers refused, the driver stopped the car and indicated that he would not continue because passengers had a dog in the car. A verbal exchange took place between the driver and passengers. After a conversation with the livery owner appeared to resolve the matter, the trip resumed, but the driver continued to complain and the passengers got out of the cab at a stop light. Driver violated paragraph (I) of this section, but it appeared that one passenger may have intimidated him, there was no physical contact, and the driver ultimately agreed to continue the trip, although the passengers eventually left the vehicle. Suspension of license for one year recommended. Commissioner imposed revocation, stating that it has consistently

revoked the licenses of drivers who have committed similar violations. **Taxi and Limousine Comm'n v. Hadeir**, OATH Index No. 1560/99 (May 27, 1999), **modified on penalty**, Comm'n Dec. (July 12, 1999).

¶ 6. Respondents were two for-hire vehicle drivers. One of respondents instigated an argument with a passenger and then drove the passenger to an unrequested destination, physically dragged the passenger's ten-year-old son out of the vehicle, and punched the passenger and brandished a knife. The other respondent was found to have struck the passenger with a tire iron. **Taxi and Limousine Comm'n v. Luna**, OATH Index Nos. 2129-30/99 (July 16, 1999).

¶ 7. For-hire vehicle drivers are prohibited from soliciting or picking up passengers by means other than by prearrangement through a licensed base. 35 RCNY § 6-16(f). In a default proceeding, respondent Luna was found to have violated rule 6-16(f) when he accepted a street hail. **Taxi and Limousine Comm'n v. Luna**, OATH Index Nos. 2129-30/99 (July 16, 1999).

¶ 8. Administrative law judge found respondent to have offered a gratuity to Commission clerk to process his application out of turn. **Taxi and Limousine Comm'n v. Luna,** OATH Index No. 774/00 (Mar. 6, 1999), **modified on penalty,** Comm'n Dec. (May 22, 2000).

¶ 9. Respondent engaged in misconduct, when he directed profanities and spit at Commission inspectors who wrote three summonses and confiscated respondent's TLC driver's license. **Taxi and Limousine Comm'n v. Dadon,** OATH Index No. 2147/00 (June 29, 2000), **modified on penalty,** Comm'r Dec. (Dec. 11, 2000).

¶ 10. Commissioner/Chair held a racial slur made by a driver, which was directed against a Commission ALJ in a communication to the Commission's presiding ALJ, constituted violation of subsection (d)(2), an act against "the best interests of the public," and subsection (i) of this section, harassment and/or abuse of a Commission representative. The OATH ALJ had found only a violation of subsection (i) and no violation of subsection (d)(2) because the communication was to a Commission representative and petitioner did not demonstrate a nexus to the public. The Commissioner/Chair adopted the OATH ALJ's penalty recommendation of license revocation and $1700 fine. **Taxi & Limousine Comm'n v. Shavel**, OATH Index No. 2410/07 (Aug. 23, 2007), **accepted**, Comm'r/Chair Decision (Sept. 4, 2007).

¶ 11. Pursuant to subsection (g) of this section, for-hire vehicle drivers are required to comply with directives from the Commission and its representatives. Driver was found to have failed to comply with a directive to appear at an interview to answer questions regarding an allegation that he used a fraudulent Social Security number to obtain two licenses from the Commission. The penalty for a proven violation of this rule is a $200 fine and license suspension until driver complies with directive. Suspension until compliance, without fine, imposed where Commission requested only that sanction. **Taxi & Limousine Comm'n v. Avila**, OATH Index No. 1299/08 (Jan. 11, 2008).

¶ 12. Under subsection (i) of this section, a licensee is considered to be "performing his duties and responsibilities as a licensee" while on Commission property conducting business with Commission representatives. The respondent was the holder of a for-hire vehicle license who used profanity toward a Commission employee while applying for a hack license. Although he was not engaged in the duties and responsibilities of a driver, the licensee should have comported himself in accordance with Commission rules. **Taxi & Limousine Comm'n v. Sandy**, OATH Index No. 362/09 (Sept. 8, 2008).

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35 RCNY 6-19

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-19 Franchise Sales Act.

The Commission shall not grant a license to, nor renew the license of, any base owner who is offering and selling franchises as defined by the New York Franchise Sales Act (Act) in violation of said Act, and may suspend or revoke the license of any base owner found to have violated the provisions of said Act. In determining whether a base owner is in violation of the Act, the Commission may rely upon the written advice of the New York State Department of Law certifying to the Commission that the base owner is in violation of the Act.

HISTORICAL NOTE

Section renumbered (formerly §6-10) City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Section renumbered (formerly §6-08) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

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***** Current through December 2009 ****

35 RCNY 6-20

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-20 Seizure and Forfeiture of Unlicensed Vehicles for Hire.

(a) **Seizure.** In accordance with §19-506(h) of the Administrative Code, any officer or employee of TLC designated by the Chairperson of TLC, and any police officer may, upon service of a summons for violation of subdivision b or c of §19-506 of the Administrative Code, seize any vehicle which such officer or employee has probable cause to believe is operated or offered to be operated without an appropriate vehicle license in violation of such subdivision b or c. A vehicle seized in accordance with such §19-506(h) shall be removed to a designated secured facility.

(b) **Summons and Notice of Seizure.** (1) The officer or employee effecting seizure shall serve a summons for violation of subdivision b or c of §19-506 of the Administrative Code upon the owner of the seized vehicle, by service upon the owner or upon a person who uses or owner, express or implied.

(2) An officer or employee of TLC who effects seizure as described in §6-20(a) shall also deliver to the vehicle owner a notice of seizure, including identification of the seized vehicle and information concerning these regulations and the designated secured facility to which the vehicle was or will be taken. Such notice of seizure may be delivered in the same manner as service of the summons.

(3) An officer or employee of TLC shall also mail a notice of seizure and a copy of the summons to the owner of the vehicle. Any defect in delivery or mailing of a notice of seizure or in mailing of a copy of the summons shall not affect the validity of service of a summons upon the owner as described in §6-20(b)(1) herein.

(c) **Expedited hearing concerning a seized vehicle.** The summons shall set forth a date and time for a hearing in

the administrative tribunal of TLC. Such hearing shall be held within fourteen business days after seizure. If the seized vehicle has been released pursuant to §6-20(d), such hearing is not required to be scheduled on an expedited basis.

(d) **Release of a seized vehicle prior to the scheduled hearing.** (1) An owner may obtain the release of the vehicle by appearing at the administrative tribunal with the notice of violation, on or before the scheduled hearing date, either to:

(i) Plead Guilty and be assessed a civil penalty by an administrative law judge. TLC staff shall also determine the amount of removal and storage fees. The owner must pay in full the civil penalty and removal and storage fees. Upon such payment, TLC shall issue an order to release the vehicle. The owner or his agent may present the order at the designated secured facility to obtain the vehicle.

(ii) Post a bond in the amount of the maximum civil penalty, plus removal and storage fees. Upon the posting of such bond, TLC shall issue an order to release the vehicle. The owner or his agent may present the order at the designated secured facility to obtain the vehicle.

(2) If the owner does not obtain the vehicle by the date specified in the order of release, the owner shall be responsible for any further storage fees, and payment of such fees shall be made before the release of the vehicle.

(e) **Decisions at the expedited hearing.** (1) If the Administrative Law Judge dismisses the summons, the Administrative Law Judge shall issue an order for release of the seized vehicle without removal and storage fees.

(2) If the Administrative Law Judge finds that the owner was in violation and that this was not the third or subsequent violation by the owner of subdivisions b or c of §19-506 of the Administrative Code committed on or after February 20, 1990 and within a thirty-six month period, the Administrative Law Judge shall assess a civil penalty as provided in §19-506(e) of the Administrative Code, and TLC staff shall assess removal and storage fees. The owner must pay the civil penalty and removal and storage fees in order to obtain from TLC an order for release of the seized vehicle.

(3) If the Administrative Law Judge finds that the owner was in violation and that this was the third or subsequent violation by the owner of subdivisions b or c of §19-506 of the Administrative Code committed on or after February 20, 1990 and within a thirty-six month period, the Administrative Law Judge shall set a civil penalty, as provided in §19-506(e) of the Administrative Code, and shall issue a notice to the owner and to the Chairperson of TLC or his designee that the vehicle is subject to forfeiture upon a judicial determination.

(4) **Inquest hearings.** If the owner of the seized vehicle fails to appear for the hearing, an inquest hearing will be held. An administrative law judge shall make a determination pursuant to paragraph (1), (2), or (3) of this subdivision (e). TLC will inform the respondent of the inquest determination by first class mail. The information mailed to the owner shall include the provisions of §6-20(i) herein concerning abandoned vehicles. The respondent may appear at TLC offices within seven business days of such mailing to comply with the inquest determination or to move in the administrative tribunal to vacate such inquest determination. In the event that such inquest determination is vacated, the respondent shall be entitled to a hearing de novo on the original summons. Such hearing shall be scheduled within fourteen business days of the order vacating the inquest determination.

(f) **Appeals.** If found in violation of subdivisions b or c of §19-506 of the Administrative Code, an owner must pay the civil penalty together with removal and storage fees in order to appeal. However, if the decision to be appealed was made pursuant to §6-20(e)(3), the owner must pay only the civil penalty in order to appeal. If upon appeal the decision is reversed in whole or part, the owner shall receive a refund of the relevant civil penalty and fees.

(g) **Forfeiture.** (1) In addition to the penalties set forth in §19-506(e) of the Administrative Code, if an owner is convicted in the criminal court or found in the TLC administrative tribunal to be in violation of subdivisions b or c of §19-506 of the Administrative Code three or more times, and all of such violations were committed on or after February

20, 1990 and within a thirty-sixth month period, the interest of such owner in any vehicle used to commit such third or subsequent violation shall be subject to forfeiture upon notice and judicial determination.

(2) The Chairperson of the TLC or his designee shall determine whether to pursue the remedy of forfeiture. If such person determines not to pursue the remedy of forfeiture, the owner shall be so notified by first class mail. The owner may obtain an order of release of the vehicle by paying the civil penalty determined pursuant to §6-20(e)(3) together with removal and storage fees.

(3) A forfeiture proceeding shall be commenced by proper service upon the owner of a summons and other papers pursuant to the provisions of the civil practice law and rules.

(h) **Public sale pursuant to forfeiture.** (1) After a judicial determination of forfeiture, but no sooner than thirty days after such determination and upon notice of at least five days, the TLC shall sell such forfeited vehicle at public sale, except as provided in paragraph (2) herein. Such notice of sale shall be published in the City Record or in a newspaper of general circulation, and shall also be mailed to any lienholder or mortgagee shown in the records of the jurisdiction which issued the number license plates on the vehicle.

(2) Any person, other than an owner whose interest is forfeited pursuant to §19-506 of the Administrative Code and these rules, who establishes a right of ownership in a vehicle, including a part ownership or security interest, shall be entitled to delivery of the vehicle if such person:

(i) redeems the ownership interest which was subject to forfeiture by payment to the city of the value thereof;

(ii) pays the reasonable expenses of the safekeeping of the vehicle between the time of seizure and such redemption; and

(iii) either

(A) asserts a claim in the forfeiture proceeding, or

(B) submits a claim in writing to the Commission within thirty days after judicial determination of forfeiture.

(3) Notwithstanding paragraphs (1) and (2) of this subdivision (h), establishment of a right of ownership shall not entitle a person to delivery of a vehicle if TLC establishes in the forfeiture proceeding or in a separate administrative adjudication of a claim asserted pursuant to §6-20(h)(2)(iii) herein that the violations of subdivisions (b) or (c) of §19-506 of the Administrative Code upon which the forfeiture is predicated were expressly or impliedly permitted by such person.

(4) If a person asserts a claim pursuant to §6-20(h)(2)(iii)(B) herein, the TLC shall schedule an adjudication of such claim in its administrative tribunal. Notice of the hearing shall be mailed to the claimant at least ten business days in advance of the hearing. The administrative law judge shall rule as to whether the violations upon which the forfeiture was predicated were expressly or impliedly permitted by the claimant. If the administrative law judge finds that there was such permission by the claimant, the claim shall be denied.

(i) **Abandoned vehicles.** (1) If an owner does not assert an interest in a seized vehicle by removing it from storage within the time periods specified in paragraph (2) of this subdivision (i), the vehicle shall be deemed abandoned. A declaration of such abandonment may be made by the Deputy Commissioner for legal affairs of TLC or his designee, without further hearing.

(2) A vehicle shall be deemed abandoned, pursuant to paragraph (1) herein, if an owner:

(i) has not removed the vehicle from storage within five days of obtaining an order of release pursuant to §6-20(d) or (e) herein; or

(ii) has not paid the civil penalty and removal and storage fees within five days of a hearing determination of violation pursuant to §6-20(e)(2) herein, or within seven days after notice of an inquest determination of violation was mailed to the owner pursuant to §6-20(e)(4) herein; or

(iii) has not obtained an order vacating inquest determination of violation and setting a hearing de novo, within seven days after notice of such inquest determination was mailed to the owner pursuant to §6-20(e)(4) herein; or

(iv) has not paid the civil penalty and removal and storage fees, within seven days after a notice that the TLC shall not pursue the remedy of forfeiture was mailed to the owner pursuant to §6-20(g)(2) herein.

(3) In the event that a vehicle has been deemed abandoned pursuant to paragraphs (1) and (2) of this subdivision (i), TLC shall mail to the owner a notice that the vehicle has been recovered by TLC as an abandoned vehicle and that, if unclaimed, its ownership shall vest in TLC and it will be sold at public auction or by bid after ten days from the date such notice was mailed. Such notice shall also be mailed to any lienholder or mortgagee shown in the records of the jurisdiction which issued the number of license plates on the vehicle.

(4) An owner, lienholder or mortgagee may claim the vehicle within ten days from the date that the notice described in paragraph (3) of this subdivision (i) was mailed, by paying the removal and storage fees due and, in the case of an owner, the civil penalty claimed as a lien by TLC on such vehicle.

(5) In the event that an abandoned vehicle is not claimed within ten days after the notice described in paragraph (3) of this subdivision (i) was mailed, ownership of the abandoned vehicle shall vest in TLC. TLC may sell an abandoned vehicle at public auction or by bid. Any proceeds from the sale, less expenses incurred for removal, storage and sale of the vehicle, and less the civil penalty claimed as a lien by TLC, shall be held without interest for the benefit of the former owner of the vehicle for one year. If not claimed within such one year period, such proceeds shall be paid into the general fund of TLC.

(j) **Removal and storage fees.** (1) The removal fee shall be one hundred fifty dollars ($150).

(2) The storage fee shall be a rate set by New York City Department of Transportation.

HISTORICAL NOTE

Section amended City Record Aug. 29, 1997 eff. Oct. 1, 1997. [See Note 1]

Section renumbered (formerly §6-11) City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06

Note 1]

Section renumbered (formerly §6-10) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04

Note 3]

Subd. (j) amended (as part of §6-11) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04

Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 29, 1997:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the

business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under section 19-506(h) of such Code, authorizing TLC to promulgate regulations concerning the seizure and release of seized vehicles.

The promulgated rule extends the period of time within which TLC is required to schedule a hearing for the owner of a seized vehicle for hire. This time period is extended from seven calendar days to fourteen business days. That is an extension of between eleven and thirteen more calendar days which would be permitted prior to holding a hearing. Under the new rules, TLC may schedule such hearings within up to twenty days rather than within seven days. This flexibility will allow for more efficient scheduling and management of TLC's case load.

Based upon comments received, the proposal was modified, to permit those vehicle owners who are currently prohibited from posting a bond to be permitted to post a bond. Under current rules, the owner of a seized vehicle may not post a bond, if the owner has been found in violation for operation of an unlicensed vehicle for hire on two or more occasions within thirty-six months. The purpose of this modification is to ensure that all owners have the opportunity to redeem their vehicle prior to a hearing, when the time which may elapse prior to a hearing is extended.

The rulemaking has also been modified to include technical amendments. Citations to section numbers have been amended to reflect the correct section.

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35 RCNY 6-21

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-21 Procedure in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section renumbered (formerly §6-08) City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Section renumbered (formerly §6-06) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (a) amended City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (b) amended City Record Aug. 29, 1997 eff. Oct. 1, 1997. [See T35 §6-20 Note 1]

Subd. (f) amended City Record May 15, 1995 §3, eff. June 19, 1995. [See T35 §1-85 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-22

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-22 Penalties for Violation of For-Hire Vehicle Rules.

Rule No.	PenaltyAll fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	Personal Appearance Required
§6-02(a)(3)	$25	No
§6-02(b)(3)	[Repealed]	
§6-04(a)	$200-1,500 and one penalty point, plus any applicable penalties under the NYC Administrative Code for unlicensed operation.	Yes
§6-04(b)(4)(ii)	Revocation	Yes
§6-04(e)	$250 for failure to post or maintain bond; one penalty point for draw on bond.	No
§6-04(h)(1)	$25 for each day of non-compliance, to a maximum of $10,000, and either suspension until compliance or base license revocation.	Yes
§6-04(h)(2)	$25 for each day of non-compliance, to a maximum of $10,000, and either suspension until compliance or base license revocation.	Yes
§6-04(h)(3)	$25 for each day of non-compliance, to a maximum of $10,000, and either suspension until compliance or base license revocation.	Yes
§6-04(h)(4)	$500-$5,000 for each twenty days said payment is overdue, and suspension until compliance or revocation, together with restitution to the Fund for any unpaid amount, together with interest at the rate of 12 percent per annum.	Yes

§6-04(h)(5)	$500-$10,000 and suspension until compliance or revocation.	Yes
§6-04(i)(1)	$25 for each day of non-compliance, to a maximum of $10,000, and either suspension until compliance or base license revocation	Yes
§6-05(e)	Revocation	Yes
§6-06(a)(1)	Suspension until minimum is met	Yes
§6-06(a)(2)	Suspension until requirement is met	Yes
§6-06(a)(3)	Suspension until requirement is met	Yes
§6-06(a)(6)	$50	No
§6-06(a)(7)	$50	No
§6-06(a)(8)	$50	No
§6-06(b)(1)	$350-first violation	Yes
	$500-second violation in 24 monthsRevocation for third violation in 36 months	
§6-06(b)(2)	$250	No
§6-06(b)(3)	$100	No
§6-06(b)(5)	$100	No
§6-06(b)(6)	$50	No
§6-06(c)	$100	No
§6-06(d)	Suspension of base license and one penalty point	Yes
§6-06(e)	Suspension of base license	Yes
§6-06(f)	$250 and suspension until compliance and one penalty point	Yes
§6-06(g)(1)	$100	No
§6-06(g)(2)	$500	No
§6-07(a)	$100 for failure to provide quote on request. $200 for passenger overcharge, whether from any quote or from schedule of fares requires to be filed with the Commission.	No
§6-07(b)	First occasion-$50	Yes
	Second and subsequent occasions-$100-250A base which has been found in violation of Rule 6-07(b) on six dates within twelve months shall not have its base license renewed	
§6-07(c)	$25-100	Yes
§6-07(d)	$100-250	Yes
§6-07(e)	$350-1,000 and/or suspension up to 30 days or revocation	Yes
§6-07(f)	$1000 and, if the violation includes failure to maintain either an affiliated accessible vehicle or an arrangement with another base to provide such service, suspension of the base license until compliance	Yes
§6-07(g)	Suspension until compliance	Yes
§6-07(j)	$150	No
§6-07(k)	$150	No
§6-08(c)	$50	No
§6-08(d)	$25-100	Yes
§6-08(e)	$50	No
§6-09(c)	$250-first violation	No
	$500-second violation within 24 months	No
§6-11(a)	One penalty point, plus $500 for the first offense in 12 months; $1000 for the second and subsequent offenses within a 12-month period.	No
§6-11(b)	One penalty point and $100-350 and/or suspension up to 30 days; summary suspension until compliance pursuant to §8-17(b) of this	Yes

	title.	
§6-11(c)	$150 plus penalties applicable for unlicensed operation	Yes
§6-11(d)(1)	$150-350 and/or suspension up to 30 days	Yes
§6-11(d)(2)	$150-350 and/or suspension up to 30 days	Yes
§6-11(d)(3)	$100	No
§6-11(d)(4)(a),(b) or (c)	$350 and suspension until compliance	Yes
§6-11(d)(5)	$500-1,000	Yes
§6-11(d)(6)	$150 and $25 for each day of violation thereafter and suspension until compliance	Yes
§6-11(e)(1)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes
§6-11(e)(2)	$25	No
§6-11(e)(3)	$50	No
§6-11(f)	$50	No
§6-11(h)	$50	No
§6-11(i)	Suspension of the vehicle owner license	Yes
§6-11(j)	$50 per day until information is supplied	Yes
§6-11(k)	$25-250	Yes
§6-11(l)(1)	$100	No
§6-11(l)(2)	$500	No
§6-11(m)	Suspension until satisfaction or payment	No
§6-11(o)	Revocation of previously issued permit	Yes
§6-11(r)	Revocation	Yes
§6-12(a)	For failure to have the proper decal(s): $500 for the first offense in 12 months; $1,000 for the second offense and subsequent offenses within a 12-month period for the base and the vehicle owner; and suspension of the for-hire vehicle permit until compliance. For failure to complete the decal(s) correctly: $100 for the vehicle owner	No
§6-12(b)	$100	No
§6-12(c)	Base: $350. Vehicle: $100 and suspension of the vehicle owner license until the condition is corrected plus one penalty point.	No for Base. Yes for Vehicle
§6-12(d)	$100	No
§6-12(e)(1)	$100	No
§6-12(e)(2)	$100	No
§6-12(e)(3)	$350 and summary suspension until compliance pursuant to §8-17(b) of this title	No
§6-12(e)(4)	Base: $300 and one penalty point	No
§6-12(f)(1)	$25	No
§6-12(f)(1)(i)	$25	No
§6-12(f)(1)(ii)	$50	No
§6-12(f)(2)	$50	No
§6-12(f)(3) or (4)	$75	No
§6-12(g)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes
§6-12(h)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes

§6-12(i)	$50	No
§6-12(j)	$50 for each violation of this rule; however, no fine for a violation of this rule shall exceed $100	Yes
§6-12(k)	$100	No
§6-12(u)-(o)	[8 entries Repealed]	
§6-12.1(a)(1)	Base: $500, except if the DMV status of the driver's license is not available on the Commission's Web site; Vehicle: $100 and one penalty point	No
§6-12.1(a)(2)	Base: $500 for the first violation in 12 months$800 for each subsequent offense within a 12-month periodVehicle owner: $350 and one penalty point	No
§6-12.1(a)(3)	Revocation and $10,000	Yes
§6-12.1(b)	Vehicle owner: $100-350 and/or suspension up to 30 days; summary suspension until compliance pursuant to §8-17(b) of this title	Yes
§6-12.1(c)(1)	$100-250	Yes
§6-12.1(c)(2)	$100-250	Yes
§6-12.1(d)	Vehicle owner: $10,000 and license suspension until compliance if alteration is not approved. $10,000 and license revocation if certification sticker is altered.Base: $1,000	Yes
§6-12.1(e)	Suspension of for-hire vehicle permit or recognition of issuing jurisdiction vehicle license until compliance.	No
§6-12.1(f)	Vehicle: During any license term, $100 for the first violation during such term, with the penalty increasing by $100 for each subsequent violation up to a maximum of $10,000.	No
§6-12.1(h)	$50	No
§6-12.1(i)	$50	No
§6-12.1(j)	$50	No
§6-12.1(k)	$50	No
§6-13(a)	$350 and suspension until the condition is corrected	Yes
§6-13(b)	$100 and suspension until the condition is corrected	Yes
§6-13(c)	$50	No
§6-15(a)(1)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes
§6-15(a)(2)	$100-350, and/or suspension up to 30 days; summary suspension until compliance pursuant to §8-17(b) of this title.	Yes
§6-15(c)	$100	No
§6-15(d)(1)	$25	No
§6-15(d)(2)	$50	No
§6-15(d)(3)	$25	No
§6-15(d)(4)	$250	No
§6-15(e)	$100	No
§6-15(f)	$75-150	Yes
§6-15(g)	$50	No
§6-15(h)	Suspension until satisfaction or payment.	No
§6-16(a)	$350-1,000 and/or suspension up to 30 days or revocation if driver is found guilty of having violated this rule more than 3 times within an 18 month period.	Yes
§6-16(b)	$25-250 and/or suspension up to 30 days	Yes
§6-16(c)(1)	$50	No

§6-16(c)(2)	$150	No
§6-16(c)(3)	$250	No
§6-16(d)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes
§6-16(e)	$50 for each violation of this rule; however, no fine for a violation of this rule shall exceed $100.	Yes
§6-16(f)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes
§6-16(g)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes
§6-16(h)	Revocation	Yes
§6-16(i)(1)	$50-100	Yes
§6-16(i)(2)	$50-100	Yes
§6-16(i)(3)	$50-100	Yes
§6-16(j)	For offenses occurring prior to July 26, 1999, $50 for the first conviction within a 12 month period and $150 for each subsequent conviction. For offenses occurring on or after July 26, 1999, $150.	No
§6-16(k)	$50	No
§6-16(l)	Revocation and $5,000	Yes
§6-16(m)	$75	No
§6-16(n)	$50	No
§6-16(o)	$100-250 except that the penalty for seeking a tip shall be $50, and order restitution of overcharge to the passenger	Yes
§6-16(p)	$75 for a violation involving a person $25 for a violation involving luggage	No
§6-16(q)(1)	$200-350 for the first violation $350-500 for a subsequent violation within thirty-six months	Yes
§6-16(q)(2)	$100-250 and order restitution of any overcharge to the passenger	Yes
§6-16(q)(3)	$200-350	Yes
§6-16(t)	Revocation	Yes
§6-16(u)	$200	No
§6-16(u)(1)	$200	No
§6-16(w)	$50	No
§6-16(x)	$50	No
§6-16(y)	$50	No
§6-16(z)	$25	No
§6-16(aa)	$25	No
§6-16(bb)	$25	No
§6-18(a)	Revocation and $10,000	Yes
§6-18(b)	$1,000 up to revocation	Yes
§6-18(c)	Base and Driver: $1,000 up to revocation Vehicle Owner: $250-1,000	Yes
§6-18(d)(1)	$350-1,000 and/or suspension up to 60 days or revocation	Yes
§6-18(d)(2)	$150-350 and/or suspension up to 30 days or revocation	Yes
§6-18(e)	$15-150	Yes
§6-18(f)	$500-1,500 and/or suspension up to 60 days or revocation	Yes
§6-18(g)	$200 and suspension until compliance	Yes

§6-18(h)	$50	No
§6-18(i)	$350-1,000 and suspension up to 30 days or revocation	Yes
§6-18(j)	$150	No
§6-25(a)	$300	No
§6-25(b)	$300	No
§6-26(a)(1)	$300	No
§6-26(a)(2)	$100	No
§6-26(a)(3)	$350	No
§6-26(a)(4)	$100	No
§6-26(a)(5)	$300	No
§6-26(a)(6)	Notice to Correct w/10 days	N/A
§6-27(a)(1)	$350	No
§6-27(a)(2)	$100	No
§6-27(a)(3)	$350	No
§6-27(a)(4)	$300	No
§6-28	See chapter 16 of this title	See chapter 16 of this Title
§6-29(b)	Revocation	Yes
§6-29(d)	Revocation	Yes

**Not Applicable

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Section amended City Record June 26, 1998 eff. July 26, 1998.

Penalty column heading amended City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-02(b)(3) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-04(a) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-04(b)(4)(ii) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-04(e) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-04(h)(1) so designated (former §6-04(i)(1)) City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-04(h)(2) so designated (former §6-04(i)(2)) City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-04(h)(3) so designated (former §6-04(i)(3)) City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-04(h)(4) so designated (former §6-04(i)(4)) City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-04(h)(5) so designated (former §6-04(i)(5)) City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-04(i)(1) so designated (former §6-04(j)(1)) and amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-04(i)(1) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

§6-04(i)(2) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

§6-04(i)(3) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

§6-04(i)(4) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

§6-04(i)(5) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

§6-04(j) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

§6-05(e) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(a)(6) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(a)(7) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(a)(8) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(b)(5) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(b)(6) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(d) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(f) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(g)(1) added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

§6-06(g)(2) added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

§6-07(a) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-07(e) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§6-07(f) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-07(f) added City Record Dec. 19, 2000 §2, eff. Jan. 18, 2001. [See T35 §6-07 Note 1]

§6-07(g) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-07(j) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-07(k) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-09(c) added City Record May 23, 2008 §4, eff. June 22, 2008. [See T35 §6-09 Note 1]

§6-11(a) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-11(b) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-11(b) amended City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-11(c) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-11(d)(4) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Notes 1, 2]

§6-11(d)(4)(a)(b) or (c) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §6-11 Note 1]

§6-11(d)(5) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 1]

§6-11(g)(1) added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

§6-11(g)(2) added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

§6-11(m) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-11(o) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-11(r) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(a) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(c) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(e)(2) added City Record Apr. 13, 2006 §2, eff. May 13, 2006. [See T35 §6-12 Note 3]

§6-12(e)(4) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(f) amended City Record Sept. 20, 1999 §2, eff. Oct. 20, 1999. [See T35 §6-12 Note 1]

§6-12(f)(1)(i) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(f)(1)(ii) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(f)(3) or (4) added City Record May 23, 2007 §9, eff. June 22, 2007. [See T35 §1-35 Note 1]

§6-12(j) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(k) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(k)(1) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(k)(2) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(k)(3) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(k)(3) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§6-12(l) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(m)(1) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(m)(2) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(n) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(n) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §6-11 Note 1]

§6-12(o) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(o) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-12.1(a)(1) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(a)(2) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(a)(3) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(b) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(c)(1) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(c)(2) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(d) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(e) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(f) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(h) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(i) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(j) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(k) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-13(c) added City Record Apr. 23, 2007 §7, eff. May 23, 2007. [See T35 §1-17 Note 4]

§6-15(a)(2) amended City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-15(h) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-16(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§6-16(b)(2) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§6-16(b)(3) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§6-16(c)(1) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§6-16(e) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(h) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-25 Note 2]

§6-16(j) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §6-18 Note 1]

§6-16(l) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§6-16(o) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(t) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 3]

§6-16(u) added City Record May 27, 1999 §6, eff. June 26, 1999. [See T35 §2-25 Note 1]

§6-16(u)(1) amended City Record Dec. 30, 2009 §10, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

§6-16(v)(3) added (replaces §6-16(v)) City Record Feb. 14, 2006 §5, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

§6-16(v) added (temporarily) City Record Nov. 21, 2005 §4, eff. Nov. 21, 2005 until Mar. 21, 2006 per Charter §1043(h) and 60 day extension notice in City Record Jan. 6, 2006. [See T35 §2-19 Note 2]

§6-16(w) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(x) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(y) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(z) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(aa) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(bb) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-18(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§6-18(f) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§6-18(g) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-86 Note 1]

§6-18(i) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§6-18(d)(1) amended City Record Aug. 10, 1998 §6, eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

§6-18(d)(2) added City Record Aug. 10, 1998 §6, eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

§6-18(g) amended City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

§6-18(j) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §6-18 Note 1]

§6-25(a) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-25(b) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-26(a)(1) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-26(a)(2) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-26(a)(3) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-26(a)(4) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-26(a)(5) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-26(a)(6) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-27(a)(1) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-27(a)(2) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-27(a)(3) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-27(a)(4) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Endnote added City Record Feb. 14, 2006 §5, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

§6-28 added City Record Nov. 23, 2007 §13, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

§6-29(b) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-29(d) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

Endnote added City Record Nov. 21, 2005 §4, eff. Nov. 21, 2005 until Jan. 20, 2006 per Charter §1043(h). [See T35 §2-19 Note 2]

DERIVATION

Section derived from former §6-09.

Section amended City Record Mar. 27, 1997 eff. May 1, 1997. [See T35 §6-02 Note 1 and §6-06 Note 2]

Section renumbered (formerly §6-07) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

§§6-07(e), 6-16(o)-(q) added City Record July 8, 1997 §21, eff. Aug. 11, 1997. Language juxtaposed and amended by Taxi and Limousine Commission, pursuant to authority of City Corporation Counsel, to reflect major amendments and renumbering to Chapter 6 in City Record Apr. 29, 1997 and erroneously overlooked. [See T35 §4-01 Note 1]

Sections repealed and added as newly numbered by rule changes City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Sections amended City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 1]

§6-03(ee) added (as 6-03(cc)) City Record Sept. 28, 1994 eff. Oct. 31, 1994.

§6-04(t) added City Record Sept. 28, 1994 eff. Oct. 31, 1994.

NOTE

1. Statement of Basis and Purpose in City Record July 1, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the

business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The purpose of the amendments is to increase penalties for violation of for-hire rules which impact upon the safety of the vehicle. Vehicles which are not satisfying the requirement that they be inspected three times a year will be suspended.

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CHAPTER 6 FOR HIRE VEHICLES

§6-23 Program for Persistent Violators of For-Hire Vehicle Rules.

(a) Any driver who has been found guilty of three or more violations that occurred within a fifteen month period and whose license has not been revoked will accumulate one point on his for-hire vehicle driver's license.

(b) Any driver who has accumulated six or more points against his for-hire vehicle driver's license within a fifteen month period and whose license has not been revoked shall have his license suspended for thirty days.

(c) Any driver who has accumulated ten or more points against his for-hire vehicle driver's license within a fifteen month period shall have his license revoked.

(d) For the purpose of subdivisions (a) through (c) of this section, a driver who has been found guilty of multiple violations arising from a single incident shall be deemed guilty of the single violation with the highest point total for purposes of this section.

(e) The penalties set forth herein will be imposed following the hearing where the driver has been found in violation of the rules that bring his accumulated point total to the level described in subdivision (b) and (c). These penalties will be added to those imposed for the underlying rule violations.

(f) The minimum penalties set forth in subdivision (a) through (c) of this section shall not preclude the imposition by the Commission of additional or more severe penalties in accordance with Rules of the Commission.

(g) The Schedule of Points is as follows:

Rule No.	Points	Reference Description
§6-15(a)(1)	2	Driver not licensed by Commission
§6-15(a)(2)	2	Driver not in possession of valid driver's license
§6-16(a)	4	Dangerous driving
§6-16(b)	4	Leaving scene of accident
		Speeding:
§6-16(c)(3)(i)	3	1 to 10 miles above posted speed limit
	4	11 to 20 miles above posted speed limit
	5	21 to 30 miles above posted speed limit
	6	31 to 40 miles above posted speed limit
	8	41 or more miles above speed limit
§6-16(c)(3)(ii)	5	Failing to stop for school bus
§6-16(c)(3)(iii)	4	Following too closely
§6-16(c)(3)(iv)	4	Inadequate brakes (own vehicle)
§6-16(c)(3)(v)	2	Inadequate brakes (employer's vehicle)
§6-16(c)(3)(vi)	3	Failing to yield right of way
§6-16(c)(3)(vii)	3	Traffic signal violation
§6-16(c)(3)(viii)	3	Stop sign violation
§6-16(c)(3)(ix)	3	Yield sign violation
§6-16(c)(3)(x)	3	Railroad crossing violation
§6-16(c)(3)(xi)	3	Improper passing
§6-16(c)(3)(xii)	3	Unsafe lane change
§6-16(c)(3)(xiii)	3	Driving left of center
§6-16(c)(3)(xiv)	3	Driving in wrong direction
§6-16(c)(3)(xv)	3	Leaving scene of an accident involving property damage or injury to animal
§6-16(d)	3	Operating an unlicensed vehicle
§6-16(e)	2	Operating FHV without Permit
§6-16(g)	2	Accepting passengers at taxi stand
§6-16(i)(1)	3	Violation of Port Authority Rules
§6-16(i)(2)	3	Accepting passengers by other than prearrangement
§6-16(i)(3)	2	Violation of TLC rules at Port Authority facilities
§6-16(u)	2	Prohibited telephone use
§6-16(u)(1)	3	Prohibited use of portable or hands-free electronic device; first offense or second offense within any 15-month period
	4	Prohibited use of portable or hands-free electronic device; third offense committed within any 15-month period
§6-18(b)	6	Failure to report bribery
§6-18(c)	6	Bribery
§6-18(d)(1)	4	Fraud, larceny
§6-18(d)(2)	3	Action against public interest
§6-18(e)	2	Failure to cooperate with law enforcement
§6-18(f)	4	Threat or physical force
§6-18(g)	2	Failure to comply with TLC directive
§6-18(i)	3	Threatening, harassment, abuse
§6-18(j)	2	Discourtesy

(h) Any licensee who voluntarily attends and satisfactorily completes a remedial or refresher course approved by the Commission, and who furnishes the Commission with proof that the course was completed on or before August 31, 1999, shall have two (2) points deducted from the total number of points assessed for the purpose of determining any

suspension or revocation pursuant to this Rule. No point reduction shall affect any suspension or revocation action which may be taken pursuant to these Rules prior to the completion of the course; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

(i) Any licensee who voluntarily attends and satisfactorily completes a remedial or refresher course approved by the Commission, and who furnishes the Commission with proof that the course was completed on or after September 1, 1999, shall have two (2) points deducted from the total number of points assessed pursuant to this Rule. No point reduction shall affect any suspension or revocation action which may be taken pursuant to these Rules prior to the completion of the course. No person shall receive a point reduction pursuant to this subdivision more than once in any five year period; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

(j) It shall be an affirmative defense that the act which formed the basis for the violation was beyond the control and influence of the for-hire vehicle driver.

HISTORICAL NOTE

Section added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-70 Note 1]

Subds. (a), (b), (c) amended City Record Jan. 31, 2000 §4, eff. Mar. 1, 2000. [See T35 §2-07 Note 1]

Subd. (g) repealed and added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §2-07 Note 1]

Subd. (g) schedule Rule 6-16(c)(3) amended City Record Oct. 21, 1998 §2, eff. Nov. 20, 1998. [See T35 §2-70 Note 2]

Subd. (g) schedule Rule 6-16(u) added City Record May 27, 1999 §5, eff. June 26, 1999. [See T35 §2-25 Note 1]

Subd. (g) §6-16(u)(1) amended City Record Dec. 10, 2009 §11, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Subds. (h), (i), (j) added City Record Jan. 31, 2000 §4, eff. Mar. 1, 2000. [See T35 §2-07 Note 1]

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§6-24 Information Sharing with Qualified Jurisdictions.

The Commission shall maintain a dedicated phone line or read-only access to an electronic database to make available to qualified jurisdictions the information required to be shared pursuant to §498(3)(e) of the New York State Vehicle and Traffic Law.

HISTORICAL NOTE

Section added City Record Nov. 22, 2006 §10, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

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CHAPTER 6 FOR HIRE VEHICLES

§6-25 Log Book.

(a) The holder of a for-hire vehicle permit issued by the Commission under this chapter for a vehicle that is used in transportation between New York City and an issuing jurisdiction and the holder of an issuing jurisdiction vehicle license issued by a qualified jurisdiction that is used in transportation between New York City and such qualified jurisdiction shall ensure that a record of each trip between New York City and such issuing jurisdiction is made prior to the commencement of the trip in a log carried in the vehicle. Such record shall be kept for a period of no less than one year after such trip. The record of each such trip shall be written legibly in ink and include the following information:

(1) passenger's name or other identifier;

(2) time of scheduled pick up of passenger;

(3) location of scheduled pick up of passenger;

(4) the locations of any intermediate stops at which the passenger is picked up and/or dropped off;

(5) final destination of passenger; and

(6) at the completion of the transport, the time of completion of the transport shall be added to the record.

(b) The log required in subdivision (a) of this section shall be kept in the vehicle during any trip between New York City and an issuing jurisdiction, including a trip through either New York City or an issuing jurisdiction, and shall be presented for inspection on request to any police officer or peace officer acting pursuant to his or her special duties or

other person authorized by the Commission or by the issuing jurisdiction. Failure to present such a log maintained in the manner prescribed in subdivision (a) of this section when requested by any such authorized person shall be presumptive evidence of unlicensed operation.

HISTORICAL NOTE

Section added City Record Nov. 22, 2006 §10, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

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CHAPTER 6 FOR HIRE VEHICLES

§6-26 Reciprocal Recognition of Vehicles Licensed by Qualified Jurisdictions.

(a) A vehicle for which an issuing jurisdiction vehicle license has been issued by a qualified jurisdiction shall be eligible for reciprocity as set forth in subdivision (b) of this section provided that the vehicle meets all of the following requirements:

(1) Evidence of a current, valid issuing jurisdiction vehicle license from the qualified jurisdiction must be attached to the windshield of the vehicle;

(2) Such vehicle must be operated by a driver who holds a valid New York State chauffeur's license or a valid license of equivalent class of the state of which the driver is a resident, and such license must be neither probationary, suspended, revoked, conditional nor restricted as to use;

(3) Such vehicle must be operated by a driver who (i) holds a valid, current issuing jurisdiction driver's license issued by the qualified jurisdiction and such driver is carrying proof of such valid license or permit while operating within New York City which will be displayed on request or is posted within the vehicle and (ii) otherwise meets the requirements of §6-27 of this chapter;

(4) Such vehicle must be validly registered in New York State or the state of the vehicle owner's residence, and evidence of such registration in the form of the certificate or a legible photostat thereof must be carried in the vehicle;

(5) Such vehicle must contain a trip log meeting the requirements of §6-25 of this chapter which log must demonstrate that any trip including travel within New York City was established by pre-arrangement and show that

either the origin or final destination of such travel is outside New York City and which record must be maintained for a year following the trip;

(6) Such vehicle must carry a valid inspection sticker indicating the date of last inspection and/or expiration date of such inspection issued pursuant to the laws of New York State or the state of the vehicle's registration; and

(7) Recognition of such vehicle's authority to operate within New York City has not been suspended pursuant to §6-12(o) of this chapter.

(b) A vehicle meeting the requirements of subdivision (a) of this section and providing pre-arranged transportation shall be eligible for reciprocity and shall be allowed, without any license or permit issued by or any fee paid to the Commission, to:

(1) pick up passengers in the vehicle's qualified jurisdiction for travel to or through New York City;

(2) pick up passengers in New York City for travel to the vehicle's qualified jurisdiction;

(3) in the course of transportation provided to passengers that meets the requirements of subdivisions (b)(1) or (2) of this section, temporarily discharge and temporarily pick up such passengers within New York City provided that all such stops must occur within 24 hours of the initial pick up of the passengers; and

(4) transit through New York City for travel beginning and ending outside New York City.

(c) The owner of a vehicle who does not hold a for-hire vehicle permit issued by the Commission and whose vehicle provides transportation for hire other than through pre-arrangement or which provides transportation for hire between two points within New York City shall be subject to all penalties applicable under this chapter for unlicensed operation.

HISTORICAL NOTE

Section added City Record Nov. 22, 2006 §10, eff. Dec. 22, 2006. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 22, 2006:

The rules amend previously existing rules to implement the reciprocity provisions recently enacted as §498 to the New York State Vehicle and Traffic Law (the "VTL"). Pursuant to that enactment, promulgation of these rules is intended to qualify the City of New York for reciprocity, thereby entitling for-hire vehicles and drivers licensed by the New York City Taxi & Limousine Commission (the "TLC") to (1) pick up passengers in New York City for travel to or through Westchester or Nassau Counties; (2) pick up passengers in Westchester or Nassau for travel to New York City; and (3) transit through Westchester and Nassau for travel beginning and ending elsewhere.

Under the amendments to the VTL, in order for drivers and vehicles licensed by one of the above-mentioned jurisdictions to qualify for reciprocity, the regulations regarding transportation for hire of the vehicles and drivers licensed by such jurisdiction must meet certain minimum requirements. Vehicles must be marked as being licensed by their home jurisdiction and must, among other things, maintain trip logs in the vehicles which contain records of interjurisdictional travel. Drivers of such vehicles must be licensed to operate such vehicles by their home jurisdictions and must be subject by their home jurisdictions, among other things, to fingerprinting and a criminal background check and an annual drug test. Any qualified jurisdiction is authorized to order the repair or replacement of any vehicle, including those licensed by other qualified jurisdictions, and failure to comply within ten days can lead to suspension of the recognition of such vehicle's home jurisdiction license in any other qualified jurisdiction. Each qualified jurisdiction must notify the other jurisdictions of its continuing status as a qualified jurisdiction at least every three years, must

maintain a dedicated phone line or electronic database sharing certain vehicle license information with other qualified jurisdictions, and must notify other qualified jurisdictions of the issuance and dispositions of summonses to such jurisdictions' licensees. The rules amend existing TLC rules to assure that TLC rules regarding for-hire vehicles and operators comply with the requirements of §498 of the VTL, among other things by affording reciprocity to vehicles and drivers licensed by qualified jurisdictions.

Finally, the amendments to the VTL eliminate tier 2 and tier 3 permits; the rules implement this change by repealing rules regarding tier 2 and tier 3 permits. Outstanding tier 2 and tier 3 permits became void upon the effective date of §498 of the VTL, which is November 14, 2006.

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CHAPTER 6 FOR HIRE VEHICLES

§6-27 Reciprocal Recognition of Drivers Licensed by Qualified Jurisdictions.

(a) A driver holding a current, valid issuing jurisdiction driver's license issued by a qualified jurisdiction shall be eligible for reciprocity as set forth in subdivision (b) of this section provided that the driver meets all of the following requirements:

(1) Such driver is operating a vehicle meeting the requirements of §6-26(a) of this chapter;

(2) Such driver holds a valid New York State chauffeur's license or a valid license of equivalent class of the state of which the driver is a resident, and such license must be neither probationary, suspended, revoked, conditional nor restricted as to use;

(3) Such driver's issuing jurisdiction driver's license is neither suspended nor revoked and such driver is carrying proof of such valid license or permit while operating within New York City which will be displayed on request or is posted within the vehicle; and

(4) Such driver maintains and completes the trip log required by §6-25 of this chapter for transportation provided into, out of, or through New York City.

(b) A driver meeting the requirements of subdivision (a) of this section is eligible for reciprocity and may operate such vehicle in providing transportation as set forth in §6-26(b) of this chapter without any license or permit issued by or fee paid to the Commission.

(c) A driver providing pre-arranged transportation for hire in New York City pursuant to this §6-27 shall comply with the provisions of §§6-16(a) through (d), (g) through (r) and (t) through (u) of this chapter while operating within New York City as if such driver were licensed by the Commission.

(d) A driver who does not hold a for-hire vehicle operator's permit issued by the Commission and who provides transportation for hire other than through pre-arrangement or who provides transportation for hire between two points within New York City shall be subject to all penalties applicable under this chapter for unlicensed operation.

(e) Notwithstanding any other provision of this chapter, a driver who does not hold a for-hire vehicle operator's permit issued by the Commission and who provides transportation for hire within New York City and who does not meet the requirements set forth in either or both of subdivisions (a)(2) or (a)(3) of this section shall be subject to all penalties applicable under §19-506 of the Administrative Code of the City of New York for unlicensed operation.

HISTORICAL NOTE

Section added City Record Nov. 22, 2006 §10, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

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35 RCNY 6-28

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CHAPTER 6 FOR HIRE VEHICLES

§6-28 Wheelchair accessible liveries.

(a) A wheelchair accessible livery must be

(i) a livery; and

(ii) either an accessible vehicle as defined in section 6-01 of this chapter, or a vehicle that meets the requirements of an accessible taxicab pursuant to section 3-03.2(a)-(d) of this title; and

(iii) equipped with a taximeter meeting the requirements of section 3-04 of this title. Such taximeter may be used only during rides subject to chapter 16 of this title.

(b) The owner of any livery that meets the requirements of subdivision (a) of this section may opt to participate in the dispatch program for wheelchair accessible vehicles as set forth in chapter 16 of this title. Any wheelchair accessible livery whose owner has opted into the dispatch program must remain in such program as long as such vehicle continues in service, or while the program continues, whichever is shorter. The owner may opt into the program by providing a written request to the Commission and providing proof that the vehicle which is the subject of such request meets the requirements of subdivision (a) of this section. Any livery meeting the requirements of subdivision (a) of this section will be accepted for participation upon the option of its owner.

(c) An owner of a wheelchair accessible livery must comply with chapter 16 of this title, and with the taximeter requirements of sections 1-20, 1-21, 1-22 and 1-23 of this title.

(d) A driver of a wheelchair accessible livery must comply with chapter 16 of this title. Such a driver of a wheelchair accessible livery must also, while operating pursuant to a dispatch as provided in chapter 16 of this title, comply with the requirements of sections 2-30, 2-31, 2-32, 2-33, 2-34 and 2-35 of this title.

(e) A base station with an affiliated wheelchair accessible livery must comply with the provisions of chapter 16 of this title.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §12, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

35 RCNY 6-29

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CHAPTER 6 FOR HIRE VEHICLES

§6-29 Penalty Points for Bases and For-Hire Vehicles.

A base or the holder of a for-hire vehicle permit will accumulate penalty points as penalties for violation of certain rules as specified in section 6-22.

(a) When a penalty point is imposed upon a for-hire vehicle, the base with which the for-hire vehicle is affiliated will be given notice of the imposition of the point by first class mail to the base address on file with the Commission.

(b) The permit of any for-hire vehicle that accumulates four penalty points for occurrences during any license term shall be revoked.

(c) The base affiliated with any for-hire vehicle for which the for-hire vehicle permit is revoked pursuant to subdivision (b) of this section shall accumulate one penalty point.

(d) The license of any base that accumulates six penalty points for occurrences during any license term shall be revoked.

(e) The revocation of any license or permit required by this section shall occur at any time the required number of penalty points have been accumulated, even if the permit or license has been renewed subsequent to the term for which such points have been accumulated.

(f) Revocation required under this section may be imposed as part of the decision imposing the final point necessary for revocation, or the Chairperson may commence revocation proceedings against any licensee which has

accumulated sufficient points to require revocation proceedings at any other time. At any time base revocation is mandated and the last penalty point arises from for-hire vehicle permit revocation pursuant to subdivision (b) of this section, revocation must be imposed following a separate revocation proceeding. Any revocation proceeding required by this section shall proceed under section 8-15 of this title.

(g) The Chairperson shall develop a point reduction program applicable to vehicles and bases.

(h) This section shall take effect on August 1, 2009, and no penalty points shall be imposed for violations occurring before that date.

HISTORICAL NOTE

Section added City Record June 2, 2009 §30, eff. Aug. 1, 2009 per subd. (h). [See T35 §6-12

Note 4]

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§6-30 [Reserved]

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§6-31 [Reserved]

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§6-32 [Reserved]

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§6-33 [Reserved]

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§6-35 [Reserved]

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§6-36 [Reserved]

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§6-37 [Reserved]

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§6-38 [Reserved]

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§6-39 [Reserved]

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§6-40 [Reserved]

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§6-41 [Reserved]

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***** Current through December 2009 ****

35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-42 [Reserved]

Rules of the City of New York

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35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-43 [Reserved]

Rules of the City of New York

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35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-44 [Reserved]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-45 [Reserved]

Rules of the City of New York

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35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-46 [Reserved]

Rules of the City of New York

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35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-47 [Reserved]

Rules of the City of New York

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35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-48 [Reserved]

Rules of the City of New York

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35 RCNY

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Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-49 [Reserved]

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35 RCNY 6-50

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-50 Inter-Municipal For-Hire Vehicle Operation-Permit Required. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

Subd. (c) par (4) amended City Record July 12, 1993 eff. Aug. 11, 1993.

Subd. (c) par (5) added City Record July 12, 1993 eff. Aug. 11, 1993.

Subd. (c) par (6) renumbered (former par (5)) City Record July 12, 1993 eff. Aug. 11, 1993.

Subd. (c) par (6) amended City Record July 5, 2002 §5, eff. Aug. 4, 2002. [See T35 §6-11 Note 1]

Subd. (c) par (7) added City Record July 5, 2002 §5, eff. Aug. 4, 2002. [See T35 §6-11 Note 1]

Subd. (e) amended City Record July 12, 1993 eff. Aug. 11, 1993.

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35 RCNY 6-51

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-51 Display of Permit. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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35 RCNY 6-52

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-52 Unlawful Activity. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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35 RCNY 6-53

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-53 Logbook. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1.Despite the unambiguous Commission regulation requiring that "for hire" vehicle drivers keep a trip log in the vehicle, livery driver conceded that he did not begin to keep a trip sheet at the time of an alleged misconduct by police officer. **Police Dep't v. Moneta,** OATH Index No. 468/00 (Mar. 2, 2000).

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35 RCNY 6-54

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-54 Inspections. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

Subd. (e) added City Record July 5, 2002 §6, eff. Aug. 4, 2002. [See T35 §6-11 Note 1]

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35 RCNY 6-55

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-55 Service of Summons and Notice. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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35 RCNY 6-56

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-56 Drivers. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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35 RCNY 6-57

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-57 Administrative Fees. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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35 RCNY 6-58

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-58 Bases. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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35 RCNY 6-59

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-59 Penalties for Violation of Inter-Municipal Transport Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

Subd. (a) amended City Record July 5, 2002 §7, eff. Aug. 4, 2002. [See T35 §6-11 Note 1]

Rules of the City of New York

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35 RCNY 7-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-01 Definitions.

Administrative Law Judge ("ALJ"). Administrative Law Judge is an attorney admitted to practice law in the State of New York who conducts administrative hearings for the Commission.

Bridge. Bridge is the area and work unit within the Adjudications Section of the Commission that coordinates the assignment of cases to be heard by administrative law judges for the Commission.

Client. A client is a respondent in a proceeding before the agency who has engaged the services of a representative.

Commission. Commission means the New York City Taxi and Limousine Commission or its designee.

Mailing Address. Mailing address means the address designated by a representative for the mailing of all notices and correspondence from the commission and for notification of charges concerning the representative pursuant to §7-10 of these rules.

Representative. A representative is a person granted permission by the Commission to represent for compensation a respondent in a proceeding before the agency. The term "representative" shall not include an individual duly admitted to the practice of law in the State of New York.

Respondent. A respondent is an individual, corporation or other entity who has applied for a license, has a license, or to whom a summons has been issued returnable at a Commission authorized facility.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Administrative Law Judge amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Client amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Representative amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Respondent amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

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35 RCNY 7-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-02 General Provisions for Representatives.

(a) An individual who desires to be granted permission to appear before the Commission as a representative shall be:

(1) at least eighteen (18) years of age;

(2) of good moral character; and

(3) possess a familiarity with all Commission rules and procedures.

(b) Applications for authorization to appear before the Commission as a representative shall be made on forms provided by the Commission.

(c) An applicant shall provide a mailing address.

(d) A representative shall notify the Commission immediately of any change in the representative's mailing address.

(e) An application for authorization to appear before the Commission as a representative will not be accepted unless such applicant shall have been sponsored by an attorney duly admitted to the practice of law in the State of New York. The attorney sponsor shall undertake that he or she will directly supervise and review the work product of the applicant and shall assume legal responsibility for the conduct of such applicant before the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Subd. (e) added City Record June 26, 1998 eff. July 26, 1998, expiring July 26, 1999 unless

extended by the Commission. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1998:

The regulation promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under section 2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 2303(c) of such Charter, authorizing the TLC to establish and regulate conduct at its adjudications tribunal, and under section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The regulation requires that representatives authorized to appear before the Commission's tribunal be sponsored by an attorney licensed to practice in New York State who agrees to directly supervise the work product and conduct of the representative.

The purpose of the regulation is to ensure that representatives appearing before the Commission on a regular basis are supervised by an attorney who shall assume ultimate responsibility for the representative's performance. The Commission's tribunal adjudicates matters involving the application and interpretation of Commission rules, the provisions of the Administrative Code and the Vehicle and Traffic Law as they apply to persons engaged in activities subject to Commission regulation. Substantial penalties, including fines, and suspension or revocation of licenses, may be imposed. Respondents who appear before the TLC tribunal are entitled to a fair hearing and competent representation. In many cases, they rely upon non-attorney representatives to appear on their behalf. These representatives are required to be familiar with the rules and procedures of the Commission; however, such representatives are not subject to the same standards of conduct imposed upon licensed attorneys. Requiring attorney oversight and supervision of a representative's work product and conduct will protect the interests of respondents appearing before the TLC tribunal by assisting them in obtaining competent representation directed and supervised by a member of the Bar.

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35 RCNY 7-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-03 Conduct and Character.

(a) No representative shall engage in any of the following conduct: (1) Disorderly behavior, breach of the peace, or other disturbance which directly or indirectly tends to disrupt or interrupt the proceedings at the Commission.

(2) Willful disregard of an Administrative Law Judge's authority prior to, during or after the course of an administrative hearing conducted at the Commission.

(3) Actions, gestures or verbal conduct which show disrespect for the proceedings of the Commission.

(b) A representative shall not leave a hearing in progress without the express permission of the Administrative Law Judge presiding.

(c) A representative shall, at all times, cooperate with all law enforcement officers, authorized representatives of the Commission and the New York City Department of Investigation, and shall comply with all their reasonable requests.

(d) A representative shall promptly and truthfully answer and comply as directed with all questions, communications, directives and summonses from the Commission or its representatives and the New York City Department of Investigation or its repre- sentatives.

(e) A representative shall not offer or give any gift, gratuity or thing of value to any employee or member of the

Commission, or to any other public servant. A representative shall immediately report to the Commission and the New York City Department of Investigation any request or demand for any gift, gratuity or thing of value by any employee or member of the Commission or any other public servant.

(f) A representative shall supply the bridge with a written list of all cases to be handled by that representative no later than 3:30 p.m. of the day before the day in which such cases are scheduled to be heard. There shall be no additions to this list without the express permission of the Legal Director of Adjudications or his/her designee.

(g) (1) A representative shall not operate any Commission computer terminal or other equipment at any time.

(2) A representative shall not enter any non-public service area at the Commission unless accompanied or authorized by a Commission manager or supervisor.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Subd. (h) repealed City Record Sept. 13, 1993 eff. Oct. 13, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The respondent, a non-attorney representative appearing before the Commission's tribunal pursuant to this chapter, engaged in a pattern of misconduct in violation of this section-disrupting hearings, showing disrespect toward the Commission's administrative law judges, and failing to comply with their requests-for which the penalty imposed was revocation of permission to practice before the tribunal. Taxi and Limousine Commission v. Falese, OATH Index No. 169/98 (Dec. 8, 1997), as modified by Comm'n Decision (Jan. 14, 1998).

¶ 2. A non-attorney representative registered to appear before the Commission did not violate standards of conduct, namely section 7-03(c) (refusal to cooperate with a reasonable request made by an authorized representative of the Commission) when he voiced an objection to a Commission hearing officer's order to leave the hearing room when the hearing officer told the representative that the hearing would be continued in his absence. The hearing officer's order was unreasonable because it did not allow the client sufficient time to secure alternative representation; therefore, the non-attorney representative could not be sanctioned for failing to comply without voicing his objection. The facts did not establish that the representative disrupted the proceedings in violation of section 7-03(a)(1) or that he displayed a disregard for the hearing officer's authority in violation of section 7-03(a)(2). In a separate incident, the non-attorney representative did not violate section 7-03(c) when he failed to comply with the request of a Commission inspector to go back to the representative's area because the inspector's request was unreasonable. The OATH administrative law judge found that the inspector forcibly separated the representative from his client during recess in order to personally serve the client with a summons that could have been served by mail (**see** section 1-85(b)). **Taxi and Limousine Comm'n v. Dickens,** OATH Index No. 1455/98 (June 2, 1998).

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35 RCNY 7-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-04 Misrepresentation and Related Matters.

(a) A representative shall not hold himself or herself out as an attorney at law. It shall be a representative's affirma-tive obligation to inform his/her clients or prospective clients that he/she is not an attorney at law.

(b) A representative shall not refer to himself or herself by any title other than "representative."

(c) All advertising by a representative shall clearly and conspicuously state that he or she is not an attorney at law.

(d) Advertising or other publicity generated or otherwise permitted by a representative shall not contain any false or misleading statement.

(e) A representative shall not induce or encourage any witness in a proceeding before an ALJ to make a false statement.

(f) A representative shall not make a statement or allow the introduction of evidence in a proceeding before an ALJ which he or she knows, or reasonably should have known, to be false, fraudulent or misleading.

(g) A representative shall not offer into evidence any document in a proceeding before an ALJ unless he or she has examined the document carefully and has satisfied himself or herself that it is genuine, true, and accurate.

(h) A representative shall not call any witness in a proceeding before an ALJ unless he or she has interviewed such witness and satisfied himself or herself that the testimony which the witness intends to offer is not misleading or false.

(i) If any witness in a proceeding before an ALJ makes any statement or offers into evidence any document which the representative knows is misleading or false, the representative shall immediately inform the Administrative Law Judge.

(j) No representative shall knowingly allow any false statement to be made by such representative's client or by a witness called by such representative on administrative appeal of an Administrative Law Judge's determination.

(k) In connection with the representaion of a respondent in an adjudication, a representative is guilty of misconduct when he or she is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the agency or any party.

(l) In connection with the representation of a client before the agency, a representative shall not make any untrue statement of fact. In connection with the issuance of agency documents, the representative shall state all material facts.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Subd. (k) repealed and added City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Subd. (l) added City Record Sept. 13, 1993 eff. Oct. 13, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Paragraph (c) of this section, requiring non-attorney representatives appearing before the Commission's tribunal to state clearly on all advertising that they are not attorneys at law, did not provide adequate notice to such representatives that their business cards must so state. Taxi and Limousine Commission v. Falese, OATH Index No. 169/98 (Dec. 8, 1997), modified on other grounds, Comm'n Decision (Jan. 14, 1998).

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35 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-05 Solicitation.

(a) A representative shall not solicit clients, or permit the solicitation of clients by another person on the representative's behalf, on the premises of the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) repealed City Record Sept. 13, 1993 eff. Oct. 13, 1993.

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***** Current through December 2009 ****

35 RCNY 7-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-06 Conflict of Interest.

(a) No representative shall represent more than one person, partnership, corporation, or association in connection with any matter in which the interests of such persons, partnerships, corporations or associations are in conflict with one another.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) repealed City Record Sept. 13, 1993 eff. Oct. 13, 1993.

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35 RCNY 7-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-07 Competent Representation.

(a) No representative shall undertake the representation of a client unless he or she is able to provide competent representation. A representative must, at a minimum:

(1) be thoroughly familiar with the facts of his or her client's particular case;

(2) have a thorough understanding of the rule or rules of the Commission involved in such case; and

(3) be thoroughly familiar with all applicable procedures.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) repealed City Record Sept. 13, 1993 eff. Oct. 13, 1993.

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35 RCNY 7-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-08 Assignment of Administrative Law Judges.

(a) No representative shall attempt to influence an employee of the Commission concerning the selection of an Administrative Law Judge to hear a particular case.

(b) Once a representative has been assigned to a hearing room, the representative shall not leave such room until all cases assigned to him or her have been adjudicated or the ALJ has given permission to the representative to leave for a stated reason or a specific period of time.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) repealed and added City Record Sept. 13, 1993 eff. Oct. 13, 1993.

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***** Current through December 2009 ****

35 RCNY 7-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-09 Suspension or Revocation.

(a) Any representative who violates these rules may be barred from representing clients before the Commission for such time and subject to such conditions as may be determined by an administrative law judge after a hearing and a finding of violation, as provided for in §7-10.

(b) Notwithstanding any inconsistent provision of this section, a representative's authorization to appear before the Commission may be suspended or revoked if it is determined that he/she has committed an act evidencing lack of good moral character which, had such act occurred prior to the time application was made to the Commission, would have served as a basis for denying such application.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) repealed and added City Record Sept. 13, 1993 eff. Oct. 13, 1993.

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***** Current through December 2009 ****

35 RCNY 7-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-10 Procedures in the Event of a Violation of Commission Rules.

(a) Upon an allegation of a violation of any of these rules by a representative, the Commission may institute proceedings to suspend or revoke such representative's authorization to appear before the Commission. Such proceedings shall be commenced by notifying the representative by both certified and first class mail of the formal written charges against him/her. Such charges shall be specific and shall advise the representative that a finding of guilty will result in the suspension or revocation of the authorization to appear before the Commission as a representative. A written notice shall accompany the charge, stating the date, time and place of the scheduled hearing of the charges.

This hearing shall be held at, and under the auspices of, the New York City Office of Administrative Trials and Hearings (also known as OATH), before an administrative law judge specially designated by OATH to conduct such a hearing. At the conclusion of the hearing, the judge will prepare and submit to the Chairperson a report containing his or her findings of fact and conclusions of law together with any recommended penalties. The Chairperson shall make the final agency decision as to findings of fact, conclusions of law, and penalties.

(b) If the Commission finds that emergency action is required to ensure public health, safety or welfare, it may order the summary suspension of the representative's authorization to appear before the Commission, pending a hearing on written charges held pursuant to §7-10(a). Such order shall be served upon the representative by both certified and first class mail at his/her last mailing address of record.

HISTORICAL NOTE

Section amended City Record Feb. 27, 1997 eff. Apr. 1, 1997. [See Note 1]

Section amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Feb. 27, 1997:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgated rules provide that hearings to determine whether representatives violated the rules governing their conduct will be conducted by the Office of Administrative Trials and Hearings, rather than by the Commission tribunal. OATH would make a recommendation as to findings and penalties to the Chairperson, who will then make the final decision.

The purpose of the promulgated rules is to provide a forum separate from the one in which representatives appear on a daily basis.

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35 RCNY 8-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-01 Definitions.

(a) Administrative Law Judge ("ALJ"). An attorney admitted to practice law in the State of New York and duly appointed by the Commission to conduct administrative hearings for the Commission, or an Administrative Law Judge duly appointed to conduct administrative hearings for the Office of Administrative Trials and Hearings ("OATH").

(b) Appeal. The procedure for review of a decision of an ALJ pursuant to §8-13 of these Rules, or a decision of the Chairperson pursuant to §8-14(k) of these Rules.

(c) Authorized industry representative. A non-attorney authorized by the Commission to represent respondents before the Commission's Adjudications Tribunal as a Representative pursuant to 35 RCNY Chapter 7.

(d) Chairperson. The member of the Commission designated by the Mayor as the Chair and Chief Executive Officer pursuant to §2301(c) of the New York City Charter.

(e) Commission. The New York City Taxi and Limousine Commission.

(f) Commission Adjudications Tribunal ("Tribunal"). The administrative tribunal established pursuant to §2303(c) of the New York City Charter and authorized to adjudicate charges of violations of provisions of the Administrative Code and regulations promulgated thereunder.

(g) Discretionary revocation. A penalty of revocation which may be imposed at the option of the Chairperson upon the recommendation of an ALJ of the Commission or by the New York City Office of Administrative Trials and

Hearings (OATH).

(h) Hearing. A procedure for the presentation and consideration of evidence before an Administrative Law Judge, after which the ALJ makes findings of fact and conclusions of law regarding any charge alleging a violation of the Administrative Code or any Commission Rule.

(i) Inquest. A procedure for the determination of the guilt or innocence of a respondent, and the imposition of penalties in the event of a finding of guilt, wherein the respondent has failed to appear for a scheduled hearing.

(j) License. A license issued by the Commission, including, but not limited to: a license to operate a taxicab, a for-hire vehicle, a commuter van or a paratransit vehicle; to own a taxicab, for-hire vehicle, commuter van, or paratransit vehicle; or to own and/or operate a for-hire vehicle base, a commuter van service, or a taximeter business; or a license to act as a taxicab broker or taxicab agent. Within the context of these Rules a "License" also includes the privilege to accept passengers by prearrangement for trips outside the City of New York, pursuant to 35 RCNY §6-50, et seq.

(k) Licensee. An individual, partnership or corporation issued a license by the Commission. Unless the context of these rules dictate otherwise, a licensee shall include an individual, partnership or corporation whose license has been suspended.

(l) Mandatory revocation. A penalty of revocation imposed for the violation of any specified Rules or Administrative Code provisions, which penalty may not be reduced or modified by an ALJ. Mandatory revocation includes, but may not be limited to, a revocation mandated by the Administrative Code or the Rules of the Commission, as a result of prior convictions, as a result of an accumulation of points pursuant to the Persistent Violator Program or Critical Driver Program, or as otherwise provided for as a penalty under these Rules or the Administrative Code.

(m) Motion to vacate. A procedure to reconsider a determination resulting from an inquest.

(n) Respondent. An individual, partnership or corporation named on a summons, a notice of violation, petition, or any other form of administrative charges wherein the respondent is charged with a violation of the Administrative Code or a Commission Rule. A respondent need not be a licensee of the Commission. In the case of a fitness hearing conducted pursuant to Commission Rules, a respondent may be either a licensee or an applicant for a license who is the subject of a fitness review.

(o) Rule. A rule of the Commission adopted in accordance with §§1043 and 2303 of the New York City Charter.

HISTORICAL NOTE

Section repealed and added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8

footnote]

Section amended City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Subd. (a) amended City Record Sept. 18, 2008 §1, eff. Oct. 18, 2008. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 18, 2008:

The promulgated rules implement Local Law 16 of 2008 by making several changes to Taxi and Limousine Commission adjudications procedures.

First, the rules codify the Commission's existing practice of referring discretionary revocation cases to the Office of Administrative Trials and Hearings ("OATH").

Second, these rules specifically allow Commission prosecutors to call witnesses by teleconference or videoconference when they are unable to appear at the hearing in person. This provision will enhance the credibility determination when, for example, the complainant is a foreign tourist who is unable to travel to New York to appear personally at a hearing.

Third, the rules codify the Commission's existing practice of summarily suspending a license only when continued licensure poses a direct and substantial threat to public health or safety.

Fourth, these rules increase the time for respondents to vacate inquest determinations from 120 days to two years and require that the Commission maintain a record detailing how the respondent was informed of the inquest determination. That record will be available to the respondent upon request.

Fifth, these rules require exedited appeals decisions where the administrative appeal is taken from a decision imposing a license suspension or revocation, and provide that fines imposed after a hearing are stayed pending decision of the administrative appeal.

Finally, the rules provide that, if the Commission fails to produce a timely copy of the recording of the hearing in response to a timely request filed by a respondent seeking to appeal, the decision appealed from must be dismissed. Given the Commission's recent conversion from audiocassette recording to digital recording of hearings, copies of recordings are available promptly and reliably.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Dec. 1, 1999. Note Statement of Basis from City Record Dec. 1, 1999.

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The rules repeal the existing Chapter Eight of the Rules of the TLC, relating to Adjudications Procedures, as well as other sections of Title 35 of the Rules of the City of New York ("RCNY"), relating to procedures to be followed in the event of a violation of Commission Rules. A new Chapter Eight, setting forth procedures to be followed in the event of a violation of the Administrative Code or Commission rules has been enacted to replace these repealed sections. This new Chapter also includes changes in adjudications procedures necessary to conform with Administrative Code amendments that were enacted into law on May 26, 1999.

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violation of TLC Rules. These amendments will create a unified, comprehensive set of procedures applicable to all Commission Rules and Administrative Code violations adjudicated before the Commission.

On May 26, 1999, amendments to the Administrative Code were enacted into law. These amendments adopted specific time periods which must be followed in the case of a summary suspension of a taxicab or for-hire vehicle license, or where a respondent is charged with taximeter tampering. Procedures mandated by the Administrative Code have been incorporated into these Rules. In addition to unifying procedures with respect to the adjudication of summonses, these Rules also establish clear procedures to be followed with respect to the review of the fitness of licensees and applicants to obtain a license from the Commission and procedures to be followed in the event the Commission seeks the discretionary revocation of a license.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-02 Scope of this Chapter.

(a) Pursuant to §2303(c) of the New York City Charter, there shall be established a Commission Adjudications Tribunal. Except as otherwise provided herein, this Tribunal shall have conferred upon it original jurisdiction over:

(i) violations of Title 19, Chapter 5 of the Administrative Code, including, but not limited to violations where a penalty of license revocation may be imposed;

(ii) violations of Commission Rules including, but not limited to violations wherein a penalty of license revocation may be imposed; and

(iii) review of the fitness of an applicant or a licensee regarding licensing determinations made by the Commission pursuant to the Administrative Code or Commission Rules.

(b) The hearing procedures set forth herein apply to all hearings conducted before the Commission Adjudications Tribunal pursuant to this Chapter, as applied to licensees and non-licensees.

(c) The Commission may, in its discretion, seek the adjudication of any violation of the Administrative Code or Commission Rules before the New York City Office of Administrative Trials and Hearings (OATH). In this event, the Rules governing the procedures for the conduct of such hearings before OATH shall govern. The determination of OATH with respect to penalty shall be a recommendation to the Chairperson.

(d) ALJs of the Commission Adjudications Tribunal shall render final decisions that shall include findings of fact

and conclusions of law, except with respect to the following proceedings, in which case the decision of the ALJ shall be a recommended decision:

(i) Licensing determinations as to the fitness of licensees or license applicants, which shall be recommended decisions as set forth in §8-15;

(ii) Proceedings pursuant to §19-528(b) of the Administrative Code, which shall be recommended decisions to the Chairperson;

(iii) Summary suspension recommendations made pursuant to §8-16, which shall be recommended decisions to the Chairperson; or

(iv) Reserved.

HISTORICAL NOTE

Section repealed and added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8

footnote]

Subd. (c) amended City Record Sept. 18, 2008 §2, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

Subd. (d) par (iv) repealed City Record Sept. 18, 2008 §3, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

DERIVATION

Former §8-02 Adjudications Conducted by the Office of Administrative Trials and Hearings

amended City Record Feb. 27, 1997 eff. Apr. 1, 1997. [See T35 §7-10 Note 1]; amended City

Record Sept. 28, 1994 eff. Oct. 31, 1994.

Subd. (a) amended City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (b) amended City Record Apr. 29, 1997 eff. June 1, 1997.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pursuant to subsection (c) of this section, any case that is referred to the Office of Administrative Trials and Hearings (OATH) is to be decided by report and recommendation to the Commission Chair. **Taxi & Limousine Comm'n v. Nitram Cab Corp.**, Comm'r/Chair's dec. (Sept. 8, 2008), **adopting,** OATH Index No. 2809/08 (Aug. 4, 2008).

FOOTNOTES

1

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-03 Penalties.

(a) Whenever a respondent is charged with a violation of any Commission Rule or Administrative Code Section, he may be subject to civil penalties in accordance with the appropriate schedule of penalties set forth in the Commission Rules or the Administrative Code.

(b) In the alternative to any of the specific penalties set forth in the Commission Rules, the Commission may, in its discretion, impose a penalty of license revocation, license suspension of up to six (6) months and/or a fine:

(i) not to exceed $10,000 for each violation against the owner of a licensed taxicab or for-hire vehicle, base, commuter van service or vehicle, paratransit service or vehicle, taximeter business, taxicab broker or taxicab agent; or

(ii) not to exceed $1,000 for each violation against a licensed driver.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

FOOTNOTES

1

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100 of 113 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-04 Preliminary Procedure in the Event of a Violation of the Administrative Code or Commission Rules: Summons or Notice of Violation.

Unless otherwise set forth herein, a respondent shall be served with a summons and/or a notice of violation, setting forth the nature of the violation charged. In the case of a fitness hearing, as described in §8-02(a)(iii), a respondent shall be served with a notice which sets forth the basis for the Commission's charge that the respondent is not fit to possess a license.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

FOOTNOTES

1

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-05 Service of Summonses and Notices.

(a) Service of a summons or other notice upon a licensee may be accomplished by any of the following methods:

(i) by personal service; or

(ii) by first class mail in a postpaid envelope addressed to the last mailing address filed with the Commission; or

(iii) if the licensee is the owner of a taxicab, for-hire vehicle, paratransit service vehicle or commuter van, by personal service upon the driver of such licensed vehicle. Said driver shall promptly forward said summons or notice to the owner or agent and the failure to do so shall be considered a failure to comply with a directive of the Commission; or

(iv) if the licensee is a commuter van service, for-hire vehicle base, paratransit base, taxicab agent, or taximeter business, by personal service upon a person of suitable age and discretion employed by or acting as an agent of the licensee at the licensee's place of business.

(b) Service of a summons or other notice upon a respondent who is not a licensee may be accomplished by any of the following methods, consistent with the requirements set forth in the Civil Practice Law and Rules:

(i) by personal service; or

(ii) by first class mail in a postpaid envelope addressed to the address set forth on the respondent's state issued driver's license or vehicle registration; or

(iii) if the respondent is the registered owner of a vehicle, by personal service upon the driver of the vehicle; or

(iv) if the respondent is charged with operating an unlicensed commuter van service, for-hire vehicle base, paratransit base, taxicab agent, or taximeter business, by personal service upon a person of suitable age and discretion employed by or acting as an agent of the respondent at the respondent's place of business.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Commissioner/Chair determined that directive was served in accordance with this section. Affidavit of service attesting that the directive had been placed on a particular date in a depository maintained for pick-up by the Commission's mail room was sufficient proof of both that it was mailed by first-class mail and that it was mailed on the day it was placed in the depository or within one business day thereafter. The Chair held that the Commission was entitled to rely upon a rebuttable presumption of regularity to establish timely service. **Taxi & Limousine Comm'n v. Nitram Cab Corp.**, Comm'r/Chair's dec. (Sept. 8, 2008), **adopting,** OATH Index No. 2809/08 (Aug. 4, 2008).

¶ 2. Commissioner/Chair held that proof of actual notice is a complete substitute for proof of technically correct service. **Taxi & Limousine Comm'n v. Nitram Cab Corp.**, Comm'r/Chair's Decision (Sept. 8, 2008), **adopting,** OATH Index No. 2809/08 (Aug. 4, 2008).

¶ 3. The Chair rules no additional certification, beyond that provided by the attorney who initially certified that he deposited the notice addressed to the respondent with the TLC mail service, is required to establish proper service. **Taxi & Limousine Comm'n v. Henry**, Comm'r/Chair's Decision (Sept. 9, 2008), **adopting with modification** OATH Index No. 245/09 (Aug. 4, 2008).

FOOTNOTES

1

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-06 Contents of Summons or Notice of Violation.

(a) A summons or notice of violation shall contain, at a minimum, the following information:

(i) the date, time and location of the alleged violation;

(ii) a description of the nature of the violation sufficient to inform the respondent of the conduct proscribed;

(iii) the Rule or Administrative Code Section alleged to have been violated; provided, however, that if there is a conflict between the Rule or Code Section cited and the description of the violation, the description shall be dispositive.

(b) A notice for a fitness hearing, as described in §8-15 herein, shall set forth the basis for the Commission's charge that the respondent is not fit to possess or retain a license issued by the Commission.

(c) If a respondent claims at a hearing that the summons or notice of violation fails to provide the information specified in subdivisions (a) or (b), the respondent will be provided with the missing information and may be granted an adjournment of the hearing if the ALJ determines that the lack of information unduly prejudices the respondent. If the summons or notice of violation is dismissed solely because the information set forth in subdivision (a) has not been provided, the Commission may issue an amended summons or notice of violation.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-07 Guilty Pleas and Scheduling of Hearings.

(a) The Commission Rules may set forth violations for which a personal appearance is not required. With respect to any summons issued for such violation, the respondent may plead guilty at or prior to a scheduled hearing, and pay the scheduled fine in person or by mail. By pleading guilty, the respondent admits the charges contained in the summons or notice of violation, and waives any right to appeal the ALJ's determination, including but not limited to the assessment of fines, imposition of points and penalties pursuant to the Persistent Violator or the Critical Driver Programs, or other penalties. If the respondent does not choose to plead guilty prior to the hearing date, he shall be required to appear at the scheduled hearing.

(b) A summons or notice of violation may inform the respondent of the date, time and location of the scheduled hearing on the summons or notice. In such case, no further notice to the respondent shall be provided. If the respondent does not plead guilty pursuant to subdivision (a), or if the summons or violation requires a personal appearance, the respondent shall appear for a hearing at the location, date and time indicated on the summons or notice of violation.

(c) If the summons or notice of violation does not inform the respondent of the date, time and location of the scheduled hearing, and if the violation is one for which a personal appearance is not required, the respondent may request a hearing by pleading not guilty to the summons or by otherwise following the instructions contained on the notice from the Commission. Upon receipt of a not guilty plea, the Commission will schedule a hearing and inform the respondent of the date, time and location of the hearing by first class mail. The failure to enter a plea of not guilty in a timely manner shall constitute a default to the charges and subject the respondent to penalties which may include license suspension or revocation as set forth therein.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-08 Failure to Prosecute by the Commission.

If, for one (1) year after the date of the issuance of a summons or notice of violation and without any delay or default on the part of the respondent, there has been no hearing or adjudication, the Commission shall dismiss the charges.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

FOOTNOTES

1

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-09 Adjournment Requests.

A respondent who is unable to appear at a scheduled hearing must notify the Commission at least five (5) business days in advance of the hearing in order to request an adjournment. An adjournment will be granted only upon a showing of an inability to attend the scheduled hearing. A respondent shall be entitled to only one adjournment. Adjournment requests made upon less than five (5) business days notice shall be made in person by the respondent and decided by an ALJ on the date of the request.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-10 Attendance at Hearing.

(a) A respondent who is a licensee may be represented at a hearing by an attorney or by a non-attorney representative duly authorized by the Commission. If the respondent is a corporation, it may also be represented by an officer, director, or employee of the respondent corporation designated as an agent for the respondent. If the respondent is a partnership, it may also be represented by any partner. Any individual appearing who is not a respondent shall provide proof of his relationship to the respondent.

(b) A respondent who is not a licensee must appear personally at a hearing and provide the ALJ with suitable identification. If the non-licensee respondent is a corporation or partnership, an officer, director, employee or partner must appear with proof of his relationship to the respondent. A non-licensee may be accompanied and represented by an attorney or a non-attorney representative duly authorized by the Commission.

(c) All hearings shall be conducted in English. A respondent, other than a licensed taxicab driver, who does not speak or understand English, may appear at a hearing with a translator who is not a party, representative of the respondent or a witness to the proceeding.

(d) A respondent may present witnesses at a hearing. A respondent shall be entitled to be present throughout the entire hearing; however, witnesses shall be excluded from the hearing room except while actually testifying.

(e) The Commission may, for cause, deny any non-attorney the opportunity to appear at a hearing.

(f) In the event that the Commission is unable to produce a complaining witness in person at the hearing, where

such witness's credibility is relevant to the charges made in the notice of violation, the Commission shall make reasonable efforts to make such witness available during the hearing by videoconferencing or teleconferencing. If the complaining witness is not available to testify at the hearing in person, or by videoconference or teleconference, the Commission shall produce a statement outlining its efforts to produce such witness. The ALJ must determine whether the Commission's efforts to produce the complaining witness were reasonable and if found to be inadequate, the ALJ shall dismiss the notice of violation.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

Subd. (f) added City Record Sept. 18, 2008 §4, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

FOOTNOTES

1

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-11

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-11 Hearing Procedure.

(a) No licensee shall be permitted to appear at a hearing unless he or she shows a valid photo ID to the Commission prior to the hearing.

(b) All hearings shall be conducted before an ALJ who shall consider all relevant testimony and review documentary evidence submitted at the hearing. Evidence at a hearing may include affidavits or affirmations submitted under penalties of perjury and may also include the records of the Commission or of another governmental body maintained in the regular course of business. Failure of the respondent to produce at a hearing any document either requested by the Commission or required to be maintained by the respondent pursuant to Commission Rules shall lead to a rebuttable presumption that the document, if produced, would have been adverse to the respondent. Although the formal rules of evidence do not apply, all witnesses shall testify under oath.

(c) All hearings shall be recorded. The record of the hearing and the written decision of the ALJ shall constitute the only official record of the hearing. No individual may record or photograph the hearing without prior written permission from the Commission.

(d) At the conclusion of the hearing, the ALJ shall issue a decision which shall include findings of fact and conclusions of law. If the ALJ finds a violation has been committed, the appropriate penalties shall be imposed, which may include a fine, and/or suspension or revocation of the respondent's license. In the event a suspension for a specified period of time is imposed, such suspension period will not include any period of time during which the respondent's license is not in the possession of the Commission.

HISTORICAL NOTE

Section amended City Record Nov. 2, 2006 §14, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-12

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-12 Procedures in the Event of a Failure to Appear.

(a) In the event that a respondent fails to appear at a scheduled hearing, the Commission shall conduct an inquest on any violation of the Administrative Code or the Commission Rules. At said inquest, to be conducted on or after the hearing date, the ALJ shall impose any penalties deemed appropriate, including additional penalties for the failure to appear at such hearing imposed upon licensees pursuant to Commission Rules.

(b) The Commission shall inform the respondent of the determination of the inquest by regular, first class mail to the address of the respondent on file with the Commission. The Commission shall prepare a record containing the name of the person who mailed the notice, and the date and time of the mailing of the notice. The Commission shall make this record available upon request to the respondent.

(c) If the penalty imposed at the inquest includes the suspension of a license as a result of a violation of a Commission Rule or the Administrative Code, said suspension shall not commence until ten (10) days after the mailing of the ALJ's decision with respect to the inquest conducted herein.

(d) A respondent may move to vacate the inquest determination within two (2) years of the date of the inquest. Said motion must be made in writing unless otherwise authorized by the Executive Director of Adjudications or his designee and shall be filed in accordance with the Commission procedures for the submission of such motions. In support of this motion to vacate, the respondent shall present written evidence as to:

(i) the reasons for his failure to appear at the hearing; and

(ii) a defense to the charge, which, if established and proven at a hearing, would result in the dismissal of the summons.

If the respondent fails to make a timely motion to vacate the default, any penalties imposed pursuant to Rule 2-70 or 6-23 shall be assessed and the respondent shall be notified of this determination by regular, first class mail.

(e) If the ALJ determines that the respondent has established both a valid excuse for his failure to appear at the hearing and a defense to the violation which, if proven, would be legally sufficient, the inquest determination shall be vacated and the respondent shall be entitled to a hearing de novo. Any suspension or revocation imposed at the inquest shall be vacated.

(f) If the ALJ denies the motion to vacate, the penalties imposed at the inquest shall be assessed. In addition, the ALJ shall impose any appropriate penalty required pursuant to §2-70 or §6-23 of the Commission Rules.

HISTORICAL NOTE

Section amended City Record Nov. 2, 2006 §15, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

Subd. (b) amended City Record Sept. 18, 2008 §5, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

Subd. (d) amended City Record Sept. 18, 2008 §5, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-13

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-13 Procedures on Appeal.

(a) The respondent may appeal the decision of an ALJ as follows:

(i) An appeal must be addressed to the Deputy Commissioner for Legal Affairs/General Counsel and received within thirty (30) calendar days of the date of the decision to be appealed. If a respondent timely files an appeal, any fines imposed by the Tribunal shall be stayed until a decision is made in such appeal; however, the Commission shall not be required to refund any fines paid before respondent made his or her appeal unless such appeal is successful.

(ii) The appeal must be accompanied by a copy of the ALJ decision.

(iii) The respondent may request a copy of the recording of the hearing within seven (7) calendar days of the ALJ's determination. Such request must be made in writing on a form to be prescribed by the Chairperson. Such form shall be completed and submitted in accordance with instructions to be printed on the form. If, for the purposes of appealing a decision, a respondent requests a copy of the hearing recording, such recording shall be produced to such respondent within thirty (30) days after receipt of a written request from such respondent. If the Commission cannot produce the recording to the resondent within the thirty (30) day period the determination being appealed shall be dismissed without prejudice. An appeal must be received by the Commission within twenty-one (21) days of the issuance of the requested copy by the Commission, whether by mailing or otherwise.

(b) If the ALJ's decision resulted in the suspension or revocation of a license, the determination of the appeal shall be expedited. If the ALJ's decision resulted in the suspension of a license, the Deputy Commissioner for Legal Affairs/General Counsel or his designee may, in his discretion, issue a temporary license after an appeal has been filed

which may remain in effect pending the determination of the appeal. In making the determination as to whether or not to issue a temporary license, the following factors may be considered: the respondent's record, the seriousness of the charges, the likelihood of the success of the appeal and the significance of the issues raised on appeal.

(c) The Commission may seek review of a determination by an Administrative Law Judge by filing an appeal with the Deputy Commissioner for Legal Affairs/General Counsel within thirty (30) calendar days of such determination. If a Commission appeal is filed, the respondent will be notified by mail. The appeal will include a written statement setting forth the basis for the appeal. The respondent may respond to the appeal within twenty-one (21) calendar days of the mailing of the appeal. The respondent may request a copy of the recording of the hearing within seven (7) calendar days of the notice of appeal. Such request must be in writing on a form to be prescribed by the Chairperson. Such form shall be completed and submitted in accordance with instructions to be printed on the form. If a respondent requests a copy of the recording of the hearing, his or her time to respond to the notice of appeal is extended until twenty-one (21) calendar days after the issuance of the requested copy by the Commission, whether by mailing or otherwise.

(d) Review of an ALJ's decision shall be limited to the issues of law raised in the appeal submitted. Upon appeal, the determination of the ALJ may be affirmed, reversed in whole or in part, or modified. In the event that a decision on appeal results in the reversal of a decision by an ALJ to dismiss a summons, the matter shall be remanded to the Commission Adjudications Tribunal for a new hearing. If a decision on appeal affirms a determination of guilt by an ALJ, but modifies a penalty which had been incorrectly imposed, the decision may correct the penalty, without remand for a new hearing.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

Subd. (a) amended City Record Apr. 11, 2006 §1, eff. May 11, 2006. [See Note 1]

Subd. (a) pars (i), (ii), (iii) amended City Record Sept. 18, 2008 §6, eff. Oct. 18, 2008. [See T35

§8-01 Note 1]

Subd. (b) amended City Record Sept. 18, 2008 §6, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

Subd. (c) amended City Record Apr. 11, 2006 §1, eff. May 11, 2006. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 11, 2006:

The rule allows for digital recording of hearings conducted in the administrative tribunal of the Taxi and Limousine Commission ("TLC"). Previously, hearings were tape recorded, and §8-13 of the TLC's rules contains numerous references to tape recordings and cassette tapes. The TLC is upgrading from audiotape to digital recording of hearings, and the rule change makes the appropriate technical changes in §8-13.

Prior to the present amendment, respondents who requested copies of tape recordings were required to supply blank cassette tapes with the requests. The amended rule provides that a form to be prescribed by the TLC Chairperson will contain instructions on the submission of requests for copies of recordings. Those instructions will direct respondents to submit any blank recording medium that may be required. However, it is anticipated that in most cases copies of digital recordings of hearings will be e-mailed to respondents who request copies of such recordings. It is also anticipated that a respondent who is unable to receive e-mail may be required to submit a blank CD-ROM.

FOOTNOTES

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On May 26, 1999, amendments to the Administrative Code were enacted into law. These amendments adopted specific time periods which must be followed in the case of a summary suspension of a taxicab or for-hire vehicle license, or where a respondent is charged with taximeter tampering. Procedures mandated by the Administrative Code have been incorporated into these Rules. In addition to unifying procedures with respect to the adjudication of summonses, these Rules also establish clear procedures to be followed with respect to the review of the fitness of licensees and applicants to obtain a license from the Commission and procedures to be followed in the event the Commission seeks the discretionary revocation of a license.

Several changes were made to the text of the Proposed Rules published in the City Record on August 23, 1999. These changes were made in response to written comments and public statements received by the TLC at or prior to the Public Hearing. The changes to the proposed Rules, as adopted by the TLC:

· Increase the time during which a respondent may file an appeal from twenty-one (21) to thirty (30) days;

· Provide that a respondent served with a summons alleging a rule violation, by personal service upon a driver as agent, will not be suspended upon a failure to appear until at least ten (10) days after the default has occurred;

· Respondents in discretionary revocation proceedings may appeal the final Agency decision of the Chairperson to the full Commission.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-14

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-14 Discretionary Revocation Proceedings.

(a) The Commission may institute proceedings to seek the revocation of any license for the violation of any Commission Rule, whether or not the penalty of revocation is provided therein.

(b) If the Commission seeks the penalty of revocation for a Rule violation not providing for mandatory revocation as a penalty, as provided for in §8-03(b), said proceeding must be commenced before the Office of Administrative Trials and Hearings (OATH). The Commission shall not commence such a proceeding unless the Chairperson makes a determination that the continued licensure of the respondent presents a threat to the public health, safety or welfare.

(c) The Commission shall notify the respondent of such proceeding by serving a written summons or notice detailing the charged misconduct and warning the respondent that a finding of guilt could result in the revocation of his license.

(d) Said written charges shall be served upon the respondent in accordance with §8-05, if the hearing is to be conducted before the Commission's Tribunal. If the hearing is to be conducted before OATH, the respondent shall be served with charges according to the procedures adopted by OATH.

(e) Said charges shall inform the respondent of the location, date and time of any scheduled hearing.

(f) If the hearing is commenced before OATH, it shall be conducted by an ALJ assigned by OATH, and the procedures of OATH shall govern with respect to the conduct of the hearing. If the hearing is commenced at the Commission's Adjudications Tribunal, the procedures set forth in this Chapter shall apply. The affirmative defenses set

forth in subdivision b of §19-512.1 of the Administrative Code may be available in any such hearing.

(g) If the proceeding is conducted by OATH, the ALJ, upon a finding of guilt, may recommend to the Chairperson license revocation, license suspension for a period up to six (6) months, and/or a fine not to exceed $10,000 for each offense for which a taxicab owner, base owner, taximeter business owner, taxicab broker or taxicab agent is found guilty and/or a fine not to exceed $1,000 for each offense for which any other licensee is found guilty.

(h) If the proceeding is conducted by the Commission Adjudications Tribunal, the decision of the ALJ shall be a Recommended Decision to the Chairperson. In such case, the ALJ will prepare and submit to the Chairperson a Recommended Decision containing his findings of fact, conclusions of law and recommended penalties.

(i) Upon the issuance of a Recommended Decision in accordance with either subsection (g) or (h), containing findings of fact, conclusions of law and any recommended penalty, the respondent shall be provided with an opportunity to provide a written response to said Recommendation, limited to the record of the hearing and the determination of the ALJ with respect to penalty only.

(j) The Recommended Decision issued in accordance with either subsection (g) or (h) will be submitted for consideration to the Chairperson. The Chairperson shall consider any written comments submitted pursuant to subsection (i) and shall determine whether to accept, modify or reject the Recommendation of the ALJ.

(k) A final decision of an ALJ may be appealed to the Deputy Commissioner for Legal Affairs/General Counsel pursuant to the provisions of §8-13. The final decision of the Chairperson, affirming, modifying or rejecting the Recommendation of an ALJ rendered pursuant to this Section may be appealed to the TLC Commissioners. The respondent may appeal the Chairperson's decision within thirty (30) calendar days of the date of the Chairperson's final decision by filing a written appeal, setting forth the basis for the appeal and all statements and arguments made in support thereof, with the Deputy Commissioner for legal Affairs/General Counsel. The Chairperson may prescribe the form for the conduct and filing of such appeals. Review of the Chairperson's decision shall be limited to the issues of law raised in the appeal submitted, and whether the decision of the Chairperson and the recommended decision of the ALJ is supported by substantial evidence. The Commissioners may not review findings of fact or determinations of credibility by an ALJ. The Agency may submit a written response to any appeal received by the Deputy Commissioner for Legal Affairs/General Counsel. The respondent shall be afforded the opportunity to respond in writing to the Agency's written submission. The Commissioners shall receive a copy of the ALJ's Recommendation, the Chairperson's decision, the appeal, and any responses filed by the Commission or the respondent. The Commission shall, by majority vote of the Commission at a meeting at which a quorum is present and in which it is acting in a quasi-judicial capacity, either affirm, modify, or reject the Chairperson's decision and penalty. The Chairperson shall not vote on such appeals. The results of the vote and action taken by the Commission shall be communicated at a public meeting. The Commission shall also have the authority, where appropriate, to remand the matter to the ALJ for further consideration prior to rendering a decision.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

Subd. (b) amended City Record Sept. 18, 2008 §7, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Respondent's motion to dismiss license revocation proceeding based upon prior adjudication of summonses was denied. The prior adjudications were rendered in error since the license revocation proceeding superseded the summonses and removed the jurisdiction of the TLC tribunal under the procedural rule in effect at the time (§ 6-21(i)). **Taxi and Limousine Comm'n v. Dadon,** OATH Index No. 819/00, mem. dec. (Mar. 27, 2000).

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Dec. 1, 1999. Note Statement of Basis from City Record Dec. 1, 1999.

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, empowering the TLC to regulate and supervise the business and industry of the transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations as are necessary to exercise the authority conferred upon it by the Charter; under §19-506 of said Code, authorizing the Commission to impose fines, suspend or revoke licenses for violations of Commission rules; and under §19-528 of said Code, authorizing the Commission to impose additional penalties for unlicensed activities.

The rules repeal the existing Chapter Eight of the Rules of the TLC, relating to Adjudications Procedures, as well as other sections of Title 35 of the Rules of the City of New York ("RCNY"), relating to procedures to be followed in the event of a violation of Commission Rules. A new Chapter Eight, setting forth procedures to be followed in the event of a violation of the Administrative Code or Commission rules has been enacted to replace these repealed sections. This new Chapter also includes changes in adjudications procedures necessary to conform with Administrative Code amendments that were enacted into law on May 26, 1999.

The purpose of these amendments is to clarify the Commission's adjudications procedures. Presently, each Chapter contained within Title 35 has its own section describing procedures to be followed in the event of a violation of TLC Rules. These amendments will create a unified, comprehensive set of procedures applicable to all Commission Rules and Administrative Code violations adjudicated before the Commission.

On May 26, 1999, amendments to the Administrative Code were enacted into law. These amendments adopted specific time periods which must be followed in the case of a summary suspension of a taxicab or for-hire vehicle license, or where a respondent is charged with taximeter tampering. Procedures mandated by the Administrative Code have been incorporated into these Rules. In addition to unifying procedures with respect to the adjudication of summonses, these Rules also establish clear procedures to be followed with respect to the review of the fitness of licensees and applicants to obtain a license from the Commission and procedures to be followed in the event the Commission seeks the discretionary revocation of a license.

Several changes were made to the text of the Proposed Rules published in the City Record on August 23, 1999. These changes were made in response to written comments and public statements received by the TLC at or prior to the Public Hearing. The changes to the proposed Rules, as adopted by the TLC:

· Increase the time during which a respondent may file an appeal from twenty-one (21) to thirty (30) days;

· Provide that a respondent served with a summons alleging a rule violation, by personal service upon a driver as agent, will not be suspended upon a failure to appear until at least ten (10) days after the default has occurred;

· Respondents in discretionary revocation proceedings may appeal the final Agency decision of the Chairperson to the full Commission.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-15

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-15 Special Procedures Relating to Fitness Hearings.

(a) If the Commission believes that a licensee or applicant for a license (hereinafter referred to as "respondent") does not meet or does not continue to meet the qualifications for licensure, as set forth in Commission Rules, it may direct that such respondent appear for a fitness hearing. Such hearing shall be conducted by an ALJ.

(b) The Commission shall prepare a notice of hearing which shall be served upon the respondent in accordance with §8-05. Such notice shall set forth, at a minimum, the date, time and location of the hearing and the basis for the Commission's charge that the respondent fails to meet the minimum requirements for licensure.

(c) Notwithstanding subdivisions (a) and (b) of this section, the Commission may order the summary suspension of a driver's license to ensure the public safety in cases where the Commission receives notice that a licensee has failed a required drug test. The Commission shall notify the licensee either by personal service or by first class mail of the summary suspension, within five (5) calendar days of the suspension. An expedited fitness hearing shall be scheduled within ten (10) calendar days of such suspension. The hearing shall be conducted by an ALJ in accordance with subdivisions (d) and (e) of this section, and based upon the ALJ's findings, either the suspension shall be lifted or the license shall be revoked.

(d) The hearing shall be conducted before an ALJ who shall review the documentary evidence and testimony submitted by the Commission and afford the respondent an opportunity to respond under oath and to proffer evidence on his or her behalf. The hearing shall be recorded.

(e) The ALJ shall issue a Recommended Decision which shall include a determination as to the respondent's

fitness to possess a license. If the respondent is or has ever been a licensee, the Recommendation shall be issued to the Chairperson. If the respondent is an applicant who has never held a license issued by the Commission, the Recommendations shall be issued to the Deputy Commissioner for Licensing, his or her designee, or any other person designated by the Chairperson. The Chairperson, Deputy Commissioner for Licensing, or designee, may accept, reject or modify said Recommendation. The decision of the Chairperson, Deputy Commissioner for Licensing, or designee shall constitute the final determination of the Commission.

HISTORICAL NOTE

Section amended City Record Nov. 2, 2006 §16, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Commission/Chair revokes license for unfitness under this section based upon licensee's conviction for driving while impaired, which occurred off-duty driving his personal car. Commission/Chair rejected ALJ's finding that license could be revoked under sections 2-61 and 8-14 of this title but not this section because the Commission did not prove that licensee lacked moral character and was thus unfit under this section based upon the conviction for a traffic infraction, where the driver showed remorse at the hearing and had completed a rehabilitation program. **Taxi & Limousine Comm'n v. Pardo**, OATH Index No. 798/08 (Oct. 31, 2007), **adopted on other grounds**, Comm'r/Chair's Decision (Nov. 19, 2007).

¶ 2. ALJ recommends dismissal of charge that probationary licensee lacks moral character based upon conviction for driving private car while under the influence of alcohol, a violation, where licensee candidly admitted his misconduct and showed remorse at the fitness hearing. Nevertheless, license revocation was recommended pursuant to rule 6-14, where conviction occurred during probationary term. **Taxi & Limousine Comm'n v. Alexandridis**, OATH Index No. 202/08 (Aug. 28, 2007). ¶ 3. Taxicab driver's recent conviction for driving while impaired, coupled with his lack of candor at his fitness hearing demonstrated that he lacked fitness to retain his license. **Taxi & Limousine Comm'n v. Chulsky,** OATH Index No. 233/08 (Aug. 28, 2007); **Taxi & Limousine Comm'n v. Corrales**, OATH Index No. 259/08 (Aug. 24, 2007) (same).

¶ 4. Taxi driver who was recently convicted of petit larceny and identity theft lacked moral character required to maintain license. **Taxi & Limousine Comm'n v. Dhillon**, OATH Index No. 364/08 (Sept. 7, 2007).

¶ 5. Taxi driver who was recently convicted of insurance fraud lacked moral character required to maintain license. **Taxi & Limousine Comm'n v. Carpio**, OATH Index No. 395/08 (Sept. 20, 2007); **Taxi & Limousine Comm'n v. Guillca**, OATH Index No. 574/08 (Oct. 10, 2007) (same).

¶ 6. Documentary evidence was found sufficiently reliable, by itself without witness testimony, to establish prima facie case that licensee's urine tested positive for marijuana, which licensee failed to rebut. Documents included an affidavit from a toxicologist, with accompanying chain of custody form, toxicology reports and a confirmation from a medical review officer. Licensee was found unfit, license revocation recommended. **Taxi & Limousine Comm'n v. Shakoor,** OATH Index No. 860/08 (Nov. 30, 2007).

¶ 7. Subsection (a), which authorizes the Commission to direct a licensee to appear for a fitness hearing, does not require an inquiry into the licensee's moral character. **Taxi & Limousine Comm'n v. Liriano-Blanco**, OATH Index No. 1196/08 (Feb. 1, 2008).

¶ 8. When the Commission elects to bring a fitness proceeding, the sole issue is whether the licensee is fit to possess a license. Commission rules do not permit the imposition of a penalty short of revocation once a licensee is found unfit. Driver convicted of criminal possession of forged instruments was found unfit and license revocation was

recommended. **Taxi & Limousine Comm'n v. Feldman**, OATH Index No. 2016/08 (Apr. 8, 2008).

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Dec. 1, 1999. Note Statement of Basis from City Record Dec. 1, 1999.

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The rules repeal the existing Chapter Eight of the Rules of the TLC, relating to Adjudications Procedures, as well as other sections of Title 35 of the Rules of the City of New York ("RCNY"), relating to procedures to be followed in the event of a violation of Commission Rules. A new Chapter Eight, setting forth procedures to be followed in the event of a violation of the Administrative Code or Commission rules has been enacted to replace these repealed sections. This new Chapter also includes changes in adjudications procedures necessary to conform with Administrative Code amendments that were enacted into law on May 26, 1999.

The purpose of these amendments is to clarify the Commission's adjudications procedures. Presently, each Chapter contained within Title 35 has its own section describing procedures to be followed in the event of a violation of TLC Rules. These amendments will create a unified, comprehensive set of procedures applicable to all Commission Rules and Administrative Code violations adjudicated before the Commission.

On May 26, 1999, amendments to the Administrative Code were enacted into law. These amendments adopted specific time periods which must be followed in the case of a summary suspension of a taxicab or for-hire vehicle license, or where a respondent is charged with taximeter tampering. Procedures mandated by the Administrative Code have been incorporated into these Rules. In addition to unifying procedures with respect to the adjudication of summonses, these Rules also establish clear procedures to be followed with respect to the review of the fitness of licensees and applicants to obtain a license from the Commission and procedures to be followed in the event the Commission seeks the discretionary revocation of a license.

Several changes were made to the text of the Proposed Rules published in the City Record on August 23, 1999. These changes were made in response to written comments and public statements received by the TLC at or prior to the Public Hearing. The changes to the proposed Rules, as adopted by the TLC:

· Increase the time during which a respondent may file an appeal from twenty-one (21) to thirty (30) days;

· Provide that a respondent served with a summons alleging a rule violation, by personal service upon a driver as agent, will not be suspended upon a failure to appear until at least ten (10) days after the default has occurred;

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Chairperson to the full Commission.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-16

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-16 Summary Suspension Pending Revocation to Protect the Public Health or Safety.

(a) If the Chairperson finds that emergency action is required to insure public health or safety, he/she may order the summary suspension of a license or licensee, pending revocation proceedings.

(b) Such revocation proceedings shall be initiated within five (5) calendar days of the summary suspension.

(c) Notwithstanding subdivision (b) of this section, the Chairperson may summarily suspend a license subject to the provisions of subdivisions (a) and (d) through (g) of this section based upon an arrest on criminal charges that the Chairperson determines is relevant to the licensee's qualifications for continued licensure. At the hearing pursuant to subdivision (e) of this section, the issue shall be whether the charges underlying the licensee's arrest, if true, demonstrate that the licensee's continued licensure during the pendency of the criminal charges would pose a direct and substantial threat to the health or safety of the public. Revocation proceedings need not be commenced during the pendency of the criminal charges. In such a case, within five (5) calendar days of the Commission's receipt from the licensee of a certificate of disposition of the criminal charges, the Chairperson shall either lift the suspension or commence revocation proceedings.

(d) The Chairperson shall notify the licensee either by personal service or by first class mail of the summary suspension, within five (5) calendar days of the suspension. If the licensee wishes to receive a hearing concerning the suspension, he or she may request a hearing within ten (10) calendar days of receipt of the notice of suspension. Upon receipt of a request for a hearing, the Commission shall schedule a hearing, which shall be held within ten (10) calendar days of the receipt of the request, unless the Commission determines that such hearing will be prejudicial to any ongoing civil or criminal investigation. This subdivision shall not apply, and no summary suspension hearing shall be

required, where the Commission schedules the revocation hearing within fifteen (15) calendar days of the suspension.

(e) A summary suspension hearing conducted pursuant to this section shall be held before an ALJ who shall consider relevant evidence and testimony under oath, according to the hearing procedures set forth in this Chapter. In any such hearing, where applicable, the affirmative defenses may include those set forth in subdivision b of §19-512.1 of the Administrative Code.

(f) Upon the conclusion of the summary suspension hearing, the ALJ shall issue a written Recommended Decision to the Chairperson, who may accept, reject or modify the recommendation. The decision of the Chairperson shall be the final determination of the Commission with respect to the summary suspension.

(g) In the event no decision is rendered by the Chairperson within sixty (60) calendar days of the conclusion of the suspension hearing, the suspension shall be thereafter stayed until such decision is rendered.

HISTORICAL NOTE

Section amended City Record Nov. 2, 2006 §17, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

Subd. (c) amended City Record Sept. 18, 2008 §8, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. See Padberg v. McGrath-McKechnie, 2002 WL 826795, N.Y.L.J., May 2, 2002, page 32, col. 1, U.S. Dist.Ct., E.D.N.Y, discussed at note 2 to 35 RCNY 2-61, and L.S. v New York City Taxi and Limousine Commission, N.Y.L.J., Jan. 31, 2002, page 21, col. 4, 2002 WL 338187 (Civ.Ct. New York Co.), discussed at note 3 of 35 RCNY 2-61.

¶ 2. Pursuant to subsection (c) of this section, where the pre-hearing suspension is based upon the licensee's arrest, at the summary suspension hearing "the issue shall be whether the charges underlying the licensee's arrest, if true, demonstrate that the licensee's continued licensure during the pendency of the criminal charges would pose a threat to the health or safety of the public." ALJ found that the licensee posed a threat to the health or safety of the public based upon proof of his arrest for second degree assault and criminal possession of a weapon and she recommended continuation of summary suspension. **Taxi & Limousine Comm'n v. Shahbaz**, OATH Index No. 1014/08 (Nov. 30, 2007).

¶ 3. While rule 8-16 requires that this tribunal consider the arrest charges to be true, there is nothing to prevent the licensee from explaining the facts underlying the arrest should he so wish. **Taxi & Limousine Comm'n v. Chaudhry**, OATH Index No. 1012/08 (Nov. 30, 2007).

¶ 4. In a summary suspension hearing where license was suspended based upon an arrest for assault, under subsection (c) of this rule, ALJ must presume arrest charge is true and then determine whether "the licensee's continued licensure during the pendency of the criminal charges would pose a threat to the health or safety of the public." ALJ had found the Commission did not establish that continued licensure presented a risk to public safety and recommended that the suspension be lifted. Commissioner/Chair found continued licensure of driver who was arrested for third degree assault would pose a threat to public safety. Suspension continued pending the final outcome of his criminal charge. **Taxi & Limousine Comm'n v. Mirakov**, OATH Index No. 1053/08 (Dec. 7, 2007), **rev'd**, Comm'r/Chair Dec. (Jan. 8, 2008).

FOOTNOTES

1

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35 RCNY 8-17

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-17 Summary Suspension Pending Compliance with Commission Rules.

(a)(i) If the Chairperson or his or her designee determines that a licensee is not in compliance with the requirements of §2-19(b)(3) or of §6-16(v)(3) of this title, such licensee's TLC-issued license shall be summarily suspended pending an opportunity to be heard.

(ii) Upon a determination made pursuant to paragraph (i) of this subdivision that a TLC-issued license shall be summarily suspended, the Commission shall notify the licensee either by personal service or by first class mail to the last mailing address filed with the Commission that the licensee's TLC-issued license shall be suspended either immediately upon service of such notice if made by personal service, or five (5) days after the date of the mailing of such notice if mailed. Such notice shall contain, at a minimum the following information:

(1) a notice that the licensee's TLC-issued license is being suspended for a violation of the Commission's rules or applicable Administrative Code section;

(2) a description of the nature of the violation;

(3) the rule or Administrative Code section alleged to have been violated; provided, however, that if there is a conflict between the rule or code section cited and the description of the violation, the description shall be dispositive; and

(4) a notice that if the licensee wishes to be heard concerning the suspension, he or she may provide the Commission with a single submission of written documentation refuting the suspension of his or her license within ten

(10) calendar days of the receipt of the notice if notice was given by personal service, or fifteen (15) calendar days of the mailing of the notice of suspension if the notice was mailed.

(iii) The documentation submitted by a licensee refuting the suspension shall be reviewed by an ALJ. Suspension of the TLC-issued license shall continue while documentation is under review by the ALJ. After review of the documentary evidence, the ALJ shall issue a decision which shall include findings of fact and conclusions of law. If the ALJ finds that a violation has been committed, the appropriate penalties shall be imposed, which shall include continued suspension of the driver's license until compliance and may also include a fine. If the ALJ finds that no violation has been committed, the suspension shall be vacated. The decision of the ALJ shall be final, and may be appealed pursuant to §8-13 of this chapter. Where an ALJ decision made pursuant to this subdivision lifting a suspension is reversed on appeal, such matter will be remanded for a new hearing pursuant to this subdivision, and the TLC-issued license shall be suspended until final disposition of the case or until compliance as appropriate.

(iv) In the event that no decision is rendered by the ALJ within sixty (60) calendar days of the receipt of written documentation provided by the licensee, the suspension shall be thereafter stayed until such decision is rendered.

(v) In the event that a licensee does not provide the Commission with written documentation refuting the suspension within ten (10) calendar days of the receipt of the notice if notice was given by personal service, or fifteen (15) calendar days of the mailing of the notice of suspension if the notice was mailed, it shall be deemed that the opportunity to be heard has been waived and a violation has been committed, and the appropriate penalties shall be imposed, which shall include continued suspension of the TLC-issued license until compliance and may also include a fine.

(vi) Suspension of TLC-issued licenses pursuant to this subdivision shall continue until the fines assessed pursuant to paragraph (iii) of this subdivision have been paid and until compliance with the underlying Commission rule or Administrative Code section has been shown to the satisfaction of the Chairperson or his or her designee.

(vii) At any time after a licensee has been notified of suspension, a licensee may pay any applicable fine, comply with the underlying Commission rule or Administrative Code section and furnish proof of such compliance to the satisfaction of the Chairperson or his or her designee. Upon such payment and submission of proof of compliance, the suspension of the TLC-issued license shall be lifted. If the licensee pays any applicable fine and furnishes proof of compliance either in lieu of submitting documentation or after documentation has been submitted but before a decision has been rendered, the suspension shall be lifted and the opportunity to be heard shall be deemed to have been waived.

(b)(i) If the Chairperson or his or her designee determines that a licensee is not in compliance with a rule in this title that provides for summary suspension until compliance, such licensee's TLC-issued license may be summarily suspended until compliance pending an opportunity for a hearing.

(ii) Upon a determination made pursuant to paragraph (b)(i) of this section that a TLC-issued license shall be summarily suspended, the Chairperson shall notify the licensee either by personal service or by first class mail to the last mailing address filed with the Commission that the licensee's TLC-issued license shall be suspended either immediately upon service of such notice if made by personal service, or five (5) days after the date of the mailing of such notice if mailed. Such notice shall contain, at a minimum the following information:

(1) a notice that the licensee's TLC-issued license is being suspended for a violation of the Commission's rules or applicable Administrative Code section;

(2) a description of the nature of the violation;

(3) the rule or Administrative Code section alleged to have been violated; provided, however, that if there is a conflict between the rule or code section cited and the description of the violation, the description shall be dispositive; and

(4) a notice that if the licensee wishes to receive a hearing concerning the suspension, he or she may request a hearing within ten (10) calendar days of receipt of the notice of suspension if notice was given by personal service, or fifteen (15) calendar days of the mailing of the notice of suspension if the notice was mailed.

(iii) Upon receipt of request for a hearing, the Commission shall schedule a hearing, which shall be held within ten (10) calendar days of the receipt of the request, unless adjourned upon consent of the licensee or for good cause by the ALJ. Such summary suspension hearing shall be conducted by an ALJ who shall consider relevant evidence and testimony under oath, according to the hearing procedures set forth in this chapter.

(iv) The ALJ shall issue a decision which shall include findings of fact and conclusions of law. If the ALJ finds that a violation has been committed, the appropriate penalties shall be imposed, which shall include continued suspension of the TLC-issued license until compliance and may also include a fine. If the ALJ finds that no violation has been committed, the suspension shall be vacated. The decision of the ALJ shall be final, and such decision may be appealed pursuant to §8-13 of this chapter. Where an ALJ decision made pursuant to this subdivision lifting a suspension is reversed on appeal, such matter will be remanded for a new hearing pursuant to this subdivision, and the TLC-issued license shall be suspended until final disposition of the case or until compliance as appropriate.

(v) In the event no decision is rendered by the ALJ within sixty (60) calendar days of the receipt of written documentation provided by the licensee, the suspension shall be thereafter stayed until such decision is rendered.

(vi) Suspension of TLC-issued licenses pursuant to paragraph (b)(iv) of this section shall continue until the fines assessed pursuant to that paragraph have been paid and until compliance with the underlying Commission rule or Administrative Code section has been shown to the satisfaction of the Chairperson or his or her designee.

(vii) In the event a licensee does not provide the Commission with a request for a hearing regarding the suspension within ten (10) calendar days of the receipt of the notice if notice was given by personal service, or fifteen (15) calendar days of the mailing of the notice of suspension if the notice was mailed, it shall be deemed that the opportunity to be heard on an expedited basis pursuant to this subdivision has been waived and the licensee shall be scheduled for a hearing on the underlying violation pursuant to the procedures in this chapter. In such an event, the summary suspension of the TLC-issued license shall be continued until either lifted by the ALJ in such regularly scheduled hearing, or until the licensee furnishes proof of compliance to the satisfaction of the Chairperson or his or her designee.

(viii) At any time after a licensee has been notified of suspension, a licensee may pay any applicable fine, comply with the underlying Commission rule or Administrative Code section and furnish proof of such compliance to the satisfaction of the Chairperson or his or her designee. Upon such payment and submission of proof of compliance, the suspension of the TLC-issued license shall be lifted. If the licensee pays any applicable fine and furnishes proof of compliance either in lieu of submitting documentation or after documentation has been submitted but before a decision has been rendered, the suspension shall be lifted and the opportunity to be heard shall be deemed to have been waived.

HISTORICAL NOTE

Section amended City Record Nov. 2, 2006 §18, eff. Dec. 2, 2006. [See T35 §1-07 Note 1] Note internal reference changes for accuracy per Charter §1045(b).

Section added City Record Feb. 14, 2006 §8, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

Section added (temporarily) City Record Nov. 21, 2005 §5, eff. Nov. 21, 2005 until Mar. 21, 2006 per Charter §1043(h) and 60 day extension notice in City Record Jan. 6, 2006. [See T35 §2-19 Note 2]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Dec. 1, 1999. Note Statement of Basis from City Record Dec. 1, 1999.

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, empowering the TLC to regulate and supervise the business and industry of the transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations as are necessary to exercise the authority conferred upon it by the Charter; under §19-506 of said Code, authorizing the Commission to impose fines, suspend or revoke licenses for violations of Commission rules; and under §19-528 of said Code, authorizing the Commission to impose additional penalties for unlicensed activities.

The rules repeal the existing Chapter Eight of the Rules of the TLC, relating to Adjudications Procedures, as well as other sections of Title 35 of the Rules of the City of New York ("RCNY"), relating to procedures to be followed in the event of a violation of Commission Rules. A new Chapter Eight, setting forth procedures to be followed in the event of a violation of the Administrative Code or Commission rules has been enacted to replace these repealed sections. This new Chapter also includes changes in adjudications procedures necessary to conform with Administrative Code amendments that were enacted into law on May 26, 1999.

The purpose of these amendments is to clarify the Commission's adjudications procedures. Presently, each Chapter contained within Title 35 has its own section describing procedures to be followed in the event of a violation of TLC Rules. These amendments will create a unified, comprehensive set of procedures applicable to all Commission Rules and Administrative Code violations adjudicated before the Commission.

On May 26, 1999, amendments to the Administrative Code were enacted into law. These amendments adopted specific time periods which must be followed in the case of a summary suspension of a taxicab or for-hire vehicle license, or where a respondent is charged with taximeter tampering. Procedures mandated by the Administrative Code have been incorporated into these Rules. In addition to unifying procedures with respect to the adjudication of summonses, these Rules also establish clear procedures to be followed with respect to the review of the fitness of licensees and applicants to obtain a license from the Commission and procedures to be followed in the event the Commission seeks the discretionary revocation of a license.

Several changes were made to the text of the Proposed Rules published in the City Record on August 23, 1999. These changes were made in response to written comments and public statements received by the TLC at or prior to the Public Hearing. The changes to the proposed Rules, as adopted by the TLC:

· Increase the time during which a respondent may file an appeal from twenty-one (21) to thirty (30) days;

· Provide that a respondent served with a summons alleging a rule violation, by personal service upon a driver as agent, will not be suspended upon a failure to appear until at least ten (10) days after the default has occurred;

· Respondents in discretionary revocation proceedings may appeal the final Agency decision of the Chairperson to the full Commission.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-01 Definitions.

Commuter van. A "commuter van" is a motor vehicle operated in a commuter van service having a seating capacity of at least nine passengers but not more than twenty passengers and carrying passengers for hire in the city duly licensed as a commuter van by the Commission and not permitted to accept hails from prospective passengers in the street. For purposes of the provisions of Chapter 9 relating to prohibitions against the operation of an unauthorized commuter van service or an unlicensed commuter van and to the enforcement of such prohibitions and to the imposition of penalties for violations of such prohibitions, the term shall also include any common carrier of passengers by motor vehicle not subject to licensure as a taxicab, for-hire vehicle, or wheelchair accessible van or not operating as an authorized bus line pursuant to applicable provisions of law.

Commuter van service. A "commuter van service" is a subclassification of common carrier of passengers by motor vehicles as such term is defined in subdivision seven of section two of the New York State Transportation Law, that provides a transportation service through the use of one or more commuter vans on a prearranged, regular daily basis, over non-specified or irregular routes, between a zone in a residential neighborhood and a location which shall be a work related central location, a mass transit or mass transportation facility, a shopping center, recreational facility or airport. A "commuter van service" shall not include any person who exclusively provides (1) any one or more of the forms of transportation that are specifically exempted from article seven of the transportation law; or (2) any one or more of the forms of transportation regulated under chapter five of title nineteen of the administrative code other than transportation by commuter vans.

Operator. An "operator" is any person, partnership or corporation, other than a lien holder, who is authorized by the Commission to operate a commuter van service.

Owner. An "owner" is any person, firm, partnership, corporation or association, other than a lien holder, having the property in or title to a commuter van. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person and also includes any lessee or bailee of a vehicle having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days. If a vehicle is sold under a contract of sale which reserves a security interest in the vehicle in favor of the vendor, such vendor or his assignee shall not, after delivery of such vehicle, be deemed to be an owner, but the vendee, or his or her assignee, receiving possession thereof, shall be deemed an owner notwithstanding the terms of such contract, until the vendor or his or her assignee shall retake possession of such vehicle. A secured party in whose favor there is a security interest in any vehicle out of his or her possession shall not be deemed to be an owner.

Person with a disability. A "person with a disability" is an individual with a physical or mental impairment or incapacity, including a person who uses a wheelchair, crutches, three-wheeled motorized scooter, other mobility aid, or a service animal, but who can transfer from such a mobility aid to a commuter van with or without reasonable assistance.

Portable or hands-free electronic device. A "portable or hands-free electronic device" is any electronic device able to:

1. make a wireless telephone call

2. send or receive a text message

3. allow its user to speak on the telephone hands-free or operate a device by voice command, even when otherwise allowed by New York State law

4. act as a personal assistant (PDA)

5. send and or receive data from the internet or from a wireless network

6. act as a laptop computer or portable computer

7. receive or send pages

8. allow two-way communications between different people or parties

9. play electronic games

10. play music or video; or

11. make or display images; or

12. any combination of the above

This definition is to be liberally construed in light of its purpose to minimize the distraction of drivers, and in recognition of the rapid development of electronic technologies and proliferation of electronic devices that may be made available in the future that similarly transfer digital images, sounds or messages.

"Portable or hands-free electronic device" does not include: (1) any device the use of which while driving is specifically authorized by TLC rules, or (2) the use of a global positioning navigation system ("GPS") which uses voice functions to convey directions, so long as the driver is not inputting data unless legally standing or parked and the GPS is not capable of being used as a cell phone or other portable or hands-free electronic device.

Security interest. A "security interest" is a security interest as defined by subdivision k of section 2010 of the New

York State Vehicle and Traffic Law.

Service animal. A "service animal" is a guide dog, signal dog or any other animal trained specifically to work or to perform tasks for an individual with a disability, including, but not limited to, guiding individuals with visual impairments, alerting individuals with hearing impairments to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or retrieving dropped items.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Operator added City Record Jan. 15, 2008 §1, eff. Feb. 14, 2008. [See Note 1]

Person with a disability definition added City Record July 8, 1997 §22, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Portable or hands-free electronic device added City Record Dec. 30, 2009 §12, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Service animal definition added City Record July 8, 1997 §22, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 15, 2008

The rule implements three changes to the TLC rules.

First, the rule implements Local law 48/2007, codified as §19-529.4(b) of the Administrative Code of the City of New York. In compliance with that legislation, the rule amends existing TLC rules to increase from one to four the number of decals owners of commuter vans and operators of commuter van services would be required to have affixed to TLC-licensed commuter vans, one on the lower right corner of the windshield, one on each rear side window of the commuter van, and one centered on the rear of the commuter van.

When a commuter van license is first granted and each time it is renewed or transferred, the operator of the commuter van service and the owner of the commuter van is responsible for bringing the commuter van to the TLC's inspection facility where TLC staff will affix the commuter van decals to the commuter van.

The purpose of this aspect of the rule is to enhance the ability of the riding public, as well as law enforcement officers, to identify legitimate, licensed commuter vans, and to better distinguish those commuter vans from illegal, unlicensed vans.

Second, the rule modifies existing rules requiring the placement of a placard inside each commuter van. Specifically, the rule updates the notice to the passengers on the placards posted inside commuter vans, to incorporate the current passenger complaint mechanisms: a telephone call to the City's government services line at 311, and the TLC website, **http://nyc.gov/taxi.**

The purpose of this amendment is to facilitate the receipt of passenger questions, feedback or complaints.

Third, the rule modifies the penalty for a violation of §9-11(a), the commuter van decal rule, for failure to have the decals affixed to the commuter van at the Commission inspection facility (which would mean no commuter van license

has been issued), to increase the penalty from $100 to $500 for a first offense within twelve months; and $1,000 for a second offense and subsequent offenses within a twelve-month period; and, for a commuter van operator, to provide for revocation of the operator's authorization in the event of a third offense within a twelve month period; and suspension of the commuter van license until compliance. Personal appearance is not required except for proceedings to revoke an operator's authorization. These penalties accord with the penalties for a violation of 35 RCNY §6-12(a), the for-hire vehicle decal rule, which is comparable to this commuter van decal rule.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Base station owner was found to have operated a commuter van service without a license. The administrative law judge rejected owner's argument that the vehicle, a limousine with a seating capacity of ten, did not fit within the definition of either a luxury limousine (which is defined in section 6-01(a) as a for-hire vehicle designed to carry fewer than nine passengers) or a commuter van (which is defined in section 9-01 as a for-hire motor vehicle having a seating capacity of at least nine passengers but not more than twenty passengers). The administrative law judge ruled that seating capacity, not physical shape of the vehicle, is the determinative factor. **Taxi and Limousine Comm'n v. Absolute Class Limousine, Inc.,** OATH Index No. 995/98 (Apr. 22, 1998).

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-02 Authorization to Operate a Commuter Van Service.

(a) No person shall operate a commuter van service wholly within the boundaries of the City of New York ["the City"] or partly within the City if the partial operation consists of the pick up and discharge of passengers wholly within the City without first obtaining an authorization from the Commission to operate such commuter van service.

(b) An applicant for an authorization to operate a commuter van service or for renewal thereof shall demonstrate to the satisfaction of the Commission that he or she is fit, willing and able to provide the transportation for which authorization is sought.

(c) An applicant for an authorization to operate a commuter van service, or for renewal thereof for a term for which a new determination as to public convenience and necessity must be made pursuant to subsection (j) of this section, shall be fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services. The applicant shall pay any processing fee required by the State. Fingerprints shall be taken of the individual owner if the applicant is a sole proprietorship; the general partners if the applicant is a partnership; the officers, principals, and stockholders owning more than ten percent of the outstanding stock of the corporation if the applicant is a corporation. If subsequent to the fingerprinting of the applicant or during the term of the authorization, one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this subdivision is changed or added, such applicant shall, within five days of such change or addition, file with the Commission an application for an approval of the change or addition of partners, officers, principals or stockholders on such forms as are prescribed by the Commission, and such new partners, officers, principals or stockholders shall be fingerprinted in accordance with this subdivision. Alter- natively, an applicant who plans to change or add one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this subdivision may

request that such fingerprinting be done prior to the change or addition of such new partner, officer, principal or stockholder.

(d) An applicant for an authorization to operate a commuter van service or for a renewal thereof shall not have engaged in any conduct that would be a basis for suspension or revocation of such authorization pursuant to this chapter.

(e) An applicant for an authorization to operate a commuter van service or for renewal thereof shall be in compliance with the conditions of operation relating to commuter vans set forth in §9-11 of this chapter and the insurance requirement set forth in §9-12 of this chapter.

(f) No application for authorization to operate a commuter van service shall be approved if the applicant has been found guilty of operating a commuter van service without authorization to operate such commuter van service two times within a six-month period prior to the date of application, provided that such violations were committed on or after March 27, 1995.

(g) An application for an authorization to operate a commuter van service or for renewal thereof shall be signed by the applicant and filed by the owner in person with the Commission, on the forms provided by the Commission. An applicant shall agree to designate each and every driver who operates pursuant to an authorization to operate a commuter van service as agent for service of any and all legal process that may be served on such commuter van service by the City of New York or any department thereof, or any other person or entity authorized to make such service.

(h) An applicant for an authorization to operate a commuter van service or for renewal thereof shall certify annually that such commuter van service is in compliance with Title III of the Federal Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and any regulations promulgated thereunder, as such act and regulations may be amended. Such certification shall be in the form of an affidavit.

(i) An applicant for an authorization to operate a commuter van service or for renewal thereof shall certify annually that such commuter van service is in compliance with such provisions of section 5 of the Federal Omnibus Transportation Testing Act of 1991 (49 U.S.C. App. Section 2717) and any regulations promulgated thereunder, as that act and regulations may be amended, as are applicable to such commuter van service. Such certification shall be in the form of an affidavit.

(j) (1) The applicant shall have the burden of demonstrating that the service proposed will be required by the present or future public convenience and necessity. The Commission shall not issue an authorization to operate a commuter van service unless the Commissioner of the New York City Department of Transportation determines that the service proposed will be required by the present or future public convenience and necessity. Such determination that the service proposed will be required by the present or future public convenience and necessity shall be in effect for six years after the date of issuance of such authorization, unless such authorization has not been renewed or has been revoked by the Commission prior to the end of such six-year period in which case such determination shall be in effect only until the expiration or revocation of such authorization. After the expiration or revocation of such determination of public convenience and necessity, no authorization to operate a commuter van service shall be renewed unless a new determination is made by the Commissioner of Transportation that the service proposed will be required by the present or future public convenience and necessity.

(2) When such a determination by the Commissioner of Transportation is required by §19-504.2(e) of the Administrative Code of the City of New York, the application for authorization to operate a commuter van service shall set forth the geographic area proposed to be served by the applicant and the maximum number of vehicles to be operated and the capacity of each such vehicle, and the Commission shall forward a copy of such application to the Commissioner of Transportation.

(3) The Commissioner of Transportation, after consultation with the New York State Department of

Transportation, shall make a determination whether the service proposed in the application will be required by the present or future public convenience and necessity. The Commissioner of Transportation may request that the applicant provide any additional information relevant to such determination. The Commissioner of Transportation shall notify the New York City Transit Authority and all City Council members and community boards representing any portion of the geographic area set forth in the application for the purpose of obtaining comment on the present or future public convenience and necessity for any proposed service. The Commissioner of Transportation shall provide for publication in the City Record of a notice of any such application and shall allow for public comment on such application for a period not to exceed sixty days after the date of publication of such notice. If any such application is protested by a bus line operating in the City or by the New York City Transit Authority, and such bus line and/or transit authority has timely submitted objections to the application to the Commissioner of Transportation, the Commissioner shall, in making such determination, evaluate such objections in accordance with the following criteria:

(i) the adequacy of the existing mass transit and mass transportation facilities to meet the transportation needs of any particular segment of the general public for the proposed service; and

(ii) the impact that the proposed operation may have on any existing mass transit or mass transportation facilities.

(4) Any determination by the Commissioner that the service proposed will be required by the present or future public convenience and necessity shall specify the geographic area where service is authorized and the number of commuter vans authorized to be used in providing such service.

(k) The Commission, after consultation with the New York State Department of Transportation, shall approve or disapprove such application for authorization to operate a commuter van service within one hundred eighty days after the date a completed application has been filed. The failure to approve or disapprove such completed application within such one hundred eighty- days period shall be deemed a disapproval of such application.

(l) The Commission shall not issue a temporary authorization to operate a commuter van service. An authorization to operate a commuter van service shall not be assignable or transferable unless otherwise provided by the Commission.

(m) In the event of the loss, mutilation or destruction of any authorization to operate a commuter van service the owner shall file such statement and proof of the facts as the Commission may require, with a fee not to exceed twenty-five dollars for each authorization, and the Commission may issue a duplicate or substitute authorization.

(n) In addition to any other basis for denial of an authorization to operate a commuter van service pursuant to this section, the Commission may deny an application where the applicant has made a material false statement or concealed a material fact in connection with the filing of such application.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-03 Term of Authorization to Operate a Commuter Van Service.

(a) An authorization to operate a commuter van service issued to a new applicant shall expire two years after such authorization was issued.

(b) An authorization to operate a commuter van service issued to a renewing applicant shall expire two years after the date on which the previous authorization expired.

(c) A person who engages in any activity for which an authorization is required pursuant to §9-02(a) of this Chapter after the expiration date of such authorization and before the issuance of a renewal authorization is in violation of such section and shall be subject to the penalties provided in this chapter for such violation.

HISTORICAL NOTE

Section amended City Record Apr. 12, 1999 §1, eff. May 12, 1999. [See Note 1]

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

NOTE

1. Statement of Basis and Purpose in City Record Apr. 12, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise

the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §19-504(a)(1) of the Administration Code of the City of New York, authorizing the TLC to issue commuter van licenses for a period of at least one, but not more than two years; under §19-504.2(g) of such Code, authorizing the TLC to issue commuter van service authorizations for a period of at least one, but not more than two years; and under §19-505(g) of such Code, authorizing the TLC to issue commuter van driver's licenses for a period of at least one, but not more than three years.

The rules of the Commission currently provide that all commuter van authorizations and licenses expire one year after issuance, and are renewable for additional one-year periods. The rules further provide that all licenses expire on the last day of each month, irrespective of the date issued.

These amendments provide that new and renewal licenses and authorizations will be issued and renewed for a two-year period. The rule also provides that a license expiration date would be linked to the date of license issuance, instead of the last day of the month of issuance.

The existing rules place an unreasonable administrative burden upon the Licensing Division of the Commission and upon licensees, by requiring licenses and authorizations to be renewed annually. These amendments would conform the commuter van rules to the rules adopted in February 1999, which provide for the issuance of two year new and renewal taxicab driver's licenses, for-hire and paratransit vehicle licenses. There is no regulatory purpose which would be served by requiring the renewal of commuter van licenses and authorizations for a one-year period. The adoption of two-year licensing will enable the Commission to better serve the public and provide for the better utilization of resources.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-04 Continuation of Operating Authority for State Approved Van Service Pursuant to Agreement with State Department of Transportation.

(a) (1) In accordance with the agreement between the State Department of Transportation and the City of New York (the "Agreement"), a commuter van service which on September 26, 1994 holds a valid certificate of operating authority granted by the State Department of Transportation covering the operations of one or more commuter vans in the City of New York, and which commuter van service is in compliance with such operating authority as of that date, shall be authorized to continue such operations in the City of New York on and after September 26, 1994 provided that on or before the date specified in paragraph two of this subdivision, such commuter van service submits to the Commission an application for an interim authorization to operate a commuter van service pursuant to subdivision (b) of this section. If a commuter van service fails to submit an application for an interim authorization to operate a commuter van service by the date specified in paragraph two of this subdivision or if a commuter van service fails to satisfy the requirements of subdivision (b) of this setion, the commuter van service shall not be authorized to continue operating in the City of New York after such date specified in paragrpah two, or, in the case of a failure to satisfy the requirements of subdivision (b), after the date that such commuter van service received notification of such failure, unless and until such commuter van service has obtained an authorization in accordance with the requirements of §9-02 of this chapter.

(2) The date for submission of an application for an interim authorization to operate a commuter van service shall be November 15, 1994 or, where the Chairperson of the Commission determines that it is in the public interest to extend such date, the date shall be extended by providing notification by regular mail of such extension to all commuter van services subject to the provisions of this subdivision, provided, however, that in no event shall the date be extended

beyond December 30, 1994.

(b) An application for an interim authorization to operate a commuter van service shall be filed by the owner of such commuter van service in person with the Commission on the forms to be provided by the Commission. Such application shall be signed by the applicant. Such application shall include such forms as may be required by the Commission to be completed and signed by the owner of any commuter van to be operated pursuant to such interim authorization and by the drivers who operate or will operate any such commuter van. In accordance with the Agreement, the Commission shall not issue an interim authorization to operate a commuter van service unless:

(1) the applicant presents to the Commission a current, valid certificate of operating authority granted by the State Department of Transportation covering the operations of such commuter van service in the City of New York and such Department certifies that on September 26, 1994 such commuter van service held a current, valid certificate of operating authority;

(2) the applicant demonstrates to the satisfaction of the Commission that:

(i) each commuter van which is operated pursuant to such State operating authority or is intended to be operated pursuant to such interim authorization (i) has been inspected by the State Department of Transportation in accordance with the requirements of the State Transportation Law and any rules or regulations promulgated thereunder, (ii) is insured in accordance with the requirements contained in Part 750 of Title 17 of the New York City Code of Rules and Regulations, and (iii) is in compliance with the registration requirements of the Vehicle and Traffic Law;

(ii) each driver who operates or will operate any such commuter van possesses a commercial driver's license which pursuant to the Vehicle and Traffic Law is valid for the operation of a commuter van for the transportation of passengers for-hire and each such driver is in compliance with the provisions of Article 19-A of the Vehicle and Traffic Law; and

(iii) the applicant is in compliance with the provisions of Article 19-A of the Vehicle and Traffic Law;

(3) the applicant has not engaged in any conduct that would be a basis for suspension or revocation of an interim authorization pursuant to subdivision (f) of this section; and

(4) the applicant agrees to designate each and every driver who operates pursuant to an interim authorization as agent for service of any and all legal process that may be issued against such commuter van service by the Commission or any other person or entity authorized to enforce the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans.

(c) An interim authorization to operate a commuter van service issued by the Commission pursuant to this section shall authorize the commuter van service to operate in the geographic areas and upon the terms and conditions set forth in the State certificate of operating authority held by such commuter van service and in accordance with any limits established by the State Department of Transportation on the maximum number of vehicles authorized to be operated; provided, however, that where such State operating authority does not contain a provision regarding the maximum number of vehicles authorized to be operated and the State Department of Transportation has not established a vehicle limit applicable to such commuter van service, such commuter van service shall be authorized to operate the number of vehicles for which such commuter van service held current, valid State Department of Transportation inspection certificates on September 26, 1994. The geographic areas, the terms and conditions set forth in such State operating authority and any vehicle limit established by the State Department of Transportation or pursuant to this subdivision and the requirements set forth in subparagraphs (a), (b), and (c) of paragraph two of subdivision (b) of this section shall be deemed to be terms and conditions upon which interim authorization shall be issued.

(d) (1) Where the Commission has issued an interim authorization to operate a commuter van service pursuant to this section, the Commission shall issue an identification sticker for each commuter van operated or to be operated

pursuant to such interim authorization. In accordance with the Agreement, no commuter van shall be operated pursuant to an interim authorization unless such van has affixed thereto an identification sticker issued by the Commission. If subsequent to the issuance of an interim authorization and identification stickers for such commuter vans a commuter van service intends to put into operation a new commuter van which may lawfully be operated pursuant to such interim authorization, such commuter van service shall be required to demonstrate to the Commission compliance with the requirements set forth in subparagraph (a) of paragraph two of subdivision (b) of this section prior to the Commission's issuance of an identification sticker.

(2) Where the Commission has issued an interim authorization to operate a commuter van service pursuant to this section, the Commission shall issue an identification card to each driver who operates or will operate a commuter van pursuant to such interim authorization. In accordance with the Agreement, no commuter van shall be operated pursuant to an interim authorization unless the driver of such van carries an identification card issued by the Commission. A driver of any such commuter van shall produce such identification card upon demand of any person authorized to enforce the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans. If subsequent to the issuance of an interim authorization, and identification card for each driver a commuter van service or commuter van owner intends to employ or retain a new driver, such commuter van service or owner shall be required to demonstrate to the Commission compliance with the requirements set forth in subparagraph (b) of paragraph two of subdivision (b) of this section prior to the Commission's issuance of an identification card for such driver.

(e) An interim authorization to operate a commuter van service issued by the Commission pursuant to this section shall expire on September 26, 1995; provided, however, that if an application for the conversion of such interim authorization is submitted to the Commission on or before March 24, 1995 pursuant to §9-05 of this chapter, such interim authorization shall remain in effect after September 26, 1995 until it is either converted to a full authorization to operate a commuter van service or the application for conversion is disapproved.

(f) (1) During the period commencing on September 26, 1994 and ending on September 26, 1995, every commuter van service which is authorized to continue to operate a commuter van service in the City of New York on and after September 26, 1994 pursuant to this section shall comply with the following:

(i) the insurance requirements contained in Part 750 of Title 17 of the New York Code of Rules and Regulations;

(ii) the requirements contained in subdivision 1 of section 140 of the Transportation Law and Parts 720(3) through 720(25) and Parts 720(27) and 720(28) of Title 17 of the New York Code of Rules and Regulations;

(iii) section 141 of the Transportation Law;

(iv) section 147 of the Transportation Law;

(v) any other provisions of the Transportation Law and any rules and regulations of the State Department of Transportation applicable to commuter van services;

(vi) the terms and conditions upon which such interim authorization has been issued as provided in subdivision (c) of this section;

(vii) Article 19-A of the Vehicle and Traffic Law;

(viii) the requirements contained in paragraph one of subdivision (d) of this section that commuter vans operating pursuant to an interim authorization have identification stickers issued by the Commission affixed thereto; and

(ix) the requirements contained in paragraph two of subdivision (d) of this section that drivers of such commuter vans carry and produce on demand an identification card issued by the Commission.

(2) Whenever any of the provisions described in subparagraphs (i) through (v) of paragraph one of this subdivision require that specific information, statements, reports or other material be filed with or submitted to the State Department of Transportation, such information, statements, reports or other material shall be filed with the Com- mission.

(3) Any commuter van service which has violated any of the provisions described in paragraph one of this subdivision shall be punishable in accordance with the penalty schedule set forth in §9-17 of this chapter. Such violation shall be adjudicated and any penalty imposed therefor in accordance with the provisions of §9-16 of this chapter.

(4) In addition to any other penalties that may be imposed pursuant to this section, the Commission may, after due notice and an opportunity to be heard, suspend or revoke any interim authorization to operate a commuter van service upon the occurrence of any one or more of the following:

(i) the holder of an interim authorization or any of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has been found by the Commission to have violated any of the provisions described in paragraph one of this subdivision; or

(ii) the holder of an interim authorization or any of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has knowingly made a material false statement or concealed a material fact in connection with filing of an application for interim authorization pursuant this section or;

(iii) the holder of an interim authorization or any of its officers, principals, directors, or stockholders owning more than ten percent of the outstanding stock of the corporation has not paid any penalty duly imposed pursuant to this chapter for a violation of any of the provisions described in paragraph one of this subdivision.

(5) Notwithstanding the provisions of paragraph (4) of this subdivision, the Chairperson of the Commission may immediately suspend any interim authorization to operate a commuter van service issued pursuant to this section without a prior hearing where the Chairperson determines that the continued possession of such interim authorization poses a serious danger to the public health, safety or welfare. After such suspension an opportunity for a hearing shall be provided on an expedited basis, within a period not to exceed fourteen days.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994, and renumbered internally by the

Law Department per Charter §1045(b).

FOOTNOTES

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[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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***** Current through December 2009 ****

35 RCNY 9-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-05 Conversion of Interim Authorization Pursuant to Agreement with State Department of Transportation.

(a) (1) In accordance with an agreement between the State Department of Transportation and the City of New York (the "Agreement"), any interim authorization to operate a commuter van service issued pursuant to §9-04 of this chapter may be converted into a full authorization to operate a commuter van service in accordance with the provisions of this section. A commuter van service which holds such interim authorization shall submit an application for conversion to the Commission pursuant to this section on or before March 24, 1995.

(2) The application for conversion shall be filed by the owner of such commuter van service in person with the Commission on the forms provided by the Commission. Such application shall be signed by the applicant.

(3) The applicant for conversion shall demonstrate to the satisfaction of the Commission that he or she is fit, willing and able to provide the transportation for which a full authorization is sought.

(4) The applicant for conversion shall be fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services. Such applicant shall pay any processing fee required by the State. Fingerprints shall be taken of the individual owner if the applicant is a sole proprietorship; the general partners if the applicant is a partnership; the officers, principals, and stockholders owning more than ten percent of the outstanding stock of the corporation if the applicant is a corporation. If subsequent to the fingerprinting of the applicant or during the term of an authorization, one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this paragraph is changed or added, such applicant shall, within five days of such change or addition, file with the Commission an application for an approval of the change or addition of partners, officers, principals or stockholders on such forms as are prescribed by the Commission, and such new partners, officers,

principals or stockholders shall be fingerprinted in accordance with this paragraph. Alternatively, an applicant who plans to change or add one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this paragraph may request that such fingerprinting be done prior to the change or addition of such new partner, officer, principal or stockholder.

(5) The applicant for conversion shall be in compliance with the conditions of operation relating to commuter vans set forth in §19-504.3 of the Administrative Code and §9-11 of this chapter and the insurance requirements set forth in §9-12 of this chapter by September 26, 1995, and the applicant shall not have engaged in any conduct that would be a basis for suspension or revocation of an authorization to operate a commuter van service pursuant to this chapter.

(6) The applicant for conversion shall agree to designate each and every driver who operates pursuant to an authorization to operate a commuter van service as agent for service of any and all legal process that may be issued against such commuter van service by the Commission or any other person or entity authorized to enforce the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans.

(7) The applicant for conversion shall certify as of September 26, 1995 that the commuter van service is in compliance with Title III of the Federal Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and any regulations promulgated thereunder, as such act and regulations may be amended. Such certification shall be in the form of an affidavit.

(8) The applicant for conversion shall certify as of September 26, 1995 that the commuter van service is in compliance with such provisions of section 5 of the Federal Omnibus Transportation Testing Act of 1991 (49 U.S.C. App. Section 2717) and any regulations promulgated thereunder, as that act and regulations may be amended, as are applicable to such commuter van service. Such certification shall be in the form of an affidavit.

(9) Any interim authorization which has been converted into a full authorization pursuant to this section shall authorize the commuter van service to operate (a) the maximum number of vehicles authorized to be operated under the State Department of Transportation certificate of operating authority or pursuant to any vehicle limit established by the State Department of Transportation, or if such State Department of Transportation operating authority does not contain a provision relating to the number of vehicles and the State Department of Transportation has not established a vehicle limit applicable to such commuter van service, such commuter van service shall be authorized to operate the number of vehicles for which such commuter van service held current, valid State Department of Transportation inspection certificates on September 26, 1994, and (b) in the geographic areas set forth in such State Department of Transportation operating authority.

(10) The Commission, after consultation with the State Department of Transportation, shall approve or disapprove such application within one hundred eighty days after the date a completed application has been filed.

(11) In addition to any other basis for denial of a full authorization to operate a commuter van service pursuant to this section, the Commission may deny a full authorization when the applicant has made a material false statement or concealed a material fact in connection with the filing of an application for conversion pursuant to this section.

(12) Any interim authorization which has been converted into a full authorization pursuant to this section shall have the same force and effect and shall be subject to the same provisions of law and rules as an authorization to operate a commuter van service issued pursuant to §19-504.2 of the Administrative Code of the City of New York and provisions of this chapter promulgated pursuant thereto. Such authorization may be renewed annually in accordance with this chapter, and the renewal of such authorization for the term that commences in the year 2000 shall be subject to a determination by the City Commissioner of Transportation that the service will be required by the present or future public convenience and necessity pursuant to the provisions of subdivision e of §19-504.2 of the Administrative Code of the City of New York and subdivision (j) of §9-02 of this chapter.

(b) An application for conversion shall be accompanied by an application for a commuter van license for each

commuter van sought to be operated pursuant to a full authorization to operate a commuter van service. Any such application for a commuter van license shall be submitted in accordance with

§19-504 of the Administrative Code of the City of New York and any provisions of this chapter promulgated pursuant thereto and shall be accompanied by the fee provided in this chapter for such license.

(c) An application for conversion shall be accompanied by an application for a commuter van driver's license submitted by each driver of any commuter van sought to be operated pursuant to a full authorization to operate a commuter van service. Any such application shall be submitted in accordance with §19-505 of the Administrative Code of the City of New York and any provisions of this chapter promulgated pursuant thereto and shall be accompanied by the fee provided in this chapter for such license.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

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[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-06 Commuter Van License.

(a) No commuter van shall be operated within the City of New York unless it is operated as part of a current, valid authorization to operate a commuter van service duly issued by the Commission and unless the owner thereof has obtained a commuter van license issued by the Commission pursuant to this section.

(b) No commuter van license shall be issued or renewed unless the following conditions are satisfied:

(1) such commuter van is operated as part of a current, valid authorization to operate a commuter van service issued by the Commission;

(2) an applicant demonstrates to the satisfaction of the Commission that such applicant is fit, willing and able to operate a commuter van;

(3) an applicant has been fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services. The applicant shall pay any processing fee required by the State. Fingerprints shall be taken of the individual owner if the applicant is a sole proprietorship; the general partners if the applicant is a partnership; the officers, principals, and stockholders owning more than ten percent of the outstanding stock of the corporation if the applicant is a corporation. If subsequent to the fingerprinting of the applicant or during the term of the license, one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this paragraph is changed or added, such applicant shall, within five days of such change or addition, file with the Commission an application for an approval of the change or addition of partners, officers, principals or stockholders on such forms as are prescribed by the Commission, and such new partners, officers, principals or

stockholders shall be fingerprinted in accordance with this paragraph. Alternatively, an applicant who plans to change or add one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this paragraph may request that such fingerprinting be done prior to the change or addition of such new partner, officer, principal or stockholder.

(4) an applicant has not engaged in any conduct that would be a basis for suspension or revocation of such license pursuant to this chapter; and

(5) an applicant demonstrates compliance with the conditions of operation relating to commuter vans set forth in §9-11 of this chapter and the insurance requirements set forth in §9-12 of this chapter.

(c) An application for a commuter van license or renewal thereof shall be signed by the applicant and filed by the owner in person with the Commission on the forms provided by the Commission. An applicant shall agree to designate each and every driver who operates such commuter van as agent for service of any and all legal process that may be issued against such commuter van service by the Commission or any othr person or entity authorized to enforce the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans.

(d) The Commission shall approve or disapprove an application for a commuter van license within 180 days after the completed application is filed. The failure to approve or disapprove such completed application within such time shall be deemed a disapproval of such application.

(e) A commuter van license shall be issued on the condition that the application is in compliance with the registration and insurance requirements set forth in this chapter. The failure to comply with either such registration or insurance requirements shall render the commuter van license suspended on and after the date of such noncompliance and during the period of such noncompliance, and any person using such commuter van in the course of operations of a commuter van service during such period of noncompliance shall be deemed to be operating without a license as required by this chapter.

(f) A commuter van license shall not be assignable or transferable.

(g) In addition to any other basis for denial of a commuter van license pursuant to this section, the Commission may deny an application where the applicant has made a material false statement or concealed a material fact in connection with the filing of such application.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

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[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-07 Term of Commuter Van License.

(a) A commuter van license issued to a new applicant shall expire two years after the license was issued.

(b) A license issued to a renewing applicant shall expire two years after the date on which the previous license expired.

(c) A person who engages in any activity for which a license is required pursuant to §9-06(a) of this Chapter after the expiration date of a commuter van license and before the issuance of a renewal of such license is in violation of such section and shall be subject to the penalties provided in this chapter for such violation.

HISTORICAL NOTE

Section amended City Record Apr. 12, 1999 §2, eff. May 12, 1999. [See T35 §9-03 Note 1]

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

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[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-08 Commuter Van Driver's License.

(a) No person shall drive a commuter van that is regulated by the provisions of Chapter 5 of Title 19 of the Administrative Code within the City without first obtaining a commuter van driver's license from the Commission.

(b) The Commission shall not issue or renew a commuter van driver's license unless the applicant:

(1) demonstrates to the satisfaction of the Commission that he or she is fit and able to drive the commuter van for which the license is sought;

(2) has been fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services for which the applicant shall pay any processing fee required by the State;

(3) possesses a commercial driver's license which pursuant to the New York State Vehicle and Traffic Law is valid for the operation of such commuter van for the transportation of passengers for-hire;

(4) submits a copy of the affidavit filed with the State Department of Motor Vehicles indicating that the applicant has met the qualifications set forth in Article 19-A of the New York State Vehicle and Traffic Law for the operation of a bus as defined in such article;

(5) has not engaged in any conduct that would be a basis for suspension or revocation of such license pursuant to this chapter; and

(6) has not had a commuter van driver's license revoked pursuant to this chapter at any time during the one year

period immediately preceding the date of application.

(c) The Commission shall approve or disapprove an application for the issuance of a commuter van driver's license within 180 days after the completed application is filed. The failure to approve or disapprove such application within such time shall be deemed a disapproval of such application.

(d) In addition to any other basis for denial of a commuter van driver's license pursuant to this section, the Commission may deny an application where the applicant has made a material false statement or concealed a material fact in connection with the filing of such application.

(e) A commuter van driver's license shall be issued on the condition that the applicant possesses a commercial driver's license and complies with Article 19-A of the New York State Vehicle and Traffic Law as described in paragraphs (3) and (4) of subdivision (b) of this section during the time that such commuter van driver's license is in effect. Notwithstanding any other provision of law, suspension or revocation of such commercial driver's license pursuant to the New York State Vehicle and Traffic Law or noncompliance with such Article 19-A shall render the commuter van driver's license suspended on and after the date of the suspension or revocation of such commercial driver's license or noncompliance with such Article 19-A and during the period of such suspension, revocation or noncompliance, and any person who drives a commuter van that is required to be licensed pursuant to subdivision (a) of this section during the period of such suspension, revocation or noncompliance shall be deemed to be driving a commuter van without a license as required by this section.

(f) A commuter van driver's license shall not be assignable or transferable.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

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[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-09 Term of Commuter Van Driver's License.

(a) A commuter van driver's license issued to a new applicant shall expire two years after the license was issued.

(b) A license issued to a renewing applicant shall expire two years after the date on which the previous license expired.

(c) A person who drives a commuter van that is regulated by the provisions of Chapter 5 of Title 19 of the Administrative Code after the expiration date of a commuter van driver's license and before the issuance of a renewal license is in violation of §9-08(a) of this chapter and shall be subject to the penalties provided in this chapter for such violation.

HISTORICAL NOTE

Section amended City Record Apr. 12, 1999 §3, eff. May 12, 1999. [See T35 §9-03 Note 1]

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

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[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-10 Conditions of Operation for Commuter Van Drivers.

(a) A commuter van driver shall not operate a commuter van unless such van is licensed by the Commission and is operating pursuant to a current, valid authorization to operate a commuter van service.

(b) A commuter van driver shall not operate a commuter van unless the following are present in the vehicle:

(1) the commuter van license;

(2) the driver's commuter van driver's license;

(3) the authorization to operate a commuter van service, or legible photocopy thereof; (4) the vehicle registration and evidence of current liability insurance; and

(5) a passenger manifest.

(c) A commuter van driver shall keep the passenger manifest required by subdivision (b) of this section in the van and shall enter the name of each passenger to be picked up legibly in ink prior to the boarding of each passenger.

(d) A commuter van driver shall not provide transportation service to a passenger unless such service is on the basis of a telephone contract or other prearrangement and such prearrangement is evidenced by the records required by Rule 9-11(l)(2).

(e) A commuter van driver shall not pick up or discharge passengers, or permit or authorize the pick up or

discharge of passengers:

(1) outside of the geographic area set forth in the authorization to operate a commuter van service issued pursuant to this chapter; or

(2) at stops of, or along a route which is traveled upon by a bus line which is operated by the New York City Transit Authority or the City or a private bus company which has been approved by the City to operate pursuant to a local law or Charter provision enacted in accordance with subdivision five of section 80 of the Transportation Law. The prohibition contained in this paragraph shall not apply to the pick up or discharge of passengers along bus routes in the borough of Manhattan south of Chambers Street by drivers for commuter van services which on July 1, 1992 had authority from the New York State Department of Transportation to pick up or discharge passengers along bus routes in such area, provided that the scope of operations by such commuter van services along bus routes in such area shall not exceed the scope of such operations prior to July 1, 1992.

(f) A commuter van driver shall not use or attempt to use physical force against a person while performing his duties and responsibilities as a van driver or in connection with the operation of a commuter van. A commuter van driver shall not distract, harm or use physical force against or attempt to distract, harm or use physical force against a service animal accompanying a person with a disability.

(g) A commuter van driver shall: (1) answer truthfully all questions and comply as directed with all communications, directives and summonses from the Commission or any other person or entity authorized to enforce the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans;

(2) produce any documents required by this section to be kept in the commuter van upon the demand of any such authorized person or entity; and

(3) produce any document required by this chapter to be kept by such driver no later than 10 days following a request from the Commission for such document.

(h) A commuter van driver shall be responsible for notifying the Commission within five calendar days after any criminal conviction (felony or misdemeanor) of such van driver. Such notification shall be in writing and must be accompanied by a certificate of disposition issued by the clerk of the court.

(i) A commuter van driver or any person acting on his or her behalf shall not offer or give any gift, gratuity or thing of value to any employee, representative or member of the Commission or any public servant who is charged with the administration or enforcement of this chapter or any traffic rule or law. Any administrative hearing to adjudicate a violation of this subdivision shall be referred to the New York City Office of Administrative Trials and Hearings.

(j) A commuter van driver shall immediately report to the Commission and to the New York City Department of Investigation any request or demand for a gift, gratuity or thing of value by any employee, representative or member of the Commission or any public servant who is charged with the administration or enforcement of this chapter or any traffic rule or law. Any administrative hearing to adjudicate a violation of this subdivision shall be referred to the New York City Office of Administrative Trials and Hearings.

(k) A commuter van driver shall not charge or attempt to charge a fare above the preapproved rate of fare quoted by the dispatcher. A commuter van driver shall not impose or attempt to impose any additional charge for transporting a person with a disability, a service animal accompanying a person with a disability or a wheelchair, three-wheeled motorized scooter or other mobility aid.

(l) (1) A commuter van driver shall not refuse by words, gestures or any other means, without justifiable grounds set forth in subdivision (m) of this section, to provide transportation, when dispatched, for a person who has prearranged the trip and the destination is within the geographical area set forth in the authorization to operate a commuter van

service. This includes a person with a disability and any service animal accompanying such person.

(2) A commuter van driver shall not require a person with a disability to be accompanied by an attendant. However, where a person with a disability is accompanied by an attendant, a commuter van driver shall not impose or attempt to impose any charge in addition to the authorized rate of fare for transporting the attendant.

(3) A commuter van driver shall not refuse to transport a passenger's wheelchair, crutches or other mobility aid.

(m) Justifiable grounds for conduct otherwise prohibited by subdivision (l) of this section shall be the following:

(1) the passenger is carrying, or is in possession of any article, package, case or container, other than a wheelchair, three-wheeled motorized scooter or other mobility aid, which the commuter van driver may reasonably believe will cause damage to the interior of the commuter van, impair its efficient operation, or cause it to become stained or foul smelling;

(2) the passenger is escorted or accompanied by an animal which is not properly or adequately secured in a kennel case or other suitable container. This provision shall not apply to service animals accompanying people with disabilities;

(3) the passenger is disorderly or intoxicated. Provided, however, that a commuter van driver shall not refuse to provide service to a person with a disability solely because such person's disability results in an appearance or involuntary behavior which may offend, annoy or inconvenience the driver; or

(4) if the passenger has refused a request by the commuter van driver to obey the no-smoking requirement of law, the driver may discharge the passenger after asking the passenger to cease smoking in the commuter van. Provided, however, that, if the driver discharges the passenger, it must be at a safe location.

(n) (1) A driver shall not use a portable or hands-free electronic device while operating a commuter van, unless such commuter van shall be lawfully standing or parked. "Use" of a portable or hands-free electronic device means that the driver is deploying any of the functions of the portable or hands-free electronic device, or has a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver's ear.

A driver may offer as an affirmative defense that he or she was using a portable or hands-free electronic device while operating a commuter van for the sole purpose of communicating with an emergency response operator that there exists an imminent threat to life or property, and that it was impossible for the driver to safely stop the vehicle before placing the call. The driver must provide documentary proof that the electronic communication was to an emergency response operator.

(2) Additional penalties for use of a portable or hands-free electronic device while operating a commuter van.

(i) For purposes of this paragraph (n)(2), "portable or hands-free electronic device violation" shall mean a violation of §9-10(n)(1) of this chapter or a violation of any state law or rule prohibiting or restricting the use of a portable or hands-free electronic device while driving, such violation having been adjudicated by a court or other tribunal having jurisdiction over such violations.

(ii) Any commuter van driver who commits a portable or hands-free electronic device violation is required to attend and satisfactorily complete an authorized course of training in the dangers of driving while distracted by portable or hands-free electronic devices. The course shall be a minimum of one hour and shall include a review of the rules governing the use of portable or hands-free devices, and the dangers of driving while distracted. The course must be completed and verification of course completion provided by the designated school within sixty days of TLC's issuance of a directive to the commuter van driver that he or she is required to take such course.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Subd. (f) amended City Record July 8, 1997 §23, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (k) added City Record July 8, 1997 §24, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (l) added City Record July 8, 1997 §24, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (m) added City Record July 8, 1997 §24, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (n) amended City Record Dec. 30, 2009 §13, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Subd. (n) added City Record May 27, 1999 §8, eff. June 26, 1999. [See T35 §2-25 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-11

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-11 Conditions of Operation Relating to Commuter Vans.

An operator and an owner shall be responsible for compliance with the following provisions and shall be liable for violations thereof:

(a) Upon the issuance and upon each renewal or transfer of a commuter van license, the commuter van shall be presented to the Commission at its inspection facility where the Commission shall affix four decals to the commuter van. The four decals shall be placed on the lower right corner of the windshield, each rear-most side window, and the center of the rear of the vehicle. Licensure of the commuter van is not complete until such decals are affixed.

(b) No commuter van shall be used in the course of operations of a commuter van service unless the van shall at all times carry the following inside the vehicle while it is in operation:

(1) the commuter van license;

(2) the driver's commuter van driver's license;

(3) the authorization to operate a commuter van service, or legible photocopy thereof; (4) the vehicle registration and evidence of current liability insurance; and

(5) a passenger manifest as described in subdivision (c) of §9-10 of this chapter.

(c) No commuter van shall be used in the course of operations of a commuter van service unless the driver holds:

(1) a commercial driver's license which pursuant to the New York State Vehicle and Traffic Law is valid for the operation of such commuter van for the transportation of passengers for-hire, and

(2) a commuter van driver's license issued pursuant to this chapter.

(d) No commuter van service and no person who owns or operates a commuter van shall provide, permit or authorize the provision of transportation service to a passenger unless such service to a passenger is on the basis of a telephone contract or other prearrangement and such prearrangement is evidenced by the manifest described in Rule 9-10(c). Where a driver of a commuter van has violated Rule 9-10(d), the commuter van service and the owner of such vehicle shall also be liable for a violation of this Rule 9-11(d).

(e) No commuter van service and no person who owns or operates a commuter van shall pick up or discharge passengers, or permit or authorize the pick up or discharge of passengers:

(1) outside of the geographical area set forth in the authorization to operate a commuter van service issued pursuant to this chapter; or

(2) at stops of, or along a route at stops of, or along a route which is traveled upon by a bus line which is operated by the New York City Transit Authority or the City or a private bus company which has been approved by the City to operate pursuant to a local law or Charter provision enacted in accordance with subdivision four of section 80 of the Transportation Law. The prohibition contained in this paragraph shall not apply to the pick up or discharge of passengers along bus routes in the borough of Manhatten south of Chambers Street by commuter van services who on July 1, 1992 had authority from the New York State Department of Transportation to pick up or discharge passengers along bus routes in such area, provided that the scope of operations by such commuter van services along bus routes in such area shall not exceed the scope of such operations prior to July 1, 1992.

Where a driver of a commuter van has violated Rule 9-10(e), the commuter van service and the owner of such vehicle shall also be liable for a violation of this Rule 9-11(e).

(f) No commuter van shall be used in the course of operations of a commuter van service unless such vehicle is in compliance with the registration requirements of the New York State Vehicle and Traffic Law.

(g) No commuter van shall be used in the course of operations of a commuter van service unless such vehicle:

(1) is inspected by the New York State Department of Transportation as provided under Section 140 of the New York State Transportation Law or any rules or regulations promulgated thereunder or as provided under any agreement between the New York State Department of Transportation and the Commission entered into pursuant to subparagraph one of paragraph a of subdivision five of section eighty of the New York State Transportation Law, and

(2) displays the certificate evidencing an inspection, and

(3) meets the vehicle safety standards prescribed by rule or regulation of the New York State Commissioner of Transportation pursuant to Section 140 of the New York State Transportation Law.

(h) No commuter van shall be used in the course of operations of commuter van service unless such vehicle is in compliance with the insurance requirements set forth in Rule 9-12.

(i) No commuter van shall be used in the course of operations of a commuter van service unless the van shall have the following information conspicuously painted on each longitudinal side of the exterior of the vehicle in letters of at least 3 inches in height: the exact name and address of the operator and the word OPERATOR adjacent thereto; the owner's exact name and the word OWNER adjacent thereto; and a permit number. In addition, a placard with the same information required above shall be placed in the interior of the commuter van clearly visible from all passenger seats of

the commuter van. Such placard shall include a statement that any complaints regarding the commuter van may be submitted to the Taxi and Limousine Commission by telephone to 311 or via the Commission's website, http://nyc.gov/taxi.

(j) A commuter van shall not be used in the course of operations of a commuter van service if the van is in appearance, in whole or in part, any shade of taxicab yellow.

(k) No commuter van that utilizes a two-way radio or other communications system shall be used in the course of operations of a commuter van service unless such commuter van service and the owner of such commuter van are in compliance with all regulations of the Federal Communications Commission applicable to such use.

(l) A commuter van service shall be responsible for ensuring that the following records are kept for all dispatched calls:

(1) the passenger manifest as described in subdivision (c) of section 9-10 of this chapter.

(2) records maintained at the business premises of such service containing the records of requests for service and trips; and

(3) a list of all current vehicles operating pursuant to the authorization to operate a commuter van service, which includes information regarding the owner of the vehicle, including but not limited to the owner's name, mailing address, and home telephone number, the vehicle's registration number, the vehicle's commuter van license number, the Department of Motor Vehicles license plate number of the vehicle, the name of the vehicle's insurance carrier and the policy number, and the dates of inspection of the vehicle and the outcome of each such inspection.

An owner of a commuter van shall also be responsible for ensuring that the records described in subparagraph (a) and (b) of this paragraph be kept for all dispatched calls. The records required to be kept by this paragraph shall be kept for a period of one year. Such records shall be subject to inspection by authorized officers or employees of the Commission during regular business hours.

(m) A commuter van service and a commuter van owner shall:

(1) answer truthfully all questions and comply as directed with all communications, directives and summonses from the Commission or any other person or entity authorized to enforce the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans;

(2) produce or be responsible for instructing the driver of any commuter van to produce any documents required by this section to be kept in the commuter van upon the demand of any such authorized person or entity;

(3) produce any other document required by this chapter to be maintained no later than 10 days following a request from the Commission for such document; and

(4) have an affirmative duty to aid the Commission in obtaining information sought by the Commission regarding any driver or vehicle operating pursuant to the authorization of such van service or owned by such owner.

(n) Neither a commuter van service owner nor a commuter van owner shall use or attempt to use physical force against any person while performing his duties and responsibilities as a van service owner or van owner or in connection with the operation of such commuter van service. Neither a commuter van service owner nor a commuter van owner shall distract, harm or use physical force against or attempt to distract, harm or use physical force against a service animal accompanying a person with a disability.

(o) A commuter van service owner and a commuter van owner shall be responsible for notifying the Commission within five calendar days after any criminal conviction (misdemeanor or felony) of the van service owner or the

commuter van owner; if the commuter van service or the commuter van owner is a partnership or a coporation, the Commission must be notified of the criminal conviction of any partner, or any officer, principal or stockholder owning more than ten percent of the outstanding stock of the corporation, who is required to be fingerprinted pursuant to this chapter. Such notification shall be in writing and must be accompanied by a certificate of disposition issued by the clerk of the court.

(p) A commuter van service owner and a commuter van owner or any person acting on his or her behalf shall not offer or give any gift, gratuity or thing of value to any employee, representative or member of the Commission or any public servant who is charged with the administration or enforcement of this chapter or any traffic rule or law. Any administrative hearing on this matter will be referred to the New York City Office of Administrative Trials and Hearings.

(q) A commuter van service owner and a commuter van owner shall immediately report to the Commission and to the New York City Department of Investigation any request or demand for a gift, gratuity or thing of value by any employee, representative or member of the Commission or any public servant who is charged with the administration or enforcement of this chapter or any traffic rule or law. Any administrative hearing on this matter will be referred to the New York City Office of Administrative Trials and Hearings.

(r) A commuter van service owner and a commuter van owner shall not instruct, authorize or permit a commuter van driver to discriminate unlawfully against people with disabilities. Such discrimination includes, but is not limited to, refusing to serve people with disabilities, refusing to load and unload the mobility aids of people with disabilities, and imposing any charge in addition to the authorized fare for the transportation of people with disabilities, service animals, wheelchairs, or other mobility aids. Where a commuter van driver has violated §9-10(k) or (l), the commuter van service and the owner of such vehicle shall also be liable for a violation of this §9-11(r).

(s) A commuter van service which purchases or leases any new commuter van, as defined by this chapter, shall ensure that such vehicle complies with all applicable provisions of law regarding accessibility to people with disabilities.

(t) A commuter van service and a commuter van owner shall comply with all provisions of the New York State Workers' Compensation Law and regulations promulgated thereunder with respect to the provision of coverage and benefits to eligible persons.

(u)(1) A commuter van service and a commuter van owner shall maintain on file with the Commission a current telephone number (which must be connected to an answering machine or recording device), pager number, answering service telephone number or similar means of telephone contact, so that the van or service owner may be reached by the Commission on a twenty-four hour basis.

(2) Such service or owner must respond to any telephone or pager contact from the Commission within forty-eight hours, seven days a week.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Open par amended City Record Jan. 15, 2008 §2, eff. Feb. 14, 2008. [See T35 §9-01 Note 1]

Subd. (a) amended City Record Jan. 15, 2008 §2, eff. Feb. 14, 2008. [See T35 §9-01 Note 1]

Subd. (i) amended City Record Jan. 15, 2008 §2, eff. Feb. 14, 2008. [See T35 §9-01 Note 1]

Subd. (n) amended City Record July 8, 1997 §25, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (r) added City Record July 8, 1997 §26, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (s) added City Record July 8, 1997 §26, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (t) added City Record Jan. 31, 2000 §3, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

Subd. (u) added City Record Jan. 31, 2000 §6, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-12

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-12 Insurance Relating to Commuter Vans.

(a) A commuter van service and an owner of a commuter van shall be responsible for compliance with the following provisions and shall be liable for violations thereof:

(1) Every person operating one or more commuter vans under an authorization issued by the Commission pursuant to §9-02 of this chapter shall, in accordance with the provisions of this section, procure and maintain and file with the Commission a surety bond or policy of insurance approved as to form by the Commission in a solvent and responsible company authorized to do business in this State and approved by the Superintendent of Insurance covering each commuter van operated pursuant to such authorization, conditioned for the payment of all claims and judgments for damages or injuries caused in the operation, maintenance, use or the defective construction of such commuter van in at least the following amounts:

(i) if the commuter van has a carrying capacity of twelve passengers or less: for personal injury or death to one person, $100,000; for personal injury or death to all persons in one accident, $300,000, with a maximum of $100,000 for each person; and for property damage, $50,000; or

(ii) if the commuter van has a carrying capacity of more than twelve passengers and less than twenty-one pasengers: for personal injury or death to one person, $100,000; for personal injury or death to all persons in one accident, $500,000, with a maximum of $100,000 for each person; and for property damage, $50,000.

(2) No commuter van shall be used in the course of operations of a commuter van service unless a surety bond or policy of insurance as described in paragraph one of this subdivision is maintained covering such commuter van.

(b) Surety bonds and certificates of insurance shall specify that coverage thereunder will remain in effect continuously until terminated as provided herein.

(c) Surety bonds or certificates of insurance which have been accepted by the Commission under this section may be replaced by other surety bonds or certificates of insurance, and the liability of the retiring surety or insurer under such surety bonds or certificates of insurance shall be considered as having terminated as of the effective date of the replacement surety bond or certificate of insurance, provided that such replacement surety bond or certificate meets all of the following conditions:

(1) it must be acceptable to the Commission under this section;

(2) it must be accompanied by a letter of authorization, in duplicate, signed by the commuter van service involved or an authorized employee of such van service, authorizing such replacement and verifying the effective date thereof; and

(3) its effective date must coincide with the effective date specified in the letter of authorization and such date may not be more than 30 days prior to the date of receipt by the Commission of the letter of authorization and replacement certificate.

(d) Every surety bond or certificate of insurance shall contain a provision for a continuing liability notwithstanding any recovery thereunder.

(e) Every surety bond or certificate of insurance shall provide that cancellation thereof shall not be effective until at least 30 days' notice in writing of intention to cancel has been delivered to the Commission; such cancellation notice shall be in the form set forth in Appendix B of this title, **infra,** designated "Form K-Uniform Notice of Cancellation of Motor Carrier Insurance Policies" or "Form L-Uniform Notice of Cancellation of Motor Carrier Surety Bonds." If such cancelled insurance policy or bond is reinstated, a new certificate, in the form provided by this section, shall be filed with the Commission, except there shall be typed or printed thereon, in capital letters, the words "REINSTATEMENT OF INSURANCE POLICY" or "REINSTATEMENT OF BOND", as may be appropriate.

(f) Certificates of Insurance shall be in accordance with the forms set forth in Appendix B of this title, **infra,** designated "Form E-Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance." When a certificate of insurance designated Form E is filed, there shall be attached to the original policy of insurance, an endorsement in the form set forth in Appendix B of this title, **infra,** and marked "Form F-Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement."

(g) When a surety bond is filed in lieu of a certificate evidencing insurance, the bond shall be in the form set forth in Appendix B of this title, **infra,** and designated "Form G-Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond."

(h) No surety bond or certifiate of insurance shall be filed with the Commission unless a direct contractual relationship exists between the authorization or license holder and the insurance or bonding company making the filing.

(i) The Commission may at any time refuse to accept any surety bond or certificate of insurance if in its judgment it does not provide adequate protection for the public.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-13

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-13 Advertising.

(a) No person shall operate or permit to be operated any vehicle bearing the words "commuter van service," "van service," "commuter van," "van" or other designation of similar import unless the vehicle is licensed as a commuter van and is operated pursuant to an authorization to operate a commuter van service and the driver has an appropriate driver's license under this chapter. No person shall advertise or hold himself or herself out as doing business as a "commuter van service," "van service," "commuter van," or "van" or other designation of similar import unless such person is authorized to operate a commuter van service and a commuter van license is in effect for each vehicle used therefor as required by this chapter.

(b) No person who is required to obtain authorization to operate a commuter van service or is required to operate pursuant to such authorization under this chapter shall advertise in print or in a broadcast medium the activity for which authorization is required without conspicuously stating in such advertising the commuter van service authorization number and that the activity is licensed by the Commission.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-14

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-14 Renewal, Suspension and Revocation of Authorization to Operate a Commuter Van Service, Commuter Van License and Commuter Van Drivers' License.

(a) An authorization to operate a commuter van service shall be revoked after the holder of such authorization has had an opportunity for a hearing and upon the occurrence of any one or more of the following conditions:

(1) Where each commuter van comprising a number of commuter vans equaling at least thirty percent of the total number of commuter vans operating as part of the same current, valid authorization rounded up to the next whole number, has failed to maintain the required liability insurance at least three times within a twelve month period; or

(2) Where each commuter van comprising a number of commuter vans equaling at least thirty percent of the total number of commuter vans operating as part of the same current, valid authorization, rounded up to the next whole number, has operated without complying with any safety inspection requirement arising from any applicable law, rule or regulation at least three times within a twelve month period; or

(3) Where a commuter van driver has had his or her license revoked pursuant to subdivision (c) of this section while operating as part of such authorization and thereafter is found to be operating a commuter van as part of such authorization without a commuter van driver's license required by this chapter three times within a six month period; or

(4) Where the number of violations of paragraph 5 of subdivision a of §19-504.3 of the Administrative Code occurring within a twelve month period is equal to the following: ninety percent of the number of commuter vans authorized to operate as part of such authorization, rounded up to the next whole number, or five, whichever is greater.

(b) A commuter van license shall be revoked after the holder of such license has had an opportunity for a hearing and after which the holder of such license is found guilty of any of the following:

(1) Failure to maintain the liability insurance required by paragraph 4 of subdivision a of §19-504.3 of the Administrative Code and §9-12 of this chapter three times within a period of one year; or

(2) Operating without complying with any safety inspection requirements arising from any applicable law, rule or regulation three times within a period of one year.

(c) A commuter van driver's license shall be revoked after the holder of such license has had an opportunity for a hearing and such holder is found to have failed to comply with subdivision (e) and/or (f) of §9-10 of this chapter three times within a period of six months.

(d) A commuter van driver's license shall be revoked after the holder of such license has had an opportunity for a hearing and the Commission finds that the holder's commuter van driver's license has been suspended on two occasions within a three year period pursuant to subdivision o of §19-505 of the Adminis- trative Code, based on such driver's disqualification pursuant to paragraph d of subdivision 2 of §509-c of Article 19-A of the Vehicle and Traffic Law by reason of the accumulation of nine or more points on his or her driving record for acts occurring during an eighteen month period.

(e) The Commission may refuse to renew any authorization to operate a commuter van service or any commuter van license or commuter van driver's license required by these rules and, after due notice and an opportunity to be heard, may suspend or revoke any such authorization or license upon the occurrence of any one or more of the following conditions:

(1) the holder of an authorization or a license or any of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has been found by the Commission to have violated any of the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans or this chapter; or

(2) the holder of an authorization or a license or any of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has made a material false statement or concealed a material fact in connection with the filing of any application or certification pursuant to this chapter or has engaged in any fraud or misrepresentation in connection with rendering transportation service; or

(3) the holder of an authorization or a license or any of its officers, principals, directors, or stockholders owning more than ten percent of the outstanding stock of the corporation has not paid any penalty duly imposed pursuant to the provisions of this chapter; or

(4) the holder of an authorization or a license or any of its officers, principals, directors, or stockholders owning more than ten percent of the outstanding stock of the corporation has been convicted of a crime which, in the judgment of the Commission has a direct relationship to such person's fitness or ability to perform any of the activities for which an authorization or a license is required pursuant to this chapter, or has been convicted of any other offense which under the provision of Article 23-A of the New York State Correction Law, would provide a basis for the Commission to refuse to renew, or to suspend or revoke, such authorization or license; or

(5) the holder of an authorization or a license has failed to maintain the conditions of operation applicable to the particular authorization or license as provided in this chapter; or

(6) the holder of an authorization or a license or any of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has been found to have violated any of the provisions of §8-107 of the Administrative Code of the City of New York concerning unlawful

discriminatory practices in public accommodations in the operation of a commuter van service or a commuter van.

(f) Notwithstanding the foregoing provisions, the Chairperson of the Commission may immediately suspend any authorization to operate a commuter van service or commuter van license or commuter van driver's license issued under these rules without a prior hearing where the Chairperson determines that the continued possession of such authorization or license poses a serious danger to the public health, safety or welfare. After such suspension an opportunity for a hearing shall be provided on an expedited basis, within a period not to exceed fourteen days.

(g) Where the Commission suspends or revokes an authorization to operate a commuter van service pursuant to this chapter:

(1) Any commuter van license which has been issued as part of such authorization shall be deemed suspended or revoked, as the case may be, where the suspension or revocation of the authorization to operate a commuter van service was based, in whole or in part, upon the operation of such commuter van; or

(2) Any commuter van license which has been issued as part of such authorization shall continue to be valid in accordance with its terms where the suspension or revocation of the authorization to operate a commuter van service was not based, in whole or in part, upon the operation of such commuter van; provided, however, that such commuter van shall not be operated in the course of operations of such commuter van service unless and until such commuter van operates as part of a current, valid authorization to operate a commuter van service; provided, further that any such commuter van which operates without being part of a current, valid authorization to operate a commuter van service shall be deemed to be operating without a commuter van license and shall be subject to any and all of the penalties that may be imposed under the Administrative Code of this chapter for the unlicensed operation of commuter vans, including seizure and forfeiture.

(h) Notwithstanding any other provision of law, any person who has had authorization to operate a commuter van service revoked by the Commission pursuant to this section shall not be permitted to apply for an authorization to operate a commuter van service for a period of six months after the day of revocation.

(i) Notwithstanding any other provision of law, any person who has had a commuter van driver's license revoked by the Commission pursuant to this section shall not be permitted to apply for a commuter van driver's license pursuant to this chapter for a period of one year after the date of such revocation.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-15

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-15 License Fees.

(a) In accordance with §19-504(o) of the Administrative Code of the City of New York, the fee for a commuter van license shall be two hundred seventy-five dollars ($275) annually, to be paid at the time of filing the application for issuance or renewal of such license. Such fee shall not be refunded in the event of disapproval of the application; provided, however, that where such disapproval is based on the disapproval of an application for issuance or renewal of an authorization to operate a commuter van service, such fee shall be refunded.

(b) (1) In accordance with §19-505(j) of the Administrative Code of the City of New York, the fee for a commuter van driver's license shall be sixty dollars ($60) annually, to be paid at the time of filing the application for issuance or renewal of such license. Such fee shall not be refunded in the event of disapproval of the application.

(2) In accordance with §19-505(j) of the Administrative Code of the City of New York, there shall be an additional fee of twenty-five dollars ($25) for late filing of a commuter van driver's license renewal application where such filing is permitted by the Commission.

(c) In accordance with §§19-504(c), 19-504(2)(i) and 19-505(j) of the Administrative Code, there shall be an additional fee of twenty-five dollars ($25) for each license or authorization issued to replace a lost or mutilated license or authorization.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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***** Current through December 2009 ****

35 RCNY 9-16

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-16 Procedures in the Event of a Violation of this Chapter. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See Chapter 8 footnote]

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Subd. (b) par (5) subpar (a) amended City Record May 15, 1995 §4, eff. June 19, 1995. [See T35 §1-85 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-17

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-17 Penalties for Violation of Rules Governing Commuter Vans.

(a)

Rule No.	Penalty All fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	Personal Appearance Required
§9-02(a)	$500-first violation $1,000-subsequent violation within twenty-four months	Yes
§9-03(c)	$500-first violation $1,000-subsequent violation within twenty-four months	Yes
§9-04(f)(1)(i)	$100-500	Yes
§9-04(f)(1)(ii)	$50-300	Yes
§9-04(f)(1)(iii)	$50	No
§9-04(f)(1)(iv)	$50	No
§9-04(f)(1)(v)	$50-300	Yes
§9-04(f)(1)(vi)	$75-500	Yes
§9-04(f)(1)(vii)	$100-300	Yes
§9-04(f)(1)(viii)	$100	No
§9-04(f)(1)(ix)	$100	No
§9-06(a)	$500-first violation $1,000-subsequent violation within twenty-four months	Yes

§9-06(e)	$500-first violation$1,000-subsequent violation within twenty-four months	Yes
§9-08(a)	$300	No
§9-08(e)	$300	No
§9-10(a)	$300	No
§9-10(b)(1-4)	$25 per missing item; maximum penalty $50	No
§9-10(c)	$25	No
§9-10(d)	$50	No
§9-10(e)	$75-first and second violationRevocation for third violation within a six month period	No
§9-10(f)	$50-350 and/or suspension or revocation	Yes
§9-10(g)(1)	$200 and suspension until compliance	Yes
§9-10(g)(2)	$50	No
§9-10(g)(3)	$75-350 and/or suspension until compliance	Yes
§9-10(h)	$50-250	Yes
§9-10(i)	$1,000 and/or suspension or revocation	Yes
§9-10(j)	$1,000 and/or suspension or revocation	Yes
§9-10(k)	$100-250 and order restitution for any overcharge to the passenger	Yes
§9-10(l)(1)	$200-350 for the first violation $350-500 for each subsequent violation within thirty-six months	Yes
§9-10(l)(2)	$100-250 and order restitution for any overcharge to the passenger	Yes
§9-10(l)(3)	$200-350	Yes
9-10(n)(1)	$200	No
§9-11(a)	For failure to have decals affixed or for operating a commuter van with damaged or missing decal(s):$500-for the first offense in 12 months;$1000-for the second offense and subsequent offenses within a 12-month period, and suspension of the commuter van license until compliance.Operator authorization revocation for the third offense within a 12-month period.	No, exceptfor operatorauthorizationrevocation
§9-11(b)	$25 per missing item; maximum penalty $50	No
§9-11(c)(1)	$300 and suspension of the commuter van license until compliance	Yes
§9-11(c)(2)	$300 and suspension of the commuter van license until compliance	Yes
§9-11(d)	$50	No
§9-11(e)	$75	No
§9-11(f)	$300 and suspension of the commuter van license until compliance	Yes
§9-11(g)(1)	$300	No
§9-11(g)(2)	$100	No
§9-11(g)(3)	$100-500 and/or suspension or revocation of commuter van license	Yes
§9-11(h)	$300 and/or suspension or revocation of commuter van license	Yes
§9-11(i)	$50	No
§9-11(j)	$100	No
§9-11(k)	$100	No
§9-11(l)(1)	$50	No
§9-11(l)(2)	$100	No
§9-11(l)(3)	$300	No
§9-11(m)(1)	$200 and suspension until compliance	Yes
§9-11(m)(2)	$50-150	Yes
§9-11(m)(3)	$75-350 and/or suspension until compliance	Yes
§9-11(m)(4)	$75-350 and/or suspension until compliance	Yes
§9-11(n)	$50-350 and/or suspension or revocation	Yes

§9-11(o)	$100	No
§9-11(p)	$1,000 and/or suspension or revocation	Yes
§9-11(q)	$1,000 and/or suspension or revocation	Yes
§9-11(r)	$200-350	Yes
§9-11(s)	$200-350	Yes
§9-11(t)	$25 for each day of non-compliance, and either suspension until compliance or license revocation.	Yes
§9-11(u)(1)	$100	No
§9-11(u)(2)	$500	No
§9-12(a)(2)	$300 and suspension until compliance	No
§9-13(a)	$500-first violation$1,000-subsequent violation within twenty-four months	Yes
§9-13(b)	$50	No

(b) A penalty of $200 and suspension shall be imposed*2 for default.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Subd. (a) Penalty column heading amended City Record Nov. 2, 2006 §19, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (a) §9-10(g)(1) amended City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

Subd. (a) §9-10(k) added City Record July 8, 1997 §27, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (a) §9-10(l)(1) added City Record July 8, 1997 §27, eff. Aug. 7, 1997. [See T35 §4-01 Note 1]

Subd. (a) §9-10(l)(2) added City Record July 8, 1997 §27, eff. Aug. 7, 1997. [See T35 §4-01 Note 1]

Subd. (a) §9-10(l)(3) added City Record July 8, 1997 §27, eff. Aug. 7, 1997. [See T35 §4-01 Note 1]

Subd. (a) §9-10(n) added City Record May 27, 1999 §9, eff. June 26, 1999. [See T35 §2-25 Note 1]

Subd. (a) §9-01(n)(1) amended City Record Dec. 30, 2009 §14, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Subd. (a) §9-11(a) amended City Record Jan. 15, 2008 §3, eff. Feb. 14, 2008. [See T35 §9-01 Note 1]

Subd. (a) §9-11(m)(1) amended City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

Subd. (a) §9-11(r) added City Record July 8, 1997 §27, eff. Aug. 7, 1997. [See T35 §4-01 Note 1]

Subd. (a) §9-11(s) added City Record July 8, 1997 §27, eff. Aug. 7, 1997. [See T35 §4-01 Note 1]

Subd. (a) §9-11(t) added City Record Jan. 31, 2000 §4, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

Subd. (a) §9-11(u)(1) added City Record Jan. 31, 2000 §7, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

Subd. (a) §9-11(u)(2) added City Record Jan. 31, 2000 §7, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

Subd. (b) amended City Record Dec. 1, 1999 §5, eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

2

[Footnote 2]: * So in original. No change indicated in City Record Dec. 1, 1999.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-18

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-18 Seizure of Commuter Vans.

(a) In accordance with §1-529(2) of the Administrative Code of the City of New York, a police officer or agent of the Commission may, upon service of a notice of violation upon the owner or operator of a commuter van, seize a vehicle which such police officer or agent of the Commission has reasonable cause to believe is being operated as a commuter van service by or on behalf of a person who is not operating pursuant to a current, valid authorization or operating as a commuter van without a commuter van license as required by this chapter. All persons in any such seized vehicle shall be left in or transported to a location which is readily accessible to other means of public transportation. A vehicle seized pursuant to §19-529(2) of the Administrative Code shall be removed to a designated secured facility.

(b) Within one business day after the seizure of a vehicle pursuant to subdivision (a) of this section, notice of such seizure and a copy of the notice of violation shall be mailed to the owner of such vehicle at the address for such owner set forth in the records maintained by the New York State Department of Motor Vehicles, or, for vehicles not registered in New York State, such equivalent record in such state of registration.

(c) A hearing to adjudicate the violation underlying the seizure shall be held before the administrative tribunal of the Commission within five business days after the date of the seizure. The adjudication shall be conducted pursuant to the procedures set forth in chapter 8 of the Rules of the Commission, except that where the procedures set forth in such Chapter are inconsistent with any provisions of the section, this section shall govern. The administrative tribunal of the Commission shall, within one business day of the conclusion of the hearing, render a determination as to whether the vehicle has been operated by or on behalf of a person who is not the holder of a current, valid authorization or has been operated without a commuter van license required by this chapter.

(d) An owner shall be eligible to obtain release of the vehicle prior to such hearing if such owner has not previously been found liable in an administrative or judicial proceeding for operating a vehicle as a commuter van service without a current, valid authorization or operating a commuter van without a commuter van license as required by this chapter, which violation was committed within a five year period prior to the violation resulting in the seizure. The vehicle shall be released to an eligible owner upon the posting of a bond in a form satisfactory to the Commission in the amount of the maximum civil penalty which may be imposed for the violation underlying the seizure and all reasonable costs for removal and storage of such vehicle.

(e) Where the Administrative Tribunal of the Commission, after adjudication of the violation underlying the seizure, shall find that the vehicle has been operated as a commuter van by or on behalf of a person who is not the holder of a current, valid authorization or operated as a commuter van without a commuter van license:

(1) If the vehicle is not subject to forfeiture pursuant to §19-529(3) of the Administrative Code of the City of New York, the Commission shall release such vehicle to an owner upon payment of the applicable civil penalties and all reasonable removal and storage costs; or

(2) If the vehicle is subject to forfeiture pursuant to §19-529(3) of the Administrative Code, the Commission may release such vehicle to an owner upon payment of the applicable civil penalties and all reasonable removal and storage costs, or may commence a forfeiture action pursuant to §19-529(3) within ten days after the owner's written demand for such vehicle.

(f) Where the Administrative Tribunal of the Commission, after adjudication of the violation underlying the seizure, finds that the charge of operating without an authorization or commuter van license has not been sustained, the vehicle shall be released to the owner.

(g) If an owner or representative of such owner has not sought to reclaim a seized vehicle within thirty days after mailing of notice to such owner of the final adjudication by the Administrative Tribunal of the Commission of the violation underlying the seizure, such vehicle shall be deemed by the Commission to be abandoned. Such vehicle shall be disposed of by the City pursuant to §1224 of the New York State Vehicle and Traffic Law; provided, however, that notwithstanding any inconsistent provision of §1224 of such law, if an owner seeks to reclaim such vehicle pursuant to §1224 of such law, such owner shall be deemed to have made a written demand for such vehicle and the Commission shall take such action as may be authorized by subdivisions (e) or (f) of this section.

(h) The vehicle removal fee shall be one hundred fifty dollars ($150).

(i) The vehicle storage fee shall be fifteen dollars ($15) per day.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Subd. (c) amended City Record Dec. 1, 1999 §5, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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***** Current through December 2009 ****

35 RCNY 9-19

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-19 Forfeiture of Commuter Vans.

(a) In addition to the penalties, sanctions and remedies provided in Chapter 5 of Title 19 of the Administrative Code and this chapter or in subdivisions 6 and 7 of §145 of the New York State Transportation Law, a vehicle seized pursuant to §19-529(2) of the Administrative Code, and all rights, title and interest therein, shall be subject to forfeiture to the City in accordance with the provisions of §19-529(3) of the Administrative Code upon judicial determination thereof, if the owner of such vehicle has been found liable at least two times in an administrative or court proceeding for operating a commuter van or other such common carrier by or on behalf of a person who is not the holder of a current, valid authorization or operating a commuter van without a commuter van license as required by this chapter, both of which violations were committed within a five-year period.

(b) A forfeiture action which is commenced pursuant to §19-529(3) shall be commenced by filing of a summons with notice or a summons and complaint pursuant to the New York Civil Practice Law and Rules, and such summons with notice or summons and complaint shall be served pursuant to subdivision (c) of this section. A vehicle which is the subject of such an action shall remain in the custody of the City pending the final determination of the forfeiture action.

(c) Service of a summons with notice or a summons and complaint shall be made:

(1) by personal service pursuant to the New York Civil Practice Law and Rules upon all owners of the vehicle listed in the records maintained by the New York State Department of Motor Vehicles, or for vehicles not registered in New York State, in the records maintained by the state of registration;

(2) by first class mail upon all individauls who have notified the Administrative Tribunal of the Commission that

they are an owner of the vehicle; and

(3) by first class mail upon all persons holding a security interest in such vehicle which security interest has been filed with the New York State Department of Motor Vehicles pursuant to the provisions of Title 10 of the New York State Vehicle and Traffic Law, at the address set forth in the records of the New York State Department of Motor Vehicles, and for vehicles not registered in New York State, all persons holding a security interest in such vehicle which security interest has been filed with the state of registration at the address provided by such state of registration.

(d) Any owner who receives notice of the institution of a forfeiture action who claims an interest in the vehicle subject to forfeiture shall assert a claim for the recovery of the vehicle or satisfaction of the owner's interest in such vehicle by intervening in the forfeiture action in accordance with the New York Civil Practice Law and Rules. Any persons with a security interest in such vehicle who receives a notice of the institution of the forfeiture action who claims an interest in such vehicle subject to forfeiture shall assert a claim for satisfaction of such person's security interest in such vehicle by intervening in the forfeiture action in accordance with the New York Civil Practice Law and Rules.

(e) No vehicle shall be forfeited pursuant to §19-529(3), to the extent of the interest of a person who claims an interest in the vehicle, if such person shall plead and prove as an affirmative defense that:

(1) the use of the vehicle for the conduct that was the basis for the seizure occurred without the knowledge of such person, or, if such person had knowledge of such use, without the consent of such person, and that such person did not knowingly obtain such interest in the vehicle in order to avoid the forfeiture of such vehicle; or

(2) the conduct that was the basis for the seizure was committed by any person other than such person claiming an interest in the vehicle, while such vehicle was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

(f) For purposes of subdivision (e) of this section, if such person claiming an interest in the vehicle had knowledge of the use of the vehicle for the conduct that was the basis for such seizure, such person shall be deemed to have consented to the unlawful conduct unless such person establishes that he or she did all that could reasonably have been done to prevent the use of the vehicle for such unlawful conduct.

(g) The City, after judicial determination of forfeiture, shall, at its discretion, either:

(1) retain such vehicle for the official use of the City; or

(2) by public notice of at least twenty (20) days, sell such forfeited vehicle at public sale. The net proceeds of any such sale shall be paid into the general fund of the City.

(h) At any time within six months after the forfeiture, any person claiming an interest in a vehicle which has been forfeited pursuant to §19-529.3 who was not sent notice of the commencement of the forfeiture action pursuant to subdivisions (b) or (c) of this section or who did not otherwise receive actual notice of the forfeiture action may assert, in an action commenced before the Justice of the Supreme Court before whom the forfeiture action was held, such claim as could have been asserted in such forfeiture action pursuant to §19-529.3. The court may grant the relief sought upon such terms and conditions as it deems reasonable and just if such person claiming an interest in the vehicle establishes that he or she was not sent notice of the commencement of the forfeiture action and was without actual knowledge of the forfeiture action and establishes either of the affirmative defenses set forth in subdivision (e) of this section.

(i) In any action commenced pursuant to subdivisions (b) or (h) of this section, where the court awards a sum of money to one or more persons in satisfaction of such person's or persons' interest or interests in the forfeited vehicle, the total amount awarded to satisfy such interest or interest shall not exceed the amount of the net proceeds of the sale of the forfeited vehicle, after deduction of the lawful expenses incurred by the City, including the reasonable costs of

removal and storage of the vehicle between the time of seizure and the date of sale.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-20

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-20 Critical Driver Program.

(a) The commuter van driver's license of any driver, who, within a period of fifteen months, accumulates six or more points against his license issued by the Department of Motor Vehicles, or an equivalent license issued by the driver's state of residence, unless previously revoked, shall be suspended for thirty days.

(b) The commuter van driver's license of any driver who, within a period of fifteen months, accumulates ten or more points against his license issued by the Department of Motor Vehicles, or an equivalent license issued by the driver's state of residence, shall be revoked.

(c) The Commission may at any time review the fitness of a driver to be licensed by the Commission in view of any moving violation, accident, or other driving related incident. Nothing contained herein shall preclude the imposition by the Commission of additional or more severe penalties, or any other action deemed appropriate, in accordance with the Rules of the Commission.

(d) For the purpose of this Rule, the points assigned by the Department of Motor Vehicles for any violation shall be deemed to have been accumulated as of the date of occurrence of the violation.

(e) The relevant fifteen-month period to be used for calculating any suspension or revocation imposed under subsection (a) or (b) herein shall be calculated from the date of the most recent occurrence which led to a conviction of a violation carrying points; provided however, that no action under subsection (a) or (b) shall be taken with regard to any violation carrying points which occurred prior to the effective date of this Rule.

(f) For the purpose of calculating penalties pursuant to subsection (a) or (b) herein, a driver who has accumulated points for multiple violations arising from a single incident shall be deemed to have accumulated points for the single violation with the highest point total.

(g) Any licensee who voluntarily attends and satisfactorily completes a motor vehicle accident prevention course approved by the Department of Motor Vehicles, and who furnishes the Commission with proof that the course was completed after the effective date of this Rule shall have two (2) points deducted from the total number of points assessed pursuant to this Rule. No point reduction shall affect any suspension or revocation action taken pursuant to these Rules prior to the completion of the course. No person shall receive a point reduction pursuant to this subdivision more than once in any eighteen-month period, and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

HISTORICAL NOTE

Section added City Record Sept. 20, 1999 §2, eff. Oct. 20, 1999. [See T35 §4-17 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-21

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-21 Special Procedures Relating to Unlicensed Commuter Van Operations.

Where the Commission or an administrative tribunal thereof finds an owner liable for operating a vehicle as a commuter van without an authorization to operate a commuter van service or without a commuter van license, the Commission shall notify the New York State Commissioner of Motor Vehicles pursuant to subparagraph 4 of paragraph a of subdivision 5 of §80 of the New York State Transportation Law of such finding. The Commissioner of Motor Vehicles may take such action as required pursuant to such subparagraph 4, including the suspension of the registration of such vehicle and the denial any application for the registration of such vehicle or any application for the renewal thereof pursuant to subdivision 5-a of §401 of the Vehicle and Traffic Law until such time as the Commission may give notice that the violation has been corrected to its satisfaction. The Commission shall also notify the Department of Finance where it finds an owner liable for operating a vehicle as a commuter van without an authorization to operate a commuter van service or without a commuter van license.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §2, eff. Dec. 31, 1999. [See T35 ch. 8 footnote]. Section renumbered by the Law Department per Charter §1045(b).

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

APPENDIX A*1 FORM K UNIFORM NOTICE OF CANCELLATION OF MOTOR CARRIER INSURANCE POLICIES

APPENDIX A*1 FORM K UNIFORM NOTICE OF CANCELLATION OF MOTOR CARRIER INSURANCE POLICIES

(EXECUTED IN TRIPLICATE)

Check Type Canceled

BI and PD

Cargo

Filed with _____ (NAME OF COMMISSION) _____ (hereinafter called Commission)

This is to advise that under the terms of a policy or policies issued to:

_____ (NAME OF MOTOR CARRIER)
_____

of _____ (ADDRESS OF MOTOR CARRIER)
_____

by _____ (NAME OF COMPANY)
_____

of _____ (ADDRESS)
_____

said policy or policies, including any and all endorsements forming a part thereof or certificates issued in connection therewith, is (are) hereby canceled effective as of the _____ day of _____, 19_____, 12:01 A.M., standard time at the address of the Insured as stated in said policy or policies provided such date is not less than thirty (30) days after the actual receipt of this notice by the Commission.

Insurance Company File No. _____ _____

Insurance Company File No.(POLICY NO.) (SIGNATURE OF INSURER)

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., Sec. 302(b)(2)).

FORM L

UNIFORM NOTICE OF CANCELLATION OF

MOTOR CARRIER SURETY BONDS

(EXECUTED IN TRIPLICATE)

Check Type Canceled

BI and PD

Cargo

Filed with _____ (NAME OF COMMISSION) _____ (hereinafter called Commission)

This is to advise that, under the terms of surety bond(s) executed in behalf of

_____ (NAME OF PRINCIPAL)
_____

of _____ (ADDRESS)
_____

by _____ (NAME OF SURETY)
_____

of _____ (ADDRESS)
_____

said bond(s), including any and all riders or certificates attached thereto or issued in connection therewith, is (are) hereby canceled effective as of the _____ day of _____, 19_____, 12:01 A.M., standard time at the address of the Principal as stated in said bond(s) provided such date is not less than thirty (30) days after the actual receipt of this notice by the Commission.

Insurance Company File No. _____ _____

Insurance Company File No.(POLICY NO.) (SIGNATURE OF PRINCIPAL OR SURETY)

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., Sec. 302(b)(2)).

FORM E

UNIFORM MOTOR CARRIER BODILY INJURY

AND PROPERTY DAMAGE LIABILITY

CERTIFICATE OF INSURANCE

(EXECUTED IN TRIPLICATE)

Filed with_____ (hereinafter called Commission)

Filed with (Name of Commission)

This is to certify, that the _____

(Name of Company)

(hereinafter called Company) of _____

(Home Office Address of Company)

has issued to _____ of _____

(Name of Motor Carrier) (Address of Motor Carrier)

a policy or policies of insurance effective from _____ 12:01 A.M., standard time at the address of the insured stated in said policy or policies and continuing until canceled as provided herein, which, by attachment of the Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement, has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed under such motor carrier by the provisions of the motor carrier law of the State in which the Commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the Company agrees to furnish the Commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the insured giving thirty (30) days' notice in writing to the State Commission, such thirty (30) days' notice to commence to run from the date notice is actually received in the office of the Commission.

Countersigned at _____

Countersigned at (Street Address) (City) (State) (Zip Code)

this _____ day of _____ 19 _____

Authorized Company Representative

Insurance Company File No. _____

Insurance Company File No. (Policy Number)

FORM F

UNIFORM MOTOR CARRIER BODILY INJURY

AND PROPERTY DAMAGE LIABILITY

INSURANCE ENDORSEMENT

It is agreed that:

1. The certification of the policy, as proof of financial responsibility under the provisions of any State motor carrier law or regulations promulgated by any State Commission having jurisdiction with respect thereto, amends the policy to provide insurance for automobile bodily injury and property damage liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby, provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.

2. The Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance has been filed with the State Commissions indicated on the reverse side hereof.

3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State Commission with which such certificate has been filed, such thirty (30) days' notice to commence to run from the date the notice is actually received in the office of such Commission.

Attached to and forming part of policy No. _____ issued by _____

_____, herein called Company, of _____

_____ to _____ of _____

Dated at _____ this _____ day of _____ 19 _____

Countersigned by_____ _____

Authorized Company Representative

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., Sec. 302(b)(2)).

(Obverse)

FORM G

UNIFORM MOTOR CARRIER BODILY INJURY AND

PROPERTY DAMAGE LIABILITY SURETY BOND

(EXECUTED IN TRIPLICATE)

KNOW ALL MEN BY THESE PRESENTS, That we, _____

(Name of Motor Carrier Principal)

of _____, as Principal (hereinafter called Principal, and _____

(City) (State) (Name of Surety)

_____, a corporation created and existing under the laws of the state of _____, with principal office at _____, _____, as Surety (hereinafter called Surety), are held and firm bound (City) (State)

unto the State of _____ in the sum or sums hereinafter provided for which payment, well and truly to be made, the Principal and Surety hereby bind themselves, their successors and assigns, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal is or intends to become a motor carrier subject to the laws of such State and the rules and regulations of

(Name of Commission)

(hereinafter called Commission), relating to insurance or other security for the protection of the public, and has elected to file with the Commission a surety bond conditioned as hereinafter set forth; and

WHEREAS, this bond is written to assure compliance by the Principal as a motor carrier of passengers or property with the laws of such State and the rules and regulations of the Commission relating to insurance or other security for the protection of the public, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the Principal for any of the damages herein described.

NOW, THEREFORE, if every final judgment recovered against the Principal for bodily injury to or the death of any person or loss of or damage to the property of others, sustained while this bond is in effect, and resulting from the negligent operation, maintenance, or use of motor vehicles in transportation (but excluding injury to or death of the Principal's employees while engaged in the course of their employment, and loss of or damage to property of the Principal and property transported by the Principal designated as cargo), shall be paid, then this obligation shall be void, otherwise to remain in full force and effect.

Within the limits hereinafter provided, the liability of the Surety extends to such losses, damages, injuries, or deaths regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the principal or elsewhere.

(Reverse)

This bond is effective from _____ (12:01 A.M., standard time at the address of the Principal as stated herein) and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Commission, such termination to become effective not less than thirty (30) days after actual receipt of said notice by the Commission. The Surety shall not be liable hereunder for the

payment of any judgment or judgments against the Principal for bodily injury to or the death of any person or persons or loss of or damage to property resulting from accidents which occur after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

The liability of the Surety on each motor vehicle shall be the limits prescribed in the laws of such State and the rules and regulations of the Commission governing the filing of surety bonds, which were in effect at the time this bond was executed, and will be a continuing one notwithstanding any recovery hereunder.

IN WITNESS WHEREOF, the said Principal and Surety have executed this instrument on the _____ day of _____, 19_____

(Principal)

By _____

(Affix Corporate Seal)

(Surety)

_____, _____

(City) (State)

By _____

Countersigned at _____ this _____ day of _____, 19 _____

Bond No. _____

Registered Resident Agent

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., Sec. 302(b)(2)).

[Footnote 1]: * Appendix A added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

35 RCNY 10-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 10 RULES GOVERNING PUBLIC AUCTION OF TAXICAB LICENSES

§10-01 Public Auction of Taxicab Licenses.

(a) The chairman may issue taxicab licenses to qualified persons, to replace any revoked taxicab licenses that were not sold by the owners prior to revocation. Issuance shall be made through application for a license, submitted by the highest bidder at a public auction. (A taxicab license is referred to herein as a "medallion.") The medallion numbers shall be set by the Chairman.

(b) The public auction will be conducted by a licensed auctioneer. The auction sale shall be advertised in the City Record for at least twenty days before the auction. The Chairman may also advertise the auction in his sole discretion in newspapers and other media. The Chairman may, at any time and for any reason, postpone or cancel an auction.

(c) In accordance with Title 35 RCNY §l-04(g),*1 the replacement of an independent taxicab owner license shall be an independent taxicab owner license; similarly, the replacement of a fleet or minifleet license shall be a fleet or minifleet taxicab license. A fleet or minifleet medallion may be issued only to a corporation which owns at least one other fleet or minifleet medallion. Purchase at auction of two such medallions would satisfy that requirement.

(d) If more than one fleet or minifleet medallion is being auctioned, the medallions will be auctioned first as a pair and then separately. The final sale of the medallions will be in the manner (as a pair or separately), which will bring the highest return to the City.

(e) Any person may bid. The highest bidder must, however, satisfy all criteria for taxicab license owners. Satisfaction of the ownership criteria will be determined by the Chairman in the review of the application by the highest bidder for a license.

(f) The highest bidder must file an application for a taxicab license with the Commission within three weeks from the auction date, unless the deadline is extended for good cause by the Chairman.

(g) If the highest bidder's application for a license is denied for any cause, the second-highest bidder will be awarded the sale, but conditional on approval by the Chairman of an application for a taxicab license.

(h) If neither the highest bidder's nor the second-highest bidder's application for a license is approved, the auction shall be nullity.

(i) The highest bidder must provide to the auctioneer, immediately after the close of bids, a deposit covering a percentage of the high bid, as set in advance by the Chairman, in the form of a certified check or money order or such other form as set in advance and published in the **City Record** by the Chairman.

(j) In addition to the amount bid, the highest bidder will be responsible on the transfer closing date for any sales tax, medallion transfer tax, or other applicable taxes or fees.

(k) The outcome of the auction remains conditional pending the resolution of any challenge to the Commission's legal authority to issue and auction the medallions.

(l) The chairman is authorized to delegate matters pertaining to the auction and to take such further measures as in his discretion may be appropriate to the sale of the medallions. The Chairman is authorized in his discretion to modify the procedures set forth in subsections (d) through (i) herein, upon public notice in the **City Record** made in advance of the auction.

HISTORICAL NOTE

Section added City Record Jan. 2, 1992 eff. Feb. 1, 1992.

FOOTNOTES

1

[Footnote 1]: * There is no 35 RCNY §1-04(g).

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Rules of the City of New York

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35 RCNY 11-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 11*1 RULES CONCERNING PETITIONS TO INITIATE RULEMAKING

§11-01 Definitions.

Person. Person shall mean any individual, partnership, corporation or other legal entity, and any individual or entity acting in a fiduciary or representative capacity.

Petition. Petition shall mean a request or application for the Taxi and Limousine Commission to adopt a rule.

Petitioner. Petitioner shall mean the person who files a petition.

Rule. Rule shall have the same meaning set forth in §1041(5) of the New York City Charter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chap. 11 renumbered City Record Sept. 26, 1994 eff. Oct. 27, 1994 (formerly Chap. 9)

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35 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 11*1 RULES CONCERNING PETITIONS TO INITIATE RULEMAKING

§11-02 Procedures for Submitting Petitions.

(a) Any person may petition the Taxi and Limousine Commission to consider the adoption of rules.

(b) The petition must contain the following information:

(1) The proposed language for the rule to be adopted;

(2) A statement of the Taxi and Limousine Commission's authority to promulgate the rule and its purpose;

(3) The petitioner's argument in support of adopting the rule;

(4) The period of time the rule should be in effect;

(5) The name, address and telephone number of the petitioner;

(6) The signature of the petitioner.

(c) All petitions should be typewritten.

(d) The Taxi and Limousine Commission is authorized to adopt a form petition. Every petition shall be submitted on such a form unless such a form is not available from the Taxi and Limousine Commission, in which case the petition shall be filed on plain white, durable paper which shall be eleven by eight and one-half inches in size.

(e) Petitions shall be mailed or delivered to the offices of the Taxi and Limousine Commission at 221 W. 41st Street, New York, New York, 10036, marked to the attention of the Chairman.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chap. 11 renumbered City Record Sept. 26, 1994 eff. Oct. 27, 1994 (formerly Chap. 9)

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 11*1 RULES CONCERNING PETITIONS TO INITIATE RULEMAKING

§11-03 Procedures for Consideration of Petitions.

(a) Upon receipt of a petition submitted in proper form, the petition shall be stamped with the date it was received and shall then be assigned a processing number. The petition shall then be forwarded to the Chairman who may, at his or her discretion, reject the petition or present the petition for consideration by the Commission. Within sixty days from the date such petition is received in proper form, the Chairman shall either deny such petition by written notice stating the reasons for the denial, or shall state in writing the Taxi and Limousine Commission's intention to grant such petition and to initiate rulemaking by a specific date.

(b) If the Chairman denies a petition, copies of the Chairman's notice rejecting such petition, together with a copy of the petition, shall be presented to the Commission at the next regularly scheduled session. At or after such session, any Commission member may present the petition for consideration by the Commission as to whether to initiate rulemaking. The Commission will notify the petitioner of the results of such session.

(c) In proceeding with rulemaking, the Taxi and Limousine Commission shall not be bound by the language proposed by the petitioner, but may amend or modify such proposed language at the Taxi and Limousine Commission's discretion.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chap. 11 renumbered City Record Sept. 26, 1994 eff. Oct. 27, 1994 (formerly Chap. 9)

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***** Current through December 2009 ****

35 RCNY 11-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 11*1 RULES CONCERNING PETITIONS TO INITIATE RULEMAKING

§11-04 Review.

The Taxi and Limousine Commission's decision to deny or grant a petition is final and shall not be subject to judicial review.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chap. 11 renumbered City Record Sept. 26, 1994 eff. Oct. 27, 1994 (formerly Chap. 9)

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-01 Definitions.

Agent. An "agent" is an individual, partnership or corporation acting, by employment, contract or otherwise, on behalf of one or more owners to operate or provide for the operation of a taxicab in accordance with the requirement of this chapter and any rule promulgated by the Commission. The term "agent" shall not include an attorney or representative who appears on behalf of one or more owners before the Commission or an administrative tribunal, and taxicab drivers licensed pursuant to Chapter 5, Title 19 of the Administrative Code when acting in that capacity.

Merchant. A "merchant" is an individual or business entity licensed by the Commission that contracts with a merchant bank provider of credit/debit card services and other merchant account related services, which merchant bank provider is approved by the Commission as a subcontractor to one or more taxicab technology service providers for the purpose of providing in-cab payment of taxicab fares, surcharges, tolls and tips by credit/debit cards.

Taxicab technology service provider. A "taxicab technology service provider" is a vendor who has contracted with the Commission to install and maintain the taxicab technology system in taxicabs.

Taxicab technology system. The "taxicab technology system" is hardware and software that provides the following four core services (collectively "four core services"): (i) credit/debit card payment required by section 3-03(e)(7) of this title, (ii) text messaging required by section 3-03(e)(8) of this title, (iii) trip data collection and transmission required by section 3-06 of this title, and (iv) data transmission with the passenger information monitor required by section 3-07 of this title.

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Merchant added City Record June 12, 2007 §29, eff. July 12, 2007. [See T35 §1-01 Note 3]

Taxicab technology service provider added City Record June 12, 2007 §29, eff. July 12, 2007. [See T35 §1-01 Note 3]

Taxicab technology system added City Record June 12, 2007 §29, eff. July 12, 2007. [See T35 §1-01 Note 3]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record March 29, 1996 effective April 30, 1996. Note further provisions:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under section 19-530 of such Code, authorizing TLC to license and regulate medallion leasing agents.

The promulgated regulations implement Local Law 83 of 1995, which authorizes TLC to license and regulate taxicab medallion leasing agents. Taxi medallion owners who choose to designate an agent to operate their taxicabs must use a licensed agent.

The annual fee for an agent's license is $500. An agent must maintain a business premises in a location zoned for the operation of such business with sufficient off-street parking to store a portion of the taxicabs managed. In addition, an agent must deposit a $50,000 bond with the Commission, payable upon violation of any Commission rules or the Administrative Code.

In addition, the Taxicab Owners Rules were amended in order to make these rules consistent with the newly proposed agent regulations. Designation of an agent would not relieve an owner of the responsibilities of a licensee.

The proposal did not appear in a regulatory agenda for the agency. The regulations are required to implement Local Law 83 of 1995.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-02 Agent's License.

(a) No individual, partnership or corporation shall act as an agent without first obtaining a license therefor from the Commission.

(b) An application for an agent's license and for the renewal thereof shall be submitted on behalf of a sole proprietorship by the proprietor; on behalf of a partnership by a general partner thereof; on behalf of a corporation by an officer or director thereof; or by any other type of business entity by the chief executive officer thereof, irrespective of organizational title. The application shall contain a sworn and notarized statement by such individual that the statements therein are true under the penalties of perjury.

(c) An applicant for an agent's license shall be fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services. The applicant shall pay any processing fee required by the New York State Division of Criminal Justice Services. Fingerprints shall be taken of the proprietor if the applicant is a sole proprietorship; all the general partners if the applicant is a partnership; all the officers, directors, and owners of more than ten percent of the outstanding stock of the corporation if the applicant is a corporation; and if the applicant is another type of business entity, the chief executive officer, irrespective of organizational title.

(d) An applicant for an agent's license and the renewal thereof shall deposit with the Commission a bond, in the penal sum of fifty thousand ($50,000) dollars, containing one or more sureties to be approved by the Commission. Such bond shall be payable to the City of New York and shall be conditioned on the license applicant or licensee complying with the provisions of the Administrative Code of the City of New York and applicable rules or regulations of the Commission, and payment of all fines imposed by the Commission and all judgments or settlements arising from

damages occasioned to any person by reason of any misrepresentation, fraud or deceit, or any unlawful act or omission of such licensee, or his or her employee, officer, director, partner, owner of more than ten percent of the outstanding stock of the licensee or the chief executive officer of such licensee while such individual is acting on behalf of such licensee, or any other violation of §19-530 of the Administrative Code. The term judgment shall include but not be limited to an order of an Administrative Law Judge of the Commission or a recommendation of the Office of Administrative Trials and Hearings adopted by the Commission directing restitution to an aggrieved party. The agent is immediately liable for satisfaction of any fine or judgment upon determination of the amount thereof, or, if timely appeal is taken, upon final determination of the appeal. The bond shall remain in effect for one year following the expiration or revocation of the license.

(e) The Commission may deny an application for an agent's license or renewal of a license or, after notice and hearing, revoke or suspend any license issued, and/or impose a civil penalty of up to ten thousand dollars ($10,000) on a licensee, if it finds that an applicant, a licensee, any officer, director, partner, or owner of more than ten percent of the outstanding stock of an applicant or licensee, or the chief executive officer of an applicant or licensee has:

(1) made a material misstatement or misrepresentation on an application for such a license or the renewal thereof; or

(2) made a material misrepresentation or omission or committed a fraudulent or unlawful act while engaged in the business or occupation of, or holding himself, herself or itself out as an agent. Such acts shall include but not be limited to:

(i) presentation of a vehicle for inspection by the Commission with a vehicle identification number other than the one under which such vehicle is licensed by the Commission;

(ii) operation of a vehicle with a vehicle identification number which has been removed and reattached, or which is other than the one under which such vehicle is licensed by the Commission;

(iii) presentation of a document to the Commission which falsely states that insurance requirements with respect to a licensed vehicle have been met; and

(iv) conviction of bribing or attempting to bribe any officer or employee of the Commission; or

(3) violated any provision of §19-530 of the Administrative Code of the City of New York or any applicable rule of the Commission.

(f) The Commission may deny an application for an agent's license or renewal of a license or, after notice and hearing, revoke or suspend any license issued, if an applicant, a licensee, any officer, director, partner, or owner of more than ten percent of the outstanding stock of an applicant or licensee, or the chief executive officer of an applicant or licensee has been found in violation of any Commission rules as a medallion owner and such party's penalty as owner is revocation or divestiture of the owner's license.

(g) The Commission may deny an application for an agent's license or renewal of a license if the proprietor, any general partner, officer, director or owner of ten percent or more of the outstanding stock of the applicant or the chief executive of the applicant, as may be the case, has been convicted of a crime which under article twenty-three-A of the Correction Law would provide a basis for the denial of such license or renewal.

(h) Upon application for a license or renewal of a license, or upon request of the Commission an agent shall provide the Commission with the identity of all shareholders, partners, officers and other principals of such agent.

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record March 29, 1996 effective April 30, 1996. Note further provisions:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under section 19-530 of such Code, authorizing TLC to license and regulate medallion leasing agents.

The promulgated regulations implement Local Law 83 of 1995, which authorizes TLC to license and regulate taxicab medallion leasing agents. Taxi medallion owners who choose to designate an agent to operate their taxicabs must use a licensed agent.

The annual fee for an agent's license is $500. An agent must maintain a business premises in a location zoned for the operation of such business with sufficient off-street parking to store a portion of the taxicabs managed. In addition, an agent must deposit a $50,000 bond with the Commission, payable upon violation of any Commission rules or the Administrative Code.

In addition, the Taxicab Owners Rules were amended in order to make these rules consistent with the newly proposed agent regulations. Designation of an agent would not relieve an owner of the responsibilities of a licensee.

The proposal did not appear in a regulatory agenda for the agency. The regulations are required to implement Local Law 83 of 1995.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-03 Term of Agent's License.

(a) An agent's license shall expire on December 31 of the year in which it is issued, unless sooner suspended or revoked by the Commission.

(b) If at any time during the term of the agent's license the Commission becomes aware of information that the agent no longer meets the requirements for an agent's license, the Commission may deny his or her renewal application, or suspend or revoke his or her license in the manner provided in the Procedures in the Event of a Violation of Commission Rules, §12-07.*2

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record March 29, 1996 effective April 30, 1996. Note further provisions:

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The promulgated regulations implement Local Law 83 of 1995, which authorizes TLC to license and regulate taxicab medallion leasing agents. Taxi medallion owners who choose to designate an agent to operate their taxicabs must use a licensed agent.

The annual fee for an agent's license is $500. An agent must maintain a business premises in a location zoned for the operation of such business with sufficient off-street parking to store a portion of the taxicabs managed. In addition, an agent must deposit a $50,000 bond with the Commission, payable upon violation of any Commission rules or the Administrative Code.

In addition, the Taxicab Owners Rules were amended in order to make these rules consistent with the newly proposed agent regulations. Designation of an agent would not relieve an owner of the responsibilities of a licensee.

The proposal did not appear in a regulatory agenda for the agency. The regulations are required to implement Local Law 83 of 1995.
2

[Footnote 2]: * §12-07 was repealed in City Record Dec. 1, 1999 §4.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-04 License Fees.

(a) In accordance with §19-530(b) of the Administrative Code of the City of New York, the fee for an agent's license shall be five hundred dollars ($500) annually, to be paid at the time of filing the application for issuance or renewal of such license. If a license is granted for a period of six months or less, the fee shall be two hundred and fifty dollars ($250).

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record March 29, 1996 effective April 30, 1996. Note further provisions:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under

section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under section 19-530 of such Code, authorizing TLC to license and regulate medallion leasing agents.

The promulgated regulations implement Local Law 83 of 1995, which authorizes TLC to license and regulate taxicab medallion leasing agents. Taxi medallion owners who choose to designate an agent to operate their taxicabs must use a licensed agent.

The annual fee for an agent's license is $500. An agent must maintain a business premises in a location zoned for the operation of such business with sufficient off-street parking to store a portion of the taxicabs managed. In addition, an agent must deposit a $50,000 bond with the Commission, payable upon violation of any Commission rules or the Administrative Code.

In addition, the Taxicab Owners Rules were amended in order to make these rules consistent with the newly proposed agent regulations. Designation of an agent would not relieve an owner of the responsibilities of a licensee.

The proposal did not appear in a regulatory agenda for the agency. The regulations are required to implement Local Law 83 of 1995.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-05 Agent's Business Premises.

(a) An agent acting on behalf of an owner, who leases or otherwise dispatches one or more taxicabs for return at the end of a shift, shall maintain business premises in a location zoned for the operation of such business, with:

(1) sufficient off-street space at or near its business premises to store the lesser of twenty-five vehicles or the following: fifty percent of the taxicabs leased on a daily or shift basis, plus five percent of the taxicabs leased for longer than one day;

(2) sufficient office space to conduct business, where all records required by the Commission, including trip sheets and driver records, are kept;

(3) regular business hours, including the hours of 9:00 a.m. through 5:00 p.m. on every weekday other than legal holidays; and

(4) a business address and telephone number on file with the Commission.

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record March 29, 1996 effective April 30, 1996. Note further provisions:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under section 19-530 of such Code, authorizing TLC to license and regulate medallion leasing agents.

The promulgated regulations implement Local Law 83 of 1995, which authorizes TLC to license and regulate taxicab medallion leasing agents. Taxi medallion owners who choose to designate an agent to operate their taxicabs must use a licensed agent.

The annual fee for an agent's license is $500. An agent must maintain a business premises in a location zoned for the operation of such business with sufficient off-street parking to store a portion of the taxicabs managed. In addition, an agent must deposit a $50,000 bond with the Commission, payable upon violation of any Commission rules or the Administrative Code.

In addition, the Taxicab Owners Rules were amended in order to make these rules consistent with the newly proposed agent regulations. Designation of an agent would not relieve an owner of the responsibilities of a licensee.

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***** Current through December 2009 ****

35 RCNY 12-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-06 Standards of Conduct.

(a) An agent shall not present a vehicle for inspection by the Commission with a vehicle identification number other than the one under which such vehicle is licensed by the Commission.

(b) An agent shall not operate a vehicle with a vehicle identification number which has been removed and reattached, or which is other than the one under which such vehicle is licensed by the Commission.

(c) An agent shall not present a document to the Commission which falsely states that insurance requirements with respect to a licensed vehicle have been met.

(d) An agent shall not bribe or attempt to bribe any officer or employee of the Commission.

(e) An agent, while performing his or her duties and responsibilities as an agent, shall not commit or attempt to commit, alone or in concert with another, any act of fraud, material misrepresentation, dishonesty or larceny or perform any willful act of omission or commission which is in violation of any applicable provision of law.

(f) An agent shall promptly respond to and comply with all inquiries, directives, summonses and other communications from the Commission or from the New York City Department of Investigation, and shall make their business premises and books and records available upon request for inspection by employees or designees of the Commission.

(g) An agent shall provide the Commission with a list of all taxicabs operated by the agent, annually and upon

request.

(h) An agent, while performing his or her duties and responsibilities as a taxicab agent, shall not threaten, harass or abuse any Commission or other governmental representative, public servant or other person.

(i) An agent, while performing his or her duties and responsibilities as a taxicab agent, shall not use any physical force against any Commission or other governmental representative, public servant or other person.

(j) An agent shall not dispatch a taxicab which is unlicensed.

(k) An agent shall not dispatch a taxicab which does not have a current medallion affixed thereto.

(l) An agent shall dispatch taxicabs in accordance with the double shift requirements of Owners Rule 1-09(a), which requires that fleet and minifleet taxicabs be operated for a minimum of two shifts of nine hours each day including weekends and holidays.

(m) An agent shall not dispatch a taxicab unless all equipment, including brakes, tires, lights and signals are in good working order and meet all requirements of the New York State Vehicle and Traffic Law, the Commission, section 3-03 and/or 3-03.1 and 3-03.2 of this title and these rules.

(n) An agent shall not dispatch a taxicab which is not equipped with a partition which isolates the driver from the rear seat passengers or all passengers of the taxicab, in accordance with section 1-17 of this title and meets the specifications set forth in section 3-03(e)(3)(i) of this title, unless the taxicab is exempt pursuant to section 1-17 of this title from the partition requirements and is equipped with an in-vehicle camera system in accordance with section 1-17 of this title in addition to the trouble light required by section 1-18(a) of this title.

(o) An agent shall not dispatch a taxicab which is not equipped with a help or distress signaling light system, in accordance with Owners Rule 1-18.

(p) An agent shall not dispatch a taxicab which is not equipped with a taximeter in accordance with Owners Rule 1-20.

(q) An agent shall not tamper with, alter, repair or attempt to repair a taximeter or any seal affixed thereto by a licensed taximeter repair shop or another authorized facility, or the taxicab technology system as defined in section 12-01 of this chapter, or alter, repair or attempt to repair any cable mechanism or electrical wiring of a taximeter or taxicab technology system, or make any change in a vehicle's mechanism or its tires which would affect the operation of the taximeter or of the taxicab technology system.

(r) An agent shall not dispatch a taxicab unless the following are present in the taxicab:

(1) the driver's written trip record, also known as a "trip sheet" until the taxicab is required to be equipped with the taxicab technology system as defined in section 12-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider, as set forth in subdivision (u) of this section;

(2) the taxicab driver's license;

(3) the rate card in the frame alongside the frame for the taxicab driver's license;

(4) an insurance card or photostat thereof, unless the owner is self insured and has noted this fact on the rate card along with any other information required by the Commission; and

(5) all notices required to be posted in the taxicab.

(s) An agent shall not authorize or allow a driver to operate a taxicab unless either the driver's name has been or entered on the rate card by the Commission and such driver, if operating the vehicle by lease arrangement, is not operating beyond the lease expiration date entered on the rate card, or "Unspecified Drivers" has been entered on the rate card by the Commission.

(t) An agent shall not authorize or allow a driver to operate a taxicab unless the driver possesses a current, valid driver's license and a current, valid taxicab driver's license.

(u) Responsibilities of agent with regard to the taxicab technology system. (1) (i) For any taxicab that is required to be equipped with the taxicab technology system, such equipment shall at all times be in good working order and each of the four core services shall at all times be functioning. (ii) In the event of any malfunction or failure to operate of such taxicab technology system, the agent shall file an incident report with the authorized taxicab technology service provider promptly and in no event more than two (2) hours following the agent's discovery of such malfunction or failure to operate or such time as the agent reasonably should have known of such malfunction or failure to operate. If the driver or taxicab owner previously filed a timely incident report regarding such malfunction or failure to operate, the agent shall not be required to file a separate incident report but shall obtain an incident report number from the driver, owner or taxicab technology service provider. Upon instruction from the owner, the agent shall meet the appointment for repair scheduled by the authorized taxicab technology service provider following the filing of an incident report with such authorized taxicab technology service provider. A taxicab in which any of the four core services of the taxicab technology system, or any part thereof, are not functioning shall not operate more than forty-eight (48) hours following the timely filing of an incident report by the owner, driver or agent.

(2) The agent for any taxicab that is required to be equipped with the taxicab technology system shall equip such taxicab, except as provided in section 1-11(g) of this title, with a taxicab technology system as set forth in sections 3-03(e)(7) and (8), 3-06 and 3-07 of this title.

(3) An agent for any taxicab requiring six (6) or more repairs of the taxicab technology system in any thirty (30) day period shall promptly take such vehicle for inspection to or schedule an inspection with the Commission's Safety and Emissions Facility. Such requirement shall not apply to the agent if compliance is made by the owner or driver of such vehicle.

(4) A merchant who is an agent may charge a mark-up to a driver licensed by the Commission of not more than five percent (5%) of the total credit/debit card charges incurred during the driver's shift.

(v) An agent who becomes aware of the death or incompetency of an owner of an interest in a taxicab license shall promptly inform the Commission thereof.

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Subd. (m) amended City Record June 12, 2007 §30, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (n) amended City Record Apr. 23, 2007 §8, eff. May 23, 2007. [See T35 §1-17 Note 4]

Subd. (q) amended City Record June 12, 2007 §30, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (r) par (1) amended City Record June 12, 2007 §30, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (u) added City Record June 12, 2007 §30, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (v) added (as (u)) City Record Dec. 24, 2008 §10, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record March 29, 1996 effective April 30, 1996. Note further provisions:

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-07 Procedures in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record March 29, 1996 effective April 30, 1996. Note further provisions:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter;

and under section 19-530 of such Code, authorizing TLC to license and regulate medallion leasing agents.

The promulgated regulations implement Local Law 83 of 1995, which authorizes TLC to license and regulate taxicab medallion leasing agents. Taxi medallion owners who choose to designate an agent to operate their taxicabs must use a licensed agent.

The annual fee for an agent's license is $500. An agent must maintain a business premises in a location zoned for the operation of such business with sufficient off-street parking to store a portion of the taxicabs managed. In addition, an agent must deposit a $50,000 bond with the Commission, payable upon violation of any Commission rules or the Administrative Code.

In addition, the Taxicab Owners Rules were amended in order to make these rules consistent with the newly proposed agent regulations. Designation of an agent would not relieve an owner of the responsibilities of a licensee.

The proposal did not appear in a regulatory agenda for the agency. The regulations are required to implement Local Law 83 of 1995.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-08 Penalties for Violation of Rules Governing Agents.

(a)

Rule No.	Penalty All fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	Personal Appearance Required
12-02(a)	$500-1,000	Yes
12-02(e)	$500-10,000 and/or revocation	Yes
12-02(f)	suspension or revocation	Yes
12-05(a)	$500-1,000 and suspension until compliance	Yes
12-06(a)	$1,000-10,000 and/or revocation	Yes
12-06(b)	$1,000-10,000 and/or revocation	Yes
12-06(c)	$1,000-10,000 and/or revocation	Yes
12-06(d)	$1,000-10,000 and/or revocation	Yes
12-06(e)	$1,000-5,000	Yes
12-06(f)	$500-1,500	Yes
12-06(g)	$250 and suspension until compliance	Yes
12-06(h)	$100-350 and/or suspension up to 30 days	Yes
12-06(i)	$100-350 and/or suspension up to 30 days	Yes
12-06(j)	$500-2,000 and/or suspension up to 30 days	Yes
12-06(k)	$500-2,000 and/or suspension up to 30 days	Yes

§12-06(m)	$100	No
12-06(q)	$250-1,500 and/or suspension up to 30 days	Yes
12-06(s)	$350	No
12-06(t)	$500-2,000 and/or suspension up to 30 days	Yes
§12-06(u)(1)(i)	$250 and suspension until compliance	Yes
§12-06(u)(1)(ii)	$250 and suspension until compliance	Yes
§12-06(u)(2)	$1000 and suspension until compliance	Yes
§12-06(u)(3)	$250	No
§12-06(u)(4)	First violation: $200. Second violation: $300. Third violation: $500.	Yes
12-06(v)	$100 In addition to the penalty payable to the Commission, the administrative law judge may order the agent to pay restitution to the driver, equal to the excess amount that was charged to the driver.	Yes

(b) A penalty of $75-350 and/or suspension shall be imposed for default.

HISTORICAL NOTE

Subd. (a) Penalty column heading amended City Record Nov. 2, 2006 §20, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Subd. (a) §12-06(m) added City Record June 12, 2007 §31, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) §12-06(u)(1)(i) added City Record June 12, 2007 §31, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) §12-06(u)(1)(ii) added City Record June 12, 2007 §31, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) §12-06(u)(2) added City Record June 12, 2007 §31, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) §12-06(u)(3) added City Record June 12, 2007 §31, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) §12-06(u)(4) added City Record June 12, 2007 §31, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) §12-06(v) added (as 12-06(u)) City Record Dec. 24, 2008 §11, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record March 29, 1996 effective April 30, 1996. Note further provisions:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under section 19-530 of such Code, authorizing TLC to license and regulate medallion leasing agents.

The promulgated regulations implement Local Law 83 of 1995, which authorizes TLC to license and regulate taxicab medallion leasing agents. Taxi medallion owners who choose to designate an agent to operate their taxicabs must use a licensed agent.

The annual fee for an agent's license is $500. An agent must maintain a business premises in a location zoned for the operation of such business with sufficient off-street parking to store a portion of the taxicabs managed. In addition, an agent must deposit a $50,000 bond with the Commission, payable upon violation of any Commission rules or the Administrative Code.

In addition, the Taxicab Owners Rules were amended in order to make these rules consistent with the newly proposed agent regulations. Designation of an agent would not relieve an owner of the responsibilities of a licensee.

The proposal did not appear in a regulatory agenda for the agency. The regulations are required to implement Local Law 83 of 1995.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 13-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 13*1 RULES GOVERNING ISSUANCE AND PUBLIC SALE OF TAXICAB LICENSES

§13-01 Definitions.

For purposes of this chapter:

(a) "Accessible medallion" shall mean a taxicab license valid for use only with a vehicle accessible to a passenger using a wheelchair;

(b) "Alternative fuel medallion" shall mean a taxicab license valid for use only with a vehicle powered by compressed natural gas or a hybrid electric vehicle;

(c) "Bidder" shall mean an individual submitting a bid for one or more lots of taxicab medallions at an auction provided for under this chapter, except that, as to subdivisions (f), (g), (h), (m), (n), (o) and (p) of section 13-03 of this chapter, the term bidder shall include any and all of the owners, partners, shareholders, or members of any entity to which a bid is assigned pursuant to subdivision (g) of section 13-03;

(d) "Chairperson" shall mean the Chairperson of the Taxi and Limousine Commission, as defined in section 2301(c) of the New York City Charter, or his or her designee;

(e) "Commission," "minifleet," "owner," "taxicab," and "taxicab license" shall have the meanings of those terms as defined in section 1-01 of this title.

(f) "Hybrid electric vehicle" shall have the meaning of that term as used in section 19-533 of the Administrative Code and in section 3-01.1(b) of this title;

(g) "Independent medallion" shall mean a taxicab license that must be owned by the owner of no more than one taxicab license, as provided by section 19-504(i) of the Administrative Code;

(h) "Lot" shall mean one taxicab license, in the case of an independent medallion, and two taxicab licenses in the case of minifleet medallions;

(i) "Minifleet medallion" shall mean a taxicab license that must be owned by the owner of more than one taxicab license, as provided by section 19-504(i) of the Administrative Code;

(j) "Restricted medallion" shall mean either an accessible medallion or an alternative fuel medallion;

(k) "Unrestricted medallion" shall mean a taxicab license that is not a restricted medallion.

HISTORICAL NOTE

Section amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007. [See Statement 2 at end of Chapter] Note: This amendment overlooked the amendment to §13-01(e) by City Record June 20, 2006 §8. The amendment is incorporated here.

Section added City Record Apr. 13, 2006 §1, eff. May 13, 2006. [See Statement 1 at end of Chapter]

Subd. (e) amended (as Subd. (d)) City Record June 20, 2006 §8, eff. July 20, 2006. [See T35 §1-01 Note 2]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007; City Record Apr. 13, 2006 §1, eff. May 13, 2006. See Statements at end of Chapter.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 13-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 13*1 RULES GOVERNING ISSUANCE AND PUBLIC SALE OF TAXICAB LICENSES

§13-02 Issuance and Public Sale of Additional Taxicab Licenses.

(a) In accordance with Administrative Code section 19-532, the Chairperson may issue and sell additional taxicab licenses up to the number authorized by state and local law.

(b) Medallions shall be sold in lots. The ratio of minifleet medallions to independent medallions shall be maintained in accordance with section 19-504(i) of the Administrative Code.

(c) Only a person who owns no other medallions shall own an independent medallion. Independent medallions shall be subject to the "owner must drive" requirements of section 1-09(b) of this title.

(d) A minifleet medallion shall be owned only by a minifleet in which each officer, director, shareholder, partner or member does not have a financial interest in any independent medallion.

(e) The terms and conditions for the public sale of licenses pursuant to this chapter shall provide that vehicles operated by or under agreement with the owners of such licenses shall be entitled to accept hails from passengers in the street in accordance with section 19-504(a)(1) of the Administrative Code.

(f) The Chairperson shall place a public notice of the date and time upon which bids are due, the number of medallions to be sold, whether those medallions shall be sold as accessible medallions, alternative fuel medallions or unrestricted medallions, the numbers of minifleet and independent medallions to be sold, the size of the reserve classes for each type of medallions to be sold and other terms of sale in the City Record for five (5) consecutive days, beginning not less than thirty (30) days prior to the deadline for bidding. In the event that the Chairperson shall, in his or

her discretion, postpone the public sale, the Chairperson shall place notice of such postponement of the sale in the City Record for five (5) consecutive days beginning at least ten (10) days prior to the new deadline for bidding. The Chairperson may place such additional notices in the City Record or other publications, as the Chairperson deems advisable.

(g) Separate public sales may be conducted for each of independent and minifleet medallions for each of accessible medallions, alternative fuel medallions, and unrestricted medallions.

HISTORICAL NOTE

Section amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007. [See Statement 2 at end of Chapter] Note: This amendment overlooked the amendment to §13-02(d) by City Record June 20, 2006 §9. That amendment was not incorporated here because this amendment covers the subject.

Section renumbered and amended (former §13-01) City Record Apr. 13, 2006 §1, eff. May 13, 2006. [See Chapter 13 footnote]

Section repealed and added City Record Sept. 3, 2004 §§1, 2, eff. Oct. 3, 2004. [See Note 2]

Section repealed and added City Record Feb. 9, 2004 §§1, 2, eff. Mar. 10, 2004. [See Statement 1 at end of Chapter, see also Note 1]

Subd. (d) amended City Record June 20, 2006 §9, eff. July 20, 2006. [See T35 §1-01 Note 2]

NOTE

1. Provisions of City Record Feb. 26, 2004:

NOTICE OF COMPLETION

OF A FINAL ENVIRONMENTAL IMPACT STATEMENT

FOR THE ISSUANCE OF ADDITIONAL TAXICAB MEDALLIONS

Date Issued:	February 25, 2004
CEQR No.:	03TLC001Y
SEQRA Classification:	Type I
Lead Agency:	New York City Taxi and Limousine Commission40 Rector Street, 5th FloorNew York, NY 10006
Location:	New York City-City-wide

Pursuant to Executive Order 91 of 1977, as amended, and the Rules of Procedure for City Environmental Quality Review found at Title 62, Chapter 5 of the Rules of the City of New York (CEQR), to Article 8 of the New York State Environmental Conservation Law, the State Environmental Quality Review Act (SEQRA), and its implementing regulations as set forth in 6 NYCRR Part 617, the Taxi and Limousine Commission (TLC) has issued a Final Environmental Impact Statement (FEIS) for the Sale of Additional Taxicab Medallions described herein. The FEIS is available for public inspection at the following repositories:

New York City Taxi and Limousine Commission, 40 Rector Street, 5th Floor, New York, NY 10006; New York

City Office of Environmental Coordination, 100 Gold St., Second Floor, New York, NY 10038; The New York Public Library, 5th Avenue and 42nd Street, New York, NY 10018; Borough Presidents' Offices; Manhattan Community Board No. 1, 49-51 Chambers Street, Room 715, New York, NY 10007; and Manhattan Community Board No. 10, 215 West 125th Street, Suite 340, New York, NY 10027.

The FEIS is also available on the Taxi and Limousine Commission's Website, www.nyc.gov/html/tlc. A Draft Environmental Impact Statement (DEIS) was issued on December 26, 2003. Public hearings were held on January 7 and 12, 2004, and public comments were received until 5:00 p.m. on January 23, 2004. All comments received by this date were incorporated into Section 8.0 of the FEIS, **Response to Comments Made on the DEIS.** Description of the Proposed Project The City of New York proposes to improve taxi service through the issuance of 900 additional taxi medallions. Taxicabs fill a vital niche in the menu of transportation alternatives available to residents, commuters and visitors of New York City. Securing a cab during rush hour, late evenings and inclement weather may be very difficult. The TLC is proposing to issue the first 300 medallions for sale in the fiscal year ending June 30, 2004, followed by two subsequent medallion sales in Fiscal Years 2005 and 2006. The TLC may limit the number of medallions issued for sale. If all 900 medallions were sold by the end of Fiscal Year 2006, the total number of taxicab medallions in New York City would be 13,087. Required Approvals The proposed sale of additional taxicab medallions requires the following approvals:

· Amendments to New York State law requiring legislative approval; and

· Amendments to the New York City Administrative Code requiring City Council approval.

Potential Significant Adverse Impacts

The proposed action could have a potential significant adverse socioeconomic impact upon the taxicab industry as a result of a possible decrease in taxicab medallion values. However, as a matter separate from the proposed medallion sale, the Taxi and Limousine Commission has reviewed petitions for taxicab fare increases from industry groups and has determined that an increase in taxicab fares could reduce the potential socioeconomic impacts to the industry resulting from the sale of additional taxicab medallions.

Significant adverse traffic impacts are projected to occur at the study intersections (listed in "Mitigation Measures," below). These impacts include increased delays and decreased levels-of-service at study intersections. The vast majority of these impacts can be mitigated by reallocating one second of green time. However, for those intersections that require more than a reallocation of one second of green time, additional mitigation measures are proposed.

Traffic impacts would occur in each phase of the medallion sale, starting with the first sale of 300 medallions in 2004.

Mitigation Measures

To address the unavoidable significant adverse traffic impacts due to the proposed project, the following mitigation measures are proposed:

· The impacted lane groups and/or approaches at the study intersections that require more than one second of green time to be reallocated, or require other mitigation measures, are listed below:

· 3rd Avenue/East 56th Street-reallocate 2 seconds of green time from northbound phase to eastbound phase during weekday PM peak hour;

· 5th Avenue/42nd Street-reallocate 2 seconds of green time from southbound phase to the east/westbound phase during weekday AM peak hour;

· Madison Avenue/East 42nd Street-reallocate 2 seconds of green time from northbound phase to the east/westbound phase during weekday AM peak hour;

· 6th Avenue/West 30th Street-eliminate on-street parking and re-stripe the eastbound approach lane and reallocate one second of green time from eastbound phase to northbound phase;

· 6th Avenue/West 33rd Street-reallocate 2 seconds of green time from the leading pedestrian phase to the northbound phase during the weekday AM peak hour.

Alternatives

Three alternatives to the proposed action were evaluated in the FEIS. These alternatives included:

· The No Action Alternative: no additional medallions would be sold.

· Alternative 1: limit the sale to 300 medallions in Fiscal Year 2004.

· Alternative 2: limit the sale to 300 medallions in each of Fiscal Years 2004 and 2005.

Contact Information

Questions regarding the FEIS may be forwarded to:

Peter M. Mazer, General Counsel

New York City Taxi and Limousine Commission

40 Rector Street, 5th Floor

New York, NY 10006

(212) 676-1117

2. Statement of Basis and Purpose in City Record Sept. 3, 2004: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, and under §19-532 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise the sale of additional taxicab medallions. In March 2004, the TLC promulgated rules which governed the sale of 300 taxicab medallions at public auctions held on April 16 and 23, 2004. These medallions were sold and all of these new medallions have been issued. Pursuant to §19-532 of the Administrative Code, the TLC has the authority to sell up to 600 additional taxicab medallions, including medallions which must be used in connection with either an alternative fuel or a wheelchair accessible vehicle. At the public sale held in April 2004, such restricted medallions were offered for sale; however, no bids were received for a price that exceeded the minimum authorized price. These amendments remove the pricing link at the public sale between restricted and unrestricted medallions, thereby increasing the possibility that the TLC will receive valid bids for unrestricted medallions. The Administrative Code states that if the price received for a restricted medallion is not at least ninety percent (90%) of the price received for an unrestricted medallion, the Commission "is authorized," but not mandated, to sell these medallions without such a restriction. Under the regulations promulgated herein, the Chairperson will establish a minimum upset price for restricted medallions prior to the auction. This will enable potential bidders to make educated decisions concerning prospective bids. Under the prior regulations, the minimum acceptable price for a restricted medallion was determined only after all unrestricted bids were opened and an average was calculated. Prospective bidders were not aware of the minimum acceptable price for a restricted medallion until the day of the bid opening. This may have dissuaded some potential purchasers from submitting bids on restricted

medallions. These rules also make some technical changes to the bid and closing process. The number of days for accepting bids was reduced from four to three, to conserve TLC staff and resources. Few bids were received during the first day that bids were accepted in April. In addition, bids submitted by mail will no longer be accepted. Few bids were received by mail, but significant agency resources were expended to receive, sort and process mail bids. The rules will also require that all bids be placed in an approved TLC-issued envelope to conform with practice. The requirement that a completed application be submitted with the bid has been eliminated. The rules presently require that successful bidders submit a second deposit within fourteen (14) days after the bid opening, unless this period was extended by the Chairperson. The TLC Chair extended this period for individuals who were able to schedule a closing within thirty (30) days of the bid opening. The proposed rules would codify this practice by waiving the second deposit requirement for all successful bids who are ready, willing and able to close within thirty (30) days. Finally, the proposed rules extend the period of time for closing from 45 to 60 days after notification to the winning bidder. By making these relatively minor adjustments to the closing procedures, the bidding and closing processes will be made even more efficient than at the previous sale, wherein 300 medallions were closed prior to the end of the fiscal year.

HISTORICAL NOTE FOR FORMER §13-02

§13-02 Restricted Medallions repealed City Record Apr. 13, 2006 §1, eff. May 13, 2006. [See Statement 1 at end of Chapter]

Section repealed and added City Record Sept. 3, 2004 §§1, 2, eff. Oct. 3, 2004. [See §13-01 Note 2]

Section added City Record Feb 9, 2004 §2, eff. Mar. 10, 2004. Former §13-02 became §13-03. [See T35 Chapter 13 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007; City Record Apr. 13, 2006 §1, eff. May 13, 2006. See Statements at end of Chapter.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 13-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 13*1 RULES GOVERNING ISSUANCE AND PUBLIC SALE OF TAXICAB LICENSES

§13-03 Sale by Sealed Bid.

(a) A bidder shall submit a sealed bid no earlier than four (4) business days prior and no later than 12:00 noon on the date set by the Chairperson as the deadline for bidding. A bidder shall submit each sealed bid by hand delivery, either in person or by an agent at the place designated by the Chairperson. Bids shall be received between the hours of 9:00 a.m. and 12:00 noon. Bids must be received by the Chairperson no later than 12:00 noon on the deadline date. A bidder must submit a bid on a form prescribed by the Chairperson in a 9" × 12" sealed envelope with a cover form prescribed by the Chairperson with only one bid for one lot per envelope, which bid is accompanied with the following: (i) a deposit of $2,000 for each medallion for which a bidder submits a bid, in the form of a certified check, bank check, money order, or a check issued by a taxicab broker or taxicab agent licensed by the Commission pursuant to chapter 5 or chapter 12 of this title, respectively, payable to the "New York City Taxi and Limousine Commission"; and (ii) a letter of commitment for no less than eighty percent (80%) of the bid amount, issued by a bank or credit union licensed to do business in the State of New York or other lender licensed by the State of New York or the Federal Government. Each bidder shall certify, as part of each bid form, that such bidder has not relied on any statements or representations from the City of New York in determining the amount of such bidder's bid. Each bidder shall further certify that such bidder has not colluded, consulted, communicated, or agreed in any way with any other bidder or prospective bidder for the purpose of restricting competition or inducing any other prospective bidder to submit or not submit a bid for purpose of restricting competition. Each bidder shall further certify that such bidder has not disclosed any bid price either directly or indirectly to any other bidder for the purpose of restricting competition or inducing any other prospective bidder to submit or not to submit a bid for the purpose of restricting competition. Each bidder shall further certify, as a part of each bid form, that such person is not acting as a taxicab broker for any other bidder, and is not the owner, shareholder, partner, member, or employee of any person or entity acting as a taxicab broker for any other bidder. No

bid amounts shall be accepted which provide for a price ending in fractional cents per medallion. Any bid for which a bidder has failed to use the proper form or the proper envelope, or for which either the bid form or the envelope cover form is not properly completed in the Chairperson's determination, or which does not contain the proper deposit or a commitment letter meeting the requirements of this subdivision, or which is a bid for more than one lot per envelope, or for which the price per medallion is set forth ending in amounts ending in fractional cents, or which is non-responsive or non-conforming in any other respect, shall be deemed non-responsive and rejected. A bidder shall not have an opportunity to correct any bid.

(b) Each bid must be submitted in a conforming sealed envelope with a cover form prescribed by the Chairperson on which the bidder shall indicate the following: (i) the bidder's name, address, phone number and date of sale, and (ii) whether the bid is for one lot of minifleet medallions or for one lot of one independent medallion and (iii) whether the bid is for an unrestricted medallion lot, an alternative fuel medallion lot or an accessible medallion lot.

(c) A minimum upset price for medallions to be sold may be determined by the Chairperson. The Chairperson may establish different upset prices for each of independent and minifleet medallions for each of accessible medallions, alternative fuel medallions, and unrestricted medallions. A minimum upset price shall be set by publication in the City Record no less than ten (10) days prior to the deadline for submission of bids. Any bid received for less than the minimum upset price should such price be set shall be rejected as non-responsive.

(d) On a date set by the Chairperson, the bids shall be opened in public and the winning bids announced at the public sale. The winning bids shall be the highest bids that are complete in accordance with the provisions of subdivision (a) of this section, and are responsive as set forth in subdivision (c) of this section. The winning bidders shall be notified promptly by certified mail. Tie bids will be decided with a drawing which shall be held at the bid opening. Winning bids shall be published in the City Record and posted at the Commission's office and on the Commission's website.

(e) Within thirty (30) days after the bid opening, each winning bidder shall close on his or her medallion(s), except that if such bidder is unable to close within that period, such bidder shall, no later than thirty (30) days after the bid opening (i) deposit $25,000 in a certified check for each medallion covered by the winning bid, and (ii) provide the Chairperson with proof of purchase of a vehicle eligible for hack-up pursuant to section 3-03 or section 3-03.1 of this title in the form of a certificate of origin or title, or a bill of sale or a sales contract. All purchases of medallions pursuant to winning bids shall close by no later than sixty (60) days after bid opening unless extended by the Chairperson for reasonable cause shown. All closing dates are subject to the approval of the Chairperson. Failure by any winning bidder to comply with any deadline contained in this subdivision shall result in disqualification of the winning bid as provided in subdivision (l) of this section.

(f) The Chairperson shall determine for each type of medallion being sold the number of the highest, non-winning bids for such type of medallion that will be accorded reserve status, provided that such number shall be not less than 10 percent of the total number of medallions of that type being sold. The holders of the highest non-winning bids which are accorded reserve status shall be notified of such reserve status. Reserve status may be converted to a winning bid upon the failure of a winning bidder to comply with subdivision (e) of this section. In the event that a reserve status is converted to a winning bid, the holder of such reserve status shall be so notified, and the date of notification shall be deemed to be the date of the bid opening for purposes of calculating such holder's deadlines pursuant to this chapter. If, for any type of medallion, there are a greater number of bids at the lowest bid price qualifying for reserve status than are established by the Chairperson pursuant to this subdivision, a drawing will be held to determine which of those tied bids will hold reserve status. Such drawing shall be held at the bid opening. Any bids otherwise qualifying for reserve status under this subdivision made by any bidder who was a winning bidder for any lot will be disqualified from reserve status upon such winning bidder's failure to comply with the requirements of subdivision (e) of this section.

(g) The rights of a winning bidder are not assignable prior to the close of sale, except that such rights may be assigned to a corporation, limited liability company or partnership by a winning bidder who is a shareholder of such

corporation, member of such limited liability company, or partner of such partnership. No winning bid may be assigned to any corporation, limited liability company or partnership the shareholders, members, or partners of which include any other winning bidder for a lot at a higher price than the winning bid being assigned and who has failed to comply with the requirements of subdivision (e) of this section with respect to such higher-priced lot.

(h) Each winning bidder must demonstrate compliance with all of the requirements applicable for issuance and ownership of a taxicab license, including those contained in sections 1-02 and 1-03 of this title, must submit all documentation required by the Chairperson, must clear outstanding fines and penalties, and must submit proof of purchase of a vehicle eligible for hack-up as required by subdivision (e) of this section, before a closing can be scheduled. Each winning bidder must also, prior to the closing, submit fingerprint records as directed by the Chairperson unless such bidder has electronic fingerprints already on file with the Commission. Each winning bidder of an independent medallion must demonstrate an ability to comply with the owner-must drive service requirements of section 1-09(b) of this title by holding or obtaining a taxicab driver's license issued under chapter 2 of this title or by providing as an owner of an entity to which such bid has been assigned a person who holds such a license.

(i) All deposits of winning bidders shall be credited toward the sale price or, in the event the winning bidder does not meet the qualifications for issuance of a taxicab license, refunded to the bidder. However, a winning bidder who fails to comply with the deadlines provided in subdivision (e) of this section, including a winning bidder who does not attempt to meet the requirements of subdivision (h) of this section, shall forfeit deposits made pursuant to subdivision (a) of this section. The Chairperson will return deposits of non-winning and non-responsive bidders. Deposits submitted in respect of bids which achieve reserve status will be held until such bids are converted to winning bids, or until the sales of all lots of medallions of the type for which the bid was made have closed.

(j) In addition to the amount bid, each winning bidder will be responsible on the transfer closing date for any applicable taxes or fees including two (2) years' worth of license and inspection fees as provided by sections 1-04 and 1-05 of this title, provided however, there will not be any medallion transfer tax collected for this initial issuance of medallions. Each medallion license shall be issued for two (2) years and all the required inspection fees shall be collected at closing.

(k) Each medallion sold pursuant to this chapter must be hacked up, as that term is used in section 3-01(a) of this title, no later than the fifth business day following the day of the closing on the sale of the medallion, unless extended by the Chairperson for reasonable cause shown.

(l) Failure of a winning bidder to meet the deadlines provided in subdivision (e) of this section regarding a winning bid shall result in the disqualification of that bidder as to that winning bid and forfeiture of deposits made pursuant to subdivision (a) of this section.

(m) Any bid achieving reserve status made by a winning bidder for another bid for which such winning bidder who has failed to meet the requirements of subdivision (e) of this section with respect to such other bid shall be disqualified and the deposits made pursuant to subdivision (a) of this section with respect to such bid will be forfeited.

(n) If any winning bidder who is a winning bidder in respect of multiple bids, including any bids assigned to an entity in which such bidder is an owner, partner, shareholder, or member, shall fail to meet the requirements of subdivision (e) of this section with respect to some but not all such bids, such bidder shall be disqualified first on the lowest such winning bid, and then in ascending order of each of the next lowest winning bids. As to such disqualified bids, the deposits made pursuant to subdivision (a) of this section in respect of such bids shall be forfeited, as required in subdivision (l) of this section. Any winning bidder who is a winning bidder in respect of multiple bids, including any bids assigned to an entity in which such bidder is an owner, partner, shareholder, or member, must close first on his or her highest winning bid(s) and then in descending order of each next highest winning bid(s).

(o) No bidder shall collude, consult, communicate or agree in any way with any other bidder or prospective bidder

for the purpose of restricting competition or inducing any other prospective bidder to submit or not submit a bid for purpose of restricting competition. No bidder shall disclose any bid price either directly or indirectly to any other bidder for the purpose of restricting competition or inducing any other prospective bidder to submit or not submit a bid for purpose of restricting competition. Violation of this subdivision or submission of a false certification under subdivision (a) of this section shall result in disqualification of all bids submitted by such bidder, in addition to any other penalties provided by law.

(p) No taxicab broker may submit a bid to purchase any lot if such taxicab broker is acting as a taxicab broker for any bidder. For purposes of this subdivision, "taxicab broker" shall include any person or entity, whether or not licensed as a taxicab broker pursuant to chapter 5 of this title, that represents or advises any bidder or potential bidder in connection with an actual or potential bid and either (i) provides advice as to a bid price or potential bid price or (ii) in the course of such representation or advice, obtains actual knowledge of the bid price submitted by any bidder, and any person or entity which is an owner, shareholder, partner, member or employee of such person or entity.

HISTORICAL NOTE

Section amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007. [See Statement 2 at end of Chapter] Note: This amendment overlooked the amendment to §13-03(g) by City Record June 20, 2007 §10. That amendment is not incorporated here because this amendment covers the subject.

Section amended City Record Apr. 13, 2006 §1, eff. May 13, 2006. [See Statement 1 at end of Chapter]

Section repealed and added City Record Sept. 3, 2004 §§1, 2, eff. Oct. 3, 2004. [See §13-01 Note 2]

(Note internal renumbering by the Law Department per Charter §1045(b))

Section repealed and added (formerly §13-02) City Record Feb. 9, 2004 §§1, 2, eff. Mar. 10, 2004. [See Statement 1 at end of Chapter]

Subd. (g) amended City Record June 20, 2006 §10, eff. July 20, 2006. [See T35 §1-01 Note 2]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007; City Record Apr. 13, 2006 §1, eff. May 13, 2006. See Statements at end of Chapter.

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35 RCNY 13-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 13*1 RULES GOVERNING ISSUANCE AND PUBLIC SALE OF TAXICAB LICENSES

§13-04 Classifications of Medallions.

A medallion issued pursuant to this chapter as an accessible medallion or an alternative fuel medallion, whether as an independent medallion, or a minifleet medallion, shall remain so classified despite any change in ownership of the medallion after its issuance, and all service and ownership requirements for such type of medallion set forth in chapter 1 of this title shall continue to apply thereto.

HISTORICAL NOTE

Section amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007. [See Statement 2 at end of Chapter]

Section added City Record Apr. 13, 2006 §1, eff. May 13, 2006. [See T35 Chapter 13 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007; City Record Apr. 13, 2006 §1, eff. May 13, 2006. See Statements at end of Chapter.

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35 RCNY 13-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 13*1 RULES GOVERNING ISSUANCE AND PUBLIC SALE OF TAXICAB LICENSES

§13-05 Penalties for Violation of Rules Governing Medallion Auctions.

Rule No.	Penalty	Personal Appearance Required
13-03	$10,000 and either disqualification of bid or, if sale has closed, revocation of taxicab licenses	Yes
13-03(p)	$10,000 and either disqualification of bid or, if sale has closed, revocation of taxicab licenses	Yes

HISTORICAL NOTE

Section added City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007. [See Statement 2 at end of Chapter]

STATEMENTS OF BASIS AND PURPOSE

FOR CHAPTER 13

NOTE

1. Statement of Basis and Purpose in City Record Apr. 13, 2006:

The rules amend chapter 13 of the rules of the Taxi and Limousine Commission ("TLC"), governing the issuance and public sale of taxicab licenses, generally known as medallions.

These amended rules would apply to the third round of taxicab license auctions authorized by chapter 63 of the

laws of 2003 and §19-532 of the New York City Administrative Code. The first two rounds of auctions were conducted in the spring and fall of 2004.

The amended rules include a number of technical and terminological amendments to existing rules, as well as the following substantive amendments:

· The amended rules expressly allow a minifleet owner to bid on a single restricted medallion (alternative fuel medallion or accessible medallion) to be added to an existing minifleet, in order to expand the pool of eligible bidders.

· The rules eliminate the bidder's option to submit a bond in lieu of a deposit. This amendment is based on the fact that no bidder used the bond option in past auctions.

· The rules provide that tie bids will be decided by drawing at the public bid opening, regardless whether the bidders choose to attend the opening. This provision is intended to eliminate an unnecessary delay in the auction process.

· The rule clarifies that a bidder's failure to submit the required deposit within 30 days of notification of the winning bid, or to close on the bid within 60 days of the bid opening, would result in a disqualification of the winning bidder and forfeiture of the first deposit of $2000 per medallion. This provision is intended to ensure that winning bidders close on their bids promptly, and put their medallions into service promptly.

· The rule expressly provides that closing on a winning bid shall be scheduled only after the winning bidder demonstrates satisfaction with the requirements of medallion ownership and submits proof that the bidder has purchased a vehicle that is eligible for hack-up. This provision is intended to ensure that winning bidders promptly qualify to own medallions, and promptly put their medallions into service.

· The rule states expressly that a winning bidder must hack-up each purchased medallion to a taxicab no later than five business days after closing on the sale, to ensure that new medallions are put into service promptly.

· The rule requires new fingerprints from any winning bidder who does not have fingerprints less than six months old on file with the TLC, rather than three years old as previously provided. The change is required by a procedural change in the New York State Division of Criminal Justice Services' processing of fingerprints.

· The rule clarifies that the ratio of independent medallions and minifleet medallions will be maintained by selling unrestricted medallions to the high bidders, without regard to whether the bids are for independent medallions or minifleet medallions, and adjusting the ratio of independent medallions and minifleet medallions in the unrestricted medallion auction as needed to maintain the required overall ratio.

Chapter basically repealed and added City Record Feb. 9, 2004 eff. Mar. 10, 2004. Note provisions of City Record Feb. 9, 2004:

Section 3. Additional licenses authorized hereunder shall be issued only after completion of such review as may be required by Article Eight of the New York State Environmental Conservation Law.

Statement of Basis and Purpose

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, and under §19-532 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise the sale of additional taxicab medallions.

Pursuant to Charter §2303(B), taxicab medallions are transferable, and new medallions may be issued only upon

the enactment of a local law providing therefor. On May 19, 2003, the State Legislature authorized the City of New York to issue up to 900 additional taxicab medallions by public sale. Like all other medallions, these additional licenses shall be fully transferable and may be pledged as security for loans and the lending institution providing the financing shall have all rights of secured parties with respect to these loans.

In 2003, the New York City Council amended the Administrative Code to add a new section 19-532, which authorizes the TLC to issue up to 900 additional taxicab licenses, provided the requirements of the New York State Environmental Conservation Law have been complied with. The TLC is further authorized to promulgate rules that establish procedures for the issuance and public sale of these licenses. The Administrative Code further provides that at least nine percent (9%) of these new licenses must be used in connection with a vehicle that is either fueled by compressed natural gas ("CNG") or is a hybrid electric vehicle. An additional nine percent (9%) of these new licenses must be used in connection with a vehicle that is accessible to persons with disabilities. The TLC can issue licenses without these restrictions if the purchase price for these restricted licenses achieved at an auction does not equal at least ninety percent (90%) of the purchase price of an unrestricted license.

These rules set forth the procedures for the sale of any additional medallions that may be issued by the Commission in accordance with the provisions of §19-532 of the Administrative Code.

2. Statement of Basis and Purpose in City Record Aug. 15, 2007: The rules amend chapter 13 of the rules of the Taxi and Limousine Commission ("TLC"), governing the issuance and public sale of taxicab licenses, generally known as medallions. The changes are made generally to reflect experience gained with the auctions of taxicab licenses held in 2006 and to ensure that future auctions provide for full and fair competition among all bidders. These amended rules will apply to an auction of one hundred fifty taxicab licenses authorized by chapter 535 of the laws of 2006 and section 19-532 of the New York City Administrative Code, an auction of unsold medallions remaining from the taxicab license auctions authorized by chapter 63 of the laws of 2003 and section 19-532 of the New York City Administrative Code, and any additional auctions that might be authorized in the future. The amended rules include a number of technical and terminological amendments to existing rules, as well as the following substantive amendments:

· The amended rules eliminate provisions permitting a minifleet purchaser to purchase only one medallion to add to an existing minifleet; experience with prior auctions demonstrated that minifleet purchasers did not use that option.

· The rules eliminate the ability of licensed taxicab brokers and their principals and employees to purchase medallions on their own behalf while advising potential purchasers at the auction. This change is made to reduce the possibility of collusion or other misuse of bid information.

· The rules provide anti-collusive bidding language and further restrict the ability of winning bidders who are also reserve bidders to default on winning bids in favor of their reserve bids. These changes are made to align practices more closely with those in place for the procurement process under the General Municipal Law and to assure that the auctions are open, fair and competitive.

· The rules permit the Chairperson to establish separate reserve classes (of at least 10% of the number of medallions being sold in each class) for each type of medallion being sold. This change is done to permit the TLC to set reserve classes of a size that will help guarantee that all medallions will be sold in any auction.

· The rules provide that tie bids will be decided by drawing at the public bid opening, regardless whether the bidders choose to attend the opening. This provision is intended to eliminate an unnecessary delay in the auction process.

· The rules provide that a bidder's failure to close within 30 days of notification of the winning bid will require submission of an additional deposit of $25,000, and that failure to close on the bid within 60 days of the bid opening would result in a disqualification of the winning bidder and forfeiture of the first deposit of $2,000 per medallion. This provision is intended to ensure that winning bidders close on their bids promptly, and put their medallions into service

promptly.

· The rules expressly provide that closing on a winning bid shall be scheduled only after the winning bidder demonstrates satisfaction with the requirements of medallion ownership and submits proof that the bidder has purchased a vehicle that is eligible for hack-up. This provision is intended to ensure that winning bidders promptly qualify to own medallions, and promptly put their medallions into service.

· The rules provide that bidders must be individual persons, to reflect experience in prior auctions, although bids will continue to be assignable to partnerships, corporations and limited liability companies in which a winning bidder is a partner, shareholder, or member. The TLC's experience in 2006 was that all bids were placed by individuals, but that many winning bids were closed upon by corporations, limited liability companies, or partnerships. Bidders typically do not organize entities to own medallions until they know that they are winning bidders.

· The rules clarify that new fingerprints must be obtained prior to closing from any winning bidder who does not have fingerprints in electronic format on file with the TLC. The prior rules specified that fingerprints had to be obtained within 30 days of the bid opening, but the experience of the 2006 auction indicated that the timing of the closing, rather than the bid opening, was a more important reference point for obtaining fingerprints.

· The rules clarify that the statutory ratio of independent medallions and minifleet medallions will be maintained as required by the Administrative Code.

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007; City Record Apr. 13, 2006 §1, eff. May 13, 2006. See Statements at end of Chapter.

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35 RCNY 14-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 14 [PILOT PROGRAMS]*1

§14-01 Definitions.

For purposes of this chapter:

(a) "Commission" shall mean the Taxi and Limousine Commission as defined in §2301 of the New York City Charter.

(b) "Chairperson" shall mean the Chairperson of the Taxi and Limousine Commission, as defined in §2301(c) of the New York City Charter, or his or her designee.

HISTORICAL NOTE

Section added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. [See Chapter 14 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 14 added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. Chapter heading supplied by editor. Note: Statement of Basis and Purpose of Rules:

These rules are intended to encourage innovation and experimentation in the industries regulated by the

Taxi and Limousine Commission ("TLC"), pursuant to §2303(b)(9) of the Charter of the City of New York ("Charter"). The TLC has entered into various pilot programs in the past, and has previously promulgated rules governing innovation and pilot programs in specific areas such as taxicab vehicle models (35 RCNY §3-03(d)) and taxicab group rides (35 RCNY §1-71(c)). These rules reflect the TLC's view that all of the industries it regulates should be encouraged to engage in innovation and experimentation in all aspects of their equipment, service and operations, and that such innovation and experimentation will benefit from a regularized and transparent process for proposal, review, approval, implementation and evaluation of pilot programs.

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35 RCNY 14-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 14 [PILOT PROGRAMS]*1

§14-02 Purpose.

The Commission recognizes that its regulatory framework should encourage the industries it regulates to adopt technological and other advances. This chapter is intended to provide a regularized and transparent process for proposal, review, approval, implementation, and evaluation of pilot programs, in furtherance of the Commission's mandate, expressed in §2303(b)(9) of the City Charter, to encourage innovation and experimentation in relation to type and design of equipment, modes of service and manner of operation.

HISTORICAL NOTE

Section added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. [See Chapter 14 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 14 added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. Chapter heading supplied by editor. Note: Statement of Basis and Purpose of Rules:

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("Charter"). The TLC has entered into various pilot programs in the past, and has previously promulgated rules governing innovation and pilot programs in specific areas such as taxicab vehicle models (35 RCNY §3-03(d)) and taxicab group rides (35 RCNY §1-71(c)). These rules reflect the TLC's view that all of the industries it regulates should be encouraged to engage in innovation and experimentation in all aspects of their equipment, service and operations, and that such innovation and experimentation will benefit from a regularized and transparent process for proposal, review, approval, implementation and evaluation of pilot programs.

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35 RCNY 14-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 14 [PILOT PROGRAMS]*1

§14-03 Submission of Pilot Program Proposals.

Any person or entity may propose a pilot program in writing to the Chairperson for purposes of testing and evaluating a proposed innovation. The proposal shall include:

(a) A statement of the purpose or value of the proposed innovation;

(b) A detailed description of the proposed innovation, including, as appropriate, diagrams, blueprints or images;

(c) Information regarding the use of the proposed innovation in other jurisdictions;

(d) Estimates of any cost and revenue impact of the proposed innovation on affected licensee groups such as drivers and vehicle owners, on the Commission and the City, and on the public;

(e) Specification of each respect in which the proposed innovation would depart from otherwise applicable requirements, including the rules of this title;

(f) Description of any affect the pilot program would have on the safety of operations involved in the pilot program;

(g) The proposed duration of the pilot program;

(h) The number of pilot program participants necessary to achieve the purpose of the proposed pilot program; and

(i) Criteria by which the value of the innovation can be measured after implementation of the pilot program, such as cost, customer satisfaction, licensee satisfaction, environmental impacts, and safety.

HISTORICAL NOTE

Section added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. [See Chapter 14 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 14 added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. Chapter heading supplied by editor. Note: Statement of Basis and Purpose of Rules:

These rules are intended to encourage innovation and experimentation in the industries regulated by the Taxi and Limousine Commission ("TLC"), pursuant to §2303(b)(9) of the Charter of the City of New York ("Charter"). The TLC has entered into various pilot programs in the past, and has previously promulgated rules governing innovation and pilot programs in specific areas such as taxicab vehicle models (35 RCNY §3-03(d)) and taxicab group rides (35 RCNY §1-71(c)). These rules reflect the TLC's view that all of the industries it regulates should be encouraged to engage in innovation and experimentation in all aspects of their equipment, service and operations, and that such innovation and experimentation will benefit from a regularized and transparent process for proposal, review, approval, implementation and evaluation of pilot programs.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 14-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 14 [PILOT PROGRAMS]*1

§14-04 Review and Approval of Pilot Program Proposals.

(a) The Chairperson shall conduct or oversee the review of pilot program proposals. The Chairperson shall be authorized to assemble any information, from any source, that he or she determines to be useful in reviewing the proposal. Without limitation of the foregoing, the Chairperson may request modification or resubmission of the proposal, including additional information, evaluations, inspection of prototypes, tests or other processes of any kind that may assist in the review of the proposal. Such request may be made to the person or entity proposing the pilot program, or to any other person or entity.

(b) The Chairperson shall forward to the Commission a proposed pilot program within 60 days of receipt of a completed proposal, except that the Chairperson may within such 60-day period extend the time for forwarding the proposed pilot program.

(c) The Commission shall consider the proposal and shall approve or reject the proposed pilot program. Grounds for rejection shall include, but shall not be limited to, the merits of the proposal and the administrative ability of the Commission or its staff to implement, monitor, or evaluate the proposed pilot program. Approval of a pilot program by the Commission shall be done in accordance with subdivision (d) of this section.

(d) The Commission's resolution of approval of any proposed pilot program shall set forth terms governing the implementation, monitoring and evaluation of the proposed pilot program, including but not limited to the following:

(1) The duration of the pilot program;

(2) A schedule for implementation and evaluation of the pilot program, including a deadline for a final report from the Chairperson to the Commission, and a deadline for initiation of rulemaking action to implement changes in the Commission's rules based on the outcome of the pilot program so that the proposed innovation may continue without interruption in the event that the Commission determines that such continuation is warranted;

(3) Statement of any minimum and maximum number of pilot program participants; (4) Description of the means by which public notice will be given of the proposed pilot program;

(5) Description of the process for selection of participants in the pilot program;

(6) Statement whether a safety evaluation of the proposed pilot program shall be required before or during implementation of the pilot program, and, if so, statement of how and by whom such safety evaluation shall be conducted;

(7) Statement that the pilot program participants shall enter into binding agreements with the Chairperson on behalf of the Commission;

(8) Enumeration of the criteria to be used in evaluating the proposed innovation during and after implementation of the pilot program; and

(9) Description of any reporting requirements during and after the completion of the pilot program, including reports from the pilot program participants to the Chairperson and from the Chairperson to the Commission.

HISTORICAL NOTE

Section added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. [See Chapter 14 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 14 added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. Chapter heading supplied by editor. Note: Statement of Basis and Purpose of Rules:

These rules are intended to encourage innovation and experimentation in the industries regulated by the Taxi and Limousine Commission ("TLC"), pursuant to §2303(b)(9) of the Charter of the City of New York ("Charter"). The TLC has entered into various pilot programs in the past, and has previously promulgated rules governing innovation and pilot programs in specific areas such as taxicab vehicle models (35 RCNY §3-03(d)) and taxicab group rides (35 RCNY §1-71(c)). These rules reflect the TLC's view that all of the industries it regulates should be encouraged to engage in innovation and experimentation in all aspects of their equipment, service and operations, and that such innovation and experimentation will benefit from a regularized and transparent process for proposal, review, approval, implementation and evaluation of pilot programs.

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35 RCNY 14-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 14 [PILOT PROGRAMS]*1

§14-05 Agreements Between the Commission and the Pilot Program Participants.

(a) Participation by a person or entity in any pilot program approved by the Commission shall be subject to that person or entity entering into an agreement with the Chairperson on behalf of the Commission, governing the preparation, implementation and evaluation of the pilot program. Such agreement shall include provisions consistent with the terms of the Commission's resolution of approval of the pilot program.

(b) Where a pilot program involves more than one participant, the Chairperson shall determine whether the participants shall enter into identical or differing agreements.

(c) Agreements made pursuant to this section shall be subject to approval as to form by the Corporation Counsel pursuant to §394(b) of the New York City Charter.

HISTORICAL NOTE

Section added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. [See Chapter 14 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 14 added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. Chapter heading

supplied by editor. Note: Statement of Basis and Purpose of Rules:

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35 RCNY 15-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-01 Definitions.

(a) Agent. "Agent" shall mean an individual, partnership or corporation that acts, by employment, contract or otherwise, on behalf of one or more owners, whether or not such person is an "agent" within the meaning of Title 35, Chapter 12 of the Rules of the City of New York.

(b) Applicant. "Applicant" shall mean an individual, partnership or corporation seeking a taximeter business license from the commission.

(c) Commission. "Commission" shall mean the New York City Taxi and Limousine Commission.

(d) Driver. "Driver" shall mean a person licensed by the commission to drive a medallion taxicab in the City of New York.

(e) Hack-up. "Hack-up" shall mean to outfit a vehicle as a taxicab and obtain approval from the commission for that vehicle to serve as a taxicab for the first time.

(f) Mailing address. "Mailing address" shall mean the address designated by an applicant or licensee for the receipt of all notices and correspondence from the commission. Unless otherwise approved in advance, the mailing address of a taximeter business licensee shall be the street address of the business.

(g) MTA Tax. The "MTA Tax" is the 50-cent tax on taxicab trips that is imposed by article 29-A of the New York State Tax Law.

(h) Owner. "Owner" shall mean an individual, partnership, limited liability company or corporation licensed by the Commission to own and operate a medallion taxicab or taxicabs.

(i) Representative. "Representative" shall mean an individual, partnership, limited liability company or corporation appointed by a manufacturer of taximeters required to be licensed under this chapter to hold a license on behalf of such manufacturer and to carry out such manufacturer's duties and responsibilities as a licensee under this chapter.

(j) Rate of fare. "Rate of fare" shall mean the established fare which may be charged by a licensed taxicab, which fare has been promulgated by the commission, and which fare may include, but is not limited to night surcharges, the MTA Tax and waiting times.

(k) Seal. "Seal" shall mean a device, approved by the commission, which may be installed on a taximeter, wire, wiring mechanism, gear or other device, so that no adjustment, repair, alteration or replacement can be made without removing or mutilating the seal or seals.

(l) Taxicab technology service provider. A "taxicab technology service provider" is a vendor who has contracted with the Commission to install and maintain the taxicab technology system in taxicabs.

(m) Taxicab technology system. The "taxicab technology system" is hardware and software that provides the following four core services (collectively "four core services"): (i) credit, debit and prepaid card payment required by section 3-03(e)(7) of this title, (ii) text messaging required by section 3-03(e)(8) of this title, (iii) trip data collection and transmission required by section 3-06 of this title, and (iv) data transmission with the passenger information monitor required by section 3-07 of this title.

(n) Taximeter. "Taximeter" shall mean an instrument or device approved by the commission by which the charge to a passenger for hire of a licensed taxicab is automatically calculated and on which such charge is plainly indicated.

(o) Taximeter business. "Taximeter business" shall mean any business which engages, in whole or in part, in the manufacture, sale (whether of new or used equipment), installation, repair, adjustment, testing, sealing or calibrating of taximeters, for use upon any licensed vehicle in the City of New York, including any business which engages in whole or in part in the installation of taxicab roof lights.

(p) Taximeter business owner. "Taximeter business owner" shall mean an individual, partnership or corporation licensed by the commission to own and operate a taximeter business.

(q) Taximeter test. "Taximeter test" (sometimes alternatively referred to as "test") shall mean a method to determine compliance with distance and time tolerances, utilizing either a road test over a precisely measured road course or a simulated road test determining the distance traveled by use of a roller device, or by computation from rolling circumference and wheel-turn data, said test having been conducted in accordance with National Institute of Standards and Technology Handbook No. 44.

(r) Wiring Harness. "Wiring harness" shall mean any wire or collection of wires, including all connections thereto, which is connected in any manner whatsoever to a taximeter, or in any way affects the operation of a taximeter.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

Subd. (g) added City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (h) relettered (former Subd. (g)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; amended City Record June 20, 2006 §11, eff. July 20, 2006. [See T35 §1-01 Note 2]

Subd. (i) relettered (former Subd. (h)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; added City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (j) relettered (former Subd. (i)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (h)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (k) relettered (former Subd. (j)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (i)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (l) relettered (former Subd. (k)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; added City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (m) relettered (former Subd. (l)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; added City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (n) relettered (former Subd. (m)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (j)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (o) relettered (former Subd. (n)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (k)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (p) relettered (former Subd. (o)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (l)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (q) relettered (former Subd. (p)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (m)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (r) relettered (former Subd. (q)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (n)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record May 5, 1999 eff. June 4, 1999. Statement of Basis and Purpose: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-509 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules with respect to the licensing and operation of taximeter businesses.

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35 RCNY 15-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-02 Unlicensed Business Activities Prohibited.

(a) No individual, partnership, corporation or other business entity shall manufacture, sell, install, repair, adjust, or calibrate taximeters or install or repair seals, wiring harnesses or other equipment relating to the operation of a taximeter or roof light for use upon any licensed vehicle in the City of New York unless he, she or it holds a current, valid taximeter business license issued by the Commission, which license is neither suspended nor revoked. No individual, partnership, corporation or other business entity shall manufacture, sell, install, repair, adjust, calibrate or maintain a taxicab technology system that is not provided by a taxicab technology service provider as defined in section 15-01 of this chapter.

(b) After July 18, 2007, no taximeter may be used in a taxicab licensed by the Commission unless the manufacturer thereof has been licensed by the Commission under these rules. Any manufacturer required to obtain a license under this subdivision must obtain such license separately and in addition to any other licenses such person or entity may hold from the Commission, including other licenses held for a taximeter business. A manufacturer required to be licensed under this chapter may appoint a representative to hold such license. Except as otherwise provided in this subdivision, such representative shall be required to meet all applicable conditions and qualifications of licensure provided by this chapter and must be authorized by appointment to act on behalf of the manufacturer pursuant to this chapter and to bind the manufacturer to the fulfillment of the duties and responsibilities of a licensee under this chapter, and the manufacturer, by such appointment, agrees to be so bound and shall be deemed to be bound hereby. Such licenses which a representative is appointed to hold shall be separate and in addition to any other licenses such person or entity may hold from the Commission, including other licenses held for a taximeter business. In the event a manufacturer chooses to appoint a representative to hold a license:

(1) The representative must have, and shall be deemed to have, the ability, on behalf of the manufacturer, to fulfill the requirements and obligations of a manufacturer, under this chapter, including the ability to implement the requirements of section 15-44 of this chapter as to the manufacturer, and to ensure that all persons and entities authorized to sell, install, or service taximeters manufactured by the manufacturer in taxicabs licensed by the Commission comply with all applicable provisions of these rules, except that such representative shall not be required to meet the requirements of section 15-12 of this chapter relating to premises and equipment of the manufacturer's manufacturing operations; notwithstanding the appointment of the representative, the manufacturer and its representative shall be jointly responsible for fulfilling the duties and responsibilities of a manufacturer as required by this chapter, including those set forth in section 15-44 of this chapter and the manufacturer's appointment of a representative shall not relieve it of responsibility for compliance;

(2) The manufacturer must inform the Commission at any time it appoints a representative and provide a copy of the appointment together with the name, address and license numbers, if any, of the representative. In addition, as a condition of renewal of such manufacturer's license, the manufacturer shall provide the Commission annually during the month of January with the name of the representative authorized by the manufacturer to hold a license from the Commission on behalf of the manufacturer, including the address, and, if already licensed by the Commission, license number(s) of such representative; and

(3) Each representative appointed under this subdivision must apply to hold a license under this chapter and must meet all applicable standards, criteria, and conditions of licensure, and must further provide to the Commission with its application for a license or renewal thereof an acceptance of the appointment and acceptance of the responsibilities imposed on such manufacturer by this chapter, except that such representative shall not be required to meet the requirements of section 15-12 of this chapter relating to premises and equipment of the manufacturer's manufacturing operations and only individual representatives, partners of a representative, members of a representative or officers of a representative shall be required to be fingerprinted under section 15-03(e) of this chapter.

HISTORICAL NOTE

Section amended City Record June 12, 2007 §33, eff. July 12, 2007. [See T35 §1-01 Note 3]

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

1

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Rules of the City of New York

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35 RCNY 15-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-03 Taximeter Business License.

(a) An applicant for a taximeter business license or its renewal shall be a sole proprietor, a partnership or a corporation. The application for a new license or its renewal shall be filed on a form approved by the commission and shall contain a sworn and notarized statement that the information contained therein is true under penalty of perjury.

(b)(1) An individual applicant for a taximeter business license must provide to the Commission proof of identity in the form of:

(i) A valid form of photo identification issued by the United States, any state or territory thereof, or any political subdivision of such state or territory; and

(ii) A valid, original social security card.

(2) An individual applicant for a taximeter business license or its renewal must be:

(i) at least eighteen (18) years of age;

(ii) of good moral character;

(iii) able to speak, read, write, and understand English.

(c) An applicant that is a partnership must file with its license application a certified copy of the partnership certificate from the clerk of the county where the principal place of business is located. In addition, each partner must

satisfy the requirements of individual ownership set forth in §15-03(b).

(d) An applicant that is a corporation shall file with its license application:

(1) a certified copy of its certificate of incorporation with a filing receipt issued by the secretary of state, if incorporated less than one year from the date of the license application or a certificate of good standing, if incorporated more than one year from the date of the license application, or if an out of state corporation, a copy of the certificate of incorporation, filing receipt, and authority to do business within the State of New York; (2) a list of its officers and shareholders, including names, residence addresses, telephone numbers and percentage of ownership interest of each shareholder; and

(3) a certified copy of the minutes of the organizational meeting at which the current officers were elected.

(e) Each of the following persons shall be fingerprinted, for purposes of securing criminal history records from the New York State Division of Criminal Justice Services:

(1) each individual applicant;

(2) each partner of a partnership applicant;

(3) each officer or shareholder of a corporate applicant;

(4) each person who has provided funds either individually, or as a principal of a partnership or corporation, whether such funds were provided by gift, loan or otherwise, in connection with the operation of the taximeter business, unless such provider is a licensed bank or loan company.

The new applicant shall pay any processing fees required by the commission or the Division of Criminal Justice Services.

(f) The commission shall have the right to reject the proposed name of any taximeter business that the commission finds to be substantially similar to any name in use by another taximeter business licensee.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

Subd. (b) amended City Record Oct. 31, 2006 §7, eff. Nov. 30, 2006. [See T35 §1-02 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 5, 1999 eff. June 4, 1999. Statement of Basis and Purpose: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-509 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules with respect to the licensing and operation of taximeter businesses.

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35 RCNY 15-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-04 Bond Required.

Each applicant for a taximeter business license or renewal thereof shall deposit with the commission, and shall keep in full force and effect throughout the license period, a bond in the sum of fifty thousand ($50,000) dollars, provided by one or more sureties approved by the commission. Such bond shall be payable to the City of New York and shall be conditioned on the licensee complying with all provisions of the Administrative Code of the City of New York and the Rules and Regulations governing taximeter businesses promulgated thereunder, including, but not limited to, payment of any fines or judgments against said licensee by any court or administrative agency, including, but not limited to, the administrative tribunal of the commission, or the Office of Administrative Trials and Hearings. This bond shall remain in full force and effect for the term of the taximeter business license, and for one year following the termination, non-renewal, or revocation of any license.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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35 RCNY 15-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-05 Financial Disclosure.

(a) Each individual applicant for a new or renewal taximeter business license, and each partner, shareholder or officer shall file with the commission a financial disclosure statement, to be submitted on a form provided by the commission, which shall include but not be limited to such individual's assets, liabilities, income, net worth, source of bank accounts and any investments within a business licensed or regulated by the commission or with an individual or entity who is a participant in a business licensed or regulated by the commission.

(b) Each individual, partner, shareholder or officer of a taximeter business shall disclose to the commission his interest, whether as owner, partner, officer, shareholder, director, lender or other creditor, in any licensed medallion taxicab.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

1

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35 RCNY 15-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-06 Filing and Renewal Fees.

Every application for a license to operate a taximeter business shall be accompanied by a non-refundable application fee of five hundred dollars ($500) for each location to be licensed. The application fee shall be one-half the annual fee for any license to be issued for a period of six months or less. Said fee shall be payable in cash, by money order, or by certified check. Irrespective of the date on which it was issued, each license shall expire on the thirty-first day of March following the date of issuance.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

1

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35 RCNY 15-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-07 Failure to Continuously Comply with Licensing Requirements.

(a) If at any time during the term of the taximeter business license the commission becomes aware that the licensee no longer meets the requirements for a taximeter business license, the commission may suspend or revoke the license in accordance with §§15-44 or 15-45 of these rules, and/or deny any application for renewal.

(b) Nothing contained herein shall limit the authority of the commission to summarily suspend the license of any taximeter business in accordance with §15-47 of these rules, where a threat to public health, safety or welfare exists.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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35 RCNY 15-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-08 Change in Business Ownership.

(a) A taximeter business owner shall not, without the prior consent of the commission, transfer any interest in a taximeter business, including, but not limited to, the transfer of any ownership interest, or any agreement to transfer an ownership interest in the future.

(b) A taximeter business owner shall not, without prior notification and approval by the commission, make any change in location, mailing address, corporate name, trade name, corporate officers, or any other material deviation from the description of the taximeter business as stated in the original or renewal application.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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***** Current through December 2009 ****

35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-09 [Reserved]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 5, 1999 eff. June 4, 1999. Statement of Basis and Purpose: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-509 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules with respect to the licensing and operation of taximeter businesses.

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§15-10 Compliance with Applicable Law.

(a) A licensee shall obtain and keep in full force and effect all licenses and permits required by city, state, or federal law.

(b) A licensee shall comply with all applicable Occupational Safety and Health Act (OSHA) standards and requirements at the licensee's place of business, as well as all other federal, state and local laws governing the conduct of its business.

(c) A licensee shall pay any fines, fees, and/or taxes owed by it to any federal, state or local governmental jurisdiction.

(d) A licensee shall comply with all worker's compensation and disability benefits laws, and all federal laws regarding the withholding of taxes and payment of FICA and other withholding taxes.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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35 RCNY 15-11

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§15-11 Fees Charged by Licensees.

(a) A licensee shall file with the commission a schedule of current fees for all services related to the sale, repair, installation and calibration of taximeters, including, but not limited to, inspections, tests, adjustments, installations, corrections, or repairs.

(b) Any change in fees shall be filed with the commission at least ten (10) days prior to the scheduled date of said change in fees.

(c) A taximeter business owner shall not engage in any business unless a current schedule of inspection and repair charges, including hourly rates, if applicable, is prominently displayed to the public on the business premises.

(d) A taximeter business owner shall not publicly display any fee schedule until after it has been filed with the commission.

HISTORICAL NOTE

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35 RCNY 15-12

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-12 Requirements Concerning Business Premises and Equipment.

(a) A taximeter business licensee shall at all times:

(1) be located within an area zoned for this business activity;

(2) be of sufficient size to simultaneously accommodate at least three (3) vehicles of the type(s) and model(s) licensed by the commission;

(3) have sufficient illumination and space in inspection, testing, and calibration areas to enable proper inspections and tests required by these regulations;

(4) have sufficient waiting area and rest room facilities for customers; and

(5) have all signs required by law and these rules.

(b) A taximeter business licensee may not use temporary structures that are not described in the certificate of occupancy for the premises. No installation, adjustment, correction, calibration, or repairs of any type may be performed on a public street or any facility other than the taximeter business premises.

(c) A taximeter business must be equipped with, at a minimum, the equipment required by the commission necessary for the repair and installation of taximeters.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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§15-13 Maintenance of Required Equipment.

(a) A taximeter business owner shall properly maintain all equipment required by the commission, or any other equipment required by law or regulation, in good working order, and in such a manner that an inspection, test, or calibration may be conducted in conformity with these rules.

(b) A taximeter business shall not conduct any test, calibration, or installation using equipment that is not in good working order.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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§15-14 Signage.

(a) A "licensed taximeter business" sign, bearing the taximeter business license number and meeting the specifications of the commission, shall, at all times, be hung or mounted on the outside of the premises in such a manner that it is easily visible to the public from outside the building. A taximeter business owner shall not display a "licensed taximeter business" sign if its taximeter business license, or any other necessary license, is expired, suspended or revoked.

(b) In addition to the foregoing, each licensed taximeter business shall have affixed to the inside of the glass window thereon, to be clearly legible from the outside, a printed sign bearing its business name, license number, and the Taxi and Limousine Commission complaint number.

HISTORICAL NOTE

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§15-15 MTA Tax.

Each taximeter business is required to adjust any taximeter in a taxicab used to provide trips in New York City to implement the MTA Tax commencing on November 1, 2009.

HISTORICAL NOTE

Section added City Record Sept. 25, 2009 §11, eff. Oct. 25, 2009. [See

Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 25, 2009:

Effective November 1, 2009, the New York State Legislature enacted a tax on taxicab trips within the Metropolitan Commuter Transportation District (the "MTA Tax"), as part of article 29-A of the New York State Tax Law. The MTA Tax will add fifty cents to the cost of each taxicab trip that originates in New York City and ends within New York City or the Counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

The MTA Tax must be paid by "taxpayers" defined at length in article 29-A of the Tax Law-either the owner of the taxicab vehicle or, under certain circumstances, a lessee of the vehicle. The MTA Tax must be passed along to the passenger, and taxicab rate regulators are required to adjust taxicab fares accordingly.

To implement the MTA Tax, the promulgated rules:

· Adjust the fares for all trips that originate in New York City and terminate either in New York City or in the county of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk or Westchester.

· Require drivers to collect the tax and pass it along to the statutorily defined "taxpayer," if that is not the driver.

· Permit owners or agents who are "taxpayers" to recoup the MTA Tax from drivers-first, by deduction from reimbursements due to drivers for credit card receipts; second, by deduction from drivers' security deposits; and third, by directly charging drivers.

In addition, the promulgated rules revise the York Avenue group ride fare from $3.50 to $6.00, to accurately reflect current practices among participants in that group ride program.

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§15-16 [Reserved]

FOOTNOTES

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§15-19 [Reserved]

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 15-20

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-20 Personal Conduct of Licensees.

(a) A taximeter business owner, while performing his, her or its duties and responsibilities as a taximeter business owner, shall not commit or attempt to commit, alone or in concert with another, any act of fraud, misrepresentation, or larceny. Examples of fraud, larceny or misrepresentation include, but are not limited to, calibration of a fare other than that set by the Commission; adjustment of the tire size, driving axle, pinion gear, transducer, wiring, or other equipment, for the purpose of generating an inaccurate signal of time or distance into the taximeter or the taxicab technology system; the manufacture, sale or installation of any device which is either designed to or does generate a false or inaccurate signal into the taximeter or the taxicab technology system; or the falsification of taxicab technology system records.

(b) An owner or his representative shall not perform any willful act of omission or commission, which is against the best interest of the public, even if not specifically prohibited by these rules.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

Subd. (a) amended City Record June 12, 2007 §34, eff. July 12, 2007. [See T35 §1-01 Note 3]

FOOTNOTES

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***** Current through December 2009 ****

35 RCNY 15-21

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-21 Unlawful Activities Prohibited.

(a) A taximeter business owner shall not use or permit any other person to use his business premises or office of record for any unlawful purpose.

(b) A taximeter business owner shall not conceal any evidence of a crime connected with his business premises or office of record.

(c) A taximeter business owner shall report immediately to the commission and the police any attempt to use his business premises to commit a crime.

(d) A taximeter business owner shall not file with the commission any statement, whatsoever, including statements required to be filed pursuant to these rules which he or she knows or reasonably should know to be false, misleading, deceptive or materially incomplete.

HISTORICAL NOTE

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***** Current through December 2009 ****

35 RCNY 15-22

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-22 Notification upon Conviction of a Crime or Other Change in License Con- ditions.

(a) A taximeter business owner, including a member of a partnership or any officer or shareholder of a corporation, shall notify the commission in writing of his conviction for a crime within fifteen (15) days of such conviction, and he shall deliver to the commission a certified copy of the certificate of disposition issued by the clerk of the court within fifteen (15) days of conviction.

(b) A taximeter business owner shall notify the commission of any material change in the information contained on such owner's latest taximeter business license application or renewal.

HISTORICAL NOTE

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***** Current through December 2009 ****

35 RCNY 15-23

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-23 Notification upon Suspension or Revocation of License.

A taximeter business owner shall immediately notify the commission in writing of any suspension or revocation of any license granted to the licensee, or any other person acting on his behalf, by any agency of the City or State of New York, or the government of the United States.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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***** Current through December 2009 ****

35 RCNY 15-24

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-24 Bribery Prohibited.

(a) A taximeter business owner or any person acting on his behalf shall not offer or give any gift, gratuity, or thing of value to any employee, representative, or member of the commission, or any public servant.

(b) A taximeter business owner or any person acting on his behalf or during the scope of his or her employment with said taximeter business owner, shall immediately report to the commission and the NYC Department of Investigation any request or demand for a gift, gratuity or thing of value by any employee, representative or member of the commission or any public servant.

(c) A taximeter business owner or any person acting on his behalf shall not accept any gift, gratuity, or thing of value from an owner or driver of any vehicle licensed by the commission, or any individual or any other person actually or purportedly acting on behalf of such owner or driver for the purpose of omitting an act required by these rules or committing any violation of these rules.

(d) A taximeter business owner shall notify the commission immediately and in writing within twenty-four (24) hours thereafter of any offer of a gift or gratuity prohibited by §15-24(c).

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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***** Current through December 2009 ****

35 RCNY 15-25

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-25 Threatening, Harassing or Abusive Conduct Prohibited.

A taximeter business owner, while performing his duties and responsibilities as a licensee, shall not:

(a) Threaten, harass, or abuse any governmental or commission representative, public servant, or other person.

(b) Use or attempt to use any physical force against a commission representative, public servant or any other person.

HISTORICAL NOTE

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35 RCNY 15-26

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-26 Cooperation with TLC.

(a) A taximeter business owner shall, at all times, cooperate with all law enforcement officers and representatives of the commission.

(b) A taximeter business owner shall answer and comply as directed with all questions, communications, notices, directives, and summonses from the commission or its representatives. A licensee shall produce his/her commission license and/or other documents whenever the commission requires.

HISTORICAL NOTE

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***** Current through December 2009 ****

35 RCNY 15-27

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-27 Taximeter Business Liability for Conduct of Employees.

(a) A taximeter business owner shall supervise and be responsible for the conduct of all its employees, contractors or agents, for the activities including, but not limited to, the sale, installation, inspection, testing, and calibration of taximeters.

(b) A taximeter business owner shall ensure that all employees are fully familiar with the rules and regulations contained herein, as well as any other pertinent regulatory agency rules and regulations. To this end, a taximeter business shall employ only such persons who have been certified as taximeter technicians by a taximeter manufacturer to perform any installation, testing, repair or calibration of the taximeter on which work is being performed.

(c) Any work involving a taximeter, including, but not limited to, installation, inspection, calibration, and repair shall be performed by a technician certified by the taximeter manufacturer. The certified technician shall be responsible for maintaining all records required by the commission and shall place his signature on all inspection, testing, repair or other reports prepared by him.

(d) A taximeter business owner shall ensure that all employees perform their duties in compliance with all relevant federal, state, and city laws, rules, and regulations.

(e) A taximeter business shall furnish to the commission, upon licensure or renewal, the names of all certified taximeter technicians employed by it and shall notify the commission in writing of any changes in the employment of certified taximeter technicians.

HISTORICAL NOTE

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***** Current through December 2009 ****

35 RCNY 15-28

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-28 Taximeter Business Liability for Tampering or Alteration.

(a) By installing a seal on a taximeter, the taximeter business certifies that the taximeter has been tested and calibrated in accordance with these rules. A taximeter business owner shall be strictly liable for tampering of a meter that is sealed with an unbroken seal issued by the taximeter business.

(b) By testing, installing or calibrating a taximeter, the taximeter business certifies that at the time of such installation, testing or calibration, it has examined and found the wiring harness leading from the taximeter to the speed sensor is of one piece construction with no intervening connectors, splices, "Y" connections, or direct or indirect interruptions of any kind whatsoever, and has examined the pinion gear seal and has determined that it is properly sealed.

HISTORICAL NOTE

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35 RCNY 15-29

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-29 Duty to Notify the Commission.

(a) A taximeter business shall notify the Commission by telephone immediately, and in writing within twenty-four (24) hours, of any of the following occurrences:

(1) A taximeter which the taximeter business knows or has reason to know has been reported to the Commission as lost or stolen or a taxicab technology system which the taximeter business knows or has reason to know has not been provided by a taxicab technology provider as defined in section 15-01 of this chapter has been presented to the taximeter business for installation, repair, adjustment or calibration.

(2) A taximeter has been presented for installation, repair, adjustment or calibration on which one or more seals are removed, damaged, broken or tampered with.

(3) A person whom the taximeter business owner knows or should have known to be a licensee of the commission, or to be acting on behalf of a licensee, has requested that the taximeter business engage in any activity prohibited by these rules.

(4) A person whom the taximeter business owner knows or should have known to be a licensee of the commission, or to be acting on behalf of a licensee, has attempted to repair, or connect any unauthorized device to, any taximeter, seal, cable connection or electrical wiring, which may have affected the operation of a taximeter.

(5) The taximeter business discovers the existence of any intervening connections, splices, "Y" connections or direct or indirect interruptions or connections of any kind whatsoever.

(b) Any notice required to be provided to the commission hereunder shall contain, at a minimum, the following information:

(1) The taxicab medallion number;

(2) The operator's license number, if any, of the driver or drivers who presented the vehicle to the taximeter business;

(3) The date of the inspection or repair;

(4) A detailed description of any items, evidence or occurrences as described in subdivision (a) herein;

(5) The names and operator's license numbers of each individual listed as a driver on the rate card.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

Subd. (a) open par amended City Record June 12, 2007 §35, eff. July 12, 2007. [See T35 §1-01

Note 3]

Subd. (a) par (1) amended City Record June 12, 2007 §35, eff. July 12, 2007. [See T35 §1-01

Note 3]

FOOTNOTES

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***** Current through December 2009 ****

35 RCNY 15-30

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-30 Seals.

(a) Installation of a taximeter shall include the affixing of security seals to the taximeter as required by the commission. Only seals which have been authorized and approved by the commission shall be used by a taximeter business. The security seals shall be installed in a manner prescribed by the commission, and in such manner that the security seals self-destruct when the taximeter or sealed part of the vehicle is dis- assembled.

(b) Each seal shall be numbered and the taximeter business shall keep a record of each seal used. Seals must be used in consecutive numerical order, and any seal not used must be accounted for. The record of seals shall be available for inspection by the commission as set forth herein. The record shall contain, at a minimum, the following information:

(1) the seal number;

(2) the number of the taximeter in which the seal was installed;

(3) the medallion number of the taxicab in which the taximeter was installed;

(4) the date the seal was installed;

(5) the date and seal number of any seal removed; and

(6) the reason for installing any new seal.

(c) No taximeter business shall install a seal on a taximeter without removing all seals installed by another meter

shop, whether or not broken.

(d) Each taximeter business shall maintain on its business premises either a fireproof safe secured to the floor of the establishment or a locked, secured room secured by an alarm connected to a centralized monitoring facility, for the storage of seals and taximeter repair records.

(e) Each taximeter business shall maintain and file with the commission a description of the procedures used by it to prevent the loss, theft, destruction or misuse of taximeter seals.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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35 RCNY 15-31

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-31 Required Inspection of Taximeters.

A taximeter shall be inspected by the taximeter business whenever it is installed, repaired, or calibrated. Inspection shall include examination of the taximeter installation and operation to verify compliance with:

(a) the taximeter specifications, type approvals, tolerances, and all other requirements of the commission, including, but not limited to a measured mile run test;

(b) the rate of fare established by the commission;

(c) the standards set forth in the sections of the taxicab owners' rules regarding taximeters; and

(d) all other applicable federal, state, and city regulations and guidelines.

This section shall not apply to repairs which are made exclusively to the printing mechanism or the resetting of the date and/or time on the printer receipt.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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35 RCNY 15-32

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Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-32 Other Repair Limitations.

A taximeter business owner shall not perform any work on a taximeter, including, but not limited to, inspection, testing, calibration, or repair, if:

(a) no valid vehicle license from the commission is presented unless the taximeter is not for use in a taxicab licensed by the commission;

(b) the taximeter serial number is deleted, defaced, or otherwise altered;

(c) the vehicle is licensed by the TLC and the taximeter make, model or serial number appears on the commission vehicle license or rate card, and the commission has not otherwise authorized the use of that taximeter;

(d) the taximeter business licensee knows or should know that the taximeter presented for testing was reported lost or stolen to the commission or any other law enforcement agency; or

(e) the taximeter business licensee has not obtained from the owner or driver of the vehicle, or his agent, a written consent to perform any work on the taximeter.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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35 RCNY 15-33

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-33 Recording the Results of Taximeter Tests.

(a) The taximeter business owner shall record the results of any inspections or tests, and the taximeter make, model, and serial number on a form, prescribed by the commission, which the taximeter business licensee shall submit to the commission within seven (7) days of such inspection.

(b) Upon a determination that a taximeter has passed an inspection, the taximeter business owner, in addition to complying with subdivision (a), shall affix a certification sticker, prescribed and approved by the commission, to the taximeter. Any certification sticker shall not be re-affixed to the taximeter if removed.

(c) A taximeter business owner shall provide for the safekeeping of certification stickers, shall control their sequence of issuance, and shall ensure that such stickers are placed only on taximeters in accordance with these regulations.

(d) When a taximeter is installed in preparation for "hack-up," the taximeter business owner, in addition to complying with subdivisions (a) and (b), shall:

(1) prepare a vehicle "hack-up" certification form approved by the commission at the completion of the preparatory work for vehicle "hack-up";

(2) submit to the commission, within 24 hours, all documents relating to the installation and inspection of such taximeter; and

(3) provide the vehicle owner with an itemized list of all work performed in preparation for "hack-up."

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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35 RCNY 15-34

RULES OF THE CITY OF NEW YORK

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-34 Failure of Tests.

No taximeter business owner shall, as a condition of performing any test or other work, require a vehicle driver or owner to undertake any repair work at his business. He shall inform the owner or driver that he may select another licensed taximeter business to perform a repair. No taximeter business owner shall direct a vehicle owner to utilize any other taximeter business to perform said repair work.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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35 RCNY 15-35

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-35 Overcharges Prohibited.

A licensed taximeter business shall not charge fees for any work involving taximeters in excess of the fees set by its fee schedule, which must be filed with the commission and shall be publicly displayed pursuant to §15-11 of these rules.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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35 RCNY

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Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-36 [Reserved]

FOOTNOTES

1

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-37 [Reserved]

FOOTNOTES

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-38 [Reserved]

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Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-39 [Reserved]

FOOTNOTES

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35 RCNY 15-40

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-40 Roof Light Installation and Repair.

(a) A taximeter business owner shall install a roof light for use in a taxicab licensed by the commission only of a type or model approved by the commission.

(b) A taximeter business owner shall install roof light directional appendages in a manner which does not permit its operation for other than directional or emergency uses.

(c) If an emergency or trouble light is installed, the taximeter business owner shall install an emergency or trouble light only of a type or model approved by the commission and in compliance with TLC specifications.

(d) If an emergency or trouble light is installed, the taximeter business owner shall install a switch to operate the emergency or trouble light that has no other function and which is not connected to any other equipment.

(e) The taximeter business owner shall install the roof light, the trouble light, the taximeter and the rate card/taxi driver license holder light in such a manner that the operation of either of these mechanisms is not controlled or affected by the dashboard light dimmer switch or any other device controlled by the driver.

(f) The taximeter business owner shall use only switches and wiring that meet specifications of the Society of Automotive Engineers, where such specifications are ap- plicable.

(g) The taximeter business owner shall only install switches for functions approved by the commission, and no additional switches, wiring and/or connections shall be installed.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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35 RCNY 15-41

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-41 Sale of Taximeters.

(a) A taximeter business owner shall sell only taximeters for use in a taxicab licensed by the commission that have been approved by the New York State Commissioner of Agriculture and Markets and the commission.

(b) A taximeter business owner shall not sell a taximeter for use in a taxicab licensed by the commission unless a valid vehicle license from the commission is presented.

(c) A taximeter business owner shall not sell a taximeter for use in a TLC licensed vehicle unless the installation, testing and certification of the taximeter/vehicle assembly is performed by the taximeter business licensee or an employee thereof.

(d) A taximeter business owner shall report to the commission, within seven (7) days, all sales, trades or exchanges of taximeters by the licensed taximeter business on a form prescribed by the commission.

(e) A taximeter business owner shall inform all purchasers in writing, before the sale takes place, of any and all restrictions imposed by the taximeter manufacturer and/or taximeter business licensee regarding the testing, repairs, calibration and installation of the taximeter.

(f) A taximeter business owner shall remove, deface, or otherwise void the validity of the certification sticker upon receipt of a taximeter purchased, exchanged, or accepted in trade by the taximeter business licensee, and report such decertification to the com- mission.

(g) The certification sticker must conform to all specifications established by the commission and bear the name of the chairperson of the commission.

(h) All installations of taximeters must be in accordance with specifications which have been filed with and approved by the commission.

(i) No change in the method of installation shall be made unless the installation method has been filed with and approved by the commission.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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35 RCNY 15-42

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-42 Record-Keeping and Reporting Requirements.

(a) A taximeter business owner shall comply with all record-keeping procedures established by the commission. All records required to be kept by the commission shall be in the form and manner prescribed by the commission and must be maintained for a period of five (5) years. All record-keeping entries must be made by a technician certified in accordance with §15-27 of these rules.

(b) A taximeter business owner shall acount for all certification stickers procured and issued by the taximeter business licensee.

(c) A taximeter business owner shall acount for all new or used taximeters that the taximeter business licensee buys, loans, rents, exchanges or accepts in trade.

(d) A taximeter business owner shall keep records of all sales, installations, inspections, re-inspections, calibrations, repairs and the results thereof.

(e) At any and all times, a taximeter business owner shall make available for examination, to any agent of the commission, or any other properly authorized law enforcement officer, all the records the official taximeter business is required to keep.

(f) A taximeter business owner shall permit any agent of the commission or any law enforcement official to inspect any portion of its business premises at any time.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-43 Penalties for Violation of Rules Governing Taximeter Businesses.

Rule No. PenaltyAll fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed. PersonalAppearanceRequired

§15-02 $10,000 and revocation if the taximeter business license is suspended Yes

§15-08(a) $1,000-5,000 and suspension until consent of commission is obtained or change in business ownership is withdrawn, or revocation Yes

§15-08(b) $500-1,000 Yes

§15-10 $500-1,000 and/or suspension until compliance Yes

§15-11(a) $50 No

§15-11(b) $50 No

§15-11(c) $50 No

§15-11(d) $50 No

§15-12(a) $500-1,000 and suspension until compliance Yes

§15-12(b) $500-1,000 Yes

§15-12(c) $500-1,000 and suspension until compliance Yes

§15-13(a) $500-1,000 Yes

§15-13(b) $500-1,000 Yes

§15-14 $100 No

§15-20(a) Revocation and $10,000 Yes

§15-20(b) $150-350 and/or suspension up to 30 days or revocation Yes

§15-21(a) $350-1,000 and/or suspension up to 30 days or revocation Yes

§15-21(b) $350-1,000 and/or suspension up to 30 days or revocation Yes

§15-21(c) $100-350 and/or suspension up to 30 days Yes

§15-21(d) Revocation and $10,000 Yes

§15-22(a)-(b) $500-1,000 and/or suspension up to 30 days Yes

§15-23 $500-1,000 and suspension until compliance Yes

§15-24(a)-(c) Revocation and $10,000 Yes

§15-25(a) $350-1,000 and/or suspension up to 30 days or revocation Yes

§15-25(b) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-26(a) $250 No

§15-26(b) $250 and suspension until compliance Yes

§15-27(a)-(e) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-28(a)-(b) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-29(a)-(b) $500-1,500 and/or suspension up to 60 days or revocation. If the failure to report relates to a medallion in which the taximeter business has a financial or other interest, the penalty may include, but not be limited to, fine or revocation of the medallion or loss of medallion owner's privileges as set forth in Chapter 1 of the commission's rules. Yes

§15-30(a)-(e) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-31 $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-32(a)-(e) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-32(f) $500 No

§15-33(a) $500 and suspension until compliance Yes

§15-33(b) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-33(c) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-33(d) $500 and suspension until compliance Yes

§15-34 $500 No

§15-35 $500 No

§15-40(a)-(g) $500 for each subdivision violated No

§15-41 $500-1,500 and/or suspension up to 60 days or revocation for each subdivision violated Yes

§15-42(a) $500 No

§15-42(b)-(d) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-42(e) $500 and suspension until compliance Yes

§15-42(f) $500-1,500 and suspension Yes

§15-44(a) and (b) First Violation: $10,000Second violation: revocation of license Yes

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

Penalty column heading amended City Record Nov. 2, 2006 §21, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (a) §15-44(a) and (b) added City Record June 12, 2007 §36, eff. July 12, 2007. [See T35 §1-01 Note 3]

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35 RCNY 15-44

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-44 Cooperation with Taxicab Technology Service Providers.

Each taxicab technology service provider (as that term is defined in section 15-01 of this chapter) shall, with the approval of the Commission, choose one or more Commission-approved taximeters to interface and communicate data with its taxicab technology system, and shall communicate such choice or choices in writing to the Commission. When a taximeter business that manufactures taximeters approved by the Commission has been notified by the Commission that its taximeter has been chosen by a taxicab technology service provider to interface and communicate data with the taxicab technology system of such taxicab technology service provider, such taximeter business shall choose either of the following options: (a) Such taximeter business shall provide to such taxicab technology service provider such information relating to the design and inner operation of the taximeter that is necessary for such taxicab technology service provider to perform the work of effecting an interface and communication of data between its taxicab technology system and the taximeter. A taximeter business may require as a condition of providing such information to a taxicab technology service provider that such taxicab technology service provider execute a non-disclosure agreement that is substantially similar in form to Attachment NDA to the agreement between the Commission and the taxicab technology service providers or as agreed upon between the parties; or

(b) Such taximeter business shall, (i) for the purpose of receiving from such taxicab technology service provider such information relating to the design and inner operation of such provider's taxicab technology system, within five business days of notification by the Commission pursuant to this section that the taximeter of such taximeter business has been chosen by such provider to interface and communicate data with such taxicab technology system, execute a non-disclosure agreement substantially similar in form to Attachment NDA to the agreement between the Commission and the taxicab technology service providers or as agreed to between the parties, (ii) perform the work of effecting an

interface and communication of data between such taximeter and such taxicab technology system, (iii) ensure that upon installation of such taxicab technology system and thereafter such interface and communication of data are effective, and (iv) submit to the Commission on an annual basis a signed certification that the taximeter business has effected and continues to effect an interface and communication of data between such taxicab technology system and such taximeter. Each failure on the part of a taximeter business that manufactures taximeters to cooperate with a taxicab technology service provider as provided in subdivision (a) or subdivision (b) of this section shall constitute a separate violation of this rule.

No taximeter manufactured by a taximeter business shall be used with any taxicab technology system unless such taximeter business is in compliance with this section insofar as it has cooperated to effect an interface of its taximeter with the taxicab technology systems of all taxicab technology service providers that chose such taximeter.

HISTORICAL NOTE

Section added City Record June 12, 2007 §37, eff. July 12, 2007. [See T35 §1-01 Note 3]

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Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-44 Procedures in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section added City Record May 5, 1999 eff. June 4, 1999. (Note internal redesignations in subd.

(v) by Law Department per Charter §1045(b)) [See T35 Chapter 15 footnote]

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35 RCNY 15-45

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-45 Discretionary Revocation Proceedings Before OATH. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-46 Procedures to Determine the Fitness of a Licensee or Applicant. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 5, 1999 eff. June 4, 1999. Statement of Basis and Purpose: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-509 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules with respect to the licensing and operation of taximeter businesses.

The Administrative Code authorizes the TLC to license shops that sell, repair, or install taximeters used by licensed medallion taxicabs. The Commission has not heretofore adopted any rules to accomplish this purpose. These regulations establish a formal procedure for both the licensing and supervision of businesses that manufacture, sell, repair and install taximeters used in medallion taxicabs.

The purpose of these regulations is to implement §19-509 of the Administrative Code. Businesses authorized to sell, repair or install taximeters will be licensed by the Commission. The regulations establish comprehensive criteria for the ownership of such businesses. The ownership criteria proposed herein will ensure that the owners of taximeter businesses are financially capable of operating a taximeter business and have operational and necessary equipment. Taximeter businesses are required to operate their businesses in a manner that will not constitute a nuisance to the public or unfavorably impact upon the quality of life in the surrounding community.

Regulations promulgated herein regulate the specific operation of a taximeter business. The purpose of these regulations is to prevent taximeter businesses from engaging in unlawful conduct, fraud or abuse, and to protect their customers and the public. Taximeter businesses will heretofore be responsible if they participate, either directly or indirectly, in the installation or removal of meter tampering devices, fail to perform proper repairs or tests, or fail to disclose evidence of tampering to the Commission. The regulations also require taximeter businesses to only utilize employees who have been properly trained and certified to perform tests, installations and repairs. The regulations also require business to maintain regular business hours, keep proper records, and disclose all charges.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 15-47

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-47 Summary Suspension of Licenses. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1994 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 5, 1999 eff. June 4, 1999. Statement of Basis and Purpose: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-509 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules with respect to the licensing and operation of taximeter businesses.

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The purpose of these regulations is to implement §19-509 of the Administrative Code. Businesses authorized to sell, repair or install taximeters will be licensed by the Commission. The regulations establish comprehensive criteria for the ownership of such businesses. The ownership criteria proposed herein will ensure that the owners of taximeter businesses are financially capable of operating a taximeter business and have operational and necessary equipment. Taximeter businesses are required to operate their businesses in a manner that will not constitute a nuisance to the public or unfavorably impact upon the quality of life in the surrounding community.

Regulations promulgated herein regulate the specific operation of a taximeter business. The purpose of these regulations is to prevent taximeter businesses from engaging in unlawful conduct, fraud or abuse, and to protect their customers and the public. Taximeter businesses will heretofore be responsible if they participate, either directly or indirectly, in the installation or removal of meter tampering devices, fail to perform proper repairs or tests, or fail to disclose evidence of tampering to the Commission. The regulations also require taximeter businesses to only utilize employees who have been properly trained and certified to perform tests, installations and repairs. The regulations also require business to maintain regular business hours, keep proper records, and disclose all charges.

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***** Current through December 2009 ****

35 RCNY 16-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-01 Definitions.

Accessible taxicab. An "accessible taxicab" is a taxicab that complies with section 3-03.2 of this title.

Accessible vehicle. An "accessible vehicle" is an accessible taxicab or a wheelchair accessible livery.

Chairperson. The "Chairperson" is the Chairperson of the Commission, or his or her designee.

Commission. The "Commission" is the New York City Taxi and Limousine Commission.

Dispatch. A "dispatch" is a request conveyed by the dispatcher for a participating driver operating an accessible vehicle to provide transportation for a wheelchair passenger or for a group of passengers which includes a wheelchair passenger.

Dispatch Equipment. The "dispatch equipment" shall be the communications equipment provided by the dispatcher to enable participating drivers operating accessible vehicles to receive dispatches from the dispatcher.

Dispatcher. The dispatcher is the entity selected by the commission to provide dispatch service for accessible vehicles.

Owner. The owner shall be the owner of the accessible taxicab medallion, or the wheelchair accessible livery, as applicable.

Participating driver. A "participating driver" is a driver of an accessible vehicle who holds a current, valid license

from the Commission to drive a taxicab under chapter 2 of this title, or to drive a livery under chapter 6 of this title, and has successfully completed the training prescribed in section 16-05 of this chapter.

Wheelchair accessible livery. A "wheelchair accessible livery" shall mean a livery which meets the requirements of section 6-28 of this title and the owner of which vehicle has opted to participate in the dispatch program as set forth in this chapter.

Wheelchair passenger. A "wheelchair passenger" is a passenger using a wheelchair.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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***** Current through December 2009 ****

35 RCNY 16-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-02 Effective Date.

Effective on January 1, 2008:

(a) All accessible vehicles and all owners and all participating drivers must comply with all provisions of this chapter; and

(b) Each accessible taxicab must be driven by a participating driver who holds a taxicab driver's license issued under chapter 2 of this title; and

(c) Each wheelchair accessible livery must be driven by a participating driver who holds a for-hire vehicle operator's permit issued under chapter 6 of this title; and

(d) No owner, and no base station with which any wheelchair accessible livery is affiliated, may permit operation of an accessible vehicle by a driver other than a participating driver holding the proper license or permit for such vehicle.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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35 RCNY 16-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-03 Requirements Not Exclusive.

Except to the extent that this chapter expressly provides otherwise, each participating driver, each accessible vehicle and each owner must comply with the generally applicable provisions of chapters 1, 2, 3 and 6 of this title.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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35 RCNY 16-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-04 Dispatch Equipment for Accessible Vehicles.

(a) Each accessible vehicle must be equipped with operable dispatch equipment.

(b) While the accessible vehicle is in operation, the dispatch equipment must be on and capable of use, unless the dispatch equipment becomes inoperable.

(c) If the dispatch equipment becomes inoperable, the driver of the accessible vehicle must notify the dispatcher and owner by the end of such driver's shift that the equipment is not operable. The owner must install replacement or repaired dispatch equipment promptly upon receipt thereof from the dispatcher. An accessible vehicle with inoperable dispatch equipment may continue to operate without accepting dispatches until repair or replacement of the dispatch equipment.

(d) Each participating driver must log on to the dispatch equipment at the beginning of such driver's shift and log off at the conclusion of such shift, and communicate with the dispatcher regarding dispatches, all in the manner prescribed by the dispatcher.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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35 RCNY 16-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-05 Training of Participating Drivers.

(a) Any driver, in order to become a participating driver and to operate an accessible vehicle, must attend a course of wheelchair accessible driver training approved by the Chairperson regarding wheelchair passenger assistance techniques.

Wheelchair accessible driver training shall include a minimum of three hours of training that covers the following:

(i) A review of all legal requirements pertaining to transportation of persons with disabilities;

(ii) Passenger assistance techniques including a review of various disabilities, hands-on demonstrations, disability etiquette, mobility equipment training (including familiarity of lift/ramp operations and various types of wheelchairs), and safety procedures, such training to involve an actual person using a wheelchair; and

(iii) Sensitivity awareness, including customer service and conflict resolution policies.

(b) No driver may operate an accessible vehicle unless the driver has a certificate of completion for or other evidence of completion of the required training as provided in subdivision (a) of this section.

(c) Each participating driver must keep the certificate or a copy of the certificate obtained pursuant to subdivision (b) of this section in the accessible vehicle and available for inspection.

(d) The owner shall be responsible for paying any fees required for the training of participating drivers for such owner's medallion or vehicle.

(e) The owner shall be responsible for ensuring that an accessible vehicle is operated by a participating driver who has completed the training provided for in this section.

(f) Each participating driver must also attend and complete the course of instruction in operation of the dispatch equipment provided by the dispatcher. Each participating driver must also attend and complete any mandatory update training on the dispatch equipment provided by the dispatcher.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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35 RCNY 16-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-06 Acceptance of Dispatch.

(a) A participating driver of an accessible vehicle must accept a dispatch from the dispatcher while a driver is on duty. In the event that any participating driver while on duty rejects more than two dispatches from the dispatcher in any work shift, the participating driver shall be deemed to have failed to participate in the dispatch program. Such participating driver may offer as a defense of any charge of failure to participate evidence or an explanation that the driver was not on duty or the vehicle was otherwise not actually available.

(b) A participating driver operating an accessible vehicle, upon receiving a dispatch from the dispatcher, must indicate to the dispatcher when the accessible vehicle will be able to pick up a wheelchair passenger in response to a dispatch in the manner prescribed by the dispatcher. A participating driver of an accessible taxicab shall illuminate the "Off Duty" light when the driver begins to travel to the pick up location.

(c) A participating driver of an accessible vehicle who has accepted a dispatch from the dispatcher may not accept any other passenger prior to picking up the wheelchair passenger.

(d) A base station with which a participating wheelchair accessible livery is affiliated shall also be responsible for ensuring the acceptance of a dispatch by the operator of the vehicle.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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35 RCNY 16-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-07 Fares.

Except as provided in section 16-09 of this chapter, fares for transportation provided following a dispatch under this chapter shall be equivalent to those set for taxicabs pursuant to sections 1-69, 1-70, 1-72 and 1-73 of this title.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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35 RCNY 16-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-08 Driver Duties Regarding Wheelchair Passengers.

(a) A participating driver must assist the wheelchair passenger to and from the curbside while entering and exiting the vehicle and must secure the wheelchair passenger within the vehicle. A participating driver is not required to assist a wheelchair passenger beyond the curbside.

(b) A participating driver must place the wheelchair passenger's packages and parcels in the vehicle and secure them and must retrieve them for the wheelchair passenger upon the conclusion of the ride.

(c) A participating driver must accept and provide transportation in the accessible vehicle for a wheelchair passenger's service animal(s) and for as many companions as may be seated in the vehicle.

(d) (i) A participating driver who has accepted a dispatch must wait for the wheelchair passenger to appear at the curbside at the point of pick up for a minimum of ten minutes following the time of pick up indicated by the dispatcher.

(ii) Notwithstanding the provisions of section 2-33(a) of this title, a participating driver shall not turn on the taximeter until the later of (A) the pick up time indicated by the dispatcher or (B) the vehicle's arrival at the point of pick up. The fare shall include any wait time from the time the taximeter is turned on until the trip begins.

(e) Except as provided in section 16-09 of this chapter, a participating driver of an accessible vehicle may not charge a fare to a wheelchair passenger higher than that indicated on the taximeter.

(f) A participating driver accepting a dispatch from the dispatcher must notify the dispatcher in the manner

prescribed by the dispatcher when the driver has arrived at the pick up location, whether a passenger is a wheelchair passenger, and whether the driver has picked up any passengers. At the conclusion of the ride, the participating driver must notify the dispatcher in the manner described by the dispatcher that the trip has been completed, the amount of the fare and the driver's ability to accept a new dispatch.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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35 RCNY 16-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-09 Non-Wheelchair Passengers.

A participating driver who has accepted a dispatch and who finds, upon arriving at the pick up location, that none of the passengers is a wheelchair passenger, may either refuse to provide transportation to such passengers, or provide such transportation but charge a fare of twice the otherwise applicable fare.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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35 RCNY 16-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-10 Penalties for Violation of Accessible Dispatch Rules.

Rule No. PenaltyAll fines listed below also include a separate license suspension, to run concurrently with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed. PersonalAppearanceRequired

§16-02 $100 to each of driver, owner, and, if the vehicle is a wheelchair accessible livery, the base station. No

§16-04(a) $50 No

§16-04(b) $100 No

§16-04(c) $50 No

§16-04(d) $100 No

§16-05(b) $50 No

§16-05(c) $50 No

§16-05(e) $50 No

§16-06(a) $100 per work shift No

§16-06(b) $100 No

§16-06(c) $100 No

§16-06(d) $50 No

§16-08(a) $50 No

§16-08(b) $50 No

§16-08(c) $50 No

§16-08(d)(i) $50 No

§16-08(d)(ii) $50 No

§16-08(e) $100 No

§16-08(f) $50 No

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Rules of the City of New York

38 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 DEALERS IN RIFLES AND SHOTGUNS*

§1-01 Introduction.

The following rules and regulations are hereby promulgated for the licensing and regulating of dealers in rifles and shotguns. Licensees are held responsible for the strict enforcement of and adherence to these rules. Any violation thereof is cause for suspension and/or revocation of the subject1 license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. Note further provisions of City Record May 31, 2001:

The Police Commissioner is responsible for the licensing and regulation of handguns, rifles, shotguns and other weapons in New York City, including activities such as possessing, carrying, selling, manufacturing, transporting or repairing such weapons. In addition, the Police Commissioner is authorized to designate

individuals as "Special Patrolmen" pursuant to §14-106 of the New York City Administrative Code. The administrative arm of the Police Department which fulfills these functions at his direction is the New York City Police Department's License Division.

Since early 1997, the operation of the License Division has undergone extensive review and analysis. This continuous effort to improve the quality and timeliness of the application and renewal process, the investigation of incidents, the determination of fitness, and the safe transport of weapons through New York City has resulted in significant policy changes and organizational improvements under the present rules and practices. However, it became clear that in the interest of consistency, fairness, and efficiency, a close examination and restructuring of Chapters 1, 2, 3, 4, 5, 13, 15 (Subchapter B), and 16 of Title 38 of the Rules of the City of New York was equally necessary.

Chapters 1 through 5, regarding licensing and possession of handguns and rifles/shotguns, as well as the licensing of dealers in weapons (including air pistols and air rifles), have been amended to be internally consistent in application, renewal, and suspension/revocation procedures. The amendments incorporate recent changes to the law, such as federal and state law prohibitions against possession of firearms by perpetrators of domestic violence, as well as local laws regarding the possession and use of safety locking devices and the establishment of domestic partnership registration in New York City. The amendments clarify and streamline the application and review process, clarify the conditions of the issuance of a license including the obligation to observe applicable laws and rules, and set forth consistent procedures for the appeal of revocation or suspension of a license or permit. Specifically with respect to handgun licensing, the amendments eliminate as a separate category the "Target" handgun license, clarify the requirements for particular categories of handgun licenses, and require inspection of all handguns with each renewal of the license.

Chapter 13, "Special Patrolmen," has been similarly amended to streamline and clarify application, renewal, and suspension/revocation procedures, including criteria to be considered when evaluating whether employers demonstrate sufficient need for the appointment of special patrolmen.

Subchapter B of Chapter 15, governing hearings conducted by the License Division, has been amended to conform the hearing process to the License Division rules as amended herein, as well as to clarify and streamline the hearing and disposition process.

Chapter 16 is amended to strengthen the already existing rules regarding the transport of weapons in New York City. The amendments clarify the definitions of applicable terms, strengthen notification requirements and security requirements when weapons are transported in and through New York City, and provide an appropriate procedure when a weapons shipment destined for a location outside of New York City is unexpectedly delayed in New York City. The chapter is also amended to exempt weapons shipments of five or fewer between licensed dealers within New York City from the operation of these rules.

In response to public comment on the proposed rule amendments and additional review by members of the Police Department, modifications have been made to rules contained in Chapters 1, 2, 3, 4, 5, 13, and 15, which include: addition of a provision requiring license or permit applicants to notify the License Division in the event that their circumstances change during the pendency of the application; restoration of the thirty-day period within which to request a hearing following suspension or revocation of a license or permit, rather than the ten-day period originally provided; addition of a provision requiring that a licensee or permittee whose license was suspended or revoked due to their becoming the subject of an order of protection must wait until the order of protection is expired or voided in order to request a hearing; and modification of a requirement in Chapter 5 providing that licensees may, rather than shall, be required to produce all handguns possessed for inspection upon renewal of a handgun license.

Consistent with the intent of the New York State Penal Law and the New York City Administrative Code,

and pursuant to the powers of the Commissioner under §§434(b) and 1043 of the New York City Charter, Title 10 of the New York City Administrative Code, and Articles 265 and 400 of the New York State Penal Law, the Police Department is now acting to amend its rules to create a comprehensive and reasonable regulatory scheme for the licensing and regulation of deadly weapons in New York City, and for the appropriate designation of Special Patrolmen.

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38 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 DEALERS IN RIFLES AND SHOTGUNS*

§1-02 Definitions.

Ammunition. The term "ammunition" shall mean any explosives suitable to be fired from a rifle or shotgun.

Certificate of registration. The term "certificate of registration" shall mean the Certificate of Registration of Rifles and Shotguns issued by the New York City Police Department.

Dealer in rifles and shotguns. The term "dealer in rifles and shotguns" shall mean any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of any rifle or shotgun. Dealer in rifles and shotguns shall not include a wholesale dealer.

Dispose of. The term "dispose of" shall mean to dispose of, give away, give, lease, loan, keep for sale, offer, offer for sale, sell, transfer, and otherwise dispose.

Employee. The term "employee" shall mean any person who is employed by a licensed dealer in rifles and shotguns and who has access in any manner to rifles and shotguns.

Fire Commissioner. The term "Fire Commissioner" shall mean the Fire Commissioner of the City of New York.

Police Commissioner. The term "Police Commissioner" shall mean the Police Commissioner of the City of New York.

Police officer, peace officer. The terms "police officer" and "peace officer" shall mean "police officer" and "peace officer" as those terms are defined in §§1.20 and 2.10 of the New York State Criminal Procedure Law, respectively.

Principal agent. The term "principal agent" refers to the person who is in active charge of the dealership. Dealer's licenses are issued to individuals. Every premises in which rifles and shotguns are sold requires an individual dealer's license. Thus if a company owns several stores each store would require its own individual dealer's license and the manager of the store would normally be considered the principal agent. Individual owners of stores who do not actively participate in the operation of their store may designate a responsible person as the "principal agent."

Rifle. The term "rifle" shall mean a "rifle" as defined in §265.00 of the New York State Penal Law, except that for purposes of this chapter a rifle shall have a barrel length of no less than sixteen inches and an overall length of no less than twenty-six inches.

Rifle/Shotgun Section. The term "Rifle/Shotgun Section" shall mean the Rifle/Shotgun Section of the License Division of the New York City Police Department. The "Rifle/Shotgun Section" was at one time known as the "Firearms Control Section."

Rifle/shotgun permit. The term "rifle/shotgun permit" shall mean the permit issued by the New York City Police Department for the purchase and possession of rifles or shotguns.

Shotgun. The term "shotgun" shall mean a "shotgun" as defined in §265.00 of the New York State Penal Law, except that for purposes of this chapter a shotgun shall have a barrel length of no less than eighteen inches and an overall length of no less than twenty-six inches.

Storage permit. The term "storage permit" shall mean the permit for the storage of more than two hundred (200) rounds of ammunition issued by the Fire Commissioner.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 DEALERS IN RIFLES AND SHOTGUNS*

§1-03 Applications.

(a) A fee of $150 shall accompany the application. All permits expire on the first day of the second January following the date of issuance of the permit and may be renewed thereafter. The renewal fee is also $150. The applicant shall pay the applicable fee with a certified check or money order payable to "N.Y.C. Police Department."

(b) All applications, renewals, inquiries and information concerning licenses for dealers in rifles and shotguns shall be made to the Rifle/Shotgun Section, License Division, New York City Police Department, 120-55 Queens Blvd., Kew Gardens, New York 11424, (718) 520-9300. The Rifle/Shotgun Section shall prescribe the manner by which such license is issued.

(c) A valid license must contain the validation seal of the Rifle/Shotgun Section.

(d) No license shall be issued or renewed pursuant to these Rules except by the Police Commissioner, and then only after investigation of the application including a review of the circumstances relevant to the answers provided in the application, and finding that all statements in a proper application for a license or renewal are true. The application may be disapproved if a false statement is made therein. No license shall be issued or renewed except for an applicant:

(1) of good moral character;

(2) who has not been convicted anywhere of a felony or of any serious offense, as defined in §265.00(17) of the New York State Penal Law, or of a misdemeanor crime of domestic violence as defined in §921(a) of title 18, United States Code;

(3) who has stated whether s/he has ever suffered any mental illness or been confined to any hospital or institution, public or private, for mental illness and who is free from any disability or condition that would impair the ability to safely possess or use a rifle or shotgun;

(4) who has stated whether s/he is or has been the subject or recipient of an order of protection or a temporary order of protection, or the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act; and

(5) concerning whom no good cause exists for the denial of a license.

(e) An application for a license shall be made to the Rifle/Shotgun Section by submitting two copies of the prescribed form by the applicant, or in the case of a corporation or partnership, by a principal agent thereof. All entries on this official form shall be typewritten.

(f) An applicant, or principal agent, shall certify upon the application that s/he has been issued a rifle/shotgun permit, the identification number thereof, that s/he maintains a regular place of business within New York City, the address of the same, that s/he is over the age of twenty-one, that s/he undertakes to supervise the acts of her/his, or in the case of a corporation or partnership, its employees, and that the applicant has not previously been refused a license as a dealer in rifles and shotguns, and that no such license issued to her/him has been revoked.

(g) The Rifle/Shotgun Section shall reserve the right to require that every applicant for dealership and also any officer, partner, agent or employee of the proposed dealership be fingerprinted in contemplation of issuing a dealer's license. The Rifle/Shotgun Section shall also reserve the right to require photographs of all applicants and also of any officer, partner, agent, or employee of the proposed dealership.

(h) During the pendency of the application, the applicant shall notify the Rifle/Shotgun Section of any necessary correction to or modification of the information provided in the original application, or any change in her/his status or circumstances, which may be relevant to the application.

(i) If her/his license application is disapproved the applicant shall receive a written "Notice of Application Disapproval" from the Rifle/Shotgun Section indicating the reason(s) for the disapproval. If the applicant wishes to appeal the decision s/he shall submit a sworn written statement, which shall be known as an "Appeal of Application Disapproval," to the Division Head, License Division, One Police Plaza, Room 110A, New York, New York 10038 within thirty (30) calender days of the date on the "Notice of Application Disapproval" requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Application Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the applicant or her/his New York State licensed attorney shall not be accepted. All timely appeals shall receive a complete review of the applicant's entire file by the Division Head, License Division, who shall notify the applicant of her/his determination. The Division Head, License Division shall not consider any documentation that was not submitted during the initial background investigation. There shall be no personal interviews to discuss appeals. If the appeal of her/his disapproval is denied, the applicant shall receive a "Notice of Disapproval After Appeal" letter from the Division Head, License Division. This notice concludes the Police Department's administrative review procedure.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 DEALERS IN RIFLES AND SHOTGUNS*

§1-04 Licenses and Licensees.

(a) For purposes of this section, all employees of a licensed dealer in rifles and shotguns shall personally be in possession of a valid rifle/shotgun permit to purchase and possess rifles and shotguns issued by the Rifle/Shotgun Section. Applications for dealer in rifles and shotguns and for possession of rifles and/or shotguns shall be processed together if submitted together.

(b) A dealer's license shall be valid for one year and may be renewed under the same conditions as for original issuance. All licensees shall be held responsible for renewing their licenses upon expiration. Any application to renew a license that has not previously expired, been revoked, suspended or cancelled shall thereby extend the term of the license until disposition is made of the application. Failure to renew a license after expiration shall result in the cancellation of the license.

(c) Federal law requires that dealers in rifles and shotguns shall be licensed by the United States Government Bureau of Alcohol, Tobacco and Firearms (ATF). The New York City Police Department shall notify the ATF of all dealer's licenses that are issued by the Rifle/Shotgun Section. The Police Department reserves the right to withhold a dealer's license from any applicant who does not have a federal license.

(d) All licensees shall be required to sign an acknowledgment that they shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to each type of license or permit issued to them. The Rifle/Shotgun Section shall provide the licensee with the acknowledgment statement to be executed. This acknowledgment statement shall be notarized. Failure to execute the acknowledgment statement and to have it notarized

shall result in the license application being denied.

(e) The licensee shall immediately notify the Rifle/Shotgun Section by telephone, followed by written notice within ten (10) calendar days, of any incident or violation of law or rules of federal, state, or local jurisdictions regarding her/himself, partners, officers, directors or stockholders of the licensed corporation or entity, or affecting the premises or business operations. For purposes of this subdivision, an incident includes:

(1) arrest, indictment or conviction in any jurisdiction;

(2) summons (except traffic infraction);

(3) suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act;

(4) the fact that the individual is or becomes the subject or recipient of an order of protection or a temporary order of protection;

(5) admission to any psychiatric institution, sanitarium and/or the receipt of psychiatric treatment;

(6) receipt of treatment for alcoholism or drug abuse;

(7) the presence or occurrence of a disability or condition that may affect the handling of a rifle/shotgun, including but not limited to epilepsy, diabetes, fainting spells, blackouts, temporary loss of memory, or nervous disorder;

(8) altered or mutilated license; or

(9) discharge of a rifle/shotgun on the licensee's premises.

(f) A dealer's license may be suspended and/or revoked by the Rifle/Shotgun Section for good cause by the issuance of a Notice of Determination Letter to the licensee, which shall state in brief the grounds for the suspension or revocation and notify the licensee of the opportunity for a hearing. The conviction of a licensee anywhere of a felony or serious offense as defined in §265.00(17) of the Penal Law of New York State, or of a misdemeanor crime of domestic violence as defined in §921(a) of title 18, United States Code, shall operate as a revocation of the license.

(g) If her/his license is suspended or revoked, the licensee shall be required to deposit any rifles or shotguns as well as any handgun license and any handguns in her/his possession with her/his local police precinct and forward a copy of the voucher together with her/his permit to the Rifle/Shotgun Section, 120-55 Queens Boulevard, Kew Gardens, N.Y. 11424, Room B-11. Her/his failure to comply within ten (10) calendar days from the date of suspension or revocation may result in the arrest of the licensee.

(h) A license issued shall be valid only for the premises mentioned and described in the license. No license is transferable to another person or location. The license shall be prominently displayed on such premises, and available at all times for inspection by members of the New York City Police Department. Failure of any licensee to so exhibit or display her/his license shall be presumptive evidence that s/he is not duly licensed.

(i) Upon issuance of a written Notice of Determination Letter from the Rifle/Shotgun Section notifying the licensee of suspension or of revocation of the license, a suspended/former licensee shall have thirty (30) calendar days from the date of the notice to submit a written request for a hearing to the Commanding Officer, License Division, One Police Plaza, Room 110A, New York, New York 10038. A licensee whose arrest or summons resulted in suspension or revocation of her/his license may only submit a written request or a hearing within thirty (30) calendar days after the termination of the criminal action, as defined in New York State Criminal Procedure Law §1.20(16)(c). If the suspension or revocation resulted from the licensee becoming the subject of an order of protection or a temporary order of protection, the licensee may only submit a written request for a hearing within thirty (30) calendar days after the

expiration or voiding of the order of protection or temporary order of protection. If the suspension or revocation was related to both a criminal action and an order of protection or temporary order of protection, then the later of the two waiting periods shall apply.

(j) Licensees shall be held responsible for having knowledge of all new laws and/or amendments or regulations that may be enacted through legislation or promulgated by the New York City Police Department affecting dealers in rifles and shotguns.

(k) Licensees shall cooperate with all reasonable requests by the Police Department for information and assistance in matters relating to the license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 DEALERS IN RIFLES AND SHOTGUNS*

§1-05 Rifles/Shotguns and Ammunition.

(a) No rifle or shotgun shall be sold, or given away, or disposed of, unless the transferee is authorized by law to possess such rifle or shotgun. Any police officer or peace officer shall produce a shield and proper identification before purchasing a rifle or shotgun. A peace officer whose status does not confer authorization to possess firearms pursuant to §2.10 of the New York State Criminal Procedure Law shall possess a rifle/shotgun permit in order to be a lawful transferee. Therefore, before delivering a rifle or shotgun to a peace officer without a rifle/shotgun permit, the licensee shall verify that person's status as a peace officer by telephoning the License Division Incident Section at (212) 374-5538 or 5539.

(b) Every dealer in rifles and shotguns shall keep a record book provided by the Rifle/Shotgun Section (P.D. 641-50). This book shall contain a record of all dispositions and registrations of rifles and shotguns purchased and disposed of by the dealer. Such records shall be maintained on the premises stated in the license and permanently preserved thereat. In the event of cancellation and/or revocation of the license, or discontinuance of business by a licensee, such records, as well as rifles and shotguns stored on the premises, shall be surrendered to the New York City Police Department.

(c) In the event of loss or theft of any rifle or shotgun, ammunition, dealer's license, or record, the licensee is required to report the loss or theft to her/his local precinct, and notify the Rifle/Shotgun Section by telephone on the next business day after discovery of the loss or theft. The licensee shall follow up with a written notification to the Rifle/Shotgun Section within 10 calendar days of discovery of the loss or theft.

(d) In the event that any individual lacking authority to possess such weapon attempts to leave any rifle or shotgun

with a licensee for cleaning, repairing, or other processing, the licensee may accept the rifle or shotgun and obtain the name, address, telephone number, etc. of the person leaving the weapon. The licensee shall immediately report the incident to the precinct wherein the premises is located. If the licensee does not accept the rifle or shotgun for cleaning, repairing, or other processing, s/he shall report the incident to the precinct wherein the premises is located as soon as the individual possessing the weapon leaves the premises. In the event that such an individual offers to sell or otherwise dispose of such a weapon to a licensee, the licensee shall attempt to obtain the name, address, and telephone number of said individual and shall notify the precinct wherein the premises is located as soon as said individual leaves the premises.

(e) Any dealer who sells, offers to sell, stores, or otherwise disposes of ammunition in excess of two hundred (200) cartridges shall be required to obtain a storage permit from the Fire Commissioner. Dealer's licenses issued by the Rifle/Shotgun Section shall not be valid for the sale of ammunition unless the dealership is also in possession of a storage permit from the Fire Department. Upon receipt of an application which indicates an intention to sell or store ammunition, the Rifle/Shotgun Section shall notify the Fire Department and ask them to conduct an inspection of the premises. The sale or storage of ammunition without a valid Fire Department permit shall be deemed sufficient cause to revoke a dealer's license.

(f) No ammunition shall be stored, exhibited, or displayed in the windows, showcases, or doors of the licensee's premises.

(g) All other ammunition shall be stored in an area of the premises that can be reasonably secured, and is not in view of the public. Only the licensee and authorized employees shall have access to this storage area.

(h) (1) The quantities of cartridges and other ammunition stored on the premises shall not exceed the amounts fixed by the Fire Commissioner for storage of ammunition. These quantities so fixed shall be stated in the storage permit.

(2) All ammunition kept on the licensee's premises shall not be stored in an area where other materials of a highly flammable nature are manufactured, stored, or kept for sale. This restriction shall not apply to any person duly authorized to keep and sell gunpowder.

(i) (1) A record of all ammunition received and dispensed shall be registered in a bound book with pages consecutively numbered. This record book shall be separately maintained from the record book noting all rifle and shotgun transactions. It shall be the responsibility of the licensee or a designated employee to make entries in this record book. This book, together with all invoices received, shall be kept in the ammunition storage area.

(2) This record shall be arranged in columnar form as outlined below. The first page of this book shall have an inscription bearing the name and address of the premises, license number, name of owner of premises, name of employee designated to make entries, and date of book being opened. Beginning with page 2, each even numbered page shall contain a record of ammunition received, and starting with page 3, each odd numbered page shall contain a record of ammunition dispensed or sold.

(j) In the event of cancellation or revocation of the license or discontinuance of business by a licensee, such records shall be surrendered to the New York City Police Department.

(k) No ammunition suitable for use in a rifle of any calibre, or for a shotgun of any gauge, shall be sold, given away, or otherwise disposed of to any person who has not been issued a rifle/shotgun permit and a certificate of registration, and who does not exhibit the same to the dealer at the time of purchase. Rifle or shotgun ammunition shall not be sold to any such person except for the shotgun or for the specific calibre of rifle for which the certificate of registration has been issued.

(l) The Rifle/Shotgun Section advises all dealers that certain ammunition calibres are considered to be

interchangeable between rifles and handguns. Sales of ammunition in these calibres shall be recorded by dealers. The following list includes most of the calibres likely to be sold as pistol, revolver, or interchangeable ammunition; however, it is not necessarily inclusive:

.4mm Rimfire

.17 Bumble Bee and Ackley Bee

.17 Hornet and "K" Hornet

.17 Mach IV

.17-222 and .17-223

5mm Remington Mag. Rimfire

.22, .25 and .32 Rimfire

.22 Rem. Jet Mag. and .22 Win. Mag.

.22 Hornet and .22 "K" Hornet

.221 Remington Fireball

.222 Remington

.223 Remington

.25 (6.35mm) ACP

25-35 Winchester

.256 Winchester Mag.

7.5mm revolver

.30 Luger (7.65mm)

.30 Mauser (7.63mm)

7.62mm Tokarev

7.65mm French Long

.30-30 (.30 WCF)

.30 calibre Carbine

.32 revolver (all types)

.32 (7.65ww) ACP

.32-20 Winchester

.357 Mag.

.357-44 B&D

9mm pistol and revolver (all types)

.38 revolver (all types)

.38 Special pistol and revolver (all types)

.38-40 Winchester

.38-44 special

.38 Super

.38 AMU

.38 ACP

.380 ZACP

.41 revolver (all types)

.41 Mag.

.44 revolver (all types)

.45-38 automatic

.45 pistol and revolver (all types)

.455 pistol and revolver (all types)

Below is a sample outline for a licensee's book recording ammunition received, dispensed or sold. While slight variations may be permitted to accommodate clarity and page size, all dealers in ammunition shall provide all information indicated below. Any deviations from this form shall be approved by the Rifle/Shotgun Section of the New York City Police Department.

AMMUNITION RECEIVED[*]

Date- Time	Manf.	Invoice	Calibre/ Gauge	Type	Quant.	Signa- ture	Comments
-	-	-	-	-	-	-	-

AMMUNITION SOLD[**]

Date- Time	Manf.	Calibre/ Gauge	Quant.	Name	Address	Date of Birth	License No.
-	-	-	-	-	-	-	-

** Records for ammunition received shall be placed on all even numbered pages beginning with page 2.

** Records for ammunition sold and disposed of shall be placed on all odd numbered pages beginning with page 3.

(m) Prospective buyers shall not be allowed to load weapons upon the premises of the licensee. If the sale of one or

more rifles and/or shotguns as well as ammunition is consummated, the ammunition box shall be sealed prior to the sale and the buyer shall be instructed that the rifle or shotgun is not to be loaded on the premises.

(n) Pursuant to New York City Administrative Code §10-312, it shall be a criminal violation for any person who is the lawful owner or lawful custodian of a rifle or shotgun to store or otherwise place or leave such weapon in such a manner or under circumstances that it is out of her/his immediate possession or control, without having rendered such weapon inoperable by employing a safety locking device as defined in subdivision (o) of this section. Such offense shall constitute a misdemeanor if the offender has previously been found guilty of such violation or if the violation is committed under circumstances which create a substantial risk of physical injury to another person. The New York City Police Department recognizes that all licensees have incurred an obligation by being issued a dealer's license to maintain and dispose of rifles and shotguns in a responsible fashion. In order to assist licensees, the Rifle/Shotgun Section has issued the following safety requirements in response to past incidents involving dealers in rifles and shotguns:

(1) No weapons shall be stored, exhibited or displayed in windows, showcases, or doors of the premises. Rifle/shotgun storage or inventory areas shall be physically separated from counter and display areas and access to these areas shall be carefully controlled.

(2) All rifle/shotgun display cases shall be kept locked and secured at all times and not readily accessible to the public. All keys to such display cases shall not leave the control of authorized personnel.

(3) All rifles and shotguns shall not be readily capable of firing. They shall be temporarily deactivated by removing magazines or bolts; or by securing with bars or chains through the trigger guard; or by using individual trigger locks or other safety locking devices composed primarily of steel or other metal of significant gauge to inhibit breaking.

(4) All rifles and shotguns within a licensee's inventory shall be tagged and cross referenced to the appropriate entry in the acquisition records.

(o) Pursuant to New York City Administrative Code §10-311(a), it shall be unlawful for any person or business enterprise to dispose of any rifle or shotgun which does not contain a safety locking device, defined as a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user. The following types of safety locking devices will be deemed to comply with this provision:

(1) a trigger lock, which prevents the pulling of the trigger without the use of a key; or

(2) a combination handle, which prevents the use of the weapon without the alignment of the combination tumblers; or

(3) a detachable or non-detachable locking device, composed primarily of steel or other metal of significant gauge to inhibit breaking, utilizing a metallic key or combination lock, rendering the weapon inoperable until the locking device is removed by an authorized person.

(p) Pursuant to New York City Administrative Code §10-311(b), it shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to dispose of any rifle or shotgun in New York City unless it is accompanied by the following warning, which shall appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the rifle or shotgun and on a separate sheet of paper included within the packaging enclosing the rifle or shotgun: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS."

(q) Pursuant to New York City Administrative Code §10-311(c), any person who applies for and obtains

authorization to purchase, or otherwise lawfully obtains, a rifle or shotgun shall be required to purchase or obtain a safety locking device at the time s/he purchases or obtains the rifle or shotgun.

(r) Pursuant to New York City Administrative Code §10-311(d), the City of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident involving, or the use or misuse of a safety locking device that may have been purchased in compliance with these rules.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

Subd. (n) par (3) amended City Record Aug. 9, 1999 eff. Sept. 8, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 9, 1999:

Local Law No. 21 of 1998, or "Christopher's Law," added Section 10-311 to the New York City Administrative Code, requiring anyone selling or otherwise transferring a pistol or revolver to provide an accompanying safety locking device. The law also requires licensed manufacturers, importers and dealers to provide a written warning with any handgun sold, encouraging the use of safety locking devices. The Police Commissioner is required to provide written notice of the law to anyone seeking authorization to purchase a handgun, and to advise applicants for handgun licenses and renewals on safe storage of weapons and the use of a safety locking device. Finally, the law authorizes the Commissioner to promulgate rules regarding the types of safety locking devices that will comply with the law.

Consistent with the intent of the law, and pursuant to the powers of the Commissioner under sections 434(b) and 1043 of the New York City Charter, the Police Department is now acting to amend its rules regarding the licensing of handguns and rifles/shotguns, as well as the licensing of dealers in such weapons, to implement the law's provisions as required and to encourage the use of safety locking devices.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 DEALERS IN RIFLES AND SHOTGUNS*

§1-06 Security.

A licensee shall take all reasonable precautions to make the premises secure. These precautions shall include but not be limited to all applicable measures as listed below:

(a) Securing windows at or near ground level with expanded metal welded to bolted angle-iron frames.

(b) Securing the front of the premises with a metal folding scissors gate, roll-down door, or another similar device.

(c) Adequately protecting and securing all rear windows and doors, and skylights.

(d) Allowing the interior of the premises to be visible at all times; no drapes or blinds shall be used that would block the view of police or passersby who might observe unusual activity within the premises.

(e) Illuminating fully the exterior and interior of the premises at night, and during the hours when business is not conducted within.

(f) Installing alarms, or other appropriate security/service systems upon the premises.

(g) Posting signs prominently on the premises warning of the presence of electronic or other types of security systems and containing penalties for criminal violations.

(h) Installing high-security cylinder locks in all doors.

(i) In order to properly protect a licensee's premises and the weapons and ammunition stored within, the New York City Police Department requires that dealers utilize its "Crime Prevention Security Survey." A member of the New York City Police Department will come to a licensee's business establishment and inspect the building for security measures. After the inspection, the officer will recommend and suggest various methods in order to better protect the premises. These recommendations may include the choice of locks, gates, and alarm systems suitable for the licensee's premises. The inspection is free of charge. Licensees shall contact their local police precinct, and request an appointment with the Crime Prevention Officer or the Community Policing Supervisor for a survey of the premises.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

NOTE

References within this chapter to the masculine shall be presumed to include the feminine and neuter. References to the singular shall be presumed to include the plural.

HISTORICAL NOTE

Note amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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38 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-01 Introduction.

The following Rules have been promulgated by the Police Commissioner for the registration and regulation of organizations possessing rifles and shotguns. Such organizations are held responsible for the strict enforcement of and adherence to these Rules. Any violation thereof is cause for suspension or revocation of the privilege to possess rifles and shotguns.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-02 Definitions.

Ammunition. The term "ammunition" shall mean any explosives suitable to be fired from a rifle or shotgun.

Certificate of registration. The term "certificate of registration" shall mean the Certificate of Registration of Rifles and Shotguns issued by the New York City Police Department.

Custodian. The term "custodian" shall mean an individual personally possessing a rifle/shotgun permit, and designated by an organization to be held responsible for the safeguarding and supervision of any rifle or shotgun owned by the organization.

Alternate custodian. The term "alternate custodian" shall mean an individual personally possessing a rifle/shotgun permit, and designated by an organization to be held responsible for the safeguarding and supervision of any rifle or shotgun owned by the organization when the custodian is unavailable to perform her/his duties.

Fire Commissioner. The term "Fire Commissioner" shall mean the Fire Commissioner of the City of New York.

Organization. The term "organization" shall mean any firm, partnership, corporation, company or other entity, association, educational institution, cultural institution, or paramilitary organization registered by the Rifle/Shotgun Section to possess rifles and/or shotguns for the purpose of holding itself out to the general public as a business providing security or protection services for compensation; or instructing individuals in the use of rifles and/or shotguns; or organizing and supervising a competition or target practice involving the use of rifles and/or shotguns.

Organization registration certificate. The term "organization registration certificate" shall mean the certificate issued by the Rifle/Shotgun Section to approved organizations registered to possess rifles and shotguns.

Rifle. The term "rifle" shall mean a "rifle" as defined in §265.00 of the New York State Penal Law, except that for purposes of this chapter, a rifle shall have a barrel length of no less than sixteen inches, and an overall length of no less than twenty-six inches.

Rifle/Shotgun Section. The term "Rifle/Shotgun Section" shall mean the Rifle/Shotgun Section of the License Division of the New York City Police Department. The "Rifle/Shotgun Section" was at one time known as the "Firearms Control Section."

Rifle/shotgun permit. The term "rifle/shotgun permit" shall mean the permit issued by the Rifle/Shotgun Section for the possession and purchase of rifles and shotguns.

Shotgun. The term "shotgun" shall mean a "shotgun" as defined in §265.00 of the New York State Penal Law, except that for purposes of this chapter, a shotgun shall have a barrel length of no less than eighteen inches and an overall length of no less than twenty-six inches.

Storage permit. The term "storage permit" shall mean the permit for the storage of more than two hundred (200) rounds of ammunition issued by the Fire Commissioner.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-03 Applicability.

These Rules shall apply to any person, firm, partnership, corporation, company or other entity, association, educational institution, cultural institution, or paramilitary organization possessing rifles and/or shotguns for the purpose of holding itself out to the general public as a business providing security or protection services for compensation; or instructing individuals in the use of rifles and/or shotguns; or engaging in a military drill or parade with rifles and/or shotguns; or organizing and supervising a competition or target practice involving the use of rifles and/or shotguns.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-04 Original Applications and Renewals.

(a) All applications, renewals, requests for information and inquiries by an organization pursuant to these Regulations shall be made to the Rifle/Shotgun Section, License Division, New York City Police Department, 120-55 Queens Blvd., Kew Gardens, N.Y. 11424, (718) 520-9300. The Rifle/Shotgun Section shall prescribe and enforce the manner in which an organization may be registered to possess rifles and shotguns.

(b) A letter prepared on the letterhead of the organization shall accompany the official application. In addition to a request to be designated an organization to possess rifles and shotguns, this letter shall set forth:

(1) the names of the custodian and alternate custodian;

(2) the manner in which the rifles and shotguns shall be secured when not in use.

The applicant shall also submit two (2) color photographs each of the designated custodian and alternate custodian, size $1^1/_2 \times 1^1/_2$ inches, taken within the past thirty (30) days, front view from the chest up, with the application.

(c) During the pendency of the application, the applicant shall notify the Rifle/Shotgun Section of any necessary correction to or modification of the information provided in the original application, or any change in her/his status or circumstances, which may be relevant to the application.

(d) If the application is disapproved the organization shall receive a written "Notice of Application Disapproval" from the Rifle/Shotgun Section indicating the reason(s) for the disapproval. If the organization wishes to appeal the

decision it shall submit a sworn written statement, which shall be known as an "Appeal of Application Disapproval," to the Division Head, License Division, One Police Plaza, Room 110A, New York, New York 10038 within thirty (30) calendar days of the date on the "Notice of Application Disapproval" requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Application Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the organization or its New York State licensed attorney shall not be accepted. All timely appeals shall receive a complete review of the applicant's entire file by the Division Head, License Division, who shall notify the organization of her/his determination. The Division Head, License Division shall not consider any documentation that was not submitted during the initial background investigation. There shall be no personal interviews to discuss appeals. If the appeal of the disapproval is denied, the organization shall receive a "Notice of Disapproval After Appeal" letter from the Division Head, License Division. This notice concludes the Police Department's administrative review procedure.

(e) An organization registration certificate shall expire on the last day of the third December after the date of issue and may be renewed every three (3) years thereafter. A renewal application shall be forwarded to the organization at least thirty (30) calendar days prior to the expiration date. If the renewal application is not received in a timely manner, the custodian or alternate custodian shall so notify the Rifle/Shotgun Section by telephone. Certificates may be renewed under the same conditions as original issuance. An application for issuance or renewal of a certificate may be disapproved if a false statement is made therein. All organizations shall be held responsible for renewing a certificate upon expiration. Failure to renew a registration prior to its expiration date shall result in its cancellation.

(f) An organization registration certificate issued shall be valid only for the organization, custodian and alternate custodian mentioned and described in the certificate. A certificate shall not be transferable to another organization. The certificate and all rifles and shotguns possessed by an organization shall be available for inspection by members of the New York City Police Department. Failure by any organization to so exhibit a registration certificate shall be presumptive evidence that it is not duly registered.

(g) All organizations shall abide by the laws, rules, standards, and procedures promulgated by federal, state and local jurisdictions and law enforcement agencies applicable to the organization. A violation thereof is cause for suspension or revocation of a registration certificate issued by the Rifle/Shotgun Section. Upon suspension or revocation of a registration certificate, the custodian or alternate custodian shall deposit all rifles/shotguns in the organization's possession with her/his local police precinct and forward a copy of the voucher together with the registration certificate to the Rifle/Shotgun Section, 120-55 Queens Boulevard, Kew Gardens, N.Y. 11424, Room B-11. Her/his failure to comply within ten (10) calendar days from the date of suspension or revocation may result in arrest or other action by the Police Department.

(h) An organization registration certificate may be revoked or suspended by the Rifle/Shotgun Section for good cause by the issuance of a Notice of Determination Letter to the organization, which shall state in brief the grounds for the suspension or revocation and notify the organization of the opportunity for a hearing.

(i) Upon issuance of a written Notice of Determination Letter from the Rifle/Shotgun Section notifying the organization of suspension or revocation of a registration certificate by the Rifle/Shotgun Section, the organization shall have thirty (30) calendar days from the date of the notice to submit a written request for a hearing to the Commanding Officer, License Division, One Police Plaza, Room 110A, New York, New York 10038.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-05 Custodian Appointment and Duties.

(a) Upon application an organization shall appoint two (2) active members or employees of the organization to be personally responsible for all rifles and shotguns possessed by the organization, its employees or members. These individuals shall be known as the custodian and alternate custodian.

(b) It shall be certified upon an application for registration that the custodian and alternate custodian are rifle/shotgun permit holders; the identification numbers thereof; that they are active members or employees of the organization; that they undertake to supervise the acts of the employees and members of the organization while they use any rifles or shotguns possessed by the organization; and that they have not been previously denied or had revoked appointment as a custodian or alternate custodian for the applicant or any other organization. If the organization does not have two active members or employees, the custodian shall be an active member or employee and the alternate custodian shall be a suitable designated individual who possesses a rifle/shotgun permit.

(c) The Rifle/Shotgun Section reserves the right to require the custodian and alternate custodian to be fingerprinted and/or photographed in contemplation of issuing an organization registration certificate.

(d) The custodian and alternate custodian shall ensure that all members or employees using rifles and shotguns registered by the organization are licensed by the Rifle/Shotgun Section to possess rifles and shotguns. The provisions of §2-05(d) shall not be applicable to the following organizations:

(1) An organization actively engaged in the instruction of minors in the use of rifles and/or shotguns or the supervision of a competition or target practice for minors. A custodian and alternate custodian, designated by an

organization of this nature, shall closely supervise all minors using rifles and/or shotguns registered by the organization, and ensure that such minors are instructed in the safe use of rifles and/or shotguns.

(2) A paramilitary organization actively engaged in the presentation of military drill or parade. A custodian and alternate custodian designated by an organization of this nature shall closely supervise all individuals using rifles and/or shotguns during all military drills or parades. The custodian and alternate custodian shall also ensure that such rifles and/or shotguns are not loaded during such events.

(e) The conviction of a custodian or alternate custodian anywhere of a felony or serious offense as defined in §265.00(17) of the New York State Penal Law, or of a misdemeanor crime of domestic violence as defined in §921(a) of title 18, United States Code, may require suspension or revocation of an organization's registration certificate. An organization's registration certificate may be suspended or revoked if the custodian or alternate custodian is the subject or recipient of an order of protection or a temporary order of protection, or the subject of an ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(f) A custodian or alternate custodian shall immediately notify the Rifle/Shotgun Section by telephone, followed by written notice within ten (10) calendar days, of any incident or violation of law or rules of federal, state, or local jurisdictions regarding the custodian or alternate custodian, or affecting the premises or business operations. For purposes of this subdivision, an incident includes:

(1) arrest, indictment or conviction in any jurisdiction;

(2) summons (except traffic infraction);

(3) suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act;

(4) the fact that the custodian or alternate custodian is or becomes the subject or recipient of an order of protection or a temporary order of protection;

(5) admission to any psychiatric institution, sanitarium and/or the receipt of psychiatric treatment;

(6) receipt of treatment for alcoholism or drug abuse;

(7) the presence or occurrence of a disability or condition that may affect the handling of a rifle/shotgun, including but not limited to epilepsy, diabetes, fainting spells, blackouts, temporary loss of memory, or nervous disorder;

(8) lost, stolen, altered or mutilated certificate of registration or organization registration certificate; or

(9) unlawful discharge of a rifle/shotgun.

(g) An organization shall inform the Rifle/Shotgun Section in writing of any proposed change of custodianship or any other amendment of its registration. An organization shall not alter a registration certificate without the permission of the Rifle/Shotgun Section.

(h) The custodian and alternate custodian shall each be required to sign an acknowledgment that s/he shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to each type of license or permit issued to her/him and to the organization. The Rifle/Shotgun Section shall provide the custodian and alternate custodian with the acknowledgment statement. These acknowledgment statements shall be notarized. Failure to sign the acknowledgment statements and have them notarized shall result in denial of the application for the organization registration certificate. Upon appointment, each successive custodian and alternate custodian shall be required to sign an

acknowledgment statement and have it notarized. Failure to do so shall result in the suspension or revocation of the organization's registration certificate. Custodians and alternate custodians shall be held responsible for having knowledge of all new laws and rules that may be enacted by local, state, or federal legislatures or promulgated by the New York City Police Department affecting their organization.

(i) The custodian and alternate custodian shall be responsible for securing all rifles and shotguns and all ammunition possessed by the organization at the close of business/activities every day. Failure to do so shall constitute good cause for suspension or revocation of the organization's registration certificate.

(j) Pursuant to New York City Administrative Code §10-311(a), it shall be unlawful for any person or business enterprise to dispose of any rifle or shotgun which does not contain a safety locking device, defined as a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user. The following types of safety locking devices will be deemed to comply with this provision:

(1) a trigger lock, which prevents the pulling of the trigger without the use of a key; or

(2) a combination handle, which prevents the use of the weapon without the alignment of the combination tumblers; or

(3) a detachable or non-detachable locking device, composed primarily of steel or other metal of significant gauge to inhibit breaking, utilizing a metallic key or combination lock, rendering the weapon inoperable until the locking device is removed by an authorized person.

(k) Pursuant to New York City Administrative Code §10-311(b), it shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to dispose of any rifle or shotgun in New York City unless it is accompanied by the following warning, which shall appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the rifle or shotgun and on a separate sheet of paper included within the packaging enclosing the rifle or shotgun: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS."

(l) Pursuant to New York City Administrative Code §10-311(c), any person who applies for and obtains authorization to purchase, or otherwise lawfully obtains, a rifle or shotgun shall be required to purchase or obtain a safety locking device at the time s/he purchases or obtains the rifle or shotgun.

(m) Pursuant to New York City Administrative Code §10-311(d), the City of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident involving, or the use or misuse of a safety locking device that may have been purchased in compliance with these rules.

(n) Organizations, custodians and alternate custodians shall cooperate with all reasonable requests by the Police Department for information and assistance in matters relating to the certificate.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-06 Storage of Rifles and Shotguns and Ammunition.

(a) Pursuant to New York City Administrative Code §10-312, it shall be a criminal violation for any person who is the lawful owner or lawful custodian of a rifle or shotgun to store or otherwise place or leave such weapon in such a manner or under circumstances that it is out of her/his immediate possession or control, without having rendered such weapon inoperable by employing a safety locking device as defined in §2-05(j) of this chapter. Such offense shall constitute a misdemeanor if the offender has previously been found guilty of such violation or if the violation is committed under circumstances which create a substantial risk of physical injury to another person. The Rifle/Shotgun Section recognizes that all organizations have incurred an obligation by being registered to maintain and use rifles and shotguns in a responsible fashion. In order to assist organizations, the Rifle/Shotgun Section has issued the following safety guidelines for storing rifles and shotguns on the premises:

(1) All rifle and shotgun cases shall be kept locked and secured at all times and shall be inaccessible to unauthorized individuals. All keys to such cases shall not leave the control of the custodian or alternate custodian.

(2) Rifles and shotguns shall be incapable of firing when not in use. Rifles and shotguns may be temporarily deactivated by removing magazines or bolts; by securing with bars or chains through the trigger guard; or by using individual trigger locks or other safety locking devices composed primarily of steel or other metal of significant gauge to inhibit breaking.

(3) A custodian and alternate custodian shall keep one updated inventory of all rifles and shotguns possessed by the organization in the event of loss or theft. Such inventory shall include a full description of each rifle and shotgun including manufacturer, model, serial number, if applicable, and calibre or gauge. The certificate of registration issued

for each rifle and shotgun shall accompany these records.

(4) In the event of loss or theft of any rifle or shotgun, certificate of registration, ammunition, or organization registration certificate, the custodian or alternate custodian is required to report the loss or theft to her/his local precinct and notify the Rifle/Shotgun Section by telephone on the next business day after discovery of the loss or theft. Follow up with a written notification to the Rifle/Shotgun Section within 10 calendar days of discovery of the loss or theft is also required.

(b) Any organization that stores in excess of two hundred (200) cartridges shall be required to obtain a storage permit from the Fire Commissioner. The storage of ammunition without a valid permit issued by the Fire Commissioner shall be deemed sufficient cause to revoke an organization's registration certificate.

(c) The quantities of cartridges and other ammunition stored on the premises shall not exceed the amounts fixed by the Fire Commissioner for storage of ammunition. The quantities so fixed shall be stated in the storage permit.

(d) All ammunition kept on the premises shall not be stored in an area where other materials of a highly flammable nature are manufactured or stored.

(e) Ammunition shall be stored in an area of the premises that can be reasonably secured. Only the custodian, alternate custodian, and authorized members or employees shall have access to this storage area.

(f) A custodian and alternate custodian shall take reasonable precautions to make the premises secure. These precautions shall include but not be limited to all applicable measures as listed below:

(1) Adequately protecting and securing all rear windows, doors and skylights.

(2) Securing windows at or near ground level with expanded metal welded to belted angle-iron frames.

(3) Installing alarms or other appropriate security/service systems upon the premises.

(4) Posting signs prominently on the premises warning of the presence of electronic or other types of security systems and containing penalties for criminal violations.

(5) Installing high-security cylinder locks in all doors.

(6) Illuminating fully the exterior and interior of the premises at night, and during the hours when business is not conducted within.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record Aug. 9, 1999 eff. Sept. 8, 1999. [See T38 §1-05 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-07 Security Plan.

In order to properly protect an organization's premises and the rifles, shotguns and ammunition stored within, the Rifle/Shotgun Section requires that custodians utilize the New York City Police Department's Crime Prevention Security Survey. A member of the New York City Police Department will come to an organization's premises and inspect the building for security measures. After the inspection, the officer will recommend and suggest various methods designed to better protect the premises. These recommendations may include the choice of locks, gates, and alarm systems suitable for the premises. The inspection is free of charge. An organization shall contact its local police precinct, and request an appointment with the Crime Prevention Officer or the Community Policing Supervisor for a survey of the premises of the organization.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-08 Separability.

If any clause, sentence, paragraph, or part of these Rules of the application to any organization, custodian, or circumstances shall be determined to be invalid, such determination shall not affect, impair or invalidate the remainder thereof.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

NOTE

References within this chapter to the masculine shall be presumed to include the feminine and neuter. References to the singular shall be presumed to include the plural.

HISTORICAL NOTE

Note amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-01 Introduction.

All New York City rifle and shotgun permittees shall be aware of the responsibilities incurred by accepting a permit. The permittee should especially be familiar with the rules applicable to the possession of a rifle or shotgun or both. The following rules for the proper and safe use of rifles and shotguns have been promulgated by the Police Commissioner of the New York City Police Department. A violation of these provisions may be cause for suspension or revocation of a rifle/shotgun permit.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

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38 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-02 Application for Permit.

(a) The applicant shall complete the application supplied to her/him by the Police Department.

(b) The minimum age for obtaining a permit is 18 years of age.

(c)(1) If the applicant was ever arrested for any crime or violation s/he shall submit a certificate of disposition indicating the offense and final disposition of the charges. The applicant shall do this even if the case was dismissed, the record sealed or the case nullified by operation of law (**e.g.,** Youthful Offender Status). Any omission of a previous arrest may result in the denial of the application.

(2) If the applicant was ever convicted in New York State of a felony or a serious offense as defined in §265.00(17) of the New York State Penal Law, s/he shall get a New York State Certificate of Relief from Disabilities.

(3) No permit shall be issued or renewed to any applicant who has been convicted of a misdemeanor crime of domestic violence, as defined in §921(a) of title 18 of the United States Code, or who is the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(d) If the applicant was discharged from the Armed Forces under other than honorable conditions s/he shall submit a copy of her/his separation papers and a notarized statement explaining the reason for discharge.

(e) If the applicant's answer to Question 2, 3 or 4 on the application is YES s/he shall submit a letter from a

licensed physician stating that s/he has examined the applicant within the last 30 days, that the examination included a review of the applicant's medical record and all pertinent hospital and institutional records, and shall conclude that the applicant is capable of possessing a rifle or a shotgun without presenting a danger of harm to the applicant or to others. Further evidence may be requested.

(f) Four color photographs, $1^1/_2 \times 1^1/_2$ inches, of the applicant, from the chest up, taken within the past thirty (30) days shall accompany the application. The wearing of any article of clothing or other adornment obscuring the identification of the wearer is not acceptable.

(g) Payment of applicable fees shall be made by certified check or money order, made payable to the N.Y.C. Police Department or to the N.Y.S. Division of Criminal Justice Services, respectively.

(h) All permittees shall be required to sign an acknowledgment that they shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to this permit. The Rifle/Shotgun Section shall provide the permittee with the acknowledgment statement. This acknowledgment statement shall be notarized. Failure to sign the acknowledgment statement and have it notarized shall result in denial of the permit application.

(i) During the pendency of the application, the applicant shall notify the Rifle/Shotgun Section of any necessary correction to or modification of the information provided in the original application, or any change in her/his status or circumstances, which may be relevant to the application.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-03 Grounds for Denial of Permit.

An application for rifle/shotgun permit may be denied if:

(a) The applicant has been arrested, indicted or convicted for any crime or violation except minor traffic violations, in any jurisdiction, federal, state or local.

(b) The applicant has been other than honorably discharged from the Armed Forces of this country.

(c) The applicant has or has had any disability or condition that may affect the ability to safely possess or use a rifle or a shotgun.

(d) The applicant has received psychiatric treatment or been confined for alcoholism, mental illness or drug addiction.

(e) The applicant makes a false statement on her/his application.

(f) The applicant is the subject or recipient of an order of protection or a temporary order of protection.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. An applicant's prior arrest for assault can constitute grounds for denial of a rifle/shotgun permit. Even though the charges against the applicant were adjourned in contemplation of dismissal, and were eventually dismissed, the department can consider the circumstances surrounding the arrest. Peric v New York City Police Dept., 5 A.D.3d 142, 772 N.Y.S.2d 507 (1st Dept. 2004).

FOOTNOTES

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[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-04 Right to Appeal Following Denial of Permit.

If for any reason her/his application is denied the applicant has the right to an appeal.

(a) If the applicant's original application is denied, the applicant shall receive a written "Notice of Application Disapproval" from the Rifle/Shotgun Section indicating the reason(s) for the disapproval. If the applicant wishes to appeal the decision s/he shall submit a sworn written statement, which shall be known as an "Appeal of Application Disapproval," to the Division Head, License Division, One Police Plaza, Room 110A, New York, New York 10038 within thirty (30) calendar days of the date on the "Notice of Application Disapproval" requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Application Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the applicant or her/his New York State licensed attorney shall not be accepted.

(b) All timely appeals shall receive a complete review of the applicant's entire file by the Division Head, License Division, who shall notify the applicant of her/his determination. The Division Head, License Division shall not consider any documentation that was not submitted during the initial background investigation. There shall be no personal interviews to discuss appeals. If the appeal of her/his disapproval is denied, the applicant shall receive a "Notice of Disapproval After Appeal" letter from the Division Head, License Division. This notice concludes the Police Department's administrative review procedure.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section amended City Record Apr. 12, 1993 eff. May 12, 1993.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-05 Suspension or Revocation of Permit.

(a) The permittee shall immediately notify the Rifle/Shotgun Section by telephone, followed by written notice within ten (10) calendar days, of any incident or violation of law or rules of federal, state, or local jurisdictions. For purposes of this subdivision, an incident includes:

(1) arrest, indictment or conviction in any jurisdiction;

(2) summons (except traffic infraction);

(3) suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act;

(4) the fact that the permittee is or becomes the subject or recipient of an order of protection or a temporary order of protection;

(5) admission to any psychiatric institution, sanitarium and/or the receipt of psychiatric treatment;

(6) receipt of treatment for alcoholism or drug abuse; or

(7) the presence or occurrence of a disability or condition that may affect the handling of a rifle/shotgun, including but not limited to epilepsy, diabetes, fainting spells, blackouts, temporary loss of memory, or nervous disorder; or

(8) unlawful discharge of a rifle/shotgun.

(b) The permittee's rifle/shotgun permit may be subject to suspension or revocation if:

(1) The permittee is arrested, indicted or convicted for any crime or violation, except minor traffic violations, in any jurisdiction, federal, state or local, or is the subject or recipient of an order of protection or a temporary order of protection, or is the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(2) The permittee is other than honorably discharged.

(3) The permittee has or has had any disability or condition that may affect the ability to safely possess or use a rifle or a shotgun.

(4) The permittee has received or is receiving psychiatric treatment or is or has been confined for alcoholism, mental illness or drug addiction.

(5) The permittee violates any of the rules pertaining to the permit to possess rifles and shotguns.

(c) If her/his permit is suspended or revoked, the permittee shall be required to deposit any rifles or shotguns as well as any handgun license and any handguns in her/his possession with her/his local police precinct and forward a copy of the voucher together with her/his permit to the Rifle/Shotgun Section, 120-55 Queens Boulevard, Kew Gardens, N.Y. 11424, Room B-11. Her/his failure to comply within ten (10) calendar days from the date of suspension or revocation may result in the arrest of the permittee.

(d) If her/his permit is suspended or revoked, the suspended/former permittee shall be issued a Notice of Determination Letter by the Rifle/Shotgun Section, which shall state in brief the grounds for the suspension or revocation and notify the permittee of the opportunity for a hearing. The permittee shall have a right to submit a written request for a hearing within thirty (30) calendar days from the date of the Notice of Determination Letter to the Commanding Officer, License Division, One Police Plaza, Room 110A, New York 10038. Before a hearing is scheduled the permittee shall be required to submit the above documents and any additional documents requested in the suspension or revocation notice. A permittee whose arrest or summons resulted in suspension or revocation of her/his permit may only submit a written request for a hearing within thirty (30) calendar days after the termination of the criminal action, as defined in New York State Criminal Procedure Law §1.20(16)(c). If the suspension or revocation resulted from the permittee becoming the subject of an order of protection or a temporary order of protection, the permittee may only submit a written request for a hearing within thirty (30) calendar days after the expiration or voiding of the order of protection or temporary order of protection. If the suspension or revocation was related to both a criminal action and an order of protection or temporary order of protection, then the later of the two waiting periods shall apply.

(e) Upon receipt of the permittee's letter, the License Division shall schedule the permittee for a hearing and notify the permittee by mail. However, requests for hearings shall not be entertained, and a hearing shall not be scheduled, unless the permittee complies with the provisions of subdivision (c) above, and forwards a Certificate of Final Disposition or Certificate of Relief from Disabilities, if applicable, to the License Division.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-06 Renewal of Permit.

Prior to the expiration of her/his rifle/shotgun permit the permittee shall be sent a renewal notice. The permittee shall answer all questions, comply with all instructions, submit a certified check or money order made payable to the N.Y.C. Police Department as required, sign and date the notice and forward it to the Rifle/Shotgun Section. In the event the permittee does not wish to renew her/his permit, s/he shall surrender her/his permit and all rifles/shotguns to her/his local precinct or otherwise lawfully dispose of the rifles/shotguns in accordance with §3-10 or §3-12 below. Any delays in renewing the permit may result in confiscation of all the permittee's rifles/shotguns by the New York City Police Department. Renewal of the permit may be disapproved if the permittee makes a false statement in connection with the renewal.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-07 Possession and Registration of Permit.

(a) The permit issued to the permittee by the Rifle/Shotgun Section enables the permittee to possess only rifles or shotguns that are properly registered under her/his permit.

(b) The permittee shall have the permit to possess rifles and shotguns in her/his possession at all times when in possession or carrying a rifle and/or shotgun in addition to a separate certificate of registration for that particular rifle and/or shotgun.

(c) Permittees are not permitted to purchase, acquire, sell, transfer or otherwise dispose of any rifle and/or shotgun and ammunition from or to gun dealers or individuals without exhibiting a Rifle/Shotgun Permit.

(d) The permit is not transferable.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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***** Current through December 2009 ****

38 RCNY 3-08

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-08 Change of Address.

The permittee shall notify the Rifle/Shotgun Section of any change in address within ten (10) calendar days.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-09

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-09 Lost or Stolen Documents and Rifles/Shotguns.

All lost or stolen documents and rifles/shotguns shall be reported to the precinct in which the permittee resides or the theft or loss was discovered. The permittee shall obtain a complaint number from the precinct and report in person the loss or theft to the Rifle/Shotgun Section within five (5) calendar days of the loss. A fee of two (2) dollars is charged for each document for which a replacement is requested. This fee shall be paid by certified check or money order made payable to the N.Y.C. Police Department and shall accompany the report. The permittee shall not send cash. For lost permits two color photos of permittee, $1^1/_2 \times 1^1/_2$ inches, from the chest up, taken within the past thirty (30) days shall also be provided. The wearing of any article of clothing or other adornment obscuring the identification of the wearer is not acceptable.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-10

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-10 Request to Cancel Permit.

The permittee shall notify the Rifle/Shotgun Section if s/he wishes to cancel or decline to renew her/his rifle/shotgun permit by forwarding the permit, certificate(s) of registration, and a notarized letter to the Rifle/Shotgun Section. The letter shall inform the Rifle/Shotgun Section where the rifles/shotguns are located or how they have otherwise been disposed of.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 3-11

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-11 Purchase of Ammunition.

The certificate of registration shall be presented to a dealer in rifles and shotguns at time of purchase of ammunition to confirm calibre or gauge of said specified rifle or shotgun.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-12

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-12 Disposal of Rifles and Shotguns.

(a) The permittee may sell or dispose of her/his rifle/shotgun only to a licensed dealer in rifles and shotguns, to the holder of a valid rifle/shotgun permit, or to an individual who is exempt from the permit requirements of the City of New York. When the permittee sells her/his rifle or shotgun, s/he shall complete a certificate of registration. These forms may be obtained from the Rifle/Shotgun Section or the licensed dealer purchasing the rifle/shotgun and shall be forwarded to the Rifle/Shotgun Section within 72 hours of disposition.

(b) Pursuant to New York City Administrative Code §10-311(a), it shall be unlawful for any person or business enterprise to dispose of any rifle or shotgun which does not contain a safety locking device, defined as a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user. The following types of safety locking devices will be deemed to comply with this provision:

(1) a trigger lock, which prevents the pulling of the trigger without the use of a key; or

(2) a combination handle, which prevents the use of the weapon without the alignment of the combination tumblers; or

(3) a detachable or non-detachable locking device, composed primarily of steel or other metal of significant gauge to inhibit breaking, utilizing a metallic key or combination lock, rendering the weapon inoperable until the locking device is removed by an authorized person.

(c) Pursuant to New York City Administrative Code §10-311(b), it shall be unlawful for any licensed

manufacturer, licensed importer, or licensed dealer to dispose of any rifle or shotgun in New York City unless it is accompanied by the following warning, which shall appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the rifle or shotgun and on a separate sheet of paper included within the packaging enclosing the rifle or shotgun: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS."

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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FOOTNOTES

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[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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***** Current through December 2009 ****

38 RCNY 3-13

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-13 Transfer of Rifles/Shotguns from an Estate.

The following procedures shall be followed to dispose of any rifles/shotguns belonging to an estate:

(a) A copy of the death certificate shall be provided.

(b) The legal heir, executor, executrix, administrator or administratrix shall establish her/his claim to be legal heir, executor or administrator. This is done by one of the following means:

(1) If there is no Will, then any person claiming to be the administrator or administratrix shall submit Letters of Administration from the Surrogate's Court.

(2) If there is a Will then the executor or executrix shall submit Letters Testamentary issued by the Surrogate's Court.

(3) All requests for transfer of rifles/shotguns shall be made on Police Department Disposition Report.

(c) If any rifles/shotguns are to be transferred to a New York City resident the person receiving the rifles/shotguns shall have a valid New York City rifle/shotgun permit.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-14

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-14 Supplemental Rules.

(a) The permittee's rifle or shotgun shall not be loaded in a public place within New York City at any time except when using it at a licensed rifle and shotgun range.

(b) When the permittee travels to and from a licensed range or hunting area, or transports her/his rifle/shotgun for any reason, it shall be carried unloaded in a locked, non-transparent case, and the ammunition shall be carried separately. If the permittee is transporting her/his rifle/shotgun in a vehicle, it shall be kept locked in the trunk or equivalent space, not in plain view. The permittee shall never leave her/his rifle/shotgun in a vehicle unless s/he is physically present in or in close proximity to the vehicle.

(c) The permittee shall never alter, remove, obliterate or deface any of the following markings that may be on her/his rifle/shotgun:

(1) name of the manufacturer;

(2) model;

(3) serial number. This information identifies the rifle or shotgun in the permittee's possession.

(d) Pursuant to New York City Administrative Code §10-311(c), any person who applies for and obtains authorization to purchase, or otherwise lawfully obtains, a rifle or shotgun shall be required to purchase or obtain a safety locking device at the time s/he purchases or obtains the rifle or shotgun. Pursuant to New York City

Administrative Code §10-311(d), the City of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident involving, or the use or misuse of a safety locking device that may have been purchased in compliance with these rules. The permittee shall take proper safety measures at all times to keep her/his rifle/shotgun from unauthorized persons-especially children. The permittee's rifle or shotgun should be kept unloaded and locked in a secure location in her/his home. Ammunition shall be stored separately from her/his rifle or shotgun.

Note: Many rifles/shotguns that are stolen in residential burglaries are taken from bedroom closets.

(e) Pursuant to New York City Administrative Code §10-312, it shall be a criminal violation for any person who is the lawful owner or lawful custodian of a rifle or shotgun to store or otherwise place or leave such weapon in such a manner or under circumstances that it is out of her/his immediate possession or control, without having rendered such weapon inoperable by employing a safety locking device as defined in §3-12(b) of this chapter. Such offense shall constitute a misdemeanor if the offender has previously been found guilty of such violation or if the violation is committed under circumstances which create a substantial risk of physical injury to another person.

(f) While there is no limit in the number of rifles or shotguns the permittee may possess, s/he should be advised that permittees who own several rifles/shotguns shall be expected to safeguard and maintain each rifle or shotgun.

(g) Minors under the age of eighteen may carry or use the permittee's rifle or shotgun only in the permittee's actual presence. The permittee shall be held responsible for supervising closely any minor using her/his rifle/shotgun. The minor, in turn, shall be expected to abide by the same rules and restrictions as a permittee.

(h) It is recommended that new permittees take advantage of instruction and safety courses in the use of rifles/shotguns that are offered by the rifle ranges and clubs within the New York area. The permittee should consult the local consumer telephone directory to find out more about a course offered in her/his area.

(i) New laws or amendments of existing rules may be enacted by a legislature or promulgated by the Police Department affecting the ownership or use of rifles/shotguns. The permittee shall be held responsible for knowing any modification of rules pertaining to her/his permit.

(j) The permit to possess a rifle or shotgun expires three years after the last day of the month in which the permit was issued. The permittee is held responsible for applying to renew her/his permit when it expires. Failure to apply to renew the permit at such time shall result in cancellation of the permit and confiscation of any rifles/shotguns the permittee may possess.

(k) Permittees shall cooperate with all reasonable requests by the Police Department for information and assistance in matters relating to the permit.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. (e) amended City Record Aug. 9, 1999 eff. Sept. 8, 1999. Note that the language in this subd.

(e) was bracketed out of the Rules by City Record May 31, 2001 amendment.

NOTE

References within these rules to the masculine shall be presumed to include the feminine and neuter. References to

singular shall be presumed to include the plural.

HISTORICAL NOTE

Note amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-01 Introduction.

The following rules are hereby promulgated for the licensing and regulation of gunsmiths, manufacturers, dealers in firearms and dealers in air pistols, air rifles or similar instruments. Licensees are held responsible for the strict enforcement of and adherence to these rules. Any violation thereof is cause for suspension and/or revocation of the subject license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-02 Definitions.

Air pistols, air rifles, or similar instruments. The terms "air pistols," "air rifles," or "similar instruments" shall mean any instrument designed or redesigned, made or remade to use the energy of a spring or air to fire a projectile.

Ammunition. The term "ammunition" shall mean any explosives suitable to be fired from a firearm, machine-gun, rifle, shotgun or other dangerous weapon.

Applicant, licensee or license. The terms "applicant," "licensee" or "license" shall mean and refer to gunsmiths, manufacturers, dealers in firearms and dealers in air pistols, air rifles, or similar instruments unless expressly restricted.

Assault weapon. The term "assault weapon" shall mean an "assault weapon" as defined in §10-301(16) of the New York City Administrative Code.

Assembler. The term "assembler" shall include any person, firm, partnership, corporation or company who engages in the business of joining or fitting together any firearm or parts thereof.

Commissioner. The term "Commissioner" shall mean the Police Commissioner of the City of New York.

Dealer in air pistols, air rifles or similar instruments. The term "Dealer in air pistols, air rifles or similar instruments" shall mean any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, any air pistol, air rifle or similar instrument. Dealer in air pistols, air rifles or similar instruments shall not include a wholesale dealer.

Dealer in firearms. The term "dealer in firearms" shall mean any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, any pistol or revolver. Dealer in firearms shall not include a wholesale dealer.

Employee. The term "employee" shall mean any person who is employed by a licensed gunsmith, manufacturer or dealer in firearms and who has access in any manner to firearms, rifles, shotguns, machine-guns, or assault weapons.

Firearm. The term "firearm" shall mean a "firearm" as defined in §265.00 of the New York State Penal Law and shall include a pistol, a revolver, and any firearm which may be concealed upon the person.

Gunsmith. The term "gunsmith" shall mean any person, firm, partnership, corporation or company who engages in the business of repairing, altering, assembling, manufacturing, cleaning, polishing, engraving or trueing, or who performs any mechanical operation on any rifle, shotgun, firearm, machine-gun, or assault weapon.

Machine-gun. The term "machine-gun" shall mean a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a submachine gun.

Manufacturer. The term "manufacturer" shall include any person, firm, partnership, corporation or company who engages in the business of machining, producing, constructing, or making any firearm, rifle, shotgun, machine-gun, assault weapon, firearm frames or receivers. The term "manufacturer" shall include "assembler".

Rifle. The term "rifle" shall mean a "rifle" as defined in §265.00 of the New York State Penal Law, except that for purposes of this chapter a rifle shall have a barrel length of no less than sixteen inches and an overall length of no less than twenty-six inches.

Shotgun. The term "shotgun" shall mean a "shotgun" as defined in §265.00 of the New York State Penal Law, except that for purposes of this chapter a shotgun shall have a barrel length of no less than eighteen inches and an overall length of no less than twenty-six inches.

HISTORICAL NOTE

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1

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38 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-03 Requirements of Applicants.

(a) Applications for dealer in firearms, gunsmith, manufacturer and dealer in air pistols and air rifles shall be filed in the precinct in which the business premises is located.

(b) An applicant shall be over 21 years of age and maintain a place of business in the city, and if the applicant is a partnership, each member shall be over 21 years of age; if the applicant is a corporation each officer shall be over 21 years of age.

(c) Each applicant shall be a citizen of the United States.

(d) Each applicant shall be of good moral character.

(e) Each applicant shall never have been convicted anywhere of a felony or any other "serious offense" as defined in §265.00(17) of the New York State Penal Law, or of a misdemeanor crime of domestic violence, as defined in §921(a) of title 18 of the United States Code.

(f) No license shall be issued or renewed to any applicant who has not disclosed whether s/he is or has been the subject or recipient of an order of protection or a temporary order of protection, or the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(g) No license shall be issued or renewed to any applicant unless s/he has stated whether s/he has ever suffered any

mental illness or been confined to any hospital or institution, public or private, for mental illness.

(h) Each applicant shall be free from any disability or condition that may affect the ability to safely possess or use a rifle, shotgun, firearm, machine-gun, assault weapon, air pistol or air rifle.

(i) No license shall be transferable to any other person or premises. The license shall mention and describe the premises for which it is issued and shall be valid only for such premises.

(j) A license issued pursuant to this section shall be prominently displayed on the licensed premises. Failure of any licensee to so exhibit or display her/his license shall be presumptive evidence that s/he is not duly licensed.

(k) If applicant has any branch units in the City of New York where any firearms, rifles, shotguns, machine-guns, assault weapons, air pistols, or air rifles are stored or any activities requiring a license are conducted, a separate application shall be filed with the precinct where each branch is located and a separate license secured for each premises.

(l) Each applicant shall be fingerprinted pursuant to the provisions of New York State Penal Law §400.00.

(m) A corporation shall file a certified copy of its articles of incorporation with application.

(n) If names of current officers do not appear in articles, a certified copy of the minutes of the directors' meeting at which current officers were elected shall be submitted with application.

(o) If there is a change of officers in a corporation, the corporation shall send to the License Division, One Police Plaza, Room 110A, New York, New York 10038, a certified copy of the minutes showing names of new officers.

(p) If applicant represents a partnership or uses a trade name, a certificate from the county clerk of the county in which the certificate is recorded shall be filed with application.

(q) Change of residence address for any individual licensee, partner, officer, stockholder, or director of a corporation, except those stockholders or directors whose fingerprints are waived, shall be filed with the Commanding Officer of the precinct wherein the premises is located, within 48 hours after change becomes effective.

(r) Applications shall be submitted together with the application fee on forms supplied by the Commissioner and shall be subscribed and sworn to by all individual applicants, partners, stockholders or officers of the corporation as the case may be. The annual fee, to be submitted with the application, by certified check or money order payable to the N.Y.C. Police Department, shall be twenty-five ($25) dollars for a gunsmith or manufacturer, fifty ($50) dollars for a dealer in firearms and ten ($10) dollars for a dealer in air pistols and air rifles.

(s) A false statement on the application shall be grounds for disapproval.

(t) **Plans and Permits.** (1) Applicant shall submit architectural plans of the premises proposed to be licensed and such plans shall be prepared by a registered architect.

(2) Applicant shall submit a current class (1) Federal Firearms License.

(3) Applicant shall submit a Certificate of Occupancy (C of O) zoned for gun dealers business. The C of O will state if premises is approved for more or less than 200 rounds of ammunition. If approved for more than 200 rounds a Fire Department permit is required.

(4) Applicant shall submit a current lease or deed for license location.

(5) Commanding Officer or designee (crime prevention officer or community policing supervisor) of the local

precinct shall inspect premises to ensure that security measures are adequate. A central station alarm shall be in place and operable.

(6) Applicant shall submit any and all licenses issued to her/him by the License Division, including a New York City Rifle/Shotgun Dealer's License, handgun license, or rifle/shotgun permit.

(7) Applicant shall submit a Second-Hand Dealer's License issued by the Department of Consumer Affairs, if applicable.

(u) During the pendency of the application, the applicant shall notify the License Division of any necessary correction to or modification of the information provided in the original application, or any change in her/his status or circumstances, which may be relevant to the application.

(v) If her/his license application is disapproved the applicant shall receive a written "Notice of Application Disapproval" from the License Division indicating the reason(s) for the disapproval. If the applicant wishes to appeal the decision s/he shall submit a sworn written statement, which shall be known as an "Appeal of Application Disapproval," to the Division Head, License Division, within thirty (30) calendar days of the date on the "Notice of Application Disapproval" requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Application Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the applicant or her/his New York State licensed attorney shall not be accepted. All timely appeals shall receive a complete review of the applicant's entire file by the Division Head, License Division, who shall notify the applicant of her/his determination. The Division Head, License Division shall not consider any documentation that was not submitted during the initial background investigation. There shall be no personal interviews to discuss appeals. If the appeal of her/his disapproval is denied, the applicant shall receive a "Notice of Disapproval After Appeal" letter from the Division Head, License Division. This notice concludes the Police Department's administrative review procedure.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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***** Current through December 2009 ****

38 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-04 Licensee Requirements.

(a) For purposes of this section, all employees, as defined in §4-02 of this chapter, of a licensed gunsmith or dealer in firearms, shall personally be in possession of the required, valid license(s) or permit(s) issued by the License Division to possess handguns, rifles and/or shotguns. No person shall be employed who has been convicted anywhere of a felony, misdemeanor, serious offense as defined in §265.00(17) of the New York State Penal Law, or a misdemeanor crime of domestic violence, as defined in §921(a) of title 18 of the United States Code. No person shall be employed who is the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act. The fitness of any employee for continued employment is subject to review by the Commissioner. The licensee may be directed to terminate such employment if such employment involves access in any manner to firearms, rifles, shotguns, machine-guns, or assault weapons, based upon an arrest for any offense, or upon previous connection with a premises wherein the license was revoked or denied, or on said employee's character or reputation, or upon the employee's being or becoming the recipient or subject of an order of protection or a temporary order of protection. Licensees shall submit a roster of employees in triplicate on a form prescribed by the Commissioner, together with original application and with each renewal application. A report of any change of personnel, or change of residence address of an employee shall be filed in writing with the Commanding Officer of the precinct wherein the premises is located, within 48 hours after such change becomes effective.

(b) No firearms shall be sold, or given away, or otherwise disposed of, except to a person expressly authorized under the provisions of Articles 265 and 400 of the New York State Penal Law and §§1.20 and 2.10 of the New York State Criminal Procedure Law to possess and have such firearm. Any police officer or peace officer as defined in the Criminal Procedure Law shall produce her/his shield and proper identification card before purchasing a pistol or

revolver. A peace officer whose status does not confer authorization to possess firearms pursuant to §2.10 of the New York State Criminal Procedure Law shall possess a handgun license or rifle/shotgun permit in order to be a lawful transferee. Therefore, before delivering a firearm, rifle, shotgun, machine-gun or assault weapon to a peace officer, the licensee shall verify that person's status as a peace officer with the License Division Incident Section at (212) 374-5538 or 5539.

(c) Pursuant to New York City Administrative Code §10-311(a), it shall be unlawful for any person or business enterprise to dispose of any firearm which does not contain a safety locking device, defined as a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user. The following types of safety locking devices will be deemed to comply with this provision:

(1) a trigger lock, which prevents the pulling of the trigger without the use of a key; or

(2) a combination handle, which prevents the use of the weapon without the alignment of the combination tumblers; or

(3) a detachable or non-detachable locking device, composed primarily of steel or other metal of significant gauge to inhibit breaking, utilizing a metallic key or combination lock, rendering the weapon inoperable until the locking device is removed by an authorized person.

(d) Pursuant to New York City Administrative Code §10-311(b), it shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to dispose of any firearm in New York City unless it is accompanied by the following warning, which shall appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the firearm and on a separate sheet of paper included within the packaging enclosing the firearm: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS."

(e) Pursuant to New York City Administrative Code §10-311(c), any person who applies for and obtains authorization to purchase, or otherwise lawfully obtains, a firearm shall be required to purchase or obtain a safety locking device at the time s/he purchases or obtains the firearm.

(f) Pursuant to New York City Administrative Code §10-311(d), the City of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident involving, or the use or misuse of a safety locking device that may have been purchased in compliance with these rules.

(g) In the event that any individual lacking authority to possess a firearm, rifle, shotgun, machine-gun or assault weapon attempts to leave such weapon with a licensee for cleaning, repairing or other processing, the licensee may accept the firearm, rifle, shotgun, machine-gun or assault weapon and obtain the name, address, telephone number, etc. of the person leaving the weapon. The licensee shall immediately report the incident to the precinct wherein the premises is located. If the licensee does not accept the firearm, rifle, shotgun, machine-gun or assault weapon for cleaning, repairing, or other processing, s/he shall report the incident to the precinct wherein the premises is located as soon as the individual possessing the weapon leaves the premises.

In the event that any individual lacking authority to possess a firearm, rifle, shotgun, machine-gun or assault weapon offers to sell or otherwise dispose of such weapon to a licensee, the licensee shall attempt to obtain the name, address, and telephone number of said individual and shall notify the precinct wherein the premises is located as soon as said individual leaves the premises.

(h) The licensee and all stockholders, officers, directors, applicants, agents and employees shall at all times comply with all laws, rules, regulations and requirements of all federal, state and local jurisdictions and agencies having

authority with respect to the premises and conduct and operation of the licensed business, now in effect or hereafter adopted.

(i) The licensee shall immediately make a telephone notification to the Division Head, License Division and the Commanding Officer of the precinct wherein the premises is located, followed by written notice to both within ten (10) calendar days, of any incident or violations of law or rules of federal, state or local jurisdictions regarding her/himself, partners, officers, directors, stockholders, agents or employees of the licensed corporation affecting the premises or business operations. For purposes of this subdivision, an incident includes:

(1) arrest, indictment or conviction in any jurisdiction;

(2) summons (except traffic infraction);

(3) suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act;

(4) the fact that the individual is or becomes the subject or recipient of an order of protection or a temporary order of protection;

(5) admission to any psychiatric institution, sanitarium and/or the receipt of psychiatric treatment;

(6) receipt of treatment for alcoholism or drug abuse;

(7) the presence or occurrence of a disability or condition that may affect the handling of a firearm, rifle, shotgun, machine-gun or assault weapon including but not limited to epilepsy, diabetes, fainting spells, blackouts, temporary loss of memory, or nervous disorder;

(8) lost, stolen, altered or mutilated license; or

(9) unauthorized discharge of a firearm, rifle, shotgun, machine-gun or assault weapon on the licensee's premises.

(j) The conviction of a licensee anywhere of a felony or any other "Serious Offense" as defined in §265.00(17) of the New York State Penal Law, or of a misdemeanor crime of domestic violence, as defined in §921(a) of Title 18 of the United States Code, shall operate as a revocation of the license. A license may also be revoked or suspended by a court pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(k) If her/his license is suspended or revoked, the licensee shall be required to deposit any firearms, rifles, shotguns, machine-guns and assault weapons as well as any handgun license or rifle/shotgun permit in her/his possession with her/his local police precinct and forward a copy of the voucher together with her/his license to the License Division. Her/his failure to comply within ten (10) calendar days from the date of suspension or revocation may result in the arrest of the licensee.

(l) A license may be suspended and/or revoked by the License Division for good cause by the issuance of a Notice of Determination Letter to the licensee, which shall state in brief the grounds for the suspension or revocation and notify the licensee of the opportunity for a hearing. Upon issuance of a written Notice of Determination Letter notifying the licensee of suspension or revocation of the license, a suspended/former licensee shall have thirty (30) calendar days from the date of the notice of determination to submit a written request for a hearing to the Commanding Officer, License Division, One Police Plaza, Room 110A, New York, New York 10038. A licensee whose arrest or summons resulted in suspension or revocation of her/his license may only submit a written request for a hearing within thirty (30) calendar days after the termination of the criminal action, as defined in New York State Criminal Procedure Law §1.20(16)(c). If the suspension or revocation resulted from the licensee becoming the subject of an order of protection

or a temporary order of protection, the licensee may only submit a written request for a hearing within thirty (30) calendar days after the expiration or voiding of the order of protection or temporary order of protection. If the suspension or revocation was related to both a criminal action and an order of protection or temporary order of protection, then the later of the two waiting periods shall apply.

(m) A license issued shall be valid only for the premises mentioned and described in the license and shall be prominently displayed on such premises.

(n) Pursuant to New York City Administrative Code §10-312, it shall be a criminal violation for any person who is the lawful owner or lawful custodian of a firearm to store or otherwise place or leave such weapon in such a manner or under circumstances that it is out of her/his immediate possession or control, without having rendered such weapon inoperable by employing a safety locking device as defined in subdivision (c) of this section. Such offense shall constitute a misdemeanor if the offender has previously been found guilty of such violation or if the violation is committed under circumstances which create a substantial risk of physical injury to another person. Firearms may be displayed so long as the firearms are enclosed in a glass case within the premises and are removed and adequately safeguarded during the hours the business is closed. Firearms dealers may not display firearms or ammunition in the store windows or doors. Licensees are responsible for the safeguarding of their firearm inventory and the loss of firearm(s) may result in the revocation of the firearms dealer's license. All firearms shall be locked in an enclosed security room or safe, when not properly displayed.

(o) Each licensee shall cause a physical inventory to be taken prior to making application for renewal of her/his license, which shall include a listing of each firearm by make, calibre and serial number and shall be prepared in triplicate. The original copy of the inventory shall be maintained on the premises, the duplicate forwarded to the License Division and the triplicate filed in the precinct. In addition to the annual inventory, the licensee shall maintain a perpetual inventory and establish an internal security system acceptable to the Commissioner.

(p) Ammunition shall not be displayed in any area. Any ammunition required in the selling area shall be kept in a locked container not visible to the public. All other ammunition shall be stored in an area of the premises that can be secured and is not in view of the public. Only the licensee and authorized employees shall have access to this area.

(q) A record of all ammunition received and dispensed shall be maintained in a bound book with pages consecutively numbered. It shall be the responsibility of the licensee or a designated employee to make entries in this record. This book together with all invoices received shall be kept in the ammunition storage area.

(r) This record shall be arranged in columnar form as outlined below. The first page of this book shall have an inscription bearing the name and address of the premises, license number, name of the owner of the premises, name of employee designated to make entries, and the date of the book being opened. Beginning on page 2, each even numbered page shall contain a record of ammunition received and starting with page 3, each odd numbered page shall contain a record of ammunition dispersed.

AMMUNITION RECEIVED

Date	Time	Trans- porter/ Manufac- turer	Invoice	Gauge/ Cal- ibre	Type	Quan- tity	Signa- ture	Com- ments
-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-

AMMUNITION SOLD

Date	Time	Manufac-	Gauge/ Cal-	Quan- tity	Name	Ad-	Date of Birth	Identifi- cation

turer ibre dress

(how determined)

- - - - - - - - -

- - - - - - - - -

(s) Permission to deviate from the above indicated procedure shall be requested from the Division Head, License Division, through the Commanding Officer of the precinct in which the licensed premises is located.

(t) Licensees shall cooperate with all reasonable requests by the Police Department for information and assistance in matters relating to the license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subds. (c), (d) added City Record Aug. 9, 1999 eff. Sept. 8, 1999. [See T38 §1-05 Note 1]

Subds. (e)-(m) relettered (former subds. (c)-(l) City Record Aug. 9, 1999 eff. Sept. 8, 1999.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-05 Rules Affecting Gunsmiths Only.

(a) Every gunsmith shall keep a bound record book with pages numbered consecutively, in which the following information shall be entered:

(1) The name, address, age and occupation of every person for whom any work is performed on a rifle, shotgun, firearm, machine-gun, or assault weapon.

(2) Make, model, calibre, serial number of the rifle, shotgun, firearm, machine-gun, or assault weapon, and time, date and nature of the work performed.

(3) The authority to carry or possess such rifle, shotgun, firearm, machine-gun, or assault weapon; enter date and number of license or permit, if any. If the owner is a police officer or a peace officer as defined in the New York State Criminal Procedure Law, enter rank, shield number, agency, unit assigned, identification number, and license/permit number or License Division notification reference in addition to other captioned information as required.

(b) Such records shall be maintained at the premises stated in the license and permanently preserved thereat. Such records, as well as the premises and all rifles, shotguns, firearms, machine-guns, and assault weapons thereat, shall be subject to inspection at all times by members of the New York City Police Department.

(c) In the event of cancellation, suspension or revocation of the license or discontinuance of the business by a licensee, such records shall be delivered to the precinct through which the license was issued and the license forwarded to the License Division.

(d) A gunsmith shall not engage in the licensed activities of a dealer in firearms, unless s/he has first obtained a license as a dealer in firearms.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-06 Rules Affecting Dealers in Firearms Only.

(a) Every dealer in firearms shall keep a bound record book with pages numbered consecutively, in which the following information shall be entered:

(1) The date, time, name, address, age, occupation, and authority to possess, of every person or firm from whom a firearm is received, together with the make, calibre and serial number of each such firearm and the name of the employee of the dealer making the purchase. If the owner is a police officer or a peace officer as defined in the New York State Criminal Procedure Law, enter rank, shield number, agency, unit assigned, identification number, and license/permit number or License Division notification reference, in addition to other captioned information as required.

(2) When a firearm is sold, exchanged, or in any manner disposed of by the dealer, the name, age, occupation and address of the person accepting same, her/his authority to purchase, carry or possess, enter date, name of issuing officer and number of license, if any, the make, model, calibre and serial number, time and name of the dealer or person in her/his employ effecting the transaction. If the purchaser is a police officer or a peace officer, as defined in the New York State Criminal Procedure Law, rank, shield number, agency, unit assigned, identification number and license/permit number or License Division notification reference, shall be entered in addition to other required information.

(3) Such records shall be maintained on the premises stated in the license and permanently preserved thereat. Such records, as well as the premises and firearms, shall be subject to inspection at all times by members of the Police Department.

(4) In the event of cancellation, suspension or revocation of the license, or discontinuance of business by a licensee, such records as well as the permanent inventory records, shall be delivered to the precinct through which license was issued and the license shall be forwarded to the Division Head, License Division.

(b) Every licensed dealer who sells, gives or otherwise provides any authorized person with a firearm shall prepare and forward to Stolen Property Inquiry Section, Pistol Index, One Police Plaza, New York, New York 10038 within 72 hours, Form P.D. 524-101 (Pistol Index Card).

(c) Every acquisition of a second-hand firearm by a licensed dealer, by trade-in or otherwise, shall be reported and forwarded to Stolen Property Inquiry Section, Pistol Index, One Police Plaza, New York, New York 10038, within 72 hours on Form P.D. 524-151, Dealer's Report on Second-Hand Guns. Each report shall give the date, hour, name and address of each person from whom a firearm is received, the authority to possess and dispose of same, and the make, model, calibre and serial number of each such firearm. No second-hand firearm shall be sold or disposed of until the expiration of fifteen (15) days after its acquisition. The date and hour of transmission of each report required hereunder shall be entered in the permanent record book which each licensed dealer is required to maintain under these Rules.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-07 Rules Affecting Air Pistol and Air Rifle Dealers Only.

Every dealer shall keep a record of the name and address of each person purchasing air pistols, air rifles, or similar instruments, together with place of delivery and said record shall be open to inspection during regular business hours by a member of the New York City Police Department.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-08 Validity of Licenses.

(a) A license issued to a dealer in firearms, gunsmith or manufacturer shall be valid until the 1st day of the second January after date of issuance, and may be renewed annually thereafter.

(b) A license for dealers in air pistols/air rifles is an annual license which may be renewed thereafter.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-09 Familiarity with Rules and Law.

All licensees shall be required to sign an acknowledgment that they shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to each type of license or permit issued to them. Licensees are specifically reminded of the prohibitions against possession of assault weapons in New York City pursuant to New York City Administrative Code, Title 10, Chapter 3. The License Division shall provide the licensee with the acknowledgment statement to be executed. This acknowledgment statement shall be notarized. Failure to execute the acknowledgment statement and to have it notarized shall result in the license application being denied.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

NOTE

Reference within this chapter to the masculine shall be presumed to include the feminine and neuter. Reference to singular shall be presumed to include the plural.

HISTORICAL NOTE

Note amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-01 Types of Handgun Licenses.

As used in this chapter, the term "handgun" shall mean a pistol or revolver. This section contains a description of the various types of handgun licenses issued by the Police Department. Section 5-09 of this subchapter contains a description of the procedure for obtaining an exemption from New York State Penal Law Article 265, allowing pre-license possession of a handgun for the purpose of possessing and using a handgun for instructional purposes with a certified instructor in small arms at an authorized small arms range/shooting club.

(a) **Premises License-Residence or Business**. This is a restricted handgun license, issued for a specific business or residence location. The handgun shall be safeguarded at the specific address indicated on the license. This license permits the transporting of an unloaded handgun directly to and from an authorized small arms range/shooting club, secured unloaded in a locked container. Ammunition shall be carried separately.

(b) **Carry Business License.** This is an unrestricted class of license which permits the carrying of a handgun concealed on the person. In the event that an applicant is not found by the License Division to be qualified for a Carry Business License, the License Division, based on its investigation of the applicant, may offer a Limited Carry Business License or a Business Premises License to an applicant.

(c) **Limited Carry Business License.** This is a restricted handgun license which permits the licensee to carry the handgun listed on the license concealed on the person to and from specific locations during the specific days and times

set forth on the license. Proper cause, as defined in §5-03, shall need to be shown only for that specific time frame that the applicant needs to carry a handgun concealed on her/his person. At all other times the handgun shall be safeguarded at the specific address indicated on the license, and secured unloaded in a locked container.

(d) **Carry Guard License/Gun Custodian License.** These are restricted types of carry licenses, valid when the holder is actually engaged in a work assignment as a security guard or gun custodian.

(e) **Special Licenses**. Special licenses are issued according to the provisions of §400.00 of the New York State Penal Law, to persons in possession of a valid New York State County License. The revocation, cancellation, suspension or surrender of such person's County License automatically renders her/his New York City license void. The holder of a Special License shall carry her/his County License at all times when possessing a handgun pursuant to such Special License.

(1) **Special Carry Business License**. This is a special license, permitting the carrying of a concealed handgun on the person while the licensee is in New York City.

(2) **Special Carry Guard License/Gun Custodian License.** These are restricted types of special licenses that permit the carrying of a concealed handgun on the person only when the licensee is actually engaged in the performance of her/his duties as a security guard or gun custodian.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Apr. 12, 1993 eff. May 12, 1993.

Section in original publication July 1, 1991.

Subds. (b), (c) amended City Record Aug. 2, 1991 eff. Sept. 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The Police Commissioner's revision of the handgun licensing regulation so as to eliminate the category of permits for transporting guns to target ranges, is neither arbitrary nor capricious, and is a rational and proper exercise of his authority. The regulation of the number of firearms is a rational means of promoting the safety of city residents and visitors. **Murad v. City of New York,** 12 A.D.3d 194, 783 N.Y.S.2d 584 (1st Dept. 2004).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-02 Premises Licenses.

The requirements for the issuance of a Premises License are listed below. The license application shall be investigated, including a review of the circumstances relevant to the information provided in the application. During the pendency of the application, the applicant shall notify the License Division of any necessary correction to or modification of the information provided in the original application, or any change in her/his status or circumstances, which may be relevant to the application.

The applicant shall:

(a) Be of good moral character;

(b) Have no prior conviction for a felony or other serious offense, as defined in §265.00(17) of the New York State Penal Law, or of a misdemeanor crime of domestic violence, as defined in §921(a) of title 18 of the United States Code;

(c) Disclose whether s/he is or has been the subject or recipient of an order of protection or a temporary order of protection;

(d) Have no prior revocation of a license nor be the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act;

(e) Disclose any history of mental illness;

(f) Be free from any disability or condition that may affect the ability to safely possess or use a handgun;

(g) Reside or maintain a principal place of business within the confines of New York City;

(h) Be an applicant concerning whom no good cause exists for the denial of such license;

(i) Be at least 21 years of age.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. Pistol permit standards, even those covering a limited premises/target permit, are more stringent than those covering shotgun/rifle permits. Thus, it was not arbitrary and capricious for the Police Department to deny a pistol permit to a man who had been arrested following an incident in which he allegedly pulled out his gun. Following the arrest, the police found 11 weapons on the premises, some of them loaded. This result was reached even though the criminal charges were later dismissed, and the applicant had a record of meritorious service with the Fire Department. Nash v. Police Department, 271 A.D.2d 384, 708 N.Y.S.2d 61 (1st Dept. 2000).

¶ 2. Petitioner's arrest on theft and fencing charges in New Jersey, and failure to notify the License Division of the arrest for more than one year, were sufficient grounds for revocation of a business license to carry a pistol. Cerchiello v Kelly, 2004 WL 1351421 (App.Div. 1st Dept.).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-03 Carry and Special Handgun Licenses.

In addition to the requirements in §5-02, an applicant seeking a carry or special handgun license shall be required to show "proper cause" pursuant to §400.00(2)(f) of the New York State Penal Law. "Proper cause" is determined by a review of all relevant information bearing on the claimed need of the applicant for the license. The following are examples of factors which will shall be considered in such a review.

(a) Exposure of the applicant by reason of employment or business necessity to extraordinary personal danger requiring authorization to carry a handgun.

Example: Employment in a position in which the applicant routinely engages in transactions involving substantial amounts of cash, jewelry or other valuables or negotiable items. In these instances, the applicant shall furnish documentary proof that her/his employment actually requires that s/he be authorized to carry a handgun, and that s/he routinely engages in such transactions.

(b) Exposure of the applicant to extraordinary personal danger, documented by proof of recurrent threats to life or safety requiring authorization to carry a handgun.

Example: Instances in which Police Department records demonstrate that the life and well-being of an individual is endangered, and that s/he should, therefore, be authorized to carry a handgun. The factors listed above are not all

inclusive, and the License Division will consider any proof, including New York City Police Department records, which document the need for a handgun license. It should be noted, however, that the mere fact that an applicant has been the victim of a crime or resides in or is employed in a "high crime area," does not establish "proper cause" for the issuance of a carry or special handgun license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-04 Carry Guard License/Gun Custodian License and Special Carry Guard License/Gun Custodian License.

(a) In addition to the requirements in §5-02 an applicant shall demonstrate the employer's need to employ armed security guards/gun custodians.

(b) Such need may be shown and documented by memorandum, letters or contract(s) for the hiring of said employer to provide armed security personnel or otherwise require the services of gun custodians.

(c) Additionally, such need may be shown by other documentation or acceptable form as required by the License Division.

(d) If applicable, an applicant shall show satisfactory evidence that such business possesses a professional license, relevant to the need for a handgun, issued by the State of New York.

(e) In addition to the requirements in §5-06 an applicant shall show proof of current employment which requires the need for a handgun license.

(f) If applicable, an applicant shall show satisfactory evidence of having a professional license, relevant to the need for a handgun issued by the State of New York.

HISTORICAL NOTE

Section renumbered and amended (formerly §5-06) City Record May 31, 2001 eff. June 30, 2001.

Former §5-04 repealed. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. (d) amended City Record Apr. 12, 1993 eff. May 12, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-05 Application Form.

(a) An application form shall be distributed, one per person, at the License Division during normal business hours. Assistance in completing the form shall be made available at the License Division. The application form shall be completely filled out and submitted in person at the License Division, and only an original application form shall be accepted. Special license applicants should also specifically refer to paragraph (9) of subdivision (b) of this section for application requirements.

(b) The applicant shall furnish the items listed below which are applicable, either at the time s/he completes and submits her/his application in person, or no later than fourteen (14) calendar days after the date of submission of the application, either in person or by mail. All documents, certificates, licenses, etc., shall be submitted in the original. A copy certified by the issuing agency as true and complete is also acceptable. In addition, a legible photocopy of each item submitted shall accompany the original or certified copy. Originals and certified copies shall be returned. The application shall not be accepted or processed without the required fee payments described in paragraph (10) of this subdivision.

(1) **Photographs.** Two (2) color photographs of the applicant taken within the past thirty (30) days. They should measure $1^1/_2 \times 1^1/_2$ inches and show applicant from the chest up. The wearing of any article of clothing or adornment that obscures identification is not acceptable. Special license applicants should refer to paragraph (9) of this subdivision.

(2) **Birth certificate.** If there is no record of the applicant's birth on file with the New York City Department of Health Office of Vital Statistics, some other proof of applicant's birth date, **e.g.,** a military record, U.S. passport or baptismal certificate, shall be sub- mitted.

(3) **Proof of citizenship/alien registration.** If the applicant was born outside the United States, s/he shall submit her/his naturalization papers or evidence of citizenship if derived from her/his parents. All other applicants born outside the United States shall submit their Alien Registration Card. Additionally, applicants who are aliens and have resided in the United States for less than seven (7) years shall submit a good conduct certificate, or the equivalent thereof, from their country of origin and two (2) letters of reference which identify the writer's relationship to the applicant and which certify to the good character of the applicant. Inability to provide the documents mentioned in this paragraph shall not operate as an absolute bar to issuance of a handgun license.

(4) **Military discharge.** If the applicant served in the armed forces of the United States, s/he shall submit her/his separation papers (DD 214) and her/his discharge papers.

(5) **Proof of residence.** The applicant shall submit proof of her/his present address. Proof may consist of one of the following, but is not limited to: a real estate tax bill, a copy of a lease indicating ownership shares in a cooperative or condominium or a current residential lease. The License Division may request further documentation, **e.g.,** a New York State Driver's License, a New York State Income Tax Return, a current utility bill, etc.

(6) **Arrest information.** If the applicant was ever arrested for any reason s/he shall submit a Certificate of Disposition showing the offense and disposition of the charges. Also, the applicant shall submit a detailed, notarized statement describing the circumstances surrounding each arrest. The applicant shall do this even if the case was dismissed, the record sealed or the case nullified by operation of law. The New York State Division of Criminal Justice Services shall report to the Police Department every instance involving the arrest of an applicant. The applicant shall not rely on anyone's representation that s/he need not list a previous arrest. If the applicant was ever convicted or pleaded guilty to a felony or a serious offense, as defined in New York State Penal Law §265.00(17), an original Certificate of Relief from Disabilities, signed by a judge, shall be submitted. The certificate shall contain a statement granting the applicant firearm privileges under Penal Law Articles 265 and 400.

(7) **Proof of business ownership.** If the applicant is making application for a license in connection with a business, s/he shall submit proof of ownership for that business. Such proof shall clearly state the name(s) of the owner(s), or, if a corporation, the name(s) of the corporate officer(s). A corporation shall submit its corporate book to include Filing Receipt, Certificate of Incorporation and minutes of the corporate meeting reflecting current corporate officers; others shall provide their business certificate or partnership agreement, whichever is applicable. If the business requires a license or permit from any government agency, **e.g.,** alcohol or firearms sales, gunsmith, private investigation and guard agencies, the applicant shall submit the license or permit or a certified copy thereof.

(8) **Letter of necessity.** (i) A letter of necessity explains the need for the license. It shall be typewritten on current letterhead stationery; signed by a corporate officer, partner, or in the case of a sole proprietorship, the owner of the business. Self-employed applicants may submit such letter under their own signature. The letter of necessity shall be notarized. A letter of necessity shall be submitted by the following applicants:

(A) All applicants except applicants for a Premises Residence License.

(B) All employees seeking a Premises Business License for use in connection with their employment shall submit a letter of authorization signed by the owner of the business.

(ii) Regardless of whether a handgun license was previously issued by the New York City Police Department or any other issuing authority, the letter of necessity shall contain the following information:

(A) A detailed description of the applicant's employment and an explanation of why the employment requires the

carrying of a concealed handgun.

(B) A statement acknowledging that the handgun shall only be carried during the course of and strictly in connection with the applicant's job, business or occupational requirements, as described herein.

(C) A statement explaining the manner in which the handgun shall be safeguarded by the employer and/or applicant when not being carried.

(D) A statement indicating that the applicant has been trained or shall receive training in the use and safety of a handgun.

(E) A statement acknowledging that the applicant's employer or, if self-employed, the applicant, is aware of its or her/his responsibility to properly dispose of the handgun and return the license to the License Division upon the termination of the applicant's employment or the cessation of business.

(F) A statement indicating that the applicant, and if other than self-employed, a corporate officer, general partner or proprietor, has read and is familiar with the provisions of New York State Penal Law Articles 35 (use of deadly force), 265 (criminal possession and use of a firearm), and 400 (responsibilities of a handgun licensee).

(G) At the time of the applicant's interview, the applicant shall be advised whether any additional forms or documents are required. Failure to provide the information requested may result in the disapproval of the applicant's application.

(9) **Special license applicants shall submit the items listed below:**

(i) All applicants shall submit two (2) application forms, to be filled out completely and presented by the applicant in person. The applicant shall not mail the application forms.

(ii) All applicants shall submit three (3) $1\frac{1}{2} \times 1\frac{1}{2}$ inch color photographs showing the applicant from the chest up, taken within the past 30 days. The wearing of any article of clothing or adornment that obscures identification is not permitted.

(iii) The applicant shall bring her/his current County Handgun License with her/him to have her/his application processed.

(10) Upon application, required fees are payable to the New York City Police Department and the New York State Division of Criminal Justice Services. Fees to the New York City Police Department shall be paid by certified check or money order made payable to the N.Y.C. Police Department.

Note: The fee payable to N.Y.S. Division of Criminal Justice Services applies to all applicants. These fees shall be paid separately. Only U.S. Postal or bank drawn money orders shall be accepted. If the applicant has any questions concerning her/his application, s/he may call (212) 374-5553. Applications shall be submitted in person at the License Division, Room 110A, Monday through Friday, 8:30 A.M. to 4:00 P.M. The License Division is closed on all legal holidays. All fees are non-refundable.

HISTORICAL NOTE

Section renumbered and amended (formerly §5-08) City Record May 31, 2001 eff. June 30, 2001. [See

T38 Chapter 1 footnote]

DERIVATION

Section amended City Record Apr. 12, 1993 eff. May 12, 1993.

Section in original publication July 1, 1991.

Subd. (b) par (5) amended City Record Sept. 23, 1994 eff. Oct. 23, 1994. This amendment was when this was §5-08.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-06 Gun Custodian, Carry Guard and Special Licenses. Establishing Company Need for Handgun Licensing.

(a) An applicant shall initially submit a typed and notarized license application in accordance with general handgun license rules, including all personal and business documentation requested. Examples of business documentation would be a company's corporate book, including filing receipt; certificate of incorporation; minutes of the corporate meeting reflecting current corporate officers; business certificate or partnership agreement, whichever is applicable.

(b) Where the applicant for a handgun license is an owner of a security guard, courier or private investigation company, or a company providing similar services, and desires the license in connection with such business, the applicant shall:

(1) present satisfactory evidence that such business is licensed by the State of New York, and;

(2) present satisfactory evidence of contracts for armed services to be performed within the City of New York.

(c) Where an applicant for a handgun license is an owner of a check cashing business and desires the license for use in connection with such business, the applicant shall: present satisfactory evidence that such business is licensed by the State of New York Banking Department.

(d) **Carry Guards.** (1) Once a gun custodian's license has been issued in connection with a particular employer, applications for individual security guards/personnel for the same employer may be submitted.

(2) In addition to the handgun license application required of all license applicants, carry guard/personnel applicants shall submit the form Handgun License Application Company and a specific letter of necessity following the format supplied by the License Division.

HISTORICAL NOTE

Section renumbered and amended (formerly §5-09) City Record May 31, 2001 eff. June 30, 2001. [See

T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Section heading amended City Record Apr. 12, 1993 eff. May 12, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-07 License Approval/Disapproval Procedures.

(a) It takes approximately six months to process an application. If her/his application is approved the applicant shall receive a "Notice of Application Approval" in the mail. If the applicant moves during the time her/his application is being processed, the applicant shall immediately notify the License Division's Handgun License Application Section, Room 110A, One Police Plaza, New York, New York 10038, 212-374-5553, and be guided by their instructions. Failure to make timely notification may result in the disapproval/cancellation of the applicant's application.

(b) To receive her/his license the applicant shall report in person with her/his "Notice of Application Approval" letter, to the Issuing Unit-Room 152, One Police Plaza, New York, New York 10038-within thirty (30) calendar days of the date on the "Notice of Application Approval" letter. Licenses shall only be issued between the hours of 9 a.m. and 12 p.m., Monday through Thursday. The applicant should note that the Issuing Unit is closed on all legal holidays.

(c) If the applicant does not appear to pick up her/his license within thirty (30) calendar days of the date on the "Notice of Application Approval," her/his license and application shall be cancelled.

(d) With her/his license the applicant shall receive a copy of the "New York City Handgun License Rules" [Subchapter B of this chapter]. The applicant shall become knowledgeable regarding these handgun rules, as any violation of these rules may result in the suspension or revocation of her/his handgun license.

(e) If her/his license application is disapproved the applicant shall receive a written "Notice of Application Disapproval" from the License Division indicating the reason(s) for the disapproval. If the applicant wishes to appeal the decision s/he shall submit a sworn written statement, which shall be known as an "Appeal of Application Disapproval," to the Division Head, License Division, within thirty (30) calendar days of the date on the "Notice of Application Disapproval" requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Application Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the applicant or her/his New York State licensed attorney shall not be accepted.

(f) All timely appeals shall receive a complete review of the applicant's entire file by the Division Head, License Division, who shall notify the applicant of her/his determination. The Division Head, License Division shall not consider any documentation that was not submitted during the initial background investigation. There shall be no personal interviews to discuss appeals. If the appeal of her/his disapproval is denied, the applicant shall receive a "Notice of Disapproval After Appeal" letter from the Division Head, License Division. This notice concludes the Police Department's administrative review procedure.

HISTORICAL NOTE

Section renumbered and amended (formerly §§5-10, 5-11) City Record May 31, 2001 eff. June 30,

2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Section amended in part City Record Apr. 12, 1993 eff. May 12, 1993.

Subds. (e), (f) amended (as §5-11) City Record Sept. 23, 1994 eff. Oct. 23, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-08 Limitations.

Applicants issued licenses pursuant to this subchapter shall be subject to such conditions and limitations as established by the Police Commissioner regarding, but not necessarily limited to the permissible number, type, transportation and safeguarding of handguns.

HISTORICAL NOTE

Section renumbered and amended (formerly §5-12) City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter

1.

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Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-09 Application for Pre-License Exemption.

Each applicant desiring to obtain the exemption set forth in New York State Penal Law §265.20(a)(7-b), allowing pre-license possession of a handgun for the purpose of possessing and using a handgun for instructional purposes with a certified instructor in small arms at an authorized small arms range/shooting club, shall make such request in writing to the Division Head, License Division at the time the application for a handgun license is filed. Such request shall include a signed and verified statement by the person authorized to instruct and supervise the applicant, that s/he has met with the applicant and s/he has determined that, in her/his judgment, said applicant does not appear to be or pose a threat to be a danger to her/himself or others. S/he shall include a copy of her/his certificate as an instructor in small arms, if s/he is required to be certified, and state her/his address and telephone number. S/he shall specify the exact location by name, address and telephone number where such instruction shall take place. The Division Head, License Division shall, no later than ten (10) business days after such filing, commence an investigation and ascertain whether the applicant has a criminal record. The Division Head, License Division shall no later than ten (10) business days after the completion of such investigation determine if the applicant has been previously denied a license, been convicted of a felony, been convicted of a serious offense as defined in Penal Law §265.00(17), been convicted of a misdemeanor crime of domestic violence, as defined in §921(a) of Title 18 of the United States Code, been the subject or recipient of an order of protection or a temporary order of protection, been the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act, or appears to be, or poses a threat to be, a danger to her/himself or others, and either approve or disapprove the applicant for

exemption purposes based upon such determinations. If the applicant is approved for the exemption, the Division Head, License Division shall notify the applicant. Such exemption shall terminate if the application for the license is denied, or at any earlier time based upon any information obtained by the Division Head, License Division which would cause the application to be rejected. The applicant shall be notified of any such rejection.

HISTORICAL NOTE

Section added City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-21 Introduction.

Any violation of this subchapter and/or the restrictions of the license, if any, may result in the suspension and/or revocation of the license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-22 Conditions of Issuance.

(a) A handgun license is issued under the following conditions:

(1) It is revocable at any time.

(2) It is not transferable to any other person or location.

(3) Any mutilation, alteration, or lamination of the license shall render it void. The licensee may not make any additions, deletions, or other changes on her/his license. Only License Division personnel may make changes on the license.

(4) If the license is mutilated, altered, laminated, lost, or destroyed an additional fee shall be required for replacement. If any of these circumstances occur, the licensee shall notify the License Division.

(5) When the license expires, and if the licensee has not renewed it, or if it is suspended, or revoked, the licensee shall immediately surrender the license with the handgun(s) to the precinct of her/his place of business or residence.

(6) The licensee shall be in possession of her/his license at all times while carrying, transporting, possessing at residence, business, or authorized small arms range/shooting club, the handgun(s) indicated on said license.

(7) If the licensee has a "Carry" or "Special Carry" type license only one (1) handgun may be carried on her/his person at any time.

(8) The licensee is authorized to own only the handgun(s) that are listed on her/his license.

(9) The licensee shall not purchase or replace a handgun prior to obtaining written permission from the Division Head, License Division (see Handgun Purchase Authorizations).

(10) A handgun may be replaced or purchased only by requesting permission in writing from the Division Head, License Division.

(11) The licensee shall not draw, expose or display handgun(s) unnecessarily.

(12) The licensee shall not leave handgun(s) in an auto, or in any place where an unauthorized person may readily obtain them.

(13) To assure maximum safety, proper safeguards shall be taken at all times to keep handguns away from unauthorized persons, especially children. Pursuant to New York City Administrative Code §10-312, it shall be a criminal violation for any person who is the lawful owner or lawful custodian of a handgun to store or otherwise place or leave such weapon in such a manner or under circumstances that it is out of her/his immediate possession or control, without having rendered such weapon inoperable by employing a safety locking device as defined in §5-25(a)(2) of this chapter. Such offense shall constitute a misdemeanor if the offender has previously been found guilty of such violation or if the violation is committed under circumstances which create a substantial risk of physical injury to another person.

(14) The licensee should endeavor to engage in periodic handgun practice at an authorized small arms range/shooting club.

(15) Any misuse of the purpose for which the license was issued, or any action or misconduct on the part of the licensee which may constitute just cause, shall result in the suspension or revocation of the license.

(16) Except for licensees with unrestricted Carry Business licenses or Special Carry Business Licenses, a licensee wishing to transport her/his handgun to a gunsmith shall request permission in writing from the Division Head, License Division. Authorization shall be provided in writing. The licensee shall carry this authorization with her/him when transporting the handgun to the gunsmith, and shall transport the handgun directly to and from the gunsmith. The handgun shall be secured unloaded in a locked container during transport.

(17) Licensees shall cooperate with all reasonable requests by the Police Department for information and assistance in matters relating to the license.

(b) In the following instances the licensee shall make an immediate report to the License Division-Incident Section, telephone #(212) 374-5538, 5539, and to the precinct where the incident occurred. (See additional requirements under "Incident Section"-§5-30).

(1) Theft/loss of handgun.

(2) Discharge of handgun other than during practice at an authorized small arms range/shooting club.

(3) Theft/loss of handgun license.

(4) Improper use/safeguarding of handgun(s).

(5) Public display of an unholstered handgun.

(c) In the following instances, the licensee shall make an immediate report to the License Division-Incident Section (see Incident Section-§5-30).

(1) Arrest, indictment, or conviction in any jurisdiction; summons other than traffic infraction; suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(2) Change of business or residence address (see Address Changes-§5-29).

(3) Change of business, occupation or employment (see Name Changes-§5-29).

(4) Any change in the circumstances for which the licensee received the license. The licensee shall immediately notify the License Division and shall then be instructed on how to proceed. The licensee may be required to report to the License Division with required documentation to have the change reviewed and effected by License Division personnel.

(5) Alteration, mutilation, destruction of handgun license.

(6) Intent to dispose of handgun. Failure to notify in writing the Division Head, License Division prior to disposing of handgun is a Class A Misdemeanor pursuant to New York State Penal Law §265.10(7).

(7) Receipt of psychiatric treatment or treatment for alcoholism or drug abuse, or the presence or occurrence of any disability or condition that may affect the ability to safely possess or use a handgun.

(8) Licensee is or becomes the subject or recipient of an order of protection or a temporary order of protection.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. The failure of a license holder to immediately notify the License Division of his arrest and of the orders of protection against him, can be grounds for revocation of a handgun license and rifle/shotgun permit. Cohen v. Kelly, 30 A.D.3d 170, 815 N.Y.S.2d 565 (1st Dept. 2006).

¶ 2. The failure to submit a notarized statement, as requested by the Licensing Division, can constitute grounds for revocation of a pistol permit. Morstadt v. Kelly, 45 A.D.3d 258, 845 N.Y.S.2d 61 (1st Dept. 2007).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-23 Types of Handgun Licenses.

(a) **Premises License-Residence or Business.** This is a restricted handgun license, issued for the protection of a business or residence premises.

(1) The handguns listed on this license may not be removed from the address specified on the license except as otherwise provided in this chapter.

(2) The possession of the handgun for protection is restricted to the inside of the premises which address is specified on the license.

(3) To maintain proficiency in the use of the handgun, the licensee may transport her/his handgun(s) directly to and from an authorized small arms range/shooting club, unloaded, in a locked container, the ammunition to be carried separately.

(4) A licensee may transport her/his handgun(s) directly to and from an authorized area designated by the New York State Fish and Wildlife Law and in compliance with all pertinent hunting regulations, unloaded, in a locked container, the ammunition to be carried separately, after the licensee has requested and received a "Police Department-City of New York Hunting Authorization" Amendment attached to her/his license.

(b) **Carry Business License.** This is an unrestricted class of license which permits the carrying of a handgun concealed on the person.

(c) **Limited Carry Business License.** This is a restricted handgun license which permits the licensee to carry a handgun listed on the license concealed on the person to and from specific locations during the specific days and times set forth on the license. Proper cause, as defined in §5-03, shall need to be shown only for that specific time frame that the applicant needs to carry a handgun concealed on her/his person. At all other times the handgun shall be safeguarded at the specific address indicated on the license and secured unloaded in a locked container.

(d) **Carry Guard License/Gun Custodian License.** These are restricted types of carry licenses, valid when the holder is actually engaged in a work assignment as a security guard or gun custodian.

(e) **Special Licenses.** Special licenses are issued according to the provisions of §400.00 of the New York State Penal Law, to persons in possession of a valid County License. The revocation, cancellation, suspension or surrender of her/his County License automatically renders her/his New York City license void. The holder of a Special License shall carry her/his County License at all times when possessing a handgun pursuant to such Special License.

(1) **Special Carry Business**. This is a class of special license permitting the carrying of a concealed handgun on the person while the licensee is in New York City.

(2) **Special Carry Guard License/Gun Custodian License.** These are restricted types of Special Carry Licenses. The handgun listed on the license may only be carried concealed on the licensee's person while the licensee is actively on duty and engaged in the work assignment which formed the basis for the issuance of the license. The licensee may only transport the handgun concealed on her/his person when travelling directly to and from home to a work assignment.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section amended City Record Apr. 12, 1993 eff. May 12, 1993.

Section amended in part City Record Aug. 2, 1991 eff. Sept. 1, 1991.

Section in original publication July 1, 1991.

Subd. (b) par (1) amended City Record Sept. 23, 1994 eff. Oct. 23, 1994. This subd. (b) was repealed

by City Record May 31, 2001 amendment.

CASE NOTES

¶ 1. The Police Department's creation of the new premises license, which permits the transport of firearms to authorized target ranges and hunting areas did not exceed the jurisdiction of the department. Penal Law §400.00, the state's enabling statute, did not pre-empt all regulations in this field. De Illy v. Kelly, 6 A.D.3d 217, 775 N.Y.S.2d 256 (1st Dept. 2004).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-24 Gun Custodians and Carry Guards.

(a) **Gun Custodian.** (1) Once a company employs and intends to arm additional employees, a gun custodian and alternate custodian shall be designated by the company.

(2) Each designee shall submit to the License Division an additional handgun license application for gun custodian, typed and notarized, along with two (2) color photos, $1\frac{1}{2} \times 1\frac{1}{2}$ inches, taken within the past thirty (30) days, showing the applicant from the chest up, and the necessary fees.

(3) The responsibilities of the gun custodian and alternate custodian are as follows:

(i) To insure that an applicant works a minimum of twenty (20) hours per week for the company.

(ii) To insure that an applicant commences work within fifteen (15) days of issuance of license.

(iii) On a semiannual basis, the gun custodian or alternate custodian shall be required to submit the following reports to the License Division:

(A) Employment Report-indicating hours worked by each licensee per month.

(B) Employee Termination Report.

(C) Annual Handgun Inventory Report.

(iv) The gun custodian or alternate custodian or an authorized designee of the company shall be required to permit properly identified representatives of the New York City Police Department to examine company records pertaining to handgun licensees.

(v) During those periods that a security guard will not be reporting to work due to illness or vacation, the gun custodian or alternate custodian shall be responsible for the security of the handgun.

(vi) In the event of termination of employment, the custodian or alternate custodian shall see to the immediate surrender of the licensee's handgun license to the New York City Police Department License Division and return of the handgun to the company.

(vii) In the event of a licensee's death, the gun custodian or alternate custodian is responsible for the security of the handgun and for the immediate notification, in writing, to the New York City Police Department License Division.

(viii) Where a licensee becomes involved in an incident or suffers a condition which shall be reported to the License Division and/or the precinct of occurrence pursuant to subdivision (b) of this section, the gun custodian or alternate custodian shall ensure that such report is made immediately.

(4) When appearing at the License Division to pick up a license, an applicant shall present a handgun assignment letter from the gun custodian or alternate custodian. If no handgun is available from the company handgun inventory, the gun custodian or alternate custodian shall request, in writing, a purchase order by following the rules set forth in §5-25, "Handgun Purchase Authorizations," to obtain a new handgun.

(5) The purchase order shall be valid for only thirty (30) calendar days from the date of issuance.

(6) After the gun custodian or alternate custodian has purchased the handgun, s/he shall return to the License Division within 72 hours to have the handgun inspected. This handgun shall be unloaded in a locked container and accompanied by the purchase order authorization and a photocopy of the bill of sale. This handgun may not be carried or transported except as indicated in this paragraph before it has been inspected.

(7) If the gun custodian or alternate custodian makes her/his purchase from other than an authorized dealer, the seller shall be either a New York City or New York State licensee, Police Officer or a Peace Officer.

(8) A handgun may be replaced by requesting permission, in writing, from the Division Head, License Division.

(b) **Carry Guard Licensee.** (1) This license is restricted to the days and hours that the licensee is actually engaged in employment, or when a licensee is travelling from her/his residence to employment, or from employment to her/his residence. These restrictions shall be strictly interpreted by the New York City Police Department and violation of these rules shall result in the immediate suspension of the pistol license. This means that the handgun may be carried only when the licensee is actually engaged in employment by the security company the name of which appears on the face of the license. This does not permit "freelancing" on the licensee's day off. The handgun may only be carried from the licensee's residence as listed on the application, to the licensee's place of employment or assignment for that particular day.

The licensee may carry her/his handgun from employment back to her/his residence. This means that there shall be no unreasonable delay in returning to the licensee's residence where the handgun shall be secured.

Example: If the licensee does not intend to stay at her/his residence the evening prior to working at her/his place of assignment, s/he will be obligated to return home to pick up her/his handgun just prior to going to work. Carrying her/his handgun with her/him the entire evening preceding her/his next work day is a distinct violation of license

restrictions. **Example:** If the licensee finishes a 4 p.m. to midnight shift and takes action involving the handgun at 3:30 a.m. in a local tavern, s/he is in violation of license restrictions and the New York State Penal Law.

(2) A licensee has the responsibility of making an immediate report to the Division Head, License Division, the precinct where the incident occurred, and the gun custodian or alternate custodian in the following instances:

(i) Loss or theft of handgun.

(ii) Discharge of handgun (other than practice at an authorized small arms range/shooting club).

(iii) Loss or theft of handgun license.

(iv) Improper use/safeguarding of handgun(s).

(v) Public display of an unholstered handgun.

(3) An immediate report shall be made in the following instances to the Division Head, License Division and the gun custodian or alternate custodian:

(i) Change of residence.

(ii) Mutilation, alteration or destruction of handgun license.

(iii) Arrest, indictment, summons other than a traffic summons, or conviction in any jurisdiction; suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(iv) Receipt of psychiatric treatment or treatment for alcoholism or drug abuse, or the presence or occurrence of any disability or condition that may affect the ability to safely possess or use a handgun.

(v) Licensee is or becomes the subject or recipient of an order of protection or a temporary order of protection.

(4) The license shall be in the possession of the licensee at all times while the licensee is carrying the handgun.

(5) Misconduct or misuse of the purpose for which this license is issued may result in the suspension or revocation of the license.

(6) A handgun licensee is authorized to use only the handgun that is endorsed on her/his license.

(c) Failure to comply with all of the above conditions set forth herein may result in the suspension, revocation, or cancellation of any/or all handgun licenses issued to employees of the subject company.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-25 Handgun Purchase Authorizations.

(a) The licensee may not obtain a handgun without prior written authorization from the Division Head, License Division. This authorization shall be provided in the nature of a "Handgun Purchase Authorization" form. The following are the rules concerning handgun acquisition:

(1) The "Handgun Purchase Authorization" form is valid only for thirty (30) calendar days from the issuance date.

(2) Pursuant to New York City Administrative Code §10-311(a), it shall be unlawful for any person or business enterprise to dispose of any handgun which does not contain a safety locking device, defined as a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user. The following types of safety locking devices will be deemed to comply with this provision:

(i) a trigger lock, which prevents the pulling of the trigger without the use of a key; or

(ii) a combination handle, which prevents the use of the weapon without the alignment of the combination tumblers; or

(iii) a detachable or non-detachable locking device, composed primarily of steel or other metal of significant gauge to inhibit breaking, utilizing a metallic key or combination lock, rendering the weapon inoperable until the locking

device is removed by an authorized person.

(3) Pursuant to New York City Administrative Code §10-311(b), it shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to dispose of any handgun in New York City unless it is accompanied by the following warning, which shall appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the handgun and on a separate sheet of paper included within the packaging enclosing the handgun: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS."

(4) Pursuant to New York City Administrative Code §10-311(c), any person who applies for and obtains authorization to purchase, or otherwise lawfully obtains, a handgun shall be required to purchase or obtain a safety locking device at the time s/he purchases or obtains the handgun.

(5) Pursuant to New York City Administrative Code §10-311(d), the City of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident involving, or the use or misuse of a safety locking device that may have been purchased in compliance with these rules.

(6) Once the licensee has purchased the handgun, s/he shall return to the License Division-Room 152, One Police Plaza, New York, New York 10038, within 72 hours to have the handgun and safety locking device inspected. The handgun may not be utilized before it has been inspected by License Division personnel and entered on the license.

(7) Handgun inspections are conducted only between the hours of 12 to 2 p.m., Monday through Friday.

Note: The License Division is closed on all legal holidays.

(8) The licensee may only purchase a handgun from the following:

(i) A licensed New York State Firearms Dealer.

(ii) The holder of a current, valid, New York State, or New York City Handgun License.

(iii) A New York State or New York City Police Officer or Peace Officer, as defined under the New York State Criminal Procedure Law.

(iv) Estate of deceased New York City/New York State handgun licensee.

(9) If the licensee purchases a handgun from a licensed New York State Firearms Dealer, s/he shall submit the following documents when s/he presents the handgun for inspection:

(i) Completed "Handgun Purchase Authorization" form.

(ii) Original Bill of Sale and a clear carbon copy or photocopy of same.

(10) If the licensee purchases a handgun from the holder of a valid New York State or New York City handgun license, s/he shall also submit the following documents when s/he presents the handgun for inspection:

(i) Completed "Handgun Purchase Authorization" form.

(ii) A signed and notarized Bill of Sale and a clear photocopy by the seller which includes the following information: make, model, calibre, and serial number of handgun sold; Seller's: name, address, license number; Buyer's: name, address, license number, date of sale.

(iii) Clear photocopy of the seller's valid, current Handgun License, listing the handgun to be purchased thereon. The front and back of the license shall be photocopied.

(11) If the licensee purchases a handgun from a New York State or New York City Police Officer or Peace Officer, s/he shall submit the following documents when s/he presents the handgun for inspection:

(i) Completed "Handgun Purchase Authorization" form.

(ii) A signed and notarized Original Bill of Sale and a clear photocopy. Bill of Sale shall include: date of sale; Seller's: name, address, agency, including command, and shield number; Buyer's: name, address, license number; make, model, calibre and serial number of handgun.

(12) The aforementioned transaction shall not be permitted if the seller is a New York City Police Officer who has not complied with Police Department guidelines regarding the sale of firearms to a handgun licensee.

(13) If the seller is a Police Officer or Peace Officer from a jurisdiction other than New York City, the License Division requires prior written notification as to the seller, so that verification of employment, etc., can be obtained. This information shall be listed in the "Handgun Purchase Authorization" request submitted by licensee.

(14) If the licensee wishes to purchase a handgun from the Estate of a deceased New York State/New York City licensee, s/he shall provide the below specified documents prior to obtaining a "Handgun Purchase Authorization" form. This transaction shall be conducted in person at the License Division, Room 152, between the hours of 9 a.m. and 12 noon, Monday through Thursday only.

(i) A written request for purchase authorization for the desired handgun(s) including make, model, calibre and reason for request; the licensee's name, address, and license number.

(ii) The license is required for this transaction.

(iii) A copy of the voucher for the handgun(s).

(iv) The decedent's license, if not previously surrendered, showing registration of the handgun(s) in question.

(v) A copy of the death certificate.

(vi) If there is a Will: The License Division requires a short certificate of Letters Testamentary, that gives the Executor or Executrix the authority to dispose of the property. Letters can be obtained from the Surrogate's Court, of the borough in which the deceased lived.

(vii) If there is no Will: The License Division requires a short certificate of Letters of Administration that gives the administrator the authority to dispose of the property. Letters can be obtained from the Surrogate's Court, of the borough in which the deceased lived.

(viii) A notarized Bill of Sale from the Executor or Administrator of the decedent's estate, indicating the weapon, make, model, calibre and serial number, and stating that they are being sold to: the licensee's name, address and license number.

(ix) Once purchased, the handgun shall be presented for inspection within seventy-two (72) hours; Monday through Friday 12 to 2 p.m.

(b) **New licensees.** A "Handgun Purchase Authorization" form shall be issued to the licensee with her/his new handgun license. As indicated previously this form is only valid for thirty (30) calendar days from the date of issuance.

(1) If the licensee does not purchase a handgun within the specified period of time, s/he shall within ten (10) calendar days of the expiration date of the "Handgun Purchase Authorization" form, surrender said form and her/his handgun license to the License Division Issuing Unit.

(2) The license is only valid if there is a handgun listed thereon.

(3) Requests for extensions for Handgun Purchase Authorizations shall be made by written request to the Division Head, License Division.

(c) **Purchasing an additional handgun.** (1) Requests for the purchase of an additional handgun shall be made in writing to the License Division-Issuing Unit-One Police Plaza, Room 152, New York, New York 10038. Pre-printed request forms are available at the Reception Desk in Room 152.

(2) The written request shall include: the licensee's name, address and license number, and the make, model and calibre of the handgun s/he wishes to purchase.

(3) The licensee shall be notified in writing of the approval or disapproval of her/his request for an additional handgun. If the request has been approved, the licensee shall receive by mail, a "Notice of Handgun Purchase Authorization Approval." To receive the purchase document the licensee shall appear at the License Division, Room 152, by the date indicated on the notice. The licensee shall bring the approval notice and her/his license with her/him to receive her/his purchase document.

(4) Purchase documents are issued only between the hours of 9 a.m. to 12 noon, Monday through Thursday.

Note: The License Division is closed on all legal holidays.

(5) "Handgun Purchase Authorizations" shall be returned to the License Division within ten (10) calendar days of their expiration date. Failure to return the document within the specified time shall result in the suspension and/or revocation of the handgun license(s).

(6) All purchasers of handguns shall also be required to prepare a "Handgun Index Card," at the License Division.

(d) **Number of handguns allowed on a handgun license.** (1) When the total number of handguns possessed by licensee(s) residing in or located in the same household/business exceeds four, the licensee(s) shall utilize a safe when handguns are stored at the premises.

(2) Requests for handguns in excess of four shall not be entertained without proof of the ownership of a safe in which the handguns shall be safeguarded when not in use. Proof of ownership consists of a Bill of Sale for the safe and two color photos of the safe, one with the door open and one with the door closed.

(3) The Division Head, License Division reserves the right to accept or reject the type of safe proposed for safeguarding the handguns.

(4) The number of handguns allowed under each type of handgun license is listed below. Requests for additional handguns shall be reviewed on an individual basis. More than four handguns requires satisfactory evidence of safeguarding to prevent theft, as approved by the Division Head, License Division-see above.

(i) Carry Business and Special Carry Business-Two handguns. The Division Head of the License Division may in her/his discretion limit to one the number of handguns that appear on the carry handgun license when the licensee's needs do not require possession of two handguns.

(ii) Limited Carry Business-One handgun.

(iii) Carry Guard and Special Carry Guard-One handgun.

(iv) Gun Custodian-Number of handguns shall be determined by the Division Head, License Division, consistent with the demonstrated needs of the applicant.

(v) Premises Business-One handgun.

(vi) Premises Residence-One handgun.

(e) **Requests for additional handguns for "Special Handgun Licenses."**

(1) Holders of "Special Handgun Licenses" shall comply with the purchase authorization request guidelines of the county in which they hold their basic handgun license. Once the addition has been made to their basic County License, a request to add the handgun to their New York City Special License may be made in writing to the Division Head, License Division. If the Division Head, License Division approves the request, the licensee shall be notified when to report to the License Division to effect the addition. The following documents shall be required at that time:

(i) The basic County License.

(ii) A copy of the county Handgun Purchase Authorization form.

(iii) A copy of the Bill of Sale.

(iv) The New York City Special Handgun License.

(2) Inquiries concerning this type of transaction may be made to the Issuing Unit at telephone numbers (212) 374-5522 or 5523.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) par (2) added, other pars renumbered City Record Aug. 9, 1999 eff. Sept. 8, 1999. [See T38 §1-05 Note 1]

Subd. (d) amended City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 5-26

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-26 Disposal of a Handgun Listed on the License.

(a) Any person lawfully in possession of a handgun who disposes of the same without first notifying the License Division in writing shall be guilty of a Class A Misdemeanor in accordance with the provisions of New York State Penal Law §265.10(7). Pursuant to New York City Administrative Code §10-311(a), it shall be unlawful for any person or business enterprise to dispose of any handgun which does not contain a safety locking device, defined as a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user. The following types of safety locking devices will be deemed to comply with this provision:

(1) a trigger lock, which prevents the pulling of the trigger without the use of a key; or

(2) a combination handle, which prevents the use of the weapon without the alignment of the combination tumblers; or

(3) a detachable or non-detachable locking device, composed primarily of steel or other metal of significant gauge to inhibit breaking, utilizing a metallic key or combination lock, rendering the weapon inoperable until the locking device is removed by an authorized person.

Note: The license becomes invalid if the licensee sells the one and only handgun on her/his license. Should the licensee wish to sell it without cancelling her/his license, s/he shall first follow the instructions to add a handgun.

(b) Pursuant to New York City Administrative Code §10-311(b), it shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to dispose of any handgun in New York City unless it is accompanied by the following warning, which shall appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the handgun and on a separate sheet of paper included within the packaging enclosing the handgun: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS."

(c) Pursuant to New York City Administrative Code §10-311(c), any person who applies for and obtains authorization to purchase, or otherwise lawfully obtains, a handgun shall be required to purchase or obtain a safety locking device at the time s/he purchases or obtains the handgun.

(d) Pursuant to New York City Administrative Code §10-311(d), the City of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident involving, or the use or misuse of a safety locking device that may have been purchased in compliance with these rules.

(e) The buyer may only be a:

(1) Licensed New York State Firearms Dealer.

(2) A New York State/New York City Handgun License Holder.

(3) A New York State/New York City Police Officer or Peace Officer.

(f) If the licensee sells to a licensed New York State Firearms Dealer the following documentation shall be required to process the transaction:

(1) The "Original Bill of Sale" from the dealer and photocopy.

(2) The "Bill of Sale" shall show the Dealer's License number, name, address; the make, model, calibre and serial number of the handgun sold; the licensee's name, address, license number and expiration date of the license; the date of sale; the bill shall clearly indicate that the Dealer purchased the handgun(s).

(3) The licensee shall appear at the License Division, Room 152, with her/his license to process this transaction.

(g) If the licensee sells to a New York State/New York City Handgun license holder, the following documentation shall be required to process the transaction:

(1) An "Original Bill of Sale," signed by the seller and the purchaser, with both signatures notarized.

(2) The "Bill of Sale" shall include: the seller's name, address and license number, expiration date of license; the purchaser's name, address, license number and expiration date; the make, model, calibre, and serial number of the handgun(s) sold, the date of sale.

(3) A copy of the purchaser's handgun license, front and back.

(4) A copy of the buyer's "Handgun Purchase Authorization form."

(5) The licensee shall be required to appear at the License Division-Room 152, with her/his license, to process this transaction.

(h) Once the licensee has sold her/his handgun(s), s/he shall appear in person to delete them from her/his license

within ten (10) calendar days of the transaction.

(i) If the licensee wishes to sell her/his handgun to a New York State/New York City Police Officer or Peace Officer the following documentation shall be required to process the transaction:

(1) A notarized "Bill of Sale" showing the make, model, calibre and serial number of the handgun sold; the name, address, shield number, Agency and Command of the Police Officer/Peace Officer. The bill of sale shall be signed by both the seller and the purchaser, dated, and each signature shall be notarized.

(2) If the purchaser is a New York City Police Officer or Peace Officer, the License Division requires prior written notification relative to the purchaser so that verification of employment, etc., can be obtained.

(3) Once the licensee has sold her/his handgun s/he shall appear at the License Division, Room 152, with her/his license and the aforementioned documentation to process this transaction.

(j) If the licensee wants to transfer her/his handgun(s) to another New York State/New York City license s/he also possesses s/he shall make a written request to the Division Head, License Division. The request shall include the following information:

(1) The licensee's name, address and telephone number.

(2) The license number; make, model, calibre, and serial number of the handgun the licensee wishes transferred; and the number of the license to which the licensee wants to transfer the handgun.

(3) The licensee shall enclose copies of both licenses front and back.

(4) The licensee shall receive a written response. If the request is approved, the licensee shall have to appear at the License Division with both licenses to process the transaction.

(k) If the licensee wishes to sell all of her/his handguns and cancel her/his license, s/he may do so by submitting the applicable documentation and her/his handgun license, by mail. (See Cancellation Procedures below.)

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 9, 1999 eff. Sept. 8, 1999. (Note, this amendment inadvertently

omitted closing paragraph.) [See T38 §1-05 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-27 Cancellation of the Handgun License.

(a) Anyone cancelling a New York City Handgun License shall:

(1) Legally dispose of handgun(s). To legally dispose of her/his handgun(s) the licensee shall either:

(i) Voucher the handgun at her/his local precinct, or

(ii) Sell to a licensed Firearms Dealer, or

(iii) Sell to a Police Officer or Peace Officer, or

(iv) Transfer handgun(s) to another license s/he may possess, if authorized to do so, or

(v) Sell to a licensee, if the licensee is authorized to purchase.

(2) Return license to the License Division and attach a copy of voucher or Bill of Sale.

(3) Attach letter briefly giving reason for cancellation.

(b) If the licensee intends to relocate out of State, the License Division requests verification from the local

authorities of that particular jurisdiction that the licensee has notified them that s/he is in possession of the handgun listed on her/his N.Y. license.

(c) To document proper disposal of the handgun, follow the rules listed in §5-26 concerning "Disposal of a Handgun Listed on the License."

(d) All documents and the license shall be returned to the License Division-Cancellation Unit-One Police Plaza, Room 152, New York, New York 10038, within ten (10) calendar days of the disposal of handguns, relocation, etc. If the licensee has any questions concerning these procedures s/he may call telephone number (212) 374-5531 or 5532.

Note: If the licensee relocates out of New York City or New York State, s/he shall immediately contact her/his new local Police Department and receive instructions on how to legally possess her/his handgun(s) in their jurisdiction.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. In one case, petitioner obtained a pistol permit in New York, then moved to New Jersey for several years, then returned to New York. When he moved to New Jersey, he failed to comply with the regulations applicable to gun license holders who were moving out of state. When he returned to New York, his application for a permit was denied by reason of his non-compliance with the regulations. The court held that the Police Department had sufficient basis for denial of the permit. Matter of Barreca v. Kerik, N.Y.L.J., Mar. 22, 2002, page 19, col. 4 (Sup.Ct. New York Co.).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-28 Renewal of the Handgun License.

The licensee is required to renew her/his handgun license every three (3) years. The license expires on the licensee's birthday.

(a) The renewal process generally begins sixty (60) calendar days prior to the licensee's month of birth. The licensee shall receive her/his renewal application, instructions, and other required forms and her/his invalidated license in the mail. As part of the renewal process, the License Division may require that the licensee produce all licensed handguns for inspection, either using a random selection procedure or when a review of the renewal package discloses the need for such an inspection, as directed by the Commanding Officer, License Division. The licensee shall receive appropriate instructions and a form, Affidavit of Handgun Possession, to be completed and notarized as part of the renewal package. If so directed, the licensee shall transport all licensed handguns to the License Division, One Police Plaza, Room 152, New York, New York or otherwise make the handguns available for inspection, in the manner directed by the instructions. The licensee shall examine the license, complete all required forms including providing color photos, forwarding fees (payable by certified check or money order only), etc., and return the renewal package to the License Division by mail, as soon as possible. Upon receipt of the renewal material, the License Division shall process the renewal and return the validated license to the licensee by mail.

(b) The license is not valid unless stamped and sealed by the License Division. The licensee shall sign her/his license in the designated area on the back of the license.

(c) The renewal application and related documents shall be mailed to the address on the license. If the licensee has moved and has not notified the License Division, the renewal documents shall be returned to the License Division and her/his license shall be cancelled for failure to notify the License Division of an address change (see Address Change-§5-29).

(d) If the licensee has not received her/his renewal documents thirty (30) calendar days prior to her/his birth date, s/he shall contact the Renewal Unit at telephone number (212) 374-5531, or 5532, for instructions.

(e) If the licensee has extenuating circumstances which prevent her/him from renewing prior to her/his birth date, s/he shall submit a notarized letter to the Renewal Unit explaining the circumstances. The License Division shall contact the licensee and advise her/him on how to proceed. However, if the licensee is not notified by the License Division by her/his birth date, s/he shall voucher her/his handgun(s) at her/his local precinct until the matter is resolved.

(f) Licensees shall carefully read and comply with the instructions on their renewal documents.

(g) Incomplete or incorrectly prepared renewal documents shall not be processed, and shall be returned to the licensee for completion/correction, with a letter indicating the problem, information omitted, etc. Consequently, if as a result of the licensee's error, the licensee fails to submit the required material, fees, etc., by her/his birthday, s/he shall be required to voucher her/his handgun(s) at her/his local precinct until the renewal process is completed.

(h) If the licensee's birthday has passed and s/he has not yet renewed, s/he shall immediately voucher her/his handgun(s) at her/his local precinct. The License Division shall not process any late renewals unless a copy of the voucher is attached to the complete renewal application which is to be submitted by mail.

(i) Failure to renew the license on time is cause for cancellation of the license.

(j) Possession of any unlicensed handgun is a violation of Article 265 of the New York State Penal Law, and may subject the licensee to arrest.

(k) Renewal fees shall be in the form of a money order or a certified check made payable to the N.Y.C. Police Department. Cash and personal checks shall not be accepted.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. added City Record Apr. 12, 1993 eff. May 12, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The Department has broad discretion in ruling on permit applications, and may properly deny the application for good cause. However, in this particular instance, the denial of the petitioner's application for a premises residence handgun license on the ground that petitioner failed to timely renew his prior license, or voucher his handgun was arbitrary and capricious. The petitioner had not been sent a renewal notice to his correct address, which was on file (see 38 RCNY § 5-28(c)); his military record and tax returns and letters of reference were also on file. Thus, the petitioner had a reasonable excuse for failure to renew. DiStefano v. Kelly 2008 NY Slip Op. 688, 47 AD3d 928, 850 NYS2d 203, 2008 NY App. Div. Lexis 598 (App. Div. 2nd Dept.).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-29 License Amendments.

(a) Originals of all verifying documents shall be presented along with photocopies. After the original documents have been reviewed, they shall be returned to the licensee.

(1) **Premises Residence License-address changes.**

(i) If the licensee has moved, s/he shall change the address listed on her/his license. To do so the licensee shall come to the License Division no later than ten (10) calendar days after her/his change becomes effective. S/he shall bring her/his license and verifying documents such as current utility bills. Any and all verifying documents shall include the licensee's name and the licensee's new address.

(ii) If the licensee has relocated outside of New York City, s/he shall follow the instructions for "Cancellation."

(2) **All Carry/Premises Business Licenses-address changes.** If the licensee's business name, principals, corporate officers (if a corporation), and the nature of her/his business remain the same, but s/he has changed her/his business location, the licensee shall within ten (10) calendar days, provide the License Division with a copy of a current utility bill verifying the name and new address of the business, and other verifying documents substantiating the move. This transaction shall be conducted in person. If the nature of the licensee's business has changed, s/he shall follow the instructions for "Cancellation."

(3) **Premises/business name changes.**

(i) If the licensee has a Premises Business License and changes her/his business name, but her/his business is of the same nature and at the same location, s/he shall provide the License Division with Amended Business Certificate, verifying documents, etc., within ten (10) calendar days.

(ii) If the licensee is an employee of a company, in addition to the documentation required in subparagraph (i) above, the licensee shall submit a letter on company stationery signed by the company president or owner, which states that the licensee is still employed by them in the same capacity for which the license was issued, and that the licensee still requires the handgun license for her/his employment.

(iii) If the nature of the licensee's business has changed s/he shall follow the instructions for Cancellation.

(4) **Carry Business License name changes.** If the licensee has a Carry Business License and s/he changes her/his business name-but not the nature of the business, the corporate officers, or the location, s/he shall contact the License Division immediately at telephone #(212) 374-5531 or 5532 for instructions on how to proceed.

(5) **"Special" Carry Handgun License Changes.** Licensees shall call telephone number (212) 374-5531 or 5532, for specific instructions. However, the licensee's basic County Handgun License shall be amended prior to requesting any amendment of her/his New York City "Special Handgun License."

(6) **Individual name changes.**

(i) If the licensee has changed her/his name because of marriage, registration of a domestic partnership, or for other reasons, s/he shall provide the License Division with a Marriage Certificate, affidavit or legal court documents verifying the change. Where an affidavit is provided, the Department may require additional evidence that the affiant has changed her/his name, including but not limited to a certificate of domestic partnership registration, credit cards issued to the affiant, or bills addressed to the affiant. For purposes of this subparagraph, "domestic partnership" shall mean a domestic partnership registered in accordance with applicable law with the City Clerk, or a domestic partnership registered with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the former City Department of Personnel have been transferred to the City Clerk.)

(ii) The aforementioned document(s) shall be submitted in the original, with a copy attached. The License Division shall return the original document to the licensee.

(iii) The licensee shall appear in person at the License Division-Room 152, with the required documents and her/his license to effect this change.

(b) **New business.** (1) If the licensee has changed her/his business from the one for which s/he was originally licensed, or her/his current business has had a change of name and/or corporate officers, owners, etc., or the nature of her/his business or responsibilities have changed; or if s/he has ended her/his association with the business, **i.e.,** retired, terminated, resigned, the licensee shall within ten (10) calendar days of the change surrender her/his handgun(s) and license to her/his local precinct for safekeeping. Her/his license may be subject to cancellation. (See §5-27-Cancellation of the Handgun License.) Questions may be directed to the Incident Section (212) 374-5538 or 5539.

(2) Handgun licenses are not transferable to new businesses. The licensee shall re-apply for a new handgun license for her/his new business.

(3) New applications shall not be accepted without proof of the surrender of the old license and proof of the proper disposal or surrender of the handgun(s).

(4) Failure to make proper notification of any of the above changes to the License Division shall result in immediate cancellation of the license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) par (6) subpar (i) amended City Record Sept. 25, 1998 eff. Oct. 25, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 25, 1998:

Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City housing authority and the department of housing preservation and development. By the end of April 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55% of those registered domestic partners were heterosexual couples, and less than 45% were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

Consistent with the intent of such orders, and pursuant to the powers of the Commissioner under sections 434(b) and 1043 of the New York City Charter, the Police Department is now acting to provide that a rule applicable to spouses should now be extended to domestic partners.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-30 Incidents Involving Suspension.

(a) Whenever a handgun licensee is involved in an "Incident," the licensee shall immediately report said incident to the License Division's Incident Section-Telephone number (212) 374-5538 or 5539. Certain "Incidents" shall also be reported to the "Precinct of Occurrence" (where the incident took place).

(b) The following "Incidents" shall be immediately reported to the "Precinct of Occurrence" and the License Division Incident Section:

(1) Lost handgun(s).

(2) Stolen handgun(s).

(3) Discharge of handgun-other than at an authorize small arms range/shooting club.

(4) Lost handgun license (see lost/stolen license).

(5) Stolen handgun license (see lost/stolen license).

(6) Improper use/safeguarding of handgun(s).

(7) Public display of an unholstered handgun.

(c) The following "Incidents" shall be immediately reported to the License Division's Incident Section:

(1) Arrest, summons (except traffic infractions), indictment, or conviction of licensee, in any jurisdiction, federal, state, local, etc.; suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(2) Admission of licensee to any psychiatric institution, sanitarium, and/or the receipt of psychiatric treatment by licensee.

(3) The receipt of treatment for alcoholism or drug abuse by licensee.

(4) The presence or occurrence of a disability or condition that may affect the handling of a handgun, including but not limited to epilepsy, diabetes, fainting spells, blackouts, temporary loss of memory, or nervous disorder.

(5) Licensee is or becomes the subject or recipient of an order of protection or a temporary order of protection.

(6) Alteration, mutilation or destruction of handgun license.

Note: The above "Incidents" shall be reported if they were not previously disclosed by licensee to the License Division, or if previously disclosed, circumstances have changed.

(d) In addition to the aforementioned "Incidents," whenever the holder of a handgun license becomes involved in a situation which comes to the attention of any police department, or other law enforcement agency, the licensee shall immediately notify the License Division's Incident Section of the details.

(e) All "Incidents" shall be reviewed and evaluated by License Division investigators. If, as a result of the "Incident" the License Division finds it necessary to suspend or revoke the license, the licensee shall receive notification by mail. Said notification shall advise the licensee of the status of her/his license and the reason for the suspension/revocation.

(f) The licensee shall be directed to immediately voucher for safekeeping all handguns, rifles and/or shotguns listed on any license and any rifle/shotgun permit s/he possesses. After the handguns, rifles and/or shotguns have been vouchered, the licensee shall immediately send her/his handgun license and any rifle/shotgun permit s/he possesses and a copy of the "Voucher" to the License Division's Incident Section.

(g) Failure to comply with these directions is a violation of the New York State Penal Law, and shall result in summary action by the Police Department. Possession of an unlicensed handgun is a crime. If a license is suspended or revoked, the handgun(s) listed thereon are no longer considered licensed. Failure to comply with the License Division's directions may result in the permanent revocation of the licensee's handgun license.

(h) If her/his license is suspended or revoked, the licensee shall be issued a written Notice of Determination Letter, which shall state in brief the grounds for the suspension or revocation of the license and notify the licensee of the opportunity for a hearing. The suspended/former licensee has the right to submit a written request for a hearing to appeal the decision. This request shall be made within thirty (30) calendar days of the date of the Notice of Determination Letter. The written request shall be submitted to the Commanding Officer, License Division, One Police Plaza, Room 110A, New York, New York 10038. A licensee whose arrest or summons resulted in suspension or revocation of her/his license may only submit a written request for a hearing within thirty (30) calendar days after the termination of the criminal action, as defined in New York State Criminal Procedure Law §1.20(16)(c). If the suspension or revocation resulted from the licensee becoming the subject of an order of protection or a temporary order of protection, the licensee may only submit a written request for a hearing within thirty (30) calendar days after the

expiration or voiding of the order of protection or temporary order of protection. If the suspension or revocation was related to both a criminal action and an order of protection or temporary order of protection, then the later of the two waiting periods shall apply. However, requests for hearings shall not be entertained, nor shall a hearing be scheduled until the licensee:

(1) Complies with the provisions of subdivision (f) above; and

(2) Provides a Certificate of Final Disposition, if applicable; and

(3) Provides a Certificate of Relief from Disabilities, if applicable, to the License Division.

(i) The written request for a hearing shall include:

(1) License number.

(2) Reason(s) for the request.

(3) Disposition of license(s) and handgun(s).

(j) Upon receipt of the licensee's letter, the License Division shall schedule the licensee for a hearing and notify the licensee by mail.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. The Police Department properly revoked a pistol permit where the petitioner failed to notify the License Division immediately of his arrest on charges of menacing in the third degree, and of an order of protection issued against him. Morstadt v. Kelly, 45 A.D.3d 258, 845 N.Y.S.2d 61 (1st Dept. 2007).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-31 Mutilated, Lost or Stolen Licenses.

(a) If her/his license was lost or stolen, the licensee shall report the loss/theft to the "Precinct of Occurrence" and obtain a "Complaint Report Number."

(1) **If the licensee's license was lost, s/he shall:**

(i) Obtain a "Complaint Report Number" from the precinct of occurrence.

(ii) Report in person to the License Division-Room 152.

(iii) Bring a ten ($10) dollar money order or certified check. Cash and personal checks shall not be accepted. Make instrument payable to "N.Y.C. Police Department."

(iv) Bring two current color photos-$1\frac{1}{2} \times 1\frac{1}{2}$ inches, front view, from the chest up, taken within the past thirty (30) days. S/he shall not wear anything which would obstruct identification, **e.g.,** hats, sunglasses, etc.

(v) Bring the "Complaint Report Number."

(vi) Bring personal identification-driver's license, credit card, old Handgun License.

(vii) The licensee shall be required to prepare a duplicate application and have it notarized.

(2) **If her/his license was stolen, the licensee shall:**

(i) Obtain a Complaint Report Number from the precinct of occurrence.

(ii) Report in person to the License Division-Room 152.

(iii) Bring two color photos-$1\frac{1}{2} \times 1\frac{1}{2}$ inches, front view, from the chest up, taken within the past thirty (30) days. S/he shall not wear anything which would obstruct identification, **e.g.,** hats, sunglasses, etc.

(iv) Bring the "Complaint Report Number."

(v) Bring personal identification-driver's license, credit card, old Handgun License.

(vi) S/he shall be required to prepare a duplicate application and have it notarized.

(b) If her/his license was altered, laminated or mutilated, the licensee shall: Report in person to the License Division-Room 152 with the following:

(1) A ten ($10) dollar money order or certified check. Cash and personal checks shall not be accepted. Make instrument payable to "N.Y.C. Police Department."

(2) Two color photos-$1\frac{1}{2} \times 1\frac{1}{2}$ inches, front view, from the chest up, taken within the past thirty (30) days. S/he shall not wear anything which would obstruct identification, **e.g.,** hats, sunglasses, etc.

(3) S/he shall be required to prepare a duplicate application and have it notarized.

(4) S/he shall bring with her/him the remnants of her/his license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-32 Transfer of Records.

New York City handgun licensees who have moved out of New York City may request a transfer of their records to their new licensing jurisdiction, in accordance with §400.00, Subdivision 5, of the New York State Penal Law.

(a) This request shall be made in writing by the new licensing agency and accompanied by a five ($5.00) dollar money order, made payable to the N.Y.C. Police Department.

(b) The request shall not be processed unless the License Division has received the licensee's New York City handgun license; documentation of the legal disposition of her/his handgun(s), **i.e.,** Bill Of Sale or Voucher (see Cancellation and Disposal of Handgun(s)-§§5-26 and 5-27), her/his new address, and the name and address of her/his new licensing authority.

(c) Requests for a records transfer may be mailed to the New York City Police Department License Division-Records Unit, One Police Plaza, Room 152, New York, New York 10038. The License Division shall process her/his request as expeditiously as possible once the License Division has received the necessary information, documentation, fee, etc. If the licensee has any questions concerning this matter contact (212) 374-5522 or 5523.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-33 Familiarity with Rules and Law.

All licensees shall be required to sign an acknowledgment that they shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to this license. The License Division shall provide the licensee with the acknowledgment statement. This acknowledgment statement shall be notarized. Failure to sign the acknowledgment statement and have it notarized shall result in denial of the license application.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

NOTE

Reference within this chapter to the masculine shall be presumed to include the feminine and neuter. Reference to the singular shall be presumed to include the plural.

HISTORICAL NOTE

Note amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 6 USE OF AMBER LIGHTS BY VOLUNTEER CIVILIAN PATROL MEMBERS

§6-01 Possession and Use of Amber Lights by Volunteer Civilian Patrol Members.

(a) Only a member of a Civilian Observation Patrol sponsored by the New York City Police Department shall be eligible for a permit to possess and use an amber light pursuant to these Regulations.

(b) The Deputy Commissioner in charge of Community Affairs is responsible for the administration of the amber light program.

(c) Applications to obtain amber light permits will be available at and processed through the precinct in which the patrol is located.

(d) The permit to possess and use an amber light will be an authorization stamped on a civilian observation patrol identification card.

(e) The only type of amber light that is permitted is one that is portable with a subdued yellow light either placed on the dashboard or roof of a civilian observation patrol car by suction cups or magnets. Permit holders may possess only one such amber light.

(f) The permit to possess and use an amber light on a vehicle is non-transferable and automatically expires when the holder ceases to be a member of the Civilian Observation Patrol Group listed on his application.

(g) Only a steady non-revolving amber light will be operated while the volunteer is involved in patrol observation duty except a rotating or revolving amber light may be used under the following circumstances:

(1) At the scene of accidents.

(2) At the scene of any incident when the light is necessary to alert oncoming vehicle or to summon assistance.

(3) When necessary to alert persons of the imminent danger of a criminal act.

(h) Permittees will obey all traffic regulations at all times while on patrol and all directions of a police officer with respect to the use of amber lights. A permit must be produced when requested by a police officer.

(i) Failure to abide by these Rules and Regulations may result in the suspension or revocation of a permit to possess an amber light.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 7-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 7 RADIO RECEIVING SET PERMITS

§7-01 Introduction.

Radio receiving set permits are issued pursuant to §397 of the New York State Vehicle and Traffic Law and §10-102 of the New York City Administrative Code. Violation of these statutes may result in the arrest and/or summons of the violator.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 7-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 7 RADIO RECEIVING SET PERMITS

§7-02 Permit Requirement.

It shall be unlawful for any person to equip an automobile with a radio receiving set capable of receiving signals on the frequencies allocated for police use, or use or possess an automobile so equipped, without a permit issued by the Police Commissioner, or designee in his or her discretion, and in accordance with such rules as the Commissioner may prescribe (Administrative Code §10-102).

HISTORICAL NOTE

Section in original publication July 1, 1991.

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38 RCNY 7-03

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CHAPTER 7 RADIO RECEIVING SET PERMITS

§7-03 Application Process.

(a) **Basic procedure.** To have his application for a radio receiving set permit processed, an applicant must comply with the following instructions:

(1) Complete application for radio receiving set permit; comply with instructions therein.

(2) Applications must be typed.

(3) Applications must be notarized.

(4) Applications which are incorrectly prepared or incomplete will not be accepted.

(5) Applicants must submit a "Letter of Necessity" with their application.

(i) This letter must be from the applicant's employer, on business stationery and contain a description of the applicant's duties as relates to his need for the permit.

(ii) The letter must also contain a statement indicating that the applicant is familiar with the provisions of §10-102 of the Administrative Code; with §397 of the Vehicle and Traffic Law; and with the NYC Police Department's rules for "Radio Receiving Set Permits."

(iii) The letter must also state that the applicant's employer will ensure the immediate removal of the receiving set in the event of the termination of the applicant's employment; or upon the occurrence of any aggravating events,

"incidents." (See Terms and Conditions-§7-04.)

(6) **Photos.** Two recent passport size photos 1 1/2" × 1 1/2", front view, from the chest up are required. No facial obscurences are permitted, i.e., sunglasses, hats, etc.

(7) **Fees.** A twenty-five dollar application fee must be in the form of a money order or certified check made payable to the NYC Police Department. Cash and uncertified checks will not be accepted. A twenty-nine dollar fingerprint fee must be in the form of a money order made payable to the N.Y.S. Division of Criminal Justice Services. All fees are non-refundable.

(b) **Documentation and fingerprinting.** Once the applicant has completed steps (1) through (7) above, he must contact the License Division (212) 374-5536 or 5537, for an appointment to submit his application and to be fingerprinted. When the applicant appears to submit his application, he must also bring the items listed below. These documents must be submitted in the original, or a copy certified by issuing agency. In addition, the applicant must submit photocopies of items (2) through (8); the Police Department will keep photocopies and return the originals to the applicant.

(1) Completed application, requisite fees, photos, letter of necessity, etc.

(2) Current employee identification card.

(3) Current working press card, if applicable, issued by the N.Y.C. Police Department.

(4) Driver's license with photo.

(5) Vehicle registration and insurance card for vehicle in which the "set" is to be installed.

(6) Proof of birth. Birth certificate, U.S. passport, or baptismal certificate.

(7) Proof of residence. Current gas, electric or telephone bill, in the name of applicant showing the applicant's address.

(8) Corporate filing receipt if business is corporation; if business is a sole proprietorship, or a partnership, the applicant must submit the business certificate from the Office of the County Clerk.

(9) If the applicant responded "Yes" on the application to the question regarding arrest history, he must explain the circumstances on a separate paper, sign and have his statement notarized. In addition, the applicant must submit a "Certificate of Disposition" for each arrest.

(c) **Vehicle inspection and interview.** The applicant will be contacted by his precinct, business location, for an inspection of his vehicle, and for an interview to evaluate his need for the permit. The applicant may be required to submit additional documentation to the License Division such as:

(1) Residential utility bill.

(2) Corporate papers, employer, including list of corporate officers and corporate filing receipt.

(3) Federal, state or city license for business, if applicable.

(4) Any other documentation as required.

(d) **Action following notification of approval.** The applicant will be notified in writing of the approval or disapproval of his application. If the application is approved the applicant must:

(1) Contact the License Division (212) 374-5536 or 5537 for an appointment to pick up his permit.

(2) The applicant must bring the following items with him in the original:

(i) Approval letter.

(ii) Current employee identification card.

(iii) Current working press card issued by the N.Y.C. Police Department, if applicable.

(iv) Current N.Y.S. Driver's License.

(v) Current residential utility bill - gas, electric, telephone.

(vi) Bill of sale for radio receiving set listing serial number, model, and make of radio.

(vii) Auto registration.

(e) **Procedure for appeal following Notification of Disapproval.** If the applicant's application is disapproved, he may appeal the decision as follows:

(1) Appeals must be made in writing by applicant's employer.

(2) Appeals must be made within thirty days of the date on the "Notice of Disapproval" letter.

(3) Appeals from media representatives shall be made to the Deputy Commissioner for Public Information; all other appeals shall be made to the Commanding Officer, License Division.

(f) **Grounds for disapproval.** A material false statement on an application shall be grounds for disapproval. Applicants may be disapproved for failure to meet character requirements after a background investigation is conducted.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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38 RCNY 7-04

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CHAPTER 7 RADIO RECEIVING SET PERMITS

§7-04 Permit Conditions.

The radio receiving set permit is issued subject to the following conditions/terms:

(a) It is not transferable to any other person, vehicle, or place/type of employment.

(b) It is subject to suspension, revocation or cancellation for violation of the terms of the permit.

(c) The permittee may not alter or laminate his permit.

(d) The permit is valid for one year from the issuance date and will expire on the date indicated on the permit, unless otherwise rendered void.

(e) The permit is valid for the receiving set indicated thereon, and only when said "set" is installed in the vehicle indicated on the permit.

(f) The permittee must have his valid permit in his possession when operating the radio receiving set indicated thereon.

(g) The permittee may only operate the receiving set while actively engaged in employment/work assignment. It is not to be used for recreational or other non-authorized purposes.

(h) The receiving set may not be monitored by any other driver or passengers in the permittee's vehicle unless the permittee is present, in possession of his valid permit, and is actively engaged in work assignment.

(i) If the permittee's employment is terminated, or his permit expired, revoked, suspended or cancelled, the permittee must immediately remove the receiving set and surrender his permit to the License Division, with proof that the set has been removed from the vehicle, or that it has been rendered incapable of receiving police frequencies. A receipt from a licensed installer indicating removal or disabling of set will be accepted as "proof" of same.

(j) The radio receiving set must be permanently installed in the vehicle listed on the permit. If it is removed or the permittee wishes to replace it, the permittee must contact the License Division for instructions.

(k) If the permittee becomes involved in any of the situations, to be henceforth known as "incidents," indicated below, he must immediately notify the License Division's Incident Unit at telephone number (212) 374-5538 or 374-5539 for instructions. Failure to comply as indicated may result in the suspension and/or revocation of his permit.

(1) An arrest in any jurisdiction.

(2) Summons in any jurisdiction except parking or moving violations. However, if permittee's driver's license is suspended or revoked, he must notify the License Division.

(3) Scofflaw certification of the vehicle in which the "set" is installed.

(4) Suspension/revocation of the registration for the vehicle in which the "set" is installed; and/or cancellation/suspension of auto insurance for same.

(5) Termination of employment; change of assignment.

(6) Change of business, name, address, or corporate offices.

(7) Change of residence.

(8) Lamination, mutilation, or alteration of permit.

(l) The permittee must notify the precinct of occurrence and obtain a "Complaint Report Number" and also immediately notify the License Division-Incident Unit, if any of the below listed incidents occur:

(1) Theft/loss of permit.

(2) Theft/loss of radio receiving set.

(m) There will be a ten dollar replacement fee if the permittee alters, laminates, mutilates, or loses his permit. This fee must be in the form of money order made payable to the NYC Police Department. To replace his permit, the permittee must call for an appointment - (212) 374-5537 (after he has made other appropriate notifications and reports). When the permittee appears for a replacement permit, he must bring the items listed below with him:

(1) A current photo (see photo instructions).

(2) His current employee identification card.

(3) His current working press card, if applicable.

(4) The complaint report number, if applicable.

(5) If his permit was laminated or mutilated, he must also bring the remnants of the permit with him.

(6) If the permittee has sold/replaced the vehicle or the receiving set, or if he requires a change on his permit for another reason, he will be required to remit a replacement fee and to follow the procedures delineated above. When the

permittee calls for an appointment, he should make sure that he explains the reason for the change, as he may be required to submit additional documentation.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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38 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 7 RADIO RECEIVING SET PERMITS

§7-05 Radio Receiving Set Permit Renewals.

(a) **Renewal process.** The permit must be renewed on an annual basis. It is the permittee's responsibility to ensure that he begins the renewal process at least one month prior to the expiration of his permit.

(1) To process the renewal, the permittee must contact the License Division for the renewal application form.

(2) The completed renewal application form together with appropriate fee and documents shall be forwarded to the License Division.

(3) The permittee will also be required to submit the following items with his renewal form:

(i) Two recent passport size photos.

(ii) His current employee identification card.

(iii) His current working press card, if applicable.

(iv) Current vehicle registration.

(v) Current N.Y.S. Driver's License.

(vi) Updated "Letter of Necessity" (see §7-03(a)(5)).

(4) The permittee will be reinterviewed and his vehicle reinspected by the Commanding Officer of the precinct in which his business is located. He will be contacted for an appointment. However, if he is not contacted by two weeks prior to the expiration of his permit, he must contact the License Division and inform them of this fact.

(5) The permittee will be notified by mail of when to appear to complete the renewal process.

(b) **Failure to renew.** If the permittee fails to renew his permit by its expiration date, he must have the radio receiving set removed from his vehicle (or made inoperable) and present proof of same, prior to being allowed to renew or reapply.

HISTORICAL NOTE

Section in original publication July 1, 1991.

NOTE

References within this chapter to the masculine shall be presumed to include the feminine and neuter. References to the singular shall be presumed to include the plural.

HISTORICAL NOTE

Note in original publication July 1, 1991.

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38 RCNY 8-01

RULES OF THE CITY OF NEW YORK

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CHAPTER 8 SOUND DEVICE PERMITS

§8-01 Definition.

Sound device. "Sound device" shall mean any radio or device or apparatus for the amplification of any sound from any radio, phonograph or other sound making or sound producing device, or any device or apparatus for the reproduction or amplification of the human voice.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 8-02

RULES OF THE CITY OF NEW YORK

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CHAPTER 8 SOUND DEVICE PERMITS

§8-02 Applications.

(a) An application for a permit will be made at least five days prior to date upon which the sound device or apparatus is to be used or operated, except in a case of a sudden event of great public interest where applicant was unable, through no fault of his or her own, to file the application within the required time.

(b) An application must be obtained from the precinct in which the device is to be used to the greatest extent, if more than one location is involved.

(1) Form P.D. 656-041 (Rev. 9-86-31). Sound Device Application and Permit must be completed - clearly printed or typewritten. Incomplete, incorrectly prepared, or illegible applications will not be accepted.

(2) If sound device or apparatus is to be used at more than two locations, a typewritten letter in duplicate containing locations and time scheduled at each location, will be attached to application by applicant.

(3) The application must also contain:

(i) The name, address and telephone number of the applicant.

(ii) If the application is made in behalf of a corporation, organization or association, it must be signed by an officer of the corporation, organization, or association; giving full name and title of office held.

(iii) In addition, the applicant must provide a certified copy of the articles of incorporation, or if not incorporated, a sworn list of names and resident addresses of officers of said organization will be filed with application, unless one has

already been filed with previous application and is on file at License Division.

(iv) Applicant will describe or specify in application the volume of sound intended to be used, measured by decibels or by any other efficient method for measuring sound.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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38 RCNY 8-03

RULES OF THE CITY OF NEW YORK

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CHAPTER 8 SOUND DEVICE PERMITS

§8-03 Fees.

The fee for use of each sound device or apparatus is five dollars for each day, regardless of number of locations specified in application. No fee is required for a permit issued to any agency of the United States Government, State or City of New York. The fee will be required upon approval of application and be paid to the precinct of application.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 8-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 8 SOUND DEVICE PERMITS

§8-04 Approval/Disapproval Procedures.

(a) The permittee will be notified by the precinct if his application for a permit is approved. If the permit is approved the permittee will be directed to pay the fee and to pick up the permit on the morning of the event. The permittee will be given a receipt for his application fee.

(b) If his application is disapproved, the applicant will be notified. If his application is disapproved because it is for a prohibited location, or to prevent an overlapping of permits, the applicant may be offered an alternate location in the vicinity, if available.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 8-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 8 SOUND DEVICE PERMITS

§8-05 Permit Conditions.

Sound device permits are issued under the following conditions:

(a) Permit automatically expires upon termination of occasion for which it was issued and should be returned, if possible, to Commanding Officer of precinct where it was issued, for forwarding to License Division for cancellation.

(b) A permit to operate a sound device or apparatus is valid only at the location and dates designated and during the hours specified on said permit.

(c) A sound device or apparatus will be so operated as not to unnecessarily interfere with the peace and comfort of residents at or near location.

(d) A sound device or apparatus may not be used in any vehicle or other device, while it is in transit.

(e) A sound device or apparatus may not be used between the hours of 10 p.m. and 9 a.m.

(f) The permit is revocable at any time.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 8-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 8 SOUND DEVICE PERMITS

§8-06 Prohibitions.

A sound device permit will not be issued for:

(a) Any location within 500 feet of a school, courthouse or church during hours of school, court or worship, or within 500 feet of a hospital or similar institution;

(b) Any location where the Department, upon investigation, determines that conditions of vehicular or pedestrian traffic, or both, are such that use of such a device or apparatus will constitute a threat to the safety of pedestrians or vehicle operators;

(c) Any location where the Department, upon investigation, determines that conditions of overcrowding or street repair, or other physical conditions are such that use of a sound device or apparatus will deprive the public of the right to safe, comfortable, convenient and peaceful enjoyment of any public street, park or place, or constitute a threat to the safety of pedestrians or vehicle operators;

(d) Use in any vehicle or other device while it is in transit;

(e) Between the hours of 10 p.m. to 9 a.m.

(f) A permit to use a sound device or apparatus for commercial or business advertising purposes.

Note: These Regulations do not apply to use or operation of any sound device or apparatus by any church or synagogue on or within its own premises in connection with religious rites or ceremonies.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 9-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 9 GOOD CONDUCT CERTIFICATION

§9-01 Instructions for Obtaining a Good Conduct Certificate.

An applicant for a Good Conduct Certificate who is a New York City resident must apply in person at the Public Inquiry & Request Section, located at One Police Plaza, New York, New York, Room 152-A, Monday through Friday, from 9 a.m. to 4:30 p.m.

An applicant will be fingerprinted only at the Public Inquiry & Request Section and will be required to present a thirty ($30.00) dollar Money Order or Certified Check payable to the New York City Police Department. Processing takes approximately ten working days.

HISTORICAL NOTE

Section in original publication July 1, 1991.

38 RCNY 9-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 9 GOOD CONDUCT CERTIFICATION

§9-02 Additional Instructions.

(a) **United States Citizens.** A United States citizen is required to bring a letter from the Consulate or requesting source i.e., Adoption Agency, State Liquor Authority, etc. and the following as proof of citizenship:

(1) Birth certificate or

(2) Voter's Registration Card or

(3) Passport

(b) **Non-citizens.** A Non-citizen is required to bring the following when making application:

(1) Passport or

(2) Letter from the Department of Immigration and Naturalization Service indicating applicant's name, address and current status in this Country or

(3) Letter from a Consulate which contains applicant's physical description and date of birth.

(c) **Former New York City Residents.** To obtain a Good Conduct Certificate for someone residing outside New York City, who was formerly a New York City resident, the following must be sent or delivered to the Public Inquiry & Request Section, One Police Plaza, New York, New York 10038-1497, Room 152-A:

(1) An official fingerprint chart bearing applicant's fingerprints from the location where the applicant resides. The chart must contain the signature of the official who fingerprinted the applicant and the date the applicant was fingerprinted.

(2) Thirty ($30.00) dollar Money Order or Certified Check, payable to the New York City Police Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

38 RCNY 10-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-01 Notice of Violation.

The owner or managing agent of a building, erection or place shall be given written notice of arrests occurring thereat for offenses which constitute a public nuisance as defined in §10-155, Administrative Code of the City of New York. The notice shall set forth the section of law violated, the date of violation, the address and location therein at which the violation occurred, and the court, county and docket number pertaining thereto. The notice shall further state that in the event that such arrests and/or future arrests result in two or more convictions for such public nuisance violations within a twelve month period, proceedings to close the building, erection or place may be commenced.

HISTORICAL NOTE

Section amended City Record Apr. 10, 1992 eff. May 10, 1992.

Section in original publication July 1, 1991.

38 RCNY 10-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-02 Commencement of Proceedings.

All Public Nuisance hearings shall be commenced by service of a Notice of Hearing on the owner, lessor, lessee and mortgagee (hereinafter called "respondent(s)") of a building, erection or place wherein the public nuisance is being conducted, maintained or permitted.

(a) **Service.** (1) Service of a Notice of Hearing may be made to owners and lessors by delivering such notice to the owner or lessor or to an agent of the owner or lessor or to a person of suitable age and discretion at the residence or place of business of the owner or lessor or, if upon reasonable application such delivery cannot be completed, by affixing such notice in a conspicuous place at the owner's or lessor's place of business or residence or by placing it under the entrance door at either of such locations or by delivering such notice to a person employed by the owner or lessor on the premises at which the nuisance is located and, in all instances except personal delivery upon such owner or lessor by mailing the Notice of Hearing as follows:

(i) to the person registered with the Department of Housing Preservation and Development as the owner or agent of the premises, at the address filed with such department in compliance with Article two of Subchapter four of Chapter two of Title twenty-seven of the Administrative Code; or

(ii) to the person designated as owner of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the Department of Finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the Department of Finance from real property transfer forms filed with the city register upon the sale or transfer of real property; or

(iii) to the person in whose name the real estate affected by the order of the Police Commissioner or such Commissioner's designee is recorded in the office of the City Register or the County Clerk, as the case may be.

(2) service of a Notice of Hearing may be made to an owner or lessor which is a corporation pursuant to section three hundred six of the Business Corporation Law.

(3) service of a Notice of Hearing may be made to lessees (i) by delivering such notice to the lessee or to a person employed by the lessee on the premises at which the nuisance is located; or (ii) by affixing such notice in a conspicuous place to the premises at which the nuisance is located or placing a copy under the entrance door of such premises and mailing a copy of such notice to the lessee at such premises.

(4) service of a Notice of Hearing may be made to mortgagees by mailing such notice to the mortgagee at the last known residence or place of business or employment of the mortgagee.

(5) proof of service pursuant to subparagraphs (a), (b), (c) and (d) of this paragraph shall be filed with the Commissioner or the Commissioner's designee.

(b) **Notice of Hearing.** A Notice of Hearing shall contain the name and address of the owner, lessor, lessee and mortgagee, the address of the building, erection or place where the public nuisance is being conducted, and a scheduled time and place for the hearing. The Notice shall cite the subsection of §10-155 being violated and contain a short and plain statement of the violation. It shall also list the dates of arrest and dates of the prior criminal convictions and cite the specific section of the law upon which they were predicated. The Notice shall also indicate the possible penalties and sanctions for violation and a warning that failure to appear may result in an order closing the building, erection or place. The Notice shall also include a statement that the respondent has a right to be represented by counsel.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) repealed and added City Record Apr. 10, 1992 eff. May 10, 1992.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-03 Hearing Officials.

(a) **Public hearing.** Hearings are generally open to the public except that if good cause is shown by either party, the Hearing Officer may exclude the public from a particular hearing or portion of a hearing.

(b) **Presiding officer.** The hearing shall be presided over by an employee of the New York City Police Department who shall be known as the Hearing Officer. The Hearing Officer serves both as impartial examiner and impartial judge and has the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of the proceedings, and to maintain order. Hearing Officers shall be assigned solely to adjudicative and related duties. It is the duty of each Hearing Officer to inquire fully into all matters in issue and to obtain a full and complete record which shall constitute a recommendation to the Commissioner. The Commissioner shall make the final decision. The Hearing Officer has all powers necessary to this end, including:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and to receive evidence;

(3) To regulate the course of hearings and the conduct of the parties and their counsel; (4) To hold conferences, both on and off the record, for settlements, simplification of issues, or any other proper purpose.

(c) **Trial attorney.** An individual designated by the Police Commissioner shall present the evidence supporting the existence of a public nuisance.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record Apr. 10, 1992 eff. May 10, 1992.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-04 Proceedings Upon Default.

(a) **Inquest.** Upon the respondent's failure to appear at the hearing or any adjournment thereof, respondent may be deemed to have pleaded "no contest" and an order closing the building, erection or place may be issued. In such event, a closing order shall not be issued unless the Hearing Officer is satisfied that a Notice of Hearing was duly served and that the evidence offered in support of the closing constitutes a public nuisance as defined in §10-155 of the Administrative Code of the City of New York. For the purpose of making this determination, the Hearing Officer shall convene the proceeding and receive all evidence in support of the closing as prescribed herein.

(b) **Application to vacate default.** An application for a hearing and stay of a default may be made within twenty (20) days of the posting of a closing order on the affected building, erection or place, or mailing of a copy of the Hearing Officer's decision, whichever is later. Such application is to be made to the License Division and shall be granted upon a showing of good cause.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-05 Conduct of Hearings.

(a) **General provisions.** The Hearing Officer shall rule upon matters of procedure and introduction of evidence and shall conduct the hearing in such manner as will best serve the attainment of justice.

(1) Any person who is entitled to notice pursuant to these Regulations may appear and be heard in person or by a duly appointed representative and may produce, under oath, evidence relevant and material to the matter under consideration.

(2) Any such person may be represented by an attorney who is a member in good standing of the Bar of the State of New York.

(3) Any person desiring to subpoena a witness, document or other evidence may do so in the manner provided for in the New York Civil Practice Law and Rules. In appropriate instances the Hearing Officer can request the issuance of an administrative subpoena pursuant to §14-137 of the Administrative Code of the City of New York.

(4) **Record.** A record of all proceedings shall be made by either stenographic transcription or electronic recording device. Typewritten copies thereof may be ordered by the parties at their own cost.

(5) No ex parte communications relating to other than ministerial matters regarding a proceeding shall be received by a Hearing Officer.

(b) **Evidence/proof.** All parties have the right to call witnesses, to conduct examinations, including

cross-examination, to present evidence, and to make objections, motions and arguments.

(1) **Burden of proof.** No public nuisance may be established except upon proof by a preponderance of the credible evidence. The Trial Attorney has the burden of proof in establishing that a public nuisance exists at the cited premises, but the proponent of any factual proposition will be required to sustain the burden of proof with respect thereto.

(2) **Order of proof.** The order of proof shall be as follows:

(i) testimony by the witness or witnesses in support of the existence of a public nuisance.

(ii) cross-examination of such witnesses;

(iii) testimony by the respondent(s) or their witnesses in defense and explanation; and

(iv) cross-examination of the respondent(s) and witnesses. The Hearing Officer may, in his discretion, change the order of proof where the circumstances so warrant.

(3) **Objections to rulings of Hearing Officers.** Objections may be taken to the rulings of the Hearing Officer by stating the reasons for such objections, but will not be deemed to have been made unless duly noted in the record.

(4) (i) **Informality of rules of evidence.** The rules of evidence governing proceedings in the courts of this State shall not be rigidly enforced in hearings before the Department. Unless objection is made and duly noted in the record, all evidence appearing in the record shall be deemed to have been validly introduced.

(ii) **Cumulative evidence.** The introduction of cumulative evidence shall be avoided and the Hearing Officer may curtail the testimony of any witness which is judged to be merely cumulative.

(iii) **Reopening of hearing for presentation of new or additional evidence.** Upon due application prior to the final determination, the hearing may be reopened for the presentation of new or additional evidence. The Department may, on its own motion, reopen a hearing for the presentation of additional evidence.

(5) **Stipulations.** Parties may, by agreement, stipulate as to any facts involved in the proceedings, provided that such stipulation is duly noted in the record.

(6) **Oral arguments only before Hearing Officer.** Oral argument may be made only before the Hearing Officer. Such oral argument may be curtailed or limited in the Hearing Officer's discretion and is to be included in the record.

(c) **Motions and adjournment.** (1) **Motion to dismiss.** Motions to dismiss may be made at the option of the respondent or respondent's attorney, but are not required and will not be deemed to be necessary to protect any right of the respondent.

(2) **Applications to adjourn.** No application for adjournment of a hearing shall be granted except for good cause shown. If such adjournment is sought on the grounds that respondent's attorney is actually engaged in a court of record, an affidavit of actual engagement by such attorney must be presented.

(3) **Imposition of penalty following application to adjourn.** Upon granting any adjournment, the Hearing Officer may direct that the matter be set down peremptory against the respondent, in which event the respondent shall be notified that there shall be no further entitlement to any adjournment.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (5) added City Record Apr. 10, 1992 eff. May 10, 1992.

Subd. (c) par (3) amended City Record Apr. 10, 1992 eff. May 10, 1992.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-06 Decisions and Orders.

(a) **Hearing Officer's recommendation.** After the conclusion of the hearing, the Hearing Officer prepares a recommendation in a written report and forwards it, with all other materials necessary for reaching a decision, to the Commissioner. The report includes a statement of (1) a recommended decision which shall consist of findings (with specific references to principal supporting items in the record) and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact and law presented on the record, and (2) an appropriate recommended ruling or order. Upon request made at or before the date of the hearing, the respondent shall be given a reasonable opportunity to review the Hearing Officer's report and submit in writing any objections thereto. Respondent's objections shall be forwarded to the Commissioner with the Hearing Officer's written report.

(b) **Final order.** The Commissioner shall approve, modify or reject (1) the recommended decision and/or (2) the recommended ruling or order.

Parties are notified promptly by regular mail of the final decision and order not later than one business day subsequent to the posting described below.

Orders of the Commissioner shall be posted at the building, erection or place where the public nuisance exists. The posted order shall state that the building, erection or place has been found to be a public nuisance by the Police Commissioner and that on the fifth business day after the posting, officers of the Police Department are authorized to discontinue such activity and/or close the building, erection or place. The posted order shall include a notice that it shall be a misdemeanor for any person to use or occupy or to permit any other person to use or occupy any building, erection or place or portion thereof ordered closed by the Commissioner. The posted order shall also contain a notice that

mutilation or removal of a posted order of the Commissioner shall be punishable by a fine of not more than $250 or by imprisonment not exceeding 15 days, or both.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record Apr. 10, 1992 eff. May 10, 1992.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-07

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-07 Consent Judgments.

Any respondent wishing to settle the charges on or before the date set for a hearing may do so by entering into a consent judgment/order which shall have the effect of a decision and order. The judgment/order shall contain such terms and conditions as in the discretion of the Hearing Officer are necessary to attain the purposes of §10-155 and §10-156 of the Administrative Code of the City of New York.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-08

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-08 Vacation of Order.

Where the Commissioner issues an order closing a building, erection or place, the order may be vacated on such terms and conditions as shall satisfy the Commissioner that the nuisance shall be abated and will not be created, maintained or permitted for such period of time as the building, erection or place has been directed to be closed by the order of the Commissioner. Such terms and conditions may include but are not limited to a posting of a bond or cash security.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-09

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-09 Bond.

Any bond filed with the Department pursuant to these Regulations shall be delivered to the Hearing Officer for safekeeping until such time as its terms have been fulfilled or violated, as the case may be, or as otherwise directed by the Commissioner. In the event that the terms of the bond have been violated, such bond shall be forfeited and the proceeds thereof shall be paid into the general fund of the City.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

38 RCNY 10-10

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-10 Construction.

As used herein, terms in the singular shall include the plural.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 11-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 11 PRESS CREDENTIALS

SUBCHAPTER A PRESS CARD ISSUANCE

§11-01 Working Press Card.

The Working Press Card entitles the bearer to cross a police or fire line at emergency scenes and at locations where police or fire barriers have been set up for crowd control purposes. To be eligible to receive the Working Press Card an individual must be:

(a) A full-time employee of a news gathering organization covering spot or breaking news events on a regular basis such as robbery scenes, fires, homicides, train wrecks, bombings, plane crashes, where there are established police or fire lines at the scene. The Working Press Card enables the individual to cross such lines at these emergency scenes, and at public events of a non-emergency nature such as parades and demon- strations.

(b) Newspersons (such as freelancers), not otherwise eligible for a Working Press Card, who demonstrate a need to cover the above-described spot or breaking news events on a regular and routine basis will be eligible for a Working Press Card. Such persons will be required to submit with their application at least three (3) letters from previous media employers or one (1) letter from one (1) media employer indicating there were three (3) articles or photographs published within the twelve (12) months immediately preceding the application.

(c) Supervisory news personnel in both print and broadcast media who demonstrate a need to regularly and routinely cross police or fire lines may be issued the Working Press Card.

(d) The publisher of an established newspaper and his counterpart in broadcast news may be issued the Working Press Card if their organization covers the events specified in §11-01(a).

(e) The Working Press Card is issued annually and bears the name, photograph, and news organization, if appropriate, of the person to whom it is issued.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 11 PRESS CREDENTIALS

SUBCHAPTER A PRESS CARD ISSUANCE

§11-02 Reserve Working Press Card.

This credential is limited in number and is issued only to news organizations. It bears only the name of the news organization to which it is issued. It is designed to afford maximum flexibility to print or broadcast assignment editors and to facilitate random coverage of police and fire scenes by individuals not normally entitled to the Working Press Card. This credential is also granted by the assignment editor to a freelancer that he may be using for a particular story. When the assignment is completed, the individual is to return the credential to the assignment editor.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 11 PRESS CREDENTIALS

SUBCHAPTER A PRESS CARD ISSUANCE

§11-03 Single Event Working Press Card.

Newspersons, not otherwise eligible for a Working Press Card, may apply for a Working Press Card for a single event. If the event is a planned event and is non-emergency in nature, such as a parade, the application should be made no less than two (2) weeks before the scheduled event. If the event is not planned or is emergency in nature and time is of the essence, the application for the Working Press Card may be made by phone to the Public Information Division (374-6700). The applicant must show a demonstrated need to cover the event, e.g., evidence that a news organization is interested in using the applicant's story or pictures. An applicant for a single event Working Press Card, under §11-03, will be regarded as having established a prima facie need for such card if he or she produces a letter from a news organization evidencing that the news organization is interested in using the applicant's story or pictures.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 11-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 11 PRESS CREDENTIALS

SUBCHAPTER A PRESS CARD ISSUANCE

§11-04 Press Identification Card.

This is an official Police Department press identification card. It means that the individual named on the card is employed by a legitimate news organization, but that the individual does not normally cover spot or breaking news events such as those listed in §11-01(a). These journalists include, among others, sports writers, drama critics, fashion writers, financial reporters, music critics. This credential does not entitle the bearer to cross police or fire lines and is issued as a courtesy by the Police Department recognizing a need for official identification.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 11-11

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 11 PRESS CREDENTIALS

SUBCHAPTER B APPEAL PROCEDURES AFTER DENIAL

§11-11 Hearing.

(a) Any person who is denied any of the above-described press credentials may appeal such decision, in writing, to the Commanding Officer, Public Information Division, within ten (10) days from the date of the denial. The applicant will be notified of a hearing date.

(b) At such hearing the applicant will have the right to be represented by counsel.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 11-12

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 11 PRESS CREDENTIALS

SUBCHAPTER B APPEAL PROCEDURES AFTER DENIAL

§11-12 Review by the Deputy Commissioner, Public Information.

If, after a hearing, the decision to deny the applicant's request for a press credential is upheld, the applicant will be advised in writing. An appeal of this decision may be made, in writing, to the Deputy Commissioner, Public Information, within ten (10) days of the date contained in the "Notice of Hearing Result." Any documentation in support of the appeal should be submitted with the request to the Deputy Commissioner, Public Information.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-01 Introduction.

The Property Clerk Division has established procedures regarding the return of property when claimed by the public. The classification of the property, arrest evidence, decedent's property, found property, etc., determines the documentation the claimant must provide in order to gain possession. In all cases, in addition to the necessary documentation, proper identification of the claimant is required. This can be in the form of licenses, credit cards, passports, bankbooks and utility bills (see appendix A of this chapter). In cases where the owner of property sends another person to pick up that property, the owner must provide such person a notarized letter authorizing such person to act on the owner's behalf, to be presented to the Property Clerk Division.

Listed below in this subchapter are categories and general procedures for claimants to follow, in order to obtain property in our custody. Subchapter A of this chapter contains general provisions. Subchapter B of this chapter sets forth special procedures, which are followed by the Property Clerk and the District Attorneys with respect to claims for the return of property taken or obtained in connection with an arrest. Subchapter C of this chapter sets forth special procedures that shall be followed by the Property Clerk with respect to items of jewelry recovered in the vicinity of the World Trade Center site subsequent to the terrorist attack of September 11, 2001. The claim submission procedures contained within this subchapter will be applicable until May 31, 2005.

HISTORICAL NOTE

Section amended City Record Feb. 17, 2005 §2, eff. Mar. 19, 2005. [See Chapter 12 Subchapter C footnote]

Section amended City Record Feb. 9, 1998 §2, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-02 Arrest Evidence-Crime Victim is the Owner.

Released to owner upon presentation of a court order which directs the return of specified property on a specified voucher to a specifically named individual. In other cases, upon presentation of a letter from the Property Clerk, which is sent to identifiable owners, 90 days after the termination of criminal proceedings.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-03 Arrest Evidence-Prisoner is the Owner. [Repealed]

HISTORICAL NOTE

Section repealed City Record Feb. 9, 1998 §3, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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***** Current through December 2009 ****

38 RCNY 12-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-04 Arrest Evidence-Claimed by Prisoner and Victim. [Repealed]

HISTORICAL NOTE

Section repealed City Record Feb. 9, 1998 §3, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-05 Arrest Evidence Subject to Forfeiture. [Repealed]

HISTORICAL NOTE

Section repealed City Record Feb. 9, 1998 §3, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-06 Investigatory Evidence.

Property vouchered for investigation will require the claimant to obtain a release from the investigating officer, in writing, usually on department letterhead. (Police Department Patrol Guide, procedure 113-22.)

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

Rules of the City of New York

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38 RCNY 12-07

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-07 Decedent's Property.

Claimants must produce letters testamentary or of Administration, naming the executor of the estate, when a will is involved. If there is no will, the claimant must obtain a written release from the Public Administrator of the county in which the property is held. In either case, if assets exceed $30,000.00 or if a safe deposit box key is in the Property Clerk's custody, the claimant must obtain a notice of waiver issued by the New York State Tax Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-08

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SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-08 Safekeeping.

This category covers property casesremoved from aided and prisoner's personal property not required as evidence. The claimant generally produces the pink copy of the voucher or, if not issued, obtains the voucher number from the Precinct in which the property was taken. If the claimant is listed as the owner on the Property Clerk's copy, the property is returned immediately. If ownership cannot be determined, the claimant is referred to the vouchering command to obtain a letter identifying the claimant as the owner (in a limited number of cases the Property Clerk can do this by telephone).

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff.

Mar. 11, 1998. Subchapter A heading provided by editor.

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§12-09 Found Property-Owner Known.

Returned to owners upon demand or upon presentation of a letter of notification from Stolen Property Inquiry Section or the Property Clerk, informing them that their property has been found.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-10

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§12-10 Found Property-Finder.

When a person turns in property and the owner cannot be determined, it must be held by the Property Clerk for specific time periods as listed below:

Property having a value of less than $100.00-3 months.

Property having a value of $100.00 or more-less than $500.00-6 months.

Property having a value of $500.00 or more-less than $5,000.00-1 year.

Property having a value of $5,000.00 or more-3 years.

The Property Clerk notifies finders by mail that property is ready for release. Finder should produce pink copy of voucher and letter from Property Clerk to obtain property.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-11

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§12-11 Peddlers Property-Unlicensed General Vendor and Food Vendor.

This property is forfeited and will not be returned unless forfeiture is waived, in writing, by the Corporation Counsel. The Corporation Counsel also specifies whether any or all storage and removal fees are waived.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-12

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§12-12 Peddler's Property-Licensed General Vendor.

Property is delivered on demand-no removal and storage fees are collected. Claimant must produce pink copy of voucher and/or be listed as the owner on Property Clerk's copy.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-13

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§12-13 Peddler's Property-Licensed Food Vendor.

Deliver property on demand and collect appropriate removal and storage fees. Claimant must provide pink copy of voucher and/or be listed as the owner on Property Clerk's copy.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-14

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SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-14 Claiming Vehicle at Whitestone Auto Pound.

To claim a vehicle that is being stored at the Whitestone Auto Pound, the owner must appear at the auto pound with documents authorizing release, showing proof of ownership and proof that driver of vehicle is licensed.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-15

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§12-15 Proof of Ownership.

Present title for all vehicles 1973 and newer. For older vehicles, registration certificate is acceptable. Additional proof of identity of owner is also required, i.e., Driver's License, Employee Identification Card, etc.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-16

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§12-16 Evidence Vehicle.

If vehicle is being held as evidence, a District Attorneys release, Court Order or Court Disposition is required in addition;

If vehicle is not currently registered and/or insured this vehicle will not be driven from the pound. It must be towed by either a tow truck or tow chain by another properly registered vehicle. If vehicle is allowed to be driven from the pound a current driver's license must be produced by the person removing the vehicle.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-17

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§12-17 Owner's Representative Claiming Vehicle.

Whenever a vehicle owner sends a representative to claim his vehicle, a notarized letter of authorization must be presented in addition to all other documents that the owner is required to present.

Any towing and storage charge accrued to this vehicle must be paid in U.S. currency or certified check before vehicle will be released.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-18

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§12-18 Vehicles Being Claimed by Insurance Company.

(a) Insurance company representative present at pound need only to present identification and a notarized "Receipt for Release of Vehicle" (referred to as a 167E letter). Payment of accrued towing and storage charges, if any, is also required.

(b) Tow operators present to remove vehicle after Insurance company representative was present and signed for vehicle must have a notarized "167E letter" in name of towing company and identification for themselves.

(c) Tow operator is present and has notarized "167E letter" authorizing him as company representative, can identify self, pay any accrued charges and remove vehicle.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-19

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§12-19 Vehicles Being Claimed by Lienholder.

Lienholders must present a copy of sales agreement which was signed by owner and a notarized statement on company letterhead stating said person is in arrears in payment.

All other regulations pertaining to payment of towing and storage charges, proof of identity, District Attorney's release, Court Disposition, Court Orders and the driving or towing of vehicles from the pound are applicable for all vehicles being released.

HISTORICAL NOTE

Section in original publication July 1, 9991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-31

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CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-31 Definitions.

Arrest Evidence. The term "arrest evidence" shall mean property taken from the person or possession of an individual prior to, simultaneous with, or subsequent to an arrest because of its relation to the matter for which the person has been arrested. No property shall be deemed arrest evidence prior to the person's arrest. No property taken from a person and held by the Police Property Clerk merely for safekeeping shall be deemed arrest evidence.

Claimant. The term "claimant" shall mean the person from whose person or possession property, other than contraband, was taken or obtained, who is seeking from the police property clerk the return of such property in the police property clerk's possession or property that has been transferred by the police property clerk to the district attorney of any of the five counties of the city.

Contraband. The term "contraband" shall mean property the mere possession of which is prohibited under federal, state or local law. Property shall not be deemed to be contraband merely because it has been held as evidence or for custodial safe-keeping, or because it may be suspected or believed to be unlawfully obtained, stolen or the proceeds or instrumentality of a crime.

Days. The term "days" shall mean calendar days unless otherwise indicated.

District attorney's release. The term "district attorney's release" shall mean a statement from the appropriate district attorney's office that the subject property is no longer needed as evidence. A district attorney's release is not to be construed as a statement by the district attorney as to the possessory rights to the property of any person, including the claimant.

District attorney supervisor. The term "district attorney supervisor" shall mean an assistant district attorney with authority to review the denial of an application for a district attorney's release.

Proper identification. The term "proper identification" shall mean identification deemed acceptable and sufficient by the department of motor vehicles for the purpose of obtaining a driver's license. A list of such identification is contained in appendix A of this chapter.

Property. The term "property" shall mean and include all property, whether it is real property, personal property, money, negotiable instruments, securities, or any other thing of value or any interest in a thing of value.

Termination of criminal proceedings. The term "termination of criminal proceedings" shall mean the earliest of (i) thirty-one days following the imposition of sentence, (ii) the date of acquittal of a person arrested for an offense, (iii) where leave to file new charges or to resubmit the case to a new grand jury is required and has not been granted, thirty-one days following the dismissal of the last accusatory instrument filed in the case, or, if applicable, upon expiration of the time granted by the court or permitted by statute for filing new charges or resubmitting the case to a new grand jury, (iv) where leave to file new charges or to resubmit the case to a new grand jury is not required, thirty-one days following the dismissal of the last accusatory instrument filed in the case, or, if applicable, upon expiration of the time granted by the court or permitted by statute for filing new charges or resubmitting the case to a new grand jury, (v) six months from the issuance of an "Adjournment in Contemplation of Dismissal" order pursuant to C.P.L. §170.55, or twelve months from the issuance of such an order pursuant to C.P.L. §170.56, where the case is not restored to the court's calendar within the applicable six-month or twelve-month period, and (vi) the date when, prior to the filing of an accusatory instrument against a person arrested for an offense, the district attorney elects not to prosecute such person.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-32 Vouchering Procedures.

The police department and the district attorney, where applicable, of each of the five counties of the city have implemented the following procedures governing the taking or obtaining of non-contraband property from a person's possession at the time of arrest:

(a) The police shall make an inventory of such property and shall issue a voucher, which shall be given to the person as a receipt for items taken. The voucher shall contain the name of the person, a complete itemized list of all non-contraband property taken, and a brief description thereof.

(b) The person shall be given an opportunity to examine the voucher, and if such person finds the itemized list to be correct, such person may sign the voucher to acknowledge that it contains a complete list of property taken. Failure to sign the voucher shall not preclude a lawful claim being made for the property.

(c) The person must be informed that if he or she believes any additional non-contraband property was taken from his or her person or from his or her possession, or if he or she believes that property was erroneously vouchered to him or her, he or she may so indicate on the voucher. The arresting officer may sign the voucher indicating his or her concurrence with the list of items or any disagreement.

(d) A person is entitled to receive a voucher at the time of his or her arrest for property taken or obtained from his or her person or possession, and the other procedures set forth in these rules shall apply, regardless of whether the property has been denominated by the police department as "arrest evidence" or otherwise, and regardless of whether the arrest is prior to, simultaneous with, or subsequent to the taking or obtaining of the property.

(e) In bold letters on the back of the voucher, or on a separate sheet attached to the voucher, notice shall be given in plain English and Spanish setting forth the following procedures:

(i) The person from whose possession the property was taken should retain and safeguard the voucher;

(ii) In order to obtain the return of the property, the claimant or a representative authorized by a notarized writing to claim the property will be required to submit, in person or by mail, the voucher and proper identification to the office of the police property clerk located at a central location in each borough. The property may be disposed of by the police property clerk according to law unless the claimant demands the property no later than 120 days after the termination of criminal proceedings.

(iii) A claimant demanding the return of property other than arrest evidence does not require a district attorney's release and may make such a demand whether or not criminal proceedings have been instituted and, if instituted, whether or not such proceedings have been terminated. As used herein, "property other than arrest evidence" refers to non-contraband property taken from an arrestee merely for safekeeping or taken from the person or possession of an individual prior to, simultaneous with or subsequent to an arrest which is unrelated to the matter for which the individual was arrested. Following receipt of a demand for such property, the property clerk may return the property or otherwise proceed pursuant to the provisions of §§12-36 and 12-37 of this subchapter.

(iv) A claimant demanding the return of arrest evidence from the property clerk should obtain prior to the demand either a district attorney's release or a supervising district attorney's statement refusing to grant a release, although presentation of either or both of these documents to the property clerk is not required for making a timely demand. If demand for the property is made without a district attorney's release, or a supervising district attorney's statement, the claimant shall have 270 days from such demand to obtain a district attorney's release or a supervising district attorney's statement refusing to grant a release. If a release or statement refusing to grant a release is not provided to the property clerk within such period, the property may be disposed of according to law.

(v) If a claimant timely provides the property clerk with a district attorney's statement refusing to grant a release, the claimant must thereafter obtain a district attorney's release to obtain the return of the property.

(f) In addition to the notice provided by the police property clerk, the district attorney shall, unless prohibited by the local arraigning court, provide the notice described in subdivision e of §12-32 of this subchapter to each person from whose person or possession property was taken or obtained when those persons initially appear at arraignment. The notice also shall set forth the procedures by which a claimant may obtain a district attorney's release and the procedures by which a claimant may seek review in the event that a release is denied. It is not required that the district attorney provide a copy of the voucher at arraignment.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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38 RCNY 12-33

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SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-33 Distribution and Posting of Notices Setting Forth the Procedures to be Followed to Obtain the Return of Property.

The police department shall make available to any person requesting information about property in the possession of the police property clerk copies of the notice described in subdivision e of §12-32 of this subchapter at each station house and at each facility maintained by the property clerk. The police department shall post such notices, in no smaller than 24-point type, in the holding areas of all station houses, in all central booking facilities within the city and in each courthouse holding area within the city, that is within the control of the police department.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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38 RCNY 12-34

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SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-34 District Attorney's Release.

The district attorney of each of the five counties of the city have implemented the following procedures governing the giving of releases for property that is arrest evidence:

(a) A request for a district attorney's release may be made, in person or by mail, by the claimant or by a representative authorized by a notarized writing by the claimant.

(b) The request must be accompanied by a copy of the voucher or, if the voucher is lost or absent, an explanation for its loss or absence, proper identification and suitable case identification. In his or her discretion, the district attorney may waive any or all of these requirements.

(c) If the request for a release is accompanied by the documents specified in subdivision b hereof, the district attorney shall, if the property is no longer needed as evidence, grant a release no more than fifteen days after receipt of the request. If the property is or may be needed as evidence, the district attorney shall follow the procedures hereinafter set forth.

(d) Before the termination of criminal proceedings, the district attorney shall provide a release to a claimant upon request unless the district attorney determines that the property is or may be needed as evidence. After the termination

of criminal proceedings, the district attorney shall provide a release to a claimant upon request unless the district attorney determines that the property needs to be retained as evidence due to (i) a pending appeal; (ii) a collateral attack or notice that a collateral attack will be commenced; (iii) another specifically identified criminal proceeding or (iv) an ongoing identifiable criminal investigation. In all cases, a district attorney's determination not to provide a release to a claimant because the property is or may be needed as evidence shall be made in good faith. The district attorney's release shall be personally delivered to the claimant or mailed to the claimant at the address provided by the claimant on the form making the request for release.

(e) Whenever a release is denied to a claimant either before or following the termination of criminal proceedings, the district attorney must provide in writing the reason for the refusal no more than fifteen days after receipt of the request. The claimant also must then be informed that he or she may obtain review by a supervising assistant district attorney, who shall not be the individual who made the initial determination, which review must be provided to the claimant within ten days of the request for review. A supervising assistant district attorney's refusal to provide a claimant a release must be in writing stating the particularized reason(s) for the refusal, which reasons must be in conformity with subdivisions c and d, above. The notices provided by the district attorney shall be personally delivered to the claimant or mailed to the claimant at the address provided by the claimant on the form making the request for release.

(f) The claimant may reapply to the district attorney for a release at any time after the date of issuance of the statement upholding the denial.

(g) The district attorney may utilize standard forms, uniform throughout the five boroughs, consistent with these rules, for

(i) Claimant's request for a district attorney's release, which shall also serve as an acknowledgement of receipt;

(ii) Claimant's request for a review of a denial of a district attorney's release, a copy which shall also serve as an acknowledgement of receipt;

(iii) District attorney supervisor's statement of reasons for upholding a denial of a release; and

(iv) District attorney's release.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-35 Disposition of Property by the Police Property Clerk Where There Has Been an Arrest.

Where there has been an arrest prior to, simultaneous with, or subsequent to the taking or obtaining of the property, the property clerk shall take the following steps with regard to all vouchered property, subject to a different disposition required by other applicable federal, state or local law:

(a) Subject to the provisions of §§12-36 and 12-37, the police property clerk shall return all non-contraband property other than arrest evidence to a claimant who produces proper identification and the voucher issued to him or her for the property. The property clerk shall not require such claimant to submit a district attorney's release covering such property, and such claimant may make a demand whether or not criminal proceedings have been instituted and, if instituted, whether or not such proceedings have been terminated.

(b) Subject to the provisions of §§12-36 and 12-37, the police property clerk shall return all non-contraband arrest evidence, which is or shall hereinafter come into his or her possession or custody, upon timely demand, to a claimant who produces proper identification and who submits a written district attorney's release covering such property and the voucher issued at the time of arrest. Failure to produce the voucher shall not preclude a lawful claim being made for property, although the property clerk may require the claimant to explain the loss or absence of the voucher.

(c) A demand for the return of property shall be timely if made within 120 days after the termination of criminal

proceedings, whether or not the demand is accompanied by a district attorney's release or a statement upholding a denial of the release. A demand may be made in person or by mail by the claimant or by a representative authorized in writing to claim the property on behalf of the claimant.

(d) If a timely demand is made without a district attorney's release, the property clerk may treat such a demand as an inquiry and require a claimant to provide, within 270 days of the inquiry, the property clerk with a district attorney's release or a supervising district attorney's statement upholding the denial of the release. If the claimant fails within such 270 days to provide the property clerk with a district attorney's release or a supervising district attorney's statement upholding the denial of the release, the property clerk may dispose of the property according to law.

(e) If the claimant provides the property clerk with a district attorney's release within the time period set forth in subdivision c, the property clerk shall return the property as required by subdivision b above. If the claimant provides the property clerk with a copy of the supervising district attorney's statement upholding the denial of the release, the property clerk must retain the property and shall either (i) return the property to the claimant when the claimant thereafter provides the property clerk with a district attorney's release, or (ii) when the property clerk learns that the property is not needed as evidence, give written notice to the claimant or the claimant's representative, at his or her last known address, which may be the address of a correctional facility, that the property will be returned forthwith to that person. Property that remains unclaimed for a period of 120 days after the date of the notice specified in (ii), or the remainder of the time provided to a claimant to obtain a release under subdivision d, whichever is greater, may be disposed of by the property clerk according to law.

(f) In no event shall a claimant be required to obtain any additional documentation or evidence relating to the property or be required to submit any proof of ownership of the property other than the voucher, except if the vouchered property is a motor vehicle, then title (or a reasonable explanation for its absence) may be required.

(g) The police property clerk must provide each claimant with a written "acknowledgement of demand or inquiry," indicating the date the demand or inquiry was made and a description of the property demanded.

(h) In any situation where the property clerk has returned property to the person from whom it was taken or obtained in accordance with this subchapter, the property clerk shall not be liable to any subsequent claimant for the same property.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-36 Property Clerk Forfeiture Proceedings.

Where the property clerk has reasonable cause to believe that property was unlawfully obtained or was the proceeds or instrumentality of a crime or otherwise may be subject to forfeiture under any applicable provision of law, the property clerk may refuse to return the property and may cause a civil forfeiture proceeding or other similar civil proceeding to be initiated in accordance with the following:

(a) Such proceeding may, subject to the time limitation below, be instituted either before or after a claimant makes a demand to the property clerk for the return of the property. If such proceeding is instituted before the termination of criminal proceedings against the claimant, this subchapter shall not be construed to effect any right of a party to the forfeiture proceeding to have the forfeiture proceeding stayed for such period as the court may determine. If a timely demand is made for the return of the property before the forfeiture proceeding is instituted, such proceeding shall be brought no later than (i) in the case of arrest evidence, 25 days after the claimant provides the property clerk with a district attorney's release, and (ii) in all other cases, as a district attorney's release is not required, within 25 days after the date of demand. If such proceeding is not commenced within this time period, the property clerk shall give written notice to the claimant or the claimant's representative, at his or her last known address, which may be the address of a correctional facility, that the property will be returned forthwith to that person. Property that remains unclaimed for a period of 120 days after the date of such notice may be disposed of by the property clerk according to law.

(b) Notice of commencement of a forfeiture proceeding by the property clerk shall include a statement of the grounds upon which the property clerk seeks to justify the continued retention of the property. Any such proceeding shall provide the claimant and any other interested persons with an adequate opportunity to be heard within a reasonable period of time. In any such proceeding the property clerk shall bear the burden of proving by a preponderance of the evidence that the property clerk is legally justified to continue to retain the property.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

CASE NOTES

¶ 1. Petitioners brought an action under 42 U.S.C. §1983, alleging that the seizure of their vehicles, following their arrests for driving while intoxicated, violated their civil rights. They had all pleaded guilty to the lesser charge of driving while impaired. They alleged that as a matter of due process under the Constitution and the Administrative Code, they were entitled to "probable cause" hearings on the merits of their cases, but the court rejected that claim. In effect, this means that a person whose vehicle is seized must wait and see whether the Property Clerk starts a forfeiture proceeding within the 25 day period set forth in 38 RCNY § 12-36 . If the Property Clerk fails to do so, they get their vehicles back. If the Property Clerk brings a forfeiture action within the deadline period, the vehicle owner has a right to be heard at that time. Krimstock v. Safir, N.Y.L.J., Nov. 20, 2000, page 41, col. 1 (U.S. Dist. Ct., S.D.N.Y.).

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-37

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-37 Property Not Subject to Forfeiture but Subject to More Than One Claim.

When property is not subject to forfeiture under §12-36 of this subchapter, but is, or may be, subject to more than one claim, the police property clerk shall take the following action:

(a) Where the person from whom the property was taken makes a timely demand to the police property clerk for the return of the property, the property clerk shall return the property to the claimant unless an additional claim is made in writing or in person within 25 days of the claimant's demand, in which case the property clerk shall within five days of the date of the additional claim provide each interested person (including the original claimant) with the name and address of all such interested persons, and shall retain the property pending a disposition of the matter between the persons who claim it. If within 30 days thereafter no settlement is reached between the persons who claim it, and the police property clerk has received no court order regarding the property or any notice of any action pending between the persons who claim it regarding the property, the police property clerk shall release the property to the claimant from whom the property was taken.

(b) When acting as a stakeholder pursuant to the provisions of this section, the police property clerk will not be liable for costs, interest or damages arising out of the continued detention of such property or money. Nothing contained in this subchapter shall be deemed to either require or prohibit the police property clerk from initiating a stakeholder proceeding in accordance with the civil practice law and rules.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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38 RCNY 12-38

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-38 Investigatory Property.

Investigatory property unconnected to an arrest (as distinguished from property seized at the time of an arrest or property seized in a case in which an arrest is later made) is not within the scope of this subchapter.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-51

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER C*4 PROCEDURES RELATING TO PROPERTY RECOVERED IN THE VICINITY OF THE WORLD TRADE CENTER SITE SUBSEQUENT TO THE TERRORIST ATTACK OF SEPTEMBER 11, 2001

§12-51 Introduction.

Following the attack of September 11, 2001, the City of New York undertook extraordinary efforts to locate and preserve items of personal property recovered in the vicinity of the World Trade Center site. Property was found and vouchered at three major locations: Ground Zero itself, the Office of the Chief Medical Examiner, and a special facility at Fresh Kills landfill where police officers sorted through tons of material recovered from the disaster site. The Property Clerk has cleansed, sorted, collated, and categorized all property that came into the custody of the Police Department following the terrorist attack. The Property Clerk has conducted and continues to conduct comprehensive investigations, utilizing available technology, with the goal of determining ownership of each piece of property, regardless of the property's value.

Where the Police Department has been able to establish the ownership of specific items that were recovered, those items have been returned to their owners. Thus far, property from approximately 72% of the 26,779 vouchers containing items recovered, has been returned. Ownership of the remaining vouchered property has yet to be determined. The Police Department recognizes that, whatever the monetary value of an individual piece of property may be, it may have great value to the survivors and family members of those whose lives were lost. As demonstrated by numerous requests from family members, this is particularly so as to jewelry that has been recovered. Therefore, the Police Department has committed special resources to examine and classify lost jewelry and has created a special questionnaire to assist individuals who may wish to make a claim for such items. Out of respect and concern for those who were killed and

their family members, and the survivors of the attack, the City is establishing special procedures for individuals to provide the Property Clerk with information needed to determine the ownership of unclaimed jewelry remaining in the custody of the Property Clerk.

The Police Department will also continue to process requests for the return of property other than jewelry made pursuant to the regular procedures of the Property Clerk.

Because of the volume of items and the number of possible claims, it may be some time before ownership of claimed items can be determined. In many cases, claims may be made for items that have never been recovered. In many other cases, claims may be made for items with respect to which it is not possible to make a determination of ownership. For example, it may ultimately prove virtually impossible to ascertain ownership of certain property because of its generic nature or its condition when recovered. The ultimate disposition of items which are not claimed, or of items ownership of which cannot be determined, will be decided at a future time after people have had the opportunity to file claims as provided in this subchapter.

HISTORICAL NOTE

Section added City Record Feb. 17, 2005 §1, eff. Mar. 19, 2005. [See Subchapter C footnote]

FOOTNOTES

4

[Footnote 4]: * Subchapter C added City Record Feb. 17, 2005 effective Mar. 19, 2005. Note: Statement of Basis and Purpose:

Section 10-106 of the Administrative Code of the City of New York requires that found property be turned into a police station, where it will in turn be transmitted to the Property Clerk. Section 14-140 of the Code authorizes the Property Clerk to take custody of certain types of property, including property, which is lost, and to dispose of lost property by rules enacted pursuant to General Municipal Law §250.

The Personal Property Law establishes periods of retention for found personal property in the custody of the Police Department Property Clerk. These periods have already expired with respect to all property remaining in the custody of the Police Department Property Clerk, which was recovered in the vicinity of the World Trade Center on and after September 11, 2001. Out of respect and concern for those who were killed and their family members, and the survivors of the attack, the City is establishing a special procedure to facilitate the return of unclaimed jewelry in the custody of the Property Clerk discovered in the vicinity of the World Trade Center site. The claim submission procedures will remain in effect until May 31, 2005. During this time, the Property Clerk will continue to entertain claims for other personal property recovered from the site pursuant to its regular procedures.

The procedures set forth in this rule are in addition to and are not intended to supercede any other provision of law relating to found property or to impair the right of any person, pursuant to any other provision of law, to claim such property.

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38 RCNY 12-52

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER C*4 PROCEDURES RELATING TO PROPERTY RECOVERED IN THE VICINITY OF THE WORLD TRADE CENTER SITE SUBSEQUENT TO THE TERRORIST ATTACK OF SEPTEMBER 11, 2001

§12-52 Property Covered by This Subchapter.

This subchapter applies to claims for personal property recovered in the vicinity of the World Trade Center site following the attack of September 11, 2001, and within the custody of the Property Clerk as of no later than May 30, 2002.

HISTORICAL NOTE

Section added City Record Feb. 17, 2005 §1, eff. Mar. 19, 2005. [See Subchapter C footnote]

FOOTNOTES

4

[Footnote 4]: * Subchapter C added City Record Feb. 17, 2005 effective Mar. 19, 2005. Note: Statement of Basis and Purpose:

Section 10-106 of the Administrative Code of the City of New York requires that found property be turned

into a police station, where it will in turn be transmitted to the Property Clerk. Section 14-140 of the Code authorizes the Property Clerk to take custody of certain types of property, including property, which is lost, and to dispose of lost property by rules enacted pursuant to General Municipal Law §250.

The Personal Property Law establishes periods of retention for found personal property in the custody of the Police Department Property Clerk. These periods have already expired with respect to all property remaining in the custody of the Police Department Property Clerk, which was recovered in the vicinity of the World Trade Center on and after September 11, 2001. Out of respect and concern for those who were killed and their family members, and the survivors of the attack, the City is establishing a special procedure to facilitate the return of unclaimed jewelry in the custody of the Property Clerk discovered in the vicinity of the World Trade Center site. The claim submission procedures will remain in effect until May 31, 2005. During this time, the Property Clerk will continue to entertain claims for other personal property recovered from the site pursuant to its regular procedures.

The procedures set forth in this rule are in addition to and are not intended to supercede any other provision of law relating to found property or to impair the right of any person, pursuant to any other provision of law, to claim such property.

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38 RCNY 12-53

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER C*4 PROCEDURES RELATING TO PROPERTY RECOVERED IN THE VICINITY OF THE WORLD TRADE CENTER SITE SUBSEQUENT TO THE TERRORIST ATTACK OF SEPTEMBER 11, 2001

§12-53 Time for Making Claims.

(a) All claims pursuant to this subchapter shall be submitted on or before Tuesday, May 31, 2005. If the claim is mailed, it shall be deemed to have been submitted on the date the envelope is postmarked.

(b) **Claims for jewelry.** Claims for jewelry may be submitted electronically by selecting the WTC Property Claims link of the NYPD homepage at http://www.nyc.gov/nypd and utilizing the form provided on the site. Claims for jewelry may also be made on paper forms-the NYPD's WTC Jewelry Claim Form-which may be obtained in person from any police precinct, transit district, or housing bureau facility ("PSA"); by calling (888) 622-2545; or by mail from the Property Clerk Division's Manhattan Office, located at One Police Plaza, Room S-20, New York, New York 10038. Completed paper forms shall be submitted in person or by mail to the Property Clerk Division's Manhattan Office, World Trade Center Project, located at One Police Plaza, Room S-20, New York, New York 10038.

(c) Nothing in this subchapter shall limit the rights of persons to claim property under any other provision of law.

HISTORICAL NOTE

Section added City Record Feb. 17, 2005 §1, eff. Mar. 19, 2005. [See Subchapter C footnote]

FOOTNOTES

4

[Footnote 4]: * Subchapter C added City Record Feb. 17, 2005 effective Mar. 19, 2005. Note: Statement of Basis and Purpose:

Section 10-106 of the Administrative Code of the City of New York requires that found property be turned into a police station, where it will in turn be transmitted to the Property Clerk. Section 14-140 of the Code authorizes the Property Clerk to take custody of certain types of property, including property, which is lost, and to dispose of lost property by rules enacted pursuant to General Municipal Law §250.

The Personal Property Law establishes periods of retention for found personal property in the custody of the Police Department Property Clerk. These periods have already expired with respect to all property remaining in the custody of the Police Department Property Clerk, which was recovered in the vicinity of the World Trade Center on and after September 11, 2001. Out of respect and concern for those who were killed and their family members, and the survivors of the attack, the City is establishing a special procedure to facilitate the return of unclaimed jewelry in the custody of the Property Clerk discovered in the vicinity of the World Trade Center site. The claim submission procedures will remain in effect until May 31, 2005. During this time, the Property Clerk will continue to entertain claims for other personal property recovered from the site pursuant to its regular procedures.

The procedures set forth in this rule are in addition to and are not intended to supercede any other provision of law relating to found property or to impair the right of any person, pursuant to any other provision of law, to claim such property.

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38 RCNY 12-54

RULES OF THE CITY OF NEW YORK

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CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER C*4 PROCEDURES RELATING TO PROPERTY RECOVERED IN THE VICINITY OF THE WORLD TRADE CENTER SITE SUBSEQUENT TO THE TERRORIST ATTACK OF SEPTEMBER 11, 2001

§12-54 Review of Claims.

(a) The Property Clerk shall review the claims submitted pursuant to this subchapter and may require additional information, including but not limited to evidence of identity, ownership and letters testamentary or letters of administration.

(b) The Property Clerk may retain any item of personal property for a reasonable time to allow for the review of all claims filed in a timely manner under this rule or other applicable provision of law. However, the Property Clerk will continue with its procedure of returning property where in its discretion it determines that conclusive evidence of ownership has been provided.

(c) Nothing contained in this subchapter shall be deemed to either require or prohibit the Property Clerk from initiating an interpleader action in accordance with the civil practice law and rules.

HISTORICAL NOTE

Section added City Record Feb. 17, 2005 §1, eff. Mar. 19, 2005. [See Subchapter C footnote]

FOOTNOTES

4

[Footnote 4]: * Subchapter C added City Record Feb. 17, 2005 effective Mar. 19, 2005. Note: Statement of Basis and Purpose:

Section 10-106 of the Administrative Code of the City of New York requires that found property be turned into a police station, where it will in turn be transmitted to the Property Clerk. Section 14-140 of the Code authorizes the Property Clerk to take custody of certain types of property, including property, which is lost, and to dispose of lost property by rules enacted pursuant to General Municipal Law §250.

The Personal Property Law establishes periods of retention for found personal property in the custody of the Police Department Property Clerk. These periods have already expired with respect to all property remaining in the custody of the Police Department Property Clerk, which was recovered in the vicinity of the World Trade Center on and after September 11, 2001. Out of respect and concern for those who were killed and their family members, and the survivors of the attack, the City is establishing a special procedure to facilitate the return of unclaimed jewelry in the custody of the Property Clerk discovered in the vicinity of the World Trade Center site. The claim submission procedures will remain in effect until May 31, 2005. During this time, the Property Clerk will continue to entertain claims for other personal property recovered from the site pursuant to its regular procedures.

The procedures set forth in this rule are in addition to and are not intended to supercede any other provision of law relating to found property or to impair the right of any person, pursuant to any other provision of law, to claim such property.

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38 RCNY 12 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

APPENDIX A*3 PROPER IDENTIFICATION

APPENDIX A*3 PROPER IDENTIFICATION

ONE of the following:

NEW YORK STATE PHOTO DRIVER'S LICENSE

NEW YORK STATE NON-DRIVER ID CARD;

OR TWO of the following, one with signature:

VALID PHOTO DRIVER'S LICENSE ISSUED BY:

Another U.S. State, jurisdiction, territory or possession

A Canadian Province.

U.S. PASSPORT

U.S. MILITARY PHOTO ID CARD

U.S. CITIZENSHIP OR NATURALIZATION PAPERS

IMMIGRATION AND NATURALIZATION SERVICE (INS) DOCUMENTS CONTAINING PHOTOS

Resident Alien Card (I-551)

Temporary Resident Card (I-688)

Employment Authorization Card (I-688A)

FOREIGN PASSPORT

In English or with a U.S. VISA STAMP or I-94 attached. (If not in English, a certified translation by the embassy or consulate of the issuing country OR by an approved Refugee Resettlement Agency is required.)

A MAJOR CREDIT CARD

HISTORICAL NOTE

Appendix added City Record Feb. 9, 1998 §5, eff. Mar. 11, 1998. [See T38 Chapter 12 footnote]

FOOTNOTES

3

[Footnote 3]: * Appendix A added City Record Feb. 9, 1998 §5, eff. Mar. 11, 1998. See T38 Chapter 12 Subchapter B footnote.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 13-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-01 Appointment.

(a) Pursuant to New York City Administrative Code §14-106, the Police Commissioner may appoint Special Patrolmen upon application by individuals whose employers demonstrate need for such appointment.

(b) Applications for appointment as Special Patrolman from employees, properly endorsed by the following agencies or institutions, shall be given consideration:

(1) City and state governmental agencies.

(2) Housing complexes.

(3) Hospitals, cemeteries and social welfare agencies.

(4) Educational and cultural institutions, schools, libraries, museums, etc.

(5) Financial institutions and business entities.

(6) As deemed appropriate by the Police Commissioner.

(c) Special Patrolmen are appointed in connection with special duties of employment, and such designation confers limited Peace Officer powers upon the employee pursuant to New York State Criminal Procedure Law §2.10(27). The exercise of these powers is limited to the employee's geographical area of employment and only while such employee is actually on duty. Such duties of employment may include:

(1) Issuing of summonses; or

(2) Making arrests and issuing desk appearance tickets; or

(3) Controlling crowds and maintaining order in governmental or public buildings.

(d) Special Patrolman designations shall be renewed every two years upon a showing, to the satisfaction of the Police Commissioner, of continuing fitness of the employee, continuing necessity by the employer, **i.e.,** that the duties and responsibilities of the positions require the special powers conferred by the New York City Administrative Code and New York State Criminal Procedure Law.

(e) To be eligible for appointment as a Special Patrolman, an applicant shall be of good character, as more specifically defined in these rules, cooperate in a background investigation by the License Division of the Police Department and possess the following qualifications:

(1) A citizen of the United States and resident of the City of New York unless exempted by law.

(2) Presently employed or about to be employed for the purpose of performing duties as specified in §13-01(b) above, within the City of New York for an employer approved by the Police Department. Appointments are made for the benefit of the employing agency, institution or business entity, at whose request the appointment is made, and the duration of the appointment shall be coterminous with such employment.

(3) No record of convictions for any felony or serious offense as enumerated in §265.00(17) of the New York State Penal Law. If an applicant presents a Certificate of Relief from Disabilities for a conviction as aforesaid, consideration shall be given to the circumstances of the underlying arrest, the age of the applicant when arrested, the time elapsed since the occurrence of the act which led to the arrest and conviction, and the subsequent conduct of the applicant.

(4) Be at least 21 years of age at the time of appointment.

(5) If discharged from the military service, it shall not have been dishonorably.

(6) Not possess a condition or disability which, even with reasonable accommodations, would prevent the performance of the essential functions of Special Patrolman.

(f) In addition to the above, applicants for Special Patrolman designation may be disapproved by failure to meet character requirements as disclosed by a background investigation. This determination shall be based upon a review of the circumstances of previous arrests, employment records, mental history, reports of misconduct reflecting on character as referred to above, and any other pertinent records or information.

(g) An applicant may be disapproved if a false statement is made on the application.

(h) All applicants shall be fingerprinted upon the filing of the application on forms provided by the License Division. A processing fee, required by the New York State Division of Criminal Justice Services, shall be paid at the time the applicant is fingerprinted, by a money order payable to the N.Y.S. Division of Criminal Justice Services. An application fee shall also be paid at that time, by certified check or money order made payable to the N.Y.C. Police Department. The following items of information shall be provided by applicants: Court disposition of any arrest in which Police Department records do not indicate a final determination; two color photos $1\frac{1}{2} \times 1\frac{1}{2}$ inches, front view, taken within the past thirty (30) days; certified copy of birth certificate; certified copy of DD214 and military discharge; proof of residence; if foreign born, naturalization certificate; handgun license or rifle/shotgun permit if applicable; driver's license or New York State Department of Motor Vehicles identification card. All application forms shall be typed and notarized, and co-signed by the employer's Chief of Security. The Special Patrolman Section shall be notified at least three (3) business days prior to any scheduled appointments if the applicant is unable to appear.

(i) During the pendency of the application, the applicant shall notify the License Division of any necessary correction to or modification of the information provided in the original application, or any change in her/his status or circumstances, which may be relevant to the application.

(j) An employer seeking approval to employ one or more Special Patrolmen shall be evaluated utilizing the following criteria:

(1) Demonstrated need for Special Patrolman services.

(2) Financial ability to support adequate compensation, uniform, training, and supervision expenses.

(3) Establishment of training program and sufficient management supervision.

(4) Character and reputation of employer including any criminal activity associated with employer's operations.

(5) Prior experiences with Special Patrolmen engaged by employer.

(6) Compliance with the rules and requirements of this chapter.

(k) Once an application for Special Patrolman appointment has been disapproved, or appointment once granted has been revoked, the disqualified individual shall be ineligible to file a new application for at least two (2) years, unless reinstated earlier after a suspension or revocation hearing.

(l) Each Special Patrolman shall be required to sign an acknowledgment that s/he shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to her/his appointment. The License Division shall provide the Special Patrolman with the acknowledgment statement. This acknowledgment statement shall be notarized. Failure to execute the acknowledgment statement and to have it notarized shall result in disapproval of the application.

(m) Special Patrolmen shall cooperate with all reasonable requests by the Police Department for information and assistance in matters relating to their designation.

(n) If her/his application for special patrolman appointment is disapproved the applicant shall receive a written "Notice of Application Disapproval" from the License Division indicating the reason(s) for the disapproval. If the applicant wishes to appeal the decision s/he shall submit a sworn written statement, which shall be known as an "Appeal of Application Disapproval," to the Division Head, License Division, within thirty (30) calendar days of the date on the "Notice of Application Disapproval" requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Application Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the applicant or her/his New York State licensed attorney shall not be accepted. All timely appeals shall receive a complete review of the applicant's entire file by the Division Head, License Division, who shall notify the applicant of her/his determination. The Division Head, License Division shall not consider any documentation that was not submitted during the initial background investigation. There shall be no personal interviews to discuss appeals. If the appeal of her/his disapproval is denied, the applicant shall receive a "Notice of Disapproval After Appeal" letter from the Division Head, License Division. This notice concludes the Police Department's administrative review procedure.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Although 38 RCNY 13-01(g) states that an applicant may be disapproved if a false statement is made on an application, it does not require disapproval for failure to list all arrests. Matter of Langston v. City of New York, 2008 N.Y. Misc. Lexis 706, 239 N.Y.L.J. 25 (Sup.Ct. New York Co.).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 13-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-02 Cancellations, Suspensions and Revocations.

(a) A Special Patrolman and her/his employer shall immediately notify the License Division of the Police Department, Special Patrolman Section, whenever an employee, appointed as Special Patrolman is:

(1) Arrested.

(2) Suspended from employment.

(3) Terminated from employment.

(4) Disabled or subject to a condition which prevents the Special Patrolman from being able to perform the duties of a Special Patrolman.

(5) Transferred to a position not requiring such appointment.

(6) Involved in an incident which demonstrates conduct which is contrary to the purpose of appointment as a Special Patrolman, **i.e.,** the protection of property, or the safety of specific individuals or the public at large, and to her/his continued designation as a Special Patrolman.

(b) Upon receipt of this notice from the Special Patrolman, her/his employer, or otherwise, the License Division shall immediately notify the Special Patrolman and the employer that the appointment is cancelled, suspended or revoked.

(c) A Special Patrolman and her/his employer shall immediately notify the License Division of the Police Department, Special Patrolman Section, whenever said employee changes her/his address. The failure of a Special Patrolman and/or her/his employer to report a Special Patrolman's change of address to the Special Patrolman Section may result in the immediate revocation of the appointment.

(d) The appointment of a Special Patrolman may also be cancelled, suspended or revoked by the Police Commissioner on her/his own initiative for any of the reasons enumerated in §13-02(a) above, or upon a finding that a condition exists, which would be cause for a disapproval of an application, or revocation, as aforesaid. In appropriate circumstances, the approval for an employer to participate in the Special Patrolman program may be revoked.

(e) When a cancellation, suspension or revocation is initiated by the Police Department, written notice shall be given to the employer and the employee whose designation has been cancelled, suspended or revoked, advising them of the reasons for the action taken.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Disciplinary hearing for Taxi and Limousine Commission inspector whose Special Patrolman's status had been revoked following out of state marijuana arrest was not premature. Pursuant to paragraph (b) of this section, upon notification of an arrest, the Police Department immediately notified the employee that his Special Patrolman status was revoked. The fact that respondent made an application to appeal the loss of his designation pursuant to 38 RCNY §13-03 did not render the revocation non-final. Loss of designation resulted in termination from position. **Taxi and Limousine Comm'n v. Glenn,** OATH Index No. 1052/98 (Mar. 30, 1998).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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***** Current through December 2009 ****

38 RCNY 13-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-03 Appeal from Written Notice of Determination of Suspension or Revocation.

(a) An employer or suspended/former Special Patrolman may within thirty (30) calendar days from the date of the Notice of Determination Letter notifying the employer or Special Patrolman of suspension or revocation make a written request for a hearing to the Commanding Officer, License Division, One Police Plaza, Room 110A, New York, New York 10038.

(b) A Special Patrolman whose arrest or summons resulted in suspension or revocation of her/his appointment may only submit a written request for a hearing within thirty (30) calendar days after the termination of the criminal action, as defined in New York State Criminal Procedure Law §1.20(16)(c). If the suspension or revocation resulted from the Special Patrolman becoming the subject of an order of protection or a temporary order of protection, the Special Patrolman may only submit a written request for a hearing within thirty (30) calendar days after the expiration or voiding of the order of protection or temporary order of protection. If the suspension or revocation was related to both a criminal action and an order of protection or temporary order of protection, then the later of the two waiting periods shall apply.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section amended City Record Apr. 12, 1993 eff. May 12, 1993.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Disciplinary hearing for Taxi and Limousine Commission inspector whose Special Patrolman's status had been revoked following out of state marijuana arrest was not premature. Pursuant to section 13-02, upon receipt of the notice that the inspector had been arrested, the Police Department immediately notified the employee that his Special Patrolman status was revoked. The fact that respondent made an application to appeal the loss of his designation pursuant to this section did not render the revocation non-final. Loss of designation resulted in termination from position. **Taxi and Limousine Comm'n v. Glenn,** OATH Index No. 1052/98 (Mar. 30, 1998).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

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38 RCNY 13-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-04 Uniform and Equipment.

(a) The shield of a Special Patrolman shall be of a design and color approved by the Police Commissioner. The Special Patrolman's uniform shall be prescribed by the employer, shall not resemble in any way the uniform of a New York City Police Officer, and shall be worn at all times while the Special Patrolman is on duty unless the Special Patrolman's identification card authorizes the wearing of civilian clothes or s/he is otherwise excused by the Police Commissioner. A Special Patrolman shall not wear her/his uniform while off-duty. (New York City Administrative Code §14-107.)

(b) When appointed, a Special Patrolman shall be provided with a shield and identification card. To insure the return of the shield, a $25 deposit shall be required for each shield issued. The deposit shall be refunded upon the return of the shield. The theft or loss of a shield or identification card shall be reported without delay to the precinct of occurrence and in writing to the License Division.

(c) Identification cards bearing the raised seal of the License Division, including an expiration date, shall be issued to Special Patrolmen who are in compliance with all applicable standards.

(d) Upon the death, resignation, termination of employment, cancellation, suspension or revocation of the appointment of a Special Patrolman, the employer shall cause the Special Patrolman's shield, identification card and pistol or revolver, if any, to be delivered to Police Department custody immediately, if this has not already been done.

(e) If handguns are required, applications for a handgun license authorizing the possession of a handgun in connection with Special Patrolman duties should be made to the License Division's Handgun License Application

Section. A determination shall be made as to whether sufficient need exists for approval. It is a crime for a Special Patrolman to possess a handgun without having a valid handgun license therefor, and grounds for revocation of the Special Patrolman designation.

(f) If handcuffs are required, Special Patrolmen are restricted to possession while on duty or while traveling to and from their assigned place of duty. Unlawful possession of handcuffs is a criminal violation (New York City Administrative Code §10-147(b)).

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 13-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-05 Conduct.

(a) It is a crime for a Special Patrolman to represent her/himself as a Police Officer (§190.25 of the New York State Penal Law).

(b) Unlawful use and possession of a police uniform, shields or emblems, as prescribed by §14-107 of the New York City Administrative Code, shall be cause for revocation of a Special Patrolman designation.

(c) A Special Patrolman shall be subject to the orders and regulations of the Police Commissioner, and shall cooperate in the performance of duty with members of the Police Department.

(d) Upon making an arrest, a Special Patrolman shall, without delay, bring the prisoner before the Desk Officer at the precinct in which the arrest is made, or directly to the Central Booking facility as appropriate.

(e) A Special Patrolman employed by a city or state governmental agency other than the New York City Police Department, which has a formalized procedure for the issuing, recording, and forwarding of summonses for personnel of the agency concerned, shall comply with the regulations of that agency. Any other Special Patrolman who serves a summons shall deliver the necessary papers to the Desk Officer of the precinct in which it was served, without delay.

(f) A Special Patrolman shall promptly notify the Special Patrolman Section of a change in residence, telephone number or employment status.

(g) If a Special Patrolman is arrested, s/he shall immediately notify her/his employer and the Special Patrolman

Section of that occurrence.

(h) Non-compliance with any provision of these rules by a Special Patrolman may result in suspension or revocation of her/his designation. Non-compliance with any of these rules by an employer may result in revocation of its approval to participate in the Special Patrolman program.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 13-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-06 Training.

(a) Persons appointed as Special Patrolmen by the Police Commissioner are mandated to have received training pursuant to New York State Criminal Procedure Law §2.30(1), within 12 months of their designation. Employers are solely responsible for providing such training.

(b) Employers of Special Patrolmen shall be responsible for certifying to the Division Head, License Division that their designated personnel have completed the required training and shall submit copies of completion certificates to the License Division within 30 days of such training.

(c) Non-compliance with these mandated training provisions by employers or their designated Special Patrolmen shall be cause for revocation of their designations and revocation of approval for the employer to participate in the Special Patrolman program.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 13-07

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-07 Required Reports.

(a) Agencies, institutions, et al., employing persons appointed as Special Patrolmen are solely responsible for compliance with mandatory reporting requirements as established by the New York State Division of Criminal Justice Services. Tel: (518) 457-6101.

(b) Failure to comply with New York State Division of Criminal Justice Services mandated reporting requirements may be grounds for removal from the Special Patrolman program.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

NOTE

References within this chapter to the masculine shall be presumed to include the feminine and neuter. References to the singular shall be presumed to include the plural.

HISTORICAL NOTE

Note added City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 14-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 14 FEES

§14-01 Vehicle Accident Photograph Request.

The fee for provision of authorized persons with motor vehicle accident photographs shall be fifteen dollars ($15) for each set of photographs requested.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 14-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 14 FEES

§14-02 Vehicles or Boats in Police Custody.

(a) **Definition.** Vehicle or boat in police custody. A motor vehicle or boat abandoned, involved in an accident, or an unoccupied boat found adrift which has been taken to a department facility. (Does not include motor vehicles or boats impounded as evidence.)

(b) **Collection of fees.** When the owner or person lawfully entitled to possession appears at a Police Department facility to claim a vehicle or boat; the following fees will be collected:

(1) A fee of $25.00 if department tow or launch removes a vehicle or boat in police custody.

(2) A storage fee of $5.00 per day or part of day for an abandoned vehicle or boat or a vehicle or boat involved in accident. (No storage fee will be imposed for the day a vehicle or boat is delivered to a department facility.)

(3) A $5.00 charge per day or part of day commencing three (3) days after notice to owner by registered mail for an unoccupied boat found adrift or a stolen vehicle or boat.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 14-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 14 FEES

§14-03 Removal and Storage Fees for Licensed Vendors Equipment and Goods.

When the owner or person lawfully entitled to possession of a peddler's vehicle, cart, stand or goods appears at a Police Department facility to claim property, the following fees shall be collected:

(a)(1) Vehicle, cart, stand removed by Department vehicle-$65.00

(2) Vehicle, cart, stand not removed by Department vehicle-$20.00

(3) Goods taken into custody with vendor's vehicle, cart, stand-$10.00

(4) Goods only seized-$20.00.

(b) If goods/food and vehicle, carts, stand, etc., are stored separately, a separate storage fee will be charged for each: a storage fee of $5.00 per day or part of day.

(c) Storage fee will not be imposed for the day the vehicle, cart, stand or goods/food are initially delivered to the station house.

(d) **Return of seized property.** (1) A vehicle, cart, stand, or goods will not be released to an owner or his representative who alleges it was stolen and refuses to pay removal/storage charges.

(2) The seized property of a licensed general vendor will be returned upon demand and without the payment of any fee, when the vendor produces a valid general vendors license. An appropriate entry will be made in the "Remarks"

section of the Property Clerk's Invoice.

(e) **Retention of seized property.** Pushcarts, stands, and/or merchandise removed from an unlicensed peddler will not be returned to the claimant upon payment of removal and storage fees, but will become the subject of forfeiture proceedings per Patrol Guide procedure 113-41, "Unlicensed Peddler Forfeiture Program."

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 14-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 14 FEES

§14-04 Fees For Non-Criminal Fingerprinting.

When a person requests a member of the Department to take his or her fingerprints for purposes not related to criminal proceedings, the following fees shall be collected:

(a) Fifteen ($15.00) dollars for first set of fingerprints.

(b) One ($1.00) dollar for each additional set of prints taken at the time the first set of fingerprints is taken.

(c) The above fees shall be tendered at the time of fingerprinting by Money Order or Certified Check made payable to the New York City Police Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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38 RCNY 15-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 15 ADJUDICATIONS

SUBCHAPTER A DISCIPLINARY PROCEEDINGS AGAINST CIVILIAN AND UNIFORM MEMBERS BEFORE THE DEPUTY COMMISSIONER OF TRIALS*1

§15-01 Definitions.

Advocate. "Advocate" shall mean the Department Advocate or Assistant Advocates of the New York City Police Department.

Charges and Specifications. "Charges and Specifications" shall mean a written accusation or accusations of misconduct against a civilian or uniform member of the Department, specifying the activity or conduct at issue, along with the date, time and place of occurrence.

Department. "Department" shall mean the New York City Police Department.

Deputy Commissioner of Trials. "Deputy Commissioner of Trials" shall mean the Deputy Commissioner or Assistant Deputy Commissioners in charge of New York City Police Department disciplinary hearings.

Respondent. "Respondent" shall mean a uniform or civilian member of the Department against whom Charges and Specifications have been preferred.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

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38 RCNY 15-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 15 ADJUDICATIONS

SUBCHAPTER A DISCIPLINARY PROCEEDINGS AGAINST CIVILIAN AND UNIFORM MEMBERS BEFORE THE DEPUTY COMMISSIONER OF TRIALS*1

§15-02 Jurisdiction.

The Deputy Commissioner of Trials shall have jurisdiction over disciplinary matters adjudicated by the Department except as provided in subchapter B of this chapter. This jurisdiction shall include the authority to render any ruling or order necessary and appropriate for the efficient adjudication of disciplinary proceedings instituted against civilian and uniform members of the Department.

(a) **Applicability.** These Rules shall apply to the conduct of all proceedings heard before the Deputy Commissioner of Trials including pre-hearing, hearing and post-hearing proceedings.

(b) **Construction, Modification and Waiver.** These Rules shall be liberally construed in order to promote just and efficient adjudication of disciplinary proceedings. Upon notice to all parties, the Deputy Commissioner of Trials shall have the authority to modify or waive these Rules where no undue hardship or prejudice to any party shall result from such modification.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Open par amended City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

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38 RCNY 15-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 15 ADJUDICATIONS

SUBCHAPTER A DISCIPLINARY PROCEEDINGS AGAINST CIVILIAN AND UNIFORM MEMBERS BEFORE THE DEPUTY COMMISSIONER OF TRIALS*1

§15-03 Pre-Hearing Proceeding.

(a) **Charges and Specifications.** Charges and specifications shall be served upon the respondent and shall include a brief statement of the disciplinary matters to be adjudicated, including the activity, behavior or incident which is the subject of the disciplinary action and, where appropriate, the date, time and place of occurrence. Additionally, the Charges and Specifications shall identify the contract provision, law, policy, regulation or rule that was allegedly violated. Charges and Specifications may be amended upon notice to all parties.

(b) **Service of Charges and Specifications.** (1) The Department shall be responsible for serving the respondent with Charges and Specifications. The Charges and Specifications shall be accompanied by notice of the respondent's right to reply and the time limits within which to do so pursuant to subdivision (c) of this section, and the requirement that the individual representing the respondent shall file a Notice of Appearance with the Deputy Commissioner of Trials, prior to engaging in any act of representation.

(2) Service of the Charges and Specifications shall be made pursuant to statute, rule, contract, or other provision of law applicable to the proceeding being initiated. Absent any such applicable law, service of the Charges and Specifications shall be made in a manner reasonably calculated to achieve actual notice to the respondent. Service by certified mail, return receipt requested, contemporaneously with service by regular first-class mail, to the respondent's last address known to the Department, shall be presumed to be reasonably calculated to achieve actual notice.

Appropriate proof of service shall be required.

(c) **Response to Charges and Specifications.** If Charges and Specifications are served personally, the respondent shall have the opportunity to reply to them within eight days of service. If Charges and Specifications are served by mail, the respondent shall have the opportunity to reply to them within thirteen days of their mailing date. Upon good cause shown, the Deputy Commissioner of Trials may fix different time periods within which to reply.

(d) **Notice of Scheduling Conference or Hearing.** (1) The Department shall serve the respondent with notice of the date, time and place of the Scheduling Conference or Hearing. The Scheduling Conference shall be conducted for purposes of setting a timetable within which to proceed with the Hearing. A Hearing shall be afforded to the respondent within a reasonable time. A Notice of Hearing shall contain a statement of the authority and jurisdiction under which the Hearing is being conducted, notice of the respondent's right to be represented by an attorney or other representative, the require- ment that the respondent's representative file a Notice of Appearance with the Deputy Commissioner of Trials prior to engaging in any act of representation and notice that failure of the respondent or the respondent's representative to appear may result in an adverse decision and waiver of the right to a Hearing or other disposition as against the respondent.

(2) The Notice of Hearing or Scheduling Conference shall be served personally or by mail. Appropriate proof of service shall be required. If the respondent is served personally, there shall be at least eight days notice provided. If respondent is served by mail at least thirteen days notice shall be provided, from the time of mailing. The Deputy Commissioner of Trials may modify these time periods.

(e) **Adjournments.** (1) Hearing dates are firm commitments and will not be adjourned absent extraordinary circumstances. Scheduling Conferences and Hearings will begin promptly at 10 a.m. and continue until 5 p.m., if necessary. All Hearings shall be continued on consecutive days until concluded absent special circumstances. Where appropriate, Hearings may be conducted on weekends and holidays.

(2) Applications for adjournments shall be made to the Deputy Commissioner of Trials upon sufficient notice to other parties. Adjournments will be granted or denied by the Deputy Commissioner of Trials upon good cause shown. The Deputy Commissioner of Trials shall have authority to set an adjourned date. If an adjournment is granted, and it is not noted on the record, the requesting party shall confirm the adjournment, in writing, with other interested parties.

(3) A party requesting an adjournment because of a conflicting engagement shall file an Affirmation of Actual Engagement with the Deputy Commissioner of Trials, prior to a ruling sought on that basis. A copy of such Affirmation shall be served on the adverse party. The Affirmation shall state the name and nature of the conflicting matter, the court or tribunal hearing the matter, the judge before whom it is scheduled, the date when the conflicting engagement became known to counsel, and the date, time, place and approximate duration of the other engagement.

(4) The Deputy Commissioner of Trials may determine that a case will proceed on an expedited basis and direct shortened pre-trial and post-trial proceedings including expedited notice periods and calendaring.

(f) **Discovery.** (1) Informal discovery and the exchange of information is encouraged. Department disciplinary proceedings are not bound by formal discovery techniques or rules of civil procedure. Requests for production of relevant documents, identification of trial witnesses and inspection of real evidence to be introduced at the Hearing may be directed between the parties without leave of the Deputy Commissioner of Trials. Privileged and confidential matters shall not be subject to disclosure.

(2) Any discovery dispute shall be presented to the Deputy Commissioner of Trials sufficiently in advance of the Hearing to allow for a timely determination. Discovery motions are subject to the discretion of the Deputy Commissioner of Trials. The timeliness of discovery requests and responses, and of discovery related motions, the complexity of the case, the need for the requested discovery, and the relative resources of the parties will be among the factors within the Deputy Commissioner of Trial's exercise of discretion.

(g) **Pre-Hearing motions.** Pre-Hearing motions and other preliminary matters shall be consolidated and addressed to the Deputy Commissioner of Trials as promptly as possible and sufficiently in advance of the Hearing to permit the rendering of a timely decision.

HISTORICAL NOTE

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. Requests for subpoenas of records in other cases involving sex harassment by the same complainant should have been presented to Deputy Commissioner of Trials. The claimant should have exhausted administrative remedies before proceeding to court. Irizarry v. New York City Police Dept., 688 N.Y.S.2d 541 (App.Div. 1st Dept. 1999).

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

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38 RCNY 15-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 15 ADJUDICATIONS

SUBCHAPTER A DISCIPLINARY PROCEEDINGS AGAINST CIVILIAN AND UNIFORM MEMBERS BEFORE THE DEPUTY COMMISSIONER OF TRIALS*1

§15-04 Hearings.

(a) **Consolidation and severance of Hearings.** In the furtherance of justice, efficiency or convenience, all or portions of separate cases may be consolidated for Hearing. Additionally, portions of a single case may be severed for separate Hearing. Cases may be consolidated or severed at the discretion of the Deputy Commissioner of Trials.

(b) **Witnesses and documents.** Attorneys for parties to the proceedings shall have the right to subpoena witnesses. Pro Se parties shall have the right to request that the Deputy Commissioner of Trials issue a subpoena on their behalf. The parties are responsible for having their witnesses available on the Hearing date. Parties intending to introduce documents into evidence shall provide sufficient copies to the Deputy Commissioner of Trials and other parties.

(c) **Interpreters.** A party in need of an interpreter at a Scheduling Conference or Hearing shall advise the Deputy Commissioner of Trials of such need as soon as possible. The Deputy Commissioner of Trials may, within discretion, accept as an interpreter any person who can provide a fair and accurate translation.

(d) **Failure to appear.** If the respondent fails to appear at the Hearing personally or by authorized representative, without good cause, the Deputy Commissioner of Trials may conduct a Hearing in the respondent's absence. If the respondent does not appear, the Deputy Commissioner of Trials shall determine whether to hold an Inquest Hearing or proceed upon written submissions of the parties. Additionally, the Deputy Commissioner of Trials may determine that

no further proceedings shall be necessary.

(e) **Hearing evidence.** (1) Compliance with the technical rules of evidence shall not be required. Hearsay shall be admissible and may form the sole basis for making findings of fact, when consistent with existing law. Additionally, principles of civil practice and the rules of evidence may be applied, where necessary, to insure an orderly proceeding, an accurate record and to aid in the formulation of Findings of Fact. Hearing sequence may be altered by the Deputy Commissioner of Trials for the convenience of the attorneys, parties, witnesses and Deputy Commissioner of Trials. Substantial prejudice shall not result to any party as a result of change in Hearing sequence. Findings of Fact shall be made exclusively on the record as a whole.

(2) The Deputy Commissioner of Trials may limit examination, the presentation of testimonial, documentary or other evidence, and submission of rebuttal evidence. Objections to evidence offered or to other matters will be noted in the transcript. Exceptions need not be taken to rulings made over objections. The Deputy Commissioner of Trials may call or question witnesses directly.

(3) Parties shall be entitled to make opening statements. Closing statements may be made orally or in writing at the discretion of the Deputy Commissioner of Trials. On motion of the Deputy Commissioner or the parties, the Deputy Commissioner of Trials may permit written post-hearing submissions including legal briefs, proposed findings of fact, conclusions of law or any other relevant documents.

(4) Except for ministerial matters, and except on consent, or in an emergency, communications with the Deputy Commissioner of Trials concerning a case shall only occur with all parties present. If the Deputy Commissioner of Trials receives an "ex parte" communication concerning the merits of a case to which he or she is assigned, then he or she shall promptly disclose the communication by placing it on the record, in detail, including all written and oral communications and identifying all individuals with whom he or she has communicated. A party desiring to rebut the "ex parte" communication shall be allowed to do so upon request.

(f) **Official notice.** The Deputy Commissioner of Trials may take official notice of any fact which may be judicially noticed by the courts of New York State. Notice may be taken before or after submission of a case for decision on request of a party or "sua sponte".

(g) **Public access to hearings.** Hearings shall be open to the public unless the Deputy Commissioner of Trials finds a legally recognizable ground for closure of all or a portion of the Hearing. The Deputy Commissioner of Trials may also exclude witnesses from the Hearing room during proceedings other than their own testimony.

(h) **Disposition by settlement.** Unless precluded by law, informal disposition may be made of any matter which is the subject of an adjudication by methods of alternative dispute resolution, stipulation, agreed settlement, or consent order.

(i) **Transcripts.** Hearings shall be stenographically recorded. A copy of the transcript or record, or any part thereof, shall be made available to any party to the Hearing for a reasonable cost upon request.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

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38 RCNY 15-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 15 ADJUDICATIONS

SUBCHAPTER A DISCIPLINARY PROCEEDINGS AGAINST CIVILIAN AND UNIFORM MEMBERS BEFORE THE DEPUTY COMMISSIONER OF TRIALS*1

§15-05 Rules of Conduct.

(a) **Conduct.** Individuals appearing before the Deputy Commissioner of Trials shall conduct themselves in a dignified and orderly manner at all times. Disruptive conduct, including failure to comply with the orders and directives of the Deputy Commissioner of Trials, will not be tolerated. The Deputy Commissioner of Trials may bar a disruptive individual from the proceedings.

(b) **Withdrawal and substitution of representatives.** A representative who has filed a Notice of Appearance, in accordance with paragraph (1) of subdivision (d) of §15-03, may not withdraw from representation of a party without the permission of the Deputy Commissioner of Trials. Withdrawal shall be granted upon sufficient showing of good cause and, where an attorney is the respondent's representative, consistent with the Code of Professional Responsibility.

(c) **Hearing Officers.** The Deputy Commissioner of Trials and Assistant Deputy Commissioners shall be assigned solely to adjudicative and related duties.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

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38 RCNY 15-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 15 ADJUDICATIONS

SUBCHAPTER A DISCIPLINARY PROCEEDINGS AGAINST CIVILIAN AND UNIFORM MEMBERS BEFORE THE DEPUTY COMMISSIONER OF TRIALS*1

§15-06 Report to Police Commissioner.

(a)(1) After the Hearing is concluded the Deputy Commissioner of Trials will review the testimony and evidence adduced and prepare a Report and Recommendation for submission to the Police Commissioner.

(2) The Report and Recommendation shall consist of a summary and analysis of the testimony, recommended findings of fact and conclusions of law, and recommendations for the disposition of the Charges and Specifications. The Report and Recommendation along with the transcript of the proceeding, unless waived, and all exhibits received in evidence shall be forwarded to the Police Commissioner for review and final action.

(b) All parties, and their counsel or other representative shall be sent a copy of the Report and Recommendation, at the time it is forwarded to the Police Commissioner, in order to afford them an opportunity to comment thereon. It is the respondent's or the respondent's representative's responsibility to submit written comments timely or a final determination may be made by the Police Commissioner without such comments having been considered.

(c) The respondent will be allowed a specified number of days from the receipt of the Report and Recommendation to submit comments. Such comments must be in writing and confined to the evidence in the record. The respondent shall provide a copy of such comments to the Department Advocate at the time that they are submitted to the Deputy Commissioner of Trials. Upon receipt of such comments, the Deputy Commissioner of Trials will forward them to the

Police Commissioner along with the Report and Recommendation.

(d) If the Deputy Commissioner of Trials finds the respondent guilty of any charges, the respondent's employment record will be reviewed prior to determining a recommended penalty. The respondent may review his or her employment record prior to its submission to the Deputy Commissioner of Trials.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 15-07

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 15 ADJUDICATIONS

SUBCHAPTER A DISCIPLINARY PROCEEDINGS AGAINST CIVILIAN AND UNIFORM MEMBERS BEFORE THE DEPUTY COMMISSIONER OF TRIALS*1

§15-07 Penalties.

(a) The penalty imposed upon a respondent should take into account the respondent's employment history as well as the nature of the proven misconduct.

(b) Penalties shall be imposed upon a respondent consistent with applicable provisions of the Civil Service Law and Administrative Code of the City of New York.

(c) An alternative penalty may be agreed upon by the parties, pursuant to subdivision (h) of §15-04, outside the scope of applicable statutes.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

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38 RCNY 15-08

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 15 ADJUDICATIONS

SUBCHAPTER A DISCIPLINARY PROCEEDINGS AGAINST CIVILIAN AND UNIFORM MEMBERS BEFORE THE DEPUTY COMMISSIONER OF TRIALS*1

§15-08 Final Review.

(a) After reviewing the record of the proceeding and the Report and Recommendation of the Trial Commissioner, the Police Commissioner will make a final determination. The Police Commissioner may approve the recommendation or modify the findings or the penalty consistent with the record.

(b) In the event a respondent enters a plea of guilty in return for a specific recommended sanction by the Trial Commissioner, and the Commissioner upon review imposes a greater sanction, the respondent will be allowed to accept the Commissioner's penalty or withdraw his or her guilty plea and proceed to a Hearing.

(c) The written final determination shall be served on the respondent, his attorney or representative if one appeared at the Hearing, and the Department Advocate.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

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38 RCNY 15-11

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 15 ADJUDICATIONS

SUBCHAPTER B SUBSTANTIATED CIVILIAN COMPLAINTS AGAINST UNIFORM MEMBERS*2

§15-11 Definitions.

Administrative Prosecution. "Administrative Prosecution" shall mean all actions taken after substantiation of a civilian complaint by CCRB in accordance with a Memorandum of Understanding executed by the CCRB and the Department during the period that such MOU is applicable.

Chair. "Chair" shall mean the Chair of the New York City Civilian Complaint Review Board.

Charges and Specifications. "Charges and Specifications" shall mean a written accusation or accusations of misconduct against a uniform member of the Department, specifying the activity or conduct at issue, along with the date, time and place of occurrence.

Civilian Complaint Review Board. "Civilian Complaint Review Board" or "CCRB" shall mean the New York City Civilian Complaint Review Board.

Department. "Department" shall mean the New York City Police Department.

Executive Director. "Executive Director" shall mean the Executive Director of the New York City Civilian Complaint Review Board.

Office of Administrative Trials and Hearings. "Office of Administrative Trials and Hearings" or "OATH" shall

mean the New York City Office of Administrative Trials and Hearings.

Police Commissioner. "Police Commissioner" or "Commissioner" shall mean the Police Commissioner of the City of New York.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter B added City Record May 24, 2001 eff. June 23, 2001, note further provisions of City Record May 24, 2001:

Statement of Basis and Purpose These proposed rules set forth amendments to the rules of the Department which implement the terms of a Memorandum of Understanding (MOU) between the Department and the Civilian Complaint Review Board. The MOU provides that the Board will take action to prosecute administratively all those cases in which the Board has substantiated civilian complaints. The Department's rules are being amended to set forth the procedures to be followed by the Department and the Board in those instances where the Board will act as the prosecutor in adjudications relating to charges against uniformed members found to be substantiated by the Board, as well as other actions which may be taken by the Board in the course of such administrative prosecutions.

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§15-12 Jurisdiction.

Civilian complaints found to be substantiated by the Civilian Complaint Review Board (CCRB) shall be prosecuted by the CCRB pursuant to a Memorandum of Understanding (MOU) executed by the CCRB and the Department during the period that such MOU is applicable. Where such prosecutions include the filing of Charges and Specifications against the subject officer, an Administrative Law Judge of the Office of Administrative Trials and Hearings (OATH) shall conduct any hearing necessary to the prosecution of the case and issue a report containing proposed findings of fact and a recommended decision to the Police Commissioner.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B

footnote]

FOOTNOTES

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Statement of Basis and Purpose These proposed rules set forth amendments to the rules of the Department which implement the terms of a Memorandum of Understanding (MOU) between the Department and the Civilian Complaint Review Board. The MOU provides that the Board will take action to prosecute administratively all those cases in which the Board has substantiated civilian complaints. The Department's rules are being amended to set forth the procedures to be followed by the Department and the Board in those instances where the Board will act as the prosecutor in adjudications relating to charges against uniformed members found to be substantiated by the Board, as well as other actions which may be taken by the Board in the course of such administrative prosecutions.

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§15-13 Application of Department Rules, Regulations, and Disciplinary Policies.

To assist CCRB in its prosecutorial function and OATH in its adjudicatory function, the Department shall provide to CCRB and OATH all relevant Department rules, regulations, and disciplinary policies. To the extent practicable and relevant, CCRB shall comply with Department Patrol Guide Series 206, "Disciplinary Matters" and shall utilize Department forms such as Charges and Specifications (PD468-121) and Supervisor's Complaint Report/Command Discipline Election Report (PD468-123), provided that if amendments or variations in Department forms utilized by CCRB are appropriate, they shall be developed jointly by the parties.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B

footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter B added City Record May 24, 2001 eff. June 23, 2001, note further provisions of City Record May 24, 2001:

Statement of Basis and Purpose These proposed rules set forth amendments to the rules of the Department which implement the terms of a Memorandum of Understanding (MOU) between the Department and the Civilian Complaint Review Board. The MOU provides that the Board will take action to prosecute administratively all those cases in which the Board has substantiated civilian complaints. The Department's rules are being amended to set forth the procedures to be followed by the Department and the Board in those instances where the Board will act as the prosecutor in adjudications relating to charges against uniformed members found to be substantiated by the Board, as well as other actions which may be taken by the Board in the course of such administrative prosecutions.

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§15-14 Expedited Cases.

Where the nature of the substantiated allegation and the status of the subject officer requires expedited prosecution of the substantiated case, the Department shall notify the Chair and the Executive Director of the need for expedited prosecution. CCRB shall make every reasonable effort to conclude the prosecution and provide a recommendation to the Police Commissioner within the requested time frame, including contacting OATH as necessary to request expedited procedures as provided in §1-26(c) of Title 48 of the Rules of the City of New York.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B

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FOOTNOTES

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[Footnote 2]: * Subchapter B added City Record May 24, 2001 eff. June 23, 2001, note further provisions of

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§15-15 Summary of Employment History.

Upon request by CCRB, the Department shall provide a summary of the employment history of the respondent as provided in the Memorandum of Understanding referenced in §15-12. CCRB may similarly obtain a summary of employment history for a witness officer upon demonstrating to the Department a particularized need for such summary based upon the facts and circumstances of a specific administrative prosecution. Such summary shall not include records relating to complaints against the respondent which are unsubstantiated, exonerated, unfounded, or open. Where the case has received a hearing at OATH and the Administrative Law Judge has determined that the petition shall be sustained in whole or in part, he or she may request the subject officer's summary of employment history from CCRB.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B

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FOOTNOTES

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§15-16 Conclusion of Administrative Prosecution.

At the conclusion of the administrative prosecution, in all instances other than cases culminating in a report and recommendation by OATH, the CCRB shall forward to the Commissioner a final recommendation reflecting the results of its prosecution of the case. The CCRB shall include all relevant forms, memoranda and background information to assist the Commissioner in making and implementing a final disciplinary determination. If the case culminated in a hearing before OATH, OATH shall forward to the Commissioner the report and recommendation accompanied by the transcript of the proceedings and the exhibits received in evidence, with a copy of the report and recommendation to CCRB. Upon receipt of a copy of the report and recommendation, CCRB may provide to the Commissioner a letter commenting on the OATH report and recommendation.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B

footnote]

FOOTNOTES

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Statement of Basis and Purpose These proposed rules set forth amendments to the rules of the Department which implement the terms of a Memorandum of Understanding (MOU) between the Department and the Civilian Complaint Review Board. The MOU provides that the Board will take action to prosecute administratively all those cases in which the Board has substantiated civilian complaints. The Department's rules are being amended to set forth the procedures to be followed by the Department and the Board in those instances where the Board will act as the prosecutor in adjudications relating to charges against uniformed members found to be substantiated by the Board, as well as other actions which may be taken by the Board in the course of such administrative prosecutions.

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§15-17 Police Commissioner's Determination.

(a) In all instances other than cases culminating in a report and recommendation by OATH, upon receiving the final recommendation of CCRB with accompanying documents, the Commissioner may accept, reject, or modify the recommendation presented, or may ask CCRB for additional investigative or background information in its possession. He or she may also request further investigation or development of the record in the case. If CCRB's recommendation is rejected or modified, CCRB will then be responsible for implementing the Commissioner's decision and taking the appropriate follow-up action as directed. After taking the appropriate follow-up action, the CCRB shall forward to the Commissioner a final recommendation as provided in §15-16.

(b) In cases culminating in a report and recommendation by OATH, the Commissioner may accept, reject, or modify the report and recommendation based upon the record presented. He may in the alternative remand the matter to OATH, stating his reasons therefor, with instructions for further proceedings as appropriate. In the event of such a remand, CCRB shall take appropriate steps in conformance with the reasons set forth in the Police Commissioner's statement for remand to reopen the case.

(c) The Department shall notify CCRB of the final disciplinary result and specific penalty in each case within thirty calendar days of the imposition of the specific penalty.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B footnote]

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Statement of Basis and Purpose These proposed rules set forth amendments to the rules of the Department which implement the terms of a Memorandum of Understanding (MOU) between the Department and the Civilian Complaint Review Board. The MOU provides that the Board will take action to prosecute administratively all those cases in which the Board has substantiated civilian complaints. The Department's rules are being amended to set forth the procedures to be followed by the Department and the Board in those instances where the Board will act as the prosecutor in adjudications relating to charges against uniformed members found to be substantiated by the Board, as well as other actions which may be taken by the Board in the course of such administrative prosecutions.

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§15-21 Definitions.

Department. The term "Department" shall mean the New York City Police Depart- ment.

Handgun. The term "handgun" shall mean a pistol or revolver.

Hearing Officer. The term "Hearing Officer" shall mean an individual designated by the Police Commissioner to preside over hearings pertaining to suspension and revocation of handgun licenses, rifle/shotgun permits, dealer's, gunsmith's and manufacturer's licenses, organization registration certificates and special patrolman designa- tions.

License. The term "License" shall mean a license or permit to possess handguns or rifles/shotguns, or to conduct business as a dealer, gunsmith or manufacturer, or the registration certificate allowing organizations to possess rifles or shotguns, or the granting of special patrolman designation.

License Division. The term "License Division" shall mean the New York City Police Department License Division.

Licensee. The term "Licensee" shall mean any person, business, organization or governmental agency which is

requesting a hearing to contest a decision made by the Department regarding an individual license, permit or certificate.

Party. The term "Party" shall mean the Department or any licensee involved in a hearing.

Revocation. The term "Revocation" shall mean removal of a license and privilege to possess a handgun or rifle/shotgun and/or be designated a special patrolman, or to conduct business as a dealer, gunsmith, or manufacturer, or to possess rifles or shotguns as an organization.

Special Patrolman. The term "Special Patrolman" shall mean an individual who has been granted a designation as Special Patrolman by the Police Commissioner pursuant to New York City Administrative Code §14-106.

Suspension. The term "Suspension" shall mean temporary removal of a license and privilege to possess a handgun or rifle/shotgun and/or be designated a Special Patrolman, or to conduct business as a dealer, gunsmith, or manufacturer, or to possess rifles or shotguns as an organization.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-22 Commencement of Proceedings.

(a) **Entitlement to a Hearing.** A licensee shall be entitled to submit a written request for a hearing following issuance of a Notice of Determination Letter notifying the licensee of suspension or revocation of a license and the opportunity for a hearing.

(b) **Scheduling of Hearings.** A licensee who wishes to request a hearing relating to a suspension or revocation shall submit a written request to the Commanding Officer, License Division, following the issuance of a Notice of Determination Letter, within 30 calendar days of the date on the Notice of Determination Letter. A licensee whose arrest or summons resulted in suspension or revocation of her/his license may only submit a written request for a hearing within thirty (30) calendar days after the termination of the criminal action, as defined in New York State Criminal Procedure Law §1.20(16)(c). If the suspension or revocation resulted from the licensee becoming the subject of an order of protection or a temporary order of protection, the licensee may only submit a written request for a hearing within thirty (30) calendar days after the expiration or voiding of the order of protection or temporary order of protection. If the suspension or revocation was related to both a criminal action and an order of protection or temporary order of protection, then the later of the two waiting periods shall apply. The License Division shall schedule a hearing within a reasonable time of receipt of the request.

(c) **Notice of Hearing.** A licensee shall receive notification of the date, time and place of the hearing by regular mail addressed to the licensee's last known address. Additionally, a licensee's New York State licensed attorney shall receive notification, if the attorney has filed an appearance with the Department.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-23 Proceedings upon Default.

(a) **Failure to Appear.** (1) Upon a licensee's failure to appear at a license suspension or revocation hearing, or any adjournment thereof, without good cause, it shall be deemed that the licensee does not contest the issues underlying the suspension or revocation of the license. The Hearing Officer may recommend the suspension or revocation of the license and/or may proceed to take testimony with regard to the merits of the case.

(2) **Notice of Default.** The parties shall be notified of the Hearing Officer's declaration of default.

(3) **Application to Vacate Default.** An application for a rehearing and stay of default may be made within 20 calendar days of the date of the notification of default/hearing results. Such application shall be made to the Hearing Officer and may be granted upon a showing of good cause.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-24 Adjournments.

(a) A request for an adjournment shall be made at least 72 hours prior to the date of the hearing. An adjournment shall not be granted except for good cause shown.

(b) (1) If an adjournment is granted, the adjourned hearing date may be marked final against the licensee requesting the adjournment.

(2) Attorneys requesting an adjournment because of a conflicting engagement shall submit an Affirmation of Actual Engagement, setting forth the name of the court, case, and date and time of the proceedings.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-25 Evidence.

(a) **Evidence.** (1) Parties shall have the right to call witnesses, conduct examinations and cross-examinations, to present evidence, and make objections, motions and arguments.

(2) The rules of evidence governing proceedings in the courts of this State shall not be strictly enforced at hearings. Objections shall be timely and the basis for the objection shall be clearly stated.

(3) The introduction of cumulative or irrelevant evidence shall be avoided. The Hearing Officer may curtail the testimony of any witness which is deemed to be cumulative or irrelevant.

(4) Parties may stipulate to facts involved in the proceedings. Stipulations shall be noted on the record and shall be approved by the Hearing Officer.

(b) **Requests for Records.** Licensees or their New York State licensed attorneys may request copies of records at least three weeks in advance of the date of the hearing. Documents shall not be provided in response to such request where: (1) the documents are privileged or confidential pursuant to law or rule, or (2) where disclosure of the documents would reveal investigative techniques, would impair active investigations or judicial proceedings, would

constitute an unwarranted invasion of privacy, or would endanger the life or safety of any person.

(c) **Oral Argument.** Oral argument may be curtailed or limited, in the Hearing Officer's discretion, and shall be included in the record.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-26 Hearing Officers and Representation of Parties.

(a) **Hearing Officer.** (1) The Hearing Officer shall serve both as impartial examiner and impartial judge and shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of the proceedings, and to maintain order. It shall be the duty of a Hearing Officer to inquire fully into all matters at issue and to obtain a full and complete record. The Hearing Officer shall write a Hearing Report which includes a recommended disposition. A Hearing Officer's duties shall be restricted to adjudication and related matters.

(2) The Hearing Officer shall have all powers necessary to conduct a hearing, including the power to administer oaths and affirmations, rule upon offers of proof, receive evidence, regulate the course of hearings and the conduct of the parties and their counsel and to hold conferences, both on and off the record, for settlements, simplification of issues, or any other proper purposes.

(b) **Prosecuting Attorney.** An attorney designated by the Department's Legal Bureau may act as prosecutor to present the Department's case.

(c) **Representation of Licensees.** Licensees may be represented by an attorney who is a member in good standing of the Bar of the State of New York.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-27 Conduct of Hearings.

(a) **Public Access to Hearings.** Hearings are generally open to the public. If good cause is shown by either party, the Hearing Officer may exclude the public from a particular hearing or portion of a hearing. Additionally, the public may be excluded at the Hearing Officer's discretion.

(b) **General Provisions.** (1) The Hearing Officer shall rule upon matters of procedure and introduction of evidence and shall conduct the hearing in such manner as will best serve the attainment of justice.

(2) Licensees shall appear and testify at the hearing. They may submit evidence relevant to the matter under consideration. If a licensee fails to testify an adverse inference may be drawn against him or her by the Hearing Officer.

(3) Any licensee desiring to subpoena a witness, document or other evidence may do so in the manner provided for in the New York Civil Practice Law and Rules. The Hearing Officer shall issue administrative subpoenas to necessary individuals and may issue administrative subpoenas upon request by a party.

(4) No ex parte communications relating to other than ministerial matters regarding a proceeding shall be received by a Hearing Officer, including internal agency directives not published as rules.

(c) **Disposition by Settlement.** Informal disposition may be made of any matter which is the subject of an adjudication by means of stipulation, agreed settlement or consent order.

(d) **Transcripts.** All hearings shall be recorded on a tape recorder. A transcript of the hearing may be ordered by any party to the hearing. The transcript shall be provided upon payment of reasonable transcription costs.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

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§15-28 Hearing Officer's Report and Recommendation.

(a) After the conclusion of the hearing, the Hearing Officer shall prepare a written hearing report and recommended disposition. The report shall include a statement of the issues, findings of fact, and conclusions of law, as well as the reasons and basis therefor. Findings of fact shall be based exclusively upon all the material issues of fact and law presented in the record. The Division Head, License Division shall review the report and recommendation and make a final determination. S/he may approve the recommendation or modify the findings or the penalty consistent with the record. The Division Head's determination is the final administrative determination.

(b) Licensees shall receive a copy of the Hearing Officer's report and the Division Head's final determination, by regular mail, within a reasonable time after the conclusion of the hearing.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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§15-29 Penalties.

Appropriate penalties may be imposed upon a licensee including suspension or revocation of the license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

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CHAPTER 15 ADJUDICATIONS

SUBCHAPTER C HEARING RULES GOVERNING SUSPENSION AND REVOCATION OF HANDGUN LICENSES, RIFLE/SHOTGUN PERMITS, DEALER'S, GUNSMITH'S AND MANUFACTURER'S LICENSES, ORGANIZATION REGISTRATION CERTIFICATES AND SPECIAL PATROLMAN DESIGNATIONS*3

§15-30 Appeals. [Repealed]

HISTORICAL NOTE

Section repealed City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

Subd. (a) amended City Record Sept. 23, 1994 eff. Oct. 23, 1994.

Subd. (d) added City Record Sept. 23, 1994 eff. Oct. 23, 1994.

NOTE

References within this chapter to masculine shall be presumed to include the feminine and neuter. References to the singular shall be presumed to include the plural.

HISTORICAL NOTE

Note added City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

3

[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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38 RCNY 16-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 16 TRANSPORT OR DELIVERY OF WEAPONS*1

§16-01 Definitions.

License Division. The term "License Division" shall mean the License Division of the New York City Police Department.

Person. The term "person" shall mean an individual, firm, partnership, corporation, company or other business entity, and shall include any common or contract carrier, shipper, transport company, weapons manufacturer, distributor or dealer.

Police Commissioner. The term "Police Commissioner" shall mean the Police Commissioner of the City of New York or her/his designee(s).

Transitory Shipment. For purposes of this chapter, the term "transitory shipment" shall mean a shipment which begins outside of the City of New York, and moves continuously and without interruption through the City of New York to a final destination outside of the City of New York. A shipment which is within the City of New York and involves any off-loading of the weapons from one means of transportation, followed by subsequent on-loading of the weapons to another means of transportation, shall not be considered a transitory shipment.

Unanticipated Delay. For purposes of this chapter, the term "unanticipated delay" is an event involving the operator of a vehicle who intended to make a transitory shipment of weapons when s/he entered the City of New York with a shipment of weapons, and having done so, has experienced an unexpected mechanical problem, or other unexpected condition or set of circumstances which causes the operator to remain within the City, and off of a limited access highway, for a period of greater than one hour.

Weapon. For purposes of this chapter, the term "weapon" shall mean a "firearm," "rifle," "shotgun," or "machine-gun," as those terms are defined in §265.00 of the New York State Penal Law and shall also include anything that is defined as an "assault weapon" in §10-301 of the New York City Administrative Code.

Weapons Dealer. For purposes of this chapter, the term "weapons dealer" shall mean any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of any weapon as defined in this chapter and who is licensed by the Police Commissioner pursuant to Article 400 of the New York State Penal Law and/or §10-302 of the New York City Administrative Code.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 16-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 16 TRANSPORT OR DELIVERY OF WEAPONS*1

§16-02 Applicability.

This chapter shall apply to all persons who transport or deliver one or more weapons into or within any location in the City of New York, except that it shall not apply to:

(a) the transitory shipment of weapons through New York City to a final destination outside of New York City. However, if the operator of the vehicle containing a transitory shipment of weapons experiences an unanticipated delay as that term is defined in §16-01 of this chapter, such operator shall immediately report to the nearest Police Department facility the following information:

(1) her/his current location;

(2) the location of the transporting vehicle;

(3) the cause of the unanticipated delay;

(4) the expected duration of the shipment's presence in the City; and

(5) how the shipment shall be secured during its stay in the City.

In the case of such delay, the officer receiving such notice may direct the vehicle operator to take reasonably necessary measures to secure the weapons shipment, or the officer may seize and secure the weapons until such time that the shipper makes alternative arrangements which are acceptable to the officer.

(b) the shipment or delivery of five (5) or fewer weapons from one licensed weapons dealer located in New York City directly to another licensed weapons dealer located in New York City. However, the manner of storage of such weapons during their transportation shall be in compliance with §16-05 of this chapter.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 16-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 16 TRANSPORT OR DELIVERY OF WEAPONS*1

§16-03 Authorization to Transport or Deliver Firearms.

(a) No person shall transport or deliver, or cause to be transported or delivered, weapons into or within the City of New York where s/he knows or has reasonable means of ascertaining what s/he is transporting, without first obtaining written authorization to do so from the Police Commissioner.

(b) A request by any person for authorization to transport or deliver weapons shall be made in writing to the Commanding Officer, License Division, New York City Police Department, One Police Plaza, Room 110A, New York, New York 10038, or by Facsimile transmission (212) 374-2828, so as to be received by the License Division at least ten (10) calendar days prior to the transportation within the City of New York. Such request shall include the following information:

(1) The name and address of the source of the shipment of weapons. If the source is a corporation, the name of the president or authorized representative of such corporation shall be included.

(2) The number of weapons, including the manufacturer's name, caliber, and model identification, for each type of weapon being transported.

(3) The name of the shipping company, if different from the source of the shipment, including the address and telephone number of the company's headquarters.

(4) The day, date, and the estimated time and place of arrival of the shipment into New York City.

(5) The name, address, and weapons dealer's or gunsmith's license number of the person authorized to receive the shipment in New York City.

(6) The type of vehicle to be used by the source of the shipment, or the shipping company, including any distinctive company logos or markings on the vehicle.

(7) A photocopy of the driver's license of the person scheduled to make the delivery, and a photocopy of the driver's license of an alternate driver who may be required by the source of the shipment, or the shipping company, to substitute for the principally scheduled delivery person.

(8) The application for permission to transport weapons shall contain the following statement, subscribed and sworn to by the applicant before a notary public, commissioner of deeds, or other comparable official: "I, _____, the applicant for permission to transport weapons within or through the City of New York, state that such weapons shall be transported in an unloaded condition, and in a manner that conforms with §16-05 of Chapter 38 of the Rules of the City of New York, and if upon inspection of the contents of the transporting vehicle it is discovered that such weapons are not secured in a manner conforming with said section, then any permission issued by virtue of this application shall be void and deemed to have never been granted, and it is understood that I and any of my agents, employees, or assignees, may be prosecuted for transporting weapons without permission pursuant to the New York State Penal Law and the New York City Administrative Code, and that the property being transported as well as the means of transport may be seized and forfeited pursuant to law."

(c) If a person seeking permission to transport a weapon pursuant to this section is utilizing a shipping company or other delivery service and is unable to provide information relevant to paragraphs (4), (6) or (7) of subdivision (b) of this section, a separate request for permission to transport shall be submitted by the shipping company or delivery service, which shall include the required information.

(d) Upon receiving a request for authorization to transport or deliver weapons, the Police Commissioner shall cause to be conducted a review of Police Department records to ascertain whether the intended recipient of the weapons shipment or delivery is an authorized person, and whether there exists any information which would otherwise provide a basis for denying authorization to receive such weapons shipment. The Police Commissioner or her/his designee shall then notify the requesting person that such authorization has or has not been granted.

(e) In addition to any other applicable penalties, the Police Commissioner may deny an application submitted pursuant to this chapter if the applicant has previously failed to comply with the provisions of this chapter.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 16-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 16 TRANSPORT OR DELIVERY OF WEAPONS*1

§16-04 Surrender of Firearms Not Authorized for Transportation or Delivery.

Any person who transports or delivers weapons without obtaining authorization pursuant to the requirements of this chapter shall be liable for the penalties set forth in Article 265 of the New York State Penal Law and the New York City Administrative Code, and shall further be directed by any member of the Police Department to surrender the weapons to the Police Department. In addition, the property being transported, as well as the means of transport, may be seized and forfeited pursuant to law.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 16-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 16 TRANSPORT OR DELIVERY OF WEAPONS*1

§16-05 Required Security Measures for Weapons Shipments in Transit.

Any person, corporation, partnership, or other business entity using a vehicle to transport weapons within or through the City of New York shall, at a minimum, employ the following security measures while such weapons are in transit:

(a) All weapons shall be transported unloaded.

(b) All weapons shall be placed in one or more containers located within the vehicle used for transportation of the weapons. Such containers shall be constructed of materials of such a sturdy character that when the container is closed and locked, it cannot be forced open by hands alone, or sliced open with a common tool such as a knife or box cutter.

(c) The above referenced container(s) shall be securely fastened, with a combination or key locking device, to the interior body structure of the transporting vehicle, in such a manner that the containers cannot be manually removed without releasing the locks.

(d) Such containers, while in transit and carrying weapons, shall be closed and locked with a heavy-duty combination or key-type lock.

(e) Ammunition shall not be stored in the same container as weapons.

(f) At all times other than loading and unloading, the cargo area of the transporting vehicle in which all of the above referenced containers shall be stored shall be closed and locked with a heavy-duty combination or key-type lock.

(g) The driver of the transporting vehicle shall carry a manifest which declares the numbers and types of weapons being transported, and the intended point of delivery. Such manifest shall not be considered valid unless it shall have written upon it the permission serial number issued by the New York City Police Department License Division.

(h)(1) The Police Commissioner may require, as a condition of the authorization to transport or deliver weapons, that shipments of weapons which will be off-loaded from one means of transportation and subsequently on-loaded to the same means or another means of transportation within the city of New York, be escorted by a uniformed member of the New York City Police Department, from the time of on-loading until such point that the shipment has left the jurisdictional boundaries of the City of New York.

(2) If the Police Commissioner elects to impose the escort requirement as a condition of the authorization to transport or deliver weapons, the applicant shall notify the Commanding Officer, License Division, of the day, date, estimated time and place of on-loading of the shipment to the second means of transportation. The escort requirement shall be deemed waived if the escort is not present at the place within the City of New York where the weapons will be on-loaded within thirty minutes of the shipment's estimated time of on-loading and departure.

HISTORICAL NOTE

Section added City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 16-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 16 TRANSPORT OR DELIVERY OF WEAPONS*1

§16-06 Requirement to Report Theft, Loss or Misdelivery.

(a) Any person, firm, corporation, or other business entity who has received permission to transport weapons pursuant to the provisions of this chapter, and who suffers a loss or theft of any part of her/his weapons shipment while it is located within New York City, shall forthwith report such loss or theft to the nearest Police Department facility and shall comply with all reasonable requests for assistance by police officers who investigate the circumstances of the loss or theft.

(b) Any person, firm, corporation or other business entity who has received permission to transport weapons pursuant to the provisions of this chapter, and who knows or reasonably should know that any part of her/his weapons shipment was delivered to a person other than the person designated in §16-03(b)(5) of this chapter, shall forthwith report such misdelivery to the Police Department's Operations Unit, at (212) 374-5580.

HISTORICAL NOTE

Section added City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

NOTE

References within this chapter to masculine shall be presumed to include the feminine and neuter. References to the singular shall be presumed to include the plural.

HISTORICAL NOTE

Note added City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 17-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 17 PROHIBITED ASSAULT WEAPONS

§17-01 Assault Weapons Designated.

(a) Pursuant to Subparagraph 7 of Paragraph a of Subdivision 16 of §10-301 of the New York City Administrative Code, the following makes and models of weapons are determined to be particularly suitable for military and not sporting purposes and are determined to be within the statutory definition of assault weapon as set forth in §10-301 (16) of the New York City Administrative Code:

(1) Models CALICO M-900 CARBINE, CALICO M-100 CARBINE manufactured by AMERICAN INDUSTRIES,

(2) Models LIGHTNING 25-22, AP-74 manufactured by AMT,

(3) Model AR-180 manufactured by ARMALITE,

(4) Model .223 SAC manufactured by AUSTRALIAN AUTOMATIC ARMS,

(5) Models M-1-SA, 1927-A1-SA manufactured by AUTO ORDINANCE,

(6) Model LIGHT 50 82-AL manufactured by BARRETT FIREARMS,

(7) Models AR70, BM 59 manufacutured by BERETTA,

(8) Model ASSAULT RIFLE manufactured by BUSHMASTER FIREARMS,

(9) Model SR-88 manufactured by CHARTERED FIREARMS INDUSTRIES,

(10) Models AR-15 manufactured by COLT,

(11) Models MAX-1, MAX-2, K1A1, K2, USAS-12 SHOTGUN manufactured by DAEWOO INDUSTRIES,

(12) Models C90, C100, C450 manufactured by DMAX INDUSTRIES,

(13) Model MK-IV CARBINE manufactured by ENCOM,

(14) Models FN-FAL, FN-LAR, FN-FNC manufactured by FABRIQUE NATION- ALE,

(15) Model MAS 223 manufactured by FAMAS,

(16) Models AT-9 CARBINE, AT-22 CARBINE manufatured by FEATHER INDUS- TRIES,

(17) Models XC-450 AUTO OCARBINE, XC-220, XC-900 manufactured by FEDERAL ENGINEERING CORPORATION,

(18) Models SPAS-12, LAW-12 PUMP AUTO SHOTGUNS manufactured by FRANCHI,

(19) Model GC HIGH TECH CARBINE manufactured by GONCZ COMPANY,

(20) Models HK-91, HK-93, HK-94, PSG-1, G3-SA manufactured by HECKLER & KOCH,

(21) Models UZI-CARBINE, MINI-UZI CARBINE, GALIL-ARM, GALIL-AR, GALIL-SAR, GALIL-SNIPER manufactured by ISRAELI MILITARY INDUSTRIES,

(22) Model PM-30 PARATROOPER manufactured by IVER JOHNSON,

(23) Models AP-74, AP-84, AP-80, AP-85, SPECTRE AUTO CARBINE manufactured by MITCHELL ARMS,

(24) Models of the KALASHNIKOV type SEMIAUTOMATIC, including those manufactured by NORINCO (China) and HUNGARIAN ARMS,

(25) Models NDM-86 SNIPER RIFLE manufactured by NORINCO,

(26) Model M-14S manufactured by POLYTECH INDUSTRIES,

(27) Model MINI-14/5F manufactured by RUGER,

(28) Models 57-AMT, PE-57, SG550SP, SG551SP manufactured by SIGARMS,

(29) Model L1A1A manufactured by SMALL ARMS FACTORY, AUSTRALIA,

(30) Models BM-59, SAR-48, SAR-58, SAR-3, M-1A manufactured by SPRINGFIELD ARMORY,

(31) Model MK-6 manufactured by STERLING,

(32) Model AUG-SA manufactured by STEYR DAIMLER-PUSCH,

(33) Models M-76-SA, M-78-SA manufactured by VALMET CORPORATION, and

(34) Model NIGHTHAWK manufactured by WEAVER ARMS CORPORATION

HISTORICAL NOTE

Section added City Record Dec. 20, 1991 eff. Jan. 19, 1992.

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38 RCNY 17-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 17 PROHIBITED ASSAULT WEAPONS

§17-02 Disposition of Assault Weapons by Permittees, Licensees and Previously Exempt Persons.

(a) Permittees, licensees and previously exempt persons, as described in Subdivision d of §10-303.1 of the New York City Administrative Code, shall, within ninety days of the effective date of these Rules, dispose of their assault weapons pursuant to such subdivision. All assault weapons possessed by such permittees, licensees and previously exempt persons shall be subject to the provisions of such subdivision, whether defined as assault weapons in subdivision 16 of §10-301 or in these Rules.

HISTORICAL NOTE

Section added City Record Dec. 20, 1991 eff. Jan. 19, 1992.

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38 RCNY 17-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 17 PROHIBITED ASSAULT WEAPONS

§17-03 Effective Date.

(a) These Rules shall take effect in accordance with the provisions of Section 1043 of the New York City Charter, provided, however, that these Rules shall not take effect prior to the effective date of Local Law 78 of 1991.

HISTORICAL NOTE

Section added City Record Dec. 20, 1991 eff. Jan. 19, 1992.

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38 RCNY 18-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 18*1 SEIZURE OF BICYCLES PURSUANT TO ADMINISTRATIVE CODE §19-176

§18-01 Seizure of Bicycles.

Pursuant to Administrative Code §19-176(c) a bicycle operated on a sidewalk under circumstances which create a substantial risk of physical injury to another person may be seized and impounded by a police officer or designated employee of the Department of Transportation, Department of Parks and Recreation or the Department of Sanitation.

HISTORICAL NOTE

Section added City Record Oct. 17, 1996 eff. Nov. 16, 1996. [See T38 Chapter 18 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Oct. 17, 1996 eff. Nov. 16, 1996. Note further provisions:

The Police Commissioner is authorized and directed to establish and enforce rules and regulations for the safety and welfare of the public. Pedestrian safety and use of sidewalks for the benefit of pedestrians is the basis for the New York City government banning the operation of bicycles on sidewalks. Local Law 6 of 1996 authorizes police officers and other designated officials to seize and impound any bicycle operated on a sidewalk in a manner which creates a substantial risk of physical injury to another person upon issuing a summons or

notice of violation to the offender. The Police Department is required to promulgate rules providing for the seizure and return of such bicycles.

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38 RCNY 18-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 18*1 SEIZURE OF BICYCLES PURSUANT TO ADMINISTRATIVE CODE §19-176

§18-02 Notice.

At the time of such seizure the operator shall be given a written notice explaining the procedures for obtaining release of the bicycle. The notice shall include a brief description of the bicycle, the location where the bicycle may be claimed, the applicable charges for removal and storage, and instructions on the steps necessary to request an Environmental Control Board hearing. The notice shall also include a conspicuous notification to the operator and/or owner that he or she is required to contact the agency in possession of the bicycle to inform that agency if and when a hearing is scheduled on the matter.

If the operator is not the owner of the bicycle notice to the operator is deemed to be notice to the owner. If the operator is less than eighteen years old, the notice shall either be personally delivered to the operator's parent or guardian or shall be mailed to the parent, guardian, or, where applicable, employer if the name and address of that person is reasonably ascertainable.

HISTORICAL NOTE

Section added City Record Oct. 17, 1996 eff. Nov. 16, 1996. [See T38 Chapter 18 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Oct. 17, 1996 eff. Nov. 16, 1996. Note further provisions:

The Police Commissioner is authorized and directed to establish and enforce rules and regulations for the safety and welfare of the public. Pedestrian safety and use of sidewalks for the benefit of pedestrians is the basis for the New York City government banning the operation of bicycles on sidewalks. Local Law 6 of 1996 authorizes police officers and other designated officials to seize and impound any bicycle operated on a sidewalk in a manner which creates a substantial risk of physical injury to another person upon issuing a summons or notice of violation to the offender. The Police Department is required to promulgate rules providing for the seizure and return of such bicycles.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 18*1 SEIZURE OF BICYCLES PURSUANT TO ADMINISTRATIVE CODE §19-176

§18-03 Procedure for Obtaining Release of Bicycles.

(a) A bicycle seized pursuant to Administrative Code §19-176 shall not be released to the owner or other person lawfully entitled to possession unless:

(i) the owner or operator submits documentation that he or she paid all applicable fines or penalties imposed for the violation, and pays all removal and storage fees as set forth below, or

(ii) if there is a proceeding pending before the Environmental Control Board of the City of New York (ECB), the owner or operator posts a bond or other form of security in the amount of one hundred and fifty dollars ($150.00) which will secure the payment of such fines, penalties or charges, or

(iii) a court or the ECB adjudicates the violation and finds in favor of the operator or owner. If there is such a finding in favor of the operator or owner, any amount previously paid for release of the bicycle shall be refunded.

(b) The operator or owner of a bicycle seized pursuant to Administrative Code §19-176 will be given the opportunity to receive a hearing before the ECB with respect to the seizure within five business days of the request for such a hearing in accordance with the rules and procedures of the ECB.

(c) The owner or operator may request release of the bicycle by appearing during regular business hours at the location where the bicycle may be claimed, and presenting all of the following documentation:

(i) satisfactory identification of the person requesting release of the bicycle; and

(ii) if a representative of the owner is requesting the release, a notarized letter signed by the owner expressly authorizing their representative to claim the bicycle; and

(iii) satisfactory documentation as required by subdivision a of this section of one of the following: the payment of all fines, penalties and charges, or the posting of a bond, or an adjudication in favor of the operator by a court or the ECB.

HISTORICAL NOTE

Section added City Record Oct. 17, 1996 eff. Nov. 16, 1996. [See T38 Chapter 18 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Oct. 17, 1996 eff. Nov. 16, 1996. Note further provisions:

The Police Commissioner is authorized and directed to establish and enforce rules and regulations for the safety and welfare of the public. Pedestrian safety and use of sidewalks for the benefit of pedestrians is the basis for the New York City government banning the operation of bicycles on sidewalks. Local Law 6 of 1996 authorizes police officers and other designated officials to seize and impound any bicycle operated on a sidewalk in a manner which creates a substantial risk of physical injury to another person upon issuing a summons or notice of violation to the offender. The Police Department is required to promulgate rules providing for the seizure and return of such bicycles.

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38 RCNY 18-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 18*1 SEIZURE OF BICYCLES PURSUANT TO ADMINISTRATIVE CODE §19-176

§18-04 Abandoned Bicycles.

Any bicycle seized pursuant to Administrative Code §19-176, which is not released and removed from City property pursuant to §18-3 of these rules within 10 days following the making of a request by a representative of the Police Commissioner or of the Commissioner of Transportation or Parks and Recreation, or Sanitation to remove it, shall be deemed to be abandoned. Such request shall be mailed to the operator of the bicycle, or to the owner of the bicycle if the owner's identity is reasonably ascertainable. If the operator is less than 18 years old, the notice shall be mailed to the operator's parent or guardian, if the name and address of that person is reasonably ascertainable, in lieu of a mailing to the operator. A bicycle will not be deemed abandoned while a respondent is awaiting a hearing or adjudication in reference to such bicycle provided the respondent complies with all sections of this chapter. A respondent awaiting a hearing regarding a seized bicycle is required to notify the agency in possession of the bicycle of the date(s) of all hearings to be held in reference to such bicycle. If a bicycle is deemed abandoned pursuant to this section it may be disposed of in the same manner that the Department disposes of other abandoned property.

HISTORICAL NOTE

Section added City Record Oct. 17, 1996 eff. Nov. 16, 1996. [See T38 Chapter 18 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Oct. 17, 1996 eff. Nov. 16, 1996. Note further provisions:

The Police Commissioner is authorized and directed to establish and enforce rules and regulations for the safety and welfare of the public. Pedestrian safety and use of sidewalks for the benefit of pedestrians is the basis for the New York City government banning the operation of bicycles on sidewalks. Local Law 6 of 1996 authorizes police officers and other designated officials to seize and impound any bicycle operated on a sidewalk in a manner which creates a substantial risk of physical injury to another person upon issuing a summons or notice of violation to the offender. The Police Department is required to promulgate rules providing for the seizure and return of such bicycles.

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38 RCNY 18-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 18*1 SEIZURE OF BICYCLES PURSUANT TO ADMINISTRATIVE CODE §19-176

§18-05 Removal and Storage Charges.

The charge for removal of a bicycle pursuant to this section shall be twenty-five dollars ($25.00). The storage fee for storing a bicycle pursuant to this section shall be five dollars ($5.00) per day or fraction thereof computed from the day the bicycle arrives at the storage facility. All charges must be paid in cash, by certified check or by money order payable to the City of New York.

HISTORICAL NOTE

Section added City Record Oct. 17, 1996 eff. Nov. 16, 1996. [See T38 Chapter 18 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Oct. 17, 1996 eff. Nov. 16, 1996. Note further provisions:

The Police Commissioner is authorized and directed to establish and enforce rules and regulations for the safety and welfare of the public. Pedestrian safety and use of sidewalks for the benefit of pedestrians is the basis for the New York City government banning the operation of bicycles on sidewalks. Local Law 6 of 1996 authorizes police officers and other designated officials to seize and impound any bicycle operated on a sidewalk

in a manner which creates a substantial risk of physical injury to another person upon issuing a summons or notice of violation to the offender. The Police Department is required to promulgate rules providing for the seizure and return of such bicycles.

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38 RCNY 19-01 [Definitions of

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 19 RULES FOR PROCESSIONS AND PARADES*1

§19-01 [Definitions of Disorderly Parade and Occasions of Extraordinary Public Interest.]

(a) For purposes of §10-110(a)(1) of the administrative code of the city of New York, a parade or procession that is "disorderly in character or tends to disturb the public peace" is one that violates subdivisions 1, 4, 5, 6 or 7 of §240.20 of the Penal Law, and would otherwise present an unreasonable danger to the health or safety of the applicant, parade participants or other members of the public, or cause damage to public or private property.

(b) For purposes of §10-110(a)(4) of the administrative code of the city of New York, "occasions of extraordinary public interest" are celebrations organized by the City honoring the armed forces; sports achievements or championships; world leaders and extraordinary achievements of historic significance.

HISTORICAL NOTE

Section added City Record June 27, 2001 eff. July 27, 2001. [See T38 Chapter 19 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 19 added City Record June 27, 2001 eff. July 27, 2001. Note further provisions:

This rule is promulgated pursuant to the authority of the Police Commissioner under §§389, 435(a), 1043

of the New York City Charter. The Police Department is authorized to regulate, direct and restrict the movement of pedestrians and vehicular traffic to facilitate and to prevent the obstruction of the free passage on the public streets and to disperse unlawful assemblages. Unauthorized parades and processions are detrimental to the health, welfare and safety of the inhabitants of the city, as they substantially increase traffic hazards and the risk of injury to life and limb. Such uses also disturb the public peace and comfort and the peaceful enjoyment by the people of their right to use the public streets for street purposes. Likewise, parades disturb the peace, quiet and comfort of neighboring inhabitants. The proper regulation of parades and processions is essential to protect the health, welfare and safety of the inhabitants of the city, to secure the health, safety, comfort, convenience, and peaceful enjoyment by the people of their right to use the public streets.

These procedures are intended to provide a framework for the Police Department to assure the safety and convenience of the public while allowing the citizens to exercise their rights to assemble and march on public streets.

Rules of the City of New York

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38 RCNY

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 19 RULES FOR PROCESSIONS AND PARADES*1

§19-02 [Definitions.]

For purposes of these rules, the following terms shall have the following meanings:

(a) A "parade" is any procession or race which consists of a recognizable group of 50 or more pedestrians, vehicles, bicycles or other devices moved by human power, or ridden or herded animals proceeding together upon any public street or roadway.

(b) "Same date or time" shall mean the same actual time period or hours.

(c) "Same location" shall mean the location identified in the permit application.

(d) "Demonstration" shall mean a group activity including, but not limited to, a meeting, assembly, protest, rally or vigil, moving or otherwise, which involves the expression of views or grievances, involving more than 20 people.

(e) "Fifth Avenue" shall mean Fifth Avenue in the borough of Manhattan south of 114th Street and north of 15th Street.

(f) "Applicant" shall mean the person or entity that applies for a permit authorizing a parade. Any person or entity responsible for organizing a parade, or any person or entity that publicizes a parade through advertisements or other means of mass communication, is authorized to act as the applicant.

HISTORICAL NOTE

Section added City Record June 27, 2001 eff. July 27, 2001. [See T38 Chapter 19 footnote]

Subd. (a) amended City Record Jan. 26, 2007 §1, eff. Feb. 25, 2007. [See Note 1]

Subds. (e), (f) added City Record Jan. 26, 2007 §2, eff. Feb. 25, 2007. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 26, 2007:

The Police Department is charged with preserving the public peace and preserving order at assemblies that obstruct the free passage of public streets and sidewalks. In that connection, the Department is authorized to promulgate rules and regulations governing permits for processions, parades and races that occur on City streets and sidewalks. These amendments are intended to clarify the circumstances under which groups using City streets for purposes of assembly are required to obtain a permit. By clarifying the type of activity that constitutes a parade and is thus required to obtain a permit, these rules are designed to protect the health and safety of participants in group events on the public streets and members of the public who find themselves in the vicinity of these events.

Accordingly, in response to public comments received, the definition of parade is amended to include groups of 50 or more pedestrians, vehicles, bicycles or other devices moved by human power that proceed together on public streets.

Each of these types of activities has the likelihood to significantly disrupt vehicular and pedestrian traffic and adversely affect public health and safety, unless subject to regulatory control via the permitting process. The amendments to the rules will permit the Police Department to adequately preserve the public peace and prevent obstructions of public streets and sidewalks. In addition, these amendments have the added benefit of making it clear to all members of the public the circumstances under which parade permits must be sought.

These rules are also amended to clarify who may apply for a parade permit. So as to make it possible for someone who promotes, but does not organize, a parade to apply for a permit, these rules clarify that any person or entity that publicizes a parade through advertisements or other means of mass communication may apply for a parade permit.

FOOTNOTES

1

[Footnote 1]: * Chapter 19 added City Record June 27, 2001 eff. July 27, 2001. Note further provisions:

This rule is promulgated pursuant to the authority of the Police Commissioner under §§389, 435(a), 1043 of the New York City Charter. The Police Department is authorized to regulate, direct and restrict the movement of pedestrians and vehicular traffic to facilitate and to prevent the obstruction of the free passage on the public streets and to disperse unlawful assemblages. Unauthorized parades and processions are detrimental to the health, welfare and safety of the inhabitants of the city, as they substantially increase traffic hazards and the risk of injury to life and limb. Such uses also disturb the public peace and comfort and the peaceful enjoyment by the people of their right to use the public streets for street purposes. Likewise, parades disturb the peace, quiet and comfort of neighboring inhabitants. The proper regulation of parades and processions is essential to protect the health, welfare and safety of the inhabitants of the city, to secure the health, safety, comfort, convenience, and peaceful enjoyment by the people of their right to use the public streets.

These procedures are intended to provide a framework for the Police Department to assure the safety and convenience of the public while allowing the citizens to exercise their rights to assemble and march on public

streets.

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38 RCNY 19-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 19 RULES FOR PROCESSIONS AND PARADES*1

§19-03 Applications.

(a) An application for a permit will be made at least thirty-six hours prior to the date upon which the parade is to occur.

(b) An application in a form prescribed by the Department must be filed with the precinct in which the parade formation area is located; provided, however, that applications for parade routes including any portion of Fifth Avenue in the borough of Manhattan or for parades with 1000 or more participants must be filed with the office of the Chief of Department.

(1) Applications must be completed by clearly typing or printing the information requested. The original application must be signed, notarized and filed with the appropriate precinct or the office of the Chief of Department.

(2) The application must contain the following information:

(i) the name, address and telephone number of the applicant;

(ii) if the application is made on behalf of a corporation, organization or association, it must be signed by a representative of the corporation, organization or association giving the full name and relationship to the corporation, organization or association, if any, and a statement as to the source of the representative's authority to sign the application, if any;

(iii) the nature or purpose of the parade;

(iv) the date, time and route of the parade;

(v) the locations and approximate times for formation and dismissal of the parade;

(vi) the number of participants, animals and/or vehicles which will constitute the parade and a description of such vehicles and animals;

(vii) the width of the roadway to be occupied by the parade;

(viii) the location of any reviewing stands;

(ix) whether rifles or shotguns will be carried by parade participants;

(x) the identity of any grand marshal or chief officer of the parade, his or her name, address and telephone number; and

(xi) any additional information that the Department shall reasonably require to make a fair determination as to whether a permit should issue under §19-04 below.

HISTORICAL NOTE

Section added City Record June 27, 2001 eff. July 27, 2001. [See T38 Chapter 19 footnote]

Subd. (b) par (2) subpar (ii) amended City Record Jan. 26, 2007 §3, eff. Feb. 25, 2007. [See T38

§19-02 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 19 added City Record June 27, 2001 eff. July 27, 2001. Note further provisions:

This rule is promulgated pursuant to the authority of the Police Commissioner under §§389, 435(a), 1043 of the New York City Charter. The Police Department is authorized to regulate, direct and restrict the movement of pedestrians and vehicular traffic to facilitate and to prevent the obstruction of the free passage on the public streets and to disperse unlawful assemblages. Unauthorized parades and processions are detrimental to the health, welfare and safety of the inhabitants of the city, as they substantially increase traffic hazards and the risk of injury to life and limb. Such uses also disturb the public peace and comfort and the peaceful enjoyment by the people of their right to use the public streets for street purposes. Likewise, parades disturb the peace, quiet and comfort of neighboring inhabitants. The proper regulation of parades and processions is essential to protect the health, welfare and safety of the inhabitants of the city, to secure the health, safety, comfort, convenience, and peaceful enjoyment by the people of their right to use the public streets.

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38 RCNY 19-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 19 RULES FOR PROCESSIONS AND PARADES*1

§19-04 Approval/Disapproval Procedures.

(a) The permittee will be notified by the precinct, relevant patrol borough or office of the Chief of Department if his or her application for a permit is approved or disapproved.

(b) If the application is disapproved, the applicant will be notified in writing of the basis for such disapproval.

(c) Permits shall be approved or disapproved as follows:

(i) for applications filed 90 or more days prior to the date for which the permit is sought, such permit shall be approved or disapproved no later than 45 days prior to the date for which such permit is sought.

(ii) for applications filed less than 90 days but more than 30 days prior to the date for which such permit is sought, such permit shall be approved or disapproved no later than 10 days prior to the date for which such permit is sought.

(iii) for applications filed less than 30 days but more than 10 days prior to the date for which such permit is sought, such permit shall be approved or disapproved no later than 5 days prior to the date for which such permit is sought.

(iv) for applications filed less than 10 days but at least thirty-six hours prior to the date for which such permit is sought, such permit shall be approved or disapproved as soon as reasonably practicable.

(v) for applications filed less than thirty-six hours prior to the date for which such permit is sought only where exigent circumstances exist which prevented the applicant from earlier seeking a permit, such permit shall be approved or disapproved pursuant to subdivision (d) of the section as soon as reasonably practicable, but may also be disapproved

where the size or nature of the parade reasonably requires an additional police presence and there is insufficient time to make such presence available.

(d) Permits will be disapproved under §10-110 of the administrative code under the following circumstances:

(i) The application, including any required attachments and submissions, is not fully completed and executed.

(ii) The application contains a material falsehood or misrepresentation.

(iii) A permit or other authorization has been granted to another person or group in conjunction with a parade, street fair, demonstration or other event for the same date or time and the same location requested, or permits or other authorizations have traditionally, on an annual basis, been granted to another person or group for a parade, street fair, demonstration or other event for the same date or time and the same location.

(iv) The proposed activity and surrounding events will substantially or unreasonably interfere with traffic in the area contiguous to the parade route.

(v) The concentration of persons, animals, vehicles or things at the formation and dismissal areas, along the parade route and in nearby areas will prevent proper fire and police protection or ambulance service.

(vi) The application proposes activities which would violate subdivisions 1, 4, 5, 6 or 7 of §240.20 of the Penal Law, and would otherwise present an unreasonable danger to the health or safety of the applicant, parade participants or other members of the public, or cause damage to public or private property.

(vii) The application proposes activities which would be in violation of law, rule or regulation.

(viii) The application seeks to hold a parade on Fifth Avenue in the borough of Manhattan, unless the parade was held at that location prior to the promulgation of these rules.

If a permit is disapproved under paragraphs (iii), (iv), (v) or (viii) of this subdivision, the Department shall employ reasonable efforts to offer the applicant a suitable alternative location, date and/or time for the parade.

(e) If an application is disapproved, the applicant may appeal the determination by written request filed with a designated appeals officer who may reverse, affirm or modify the original determination and will provide a written explanation of his or her finding.

(i) If a permit application is disapproved 45 days or more prior to the proposed parade, the applicant shall have 10 days from the date that such disapproval is mailed to the applicant to appeal such disapproval. The Department shall render a decision on such appeal within 10 days of its receipt of such appeal.

(ii) If a permit application is disapproved less than 45 days but more than 10 days prior to the proposed parade, the applicant shall have 5 days from the date such disapproval is mailed to the applicant to appeal such disapproval. The Department shall render a decision on such appeal within 5 days of its receipt of such appeal.

(iii) If a permit application is disapproved 10 days or less prior to the proposed parade, the applicant shall have 3 days from the date such disapproval is mailed to the applicant to appeal such disapproval. The Department shall render a decision on such appeal as soon as is reasonably practicable.

HISTORICAL NOTE

Section added City Record June 27, 2001 eff. July 27, 2001. [See T38 Chapter 19 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 19 added City Record June 27, 2001 eff. July 27, 2001. Note further provisions:

This rule is promulgated pursuant to the authority of the Police Commissioner under §§389, 435(a), 1043 of the New York City Charter. The Police Department is authorized to regulate, direct and restrict the movement of pedestrians and vehicular traffic to facilitate and to prevent the obstruction of the free passage on the public streets and to disperse unlawful assemblages. Unauthorized parades and processions are detrimental to the health, welfare and safety of the inhabitants of the city, as they substantially increase traffic hazards and the risk of injury to life and limb. Such uses also disturb the public peace and comfort and the peaceful enjoyment by the people of their right to use the public streets for street purposes. Likewise, parades disturb the peace, quiet and comfort of neighboring inhabitants. The proper regulation of parades and processions is essential to protect the health, welfare and safety of the inhabitants of the city, to secure the health, safety, comfort, convenience, and peaceful enjoyment by the people of their right to use the public streets.

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38 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER A INTRODUCTION

§1-01 Definitions.

As used in this chapter:

Chair. "Chair" shall mean the Chair of the Civilian Complaint Review Board, appointed pursuant to New York City Charter §440(b)(1).

Civilian Complaint Review Board. "Civilian Complaint Review Board" or "Board" shall mean the entity established by Local Law No. 1 for the year 1993, codified as §440 of the New York City Charter.

Commissioner. "Commissioner" shall mean the Police Commissioner of the New York City Police Department.

Executive Director. "Executive Director" shall mean the chief executive officer of the Civilian Complaint Review Board, appointed pursuant to New York City Charter §440(c)(5).

Mediation. "Mediation" shall mean an informal process, voluntarily agreed to by a complainant and the subject officer and conducted with the assistance of a neutral third party, engaged in for the purpose of fully and frankly discussing alleged misconduct and attempting to arrive at a mutually agreeable resolution of a complaint.

Police Department. "Police Department" shall mean the New York City Police Department.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

Executive Director amended City Record July 6, 2009 §1, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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38 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER A INTRODUCTION

§1-02 Jurisdiction.

The Board shall receive, investigate, hear, make findings and recommend action upon complaints by members of the public against uniformed members of the New York City Police Department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. The jurisdiction of the Board shall include the prosecution of substantiated civilian complaints pursuant to a Memorandum of Understanding (MOU) executed by the Board and the Police Department during the period that such MOU is applicable. The findings and recommendations of the Board, and the basis therefor, regarding case investigations and administrative prosecutions shall be submitted to the Police Commissioner.

HISTORICAL NOTE

Section amended City Record June 15, 2001 eff. July 15, 2001. [See T38-A Subchapter E footnote]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER B INITIAL PROCEDURES*3

§1-11 Written Complaints.

Written complaints may be mailed to the Board office or may be submitted in person at that office during operating hours. Written complaints may be filed on forms furnished by the Board. The Board will accept written complaints filed at local precincts and forwarded by the Police Department.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

3

[Footnote 3]: * Subchapter B heading amended City Record July 6, 2009 §2, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER B INITIAL PROCEDURES*3

§1-12 Telephone or In-Person Complaints.

Telephone complaints will be received twenty-four hours a day, seven days a week by the Board. Complainants may also report complaints in person at the Board office during operating hours. Complaints may also be filed at public locations to be designated by the Board.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

3

[Footnote 3]: * Subchapter B heading amended City Record July 6, 2009 §2, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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38 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER B INITIAL PROCEDURES*3

§1-13 Referrals of Complaints.

(a) Where the Board receives allegations about persons or matters falling within the sole jurisdiction of another agency (and not that of the Board), the Board or the Executive Director shall refer such allegations to such other agency.

(b) Where the Board receives allegations about persons or matters falling partly within the sole jurisdiction of another agency (and not that of the Board) and partly within the joint jurisdiction of both the other agency and the Board, the Board or the Executive Director may refer the entire complaint to the other agency if in the determination of the Board or the Executive Director it is appropriate for the entire complaint to be investigated by one single agency.

HISTORICAL NOTE

Section amended City Record July 6, 2009 §3, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

3

[Footnote 3]: * Subchapter B heading amended City Record July 6, 2009 §2, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER B INITIAL PROCEDURES*3

§1-14 Notification to the Police Department.

With respect to complaints about officers and matters within the Board's jurisdiction, the Board shall notify the Police Department of the actions complained of within a reasonable period of time after receipt of the complaint.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

3

[Footnote 3]: * Subchapter B heading amended City Record July 6, 2009 §2, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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38 RCNY 1-21

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER C FACT-FINDING PROCESS

§1-21 Statement of Policy.

The procedures to be followed in investigating complaints shall be such as in the opinion of the Board will best facilitate accurate, orderly and thorough fact-finding.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER C FACT-FINDING PROCESS

§1-22 Method of Investigation of Complaints.

In investigating a complaint, Board investigatory personnel may utilize one or more of the methods set forth in this subchapter, and any other techniques not enumerated here, as may be useful in conducting an investigation.

HISTORICAL NOTE

Section amended City Record July 6, 2009 §4, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

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38 RCNY 1-23

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER C FACT-FINDING PROCESS

§1-23 Obtaining Documentary and Other Evidence.

(a) Board investigators may make written or oral requests for information or docu- ments.

(b) Board investigators or, as provided in §1-32(c), a panel established pursuant to §1-31, may interview the complainant, the subject officer or witnesses.

(c) Board investigators may make field visits for purposes such as examining the site of alleged misconduct and interviewing witnesses.

(d) Upon a majority vote of members of the Board, subpoenas ad testificandum and duces tecum may be served. Board subpoenas are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules.

(e) The Board may obtain records and other materials from the Police Department which are necessary for the investigation of complaints submitted to the Board, except such records and materials that cannot be disclosed by law. In the event that requests for records or other evidence are not complied with, investigators may request that the Board issue a subpoena duces tecum or a subpoena ad testificandum.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER C FACT-FINDING PROCESS

§1-24 Conduct of Interviews.

(a) It is the intent of these Rules not to alter the rights afforded to police officers by the Police Department Patrol Guide with respect to interviews so as to diminish such rights, including but not limited to the right to notice of an interview, the right to counsel, and the right not to be compelled to incriminate oneself.

(b) A member of the Police Department who is the subject of a complaint shall be given two business days notice prior to the date of an interview, to obtain and consult with counsel. A member of the Police Department who is a witness in an investigation of a complaint shall be given a period of time, up to two business days, to confer with counsel.

(c) All persons interviewed may be accompanied by up to two representatives, including counsel. Such counsel or representative may advise the person interviewed as circumstances may warrant, but may not otherwise participate in the proceeding.

(d) Prior to the commencement of the interviewing of a police officer, the following statement shall be read to such officer:

"You are being questioned as part of an official investigation of the Civilian Complaint Review Board. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the

rights and privileges guaranteed by the laws of the State of New York, the Constitution of this State and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation. If you refuse to testify or to answer questions relating to the performance of your official duties, your refusal will be reported to the Police Commissioner and you will be subject to Police Department charges which could result in your dismissal from the Police Department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent Police Department charges."

(e) Interviews shall be scheduled at a reasonable hour, and reasonable requests for interview scheduling or rescheduling shall be accommodated. If possible, an interview with a police officer shall be scheduled when such officer is on duty and during daytime hours. Interviews may be conducted at the Board's offices or other locations designated by the Board.

(f) The interviewer shall inform a member of the Police Department of the name and position of the person in charge of the investigation, name and position of the interviewer, the identity of all persons present at the interview, whether the member is a subject or witness in the investigation, the nature of the complaint and information concerning all allegations, and the identity of witnesses and complainants, except that addresses need not be disclosed and confidential sources need not be identified unless they are witnesses to the alleged incident.

(g) The interviewer shall not use off-the-record questions, offensive language or threats, or promise of reward for answering questions.

(h) The interviewer shall regulate the duration of question periods with breaks for such purpose as meals, personal necessity and telephone calls. The interviewer shall record all recesses.

(i) Interviews shall be recorded either mechanically or by a stenographer.

(j) If a person participating in an interview needs an interpreter, he or she shall advise the Board investigator of such need as soon as possible after being notified of the date and time of the interview. A qualified interpreter will be obtained from an official registry of interpreters or another reliable source.

(k) Reasonable accommodations shall be made for persons with disabilities who are participating in an interview. Persons requiring such accommodations shall advise the Board investigator of such need as soon as possible after being notified of the date and time of the interview.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

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38 RCNY 1-31

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER D DISPOSITION OF CASES*4

§1-31 Assignment of Cases.

(a) The Chair shall assign to a panel consisting of at least three Board members, or may assign to the full Board for review, all cases which have been fully investigated, and such other cases or categories of cases as the Board may by resolution from time to time determine.

(b) Panel membership shall be determined by the Chair, but each panel shall consist of at least one member designated by the City Council, at least one designated by the Police Commissioner, and at least one designated by the Mayor. Panel membership shall be rotated on a regular basis.

HISTORICAL NOTE

Section amended City Record July 6, 2009 §6, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

4

[Footnote 4]: * Subchapter D heading amended City Record July 6, 2009 §5, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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38 RCNY 1-32

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER D DISPOSITION OF CASES*4

§1-32 Panel or Board Review of Cases.

(a) The panel or the Board shall review the investigatory materials for each assigned case, and prepare a report of its findings and recommendations.

(b) The panel or the Board may, if it deems appropriate, return a case to investigative staff for further investigation or a panel may, upon approval of the Board, conduct additional fact-finding interviews in accordance with the provisions of §1-24.

(c) Panel findings and recommendations shall be deemed the findings and recommendations of the Board. However, upon request of a member of the panel, or upon the direction of the Chair at the request of any member of the Board, the case shall be referred to the full Board for its consideration.

HISTORICAL NOTE

Section amended City Record July 6, 2009 §7, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

4

[Footnote 4]: * Subchapter D heading amended City Record July 6, 2009 §5, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER D DISPOSITION OF CASES*4

§1-33 Case Dispositions.

(a) No finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the basis for any such finding or recommendation.

(b) Panels or the Board shall employ a "preponderance of the evidence" standard of proof in evaluating cases.

(c) A report of the findings and recommendations with respect to each case investigation reviewed shall be prepared and transmitted to the Police Commissioner. Where the disposition of one or more allegations is "Substantiated," as defined in subdivision (d) of this section, such report shall be forwarded in writing within five business days of such substantiation and shall include appropriate pedigree information regarding the subject officer, the case number and any other control or serial number assigned to the case, and a summary of the pertinent facts.

(d) The following categories of case investigation dispositions shall be used in reports to the Police Commissioner:

(1) Substantiated: the acts alleged did occur and did constitute misconduct.

(2) Unsubstantiated: there was insufficient evidence to establish whether or not there was an act of misconduct.

(3) Exonerated: the acts alleged did occur but did not constitute misconduct.

(4) Unfounded: the acts alleged did not occur.

(5) Complaint Withdrawn: the complainant voluntarily withdrew the complaint.

(6) Complainant Unavailable: the complainant could not be located.

(7) Victim Unavailable: the victim could not be located.

(8) Complainant Uncooperative: the participation of the complainant was insufficient to enable the Board to conduct a full investigation.

(9) Victim Uncooperative: the participation of the victim was insufficient to enable the Board to conduct a full investigation.

(10) Officer Unidentified: the board was unable to identify the officer who was the subject of the allegation.

(11) Referral: the complaint was referred to another agency.

(12) No Jurisdiction: the complaint does not fall within the jurisdiction of the Board.

(13) No Prima Facie Case: the complaint does not state a prima facie case.

(14) Mediated: the parties to the mediation agreed that the complaint should be considered as having been resolved through mediation.

(15) Mediation Attempted: the parties agreed to mediate the complaint but the civilian subsequently did not participate in the mediation.

(16) Miscellaneous: the subject of the complaint is not currently employed by the Police Department as a police officer.

(17) Other: as from time to time determined by the Board.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

Subd. (c) amended City Record June 15, 2001 eff. July 15, 2001. [See T38-A Subchapter E footnote]

Subd. (d) amended City Record July 6, 2009 §8, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

Subd. (d) open par amended City Record June 15, 2001 eff. July 15, 2001. [See T38-A Subchapter E

footnote]

FOOTNOTES

4

[Footnote 4]: * Subchapter D heading amended City Record July 6, 2009 §5, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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38 RCNY 1-34

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER D DISPOSITION OF CASES*4

§1-34 Cases closed without a Full Investigation.

(a) The Board or the Executive Director may close without conducting a full investigation any case falling within categories (5) through (17) of §1-33.

(b) Prior to the closure of any case under § 1-34(a), board members must be afforded an opportunity to review such case.

HISTORICAL NOTE

Section added City Record July 6, 2009 §9, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

FOOTNOTES

4

[Footnote 4]: * Subchapter D heading amended City Record July 6, 2009 §5, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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38 RCNY 1-41

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER E ADMINISTRATIVE PROSECUTION*1

§1-41 Introduction.

It is the intent of this subchapter to implement the provisions of the Memorandum of Understanding executed by the Board and the Police Department during the period that such MOU is applicable. Upon substantiation by the Board of one or more allegations of excessive use of force, abuse of authority, discourtesy or use of offensive language, the Board shall undertake the responsibility for administrative prosecution of the case. The Board shall independently conduct its administrative prosecution. At the conclusion of the administrative prosecution, the Board shall forward to the Commissioner a final recommendation reflecting the results of its prosecution of the case. The Commissioner shall retain in all respects the authority and discretion to make final disciplinary determinations.

HISTORICAL NOTE

Section added City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter E added City Record June 15, 2001 eff. June 25, 2001, note further provisions:

Statement of Substantial Need For Early Rule Implementation The Civilian Complaint Review Board (Board) hereby finds, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, that there is substantial need for the implementation, upon its publication in the City Record, of the Board's rule implementing the provisions of a Memorandum of Understanding (MOU) between the Board and the Police Department, pursuant to which the board will conduct administrative prosecutions of substantiated civilian complaints against Police Department uniformed officers in proceedings conducted by the Office of Administrative Trials and Hearings. The Memorandum of Understanding will take effect on June 25, 2001. The Board's schedule precluded adoption of these rule amendments prior to its meeting on June 13, 2001, and made necessary this finding to assure that the rule would be in effect no later than the effective date of the MOU. Prompt implementation of the rules, based on this finding and the Mayor's approval, will assure that the Board will be able to comply with the terms of the MOU on its effective date. The amendments to rules of the Police Department, which are necessary to conform the Police Department's rules to the terms of the MOU, were published in final form on May 24, 2001 and will be effective by operation of law thirty days thereafter, prior to the MOU's effective date. Statement of Basis and Purpose These proposed rules implement the terms of a Memorandum of Understanding between the Police Department and the Board, pursuant to which the Board will take over the administrative prosecution of cases where civilian complaints against uniformed police officers have been substantiated by the Board. Where charges and specifications have been preferred against such uniformed officers, the Board's staff will represent the Department at the required hearing, which will be conducted at the Office of Administrative Trials and Hearings. These rules set forth the procedures that will govern both the conduct of the adjudicative hearing and the role of the Board in those administrative prosecutions that do not result in formal hearings.

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38 RCNY 1-42

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER E ADMINISTRATIVE PROSECUTION*1

§1-42 Prosecutorial Discretion.

The Board may in its prosecutorial discretion consider all available levels of Police Department disciplinary penalties in evaluating a substantiated case ranging from informal discipline such as Instructions or Command Discipline through formal discipline of Charges and Specifications. The Board may conduct plea negotiations and reach agreements with subject officers and their attorneys, subject to the Commissioner's approval, or schedule cases for hearing before the New York City Office of Administrative Trials and Hearings (OATH). The Board may also elect to recommend that the case be dismissed or otherwise not be prosecuted.

HISTORICAL NOTE

Section added City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter E added City Record June 15, 2001 eff. June 25, 2001, note further provisions:

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38 RCNY 1-43

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER E ADMINISTRATIVE PROSECUTION*1

§1-43 Coordination with Police Department.

In the course of the administrative prosecution, the Board and Police Department shall communicate as necessary to ensure timely and effective prosecution as follows:

(a) The Police Department shall notify the Chair and the Executive Director if an expedited prosecution is necessary, and the Board shall make every reasonable effort to conclude the prosecution and provide a recommendation to the Commissioner within the requested time frame, including contacting OATH as necessary to request expedited procedures as provided in §1-26(c) of Title 48 of the Rules of the City of New York.

(b) The Board may request from the Police Department a summary of the subject officer's employment history, which shall be provided within ten business days of its receipt of the request. The Board may similarly request a summary of employment history for a witness officer upon demonstrating to the Police Department a particularized need for such summary based upon the facts and circumstances of a specific administrative prosecution.

(c) The Police Department shall advise the Board whether the subject officer is on probation, dismissal probation, or the subject of any other type of Police Department monitoring program or procedure relevant to the prosecution of the substantiated com- plaint.

(d) Where the Police Department determines that administrative prosecution of a substantiated civilian complaint

would be inadvisable or inappropriate for reasons outside the control of the Board, the Police Department may make a written request to the Chair and the Executive Director that the Board refrain from commencing or continuing its prosecution until such time as the prosecution would no longer interfere with a pending matter or otherwise be inappropriate. The request shall include any explanatory information that the Police Department can reasonably provide. Upon receiving such request, the Board shall not commence or continue a prosecution as requested until it receives a written notification from the Police Department no longer than twenty business days from the Police Department's determination that the prosecution need no longer be delayed.

(e) If the Board becomes aware of possible misconduct which falls outside its jurisdiction of excessive use of force, abuse of authority, discourtesy or use of offensive language, the Board shall immediately refer the allegation of other misconduct to the Police Department for investigation and shall not itself undertake the prosecution of such allegation. The Board shall provide assistance to the Department as requested for purposes of investigation or prosecution of the alleged misconduct. If necessary, the Board and the Police Department shall coordinate their separate prosecutions of such related cases.

HISTORICAL NOTE

Section added City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter E added City Record June 15, 2001 eff. June 25, 2001, note further provisions:

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Rules of the City of New York

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38 RCNY 1-44

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER E ADMINISTRATIVE PROSECUTION*1

§1-44 Conclusion of Administrative Prosecution.

At the conclusion of the administrative prosecution, in all instances other than cases culminating in a report and recommendation by OATH, the Board shall forward to the Commissioner a final recommendation reflecting the results of its prosecution of the case. The Board shall include all relevant forms, memoranda and background information to assist the Commissioner in making and implementing a final disciplinary determination. If the case culminated in a hearing before OATH, upon receipt of a report and recommendation by OATH, CCRB may provide to the Police Commissioner a letter commenting on the OATH report and recommendation.

HISTORICAL NOTE

Section added City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter E added City Record June 15, 2001 eff. June 25, 2001, note further provisions:

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Rules of the City of New York

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38 RCNY 1-45

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER E ADMINISTRATIVE PROSECUTION*1

§1-45 Police Commissioner's Determination.

(a) In all instances other than cases culminating in a report and recommendation by OATH, upon receiving the final recommendation of the Board with accompanying documents, the Commissioner may accept, reject, or modify the recommendation presented, or may ask the Board for additional investigative or background information in its possession. He or she may also request further investigation or development of the record in the case. If the Board's recommendation is rejected or modified, the Board will then be responsible for implementing the Police Commissioner's decision and taking the appropriate follow-up action as directed. After taking the appropriate follow-up action, the Board shall forward to the Police Commissioner a final recommendation as provided in §1-44.

(b) In cases culminating in a report and recommendation by OATH, the Police Commissioner may accept, reject, or modify the report and recommendation based upon the record presented. He may in the alternative remand the matter to OATH, stating his reasons therefor, with instructions for further proceedings as appropriate. In the event of such a remand, CCRB shall take appropriate steps in conformance with the reasons set forth in the Police Commissioner's statement for remand to reopen the case.

(c) The Department shall notify the Board of the final disciplinary result and specific penalty in each case within thirty calendar days of the imposition of the specific penalty.

HISTORICAL NOTE

Section added City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter E added City Record June 15, 2001 eff. June 25, 2001, note further provisions:

Statement of Substantial Need For Early Rule Implementation The Civilian Complaint Review Board (Board) hereby finds, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, that there is substantial need for the implementation, upon its publication in the City Record, of the Board's rule implementing the provisions of a Memorandum of Understanding (MOU) between the Board and the Police Department, pursuant to which the board will conduct administrative prosecutions of substantiated civilian complaints against Police Department uniformed officers in proceedings conducted by the Office of Administrative Trials and Hearings. The Memorandum of Understanding will take effect on June 25, 2001. The Board's schedule precluded adoption of these rule amendments prior to its meeting on June 13, 2001, and made necessary this finding to assure that the rule would be in effect no later than the effective date of the MOU. Prompt implementation of the rules, based on this finding and the Mayor's approval, will assure that the Board will be able to comply with the terms of the MOU on its effective date. The amendments to rules of the Police Department, which are necessary to conform the Police Department's rules to the terms of the MOU, were published in final form on May 24, 2001 and will be effective by operation of law thirty days thereafter, prior to the MOU's effective date. Statement of Basis and Purpose These proposed rules implement the terms of a Memorandum of Understanding between the Police Department and the Board, pursuant to which the Board will take over the administrative prosecution of cases where civilian complaints against uniformed police officers have been substantiated by the Board. Where charges and specifications have been preferred against such uniformed officers, the Board's staff will represent the Department at the required hearing, which will be conducted at the Office of Administrative Trials and Hearings. These rules set forth the procedures that will govern both the conduct of the adjudicative hearing and the role of the Board in those administrative prosecutions that do not result in formal hearings.

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38 RCNY 1-46

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER F MISCELLANEOUS MATTERS*2

§1-46 Meetings of the Board.

(a) The full Board shall meet at least one time each month, at which meeting it shall consider cases referred to it and conduct any other business.

(b) If a case has been referred to the Board, the Board may take such action as it deems appropriate, including, but not limited to, making its own findings and recommendations, remanding the case to a referring panel for further consideration or action, and remanding the case for further investigation.

HISTORICAL NOTE

Section renumbered (formerly §1-41) City Record June 15, 2001 eff. July 15, 2001.

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

2

[Footnote 2]: * Subchapter F relettered (formerly Subchapter E) City Record June 15, 2001 eff. July 15, 2001. §§1-41-1-45 renumbered 1-46-1-50.

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38 RCNY 1-47

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER F MISCELLANEOUS MATTERS*2

§1-47 Panel and Board Meetings: General Matters.

(a) If a Board member has a personal, business or other relationship or association with a party to or a witness in a case before a panel to which such member has been assigned, the member shall disclose this situation to the Chair, and shall request that the case be transferred to another panel. If a Board member has such relationship in a case before the full Board, the member should recuse himself or herself from deliberations or action in connection with that case.

(b) Board members must be present at a meeting of the Board or a panel in person or, subject to such limitations as the Board may by resolution from time to time determine, by videoconference in order to register their votes.

HISTORICAL NOTE

Section renumbered (formerly §1-42) City Record June 15, 2001 eff. July 15, 2001. [See T38-A Subchapter E footnote]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

Subd. (b) amended City Record July 6, 2009 §10, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

FOOTNOTES

2

[Footnote 2]: * Subchapter F relettered (formerly Subchapter E) City Record June 15, 2001 eff. July 15, 2001. §§1-41-1-45 renumbered 1-46-1-50.

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***** Current through December 2009 ****

38 RCNY 1-48

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER F MISCELLANEOUS MATTERS*2

§1-48 Communications with and Notifications to Complainants Regarding Status of Complaints.

(a) Within seven business days of the receipt of a complaint, the Board shall notify a complainant by telephone or letter that the Board has received his/her complaint, and shall identify the case number and staff member(s) assigned to the case.

(b) The Board shall advise a complainant by letter, within forty-five days of the filing of a complaint, of the status of his/her case. If the investigation is not completed within ninety days of the filing of a complaint, the Board shall again advise the complainant of the status of his/her case.

(c) The Board shall advise the complainant within five business days of the completion of the case investigation.

(d) The Board shall notify the Complainant by letter of its findings and recommendations regarding the case investigation within seven business days of the Board's submission of the findings and recommendations to the Police Commissioner. If the case is substantiated, the Board shall include notice to the complainant that the Board is responsible for undertaking the administrative prosecution of the complaint.

(e) Following an administrative prosecution, the Board shall notify the complainant by letter of the final action taken by the Commissioner within seven business days of the Board's receipt of the Commissioner's final decision.

(f) Where the parties have agreed to mediate a case, the provisions of paragraphs (b), (c) and (d) of this section shall not apply.

HISTORICAL NOTE

Section renumbered (formerly §1-43) City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

Subd. (d) amended City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

Subd. (e) added City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

Subd. (f) relettered (formerly subd. (e)) City Record June 15, 2001 eff. July 15, 2001. [See T38-A Subchapter E footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter F relettered (formerly Subchapter E) City Record June 15, 2001 eff. July 15, 2001. §§1-41-1-45 renumbered 1-46-1-50.

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38 RCNY 1-49

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER F MISCELLANEOUS MATTERS*2

§1-49 Mediation.

(a) A complainant may choose to resolve a complaint by means of mediation, provided the subject officer agrees to mediation as provided herein, and unless the Board or a panel thereof determines that the complainant is not appropriate for mediation.

(b) Unless the Board or panel thereof determines that a complaint is not appropriate for mediation, a complainant requesting mediation and the subject officer shall be sent a notice formally offering them the opportunity to voluntarily engage in the mediation process.

(c) Both the complainant and the subject officer must agree to mediation within ten days of such notification being sent in order for mediation to proceed. In the event one or both parties do not agree to mediation, the complaint shall be referred to Board investigatory personnel for investigation. The mediator shall be designated by the Executive Director.

(d) Written notice of the time, date and location of the first mediation session shall provided to each party. Such notice shall be accompanied by a description of procedures and guidelines for mediation. Subsequent session(s) shall be scheduled by the mediator if the mediation is not completed at the first session.

(e) Those present at the mediation session shall include the complainant, the subject officer and the mediator. Where appropriate, arrangements may be made for a translator or interpreter to be present. In the case of a complainant

who is a minor, a parent or legal guardian shall be present. Where the Executive Director determines that a complainant who is an adult requires assistance in order to comprehend or participate in mediation, such adult may be accompanied by a family member or legal guardian. Parties' representatives or counsel may be available outside the room where the mediation is being conducted.

(f) All information discussed or statements made at a mediation session shall be held in confidence by the mediator, and the parties shall also agree in writing to maintain such confidentiality. No stenographic record, minutes or other record of the mediation session shall be maintained.

(g) The mediation session(s) shall continue as long as the participants believe that progress is being made toward the resolution of the issues. The mediation process shall terminate if either party announces its unwillingness to continue mediation, the mediator believes no progress is being made, or the complainant fails to attend two or more mediation sessions without good cause shown.

(h) If mediation is successful, the parties shall sign an agreement stating that each believes the issues have been satisfactorily resolved. The mediator shall advise the Board that the mediation has been successfully concluded, and the Board shall forward this information to the Police Commissioner.

(i) If the mediated case is not successfully resolved, the mediator shall notify Board staff of his or her intent to pursue a complaint, and the complaint shall be referred to Board investigatory staff for investigation.

HISTORICAL NOTE

Section renumbered (formerly §1-44) City Record June 15, 2001 eff. July 15, 2001. [See T38-A

Subchapter E footnote]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

2

[Footnote 2]: * Subchapter F relettered (formerly Subchapter E) City Record June 15, 2001 eff. July 15, 2001. §§1-41-1-45 renumbered 1-46-1-50.

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38 RCNY 1-50

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER F MISCELLANEOUS MATTERS*2

§1-50 Reconsideration or Reopening of Cases.

(a) The Board may on receipt of a written request from a complainant or victim or police officer re-open any case closed by a panel or the full board where new evidence or a previously unavailable or uncooperative witness becomes available and in the determination of such panel or full Board such new evidence or the prospective availability or cooperation of such witness may reasonably lead to a different finding or recommendation.

(b) The Executive Director may on receipt of a written request from a complainant or victim, re-open any case closed without a full investigation under §1-34.

(c) Where following receipt of a request to reopen a case closed without a full investigation under §1-34, the Executive Director decides not to reopen such case, such request shall (except as from time to time otherwise directed by the Board) be submitted to a panel or the full Board for its consideration.

(d) Any person considering a request to reopen a case shall have full discretion in making his or her determination, and may properly consider all relevant circumstances, including, but not limited to, any delays on the part of the person requesting that the case be reopened, new, material information as to the complainant, the subject officer or any civilian or police witness, and the practicability of conducting a full investigation of the allegations contained in the case within any applicable limitation period.

HISTORICAL NOTE

Section amended City Record July 6, 2009 §11, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

Section renumbered (formerly §1-45) June 15, 2001 eff. July 15, 2001. [See T38-A Subchapter E

footnote]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

2

[Footnote 2]: * Subchapter F relettered (formerly Subchapter E) City Record June 15, 2001 eff. July 15, 2001. §§1-41-1-45 renumbered 1-46-1-50.

38 RCNY 1-51

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER F MISCELLANEOUS MATTERS*2

§1-51 Authority given to the Executive Director.

The authority given under these Rules to the Executive Director shall

(a) except in relation to § 1-13(b), be exercisable either by the Executive Director or by such members of the senior staff of the Board as the Executive Director may from time to time designate, and

(b) be subject to such limitations as the Board may by resolution from time to time determine.

HISTORICAL NOTE

Section added City Record July 6, 2009 §12, eff. Aug. 5, 2009. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 6, 2009:

Overview

The Civilian Complaint Review Board currently closes certain cases without conducting a full investigation, for example, when a complainant withdraws a complaint, cannot be located or does not co-operate with an investigation.

Under the Board's existing rules, such cases could only be closed following a vote by a panel of the Board.

During the period 2003 to 2007, 18,873 cases were submitted by staff to panels of the Board with the recommendation that they be closed without conducting a full investigation. The Board accepted such recommendation in 18,869 such cases. The Board, therefore, determined to amend the rules so as to authorize the Executive Director or an authorized senior staff member to close certain cases without their first being referred to a panel. Such authorization is subject to such limitations as may from time to time be determined by the Board.

The Board determined that the revised rule will permit cases to be closed without conducting a full investigation, in appropriate circumstances, more speedily and at less cost to the Board, without adversely affecting the interests of the public or of police officers.

The Board also conducted a review of its other rules, and determined that certain of them, such as the rule dealing with the referral of certain cases to other agencies and that dealing with the re-opening of cases, should be revised so as to provide greater clarity, consistency and efficiency.

Detailed Changes

Amended rule §1-13 clarifies the language dealing with the referral of complaints to other agencies and provides that where a complaint contains allegations falling partly within the sole jurisdiction of another agency and partly within the jurisdiction both of such other agency and of the Board, the Board or the Executive Director may refer the entire complaint to the other agency if the person making the determination determines that it is appropriate for the entire complaint to be investigated by one single agency.

Amended rule §1-22 is deleted, to the extent that it deals with complaints concerning persons or matters not within the jurisdiction of the Board or not stating a prima facie case. Such matters are now dealt with by §§1-33(12) and (13) and §1-34.

Amended rule §1-31 clarifies the language dealing with the assignment of cases to panels of the Board and codifies the existing practice regarding the assignment of Board members to panels, whereby each such panel contains at least one member designated by the city council, at least one designated by the police commissioner and at least one designated by the mayor.

The Amended rules delete §1-32(b), relating to cases recommended to be closed under §1-22, because the relevant provision of §1-22 is itself deleted. Such provision in §1-22 is replaced by §§1-33(12) and (13).

Amended rule §1-32(c) (formerly §1-32(d)) provides that cases referred to the full Board shall be so referred for consideration by the Board, and not, as at present, as provided in §1-41 (which concerns the administrative prosecution of cases by the Board). This change is to correct a manifest error.

Amended rule §1-33(d) simplifies certain terms used in case dispositions, so as to make them easier to understand, and defines other terms for the first time.

Amended rule §1-34 authorizes the Board or the Executive Director to close without conducting a full investigation cases in which a complainant voluntarily withdraws a complaint, a complainant or alleged victim cannot be located, the participation of a complainant or alleged victim was insufficient to enable the Board to conduct a full investigation, a subject officer cannot be identified or ceases to be employed by the police department as a police officer, a complaint is referred to another agency, does not fall within the jurisdiction of the Board or does not state a prima facie case, a case is mediated or a complainant or alleged victim agrees to mediate a case but subsequently does not participate in a mediation, or as from time to time determined by the Board. Prior to the closure of any case under §1-34, board members must be afforded an opportunity to review such case.

Amended rule §1-47 permits, subject to such limitations as the Board may by resolution from time to time determine, Board members to attend and vote by videoconference at a meeting of the Board or a panel.

Amended rule §1-50 changes the provisions concerning the re-opening of cases. Under the amended rule, the Executive Director may at the written request of a complainant or alleged victim re-open any case closed without a full investigation and must refer to a panel or the full Board for its decision any such request which he or she decides not to grant. The amended rule removes the requirement that any request to re-open a case be made within 18 months of its closure but provides that any person considering such a request shall have full discretion in making his or her determination and may properly consider, among other things, any delays on the part of the person requesting that the case be re-opened, and the practicability of conducting a full investigation within any applicable limitation period.

Amended rule §1-51 provides that where authority is granted under the rules to the Executive Director, such authority shall (except in relation to certain complaints containing allegations falling within the jurisdiction both of the Board and of another agency) be exercisable either by the Executive Director or by such members of the senior staff of the Board as the Executive Director may from time to time determine; and that the authority granted under the rules to the Executive Director shall be subject to such limitations as the Board may by resolution from time to time determine. This provision will ensure an appropriate degree of administrative flexibility, under the control of the Board, in the Board's operations.

FOOTNOTES

2

[Footnote 2]: * Subchapter F relettered (formerly Subchapter E) City Record June 15, 2001 eff. July 15, 2001. §§1-41-1-45 renumbered 1-46-1-50.

39 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 39 Department of Correction

CHAPTER 1 INMATE RULE BOOK*1

§1-01 Introduction.

This chapter sets forth rules relating to inmates of New York City Department of Correction ("Department") facilities. All inmates will also be provided separately with detailed information relating to their incarceration, including the subjects covered in section 1-02 of these rules.

HISTORICAL NOTE

Section repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of Chapter]

Former §1-01 List of Violations That May Result in Disciplinary Action in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of chapter]

2 of 6 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

39 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 39 Department of Correction

CHAPTER 1 INMATE RULE BOOK*1

§1-02 Rights and Privileges.

(a) **Property.** When you first come to jail, any property that is taken from you that involves a criminal offense may be forwarded to the appropriate law enforcement agency for possible criminal prosecution and subject you to disciplinary action. Property taken from you that does not involve a criminal offense will be identified, receipted, stored and returned to you after your discharge from Department custody. Upon incarceration, you will be given more information about what property may be kept in jail and how to get other property back after discharge.

(b) **Recreation.** The Department may limit your right to participate in recreation for a security related reason in accordance with State Commission of Correction standards (9 NYCRR §7028.6). Upon incarceration, you will be given more information about how and when the Department can limit recreation.

(c) **Religious rights.** You may attend religious services with general population inmates unless you are found to pose a threat to the safety and security of the institution, including if the Department finds it likely that you will disrupt the service. Upon incarceration, you will be given more information about your religious rights in jail in accordance with New York City Board of Correction standards (§1-08).

(d) **Telephone calls.** The Department may limit your telephone calls if they constitute a threat to institutional safety or security, if you abuse the telephone regulations or in accordance with a court order. Upon incarceration, you will be given more information about your rights to telephone calls.

If you are affected by a determination made pursuant to this subdivision, you may appeal such determination to the New York City Board of Correction by providing written notice. Written notice must also be provided to the

Department of Correction and the Facility. You may also submit any additional relevant materials for the Board's consideration. The Board will issue a written response upon the appeal within five (5) business days after receiving the appeal.

(e) **Visits.** The Department may revoke, deny or limit your contact visits if they constitute a serious threat to institutional safety or security. Upon incarceration, you will be given more information about your right to visits and the permitted schedules of those visits.

If you are affected by a determination made pursuant to this subdivision, you may appeal such determination to the New York City Board of Correction and to the Commanding Officer by providing written notice. You may also submit any additional relevant materials for the Board's consideration. The Board, or its designee, will issue a written decision upon the appeal within five (5) business days after receiving notice of the requested review.

HISTORICAL NOTE

Section repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end

of Chapter]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of chapter]

39 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 39 Department of Correction

CHAPTER 1 INMATE RULE BOOK*1

§1-03 Rules of Conduct.

(a) **Introduction.** This section sets forth the behavior that is prohibited in Department of Correction ("Department") facilities. The grade of each offense is listed. The acts of conspiracy, attempt, and accessory will be punishable to the same degree as the actual offense involved.

(b) **Definitions.** (1) "Accessory" shall mean assisting in any way in the violation of a Department rule, before, during or after such violation.

(2) "Any person" shall include, but not be limited to, uniformed and civilian Department staff, medical staff, contractors and their employees, volunteers, visitors and inmates.

(3) "Attempt" shall mean any act that is intended to and tends to lead to a violation of a Department rule.

(4) "Contraband" shall mean any item that is not sold in the commissary, that is not on the approved list of permissible items, that is possessed in more than the approved amount, or that the inmate does not have permission to possess. Contraband includes items that may disrupt the safety, security, good order and discipline of the facility. Any item that is illegal for an individual not on Department property to possess is also illegal to use or possess on Department property. Possession of contraband may subject an inmate to criminal prosecution as well as disciplinary action. Any person who tries to introduce contraband into a facility may also be subject to criminal prosecution.

(5) "Conspiracy" shall mean an agreement between one or more persons to violate a Department rule.

(6) "Good Time" shall mean a discretionary reduction of up to one third of the term of commitment for a definite sentence or certain civil commitments, as allowed by the New York State Correction Law.

(7) "Security Risk Group" shall mean persons such as gang members, intended or actual contraband recipients, and weapons carriers or users, whose actions violate laws or established rules of conduct, or persons who belong to groups whose purpose is antithetical to established law enforcement authority.

(8) "Unauthorized group" shall mean five or more inmates remaining in close physical proximity to each other when not authorized to do so by Department personnel.

(c) **Prohibited conduct.** (1) **Arson (setting fires)**

Grade I:

100.10. An inmate is guilty of arson when he or she intentionally starts or attempts to start any fire or causes or attempts to cause any explosion.

(2) **Assault and Fighting**

Grade I:

101.10. An inmate is guilty of assault on staff when he or she injures or attempts to injure any staff member, or when he or she spits on or throws any object or substance at any staff member. Assault or attempted assault on staff is always a Grade I offense.

101.11: An inmate is guilty of Grade I assault when he or she injures any other person, or when he or she spits on or throws any object or substance at any other person.

101.12: An inmate is guilty of Grade I assault on an inmate when he or she injures any other inmate, or when he or she spits on or throws any object or substance at any other inmate.

101.13: An inmate is guilty of assault with a weapon when he or she uses any item to assault or attempt to assault any person.

101.14: An inmate is guilty of Grade I fighting when he or she engages in a physical struggle with another inmate that results in injury to any person.

Grade II:

101.16: An inmate is guilty of Grade II assault when he or she attempts to injure any person other than a staff member, without using a weapon, but does not cause injury.

101.17: An inmate is guilty of Grade II fighting when he or she engages in a physical struggle with another inmate that does not result in injury.

Grade III:

101.18: An inmate is guilty of Grade III fighting when he or she engages in a non-violent physical struggle with another person such as horseplay, boxing, wrestling or sparring.

(3) **Bribery**

Grade I:

102.10: An inmate is guilty of bribery when he or she gives or attempts to give any benefit, including but not limited to money or valuable items, to any person, with the intent of influencing that person's conduct or obtaining a benefit for himself or herself.

(4) **Contraband**

Grade I:

103.05: Inmates shall not possess any tobacco-related products including, but not limited to, cigarettes, cigars, loose tobacco, chewing tobacco, rolling paper, matches and lighters.

103.07: Inmates shall not sell, exchange or distribute tobacco-related products including, but not limited to, cigarettes, cigars, loose tobacco, chewing tobacco, matches and lighters.

103.08: Inmates shall not make, possess, sell or exchange any amount of alcoholic beverage.

103.10: Inmates shall not make, possess, sell or exchange any type of contraband weapon. Any object that could be used as a weapon may be classified as a weapon.

103.10.5: Inmates shall not possess or transport a Department-issued razor outside the housing area.

103.10.6: Inmates shall return all Department-issued razors after shaving is completed, in accordance with Department or facility procedures. Razors shall be returned in the same condition as received; for example, blade and handle shall be intact.

103.11: Inmates shall not make, possess, sell, give or exchange any amount of narcotic, narcotic paraphernalia, or any other controlled substance.

103.12: Inmates shall not make, possess, sell, give or exchange any type of escape paraphernalia. Where there is the likelihood that an item can be used to aid an escape, it may be classified as escape paraphernalia. Keys, possession of identification belonging to another person, or fictitious person, transferring an inmate's identification to another, possession of employee clothing, or any other articles which would aid in an escape, or which suggest that an escape is being planned, are contraband.

103.12.5: Inmates shall not possess any type of electronic telecommunication and/or recording device or any part of such instrument, which is designed to transmit and/or receive telephonic, electronic, digital, cellular or radio communications The term "telecommunication device" shall include, but not be limited to, any type of instrument, device, machine or equipment which is designed to transmit and/or receive telephonic, electronic, digital, cellular or radio signals or communications or any part of such instrument, device, machine or equipment as well as any type of instrument designed to have sound, or image recording abilities and shall include, but not be limited to, a cellular or digital phone, a pager, a two-way radio text messaging or modem device (including a modem equipment device), a camera, a video recorder and a tape or digital recording device, or any other device that has such capabilities. (Radios sold in commissary are excluded from this prohibition.) Inmates shall not possess any type of device or any part of such instrument designed to have sound and/or image recording or capturing capabilities. Such devices shall include, but not be limited to, cameras (digital or film), video recorders, and tape or digital recording devices. Inmates are also prohibited from possessing any type of phone or battery charger, or A/C adapter for any electronic device prohibited by this rule.

103.12.6: Inmates shall not possess any contraband with intent to sell or distribute such contraband.

103.12.7: An inmate is guilty of the offense of Possession of Contraband Grade I when such inmate possesses money whose value exceeds twenty (20) dollars in cash or checks. Money confiscated as contraband will be deposited

in the City's treasury and will not be returned to the inmate.

Grade II:

103.13: Inmates shall not sell or exchange prescription drugs or non-prescription drugs. Inmates shall not possess prescription drugs that they are not authorized by medical staff to possess.

103.13.5: Inmates shall not possess prescription or non-prescription drugs in quantities in excess of that authorized by medical staff. Inmates are not authorized to possess expired prescription medication or drugs.

103.13.6: Inmates are not authorized to possess any drug that by prescription, or by medical order, must be ingested in view of Department and/or medical staff.

103.13.7: Inmates shall not possess more than one Department-issued razor.

103.14: Inmates shall not make, possess, sell, exchange, use or display any item that identifies the inmate as a member or associate of a Security Risk Group or of a gang. Articles of religious significance that are Security Risk Group identifiers shall only be considered contraband if they are displayed. Incidental or inadvertent exposure of the item (for example, while showering, saying the rosary or other religious observance, dressing or undressing or sleeping) shall not be considered "display" under this rule.

103.15: An inmate is guilty of the offense of Possession of Contraband Grade II when such inmate possesses money not in excess of twenty (20) dollars, or checks or credit cards. Money confiscated as contraband will be deposited in the City's treasury and will not be returned to the inmate.

Grade III:

103.16: Inmates shall not possess unauthorized hobby materials, art supplies or tattooing equipment, or writing implements.

103.17: Inmates shall not possess unauthorized amounts of jewelry, clothing, food, or personal property.

103.18: Inmates shall not possess unauthorized amounts of City-issued property.

103.19: Inmates shall not possess any other unauthorized items not specifically listed within this section.

(5) **Count Procedures**

Grade II:

104.10: Inmates shall not intentionally cause a miscount.

104.11: Inmates shall not intentionally delay the count.

(6) **Creating a Fire, Health or Safety Hazard**

Grade II:

105.10: Inmates shall not create a fire hazard, health hazard, or other safety hazard.

105.11: Inmates shall not tamper with any fire safety equipment.

105.12: Inmates shall not cause any false alarms about a fire, claimed health emergency, or create any kind of disturbance or security problem.

105.13: Inmates shall not flood any living area or other area in the facility.

Grade III:

105.14: Inmates shall not store food in their housing area or any work place, except food items bought in the commissary, which must be stored in the food containers provided.

105.15: Inmates shall not litter, spit, or throw garbage or any kind of waste or substance.

105.16: Inmates shall follow all local facility rules relating to fire, health or safety.

105.17: Inmates shall clean their cell or living area, toilet bowl, sink and all other furnishings every day. They must keep their cells and beds neatly arranged. Before leaving their cells or living areas for any purpose, they must clean their cells or areas and make their beds.

105.19: Inmates shall not obscure, block, obstruct, mark up, write on, or post any pictures or place any other articles on Department property, including any walls, windows, cells, or lighting fixtures.

105.20: Inmates shall not cook in any living area, including any cell.

105.22: Inmates must keep themselves and their clothes clean.

105.24: Inmates shall not block the view into or out of any cell by putting anything on the bars of the cell or on any cell door, cell door window or cell window, in a manner that would obstruct the view into or out of the cell.

(7) **Demonstrations**

Grade I:

106.10: Inmates shall not lead, attempt to lead or encourage others to participate in boycotts, work stoppages, or other demonstrations that interrupt the routine of the facility.

106.11: Inmates shall not participate in boycotts, work stoppages, or other demonstrations.

(8) **Destruction of Property**

Grade I:

107.10: An inmate is guilty of the offense of Destruction of Property Grade I when such inmate misuses, defaces, or destroys City property, or private property belonging to another, with a value greater than one hundred dollars ($100.00).

Grade II:

107.11: An inmate is guilty of the offense of Destruction of Property Grade II when such inmate misuses, defaces, or destroys City property, or private property belonging to another, with a value between ten dollars ($10.00) and one hundred dollars ($100.00).

Grade III:

107.12: An inmate is guilty of the offense of Destruction of Property Grade III when such inmate defaces or destroys City property, or private property belonging to another, with a value of ten dollars ($10.00) or less.

(9) **Disorderly Conduct**

Grade III:

108.10: Inmates shall not shout out to, curse, use abusive language, or make obscene gestures towards any person.

108.11: Inmates shall not behave in a loud and noisy manner.

(10) **Disrespect for Staff**

Grade I:

109.10: Inmates shall not physically resist staff members.

109.11: Inmates shall not harass or annoy staff members by touching or rubbing against them.

Grade II:

109.12: Inmates shall not verbally abuse or harass staff members, or make obscene gestures towards any staff members.

(11) **Disrupting Institutional Programs**

Grade II:

110.10: Inmates shall not interfere with or disrupt institutional services, programs, or special activities.

(12) **Escape**

Grade I:

111.10 Inmates shall not escape or aid others to escape, or attempt to escape or aid others to escape. Exiting Department property, a Department facility, or vehicle without permission from Department staff is an escape.

(13) **Extortion**

Grade I:

112.10: Inmates shall not make threats, spoken, in writing or by gesture, against a staff member for the purpose of obtaining any benefit.

Grade II:

112.11: Inmates shall not make any threats, spoken, in writing or by any gesture, against any person other than a staff member for the purpose of obtaining any benefit.

(14) **False Statements**

Grade II:

112.50: Inmates shall not provide to Department officials, or officials from other governmental entities, false oral or written statements for any purpose.

(15) **Gambling**

Grade III:

113.10: Inmates shall not engage in any form of gambling.

(16) **Hostage Taking**

Grade I:

114.10: Inmates shall not take or hold any person hostage.

(17) **Identification Procedures**

Grade III:

115.10: Inmates shall carry and display their Department ID cards clipped onto the outermost garment at all times when outside their cell or sleeping quarters.

115.11: Inmates shall promptly produce their Department ID cards at the direction of any staff member.

115.12: Inmates shall report the loss of their ID cards promptly to appropriate staff members. Inmates shall be charged a fee of $6.00 for a new identification card with or without a clip. There will be no charge for the clip alone.

(18) **Impersonation**

Grade I:

116.10: Inmates shall not impersonate any staff member in any way.

Grade II:

116.11: Inmates shall not impersonate another inmate or any other person in any way.

(19) **Inmate Movement**

Grade II:

117.10: Inmates shall follow facility rules and staff orders relating to movement inside and outside the facility, including, but not limited to, rules and orders dealing with seating, lock-in and lock-out.

Grade III:

117.11: Inmates shall not be out of their assigned area, including being in a cell to which they are not assigned, nor shall inmates leave an assigned area such as a work area or program area, without authorization.

(20) **Purchase, Sale or Exchange of Services or Property**

Grade III:

119.10: Inmates shall not sell, buy or exchange services or personal property with any other inmate without permission.

(21) **Refusal To Obey a Direct Order**

Grade II:

120.10: Inmates shall obey all orders of Department staff promptly and completely. It shall be a Grade II offense to fail to obey the following orders: to stop fighting with or assaulting another person, to be frisked, to have a cell

searched, to be locked-in and/or locked-out, to disperse an unauthorized assembly, to identify oneself, to go to court, and to cooperate in admission procedures. It shall be a Grade II offense to fail to obey any order given to an inmate when the inmate is outside the facility, and when any order is given in any emergency situation.

Grade III:

120.11: It shall be a Grade III offense to refuse to obey any other staff order promptly and completely.

(22) **Rioting**

Grade I:

121.10: Inmates shall not take any action with the intention of taking control over any area of any facility. Inmates in groups must not use or threaten violence against any person or property.

121.12: Inmates shall not encourage or in any way persuade other inmates to take any action in order to take control over any area of the facility, or to use or threaten violence against any person or property.

(23) **Sex Offenses**

Grade I:

122.10: Inmates shall not force or in any way coerce any person to engage in sexual activities.

Grade II:

122.11: Inmates shall not voluntarily engage in sexual activity with any other person. 122.12: Inmates shall not expose the private parts of their bodies in a lewd manner. Grade III:

122.13: Inmates shall not request, solicit or otherwise encourage any person to engage in sexual activity.

(24) **Smuggling**

Grade I:

123.10: Inmates shall be guilty of Grade I smuggling if, by their own actions or acting in concert with others, they smuggle weapons, drugs or drug-related products, alcohol, tobacco or tobacco related products, or escape paraphernalia into or out of the facility.

Grade III:

123.11: Inmates shall be guilty of Grade III smuggling if, by their own actions or acting in concert with others, they smuggle contraband other than that listed in section 123.10 of these rules.

(25) **Stealing; Possession of Stolen Property**

Grade II:

124.10: Inmates shall not steal property belonging to any other person or to the City whether that property is of any or no monetary value.

Grade II:

124.11: Inmates shall not possess property belonging to any other person or to the City whether that property is of

any or no monetary value.

(26) **Tampering With Documents**

Grade II:

125.10: Inmates shall not destroy, tamper with, change, counterfeit, or give other inmates any institutional documents, passes or ID Cards.

125.11: Inmates shall not forge the signature of staff, an inmate, or any other person on any documents, institutional or otherwise.

(27) **Tampering With Security Devices**

Grade I:

126.10: Inmates shall not tamper with, destroy, or sabotage any security related devices or equipment.

(28) **Threats**

Grade I:

127.10 Inmates shall not make any threat whether spoken, in writing, or by gesture, against any staff member.

Grade II:

127.11 Inmates shall not make any threat whether spoken, in writing, or by gesture, against any person other than a staff member.

(29) **Unauthorized Assembly**

Grade I:

128.10: Inmates shall not gather in unauthorized groups anywhere.

(30) **Refusal to Provide Sample for DNA Bank**

Grade 1:

129.10: Inmates shall not refuse to provide a DNA sample if they meet the criteria as set forth in Article 49-B of the New York State Executive Law qualifying a person as a designated offender. A designated offender is a person convicted and sentenced for charges specified in subdivision seven (7) of §995 of Article 49-B of the New York State Executive Law, including, but not limited to Sex Offenses, Drug Offenses, and Dangerous Weapons Offenses.

(31) **Refusal to Provide Sample for Random Drug/Alcohol Testing**

Grade I:

130.10: Inmates shall not refuse to provide a urine, hair, saliva, or other sample, according to the Department's policy and procedures, when they have been notified by the head of the facility or his/her designee that they have been selected for drug/alcohol testing, whether by random selection or based on reasonable suspicion.

(32) **Testing Positive for Alcohol or Illegal Drugs/Substances**

Grade I:

130.11 Inmates shall not test positive for nor be found under the influence of alcohol or illegal drugs/substances.

Grade I:

130.12: Inmates shall not adulterate or tamper with, or attempt to adulterate or tamper with a urine sample or offer as their own a urine sample of another individual.

(33) **Acts of Hate**

Grade I:

131.00: Inmates shall not engage in acts of hate against any person due to a belief or perception regarding such person's race, color, national origin, affiliation with any group, religion, religious practice, age, gender, disability, or sexual orientation.

131.10 Any action that targets a person or group in a negative and or hostile manner is strictly prohibited. Inmates shall not intentionally commit any verbal and or physical offense against staff, inmates, or visitors, in whole or substantial part based on the other person's or persons' race, religion, color, national origin, group affiliation, age, gender or sexual orientation.

HISTORICAL NOTE

Section repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of Chapter]

Former §1-03 Inmate Discipline in original publication July 1, 1991; amended in part City Record July 30, 2001.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of chapter]

Rules of the City of New York

***** Current through December 2009 ****

39 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 39 Department of Correction

CHAPTER 1 INMATE RULE BOOK*1

§1-04 Hearing Procedures.

This section sets forth hearing procedures.

(a) **General procedures.** (1) When you are placed against your will in any of the most restrictive security categories, including punitive segregation, you will be given written notice of:

(i) The reasons for the designation.

(ii) The evidence relied upon. The Department is not required to provide you with the source of confidential information.

(iii) The right to a hearing before an impartial Adjudication Captain appointed from the Adjudication Unit.

(iv) Your rights at the hearing.

(b) **Disciplinary hearing procedures.**

(1) Pre-Hearing Detention (PHD). Where you are placed in Pre-Hearing Detention (PHD) prior to your disciplinary hearing, the infraction hearing will be completed within three (3) business days of your transfer to PHD. If the infraction hearing cannot be completed within three (3) business days, the Adjudication Captain will assess whether it is likely that a hearing will be completed within another three (3) business days. PHD placement may be extended once for a maximum of another three (3) business days. If the hearing is not completed within that time the Chief of Facility Operations or his/her designee shall determine whether you should be placed in Close Custody.

(2) Disciplinary Infraction Hearings. If you are not placed in PHD, the infraction hearing will take place within three (3) business days after you receive written notice, unless any further delay is justified in accordance with Directive 6500R-B III.C.2.

Hearings may be held in absentia (that is, without you present) only under the following circumstances:

(i) You are notified of the hearing and refuse to appear; or

(ii) You appear and are extremely disruptive, causing a situation, which is unduly hazardous to institutional safety, and necessitating your removal from the hearing room thus constituting a constructive refusal to appear.

When either of these situations arises, the justification for holding the hearing in absentia shall be clearly documented in the Adjudication Captain's decision.

(3) If you request a hearing you have the following rights:

(i) To personally appear.

(ii) To make statements.

(iii) To present material, relevant, and non-duplicative evidence.

(iv) To have witnesses testify at the hearing, provided they are reasonably available and attending the infraction hearing will not be unduly hazardous to the institutional safety or correctional goals.

(v) If you are illiterate or if your case is very complicated, you have a right to be helped by a "hearing facilitator" (not a lawyer).

(vi) If you do not understand or are not able to communicate in English well enough to conduct the hearing in English, you have a right to an interpreter.

(vii) You have a right to appeal an adverse decision.

(c) **Close Custody and Close Custody/Protective Custody.**

(1) If you are transferred to close custody (CC), including protective custody (CC/PC), the Department will determine within two (2) business days whether you should continue in such housing. If you do not consent to a decision to continue CC or CC/PC placement, you will be provided with written notice as set forth in §1-04(a)(1).

(2) The hearing will be held no sooner than 24 hours and no later than three (3) business days after you receive the written notice of your Close Custody security designation, unless an adjournment is required or for one of the reasons set forth in Directive 6006R-C III. E. 8.

(3) The Adjudication Captain will recommend whether you should remain in CC or CC/PC to the Chief of Facility Operations in writing within one (1) business day after the hearing. You will receive a copy of the decision of the Chief of Facility Operations or designee.

(4) If you are placed in CC or CC/PC, the Department will review your case every twenty-eight (28) days to see if you should remain in CC or CC/PC. You will be notified in writing of the results of that review.

(5) If you request a hearing you will have the following rights:

(i) To personally appear.

(ii) To be informed of the evidence against you that resulted in the designation.

(iii) The opportunity to make a statement.

(iv) To call witnesses, subject to the Adjudication Captain's discretion.

(v) To present evidence.

(vi) The right to a written determination with reasons.

(d) **Miscellaneous.** (1) If you are illiterate, if your case is very complicated, or a pre-hearing transfer has restricted access to potential witnesses, you have a right to be helped by a "hearing facilitator" (not a lawyer). In hearings other than disciplinary infraction hearings, the Department may in its discretion allow you to have a lawyer present who is willing to represent you.

(2) If you do not understand English an interpreter will be provided.

(3) The proceedings of the hearing are recorded.

HISTORICAL NOTE

Section added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of Chapter]

CASE AND ADMINISTRATIVE NOTES

¶ 1. An inmate's right to present witnesses is limited because of the danger which may result from violence or intimidation directed at other inmates or staff. Thus, an inmate responding to charges at a disciplinary hearing has no unqualified right to present witnesses, and may not confront or cross-examine adverse witnesses. Otero v. New York City Dept. of Corrections, 290 A.D.2d 272, 735 N.Y.S.2d 768 (1st Dept. 2002).

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of chapter]

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39 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 39 Department of Correction

CHAPTER 1 INMATE RULE BOOK*1

§1-05 Penalties.

(a) **Introduction.** If you are found guilty of violating a Department rule of conduct, your penalty will depend on the seriousness of your offense. Grade I offenses are the most serious and Grade III offenses are the least serious. The penalty will also depend on the facts and circumstances of your case. If you have a good explanation or justification for your actions-what is known as "mitigating circumstances"-you may receive a less severe penalty.

Any of the penalties set forth below, or a combination of them, may be imposed on you for violating Department rules of conduct.

(b) **Reprimand.** You may lose one or more privileges, temporarily or permanently, except that:

(i) You will not be deprived of the right to receive visitors, although contact visits may be replaced with non-contact visits.

(ii) You will not be deprived of the right to send or receive mail.

(iii) You will not be deprived of the right to contact legal counsel.

(iv) You will not be deprived of the right to have recreation as a sanction for an infraction.

(c) **Loss of Good Time.** If you are sentenced and serving your time in a Department facility, you may lose good time.

(i) You may lose all your good time for a Grade I offense.

(ii) The maximum that you can lose for a Grade II offense is two-thirds of all of your good time.

(iii) The maximum that you can lose for a Grade III offense is one-third of all of your good time.

(d) **Punitive Segregation.**

(i) The maximum period of punitive segregation for a Grade I offense is ninety (90) days for each disciplinary charge.

(ii) The maximum period for a Grade II offense is twenty (20) days for each disciplinary charge.

(iii) The maximum period for a Grade III offense is ten (10) days for each disciplinary charge.

(e) **Restitution.** If you are found guilty of damaging or destroying City property, you may be ordered to pay restitution, which can be as much as the replacement cost of the item or property, plus the labor costs of fixing or replacing the item you damaged or destroyed. If you are found guilty of an assault that causes a need for medical services, you can be ordered to make a restitution payment towards the cost to the City of providing such medical services.

(f) **Repeated offenses.** The third time you are found guilty of a rule of conduct violation for the same offense during the same period of incarceration, you may be sentenced to a penalty that applies to the next higher grade of offenses. For example, the third time you are found guilty of violating a specific Grade III offense during the same period of incarceration, you may be given a Grade II penalty. Similarly, the third time you are found guilty of violating a specific Grade II offense during the same period of incarceration, you may be given a Grade I penalty.

(g) **Surcharge.** A disciplinary surcharge, in the maximum amount allowed by law, may be imposed on you for violating a rule of conduct.

HISTORICAL NOTE

Section added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of Chapter]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of chapter]

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Rules of the City of New York

***** Current through December 2009 ****

39 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 39 Department of Correction

CHAPTER 1 INMATE RULE BOOK*1

§1-06 Appeals.

You have the right to appeal an adverse decision rendered by the Adjudication Captain within two (2) business days of service of the decision. If you have been sentenced to a total of thirty (30) days or more of punitive segregation or loss of all your good time on any one (1) Notice of Disciplinary Disposition (6500D), your appeal shall be forwarded to the General Counsel in the Department's Legal Division. Within five (5) business days of the receipt of your appeal, you will receive a written decision from the General Counsel regarding such appeal, unless further documentation/information is required by the General Counsel to decide your appeal. In those cases, the five (5) business day limit shall be extended and the reasons for the extensions will be noted on the General Counsel's decision to you. If you receive an unfavorable decision from General Counsel within ten (10) business days of the receipt of your appeal, you may file a petition for a writ under Article 78 of the CPLR. If you are sentenced to less than thirty (30) days punitive segregation or loss of less than all of your good time, you may appeal that decision to the Warden of the facility where the infraction occurred.

HISTORICAL NOTE

Section added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of Chapter]

STATEMENTS OF BASIS AND PURPOSE 1. Statement of Basis and Purpose in City Record Sept. 12, 2007: The Commissioner of the New York City Department of Correction is authorized by Sections 389, 623 and 1043 of the City Charter and §9-114 of the Administrative Code to adopt rules relating to the management of Department of Correction facilities and the conduct of inmates in such facilities. **General Description of Changes** The proposed rules would amend Sections 1-01, 1-02 and 1-03 of Title 39 of the Rules of the City of New York. The purpose of the

proposed rules is to further deter inmate misconduct and increase inmate compliance with institutional rules and regulations, thereby maintaining the good order of and increasing safety at the City's correctional institutions. The proposed rules incorporate many of the previously promulgated rules of conduct and also include new prohibitions, including: testing positive for alcohol or illegal drugs/substances; refusing to provide a sample for random drug/alcohol and possessing electronic telecommunication and/or recording devices. In addition, the penalties for violations of certain rules of conduct have been increased. These additional rules and enhanced penalties have been determined to be necessary to further deter the entrance and use of contraband into Department of Correction facilities by inmates or their agents and to further deter misconduct, thereby positively affecting the good order of, and safety at, the City's correctional institutions. Specific Changes Initially Published for Comment The list of areas of prohibited behavior in former §1-01 was omitted as duplicative of the list of rules of conduct fully described in §1-03. Proposed §1-01 introduces the Inmate Rule Book and informs the public that all inmates will be provided separately with additional information on certain subjects of these rules. Former §1-02(a), "Due process-detainees in high security categories", has been updated and renumbered as §1-04, entitled "Hearing Procedures". Significant amendments include the notification that the Department is not required to provide inmates with the source of confidential information (1-03(a)(1)(ii)); a clarification of the requirements to permit inmates to call witnesses at their due process hearings (1-03(a)(2)(iii)) and of the right to cross-examine witnesses (1-03(a)(2)(iv)); and the renaming of the "counsel substitute" as "hearing facilitator". Former §1-02(b), "Homosexual housing", has been deleted from these rules because the Department no longer designates any housing areas as homosexual housing. Former §1-02(c), "Centrally monitored case", has been deleted from these rules because the designation of an inmate as a "centrally monitored case" is an internal administrative categorization that does not itself affect housing, method of restraint, or any other incident of confinement that implicates an inmate's due process rights. Former §1-02(d), "Confiscation of property", has been clarified and replaced with proposed §1-02(a), "Property". Former §1-02(e), "Recreation", has been clarified and replaced with proposed §1-02(b), "Recreation". Former §1-02(f), "Religious services", has been clarified and replaced with proposed §1-02(c), "Religious rights". Former §1-02(g), "Telephone calls", has been clarified and replaced with proposed §1-02(d), "Telephone calls". Former §1-02(h), "Visiting", has been clarified and replaced with proposed §1-02(e), "Visits". Former §1-03, "Inmate Discipline", has been renamed "Rules of Conduct". Former §1-03(a) has been consolidated with former §1-02(a) as a proposed §1-04, "Hearing Procedures", which is described above. Former §1-03(b), "Penalties that can be administered", and 1-03(c), "Normative range of penalties", have been consolidated and renumbered as proposed §1-05, "Penalties". The majority of the changes in these sections are for clarification only. Additionally, the maximum period of punitive segregation for all Grade I offenses will be 90 days for each disciplinary charge (proposed §1-05(d)(1)). Former §1-03(d), "Categories of offenses and consequent penalties", has been reorganized and renumbered as proposed §1-03, "Rules of Conduct". Proposed §1-03(a) introduces the rules and states that the acts of conspiracy, attempt, and accessory will be punishable to the same degree as the actual offense involved. Proposed §1-03(b) would provide definitions for the terms "accessory", "any person", "attempt", "contraband", "conspiracy", "good time", "security risk group", and "unauthorized group". Proposed §1-03(c), "Prohibited conduct", lists the specific actions that are prohibited for inmates in Department custody, with the grade of each offense. This section has been edited for clarity and reorganized to incorporate the rule numbering in effect in the Department. Additionally, the following conduct is now prohibited: The possession, sale, exchange, or distribution of tobacco and tobacco-related products (proposed Rules 103.05 and 103.07) and alcohol (proposed Rule 103.08) The possession of any type of electronic telecommunication and/or recording device or part thereof (proposed Rule 103.12.5) The refusal to provide a DNA sample as required by law for designated offenders (proposed Rule 129.10) The refusal to provide a sample for random drug/alcohol testing (proposed Rule 130.10) Testing positive for alcohol or drugs (proposed Rules 130.11 and 130.12) Acts of hate (proposed Rules 131.00 and 131.10) Changes Made After Receiving Comments The Department received and reviewed comments from the public after publishing the proposed rules in the City Record on March 12, 2007. The following changes to the proposal have been made as a result of some of these comments: §1-02 Rights and Privileges §1-02 (b) Recreation: This subdivision was amended to indicate that an inmate's right to participate in recreation for a security-related reason will be governed by the standards promulgated by the State Commission of Correction (9 NYCRR §7028.6). §1-02(c) Religious rights: This section is clarified by providing that inmates are to receive more information about their religious rights in jail in accordance with standards promulgated by the State Board of Correction (§1-08). §1-02(d) Telephone calls: This subdivision has been amended to conform to

existing local rules. In addition, the right to appeal a Department decision regarding telephone calls is now expressly set forth in this subdivision. §1-02 (e) Visits: The right to appeal a Department decision regarding visits is now expressly set forth in this subdivision. §1-03 Rules of Conduct §104.10 and §104.11 ((5) Count Procedures, Grade II): The term "intentionally" is added to the proscriptions against causing a miscount (§104.10) and delaying the count (§104.11). §109.12 ((10) Disrespect for Staff, Grade II): The term "annoy" has been deleted from the list of actions constituting disrespectful behavior towards staff members. §120.10 ((21) Refusal To Obey a Direct Order, Grade II): The phrase "and without argument" has been deleted from mandate that inmates "promptly and completely" obey all orders of Department staff. §120.11((21) Refusal To Obey a Direct Order, Grade III): The phrase "and without argument" has been deleted from the mandate that inmates "promptly and completely" obey all orders of Department staff. §1-04 Hearing Procedures This section was revised to clarify the process and distinguish between disciplinary infraction, close custody and close custody/protective custody proceedings. §1-05 Penalties (b)(iv): Reprimand With respect to the penalty of "Reprimand", reference is made to the standards of the State Commission of Correction (9 NYCRR §7028.6(a)) with respect to the deprivation of recreation. §1-06 Appeals A new section has been added to describe procedures governing the already existing right to appeal an adverse decision rendered by the Adjudication Captain. This applies to sentences of (1) at least thirty days of punitive segregation or loss of all of one's good time, or (2) less than thirty days of punitive segregation or loss of less than all of one's good time.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of chapter]

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-01 Non-discriminatory Treatment.

(a) **Policy.** Prisoners shall not be subject to discriminatory treatment based upon race, religion, nationality, sex, sexual orientation, gender, disability, age or political belief. The term "prisoner" means any person in the custody of the New York City Department of Correction ("the Department"). "Detainee" means any prisoner awaiting disposition of a criminal charge. "Sentenced prisoner" means any prisoner serving a sentence of up to one year in Department custody.

(b) **Equal protection.** (1) Prisoners shall be afforded equal opportunity in all decisions including, but not limited to, work and housing assignments, classification, and discipline.

(2) Prisoners shall be afforded equal protection and equal opportunity in being considered for any available programs including, but not limited to educational, religious, vocational, recreational, or temporary release.

(3) Each facility shall provide programs, cultural activities and foods suitable for those racial and ethnic groups with significant representation in the prisoner population, including Black and Hispanic prisoners.

(4) Nothing contained in this section shall prevent the Department from using rational criteria for a particular program or opportunity.

(c) **Hispanic prisoners and staff.** (1) Each facility shall have a sufficient number of employees and volunteers fluent in the Spanish language to assist Hispanic prisoners in understanding, and participating, in the various facility programs and activities, including use of the law library and parole applications.

(2) Bilingual prisoners in each housing unit should be used to assist Spanish-speaking prisoners in the unit and in the law library.

(3) Communications on any significant matter from correctional personnel to prisoners, including, but not limited to, orientation, legal research, facility programs, medical procedures, minimum standards and disciplinary code shall be in Spanish and English.

(4) Communications on any significant matter from correctional personnel to outside individuals or organizations regularly involved with New York City prisoners shall be in Spanish and English.

(5) Spanish-speaking prisoners shall be afforded opportunities to read publications and newspapers printed in Spanish, and to hear radio and television programs broadcast in Spanish. Facility libraries shall contain Spanish language books and materials.

(d) **Different languages.** (1) Prisoners shall be permitted to communicate with other prisoners and with persons outside the facility by mail, telephone, or in person, in any language, and may read and receive written materials in any language.

(2) Provisions shall be made by the Department to assist in assuring prompt access to translation services for non-English speaking prisoners.

(3) Procedures shall be employed to ensure that non-English speaking prisoners understand all written and oral communications from facility staff members, including but not limited to, orientation procedures, health services procedures, facility rules and disciplinary proceedings.

HISTORICAL NOTE

Section amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

DERIVATION

Former §1-01 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-02 Classification of Prisoners.

(a) **Policy.** Consistent with the requirements of this section the Department shall employ a classification system for prisoners.

(b) **Categories.** (1) Prisoners serving sentence shall be housed separate and apart from prisoners awaiting trial or examination, except when housed in:

(i) punitive segregation;

(ii) medical housing areas;

(iii) mental health centers and mental observation cell housing areas;

(iv) close custody housing areas; and

(v) nursery.

(2) Within the categories set forth in paragraph (1), the following groupings shall be housed separate and apart:

(i) male adults, ages 19 and over;

(ii) male minors, ages 16 to 18 inclusive;

(iii) female adults, ages 19 and over;

(iv) female minors, ages 16 to 18 inclusive.

(c) **Civil prisoners.** (1) Prisoners who are not directly involved in the criminal process as detainees or serving sentence and are confined for other reasons including civil process, civil contempt or material witness, shall be housed separate and apart from other prisoners and, if possible, located in a different structure or wing. They must be afforded at least as many of the rights, privileges and opportunities available to other prisoners.

(2) Within this category, the following groupings shall be housed separate and apart:

(i) male adults, ages 19 and over;

(ii) male minors, ages 16 to 18 inclusive;

(iii) female adults, ages 19 and over;

(iv) female minors, ages 16 to 18 inclusive.

(d) **Limited commingling.** Nothing contained in this section shall prevent prisoners in different categories or groupings from being in the same area for a specific purpose, including, but not limited to, entertainment, classes, contact visits or medical necessity.

(e) **Security classification.** (1) The Department shall use a system of classification to group prisoners according to the minimum degree of surveillance and security required.

(2) The system of classification shall meet the following requirements:

(i) It shall be in writing and shall specify the basic objectives, the classification categories, the variables and criteria used, the procedures used and the specific consequences to the prisoner of placement in each category.

(ii) It shall include at least two classification categories.

(iii) It shall provide for an initial classification upon entrance into the corrections system. Such classification shall take into account only relevant factual information about the prisoner, capable of verification.

(iv) It shall provide for involvement of the prisoner at every stage with adequate due process.

(v) Prisoners placed in the most restrictive security status shall only be denied those rights, privileges and opportunities that are directly related to their status and which cannot be provided to them at a different time or place than provided to other prisoners.

(vi) It shall provide mechanisms for review of prisoners placed in the most restrictive security status at intervals not to exceed four weeks for detainees and eight weeks for sentenced prisoners.

HISTORICAL NOTE

Section amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

DERIVATION

Former §1-02 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

Rules of the City of New York

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40 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-03 Personal Hygiene.

(a) **Policy.** Each facility shall provide for and maintain reasonable standards of prisoner personal hygiene.

(b) **Showers.** (1) Showers with hot and cold water shall be made available to all prisoners daily. The hot water temperature norms of the American Public Health Association shall be followed. Consistent with facility health requirements, prisoners may be required to shower periodically. The shower area shall be cleaned at least once each week.

(2) Notwithstanding paragraph (1) of this subdivision, prisoners confined in punitive segregation may be denied daily access to showers for infraction convictions for misconduct on the way to, from or during a shower, as follows: for a first offense, access to showers may be reduced to five days per week for two consecutive weeks; for subsequent convictions during the same punitive segregation confinement, as follows: for a second conviction, access to showers may be reduced to three days per week for up to three consecutive weeks; for a third conviction, to three days per week for up to four consecutive weeks; and for a fourth conviction, to three days per week for the duration of the current punitive segregation confinement. The provisions of this paragraph (2) shall not apply to prisoners making court appearances, during times of hot weather when access to cool showers protects prisoners' health, and to female prisoners who are menstruating,

(c) **Shaving.** (1) All prisoners shall be permitted to shave daily. Hot water sufficient to enable prisoners to shave with care and comfort shall be provided. Upon request, necessary shaving items shall be provided at Department expense and shall be maintained in a safe and sanitary condition.

(2) Notwithstanding paragraph (1) of this subdivision, prisoners confined in punitive segregation may be denied access to daily shaves, except for court appearances, for infraction convictions for misconduct on the way to, from or during a shower, in accordance with the schedule in paragraph (b)(2) of this section.

(d) **Haircuts.** (1) Hair shall be cut by persons capable of using barber tools. Such persons include, but are not limited to:

(i) licensed barbers;

(ii) facility staff members; and

(iii) prisoners.

(2) Barber tools shall be maintained in a safe, sanitary condition.

(e) **Hair styles.** (1) Consistent with the requirements of this subdivision, prisoners shall be permitted to adopt hair styles, including facial hair styles, of any length.

(i) Prisoners assigned to work in areas where food is stored, prepared, served or otherwise handled may be required to wear a hair net or other head covering.

(ii) The Department may determine that certain work assignments constitute a safety hazard to those prisoners with long hair or beards. Prisoners unwilling or unable to conform to the safety requirements of such work assignment shall be assigned elsewhere.

(iii) Should examination of a prisoner's hair reveal the presence of vermin, medical treatment should be initiated immediately. The cutting of a prisoner's hair is permissible under these circumstances pursuant to a physician's written order and under the direct supervision of the physician.

(2) When the growth or removal of a prisoner's hair, including facial hair, creates an identification problem, a new photograph may be taken of that prisoner.

(f) **Personal health care items.** (1) Upon admission to a facility, all prisoners shall be provided at Department expense with an issue of personal health care items, including but not limited to:

(i) soap;

(ii) toothbrush;

(iii) toothpaste or tooth powder;

(iv) drinking cup;

(v) toilet paper;

(vi) towel; and

(vii) aluminum or plastic mirror, unless this is permanently available in the housing area.

(2) In addition to the items listed in paragraph (1) of this subdivision, all women prisoners shall be provided at Department expense with necessary hygiene items.

(3) Towels shall be exchanged at least once per week at Department expense. All other personal health care items issued pursuant to paragraphs (1) and (2) of this subdivision shall be replenished or replaced as needed at Department

expense.

(g) **Clothing.** (1) Prisoners shall be entitled to wear clothing provided by the Department as needed. Such clothing shall be laundered and repaired at Department expense and shall include, but is not limited to:

(i) one shirt;

(ii) one pair of pants;

(iii) two sets of undergarments;

(iv) two pairs of socks;

(v) one pair of suitable footwear; and

(vi) one sweater or sweatshirt to be issued during cold weather.

(2) The Department may require sentenced prisoners to wear facility clothing. Upon establishment and operation of clothing services described in paragraph (h)(2) of this section, the Department may require all prisoners to wear seasonally appropriate facility clothing, except that for trial appearances, prisoners may wear clothing items described in paragraph (3) of this subdivision. The facility clothing that is provided for detainees shall be readily distinguishable from that provided for sentenced prisoners. Facility clothing shall be provided, laundered and repaired at Department expense.

(3) Until the Department establishes and operates clothing services described in paragraph (h)(2) of this section, detainees shall be permitted to wear non-facility clothing. Such clothing may include items:

(i) worn by the prisoner upon admission to the facility; and

(ii) received after admission from any source. This clothing, including shoes, may be new or used.

(iii) Detainees shall be permitted to wear all items of clothing that are generally acceptable in public and that do not constitute a threat to the safety of a facility.

(4) Prisoners engaged in work assignment or outdoor recreation requiring special clothing shall be provided with such clothing at Department expense.

(5) Upon establishment and operation of clothing services described in paragraph (h)(2) of this section and requiring all prisoners to wear facility clothing, the Department shall provide to all prisoners upon admission at least the following:

(i) two shirts;

(ii) one pair of pants;

(iii) four sets of undergarments;

(iv) four pairs of socks;

(v) one pair of suitable footwear; and

(vi) one sweater or sweatshirt to be issued during cold weather.

(6) Upon requiring all prisoners to wear facility clothing, the Department shall provide prisoners with a clean

exchange of such clothing every four days.

(h) **Clothing services.** (1) Laundry service sufficient to provide prisoners with a clean change of personal or facility clothing at least twice per week shall be provided at Department expense.

(2) Prior to requiring detainees to wear facility clothing, the Department shall establish and operate:

(i) laundry service sufficient to fulfill the requirements of paragraphs (g)(5) and (6) of this section at Department expense, and

(ii) secure storage facilities from which prisoners' personal clothing can be retrieved promptly and cleaned for trial court appearances, and retrieved promptly upon prisoners' discharge from custody.

(i) **Bedding.** (1) Upon admission to a facility, all prisoners shall be provided at Department expense with an issue of bedding, including but not limited to:

(i) two sheets;

(ii) one pillow;

(iii) one pillow case;

(iv) one mattress;

(v) one mattress cover; and

(vi) sufficient blankets to provide comfort and warmth.

(2) Prior to being issued, all bedding items shall be checked for damage and repaired or cleaned, if necessary.

(3) Pillowcases and sheets shall be cleaned at least once each week. Blankets shall be cleaned at least once every three months. Mattresses shall be cleaned at least once every six months.

(4) Mattresses must be constructed of fire retardant materials. Mattress covers must be constructed of materials both water resistant and easily sanitized.

(5) All items of clothing and bedding stored within the facility shall be maintained in a safe and sanitary manner.

(j) **Housing areas.** (1) Prisoners shall be provided at Department expense with a supply of brooms, mops, soap powder, disinfectant, and other materials sufficient to properly clean and maintain housing areas, except when contraindicated by medical staff. Under such circumstance, the Department shall make other arrangements for cleaning these areas.

(2) The Department shall provide for regular cleaning of all housing areas, including cells, tiers, dayrooms, and windows, and for the extermination of rodents and vermin in all housing areas.

(3) All housing areas shall contain at least the following fixtures in sufficient supply to meet reasonable standards of prisoner personal hygiene:

(i) sink with hot and cold water;

(ii) flush toilet; and

(iii) shower with hot and cold water.

HISTORICAL NOTE

Section renumbered and amended (former §1-04) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

Former §1-04 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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40 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-04 Overcrowding.

(a) **Policy.** Prisoners shall not be housed in cells, rooms or dormitories unless adequate space and furnishings are provided.

(b) **Single occupancy.** (1) A cell or room designed or rated for single occupancy shall house only one prisoner.

(2) Each single cell shall contain a flush toilet, a wash basin with drinking water, a single bed and a closeable storage container for personal property.

(3) A single-cell housing area shall contain table or desk space for each occupant that is available for use at least 12 hours per day.

(c) **Multiple occupancy.** (1) A multiple-occupancy area shall contain for each occupant a single bed, a closeable storage container for personal property and a table or desk space that is available for use at least 12 hours per day.

(2) Multiple-occupancy areas shall provide a minimum of 60 square feet of floor space per person in the sleeping area.

(3) A multiple-occupancy area shall provide a minimum of one operable toilet and shower for every 8 prisoners and one operable sink for every 10 prisoners. Toilets shall be accessible for use without staff assistance 24 hours per day.

(4) A multiple-occupancy area shall provide a dayroom space that is physically and acoustically separate from but

immediately adjacent and accessible to the sleeping area, except for cells designed or rated for two or more occupants, opened on or prior to January 1, 2000.

(5) A multiple occupancy area shall house no more than:

(i) 50 Detainees

(ii) 60 Sentenced Prisoners. This subparagraph shall be applicable to all multi-occupancy areas opened after July 1, 1985.

HISTORICAL NOTE

Section renumbered and amended (former §1-05) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

Former §1-05 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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40 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-05 Lock-in.

(a) **Policy.** The time spent by prisoners confined to their cells should be kept to a minimum and required only when necessary for the safety and security of the facility. The provisions of this section are inapplicable to prisoners confined in punitive segregation or prisoners confined for medical reasons in the contagious disease units.

(b) **Involuntary lock-in.** No prisoner shall be required to remain confined to his or her cell except for the following purposes:

(1) At night for count or sleep, not to exceed eight hours in any 24-hour period;

(2) During the day for count or required facility business that can only be carried out while prisoners are locked in, not to exceed two hours in any 24-hour period. This time may be extended if necessary to complete an off count.

(c) **Optional lock-in.** (1) Prisoners shall have the option of being locked in their cells during lock-out periods. Prisoners choosing to lock in at the beginning of a lock-out period of two hours or more shall be locked out upon request after one-half of the period. At this time, prisoners who have been locked out shall be locked in upon request.

(2) The Department may deny optional lock-in to a prisoner in mental observation status if a psychiatrist or psychologist determines in writing that optional lock-in poses a serious threat to the safety of that prisoner. A decision to deny optional lock-in must be reviewed every ten days, including a written statement of findings, by a psychiatrist or psychologist. Decisions made by a psychiatrist or psychologist pursuant to this subdivision must be based on personal consultation with the prisoner.

(d) **Schedule.** Each facility shall maintain and distribute to all prisoners or post in each housing area its lock-out schedule, including the time during each lock-out period when prisoners may exercise the options provided by paragraph (c)(1) of this subdivision.

HISTORICAL NOTE

Section renumbered and amended (former §1-06) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

Former §1-06 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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40 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-06 Recreation.

(a) **Policy.** Recreation is essential to good health and contributes to reducing tensions within a facility. Prisoners shall be provided with adequate indoor and outdoor recreational opportunities.

(b) **Recreation areas.** Indoor and outdoor recreation areas of sufficient size to meet the requirements of this section shall be established and maintained by each facility. An outdoor recreation area must allow for direct access to sunlight and air.

(c) **Recreation schedule.** Recreation periods shall be at least one hour; only time spent at the recreation area shall count toward the hour. Recreation shall be available seven days per week in the outdoor recreation area, except in inclement weather when the indoor recreation area shall be used.

(d) **Recreation equipment.** (1) The Department shall make available to prisoners an adequate amount of equipment during the recreation period.

(2) Upon request each facility shall provide prisoners with appropriate outer garments in satisfactory condition, including coat, hat, and gloves, when they participate in outdoor recreation during cold or wet weather conditions.

(e) **Recreation within housing area.** (1) Prisoners shall be permitted to engage in recreation activities within cell corridors and tiers, dayrooms and individual housing units. Such recreation may include but is not limited to:

(i) table games;

(ii) exercise programs; and

(iii) arts and crafts activities.

(2) Recreation taking place within cell corridors and tiers, dayrooms and individual housing units shall supplement, but not fulfill, the requirements of subdivision (c) of this section.

(f) **Recreation for prisoners in the contagious disease units.** The Department shall not be required to provide an indoor recreation area for use during inclement weather by prisoners confined for medical reasons in the contagious disease units.

(g) **Recreation for prisoners in segregation.** Prisoners confined in close custody or punitive segregation shall be permitted recreation in accordance with the provisions of subdivision (c) of this section.

(h) **Limitation on access to recreation.** A prisoner's access to recreation may be denied for up to five days only upon conviction of an infraction for misconduct on the way to, from or during recreation.

HISTORICAL NOTE

Section renumbered and amended (former §1-07) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

Former §1-07 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

40 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-07 Religion.

(a) **Policy.** Prisoners have an unrestricted right to hold any religious belief, and to be a member of any religious group or organization, as well as to refrain from the exercise of any religious beliefs. A prisoner may change his or her religious affiliation.

(b) **Exercise of religious beliefs.** (1) Prisoners are entitled to exercise their religious beliefs in any manner that does not constitute a clear and present danger to the safety or security of a facility.

(2) No employee or agent of the Department or of any voluntary program shall be permitted to proselytize or seek to convert any prisoner, nor shall any prisoner be compelled to exercise or be dissuaded from exercising any religious belief.

(3) Equal status and protection shall be afforded all prisoners in the exercise of their religious beliefs except when such exercise is unduly disruptive of facility routine.

(c) **Congregate religious activities.** (1) Consistent with the requirements of subdivision (a) of this section, all prisoners shall be permitted to congregate for the purpose of religious worship and other religious activities, except for prisoners confined for medical reasons in the contagious disease units.

(2) Each facility shall provide all prisoners access to an appropriate area for congregate religious worship and other religious activities. Consistent with the requirements of paragraph (b)(1) of this section, this area shall be made available to prisoners in accordance with the practice of their religion.

(d) **Religious advisors.** (1) As used in this section, the term "religious advisor" means a person who has received endorsement from the relevant religious authority.

(2) Religious advisors shall be permitted to conduct congregate religious activities permitted pursuant to subdivision (c) of this section. When no religious advisor is available, a member of a prisoner religious group may be permitted to conduct congregate religious activities.

(3) Consistent with the requirements of paragraph (b)(1) of this section, prisoners shall be permitted confidential consultation with their religious advisors during lock-out periods.

(e) **Celebration of religious holidays or festivals.** Consistent with the requirements of paragraph (b)(1) of this section, prisoners shall be permitted to celebrate religious holidays or festivals on an individual or congregate basis.

(f) **Religious dietary laws.** Prisoners are entitled to the reasonable observance of dietary laws or fasts established by their religion. Each facility shall provide prisoners with food items sufficient to meet such religious dietary laws.

(g) **Religious articles.** Consistent with the requirements of paragraph (b)(1) of this section, prisoners shall be entitled to wear and to possess religious medals or other religious articles, including clothing and hats.

(h) **Exercise of religious beliefs by prisoners in segregation.** (1) Prisoners confined in administrative or punitive segregation shall not be prohibited from exercising their religious beliefs, including the opportunities provided by subdivisions (d) through (g) of this section.

(2) Congregate religious activities by prisoners in close custody or punitive segregation shall be provided for by permitting such prisoners to attend congregate religious activities with appropriate security either with each other or with other prisoners.

(i) **Recognition of a religious group or organization.** (1) A list shall be maintained of all religious groups and organizations recognized by the Department. This list shall be in Spanish and English, and shall be distributed to all incoming prisoners or posted in each housing area.

(2) Each facility shall maintain a list of the religious advisor, if any, for each religious group and organization, and the time and place for the congregate service of each religion. This list shall be in Spanish and English, and shall be distributed to all incoming prisoners or posted in each housing area.

(3) Prisoner requests to exercise the beliefs of a religious group or organization not previously recognized shall be made to the Department.

(4) In determining requests made pursuant to paragraph (3) of this subdivision, the following factors among others shall be considered as indicating a religious foundation for the belief:

(i) whether there is substantial literature supporting the belief as related to religious principle;

(ii) whether there is formal, organized worship by a recognizable and cohesive group sharing the belief;

(iii) whether there is an informal association of persons who share common ethical, moral, or intellectual views supporting the belief; or

(iv) whether the belief is deeply and sincerely held by the prisoner.

(5) In determining requests made pursuant to paragraph (3) of this subdivision, the following factors shall not be considered as indicating a lack of religious foundation for the belief:

(i) the belief is held by a small number of individuals;

(ii) the belief is of recent origin;

(iii) the belief is not based on the concept of a Supreme Being or its equivalent; or

(iv) the belief is unpopular or controversial.

(6) In determining requests made pursuant to paragraph (3) of this subdivision, prisoners shall be permitted to present evidence indicating a religious foundation for the belief.

(7) The procedure outlined in paragraphs (1) and (3) of this subdivision shall apply when a prisoner request made pursuant to paragraph (i)(3) of this subdivision is denied.

(j) **Limitations on the exercise of religious beliefs.** (1) Any determination to limit the exercise of the religious beliefs of any prisoner shall be made in writing, and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(2) This determination must be based on specific acts committed by the prisoner during the exercise of his or her religion that demonstrate a serious and immediate threat to the safety and security of the facility. Prior to any determination, the prisoner must be provided with written notification of the specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond.

(3) Any person affected by a determination made pursuant to this subdivision may appeal such determination to the Board.

(i) The person affected by the determination shall give notice in writing to the Board and the Department of his or her intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(iii) The Board or its designee shall issue a written decision upon the appeal within 14 business days after receiving notice of the requested review.

HISTORICAL NOTE

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[See T40 §1-15 Note 1]

DERIVATION

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-08 Access to Courts and Legal Services.

(a) **Policy.** Prisoners are entitled to access to courts, attorneys, legal assistants and legal materials.

(b) **Judicial and administrative proceedings.** (1) Prisoners shall not be restricted in their communications with courts or administrative agencies pertaining to either criminal or civil proceedings except pursuant to a court order.

(2) Timely transportation shall be provided to prisoners scheduled to appear before courts or administrative agencies. Vehicles used to transport prisoners must meet all applicable safety and inspection requirements and provide adequate ventilation, lighting and comfort.

(c) **Access to counsel.** (1) Prisoners shall not be restricted in their communication with attorneys. The fact that a prisoner is represented by one attorney shall not be grounds for preventing him or her from communicating with other attorneys. Any properly identified attorney may visit any prisoner with the prisoner's consent.

(i) An attorney may be required to present identification to a designated official at the central office of the Department in order to obtain a facility pass. This pass shall permit the attorney to visit any prisoner in the custody of the Department.

(ii) The Department only may require such identification as is normally possessed by an attorney.

(2) The Department may limit visits to any attorney of record, or an attorney with a court notice for prisoners undergoing examination for competency pursuant to court order.

(3) Visits between prisoners and attorneys shall be kept confidential and protected, in accordance with provisions of §1-09. Legal visits shall be permitted at least eight hours per day between 8 a.m. and 8 p.m. During business days, four of those hours shall be 8 a.m. to 10 a.m., and 6 p.m. to 8 p.m. The Department shall maintain and post the schedule of legal visiting hours at each facility.

(4) Mail between prisoners and attorneys shall not be delayed, read, or interfered with in any manner, except as provided in §1-11.

(5) Telephone communications between prisoners and attorneys shall be kept confidential and protected, in accordance with the provisions of §1-10.

(d) **Access to co-defendants.** Upon reasonable request, regular visits shall be permitted between a detainee and all of his or her co-defendants who consent to such visits. If any of the co-defendants are incarcerated, the Department may require that an attorney of record be present and teleconferencing shall be used, if available.

(e) **Attorney assistants.** (1) Law students, legal paraprofessionals, and other attorney assistants working under the supervision of an attorney representing a prisoner shall be permitted to communicate with prisoners by mail, telephone and personal visits, to the same extent and under the same conditions that the attorney may do so for the purpose of representing the prisoner. Law students, legal paraprofessionals and other attorney assistants working under the supervision of an attorney contacted by a prisoner shall be permitted to communicate with that prisoner by mail, telephone, or personal visits to the same extent and under the same conditions that the attorney may do so.

(2) An attorney assistant may be required to present a letter of identification from the attorney to a designated official at the central office of the Department in order to obtain a facility pass. A pass shall not be denied based upon any of the reasons listed in §1-09(h)(1).

(3) The pass shall permit the assistant to perform the functions listed in subdivision (e) of this section. It may be revoked if specific acts committed by the legal assistant demonstrate his or her threat to the safety and security of a facility. This determination must be made pursuant to the procedural requirements of paragraphs (2), (4) and (5) of subdivision (h) of §1-09.

(f) **Law libraries.** Each facility shall maintain a properly equipped and staffed law library.

(1) The law library shall be located in a separate area sufficiently free of noise and activity and with sufficient space and lighting to permit sustained research.

(2) Each law library shall be open for a minimum of five days per week including at least one weekend day. On each day a law library is open:

(i) in facilities with more than 600 prisoners, each law library shall be operated for a minimum of ten hours, of which at least eight shall be during lock-out hours;

(ii) in facilities with 600 or fewer prisoners, each law library shall be operated for a minimum of eight and a half hours, of which at least six and a half shall be during lock-out hours;

(iii) in all facilities, the law library shall be operated for at least three hours between 6 p.m. and 10 p.m.; and

(iv) the law library will be kept open for prisoners' use on all holidays which fall on regular law library days except New Year's Day, July 4th, Thanksgiving, and Christmas. The law library may be closed on holidays other than those specified provided that law library services are provided on either of the two days of the same week the law library is usually closed. On holidays on which the law library is kept open, it shall operate for a minimum of eight hours. No changes to law library schedules shall be made without written notice to the Board of Correction, and shall be received

at least five business days before the planned change(s) is to be implemented.

(3) The law library schedule shall be arranged to provide access to prisoners during times of the day when other activities such as recreation, commissary, meals, school, sick call, etc., are not scheduled. Where such considerations cannot be made, prisoners shall be afforded another opportunity to attend the law library at a later time during the day.

(4) Each prisoner shall be granted access to the law library for a period of at least two hours per day on each day the law library is open. Upon request, extra time may be provided as needed, space and time permitting. In providing extra time, prisoners who have an immediate need for additional time, such as prisoners on trial and those with an impending court deadline shall be granted preference.

(5) Notwithstanding the provisions of paragraph (f)(4), prisoners housed for medical reasons in the contagious disease units may be denied access to the law library. An alternative method of access to legal materials shall be instituted to permit effective legal research.

(6) The law library hours for prisoners in punitive segregation may be reduced or eliminated, provided that an alternative method of access to legal materials is instituted to permit effective legal research.

(7) Legal research classes for general population prisoners shall be conducted at each facility on at least a quarterly basis. Legal research training materials shall be made available upon request to prisoners in special housing.

(8) The Department shall report annually to the Board detailing the resources available at the law library at each facility, including a list of titles and dates of all law books and periodicals and the number, qualifications and hours of English and Spanish-speaking legal assistants.

(g) **Legal documents and supplies.** (1) Each law library shall contain necessary research and reference materials which shall be kept properly updated and supplemented, and shall be replaced without undue delay when materials are missing or damaged.

(2) Prisoners shall have reasonable access to typewriters, dedicated word processors, and photocopiers for the purpose of preparing legal documents. A sufficient number of operable typewriters, dedicated word processors, and photocopy machines will be provided for prisoner use.

(3) Legal clerical supplies, including pens, legal paper and pads shall be made available for purchase by prisoners. Such legal clerical supplies shall be provided to indigent prisoners at Department expense.

(4) Unmarked legal forms which are commonly used by prisoners shall be made available. Each prisoner shall be permitted to use or make copies of such forms for his or her own use.

(h) **Law library staffing.** (1) During all hours of operation, each law library shall be staffed with trained civilian legal coordinator(s) to assist prisoners with the preparation of legal materials. Legal coordinator coverage shall be provided during extended absences of the regularly assigned legal coordinator(s).

(2) Each law library shall be staffed with an adequate number of permanently assigned correction officers knowledgeable of law library procedures.

(3) Spanish-speaking prisoners shall be provided assistance in use of the law library by employees fluent in the Spanish language on an as needed basis.

(i) **Number of legal documents and research materials.** (1) Prisoners shall be permitted to purchase and receive law books and other legal research materials from any source.

(2) Reasonable regulations governing the keeping of materials in cells and the searching of cells may be adopted,

but under no circumstances may prisoners' legal documents, books, and papers be read or confiscated by correctional personnel without a lawful warrant. Where the space in a cell is limited, an alternative method of safely storing legal materials elsewhere in the facility is required, provided that a prisoner shall have regular access to these materials.

(j) **Limitation of access to law library.** (1) A prisoner may be removed from the law library if he or she disrupts the orderly functioning of the law library or does not use the law library for its intended purposes. A prisoner may be excluded from the law library for more than the remainder of one law library period only for a disciplinary infraction occurring within a law library.

(2) Any determination to limit a prisoner's right of access to the law library shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(3) An alternative method of access to legal materials shall be instituted to permit effective legal research for any prisoner excluded from the law library. A legal coordinator shall visit any excluded prisoner to determine his or her law library needs upon request.

(4) Any person affected by a determination made pursuant to this subdivision (j) may appeal such determination to the Board.

(i) The person affected by a determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(iii) The Board or its designee shall issue a written decision upon the appeal within five business days after receiving notice of the requested review.

HISTORICAL NOTE

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[See T40 §1-15 Note 1]

DERIVATION

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-09 Visiting.

(a) **Policy.** Prisoners are entitled to receive personal visits of sufficient length and number.

(b) **Visiting and waiting areas.** (1) A visiting area of sufficient size to meet the requirements of this section shall be established and maintained in each facility.

(2) The visiting area shall be designed so as to allow physical contact between prisoners and their visitors as required by subdivision (f) of this section.

(3) The Department shall make every effort to minimize the waiting time prior to a visit. Visitors shall not be required to wait outside a facility unless adequate shelter is provided and the requirements of paragraph (b)(4) of this section are met.

(4) All waiting and visiting areas shall provide for at least minimal comforts for visitors, including but not limited to:

(i) sufficient seats for all visitors;

(ii) access to bathroom facilities and drinking water throughout the waiting and visiting periods;

(iii) access to vending machines for beverages and foodstuffs at some point during the waiting or visiting period; and

(iv) access to a Spanish-speaking employee or volunteer at some point during the waiting or visiting period. All visiting rules, regulations and hours shall be clearly posted in English and Spanish in the waiting and visiting areas at each facility.

(5) The Department shall make every effort to utilize outdoor areas for visits during the warm weather months.

(c) **Visiting schedule.** (1) Visiting hours may be varied to fit the schedules of individual facilities but must meet the following minimum requirements for detainees:

(i) Monday through Friday. Visiting shall be permitted on at least three days for at least three consecutive hours between 9 a.m. and 5 p.m. Visiting shall be permitted on at least two evenings for at least three consecutive hours between 6 p.m. and 10 p.m.

(ii) Saturday and Sunday. Visiting shall be permitted on both days for at least five consecutive hours between 9 a.m. and 8 p.m.

(2) Visiting hours may be varied to fit the schedules of individual facilities but must meet the following minimum requirements for sentenced prisoners:

(i) Monday through Friday. Visiting shall be permitted on at least one evening for at least three consecutive hours between 6 p.m. and 10 p.m.

(ii) Saturday and Sunday. Visiting shall be permitted on both days for at least five consecutive hours between 9 a.m. and 8 p.m.

(3) The visiting schedule of each facility shall be available by contacting either the central office of the Department or the facility.

(4) Visits shall last at least one hour. This time period shall not begin until the prisoner and visitor meet in the visiting room.

(5) Sentenced prisoners are entitled to at least two visits per week with at least one on an evening or the weekend, as the sentenced prisoner wishes. Detainees are entitled to at least three visits per week with at least one on an evening or the weekend, as the detainee wishes. Visits by properly identified persons providing services or assistance, including lawyers, doctors, religious advisors, public officials, therapists, counselors and media representatives, shall not count against this number.

(6) There shall be no limit to the number of visits by a particular visitor or category of visitors.

(7) In addition to the minimum number of visits required by paragraphs (1), (2) and (5) of this subdivision, additional visitation shall be provided in cases involving special necessity, including but not limited to, emergency situations and situations involving lengthy travel time.

(8) Prisoners shall be permitted to visit with at least three visitors at the same time, with the maximum number to be determined by the facility.

(9) Visitors shall be permitted to visit with at least two prisoners at the same time, with the maximum number to be determined by the facility.

(10) If necessitated by lack of space, a facility may limit the total number of persons in any group of visitors and prisoners to four. Such a limitation shall be waived in cases involving special necessity, including but not limited to, emergency situations and situations involving lengthy travel time.

(d) **Initial visit.** (1) Each detainee shall be entitled to receive a non-contact visit within 24 hours of his or her admission to the facility.

(2) If a visiting period scheduled pursuant to paragraph (c)(1) of this section is not available within 24 hours after a detainee's admission, arrangements shall be made to ensure that the initial visit required by this subdivision is made available.

(e) **Visitor identification and registration.** (1) Consistent with the requirements of this subdivision, any properly identified person shall, with the prisoner's consent, be permitted to visit the prisoner.

(i) Prior to a visit, a prisoner shall be informed of the identity of the prospective visitor.

(ii) A refusal by a prisoner to meet with a particular visitor shall not affect the prisoner's right to meet with any other visitor during that period, nor the prisoner's right to meet with the refused visitor during subsequent periods.

(2) Each visitor shall be required to enter in the facility visitors log:

(i) his or her name;

(ii) his or her address;

(iii) the date;

(iv) the time of entry;

(v) the name of the prisoner or prisoners to be visited; and

(vi) the time of exit.

(3) Any prospective visitor who is under 16 years of age shall be required to enter, or have entered for him or her, in the facility visitors log:

(i) the information required by paragraph (2) of this subdivision;

(ii) his or her age; and

(iii) the name, address, and telephone number of his or her parent or legal guardian.

(4) The visitors log shall be confidential, and information contained therein shall not be read by or revealed to non-Department staff except as provided by the City Charter or pursuant to a specific request by an official law enforcement agency. The Department shall maintain a record of all such requests with detailed and complete descriptions.

(5) Prior to visiting a prisoner, a prospective visitor under 16 years of age may be required to be accompanied by a person 18 years of age or older, and to produce oral or written permission from a parent or legal guardian approving such visit.

(6) The Department may adopt alternative procedures for visiting by persons under 16 years of age. Such procedures must be consistent with the policy of paragraph (e) (5) of this subdivision, and shall be submitted to the Board for approval.

(f) **Contact visits.** Physical contact shall be permitted between every prisoner and all of his or her visitors throughout the visiting period, including holding hands, holding young children, and kissing. The provisions of this subdivision are inapplicable to prisoners housed for medical reasons in the contagious disease units.

(g) **Visiting security and supervision.** (1) All prisoners, prior and subsequent to each visit, may be searched solely to ensure that they possess no contraband.

(2) All prospective visitors may be searched prior to a visit solely to ensure that they possess no contraband.

(3) Any body search of a prospective visitor made pursuant to paragraph (2) of this subdivision shall be conducted only through the use of electronic detection devices. Nothing contained herein shall affect any authority possessed by correctional personnel pursuant to statute.

(4) Objects possessed by a prospective visitor, including but not limited to, handbags or packages, may be searched or checked. Personal effects, including wedding rings and religious medals and clothing, may be worn by visitors during a visit. The Department may require a prospective visitor to secure in a lockable locker his or her personal property, including but not limited to bags, outerwear and electronic devices. A visit may not be delayed or denied because an operable, lockable locker is not available.

(5) Supervision shall be provided during visits solely to ensure that the safety or security of the facility is maintained.

(6) Visits shall not be listened to or monitored unless a lawful warrant is obtained, although visual supervision should be maintained.

(h) **Limitation on visiting rights.** (1) Visiting rights shall not be denied, revoked, limited or interfered with based upon a prisoner's or prospective visitor's:

(i) sex;

(ii) sexual orientation;

(iii) race;

(iv) age, except as otherwise provided in this section;

(v) nationality;

(vi) political beliefs;

(vii) religion;

(viii) criminal record;

(ix) pending criminal or civil case;

(x) lack of family relationship;

(xi) gender; or

(xii) disability.

(2) The visiting rights of a prisoner with a particular visitor may be denied, revoked or limited only when it is determined that the exercise of those rights constitutes a serious threat to the safety or security of a facility, provided that visiting rights with a particular visitor may be denied only if revoking the right to contact visits would not suffice to reduce the serious threat.

This determination must be based on specific acts committed by the visitor during a prior visit to a facility that

demonstrate his or her threat to the safety and security of a facility, or on specific information received and verified that the visitor plans to engage in acts during the next visit that will be a threat to the safety or security of the facility. Prior to any determination, the visitor must be provided with written notification of the specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond. The name of an informant may be withheld if necessary to protect his or her safety.

(3) A prisoner's right to contact visits as provided in subdivision (f) of this section may be denied, revoked, or limited only when it is determined that such visits constitute a serious threat to the safety or security of a facility. Should a determination be made to deny, revoke or limit a prisoner's right to contact visits in the usual manner, alternative arrangements for affording the prisoner the requisite number of visits shall be made, including, but not limited to, non-contact visits.

This determination must be based on specific acts committed by the prisoner while in custody under the present charge or sentence that demonstrate his or her threat to the safety and security of a facility, or on specific information received and verified that the prisoner plans to engage in acts during the next visit that will be a threat to the safety or security of the facility. Prior to any determination, the prisoner must be provided with written notification of the specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond. The name of an informant may be withheld if necessary to protect his or her safety.

(4) Any determination to deny, revoke or limit a prisoner's visiting rights pursuant to paragraphs (2) and (3) of this subdivision shall be in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(5) Any person affected by a determination made pursuant to paragraphs (2) and (3) of this subdivision may appeal such determination to the Board.

(i) The person affected by the determination shall give notice in writing to the Board and the Department of his or her intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written deter- mination.

(iii) The Board or its designee shall issue a written decision upon the appeal within five business days after receiving notice of the requested review.

HISTORICAL NOTE

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[See T40 §1-15 Note 1]

DERIVATION

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-10 Telephone Calls.

(a) **Policy.** Prisoners are entitled to make periodic telephone calls. A sufficient number of telephones to meet the requirements of this section shall be installed in the housing areas of each facility.

(b) **Initial telephone call.** Upon admission to a facility, each detainee shall be permitted to make one completed local telephone call at Department expense. Requests to make additional telephone calls upon admission shall be decided by the facility. Long distance telephone calls shall be made collect, although arrangements may be made to permit the prisoner to bear the cost of such calls.

(c) **Detainee telephone calls.** Detainees shall be permitted to make a minimum of one telephone call each day. Three calls each week shall be provided to indigent detainees at Department expense if made within New York City. Long distance telephone calls shall be made collect or at the expense of the detainee.

(d) **Sentenced prisoner telephone calls.** Sentenced prisoners shall be permitted to make a minimum of two telephone calls each week. These calls shall be provided to indigent sentenced prisoners at Department expense if made within New York City. Long distance telephone calls shall be made collect or at the expense of the sentenced prisoner.

(e) **Duration of telephone calls.** The Department shall allow telephone calls of at least six minutes in duration.

(f) **Scheduling of telephone calls.** In meeting the requirements of subdivisions (c) and (d) of this section, telephone calls shall be permitted during all lock-out periods. Telephone calls of an emergency nature shall be made at any reasonable time.

(g) **Incoming telephone calls.** (1) A prisoner shall be permitted to receive incoming telephone calls of an emergency nature, or a message shall be taken and the prisoner permitted to return the call as soon as possible.

(2) A prisoner shall be permitted to receive incoming telephone calls from his or her attorney of record in a pending civil or criminal proceeding, or a message shall be taken and the prisoner permitted to return the call as soon as possible. Such calls must pertain to the pending proceeding.

(h) **Supervision of telephone calls.** Upon implementation of appropriate procedures, prisoner telephone calls may be listened to or monitored only when legally sufficient notice has been given to the prisoners. Telephone calls to the Board of Correction, Inspector General and other monitoring bodies, as well as to treating physicians and clinicians, attorneys and clergy shall not be listened to or monitored.

(i) **Limitation on telephone rights.** (1) The telephone rights of any prisoner may be limited only when it is determined that the exercise of those rights constitutes a threat to the safety or security of the facility or an abuse of written telephone regulations previously known to the prisoner.

(i) This determination must be based on specific acts committed by the prisoner during the exercise of telephone rights that demonstrate such a threat or abuse. Prior to any determination, the prisoner must be provided with written notification of specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond. The name of an informant may be withheld if necessary to protect his or her safety.

(ii) Any determination to limit a prisoner's telephone rights shall be made in writing and state specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(2) The telephone rights provided in subdivisions (c) and (d) of this section may be limited for prisoners in punitive segregation, provided that such persons shall be permitted to make a minimum of one telephone call each week.

(j) **Appeal.** Any person affected by a determination made pursuant to this subdivision may appeal such determination to the Board.

(1) The person affected by the determination shall give notice in writing to the Board and the Department of his or her intent to appeal the determination.

(2) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(3) The Board or its designee shall issue a written decision upon the appeal within five business days after receiving notice of the requested review.

HISTORICAL NOTE

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[See T40 §1-15 Note 1]

DERIVATION

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-11 Correspondence.

(a) **Policy.** Prisoners are entitled to correspond with any person, except when there is a reasonable belief that limitation is necessary to protect public safety or maintain facility order and security. The Department shall establish appropriate procedures to implement this policy. Correspondence shall not be deemed to constitute a threat to safety and security of a facility solely because it criticizes a facility, its staff, or the correctional system, or espouses unpopular ideas, including ideas that facility staff deem not conducive to rehabilitation or correctional treatment. The Department shall provide notice of this policy to all prisoners.

(b) **Number and language.** (1) There shall be no restriction upon incoming or outgoing prisoner correspondence based upon either the amount of correspondence sent or received, or the language in which correspondence is written.

(2) If a prisoner is unable to read or write, he or she may receive assistance with correspondence from other persons, including but not limited to, facility employees and prisoners.

(c) **Outgoing correspondence.** (1) Each facility shall make available to indigent prisoners at Department expense stationery and postage for all letters to attorneys, courts and public officials, as well as two other letters each week.

(2) Each facility shall make available for purchase by prisoners both stationery and postage.

(3) Outgoing prisoner correspondence shall bear the sender's name and either the facility post office box or street address or the sender's home address in the upper left hand corner of the envelope.

(4) Outgoing prisoner correspondence shall be sealed by the prisoner and deposited in locked mail receptacles.

(5) All outgoing prisoner correspondence shall be forwarded to the United States Postal Service at least once each business day.

(6) Outgoing prisoner non-privileged correspondence shall not be opened or read except pursuant to a lawful search warrant or the warden's written order articulating a reasonable basis to believe that the correspondence threatens the safety or security of the facility, another person, or the public.

(i) The warden's written order shall state the specific facts and reasons supporting the determination.

(ii) The affected prisoner shall be given written notification of the determination and the specific facts and reasons supporting it. The warden may delay notifying the prisoner only for so long as such notification would endanger the safety and security of the facility, after which the warden immediately shall notify the prisoner.

(iii) A written record of correspondence read pursuant to this paragraph shall be maintained and shall include: the name of the prisoner, the name of the intended recipient, the name of the reader, the date that the correspondence was read, and the date that the prisoner received notification.

(iv) Any action taken pursuant to this paragraph shall be completed within five business days of receipt of the correspondence by the Department.

(7) Outgoing prisoner privileged correspondence shall not be opened or read except pursuant to a lawful search warrant.

(d) **Incoming correspondence.** (1) Incoming correspondence shall be delivered to the intended prisoner within 48 hours of receipt by the Department unless the prisoner is no longer in custody of the Department.

(2) A list of items that may be received in correspondence shall be established by the Department. Upon admission to a facility, prisoners shall be provided a copy of this list or it shall be posted in each housing area.

(e) **Inspection of incoming correspondence.** (1) Incoming prisoner non-privileged correspondence

(a) shall not be opened except in the presence of the intended prisoner or pursuant to a lawful search warrant or the warden's written order articulating a reasonable basis to believe that the correspondence threatens the safety or security of the facility, another person, or the public.

(i) The warden's written order shall state the specific facts and reasons supporting the determination.

(ii) The affected prisoner and sender shall be given written notification of the warden's determination and the specific facts and reasons supporting it. The warden may delay notifying the prisoner and the sender only for so long as such notification would endanger the safety or security of the facility, after which the warden immediately shall notify the prisoner and sender.

(iii) A written record of correspondence read pursuant to this subdivision shall be maintained and shall include: the name of the sender, the name of the intended prisoner recipient, the name of the reader, the date that the correspondence was received and was read, and the date that the prisoner and sender received notification.

(iv) Any action taken pursuant to this subdivision shall be completed within five business days of receipt of the correspondence by the Department.

(b) shall not be read except pursuant to a lawful search warrant or the warden's written order articulating a reasonable basis to believe that the correspondence threatens the safety or security of the facility, another person, or the

public. Procedures for the warden's written order pursuant to this subdivision are set forth in paragraph (1) of this subdivision.

(2) Incoming correspondence may be manipulated or inspected without opening, and subjected to any non-intrusive devices. A letter may be held for an extra 24 hours pending resolution of a search warrant application.

(3) Incoming privileged correspondence shall not be opened except in the presence of the recipient prisoner or pursuant to a lawful search warrant. Incoming privileged correspondence shall not be read except pursuant to a lawful search warrant.

(f) **Prohibited items in incoming correspondence.** (1) When an item found in incoming correspondence involves a criminal offense, it may be forwarded to the appropriate authority for possible criminal prosecution. In such situations, the notice required by paragraph (3) of this subdivision may be delayed if necessary to prevent interference with an ongoing criminal investigation.

(2) A prohibited item found in incoming prisoner correspondence that does not involve a criminal offense shall be returned to the sender, donated or destroyed, as the prisoner wishes.

(3) Within 24 hours of the removal of an item, the Board and the intended prisoner shall be sent written notification of this action. This written notice shall include:

(i) the name and address of the sender;

(ii) the item removed;

(iii) the reasons for removal;

(iv) the choice provided by paragraph (2) of this subdivision; and

(v) the appeal procedure.

(4) After removal of an item, the incoming correspondence shall be forwarded to the intended prisoner.

(g) **Appeal.** Any person affected by the determination to remove an item from prisoner correspondence may appeal such determination to the Board.

(1) The person affected by the determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(2) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(3) The Board or its designee shall issue a written decision upon the appeal within 14 business days after receiving notice of the requested review.

HISTORICAL NOTE

Section renumbered and amended (former §1-12) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

Former §1-12 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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40 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-12 Packages.

(a) **Policy.** Prisoners shall be permitted to receive packages from, and send packages to, any person, except when there is reasonable belief that limitation is necessary to protect public safety or maintain facility order and security.

(b) **Number.** The Department may impose reasonable restrictions on the number of packages sent or received.

(c) **Outgoing packages.** The costs incurred in sending outgoing packages shall be borne by the prisoner.

(d) **Incoming packages.** (1) Incoming packages shall be delivered within 48 hours of receipt by the Department, unless the intended prisoner is no longer in custody of the Department.

(2) Packages may be personally delivered to a facility during visiting hours.

(3) Upon admission to a facility, prisoners shall be provided with a copy of a list of items that may be received in packages or this list shall be posted in each housing area.

(e) **Inspection of incoming packages.** (1) Incoming packages may be opened and inspected.

(2) Correspondence enclosed in incoming packages may not be opened or read except pursuant to the procedures set forth in subdivision (e) of §1-11.

(f) **Prohibited items in incoming packages.** (1) When an item found in an incoming package involves a criminal offense, it may be forwarded to the appropriate authority for possible criminal prosecution. In such situations, the notice

required by paragraph (3) of this subdivision may be delayed if necessary to prevent interference with an ongoing criminal investigation.

(2) A prohibited item found in an incoming package that does not involve a criminal offense shall be returned to the sender, donated or destroyed, as the prisoner wishes.

(3) Within 24 hours of the removal of an item, the Board and the intended prisoner shall be sent written notification of this action. This written notice shall include:

(i) the name and address of the sender;

(ii) the item removed;

(iii) the reasons for removal;

(iv) the choice provided by paragraph (2) of this subdivision; and

(v) the appeal procedure.

(4) After removal of an item, all other items in the package shall be forwarded to the intended prisoner.

(g) **Appeal.** Any person affected by the determination to remove an item from an incoming package may appeal such determination to the Board.

(1) The person affected by the determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(2) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(3) The Board or its designee shall issue a written decision upon the appeal within 14 business days after receiving notice of the requested review.

HISTORICAL NOTE

Section renumbered and amended (former §1-13) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

Former §1-13 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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40 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-13 Publications.

(a) **Policy.** Prisoners are entitled to receive new or used publications from any source, including family, friends and publishers, except when there is substantial belief that limitation is necessary to protect public safety or maintain facility order and security. "Publications" are printed materials including soft and hardcover books, articles, magazines and newspapers.

(b) **Number and language.** There shall be no restriction upon the receipt of publications based upon the number of publications previously received by the prisoner, or the language of the publication.

(c) **Incoming publications.** (1) Incoming publications shall be delivered to the intended prisoner within 48 hours of receipt by the Department unless the prisoner is no longer in custody of the Department.

(2) Incoming publications may be opened and inspected pursuant to the procedures applicable to incoming packages.

(3) Incoming publications shall not be censored or delayed unless they contain specific instructions on the manufacture or use of dangerous weapons or explosives, plans for escape, or other material that may compromise the safety and security of the facility.

(4) Incoming publications shall only be read to ascertain if they contain material prohibited by paragraph (3) of this subdivision.

(5) Within 24 hours of a decision to censor or delay all or part of an incoming publication, the Board and the intended prisoner shall be sent written notification of such action. This notice shall include the specific facts and reasons underlying the determination and the appeal procedure.

(d) **Appeal.** Any person affected by a determination made pursuant to paragraph (c)(3) of this section may appeal such determination to the Board.

(1) The person affected by the determination shall give notice in writing to the Board and the Department of his or her intent to appeal the determination.

(2) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written deter- mination.

(3) The Board or its designee shall issue a written decision upon the appeal within five business days after receiving notice of the requested review.

HISTORICAL NOTE

Section renumbered and amended (former §1-14) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

Former §1-14 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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40 RCNY 1-14

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-14 Access to Media.

(a) **Policy.** Prisoners are entitled to access to the media. "Media" means any printed or electronic means of conveying information to any portion of the public and shall include, but is not limited to newspapers, magazines, books or other publications, and licensed radio and television stations.

(b) **Media interviews.** (1) Properly identified media representatives shall be entitled to interview any prisoner who consents to such an interview. "Properly identified media representative" means any person who presents proof of his or her affiliation with the media.

(2) The prisoner's consent must be in writing on a form that includes the following information in Spanish and English:

(i) the name and organization of the media representative;

(ii) notification to the prisoner that statements made to the media representative may be detrimental to the prisoner in future administrative or judicial proceedings;

(iii) notification to the prisoner that he or she is not obligated to speak to the media representative; and

(iv) notification to the prisoner that he or she may postpone the media interview in order to consult with an attorney or any other person.

(3) The Department may require the consent of an attorney of record prior to scheduling a media interview with a

detainee undergoing examination for competency pursuant to court order.

(4) The Department may require the consent of an attorney of record or a parent or legal guardian prior to scheduling a media interview with a prisoner under 18 years of age.

(5) The name of the Department's media contact shall be published. Media representatives shall direct requests for interviews to this person.

(6) Interviews shall be scheduled promptly by the Department but not later than 24 hours from a request made between 8 a.m. and 4 p.m. The 24-hour period may be extended if necessitated by the prisoner's absence from the facility.

(c) **Limitation of media interviews.** (1) The Department may deny, revoke or limit a media interview with a media representative or a prisoner only if it is determined that such interview constitutes a threat to the safety or security of the facility.

(2) This determination must be based on specific acts committed by the media representative or by the prisoner during a prior visit that demonstrate his or her threat to the safety and security of the facility. Prior to any determination, the media representative or the prisoner must be provided with written notification of the specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond.

(3) Any determination made pursuant to paragraph (1) of this subdivision shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(4) Any person affected by a determination made pursuant to this subdivision may appeal such determination to the Board.

(i) The person affected by the determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written deter- mination.

(iii) The Board or its designee shall issue a written decision upon the appeal within five business days after it has received notice of the requested review.

HISTORICAL NOTE

Section renumbered and amended (former §1-15) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

Former §1-15 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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40 RCNY 1-15

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-15 Variances.

(a) **Policy.** The Department may apply for a variance from a specific subdivision or section of these minimum standards when compliance cannot be achieved or continued. A "limited variance" is an exemption granted by the Board from full compliance with a particular subdivision or section for a specified period of time. A "continuing variance" is an exemption granted by the Board from full compliance with a particular subdivision or section for an indefinite period of time. An "emergency variance" as defined in paragraph (b)(3) of this section is an exemption granted by the Board from full compliance with a particular subdivision or section for no more than 30 days.

(b) **Limited, continuing and emergency variances.** (1) The Department may apply to the Board for a variance when:

(i) despite its best efforts, and the best efforts of other New York City officials and agencies, full compliance with the subdivision or section cannot be achieved, or

(ii) compliance is to be achieved for a limited period in a manner other than specified in the subdivision or section.

(2) The Department may apply to the Board for a continuing variance when despite its best efforts and the best efforts of other New York City officials and agencies compliance cannot be achieved in the foreseeable future because:

(i) full compliance with a specific subdivision or section would create extreme practical difficulties as a result of circumstances unique to a particular facility, and lack of full compliance would not create a danger or undue hardship to staff or prisoners; or

(ii) compliance is to be achieved in an alternative manner sufficient to meet the intent of the subdivision or section.

(3) The Department may apply to the Board for an emergency variance when an emergency situation prevents continued compliance with the subdivision or section. An emergency variance for a period of less than 24 hours may be declared by the Department when an emergency situation prevents continued compliance with a particular subdivision or section. The Board or its designee shall be immediately notified of the emergency situation and the variance declaration.

(c) **Variance application.** (1) An application for a variance must be made in writing to the Board by the Commissioner of the Department as soon as a determination is made that continued compliance will not be possible and shall state:

(i) the type of variance requested;

(ii) the particular subdivision or section at issue;

(iii) the requested commencement date of the variance;

(iv) the efforts undertaken by the Department to achieve compliance by the effective date;

(v) the specific facts or reasons making full compliance impossible, and when those facts and reasons became apparent;

(vi) the specific plans, projections and timetables for achieving full compliance;

(vii) the specific plans for serving the purpose of the subdivision or section for the period that strict compliance is not possible; and

(viii) if the application is for a limited variance, the time period for which the variance is requested, provided that this shall be no more than six months.

(2) In addition to the provisions of paragraph (1) of this subdivision, an application for a continuing variance shall state:

(i) the specific facts and reasons underlying the impracticability or impossibility of compliance within the foreseeable future, and when those facts and reasons become apparent, and

(ii) the degree of compliance achieved, and the Department's efforts to mitigate any possible danger or hardships attributable to the lack of full compliance; or

(iii) a description of the specific plans for achieving compliance in an alternative manner sufficient to meet the intent of the subdivision or section.

(3) In addition to the requirements of paragraph (1) of this subdivision, an application for an emergency variance for a period of 24 hours or more, (or for renewal of an emergency variance) shall state:

(i) the particular subdivision or section at issue;

(ii) the specific facts or reasons making continued compliance impossible, and when those facts and reasons became apparent;

(iii) the specific plans, projections and timetables for achieving full compliance; and

(iv) the time period for which the variance is requested, provided that this shall be no more than thirty days.

(d) **Variance procedure for limited and continuing variance.** (1) Prior to a decision on an application for a limited or continuing variance, the Board shall consider the position of all interested parties, including correctional employees, prisoners and their representatives, other public officials and legal, religious and community organizations.

(2) Whenever practicable, the Board shall hold a public meeting or hearing on the variance application, and hear testimony from all interested parties.

(3) The Board's decision on a variance application shall be in writing.

(4) Interested parties shall be notified of the Board's decision as soon as practicable, and no later than 5 business days after the decision is made.

(e) **Granting of variance.** (1) The Board shall grant a variance only if it is presented with convincing evidence that the variance is necessary and justified.

(2) Upon granting a variance, the Board shall state:

(i) the type of variance

(ii) the date on which the variance will commence

(iii) the time period of the variance, if any, and

(iv) any requirements imposed as conditions on the variance.

(f) **Renewal and review of variance.** (1) An application for a renewal of a limited or emergency variance shall be treated in the same manner as an original application as provided in subdivisions (b), (c), (d) and (e) of this section. The Board shall not grant renewal of a variance unless it finds that, in addition to the requirements for approving an original application, a good faith effort has been made to comply with the subdivision or section within the previously prescribed time limitation, and that the requirements set by the Board as conditions on the original variance have been met.

(2) A petition for review of a continuing variance may be made upon the Board's own motion or by the Department, correctional employees, prisoners or their representatives. Upon receipt of a petition, the Board shall review and re-evaluate the continuing necessity and justification for the continuing variance. Such review shall be conducted in the same manner as the original application as provided in subdivisions (b), (c), (d) and (e) of this section. The Board will review all the facts and consider the positions of all interested parties. The Board will discontinue the variance, if after such review and consideration, it determines that:

(i) full compliance with the standard now can be achieved; or

(ii) requirements imposed as conditions upon which the continuing variance was granted have not been fulfilled or maintained; or

(iii) there is no longer compliance with the intent of the subdivision or section in an alternative manner as required by subparagraph (b)(2)(ii) of this section.

(3) The Board shall specify in writing and publicize the facts and reasons for its decision on an application for renewal or review of a variance. The Board's decision must comply with the requirements of subdivision (e) of this section, and, in the case of limited and continuing variances, paragraphs (d)(3) and (4) of this section. Where appropriate, the Board shall set an effective date for discontinuance of a continuing variance after consultation with all interested parties.

(4) The Board shall not grant more than two consecutive renewals of emergency variances.

HISTORICAL NOTE

Section renumbered and amended City Record May 16, 2008 §1, eff. June 15, 2008. [See Note 1]

DERIVATION

Former §1-16 in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record May 16, 2008:

The Board adopted the original Minimum Standards for New York City Correctional Facilities in 1978. The original sixteen standards represented the Board's view of the basic elements necessary to promote safe, secure and humane jail environments. The Minimum Standards provisions sought to ensure non-discriminatory treatment of prisoners, and regulated classification, personal hygiene, overcrowding, lock-in, access to recreation, practice of religion, access to courts, visiting, telephone calls, correspondence, packages, publications, and access to media. The original Minimum Standards remained substantially unchanged until 1985, when the Board promulgated three important amendments to the Standards provisions regulating overcrowding, law libraries, and the variance process.

The attached amendments are the result of a review of all sixteen sections of the Minimum Standards, the first such comprehensive reexamination since they became effective in 1978. In developing the amendments, the Board considered developments in case law and correctional practices in jurisdictions throughout the United States. Throughout the Minimum Standards set forth herein, the Board has deleted original implementation language that long has been obsolete (e.g., "By September 1, 1978 . . ."). The Board has also adopted as amendments to the Minimum Standards longstanding variances that have facilitated the medical isolation of prisoners in contagious disease housing units.

Set forth below is a section-by-section description of the adopted amendments.

. . . . . .

Section 1-01 ("Non Discriminatory Treatment") The Board voted at its meeting of November 8, 2007 to amend subdivision (a) ("Policy") by adding the terms "gender" and "disability" to the list of factors that cannot be the bases for discriminatory treatment of prisoners. The purpose of this amendment to subdivision (a) is to be clear that the non-discriminatory treatment policy that has historically applied with respect to race, religion, nationality, sex, sexual orientation, age or political belief should also be applicable to treatment based on gender or disability. With regard to gender, the amendment signifies that transgender prisoners should not be searched more frequently than or differently from other prisoners. It was not the Board's intention, in amending this section, to require the Department of Correction to change its present inmate classification policy, which is based on genital anatomy, nor to require the Department to change its practices of applying such classification for purposes including but not limited to housing, search procedures and permissible clothing and other items. The Board rejected a proposal to add language to include "gender identity appropriate clothing" to the new provisions of the standards that authorize DOC to require all prisoners to wear facility clothing. See paragraph (g)(2) of §1-03 ("Personal Hygiene") below. Rather, the Board's sole intention is to ensure that interactions between staff and transgender prisoners should be the same as those with non-transgender prisoners. During the Board's November 8th meeting, the Executive Director, for the limited purpose of illustrating the meaning of the term "gender", read into the record the definition of that term set forth in the New York City Human Rights Law ("HRL"). The General Counsel of the New York City Human Rights Commission has advised the Board that the HRL is not applicable with regard to the treatment of prisoners housed in DOC facilities, specifically with regard to the DOC policies and classifications discussed herein. The Board did not discuss or consider the issue of whether the provisions

of the HRL should be applied through its Minimum Standards. Consistent with its views about non-discriminatory treatment, the Board also voted to include "gender" as one of the categories that cannot be used as a basis to deny, revoke, limit or interfere with visits, specifically referring to both visitors and prisoners. A corresponding revision has been made to paragraph (h)(1) of Section 1-09 ("Visiting"). The Board rejected a proposal to repeal paragraph (c)(1), which remains intact. The Board also voted to add a new paragraph (d)(3), which will require that "(p)rocedures must be employed to ensure that non-English speaking prisoners understand all written and oral communications from facility staff members . . ." Section 1-02 ("Classification") The Board voted to amend paragraph (b)(1) to authorize the housing of sentenced and detention prisoners together in punitive segregation, medical housing areas, mental health centers and mental observation cell housing areas, close custody housing areas, and nursery, thereby converting longstanding variances into amendments to the Minimum Standards, and allowing DOC to continue to operate these housing areas more efficiently. Thus, for example, DOC would not be required to operate separate nurseries for detainees and sentenced prisoners. The Board voted to amend paragraphs (b)(2) and (3) to reflect a change in New York State Correction Law, which defines adolescent prisoners as ages 16 through 18 years old. Adolescent prisoners must continue to be housed separately from adults, ages 19 years and over. Repeal of Section 1-03 ("Overtime for Correction Officers") The repeal of §1-03 reflects the longstanding opinion of the Law Department that the Board's efforts to regulate involuntary overtime for correctional officers exceeded the Board's jurisdiction as an intrusion upon the labor relations prerogatives of the City and employee unions. Subsequent sections have been renumbered to reflect this repeal. Section 1-03 ("Personal Hygiene") The Board voted to amend paragraph (b)(1) to require that hot water for showers be provided at temperatures recommended by the American Public Health Association. To enable DOC to hold prisoners confined in punitive segregation responsible for misconduct, the Board voted to add a paragraph (b)(2), authorizing DOC to provide less frequent than daily access to showers to prisoners in punitive segregation who engage in misconduct on the way to, from, or at the shower area, and would convert longstanding variances into permanent amendments. The Board approved three exceptions for: (1) court appearances, (2) hot weather "when access to cool showers protects prisoners' health", and (3) menstruating female prisoners. The Board also voted to add a paragraph (c)(2) to apply identical restrictions to access to daily shaves. The Board voted to amend subdivisions (g) and (h), thereby authorizing DOC to require all prisoners, including detainees, to wear seasonally-appropriate facility clothing, except for trial court appearances. Facility clothing for detainees must be readily distinguishable from facility clothing for sentenced prisoners. DOC may not require detainees to wear facility clothing until DOC first establishes and operates adequate laundry and clothing storage facilities. Section 1-04 ("Overcrowding") The Board voted to reject three related proposed amendments that would have enabled DOC to increase the number of detainees it confines in dormitories. The Board left intact paragraph (c)(2), deciding to retain the dormitory density requirement of 60 square feet per prisoner in sleeping areas. The Board voted to reject a proposal to amend subparagraph (c)(5)(i), deciding to retain the dormitory capacity limit of 50 detainees. The Board also voted to reject a proposal to increase in dormitories the mandated ratio of sinks to prisoners, deciding to retain the current ratio of one sink for every 10 prisoners (§1-04(c)(3)). Section 1-05 ("Lock-In") The Board voted to amend subdivision (a) to exclude from the optional lock-out provisions prisoners who are confined for medical reasons in contagious disease units (CDUs), and prisoners confined in punitive segregation. Pursuant to a longstanding variance, medical prisoners in the CDUs have been excluded from optional lock-out because they must be isolated from other prisoners. The amendment acknowledges that prisoners in punitive segregation are confined to their cells most of the time (except for some programs and services, including recreation, visits, and medical and mental health care). The Board rejected a proposal to further amend subdivision (a) to exclude from the optional lock-out provisions prisoners who are confined in close custody. Section 1-06 ("Recreation") The Board voted to amend subdivision (d) by requiring DOC to provide prisoners participating in outdoor recreation during cold or wet weather with "appropriate outer garments in satisfactory condition, including coat, hat, and gloves." The Board voted to add a new subdivision (h), entitled "Limitation on Access to Recreation", authorizing DOC to deny recreation for up to five days for prisoners who are found guilty of infractions for misconduct on the way to, from, or at recreation. This amendment makes permanent a longstanding variance. It should be noted that although the original Minimum Standards provide that prisoner misconduct at the law library, while using telephones, and during visits, may result in limitations on access, no such limitation had been incorporated into the Minimum Standards for recreation-related misbehavior. This subdivision (h) has also been amended to correct an inadvertent omission in the version published for comment, by inserting the phrase "upon conviction of an infraction" with respect

to the denial of access to recreation. Section 1-07 ("Religion") The Board voted to amend paragraph (c)(1), making permanent a longstanding variance authorizing DOC to exclude from congregate religious services prisoners who are confined for medical reasons in CDUs. The Board rejected proposals to amend paragraphs (d)(1) and (j)(3), which would have identified DOC's (1) Executive Director of Ministerial Services as the official to approve religious advisors who conduct services and provide religious counseling in DOC facilities, and (2) Deputy Commissioner for Programs as the official to decide on prisoner requests to exercise the beliefs of a religious group or organization not previously recognized by DOC, respectively. Section 1-08 ("Access to Courts and Legal Services") The Board approved a proposal to amend paragraph (f)(2), authorizing DOC to operate law libraries for two hours when general population prisoners are locked in their housing areas, and to count those hours as part of the total number of hours that the law libraries must be open. DOC must operate libraries in large jails for 10 hours (of which 8 hours must be during "lock-out hours"), and for eight hours in small jails (of which six hours must be during "lock-out hours)." The Board believes that authorizing DOC to operate law libraries during two hours when prisoners are locked-in is likely to increase access to law libraries for prisoners from special housing areas, because these prisoners can be escorted to the law library more safely when there are no other prisoners in the corridors. The Board voted to revise paragraph (f)(8) to require DOC to report annually, rather than periodically, on each facility's law library resources. The Board also voted to revise paragraph (g)(2) to require DOC to provide dedicated word processors for prisoner use in the law libraries. Section 1-09 ("Visiting") The Board voted to amend paragraph (d)(1), authorizing DOC to provide a non-contact visit to detainees within 24 hours after admission, rather than a contact visit. This amendment affects only initial visits that occur within 24 hours of admission. All other visits continue to be contact visits. In voting this amendment, the Board noted that during the first 24 hours of custody, DOC must determine a prisoner's security risk and classification, and health providers must evaluate a prisoner's health status, including whether a prisoner may have a contagious disease. Noting that the amendment will affect a small number of prisoners, the Board concluded that providing a non-contact visit during the first 24 hours would help to ensure the safety of the prisoner, the visitor and the facility. A typographical error in paragraph 4 of subdivision (g) ("Visiting security and supervision") is corrected by deleting the brackets that had appeared in the first sentence when initially published for comment. The Board voted to add language to ensure that visits would not be delayed or denied because the Department lacked sufficient functioning lockers. The Board voted to amend paragraph (h)(1), prohibiting DOC from denying, revoking, limiting, or interfering with a visit based upon the visitor's or prisoner's gender or disability. Section 1-10 ("Telephone Calls") The Board voted to amend subdivision (h), authorizing the Department, upon implementation of appropriate procedures and legally sufficient notice to prisoners, to listen to and monitor prisoner telephone calls, except for telephone calls to the Board of Correction, Inspector General, other monitoring and investigative bodies, treating physicians and clinicians, attorneys and clergy. Section 1-11 ("Correspondence") The Board voted to amend Section 1-11 in three important respects. First, it amended subdivision (a) to allow prisoners to correspond with anyone "except when there is a reasonable belief that limitation is necessary to protect public safety or maintain facility order and security." The Board voted to require the Department to establish appropriate implementation procedures, and to provide notice of this revised policy to prisoners. The Board believes that heightened security concerns justify the proposed amendment. Second, the Board amended paragraphs (c)(6) and (e)(1), authorizing DOC to read prisoner non-privileged correspondence pursuant to a court order or warden's written order articulating a reasonable belief that the correspondence threatens the safety or security of the facility, another person, or the public. Moreover, in paragraph (c)(7), the reference to "outgoing prisoner privilege correspondence" was inadvertently omitted from the published proposal, and appears in this final version. During its deliberations, the Board noted that several New York jails (Nassau, Suffolk, Westchester, and Rockland) read non-privileged mail. The Philadelphia, Dallas, and Houston jails also read non-privileged mail. The Board concluded that relying on obtaining court orders could cause undue delays, and interfere with DOC's ability to act quickly and decisively when dealing with imminent security threats. Third, the Board amended paragraph (d)(1), increasing from 24 to 48 hours the time by which incoming correspondence must be delivered to prisoners. The Board noted that an additional 24 hours would enable DOC to conduct more thorough physical inspections of incoming correspondence. Finally, paragraph (e)(3) is amended to reflect the Board's view that the reading of privileged mail may occur only pursuant to court order, in which case there is no reason for the prisoner to be present. Section 1-12 ("Packages") The Board voted to amend subdivision (a), allowing prisoners to receive packages from, or send packages to, anyone "except when there is reasonable belief that limitation is necessary to protect public safety or maintain facility order and security." The Board believes that

heightened security concerns justify this amendment. The Board also amended paragraph (e)(2), consistent with the amendments to §1-11(e) noted above, authorizing DOC to read prisoner non-privileged correspondence enclosed in incoming packages pursuant to a court order or warden's written order articulating a reasonable belief that the correspondence threatens the safety or security of the facility, another person, or the public. Section 1-13 ("Publications") The Board voted to amend subdivision (a), allowing prisoners to receive publications from any source "except when there is reasonable belief that limitation is necessary to protect public safety or maintain facility order and security." The Board believes that heightened security concerns justify this amendment. The Board also voted to amend paragraph (c)(3), authorizing DOC to censor or delay delivery of a publication if it contains "material that may compromise the safety and security of the facility." The Board believes that heightened security concerns justify the proposed amendment. Section 1-15 ("Variances") The Board rejected proposals to amend §1-15, which would have simplified the process by which DOC could seek variances for non-compliance with provisions of the Standards. The Board also rejected a proposal that would have authorized the Board to grant a variance allowing DOC to implement, on a trial basis for a specified period of time, a procedure or program that does not comply with a Standard but which is identified as a correctional "best practice" - one that the Board determines may be particularly appropriate for implementation in City jails. Therefore §1-15 is to remain unchanged as to proposed substantive provisions. A correction has been made to the language in paragraph (d)(1) to restore the original text that was inadvertently misprinted in 1991 when the compilation of New York City Rules was published.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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40 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-01 Service Calls.

Services for the detection, diagnosis and treatment of mental illness shall be provided to those persons in the care and custody of the New York City Department of Correction. The New York City Department of Health or a contracted service provider,*1 and the Department of Correction, with the approval of the Department of Mental Health, Mental Retardation and Alcoholism Services shall design and implement a mental health program to provide:

(a) crisis intervention and the management of acute psychiatric episodes;

(b) suicide prevention;

(c) stabilization of mental illness and the alleviation of psychological deterioration in the prison setting; and

(d) elective therapy services and preventive treatment where resources permit.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Hereinafter called the Department of Health.

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***** Current through December 2009 ****

40 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-02 Identification and Detection.

(a) **Policy.** Procedures shall be developed and implemented which promote the timely identification of inmates requiring mental health evaluation.

(b) **Receiving screening.**

(1) Screening for mental and emotional disorders is to be performed on all inmates before they are placed in general population. This initial screening shall take place within twenty-four hours after an inmate's arrival at the correctional facility.

(2) Screening shall be performed by mental health services personnel or by appropriately trained medical personnel. Screening may be incorporated within the medical intake procedure.

(3) The Department of Health, with the approval of the Department of Mental Health, Mental Retardation and Alcoholism Services shall develop written procedures setting the topics to be reviewed in receiving screening. The review shall include, but need not be limited to: psychiatric history, including neuropsychiatric hospitalizations, contacts with mental health professionals, suicidal and violent behavior, history or presence of delusions or hallucinations, and an assessment based on behavioral observations of mood, orientation, impaired consciousness, indications of gross mental retardation and significant presenting complaints.

(4) The professionals conducting intake screening shall record their findings in a standard, written mental health intake form which the Department of Health shall develop with the approval of the Department of Mental Health,

Mental Retardation and Alcoholism Services for use in all facilities.

(5) Receiving screening shall include a description of available mental health services and the procedures for access to those services:

(i) inmates shall receive a written communication in English and Spanish describing available mental health services, the confidentiality of those services and the procedures for gaining access to them;

(ii) the Department of Correction shall make provisions to assist in assuring that the procedures for gaining access to mental health services are verbally explained to illiterate inmates, and that inmates whose native language is other than English or Spanish are given prompt access to translation services for the explanation of these procedures.

(c) **Training of staff.**

(1) All correction officers and medical services personnel are to receive training and continuing education in programs approved by the Departments of Correction, Health and Mental Health, Mental Retardation and Alcoholism Services regarding the recognition of mental and emotional disorders. This training shall incorporate, but need not be limited to, the following areas:

(i) the recognition of signs and symptoms of mental and emotional disorders most frequently found in the inmate population;

(ii) the recognition of signs of chemical dependence and the symptoms of narcotic and alcohol withdrawal;

(iii) the recognition of adverse reactions to psychotropic medication;

(iv) the recognition of signs of developmental disability, particularly mental retardation;

(v) types of potential mental health emergencies, and how to approach inmates to intervene in these crises;

(vi) identification and referral of medical problems of mental health inmates;

(vii) suicide prevention; and

(viii) the appropriate channels for the immediate referral of an inmate to mental health services for further evaluation, and the procedures governing such referrals.

(2) No later than nine months from the effective date of these standards, there shall be at least one officer in every housing area on every tour trained in the application of basic first aid, including life support cardio-pulmonary resuscitation.

(3) Mental health services staff shall receive explicit orientation as well as continuing education and training appropriate to their activities:

(i) there shall be a written plan developed by the Department of Health and approved by the Department of Mental Health, Mental Retardation and Alcoholism Services for the orientation, continuing education and training of all mental health services staff;

(ii) in-service training shall include regular individual supervision of not less than one hour per week and not less than one hour per week of continuing education to be prorated for part-time staff.

(d) **Observation aides.**

(1) There is to be an organized program of observation aides trained to monitor those inmates identified as

potential suicide risks as well as to recognize in those inmates not previously identified the warning signals of suicidal behavior. Inmates, including those housed in mental observation areas, may be employed as observation aides and shall be paid for their services.

(2) Written procedures shall be developed by the Department of Correction and Health, to be approved by the Department of Mental Health, Mental Retardation and Alcoholism Services, defining the selection criteria for observation aides, the training they shall receive, the procedures they shall follow and the criteria for the evaluation of their performance as well as for terminating their employment where necessary:

(i) in developing a program of observation aides the Department of Correction shall consult with the Department of Health in order to provide for coordination of effort between the two agencies;

(ii) observation aides shall be trained to promptly inform correction or mental health services staff when they believe an inmate poses a suicide risk, presents an immediate danger of suicide or is engaging in bizarre behavior. This information shall be recorded in a systematic manner.

(3) Observation aides shall operate in all correctional facilities in the following housing areas: mental observation, punitive segregation, administrative segregation and new admission. They shall be employed in other areas as required.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-03 Diagnosis and Referral.

(a) **Policy.** The Departments of Correction and Health, with the approval of the Department of Mental Health, Mental Retardation and Alcoholism Services, shall develop procedures to provide for the prompt evaluation and appropriate referral of inmates whose behavior suggests that they are suffering from a mental or emotional disorder, as well as the immediate evaluation and treatment of those in need of emergency psychiatric care.

(b) **Access.**

(1) There is to be non-emergency access to mental health services. Inmates may refer themselves for preliminary evaluation, and they shall be seen by a member of mental health services staff as soon as possible but in no instance later than three working days after receipt of referral by mental health services staff. The Department of Correction shall ensure that notice of the request is received by mental health services staff within twenty-four hours.

(2) Inmates shall have twenty-four hour access to mental health services personnel for emergency psychiatric care and the management of acute psychiatric episodes:

(i) all inmates who report having been sexually assaulted shall be referred for emergency assessment;

(ii) inmates awaiting emergency evaluation are to be housed in a specially designated area with close staff supervision and sufficient security to protect inmates and staff;

(iii) the Departments of Correction and Health shall develop a written form for emergency evaluation referrals.

(3) Correction staff and medical services personnel are required to refer to mental health services those inmates in the general population who exhibit signs of mental or emotional disorders. A standard written procedure to include a description of the behavior upon which the referral is based shall be developed by the Departments of Health and Correction.

(4) The Department of Correction shall provide sufficient escort officers to ensure delivery of service in a manner that promotes the maximum efficiency of mental health services staff. The Department of Correction shall develop and implement procedures to provide that inmates requested for evaluation or follow-up be escorted to mental health services staff, or accounted for, the same day. In all cases where the inmate is still in custody, he or she shall be brought to mental health services staff within twenty-four hours.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-04 Treatment.

(a) **Policy.** Adequate mental health care is to be provided to inmates in an environment which facilitates care and treatment, provides for maximum observation, reduces the risk of suicide, and is minimally stressful. Inmates under the care of mental health services, if in all other respects qualified and eligible shall be entitled to the same rights and privileges as every other inmate.

(b) **Criteria of adequacy.**

(1) The Department of Health shall develop written criteria to be approved by the Department of Mental Health, Mental Retardation and Alcoholism Services defining in accordance with current professional standards the mental health staff, supplies and equipment necessary to provide adequate mental health care.

(2) The Departments of Health and Correction shall develop written criteria to be approved by the Department of Mental Health, Mental Retardation and Alcoholism Services defining in accordance with current professional standards the space necessary to provide adequate and appropriate housing and treatment of inmates under the care of mental health services.

(3) No later than ninety days from the effective date of these standards, the written criteria shall be submitted to the Board of Correction for promulgation as an amendment to these standards.

(c) **Programs.**

(1) Special housing shall be provided to those inmates in need of close supervision due to mental or emotional disorders, and to those inmates in the process of being evaluated for such disorders:

(i) twenty-four hour observation aides shall be assigned to special housing areas;

(ii) correction officers who have received not less than thirty-five hours of special training within the first year of their assignment shall be assigned to steady posts within these areas. These officers shall receive annual training enhancement. The Departments of Health and Correction shall develop a written curriculum to be approved by the Department of Mental Health, Mental Retardation and Alcoholism Services specifying the components and hours of the training programs;

(iii) inmates placed in special housing areas shall be seen and interviewed by mental health services staff at least once per week;

(iv) an individual member of mental health services staff shall be directly responsible for mental health services in each special housing area;

(v) the Department of Correction shall make provision for the allocation of dormitory space as special housing for the observation of potentially suicidal inmates.

(2) The Departments of Correction and Health shall develop specific written criteria and procedures for the admission to and the discharge from special housing areas for mental observation:

(i) it shall be the prerogative of mental health services to admit and discharge inmates from special housing areas for mental observation;

(ii) the placement of an inmate in special housing shall be reviewed by mental health services at least once per week.

(3) An individualized written treatment plan based upon the evaluation of the treatment team shall be developed for each inmate placed in special housing for mental observation and for all inmates to whom medication for mental or emotional disorders is prescribed:

(i) the treatment team must include a psychiatrist who shall personally examine each inmate evaluated by the treatment team;

(ii) those members of the treatment team who are providing care to an inmate shall prepare a treatment plan, which shall be signed by the psychiatrist;

(iii) the Chief of Service or his or her designee shall approve all treatment plans;

(iv) the Department of Health shall develop written criteria to be approved by the Department of Mental Health, Mental Retardation and Alcoholism Services defining the nature and the specificity of the treatment plan;

(v) there shall be documented evidence of initial treatment planning within three days of the inmate being placed in special housing, and a treatment plan shall be prepared no later than one week after placement;

(vi) treatment plans shall be reviewed and assessed for effectiveness by professional mental health services staff at least every two weeks. Both the review and the inmate's progress shall be recorded in the medical chart;

(vii) a range of treatment modalities other than the provision of medication shall be made available.

(4) There shall be facilities appropriate for the observation, evaluation and treatment of acute psychiatric episodes.

(5) Where required, an inmate shall be transferred to a municipal hospital prison ward in accordance with New York State Correction Law §§402 and 508.

(6) Inmates identified as developmentally disabled shall be evaluated within seventy-two hours and mental health services staff shall make a recommendation to the Department of Correction as to whether such developmental disability makes it necessary for the inmate to be placed in special housing or otherwise separated from the general inmate population:

(i) inmates who suffer from developmental disabilities shall be housed in areas sufficient to ensure their safety;

(ii) if it is determined by mental health services that an inmate's developmental disability makes it clinically contraindicated that the inmate be housed in a correctional facility, then the Department of Correction shall immediately notify the court and a written notice shall be filed in the inmate's court papers.

(7) The Departments of Health and Correction shall use mechanisms approved by the Department of Mental Health, Mental Retardation and Alcoholism Services to identify inmates who are suffering from drug addiction or the disease of alcoholism. Inmates so identified shall be referred to available programs approved by the Departments of Correction and Health. Detoxification shall take place in a setting appropriate to the level of care required.

(d) **Informed consent.** Except as otherwise provided herein, mental health treatment may be administered only upon the informed consent of the inmate after a disclosure of the risks and benefits of the proposed treatment in accordance with good clinical practice. The Departments of Health and Mental Health, Mental Retardation and Alcoholism Services shall develop procedures for the implementation of this section, which shall include the use of a written form to document the informed consent of the inmate.

(e) **Right to refuse treatment.** The city may not require treatment of an inmate without the inmate's consent unless, in an emergency, that person, by reason of mental disability or mental illness, poses a clear and present danger of serious physical injury to self or others. Then and only then may an inmate be examined, treated or medicated against the inmate's will, subject to the following conditions:

(1) the attending physician shall use only those measures which in his or her best professional judgment are deemed appropriate in response to the emergency;

(2) these measures may be used only with a written medical order;

(3) these measures may be used only with adequate explanation in the inmate's chart by the physician responsible detailing the length of the period of observation, the inmate's condition, the threat the inmate poses and the specific reasons for the specific intervention proposed;

(4) no order to treat an inmate against the inmate's will shall be valid for longer than twenty-four hours, without review and renewal and appropriate notation in the inmate's medical records;

(5) the Departments of Correction and Health shall develop procedures to be approved by the Department of Mental Health, Mental Retardation and Alcoholism Services for the implementation of this subdivision including the use of a written form to document an inmate's refusal to consent to a particular examination, procedure or medication.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

40 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-05 Medication.

(a) **Policy.** Medication shall not be used solely as a method of restraint or means of control, but only as one facet of a treatment plan (as defined in §2-04(c)(3)).

(b) **Procedures.**

(1) The Department of Health, with the approval of the Department of Mental Health, Mental Retardation and Alcoholism Services shall develop and implement procedures governing the prescription, dispensing, administration and review of medication:

(i) medication for mental and emotional disorders is to be prescribed only by a psychiatrist, except in an emergency when a physician other than a psychiatrist may prescribe medication for mental and emotional disorders. Such a prescription must be reviewed by a psychiatrist within twenty-four hours;

(ii) except in an emergency, medication for mental and emotional disorders may not be prescribed to an inmate unless that inmate has had a physical examination including a detailed clinical history within the previous six months; in all cases the prescribing physician must first review the medical chart and all other medicine the inmate is receiving;

(iii) medication is to be administered only by appropriately trained medical or health services personnel.

(2) Psychotropic medication shall be dispensed only when clinically indicated, consistent with the treatment plan:

(i) all prescriptions for psychotropic medication must include a stop order; no prescription for psychotropic

medication shall be valid for longer than two weeks;

(ii) every inmate receiving psychotropic medication shall be seen and evaluated by the prescribing psychiatrist, or, in cases of emergency when a physician other than a psychiatrist prescribes medication under §2-05(b)(1)(i) by the reviewing psychiatrist, at least once a week until stabilized and thereafter at least every two weeks by medical personnel;

(iii) female inmates who are prescribed psychotropic medication shall be informed of the potential risk of taking such drugs while pregnant and shall be given the opportunity to be tested for pregnancy.

(c) **Pharmacy.**

(1) When stock medications are maintained within a correctional facility, the agency providing medical services shall develop and maintain a formulary of medications stored in that facility.

(2) The Departments of Health and Correction shall develop and implement a written policy to provide for the maximum security storage and weekly inventory of all controlled substances, syringes, needles and surgical instruments:

(i) "controlled substances" are defined as those so listed by the Drug Enforcement Administration of the United States Department of Justice;

(ii) written notice of this policy shall be given to all staff with potential access to any controlled substances or items under maximum security storage.

(d) **Research.** Biomedical or behavioral research involving any inmate in the custody of the New York City Department of Correction is prohibited, except insofar as it meets the requirements for approval of research which is subject to the Department of Health and Human Services' regulations, and in addition, has the approval of the Department of Mental Health, Mental Retardation and Alcoholism Services.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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40 RCNY 2-06

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Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-06 Restraints and Seclusion.

(a) **Policy.** The Departments of Correction and Health shall develop and implement procedures subject to the review of the Department of Mental Health, Mental Retardation and Alcoholism Services governing the physical restraint and seclusion of inmates being observed or treated for mental or emotional disorders. Consistent with the New York State Mental Hygiene Law restraints or seclusion shall not be used as punishment, for the convenience of staff, or as a substitute for treatment programs.

(b) **Definitions.**

Physical restraint. "Physical restraint" is the deliberate use of a device to interfere with the free movement of an inmate's arms and/or legs, or which totally immobilizes the inmate, and which the inmate is unable to remove without assistance:

(i) the Departments of Health and Mental Health, Mental Retardation and Alcoholism Services shall develop procedures defining permissible forms of physical restraints;

(ii) in no instance shall metal handcuffs be used to restrain an inmate; however, this proscription shall not preclude the application of appropriate security precautions during the transportation of inmates;

(iii) in an emergency, when an inmate presents a clear and present danger to himself or others, the inmate may be restrained, including with metal handcuffs, pending the arrival of a psychiatrist. Correction personnel shall immediately notify the mental health staff for response. The psychiatrist shall respond immediately, but in no event more than one

hour after notification. When there is no institutional psychiatrist on duty, correction personnel shall immediately transport the inmate to a facility where a psychiatrist is present.

Seclusion. "Seclusion" is the placing of inmates in their cells, or a seclusion room from which they cannot leave at will, during a normal lock-out period when other inmates in the housing area are given the option to lock out of their cells:

(i) seclusion shall be used only if the cells or seclusion rooms available allow adequate observation of the inmate by staff;

(ii) nothing in this Section shall restrict the ability of the Department of Correction to limit the lock-out rights of inmates for disciplinary purposes (punitive segregation).

(c) **Procedures.**

(1) The use of physical restraint or seclusion of inmates being observed or treated for mental or emotional disorders shall be permitted only where there is on-duty psychiatric coverage.

(2) Physical restraint or seclusion may be used only upon the direct written order of a psychiatrist which includes the reasons for taking such action.

(3) Physical restraint or seclusion shall be used only when the psychiatrist has examined the inmate and determined in light of all available mental health data that:

(i) the inmate presents an immediate danger of injury to self or others;

(ii) this potential for violence is the result of a mental health disorder for which the inmate is receiving treatment;

(iii) these measures are absolutely necessary to avert the danger and will be therapeutically beneficial; and

(iv) all other available alternatives are ineffective in preventing injury.

(4) An inmate put in restraints or seclusion shall be kept under constant observation and the need for continued restrictive measures shall be assessed by nursing or mental health staff:

(i) use of restraints shall be assessed every fifteen minutes and seclusion shall be reviewed every thirty minutes;

(ii) written findings of such reviews shall be noted on the inmate's medical chart;

(iii) vital signs (temperature, pulse, blood pressure and respiration)

shall be recorded every hour.

(5) An inmate subjected to restraints or seclusion shall be released every two hours and given the opportunity to go to the toilet.

(6) A psychiatrist shall evaluate an inmate in restraints or seclusion at least once every two hours to determine whether continued restrictive measures are warranted.

(7) No order to place an inmate in restraints or seclusion shall be valid longer than two hours, and such an order shall be renewable only once, by a psychiatrist after evaluation of the inmate's condition.

(8) After four hours, if an inmate remains too agitated to be released, the inmate shall be moved to a municipal hospital prison ward.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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40 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-07 Confidentiality.

(a) **Policy.** The principle of confidentiality of information obtained in the Health, with the approval of the Department of Mental Health, Mental Retardation and Alcoholism Services shall develop and implement a written policy governing the dissemination of information.

(b) **Sharing of information.**

(1) Mental health services shall promptly inform correction personnel when an inmate is identified as:

(i) suicidal;

(ii) homicidal;

(iii) posing a clear danger or injury to self or to others;

(iv) presenting a clear and immediate risk of escape or riot;

(v) receiving psychotropic medication; or

(vi) requiring transfer for mental health reasons.

(2) The Departments of Correction and Health shall develop and implement an explicit written procedure specifying which correction personnel are to be notified of information as described in §2-07(b)(1) above, and the

method of notification.

(c) **Records.**

(1) Mental health records are to be maintained separately from the confinement record and kept in a secure file. Each significant inmate contact shall be reflected by a substantive progress note on the chart.

(2) Mental health records are to be transferred with an inmate when the inmate is transferred from one facility to another within the New York City Department of Correction. A record summary shall accompany each inmate transferred to a municipal hospital prison ward. When a request is received to transfer mental health records outside the jurisdiction of the Department of Correction, written authorization of the inmate is required unless otherwise provided by law.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-08 Coordination.

(a) **Policy.** The Departments of Correction and Health shall consult and coordinate their activities on a regular basis in order to provide for the continued delivery of quality mental health care.

(b) **Discipline.**

(1) The Departments of Health and Correction shall develop written procedures to provide for mental health services to be informed whenever an inmate in a special housing area for mental observation is charged with an infraction, and to be permitted to participate in the infraction hearing and to review any punitive measures to be taken.

(2) Any inmate to be placed in punitive segregation who has a history of mental or emotional disorders shall be seen by mental health services staff before being moved to punitive segregation. All inmates in punitive segregation shall be seen at least once each day by medical staff who shall make referrals to mental health services where appropriate.

(c) **Meetings.** Monthly meetings including the facility administrator, the chief representative of mental health services to that facility and representatives of the medical and nursing staff shall be held to discuss the delivery of mental health services. Meetings shall include a written agenda as well as the taking and distribution of minutes.

(d) **Evaluation.** The Department of Mental Health, Mental Retardation and Alcoholism Services shall annually conduct a formal evaluation of the quality, effectiveness and level of performance of mental health services provided to inmates in New York City correctional facilities.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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40 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-09 Variances.

(a) **Policy.** Any Department affected by these minimum standards may apply for a variance from a specific subdivision or Section of these standards when compliance cannot be achieved or continued. A "variance" is an exemption granted by the Board from full compliance with a particular subdivision or Section for a specified period of time.

(b) **Variance prior to implementation date.** A Department may apply to the Board for a variance prior to the implementation date of a particular subdivision or Section when:

(1) despite its best efforts and the best efforts of other New York City officials and agencies, full compliance with the subdivision or Section cannot be achieved by the implementation date; or

(2) compliance is to be achieved in a manner other than specified in the subdivision or Section.

(c) **Variance application.** An application for a variance must be made in writing to the Board by the Commissioner of the Department at least forty-five days prior to the implementation date and shall state:

(1) the particular subdivision or Section at issue;

(2) the efforts undertaken by the Department to achieve compliance by the implementation date;

(3) the specific facts or reasons making full compliance by the implementation date impossible;

(4) the specific plans, projections and timetables for achieving full compliance;

(5) the specific plans for serving the purpose of the subdivision or Section for the period that strict compliance is not possible; and

(6) the time period for which the variance is requested, provided that this shall be no more than six months.

(d) **Variance procedure.**

(1) Prior to a decision on a variance application, the Board shall consider the positions of all interested parties.

(2) In order to receive this input the Board shall publicize the variance application in its entirety in a manner reasonably calculated to reach all interested parties, including direct mail. This shall occur at least thirty days prior to the implementation date of the subdivision or Section.

(3) The Board shall hold a public meeting or hearing on the variance application and hear testimony from all interested parties at least twenty-one days prior to the implementation date.

(4) The Board's decision on a variance application shall be in writing and shall include the specific facts and reasons underlying the decision.

(5) The Board's decision shall be publicized in the manner provided by §2-09(d)(2) at least ten days prior to the implementation date.

(e) **Granting of variance.**

(1) The Board shall grant a variance only if it is convinced that the variance is necessary and justified.

(2) Upon granting a variance, the Board shall state:

(i) the time period of the variance; and

(ii) any requirements imposed as conditions on the variance.

(f) **Renewal of variance.** An application for a renewal of a variance shall be treated in the same manner as an original application as provided in §§2-09(b), 2-09(c), 2-09(d) and 2-09(e). The Board shall not grant renewal of a variance unless it finds that, in addition to the requirements for approving an original application, a good faith effort has been made to comply with the subdivision or Section within the previously prescribed time limitation.

(g) **Emergency variance after implementation date.** A Department may apply to the Board for a variance after the implementation date of a particular subdivision or Section when an emergency prevents continued compliance with the subdivision or Section.

(h) **Emergency variance application.** (1) A variance for a period of less than twenty-four hours may be declared by the Department or a designee when an emergency prevents continued compliance with a particular subdivision or Section. The Board or a designate shall be immediately notified of the emergency and the variance.

(2) An application for an emergency variance for a period of twenty-four hours or more, or for a renewal of an emergency variance, must be made by the Commissioner of the Department or a designee to the Board and shall state:

(i) the particular subdivision or Section at issue;

(ii) the specific facts or reasons making continued compliance impossible;

(iii) the specific plans, projections and timetables for achieving full compliance; and

(iv) the time period for which the variance is requested, provided that this shall be no more than five days.

(i) **Granting of emergency variance.**

(1) The Board shall grant an emergency variance only if it is convinced that the variance is necessary and justified.

(2) A renewal of an emergency variance previously granted by the Board may be granted only if the requirements of

§§2-09(g), 2-09(h)(2) and 2-09(i)(1) have been met.

(3) The Board shall not grant more than two consecutive renewals of an emergency variance.

HISTORICAL NOTE

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40 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-01 Service Goals and Purpose.

(a) **Purpose.**

(1) The following minimum health care standards are intended to insure that the quality of health care services provided to inmates in New York City correctional facilities is maintained at a level consistent with legal requirements, accepted professional standards and sound professional judgment and practice.

(2) These standards shall apply to health services for all inmates in the care and custody of the New York City Department of Correction (DOC), whether in City Correction facilities or at other health care facilities.

(b) **Service goals.** Services for the detection, diagnosis and treatment of medical and dental disorders shall be provided to all inmates in the care and custody of the New York City Department of Correction. The Department of Correction and the Health Authorities in consultation with the Department of Health (DOH) and the Health and Hospitals Corporation (HHC) shall design and implement a health care program to provide the following:

(1) Medical and dental diagnosis, treatment and appropriate follow-up care consistent with professional standards and sound professional judgment and professional practice;

(2) Management and administration of emergency medical and dental care;

(3) Regular training and development of health care personnel and correctional staff as appropriate to their respective roles in the health care delivery system; and

(4) Review and assessment of the quality of health service delivery on an ongoing basis.

(c) **Definitions.**

Chief Correctional Officer. "Chief Correctional Officer" refers to the highest ranking correctional official assigned to a facility (usually a warden).

Chronic Care. "Chronic care" is service rendered to an inmate over a long period of time. Treatment for diabetes, hypertension, asthma, and epilepsy are examples thereof.

Convalescent Care. "Convalescent care" refers to services rendered to an inmate to assist in the recovery from illness or injury.

Emergency. "Emergency" medical or dental care refers to care for an acute illness or an unexpected health need that cannot be deferred until the next scheduled sick call or clinic without jeopardy to the inmate's health or causing undue suffering.

Facility. "Facility" refers to any jail which operates as its own command or to any jail annex which is not within walking distance of the parent facility.

Flow Sheet. "Flow sheet" refers to a document which contains all clinical and laboratory variables on a problem in which data and time relationships are complex (e.g., sequential fasting blood sugars in the diabetic inmate).

Health Authority. "Health Authority" shall refer to any health care body designated by New York City as the agency or agencies responsible for health services for inmates in the care and custody of the New York City Department of Correction. When the responsibility is contractually shared with an outside provider this term shall also apply.

Health Care Personnel. "Health care personnel" refers to professionals who meet qualifications stipulated by their profession and who possess all credentials and licenses required by New York State law. Medical personnel refers to physicians, physician assistants and nurse practitioners.

Health Record. "Health record" refers to a single medical record that contains all available information pertaining to an inmate's medical, mental health and dental care. Unless otherwise specified this record refers to a jail-based health record, not the hospital record, which is separate.

Sick-Call. "Sick-call" refers to an encounter between an inmate and health care personnel for the purpose of assessing and/or treating an inmate's medical complaint.

Special Needs. "Special needs" refers to inmates requiring chronic care (see definition 6), convalescent care (definition 7) or skilled nursing care.

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Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-02 Access to Health Care Services.

(a) **Policy.** The Department of Correction and the Health Authority shall be responsible for the design and implementation of written policies and procedures which ensure that all inmates have prompt and adequate access to all health care services. Services must be available, consistent with §1-01 of the Minimum Standards for New York City Correctional Facilities.

(b) **Access to Care.**

(1) Every facility must inform all inmates of their right to health care and the procedures for obtaining medical attention, as described in §3-04(b)(6).

(2) No inmate may be punished for requesting medical care or for refusing it.

(3) Under no circumstances shall an inmate's access to any health care service, including but not limited to those services described in these standards, be denied or postponed as punishment.

(4) Correctional personnel shall never prohibit, delay, or cause to prohibit or delay an inmate's access to care or appropriate treatment. All decisions regarding need for medical attention shall be made by health care personnel.

(5) Inmates shall not be discriminated against, with regard to treatment, on the basis of their medical diagnoses.

(6) Any correctional personnel who knows or has reason to believe that an inmate may be in need of health services shall promptly notify the medical staff and a uniformed supervisor.

(7) Staffing levels in the jail clinics, jail infirmaries and prison hospital wards shall be adequate in numbers and types to insure that all standards described here are met. Staffing levels refers to both clinical and correctional personnel.

(8) The Health Authority shall develop policies and procedures to insure that inmates have access to second medical opinions regarding clinical recommendations.

(c) **Sick-Call.**

(1) Sick-call shall be available at each facility to all inmates at a minimum of five days per week within 24 hours of a request or at the next regularly scheduled sick-call. Sick-call need not be held on City holidays or weekends. Facilities with capacities of over 100 people, must provide sick-call services on-site in medical treatment areas. (As defined in §3-06(b)).

(2) Sick-call is to be conducted by a physician or under the supervision of a physician.

(i) Correctional personnel shall not prevent or delay or cause to prevent or delay an inmate's access to medical or dental services.

(ii) Correctional personnel will not diagnose any illness or injury, prescribe treatment, administer medication other than that described in §3-05(b)(2)(iii), or screen sick-call requests.

(3) Requests for access to health services shall not be denied based on any prior requests.

(4) The Department of Correction shall provide sufficient security for inmate movement to and from health service areas.

(5) Adequate records shall be maintained daily which are distinguishable by housing area on a form developed by the Department of Correction. These records shall be maintained for at least three (3) years. The form shall include the following:

(i) the names and number of inmates requesting sick call;

(ii) the names and numbers of inmates arriving in the clinic; and

(iii) the names and number of inmates seen by health care personnel.

(6) The use of a sick-call sign up sheet shall not preclude the use of sick-call by inmates who are not on the list.

(d) **Emergency Services.**

(1) All inmate requests for emergency medical or dental attention shall be responded to promptly by medical personnel. This shall include a face to face encounter between the inmate requesting attention and appropriate health care personnel. All health care and correctional personnel must be familiar with the procedures for obtaining emergency medical or dental care, with the names and telephone numbers of people to be notified and/or contacted readily accessible.

(2) Correctional personnel who know or have reason to believe that an inmate is in need of emergency health services shall make the appropriate notifications pursuant to §3-02(d)(5).

(3) The Department of Correction, with the advice and agreement of the Health Authority, shall prepare and implement written policies and defined procedures which shall be posted in every facility and include arrangements for, at least, the following:

(i) emergency evacuation of an inmate from the facility when required;

(ii) use of an appropriate emergency medical vehicle;

(iii) use of a designated hospital emergency unit;

(iv) security procedures for the immediate transfer of inmates when necessary; and

(v) procedures for providing for transfer of inmates within time guidelines established by the Health Authority.

(4) Any correctional facility with a rated capacity of less than 100 inmates must have an agreement with one or more health care providers to provide emergency medical services and must have at least one correctional personnel on each housing unit certified in Cardio-pulmonary resuscitation (CPR).

(5) All uniformed correctional personnel shall be informed of and familiar with all written procedures pertaining to emergency health services.

(6) In each facility, the telephone numbers of the control room and the medical clinic shall be posted prominently at each correctional officer station.

(7) Medical personnel, with current CPR certification, trained in the provision of emergency health care shall be present at all times in each facility that has a rated capacity of 100 or more inmates. Whenever possible, health care personnel should be trained and certified in CPR.

(8) In the case of serious illness or injury to an inmate, all reasonable attempts shall be made by the Department of Correction to notify the next of kin or legal guardian of the inmate within the time frames established for reporting unusual incidents.

(9) The Health Authority shall determine the types and quantities of emergency equipment and supplies required to be available within each correctional facility in order to provide adequate emergency services and shall have written protocols regarding emergency care. An inventory shall be submitted to the Board of Correction within 90 days of implementation of the standards and updated annually or more frequently as determined by the Health Authority.

(i) all emergency health equipment and supplies shall be inventoried and inspected by health services personnel at least twice each year, or more frequently as determined necessary by the Health Authority to ensure that such equipment and supplies are in good working order.

(ii) all emergency equipment and supplies shall be easily accessible to appropriate personnel.

(10) A uniform logbook shall be designed and used by the Department of Correction to document all requests for emergency health care. This logbook shall be maintained in the clinic and shall contain, but not be limited to the following information:

(i) name, commitment number/book and case number, housing location of the inmate, and the location of the incident;

(ii) the date and time of referral and the referring officer;

(iii) the time of inmate arrival in clinic or in the event that medical personnel respond to an area outside of the clinic, the time medical personnel leave the clinic; and

(iv) the time the inmate is examined by health care personnel.

(e) **Infirmaries.** (1) Infirmaries, with discrete nursing stations and treatment area(s), shall be utilized to provide overnight accommodations and health care services of limited duration to inmates in need of close observation or treatment of health conditions which do not require hospitalization. Housing areas shall not be used for a combination of general population and infirmary housing at any one time.

(2) At designated facilities, The Health Authority and Department of Correction shall develop and implement written policies and procedures for the management of infirmaries that are consistent with professional standards and legal requirements. Such procedures shall incorporate at least the following;

(i) allocation of space and beds to meet the needs of the inmates in DOC custody as determined by the Health Authority and other applicable regulatory agencies;

(ii) accommodations for providing appropriate emergency services and the timely transfer of inmates to hospital and specialty services as consistent with §3-02(d)(3) and §3-02(f)(1) and §3-02(f)(2); and

(iii) provision of §3-02 adequate space and physical plant to operate infirmary related services (such as communicable disease isolation where applicable).

(3) The Health Authority shall develop and implement written policies that incorporate the following:

(i) maintenance and inventory of sufficient supplies, material, and equipment to provide proper and timely services to inmates;

(ii) clinical criteria for determining the eligibility of inmates for infirmary housing;

(iii) appropriate methods for a daily evaluation of the medical condition of each inmate;

(iv) supervision of the infirmary 7 days per week, 24 hours per day by nurses, and other health care personnel as sufficient to meet the established needs of the inmates; and

(v) availability of an adequate number of medical personnel 7 days per week, 24 hours per day to provide appropriate coverage, including daily rounds on infirmary patients.

(4) Only health care personnel shall determine, after an examination of the inmate, if an inmate's condition necessitates admission to the infirmary.

(i) inmates shall be discharged from the infirmary only upon the written authorization of medical personnel.

(ii) correctional personnel shall not interfere with an inmate's access to infirmary services or the duration of confinement in the infirmary and shall transfer inmates to and from infirmaries promptly when so requested by health care personnel.

(5) Infirmaries shall be designed and staffed so that inmates confined therein are within the sight or sound of health care personnel at all times.

(6) Adequate records for each infirmary admission, evaluation, and discharge shall be maintained as part of each inmate's health record as consistent with applicable requirements of §3-07(b) and §3-07(c).

(7) Sufficient security measures shall be provided continuously in the infirmary to assure the health and safety of all inmates and health care personnel who provide services to such inmates.

(f) **Outpatient Specialty Clinics.** (1) Outpatient specialist services shall be provided to inmates in time frames specified by the referring medical personnel upon the written determination of a physician or dentist that the treatment

appropriate to the inmate's health care need is not available in the correctional facility or cannot adequately be provided at such facility. In the event that the inmate has previously been treated by the specialty clinic physician, the specialty clinic physician shall determine the medically appropriate time for the return visit(s).

(i) In instances where the specialty clinic physician determines the time period or date for a follow-up appointment, the jail-based physician may alter that time provided that the change in time is not medically inappropriate and shall inform the inmate of the proposed change. If the change is not medically required, the new appointment date shall be scheduled for the next available clinic, or in the alternative, shall not be scheduled for a time period greater than the original time period (for example, if the original appointment was scheduled for within one week, the rescheduled appointment cannot be more than one week from the original appointment).

(ii) The reasons for any change in the original plan must be indicated in the inmate's medical record with clear reasons for the change.

(2) The Health Authority and the Department of Correction shall devise a written plan for the timely delivery of inmates to specialty clinics. This plan shall include, but not be limited to the following procedures:

(i) maintenance of a current list of community clinics, approved by the Health Authority which can adequately provide specialist care and treatment;

(ii) the scheduling requirements for specialist services and the hours of operation;

(iii) the use of an appropriate vehicle for the timely transfer of inmates to and from specialty clinics;

(iv) security procedures and escort requirements appropriate for transferring the inmate to and from the outpatient health clinic, including shackling procedures which are medically appropriate; and

(v) the transfer of appropriate health records and/or other pertinent information to assure proper follow-up care for the inmate, and to avoid unnecessary duplication of tests and examinations, pursuant to §3-08(b)(4).

(3) The variety of outpatient services available to inmates shall be no different than those available to civilian patients.

(4) Correctional or health care personnel shall not deny or unreasonably delay, or cause to deny or unreasonably delay an inmate's access to specialty services at any outpatient clinic.

(i) sufficient Escort Officers shall be provided within the clinic or hospital to ensure that an inmate's access to specialty clinics and related diagnostic units is not denied or unreasonably delayed.

(g) **Medical Isolation.** (1) Inmates in medical isolation will receive the same rights, privileges and services set forth in these standards for inmates not in isolation, provided that the exercise of such rights, privileges and services does not pose a threat to the health, safety, or well being of any other inmate, correctional staff or health care personnel. Access to rights, privileges and services of and procedures regarding inmates in segregation for mental health observation is governed by the Board of Correction Mental Health Minimum Standards for New York City Correctional Facilities.

(2) Medical personnel shall assess the condition of each inmate so segregated at least once each 24 hour period. At least once each week rounds on all segregation inmates must be made by a physician.

(3) Health care personnel must maintain a daily log that includes the name of medical personnel who made rounds on inmates in isolation and lists those inmates who required further attention in the clinic. These logs are the property of the Health Authority and subject to the confidentiality provisions described in §3-08(c). Medical services provided to individual inmates must be noted in the inmates' health records.

(4) Upon request of the medical staff, inmates requiring further medical evaluation outside of the housing area shall be escorted to the clinic promptly for medical attention.

(5) The Health Authority shall develop written policies and procedures regarding the care of inmates in medical isolation. These procedures shall include that an inmate may be placed in medical isolation only upon the determination of medical personnel that isolation of an inmate is the only means to protect other people from a serious health threat, subsequent to the examination of such inmate and pursuant to §3-06(1)(2). This disposition by the medical personnel shall be in writing in the health care record and shall state:

(i) the name of the inmate; and

(ii) the facts and medical reasons for the isolation;

(iii) the date and time of isolation;

(iv) the duration of isolation, if known; and

(v) any other special precautions or treatment deemed necessary by the medical personnel.

Upon determination by a physician that an inmate in medical isolation no longer presents a serious threat to the health of any person that inmate shall be released from such special housing after the appropriate correctional personnel are advised.

(h) **Special Needs.** (1) The Health Authority in consultation with other agencies as required will develop written policies and defined procedures insuring appropriate care of inmates with special needs requiring close medical supervision, including chronic care and convalescent care or skilled nursing care.

(2) A written treatment plan, developed by the health care provider, supervised by medical personnel, must exist for each special needs inmate. The plan, to be included in the health record, may include but need not be limited to instructions about diet, exercise, medication, the type and frequency of laboratory and diagnostic testing, and the frequency of follow-up for medical evaluation and adjustment of treatment modality.

(3) When clinically appropriate, the treatment plan shall prescribe inmates access to the range of supportive and rehabilitative services (such as physical therapy and rehabilitation therapy), that the treating medical personnel deems appropriate.

(4) Rehabilitation services shall be available at in-jail clinics or through the outpatient clinics at off-site facilities, as appropriate.

(i) **Hospital Care.** (1) Hospital based care shall be provided for inmates in need of hospital care consistent with applicable sections of the State Health Code. The Health Authority in conjunction with the Department of Health, Health and Hospitals Corporation, and other relevant providers, shall have a written plan defining admission and discharge procedures for appropriate levels of care. These procedures shall insure that inmates are not transferred to and from health care settings unnecessarily.

(2) Services provided to inmates in acute care, chronic care or other non-jail health facilities must meet all applicable subdivisions of these standards.

(j) **Punitive Segregation.** (1) The Health Authority shall develop policies and procedures governing the medical attention for inmates in punitive segregation. These policies shall include the requirements of §3-02(g)(2-4). In addition, upon determination by a physician that the health of an inmate in punitive segregation will be adversely affected by such housing, the inmate shall be released from punitive segregation housing after the appropriate correctional personnel is advised.

HISTORICAL NOTE

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40 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-03 Training and Continuing Education.

(a) **Policy.** There shall be a written program for the orientation, training and continuing education of correctional and health care personnel to ensure the employment or assignment of qualified personnel and the continuous delivery of quality health care.

(b) **Health Care Personnel.** (1) The Health Authority shall be responsible for the following:

(i) ensuring that all health service professionals are appropriately credentialed;

(ii) monitoring verification of continued maintenance of licensure and/or certification of professional health care personnel, including participation in continuing education programs as required by their professions.

(2) Written job descriptions approved by the Health Authority shall define the specific duties and responsibilities of health care personnel who provide health care in the facilities. Such job descriptions shall be reviewed on a periodic basis as determined by the Health Authority, but never to exceed one year.

(3) The following shall only be performed by health care personnel and shall not be performed by correctional personnel or inmates, except as provided under §3-05(b)(2)(iii):

(i) providing direct patient care services;

(ii) scheduling health care appointments;

(iii) determining access of (other) inmates to health care services;

(iv) handling of unsealed health records except in medical emergency situations and only upon the request of health care personnel;

(v) handling or having access to surgical instruments, syringes, needles, medications; or

(vi) operating medical equipment.

(c) **Training.** (1) A written plan developed by the Health Authority shall require all health care personnel to participate in orientation and training appropriate to their specific health care delivery activities and job descriptions, and required by their respective disciplines and licensing bodies. This shall include training in mental health screening as described in the Mental Health Minimum Standards. The plan shall define the frequency of ongoing training for all health care personnel.

(2) Written policy and a training program for correctional staff shall be established and approved jointly by the Health Authority and the Department of Correction determining the type of training for new staff and the type and frequency of training and continuing education for all correctional staff regarding, but not limited to, instruction in the following:

(i) how to recognize medical emergencies;

(ii) administration of first aid and certification in cardiopulmonary resuscitation (CPR) for sufficient staff to meet the standard described in the Mental Health Minimum Standards;

(iii) how to obtain medical care for inmates in emergency and non-emergency situations.

(iv) rules and regulations regarding health services and the layout of each facility in which they work.

(3) The Department of Correction will ensure that the correctional staff are trained in those areas described in §3-03(c)(2).

HISTORICAL NOTE

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RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-04 Screening.

(a) **Policy.** Screening procedures shall be developed and implemented which promote timely identification of immediate needs of the inmate and of public health concerns for the institution. The initial screening shall also establish a medical baseline for ongoing care.

(b) **Intake screening.** (1) Screening for health purposes is to be performed on all inmates upon their arrival at the initial receiving correctional facility. Screening shall be conducted by medical personnel prior to housing.

(2) The Health Authority shall develop written policies and procedures determining the topics to be reviewed during intake screening. Such review shall include but not be limited to the following:

(i) a history of present illnesses and past medical history including dental, vision, mental health and hearing problems, an immunization history, as well as communicable diseases such as venereal disease and tuberculosis;

(ii) a drug history inquiring into the use of alcohol and other addictive substances including types of drugs used, mode of use, amounts used, date of last use and a history of problems which may have occurred after ceasing use, such as convulsions;

(iii) inquiry into and, where appropriate verification of medication taken and special treatment requirements and planned procedures for inmates with significant health problems;

(iv) recording of height, weight, pulse, blood pressure, temperature;

(v) physical examinations and administering of tests held to be appropriate by the screening medical personnel, including but not necessarily limited to:

(A) tuberculin skin test, if no history of prior positive reaction, if positive to be followed by chest x-ray.

(B) urinalysis dipstick test for glucose, ketones, blood, protein, and bilirubin;

(C) serologic test for syphilis;

(D) gonorrhea culture for men if clinically appropriate, and gonorrhea and chlamydia screening for all women;

(E) rectal exams for all inmates over 40 years old.

(vi) observation of behavior which includes alertness, orientation, mood, affect, apparent signs of drug/alcohol withdrawal, and suicidal and homicidal ideation;

(vii) observation of body deformities and ease of movement;

(viii) observation of condition of skin, including trauma, major and/or unusual markings, bruises, lesions, jaundice, rashes and infestations, and needle marks or other indications of drug abuse;

(ix) observation of other health problems as designated by the screening physician or Health Authority.

(x) obstetrical and gynecological histories, pap smears and pregnancy tests for women.

(3) The results of each inmate's screening examination shall be reviewed by health care personnel and mental health staff when appropriate and one of the following actions shall be taken:

(i) referral to an appropriate health care service on an emergency basis; or

(ii) clearance for housing with follow-up scheduled later with the appropriate health care service, if required; or

(iii) placement in specialized housing such as infirmary or mental observation. A referral to mental observation housing shall be reviewed by mental health staff on the next tour that mental health staff are on-site.

(4) Intake screening for transfers may be limited to a review of the previous screening results by health care personnel, but must be completed prior to housing. A full screening need not be conducted except where any of the following apply:

(i) a copy of the previous intake screening form does not accompany the transferee's arrival or is lost, or illegible;

(ii) the accompanying form is not in compliance with standard format or procedures as determined by the Health Authority pursuant to §3-07(b); or

(iii) medical personnel reviewing the chart determines an inmate must be seen.

(5) Initial intake screening results shall be recorded on a standard printed form approved by the Health Authority.

(6) At the time of intake, all inmates shall receive written communication to be approved by the Health Authority, and written and distributed by DOC in English and Spanish describing available medical and dental services, the confidentiality of those services and the procedures for gaining access to them.

(i) the Department of Correction shall make provisions to assure that procedures for gaining access to medical and dental services are verbally explained to illiterate inmates and that inmates whose native language is other than English

or Spanish are given prompt access to translators for the explanation of these procedures.

(7) The new admission intake screening must be completed within 24 hours of admission to DOC custody. A designated person at the Health Authority and at the Department of Correction shall be notified in writing whenever a newly admitted inmate does not receive intake screening within 24 hours of admission to DOC.

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Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-05 Pharmaceutical Services.

(a) **Policy.** Written policies and procedures pertaining to pharmaceutical services, that are consistent with professional practices and in accordance with all applicable federal, state and local laws, shall be established and implemented.

(b) **Management.** (1) All written policies and procedures for the proper management of pharmaceuticals shall be established by the Health Authority in accordance with all applicable law. This plan shall include, but not be limited to the following:

(i) a formulary specifically developed for both prescribed and non-prescribed medications stocked by the facility;

(ii) procedures which account for receipt, dispensation, distribution, administration, and disposal of medication;

(iii) periodic inventory of controlled substances as defined by the Drug Enforcement Administration of the United States Department of Justice;

(iv) periodic inventory of all other medication retained in a facility on a schedule established by the Health Authority to insure that medications do not expire;

(v) appropriate security and storage of all medications and medical supplies including needles and syringes; and

(vi) maintenance of adequate supply of all regularly used drugs.

(2) Access to prescription medication shall be limited to only those persons with written authority of the Health Authority or those designated by them. Prescription medication for inmates shall be prescribed, dispensed and administered only by physicians, physician's assistants, nurse practitioners, nurses, pharmacists or other health care personnel properly trained and in compliance with State and Federal law.

(i) Prescription medication may be prescribed, dispensed and administered only when clinically indicated and consistent with a treatment plan.

(ii) Controlled substances or drugs whose toxic dose is close to the therapeutic dose shall be administered in liquid or powdered form whenever possible and when clinically appropriate.

(iii) Non-prescription analgesic medication may be distributed by Correction Officers in the housing areas in accordance with written guidelines approved by the Health Authority, and the Department of Correction.

(3) All administered medication shall be documented and maintained on records satisfactory to the Health Authority and shall consist of the following:

(i) the name of the inmate;

(ii) the name of the dispenser;

(iii) the name of the prescriber;

(iv) the name of the drug;

(v) the time of day and date the medication is dispensed;

(vi) the date the prescription expires;

(vii) directions for administering the medication; and

(viii) other information deemed necessary by the Health Authority to facilitate proper use.

(4) All medication prescribed and dispensed to inmates shall be administered in accordance with the prescriber's written directions and only up to the expiration date of the specific item. The Health Authority shall write policies and procedures that insure the prompt availability of non-formulary drugs and continuity of medication between health service sites.

(5) No inmate may be prescribed a controlled substance for more than two weeks unless determined to be necessary by a physician or authorized health care personnel after a thorough re-evaluation of the inmate's condition. There shall be exceptions for 21 day methadone and 30 day phenobarbital protocols.

(6) Written policies and procedures will be developed by the Department of Correction and the Health Authority to insure that inmates on medications can receive them if they are scheduled to be in court or at another facility at the time that medications are administered.

(7) Policies and procedures, developed by the Health Authority shall be implemented to insure that inmates who refuse significant medications are counseled on the medical consequences of refusal. Inmates must be offered subsequent administration if re-prescribed by medical personnel.

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40 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-06 Treatment.

(a) **Policy.** Adequate health care, including follow-up care, shall be provided to inmates in an environment which facilitates care and treatment. Such care and treatment shall be provided by health care personnel in a timely fashion and shall be consistent with accepted professional standards and legal requirements.

(b) **Treatment Area.** (1) Each correctional facility with a capacity of over one hundred shall establish and maintain a discrete medical treatment area (clinic) which is in accordance with all State, Federal, and local laws and all other applicable legal requirements, except where §3-06(b)(5) applies.

(2) The Health Authority shall establish written criteria defining the following:

(i) the equipment, supplies and materials necessary in each clinic to provide quality health treatment and appropriate specialty care, where applicable; and

(ii) the number of health care personnel required to provide effectively for the needs of the inmate population within appropriate time frames.

(3) At a minimum, the medical treatment areas in each clinic shall be equipped with the following:

(i) hot and cold running water in each exam room;

(ii) adequate lighting in each exam room;

(iii) an examination table;

(iv) an appropriate receptacle for infectious waste in accordance with local laws;

(v) sterilization equipment as needed;

(vi) adequate space to provide privacy for all encounters between health care personnel and inmates;

(vii) acceptable heating, air-conditioning and ventilation;

(viii) soap and paper towels, and

(ix) all other equipment, supplies and materials deemed appropriate by the Health Authority pursuant to §3-06(b)(2).

(4) Health care equipment, supplies, and materials shall be placed in an area which is easily accessible to health care personnel. Equipment used for treating inmates shall function properly and safely at all times.

(5) Medical treatments or physical examinations shall not occur outside of appropriate treatment areas described by §3-06(b)(2) and §3-06(b)(3), except as needed in the event of an acute medical emergency.

(c) **Dental Services.** (1) Quality dental care necessary to maintain an adequate level of dental health shall be available to each inmate under the direction and supervision of a dentist licensed in New York State.

(i) emergency dental care shall be provided as described in §3-02(d).

(ii) a dental examination shall be offered within three weeks for each inmate who so requests or upon referral by other health care personnel unless the inmate refuses the scheduled exam. There shall be a follow-up plan developed to insure that necessary services are provided in a timely fashion. In-clinic refusals or no-shows shall be documented in the inmate's health record.

(iii) the Department of Correction shall be responsible for ensuring that requests for access to non-emergency dental services are communicated to dental health care personnel within two working days of receipt by Department of Correction. In the event that dental personnel are not on duty, an inmate's request will be communicated to health care personnel, who in turn will be responsible for conveying the request to dental personnel on their next work day.

(2) A dental examination shall include, but not be limited to, the following:

(i) an examination of the internal and external structure of the mouth to detect abnormal functioning, diseases of the mucous membranes and jaws, and diseases of the teeth and supporting structures;

(ii) diagnostic X-rays when deemed necessary by the dentist;

(iii) testing of the pulp and other tissues;

(iv) caries susceptibility;

(v) cancer smears, as indicated;

(vi) taking or reviewing a dental history and noting decayed, missing, and filled teeth; and

(vii) education in proper dental hygiene.

(3) Dental treatment, not limited to extractions, shall be provided when the health or comfort of the inmate would

otherwise be adversely affected for an unreasonable length of time as determined by the dentist after reviewing the results of a dental examination. Treatment may include, but not be limited to, the following:

(i) relief of pain and treatment of acute infections;

(ii) removal of irritating conditions which may lead to malignancies;

(iii) treatment of related bone and soft tissue diseases;

(iv) repair of injured or carious teeth;

(v) replacement of lost teeth and restoration of function;

(vi) oral prophylaxis;

(vii) endodontics;

(viii) oral surgery; and

(ix) periodontics.

(4) Dental treatment shall be conducted within a reasonable time as determined by the results of the dental examination.

(5) A full health record must be available to the treating dentist at the time of treatment if requested by the dentist or deemed necessary by health care personnel.

(6) Adequate dental records of each inmate's visit shall be maintained in the health record, including the following:

(i) date of the visit;

(ii) results of the dental examination;

(iii) treatment planned or provided where appropriate;

(iv) follow up plans if any; and

(v) name and signature of the dentist.

(7) Only a dentist or a dental hygienist licensed to practice in New York State may conduct dental examinations. Only a dentist so licensed may provide dental treatment.

(i) correctional personnel will not screen requests for dental services.

(ii) no person shall deny or in any way delay an inmate's request for access to dental services.

(8) A daily record or log shall be maintained by the Health Authority which lists the following:

(i) the names and number of inmate requests for dental services;

(ii) the names and number of inmates brought to the dental clinic; and

(iii) the names and number of inmates seen by dental personnel.

(d) **Vision and Eye Care Services.** (1) The Health Authority shall establish written policies and procedures to

provide vision and eye care services to inmates in need of such services.

(i) All inmates who in the opinion of medical personnel require vision and eye care services beyond that which is provided during the intake screening, shall be so referred and provided.

(ii) Inmates whose eyeglasses are broken, lost, or otherwise unavailable shall be entitled to a vision examination.

(2) If determined after an eye examination that an inmate is in need of eyeware, the Health Authority shall be responsible for providing the inmate with such eyeware.

(3) All incoming inmates who are in possession of corrective eyeware shall be allowed to retain such unless otherwise determined by health care personnel.

(4) Records shall be maintained in the inmate's medical chart of all ophthalmologic, optometric, and vision services. Such records will include at least the following:

(i) results of vision examinations conducted in addition to initial screening;

(ii) treatment or medication prescribed and follow-up plans; and

(iii) the name of the treating ophthalmologist/ optometrist.

(5) A daily log shall be maintained by the Health Authority to document the following:

(i) the names and number of inmates referred to or requesting vision and eye care services; and

(ii) the names and number of referrals and requests honored.

(6) Eye and vision examinations and treatment shall be conducted only by an ophthalmologist or an optometrist licensed in New York State.

(e) **Pregnancy and Child Care.** (1) All pregnant inmates shall receive comprehensive counseling, assistance, and medical care consistent with professional standards and legal requirements.

(2) A pregnant inmate shall be provided with appropriate and timely prenatal and postnatal care including but not limited to the following:

(i) gynecological and obstetrical care;

(ii) medical diets for prenatal nutrition;

(iii) all laboratory tests as deemed necessary by medical personnel; and

(iv) special housing as deemed necessary by medical personnel.

(3) Upon request, and in accordance with all applicable laws, female inmates shall be entitled to receive abortions in an appropriately equipped and licensed medical facility within a reasonable time-frame. The following conditions shall apply to abortion services at a hospital:

(i) subsequent to consultation with a licensed physician, the voluntary informed consent of the inmate shall be obtained as pursuant to §3-06(j) prior to the procedure; and

(ii) the procedure shall not be performed in the correctional institution.

(4) The Health Authority shall make all reasonable arrangements to ensure that child births take place in a safe and appropriately equipped medical facility outside of the correctional facility.

(5) If an inmate decides to keep her child, necessary child care will be provided as consistent with applicable section(s) of the New York Correction Law and all other legal requirements and consistent with Department of Correction policies governing the nursery program.

(6) Upon request, pregnant inmates shall be provided access to adoption or foster care services through the Department of Correction's Social Service Unit. Under no circumstances will correctional or health care personnel delay or deny an inmate access to such services or force an inmate to utilize either service against her will.

(i) if the inmate decides on adoption or foster care for the new born child, referral services with the New York City Department of Social Services will be promptly provided for planning and placement of the infant.

(7) The Health Authority and the Department of Correction shall insure that nursing mothers admitted to the Department of Correction are screened for eligibility for the nursery program with appropriate speed. There shall be written policies and procedures defining the program and criteria for admission to and discharge, including grounds for removal from the program.

(f) **Diagnostic Services.** (1) Written policies and procedures pertaining to diagnostic services, including radiology, pathology, and other medical laboratory services shall be developed and implemented by the Health Authority within the correctional facilities in accordance with legal requirements, accepted professional standards and sound professional judgment and practice.

(2) Pathology and medical laboratory procedures and policy shall include but not be limited to the following:

(i) conducting laboratory tests appropriate to the inmate's needs;

(ii) performing tests in a timely and accurate manner;

(iii) prompt distribution and review of test results and maintaining copies of results in the laboratory and in the inmate's health record;

(iv) calibration of equipment on a periodic basis;

(v) validation of test results through use of standardized control specimens or laboratories;

(vi) receipt, storage, identification and transportation of specimens;

(vii) maintenance of complete descriptions of all test procedures performed in the laboratory including sources of reagents, standards, and calibration procedures; and

(viii) space, equipment and supplies sufficient for performing the volume of work with optimal accuracy, precision, efficiency, and safety.

(3) Policies and procedures for the delivery of radiology services within the correctional facilities shall be established by the Health Authority and shall include but not be limited to the following:

(i) appropriate radiographic or fluoroscope diagnostic and treatment services;

(ii) interpreting x-ray films and other radiographs, and supplying reports in a timely manner;

(iii) maintaining duplicate reports for services and retaining film in the radiology department for a period of time

that is in accordance with all applicable laws;

(iv) maintaining an adequate record of all examinations performed on each inmate in a separate log and as part of the inmate's health record; and

(v) when appropriate, prompt referral to necessary off-site radiology services.

(4) Safety issues regarding all radiology services shall be explained to all appropriate health personnel. Policies and procedures addressing these aspects shall include, but not be limited to, the following:

(i) performing radiology services only upon the written order of medical personnel or a dentist which contains the reason for the procedure;

(ii) limiting the use of any radioactive materials to qualified health care personnel;

(iii) regulating the use, removal, handling, and storage of any radioactive material;

(iv) precautions against electrical, mechanical, and radiation hazards;

(v) instruction to health care and correctional personnel in safety precautions and in the handling of emergency radiation hazards;

(vi) proper shielding where radiation sources are used, acceptable monitoring devices for all personnel who might be exposed to radiation to be worn in any area with a radiation hazard, and the maintenance of records on personnel exposed to radiation; and

(vii) ongoing recorded evaluation of radiation sources and of all safety measures followed, in accordance with all federal, state, and local laws and regulations.

(5) Pathology and radiology services shall be directed by qualified physicians licensed by New York State.

(6) Inmates will be notified promptly of all clinically significant findings and appropriate follow-up evaluation and care will be provided. This section applies to diagnostic service provided in all settings.

(g) **Surgical and Anesthesia Services.** (1) Inmates shall be provided with access to adequate surgical and anesthesia services as defined in written policies and procedures developed by the Health Authority in accordance with legal requirements, accepted professional standards and sound professional judgement and practices.

(2) Minor surgical and oral surgical procedures can be performed only by medical personnel or dentists with appropriate training and appropriate levels of back up services available.

(3) The informed consent of the inmate must be obtained before an operation is performed, pursuant to §3-06.

(4) The Health Authority shall provide observation and care for inmates during pre-operative preparation and post-operative recovery periods, and establish written instructions for inmates in follow-up care after surgery.

(5) Surgical rooms, supplies, and equipment shall be properly cleaned and sterilized before and after each use.

(6) Adequate surgical and anesthesia equipment and space will be available.

(i) all equipment shall be calibrated, adjusted and tested regularly and so recorded to ensure proper functioning at all times.

(h) **Medical Diets.** (1) Written policies and defined procedures shall be developed by the Health Authority and the

Department of Correction and shall provide for special medical and dental diets which are prepared and served to inmates according to the written orders of the medical or dental personnel.

(2) When determined by medical or dental personnel that an inmate's health condition necessitates a special therapeutic diet, the Department of Correction shall be responsible for providing such diets promptly. Written records shall be maintained that identify the names of inmates receiving special diets, the date they are initiated, the duration and the specification of the diets.

(3) Requests for special diets or modifications of previous requests will be in writing, signed by medical or dental personnel and completely and specifically list the following: (i) levels of applicable nutrients or calories desired;

(ii) types of and quantities of food groups allowed;

(iii) special preparation restrictions or requirements if any; and

(iv) duration of the diet.

(4) Orders for special diets shall be recorded in the inmate's medical or dental record including:

(i) the purpose for such diet;

(ii) a description of the diet including duration; and

(iii) the signature of the dentist or physician ordering such diet.

(5) Inmates who are in need of long-term therapeutic diets shall be given written dietary instructions specific to their diet modification by the Health Authority.

(6) A Department of Correction registered dietician trained in the preparation of therapeutic diets shall be available for consultation to all facilities where food is prepared for inmates. This registered dietician shall oversee the staff dieticians who will be available in sufficient numbers to insure that all relevant sections of these standards are met.

(7) Special diets shall be available to inmates in general population and special housing. Special housing shall not be required in order to receive special diets.

(i) **Prosthetic Devices.** (1) Medical and/or dental prostheses shall be provided promptly by the Health Authority when it has been determined by the responsible physician and/or dentist that they are necessary, unless there is a reasonable basis to assume that the inmate will not be incarcerated for sufficient time to receive the prosthesis.

(i) prostheses shall include any artificial device to replace missing body parts or compensate for defective bodily functions;

(ii) the cost for prosthetic equipment and services shall be borne by the Health Authority.

(j) **Informed Consent.** (1) Informed consent will always be sought by health care per- sonnel.

(2) When an invasive procedure is indicated and except as otherwise provided in §3-06(j)(4) an inmate shall be given complete information, in a language he/she understands, pertaining to the following:

(i) the inmate's diagnosis and the nature and purpose of the proposed medical or dental treatment;

(ii) the risks and benefits of the proposed treatment;

(iii) alternative methods of treatment, if any; and

(iv) the consequences of forgoing the proposed treatment.

(3) Medical personnel or dentists shall not withhold any facts necessary for an inmate to make an informed, knowing decision regarding treatment, or minimize the risks of known dangers of a procedure in order to induce the inmate's consent.

(4) The Health Authority shall develop and implement written policies and procedures pertaining to informed consent which will be submitted for approval to the Board of Correction within 90 days and must be consistent with all applicable laws. The policies and procedures must include, but need not be limited to the following:

(i) obtaining informed consent for inmates who are minors or others who are or may be legally incapable of providing informed consent;

(ii) use of a written form to document the informed consent of inmates for special procedures beyond routine treatment; and

(iii) maintenance of detailed documentation when special procedures or surgery are performed on inmates in emergency situations pursuant to §3-06.

(5) Informed consent forms shall be maintained as part of the inmate's health record in accordance with all applicable laws.

(6) Informed consent policies shall be consistent with the informed consent policies described in The Board of Correction Mental Health Minimum Standards for New York City Correctional Facilities.

(k) **Drug and Alcohol Treatment.** (1) All inmates who give empirical evidence of addiction to alcohol, drugs or both, must be observed and offered treatment to prevent complications resulting from intoxication, withdrawal and associated conditions, as appropriate and according to written protocols approved by the Health Authority.

(2) Education and referral services should be available to inmates with alcohol or drug addiction(s) who request assistance.

(l) **Right to Refuse Treatment.** (1) An inmate may refuse a medical examination or any medical treatment except when medical personnel or a dentist has determined that immediate medical, surgical or dental treatment is required to treat a condition or injury that may cause death, serious bodily harm, or disfigurement to such inmate and at least one of the following applies:

(i) the inmate has been determined in accordance with all applicable laws to be incompetent to consent to the specific procedure at the time it is offered;

(ii) consistent with the provision of applicable law the inmate is a minor; or

(iii) it is demonstrated that the parent or legal guardian of incompetent inmates or minors cannot be reached.

(2) When an inmate refuses treatment for a health condition that is infectious, contagious, or otherwise poses a threat to the health, safety, or well-being of others, such inmate may, in accordance with determination made by health care personnel either:

(i) be placed in medical isolation in compliance with §3-02(g); or

(ii) be transferred to an infirmary setting.

(3) When an inmate is treated against his or her will pursuant to §3-06(l)(2):

(i) the medical personnel will use only those measures which in his or her best professional judgment are deemed appropriate in response to the emergency; and

(ii) adequate health records shall be maintained to detail the inmate's condition, the threat the inmate poses to himself and others, and the specific reasons for the inter- vention.

(4) An inmate who voluntarily refuses any health service deemed essential upon review by health care personnel shall do so after consultation with a Health Authority and shall sign a waiver form developed by the Health Authority.

(i) if the inmate refuses to sign a waiver, non-treating health care personnel shall sign the waiver as a witness, and note that the inmate has verbally refused such health services and refused to sign any waiver.

(ii) completed waiver forms shall be maintained as part of each inmate's health file in accordance with all applicable laws regarding duration of retention.

(iii) the waiver shall be specific to the procedure or care being refused and must be accompanied by a detailed and documented discussion of the procedure/treatment being refused and medical consequences of refusal and cannot be used to deny or fail to offer the inmate subsequent treatment.

(iv) Whenever required by medical personnel and practicable, all refusals for specialty clinics should be signed in the presence of medical personnel before the inmate is scheduled for transfer to the specialty clinic.

(5) Inmates refusing treatment need not remain in a medical area unless their condition, without treatment, cannot be managed in a less intensive setting.

(6) The policies developed regarding the right to refuse treatment shall be consistent with the Mental Health Minimum Standards.

(7) Care rendered under §3-06(l)(1) or §3-06(l)(3) or care refused as described in §3-06(l)(4) shall be recorded in a log specifically maintained for this purpose. The log which shall be maintained by the Health Authority in each clinic shall have sequentially numbered pages, and must at a minimum indicate the name and number of the inmate refusing care or being treated against his/her will, the name(s) of the health care personnel involved and a description of the event. This log shall be reviewed by medical personnel designated by the Health Authority on a daily basis. Nothing in this subdivision shall alter the requirements for appropriate documentation in the health care record.

(m) **Acquired Immune Deficiency Syndrome.** (1) The Department of Correction and the Health Authority shall develop policies and procedures to insure that inmates with HIV disease are treated in a non-discriminatory manner. These policies shall state that discrimination against any inmate based on his/her diagnosis or unauthorized disclosure of HIV-related information will result in disciplinary action by the relevant agency.

(2) The Health Authority shall develop protocols for the prevention and treatment of HIV related illnesses that are consistent with accepted professional standards and sound professional judgement and practice. All practices affecting the treatment or care of people with HIV infection shall be in compliance with federal, state and local laws and with all other parts of these standards.

(3) **Confidentiality.** All services for HIV-related disease shall be provided in a manner that insures confidentiality, consistent with these standards and New York State law. Segregation based solely upon this diagnosis shall be prohibited.

(4) **Testing.** Testing for HIV infection will be voluntary and performed only with specific informed consent and appropriate pre- and post-test counseling.

(5) **Education.** There shall be comprehensive AIDS education for all inmates and personnel who work in

Department of Correction facilities and on the prison hospital wards. The curriculum shall be reviewed by the Health Authority, and revised as new information and treatments become available. Education services shall be provided by the Department of Health, the Department of Correction, Health and Hospitals Corporation or their designees. The Health Authority and the Department of Correction shall maintain a schedule of training sessions which includes the number of people in each session which shall be available for review by the Board of Correction.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-07 Records.

(a) **Policy.** (1) The Health Authority shall design and implement written policies and procedures for the maintenance of medical and dental records for use in correctional facilities which are:

(i) documented accurately, legibly, and in a timely manner; and

(ii) readily accessible to health care personnel.

(2) Records for inmates who are treated at the hospital shall comply with the legal requirements of the hospitals' accrediting agent(s).

(b) **Format and Contents.** (1) The Health Authority shall approve uniform medical and dental forms for the recording of health information at all Department of Correction facilities.

(2) A health record shall be established and maintained for each inmate. At a minimum, the health record file shall contain, but not be limited to, the following:

(i) the completed intake screening form, as described in §3-04(b);

(ii) a problem list;

(iii) place, date, time, and the type of health service provided at each clinical encounter;

(iv) all findings, diagnoses, treatments, dispositions, recommendations, and summary of instructions to inmates;

(v) prescribed medications, their administration, and the duration;

(vi) original or copies of original laboratory, x-ray, and other diagnostic studies;

(vii) signature and title of each health care provider shall accompany each chart note; (viii) completed consent and refusal forms;

(ix) release of information forms signed by the inmate;

(x) special diets and other specialized treatment plans;

(xi) clinical and discharge summaries when an inmate is treated outside of Department of Correction facilities;

(xii) health service reports of medical and dental treatments, examinations, and all consultations pertaining to such services; and

(xiii) flow sheets for all infirmary or chronic patients.

(3) The health record shall accompany each inmate whenever he or she is transferred to another New York City Department of Correction institution. The health record, or a copy of the record, or pertinent sections of the record shall accompany each inmate whenever he or she is treated in a specialty clinic within a Department of Correction facility upon request of the specialty clinic physician.

(4) When an inmate is treated at a specialty clinic in a municipal hospital or other off-site health care facility, a detailed consultation request containing significant data, lab results and all relevant medical history shall accompany each inmate. When specialists at any off-site facility require the complete medical record, there shall be a written procedure in place to allow for the confidential transfer and return of this record or a copy of the record.

(c) **Retention of Institutional Records.** (1) At a minimum the Health Authority shall be responsible for the following:

(i) safeguarding all health records from loss, tampering, alteration, or destruction;

(ii) maintaining the confidentiality and security of health records;

(iii) maintaining the unique identification of each inmate's health record;

(iv) supervising the collection, processing, maintenance, storage, timely retrieval, distribution, and release of health records;

(v) maintaining a predetermined, organized health record format; and

(vi) retention of active health records and retirement of inactive health records.

(2) Active and inactive health record files shall be retained according to all applicable laws.

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Rules of the City of New York

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40 RCNY 3-08

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-08 Privacy and Confidentiality.

(a) **Policy.** The Health Authority shall establish and implement written policies and procedures which recognize the rights of inmates to private and confidential treatment and consultations consistent with legal requirements, professional standards and sound professional judgment and practice.

(b) **Privacy.** (1) All consultations and examinations between inmates and health care personnel will be confidential and private.

(i) correctional personnel may be present during the delivery of health services when health care and correctional personnel determine that such action is necessary for the safety and/or security of any person.

(ii) correctional personnel shall remain sufficiently distant from the place of health care encounters so that quiet conversations between inmates and health care personnel cannot be overheard. Every effort shall be made to maintain aural and, where possible, visual privacy during encounters between health care personnel and inmates.

(2) Facility health care personnel shall not conduct body cavity searches or strip searches.

(c) **Confidentiality.** (1) Information obtained by health care personnel from inmates in the course of treatment or consultations shall be confidential except as provided in §3-08(c)(3) and §3-03(b)(3)(iv).

(i) all professional standards and legal requirements pertaining to the physician-patient privilege apply.

(2) Active health records shall be maintained by health care personnel separately from the confinement record and

shall be kept in a secure location.

(i) access to health records shall be controlled by the Health Authority.

(ii) health records shall not be released, communicated or otherwise made available to any person, except treatment personnel or as pursuant to a lawful court order, without the written authorization of the inmate, except in emergency situations described in §3-03(b)(3)(iv).

(3) Health care personnel may report an inmate's health information to the chief correctional officer without the written consent of the inmate only when such information is necessary, to provide appropriate health services for the inmate or to protect the health and safety of the inmate or others. Such information shall not include the specific diagnosis or the entire health record, but where necessary may include the following:

(i) the inmate's dietary restrictions and modifications, if any;

(ii) known allergies and/or communicable diseases of the inmate, if any; and

(iii) health information concerning an inmate's ability to work, placement in punitive segregation isolation, or hospitalization needs.

(4) If an inmate has a communicable disease, the correctional authorities shall be instructed by health care personnel on proper precautions needed to protect correctional personnel and other inmates without being told disease-specific diagnoses for individual inmates.

(5) The chief correctional officer shall keep confidential any inmate health-related information or records forwarded to him by health care personnel.

(6) When an inmate communicates health-related information to correctional personnel in order to obtain access to health services or treatment of a health condition, then such information shall be kept confidential by correctional personnel. An inmate need not disclose his specific medical complaint to correction personnel in order to obtain medical assistance.

(7) In order to assure continuity of care and to avoid unnecessary duplication of tests and examinations, an inmate's health information shall be made available to health care personnel when that inmate is transferred to another correctional or health care facility.

(i) When an inmate is transferred from one correctional facility to another within the New York City Department of Correction, the inmate's complete health record shall be transferred simultaneously.

(ii) When an inmate is transferred to or from a municipal hospital ward, a pertinent summary of the inmate's health record shall accompany the transfer.

(iii) When an inmate is transferred to another correctional system, a record summary defined by the receiving and sending systems shall accompany the inmate.

(iv) Complete health record information shall be transferred to specific and designated physicians outside the jurisdiction of the Department of Correction upon the request and written authorization of the inmate for the release of such information. The release form must specify the information to be transferred.

(d) **Experimentation.** (1) Biomedical, behavioral, pharmaceutical, and cosmetic research involving the use of any inmate in the custody of the New York City Department of Correction shall be prohibited except where:

(i) the inmate has voluntarily given his/her informed consent pursuant to §3-06(j); and

(ii) all ethical, medical and legal requirements regarding human research are satisfied; and

(iii) the research satisfies all standards of design, control and safety; and

(iv) the proposed research has been approved in writing from the Health Authority.

(2) The use of a new medical protocol for individual treatment of an inmate by his/her physician will not be prohibited, provided that such treatment is conducted subsequent to a full explanation to the inmate of the positive and negative features of the treatment and all requirements of §3-06(j) regarding informed consent are satisfied and that the protocol/treatment has been reviewed by the appropriate local and institutional review boards as required by all applicable Federal, State and local laws. As an example, the protocol must be reviewed by an established human research review committee with representation of inmate advocates.

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40 RCNY 3-09

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-09 Quality Assurance.

(a) **Policy.** (1) The Health Authority shall establish and implement written policies and procedures for a Quality Assurance Program which ensures the delivery of quality health care. This program shall be systematic and include objective criteria for evaluating care and shall include procedures for the following:

(i) monitoring and evaluation of the quality, appropriateness, and effectiveness of health care services; and

(ii) prompt identification and resolution of problems.

(2) Hospital Prison Wards shall meet accepted community standards for accreditation. Each hospital that is designated to provide health services for inmates shall have a single physician of attending status responsible for all treatment provided to inmates in that hospital.

(b) **Quality Assurance Program.** (1) The monitoring and evaluation activities of the Quality Assurance Program shall reflect the following:

(i) the ongoing collection and/or screening and evaluation of information about health care services to identify opportunities for improving care and to identify problems that have an impact on health care provision and clinical performance;

(ii) the use of objective criteria that reflect current knowledge and clinical experience;

(iii) the identification of problems and improvement of the quality of health care through appropriate actions by

administrative and health personnel; and

(iv) documentation and reporting of the findings, conclusions, recommendations, actions taken and the results of such actions.

(2) The administration and coordination of the overall Quality Assurance Program will be designed to assure the following:

(i) all monitoring and evaluation activities are performed appropriately and effectively;

(ii) necessary information is communicated within and between the Health Authority and the Department of Correction when problems or opportunities to improve health care involve more than one department or service. Communication with the Department of Correction must be consistent with State law and §3-08(c) of these standards regarding confidentiality.

(iii) the status of identified problems shall be tracked to assure prompt improvement or timely resolution;

(iv) all documented information and recordings will be statistically analyzed to detect trends, patterns of performance or potential problems;

(v) a quarterly statistical report outlining the types of health care rendered and their frequency shall be prepared by the Health Authority; and

(vi) the objectives, scope, organization, and effectiveness of the quality assurance program shall be evaluated at least annually and revised as necessary.

(3) There shall be monthly meetings attended by the facility correctional administrator, the chief representative of Health Services at the facility and representatives of the medical, dental, and nursing staff.

(i) each meeting will include a written agenda as well as the taking and distribution of minutes.

(4) All Hospital Prison Wards shall be inspected as part of the accreditation process by the Joint Commission on Accreditation of Hospitals (JCAH), and shall be in compliance with JCAH and State Department of Health standards. In addition, each hospital that is designated to care for inmates will submit as part of their quarterly written reports to the Health Authority, a section that reflects quality assurance activities concerning care provided to inmates.

(5) The Health Authority shall annually conduct itself or contract for a formal evaluation of the quality, effectiveness, and appropriateness of health services provided to inmates in each New York City correctional facility. If the review is conducted by the Health Authority, it must be done by personnel other than those who provide care directly to inmates.

(i) At a minimum the evaluation will consist of the items outlined in §3-09(c).

(ii) The findings, conclusions, and recommendations of the Health Authority's evaluation shall be documented and distributed to the appropriate authorities, including the Board of Correction.

(c) **Monitoring and Evaluation.** (1) The quality of care shall be evaluated and monitored to ensure that medical judgments are soundly made and documented and that medical procedures are appropriately performed and evaluated. Monitoring and evaluation shall assess the appropriateness of diagnostic and treatment procedures, the use of adequate and complete diagnostic procedures including laboratory and radiology studies when indicated. Other subjects which should be reviewed include but need not be limited to: inservice training for medical personnel; the provision of chronic care services; adherence to protocols as evidenced by chart review; whether protocols are updated to reflect current medical knowledge; and whether staff education is successfully conducted to ensure compliance with current protocols.

(2) The quality, content and completeness of medical and dental records and entries will be evaluated and shall at a minimum include verification of:

(i) timely and adequate transfer of appropriate health care documents and information when inmates are transferred to or from other correctional facilities.

(ii) confidentiality and security of records.

(3) The quality, completeness and efficiency of receiving screening services shall be evaluated, including at least a review of any cases where an inmate with a serious health problem, which went undetected at screening, was placed in the general population and of cases where there are substantial delays in conducting the screening.

(4) An evaluation of the quality and appropriateness of surgical and anesthesia services shall be conducted and include at least the following:

(i) a regular and systematic evaluation of inmates who require hospitalization following surgery;

(ii) a regular review to ensure that procedures are done in appropriate time frames after they are ordered;

(iii) review of the inspection and testing of anesthetic apparatus before use; and

(iv) review of the documentation of surgical and anesthesia procedures, annual review and revision as necessary.

(5) The quality and appropriateness of emergency services will be evaluated and include at least a review of the following:

(i) correctional and health personnel response times to emergencies; and

(ii) sufficiency of supplies, equipment, materials and emergency health care per- sonnel.

(6) An evaluation of quality control in radiology, pathology, and other laboratory services will be performed and include a review of at least the following:

(i) the documentation, accuracy, and completeness of procedures; and

(ii) all safety aspects of the radiology service.

(7) Procedures for medication prescription, administration, and dispensing will be reviewed to ensure compliance with all applicable Federal, State, and local laws.

(8) Procedures for inventory control and documentation to account for the use of materials, supplies, equipment and medication shall be evaluated.

(9) Staffing needs shall be evaluated regularly to assure the maintenance of an adequate number of qualified health care personnel as consistent with the needs of the correctional facility.

(i) Written job descriptions shall be reviewed to maximize the functional responsibility, authority, and utilization of available health care personnel and to make changes or additions where necessary;

(ii) All health care personnel will receive periodic job performance appraisals by their supervisors which will include licensure or certification renewal; and

(iii) Inservice training shall be reviewed at least annually by the Health Authority to ensure that the quality, scope and effectiveness of training is adequate.

(10) All powered emergency, radiology, pathology, surgical, and dental equipment shall be tested at intervals deemed necessary to assure their proper functioning, but in no case shall such intervals exceed six months.

(11) Procedures for the management of hazardous materials and wastes in accordance with Federal, State, and local laws and regulations shall be reviewed.

(12) Documents and records will be made available to the Board of Correction by the Health Authority, Health and Hospitals Corporation and the Department of Correction in a timely fashion to allow the Board to monitor compliance with all parts of these standards. These records do not include individual medical records for living inmates, which must be obtained using standard procedures of informed consent and release.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 3-10

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-10 Inmate Death.

(a) **Policy.** The Department of Correction shall establish policies and procedures to insure that in the case of an inmate's death, prompt notification is made to family and appropriate officials and with the Health Authority shall insure that a thorough and timely review of the death is conducted.

(b) **Notification.** In the event of an inmate death, the Department of Correction shall notify the Medical Examiner's Office and the inmate's next of kin immediately.

(c) **Review.** (1) A postmortem examination shall be performed promptly whenever an inmate dies in the custody of the Department of Correction. A copy of the report will be sent to the Board of Correction.

(2) The Board of Correction shall conduct an investigation of inmate deaths including the review of all medical records of the deceased. Appropriate reviews will be discussed by the Prison Death Review Board that the Board of Correction will staff and the Deputy Mayor for Public Safety's Office will convene. The Prison Death Review Board will meet on an as needed basis and will include representatives from the Mayor's office, the Health Authority, the Department of Mental Health, Mental Retardation and Alcoholism Services, the Health and Hospitals Corporation, the Department of Correction, the Board of Correction and other health care providers involved in the care of the deceased.

(3) Nothing in this section substitutes for the reviews that must be conducted of every death by the Health Authority and the Department of Correction.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

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***** Current through December 2009 ****

40 RCNY 3-11

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-11 Disaster Plan.

(a) **Policy.** There shall be policies and procedures for the management and delivery of health care in the event of a man-made or natural disaster.

(b) **Disaster Plan.** (1) The Health Authority and the Department of Correction shall be responsible for designing written policies and procedures to provide timely and orderly emergency services in the event of a natural or man-made disaster. This disaster plan shall include, but not be limited to the following:

(i) use of an alert system;

(ii) use of emergency equipment and supplies;

(iii) re-assignment of health care and correctional personnel Department-wide to best meet each facility's needs;

(iv) a training program and schedule;

(v) security, storage, and maintenance of medical supplies and health records; (vi) delivery of medical and dental supplies;

(vii) use of ambulance services; and

(viii) periodic recorded practice drills and staff training.

(2) The disaster plan must be approved by the Health Authority and the Department of Correction and reviewed and updated annually. Certification of annual review must be sent to the Board of Correction.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 3-12

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-12 Shackling of Inmates.

(a) **Policy.** The Department of Correction, the Health Authority, and the Health and Hospitals Corporation shall develop and implement procedures governing the shackling of inmates who are receiving medical treatment and are housed in beds outside secure medical wards at the municipal hospitals. Inmates housed outside secure medical wards shall not be routinely shackled. The decision to shackle shall be made on a case by case basis and shall not serve as a substitute for appropriate security precautions or as punishment or for the convenience of staff. Shackling of inmates being transported between clinical settings shall be the least restrictive possible. All non-emergency decisions to shackle inmates must not be medically contraindicated.

(b) **Definition.** Shackling includes the use of all devices which encircle the ankle or wrist of an inmate and restrict movement.

(c) **Procedures.** The procedures developed for inmates housed in hospitals in beds outside of secure medical wards must include the following:

(1) Shackling shall be used only upon the direction of the Chief Correctional Officer or his/her designee after a review of the individual case. Pending the receipt of security-related information necessary to perform the review, an inmate may be shackled unless he/she falls into categories listed in (3)(i) through (iv) below. This security-related information must be obtained promptly.

(2) Shackling shall only be used when a Chief Correctional Officer or his/her designee demonstrates with clear and articulable facts that twenty-four hour officer coverage may be insufficient to protect the safety of others or to prevent

escape.

(3) An inmate who is to be restrained shall be seen by a physician. DOC will not shackle an inmate where a physician has determined that the inmate is:

(i) pregnant and admitted for delivery of a baby; or

(ii) dependent on a ventilator or respirator; or

(iii) in imminent danger or expectation of death (unless the inmate while in the condition described by (i)-(iii) above attempts to escape or engages in violent behavior at the hospital which presents a danger of injury); or

(iv) where shackling is medically contraindicated. Provided, however, that should an inmate, while in a condition described by (iv) above, attempt to escape or engage in violent behavior at the hospital which presents a danger of injury, he/she may be restrained pending an immediate review of his/her medical condition by a physician to determine whether the use of shackles threatens the inmate's life. DOC shall promptly make alternative security arrangements before the restraints are removed, unless a life-threatening condition exists. In the case of a life-threatening condition, the shackles shall be removed immediately.

(4) At least daily, physicians shall update and review the medical condition of shackled inmates. They shall convey their findings to the Department of Correction including whether the use of mechanical restraints, while the inmate ambulates is medically contraindicated.

(5) A shackled inmate shall be given the opportunity to use the bathroom as often as the need arises unless the physician has ordered the use of bed pans instead.

(6) The decision to shackle an inmate shall be reviewed on a daily basis by a Chief Correctional Officer or his/her designee and must be revised immediately if a physician determines that the shackles have become medically contraindicated. In the latter case, unless a life-threatening medical emergency exists, DOC shall have the opportunity to make alternative security arrangements, if necessary, before the shackles are removed. These arrangements must be made promptly.

(7) All decisions to apply mechanical restraints will be made by the Department of Correction's office of operations.

(8) Written records shall be maintained at the hospitals which indicated the reason for shackling, the time and date of the approval for shackling, the name and title of the person giving approval, and the inmate's name, book and case number and medical status.

(9) Hospital-based physicians caring for inmates outside secure medical wards at the municipal hospitals shall receive training in this standard.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 3-13

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-13 Variances.

(a) **Policy.** Any Department may apply for a variance from a specific Section or Subdivision of these minimum standards when compliance cannot be achieved or continued.

Continuing Variance. A "continuing variance" is an exemption granted by the Board from full compliance with a particular Section or Subdivision for an indefinite period of time.

Emergency Variance. An "emergency variance" as defined in §3-13(c)(3) is an exemption granted by the Board from full compliance with a particular Section or Subdivision for no more than 30 days.

Limited Variance. A "limited variance" is an exemption granted by the Board from full compliance with a particular Section or Subdivision for a specified period of time.

(b) **Variances Prior to Effective Date.** A Department may apply to the Board for a variance prior to the effective date of a particular Section or Subdivision when:

(1) despite its best efforts and the best efforts of other New York City officials and agencies, full compliance with the Section or Subdivision cannot be achieved by the effective date; or

(2) compliance is to be achieved in a manner other than specified in the Section or Subdivision.

(c) **Limited, Continuing and Emergency Variances.** (1) A Department may apply to the Board for a limited variance when:

(i) despite its best efforts, and the best efforts of other New York City officials and agencies, full compliance with the Section or Subdivision cannot be achieved; or

(ii) compliance is to be achieved for a limited period in a manner other than specified in the Section or Subdivision.

(2) A Department may apply to the Board for a continuing variance when despite its best efforts and the best efforts of other New York City officials compliance cannot be achieved in the foreseeable future because:

(i) full compliance with a Section or Subdivision creates extreme practical difficulties as a result of circumstances unique to the design of a particular facility, and lack of full compliance would not create a danger or undue hardship to staff or inmates; or

(ii) compliance is to be achieved in an alternative manner sufficient to meet the intent of the Section or Subdivision.

(3) A Department may apply to the Board for an emergency variance when an emergency situation prevents continued compliance with the Section or Subdivision. An emergency variance for a period of less than 24 hours may be declared by a Department when an emergency situation prevents continued compliance with a particular Section or Subdivision. The Board or a designee shall be immediately notified of the emergency situation and the variance application.

(d) **Variance Application.** (1) An application for a variance must be made in writing to the Board by the Commissioner of a Department as soon as a determination is made that continued compliance will not be possible and shall state:

(i) the type of variance requested;

(ii) the particular Section or Subdivision at issue;

(iii) the requested commencement date of the variance;

(iv) the efforts undertaken by a Department to achieve compliance;

(v) the specific facts or reasons making full compliance impossible, and when those facts and reasons became apparent;

(vi) the specific plans, projections and timetables for achieving full compliance;

(vii) the specific plans for serving the purpose of the Section or Subdivision for the period that strict compliance is not possible; and

(viii) if the application is for a limited variance, the time period for which the variance is requested, provided that this shall be no more than six months.

(2) In addition to the provisions of subsection (1), an application for a continuing variance shall state:

(i) the specific facts and reasons underlying the impracticability or impossibility of compliance within the foreseeable future, and when those facts and reasons became apparent; and

(ii) the degree of compliance achieved and the Department's efforts to mitigate any possible danger or hardships attributable to lack of full compliance; or

(iii) a description of the specific plans for achieving compliance in an alternative manner sufficient to meet the intent of the Section or Subdivision.

(3) In addition to the requirements of subsection (1), an application for an emergency variance for a period of 24 hours or more, (or for renewal of an emergency variance) shall state:

(i) the specific facts or reasons making continued compliance impossible, and when those facts and reasons became apparent;

(ii) the specific plans, projections and timetables for achieving full compliance; and

(iii) the time period for which the variance is requested, provided that this shall be no more than thirty days.

(e) **Variance procedure for limited and continuing variances.**

(1) Prior to a decision on a variance application for a limited or continuing variance, whenever practicable, the Board will consider the positions of all interested parties, including correctional employees, health service professionals, inmates and their representatives, other public officials and legal religious and community organizations.

(2) Whenever practicable, the Board shall hold a public meeting or hearing on the variance application and hear testimony from all interested parties.

(3) The Board's decision on a variance application shall be in writing.

(4) Interested parties shall be notified of the Board's decision as soon as practicable and no later than 5 business days after the decision is made.

(f) **Granting of variance.** (1) The Board shall grant a variance only if it is convinced that the variance is necessary and justified.

(2) Upon granting a variance, the Board shall state:

(i) the type of variance;

(ii) the date on which the variance will commence;

(iii) the time period of the variance, if any; and

(iv) any requirements imposed as conditions on the variance.

(g) **Renewal of variance.** (1) An application for a renewal of a limited or emergency variance shall be treated in the same manner as an original application as provided in §3-13(c)-(f). The Board shall not grant renewal of a variance unless it finds that, in addition to the requirements for approving an original application, a good faith effort has been made to comply with the Section or Subdivision within the previously prescribed time limitation, and that the requirements set by the Board as conditions on the original variance have been met.

(2) A petition for review of a continuing variance may be made upon the Board's own motion or by officials of a Department, or its employees, inmates or their representatives. Upon receipt of a petition, the Board shall review and reevaluate the continuing necessity and justification for the continuing variance. Such review shall be conducted in the same manner as the original application as provided in the §3-13(c)-(f). The Board will discontinue the variance, if after such review and consideration, it determines that:

(i) full compliance with the standard can now be achieved; or

(ii) requirements imposed as conditions upon which the continuing variance was granted have not been fulfilled or maintained; or

(iii) there is no longer compliance with the intent of the Section or Subdivision in alternative manner as required by §3-13(b)(ii).

(3) The Board shall specify in writing and publicize the facts and reason for its decision on an application for renewal or review of a variance. The Board's decision must comply with the requirements of §3-13(f), and, in the case of limited and continuing variances, §3-13(e)(3) and (4). Where appropriate, the Board shall set an effective date for discontinuance of a continuing variance after consultation with all interested parties.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 3-14

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-14 Effective Date.

These standards (§§3-01 through 3-13) shall take effect May 15, 1991.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 3-15

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-15 Implementation Dates.

The policies, procedures, criteria, plans, programs and forms required by the various subdivisions of these standards shall be developed, approved and implemented with the time periods stated below. All time periods are computed from the effective date of these standards (see §3-14).

[See tabular material in printed version]

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 4 [PROCEDURES FOR CONSIDERATION OF PETITIONS FOR RULEMAKING SUBMITTED TO THE BOARD OF CORRECTION]*1

§4-01 Definitions.

(a) "Petition" shall mean a request or application for the Board of Correction ("the Board") to adopt a rule.

(b) "Petitioner" shall mean the person or entity who files the petition.

(c) "Rule" shall have the same meaning set forth in §1041(5) of the New York City Charter.

HISTORICAL NOTE

Section added City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. [See Chapter 4 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added (without heading) City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. Note Statement of Basis and Purpose:

To comply with the requirements of City Charter §1043(f), the Board of Correction adopted procedures for the consideration of petitions for rulemaking.

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40 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 4 [PROCEDURES FOR CONSIDERATION OF PETITIONS FOR RULEMAKING SUBMITTED TO THE BOARD OF CORRECTION]*1

§4-02 Scope.

This rule shall govern the procedures by which any person or entity may petition the Board to commence rulemaking pursuant to §1043(f) of the New York City Charter and the procedure for submission, consideration and disposition of such petitions.

HISTORICAL NOTE

Section added City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. [See Chapter 4 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added (without heading) City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. Note Statement of Basis and Purpose:

To comply with the requirements of City Charter §1043(f), the Board of Correction adopted procedures for the consideration of petitions for rulemaking.

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 4 [PROCEDURES FOR CONSIDERATION OF PETITIONS FOR RULEMAKING SUBMITTED TO THE BOARD OF CORRECTION]*1

§4-03 Procedures for submitting petitions.

(a) Any person or entity may petition the Board to consider the adoption of a rule.

(b) A petition must contain the following information:

(1) the rule to be considered, with the proposed language for adoption;

(2) a statement of the Board's authority to promulgate the rule and its purpose;

(3) petitioner's arguments in support of adoption of the rule;

(4) the period of time the rule should be in effect;

(5) the name, address, email address and telephone number of the petitioner or his or her authorized representative;

(6) petitioner's signature or that of his or her authorized representative if the petition is submitted on paper or by facsimile.

(c) Any change in the information provided pursuant to §4.03(b)(5) shall be communicated promptly in writing to the office of the Board's Executive Director.

(d) Petitions shall be delivered, mailed or submitted by facsimile or electronic mail to the office of the Board's

Executive Director.

HISTORICAL NOTE

Section added City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. [See Chapter 4 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added (without heading) City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. Note Statement of Basis and Purpose:

To comply with the requirements of City Charter §1043(f), the Board of Correction adopted procedures for the consideration of petitions for rulemaking.

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***** Current through December 2009 ****

40 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 4 [PROCEDURES FOR CONSIDERATION OF PETITIONS FOR RULEMAKING SUBMITTED TO THE BOARD OF CORRECTION]*1

§4-04 Procedures for responding to petitions.

(a) Upon receipt of a petition in proper form, the Executive Director shall promptly forward it to the Board.

(b) Within 60 days from the date a petition is received by the office of the Executive Director, the Chair shall either state in writing the Board's intention to initiate rulemaking by a specified date, or shall deny the petition in writing, stating the reasons for denial.

(1) Whenever the Chair decides to initiate rulemaking, the petition shall be made part of the record of the Board meeting at which rulemaking is initiated. In proceeding with rulemaking, the Board shall not be bound by the language proposed by the petitioner, but may amend or modify such proposed language at the Board's discretion. Neither shall the Board be bound to enact the substance of a petition for which the Chair has decided to initiate rulemaking.

(2) Whenever the Chair intends to deny a petition, the proposed denial and the reasons therefore shall be promptly provided to the members of the Board. Should a member object to the proposed denial of the petition within 10 days of receiving notice of the Chair's intention to deny, the petition shall be placed before the full Board for consideration as to whether the petition should be denied or the Board should proceed to rulemaking.

(c) The Chair's decision to initiate rulemaking, or to deny a petition in the absence of a member's timely objection, or a decision by the Board to initiate rulemaking or deny a petition, shall be a final decision which is not subject to judicial review.

HISTORICAL NOTE

Section added City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. [See Chapter 4 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added (without heading) City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. Note Statement of Basis and Purpose:

To comply with the requirements of City Charter §1043(f), the Board of Correction adopted procedures for the consideration of petitions for rulemaking.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-01 Purpose and Scope.

(a) The people's right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or con- fidentiality.

(b) These regulations provide information concerning the procedures by which records may be obtained.

(c) Personnel shall furnish to the public the information and records required by the Freedom of Information Law, as well as records otherwise available by law.

(d) Any conflicts among laws governing public access to records shall be constructed in favor of the widest possible availability of public records.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-02 Designation of Records Access Officer.

(a) Commissioner Rose W. Washington is responsible for insuring compliance with the regulations herein, and designates the following person as Records Access Officer:

Kay C. Murray, Esq., Counsel

Department of Juvenile Justice

365 Broadway

New York, NY 10013

(212) 925-7779, Ext. 211

(b) The Records Access Officer is responsible for insuring appropriate agency response to public requests for access to records.

(c) Records Access Officer shall insure that personnel:

(1) Maintain a reasonably detailed current subject matter list of all records in the possession of the agency, whether or not such records are available for inspection and copying pursuant to the Freedom of Information Law. The list shall be of sufficient detail to permit identification by the public of categories of records. The subject matter list shall be updated not less than twice per year and the date of the most recent revision of the list shall appear on its first page;

(2) Assist the requester in identifying requested records, if necessary;

(3) Upon locating the records, take one of the following actions:

(i) make records available for inspection or,

(ii) deny access to the records in whole or in part and explain in writing the reasons therefore.

(4) Upon request for copies of records, arrange to make copies available on payment of or offer to pay the established fee;

(5) Upon request, certify that a record is a true copy; and

(6) Upon failure to locate records, certify that:

(i) the Department of Juvenile Justice is not the custodian for such records, or

(ii) the records of which the Department of Juvenile Justice is a custodian cannot be found after diligent search.

(d) The Records Access Officer shall retain a file copy of each writing granting, denying or acknowledging a request pursuant to §1-07(c) and shall promptly forward to the NYC Law Department a copy of each denial.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-03 Location.

Records shall be available for public inspection and copying at:

Department of Juvenile Justice

365 Broadway

New York, NY 10013

(212) 925-7779

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-04 Hours for Public Inspection.

Requests for public access to records shall be accepted and records produced during all hours regularly open for business.

These hours are: 9 a.m.-5 p.m.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-05 Subject Matter List.

(a) The Records Access Officer shall maintain a reasonably detailed current list by subject matter of all records in the possession of the agency, whether or not records are available pursuant to Subdivision two of Section eighty-seven of the Public Officers Law.

(b) The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-06 Records Not Subject to FOIL Requests.

The following records are specifically excluded from coverage under these regulations and public access may be denied to records or portions thereof that:

(a) Are specifically exempted from disclosure by state or federal statute;

(b) If disclosed would constitute an unwarranted invasion of personal privacy under the provision of Subdivision two of Section eighty-nine of FOIL;

(c) If disclosed would impair present or imminent contract awards or collective bargaining negotiations;

(d) Are trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;

(e) Are compiled for law enforcement purposes and which, if disclosed, would:

(1) interfere with law enforcement investigations or judicial proceedings;

(2) deprive a person of a right to a fair trial or impartial adjudication;

(3) identify a confidential source or disclose confidential information relating to a criminal investigation; or

(4) reveal criminal investigative techniques or procedures, except routine techniques and procedures.

(f) Records that would endanger the life or safety of any person;

(g) Records that are inter-agency or intra-agency materials that are not statistical or factual tabulations or data, or instructions to staff that affect the public, or final agency police determinations;

(h) Records that are examination questions or answers which are requested prior to the final administration of the questions; or

(i) Records that are computer access codes. The Records Access Officer shall examine requests to ascertain if the requested records may be exempted as per this statute.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-07 Procedures for Making Requests, Responses.

(a) Any request to inspect and/or copy records shall be made in writing and addressed to the Records Access Officer of the agency. The requests shall reasonably describe the record or records sought and shall, whenever possible, supply information regarding dates, file designations or other information which will enable the Records Access Officer to identify the records sought.

(b) Any present or former DJJ employee who wishes to review his or her personnel file, should submit such request on the pre-printed agency form designed for that purpose. A supply of that form shall be available at the DJJ Personnel Office and at the Spofford Personnel Office. The Personnel Director may handle these routine requests without the Records Access Officer. A copy of the request form shall be retained in the employee's personnel file.

(c) A response shall be given regarding any request reasonably describing the record or records sought within five business days of receipt of the request.

(d) If the Records Access Officer does not provide or deny access to the record sought within five business days of receipt of a request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-08 Denial of Access to Records.

Denial of access to records shall be in writing stating the reason therefore and advising the requester of the right to appeal to the individual or body established to hear appeals.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-09 Procedure for Appeals.

(a) When a request for inspection has been denied in writing in whole or in part by the Records Access Officer, the requesting party shall have thirty days after receipt of the denial within which to appeal. An appeal shall be in writing, addressed to the agency's Appeals Officer. The following person shall hear appeals for denial of access to records under the Freedom of Information Law:

Rose W. Washington, Commissioner

Department of Juvenile Justice

365 Broadway

New York, NY 10013

(212) 925-7779 Ext. 201

(b) The time for deciding an appeal by the Appeals Officer shall commence upon receipt of a written appeal identifying:

(1) the date of the appeal;

(2) the date and location of the request for records;

(3) the name of the Records Access Officer who denied the request;

(4) the records to which the requester was denied access;

(5) the date of the denial;

(6) the name and return address of the requester.

(c) The Appeals Officer shall transmit to the NYC Law Department and the Committee on Public Access to Records, Department of State, 162 Washington Avenue, Albany, New York, 12231, copies of all appeals upon their receipt.

(d) The Appeals Officer shall inform the appellant and the Committee on Public Access to Records of her determination in writing within ten business days of receipt of an appeal. The determination shall be transmitted to the Committee on Public Access to Records in the same manner as set forth in subdivision (c) of this section.

(e) Determination affirming denials shall state the grounds for withholding of the requested records and that judicial review of the denial may be obtained in a proceeding under Article 78 of the Civil Practice Law and Rules commenced within four months after determination of the appeal.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-10 Fees.

(a) There shall be no fee charged for:

(1) inspection of records;

(2) search for records; or

(3) any certification pursuant to this part.

(b) Copies of records shall be provided for a fee of $.25 per page not exceeding 9 × 15 inches or the actual cost of duplication, if greater. The Records Access Officer shall ensure that the fee is collected or may, at her discretion, waive the fee.

(c) Payment for copying shall be made by check or money order payable to the City of New York and shall be made upon delivery of the copies to the person requesting them.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-11 Public Notice.

A notice containing the title or name and business address of the Records Access Officer and Appeals Officer, and the time and location where records can be seen or copied shall be posted in a conspicuous location wherever records are kept.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-12 Removal of Records.

In no case shall the agency permit the removal of agency records from agency premises by a requesting party.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-13 Severability.

If any provision of these regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of these regulations or the application thereof to other persons and circumstances.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 2 ADJUDICATIONS

§2-01 Conducted by the Office of Administrative Trials and Hearings.

Pursuant to the New York City Charter, §§1041 and 1046-48, the Department of Juvenile Justice has determined that adjudications shall be conducted by the Office of Administrative Trials and Hearings.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 2 ADJUDICATIONS

§2-02 Findings of Fact and Decisions.

Adjudications arising under §75 of the Civil Service Law and the Citywide collective bargaining agreement, if referred to the Office of Administrative Trials and Hearings, shall be conducted by the Office of Administrative Trials and Hearings. The OATH Administrative Law Judge shall make written proposed findings of fact and recommend decisions.

HISTORICAL NOTE

Section in original publication July 1, 1991.

41 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 3*1 GUIDELINES FOR CONTINUITY AND PROVISION OF MEDICAL CARE

§3-01 Purpose.

(a) It is the treatment philosophy of the Department of Juvenile Justice ("the Department" or "DJJ") to seek the active participation of the resident, his/her parent(s) or legal guardian(s), and previous health care providers, in the care and treatment of residents in the custody of the Department.

(b) DJJ recognizes that, as the resident's primary medical provider while in the Department's custody, it is in the best interest of the resident to have accurate and current information concerning the resident's medical and psychiatric cre and medication in order to provide continuity of care.

(c) As part of providing a continuum of appropriate health care services, DJJ endorses the principle of continuing previously provided medical and psychiatric are, including medications, in accordance with the procedures set forth below. Medical and psychiatric care and medication which the resident was receiving prior to admission to DJJ shall continue unless modified in accordance with the procedures set forth below.

HISTORICAL NOTE

Section added City Record Apr. 16, 2001 eff. May 16, 2001. [See T41 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Apr. 16, 2001 eff. May 16, 2001. Note provisions of City Record Apr. 16, 2001:

This rule has been adopted in furtherance of the settlement of a motion brought by the Family Court (Hon. Paula J. Hepner, J.F.C.) in a juvenile delinquency proceeding under Article III of the Family Court Act. Its purpose is to establish guidelines for the continuity and provision of medical care for youths in the custody of DJJ.

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***** Current through December 2009 ****

41 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 3*1 GUIDELINES FOR CONTINUITY AND PROVISION OF MEDICAL CARE

§3-02 Parental Involvement.

(a) Upon a youth's admission to a Department facility, DJJ shall promptly seek to have the parent/legal guardian execute appropriate consent forms authorizing routine medical treatment.

(b) Whenever, in the course of non-emergency or routine medical care, DJJ proposes a "substantial alteration" to a course of treatment that a resident was receiving prior to his/her admission to the Department, DJJ shall make reasonable efforts to seek the consent of the parent/legal guardian prior to initiating the "substantial alteration". The parent/legal guardian shall have the opportunity to consult with a DJJ physician, physician's assistant, or nurse practitioner regarding the proposed "substantial alteration".

(c) For purposes of this chapter, "substantial alteration" shall mean:

(1) The proposal to initiate medical or psychiatric care or medication where not previously prescribed for the resident, other than routine medical care or emergency medical treatment;

(2) A change in a continuous and uninterrupted course of therapy or medication that had been in effect either at an inpatient facility or by a private physician prior to the resident's admission to the Department. However, changes in the dosage or timing in administering medication which remain consistent with the pharmacological intent of the medication and which are intended to enhance the resident's functional abilities while in DJJ's custody shall not constitute a substantial alteration of a medication regimen. Any such changes in the dosage or timing in administering medication must be based on a specific and clearly identified clinical requirement that is accordingly documented in the patient's record.

(3) The substitution of a generic equivalent where the prescription states "dispense as written".

(d) If, after reasonable efforts to contact a parent/legal guardian, that person is non-responsive, absent or otherwise uninvolved, DJJ shall treat the resident consistent with his/her medical and psychiatric history and current symptomatology.

(e) In the event that DJJ proposes a "substantial alteration" but the parent/legal guardian refuses to consent, then, absent further court intervention, the only treatment that may occur is routine medical care, emergency treatment, and the administration of previously prescribed medications that have been confirmed in accordance with the procedures set forth in §3-03 below.

HISTORICAL NOTE

Section added City Record Apr. 16, 2001 eff. May 16, 2001. Note internal relettering by Law

Department per Charter §1045(b). [See T41 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Apr. 16, 2001 eff. May 16, 2001. Note provisions of City Record Apr. 16, 2001:

This rule has been adopted in furtherance of the settlement of a motion brought by the Family Court (Hon. Paula J. Hepner, J.F.C.) in a juvenile delinquency proceeding under Article III of the Family Court Act. Its purpose is to establish guidelines for the continuity and provision of medical care for youths in the custody of DJJ.

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***** Current through December 2009 ****

41 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 3*1 GUIDELINES FOR CONTINUITY AND PROVISION OF MEDICAL CARE

§3-03 Consultation With Prior Medical Providers.

(a) If a newly admitted resident had been under the continuous and uninterrupted care of a physician or hospital prior to admission to the Department, upon admission to a DJJ facility, DJJ shall make reasonable efforts to confirm with the prior provider the following information:

(1) If from a physician: prescribed medications; significant medical history; and current treatment recommendations;

(2) If from a hospital: discharge information; current medications; significant medical history; current treatment recommendations;

(3) If from a pharmacy: current medication and prescription renewal information.

(b) Where a youth is admitted to DJJ on a medication regimen that is confirmed pursuant to subdivision (a) of this section, DJJ shall continue that medication in accordance with the procedures set forth herein within twenty-four hours of the completion of the initial medical screening.

(c) Where the medication is not in the DJJ pharmacological inventory, DJJ will make every reasonable effort to obtain the medication and initiate it as soon thereafter as practicable.

(d) If unable to confirm information regarding a resident's medical or psychiatric regimen or medication after reasonable efforts, DJJ shall treat the resident consistent with his/her disclosed history and current symptomatology.

(e) In the event that DJJ does not authorize a continuation of the resident's medication regimen, DJJ shall have the resident seen by a doctor within twenty-four hours of the initial medical screening.

HISTORICAL NOTE

Section added City Record Apr. 16, 2001 eff. May 16, 2001. Note internal relettering by Law

Department per Charter §1045(b). [See T41 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Apr. 16, 2001 eff. May 16, 2001. Note provisions of City Record Apr. 16, 2001:

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***** Current through December 2009 ****

41 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 3*1 GUIDELINES FOR CONTINUITY AND PROVISION OF MEDICAL CARE

§3-04 Information Regarding Medical and Psychiatric Care and Medications.

(a) When a youth is remanded to DJJ, DJJ shall use a Medication Referral Form (such as the form currently in use, annexed as Appendix A, or a revised form which may be developed by DJJ as needed), to obtain information concerning a resident's current medication regimen from a parent, legal guardian, or prior provider. This form shall be made available in the Courthouse.

(b) When a resident is admitted to a DJJ facility, DJJ shall use an Initial Medical Screening Form (Such as the form currently in use, annexed as Appendix B, or a revised form which may be developed by DJJ as needed) to obtain information concerning a resident's current medical and psychiatric care.

HISTORICAL NOTE

Section added City Record Apr. 16, 2001 eff. May 16, 2001. Note internal relettering by Law

Department per Charter §1045(b). [See T41 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Apr. 16, 2001 eff. May 16, 2001. Note provisions of City

Record Apr. 16, 2001:

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Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 3*1 GUIDELINES FOR CONTINUITY AND PROVISION OF MEDICAL CARE

§3-05 Routine Medical Care and Emergency Treatment.

Nothing in these Guidelines shall preclude DJJ from administering routine medical care and emergency treatment.

HISTORICAL NOTE

Section added City Record Apr. 16, 2001 eff. May 16, 2001. [See T41 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Apr. 16, 2001 eff. May 16, 2001. Note provisions of City Record Apr. 16, 2001:

This rule has been adopted in furtherance of the settlement of a motion brought by the Family Court (Hon. Paula J. Hepner, J.F.C.) in a juvenile delinquency proceeding under Article III of the Family Court Act. Its purpose is to establish guidelines for the continuity and provision of medical care for youths in the custody of DJJ.

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***** Current through December 2009 ****

41 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 3*1 GUIDELINES FOR CONTINUITY AND PROVISION OF MEDICAL CARE

§3-06 Disagreement With Prior Treatment and/or Court-Ordered Treatment.

(a) In the event that the parent or legal guardian of a resident is absent, non-responsive or otherwise uninvolved, and DJJ proposes a "substantial alteration" to medical or psychiatric are or medication prescribed by a prior treatment provider, DJJ shall contact the prior treatment provider in accordance with the procedures set forth in §3-03 above. In the event that DJJ and a resident's prior treatment provider disagree regarding the resident's treatment, DJJ shall provide written notification of its alternative treatment plan to the Court wherein the delinquency matter is pending by the next business day.

(b) At any stage of the proceeding, if a court order is entered directing a resident's course of treatment, that order will be followed unless DJJ returns to court to vacate or modify the order by the next business day. Where an application to vacate or modify cannot be made within 24 hours, DJJ will make every reasonable effort to comply with the court order until an application to vacate or modify can be heard.

HISTORICAL NOTE

Section added City Record Apr. 16, 2001 eff. May 16, 2001. Note internal relettering by Law

Department per Charter §1045(b). [See T41 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Apr. 16, 2001 eff. May 16, 2001. Note provisions of City Record Apr. 16, 2001:

This rule has been adopted in furtherance of the settlement of a motion brought by the Family Court (Hon. Paula J. Hepner, J.F.C.) in a juvenile delinquency proceeding under Article III of the Family Court Act. Its purpose is to establish guidelines for the continuity and provision of medical care for youths in the custody of DJJ.

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41 RCNY 3 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

APPENDIX A MEDICATION REFERRAL FORM

APPENDIX A MEDICATION REFERRAL FORM

DATE_____

I. RESPONDENT INFORMATION:

Name of Respondent_____ D.O.B._____

DOCKET #_____ COURT AND COUNTY_____

II. HEALTH CARE PROVIDER INFORMATION:

Name of Hospital/Clinic:_____ TEL.# _____

Address of Hospital/Clinic:_____

Name of Prescribing Physician: _____ TEL# _____

III. CURRENTLY PRESCRIBED MEDICATION(S):

NAME	DOSAGE AND FREQUENCY	DIRECTIONS	DATE FIRST PRESCRIBED	DATE LAST TAKEN
1.				
2.				
3.				
4.				

IV. PARENTAL/LEGAL GUARDIAN INFORMATION:

Name of Parent/Legal Guardian:_____

Telephone Number of Parent/Legal Guardian: Day _____ Evening/Weekend_____

Discharge Summary Attached: Yes_____ No_____

V. ADDITIONAL COMMENTS: _____

_____

_____

I authorize the Department of Juvenile Justice to request and be provided any information, records and reports concerning past medical, psychiatric, surgical or dental services given to my son/daughter that the Department may determine to be necessary for providing health services.

Signature of Parent/Legal Guardian_____

Instructions: DJJ cannot accept bottles containing medication. The parent/legal guardian must empty the bottles before giving them to DJJ Court Service Staff. The bottles and this form should be placed in the envelope attached.

MOVEMENT CONTROL AND COMMUNICATIONS UNIT (MCCU)
365 BROADWAY, NY, NY 10013
TEL: (212) 925-7779 ext. 226, 212

Rules of the City of New York

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41 RCNY 3 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

APPENDIX B CITY OF NEW YORK DEPT. OF JUVENILE JUSTICE FORM

APPENDIX B CITY OF NEW YORK DEPT. OF JUVENILE JUSTICE FORM

EMSA *CORRECTIONAL CARE* **INITIAL MEDICAL SCREENING**

ARE YOU ILL? ☐ **YES** ☐ **NO** **ARE YOU INJURED?** ☐ **YES** ☐ **NO** **HOUSING** _____ **PROP#** _____

NAME _____ **T.N./AKA** _____

ADDRESS _____ **PHONE** _____

SEX _____ **DOB** _____ **ID#** _____ **DATE** _____ **TIME** _____

PREVIOUS ADMISSIONS _____

DO YOU HAVE MEDICAL INSURANCE? ☐ **YES** ☐ **NO** **INSURANCE COMPANY** _____

VISUAL OBSERVATION Circle Y or N (Explain all "Yes" answers)	Yes	No
ALLERGIES: _____		
1. Is resident unconscious or showing visible signs of illness, injury, bleeding, pain or other symptoms suggesting the need for immediate emergency medical referral? If yes, _____	Y	N
2. Are there obvious signs of fever, jaundice, skin lesions, rash, or infection? Needle marks? Body vermin? Trauma markings, bruises? If Yes, _____	Y	N
3. Does the resident's behavior/appearance suggest the risk of suicide or assault? If Yes, _____	Y	N
4. Does the resident exhibit any signs of abnormal behavior? (e.g. tremors, sweating) If Yes, _____	Y	N
5. Does the resident appear to be under the influence of, or withdrawing from, drugs or alcohol? If Yes, _____	Y	N
6. Is the resident's mobility restricted in any way due to deformity, cast, injury, etc.? If Yes, _____	Y	N
7. Does the resident have a persistent cough or appear to be lethargic? If Yes, _____	Y	N
RESIDENT QUESTIONNAIRE Circle Y or N (Explain all "Yes" answers)	Yes	No
8. Are you taking medication for: (circle as appropriate) asthma, diabetes, heart condition, high blood pressure, mental health problems, ulcers, arthritis, or other condition? If Yes, what medication? _____	Y	N
9. When were you last seen by a physician or at a clinic for a medical, dental or mental health condition? _____		
10. Are you allergic to any medications, foods, plants, etc.? If Yes, _____	Y	N
11. Have you fainted or had a head injury within the last 72 hours? If Yes, _____	Y	N
12. Do you have or have you been exposed to AIDS, hepatitis, TB, VD, or other communicable disease? Have you experienced lethargy, weakness, weight loss, loss of appetite, fever or night sweats? If Yes, _____	Y	N
13. Have you been hospitalized by a physician or psychiatrist within the last year? If Yes, _____	Y	N
14. Have you ever considered or attempted suicide? It Yes, _____	Y	N
15. Do you have a painful dental condition? If Yes, _____	Y	N
16. Are you on a specific diet prescribed by a physician? If Yes, _____	Y	N
17. Do you use drugs and/or alcohol? What kind? _____ How often? _____ How much? _____	Y	N
18. Females: Last menstrual period _____. Are you pregnant, on birth control pills, recently delivered or aborted? If Yes, _____	Y	N

HOUSING RECOMMENDATION (Check one)

☐ Emergency Room ☐ General Population ☐ Health Services Unit
☐ Isolation ☐ Observation ☐ Sick Call _____ Date/Time

REMARKS: _____

(Check one) MD ☐ PA ☐ NP ☐ Clinic _____ Date/Time

I have answered all questions truthfully. I have been told and shown how to obtain medical services. I hereby give my consent for professional services to be provided to me by and through EMSA Correctional Care.

_____ Resident's signature _____ Date

PAT Pre-screening Form

Screening Staff:_____ ☐ **NSD**
(please print your name)

☐ **SECURE**

Name of Resident:_____
(please print name)

DOB:_____

Date of screening: ____/____/____

Date of intake: ____/____/____

Have you EVER used:

1. Alcohol	☐ **yes**	☐ **no**
2. Marijuana	☐ **yes**	☐ **no**
3. Crack	☐ **yes**	☐ **no**
4. Cocaine	☐ **yes**	☐ **no**
5. Sniffing glue/huffing/solvents	☐ **yes**	☐ **no**
6. Heroin/Methadone	☐ **yes**	☐ **no**
7. Pain Killers/opiates/Special K	☐ **yes**	☐ **no**
8. PCP/Angel Dust	☐ **yes**	☐ **no**
9. LSD/Acid/Mushrooms	☐ **yes**	☐ **no**
10. Ecstasy/X	☐ **yes**	☐ **no**
11. Tranquilizers/Valium	☐ **yes**	☐ **no**
12. Uppers/Speed/Crystal Meth	☐ **yes**	☐ **no**
13. Downers/Quaaludes	☐ **yes**	☐ **no**
14. Any Other Drug (pain killers, cough syrup)	☐ **yes**	☐ **no**

15. In the last MONTH (30 days), how many days have you been in a jail, hospital, or other place where you could not use alcohol, marijuana or other drugs? _____ **days**

16. How many times have you used ANY drug in the past 30 days? _____ **times**

17. Have you ever had a craving or strong desire for alcohol or drugs?	☐ **yes**	☐ **no**
18. Have you ever tried to cut down or stop using alcohol or drugs?	☐ **yes**	☐ **no**
19. Have you ever needed more and more alcohol or drugs to get the high you want?	☐ **yes**	☐ **no**
20. Have you ever felt "hooked" or addicted to alcohol or drugs?	☐ **yes**	☐ **no**
21. Have you ever felt unable to control your alcohol or drug use?	☐ **yes**	☐ **no**

22. How old were you the first time you got high or drunk? _____

CITY OF NEW YORK DEPT OF JUVENILE JUSTICE

EMSA Correctional Care

NAME: _____

D.O.B. _____

LOCATION: _____

INITIAL MENTAL HEALTH SCREENING

FAMILY SOCIAL PSYCHIATRIC HISTORY

1. Where do you live? _____
   Address Zip Code

   _____
   Contact Person Emergency #

2. Who lives in your household? (List all by relationship)

   _____

   _____

3. Who raised you? (Relationship & Occupation)

   _____

   _____

4. Tell me about your parents. (Major psychiatric illness, drinking, drug problems, incarcerations, separations, deaths, suicides)

   _____

   _____

5. Whom do you feel close to?

   _____

6. How do your parents react when you do something you're not supposed to?

   _____

   Have you ever required medical attention for this?

   _____

7. Have other agencies been involved with your family? (e.g. ACS)

   _____

   _____

PERSONAL EDUCATIONAL HISTORY

1. **Do you attend school? (Special Ed?)**

   _____

2. **Do you like school? (if dropped out, why?)**

   _____

3. **Highest grade achieved**

   _____

4. **Read 3rd grade paragraph. Yes ☐ No ☐**
   Comments on reading ability:

   _____

5. **Plans for the future.**

   _____

PERSONAL PSYCHIATRIC HISTORY	YES	NO	If yes, give details.
1. Have you ever seen a Psychiatrist or social worker?			
2. Hospitalized for your nerves.			
3. Tried to hurt yourself?			
4. Taken medicine for your nerves.			

SLEEPING AND EATING HABITS	NL	ABNL	Give detail for any ABNL or Yes answers
1. What are your sleeping habits? (excessive sleep, early AM waking, unrefreshed sleep, nightmares, trouble falling asleep or staying awake)			
2. How is your appetite?			
3. Any recent weight loss?			
MENTAL STATUS	**NL**	**ABNL**	
1. Orientation to person, place & time?			
2. Thought and speech: • attention span . . . . . . • tone of voice . . . . . . • speech patterns . . . . . . • unusual thoughts . . . . . . • delusions . . . . . . • hallucinations . . . . . . • sexual orientation or obsessions?			
ASPECTS AND BEHAVIOR	**NL**	**ABNL**	
1. Facial expressions, eye contact, and appropriateness of response to communication			
2. Evidence of hyperactivity, lethargy, compulsiveness			
3. What do you do when you get upset? (impulse control-violence, hurt self, hurt others, isolation)			
	YES	**NO**	
4. Is resident suicidal now? Does resident have a concrete plan			
5. Is resident potentially violent? Who is target person(s)?			
6. Interaction with interviewer, (friendly, open, guarded, hostile, withdrawn, suspicious)			
ASSESSMENT AND PLAN:			Signature/Title Date

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***** Current through December 2009 ****

42 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 PROCEDURE FOR OBTAINING PRE-SENTENCE REPORTS

§1-01 Requests for Records.

The request for such records shall be in writing, indicating the case name and appellate court where pending, submitted by the subject-defendant, counsel on appeal, or the Assistant District Attorney, or by order of the sentencing court or by subpoena and directed to the New York City Department of Probation, Office of the General Counsel, 115 Leonard Street, New York, N.Y. 10013.

In order to identify the correct records, the request shall also include the following information:

Defendant's full name.

NYSIS number.

Indictment or Docket number.

County of conviction.

Sentence received, date and name of judge.

The request should also include whenever possible the following:

Aliases used by defendant.

If sentenced to probation, the county and name of supervising officer.

If sentenced to a term of imprisonment, the name and address of the facility where served and the inmate identification number.

Defendant's date of birth.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

42 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 PROCEDURE FOR OBTAINING PRE-SENTENCE REPORTS

§1-02 Production of Records.

(a) **Basic procedure.** Upon receipt of a proper request, as indicated above, the Department of Probation shall cause three copies of the pre-sentence investigation report to be forwarded to the appropriate appellate court. Said records may then be obtained from the Office of the Clerk of that court. **Under no circumstances will the Department of Probation release pre-sentence investigation reports directly to any defendant or attorney.** CPL 390.50 provides that probation records are confidential, and are available only for purposes of initial sentencing and upon appeal, and that in those instances "the court shall release" the records.

(b) **Time of requests for production.** Requests for probation records should be made as far in advance of the date for perfection of the appeal as is possible. Cases which are two or more years old are archived and take a minimum of three to four weeks to locate and forward to the appellate court. Some take longer.

(c) **Failure to produce records.** It is the responsibility of the requesting party to ascertain whether the probation records have reached the appellate court. No notice will be sent by the Department of Probation. However, if the appellate court indicates that the records have not been received in a reasonable time, further inquiries should be directed either in writing or by telephone to the New York City Department of Probation, Office of the General Counsel, (212) 374-3718, 115 Leonard Street, New York, N.Y. 10013.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

42 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 2 ADJUDICATIONS

§2-01 Fitness and Discipline Adjudications of Department of Probation Em- ployees.

New York City Department of Probation adjudications regarding the fitness and discipline of agency employees will be conducted by the Office of Administrative Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Commissioner of the Department of Probation.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-01 Scope.

(a) These Rules and Regulations shall govern the procedures by which records made available for public inspection pursuant to the Freedom of Information Law (Public Officers Law, Art. 6) may be obtained from a city agency.

(b) Agency personnel shall furnish to the public the information and records required to be made available by the Freedom of Information Law, as well as records otherwise available by law. Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-02 Designation of Records Access Officer.

The head or governing body of each agency shall be responsible for insuring compliance with these Rules and Regulations and shall designate one or more persons as records access officer or officers to coordinate the agency's response to public requests for inspection and copying of records. The designation shall include the name, specific job title, telephone number and business address of such access officer. The designation of a records access officer or officers shall not be construed to prohibit other agency officers and employees who have been authorized previously to make records or information available to the public from continuing to do so.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-03 Responsibilities of Records Access Officer.

Each agency's records access officer shall have the following responsibilities:

(a) He shall maintain a reasonably detailed current subject matter list of all records in the possession of the agency, whether or not such records are available for inspection and copying pursuant to the Freedom of Information Law. The list shall be of sufficient detail to permit identification by the public of categories of records. The subject matter list shall be updated not less than twice per year and the date of the most recent revision of the list shall appear on its first page.

(b) He shall assist members of the public in identifying requested records.

(c) When requested records are located, he shall either make such records available for inspection or deny access to such records in whole or in part, with a written statement of the grounds for denial of access.

(d) Upon request for copies of records, he shall either arrange to make copies available on payment of or offer to pay the established fee or shall permit the requesting party to copy the records using photocopying equipment on agency premises.

(e) He shall, upon request, certify that a copy of a record is a true copy.

(f) Upon failure to locate records, he shall state in writing that the agency is not the custodian of such records or

that the records cannot be found after diligent search.

(g) He shall maintain the records required to be maintained by subdivisions (b) and (f) of §1-05 of these Rules and Regulations.

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§1-04 Hours and Location.

(a) Each agency shall designate a location or locations where records shall be available for public inspection and copying.

(b) Each agency shall accept requests for public access to records and shall produce records during the agency's regular business hours. If an agency does not have regular business hours, it shall establish a written procedure by which a member of the public may arrange an appointment to inspect and copy records. The procedure shall specify the name, job title, telephone number and business address of the person to be contacted for the purpose of making such appointments.

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CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-05 Procedure for Making Requests; Responses to Requests.

(a) Any request to inspect or copy records shall be made in writing and addressed to the records access officer of the appropriate agency. The request shall reasonably describe the record or records sought and shall, whenever possible, supply information regarding dates, file designations or other information which will enable the records access officer to identify the records sought.

(b) Upon receipt of a request, the records access officer shall forward the request to the division of the agency having custody of the records requested. The records access officer shall retain a file copy of each request received by him and shall maintain or cause to be maintained a record showing the date on which the request was received, the division to which it was forwarded and the date of forwarding.

(c) Within five business days of receipt of a request, the records access officer shall respond to the request:

(1) If the agency determines that the request should be granted, the records access officer shall so notify the requesting party in a writing which states the time and place at which the requested records may be inspected and the procedures and fees for copying of records.

(2) If the agency determines that the requested records are exempt from disclosure under the terms of the Freedom of Information Law and that the request should be denied, the records access officer shall so notify the requesting party in a writing which states the grounds for the denial.

(3) If a request does not adequately describe the records sought, the records access officer shall notify the requesting party in writing that his request has been denied, stating the reasons why the request does not meet the requirements of this section and extending to the requesting party an opportunity to confer with the records access officer in order to attempt to reformulate the request in a manner that will enable the agency to identify the records sought.

(4) If a requested record does not exist, has been destroyed or otherwise disposed of, or is in the possession, custody or control of another agency, the records access officer shall so notify the requesting party in writing. In the case of records which the records access officer believes to be in the possession, custody or control of another agency, he shall state in the writing the agency to which the request should be addressed.

(5) If the agency determines that a request should be granted in part and denied in part, the records access officer shall so notify the requesting party in a writing which sets forth the information required by subparagraphs (1), (2), (3) and (4) of this subdivision (c), as applicable.

(6) Each writing denying a request in whole or in part shall inform the requesting party of his right to appeal the determination of the agency within thirty days and shall state the name of the person or body designated in the agency to hear such appeals. Such person or body shall be identified by name, title, business address and telephone number.

(d) If, because of unusual circumstances, an agency is unable to determine within five business days whether to grant, deny or otherwise respond to a request for inspection and copying, the records access officer shall, within such five day period, acknowledge receipt of the request in writing to the requesting party, stating the approximate date, not to exceed ten business days from the date of the acknowledgement, by which a determination with respect to the request will be made. If the agency does not make a determination with respect to the request within ten business days from the date of such acknowledgement, the request may be deemed denied and an appeal may be taken to the person or body designated in the agency to hear appeals. As used in this subdivision (d), "unusual circumstances" means:

(1) The need to search for and collect the requested records from facilities or offices that are separate from the office processing the request; or

(2) The need to search for, collect, examine and evaluate a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or between two or more divisions or departments of an agency having a substantial subject matter interest therein; or

(4) Any other circumstances in which the agency is unable, by the exercise of due diligence, and acting in good faith, to comply with the time limits set forth in this sub- division.

(e) To prevent unwarranted invasions of personal privacy, an agency, in making records available for inspection and copying, may delete identifying details or may withhold records otherwise available, if deletion of identifying details is impracticable or will not, in fact, prevent an unwarranted invasion of the privacy of the person to whom the record refers.

An unwarranted invasion of privacy includes, but is not limited to:

(1) Disclosure of employment, medical or credit histories or personal references of applicants for employment; or

(2) Disclosure of items involving the medical or personal records of a client or patient in a medical facility; or

(3) Sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising

purposes; or

(4) Disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; or

(5) Disclosure of information of a personal nature reported in confidence to an agency requesting or maintaining it and which is not relevant to the ordinary work of such agency.

(f) The records access officer shall retain a file copy of each writing granting, denying or acknowledging a request pursuant to subdivision (d) of this section and shall promptly forward to the Law Department a copy of each denial.

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§1-06 Procedures for Appeals.

(a) The head or governing body of each agency shall hear appeals or shall designate a person or body to hear appeals (an "appeals officer") from denials of requests by a records access officer. No records access officer shall also serve as an appeals officer.

(b) When a request for inspection has been denied in writing in whole, or in part by a records access officer, the requesting party shall have thirty days after receipt of the denial within which to appeal. An appeal shall be in writing, addressed to the denying agency's appeals officer, and shall include the name of the records access officer who denied the request, the date of the request, the date of the denial, the records which were the subject of the request and the name and address of the appellant.

(c) Each appeals officer shall transmit to the Law Department and the Committee on Open Government, Department of State, 162 Washington Avenue, Albany, N.Y. 12231, copies of all appeals upon their receipt.

(d) Within ten business days from the date of actual receipt of an appeal, the appeals officer shall make a written determination either affirming or reversing the denial and shall transmit copies of his or its determination to the appellant, the Law Department and the Committee on Open Government. Determinations affirming denials shall state the grounds for withholding of the requested records and that judicial review of the denial may be obtained in a proceeding under Article 78 of the Civil Practice Law and Rules commenced within four months after determination of the appeal.

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§1-07 Fees.

Except when a different fee is otherwise prescribed by law:

(a) Each agency shall charge a fee for copying of records equal to the actual reproduction cost, which is the average unit cost for copying of records, excluding fixed costs of the agency, such as operators' salaries; provided that, in no case shall the fee charged for copying exceed 25 cents per page for photocopies not exceeding 9 by 14 inches in size.

(b) No fee shall be charged for the search for records, the inspection of records or for any certification made pursuant to these Rules and Regulations.

(c) If an agency does not have operational photocopying equipment, the agency may either arrange for the production of photocopies outside the agency or prepare a transcript of requested records upon request. A transcript prepared by the agency may be either typed or handwritten and the persons requesting the records may be charged for the clerical time involved in making the transcript. Photocopies obtained by agencies which do not have operational photocopying equipment shall be charged to the requesting party at the same rate as that paid by the agency to the person or firm which made the photocopies.

(d) Payment for copying shall be made by check or money order payable to the City of New York and shall be made upon delivery of the copies to the person requesting them. Where the anticipated fee chargeable under this section exceeds $25, an advance deposit of 25 percent of the anticipated fee or $25, whichever is greater, may be required.

Where a requesting party has previously failed to pay a fee under this section, payment of any past-due fees and an advance deposit of the full amount of the anticipated fee may be required.

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CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-08 Public Notice; Promulgation of Rules and Regulations by City Agencies.

(a) Each agency shall publicize by posting in a conspicuous location:

(1) the location or locations where records shall be made available for inspection and copying;

(2) the hours during which records may be inspected and copied or the procedures for requesting an appointment to inspect and copy;

(3) the procedures for requesting and inspecting records and the procedures and fees for copying;

(4) the name, title, business address and telephone number of the designated records access officer or officers; and

(5) the procedures for appeals and the name, title and business address of the agency's appeals officer.

(b) Each agency shall forthwith submit for publication in the City Record notice of the hours when records are available for inspection and copying, the location or locations where records may be inspected and copied, the fees for copying, and the name, title, business address and telephone number of the person(s) designated to serve as records access officer(s) and of the person or body designated to serve as appeals officer. Notice of any change in the above information shall be published as soon as practicable in the City Record.

(c) In addition to the matters required to be published pursuant to subdivision (b) of this section, each agency may, after consultation with the Law Department, promulgate such additional rules and regulations as may be necessary to

effectuate the purpose of these Rules and Regulations; provided that any such agency rules and regulations must be consistent with the Freedom of Information Law, the applicable Rules and Regulations of the Committee on Open Government and the Rules and Regulations set forth herein. Such additional rules and regulations may provide where appropriate for the safeguarding of records during inspection and copying.

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CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-09 Removal of Records.

In no case shall an agency permit removal of agency records from agency premises by a requesting party.

HISTORICAL NOTE

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CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-10 Severability.

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of these Rules and Regulations or the application thereof to other persons and circumstances.

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43 RCNY 2-01

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CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-01 Definitions.

Agency. "Agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

Architect. "Architect" means the professional, whether a city employee, or a consultant, responsible for the design of an eligible project.

Art allocation. "Art allocation" means the dollar amount of the budget of an eligible project available for expenditure for works of art, calculated as follows:

(a) Not less than 1 percent of the first twenty million dollars ($20,000,000) of capital funds appropriated in the city capital budget for an eligible project, not including funds appropriated for the acquisition of real property; plus,

(b) Not less than 1/2 of 1 percent of the capital funds in excess of the first twenty million dollars ($20,000,000) appropriated in the city capital budget for such eligible project, not including funds appropriated for the acquisition of real property; provided, however, that such allocation will be recalculated if changes in the project scope prior to the selection of works of art result in a change of 15 percent or more of the capital funds originally appropriated in the city capital budget for such eligible project; and provided further, however, that in no case shall §224 of the Charter require the expenditure of more than four hundred thousand dollars ($400,000) for works of art for any one eligible project, not more than one and one-half million dollars ($1,500,000) for works of art in any one fiscal year. This allocation may be used for, but is not limited to, the acquisition of existing works of art, the commissioning and acquisition of new works

of art, the restoring or refurbishing of existing works of art, the removal of works of art to an eligible project from another site, and/or the installation of works of art at the site of an eligible project.

Art Commission. "Art Commission" means the body created pursuant to Chapter 37 of the Charter.

Commissioner. "Commissioner" means the Commissioner of the Department of Cultural Affairs.

Design agency. "Design agency" means the city agency responsible for the preparation of the design of a project.

Director. "Director" means the director of the Mayor's Office of Construction or its successor.

Eligible project. "Eligible project" means a capital project for which capital funds are appropriated by the city, and which involves the construction or substantial reconstruction of a city-owned building or structure, the intended use of which requires that it be accessible to the public generally or to members of the public participating in, requiring or receiving programs, services or benefits provided thereat. Buildings or structures within this category include, but shall not be limited to, office buildings, buildings designed for recreational purposes, police precinct houses, fire houses, schools, prisons and detention centers, hospitals and clinics, passenger terminals, shelters, libraries, community centers and court buildings.

Panel. "Panel" means an advisory panel as provided in §2-03 hereof.

Substantial reconstruction. "Substantial reconstruction" means a capital project in which at least two of the major systems [electrical, HVAC (heating, ventilating and air conditioning), or plumbing] of a building are replaced and general construction work, including but not limited to new flooring, ceilings, partitions, windows, affects at least 80 percent of the building's floor area.

Work(s) of art. "Work(s) of art" means all forms of visual arts conceived in any medium, material or combination thereof.

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43 RCNY 2-02

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CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-02 Applicability.

These Regulations apply to projects listed in the city's capital budget and include each line project and each project of a multi-project effort generally described in a lump sum budget line. Individual projects including multi-year projects, which are part of a major improvement program or betterment at a specific site may be subject to these Rules as set forth below.

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43 RCNY 2-03

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CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-03 Panel.

(a) **Membership and organization.** (1) For each eligible project, the Commissioner will convene a panel consisting of:

(i) the Commissioner or his/her designee;

(ii) one representative of the city agency having jurisdiction over the eligible project upon its completion, if other than the Department of Cultural Affairs (such representative shall not be the Architect);

(iii) one representative of the Design agency, if other than (ii) above (such representative shall not be the Architect); and,

(iv) three representatives of the public generally recognized as knowledgeable in the field of public art, and selected by the Commissioner, at least one of whom shall reside in or maintain a place of business in the borough in which the project is located. If the Department of Cultural Affairs is the agency referred to in both (ii) and (iii) above, then four such representatives of the public, selected by the Commissioner.

(2) Each member shall have one vote; except, in the event of a tie vote by the members, the Chairperson shall have two votes.

(3) A majority of the votes eligible to be cast shall constitute a quorum to do business. Any action taken by the Panel shall require the assent of a majority of the votes present.

(4) One representative of the Art Commission and one representative or the Director will be non-voting ex officio members of each panel and will not be counted as part of the quorum.

(5) The Commissioner or his/her designee shall serve as Chairperson of the Panel.

(6) The Chairperson may invite other knowledgeable persons to address the Panel but they shall not have a vote.

(b) **Duties.** Upon reviewing the scope of each eligible project and any reports, comments or recommendations of the Architect and the agencies involved in its construction, after due deliberation, and following full consultation with the Architect, the Panel shall inform the Design Agency in writing of its recommendations as follows:

(1) the nature of work(s) of art to be considered for the eligible project;

(2) if new work(s) of art are to be commissioned, then the names of artists to be considered to create the work(s) of art or the manner to be used to select an artist, as through a competition, for example;

(3) if work(s) of art already in existence are to be used, then specific art works or works of suggested artists shall be recommended;

(4) other suggestions for the use of the art allocation, such as refurbishing or restoring existing work(s) of art located at the site or to be relocated to the site.

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43 RCNY 2-04

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CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-04 Procedures.

(a) Upon the initiation of design of an eligible project in accordance with §219(b) of the Charter, the Design Agency shall notify the Commissioner in writing of the following:

(1) scope of the project;

(2) budget for the project;

(3) time schedule for the project; and

(4) the Architect's name and address.

(b) The duties of the panel shall be performed as part of the eligible project's design phase but, in no event shall they interfere with the project's schedule.

(c) Panels shall be convened by the Commissioner in consultation with the Design Agency, so as to expeditiously process eligible projects.

(d) The Commissioner will keep a list of the eligible projects submitted, will establish a schedule for their consideration by a panel, will appoint the three (or four, if required hereby) panel members to each panel representing the public, will notify all members of the time and place of each panel meeting, and prior to each such meeting will distribute materials for consideration. If necessary, a panel may be scheduled to convene more than once during its review of an eligible project, as for example, to visit the site of the eligible project, or to have additional opportunities to

confer with the Architect and/or Design Agency.

(e) The Commissioner will give reasonable advance notification of the intention to include works of art in an eligible project to the appropriate district council members, borough president and chairperson of the community board of the district in which the project is located, in writing, at the time the panel to consider such project is appointed. The notification shall include the time and place of such panel meeting(s).

(f) Submissions to a panel shall be made through the Commissioner by the Design Agency. The contract or agreement with the Architect (if the Architect is a consultant to the Design Agency) will provide that the Architect will consult with, and cooperate with, the panel, in carrying out the requirements of §224 of the charter, and will prepare all other necessary data, drawings and plans to be presented to and considered by the panel.

(g) Not later than ten (10) business days prior to the first date a panel is scheduled to convene to consider an eligible project, the Design Agency, in consultation with the Architect, shall submit a statement, in writing, to the Commissioner, which shall include:

(1) description and scope of the eligible project;

(2) the amount of the art allocation;

(3) suggestions as to the nature and types of works of art to be included in the eligible project and to be paid out of the art allocation; and

(4) suggested works of art already existing to be acquired and/or suggested artists to execute the works of art.

(h) The Commissioner shall distribute the statement to the members of the panel prior to the meeting.

(i) At the panel meeting(s), the Architect will be present to discuss the eligible project with the panel members and respond to questions and comments. Following full discussion and upon a majority vote, the panel will render its recommendations, including specific recommendations regarding work(s) of art and artists. For any eligible project the Architect may request and the panel may recommend that the art allocation be spent on restoring or refurbishing existing work(s) of art for the site; or the removal of works of art to the eligible project from another site; or any other alternative recommendations for the use of the art allocation.

(j) Within two weeks after the panel's final meeting, the Commissioner will forward the panel's written recommendations, in accordance with §203(b) above, to the Design Agency to be used in the Architect's preparation of initial designs for the eligible project, with copies to the members of the panel and to those persons referred to in §2-04(e) above.

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43 RCNY 2-05

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CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-05 Eligibility and Exemptions.

(a) In the scope of each capital project, the Design Agency shall specifically state, either, that:

(1) the project is an eligible project as defined in §224 of the Charter; or

(2) the project is not an eligible project.

(b) The Mayor may exempt capital projects from the provisions of §224 of the Charter if in his sole judgement the inclusion of works of art as provided thereby would be inappropriate.

(c) If any city agency takes issue with the finding that a project is or is not an eligible project, the matter shall be referred to the Director, whose decision will be final.

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43 RCNY 2-06

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CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-06 Project Eligibility Monitoring.

(a) Each capital budget request form ("CB Form III") submitted to the Office of Management and Budget ("OMB") shall have indicated thereon that such project either is or is not an eligible project, or that at such stage of planning, eligibility cannot yet be determined.

(b) OMB shall submit a set of all CB Form III's received by it to the Commissioner for the purpose of monitoring and determining capital projects that come within §224 of the Charter.

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43 RCNY 2-07

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CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-07 Art Commission; Removal or Alteration of Works of Art.

(a) The procedures set forth herein are in addition to and not in lieu of the procedures of the Art Commission pursuant to §854 of the Charter.

(b) Works of art acquired pursuant to §224 of the Charter shall not be, without the prior written approval of the Art Commission,

(1) sold or otherwise alienated or disposed of; or

(2) altered, modified in any way or relocated.

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43 RCNY 2-08

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CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-08 Implementation.

(a) Following receipt of the panel's recommendations, the Design Agency shall make its final decision concerning the work(s) of art to be included in the eligible project. If the Design Agency's decision differs from the panel's recommendations, the Design Agency shall promptly, and within the design phase, provide a written explanation for its decision to the Commissioner, who shall forward copies of such explanation to members of the panel and to the persons referred to in §2-03(e) above.

(b) It is the intent of §224 of the Charter that the works of art be an integral part of and compatible with the project being constructed. Hence, the procedures called for in these Regulations are meant to commence at the earliest stages of project design to assure that the project construction schedule has incorporated into it the schedule to be followed for the creation, acquisition or restoration of the works of art to be included therein.

(c) The Commissioner shall administer the implementation of §224 of the Charter and shall offer guidance, assistance and advice, throughout the pre- and post-panel process, to the agencies involved with eligible projects, the Architect, the artist(s) or the community.

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43 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 3 CITY POLICY CONCERNING ALIENS

§3-01 Definitions.

Alien. "Alien" means any person who is not a citizen or national of the United States.

Line worker. "Line worker" means a person employed by any City agency whose duties involve contact with the public.

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43 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 3 CITY POLICY CONCERNING ALIENS

§3-02 Confidentiality of Information Respecting Aliens.

(a) No City officer or employee shall transmit information respecting any alien to federal immigration authorities unless

(1) such officer's or employee's agency is required by law to disclose information respecting such alien, or

(2) such agency has been authorized, in writing signed by such alien, to verify such alien's immigration status, or

(3) such alien is suspected by such agency of engaging in criminal activity, including an attempt to obtain public assistance benefits through the use of fraudulent documents.

(b) Each agency shall designate one or more officers or employees who shall be responsible for receiving reports from such agency's line workers on aliens suspected of criminal activity and for determining, on a case by case basis, what action, if any, to take on such reports. No such determination shall be made by any line worker, nor shall any line worker transmit information respecting any alien directly to federal immigration authorities.

(c) Enforcement agencies, including the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity. However, such agencies shall not transmit to federal authorities information respecting any alien who is the victim of a crime.

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43 RCNY 3-03

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Title 43 Mayor

CHAPTER 3 CITY POLICY CONCERNING ALIENS

§3-03 Availability of City Services to Aliens.

Any service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service unless such agency is required by law to deny eligibility for such service to aliens. Every City agency shall encourage aliens to make use of those services provided by such agency for which aliens are not denied eligibility by law.

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43 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 4 CHARGE FOR BAD CHECKS [EXECUTIVE ORDER NO. 125]

§4-01 Charge of Payment on Account of Insufficient Funds.

Pursuant to §85 of the General Municipal Law, a charge of fifteen dollars per check may be added to any account owing to the City of New York or any of its agencies where a tendered payment of such account was by a check or other written order that was returned for insufficient funds.

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43 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 5 PETITIONS FOR RULEMAKING

§5-01 Short Title.

These Rules and Regulations shall be known and may be cited as "Rules for Pe- titioning."

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43 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 5 PETITIONS FOR RULEMAKING

§5-02 Definitions.

Agency. "Agency" shall mean an agency the head of which holds office upon the appointment of the Mayor.

Person. "Person" shall mean an individual, partnership, corporation or other legal entity, and any individual or entity acting in a fiduciary or representative capacity.

Petition. "Petition" shall mean a request or application for any agency to adopt a rule.

Petitioner. "Petitioner" shall mean the person who files a petition.

Rule. "Rule" shall have the meaning set forth in §1041(5) of the New York City Charter (City Administrative Procedure Act) and shall mean generally any statement or communication of general applicability that

(1) implements or applies law or policy or

(2) prescribes the procedural requirements of an agency, including an amendment, suspension, or repeal of any such statement or communication.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 5 PETITIONS FOR RULEMAKING

§5-03 Scope.

These Rules and Regulations shall govern the procedures by which the public may submit petitions for rulemaking pursuant to §1043(f) of the New York City Charter (City Administrative Procedures Act).

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 5-04

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 5 PETITIONS FOR RULEMAKING

§5-04 Procedures for Submitting Petitions and Responses to Petitions.

(a) Any person may petition an agency to consider the adoption of a rule. The petition must contain the following information:

(1) The rule to be considered, with proposed language for adoption;

(2) A statement of the agency's authority to promulgate the rule and its purpose;

(3) Petitioner's argument(s) in support of adoption of the rule;

(4) The period of time the rule should be in effect;

(5) Responses to any questions posed on a form provided by an agency for such petitions, pursuant to subdivision (d) of this section;

(6) The name, address and telephone number of the petitioner or his or her authorized representative;

(7) The signature of petitioner or his or her representative.

(b) Any change in the information provided pursuant to §5-04(a)(6) must be communicated promptly in writing to the office of which the petition was submitted.

(c) All petitions should be typewritten, if possible, but handwritten petitions will be accepted, provided they are

legible.

(d) Each agency is authorized to adopt a form petition. Every petition for rulemaking shall be submitted on such form, unless such a form is not available from the agency, in which case the petition shall be filed in duplicate on plain white paper.

(e) Each agency may designate an officer or location to which a petition must be addressed or delivered. If no officer or location is designated, petitions shall be mailed or delivered to the agency's General Counsel.

(f) Upon receipt of a petition submitted in the proper form, the designated officer for each agency will stamp the petition with the date it was received and will assign the petition number. If that officer is not the person who will ultimately accept or deny the petition for adoption of a rule, the officer will forward the petition to the agency's Commissioner, or the officer or employee of the agency authorized to accept or deny such petitions for the agency.

(g) Within sixty days from the date the petition was received by the agency, the agency shall either deny such petition in a written statement containing the reasons for denial, or shall state in writing the agency's intention to grant the petition and to initiate rulemaking by a specified date. In proceeding with such rulemaking, an agency shall not be bound by the language proposed by petitioner, but may amend or modify such proposed language at the agency's discretion. The agency's decision to grant or deny a petition is final.

(h) The agency's decision to grant or deny an appeal is final.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 5-05

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 5 PETITIONS FOR RULEMAKING

§5-05 Public Notice and Promulgation of Rules and Regulations by City Agencies.

(a) Each agency shall publicize by posting in a conspicuous location,

(1) the procedures for submitting petitions for rulemaking including the location at which any necessary forms may be obtained, and

(2) the name, title, business address and telephone number of the officer designated to receive petitions.

(b) Each agency shall forthwith submit for publication in The City Record notice of the name, title, business address and telephone number of the officer designated to receive petitions, and the location at which any necessary forms may be obtained. Notice of any change in the above information shall be published as soon as practicable in The City Record. Such notice shall not constitute a rule as defined in the City Charter, §1041, subd. 5.

(c) In addition to the matters required to be published pursuant to subdivision (b) of this section, each agency may, after consultation with the Law Department, promulgate such additional rules as may be necessary to effectuate the purpose of these Rules and Regulations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 5-06

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 5 PETITIONS FOR RULEMAKING

§5-06 Severability.

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of these Rules and Regulations or the application thereof to other persons and circumstances.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-01 Applicability.

[Except as modified by City Planning Rules, §5-02(a) and (d).] No final decision to carry out or approve any action which may have a significant effect on the environment shall be made by any agency until there has been full compliance with the provisions of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. Promulgation of protocols regarding removal of lead paint from City owned bridge was subject to requirements of City environmental quality review regulations. Thus, the court granted injunctive relief requiring the City to comply with the required environmental procedures before the work could be undertaken. The court noted that the work constituted more than routine maintenance (which is not subject to environmental review) because of the environmental hazards posed by lead. Note that where petitioner seeks to nullify a regulation, have heavy burden to show that reg. is unreasonable and unsupported by evidence. Here, petitioner failed to meet that burden. Williamsburgh Around the Bridge Block Association v. Guiliani, 223 A.D.2d 64, 644 N.Y.S.2d 252 (App.Div. 1st Dept. 1996).

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

Rules of the City of New York

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43 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-02 Definitions.

[Additional definitions, City Planning Rules §5-02(c).] As used herein, the following terms shall have the indicated meanings unless noted otherwise:

Action. **[Modified by City Planning Rules §5-02(c)(2).]** "Action" means any activity of an agency, other than an exempt action enumerated in §6-04 of this chapter, including but not limited to the following:

(1) non-ministerial decisions on physical activities such as construction or other activities which change the use or appearance of any natural resource or structure;

(2) non-ministerial decisions on funding activities such as the proposing, approval or disapproval of contracts, grants, subsidies, loans, tax abatements or exemptions or other forms of direct or indirect financial assistance, other than expense budget funding activities;

(3) planning activities such as site selection for other activities and the proposing, approval or disapproval of master or long range plans, zoning or other land use maps, ordinances or regulations, development plans or other plans designed to provide a program for future activities;

(4) policy making activities such as the making, modification or establishment of rules, regulations, procedures, policies and guidelines;

(5) non-ministerial decisions on licensing activities, such as the proposing, approval or disapproval of a lease, permit, license, certificate or other entitlement for use or permission to act.

Agency. **[Inapplicable. See City Planning Rules §5-02(a), §5-02(c)(i).]**"Agency" means any agency, administration, department, board, commission, council, governing body or any other governmental entity of the City of New York, unless otherwise specifically referred to as a state or federal agency.

Applicant. "Applicant" means any person required to file an application pursuant to this chapter.

Conditional negative declaration. "Conditional negative declaration" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action and accepted by the applicant in writing, which announces that the lead agencies have determined that the action will not have a significant effect on the environment if the action is modified in accordance with conditions or alternatives designed to avoid adverse environmental impacts.

DEC. "DEC" means the New York State Department of Environmental Conservation.

Environment. "Environment" means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution or growth, and existing community or neighborhood character.

Environmental analysis. "Environmental analysis" means the lead agencies' evaluation of the short and long term, primary and secondary environmental effects of an action, with particular attention to the same areas of environmental impacts as would be contained in an EIS. It is the means by which the lead agencies determine whether an action under consideration may or will not have a significant effect on the environment.

Environmental assessment form. **[Retitled Environmental Assessment Statement; see City Planning Rules §5-04(c)(3).]** "Environmental assessment form" means a written form completed by the lead agencies, designed to assist their evaluation of actions to determine whether an action under consideration may or will not have a significant effect on the environment.

Environmental impact statement (EIS). "Environmental impact statement (EIS)" means any written document prepared in accordance with §§6-08, 6-10, 6-12 and 6-13 of this chapter. An EIS may either be in a draft or a final form.

Environmental report. "Environmental report" means a report to be submitted to the lead agencies by a non-agency applicant when the lead agencies prepares or cause to be prepared a draft EIS for an action involving such an applicant. An environmental report shall contain an analysis of the environmental factors specified in §6-10 of this chapter as they relate to the applicant's proposed action and such other information as may be necessary for compliance with this chapter, including the preparation of an EIS.

Lead agencies. **[Inapplicable, City Planning Rules §5-02(a). Superseded by City Planning Rules §5-02(b)(1) and §5-02(c)(3)(vi); also see City Planning Rules §5-03 for choice of lead agency.]**"Lead agencies" means the Department of Environmental Protection and the Department of City Planning of the City of New York, as designated by the Mayor pursuant to §617.4 of Part 617 of Volume 6 of the New York Code of Rules and Regulations, for the purpose of implementing the provisions of Article 8 of the Environmental Conservation Law (SEQRA) in the City of New York, by order dated December 23, 1976.

Ministerial action. "Ministerial action" means an action performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the action, although such law may require, in some degree, construction of its language or intent.

Negative declaration. "Negative declaration" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the

action will not have a significant effect on the environment.

Notice of determination. **[See also City Planning Rules §5-02(c)(3)(iii).]** "Notice of determination" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the action may have a significant effect on the environment, thus requiring the preparation of an EIS.

NYCRR. **[See also City Planning Rules §5-02(c)(3)(viii).]** "NYCRR" means the New York Code of Rules and Regulations.

Person. "Person" means an agency, individual, corporation, governmental entity, partnership, association, trustee or other legal entity.

Project data statement. **[Inapplicable, City Planning Rules §5-02(a). Superseded by Environmental Assessment Statement, see City Planning Rules §5-04(c)(3). See also City Planning Rules §5-05(b)(1) and §5-08(a).]**"Project date statement" means a written submission to the lead agencies by an applicant on a form prescribed by the lead agencies, which provides an identification of an information relating to the environmental impacts of a proposed action. The project data statement is designed to assist the lead agencies in their evaluation of an action to determine whether an action under consideration may or will not have significant effect on the environment.

SEQRA. "SEQRA" means the State Environmental Quality Review Act (Article 8 of the New York State Environmental Conservation Law).

Typically associated environmental effect."Typically associated environmental effect" means changes in one or more natural resources which usually occur because of impacts on other such resources as a result of natural interrelationships or cycles.

ULURP. "ULURP" means the Uniform Land Use Review Procedure (§197-c of Chapter 8 of the New York City Charter).

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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43 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-03 Actions Involving Federal or State Participation.

(a) **[See also City Planning Rules §5-04(e)]** If an action under consideration by an agency may involve a "major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969," then the following procedures shall apply:

(1) in the case of an action for which there has been duly prepared both a draft EIS and a final EIS, no agency shall have an obligation to prepare an EIS or to make findings pursuant to §6-12 of this chapter.

(2) in the case of an action for which there has been prepared a Negative Declaration or other written threshold determination that the action will not require a federal impact statement under the National Environmental Policy Act of 1969, the lead agencies shall determine whether or not the action may have a significant effect on the environment pursuant to this chapter, and the action shall be fully subject to the same.

(b) **[Inapplicable, City Planning Rules §5-02(a). Entire subdivision (b) superseded by City Planning Rules §5-03(j) and §5-04(d).]**If an action under consideration by any agency may involve any state action which may have a significant effect on the environment under SEQRA, pursuant to which a state agency is required to comply with the procedures specified in 6 NYCRR 617, then the determination as to whether the state agency or the lead agencies shall be responsible for the environmental review shall be made on the basis of the following criteria:

(1)the agency to first act on the proposed action;

(2)a determination of which agency has the greatest responsibility for supervising or approving the action as a whole;

(3)a determination of which agency has the more general governmental powers as compared to single or limited powers or purposes;

(4)a determination of which agency has the greatest capability for providing the most thorough environmental assessment of the action;

(5)a determination of whether the anticipated impacts of the action being considered are primarily of statewide, regional or local concern, e.g., if such impacts are primarily of local concern, the lead agencies shall conduct the environmental review. If this determination cannot be made within 30 days of the filing of an application, the Commissioner of DEC shall be requested, in writing, to make such determination.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

Rules of the City of New York

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43 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-04 Exempt Actions.

[See also City Planning Rules §5-02(d).] The following actions shall not be subject to the provisions of this chapter:

(a) projects or activities classified as Type I pursuant to §6-15 of this chapter directly undertaken or funded by an agency prior to June 1, 1977 except that if such action is sought to be modified after June 1, 1977, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of [this chapter;

(1) such actions include, but are not limited to, those actions defined in §6-09. "Action" (1), (2), (3) and (4) of [this chapter;

(2) an action shall be deemed to be undertaken at the point that:

(i) the agency is irreversibly bound or committed to the ultimate completion of a specifically designed activity or project; or

(ii) in the case of construction activities, a contract for substantial construction has been entered into or if a continuous program of on-site construction or modification has been engaged in; or

(iii) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant, subsidy, loan

or other form of financial assistance; or

(iv) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.

(b) projects or activities classified as Type I pursuant to §6-15 of this chapter approved by an agency prior to September l, 1977 except that if such action is sought to be modified after September 1, 1977, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this chapter;

(1) such actions include, but are not limited to, those actions defined in §6-02, "Action" (2) and (5) of this chapter;

(2) an action shall be deemed to be approved at the point that:

(i) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant, subsidy, loan or other form of financial assistance; or

(ii) the agency gives final approval for the issuance to an applicant of a discretionary lease, permit, license, certificate or other entitlement for use or permission to act; or

(iii) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.

(c) projects or activities not otherwise classified as Type I pursuant to §6-15 of this chapter directly undertaken, funded or approved by an agency prior to November 1, 1978 except that if such action is sought to be modified after November 1, 1978, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this chapter;

(1) such actions include, but are not limited to, those actions defined in §6-02 "Action" of this chapter;

(2) an action shall be deemed to be undertaken as provided in paragraphs (a)(2) and (b)(2) of this section, as applicable.

(d) enforcement or criminal proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;

(e) **[See City Planning Rules §5-02(d).]** ministerial actions, which shall appear on a list compiled, certified and made available for public inspection by the lead agencies, except as provided in §6-15(a), Type I, of this chapter, relating to critical areas and historic resources;

(f) maintenance or repair involving no substantial changes in existing structures or facilities;

(g) actions subject to the provisions requiring a certificate of environmental compatibility and public need in Article 7 and 8 of the Public Service Law;

(h) actions which are immediately necessary on a limited emergency basis for the protection or preservation of life, health, property or natural resources; and

(i) actions of the Legislature of the State of New York or of any court.

HISTORICAL NOTE

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FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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43 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-05 Determination of Significant Effect-Applications.

(a) **[Inapplicable, City Planning Rules §5-02(a). Superseded by City Planning Rules §5-05(a). See also City Planning Rules §5-02(b)(2) and §5-02(d).]**Each agency shall ascertain whether an application need be filed pursuant to this section, employing lists of actions, classified as either exempt, Type I or Type II pursuant to §§6-04 and 6-15 of this chapter, respectively, which lists shall be certified by the lead agencies.

(b) **[Introductory paragraph inapplicable, City Planning Rules §5-02(a). Paragraph (b) superseded by City Planning Rules §5-08.]** The applicant initiating the proposed action, other than an exempt or Type II action pursuant to §6-04 of this chapter, shall file an application with the lead agencies, which application shall include a Project Data Statement and such other documents and additional information as the lead agencies may require to conduct an environmental analysis to determine whether the action may or will not have a significant effect on the environment. Where possible existing City applications shall be modified to incorporate this procedure and a one-stop review process developed;

(1) within 20 calendar days of receipt of a determination pursuant to §6-03(b) of this chapter, if applicable, the lead agencies shall notify the applicant, in writing, whether the application is complete or whether additional information is required;

(2) **[Determination pursuant to §5-03(b) deemed to refer to lead agency selection pursuant to City Planning Rules §5-03. See City Planning Rules §5-02(b)(3).]** when all required information has been received, the lead agencies shall notify the applicant, in writing, that the application is complete.

(c) Each application shall include an identification of those agencies, including federal or state agencies, which to the best knowledge of the applicant, have jurisdiction by law over the action or any portion thereof.

(d) Where appropriate, the application documents may include a concise statement or reasons why, in the judgment of the applicant, the proposed action is one which will not require the preparation of an EIS pursuant to this chapter.

(e) Initiating applicants shall consider the environmental impacts of proposed actions and alternatives at the earliest possible point in their planning processes, and shall develop wherever possible, measures to mitigate or avoid adverse environmental impacts. A statement discussing such considerations, alternatives and mitigating measures shall be included in the application documents.

(f) Nothing in this section shall be deemed to prohibit an applicant from submitting a preliminary application in the early stages of a project or activity for review and comment by the lead agencies.

HISTORICAL NOTE

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FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

43 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-06 Determination of Significant Effect-Criteria.

(a) An action may have a significant effect on the environment if it can reasonably be expected to lead to one of the following consequences:

(1) a substantial adverse change to ambient air or water quality or noise levels or in solid waste production, drainage, erosion or flooding;

(2) the removal or destruction of large quantities of vegetation or fauna, the substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on critical habitat areas, or the substantial affecting of a rare or endangered species of animal or plant or the habitat of such a species;

(3) the encouraging or attracting of a large number of people to a place or places for more than a few days relative to the number of people who would come to such a place absent the action;

(4) the creation of a material conflict with a community's existing plans or goals as officially approved or adopted;

(5) the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources (including the demolition or alteration of a structure which is eligible for inclusion in an official inventory of such resources), or of existing community or neighborhood character;

(6) a major change in the use of either the quantity or type of energy;

(7) the creation of a hazard to human health or safety;

(8) a substantial change in the use or intensity of use of land or other natural resources or in their capacity to support existing uses, except where such a change has been included, referred to, or implicit in a broad "programmatic" EIS prepared pursuant to §6-13 of this chapter;

(9) the creation of a material demand for other actions which would result in one of the above consequences;

(10) changes in two or more elements of the environment, no one of which is substantial, but taken together result in a material change to the environment.

(b) **[Reference to §6-15 Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** For the purpose of determining whether an action will cause one of the foregoing consequences, the action shall be deemed to include other contemporaneous or subsequent actions which are included in any long-range comprehensive integrated plan of which the action under consideration is a part, which are likely to be undertaken as a result thereof, or which are dependent thereon. The significance of a likely consequence (i.e., where it is material, substantial, large, important, etc.) should be assessed in connection with its setting, its probability of occurring, its duration, its irreversibility, its controllability, its geographic scope and its magnitude (i.e., degree of change or its absolute size). Section 6-15 of this chapter refers to lists of actions which are likely to have a significant effect on the environment and contains lists of actions found not to have a significant effect on the environment.

HISTORICAL NOTE

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FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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43 RCNY 6-07

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-07 Determination of Significant Effect-Notification.

(a) **[Error. Reference to §6-05(a) should be to §6-05(b).]** The lead agencies shall determine within 15 calendar days following notification of completion of the application pursuant to §6-05(a) of this chapter whether the proposed action may have a significant effect on the environment;

(1) **[Reference to §6-15(b) Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** In making their determination, the lead agencies shall employ the Environmental Assessment Form, apply the criteria contained in §6-06 and consider the lists of actions contained in §6-15 of this chapter;

(2) The lead agencies may consult with, and shall receive the cooperation of any other agency before making their determination pursuant to this subdivision (a).

(b) The lead agencies shall provide written notification to the applicant immediately upon determination of whether the action may or will not have a significant effect on the environment. Such determination shall be in one of the following forms:

(1) **Negative Declaration. [Reference to §6-15, Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See Rules §5-02(b)(2).]** If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§6-04 and 6-15 of this chapter, respectively, and that the action will not have a significant effect on the environment, they shall issue a Negative Declaration which shall contain the following information:

(i) an action identifying number;

(ii) a brief description of the action;

(iii) the proposed location of the action;

(iv) a statement that the lead agencies have determined that the action will not have a significant effect on the environment;

(v) a statement setting forth the reasons supporting the lead agencies' determination.

(2) **Conditional Negative Declaration. [Reference to §6-15, Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§6-04 and 6-15 of this chapter, respectively, and that the action will not have a significant effect on the environment if the applicant modifies its proposed action in accordance with conditions or alternatives designed to avoid adverse environmental impacts, they shall issue a Conditional Negative Declaration impacts, they shall issue a Conditional Negative Declaration which shall contain the following information (in addition to the information required for a Negative Declaration pursuant to paragraph (1) of this subdivision):

(i) a list of conditions, modifications or alternatives to the proposed action which supports the determination;

(ii) the signature of the applicant or its authorized representative, accepting the conditions, modifications or alternatives to the proposed action;

(iii) a statement that if such conditions, modifications or alternatives are not fully incorporated into the proposed action, such Conditional Negative Declaration shall become null and void. In such event, a Notice of Determination shall be immediately issued pursuant to paragraph (3) of this subdivision.

(3) **Notice of Determination. [Reference to §6-15 Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§6-04 and 6-15 of this chapter, respectively, and that the action may have a significant effect on the environment, they shall issue a Notice of Determination which shall contain the following information:

(i) an action description number;

(ii) a brief description of the action;

(iii) the proposed location of the action;

(iv) a brief description of the possible significant effects on the environment of the action;

(v) a request that the applicant prepare or cause to be prepared, at its option, a draft EIS in accordance with §§6-08 and 6-12 of this chapter.

(c) **[See additional circulation provisions, City Planning Rules §5-06(b) and §5-06(c). City Clerk function transferred to Office of Environ. Coord., City Planning Rules §5-02(b)(4).]** The lead agencies shall make available for public inspection the Negative Declaration, Conditional Negative Declaration or the Notice of Determination, as the case may be, and circulate copies of the same to the applicant, the Regional Director of the DEC, the Commissioner of DEC, the appropriate Community Planning Board(s), the City Clerk, and all other agencies, including federal and state agencies, which may be involved in the proposed action.

HISTORICAL NOTE

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FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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43 RCNY 6-08

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-08 Draft Environmental Impact Statements-Responsibility for Preparation.

(a) **Non-agency applicants.** (1) **[Rules add formal scoping, City Planning Rules §5-07. Interested and involved agencies assist with DEIS on request. See City Planning Rules §5-05(b)(2).]** After receipt of a Notice of Determination pursuant to §6-07(c)(3) of this chapter, a non-agency applicant shall notify the lead agencies in writing as to whether it will exercise its option to prepare or cause to be prepared a draft EIS, and as to whom it has designated to prepare the draft EIS, provided that no person so designated shall have an investment or employment interest in the ultimate realization of the proposed action;

(2) **[See also City Planning Rules §5-05(b)(3) for requirements of lead consultation on mitigations.]** The lead agencies may prepare or cause to be prepared a draft EIS for an action involving a non-agency applicant. In such event, the applicant shall provide, upon request, an environmental report to assist the lead agencies in preparing or causing to be prepared the draft EIS and such other information as may be necessary. All agencies shall fully cooperate with the lead agencies in all matters relating to the preparation of the draft EIS.

(3) If the non-agency applicant does not exercise its option to prepare or cause to be prepared a draft EIS, and the lead agencies do not prepare or cause to be prepared such draft EIS, then the proposed action and review thereof shall terminate.

(b) **Agency applicants.** (1) When an action which may have a significant effect on the environment is initiated by an agency, the initiating agency shall be directly responsible for the preparation of a draft EIS. However, preparation of the draft EIS may be coordinated through the lead agencies.

(2) **[See City Planning Rules §5-05(b)(3)for requirements of lead consultation on mitigations.]** All agencies, whether or not they may be involved in the proposed action, shall fully cooperate with the lead agencies and the applicant agency in all matters relating to the coordination of the preparation of the draft EIS.

(c) Notwithstanding the provisions contained in subdivisions (a) and (b) of this section, when a draft EIS is prepared, the lead agencies shall make their own independent judgment of the scope, contents and adequacy of such draft EIS.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-09 Environmental Impact Statements-Content.

(a) **[Lead to be guided by technical standards and methodologies developed by Office of Environ. Coord., City Planning Rules §5-04(c).]** Environmental impact statements should be clearly written in a brief and concise manner capable of being read and understood by the public. Within the framework presented in subdivision (d) of this section, such statements should deal only with the specific significant environmental impacts which can be reasonably anticipated. They should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts.

(b) All draft and final EIS's shall be preceded by a cover sheet stating:

(1) whether it is a draft or a final;

(2) the name or other descriptive title of the action;

(3) the location of the action;

(4) the name and address of the lead agencies and the name and telephone number of a person at the lead agencies to be contacted for further information;

(5) identification of individuals or organizations which prepared any portion of the statement; and

(6) the date of its completion.

(c) If a draft or final EIS exceeds ten pages in length, it shall have a table of contents following the cover sheet.

(d) The body of all draft and final EIS's shall contain at least the following:

(1) a description of the proposed action and its environmental setting;

(2) a statement of the environmental impacts of the proposed action, including its short-term and long-term effects, and typically associated environmental effects;

(3) an identification of any adverse environmental effects which cannot be avoided if the proposed action is implemented;

(4) a discussion of the social and economic impacts of the proposed action;

(5) a discussion of alternatives to the proposed action and the comparable impacts and effects of such alternatives;

(6) an identification of any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(7) a description of mitigation measures proposed to minimize adverse environmental impacts;

(8) a description of any growth-inducing aspects of the proposed action, where applicable and significant;

(9) a discussion of the effects of the proposed action on the use and conservation of energy, where applicable and significant;

(10) a list of underlying studies, reports or other information obtained and considered in preparing the statement; and

(11) (for the final EIS only) copies or a summary of the substantive comments received in response to the draft EIS and the applicant's response to such comments.

(e) An EIS may incorporate by reference all or portions of other documents which contain information relevant to the statement. The referenced documents shall be made available to the public in the same places where copies of the statement are made available. When a statement uses incorporation by reference, the referenced document shall be briefly described and its date of preparation provided.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-10 Draft Environmental Impact Statements-Procedures.

(a) **Notice of Completion.** Upon the satisfactory completion of a draft EIS, the lead agencies shall immediately prepare, file and make available for public inspection a Notice of Completion as provided in paragraphs (1), (2) and (3) of this subdivision. Where a proposed action is simultaneously subject to the Uniform Land Use Review Procedure ("ULURP"), the City Planning Commission shall not certify an application pursuant to ULURP until a Notice of Completion has been filed as provided in paragraph (3) of this subdivision.

(1) **Contents of Notice of Completion.** All Notices of Completion shall contain the following:

(i) an action identifying number;

(ii) a brief description of the action;

(iii) the location of the action and its potential impacts and effects; and

(iv) a statement that comments on the draft EIS are requested and will be received and considered by the lead agencies at their offices. The Notice shall specify the public review and comment period on the draft EIS, which shall be for not less than 30 calendar days from the date of filing and circulation of the notice, or not less than 10 calendar days following the close of a public hearing on the draft EIS, whichever last occurs.

(2) **Circulating Notice of Completion.** All Notices of Completion shall be circulated to the following:

(i) all other agencies, including federal and state agencies, involved in the proposed action;

(ii) all persons who have requested it;

(iii) the editor of the State Bulletin;

(iv) the State clearinghouse;

(v) the appropriate regional clearinghouse designated under the Federal Office of Management and Budget Circular A-95.

(3) **Filing Notice of Completion.** All Notices of Completion shall be filed with and made available for public inspection by the following:

(i) the Commissioner of DEC;

(ii) the Regional Director of DEC;

(iii) the agency applicant, where applicable;

(iv) the appropriate Community Planning Board(s);

(v) the City Clerk;

(vi) the lead agencies.

(b) **Filing and availability of draft EIS. [City Clerk function transferred to OEC, City Planning Rules §5-02(b)(4).]** All draft EIS's shall be filed with and made available for public inspection by the same persons and agencies with whom Notices of Completion must be filed pursuant to paragraph (a)(3) of this section.

(c) **Public hearings on draft EIS.** (1) Upon completion of a draft EIS, the lead agencies shall conduct a public hearing on the draft EIS.

(2) The hearing shall commence no less than 15 calendar days or more than 60 calendar days after the filing of a draft EIS pursuant to subdivision (b) of this section, except where a different hearing date is required as appropriate under another law or regu- lation.

(3) Notice of the public hearing may be contained in the Notice of Completion or, if not so contained, shall be given in the same manner in which the Notice of Completion is circulated and filed pursuant to subdivision (a) of this section. In either case, the notice of hearing shall also be published at least 10 calendar days in advance of the public hearing in a newspaper of general circulation in the area of the potential impact and effect of the proposed action.

(4) Where a proposed action is simultaneously subject to ULURP, a public hearing conducted by the appropriate community or borough board and/or the City Planning Commission pursuant to ULURP shall satisfy the hearing requirement of this section. Where more than one hearing is conducted by the aforementioned bodies, whichever hearing last occurs shall be deemed the hearing for purposes of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-11 Final Environmental Impact Statements-Procedures.

(a) **[Interested and involved agencies assist with FEIS on request, City Planning Rules §5-05(b)(2).]** Except as provided in paragraph (1) of this subdivision, the lead agencies shall prepare or cause to be prepared a final EIS within 30 calendar days after the close of a public hearing.

(1) If the proposed action has been withdrawn or if, on the basis of the draft EIS and the hearing, the lead agencies have determined that the action will not have a significant effect on the environment, no final EIS shall be prepared. In such cases, the lead agencies shall prepare, file and circulate a Negative Declaration as prescribed in §6-07 of this chapter.

(2) The final EIS shall reflect a revision and updating of the matters contained in the draft EIS in light of further review by the lead agencies, comments received and the record of the public hearing.

(b) Immediately upon the completion of a final EIS, the lead agencies shall prepare, file, circulate and make available for public inspection a Notice of Completion of a final EIS in a manner specified in §6-11(a) of this chapter, provided, however, that the Notice shall not contain the statement described in subparagraph (a)(1)(iv) of such section.

(c) Immediately upon completion of a final EIS, copies shall be filed and made available for public inspection in the same manner as the draft EIS pursuant to §6-11(b) of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

43 RCNY 6-12

RULES OF THE CITY OF NEW YORK

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CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-12 Agency Decision Making.

(a) No final decision to carry out or approve an action which may have a significant effect on the environment shall be made until after the filing and consideration of a final EIS.

(1) **[Inapplicable, City Planning Rules, §5-02(a).]**Except as provided in paragraph (2) of this subdivision where a final decision whether or not to carry out or approve an action is required by law to be made by any agency, such decision shall be made within 30 calendar days of the filing of a final EIS.

(2) **[Inapplicable, City Planning Rules, §5-02(a).]**Where a proposed action is simultaneously subject to ULURP, the final decision whether or not to carry out or approve the action shall be made by the Board of Estimate or its successor agency within 60 calendar days of the filing of the final EIS.

(b) When an agency decides to carry out or approve an action which may have a significant effect on the environment, it shall make the following findings in a written decision:

(1) consistent with social, economic and other essential considerations of state and city policy, from among the reasonable alternatives thereto, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects to the maximum extent possible, including the effects disclosed in the relevant environmental impact statement;

(2) consistent with social, economic and other essential considerations of state and city policy, all practicable

means will be taken in carrying out or approving the action to minimize or avoid adverse environmental effects.

(c) For public information purposes, a copy of the Decision shall be filed in the same manner as the draft EIS pursuant to §6-11(b) of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

43 RCNY 6-13

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CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-13 Programmatic Environmental Impact Statements.

(a) Whenever possible, agencies shall identify programs or categories of actions, particularly projects or plans which are wide in scope or implemented over a long time frame, which would most appropriately serve as the subject of a single EIS. Broad program statement, master or area wide statements, or statements from comprehensive plans are often appropriate to assess the environmental effects of the following;

(1) a number of separate actions in a given geographic area;

(2) a chain of contemplated actions;

(3) separate actions having generic or common impacts;

(4) programs or plans having wide application or restricting the range of future alternative policies or projects.

(b) No further EIS's need be prepared for actions which are included in a programmatic EIS prepared pursuant to subdivision (a) of this section. However:

(1) a programmatic EIS shall be amended or supplemented to reflect impacts which are not addressed or adequately analyzed in the EIS as originally prepared; and

(2) actions which significantly modify a plan or program which has been the subject of an EIS shall require a supplementary EIS;

(3) programmatic EIS's requiring amendment and actions requiring supplementary EIS's pursuant to this section shall be processed in full compliance with the requirements of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-14 Rules and Regulations.

[Inapplicable, City Planning Rules §5-02(a).]The lead agencies shall promulgate such rules, regulations, guidelines, forms and additional procedures as may be necessary to implement this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

43 RCNY 6-15

RULES OF THE CITY OF NEW YORK

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CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-15 Lists of Actions.

(a) **Type I. [See City Planning Rules §5-02(d).]** Type I actions enumerated in §617.12 of 6 NYCRR 617 are likely to, but will not necessarily, require the preparation of an EIS because they will in almost every instance significantly affect the environment. However, ministerial actions never require the preparation of an EIS except where such actions may directly affect a critical area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of §617.12. In addition, for the purpose of defining paragraph (2) of said subdivision and section, the following thresholds shall apply:

(1) relating to public institutions:

(i) new correction or detention centers with an inmate capacity of at least 200 inmates; (ii) new sanitation facilities, including:

(A) incinerators of at least 250 tons per day capacity;

(B) garages with a capacity of more than 50 vehicles;

(C) marine transfer stations;

(iii) new hospital or health related facilities containing at least 100,000 sq. ft. of floor area;

(iv) new schools with seating capacity of at least 1,500 seats;

(v) any new community or public facility not otherwise specified herein, containing at least 100,000 sq. ft. of floor area, or the expansion of an existing facility by more than 50 percent of size or capacity, where the total size of an expanded facility exceeds 100,000 sq. ft. of floor area.

(2) relating to major office centers: any new office structure which has a minimum of 200,000 sq. ft. of floor area and exceeds permitted floor area under existing zoning by more than 20 percent, or the expansion of an existing facility by more than 50 percent of floor area, where the total size of an expanded facility exceeds 240,000 sq. ft. of floor area.

(b) **Type II.** (1) **[See City Planning Rules §5-02(d).]** Type II actions will never require the preparation of an EIS because they are determined not to have a significant effect on the environment, except where such actions may directly affect a critical area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of §617.12 of 6 NYCRR 617.

(2) **[Inapplicable. Replaced by State Type II list 6 NYCRR Part 617.13. See City Planning Rules §5-02(a) and §5-02(b)(2).]**Pursuant to SEQRA, as amended, a list of Type II actions shall be promulgated prior to July 1, 1978, to become effective on September 1, 1978.

Effective Date. **[See new City Planning transition Rules §5-08 and §5-11. New Rules effective Oct. 1, 1991.]**

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-01 Purpose and General Description.

(a) The purpose of these regulations is to set forth the application process for the New York City Made In New York Film Production Tax Credit program established by Local Law Number 2 of the Year 2005, as amended by Local Law No. 24 of the Year 2006, pursuant to subdivision (b) of §1201-a of the Tax Law. The Mayor's Office of Film, Theatre and Broadcasting has authority to promulgate regulations to establish procedures for the allocation of such credits including, but not limited to, the application process, standards for application evaluations, and any other provisions deemed necessary and appropriate. The Mayor's Office of Film, Theatre and Broadcasting shall administer the program, including the issuance of tax credit certificates. These regulations do not govern the New York State film production tax credit program. Eligibility in and receipt of a tax credit in the New York State program does not guarantee eligibility in or receipt of a tax credit in the New York City Made In New York film production tax credit program. In addition, eligibility in and receipt of a tax credit in the New York City Made In New York film production tax credit program does not guarantee eligibility in or receipt of a tax credit in the New York State program.

(b) A taxpayer which has been issued a certificate of tax credit shall be allowed to claim a New York City Made in New York film production tax credit pursuant to §§11-503(m) or 11-604(20) of the Administrative Code of the City of New York, whichever is applicable.

(c) Such tax credit shall only be allowed with respect to a qualified film that is completed on or after January 1, 2005. For this purpose, a film will be considered completed upon substantial completion of post-production.

HISTORICAL NOTE

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

Subd. (a) amended City Record Sept. 22, 2006 §1, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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43 RCNY 7-02

RULES OF THE CITY OF NEW YORK

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CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-02 Definitions.

As used in this regulation, the following terms shall have the following meanings:

(a) Authorized applicant. "Authorized applicant" means a qualified film production company that is scheduled to begin principal and ongoing photography on the qualified film no more than ninety (90) days after submitting an initial application to the Office and intends to shoot a portion of principal and ongoing photography on a stage at a qualified film production facility on a set or sets.

(b) Approved applicant. "Approved applicant" means an authorized applicant that has been issued a certificate of conditional eligibility by the Office.

(c) Certificate of conditional eligibility. "Certificate of conditional eligibility" means a certificate issued by the Office which states that the authorized applicant has met the criteria set forth in §7-06(a) of this chapter and is being considered for the New York City Made In New York film production tax credit, pending successful completion of the final application and issuance of a certificate of tax credit. Such certificate of conditional eligibility shall include, but not be limited to, the following information: name and address of the authorized applicant, effective date, taxpayer identification number, a statement that the initial application meets the appropriate criteria for conditional eligibility under this regulation and a disclaimer stating that actual receipt of the tax credit is subject to availability of City funds for the program.

(d) Certificate of tax credit. "Certificate of tax credit" means a certificate issued by the Office which states the amount of the New York City Made In New York film production tax credit that the approved applicant has qualified

for, based on the Office's analysis under §§11-503(m) or 11-604(20) of the Administrative Code of the City of New York and the provisions of this chapter. Such certificate shall include, but not be limited to, the following information: name and address of the approved applicant, name of the qualified film the credit applies to, the amount of the tax credit to be received by the approved applicant and a disclaimer stating that actual receipt of the tax credit is subject to availability of City funds for the program.

(e) Completeness of the application. "Completeness of the application" means that all questions on the application itself were fully addressed by either the authorized or approved applicant and that any additional substantiating documents that were requested by the Office were provided in a manner sufficient to allow the Office to properly evaluate the application.

(f) Completion of production of a qualified film. "Completion of production of a qualified film" for purposes of paragraph (1) of subdivision (c) of §7-03 and paragraphs (4) and (5) of subdivision (b) of §7-06 and subdivision (k) of §7-02 of these rules, means that post-production of a qualified film has been finished and a cut negative, video master or other final locked form of the qualified film is ready for the striking of prints or electronic copies, and/or ready for broadcast or delivery to a distributor. All activities and expenses related to marketing and distribution, including the making of release prints, video dupes or other forms of copies, promotional images, and poster art are considered to occur after the production of a qualified film is completed.

(g) Commissioner. "Commissioner" means the Commissioner of the City of New York Mayor's Office of Film, Theatre and Broadcasting.

(h) Effective date. "Effective date" means the date the certificate of conditional eligibility becomes effective. Such date is determined by the date the initial application is received by the Office. In the event that the applicant's principal and ongoing photography on a qualified film does not actually begin within ninety (90) days of the submission of the initial application, the applicant's effective date will be recalculated to correspond to the date ninety (90) days prior to the date that the approved applicant submits, and the Office receives, a notification of actual commencement of principal and ongoing photography. If the actual commencement of principal and ongoing photography does not begin within one hundred eighty (180) days of submission of the initial application, the application shall no longer be deemed valid.

(i) Feature-length film. "Feature-length film" means a production intended for commercial distribution to a motion picture theater or directly to the home video market that has a running time of at least seventy-five (75) minutes in length.

(j) Film production facility. "Film production facility" means a building and/or complex of buildings and their improvements and associated back-lot facilities in which films are or are intended to be regularly produced and which contain at least one sound stage.

(k) Final application. "Final application" means a document created by the Office and submitted by an approved applicant after it has completed production of a qualified film which contains information concerning actual expenditures regarding a qualified film that could make it eligible for the New York City Made In New York film production tax credit under §§11-503(m) or 11-604(20) of the Administrative Code of the City of New York and the provisions of this chapter. Such application shall include, but not be limited to: actual data with regard to the qualified film's total budget, the total production costs at film production facilities in and outside of New York, and the total number of shooting days in and outside of New York and any other information the Office determines is necessary to properly evaluate the application.

(l) Initial application. "Initial application" means a document created by the Office and submitted by an authorized applicant which contains information concerning projected expenditures regarding a qualified film that could make it eligible for the New York City Made In New York film production tax credit under §§11-503(m) or 11-604(20) of the

Administrative Code of the City of New York and the provisions of this chapter. Such application shall include, but is not limited to, the following information: the estimated total budget for the qualified film, estimates of expenditures at a qualifying production facility, estimates of shooting days and expenditures in New York City and outside of New York City and any other information the Office determines is necessary to properly evaluate the application.

(m) Notification of actual commencement of principal and ongoing photography. "Notification of actual commencement of principal and ongoing photography" means the date the Office receives written notice from the approved applicant that the actual production of a qualified film, including the principal and ongoing photography, has commenced on a date specified in such notice, which date is on or before the date that the approved applicant has submitted such notice.

(n) Office. "Office" means the City of New York Mayor's Office of Film, Theatre and Broadcasting.

(o) Pre-production. "Pre-production" means the process of preparation for actual physical production which begins after a qualified film has received a firm agreement of financial commitment ("greenlit") with, for example, the establishment of a dedicated production office, the hiring of key crew members such as a Unit Production Manager, Line Producer and Location Manager, and includes, but is not limited to, activities such as location scouting, hiring of crew, and execution of contracts with vendors of equipment and stage space.

(p) Reserved.

(q) Priority number. "Priority number" means the number used by the Office to determine allocation of the New York City Made In New York film production tax credit. Priority number shall be based on the applicant's effective date; provided, however, that in the event that there is more than one initial application with the same effective date, priority shall be given to the authorized applicant with the earliest anticipated date of commencement of principal and ongoing photography. Provided further that if the principal and ongoing photography does not begin on the anticipated date, and the commencement date is within the one hundred eighty (180)-day limitation provided in subdivision (h) of this section, such priority number shall be recalculated based upon the date that the Office receives notification of actual commencement of principal and ongoing photography from the approved applicant.

(r) Post-production. "Post-production" means the final stage in a qualified film's production after principal and ongoing photography is completed, including, but not limited to, editing, Foley recording, Automatic Dialogue Replacement, sound editing, special effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, the addition of sound/visual effects, dubbing, and subtitling. Advertising and marketing activities and expenses are not included in post-production.

(s) Premature application. "Premature application" means an initial application in which the Office reasonably determines that the applicant cannot commence principal and ongoing photography within ninety (90) days of the date the initial application was submitted. Such determination may, but is not required to, be based on, among other things, vagueness of the applicant's answers on the initial application and during the initial interview and lack of documentation supporting an applicant's initial application.

(t) Principal and ongoing photography. "Principal and ongoing photography" means the filming of major and significant portions of a qualified film that involves the lead actors.

(u) Production costs. "Production costs" means any costs for tangible property used and services performed directly and predominantly (including pre-production and post-production) in the production of a qualified film. Production costs shall not include (i) costs for a story, script or scenario to be used for a qualified film and (ii) wages or salaries or other compensation for writers, directors, including music directors, producers, actors and performers (other than background actors or other performers with no scripted lines). Production costs generally include technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing and meals.

(v) Qualified film. "Qualified film" means a feature-length film, television film, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot or episode is created or conveyed. Qualified film shall not include (i) a documentary film, news or current affairs program, interview or talk program, magazine program, variety or skit program, "how-to" (i.e., instructional) film or program, film or program consisting primarily of stock footage, sporting event or sporting program, game show, award ceremony, film or program intended primarily for industrial, corporate or institutional end-users, fundraising film or program, daytime drama (i.e., daytime "soap opera"), commercials, music videos or "reality" program or (ii) a production for which records are required under §2257 of Title 18, United States Code, to be maintained with respect to any performer in such production (reporting of books, films, etc. with respect to sexually explicit conduct).

(w) Qualified film production company. "Qualified film production company" means a corporation, partnership, limited partnership, or other entity or individual which or who is principally engaged in the production of a qualified film and controls the qualified film during production and is responsible for payment of the direct production expenses (including pre and post-production) and is a signatory to the qualified film's contracts with its payroll company and facility operators.

(x) Qualified film production facility. "Qualified film production facility" means a film production facility in New York City, which contains at least one sound stage having a minimum of seven thousand square feet of contiguous production space.

(y) Qualified production costs. "Qualified production costs" means production costs only to the extent such costs are incurred directly in New York City and are attributable to the use of tangible property or the performance of services within New York City directly and predominantly in the production (including pre-production and post-production) of a qualified film.

(z) Sound stage. "Sound stage" means a large interior room or space which provides a controlled environment in which filming takes place on sets built or assembled specifically for the production.

(aa) Television film. "Television film", which may also be known as "movie-of-the-week," "mow," "made for television movie," or "mini-series," means a production intended for broadcast on television, whether free or via a subscription-based service, that has a running time of at least ninety (90) minutes in length (inclusive of commercial advertisement and interstitial programming).

(bb) Television pilot. "Television pilot" means the initial episode produced for a proposed episodic television series. This category will include shorter formats which are known as "television presentation," a production of at least fifteen (15) minutes in length, produced for the purposes of selling a proposed television series, but not intended for broadcast.

(cc) Television series. "Television series", which may also be known as "episodic television series," means a regularly occurring production intended in its initial run for broadcast no more than once weekly, on television, whether free or via subscription-based service, that has a running time of at least thirty (30) minutes in length (inclusive of commercial advertisement and interstitial programming).

HISTORICAL NOTE

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

Subd. (a) amended City Record Sept. 22, 2006 §2, eff. Oct. 22, 2006. [See Note 1]

Subd. (h) amended City Record Sept. 22, 2006 §2, eff. Oct. 22, 2006. [See Note 1]

Subd. (q) amended City Record Sept. 22, 2006 §2, eff. Oct. 22, 2006. [See Note 1]

Subd. (s) amended City Record Sept. 22, 2006 §2, eff. Oct. 22, 2006. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 22, 2006:

These rules are promulgated in accordance with recent State and local law amendments to the "Made In New York Film Production Tax Credit" program. State legislation enacted in 2004 had provided for State tax credits under the new "Empire State Film Production Tax Credit" program, and authorized New York City to establish such a program by local law with respect to local tax credits, which was accomplished by the passage of Local Law No. 2 of 2005. Both such laws were recently amended by the State Legislature (Chapter 62 of the Laws of 2006) and the City Council (Local Law No. 24 of 2006), resulting in an extension of the program through 2011, pursuant to which funds have been increased to support the State and City tax credits through that year.

Local Law No. 24 of 2006 requires that the Mayor's Office of Film, Theatre & Broadcasting ("MOFTB") amend the rules previously promulgated (effective June 12, 2005) with respect to procedures for the allocation of tax credits allowed under the Administrative Code. In the time since the original rules were promulgated, MOFTB has gained considerable experience administering the program and has determined that changes should be made to certain of these procedures.

Specifically, the rule changes set forth herein decrease the time period applicable to submissions for film production tax credits, shortening the period of time from 180 to 90 days, within which principal and ongoing photography must be commenced. Failure to meet such deadlines will result in the postponement of the application's effective date to a date 90 days prior to such date of actual commencement.

Moreover, under these changes the failure to commence the principal and ongoing photography within 180 days of the date of submission of the application will render the application invalid. An application will now be deemed premature if it is submitted more than 90 prior to the commencement of the principal and ongoing photography. Final applications for the film production tax credits must be submitted within 90 (formerly 60) days after completion of the production. Applicants will be permitted to file a written request to extend such 90-day period to 150 days after completion of production.

The rules incorporate a new criterion for evaluating applications: whether an applicant agrees to include the MOFTB "Made In New York" logo in the screen credits of the qualified film, indicating receipt of the tax credit.

A new §7-09, "Applicability", provides that these new rules do not apply to initial or final applications submitted prior to the effective date of the amendments, with the exception of the amendments made to §7-05 which refer to the funds allocated to the film production tax credit program as provided by law.

Finally, the rules contain technical amendments that reference the enactment of the 2006 State legislation and the subsequent local law that was signed by the Mayor in July, 2006.

FOOTNOTES

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[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the

Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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43 RCNY 7-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-03 Application Process.

For the purposes of this Chapter, only an authorized applicant shall be eligible to apply for the New York City Made In New York film production tax credit.

(a) **Initial application.**

(1) An authorized applicant shall submit an initial application to the Office prior to the start of principal and ongoing photography.

(2) The authorized applicant shall have an interview with the Office to discuss the details of the initial application. A producer and either the line producer, unit production manager, production accountant or their designee, approved by the Office, shall attend such meeting.

(3) The Office shall approve or disapprove the initial application based upon criteria set forth in §7-06(a) of these rules.

(4) If the initial application is approved, the Office shall issue a certificate of conditional eligibility to the authorized applicant. The Office shall provide a copy of such certificate of conditional eligibility to the Department of Finance. If the initial application is disapproved, the Office shall provide the authorized applicant with a notice of disapproval which shall state the reasons therefor. Such disapproval shall be a rejection of the authorized applicant's initial application. If the initial application is disapproved as premature, an authorized applicant may resubmit the application.

(5) Applications shall be reviewed by the Office in the order they are received.

(b) **Notification.** The approved applicant shall notify the Office, in writing, on the date principal and ongoing photography begins on the qualified film. In addition, the approved applicant shall provide a sign off budget or its equivalent and other supporting documents requested by the Office on this date.

(c) **Final application.**

(1) Within ninety (90) days after the completion of production of a qualified film, or, if a written extension request is submitted, one hundred fifty (150) days after the completion of production, the approved applicant shall submit a final application to the Office.

(2) The Office shall approve or disapprove the final application based upon criteria set forth in §7-06(b) of this chapter. The Office may request additional documentation, including copies of receipts of qualified production costs, in connection with its consideration of the final application. If the final application is approved, the Office shall issue a certificate of tax credit to the approved applicant. The Office shall provide a copy of such certificate of tax credit to the Department of Finance. If the final application is disapproved, the Office shall provide the applicant with a notice of disapproval which shall state the reasons therefor. Such disapproval shall be a rejection of the applicant's final application.

HISTORICAL NOTE

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

Subd. (c) par (1) amended City Record Sept. 22, 2006 §3, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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43 RCNY 7-04

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-04 Reserved.

FOOTNOTES

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[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-05 Allocation of New York City Made In New York Film Production Tax Credit.

The Office shall allocate the amount of the credits allocated for each calendar year in order of priority based upon an applicant's effective date. In the event that an approved applicant's New York City Made In New York production tax credit would exceed the maximum amount of credits allowed for that given year, the approved applicant will be allocated credits on a priority basis in the immediately succeeding calendar year. A maximum of $12.5 million of credits may be allocated in 2004 and 2005, and $30 million in 2006 through 2011.

HISTORICAL NOTE

Section amended (catchline not laid out, erroneous (a) designation deleted) City Record Sept. 22, 2006

§4, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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43 RCNY 7-06

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CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-06 Criteria for Evaluation of Applications.

(a) **Initial application.** In the event that any of the following criteria are not met, or in the event that the Office concludes that the authorized applicant knowingly submitted false or misleading information, the Office shall disapprove the initial application:

(1) the application is substantially complete;

(2) the application is not premature and is submitted prior to the start of principal and ongoing photography;

(3) the application is submitted within one hundred eighty (180) days of the start of the principal and ongoing photography;

(4) the authorized applicant is a qualified film production company;

(5) the authorized applicant intends to shoot a portion of principal and ongoing photography on a stage at a qualified film production facility on a set or sets;

(6) the authorized applicant is planning to produce a qualified film;

(7) the qualified film will be completed on or after January 1, 2005, within the meaning of subdivision (c) of §7-01 of these rules;

(8) the authorized applicant's projected qualified production costs (excluding post-production costs) paid or

incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of a qualified film are likely to equal or exceed seventy-five percent of the projected production costs (excluding post-production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the City in the production of the qualified film; and

(9) in the event that the projected qualified production costs (excluding post-production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of a qualified film are less than three million dollars, the shooting days spent in New York outside of a film production facility in the production of a qualified film are expected to equal or exceed seventy-five percent of the total shooting days spent within and without New York outside of a film production facility in the production of such qualified film.

(b) **Final application.** In the event that any of the following criteria are not met, or the Office determines that the approved applicant knowingly submitted false or misleading information, the Office shall disapprove the final application:

(1) the application is substantially complete;

(2) the approved applicant shot a portion of principal and ongoing photography on a stage at a qualified film production facility on a set or sets;

(3) the application is submitted with respect to a completed qualified film that was completed on or after January 1, 2005, within the meaning of subdivision (c) of §7-01 of these rules;

(4) the approved applicant's actual date of completion of production of the qualified film was within one year of its projected completion date;

(5) the final application was submitted within ninety (90) days after the completion of production of a qualified film, or, if a written extension request has been submitted, one hundred fifty (150) days after the completion of production;

(6) the approved applicant's actual qualified production costs paid or incurred (excluding post-production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of the qualified film equaled or exceeded seventy-five percent of the production costs (excluding post-production costs) paid or incurred that were attributable to the use of tangible property or the performance of services at any film production facility within and without the City in the production of the qualified film; and

(7) in the event that the actual qualified production costs (excluding post-production costs) paid or incurred that are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of a qualified film are less than three million dollars, the shooting days spent in New York outside of a film production facility in the production of a qualified film equaled or exceeded seventy five percent of the total shooting days spent within and without New York outside of a film production facility in the production of such qualified film. If the shooting days spent in New York equaled or exceeded the seventy five percent threshold, the Office shall include in their calculation of the New York City Made In New York film production tax credit the portion of qualified production costs attributable to the use of tangible property or the performance of services in the production of a qualified film outside of a qualified film production facility.

(c) For purposes of this section, the Office may consider whether an authorized applicant executes or has executed an agreement with the Office that obligates the authorized applicant to include the Office's "Made In New York" logo in the screen credits of the qualified film indicating receipt of the tax credit.

HISTORICAL NOTE

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

Subd. (a) par (3) added City Record Sept. 22, 2006 §5, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (a) par (4) renumb. (former par (3)) City Record Sept. 22, 2006 §6, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (a) par (5) renumb. (former par (4)) City Record Sept. 22, 2006 §6, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (a) par (6) renumb. (former par (5)) City Record Sept. 22, 2006 §6, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (a) par (7) renumb. (former par (6)) City Record Sept. 22, 2006 §6, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (a) par (8) renumb. (former par (7)) City Record Sept. 22, 2006 §6, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (a) par (9) renumb. (former par (8)) City Record Sept. 22, 2006 §6, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (b) par (5) amended City Record Sept. 22, 2006 §7, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (c) added City Record Sept. 22, 2006 §8, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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43 RCNY 7-07

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CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-07 Record Retention.

Each authorized and approved applicant must maintain records, in paper or electronic form, of any qualified productions costs used to calculate its potential or actual benefit(s) under this program for a minimum of three years from the date of filing of the tax return on which the applicant claims the tax credit. The Office shall have the right to request such records upon reasonable notice.

HISTORICAL NOTE

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process,

due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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43 RCNY 7-08

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CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-08 Appeal Process.

If the authorized applicant's initial application or an approved applicant's final application is disapproved by the Office, or if the approved applicant disagrees with the amount of the tax credit granted by the Office, the applicant may appeal such determination. In the case of an appeal from a disapproval of an initial or final application, such appeal shall be made by sending a letter to the City of New York Mayor's Office of Film, Theatre and Broadcasting, Attn: Commissioner, 1697 Broadway, New York, NY 10019, within thirty (30) days from the date of the denial letter issued by the Office. In the case of an appeal from a determination of the amount of the tax credit, such appeal shall be made by sending a letter to the same address as listed above within thirty (30) days from the date of issuance of the certificate of tax credit. Failure to request an appeal within thirty (30) days will finalize the denial decision and/or the amount of the tax credit.

Upon receipt of a timely letter of appeal, the Commissioner will appoint an appeal officer within the Office to review. Such appeal officer will make a report on the appeal to the Commissioner. The Commissioner or his designee shall issue a final order within sixty (60) days of the report. A copy of the final order will be issued to the appellant within ten (10) days after the date the Commissioner or his designee renders the final order.

HISTORICAL NOTE

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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43 RCNY 7-09

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Title 43 Mayor

CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-09 Applicability.

The amendments made by the rules that added this section shall not apply to initial or final applications submitted prior to the effective date of such amendments, with the exception of the amendments made to §7-05 of this chapter by §4 of such rules.

HISTORICAL NOTE

Section added City Record Sept. 22, 2006 §9, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to

taxpayers to substantiate the amount of tax credits allocated to them.

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43 RCNY 8-01

RULES OF THE CITY OF NEW YORK

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CHAPTER 8 PREMIERE PERMITS AND FEES*1

§8-01 Premiere Permits Relating to Certain Entertainment Events.

The Mayor's Office of Film, Theatre & Broadcasting ("MOFTB") shall issue Premiere Permits in connection with certain entertainment events held in New York City. These include special events associated with movie premieres, theatre openings, and other similar events held with respect to films, television commercials and radio productions. Premiere Permits for such events may, at the discretion of the Commissioner of MOFTB and, as indicated below, be issued to individuals or commercial entities.

HISTORICAL NOTE

Section amended City Record July 20, 2009 §1, eff. Aug. 19, 2009. [See Note 2]

Section added City Record June 10, 2005 eff. July 10, 2005. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 10, 2005:

This rule implements a decision to transfer certain of the functions that are currently administered by the Community Assistance Unit's ("CAU") Street Activity Permit Office ("SAPO"). It would add a new Chapter to Title 8 to Title 43 to authorize the Mayor's Office of Film, Theater and Broadcasting ("MOFTB"), in conjunction with CAU, to issue permits for special events that are held in New York City in the entertainment field. These include special events held in connection with movie premieres, theatre openings, and other events held with respect to films, television

commercials and radio.

Because MOFTB has been, for almost forty years, the office providing one-stop clearance and permit operations for film and television productions in the City, it is logical that MOFTB have a significant administrative role in this permitting function. Moreover, a primary mission of MOFTB is to attract business for the City in the entertainment industry, and thus as that industry's primary liaison to the City, this permitting function supports such mission.

The MOFTB received comments from other City agencies regarding the rule published for comment, which are now reflected in the text set forth above. The significant changes are as follows:

- The permit is to be denominated a Premiere Permit.

- In summary, the application process will be as follows: permit applications will be submitted to MOFTB, which will forward them to CAU. CAU will consult with the City agencies that might be affected by the activity, consider information submitted by such agencies and conduct any requisite discussions to resolve any outstanding issues. CAU will then provide its recommendation regarding the permit. MOFTB may thereafter issue the permit to the applicant and collect the requisite fee. However, such approval may not be inconsistent with CAU's recommendation.

2. Statement of Basis and Purpose in City Record July 20, 2009: This amendment constitutes revisions to Chapter 8 of Title 43, the rule promulgated in 2005 to implement the decision to transfer certain of the functions that had been administered by the Community Assistance Unit's ("CAU") Street Activity Permit Office ("SAPO") to the Mayor's Office of Film, Theatre and Broadcasting ("MOFTB"). These amendments to Chapter 8 include definitions, the addition of categories, and amendments to the fee schedule for certain Premiere Permits that are issued for special events held in connection with movie premieres, theatre openings, and other entertainment-related events held with respect to the film, television commercial, and radio industries. The amendments also acknowledge the role of the recently created Office of Citywide Events Coordination and Management ("CECM") in permitting activities of the City. The rule was initially published for comment in the **City Record** on November 14, 2008. Although no comments from the public were received prior to or at the hearing (held on December 15, 2008), MOFTB received comments from other City agencies regarding the proposal, and has thus revised its proposal to provide additional detail concerning the regulatory framework for issuance of such premiere permits with an approach that is more consistent with rules recently promulgated by CECM. Section 8-02 is a new section that defines events according to their size in two primary ways: first, according to the number of people who are likely to attend such event, a number that is predictable because the majority of such events are by invitation; and second, according to the level of impact on the community, traffic, and need for coordination among City agencies. As indicated in the publication on November 14, 2008, the amended rule contains increased fees, which are set forth in a new § 8-03: for large events, from up to $5,000.00 to $14,000; for medium events, from up to $3,100.00 to $5,000.00; and for small events, from up to $1,750.00 to $2,750.00. Two new permit categories are added: first, "extra small events", the fees for which will be $450.00; and second, "extra large events", the fees for which will be $24,000.00. The section addressing processing of premiere permits, now § 8-04, is revised to provide that CECM is involved in the approval process, in the former role that CAU played. In accordance with this Premiere Permit program administered since 2005, MOFTB is authorized to impose fees and conditions necessary to protect the interests of the City, the entertainment industry and the general public. After four years of experience in administering this permit program, MOFTB has developed expertise in assessing the extent to which such events require additional police presence involving increased overtime expenditures by the City. In order to effectively deploy such police and other City resources, MOFTB has exercised its discretion to approve permits for these "red carpet" events in accordance with a fee scale for such commercial entertainment events based on the cost the City incurs to process the permit application and ensure the safety of the event. Moreover, MOFTB has received feedback from other agencies regarding the need to create additional categories of permits to address the variety of the size and scope of these entertainment-related activities that are regulated by permits under Chapter 8, as well as the need to ensure that existing fees accurately reflect the high cost of overseeing the activities that are covered by such permits. The fee scale was created by analyzing the administrative and manpower costs incurred by the MOFTB, the NYPD and other agencies that work directly with MOFTB to review, evaluate and approve or deny an application and to oversee the

permitted activities. Establishment of the amended fee scale also ensures that event organizers will evaluate the components of the event prior to application submission to make certain that there will be sufficient City resources to cover the activities contemplated by the permit.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record July 20 2009 §1, eff. Aug. 19, 2009. [See §8-01 Note 2]; chapter added City Record June 10, 2005 eff. July 10, 2005 eff. July 10, 2005. [See §8-01 Note 1]

This rule implements a decision to transfer certain of the functions that are currently administered by the Community Assistance Unit's ("CAU") Street Activity Permit Office ("SAPO"). It would add a new Chapter 8 to Title 43 to authorize the Mayor's Office of Film, Theater and Broadcasting ("MOFTB"), in conjunction with CAU, to issue permits for special events that are held in New York City in the entertainment field. These include special events held in connection with movie premieres, theatre openings, and other events held with respect to films, television commercials and radio.

Because MOFTB has been, for almost forty years, the office providing one-stop clearance and permit operations for film and television productions in the City, it is logical that MOFTB have a significant administrative role in this permitting function. Moreover, a primary mission of MOFTB is to attract business for the City in the entertainment industry, and thus as that industry's primary liaison to the City, this permitting function supports such mission.

The MOFTB received comments from other City agencies regarding the rule published for comment, which are now reflected in the text set forth above. The significant changes are as follows:

- The permit is to be denominated a Premiere Permit.

- In summary, the application process will be as follows: permit applications will be submitted to MOFTB, which will forward them to CAU. CAU will consult with the City agencies that might be affected by the activity, consider information submitted by such agencies and conduct any requisite discussions to resolve any outstanding issues. CAU will then provide its recommendation regarding the permit. MOFTB may thereafter issue the permit to the applicant and collect the requisite fee. However, such approval may not be inconsistent with CAU's recommendation.

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43 RCNY 8-02

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CHAPTER 8 PREMIERE PERMITS AND FEES*1

§8-02 Definitions.

For purposes of this chapter, the following terms shall have the following meanings:

(a) Sponsor or applicant. "Sponsor" or "applicant" shall mean the individual or commercial entity named in an application for a Premiere Permit, which application shall be submitted on forms prescribed by the Commissioner of MOFTB.

(b) Extra large event. "Extra large event" shall mean an event (1) for which there is an anticipated attendance of 5,000 or more people; and (2) that has an extensive impact on the surrounding community and/or on vehicular/pedestrian traffic, in that they include obstructions or structures such as any temporary platforms, bleachers, reviewing stands, outdoor bandstands or similar structures, or tents or canopies that require a Department of Buildings permit. This may involve, but is not limited to, significant coordination by other City agencies, including permitting agencies; a large and/or complicated permitting role by the Department of Buildings; full closure of streets and/or sidewalks; and extensive coordination between MOFTB, the Office of Citywide Events Coordination and Management ("CECM"), the Police Department, the Fire Department, and other City agencies as appropriate.

(c) Large event. "Large event" shall mean an event (1) for which there is an anticipated attendance of fewer than 5,000 people; and (2) that has an extensive impact on the surrounding community and/or on vehicular/pedestrian traffic, in that they include obstructions or structures such as any temporary platforms, bleachers, reviewing stands, outdoor bandstands or similar structures, or tents or canopies that require a Department of Buildings permit. This may involve, but is not limited to, coordination by other City agencies, including permitting agencies; full closure of streets and/or sidewalks; and coordination between MOFTB, CECM, and other City agencies as appropriate.

(d) Medium event. "Medium event" shall mean an event (1) for which there is an anticipated attendance of fewer than 1,500 people; and (2) that has an impact on pedestrian and/or vehicular traffic, and may include the presence of an obstruction such as a press riser, stage, table or other structure. Such events require coordination between MOFTB, CECM, the Police Department, and the Department of Transportation, but would require minimal involvement of the Department of Buildings or the Fire Department.

(e) Small event. "Small event" shall mean an event (1) for which there is an anticipated attendance of fewer than 1,000 people; and (2) that occupies a period of time that does not exceed four hours and has moderate impact on pedestrian and/or vehicular traffic. Such events require some degree of coordination between MOFTB, the Department of Transportation and the Police Department.

(f) Extra small event. "Extra small event" shall mean an event (1) for which there is an anticipated attendance of fewer than 500 people; and (2) that occupies a period of time that does not exceed four hours and has low or no impact on pedestrian and/or vehicular traffic. Such events require little or no coordination between MOFTB and other City agencies.

HISTORICAL NOTE

Section added City Record July 20, 2009 §1, eff. Aug. 19, 2009. [See §8-01 Note 2]

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record July 20 2009 §1, eff. Aug. 19, 2009. [See §8-01 Note 2]; chapter added City Record June 10, 2005 eff. July 10, 2005 eff. July 10, 2005. [See §8-01 Note 1]

This rule implements a decision to transfer certain of the functions that are currently administered by the Community Assistance Unit's ("CAU") Street Activity Permit Office ("SAPO"). It would add a new Chapter 8 to Title 43 to authorize the Mayor's Office of Film, Theater and Broadcasting ("MOFTB"), in conjunction with CAU, to issue permits for special events that are held in New York City in the entertainment field. These include special events held in connection with movie premieres, theatre openings, and other events held with respect to films, television commercials and radio.

Because MOFTB has been, for almost forty years, the office providing one-stop clearance and permit operations for film and television productions in the City, it is logical that MOFTB have a significant administrative role in this permitting function. Moreover, a primary mission of MOFTB is to attract business for the City in the entertainment industry, and thus as that industry's primary liaison to the City, this permitting function supports such mission.

The MOFTB received comments from other City agencies regarding the rule published for comment, which are now reflected in the text set forth above. The significant changes are as follows:

- The permit is to be denominated a Premiere Permit.

- In summary, the application process will be as follows: permit applications will be submitted to MOFTB, which will forward them to CAU. CAU will consult with the City agencies that might be affected by the activity, consider information submitted by such agencies and conduct any requisite discussions to resolve any outstanding issues. CAU will then provide its recommendation regarding the permit. MOFTB may thereafter issue the permit to the applicant and collect the requisite fee. However, such approval may not be inconsistent

with CAU's recommendation.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 8-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 8 PREMIERE PERMITS AND FEES*1

§8-03 Fees.

(a) MOFTB shall determine which fee category is appropriate for a proposed event. Fees are based on the City resources required as determined by the anticipated attendance at events to be held, and permits will authorize activities including, for example, the placement of a "red carpet", the setting aside of a "limousine lane", or the siting of a tent or other structure. Fees shall be paid in the form of a certified check or money order made payable to "New York City Department of Finance" or, if available as a payment method, through the use of a credit or debit card. Fees shall be non-refundable, and payment shall accompany each application for a Premiere Permit as follows:

(1) For an extra large event: $24,000.00.

(2) For a large event: $14,000.00.

(3) For a medium event: $5,000.00.

(4) For a small event: $2,750.00.

(5) For an extra small event: $450.00.

(b) Each fee described in subdivision (a) of this section includes permission to use the following:

(1) One curb lane closure.

(2) One red carpet.

(3) One press pen.

(4) One generator.

(5) One klieg light.

(6) One tent (10 feet by 20 feet).

HISTORICAL NOTE

Section redesignated and amended (former §8-02) City Record July 20, 2009 §1, eff. Aug. 19, 2009.

[See §8-01 Note 2]

Section added City Record June 10, 2005 eff. July 10, 2005. [See §8-01 Note 1]

FOOTNOTES

1

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***** Current through December 2009 ****

43 RCNY 8-04

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 8 PREMIERE PERMITS AND FEES*1

§8-04 Processing of Premiere Permits.

(a) Applications for Premiere Permits shall be submitted to the MOFTB no later than fourteen (14) days prior to the date of the event. Upon receipt of an application, MOFTB shall forward it to CECM, which shall notify and consult, as appropriate, with the Police Department, the Fire Department, the Department of Transportation, and the Department of Sanitation. CECM shall consider information, if any, submitted by any of the foregoing agencies in connection with such notification and shall attempt to resolve any issues in connection with the issuing of a permit.

(b) CECM shall review the Premiere Permit to determine if there are conflicting scheduled activities. Where such exist, CECM shall make recommendations regarding ways to resolve them, and shall forward such recommendations to MOFTB. Prior to issuing a Premiere Permit, MOFTB and CECM shall have resolved any outstanding scheduling issues.

(c) At any time during the review of an application for a Premiere Permit, the applicant or sponsor may be required to submit such additional information as is deemed necessary, during evaluation of the application or the particular facts surrounding the proposed event that is the subject of the permit request.

(d) MOFTB shall have the authority to deny an application, to condition the approval of an application, or to revoke a Premiere Permit, based on the past or present failure of the applicant or sponsor

(1) to make payment of the application fee; or

(2) to present proof that all necessary and proper licenses, permits or authorizations have been received; or

(3) to comply with applicable laws or rules; or

(4) to comply with a condition imposed on a permit issued previously to the applicant or sponsor.

(e) CECM shall have the authority to recommend denial of an application, the conditioning of approval of an application, or revocation of a Premiere Permit on any or all of the following grounds:

(1) any of the City or other government agencies which were notified of the Premiere Permit application had reason to raise objections regarding the permit request; or

(2) the proposed activity, when considered in conjunction with other proposed activities, would produce an excessive burden on the community, City services or City personnel; or

(3) approval of the application is not in the best interest of the community, the City or the general public for reasons that may include, but are not limited to, honesty, integrity or financial responsibility of the sponsor.

(f) Upon completing its review of a Premiere Permit application, CECM shall indicate its recommendation on the MOFTB permit application and shall return such form to MOFTB.

(g) Permits received pursuant to this section shall be non-transferable.

HISTORICAL NOTE

Section redesignated and amended (former §8-03) City Record July 20, 2009 §1, eff. Aug. 19, 2009.

[See Note 2]

Section added City Record June 10, 2005 eff. July 10, 2005. [See Note 1]

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 9-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 9 PERMITS ISSUED BY MAYOR'S OFFICE OF FILM, THEATRE AND BROADCASTING*1

§9-01 Permits for Scouting, Rigging and Production Activities.

(a) **Scope of Rules**. The Mayor's Office of Film Theatre and Broadcasting ("MOFTB") shall issue permits in connection with filming, including but not limited to the taking of motion pictures; the taking of photographs; the use and operation of television cameras, transmitting television equipment, or radio remotes in or about city property; load-ins or load-outs supporting indoor performances; or such activities in or about any street, park, marginal street, pier, wharf, dock, bridge or tunnel within the jurisdiction of any City department or agency, or involving the use of any City owned or maintained facilities or equipment. As defined herein, MOFTB will issue permits for scouting, rigging and shooting activities. Obtaining such a permit does not obviate the need to comply with other applicable laws, rules or case law also governing such activity.

(b) **Required and Optional Permits.** Unless a permit is designated in these rules as an "Optional Permit", the use of the term "permit" herein shall be deemed to be a "Required Permit".

(1) Required Permits.

a. The following activities require that a permit be obtained pursuant to this chapter: (i) Filming, photography, production, television or radio remotes occurring on City property, as described in subdivision (a) of this section, that uses vehicles or equipment.

(ii) Filming, photography, production, television or radio remotes occurring on City property, as described in subdivision (a) of this section, (A) if such activity involves the assertion by any means, including physical or verbal, of exclusive use of one or more lanes of a street or walkway of a bridge or (B) if such activity involves the assertion by

any means, including physical or verbal, of exclusive use of more than one-half of a sidewalk or other pedestrian passageway or, in a situation in which the sidewalk or pedestrian passageway is narrower than sixteen feet, if such activity involves the assertion by any means, including physical or verbal, of exclusive use of the sidewalk or pedestrian passageway such that less than eight feet is otherwise available for pedestrian use.

For purposes of this subparagraph, standing on a street, walkway of a bridge, sidewalk, or other pedestrian passageway while using a handheld device and not otherwise asserting exclusive use by any means, including physical or verbal, is not activity that requires a permit.

b. The following activities do not require that a permit be obtained pursuant to this chapter:

(i) Filming, photography, production, television or radio remotes occurring on City property, as described in subdivision (a) of this section, involving the use of handheld devices as defined in paragraph three of subdivision (a) of §9-02, (A) if such activity does not involve the assertion by any means, including physical or verbal, of exclusive use of one or more lanes of a street or walkway of a bridge or (B) if such activity does not involve the assertion by any means, including physical or verbal, of exclusive use of more than one-half of a sidewalk or other pedestrian passageway or, in a situation in which the sidewalk or pedestrian passageway is narrower than sixteen feet, does not involve the assertion by any means, including physical or verbal, of exclusive use of the sidewalk or pedestrian passageway such that less than eight feet is otherwise available for pedestrian use.

For purposes of this subparagraph, standing on a street, walkway of a bridge, sidewalk, or other pedestrian passageway while using a handheld device and not otherwise asserting exclusive use by any means, including physical or verbal, is not activity that requires a permit.

(ii) Filming or photography of a parade, rally, protest, or demonstration except when using vehicles or equipment.

(2) Optional Permits: Persons who are engaged in filming or still photography and are not otherwise required to obtain a permit pursuant to paragraph (1) of subdivision (b) of this section may be issued an Optional Permit.

a. Persons requesting such an Optional Permit shall provide accurate information concerning their postal address and, if available, e-mail address, telephone number and fax number; and accurate information as to the location(s) of such activities, the date(s) and time(s) during which such activities are proposed to take place.

b. MOFTB shall process Optional Permit requests in accordance with the provisions of paragraphs four, five, six, seven, eight, nine and ten of subdivision (b) of §9-02 of these rules.

(c) **Press passes.** The use of a press pass issued by the New York City Police Department ("NYPD") in accordance with Chapter 11 of Title 38 of the Rules of the City of New York ("Press Credentials"), where an individual is acting in furtherance of the activity authorized by such press pass, and is engaged in filming as defined in these rules, does not require that a permit be obtained pursuant to this chapter.

(d) **Authorization from other agencies:** Notwithstanding the provisions of subdivision (a) of this section, scouting, rigging or shooting activities within City parks or the interiors of City buildings, bridges or tunnels require, if applicable, separate authorization from the City agency with jurisdiction over the location. The use of certain items or activities, including but not limited to animals, firearms (actual or simulated), special effects, pyrotechnics, police uniforms, police vehicles, driving shots with tow or camera rigs, and conditions that require holding of traffic may require authorization and/or assistance from the relevant government agency.

HISTORICAL NOTE

Section added City Record July 14, 2008 §1, eff. Aug. 13, 2008. [See §9-03 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 2008 §1, eff. Aug. 13, 2008. [See 9-03 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 9-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 9 PERMITS ISSUED BY MAYOR'S OFFICE OF FILM, THEATRE AND BROADCASTING*1

§9-02 Processing of Permit Applications.

(a) **Definitions.** For purposes of this chapter, the following terms shall have the following meanings:

(1) "Equipment" shall include, but is not limited to, television, photographic, film or videocameras or transmitting television equipment, including radio remotes, props, sets, lights, electric and grip equipment, dolly tracks, screens, or microphone devices, and any and all production related materials. "Equipment" shall not include (a) "hand-held devices," as defined in paragraph (3) of this subdivision, and (b) vehicles, as defined in section one hundred fifty-nine of the New York vehicle and traffic law, that are used solely to transport a person or persons while engaged in the activity of filming or photography from within such vehicle, operated in compliance with relevant traffic laws and rules.

(2) "Filming" shall mean the taking of motion pictures, the taking of still photography or the use and operation of television cameras or transmitting television equipment, including radio remotes and any preparatory activity associated therewith, and shall include events that include, but are not limited to, the making of feature or documentary films, television serials, webcasts, simulcasts or specials.

(3) "Hand-held devices" shall mean (a) film, still or television cameras, videocameras or other equipment which are held in the photographer's or filmmaker's hand and carried at all times with the photographer or filmmaker during the course of filming, or (b) tripods used to support film, still, television cameras or videocameras. Hand-held devices shall not include cables or any other item or equipment not carried by the photographer or filmmaker at all times during the course of photography, filming or transmission.

(4) "New Project Account application" shall mean a request submitted on an MOFTB form by an applicant

indicating that the applicant intends to request one or more permits for scouting, rigging and/or shooting activities.

(5) "Photography" shall mean the taking of moving or still images.

(6) "Pre-permit reserve" shall mean the designation by MOFTB, at the request of a permit applicant, of a location(s) where the applicant intends to conduct rigging or shooting activities.

(7) "Rigging/de-rigging" shall mean the loading in or loading out, loading or unloading, of any shooting or production related equipment, including but not limited to props, sets, electric and grip equipment, at any location, time and date where film or theatrical production is not occurring.

(8) "Same date" shall mean the same actual calendar date (numerical date and month) or the same day of the same week in a given month, as relevant. For example, "same date" shall encompass the date July 11 as well as the second Sunday in the month of July, as relevant.

(9) "Same location" shall mean the location identified in the rigging permit or the filming permit application.

(10) "Scouting" shall mean the act of viewing, assessing and photographing locations for filming or photography during pre-production or production for, including, but not limited to, still photography, feature films, television series, mini-series or specials.

(11) "Shooting" shall include (a) filming interiors or exteriors, and (b) theatrical productions whose performances are presented indoors.

(b) **New Project Account application and Permit application for scouting, rigging and/or shooting activities.**

(1) The following two steps shall be taken to obtain a scouting, rigging, and/or shooting permit:

a. Submission of a New Project Account application to MOFTB.

b. At the same time, or some time thereafter, an applicant shall seek a scouting, rigging, and/or shooting permit.

(2) New Project Account Application contents. Applicants shall complete an application, on a form prescribed by MOFTB, which shall contain detailed identifying information about the applicant and the project. In completing such form, applications shall provide the information set forth below.

a. A postal address (but not a post office box) and, if available, an e-mail address, a telephone number and a facsimile number for purposes of receiving notification from MOFTB.

b. Valid photo identification of the applicant or, if the applicant is not a natural person, a valid photo identification of the natural person authorized by the applicant to act on its behalf in connection with the application.

c. If known at the time of the application, the dates and times of scouting, rigging or shooting and location of such activity, and any special circumstances including, but not limited to, information regarding whether the activity involves special parking requests, traffic control issues or special effects.

d. Film school students shall provide a letter from the student's school confirming insurance coverage, and the student's current enrollment, subject to the provisions of §9-03.

(3) Scouting, Rigging and/or Shooting Permit Applications. When applicants submit a scouting, rigging and/or shooting permit application, on a form prescribed by MOFTB, they shall:

a. identify the date(s), time(s) and location(s) of such activity;

b. identify any special circumstances including, but not limited to, information regarding whether the activity involves special parking requests, traffic control issues or special effects;

c. for applicants requesting a scouting permit, provide a letter from the applicant's producing/financing entity verifying the project by name and identifying the natural person(s) on-site who will be performing scouting activities on behalf of the applicant;

d. for applicants requesting a scouting permit, provide documents of incorporation, financing documents for the project or grant or foundation award letter.

(4) Processing of Permits. All permit applications will be processed on a "first come, first served" basis. Upon request by an applicant for a Required Permit, MOFTB will place a pre-permit reserve on the location(s) identified in the New Project Account application or the rigging and/or shooting application. An applicant can request such pre-permit reserve no more than three weeks in advance of the activity, but upon a need demonstrated in writing by the applicant, MOFTB may grant a greater period of time. If two or more permit applicants request the same date and the same location, the New Project Account application request that was received first shall be first eligible for approval.

(5) MOFTB shall respond to the applicant with one of the responses enumerated in subparagraphs a through c of paragraph (6) of this section in accordance with the following schedule:

a. for applications filed 45 days or more prior to the date for which such permit is sought, MOFTB shall respond no later than 30 days after the receipt of such applications;

b. for applications filed less than 45 days but more than 15 days prior to the date for which such permit is sought, MOFTB shall respond no later than ten days after the receipt of such applications; or

c. for applications filed 15 days or less prior to the date for which such permit is sought, MOFTB shall respond as soon as is reasonably practicable.

d. No application may be filed more than sixty days prior to the date of the requested event, unless special circumstances are presented to the commissioner or her designee for approval.

(6) Determination upon review of application. Following receipt of an application, the MOFTB will make one or more of the following determinations:

a. issuance of the particular permit.

b. written notification that more information is needed before MOFTB can make a determination as to a particular permit application.

c. written notification that the particular permit application has been denied and a statement of the reason or reasons pursuant to paragraph (7) of this subdivision for such denial.

(7) Denial of new project account applications or scouting, rigging, and/or shooting permit application. MOFTB may deny a permit if any one or more of the following issues exists:

a. conditions exist that may pose a danger or a threat to participants, onlookers or the general public;

b. the location sought is not suitable because the proposed use cannot reasonably be accommodated in the proposed location;

c. the date and time requested for a particular location is not available because (i) a permit has previously been issued for such date and time, or (ii) the permit request is the subject of a new project account application, as provided

in paragraph (4) of this subdivision, or (iii) another City agency has issued a permit for such date or time;

d. MOFTB has concluded, based on specific information, that the applicant is unlikely to comply with the material terms of the requested permit;

e. use of the location or the proposed activity at the location would otherwise violate any law, ordinance, statute or regulation;

f. use of the location would interfere unreasonably with the operation of City functions.

(8) If the permit has been denied pursuant to subparagraphs a, b, c, e (with respect to location) or f of paragraph (7) of this subdivision, MOFTB shall employ reasonable efforts to offer the applicant suitable alternative locations and/or times and/or dates for the proposed rigging or shooting. If the permit has been denied pursuant to subparagraph d, the MOFTB may consider whether special conditions may be placed or whether additional steps can be taken to address its concern about potential non-compliance.

(9) The denial of a permit shall be in writing and shall contain information about the right to appeal such denial unless the applicant, in its application, authorizes MOFTB to issue an oral determination in connection with the filing of the application. Subsequent to the filing of such application, an applicant may request a written determination upon notifying MOFTB in writing that such applicant now seeks a written determination. Upon receiving such request for a written determination, MOFTB shall respond in accordance with the requirements of paragraph (5) of this subdivision, such time to respond commencing on the date of receipt by MOFTB of the notification.

(10) After a permit application is denied, the applicant may appeal a written determination by written request filed with the appeals officer who may reverse, affirm, or modify the original determination and provide a written explanation of his or her finding.

a. If a permit application is denied more than 30 days prior to the proposed scouting, rigging or shooting, the applicant shall have 10 days from the date that such denial is e-mailed or faxed to the applicant to appeal such denial. MOFTB shall render a decision on such appeal within 10 days of receipt of such appeal.

b. If a permit application is denied more than 10 days and less than 30 days prior to the proposed scouting, rigging or shooting, the applicant shall have 5 days from the date such denial is e-mailed or faxed to the applicant to appeal such denial. MOFTB shall render a decision on such appeal within 5 days of receipt of such appeal.

c. If a permit application is denied 10 days or less prior to the proposed scouting, rigging or shooting, the applicant shall have one day from the date such denial is e-mailed or faxed to the applicant to appeal such denial. MOFTB shall render a decision on such appeal as soon as is reasonably practicable.

(c) **Responsibilities of Holders of Required and Optional Permits.** (1) Rules: All permittees are subject to the rules of MOFTB, the specific terms and conditions of the permit, and all applicable city, state, and federal laws or rules. Nothing herein is intended to authorize activities that are illegal under any applicable city, state or federal law or rule, except that permittees may engage in such conduct as is expressly authorized by the permit issued to them.

(2) Display of permit: All permittees shall have the permit in their possession on location at the time and site of the scouting, rigging or shooting, as well as any other permits required by MOFTB or any other governmental agency, and shall make such permit available for inspection at the request of an employee of the Police Department or other government agency.

(3) Permit restrictions: All permittees shall confine their activities to the locations and times specified on their permit. MOFTB may establish specific guidelines to address conditions that exist at certain designated locations and the use of vehicles and equipment at locations based on, among other considerations, the time of day, weather conditions,

season, location, and day of the week.

(4) Non-transferability: Required Permits and Optional Permits are not transferable.

(5) Clean-up: All permittees are responsible for cleaning and restoring the site after the rigging or shooting. The cost of any City employee time incurred because of a permittee's failure to clean and/or restore the site following the rigging or shooting will be borne by the permittee.

(6) Accidents or injuries: Should there be any injuries, accidents, other health incidents or damage to private or City property at a permitted event, the permittee shall notify MOFTB immediately.

(7) Vehicle Parking: Only vehicles with permits issued by MOFTB will be allowed to park in areas designated for the rigging or shooting activity at the time(s) and location(s) described in the applicable permit.

(8) Dolly track or other equipment: No dolly track or other equipment may be laid across a street or block a fire lane without prior approval of MOFTB and NYPD.

(9) Pyrotechnics: The use of pyrotechnics, fire effects and explosions, including simulated smoke and smoke effects, shall be conducted only upon authorization by the New York City Fire Department and subsequent approval shall be obtained from MOFTB and the NYPD prior to shooting.

(10) Animals: The use of wild animals, as defined in Article 161, §161.02 of the New York City Health Code, shall be used only upon authorization by the Department of Health and Mental Hygiene, and subsequent approval shall be obtained from MOFTB prior to shooting.

(11) Potentially dangerous activities: Conduct or activities associated with rigging or shooting permits which are determined by MOFTB to cause a potential danger to persons or property will be referred by MOFTB for approval by the NYPD or other governmental agency having jurisdiction over such activity. Such activities shall include, but not be limited to, the use of stunts, helicopters, firearms or simulated firearms.

(12) Traffic control: Where a public street is closed in connection with rigging or production activities, a 13.5-foot lane shall be kept open. Such requirement may be waived by MOFTB upon an appropriate showing of need or at the discretion of the NYPD.

(13) Trees and plantings: Trimming, damaging, removing or cutting trees or vegetation on City property is prohibited without the prior approval of the New York City Department of Parks and Recreation.

(14) Street structures: No street signs, lights, postal boxes, parking meters or any other permanent street structure may be removed or altered without the prior approval of the New York City Department of Transportation or other agency charged with maintaining such structures.

(15) Production location access: If determined by MOFTB to be appropriate, permittees shall submit a mitigation plan for minimizing the potential inconvenience to residents and/or businesses caused by rigging or shooting activities.

(16) Food services: There shall be no sit-down catered meals permitted on public streets or sidewalks.

(17) Code of Conduct: MOFTB shall issue a location Code of Conduct that addresses the importance of considerate behavior on the set of all rigging and shooting activities. A copy of the Code of Conduct shall be given to holders of Required and Optional Permits under these rules. The permittee is responsible for providing a copy of the Code of Conduct to the cast and crew of each permitted rigging or shooting activity. Permittees shall be required to encourage participants in the permitted event to act in accordance with such code.

(d) **Modifications to or Suspension of Required or Optional Permit.** (1) If a permittee seeks to modify its

permit, it shall submit an addendum to its original request, which will be governed by the same timetable as provided in paragraph (5) of subdivision (b) of this section.

(2) If MOFTB determines that modifications should be made to the terms or conditions of any permit, or that a permit should be revoked, after notice and opportunity to be heard, MOFTB may do so, based upon reasons set forth in paragraph (7) of subdivision (b) of this section.

(3) If MOFTB revokes any permit prior to the date of the scouting, rigging or shooting, the permittee may appeal the revocation, subject to the time limitations set forth in paragraph (10) of subdivision (b) of this section.

(4) During the course of scouting, rigging or shooting, MOFTB or the NYPD may suspend any permit where public health or safety risks are found or where exigent circumstances warrant such action. Where a suspension lasting longer than six hours occurs, permittees shall be given notice and an opportunity to be heard within ten days after the suspension.

HISTORICAL NOTE

Section added City Record July 14, 2008 §1, eff. Aug. 13, 2008. [See §9-03 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 2008 §1, eff. Aug. 13, 2008. [See 9-03 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 9 PERMITS ISSUED BY MAYOR'S OFFICE OF FILM, THEATRE AND BROADCASTING*1

§9-03 Indemnification and Insurance.

(a) By accepting a permit, a permittee agrees to protect all persons and property from damage, loss or injury arising from any of the operations performed by or on behalf of the permittee, and to indemnify and hold harmless the City, to the fullest extent permitted by law, from all claims, losses and expenses, including attorneys' fees, that may result therefrom. This indemnification requirement does not apply to any person or entity acting with an Optional Permit in accordance with §9-01(b)(2).

(b) Every holder of a Required Permit shall maintain, during the entire course of its operations, liability insurance with a limit of at least one million dollars ($1,000,000) per occurrence. Such insurance shall include a policy endorsement naming the City of New York as an additional insured with coverage at least as broad as provided by Insurance Services Office (ISO) form CG 20 12 (07/98 ed.). The applicant shall provide proof of such insurance prior to the issuance of the permit in the form of an original certificate of insurance signed in ink to which a copy of the required endorsement is attached. For currently enrolled film students, proof of insurance through their school and the student's current attendance shall satisfy this requirement. This insurance requirement does not apply to any person or entity holding an Optional Permit issued in accordance with §9-01(b)(4).

(c) If MOFTB determines, in light of the activity for which a permit is sought, that such activity may increase the potential for injury to individuals and/or damage to property, and that the minimum limit of insurance should be higher than one million dollars ($1,000,000) per occurrence, MOFTB shall determine what higher minimum limit is to be required and inform the applicant of such higher limit. Factors to be considered by MOFTB may include, but shall not be limited to, the number of people involved, the location of the activity and the nature of the activity. The applicant shall thereafter provide proof of such insurance in accordance with subdivision (b) of this section. If MOFTB

determines in writing that a higher minimum limit is to be required, the applicant may appeal such determination by written request filed with the MOFTB appeals officer who may reverse, affirm, or modify the determination and provide a written explanation of his or her finding.

(d) MOFTB shall have the authority to waive the insurance required by subdivision (b) of this section where the applicant is able to demonstrate that such insurance cannot be obtained without imposing an unreasonable hardship on the applicant. Any request for a waiver of the insurance required by subdivision (b) of this section shall be included by the applicant in the application submitted to MOFTB under §9-02 of this chapter. The burden of demonstrating unreasonable hardship shall be on the applicant, and may be demonstrated by a showing, for example, that the cost of obtaining insurance for the permitted activity exceeds twenty-five percent (25%) of the applicant's budget for such activity that is the subject of the application. MOFTB shall take into consideration the applicant's projections of budget as well as the budget projections for comparable productions of similar size and duration in determining whether the cost of obtaining insurance exceeds twenty-five percent (25%) of the budget. MOFTB may also take into consideration its determination that the permitted activity may increase the potential for injury to individuals and/or damage to property. In the event that MOFTB denies a waiver of the insurance requirement, the applicant may thereafter respond to the denial and appeal such denial pursuant to the provisions of §9-02 of this chapter.

HISTORICAL NOTE

Section added City Record July 14, 2008 §1, eff. Aug. 13, 2008. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 14, 2008:

The Mayor's Office of Film Theatre & Broadcasting ("MOFTB") has for many years issued permits in connection with various film production activities. With the recent significant increase in filming activities by both amateurs and professionals, it has become necessary to codify the process that has been followed over time. Such codification is also consistent with the City Charter requirement that agencies whose procedures or requirements affect the general public shall promulgate rules governing such activities. The purpose of these rules is thus to provide clear guidance to the persons and entities engaged in filming activities as to when they need permits, and when they do not.

MOFTB published proposed rules in the City Record on May 25, 2007, held a public hearing regarding the rules on June 28, 2007, and received extensive comments through August 3, 2007. MOFTB then republished the rules for comment on October 30, 2007, received additional extensive comments, and held another public hearing on December 13, 2007.

The adopted rules that are set forth herein include changes made as a result of this second public comment period and public hearing in recognition of the comments that have been received. Of significance is the change with respect to §9-01(b) ("Required and Optional Permits"). MOFTB has considered comments received-including from amateur and professional people involved in a variety of film-related endeavors-and has clarified the definitions set forth in subdivision (b) regarding the use of public space requiring (or not requiring) a permit. In particular, where the rules describe the need for a permit for filming with a handheld device on either a street or sidewalk, the test for whether it is required is whether he/she would "assert exclusive use by any means, including physical or verbal" in various contexts. First is the situation where someone asserts such exclusive use on one or more lanes of a street or walkway of a bridge, and thus needs to obtain a permit. Second, with respect to a sidewalk or other pedestrian passageway, that person will need a permit if he/she asserts such exclusive use of more than one half of that sidewalk/pedestrian passageway. If that sidewalk/pedestrian passageway is narrower than sixteen feet, the person asserting such exclusive use in a way that leaves less than eight feet for other people's pedestrian use must get a permit.

In connection with the "exclusive use" test, the adopted rules also clarify that the activity of "standing on a street, walkway of a bridge, sidewalk, or other pedestrian passageway while using a handheld device and not asserting

exclusive use" is not activity that requires a permit.

Minor changes have been made to other provisions of the rules:

· In §9-02(a) ("Definitions") the definition of equipment has been revised with respect to vehicles that are transporting people who are engaged in filming from within such vehicles, to clarify that such vehicles do not need a permit if they are being operated in compliance with relevant traffic laws and rules.

· In §9-02 (b) ("New Account Project Application and Permit Application . . .") paragraphs (7)(d) and (8) have been revised to provide that one of the reasons a permit can be denied is if the MOFTB concludes, based on specific information, that an applicant is unlikely to comply with the material terms of a requested permit, but that the MOFTB can consider whether special conditions may be placed on the permit, or whether other steps might be taken to address its concerns.

· In §9-02(c) ("Responsibilities of Holders of Required and Optional Permits") paragraph (1) (Rules) has been revised to reiterate that permittees, as well as those engaged in filming that does not require a permit, are subject to all applicable laws and rules; that permittees are subject to the terms of their permits; and that these rules do not authorize activities that are illegal under any law or rule, except for the conduct of permittees that is expressly authorized in the permits issued to them. Paragraph (2) ("Display of permit") is amended to make explicit the requirement that permittees not only have their MOFTB permit in their possession on location, but also must make it available for inspection by an employee of the NYPD or other government agency.

· In §9-02(d) (Modifications to or Suspension of Required or Optional Permit) paragraph (4) has been rewritten to indicate that if there are public health or safety risks found that warrant the temporary suspension of a permit by the MOFTB or NYPD, the provisions already requiring notice and an opportunity to be heard will apply if such suspension lasts longer than six hours.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 2008 §1, eff. Aug. 13, 2008. [See 9-03 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 10 GREEN BUILDING STANDARDS*

§10-01 Definitions.

(a) Definitions of the terms "capital project", "city agency", "green building standards", "LEED energy and atmosphere credit 1", "LEED green building rating system", and "not less stringent" set forth in subdivision (a) of §224.1 of the Charter shall apply to such terms as they appear in this chapter.1

(b) As used in this chapter, the following terms shall have the following meanings:

Construction cost. The term "construction cost" means capital dollars allocated to construction as defined in the Certificate to Proceed for Construction or Certificate to Proceed for Design and Construction or with respect to entities that are not City agencies, cost allocated to construction of a project intended to achieve a public purpose of the City as such project is described in supporting documentation submitted to the Office of Management and Budget for the issuance of a Certificate to Proceed for Construction or Certificate to Proceed for Design and Construction.

Estimated project cost. The term "estimated project cost" means all costs of a project that is intended to achieve a public purpose of the City, as such project is described in supporting documentation submitted to the Office of Management and Budget for the issuance of a Certificate to Proceed for Construction or a Certificate to Proceed for Design and Construction, including but not limited to the cost of site acquisition, preparation, design and construction.

Floor area. The term "floor area" means all occupied and unoccupied space including, but not limited to, cellars, basements, interior shafts, penthouses and wall thickness. It shall be measured from the outside surface of exterior walls or from the centerline of walls shared by adjacent buildings.

HVAC comfort controls. The term "HVAC comfort controls" means control systems and components, including, but not limited to, building management systems and related devices such as thermostats, actuators, and sensors used to regulate the equipment that provide, either collectively or individually, the processes of heating, ventilating, or air-conditioning to a building or portion of a building.

Phased project. The term "phased project" means a project of a City agency undertaken in phases for which the Office of Management and Budget issues a separate Certificate to Proceed for Construction or Certificate to Proceed for Design and Construction for each phase.

Plumbing fixture. The term "plumbing fixture" means all toilets, urinals, lavatories, showers, and kitchen sinks that form part of a plumbing system.

Plumbing system. The term "plumbing system" means a domestic plumbing system, including all plumbing fixtures and piping and fittings associated with such fixtures.

Rehabilitation work. The term "rehabilitation work" in relation to major systems means the partial or total reconstruction of the system. Such term shall include all construction work on such systems except minor alterations or ordinary repairs as described in chapter 1 of title 27 of the Administrative Code.

Reporting form. The term "reporting form" means the Local Law 86 reporting database, reporting worksheet and reporting instructions.

Substantial reconstruction. The term "substantial reconstruction" means a capital project in which the scope of work includes rehabilitation work in at least two of the three major systems-electrical, HVAC (heating, ventilating and air conditioning) and plumbing-of a building and reconstruction work affects at least fifty percent (50%) of the entire building's floor area. For purposes of this definition, only work that does not constitute minor alterations or ordinary repairs as described in chapter 1 of title 27 of the Administrative Code shall be considered in determining the amount of affected floor area.

HISTORICAL NOTE

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 10 added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. Note: Statement of Basis and Purpose in City Record Apr. 2, 2007:

Local Law No. 86 for the year 2005 amended the New York City Charter by adding a new §224.1 (green building standards). The local law, which became effective on January 1, 2007, provides that the "mayor shall promulgate rules to carry out the provisions of this section."

Executive Order No. 97 of 2006 authorizes the Director of the Office of Environmental Coordination to exercise the powers and duties granted to the Mayor in connection with the implementation of Local Law 86. Such powers and duties include: (1) promulgating rules pursuant to Charter Chapter 45, known as the City Administrative Procedure Act; (2) administering exemptions from the requirements of the law; (3) working with other City agencies to monitor compliance with the law; (4) publishing findings, where necessary, on whether proposed green buildings standards are not less stringent than the applicable Leadership in Energy and

Environmental Design ("LEED") standard; and (5) taking all other actions necessary to implement and administer the law.

The green building standards rules define the selected green building rating system, add clarifying definitions, outline the occupancy groups, project types, and City and City-funded capital projects to which green buildings requirements apply, summarize the required green building standards, set targets for energy cost savings and water use reduction, provide the method for calculating energy cost savings, list thresholds for City agencies to apply for USGBC certification, establish reporting procedures, and set forth the process for applying for a mayoral exemption.

The rules define the terms construction costs, estimated project costs, floor area, HVAC comfort controls, phased project, plumbing fixture, plumbing system, rehabilitation work, reporting form and substantial reconstruction.

The selected green building rating system is defined as New Construction version 2.2, Existing Buildings version 2.0, or Commercial Interiors version 2.0 of the Leadership in Energy and Environmental Design (LEED) building rating system published by the United States Green Building Council, whichever is most appropriate for the project under United States Green Building Council guidelines. The LEED green building rating system shall apply to capital projects subject to subdivision b of §224.1 of the Charter unless an alternative, not less stringent, green building standard has been specifically approved by the Director of the Office of Environmental Coordination as set forth in such section.

Projects in occupancy groups B-1, B-2, C, E, F-1a, F-1b, F-3, F-4, G, H-1 and H-2 having one or more of the following characteristics are subject to green building requirements under §224.1 of the Charter: (i) capital projects for or in new buildings, additions to buildings and the substantial reconstruction of existing buildings, including fit-outs of condominium units or leased space, at an estimated construction cost of two million dollars or more; (ii) installation or replacement of plumbing systems that include the replacement of plumbing fixtures at an estimated construction cost for such plumbing system of $500,000 or more; (iii) installation or replacement of boilers at an estimated construction cost of two million dollars or more; (iv) installation or replacement of lighting systems at an estimated construction cost of one million dollars or more; and (v) installation or replacement of HVAC comfort controls at an estimated construction cost of two million dollars or more.

Capital projects of entities that are not City agencies are not subject to the requirements of §224.1 of the Charter and the rules unless at any time: (1) 50% or more of the estimated project costs are paid out of the City treasury; or (2) the project receives ten million dollars or more of the estimated project cost from the City treasury. When determining whether the City contribution exceeds one of these thresholds, the cost of the entire project, as described in relevant documentation submitted to the Office of Management and Budget, including acquisition and subsequent construction or rehabilitation costs, shall be considered. Entities shall act in good faith in describing their capital projects to the Office of Management and Budget.

The rules clarify that stand-alone parking garages are not covered by the law, as there is no LEED certification that would apply to them at the present time.

For the purposes of determining the required energy cost reduction of capital projects subject to paragraph (2) of subdivision b and subdivision c of §224.1 of the Charter, the methodology prescribed under LEED atmosphere and energy credit 1 of LEED NC v.2.1 or the New York State Energy Conservation Code, whichever is more stringent, shall be utilized.

The requirement for application for USGBC certification pursuant to subdivision k of §224.1 of the Charter does not apply where the agency is utilizing an approved green building rating system other than the LEED green building rating system, nor does it apply to the projects of entities that are not City agencies. City and

non-City agencies responsible for a capital project subject to §224.1 of the Charter must complete the applicable reporting forms for each capital project. The Director of the Office of Environmental Coordination will prepare an Annual Report in accordance with §3 of Local Law 86 for the year 2005.

Pursuant to subdivision f of §224.1 of the Charter, the Mayor may exempt capital projects from one or more of the green building requirements if, in his or her sole discretion, such exemption is necessary in the public interest. Executive Order No. 97 of 2006 delegated this power to administer exemptions to the Director of the Office of Environmental Coordination, which is reflected in the rules. The total value of the exemptions granted may not exceed 20% of the capital dollars in each fiscal year accounting for capital projects subject to each of subdivisions b, c and d of §224.1 of the Charter. Request for exemption, including an explanation of the reason for such request and supporting documentation, shall be submitted to the Director of the Office of Environmental Coordination as soon as is practicable after the City agency becomes aware of the necessity for such exemption.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043(e)(1)(c) of the New York City Charter, that there is a substantial need for the implementation of the rules governing green building standards immediately upon the publication of the final rules in the City Record.

Local Law No. 86 for the year 2005 amended the New York City Charter, in relation to green building standards for certain capital projects. This local law, which became effective on January 1, 2007, requires that the Mayor promulgate rules to carry out the provisions of the law. Executive Order No. 97 of 2006 further provides that the Director of the Office of Environmental Coordination shall promulgate rules pursuant to Chapter 45 of the City Charter, known as the City Administrative Procedure Act.

Immediate implementation of the rules governing green building standards is necessary because Local Law 86 of 2005 has already taken effect and such rules provide needed clarification and guidance to City and non-City agencies affected by the law, regarding the law's applicability to capital projects in which they are engaged or will soon be engaged. The rules define the selected green building rating system, provide clarifying definitions of terms used in the law, provide the method for calculating energy cost savings, establish reporting procedures, and set forth the process for applying for a mayoral exemption. Affected agencies need this information to effectively carry out the law's provisions. Immediate implementation will ensure that affected agencies receive such information in a timely manner and are able to effectively comply with the law.

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Title 43 Mayor

CHAPTER 10 GREEN BUILDING STANDARDS*

§10-02 Selected Green Building Rating System.

Pursuant to paragraph (11) of subdivision (a) of §224.1 of the Charter, on and after June 26, 2009 the "selected green building rating system" is the Leadership in Energy and Environmental Design (LEED) 2009 New Construction and Major Renovations Rating System, LEED 2009 for Commercial Interiors Rating System, LEED 2009 for Schools New Construction and Major Renovations Rating System, LEED 2009 for Core and Shell Development Rating System, and LEED 2009 for Existing Buildings: Operations and Maintenance Rating System published by the United States Green Building Council, whichever is most appropriate for the project under United States Green Building Council guidelines except that for projects that either received funding from the city treasury or received design approval prior to June 26, 2009 or that applied to the United States Green Building Council for certification prior to June 26, 2009, the selected green building rating system may be New Construction version 2.2, Existing Buildings version 2.0, or Commercial Interiors version 2.0 of the Leadership in Energy and Environmental Design (LEED) building rating system published by the United States Green Building Council, whichever is most appropriate for the project under United States Green Building Council guidelines. Except as otherwise provided in subdivision (a) of §10-05 of this chapter for calculation of required reductions in energy cost, the selected green building rating system shall apply to capital projects subject to subdivision (b) of §224.1 of the Charter unless an alternative, not less stringent, green building standard has been specifically approved by the Director of the Office of Environmental Coordination as set forth in such subdivision.

HISTORICAL NOTE

Section amended City Record May 22, 2009 §1, eff. June 21, 2009. [See Note 1]

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

NOTE

1. Statement of Basis and Purpose in City Record May 22, 2009:

Local Law No. 86 for the year 2005 amended the New York City Charter by adding a new §224.1 (green building standards). The local law, which became effective on January 1, 2007, provides that the "mayor shall promulgate rules to carry out the provisions of this section."

Executive Order No. 97 of 2006 authorizes the Director of the Mayor's Office of Environmental Coordination to exercise the powers and duties granted to the Mayor in connection with the implementation of Local Law 86. Such powers and duties include: (1) promulgating rules pursuant to Charter Chapter 45, known as the City Administrative Procedure Act; (2) administering exemptions from the requirements of the law; (3) working with other City agencies to monitor compliance with the law; (4) publishing findings, where necessary, on whether proposed green buildings standards are not less stringent than the applicable Leadership in Energy and Environmental Design ("LEED;rm") standard; and (5) taking all other actions necessary to implement and administer the law.

The green building standards rules previously promulgated define the selected green building rating system as New Construction version 2.2, Existing Buildings version 2.0, or Commercial Interiors version 2.0 of the Leadership in Energy and Environmental Design (LEED;rm) building rating system published by the United States Green Building Council (USGBC), whichever is most appropriate for the project under USGBC guidelines. This amendment to the Rules redefines the selected green building rating system as the Leadership in Energy and Environmental Design (LEED;rm) 2009 green building standards for New Construction, Commercial Interiors, Schools, Core and Shell, and Existing Buildings published by the USGBC. This selected green building rating system shall apply to capital projects subject to subdivision b of §224.1 of the Charter unless an alternative, not less stringent, green building standard has been specifically approved by the Director of the Mayor's Office of Environmental Coordination as previously set forth in such section.

The purpose of updating the selected green building rating system is to allow agencies to continue to apply to the USGBC for certification of their projects in accordance with the provision in the law that requires capital projects to aply to the USGBC for certification that such projects have achieved a Silver or higher rating under the LEED;rm green building rating system or, with respect to projects involving buildings classified in occupancy groups G or H-2, a certified or higher rating under such system. Applying to the USGBC for certification of a rating under each of the LEED;rm 2009 rating systems also allows projects to utilize version 3 of USGBC LEED;rm Online, a tool that will expedite administration of the certification process for each project, thereby reducing costs to the City.

Another purpose for updating to LEED;rm 2009 rating systems is to ensure that the City will continue to utilize green building standards that are recognized by New York State and federal authorities considering the allocation of funds for the upgrade of city projects to meet green building standards.

The LEED;rm 2009 systems also offer a number of improvements that further streamline the certification process, further reducing cost to the City. As the USGBC has stated, the systems consolidate and align the credits and prerequisites from previous LEED;rm systems, so that credits and prerequisites covered by the LEED;rm 2009 green building standards are consistent across project types. Necessary precedent-setting and clarifying information from Credit Interpretation Rulings are also incorporated. In addition, the LEED;rm 2009 credits have different weightings depending on their ability to impact different environmental and human health concerns. With revised credit weightings, the credits award more points for strategies that will have greater positive impacts on environmental issues of greater concern, such as energy efficiency and CO_2 reduction. Specific environmental issues are also prioritized by region in the LEED;rm 2009 rating systems, thereby allowing capital projects to receive more points for addressing environmental issues that are most important to the region in which the City is located.

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CHAPTER 10 GREEN BUILDING STANDARDS*

§10-03 Applicability.

(a) Except as otherwise provided in subdivision (b) of this section, capital projects within spaces classified in the occupancy groups listed in paragraph (1) of this subdivision having one or more of the six characteristics listed in paragraph (2) of this subdivision, are subject to this chapter and the green building requirements of §224.1 of the Charter, summarized in §10-04 of this chapter.

(1) **Occupancy Groups.**

B-1 Storage (moderate hazard) F-3 Assembly (museums, etc.)

B-2 Storage (low hazard) F-4 Assembly (restaurants, etc.)

C Mercantile G Education

E Business H-1 Institutional (restrained)

F-1a Assembly (theaters, etc.) H-2 Institutional (incapacitated)

F-1b Assembly (churches, concert halls, etc.)

(2) **Project Characteristics.**

(i) Capital projects for or in new buildings and additions to existing buildings, including fit-outs of condominium

units and leased space. A capital project for or in a new building or an addition to an existing building is covered by subdivision b of §224.1 of the Charter if the construction cost of the capital project is two million dollars or more. With respect to projects involving the fit-out of condominium units and leased space, only space and components under the exclusive control of the tenant or unit owner are subject to the design and construction requirements of such subdivision. With respect to phased projects of City agencies, each phase shall be covered only if the estimated construction cost of such phase is two million dollars or more.

(ii) Capital projects in existing buildings subject to substantial reconstruction, including fit-outs of condominium units and leased space. A capital project in a building in which 50% of the entire building's floor area is subject to reconstruction work is covered by subdivision b of §224.1 of the Charter if the construction cost of the capital project is two million dollars or more and the scope of work of the project includes rehabilitation work in at least two of the three major systems-electrical, HVAC (heating, ventilating and air conditioning) and plumbing-of the building. With respect to the fit-out of condominium units and leased space, only space and components under the exclusive control of the tenant or unit owner are subject to the design and construction requirements of such subdivision. With respect to phased projects of City agencies, each phase shall be covered only if the estimated construction cost of such phase is two million dollars or more.

(iii) Installation or replacement of plumbing systems that includes the installation or replacement of plumbing fixtures. A capital project that includes the installation or replacement of a plumbing system is covered by subdivision d of §224.1 of the Charter if it includes the installation or replacement of plumbing fixtures and the estimated construction cost of the installation or replacement of the plumbing system is $500,000 dollars or more.

(iv) Installation or replacement of boilers. A capital project that is not subject to subdivision b of §224.1 of the Charter involving the installation or replacement of boilers at an estimated construction cost of two million dollars or more is covered by subdivision c (1) of §224.1 of the Charter.

(v) Installation or replacement of lighting systems. A capital project that is not subject to subdivision b of §224.1 of the Charter and that includes the installation or replacement of lighting systems at an estimated construction cost of one million dollars or more is covered by subdivision c (1) of §224.1 of the Charter.

(vi) Installation or replacement of HVAC comfort controls. A capital project that is not subject to subdivision b or paragraph (1) of subdivision c of §224.1 of the Charter and that includes the installation or replacement of HVAC comfort controls at an estimated construction cost for such installation or replacement of two million dollars or more is covered by paragraph (2) of subdivision c of §224.1 of the Charter.

(b) **Entities that are not City agencies.** (1) Notwithstanding subdivision (a) of this section, a capital project of an entity that is not a City agency is not subject to the requirements of §224.1 of the Charter and this chapter unless:

(i) 50% or more of the estimated project cost is paid out of the City treasury; or

(ii) the project receives ten million dollars or more of the estimated project cost from the City treasury.

(2) Entities that are not City agencies and that receive capital dollars from the City treasury shall be on notice that a project, as such project is described in supporting documentation submitted to the Office of Management and Budget for the issuance of a Certificate to Proceed for Construction or Certificate to Proceed for Design and Construction, shall be subject to all applicable provisions of Local Law 86 of 2005 at any time that the City capital contribution to such project equals or exceeds one of the amounts set forth in paragraph 1 of this subdivision. All City funding agreements shall contain notice of this requirement.

(3) When determining whether the City contribution is 50% or more or $10 million or more of the estimated project cost, the cost of the entire project, as described in supporting documentation submitted to the Office of Management and Budget for the issuance of a Certificate to Proceed for Construction or Certificate to Proceed for

Design and Construction, including land or other property acquisition and subsequent construction or rehabilitation costs, shall be considered.

(4) Entities that are not City agencies shall act in good faith in describing capital projects in supporting documentation submitted to the Office of Management and Budget for the issuance of a Certificate to Proceed for Construction or Certificate to Proceed for Design and Construction, and shall not seek to do so in a manner so as to circumvent the requirements of §224.1 of the Charter and this chapter.

(c) **Stand-alone parking garages.** Notwithstanding any inconsistent provision of this chapter, stand-alone parking garages are not covered by §224.1 of the Charter and this chapter.

HISTORICAL NOTE

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

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CHAPTER 10 GREEN BUILDING STANDARDS*

§10-04 Table Summaries of Green Building Standards.

The following tables summarize the requirements of §224.1 of the Charter as they apply to the capital projects described in §10-03 of this chapter:

(a) **Requirements for capital projects for or in new buildings, additions to existing buildings and capital projects in existing buildings subject to substantial reconstruction:**

Table A

EstimatedConstructionCost Occupancy Group Green BuildingStandard Required Additional EnergyCost ReductionRequired (See§10-05(a) for methodof calculation)

$2M andlower than$12M B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE Business LEED Silver or higher N/A

F-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)H-1 Institutional (restrained)

G EducationH-2 Institutional (incapacitated) LEED-certified orhigher N/A

$12M or more G Education LEED-certified or higher Minimum 20% reduction in energy costs. Additional 5% or 10% (whichever is achievable) reduction required if payback within 7 years.

Greater than $12M and lower than $30M B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE BusinessF-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)H-1 Institutional (restrained) LEED Silver or higher Minimum 20% reduction in energy costs. Additional 5% reduction required if payback within 7 years.

H-2 Institutional (incapacitated) LEED-certified or higher Minimum 20% reduction in energy costs. Additional 5% reduction required if payback within 7 years.

$30M or more B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE BusinessF-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)H-1 Institutional (restrained) LEED Silver or higher Minimum 25% reduction in energy costs. Additional 5% reduction required if payback within 7 years.

H-2 Institutional (incapacitated) LEED-certified or higher Minimum 25% reduction in energy costs. Additional 5% reduction required if payback within 7 years.

(b) **Requirements for capital projects involving the installation or replacement of boilers, lighting systems and HVAC comfort controls:**

Table B

EstimatedConstructionCost Occupancy Group Energy Cost Reduction Required (See §10-05(a) for method of calculation)

Boiler-$2M or more B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE BusinessF-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)G EducationH-1 Institutional (restrained)H-2 Institutional (incapacitated) Minimum 10% reduction in energy costs.

Lighting systems-$1M or more B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE BusinessF-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)G EducationH-1 Institutional (restrained)H-2 Institutional (incapacitated) Minimum 10% reduction in energy costs.

HVAC comfort controls-$2M or more B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE BusinessF-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)G EducationH-1 Institutional (restrained)H-2 Institutional (incapacitated) Minimum 5% reduction in energy costs.

Notes to Table B: (i) Capital projects required to comply with subdivision (a) of this section are not required to also comply with the energy cost reduction requirements summarized in this table. (ii) Capital projects for the installation of boilers at an estimated construction cost of two million dollars or more are not required to also comply with the energy cost reduction requirements summarized in this table for the installation of HVAC comfort controls.

(c) **Requirements for capital projects involving the installation or replacement of plumbing systems that includes the installation or replacement of plumbing fixtures:**

Table C

EstimatedConstructionCost for Plumbing Systems Occupancy Group Water Use Reduction Required (See §10-05(b) for method of calculation)

$500,000 or more B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE Business Minimum 30%

reduction in water use or 20% if the Department of Buildings rejects an application for the use of waterless urinals.

F-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)G EducationH-1 Institutional (restrained)H-2 Institutional (incapacitated)

Note to Table C: Capital projects required to comply with the provisions of subdivision (a) or (b) of this section are also subject to any applicable water use reduction requirements, summarized in this table.

HISTORICAL NOTE

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 10-05

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 10 GREEN BUILDING STANDARDS*

§10-05 Calculation of Required Energy Cost Reduction and Potable Water Use Reduction.

(a) The required energy cost reduction, summarized in the tables set forth in subdivisions (a) and (b) of §10-04 of this chapter, shall be calculated in accordance with the methodology prescribed under LEED Energy and Atmosphere Credit 1 of LEED NC v.2.1 or the New York State Energy Conservation Construction Code, whichever is more stringent.

(b) The required potable water use reduction, summarized in the table set forth in subdivision (c) of §10-04 of this chapter, shall be determined by a methodology not less stringent than that prescribed in the LEED water efficiency credit 3.2 of LEED NC v.2.1 or v.2.2.

HISTORICAL NOTE

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 10-06

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 10 GREEN BUILDING STANDARDS*

§10-06 Procedures.

(a) **Application for USGBC certification.** In accordance with subdivision (k) of §224.1 of the Charter and this chapter, a City agency must apply to the U.S. Green Building Council for certification of projects accounting for at least 50% of the amount of capital dollars allocated for capital projects of such agency unless the agency is utilizing an approved green building rating system other than the LEED green building rating system. This subdivision does not apply to the projects of entities that are not City agencies.

(b) **Reporting requirements.** (1) Each agency responsible for the expenditure of City funds on a capital project, whether it is a project of a City agency or a project of an entity that is not a City agency for which City capital funds will be expended, shall complete and submit applicable reporting forms for each capital project subject to §224.1 of the Charter in accordance with guidelines issued by the Director of the Office of Environmental Coordination.

(2) The Director of the Office of Environmental Coordination will prepare an Annual Report in accordance with §3 of local law 86 for the year 2005.

(c) **Indexation of construction costs to inflation.** The construction costs listed in subdivisions (b), (c), (d) and (g) of §224.1 of the Charter shall be indexed to inflation. The Director of the Office of Environmental Coordination shall publish such costs at the start of each calendar year, beginning January 1, 2008.

HISTORICAL NOTE

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 10-07

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 10 GREEN BUILDING STANDARDS*

§10-07 Exemptions.

(a) The Director of the Office of Environmental Coordination may, on behalf of the Mayor, administer exemptions for capital projects from one or more of the requirements outlined in §10-04 of this chapter if, in his or her sole discretion, such exemption is necessary in the public interest.

(b) The total value of the exemptions granted pursuant to subdivision (a) of this section may not exceed 20% of the capital dollars in each fiscal year accounting for capital projects subject to each of subdivisions (b), (c) and (d) of §224.1 of the Charter.

(c) Requests for exemption, including an explanation of the reason for such request and supporting documentation, shall be submitted to the Director of the Office of Environmental Coordination as soon as is practicable after the agency becomes aware of the necessity for such exemption.

HISTORICAL NOTE

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 11-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 11 ENVIRONMENTAL PREFERABLE PURCHASING PROGRAM*1

SUBCHAPTER 1 GENERAL PROVISIONS

§11-01 Definitions.

(a) For the purposes of this chapter only, the following terms shall have the following meaning:

(1) "Architectural coatings" means any coating to be applied to stationary structures and their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. This term shall not include the following: marine-based paints and coatings; coatings or materials to be applied to metal structures, such as bridges; or coatings or materials labeled and formulated for application in roadway maintenance activities.

(2) "Cadmium plating" means any deposit or coating of metallic cadmium on a metallic surface.

(3) "Carpet" means any fabric used as a floor covering, but such term shall not include artificial turf.

(4) "Carpet adhesive" means any substance used to adhere carpet to a floor by surface attachment, including any latex multi-purpose floor adhesive, pressure-sensitive floor adhesive, vinyl-backed floor adhesive, latex seam adhesive, vinyl-backed seam sealer, cove base adhesive, tackless cushion adhesive and contact adhesive.

(5) "Carpet cushion" means any kind of material placed under carpet to provide softness when it is walked upon.

(6) "Cathode ray tube" means any vacuum tube, typically found in computer monitors, televisions and oscilloscopes, in which a beam of electrons is projected on a phosphorescent screen.

(7) "Clear brushing lacquer" means any clear wood finish, excluding any clear lacquer sanding sealer, formulated with nitrocellulose or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid, protective film, that is intended exclusively for application by brush.

(8) "Coating" means any material that is applied to a surface in order to beautify, protect, or provide a barrier to such surface.

(9) "Director" means the director of citywide environmental purchasing.

(10) "Emission factor" means the mass of a volatile organic compound emitted from a specific unit area, mass or length, as appropriate, of product surface per unit of time.

(11) "Flat paint" means any coating that registers a gloss of less than 15 on an 85-degree meter or less than 5 on a 60-degree meter.

(12) "Floor coating" means any opaque coating that is formulated for or applied to flooring, including but not limited to decks, porches, gymnasiums, and bowling alleys, but does not include any industrial maintenance coating.

(13) "Homogeneous" means of uniform composition throughout, such as plastics, ceramics, glass, metals, alloys, paper, board, resins and coatings.

(14) "Homogeneous material" means a material that cannot be mechanically disjointed into different materials through actions such as unscrewing, cutting, crushing, grinding and abrasive processes.

(15) "Lacquer" means any clear or pigmented wood finish, including clear lacquer sanding sealers, formulated with nitrocellulose or synthetic resins to dry by evaporation without chemical reaction and to provide a solid, protective film.

(16) "Lamp" means any glass envelope with a gas, coating, or filament that produces visible light when electricity is applied, but such term shall not include automotive light bulbs.

(17) "Lamp life" means the rated hours of output for a fluorescent tube lamp measured using instant-start ballasts at 3 hours per start, except for T5 lamps, which shall be measured using program start ballasts.

(18) "Maximum mercury" means the total weight of mercury in a lamp.

(19) "Medical device" means any equipment for fertilization testing, laboratory equipment for in-vitro diagnosis, medical analyzer, medical freezer, pulmonary ventilator, cardiology, dialysis, radiotherapy or nuclear medicine equipment and any other appliance for detecting, preventing, monitoring, treating, alleviating illness, injury or disability.

(20) "Monitoring and control instrument" means any heating regulator, smoke detector, thermostat, device for measuring, weighing or adjusting any device for use in a household or laboratory and any other monitoring and control instrument used in industrial installations.

(21) "Multi-function device" means any physically integrated device or a combination of functionally integrated components that performs the function of a copier as well as the functions*2 at least one of the following devices: printer, facsimile machine or scanner.

(22) "Nonflat paint" means any coating that registers a gloss of 5 or greater on a 60 degree meter and a gloss of 15 or greater on an 85 degree meter.

(23) "Primer" means any coating applied to a substrate to provide a firm bond between the substrate and subsequent coats.

(24) "Rust preventative/anti-corrosive paint" means any coating formulated exclusively for nonindustrial use to prevent the corrosion of metal surfaces.

(25) "Sanding sealer" means any clear or semi-transparent wood coating formulated for or applied to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent applications of coatings. A sanding sealer that also meets the definition of a lacquer is not included in this category, but it is included in the lacquer category.

(26) "Selected test method" means the American Society for Testing and Materials test method D 5116 (guide for small-scale environmental chamber determinations of organic emissions from indoor materials/products).

(27) "Varnish" means any clear or semi-transparent wood coating, excluding lacquers and shellacs, formulated to dry by chemical reaction on exposure to air. Varnishes may contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.

(28) "Volatile organic compound" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, as specified in part 51.100 of chapter 40 of the United States code of federal regulations.

(b) Reserved.

HISTORICAL NOTE

Section added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 11 added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. Note: Statement of Basis and Purpose in City Record Jan. 29, 2007:

The Director of Citywide Environmental Purchasing is authorized by §6-304 of the Administrative Code of the City of New York to promulgate rules on environmentally preferable purchasing standards.

These rules add a new Chapter 11 of Title 43 of the Rules of the City of New York which provides:

· Standards on the maximum volatile organic compounds in carpeting products and architectural coatings, as required under §6-313 of the Administrative Code;

· Standards on the minimum energy efficiency of and maximum amount of mercury in mercury-added light bulbs, as required under §6-314 of the Administrative Code; and

· Exceptions to §6-312 of the Administrative Code on restrictions to hazardous materials in electronic devices in order to harmonize this section with European standards and to take into account the availability of compliant products in the United States.

2

[Footnote 2]: * "of" missing.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 11 ENVIRONMENTAL PREFERABLE PURCHASING PROGRAM*1

SUBCHAPTER 1 GENERAL PROVISIONS

§11-02 Applicability, Exemptions and Waivers.

These rules shall apply to products according to §6-302 of the administrative code of the city of New York on the applicability of the environmentally preferable purchasing program contained in chapter three of title six of such code. These rules shall be subject to any exemption or waiver contained in §6-303 of such code or contained in any other provision of such chapter.

HISTORICAL NOTE

Section added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 11 added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. Note: Statement of Basis and Purpose in City Record Jan. 29, 2007:

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· Exceptions to §6-312 of the Administrative Code on restrictions to hazardous materials in electronic devices in order to harmonize this section with European standards and to take into account the availability of compliant products in the United States.

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***** Current through December 2009 ****

43 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 11 ENVIRONMENTAL PREFERABLE PURCHASING PROGRAM*1

SUBCHAPTER 2 HAZARDOUS SUBSTANCES

§11-03 Hazardous Content of Electronic Devices.

(a) No new cathode ray tube, product containing a cathode ray tube, liquid crystal display (LCD), plasma screen or other flat panel television or computer monitor or similar video display product, desktop computer or laptop computer, computer peripheral including, but not limited to, a keyboard, mouse and other pointing device, printer, scanner, facsimile machine and card reader, copier, and multi-function device purchased or leased by any agency shall contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers, except that this section shall not apply to:

(1) Any battery, medical device or monitoring and control instrument.

(2) Any display device with a diagonal screen size of four inches or less.

(3) Any electronic device that is functionally or physically a part of any larger piece of equipment designed and intended for use in an industrial, commercial or medical setting, including diagnostic, monitoring or control equipment.

(4) Any remanufactured, refurbished or reused electronic device; any electronic device containing any reused component, assembly or part; and any reused part, component or assembly for the repair of any electronic device.

(5) Any electronic device used in homeland security, police, military or emergency response activities, and/or by

personnel engaged in those activities.

(6) Mercury in the following circumstances:

(i) In compact fluorescent lamps not exceeding 5 mg per lamp;

(ii) In straight fluorescent lamps for general purposes not exceeding:

-halophosphate 10 mg

-triphosphate with normal lifetime 5 mg

-triphosphate with long lifetime 8 mg;

(iii) In straight fluorescent lamps for special purposes; and

(iv) In other lamps not specifically mentioned in this section.

(7) Lead in the following circumstances:

(i) 0.1% by weight in homogeneous materials;

(ii) As a constituent in the glass used in cathode ray tubes, electronic components or fluorescent tubes;

(iii) As an alloying element in steel containing up to 0.35% lead by weight, aluminum containing up to 0.4% lead by weight and as a copper alloy containing up to 4% lead by weight;

(iv) In high melting temperature type solders (i.e. lead-based alloys containing 85% by weight or more lead);

(v) In solders for servers, storage and storage array systems, network infrastructure equipment for switching, signaling, transmission as well as network management for telecommunications;

(vi) In electronic ceramic parts (e.g. piezoelectronic devices);

(vii) In lead-bronze bearing shells and bushes;

(viii) Used in compliant pin connector systems;

(ix) As a coating material for the thermal conduction module c-ring;

(x) In solders consisting of more than two elements for the connection between the pins and the package of microprocessors with a lead content of more than 80% and less than 85% by weight;

(xi) In solders to complete a viable electrical connection between semiconductor die and carrier within integrated circuit flip chip packages;

(xii) In linear incandescent lamps with silicate coated tubes;

(xiii) Lead halide as radiant agent in High Intensity Discharge (HID) lamps used for professional reprography applications;

(xiv) As activator in the fluorescent powder (1% lead by weight or less) of discharge lamps when used as sun tanning lamps containing phosphors such as BSP (BaSi2O5:Pb) as well as when used as speciality lamps for diazoprinting reprography, lithography, insect traps, photochemical and curing processes containing phosphors such as

SMS ((Sr,Ba)2MgSi2O7:Pb);

(xv) With PbBiSn-Hg and PbInSn-Hg in specific compositions as main amalgam and with PbSn-Hg as auxiliary amalgam in very compact Energy Saving Lamps (ESL);

(xvi) Lead oxide in glass used for bonding front and rear substances of flat fluorescent lamps used for Liquid Crystal Displays (LCD);

(xvii) As an impurity in RIG (rare earth iron garnet) Faraday rotators used for fiber-optic communications systems;

(xviii) In finishes of fine pitch components other than connectors with a pitch of 0.65 mm or less with NiFe lead frames and lead in finishes of fine pitch components other than connectors with a pitch of 0.65 mm or less with copper lead frames;

(xix) In solders for the soldering to machined through hole discoidial and planar array ceramic multilayer capacitors;

(xx) Lead oxide in plasma display panels (PDP) and surface conduction electron emitter displays (SED) used in structural elements; notably in the front and rear glass dielectric layer, the bus electrode, the black stripe, the address electrode, the barrier ribs, the seal frit and frit ring as well as in print pastes;

(xxi) Lead oxide in the glass envelope of Black Light Blue (BLB) lamps;

(xxii) Lead alloys as solder for transducers used in high-powered (designated to operate for several hours at acoustic power levels of 125 dB SPL and above) loudspeakers; and

(xxiii) Lead bound in crystal glass as defined in Annex I (Categories 1, 2, 3 and 4) of Council of the European Union Directive 69/493/EEC, as amended.

(8) Cadmium in the following circumstances:

(i) 0.01% by weight in homogeneous materials; and

(ii) Cadmium and its compounds in electrical contacts and cadmium plating.

(9) Lead and cadmium in the following circumstances:

(i) In optical and filter glass; and

(ii) In printing inks for the application of enamels on borosilicate glass.

(10) Hexavalent chromium in the following circumstances:

(i) As an anti-corrosion of the carbon steel cooling system in absorption refrigerators; and

(ii) Until July 1, 2007, in corrosion preventive coatings of unpainted metal sheetings and fasteners used for corrosion protection and Electromagnetic Interference Shielding in equipment falling under category three of European Union Directive 2002/96/EC (IT and telecommunications equipment).

(11) The following materials in the following concentrations:

(i) 0.1% by weight in homogeneous materials for mercury;

(ii) 0.1% by weight in homogeneous materials for hexavalent chromium;

(iii) 0.1% by weight in homogeneous materials for polybrominated biphenyls; and

(iv) 0.1% by weight in homogeneous materials for polybrominated diphenyl ethers.

(12) DecaBDE in polymeric applications.

(b) Reserved.

HISTORICAL NOTE

Section added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 11 added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. Note: Statement of Basis and Purpose in City Record Jan. 29, 2007:

The Director of Citywide Environmental Purchasing is authorized by §6-304 of the Administrative Code of the City of New York to promulgate rules on environmentally preferable purchasing standards.

These rules add a new Chapter 11 of Title 43 of the Rules of the City of New York which provides:

· Standards on the maximum volatile organic compounds in carpeting products and architectural coatings, as required under §6-313 of the Administrative Code;

· Standards on the minimum energy efficiency of and maximum amount of mercury in mercury-added light bulbs, as required under §6-314 of the Administrative Code; and

· Exceptions to §6-312 of the Administrative Code on restrictions to hazardous materials in electronic devices in order to harmonize this section with European standards and to take into account the availability of compliant products in the United States.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 11-04

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 11 ENVIRONMENTAL PREFERABLE PURCHASING PROGRAM*1

SUBCHAPTER 2 HAZARDOUS SUBSTANCES

§11-04 Volatile Organic Compounds and Other Airborne Hazards.

(a) (1) No carpet or carpet adhesive purchased or leased by any agency shall contain any volatile organic compound in any concentration exceeding that specified below, according to the selected test method.

Product Volatile Organic Compound 24-Hour Testing Maximum Emission Factor (mg/m^2·hr) 14-Day Testing Maximum Emission Factor (mg/m^2·hr)

Formaldehyde 50 30

4-Phenylcyclohexene 50 17

Carpet Styrene 410 410

Total Volatile Organic Compounds 500 -

Product Volatile Organic Compound 24-Hour Testing Maximum Emission Factor (mg/m^2·hr) 14-Day Testing Maximum Emission Factor (mg/m^2·hr)

Formaldehyde 50 31

Carpet 2-ethyl-1-hexanol 300 300

Adhesive Total Volatile Organic Compounds 8000 -

(2) No carpet cushion purchased or leased by any agency shall contain any volatile organic compound in any concentration exceeding that specified below, according to the selected test method.

Product Volatile Organic Compound 24-Hour Testing Maximum Emission Factor (EF) ($mg/m^2 \cdot hr$)

Butylated Hydroxytoluene 300

Carpet Formaldehyde 50

Cushion 4-Phenylcyclohexene (4PCH) 50

Total Volatile Organic Compounds 1000

(b) (1) No architectural coating regulated under part 205 of title six of the New York codes, rules and regulations and purchased or leased by any agency shall contain any volatile organic compound in any concentration exceeding that permitted under such part.

(2) None of the following architectural coatings purchased or leased by any agency shall contain any volatile organic compound in any concentration exceeding that specified below, according to the selected test method.

Product Maximum Concentration of Volatile Organic Compounds in Grams per Liter

Sanding Sealers 275

Varnish 275

Floor Coatings 100

Clear Brushing Lacquer 275

Pigmented Lacquers 275

Rust-Preventative/Anti-Corrosive Paint 250

Primer For Flat Paint 100

Primer For Non-Flat Paint 150

Any other architectural coating not listed above but regulated under part 205 of title six of the New York codes, rules and regulations shall not contain any volatile organic compound in any concentration exceeding that permitted under such part.

HISTORICAL NOTE

Section added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. [See Chapter 11 footnote]

FOOTNOTES

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***** Current through December 2009 ****

43 RCNY 11-05

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 11 ENVIRONMENTAL PREFERABLE PURCHASING PROGRAM*1

SUBCHAPTER 2 HAZARDOUS SUBSTANCES

§11-05 Mercury-Added Lamps.

Any of the following mercury-added lamps purchased or leased by any agency shall comply with the standards specified below:

Fluorescent Tube Lamps

Lamp Characteristics Standard

Lamp Type Length (Inches) Watts Minimum Mean Lumens Minimum Lamp Life (Rated Hours) Maximum Mercury (mg.)

T5 46-48 28 2700 20,000 5

T5 High Output 45-46 54 4600 20,000 5

T8 24 17 1300 24,000 6

T8 36 25 2000 24,000 6

T8 48 32 2800 24,000 6

T8 Instant Start 96 59 5400 18,000 10

T8 High Output 96 86 7300 18,000 10

U-Bent, 6" Spacing Any 32 2325 18,000 8

T8 Rapid Start 60 40 3200 18,000 8

T8 Preheat 18 15 740 7,500 6

T8 Preheat 36 30 1800 7,500 6

T12 24 30 1870 18,000 10

T12 48 34 2520 20,000 10

T12 48 40 2660 20,000 10

T12 Instant Start 48 39 2400 9,000 10

T12 Instant Start 72 56 3900 12,000 10

T12 Instant Start 96 60 4950 12,000 10

T12 Instant Start 96 75 5900 12,000 10

T12 High Output 48 60 3200 15,000 15

T12 High Output 72 85 5500 12,000 25

T12 High Output 96 95 6900 12,000 15

T12 High Output 96 110 8100 12,000 15

T12 U-Bent, 6" Spacing Any 31-32/34 2000 18,000 8

T12 U-Bent, 6" Spacing Any 40 2700 18,000 8

T12 Preheat 18 15 650 9,000 16

T12 Preheat 24 20 1040 9,000 9.5

T9 Circline Any 22 675 12,000 20

T9 Circline Any 32 1300 12,000 20

T9 Circline Any 40 1975 12,000 20

Compact Fluorescent Lamps

Lamp Type Minimum Lamp Life (Rated Hours) Maximum Mercury (mg.)

4-Pin 12,000 5

2-Pin 10,000 5

Twist/Spiral or Loop (Self-Ballasted) 8,000 5

Other Self-Ballasted 6,000 5

HISTORICAL NOTE

Section added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. [See Chapter 11 footnote]

FOOTNOTES

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43 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-01 Purpose.

The purpose of this chapter is to set forth the procedure for persons to seek waivers from inclusion in the doing business database as described in paragraph (c) of subdivision 18 of section 3-702 of the administrative code.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

This rule is being promulgated in accordance with paragraph (c) of subdivision 18 of section 3-702 of the administrative code, which allows the CCPO to create a process to allow persons required to be listed in the doing business database to seek a waiver from that requirement.

Local Laws 34 and 67 of 2007 amended the administrative code to establish a doing business database in order to enforce limits on contributions to municipal campaigns for elective office from certain people affiliated

with entities that do business with the city of New York. The doing business database includes the names of persons that have business dealings with the City as defined by the law.

The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 12-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-02 Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

(a) Agency. "Agency" shall mean the city of New York or any agency or entity affiliated with the city of New York as defined in paragraph (a) of subdivision 18 of section 3-702 of the administrative code.

(b) Business dealings with the city. "Business dealings with the city" shall have the same meaning as in paragraph (a) of subdivision 18 of section 3-702 of the administrative code.

(c) City chief procurement officer or CCPO. "City chief procurement officer" or "CCPO" shall mean the person to whom the mayor has delegated authority to coordinate and oversee the procurement activity of mayoral agency staff, including the agency chief contracting officers.

(d) Doing business database. "Doing business database" shall mean the database established pursuant to subdivision 20 of section 3-702 of the administrative code.

(e) Person. "Person" shall have the same meaning as in subdivision 20 of section 3-702 of the administrative code.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

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The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 12-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-03 Applicability.

A waiver may be requested by any person having business dealings with the city in such instances in which such person is providing essential goods, services or construction such as those necessary for security or other essential government operations. Notwithstanding the foregoing, if the transaction is a bid or proposal, a waiver may only be requested if the notice included in the solicitation specifies that a waiver may be applied for.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

This rule is being promulgated in accordance with paragraph (c) of subdivision 18 of section 3-702 of the administrative code, which allows the CCPO to create a process to allow persons required to be listed in the doing business database to seek a waiver from that requirement.

Local Laws 34 and 67 of 2007 amended the administrative code to establish a doing business database in order to enforce limits on contributions to municipal campaigns for elective office from certain people affiliated with entities that do business with the city of New York. The doing business database includes the names of persons that have business dealings with the City as defined by the law.

The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 12-04

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-04 Procedure for Requesting Waiver.

(a) Any person seeking a waiver from the doing business database in connection with a transaction considered a business dealing with the city shall obtain a waiver application form from the CCPO as described in section 12-07 of this chapter. The waiver applicant shall provide all information that is required of waiver applicants and submit the application to the agency involved with the transaction.

(b) Within ten (10) business days of receipt of the waiver application from the applicant, the agency shall provide all information that is required of agencies and submit the completed application to the CCPO. The CCPO shall notify the waiver applicant when the waiver application is received from the agency.

(c) If the agency fails to complete its portion of the waiver application and/or fails to submit the application to the CCPO within ten (10) business days, the waiver applicant may submit the application directly to the CCPO. The CCPO shall then contact the agency in order to obtain the agency's portion of the waiver application.

(d) Upon receipt of a waiver application pursuant to paragraph (b) or (c) of this section, the CCPO shall forward the application to the campaign finance board. The waiver application may not be acted on by the CCPO for ten (10) days from the date of receipt of the application by the campaign finance board.

(e) Upon action on a waiver application by the CCPO, both the applicant and agency shall be notified. If the waiver is granted, the applicant shall not be required to provide the data covered by the waiver. If the CCPO determines that a waiver should be denied, in full or in part, to an applicant doing business with an independently elected official other than the Mayor (or with an agency under the control of such an official), the CCPO shall notify such agency at

least five (5) days prior to issuance of any such denial determination, and shall consider the agency's written response, if any, before making the final determination.

(f) Determinations by the CCPO are final.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

This rule is being promulgated in accordance with paragraph (c) of subdivision 18 of section 3-702 of the administrative code, which allows the CCPO to create a process to allow persons required to be listed in the doing business database to seek a waiver from that requirement.

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The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 12-05

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-05 Public Notice of Waiver Approvals.

All approved waivers shall be posted on the websites of both the CCPO and the campaign finance board in locations that are accessible by the public. In the event that an independently elected official (or an agency under the control of such an official), submits a written response for consideration by the CCPO pursuant to section 12-04(e), a copy of such response shall be included in the CCPO's public posting.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

This rule is being promulgated in accordance with paragraph (c) of subdivision 18 of section 3-702 of the administrative code, which allows the CCPO to create a process to allow persons required to be listed in the doing business database to seek a waiver from that requirement.

Local Laws 34 and 67 of 2007 amended the administrative code to establish a doing business database in order to enforce limits on contributions to municipal campaigns for elective office from certain people affiliated with entities that do business with the city of New York. The doing business database includes the names of persons that have business dealings with the City as defined by the law.

The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

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***** Current through December 2009 ****

43 RCNY 12-06

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-06 Scope of Waiver.

Waivers granted under these rules apply only to the requirement that information about covered persons be included in the doing business database.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

This rule is being promulgated in accordance with paragraph (c) of subdivision 18 of section 3-702 of the administrative code, which allows the CCPO to create a process to allow persons required to be listed in the doing business database to seek a waiver from that requirement.

Local Laws 34 and 67 of 2007 amended the administrative code to establish a doing business database in order to enforce limits on contributions to municipal campaigns for elective office from certain people affiliated

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The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

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43 RCNY 12-07

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-07 Form of Waiver Application.

(a) The CCPO shall create a waiver application form that shall be completed by waiver applicants and agencies. The information required on the form shall include all information required by the CCPO in order to determine whether a waiver should be granted, including but not limited to the information set forth below.

(b) The information required from waiver applicants shall include the following, in addition to any other information that the CCPO shall require:

(i) a description of the information that the waiver applicant seeks to have excluded from the doing business database; and

(ii) an explanation of the applicant's reason or reasons for seeking a waiver from including this information in the doing business database.

(c) The information required from agencies shall include the following, in addition to any other information that the CCPO may require:

(i) whether there is a compelling need to obtain essential goods, services or construction from the person seeking the exemption;

(ii) whether no other reasonable alternative exists in light of such considerations as cost, uniqueness and the critical nature of such goods, services or construction to the accomplishment of the agency's mission;

(iii) the efforts undertaken by the agency to obtain from the waiver applicant the information required to establish the doing business database in accordance with subdivision 20 of section 3-702 of the administrative code; and

(iv) whether the agency believes that it would be in the best interests of the city for the waiver application to be granted.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

This rule is being promulgated in accordance with paragraph (c) of subdivision 18 of section 3-702 of the administrative code, which allows the CCPO to create a process to allow persons required to be listed in the doing business database to seek a waiver from that requirement.

Local Laws 34 and 67 of 2007 amended the administrative code to establish a doing business database in order to enforce limits on contributions to municipal campaigns for elective office from certain people affiliated with entities that do business with the city of New York. The doing business database includes the names of persons that have business dealings with the City as defined by the law.

The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

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43 RCNY 12-08

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-08 Basis for Waiver.

A waiver may be granted in the following circumstances:

(a) When the CCPO finds that a waiver would be in the best interests of the city. Such a finding shall only be made upon a determination that:

(i) there is a compelling need to obtain such essential goods, services or construction from the person seeking the exemption; and

(ii) no other reasonable alternative exists in light of such considerations as cost, uniqueness and the critical nature of such goods, services or construction to the accomplishment of the agency's mission.

(b) When a person is doing business with the city by virtue of the city's exercise of its powers of eminent domain.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

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The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

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43 RCNY 12-09

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-09 Efforts to Obtain Data.

A waiver shall be granted only after substantial efforts have been made by the CCPO to obtain the information. Such efforts may include any efforts made by the agency at the direction of the CCPO.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

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Local Laws 34 and 67 of 2007 amended the administrative code to establish a doing business database in order to enforce limits on contributions to municipal campaigns for elective office from certain people affiliated

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The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

Rules of the City of New York

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43 RCNY 1428

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1428 Purpose.

The New York city green property certification program is established to acknowledge the benefits to public health and the environment of remedial action to property in New York city performed by enrollees in the New York city local brownfield cleanup program and in other government remediation programs that achieve equivalent property remediation.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 2, 2009:

Local Law No. 27 of 2009 amended the New York City Charter to create an Office of Environmental Remediation, led by a director. The office oversees all aspects of the city's brownfield policy and administers the E-designation program, as defined in the zoning resolution.

Local Law No. 27 also amended the Administrative Code of the City of New York to establish the local brownfield cleanup program. In particular, §24-903(h) of the Administrative Code requires the director to promulgate

rules for the issuance of a green property certification to properties that have successfully completed the local brownfield cleanup program or other remedial programs equivalent to the local brownfield cleanup program.

The Office now promulgates the following rules to implement §24-903(h) of the Administrative Code. The rules provide that the Office will issue a green property certification to properties in the City of New York that have obtained a certificate of completion under the local brownfield cleanup program or equivalent remedial programs, including the New York State brownfield cleanup program. The rules set forth the eligibility requirements for the green property certification and an application process for properties in other state or city remediation programs that attain equivalent levels of remediation. The rules also provide that the Office of Environmental Remediation may rescind the certification if it determines that a party has failed to maintain the property in compliance with requirements established under the respective remediation programs.

FOOTNOTES

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[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

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***** Current through December 2009 ****

43 RCNY 1429

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1429 Definitions.

For the purposes of this subchapter, the following terms shall have the following meanings:

a. Agreement. "Agreement" means (1) for the New York city local brownfield cleanup program, the local brownfield cleanup agreement, (2) for the New York state brownfield cleanup program, an agreement between the enrollee and the New York state department of environmental conservation setting forth the enrollee's remedial obligations, or (3) for any other governmental remediation program, the agreements, stipulations, statutory requirements or regulations that govern management of such program.

b. Green property certification. "Green property certification" means formal recognition by the office that a property in New York city under the New York city local brownfield cleanup program or the New York state brownfield cleanup program, or that a property in New York city that is an equivalent remediation property, has been successfully remediated and that such remediation protects public health and the environment.

c. Enrollee. "Enrollee" means an enrollee in the New York city local brownfield cleanup program, as defined in §43-1402 of this chapter, an applicant in the New York state brownfield cleanup program, pursuant to §27-1405 of the environmental conservation law, or a party who has submitted an application for admission into the New York city green property certification program as an equivalent remediation property.

d. Equivalent remediation property. "Equivalent remediation property" means a property that the office has determined to have met the requirements of §43-1430(a)(2).

e. Office. "Office" means the office of environmental remediation.

f. Recipient. "Recipient" means an enrollee who is eligible for and has been issued green property certification, as well as such enrollee's successors and assigns.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

FOOTNOTES

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[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

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43 RCNY 1430

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1430 Eligibility.

a. To be eligible for green property certification, a property shall be located in the city of New York and (1) be admitted to the New York city local brownfield cleanup program or the New York state brownfield cleanup program or (2) be an equivalent remediation property.

1. A property admitted to the New York city local brownfield cleanup program or the New York state brownfield cleanup program shall be eligible if the enrollee has completed the requirements of the local brownfield cleanup agreement or the state brownfield cleanup agreement and received a certificate of completion from such program.

2. A property shall be eligible as an equivalent remediation property if the office determines that:

A. the property has been the subject of a governmental remediation program, including the New York state voluntary cleanup program, the New York state petroleum spills remediation program, and the New York city e-designation hazardous materials program;

B. the enrollee has successfully completed the requirements of such governmental remediation program and received a certificate of completion or equivalent notification of completion from the appropriate city or state office or agency;

C. for a property where residual contamination will remain after the completion of the remediation, the remedial action required pursuant to such governmental remediation program includes establishment of institutional and engineering controls for the property that are equivalent to those required pursuant to the New York city local brownfield cleanup program, as provided in subchapter one of this chapter, including the maintenance of a site management plan to ensure compliance with institutional and engineering controls;

D. the property is in compliance with such requirements for institutional and engineering controls; and

E. the remedial action required pursuant to such governmental remediation program includes the investigation and remediation of the entire property for which a green property certification is sought and addresses all media, including soil, soil vapor and groundwater, to an equivalent extent as required pursuant to the New York city local brownfield cleanup program, as provided in subchapter one of this chapter.

3. The office may determine that one or more sub-parcels of a property are eligible as an equivalent remediation property and that one or more other sub-parcels are not eligible as an equivalent remediation property.

b. Properties that have fulfilled the eligibility requirements for green property certification pursuant to this section prior to the effective date of this section shall be eligible for such certification.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

FOOTNOTES

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[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

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43 RCNY 1431

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1431 Applications.

a. No application is required for properties admitted to the New York city local brownfield cleanup program.

b. An application is required for all other properties, including those that have completed the New York state brownfield cleanup program and those for which eligibility under an equivalent remediation property is sought. The office may require information and documentation sufficient for the office to determine whether a property is an equivalent remediation property.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

FOOTNOTES

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[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

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***** Current through December 2009 ****

43 RCNY 1432

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1432 Records.

a. The office shall maintain a public record of all properties certified under the New York city green property certification program. The office shall provide confirmation of such certification to any member of the public upon request.

b. The office shall provide a certificate and/or make available other symbols of green property certification to the recipient.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

FOOTNOTES

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[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

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43 RCNY 1433

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1433 Rescission and termination.

a. The office may rescind a green property certification if it determines that a certified property is no longer in compliance with the agreement, the certificate of completion or equivalent notice of completion, or the site management plan governing institutional and/or engineering controls established within the respective remediation program to which the property is admitted. Compliance for the purpose of this subdivision includes compliance with reporting requirements. The office may reinstate a green property certification if it determines that the recipient has cured the non-compliance.

1. If the office seeks to rescind a green property certification, it shall provide notice to the recipient by certified mail specifying the basis for the office's proposed action and facts in support of that action.

2. The recipient shall have thirty days after the effective date of the notice to cure the non-compliance and submit proof of cure to the office or to seek a hearing.

3. If the recipient does not seek a hearing within such thirty day period, the green property certification shall be rescinded on the thirty-first day.

4. If the office determines that the non-compliance has been cured, the proposed rescission shall be withdrawn.

5. If the office determines that the recipient has not proven that the non-compliance has been cured, the office shall provide notice to the recipient by certified mail. The recipient shall have thirty days after the effective date of the notice to seek a hearing. If the recipient does not seek a hearing within such thirty day period, the green property certification shall be rescinded on the thirty-first day.

6. A hearing pursuant to paragraph two or five of this subdivision shall be held before the director of the office of environmental remediation or his or her designee, or in the director's discretion, by the office of administrative trials and hearings. If the matter is referred to the office of administrative trials and hearings, the hearing officer shall submit findings of fact and a recommended decision to the director. The director or his or her designee shall make a final determination and shall notify the recipient within a reasonable period of time of such determination.

7. For purposes of this subdivision, the effective date of notice shall be two business days after the office mails such notice by certified mail.

b. The recipient of a green property certification may terminate the certification upon written request to the office.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

FOOTNOTES

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[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

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43 RCNY 1434

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1434 Miscellaneous.

a. **Certification categories.** The office may establish certification categories, including categories that recognize a cleanup for unrestricted use of the property and categories that recognize the use of sustainable methods for remediation and redevelopment of the property.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

FOOTNOTES

1

[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 1 BOND TRANSFERS

§1-01 Issuance of New Bond.

Upon registration of the transfer of a registered bond, the transferee may be provided with a new bond.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 1 BOND TRANSFERS

§1-02 Form of New Bond.

The new bond shall be of substantially the same form and tenor as the bond presented, except as provided below.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

44 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 1 BOND TRANSFERS

§1-03 Signing and Attesting of New Bond.

The new bond shall be signed and attested, either:

(a) by manual or facsimile signature by the appropriate persons in office at the time of delivery to the transferee, or

(b) by facsimile signature of the appropriate persons in office at the time of issuance, provided, however, that in the event the new bond is not authenticated by the fiscal agent, as defined in or designated pursuant to §70.00 of the New York Local Finance Law, as the case may be, it shall be attested by the manual signature of the City Clerk, or the deputy of the City Clerk, in office at the time of delivery to the transferee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 1 BOND TRANSFERS

§1-04 Execution and Authentication of New Bond.

The new bond shall be executed as of the date of the bond presented and shall be authenticated as of the date of delivery of the new bond.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 1 BOND TRANSFERS

§1-05 Destruction of Old Bond.

The bond presented shall be destroyed in such manner as is set forth in any agreement between the City and its fiscal agent and a certificate of destruction shall be prepared as set forth in such agreement.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 1 BOND TRANSFERS

§1-06 Effectiveness.

These Rules and Regulations shall be effective immmediately; provided, however, that neither delivery of new bonds prior to the effective date hereof nor the application of procedures inconsistent with the requirements of these Rules and Regulations shall affect the validity of new bonds.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 2 COMPTROLLER'S LABOR LAW HEARING PRACTICE AND PROCEDURE

§2-01 Applicability.

These Rules shall apply to hearings conducted pursuant to the provisions of New York State Labor Law §§220 et seq. and 230 et seq.

HISTORICAL NOTE

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Under Labor Law section 220(8-d), the City and the union representing prevailing wage employees must negotiate in good faith to reach a collective bargaining agreement. If the parties cannot reach agreement, the union is authorized to file a verified complaint on behalf of the employees with the New York City Comptroller. The Comptroller, after a hearing on those issues, must make a determination of the wages and supplemental benefits due the employees. Under the Comptroller's rules, Labor Law section 220 hearings are conducted by the Office of Administrative Trials and Hearings. **Comptroller v. Office of Labor Relations,** OATH Index No. 616/98 (May 18, 1998), **aff'd sub nom. Local 237 v. Comptroller of the City of New York,** 259 A.D.2d 314, 686 N.Y.S.2d 420 (1st Dep't 1999).

¶ 2. Comptroller brought a proceeding against plumbing contractor pursuant to section 220 of the Labor Law (prevailing wage law) seeking to debar the contractor for intentionally filing false payroll records. The Comptroller was unable to perform an audit so the contractor was not charged with underpaying any workers. The administrative law

judge recommended dismissal of the proceeding, finding petitioner did not prove the contractor filed false records. The Comptroller found the false filing charge was proven, but dismissed the proceeding, finding proof of underpayments to be a jurisdictional requirement for imposing a sanction pursuant to the prevailing wage law. **Office of the Comptroller v. Stivan Plumbing & Heating, Inc.,** OATH Index No. 1980/01 (June 28, 2002), **aff'd on other grounds,** Comptroller's Determination (Oct. 8, 2002).

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 2 COMPTROLLER'S LABOR LAW HEARING PRACTICE AND PROCEDURE

§2-02 Hearing Procedure.

(a) **Commencement of hearing.** A hearing shall be commenced by service of a notice of hearing by the Comptroller's Labor Law Division.

(b) **Notice of hearing.** (1) All persons or corporations affected thereby shall receive a notice of hearing at least five (5) days before the date of the hearing. If service is by mail, five (5) days shall be added to the prescribed period of notice, pursuant to CPLR 2103.

(2) The notice of hearing shall state:

(i) the date, time and place of the hearing;

(ii) the nature or purpose of the hearing and the alleged violations;

(iii) the legal authority under which the hearing is to be held; and

(iv) a reference to the particular sections of the law and rules involved.

(c) **Representation by counsel.** All parties to a hearing shall have the right to be represented by counsel. After a notice of appearance has been filed by counsel with the Office of Administrative Trials and Hearings ("OATH"), all subsequent notices, documents or other communications shall be sent to such counsel and shall be deemed service upon the party.

(d) **Hearing officer.** (1) An administrative law judge assigned to OATH shall conduct hearings pursuant to Labor Law §§220 and 235.

(2) No administrative law judge shall participate in any hearing in which (s)he has an interest.

(3) Any party may challenge an administrative law judge's impartiality by filing an affidavit of his or her personal bias or other grounds for disqualification. The Chief Administrative Law Judge or his or her designee shall issue a written decision to the challenge which shall be reviewable only at the conclusion of the hearing through an Article 78 proceeding.

(4) Whenever an administrative law judge is disqualified or otherwise unable to continue the hearing, the proceeding may be transferred to another administrative law judge designated by the Chief Administrative Law Judge to continue with the case.

(e) **Disclosure.** Except as provided in the Labor Law, there shall be no pre-hearing discovery or depositions.

(f) **Conduct of hearing.** (1) The administrative law judge shall conduct the hearing in such order and manner and with such methods of proof and interrogation, consistent with due process, as (s)he deems best suited to ascertain the substantial rights of the parties. The administrative law judge shall set the time and place for continued hearings.

(2) The administrative law judge shall not be bound by formal rules of evidence or technical or formal rules of procedure. Official notice of facts may be taken only in situations in which judicial notice might be taken.

(3) The administrative law judge is authorized to:

(i) administer oaths and affirmations;

(ii) sign and issue subpoenas for the appearance and relevant testimony of witnesses and the production of relevant documents, as regulated by the CPLR; attorneys for any party shall also have the right to issue subpoenas pursuant to the CPLR;

(iii) examine the parties and their witnesses and require such appearances as deemed necessary;

(iv) hear and decide issues not specifically included in the notice of hearing provided such intention is noted on the record together with the reason therefor and the parties are given the opportunity to request an adjournment for the purpose of adequately preparing to address such issues;

(v) sever or consolidate cases in the interest of justice so long as there is no prejudice to the substantial rights of any party;

(vi) direct such further investigation, inquiry, audit, examination or report as may be necessary to enable the hearing officer to adequately resolve the proceeding and issue findings and recommendations.

(4) All parties shall be accorded the opportunity to present such testimony or introduce such documentary or other evidence as may be pertinent. All parties shall have the right to call, examine and cross-examine parties and witnesses and to present oral and written arguments on the law and facts. The administrative law judge shall fix the time for presenting oral and written argument and shall establish reasonable limits thereon.

(5) The hearing shall be transcribed and a copy of the transcript shall be made available to any party upon request at a reasonable cost.

(g) **Adjournments.** (1) Any party may request an adjournment upon establishing good cause for the adjournment. The administrative law judge shall rule on all requests for adjournments and may on his or her own initiative adjourn

the hearing for good cause.

(2) If a request for an adjournment is not made at least 24 hours before the scheduled hearing, the party making the request shall, as a condition to being granted the adjournment, agree to pay any charges assessed by the stenographic service for late cancellation of the scheduled hearing.

(3) Any adjourned hearing shall be rescheduled by the administrative law judge at the convenience of the other parties. Notice of the rescheduled hearing shall be given to all parties by telephone or mail at least 24 hours before the rescheduled date and time.

(4) Upon an adjournment for failure of one or more parties to appear, the failure of any such party to appear at the rescheduled hearing may result in their being declared in default, in which case the hearing may continue in their absence and the decision rendered based upon the record created without their participation.

HISTORICAL NOTE

Section amended City Record Aug. 13, 1991 eff. Sept. 12, 1991.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. At a prevailing wage enforcement hearing where respondents defaulted, petitioner proved proper service of notice of petition and hearing date by certified and regular mail to address on file with the Secretary of State, as required by statute and this section. **Office of the Comptroller v. Manshul Construction, Inc.,** OATH Index No. 1631/99 (May 21, 1999), **modified on penalty,** Comptroller's Determination (June 14, 1999).

¶ 2. Default hearing held where petitioner proved proper service of notice of petition and hearing date, as required by paragraph (b) of this section, by certified and regular mail to last address of record and to address on file with Secretary of State. **Office of the Comptroller v. A & R Paterno Construction, Inc.,** OATH Index No. 2248/00 (Oct. 19, 2000).

¶ 3. Defaulting contractor was found to have failed to pay prevailing wages and supplemental benefits to four roofers and to have submitted falsified certified payroll reports. Willful violation and falsification of records merited a 25% civil penalty. **Office of the Comptroller v. Kornas Construction Corp.,** OATH Index No. 628/01 (Jan. 4, 2001).

¶ 4. A bankruptcy order of settlement did not bar adjudication of claims pursuant to the Labor Law or the issuance of penalties or willfulness findings under the Labor Law, even though two of the claims were discharged by a bankruptcy order of settlement. A worker's complaint and detailed diary notes of his work assignments were sufficient to establish that the worker was employed on a City contract. Violations were willful under section 220(3) of the Labor Law because records were intentionally fabricated to conceal contractor's failure to pay the prevailing wage to its cleaners. **Office of the Comptroller v. Navarro Special Cleaning Services,** OATH Index No. 2247/00 (Jan. 30, 2001).

¶ 5. Section 2-02(e) of the Comptroller's rules (44 RCNY §2-02(e)) prohibits discovery "except as provided in the Labor Law". Request for documents and subpoena was denied where the ALJ found that the items sought were not relevant to the proceeding and that the request was untimely made. **Comptroller v. Office of Labor Relations**, OATH Index No. 254/05 (Feb. 28, 2005).

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 2 COMPTROLLER'S LABOR LAW HEARING PRACTICE AND PROCEDURE

§2-03 Decision.

(a) Within a reasonable time after the conclusion of the hearings, the administrative law judge shall issue a written report, including proposed findings of fact and conclusions of law, and recommendations as to decisions, determinations and orders which shall be forwarded to the Comptroller or his or her designee for consideration; a copy shall also be mailed to each party.

(b) The findings of fact shall be based exclusively upon the record as a whole, including facts of which official notice has been taken.

(c) The Comptroller or his or her designee may adopt, reject or modify the administrative law judge's findings and recommendation when issuing a decision, order and determination; such decision, order and determination shall be based exclusively upon the record as a whole, including facts of which official notice has been taken.

(d) An administrative law judge may, on his or her own initiative or on application duly made, revise the findings and decision, order and determination for the purpose of correcting clerical, arithmetical or typographical errors.

(e) Copies of decisions, orders and determinations and revisions thereof shall be filed in the Comptroller's Labor Law Division and shall be mailed to every party.

HISTORICAL NOTE

Section amended City Record Aug. 13, 1991 eff. Sept. 12, 1991.

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 2 COMPTROLLER'S LABOR LAW HEARING PRACTICE AND PROCEDURE

§2-04 Appeals.

There shall be no right to an administrative appeal of any decision, order and determination. Any review thereof is restricted to that provided by statute.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 2 COMPTROLLER'S LABOR LAW HEARING PRACTICE AND PROCEDURE

§2-05 Reopening.

(a) Upon written application of a party, the administrative law judge may reopen the proceeding.

(b) An application for reopening must be served upon the administrative law judge and all other parties within 30 days of the receipt of the order and determination by the moving party.

(c) Any party may file written opposition to an application for reopening by serving a copy upon the administrative law judge and all other parties within 14 days of receipt of the application.

(d) An application for reopening must contain the following:

(1) a statement that the decision, order and determination was issued after the party had defaulted and a demonstration that good cause existed for the default; or

(2) a demonstration that new and additional facts occurred or were discovered after issuance of the decision, order and determination; or

(3) a determination that in issuing the decision, order and determination, the administrative law judge, Comptroller or his or her designee overlooked or misapprehended some controlling fact or legal authority.

(e) The administrative law judge, on his or her own initiative, or at the direction of the Comptroller or his or her designee, may reopen the hearing when it is deemed appropriate in order to arrive at an equitable determination.

HISTORICAL NOTE

Section amended City Record Aug. 13, 1991 eff. Sept. 12, 1991.

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-01 Final Audit Report.

(a) After the receipt of the hospital's objections to the draft audit report, or if no objections have been received within 30 days after mailing the draft audit report to the hospital, a final report shall be issued. In preparing the final audit report, the Bureau of Financial Audit (BFA) of the New York City Comptroller's Office (Comptroller) shall consider the objections, any supporting documents and materials submitted therewith, the draft audit report, and any additional material which may become available.

(b) The final audit report and/or the cover letter accompanying it shall clearly advise the hospital:

(1) of the nature and amount of the audit findings, the basis for the action and the statutory, regulatory or other legal basis therefore;

(2) of the action which will be taken;

(3) that the withholding action will occur 35 days from the date of the final audit report unless an appeal is taken;

(4) of the right to appeal the administrative action by requesting a hearing;

(5) the name, title, address and telephone number of the BFA's Director whom the hospital must contact to request a hearing;

(6) that a request for a hearing must be made in writing and postmarked or delivered within 30 days of receipt of the final audit report which shall be presumed to be five days from the date of mailing; and

(7) that the request may not address issues regarding the:

(i) statistical sampling and extrapolation methodologies used to determine the disallowances;

(ii) disallowances where patient account records to substantiate billings were missing at the time of the audit; or

(iii) any issue that could have been raised, but was not, in a written response to the draft report.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-02 Request for Hearing.

(a) A hospital has the right to an administrative hearing to challenge the final audit report and may request such a hearing within 30 days of receipt of the final audit report which shall be presumed to be five days from the date of mailing.

(b) The request for hearing shall be in writing and shall be delivered or mailed to the BFA's Director, who will forward such request to the New York City Office of Administrative Trials and Hearings (OATH) for scheduling on the calendar. It shall be accompanied by a copy of the final audit report which is to be the subject of the hearing and shall include the following additional information:

(1) the specific item or items to which objections are made;

(2) the factual basis for the objections; and

(3) any legal authority for the objections.

(c) When a timely request for a hearing has been made, a hearing shall be held, except when the request has been withdrawn or abandoned by the hospital.

(1) A request for a hearing shall be considered withdrawn only upon receipt of a written statement or by the making of a statement on the record at the hearing by the hospital or by the hospital's attorney or representative.

(2) A request for a hearing shall be considered abandoned if, without good cause, neither the hospital nor the

hospital's attorney or representative appears at the time and place designated for the hearing.

(d) Upon receipt of a request for a hearing, the BFA's Director shall:

(1) have OATH designate an Administrative Law Judge to hear, report and recommend; and establish a time and place for such hearing;

(2) notify the hospital of the time and place of such hearing at least 15 days before the commencement of the hearing;

(3) include in a notice of hearing a statement:

(i) of those issues which are controverted and to be determined at the hearing;

(ii) of the legal authority and jurisdiction under which the hearing is to be held, and a reference to the particular sections of the law and rules involved;

(iii) of the hospital's right to be represented by an attorney or other representative, to cross-examination, to present evidence and produce witnesses on the hospital's own behalf; and

(iv) that the burden of proof at the hearing shall be on the hospital.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-03 The Hearing Officer.

The hearing shall be conducted by an Administrative Law Judge employed by OATH for that purpose. The judge shall have all the powers conferred by law to administer oaths, issue subpoenas, require the attendance of witnesses and production of records, rule upon requests for adjournment, rule upon evidentiary matters and to otherwise regulate the hearing, observe requirements of due process and effectuate the purposes and provisions of applicable law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-04 Authorization of Representative.

An individual, other than an attorney, representing the hospital, shall have written authorization signed by an officer or director of the hospital.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-05 Conduct of Hearings; Rights of Hospital.

(a) The judge shall preside over the hearing, make all procedural rulings, and make a statement on the record describing the nature of the proceedings, the issues, and the manner in which the hearing will be conducted.

(b) The issues and documentation presented at the hearing shall be limited to issues relating to determinations made in the final audit report. A hospital may not raise issues regarding the:

(1) statistical sampling and extrapolation methodologies used to determine the disallowances;

(2) disallowances where patient account records to substantiate billings were missing at the time of the audit; or

(3) any issue that could have been raised, but was not, in a written response to the draft report.

(c) The rules of evidence observed by a court of law need not apply.

(d) Computer-generated documents prepared by the New York State Department of Social Services (NYSDSS) or its fiscal agent to show the nature and amount of payments made under the Medicaid program shall be presumed, in the absence of evidence to the contrary, to constitute an accurate reflection of NYSDSS' records as to the amount and type of payment made to a hospital as well as the basis for such payment.

(e) An extrapolation based upon a Comptroller's Office audit utilizing a valid statistical sampling method shall be presumed, in the absence of evidence to the contrary, to be accurate.

(f) An audit report of the Comptroller's Office shall be presumed to be correct and the burden of proof shall be upon the hospital to show by a preponderance of the evidence that any item of such report is incorrect.

(g) All testimony shall be given under oath or affirmation administered by the judge.

(h) The hospital shall be entitled to be represented, to have witnesses give testimony and to otherwise present relevant and material evidence on the hospital's behalf, to cross-examine witnesses and to examine any document or other item offered into evidence.

(i) A typed or recorded copy of the record of the hearing will be prepared by OATH; a copy shall be provided upon request for a reasonable cost.

(j) At the discretion of the judge, the hearing may be adjourned for good cause upon the request of either party or upon the judge's own motion.

(k) The hearing shall be conducted in conformity with procedural requirements of applicable law and the rules of procedure adopted by OATH which are not inconsistent with these rules.

(l) After the conclusion of the hearing, the presiding Administrative Law Judge will prepare a report and recommendation.

(m) The report will summarize the evidence presented and contain an analysis of the legal and factual issues, with recommended findings of fact and recommended dis- position.

(n) The report will be sent to the Comptroller for a final decision.

(o) A copy of the report will also be delivered or mailed to the hospital.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-06 Decision After Hearing.

(a) The hearing decision shall be made and issued by the Comptroller and shall be based exclusively on the record and transcript of the hearing. In reaching a decision, the Comptroller may review the memoranda of law of the parties, if any. The Comptroller shall not be bound by the judge's recommendation but may adopt, reject or modify such recommendation, in whole or in part, as may be appropriate. The decision shall be in writing and shall state reasons for the determinations and, when appropriate, direct specific action.

(b) A copy of such decision shall be mailed by the Comptroller to the hospital and the hospital's attorney or representative, if any, and to NYSDSS.

(c) In the event that a decision is adverse to the hospital, in whole or in part, the hospital has the right to judicial review in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-07 Recoupment of Overpayments.

Upon determination that overpayments have been made, the BFA shall transmit a "Withholding Request for Provider Recoupment Initiated by the Local District" to NYSDSS. NYSDSS' fiscal agent shall recover overpayments by withholding against the hospital's current or future payments on claims submitted or a percentage of payments otherwise payable on such claims, at the option of NYSDSS. Such withholding may be made at any time after the issuance of a decision after hearing or, if a hearing has not been requested in accordance with this chapter, at any time after expiration of the time period allowed (30 days) for the making of such request.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 4 RULES FOR PETITIONING

§4-01 Scope.

These Rules and Regulations shall govern the procedures by which the public may submit petitions for rulemaking to the Comptroller pursuant to §1043(f) of the New York City Charter (City Administrative Procedures Act).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 4 RULES FOR PETITIONING

§4-02 Definitions.

Person. "Person" shall mean an individual, partnership, corporation or other legal entity, and any individual or entity acting in a fiduciary or representative capacity.

Petition. "Petition" shall mean a request or application for any agency to adopt a rule.

Petitioner. "Petitioner" shall mean the person who files a petition.

Rule. "Rule" shall have the meaning set forth in §1041(5) of the City Administrative Procedure Act and shall mean generally any statement or communication of general applicability that

(i) implements or applies law or policy or

(ii) prescribes the procedural requirements of an agency, including an amendment, suspension, or repeal of any such statement or communication.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 4 RULES FOR PETITIONING

§4-03 Procedures for Submitting Petitions; Responses to Petitions.

(a) Any person may petition the Comptroller to consider the adoption of a rule. The petition must contain the following information:

(1) The rule to be considered, with proposed language for adoption;

(2) A statement of the Comptroller's authority to promulgate the rule and its purpose; (3) Petitioner's argument(s) in support of adoption of the rule;

(4) The period of time the rule should be in effect;

(5) The name, address and telephone number of the petitioner or his or her authorized representative;

(6) The signature of petitioner or his or her representative.

(b) Any change in the information provided pursuant §4-03(a)(5) must be communicated promptly in writing to the Comptroller.

(c) All petitions should be typewritten, if possible, but handwritten petitions will be accepted, provided they are legible.

(d) The petition shall be filed in duplicate on plain white paper.

(e) Petitions shall be mailed or delivered to the agency's Deputy General Counsel, Sue Ellen Dodell, at 1 Centre Street, Room 518, New York, NY 10007.

(f) Upon receipt of a petition submitted in the proper form, the Deputy General Counsel will stamp the petition with the date it was received and will assign the petition a number.

(g) Within sixty days from the date the petition was received by the Comptroller, the Comptroller shall either deny such petition in a written statement containing the reasons for denial, or shall state in writing the Comptroller's intention to grant the petition and to initiate rulemaking by a specified date. In proceeding with such rulemaking, the Comptroller shall not be bound by the language proposed by petitioner, but may amend or modify such proposed language at the Comptroller's discretion. The Comptroller's decision to grant or deny a petition is final.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 4 RULES FOR PETITIONING

§4-04 Public Notice; Promulgation of Rules and Regulations.

(a) The Comptroller shall publicize by posting in a conspicuous location:

(1) these procedures for submitting petitions for rulemaking and

(2) the name, title, business address and telephone number of the officer designated to receive petitions, who shall be Sue Ellen Dodell, Deputy General Counsel, 1 Centre Street, Room 518, New York, NY 10007, (212) 669-7778.

(b) The Comptroller shall forthwith submit for publication in The City Record notice of the name, title, business address and telephone number of the officer designated to receive petitions. Notice of any change in the above information shall be published as soon as practicable in The City Record. Such notice shall not constitute a rule as defined in the City Charter, §1041, subd. 5.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 4 RULES FOR PETITIONING

§4-05 Severability.

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of these Rules and Regulations or the application thereof to other persons and circumstances.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 1 PRESIDENT OF THE BOROUGH OF THE BRONX

SUBCHAPTER A HOUSE NUMBERS

§1-01 Procedure for Issuance of House Numbers.

The architect, builder, owner or his or her agent must provide to the office of the Borough President, Bureau of Topography, a completed Department of Buildings "New Buildings Application" form which includes a description and the location of the property and building involved, the signature of the owner and the signature and seal of the registered architect, and a diagram indicating the filed grades and their relationship to the rest of the block, including street corners. The form certified, along with a street status report, which reflect ownership of the street, and the official house number is the issued.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 1 PRESIDENT OF THE BOROUGH OF THE BRONX

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§1-02 Definitions.

Whenever used in this subchapter, the following terms shall be deemed to mean and include:

(a) "Alteration Map" means a map which shows proposed changes to the City Map and is prepared by the Topographical Bureau or a qualified consultant who is a licensed professional engineer or registered architect.

(b) "Alteration Map Review" mean the review, processing and approval by the Topographical Bureau of an Alteration Map prepared by a person other than the staff of the Topographical Bureau.

(c) "Alteration Map Preparation" means preparation and processing of Alteration Maps by the Bronx Borough President's Topographical staff from inception through final review.

(d) "Street Address Application" means the filing of an application or a request with the Topographical Bureau requesting:

(i) the issuance of a new street address for an existing or proposed building (or portion thereof); or

(ii) the review and confirmation of whether a specific street address is correct for an existing or proposed building (or a portion thereof).

(e) "Street Status Review and Report" means work performed by the Topographical Bureau in response to an application or request that it research, review and advise as to the legal dimensions and ownership of a portion of a street (including the sidewalk) as indicated in the records of the Topographical Bureau and other relevant information.

(f) "Topographical Bureau" means the Topographical Bureau maintained by the Office of the President of the Borough of The Bronx.

HISTORICAL NOTE

Section added City Record Apr. 29, 2004 eff. May 29, 2004. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record Apr. 29, 2004 eff. May 29, 2004. Note: Statement of Basis and Purpose. The Amendment to the Borough President's Rules creates a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. The Borough President is responsible for maintaining the official City Map for the borough, for assigning street addresses to buildings located in the borough, and for related services which include maintaining various records, maps, surveys, topographical data, the preparation and review of alteration maps, damage and acquisition maps, and other street maps. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public and to comply with Section 82 of the Charter, the Office of the Bronx Borough President will charge the fees set forth in this rule.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 1 PRESIDENT OF THE BOROUGH OF THE BRONX

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§1-03 Schedule of Fees, Charges and Limitations.

(a) The fees for the processing of the below listed applications and requests submitted to the Topographical Bureau shall be as follows:

Fee

(1) street address application $100.00 per street number

(2) street status review and report $250.00 per block face

(3) alteration map review $3,000.00 per map sheet

(4) alteration map preparation $4,500 for up to two sheets and$1,500 for each additional sheet, not toexceed a total charge of $9,000.

HISTORICAL NOTE

Section added City Record Apr. 29, 2004 eff. May 29, 2004. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record Apr. 29, 2004 eff. May 29, 2004. Note: Statement of Basis and Purpose. The Amendment to the Borough President's Rules creates a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. The Borough President is responsible for maintaining the official City Map for the borough, for assigning street addresses to buildings located in the borough, and for related services which include maintaining various records, maps, surveys, topographical data, the preparation and review of alteration maps, damage and acquisition maps, and other street maps. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public and to comply with Section 82 of the Charter, the Office of the Bronx Borough President will charge the fees set forth in this rule.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 1 PRESIDENT OF THE BOROUGH OF THE BRONX

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§1-04 Payment Method.

Except as specifically provided in this section, every application for the preparation of an alteration map, review of an alteration map, issuance of a street address or review and report of street status made after July 1, 2004 shall include a non-returnable fee which shall be paid by certified check or money order made payable to the New York City Department of Finance. Fees shall be paid when the application is filed, and no application will be processed by the Borough President's Office until the fee is paid in full.

HISTORICAL NOTE

Section added City Record Apr. 29, 2004 eff. May 29, 2004. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record Apr. 29, 2004 eff. May 29, 2004. Note: Statement of Basis and Purpose. The Amendment to the Borough President's Rules creates a new Fee Schedule for providing

certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. The Borough President is responsible for maintaining the official City Map for the borough, for assigning street addresses to buildings located in the borough, and for related services which include maintaining various records, maps, surveys, topographical data, the preparation and review of alteration maps, damage and acquisition maps, and other street maps. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public and to comply with Section 82 of the Charter, the Office of the Bronx Borough President will charge the fees set forth in this rule.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER A HOUSE NUMBERS

§2-01 Procedure for Issuance of House Numbers.

The following Regulations are established pursuant to Chapter 5, §3-505 of the Administrative Code of the City of New York.

(a) All house numbers shall be at least five (5) inches in height and may be metal, metal foil, glass, plastic, wood, paint, or other suitable material; where such numbers are displayed in paint, they shall bear an even and uniform brush stroke at least 5/8" in width.

(b) All house numbers shall be located at one of the following locations:

(1) on the front wall of the building within two (2) feet of the knob side of the door and not less than four (4) feet from the bottom thereof nor at a height greater than the height of the door; or

(2) on the front wall of the building above the door at the centerline of the opening and within two (2) feet of the top of the door; or

(3) such other locations as may be authorized by the Office of the Borough President. For the purposes of these Regulations, the term "front wall" shall mean the side of the building facing the street on which house numbers have been assigned.

(c) All house numbers shall be plainly legible at all times from the sidewalk in front of the building.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER B RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§2-11 Applicability.

These Rules apply to the public hearings conducted pursuant to the New York City Charter or other applicable law or rule by the President of the Borough of Brooklyn ("Borough President") or his or her designee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER B RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§2-12 Notice of Public Hearing and Agenda.

Notice of the date, day, time, place and subject of a public hearing shall be by publication in the City Record for the five days of publication immediately preceding and including the date of the public hearing. An agenda for the public hearing shall be available at the public hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 2-13

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER B RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§2-13 Conduct of Public Hearings.

(a) **Locations.** Public hearings shall be held in the Community Room at the Brooklyn Borough Hall, 209 Joralemon Street, Brooklyn, New York, or such other place as may be determined by the Borough President and listed in the notice.

(b) **General Character.** Public hearings shall be legislative type hearings, without sworn testimony or strict rules of evidence. The Borough President or his or her designee shall preside and only he or she may question a speaker.

(c) **Testimony.** Persons seeking to testify on any matter on the agenda shall request an opportunity to testify by completing the form provided by the Borough President at the hearing. Persons testifying shall be called in the order determined by the Borough President. Testimony generally is limited to three minutes, unless extended by the Borough President.

(d) **Written Comments.** Any person may submit a written statement or comments on any matter on the agenda. Written statements or comments shall be submitted to the Borough President at the public hearing or by two days after the hearing to receive full consideration.

(e) **Record.** The record of a public hearing shall consist of a tape recording, or when determined by the Borough President, a stenographic transcript of the hearing, a list of the names of the persons who testified and their affiliation, if

any, and any timely submitted written statements or comments. The record shall be available for public inspection at the Brooklyn Borough Hall, Room 230, within sixty days after the hearing. A copy of a transcript or any pages requested is available at a fee of twenty-five cents a page, plus mailing costs, payable in advance.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 2-14

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER B RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§2-14 Borough President's Actions.

The Borough President may adjourn, continue or close any public hearing. The Borough President may make no recommendation, or may approve, approve with modification, disapprove or conditionally disapprove any matter on the agenda of a public hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

45 RCNY 2-15

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER C TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§2-15 Definitions.

Whenever used in this subchapter, the following terms shall be deemed to mean and include:

(a) "Alteration Map" means a map which shows proposed changes to a city map and is prepared by the Topographical Bureau or a qualified consultant who is a licensed professional engineer or registered architect.

(b) "Alteration Map Review" means the review, processing and approval by the Topographical Bureau of an Alteration Map prepared by a person other than the staff of the Topographical Bureau.

(c) "Street number application" means the filing of an application or a request with the Topographical Bureau requesting;

(i) the issuance of a new street number for an existing or proposed building (or a portion thereof); or

(ii) the review and confirmation of whether a specific street number is correct for an existing or proposed building (or a portion thereof).

(d) "Street Status Review and Report" means work performed by the Topographical Bureau in response to an application or request that it research, review and advise as to the legal dimensions and ownership of a portion of a street (including the sidewalk) as indicated in the records of the Topographical Bureau and other relevant information.

(e) "Topographical Bureau" means the topographical bureau maintained by the Office of the President of the Borough of Brooklyn.

(f) "Vanity Address Assignment" means an address that is not a sequential house number, but instead refers to a geographical destination, e.g. One Metro Tech. or a new designation not including a street name, e.g. Bartel Pritchard Square.

(g) "Vanity Address Application" means the filing of an application or a request with the Topographical Bureau requesting:

(i) the review of the appropriateness of a proposed address that is not a sequential house number, but instead refers to a geographical destination, e.g. One Metro Tech. or a new designation not including a street name, e.g. Bartel Pritchard Square; and

(ii) issuance of a Vanity Address Assignment for an existing or proposed building (or a portion thereof);

HISTORICAL NOTE

Section amended City Record Dec. 16, 2004 eff. Jan. 15, 2005. [See T45 Chapter 2 Subchapter C

footnote]

Section added City Record May 30, 2003 eff. June 29, 2003. [See T45 Chapter 2 Subchapter C footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C amended City Record Dec. 16, 2004 eff. Jan. 15, 2005. Note: Statement of Basis and Purpose. The Topographical Bureau of the Office of the Borough President of Brooklyn is responsible for maintaining the official City Map for the borough and for assigning street addresses and vanity addresses to buildings located in the borough. This responsibility includes detailed review and analysis of drawings, maps, surveys, and other information maintained by the Topographical Bureau, other City, State, and Federal agencies and submitted by applicants. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public, the Office of the Brooklyn Borough President proposes to charge the fees set forth in this rule. Subchapter C added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose. The Topographical Bureau of the Office of the Borough President of Brooklyn is responsible for maintaining the official City Map for the borough and for assigning street numbers to buildings located in the borough. This responsibility includes detailed review and analysis of drawings, maps, surveys and other information maintained by the Topographical Bureau and submitted by applicants. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public, the Office of the Brooklyn Borough President will charge the fees set forth in this rule.

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***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER C TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§2-16 Schedule of Fees, Charges and Limitations.

(a) The fees for the processing of the below listed applications and requests submitted to the Topographical Bureau shall be as follows:

(1) street number application $100.00 per street number

(2) street status review and report $250.00 per block face

(3) alteration map review $3,000.00 per map (A separate additional fee of $3,000 is required if a proposed alteration of the City Map will also require the discontinuance and closing of a portion of a street.)

(4) vanity address application $5,500.00

HISTORICAL NOTE

Section amended City Record Dec. 16, 2004 eff. Jan. 15, 2005. [See T45 Chapter 2 Subchapter C footnote]

Section added City Record May 30, 2003 eff. June 29, 2003. [See T45 Chapter 2 Subchapter C footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C amended City Record Dec. 16, 2004 eff. Jan. 15, 2005. Note: Statement of Basis and Purpose. The Topographical Bureau of the Office of the Borough President of Brooklyn is responsible for maintaining the official City Map for the borough and for assigning street addresses and vanity addresses to buildings located in the borough. This responsibility includes detailed review and analysis of drawings, maps, surveys, and other information maintained by the Topographical Bureau, other City, State, and Federal agencies and submitted by applicants. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public, the Office of the Brooklyn Borough President proposes to charge the fees set forth in this rule. Subchapter C added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose. The Topographical Bureau of the Office of the Borough President of Brooklyn is responsible for maintaining the official City Map for the borough and for assigning street numbers to buildings located in the borough. This responsibility includes detailed review and analysis of drawings, maps, surveys and other information maintained by the Topographical Bureau and submitted by applicants. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public, the Office of the Brooklyn Borough President will charge the fees set forth in this rule.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 3 PRESIDENT OF THE BOROUGH OF MANHATTAN

SUBCHAPTER A HOUSE NUMBERS

§3-01 House Number Specifications.

(a) **Power of the Borough President.** The Borough President is empowered to establish and enforce rules and regulations relating to the size, form, visibility and location of house numbers.

(b) **Specifications.** All house numbers shall be at least 5 inches in height and may be metal, metal foil, glass, plastic, wood or paint in composition; where such house numbers are displayed in paint, such numbers shall bear an even and uniform 5/8" stroke.

(c) **Location.** All house numbers shall be located at either of the following locations:

(1) On the front wall of the building, within two (2) feet of the knob side of the door and not less than four (4) feet from the bottom thereof nor at a height greater than the height of the door; or

(2) On the front wall of the building above the door, at the center line of the opening and within two (2) feet of the height of the door. All transoms shall be considered part of the building wall for purposes of these Rules and Regulations; or

(3) Where an entrance door is recessed in excess of three (3) feet from the building line, the house numbers shall be placed on the front wall of the building nearest the front entrance in accordance with either subdivision (b) or

paragraph (2) above; and

(4) Such other locations on the front of the building as may be approved by the Office of the Borough President.

(5) The term "front" shall mean the side of the building which faces the street on which numbers have been assigned.

(d) **Responsibility for display and illumination.** All owners, agents, lessees or other persons in charge of buildings to which house numbers have been assigned by the Office of the Borough President shall be responsible for the conspicuous display of such numbers, so that they may at all times be plainly legible from the sidewalk in front of such buildings. Proper illumination for house numbers shall be provided for all buildings to be constructed, modernized or renovated.

(e) **Penalties for violations.** Failure to comply with these Rules and Regulations and the Administrative Code applicable thereto, shall subject the owner, lessee, agent or other person in charge of any building to the penalties provided for in the Administrative Code.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 3 PRESIDENT OF THE BOROUGH OF MANHATTAN

SUBCHAPTER A HOUSE NUMBERS

§3-02 Directional Sign-Display of House Numbers.

These Rules and Regulations shall apply in addition to the "House Numbers" regulations in all cases where the Borough President of Manhattan determines that house numbers may not be clearly visible from the street upon which the address is assigned.

Note: This situation usually arises with respect to buildings which are set back from the street, where the entrances are rotated out of a parallel plane to the building line or in cases where buildings do not front on City street.

(a) **Sign facing city streets.** A directional sign shall be installed in the proximity of the building line, facing the street upon which the address is assigned. The sign shall display all the assigned house numbers, in addition to the name of the street, and shall include arrows or other approved symbols to direct pedestrians toward the building entrance.

(b) **Additional signs.** (1) **Based on Distance of Building Entrance to Street.** One additional directional sign shall be posted for each two hundred feet of distance between the building entrance and the street upon which the address is given.

(2) **Based on Changes of Direction between Building Enterance and Street.** One additional directional sign shall be posed at each change in direction to be travelled between the building entrance and the street upon which the address is assigned.

(c) **Posting of address on door.** The complete address, which shall include the house number and the name of the street upon which the address is assigned, shall be placed upon the entrance door in conformance with the "house numbers" regulations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 3 PRESIDENT OF THE BOROUGH OF MANHATTAN

SUBCHAPTER A HOUSE NUMBERS

§3-03 Interior Directional Signs.

(a) These Rules and Regulations shall apply, in all cases where the Borough President of Manhattan determines that house numbers may not clearly direct the public to their designated location within the building(s) assigned.

Note: This situation usually arises with respect to developments where two or more buildings have a common entrance; or in cases where specific building towers or sections of a building require separate house number designations.

(b) **Interior directional sign(s) to be posted within lobby.** An interior directional sign shall be installed within the immediate lobby area of the main entrance, which clearly directs the public to the appropriate tower(s) or section(s) of the building. The sign shall display all the assigned house numbers, in addition to the name of the street, and shall include arrows or other symbols as approved by the Manhattan Borough President's Office.

(c) **Additional interior directional sign required.** (1) One additional interior directional sign shall be posted for each 100 feet of distance between the lobby and the appropriate tower or section of the building to which the address is assigned.

(2) One additional interior directional sign shall be posted at each change in direction to be travelled between the lobby and appropriate tower or section of the building to which the address is assigned.

(d) **Address to be posted at base of each tower.** The complete address, which shall include the house number and the name of the street upon which the address is assigned, shall be placed within the entry area of the assigned portion of the building, or at the base of the appropriate tower.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 3 PRESIDENT OF THE BOROUGH OF MANHATTAN

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§3-04 Definitions.

(a) "Alteration Map" means a map which shows the proposed changes to the City Map and is prepared by the Topographical Bureau or a qualified consultant who is a licensed professional engineer or registered architect.

(b) "Alteration Map Preparation" means preparation and processing of Alteration Maps by the Manhattan Borough President's Topographical staff from inception through final review.

(c) "Alteration Map Review" means the review and processing of Alteration Maps prepared by a person other than the Manhattan Borough President's Topographical staff, including consulting engineers and developers.

(d) "Address Assignment" means the issuance and recording of house number(s) for specific lot or lots.

(e) "Address Verification" means the issuance and verification of a new house number and certification of the relationship of a lot to mapped streets, as well as the verification of an existing house number and the certification of the relationship of a lot to mapped streets.

(f) "Vanity Address Assignment" means a request and assignment of an address that is not a regular sequential house number, but instead refers to a geographical designation, e.g., Times Square, or a new designation not including a street name, e.g., Penn Plaza, Morton Square.

HISTORICAL NOTE

Section added City Record Feb. 11, 2004 eff. Mar. 12, 2004. [See T45 Chapter 3 Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record Feb. 11, 2004 eff. Mar. 12, 2004. Note: Statement of Basis and Purpose. The proposed Amendment to the Borough President's Rules would create a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, assignment of addresses, preparation and review of alteration maps, vanity address requests, damage and acquisition maps, and other related street maps. In order to provide these services to the general public and comply with Section 82 of the City Charter, it is necessary for the Manhattan Borough President's office to implement the above fee schedule.

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***** Current through December 2009 ****

45 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 3 PRESIDENT OF THE BOROUGH OF MANHATTAN

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§3-05 Schedule of Fees.

(a) The fees for the processing of the below-listed applications and requests submitted to the Topographical Bureau shall be as follows:

(1) Alteration Map Preparation $12,000.00 for up to two map sheets and $2,500.00 for each additional map sheet, not to exceed a total charge of $18,000.00.

(2) Alteration Map Review $6,000.00 for up to two map sheets and $1,500.00 for each additional map sheet, not to exceed a total of $9,000.

(3) Address Assignment $300.00

(4) Address Verification $250.00

(5) Vanity Address Request $11,00.00

(b) Reserved.

HISTORICAL NOTE

Section amended City Record Nov. 13, 2009 §1, eff. Dec. 13, 2009. [See Note 1]

Section added City Record Feb. 11, 2004 eff. Mar. 12, 2004. [See T45 Chapter 3 Subchapter B footnote]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 13, 2009:

The Amendment to the Borough President's Rules amends the Fee Schedule for providing certain services pursuant to §82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, topographical data, assignments of addresses, preparation and review of alteration maps, vanity address requests and assignments, damage and acquisition maps, and other related street maps. In order to continue to provide these services to the general public and comply with §82 of the Charter, it is necessary for the Manhattan Borough President's office to implement the above fee schedule, as it takes into account the cumulative rate of inflation and the cost of professional staff time in maintaining a Topographical Bureau.

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record Feb. 11, 2004 eff. Mar. 12, 2004. Note: Statement of Basis and Purpose. The proposed Amendment to the Borough President's Rules would create a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, assignment of addresses, preparation and review of alteration maps, vanity address requests, damage and acquisition maps, and other related street maps. In order to provide these services to the general public and comply with Section 82 of the City Charter, it is necessary for the Manhattan Borough President's office to implement the above fee schedule.

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***** Current through December 2009 ****

45 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 3 PRESIDENT OF THE BOROUGH OF MANHATTAN

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§3-06 Payment Method.

Except as specifically provided in this section, every application for the preparation of an alteration map, review of an alteration map, address assignment, address verification, or vanity address request shall include a non-returnable fee, which shall be paid by certified check or money order made payable to the Office of the Manhattan Borough President. Fees shall be paid when the application is filed, and no application will be processed by the Borough President's office until the fee is paid in full.

HISTORICAL NOTE

Section amended City Record Nov. 13, 2009 §1, eff. Dec. 13, 2009. [See Note 1]

Section added City Record Feb. 11, 2004 eff. Mar. 12, 2004. [See T45 Chapter 3 Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record Feb. 11, 2004 eff. Mar. 12, 2004. Note: Statement of Basis

and Purpose. The proposed Amendment to the Borough President's Rules would create a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, assignment of addresses, preparation and review of alteration maps, vanity address requests, damage and acquisition maps, and other related street maps. In order to provide these services to the general public and comply with Section 82 of the City Charter, it is necessary for the Manhattan Borough President's office to implement the above fee schedule.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§4-01 Applicability.

These rules apply to public hearings conducted pursuant to the New York City Charter or other applicable law or rule by the President of the Borough of Queens ("Borough President") or his or her designee.

HISTORICAL NOTE

Section added City Record May 29, 1991 eff. June 28, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§4-02 Notice of Public Hearing and Agenda.

Notice of the date, day, time, place and subject of a public hearing shall be by publication in the City Record for the five days of publication immediately preceding and including the date of the public hearing. An agenda for the public hearing shall be available at the public hearing.

HISTORICAL NOTE

Section added City Record May 29, 1991 eff. June 28, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§4-03 Conduct of Public Hearings.

(a) **Location.** Public hearings shall be held in Room 213 at Queens Borough Hall, 120-55 Queens Boulevard, Kew Gardens, New York, or other such place as may be determined by the Borough President and listed in the notice.

(b) **General Character.** Public hearings shall be legislative type hearings, without sworn testimony or strict rules of evidence. The Borough President or her or his designee shall preside and only she or he may question a speaker.

(c) **Testimony.** Persons seeking to testify on any matter on the agenda shall request an opportunity to testify by completing the form provided by the Borough President at the hearing. Persons testifying shall be called in the order determined by the Borough President. Testimony generally is limited to three minutes, unless extended by the Borough President.

(d) **Written Comments.** Any person may submit a written statement or comments on any matter on the agenda. Written statements or comments shall be submitted to the Borough President at the public hearing or by two days after the hearing to receive full consideration.

(e) **Record.** The record of a public hearing shall consist of a tape recording, or when determined by the Borough President, a stenographic transcript of the hearing, a list of the names of the persons who testified and their affiliation, if any, and any timely submitted written statements or comments. The record shall be available for public inspection at the

Queens Borough Hall, Room 213 within sixty days after the hearing. A copy of the transcript, if any, or any pages requested is available at a fee of twenty-five cents a page, plus mailing costs, payable in advance.

HISTORICAL NOTE

Section added City Record May 29, 1991 eff. June 28, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§4-04 Borough President's Actions.

The Borough President may adjourn, continue or close any public hearing. The Borough President may make no recommendation, or may approve, approve with modification, disapprove or conditionally disapprove any matter on the agenda of a public hearing.

HISTORICAL NOTE

Section added City Record May 29, 1991 eff. June 28, 1991.

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45 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§4-05 Definitions.

(a) "Alteration Map" means a map which shows the proposed changes to a City Map and is prepared by the Topographical Bureau or a qualified consultant who is a licensed professional engineer or registered architect.

(b) "Alteration Map Preparation" means preparation and processing of Alteration Maps by the Queens Borough President's Topographical staff from inception through final review.

(c) "Alteration Map Review" means the review and processing of Alteration Maps prepared by a person other than the Queens Borough President's Topographical staff, including consulting engineers and developers.

(d) "New Building Certification" means the issuance and certification of a new house number, verification of legal grade and certification of the relationship of a lot to mapped streets.

(e) "Building Alteration Certification" means the verification and certification of an existing house number and certification of the relationship of a lot to mapped streets.

(f) "Detailed Grade Study" means the calculation and determination of top of curb elevations in conformance with established legal grades.

(g) "House Number Issuance" means the issuance and recording of house number(s) for a specific lot or lots.

(h) "Topographical Bureau" means the Topographical Bureau maintained by the Office of the Queens Borough President.

HISTORICAL NOTE

Section added City Record May 23, 2003 eff. June 22, 2003. [See T45 Chap. 4 Subchap. B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record May 23, 2003 eff. June 22, 2003. Note: Statement of Basis and Purpose. The Amendment to the Borough President's Rules establishes a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, topographical data, issuance of house numbers, the preparation and review of alteration maps, damage and acquisition maps, and other related street maps. In order to continue to provide these services to the general public and comply with §82 of the Charter, it is necessary for the Queens Borough President's Office to implement the above fee schedule, as it takes into account the cumulative rate of inflation and the cost of professional staff time in maintaining a Topographical Bureau.

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***** Current through December 2009 ****

45 RCNY 4-06

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§4-06 Schedule of Fees.

(a) The fees for the processing of the below-listed applications and requests submitted to the Topographical Bureau shall be as follows:

(1) Alteration Map Preparation $12,000.00 for up to two map sheets and $2,500.00 for each additional map sheet, not to exceed a total charge of $18,000.00

(2) Alteration Map Review $6,000.00 for up to two map sheets and $1,500.00 for each additional map sheet, not to exceed a total charge of $9,000.00

(3) New Building Certification $100.00

(4) Building Alteration Certification $75.00

(5) Detailed Grade Study $40.00

(6) House Number Issuance $50.00

HISTORICAL NOTE

Section amended City Record Sept. 9, 2009 §1, eff. Oct. 9, 2009. [See Note 1]

Section added City Record May 23, 2003 eff. June 22, 2003. [See T45 Chap. 4 Subchap. B footnote]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 9, 2009:

The Amendment to the Borough President's Rules creates a new Fee Schedule for providing certain services pursuant to §82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, topographical data, issuance of house numbers, the preparation and review of alteration maps, damage and acquisition maps, and other related street maps. In order to continue to provide these services to the general public and comply with §82 of the Charter, it is necessary for the Queens Borough President's Office to implement the above fee schedule, as it takes into account the cumulative rate of inflation and the cost of professional staff time in maintaining a Topographical Bureau.

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record May 23, 2003 eff. June 22, 2003. Note: Statement of Basis and Purpose. The Amendment to the Borough President's Rules establishes a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, topographical data, issuance of house numbers, the preparation and review of alteration maps, damage and acquisition maps, and other related street maps. In order to continue to provide these services to the general public and comply with §82 of the Charter, it is necessary for the Queens Borough President's Office to implement the above fee schedule, as it takes into account the cumulative rate of inflation and the cost of professional staff time in maintaining a Topographical Bureau.

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***** Current through December 2009 ****

45 RCNY 4-07

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§4-07 Payment Method.

Except as specifically provided in this section, every application for the preparation of an alteration map, review of an alteration map, new building certification, building alteration, to conduct a detailed grade study or issue house numbers, shall include a non-returnable fee, which shall be paid by certified check, money order, bank check or credit card, made payable to the Office of the Queens Borough President. Fees shall be paid when the application is filed, and no application will be processed by the Borough President's Office until the fee is paid in full.

HISTORICAL NOTE

Section amended City Record Sept. 9, 2009 §1, eff. Oct. 9, 2009. [See T45 §4-06 Note 1]

Section added City Record May 23, 2003 eff. June 22, 2003. [See T45 Chap. 4 Subchap. B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record May 23, 2003 eff. June 22, 2003. Note: Statement of Basis

and Purpose. The Amendment to the Borough President's Rules establishes a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, topographical data, issuance of house numbers, the preparation and review of alteration maps, damage and acquisition maps, and other related street maps. In order to continue to provide these services to the general public and comply with §82 of the Charter, it is necessary for the Queens Borough President's Office to implement the above fee schedule, as it takes into account the cumulative rate of inflation and the cost of professional staff time in maintaining a Topographical Bureau.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§5-01 Applicability.

These Rules apply to public hearings conducted pursuant to the New York City Charter or other applicable law or rule by the President of the Borough of Staten Island ("Borough President") or his or her designee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§5-02 Notice of Public Hearing and Agenda.

Notice of the date, day, time, place and subject of a public hearing shall be by publication in the City Record for the five days of publication immediately preceding and including the date of the public hearing. An agenda for the public hearing shall be available at the public hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§5-03 Conduct of Public Hearings.

(a) **Location.** Public hearings shall be held in Room 122 at Staten Island Borough Hall, Saint George, Staten Island, New York, or such other place as may be determined by the Borough President and listed in the notice.

(b) **General Character.** Public hearings shall be legislative type hearings, without sworn testimony or strict rules of evidence. The Borough President or her or his designee shall preside and only she or he may question a speaker.

(c) **Testimony.** Persons seeking to testify on any matter on the agenda shall request an opportunity to testify by completing the form provided by the Borough President at the hearing. Persons testifying shall be called in the order determined by the Borough President. Testimony generally is limited to three minutes, unless extended by the Borough President.

(d) **Written Comments.** Any person may submit a written statement or comments on any matter on the agenda. Written statements or comments shall be submitted to the Borough President at the public hearing or by two days after the hearing to receive full consideration.

(e) **Record.** The record of a public hearing shall consist of a tape recording, or when determined by the Borough President, a stenographic transcript of the hearing, a list of the names of the persons who testified and their affiliation, if any, and any timely submitted written statements or comments. The record shall be available for public inspection at the

Staten Island Borough Hall, Room 100 within sixty (60) days after the hearing. A copy of the transcript, if any, or any pages requested is available at a fee of twenty-five cents a page, plus mailing costs, payable in advance.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 5-04

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§5-04 Borough President's Actions.

The Borough President may adjourn, continue or close any public hearing. The Borough President may make no recommendation, or may approve, approve with modification, disapprove or conditionally disapprove any matter on the agenda of a public hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 5-05

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES*1

§5-05 Definitions.

(a) "House or building number issuance" means the issuance and recording of a house or building number(s) for a specific lot or lots including:

(i) The issuance of a new street number for an existing house or building or proposed house or building (or a portion thereof); and

(ii) The review and confirmation of whether a specific street number is correct for an existing house or building or proposed house or building (or a portion thereof).

(b) "Topographical Bureau" means the topographical bureau maintained by the Office of the Borough President of the Borough of Staten Island.

HISTORICAL NOTE

Section added City Record July 7-18, 2003 eff. Aug. 6, 2003. [See T45 Chap. 5 Subchap. B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Records July 7-18, 2003 eff. Aug. 6, 2003. Note: Statement of Basis and Purpose. The Topographical Bureau of the Staten Island Borough President's office is responsible for maintaining various records, maps, surveys, topographical data, house and building street number data and other related materials.

These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to the public it is necessary for the Office of the Staten Island Borough President to implement the above fee schedule.

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Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 5-06

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES*1

§5-06 Fee Schedule.

(a) The fee for the processing of the below listed application and request submitted to the Topographical Bureau shall be as follows:

(1) House or building number application: $100.00 per house or building number.

HISTORICAL NOTE

Section added City Record July 7-18, 2003 eff. Aug. 6, 2003. [See T45 Chap. 5 Subchap. B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Records July 7-18, 2003 eff. Aug. 6, 2003. Note: Statement of Basis and Purpose. The Topographical Bureau of the Staten Island Borough President's office is responsible for maintaining various records, maps, surveys, topographical data, house and building street number data and other related materials.

These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to the public it is necessary for the Office of the Staten Island Borough President to implement the above fee schedule.

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***** Current through December 2009 ****

45 RCNY 5-07

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES*1

§5-07 Method of Payments.

Every application for a house or building number issuance made after August 25, 2003 shall include a non-returnable fee which shall be paid by certified check or money order made payable to the Office of the Staten Island Borough President. Fees shall be paid when an application is filed, and no application will be processed by the Office of the Borough President until the fee is paid in full.

HISTORICAL NOTE

Section added City Record July 7-18, 2003 eff. Aug. 6, 2003. [See T45 Chap. 5 Subchap. B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Records July 7-18, 2003 eff. Aug. 6, 2003. Note: Statement of Basis and Purpose. The Topographical Bureau of the Staten Island Borough President's office is responsible for maintaining various records, maps, surveys, topographical data, house and building street number data and other

related materials.

These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to the public it is necessary for the Office of the Staten Island Borough President to implement the above fee schedule.

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Rules of the City of New York

***** Current through December 2009 ****

46 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 46 Law Department

CHAPTER 1 ADJUDICATIONS

§1-01 Fitness and Discipline Adjudications of Law Department Employees.

New York City Law Department adjudications regarding the fitness and discipline of agency employees will be conducted by the Office of Administrative Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Corporation Counsel.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

46 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 46 Law Department

CHAPTER 2 ESCROW AGREEMENTS

§2-01 Escrow Agreements Entered into with the New York City Law Department.

(a) The Corporation Counsel, or a named representative, when acting as escrow agent for agreements entered into with the New York City Law Department, will deposit any money received pursuant to such escrow agreement into an Attorney Trust Account maintained by the Law Department.

(b) When the Corporation Counsel, or a named representative, receives -documentation that the conditions set forth in the escrow agreement have been met, the monies in the escrow account will be paid to the party fulfilling the conditions along with any interest that has accrued but less the escrow agent's fee.

(c) The escrow agent's fee shall be 2 percent per annum on the escrow principal deposit prorated monthly; provided, however, that the minimum monthly fee shall be $5.00 and the maximum monthly fee shall be $25.00, and provided further that there is no fee on escrow deposits of $750.00 or less except when multiple disbursements are requested. Multiple disbursements on a single escrow deposit will be subject to a $25.00 fee per disbursements.

(d) If the conditions set forth in the agreement are not satisfied by the date specified in such agreement, the monies in the account, less the escrow agent's fee, shall be paid with interest to the party specified in such agreement.

(e) Where the monies have been escrowed to have properties repaired or for similar purposes, if the conditions specified in the agreement are not met by the date set forth in such agreement, the escrow fund shall become the property of the City of New York and the escrow agent shall be authorized to transfer the fund, less the escrow agent's fee, to the General Fund of the City of New York after giving the depositor thirty days notice. However, if the depositor has already expended sums in partial compliance with the conditions set forth in the agreement, he or she may issue a

request to the escrow agent for reimbursement from the escrow fund, without interest, before the balance of the fund is transferred to the City of New York General Fund. Such request must be in writing accompanied by an accounting and appropriate documentation. The escrow agent may pay the requested amount to the depositor if reimbursement appears appropriate under the circumstances. If the depositor and escrow agent are unable to agree on disposition of the requested amount within sixty days of the date such request is received, the escrow agent shall resign as escrow agent and deposit the escrow fund into the appropriate court.

(f) In the event of a dispute between the parties with respect to the escrow fund or the underlying transaction, the Corporation Counsel, or a named representative, has the right, at his or her sole discretion, to resign as escrow agent and represent the City of New York in the dispute. Upon his or her resignation as escrow agent, the escrow fund will be transferred either to another escrow agent selected by mutual agreement of all parties or to the appropriate court.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

46 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 46 Law Department

CHAPTER 3*1 FALSE CLAIMS

§3-01 Submission of Proposed Civil Complaints to the City.

(a) Any person may submit a proposed civil complaint alleging a violation of §7-803 of Chapter 8 of Title 7 of the Administrative Code of the City of New York on behalf of the City of New York. Such submission shall include the person's name, address, telephone numbers and e-mail address (if available), and shall enclose all material evidence and information possessed by such person in support of the allegations of the proposed civil complaint. Information and materials submitted in support of the proposed complaint shall include, but not be limited to (1) identification of the person or entity alleged to have submitted a false or fraudulent claim to the City; (2) a description of the nature of the allegedly fraudulent claim; (3) the dollar amount alleged to have been falsely or fraudulently submitted to the City; (4) the date(s) on which the allegedly false or fraudulent claims were made; (5) the City agency(ies) to which the allegedly false or fraudulent claims were made.

(b) The proposed civil complaint shall be signed and verified as follows: "The proposed civil complaint is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters (he) (she) believes them to be true." Such verification shall be notarized.

(c) The proposed civil complaint shall be sent by certified U.S. mail, return receipt requested, in a sealed envelope addressed to the New York City Department of Investigation, 80 Maiden Lane, New York, New York 10038, Attention: Complaint Bureau.

(d) The Department of Investigation ("DOI") shall send an acknowledgement to each person who has submitted a proposed civil complaint indicating that their proposed civil complaint has been received.

HISTORICAL NOTE

Section added City Record Aug. 8, 2005 eff. Aug. 8, 2005. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 3 added City Record Aug. 8, 2005 eff. Aug. 8, 2005: Note Statement of Basis and Purpose:

On May 19, 2005, the Mayor signed into law Intro. 630, the New York City False Claims Act. Section 7-804(b)(2) of the law requires the Corporation Counsel and the Commissioner of Investigation to promulgate rules establishing a protocol which details the procedures by which the City will address proposed civil complaints after they have been submitted. This proposed rule implements the directive set forth in the new law.

Statement of Need for Immediate Implementation: I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for the implementation of the rule governing the protocol for processing proposed civil complaints pursuant to the New York City False Claims Act, upon the publication in the City Record of its Notice of Adoption.

On May 19, 2005, the Mayor signed into law Intro. 630 (Local Law No. 53 of 2005), the New York City False Claims Act. This new law requires, inter alia, that the Corporation Counsel and the Commissioner of Investigation promulgate rules establishing a protocol detailing the procedures by which the City will address proposed civil complaints after they have been submitted. Local Law 53 takes effect on August 17, 2005. It is therefore essential that this rule-an important component for the success of the False Claims Act's implementation-be in effect at approximately the same time as the local law.

Michael A. Cardozo

Corporation Counsel

Approved: Michael R. Bloomberg

Mayor

Date: _____

Rules of the City of New York

***** Current through December 2009 ****

46 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 46 Law Department

CHAPTER 3*1 FALSE CLAIMS

§3-02 Review of Proposed Civil Complaints.

(a) Within thirty days of receipt of the proposed civil complaint, DOI shall forward a copy of each proposed civil complaint and all documentation submitted in support thereof to the Law Department, addressed to "Chief, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, NY 10007," and marked "CONFIDENTIAL-TO BE OPENED ONLY BY ADDRESSEE." DOI shall at that time notify the Law Department in writing whether the proposed civil complaint alleges wrongdoing that is already the subject of an ongoing investigation, or may warrant the opening of a new investigation by DOI.

(b) Following receipt of notification from DOI that the subject of a proposed civil complaint is the subject of an ongoing investigation or that a new investigation may be warranted, the Law Department and DOI will promptly and thereafter, as necessary, discuss the necessity of and the appropriate level of confidentiality to be given to such proposed complaints; the preparation for and/or commencement of a civil action and the timing of such civil action; and the status of the investigation or prosecution.

(c)(1) Within 60 days of receipt of a proposed civil complaint, DOI shall notify the Law Department in writing as to whether the Commissioner of Investigation has determined that a civil enforcement action may interfere with or jeopardize an investigation by a governmental agency. DOI shall promptly notify the Law Department in writing when the Commissioner of Investigation has determined that such civil enforcement action would no longer interfere with or jeopardize a governmental investigation.

(2) Upon the determination by the Commissioner of Investigation that a civil enforcement action shall not interfere with or jeopardize a governmental investigation, DOI will share with the Law Department relevant documents in its

possession. DOI will also share material developed during the course of the investigation, to the extent permitted by law and to the extent that the sharing of such information will not compromise a criminal investigation.

(d) DOI shall make the determination as to if and when a referral of a potential criminal case shall be made to the appropriate prosecutorial agency, based on its investigation of allegations submitted pursuant to Administrative Code §7-804.

(e) Nothing in these rules shall be deemed to supersede or interfere with the authority and practices of DOI with respect to its conduct of investigations and cooperation with and referral of matters to other law enforcement or other government agencies pursuant to the City Charter or other law, nor shall the Corporation Counsel commence or authorize the commencement of any civil enforcement action pursuant to Administrative Code §7-804 if the Commissioner of Investigation has determined that such an action may interfere with or jeopardize an investigation by a governmental agency.

HISTORICAL NOTE

Section added City Record Aug. 8, 2005 eff. Aug. 8, 2005. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 3 added City Record Aug. 8, 2005 eff. Aug. 8, 2005: Note Statement of Basis and Purpose:

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On May 19, 2005, the Mayor signed into law Intro. 630 (Local Law No. 53 of 2005), the New York City False Claims Act. This new law requires, inter alia, that the Corporation Counsel and the Commissioner of Investigation promulgate rules establishing a protocol detailing the procedures by which the City will address proposed civil complaints after they have been submitted. Local Law 53 takes effect on August 17, 2005. It is therefore essential that this rule-an important component for the success of the False Claims Act's implementation-be in effect at approximately the same time as the local law.

Michael A. Cardozo

Corporation Counsel

Approved: Michael R. Bloomberg

Mayor

Date: _____

Rules of the City of New York

***** Current through December 2009 ****

46 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 46 Law Department

CHAPTER 3*1 FALSE CLAIMS

§3-03 Processing of Proposed Civil Complaints.

(a) In accordance with Administrative Code §7-804(b)(2), within one hundred eighty days of the receipt of a proposed civil complaint by the Department of Investigation, the Law Department shall in writing notify the person who has submitted the proposed complaint of its intention to commence a civil enforcement action, or to designate the person or his or her attorney to commence a civil enforcement action, or to decline to commence such action, in which case it shall provide its reasons for so declining. If the Commissioner of Investigation has determined that a civil enforcement action may interfere with or jeopardize an investigation by a governmental agency, the Law Department shall notify the complainant of such fact within ninety days of the City's receipt of the proposed civil complaint.

(b) Any person who has submitted a proposed civil complaint shall fully cooperate with DOI and the Law Department from the time such proposed civil complaint was submitted through the resolution of the matter.

(c) Nothing in these rules shall be deemed to supersede or interfere with the authority of the Corporation Counsel, pursuant to the New York City Charter or any other law, with regard to the conduct of litigation or the recommendation for settlement of matters on behalf of the City of New York.

HISTORICAL NOTE

Section added City Record Aug. 8, 2005 eff. Aug. 8, 2005. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 3 added City Record Aug. 8, 2005 eff. Aug. 8, 2005: Note Statement of Basis and Purpose:

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Statement of Need for Immediate Implementation: I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for the implementation of the rule governing the protocol for processing proposed civil complaints pursuant to the New York City False Claims Act, upon the publication in the City Record of its Notice of Adoption.

On May 19, 2005, the Mayor signed into law Intro. 630 (Local Law No. 53 of 2005), the New York City False Claims Act. This new law requires, inter alia, that the Corporation Counsel and the Commissioner of Investigation promulgate rules establishing a protocol detailing the procedures by which the City will address proposed civil complaints after they have been submitted. Local Law 53 takes effect on August 17, 2005. It is therefore essential that this rule-an important component for the success of the False Claims Act's implementation-be in effect at approximately the same time as the local law.

Michael A. Cardozo

Corporation Counsel

Approved: Michael R. Bloomberg

Mayor

Date: _____

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47 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER A GENERAL**3

§1-01 Scope of Rules.

These rules are intended to carry out the provisions of Title 8, Chapter 1 of the Administrative Code of the City of New York, Human Rights Law ("HRL"), and the policies and procedures of the Commission on Human Rights in connection therewith, as authorized by HRL §8-105(11) and §8-117.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section repealed and added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

Effective July 1, 1997, the Hearings Bureau of the Commission on Human Rights ("Commission") was discontinued, and its adjudication function was transferred to the office of Administrative Trials and Hearings ("OATH"). The proposed amendments to the Rules of Practice of the Commission, and of OATH, are intended to facilitate that transfer without change to the substantive law applicable to those adjudications, and with the least possible change to the procedure applicable to those adjudications. The Commission's adjudications, both as previously conducted by the Hearings Bureau, and as now conducted by OATH, result in the issuance of Recommended Decisions from Administrative Law Judges to the Commission, which the Commission may adopt in full, modify or reject in full. Therefore, the Commission retains the same final role in adjudication as it had before the transfer.

The proposed amendments would delete from the Commission's Rules of Practice, Title 47, Chapter 1, Rules of the City of New York, most rules governing pre-hearing, hearing and post-hearing procedures. Amendments currently being proposed by OATH will address the adjudication of Commission hearings before that Agency. To the extent that OATH's existing Rules of Practice, Title 48, Chapter 1, Rules of the City of New York, are substantially consistent with the Commission's existing Rules, OATH's existing Rules would be made applicable to cases referred by the Commission to OATH. To the extent that OATH's existing Rules of Practice are not substantially consistent with the Commission's existing Rules, OATH's Rules would be amended to include a new Subchapter C in Chapter 2 of Title 48 consisting of Rules necessary to conform the practice and procedure at OATH to the former practice and procedure before the Commission's Hearings Bureau. In those instances in which the Commission has judged the difference between its former practice and procedure and OATH's practice and procedure to be technical or insubstantial, these proposed amendments would make OATH's existing Rules applicable.

Some changes in procedure would be adopted by these proposed amendments. For example, by proposed Section 1-43 of Title 48, OATH would adopt for all of its cases a Rule governing subpoenas that is identical to the Commission's present Rule governing subpoenas, 47 RCNY, 1-81, except that ex parte applications for issuance of subpoenas would not be permitted. In addition, the time for taking an interlocutory appeal from a Decision or Order of the Administrative Law Judge would be reduced from seven days, as provided in the Commission's Existing Rules, to five days in OATH's proposed Rules. Finally, motions concerning investigative record-keeping and investigative subpoenas which were made to the Hearings Bureau under the Commission's existing Rules will be made to the Chair of the Commission under the Commission's proposed Rules, proposed 47 RCNY 1-72 and 1-73.
3

[Footnote 3]: ** Subchapter A amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Rules of the City of New York

***** Current through December 2009 ****

47 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER A GENERAL**3

§1-02 Organization of Commission.

In order to carry out its various statutory responsibilities in a fair and impartial fashion, the Commission has separated its functions into discreet bureaus and offices, each of which reports to the Chair of the agency. In addition to the Chair and the Commissioners, the following components of the Commission are directly involved in the enforcement of the HRL:

(a) **Law Enforcement Bureau.** The Law Enforcement Bureau is charged with the Commission's investigatory and prosecutorial functions. Where an action is authorized or required to be taken by the Law Enforcement Bureau, such action shall be taken by the Deputy Commissioner for Law Enforcement, such Law Enforcement Bureau staff as the Deputy Commissioner shall designate, or such person as may be appointed by the Chair of the Commission.

(b) **Office of General Counsel.** The Office of General Counsel serves as counsel to the Chair and to the Commissioners. Where an action is authorized or required to be taken by the Office of General Counsel, such action shall be taken by the General Counsel, such staff of the Office of General Counsel as the General Counsel shall designate, or such person as may be appointed by the Chair of the Commission.

(c) **Office of Mediation and Conflict Resolution.** The Office of Mediation and Conflict Resolution provides mediation and conciliation services in connection with complaints that have been filed. Where an action is authorized or required to be taken by the Office of Mediation and Conflict Resolution, such action shall be taken by the Deputy

Commissioner for Mediation and Conflict Resolution, such staff of the Office of Mediation and Conflict Resolution as the Deputy Commissioner shall designate, or such person as may be appointed by the Chair of the Commission.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

Section in original publication July 1, 1991.

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The proposed amendments would delete from the Commission's Rules of Practice, Title 47, Chapter 1, Rules of the City of New York, most rules governing pre-hearing, hearing and post-hearing procedures. Amendments currently being proposed by OATH will address the adjudication of Commission hearings before that Agency. To the extent that OATH's existing Rules of Practice, Title 48, Chapter 1, Rules of the City of New York, are substantially consistent with the Commission's existing Rules, OATH's existing Rules would be made applicable to cases referred by the Commission to OATH. To the extent that OATH's existing Rules of Practice are not substantially consistent with the Commission's existing Rules, OATH's Rules would be amended to include a new Subchapter C in Chapter 2 of Title 48 consisting of Rules necessary to conform the practice and procedure at OATH to the former practice and procedure before the Commission's Hearings Bureau. In those instances in which the Commission has judged the difference between its former practice and procedure and OATH's practice and procedure to be technical or insubstantial, these proposed amendments would make OATH's existing Rules applicable.

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existing Rules will be made to the Chair of the Commission under the Commission's proposed Rules, proposed 47 RCNY 1-72 and 1-73.
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[Footnote 3]: ** Subchapter A amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER A GENERAL**3

§1-03 Definitions and Construction.

For purposes of this chapter,

Calculation of dates. A number of days specified in these Rules means calendar days exclusive of the calendar day from which the calculation is made.

Complainant. Complainant shall mean a person who has filed a complaint pursuant to these Rules.

Discriminatory harassment or violence. The procedures set forth in these Rules which apply to unlawful discriminatory practices shall apply with like effect to acts of discriminatory harassment or violence as set forth in Chapter 6 of Title 8 of the Administrative Code except that no complaint shall be filed with respect to an act of discriminatory harassment or violence unless the act complained of occurred on or after January 22, 1993.

Filing and proof of service. Wherever these Rules require that a paper be filed, such requirement shall be construed to require the filing of proof of prior service of the paper on the persons required to be served by the section together with the paper. Each Bureau and Office of the Commission shall retain proof of service of each paper served under these Rules.

Investigatory file. For the purposes of these Rules, the Law Enforcement Bureau's "Investigatory File" shall be

construed to include only the factual information, as opposed to opinions or legal analysis contained in those writings made or gathered by the Bureau during the course of an investigation. Any information derived from an investigation pursuant to Subchapter D of this chapter including the names and other identifying information of witnesses who request anonymity is confidential; provided, however, that the Law Enforcement Bureau may be required to disclose the names of such witnesses in the course of an administrative hearing or a civil action.

Means of service of papers. Except where otherwise specified, service of a paper means any method of service described by §2103 of the New York Civil Practice Law and Rules.

Necessary party. Necessary party shall mean any person deemed by the Law Enforcement Bureau or any person determined by an Administrative Law Judge to be a person without whom complete relief could not be ordered by the Commission or a person whose interests would be materially affected by the Commission's determination of the case. Any person deemed or determined to be a necessary party shall be treated as a party for all purposes under these rules and the HRL.

Papers to be served upon counsel. Whenever a person required to be served with a paper pursuant to these Rules has duly informed the Law Enforcement Bureau as required by these rules that such person is represented by counsel, service shall be effected upon the person's counsel in lieu of service on the person himself or herself.

Party. Unless the context requires otherwise, the term "party" shall refer to the Law Enforcement Bureau, to respondents, to those complainants that shall have intervened pursuant to §1-75 of this chapter and to necessary parties.

Person. The term "person" shall have the meaning ascribed thereto in subdivision one of HRL 8-102. The term "person" shall be construed to include associations, organizations or groups that assert the civil rights of protected classes.

Probable Cause. The Law Enforcement Bureau shall find probable cause exists to credit the allegations of a complaint that an unlawful discriminatory practice has been or is being committed by a respondent where a reasonable person, looking at the evidence as a whole, could reach the conclusion that it is more likely than not that the unlawful discriminatory practice was committed.

Respondent. Respondent shall mean a person who has been charged in a complaint filed pursuant to these Rules with having committed an unlawful discriminatory practice.

Rules. Rules shall mean the provisions of Chapter 1 of Title 47 of the Rules of the City of New York.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section repealed and added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Petitioner, a wheelchair-bound tenant who lived in a fourth floor apartment in respondent landlord's apartment building, filed a complaint with the Commission alleging that respondent failed to reasonably accommodate his disability by refusing his request to allow petitioner to relocate to a first floor apartment. Petitioner sought joinder of a

real estate company and a hospital, which leased the first floor of the building from respondent and who in turn sublet units to hospital employees, on the ground that they were necessary parties to the requested relief. All of the first floor apartments were occupied under existing lease agreements. Finding that displacement of existing tenants would not be an available remedy if petitioner was ultimately successful, the administrative law judge denied the motion. **Hagopian v. NJR Associates**, OATH Index No. 2368/99, mem. dec. (Dec. 9, 1999).

¶ 2. In a case alleging discrimination in housing accommodation on the basis of disability, where named respondents claimed that another entity currently owns the premises, administrative law judge **sua sponte** added purported owner as a necessary party pursuant to definition in this section. **Orlic v. T.K. Management, Inc.,** OATH Index No. 149/02, mem. dec. (Dec. 27, 2001).

§§1-04-1-06 from original publication July 1, 1991 repealed City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

1

[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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Some changes in procedure would be adopted by these proposed amendments. For example, by proposed Section 1-43 of Title 48, OATH would adopt for all of its cases a Rule governing subpoenas that is identical to the Commission's present Rule governing subpoenas, 47 RCNY, 1-81, except that ex parte applications for issuance of subpoenas would not be permitted. In addition, the time for taking an interlocutory appeal from a Decision or Order of the Administrative Law Judge would be reduced from seven days, as provided in the Commission's Existing Rules, to five days in OATH's proposed Rules. Finally, motions concerning investigative

record-keeping and investigative subpoenas which were made to the Hearings Bureau under the Commission's existing Rules will be made to the Chair of the Commission under the Commission's proposed Rules, proposed 47 RCNY 1-72 and 1-73.
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[Footnote 3]: ** Subchapter A amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER B COMPLAINTS, ANSWERS AND NOTIFICATION OF OBLIGATIONS*4

§1-11 Complaints Generally.

(a) **Who may file.** (1) Any person claiming to be aggrieved by an unlawful discriminatory practice may in person, by his or her attorney, or by a representative acting with appropriate legal authority make, sign and file a written verified complaint with the Law Enforcement Bureau in accordance with these rules.

(2) The Law Enforcement Bureau may make, sign, and file a verified complaint alleging that a person has committed an unlawful discriminatory practice.

(b) **Form of complaints.** All complaints shall be typewritten, and must be signed and verified by the person making the complaint or in the case of a Commission-initiated complaint, by the Commission. A complaint initiated by a person other than the Commission shall be signed before a notary public or other person authorized by law to administer oaths. Each complaint shall recite the name of each complainant and respondent in a caption in the following form:

CITY OF NEW YORK

COMMISSION ON HUMAN RIGHTS

----------x

In the Matter of the Complaint of:
Complainant,
-against-
Respondent.

Verified Complaint
Case No.

----------x

(c) **Contents of complaint.** A complaint shall contain the following:

(1) the full name and address of the person or persons making the complaint or such other designation as appropriate. Each such person shall be denominated a complainant. If a complaint is prepared by a complainant's attorney, the attorney's name, address, telephone number and facsimile number, if any, shall also appear on the complaint;

(2) the full name and address, where known, of the person or persons alleged to have committed an unlawful discriminatory practice. Each such person shall be denominated a respondent;

(3) a statement of the specific facts constituting the alleged unlawful discriminatory practice. The statement shall contain, to the extent known to the complainant, the exact or approximate date or dates of the alleged discriminatory practices and, if the alleged discriminatory practices are of a continuing nature, the dates between which those continuing acts of discrimination are alleged to have occurred; and the addresses or approximate locations of any places where the acts complained of are alleged to have occurred; and

(4) whether complainant has previously filed any other civil or administrative action alleging an unlawful discriminatory practice with respect to the allegations of discrimination which are the subject of the complaint. In the event of a prior filing, a statement of the title, docket or similar identifying number, and forum before which such other claim was filed, and a statement of the status or disposition of such other action or proceeding should be made.

(d) **What constitutes filing of a complaint or answer.** A complaint or answer is filed when it is accepted for filing by the Office of the Docketing Clerk of the Law Enforcement Bureau.

(e) **Procedure upon receipt of complaint.** The Law Enforcement Bureau shall accept complaints for filing, note the date of filing on the complaint, and assign a complaint number to the complaint. The Law Enforcement Bureau shall thereafter serve by mail a copy of the filed complaint upon each respondent and necessary party and shall advise the respondent of his or her procedural rights and obligations.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and

added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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The proposed amendments would delete from the Commission's Rules of Practice, Title 47, Chapter 1, Rules of the City of New York, most rules governing pre-hearing, hearing and post-hearing procedures. Amendments currently being proposed by OATH will address the adjudication of Commission hearings before that Agency. To the extent that OATH's existing Rules of Practice, Title 48, Chapter 1, Rules of the City of New York, are substantially consistent with the Commission's existing Rules, OATH's existing Rules would be made applicable to cases referred by the Commission to OATH. To the extent that OATH's existing Rules of Practice are not substantially consistent with the Commission's existing Rules, OATH's Rules would be amended to include a new Subchapter C in Chapter 2 of Title 48 consisting of Rules necessary to conform the practice and procedure at OATH to the former practice and procedure before the Commission's Hearings Bureau. In those instances in which the Commission has judged the difference between its former practice and procedure and OATH's practice and procedure to be technical or insubstantial, these proposed amendments would make OATH's existing Rules applicable.

Some changes in procedure would be adopted by these proposed amendments. For example, by proposed Section 1-43 of Title 48, OATH would adopt for all of its cases a Rule governing subpoenas that is identical to the Commission's present Rule governing subpoenas, 47 RCNY, 1-81, except that ex parte applications for issuance of subpoenas would not be permitted. In addition, the time for taking an interlocutory appeal from a Decision or Order of the Administrative Law Judge would be reduced from seven days, as provided in the Commission's Existing Rules, to five days in OATH's proposed Rules. Finally, motions concerning investigative record-keeping and investigative subpoenas which were made to the Hearings Bureau under the Commission's existing Rules will be made to the Chair of the Commission under the Commission's proposed Rules, proposed 47 RCNY 1-72 and 1-73.
4

[Footnote 4]: * Subchapter B amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER B COMPLAINTS, ANSWERS AND NOTIFICATION OF OBLIGATIONS*4

§1-12 Commission-Initiated Complaints.

(a) **Procedure upon filing of a Commission-initiated complaint.** Upon filing of a Commission-initiated complaint, the Law Enforcement Bureau shall immediately note the date of filing on the complaint, and assign a complaint number to the complaint. The Law Enforcement Bureau shall thereafter serve a copy of the filed complaint upon each respondent and shall advise the respondent of his/her procedural rights and obligations.

(b) **Probable cause.** The filing of Commission-initiated complaint shall be deemed to be a determination of probable cause.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 4]: * Subchapter B amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER B COMPLAINTS, ANSWERS AND NOTIFICATION OF OBLIGATIONS*4

§1-13 Amendments to Complaints.

A complaint may be amended as of right at any time before the referral of the complaint to the Office of Administrative Trials and Hearings (hereinafter OATH) pursuant to §1-71 of this chapter. Subsequent to the referral of a complaint to OATH a complaint may be amended by application to the presiding Administrative Law Judge.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A motion to amend a Human Rights complaint was granted to add one respondent and to delete two respondents on the basis of matters learned through discovery. Pursuant to this section, subsequent to the referral of a complaint to OATH, a complaint may be amended by application to the presiding Administrative Law Judge. **Silva v.**

Gitto, OATH Index No. 263/01, mem. dec. (Jan. 18, 2001).

¶ 2. Motion to add individual as a party (respondent) granted where individual had represented himself as an agent of corporate building owner, but Commission alleged individual is the actual building owner and the statute of limitations had not run. **Orlic v. T.K. Management, Inc.,** OATH Index No. 149/02, mem. dec. (Dec. 27, 2001).

¶ 3. Administrative law judge denied an application to amend complaint where the amending party had been aware of the facts upon which the motion was predicated for some time, the amendment was not meritorious, and no reasonable excuse for the delay was offered. **Comm'n on Human Rights v. United Parcel Service**, OATH Index Nos. 1096/02 & 1097/02, mem. dec. (Sept. 14, 2004).

¶ 4. Absent prejudice to the parties, this section and section 1-25 of the OATH rules permit amendment of pleadings. ALJ permitted respondent to amend its answer to assert that it is not an employer as defined by section 8-102(5) of the City Human Rights Law because it employs fewer than four people. The ALJ granted petitioner's counter-motion to amend the complaint to conform to the proof that even if respondent employed less than four people, respondent is an employment agency subject to the City Human Rights Law's bar on age discrimination under City Code sections 8-102(2) and 8-107(1)(b) of the Code. **Comm'n on Human Rights ex rel Campbell v. Personnel Employment Services**, OATH Index No. 1579/07 (Aug. 20, 2007), **adopted**, Dec. & Order (Dec. 14, 2007).

FOOTNOTES

1

[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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Some changes in procedure would be adopted by these proposed amendments. For example, by proposed

Section 1-43 of Title 48, OATH would adopt for all of its cases a Rule governing subpoenas that is identical to the Commission's present Rule governing subpoenas, 47 RCNY, 1-81, except that ex parte applications for issuance of subpoenas would not be permitted. In addition, the time for taking an interlocutory appeal from a Decision or Order of the Administrative Law Judge would be reduced from seven days, as provided in the Commission's Existing Rules, to five days in OATH's proposed Rules. Finally, motions concerning investigative record-keeping and investigative subpoenas which were made to the Hearings Bureau under the Commission's existing Rules will be made to the Chair of the Commission under the Commission's proposed Rules, proposed 47 RCNY 1-72 and 1-73.
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[Footnote 4]: * Subchapter B amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-14

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SUBCHAPTER B COMPLAINTS, ANSWERS AND NOTIFICATION OF OBLIGATIONS*4

§1-14 Answer.

(a) **Time for filing.** The respondent shall file a verified answer with the Law Enforcement Bureau within 30 days of having been served with a complaint or an amendment thereof.

(b) **Form and content of answer.** The answer shall be verified as to the truth of the statements therein, and the respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge or information sufficient to form a belief, in which case the respondent shall so state, and such statement shall operate as a denial. Any allegation in the complaint not specifically denied or explained shall be deemed admitted unless good cause to the contrary is shown. All affirmative defenses and mitigating factors set forth in HRL 8-107(13)(d), 8-107(13)(e), and 8-126(b) shall be stated separately in the answer.

(c) **Counterclaims and cross-claims.** The respondent shall not be permitted to interpose either a counterclaim or cross-claim in the answer.

(d) **Extension of time to answer.** A respondent may apply to the Law Enforcement Bureau for additional time to file an answer. Such a request shall be granted for good cause shown.

(e) **Amendment of answer.** A respondent may amend its answer to the original complaint at any time prior to the referral of the complaint to OATH pursuant to §1-71 of this chapter. An amendment to an answer subsequent to the

referral of a complaint to OATH may be made by application to the presiding Administrative Law Judge.

(f) Notwithstanding the foregoing provisions, the following shall apply with respect to complaints originally filed with the Commission prior to September 16, 1991 and amendments thereof whether filed before or after September 16, 1991:

(1) A respondent may but is not required to file a verified answer to the complaint. If a respondent elects not to file an answer to the complaint, all allegations of the complaint shall be deemed denied.

(2) A respondent must file a verified answer if the respondent has or intends to assert affirmative defenses to the charges set forth in the complaint.

(3) Where a respondent files an answer, any allegation of the complaint which is not answered or upon which respondent alleges insufficient information shall be deemed denied.

(4) An answer may be filed at any time after service of the complaint and no later than 15 days after service of a determination of probable cause.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

CASE NOTES

¶ 1. Absent prejudice to the parties this section and section 1-25 of the OATH rules, permit amendment of pleadings. ALJ permitted respondent to amend its answer to assert that it is not an employer as defined by section 8-102(5) of the City Human Rights law, because it employs fewer than four people. **Comm'n on Human Rights ex rel Campbell v. Personnel Employment Services**, OATH Index No. 1579/07 (Aug. 20, 2007), **adopted**, Dec. & Order (Dec. 14, 2007).

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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[Footnote 4]: * Subchapter B amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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§1-15 Representation.

Complainants and respondents may be represented by counsel. Counsel shall file with the Law Enforcement Bureau a Notice of Appearance which shall recite the person or persons for whom the attorney appears, and the attorney's name, address, and telephone and fax number.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

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[Footnote 4]: * Subchapter B amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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SUBCHAPTER B COMPLAINTS, ANSWERS AND NOTIFICATION OF OBLIGATIONS*4

§1-16 Change of Address.

Complainants, respondents, and their legal representatives are under a continuing obligation to notify the Law Enforcement Bureau of any change in their addresses.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

Effective July 1, 1997, the Hearings Bureau of the Commission on Human Rights ("Commission") was discontinued, and its adjudication function was transferred to the office of Administrative Trials and Hearings ("OATH"). The proposed amendments to the Rules of Practice of the Commission, and of OATH, are intended to facilitate that transfer without change to the substantive law applicable to those adjudications, and with the least possible change to the procedure applicable to those adjudications. The Commission's adjudications, both as previously conducted by the Hearings Bureau, and as now conducted by OATH, result in the issuance of Recommended Decisions from Administrative Law Judges to the Commission, which the Commission may adopt in full, modify or reject in full. Therefore, the Commission retains the same final role in adjudication as it had before the transfer.

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Some changes in procedure would be adopted by these proposed amendments. For example, by proposed Section 1-43 of Title 48, OATH would adopt for all of its cases a Rule governing subpoenas that is identical to the Commission's present Rule governing subpoenas, 47 RCNY, 1-81, except that ex parte applications for issuance of subpoenas would not be permitted. In addition, the time for taking an interlocutory appeal from a Decision or Order of the Administrative Law Judge would be reduced from seven days, as provided in the Commission's Existing Rules, to five days in OATH's proposed Rules. Finally, motions concerning investigative record-keeping and investigative subpoenas which were made to the Hearings Bureau under the Commission's existing Rules will be made to the Chair of the Commission under the Commission's proposed Rules, proposed 47 RCNY 1-72 and 1-73.
4

[Footnote 4]: * Subchapter B amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER C WITHDRAWALS AND DISMISSALS*5

§1-21 Withdrawal of Complaints.

At any time prior to the service of a notice that a complaint has been referred to the OATH, a complainant may withdraw a complaint that has been filed.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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[Footnote 5]: * Subchapter C amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER C WITHDRAWALS AND DISMISSALS*5

§1-22 Dismissal of Complaint.

(a) **Dismissal for administrative convenience.** The Law Enforcement Bureau may, in its discretion, dismiss a complaint for administrative convenience at any time prior to the taking of testimony at a hearing. Administrative convenience shall include, but not be limited to, the following circumstances:

(1) Law Enforcement Bureau personnel have been unable to locate the complainant after diligent efforts to do so;

(2) the complainant has repeatedly failed to appear at mutually agreed-upon appointments with the Law Enforcement Bureau or the Office of Mediation and Conflict Resolution personnel, or is unwilling to meet with the Law Enforcement Bureau or the Office of Mediation and Conflict Resolution personnel, provide requested documentation, or to attend a hearing;

(3) the complainant has repeatedly engaged in conduct which is disruptive to the orderly functioning of the Law Enforcement Bureau;

(4) where the complainant is unwilling to accept a reasonable proposed conciliation agreement;

(5) prosecution of the complaint will not serve the public interest. Without limitation, this shall include those circumstances where it is not likely that further investigation will result in a finding of probable cause or where the

passage of time or other factors have materially impaired the ability of a respondent to defend against the allegations of the complaint; and

(6) the complainant requests such dismissal, one hundred eighty days have elapsed since the filing of the complaint with the Law Enforcement Bureau, and the Law Enforcement Bureau finds (a) that the complaint has not been actively investigated and (b) that the respondent will not be unduly prejudiced thereby.

(b) **Mandatory dismissal for administrative convenience.** The Law Enforcement Bureau shall dismiss a complaint for administrative convenience at any time prior to the filing of an answer by the respondent if the complainant requests such dismissal, unless the Law Enforcement Bureau has conducted an investigation of the complaint or has engaged the parties in conciliation after the time the complaint was filed.

(c) **Dismissal because the complaint is not within the jurisdiction of the Commission.** The Law Enforcement Bureau shall dismiss a complaint in whole or in part where it concludes that the complaint or a portion thereof is not within the jurisdiction of the Commission.

(d) **Dismissal for lack of probable cause.** If, after investigation the Law Enforcement Bureau determines that probable cause does not exist to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice, the Bureau shall dismiss the complaint in whole or in part as to such respondent.

(e) **Notification of dismissal.** When the Law Enforcement Bureau makes a determination pursuant to this section, it shall promptly serve each complainant, respondent, and necessary party with an order dismissing the complaint in whole or in part.

(f) **Review of order of dismissal.** A complainant or respondent aggrieved by an order of dismissal made pursuant to this section may apply to the Chair for review of such order within 30 days of the service of such order by serving a notice of application for review on all other complainants and respondents, the Law Enforcement Bureau and any necessary parties, and by filing such notice with the Office of General Counsel.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 5]: * Subchapter C amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER D INVESTIGATORY PROCEDURES*6

§1-31 Policy.

The procedures to be followed in investigative proceedings shall be such as in the discretion of the Law Enforcement Bureau will best facilitate accurate, orderly, and thorough fact-finding.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

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[Footnote 6]: * Subchapter D amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER D INVESTIGATORY PROCEDURES*6

§1-32 Subpoenas.

The Law Enforcement Bureau may issue and serve subpoenas ad testificandum and subpoenas duces tecum upon any person. Proceedings to enforce, quash, fix conditions, or modify subpoenas shall be governed by Article 23 of the New York Civil Practice Law and Rules.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER D INVESTIGATORY PROCEDURES*6

§1-33 Investigative Record-Keeping.

(a) The Law Enforcement Bureau shall have the authority to make demands for the preservation of records and for the continuation of the practice of making and keeping records permitted by HRL 8-114(b). The demand shall require that such records be made available for inspection by the Law Enforcement Bureau and/or be filed with the Law Enforcement Bureau.

(b) Any person upon whom a demand has been made may assert an objection to the demand within seven days after service of the demand by serving such objection upon the Law Enforcement Bureau and filing such objection with the Office of General Counsel. The Law Enforcement Bureau shall have seven days from service of the objection to serve such person with a written response to the objection and to file such response with the Office of General Counsel. The Chair shall issue an order on said demand and objection.

HISTORICAL NOTE

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DERIVATION

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER D INVESTIGATORY PROCEDURES*6

§1-34 Availability of Investigatory Materials.

Upon an order of the Law Enforcement Bureau dismissing the complaint, complainant and respondent may examine the factual documentation in the investigatory file.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER D INVESTIGATORY PROCEDURES*6

§1-35 Pre-Complaint Investigations.

In addition to conducting investigations of allegations contained in complaints filed pursuant to §1-11 and §1-12 of this chapter, the Law Enforcement Bureau may investigate on its own initiative possible violations of the HRL.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

§§1-36-1-44 added City Record Jan. 5, 1994 eff. Feb. 4, 1994 were repealed City Record Oct. 10, 1995 eff. Nov. 9, 1995.

FOOTNOTES

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER E DETERMINATION OF WHETHER PROBABLE CAUSE EXISTS*7

§1-51 Basis of Determination.

The Law Enforcement Bureau shall find probable cause exists to credit the allegations of a complaint that an unlawful discriminatory practice has been or is being committed by a respondent where a reasonable person, looking at the evidence as a whole, could reach the conclusion that it is more likely than not that the unlawful discriminatory practice was committed.

HISTORICAL NOTE

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DERIVATION

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[Footnote 7]: * Subchapter E amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER E DETERMINATION OF WHETHER PROBABLE CAUSE EXISTS*7

§1-52 Notice of Determination.

The Law Enforcement Bureau shall serve a written notice of determination upon complainant and respondent. Determinations which state that probable cause has been found not to exist and that dismiss the complaint shall state the reasons for the Law Enforcement Bureau's conclusion.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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[Footnote 7]: * Subchapter E amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER E DETERMINATION OF WHETHER PROBABLE CAUSE EXISTS*7

§1-53 Review of Determination.

A determination that probable cause exists to credit some or all of the allegations of a complaint that an unlawful discriminatory practice has been or is being committed is not reviewable. A determination that probable cause does not exist to credit some or all of the allegations of a complaint that an unlawful discriminatory practice has been or is being committed, and that the complaint is accordingly dismissed in whole or in part, is reviewable in accordance with subdivision (f) of §1-22 of this Chapter.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

§§1-54-1-55 added Jan. 5, 1994 eff. Feb. 4, 1994; repealed City Record Oct. 10, 1995 eff. Nov. 9, 1995.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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[Footnote 7]: * Subchapter E amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER F MEDIATION AND CONCILIATION*8

§1-61 Conciliation Agreements.

The Law Enforcement Bureau, complainant, respondent, and other necessary parties may at any time after the filing of a complaint agree to a conciliated resolution of a complaint.

(a) **Form and Content.** Every conciliation agreement shall contain an acknowledgment of each complainant's and respondent's execution of the agreement. The provisions of the conciliation agreement may be such as are agreed to by the Law Enforcement Bureau, complainant, and respondent.

(b) **Effective Date.** A conciliation agreement shall be deemed binding at the time that such agreement is executed by the Law Enforcement Bureau and by all complainants and respondents and other necessary parties entering into the agreement.

(c) **Entry of Order by Commission.** When a conciliation agreement has been fully executed, the Law Enforcement Bureau shall promptly forward such agreement to the Chair. The signature of the Chair on a conciliation agreement with the notation "SO ORDERED" shall be construed to be an order of the Commission pursuant to HRL 8-115(d) directing the parties to such conciliation agreement to perform each and all of their obligations under such conciliation agreement in the time and manner set forth in such conciliation agreement. The Chair shall deliver the order of the Commission to the Law Enforcement Bureau for service upon the parties to the agreement.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

CASE NOTES

¶ 1. Written agreement was inadmissible where it was not signed by the complainant or his attorney or by the Human Rights Commissioner. **Comm'n on Human Rights ex rel. Bryan v. Memorial Sloan-Kettering Cancer Center**, OATH Index No. 183/06 (July 25, 2006), **aff'd**, Comm'n Dec. (Sept. 29, 2006).

FOOTNOTES

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[Footnote 8]: * Subchapter F amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER F MEDIATION AND CONCILIATION*8

§1-62 Requests for Assistance of Office of Mediation and Conflict Resolution.

Upon the request of the Law Enforcement Bureau, complainant, or respondent, the Office of Mediation and Conflict Resolution shall endeavor to assist the Law Enforcement Bureau, complainant, and respondent to achieve a conciliated resolution of a complaint.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

§§1-63-1-66 added City Record Jan. 5, 1994 eff. Feb. 4, 1994; repealed City Record Oct. 10, 1995 eff. Nov. 9, 1995.

FOOTNOTES

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER G ADJUDICATION PROCEDURES*9

§1-71 Referral of Complaints to OATH.

(a) When the Law Enforcement Bureau determines that a case is ready for adjudication, the Bureau shall refer the case to the Office of Administrative Trials and Hearings (OATH) pursuant to this section. Except as otherwise provided herein, OATH's rules of practice relating to hearing and pre-hearing procedures (Title 48, Rules of the City of New York, chapter 1, and chapter 2, subchapter C) are hereby adopted by the Commission as the rules of practice and the procedure of the Commission and shall apply to adjudications referred to OATH by the Commission.

(b) The Law Enforcement Bureau shall serve the Notice of Referral upon the complainant, the respondent and any necessary party and file it with the OATH. The notice shall include the last known address and telephone number of each complainant, respondent, and necessary party. The notice shall state whether the respondent has complied with the requirement of §1-14 of this Chapter and, if not, whether the Law Enforcement Bureau seeks to have respondent held in default. The notices shall inform the complainant of his or her right to intervene pursuant to OATH's rules (48 RCNY §2-25). No material relating to the investigation, the finding of probable cause, or the substance of conciliation efforts shall be filed with OATH.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

Opening par repealed City Record June 17, 1998 eff. July 17, 1998.

Subd. (a) added City Record June 17, 1998 eff. July 17, 1998.

Subd. (b) lettered and amended (formerly §1-72) City Record June 17, 1998 eff. July 17, 1998.

FOOTNOTES

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47 RCNY 1-72 and 1-73.
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[Footnote 9]: * Subchapter G amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER G ADJUDICATION PROCEDURES*9

§1-72 Motions Relating to Requests by Law Enforcement Bureau Pursuant to Subchapter D.

In the event any party has failed to comply with any request by the Law Enforcement Bureau for documents or other information pursuant to Subchapter D of this Chapter, the Law Enforcement Bureau may make a motion to have the Chair order compliance with such request. Any party to whom such a request is made shall have an opportunity to submit to the Chair any objections to such request. The Chair may order compliance with such request or may order such other relief as the Chair deems just and proper. In the event any party has failed to comply with such an order compelling compliance with a request by the Law Enforcement Bureau for documents or other information, the Law Enforcement Bureau may make a motion to have the Chair make such orders or take such actions as are permitted by HRL §8-118.

HISTORICAL NOTE

Section renumbered (formerly §1-79) and amended City Record June 17, 1998 eff. July 17, 1998; prior

§1-72 became §1-71(b). [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 9]: * Subchapter G amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER G ADJUDICATION PROCEDURES*9

§1-73 Motions Relating to Sanctions for Failure to Comply With Order for Investigative Record-Keeping.

The Law Enforcement Bureau may make a motion to have the Chair make such orders or take such actions as are permitted by HRL 8-118 in the event a respondent has failed to comply with an order for investigative record-keeping issued by the Chair pursuant to §1-33 of this Chapter.

HISTORICAL NOTE

Section renumbered (formerly §1-80) and amended City Record June 17, 1998 eff. July 17, 1998; prior

§1-73 repealed. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 9]: * Subchapter G amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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SUBCHAPTER G ADJUDICATION PROCEDURES*9

§1-74 Interlocutory Review of Administrative Law Judge Decisions and Orders.

The Chair shall entertain an interlocutory challenge to a decision or order of an Administrative Law Judge where the presiding Administrative Law Judge certifies the question for review. Any question not certified by the presiding Administrative Law Judge may be raised by a party to the Commission in connection with the Commission's review of a recommended decision and order in a case. Any challenge that is certified by the Administrative Law Judge and entertained by the Chair shall preclude further review by the Commission. The failure of a party to challenge a decision or order of an Administrative Law Judge other than a recommended decision and order, shall not preclude that party from making such challenge to the Commission in connection with the Commission's review of a recommended decision and order in a case, provided that the party timely made its objection known to the Administrative Law Judge and that the grounds for such challenge shall be limited to those set forth to the Administrative Law Judge.

HISTORICAL NOTE

Section renumbered (formerly §1-82) and amended City Record June 17, 1998 eff. July 17, 1998; prior

§1-74 repealed. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

Effective July 1, 1997, the Hearings Bureau of the Commission on Human Rights ("Commission") was discontinued, and its adjudication function was transferred to the office of Administrative Trials and Hearings ("OATH"). The proposed amendments to the Rules of Practice of the Commission, and of OATH, are intended to facilitate that transfer without change to the substantive law applicable to those adjudications, and with the least possible change to the procedure applicable to those adjudications. The Commission's adjudications, both as previously conducted by the Hearings Bureau, and as now conducted by OATH, result in the issuance of Recommended Decisions from Administrative Law Judges to the Commission, which the Commission may adopt in full, modify or reject in full. Therefore, the Commission retains the same final role in adjudication as it had before the transfer.

The proposed amendments would delete from the Commission's Rules of Practice, Title 47, Chapter 1, Rules of the City of New York, most rules governing pre-hearing, hearing and post-hearing procedures. Amendments currently being proposed by OATH will address the adjudication of Commission hearings before that Agency. To the extent that OATH's existing Rules of Practice, Title 48, Chapter 1, Rules of the City of New York, are substantially consistent with the Commission's existing Rules, OATH's existing Rules would be made applicable to cases referred by the Commission to OATH. To the extent that OATH's existing Rules of Practice are not substantially consistent with the Commission's existing Rules, OATH's Rules would be amended to include a new Subchapter C in Chapter 2 of Title 48 consisting of Rules necessary to conform the practice and procedure at OATH to the former practice and procedure before the Commission's Hearings Bureau. In those instances in which the Commission has judged the difference between its former practice and procedure and OATH's practice and procedure to be technical or insubstantial, these proposed amendments would make OATH's existing Rules applicable.

Some changes in procedure would be adopted by these proposed amendments. For example, by proposed Section 1-43 of Title 48, OATH would adopt for all of its cases a Rule governing subpoenas that is identical to the Commission's present Rule governing subpoenas, 47 RCNY, 1-81, except that ex parte applications for issuance of subpoenas would not be permitted. In addition, the time for taking an interlocutory appeal from a Decision or Order of the Administrative Law Judge would be reduced from seven days, as provided in the Commission's Existing Rules, to five days in OATH's proposed Rules. Finally, motions concerning investigative record-keeping and investigative subpoenas which were made to the Hearings Bureau under the Commission's existing Rules will be made to the Chair of the Commission under the Commission's proposed Rules, proposed 47 RCNY 1-72 and 1-73.

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[Footnote 9]: * Subchapter G amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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***** Current through December 2009 ****

47 RCNY 1-75

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER G ADJUDICATION PROCEDURES*9

§1-75 Time for Commission Consideration of Recommended Decision and Order.

(a) **Generally.** The Commission shall commence consideration of a case that is the subject of a recommended decision and order upon filing of the recommended decision and order with the Office of General Counsel.

(b) **Recommended decisions and orders not completely disposing of a complaint.** The Commission shall not commence consideration of a case that is the subject of a recommended decision and order which, if adopted, would not resolve the complaint in its entirety unless the Administrative Law Judge certifies the portion of the case proposed to be decided by the recommended decision and order to the Commission for immediate consideration. Dismissal of all or part of a case shall have the effect of a Recommended Decision and Order for the purpose of this section.

HISTORICAL NOTE

Section renumbered (formerly §1-141) City Record June 17, 1998 eff. July 17, 1998, prior §1-75 repealed. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

Effective July 1, 1997, the Hearings Bureau of the Commission on Human Rights ("Commission") was discontinued, and its adjudication function was transferred to the office of Administrative Trials and Hearings ("OATH"). The proposed amendments to the Rules of Practice of the Commission, and of OATH, are intended to facilitate that transfer without change to the substantive law applicable to those adjudications, and with the least possible change to the procedure applicable to those adjudications. The Commission's adjudications, both as previously conducted by the Hearings Bureau, and as now conducted by OATH, result in the issuance of Recommended Decisions from Administrative Law Judges to the Commission, which the Commission may adopt in full, modify or reject in full. Therefore, the Commission retains the same final role in adjudication as it had before the transfer.

The proposed amendments would delete from the Commission's Rules of Practice, Title 47, Chapter 1, Rules of the City of New York, most rules governing pre-hearing, hearing and post-hearing procedures. Amendments currently being proposed by OATH will address the adjudication of Commission hearings before that Agency. To the extent that OATH's existing Rules of Practice, Title 48, Chapter 1, Rules of the City of New York, are substantially consistent with the Commission's existing Rules, OATH's existing Rules would be made applicable to cases referred by the Commission to OATH. To the extent that OATH's existing Rules of Practice are not substantially consistent with the Commission's existing Rules, OATH's Rules would be amended to include a new Subchapter C in Chapter 2 of Title 48 consisting of Rules necessary to conform the practice and procedure at OATH to the former practice and procedure before the Commission's Hearings Bureau. In those instances in which the Commission has judged the difference between its former practice and procedure and OATH's practice and procedure to be technical or insubstantial, these proposed amendments would make OATH's existing Rules applicable.

Some changes in procedure would be adopted by these proposed amendments. For example, by proposed Section 1-43 of Title 48, OATH would adopt for all of its cases a Rule governing subpoenas that is identical to the Commission's present Rule governing subpoenas, 47 RCNY, 1-81, except that ex parte applications for issuance of subpoenas would not be permitted. In addition, the time for taking an interlocutory appeal from a Decision or Order of the Administrative Law Judge would be reduced from seven days, as provided in the Commission's Existing Rules, to five days in OATH's proposed Rules. Finally, motions concerning investigative record-keeping and investigative subpoenas which were made to the Hearings Bureau under the Commission's existing Rules will be made to the Chair of the Commission under the Commission's proposed Rules, proposed 47 RCNY 1-72 and 1-73.

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[Footnote 9]: * Subchapter G amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-76

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER G ADJUDICATION PROCEDURES*9

§1-76 Post-Hearing Comments.

Each party shall have twenty days after the commencement of Commission consideration of the recommended decision and order as provided in §1-75 of this chapter to submit written comments to the Commission. The comments should raise any objections to the recommended decision and order. Comments shall be limited to the record below. Objections not raised in the comments will be deemed waived in any further proceedings. Comments shall be served upon all other parties and shall be filed with the Office of General Counsel. Parties shall apply to the General Counsel's office for permission to submit reply comments. Upon application filed with the Office of General Counsel, the Chair may shorten or extend the time for comments or replies for good cause shown. Comments and replies shall be served upon the Commissioners by the Office of General Counsel.

HISTORICAL NOTE

Section renumbered (formerly §1-142) City Record June 17, 1998 eff. July 17, 1998, prior §1-76 repealed. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

§§1-77, 1-78 repealed City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

§1-81 repealed City Record June 17, 1998 eff. July 17, 1998.

Subchapter H §§1-101-1-103, Subchapter I §§1-121-1-130 added City Record Oct. 10, 1995 eff. Nov. 9, 1995; repealed City Record June 17, 1998 eff. July 17, 1998.

§§1-143-1-152 added City Record Jan. 5, 1994 eff. Feb. 4, 1994; repealed City Record Oct. 10, 1995 eff. Nov. 9, 1995.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

Effective July 1, 1997, the Hearings Bureau of the Commission on Human Rights ("Commission") was discontinued, and its adjudication function was transferred to the office of Administrative Trials and Hearings ("OATH"). The proposed amendments to the Rules of Practice of the Commission, and of OATH, are intended to facilitate that transfer without change to the substantive law applicable to those adjudications, and with the least possible change to the procedure applicable to those adjudications. The Commission's adjudications, both as previously conducted by the Hearings Bureau, and as now conducted by OATH, result in the issuance of Recommended Decisions from Administrative Law Judges to the Commission, which the Commission may adopt in full, modify or reject in full. Therefore, the Commission retains the same final role in adjudication as it had before the transfer.

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47 RCNY 1-72 and 1-73.
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[Footnote 9]: * Subchapter G amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 2 UNLAWFUL DISCRIMINATORY PRACTICES

§2-01 Definitions.

The definitions in this section shall be used by the New York City Commission on Human Rights in determining whether an institution, club, or place of accommodation is "distinctly private" as that term is used in the New York City Human Rights Law, Administrative Code §8-101 **et seq.**

Domestic partner. The term "domestic partner" means a person who has registered a domestic partnership in accordance with applicable law with the City Clerk, or has registered such a partnership with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the Department of Personnel are to be transferred to the City Clerk.)

Members. "Members" shall mean individuals belonging to any class of membership offered by the institution, club, or place of accommodation including, but not limited to, full membership, resident membership, nonresident membership, temporary membership, family membership, honorary membership, associate membership, membership limited to use of dining or athletic facilities, and membership of members' minor children or spouses or domestic partners.

Payment directly from a nonmember. "Payment directly from a nonmember" shall mean payment made to an institution, club or place of accommodation by a nonmember for expenses incurred by a member or nonmember for dues, fees, use of space, facilities, services, meals or beverages.

Payment for the furtherance of trade or business. "Payment for the furtherance of trade or business" shall mean

payment made by or on behalf of a trade or business organization, payment made by an individual from an account which the individual uses primarily for trade or business purposes, payment made by an individual who is reimbursed for the payment by the individual's employer or by a trade or business organization, or other payment made in connection with an individual's trade or business, including entertaining clients or business associates, holding meetings or other business- related events.

Payment indirectly from a nonmember. "Payment indirectly from a nonmember" shall mean payment made to a member or nonmember by another nonmember as reimbursement for payment made to an institution, club or place of accommodation for expenses incurred for dues, fees, use of space, facilities, meals or beverages.

Payment on behalf of a nonmember. "Payment on behalf of a nonmember" shall mean payment by a member or nonmember for expenses incurred for dues, fees, use of space, facilities, services, meals or beverages by or for a nonmember.

Regular meal service. "Regular meal service" shall mean the provision, either directly or under a contract with another person, of breakfast, lunch, or dinner on three or more days per week during two or more weeks per month during six or more months per year.

Regularly receives payment. An institution, club or place of "accommodation "regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of nonmembers for the furtherance of trade or business" if it receives as many such payments during the course of a year as the number of weeks any part of which the institution, club or place of accommodation is available for use by members or non members per year.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Domestic partner definition added City Record June 17, 1998 eff. July 17, 1998. [See Note 1]

Members definition amended City Record June 17, 1998 eff. July 17, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 17, 1998:

Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City Housing Authority and the Department of Housing Preservation and Development. By the end of April, 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55 percent of those registered domestic partners who reported demographic information were heterosexual couples, and less than 45 percent were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

Consistent with the intent of such orders, and its authority pursuant to Administrative Code 8-105(11), the Commission is now acting to provide that a provision of its rules applicable to spouses should now be extended to domestic partners.

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47 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 2 UNLAWFUL DISCRIMINATORY PRACTICES

§2-02 Severability.

If any provision of these Regulations or the application thereof is held invalid, the remainder of these Regulations shall not be affected by such holding and shall remain in full force and effect.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

47 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 2 UNLAWFUL DISCRIMINATORY PRACTICES

§2-03 Exemption of Certain Places of Public Accommodations in Relation to Sex Discrimination.

(a) Dressing rooms, toilets and shower rooms containing multiple facilities, and appurtenant rooms and facilities, and turkish baths and saunas, shall be exempt from the provisions of §8-107, Paragraph 2*1 of the Administrative Code insofar as the use of such accommodations is restricted to one sex. This exemption shall not apply to swimming pools and other facilities for swimming.

(b) Rooming houses or residence hotels in which rental is restricted to one sex shall be exempt from the provisions of §8-107, Paragraph 2* of the Administrative Code if such accommodation is regularly occupied on a permanent, as opposed to transient, basis by the majority of its guests.

(c) Lodging facilities in which the sleeping rooms and/or bathrooms are used in common, such as missions or dormitories designed for occupancy by members of the same sex, shall be exempt from the provisions of §8-107, Paragraph 2 of the Administrative Code insofar as members of one sex are excluded from such accommodations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * "Paragraph 2" should be subdivision 4; section 8-107 as amended by L.L. 39/1991, and rule has not been amended to reflect changes.

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***** Current through December 2009 ****

47 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 3 AGE DISCRIMINATION EXEMPTIONS FOR PUBLIC ACCOMMODATIONS*1

§3-01 Definitions.

Advantages. "Advantages" shall include but not be limited to priority services, discounts in pricing or anything of monetary value extended on the basis of a person's age.

Restrictions. "Restrictions" shall be construed to mean any limitation in access or services on the basis of a person's age.

HISTORICAL NOTE

Section amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. [See T47 Chapter 3 footnote]

Section added City Record Nov. 12, 1993 eff. Dec. 12, 1993.

FOOTNOTES

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[Footnote 1]: * Chapter 3 amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. Note: Statement of Basis and Purpose-

Paragraph b of Subdivision 4 of Section 8-107 of the New York City Human Rights Law provides that the

provisions of the Human Rights Law which prohibit discrimination by a place or provider of public accommodation on the basis of a person's age shall not apply to places and providers of public accommodation where the Commission grants an exemption based on bona fide considerations of public policy. Rules were promulgated effective December 13, 1993, setting forth general exemptions applicable to all places and providers of public accommodation. These Rules also establish a procedure which permits the owner of a place or provider of public accommodation to apply to the Chairperson of the Commission for an exemption of a specific age-based restriction not covered by any of the general exemptions.

The Commission has received a number of requests by places and providers of public accommodation for exemption of age-based restrictions. Many of these requests arise from the concern on the part of the operator of a place or provider of public accommodation that the presence of children under a certain age within the facility will result in the destruction of property and or disruption of the quiet enjoyment of the services offered by the facility. The Commission has granted exemptions that fall within this category under the rubric of promoting the well-being of the public. In order to clarify the grounds upon which the Commission believes exemptions to the prohibition on age-based discrimination are appropriate, it proposes to add more specific language to Section 3-04 of the current Rule.

The statutory authority for this Rule is New York City Administrative Code, Title 8 Chapter 1, Section 8-105(11) and Section 8-107(4)(b). Persons affected will include all persons who own or operate one or more places or providers of public accommodation within the City of New York, as well as all persons who avail themselves of the goods or services offered by any such place or provider of public accommodation.

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47 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 3 AGE DISCRIMINATION EXEMPTIONS FOR PUBLIC ACCOMMODATIONS*1

§3-02 Age-Based Extension of Advantages in Public Accommodations.

Any and all reasonable advantages extended in access to services provided by a place or provider of public accommodation on the basis of a person's age shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code of the City of New York.

HISTORICAL NOTE

Section amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. [See T47 Chapter 3 footnote]

Section added City Record Nov. 12, 1993 eff. Dec. 12, 1993.

FOOTNOTES

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[Footnote 1]: * Chapter 3 amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. Note: Statement of Basis and Purpose-

Paragraph b of Subdivision 4 of Section 8-107 of the New York City Human Rights Law provides that the provisions of the Human Rights Law which prohibit discrimination by a place or provider of public accommodation on the basis of a person's age shall not apply to places and providers of public accommodation

where the Commission grants an exemption based on bona fide considerations of public policy. Rules were promulgated effective December 13, 1993, setting forth general exemptions applicable to all places and providers of public accommodation. These Rules also establish a procedure which permits the owner of a place or provider of public accommodation to apply to the Chairperson of the Commission for an exemption of a specific age-based restriction not covered by any of the general exemptions.

The Commission has received a number of requests by places and providers of public accommodation for exemption of age-based restrictions. Many of these requests arise from the concern on the part of the operator of a place or provider of public accommodation that the presence of children under a certain age within the facility will result in the destruction of property and or disruption of the quiet enjoyment of the services offered by the facility. The Commission has granted exemptions that fall within this category under the rubric of promoting the well-being of the public. In order to clarify the grounds upon which the Commission believes exemptions to the prohibition on age-based discrimination are appropriate, it proposes to add more specific language to Section 3-04 of the current Rule.

The statutory authority for this Rule is New York City Administrative Code, Title 8 Chapter 1, Section 8-105(11) and Section 8-107(4)(b). Persons affected will include all persons who own or operate one or more places or providers of public accommodation within the City of New York, as well as all persons who avail themselves of the goods or services offered by any such place or provider of public accommodation.

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47 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 3 AGE DISCRIMINATION EXEMPTIONS FOR PUBLIC ACCOMMODATIONS*1

§3-03 Age-Based Restrictions in Public Accommodations.

(a) Any and all restrictions in access to public accommodations on the basis of a person's age which are mandated by federal, state or local law shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code of the City of New York.

(b) Any and all restrictions on the basis of a person's age in access to public accommodations displaying motion pictures with ratings by the Motion Picture Association of America, Inc. shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code of the City of New York.

(c) Any and all reasonable restrictions in access to public accommodations imposed upon minors to prevent physical harm to such persons shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code of the City of New York.

(d) Any restrictions in access to or services provided by a place or provider of public accommodation based on age which allows the owner, lessee, proprietor, manager, superintendent, agent or employee of a place or provider of public accommodation to refuse to enter into a contract which under the laws of the State of New York may be disaffirmed on the ground of infancy shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code.

HISTORICAL NOTE

Section amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. [See T47 Chapter 3 footnote]

Section added City Record Nov. 12, 1993 eff. Dec. 12, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter 3 amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. Note: Statement of Basis and Purpose-

Paragraph b of Subdivision 4 of Section 8-107 of the New York City Human Rights Law provides that the provisions of the Human Rights Law which prohibit discrimination by a place or provider of public accommodation on the basis of a person's age shall not apply to places and providers of public accommodation where the Commission grants an exemption based on bona fide considerations of public policy. Rules were promulgated effective December 13, 1993, setting forth general exemptions applicable to all places and providers of public accommodation. These Rules also establish a procedure which permits the owner of a place or provider of public accommodation to apply to the Chairperson of the Commission for an exemption of a specific age-based restriction not covered by any of the general exemptions.

The Commission has received a number of requests by places and providers of public accommodation for exemption of age-based restrictions. Many of these requests arise from the concern on the part of the operator of a place or provider of public accommodation that the presence of children under a certain age within the facility will result in the destruction of property and or disruption of the quiet enjoyment of the services offered by the facility. The Commission has granted exemptions that fall within this category under the rubric of promoting the well-being of the public. In order to clarify the grounds upon which the Commission believes exemptions to the prohibition on age-based discrimination are appropriate, it proposes to add more specific language to Section 3-04 of the current Rule.

The statutory authority for this Rule is New York City Administrative Code, Title 8 Chapter 1, Section 8-105(11) and Section 8-107(4)(b). Persons affected will include all persons who own or operate one or more places or providers of public accommodation within the City of New York, as well as all persons who avail themselves of the goods or services offered by any such place or provider of public accommodation.

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47 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 3 AGE DISCRIMINATION EXEMPTIONS FOR PUBLIC ACCOMMODATIONS*1

§3-04 Applications for Exemption from §8-107(4)(a) Ad Code.

The owner, lessee, proprietor, manager, superintendent or agent of a place or provider of public accommodation may make an application for exemption of an age-based restriction on access to or services provided by such public accommodation which would otherwise be prohibited pursuant to §8-107(4)(a) of the Administrative Code of the City of New York and §3-03 of these rules. Such application shall be made in writing to the office of the chairperson of the New York City Commission on Human Rights. The application shall set forth the specific basis for the exemption sought together with any supporting evidence. The chairperson may grant such exemption if he or she determines that the exemption promotes the health, safety or well-being of the public, or prevents physical harm to the property or premises of a place of public accommodation, or undue disruption of the quiet enjoyment of a place of public accommodation and is not inconsistent with the goals and policies of the City Human Rights Law. The decision of the Chairperson shall be final.

HISTORICAL NOTE

Section amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. [See T47 Chapter 3 footnote]

Section added City Record Nov. 12, 1993 eff. Dec. 12, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter 3 amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. Note: Statement of Basis and Purpose-

Paragraph b of Subdivision 4 of Section 8-107 of the New York City Human Rights Law provides that the provisions of the Human Rights Law which prohibit discrimination by a place or provider of public accommodation on the basis of a person's age shall not apply to places and providers of public accommodation where the Commission grants an exemption based on bona fide considerations of public policy. Rules were promulgated effective December 13, 1993, setting forth general exemptions applicable to all places and providers of public accommodation. These Rules also establish a procedure which permits the owner of a place or provider of public accommodation to apply to the Chairperson of the Commission for an exemption of a specific age-based restriction not covered by any of the general exemptions.

The Commission has received a number of requests by places and providers of public accommodation for exemption of age-based restrictions. Many of these requests arise from the concern on the part of the operator of a place or provider of public accommodation that the presence of children under a certain age within the facility will result in the destruction of property and or disruption of the quiet enjoyment of the services offered by the facility. The Commission has granted exemptions that fall within this category under the rubric of promoting the well-being of the public. In order to clarify the grounds upon which the Commission believes exemptions to the prohibition on age-based discrimination are appropriate, it proposes to add more specific language to Section 3-04 of the current Rule.

The statutory authority for this Rule is New York City Administrative Code, Title 8 Chapter 1, Section 8-105(11) and Section 8-107(4)(b). Persons affected will include all persons who own or operate one or more places or providers of public accommodation within the City of New York, as well as all persons who avail themselves of the goods or services offered by any such place or provider of public accommodation.

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47 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 3 AGE DISCRIMINATION EXEMPTIONS FOR PUBLIC ACCOMMODATIONS*1

§3-05 Effective Date. [Repealed]

HISTORICAL NOTE

Section repealed City Record Aug. 18, 1995 eff. Sept. 17, 1995. [See T47 Chapter 3 footnote]

Section added City Record Nov. 12, 1993 eff. Dec. 12, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter 3 amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. Note: Statement of Basis and Purpose-

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48 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-01 Definitions.

As used in this chapter:

Administrative law judge. "Administrative law judge" shall mean the person assigned to preside over a case, whether the chief administrative law judge or a person appointed by the chief administrative law judge.

Agency. "Agency" shall mean any commission, board, department, authority, office or other governmental entity authorized or required by law to refer a case to OATH, regardless of whether the agency is petitioner or respondent in such a case.

CAPA. "CAPA" shall mean the City Administrative Procedure Act, §§1041 to 1047 of the New York City Charter ("Charter").

Case. "Case" shall mean an adjudication pursuant to CAPA, §1046, referred to OATH pursuant to Charter, §1048.

Chief administrative law judge. "Chief administrative law judge" shall mean the director of OATH appointed by the mayor pursuant to Charter, §1048.

Electronic means. "Electronic means" shall mean any method of transmission of information between computers or

other machines designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce the information transmitted in a tangible medium of expression, e.g. facsimile transmission and email.

Filing. "Filing" shall mean submitting papers to OATH, whether in person, by mail, or by electronic means, for inclusion in the record of proceedings in a case.

Mailing. "Mailing" shall mean the deposit, in a post office or official depository under the exclusive care and custody of the United States Postal Service, of a paper enclosed in a first class postpaid wrapper, addressed to the address designated by a person for that purpose or, if none is designated, at such person's last known address.

OATH. "OATH" shall mean the Office of Administrative Trials and Hearings.

Petition. "Petition" shall mean a document, analogous to a complaint in a civil action, which states the claims to be adjudicated.

Petitioner. "Petitioner" shall mean a party asserting claims.

Respondent. "Respondent" shall mean a party against whom claims are asserted.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section repealed and added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-02 Jurisdiction.

Pursuant to Charter §1049(3), OATH's jurisdiction includes the authority to render any ruling or order necessary and appropriate under applicable law or agency rule for the just and efficient adjudication of cases.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section repealed and added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Absent precedent stating a standard applicable to requests for **amicus** participation in a disability discrimination case under the City Human Rights Law, reference to practice before the Commission's former tribunal is appropriate and the standard is whether, in the discretion of the presiding judge, such participation will substantially further the "just and efficient adjudication of cases." **Comm'n on Human Rights v. 325 Cooperative, Inc.,** OATH Index No. 1423/98, mem. dec. (July 16, 1998).

¶ 2. Automatic stay provision of federal bankruptcy law and pendency of the contractor's bankruptcy case did not preclude the Comptroller from proceeding against the contractor under the prevailing wage law. **Office of the Comptroller v. C & F Electrical Contractors, Inc.,** OATH Index Nos. 401-02/93 (Jan. 11, 1993); **Office of the Comptroller v. IFD Construction Corp.,** OATH Index No. 901/98 (Jan. 26, 1998).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-03 Applicability.

This chapter applies to the conduct of all cases, including hearings, pre-hearing and post-hearing matters, except to the extent that this chapter may be superseded by CAPA or other provision of law.

HISTORICAL NOTE

Section repealed and added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pursuant to the section and to §1049(3)(d) of the City Charter, this tribunal's rules apply to a case except to the extent that they are inconsistent with the rules of the agency that referred the case. Therefore, in a Loft Law case referred by the Loft Board, this tribunal's rules govern pre-trial discovery because the rules of the Loft Board are silent as to discovery. **Matter of Prince,** OATH Index No. 1506/95 (Aug. 4, 1995).

¶ 2. Because not all Loft Law cases are adjudicated before this tribunal, the rules of this tribunal are not applicable to a Loft Law case unless and until the case is referred here. **Matter of Ancona,** OATH Index Nos. 116/96, 621/96,

623/96 (Dec. 8, 1995).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-04 Construction and Waiver.

This title shall be liberally construed to promote just and efficient adjudication of cases. This title may be waived or modified on such terms and conditions as may be determined in a particular case to be appropriate by an administrative law judge.

HISTORICAL NOTE

Section repealed and added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Absent precedent stating a standard applicable to requests for **amicus** participation in a disability discrimination case under the City Human Rights Law, reference to practice before the Commission's former tribunal is appropriate and the standard is whether, in the discretion of the presiding judge, such participation will substantially further the "just and efficient adjudication of cases." **Comm'n on Human Rights v. 325 Cooperative, Inc.,** OATH Index No. 1423/98, mem. dec. (July 16, 1998).

¶ 2. An application that respondent's wife and a friend be permitted to observe the undercover witness' testimony was denied because divulging the witness' identity would be tantamount to placing him and his family in jeopardy and would compromise ongoing police investigations. Under section 1-49, all OATH hearings are open unless legally recognized grounds exist for closure. Section 1-49 was interpreted in light of this section which gives the administrative law judge discretion to waive or modify trial rules as may be appropriate in a particular case to promote the just and fair adjudication of cases. **Dep't of Correction v. Lowndes**, OATH Index No. 1662/99 (July 29, 1999), **rev'd on other grounds**, NYC Civ. Serv. Comm'n Item No. CD00-84-R (July 24, 2000).

FOOTNOTES

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In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration

Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-05 Effective Date.

This chapter shall be effective on the first day permitted by CAPA, §1043(e), and shall apply to all cases. However, for cases initiated prior to the effective date of these rules, no act which was valid, timely or otherwise proper under the rules applicable at the time of the act will be rendered improper by the subsequent effectiveness of this chapter.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

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Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-06 Computation of Time.

Periods of days prescribed in this chapter shall be calculated in calendar days, except that when a period of days expires on a Saturday, Sunday or legal holiday, the period shall run until the next business day. Where this chapter prescribes different time periods for taking an action depending whether service of papers is personal or by mail, service of papers by electronic means shall be deemed to be personal service, solely for purposes of calculating the applicable period of time.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section repealed and added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. OATH practice is to recommend suspension penalties in calendar days unless otherwise specified. A reference to "days" in a recommendation means calendar days, not working days. **Dep't of Sanitation v. Boyd,** OATH Index No.

104/99, letter dated Oct. 9, 1998 to department advocate (Sept. 30, 1998).

FOOTNOTES

1

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As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-07 Filing of Papers.

(a) **Generally.** Papers may be filed at OATH in person, by mail or by electronic means.

(b) **Headings.** The subject matter heading for each paper sent by personal service, mail or electronic means must indicate the OATH index number where one has been assigned pursuant to §1-26(b).

(c) **Means of service on adversary.** Submission of papers by a party in a case to the administrative law judge by electronic means mail or personal delivery without providing equivalent method of service to all other parties shall be deemed to be an **ex parte** communication.

(d) **Proof of service.** Proof of service must be maintained by the parties for all papers filed at OATH. Proof of service shall be in the form of an affidavit by the person effecting service, or in the form of a signed acknowledgement of receipt of papers by the person receiving the papers. A writing admitting service by the person to be served is adequate proof of service. Proof of service for papers served by electronic means, in addition to the foregoing, may also be in the form of a record confirming delivery or acknowledging receipt of the electronic transmission.

HISTORICAL NOTE

Section added City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-08 Access to Facilities and Programs by People with Disabilities.

OATH is committed to providing equal access to its facilities and programs to people with disabilities and OATH will make reasonable accommodations requested by people with disabilities. A person requesting an accommodation for purposes of participation in a case at OATH, including attendance as a member of the public, shall request such accommodation sufficiently in advance of the proceeding in which the person wishes to participate to permit a reasonable time to evaluate the request. A request for accommodation shall be submitted to OATH's office manager.

HISTORICAL NOTE

Section added City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

1-09 repealed City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

1

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered

and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER B RULES OF CONDUCT

§1-11 Appearances.

(a) A party may appear in person, by an attorney, or by a duly authorized representative. A person appearing for a party, including by telephone conference call, is required to file a notice of appearance with OATH. Docketing of a case by an attorney or representative of a party shall be deemed to constitute the filing of a notice of appearance by that person. The filing of any papers by an attorney or representative who has not previously appeared shall constitute the filing of a notice of appearance by that person, and shall conform to the requirements of subdivisions (b) and (d) of this section.

(b) The appearance of a member in good standing of the bar of a court of general jurisdiction of any state or territory of the United States shall be indicated by the suffix "Esq." and the designation "attorney for (petitioner or respondent)", and the appearance of any other person shall be indicated by the designation "representative for (petitioner or respondent)".

(c) Absent extraordinary circumstances, no application shall be made or argued by any attorney or other representative who has not filed a notice of appearance. Participation in a telephone conference call on behalf of a party by an attorney or representative of the party shall be deemed an appearance by the attorney or representative. Nonetheless, upon making such an appearance, the attorney or representative shall file a notice of appearance in conformity with subdivisions (b) and (d) of this section.

(d) A person may not file a notice of appearance on behalf of a party unless he or she has been retained by that party to represent the party before OATH. Filing a notice of appearance constitutes a representation that the person appearing has been so retained. Filing a notice of appearance pursuant to §1-11(a) of this subchapter constitutes a representation that the person appearing has read and is familiar with the rules of this subchapter.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A motion to disqualify an opposing party's counsel is governed by the disciplinary rules of the Code of Professional Responsibility. An agency's attorney who will testify as a trial witness may act as counsel to the agency, and may provide administrative and supervisory support to the agency's trial counsel, but may not himself act as trial counsel. Human Resources Administration v. Man-of-Jerusalem, OATH Index No. 1021/91 (Nov. 12, 1991).

¶ 2. A party before OATH is not required to appear by an attorney. Fire Department v. Durkin, OATH Index No. 309/90 (Mar. 28, 1991).

¶ 3. Where taxicab medallion owners defaulted at license revocation hearing, an attorney retained by a taxi management company who represents that he is in the process of contacting the medallion owners to offer his services, lacks standing under paragraphs (c) and (d) of this section to file motions to vacate the medallion owners' defaults. Taxi and Limousine Commission v. West, OATH Index Nos. 1131, 1133-37/94 (Aug. 19, 1994); Taxi and Limousine Commission v. Borko, OATH Index Nos. 1117-24 (July 18, 1994).

¶ 4. Counsel must file a notice of appearance before he could appear on behalf of respondent in the proceeding. **Taxi and Limousine Comm'n v. Surinder,** OATH Index No. 825/99, letter decision dated Nov. 30, 1998.

¶ 5. Where respondent failed to appear for trial and his union-provided counsel asked for an adjournment based upon respondent's representation to a union representative that he had to leave the state to attend to a sick parent, the respondent was declared in default because he had not authorized anyone to appear on his behalf pursuant to this rule. **Health and Hospitals Corp. (Elmhurst Hospital Center) v. Mosley**, OATH Index No. 206/00 (Nov. 15, 1999).

¶ 6. Where attorney was present at the hearing to represent respondent but had not filed a notice of appearance, the attorney was not authorized to appear or seek relief in the form of an adjournment under subsection (c). **Health and Hospitals Corp. (Bellevue Hospital Center) v. Page,** OATH Index No. 1623/01 (May 9, 2001).

¶ 7. Upon respondent's failure to appear on date of scheduled hearing, union counsel had no standing to participate in the proceedings and was excused where counsel represented that respondent had failed to respond to all attempts to contact him. **Dep't of Correction v. Bomani,** OATH Index No. 1383/01 (July 20, 2001)

¶ 8. Under subsection (d) of this section union counsel had no standing to participate in the proceedings or to make an adjournment request on respondent's behalf where respondent had not given permission for counsel to represent him in the instant proceeding. **Dep't of Correction v. Chapman,** OATH Index No. 774/02 (May 6, 2002).

¶ 9. Under OATH's Rules of Practice, a party is deemed to have appeared as of the date of filing of a notice of appearance. Respondent owner was deemed to have appeared where he retained counsel well in advance of the hearing, and where counsel filed a notice of appearance and sought and obtained at least one adjournment of the proceeding. Having so appeared, respondent owner waived any objection to service of the petition. **Dep't of Buildings v. Owners, Occupants and Mortgagees of 116 East 73rd Street, Manhattan,** OATH Index No. 1807/02 (Jan. 24, 2003).

¶ 10. In a disciplinary hearing, an attorney appeared on behalf of respondent's union and requested an adjournment in order to contact respondent. The attorney lacked standing to make the request for an adjournment under this rule and respondent was found in default. **Human Resources Admin. v. Messam,** OATH Index No. 1437/03 (May 30, 2003).

¶ 11. An attorney appeared for respondent's union and represented that he had not had contact with respondent. Pursuant to this rule, a person may not appear on behalf of a party unless he or she has been retained by that party to represent that party before OATH. **Human Resources Admin. v. Crawford,** OATH Index No. 265/04 (Sept. 16, 2003).

FOOTNOTES

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[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER B RULES OF CONDUCT

§1-12 Withdrawal and Substitution of Counsel.

(a) An attorney who has filed a notice of appearance shall not withdraw from representation without the permission of the administrative law judge, on application. Withdrawals shall not be granted unless upon consent of the client or when other cause exists as delineated in the applicable provisions of the Code of Professional Responsibility.

(b) Notices of substitution of counsel may be served and filed more than twenty days before trial without leave of the administrative law judge. Applications for later substitutions of counsel shall be granted freely absent prejudice or substantial delay of proceedings.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Absent any mandatory basis for withdrawal of counsel under the Code of Professional Responsibility, and absent any persuasive reason for the respondent's last-minute desire to replace counsel, who had represented him through 15 months of pre-trial proceedings, counsel's application for leave to withdraw was denied. Department of

Correction v. Rebecca, OATH Index No. 151/94 (Oct. 21, 1993).

¶ 2. The requirement that counsel seek leave to withdraw has several purposes, including protecting all parties' rights, monitoring and regulating the practice of the bar before the tribunal, ensuring that adjudication proceeds expeditiously and in an orderly fashion, and protecting the public interest in efficient application of this tribunal's resources. **Department of Correction v. Lewis,** OATH Index No. 1316/95 (May 31, 1995).

¶ 3. An attorney who has appeared pursuant to §1-11 of these rules may not unilaterally withdraw. However, because not all Loft Law cases are adjudicated before this tribunal, withdrawal of counsel before referral of the case to this tribunal is not governed by this tribunal's rules. **Matter of Ancona,** OATH Index Nos. 116/96, 621/96, 623/96 (Dec. 8, 1995).

¶ 4. Where counsel delayed seeking leave to withdraw from representation of the petitioner until too late for the petitioner to retain new counsel in time for trial, the motion to withdraw was denied notwithstanding fee dispute between counsel. **Matter of SMJ Management Corp.,** OATH Index No. 1505/95 (Nov. 21, 1995), **aff'd sub nom. SMJ Management Corp. v. New York City Loft Board,** Index No. 103595/96 (Sup. Ct. N.Y. Co. Feb. 6, 1997).

¶ 5. Counsel's bare statement that some other attorney, unknown to counsel, had taken over representation of the respondent, is an insufficient basis for granting leave to withdraw from representation of the respondent. **Department of Correction v. Lewis,** OATH Index No. 1316/95 (May 31, 1995).

¶ 6. Having previously appeared in the proceeding by attending the pre-trial conference, counsel must seek permission of the administrative law judge in order to withdraw from representing a party scheduled for a hearing. **Matter of Wilson,** OATH Index No. 1573/97 (Mar. 20, 1998), **aff'd,** Loft Bd. Order No. 2280 (Sept. 24, 1998).

¶ 7. Counsel for respondent sought to withdraw on the third and final day of trial based solely on respondent's desire to change counsel. In denying the motion, the administrative law judge found that a simultaneous request to adjourn the proceedings in order for new counsel to prepare demonstrated that substitution would substantially delay the proceedings. The matter had been pending for several months, and more than one month between the second and third day of trial had elapsed. No apparent reason existed that substitution could not have been made earlier so that new counsel would have been ready for the final trial date, or that respondent could have found new counsel who was available on that date. **Dep't of Sanitation v. Garcia,** OATH Index No. 1140/98 (May 1, 1998).

¶ 8. Pursuant to this rule, an attorney who has filed a notice of appearance shall not withdraw from representation without the permission of the administrative law judge, on application. At the end of a second day of trial, respondent's counsel requested the tribunal's permission to withdraw from representing respondent. The application was denied. On the third day of trial, when respondent indicated that she no longer wished that the attorney represent her, the administrative law judge relieved the attorney from representing respondent and the attorney withdrew. **Dep't of Correction v. Shepheard,** OATH Index No. 965/03 (Nov. 6, 2003).

¶ 9. Administrative law judge granted attorney's application to withdraw based on client's consent and the preliminary stage of the proceeding. **Matter of Rosario**, OATH Index No. 1692/04, mem. dec. (Aug. 31, 2004).

¶ 10. In an employee disciplinary proceeding at OATH, the union is not a party, and counsel appears as attorney for the employee. Therefore, the attorney's motion to withdraw from hearing is governed by OATH's rule of practice and the lawyer's Code of Professional Responsibility, not federal, state or local labor law. **Health & Hospitals Corp. (Harlem Hospitals Center) v. Norwood**, OATH Index No. 143/05, mem dec. (Mar. 7, 2005). ALJ rejects argument by union-retained counsel that he should have been permitted to withdraw because he was instructed by the union to withdraw from the proceeding since the employee failed to appear at the scheduled hearing and that the union, and not the employee, is his client.

¶ 11. Withdrawal of counsel granted based on irreconcilable differences between attorney and client. **13 East 17 th**

Street Tenants v. 13 East 17 th Street, LLC, OATH Index Nos. 1343/03, 1357/03 & 1358/03, mem. dec. (Apr. 29, 2005).

¶ 12. Counsel's motion to withdraw, made four days before scheduled completion date in protracted litigation, was denied. **Matter of Slotkin**, OATH Index No. 690/06 (May 29, 2007).

¶ 13. An attorney who has filed a notice of appearance may not withdraw from representation without the permission of the client or as delineated in the Code of Professional Responsibility. A motion to withdraw based on the respondent's failure to appear at the hearing and the attorney's inability to contact him was denied when the ALJ found no indication that the attorney had taken steps to avoid prejudice to the respondent, including giving due notice of her intention to withdraw. **Health & Hospitals Corp. (Lincoln Medical & Mental Health Center) v. Wolf**, OATH Index No. 2153/08 (June 3, 2008), **adopted**, Senior Assoc. Executive Director's Dec. (July 9, 2008).

FOOTNOTES

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The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER B RULES OF CONDUCT

§1-13 Conduct; Suspension from Practice at OATH.

(a) Individuals appearing before OATH shall comply with the rules of this chapter and any other applicable rules, and shall comply with the orders and directions of the administrative law judge.

(b) Individuals appearing before OATH shall conduct themselves at all times in a dignified, orderly and decorous manner. In particular, at the hearing, all parties, their attorneys or representatives, and observers shall address themselves only to the administrative law judge, avoid colloquy and argument among themselves, and cooperate with the orderly conduct of the hearing.

(c) Attorneys and other representatives appearing before OATH shall be familiar with the rules of this title.

(d) Attorneys appearing before OATH shall conduct themselves in accordance with the canons, ethical considerations and disciplinary rules set forth in the code of professional responsibility in their representation of their clients, in their dealings with other parties, attorneys and representatives before OATH, and with OATH's administrative law judges and staff.

(e) Willful failure of any person to abide by the standards of conduct stated in paragraphs (a) through (d) of this section, may, in the discretion of the administrative law judge, be cause for the imposition of sanctions. Such sanctions

may include formal admonishment or reprimand, assessment of costs or imposition of a fine, exclusion of the offending person from the proceedings, exclusion or limitation of evidence, adverse evidentiary inference, adverse disposition of the case, in whole or in part, or other sanctions as the administrative law judge may determine to be appropriate. The imposition of sanctions may be made after a reasonable opportunity to be heard. The form of the hearing shall depend upon the nature of the conduct and the circumstances of the case.

(f) In the event that an attorney or other representative of a party persistently fails to abide by the standards of conduct stated in paragraphs (a) through (d) of this section, the chief administrative law judge may, upon notice to the attorney or representative and a reasonable opportunity to rebut the claims against him or her, suspend that attorney or representative from appearing at OATH, either for a specified period of time or indefinitely until the attorney or representative demonstrates to the satisfaction of the chief administrative law judge that the basis for the suspension no longer exists.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 19, 2005:

Pursuant to §§1043 and 1049 of the City Charter, the Chief Judge hereby amends various sections in Chapter 1 of Title 48 of the Rules of the City of New York (RCNY), the "Rules of Practice Applicable to Cases at OATH Generally," §§2-01, 2-03 and 2-07 of Subchapter A of Chapter 2 of Title 48 RCNY, "Additional Rules for Pre-qualified Vendor Appeals," repeals Subchapter B of Chapter 2 of Title 48 RCNY, "Additional Rules for Debarment Cases" and amends §3-01 of Chapter 3 of Title 48 of the RCNY, "Fitness and Discipline Hearings for OATH Employees."

Chapter 1 of Title 48 has not been changed since the last rule revision in 1998. During the ensuing years, there have been instances where OATH Administrative Law Judges have discovered that certain provisions in Chapter 1 were unclear and that practices have developed which are inconsistent with the text of the rules. The changes to Chapter 1 clarify existing rules and ensure that the text of the rules comports with the principles of good administrative trial practice. Among other things, the amendments provide for electronic filing of papers, provide procedures for requesting reasonable accommodation for people with disabilities, and provide sanctions for not complying with the standards of conduct.

The amendments to the "Additional Rules for Prequalified Vendor Appeals" clarify the method for calculating the deadline for a respondent to file an answer to the petition and reflect that an applicable Procurement Policy Board rule has been renumbered.

The "Additional Rules for Debarment Cases" are repealed due to amendments to §335 of the City Charter in 2001, which repealed provisions for OATH to hear debarment cases. The current §335 does not provide for an OATH hearing.

The amendment to the rule for "Fitness and Discipline Hearings for OATH Employees" reflects the correct charter section authorizing such proceedings.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where counsel failed properly to move to withdraw as counsel, disregarded instructions of the administrative law judge to appear for trial as scheduled, and wrote letters to the administrative law judge that were manifestly inappropriate as a form of address by counsel to a judge, he was found to have violated paragraph (a) of this section,

was formally reprimanded, and was cautioned that future violations might result in imposition of the more severe sanctions provided by paragraph (b) of this section. **Department of Correction v. Lewis,** OATH Index No. 1316/95 (May 31, 1995).

¶ 2. Although some of the language in paragraph (a) of this section pertains to trial misconduct, the requirement of "dignified, orderly and decorous" conduct applies at all times and in all proceedings before this tribunal. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Dec. 12, 1996).

¶ 3. For failure without excuse to comply with the administrative law judge's order at the commencement of the case to submit a notice of appearance by a certain date, and failure to comply with §1-11(c) of these rules by orally arguing a motion for an adjournment of a settlement conference without having submitted a notice of appearance, counsel who had not previously been formally sanctioned was formally admonished pursuant to paragraph (a) of this section. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Dec. 12, 1996).

¶ 4. The administrative law judge cautioned attorney for failing to disclose prior adverse holdings and for repeatedly asserting issues that have been previously adjudicated. In post-trial submissions, attorney raised several defenses to the padlock law but did not disclose that a prior decision by this tribunal had considered and rejected these same legal defenses. **Dep't of Buildings v. Owners, Occupants & Mortgagees of 2377 Grand Avenue, Bronx,** OATH Index No. 1061/98 (June 12, 1998).

¶ 5. After an adjournment request was denied on the third and final day of trial, the administrative law judge instructed the parties to proceed. Counsel and respondent elected to leave the hearing, claiming they were unprepared to go forward. Pursuant to this section, the administrative law judge issued a warning to counsel for violating OATH's rules and administrative law judge's direction, as well as the applicable provision of the disciplinary rules, DR 2-110 (A)(1). **Dep't of Sanitation v. Garcia,** OATH Index No. 1140/98 (May 1, 1998).

¶ 6. Where counsel misrepresented legal precedent by inserting favorable language to his position in his brief, counsel was admonished that he would be subject to the penalties provided under this section if it occurred again. **Taxi and Limousine Commission v. Ouali,** OATH Index No. 1855/00, mem. dec. (Feb. 16, 2000).

¶ 7. Attorney is sanctioned for issuing his own subpoenas, not on notice to this tribunal or his adversary, in violation of section 1-43. **Matter of Live Centre Tenants Assoc.,** OATH Index No. 834/05, mem. dec. (Mar. 2, 2006).

¶ 8. Sanctions may be imposed pursuant to subsection (e) of this section so long as there is a willful violation of OATH's rules. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

¶ 9. The imposition of sanctions for non-compliance with discovery is not limited to the provisions of 1-33(e). Sanctions may be imposed under subsection (e) of this section for the willful failure to comply with a discovery demand. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

¶ 10. Sanctions range from admonition of counsel to dismissal of the petition. A factor to consider when assessing the sanction was whether counsel's noncompliance was malicious or due to a failure to understand her obligations. Where counsel acts maliciously or in a calculated effort to disadvantage her adversary, a severe sanction is warranted. Dismissal of the petition with prejudice is a draconian sanction, not warranted, where, as here, it was not shown that counsel's non-compliance with discovery demands was done with a malicious intent to gain an advantage. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

¶ 11. Admonition is imposed as the sanction for counsel's willful, but not malicious, failure to comply with discovery demands. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of

OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER B RULES OF CONDUCT

§1-14 Ex Parte Communications.

(a) Except for ministerial matters, and except on consent, in an emergency, or as provided in §l-31(a), communications with the administrative law judge concerning a case shall only occur with all parties present. If an administrative law judge receives an **ex parte** communication concerning the merits of a case to which he or she is assigned, then he or she shall promptly disclose the communication by placing it on the record, in detail, including all written and oral communications and identifying all individuals with whom he or she has communicated. A party desiring to rebut the **ex parte** communication shall be allowed to do so upon request.

(b) Communications between OATH and a party docketing a case, to the extent necessary to the placement of a case on the trial calendar or conference calendar pursuant to §1-26(a), shall be deemed to be ministerial communications. Communications between OATH and a party docketing a case, to the extent necessary to a request for expedited calendaring pursuant to §1-26(c), shall be deemed to be emergency communications.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Consent by one party to an **ex parte** communication by the other party must be conveyed by the consenting party to the administrative law judge. Human Resources Administration v. Morales, OATH Index No. 306/92 (Dec. 31, 1991).

¶ 2. Counsel's submission of motion papers to this tribunal by facsimile transmission, with a copy served on the opposing party by regular mail, constituted an improper **ex parte** communication. **Health and Hospitals Corporation, Emergency Medical Service v. Hermida,** OATH Index No. 715/95 (Mar. 28, 1995).

¶ 3. Counsel's application to cancel hearing, sent by facsimile to administrative law judge, without indication that it was served on counsel's adversary, was an improper **ex parte** communication. **Human Resources Admin. v. Khoury-King,** OATH Index No. 836/99 (Dec. 2, 1998).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-21 Designation of OATH.

Where necessary under the provision of law governing a particular category of cases, the agency head shall designate the chief administrative law judge of OATH, or such administrative law judges as the chief administrative law judge may assign, to hear such cases.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48

of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-22 The Petition.

The petition shall include a short and plain statement of the matters to be adjudicated, and, where appropriate, specifically allege the incident, activity or behavior at issue as well as the date, time, and place of occurrence. The petition shall also identify the law, rule, regulation, contract provision, or policy that was allegedly violated and provide a statement of the relief requested. If the petition does not comply with this provision, the administrative law judge may direct, on the motion of a party or sua sponte, that the petitioner re-plead the petition.

HISTORICAL NOTE

Section amended City Record Aug. 19, 2009 §1, eff. Sept. 18, 2009. [See Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

NOTE

1. Statement of Basis and Purpose in City Record Aug. 19, 2009:

OATH held a public hearing on proposed amendments to its Rules of Practice on July 24, 2009. One person had submitted written comments regarding the proposed rule changes but no one testified at the hearing.

OATH has amended various sections of its Rules of Practice, found in Chapter 1 of Title 48 of the Rules of the City of New York, to make the hearing process more transparent and efficient, while continuing to provide fair and impartial treatment for parties and litigants.

Section 1-22 was amended to improve pleading practice at OATH. Pleadings are to be construed liberally. However, when a petition does not adequately place a respondent on notice of the allegations and the remedy sought or when multiple charges are written in duplicative fashion or are confusing, adjudication of the matter can be delayed or complicated. The amended rule gives the administrative law judge authority to direct the petitioner to re-plead the petition, which will allow the proceeding to go forward in an efficient manner.

Section 1-32 has been amended to permit an administrative law judge to remove a case from the calendar. The amended rule provides a tool to avoid a long or indefinite continuation of the proceedings when the parties are not ready for trial or conference. It is intended to allow the ALJ to assess the readiness of the parties for trial in a period of time that is consistent with OATH's calendar management standards.

Appropriate language assistance services are needed so that parties and witnesses whose primary language is not English can participate in conferences and trials. Interpreters are also needed to ensure that a complete and accurate hearing record is made. Section 1-44 was amended to improve the quality of language assistance services provided at OATH conferences and hearings. The old rule, which allowed for the use of a friend or relative of a witness or party to act as an interpreter, did not ensure that an accurate and reliable translation was made. In addition, the old rule placed the burden of obtaining an interpreter on the party who needs it. Because OATH has access to quality language assistance services, the amended rule makes OATH responsible for ensuring that appropriate services are provided.

The amendment of §1-49 addresses publication of OATH decisions. While there is a presumption that administrative proceedings are open to the public, various statutes and rules require that certain information remain confidential. The amended rule is intended to ensure that confidential information is not published in a decision in contravention of applicable law or rules, without departing from OATH's policy of maintaining open proceedings.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pleadings do not serve a jurisdictional purpose in administrative proceedings, only a notice-giving function. Department of Buildings v. 2837-39 Decatur Avenue, Bronx, New York, OATH Index No. 349/94 (Jan. 10, 1994).

¶ 2. The purpose of administrative pleadings is notice, not jurisdiction, and a petition is sufficient if it affords notice of the matters to be adjudicated. Department of Buildings v. Owner, Occupants and Mortgagees of 31 West 11th Street, Apartments 6A and 6B, New York, OATH Index No. 990/94 (Aug. 26, 1994).

¶ 3. A petition need not be verified. Department of Buildings v. 232 Mount Hope Place, Bronx, New York, OATH Index No. 1207/94 (Oct. 28, 1994).

¶ 4. This section does not require any particular form of designation of parties, and does not refer to a caption. Therefore, the petition's reference to the premises in the caption and listing of the respondents below the caption is a matter purely of style, not of substance, and the listing of "occupants" rather than the names of the occupants is a reasonably precise description which the movant had no trouble recognizing as applying to her. Department of Buildings v. Owner, Occupants and Mortgagees of 31 West 11th Street, Apartments 6A and 6B, New York, OATH Index No. 990/94 (Aug. 26, 1994).

¶ 5. A petition alleging commercial use of premises in a residential zone need not plead the non-existence of a legal non-conforming use, because the doctrine of prior non-conforming use is an affirmative defense. Department of Buildings v. 232 Mount Hope Place, Bronx, New York, OATH Index No. 1207/94 (Oct. 28, 1994).

¶ 6. Where the petition erroneously alleged that the date of occurrence was one day before that stated in all other

documentation, notice to the respondent of the petitioner's claim was sufficient, and the respondent was afforded an adequate opportunity to prepare a defense. **Department of Correction v. Cross,** OATH Index No. 1109/95 (Aug. 9, 1995).

¶ 7. Although it is the better practice that the petition specify the rule allegedly violated by the respondent, failure to cite the rule is not fatal to the petition where the respondent was not prejudiced by the failure. **Health and Hospitals Corporation, Harlem Hospital v. Case,** OATH Index No. 595/95 (Apr. 6, 1995).

¶ 8. Where the petition alleged that the respondent was absent from her job, without leave, "since" a stated date, and where the trial evidence showed that the respondent's absence without leave was still ongoing as of the time of trial, the petition adequately pleaded a continuous period of absence without leave beginning on the stated date and continuing until the time of trial. **Health and Hospitals Corporation, Harlem Hospital v. Case,** OATH Index No. 595/95 (Apr. 6, 1995).

¶ 9. A petition that alleged that the respondent engaged in hugging and kissing a student over a period of several months was not inadequately specific pursuant to this section, because the petition alleged continuing conduct over the time period alleged, and because material produced to the respondent during pre-trial discovery revealed that the petitioner's evidence included an allegation that the respondent had engaged in the hugging and kissing approximately every other day during the time period at issue. Board of Education v. Blackson, OATH Index No. 1715/97 (Dec. 10, 1997).

¶ 10. As a threshold matter, the party filing a petition must possess the right to an administrative hearing pursuant to statute, rule, collective bargaining agreement or other legal provision. Petitioner, a base station licensee whose license had been suspended prior to hearing, filed a petition requesting a hearing and seeking termination of the pre-hearing suspension imposed by the Taxi and Limousine Commission. Although the petition meets the requirements of this rule-it alleges a wrong and asserts a claim to relief-the Commission's motion to dismiss was granted because there is no law or regulation which requires an administrative hearing when a licensee seeks termination of a pre-hearing suspension. **Haven Car Service Corp. v. Taxi and Limousine Comm'n,** OATH Index No. 994/98, mem. dec. (Feb. 9, 1998).

¶ 11. Under section 17-346(a) of the NYC Administrative Code, the Dangerous Dog Regulation and Protection Law, a dog previously determined to be dangerous may be immediately impounded if its owner is found in violation of a previous order of the Commissioner. Under section 17-346(b), the owner may request a hearing to determine whether the dog should be returned to his or her custody. **Dep't of Health v. Yosupov,** OATH Index No. 1551/98 (July 23, 1998).

¶ 12. In vehicle retention hearing, administrative law judge found petition, alleging vehicle is being retained for forfeiture as an instrumentality of a crime following owner/driver's arrest for reckless endangerment and reckless driving, provided sufficient notice under section 1-22, which requires only "a short and plain statement of the matters to be adjudicated." **Police Dep't v. Fung**, OATH Index No. 1195/05, mem dec. (Jan. 27, 2004).

¶ 13. Disciplinary pleadings should be designed to simply and concisely place employee on notice of what he or she has allegedly done wrong. Petitioner was criticized for confusing and verbose petition which itemized ten incidents in 28 redundant, cross-referenced paragraphs. **Admin. for Children's Services v. Papa**, OATH Index No. 1622/05 (Aug. 30, 2005), **modified on penalty**, Comm's Dec. (Oct. 21, 2005).

¶ 14. Disciplinary pleadings should be designed to simply and concisely place an employee on notice of what he or she has allegedly done wrong. Cross-referencing the paragraphs and repeating specifications numerous times under multiple charges and specifications leads to confusing and overly verbose pleadings. The better practice is to provide a single factual allegation with a citation to the agency rules alleged to have been violated. **Dep't of Homeless Services v. Aigbedion**, OATH Index No. 2340/07 (Nov. 2, 2007).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a

transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-23

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-23 Service of the Petition.

(a) The petitioner shall be responsible for serving the respondent with the petition. The petition shall be accompanied by a notice of the following: the respondent's right to file an answer and the deadline to do so under §1-24; the respondent's right to representation by an attorney or other representative; and the requirement that a person representing the respondent must file a notice of appearance with OATH. The notice shall include the statement that OATH's rules of practice and procedure are published in Title 48 of the Rules of the City of New York, and that copies of OATH's rules are available at OATH's offices or on OATH's website www.nyc.gov/oath.

(b) Service of the petition shall be made pursuant to statute, rule, contract, or other provision of law applicable to the type of proceeding being initiated. Absent any such applicable law, service of the petition shall be made in a manner reasonably calculated to achieve actual notice to the respondent. Service by certified mail, return receipt requested, contemporaneously with service by regular first-class mail, shall be presumed to be reasonably calculated to achieve actual notice. Appropriate proof of service shall be maintained.

(c) A copy of the petition and accompanying notices, with proof of service, shall be filed with OATH at or before the commencement of the trial.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (a) amended City Record Aug. 19, 2009 §2, eff. Sept. 18, 2009. [See T48 §1-22 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where the individual respondent is sole owner of the corporate respondent, and service of the petition was made by certified mail to the individual respondent's last known residence address in New York and to the corporate respondent's address on file with the petitioner, but the petitioner subsequently learned of the individual respondent's relocation to Florida, service of the petition was inadequate because it was not reasonably calculated under all of the circumstances to give the respondents actual notice of the petition. Taxi and Limousine Commission v. Larch Cab Corp., OATH Index No. 363/94 (Nov. 29, 1993).

¶ 2. Where the petitioner-employer had no record of the respondent-employee's apartment number, but made service of the petition by posting a copy on the door of the apartment building at the respondent's last known address and mailing copies to the same address, and the petitioner made no attempt to serve the respondent at his workplace, service of the petition was not reasonably calculated to give the respondent actual notice of the petition. Human Resources Administration v. Garrido, OATH Index No. 213/94 (Sept. 14, 1993).

¶ 3. Actual notice to the respondent of the petition and the trial date, which can be inferred from the respondent's attendance with her attorney at a pre-trial conference at which the trial date was fixed, waives the defects in the petitioner's proof of service under the rules applicable to an employee disciplinary case (Personnel Director's Rules, Appendix A to 59 RCNY). Human Resources Administration v. Rice, OATH Index No. 455/93 (Mar. 1, 1993).

¶ 4. Service of the petition, like the content of the petition, is concerned primarily with fair notice. Department of Buildings v. Owner, Occupants and Mortgagees of 31 West 11th Street, Apartments 6A and 6B, New York, OATH Index No. 990/94 (Aug. 26, 1994).

¶ 5. In an employee disciplinary case, service of the petition by attempted personal service and certified mail to the respondent's last known address was adequate, where it appeared that the address was no longer the employee's residence, but the employing agency had no information regarding a new address. Department of Correction v. Echevarria, OATH Index No. 957/94 (May 19, 1994).

¶ 6. Strict adherence to rules regulating service is not required when actual notice of the petition is given to the respondent. Board of Education v. Earl, OATH Index No. 494/95 (Nov. 28, 1994).

¶ 7. Actual notice of the petition waives technical defects in the manner of service. Department of Buildings v. Owner, Occupants and Mortgagees of 31 West 11th Street, Apartments 6A and 6B, New York, OATH Index No. 990/94 (Aug. 26, 1994).

¶ 8. Given actual notice of the petition, technical defects in service are not jurisdictional. Department of Buildings v. Bellman, OATH Index No. 1100/93 (Apr. 11, 1994).

¶ 9. Notice of petition stating that the respondent may answer within the time provided by this section, rather than stating the date, could be improved, but is sufficient. Department of Buildings v. Owner, Occupants and Mortgagees of 31 West 11th Street, Apartments 6A and 6B, New York, OATH Index No. 990/94 (Aug. 26, 1994).

¶ 10. Although the better practice would be for the notice of petition to refer to §1-24, and to state the deadline for submission of an answer, reference to this section was adequate. Department of Buildings v. 2837-39 Decatur Avenue, Bronx, New York, OATH Index No. 349/94 (Jan. 10, 1994).

¶ 11. Under paragraph (b) and (c) of this rule, written proof of service must be maintained by the petitioner, and filed before trial. Also, where the petitioner's counsel has additional information that shows that the respondent received actual notice of the petition and trial, the better practice is for counsel to prepare an affidavit to relate that information. Board of Education v. Earl, OATH Index No. 494/95 (Nov. 28, 1994).

¶ 12. The Civil Practice Law and Rules does not apply to administrative proceedings, and therefore the CPLR does not govern service of the petition. **Department of Buildings v. Owner, Occupants and Mortgagees of 845 Walton Avenue, Bronx, New York,** OATH Index No. 234/95 (Jan. 19, 1995).

¶ 13. Service of the petition in administrative adjudication is for purposes of notice, not jurisdiction, and therefore, where the respondent receives actual notice of the petition, technical defects in service are disregarded. **Department of Buildings v. Owner, Occupants and Mortgagees of 845 Walton Avenue, Bronx, New York,** OATH Index No. 234/95 (Jan. 19, 1995).

¶ 14. An inference that the respondent had actual notice of the petition and of the trial date was based on evidence that, in seeking to retain counsel, the respondent told two different attorneys of the trial date and time. **Taxi and Limousine Commission v. Min,** OATH Index No. 669/96 (Nov. 13, 1995).

¶ 15. Because the rules of the City Personnel Director (appendix A to title 55, RCNY) apply to the Board of Education, those rules, not paragraph (b) of this section, govern the means of service of a petition in an employee disciplinary case brought by the Board of Education. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 16. Where an employee was required by the employer's rules of conduct to keep his current address on file with the employer, service of notice of employee disciplinary proceedings by mail to the employee's address of record was sufficient service pursuant to paragraph (b) of this section. Health and Hospitals Corporation, Jacobi Medical Center v. Williams, OATH Index No. 282/97 (Oct. 30, 1996).

¶ 17. Where the statute of limitations on service of employee disciplinary charges expired the day before personal service was effected, but the respondent had intentionally evaded attempts at service of employee disciplinary charges during the three days before expiration of the statute of limitations, the respondent was estopped from asserting a statute of limitations defense. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 18. The notices that must accompany service of the petition pursuant to paragraph (a) of this section are required for service of the original petition, but are not required for service of amendments to the petition. Transit Authority v. Smallwood, OATH Index No. 442/96 (Aug. 8, 1997).

¶ 19. Service of petition and notice of hearing by regular and certified mail to respondent's last known address was reasonably calculated to give actual notice to respondent, even in the face of information showing the address might no longer be valid, where respondent did not satisfy its obligation to inform the contracting agency or the Comptroller that it was moving. **Office of the Comptroller v. Goliath Allied Corp.,** OATH Index No. 1650/98 (July 10, 1998).

¶ 20. The administrative law judge found service at a foreign address provided by respondent was sufficient to give respondent actual notice of the proceeding. Inasmuch as respondent reported that he would be residing at a foreign address, personal service at his local address was unnecessary. **Dep't of Environmental Protection v. Zaza,** OATH Index No. 516/99 (Oct. 16, 1998).

¶ 21. Service of the petition provided respondent with actual notice of the proceeding since he appeared at the informal conference. Service of the notice of hearing sent to an address provided by respondent at the informal conference, was reasonably calculated to give respondent actual notice of the hearing where mail sent to respondent's address of record had been returned undelivered. **Dep't of Homeless Services v. Harrison,** OATH Index No. 396/98 (Dec. 19, 1997).

¶ 22. Service to respondent's last known address was reasonably calculated to achieve actual notice and was legally sufficient, whether or not actual notice was achieved. **Dep't of Finance v. Stevens**, OATH Index No. 1294/99 (Feb. 26, 1999).

¶ 23. Indication on personnel papers that respondent's absence was originally due to "incarceration" raised question of whether proper service of charges was made. Evidence showed that personal service on admitted relative of respondent at last known address was accomplished prior to hearing. Administrative law judge determined that service was sufficient to afford respondent opportunity to communicate with counsel or the agency prior to date of hearing. **Human Resources Admin. v. Hartley**, OATH Index No. 1829/99 (June 9, 1999).

¶ 24. Petitioner, following original default hearing, discovered additional address for respondent in agency files and moved to re-open. Administrative law judge allowed additional service of notice of petition and hearing and new hearing date. Agency provided proper proof of service on three addresses known for respondent. Upon failure of respondent to appear, administrative law judge was satisfied notice was proper and record was closed. **Human Resources Admin. v. Pancham,** OATH Index No. 965/00 (Mar. 21, 2000).

¶ 25. Respondent was properly served with the notice of hearing and charges when they were handed to her, even though she refused to sign an acknowledgment. **Dep't of Transportation v. Deloach,** OATH Index No. 2287/00 (Oct. 18, 2000).

¶ 26. Upon respondent's failure to appear at the hearing, affidavits demonstrating that the required documents were sent by regular and certified mail to respondent's address of record and an unsuccessful attempt at personal service were reasonably calculated to achieve actual notice to respondent. **Administration for Children's Services v. Esonwune,** OATH Index No. 240/01 (Jan. 10, 2001).

¶ 27. In a zoning violation proceeding, the commercial occupant, the mortgagees of record, one mortgagor of record and a taxpayer of record made no appearance and were declared in default upon showing of proper service of notice of the hearing and petition pursuant to this section. Testimony, photographs, reports and other documentary evidence established an illegal use of a portion of the first floor of the building for a commercial barber shop. **Dep't of Buildings v. Owners, Occupants, and Mortgagees of 86 West 183rd Street, Bronx,** OATH Index No. 595/01 (Apr. 9, 2001).

¶ 28. Where owner and occupant made no appearance in a zoning violation proceeding, they were declared in default upon a showing of proper service of notice of the hearing and petition under this section. **Dep't of Buildings v. Owners, Occupants, and Mortgagees of 304 Echo Place, Bronx,** OATH Index No. 1534/01 (June 11, 2001).

¶ 29. Proof of service on respondents established their default under this section. Testimony, photographs, reports and other documentary evidence established illegal use of premises as an auto repair, auto storage and salvage facility in violation of zoning resolution. **Dep't of Buildings v. 111-64 166th Street, Queens,** OATH Index No. 1735/01 (June 6, 2001).

¶ 30. A letter informing respondent of the date, time and place of the hearing that was served at respondent's last known address of record established jurisdictional prerequisite for finding respondent in default. **Dep't of Correction v. Bomani,** OATH Index No. 1383/01 (July 20, 2001).

¶ 31. Refusal to accept service did not bar a finding of personal service where investigator handed the notice to respondent, who reviewed the papers, but would not accept them. **Dep't of Correction v. Johnson,** OATH Index No. 1992/01 (Aug. 16, 2001).

¶ 32. Owner and occupants were served either personally or by affixing the notice of petition at the premises. Each of the owners and occupants were further served by mailing a copy of the petition and notice of hearing to the premises. Mortgagor and mortgagee were served by mail at addresses of record. Service was found to be sufficient to establish the

jurisdictional prerequisites for finding respondents in default. **Dep't of Buildings v. Owners, Occupants and Mortgagees of 1410-1414 Vyse Avenue, Bronx,** OATH Index No. 699/02 (June 20, 2002).

¶ 33. Attempted personal service of charges at respondent's home address held sufficient, even where agency employees may have been aware of respondent's temporary absence from residence due to an in-patient rehabilitation program. **Fire Dep't v. Reinhard**, OATH Index No. 647/05 (Oct. 21, 2004).

¶ 34. Charges dismissed without prejudice when petitioner did not follow up its attempted personal service of the charges and notice of the hearing by registered mail. The ALJ required proof of service by registered mail and rejected petitioner's argument that returned mail gave constructive notice of respondent's change of address. **Dep't of Transportation v. Salib**, OATH Index No. 891/08 (Dec. 14, 2007).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

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In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-24

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-24 Answer.

The respondent may serve and file an answer to the petition within eight days of service of the petition if service was personal, or within thirteen days of service of the petition if service was by mail, unless a different time is fixed by the administrative law judge. In the discretion of the administrative law judge, the respondent may be required to serve and file an answer. Failure to file an answer where required, may result in sanctions, including those specified in §1-33(e).

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

1

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can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-25

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-25 Amendment of Pleadings.

Amendments of pleadings shall be made as promptly as possible. If a pleading is to be amended less that twenty-five days before the commencement of the hearing, amendment may be made only on consent of the parties or by leave of the administrative law judge on motion.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Applications to amend petitions are to be freely granted absent irremediable prejudiace; disposition of related claims in a single proceeding is vastly preferable to disposing of them piecemeal. Department of Correction v. Rebecca, OATH Index No. 151/94 (Sept. 17, 1993).

¶ 2. In a disability proceeding pursuant to Civil Service Law §71, amendment of petition, three weeks before trial, to allege unfitness due to an injury subsequent to the injury alleged in the original petition would not prejudice the respondent's ability to prepare for trial and explore pretrial settlement options. Department of Correction v. Rebecca,

OATH Index No. 151/94 (Sept. 17, 1993).

¶ 3. Where petition alleged that the respondent refused to submit to drug testing "on or about March 24, 1994," "at the 110 Pct.," but the trial evidence showed that the refusal occurred on March 23, 1994, at the 112th Precinct, motion to amend the petition accordingly was granted, given fair notice to the respondent of the events at issue, the insignificance of the precinct number, and the petition's use of the "on or about" formulation. Department of Correction v. Tirado, OATH Index No. 1213/94 (Aug. 17, 1994).

¶ 4. Where the petition alleged that the respondent "did kick and/or strike with a nightstick" but the trial evidence showed that the respondent punched the complainant, and where post-trial amendment of the petition to conform to the proof would not surprise or prejudice the respondent, such amendment was granted. **Police Department v. Coll,** OATH Index Nos. 245/95, 252/95 (Feb. 16, 1995).

¶ 5. Where the petition alleged that the respondent improperly locked inmates into their cells, but the trial evidence showed that the respondent ordered the lock-in but that the lock-in was never completed, the petition was amended after trial to conform to the proof. **Department of Correction v. Aikman,** OATH Index No. 267/96 (Nov. 24, 1995).

¶ 6. Although the petitioner gave no reason for presentation of a motion to amend the petition as late as the day of trial, the motion was granted where the respondent was unable, both before and after trial, to articulate any prejudice that accrued to the respondent by virtue of either the proposed amendment or the lateness of the motion to amend. **Matter of Zabari,** OATH Index No. 419/96 (Oct. 16, 1995), **aff'd sub nom. Zabari v. New York City Loft Board,** Index No. 107964/96 (Sup. Ct. N.Y. Co. Feb. 11, 1997).

¶ 7. Where a landlord's petition for a six-month extension of time to comply with the Loft Law was not answered by any tenant, the landlord's pre-trial motion to amend the petition to seek a one-year extension was granted on the condition that the petitioner serve the motion to amend on the tenants, who were given 30 days to answer the motion. **Matter of Pittis,** OATH Index No. 1197/95 (Aug. 14, 1995).

¶ 8. In a case that had been pending for several months, a motion made only days before trial to amend the petition to add a charge to the 30 charges in the original petition was denied on the ground that the new charge would protract the trial beyond the two days allotted for the trial of the original 30 charges. **Board of Education v. Drakeford,** OATH Index No. 1406/95 (Nov. 29, 1995).

¶ 9. A motion to conform the petition to the proof at trial must be denied where the respondent did not have fair notice of the new claim to be added and an opportunity to fully litigate it, and special care must be taken where the respondent did not appear for trial and litigate the issues. Department of Correction v. Griffith, OATH Index No. 925/96 (Dec. 23, 1996), modified as to penalty, Comm'r Decision (Feb. 18, 1997).

¶ 10. Where the original petition charged that the respondent had committed employee misconduct by the publication of magazines containing nude pictures of the respondent, but the trial evidence included no proof that the respondent was responsible for the publication of the magazines, a motion to conform the petition to the proof was granted to amend the petition to allege that the respondent committed misconduct by posing nude for pictures she knew or reasonably should have known would be published. Department of Correction v. Griffith, OATH Index No. 925/96 (Dec. 23, 1996), modified as to penalty, Comm'r Decision (Feb. 18, 1997).

¶ 11. The petitioner's motion to amend the petition at the commencement of trial to allege a new theory of liability was granted on the condition that petitioner agree to an adjournment of the trial. When petitioner elected to proceed to trial as scheduled, the motion to amend was denied. Department of Correction v. Boyce, OATH Index No. 789/97 (July 9, 1997).

¶ 12. Where the petition alleged misconduct on September 23, 1995, but the evidence pertained to September 3, 1995, and where it was clear that the respondent fully understood which date was at issue and was able to defend the

charge in spite of the error, the administrative law judge in rendering the report and recommendation deemed the petition to be amended to conform to the proof. Health and Hospitals Corporation/North Central Bronx Hospital v. Cross, OATH Index No. 315/97 (Jan. 27, 1997).

¶ 13. An amended petition pursuant to this section need not be served with the notices required upon service of the original petition pursuant to §1-23(a) of this chapter. Transit Authority v. Smallwood, OATH Index No. 442/96 (Aug. 8, 1997).

¶ 14. Where a proposed amendment to the petition pertained to the same incident as the original petition, and the amendment posed no irremediable prejudice to the respondent's defense, the amendment related back to the original petition and was not time-barred. Police Department v. Zisel, OATH Index No. 389/97 (Mar. 7, 1997), modified as to penalty, Comm'r Decision (Sept. 23, 1997).

¶ 15. Petitioner commenced prevailing wage proceeding against company A as the subcontractor on a city school construction project. Petitioner sought to amend its original petition in order to seek relief against company A as the prime contractor. The administrative law judge granted petitioner's application to amend where the relief sought against company A as the prime contractor was not substantially different from the relief sought when the proceeding was commenced against A as the subcontractor. **Office of the Comptroller v. Aim Construction Corp.,** OATH Index No. 1221/98 (May 18, 1998).

¶ 16. Agency permitted to proceed on amended charges, served two weeks prior to the trial by certified mail where service was acknowledged, uncontested and the amendment was a minor modification to the original charges. **Triborough Bridge and Tunnel Auth. v. Leibowitz,** OATH Index No. 1080/98 (July 24, 1998).

¶ 17. Administrative law judge granted application made at trial to amend the charge to allege continuing unauthorized absence (AWOL) through date of the hearing, as established by the evidence. Respondent was properly notified as to the essence of the charged misconduct, long term AWOL, and no prejudice would inure to respondent in circumstances, despite default nature of the proceeding. **Dep't of Correction v. Ottle,** OATH Index No. 485/99 (Dec. 1, 1998).

¶ 18. Administrative law judge permitted petitioner to conform the charges and specifications to the proof presented at the hearing where the original charge gave an incorrect date, petitioner presented a witness who established that the mistake was the result of a typographical error and respondent failed to demonstrate the change was prejudicial. **Dep't of Transportation v. McKoy,** OATH Index No. 199/98 (Jan. 9, 1998), **app. withdrawn,** NYC Civ. Serv. Comm'n Item No. CD 99-2-W (Feb. 12, 1999).

¶ 19. Building owner filed an application with the Loft Board seeking an extension of then existing legalization deadlines. While the application was pending, the legislature added new legalization deadlines, but Loft Board continued to process the application as one for a "retroactive extension" of the pre-existing deadlines. Amendment of the application was permitted to add a request for an extension of the new deadline to obtain a building permit. **Matter of Ken-Zen Institute, Ltd.,** OATH Index No. 897/98 (Feb. 24, 1998), **aff'd in part,** Loft Bd. Order No. 2235 (Mar. 24, 1998).

¶ 20. Agency's day of trial motion to amend the charges was denied where the new charges were never served on respondent. **Triborough Bridge and Tunnel Auth. v. Leibowitz,** OATH Index No. 1080/98 (July 24, 1998).

¶ 21. Pursuant to the relation back doctrine, petitioner was allowed to substitute amended charge, which referred to the complainant, for timely served original charge, which referred to the complainant's mother, since the amendment relates to the same events, involving the same officer and the same complainant on the same night in front of the same witnesses as the original charge. **Police Dep't v. Booth,** OATH Index No. 1208/98 (Aug. 18, 1998).

¶ 22. Petitioner's motion made at the close of the hearing to conform the charges to the proof to include charge of

disrespectful conduct, which occurred on the day after the date of the charged incident, was granted because the events of the second day were fully litigated at the hearing. Respondent had the opportunity to cross-examine petitioner's witness regarding this conduct and respondent was previously on notice of both dates involved in this matter. **Dep't of Correction v. Bovell**, OATH Index No. 1910/99 (Aug. 13, 1999).

¶ 23. Where first two specifications alleged the wrong date for the incident, it was appropriate to conform the charge to the proof where no one was prejudiced by the inaccuracy, and respondent and all other witnesses were aware of the incident charged. **Dep't of Correction v. Sostre-Valentin**, OATH Index No. 1923/99 (Sept. 22, 1999).

¶ 24. Charge of directing abusive language towards the passenger (35 RCNY § 2-60(a)) was conformed to proof of discourtesy (35 RCNY § 2-42). Administrative law judge credited the passenger's testimony that respondent had told her to shut up when she gave him her desired route. Administrative law judge found that the language used by respondent did not rise to the level of a 2-60(a) violation, because that rule addresses physical force and abuse. Nevertheless, the administrative law judge found that respondent's conduct amounted to a clear act of discourtesy, in violation of 2-42. **Taxi and Limousine Comm'n v. Ahmed**, OATH Index No. 1790/99 (May 3, 1999).

¶ 25. Agency served a new charge by electronic facsimile upon employee's attorney, without serving the employee himself. Although Personnel Director's rule 6.4.3 requires personal service of disciplinary charges on the employee, the rule has not been held to require personal service of amendments to charges, made after the employee has already been personally served with the initial charges and counsel had already appeared in the case. Under these circumstances, the administrative law judge found that there was no prejudice to respondent, that he had a fair opportunity to litigate the issue of the bribe, and that the motion to amend should therefore be granted. **Dep't of Sanitation v. Vaughan,**, OATH Index No. 2234/99 (Feb. 15, 2000), **aff'd,** NYC Civ. Serv. Comm'n Item No. CD00-100-SA (Nov. 15, 2000).

¶ 26. Park worker was charged with using or being under the influence of a controlled substance while on duty; proof established respondent's urine tested positive for cocaine metabolite. Held, test result, without more, did not establish that worker was under the influence of an illegal drug at work; Administrative law judge conforms charge to the proof that respondent's urine tested positive for cocaine metabolite. **Dep't of Parks and Recreation v. Nappa,** OATH Index No. 306/00 (Jan. 25, 2000), **modified on findings, aff'd on penalty,** Comm'r Dec. (Feb. 9, 2000).

¶ 27. Respondent moved to dismiss amended charge added after the eighteen-month limitations period provided in Civil Service Law § 75(4). Administrative law judge found that charge, as amended, should be allowed as the added specification arose out of the exact incident described in the original specification, in accordance with the relation-back doctrine of the New York Civil Practice Law and Rules and this tribunal's precedent, **citing** CPLR § 203(f); **Dep't of Correction v. Lee and Potter,** OATH Index Nos. 284-85/88 (Dec. 2, 1988). Here, the facts were the same, no new witnesses were asked for, no identified witnesses were unavailable, and respondent had ample time to prepare his defense. The issues were fully litigated at the hearing. **Police Dep't v. Strom,** OATH Index No. 546/00 (July 20, 2000).

¶ 28. A motion to amend a Human Rights complaint was granted to add one respondent and to delete two respondents on the basis of matters learned through discovery. Pursuant to 47 RCNY § 1-13 and this section, applications to amend pleadings shall be made as promptly as possible. **Silva v. Gitto,** OATH Index No. 263/01, mem. dec. (Jan. 18, 2001).

¶ 29. Petitioner was permitted to amend its charges as of right under this section against respondents after the statute of limitations had run because amendments did not so substantially alter the nature of the misconduct previously noticed to respondents as to have created new charges which should be time-barred. **Dep't of Correction v. Travers,** OATH Index Nos. 2499-02/00 (Feb. 28, 2001).

¶ 30. A motion to amend charges to include four and one-half year old conduct was denied where eighteen-month statute of limitations for service of disciplinary charges had long since passed, and where conduct was separate and distinct from other charge and where conduct was not unknown or actively concealed from petitioner. **Dep't of**

Correction v. Wilder, OATH Index No. 1636/00 (June 20, 2001).

¶ 31. Under this section, if amendment is sought less than twenty-five days before the commencement of the hearing, amendment may be made only on consent of the parties or by leave of the administrative law judge on motion. Administrative law judge denied motion to expand charges because it was made on the day of trial without any prior notice to respondent's counsel or to the tribunal. **Dep't of Correction v. Barnwell,** OATH Index No. 733/02 (Apr. 24, 2002).

¶ 32. Amendment of charges was timely where amendment was sought twenty-five days before trial and thus, did not require the permission of the administrative law judge under this section. **Dep't of Correction v. Battle,** OATH Index No. 1052/02 (Nov. 12, 2002).

¶ 33. At the commencement of trial, petitioner made a motion to amend charges to include that respondent submitted a false and misleading report regarding an incident of disrespect towards a supervisor. Because no explanation was provided why the charges could not have been amended in a timely manner, and given that amendment was substantial in nature, and would likely exacerbate any penalty, the administrative law judge denied the motion. **Dep't of Correction v. James,** OATH Index No. 1453/03 (July 29, 2003).

¶ 34. Counsel's insertion of allegation into her closing memorandum does not constitute a motion to amend the pleadings. Further, it would be unfair to amend the petition **suasponte** at such a late stage. **Dep't of Housing Preservation & Development v. Scharf**, OATH Index No. 2062/07 (Mar. 31, 2008).

¶ 35. In a license revocation hearing where a driver was charged with punching another driver in the face, ALJ denied request that she conform the petition to the proof that the driver had violated Commission rule when he grabbed and pulled another driver from his cab. **Taxi & Limousine Comm'n v. Sobczak**, OATH Index No. 1691//08 (Apr. 7, 2008), **modified on penalty**, Comm'r/Chair's Decision (May 9, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and

re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-26

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-26 Docketing the Case.

(a) A case shall be docketed by filing with OATH a completed intake sheet and either a petition or a written application for relief. Parties are encouraged to docket cases by electronic means. When a case is docketed, OATH shall place it on the trial calendar, the conference calendar, or on open status. Absent prejudice, cases involving the same respondent or respondents shall be scheduled for joint trials or conferences, as shall cases alleging different respondents' involvement in the same incident or incidents.

(b) When a case is docketed, it shall be given an index number and assigned to an administrative law judge. Assignments shall be made and changed in the discretion of the chief administrative law judge or his or her designee, and motions concerning such assignments shall not be entertained except pursuant to §1-27.

(c) OATH may determine that the case is not ready for trial or conference and may adjourn the trial or conference, or may remove the case from the trial or conference calendar and place it on open status. In addition, OATH may determine that the case should proceed on an expedited basis, and may direct expedited procedures, including expedited pre-trial and post-trial procedures, shortened notice periods, and/or expedited calendaring.

(d) The party docketing a case may do so **ex parte.** If the case is placed on the conference calendar or the trial calendar rather than on open status, the party may at the time of docketing also select a trial date and/or conference date

ex parte. However, OATH encourages selection of trial and conference dates by all parties jointly. In the event that a party selects a trial date or a conference date **ex parte,** that party shall serve the notice of conference or trial required by §1-28, within one business day of selecting that date. Whenever practicable, such notice shall be served by personal delivery or electronic means.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. When a petitioner selects a trial date **ex parte** upon docketing the case at OATH, the petitioner must serve notice of trial within one business day of selecting that date. However, absent prejudice to the respondent, the appropriate remedy was an admonishment of petitioner's counsel, not removal of the case from the trial calendar. New York City Transit Authority v. Brady, OATH Index No. 959/93 (Aug. 13, 1993).

¶ 2. In an employee disciplinary case, the agency's trial scheduling was ex parte notwithstanding the agency's consultations about available dates with the law firm representing the employee's union, because the employee had not yet retained the law firm, and because the law firm was not a party to either the telephone call or the written submission by which the agency subsequently docketed the case and scheduled the trial. Department of Correction v. Brown, OATH Index No. 1208/94 (Aug. 11, 1994).

¶ 3. Where trial is calendared by the petitioner ex parte, notice of trial must be served within one business day. In an employee disciplinary case, notice of the trial date given to the law firm representing the employee's union was courteous but inadequate where the employee had not yet retained the law firm. However, because the employee did not show that he was prejudiced by his imprompt receipt of notice of the trial date, the remedy for late notice was not an adjournment of trial, but an admonishment of petitioner's counsel. Department of Correction v. Brown, OATH Index No. 1208/94 (Aug. 11, 1994).

¶ 4. Although the petitioner failed to serve the respondent with notice of trial within one business day of the **ex parte** selection of the trial date as required by paragraph (d) of this section, no sanction was imposed on the petitioner, and the petitioner was permitted to proceed to trial in the respondent's absence, because the circumstances indicated that the respondent did not wish to defend the employee disciplinary charges against him and did not wish to retain his employment. Department of Correction v. Boyce, OATH Index No. 1227/97 (Apr. 29, 1997).

¶ 5. Where the case was docketed by one party **ex parte,** but trial was not scheduled at the time of docketing pursuant to paragraph (d) of this section, subsequent scheduling of trial may not be done by **ex parte** communication with the Calendar Unit but must be done by conference call to the administrative trial judge assigned to the case. Department of Health v. Protzel, OATH Index No. 613/98 (Dec. 10, 1997).

¶ 6. With its base station license pre-suspended by the Taxi and Limousine Commission, the licensee filed a petition with OATH, asking that a hearing on the underlying charges be scheduled. Although this rule permits the docketing of a matter by motion, since the Commission's rules expressly give the Commission discretion to defer a base license revocation proceeding until a reasonable time after the final disposition of related criminal charges, the motion to have a hearing scheduled must be denied. **Haven Car Service Corp. v. Taxi and Limousine Comm'n,** OATH Index No. 994/98, mem. dec. (Feb. 9, 1998).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-27

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-27 Disqualification of Administrative Law Judges.

(a) A motion for disqualification of an administrative law judge shall be addressed to that administrative law judge, shall be accompanied by a statement of the reasons for such application, and shall be made as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist.

(b) The administrative law judge shall be disqualified for bias, prejudice, interest, or any other cause for which a judge may be disqualified in accordance with §14 of the Judiciary Law. In addition, an administrative law judge may, **sua sponte** or on motion of any party, withdraw from any case, where in the administrative law judge's discretion, his/her ability to provide a fair and impartial adjudication might reasonably be questioned.

(c) If the administrative law judge determines that his or her disqualification or withdrawal is warranted on grounds that apply to all of the existing administrative law judges, the administrative law judge shall state that determination, and the reasons for that determination, in writing or orally on the record, and may recommend to the chief administrative law judge that the case be assigned to a special administrative law judge to be appointed temporarily by the chief administrative law judge. The chief administrative law judge shall either accept that recommendation, or, upon a determination and reasons stated in writing or orally on the record, reject that recommendation. A special administrative law judge shall have all of the authority granted to administrative law judges under this title.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where two OATH judges will be material witnesses at trial, they are disqualified from presiding at trial due to their extra-record knowledge of the facts in issue, and other OATH judges are disqualified because their collegial relationship with the two witnesses could lead a reasonable person to question their impartiality. In such a case, the chief administrative law judge will appoint a special administrative law judge to preside. Human Resources Administration v. Man-of-Jerusalem, OATH Index No. 1021/91 (Sept. 6, 1991).

¶ 2. The fact that the administrative law judge ruled against the clients of an attorney in his three prior cases of a particular type does not demonstrate that the judge is biased against the attorney and his clients in the present case of the same type; nor would any reasonably objective observer so conclude. Police Department v. Lowe, OATH Index Nos. 923-24/94 (Oct. 21, 1993).

¶ 3. The respondent's post-trial application for recusal of the administrative law judge, alleging bias by the judge and an improper post-trial ex parte communication between the administrative law judge and the petitioner, was denied. The administrative law judge's initial reluctance to allow the requested time for the respondent's post-trial submission did not demonstrate bias against the respondent. The ex parte communication was inadvertent, occurring when the administrative law judge, rather than her secretary, answered a telephone call, and the respondent demonstrated no resulting prejudice. Department of Buildings v. Bellman, OATH Index No. 1100/93 (Apr. 11, 1994).

¶ 4. A loft tenant filed a challenge to her owner's rent increase application some three months after the deadline. Administrative law judge reviewed a prior challenge on the same matter included in the Loft Board file and, in a notice sent to the tenant, requested submissions on the apparent untimeliness of her challenge and also on prior stipulations settling the rent issue. The tenant filed a motion to disqualify the presiding administrative law judge and all other OATH administrative law judges, arguing that the judge's review of these files was improper because it was **ex parte** and constituted advocacy for the owner. Administrative law judge denied the motion finding that it lacked any legal or factual basis. **Matter of Breson Corp**., OATH Index No. 1758/99, mem. dec. (May 14, 1999).

¶ 5. Where the ALJ is not a party, has not been counsel to a party, and has no interest in or any relations to a party to the proceeding, there is no basis for mandatory recusal under Section 14 of the Judiciary Law. The rulings and conduct that respondent attributed to bias reflect the discretion inherent in the tribunal, and the attempt to conduct proceedings in a fair, balanced, and efficient manner. Motion to recuse ALJ on the ground of alleged bias denied. **Dep't of Housing Preservation and Development v. 331 W 22nd Street, LLC**, OATH Index No. 912/06, mem. dec. (May 15, 2006).

FOOTNOTES

1

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generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

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Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-28 Notice of Conference of Trial.

(a) When a case is placed on either the trial calendar or the conference calendar, and within the time provided in §1-26(d), if applicable, the party that placed the case on the calendar shall serve each other party with notice of the following: the date, time and place of the hearing or conference; each party's right to representation by an attorney or other representative at the hearing or conference; the requirement that a person representing a party at the hearing or conference must file a notice of appearance with OATH prior to the hearing or conference; and, in a notice of a hearing served by the petitioner, the fact that failure of the respondent or an authorized representative of the respondent to appear at the hearing may result in a declaration of default, and a waiver of the right to a hearing or other disposition against the respondent. The notice may be served personally or by mail, and appropriate proof of service shall be maintained. A copy of the notice of conference, with proof of service, shall be filed with OATH at or before the commencement of the conference. A copy of the notice of trial, with proof of service, shall be filed with OATH at or before the commencement of the trial.

(b) When multiple petitions against a single respondent, or petitions against multiple respondents, are placed on the calendar or calendar conference for joint trial or conference pursuant to §1-26(a), notice of trial or notice of conference pursuant to this section shall include notice of such joinder.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Service of notice of trial on the respondent must be made in a manner that is reasonably calculated to apprise the respondent of the trial date. Human Resources Administration v. Aiken, OATH Index No. 855/93 (Sept. 16, 1993).

¶ 2. Service of notice of trial by mail to the respondent's address of record was inadequate where the respondent had advised the petitioner at a pre-trial conference of her new address. Human Resources Administration v. Aiken, OATH Index No. 855/93 (Sept. 16, 1993).

¶ 3. Notice of trial may be served by mail pursuant to this section. Therefore, petitioner's motion for leave to serve notice of hearing by mail was dismissed as unnecessary. Board of Education v. Murphy, OATH Index No. 1432/97 (Oct. 7, 1997).

¶ 4. Where an employee advised his employer of an address change after the commencement of an employee disciplinary case against him, the employer's service of notice of the hearing by mail to the employee's former address was inadequate pursuant to this section, because the notices were returned undelivered and the employee failed to appear for trial. Department of Homeless Services v. Harrison, OATH Index No. 396/98 (Dec. 19, 1997).

¶ 5. Service of notice of trial by mail to the address given by an employee after commencement of employee disciplinary charges against him was reasonably calculated to achieve actual notice and was therefore sufficient service pursuant to this section. Department of Homeless Services v. Harrison, OATH Index No. 396/98 (Dec. 19, 1997).

¶ 6. Where the trial date was selected by the attorneys for both parties following a pre-trial conference, the respondent's counsel was obligated to inform his client of the trial schedule, and the petitioner bore no obligation pursuant to this rule to notify the respondent of the trial. Department of Correction v. Bazemore, OATH Index No. 475/97 (July 9, 1997).

¶ 7. Upon respondent's failure to appear for a hearing, petitioner established that respondent had been properly served with the notice of hearing on two sets of the charges, but not the third. **Dep't of Correction v. Floyd**, OATH Index No. 1052/99 (Mar. 23, 1999).

¶ 8. Upon setting of hearing date at prior conference, attorney was obligated to inform client of the trial schedule. **Admin. for Children's Services v. Lopez,**, OATH Index No. 198/00 (Feb. 22, 2000).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-29 Scheduling Other Conferences.

In the discretion of the administrative law judge, and whether or not a case has been on the conference calendar, conferences may be scheduled on application of either party or **sua sponte.**

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-30 Conduct of Conferences.

(a) All parties are required to attend conferences as scheduled unless timely application is made to the administrative law judge. Participants shall be prompt and prepared to begin on time. No particular format for conducting the conference is required. The structure of the conference may be tailored to the circumstances of the particular case. The administrative law judge may propose mediation and, where the parties consent, may refer the parties to the Center for Mediation Services or other qualified mediators. In the discretion of the administrative law judge, conferences may be conducted by telephone.

(b) At the conference, all parties must be fully prepared to discuss all aspects of the case, including the formulation and simplification of issues, the possibility of obtaining admissions or stipulations of fact and of admissibility or authenticity of documents, the order of proof and of witnesses, discovery issues, legal issues, pre-hearing applications, scheduling, and settlement of the case.

(c) In the event that the case is not settled at the conference, outstanding pre-trial matters, including discovery issues, shall be raised during the conference. In the event that the case is not settled at the conference, a trial date may be set, if such a date has not already been set. The parties shall be expected to know their availability and the availability of their witnesses for trial.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-31 Settlement Conferences and Agreements.

(a) If settlement is to be discussed at the conference, each party shall have an individual possessing authority to settle the matter either present at the conference or readily accessible. A settlement conference shall be conducted by an administrative law judge or other individual designated by the chief administrative law judge, other than the administrative law judge assigned to hear the case. During settlement discussions, upon notice to the parties, the administrative law judge or other person conducting the conference may confer with each party and/or representative separately.

(b) All settlement offers, whether or not made at a conference, shall be confidential and shall be inadmissible at trial of any case. Administrative law judges shall not be called to testify in any proceeding concerning statements made at a settlement conference.

(c) A settlement shall be reduced to writing, or, in the discretion of the administrative law judge, placed on the record. In the event that a settlement is reached other than at a conference, OATH shall be notified immediately pursuant to §1-32(f). Copies of all written settlement agreements shall be sent promptly to OATH.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Petitioner failed to demonstrate that it met the requirements under OATH's rules to participate in the settlement conference process in good faith where prior precedent suggested that penalties far more minimal than what petitioner offered would be appropriate in the circumstances, assuming the charge was proved. Application to restore case to trial calendar was granted where no benefit could come from delaying trial any further. **Fire Dep't v. O'Brien,** OATH Index No. 1308/98, mem. dec. (June 16, 1998).

¶ 2. A motion to call an administrative law judge as a witness with regard to the authenticity of a document that respondent provided to petitioner during a settlement conference was denied. Under this rule, conference judges cannot be directed to testify about representations made during private conference. **Dep't of Buildings v. Goldberg,** OATH Index No. 652/03, mem. dec. (Jan. 9, 2003).

¶ 3. Landlord's request to introduce at hearing testimony concerning alleged monetary demand made by tenants to landlord during conference was denied as subsection (b) of this section makes settlement offers made during case conferences confidential. **Dep't of Housing Preservation & Development v. Bryant**, OATH Index No. 149/07 (Jan. 5, 2007).

FOOTNOTES

1

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-32 Adjournments.

(a) Applications for adjournments of conferences or hearings shall be governed by this section and by §1-34 or §1-50. Conversion of a trial date to a conference date, or from conference to trial, shall be deemed to be an adjournment.

(b) Applications to adjourn conferences or hearings shall be made to the assigned administrative law judge as soon as the need for the adjournment becomes apparent. Applications for adjournments are addressed to the discretion of the administrative law judge, and shall be granted only for good cause. Although consent of all parties to a request for an adjournment shall be a factor in favor of granting the request, such consent shall not by itself constitute good cause for an adjournment. Delay in seeking an adjournment shall militate against grant of the request.

(c) If a party selects a trial or conference date without consulting with or obtaining the consent of another party pursuant to §1-26(d), an application for an adjournment of such date by that other party, especially if such application is based upon a scheduling conflict, shall be decided with due regard to the **ex parte** nature of the case scheduling.

(d) Counsel shall file an affirmation of actual engagement prior to a ruling on an adjournment sought on that basis. Such affirmation shall state the name and nature of the conflicting matter, the court or tribunal hearing the matter, the judge before whom it is scheduled, the date that the conflicting engagement became known to counsel, and the date, time, place and approximate duration of the engagement.

(e) Approved adjournments, other than adjournments granted on the record, shall be promptly confirmed in writing by the applicant, to all parties and to the administrative law judge.

(f) Withdrawal of a case from the calendar by the petitioner shall not be subject to the "good cause" requirement of subdivision (b) of this section. However, such withdrawal, other than pursuant to settlement agreement or other final disposition of the case, shall be permitted only upon application to the administrative law judge, who may grant or deny the application, either in full or upon stated terms and conditions.

(g) If an administrative law judge determines that a case is not ready for trial or conference and that an adjournment is inappropriate, the judge may remove the case from the calendar. Unless otherwise directed by the administrative law judge, the case will be administratively closed if the parties do not restore the matter to the calendar within 30 days.

(h) At the discretion of the administrative law judge, a grant of an adjournment may be conditioned upon the imposition of costs for travel, lost earnings and witness fees, which may be assessed against the party causing the need for an adjournment.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (g) added City Record Aug. 19, 2009 §3, eff. Sept. 18, 2009. [See T48 §1-22 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Last-minute adjournment requests are heavily disfavored. Department of Correction v. Vassel, OATH Index No. 267/93 (Nov. 18, 1992).

¶ 2. Conflict between counsel's vacation and trial is not good cause for adjournment of trial, notwithstanding consent of adversary, because counsel consented to the trial date, and because counsel belongs to a 16-attorney firm which can supply substitute trial counsel. Department of Correction v. Taylor, OATH Index No. 205/94 (Sept. 2, 1993).

¶ 3. Amendment of petition three weeks before trial is not good cause for adjournment of trial, because the respondent has adequate time for trial preparation and exploration of pre-trial settlement. Department of Correction v. Rebecca, OATH Index No. 151/94 (Sept. 17, 1993).

¶ 4. Where counsel had represented the respondent for at least 15 months, through various pre-trial proceedings at the agency and then at OATH, the respondent's desire to discharge counsel on the day of trial, without any persuasive reason to change counsel, was not good cause for an adjournment of trial. Department of Correction v. Rebecca, OATH Index No. 151/94 (Oct. 21, 1993).

¶ 5. Neither the pendency of a criminal case against the respondent corporation related to the administrative case against the respondent, nor the possibility that ongoing plea negotiations in the criminal case might resolve the issues in the administrative case constitutes good cause for an indefinite adjournment of the administrative trial. In addition, the fact that defense of the administrative case while criminal charges are pending would require a principal of the respondent to choose between testifying and compromising her privilege against self-incrimination in the criminal case, and not testifying and thereby subjecting the respondent to a negative inference, does not constitute good cause for an indefinite adjournment of the administrative trial. Comptroller v. BQE Contracting Corp., OATH Index No. 1046/93 (Sept. 3, 1993).

¶ 6. An adjournment application must be directed to the Administrative Law Judge, not to a calendar unit clerk.

Transit Authority v. Sayad, OATH Index No. 1026/94 (June 8, 1994).

¶ 7. An adjournment may only be granted by an Administrative Law Judge, not by unilateral action of one party or by consent of all parties. Department of Correction v. Kilcullen, OATH Index No. 528/95 (Oct. 19, 1994).

¶ 8. Adjournment of conferences is subject to the provisions of this section. Department of Correction v. Kilcullen, OATH Index No. 528/95 (Oct. 19, 1994).

¶ 9. Where the respondent sought to change attorneys on the evening before trial, no satisfactory reason for the delay in changing counsel was given, and the new attorney was unable to appear for trial as scheduled but the former attorney was ready and able to proceed, adjournment was denied. Department of Correction v. Tirado, OATH Index No. 1213/94 (Aug. 17, 1994).

¶ 10. In a proceeding on an agency's petition to place an employee on involuntary disability leave, the employee's application for a second adjournment of trial was denied, where the employee had been on paid sick leave for four years, and continued health insurance was available to the employee, at his expense, pending disposition of his disability retirement application. Department of Correction v. Norris, OATH Index No. 1099/94 (Aug. 10, 1994).

¶ 11. In an employee disciplinary proceeding based upon citizens' complaints against two employees, the employing agency's application for an adjournment of trial was denied, where the application was made on the day of trial, trial had been adjourned four times before, the agency acknowledged that the charges were not grave, the long pendency of the charges was impeding the employees' careers, and the complaining citizens' repeated failure to appear for scheduled trial dates indicated a disinterest in proceeding that would not likely be remedied by grant of an adjournment. Police Department v. Nation, OATH Index Nos. 1004-05/94 (Nov. 30, 1994).

¶ 12. An application for an indefinite stay of proceedings on a petition alleging illegal commercial use of premises in a residential zone was denied. The movant alleged that he was seeking an amended certificate of occupancy, but did not show that grant of an amendment was likely, would be accomplished reasonably soon, or would legalize the use of the apartments placed at issue by the petition. Department of Buildings v. Owner, Occupants and Mortgagees of 31 West 11th Street, Apartments 6A and 6B, New York, OATH Index No. 990/94 (Aug. 26, 1994).

¶ 13. Where the petitioner's case was based on the complaint of an out-of-state witness who twice failed to appear for scheduled trial dates, and the petitioner had no other evidence to support the petition, the petitioner's application for withdrawal of the case from the calendar pursuant to paragraph (f) of this section, and for dismissal of the petition, was granted. Police Department v. Tallarine, OATH Index No. 191/95 (Sept. 8, 1994).

¶ 14. Like an application for an adjournment (delay in the commencement of trial), an application for a continuance (delay after commencement of trial) may be granted only upon a showing of good cause. Where an application for a continuance is based on the need for additional time to obtain evidence, an element of good cause must be that he applicant could not reasonably have anticipated the need for the evidence which necessitates the continuance. Department of Correction v. Jewell, OATH Index No. 260/94 (Feb. 14, 1994).

¶ 15. Adjournment of trial was granted, where the motion for an adjournment was supported by medical documentation indicating that the movant would require bed rest after delivery of a baby, until four days after the previously scheduled trial date. **Human Resources Administration v. Brown,** OATH Index No. 1557/95 (Dec. 1, 1995).

¶ 16. The respondent's motion for a trial adjournment, made the day before trial, was denied where the case had been pending for six months, and the case had been marked off the calendar twice due to settlements on which the respondent had reneged. **Taxi and Limousine Commission v. Vedrine,** OATH Index No. 1001/95 (Sept. 7, 1995).

¶ 17. In an involuntary disability leave case against an employee pursuant to §71 of the Civil Service Law, the

respondent's motion for an adjournment of trial until disposition of his disability retirement application was denied, because the respondent's concession that he was disabled and unable to work vitiated his entitlement to a hearing, and the respondent's desire to remain on the public payroll pending his anticipated disability retirement did not constitute "good cause" for an adjournment. **Department of Correction v. Iannicelli,** OATH Index No. 1429/95, May 24, 1995).

¶ 18. Where a contractor debarment petition pursuant to §335 of the City Charter was based on the criminal conviction of the individual respondent, who controlled the corporate respondents, neither the individual respondent's incarceration and inability personally to attend trial nor the pendency of an appeal from his conviction constituted "good cause" for a trial adjournment. It is relevant to the assessment of "good cause" that debarment cases are to be adjudicated "as expeditiously as possible" under §7-08(d)(5) of the Procurement Policy Board rules (title 9, Rules of the City of New York). **Department of Housing Preservation and Development v. Afro Contracting Corp.,** OATH Index No. 1519/95 (June 27, 1995).

¶ 19. The respondent's motion for an indefinite adjournment of trial due to the respondent's pregnancy, or, in the alternative, for a two- or three-month adjournment, was denied, although an adjournment of 12 days was granted, where the motion was supported by medical documentation indicating that the respondent would require bed rest after delivery of her baby, until four days after the previously scheduled trial date. **Human Resources Administration v. Brown,** OATH Index No. 1557/95 (Dec. 1, 1995).

¶ 20. The respondent's motion for an adjournment of trial pending disposition of his motion to dismiss the petition on various jurisdictional grounds was denied, because the respondent is not entitled to a ruling on jurisdictional objections before proceeding to trial on the merits. **Department of Correction v. Mercer,** OATH Index No. 1638/95 (Sept. 13, 1995).

¶ 21. The respondent's motion for an adjournment of trial, to permit the respondent to move in court for a stay of proceedings in this tribunal, was denied where the issue that the respondent wished to have adjudicated in court could be asserted as a defense to the petition in this tribunal. **Department of Correction v. Malloy,** OATH Index No. 1405/95 (May 22, 1995).

¶ 22. Disposition of a petitioner's motion to withdraw the petition is committed to the discretion of the administrative law judge, pursuant to paragraph (f) of this section. Relevant factors include whether the respondents had asserted counterclaims or other rights, how far the adjudication had progressed, and whether the petition clearly lacked merit. For a petition that was found clearly lacking in merit, withdrawal without prejudice was denied, and the petition was dismissed with prejudice. For a petition against which a counterclaim had been asserted, and adjudication of which had progressed nearly to trial, withdrawal was allowed without prejudice, on conditions intended to protect the respondent from prejudice. Finally, a petition which was not clearly without merit and which had not progressed nearly to trial, withdrawal without prejudice was allowed without conditions. **Matter of Ancona,** OATH Index Nos. 116/96, 621/96, 623/96 (Dec. 8, 1995).

¶ 23. Where an adjournment of a pre-trial conference is sought on the ground of unavailability of counsel, the showing of good cause necessary to the grant of the adjournment pursuant to paragraph (b) of this section must include a showing that no other attorney can cover either the pre-trial conference or the conflicting engagement, and a showing that the attorney's acceptance of the latter-scheduled engagement was not readily avoidable. Matter of Phillips, OATH Index No. 1651/96 (Apr. 24, 1996).

¶ 24. Where the respondent, an employee of the petitioner's, called in sick on the day of trial pursuant to the petitioner's employee procedures, that call did not constitute a request for an adjournment, which, pursuant to paragraph (b) of this section, may be obtained only by motion to the administrative law judge. Department of Correction v. Kelly, OATH Index No. 1228/97 (May 16, 1997).

¶ 25. Where the respondents did not ask the petitioner to produce two of the petitioner's employees as trial

witnesses for the respondents until the day before trial, and the petitioner was unable on short notice to arrange for the attendance of those witnesses, the respondents' request for a continuance for an additional opportunity to call those witnesses was denied for lack of good cause pursuant to paragraph (b) of this section. Police Department v. Horgan, OATH Index Nos. 443/97, 446/97 (Feb. 4, 1997).

¶ 26. Counsel's need for additional time to arrange for the attendance of witnesses, due to counsel's failure to prepare for trial until the day before trial because of a heavy caseload, was not good cause for a trial continuance pursuant to paragraph (b) of this section. Police Department v. Horgan, OATH Index Nos. 443/97, 446/97 (Feb. 4, 1997).

¶ 27. The degree of need for an adjournment that is required to constitute good cause pursuant to paragraph (b) of this section can only increase as the case ages and the number of adjournments granted grows. Police Department v. Starr, OATH Index No. 1414/97 (Dec. 2, 1997).

¶ 28. Where trial was continued for more than seven weeks following the presentation of the petitioner's case, and the continuance date was then adjourned for more than two weeks, the respondent's request for an adjournment three days before the resumption of trial, on the ground that the respondent wanted to retain new counsel, was denied pursuant to paragraph (b) of this section. Transit Authority v. Merrit, OATH Index No. 963/97 (Oct. 30, 1997).

¶ 29. Speculation by the respondent's counsel that the respondent had failed to appear for trial for medical reasons, without any medical documentation or other specific information, did not constitute good cause for an adjournment pursuant to paragraph (b) of this section. Health and Hospitals Corporation, Woodhull Medical & Mental Health Center v. Pratt, OATH Index No. 818/97 (Feb. 19, 1997).

¶ 30. The respondent's motion for an adjournment, made pursuant to paragraph (b) of this section on the morning of trial, was denied where two witnesses had traveled from Georgia to attend trial. Police Department v. Carfora, OATH Index No. 621/97 (June 16, 1997).

¶ 31. Where trial was adjourned during a telephone conference call with counsel for both sides, the fact that neither the petitioner nor the respondent's counsel notified the respondent of the adjourn date, and therefore the respondent did not appear for trial, did not constitute good cause for an adjournment pursuant to paragraph (b) of this section. Police Department v. Carfora, OATH Index No. 621/97 (June 16, 1997).

¶ 32. Paragraph (f) of this section provides that a petitioner may withdraw a case from the calendar unilaterally, if the withdrawal is with prejudice, but that withdrawal of a case from the calendar without prejudice may be effected only by motion. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996).

¶ 33. One of the factors informing the discretion of the administrative law judge in determining whether to allow withdrawal without prejudice pursuant to paragraph (f) of this section is the merit of the application. Withdrawal of a petition that has no substantial likelihood of success should be with prejudice. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996).

¶ 34. The authority of the administrative law judge pursuant to paragraph (f) of this section to impose conditions on a petitioner's withdrawal of a case without prejudice does not apply to withdrawal with prejudice. Loft Board v. Tekosky, OATH Index No. 470/97 (Apr. 18, 1997).

¶ 35. A petitioner has the right to withdraw a case with prejudice pursuant to paragraph (f) of this section, without the consent of the respondent or the permission of the administrative law judge, and OATH did not have the authority to retain jurisdiction over issues subsidiary to the withdrawn petition. Teachers' Retirement System v. Barrett, OATH Index No. 1135/97 (Nov. 18, 1997).

¶ 36. Where the petitioner's withdrawal of the case from the calendar pursuant to paragraph (f) of this section was

done unilaterally, not by motion, and where both parties at the time of the withdrawal regarded that withdrawal as a final disposition of the case, the withdrawal constituted a final disposition of the case, and OATH did not have jurisdiction to consider the respondent's motion to restore the case to the trial calendar. Human Resources Administration v. Lampart, OATH Index No. 309/97 (Dec. 2, 1997).

¶ 37. A tenant, who was not a party to a proceeding brought by the Loft Board against a landlord, has no standing to object to the Loft Board's request to withdraw the case pursuant to paragraph (f) of this section. Loft Board v. Tekosky, OATH Index No. 470/97 (Apr. 18, 1997).

¶ 38. Where the petitioner obtained a trial adjournment due to the unavailability of its principal witness, and where the petitioner on the adjourn date sought to withdraw the case without prejudice due to the witness's non-cooperation, the request was granted without prejudice pursuant to paragraph (f) of this section, over the respondent's objection that withdrawal should be with prejudice, on the condition that the case may be restored to the calendar only upon written application to the administrative law judge, on a showing that the witness will cooperate and appear for trial, including an affidavit to that effect by the witness. Jacobi Medical Center v. Arceo, OATH Index No. 161/97 (Nov. 12, 1996).

¶ 39. Applications for adjournments are addressed to the discretion of the administrative law judge and shall be granted only for good cause. Parties may not agree to adjourn a matter without making an application to the administrative law judge. **Taxi and Limousine Comm'n v. Surinder,** OATH Index No. 825/99, letter to parties (Nov. 30, 1998).

¶ 40. Good cause for granting adjournment was lacking where the doctor's notes submitted by respondent failed to provide a medical reason, either psychological or physiological, that he could not attend the OATH hearing. **Triborough Bridge and Tunnel Auth. v. Leibowitz,** OATH Index No. 1080/98 (July 24, 1998).

¶ 41. Good cause for granting adjournment was lacking where there was no basis to conclude that further attempts to locate the Department's complaining witness would be successful, and the first adjournment was marked final against the Department. **Police Dep't v. Bowser,** OATH Index No. 1694/98 (Aug. 24, 1998).

¶ 42. Adjournment denied where trial was continued for a month following the presentation of petitioner's case, where the matter had been pending for several months, and where respondent's request for an adjournment was made on the third day of trial, so that respondent's newly retained counsel would need more time to prepare for trial. **Dep't of Sanitation v. Garcia,** OATH Index No. 1140/98 (May 1, 1998).

¶ 43. Non-appearance of petitioner's attorney did not constitute good cause for an adjournment where petitioner had ample notice that her attorney would not appear unless she paid his retainer, but failed to do so. Nor did she show good cause to adjourn continued date, selected by her, based on her claim that she assumed that her recently retained attorney, whose name she could not recall, obtained an adjournment to an unspecified date. **Matter of Wilson,** OATH Index No. 1573/97 (Mar. 20, 1998), **aff'd,** Loft Bd. Order No. 2280 (Sept. 24, 1998).

¶ 44. Under paragraph (f) of this rule, a party may withdraw a case from the calendar without making an application to the administrative law judge if the withdrawal is pursuant to a settlement agreement or other final disposition of the case. Petitioner placed its employee on pre-hearing involuntary leave pursuant to section 72 of the Civil Service Law. Prior to trial, petitioner restored the employee to duty and withdrew the case from the calendar. The employee made an application to the administrative law judge seeking back pay and restoration of leave credits expended during the period of pre-hearing involuntary leave. The administrative law judge denied the application, ruling that petitioner had the right to withdraw the case with prejudice, without the consent of the employee or the permission of the administrative law judge, and OATH did not have the authority to retain jurisdiction over issues subsidiary to the withdrawn petition. **Teachers' Retirement System v. Barrett,** OATH Index No. 1135/97 (Nov. 18, 1997), **rev'd and remanded sub nom. Barrett v. Miller,** 179 Misc. 2d 24, 682 N.Y.S.2d 552 (Sup. Ct. N.Y. Co. 1998). On appeal, the court found that the employee's claims to entitlement to back pay and restoration of leave credits

were not finally disposed of within the meaning of paragraph (f) when petitioner withdrew the matter from the calendar and the court remanded the matter to OATH to determine those issues.

¶ 45. In a zoning violation proceeding, the owner of premises appeared and argued that an indefinite stay should be granted based on his submission of an application to the Board of Standards and Appeals for re-zoning. Administrative law judge denied the application, noting that the matter had already been adjourned three times before for that purpose to no avail. Commissioner adopted the administrative law judge's reasons for denying the adjournment request. In addition, the Commissioner noted that an owner who commences an illegal commercial use of a residentially zoned premises should not be entitled to wait until he is caught, then delay enforcement action by filing a re-zoning application with the City Planning Commission. Commissioner further noted that statutory discretion to order closure of a premises lies with the Buildings Department Commissioner under section 26-127.2(b), (d) of the Administrative Code, not OATH and the adjournments were therefor improvident. **Dep't of Buildings v. 100 Post Avenue, New York**, OATH Index No. 1402/99 (Sept. 29, 1999).

¶ 46. Where respondent failed to appear for trial and his attorney asked for an adjournment based upon respondent's representation to a union representative that he had to leave the state to attend to a sick parent, the respondent was declared in default because respondent had not authorized anyone to appear on his behalf pursuant to section 1-11. Pursuant to this rule, the administrative law judge denied the request for an adjournment because respondent did not provide sufficient information to warrant one, but he left record open for two weeks to permit respondent to submit explanation for his failure to appear. **Health and Hospitals Corp. (Elmhurst Hospital Center) v. Mosley**, OATH Index No. 206/00 (Nov. 15, 1999).

¶ 47. A loft tenant's request to withdraw her challenge to a rent increase indicated that she wished to preserve a right to continue to contest the accuracy of the owner's application at some future time before another forum. The tenant was permitted to submit a letter withdrawing her challenge "with the understanding that the owner's rent increase application would be deemed granted," but, absent such a submission, her withdrawal request was denied. **Matter of Breson Corp.**, OATH Index No. 1758/99, mem. dec. (May 14, 1999).

¶ 48. Agency advocate moved to dismiss the charges because he was unable to produce complaining witnesses for trial. Administrative law judge denied the motion, as it was totally within agency's discretion to discontinue the case without need for a ruling on such a motion. Administrative law judge ordered agency to proceed to trial. **Police Dep't v. Elcock**, OATH Index No. 1890/99 (May 26, 1999).

¶ 49. Commission's unilateral withdrawal of pending case without prejudice not permitted. Administrative law judge found that OATH rule 2-26, which applies only to Human Rights cases, incorporated by reference OATH rule 1-32(f), which requires permission from an administrative law judge before a matter can be withdrawn without prejudice when it is not a final disposition of the case. Sound reasons of calendar control support an interpretation of the rule to require permission of an administrative law judge before a case can be withdrawn without prejudice. **Blueweiss v. Metropolitan Life Insurance Co.**, OATH Index No. 852/99, mem. dec. (Mar. 29, 1999).

¶ 50. Disciplinary case against police officer had been adjourned three times and marked final. On the fourth trial date, petitioner withdrew the matter when the complainant did not appear on time. Petitioner's subsequent motion to vacate the "dismissal" of the charges was denied because the charges had been withdrawn by petitioner, and not dismissed by the judge. Administrative law judge advised petitioner it could make an application to restore the case to the calendar and petitioner did so two months later. Administrative law judge denied the motion to restore, based upon petitioner's unexplained delay in bringing the application and because petitioner's unilateral withdrawal was with prejudice pursuant to paragraph (f) of this rule. Further, to permit petitioner to restore the matter would render ineffective the administrative law judge's decision to mark the matter final. **Police Dep't v. Ortega**, OATH Index No. 580/99 (Aug. 6, 1999).

¶ 51. Administrative law judge denied petitioner's adjournment request where complainant and witnesses failed to

appear on scheduled trial date despite prior notice and having been subpoenaed, the case was three and a half years old and involved minor discourtesy charges, there had been previous adjournments either due to petitioner's witnesses' inability to appear or petitioner's failure to properly order respondents in for trial, and the trial date had been marked final by this tribunal two dates prior to date at issue. **Police Dep't v. Sanchez & Trinidad,** OATH Index Nos. 548-49/00 (Feb. 16, 2000).

¶ 52. Administrative law judge denied continuance to bring in respondent's partner, who was unable to appear due to illness, based on counsel's failure to know whether the potential witness could offer anything probative to the proceeding. **Dep't of Sanitation v. Branch,** OATH Index No. 169/01 (Dec. 6, 2000).

¶ 53. Adjournment application denied where occupant of the premises appeared and represented that an application for a zoning variance was pending before the Board of Standards and Appeals and a hearing on that application had been scheduled. Statutory discretion to order closure of a premises lies with the Commissioner of the Department of Buildings. **See** Admin. Code § 26-127.2(b), (d); **Dep't of Buildings v. Owners, Occupants and Mortgagees of 20 West 190th Street, Bronx,** OATH Index No. 843/00 (Mar. 8, 2000).

¶ 54. Motion to adjourn disciplinary hearing pending resolution of criminal charges is denied. Long standing precedent holds that an employee's constitutional right against self-incrimination is not violated by going forward with the administrative disciplinary proceeding. **Human Resources Admin. v. Rickenbacker-Miller,** OATH Index No. 603/01 (Dec. 12, 2000).

¶ 55. Administrative law judge denied attorney's adjournment request the day before a scheduled license revocation hearing due to its similarity to a previous adjournment request and was suggestive of deceptive delaying tactics. **Dep't of Buildings v. Banton,** OATH Index No. 2124/00 (Sept. 18, 2000).

¶ 56. On day of the scheduled hearing, attorney's office informed the tribunal that respondent's attorney would be one hour late. Administrative law judge held that the request to postpone the hearing did not meet the tribunal's standards for an adjournment request. The hearing proceeded in the form of an inquest. **Admin. for Children's Services v. Lopez,** OATH Index No. 198/00 (Feb. 22, 2000).

¶ 57. Respondent, a correction officer, sought an adjournment of her disciplinary hearing due to the pendency of a criminal proceeding. Respondent argued that she should not be forced to choose between remaining silent at her disciplinary hearing, at the risk of losing her job, or testifying at that hearing at the risk of incriminating herself in the criminal proceeding. The ALJ denied the adjournment request, noting that it was not unconstitutionally impermissible to require a defendant to go forward in a civil or administrative proceeding despite the pendency of criminal charges, and further, that the conduct at issue in the disciplinary proceedings predated and was unrelated to the subsequent criminal charges. **Dep't of Correction v. Dasque,** OATH Index No. 1270/01, mem. dec. (July 26, 2001).

¶ 58. Owner's request for an adjournment at time of trial, so he would have additional time to obtain a building permit, was denied. Adjournment of trial may be granted only upon a showing of good cause by the party seeking the adjournment. Here, the owner had already had months to obtain the permit but failed to get it. **Matter of Buchen,** OATH Index Nos. 1132/98 & 105/99 (Mar. 21, 2002), **aff'd,** Loft Bd. Order No. 2725 (Apr. 18, 2002).

¶ 59. Administrative law judge denied counsel's motion for an adjournment of the hearing, after the tribunal delayed the start of the hearing by three hours in order to give respondent an opportunity to appear and to give counsel an opportunity to locate him and determine why he was not present. **Dep't of Correction v. Jones,** OATH Index No. 1400/02 (July 10, 2002).

¶ 60. Pursuant to subsection (f) of this section, administrative law judge denied petitioner's request to withdraw Loft Law coverage application without prejudice made on the eve of trial as unfairly prejudicial to the opposing party. **Matter of Munzer,** OATH Index Nos. 2109-10/01 (May 13, 2002), **aff'd,** Loft Bd. Order No. 2743 (June 25, 2002).

¶ 61. Respondents requested an adjournment of trial date, claiming that they would not have sufficient time to obtain complainant's medical records or their own financial records to prove undue hardship. The request failed to establish the requisite good cause for an adjournment under this rule. Respondents inexplicably waited six weeks before moving to order the complainant to provide medical records. With regard to the financial records, respondents' claim was without merit given judge's scheduling order establishing discovery timeline and trial date. **Comm'n on Human Rights v. Woodycrest Realty, LLC,** OATH Index No. 779/03, mem. dec. (May 1, 2003).

¶ 62. Pursuant to this rule, adjournments may be granted only for good cause shown. Respondent requested an adjournment because of an expected arbitration proceeding on a related grievance. The administrative law judge denied the adjournment for lack of good cause where the arbitration proceeding was not imminent, where the cited Department directive did not have any applicability to OATH conferences, and where respondent would not be prejudiced by proceeding with a disciplinary hearing. **Dep't of Correction v. Chalmers,** OATH Index No. 413/04, mem. dec. (Nov. 6, 2003).

¶ 63. Adjournment request based on pending arbitration proceeding was denied where arbitration was not imminent and where movant could not show prejudice would result. **Dep't of Correction v. Crenshaw,** OATH Index No. 172/04, mem. dec. (Nov. 18, 2003).

¶ 64. Alleged flaws in the attempted personal service of charges was not found to be a basis for adjourning a disciplinary hearing where the charges were served at respondent's home, despite petitioner's possible awareness of respondent's temporary absence from residence due to an in-patient rehabilitation program. **Fire Dep't v. Reinhard**, OATH Index No. 647/05 (Oct. 21, 2004).

¶ 65. Department rule giving firefighter thirty days to request a drug test retest was found not to be a valid basis to grant an adjournment where respondent had not submitted the form required to authorize the retest and he had submitted his retirement application which was to become effective two weeks after the scheduled hearing. **Fire Dep't v. Rinehard**, OATH Index No. 647/05 (Oct. 21, 2004).

¶ 66. Motion for adjournment, made on the day of trial, to retain new counsel was denied, where counsel of record had appeared for respondent at a pre-trial conference and stated that he was prepared to go forward with the trial. **Dep't of Correction v. Cortes**, OATH Index No. 1230/06 (June 16, 2006).

¶ 67. License revocation hearing was adjourned to give respondent, a for-hire driver, an opportunity to secure counsel. Section 100.3 (A)(8) of the Rules of Conduct for Administrative Law Judges directs judges take steps to ensure that unrepresented parties have the opportunity to have his or her case fully heard. Among the steps the judge took was to give respondent time to secure counsel, obtain a translator for the hearing, and permit continued cross-examination of the complaining witness after respondent hired an attorney. **Taxi & Limousine Comm'n v. Martinez**, OATH Index No. 1183/07 (Apr. 11, 2007).

¶ 68. Application for a continuance, like an application for an adjournment, may only be granted on a showing of good cause. Request for a open-ended or prolonged continuance on the third day of hearing was denied where the party's explanation for her absence-that she had a gravely ill relative and "other factors in her life"-were vague and unsubstantiated. **Dep't of Finance v. Zindel**, OATH Index No. 1310/07 (June 22, 2007).

¶ 69. ALJ denied motions to stay civil service disciplinary hearing while related criminal charges were pending. Going forward with disciplinary trial does not unlawfully impinge on employee's Fifth Amendment right to remain silent. **Dep't of Environmental Protection v. Rodriguez**, OATH Index No. 1438/08 (Apr. 29, 2008), **modified on penalty**, Comm'r Dec. (May 15, 2008); **Dep't of Environmental Protection v. Bellach**, OATH Index No. 1574/08 (Apr. 30, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of

OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-33

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-33 Discovery.

(a) Requests for production of documents, for identification of trial witnesses, and for inspection of real evidence to be introduced at the hearing may be directed by any party to any other party without leave of the administrative law judge.

(b) Depositions shall only be taken upon motion for good cause shown. Other discovery devices, including interrogatories, shall not be permitted except upon agreement among the parties or upon motion for good cause shown. Demands for bills of particulars shall be deemed to be interrogatories. Resort to such extraordinary discovery devices shall not generally be cause for adjournment of a conference or hearing.

(c) Discovery shall be requested and completed promptly, so that each party may reasonably prepare for trial. A demand for identification of witnesses, for production of documents, or for inspection of real evidence to be introduced at trial shall be made not less than twenty days before trial, or not less than twenty-five days if service of the demand is by mail. An answer to a discovery request shall be made within fifteen days of receipt of the request, or within ten days if service of the answer is by mail. An objection to a discovery request shall be made as promptly as possible, but in any event within the time for an answer to that request. Different times may be fixed by consent of the parties, or by the administrative law judge for good cause. Notwithstanding the foregoing time periods, where the notice of the hearing is served less than twenty-five days in advance of trial, discovery shall proceed as quickly as possible, and time periods

may be fixed by consent of the parties or by the administrative law judge.

(d) Any discovery dispute shall be presented to the assigned administrative law judge sufficiently in advance of the hearing to allow a timely determination. Discovery motions are addressed to the discretion of the administrative law judge. The timeliness of discovery requests and responses, and of discovery-related motions, the complexity of the case, the need for the requested discovery, and the relative resources of the parties shall be among the factors in the administrative law judge's exercise of discretion.

(e) In ruling upon a discovery motion, the judge may deny the motion, order compliance with a discovery request, order other discovery, or take other appropriate action. The administrative law judge may grant or deny discovery upon specified conditions, including payment by one party to another of stated expenses of the discovery. Failure to comply with an order compelling discovery may result in imposition of appropriate sanctions upon the disobedient party, attorney or representative, such as the sanctions set forth in §1-13(e), the preclusion of witnesses or evidence, drawing of adverse inferences, or, under exceptional circumstances, removal of the case from the calendar, dismissal of the case, or declaration of default.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Although the parties may consent to alter the discovery deadlines set by these rules, such consent may not be inferred from a failure to object by the party receiving the discovery request. Fire Department v. James, OATH Index No. 1187/90 (Oct. 17, 1990), **modified as to penalty,** Comm'r Decision (Dec. 13, 1990).

¶ 2. Interrogatories are an extraordinary discovery device, and therefore the "good cause" standard for leave to propound interrogatories is stricter than the "material and necessary" standard applicable to discovery devices available as of right. Human Resources Administration v. Man-of-Jerusalem, OATH Index No. 790/91 (Nov. 12, 1991).

¶ 3. Although only willful noncompliance with orders compelling discovery may result in the more extreme sanctions, such as dismissal of the case, persistently negligent noncompliance with such orders may result in imposition of lesser sanctions. Where the respondent's delays in obtaining discovery from the petitioner were aggravated by the respondent's counsel's refusal to comply with discovery orders, and where the respondent was ultimately not prejudiced by the petitioner's noncompliance with discovery orders, the respondent's application for preclusion of evidence was denied, and the sanction imposed on the petitioner's counsel was a formal admonishment. Board of Eduction v. Butler, OATH Index No. 554/93 (May 24, 1993).

¶ 4. The trade secrets privilege is qualified, not absolute, and, where documents containing trade secrets are sufficiently important to a party's case, disclosure to that party can be compelled upon the condition that the party agree to maintain the confidentiality of the documents. Department of Correction v. Carlton, OATH Index No. 329/94 (Apr. 15, 1994).

¶ 5. In general, discovery is far less extensive in administrative adjudication than in modern civil litigation, and the administrative law judge is vested by this section with broad discretion in overseeing discovery. Matter of Prince, OATH Index No. 1506/95 (Aug. 18, 1995).

¶ 6. Where the information available without the benefit of discovery is inadequate to trial preparation on critical factual issues, discovery is essential. Matter of Prince, OATH Index No. 1506/95 (Aug. 4, 1995).

¶ 7. The benefits of discovery-for instance, in shaping or limiting the issues for trial-should outweigh the costs, burdens, and time associated with the discovery, and the timeliness of a request for discovery is also relevant. Matter of Prince, OATH Index No. 1506/95 (Sept. 12, 1995).

¶ 8. A motion to compel disclosure of certain facts, arguments and other information was construed to be a motion for leave to submit interrogatories pursuant to this section, and, because the proposed interrogatories were not included with the motion papers, the motion was denied. Matter of Prince, OATH Index No. 1506/95 (Sept. 12, 1995).

¶ 9. Where the respondent moved to compel discovery sought in support of an affirmative defense, the administrative law judge, in considering the motion to compel, ruled that the affirmative defense did not lie and therefore denied the motion to compel. Department of Health v. Protzel, OATH Index No. 613/98 (Dec. 10, 1997).

¶ 10. The respondent's discovery request, that the petitioner produce copies of OATH's decisions in cases brought by the petitioner in comparable cases, constituted a request for legal research of material which is available to each party at OATH's offices. Therefore, the respondent's motion to compel the petitioner to answer the discovery request was denied. Department of Health v. Protzel, OATH Index No. 613/98 (Dec. 10, 1997).

¶ 11. After the petitioner failed to produce documents requested in discovery by the respondent and failed to comply with two successive orders compelling such production, the case was marked off the calendar without prejudice to restoration upon a showing that the petitioner had complied with the respondent's discovery demands. When the petitioner moved a year later to restore the case to the calendar, but the petitioner failed to prove full compliance with the respondent's discovery demand, the motion to restore was denied and the case was dismissed with prejudice. Transit Authority v. Villa, OATH Index No. 668/95 (Apr. 15, 1996).

¶ 12. As a general matter, paragraph (e) of this section requires a two-step process: upon one party's failure to make discovery, the requesting party must move for and obtain an order compelling discovery, and only upon failure to comply with such an order may sanctions be imposed. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), reversed in part and remanded on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 13. Although the respondent's counsel was negligent in failing to respond timely to a discovery request, the petitioners' request for discovery sanctions pursuant to paragraph (e) of this section was denied because the respondent's counsel provided the discovery promptly upon receipt of the petitioners' motion to compel. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), reversed in part and remanded on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 14. Applicability of the public interest privilege to the investigatory files of a governmental agency was determined by an **in camera** inspection of the files in question. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 15. The public interest privilege is a qualified privilege, and it precluded disclosure to the respondent in an employee disciplinary case of documents pertaining to a continuing investigation of an unrelated matter involving the same respondent, and documents containing private information implicating witnesses' privacy concerns, but did not preclude disclosure of documents summarizing investigatory interviews with witnesses, provided that witnesses' addresses and dates of birth were redacted. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 16. Respondent allegedly used the Office of the Sheriff to carry on the practice of law on behalf of private clients, in violation of the Conflicts of Interest Law. After respondent made a blanket claim of attorney-client privilege in response to petitioner's document request, the administrative law judge directed production of documents for **in camera** review accompanied by a list of the documents and an itemized description of the basis of the claim of the attorney-client privilege. Respondent's refusal to cooperate by providing identifying information about the documents contained in the files produced for **in camera** review, despite repeated instruction, requires that the documents sought in discovery, as to which no privilege has been established by respondent, and as to which none is apparent, be released to

petitioner. Administrative law judge orders production of documents which, on their face, might be confidential attorney-client communications, but which also refer to fees collected by respondent during the relevant period, be produced in redacted form, showing date, author, matter, addressee(s), typist initials, letterhead and the reference to fees collected by respondent or assessed by respondent. **Conflicts of Interest Bd. v. Katsorhis,** OATH Index No. 1531/97, mem. dec. (Sept. 25, 1997), **aff'd in part, modified on other grounds,** Conflicts of Interest Bd. Case No. 94-351 (Sept. 17, 1998).

¶ 17. Bills of particulars are extraordinary discovery devices that are not allowable absent agreement among the parties or upon motion for good cause shown. Consent to use this device did not excuse petitioner from making a complete response to the demand. **Dep't of Correction v. Altreche,** OATH Index Nos. 1377-78/98, 1384-86/98, 492/99, mem. dec. (Sept. 22, 1998).

¶ 18. Extensive production demands made only days before the hearing are untimely pursuant to this rule. **Taxi and Limousine Comm'n v. Haven Car Service,** OATH Index No. 652/99 (Jan. 22, 1999).

¶ 19. Respondent's request for voluminous document production was made less than 20 days before trial, without consent of petitioner and without leave of the administrative law judge, and was returnable on the day of trial. Upon petitioner's failure to comply, respondent moved to preclude evidence on the charges related to the document request. Preclusion was denied but a continuance was allowed to enable respondent to review the documents. **Human Resources Admin. v. Dimps,** OATH Index No. 939/98 (Apr. 3, 1998), **aff'd,** NYC Civ. Serv. Comm'n CD 99-90-SA (Aug. 31, 1999).

¶ 20. No sanctions imposed where party from whom discovery material was sought was not in possession of the material and where the discovery request was untimely. No adverse inference or missing evidence inference was warranted where it was not clear that the evidence in question ever existed or that it was being purposefully withheld. **Taxi and Limousine Comm'n v. Haven Car Service,** OATH Index No. 652/99 (Jan. 22, 1999).

¶ 21. Parties voluntarily engaged in extraordinary discovery device by service and response to bill of particulars; respondent claimed inadequate compliance with demand and moved for preclusion of evidence at trial. Petitioner provided sufficient information in its subsequent response to respondent's motion to preclude, thereby putting respondent on notice of the charges against him. Administrative law judge denied the motion holding that preclusion is only appropriate where the party fails to comply with discovery order. **Dep't of Correction v. Altreche,** OATH Index Nos. 1377-78/98, 1384-86/98, 492/99, mem. dec. (Sept. 22, 1998); **Human Resources Admin. v. Dimps,** OATH Index No. 939/98 (Apr. 3, 1998), **aff'd,** NYC Civ. Serv. Comm'n CD 99-90-SA (Aug. 31, 1999).

¶ 22. Administrative law judge declines respondent's request that judge should draw a negative inference against the agency for failing to produce a document sought by respondent in discovery. The fact that a record cannot be found, absent some indication that non-production is purposeful, is insufficient reason for any sanction to be imposed. Discovery sanctions are available only if willful or "persistently negligent" noncompliance with discovery obligations is shown. **Dep't of Sanitation v. McCutchen**, OATH Index No. 1728/99 (Jan. 25, 1999), **aff'd**, NYC Civ. Serv. Comm'n Item No. CD00-102-SA (Nov. 15, 2000).

¶ 23. Extensive discovery demand, made only days before the scheduled hearing, was untimely under this section. Administrative law judge denied respondent's request that he draw an adverse inference against petitioner based upon petitioner's failure to produce documents sought by respondent in discovery. A missing evidence inference is available, not when a party merely fails to produce some evidence, but when there is a basis to believe that the party in possession of the evidence, knows it to be unfavorable, and has therefore chosen not to produce it. Here respondent failed to make such a showing. **Taxi and Limousine Comm'n v. Haven Car Service**, OATH Index No. 652/99 (Jan. 22, 1999).

¶ 24. Administrative law judge denies respondent's motion to take interrogatories in a Loft Board overcharge proceeding where all issues would be more expeditiously resolved at a prompt trial, thus eliminating delay occasioned

by taking the interrogatories first. **Matter of Shannon**, OATH Index No. 1757/99, mem. dec. (Apr. 15, 1999).

¶ 25. Under this section, discovery motions are addressed to the discretion of the administrative law judge. Depositions may be taken upon a showing of good cause by the requesting party. Administrative law judge found that respondent made showing of good cause for depositions, and that due process required two depositions previously ordered. **Dep't of Buildings v. DeAcetis,** OATH Index No. 1440/02, mem. dec. (June 10, 2002).

¶ 26. In a civil rights enforcement proceeding, based on disability discrimination, the administrative law judge granted respondents' motion to compel discovery of complainant's medical records because the complainant placed her health in issue. **Comm'n on Human Rights v. Woodycrest Realty, LLC,** OATH Index No. 779/03, mem. dec. (May 1, 2003).

¶ 27. Noncompliance with disclosure order would subject party to sanctions under 48 RCNY §§ 1-33(e), and 2-29(c), including but not limited to preclusion of evidence, striking the answer or precluding asserted defenses, and/or costs. **Comm'n on Human Rights v. G.P.C. Realty Corp.**, OATH Index No. 228/04, mem. dec. (Feb. 26, 2004).

¶ 28. Administrative law judge denied application to sanction respondent for spoilation of crucial evidence, a surveillance videotape, where no discovery disputes have been presented to the tribunal nor has an order compelling compliance with a discovery request been made. **Comm'n on Human Rights v. Space Hunters, Inc.**, OATH Index No. 997/04, mem. dec (June 22, 2004).

¶ 29. ALJ ordered petitioner to produce two witnesses requested by respondent who were present during the incident which formed the basis of the charges; she excluded four witnesses respondent requested to testify about miscellaneous uncharged conduct allegedly committed by petitioner's main witness. Those witnesses were excluded pursuant to the collateral matter rule, which precludes the introduction of extrinsic evidence to prove a collateral matter. **Dep't of Correction v. Finch**, OATH Index No. 652/07 (Nov. 28, 2006), **modified on penalty**, Comm'r Dec. (May 24, 2007).

¶ 30. In an employment discrimination case, where the employer claimed the complainant was fired for poor performance, ALJ took an adverse inference against the employer due to the employer's negligent failure to preserve certain key documents-sales reports and a recent performance evaluation for the complainant and similarly situated employees-which were sought by the complainant in discovery. **Comm'n on Human Rights ex rel Manning v. HealthFirst, LLC**, OATH Index No. 462/05 (Mar. 15, 2006), **adopted**, Comm'n Dec. (May 10, 2006).

¶ 31. Preclusion of an agency's requested witness is the proper remedy for agency's repeated failure to identify the witness during numerous pretrial communications establishing the agency's witness list. **Dep't of Housing Preservation & Development v. Porres**, OATH Index No. 627/06 (June 16, 2006).

¶ 32. Parties should disclose all evidence relevant to the case and all information reasonably calculated to lead to relevant evidence. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

¶ 33. The recipient of a discovery request must alert her adversary when she does not intend to disclose the requested material. Pursuant to subsection (c) of this section, an objection to a discovery request shall be made as promptly as possible, but no later than the time for an answer to that request. A party has two options: bring the matter to the attention of the trial judge or make an objection and allow the adversary to present the matter to the judge. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

¶ 34. Two agency attorneys who deliberately chose not to produce requested documents in their possession were admonished. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

¶ 35. Motion to preclude evidence due to petitioner's failure to produce documents prior to trial was denied where record showed that counsel was unaware of the existence of the documents until witnesses testified at trial. Counsel was

admonished to be more attentive to its pretrial discovery obligations in the future or it may face severe sanctions. **Dep't of Environmental Protection v. Ginty**, OATH Index No. 1627/07 (Aug. 10, 2007).

¶ 36. Preclusion is a disfavored remedy best suited to a situation in which a party offers the very evidence that it failed to produce in discovery. The preferred remedy when non-production is revealed at trial is a continuance. Motion for sanctions of preclusion and adverse inference denied where party rejected offer of continuance for the purposes of having supplemental document production. **Dep't of Environmental Protection v. Ginty**, OATH Index No. 1627/07 (Aug. 10, 2007).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the

implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-34

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-34 Pre-Trial Motions.

(a) Pre-trial motions shall be consolidated and addressed to the administrative law judge as promptly as possible, and sufficiently in advance of the hearing to permit a timely decision to be made. Delay in presenting such a motion may, in the discretion of the administrative law judge, weigh against the granting of the motion, or may lead to the granting of the motion upon appropriate conditions.

(b) The administrative law judge may in his or her discretion permit pre-trial motions to be made orally, including by telephone, electronic means, or in writing. The administrative law judge may require the parties to submit legal briefs on any motion. Parties are encouraged to make pre-trial motions, or to conduct preliminary discussions and scheduling of such motions, by conference telephone call or by electronic means to the administrative law judge.

(c) Motion papers shall state the grounds upon which the motion is made and the relief or order sought. Motion papers shall include notice to all other parties of their time pursuant to subdivision (d) of this section to serve papers in opposition to the motion. Motion papers and papers in opposition shall be served on all other parties, and proof of service shall be filed with the papers. The filing of motion papers or papers in opposition by a representative who has not previously appeared shall constitute the filing of a notice of appearance by that representative, and shall conform to the requirements of §1-11(b).

(d) Unless otherwise directed by the administrative law judge upon application or **sua sponte,** the opposing party shall file and serve responsive papers no later than eight days after service of the motion papers if service of the motion papers was personal or by electronic means, and no later than thirteen days after service if service of the motion papers was by mail.

(e) Reply papers shall not be filed unless authorized by the administrative law judge, and oral argument shall not be scheduled except upon the direction of the administrative law judge.

(f) Nothing in this section shall limit the applicability of other provisions to specific pre-trial motions. For instance, an application for withdrawal or substitution of counsel is also governed by §1-12; an application for an adjournment is also governed by §1-32; an application for issuance of a subpoena is also governed by §1-43.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pre-trial motions to dismiss are disfavored, and are granted only in the clearest cases of failure by petitioners to plead viable claims. Fire Department v. Zollner, OATH Index No. 623/92 (June 12, 1992).

¶ 2. A party may remain silent in response to a motion unless the administrative law judge requires a response, and paragraph (d) of this section should be read as if the word "any" appeared before "responsive papers." Fire Department v. Zollner, OATH Index No. 623/92 (June 12, 1992).

¶ 3. Untimeliness of a pre-trial motion may be sufficient ground for denial of the motion. Human Resources Administration v. Man-of-Jerusalem, OATH Index No. 1021/91 (Nov. 12, 1991).

¶ 4. The respondents' motion to dismiss the petition on the ground of laches was denied absent evidence that the respondents' ability to defend was prejudiced by the 27-month delay between the events in question and the trial. **Department of Correction v. Garcia,** OATH Index Nos. 765/95, 767-68/95 (Aug. 29, 1995).

¶ 5. The petitioner's motion for summary judgment before trial was denied where the respondent's offer of proof raised triable issues of fact. **Matter of Teitelbaum,** OATH Index No. 424/96 (Dec. 11, 1995).

¶ 6. The respondent's request for a pre-trial hearing on his motion for suppression of certain evidence against him was denied, and the suppression issues were deferred for adjudication at trial. **Department of Correction v. Mack,** OATH Index No. 964/95 (Feb. 3, 1995); **see also Transit Authority v. Castro,** OATH Index No. 748/95 (Mar. 7, 1995).

¶ 7. An employee's pre-trial motion to dismiss employee disciplinary charges on the ground that the charges were time-barred was denied as premature, because the applicability of the statute of limitations depended upon factual questions which only could be resolved after trial. Police Department v. Kushner, OATH Index Nos. 447-48/97 (May 1, 1997).

¶ 8. An employee's pre-trial motion to dismiss disciplinary charges based on the statute of limitations was denied, without prejudice to renew the motion at the close of the hearing, because the applicability of the statute of limitations turned on whether the employee had committed a crime, an issue which presented mixed questions of law and fact requiring trial. Department of Correction v. Gilliard, OATH Index No. 587/98 (Dec. 17, 1997).

¶ 9. A pre-trial motion to dismiss may be granted only in the clearest case of a failure to plead a viable claim. Police

Department v. Fredericks, OATH Index Nos. 386/97, 616/97 (Feb. 18, 1997).

¶ 10. Where the applicability of the statute of limitations turned on whether the petitioner could prove that the respondent had committed a crime, the respondent's pre-trial motion to dismiss the petition as time-barred was denied, because it was not certain that the petitioner could not prove that the respondent had committed assault in the third degree. Police Department v. Fredericks, OATH Index Nos. 386/97, 616/97 (Feb. 18, 1997).

¶ 11. Motions to disqualify opposing counsel are disfavored, because a party's right to select counsel has constitutional implications, and rejection of the counsel selected can work substantial hardships. Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996).

¶ 12. Although a person generally may not serve both as trial counsel and as a trial witness, an exception was permitted where, pursuant to applicable provisions of the Code of Professional Responsibility, the party's need for the individual as a witness was distinctive and disqualification of the individual from serving as trial counsel would impose a substantial hardship on the party. However, trial counsel was required to arrange for another attorney to conduct the proceedings while trial counsel testified. Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996).

¶ 13. A party's motion to disqualify opposing counsel, a former city employee, based on the post-employment restrictions contained in the city's conflicts of interest law, was denied because counsel had not worked on the particular matter that was to be tried while she had served as a city employee. Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996).

¶ 14. Submission of pre-trial amicus brief permitted where judge found no delay in briefing schedule. **Comm'n on Human Rights v. 325 Cooperative, Inc.,** OATH Index No. 1423/98, mem. dec. (July 16, 1998).

¶ 15. Delay of almost four years between the date of the charged acts of bribery and the date of the hearing does not sustain a motion to dismiss under Charter section 1046(c) that hearing be held within a reasonable time, absent proof of substantial prejudice to respondents due to the delay. **Taxi and Limousine Comm'n v. Chrisanthos, Inc.,** OATH Index Nos. 1626-32/95 (July 21, 1998); **Statharos v. NYC Taxi & Limousine Comm'n,** 269 A.D.2d 280, 703 N.Y.S.2d 461 (1st Dep't 2000).

¶ 16. Motion to dismiss for untimely service of charges denied, where the conduct fell within the crimes exception to the statutory limitations period because respondent was found to have incurred principal liability for the crime of assault in the third degree as an accessory. **Police Dep't v. Murray,** OATH Index Nos. 1695, 1820/98 and 183/99 (Nov. 6, 1998), **rev'd on other grounds,** Comm'r Decision (Dec. 3, 1999).

¶ 17. Parties may not decide unilaterally to proceed directly to trial and forego a previously scheduled conference without first making a motion to the administrative law judge. **Human Resources Admin. v. Danagogo,** OATH Index No. 373/99, letter decision dated Nov. 18, 1998.

¶ 18. Where a subtenant brought an overcharge claim against the prime tenant, then later moved to disqualify the subtenant's attorney because the attorney also represented the building owner. Administrative law judge denied the motion, noting that the owner was not a party to the litigation and finding the alleged conflict of interest due to dual representation to be conjectural. **Matter of Shannon**, OATH Index No. 1757/99, mem. dec. (Apr. 15, 1999).

¶ 19. To accommodate her disability, petitioner sought a first floor apartment. The landlord denied the request because all of the first floor apartments were occupied under existing lease agreements. Petitioner sought joinder of real estate company and hospital, which leased first floor apartments from the landlord and then in turn leased those units to subtenants, on the ground that they were necessary parties to the requested relief, a first floor apartment. Under this section, the joinder of necessary parties is at the discretion of the administrative law judge. Finding that displacement of existing tenants would not be an available remedy if petitioner was ultimately successful, the administrative law judge denied the motion. **Hagopian v. NJR Associates**, OATH Index No. 2368/99, mem. dec. (Dec. 9, 1999).

¶ 20. Petitioner's motion to reopen was properly addressed to OATH administrative law judge where judge had previously withdrawn the original report and recommendation to correct an error. Administrative law judge granted the motion to supplement the record with further proof on the issue of liability, noting that although petitioner had not made a compelling showing that the evidence to be offered was unavailable at the original hearing, the motion was unopposed and "the dictates of justice militate against penalizing a party for . . . oversight or error of law in not introducing material evidence during the course of the hearing that was then available." **Office of the Comptroller v. NAB Management Associates, Inc.**, OATH Index No. 2162/99, mem. dec. (Oct. 8, 1999).

¶ 21. Respondent's motion to reopen the record to admit into evidence the unsolicited post-hearing affidavit from a Step 1A conference leader was granted as material and relevant to an assessment of petitioner's chief witness' credibility. Petitioner's motion to submit a letter containing the preliminary investigatory findings of the State Health Department's investigation into this matter was denied on procedural grounds as well as on the merits. The motion was procedurally defective because it was not served on petitioner's adversary. On the merits, the document was excluded because the administrative law judge found it would be unfair to the respondent if the judge were to rely on a bald conclusory statement regarding respondent's culpability in the incident. **Health and Hospitals Corp. (Seaview Hospital Rehabilitation Center and Home) v. Rayside**, OATH Index No. 972/99, mem. dec. (Apr. 15, 1999).

¶ 22. Administrative law judge denied respondent's motion to dismiss where respondent claimed that a related matter was pending in the Federal courts and that it would be improper for the tribunal to usurp the courts' jurisdiction over any issues which might be raised in the Federal suit. Administrative law judge found that respondent's action had been irrevocably dismissed, except for a still pending motion addressed to the Supreme Court of the United States to reconsider its denial of **certiorari. Triborough Bridge and Tunnel Auth. v. King,** OATH Index No. 501/00, mem. dec. (Jan. 24, 2000).

¶ 23. On a motion to dismiss for failure to state a **prima facie** case, made at the close of petitioner's direct case, the trier of fact is required to afford petitioner every inference which may be properly drawn from the facts presented and to consider petitioner's evidence in its most favorable light, in determining whether proof sufficient to establish all of the necessary elements of the charged misconduct was presented. **Dep't of Buildings v. Jennings,** OATH Index No. 561/00 (Nov. 30, 2000).

¶ 24. Administrative law judge granted respondents' motion to dismiss disciplinary charges where complainant and witnesses failed to appear on scheduled trial date despite prior notice and having been subpoenaed, the case was three and a half years old and involved minor discourtesy charges, there had been previous adjournments either due to petitioner's witnesses' inability to appear or petitioner's failure to properly order respondents in for trial, and the case had been marked final by this tribunal two dates prior to date at issue. Balance of competing interests of Department in providing an opportunity for civilian complaints to be aired, respondents, in an expeditious final result, and this tribunal in the integrity of its prior rulings, weighs in favor of dismissal. **Police Dep't v. Sanchez,** OATH Index Nos. 548-49/00 (Feb. 16, 2000).

¶ 25. Petitioner is required in the first instance to present proof as to each and every element of offense in its direct case. Administrative law judge, in evaluating **prima facie** motion to dismiss, is required to give every favorable inference to petitioner's proof at that juncture. It is a fundamental element of petitioner's direct case to provide some proof that respondent was the offending officer. Administrative law judge granted respondent's motion to dismiss for failure to make a **prima facie** case, made at the close of petitioner's case, where hearsay evidence produced by petitioner failed to prove that respondent was the police officer who intentionally tightened the complainant's handcuffs to cause him pain. **Police Dep't v. Kendricks,** OATH Index No. 1586/00 (July 11, 2000).

¶ 26. Administrative law judge denied motion for disqualification of petitioner's counsel based on counsel's participation in a pre-trial investigatory interview of respondent and precluded respondent from calling petitioner's counsel as a witness. Respondent failed to show that petitioner's counsel was a "necessary" witness. **Dep't of Buildings v. Jennings,** OATH Index No. 561/00 (Nov. 30, 2000).

¶ 27. After respondent filed a memorandum of law in support of his contention that the use of the premises was not in violation of the Zoning Resolution, petitioner was granted eight days to respond to the memorandum pursuant to this rule and 48 RCNY § 1-50. **Dep't of Buildings v. Owners, Occupants, and Mortgagees of 160 St. Albans Place, Staten Island,** OATH Index No. 870/01 (Apr. 23, 2001).

¶ 28. Administrative law judge denied pre-trial motion to dismiss, based on allegations that hospital's intimidation of certain potential witnesses would make a fair hearing impossible, because potential witnesses identified by the respondent had not yet refused to appear or to testify at trial. **Health and Hospitals Corp. (Coney Island Hospital) v. Jellinek,** OATH Index No. 2192/01 (Nov. 23, 2001).

¶ 29. Motion to dismiss on the basis of laches and prejudicial delay was denied where respondents did not make the requisite showing of actual substantial prejudice to their ability to defend against the charges. **Dep't of Buildings v. Sarabella,** OATH Index Nos. 2258-59/00 (July 2, 2001).

¶ 30. In a Loft Board proceeding, petitioner-tenant moved to suppress tape recorded conversations between petitioner and doorman/security guard on the ground that the recording was made without petitioner's knowledge or consent. OATH lacks jurisdiction to exclude the tape pursuant to CPLR § 4506(1), which provides that the motion to suppress be made before a justice of the Supreme Court in the district where the proceeding is pending. Further, as the security guard was a party to the conversation and consented to the taping, the taping was not illegal within the meaning of state law (Penal Law §§ 250.00(2), 250.05). **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part on other grounds,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 31. Written motions filed with OATH must meet certain minimum standards pursuant to subsection (c) of this section, including the caption of the case with the OATH Index number; a clear statement of the nature of the motion and the specific relief sought; a specific statement of the grounds upon which the motion is based along with supporting facts and authority; proof of service upon an adversary and notice of time within which an answer may be filed. **Dep't of Correction v. Battle,** OATH Index No. 1052/02, mem. dec. (May 15, 2002).

¶ 32. A motion for reargument, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended relevant facts or misapplied a controlling principle of law. Counsel for petitioner sought to renew its request to call a conference judge as a witness. The original motion was denied under OATH rule 1-31(b), which prohibits parties from calling an administrative law judge as a witness if the subject of the testimony concerns statements made at a settlement conference. In the motion for reargument, counsel argued only that the information presented at the settlement conference was outside the context of settlement negotiations because it led to new charges related to the same incident that was the subject of the conference. The administrative law judge found that counsel had an opportunity to make that argument in the original motion and could not raise it on reargument. **Dep't of Buildings v. Goldberg,** OATH Index No. 652/03, mem. dec. (Jan. 24, 2003).

¶ 33. Motion to disqualify counsel granted pursuant to Disciplinary Rule 5-102, which prohibits an attorney from representation when it is obvious that he may be called as a witness on a significant issue; here, the adverse party intended to use at trial an affirmation made by counsel which contained statements adverse to his client. **Dep't of Finance v. Jones**, OATH Index No. 1127/06, mem. dec. (Mar. 9, 2006).

¶ 34. The Department of Buildings brought a license revocation proceeding against a master plumber. The plumber, who also works for the Department of Sanitation, made a pretrial motion to suppress statements he made to the Department of Investigation on the ground that the investigators failed to inform him of his right to representation under section 75 of the Civil Service Law. ALJ denied the motion, finding section 75 inapplicable in the license revocation proceeding. **Dep't of Buildings v. Grande**, OATH Index No. 794/06, mem. dec. (Mar. 9, 2006).

¶ 35. Preclusion of an agency's requested witness is the proper remedy for agency's repeated failure to identify the witness during numerous pretrial communications establishing the agency's witness list. **Dep't of Housing**

Preservation & Development v. Porres, OATH Index No. 627/06 (June 16, 2006).

¶ 37. Sanctions in the form of a fine of $1,000 imposed upon petitioner's counsel for counsel's willful disobedience of tribunal's orders setting trial date and requiring proper harassment pleading and production of trial exhibits. Loft Board rejects ALJ's recommendation that application be dismissed with prejudice or conditions be placed on applicant before he may refile and remanded the matter to OATH for resolution of existing claims. **Dawe v. 20 Beaver Street LLC**, OATH Index Nos. 237/06 and 335/06, mem. dec. (Oct. 20, 2006), **rejected in part and remanded,** Loft Bd. Order No. 3161 (Feb. 15, 2007).

¶ 38. Summary judgment is appropriate where there is no triable issue of fact and the movant has established entitlement to relief as a matter of law. There is no need for an evidentiary hearing where there is no material factual dispute. Held: in Loft Board matter, tenant was entitled to summary judgment in an overcharge case. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the

amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

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Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-41 Consolidation; Separate Trials.

All or portions of separate cases may be consolidated for trial, or portions of a single case may be severed for separate trials, in the discretion of the administrative law judge. Consolidation or severance may be ordered on motion or **sua sponte,** in furtherance of justice, efficiency or convenience.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Under this section and 48 RCNY §1-26(a), joint trial of cases involving the same parties in mandatory unless real and substantial prejudice by joint trial is shown. It is presumed that the trial judge will be able to distinguish proper inferences and arguments from improper ones. Human Resources Administration v. Man-of-Jerusalem, OATH Index No. 790/91 (Nov. 12, 1991).

¶ 2. The fact that the petition alleges multiple counts of misconduct, even multiple counts of similar misconduct, is not a basis for separate trials on the different counts. Human Resources Administration v. Man-of-Jerusalem, OATH

Index No. 790/91 (Nov. 12, 1991); Police Department v. Ruotolo, OATH Index No. 612/91 (Mar. 14, 1991).

¶ 3. Severance of the petition for two separate trials is committed to the trial judge's discretion, and may be ordered by the trial judge **sua sponte.** Where the parties are ready to proceed to trial on certain employee disciplinary charges but not others, and where five days have been set aside for trial, severance is preferable to a continuance or last-minute adjournment of trial. Board of Education v. Osoba, OATH Index No. 237/92 (Feb. 28, 1992). See also Police Department v. Combs, OATH Index Nos. 1073/91, 422/92 (July 7, 1992).

¶ 4. Untimeliness of a motion for a severance, made on the day of trial, is an important factor weighing against grant of the motion. Police Department v. Ruotolo, OATH Index No. 612/91 (Mar. 14, 1991).

¶ 5. Where joint adjudication and trial of two pending cases pursuant to the Loft Law would conserve resources for the parties and this tribunal, consolidation of the two cases was ordered. **Matter of 315 Berry Street Corp.,** OATH Index No. 764/96 (Nov. 9, 1995).

¶ 6. Six separate license revocation proceedings against six different licensees, involving identical charges and common issues of law and fact, were consolidated by the administrative law judge **sua sponte** pursuant to this section. Department of Buildings v. Catapano, OATH Index Nos. 1066/97, 1091/97, 1122/97, 1184-86/97 (July 17, 1997).

¶ 7. Administrative adjudication is intended to be expeditious and efficient, and therefore such proceedings as bifurcated trials are largely alien to administrative law, and the presumption against bifurcation of trial is quite a heavy one. Department of Environmental Protection v. Bruni, OATH Index No. 1038/96 (May 16, 1996).

¶ 8. Severance of the petition for two separate trials is a matter for the trial judge's discretion. Board of Education v. Osoba, OATH Index No. 237/92 (Feb. 28, 1992).

¶ 9. The contention by both parties that bifurcation of trial might improve the prospects of a settlement of the case was, by itself, insufficient to justify bifurcation. Department of Environmental Protection v. Bruni, OATH Index No. 1038/96 (May 16, 1996).

¶ 10. Where resolution of a preliminary issue in favor of the respondent would dispose of the case, alleviating the need for the petitioner to call its main witness on the merits of the case from North Carolina, and where the trial would take two days even if not bifurcated, the possibility of saving the petitioner and the taxpayers the considerable expense of bringing the out-of-state witness to trial warranted a bifurcated trial and resolution of the preliminary issue. Department of Environmental Protection v. Bruni, OATH Index No. 1038/96 (May 16, 1996).

¶ 11. On application to sever trial, charged employee failed to rebut heavy presumption against bifurcation given the interests of administrative efficiency weigh in favor of consolidating incidents for trial. **Dep't of Correction v. Graham**, OATH Index No. 1380/03 (Feb. 25, 2004).

¶ 12. Administrative law judge consolidated harassment and access applications for trial. **Matter of Alkara,** OATH Index No. 1101/03 (Oct. 6, 2004), **aff'd in part, modified in part**, Loft Bd. Order No. 2920 (Apr. 21, 2005) & **Matter of Plot Realty, LLC,** OATH Index No. 1285/03 (Oct. 6, 2004), **aff'd**, Loft Bd. Order No. 2920 (Apr. 21, 2005).

FOOTNOTES

1

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-42 Witnesses and Documents.

The parties shall have all of their witnesses available on the hearing date. A party intending to introduce documents into evidence shall bring to trial copies of those documents for the administrative law judge, the witness, and the other parties. Repeated failure to comply with this section may be cause for sanctions, as set forth in §1-13(e).

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. ALJ denied agency's request to call an additional witness to testify to tenant statements where offer of proof failed to identify tenants or specify substance of the statements. **Dep't of Housing Preservation & Development v. Porres**, OATH Index No. 627/06 (June 16, 2006).

FOOTNOTES

1

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of

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Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-43 Subpoenas.

(a) A subpoena **ad testificandum** requiring the attendance of a person to give testimony prior to or at a hearing or a subpoena **duces tecum** requiring the production of documents or things at or prior to a hearing may be issued only by the Administrative Law Judge upon application of a party or **sua sponte.**

(b) A request by a party that the Administrative Law Judge issue a subpoena shall be deemed to be a motion, and shall be made in compliance with §1-34 or §1-50, as appropriate; provided, however, that such a motion shall be made on 24 hours notice by electronic means or personal delivery of papers, including a copy of the proposed subpoena, unless the Administrative Law Judge directs otherwise. The proposed subpoena may be prepared by completion of a form subpoena available from OATH. The making and scheduling of requests for issuance of subpoenas by telephone conference call to the Administrative Law Judge or by electronic means is encouraged.

(c) Subpoenas shall be served in the manner provided by §2303 of the Civil Practice Law and Rules, unless the Administrative Law Judge directs otherwise. The party requesting the issuance of a subpoena shall bear the cost of service, and of witness and mileage fees, which shall be the same as for a trial subpoena in the Supreme Court of the State of New York.

(d) In the event of a dispute concerning a subpoena after the subpoena is issued, informal resolution shall be

attempted with the party who requested issuance of the subpoena. If the dispute is not thus resolved, a motion to quash, modify or enforce the subpoena shall be made to the Administrative Law Judge.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section amended City Record June 29, 1998 eff. July 29, 1998. [See Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

NOTE

1. Statement of Basis and Purpose in City Record June 29, 1998:

Effective July 1, 1997, the Hearings Bureau of the Commission on Human Rights (the "Commission") was discontinued and the Bureau's adjudication function was transferred to the Office of Administrative Trials and Hearings ("OATH"). These amendments to the rules of practice of OATH, and the simultaneous amendments to the rules of practice of the Commission, are intended to facilitate that transfer without change to the substantive law applicable to those adjudications, and with the least possible change to the procedures applicable to those adjudications.

The Commission's adjudications, both as previously conducted by the Hearings Bureau and as now conducted by OATH, result in the issuance of recommended decisions from administrative law judges to the Commission, which the Commission may adopt in full, modify, or reject in full. Therefore, the Commission retains the same final role in adjudication as it had before the transfer.

The amendments to the Commission's rules delete from the Commission's rules of practice (Title 47, Chapter 1, Rules of the City of New York), most rules governing pre-hearing, hearing and post-hearing procedures. To the extent that OATH's existing rules of practice (Title 48, Chapter 1, Rules of the City of New York) are substantially consistent with the Commission's existing rules, OATH's existing rules are made applicable to cases referred by the Commission to OATH. To the extent that OATH's existing rules of practice are not substantially consistent with the Commission's existing rules, OATH's rules are amended to include a new Subchapter C in Chapter 2 of Title 48, consisting of rules necessary to conform the practice and procedure at OATH to the former practice and procedure before the Commission's Hearings Bureau. Where the Commission has judged the differences between its former practice and procedure and OATH's practice and procedure to be technical or insubstantial, these amendments would make OATH's existing rules applicable.

Some changes in procedure are adopted by these amendments. For example, by amended section 1-43 of Title 48, OATH adopts for all of its cases a rule governing subpoenas that is identical to the Commission's present rule governing subpoenas (47 RCNY §1-81), except that **ex parte** application for issuance of a subpoena is not permitted. In addition, the time for taking an interlocutory appeal from a decision or order of the administrative law judge is reduced from seven days, as provided in the Commission's former rules (47 RCNY §1-82), to five days, in OATH's amended rules (48 RCNY §2-30). Finally, motions concerning investigative record-keeping and investigative subpoenas, which were made to the Hearings Bureau under the Commission's previous rules (47 RCNY §§1-79, 1-80), will be made to the Chair of the Commission under the Commission's amended rules (47 RCNY §§1-72, 1-73).

CASE AND ADMINISTRATIVE NOTES

¶ 1. This section recognizes that subpoenas may be judicially enforced, but, in the interests of judicial economy, requires that any dispute concerning a subpoena be submitted to the Administrative Law Judge before resort to the courts. Department of Buildings v. Bellman, OATH Index No. 1100/93 (Apr. 11, 1994).

¶ 2. Where a party served an attorney-issued subpoena on the day of trial, and moved for enforcement of the subpoena by the Administrative Law Judge, the application was denied as untimely. Department of Buildings v. Bellman, OATH Index No. 1100/93 (Apr. 11, 1994).

¶ 3. A motion to quash an attorney issued subpoena made to this tribunal in the first instance is actually an application to exclude the testimony of a proposed witness. A demand for a witness with no knowledge of relevant facts is denied where respondent wanted to question her only on points of law. Administrative law judge grants petitioner's motion to quash subpoena calling for production of Deputy Commissioner at trial who had no knowledge of the facts concerning the preparation and service of the charges and was being called only to testify about her interpretation of department rules. **Fire Dep't v. Durkin**, OATH Index No. 309/90, mem. dec. (Jan. 4, 1991).

¶ 4. Respondent requested issuance of subpoenas **ad testificandum** and **duces tecum** for production of contract documents to show a pattern of harassment of respondent. Administrative law judge required offer of proof of testimony of proposed witnesses. Motion for subpoenas denied because respondent provided only representations as to what proposed witnesses might testify to and because contract documents had no apparent relevance to charge. **Transit Auth. v. Wagh,** OATH Index No. 517/02, mem. dec. (Apr. 29, 2002).

¶ 5. Administrative aw judge denied the **Daily News'** motion to quash Department's subpoenas and testimony from its reporter and the photographer, related to published, non-confidential journalistic material. **Dep't of Transportation v. Sampugnaro,** OATH Index Nos. 1564/03, 1565/03 & 1566/03, mem. dec. (June 13, 2003).

¶ 6. Administrative law judge granted the **Daily News'** motion to quash Department's subpoenas requiring production of non-published journalistic materials in accordance with the Shield Law. **Dep't of Transportation v. Sampugnaro,** OATH Index Nos. 1564/03, 1565/03 & 1566/03, mem. dec. (June 13, 2003).

¶ 7. Attorney is sanctioned for issuing his own subpoenas, not on notice to this tribunal or his adversary, in violation of this section. **Matter of Live Centre Tenants Assoc**., OATH Index No. 834/05, mem. dec. (Mar. 2, 2006).

¶ 8. In vehicle retention case, respondent vehicle owner's request for subpoena **ad testificandum** requiring arresting officer to testify denied because requiring the appearance of the arresting officer would run contrary to the letter and spirit of the **Krimstock** Order, sufficient documentary evidence was available in lieu of such live testimony, and the respondent remained free to present his own defense through other witnesses, documentary evidence, or his own testimony. **Police Dep't v. McBrien**, OATH Index No. 1058/09, mem. dec. (Oct. 2, 2008).

FOOTNOTES

1

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-44

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-44 Interpreters.

OATH will make reasonable efforts to provide language assistance services to a party or their witnesses who are in need of an interpreter to communicate at a hearing or conference.

HISTORICAL NOTE

Section amended City Record Aug. 19, 2009 §4, eff. Sept. 18, 2009. [See T48 §1-22 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-45

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-45 Failure to Appear.

All parties, counsel and other representatives are required to be present at OATH and prepared to proceed at the time scheduled for commencement of trial. Commencement of trial, or of any session of trial, shall not be delayed beyond the scheduled starting time except for good cause as determined in the discretion of the administrative law judge. Absent a finding of good cause, and to the extent permitted by the law applicable to the claims asserted in the petition, the administrative law judge may direct that the trial proceed in the absence of any missing party or representative, render a disposition of the case adverse to the missing party, or take other appropriate measures, including the imposition of sanctions listed in §1-13(e). Relief from the direction of the administrative law judge may be had only upon motion brought as promptly as possible pursuant to §1-50 or §1-52. The administrative law judge may grant or deny such a motion, in whole, in part, or upon stated conditions.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Under this section and 48 RCNY §1-52, a respondent's post-trial motion to vacate her trial default is addressed to the trial judge's discretion, and requires a showing that the default was excusable, and that the respondent has a legally viable and factually substantial trial defense. New York City Transit Authority v. O'Connell, OATH Index No. 1076/91 (Nov. 8, 1991).

¶ 2. A post-trial motion to re-open the record before issuance of the trial decision is directed to the trial judge's discretion, and requires a showing that the movant has evidence that is material to the outcome of the case, that the evidence was not improperly withheld, and that the opposing party will not be prejudiced by grant of the motion. New York City Transit Authority v. O'Connell, OATH Index No. 1076/91 (Nov. 8, 1991).

¶ 3. Inability of the respondent to attend trial, due to his incarceration, is no impediment to proceeding in his absence. New York City Transit Authority v. Daniels, OATH Index No. 140/94 (Nov. 18, 1993).

¶ 4. Because service of the petition on the individual and corporate respondents was inadequate under 48 RCNY §1-23(b), the petitioner was not entitled to proceed to trial in the absence of the respondents. Taxi and Limousine Commission v. Larch Cab Corp., OATH Index No. 363/94 (Nov. 29, 1993).

¶ 5. Late arrival to trial by counsel with a history of such late arrivals resulted in the formal admonishment of counsel. Department of Correction v. Pesante, OATH Index No. 618/93.

¶ 6. Upon a respondent's failure to appear for trial in a case under the conflicts of interest law, the Administrative Law Judge will scrutinize the notice of petition and notice of trial for compliance with §§1-23 and 1-28, but need not inquire whether the address at which the respondent was served was the respondent's actual address. Proper procedure is to declare the respondent to be in default and to permit the petitioner to proceed to trial in the respondent's absence, subject to any post-trial motions made by the respondent. Conflicts of Interest Board v. Two City Employees, OATH Index Nos. 605, 641/94 (Apr. 8, 1994).

¶ 7. Upon the respondents' failure to appear for trial in a case brought pursuant to §26-127.2 of the Administrative Code, the petitioner's proof of proper service of the petition and notice of the hearing date was sufficient to permit the trial to proceed in the respondents' absence. **Department of Buildings v. Owners and Occupants of 84-19 115th Street, Queens, New York,** OATH Index No. 1236/95 (June 29, 1995).

¶ 8. Upon the respondent's failure to appear for trial in a license revocation proceeding, the petitioner's proof of proper service of the petition and notice of the hearing, and proof of the respondent's actual knowledge of the petition and hearing date, were sufficient to permit the trial to proceed in the respondent's absence. **Taxi and Limousine Commission v. Vedrine,** OATH Index No. 1001/95 (Sept. 7, 1995); **see also Taxi and Limousine Commission v. Min,** OATH Index No. 669/96 (Nov. 13, 1995).

¶ 9. Upon the 26 respondents' failure to appear for trial in a case brought pursuant to §12-110 of the Administrative Code, proof of proper service of the petitions and notices of hearing were sufficient to permit trial to proceed in the respondents' absence. **Conflicts of Interest Board v. Twenty-Six Individual Respondents,** OATH Index Nos. 135/96, **et al.** (Oct. 16, 1995).

¶ 10. Where the respondent in an employee disciplinary case pursuant to §75 of the Civil Service Law conveyed through his attorney his desire not to attend trial due to the pendency of the respondent's federal civil rights action against the petitioner, the attorney's motion to withdraw from representation of the respondent was granted and trial proceeded in the respondent's absence. **Board of Education v. Clarke,** OATH Index No. 285/95 (Feb. 2, 1995).

¶ 11. Where an employee had notice of employee disciplinary charges against him, and the circumstances indicated that the employee did not wish to defend the charges or retain his employment, the employer was entitled to proceed to trial in the employee's absence notwithstanding untimely notice of trial pursuant to §§1-26(d) and 1-28 of this chapter. Department of Correction v. Boyce, OATH Index No. 1227/97 (Apr. 29, 1997).

¶ 12. Because a food cart licensee is required by the Health Code to keep a current address on file with the Department of Health, the Department's service of the requisite notices by regular and certified mail to the licensees' addresses of record was legally sufficient, and the Department was entitled to proceed to trial in the licensees' absence pursuant to this section. Department of Health v. Moustafa, OATH Index Nos. 533/98, 535/98 (Nov. 5, 1997).

¶ 13. Where an employee, who was required by the employer's rules of conduct to keep his current address on file with the employer, was served with notice of employee disciplinary proceedings by mail to his address of record and was given actual notice of the trial by telephone call from his union representative, the employer was entitled to proceed to trial in the employee's absence pursuant to this section. Health and Hospitals Corporation, Jacobi Medical Center v. Williams, OATH Index No. 282/97 (Oct. 30, 1996).

¶ 14. Where a taxi driver appeared for trial on license revocation charges and the administrative law judge delayed the commencement of trial briefly to allow the driver's attorney time to arrive, and the driver left without explanation before his attorney arrived, trial proceeded in the driver's absence pursuant to this section, and the driver's attorney was permitted to withdraw as counsel. Taxi and Limousine Commission v. Herrera, OATH Index No. 509/98 (Nov. 20, 1997).

¶ 15. Where the petitioner presented evidence that two licensees had signed certified mail receipt cards evidencing their actual receipt of notice of the petition and notice of the hearing, and one of the licensees had written to the petitioner stating that he had no objection to the revocation of his license, the petitioner was entitled pursuant to this section to proceed to trial in the licensees' absence. Department of Buildings v. Catapano, OATH Index Nos. 1066/97, 1091/97, 1122/97, 1184-86/97 (July 17, 1997).

¶ 16. Where the record contained two different addresses for a former city contractor, and service of notices was made by mail to both addresses, the fact that the notices mailed to one of the addresses were returned by the postal service did not render service insufficient because there was no indication that the other address was not valid. Therefore, the petitioner was entitled pursuant to this section to proceed to trial in the former contractor's absence. Comptroller v. Kallo Building Construction Co., Inc., OATH Index No. 868/97 (Mar. 11, 1997).

¶ 17. Where service of notices was made by mail to an employee's last known address, and no other address for the employee was known, the employer was entitled to proceed to trial in the employee's absence pursuant to this section, although all of the notices were returned undelivered. Health and Hospitals Corporation, Bellevue Hospital Center v. Barber, OATH Index No. 193/98 (Aug. 15, 1997).

¶ 18. Upon failure of respondent to appear, and on showing of proof of service, a hearing may proceed in the form of an inquest. **Dep't of Buildings v. Owners, Occupants and Mortgagees of 1517 Rowland Street, Bronx,** OATH Index No. 896/00 (Mar. 13, 2000).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-46

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-46 Evidence at the Hearing.

(a) Compliance with technical rules of evidence, including hearsay rules, shall not necessarily be required. Traditional rules governing trial sequence shall apply. In addition, principles of civil practice and rules of evidence may be applied to ensure an orderly proceeding and a clear record, and to assist the administrative law judge in the role as trier of fact. Traditional trial sequence may be altered by the administrative law judge for convenience of the parties, attorneys, witnesses, or OATH, where substantial prejudice will not result.

(b) The administrative law judge may limit examination, the presentation of testimonial, documentary or other evidence, and the submission of rebuttal evidence. Objections to evidence offered, or to other matters, will be noted in the transcript, and exceptions need not be taken to rulings made over objections. The administrative law judge may call witnesses, may require any party to clarify confusion, fill gaps in the record, or produce witnesses, and may question witnesses directly.

(c) In the discretion of the administrative law judge, closing statements may be made orally or in writing. On motion of the parties, or **sua sponte,** the administrative law judge may direct written post-trial submissions, including legal briefing, proposed findings of fact and conclusions of law, or any other pertinent matter.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Although hearsay is permissible under the relaxed standards of evidence applicable to administrative proceedings, competence rules remain applicable, and a fact can only be alleged by a person who is, and who shows that she is, in a position to know that fact. An allegation related as hearsay must include an indication of the source of the allegation and the competence of that source to know the thing alleged. Penn-Troy Machine Company, Inc. v. Department of General Services, OATH Index No. 478/93 (Mar. 2, 1993).

¶ 2. In general, hearsay evidence is admissible in administrative trials. **Transit Authority v. Castro,** OATH Index No. 748/95 (Mar. 7, 1995); **see also Davidson v. Department of Correction,** OATH Index No. 545/95 (Feb. 7, 1995).

¶ 3. Where the respondent declined to testify and give explanations for the evidence against him, the administrative law judge was permitted to draw the strongest inference against the respondent that the evidence permitted. Department of Correction v. Sorisio, OATH Index No. 2110/96 (Apr. 30, 1997); see Department of Correction v. Brookins, OATH Index No. 193/97 (Apr. 21, 1997).

¶ 4. Where the refusal of a witness to appear and testify against the respondent was not shown to be based on a desire to avoid testifying falsely against the respondent, no adverse inference was drawn against the petitioner. Transit Authority v. Tarquini, OATH Index Nos. 1585-87/96 (Aug. 1, 1997).

¶ 5. Prior sworn testimony-in this case, the testimony of a witness at two criminal trials-is among the most reliable forms of hearsay. Transit Authority v. Tarquini, OATH Index Nos. 1585-87/96 (Aug. 1, 1997).

¶ 6. Where the petitioner offered hearsay and double hearsay statements that were contemporaneously made, at a time when the subject matter of the statements was not known to be an issue, and where the respondent's trial testimony contrary to those statements was not credible, the hearsay statements were credited. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 7. Although hearsay is often less reliable than testimony given subject to cross-examination, hearsay was credited over contrary testimony where the hearsay was given contemporaneously and was found to be reliable. Department of Correction v. Boyce, OATH Index No. 789/97 (July 9, 1997).

¶ 8. A hearsay declarant does not present herself to the trier of fact for assessment of her demeanor and credibility; does not submit to cross-examination in which the certainty of her perceptions, her motivations and biases, the reliability of her memory, and her character may be tested by one with a motive to test them vigorously. Therefore, the fact that hearsay is admissible in administrative proceedings does not mean that hearsay is not skeptically received. Triborough Bridge and Tunnel Authority v. Simms, OATH Index No. 1303/97 (May 30, 1997).

¶ 9. A federal court conviction, based on the respondent's guilty plea, was binding on the respondent here, and he was not free to contest the facts established by his conviction. Department of Buildings v. Gelb, OATH Index No. 2155/96 (Mar. 3, 1997).

¶ 10. As a general rule, it is improper to prove that a person did an act on a particular occasion by showing that he did a similar act on a different, unrelated occasion. Therefore, evidence of prior, similar but unrelated acts by the respondents was properly excluded. Department of Housing Preservation and Development v. Isidro, OATH Index No. 777/96 (Mar. 27, 1996).

¶ 11. The scope of permissible cross-examination for purposes of impeachment of a trial witness is a matter that is relegated to the discretion of the administrative law judge. Police Department v. Zisel, OATH Index No. 389/97 (Mar. 7, 1997), modified as to penalty, Comm'r Decision (Sept. 23, 1997).

¶ 12. A witness's conviction for armed robbery, and the underlying nature of the act that led to that conviction, were permissible subjects of cross-examination for purposes of impeachment of the witness. Police Department v. Zisel, OATH Index No. 389/97 (Mar. 7, 1997), modified as to penalty, Comm'r Decision (Sept. 23, 1997).

¶ 13. Cross-examination of a witness about prior bad acts, for purposes of impeachment of the witness, must be founded upon matters about which cross-examining counsel had a good faith basis to inquire. Police Department v. Zisel, OATH Index No. 389/97 (Mar. 7, 1997), modified as to penalty, Comm'r Decision (Sept. 23, 1997).

¶ 14. Where cross-examination of a witness about an alleged prior bad act by the witness was based upon information improperly obtained by cross-examining counsel from sealed records of an arrest that had not led to a conviction, the cross-examination lacked good faith basis and was not permitted. Police Department v. Zisel, OATH Index No. 389/97 (Mar. 7, 1997), modified as to penalty, Comm'r Decision (Sept. 23, 1997).

¶ 15. The respondents' post-trial submission of a statement that the complaining witness against the respondents had been arrested after trial was improper, because an arrest by itself did not constitute proof of wrongdoing, but further hearings were unnecessary because the law presumes that a judge, unlike a jury, is able to ignore improper evidence. Police Department v. Kushner, OATH Index Nos. 447-48/97 (May 1, 1997).

¶ 16. A segment of videotape was admitted into evidence based on the testimony of one of the participants in the incident shown on the videotape, that the tape fairly depicted what had occurred, and based on the testimony of the person who copied the videotape from the original, that the tape segment was unedited and continuous. A second segment of videotape, compiled by editing videotape from three cameras at three different angles, was admitted into evidence based on the testimony from the person who compiled the videotape from the originals, that he had copied all portions of the three different original videotapes that showed any portion of the incident in question, and had compiled them into a single tape to show one continuous sequence of events. Triborough Bridge and Tunnel Authority v. Simmons, OATH Index No. 1166/96 (May 1, 1997).

¶ 17. Documents obtained by the petitioner before the conclusion of a criminal case that was disposed of favorably to the respondent, and before those documents were sealed by court order, could not be introduced into evidence at a subsequent employee disciplinary proceeding against the respondent unless the petitioner obtained an unsealing order from the court that had sealed the records. However, a witness was permitted to testify to the events at issue based on recollection independent of the sealed records, and the petitioner was permitted to introduce into evidence reports of the petitioner's investigators which contained information taken from the criminal case records before those records were sealed. Department of Correction v. Toby C., OATH Index No. 1692/96 (Sept. 19, 1997).

¶ 18. A transcript of the respondent's investigatory interview was admitted into evidence at trial, despite the fact that the transcript was not notarized, because the transcript certification included the stenographer's statement that the transcript was a true and accurate record of the proceeding held in her presence. Department of Buildings v. Mogg, OATH Index No. 1757/96 (May 31, 1996), modified as to penalty, Comm'r Decision (June 24, 1996); Department of Buildings v. Purrier, OATH Index No. 1744/96 (May 29, 1996), modified as to penalty, Comm'r Decision (June 24, 1996).

¶ 19. Although the prior disciplinary history of a respondent in an employee disciplinary case is not admissible to show that the respondent had a propensity to commit the charged misconduct, it may be admissible for other purposes. Here, the prior disciplinary history was admissible to rebut the respondent's contention that the complainant against him overreacted to the encounter with the respondent that was the subject of the instant charges. Department of Correction v. West, OATH Index No. 1498/96 (July 1, 1996).

¶ 20. Where the petitioner bears the burden of proof by a preponderance of the evidence, as in an employee disciplinary case, and disposition of the case turns on the resolution of factual disputes between the petitioner and the respondent, the petitioner must prove that its account of events was more probable than the respondent's. If the weight

of the evidence is with the respondent or if the evidence is equally balanced, the petitioner's case must fail. Department of Correction v. Toby C., OATH Index No. 1692/96 (Sept. 19, 1997).

¶ 21. The petitioners' request to call the respondent's trial counsel as a witness was denied because, although counsel unquestionably had knowledge of facts relevant to the petition, other witnesses were available to the petitioners whose knowledge was equal to counsel's, if not superior, and because grant of the request would have raised difficult questions concerning not only the disqualification of the respondent's trial counsel but also the disqualification of his entire firm. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), rev'd in part and remanded on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 22. Although the rules of this subchapter do not expressly state that a trial must be conducted in the form of a traditional adversarial evidentiary hearing, that procedure is implicit throughout the rules. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997).

¶ 23. Where the material facts were undisputed and disposition of the case turned entirely on the application of the law to those undisputed facts, the petitioner's request, consented to by the respondents, to conduct the trial by written submissions was granted. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997).

¶ 24. Where the respondent spoke with a pronounced accent and could not be understood, and refused to testify through an interpreter, the respondent was permitted to testify, by consent of both sides, by means of written answers to written questions from counsel. Administration for Children's Services v. Lin, OATH Index No. 1665/97 (Dec. 15, 1997).

¶ 25. Hearsay evidence, consisting of affidavit from out-of-state passenger, was insufficient to meet petitioner's burden of proof where credibility questions concerning the complainant's version, motive and honesty required that the right to cross-examination not be dispensed with. **Taxi and Limousine Comm'n v. Gamliel,** OATH Index No. 996/98 (July 24, 1998).

¶ 26. Administrative law judge issued preliminary ruling from the bench that the Dead Man's Statute, CPLR section 4519, is inapplicable in a Loft Board hearing. Party's objection to receipt of testimony on that basis was deemed waived where party did not avail himself of the opportunity to submit authority to the contrary. **Matter of Sultan,** OATH Index Nos. 1314-15/98, at 14, n. 1 (Aug. 18, 1998), **aff'd,** Loft Bd. Order No. 2323 (Oct. 27, 1998).

¶ 27. No adverse inference was drawn from petitioner's unintentional loss of tape recordings of witness interviews, because respondent had summaries of the witnesses' statements and was able to cross-examine the witnesses effectively. **Dep't of Correction v. Whitehead,** OATH Index No. 1552/97 (Oct. 10, 1997).

¶ 28. As a general rule, petitioner may not use a prior disciplinary disposition that was adverse to the respondent to prove that respondent is guilty of the instant disciplinary charges. **Dep't of Correction v. Whitehead,** OATH Index No. 1552/97 (Oct. 10, 1997).

¶ 29. A detective taped a conversation that she had with respondent civil servant without respondent's knowledge. Ethical opinions have generally condemned secret taping by lawyers as unethical, but have recognized an exception for such taping by law enforcement personnel and prosecutors, where one party to the conversation consents to the recording. Respondent's motion to suppress the secretly taped conversation denied. **Dep't of Finance v. Diaz,** OATH Index No. 611/98 (Dec. 11, 1997).

¶ 30. As a general rule, petitioner may not use a prior disciplinary disposition that was adverse to respondent to prove respondent guilty of the instant disciplinary charges. **Dep't of Correction v. Whitehead,** OATH Index No. 1552/97 (Oct. 10, 1997).

¶ 31. It is within the administrative law judge's discretion to permit rebuttal testimony by a witness not called on

either petitioner's or respondent's direct case, where respondent's attorney did not object and the testimony did not unduly protract the proceeding. **Police Dep't v. Guarino,** OATH Index No. 1696/98 (Dec. 17, 1998).

¶ 32. Administrative law judge admitted into evidence the transcript of respondent's investigatory interview over respondent's objection that he was never offered an opportunity to correct any errors in the transcription of his statements. While CPLR section 3116(a) requires that a deposed person be given his deposition for changes and signing (see also CPLR section 5525(c)), no departmental rule or regulation requires a similar procedure be followed for a recorded investigatory interview. The collective bargaining agreement provided that a record of the interview be made available to a member who is brought up on charges based on answers to the questions; here there was no indication respondent requested a copy of the transcript, nor has he asserted that it contained any errors or omissions. **Fire Dep't v. Durkin**, OATH Index No. 309/90, mem. dec. (Jan. 4, 1991).

¶ 33. In a default proceeding, one-page conclusory memos from a supervisor were found to be unreliable and insufficient to sustain charges of insubordination and neglect of duty. Other hearsay evidence was found to have established unauthorized absence and excessive lateness charges. **Dep't of Homeless Services v. Ighodaro**, OATH Index No. 1594/99 (June 11, 1999).

¶ 34. Hearsay account of threatening phone call was found insufficient to prove conduct absent testimony of "victim," since her credibility was placed in question, having been the former paramour of respondent's husband. **Dep't of Correction v. Aiken**, OATH Index No. 1750/99 (Aug. 4, 1999).

¶ 35. Hearsay evidence was found insufficient to meet petitioner's burden of proof that respondent used excessive force against a civilian, where it was central to the outcome of the case, complainant had arguable bias, complainant failed to make a complaint or appear at the hearing but instead had fled criminal court jurisdiction and made prior inconsistent statements. **Police Dep't v. Nieves**, OATH Index No. 1888/99 (Oct. 4, 1999).

¶ 36. Imposition of a prior fine on respondent was admissible to rebut respondent's claim that he lacked notice of a rule prohibiting his use of a City car for anything other than official business. **Dep't of Housing Preservation and Development v. Thomas**, OATH Index No. 1175/99 (June 10, 1999).

¶ 37. In Loft Board proceeding, denying owner's request to call rebuttal witness was within administrative law judge's discretion where it was made on the last scheduled hearing day, four months after the testimony began, and where the witness was not newly discovered and the owner could have called the witness during his direct case. **Matter of DeLong,** OATH Index Nos. 266 & 518/99 (Oct. 4, 1999), **aff'd and remanded,** Loft Bd. Order No. 2457 (Dec. 13, 1999), **application for reconsideration denied,** Loft Bd. Order No. 2500 (Mar. 30, 2000).

¶ 38. Administrative law judge ruled that petitioner laid proper foundation for drug test results to be admitted as a business record. **Dep't of Parks and Recreation v. Nappa,** OATH Index No. 306/00 (Jan. 25, 2000), **modified on findings, aff'd on penalty,** Comm'r Dec. (Feb. 9, 2000).

¶ 39. A pre-trial application to present testimony via speaker telephone was denied where basis of application was uncertainty of whether and when a witness might be called to testify and where documents would be exhibited to the witness. Under this section, applications to present testimony by alternative means are within the discretion of the Administrative Law Judge. **Matter of Pelli**, OATH Index Nos. 1195-96/01, mem. dec. (Jan. 11, 2001).

¶ 40. Petitioner's application to call a rebuttal witness was denied at the conclusion of a case. A party may not offer rebuttal evidence except to counter new facts affirmatively asserted by its adversary. Pursuant to this rule, the use of rebuttal witnesses is within the discretion of the ALJ. **Dep't of Sanitation v. Ambrosino,** OATH Index No. 208/01 (May 30, 2001).

¶ 41. Administrative law judge denied petitioner's application for a continuance to call a rebuttal witness who was an obvious participant in the events in question. **Dep't of Sanitation v. Edgar,** OATH Index No. 2228/01 (Dec. 3,

2001).

¶ 42. Administrative law judge granted respondent's motion to dismiss without prejudice where petitioner refused to obey Administrative law judge's direction to proceed with other witnesses when its main witness was unavailable to testify. **Dep't of Environmental Protection v. Elliott**, OATH Index No. 1647/03, mem. dec. (Feb. 17, 2004).

¶ 43. Application to call rebuttal witness made during closing argument denied where there was no undue surprise. **Health & Hospital Corp. (Segundo Ruiz Belvis Diagnostic and Treatment Center) v. Pena**, OATH Index No. 1961/04 (Oct. 14, 2004).

¶ 44. WWW.Mapquestcom adequately provides one measure of driving distances, reliable enough for administrative proceedings, to show at least in terms of gross estimates, that City employee was not using City van exclusively for City business. **Human Resources Admin. v. Allen**, OATH Index No. 212/06 (June 28, 2006).

¶ 45. Dead Man's statute will not be applied reflexively in administrative hearing. **Dep't of Housing Preservation & Development v. 331 West 22nd Street LLC**, OATH Index No. 912/06, mem. dec. (Dec. 29, 2006).

¶ 46. The attorney-client privilege may be asserted by the client or the attorney or someone who stands in their interest. A litigant may not preclude the admission of evidence by claiming it violates his adversary's privilege. Building owner could not assert attorney-client privilege on behalf of deceased tenant. **Dep't of Housing Preservation & Development v. 331 West 22nd Street LLC**, OATH Index No. 912/06, mem. dec. (Dec. 29, 2006).

¶ 47. In a taxi license revocation hearing, documentary evidence was found sufficiently reliable, by itself without witness testimony, to establish prima facie case that licensee's urine tested positive for marijuana, which licensee failed to rebut. Documents included an affidavit from a toxicologist, with accompanying chain of custody form, toxicology reports and a confirmation from a medical review officer. **Taxi & Limousine Comm'n v. Shakoor**, OATH Index No. 860/08 (Nov. 30, 2007).

¶ 48. In the exercise of discretion, ALJ admitted polygraph test results in a disciplinary hearing at the accused worker's request, where the worker presented sufficient evidence that a recognized expert performed the test on a properly functioning machine. **Dep't of Sanitation v. Bacigalupo**, OATH Index No. 2091/07 (Jan. 25, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

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Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-47 Evidence Pertaining to Penalty or Relief.

(a) A separate trial shall not be held as to the penalty to be imposed or the relief to be granted in the event that the petition is sustained in whole or in part.

(b) In the event that a personnel file, abstract of a personnel file, driver record, owner record, or other similar or analogous file is not admitted into evidence at the trial on the merits, the administrative law judge, upon determining that the petition shall be sustained in whole or in part, may request that the petitioner forward such file or record to the administrative law judge for consideration relative to penalty or relief. That request may be conveyed to the petitioner or the petitioner's representative **ex parte** and without further notice to the respondent. The petitioner shall forward only the requested file or record, without accompanying material, and such file or record shall include only material which is available from the petitioner for inspection by the respondent as of right. In his or her report and recommendation, the administrative law judge shall refer to any material from such file or record relied on in formulating the recommendation as to penalty or other relief.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pursuant to this section, evidence relevant to penalty may be adduced at trial, or after trial by submission, in an employee disciplinary case, of the employee's personnel file. **Human Resources Administrative v. Brown,** OATH Index No. 1557/95 (Dec. 1, 1995).

¶ 2. The petitioner is entitled to adduce any relevant evidence, from any competent source, in an effort to prove any fact that might aggravate the penalty to be imposed on the respondent. **Human Resources Administrative v. Brown,** OATH Index No. 1557/95 (Dec. 1, 1995).

¶ 3. Generally speaking, the petitioner bears the burden of proof of aggravating factors, and the respondent bears the burden of proof of mitigating factors. **Human Resources Administrative v. Brown,** OATH Index No. 1557/95 (Dec. 1, 1995).

¶ 4. Administrative law judge denies motion seeking modification of procedures used by OATH to request and consider personnel materials. Administrative law judge found that section 1-47(b) of OATH's Rules of Practice provides notice of the procedures to be followed when requesting and considering personnel materials and that these procedures satisfy the "fundamental fairness" standard set forth in **Bigelow v. Board of Trustees,** 63 N.Y.2d 470, 474, 483 N.Y.S.2d 173, 174 (1984). **Dep't of Sanitation v. Joyce,** OATH Index 888-89/00, mem. dec. (May 8, 2000).

¶ 5. Unadjudicated allegations and police report in respondent's personnel file could not be considered for purposes of penalty. **Health and Hospitals Corp. (Woodhull Medical and Mental Health Center) v. Pawlowski,** OATH Index No. 1836/00 (Oct. 4, 2000).

¶ 6. A post-trial motion to obtain copies of material from respondent's personnel file submitted to ALJ for review in making a penalty recommendation and requesting a hearing with respect to the documentation contained in the file prior to the issuance of a report and recommendation was denied. Subsection (b) of this section provides notice of the procedures to be followed when requesting and considering personnel material and that these procedures satisfy the fairness standard articulated in **Bigelow v. Board of Trustees,** 63 N.Y.2d 470, 474, 483 N.Y.S.2d 173, 174 (1984). As the administrative law judge may consider only those records that respondent may inspect as of right, respondent therefore may review his personnel records at any time prior to submission to the judge and may, if necessary, correct any errors or omissions in the records. Finally, respondents have a right to comment to the final decision maker prior to the issuing of a final decision in the matter. **Triborough Bridge and Tunnel Auth. v. Mondiello,** OATH Index No. 1563/01, mem. dec. (June 28, 2001).

¶ 7. Proof that respondent received memoranda which appear in his personnel file were satisfied by notarized statement by his supervisor and therefore could be considered in determination of an appropriate penalty. Memoranda showed that respondent had engaged in similar acts of disrespect towards his supervisors in 1993 and 1994. When considered together with the misconduct found to have occurred in 1999 and 2000, the penalty of termination of employment was recommended. **Bd. of Education v. Fuccio,** OATH Index No. 924/01 (June 21, 2001).

¶ 8. In a disciplinary proceeding, respondent's counsel requested leave to present evidence as to penalties in similar cases that were settled. Under this rule, penalty evidence is not considered prior to a finding that the employee has engaged in misconduct. The administrative law judge denied the motion because stipulations of settlement lack precedential effect. **Triborough Bridge and Tunnel Auth. v. Colon,** OATH Index No. 1501/03, mem. dec. (July 31, 2003).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

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Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-48 Official Notice.

(a) In reaching a decision, the administrative law judge may take official notice, before or after submission of the case for decision, on request of a party or **sua sponte** on notice to the parties, of any fact which may be judicially noticed by the courts of this state. Matters of which official notice is taken shall be noted in the record, or appended thereto. The parties shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by presentation of authority.

(b) Official notice may be taken, without notice to the parties, of rules published in the Rules of the City of New York or in The City Record. In addition, all parties are deemed to have notice that official notice may be taken of other regulations, directives, guidelines, and similar documents that are lawfully applicable to the parties, provided that any such materials that are unpublished are on file with OATH sufficiently before trial of the case to enable all parties to address at trial any issue as to the applicability or meaning of any such materials. Unpublished materials on file with OATH shall be available for inspection by any party or attorney or representative of a party.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. In deciding the merits of a disciplinary petition against a police officer, the trial judge is entitled to take official notice of provisions of the Patrol Guide on file with OATH. Police Department v. Connors, OATH Index No. 348/92 (Feb. 18, 1992).

¶ 2. An unpublished agency policy governing penalty in an employee disciplinary case may either be proved at trial, officially noticed if filed with OATH pursuant to paragraph (b) of this section, or discerned from precedents. Transit Authority v. Monteverde, OATH Index No. 1198/94 (Dec. 5, 1994).

¶ 3. Official notice was taken of symptoms of a disease listed on the website for National Institutes of Health. **Dep't of Correction v. Rodriguez**, OATH Index No. 277/06 (Mar. 27, 2006).

¶ 4. Official notice was taken of driving distances between points of travel as calculated on the internet website, www.Mapquest.com. **Human Resources Admin. v. Allen**, OATH Index No. 212/06 (June 28, 2006).

¶ 5. Official notice taken of research amassed by the federal government in support of the accuracy of GPS. **Dep't of Education v. Halpin**, OATH Index No. 818/07 (Aug. 9, 2007).

FOOTNOTES

1

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

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Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-49 Public Access to Proceedings.

(a) Other than settlement conferences, all proceedings shall be open to the public, unless the administrative law judge finds that a legally recognized ground exists for closure of all or a portion of the proceeding, or unless closure is required by law. Trial witnesses may be excluded from proceedings other than their own testimony in the discretion of the administrative law judge.

(b) No person shall make or cause to be made a stenographic, electronic, audio, audio-visual or other verbatim or photographic reproduction of any hearing or other proceeding, whether such hearing or other proceeding is conducted in person, by telephone, or otherwise, except upon application to the administrative law judge. Except as otherwise provided by law (**e.g.,** N.Y. Civil Rights Law, §52), such application shall be addressed to the discretion of the administrative law judge, who may deny the application or grant it in full, in part, or upon such conditions as the administrative law judge deems necessary to preserve the decorum of the proceedings and to protect the interests of the parties, witnesses and any other concerned persons.

(c) Transcripts of proceedings made a part of the record by the administrative law judge shall be the official record of proceedings at OATH, notwithstanding the existence of any other transcript or recording, whether or not authorized under the previous subdivision of this section.

(d) Unless the administrative law judge finds that legally recognized grounds exist to omit information from a decision, all decisions will be published without redaction. To the extent applicable law or rules require that particular information remain confidential, including but not limited to the name of a party or witness or an individual's medical records, such information will not be published in a decision. On the motion of a party, or sua sponte, the administrative law judge may determine that publication of certain information will violate privacy rights set forth in applicable law or rules and may take appropriate steps to ensure that such information is not published.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (d) added City Record Aug. 19, 2009 §5, eff. Sept. 18, 2009. [See T48 §1-22 Note 1]

CASE NOTES

¶ 1. Application that respondent's wife and a friend be permitted to observe the undercover witness' testimony was denied where divulging the witness' identity would be tantamount to placing him in jeopardy and would compromise ongoing police investigations. Under paragraph (a) of this section, all OATH hearings are open unless legally recognized grounds exist for closure. This rule was interpreted in light of section 1-04, which gives the administrative law judge discretion to waive or modify trial rules as may be appropriate in a particular case to promote the just and fair adjudication of cases. **Dep't of Correction v. Lowndes**, OATH Index No. 1662/99 (July 29, 1999).

FOOTNOTES

1

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-50

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-50 Trial Motions.

Motions may be made during the hearing orally or in writing. Trial motions made in writing shall satisfy the requirements of §1-34. The administrative law judge may, in his or her discretion, require that any trial motion be briefed or otherwise supported in writing. In cases referred to OATH for disposition by report and recommendation to the head of the agency, motions addressed to the sufficiency of the petition or the sufficiency of the petitioner's evidence shall be reserved until closing statements.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The respondent, a correction officer, was gay but had kept that fact private and separate from his professional life. The complainant in the employee disciplinary case against him was his former paramour, and the trial evidence necessarily included considerable evidence about the history and nature of the private relationship between the two men. Therefore, the respondent's motion at the conclusion of trial, to be identified in the report and recommendation only by first name and last initial, in the event that he was not found guilty, was granted in order to protect his privacy.

Department of Correction v. Toby C., OATH Index No. 1692/97 (Sept. 19, 1997).

¶ 2. After respondent filed a memorandum of law in support of his contention that the use of the premises was not in violation of the Zoning Resolution, petitioner was granted eight days to respond to the memorandum pursuant to 48 RCNY § 34 and this rule. **Dep't of Buildings v. Owners, Occupants, and Mortgagees of 160 St. Albans Place, Staten Island,**, OATH Index No. 870/01 (Apr. 23, 2001).

¶ 3. Administrative law judge granted motion to dismiss during trial where petitioner-attorney failed to put on any **prima facie** evidence in support of the charges. **Human Resources Admin. v. Levitant**, OATH Index No. 397/04 (Sept. 7, 2004).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-51

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-51 The Transcript.

Hearings shall be stenographically or electronically recorded, and the recordings shall be transcribed, unless the administrative law judge directs otherwise. In the discretion of the administrative law judge, matters other than the hearing may be recorded and such recordings may be transcribed. Transcripts shall be made part of the record, and shall be made available upon request as required by law.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where respondent, who spoke with a pronounced accent so that he could not be understood, refused to testify through an interpreter, the administrative law judge permitted respondent to testify, by means of written answers to written questions from counsel. **Admin. for Children's Services v. Lin,** OATH Index No. 1665/97 (Dec. 15, 1997).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-51.1

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-51.1 Decision Made on the Record.

An administrative law judge may dispose of a case by making a decision or report and recommendation on the record.

HISTORICAL NOTE

Section added City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-52

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-52 Post-Trial Motions.

Post-trial motions shall be made in writing, in conformity with the requirements of §1-34, to the administrative law judge, except that after issuance of a report and recommendation in a case referred to OATH for such motions, as well as comments on the report and recommendation to the extent that such comments are authorized by law, shall be addressed to the deciding authority.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A post-trial motion for an indefinite delay of the issuance of the report and recommendation, in contemplation of the possibility of a motion to reopen the record following further investigation, was denied where movant provided no reason for delay in concluding his investigations, and there was no reason to expect that the evidence being pursued would be favorable to movant or that the evidence would be available in the near future. Department of Correction v. Grant, OATH Index No. 798/92 (Aug. 26, 1992).

¶ 2. Where the petitioner did not call the respondents during its case in chief, or seek to reserve the right to call the respondents if they did not testify on their own behalf, grant of the petitioner's motion after summations to reopen the record to allow the petitioner to call the respondents, or to introduce transcripts of their pre-trial interviews, would be fundamentally unfair. Police Department v. Abbate, OATH Index Nos. 228 & 230/93 (Nov. 2, 1992).

¶ 3. The respondent's application to re-open the trial to permit the respondent to testify is denied because none of the medical documentation profferred by the respondent showed that the respondent had been unable to appear for trial, especially in light of the fact that the respondent had appeared for pre-trial conferences and the fact that the respondent had travelled out-of-state during the pendency of the case. Department of Correction v. Wilson, OATH Index No. 590/93 (July 30, 1993).

¶ 4. The respondent's application to re-open the trial to permit the respondent to testify is denied because the conclusory assertion by respondent's counsel that the respondent has vital evidence to offer in her own defense does not substitute for an explanation of what that evidence is and how it might alter the outcome of the hearing. Department of Correction v. Wilson, OATH Index No. 590/93 (July 30, 1993).

¶ 5. Although attorney who had not been retained by any party, and who appeared at trial as an "officer of the court," lacked standing to move to vacate the respondent's trial default, the administrative law judge vacated the default **sua sponte** based on information produced by the attorney demonstrating that service of the petition on the respondent had been inadequate under 48 RCNY 1-23(b). Taxi and Limousine Commission v. Larch Cab. Corp., OATH Index No. 363/94 (Nov. 29, 1993).

¶ 6. A respondent's motion to vacate a trial default, if made after trial but before issuance of a decision, may be granted upon the respondent's showing of an excuse for the default and a meritorious defense to the petition. Human Resources Administration v. Rice, OATH Index No. 455/93 (Apr. 7, 1993).

¶ 7. A post-trial motion to re-open the record before issuance of the trial decision is directed to the trial judge's discretion, and requires a showing that new evidence might reasonably alter the outcome of the case, either as to the merits or as to penalty, that there was substantial reason the new evidence was not admitted at trial, and that grant of the motion will not prejudice the other party to the case. Department of Correction v. Tirado, OATH Index No. 1213/94 (Aug. 17, 1994).

¶ 8. Even absent the requisite showing on a motion to reopen the record, the Administrative Law Judge has the discretion to reopen the record to afford the respondents an opportunity to be heard. Taxi and Limousine Commission v. Rolf, OATH Index Nos. 1111-16/93 (Jan. 28, 1994).

¶ 9. A motion to vacate a trial default was denied where the respondent acknowledged the validity of the petition and his only articulated reason for failing to appear at trial was that he "forgot." Conflict of Interest Board v. Sixty-Two City Employees, OATH Index Nos. 593/94 et al. (Apr. 8, 1994).

¶ 10. The respondent's post-trial motion for a new trial was denied where the respondent's counsel, retained by the respondent after trial at which the respondent appeared **pro se,** proffered new evidence relevant to penalty, but not to the merits of the petition. However, the motion was construed to include a request, in the alternative, to re-open the record for submission of additional evidence, and that alternative request was granted. **Human Resources Administrative v. Brown,** OATH Index No. 1557/95 (Dec. 1, 1995).

¶ 11. The respondent's post-trial motion to re-open the record to permit the respondent to present witness testimony was denied because the respondent had knowingly chosen at trial to rest its case solely on documentary evidence. **Davidson v. Department of Correction,** OATH Index No. 545/95 (Feb. 7, 1995).

¶ 12. Post-trial motion by the respondent to re-open the record was denied where the proffered evidence would explain the significance of a circumstance that the trial evidence showed to be possible but highly improbable, such that

the proffered evidence was merely speculative and theoretical. **Department of Correction v. Mack,** OATH Index No. 726/95 (May 22, 1995).

¶ 13. The respondent's post-trial motion to vacate his trial default was denied because the respondent had deliberately chosen not to attend trial due to the pendency of his federal civil rights action against the petitioner. **Board of Education v. Clarke,** OATH Index No. 285/95 (Feb. 2, 1995).

¶ 14. Following trial held in the respondent's absence due to the respondent's failure to appear, the respondent's motion to reopen the record to permit the respondent to testify was denied, because, although the respondent established a reasonable excuse for his failure to appear at trial, he was unable to show that his testimony could support a meritorious defense to employee disciplinary charges that were based on criminal convictions. Health and Hospitals Corporation, Elmhurst Hospital Center v. Stevens, OATH Index No. 447/98 (Nov. 7, 1997).

¶ 15. The petitioner's post-trial motion to reopen the record pursuant to this section, made before issuance of the report and recommendation, was granted where the petitioner showed that the evidence was unknown or unavailable at the time of trial, and the evidence was probative and would not prejudice the respondent. Taxi and Limousine Commission v. Nawaz, OATH Index No. 1433/97 (Aug. 22, 1997).

¶ 16. The petitioner's post-trial motion to reopen the record for admission of two affidavits was denied because the evidence was unavailable at the time of trial and was not reasonably likely to alter the outcome of the trial, and because granting the motion would unfairly allow the petitioner to review the trial evidence and decide to address a disputed issue further. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 17. Where the respondent failed to appear for trial, but moved after trial to reopen the trial, the motion was denied because the respondent's motion established neither a reasonable excuse for his failure to attend trial nor a meritorious defense to the petition. Transit Authority v. Rodriguez, OATH Index No. 1368/96 (May 20, 1996).

¶ 18. The respondent's motion for reconsideration of the recommended penalty was denied because, after issuance of the report and recommendation to the agency head, post-trial motions must be made to the agency head pursuant to this section. Department of Correction v. Spencer, OATH Index No. 1387/97 (Oct. 27, 1997).

¶ 19. After the administrative law judge rendered the report and recommendation on the record at the conclusion of trial, but before the trial and report and recommendation was transcribed and the transcript was forwarded to the deciding authority, post-trial motions are properly made to the administrative law judge pursuant to this rule, not to the deciding authority. Transit Authority v. Rodriguez, OATH Index No. 1368/96 (May 20, 1996).

¶ 20. Pursuant to this rule, respondents may address challenge to the Comptroller of the administrative law judge's finding of default before the Comptroller renders a final decision in the case. **Office of the Comptroller v. IFD Construction Corp.,** OATH Index No. 901/98 (Jan. 26, 1998).

¶ 21. Petitioner's motion to reopen was granted where evidence was unknown or unavailable at trial, appeared to be probative to a trial issue, might reasonably alter the outcome of the case and reopening would not prejudice respondent, who would have the opportunity to test the evidence at trial. **Taxi and Limousine Comm'n v. Nawaz,** OATH Index No. 1433/97, mem. dec. (Aug. 22, 1997).

¶ 22. Motion to vacate default denied for failure to submit a more complete showing in support of the motion, as previously instructed by the administrative law judge. **Taxi and Limousine Comm'n v. Mohammad,** OATH Index Nos. 173-75/99 (Oct. 6, 1998), **modified on penalty,** Comm'n Decision (Feb. 10, 1999).

¶ 23. Respondent's motion to vacate and set aside a stipulation of settlement was denied as there was no longer an active case before OATH. The stipulation constituted a final disposition of the padlock proceeding which could not be set aside without petitioner's consent. **Dep't of Buildings v. Owners, Occupants and Mortgagees of 1565 Grand**

Avenue, Bronx, OATH Index No. 1074/98, mem. dec. (July 2, 1998).

¶ 24. Administrative law judge denies respondent's motion to reopen the record after a settlement because OATH lacks the authority to unilaterally rescind such an agreement. **Dep't of Health v. Khedr,** OATH Index No. 144/99, mem. dec. (Nov. 12, 1998).

¶ 25. Respondent's post-hearing motion to reopen to admit into evidence an unsolicited post-hearing affidavit from Step 1A conference leader was granted as material and relevant to an assessment of petitioner's chief witness' credibility. Petitioner's motion to submit a letter containing the preliminary investigatory findings of the State Health Department's investigation into this matter was denied on procedural grounds (it was not served on respondent) as well as on the merits. **Health and Hospitals Corp. (Seaview Hospital Rehabilitation Center and Home) v. Rayside**, OATH Index No. 972/99 (June 4, 1999).

¶ 26. Respondent, who appeared shortly after the conclusion of the trial, moved to vacate his default, stating that he had been in the building for almost two hours and that he had been misdirected to TLC's offices. Respondent made motion to vacate his default on the record before the administrative law judge and with petitioner's counsel present. Judge granted respondent's motion. **Taxi and Limousine Comm'n v. Singh**, OATH Index No. 618/00 (Dec. 20, 1999).

¶ 27. After a default determination, respondent was terminated from his position and appealed to the Civil Service Commission. The Commission ruled that no appeal lies from a default, but provided respondent time to file a motion to vacate his default. Administrative law judge denied the motion to vacate, finding respondent did not meet the "good cause" standard to excuse his default and that the motion to vacate was untimely. **Fire Dep't v. Parker,** OATH Index No. 2003/99 (July 7, 1999), **aff'd,** NYC Civ. Serv. Comm'n Item No. CD 99-92-SA (Aug. 31, 1999), **reaffirmed,** NYC Civ. Serv. Comm'n Item No. CD 99-117-A (Nov. 19, 1999).

¶ 28. Petitioner moved to dismiss the disciplinary charges due to inability to produce complaining witnesses for trial. Administrative law judge denied the motion, holding it was totally within petitioner's discretion to unilaterally discontinue the case without need for a ruling. Judge ordered agency to proceed to trial. **Police Dep't v. Elcock**, OATH Index No. 1890/99 (May 26, 1999).

¶ 29. Administrative law judge granted motion to vacate default based on **pro se** respondent's notation on respondent's calendar of the wrong date for the hearing. **Dep't of Buildings v. Owners, Occupants and Mortgagees of 1517 Rowland Street, Bronx,** OATH Index No. 896/00 (Mar. 13, 2000).

¶ 30. Motion to vacate default was denied where party put forth an insufficient explanation for his failure to appear, **i.e.,** he forgot about the hearing, and he gave no indication of a meritorious defense. **Dep't of Correction v. Heyward,** OATH Index No. 2041/00 (July 18, 2000).

¶ 31. A motion to vacate a default was granted where respondent was incarcerated on the date of the hearing and notice issues and where respondent established meritorious defenses to allegations of excessive absenteeism, AWOLs, and abusive language. **Health and Hospitals Corp. (Jacobi Hospital Center) v. Velez,** OATH Index No. 748/01 (May 18, 2001).

¶ 32. Motion to vacate default pursuant to section 1-06(i)(2) of the Loft Board's rules is granted as it is the public policy of New York State that a party should not be prejudiced by the running of a statute of limitations in the period following the disaster at the World Trade Center. **Matter of Haley,** OATH Index No. 355/02, mem. dec. (Dec. 6, 2001).

¶ 33. In a padlock proceeding, defaulting owner/occupant moved to vacate default. Administrative law judge found that owner/occupant failed to set forth meritorious defense to allegation of illegal commercial use of residentially zoned premises, but she permitted reopening of the record for the limited purpose of allowing the owner/occupant to offer testimony as to whether padlocking would impair residential access to the premises. The commissioner ruled that the administrative law judge erred when she reopened the record for that purpose, finding the access issue was not a proper

subject for adjudication before the administrative law judge, based upon her interpretation that the padlock law leaves the choice of the method of enforcement to the Department, post-adjudication. **Dep't of Buildings v. Owners, Occupants, Mortgagees of 1410-1414 Vyse Avenue, Bronx,** OATH Index No. 699/02, mem. dec. (Mar. 21, 2002), **rev'd,** Commissioner's Memorandum Decision (Aug. 16, 2002).

¶ 34. Motion to vacate default denied where papers did not provide adequate proof of the reason the respondent failed to attend, and because they did not assert that the respondent had a meritorious defense. **Dep't of Correction v. Patrick,** OATH Index No. 871/02, mem. dec. (Mar. 13, 2002)

¶ 35. Motion to supplement the record made before issuance of report and recommendation denied where the documents offered would not affect the outcome or the penalty recommendation. **Dep't of Sanitation v. Manzi,** OATH Index No. 1753/01 (Dec. 4, 2001).

¶ 36. Respondent failed to appear and the disciplinary hearing went forward in the form of an inquest. After the report and recommendation was issued, respondent's counsel moved to vacate the default. Under OATH rule 1-52, the application was required to be made to the agency head. **Human Resources Admin. v. Smith,** OATH Index No. 1110/03, mem. dec. (May 29, 2003).

¶ 37. Administrative law judge may hear a motion to vacate default prior to the issuance of the report and recommendation to the agency head for final action. **Human Resources Admin. v. Thomas,** OATH Index No. 190/05, mem. dec. (Dec. 8, 2004).

¶ 38. Although noting that under this section, a post report and recommendation, motion should be made to the deciding authority, who, in turn, could refer it to the presiding judge for disposition, ALJ agreed to decide such a motion to reopen record to submit new evidence made by petitioner, **Health and Hospitals Corp. (Harlem Hospital Center) v. Norwood,** OATH Index No. 143/05, mem. dec. (June 20, 2005), where adherence to regular process would have caused further unnecessary delay in the disposition of the disciplinary proceeding, which has remained undecided for six months.

¶ 39. Motion to reopen open the record to submit new evidence was denied where proffered evidence was not likely to change the outcome of the proceeding. **Health & Hospitals Corp. (Harlem Hospital Center) v. Norwood,** OATH Index No. 143/05, mem. dec. (June 20, 2005). After hearing ALJ found that employee's attendance violations were the result of his disability. Hospital sought to reopen record to submit medical officer's report opining that the employee was currently fit to work. ALJ found that the report that the hospital sought to add to the record did not contradict ALJ's finding that the employee suffered from depression at the time of the attendance violations, where the report was based largely on the fact that the employee's condition was in remission because she was currently in treatment and compliant with her medications.

¶ 40. In a padlock proceeding, the building owner made a post-report and recommendation motion to the Commissioner to vacate his default. Motion is denied as Commissioner found the owner did not show a reasonable excuse for his failure to appear (he merely alleged that he misread the notice) or a meritorious defense to the allegation of illegal commercial use of the premises in a residential zone (owner's claim that he was not engaged in commercial activity), where the proof showed storage of unlicensed motor vehicles (dead storage of motor vehicles) in violation of the Zoning Resolution. **Dep't of Buildings v. Owners, Occupants and Mortgagees of 144-11 Lackwood Avenue**, OATH Index No. 176/06 (Sept. 27, 2005), **aff'd and motion to vacation default denied**, Comm'r Dec. (Sept. 29, 2005).

¶ 41. A motion to reargue, addressed to the discretion of the judge, is designed to afford a party an opportunity to establish that the judge overlooked or misapprehended relevant facts or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to the unsuccessful party to argue once again the very questions previously decided. **Dep't of Education v. Brust**, OATH Index No. 2280/07, mem. dec. (Nov. 7, 2007).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a

transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-01 Applicability.

This subchapter shall apply solely to prequalified vendor appeals pursuant to §324(b) of the Charter and the rules of the Procurement Policy Board, 9 RCNY §3-10(m). Chapter 1 shall also apply to such proceedings except to the extent that it is inconsistent with this subchapter.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §2, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Asbestos contractor, appealing revocation of its prequalified vendor status to the Office of Administrative Trials and Hearings failed to demonstrate that the agency's actions were arbitrary or capricious, where it was undisputed that petitioner contracted with a consultant who was under criminal investigation for his involvement as a subcontractor at the Deutsche Bank building, where a fire occurred, killing two firefighters. **Gramercy Group, Inc. v. Dep't of Housing Preservation & Development**, OATH Index No. 637/09, mem. dec. (Nov. 12, 2008).

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-02 Docketing; Service of the Petition.

(a) A vendor shall docket an appeal by delivering to OATH a completed intake sheet, with a petition and appropriate proof of service of the petition upon the agency whose prequalification determination is to be reviewed. The petition shall include a copy of the determination to be reviewed and shall state the nature and basis of the challenge to the determination.

(b) The petition shall be accompanied by a notice to the respondent of its time to serve and file an answer. The notice described in §1-23(a) shall not be required.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. In an appeal from denial of prequalification, service of the petition need not be made on the agency head, and can be made on the agency chief contracting officer (ACCO). Neither this section nor the applicable section of the Procurement Policy Board rules (9 RCNY §7-06) requires service on the agency head. Silverite Construction Co., Inc.

v. Department of Transportation, OATH Index No. 486/94 (Mar. 8, 1994).

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48 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-03 Answer; Reply.

(a) If the petition is served personally on the respondent, the respondent shall file an answer, with appropriate proof of service, within fourteen days of the respondent's receipt of the petition. If the petition is served by mail, it shall be presumed that the respondent received the petition five days after it was served.

(b) The answer shall include the determination to be reviewed, the basis of the determination, admission, denial or other response to each allegation in the petition, and a statement of any other defenses to the petition. The basis of the determination included in the answer shall consist of all documentation and information that was before the agency head, including any submissions by the vendor. To the extent that information in support of the determination was not written, it shall be reduced to writing and included in the answer in the form of affidavits or affirmations, documentary exhibits, or other evidentiary material. Also, defenses may be supported by evidentiary material. The answer may be accompanied by a memorandum of law.

(c) If the respondent's attorney or other representative has not already filed a notice of appearance, such notice shall be filed with the answer.

(d) Within fifteen days of the service of the answer, or within twenty days if such service is by mail, the petitioner may file a reply. The reply may include affidavits or affirmations, documentary exhibits, or other evidentiary material in

rebuttal of the answer, including information provided to the agency head which was not written. The reply may be accompanied by a memorandum of law.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §2, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Facts asserted in the answer and reply should be submitted in evidentiary form as provided in this section, not merely in the form of pleadings signed solely by the parties' attorneys, without indication whether the facts asserted are within the attorneys' knowledge. Penn-Troy Machine Company, Inc. v. Department of General Services, OATH Index No. 478/93 (Mar. 2, 1993).

¶ 2. Reason offered for denial of prequalified status for first time in agency's answer is not considered by the administrative law judge where the information was not before the agency head at the time of the initial determination to deny prequalified status. **East Coast Services, Inc. v. Dep't of Housing Preservation and Development,** OATH Index No. 413/99 (Nov. 5, 1998).

¶ 3. Vendor appealed revocation of its pre-qualified status based upon unsatisfactory performance on two projects. Under paragraph (b) of this section, the answer is limited to "all documentation and information that was before the agency head, including any submissions by the vendor" upon which the decision was based. Therefore, the administrative law judge did not consider affidavits and exhibits submitted by the agency in its answer relating to later events which were not before the agency head at the time the decision to revoke petitioner's pre-qualified status was made. **Matter of Promatech, Inc. v. Dep't of Design and Construction**, OATH Index No. 1590/99 (Sept. 27, 1999).

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48 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-04 Further Proceedings.

An appeal shall be decided on the petition, answer and reply, unless the administrative law judge directs further written submissions, oral argument, or an evidentiary hearing, as may be necessary to the decision of the appeal.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. An evidentiary hearing on a prequalified vendor appeal will be conducted only in the most extraordinary circumstances where a determination cannot otherwise be reached, not simply whenever there are facts in dispute. Rod Knox Architect v. Department of General Services, OATH Index No. 304/93 (Dec. 10, 1992).

¶ 2. This section, which expressly prohibits submission of sur-reply papers, furthers the purpose of speedy and simplified presentation and adjudication of prequalified vendor appeals. In the event that counsel believes sur-reply papers are necessary, proper procedure is an application, which may be made by telephone conference call, for leave to file such papers. The intention of this section is that leave to file sur-reply papers will rarely be granted. Penn-Troy

Machine Company, Inc. v. Department of General Services, OATH Index No. 478/93 (Mar. 2, 1993).

¶ 3. Vendor's motion for document discovery and to make the ACCO and agency head available for deposition was denied. The purpose of an appeal pursuant to this subchapter of the OATH rules is to permit limited and expedited review of a decision already made by the agency, not to provide a **de novo** fact-finding proceeding where that decision will be made anew by an OATH ALJ. **Mazzocchi Wrecking, Inc. v. Dep't of Housing Preservation & Development**, OATH Index No. 1296/06, mem. dec. (Mar. 27, 2006).

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48 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-05 Discovery.

Discovery shall not be permitted except upon order of the administrative law judge in connection with §2-04.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

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48 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-06 Determination.

The administrative law judge shall render as expeditiously as possible a determination as to whether the agency's decision is arbitrary or capricious.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where administrative law judge affirms the agency's findings regarding its factual basis for revoking vendor's prequalified status, administrative law judge retains discretion of decide if the penalty of revocation was inappropriate or was arbitrary or capricious. Administrative law judge found that such penalty review is limited to the "arbitrary and capricious" standard, which is met if there is a rational basis for the administrative action. Administrative law judge found a rational basis for revocation here based upon the vendor's false answers to questions on the VENDEX questionnaire. **Leroy Brookes d/b/a Brookes Plumbing & Heating v. Dep't of Housing Preservation & Development,** OATH Index No. 1275/00 (Apr. 5, 2000).

¶ 2. Asbestos contractor, appealing revocation of its prequalified vendor status to the Office of Administrative Trials and Hearings failed to demonstrate that the agency's actions were arbitrary or capricious, where it was undisputed that petitioner contracted with a consultant who was under criminal investigation for his involvement as a subcontractor at the Deutsche Bank building, where a fire occurred, killing two firefighters. **Gramercy Group, Inc. v. Dep't of Housing Preservation & Development**, OATH Index No. 637/09, mem. dec. (Nov. 12, 2008).

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-07 Copies of Determination.

The respondent shall send copies of the administrative law judge's determination to such non-parties as may be required, for instance, by the rules of the Procurement Policy Board, 9 RCNY §3-10(m)(5).

HISTORICAL NOTE

Section added City Record Oct. 19, 2005 §2, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-21 Applicability.

This subchapter shall apply solely to cases brought by the New York City Commission on Human Rights pursuant to the City Human Rights Law, Title 8 of the New York City Administrative Code. Chapter 1 of this title shall also apply to such proceedings except to the extent that it is inconsistent with this subchapter.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-22 Definitions.

For purposes of this subchapter:

Commission. "Commission" shall mean the New York City Commission on Human Rights.

Complainant. "Complainant" shall be defined according to the Commission's rules, 47 RCNY §1-03.

Party. "Party" shall be defined according to the Commission's rules, 47 RCNY §1-03.

Petition. The complaint as defined in the Commission's rules, 47 RCNY §§1-11, 1-12 shall constitute the petition as defined in §1-01 of Chapter 1 of this title.

Petitioner. "Petitioner" shall mean the Law Enforcement Bureau of the Commission.

Report and recommendation. The "report and recommendation" referred to in this title shall constitute the recommended decision and order referred to in the Commission's Rules.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-23 Proceedings Before Referral to OATH.

Proceedings before the case is docketed at OATH shall be governed by the Commission's rules (47 RCNY §§1-01 to 1-62).

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-24 Docketing the Case at OATH.

(a) Notwithstanding the provisions of §1-26 of this title, only the petitioner may docket a case at OATH. The petitioner shall docket a case by delivering to OATH a completed intake sheet, the notice of referral required by the Commission's rules (47 RCNY §1-71), the pleadings and any amendments to the pleadings, any notices of appearances filed with the petitioner pursuant to the Commission's rules (47 RCNY §1-15), and any changes of address filed with the petitioner pursuant to the Commission's rules (47 RCNY §1-16).

(b) Upon docketing the case at OATH, the petitioner shall serve notice of trial, if a trial date has been selected, and notice of conference, if a conference date has been selected, in compliance with §1-28 of this title.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-25 Intervention.

(a) A person may move to intervene as a party at any time before commencement of the hearing. Intervention may be permitted, in the discretion of the Administrative Law Judge, if the proposed intervenor demonstrates a substantial interest in the outcome of the case. In determining applications for intervention, the Administrative Law Judge shall consider the timeliness of the application, whether the issues in the case would be unduly broadened by grant of the application, the nature and extent of the interest of the proposed intervenor and the prejudice that would be suffered by the intervenor if the application is denied, and such other factors as may be relevant. The Administrative Law Judge may grant the application upon such terms and conditions as he or she may deem appropriate and may limit the scope of an intervenor's participation in the adjudication.

(b) A complainant shall be permitted to intervene as of right, upon notice to all parties and the Administrative Law Judge at or before the first conference in the case, or, if no conference is held, before commencement of trial. The Commission's Law Enforcement Bureau shall prosecute the complaint. Complainants and respondents may be represented by counsel or other duly authorized representatives, who shall file notices of appearance pursuant to the Commission's rules (47 RCNY §1-15), if before referral of the case to OATH, or pursuant to §1-11 of this title, if after such referral.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Submission of pre-trial amicus brief permitted where judge found no delay in briefing schedule. **Comm'n on Human Rights v. 325 Cooperative, Inc.,** OATH Index No. 1423/98, mem. dec. (July 16, 1998).

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-26 Withdrawal or Dismissal of the Petition.

After referral of a case to OATH, but before commencement of the hearing, dismissal of the case by the petitioner on the grounds provided in the Commission's Rules (47 RCNY §1-22), or withdrawal of the case by the petitioner pursuant to §1-32(f) of this title, shall be effected by notice to all other parties and to the Administrative Law Judge. The complainant may move to withdraw the complaint at any time before commencement of the hearing. All other motions to withdraw or dismiss the petition shall be governed by §§1-34 and 1-50 of this title.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Commission's unilateral withdrawal of pending case without prejudice not permitted. Administrative law judge found that this section, which applies only to Human Rights cases, incorporated by reference section 1-32(f), which requires permission from an administrative law judge before a matter can be withdrawn where the withdrawal is not with prejudice or otherwise a final disposition of the case. Sound reasons of calendar control support an interpretation of the rule which requires permission of an administrative law judge before a case can be withdrawn without prejudice.

Blueweiss v. Metropolitan Life Insurance Co., OATH Index No. 852/99, mem. dec. (Mar. 29, 1999).

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-27 Entry of and Relief from Default.

(a) If the notice of referral to OATH alleges that a respondent has not complied with the requirements of §1-14 of the Commission's rules (47 RCNY §1-14), the respondent shall serve and file an affidavit asserting that the respondent has complied with those requirements, or asserting reasons constituting good cause for its failure to comply with those requirements. Such affidavit shall be served and filed at or before the first conference in the case, or, if no conference is held, before commencement of the hearing. If the respondent fails to serve and file such an affidavit within the time allowed by this paragraph, the Administrative Law Judge shall declare the respondent to be in default and shall preclude the respondent from further participation in the adjudication. If the respondent timely serves and files such an affidavit, the Administrative Law Judge shall decide the questions presented, and shall either declare the respondent to be in default and preclude the respondent from further participation in the adjudication, or shall deny the default in full or upon stated terms and conditions which may include such limitations on the respondent's participation in the adjudication as the Administrative Law Judge deems to be equitable.

(b) A respondent against whom a default has been entered pursuant to paragraph (a) of this section may move at any time before issuance of the report and recommendation to open the default. Such a motion must include a showing of good cause for the conduct constituting the default, a showing of good cause for the failure to oppose entry of the default in accordance with paragraph (a) of this section, and a meritorious defense to the petition, in whole or in part. In granting any such motion, the Administrative Law Judge may impose such terms and conditions as he or she deems to

be equitable.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-28 Settlement Conferences.

In addition to or instead of the conduct of settlement conferences pursuant to §§1-30 and 1-31 of this title, the Administrative Law Judge may in his or her discretion, on the request of any party, refer the case for a settlement conference to be conducted by the Commission's Office of Mediation and Conflict Resolution pursuant to the Commission's Rules (47 RCNY Subchapter F). In the discretion of the Administrative Law Judge, proceedings at OATH may be stayed, in whole or in part, pending completion of such settlement conference or for any shorter period of time.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-29 Discovery.

(a) **Policy.** Although strict compliance with the provisions of Article 31 of the Civil Practice Law and Rules shall not be required, the principles of that article may be applied to ensure orderly and expeditious preparation of cases for trial.

(b) **Scope of discovery.** (1) With the exception of the substance of any oral or written communications made by and between a complainant or complainant's counsel and the petitioner subsequent to a determination that probable cause exists, the materials contained in the petitioner's investigatory file shall be available as of right to any party for inspection and copying subsequent to docketing at OATH upon reasonable notice, unless a default has been entered against that party by the Administrative Law Judge.

(2) In the absence of an agreement by the parties, the number of interrogatories, including subparts, shall be limited to fifteen. The Administrative Law Judge may permit additional interrogatories upon application for good cause shown.

(3) Any party may take the deposition of any other party as of right. Other depositions shall be taken only upon leave of the Administrative Law Judge for good cause shown. No person shall be deposed by the party conducting the examination for a period aggregating more than seven hours except upon consent of all parties or leave of the administrative law judge for good cause shown. Deposition testimony may be recorded by a stenographer or by

videotape or audiotape recording, at the option of the party conducting the deposition. The cost of the recording and transcription of deposition testimony shall be borne by the party conducting the deposition.

(c) **Sanctions.** Failure to comply with or object to a discovery request in a timely fashion as provided by §1-33 of this title may result in the imposition of sanctions as appropriate, including those specified in §1-33(e) of this title.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Noncompliance with disclosure order would subject party to sanctions under 48 RCNY §§ 1-33(e), and 2-29(c), including but not limited to preclusion of evidence, striking the answer or precluding asserted defenses, and/or costs. **Comm'n on Human Rights v. G.P.C. Realty Corp.**, OATH Index No. 228/04, mem. dec. (Feb. 26, 2004).

¶ 2. In an employment discrimination case, where the employer claimed the complainant was fired for poor performance, ALJ took an adverse inference against the employer due to the employer's negligent failure to preserve certain key documents-sales reports and a recent performance evaluation for the complainant and similarly situated employees-which were sought by the complainant in discovery. **Comm'n on Human Rights ex rel Manning v. HealthFirst, LLC**, OATH Index No. 462/05 (Mar. 15, 2006), **adopted**, Comm'n Dec. (May 10, 2006).

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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48 RCNY 2-30

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-30 Interlocutory Review.

(a) Within five days after issuance of any interlocutory order or decision, a party may move for certification by the Administrative Law Judge that such order or decision may be submitted, in whole or in specified part, for review by the chair of the Commission. If the party moving for certification seeks a stay of proceedings, in whole or in part, pending completion of the interlocutory review, the motion for certification shall include a statement as to why the failure to grant the requested stay would materially prejudice the party. Certification may also be made, and a stay may be ordered, by the Administrative Law Judge on his or her own motion.

(b) As provided by the Commission's rules (47 RCNY §1-74), failure of a party to seek interlocutory review of a decision or order shall not preclude that party from making such challenge to the Commission in connection with the Commission's review of a report and recommendation in a case, provided that the party timely made its objection known to the Administrative Law Judge and that the grounds for such challenge shall be limited to those set forth to the Administrative Law Judge.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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48 RCNY 2-31

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-31 Proceedings After Issuance of Report and Recommendation.

Proceedings following issuance by the Administrative Law Judge of the report and recommendation in the case shall be governed by the Commission's Rules (47 RCNY §§1-75, 1-76).

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 2-41

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER D RULES FOR POST-SEIZURE REVIEW OF IMPOUNDMENT OF VEHICLES*2

§2-41 Applicability.

This subchapter shall apply solely to cases brought to determine the validity of post-seizure retention of vehicles by the Police Department as evidence or for prospective or pending actions to forfeit such vehicles pursuant to §14-140 of the New York City Administrative Code. Chapter 1 of this title shall also apply to such cases except to the extent that it is inconsistent with this subchapter or with **Krimstock v. Kelly,** 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), and any amendments, modifications and revisions thereof.

HISTORICAL NOTE

Section added City Record Apr. 27, 2004 eff. May 27, 2004; replaces section added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Apr. 27, 2004 eff. May 27, 2004 [Note 1]; replaces Subchapter D added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [Note 2] Note:

1. Statement of Basis and Purpose of Rules in City Record Apr. 27, 2004. These rules replace rules promulgated by emergency procedure on January 22, 2004, to implement Krimstock v. Kelly, 99 Civ. 12041 (MBM), amended order and judgment (S.D.N.Y. Jan. 22, 2004). The order in Krimstock v. Kelly requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated. The emergency rules applied solely to vehicle forfeiture cases brought by the Police Department pursuant to Krimstock v. Kelly. These rules have been modified slightly to make them applicable to any vehicle forfeiture cases that might be brought. No other substantive change is intended.

These rules supplement and modify OATH's existing rules of practice, solely for purposes of hearings regarding city agencies' retention of vehicles seized for use as evidence or for forfeiture, including vehicles seized, as required by Krimstock v. Kelly.

2. Provisions of City Record Jan. 22, 2004: This emergency rulemaking implements Krimstock v. Kelly, 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), which requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated.

The rules promulgated herein on an emergency basis supplement and modify OATH's existing rules of practice, solely for purposes of hearings to be held pursuant to the order in Krimstock v. Kelly. In addition, the order in Krimstock v. Kelly provides that OATH's rules of practice shall apply to such hearings "to the extent such rules are not in conflict with the terms of this Order and Judgment"; therefore, the practitioner or party appearing before OATH in these hearings must be familiar with OATH's existing rules of practice, these proposed rules, and the order in Krimstock v. Kelly.

FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules relating to the post-seizure review of the impoundment of certain vehicles is necessary to prevent an immediate threat to health, safety and property, by ensuring compliance with a Court order prescribing procedures for such review to be undertaken by the Office of Administrative Trials and Hearings. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

On January 5, 2004, the United States District Court for the Southern District of New York (Mukasey, J.) issued its Order and Judgment in Krimstock v. Kelly, 99 Civ. 12041. Judge Mukasey's Order implements a determination by the United States Court of Appeals for the Second Circuit in that case, 306 F.2d 40 (2d Cir. 2002). The Court of Appeals held that, when a vehicle is seized by the City and held for forfeiture after its driver has been arrested for driving while intoxicated ("DWI") or another crime, the vehicle's owner must be afforded an opportunity to be heard on the "probable validity" of the seizure. The District Court Order sets forth certain procedures which must be followed by the City in contacting the owner of a vehicle seized for forfeiture or as evidence in a criminal proceeding and holding the hearing. These procedures, by the terms of the Order, are effective on and after January 23, 2004. The Order further mandates that the hearing be held by the Office of Administrative Trials and Hearings ("OATH"). OATH's Rules of Practice (set forth in chapter 1 of Title 48 of the Rules of the City of New York), which normally govern OATH proceedings, differ in certain points from the requirements of the Order and set forth certain requirements which are not necessary for hearings conducted pursuant to the Order. It is essential that, by the date set by Judge Mukasey, OATH put in place rules for the conduct of the hearings in question which are consistent with the Order. Failure to do so would jeopardize OATH's ability to hold the required hearings and put at risk the City's program of seizing vehicles driven by

persons arrested for DWI, thus undermining the public's interest in having such vehicles forfeited. Further, such hearings are necessary to ensure that vehicles seized as evidence in criminal proceedings remain available for use by prosecuting authorities.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule relating to the post-seizure review of the impoundment of vehicles driven by persons arrested for DWI or other crimes or held as evidence in a criminal proceeding is necessary to address an immediate threat to health, safety and property.

Dated: January 19, 2004

Roberto Velez

Chief Administrative Law Judge

Approved:

Michael R. Bloomberg

Mayor

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 2-42

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER D RULES FOR POST-SEIZURE REVIEW OF IMPOUNDMENT OF VEHICLES*2

§2-42 Parties.

For purposes of this subchapter, the Police Department shall be the petitioner, and the claimant to the vehicle shall be the respondent, as defined in §1-01 of this title.

HISTORICAL NOTE

Section added City Record Apr. 27, 2004 eff. May 27, 2004; replaces section added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Apr. 27, 2004 eff. May 27, 2004 [Note 1]; replaces Subchapter D added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [Note 2] Note:

1. Statement of Basis and Purpose of Rules in City Record Apr. 27, 2004. These rules replace rules promulgated by emergency procedure on January 22, 2004, to implement Krimstock v. Kelly, 99 Civ. 12041 (MBM), amended order and judgment (S.D.N.Y. Jan. 22, 2004). The order in Krimstock v. Kelly requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated. The emergency rules applied solely to vehicle forfeiture cases brought by the Police Department pursuant to Krimstock v. Kelly. These rules have been modified slightly to make them applicable to any vehicle forfeiture cases that might be brought. No other substantive change is intended.

These rules supplement and modify OATH's existing rules of practice, solely for purposes of hearings regarding city agencies' retention of vehicles seized for use as evidence or for forfeiture, including vehicles seized, as required by Krimstock v. Kelly.

2. Provisions of City Record Jan. 22, 2004: This emergency rulemaking implements Krimstock v. Kelly, 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), which requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated.

The rules promulgated herein on an emergency basis supplement and modify OATH's existing rules of practice, solely for purposes of hearings to be held pursuant to the order in Krimstock v. Kelly. In addition, the order in Krimstock v. Kelly provides that OATH's rules of practice shall apply to such hearings "to the extent such rules are not in conflict with the terms of this Order and Judgment"; therefore, the practitioner or party appearing before OATH in these hearings must be familiar with OATH's existing rules of practice, these proposed rules, and the order in Krimstock v. Kelly.

FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules relating to the post-seizure review of the impoundment of certain vehicles is necessary to prevent an immediate threat to health, safety and property, by ensuring compliance with a Court order prescribing procedures for such review to be undertaken by the Office of Administrative Trials and Hearings. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

On January 5, 2004, the United States District Court for the Southern District of New York (Mukasey, J.) issued its Order and Judgment in Krimstock v. Kelly, 99 Civ. 12041. Judge Mukasey's Order implements a determination by the United States Court of Appeals for the Second Circuit in that case, 306 F.2d 40 (2d Cir. 2002). The Court of Appeals held that, when a vehicle is seized by the City and held for forfeiture after its driver has been arrested for driving while intoxicated ("DWI") or another crime, the vehicle's owner must be afforded an opportunity to be heard on the "probable validity" of the seizure. The District Court Order sets forth certain procedures which must be followed by the City in contacting the owner of a vehicle seized for forfeiture or as evidence in a criminal proceeding and holding the hearing. These procedures, by the terms of the Order, are effective on and after January 23, 2004. The Order further mandates that the hearing be held by the Office of Administrative Trials and Hearings ("OATH"). OATH's Rules of Practice (set forth in chapter 1 of Title 48 of the Rules of the City of New York), which normally govern OATH proceedings, differ in certain points from the requirements of the Order and set forth certain requirements which are not necessary for hearings conducted pursuant to the Order. It is essential that, by the date set by Judge Mukasey, OATH put in place rules for the conduct of the hearings in question which are consistent with the Order. Failure to do so would jeopardize OATH's ability to hold the required hearings and put at risk the City's program of seizing vehicles driven by persons arrested for DWI, thus undermining the public's interest in having such vehicles forfeited. Further, such hearings are necessary to ensure that vehicles seized as evidence in criminal proceedings remain available for use by prosecuting authorities.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule relating to the post-seizure review of the impoundment of vehicles driven by persons arrested for DWI or other crimes or held as evidence in a criminal proceeding is necessary to address an immediate threat to health, safety and property.

Dated: January 19, 2004

Roberto Velez

Chief Administrative Law Judge

Approved:

Michael R. Bloomberg

Mayor

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SUBCHAPTER D RULES FOR POST-SEIZURE REVIEW OF IMPOUNDMENT OF VEHICLES*2

§2-43 Pleadings.

(a) The time provided in §1-26(d) for service of the notice of hearing shall not apply.

(b) Notwithstanding §1-24 of this title, the responent may serve and file an answer at any time until the commencement of the hearing.

HISTORICAL NOTE

Section added City Record Apr. 27, 2004 eff. May 27, 2004; replaces section added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Apr. 27, 2004 eff. May 27, 2004 [Note 1]; replaces

Subchapter D added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [Note 2]
Note:

1. Statement of Basis and Purpose of Rules in City Record Apr. 27, 2004. These rules replace rules promulgated by emergency procedure on January 22, 2004, to implement Krimstock v. Kelly, 99 Civ. 12041 (MBM), amended order and judgment (S.D.N.Y. Jan. 22, 2004). The order in Krimstock v. Kelly requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated. The emergency rules applied solely to vehicle forfeiture cases brought by the Police Department pursuant to Krimstock v. Kelly. These rules have been modified slightly to make them applicable to any vehicle forfeiture cases that might be brought. No other substantive change is intended.

These rules supplement and modify OATH's existing rules of practice, solely for purposes of hearings regarding city agencies' retention of vehicles seized for use as evidence or for forfeiture, including vehicles seized, as required by Krimstock v. Kelly.

2. Provisions of City Record Jan. 22, 2004: This emergency rulemaking implements Krimstock v. Kelly, 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), which requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated.

The rules promulgated herein on an emergency basis supplement and modify OATH's existing rules of practice, solely for purposes of hearings to be held pursuant to the order in Krimstock v. Kelly. In addition, the order in Krimstock v. Kelly provides that OATH's rules of practice shall apply to such hearings "to the extent such rules are not in conflict with the terms of this Order and Judgment"; therefore, the practitioner or party appearing before OATH in these hearings must be familiar with OATH's existing rules of practice, these proposed rules, and the order in Krimstock v. Kelly.

FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules relating to the post-seizure review of the impoundment of certain vehicles is necessary to prevent an immediate threat to health, safety and property, by ensuring compliance with a Court order prescribing procedures for such review to be undertaken by the Office of Administrative Trials and Hearings. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

On January 5, 2004, the United States District Court for the Southern District of New York (Mukasey, J.) issued its Order and Judgment in Krimstock v. Kelly, 99 Civ. 12041. Judge Mukasey's Order implements a determination by the United States Court of Appeals for the Second Circuit in that case, 306 F.2d 40 (2d Cir. 2002). The Court of Appeals held that, when a vehicle is seized by the City and held for forfeiture after its driver has been arrested for driving while intoxicated ("DWI") or another crime, the vehicle's owner must be afforded an opportunity to be heard on the "probable validity" of the seizure. The District Court Order sets forth certain procedures which must be followed by the City in contacting the owner of a vehicle seized for forfeiture or as evidence in a criminal proceeding and holding the hearing. These procedures, by the terms of the Order, are effective on and after January 23, 2004. The Order further mandates that the hearing be held by the Office of Administrative Trials and Hearings ("OATH"). OATH's Rules of Practice (set forth in chapter 1 of Title 48 of the Rules of the City of New York), which normally govern OATH proceedings, differ in certain points from the requirements of the Order and set forth certain requirements which are not necessary for hearings conducted pursuant to the Order. It is essential that, by the date set by Judge Mukasey, OATH put in place rules for the conduct of the hearings in question which are consistent with the Order. Failure to do so would jeopardize OATH's ability to hold the required hearings and put at risk the City's program of seizing vehicles driven by persons arrested for DWI, thus undermining the public's interest in having such vehicles forfeited. Further, such

hearings are necessary to ensure that vehicles seized as evidence in criminal proceedings remain available for use by prosecuting authorities.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule relating to the post-seizure review of the impoundment of vehicles driven by persons arrested for DWI or other crimes or held as evidence in a criminal proceeding is necessary to address an immediate threat to health, safety and property.

Dated: January 19, 2004

Roberto Velez

Chief Administrative Law Judge

Approved:

Michael R. Bloomberg

Mayor

Rules of the City of New York

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48 RCNY 2-44

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER D RULES FOR POST-SEIZURE REVIEW OF IMPOUNDMENT OF VEHICLES*2

§2-44 Trial Continuances.

A motion by the petitioner, after the conclusion of the respondent's evidence, for a continuance of trial to present rebuttal evidence in the form of testimony from witnesses not called on the petitioner's case-in-chief, shall be granted for good cause shown.

HISTORICAL NOTE

Section added City Record Apr. 27, 2004 eff. May 27, 2004; replaces section added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [See Subchapter D footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. A relaxed standard for applications exists for trial continuances to produce witness testimony in vehicle retention cases. **Police Dep't v. Burnett**, OATH Index No. 1363/04, mem. dec. (Mar. 11, 2004), **aff'd, Property Clerk v. Burnett**, Index No. 04/400955 (N. Y. Sup. Ct. July 19, 2004) (Schulman, J.), **aff'd**, 22 A.D.3d 201, 801 N.Y.S.2d 592 (1st Dep't 2005).

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Apr. 27, 2004 eff. May 27, 2004 [Note 1]; replaces Subchapter D added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [Note 2] Note:

1. Statement of Basis and Purpose of Rules in City Record Apr. 27, 2004. These rules replace rules promulgated by emergency procedure on January 22, 2004, to implement Krimstock v. Kelly, 99 Civ. 12041 (MBM), amended order and judgment (S.D.N.Y. Jan. 22, 2004). The order in Krimstock v. Kelly requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated. The emergency rules applied solely to vehicle forfeiture cases brought by the Police Department pursuant to Krimstock v. Kelly. These rules have been modified slightly to make them applicable to any vehicle forfeiture cases that might be brought. No other substantive change is intended.

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2. Provisions of City Record Jan. 22, 2004: This emergency rulemaking implements Krimstock v. Kelly, 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), which requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated.

The rules promulgated herein on an emergency basis supplement and modify OATH's existing rules of practice, solely for purposes of hearings to be held pursuant to the order in Krimstock v. Kelly. In addition, the order in Krimstock v. Kelly provides that OATH's rules of practice shall apply to such hearings "to the extent such rules are not in conflict with the terms of this Order and Judgment"; therefore, the practitioner or party appearing before OATH in these hearings must be familiar with OATH's existing rules of practice, these proposed rules, and the order in Krimstock v. Kelly.

FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules relating to the post-seizure review of the impoundment of certain vehicles is necessary to prevent an immediate threat to health, safety and property, by ensuring compliance with a Court order prescribing procedures for such review to be undertaken by the Office of Administrative Trials and Hearings. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

On January 5, 2004, the United States District Court for the Southern District of New York (Mukasey, J.) issued its Order and Judgment in Krimstock v. Kelly, 99 Civ. 12041. Judge Mukasey's Order implements a determination by the United States Court of Appeals for the Second Circuit in that case, 306 F.2d 40 (2d Cir. 2002). The Court of Appeals held that, when a vehicle is seized by the City and held for forfeiture after its driver has been arrested for driving while intoxicated ("DWI") or another crime, the vehicle's owner must be afforded an opportunity to be heard on the "probable validity" of the seizure. The District Court Order sets forth certain procedures which must be followed by the City in contacting the owner of a vehicle seized for forfeiture or as evidence in a criminal proceeding and holding the hearing. These procedures, by the terms of the Order, are effective on and after January 23, 2004. The Order further mandates that the hearing be held by the Office of Administrative Trials and Hearings ("OATH"). OATH's Rules of Practice (set forth in chapter 1 of Title 48 of

the Rules of the City of New York), which normally govern OATH proceedings, differ in certain points from the requirements of the Order and set forth certain requirements which are not necessary for hearings conducted pursuant to the Order. It is essential that, by the date set by Judge Mukasey, OATH put in place rules for the conduct of the hearings in question which are consistent with the Order. Failure to do so would jeopardize OATH's ability to hold the required hearings and put at risk the City's program of seizing vehicles driven by persons arrested for DWI, thus undermining the public's interest in having such vehicles forfeited. Further, such hearings are necessary to ensure that vehicles seized as evidence in criminal proceedings remain available for use by prosecuting authorities.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule relating to the post-seizure review of the impoundment of vehicles driven by persons arrested for DWI or other crimes or held as evidence in a criminal proceeding is necessary to address an immediate threat to health, safety and property.

Dated: January 19, 2004

Roberto Velez

Chief Administrative Law Judge

Approved:

Michael R. Bloomberg

Mayor

Rules of the City of New York

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48 RCNY 2-45

RULES OF THE CITY OF NEW YORK

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CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER D RULES FOR POST-SEIZURE REVIEW OF IMPOUNDMENT OF VEHICLES*2

§2-45 Default by Vehicle Owner.

Pursuant to §1-45 of this title, where an owner of a vehicle fails to appear for trial, having been properly served with required notices, the petitioner need not prove that such owner "permitted or suffered" the allegedly illegal use of the seized vehicle.

HISTORICAL NOTE

Section added City Record Apr. 27, 2004 eff. May 27, 2004; replaces section added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [See Subchapter D footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Administrative law judge did not need to consider whether the Police Department disproved any "innocent owner" defense where an owner fails to appear for trial. **Police Dep't v. Benkovich**, OATH Index No. 1296/04, mem. dec. (Mar. 9, 2004).

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Apr. 27, 2004 eff. May 27, 2004 [Note 1]; replaces Subchapter D added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [Note 2] Note:

1. Statement of Basis and Purpose of Rules in City Record Apr. 27, 2004. These rules replace rules promulgated by emergency procedure on January 22, 2004, to implement Krimstock v. Kelly, 99 Civ. 12041 (MBM), amended order and judgment (S.D.N.Y. Jan. 22, 2004). The order in Krimstock v. Kelly requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated. The emergency rules applied solely to vehicle forfeiture cases brought by the Police Department pursuant to Krimstock v. Kelly. These rules have been modified slightly to make them applicable to any vehicle forfeiture cases that might be brought. No other substantive change is intended.

These rules supplement and modify OATH's existing rules of practice, solely for purposes of hearings regarding city agencies' retention of vehicles seized for use as evidence or for forfeiture, including vehicles seized, as required by Krimstock v. Kelly.

2. Provisions of City Record Jan. 22, 2004: This emergency rulemaking implements Krimstock v. Kelly, 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), which requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated.

The rules promulgated herein on an emergency basis supplement and modify OATH's existing rules of practice, solely for purposes of hearings to be held pursuant to the order in Krimstock v. Kelly. In addition, the order in Krimstock v. Kelly provides that OATH's rules of practice shall apply to such hearings "to the extent such rules are not in conflict with the terms of this Order and Judgment"; therefore, the practitioner or party appearing before OATH in these hearings must be familiar with OATH's existing rules of practice, these proposed rules, and the order in Krimstock v. Kelly.

FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules relating to the post-seizure review of the impoundment of certain vehicles is necessary to prevent an immediate threat to health, safety and property, by ensuring compliance with a Court order prescribing procedures for such review to be undertaken by the Office of Administrative Trials and Hearings. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

On January 5, 2004, the United States District Court for the Southern District of New York (Mukasey, J.) issued its Order and Judgment in Krimstock v. Kelly, 99 Civ. 12041. Judge Mukasey's Order implements a determination by the United States Court of Appeals for the Second Circuit in that case, 306 F.2d 40 (2d Cir. 2002). The Court of Appeals held that, when a vehicle is seized by the City and held for forfeiture after its driver has been arrested for driving while intoxicated ("DWI") or another crime, the vehicle's owner must be afforded an opportunity to be heard on the "probable validity" of the seizure. The District Court Order sets forth certain procedures which must be followed by the City in contacting the owner of a vehicle seized for forfeiture or as evidence in a criminal proceeding and holding the hearing. These procedures, by the terms of the Order, are effective on and after January 23, 2004. The Order further mandates that the hearing be held by the Office of Administrative Trials and Hearings ("OATH"). OATH's Rules of Practice (set forth in chapter 1 of Title 48 of the Rules of the City of New York), which normally govern OATH proceedings, differ in certain points from the

requirements of the Order and set forth certain requirements which are not necessary for hearings conducted pursuant to the Order. It is essential that, by the date set by Judge Mukasey, OATH put in place rules for the conduct of the hearings in question which are consistent with the Order. Failure to do so would jeopardize OATH's ability to hold the required hearings and put at risk the City's program of seizing vehicles driven by persons arrested for DWI, thus undermining the public's interest in having such vehicles forfeited. Further, such hearings are necessary to ensure that vehicles seized as evidence in criminal proceedings remain available for use by prosecuting authorities.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule relating to the post-seizure review of the impoundment of vehicles driven by persons arrested for DWI or other crimes or held as evidence in a criminal proceeding is necessary to address an immediate threat to health, safety and property.

Dated: January 19, 2004

Roberto Velez

Chief Administrative Law Judge

Approved:

Michael R. Bloomberg

Mayor

Rules of the City of New York

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48 RCNY 2-46

RULES OF THE CITY OF NEW YORK

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SUBCHAPTER D RULES FOR POST-SEIZURE REVIEW OF IMPOUNDMENT OF VEHICLES*2

§2-46 Transcription of Hearings.

Notwithstanding §1-51 of this title, the recording of the hearing or of other proceedings in the case, whether electronic or stenographic, shall not be transcribed except (i) upon request and payment of reasonable transcription costs, (ii) upon direction of the administrative law judge, in his or her discretion, or (iii) as otherwise required by law.

HISTORICAL NOTE

Section added City Record Apr. 27, 2004 eff. May 27, 2004; replaces section added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Apr. 27, 2004 eff. May 27, 2004 [Note 1]; replaces Subchapter D added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [Note 2]

Note:

1. Statement of Basis and Purpose of Rules in City Record Apr. 27, 2004. These rules replace rules promulgated by emergency procedure on January 22, 2004, to implement Krimstock v. Kelly, 99 Civ. 12041 (MBM), amended order and judgment (S.D.N.Y. Jan. 22, 2004). The order in Krimstock v. Kelly requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated. The emergency rules applied solely to vehicle forfeiture cases brought by the Police Department pursuant to Krimstock v. Kelly. These rules have been modified slightly to make them applicable to any vehicle forfeiture cases that might be brought. No other substantive change is intended.

These rules supplement and modify OATH's existing rules of practice, solely for purposes of hearings regarding city agencies' retention of vehicles seized for use as evidence or for forfeiture, including vehicles seized, as required by Krimstock v. Kelly.

2. Provisions of City Record Jan. 22, 2004: This emergency rulemaking implements Krimstock v. Kelly, 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), which requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated.

The rules promulgated herein on an emergency basis supplement and modify OATH's existing rules of practice, solely for purposes of hearings to be held pursuant to the order in Krimstock v. Kelly. In addition, the order in Krimstock v. Kelly provides that OATH's rules of practice shall apply to such hearings "to the extent such rules are not in conflict with the terms of this Order and Judgment"; therefore, the practitioner or party appearing before OATH in these hearings must be familiar with OATH's existing rules of practice, these proposed rules, and the order in Krimstock v. Kelly.

FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules relating to the post-seizure review of the impoundment of certain vehicles is necessary to prevent an immediate threat to health, safety and property, by ensuring compliance with a Court order prescribing procedures for such review to be undertaken by the Office of Administrative Trials and Hearings. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

On January 5, 2004, the United States District Court for the Southern District of New York (Mukasey, J.) issued its Order and Judgment in Krimstock v. Kelly, 99 Civ. 12041. Judge Mukasey's Order implements a determination by the United States Court of Appeals for the Second Circuit in that case, 306 F.2d 40 (2d Cir. 2002). The Court of Appeals held that, when a vehicle is seized by the City and held for forfeiture after its driver has been arrested for driving while intoxicated ("DWI") or another crime, the vehicle's owner must be afforded an opportunity to be heard on the "probable validity" of the seizure. The District Court Order sets forth certain procedures which must be followed by the City in contacting the owner of a vehicle seized for forfeiture or as evidence in a criminal proceeding and holding the hearing. These procedures, by the terms of the Order, are effective on and after January 23, 2004. The Order further mandates that the hearing be held by the Office of Administrative Trials and Hearings ("OATH"). OATH's Rules of Practice (set forth in chapter 1 of Title 48 of the Rules of the City of New York), which normally govern OATH proceedings, differ in certain points from the requirements of the Order and set forth certain requirements which are not necessary for hearings conducted pursuant to the Order. It is essential that, by the date set by Judge Mukasey, OATH put in place rules for the conduct of the hearings in question which are consistent with the Order. Failure to do so would jeopardize OATH's ability to hold the required hearings and put at risk the City's program of seizing vehicles driven by persons arrested for DWI, thus undermining the public's interest in having such vehicles forfeited. Further, such hearings are necessary to ensure that vehicles seized as evidence in criminal proceedings remain available for

use by prosecuting authorities.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule relating to the post-seizure review of the impoundment of vehicles driven by persons arrested for DWI or other crimes or held as evidence in a criminal proceeding is necessary to address an immediate threat to health, safety and property.

Dated: January 19, 2004

Roberto Velez

Chief Administrative Law Judge

Approved:

Michael R. Bloomberg

Mayor

Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-11 Definitions.

As used herein the following terms shall have the meanings specified.

Appearance. "Appearance" means a communication with the board or its tribunal that is made by a party or the representative of a party in connection with a notice of violation that is or was pending before the board or its tribunal. An appearance may be made in person or otherwise-for example, by mail.

Board. "Board" means the Environmental Control Board of the City of New York.

Executive Director. "Executive Director" means the executive director of the Environmental Control Board of the City of New York.

Hearing Officer. "Hearing Officer" means a person designated as a hearing officer by the chairman of the board.

Notice of Violation. "Notice of Violation" means the document issued by a petitioner to a respondent which specifies the charges forming the basis of an adjudicatory proceeding before the Environmental Control Board.

Party. "Party" means the person named as petitioner or respondent, or intervening as of right, in an adjudicatory or enforcement action before the board or its tribunal.

Person. "Person" means any individual, partnership, unincorporated association, corporation or governmental agency.

Petitioner. "Petitioner" means the commissioner, department or bureau within a department of the City of New York which commences an adjudicatory or enforcement proceeding before the Environmental Control Board.

Respondent. "Respondent" means the person against whom the charges alleged in a notice of violation have been filed.

Tribunal. "Tribunal" means the hearing officers and staff at the Environmental Control Board under the direction of the executive director charged with holding hearings on notices of violation, or hearings in the course of any special enforcement proceeding by the board.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See Note 1]

Section repealed and reissued (former T15 §31-11) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record May 15, 2009:

Local Law 35 of 2008, signed by the Mayor on August 12, 2008 and effective November 23, 2008, created a new §1049-a of the City Charter, which consolidates the Environmental Control Board with the Office of Administrative Trials and Hearings. Section 2 of Local Law 35 also amended the City Charter to include a new subdivision b-1 of §1049-a, which imposes upon the Environmental Control Board the obligation to promulgate rules concerning provision of language assistance services and limitations on the discretion of a hearing officer to adjourn a hearing under certain circumstances. Section 2 also adds a new subdivision (f) of Section 1049-a, which allows for judicial review of a hearing officer's recommended decision and order if the respondent files exceptions in accordance with the board's rules and the board does not render a decision within 180 days, provided that the respondent complies with certain requirements including prior written notice. Section 13 of the Local Law requires that mandated rules must be promulgated no later than 180 days after the effective date of the local law. Therefore, it is required that these amended rules be promulgated no later than May 22, 2009. The proposed rule was published for notice and comment in the City Record on April 1, 2009.

The amendments proposed are intended to effectuate the purposes and the specific requirements now set forth in §1049-a, subdivision b-1 of the City Charter, as amended by Local Law 35. Other amendments have been proposed to clarify that a recording of a hearing may serve as a transcript for purposes of an appeal from a hearing officer's decision and to correct typographical errors and inconsistencies in the existing Rules of Procedure.

The Environmental Control Board held a public hearing on May 1, 2009 on the amendments to the Environmental Control Board's Rules of Procedure as required by Local Law 35 of 2008. Three written comments were received by the Environmental Control Board. No testimony was presented. After carefully considering the written comments submitted by the members of the public, the Board modified Section 3-52.1 (b) (i), entitled Adjournments to define a respondent's appearance on an adjourned date as "timely" if the respondent appears within two hours of the scheduled hearing time for a Notice of Violation (NoV). In the originally proposed rule, a respondent's appearance was "timely" if the

respondent appeared within one hour of the scheduled hearing time. The reason for this modification is to provide the same definition of timely for both respondents and petitioning agencies.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a,

in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 12]: ** Subchapter A amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11

Note 1]

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-12 Scope of Rules.

The rules contained herein govern the conduct of all adjudicatory hearings at the tribunal brought pursuant to the provisions of §1049-a of the New York City Charter and provisions of the New York City Administrative Code, or as otherwise authorized by law, and the conduct of such special hearings or enforcement proceedings before the board as authorized by Title 24 of the New York City Administrative Code.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section amended City Record Nov. 25, 2008 §1, eff. Nov. 25, 2008 per City Record notice. [See Note 1]

Section repealed and reissued (former T15 §31-12) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section repealed and added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Nov. 25, 2008:

The Environmental Control Board has amended internal numbering references within its rules so as to change all references from §1404 of the City Charter to references to §1049-a of the City Charter, and so as to change all references from its own rules prefaced with a "31-" to references to its own rules prefaced with a "3-".

ECB has amended the internal numbering references within ECB's rules because ECB was consolidated with OATH as of November 23, 2008. This consolidation was pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amended City Charter §1404 which governs ECB, and re-numbered that section as §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008, and the functional transfer was effective on November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

In view of the consolidation of ECB with OATH, ECB has by separate rule (i) included all of its rules within Chapter 3 of Title 48, which is the title of the Rules of the City of New York that includes the rules of the Office of Administrative Trials and Hearings, and (ii) replaced the prefix "31-" in all ECB rule numbers with the prefix "3-".

Accordingly, ECB in the instant rule has re-numbered all internal references in its own rules to City Charter §1404, as references to §1049-a, and has renumbered all internal references in its own rules to sections prefaced with a "31-", as references to sections prefaced with a "3-".

As is authorized by §1043(d)(ii) of the NYC Charter, there was no public hearing regarding this rule, on the ground that such a public hearing would serve no public purpose. This determination was made because this rule merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has amended internal numbering references within its rules so as to change all references from §1404 of the City Charter to references to §1049-a of the City Charter, and so as to change all references from its own rules prefaced with a "31-" to references to its own rules prefaced with a "3-".

This immediate implementation is essential in view of the fact that ECB is being consolidated with OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will become effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that all the internal references within ECB's own rules will properly and timely reflect the new numbering of the Charter provision and of ECB's own rules resulting from the consolidation of ECB and OATH.

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

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The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within

ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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[Footnote 12]: ** Subchapter A amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-13 Filing.

All documents required or permitted to be filed with the tribunal or the board shall be filed at the office of the executive director or at the tribunal or a branch thereof when more specifically provided by notice from the tribunal.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-13) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

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Section in original publication July 1, 1991.

FOOTNOTES

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 12]: ** Subchapter A amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-14 Form of Documents.

(a) All documents filed with the executive director shall contain a caption setting forth the title of the action, the file or docket number assigned to the action and a designation as to the nature of the document.

(b) All documents filed must be signed by the party or by the party's attorney or other duly authorized agent. The signature of an attorney constitutes a certification that he or she has read the document; that to the best of his or her knowledge, information and belief, there is good ground to support it; and that it is not interposed for delay.

(c) All documents, other than notices of violation (provision for which is made in §3-3), required to be served on other parties, shall be accompanied by an affidavit of service when filed. Such affidavit of service shall recite the date and manner of service as to each party and be executed by the serving party.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-14) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

Subd. (c) amended City Record Nov. 25, 2008 §2, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules

within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow

be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 12]: ** Subchapter A amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-15 Computation of Time.

(a) Except as otherwise provided herein, computation of any period of time prescribed in these rules shall be as follows:

(1) The start date for the time period shall not be considered in the computation. The next business day is the first day of the time period.

(2) The computation is based on the number of calendar days.

(3) If the last day in the period is a Saturday, Sunday or New York City legal holiday, the period is extended to the next business day.

(b) When mail is used for service of any document (other than a notice of violation) on an opposing party, five additional days shall be granted the opposing party in taking any action or making any response required or permitted by these rules.

(c) Any emergency action taken by the board which requires action within a 24 hour period shall be taken regardless of whether the 24 hour period includes a Saturday, Sunday or legal holiday.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-15) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section repealed and added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of

Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

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Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been

delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 12]: ** Subchapter A amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-16 Appearances.

The following persons are permitted to participate in proceedings before the tribunal:

(a) An individual may appear on his or her own behalf or by an authorized agent, or by attorney licensed to practice in the State of New York.

(b) A business entity, not-for-profit organization or government agency may appear by any authorized officer or employee or by attorney licensed to practice in the State of New York, or by any other duly authorized agent.

(c) Any representative who is authorized by a City agency to appear on its behalf before the board or its tribunal may be authorized by any other City agency that issues notices of violation returnable to the board to appear on its behalf. An appearance includes any time an agency appears before a hearing officer to present a case or a motion for adjournment or for any other purpose concerning a notice of violation.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-16) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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[Footnote 12]: ** Subchapter A amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-17 Public Information and Access.

(a) The executive director shall maintain files containing all information, documents, evidence, tape recordings, transcripts, and any other items submitted or produced in the course of any adjudicatory or special hearing or enforcement proceeding.

(b) Case files shall be available to the public in accordance with the Public Information Law of the State of New York (Public Officers Law, Art. 6) and the Rules of the City of New York (43 RCNY 1). Case files shall be retained on the premises of the tribunal for one year after the final action in a proceeding and then may be archived or destroyed in accordance with law.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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2008 per City Record notice. [See Chapter 3 footnote]

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FOOTNOTES

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 12]: ** Subchapter A amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-31 Notice of Violation.

(a) **Form:** All adjudicative hearings instituted by a petitioner shall be commenced by the issuance of a notice of violation on a form approved by the board.

(b) **Contents:** The notice of violation shall contain the name and address, when known, of a respondent; a brief description of the alleged violation, its date and place of occurrence; and reference to the provision of law or rule charged. The notice of violation shall contain information advising the respondent of the maximum penalty and of the time in which the respondent may admit or deny the violation charged. The notice of violation shall also contain a warning to the respondent that failure to plead in the manner and time stated in the notice may result in a default decision and order being entered against the respondent. On or after November 25, 2008, any notice of violation filed pursuant to this section that refers to section 1404 of the Charter as the legal authority for jurisdiction under which a hearing is to be held shall be deemed to refer to §1049-a of the Charter.

(c) **Service:** A notice of violation issued by a petitioner may be served on a respondent in accordance with the methods set out in §1049-a(d)(2) of the New York City Charter which render the tribunal's decision and order automatically docketable in Civil Court, or alternatively as provided by the statute, rule or other provision of law governing the violation alleged. Lawful service in a manner other than that provided for in §1049-a(d)(2) shall give the tribunal jurisdiction to hold a hearing or render a decision and order whether after hearing or in default thereof, but such decision and order shall not be entered in Civil Court or any other place provided for entry of civil judgments without

court proceedings.

(d) **Filing:** The original or a copy of the notice of violation, together with the proof(s) of service, shall be filed with the tribunal prior to the first scheduled hearing date. Failure to timely file all proofs of service shall not divest the tribunal of jurisdiction to proceed with a hearing or to issue a default order.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-31) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section repealed and added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

Subd. (b) amended City Record Nov. 25, 2008 §1, eff. Nov. 25, 2008 per City Record notice. [See

Note 1]

Subd. (c) amended City Record Nov. 25, 2008 §3, eff. Nov. 25, 2008 per City Record notice.

[See T48 §3-12 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 25, 2008:

The Board has amended §3-31(b) of Title 48 of the Rules of the City of New York (RCNY), to add text that reads as follows: "On or after November 25, 2008, any notice of violation filed pursuant to this section that refers to §1404 of the Charter as the legal authority and jurisdiction under which a hearing is to be held shall be deemed to refer to §1049-a of the Charter."

This text is being added to §3-31 in view of the fact that ECB's jurisdiction is now grounded in §1049-a of the New York City Charter, rather than in §1404 of the Charter, as was previously the case. This change is due to the enactment of Local Law Number 35 of 2008, which resulted in the consolidation of the Environmental Control Board (ECB) with the Office of Administrative Tribunals and Hearings (OATH). Local Law Number 35 re-numbered §1404 of the Charter as §1049-a of the Charter, effective on November 23, 2008. November 23, 2008 was the functional transfer date of the consolidation.

The Board has amended §3-31 in order to ensure that all NOVs issued on and after November 25, 2008, accurately reflect the legal authority and jurisdiction, §1049-a of the Charter, under which the hearing on the NOV will be held.

It should be noted that §3-31 of Title 48 of the RCNY was previously denominated §31-31 of Title 15 of the RCNY. However, that section is now numbered as §3-31 of Title 48 because all of ECB's rules have been transferred into Title 48 and given a new prefix of "3-" rather than of "31-" as a result of the consolidation of ECB with OATH.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has added text to indicate that "[o]n or after November 25, 2008, any notice of

violation filed pursuant to this section that refers to §1404 of the Charter as the legal authority and jurisdiction under which a hearing is to be held shall be deemed to refer to §1049-a of the Charter."

This immediate implementation is essential in view of the fact that ECB is being consolidated with OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will become effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that NOVs will accurately reflect the legal authority and jurisdiction, §1049-a of the Charter, under which the hearing on the NOV will be held.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter

as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 1]: * Subchapter B amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter title amended City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-32 Admissions and Payments by Mail.

Where the notice of violation states that a mailable penalty schedule exists for the cited violation, a respondent may admit to the violation charged and pay the penalty by mail in the manner and time directed by the notice of violation. Payment in full is deemed an admission of liability and no further hearings or appeal will be allowed.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-32) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section repealed, added and re-titled City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-33 Pre-hearing Reschedules.

Upon application by respondent, ex-parte, to the executive director and for good cause shown, the executive director may postpone the hearing date set in the notice of violation for a brief period of time and reschedule the hearing. The executive director may deny any further requests for a reschedule and require respondent to appear and make such motion for adjournment to a hearing officer at the scheduled hearing.

HISTORICAL NOTE

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-34 Adjudication by Mail.

(a) The executive director may designate certain classes of alleged violations or defenses as appropriate for adjudication by mail and prescribe procedures for such adjudication. Where respondent is offered the option of contesting the violation or presenting a defense by mail, respondent may move for such adjudication by application addressed to the tribunal. Such application shall set forth all facts and arguments relevant to the case relied on by the respondent. The application may be supported by affidavits or other documentary evidence.

(b) Upon receipt by the tribunal of an application for adjudication by mail, the matter shall be assigned to a hearing officer who shall review the record. The hearing officer may request further evidence to be submitted by respondent, may direct respondent to serve a copy of the application on petitioner, or may render a recommended decision and order based on the evidence in the record. The hearing officer may also deny the application for adjudication by mail and direct respondent to appear for a hearing in person.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-34) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

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Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules

within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-35 Motions to Intervene.

(a) **As of Right.** (1) A person may intervene as of right in an adjudicatory or enforcement proceeding if such person may be directly and adversely affected by an order of the board. An order imposing a monetary penalty only shall not be deemed an order directly or adversely affecting any person other than respondent.

(2) A written application by any person to intervene as of right shall be filed with the tribunal and served upon each party to the proceeding not less than 5 days before the hearing. Such application shall set forth in detail the reasons the applicant seeks to intervene. Upon being served with an application for intervention, any party wishing to respond thereto may do so within 3 days after receipt of the application. Such response, accompanied by any supporting documents, must be filed with the tribunal and served upon the applicant and all other parties. When such written application is made by any person, the matter shall be assigned to a hearing officer for disposition.

(3) An intervenor as of right shall have all the rights of an original party, except that the hearing officer may provide that such intervenor shall be bound by orders previously entered or evidence previously received, and that the intervenor shall not raise issues or seek to add parties which might have been raised or added more properly at an earlier stage of the proceeding.

(b) **Discretionary Intervention.**

When written application by any person for discretionary intervention is filed with the tribunal prior to the date set for hearing in any adjudicatory proceeding, the matter shall be assigned to a hearing officer. The hearing officer, subject to the necessity of conducting an orderly and expeditious hearing, may permit such person to intervene if good cause is shown therefore or if the applicant is in a position to assist in the proof or defense of the proceeding. An intervenor permitted to intervene at the discretion of the hearing officer shall be assigned such role in the proceeding as the hearing officer in his or her discretion may direct, taking into consideration the avoidance of unfairness to the parties and the intervenor and the avoidance of undue delay. An oral application to intervene by any person may be made at the commencement of the hearing and shall be considered by the hearing officer assigned to the case. A discretionary intervenor is not a party to the proceeding and has no standing to appeal the hearing officer's recommended decision and order.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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FOOTNOTES

6

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is

consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-36 Consolidation.

In the interest of convenient, expeditious and complete determination of cases involving the same or similar issues or the same parties, the hearing officer may consolidate two or more notices of violation for adjudication at one hearing.

HISTORICAL NOTE

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This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-37 Discovery.

(a) Upon written request received by the opposing party at least five business days prior to the scheduled hearing date, any party is entitled to receive from the opposing party a list of the names of witnesses who may be called and copies of documents intended to be submitted into evidence.

(b) Pre-hearing discovery shall be limited to the matters enumerated above. All other applications or motions for discovery, including depositions on oral examination, shall be made to a hearing officer at the commencement of the hearing and the hearing officer may order such further discovery as is deemed appropriate in his or her discretion.

(c) Upon the failure of any party to properly respond to a lawful discovery order or request or such party's wrongful refusal to answer questions or produce documents, the hearing officer may take whatever action he or she deems appropriate including but not limited to preclusion of evidence or witnesses, or striking the pleadings or defenses of such party. It shall not be necessary for a party to have been subpoenaed to appear or produce documents at any properly ordered discovery proceeding for such sanctions to be applicable.

HISTORICAL NOTE

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Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow

be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 1]: * Subchapter B amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter title amended City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-38 Subpoenas.

(a) Upon application to the tribunal by a party, the tribunal shall issue a subpoena for attendance at deposition or hearing, which may include a command to produce specified books, documents or tangible things which are reasonably necessary to a resolution of the issues, subject to the limitations on discovery prescribed by these rules.

(b) All subpoenas shall be issued on forms approved by the board and shall be signed by a hearing officer. A hearing officer, on motion timely made before the return date of the subpoena, or on the hearing officer's own motion, may quash or modify the subpoena if it is unreasonable or was wrongfully issued.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-38) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section repealed and added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local

Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-39 Interlocutory Appeals. [Repealed]

HISTORICAL NOTE

Section repealed City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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(ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

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The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-40 Amendments and Supplemental Pleadings. [Repealed]

HISTORICAL NOTE

Section repealed City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-41 Summary Decisions. [Repealed]

HISTORICAL NOTE

Section repealed City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

6

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Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
1

[Footnote 1]: * Subchapter B amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter title amended City Record Sept. 5, 1997 eff. Oct. 5, 1997.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-51

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-51 General Rules.

(a) **Expedition.** Hearings shall proceed with all reasonable expedition and insofar as is practicable shall be held at one place and shall continue without suspension, except for brief recesses, until concluded. Subject to §3-52.1, the hearing officer shall have the authority to grant brief adjournments, for good cause shown, and consistent with the requirements of expedition.

(b) **Notice of Hearing.** The notice of violation shall set the hearing date and place or, if none, the executive director shall set such time and place. In no event shall such hearing date be set for more than 60 days after the filing of the notice of violation at the tribunal. At least 10 days notice of such hearing date and location shall be sent to all parties. Where respondent waives the 10 day notice and requests an expedited hearing, the executive director may assign the case for immediate hearing, upon appropriate notice to petitioner and opportunity for petitioner to appear.

(c) **Rights of Parties.** Every party, except intervenors under §3-35(b), shall have the right of due notice, cross examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing.

(d) **Order of Hearing.** The following shall be the order of all adjudicatory hearings, subject to modification by the hearing officer for good cause:

(1) Presentation and argument of motions preliminary to a hearing on the merits;

(2) Presentation of opening statements; if any

(3) Petitioner's case in chief;

(4) Respondent's case in chief;

(5) Petitioner's case in rebuttal;

(6) Respondent's case in rebuttal;

(7) Respondent's closing argument;

(8) Petitioner's closing argument.

(e) **Oaths.** All persons giving testimony as witnesses at a hearing must be placed under oath.

(f) **Language Assistance Services.** (1) Appropriate language assistance services shall be afforded to respondents whose primary languages are not English to assist such respondents in communicating meaningfully with hearing officers. Such language assistance services shall include interpretation of hearings and of pre-hearing conferences conducted by hearing officers, where interpretation is necessary to assist the respondent in communicating meaningfully with the hearing officer. At the beginning of any hearing or pre-hearing conference, the hearing officer shall advise the respondent of the availability of interpretation. In determining whether interpretation is necessary to assist the respondent in communicating meaningfully with the hearing officer, the hearing officer shall consider all relevant factors, including but not limited to the following: (i) information from board administrative personnel identifying a respondent as requiring language assistance services to communicate meaningfully with a hearing officer; (ii) a request by the respondent for interpretation; (iii) even if interpretation was not requested by the respondent, the hearing officer's own assessment whether interpretation is necessary to enable meaningful communication with the respondent. If the respondent requests an interpreter and the hearing officer determines that an interpreter is not needed, that determination and the basis for the determination shall be made on the record.

(2) When required by paragraph (1) of this subsection, interpretation services shall be provided at hearings and at pre-hearing conferences by a professional interpretation service that is made available by the board, unless the respondent requests the use of another interpreter, in which case the hearing officer in his or her discretion may use the respondent's requested interpreter. In exercising that discretion, the hearing officer shall take into account all relevant factors, including but not limited to the following: (i) the respondent's preference, if any, for his or her own interpreter; (ii) the apparent skills of the respondent's requested interpreter; (iii) whether the respondent's requested interpreter is a child under the age of eighteen; (iv) minimization of delay in the hearing process; (v) maintenance of a clear and usable hearing record; (vi) whether the respondent's requested interpreter is a potential witness who may testify at the hearing. The hearing officer's determination and the basis for this determination shall be made on the record.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-51) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

Subd. (c) amended City Record Nov. 25, 2008 §4, eff. Nov. 25, 2008 per City Record notice. [See

T48 §3-12 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

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[Footnote 2]: * Subchapter C amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter re-titled City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-52 Hearing Officers.

(a) **Who Presides.** Hearings in enforcement proceedings shall be presided over by a hearing officer appointed by the board.

(b) **Powers and Duties.** Hearing officers shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. They shall have all powers necessary to these ends, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpoenas and discovery orders and to rule upon objections to such orders;

(3) To rule upon offers of proof and receive evidence;

(4) To regulate the course of the hearing and the conduct of the parties and their representatives;

(5) To hold conferences for the simplification of issues or any other proper purpose;

(6) To interrogate witnesses;

(7) To consider and rule upon all procedural and other motions, including requests for adjournment;

(8) To make and file recommended decisions and orders.

(c) **Interference.** In the performance of their adjudicative functions, hearing officers shall not be responsible to or subject to the supervision of direction of any officer, employee or agent of a petitioner. No ex-parte communication relating to other than ministerial matters regarding a proceeding, including internal agency directives not published as rules, shall be received by a hearing officer from the petitioning agency or from individual members of the board.

(d) **Power to Discipline.** The hearing officer may for good cause noted on the record, and after a warning, bar any person, including a party or an attorney or other representatives of a party, from continued participation in a hearing where such person refuses to comply with the hearing officer's directions or behaves in a disorderly, dilatory or obstructionist manner. Any person so barred may make a prompt application to the executive director for a review of the hearing officer's action. The hearing may continue at the hearing officer's discretion, unless the executive director orders that further proceedings be stayed pending a decision on the application. No interlocutory appeal shall lie to the board from the decision of the executive director granting or denying the application.

(e) **Disqualification of Hearing Officer.**

(1) When a hearing officer deems himself or herself disqualified to preside in a particular proceeding, the hearing officer shall withdraw from the proceeding by notice on the record and shall notify the executive director of such withdrawal.

(2) A party may, for good cause shown, request that the hearing officer remove or disqualify himself or herself. Such motion shall be ruled upon by the hearing officer in the proceeding. If the hearing officer denies the motion, the party may obtain a brief adjournment in order to promptly apply for review by the executive director.

(3) Upon recusal or removal of the hearing officer, the executive director shall appoint another hearing officer to continue the case. If a refusal to recuse is upheld by the executive director, the party may re-raise the issue on appeal.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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FOOTNOTES

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rules of the Office of Administrative Trials and Hearings (OATH).

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[Footnote 2]: * Subchapter C amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter re-titled City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-52.1 Adjournments.

(a) In general, a hearing officer may adjourn a proceeding if he or she decides that the adjournment would allow one party to present its side of the dispute more effectively and would not be unreasonably inconvenient or unfair to the other party. In certain instances, however, a hearing officer's authority to adjourn a proceeding is limited. This Rule describes those instances.

(b) The Rule uses these special definitions:

(i) A respondent's appearance is "timely" if the respondent appeared within two hours of the scheduled hearing time for a notice of violation.

(ii) If the respondent has timely appeared, an appearance by the officer who issued the notice of violation is "timely" if the officer appears within two hours of the scheduled hearing time for the notice of violation or within one hour after a hearing officer has announced that he or she is available to call the notice of violation for a hearing.

(iii) "Extraordinary circumstances" are circumstances that could not reasonably have been foreseen by the petitioning agency. They do not include the fact that the parties disagree about the notice of violation or the charges it contains.

(c) Respect for a respondent's convenience means that a hearing should not be routinely adjourned once a respondent has appeared at a board office as instructed by the notice of violation. If a respondent makes a timely appearance on the date indicated on a notice of violation and at the specific board office location indicated on the notice of violation (or, if no specific board office location is indicated, at any board office location), the hearing officer may adjourn the hearing only if (i) the respondent consents to the adjournment; or (ii) a representative of the petitioning agency appears at the hearing, unless the failure of any representative of the petitioning agency to appear is due to extraordinary circumstances.

(d) Once a hearing has been adjourned for the convenience of one party, it should not routinely be adjourned again to accommodate the same party unless good cause is shown that a further adjournment is necessary to afford the party a reasonable opportunity to present relevant, non-cumulative testimony or evidence that would contribute to a full and fair hearing of each party's side of the dispute. However, absent extraordinary circumstances, a hearing will not be adjourned for the sole purpose of enabling the officer who issued the notice of violation to attend if: (i) the hearing has already been adjourned for the sole purpose of enabling the officer who issued the notice of violation to attend; (ii) the respondent timely appears on the adjourned hearing date at the specific board office location indicated on the adjournment order; and (iii) the issuing officer does not timely appear at the specific board office indicated on the adjournment order. In order to ensure the fairness and efficient functioning of the adjournment process, the petitioning agency will be granted an opportunity to confirm the issuing officer's availability for the proposed adjourned date of the hearing. If it is not possible for the date to be confirmed at the time of the hearing, proposed adjourned dates will be selected at the hearing, the petitioning agency will confirm with the hearing officer and within one week of the initial hearing notify the board of the adjourned date upon which the issuing officer will be available. A written notice will be mailed by the board to the respondent and the petitioning agency confirming the new adjourned date.

(e) An adjournment will sometimes be appropriate because of extraordinary circumstances. Under such circumstances, a petitioning agency may be entitled to an adjournment that would not otherwise be permitted. To ask for an adjournment because of extraordinary circumstances, the agency must file with the board a written statement of the claimed circumstances, accompanied by any supporting documents. The agency must also serve a copy of its request and any supporting documents on the respondent. The request must be made as soon as is reasonable after the agency becomes aware of the circumstances it claims to be extraordinary, but in no event more than five days after the agency becomes aware of those circumstances. The hearing officer before whom the case is pending shall determine whether extraordinary circumstances have been demonstrated to warrant an adjournment. The hearing officer shall also determine whether the case should be continued through consideration of written submissions only or through one or more additional hearing dates. In making those determinations, the hearing officer shall give the respondent an opportunity to state and support a position with respect to the existence of extraordinary circumstances, the appropriateness of an adjournment, the best approach to continuing the hearing and any other matter raised by the petitioning agency's submission.

HISTORICAL NOTE

Section added City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

FOOTNOTES

6

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ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

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contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

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[Footnote 2]: * Subchapter C amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter re-titled City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-53 Amendments to Notice of Violation.

(a) **By Leave.** If and whenever determination of a controversy on the merits will be facilitated thereby, the hearing officer may, upon such conditions as are necessary to avoid injustice or unfair surprise to a party, allow appropriate amendments to the notice of violation.

(b) **Conformance to Evidence.** When issues not raised by the notice of violation but reasonably within its scope are tried by the express or implied consent of the parties, they shall be treated in all respects as if they had been raised, and such amendments of the notices of violation as may be necessary to make it conform to the evidence shall be allowed at any time.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-53) City Record Nov. 24, 2008 §1, eff. Nov. 24,

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Section in original publication July 1, 1991.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-54 Evidence.

(a) **Burden of Proof.** The petitioner shall have the burden of proof in establishing by a preponderance of the credible evidence that respondent has committed the violation charged in the notice of violation, but the proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto. The notice of violation, if sworn to or affirmed, shall constitute prima facie evidence of the facts stated therein.

(b) **Admissibility.** Relevant, material and reliable evidence shall be admitted without regard to technical or formal rules or laws of evidence applicable in the courts of the State of New York. Irrelevant, immaterial, unreliable or unduly repetitious evidence shall be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as practicable.

(c) **Official Notice.** Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge and experience of the board or the hearing officer. Opportunity to disprove such noticed fact shall be granted to any party making timely motion therefore.

(d) **Objections.** Objections to evidence shall be timely and shall briefly state the grounds relied upon. Rulings on all objections shall appear on the record.

(e) **Exceptions.** Formal exception to an adverse ruling is not required.

HISTORICAL NOTE

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Section in original publication July 1, 1991.

CASE NOTES

¶ 1. The court held that this section was not unconstitutionally vague. Although the regulation did not specify the standard of proof, the court interpreted the regulation to require proof by a preponderance of evidence, which is the normal standard in a civil proceeding. New Amber Auto Service v. New York City Environmental Control Board, 163 Misc.2d 113, 619 N.Y.S.2d 496 (Sup.Ct. New York Co. 1994).

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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and re-numbers that Charter section as Charter §1049-a.

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-55 Interlocutory Appeals.

Interlocutory appeals from rulings of a hearing officer may be filed only after leave to file has been obtained from the hearing officer. Leave to appeal will not be granted except upon a showing that the ruling complained of involves substantial rights and will materially affect the final decision, and that a determination of its correctness before conclusion of the hearing is essential to serve the interests of justice. The board may, in its discretion, refuse to hear such interlocutory appeal even though leave to appeal has been obtained from the hearing officer. Unless otherwise ordered by the board or the hearing officer, an interlocutory appeal shall not stay the proceeding or extend the time for the performance of an act.

HISTORICAL NOTE

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Section in original publication July 1, 1991.

CASE NOTES

¶ 1. The Environmental Control Board may permit extensions of the time to appeal a decision, where the request for extension was made within the 30 day limit for filing appeals. Reminisce Bar and Lounge v. City of New York Department of Environmental Protection, 178 Misc.2d 640, 680 N.Y.S.2d 143 (Sup.Ct. New York Co. 1998).

FOOTNOTES

6

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-56 Transcript.

The board shall provide or arrange for either a stenographically reported or mechanically recorded verbatim transcript of all hearings. A digital, tape or other electronic or mechanical recording may be deemed the transcript of the hearing for all purposes under these Rules.

HISTORICAL NOTE

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I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

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[Footnote 2]: * Subchapter C amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter re-titled City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-57 Decisions.

(a) **Hearing Officer's Recommended Decision and Order.** As soon as possible after conclusion of the hearing, the hearing officer shall prepare a recommended decision and order. The hearing officer's decision shall set forth findings of fact and conclusions of law, and it shall set forth the hearing officer's reasons for findings on all material issues. If the charges contained in the notice of violation are upheld, the hearing officer shall prepare an order setting forth the penalty, and if the board is authorized by law to impose remedial relief or other sanction, the relief or sanctions recommended. The recommended decision and order shall be filed with the executive director and served on all parties.

(b) **Finality.** If timely exceptions are not filed as per §3-71, the hearing officer's recommended decision and order will be automatically adopted by the board without further action and shall constitute the board's final action in the matter.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-57) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Subd. (b) amended City Record Nov. 25, 2008 §5, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

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Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters

through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 2]: * Subchapter C amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter re-titled City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER D ADJUDICATIONS-APPEAL PROCEDURES*3

§3-71 Exceptions to Recommended Decision and Order.

(a) **Filing.** Any party aggrieved by the hearing officer's recommended decision and order may, within 30 days of mailing of the same, file written exceptions with the tribunal. A copy of the exceptions shall be served upon all parties, and proof of such service filed with the tribunal within 30 days of the mailing of said decision and order. Written exceptions must contain a concise statement of the issues presented, specific objections to the findings of fact and conclusions of law set forth in the hearing officer's recommended decision and order, and arguments presenting clearly the points of law and fact relied on in support of the position taken on each issue.

(b) **Answer.** Within 20 days after the service on a party of exceptions to the hearing officer's recommended decision and order, any party supporting the hearing officer's recommended decision and order or opposing the matters raised in the exceptions may file an answering brief. An answering brief shall follow the format and be served as required of exceptions by subparagraph (a).

(c) **Replies.** Further briefing shall not be permitted unless required by the board.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-71) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Subd. (a) amended City Record Oct. 13, 2006 §8, eff. Nov. 12, 2006. [See T48 §3-103 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules

within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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[Footnote 3]: * Subchapter B amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter added City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER D ADJUDICATIONS-APPEAL PROCEDURES*3

§3-72 Timeliness and Extensions of Time.

(a) Any application for a written copy of the transcript of the hearing or a copy of the audio tape shall be made within the time allotted for the filing of exceptions. A copy of such application shall be served upon all parties, and proof of such service filed with the tribunal within the time allotted for filing exceptions. In that event, the time within which exceptions to the hearing officer's recommended decision and order must be filed with the tribunal shall be extended by 20 days from the date when such transcription or audio tape is delivered or mailed to the party requesting same.

(b) Any application to extend time to file for any other reason shall be made to the executive director and supported by evidence of impossibility or other explanation of inability to file timely. A copy of such application shall be served upon all parties, and proof of such service filed with the tribunal.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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2008 per City Record notice. [See Chapter 3 footnote]

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FOOTNOTES

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER D ADJUDICATIONS-APPEAL PROCEDURES*3

§3-73 Payment of Penalty.

(a) No appeal by a respondent shall be permitted unless within 20 days of the mailing of the hearing officer's recommended decision and order the civil penalty imposed by said order is paid or the respondent shall have posted a cash or recognized surety company bond in the full amount imposed by the decision and order appealed from.

(b) Any application for a waiver of such prior payment of the civil penalty must be made within 20 days of the mailing of the hearing officer's recommended decision and order and must be supported by evidence of financial hardship. Waivers of such prepayment may be granted in the discretion of the executive director.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local

Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

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[Footnote 3]: * Subchapter B amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter added City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER D ADJUDICATIONS-APPEAL PROCEDURES*3

§3-74 Board Review.

(a) When exceptions have been filed with the tribunal, the board shall consider the entire matter on the basis of the record before it. The notice of violation, the transcript of the hearing and all briefs filed and exhibits received in evidence, together with the hearing officer's recommended decision and order, shall constitute the hearing record.

(b) The board may from time to time establish panels from among its members who shall conduct the review. If an appeal panel deems it necessary, it shall order further testimony or evidence be taken or submitted, or it may order oral argument on any or all of the questions raised on appeal. The appeal panel shall report its findings to the full board for final resolution.

(c) After such review, the board shall issue its decision. Such decision shall contain findings of fact and conclusions of law. An order consistent with such decision shall be made, exercising such of the board's powers as are deemed appropriate.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-74) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental

Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.

[Footnote 3]: * Subchapter B amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter added City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER D ADJUDICATIONS-APPEAL PROCEDURES*3

§3-75 Amendments to Board Appeal Decision and Order.

An application to the board by any party for a superseding appeal decision and order may be made within 10 days of mailing of the board's final decision and order, to correct ministerial errors or errors due to mistake of fact or law.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-75) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the

Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER D ADJUDICATIONS-APPEAL PROCEDURES*3

§3-76 Judicial Review of Board Decisions.

(a) After exhaustion of the procedures set forth above, judicial review of the final decision and order of the board may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.

(b) If a respondent appeals and the board does not issue a final decision and order after 180 days from the filing of exceptions, the respondent may at any time seek judicial review of the hearing officer's recommended decision and order pursuant to Article 78 of the New York Civil Practice Law and Rules and rely on the hearing officer's recommended decision and order as the final decision and order of the board, provided that three specific conditions are met:

(i) at least 45 days before the filing of a petition pursuant to Article 78 of the New York Civil Practice Law and Rules, the respondent files with the board written notice of the respondent's intention to file the petition;

(ii) the board has still not issued a final decision and order when the respondent files the petition; and

(iii) the respondent serves the petition on the board pursuant to the New York Civil Practice Law and Rules.

(c) After a respondent files with the board notice of intention to file a petition for judicial review under the preceding subsection (b), the board may still issue a final decision and order unless the respondent has already filed the

petition.

HISTORICAL NOTE

Section added City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER E MISCELLANEOUS*4

§3-81 Default by Respondent.

(a) Failure of a respondent to make a timely response, or appear or proceed as required by the tribunal or hearing officer or these rules shall constitute a default. Upon default, the hearing officer or board shall thereupon render such decision and order in accordance with §1049-a(d)(1)(d) of the Charter. Orders rendered in consequence of a default shall take effect immediately. Notice of such order shall be sent to respondent.

(b) Where respondent was permitted to admit and pay by mail pursuant to §3-32, respondent shall also be offered the opportunity to enter a late admission and payment by mail within 30 days of the mailing date of the default order issued against respondent. An appropriate fee may be imposed by the tribunal for the processing of such late admission.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section amended City Record Nov. 25, 2008 §6, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Section repealed and reissued (former T15 §31-81) City Record Nov. 24, 2008 §1, eff. Nov. 24,

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Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

FOOTNOTES

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental

Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

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SUBCHAPTER E MISCELLANEOUS*4

§3-82 Stays of Default.

Except as otherwise provided by rule or statute, a request by respondent for a stay of a default order and a hearing must be made by application to the executive director within 30 days of mailing of the default order. When a timely request is made for a stay of a first default, the executive director shall grant the request. A timely request for a stay of a second or subsequent default made for the same notice of violation may be denied by the executive director absent a showing of a meritorious defense.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-82) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER E MISCELLANEOUS*4

§3-83 Late Request for Stay of Default.

(a) A request by a respondent for stay of default and a new hearing made more than 30 days after service of the default order shall be granted where, within 90 days from mailing of the default order, respondent alleges a credible explanation and excuse for the default together with an allegation of a meritorious defense to the violation charged.

(b) The executive director may designate categories of alleged defenses which in the interest of justice shall be grounds for a late stay of default and a hearing without regard to the requirements set out in paragraph (a) above.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-83) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER E MISCELLANEOUS*4

§3-84 Stipulation in Lieu of Hearing.

(a) At any time prior to the issuance of the hearing officer's recommended decision and order the petitioner may offer the respondent a settlement of the matter by stipulation in lieu of further hearing. The stipulation shall contain an admission of the violation, the further facts stipulated to, if any, the amount of the penalty to be imposed, and the compliance ordered, if any.

(b) If entered into by respondent and filed with the tribunal prior to the first scheduled hearing date, in the manner and form set by the tribunal, the stipulation shall be reviewed by the board. Within a reasonable time after receipt of such stipulation, the board shall cause to be issued a final decision and order incorporating the terms of said stipulation or, if the stipulation is not acceptable to the board, the matter will be rescheduled for further hearing.

(c) If entered into before a hearing officer during the course of a hearing and if the hearing officer approves such stipulation, it shall be incorporated into the hearing officer's recommended decision and order.

(d) Decisions and orders based upon stipulations shall not be appealable.

HISTORICAL NOTE

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FOOTNOTES

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER F*5 SPECIAL HEARINGS AND ENFORCEMENT PROCEEDINGS

§3-91 Cease and Desist Actions.

(a) **Scope.** This section governs cease and desist actions brought by the board pursuant to Administrative Code §§24-178, 24-257, or 24-524, after respondent has had notice and an opportunity for a hearing on the violations alleged pursuant to the provisions of §§24-184, 24-263, or 24-524 as appropriate, and has failed to comply with orders issued by the board in such proceedings.

(b) **Issuance of Order and Notice.** Cease and desist actions shall be commenced by the issuance by the board of an order to cease and desist and a notice of special hearing. The order and notice shall identify the particular compliance order previously issued after an adjudicatory hearing, or in default thereof, that respondent is alleged to have disregarded, and the activity, equipment, device and/or process involved. The order shall direct respondent to show cause at a special hearing why the equipment, device or process should not be sealed and additional penalties imposed and shall notify respondent that if respondent does not appear as directed, the board order will be implemented forthwith.

(c) **Service.** The order to cease and desist and notice of special hearing shall be served personally or by certified mail, return receipt requested.

(d) **Hearing.** The special hearing shall be presided over by a hearing officer of the tribunal who shall have all of the powers and duties set out in subchapter C of these rules, except as more specifically provided below. The hearing

officer shall receive such evidence as may be presented by the petitioner which requested the board to issue the cease and desist order concerning respondent's failure to comply with orders previously issued, and such evidence as respondent may present in defense.

(e) **Report.** In lieu of a recommended hearing decision and order, the hearing officer shall prepare a report summarizing the evidence and arguments offered together with the hearing officer's findings of fact and recommendation as to whether the sealing should proceed and additional penalties be imposed. The report shall be promptly filed with the board.

(f) **Board Order.** Upon receipt of the hearing officer's report, the board may adopt, reject or modify the findings and recommendations and direct such further hearings or issue such further orders to respondent as are appropriate under the circumstances to assure correction of the violations. In any case in which the board issues an order requiring affirmative action to be taken by the respondent, such order may also require the respondent to file with the board a report or reports under oath attesting to respondent's compliance with the order. Failure to file a required report within the time limit set forth may, in the board's discretion, constitute a violation of the order regardless of whether the respondent has otherwise been in compliance with the provisions of the order.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-91) City Record Nov. 24, 2008 §1, eff. Nov. 24,

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FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was

consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER F*5 SPECIAL HEARINGS AND ENFORCEMENT PROCEEDINGS

§3-92 Post-Sealing Special Hearing.

At any time after a sealing has taken place, a respondent may request a special hearing to present evidence as to why the seal should be removed or sealing order modified. The request may be made by letter addressed to the board or the executive director or their designee at the tribunal. A special post-sealing hearing shall then be scheduled and shall be presided over by a hearing officer of the tribunal and conducted in accordance with the provisions of subparagraphs (d), (e) and (f) of §3-81.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section amended City Record Nov. 25, 2008 §7, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Section repealed and reissued (former T15 §31-92) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

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FOOTNOTES

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local

Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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SUBCHAPTER F*5 SPECIAL HEARINGS AND ENFORCEMENT PROCEEDINGS

§3-93 Application for a Temporary or Limited Unsealing or Stay.

If it appears that remediation undertaken by a respondent cannot proceed or its effectiveness cannot be tested while a seal remains in place, the respondent may, by written application addressed to the executive director, request that a seal be temporarily removed or stayed for a limited period. The executive director may authorize a temporary unsealing or stay of sealing for the above specified reasons for such limited period and subject to such conditions as the executive director deems appropriate.

HISTORICAL NOTE

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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SUBCHAPTER F*5 SPECIAL HEARINGS AND ENFORCEMENT PROCEEDINGS

§3-94 Hearings after Emergency Cease and Desist Orders.

When the board has issued an emergency cease and desist order, without hearing, on account of an imminent peril to public health, pursuant to Administrative Code §§24-178(f), 24-346(e) or 24-523(b), any person affected by such emergency order may, by written notice to the board, request a hearing or an accelerated hearing in accordance with said provisions. The hearing held pursuant to the request shall be held by the board and shall not be referred to a hearing officer. The hearing shall otherwise be conducted in accordance with the relevant provisions of law and such of the board's rules for adjudicatory hearings as may be applicable.

HISTORICAL NOTE

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T48 §3-11 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER F*5 SPECIAL HEARINGS AND ENFORCEMENT PROCEEDINGS

§3-95 Post Judgment Amendment of Records.

(a) Upon the motion of any party, the board may amend a judgment or judgments to designate a judgment debtor by his, her or its correct legal name.

(b) The motion shall be made in writing and filed with the executive director. The movant shall also file an affidavit setting forth the facts and evidence relied on by the movant and an affidavit of service, by certified or registered mail and regular mail, of the motion on the party whose name is sought to be corrected in the judgment or judgments at his, her or its last known address and at the address or addresses at which the notice or notices of violation was or were served. Such motion shall be served on all parties. The date and time of the hearing on the motion is to be set forth in the moving papers in accordance with the direction of the executive director but shall not be sooner than 10 days after the service of such motion on the party whose name is sought to be corrected. At such hearing any party may appear, in person or otherwise, with or without counsel, cross-examine witnesses, present evidence and testify. If the party whose name is sought to be corrected does not appear at the hearing the hearing officer may proceed to determine the evidence presented by the moving party in support of the motion.

(c) If the hearing officer finds that the movant has established, by a preponderance of evidence (i) the true name of the judgment debtor, (ii) that such person is the same person as the person designated on the notice of violation as responsible for the violation or violations and (ii) that service of the notice or notices of violation and of all other papers in the proceeding or proceedings was or were properly made upon such person, he or she shall grant such motion and

issue a recommended decision and order directing the amendment and correction, to reflect the correct legal name of such person, of all records relating to the proceedings commenced by the service of such notice or notices of violation, including the records of judgments filed with the civil court and in the office of the county clerk.

(d) The recommended decision and order shall be filed with the executive director and served on all parties. Any party who appeared at the hearing, in person or otherwise, may file exceptions to such recommended decision and order in the manner provided in §3-71 and the board shall render a final decision and order on such exceptions. Such final decision and order shall be the final decision of the board for purposes of review pursuant to article 78 of the Civil Practice Law and Rules.

(e) If exceptions are not filed within the time provided in §3-71, the hearing officer's recommended decision and order shall become the final decision and order of the board and, in accordance with applicable law, shall not be subject to review pursuant to article 78 of the Civil Practice Law and Rules.

(f) An order correcting a judgment shall not affect the duration of a judgment. The judgment shall remain in full force and effect for eight years from the date the judgment was originally entered.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-95) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Subd. (d) amended City Record Nov. 25, 2008 §8, eff. Nov. 25, 2008 per City Record notice. [See

T48 §3-12 Note 1]

Subd. (e) amended City Record Nov. 25, 2008 §8, eff. Nov. 25, 2008 per City Record notice. [See

T48 §3-12 Note 1]

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC

Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as

practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 5]: * Subchapter F amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter added City Record Sept. 5, 1997 eff. Oct. 5, 1997.

Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-100 General.

Whenever a respondent is found in violation of any of the following provisions of the New York City Administrative Code, Rules of the City of New York, New York City Health Code, New York State Public Health Law, New York Codes, Rules and Regulations, New York City Zoning Resolution, New York State Vehicle and Traffic Law, New York State Environmental Conservation Law, any civil penalties recommended by a Hearing Officer pursuant to §3-57(a) and/or any default penalties imposed pursuant to §3-81(a) in accordance with §1049-a(d)(1)(d) of the Charter and/or any civil penalties imposed for admissions of violation(s) pursuant to §3-32 or late admissions pursuant to §3-81(b) will be imposed pursuant to the penalty schedules set forth below.

Please note that some of the penalties in the Penalty Schedules set forth below are established by law as flat penalties. Thus, for some of the penalties set forth below, no range of dollar amounts is set forth in the Administrative Code or other applicable law. However, solely for the convenience of the public, these flat penalties are included in the Penalty Schedules set forth below, to ensure, to the extent possible, that these Penalty Schedules are comprehensive.

HISTORICAL NOTE

Section amended City Record Nov. 25, 2008 §9, eff. Nov. 25, 2008 per City Record notice. [See T48

§3-12 Note 1]

Section repealed and reissued (former T15 §31-100) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Closing par added City Record Aug. 16, 2007 §1, eff. Sept. 15, 2007. [See §3-122 Note 1]

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules

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ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow

be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-101 Air Asbestos Penalty Schedule.

AIR ASBESTOS PENALTY SCHEDULE

If a stipulation is offered and accepted at a hearing, the stipulation (stip.) penalty will be imposed.

Unless otherwise indicated, all citations are to 15 RCNY Chapter 1.

A second violation is a violation by the same respondent within two years, for an infraction within the same category as the prior infraction. (Categories are defined by description subheadings on this schedule, e.g., "Notification.")

The default penalty for all charges in this Penalty Schedule is $10,000.

Section	Description	1st Violation Penalty	1st Violation STIP.	2nd Violation Penalty	2nd Violation STIP.
1-01(e)	Knowingly made a false statement or submitted a false document to DEP	2400	1500	4800	3000
1-01(g)	Interfered with or obstructed DEP personnel	2400	1500	4800	3000
1-01(f)	Did not permit DEP inspection of Asbestos Project/Abatement Activities	2400	1500	4800	3000
1-01(c)	Failure of Asbestos Handler Supervisor to comply with all provisions of	1200	1000	2400	1500

	Asbestos Rules				
1-01(h)	Unprofessional conduct	1200	1000	2400	1500
	ASBESTOS INVESTIGATION CERTIFICATE				
1-16(a)(1)	Conduct of building survey and hazard assessment without DEP certification	2400	1500	4800	3000
1-16(a)(3)	Failure to collect bulk samples as specified	2400	1500	4800	3000
1-16(h)	Failure to sign/affix valid investigators seal to plan report as required	1200	1000	2400	1500
1-21(a)	Failed to comply with reporting and filing require- ments	2400	1500	4800	3000
1-21(b)	Failed to calculate project size and scope as required	2400	1500	4800	3000
	NOTIFICATION				
1-22(b)	Owner failed to determine the amount of ACM to be disturbed by permitted activity	2400	1500	4800	3000
1-23(c)	Failure to file required Asbestos Assessment Report (ACP-5) with Buildings Dept	2400	1500	4800	3000
1-25(c)	Failed to file Asbestos inspection report 7 days before work starts	2400	1500	4800	3000
1-25(d)	Failed to notify DEP in writing of any change in project notification	1200	1000	2400	1500
1-27(b)	Failure to immediately notify DEP of emergency project as required	2400	1500	4800	3000
1-27(c)	Failure to notify DEP in writing of emergency project within 48 hours	2400	1500	4800	3000
	PERMITTING				
1-26(a)	Failure to obtain asbestos abatement permit when required	4800	3000	9600	6000
1-26(c)(3)	Failure to maintain/provide record of final inspection	2400	1500	4800	3000
1-26(e)	Failed to terminate asbestos abatement permit w/in 1 yr of issuance	4800	3000	9600	6000
1-26(f)	Failure to maintain required insurance during work-permitted work	1200	1000	2400	1500
1-26(h)	Commencement of permitted work prior to permit issuance	1200	1000	2400	1500
	RECORDKEEPING REQUIREMENTS FOR INVESTIGATOR				
1-28(a)	Failure to maintain permanent records of Asbestos surveys as required	2400	1500	4800	3000
1-28(b)	Failure to compile complete records of Asbestos survey as required	1200	1000	2400	1500
1-28(c)	Failure to properly record work by non-certified individual as required	1200	1000	2400	1500
1-28(d)	Failure to maintain records of Asbestos surveys for 30 years	1200	1000	2400	1500
1-28(e)	Failure to make Asbestos survey records available for inspection by DEP	2400	1500	4800	3000
	PROJECT RECORD & PROJECT SUMMARY				
1-29(a)	Failure to properly maintain project record	1200	1000	2400	1500
1-29(b)	Failure to properly maintain project summary	1200	1000	2400	1500
1-29(c)	Failure to make project record or project summary available for inspection in a timely manner	1200	1000	2400	1500
	AIR MONITORING				
1-36(a)	Failure to retain independent third party Air Monitor	4800	3000	9600	6000
1-36(b)	Failure to have technician present during air sample collection	1200	1000	2400	1500
1-36(c)	Use of lab without required qualifications to perform bulk sample analysis	2400	1500	4800	3000
1-36(d)	Use of lab without required qualifications to perform air sample analysis	2400	1500	4800	3000
1-36(e)	Employment of unqualified analyst to perform air sample analysis (TEM)	2200	1500	4800	3000
1-37(a)	Failed to perform bulk sampling as required	1200	1000	2400	1500
1-37(b)	Failed to utilize area Air sampling equipment for PCM per 60 NIOSH 7400	1200	1000	2400	1500
1-37(c)	Failed to utilize area Air sampling equipment for TEM as required	1200	1000	2400	1500
1-37(d)	Failure to to use appropriate air sampling pump calibrated by rotometer	1200	1000	2400	1500
1-37(e)	Failure to properly inspect air sampling equipment	1200	1000	2400	1500
1-37(f)	Failure to create/maintain air sampling log	2400	1500	4800	3000

1-41(a)	Failed to conduct Air sampling in accordance with required schedule	4800	3000	9600	6000
1-41(b)	Failed to conduct Pre-Abatement Air sampling as required	1200	1000	2400	1500
1-41(c)	Failed to conduct Air sampling during abatement as required	2400	1500	4800	3000
1-41(d)	Failure to conduct Post-Abatement air sampling as required	2400	1500	4800	3000
1-42(a)	Utilization of improperly located air samplers	1200	1000	2400	1500
1-42(b)	Failed to locate ambient samplers properly	1200	1000	2400	1500
1-42(c)	Placed Air sampling equipment in corners or near obstructions	1200	1000	2400	1500
1-42(d)	Failed to have a chain of custody record for air samples	2400	1500	4800	3000
1-42(e)	Failed to follow specified area sampling schedule for air monitoring	2400	1500	4800	3000
1-42(f)	Failed to conduct air sampling for glovebag and tent procedures as required	2400	1500	4800	3000
1-43(a)	Failed to confirm absence of visible ACM before final air monitoring	2400	1200	4800	2400
1-43(b)	Failed to properly place required number of samples in work area	1200	1000	2400	1500
1-43(c)	Failed to properly place samples outside work area	1200	1000	2400	1500
1-43(d)	Failed to conduct aggressive sampling according to required procedures	2400	1500	4800	3000
1-43(e)	Area Air samples did not meet schedules for Post-Abatement monitoring	2400	1500	4800	3000
1-43(f)	Failed to reclean and re-sample in areas that failed clearance as required	2400	1500	4800	3000
1-43(g)	Failed to meet release criteria for any independent work area	2400	1500	4800	3000
1-44(a)	Failed to analyze and report PCM area Air samples as required	2400	1500	4800	3000
1-44(b)	Failed to analyze and report TEM area Air samples as required	2400	1500	4800	3000
1-44(c)	Failed to analyze and report bulk sample as required	1200	1000	2400	1500
1-44(d)	Failed to submit bulk/Air sampling results w/in 5 days of DEP request	2400	1500	4800	3000
1-45(a)	Failed to follow proper procedures when action criteria exceeded	4800	3000	9600	6000
1-45(b)	Failed to meet clearance and/or reoccupancy criteria	2400	1500	4800	3000
	WORKER PROTECTION REQUIREMENTS				
1-51(a)	Employed uncertified workers on an Asbestos project	4800	3000	9600	6000
1-51(b)	Failed to have supervisor present during abatement activities	4800	3000	9600	6000
1-51(c)	Allowed persons inside work place w/out proper protective clothing	4800	3000	9600	6000
1-51(d)	Failed to perform personal Air monitoring as per OSHA standards	2400	1500	4800	3000
1-51(e)	Failed to meet personal hygiene requirements at work site	1200	1000	2400	1500
1-51(f)	Failed to have required info in clean room	2400	1500	4800	3000
1-51(g)	Failed to post Asbestos warning signs at all approaches to work place	2400	1500	4800	3000
1-51(h)	Failed to affix required warning labels to all ACM waste containers	2400	1500	4800	3000
	MATERIALS AND EQUIPMENT				
1-61(a)	Did not store replacement materials outside work area as required	2400	1500	4800	3000
1-61(b)	Used replacement materials which did not comply with NYC Code and regulations	1200	1000	2400	1500
1-61(c)	Failed to use plastic of 6-mil thickness or greater for plasticizing	2400	1500	4800	3000
1-61(d)	Used duct tape and/or adhesive incapable of properly sealing plastic	2400	1500	4800	3000
1-61(e)	Failed to use and/or label 6-mil bags or containers for ACM as required	2400	1500	4800	3000
1-61(f)	Failed to enclose ACM in airtight manner with impact resistant material	2400	1500	4800	3000
1-61(g)	Failed to use HEPA filtration as required on hand power tools	1200	1000	2400	1500
1-61(h)	Failed to provide ladders/scaffolds and/or seal joints/ends of same	2400	1500	4800	3000
1-61(i)	Failed to use UL listed and approved electrical equipment	1200	1000	2400	1500
1-61(j)	Failure to use non-carcinogenic/non-toxic chemicals	4800	3000	9600	6000
1-61(k)	Failure to use non-combustible/fire-retardant materials	4800	3000	9600	6000
1-61(l)	Failure to obtain DEP approval for substitute equipment/material	1200	1000	2400	1500
	GENERAL WORK PLACE PREPARATION-LARGE PROJECT				
1-81(a)	Failed to post notice of Asbestos project as specified	1200	1000	2400	1500
1-81(b)	Failure to post floor plan as specified	1200	1000	2400	1500

1-81(c)	Failure to vacate work place prior to and during abatement activities	4800	3000	9600	6000
1-81(d)	Failure to provide power from outside the work area thru GFI at source	4800	3000	9600	6000
1-81(e)	Failure to install worker decon in required sequence	4800	3000	9600	6000
1-81(f)	Failure to limit disturbance of ACM before erecting partition as required	2400	1500	4800	3000
1-81(g)	Failure to lockout/isolate heating/ventilation/air conditioning system	4800	3000	9600	6000
1-81(h)	Commencement of abatement prior to completion of work place preparation	4800	3000	9600	6000
1-81(i)	Failure to properly pre-clean and remove moveables and/or cover carpet	1200	1000	2400	1500
1-81(j)	Failure to remove flammables/extinguish ignition sources	2400	1500	4800	3000
1-81(k)	Failure to properly pre-clean and plasticize fixed objects in work area	1200	1000	2400	1500
1-81(l)	Failure to use temporary emergency lighting when required	1200	1000	2400	1500
1-81(m)	Failure to properly pre-clean the work area prior to plasticizing	2400	1500	4800	3000
1-81(n)	Failure to install isolation barriers over all openings to work place	4800	3000	9600	6000
1-81(o)(1)-(3)	Failure to segregate work area from work site with partitions as required	4800	3000	9600	6000
1-81(o)(4)-(5)	Failure to construct partitions to ensure unobstructed means of egress	4800	3000	9600	6000
1-81(p)	Failure to properly seal floors and walls with 2 layers of 6-mil plastic	4800	3000	9600	6000
1-81(q)	Failure to remove/clean ceiling-mounted objects not previously sealed	1200	1000	2400	1500
1-81(r)	Removal of contaminated ceiling tiles prior to full work area preparation	2400	1500	4800	3000
1-81(s)	Failure to lock entrances not used for workers or as emergency exits	2400	1500	4800	3000
1-81(t)	Failure to properly maintain/check exits	4800	3000	9600	6000
1-81(u)	Failure to post/maintain exit signs in work area	1200	1000	2400	1500
1-81(v)	Failure to post/maintain no smoking signs in work place	1200	1000	2400	1500
1-81(w)	Failure to properly seal and/or cover floor drains, pits, sumps, etc.	1200	1000	2400	1500
1-81(x)	Failure to maintain, secure, lockout elevators running thru work area	4800	3000	9600	6000
1-81(y)	Failure to provide adequate toilet facilities in vicinity of clean room	1200	1000	2400	1500
1-81(z)	Failure to have fire extinguisher(s) in work place	1200	1000	2400	1500
	WORKER DECONTAMINATION ENCLOSURE-LARGE PROJECT				
1-82(a)	Failed to provide or locate worker decon outside work area as required	4800	3000	9600	6000
1-82(b)	Failed to construct worker decon as specified	4800	3000	9600	6000
1-82(c)	Failed to fully line worker decon with 2 layers of opaque 6-mil plastic	2400	1500	4800	3000
1-82(d)	Failed to secure/weatherproof outside or publicly accessible decon	2400	1500	4800	3000
1-82(e)	Failed to provide proper prefabricated or trailer worker decon	1200	1000	2400	1500
1-82(f)	Failed to construct and/or maintain clean room as required	1200	1000	2400	1500
1-82(g)	Failed to install and/or maintain shower room as required	2400	1500	4800	3000
1-82(h)	Failed to provide shower filtration system as specified	2400	1500	4800	3000
1-82(i)	Failed to properly use or maintain equipment room	1200	1000	2400	1500
	WASTE DECONTAMINATION ENCLOSURE SYSTEM-LARGE PROJECT				
1-83(a)	Failed to properly construct waste decon as specified	4800	3000	9600	6000
1-83(b)	Failed to locate/install waste/worker decon where 1 exit exists	2400	1500	4800	3000
1-83(c)	Failed to construct waste decon in accordance with requirements of 1-82	2400	1500	4800	3000
	COMBINED WORKER/WASTE DECON-SMALL PROJECT				
1-84(a)	Failure to properly construct alternative worker/waste decon for small project	4800	3000	9600	6000
1-84(b)	Failure to properly utilize alternative worker/waste decon for small project	4800	3000	9600	6000
	ENGINEERING CONTROLS-LARGE PROJECT				
1-91(a)	Failed to utilize negative pressure ventilation equipment	4800	3000	9600	6000

1-91(a)(1)	Failure to use manometer to document pressure differential	1200	1000	2400	1500
1-91(b)	Failed to use negative pressure ventilation equipment 24 hrs/day	4800	3000	9600	6000
1-91(c)	Did not maintain static negative Air pressure of 0.02 in. water column	4800	3000	9600	6000
1-91(d)	Failed to turn on negative Air units 1 by 1 to check barrier integrity	2400	1500	4800	3000
1-91(e)	Failed to use dedicated power supply for negative Air units	2400	1500	4800	3000
1-91(f)	Failure to utilize/properly locate negative air cutoff switch	4800	3000	9600	6000
1-91(g)	Failure to follow procedures for loss of power to negative air units	4800	3000	9600	6000
1-91(h)	Failure to provide required air changes in work area	2400	1500	4800	3000
1-91(i)	Failure to make openings for negative air units airtight	1200	1000	2400	1500
1-91(j)	Use of negative air units not in compliance w/ANSI 9.2. Standards	4800	3000	9600	6000
1-91(k)	Operation of negative air system contrary to EPA report 560/5-85 (1985)	4800	3000	9600	6000
1-91(l)	Failure to exhaust negative air units to outside as required	2400	1500	4800	3000
1-91(m)	Failure to properly use second negative air unit in series as required	2400	1500	4800	3000
1-91(o)	Failure to smoke test/inspect/monitor ducts to ensure no fiber release	1200	1000	2400	1500
	WORK PLACE ENTRY AND EXITPROCEDURES-LARGE PROJECT				
1-92(a)	Failed to ensure proper work place entrance procedures are followed	2400	1500	4800	3000
1-92(b)	Failed to ensure that proper work area exit procedures are followed	4800	3000	9600	6000
	EQUIP/WASTE CONTAINER DECON &REMOVAL PROC. LARGE PROJECT				
1-93(a)	Permitted storage of ACM/carts in clean room when used as holding area	1200	1000	2400	1500
1-93(b)	Improperly removed waste while workers used combined decon system	1200	1000	2400	1500
1-93(c)	Improper worker transit during waste transfer in combined decon	1200	1000	2400	1500
1-93(d)	Did not clean ACM container/equipment properly before transfer into decon	1200	1000	2400	1500
1-93(e)	Failed to properly bag/package containerized ACM waste and equipment	1200	1000	2400	1500
1-93(f)	Improper washroom transit of workers prior to end of waste removal	1200	1000	2400	1500
1-93(g)	Failed to properly remove waste and equipment from airlock to holding area	1200	1000	2400	1500
1-93(h)	Failed to use/clean waste storage carts as required	1200	1000	2400	1500
1-93(i)	Failed to secure exit from waste decontamination system	1200	1000	2400	1500
1-93(j)	Failed to store waste storage carts in worksite holding area	1200	1000	2400	1500
	MAINTENANCE OF DECON SYSTEM ANDBARRIERS-LARGE PROJECT				
1-94(a)	Failed to inspect plastic barriers and partitions twice per shift	1200	1000	2400	1500
1-94(b)	Failed to smoke test plastic barriers and decon twice daily	1200	1000	2400	1500
1-94(c)	Failed to immediately repair damage or defects in decon	2400	1500	4800	3000
1-94(d)	Failed to follow proper procedure upon fiber release or barrier damage	4800	3000	9600	6000
1-94(e)	Failed to document specified events in daily projects log	1200	1000	2400	1500
	ACM ABATEMENT PROCEDURES				
1-102(a)	Performed dry removal of ACM without EPA and/or DEP approval	4800	3000	9600	6000
1-102(b)	Failed to sufficiently wet down ACM for enhanced penetration	4800	3000	9600	6000
1-102(c)	Failed to properly apply removal encapsulant as per federal guidelines	1200	1000	2400	1500
1-102(d)	Failed to bag ACM directly upon detachment from substrate as specified	2400	1500	4800	3000
1-102(e)	Failed to properly wet, wrap and secure large components of ACM	2400	1500	4800	3000
1-102(f)	Failed to remove all visible ACM residue from abated surfaces	2400	1200	4800	2400
	ENCAPSULATION PROCEDURES				
1-103(a)	Failure to utilize proper material for encapsulation/repair of ACM	1200	1000	2400	1500
1-103(b)	Failed to properly remove loose or hanging ACM before encapsulation	1200	1000	2400	1500
1-103(c)	Failed to use acceptable pigmented encapsulant	1200	1000	2400	1500

1-103(d)	Used encapsulant solvent or vehicle containing volatile hydrocarbon	1200	1000	2400	1500
1-103(e)	Improperly used latex paint as encapsulant	1200	1000	2400	1500
1-103(f)	Failed to properly field test encapsulant prior to use	1200	1000	2400	1500
1-103(g)	Failed to apply required thickness of bridging encapsulant over ACM	1200	1000	2400	1500
1-103(h)	Failed to use a different color for each coat of encapsulant	1200	1000	2400	1500
1-103(i)	Failed to properly apply penetrating encapsulant to ACM	1200	1000	2400	1500
1-103(j)	Failed to apply encapsulant with airless spray equipment as specified	1200	1000	2400	1500
1-103(k)	Failed to properly identify encapsulated ACM	2400	1500	4800	3000
	ENCLOSURE PROCEDURE				
1-104(a)	Did not properly remove loose/hanging ACM before installing enclosure	2400	1500	4800	3000
1-104(b)	Failed to properly repair areas damaged during enclosure procedure	1200	1000	2400	1500
1-104(c)	Failed to properly lower/remove/replace utilities service components	1200	1000	2400	1500
1-104(d)	Failed to properly identify enclosed ACM	2400	1500	4800	3000
	GLOVEBAG PROCEDURES				
1-105(a)	Failed to properly conduct glovebag procedures	4800	3000	9600	6000
1-105(b)(1)	Failed to bring tools/materials into work area before glovebag begins	2400	1500	4800	3000
1-105(b)(2)	Failed to conduct Air monitoring during glovebag procedure as required	2400	1500	4800	3000
1-105(b)(3)	Failed to have trained/equipped workers to conduct glovebag procedures	2400	1500	4800	3000
1-105(b)(4)	Failed to use properly sized glovebag for diameter of insulation	2400	1500	4800	3000
1-105(b)(5)	Failed to wet ACM prior to stripping during glovebag procedure	4800	3000	9600	6000
1-105(b)(6)	Failed to properly attach glovebag to insulation	4800	3000	9600	6000
1-105(b)(7)	Failed to smoke test glovebag as required	2400	1500	4800	3000
1-105(b)(8)	Failed to properly seal adjacent insulation during glovebag procedure	2400	1500	4800	3000
1-105(b)(9)	Failed to properly clean/wet surface, tools, etc. before glovebag is moved	2400	1500	4800	3000
1-105(b)(10)	Failed to properly seal insulation ends	2400	1200	4800	3000
1-105(b)(11)	Failed to properly remove tools/tool pouch from glovebag	2400	1500	4800	3000
1-105(b)(12)	Failed to use HEPA vacuum to evacuate glovebag or for clean up	2400	1500	4800	3000
1-105(b)(13)	Failed to properly collapse or seal glovebag prior to bag removal	2400	1500	4800	3000
1-105(b)(14)	Failed to properly double-bag and detach glovebag	2400	1500	4800	3000
1-105(b)(15)	Failed to properly wet/bag, dispose of waste from glovebag procedure	2400	1500	4800	3000
1-105(d)	Failure to utilize glovebag within containment as specified	1200	1000	2400	1500
	TENT PROCEDURES				
1-106(a)	Conducted tent procedures on 260 linear ft/160 sq. or more of ACM	2400	1500	4800	3000
1-106(b)	Failed to properly install and/or construct tent	2400	1500	4800	3000
1-106(c)	Failure to install airlock at tent entrance when required	2400	1500	4800	3000

1-106(d)	Failure to wear appropriate personal protective equipment during tent procedure	4800	3000	9600	6000
1-106(e)	Failure to attach tent to surface to produce an airtight seal	2400	1500	4800	3000
1-106(f)	Failure to provide/maintain proper negative air in tent	1200	1000	2400	1500
1-106(g)	Failure to use required wet removal methods during tent procedures	2400	1500	4800	3000
1-106(h)	Failure to place ACM removed in tent procedures in leaktight container	2400	1500	4800	3000
1-106(i)	Failure to properly clean/encapsulate enclosed surfaces in tent	2400	1500	4800	3000
1-106(j)	Failure to clean/encapsulate surfaces after tent failure/termination	2400	1500	4800	3000
1-106(k)	Failure to properly clean/double bag ACM for disposal as specified	2400	1500	4800	3000
1-106(l)	Failure to follow specified procedures for worker exit from tent	2400	1500	4800	3000
1-106(m)	Failure to have 4 air changes after abatement but before tent collapse	2400	1500	4800	3000
1-106(n)	Failure to collapse tent or dispose of contaminated material as specified	2400	1500	4800	3000
1-106(o)	Failure to follow proper glovebag procedure during removal in tent	1200	1000	2400	1500
	ROOFING REMOVAL PROCEDURES				
1-107(a)	Failure to properly cordon off and restrict access to work area	1200	1000	2400	1500
1-107(b)	Failure to use proper foam or liquid during removal	2400	1500	4800	3000
1-107(c)	Failure to maintain blanket of foam or liquid during removal	2400	1500	4800	3000
1-107(d)	Failure to keep ACRM wet during bagging process	1200	1000	2400	1500
1-107(e)	Failure to ensure that all persons in work area wear proper boots	1200	1000	2400	1500
1-107(f)	Carrying out of abatement during adverse weather conditions	1200	1000	2400	1500
1-107(g)	Failure to properly locate worker/waste decons	1200	1000	2400	1500
1-107(h)	Failure to remove or plasticize movable objects	1200	1000	2400	1500
1-107(i)	Failure to properly seal openings/ensure adequate air supply	1200	1000	2400	1500
1-107(j)	Failure to plasticize fixed objects as specified	1200	1000	2400	1500
1-107(k)	Failure to blanket roofing material w/foam before removal	2400	1500	4800	3000
1-107(l)	Failure to use HEPA filters on power tools used in removal	1200	1000	2400	1500
1-107(m)	Failure to properly conduct cleanup procedures	1200	1000	2400	1500
1-107(n)	Failure to conduct proper visual inspection	1200	1000	2400	1500
1-107(o)	Failure to remove all plastic sheeting after visual inspection	1200	1000	2400	1500
1-107(p)	Failure to conduct required air monitoring	1200	1000	2400	1500
	FLOORING REMOVAL PROCEDURES				
1-108(b)	Failure to use proper foam or liquid during removal	2400	1500	4800	3000
1-108(c)	Failure to maintain blanket of foam or liquid during removal	2400	1500	4800	3000
1-108(d)	Failure to keep ACM wet during bagging process	1200	1000	2400	1500
1-108(e)	Failure to ensure that all persons in work area wear proper boots	1200	1000	2400	1500
1-108(f)	Failure to plasticize baseboards and walls as specified	1200	1000	2400	1500
1-108(g)	Failure to provide negative pressure ventilation	1200	1000	2400	1500
1-108(h)	Failure to properly conduct cleanup procedures	1200	1000	2400	1500
1-108(i)	Failure to conduct proper visual inspection	1200	1000	2400	1500
1-108(j)	Failure to remove all plastic sheeting after visual inspection	1200	1000	2400	1500
1-108(k)	Failure to conduct required air monitoring	1200	1000	2400	1500
	VERTICAL SURFACE REMOVAL PROCEDURES				
1-109(a)	Failure to properly prepare work area	1200	1000	2400	1500
1-109(b)	Failure to construct decon within restricted area	1200	1000	2400	1500
1-109(c)	Failure to follow proper cleanup procedure	1200	1000	2400	1500
1-109(d)	Failure to conduct required air monitoring	1200	1000	2400	1500
	CONTROLLED DEMOLITION PROCEDURES				
1-110(a)	Demolition of building w/ACM in place w/no danger of collapse	4800	3000	9600	6000
1-110(b)	Failure to provide copy of condemnation letter to DEP	1200	1000	2400	1500
1-110(c)	Failure to perform demolition as per AC 28-215/56 NYCRR 11.5	2400	1500	4800	3000

	PRELIMINARY CLEANUP PROCEDURES-LARGE PROJECT				
1-111(a)	Failure to bag/wrap/containerize waste immediately upon removal	4800	3000	9600	6000
1-111(b)	Failure to properly clean waste decon on completion of waste removal	2400	1500	4800	3000
1-111(c)	Failure to properly clean worker decon when required	2400	1500	4800	3000
1-111(d)	Failure to stop work and dispose of excess water in work area	1200	1000	2400	1500
	FINAL CLEAN-UP PROCEDURES				
1-112(a)	Failed to HEPA vacuum all surfaces after removal of all visible ACM	1200	1000	2400	1500
1-112(b)	Failed to wet clean all surfaces in work area (first cleaning)	2400	1500	4800	3000
1-112(c)	Failure to apply lockdown encapsulant as specified	2400	1500	4800	3000
1-112(d)	Failure to vacate area for 12 hrs after 1st cleaning	1200	1000	2400	1500
1-112(e)	Failed to remove 1st layer of surface barriers	1200	1000	2400	1500
1-112(f)	Failure to properly perform 2nd cleaning	2400	1200	4800	2400
1-112(g)	Failure to follow required procedures for third cleaning	1200	1000	2400	1500
1-112(h)	Failure to remove 2nd layer of surface barriers	1200	1000	2400	1500
1-112(i)	Failure to verify absence of ACM prior to clearance air monitoring	2400	1200	4800	2400
1-112(j)	Failure to remove containerized waste from work areas as required	1200	1000	2400	1500
1-112(k)	Failure to properly decontaminate or dispose of tools, equipment, etc.	1200	1000	2400	1500
1-112(l)	Removal of isolation barriers before successful clearance air monitoring	4800	3000	9600	6000
1-112(m)	Failure to submit project monitor's report within 21 days of project completion	2400	1500	4800	3000
	PRE-DEMOLITION ABATEMENTPROCEDURES				
1-125(a)	Failed to post notice of Asbestos Project as required before abatement	2400	1500	4800	3000
1-125(b)	Failed to evacuate all occupants prior to abatement activities	2400	1500	4800	3000
1-125(c)	Failed to lock out electrical power and/or provide outside power as required	1200	1000	2400	1500
1-125(d)	Failed to install worker waste decon in required sequence	2400	1500	4800	3000
1-125(e)	Failed to lock out HVAC and/or install isolation barriers at ducts	4800	3000	9600	6000
1-125(f)	Commenced abatement prior to completion of work place preparation	4800	3000	9600	6000
1-125(g)	Used methods that raise dust during work area preparation	2400	1500	4800	3000
1-125(h)	Failed to properly preclean and/or remove objects from work area	1200	1000	2400	1500
1-125(i)	Failed to install required isolation barriers as specified	2400	1500	4800	3000
1-125(j)	Failed to properly cover/seal cinderblock/porous construction material	2400	1500	4800	3000
1-125(k)	Failed to make flooring in work area watertight	2400	1500	4800	3000
1-125(l)	Disturbed contaminated ceiling tiles prior to full work area prep	2400	1500	4800	3000
1-125(m)	Failure to establish and maintain required means of egress	4800	3000	9600	6000
1-125(n)	Failed to lock entrances to work area against unauthorized entry	2400	1500	4800	3000
1-125(o)	Failed to maintain/secure/lock-out elevators running thru work area	2400	1500	4800	3000
1-125(p)	Failed to provide adequate external toilet facilities near clean room	1200	1000	2400	1500
	ACM PROCEDURES: ORDER OF WORK				
1-126(a)	Failed to prevent demolition from compromising abatement on lower floors	4800	3000	9600	6000
1-126(b)	Improperly routed demolition debris through removal project work area	1200	1000	2400	1500
1-126(d)	Failed to maintain proper separation between abatement and demolition areas	1200	1000	2400	1500
1-126(e)	Failed to remove ACM from underground floors in proper sequence	1200	1000	2400	1500
1-126(f)	Failed to remove ACM from street level floor last	1200	1000	2400	1500
	CLEAN-UP PROCEDURES DURINGABATEMENT				
1-127(a)	Failure to bag/wrap/containerize waste immediately upon removal	4800	3000	9600	6000
1-127(b)	Failure to properly clean waste decon on completion of waste removal	2400	1500	4800	3000
1-127(c)	Failure to clean worker decon after shift/meal break as specified	2400	1500	4800	3000

1-127(d)	Failure to stop work and dispose of excess water in work area	1200	1000	2400	1500
	CLEAN-UP PREPARATION FOR CLEARANCEAIR MONITORING				
1-128(a)	Failure to properly remove/containerize visible accumulations of ACM	4800	3000	9600	6000
1-128(b)	Failure to remove containerized waste from work area as required	2400	1500	4800	3000
1-128(c)	Failure to properly wet-clean/HEPA vac surfaces in work area	2400	1500	4800	3000
1-128(d)	Failure to properly clean and/or encapsulate plastic on porous material	2400	1500	4800	3000
1-128(e)	Failure to properly encapsulate surfaces in work area	2400	1500	4800	3000
1-128(f)	Failure to remove and decontaminate all tools and equipment as required	1200	1000	2400	1500
1-128(g)	Removal of isolation barriers before final Air clearance	4800	3000	9600	6000
1-128(h)	Failure to submit project monitor's report within 21 days of project completion	2400	1500	4800	3000
12 NYCRR Part 56	Violation of New York State Industrial Code Rule 56-level 1(includes sections 56-4.2, 56-4.3, 56-4.9d, 56-4.10, 56-4.12c, 56-5.1a, 56-5.1f, 56-5.1h, 56-5.1j, 56-7.1d, 56-7.2n, 56-7.4a, 56-7.4b, 56-7.5a, 56-7.5b, 56-7.5c, 56-7.5d, 56-7.5e, 56-7.6, 56-7.7, 56-7.8a, 56-7.9a, 56-7.9b, 56-7.9c, 56-7.11a, 56-7.11b, 56-7.11d, 56-7.11e, 56-8.2e, 56-8.2g, 56-8.3a, 56-8.4a, 56-8.4b, 56-8.4c, 56-8.7a, 56-8.7l, 56-8.8a, 56-8.8b, 56-8.8k, 56-9.1a, 56-9.2d, 56-9.2g, 56-11.2a, 56-11.2f, 56-11.3a, 56-11.4a, 56-11.4b, 56-11.4c, 56-11.4d, 56-11.4e, 56-11.5a, 56-11.5c, 56-11.6a, 56-11.6b, 56-11.6c, 56-11.6d, 56-11.6e, 56-11.6f, 56-11.7a, 56-11.7b, 56-11.7c, 56-11.7d, 56-11.8a, 56-11.8b, 56-11.8c, 56-11.8d)	4800	3000	9600	6000
12 NYCRR Part 56	Violation of New York State Industrial Code Rule 56-level 2(includes sections 56-4.5, 56-4.6, 56-4.8a, 56-4.8c, 56-4.9b, 56-4.9c, 56-4.12a, 56-4.12b, 56-5.1e, 56-6.2a, 56-6.2b, 56-7.1b, 56-7.1c, 56-7.2a, 56-7.2d, 56-7.2e, 56-7.2f, 56-7.2g, 56-7.2h, 56-7.2i, 56-7.2j, 56-7.2k, 56-7.2l, 56-7.2m, 56-7.3, 56-7.4c, 56-7.5f, 56-7.10c, 56-7.11c, 56-7.11f, 56-8.2a, 56-8.2b, 56-8.2h, 56-8.4e, 56-8.4f, 56-8.4g, 56-8.4h, 56-8.4i, 56-8.5a, 56-8.5b, 56-8.5c, 56-8.5d, 56-8.5e, 56-8.7j, 56-8.7k, 56-8.8c, 56-8.8e, 56-8.8i, 56-8.8j, 56-8.9a, 56-8.9b, 56-9.1b, 56-9.1d, 56-9.2b, 56-9.3a, 56-9.3c, 56-9.3d, 56-11.3d, 56-11.3e)	2400	1500	4800	3000
12 NYCRR Part 56	Violation of New York State Industrial Code Rule 56-level 3(includes sections 56-3.4a, 56-3.6a, 56-3.6b, 56-3.6d, 56-3.6e, 56-4.7a, 56-4.7b, 56-4.7c, 56-4.8b, 56-4.9a, 56-5.1g, 56-7.2b, 56-7.2o, 56-7.10a, 56-7.10b, 56-7.11g, 56-8.1b, 56-8.2d, 56-8.2f, 56-8.6a, 56-8.6b, 56-8.7b, 56-8.7c, 56-8.7d, 56-8.7e, 56-8.7f, 56-8.7g, 56-8.7h, 56-8.7i, 56-8.8d, 56-8.8f, 56-8.8g, 56-8.8h, 56-8.9c, 56-8.9d, 56-8.9e, 56-8.9f, 56-8.9h, 56-8.9i, 56-9.1c, 56-9.1f, 56-9.1h, 56-9.3b, 56-10.2, 56-10.4, 56-11.3c, 56-11.5b)	1200	1000	2400	1500
	AIR CODE-STOP WORK ORDERS				
24-146.1(h)	Resumed work in violation of stop work order	4400	2750	8800	5500

HISTORICAL NOTE

Section extensively amended City Record Dec. 9, 2009 §§1-23, eff. Dec. 9, 2009 per City Record notice. [See Note 2]

Section repealed and reissued (former T15 §31-101) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Air Code-Stop Work Orders 24-146.1(h) added City Record June 20, 2005 §1, eff. July 20, 2005.

[See Note 1]

12 NYCRR Part 56 (3 entries) amended City Record Mar. 2, 2007 §5, eff. Apr. 1, 2007. [See §3-103

Note 2]

NOTE

1. Statement of Basis and Purpose in City Record June 20, 2005:

The Environmental Control Board is making the following revisions to the ECB Penalty Schedules: (1) After considering the many public comments received in connection with the hearing held on November 18, 2004, the Board is now including within the ECB Penalty Schedules set out in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York the penalty schedules relating to general and food vendor violations, by adding a Food Vendor Administrative Code Penalty Schedule; a General Vendor Penalty Schedule; and also adding additional food-vendor related charges to the Health Code penalty schedule, and renaming that penalty schedule the Miscellaneous Food Vendor Violations Penalty Schedule. (2) The Board is repealing the previous Sewer Control Rules Penalty Schedule, and reenacting that Penalty Schedule, as a result of the enactment of an amendment to §24-524(f) of the NYC Administrative Code, which changes the permissible minimum and maximum civil penalties for sewer code charges, and as a result of the NYC DEP Policy on Incentives for Business to Comply with Regulations Governing Discharges to Public Sewers, which encourages the voluntary disclosure of violations in exchange for a reduction or elimination of the penalty. (3) In the Air Code Penalty Schedule, the Board is revising the penalties for violation of Administrative Code §24-163 (idling of motor vehicle) and the definition of second and third offense applicable to §24-163, as a result of the enactment of an amendment to Administrative Code §24-178(b), which changes the penalty structure for such violations. (4) In the Air Code Penalty Schedule, the Board is adding a penalty for miscellaneous violations of NYC Administrative Code, Title 24, Ch. 1. (5) In the Health Code Lead Abatement Penalty Schedule, the Board is adding an explanatory note clarifying that the Penalty Schedule applies to previously-issued lead-abatement Notices of Violation, citing §173.14 of the Health Code. (6) In the Air Asbestos Penalty Schedule, the Board is adding a penalty for violation of Administrative Code §24-146(h), pertaining to air asbestos stop-work orders. (7) At the request of the Fire Department, the Board is clarifying the definition of second and subsequent violations in the Fire Penalty Schedule. (8) In the Buildings Penalty Schedule, the Board is adding a penalty for violation of Administrative Code §27-981.2 (failure to provide and install an approved operational carbon monoxide detecting device) as a result of the enactment of an amendment to the Administrative Code adding §§27-981.1 through 27-981.3 pertaining to carbon monoxide detecting devices.

2. Statement of Basis and Purpose in City Record Dec. 9, 2009: The Environmental Control Board (ECB) held a Public Hearing on various amendments to the Air Asbestos Penalty Schedule found in §3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented. In the fall of 2007, Mayor Bloomberg convened the Construction, Demolition and Abatement Working Group, consisting of the Department of Environmental Protection, the Department of Buildings, the Fire Department, the Mayor's Office of Operations, and the Law Department. The Working Group was created in the aftermath of the August 18, 2007 fire at the Deutsche Bank building in lower Manhattan, which killed two New York City firefighters. The building, which had been damaged on 9/11, was undergoing asbestos abatement at the time of the fire, and the containment structures erected as part of the abatement, combined with the smoky conditions caused by the fire, caused the firefighters to become disoriented and interfered with rescue efforts. In light of these events, the Working Group was assigned to make recommendations to improve the safety of construction, demolition and abatement operations for workers, first responders and the general public. The Working Group identified 28 issues and developed 33

recommendations which were summarized in a July 2008 report to the Mayor entitled "Strengthening the Safety, Oversight and Coordination of Construction, Demolition and Abatement Operations". As a result of the Report, new provisions were added to the Air Pollution Control Code, requiring changes to the existing DEP Asbestos Rules found in Title 15, Chapter 1 of the Rules of the City of New York and the Environmental Control Board (ECB) Penalty Schedule found in §3-101, Subchapter G of Title 48 of the Rules of the City of New York entitled Air Asbestos Penalty Schedule. In addition, numerous changes were needed in order to conform the Rules and this Penalty Schedule to the New York State Department of Labor rules (Industrial Code Rule 56), which were extensively revised in 2006. The updates to the DEP rules were initially published in the City Record on July 30, 2009. After the required public hearing, final publication took place on September 11, 2009. The revised DEP Rules will become effective on November 13, 2009. In light of the new emphasis on building, fire and life-safety issues, the amount of the penalty for each charge was based on a determination as to the severity of an infraction in its effect on either (1) risk of exposure of any person to asbestos fibers or (2) risk of creation of building, fire or life-safety hazards. The most significant changes to the penalty schedule track the changes in the Air Asbestos rules. These changes are: **Permitting Requirements and Recordkeeping**: Subchapter C, which governs asbestos-related notifications, has been extensively revised. Asbestos projects which pose the greatest public-safety risks will now require an asbestos abatement permit, to be issued by DEP after approval of a Work Place Safety Plan, prepared by an engineer or architect, which addresses building and fire safety issues. Section 1-26 is the new permitting section. The penalties for failing to obtain a permit when required (§ 1-26(a)) and failing to terminate a permit within one year of issuance (§ 1-26(e)) are set at $4800, as these sections constitute the basic requirements of the new permitting scheme. The penalties for these changes appear in §4 of the proposed rule set forth above. Section 1-29 has been added to conform to NYS Department of Labor rules. This section requires the long-term maintenance of records related to the project. The penalties for these charges appear in §5 of the proposed rule and are set at the lowest level. **Egress**: The Rules contain new provisions requiring that egress be maintained during abatement work. The penalties for these changes appear in §10 of the proposed rule. The rules also require daily checks and the recording of egress conditions in the project log book. The penalties for these changes appear in §5 of the proposed rule. **Fire Safety**: The new penalty schedule encompasses changes to rules that strengthen the prohibition on smoking at abatement sites, require the use of fire-retardant plastic and fire-rated wood in the construction of containment structures, require the posting of a floor plan in the lobby and no smoking signs in the work place, and require that on certain projects a central cut-off switch be installed so that first responders can shut down negative air pressure units. New subsections of §1-61, sub-section (j), related to the use of carcinogenic or toxic substances, and (k), related to the use of fire-safe materials, are assigned high-level penalties due to the hazards presented by these infractions. Section 1-81 now contains several new work place preparation requirements related to fire-safety and egress issues. High-level penalties are proposed for §§ 1-81(o)(4-5) and 1-81(t), which relate to the maintenance of unobstructed means of egress. A high-level penalty is proposed for new § 1-91(f), which requires installation of a central cutoff switch for negative air machines on some projects; this was an important recommendation of the Working Group. The penalties for these changes appear in §§9, 10 and 13 of the proposed rule. **Air Monitoring**: Requirements relating to air monitoring have been changed to conform to New York State provisions. The penalties for these changes appear in §§2, 6, 7, and 8 of the proposed rule. **Small Projects**: All rules related to work place preparation and decontamination units now apply to all asbestos projects, not just large projects as under the existing Rules. The penalties for these changes appear in §11 of the proposed rule. **Special Procedures**: Four new sections have been added establishing special procedures for the removal of asbestos-containing roofing, flooring, and siding, as well as for controlled demolition of buildings with asbestos in place. In the past, these types of abatements were usually performed pursuant to standardized variances, and the new Rules for these procedures are based on the variance conditions which have been developed over the years. Most infractions under these new sections are assigned low-level penalties, as the asbestos materials involved are less likely to emit fibers when disturbed. The penalties for these changes appear in §17 of the proposed rule. There are few significant deletions from the existing penalty schedule. A few subsections and one entire section (1-127) have been deleted as part of the Rules revision, in order to conform to the NYS Department of Labor Rules. Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of a Final Environmental Control Board rule that makes numerous amendments to the Air Asbestos Penalty Schedule, including penalties for the new Rules

which have been promulgated to enhance the safety of asbestos abatement projects for workers, first responders, and the general public. The Air Asbestos Penalty Schedule is found at §3-101 of Title 48 of the Rules of the City of New York. After the fire at the Deutsche Bank building that killed two firefighters in August 2007, Deputy Mayor Edward Skyler convened a Construction, Demolition & Abatement Working Group to recommend changes to strengthen the City's oversight and coordinated regulation of asbestos abatement operations. In July 2008 the Working Group recommended numerous changes to the DEP Asbestos Rules, 15 RCNY Chapter 1. As a result, extensive revisions to the DEP Asbestos Rules were promulgated and became effective on November 13, 2009. These revisions include a permitting requirement for many asbestos projects, the use of fire-retardant materials in the construction of enclosures, and the maintenance of proper egress at abatement sites. It is critical that DEP be able to fully enforce these new Rules as soon as possible. Since the new Rules are already in effect, it is important that the penalty schedule for these Rules be implemented upon publication of the Final Rule in the City Record, instead of waiting for the 30-day publication period to elapse. This will speed the Environmental Control Board's ability to adjudicate Notices of Violations issued under the Department of Environmental Protection's new Rules.

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is

November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a

civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

147 of 198 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-102

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-102 Air Code Penalty Schedule.

AIR CODE

PENALTY SCHEDULE

Unless otherwise indicated all citations are to the NYC Administrative Code.

* Civil penalty if facility in compliance and not in default at time of hearing and facility is eligible for registration under 24-109(b) or 24-109(b)(4).

"Offense" is abbreviated "OFF." "Stipulation" is abbreviated "STIP." "Default" is abbreviated "DEF."

Except in connection with violations of §24-163, a second offense is a violation by the same respondent within two years of the prior violation, at the same premises (if premises-related), and involving the same equipment. The prior violation may have been for any section of the Air Code. In connection with violations of §24-163, a second or third or subsequent offense is a violation by the same respondent within two years of the prior violation(s) and involving the same equipment, where the prior violation(s) were for a violation of §24-163.

Schedules E , F and G are set forth as tables at the end of this section.

Section	Description	1stOff.	1stStip.	2nd/3d &Subsq.Off.	2nd/3d &Subsq.Stip.	Default

24-108(f)	Location of key to boiler room not posted or no key on premises	350	350	545	545	875
24-109(b)(1)	Spraying insulation material w/o registration.	1,040	1,040	1,615	1,615	2,600
24-109(b)(2)	Building demolition w/o registration	1,040	1,040	1,615	1,615	2,600
24-109(b)(3)	Unregistered fuel burning equipment-#4 or #6 oil.	560*(300)	560	870	870	1,400
24-109(b)(4)	Unregistered fuel burning equipment -#2 oil or natural gas	700*(350)	700	1,085	1,085	1,750
24-109(f)	Operating emission source with expired registration	350	350	545	545	875
24-111	Interference/obstruction of DEP personnel	700	700	1,085	1,085	1,750
24-112	Making/filing false or misleading statements/documents	700	No	1,085	No	1,750
24-113(a)	Permits, certificate, or registration not displayed	120	120	185	185	300
24-113(c)	No display of notice required for equipment using residual oil	120	120	185	185	300
24-117	Unauthorized discontinuance of refuse burning equipment	350	350	545	No	875
24-118	Installation of refuse burning equip. non-municipal, greater than 25sq. ft.	8,000	No	12,400	No	20,000
24-118	Installation of refuse burning equip. non-municipal, less than 25sq. ft	2,400	No	3,720	No	6,000
24-119(a)	Failure to provide refuse compactor	1,600	No	2,480	No	4,000
24-120	Equipment installed/altered w/out work permit	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	No	Sch.E, F, G
24-122(b)(1)	Operating fuel burning equipment w/out an operating certificate	Sch. E	Sch. E	Sch. E	No	Sch. E
24-122(b)(2)	Operating manufacturing equipment w/out an operating certificate	Sch. F	Sch. F	Sch. F	No	Sch. F
24-122(b)(3)	Operating portable powered equipment w/out an operating certificate	Sch. E	Sch. E	Sch. E	No	Sch. E
24-122(b)(4)	Operating refuse burning equipment w/out an operating certificate	Sch G	Sch. G	Sch. G	No	Sch. G
24-122(b)(5)	Operating equipment w/out required operating certificate	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	No	Sch.E, F, G
24-123(e)	Operating w/out renewal of expired operating certificate	350	350	545	No	875
24-141	Emission of air contaminant equipment requiring O.C. or registration	Sch E, F, G*(350)	Sch.E, F, G	Sch. E, F, G	Sch.E, F, G	Sch.E, F, G
24-141	Emission of air contaminant from unregulated source	400	400	620	620	1,000
24-142(a)	Emission of air contaminant (smoke)	Sch E, F,	Sch.E, F, G	Sch. E, F, G	Sch.E, F, G	Sch.E, F, G

		G*(350)				
24-142	Emission of air contaminant from unregulated equipment	350	350	545	545	875
24-143	Emission of air contaminant from motor vehicle (Diesel)	350	350	545	545	875
24-144	Emission of sulphur compounds	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-145	Emission of particulates from refuse or fuel burning equipment	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-146(a)	Particulate matter allowed to become airborne	700	700	1,085	1,085	1,750
24-146(b)	Asbestos spraying w/out permit	4,800	No	7,440	No	12,000
24-146(c)	Particulate emissions from construction activity	700	700	1,085	1,085	1,750
24-146(d)	Particulate emissions from untreated open areas	560	560	870	870	1,400
24-146(e)	Spraying of insulation material w/o proper required precaution	700	700	870	870	1,750
24-146(f)	Failure to take required precautions during demolition	1,200	1,200	1,860	1,860	3,000
24-147	Emission of air contaminant nitrogen oxides from boiler	1,400	1,400	2,170	2,170	3,500
24-148	Sale or use of photo-chemical solvents	1,050	1,050	1,630	1,630	2,625
24-149	Caused or permitted air contaminant from open fire	350	350	545	545	875
24-150	Smoking in elevator/failure to post no smoking sign	200	200	310	310	500
24-151	Concealing or masking of air contaminant emission	1,400	1,400	2,170	2,170	3,500
24-153	Air contaminant emission exceeding environmental rating	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-154	Failure to file environmental rating report	350	350	545	545	875
24-155	Improper maintenance of equipment requiring O.C. or registration	Sch E, F, G*(350)	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-155	Failure to maintain unregulated equipment	350	350	545	545	875
24-156	Use of equipment w/out required apparatus	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-159	Use of burning equipment by person w/out a certificate of fitness	350	350	545	545	875
24-160	No air contaminant recorder for boiler	Sch E	Sch E	Sch E	Sch E	Sch E
24-161	Operating fuel burning equipment w/out certificate of instruction	350	350	545	545	875
24-162(a)	Operating Refuse burning equipment at unauthorized times	Sch G	Sch G	Sch G	Sch G	Sch G
24-162(c)	Operation of discontinued refuse	Sch G	Sch G	Sch G	Sch G	Sch G

	burning equipment					
24-163	Idling of Diesel Motor Vehicle engine over three minutes	350	350	2nd Off.:545 3rd & sub-sq.Off: 740	2nd Off.:545 3rd & sub-sq.Off: 740	1st Off: 1,0002nd Off: 1,5003rd & subsq.Off: 2,000
24-163(f)	Idling of Motor Vehicle engine over one minute while adjacent to school (Diesel)	350	350	2nd Off.:545 3rd & subsq. Off.:740	2nd Off.:545 3rd & subsq. Off.:740	1st Off:1,0002nd Off.:1,5003rd & subsq. Off.:2,000
24-164	Operating soot blower of vessel in city waters	700	700	1,085	1,085	1,750
24-165	Failure to use air contaminant detector/recording as required	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-166	Use of inadequate combustion shut-off device	350	350	545	545	875
24-167	Improper use of equipment or apparatus	350	350	545	545	875
24-168	Use of improper fuel in fuel burning equipment	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-169(c)	Use/purchase, for regulated equipment, of fuel with excess sulphur	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-169	Use/purchase, for unregulated equipment of fuel with excess sulphur	350	350	545	545	875
24-169	Sale, offer, storage or transport of fuel with excess sulphur content	2,400	2,400	3,720	3,720	6,000
24-173	Improper use of solid fuel in fuel burning equipment	Sch E	Sch E	Sch E	Sch E	Sch E
24-174(a)	Sale, offer, transport or storage of gasoline with excessive lead content	1,060	1,060	1,645	1,645	2,650
24-174(b)	Use or purchase of gasoline with excessive lead content	350	350	545	545	875
24-175(a)	Sale, offer, store, transport or storage of gasoline exceeding volatility limits	1,060	1,060	1,645	1,645	2,650
24-175	Use or purchase of gasoline exceeding volatility limits	350	350	545	545	875
24-176	Failure to report shipment of fuel to NYC as required	350	350	545	545	875
24-178(b)(8)	Breaking a Board ordered seal	1,600	1,600	2,480	No	4,000
24-122(a)	Use or operation of equipment w/ out an operating certificate	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-131	Failure to comply with conditions of certificate or permit	350	350	545	545	875
24-170	Failure to supply fuel supply information to the Commissioner	350	350	545	545	875

24-172	Excess volatile matter (by weight) in boiler fuel	350	350	545	545	875
24-177(a)	Fail to have required statement on fuel information ticket	350	350	545	545	875
24-177(b)	Failure to retain fuel information tickets by shipper	350	350	545	545	875
24-177(c)	Failure to retain fuel records for one year	350	350	545	545	875
24-131(c)	Failure to comply with Conditions of Certificate/Regulation of operation or Permit	265	265	400	400	875
24-143	Emission of Air contaminant from vehicle (non-diesel fuel)	300	300	460	460	875
24-163	Idling of Motor Vehicle Engine over three minutes (non-diesel fuel)	300	300	2nd Off.:460 3rd & sub-sq.Off: 620	2nd Off.:460 3rd & sub-sq.Off: 620	1st Off: 1,0002nd Off: 1,5003rd & subsq.Off: 2,000
24-163(f)	Idling of Motor Vehicle engine over one minute while adjacent to school (Non-diesel)	300	300	2nd Off.:460 3rd & subsq. Off.:620	2nd Off.:460 3rd & subsq. Off.:620	1st Off:1,0002nd Off.:1,5003rd & subsq. Off.:2,000
24-163.3(b)(1) Compliance: Use low sulfur fuel in non-road vehicle forthwith	Failed to use ultra low sulfur diesel fuel in nonroad vehicle (aggravated penalty for excess profit)	1,000 (plus agg. pen for excess profit)	No	5,000 (Plus agg. pen for excess profit)	No	10,000
24-163.3(b)(2) Compliance: Use best available technology forthwith	Failed to use best available technology for emission reduction in nonroad vehicle	1,000	1,000	5,000	5,000	10,000
24-163.3(b)(2) Compliance: Use best available technology forthwith	Failed to use best available technology for emission reduction in nonroad vehicle (aggravated penalty for excess profit)	1,000 (plus agg. pen for excess profit)	No	5,000 (plus agg. pen for excess profit)	No	10,000
24-163.3(o)	Made false claim regarding compliance with emission reduction requirements for diesel nonroad vehicles	20,000	20,000	20,000	20,000	20,000
24-163.3(o)	Made false claim regarding compliance with emission reduction requirements for diesel nonroad vehicles (aggravated penalty for excess profit)	20,000 (plus agg. pen for excess	No	20,000 (plus agg. pen for excess	No	25,000

		profit)		profit)		
24-163.8(b)(1)	Failed to use ultra low sulfur diesel fuel in generator for Film/ TV/Ad/Street Fair	500	500	2nd Off:500 3rd & subsq. Off:500	2nd Off:500 3rd & subsq. Off:500	1st Off:5002nd Off.:5003rd & subsq. Off:500
24-163.8(c)	Made false claim regarding use of ultra low sulfur diesel fuel in generator	500	No	2nd Off:500	2nd Off:No	1st Off:5002nd Off:500
24-108(e)	Refused access to authorized DEP employee	350	350	545	545	875
24-117(j)	Failure to cease operation of refuse burning equipment	875	No	875	No	875
24-125(c)	Failure to comply with appropriate criteria referred to in this section VAPOR RECOVERY REGULATIONS	350	No	545	No	875
15 RCNY4-03(a)(1)	No Stage 1 Vapor Collection System at Gas dispensing site	350	350	545	545	875
15 RCNY4-03(a)(2)(3)	Fail to maintain Stage 1 Vapor Collection and control system	350	350	545	545	875
15 RCNY4-03(a)(2)(IV)	Fail to connect and operate vapor collection system loading and unloading at site	350	350	545	545	875
15 RCNY4-03(a)(3)	No Stage 1 Vapor Recovery System Capacity at least 250 gallons	350	350	545	545	875
15 RCNY4-03(b)	No certificate of registration for gasoline dispensing site	350	350	545	545	875
15 RCNY4-04(a)(3)	No NYSDEC date for pressure test on gasoline transporting vehicle	350	350	545	545	875
15 RCNY4-04(c)	Fail to keep dome covers closed on gas transport vehicle	350	350	545	545	875
15 RCNY4-04(d)(1)	No Stage 1 Vapor collect/control system on gasoline transport vehicle	350	350	545	545	875
15 RCNY4-04(d)(2)	Fail to provide adequate training for operator of gasoline transport vehicle	350	350	545	545	875
15 RCNY4-04(d)(3)	Failure to maintain Stage 1 vapor collection/control system on gas transport vehicle	350	350	545	545	875
15 RCNY4-04(d)(4)	Failure to connect/operate vapor collection/control system on gas transport vehicle	350	350	545	545	875
15 RCNY4-05	Failure to control visible leaks from vehicle vapor collection/control system PERCHLOROETHYLENE DRY CLEANING FACILITIES	350	350	545	545	875

15 RCNY 12-04(a)	Installation of perc dry cleaning machine in residential building after 7/13/06	750	No	875	No	875
15 RCNY 12-04(b)	Failure to eliminate perc use in specified machines by 7/13/09	750	No	875	No	875
15 RCNY12-05(a)	Failure to install vapor barrier or room enclosure and general exhaust ventilation	750	No	No	875	875
15 RCNY12-06(a)	Improper vapor barrier or room enclosure and general exhaust ventilation	750	750	875	No	875
15 RCNY 12-06(a)(4)(i)	Improper process emission point location	750	No	875	No	875
15 RCNY 12-06(a)(4)(iii)	Process emissions greater than 20 ppm	750	750	875	No	875
15 RCNY 12-06(a)(4)(iv)	Failure to properly operate exhaust damper	750	750	875	No	875
15 RCNY 12-06(a)(5),(6)	Failure to have proper emission control systems	750	No	875	No	875
15 RCNY12-06(b)	Failure to remove equipment from service	750	No	875	No	875
15 RCNY12-06(b)	Failure to properly replace, retrofit, or convert equipment	750	No	875	No	875
15 RCNY12-06(b)	Fugitive emission greater than 50 ppm	750	No	875	No	875
15 RCNY12-07(a),(b)	Failure to inspect or self-monitor	750	750	875	No	875
15 RCNY12-07(g)	Failure to repair leak w/in 24 hrs.	750	750	875	No	875
15 RCNY12-08	Failure to comply with O&M requirements	750	750	875	No	875
15 RCNY12-08(d)(7)	Failure to have proper spill control equipment	750	750	875	No	875
15 RCNY12-08(d)(8)	Failure to keep solvent containers closed	750	750	875	No	875
15 RCNY12-10	Failure to properly manage hazardous waste	750	750	875	No	875
15 RCNY12-11(a)	Failure to seal floor drains	750	750	875	No	875
15 RCNY12-11(b)	Failure to install proper spill containment system	750	750	875	No	875
15 RCNY12-11(c)	Failure to report release, fire or explosion	750	750	875	No	875
15 RCNY12-11(d)	Failure to record emergency response actions	400	400	500	No	875
15 RCNY12-12	Failure to maintain proper records	400	400	500	No	875
15 RCNY12-13	Installation of uncertified equip-	750	750	875	No	875

	ment					
15 RCNY12-14(a)(1)	Failure to have owner or manager certification	750	750	875	No	875
15 RCNY12-14(a)(2)	Failure to have operator certification	750	750	875	No	875
15 RCNY 12-14(e)	Failure to attend required DEC training and hold valid DEC certificate	750	750	875	No	875
15 RCNY12-15(a)	Failure to submit notice of alteration or modifications	400	400	500	No	875
15 RCNY12-15(b)	Failure to have work permit or operating certificate	750	750	875	No	875
15 RCNY12-16	Failure to have 3d. Party inspection	750	750	875	No	875
15 RCNY12-18	Failure to post public notice in conspicuous location	400	400	500	No	875
15 RCNY 12	Violation of perc dry cleaner rules	750	No	875	No	875
	CONSTRUCTION DUST RULES					
15 RCNY 13-01(d)	No access to inspect site	700	700	1085	1085	1750
15 RCNY 13-01(e)	Interference w/DEP employee	700	700	1085	1085	1750
15 RCNY 13-04(a)	Failed to control release of dust from construction by wetting or other acceptable means	1000	1000	1500	1500	1750
15 RCNY 13-04(b)	Failed to cover trucks used to transport particulate matter	1000	1000	1500	1500	1750
15 RCNY 13-04(c)	Failed to provide adequate water to perform wet method of dust control	1000	1000	1500	1500	1750
15 RCNY 13-04(e)	Failed to provide suitable drainage for water and sludge	800	800	1200	1200	1750
15 RCNY 13-05(a)	Failed to wet (& maintain wet) all exterior building surfaces prior to & during demolition	1000	1000	1500	1500	1750
15 RCNY 13-05(b)	Failed to wet and/or cover construction materials before & during loading and transport	1000	1000	1500	1500	1750
15 RCNY 13-05(c)	Failed to use wetting to control dust during drilling, griding or other similar construction activities	1000	1000	1500	1500	1750
15 RCNY 13-05(d)	Failed to control dust produced at transfer points	800	800	1200	1200	1750
15 RCNY 13-05(e)	Failed to have sprinklers at transfer points capable of being operated by person responsible for loading	800	800	1200	1200	1750
15 RCNY 13-05(f)	Failed to moisten soil or debris piles to prevent windblown dust	1000	1000	1500	1500	1750
15 RCNY 13-06(a)	Failed to properly remove debris during hand demolition	1000	1000	1500	1500	1750

15 RCNY 13-06(b)	Failed to board up windows to prevent dust emission during renovation	800	800	1200	1200	1750
15 RCNY 13-06(c)	Failed to suppress dust during sandblasting	800	800	1200	1200	1750
15 RCNY 13-06(d)	Failed to cover trucks used to transport dust-producing materials	1000	1000	1500	1500	1750
15 RCNY 13-06(e)	Failed to remove earth or other materials daily	800	800	1200	1200	1750
15 RCNY 13-06(g)	Used blowers for mud or dirt removal	800	800	1200	1200	1750
15 RCNY 13-06(h)	Failed to operate construction vehicles slowly to minimize dust emissions	800	800	1200	1200	1750
15 RCNY 13-06(i)	Failed to properly stabilize disturbed areas	800	800	1200	1200	1750
15 RCNY 13-07(b)	Failed to wet adequately before and during demolition	1000	1000	1500	1500	3000
15 RCNY 13-07(c)	Failed to use chutes/buckets to transport debris	1000	1000	1500	1500	3000
15 RCNY 13-07(d)	Failed to remove dust/debris daily from adjacent areas	800	800	1200	1200	3000
15 RCNY 13-08(a)	Performed dry sandblasting	800	800	1200	1200	1750
15 RCNY 13-08(b)	Failed to use containment during sandblasting	800	800	1200	1200	1750
15 RCNY 13-08(c)	Failed to use curtains during sandblasting	800	800	1200	1200	1750
15 RCNY 13-08(d)	Failed to give required advance notice of sandblasting	800	800	1200	1200	1750
15 RCNY 13-09	Failed to register dust-emitting construction equipment with DEP	875	875	1315	1315	1750
15 RCNY 13-10	Failed to prevent dust emission from open areas after demolition	800	800	1200	1200	1750
NYC Admin. Code. Title 24, Ch. 1	Misc. Violation of Air Pollution Control Code	350	350	545	545	875

This schedule is to be used with the Air Code Penalty Schedule

SCHEDULE E-PENALTIES FOR FUEL BURNING EQUIPMENT
Gross Input or Designed Fuel Consumption of Equipment in Million of BTU/Hr

Civil Penalties				
#4 or #6 Fuel Oil and Solid Fuels	Gasoline, #2 Fuel Oil and Nat. Gas	1st. Viol./Stip.	2nd Viol./Stip	Max

Less than 2.8	Less than 2.8	560	870	1,400
2.8 to less than 2.1	2.8 to less than 50	720	1,115	1,800
21 to less than 42	50 or greater	1,200	1,860	3,000
42 or greater		1,600	2,480	4,000

SCHEDULE F-PENALTIES FOR OTHER THAN FUEL OR REFUSE

BURNING EQUIPMENT

Emission Rate in cubic feet per minute	Civil Penalties Based on Environmental Ratings as Contained inSection 24-153		
	Env. Rating A		
	1st Viol./ Stip	2nd Viol./Stip.	Max
Less than 5,000	2,400	3,720	6,000
5,000 to less than 20,000	3,200	4,960	8,000
20,000 or greater	4,800	7,440	12,000
	Env. Rating B		
	1st Viol. /Stip.	2nd Viol./ Stip	Max
Less than 5,000	1,600	2,480	4,000
5,000 to less than 20,000	2,400	3,720	6,000
20,000 or greater	3,200	4,960	8,000
	Env. Rating C		
	1st Viol./Stip.	2nd Viol./Stip.	Max
Less than 5,000	1,200	1,860	3,000
5,000 to less than 20,000	1,600	2,480	4,000
20,000 or greater	2,400	3,720	6,000
	Env. Rating D		
	1st Viol./ Stip	2nd Viol./Stip	Max
Less than 5,000	800	1,240	2,000
5,000 to less than 20,000	1,200	1,860	3,000
20,000 or greater	2,000	3,100	5,000

SCHEDULE G-PENALTIES FOR REFUSE BURNING EQUIPMENT

Maximum Horizontal inside Cross Sectional Area of Primary Combustion Chamber in Square Feet	Civil Penalties		
	1st Viol./Stip	2nd Viol./Stip	Max.
25 or less	640	995	1,600
25-40	800	1,240	2,000
Above 40	1,200	1,860	3,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-102) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Fourth undesignated paragraph amended City Record June 20, 2005 §2, eff. July 20, 2005. [See T48 §3-101 Note

1]

Table column headers amended City Record June 20, 2005 §3, eff. July 20, 2005. [See T48

§3-101 Note 1]

Table 24-163 Idling of Diesel Motor Vehicle engine over three minutes amended City Record June 20, 2005 §4, eff. July 20, 2005. [See T48 §3-101 Note 1]

Table 24-163 Idling of Motor Vehicle engine over three minutes (non-diesel fuel) amended City Record June 20, 2005 §3, eff. July 20, 2005. [See T48 §3-101 Note 1]

Table §24-163(f) Idling . . . (Diesel) added City Record Aug. 17, 2009 §1, eff. Sept. 16, 2009. [See Note 1]

Table §24-163(f) Idling . . . (Non-Diesel) added City Record Aug. 17, 2009 §2, eff. Sept. 16, 2009. [See Note 1]

Table 24-163.3(b)(1) added City Record Mar. 2, 2007 §4, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 24-163.3(b)(1) added City Record Mar. 2, 2007 §4, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 24-163.3(b)(2) added City Record Mar. 2, 2007 §4, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 24-163.3(b)(2) added City Record Mar. 2, 2007 §4, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 24-163.3(o) added City Record Mar. 2, 2007 §4, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 24-163.3(o) added City Record Mar. 2, 2007 §4, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table §24-163.8(b)(1) Failed . . . Fair added City Record Aug. 17, 2009 §3, eff. Sept. 16, 2009. [See Note 1]

Table §24-163.8(c) Made . . . generator added City Record Aug. 17, 2009 §3, eff. Sept. 16, 2009. [See Note 1]

Table Perchloroethyene Dry Cleaning Facilities

15 RCNY 12-04(a) added City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010

[See Note 2]

15 RCNY 12-04(b) added City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010

[See Note 2]

15 RCNY 12-14(e) added City Record Dec. 24, 2009 §2, eff. Jan. 23, 2010

[See Note 2]

15 RCNY 12 amended City Record Dec. 24, 2009 §3, eff. Jan. 23, 2010

[See Note 2]

Table Perchloroethylene Dry Cleaning Facilities/NYC Admin. Code . . . 875 added City

Record June 20, 2005 §6, eff. July 20, 2005. [See T48 §3-101 Note 1]

Table Construction Dust Rules 15 RCNY 13-01(d) . . . 15 RCNY 13-10 (29 entries) added City Record Aug. 17,

2009 §4, eff. Sept. 16, 2009. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 17, 2009:

The Environmental Control Board (ECB) held a Public Hearing on August 6, 2009 on various amendments to the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented.

In sections 1 and 2 of the rule, the Board has revised the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add two new charges for violations of §24-163(f), Idling of Motor Vehicle engine over one minute while adjacent to school (Diesel) and Idling of Motor Vehicle over one minute while adjacent to school (Non-diesel). These charges were added to that Penalty Schedule in light of the enactment of Local Law 5 of 2009. This new law amends §24-163 of the New York City Administrative Code in relation to engine idling by adding new subdivisions (f) and (g).

Section 24-163(f) provides that the allowable idling time is reduced from three minutes to one minute if the motor vehicle in question is "adjacent" to a school. "Adjacent" is defined in Chapter 39 of the rules of the City of New York, §39-02 entitled "Engine idling adjacent to any public or non-public school: "Adjacent shall mean on each and every street on which a school is located and has entrances/exits to such street. School shall include any building or structure, playground, athletic field or other property that is part of the school."

An exception is made for school buses to allow idling for mechanical work, to maintain a comfortable temperature for passengers or to operate wheel chair lifts. A defense is provided where the school was not readily identifiable as such. The penalties set forth are the same as those for the existing three-minute prohibition set forth in §24-163(a) of the New York City Administrative Code.

In §3, the Board has revised the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by adding two new charges in light of the enactment of Local Law 16 of 2009 that amends the Administrative Code of the City of New York to add a new §24-163.8, in relation to the use of ultra low sulfur diesel fuel in diesel-powered generators used in the production of films, television programs and advertisements, and at street fairs in New York City. The first charge is for a violation of §24-163.8(b)(1), "Failed to use ultra low sulfur diesel fuel in generator for Film/TV/Ad/Street Fair." The second charge is for a violation of 24-163.8(c) "Made false claim regarding use of ultra low sulfur diesel fuel in generator." These charges have been added to that Penalty Schedule.

Section 24-163.8 provides that diesel-powered generators used to provide electricity for film, television or advertising productions or at street fairs must use ultra low sulfur diesel fuel. The provision applies to all productions or street fairs that require a permit from a city agency. For Film, TV and advertising productions, the Mayor's Office of Film, Theater and Broadcasting is required to issue a notice to the production company advising it of the new requirement. For street fairs, the Street Activity Permit Office is required to notify all applicants for street fair permits of the new requirement. The charging subdivision is (b)(1). In addition, under subdivision (c), the making of a false claim to a city agency "with respect to the provision of this section" is a violation. Subdivision (c) provides for a $500 penalty for violating the section or for making a false claim to a city agency with respect to the section.

In §4, the Board has revised the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by adding twenty-nine new charges in response to the Department of Environmental Protection's (DEP) promulgation of Chapter 13 of Title 15 of the Rules of the City of New York (RCNY) pertaining to the prevention of the emission of dust from construction related activities.

Section 24-146 of the Air Pollution Control Code ("Preventing particulate matter from becoming airborne . . .")

authorizes the DEP Commissioner to promulgate rules regarding dust control during construction-related activities. Specifically, §24-146(c) states: "No person shall cause or permit a building or its appurtenances or a road to be constructed, altered or repaired without taking such precautions as may be ordered by the commissioner to prevent particulate matter from becoming airborne." Subdivision (f) further provides that dust control measures are to be taken during demolition, and specifies that walls are not to be toppled without DEP approval.

In response to numerous requests for more specific guidance regarding compliance with §24-146, DEP has promulgated "Rules pertaining to the prevention of the emission of dust from construction related activities", 15 RCNY Chapter 13. Section 24-178 of the Air Pollution Control Code sets forth a minimum penalty of $440 and a maximum penalty of $1750 for violations of §24-146(c), and a minimum penalty of $750 and a maximum penalty of $3000 for violations of §24-146(f). The penalty schedule for the Construction Dust Rules is based on a range of $440 to $1750 with the exception of violations issued under §13-07 of Title 15 of the RCNY ("Demolition"). Penalties for those violations range from $750 to $3000.

The penalty schedule for the Construction Dust Rules includes four penalty levels:

For violations of §§13-01(d) and 13-01(e), which deal with access to the site and interference with an inspector, the penalties are $700 for a first offense and $1085 for a second offense, to conform to the penalties set forth for analogous sections of the Air Code.

For §13-09, which deals with registration, the penalty is $875 for a first offense and $1315 for a second offense, to conform to the penalties set forth in the Air Code for failure to register.

For those infractions deemed to present the greatest impact on public health and comfort, a first offense penalty of $1000 and a second offense penalty of $1500 are established.

For those infractions deemed to pose a lesser hazard, a first offense penalty of $800 and a second offense penalty of $1200 are established.

2. Statement of Basis and Purpose in City Record Dec. 24, 2009: The Environmental Control Board (ECB) held a Public Hearing on November 19, 2009 on amendments to the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented. In §§1 and 2 of this final rule, the Board has revised the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) by adding two new charges for violations of §15 RCNY 12-04 and one new charge for a violation of §15 RCNY 12-14(e) respectively. These charges are being added to ECB's Air Code Penalty Schedule in light of recently promulgated amendments to 15 RCNY Chapter 12, Rules Governing and Restricting the Use of Percholoroethylene (perc) at Dry Cleaning Facilities in the City of New York. Those amendments were promulgated by the Department of Environmental Protection (DEP) to reflect changes in the national emissions standards for perc. 15 RCNY 12-04(a) prohibits the installation of perc dry cleaning machinery in a residential building after July 13, 2006. 15 RCNY 12-04(b) requires that by July 13, 2009, the use of perc be eliminated from dry cleaning machinery that was installed in residential buildings between December 21, 2005 and July 13, 2006. 15 RCNY 12-14(e) requires dry cleaning owners and/or managers and all machine operators of perc dry cleaning machines to attend sixteen hours of training, to pass a state-administered test and to hold valid DEC Owner/Manager Certifications and/or Operator Certificates. The penalties for these new sections are in line with those currently in effect for most violations of the Perc Dry Cleaner Rules. In §3, the Board has revised the description of 15 RCNY 12 for violations of perc dry cleaner rules not specifically set out in this penalty schedule.

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the

Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food

vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-103

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-103 Buildings Penalty Schedule.

BUILDINGS PENALTY SCHEDULE

Buildings Penalty Schedule I: Effective For Notices of Violation With a Date of Occurrence On or Before June 30, 2008:

The Penalty Schedule set forth below, Buildings Penalty Schedule I, sets forth the penalties that will be imposed in connection with Notices of Violation with a date of occurrence on or before June 30, 2008.

Citations preceded by "ZR" refer to the NYC Zoning Resolution. All other citations, except where otherwise indicated, are to the NYC Administrative Code; also, citations preceded by "AC" are to the NYC Administrative Code.

A stipulation (stip.) is available at a hearing (at the first offense penalty) only if so indicated in this Penalty Schedule. A stip. provides a 75 day extension of time to comply with the Buildings Commissioner's Order to Correct, with the 75 days counted from the first scheduled hearing date. If the violation has been marked hazardous by the Issuing Officer on the Notice of Violation or the NOV is amended to indicate a hazardous violation, a stipulation will not be offered.

A second or subsequent offense is a violation by the same respondent of the same provision of law, rule or

regulation as the previous violation and, if the respondent is the owner, agent, lessee, or other person in control of the premises with respect to which the violation occurred, at the same premises as the previous violation (all violations committed within an 18 month period).

If the violation has been corrected by the first scheduled hearing date, a mitigated (MIT.) penalty will be imposed for violations that are eligible for mitigation as indicated in this Penalty Schedule, unless the violation has been marked hazardous by the Issuing Officer on the Notice of Violation or the NOV is amended to indicate a hazardous violation.

Section of Law	Violation Description	STIP.	Penalty	MIT. Pen.	Default-Penalty	2nd Offense Penalty	2nd Offense MIT.	2nd Offense Default Penalty
26-118	Failure to comply with a Stop Work Order-HAZARDOUS	No	2,000	No	2,500	5,000	No	10,000
26-122	Failure to comply with order by the Department.	No	1,500	No	5,000	3,000	No	5,000
26-124 (b)	Filing a false certificate, form, affidavit or statement of correction with the N. Y. C. Department of Buildings.	No	2,500	No	2,500	6,250	No	10,000
26-125 (f)	Illegal conversion from 1 or 2 family house to 4 families or more (daily penalty per unit for a violation of 26-125)	No	1,000 (perday)	No	25,000	1,000 (perday)	No	45,000
26-126 .1(e)(i)	Additional daily penalty for continued violation of 27-118.1(a) (1st & 2nd Offenses) HAZARDOUS	No	50	No	4,500	75	No	4,500
26-126 .1(e)(ii)	Additional daily penalty for continued violation of 27-118.1(a) (3rd Offense) HAZARDOUS	No	N/A	N/A	N/A	3rd Off:100	No	3rd Off:4,500
26-126 .1(f)	Additional daily penalty for continued violation of 27-118.1(b)	No	350	No	15,750	N/A	N/A	N/A
26-126 .3(a)	Failure to comply with the commissioner's order to file a certificate of correction.	No	500	No	2,500	1,250	No	10,000
26-138 (a)	Falsely advertising as eligible to perform work requiring DOB license.	No	400	No	2,500	1,000	No	10,000
26-142	Performing work required to be performed by a licensed Master Plumber without having obtained Master Plumber's license.	No	400	No	2,500	1,250	No	10,000
26-166	Supervision or use of hoisting machine without a hoisting machine operator's license.	No	500	No	2,500	1,250	No	10,000
26-172	Supervision/use of rigging equipment without a master rigger's license-HAZARDOUS	No	1,250	No	2,500	2,500	No	15,000
26-172	Supervision/use of rigging equipment without a special rigger's license-HAZARDOUS	No	1,250	No	2,500	2,500	No	15,000
26-178	Failed to obtain or maintain a bond and/or insurance as required-HAZARDOUS	No	1,250	No	2,500	2,500	No	15,000
26-179	Failed to obtain and/or maintain workers' comp. ins. as required by law-HAZARDOUS	No	1,250	No	2,500	2,500	No	15,000
26-181 (a)	Use of rigging equipment without proper "DANGER" signs.	No	500	No	2,500	1,250	No	10,000
26-181 .1	Lic. Rigger failed to ensure Susp. Scaff. workers have valid Cert. ofFitness on site-HAZARDOUS	No	1,500	No	2,500	2,500	No	15,000
26-204 .1(a)	Erected, dismantled, repaired, maintained or modified supported scaffold without a Supported Scaffold Certificate of Completion issued pursuant to 26-204.3-HAZARDOUS	No	800	No	2,500	2,000	No	10,000

26-204 .1(b)	Knowingly permitted individual to erect, dismantle, repair, maintain or modify supported scaffold without a Supported Scaffold Certificate of Completion issued pursuant to 26-204.3-HAZARDOUS	No	1,200	No	2,500	2,500	No	10,000
26-204 .1(c)	Use of permitted supported scaffold without a Supported Scaffold User Certificate issued pursuant to 26-204.4	No	500	250	2,500	1,000	No	10,000
26-204 .1(d)	Knowingly allowed individual(s) to use permitted supported scaffold without a Supported Scaffold User Certificate issued pursuant to 26-204.4-HAZARDOUS	No	1,200	No	2,500	2,500	No	10,000
26-229	Failure to provide 8 foot high fence where required during excavation operations.	No	480	No	2,500	1,250	No	10,000
26-230	Failure to protect roofs, roof outlets or skylights or adjoining property.	No	500	No	2,500	1,250	No	10,000
26-230	Failure to protect roof, roof outlets or skylights of adjoining property during construction operations.	No	500	No	2,500	1,250	No	10,000
26-246	Operation of a Place of Assembly without a current permit.	Yes	200	100	2,500	500	250	10,000
26-246 (a) (2)	Failure to use safety belts while working on swinging scaffold.	No	500	No	2,500	1,250	No	10,000
26-252	No permit for sidewalk shed.	No	400	200	2,500	1,000	500	10,000
26-252	No permit for footbridge.	No	400	200	2,500	1,000	500	10,000
26-252	No permit for catch-platform.	No	400	200	2,500	1,000	500	10,000
26-252	No permit for sidewalk shanty.	No	400	200	2,500	1,000	500	10,000
26-252	No permit for sidewalk chute.	No	400	200	2,500	1,000	500	10,000
26-252	Failure to obtain a permit for temporary construction.	No	400	200	2,500	1,000	500	10,000
26-252	No permit for fence	Yes	400	200	2,500	1,000	No	10,000
26-252	No permit for railing	Yes	400	200	2,500	1,000	No	10,000
27-118 .1(a)	Residence altered or maintained for more than the legally approved number of families. (1st or 2nd Offense (Also subject to additional daily penalties for continued violations per section 26-126.1 (e)(i)) HAZARDOUS	No	800	No	2,500	2,000	No	10,000
27-118 .1(a)	Residence altered or maintained for occupancy as a dwelling for more than the legally approved number of families. (3rd Offense) (Also subject to additional daily penalties for continued violations per §26-126.2(e)(i)) HAZARDOUS	No	N/A	No	N/A	3rd Off:5 ,000	No	3rd Off:15, 000
27-118 .1(b)	Industrial/manufacturing altered or maintained for residential use-HAZARDOUS	No	3,000	No	5,000	8,000	No	25,000
27-127	Failure to maintain exterior building wall.	Yes	350	180	2,500	880	440	10,000
27-127	Failure to maintain building: interior.	Yes	350	180	2,500	880	440	10,000
27-127	Failure to maintain Boiler.	Yes	350	180	2,500	880	440	10,000
27-127	Failure to maintain Boiler-HAZARDOUS.	No	800	400	2,500	2,000	1,000	10,000
27-127	Failure to maintain exterior building wall HAZARDOUS	No	800	No	2,500	2,000	No	10,000
27-127	Failure to maintain building: interior HAZARDOUS.	No	800	No	2,500	2,000	No	10,000
27-127	Failure to maintain Place of Assembly.	Yes	350	180	2,500	880	440	10,000
27-127	Failure to Maintain Exterior Building Wall-NON-HAZARDOUS.	No	800	No	2,500	2,000	No	10,000

27-127	Failure to maintain plumbing and/or appurtenances-NON-HAZARDOUS	Yes	350	180	2,500	880	440	10,000
27-127	Failure to maintain plumbing and/or appurtenances-HAZARDOUS.	No	800	No	2,500	2,000	No	10,000
27-127	Failure to Maintain Exterior Building-HAZARDOUS	No	800	400	2,500	2,000	No	10,000
27-129	Failure to submit a 5th round Technical Report: Periodic Inspection of Exterior Wall and appurtenances as required by 1 RCNY 32-03.	No	700	350	2,500	1,750	No	10,000
27-129	Failure to submit a 2nd or 3rd round Technical Report: Periodic Inspection of Exterior Wall and appurtenances as required by 1 RCNY 32-03.	No	700	350	2,500	1,750	No	10,000
27-129	Failure to submit a 4th round Technical Report: Periodic inspection of Exterior Wall and Appurtenances as required by 1 RCNY 32-03.	No	700	350	2,500	1,750	No	10,000
27-129	Failure to submit a 6th round Technical Report: Periodic Inspection of Exterior wall and appurtenances as required by 1 RCNY 32-03	No	700	350	2,500	1,750	No	10,000
27-129 (d)(1)(b),(c)	Failure to file an amended report acceptable to this Department indicating correction of unsafe conditions described in initial report.	No	700	350	2,500	1,750	No	10,000
27-132	Failure to file 10E/TRI upon completion of controlled work.	No	350	180	2,500	880	No	10,000
27-132	Failure to file 10F/TRI prior to start of controlled work.	No	350	180	2,500	880	No	10,000
27-146	Site Safety. Approved plans not available for inspection.	Yes	500	250	2,500	1,250	630	10,000
27-146	Failure to provide approved plans at premises at time of inspection.	Yes	250	130	2,500	630	320	10,000
27-146	Approved Plans not available at premises at time of inspection- plumbing	Yes	250	130	2,500	630	320	10,000
27-147	Work without a permit.	Yes	500	250	2,500	1,250	630	10,000
27-147	Work without a permit: Expired permit.	Yes	500	250	2,500	1,250	630	10,000
27-147	Work without a permit - elevator	Yes	500	250	2,500	1,250	630	10,000
27-147	No permit for elevator in readiness.	Yes	1,000	500	2,500	2,500	1,250	10,000
27-147	No permit for material hoist.	Yes	500	250	2,500	1,250	630	10,000
27-147	No permit for personnel hoist.	Yes	500	250	2,500	1,250	630	10,000
27-147	No permit for new building.	Yes	500	250	2,500	1,250	630	10,000
27-147	Plumbing work without a permit-HAZARDOUS	No	800	No	2,500	2,000	No	10,000
27-147	Work without a permit-HAZARDOUS	No	800	No	2,500	2,000	No	10,000
27-147	Plumbing without a permit NON-HAZARDOUS	Yes	500	250	2,500	1,250	No	10,000
27-147	Work without a permit NON-HAZARDOUS	Yes	500	250	2,500	1,250	No	10,000
27-147	Boiler installed, altered, repaired or used without a permit.	Yes	500	250	2,500	1,250	630	10,000
27-147	Work without a permit: Facilities for people with physical disabilities.	No	500	250	2,500	1,250	630	10,000
27-147	Demolition Work Without Required Demolition Permit-HAZARDOUS	No	2,000	1,000	2,500	5,000	No	10,000
27-147	Construction or alteration work without a permit in manufacturing district for residential use-HAZARDOUS.	No	2,000	No	2,500	2,500	No	10,000

27-147	Construction or alteration work without a permit in manufacturing district for residential use.	No	1,500	750	2,000	2,000	1,000	10,000
27-147	Plumbing work without a permit in manufacturing district for residential use-HAZARDOUS.	No	2,000	No	2,500	2,500	No	10,000
27-147	Plumbing work without a permit in manufacturing district for residential use.	No	1,500	750	2,000	2,000	1,000	10,000
27-185	Operation of a elevator without an equipment use permit.	Yes	300	150	2,500	750	380	10,000
27-194	Failure to post permit for work at premises.	Yes	250	130	2,500	625	320	10,000
27-195	Failure to notify the DOB prior to the commencement of demolition work-HAZARDOUS	No	1,000	No	2,500	2,500	No	10,000
1 RCNY 52-01(a)	Failure to notify the Department prior to the commencement of earthwork-HAZARDOUS	No	1,000	No	2,500	2,500	No	10,000
1 RCNY 52-01(b)	Failure to notify the Department prior to the cancellation of earthwork-HAZARDOUS	No	1,000	No	2,500	2,500	No	10,000
27-201	Work contrary to approved Department of Buildings plans and application. Site safety hazardous.	No	500	No	2,500	1,250	No	10,000
27-201	Work does not conform to approved plans.	Yes	250	130	2,500	630	320	10,000
27-201	Place of Assembly contrary to approved plans.	Yes	250	130	2,500	630	320	10, 000
27-201	Work does not conform to approved plans-plumbing.	Yes	250	130	2,500	630	320	10,000
27-201	Work does not conform to approved plans-HAZARDOUS	No	500	No	2,500	1,250	No	10,000
27-201	Work contrary to approved Department of Buildings plans and application. Site Safety Non-hazardous	Yes	500	250	2,500	1,250	No	10,000
27-201	Work does not conform to approved plans.	Yes	500	250	2,500	1,250	No	10,000
27-201	Work contrary to approved application: Facilities for people with disabilities.	No	500	250	2,500	1,250	630	10,000
27-201	Plumbing work contrary to approved applications and plans in manufacturing district for residential use-HAZARDOUS.	No	2,000	No	2,500	2,500	No	10,000
27-201	Plumbing work contrary to approved applications and plans in manufacturing district for residential use.	No	1,500	750	2,000	2,000	1,000	10,000
27-201	Construction work contrary to approved applications and plans in a manufacturing district for residential use-HAZARDOUS.	No	2,000	No	2,500	2,500	No	10,000
27-201	Construction work contrary to approved applications and plans in a manufacturing district for residential use.	No	1,500	750	2,000	2,000	1,000	10,000
27-203	Failure to comply with safety requirements during buildings operations	No	1,500	No	2,500	3,750	No	10,000
27-205	Failure to grant entry to premises to inspect work-HAZARDOUS	No	2,000	No	2,500	5,000	No	10,000
27-214	New building occupied without a valid temporary or final certificate of occupancy.	Yes	700	350	2,500	1,750	No	10,000
27-214	New building occupied in manufacturing district without a valid certificate of occupancy.	No	1,500	750	2,000	2,000	1,000	10,000

27-215	Altered building occupied without a valid Certificate of Occupancy.	Yes	350	180	2,500	880	440	10,000
27-215	Operation of a Place of Assembly contrary to the C of O when the current C of O allows for the operation of a P.A.	Yes	350	180	2,500	880	440	10,000
27-215	Operation of a Place of Assembly contrary to the C of O when the current C of O does not allow the operation of a P.A.	Yes	350	180	2,500	880	440	10,000
27-215	Building in a manufacturing districtaltered for residential use occupiedwithout a valid certificate of occupancy.	No	1,500	750	2,000	2,000	1,000	10,000
27-217	Occupancy contrary to that allowed by the Certificate of Occupancy or Building Department records.	Yes	800	400	1,000	2,000	1,000	5,000
27-217	Occupancy contrary to that allowed by the Certificate of Occupancy or Building Department records-HAZARDOUS	No	800	No	1,000	2,000	No	5,000
27-217	Occupancy contrary to that allowed by the Certificate of Occupancy or Building Department records. NON-HAZARDOUS	Yes	800	400	1,000	2,000	No	5,000
27-217	Dwelling illegally converted from family to 2 or 3 families.	Yes	800	400	1,000	2,000	1,000	5,000
27-217	Occupancy contrary to that allowed by Certificate of Occupancy number-HAZARDOUS	No	800	No	1,000	2,000	No	5,000
27-217	Occupancy contrary to that allowed by Certificate of Occupancy number-NON-HAZARDOUS	Yes	800	400	1,000	2,000	1,000	5,000
27-217	Occupancy in a manufacturing district inconsistent with that allowed by the certificate of occupancy or Buildings Department records-HAZARDOUS.	No	2,000	No	2,500	2,500	No	10,000
27-217	Occupancy in manufacturing district inconsistent with that allowed by the certificate of occupancy or Buildings Department records.	No	1,500	750	2,000	2,000	1,000	10,000
27-225	Failure to post sign with occupant loads	Yes	250	130	500	630	320	5,000
27-228 .5	Failure to file a "Report of Compliance with Local Law 16/84" certifying to the installation of required fire protection systems.	No	400	200	2,500	1,000	500	10,000
27-228 .5	Failure to file an architect/engineer report certifying exit/directional signs connection to emergency power source/battery storage equipment	No	700	350	2,500	1,750	No	10,000
27-292 .10	People with Physical Disabilities: Public spaces/rooms not accessible/usable.	No	500	250	2,500	1,250	630	10,000
27-292 .11	Failure to provide/inadequate accessible wheelchair viewing positions.	No	500	250	2,500	1,250	630	10,000
27-292 .12	People with Physical Disabilities: Inadequate accessible public toilet rooms.	No	500	250	2,500	1,250	630	10,000
27-292 .13	People with Physical Disabilities: Inadequate accessible drinking fountains.	No	500	250	2,500	1,250	630	10,000
27-292 .14	People with Physical Disabitlities: inadequate accessible public telephones.	No	500	250	2,500	1,250	630	10,000
27-292 .15	People with Physical Disabilities: Inadequate emergency warning systems.	No	500	250	2,500	1,250	630	10,000

27-292 .16	People with Physical Disabilities: Operating mechanisms inaccessible.	No	500	250	2,500	1,250	630	10,000
27-292 .17	People with Physical Disabilities: Inadequate tactile warning systems.	No	500	250	2,500	1,250	630	10,000
27-292 .18	People with Physical Disabilities: Inadequate signage.	No	500	250	2,500	1,250	630	10,000
27-292 .19	People with Physical Disabilities: Insufficient usable parking spaces.	No	500	250	2,500	1,250	630	10,000
27-292 .20	People with Physical Disabilities: Inadequate passenger loading zones.	No	500	250	2,500	1,250	630	10,000
27-292 .5	People with Physical Disabilities: Failure to provide/ inadequate access.	No	500	250	2,500	1,250	630	10,000
27-292 .8	People with Physical Disabilities: Inadequate adaptable dwelling units.	No	500	250	2,500	1,250	630	10,000
27-292 .9	People with Physical Disabilities: Inadequate usable adaptable dwelling units.	No	500	250	2,500	1,250	630	10,000
27-345	Failure to provide/maintain fire stopping where required.	Yes	350	180	2,500	880	440	10,000
27-353 .01(a)	Failure to provide/inadequate elevator vestibules.	Yes	400	200	2,500	1,000	500	10,000
27-353 .01(b)	Failure to provide/inadequate fire protection for escalators.	Yes	400	200	2,500	1,000	500	10,000
27-361	Exit door: Total obstruction.	No	480	No	2,500	1,200	No	10,000
27-365	Failure to provide at least two means of egress from room or space as required.	No	480	No	2,500	1,200	No	10,000
27-366	Failure to provide required means of egress for every floor.	No	480	No	2,500	1,200	No	10,000
27-369	Exit passageway or corridor: Total Obstruction.	No	480	No	2,500	1,200	No	10,000
27-369	Exit passage or corridor: Required width decreased by Obstruction.	No	350	180	2,500	880	440	10,000
27-371	Exist door: required width decreased by Obstruction.	No	350	180	2,500	880	440	10,000
27-371	Exit door not self-closing.	No	350	180	2,500	880	440	10,000
27-371	Exit door swings against the flow of egress.	No	350	180	2,500	880	440	10,000
27-371	Use of prohibited door.	No	350	180	2,500	880	440	10,000
27-371	Use of prohibited door in place of Assembly.	No	350	180	2,500	880	440	10,000
27-371	Place of Assembly exit door of insufficient size.	No	350	180	2,500	880	440	10,000
27-371 (a)	Place of Assembly exit door not self-closing.	No	250	130	2,500	630	320	10,000
27--37 1(g)	Place of Assembly exit door swings against the flow of egress.	No	250	130	2,500	630	320	10,000
27-371 (j)	Use of illegal hardware.	No	350	180	2,500	880	440	10,000
27-371 (j)	Use of illegal hardware in Place of Assembly.	No	350	180	2,500	880	440	10,000
27-371 (k)	Failure to panic hardware where required by law.	Yes	350	180	2,500	880	440	10,000
27-371 (k)	Panic hardware inoperative.	Yes	350	180	2,500	880	440	10,000
27-371 (k)	Failure to provide panic hardware in place of Assembly.	Yes	350	180	2,500	880	440	10,000

27-371 (k)	Panic hardware in Place of Assembly inoperative.	Yes	350	180	2,500	880	440	10,000
27-381	Exit lighting defective/fails to meet Building Code standards.	No	350	180	2,500	880	440	10,000
27-381	Place of Assembly exit lighting does not meet Building Code standards.	No	350	180	2,500	880	440	10,000
27-381	Exit lighting defective/fails to meet Building Code standards.	No	350	180	2,500	880	440	10,000
27-381 (e)	Emergency lighting in vertical exits fails to meet B.E.C. standards.	Yes	400	200	2,500	1,000	500	10,000
27-382	Failure to provide/inadequate emergency power exit lights.	Yes	400	200	2,500	1,000	500	10,000
27-383	Exit sign defective/fails to meet Building Code standards.	Yes	250	130	2,500	630	320	10,000
27-383	Directional sign defective/fails to meet Building Code standards	Yes	250	130	2,500	630	320	10,000
27-383 (b)(3)	Failure to file affidavits and/or comply with other requirements set forth in RS 6-1 for photoluminescent exit path markings	No	700	350	2,500	1,750	No	10,000
27-383 (b)(3)	Failure to comply with requirements set forth in RS 6-1 for photoluminescent exit path markings-HAZARDOUS	No	1,500	No	2,500	3,750	No	10,000
27-383 (b)	Failure to install photoluminescent exit path markings-HAZARDOUS	No	2,000	No	2,500	5,000	No	10,000
27-383 .1	Failure to comply with additional exit/directional sign requirement(s)	No	1,000	500	2,500	2,500	No	10,000
27-384	Failure to provide/inadequate emergency power exit/ directional signs.	Yes	400	200	2,500	1,000	500	10,000
27-384 (c)	Failure to provide proper emergency power or storage battery connections to exit/directional signs-HAZARDOUS	No	2,000	No	2,500	5,000	No	10,000
27-391	Signs at elevator landings missing and/or defective.	Yes	400	200	2,500	1,000	500	10,000
27-391	Signs at elevator landings missing and/or defective.	Yes	400	200	2,500	1,000	500	5,000
27-392	Floor numbering signs missing and/or defective	Yes	400	200	2,500	1,000	500	10,000
27-393	Stair and/or elevator identification signs missing and/ or defective.	Yes	400	200	2,500	1,000	500	10,000
27-394	Stair re-entry signs missing and/or defective.	Yes	400	200	2,500	1,000	500	10,000
27-395	Required signs not made of metal or other durable material.	Yes	400	200	2,500	1,000	500	10,000
27-396 .02	Failure to provide/inadequate sleeping room signs.	Yes	400	200	2,500	1,000	500	10,000
27-419	No fireproof enclosure for boiler.	No	480	No	2,500	1,200	No	10,000
27-509	Fence exceeds permitted height.	Yes	300	150	2,500	750	380	10,000
27-525 .1	Operation of a Place of Assembly without a current P. A. permit	Yes	500	250	2,500	1,250	630	10,000
27-527	Failure to post approved capacity sign.	No	80	40	2,500	200	100	10,000
27-528	Approved Place of Assembly plans not available for inspection	No	200	No	2,500	500	No	10,000
27-530	Failure to provide at least two means of egress.	No	400	No	2,500	1,000	No	10,000
27-530	Required means of egress obstructed in a place of as-	No	400	No	2,500	1,000	No	10,000

	sembly.							
27-541	Place of Assembly exit sign does not meet Building Code standards.	No	130	70	2,500	330	170	10,000
27-541	Place of Assembly direction sign does not meet Building Code standards.	No	130	70	2,500	330	170	10,000
27-542	No emergency lighting.	Yes	350	180	2,500	880	440	10,000
27-542	Emergency lighting is inoperative or defective.	Yes	350	180	2,500	880	440	10,000
27-542	Emergency lighting is inadequate.	Yes	350	180	2,500	880	440	10,000
27-542	Failure to obtain a Certificate of Electrical Inspection for emergency lighting.	Yes	350	180	2,500	880	440	10,000
27-542	Failure to amend plans to show location of emergency lighting.	Yes	350	180	2,500	880	440	10,000
27-546	No certificate for fireproof drapes and/or curtains.	Yes	100	50	2,500	250	130	10,000
27-777 .02	Failure to provide/inadequate smoke control.	Yes	400	200	2,500	1,000	500	10,000
27-782	Failure to clean range grease filters.	No	150	80	2,500	380	190	10,000
27-782	Failure to maintain record of duct and filter cleaning.	No	150	80	2,500	380	190	10,000
27-792	Heating combustion or cooking equipment installed with inadequate clearances from combustible construction.	No	700	350	2,500	1,750	880	10,000
27-793 (c)	Failure to file annual boiler report with this Department.	Yes	250	130	2,500	630	320	10,000
27-796	Fuel oil burning equipment installed by other than a licensed installer.	Yes	700	350	2,500	1,750	880	10,000
27-807	Inadequate air supply in boiler room.	No	700	350	2,500	1,750	880	10,000
27-814	Suspended unit heater not adequately supported.	No	700	350	2,500	1,750	880	10,000
27-829	Fuel oil tank improperly located.	No	700	350	2,500	1,750	880	10,000
27-830	Piping and/or equipment installed improperly.	No	700	350	2,500	1,750	880	10,000
27-832	Oil fired equipment not connected to chimney.	No	700	350	2,500	1,750	880	10,000
27-887	Gas vent reduced or undersized.	No	400	200	2,500	1,000	500	10,000
27-888	Gas vent installed at illegal height or location.	No	400	200	2,500	1,000	500	10,000
27-892	Gas vent connector backpitched.	No	400	200	2,500	1,000	500	10,000
27-901 (l)	Insufficient plumbing fixtures as required by RS-16.	No	400	200	2,500	1,000	500	10,000
27-901 (a)	No potable water in habitable building	No	400	200	2,500	1,000	500	10,000
27-901 (b)	Insufficient potable water in a habitable builiding.	No	400	200	2,500	1,000	500	10,000
27-901 (c)(2)	Building water service and/or house sewer not connected to available public water main or sewer.	No	400	200	2,500	1,000	500	10,000
27-901 (o)	Plumbing fixture not properly trapped and/or vented.	No	400	200	2,500	1,000	500	10,000
27-901 (z)(1)	Piping installed in elevator/counterweight hoistway.	No	400	200	2,500	1,000	500	10,000
27-902	Use or installation of plumbing materials or equipment which do not comply with RS-16.	No	400	200	2,500	1,000	500	10,000
27-904	Gas being supplied to building without inspection and certification by this department.	No	400	200	2,500	1,000	500	10,000
27-908 (a)	Potable water piping cross connected to non-potable water piping.	No	400	200	2,500	1,000	500	10,000

27-908 (c)	Water supply system not in accordance with RS-16.	No	400	200	2,500	1,000	500	10,000
27-911	Drainage system not in accordance with RS-16	No	400	200	2,500	1,000	500	10,000
27-912	Hospital/institutional plumbing not in accordance with RS-16.	No	400	200	2,500	1,000	500	10,000
27-913	Swimming pool plumbing not in compliance with RS-16.	No	400	200	2,500	1,000	500	10,000
27-921 (a)	Failure to have new or altered plumbing system tested.	No	400	200	2,500	1,000	500	10,000
27-921 (c)	Failure to uncover plumbing system for inspection and/or test.	No	400	200	2,500	1,000	500	10,000
27-929 (b)	Failure to provide/inadequate fire command and communication system.	No	400	No	2,500	1,000	No	10,000
27-930 (a)(1)	Insufficient reserve of water in gravity of pressure tank for standpipe system.	No	400	200	2,500	1,000	500	10,000
27-930 (a)(2)	Insufficient height of gravity tank above highest hose outlet.	No	400	200	2,500	1,000	500	10,000
27-930 (a)(4)	Siamese connection(s) not painted in approved color and/or labeled.	No	400	200	2,500	1,000	500	10,000
27-930 (a)(8)	Failure to provide drip valves between siamese connection and check value.	No	400	200	2,500	1,000	500	10,000
27-932 (a)	Required standpipe system not installed.	Yes	400	200	2,500	1,000	500	10,000
27-933	Failure to install required yard hydrant system.	Yes	400	200	2,500	1,000	500	10,000
27-934	Standpipe system in building under construction or demolition not installed or not in accordance with this section.	No	400	200	2,500	1,000	500	10,000
27-935	Insufficient number of Standpipe risers.	No	400	200	2,500	1,000	500	10,000
27-936	Standpipe risers improperly located.	No	400	200	2,500	1,000	500	10,000
27-938	Installation of undersized standpipe risers.	No	400	200	2,500	1,000	500	10,000
27-940	Insufficient number of siamese connections.	No	400	200	2,500	1,000	500	10,000
27-941	Cross-connection undersized/improperly installed.	No	400	200	2,500	1,000	500	10,000
27-942 (a)(1)	Hose outlet valve(s) not provided/do(es) not meet building code standards.	No	400	200	2,500	1,000	500	10,000
27-942 (a)(2)	Roof manifold not provided/does not meet building code standards.	No	400	200	2,500	1,000	500	10,000
27-942 (b)	Hose station not properly located.	No	400	200	2,500	1,000	500	10,000
27-942 (c)	Hose provided is not of proper type, size and/or quality.	No	400	200	2,500	1,000	500	10,000
27-942 (d)	Illegal auxiliary hose station(s).	No	400	200	2,500	1,000	500	10,000
27-944	Required pressure-reducing valves not installed.	No	400	200	2,500	1,000	500	10,000
27-945	Insufficient water supply to standpipe.	No	400	200	2,500	1,000	500	10,000
27-946	Required fire pump not installed.	Yes	400	200	2,500	1,000	500	10,000
27-947 (a)	Failure to install required control valve.	No	400	200	2,500	1,000	500	10,000
27-947 (b)	Failure to have required water supply to fire pump(s).	No	400	200	2,500	1,000	500	10,000
27-949	Failure to properly protect standpipe system from	No	400	200	2,500	1,000	500	10,000

	freezing.							
27-951	Standpipe system not properly tested.	No	400	200	2,500	1,000	500	10,000
27-954	Failure to provide a system of automatic sprinklers where required.	No	400	200	2,500	1,000	500	10,000
27-956 (c)	Sprinkler installation not in accordance with RS 17-2.	No	400	200	2,500	1,000	500	10,000
27-957	No sprinkler alarm in accordance with RS-17.	Yes	400	200	2,500	1,000	500	10,000
27-959	Failure to provide required siamese connection(s).	No	400	200	2,500	1,000	500	10,000
27-962	Insufficient sources of water supply for sprinkler system.	No	400	200	2,500	1,000	500	10,000
27-964	Failure to provide sprinkler booster pump where required.	No	400	200	2,500	1,000	500	10,000
27-966	Sprinkler system not properly protected from freezing.	No	400	200	2,500	1,000	500	10,000
27-967	Sprinkler system not properly tested.	No	400	200	2,500	1,000	500	10,000
27-968	No fire alarm system.	Yes	400	200	2,500	1,000	500	10,000
27-969	No approval certificate for fire alarm system.	Yes	130	70	2,500	330	170	10,000
27-972 (h)	Failure to install an acceptable two-way voice communication system with central station connection.	No	400	No	2,500	1,000	No	10,000
27-981 .2	Failure to provide and install an approved operational carbon monoxide detecting device	No	800	400	2,500	1,500	No	10,000
27-987	Failure to maintain elevator.	Yes	350	180	2,500	1,000	500	10,000
27-987	Failure to maintain elevator-HAZARDOUS	No	800	No	2,500	2,000	No	10,000
27-996 .1	Failure to remove locks on elevator and hoistway doors.	Yes	400	200	2,500	1,000	500	10,000
27-996 .2	Failure to provide/inadequate firemen's service operation in elevator(s).	Yes	400	200	2,500	1,000	500	10,000
27-100 0	Failure to file a report of private elevator inspection with this department.	No	400	200	2,500	1,000	500	10,000
27-100 6	Failure to promptly report an elevator accident.	No	460	No	2,500	1,150	No	10,000
27-100 9	Operation of crane, derrick, or hoisting equipment in an unsafe manner.	No	4,000	No	5,000	10,000	No	10,000
27-100 9(a)	Failure to close sidewalk before lifting over the sidewalk.	No	1,500	No	5,000	3,750	No	10,000
27-100 9(a)	No toe boards							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors		1250	No	5000	3130	No	10,000
	7 or more floors		2500	No	5000	6250	No	10,000
27-100 9(a)	No guard rails							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors		1250	No	5000	3130	No	10,000
	7 or more floors		2500	No	5000	6250	No	10,000
27-100 9(a)	Failure to provide handrails on stairwell							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors		1250	No	5000	3130	No	10,000
	7 or more floors		2500	No	5000	6250	No	10,000
27-100	Openings/holes not covered							

9(a)								
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors		1250	No	5000	3130	No	10,000
	7 or more floors		2500	No	5000	6250	No	10,000
27-100 9(a)	Failure to safeguard public and property effected by demolition operations.	No	1,500	No	5,000	3,750	No	10,000
27-100 9(a)	No toe boards	No	1,000	No	5,000	2,500	No	10,000
27-100 9(a)	No guard rails	No	1,000	No	5,000	2,500	No	10,000
27-100 9(a)	Failure to safeguard public and property affected by construction operations.	No	1,000	No	5,000	2,500	No	10,000
27-100 9(a)	Failure to safeguard public and property affected by demolition operations.	No	1,500	No	5,000	3,750	No	10,000
27-100 9(c)	Failure to post contractor's sign	No	500	250	5,000	1,250	630	10,000
27-100 9(d)	No site safety log as per regulations	No	1,000	No	5,000	2,500	No	10,000
27-100 9(d)	Failure to comply with site safety program/plan per Buildings Dept. Rule	No	1,000	No	5,000	2,500	No	10,000
27-100 9(d)	Failure to have site safety manager present as required	No	2,000	No	5,000	5,000	No	10,000
27-101 4(a)	No elevator in readiness.	No	1,000	No	5,000	2,500	No	10,000
27-101 4(b)	No standpipe system.	No	1,000	No	5,000	2,500	No	10,000
27-101 4(b)	Siamese connection detective does not meet Building Code standards.	No	1,000	No	5,000	2,500	No	10,000
27-101 4(b)	No standpipe system.	No	1,000	No	5,000	2,500	No	10,000
27-101 8	Failure to perform adequate housekeeping							
	1-2 floors	No	350	No	5000	880	No	10,000
	3-6 floors	No	880	No	5000	2,200	No	10,000
	7 or more floors	No	1,760	No	5000	4,400	No	10,000
27-101 8	Failure to maintain adequate housekeeping.	No	500	No	5,000	1,250	No	10,000
27-101 8	Failure to perform adequate housekeeping. Insufficient containers provided for the storage of garbage and debris.							
	1-2 floors	No	350	No	2500	880	No	10,000
	3-6 floors	No	880	No	5000	2,200	No	10,000
	7 or more floors	No	1,760	No	5000	4,400	No	10,000
27-101 8(c)	Unsafe storage of materials less than two feet from building edge							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-101 8(b)	Unsafe storage of materials at edge of building							

	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-101 8(b)	Unsafe storage of materials less than five feet from building edge							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-101 8(d)	Waste dumpster, debris box or skip box not maintained in accordance with Building Department rules							
	1-2 floors	No	350	No	5000	880	No	10,000
	3-6 floors	No	880	No	5000	2,200	No	10,000
	7 or more floors	No	1760	No	5000	4,400	No	10,000
27-101 8(e)	Insufficient containers provided for the storage of garbage and debris.							
	1-2 floors	No	500	No	1000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-101 9(a)	Failure to safely and properly remove material/debris from construction site.	No	500	No	5,000	1,250	No	10,000
27-101 9(c)	Failure to properly store combustible material or other material and equipment.	No	900	No	5,000	2,250	No	10,000
27-102 0	Department of Transportation Permit for street/ sidewalk closing not posted.	No	400	200	5,000	1,000	500	10,000
27-102 1	Failure to provide adequate protection for sidewalks and walkways during construction operations.	No	2,000	No	5,000	5,000	No	10,000
27-102 1	No sidewalk shed.	No	2,000	No	5,000	5,000	No	10,000
27-102 1	Sidewalk shed does not meet Building Code specifications.	No	2,000	No	5,000	5,000	No	10,000
27-102 1	Sidewalk shed not adequately maintained.	No	1,000	No	5,000	2,500	No	10,000
27-102 1(a)	No sidewalk shed.	No	2,000	No	5,000	5,000	No	10,000
27-102 1(a)	No job site fence.	No	1,000	No	5,000	2,500	No	10,000
27-102 1(a)	No sidewalk shed.	No	2,000	No	5,000	5,000	No	10,000
27-102 1(a)(6)	Horizontal safety netting not provided.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 1(a)(6)	Vertical safety netting not provided.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 1(b)	Sidewalk shed does not meet Building Code specifications.	No	2,000	No	5,000	5,000	No	10,000

27-102 1(b)	Sidewalk shed not adequately maintained.	No	1,000	No	5,000	2,500	No	10,000
27-102 1(b)	Sidewalk shed overloaded.	No	2,000	No	5,000	5,000	No	10,000
27-102 1(b)	Sidewalk shed unsafe.	No	2,000	No	5,000	5,000	No	10,000
27-102 1(b)	Sidewalk shed does not meet Building Code specifications.	No	2,000	No	5,000	5,000	No	10,000
27-102 1(c)	Job site fence defective.	No	500	No	5,000	1,250	No	10,000
27-102 1(d)	Failure to protect opening in job-site fence.	No	500	No	5,000	1,250	No	10,000
27-102 1(g)(3)	Safety netting not labeled.	No	1,000	No	5,000	2,500	No	10,000
27-102 1(g)(3)	No documentation from manufacturer on job site for safety netting.	No	1,000	500	5,000	2,500	1,250	10,000
27-102 1(g)(3)	Safety netting damaged and/or broken.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 1(g)(3)	Failure to notify DOB of an accident / complaint. Re: Public or adjacent property	No	2,000	No	5,000	5,000	No	10,000
27-102 2	Failure to provide catch Platform.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 2(a)(1)	Horizontal safety netting not provided.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 2(c)	Materials stored in safety netting.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 2(b)	Debris not removed from safety netting.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 3	Failure to provide warning sign.	No	500	No	5,000	1,250	No	10,000
27-102 3	Failure to provide warning lights.	No	500	No	5,000	1,250	No	10,000
27-102 4(a)	No watchman.	No	500	No	5,000	1,250	No	10,000
27-102	No flagperson.	No	1,000	No	5,000	2,500	No	10,000

4(b)								
27-1025	Failure to provide escape hatch.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-1031	Failure to protect adjoining structures during excavation operations.	No	1,000	No	5,000	2,500	No	10,000
27-1032	Failure to provide protection at sides of excavation.	No	1,000	No	5,000	2,500	No	10,000
27-1035(f)(1)	Wedges used in reshores within ten feet of faade.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-1038	Failure to provide adequate protection for sidewalks and walkways during demolition operations.	No	2,000	No	5,000	5,000	No	10,000
27-1039	Failure to carry out demolition operations in a safe and proper manner.	No	2,000	No	5,000	5,000	No	10,000
27-1039	Failure to safely and properly remove material debris from demolition site.	No	2,000	No	5,000	5,000	No	10,000
27-1039	Failure to properly store combustible material or other material and equipment during demolition operations.							
	1-2 floors	No	1000	No	5000	2500	No	10,000
	3-6 floors	No	2500	No	5000	6250	No	10,000
	7 or more floors	No	5000	No	5000	10000	No	10,000
27-1039	Failure to do adequate housekeeping during demolition operations.							
	1-2 floors	No	1000	No	5000	2500	No	10,000
	3-6 floors	No	2500	No	5000	6250	No	10,000
	7 or more floors	No	5000	No	5000	10000	No	10,000
27-1039	No permit from Fire Department for welding of cutting operations during demolition.	No	2,000	No	5,000	5,000	No	10,000
27-1039	Failure to do adequate housekeeping during demolition operations. Insufficient containers provided for the storage of garbage and debris.							
	1-2 floors	No	1000	No	5000	2500	No	10,000
	3-6 floors	No	2500	No	5000	6250	No	10,000
	7 or more floors	No	5000	No	5000	10000	No	10,000
27-1039	Failure to safely and properly remove material/debris from demolition site.	No	2,000	No	5,000	5,000	No	10,000
27-1039	Failure to properly store combustible material or other material and equipment during demolition operations.							
	1-2 floors	No	1000	No	5000	2500	No	10,000
	3-6 floors	No	2500	No	5000	6250	No	10,000
	7 or more floors	No	5000	No	5000	10000	No	10,000

27-1039(a)(6)	Handrails missing on stairways during demolition.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-1039(a)(6)	Openings/holes not covered during demolition.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-1039(d)(2)	Safety zone not provided during mechanical demolition.	No	1,000	No	5,000	2,500	No	10,000
27-1039(d)(2)	Fences not provided for safety zone during mechanical demolition.	No	1,000	No	5,000	2,500	No	10,000
27-1039(h)	No elevator in readiness during demolition operations.	No	1,000	No	5,000	2,500	No	10,000
27-1040	Failure to adequately grade, drain or otherwise properly protect site after demolition.	No	1,000	No	5,000	2,500	No	10,000
27-1042	Failure to provide center iron on 2pt suspension scaffold multipoint suspension scafold.	No	750	No	5,000	1,880	No	10,000
27-1042	Erected, dismantled, repaired, maintained or modified supported scaffold 40 feet or higher without a permit pursuant to 27-1042-HAZARDOUS	No	800	No	2,500	2,000	No	10,000
27-1042(g)	Failure to provide toe board on two-point or multi-point suspension scaffold.	No	750	No	5,000	1,880	No	10,000
27-1042(g)	Failure to provide guard rails on two-point of multi-point suspension scaffold.	No	750	No	5,000	1,880	No	10,000
27-1045	Failed to perform safe/proper insp./install/maint./operation of Susp. Scaff.-HAZARDOUS	No	4,000	No	5,000	10,000	No	10,000
27-1045(b)	No record of daily insp. of Susp. Scaff. performed by authorized person at site-HAZARDOUS	No	1,250	No	2,500	2,500	No	15,000
27-1046	Two-point suspension scaffold and/or ropes not in compliance with Building Code specifications.	No	750	No	5,000	1,880	No	10,000
27-1046(d)(2)	Use of scaffold with fiber ropes when upper block is greater than 100 feet above the platform.	No	750	No	5,000	1,880	No	10,000
27-1047	Multi-point suspension scaffold and/or ropes not in compliance with Building Code specifications.	No	750	No	5,000	1,880	No	10,000
27-1050.1	Failed to notify Dept. prior to use/inst. of C-hooks/outrigger beams in connection with Susp. Scaff.-HAZARDOUS	No	500	No	2,500	1,250	No	10,000
27-1054	Operation of defective Crane, Derrick or hoisting equipment.	No	3,000	No	5,000	7,500	No	10,000
27-1054	Personnel riding on material hoist.	No	3,000	No	5,000	7,500	No	10,000
27-1054(b)	Lifting of a load in excess of that approved by the Department.	No	2,000	No	5,000	5,000	No	10,000
27-1055	Improper size rope used for hoisting.	No	750	No	5,000	1,880	No	10,000
27-105	Use of hoisting cable less than 1/2" in diameter.	No	750	No	5,000	1,880	No	10,000

5(b)(1)								
27-1057	Crane/Derrick Certificate of Approval not available for inspection.	No	500	No	5,000	1,250	No	10,000
27-1057	Crane/Derrick Certificate of Operation not available for inspection.	No	500	No	5,000	1,250	No	10,000
27-1057	Crane/Derrick Certificate of on-site inspection not available for inspection.	No	500	No	5,000	1,250	No	10,000
27-1057(a)	Operation of boom truck without certificate of operation.	No	1,500	No	5,000	3,750	No	10,000
27-1057(b)	Operation of crane/derrick without certificate of approval/certificate of operation.	No	1,500	No	5,000	3,750	No	10,000
27-1057(d)	Failure to comply with Certificate of on-site inspection.	No	1,500	No	5,000	3,750	No	10,000
27-1057(d)	Operation of crane/derrick without certificate of on-site inspection.	No	1,500	No	5,000	3,750	No	10,000
27-1057(e)	Failure to immediately notify DOB of accident involving hoisting machinery.	No	1,000	No	5,000	2,500	No	10,000
Titles 26 and 27 of the NYC Admin. Code	Miscellaneous site safety violations.	No	500	No	2,500	1,250	No	10,000
Titles 26 and 27 of the NYC Admin. Code	Miscellaneous Construction Violations.	Yes	400	200	2,500	1,000	500	10,000
Title 26 and 27 of the NYC Admin. Code	Miscellaneous Construction Violation-HAZARDOUS	No	800	No	2,500	2,000	No	10,000
Tit. 26 & 27 of the NYC Admin. Code	Misc. Violation of condition on as of right privately owned public space.	Yes	2,500	1,250	2,500	10,000	No	10,000
Tit. 26 & 27	Miscellaneous P.A. violations	Yes	400	200	2,500	1,000	500	10,000

of the NYC Ad-min. Code								
Tit.26 & 27 of the NYC Ad-min. Code	Miscellaneous Plumbing Violation	Yes	400	200	2,500	1,000	500	10,000
Tit. 26 & 27 of the NYC Ad-min. Code	Miscellaneous HPD Demolition violations	No	500	No	2,500	1,250	No	10,000
1 RCNY 50-01(a)(5)	Failure to properly install microturbine system in accordance with regulations HAZARDOUS	No	2,500	No	2,500	6,250	No	10,000
1 RCNY 50-01(a)(9)	Failure to maintain qualified service for microturbine system HAZARDOUS	No	1,500	No	2,500	3,750	No	10,000
ZR 11-62	Violation of condition on discretionary privately owned public space	Yes	2,500	1,250	2,500	10,000	No	10,000
ZR 22-00	Illegal use in residential district.	Yes	480	240	2,500	1,200	600	10,000
ZR 25-41	Violation of parking regulations in a residential district.	Yes	480	240	2,500	1,200	600	10,000
ZR 32-00	Illegal use in commercial district.	Yes	480	240	2,500	1,200	600	10,000
ZR 36-00	Violation of parking regulations in a commercial district.	Yes	480	240	2,500	1,200	600	10,000
ZR 42-00	Illegal use in a manufacturing district.	Yes	480	240	2,500	1,250	600	10,000
ZR 42-00	Violation of parking regulations in a manufacturing district.	Yes	480	240	2,500	1,200	600	10,000
ZR 72-22	Failure to comply with the conditions and restrictions applicable to a variance granted by Board of Standards and Appeals.	Yes	480	240	2,500	1,200	600	10,000
ZR 105-20,107-321,119-111	Failure to comply with natural land features and planting requirements of special purpose districts	Yes	700	350	2,500	1,750	No	10,000
ZR	Miscellaneous violations of the Zoning Resolution.	Yes	480	240	2,500	1,200	600	10,000

Misc. 1 RCNY 9-01	Licensed Rigger failed to supervise rigger work.	Yes	500	250	2,500	1,250	No	10,000
1 RCNY 9-01	Licensed Rigger designated an unqualified foreman.	Yes	500	250	2,500	1,250	No	10,000
1 RCNY 9-02	Licensed sign hanger failed to supervise sign hanging work	Yes	500	250	2,500	1,250	No	10,000
1 RCNY 9-02	Licensed sign hanger designated an unqualified foreman.	Yes	500	250	2,500	1,250	No	10,000
1 RCNY 9-03	Licensed Rigger failed to ensure scaffold worker met minimum req.	Yes	500	250	2,500	1,250	No	10,000
1 RCNY 9-03	Licensed sign hanger failed to ensure scaffold worker met minimum requirements.	Yes	500	250	2,500	1,250	No	10,000
26-262 (d)	Maintaining sign/structure controlled by unregistered Outdoor Ad. Co.	No	800	400	2,500	1,500	No	10,000
AC 27-147	Outdoor sign on display structure without a permit.	Yes	800	400	2,500	1,500	750	10,000
AC 27-201	Outdoor sign is contrary to approved plans.	Yes	800	400	2,500	1,500	750	10,000
AC 27-313	Unlawful projection of outdoor light fixture or awning.	Yes	800	400	2,500	1,500	750	10,000
AC 27-313	Unlawful projection of outdoor sign.	Yes	800	400	2,500	1,500	750	10,000
AC 27-313 through 27-315	Misc impermissible projection	Yes	800	400	2,500	1,500	750	10,000
AC 27-498 Through 27-508	Misc outdoor sign violation.	Yes	800	400	2,500	1,500	750	10,000
AC 27-499	Outdoor sign obstructs egress or required light or ventilation.	Yes	800	400	2,500	1,500	750	10,000
AC 27-499	Outdoor sign attached to fire escape or exterior stair.	Yes	800	400	2,500	1,500	750	10,000
AC 27-500 (a)	Unlawful projection of ground sign.	Yes	800	400	2,500	1,500	750	10,000
AC 27-501 (a)	Unlawful projection of outdoor wall sign.	Yes	800	400	2,500	1,500	750	10,000
AC	Outdoor wall sign covers door or window required for	Yes	800	400	2,500	1,500	750	10,000

27-501 (d)	fire Dept. access.							
AC 27-502 (a)	Projecting outdoor sign unlawfully extends beyond street line.	Yes	800	400	2,500	1,500	750	10,000
AC 27-502 (a)	Projecting outdoor sign in location prohibited by RS7-2.	Yes	800	400	2,500	1,500	750	10,000
AC 27-502 (b)	Projecting outdoor sign exceeds height limits.	Yes	800	400	2,500	1,500	750	10,000
AC 27-508	Failure to maintain outdoor sign.	Yes	800	400	2,500	1,500	750	10,000
AC Title 27	Misc outdoor sign violation.	Yes	800	400	2,500	1,500	750	10,000
1 RCNY 27-03	Prohibited sign on sidewalk shed	No	800	400	2,500	1,500	750	10,000
ZR 22-00	Illegal use in residential district.	No	480	240	2,500	1,200	600	10,000
ZR 22-30thru 22-40	Misc sign violation in R Dist under Zoning Resolution.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-32	Impermissible illuminated or flashing sign in R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-32	Impermissible advertising sign in an R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-321 (a)	Impermissible nameplate on residential bldg in R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-321 (b)	Impermissible identification sign on bldg in R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-322	Impermissible "for sale" or "for rent " sign in R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-323	Impermissible parking sign in R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-341	Outdoor sign in R Dist extends more than 12 in. beyond street line.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-342	Outdoor sign in R Dist exceeds height limits.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-343	Excess number of signs on building in R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 25-41	Violation of parking regulations in a residential district.	No	480	240	2,500	1,200	600	10,000
ZR 32-00	Illegal use in commercial district.	No	480	240	2,500	1,200	600	10,000
ZR	Impermissible advertising sign in specified C Dist.	Yes	800	400	2,500	1,500	750	10,000

32-63								
ZR 32-64	Sign(s) in specified C Dist exceed(s) surface area restrictions.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-64	Illuminated sign in C Dist exceeds illumination standards.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-64	Illuminated sign not permitted in specified C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-64	Flashing sign not permitted in specified C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-64	Flashing sign in window not allowed in C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-64	More than three illuminated signs in window of building in C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-64	Illuminated sign(s) in window of building in C Dist exceed size limits	Yes	800	400	2,500	1,500	750	10,000
ZR 32-65	Sign in specified C Dist extends beyond street line limitation.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-653	Prohibited sign on awning, canopy, or marquee in C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-654	Sign exceeds permitted height for C8 Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-655	Sign exceeds permitted height for specified C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-656	Sign on building in specified C Dist impermissibly extends above roof.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-657	Sign on roof of building prohibited in specified C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-661	Sign in specified C Dist near park or highway exceeds size limits.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-662	Ad sign in specified C Dist. w/i prohibited distance of park or highway.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-67	Advertising sign in specified C Dist angled towards R Dist. or Park	Yes	800	400	2,500	1,500	750	10,000
ZR 32-67	Sign in specified C district facing R district or park violates C1 district regs	Yes	800	400	2,500	1,500	750	10,000
ZR 32-68	Impermissible sign on residential or mixed building in C district	Yes	800	400	2,500	1,500	750	10,000
ZR 32-62thru 32-69	Misc. sign violation in C district under zoning resolution	Yes	800	400	2,500	1,500	750	10,000
ZR 36-00	Violation of parking regulations in a commercial district.	No	480	240	2,500	1,200	600	10,000
ZR 42-00	Illegal use in a manufacturing district.	No	480	240	2,500	1,200	600	10,000
ZR 42-51thru 42-58	Misc sign violation in M Dist. under Zoning Resolution	Yes	800	400	2,500	1,500	750	10,000
ZR	Illuminated sign in M Dist. exceeds illumination stand-	Yes	800	400	2,500	1,500	750	10,000

42-53	ards							
ZR 42-53	Flashing window sign in M Dist. prohibited.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-531	Illuminated sign in M Dist. exceeds size limit.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-532	Nonilluminated sign in M Dist. exceeds size limit.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-533	Illuminated or flashing advertising sign in M Dist not permitted.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-533	Illuminated or flashing non-advert sign in M Dist exceeds size limits	Yes	800	400	2,500	1,500	750	10,000
ZR 42-533	Indirectly illuminated sign exceeds size limit in M Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-541	Unlawful projection of sign in M Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-542	Unlawful sign on awning, canopy or marquee in M Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-543	Sign in M Dist. exceeds height limit.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-55(a)	Sign in M Dist. within 200 ft. of park or highway exceeds 500 sq. ft.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-55(a)	Advertisting sign in M Dist. prohibited w/i 200 ft. of park or highway.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-55(b)	Sign in M Dist exceeds size limits.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-561	Advertising sign in M Dist. improperly angled toward R Dist. or park.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-561	Sign in M Dist. facing R Dist or park violates C1 Dist regs.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-562	Illuminated sign in M Dist improperly angled toward R or C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-562	Indirect illuminated sign in M Dist w/i 500 ft of R or C Dist. over 58 ft. H.	Yes	800	400	2,500	1,500	750	10,000
ZR Misc Signviolation	Misc sign violation under the Zoning Resolution	Yes	800	400	2,500	1,500	750	10,000
26-260 (a)	Outdoor Ad. Co. engages in outdoor advertising business w/o valid registration.	No	10,000	5,000	15,000	20,000	No	25,000
26-260 (b)	Outdoor Ad. Co. fails to submit information prescribed by department.	No	10,000	5,000	15,000	20,000	No	25,000
26-260 (c)	Outdoor Ad. Co. fails to post bond or provide other form of security.	No	10,000	5,000	15,000	20,000	No	25,000
26-261 (a)	Outdoor Ad. Co. fails to submit accurate sign inventory info.	No	10,000	5,000	15,000	20,000	No	25,000
26-261 (b)	Outdoor Ad. Co. fails to display required info on sign/ sign location.	No	10,000	5,000	15,000	20,000	No	25,000

26-262 (a)(1)	Outdoor Ad. Co. sign violates ZR, AC or DOB rule. HAZARDOUS.	No	10,000	5,000	15,000	20,000	No	25,000
26-262 (a)(1)	Outdoor Ad. Co. sign violates ZR, AC or DOB rule.	No	10,000	5,000	15,000	20,000	No	25,000
26-262 (a)(2)	Outdoor Ad. Co. makes available sign which is in violation of ZR/AC/DOB rules.	No	10,000	5,000	15,000	20,000	No	25,000
26-262 (a)(3)	Outdoor Ad. Co. makes available sign or registration to unregistered Outdoor Ad. Co.	No	10,000	5,000	15,000	20,000	No	25,000
27-147 &26-262	Outdoor Ad Co Sign on display without permit	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-201 &26-262	Outdoor Ad Co sign is contrary to approved plans	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-313 &26-262	Outdoor Ad Co light fixture or awning has unlawful projection	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-313 &26-262	Outdoor Ad Co Sign has unlawful projection	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-499 &26-262	Outdoor Ad Co sign obstructs egress or required light or ventilation	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-499 &26-262	Outdoor Ad Co sign is attached to fire escape or exterior stair	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-500 (a) &26-262	Outdoor Ad Co ground sign has unlawful projection	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-501 (a) &26-262	Outdoor Ad Co wall sign has unlawful projection	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-501 (d) &26-262	Outdoor Ad Co wall sign blocks FDNY access	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-502 (a) &26-262	Outdoor Ad Co sign unlawfully projects beyond street line	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-502 (a) &26-262	Outdoor Ad Co projecting sign in location prohibited by RS7-2	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-502 (b) &26-262	Outdoor Ad Co projecting sign exceeds height limits	Yes	10,000	5,000	15,000	20,000	10,000	25,000

27-508 &26-262	Outdoor Ad Co failed to maintain sign	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-313 thru 27-315 & 26-262	Misc. projection violation by Outdoor Ad Co	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-498 thru 27-508 & 26-262	Misc. sign violation by Outdoor Ad Co	Yes	10,000	5,000	15,000	20,000	10,000	25,000
AC Title 27& 26-262	Misc. sign violation by Outdoor Ad Co	Yes	10,000	5,000	15,000	20,000	10,000	25,000
1 RCNY 27-03	Prohibited sign on s/w shed by Outdoor Ad. Co	Yes	10,000	5,000	15,000	20,000	10,000	25,000
1 RCNY 49-02	Outdoor Ad. Co. fails to cooperate with DOB sign related investigation	No	10,000	5,000	15,000	20,000	No	25,000
1 RCNY 49-03	Outdoor Ad. Co. fails to comply w/Commissioner's sign related order. HAZARDOUS	No	10,000	5,000	15,000	20,000	No	25,000
1 RCNY 49-03	Outdoor Ad. Co. fails to comply w/Commissioner's sign related order.	No	10,000	5,000	15,000	20,000	No	25,000
1 RCNY 49-12(e)	Outdoor Ad. Co. fails to notify DOB of material change in registration info.	No	10,000	5,000	15,000	20,000	No	25,000
1 RCNY 49-12(e)	Affiliated Outdoor Ad. Co. does business before notice of material change is received.	No	10,000	5,000	15,000	20,000	No	25,000
1 RCNY 49-15(h)	Outdoor Ad. Co. fails to amend sign inventory information as prescribed by DOB Rule.	No	10,000	5,000	15,000	20,000	No	25,000
ZR 22-32 & AC 26-262	Outdoor Ad Co has impermissible illuminated or flashing sign in Residential District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-32 & AC 26-262	Outdoor Ad Co has impermissible advertising sign in a Residential District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR	Outdoor Ad Co has impermissible nameplate on resid-	Yes	10,00	5,000	15,00	20,00	10,00	25,000

22-321 (a)& AC 26-262	ential bldg in Residential District		0		0	0	0	
ZR 22-321 (b)& AC 26-262	Outdoor Ad Co has impermissible identification sign on bldg in Residential District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-322 & AC 26-262	Outdoor Ad Co has impermissible 'for sale" or "for rent" sign in Residential District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-323 & AC 26-262	Outdoor Ad Co has impermissible parking sign in Residential District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-341 & AC 26-262	Outdoor Ad Co sign in Residential District extends >12in. Beyond street line	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-342 & AC 26-262	Outdoor Ad Co sign in Residential District exceeds height limits	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-343 & AC 26-262	Outdoor Ad Co has excess number of signs on bldg in Residential District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-30 to 22-40 & AC 26-262	Misc. sign violation in Residential District under Zoning Resolution by Outdoor Ad	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-63 & AC 26-262	Outdoor Ad Co advertising sign not permitted in specified Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-64 & AC 26-262	Outdoor Ad Co sign(s) in specified Commercial District exceed surface area limits	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-64 & AC 26-262	Outdoor Ad Co illuminated sign in Commercial District exceeds illumination standards	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-64 & AC	Outdoor Ad Co Illuminated sign not permitted in specified Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000

26-262 ZR 32-64 & AC 26-262	Outdoor Ad Co flashing sign not permitted in specified Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-64 & AC 26-262	Outdoor Ad Co flashing sign in window not allowed in Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-64 & AC 26-262	Outdoor Ad Co has more than 3 illuminated window signs in Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-64 & AC 26-262	Outdoor Ad Co illuminated window sign(s) in Commercial District exceed size limits	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-65 & AC 26-262	Outdoor Ad Co sign in specified Commercial District extends beyond street line limit	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-653 & AC 26-262	Outdoor Ad Co sign on awning, canopy, or marquee prohibited in commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-654 & AC 26-262	Outdoor Ad Co sign exceeds permitted height for commercial 8 District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-655 & AC 26-262	Outdoor Ad Co sign exceeds permitted height for specified Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-656 & AC 26-262	Outdoor Ad Co sign in specified Commercial District impermissibly extends above roof	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-657 & AC 26-262	Outdoor Ad Co sign on roof of bldg prohibited in specified Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-661 & AC 26-262	Outdoor Ad Co sign in Commercial District near park or highway exceeds size limits	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-662 & AC 26-262	Outdoor Ad Co sign in Commercial District w/i prohibited distance of park or highway	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR	Outdoor Ad Co sign in specified Commercial District	Yes	10,00	5,000	15,00	20,00	10,00	25,000

32-67 & AC 26-262	angled towards Residential District or park		0		0	0	0	
ZR 32-67 & AC 26-262	Outdoor Ad Co Sign in Commercial District facing Residential District or park violates commercial 1 District regs	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-68 & AC 26-262	Impermissible Outdoor Ad Co sign on residential or mixed bldg in Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-62 through 32-69 & AC 26-262	Misc. sign. Violation in Commercial District under Zoning Resolution by Outdoor Ad Co	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-53 & AC 26-262	Outdoor Ad Co illuminated sign in Manufacturing District exceeds illumination standards	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-531 & AC 26-262	Outdoor Ad Co illuminated sign in Manufacturing District exceeds size limit	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-532 & AC 26-262	Outdoor Ad Co nonilluminated sign in Manufacturing District exceeds size limit	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-533 & AC 26-262	Outdoor Ad Co illuminated or flashing ad sign in Manufacturing District not permitted	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-533 & AC 26-262	Outdoor Ad Co illuminated or flashing non-ad sign in Manufacturing District exceeds size limit	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-533 & AC 26-262	Outdoor Ad Co indirectly illuminated sign in Manufacturing District exceeds size limit	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-541 & AC 26-262	Outdoor Ad Co sign in Manufacturing District has unlawful projection	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-542 &AC 26-262	Unlawful Outdoor Ad Co sign on awning canopy or marquee in Manufacturing District	Yes	10,000	5,000	15,000	20,000	10,000	25,000

ZR 42-55(a) & AC 26-262	Outdoor Ad Co sign in Manufacturing District w/i 200 ft of park or highway > 500 sq ft.	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-55(a)& AC 26-262	Outdoor Ad Co sign in Manufacturing District prohibited w/i 200 ft of park or highway	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-55(b)& AC 26-262	Outdoor Ad Co sign in Manufacturing District exceeds size limits	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-561 & AC 26-262	Outdoor Ad Co sign in Manufacturing District improperly angled toward Residential District or park	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-561 & AC 26-262	Outdoor Ad Co sign in Manufacturing District facing Residential District or park violates C1 district regs	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-562 & AC 26-262	Outdoor Ad Co illuminated sign in Manufacturing District improperly faces Residential or Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-562 & AC 26-262	Outdoor Ad Co indirect illumin sign in Manufacturing District near Residential or Commercial District > 58 ft high	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-51through 42-58 &AC 26-262	Misc. sign violation in Manufacturing District under zoning Resolution by Outdoor Ad Co.	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR Misc-Sign-Violation	ZR Misc. sign violation under the Zoning Resolution by an Outdoor Ad Co	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-53	Outdoor Ad Co flashing window sign in Manufacturing District Prohibited	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-543	Outdoor Ad Co sign in Manufacturing district exceeds height limit	Yes	10,000	5,000	15,000	20,000	10,000	25,000

Buildings Penalty Schedule II: Effective For Notices of Violation With a Date of Occurrence On or After July 1, 2008:

The Penalty Schedule set forth below, Buildings Penalty Schedule II, sets forth the penalties that will be imposed in connection with Notices of Violation with a date of occurrence on or after July 1, 2008.

1.) **Legal References.** The legal references referred to in this Penalty Schedule include the following:

· Title 28 of the New York City (NYC) Administrative Code. References to Title 28 of the NYC Administrative Code begin with "28-" (for example, "28-201.1). The citation "28-Misc." refers to provisions of Title 28 that are not specifically designated elsewhere in the Penalty Schedule.

· Title 27 of the NYC Administrative Code (also known as the "1968 Building Code"). References to title 27 of the NYC Administrative Code begin with "27-" (for example, "27-371"). The citation "27-Misc." refers to provisions of Title 27 that are not specifically designated elsewhere in the Penalty Schedule.

· The "New York City Construction Codes," which consist of:-The New York City plumbing code (PC)-The New York City building code (BC)-The New York City mechanical code (MC)-The New York City fuel gas code (FGC)

· References to these New York City Construction Codes are designated by the various abbreviations set out above (for example, "BC3010.1"). The citations "BC-Misc.", "PC-Misc.", "MC-Misc." and "FGC-Misc." refer to provisions of the New York City building, plumbing, mechanical or fuel gas code that are not specifically designated elsewhere in the Penalty Schedule.

· Appendices to the New York City Construction Codes (the New York City Construction Codes include all enacted appendices, as per §28-102.6 of the NYC Administrative Code). References to Appendices are cited by using the abbreviation for the particular Construction Code followed by the applicable Appendix letter (for example, "H") followed by the applicable section number (for example, "BC H103.1").

· The NYC Zoning Resolution (ZR) and the Rules of the City of New York (RCNY). References to the Zoning Resolution and to the Rules of the City of New York are designated by the abbreviations "ZR" and "RCNY" (for example, "ZR25-41"; "1 RCNY9-01"). The citations "1 RCNY-Misc." and "ZR-Misc." refer to provisions of 1 RCNY or the Zoning Resolution that are not specifically designated elsewhere in the Penalty Schedule.

· Reference Standards that pertain to Title 27 of the NYC Administrative Code (RS). References to the Reference Standards are designated by the abbreviation set out above (for example, "RS-16"). The citation "RS-Misc." refers to Reference Standards that are not specifically designated elsewhere in the Penalty Schedule.

2.) **Citations to the New York City Construction Codes.** Whenever a section or subdivision of the New York City Construction Codes is cited or referred to, subordinate consecutively numbered subdivisions or paragraphs of the cited provision are deemed to be included in such reference unless the context or subject matter requires otherwise.

3.) **Classification of Violations.** Pursuant to the Rules of the Department of Buildings set out in Title 1 of the Rules of the City of New York, for purposes of classifying violations pursuant to section 28-201.2 of the Administrative Code, the following terms shall have the following meanings:

· IMMEDIATELY HAZARDOUS VIOLATION. Immediately hazardous violations are those specified as such by the New York City Construction Codes, or those where the violating condition poses a threat that severely affects life, health, safety, property, the public interest, or a significant number of persons so as to warrant immediate corrective action, or, with respect to outdoor advertising, those where the violation and penalty are necessary as an economic disincentive to the continuation or the repetition of the violating condition.) Immediately hazardous violations shall be denominated as Class 1 violations.

· MAJOR VIOLATION. Major violations are those specified as such by the New York City Construction Codes or those where the violating condition affects life, health, safety, property, or the public interest but does not require

immediate corrective action, or, with respect to outdoor advertising, those where the violation and penalty are appropriate as an economic disincentive to the continuation or the repetition of the violating condition. Major violations shall be denominated as Class 2 violations.

· LESSER VIOLATION. Lesser violations are those where the violating condition has a lesser effect than an immediately hazardous (Class 1) or major violation (Class 2) on life, health, safety, property, or the public interest. Lesser violations shall be denominated as Class 3 violations.

In this Penalty Schedule, the classification of any particular charge is indicated in the column of the Penalty Schedule that is entitled ""Classification." In some instances, where so indicated in this Penalty Schedule, a violation of a particular section of law may be charged by the Department of Buildings as either an "Class 1" violation, or as a "Class 2" violation, or as a "Class 3" violation, depending upon the assessment by the Department of Buildings as to the classification that is warranted for the particular violation in question.

4.) **Aggravated Penalties:** If a Notice of Violation charges a violation as an Aggravated I or as an Aggravated II violation and the respondent is found in violation, then aggravated penalties of the first order ("Aggravated I") or aggravated penalties of the second order ("Aggravated II") penalties will be imposed. This Penalty Schedule sets forth the Aggravated I or Aggravated II penalties that will apply. Pursuant to the Rules of the Department of Buildings set out in Title 1 of the Rules of the City of New York, the Department of Buildings will charge a violation as an Aggravated I or Aggravated II violation under the following circumstances: (1) Aggravated penalties of the first order. Aggravated penalties of the first order ("Agg. I") shall be imposed in the following instances:

(i) Aggravated penalties of the first order. Aggravated penalties of the first order ("Agg. I") shall be imposed when evidence establishes the same condition or the same charge under the New York City Construction Codes or the predecessor charge under the laws in effect prior to July 1, 2008, in a prior enforcement action against the same owner or responsible party during the previous three years.

(2) Aggravated penalties of the second order. Aggravated penalties of the second order ("Agg. II") shall be imposed in the following instances:

(i) When the respondent or defendant is found in violation of any law or rule enforced by the Department where the violation of law is accompanied by or results in an accident, or poses a substantial risk thereof; is accompanied by, or results in a fatality or serious injury; or where the violating condition affects a significant number of people; or

(ii) Where the respondent refuses to give the Department of Buildings requested information necessary to determine the condition of a building or site; or

(iii) Where the respondent has a history of non-compliance with laws or rules enforced by the Department of Buildings at one or more locations, including but not limited to a pattern of unreasonable delays in correcting violations, a pattern of failing to obey Stop Work Orders, filing false documents, or multiple defaults.

5.) **Mitigation.** A violation that is otherwise subject to a standard penalty or to an Aggravated I penalty is potentially eligible for a mitigated penalty if and only if this Penalty Schedule so indicates by a "Yes" in the "Mitigated Penalty" column. If a violation is potentially eligible for a mitigated penalty, a mitigated penalty will be imposed if the respondent proves at the hearing that the violating condition was corrected prior to the first scheduled hearing date at ECB. (A certificate of correction must thereafter be filed by the respondent with the Department of Buildings in accordance with its Rules.) If a mitigated penalty is imposed, that mitigated penalty will be half of the penalty amount rounded to the nearest dollar (i.e., either half of the standard penalty amount or half of the Aggravated I penalty amount, whichever is applicable) that would otherwise have been imposed at a hearing for that particular violation. A mitigated penalty is never available in connection with a violation that has been charged by the Department of Buildings as an Aggravated II charge. (This is the case even if there is a "Yes" in the "Mitigated Penalty" column in this Penalty Schedule.)

6.) **Additional Daily and Monthly Penalties.** Additional daily penalties may be imposed in connection with certain Class 1 violations. Additional monthly penalties may be imposed in connection with certain Class 2 violations. If such penalties are sought by the Department of Buildings in connection with a particular Class 1 or Class 2 charge, that will be indicated on the Notice of Violation.

Such daily or monthly penalties, if applicable, are in addition to the set penalty amount that also is indicated in this Penalty Schedule as applicable to the type of violation in question taking into account the classification level and Aggravated level of the particular violation. Imposition of such additional daily and monthly penalties is authorized pursuant to Section 28-202.1 of the New York City Administrative Code.

Accrual of Daily Penalties: Daily penalties, if applicable, will accrue at the rate set forth in this Penalty Schedule per day for a potential total of forty-five days running from the date of the Order to Correct of the Commissioner of the Department of Buildings that is set forth in the Notice of Violation unless the violating condition is proved by the respondent at the hearing to have been corrected prior to the end of that forty-five day period, in which case the daily penalties will accrue for every day up to the date of that proved correction.

Accrual of Monthly Penalties: Monthly penalties, if applicable, accrue at the rate set forth in this Penalty Schedule per month for a potential total of one month running from the date of the Order to Correct of the Commissioner of the Department of Buildings that is set forth in the Notice of Violation unless the violating condition is proved by the respondent at the hearing to have been corrected prior to the end of a month period.

7.) **Cures.** Certain violations are potentially eligible for a cure by correction within forty days running from the date of the Order to Correct of the Commissioner of the Department of Buildings that is set forth in the Notice of Violation. This Penalty Schedule indicates which violations are potentially subject to cure. A cure constitutes an admission of the charged violation; results in a finding of violation in connection with that charged violation; dispenses with the need for a hearing at ECB; may constitute a prior violation in relation to later-issued violations, for purposes of determining if those later-issued violations have an Aggravated I or Aggravated II status; and results in a zero penalty. As is indicated in this Penalty Schedule, and consistent with the provisions of Section 28-204.2 of the NYC Administrative Code, all violations that are designated as Class 3 violations are eligible for cure. Also some, but not all, violations that are designated as Class 2 violations are eligible for cure. (Note: A violation that has been charged as an Aggravated II violation is never eligible for a cure. This is the case even if there is a "Yes" in the "Cure" column in this Penalty Schedule.) In order to cure, the respondent must file a certificate of correction acceptable to the Department of Buildings with the Department of Buildings within the forty day period.

8.) **Stipulations.** Stipulations are agreements between the Department of Buildings and a respondent, subject to approval by the Environmental Control Board. If a violation is potentially eligible for a stipulation, that is indicated in this Penalty Schedule. Even where a violation is potentially eligible for a stipulation, a stipulation is only available if the Department of Buildings in fact makes an offer of such a stipulation in connection with the particular Notice of Violation. (Note: A violation that has been charged as an Aggravated II violation is never eligible for a stipulation. Also, a violation that is charged as Class 1 is never eligible for a stipulation. This is the case even if there is a "Yes" in the "Stipulation" column in this Penalty Schedule.) There are both pre-hearing stipulations, and hearing stipulations. Those terms are defined below.

If a respondent enters into a stipulation (whether a pre-hearing stipulation or a hearing stipulation), that stipulation constitutes an agreement whereby the Department of Buildings agrees not to issue another violation to the same respondent for the same violating condition for a period of seventy-five days running from the first scheduled hearing date; and whereby the respondent admits the violation, resulting in a finding of violation; and whereby the respondent agrees to correct the violation and to file an acceptable Certificate of Correction with the Department of Buildings within the seventy-five day period running from the first scheduled hearing date. Additionally, in connection with pre-hearing stipulations only (not hearing stipulations), a lesser penalty is imposed.

The Department of Buildings will in no event offer a stipulation if the violation has been charged as an Aggravated II violation, or has been deemed "Class 1" by the Issuing Officer on the NOV, or if the charge on the Notice of Violation is amended to indicate an "Class 1" or a "Class 2" violation that is not potentially eligible to receive a stipulation.

Pre-hearing stipulations: A "pre-hearing stipulation" is a stipulation that is offered and can be accepted only prior to the first scheduled hearing date, or else on the first scheduled hearing date but prior to any actual hearing on that date. A violation is eligible for a pre-hearing stipulation if this Penalty Schedule so indicates (indicated via a "Yes" in the "Stipulation" column of this Penalty Schedule) and if the Department of Buildings in fact offers a pre-hearing stipulation in connection with the particular Notice of Violation in question. Pre-hearing stipulation offers are made via a mailed notice. (If a respondent is uncertain whether a pre-hearing stipulation offer has been made in connection with a particular Notice of Violation, the respondent may call ECB to inquire.) No pre-hearing stipulation shall take effect unless it is offered by the Department of Buildings prior to the first scheduled hearing date, signed by respondent prior to or on the first scheduled hearing date, and approved by ECB in writing.

If a pre-hearing stipulation is offered in connection with a particular Notice of Violation and is timely accepted by the respondent, and if the respondent then files an acceptable Certificate of Correction within the seventy-five-day time period, then the penalty imposed for that violation will be half of the penalty amount (rounded to the nearest dollar) of the penalty amount that would otherwise have been imposed at a hearing for that particular violation.

However, if a pre-hearing stipulation is offered in connection with a particular Notice of Violation and is timely accepted by the respondent, but the respondent in connection with a particular pre-hearing stipulation then fails to file an acceptable certificate of correction with the Department of Buildings within the seventy-five-day time period, then the penalty imposed for that violation will rise to the full penalty amount that would have been imposed at a hearing if a hearing had been held.

Hearing stipulations: A hearing stipulation is a stipulation that is offered and can be accepted at a hearing. A violation is eligible for a hearing stipulation if this Penalty Schedule so indicates (via a "yes" in the "Stipulation" column of this Penalty Schedule) and if the Department of Buildings in fact offers a hearing stipulation at the hearing in connection with the particular Notice of Violation.

If a hearing stipulation is offered in connection with a particular Notice of Violation and is accepted by the respondent, it constitutes an agreement as described above, whereby respondent agrees to correct the violation and file an acceptable certificate of correction within the seventy-five day period, and whereby the Department of Buildings agrees not to issue another violation to the same respondent for the same violating condition within that seventy-five day time period. No hearing stipulation shall take effect unless it is offered by the Department of Buildings at the hearing, accepted by the respondent at that hearing, and is approved in writing by ECB.[Table 1]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II DefaultMaximumPenalty
1 RCNY-Misc, RS-Misc	Class 1	Miscellaneous violations.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000
1 RCNY-Misc, RS-Misc	Class 2	Miscellaneous violations.	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
1 RCNY-Misc, RS-Misc	Class 3	Miscellaneous violations.	Yes	Yes	$300	Yes	$500	$500	$500	$500	$500

1 RCNY 27-03	Class 1	Prohibited sign on sidewalk shed or construction fence.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
1 RCNY 9-01	Class 1	Licensed Rigger designated an unqualified foreman.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000
1 RCNY 9-01	Class 2	Licensed Rigger designated an un-qualified foreman.	No	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
1 RCNY 9-03	Class 1	Licensed Rigger failed to ensure scaffold worker met minimum req.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000
1 RCNY 9-03	Class 2	Licensed Rigger failed to ensure scaffold worker met minimum req.	No	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
1 RCNY 49-03	Class 1	Outdoor Ad. Co. failed to comply with Commissioner's sign-related Order.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
27-185 & BC 3007.1	Class 2	Operation of an elevator without equipment use permit or service equipment Certificate of Compliance.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
27-228.5	Class 2	Failure to file an Architect/Engineer report certifying exit/directional signs are connected to emergency power source/storage battery equipment.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
27-369 & BC 1020.2	Class 1	Failure to provide unobstructed exit passageway.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000
27-371 & BC 715.3.7	Class 2	Exit door not self-closing.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000

27-382 & BC 1006.3	Class 2	Failure to provide power for emergency exit lighting.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
27-383(b) & BC 403.16	Class 1	Failure to install photoluminescent exit path marking in a high-rise building.	No	No	$4,800	Yes	$24,000	$12,000	$25,000	$24,000	$25,000			
27-391 & BC 3002.3	Class 2	Emergency signs at elevator call stations missing, defective or non-compliant with section requirements.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			

[Table 2]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Maximum Penalty			
27-393 & BC 1019.1.7	Class 2	Stair identification signs missing and/or defective.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
27-509 & BC 3111.1	Class 3	Fence exceeds permitted height.	Yes	Yes	$200	Yes	$500	$500	$500	$500	$500			
27-528 & BC 1024.1.3	Class 2	Approved Place of Assembly plans not available for inspection.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
27-901(z)(1) & PC 301.6	Class 2	Piping installed in elevator/ counterweight hoistway.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
27-904 & FGC 406.6.2	Class 1	Gas being supplied to building without inspection and certification by DOB.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
27-904 & FGC 406.6.2	Class 2	Gas being supplied to building without inspection and certification by DOB.	No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
27-921(a) & PC 107.3	Class 1	Failure to have new or altered plumbing system tested.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
27-921(a) & PC 107.3	Class 2	Failure to have new or altered plumbing system tested.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
27-972(h) & BC 907.2.12	Class 2	Failure to install an acceptable two-way voice communication system with central station connection.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			

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27-Misc, 28-Misc, BC-Misc	Class 1	Miscellaneous violations.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000		
27-Misc, 28-Misc, BC-Misc	Class 2	Miscellaneous violations.	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000		
27-Misc, 28-Misc, BC-Misc	Class 3	Miscellaneous violations.	Yes	Yes	$300	Yes	$500	$500	$500	$500	$500		
28-104.2.2	Class 2	Failure to provide approved/accepted plans at job site at time of inspection.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000		
28-105.1	Class 2	Failed to obtain a temporary construction permit prior to installation/use of sidewalk shed.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000		
28-105.1	Class 1	Work without a Permit	No	No	$1,600	Yes	$8,000	$4,000	$16,000	$8,000	$25,000		
28-105.1	Class 2	Work without a permit.	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000		

[Table 3]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II Default-MaximumPenalty		
28-105.1	Class 3	Work without a permit.		Yes	Yes	$200	Yes	$500	$500	$500	$500	$500	
28-105.1	Class 2	Work without a permit: Expired permit.		Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000	
28-105.1	Class 1	Construction or alteration work w/o a permit in manufacturing district for residential use.		No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
28-105.1	Class 2	Construction or alteration work w/o a permit in manufacturing district for residential use.		No	No	$1,500	Yes	$7,500	$3,750	$10,000	$7,500	$10,000	
28-105.1	Class 1	Demolition work without required demolition permit		No	No	$4,800	No	$24,000	$12,000	$25,000	$24,000	$25,000	

28-105.1	Class 1	Plumbing work without a permit in manufacturing district for residential use.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000		
28-105.1	Class 2	Plumbing work without a permit in manufacturing district for residential use.	No	Yes	$1,500	Yes	$7,500	$3,750	$10,000	$7,500	$10,000		
28-105.1	Class 2	Outdoor sign on display structure without a permit.	No	Yes	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000		
28-105.1	Class 1	Outdoor Ad Co sign on display structure without a permit.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000		
28-105.11	Class 2	Failure to post permit for work at premises	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000		
28-105.12.1	Class 2	Outdoor sign permit application contrary to Code and ZR requirements	No	No	$2,400	No	$10,000	$10,000	$10,000	$10,000	$10,000		
28-105.12.2	Class 1	Work does not conform to approved construction documents and/or approved amendments	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000		
28-105.12.2	Class 2	Work does not conform to approved construction documents and/or approved amendments.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000		
28-105.12.2	Class 3	Work does not conform to approved construction documents and/or approved amendments.	Yes	Yes	$200	Yes	$500	$500	$500	$500	$500		
28-105.12.2	Class 1	Work does not conform to approved construction documents and/or approved amendments in a manufacturing district for residential use.	No	No	$4,800	No	$24,000	$12,000	$25,000	$24,000	$25,000		
28-105.12.2	Class 2	Work does not conform to approved construction documents and/or approved amendments in a manufacturing district for residential use.	No	No	$2,400	Yes	$10,000	$6,000	$10,000	$10,000	$10,000		

[Table 4]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Maximum Penalty

	n		alty	alty	alty		alty					
28-105.12.2	Class 1	Place of Assembly contrary to approved construction documents.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000	
28-105.12.2	Class 2	Place of Assembly contrary to approved construction documents.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000	
28-105.12.2	Class 1	Outdoor Ad Co sign is contrary compliance with construction documents.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000	
28-110.1	Class 1	Failure to provide evidence of workers attending construction & safety course	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000	
28-110.1	Class 1	Failure to conduct workers' site-specific safety orientation program per site safety plan.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000	
28-117.1	Class 1	Operation of a Place of Assembly without a current Certificate of Operation.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000	
28-117.1	Class 2	Operation of a Place of Assembly without a current Certificate of Operation.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000	
28-118.2	Class 1	New building or open lot occupied without a valid certificate of occupancy.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000	
28-118.3	Class 1	Altered/changed building occupied without a valid Certificate of Occupancy as per §28-118.3.1-§28-118.3.2.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000	
28-118.3	Class 2	Altered/changed building occupied without a valid Certificate of Occupancy as per §28-118.3.1-§28-118.3.2.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000	
28-118.3	Class 1	Change in occupancy/use of C of O as per §28-118.3.1-§28-118.3.2 by operating a Place of Assembly as per when current C of O does not allow such occupancy.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000	
28-118.3	Class 2	Change in occupancy/use of C of O as per §28-118.3.1-§28-118.3.2 by operating a Place of Assembly as per when current C	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000	

of O does not allow such occupancy.

28-118.3.2	Class 1	Occupancy contrary to that allowed by the Certificate of Occupancy or Building Department records.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000			
28-201.1	Class 1	Unlawful Acts. Failure to comply with an order of the Commissioner.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000			

[Table 5]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Maximum Penalty			
28-118.3.2	Class 2	Occupancy contrary to that allowed by the Certificate of Occupancy or Building Department records.	Yes	Yes	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000			
28-118.3.2	Class 3	Occupancy contrary to that allowed by the Certificate of Occupancy or Building Department records.	Yes	Yes	$400	Yes	$500	$500	$500	$500	$500			
28-202.1	Class 1	Additional daily penalty for Class 1 violation of 28-210.1-1 or 2 family converted to 4 or more families.	No	No	1,000/day	No	$25,000	NA	NA	NA	NA			
28-202.1	Class 2	Additional monthly penalty for continued violation of 28-210.1	No	No	$250/month	No	$10,000	NA	NA	NA	NA			
28-202.1	Class 1	Additional daily civil penalties for continued violations.	No	No	$1,000/day	No	$25,000	NA	NA	NA	NA			
28-202.1	Class 2	Additional monthly civil penalties for continued violations.	No	No	$250/month	No	$10,000	NA	NA	NA	NA			
28-202.1	Class 2	Additional monthly penalty for continued violation of 28-210.2	No	No	$250/month	No	$10,000	NA	NA	NA	NA			
28-204.4	Class 2	Failure to comply with the commissioner's order to file a certificate of correction with the Department of Buildings.	No	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000			
28-	Clas	Unlawfully continued work while on	No	No	$4,8	No	$24,	$12,	$25,	$24,	$25,			

207.2.2	s 1	notice of a stop work order.			00		000	000	000	000	000				
28-210.1	Class 1	Residence altered for occupancy as a dwelling from 1 or 2 families to 4 or more families.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000				
28-210.1	Class 2	Residence altered for occupancy as a dwelling for more than the legally approved number of families	No	No	$1,200	No	$6,000	$3,000	$10,000	$6,000	$10,000				
28-210.2	Class 2	Maintain or permit conversion of industrial/manufacturing bldg to residential use w/out C of O/code compliance	No	No	$2,400	No	$10,000	$6,000	$10,000	$10,000	$10,000 [$25,000]				

[Table 6]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II DefaultMaximumPenalty				
28-210.2	Class 2	Plumbing work contrary to approved app'n/plans that assists/maintains convers'n of indust/manuf occupancy for resid use	No	Yes	$1,500	Yes	$7,500	$3,750	$10,000	$7,500	$10,000				
28-211.1	Class 1	Filed a certificate, form, application etc., containing a material false statement(s).	No	No	$4,800	Yes	$24,000	$12,000	$25,000	$24,000	$25,000				
28-211.1	Class 1	Filed a certificate of correction or other related materials containing material false statement(s).	No	No	$4,800	No	$24,000	$12,000	$25,000	$24,000	$25,000				
28-216.12.1	Class 2	Failure to submit required report of inspection of potentially compromised buildings.	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000				
28-216.12.6	Class 1	Failure to immediately notify Department that building or structure has become potentially compromised.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000				
28-301.1	Class 1	Failure to maintain building in code-compliant manner.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000				
28-301.	Class 2	Failure to maintain building in code-compliant manner.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000				

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28-301.1	Class 3	Failure to maintain building in code-compliant manner.	Yes	Yes	$200	Yes	$500	$500	$500	$500	$500			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: Use of prohibited door and/or hardware per BC 1008.1.8; 27-371(j).	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
28-301.1	Class 2	Failure to maintain building in code-compliant manner: Use of prohibited door and/or hardware per BC 1008.1.8; 27-371(j).	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: illumination for exits, exit discharges and public corridors per BC 1006.1;27-381.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
28-301.1	Class 2	Failure to maintain building in code-compliant manner: illumination for exits, exit discharges and public corridors per BC 1006.1;27-381.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: floor numbering signs missing and/or defective per BC 1019.1.7;27-392	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
28-301.1	Class 2	Failure to maintain building in code-compliant manner: floor numbering signs missing and/or defective per BC 1019.1.7;27-392	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			

[See Table 6] [Table 7]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Maximum Penalty			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: high-rise to provide exit sign requirement(s) within exits per BC 1011.1.1;27-383.1.			No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
28-301.	Class 2	Failure to maintain building in code-compliant manner: high-rise to provide			Yes	No	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000	

1		exit sign requirement(s) within exits per BC 1011.1.1;27-383.1.												
28-301.1	Class 1	Failure to maintain building in code-compliant manner: lack of emergency power or storage battery connection to exit signs per BC 1011.5.3; 27-384 (c).	No	No	$4,800	Yes	$24,000	$12,000	$25,000	$24,000	$25,000			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: lack of emergency lighting for exits, exit discharges and public corridors per BC 1006.1; 27-542.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
28-301.1	Class 2	Failure to maintain building in code-compliant manner: lack of emergency lighting for exits, exit discharges and public corridors per BC 1006.1; 27-542.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
28-301.1	Class 2	Failure to maintain building in code-compliant manner: failure to provide non-combustible proscenium curtain per BC410.3.5; 27-546.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: no fire stopping per BC 712.3; 27-345.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
28-301.1	Class 2	Failure to maintain building in code-compliant manner: no fire stopping per BC 712.3; 27-345.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: Improper exit/exit access doorway arrangement per BC 1014.2;27-361.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000			
28-301.1	Class 1	Failure to maintain building in a code compliant manner. Failure to provide number of required means of egress for every floor per BC 1018.1 & 27-366.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000			

[Table 8]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II Default-MaximumPenalty			
28-301.	Class 1	Failure to maintain building in code-compliant manner: service equipment-elevat-				No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000

1		or per BC 3001.2;27-987.												
28-301.1	Class 2	Failure to maintain building in code-compliant manner: service equipment-elevator per BC 3001.2;27-987.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-301.1	Class 3	Failure to maintain building in code-compliant manner: service equipment-elevator per BC 3001.2;27-987.	Yes	Yes	$200	Yes	$500	$500	$500	$500	$500
28-301.1	Class 1	Failure to maintain building in code-compliant manner: service equipment-boiler.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000
28-301.1	Class 2	Failure to maintain building in code-compliant manner: service equipment-boiler.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-301.1	Class 3	Failure to maintain building in code-compliant manner: service equipment-boiler.	Yes	Yes	$200	Yes	$500	$500	$500	$500	$500
28-301.1	Class 1	Failure to maintain building in code-compliant manner: lack of a system of automatic sprinklers where required per BC 903.2; 27-954.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000
28-301.1	Class 2	Failure to maintain building in code-compliant manner: lack of a system of automatic sprinklers where required per BC 903.2; 27-954.	No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-301.1	Class 2	Fail to maintain building in code-compliant manner re: installation/maintenance of plumbing materials/ equipment per PC102.3;27-902.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-301.1	Class 2	Failure to maintain building in code-compliant manner: Gas vent reduced or undersized as per FGC 504.2;27-887.	No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000

[Table 9]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II Default-MaximumPenalty
28-301.	Class 2	Failure to maintain building in code-compliant manner: failure to comply with					No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000

1		law for water supply system per PC 602.3;27-908(c).									
28-301.1	Class 2	Failure to maintain building in code-compliant manner: failure to comply with law for drainage system per PC 702.1;27-911.	No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-301.1	Class 2	Failure to maintain building in code-compliant manner: Plumbing fixture(s) not trapped and/or vented per PC 916.1 & PC 1002.1; 27-901(o).	No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-301.1	Class 2	Failure to maintain building in a code compliant manner. Exhaust discharge must be no closer than 10 feet from building openings as per RS 2-2.1.4 & MC 401.5.2	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-301.1	Class 1	Failure to maintain building in code-compliant manner: Misc sign violation by Outdoor Ad Co as per 27-498 through 27-508 & BC H103.1.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
28-301.1	Class 2	Failure to maintain sign in accordance w Tit. 27; Tit. 28; ZR; RCNY	No	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-302.1	Class 1	Failure to maintain building wall(s) or appurtenances.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000
28-302.1	Class 2	Failure to maintain building wall(s) or appurtenances.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-302.1	Class 3	Failure to maintain building wall(s) or appurtenances.	Yes	Yes	$200	Yes	$500	$500	$500	$500	$500
28-302.4	Class 2	Failure to submit a required report of critical examination documenting condition of exterior wall and appurtenances.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-302.5	Class 2	Failure to file an amended report acceptable to this Department indicating correction of unsafe conditions.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-303.7	Class 2	Failure to file a complete boiler inspection report	No	No	$500	No	$2,500	$1,250	$5,000	$2,500	$10,000

28-305.4.4	Class 2	Failure to submit required report of condition assessment of retaining wall	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-305.4.6	Class 1	Failure to immediately notify Department of unsafe Condition observed during condition assessment of retaining wall.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000
28-305.4.7.3	Class 2	Failure to file an amended condition assessment acceptable to Department indicating correction of unsafe conditions.	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-401.16	Class 2	Held self out as licensed, certified, registered etc., to perform work requiring a DOB license w/o obtaining such license.	No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000

[Table 10]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II DefaultMaximumPenalty		
28-401.9	Class 1	Failure to file evidence of liability &/or property damage insurance.					No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000
28-401.9	Class 1	Failure to file evidence of compliance with WorkersComp, law and/or disability benefits law.					No	No	$1,250	No	$6,250	$3,125	$12,500	$6,250	$25,000
28-404.1	Class 1	Supervision or use of rigging equipment without a Rigger's license.					No	No	$4,800	No	$24,000	$12,000	$25,000	$24,000	$25,000
28-404.4.1	Class 2	Licensed Master/Special Rigger failed to place appropriate "Danger" sign while using rigging equipment.					Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-405.1	Class 1	Supervision or use of power-operated hoisting machine without a Hoisting Machine Operator's license.					No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000
28-408.1	Class 1	Performing unlicensed plumbing work without a master plumber license.					No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000
28-	Clas	Hoisting, lowering, hanging, or attaching					No	No	$4,8	No	$24,	$12,	$25,	$24,	$25,

415.1	s 1	of outdoor sign not performed or supervised by a properly licensed sign hanger.			00		000	000	000	000	000
28-502.2	Class 1	Outdoor Ad. Co. engaged in outdoor advertising business without a Valid registration.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
28-502.2.1	Class 1	Outdoor Ad. Co. failed to submit complete/accurate info. as prescribed in 1 RCNY Chap. 49.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
28-502.2.2	Class 1	Outdoor Ad. Co. failed to post, renew or replenish bond or other form of security.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
28-502.5	Class 1	Outdoor Ad. Co. failed to post required information at sign location.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
Misc. Chapter 4 of Title 28-Unlicensed Activity	Class 1	Illegally engaging in any business or occupation without a required license or other authorization.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000
28-502.6	Class 1	Misc sign viol'n by outdoor ad co of Tit. 27; Tit. 28; ZR; or BC	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
BC 1016.2	Class 2	Failure to maintain building in code-compliant manner: provide required corridor width per BC 1016.2; 27-369	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
BC 3010.1 & 27-1006	Class 1	Failure to promptly report an elevator accident involving personal injury requiring the services of a physician or damage to property.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000
BC 3301.2 & 27-1009(a)	Class 1	Failure to safeguard all persons and property affected by construction operations.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000
BC 3301.2 & 27-1009(a)	Class 2	Failure to safeguard all persons and property affected by construction operations.	No	No	$1,200	No	$6,000	$3,000	$10,000	$6,000	$10,000

[Table 11]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Penalty	Maximum Penalty
BC 3301.2 & 27-1009 (a)	Class 1	Failure to institute/maintain safety equipment measures or temporary construction-No guard rails	No	No	$2,400	Yes	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3301.2 & 27-1009 (a)	Class 1	Failure to institute/maintain safety equipment measures or temporary construction-No toe boards.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000	
BC 3301.2 & 27-1009 (a)	Class 1	Failure to institute/maintain safety equipment measures or temporary construction-No handrails.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000	
BC 3301.8	Class 1	Failure to immediately notify the Department of an accident at construction/demolition site	No	No	$2,500	No	$12,500	$6,250	$25,000	$12,500	$25,000	
BC 3301.9 & 27-1009 (c)	Class 2	Failure to provide/post sign(s) at job site pursuant to subsection.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000	
BC 3303.3 & 27-1020	Class 2	Failure to post D.O.T. permit for street/sidewalk closing.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000	
BC 3303.4& 27-1018	Class 1	Failure to maintain adequate housekeeping per section requirements.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3303.4 & 27-1018	Class 2	Failure to maintain adequate housekeeping per section requirements.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000	
BC 3303.4.5& 27-1018	Class 1	Unsafe storage of materials during construction or demolition.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3303.4.6& 27-1018	Class 1	Unsafe storage of combustible material and equipment	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3304.3 &	Clas	Failure to notify the Department	No	No	$1,2	No	$6,0	$3,0	$12,	$6,0	$25,	

1 RCNY 52-01(a)	s 1	prior to the commencement of earthwork.			00		00	00	000	00	000			
BC 3304.3 & 1 RCNY 52-01(b)	Class 2	Failure to notify the Department prior to the cancellation of earthwork .	No	No	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000			
BC 3304.4 & 27-1032	Class 1	Failure to provide protection at sides of excavation.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000			
BC 3306 & 27-1039	Class 1	Failure to carry out demolition operations as required by section.	No	No	$2,400	Yes	$12,000	$6,000	$24,000	$12,000	$25,000			
BC 3306.2.1	Class 1	Failure to provide safety zone for demolition operations.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
BC 3306.3& 27-195	Class 1	Failure to provide required notification prior to the commencement of demolition.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000			
BC 3306.5	Class 1	Mechanical demolition without plans on site.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
BC 3307.3.1& 27-1021(a)	Class 1	Failure to provide sidewalk shed where required.	No	No	$4,800	No	$24,000	$12,000	$25,000	$24,000	$25,000			
BC 3307.3.1& 27-1021(a)	Class 2	Failure to provide sidewalk shed where required.	No	No	$2,400	No	$10,000	$6,000	$10,000	$10,000	$10,000			
BC 3307.6 & 27-1021	Class 2	Sidewalk shed does not meet code specifications.	No	No	$2,400	No	$10,000	$6,000	$10,000	$10,000	$10,000			

[Table 12]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Maximum Penalty
BC 3307.7 & 27-1021(c)	Class 2	Job site fence not constructed pursuant to subsection.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
BC 3309.4 & 27-1031	Class 1	Failure to protect adjoining structures during excavation operations.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000
BC	Clas	Failure to have Site Safety Man-	No	No	$2,4	Yes	$12,	$6,0	$24,	$12,	$25,

3310.5 & 27-1009(d)	s 1	ager or Coordinator present as required.			00		000	00	000	000	000	
BC 3310.8.2	Class 1	Site safety manager/coordinator failed to immediately notify the Department of conditions as required	No	No	$2,500	No	$12,500	$6,250	$25,000	$12,500	$25,000	
BC 3310.9.1	Class 1	No Concrete Safety manager present during all concrete operations as required.	No	No	$2,400	Yes	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3314.2 & 27-1042	Class 1	Erected or installed supported scaffold 40 feet or higher without a permit.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000	
BC 3314.1.1 & 27-1050.1	Class 2	Failed to notify Department prior to use/inst. off C-hooks/outrigger beams in connection with Suspended Scaffold	No	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000	
BC 3314.4.3.1 & 27-1045	Class 1	Failure to perform safe/proper inspection of suspended scaffold.	No	No	$10,000	No	$25,000	$25,000	$25,000	$25,000	$25,000	
BC 3314.4.3.1 & 27-1045(b)	Class 1	No record of daily inspection of Suspended Scaffold performed by authorized person at site.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3314.4.4.5	Class 1	Erected, dismantled repaired, maintained, modified or removed supported scaffold without a scaffold certificate of completion.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3314.4.6	Class 1	Use of supported scaffold without a scaffold user certificate.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000	
BC 3314.6.3 & 27-1009	Class 1	Failure to provide/use lifeline while working on scaffold.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000	
BC 3314.6.3 & 27-1009	Class 2	Failure to provide/use lifeline while working on scaffold.	No	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000	

BC 3316.2 & BC 3319.1 & 27-1054	Class 1	Inadequate safety measures: Oper'n of crane/ derrick/hoisting equip in unsafe manner)		No	No	$4,800	No	$24,000	$12,000	$25,000	$24,000	$25,000			

[Table 13]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II DefaultMaximumPenalty				
BC 3319.3	Class 1	Operation of a crane/derrick without a Certificate of Operation			No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000		
BC 3319.3 & 27-1057 (b)	Class 2	Operation of crane/derrick without Certificate of Approval/Certificate of Operation.			No	No	$2,400	No	$10,000	$6,000	$10,000	$10,000	$10,000		
BC 3319.3 & 27-1057(d)	Class 2	Operation of a crane/derrick without a Certificate of Onsite Inspection.			No	No	$2,400	No	$10,000	$6,000	$10,000	$10,000	$10,000		
BC 3319.8	Class 1	Failure to provide erection, jumping, climbing, dismantling plan for tower/ climber crane.			No	No	$2,000	No	$10,000	$5,000	$20,000	$10,000	$25,000		
BC 3319.8.2	Class 1	Failure to conduct a safety coordination meeting.			No	No	$2,000	No	$10,000	$5,000	$20,000	$10,000	$25,000		
BC 3319.8.3	Class 1	Failure to conduct a pre-jump safety meeting.			No	No	$2,000	No	$10,000	$5,000	$20,000	$10,000	$25,000		
BC 3319.8.4	Class 1	Failure to notify the Department prior to pre-jump or safety coordination meeting.			No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000		
BC 3319.8.4.2	Class 1	Failure to provide time schedule indicating erection, jumping, climbing or dismantling of crane.			No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000		
BC 3319.8.6	Class 1	No meeting log available.			No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000		

BC 3319.8.7	Class 1	Failure to file a complete and acceptable tower/climber installation Report per BC 3319.8.7	No	No	$2,000	No	$10,000	$5,000	$20,000	$10,000	$25,000
BC 3319.8.8	Class 1	Erection, jumping, climbing, dismantling operations of a tower or climber crane not in accordance with 3319.8.8	No	No	$4,000	No	$20,000	$10,000	$25,000	$20,000	$25,000
PC-Misc, FGC-Misc, MC-Misc	Class 1	Miscellaneous violations.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000
PC-Misc, FGC-Misc, MC-Misc	Class 2	Miscellaneous violations.	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
PC-Misc, FGC-Misc, MC-Misc	Class 3	Miscellaneous violations.	Yes	Yes	$300	Yes	$500	$500	$500	$500	$500
RS 6-1	Class 1	Failure to file affidavits and/or comply with other requirements set forth for photoluminescent exit path marking.	No	No	$2,400	Yes	$12,000	$6,000	$24,000	$12,000	$25,000
ZR 42-543	Class 1	Outdoor Ad Co sign in M Dist exceeds height limit.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
ZR 22-00	Class 2	Illegal use in residential district.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
ZR 22-00	Class 3	Illegal use in residential district	Yes	Yes	$300	No	$500	$500	$500	$500	$500
ZR 22-32	Class 1	Outdoor Ad Co has impermissible advertising sign in an R Dist.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
ZR 22-342	Class 1	Outdoor Ad Co sign in R Dist exceeds height limits.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
ZR 25-41	Class 2	Violation of parking regulations in a residential district.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
ZR 25-41	Class 3	Violation of parking regulations in a residential district.	Yes	No	$300	Yes	$500	$500	$500	$500	$500

ZR 32-00	Class 2	Illegal use in a commercial district.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000			
ZR 32-63	Class 1	Outdoor Ad Co advertising sign not permitted in specified C Dist.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000			
ZR 32-64	Class 2	Sign(s) in specified C Dist exceed(s) surface area restrictions.	No	Yes	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000			

[Table 14]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Maximum Penalty			
ZR 32-64	Class 1	Outdoor Ad Co sign(s) in specified C Dist exceed surface area limits.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000			
ZR 32-652	Class 2	Sign in specified C Dist extends beyond street line limitation.	No	Yes	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000			
ZR 32-653	Class 2	Prohibited sign on awning, canopy, or marquee in C Dist.	No	Yes	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000			
ZR 32-655	Class 1	Outdoor Ad Co sign exceeds permitted height for specified C Dist.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000			
ZR 42-00	Class 2	Illegal use in a manufacturing district.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000			
ZR 42-52	Class 1	Outdoor Ad Sign not permitted in M Dist.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000			
ZR 42-53	Class 1	Outdoor Ad sign in M Dist exceeds surface area limits.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000			
ZR-Misc	Class 2	Miscellaneous violations of the Zoning Resolution.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000			
ZR-Mis	Class 3	Miscellaneous violations of the Zoning Resolution.	Yes	No	$300	Yes	$500	$500	$500	$500	$500			

c												
ZR-Misc.	Class 1	Misc sign violation under the Zoning Resolution by an Outdoor Ad Co	No	Yes	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
ZR-Misc.	Class 2	Misc sign violation under the Zoning Resolution	No	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
Misc Title 28/Misc ZR	Class 1	Misc outdoor sign violation of ZR and/or Building Code.	No	No	$10,000	No	$25,000	$25,000	$25,000	$25,000	$25,000
Misc Title 28/Misc ZR	Class 2	Misc outdoor sign violation of ZR and/or Building Code	No	No	$2,400	No	$10,000	$10,000	$10,000	$10,000	$10,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-103) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Buildings Penalty Schedule I designation added City Record May 19, 2008 §1, eff. June 18, 2008. [See Note 6]

Opening par added City Record May 19, 2008 §1, eff. June 18, 2008. [See Note 6]

Second undesignated par added City Record May 19, 2008 §1, eff. June 18, 2008. [See Note 6]

Table 26-118 amended City Record May 4, 2007 §12, eff. June 3, 2007. [See Note 3]

Table 26-126.1(e)(ii) so designated and amended City Record Jan. 28, 2008 §4, eff. Feb. 27, 2008. [See Note 5]

Table 26-126.1(f) added City Record Jan. 28, 2008 §2, eff. Feb. 27, 2008. [See Note 5]

Table 26-172 (two entries) added City Record Aug. 16, 2007 §1, eff. Sept. 15, 2007. [See Note 4]

Table 26-126.1(e)(i) amended City Record Jan. 28, 2008 §4, eff. Feb. 27, 2008. [See Note 5]

Table 26-178 added City Record Aug. 16, 2007 §2, eff. Sept. 15, 2007. [See Note 4]

Table 26-179 added City Record Aug. 16, 2007 §2, eff. Sept. 15, 2007. [See Note 4]

Table 26-181.1 added City Record Aug. 16, 2007 §3, eff. Sept. 15, 2007. [See Note 4]

Table 26-204.1(a) added City Record May 4, 2007 §3, eff. June 3, 2007. [See Note 3]

Table 26-204.1(b) added City Record May 4, 2007 §3, eff. June 3, 2007. [See Note 3]

Table 26-204.1(c) added City Record May 4, 2007 §3, eff. June 3, 2007. [See Note 3]

Table 26-204.1(d) added City Record May 4, 2007 §3, eff. June 3, 2007. [See Note 3]

Table 27-118.1(a) as designated and amended (former 27-118.1) City Record Jan. 28, 2008 §3, eff. Feb. 27, 2008. [See Note 5]

Table 27-118.1(a) as designated and amended (former 27-118.1) City Record Jan. 28, 2008 §3, eff. Feb. 27, 2008. [See Note 5]

Table 27-118.1(b) added City Record Jan. 28, 2008 §1, eff. Feb. 27, 2008. [See Note 5]

Table 27-129 (Failure to submit a 6th . . . 1 RCNY 32-03) added City Record May 4, 2007 §2, eff. June 3, 2007. [See Note 3]

Table 27-147 (Demolition . . . HAZARDOUS) amended City Record May 4, 2007 §5, eff. June 3, 2007. [See Note 3]

Table 27-195 amended City Record May 4, 2007 §6, eff. June 3, 2007. [See Note 3]

Table 27-205 added City Record Nov. 1, 2007 §2, eff. Dec. 1, 2007. [See T48 §3-120 Note 1]

Table 1 RCNY 50-01(a)(5) added City Record Jan. 28, 2008 §5, eff. Feb. 27, 2008. [See Note 5]

Table 1 RCNY 50-01(a)(9) added City Record Jan. 28, 2008 §5, eff. Feb. 27, 2008. [See Note 5]

Table 1 RCNY 52-01(a) added City Record May 4, 2007 §7, eff. June 3, 2007. [See Note 3]

Table 1 RCNY 52-01(b) added City Record May 4, 2007 §7, eff. June 3, 2007. [See Note 3]

Table 27-228.5 (Failure to file an architect/engineer . . . equipment) added City Record May 4, 2007 §8, eff. June 3, 2007. [See Note 3]

Table 27-383(b)(3) (two entries) added City Record May 4, 2007 §9, eff. June 3, 2007. [See Note 3]

Table 27-383(b) added City Record May 4, 2007 §9, eff. June 3, 2007. [See Note 3]

Table 27-383.1 added City Record May 4, 2007 §9, eff. June 3, 2007. [See Note 3]

Table 27-384(c) added City Record May 4, 2007 §10, eff. June 3, 2007. [See Note 3]

Table 27-987 (2 entries) amended City Record May 4, 2007 §1, eff. June 3, 2007. [See Note 3]

Table 27-1042 (Erected, dismantled . . . HAZARDOUS) added City Record May 4, 2007 §4, eff. June 3, 2007. [See Note 3]

Table 27-1045 added City Record Aug. 16, 2007 §4, eff. Sept. 15, 2007. [See Note 4]

Table 27-1045(b) added City Record Aug. 16, 2007 §4, eff. Sept. 15, 2007. [See Note 4]

Table 27-1050.1 added City Record Aug. 16, 2007 §5, eff. Sept. 15, 2007. [See Note 4]

Title 26 and 27 of the NYC Admin. Code (Miscellaneous Construction . . .) added City Record May 4, 2007 §11, eff. June 3, 2007. [See Note 3]

Table 26-262(d) added City Record Mar. 2, 2007 §1, eff. Apr. 1, 2007. [See Note 2]

Table 26-260(a) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-260(b) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-260(c) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-261(a) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-261(b) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-262(a)(1) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-262(a)(1) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-262(a)(2) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-262(a)(3) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 1 RCNY §49-02 added City Record Mar. 2, 2007 §3, eff. Apr. 1, 2007. [See Note 2]

Table 1 RCNY §49-03 added City Record Mar. 2, 2007 §3, eff. Apr. 1, 2007. [See Note 2]

Table 1 RCNY §49-03 added City Record Mar. 2, 2007 §3, eff. Apr. 1, 2007. [See Note 2]

Table 1 RCNY §49-12(e) added City Record Mar. 2, 2007 §3, eff. Apr. 1, 2007. [See Note 2]

Table 1 RCNY §49-12(e) added City Record Mar. 2, 2007 §3, eff. Apr. 1, 2007. [See Note 2]

Table 1 RCNY §49-15(h) added City Record Mar. 2, 2007 §3, eff. Apr. 1, 2007. [See Note 2]

Table 27-147 (last four entries) added City Record Oct. 13, 2006 §4, eff. Nov. 12, 2006. [See Note 1]

Table 27-201 (last four entries) added City Record Oct. 13, 2006 §5, eff. Nov. 12, 2006. [See Note 1]

Table 27-214 (second entry) added City Record Oct. 13, 2006 §1, eff. Nov. 12, 2006. [See Note 1]

Table 27-215 (fourth entry) added City Record Oct. 13, 2006 §2, eff. Nov. 12, 2006. [See Note 1]

Table 27-217 (seventh entry) added City Record Oct. 13, 2006 §3, eff. Nov. 12, 2006. [See Note 1]

Table 27-217 (eighth entry) added City Record Oct. 13, 2006 §3, eff. Nov. 12, 2006. [See Note 1]

Table 27-981.2 line added City Record June 20, 2005 §15, eff. July 20, 2005. [See T48 §3-101 Note 1]

Buildings Penalty Schedule II added City Record May 19, 2008 §2, eff. June 18, 2008. [See Note 6]

Paragraph 4 subpar (2) clause (i) amended City Record Dec. 23, 2009 §1, eff. Jan. 22, 2010. [See Note 11]

Table 1 RCNY 49-03 added City Record Dec. 23, 2009 §6, eff. Jan. 22, 2010. [See Note 11]

Table 28-105.1 amended City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 11]

Table 28-105.11 added City Record Apr. 2, 2009 §9, eff. May 2, 2009. [See Note 8]

Table 28-105.12.1 added City Record Dec. 23, 2009 §3, eff. Jan. 22, 2010. [See Note 11]

Table 28-105.12.2 added City Record Apr. 2, 2009 §3, eff. May 2, 2009. [See Note 7]

Table 28-110.1 added City Record Apr. 2, 2009 §10, eff. May 2, 2009. [See Note 8]

Table 28-110.1 added City Record Apr. 2, 2009 §10, eff. May 2, 2009. [See Note 8]

Table 28-201.1 added City Record Apr. 2, 2009 §11, eff. May 2, 2009. [See Note 8]

Table 28-202.1 amended City Record Apr. 2, 2009 §7, eff. May 2, 2009. [See Note 7]

Table 28-210.1 amended City Record Apr. 2, 2009 §6, eff. May 2, 2009. [See Note 7]

Table 28-211.1 (last entry) added City Record Apr. 2, 2009 §12, eff. May 2, 2009. [See Note 8]

Table 28-216.12.1 (Failure . . . buildings.) added City Record July 2, 2009 §1, eff. Aug. 1, 2009. [See Note 10]

Table 28-216.12.6 (Failure . . . compromised.) added City Record July 2, 2009 §1, eff. Aug. 1, 2009. [See Note 10]

Table 28-301.1 (Failure . . . & 27-366) added City Record Apr. 2, 2009 §13, eff. May 2, 2009. [See Note 8]

Table 28-301.1 (Failure . . . MC 401.5.2) added City Record Apr. 2, 2009 §14, eff. May 2, 2009. [See Note 8]

Table 28-305.4.4 (Failure . . . wall) added City Record July 2, 2009 §2, eff. Aug. 1, 2009. [See Note 10]

Table 28-305.4.6 (Failure . . . wall) added City Record July 2, 2009 §2, eff. Aug. 1, 2009. [See Note 10]

Table 28-305.4.7.3 (Failure . . . conditions) added City Record July 2, 2009 §2, eff. Aug. 1, 2009. [See Note 10]

Table 28-405.1 (Supervision . . . license) repealed City Record Apr. 2, 2009 §15, eff. May 2, 2009. [See Note 8]

Table 28-408.1 amended City Record Apr. 2, 2009 §16, eff. May 2, 2009. [See Note 8]

Table 28-415.1 added City Record Dec. 23, 2009 §4, eff. Jan. 22, 2010. [See Note 11]

Table 28-502.2 added City Record Dec. 23, 2009 §4, eff. Jan. 22, 2010. [See Note 11]

Table 28-502.2.1 added City Record Dec. 23, 2009 §4, eff. Jan. 22, 2010. [See Note 11]

Table 28-502.2.2 added City Record Dec. 23, 2009 §4, eff. Jan. 22, 2010. [See Note 11]

Table 28-502.5 added City Record Dec. 23, 2009 §4, eff. Jan. 22, 2010. [See Note 11]

Table Misc. Title 28/Misc ZR Class 1 & 2 added City Record Dec. 23, 2009 §5, eff. Jan. 22, 2010. [See Note 11]

Table Misc. Chapter 4 . . . Activity added City Record Apr. 2, 2009 §17, eff. May 2, 2009. [See Note 8]

Table BC 1016.2 amended City Record Apr. 2, 2009 §4, eff. May 2, 2009. [See Note 7]

Table BC 3010.1 & 27-1006 amended City Record Apr. 2, 2009 §5, eff. May 2, 2009. [See Note 7]

Table BC 3301.8 added City Record Apr. 2, 2009 §1, eff. May 2, 2009. [See Note 7]

Table BC 3303.4 & 27-1018 added City Record Apr. 2, 2009 §1, eff. May 2, 2009. [See Note 8]

Table BC 3303.4.5 & 27-1018 added City Record Apr. 2, 2009 §2, eff. May 2, 2009. [See Note 8]

Table BC 3303.4.6 & 27-1018 added City Record Apr. 2, 2009 §2, eff. May 2, 2009. [See Note 8]

Table BC 3307.3.1 & 27-1021(a) (second entry) added City Record Apr. 2, 2009 §3, eff. May 2, 2009. [See Note 8]

Table BC 3310.8.2 added City Record Apr. 2, 2009 §2, eff. May 2, 2009. [See Note 7]

Table BC 3310.9.1 added City Record Apr. 2, 2009 §4, eff. May 2, 2009. [See Note 8]

Table BC 3314.4.6 amended City Record Apr. 2, 2009 §5, eff. May 2, 2009. [See Note 8]

Table BC 3314.4.5 amended City Record Apr. 2, 2009 §7, eff. May 2, 2009. [See Note 8]

Table BC 3314.4.5 & 26-204.1(a) repealed City Record Apr. 2, 2009 §8, eff. May 2, 2009. [See Note 8]

Table BC 3314.4.6 & 26-204.1(c) repealed City Record Apr. 2, 2009 §6, eff. May 2, 2009. [See Note 8]

Table BC 3319.8 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.2 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.3 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.4 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.4.2 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.6 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.7 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.8 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table ZR 22-00 (class 3) added City Record Apr. 2, 2009 §18, eff. May 2, 2009. [See Note 8]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 13, 2006:

The Environmental Control Board (ECB) had a Public Hearing on June 22, 2006 on its proposed revisions of its Penalty Schedules and its Appeals rules. The Board carefully considered the testimony, written comments and material received at and after the June 22, 2006 Public Hearing and has adopted the following revisions to the ECB Penalty Schedules and ECB Appeals rules: (1) the addition of twelve new charges with enhanced penalties for violations within manufacturing districts to the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York; (2) the addition of three new charges and the revision of three existing charges to the Department of Sanitation's Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules

of the City of New York as a result of the enactment of Local Law 108 of 2005 which amends §16-118(2) of the Administrative Code of the City of New York; (3) the addition of a new charge to the Public Safety Graffiti Penalty Schedule found in §3-119 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York pursuant to the enactment of Local Law 111 of 2005 which adds a new §10-117.3, to the Administrative Code of the City of New York; and (4) revisions to clarify ECB Appeals rules found in §§3-71(a), 3-72(a)(b), and 3-73(a)(b) of Subchapter D of Chapter 3 of Title 48 of the Rules of the City of New York.

The Board adopted the twelve new charges with enhanced penalties for certain Building Code violations within a manufacturing district based upon the following: (1) to deter the illegal conversion of industrial properties to residential use as the existing penalties do not adequately or equitably penalize property owners for the destruction of industrial space; (2) to ensure compliance and deter repeated violations because property owners have been absorbing the existing penalties as a cost of doing business to generate the higher profits offered by residential conversion; and (3) the enhanced penalties are necessary to offset the high rents that these illegally converted residential units command.

The new charges with enhanced penalties include: (a) occupancy of a new building in a manufacturing district without a valid certificate of occupancy; (b) occupancy of a building altered for residential use in a manufacturing district without a valid certificate of occupancy; (c) occupancy of a building in a manufacturing district inconsistent with the certificate of occupancy or Department of Buildings records; (d) performing construction or alteration work for residential use in a manufacturing district without a permit; (e) performing plumbing work for residential use in a manufacturing district without a permit; (f) performing plumbing work for residential use in a manufacturing district contrary to approved applications and plans; and (g) performing construction work for residential use in a manufacturing district contrary to approved applications and plans.

The Board revised and added three new charges to the Department of Sanitation's Penalty Schedule pursuant to the enactment of Local Law No. 108 of 2005 which amends §16-118(2) of the Administrative Code of the City of New York in relation to the responsibility of an owner, lessee, tenant or person in charge of a vacant lot to maintain such lot and adjacent areas. The law as amended provides that all vacant lot owners, lessees, tenants or persons in charge of vacant lots are now responsible for ensuring that the entire lot is kept free from garbage, refuse, rubbish, litter, debris and other offensive material. The law as amended re-designates the existing text of subdivision (2) as paragraph (a) of such subdivision and a new paragraph (b) is added to subdivision (2) to incorporate the vacant lots and the areas fronting vacant lots to the list of property areas that are required to be kept clean, including one and one-half feet from curb into the street.

The Board revised and added a new charge to the Public Safety Graffiti Penalty Schedule pursuant to the enactment of Local Law No. 111 of 2005, which adds a new §10-117.3, to the Administrative Code of the City of New York in relation to the removal of graffiti from commercial buildings and from residential buildings containing six dwelling units or more and in relation to establishing a process whereby the City may clean graffiti from these buildings. Owners, upon notice will have sixty days to remove the graffiti before any hearing is held and a civil penalty is imposed. The purpose of the new graffiti law and penalties coupled with granting the City the ability to clean graffiti in public view from commercial and residential buildings is to rid the City's communities of graffiti and improve the quality of life in the City.

The Board adopted the revisions to the ECB Appeals rules that are found in §§3-71(a), 3-72(a)(b), and 3-73(a)(b) of Subchapter D of Chapter 3 of Title 48 of the Rules of the City of New York for the following reasons: 1) the revision to 15 RCNY 31-71(a) clarifies that the filing of proof of service must be made within the same 30 day period that is required to file exceptions; 2) the revision to 15 RCNY 31-72(a) clarifies that a request for a copy of an audio tape extends the time to appeal just as does a request for a transcript and clarifies that applications for extension of time to appeal must be served on all parties and proof of such service must be filed with the tribunal. This would make the service requirements for extension requests identical to the service requirements for the exceptions themselves. The revision also conforms 15 RCNY 31-72(b), which governs applications for extension of time to file an appeal for any reason other than a request for a transcript or audiotape, to these same service and filing requirements; and 4) the

revision to 15 RCNY 31-73(a)(b) clarifies that as a pre-requisite to appeal, any civil penalties imposed by the hearing officer must be paid by a date certain, and sets a clearly identifiable date by which payment must be made.

2. Statement of Basis and Purpose in City Record Mar. 2, 2007: The Environmental Control Board (ECB) had a Public Hearing on January 31, 2007, on its proposed revisions of its Penalty Schedules. The Board carefully considered the testimony, written comments and material received before and at the January 31, 2007, Public Hearing and has adopted the following revisions to the ECB Penalty Schedules: (1) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add sixteen new charges for violations of the Building Code and the Rules of the City of New York regulating the registration of Outdoor Advertising Companies (OACs) and outdoor signs. These charges are being added to the Buildings Penalty Schedule to address outdoor advertising violations of the New York City Administrative Code and the Rules of the City of New York (RCNY), which are in addition to the charges for outdoor-sign related violations that are already included in the Buildings Penalty Schedule. The new charges for violations of Title 1 of the RCNY, §§49-02, 49-03, 49-12(e), and 49-15(h) are being added to the Buildings Penalty Schedule in light of the promulgation of Chapter 49 of Title 1 of the RCNY, which became effective on August 25, 2006. The new charges for violations of the Administrative Code charges are added in response to the enactment of Local Law 14/2001, as amended by Local Law 31/2005, which pertains to outdoor signage. The City Council enacted Local Law 14 and Local Law 31 to reduce the proliferation of illegal signage and better regulate existing and new legal signs. These local laws created the foundation for a new regulatory scheme that requires the registration of all OACs doing business within the City of New York, and their sign locations within nine-hundred feet and within view of an arterial highway, and within two-hundred feet and within view of a public park of one-half acre or more. The City Council determined that visual clutter had significantly increased in these areas, causing unsightly, and in some cases, unsafe conditions. Chapter 49 of Title 1 of the RCNY sets forth the procedures by which Local Law 14 and Local Law 31 will be implemented, such as the registration and permitting process, fees, deadlines, penalties and enforcement procedures for non-compliance. The City Council, in enacting these local laws, established a higher penalty scale for violations by OACs, to deter new illegal signage and to combat existing illegal signage, in light of the tremendous revenue generated by advertising signs. The previous enforcement penalties applicable to OACs were considered a mere cost of doing business to many OACs. These new charges and penalties will help deter violations of the outdoor sign-related laws. The new charges include the following: (a) Maintaining sign/structure controlled by unregistered OAC; (b) OAC engages in outdoor advertising business without valid registration; (c) OAC fails to submit information prescribed by Department; (d) OAC fails to post bond or provide other form of security; (e) OAC fails to submit accurate sign inventory information; (f) OAC fails to display required information on sign/sign location; (g) OAC sign violates Zoning Resolution (ZR), Administrative Code (AC) or Department of Buildings (DOB) rule; (h) OAC makes available sign which is in violation of the ZR, AC, or DOB rules; (i) OAC makes available sign or registration to unregistered OAC; (j) OAC fails to cooperate with DOB sign-related investigation; (k) OAC fails to comply with commissioner's sign-related order; (l) OAC fails to notify DOB of material change in registration information; (m) Affiliated OAC does business before notice of material change is received; and (n) OAC fails to amend sign inventory information as prescribed by DOB rule. (2) The Board has revised the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add six charges pertaining to the use of ultra low sulfur diesel fuel and best available technology in nonroad vehicles. The charges are added in response to the enactment of Local Law 77/2003, which can be found in the Air Pollution Control Code as §24-163.3. The purpose of this section is to limit emissions from nonroad vehicles, such as backhoes, bulldozers, excavators, and cranes. The statute requires that any diesel-powered nonroad vehicle with an engine fifty or more horsepower must be (a) powered by ultra-low sulfur diesel fuel and (b) utilize best available technology for emission reduction. The law applies to all vehicles owned by, operated by or on behalf of, or leased by a City agency. Some of the new charges have aggravated penalties for excess profit, consistent with the penalty provisions set forth in subdivisions (n) and (o) of §24-163.3. (3) The Board has revised the Air Asbestos Code Penalty Schedule found in §3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend the description in that Penalty Schedule of the three charges for New York State Industrial Code Rule 56. The New York City Department of Environmental Protection (DEP) has authority to enforce Industrial Code Rule 56 (ICR 56) pursuant to a prior delegation by the New York State Department of Labor (NYSDOL). Effective on September 5, 2006, the NYSDOL has

promulgated extensive revisions to ICR 56, including the addition of new sections and the amendment and renumbering of previously existing sections. Accordingly, the Board has revised the current Penalty Schedule entries for ICR 56 to take into account the new revisions to ICR 56. As was the case with the current description of the charges for ICR 56 violations, the various charges as revised have been assigned to severity level 1, 2 or 3 based on the danger to health and safety of workers and to the public posed by each infraction. As with the other penalties in the Air Asbestos Code Penalty Schedule, the penalties for charges of violations of ICR 56 are designed to act as a deterrent so that contractors in the asbestos-abatement industry, which is a high-profit industry, will not regard violations merely as a cost of doing business. In the revised charges implemented by this rule, a list of the specific section numbers included within ICR 56 that correspond to the different severity levels has been added to each charge description. (4) The Board has revised the Public Pay Telephones Penalty Schedule found in §3-118 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to include a new charge and to remove a charge. The new charge, for a violation of 67 RCNY 6-05(d), is added to reflect the amendment of Title 67 of the Rules of the City of New York relating to the management of public pay telephones. This amendment became effective on March 14, 2006. The amendment establishes a new provision, §6-05(d), which mandates that public pay telephone operators fully correct any public pay telephone that is in a broken, cracked, fractured, displaced, or like condition, within a seventy-two hour period. The subsection was promulgated to compel public pay telephone operators to act promptly when a public pay telephone is damaged such that the condition of the public pay telephone may cause, or result in, physical injury to the public. Accordingly, a new charge that correlates with this new provision of Title 67 is added by this rule to the Public Pay Telephones Penalty Schedule. The penalty is commensurate with the serious nature of a violation of §6-05(d), which specifically seeks to protect the public from unsafe conditions on public pay telephones. The charge that is being removed from the Penalty Schedule is for 67 RCNY 6-05(d)(3). This charge is being removed from the Penalty Schedule because there is no paragraph (3) of subdivision (d) of §6-05 in Title 67 of the RCNY, and because the substance of the charge is subsumed by a different entry in the Penalty Schedule, namely the entry for 67 RCNY 6-05(c). (5) The Board has amended the list of subchapters that precedes the ECB Rules, which are found in Chapter 3 of Title 48 of the Rules of the City of New York. Specifically, the Board is adding to this list a reference to Subchapter G, "Penalties". Subchapter G is already included in the ECB Rules that are found in Chapter 3 of Title 48 of the Rules of the City of New York. (6) The Board has amended the Department of Parks and Recreation Rules Penalty Schedule found in §3-116 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the section of law set forth in the "Section/Rule" column of that Penalty Schedule that currently reads "56 RCNY 1-04(b)(1)(ii)," for "Major damage to/accidental destruction of a tree" to instead read "56 RCNY 1-04(b)(1)(i)." The reason for this change is that subparagraph (i) specifically pertains to damage to trees, whereas subparagraph (ii) is more general, pertaining to damage to "plants, flowers, shrubs or other vegetation." Because the charge in question, "Major damage to/accidental destruction of a tree," specifically relates to trees, it is appropriate that the citation be to subparagraph (i), since that subparagraph specifically pertains to trees.

3. Statement of Basis and Purpose in City Record May 4, 2007: The Environmental Control Board (ECB) had a Public Hearing on April 12, 2007, on its proposed revisions of its Penalty Schedules. The Board carefully considered the testimony at the April 12, 2007, Public Hearing (the only testimony presented at that hearing addressed §27-383) as well as the written comment received in connection with that hearing and has adopted the following revisions to the ECB Penalty Schedules: 1) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the penalty amounts for New York City Administrative Code §27-987, "Failure to maintain elevator," and for New York City Administrative Code §27-987 "Failure to maintain elevator-HAZARDOUS." These penalty amounts are being changed to impose higher penalties on those offenders who repeatedly violate this section of law. These higher penalties are designed to provide a deterrent to chronic elevator maintenance violations, thereby increasing compliance with elevator maintenance standards. These penalties are within the statutory minimum and maximum penalties prescribed by the New York City Administrative Code. 2) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add a new charge of a violation of §27-129 of the New York City Administrative Code. The charge is for "Failure to submit a sixth-round Technical Report: Periodic Inspection of Exterior wall and appurtenances as required by 1 RCNY 32-03." This new charge will be used to cite buildings owners

who fail to file a sixth-round architect's or engineer's technical report with the Department of Buildings. Such a report certifies the results of an examination of the premises' exterior walls and the appurtenances thereof. The report is required for buildings greater than six stories in height. The Buildings Penalty Schedule already includes charges of failure to submit second-round through fifth-round technical reports. This new charge is required because the sixth-round filing period began on February 21, 2005. This new charge is essentially identical to the existing charges except insofar as it pertains to the sixth-round technical report. 3) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add five new charges. The new charges are added in response to the enactment of Local Law Number 52 of 2005. This Local Law was enacted on May 19, 2005, and took effect on November 19, 2006. This law requires User Certificates and Certificate of Completion for supported scaffoldings at construction sites, as per §26-204.1 through §26-204.5 of the New York City Administrative Code. The law also requires a permit in connection with the erection, dismantling, repairing, maintaining or modifying a supported scaffold that is 40 feet high or more in height, pursuant to §27-1042 of the New York City Administrative Code. Enforcement of these new provisions will help to protect citizens from careless construction of supported scaffolds and the dangers associated with working on these scaffolds on construction sites. The five new charges include the following: (i) Erected, dismantled, repaired, maintained or modified supported scaffold without a Supported Scaffold Certificate of Completion issued pursuant to §26-204.3-HAZARDOUS; (ii) Knowingly permitted individual to erect, dismantle, repair, maintain or modify supported scaffold without a Supported Scaffold Certificate of Completion issued pursuant to §26-204.3-HAZARDOUS; (iii) Use of permitted supported scaffold without a Supported Scaffold User Certificate issued pursuant to §26-204.4; (iv) Knowingly allowed individual(s) to use permitted supported scaffold without a Supported Scaffold User Certificate issued pursuant to §26-204.4-HAZARDOUS; (v) Erected, dismantled, repaired, maintained or modified supported scaffold 40 feet or higher without a permit pursuant to §27-1042-HAZARDOUS. 4) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the penalty amounts for Administrative Code §27-147, "Demolition Work Without Required Demolition Permit." These penalty amounts are being changed to impose higher penalties because demolition work is inherently dangerous and requires close scrutiny, monitoring and supervision. This increase in penalties will help convey the seriousness of this charge, and thereby promote the safety of adjacent properties, property owners and workers at construction sites. This increase in penalties is also in keeping with recent legislation of the City Council, Intro. 132-A of 2006, which became effective on December 5, 2006, which mandated higher criminal penalties for demolition work without a permit on one-family or two-family dwellings. Regarding this charge, as to which the penalties are being increased, it should be noted that this was already a hazardous offense, but the word "HAZARDOUS" is now being adding to the charge description for further clarification of this fact. 5) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the penalty amounts for Administrative Code §27-195, "Failure to notify the DOB prior to the commencement of demolition work." These penalty amounts are being changed to impose higher penalties because demolition work is inherently dangerous and requires close monitoring and supervision. The notification requirement prior to the commencement of demolition is intended to enable the Department of Buildings to investigate whether demolition work is being performed according to accepted safety standards. Because demolition is inherently dangerous, the proposed increase in penalties will help promote safety during demolition, including the safety of adjacent properties, property owners, and workers at construction sites. Regarding this charge as to which the penalties are being increased, it should be noted that this was already a hazardous offense, but the word "HAZARDOUS" is now being added to the charge description for further clarification of this fact. 6) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add two new charges to enforce the provisions of §52-01(a) and (b) of Title 1 of the Rules of the City of New York. Section 52-01 was promulgated pursuant to §27-195 of the New York City Administrative Code and became effective on October 25, 2006. This Rule requires holders of earthwork permits to give notice to the Department of Buildings at least 24 hours, but not more than 48 hours, prior to the commencement of earthwork. It also requires that, in the event that earthwork is cancelled, a permit holder must notify the Department of Buildings of the cancellation not more than 24 hours prior to, but no later than the date for which the earthwork was scheduled. The rule is intended to enable the Department of Buildings to investigate whether the work is being performed according to accepted safety standards. Because earthwork is inherently dangerous, these new charges, and

the associated penalties, will help promote safety during earthwork, including the safety of adjacent properties, property owners, and workers at construction sites. 7) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add six new charges to enforce the provisions of Local Law 26 of 2004 which amends the Buildings and Fire Prevention Codes and requires owners of certain buildings to comply with new photoluminescent exit path markings (technical standards as set forth by RS 6-1), emergency power connection standards for exit and directional signs, and additional signs where the path of egress is not clear. It should be noted that the new charges for §§27-228.5, 27-383.1 and 27-384(c), set forth in §§8, 9 and 10 of this Final Rule, will not become effective until July 1, 2007. This is because July 1, 2007, is the compliance date specified for these charges, as is set forth in those sections of law, in Local Law 26 of 2004. This Local Law was adopted following the events of September 11, 2001, to aid in evacuation from buildings in the event of failure of both the power and back-up power connected to the lighting and illuminated exit/directional signs. These new requirements are critical to improvement of mass evacuations in affected buildings during emergencies or other extreme conditions. They are in addition to, or modification of existing signage and power requirements under the Building Code. 8) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add one new charge to enforce miscellaneous hazardous construction violations of the New York City Building Code. Currently a miscellaneous charge exists for non-hazardous construction violations. Inspectors presently are compelled to use this miscellaneous charge even when the miscellaneous violation is deemed hazardous, resulting in penalties that are not commensurate with a hazardous designation. This new charge, with its enhanced penalties, will allow for a more effective enforcement of the Building Code. 9) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the penalty amounts for Administrative Code §26-118, "Failure to comply with a Stop Work Order." Stop Work Orders are issued by the Department of Buildings when a Department of Buildings Inspector determines that building work is being executed in a dangerous or unsafe manner and in violation of a provision of any law, rule or regulation enforceable by the Department of Buildings. The continuance of such work may pose an imminent hazard and jeopardize public safety. The penalty amounts for this charge are being changed to impose higher penalties in order to discourage dangerous and unsafe work. These higher penalties are in keeping with recent legislation within the City Council (specifically, Intro. 216-A of 2006, which became effective on December 5, 2006), mandating higher penalties payable to the Department of Buildings before a Stop Work Order may be lifted. In addition, the new Local Law mandates new criminal fines for violating a Stop Work Order. The ECB penalties are in addition to these new mandated penalties, and are being increased in recognition of the serious nature of such violation. Regarding this charge, as to which the penalties are being increased, it should be noted that this was already a hazardous offense, but the word "HAZARDOUS" is now being added to the charge description for further clarification of this fact.

4. Statement of Basis and Purpose in City Record Aug. 16, 2007: The Environmental Control Board (ECB) had a Public Hearing on July 19, 2007, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB Buildings Penalty Schedules. 1) The Board has revised the Buildings Penalty Schedule set forth in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the penalty amounts and violation descriptions for two charges of violations of §26-172, namely, 26-172, "Supervision/use of rigging equipment without a master rigger's license," and §26-172, "Supervision/use of rigging equipment without a special rigger's license." The descriptions for those two charges have been revised to add the word "HAZARDOUS" to the descriptions. Regarding these charges, as to which the penalties are being increased, it should be noted that these were already hazardous offenses, but the word "HAZARDOUS" has now been added to the violation descriptions for further clarification of this fact. These new higher penalties are mandated by Administrative Code §26-181.1, which was enacted pursuant to Local Law 18 of 2007, effective on July 16, 2007. It should be noted that these higher penalties are set as flat penalties by §26-181.1. However, solely for the convenience of the public, ECB is including these flat penalties in the Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. 2) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add two new charges relating to bond requirements and workers' compensation requirements relating to riggers licenses. Specifically, one of these two new charges is for

violations of Administrative Code §26-178, "Failed to obtain or maintain a bond and/or insurance as required-HAZARDOUS." The other of the two new charges is for violations of Administrative Code §26-179, "Failed to obtain and/or maintain workers' comp. ins. as required by law-HAZARDOUS." These two new charges have been added in light of the enactment of Administrative Code §26-181.1, which was enacted pursuant to Local Law 18 of 2007, effective July 16, 2007, which sets new flat penalties for violations of these two Sections of the Administrative Code. The penalties for this part of subdivision (b) of §27-1045, as set forth in this proposed rule, reflect the new flat penalties for these charges as established by that local law. Solely for the convenience of the public, ECB is including these flat penalties in the Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. 3) The Board has revised the Buildings Penalty Schedule set forth in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add one new charge for §26-181.1 of the Administrative Code, "Lic. Rigger failed to ensure Susp. Scaff. workers have valid Cert. of Fitness on site-HAZARDOUS." This new charge for violations of §26-181.1 has been added in response to the enactment of Local Law Number 18 of 2007, effective July 16, 2007, which added §26-181.1 to Chapter 1 of Title 26 of the Administrative Code. That Local Law also sets flat penalties for violations of §26-181.1. The penalties for this part of subdivision (b) of §27-1045, as set forth in this proposed rule, reflect the new flat penalties for this charge. Solely for the convenience of the public, ECB is including these flat penalties in the Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. 4) The Board has revised the Buildings Penalty Schedule set forth in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add two new charges relating to Administrative Code §27-1045. One of the two new charges is for violation of one part of subdivision (b) of Administrative Code §27-1045, namely, the new charge: "No record of daily insp. of Susp. Scaff. performed by authorized person at site-HAZARDOUS." This new charge has been added in response to the enactment of Local Law Number 16 of 2007, and Local Law Number 18 of 2007, both effective July 16, 2007. Local Law 16 of 2007 amended subdivision (b) of Administrative Code §27-1045 to require that a record of daily inspections of suspended scaffolds be kept at the job site and be readily available upon request. Local Law 18 of 2007 set new, flat penalties for violations of this part of subdivision (b) of §27-1045. The penalties set forth in this proposed rule for this part of subdivision (b) of §27-1045 reflect the new flat penalties for this charge. Solely for the convenience of the public, ECB is including these flat penalties in the Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. The other of the two new charges is for violation of the remaining provisions of §27-1045, namely, the new charge "Failed to perform safe/proper ins./install./maint./operation of Susp. Scaff.-HAZARDOUS." This new charge for violations of those provisions of §27-1045 has been added in recognition of the need to increase safety in the use of suspended scaffolds and related rigging equipment. The penalties for this charge will ensure greater accountability on the part of licensed rigging personnel in managing construction sites and worker safety. These penalties are within the minimum and maximum penalties allowed for such charges by Administrative Code §26-126.1. 5) The Board has revised the Buildings Penalty Schedule set forth in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add one new charge for §27-1050.1 of the Administrative Code, "Failed to notify Dept. prior to use/inst. of C-hooks/outrigger beams in connection with Susp. Scaff.-HAZARDOUS." This new charge has been added in response to the enactment of Local Law Number 17 of 2007, effective July 16, 2007, which added §27-1050.1 to Chapter 1 of Title 27 of the Administrative Code. That Local Law also sets flat penalties for violation of §27-1050.1, which are reflected in the penalties for violation of §27-1050.1 set forth in this proposed rule. Solely for the convenience of the public, ECB is including these flat penalties in the Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive.

5. Statement of Basis and Purpose in City Record Jan. 28, 2008: The Environmental Control Board (ECB) had a Public Hearing on January 10, 2008, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above. 1) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add a charge for a new section of law, namely, Administrative Code §27-118.1(b), which relates to illegal conversions of industrial and manufacturing occupancies to residential use, and to

add an associated daily penalty provision under Administrative Code §26-126.1(f). This new material is being added to the Buildings Penalty Schedule in light of the enactment of Local Law 37 of 2007, which became effective on November 1, 2007, to enforce the provisions of that Local Law. That Local Law, inter alia, added §27-118.1(b) and a new daily civil penalty provision under 26-126.1(f). 2) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend the current entries in that Penalty Schedule for Administrative Code §27-118.1. Specifically, the Board has revised the descriptions of the two current entries for §27-118.1-one entry for first and second offenses, and the other entry for third offenses-in order to add a citation to subdivision (a). These revisions were made in response to the enactment of Local Law 37 of 2007. In addition, the Board has revised the charge descriptions for those two current entries, for clarity, by adding the word "HAZARDOUS" to the two charge descriptions. Those charges were already hazardous offenses, but the word "HAZARDOUS" has been added to the charge descriptions for further clarification. Similarly, the Board has revised the two current entries in the Buildings Penalty Schedule for Administrative Code §26-126.1(e)(i)-one entry for first and second offenses, and the other entry for third offenses-in order to clarify the charge descriptions. These clarifications include adding the word "HAZARDOUS" to the two charge descriptions. Those charges were already hazardous offenses, but the word "HAZARDOUS" has been added to the charge descriptions for further clarification. In addition, the Board has corrected one of the current entries for §26-126.1(e)(i)-the entry for third offenses-to read §26-126.1(e)(ii). 3) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add two new charges, for violations of §1 RCNY 50-01(a)(5) and 1 RCNY 50-01(a)(9). These two new charges are being added to implement the addition, effective on December 3, 2007, of a new Chapter 50 to Title 1 of the Rules of the City of New York, entitled "Distributed Energy Resource Standards". The new Chapter 50 was promulgated to provide installation standards for microturbines in New York City buildings. These microturbine systems increase low pressure natural gas (of between 2 and 3 pounds per square inch) to a high pressure (of over 60 pounds per square inch) to drive a turbine which results in the generation of electricity. The Rule was enacted in order to regulate these microturbine systems. The two new charges have been added to the Buildings Penalty Schedule to enforce the provisions of 1 RCNY §50-01, which is included within the new Chapter 50. Section 50-01 regulates the installation of High-Pressure Gas-Fired Microturbine systems. 4) The Board has revised the Recycling-Sanitation Collection Rules Penalty Schedule found in §3-120 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York in order to make certain numbering changes relating to the charges for violation of 16 RCNY 1-08(h)(3), "Non-recyclables left in recycling container for Collection," and 16 RCNY 1-08(h)(4), "Recyclables placed for collection with non-recyclables." These changes were made to reflect the fact that those subdivisions of §1-08 of Title 16 of the Rules of the City of New York were renumbered by the Department of Sanitation, effective June 14, 2007.

6. Statement of Basis and Purpose in City Record May 19, 2008: The Environmental Control Board (ECB) held a Public Hearing on April 14, 2008, on proposed revisions of its Penalty Schedules. This Public Hearing was held jointly with the Department of Buildings, which presented its proposed rules implementing the new Building Code. The Board carefully considered the oral and written comments from the public submitted at the April 14, 2008 Public Hearing with regard to the proposed revisions of its Penalty Schedules. After evaluating the various points presented, the Board determined that no substantive revision to the proposed rule was warranted. 1) The Board has revised the "Buildings Penalty Schedule" found in Section 31-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add an additional Buildings Penalty Schedule (designated as "Buildings Penalty Schedule II") to reflect the enactment of new Construction Codes, and the simultaneous repeal of substantial portions of the current Buildings Code. Buildings Penalty Schedule II will apply to all ECB Notices of Violation issued by the Department of Buildings with a date of occurrence on or after July 1, 2008. The existing Penalty Schedule (designated as "Buildings Penalty Schedule I") will be retained and will apply to all Notices of Violation issued by the Department of Buildings with a date of occurrence on or before June 30, 2008. The new Construction Codes were enacted pursuant to the provisions of Local Law 33 of 2007 and Local Law 99 of 2005. Local Law 33 of 2007 sets forth administrative, enforcement and technical provisions for the City's new Construction Codes. It has revised and thus complements Local Law 99 of 2005, which enacted administrative provisions of a new Title 28 of the NYC Administrative Code, as well as a new plumbing code. Local Law 33 repealed all of Chapter 1 of Title 26 of the NYC Administrative Code, and many of the provisions

of Title 27 of the NYC Administrative Code, effective July 1, 2008. In view of the enactment of the new Construction Codes, the Board has implemented Buildings Penalty Schedules I and II to reflect the changes in the law. On July 1, 2007, the new Construction Codes will become effective in New York City. The enactment of the new Construction Codes provides for improved building safety, enhanced enforcement tools, opportunities for construction cost savings, and incentives for innovative and sustainable building in New York City. The new Construction Codes consist of the New York City Plumbing Code (PC), the New York City Building Code (BC), the New York City Mechanical Code (MC) and the New York City Fuel Gas Code (FGC). In Title 28 of the NYC Administrative Code are found the administration and enforcement provisions that are applicable to both the new Construction Codes, and to the continuing provisions of the pre-existing Building Code. Those provisions of title 27 that continue to be in effect (primarily for existing buildings) have now been retitled the "1968 Building Code." The new Construction Codes will apply prospectively to all new construction, with some exceptions. For example, for a period of one year after the effective date, owners may elect to use the technical requirements of the 1968 building code, rather than the technical requirements of the new Construction Codes, for new buildings and for applications for alteration of existing buildings. In addition, after that one-year period, alterations of existing buildings will in some circumstances, at the option of the owner, be permitted to comply with the 1968 Building Code. Even if an existing building (or in some cases, a new or altered building) continues to be governed by the provisions of the 1968 Building Code, rather than by the provisions of the new Construction Codes, the **enforcement** provisions of Title 28 of the NYC Administrative Code will nonetheless apply in connection with those buildings. Title 28 includes, among other provisions, the various penalty structure requirements for violations of these codes. Accordingly, even in connection with the continuing provisions of the 1968 Buildings Code, Buildings Penalty Schedule II will apply in connection with ECB Notices of Violations issued on or after July 1, 2008. Buildings Penalty Schedule II includes charges from Title 28; the new Construction Codes; the Rules of the Department of Buildings; the Zoning Resolution; and charges that reflect the various continuing provisions of the 1968 Building Code. The penalties in Buildings Penalty Schedule II are based on the penalty provision requirements of Title 28. The Department of Buildings, pursuant to Chapter 2 of Title 28, will also promulgate Rules in order to implement the provisions of Title 28 and the new Construction Codes. The Department of Buildings rules will include the same charge descriptions and classification levels as are included in Buildings Penalty Schedule II, although without including the penalties themselves. The reason for this replication in DOB's Rule of these portions of Buildings Penalty Schedule II is that the Department of Buildings is mandated by Title 28 to set forth in a rule the classification level for every charge. Specifically, as mandated by Section 28-201.2 of the NYC Administrative Code, the Department of Buildings must indicate in its rules whether a charge has a classification level of "lesser" (Class 3), "major" (Class 2), or "immediately hazardous" (Class 1). These classifications are based on "the effect of the violation on life, health, safety or the public interest or the necessity for economic disincentive." The classification level assigned to a particular charge determines the applicable statutory penalty range, as well as compliance requirements. The Rule proposed by the Department of Buildings indicates that these classifications of "lesser," "major," and "immediately hazardous" shall be denominated as Class 1, Class 2, and Class 3, respectively. Therefore, Buildings Penalty Schedule II reflects this terminology. Buildings Penalty Schedule II allows respondents the opportunity to "cure" and so to obtain a zero penalty in connection with all violations classified as Class 3 violations, as well as in connection with some violations classified as Class 2 violations, if an acceptable Certificate of Correction is filed in a timely manner with the Department of Buildings in accordance with its Rules. This provision for cures is based upon the provisions of Section 28-204.2 of the NYC Administrative Code, which provides that no civil penalty shall be imposed for violations that are classified as Lesser (Class 3) violations if those violations are corrected and an acceptable Certificate of Correction is timely filed, within thirty days, with the Department of Buildings. Section 28-204.2 further provides that such a violation later may serve as a predicate for purposes of assessing aggravating factors attributable to multiple offenses. In addition to reflecting these statutorily-mandated requirements, the Buildings Penalty Schedule II provides additional time for correction in connection with cures, in that cures are permitted within forty days, rather than the statutorily-mandated thirty days, in order to allow for practical processing-time considerations. Additionally, the Buildings Penalty Schedule II allows for such cures, with a zero penalty, in connection with certain violations that are classified as Class 2, as well as in connection with violations that are classified as Class 3. The zero penalty is consistent with the statutory range set out for Major (Class 2) violations that is set forth in Section 28-202.1. Buildings Penalty Schedule II also reflects the fact that in some cases, the Department of Buildings may offer a stipulation to a respondent in connection with certain

types of charges. Stipulation offers are made by the Department of Buildings consistent with its Rules, found in Title 1 of the Rules of the City of New York. Buildings Penalty Schedule II indicates which violations are potentially eligible for such a stipulation offer. Regarding charges that pertain to Certificates of Occupancy issued by the Department of Buildings, Section 28-201.2.1 provides that violations for "occupancy without a required certificate of occupancy" shall be classified as an "immediately hazardous" (Class 1) violation. The Department of Buildings interprets that provision to mean that a violation for occupancy without a required Certificate of Occupancy is an "immediately hazardous" (Class 1) violation **only** in cases involving a new building that has never had a Certificate of Occupancy. In all other cases, a violation for occupancy contrary to the Certificate of Occupancy may be written as an "immediately hazardous" (Class 1), "major" (Class 2), or "lesser" (Class 3) violation.

7. Statement of Basis and Purpose in City Record Apr. 2, 2009: The Environmental Control Board (ECB) had a Public Hearing on August 25, 2008 on proposed revisions of its Buildings Penalty Schedule II. Neither written material nor testimony was presented at the Public Hearing on the Proposed revisions to the ECB's Penalty Schedules as set forth above. 1) The Environmental Control Board has added two new charges to Buildings Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to enforce the notification provisions of the New York City Construction Codes, and specifically, to enforce the provisions of Chapter 33 of the new Building Code. The two new charges are to enforce Building Code (BC) §3301.8 and Building Code §3310.8.2. Section 3301.8 requires that "[t]he department shall be notified promptly, in accordance with the circumstances, of all accidents at construction or demolition sites." Section 3310.8.2 outlines certain conditions for which, during the routine performance of his/her job, the Site Safety Manager and/or Coordinator must immediately notify the department. These conditions include unsafe or unlicensed crane operations and accidents involving the public, or private or public property. The addition of these two new charges to the Buildings Penalty Schedule II will assist in ensuring that the construction industry promptly reports conditions, incidents or accidents that affect the safety of the public and/or construction personnel. The Buildings Department has amended §100-21 of Subchapter B of Title 1 of the Rules of the City of New York in order to include the same charge descriptions and classification levels for §§3301.8 and 3310.8.2, although without including the penalties themselves. The reason for this replication in DOB's Rule of these portions of Buildings Penalty Schedule II is that the Department of Buildings is mandated by Title 28 to set forth in a rule the classification level for every charge. Specifically, as mandated by §28-201.2 of the NYC Administrative Code, the Department of Buildings must indicate in its rules whether a charge has a classification level of "lesser" (Class 3), "major" (Class 2), or "immediately hazardous" (Class 1). 2) The Environmental Control Board also added another new charge to Buildings Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to enforce a provision of Title 28 of the New York City Administrative Code. The charge is for a Class 1 ("Immediately Hazardous") violation of §28-105.12.2, "Work does not conform to approved construction documents and/or approved amendments." The reason for adding this Class 1 charge is to enforce against work being conducted which does not conform to approved construction documents (such as plans) or amendments to these documents. The existing Buildings Penalty Schedule II only includes Class 2 and Class 3 Severity Level Classifications for this charge. The addition of a Class 1 (Immediately Hazardous) option will allow the Department of Buildings to write NOVs for the most hazardous violations as Class 1 violations. The Buildings Department has amended §100-21 of Subchapter B of Title 1 of the Rules of the City of New York to include the same charge description and classification level for §28-105.12.2. As stated above, the reason for the replication in DOB's Rule of that portion of ECB's Buildings Penalty Schedule II is that the Department of Buildings is mandated by Title 28 to set forth in a Rule the classification level for every charge. Specifically, as mandated by §28-201.2 of the NYC Administrative Code, the Department of Buildings must indicate in its rules whether a charge has a classification level of "lesser" (Class 3), "major" (Class 2), or "immediately hazardous" (Class 1). 3) The Environmental Control Board as revised four charges in Buildings Penalty Schedule II found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. (a) The first revision is to the charge for Section BC 1016.2, in order to add a "yes" in the "Cure" column, which was inadvertently omitted when the Penalty Schedule II was first promulgated; (b) The second revision is to the charge for BC 3010.1 & 27-1006, Class 1 charge, to correct the Aggravated II maximum default penalty, from $10,000 to $25,000. This higher penalty is the statutory maximum penalty, and is consistent with the maximum Aggravated II default penalty that is imposed for all Class 1 charges in the Buildings Penalty Schedule II. The change corrects a ministerial error in the

original promulgation of that Penalty Schedule; (c) The third revision is to the charge for §28-210.1, Class 1, to amend the description for that charge to now read "Residence altered for occupancy as a dwelling from 1 or 2 families to 4 or more families." This amended text will better reflect the text of the statute regarding a Class 1 illegal conversion; (d) The fourth revision is to the charge for §28-202.1, Class 1, to amend the description for that charge to now read "Additional daily penalty for Class 1 violation of 28-210.1 - 1 or 2 families converted to 4 or more families." This amended text will better reflect the text of the statute regarding daily penalties for Class 1 illegal conversions. The Buildings Department has amended §100-21 of Subchapter B of Title 1 of the Rules of the City of New York to make the same revisions to the charge descriptions for §§28-210.1 and 28-202.1, as are described in (c) and (d) above.

8. Statement of Basis and Purpose in City Record Apr. 2, 2009: The Environmental Control Board had a Public Hearing on November 6, 2008 on proposed rule revisions to its Buildings Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECHB's Penalty Schedule as set forth above. As described below, the Environmental Control Board has added various amendments and additions to charges in Buildings Penalty II, found in Title 48 of the Rules of the City of New York (RCNY). Buildings Penalty Schedule II is found in Title 48 in view of the fact that as of November 23, 2008, ECB has been consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law 35 of 2008. Title 48 of the RCNY includes OATH's rules. Accordingly, this final rule, which amends Buildings Penalty Schedule II, amends Buildings Penalty Schedule II as found within Chapter 3 of Title 48. It should be noted that with regard to all new and amended violations in this rule, the classifications (but not the penalties) are established by the Department of Buildings by a separate rule of that Department. This is because, pursuant to §28-201.2 of the NYC Administrative Code, the Commissioner of the Department of Buildings is required to promulgate rules classifying all violations enforced by the Department as Immediately Hazardous (Class 1), or as Major (Class 2), or as Lesser (Class 3). Those violation classifications are then incorporated into ECB's Penalty Schedules. **Housekeeping Violations:** The Board has added three additional charges for violations of Building Code §3303.4, to Buildings Penalty Schedule II. Section 3303.4 pertains to "housekeeping" at construction sites. This is in view of the enactment of Local law 34 of 2008, which took effect on August 12, 2008. That law amended §28-201.2.1 of the NYC Administrative Code so as to classify violations of subsections 3303.4.5 and 3303.4.6 as "Immediately Hazardous" (Class 1). Therefore, the Board has added a charging provisions for those subsections. In addition, the Board has added a new Class 1 general housekeeping violation (not specific to a particular subsection), which will be in addition to the already existing general Class 2 violation. **Concrete Safety Managers:** The Board has added a Class 1 charge for a violation of Building Code §3310.9.1, "No Concrete Safety Manager present during all concrete operations as required," to Buildings Penalty Schedule II. This is in view of the enactment of Local Law 40 of 2008, which takes effect on January 1, 2009. That Local Law adds a new section, BC 3310.9, to the Building Code, requiring additional personnel to oversee concrete operations at major buildings under construction, and requiring a Concrete Safety Manager on construction sites where a minimum of 2,000 cubic yards of concrete is to be poured. Accordingly, the Board has added a new charge to implement this new provision of law. Local Law 40 takes effect on January 1, 2009. **Supported scaffolds:** The Board has deleted the Class 2 charges for Building Code §§3314.4.5 and 3314.4.6, both of which pertain to supported-scaffolds, from Buildings Penalty Schedule II. This is in view of the enactment of Local Law 24 of 2008, which took effect on July 1, 2008. That law amended §28-201.2.1 so as to require that all violations of §§3314.4.5 and 3314.4.6 be classified as Class 1 (Immediately Hazardous). Accordingly, the Board has deleted the Class 2 charges for those sections. Additionally, the Board has amended the two remaining (Class 1) charges for §§3314.4.5 and 3314.4.6 so as to delete the additional Section numbers, 26-204.1(a) and 26,204(c), that are also listed in those charges. The reason the Board has deleted the references to §§26-204.1(a) and 26-204(c) is that the references to those sections were included in error in the initial promulgation of Buildings Penalty Schedule II. **Site safety:** The Board as added two new charges to Buildings Penalty Schedule II for violations of Administrative Code §28-110.1, namely, "Failure to provide evidence of workers attending construction & safety course," and "Failure to conduct workers' site-specific safety orientation program per site safety plan." This is in view of the enactment of Local Law 41 of 2008, which takes effect on December 2, 2008. That law amends §28-110.1 to add two new provisions that require that workers complete site safety courses, and that require Site Safety Plans to include mandatory site-specific Safety Orientation Programs. Accordingly, the Board has added two new charges to implement

these new provisions of §28-110.1 Local Law 41 takes effect on December 2, 2008. **Unlicensed activity:** The Board has deleted the Class 2 level charge for Administrative Code §28-405.1, "Supervision or use of power-operated hoisting machine without a Hoisting Machine Operator's License," from Buildings Penalty Schedule II. There is already a Class 1 charge for that violation in the Penalty Schedule. The Board has amended the charge for Administrative Code §28-408.1, "Performing unlicensed plumbing work without a master plumbing license," from a Class 2 charge to a Class 1 charge. The Board has also added a new Class 1 miscellaneous charge, "Illegally engaging in any business or occupation without a required license or other authorization," for Chapter 4 of Title 28 of the Administrative Code. The Board has proposed these various amendments and additions to Buildings Penalty Schedule II in view of the enactment of Local Law 08 of 2008, which took effect on July 1, 2008. That law amended Administrative Code §28-201.2.1 to require that a violation be classified as Class 1 where the violation is of any provision of Chapter 4 of Title 28 of the Administrative Code, for engaging in any business or occupation without a required license or other authorization. **Sidewalk sheds:** The Board has added a new Class 2 charge for a violation of Building Code §3307.3.1 & Administrative Code §27-1021(a), "Failure to provide sidewalk shed where required." There is already a Class 1 charge for this section. The Board has added a Class 2 classification in view of the fact that a Class 2 severity level may be warranted under some circumstances. **Failure to post permit for work at premises:** The Board has added a charge for a violation of Administrative Code §28-105.11, for failure to post permit for work at premises, to enable effective enforcement of this section of law. **Required Means of egress; Location of exhaust discharge:** The Board has added two new charges for failure-to-maintain in violation of Administrative Code §28-301.1: (1) respondent failed to provide the required number of means of egress for every floor, and (2) respondent improperly located an exhaust discharge. These charges have been added to enable effective enforcement with regard to these conditions. **Zoning Resolution 22-00:** The Board has added a new Class 3 charge for illegal use in a residential district in violation of §22-00 of the Zoning Resolution. This charge has been added in view of the fact that there is already a Class 3 charge in Buildings Penalty Schedule II for violations of ZR 25-41, which pertains to parking restrictions, and in view of the fact that ZR 22-00 is also at times cited in connection with violations pertaining to parking restrictions. **Material false statements in Certificate of Correction:** The Board has added a new charge for filing a false certificate of correction pursuant to Administrative Code §28-211.1, which makes it a violation to make a material false statement in various documents, including certificates of corrections. Buildings Penalty Schedule II already contains a general charge under §28-211.1; however, the Board has added this more specific charge, due to the frequency of issuance of violations in connection with certificates of correction, in particular. **Failure to comply with an order of the Commissioner:** The Board has added a new charge for failing to comply with an order of the Commissioner of the Department of Buildings in violation of Administrative Code §28-201.1. Buildings Penalty Schedule II already includes a charge for failure to comply with a Stop Work Order, and a charge for not filing a certificate of correction. However, this newly added charge will enable enforcement in connection with all other instances of failure to comply with a Commissioner's order.

9. Statement of Basis and Purpose in City Record May 14, 2009: The Environmental Control Board (ECB) had a Public Hearing on April 15, 2009 on various amendments to ECB's Buildings Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. One private citizen was present to offer testimony into the public record. No written comments were submitted. The Board has considered the testimony offered at the hearing. The Board has added eight crane-related charges to that Penalty Schedule. The Board has amended the Penalty Schedule in light of the enactment of Local Law 46 of 2008, effective December 22, 2008. Local Law 46 of 2008 added new sections to the NYC Building Code and amended sections of the NYC Administrative Code. Specifically, it added §§3319.8 through 3319.8.8 to the Building Code, and it amended §§28-201.2.1 and 28-401.19.4.1 of the NYC Administrative Code. These sections require the submission of a plan for the erection, jumping, climbing and dismantling tower or climber cranes to the Department of Buildings, and detail the items that must be included in such a plan. The sections further require certain meetings at construction sites, including safety coordination and pre-jump safety meetings, specify the topics of such meetings, and require that the Department to be notified of those meetings. The sections also require an engineer to inspect and certify a tower or climber crane prior to jumping or climbing, impose new standards during erection, jumping, climbing and dismantling operations, and require preparation and maintenance of certain schedules and logs. The Board has added these eight crane-related charges to ECB's Buildings Penalty Schedule II to enforce the provisions of Local Law 46 of 2008. All of the charges have a Class 1

("Immediately Hazardous") classification level due to the seriousness of the nature of the violations (unsafe crane operations). The Department of Buildings (DOB) has already classified these eight crane charges as Class 1. As set forth in §28-201.1 of the NYC Administrative Code, it is within DOB's purview to determine the classification of all charges enforced by DOB.

10. Statement of Basis and Purpose in City Record July 2, 2009: The Environmental Control Board (ECB) held a Public Hearing on May 14, 2009 on various amendments to ECB's Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor any oral testimony were presented. (1) The Board has added two new charges for potentially compromised buildings and structures in light of the enactment of Local Law 33 of 2008, effective February 9, 2009. That law created a new class of potentially compromised buildings and structures and imposed notification and inspection requirements on owners of such buildings. The law added §28-216.12 to the NYC Administrative Code, which defines a potentially compromised building or structure as "a building or structure that has had an open roof for sixty days or longer, that has been shored and braced or repaired pursuant to an emergency declaration issued by the commissioner, that has been subject to a precept as a compromised structure under Article 216 of this code or that may have suffered structural damage by fire or other cause as determined by the commissioner." Section 28-216.12.1 requires that the owner of such buildings or structures shall cause a structural inspection to be performed within 60 days from the date that such building becomes potentially compromised and file a report within 30 days thereafter, with details and provisions of periodic monitoring, as outlined by the commissioner. The Board has added two charges regarding compromised buildings to ECB's Buildings Penalty Schedule II to enforce the provisions of Local Law 33 of 2008. The §28-212.16.1 charge ("Failure to submit required report of inspection of potentially compromised buildings") has a Class 2 (Major Violation) classification level and the §28-216.12.6 charge ("Failure to immediately notify Department that building or structure has become potentially compromised") has a Class 1 ("Immediately Hazardous") classification level. DOB has already classified these two charges in a DOB rule published in the City Record on April 2, 2009. As set forth in §28-201.1 of the NYC Administrative Code, it is within DOB's purview to determine the classification of all charges enforced by DOB. (2) The Board has added three new retaining wall charges to implement three new sections of law added to the Administrative Code by Local Law 37 of 2008, effective February 9, 2009, namely §§28-305.4, 28-305.4.6, and 28-305.4.7.3. Section 28-305.4 includes provisions that detail requirements regarding the inspection, maintenance and repair of retaining walls. Owners of retaining walls with a height of ten feet or more and fronting a public right-of-way must comply with the requirements of §28-305.4. This section requires that after a condition assessment, which must be completed at least once every five years, is complete, a report of condition assessment shall be submitted to the Department of Buildings. According to this provision, "the report shall clearly document the condition of the retaining wall and shall include a record of all significant deterioration, potentially unsafe conditions of the wall or affecting the wall, and movement observed. The report must be certified by the registered design professional." Section 28-305.4.6 requires that "[w]henever the registered design professional under whose supervision the inspection is performed learns of an unsafe condition through a condition assessment of a retaining wall, such person shall notify the owner and the department of such condition immediately by calling 311 and by written notification to the department." Section 28-305.4.7.3 requires that the owner or the owner's agent "reinspect the retaining wall and file an amended report within two weeks after the repairs have been completed certifying that the unsafe conditions of the retaining wall have been corrected." Unmaintained retaining walls can constitute a serious threat to public safety. The Board has added these three retaining wall charges to ECB's Buildings Penalty Schedule II to enforce the provisions of Local Law 37 of 2008. The §28-305.4.4 charge ("Failure to submit required report of condition assessment of retaining wall") and the §28-305.4.7.3 charge ("Failure to file an amended condition assessment acceptable to this Department indicating correction of unsafe conditions") has a Class 2 ("Major") level. The §28-305.4.6 charge ("Failure to immediately notify Department of unsafe condition observed during condition assessment of retaining wall") has a Class 1 ("Immediately Hazardous") level. DOB has classified these two charges in a DOB rule published in the City Record on April 2, 2009. As set forth in §28-201.1 of the NYC Administrative Code, it is within DOB's purview to determine the classification of all charges enforced by DOB.

11. Statement of Basis and Purpose in City Record Dec. 23, 2009: The Environmental Control Board (ECB) held a

Public Hearing on August 6, 2009 on various amendments to ECB's Buildings Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented. Specifically, the Board has amended the definition of "Aggravated Penalties of the second order ("Agg II")". The purpose of this amendment is to add to the Aggravated II definition, conditions that pose significant potential risks of accidents, serious injuries or fatalities but may not have resulted in such accidents, serious injuries or fatalities. The Department of Buildings has amended §102-02(f)(2) of Subchapter B of Title of the Rules of the City of New York, to reflect the underlined language in the definition of Aggravated penalties of the second order set forth in section 1 above. The Board has also amended the Class 1 (Work without a Permit) charge promulgated pursuant to §28-105.1 of the New York City Administrative Code by permitting imposition of a mitigated penalty after a hearing. Mitigation after hearing would provide an incentive to respondents who are not contesting the cited condition(s) to correct the condition(s) promptly. Mitigation allows an ECB hearing officer to impose one half the standard penalty following a hearing, if the respondent demonstrates correction of the condition(s) indicated on the notice of violation prior to the original hearing date. In §§3, 4 and 5 the Board has added eight new charges to ECB's Buildings Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to enforce various regulations regarding sign hangers, as set forth in Article 415 of Title 28 of the New York City Administrative Code and in other applicable sections of the Administrative Code and of the New York City Zoning Resolution, and outdoor advertising companies, as found in Article 502 of Title 28 of the Administrative Code. These charges are as follows:

· 28-105.12.1: Outdoor sign permit application contrary to Code and ZR requirements

· 28-415.1: Hoisting, lowering, hanging, or attaching of outdoor sign not performed or supervised by a properly licensed sign hanger

· Misc Title 28/Misc ZR: Misc outdoor sign violation of ZR and/or Building Code (Class 1) and

· Misc Title 28/Misc ZR: Misc outdoor sign violation of ZR and/or Building Code (Class 2)

· 28-502.2: Outdoor Advertising Company engaged in outdoor advertising business without a valid registration (Class 1)

· 28-502.2.1: Outdoor Ad. Co. failed to submit complete/accurate information as prescribed in 1 RCNY Chapter 49 (Class 1)

· 28-502.2.2: Outdoor Advertising Company failed to post, renew or replenish bond or other form of security (Class 1)

· 28-502.5: Outdoor Advertising Company failed to post required information at sign location (Class 1)

The addition of these eight new charges to ECB's Buildings Penalty Schedule II will enhance the Department of Buildings' enforcement efforts against illegal sign hanging and outdoor advertising activity. The proposed penalties reflect the range of penalties set forth within the statute. The Department of Buildings is amending §102-01 of Subchapter B of Title 1 of the Rules of the City of New York to be consistent with these changes.

In §6 the Board has added one new charge to ECB's Buildings Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to enforce Article 502 of Title 28 of the New York City Administrative Code and Chapter 49 of Title 1 of the Rules of the City of New York relating to Outdoor Advertising Companies. This charge is as follows:

· 1 RCNY 49-03: Outdoor Advertising Company failed to comply with Commissioner's sign-related Order (Class 1)

The addition of this new charge will enhance the Department of Buildings' efforts to enforce effectively its existing laws related to outdoor advertising companies. The proposed penalties reflect the range of penalties set forth within the statute. The Department of Buildings is amending §102-01 of Subchapter B of Title 1 of the Rules of the City of New York to be consistent with these changes.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within

ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-104

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-104 Community Right-To-Know Law Penalty Schedule.

COMMUNITY RIGHT TO KNOW LAW PENALTY SCHEDULE

For a description of mitigating and aggravating (Mit/Agg) factors, see the listing at the end of this penalty schedule.

A second or subsequent offense is a violation by the same respondent of Section 24-706, 24-711, 24-712 or 24-718 within five years of having been found in violation of the same section.

All citations are to Title 24, Chapter 7, of the NYC Administrative Code (Community Right-To-Know Law).

Section Description Offense Penalty Default Stipulation Mit/Agg

24-706(a) Failed to file a completed Facility Inventory Form 1st2nd3rd $500$3500$7500 $5000$10000$20000 YesNoNo CIJKLADIJKLBEIJKL

Failed to file a facility inventory update 1st2nd3rd $500$3500$7500 $5000$10000$20000 YesNoNo CIJKLADIJKLBEIJKL

24-706(b) Failed to submit a Material Safety Data Sheet 1st2nd3rd $500$3500$7500 $5000$10000$20000

YesNoNo IJKLAIJKLBIJKL

24-706(c) Failed to make copy of FIF or MSDS available at facility 1st2nd3rd $500$3500$7500 $5000$10000$20000 NoNoNo IJKLIJKLIJKL

24-711 Failed to properly label hazardous substance 1st2nd3rd $500$3500$7500 $5000$10000$20000 NoNoNo FIJKLFIJKLFIJKL

24-712 Failed to give access to inspect facility 1st2nd $2500$5000 $20000$20000 NoNo GHGH

24-718 Failed to properly file risk management plan 1st2nd3rd $1000$3500$7500 $5000$10000$20000 NoNoNo IJKLAIJKLBIJKL

COMMUNITY RIGHT-TO-KNOW LAW

Table of Violations-Mitigating and Aggravating Factors

Note: All additions and subtractions are cumulative, except that factors J and K cannot be applied together, and factors A, B, and L may only be applied when at least one aggravating factor is also present (i.e., they cannot be used to reduce the penalty to less than the legal minimum).

Note: Where the application of multiple aggravating factors would cause the legal maximum penalty to be exceeded, the legal maximum penalty (same as the default penalty) shall be imposed.

EHS = Extremely Hazardous Substance (as defined in §24-702(h))

ASubtract $1750 for compliance by first hearing date.

BSubtract $3750 for compliance by first hearing date. CAdd $250 if there are any EHS stored at the facility. DAdd $1750 if there are any EHS stored at the facility. EAdd $3750 if there are any EHS stored at the facility. FAdd $100 for each unlabeled non-EHS hazardous substance more than one; add $2000 for each unlabeled EHS. GAdd $1000 if there are 25 or more hazardous substances stored at the facility; add $5000 if there are more than 50 hazardous substances stored at the facility or if any EHS are stored at the facility. NOTE: This factor may only be applied until the legal maximum penalty has been reached. HAdd $5000 for willful refusal to allow access to the facility, or physical interference with or obstruction of the inspection. IAdd $1000 if there was an emergency response to the facility. JAdd $2500 if there was a release of a hazardous substance at the facility. KAdd $4500 if release of a hazardous substance at the facility resulted in injury to any person, or injury to plant or animal life, or damage to property or business. LSubtract $250 where the existence of the violation was voluntarily disclosed to DEP by respondent.

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-104) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

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I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City

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This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

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Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-105

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-105 Environmental Conservation Law Penalty Schedule.

ENVIRONMENTAL CONSERVATION LAW PENALTY SCHEDULE

Section/Rule Description Penalty Default

NYS Env. Cons. Law 27-1701(3) Improper disposal of lead acid battery 50 50

NYS Env. Cons. Law 27-1701(3) Improper storage of lead acid battery 50 50

NYS Env. Cons. Law 27-1701(4) Failure to collect/accept returned lead acid battery 250 500

NYS Env. Cons. Law 27-1701(5) Failure to refund deposit for lead acid battery 50 50

NYS Env. Cons. Law 27-1701(5) Failure to inform consumer of refund policy 50 50

NYS Env. Cons. Law 27-1701(6) Failure to post sign regarding lead acid battery recycling 50 50

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-105) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

FOOTNOTES

6

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-106

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-106 Fire Penalty Schedule.

FIRE PENALTY SCHEDULE

Fire Penalty Schedule I: Effective For Notices of Violation With a Date of Occurrence On or Before June 30, 2008:

The Penalty Schedule set forth below, Fire Penalty Schedule I, sets forth the penalties that will be imposed in connection with Notices of Violation with a date of occurrence on or before June 30, 2008.

All Rules cited below are found in Section 16-03 of Title 3 of the Rules of the City of New York. All citations preceded by "A.C." are citations to the NYC Administrative Code.

The mitigated (MIT.) penalty is available if the condition is corrected as of the original hearing date. (A stipulation is available in some cases at the mitigated penalty if there is concurrence by the Fire Department, and good faith efforts to correct have commenced as of the original hearing date.)

A second or subsequent violation is a violation by the same respondent of the same provision of law, rule or regulation as the previous violation and, if the respondent is the owner, agent, lessee, or other person in control of the premises with respect to which the violation occurred, at the same premises, with a date of occurrence within 18 months

of the date of occurrence of the previous violation.

Section/Rule Description First Violation Second Violation

Penalty MIT. MAX. Penalty MIT MAX.

Rule 1 Buckets and/or Fire Extinguishers $500 250 1000 1500 750 5000

Rule 2 Waste Receptacles 500 250 1000 1500 750 5000

Rule 3 No FDNY Permit 400 200 1000 1250 625 5000

Rule 4 Quantities in Excess of Permit 400 200 1000 1250 625 5000

Rule 5 Produce Permit and/or Record 600 300 1000 1750 900 5000

Rule 6 Signs/Postings/Instructions 500 250 1000 1500 750 5000

Rule 7 Labels/Marks/Stamps 500 250 1000 1500 750 5000

Rule 8 Obstructions/ Accumulations 600 300 1000 1750 900 5000

Rule 9 Adequate Egress/Aisle Space/Clearance 600 300 1000 1750 900 5000

Rule 10 Occupancy Load Restrictions 500 250 1000 1500 750 5000

Rule 11 General Maintenance 400 200 1000 1250 625 5000

Rule 12 Maintenance of Sprinkler/Standpipe/Alarm Systems 900 450 1000 2000 1200 5000

Rule 13 Fire Retardant Material 750 375 1000 1750 900 5000

Rule 14 Fireproof Doors/Windows 750 375 1000 1750 900 5000

Rule 15 Fireproof Partitions or Walls 750 375 1000 1750 900 5000

Rule 16 Ventilation 600 300 1000 1750 900 5000

Rule 17 Certificates of Fitness 600 300 1000 1750 900 5000

Rule 18 FDNY Certificates of Approval/Qualification/ License 600 300 1000 1750 900 5000

Rule 19 Public Assembly Permit/Affidavits/Documentation/Plans 500 250 1000 1500 750 5000

Rule 20 Test/Inspection 400 200 1000 1250 625 5000

Rule 21 Containers 500 250 1000 1500 750 5000

Rule 22 Tanks/Supports 750 375 1000 1750 900 5000

Rule 23 Storage 500 250 1000 1500 750 5000

Rule 24 Racks 500 250 1000 1500 750 5000

Rule 25 Electrical Equipment 800 400 1000 1750 900 5000

Rule 26 Approved Refrigeration/Heating Devices or Units 600 300 1000 1750 900 5000

Rule 27 Approved Lighting Devices 600 300 1000 1750 900 5000

Rule 28 Exposed Flames or Sparks 800 400 1000 1750 900 5000

Rule 29 Designated Areas 500 250 1000 1500 750 5000

Rule 30 Fire Safety in Office Buildings/Hotels/Motels 900 450 1000 2000 1200 5000

A.C. 15-231 Fail to comply with Comm. Order to correct & certify 1250 None 5000 3500 None 5000

A.C. 15-220.1 False Certification 2500 None 5000 4500 None 5000

Fire Penalty Schedule II: Effective For Notices of Violation With a Date of Occurrence On or After July 1, 2008:

The Penalty Schedule set forth below, Fire Penalty Schedule II, sets forth the penalties that will be imposed in connection with Notices of Violation with a date of occurrence on or after July 1, 2008.

This schedule sets forth penalties for violations of the New York City Fire Code, Fire Department rules and other laws, rules and regulations enforced by the Fire Department. The violation categories set forth below are derived from §109-02 of Title 3 of the Rules of the City of New York. All citations preceded by "AC" are citations to the NYC Administrative Code.

The mitigated (MIT) penalty is available if the condition is corrected as of the original hearing date. (A stipulation is available in some cases at the mitigated penalty if there is concurrence by the Fire Department, and good faith efforts to correct have commenced as of the original hearing date.)

A violation is subject to second or subsequent violation penalties when: (1)(a) it is a violation by the same respondent of the same provision of law, rule, or Violation Category as a prior violation that has a date of occurrence within 18 months, or (b) it is a violation by the same respondent of the predecessor provision of law, rule or Violation Category (previously "Rule") that has a date of occurrence within 18 months; and (2) if the respondent is the owner (as defined in the Fire Code) of the premises with respect to which the violation occurred, if the prior violation occurred at the same premises.

Section/ViolationCategory Description First Violation Second or Subsequent Violation

Penalty MIT. MAX. Penalty MIT MAX.

Violation Category 1 Portable Fire Extinguishers and Fire Hoses $500 250 1000 1500 750 5000

Violation Category 2 Combustible Waste Containers 500 250 1000 1500 750 5000

Violation Category 3 Permits 400 200 1000 1250 625 5000

Violation Category 4 Unlawful Quantity or Location of Regulated Material 400 200 1000 1250 625 5000

Violation Category 5 Posting of Permits and Record Keeping 600 300 1000 1750 900 5000

Violation Category 6 Signs, Postings, Notices and Instructions 500 250 1000 1500 750 5000

Violation Category 7 Labels/Markings 500 250 1000 1500 750 5000

Violation Category 8 Accumulation and Removal of Combustible Waste 600 300 1000 1750 900 5000

Violation Category 9 Means of Egress 600 300 1000 1750 900 5000

Violation Category 10 Overcrowding 500 250 1000 1500 750 5000

Violation Category 11 General Maintenance 400 200 1000 1250 625 5000

Violation Category 12 Fire Protection Systems 900 450 1000 2000 1200 5000

Violation Category 13 Flame-Resistant Materials 750 375 1000 1750 900 5000

Violation Category 14 Fire-Rated Doors and Windows 750 375 1000 1750 900 5000

Violation Category 15 Fire-Rated Construction 750 375 1000 1750 900 5000

Violation Category 16 Ventilation 600 300 1000 1750 900 5000

Violation Category 17 Certificates of Fitness and Certificates of Qualification 600 300 1000 1750 900 5000

Violation Category 18 Certificates of Approval, Certificates of License and Company Certificates 600 300 1000 1750 900 5000

Violation Category 19 Affidavits, Design/Installation Documents, and Other Documentation 500 250 1000 1500 750 5000

Violation Category 20 Inspection and Testing 400 200 1000 1250 625 5000

Violation Category 21 Portable Containers 500 250 1000 1500 750 5000

Violation Category 22 Stationary Tanks 750 375 1000 1750 900 5000

Violation Category 23 Storage Facilities 500 250 1000 1500 750 5000

Violation Category 24 Racks and Shelf Storage 500 250 1000 1500 750 5000

Violation Category 25 Electrical Hazards 800 400 1000 1750 900 5000

Violation Category 26 Heating and Refrigerating Equipment and Systems 600 300 1000 1750 900 5000

Violation Category 27 Electrical Lighting Hazards 600 300 1000 1750 900 5000

Violation Category 28 Open Fires, Open Flames and Sparks 800 400 1000 1750 900 5000

Violation Category 29 Designated Handling/Use Rooms or Areas 500 250 1000 1500 750 5000

Violation Category 30 Fire Safety in Office Buildings, Hotels, and Motels 900 450 1000 2000 1200 5000

AC 15-231 Fail to Comply with Commissioner's Order to Correct and Certify 1250 None 5000 3500 None 5000

AC 15-220.1 False Certification 2500 None 5000 4500 None 5000

FC1404.1 Smoking on Construction Site 1,000 No 1,000 2,400 No 2,400

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-106) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Fire Penalty Schedule I designated City Record July 1, 2008 §1, eff. July 1, 2008 per City Record notice. [See Note 1]

Fire Penalty Schedule I open par added City Record July 1, 2008 §1,eff. July 1, 2008 per City Record notice. [See Note 1]

Fire Penalty Schedule II added City Record July 1, 2008 §1, eff. July 1, 2008 per City Record notice. [See Note 1]

Third undesignated paragraph amended City Record June 20, 2005 §7, eff. July 20, 2005. [See T48 §3-101 Note 1]

Fourth undesignated paragraph repealed and added City Record Dec. 9, 2008 §1, eff. Jan. 8, 2009. [See Note 2]

Table FC1404.1 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 3]

NOTE

1. Statement of Basis and Purpose in City Record July 1, 2008:

The Environmental Control Board (ECB) had a Public Hearing on June 23, 2008, on proposed revisions of its Fire Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above.

The Board has revised the ECB Fire Penalty Schedule set out in §3-106 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. These revisions are intended to implement in part the new Fire Code for the City of New York. The new Fire Code was enacted on May 28, 2008. The new Fire Code comprises Title 29 of the New York City Administrative Code, becomes effective on July 1, 2008. The Local Law enacting the new Fire Code repeals the existing Fire Code, found in Chapter 4 of Title 27. Among other things, the Local Law also repeals subdivisions (7) through (19) of §15-232 of the New York City Administrative Code, which pertains to Chapter 4 of Title 27.

As a result of the enactment of the new Fire Code, the Board has adopted a new Fire Penalty Schedule (Fire Penalty Schedule II), as well as retaining the existing Fire Penalty Schedule (Fire Penalty Schedule I). Fire Penalty Schedule I applies to all ECB Notices of Violation issued by the Fire Department with a date of occurrence on or before June 30, 2008. Fire Code Penalty Schedule II applies to all ECB Notices of Violation issued by the Fire Department with a date of occurrence on or after July 1, 2008.

The Fire Department is in the process of promulgating Rules in order to implement the provisions of the new Fire Code. One of those Fire Department Rules, §109-02 of Title 3 of the Rules of the City of New York, will set forth Violation Categories for Fire Department enforcement purposes. §109-02 will re-name and re-organize the Violation Categories (previously denominated "Rules") that are now in effect pursuant to §16-03 of Title 3 of the Rules of the City of New York. Under each of these new Violation Categories, the new Fire Department Rule 109-02 will set forth the relevant section numbers of the new Fire Code. The Board's Fire Penalty Schedule II reflects these new Fire Department Violation Categories, and sets forth penalties for violations of any of the Sections of the Fire Code that are listed under those Violation Categories. The penalties set forth in Fire Penalty Schedule II remain the same as those set forth in Fire Penalty Schedule I.

Statement of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that revises the ECB Fire Penalty Schedule set out in §3-106 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. The new ECB rule implements in part the new Fire Code, which become effective on July 1, 2008. The new ECB rule includes the new ECB Fire Penalty Schedule which will apply to all Fire Notices of Violation returnable to ECB issued on or after July 1, 2008. The new Fire Department rule on which such Notices of Violation will be based, and the violation categories it establishes will apply to all Fire Notices of Violation returnable to ECB issued on or after July 1, 2008.

In view of the July 1, 2008, effective date of the new Fire Code, the implementation of the new ECB rule upon publication is necessary to ensure that the new Fire Code can be enforced beginning on the effective date.

2. Statement of Basis and Purpose in City Record Dec. 9, 2008: The Environmental Control Board had a Public Hearing on November 6, 2008 on proposed revisions of its Fire Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Fire Penalty Schedule as set forth above. The Environmental Control Board (ECB) has revised the definition of "second or subsequent" violation found in ECB's Fire Penalty Schedule II, found in §3-106 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. The revision will ensure that the higher "second or subsequent" penalty amount will be imposed not only when there is a prior violation of the predecessor section of law, rule or Violation Category (previously "Rule"). The term "Violation Category" is included in the proposed definition of "second or subsequent" violation because the NYC Fire Department, for enforcement purposes, classifies charging provisions into categories denominated "Violation Categories" (1 RCNY 109-01). The equivalent classifications were denominated "Rule" categories under the superseded Fire Code (3 RCNY 16-03). ECB's Fire Penalty Schedule II reflects the current Violation Categories. Therefore, for example, under the proposed definition, if a current violation is of a "Violation Category 1" charge, that violation will constitute a "second or subsequent" violation if the respondent was previously found in violation of either (i) any "Violation Category 1" charge issued pursuant to the current Fire Code with a date of occurrence within 18 months of the date of occurrence of the current charge, if all other criteria set forth in the definition of "second or subsequent" violation are met, or (ii) any "Rule 1" charge issued pursuant to the superseded Fire Prevention Code, with a date of occurrence within 18 months of the date of occurrence of the current charge, if all other criteria set forth in the definition of "second or subsequent" violation are met. ECB's Fire Penalty Schedule is found in Title 48 in view of the fact that as of November 23, 2008, ECB will have been consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law 35 of 2008. Title 48 of the RCNY includes OATH's rules. Accordingly, this final rule has amended the Fire Penalty Schedule as found within Chapter 3 of Title 48.

3. Statement of Basis and Purpose in City Record May 14, 2009: The Environmental Control Board (ECB) had a Public Hearing on April 15, 2009 on proposed revisions of its Fire Penalty Schedule to add a new charge, for a violation of §1404.1 of the Fire Code, to Fire Penalty Schedule II, found in §3-106 of Title 48 of the Rules of the City of New York. One private citizen was present to offer testimony into the public record. No written comments were submitted. The Board has considered the testimony offered at the hearing. Section 1404.1 of the Fire Code prohibits smoking on construction sites. Up until now, §1404.1 has been enforced by the Fire Department via notices of violations that cite to the "General Maintenance" provision of Violation Category 11, found in 3 RCNY 109-02. Those violations carry a $400 penalty for a first offense (which can be mitigated to $200 if correction is shown by the first scheduled hearing date), and a $1,250 second offense penalty (which can be mitigated to $625 if correction is shown by the first scheduled hearing date). The new charge carries a higher penalty, commensurate with the seriousness of the condition. Specifically, the new charge of §1401.1 carries a first offense penalty of $1,000 (which cannot be mitigated) and a second offense penalty of $2,400 (which cannot be mitigated). The purpose of adding this separate charge for §1404.1 to Fire Penalty Schedule II is to enable these higher penalties to be imposed for this serious violation.

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers

("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-107

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-107 Food Vendor Administrative Code Penalty Schedule.

FOOD VENDOR ADMINISTRATIVE CODE

PENALTY SCHEDULE

Multiple Offense Schedule (MOS): 1st Violation $50 (default $50); 2nd Violation $100 (default $100); 3rd Violation $250 (default $250); 4th Violation $500 (default $1,000); 5th Violation $750 (default $1,000); 6th and subsequent Violation $1,000 (default $1,000).

A 2nd, 3rd, 4th, 5th, 6th or subsequent violation is a violation by the same respondent of a section of law listed in this Penalty Schedule that is subject to an "MOS" penalty as indicated in this Penalty Schedule, with a date of occurrence within 2 years of the date of occurrence of the previous violation(s), and where the previous violation(s) was a violation of any section of law that is subject to an "MOS" penalty as indicated in this Penalty Schedule.

* Pursuant to §3-81(b), a late admit fee of $30.00 will be added to the penalty for this charge for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

All citations are to the NYC Administrative Code.

Section/Rule Description Penalty Default

Admin. Code 17-307(a) Unlicensed Mobile food vendor 1,000 1,000

Admin. Code 17-307(b) Unpermitted Mobile Food Unit 1,000 1,000

Admin. Code 17-307(b)(1) Vending food other than fresh fruits and vegetables 1,000 1,000

Admin. Code 17-307(c)* Lack of permit for commissary or distribution place 200 1,000

Admin. Code 17-307(d) Vending of unapproved items MOS MOS

Admin. Code 17-311 Fail to display license and/or plate MOS MOS

Admin Code 17-311(d) Green Cart Vendor failed to carry map showing authorized vending areas MOS MOS

Admin. Code 17-312 Fail to notify of change of license information MOS MOS

Admin. Code 17-313 Failure in bookkeeping requirements MOS MOS

Admin. Code 17-314(a) Fail to permit regular inspections MOS MOS

Admin. Code 17-314(b) Failure to give supplier/depot/commissary information MOS MOS

Admin. Code 17-314(c) Sale of unauthorized foods without written approval MOS MOS

Admin. Code 17-314(d) Fail to surrender license, permit and plate MOS MOS

Admin. Code 17-314.1 Sale, loan, lease or transfer of license, permit or plate MOS MOS

Admin. Code 17-315(a) Vendor on sidewalk less than 12 ft., or not at curb MOS MOS

Admin. Code 17-315(b) Cart touching or leaning against building MOS MOS

Admin. Code 17-315(c) Items not in or under cart (except waste container) MOS MOS

Admin. Code 17-315(d) Vending pushcart or stand against display window or 20 ft. of entrance MOS MOS

Admin. Code 17-315(e) In bus stop, or 10 ft. of drive, subway, crosswalk, etc. MOS MOS

Admin. Code 17-315(f) Violation of parking rules and regulations MOS MOS

Admin. Code 17-315(h) On median strip, not intended for mall or plaza MOS MOS

Admin. Code 17-315(i) Vending within Parks jurisdiction without Comm. approval MOS MOS

Admin. Code 17-315(j) Failure to move after notice of exigent circumstances given MOS MOS

Admin. Code 17-316 Transfer of food to unlicensed food vendor for resale MOS MOS

Admin. Code 17-315(k), (l) Vending at time/place prohibited MOS MOS

24 RCNY 6-01(m) Green Cart umbrella not opened while vending MOS MOS

24 RCNY 6-01(m) Green Cart umbrella not safely secured or in good condition or repair MOS MOS

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-107) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added (Note, identical to City Record June 20, 2005 addition) City Record Jan. 26, 2006 §2, eff. Feb. 25, 2006. [See Note 1]

Section added City Record June 20, 2005 §9, eff. July 20, 2005. [See T48 §3-101 Note 1]

Third undesignated par amended City Record Nov. 25, 2008 §10, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Schedule Admin. Code 17-307(b)(1) added City Record Oct. 10, 2008 §, eff. Nov. 9, 2008. [See Note 2]

Schedule Admin. Code 17-311(d) added City Record Oct. 10, 2008 §2, eff. Nov. 9, 2008. [See Note 2]

Schedule 24 RCNY 6-01(m) Green Cart...vending added City Record Oct. 10, 2008 §3, eff. Nov. 9, 2008. [See Note 2]

Schedule 24 RCNY 6-01(m) Green Cart...repair added City Record Oct. 10, 2008 §3, eff. Nov. 9, 2008. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 26, 2006:

The Environmental Control Board has adopted penalty schedules for food and general vending violations pursuant to the authority set forth in subdivision c of §1404 of the New York City Charter. The purpose of these penalty schedules is to ensure that penalties imposed upon licensed and unlicensed street vendors who do not comply with City laws and rules governing vending are commensurate with the seriousness of the violations and are sufficient to deter illegal vending. They are also adopted to assure that such penalties are imposed in a uniform and consistent manner. In adopting the schedules, the Board carefully considered the presentations and comments submitted at the public hearings held on November 18, 2004 and April 18, 2005. The Board also considered the written comments submitted by members of the public to the Board both during and after each public hearing. In addition, it considered the letters submitted to the Board by the Department of Consumer Affairs and the Department of Health and Mental Hygiene. **As a result of the testimony, comments, and material received at and after the November 18, 2004 public hearing, the Board has modified the then proposed penalty schedules. The penalty schedules set forth in the initial proposed rule included Multiple Offense Penalty Schedules setting forth penalties for first, second, third, and fourth offenses, with the fourth offense resulting in the maximum penalty provided by law. By contrast, the Multiple Offense Penalty Schedules as set forth in this final rule set forth penalties for first, second, third, fourth, fifth, and sixth offenses, with the sixth offense resulting in the maximum penalty provided by law. The Board balanced the concerns articulated on behalf of the vending community with the need to ensure compliance and deter repeated violations. Accordingly, the Board modified the schedules to increase the number of offenses that must occur before the statutory maximum penalties** will **be imposed.**

The Board's decision to adopt these penalty schedules is based upon the following: 1) the penalties imposed by the Board prior to the increase set forth herein are no longer effective in encouraging compliance with the laws being enforced, including significant health and safety provisions; 2) the proposed penalties are more appropriate in view of inflation and provide a reasonable financial incentive for vendors to comply with the law; and 3) vendors who repeatedly violate the vending laws should be subject to higher penalties; so that the payment of penalties is not simply a part of their cost of doing business. The proposed penalty schedules comport with existing statutory minimum and maximum penalties set forth in §§17-325 and 20-472 of the Administrative Code of the City of New York.

The Board's decision to adopt schedules with penalties greater than those imposed prior to the increase set forth herein for various violations of the Health Code is further warranted in light of an amendment to §3.12 of the New York City Health Code **(set forth in Title 24 of the Rules of the City of New York)** increasing the minimum penalties for permit and license related violations to $1,000, the minimum default penalty for such charges to $2,000 and the minimum penalty for other Health Code penalties to $200. These are serious violations and these increases are also intended to impose penalties that are commensurate with the seriousness of the violations and encourage compliance with the law. The penalties are within the statutory minimum and maximum penalties set forth by §3.12 of the New York City Health Code.

Supplemental Notice:

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Environmental Control Board (ECB) by §1404(c)(3) of the New York City Charter, and in accordance with §1043(b) of the Charter, that the Environmental Control Board hereby promulgates the following sections of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. This is a final version of penalties for general and food vending violations in §§3-107, 3-109 and 3-110 of Title 48 of the Rules of the City of New York. This final version is being republished pursuant to the direction of Justice Michael D. Stallman in a decision, dated December 21, 2005, in the case of **Street Vendor Project, on behalf of its members Ousmane Moussa and Mohammed Alali v. City of New York and Emily Lloyd, Commissioner of the Department of Environmental Protection and Chairperson of the Environmental Control Board,** New York State Sup. Ct., New York County, Index No. 402339/05. The substance of the above sections is identical to that originally published as a final rule in the City Record on June 20, 2005. The rule was published as a Proposed Rule in the City Record on March 17, 2005 and the Public Hearing was held on April 18, 2005. In addition, prior to the publication of the Proposed Rule in the City Record on March 17, 2005, an earlier version of the Proposed Rule was published in the City Record on October 15, 2004 and a Public Hearing was held on November 18, 2004.

2. Statement of Basis and Purpose in City Record Oct. 10, 2008: The Environmental Control Board (ECB) had a Public Hearing on August 25, 2008 on proposed revisions of its Food Vendor Administrative Code Penalty Schedule and Health Code and Miscellaneous Food Vendor Code Violation Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above. The Board has added four new charges to the Food Vendor Administrative Code Penalty Schedule, §31-107 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York. Two of these new charges are for violations of §6-01(m) of Title 24 of the Rules of the City of New York. The addition of these new charges will enable the enforcement of a new Department of Health and Mental Hygiene (DOHMH) Rule, §6-01(m) of Title 24 of the Rules of the City of New York, which implements the requirements of the recently enacted "Green Carts" law, Local Law No. 9 of 2008. That law authorizes DOHMH to issue fresh fruits and vegetables ("Green Carts") permits, and also requires that the Green Carts have a distinctive and easily recognizable appearance in accordance with rules to be established by the commissioner. Accordingly, the new DOHMH Rule requires that all Green Carts have a distinctive umbrella, and that the umbrella be safely secured and maintained in good condition. The third charge that the Board has added to the Food Vendor Administrative Code Penalty Schedule is for a violation of §17-307(b)(1), which was added to the NYC Administrative Code by Local Law 9 of 2008, and which provides that no food vendor issued a fresh fruits and vegetables permit shall vend any food other than fresh fruits and vegetables from the cart or vehicle for which the permit was issued. The fourth charge is for a violation of §17-311(d), also added to the NYC Administrative

Code by Local Law 9 of 2008, which provides that vendors who are issued fresh fruits and vegetables permits must carry a map designating those areas of the city in which they are authorized to vend. The Board has added six new charges to the Health Code and Miscellaneous Food Vendor Violations Penalty Schedule found in §31-110 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York. Two of these new charges are for violations of §81.08 of the NYC Health Code, which applies to all food service establishments (FSEs) including mobile food units. Beginning July 1, 2008, FSEs may not store, serve, sell, or use any food or food item in the preparation of a menu item if it contains partially hydrogenated vegetable oil, shortening, or margarine that has 0.5 grams or more of trans fat per serving. One of the two added new charges is for storing, distributing or holding for service or using in preparation of a menu item, or serving a food containing artificial trans fat in violation of this Section 81.08(a). The other added charge is for failing to maintain on site the original nutrition fact label and/or ingredient label or acceptable manufacturers' documentation in violation of §81.08(c). The other four charges that the Board has added to the Health Code and Miscellaneous Food Vendor Violations Penalty Schedule found in §31-110 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York are for violations of 81.50(c) of the NYC Health Code. Section 81.50(c) requires that a FSE, including a mobile food vending unit, that is one of a group of fifteen or more FSEs doing business nationally, offering for sale substantially the same menu items, in servings that are standardized for portion size and content, that are operating under common ownership or control, or as franchised outlets of parent business, or doing business under the same name, post calorie information for menu items on menus and menu boards. These four added charges implement the provisions of §81.50(c). The Board also has added text to the sentence in the headnote at the beginning of the Health Code and Miscellaneous Food Vendor Violations Penalty Schedule to indicate that there now is a citation within that Penalty Schedule to the Rules of the City of New York (RCNY).

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which

provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and

Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-108

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-108 Fulton Fish Market/Other Public Markets Penalty Schedule.

FULTON FISH MARKET/OTHER PUBLIC MARKETS VIOLATIONS

PENALTY SCHEDULE

Repeat penalties apply for violations of the same subsection and penalty schedule description.

2nd, 3rd, 4th, 5th and subsequent (subs.) violations are defined as a violation by the same respondent with a date of occurrence within five years of the date of occurrence of the previous violation.

Code/RuleSection Description 1stOffencePenalty Repeat Penalty DefaultPenalty

TITLE 66 RCNY CHAPTER 1 SUBCHAPTER A: MARKETS GENERAL

66 RCNY 1-03(a) Failed to obtain written lease, license or permit 1000 2ndSubs. 25005000 7500

66 RCNY 1-03(b) Sale of unauthorizedmerchandise 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-03(d) Unauthorized transfer/assignment of lease, license or permit 1000 2ndSubds. 25005000 7500

66 RCNY 1-03(g) Failed to furnish information upon request 300 2nd3rd4thSubs. 600 90015003000 7500

66 RCNY 1-03(g) Failed to permit entry upon the premises 300 2nd3rd4thSubs. 600 90015003000 5000

66 RCNY 1-04(b) Failed to display license plate, permit or badge 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-04(e) Failed to clear all vehicles, produce and/or refuse as per subsec. at closing time 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-04(e) Failed to clear all vehicles, produce and/or refuse as per subsec. on a daily basis 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-04(e) Failed to clear all vehicles, produce and/or refuse as per subsec. When ordered by the Comm'r 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-05(a) Damaged, removed and/or destroyed property and/or equipment 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-05(b) Illegally discarded or transferred refuse, litter or rubbish 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-05(c) Improper discharge of sewage/drainage into tidal water. 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-05(d) Caused or permitted drains/sewers to be damaged/choked/clogged 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-05(e)(1) Failed to obey an order, notice, instruction, etc. of the Dept. or City Agency 500 2nd3rdSubs. 100020003000 5000

66 RCNY 1-05(e)(6) Refused/attempted to avoid any charge, toll, price or fee of the Comm'r 500 2nd3rdSubs. 100020003000 5000

66 RCNY 1-05(e)(7) Refusing to surrender required documents to Dept., as per subsec. 300 2nd3rd4thSubs. 600 90015003000 5000

66 RCNY 1-05(e)(9) Caused or permitted injury to any person, animal or property 300 2nd3rd4thSubs. 600 90015003000 5000

66 RCNY 1-05(f)(2) Failure to register firearms with Comm'r 300 2nd3rd4thSubs. 600 90015003000 5000

66 RCNY 1-05(h) Illegal distribution or taking of photographs/video 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-06(c) Failure to remove disabled vehicle as per subsec. 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-07 Misrepresentation of merchandise offered for sale 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-07 Use of scale not tested and approved by the City 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-08(a) Failed to provide exterminator services as per subsec. 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-08(b) Display of signage without written permission of Comm'r 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-08(c) Failed to maintain bldg., stores, etc., in sanitary condition as per subsec. 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-08(c) Obstructed sidewalk, aisle, lane, street or avenue 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-08(e) Illegal display/storage of merch., on sidewalk/loading platform 100 2nd3rdSubs. 250 5001000 2500

TITLE 66 RCNY CHAPTER 1 SUBCHAPTER A-1: PUBLIC WHOLESALE MARKETS

66 RCNY 1-14(b) Failed to notify Comm'r of ownership/employee changes as per subsec. 500 2nd3rdSubs. 100020003000 5000

66 RCNY 1-14(b) Failed to notify Comm'r of arrest/conviction of any principal 500 2nd3rdSubs. 100020003000 5000

66 RCNY 1-14(b) Failed to notify Comm'r of material changes of info. provided in subsec. (a) 500 2nd3rdSubs. 100020003000 5000

66 RCNY 1-15(a) Failed to obtain identification card as per subsec. 300 2nd3rdSubs. 75015003000 5000

66 RCNY 1-15(b) Failed to produce ID card upon demand 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-19(a)(1) Improper transfer of registration number 1,000 2ndSubs. 25005000 7500

66 RCNY 1-19(a)(2) Unauthorized sublease of registration number, premises and/or business 1,000 2ndSubs. 25005000 7500

66 RCNY 1-19(b) Failed to affix & display name and reg. number on premises &/or vehicles 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-19(c) Failed to maintain books, records, etc. as per subsec. 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-19(c) Failed to retain books, records, etc., and make available for inspection 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-20.7(a)(1) Interfered with lawful duties of Market Manager or his staff 1500 2ndSubs. 30005000 7500

66 RCNY 1-20.7(a)(1) Interfered with/obstructed orderly function of Market 1000 2ndSubs. 30005000 7500

66 RCNY 1-20.7(a)(2) Interfered with/obstructed any operation, etc., of mkt. registrant 250 2nd3rdSubds. 50010003000 5000

66 RCNY 1-20.7(b)(3) Conducted business using unregistered name 1000 2ndSubds. 25005000 7500

66 RCNY 1-20.7(b)(11) Employed individuals without approved ID cards 1000 2ndSubs. 25005000 7500

66 RCNY 1-20.7(b)(12) Use of unregistered/uninsured vehicle 100 2nd3rdSubs. 250 5001000 2500

TITLE 22 NYC ADMINISTRATIVE CODE CHAPTER 1-B: OTHER PUBLIC MARKETS

Admin. Code 22-252(a) Daily failure to obtain identification card as per subsec. (between 11 and 30 days) 2500 Subs. 5000 5000

Admin. Code 22-253(a) Daily failure to register wholesale and/or market businesses, as per subsec. (single day) 1000 2ndSubs. 25005000 5000

Admin. Code 22-253(a) Daily failure to register wholesale and/or market businesses, as per subsec. (between 2 and 10 days) 2500 Subs. 5000 5000

Admin. Code 22-253(a) Daily failure to register wholesale and/or market businesses, as per subsec. (between 11 and 30 days) 3500 Subs. 5000 5000

Admin. Code 22-262 Daily failure to surrender and/or cease using regis. certif. and/or number (single day) 2500 Subs. 5000 5000

Admin. Code 22-262 Daily failure to surrender and/or cease using regis. certif. and/or number (between 2 and 10 days) 3500 Subs. 5000 5000

Admin. Code 22-262 Daily failure to surrender and/or cease using regis. certif. and/or number (between 11 and 30 days) 5000 Subs. 5000 5000

Admin. Code 22-262 Daily failure to surrender and/or cease using identification card (single day) 1000 2ndSubs. 25005000 5000

Admin. Code 22-262 Daily failure to surrender and/or cease using identification card (between 2 and 10 days) 2500 Subs. 5000 5000

Admin. Code 22-262 Daily failure to surrender and/or cease using identification card (between 11 and 30 days) 3500 Subs. 5000 5000

TITLE 66 RCNY CHAPTER 1 SUBCHAPTER B: FULTON FISH MARKET

66 RCNY 1-23(a)(1) Failed to possess identification card as per subsec. 300 2nd3rdSubs. 75015003000 5000

66 RCNY 1-23(a)(2) Failed to display identification card as per subsec. 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-24(a) Operated an unloading business without a license 1000 2ndSubs. 25005000 5000

66 RCNY 1-24(b) Operated a loading business without a license 1000 2ndSubs. 25005000 5000

66 RCNY 1-25(d)(1) Unauthorized transfer of license 1000 2ndSubs. 25005000 7500

66 RCNY 1-25(d)(2) Failed to provide notice of addition of principal 500 2nd3rdSubs. 100025005000 7500

66 RCNY 1-26(a) Failed to maintain required insurance 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-26(b)(1) Failed to notify Comm'r of material change in license info. 500 2nd3rdSubs. 100025005000 7500

66 RCNY 1-26(c) Failed to notify Comm'r of arrest/conviction of principal, employee or agent 500 2nd3rdSubs. 100025005000 7500

66 RCNY 1-28(d) Failed to surrender license upon suspension or revocation 2500 Subs. 5000 5000

66 RCNY 1-28(d) Failed to surrender identification card upon suspension/revocation of license (principal, employee or agent) 1000 2ndSubs. 25005000 5000

66 RCNY 1-29 Failed to comply with conditions in unloading license 300 2nd3rd4thSubs. 600 90015003000 5000

66 RCNY 1-29(a)(3), (b)(3) Failed to unload in required order, as per subsec. 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-29(b)(1) Unloading outside approved, designated and/or assigned areas 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-29(b)(4) Refused to unload trucks in approved or assigned unloading area 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-29(c)(1) Charged rates in excess of those specified in unloading license (Unloader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-29(c)(1) Failed to post rates in appropriate locations (Unloader) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-29(c)(2) Failed to verify bill of lading/obtain signature/record license # (Unloader) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-29(c)(3) Failed to keep/make available weekly records (Unloader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-29(d)(1) Unloader engaged in business/activity interfering with unloading business 250 2nd3rdSubs. 50010003000 5000

66 RCNY 1-29(d)(2) Interfered with market manager as per subsec. (Unloader) 1500 2ndSubs. 30005000 7500

66 RCNY 1-29(d)(2) Obstructed unloading process as per subsec. (Unloader) 1000 2ndSubs. 25005000 7500

66 RCNY 1-29(d)(3) Requested/accepted unauthorized fees and/or gratuities (Unloader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-29(d)(3) Charged unauthorized fees (Unloader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-30 Failed to comply with loading license conditions (Loader) 300 2nd3rd4thSubs. 600 90015003000 5000

66 RCNY 1-30(a)(1) Failed to post copies of rates (Loader) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-30(a)(2) Charged rates in excess of those specified in loading license (Loader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-30(b)(1) Loaded outside designated/approved areas (Loader) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-30(b)(3) Loaded outside designated hours (Loader) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-30(c)(1) Charged fees not specified in license (Loader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-30(c)(1) Solicited or accepted unauthorized gratuities (Loader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-30(c)(3) Refused to perform loading services when space is available (Loader) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-30(c)(4) Forced another to use or prevented another from using loading services (Loader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-30(c)(4) Solicited, threatened and/or agreed to refuse loading services (Loader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-30(c)(5) Moved or interfered with any vehicle, as per subsec. (Loader) 250 2nd3rdSubs. 50010003000

5000

66 RCNY 1-31(a) Operated wholesale or delivery seafood business without registration or stand permit from Comm'r 1000 2ndSubs. 25005000 5000

66 RCNY 1-32(d) Failed to notify Comm'r of changes in registration information. (Wholesaler/Deliverer) 500 2nd3rdSubs. 100025005000 7500

66 RCNY 1-32(g) Failed to surrender identification card upon suspension/revocation of registration (Wholesaler/Deliverer) 1,000 2ndSubs. 25005000 5000

66 RCNY 1-33(a)(1) Unauthorized transfer of registration number and/or stand permit (Wholesaler) 1,000 2ndSubs. 25005000 7500

66 RCNY 1-33(a)(2) Allowed use of registration number/business name by others (Wholesaler) 1,000 2ndSubs. 25005000 7500

66 RCNY 1-33(a)(3) Allowed another to place seafood in stand space (Wholesaler) 1,000 2ndSubs. 25005000 7500

66 RCNY 1-33(b)(2) Failed to affix and prominently display name and/or reg.number (Wholesaler) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-33(d) Failed to keep and/or make available records, bills, etc. as per subsec. (Wholesaler) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-33(e) Failed to submit proof of worker's comp. coverage as per subsec. (Wholesaler) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-33(f) Failed to maintain required liability insurance (Wholesaler) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-33(g) Failed to procure/maintain payment bond (Wholesaler) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-33(i)(1) Solicited unloader to unload out of order (Wholesaler) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-33(i)(2) Obstructed orderly function of market (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(2) Interfered with market manager (Wholesaler) 1500 2ndSubs. 30005000 7500

66 RCNY 1-33(i)(3) Authorized another to use business name (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(4) Authorized another to use registration number (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(5) Subleased or allowed use of premises by unregistered person (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(6) Authorized another to use permit to place seafood on street (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(7) Conducted business under unregistered name (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(8) Discarded seafood contrary to requirements of subsec. (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(10) Failed to notify Comm of change of ownership of business employee status (Wholesaler) 500

2nd3rdSubs. 100025005000 7500

66 RCNY 1-34(a) Operated a seafood delivery operation in non-designated area (Deliverer) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-34(b)(1) Operated vehicle without valid driver's license (Deliverer) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-34(b)(2) Operated vehicle without registration, inspection sticker and/or insurance coverage (Deliverer) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-34(b)(3) Failed to display sticker and/or decal on vehicle, as per subsec. (Deliverer) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-34(c) Offered seafood for resale to public without wholesale registration (Deliverer) 1000 2ndSubs. 25005000 5000

66 RCNY 1-35 Failed to comply with order of market manager regarding safety/order/health in market area 1000 2ndSubs. 25005000 7500

66 RCNY 1-36(b)(2) Interfered with or intentionally damaged properly/equipment used for loading/unloading purposes 1000 2ndSubs. 25005000 5000

TITLE 22 NYC ADMINISTRATIVE CODE CHAPTER 1-A: FULTON FISH

MARKET DISTRIBUTION AREAS

Admin. Code 22-204(a) Operated an unloading business or provided unloading services without a license 1000 2ndSubs. 25005000 5000

Admin. Code 22-206(a) Operated an loading business or provided loading services without a license 1000 2ndSubs. 25005000 5000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-108) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and

(ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including

31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-109

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-109 General Vendor Penalty Schedule.

GENERAL VENDOR PENALTY SCHEDULE

Multiple Offense Schedule (MOS): 1st Violation $50 (default $50); 2nd Violation $100 (default $100); 3rd Violation $250 (default $250); 4th Violation $500 (default $1,000); 5th Violation $750 (default $1,000); 6th and subsequent Violation $1,000 (default $1,000).

A 2nd, 3rd, 4th, 5th, 6th or subsequent violation is a violation by the same respondent of a section of law listed in this Penalty Schedule that is subject to an "MOS" penalty as indicated in this Penalty Schedule, with a date of occurrence within 2 years of the date of occurrence of the previous violation(s), and where the previous violation(s) was a violation of any section of law that is subject to an "MOS" penalty as indicated in this Penalty Schedule.

* Pursuant to §3-81(b), a late admit fee of $30.00 will be added to the penalty for this charge for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Unless otherwise indicated, all citations are to the NYC Administrative Code.

Section/Rule Description Penalty Default

Admin. Code 20-453* Unlicensed general vendor 250 1,000

Admin. Code 20-461(a) Failure to carry & exhibit license on demand MOS MOS

Admin. Code 20-461(b) Failure to wear license while vending MOS MOS

Admin. Code 20-462 Failure to notify DCA of change of info. on license application MOS MOS

Admin. Code 20-463 Failure to keep or produce required written record MOS MOS

Admin. Code 20-464(a) Failure to permit regular inspections MOS MOS

Admin. Code 20-464(b) Failure to provide name/address of supplier or place of storage MOS MOS

Admin. Code 20-464(c) Vending of prohibited merchandise MOS MOS

Admin. Code 20-464(d) Transfer of license without approval of Comm. MOS MOS

Admin. Code 20-465(a) Vending on sidewalk less than 12 ft. wide, or not at curb MOS MOS

Admin. Code 20-465(b) Using more than 8 ft. parallel to curb or 3 ft. from curb MOS MOS

Admin. Code 20-465(c) Stand or goods touching or leaning against building MOS MOS

Admin. Code 20-465(d) Stand or goods against display window or within 20 ft. of entrance MOS MOS

Admin. Code 20-465(e) Vending in bus stop, taxi stand or within 10 ft. of drive/subway/corner MOS MOS

Admin. Code 20-465(f) Violation of parking rules and regulations MOS MOS

Admin. Code 20-465(g) Vending in prohibited zone MOS MOS

Admin. Code 20-465(i) Vending on median strip not intended for mall or plaza MOS MOS

Admin. Code 20-465(j) Vending within Parks jurisdiction without Parks Comm. approval MOS MOS

Admin. Code 20-465(k) Failure to move after notice of exigent circumstances given MOS MOS

Admin. Code 20-465.1 Vending at times/places restricted by rule of Vendor Review Panel. MOS MOS

Admin. Code 20-466 Transfer of goods/vehicle/stand to unlicensed vendor MOS MOS

Admin. Code 20-465(m) Vending over ventilation grill, cellar door, manhole, transformer vault or subway access grating MOS MOS

Admin. Code 20-465(n) Display of goods on sidewalk surface, blanket, trash receptacle or board placed on sidewalk surface; display exceeding 5 feet in height from ground level; or less than 24 inches above sidewalk, or less than 12 inches above sidewalk where display is vertical. MOS MOS

Admin. Code 20-465(o) Vending from a parked motor vehicle MOS MOS

Admin. Code 20-465(p) Illegal use of electricity, electrical generating equipment, oil or gasoline powered equipment, machinery of any kind MOS MOS

Admin. Code 20-465(q) Vending within 20 ft. of sidewalk cafes; within 5 ft. of bus shelters, newsstands, public telephones, disabled access ramps; within 10 ft. of residental entrance or exit MOS MOS

Admin. Code 20-474.1 Unlicensed distribution of goods to a vendor MOS MOS

Admin. Code 20-474.2 Distributor's delivery vehicle without the required ID MOS MOS

6 RCNY 2-301 Failure to prove payment of taxes when renewing license MOS MOS

6 RCNY 2-302(a) Failure to notify DCA after 4 or more violations MOS MOS

6 RCNY 2-302(b) Failure to answer Notice of Violation/pay penalty within 30 days MOS MOS

6 RCNY 2-302(c) Failure to notify DCA of change of address or telephone number MOS MOS

6 RCNY 2-303(a) Failure to keep daily gross receipts record MOS MOS

6 RCNY 2-303(b) Failure to make records available to DCA MOS MOS

6 RCNY 2-302(d) Failure to notify DCA of supplier's address change MOS MOS

6 RCNY 2-304(a) Vending in road where parking/standing Prohibited MOS MOS

6 RCNY 2-304(b) Failure to comply with parking meter requirement MOS MOS

6 RCNY 2-304(c) Vending near fire hydrant or in safety zone MOS MOS

6 RCNY 2-305(a) Vending at street fair without exemption MOS MOS

6 RCNY 2-305(b) Vending violation at street fair MOS MOS

6 RCNY 2-306 Failure to move after notice of exigent circumstances given MOS MOS

6 RCNY 2-307(a) Misrepresentations concerning merchandise (Consumer Prot. Law) MOS MOS

6 RCNY 2-307(b) Failure to display price MOS MOS

6 RCNY 2-307(c) Failure to offer receipt for purchase MOS MOS

6 RCNY 2-307(d) Failure to retain receipts MOS MOS

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-109) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added (Note, identical to City Record June 20, 2005 addition) City Record Jan. 26, 2006 §3, eff. Feb. 25, 2006. [See T48 §3-107 Note 1]

Section added City Record June 20, 2005 §10, eff. July 20, 2005. [See T48 §3-101 Note 1]

Third undesignated par amended City Record Nov. 25, 2008 §11, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers

("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-110

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-110 Health Code and Miscellaneous Food Vendor Violations Penalty Schedule.

HEALTH CODE AND MISCELLANEOUS FOOD VENDOR

VIOLATIONS PENALTY SCHEDULE

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section/Rule Description Penalty Default

NYC Health Code 81.07(a) Food not free of or protected against contamination 300 600

NYC Health Code 81.09 Potentially hazardous foods at improper temperatures 300 600

NYC Health Code 81.13(a) Food worker with communicable disease 300 600

NYC Health Code 81.15(a) Failure to have required Food Protection Certificate 500 1,000

NYC Health Code 81.07(l) Foods prepared or served with bare-hand contact 300 600

NYC Health Code 81.21(a) Plumbing inadequate 200 400

NYC Health Code 81.37(k) Garbage and trash improperly stored 200 400

NYC Health Code 81.27 Smoking, use of tobacco, or spitting 200 400

NYC Health Code 81.29(c) Handwashing facilities not provided 200 400

NYC Health Code 81.37(a) Cart, utensils, equipment unclean 200 400

NYC Health Code113.03(c)(2) or 113.07 Vending frozen desserts w/o appropriate permit(s) 1,000 2,000

NYC Health Code 181.17 Smoking in elevator, supermarket or assembly hall 200 400

NYC Health Code 81.07(i) Food from unapproved source 300 600

NYC Health Code 81.09(i) Appropriately scaled metal stem thermometer to evaluate food temps., not provided 300 600

NYC Health Code 81.08(a) Food containing artificial trans fat is stored/distributed/held for service/used in preparation of menu item or served 200 400

NYC Health Code 81.08(c) Original nutritional fact labels and/or ingredient labeling or acceptable manufacturers' documentation not maintained on site 200 400

NYC Health Code 81.13(b) Food worker not wearing hair restraint 200 400

NYC Health Code 81.19(b) Shatter proof or shielded light bulb not provided when required 200 400

NYC Health Code 81.19(c) Inadequate ventilation 200 400

NYC Health Code 81.23(a) Vermin, insects or other pests present 300 600

NYC Health Code 81.31 Equipment not clean; improperly maintained 300 600

NYC Health Code 81.37(a) Wiping cloth used on food contact surfaces not stored in sanitizing solution 300 600

NYC Health Code 81.50(c) Calorie content not posted for each menu item served in portions, size and content of which are standardized 200 400

NYC Health Code 81.50(c) Caloric content range not posted on menus and/or menu boards for each flavor/variety/size of each menu item offered for sale 200 400

NYC Health Code 81.50(c) Calorie content or range not posted for menu item offered as combination meal 200 400

NYC Health Code 81.50(c) Posted caloric content deficient in that size and/or font for posted calories not as prominent as name of the menu item or price 200 400

NYC Health Code 89.03(a) Operating a mobile food unit without a permit on private property 1,000 2,000

NYC Health Code 89.03(b) Unlicensed Vendors on private property 1,000 2,000

24 RCNY 6-01(l) Non-processing unit being operated without proper food processing permit 1,000 1,000

NYC Health Code 131.041 Failure to remove locking device from discarded refrigerator 200 400

NYC Health Code 131.11 Waste receptacles 200 400

NYC Health Code 139.05 Littering on public transport facility 200 400

NYC Health Code 139.07(a) Smoking on public transport facility 200 400

NYC Health Code 151.03(a) Rat Infestation 200 400

NYC Health Code 153.01 Littering 200 400

NYC Health Code 153.03 Agitation of materials prohibited 200 400

NYC Health Code 153.05 Inadequate precautions, construction/demolition 200 400

NYC Health Code 153.19 Dirty or obstructed sidewalk 200 400

NYC Health Code 153.07 Exposure of dirty rags, barrels, boxes 200 400

NYC Health Code 161.03 Control of dogs and other animals to prevent nuisance 200 400

NYC Health Code 161.05 Dogs to be restrained 200 400

NYC Health Code 161.04 Dog licenses-no tag on collar in public places 200 400

NYC Health Code 11.66 Owning or harboring a dog or cat which has not been immunized against rabies 500 1,000

NYC Health Code 161.01 Unlawfully keeping/selling/giving a wild animal 500 1,000

NYC Health Code 175.05(a) Excessive radiation exposure 200 400

NYC Health Code 175.52(a) Radiation installation without permit 200 400

NYC Health Code 181.03(a) Spitting 200 400

NYC Health Code Provision Miscellaneous NYC Health Code Provision-Miscellaneous Excluding NYC Health Code Sections Relating to Violations for Single Room Occupancies or to Lead Abatement. 200 400

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-110) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section amended (Note, amendments identical to City Record June 20, 2005 amendments) City Record Jan. 26, 2005 §§4, 5, eff. Feb. 25, 2006. [See T48 §3-107 Note 1]

Section amended City Record June 20, 2005 §11, eff. July 20, 2005. [See T48 §3-101 Note 1]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Opening par amended City Record Nov. 25, 2008 §12, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Schedule NYC Health Code 81.08(a) added City Record Oct. 10, 2008 §5, eff. Nov. 9, 2008. [See T48 §3-107 Note 2]

Schedule NYC Health Code 81.08(c) added City Record Oct. 10, 2008 §5, eff. Nov. 9, 2008. [See T48 §3-107 Note 2]

Schedule NYC Health Code 81.50(c) [Four entries] added City Record Oct. 10, 2008 §5, eff. Nov. 9, 2008. [See T48 §3-107 Note 2]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a

rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of

users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-111 Hazardous Materials Penalty Schedule.

HAZARDOUS SUBSTANCES EMERGENCY RESPONSE LAW

PENALTY SCHEDULE

All citations, unless otherwise indicated are to the NYC Administrative Code.

A second violation is a violation by the same respondent of the same section of law with a date of occurrence within three (3) years of the date of occurrence of the previous violation.

* The following shall be considered environmentally sensitive areas: wetlands and wetland buffer areas; National and State parks; critical habitats for endangered and threatened plant and animal species; wilderness and natural areas; marine sanctuaries; conservation areas; preserves; wildlife areas; scenic, wild or recreational rivers; seashore and lakeshore recreational areas; critical biological resource areas; National and State protected and critical environmental areas (CEAS) as defined in 6 NYCRR Section 617.2(i).

Section/Offense/Penalty Mitigating Factors (Cumulative) Aggravating Factor(Cumulative, up to a Total Penalty of $10,000) Default

24-609(b) 1st offenseFailed to comply with notification requirements upon release of hazardous substance $4,000

1. Subtract $500, if telephone within 24 hours. Telephone notification shall be found where respondent provided DEP with all of the telephone notification requirements as provided in 15 RCNY 11-03(b) within 24 hours of when respondent knows or has reason to know of a release.2. Subtract $500, if respondent did provide written notification. Written notification shall be found where respondent provided DEP with all of the written notification requirements as provided in 15 RCNY 11-03 (c).3. Subtract $1000, if began abating release within 3 hours of when respondent knew or had reason to know of a release. 1. Add $2,500, if release occurred within 1,000 feet of any of the following: residence district as defined by the New York City Zoning Resolution; school, highway, parkway or any other three lane roadway; environmentally sensitive area*; hazardous/toxic substance(s) industry/facility required to file under the New York City Community Right-to-know Law, Title 24 Chapter 7 of the New York Administrative Code.2. Add $2,500, if amount of release was equal to or greater than twice the Reportable Quantity.3. Add $2,500, if release caused actual injury to wildlife and/or human health.4. Add $2,500 if willful or intentional release of the listed hazardous substance. $10,000

24-609(b)2nd Offense$9,000 SAME AS ABOVE SAME AS ABOVE $10,000

24-610(c) 1st Offense willfully violated or failed or refused to comply with Commissioner's Order $3,000 1. Subtract $1,000, if complied with that portion of Scope of Work Order relating to securing of premises/building.2. Subtract $500, if complied with that portion of Scope of Work Order relating to identification of all hazardous substances. 1. Add $1,500, if failed to comply with that portion of Scope of Work Order relating to Bills of Lading and Hazardous Waste Manifests.2. Add $1,500, if total non-compliance, i.e. failed to comply with any part of Commissioner's Order. (In such cases, there could be no mitigating factors.) $10,000

24-610(c) 2nd Offense $4,500 SAME AS ABOVE SAME AS ABOVE $10,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-111) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

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Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-112 Health Code Lead Abatement Penalty Schedule.

HEALTH CODE LEAD ABATEMENT PENALTY SCHEDULE

This Health Code Lead Abatement Penalty Schedule is for the purpose of enforcing Notices of Violation returnable to ECB that were issued prior to December 13, 1999, and that cite sections of law set out in the Health Code Lead Abatement Penalty Schedule. Current lead-abatement violations are no longer returnable to ECB.

A second violation is a violation by the same respondent that is within the same category of this penalty schedule as the prior violation, and must have a date of occurrence that is within 2 years of the date of occurrence of the prior violation.

All citations are to the New York City Health Code.

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section/Rule Description 1st Violation Penalty 2nd Violation Penalty Default

Filing Procedures

173.14(c)(1)(aa) Failure to file timely notice of start of abatement 450 900 1,000

173.14(c)(1)(bb) Failure to give required info on start of abatement notice 100 200 1,000

173.14(c)(1)(dd) No timely notice of change in notice of abatement 100 200 1,000

Recordkeeping

173.14(c)(3)(aa) Failure to make/keep records of abatement performed 300 600 1,000

173.14(c)(3)(bb) Failure to maintain environmental test results/records 300 600 1,000

173.14(c)(3)(cc) Failure to retain or permit inspection of records 300 600 1,000

Wet Scraping and Repainting

173.14(d)(1)(aa) Failure to use scraper/water mist to remove paint 300 600 1,000

173.14(d)(1)(bb) Failure to properly re-seal scraped surfaces 300 600 1,000

Removal

173.14(d)(2)(aa) Failure to remove paint by planing/chemical stripping 300 600 1,000

173.14(d)(2)(bb) Use of prohibited method of paint removal 450 900 1,000

Enclosure

173.14(d)(3)(aa) Failure to properly enclose walls 300 600 1,000

173.14(d)(3)(bb) Failure to properly enclose chewable surfaces 300 600 1,000

173.14(d)(3)(cc) Failure to tightly seal seams 300 600 1,000

173.14(d)(3)(dd) Failure to properly seal abated surfaces 300 600 1,000

173.14(d)(3)(ee) Use of enclosure method where not proper 300 600 1,000

Encapsulation

173.14(d)(4)(aa) Failure to properly prepare surfaces 100 200 1,000

173.14(d)(4)(bb) Use of unapproved encapsulant 100 200 1,000

173.14(d)(4)(cc) Use of improper material as encapsulant 100 200 1,000

173.14(d)(4)(dd) Use of encapsulation method where not proper 300 600 1,000

Replacement

173.14(d)(5) Improper replacement or removal 300 600 1,000

Abatement Area Preparation (Less than or equal to 6sf per room)

173.14(e)(2)(aa)(i) Failure to post warning signs/notices (< 6sf) 100 200 1,000

173.14(e)(2)(aa)(ii) Failure to remove/cover movable objects (< 6sf) 100 200 1,000

173.14(e)(2)(aa)(iii) Failure to cover floor prior to/during abatement (< 6sf) 100 200 1,000

173.14(e)(2)(aa)(iv) Failure to correct conditions causing paint to peel (< 6sf) 300 600 1,000

173.14(e)(2)(aa)(v) Starting abatement prior to full area preparation (< 6sf) 100 200 1,000

173.14(e)(2)(aa)(vi) Failure to instruct occupants to avoid work area (< 6sf) 100 200 1,000

Abatement Area Preparation (More than 6sf per room)

173.14(e)(2)(bb)(i) Failure to post warning signs/notices 300 600 1,000

173.14(e)(2)(bb)(i) Failure to remove/cover movable objects 300 600 1,000

173.14(e)(2)(bb)(i) Failure to correct conditions causing paint to peel 300 600 1,000

173.14(e)(2)(bb)(i) Starting abatement prior to full area preparation 300 600 1,000

173.14(e)(2)(bb)(i) Failure to instruct occupants to avoid work area 300 600 1,000

173.14(e)(2)(bb)(ii) Failure to seal abatement area to prevent access 450 900 1,000

173.14(e)(2)(bb)(iii) Failure to isolate abatement area from other areas 450 900 1,000

173.14(e)(2)(bb)(iv) Failure to properly cover floor/movable objects 300 600 1,000

173.14(e)(2)(bb)(v) Failure to properly seal openings 300 600 1,000

Health and Safety

173.14(e)(3)(aa) Failure to minimize dispersal of lead 450 900 1,000

173.14(e)(3)(bb) Improper maintenance of flammable materials/data 100 200 1,000

173.14(e)(3)(cc) Failure to properly store/dispose of contaminated material 300 600 1,000

173.14(e)(3)(dd) Failure to properly isolate clean changing area 100 200 1,000

Daily Clean-up

173.14(e)(4)(aa) Failure to properly clean area daily 300 600 1,000

Final Clean-up

173.14(e)(4)(bb)(i) Failure to properly mist/sweep/remove poly sheeting 300 600 1,000

173.14(e)(4)(bb)(ii) Failure to properly HEPA vacuum surfaces 300 600 1,000

173.14(e)(4)(bb)(iii) Failure to properly wash surfaces 300 600 1,000

173.14(e)(4)(bb)(iv) Failure to properly perform second HEPA vacuuming 300 600 1,000

173.14(e)(4)(bb)(v) Failure to properly inspect/reclean abated surfaces 300 600 1,000

Final Inspection

173.14(e)(4)(cc) Failure to properly perform final inspection 450 900 1,000

Clearance for re-occupancy

173.14(e)(4)(dd) Allowed re-occupancy prematurely 450 900 1,000

173.14(e)(6) Failure to provide requested clearance dust test results 450 900 1,000

Miscellaneous

173.14 Miscellaneous violations 450 1,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-112) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Opening par added City Record June 20, 2005 §13, eff. July 20, 2005. [See T48 §3-101 Note 1]

Fourth par amended City Record Nov. 25, 2008 §13, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

FOOTNOTES

6

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In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included

within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-113

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-113 Hudson River Park Rules Penalty Schedule.

HUDSON RIVER PARK RULES PENALTY SCHEDULE

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

All citations are to 21 NYCRR Part 751.

Section/Rule Description Penalty Default

751.4(a) Unauthorized presence in park when closed to public 50 200

751.4(b)(1) Failure to comply with directives of Police officer/Park employee 250 500

751.4(b)(2) Failure to comply with directions/prohibitions on signs 50 200

751.4(c) Failure to comply with orders of HRPT 250 500

751.5(h) Failure to have/ display/ comply with required permit 50 200

751.6(a) Injury/ defacement/ abuse of property or equipment 500 500

751.6(b)(1) Intentional destruction/ removal/ permanent damage to tree(s) 500 500

751.6(b)(1) Destruction/defacement/abuse of park vegetation 250 500

751.6(b)(2) Walking/permitting animal /child to walk on newly seeded grass 50 200

751.6(b)(3) Unauthorized entry/allowing entry into fenced/restricted area 50 200

751.6(b)(4) Unauthorized possession of gardening tool/plant 50 200

751.6(b)(5) Unauthorized use of metal detector 50 200

751.6(c) Littering or unlawful use of park waste receptacle 100 300

751.6(c)(2) Illegal discharge into park waters 250 500

751.6(c)(3) Unlawful dumping 500 500

751.6(c)(4) Storing/leaving unattended personal belongings 50 200

751.6(d) Possession of glass container in restricted area 50 200

751.6(e) Failure to comply with restrictions re: aviation 100 400

751.6(g)(1) Molest/kill/remove/ possess animal/ nest egg. etc. 500 500

751.6(g)(2) Unlawful feeding of animals 50 200

751.6(i) Unleashed or uncontrolled animals in park 100 200

751.6(i) Unleashed or uncontrolled animals in park-2nd Offense 200 400

751.6(i) Unleashed or uncontrolled animals in park-3rd Offense 300 500

751.6(i) Unleashed or uncontrolled animals in park-4th Offense 400 500

751.6(i) Unleashed or uncontrolled animals in park-5th Offense 500 500

751.6(j) Failure to comply with horseback riding restrictions 50 200

751.6(k) Fail to remove animal waste 50 100

751.6(l) Unlawful urination/ defecation in park 50 300

751.6(m)(1) Disorderly behavior involving entrance/exit onto park property 50 200

751.6(m)(2) Unlawful climbing on park property 50 200

751.6(m)(3) Failure to pay a fee/charge 50 200

751.6(p) Obstruction of benches, sitting areas 50 200

751.6(q) Unauthorized camping/ erection of tent or shelter 250 500

751.6(r) Spitting on park building/ monument/ structure or in the water 100 200

751.6(s) Unlawful use of fountain/pool/water/ for personal/ animal hygiene 50 200

751.6(u) Use of prohibited vessels,i.e. jet skis, cigarette boats, etc. 100 400

751.7(a)(1) Unauthorized special event/ demonstration without permit 250 500

751.7(a)(2) Unlawful erection of structure/stand/booth/platform/exhibit/artwork 250 500

751.7(b) Unauthorized vending 250 500

751.7(c) Unauthorized posting/ display of notices/ signs/ banners, etc. 50 200

751.7(d)(1) Unreasonable noise 350 500

751.7(d)(2) Unauthorized/un-permitted use of sound reproduction device 140 350

751.7(d)(3) Playing instrument/radio, etc. during unauthorized hours 140 350

751.7(d)(4) Unauthorized noise for advertising/ commercial purposes 500 500

751.7(e) Commercial/ Photo production without permit/ restricting access 250 500

751.7(f)(1) Unauthorized consumption/possession of alcoholic beverage 25 100

751.7(g) Failure to comply with bathing restrictions 50 200

751.7(h) Failure to comply with fishing restrictions 50 200

751.7(i) Failure to comply with bicycle riding restrictions 50 200

751.7(j) Planting/pruning/interfering with tree/vegetation without permit 50 200

751.7(k)(1) Failure to comply with restriction re:fires 50 200

751.7(k)(2) Unlawful disposal of flammable materials 50 200

751.7(m) Unauthorized construction/storage of materials 500 500

751.7(n) Unauthorized excavation 500 500

751.7(o) Failure to comply with area use restrictions 50 200

751.7(q) Unauthorized distribution or demonstration of products 100 400

751.7(r) Failure to comply with rollerblading/skating etc. Restrictions 50 100

751.8(a)(1) Operating/anchoring/mooring etc. boat in unauthorized area 500 500

751.8(b) Failure to operate a vessel in a safe/non-reckless manner 100 400

751.8(c) Operating a vessel without muffler that muffles noise in a reasonable manner 350 500

751.8(d) Prohibited use of vessels in an authorized swimming or wading area 100 400

751.8(e) Unlawful use of vessel 500 500

751.8(f) Use of excessive speed by vessel 50 200

751.8(g) Failure to remove sunken/disabled vessel 500 500

751.8(h) Unauthorized overnight occupancy of vessels 50 200

751.8(i) Interference with emergency vessel boarding 100 400

751.8(j)(1) Use of unauthorized toilets on vessel 250 500

751.8(j)(2) Unauthorized and non-emergency repair of vessels 100 400

751.8(j)(3) Failure to deposit garbage in designated receptacles 100 400

751.8(j)(4) Prohibited use /storage of welding machinery 50 250

751.8(l)(1) Failure to meet docking requirements/ altering docks 50 200

751.8(l)(2)(i) Mooring of a vessel in an unauthorized area 50 200

751.8(l)(2)(ii) Mooring of a vessel with improper/inadequate ties 50 200

751.8(m)(1) Improper maintenance of vessel or equipment 50 200

751.8(m)(2) Unauthorized structural modification on vessel 500 500

751.8(n) Failure to possess proper safety equipment on vessel 50 200

751.8(o) Unauthorized storage of dinghies, kayaks & canoes 50 250

751.8(p) Unauthorized boat launching 50 250

751.8(q) Use of non-motorized vessels in restricted areas 100 400

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-113) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

First par amended City Record Nov. 25, 2008 §14, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31

§§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City

Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-114

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-114 Landmarks Preservation Penalty Schedule.

LANDMARKS PRESERVATION PENALTY SCHEDULE

All Citations below are to the NYC Administrative Code.

The mitigation (Mitig.) is imposed where the cited illegal condition has been corrected by the first scheduled hearing date.

Section Description 1stoffensePenalty 1stoffenseMitig. 1stoffenseDefault 2ndoffensePenalty 2ndoffenseDefault

25-310 Work without or in violation of a Permit for Minor Work-Alteration to exterior architectural feature-Type A 500 250 3,000 5,000 5,000

25-310 Work without or in violation of a Permit for Minor Work-Alteration to storefront-Type A 1,500 750 3,000 5,000 5,000

25-310 Work without or in violation of a Permit for Minor Work-Alteration to interior landmark-Type A 1,000 500 3,000 5,000 5,000

25-310 Work without or in violation of a Permit for Minor Work-Modification of existing bulk of building-Type A

1,500 750 3,000 5,000 5,000

25-310 Work without or in violation of a Permit for Minor Work-Elimination of greenspace-Type A 500 250 3,000 5,000 5,000

25-310 Work without or in violation of a Permit for Minor Work-Alteration to non-building improvement-Type A 500 250 3,000 5,000 5,000

25-310 Work without or in violation of a Permit for Minor Work-Failure to submit periodic inspection reports-Type A 2,500 1,250 3,000 5,000 5,000

25-310 Work w/o or in violation of a Permit for Minor work (Type C) flag, signs, banners, awnings 250 125 500 500 500

25-310 Work w/o or in violation of a Permit for Minor work (Type C) Miscellaneous violations 100 50 500 500 500

25-322(b) Failing to notify lessee of Landmark status in Commercial space 250 125 500 500 500

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Alteration to exterior architectural feature-Type A 500 250 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Alteration to storefront-Type A 1,500 750 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Alteration to interior landmark-Type A 1,000 500 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Modification of existing bulk of building-Type A 1,500 750 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Elimination of greenspace-Type A 500 250 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Alteration to non-building improvement-Type A 500 250 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Failure to submit periodic inspection reports-Type A 2,500 1,250 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect (Type C)-flag, signs, banners, awnings 250 125 500 500 500

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect (Type C)-Miscellaneous violations 100 50 500 500 500

25-311 Failure to maintain an improvement in good repair (Type B) 3,500 1,750 5,000 5,000 5,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-114) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record Nov. 14, 2005 §1, eff. Dec. 14, 2005. [See Note 1]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 14, 2005:

The Environmental Control Board is making the following revisions to the ECB Penalty Schedules: (1) The Board is revising the Landmarks Preservation Penalty Schedule found in §3-114 of Subchapter G of Chapter 3 of Title 48, of the Rules of the City of New York. These revisions are made following enactment of Local Law 18 of 2005, which modifies the Landmarks Preservation Law by authorizing the Landmarks Preservation Commission to issue Notices of Violation for failure to maintain landmark structures in good repair. The revisions include re-designating former type "B" violations as type "C" violations, and creating a new type "B" violation for failure to maintain an improvement in good repair. Additionally, a second-offense penalty category is added to the various landmarks charges in order to provide a more effective deterrent and to encourage violators to bring their landmark buildings into compliance with the law; (2) The Board is revising the Department of Transportation Penalty Schedule found in §3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to include six new charges. These charges are for violations of already existing DOT rules and are being added to the ECB Penalty Schedule to enable DOT to cite these rules on their Notices of Violation. Three of the charges pertain to the storage of tool carts and three pertain to street operations. The toolcart charges apply when a toolcart is (a) stored on the roadway without a permit; (b) stored on the sidewalk without a five foot minimum walkway; and (c) stored on the sidewalk while obstructing a hydrant, bus stop, or driveway. The street operations charges apply in connection with (a) a failure to replace loose, slippery or broken utility maintenance hole covers or castings; (b) a failure to repair defective street conditions found within an area extending 12 inches outward from covers or gratings; and (c) illegally working on a street during an embargo period.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local

Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included

within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-115

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-115 Noise Code Penalty Schedule.

NOISE PENALTY SCHEDULE

All Citations are to the NYC Administrative Code except where the citation indicates that it is to the Rules of the City of New York (RCNY).

A stipulation (Stip) penalty is imposed if there is a "Y" (Yes) In the Stip column in the Penalty Schedule rather than a "N" (No), and if a stipulation is offered and accepted at a hearing.

Definition of 2nd and/or 3rd and/or 4th offense: By the same respondent of the same provision of law, order, rule or regulation as the previous violation and, if the respondent is the owner, agent, lessee or other person in control of the premises with respect to which the violation occurred, at the same premises as the previous violation (all violations committed within two years).

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

* In connection with §24-231(a), a zero penalty may be imposed for admission for a first offense upon submission

to DEP (within 30 days of NOV issuance unless extended by DEP) of acceptable certification of compliance as set forth in §24-231(b)(1).

Section Description ViolationOffense Penalty Default Stip

10-108 Noise from sound device exceeding permit levels. 1st2nd3rd4th 2505007501000 2505007501000 NNNN

24-206(c) Failed to Comply with Commissioner's Order to Provide Access for Testing 1st2nd3rd 220440660 87517502625 NNN

24-207(c) Refused DEP entry into public area(s) of premises 1st2nd3rd 3507001050 87517502625 YNN

24-207(d) Refusal to allow authorized employee to perform sound testing. 1st2nd3rd 3507001050 87517502625 YNN

24-208 Operating equipment without a valid registration 1st2nd3rd 3507001050 87517502625 YNN

24-209 Interfering w/or obstructing DEP Personnel. 1st2nd3rd 3507001050 87517502625 YYN

24-210 False/misleading statements: unlawful repro/alteration of documents. 1st2nd3rd 3507001050 87517502625 NNN

24-211 Failure to post certificate or tunneling permit. 1st2nd3rd 3507001050 87517502625 YYN

24-216(d) Failure to comply with noise abatement contract requirements. 1st2nd3rd 65013001950 262552507875 YNN

24-218(a) Causing or permitting unreasonable noise (7AM to 10PM). 1st2nd3rd 3507001050 100020003000 YYN

24-218(a) Causing or permitting unreasonable noise (10PM to 7AM). 1st2nd3rd 4509001350 100020003000 YYN

24-218(e) Failure to comply with Commissioner's Order or mitigation measures re noise from refuse collection facility. 1st2nd3rd 3507001050 100020003000 YYN

24-218.1 Use of mobile telephones in a place of public performance. 1st2nd3rd 505050 505050 YYY

24-220(a) Failure to adopt/implement Noise Mitigation Plan for construction site. 1st2nd3rd 87517502625 140028004200 YNN

24-220(b) Inadequate/insufficiently detailed noise mitigation plan. 1st2nd3rd 4408801320 140028004200 YNN

24-220(b) Failure to ensure that all construction workers are familiar with noise mitigation plan. 1st2nd3rd 4408801320 140028004200 YNN

24-220(c) Failure to keep/have available for inspection copy of noise mitigation plan. 1st2nd3rd 4408801320 140028004200 YNN

24-220(d) Failure to amend noise mitigation plan. 1st2nd3rd 4408801320 140028004200 YNN

24-220(e) Failure to file noise mitigation plan when required. 1st2nd3rd 4008801320 140028004200 YNN

24-222 Construction activities at impermissible times/days. 1st2nd3rd 140028004200 3500700010500 YNN

24-223(b) Failure to submit certification for emergency work within 3 days of starting work. 1st2nd3rd

87517502625 3500700010500 YNN

24-223(d) Failure to respond to request for conference or to amend noise mitigation plan. 1st2nd3rd 87517502625 3500700010500 YNN

24-224 Construction work not in compliance with noise mitigation plan. 1st2nd3rd 140028004200 3500700010500 YNN

24-225(a) Sell/offer/operate/permit operation of refuse compacting vehicle producing excessive noise. 1st2nd3rd 56011201680 140028004200 YNN

24-225(b) Operate/cause operation of refuse compacting vehicle producing excessive noise (11PM to 7AM). 1st2nd3rd 70014002100 140028004200 YNN

24-226(a) Operating air compressor without appropriate muffler w/no exhaust leaks. 1st2nd3rd 56011201680 140028004200 YNN

24-226(b) Excessive noise from air compressor (measured @ 1 meter). 1st2nd3rd 56011201680 140028004200 YNN

24-226(c) Excessive noise from air compressor (measured @ receiving property). 1st2nd3rd 56011201680 140028004200 YNN

24-227(a) Noise from circulation device in excess of 42 dB(A). 1st2nd3rd 56011201680 87517502625 YNN

24-227(b) Cumulative impact from circulation device exceeded 45 dB(A). 1st2nd3rd 56011201680 87517502625 YNN

24-227(c) Failure to reduce cumulative impact from multiple circulation devices exceeding 50 dB(A). 1st2nd3rd 56011201680 87517502625 YNN

24-228 Unreasonable noise from construction devices. 1st2nd3rd 56011201680 140028004200 YNN

24-228.1 Unreasonable noise from engine exhaust. 1st2nd3rd 56011201680 87517502625 YNN

24-229 Unreasonable noise from handling/transporting of container or construction material. 1st2nd3rd 56011201680 140028004200 YNN

24-230(a) Operation/caused operation of paving breaker w/o pneumatic discharge muffler. 1st2nd3rd 56011201680 140028004200 YNN

24-230(b) Sold/offer for sale/operate/permit operation of paving breaker producing over 95 dB(A). 1st2nd3rd 56011201680 140028004200 YNN

24-231(a)* Made/caused/permitted music from commercial establishment in excess of permitted levels. 1st2nd3rd 320064009600 80001600024000 NNN

24-231(d) Violation of variance from limits set forth in 24-231(a) 1st2nd3rd 56011201680 87517502625 NNN

24-232(a) Excessive noise from sound source @ commerical or business establishment. 1st2nd3rd 56011201680 140028004200 NNN

24-233(a) Unreasonable noise: personal audio device. 1st2nd3rd 70140210 175350525 YYN

24-233(b)(1) Unreasonable noise-personal audio device (public right-of-way). 1st2nd3rd 140280420 175350525 YYN

24-233(b)(2) Unreasonable noise-personal audio device (motor vehicle). 1st2nd3rd 140280420 3507001050 YNN

24-234 Excess noise from sound reproduction device on rapid transit (subway, bus, ferry). 1st2nd3rd 70140210 175350525 YYN

24-235 Permitting animal to cause unreasonable noise. 1st2nd3rd 70140210 175350525 YYY

24-236(a) Excess noise from motor vehicles (10,000 lbs or less). 1st2nd3rd 210420840 52510501575 YNN

24-236(b) Excess noise from motorcycles. 1st2nd3rd 88017202600 144028004200 YNN

24-236(c) Excess noise from motor vehicles (10,000 lbs or greater). 1st2nd3rd 88017202600 144028004200 YNN

24-236(d) Non-emergency use of compression brake system. 1st2nd3rd 88017202600 144028004200 YNN

24-237(a) Unauthorized use of motor vehicle claxon. 1st2nd3rd 3507001050 100020003000 YYN

24-237(b) Unauthorized use of motor vehicle air horn/gong. 1st2nd3rd 3507001050 87517502625 YYN

24-237(c) Unauthorized use of steam whistle. 1st2nd3rd 3507001050 87517502625 YYN

24-237(d) Improper use of sound signal device (food vendor). 1st2nd3rd 3507001050 100020003000 YYY

24-238(a) Improper audible burglar alarm/no automatic termination. 1st2nd3rd 280560840 70014002100 YYN

24-238(b) Audible status indicator on motor vehicle in operation. 1st2nd3rd 280560840 70014002100 YYN

24-239(b) Vehicle owner failure to display owner's local precinct number. 1st2nd3rd 100200300 3507001050 YYN

24-241(a) Unauthorized use of emergency signal device. 1st2nd3rd 4408801320 140028004200 YNN

24-241(b) Failed to file certification regarding test of emergency signal device. 1st2nd3rd 4408801320 140028004200 YNN

24-242(a) Operating lawn care devices at unauthorized times or so as to create unreasonable noise. 1st2nd3rd 220440660 87517502625 YYY

24-242(b) Operation of leaf blower without muffler. 1st2nd3rd 220440660 87517502625 YYY

24-244(a) Unreasonable noise from sound reproduction device. 1st2nd3rd 4408801320 175035005250 YNN

24-244(b) Unreasonable noise from sound reproduction device for commercial/bus. advert. purposes. 1st2nd3rd 70014002100 175035005250 NNN

24-245 Failure to have operating certificate or tunneling permit. 1st2nd3rd 105021003150 262552507875 NNN

24-257(b)(7) Breaking of Board ordered seal. 1st2nd3rd 160016002480 400040004000 NNN

15 RCNY28-100 Failed to Conspicuously Post an Accurate and Complete Construction Noise Mitigation Plan (CNMP) 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-101(a) Failed to Self-Certify Equipment Maintenance in CNMP 1st2nd3rd 220440660 87517502625

YNN

15 RCNY28-101(a) Failed to Exercise Noise Mitigation Option within 5 Business Days of Construction Tool Exceeding Noise Standard 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(b) Failed to Equip Construction Equipment with Noise Reduction Device 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(c) Failed to Mitigate Noise From Internal Combustion Engine 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(d) Failed to Cover Compressors/Generators/Pumps with Noise-Insulating Fabric 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(g) Failed to Use Perimeter Noise Barriers 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(h) Failed to Create and Utilize Noise Mitigation Training Program 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-101(i) Failed to Coordinate Work Schedule with Sensitive Facility Receptor 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-101(j) Failure to Comply with CNMP or File Alternative Plan w/in 3 Days of Inspection 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(l) Failed to Utilize Temporary Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(m) Failed to Utilize Noise Barrier on Sandblasting Perimeter Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(1)(B)(ii) Failed to Use Specified Pile Driver When Working w/in 100 ft of Receptor 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(1)(B)(iii) Failed to Equip Pile Driver w/Exhaust Muffler 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(1)(B)(v) Failed to Pre-Augur/Pre-Trench Pile Holes 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(1)(B)(vi) Failed to Properly Secure Impact Cushions to Piles 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(1)(C)(i-iv) Failed to Properly Construct Portable Noise Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(2)(B)(iii) Failed to Equip Jackhammer With Effective Muffler 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(2)(C)(i) Failed to Properly Construct Portable Noise Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(2)(C)(ii) Exceeded Maximum Height of 15 Feet for Free-Standing Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(2)(C)(iii)(b) Failed to Use Multiple Tents for Multiple Jackhammers 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(2)(C)(iii)(c) Failed to Move Noise Tents as Jackhammer Work Progresses 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(2)(C)(iii)(d) Failed to Use Double Layer of Mitigation During Emergency Jackhammering w/in 500 ft of Residential Receptor 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(2)(C)(iii)(e) Failed to Use Tents on Either Side of Jackhammer Where Surrounded by Receptors 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(3)(B)(iii) Failed to Wrap Noise Shroud Around Head of Hoe Ram w/in 200 ft of Receptor 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(3)(C)(i-iv) Failed to Properly Construct Portable Noise Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(4)(C)(i) Failed to Lay Heavy Rubber Blast Mats Over Blast Site 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(4)(C)(ii-iii) Failed to Properly Construct Portable Noise Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(b)(1)(B)(iv) Failed to Cover Vac-Truck's Suction Component w/Noise-Reducing Enclosure 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(b)(1)(C)(i-iv) Failed to Properly Construct Portable Noise Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(c)(1)(B)(ii) Failed to Install Bed Liner 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(c)(1)(B)(v) Failed to Equip Truck with Effective Muffler 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(c)(1)(B)(vii) Failed to Keep Housing Doors Closed During Engine Operation 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(c)(1)(C)(i-iii) Failed to Properly Construct Portable Noise Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(d)(1)(B)(v) Failed to Equip Crane with Effective Muffler 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(d)(2)(B)(i) Failed to Equip Auger Drill Rig with Effective Muffler 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(d)(2)(B)(ii) Failed to Lubricate All Moving Parts of Auger Drill Rig 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(d)(2)(B)(iii) Failed to Properly Clear Debris from Drill Bits 1st2nd3rd 4408801320 87517502625 YN N

15 RCNY 28-102(d)(2)(C)(i-iv) Failed to Properly Construct Portable Noise Barriers 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(d)(3)(A)(i) Failed to Properly Install Street Plates 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(d)(4)(A)(i)(a-c) Failed to Equip Work Vehicles with Proper Backup Alarms 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(d)(4)(B)(ii-iv) Failed to Properly Construct Portable Noise Barriers 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(e)(1)(C)(i-iii) Failed to Properly Construct Portable Noise Barriers 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(e)(1)(C)(iv) Failed to Use Multiple Tents During Use of Multiple Concrete Saws 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(e)(1)(C)(v) Failed to Move Noise Tent as Concrete Saw Work Progressed 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(e)(1)(C)(vi) Failed to Use Double Layer of Mitigation for Noise Barrier During Emergency Concrete Sawing within 500 ft of Residential Receptor 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(e)(1)(C)(vii) Failed to Use Two Tents on Either Side of Saw When Surrounded by Receptors 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-104 Failed to File Alternative Noise Mitigation Plan (ANMP) 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-105 Failed to Conspicuously Post Utility Noise Mitigation Plan (UNMP) 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-106(a) Failed to Self-Certify Equipment Maintenance in UNMP 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-106(a) Failed to Exercise Noise Mitigation Option within 5 Days of Construction Tool Exceeding Noise Standard 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-106(b) Failed to Equip Construction Tool with Noise Reduction Device 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-106 (c) Failed to Comply with Additional Noise Mitigation Measures for Specialized Vehicles 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-106(d) Failed to Cover Equipment with Noise-Insulating Fabric 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-106(h) Failed to Properly Install and Secure Street Plates 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-106(i) Failed to Notify Residents within 200 Feet of Construction Activity 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-106(j) Failed to Respond to Noise Complaints/Notice from DEP 1st2nd3rd 220440660 87517502625

YNN

15 RCNY28-106(l) Failed to Create and Utilize Noise Mitigation Training Program 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-106(m) Failed to Coordinate Work Schedule with Sensitive Receptor Owner 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-106(n) Failed to Correct Excessive Noise Condition/File ANMP 1st2nd3rd 4408801320 87517502625 YNN

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-115) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record May 4, 2007 §1, eff. June 3, 2007. [See Note 1]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Open par amended City Record Dec. 12, 2007 §1, eff. Jan. 11, 2008. [See Note 2]

Fourth par amended City Record Nov. 25, 2008 §15, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Fifth undesig. par (*In connection . . . §24-231(b)(1)) amended City Record Nov. 1, 2007 §3, eff. Dec. 1, 2007. [See T48 §3-120 Note 1]

15 RCNY 28-100-15 RCNY 28-106(n) added City Record Dec. 12, 2007 §2, eff. Jan. 11, 2008. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record May 4, 2007:

The Environmental Control Board (ECB) had a Public Hearing on April 12, 2007, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the Noise Control Penalty Schedule and to the Water Code Penalty Schedule. The Board has adopted the following revisions to those two Penalty Schedules:

1) The Board has revised the Noise Code Penalty Schedule found in §3-115 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend that Penalty Schedule to take into account the promulgation of the new Noise Control Code that was signed into law (Local Law 113 of 2005) on December 21, 2005. That law becomes effective on July 1, 2007. Accordingly, the revised Noise Code Penalty Schedule adopted by this Final Rule becomes effective on July 1, 2007. This new law repeals many previously existing sections of law pertaining to noise control and puts into place new provisions that make the Noise Control Code more effective and responsive to the needs of the City. The primary focus of the new Code is the reduction of the overall sound level in the City.

In addition to continuing the current Noise Control Code's prohibition on after-hours and weekend construction, Subchapter 4 of the new Noise Control Code ("Construction Noise Management") contains detailed requirements which

require all construction sites to have a noise mitigation plan setting forth the noise mitigation strategies, methods, procedures and technologies to be employed for each device or activity at the site. The current Code section relating to commercial music sources has been strengthened by lowering the threshold from 45 dB(A) to 42 dB(A) as measured in any dwelling unit, and by adding a provision dealing with measuring sound in the dB(C) weighting network. In connection with §24-231(a), the new code also contains a provision which allows the Department of Environmental Protection to recommend a zero penalty in cases where the respondent admits the violation and timely submits a report, pursuant to the requirements set forth in §24-231(b)(1), showing that modifications have been made which bring the establishment into full compliance with the Code, along with measurements confirming that compliance has been achieved. The current Code section regarding circulation device noise has been strengthened by lowering the threshold from 45 dB(A) to 42 dB(A) as measured three feet from the open window of any dwelling unit. The new Code also restricts noise from multiple circulation devices owned by the same entity and allows the Department of Environmental Protection to order owners to implement remedial actions when the cumulative sound level from existing multiple devices exceeds 50 dB(A). For new installations of multiple circulation devices or for a new addition to a cluster of circulation devices, the cumulative permitted sound level is 45 dB(A). The new Code includes a "plainly audible" standard for personal audio devices, sound reproduction devices, animals and motor vehicles. Also, the prohibition against unreasonable noise has been strengthened by the establishment of sound levels which are considered to be unreasonable per se, e.g., any sound source which increases the ambient sound level by ten dB(A) or more (7 dB(A) at night) when measured at a distance of fifteen feet or more.

Regarding §24-218.1, "Use of mobile telephones in a place of public performance," this provision of law was previously enacted, by Local Law 9 of 2003, and is now being added to this amended Noise Code Penalty Schedule.

2) The Board has revised the Water Code Penalty Schedule found in §3-126 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend that Penalty Schedule to take into account the repeal of the Drought Emergency Rules and the re-promulgation of those Rules (Title 48, Chapter 21 of the Rules of the City of New York (RCNY). The new Rules took effect on September 7, 2006. It should be noted that there are no changes to that portion of the Water Penalty Schedule that does not pertain to the Drought Emergency Rules. In other words, there are no changes to the part of the Water Penalty Schedule that is entitled "Other Water Regulations," since those sections are not drought-related. Among reasons for the repeal and re-promulgation of those Rules was that the Department of Environmental Protection, in light of recent experiences with the drought, recognized that amendments to the Drought Emergency Rules were needed. The amended Rules are streamlined and simplified. Redundancy has been omitted and inconsistencies eliminated. Definitions have been added for greater clarity and conformance with general style of RCNY rules. The Rules have been amended to provide greater flexibility and consistency for water usage during the various stages of drought.

The principal changes from the current Penalty Schedule are that section numbers have been changed under the new Rules; improper use of well water, which was previously a violation only in Stage III, is now a violation in Stage I and II as well; infractions for air conditioning or refrigeration units without approved water conservation devices, dumping cooling tower water, and failure to reduce non-residential use of water by specified percentages are no longer included in the Penalty Schedule, as these violations do no exist under the new Rules.

2. Statement of Basis and Purpose in City Record Dec. 12, 2007: The Environmental Control Board (ECB) had a Public Hearing on November 29, 2007, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above. 1) The Board has revised the Noise Code Penalty Schedule found in §3-115 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend that Penalty Schedule to take into account the promulgation of the City of New York Department of Environmental Protection's Rules concerning citywide construction noise mitigation. These Rules were enacted in light of Local Law 113 of 2005, which amended the Administrative Code of the City of New York in relation to the Noise Control Code. Specifically, the law established standards and procedures to reduce noise levels from construction, and established sound level standards for specific noise sources. The law also mandated, in §24-219 of the Administrative Code, the adoption of rules by the Department of Environmental

Protection. These new Rules establish the requirement that contractors develop and implement Noise Mitigation Plans prior to performing construction work within the City. These new Rules describe acceptable work hours, after-hour restrictions, and requirements for the use of noise barriers around construction sites, as well as establishing noise emission criteria limits for all generic types of construction equipment in accordance with new Federal Highway Administration guidelines. These Rules prescribe the methods, procedures and technology that shall be used at construction sites to achieve noise mitigation whenever any one or more of certain construction devices or activities set forth in the Rules are employed or performed. The penalties set out in the Board's revised Noise Code Penalty Schedule for violations of the DEP Rules fall into two categories, namely, (1) violations pertaining to failure to comply with general administrative requirements (e.g., posting of plan, worker training, notification filings), and (2) failure to comply with specific noise mitigation requirements. The proposed penalties for the second category are double those for the first category, since these will be violations of specific noise mitigation requirements and are therefore likely to result in actual increase in noise levels. 2) The Board has revised the Noise Code Penalty Schedule found in §3-115 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend that Penalty Schedule to clarify that citations to the Rules of the City of New York, as well as citations to the Administrative Code, are now included in the Penalty Schedule as a result of the inclusion in that Penalty Schedule of charges pertaining to the recently enacted New York Department of Environmental Protection's Rules concerning citywide construction noise mitigation. 3) The Board has revised the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend one charge and to add eight new charges. All these charges pertain to the theft of recyclables and solid waste. These charges have been amended and added in light of the enactment of Local Law 50 of 2007, which pertains to the unauthorized collection or removal of solid waste and recyclable materials. Among other things, this law makes it a violation for a person operating a motor vehicle to unlawfully remove or transport recyclables from the residential curb without the building owner's authorization. In buildings containing more than three dwelling units, the owner's authorization must be evidenced in writing and filed with the Sanitation Commissioner. Local Law No. 50 also makes it a violation for a person operating a motor vehicle to unlawfully remove recyclable materials placed at the curb by commercial establishments, and premises occupied by city agencies and institutions that receive DSNY collection service. This law also makes it a violation for persons, other than a not-for-profit corporation, to receive recyclable materials for storage, collection or processing from anyone other than an authorized DSNY employee or agent; employee of a company licensed by or registered with the New York City Business Integrity Commission; a not-for-profit organization; or a person who has entered into a written agreement to remove recyclables pursuant to this Local Law. The law itself, in §16-118(7)(f)(1)(i) of the New York City Administrative Code, imposes flat penalties for each level of offense for violations of §16-118(7)(b)(1) (if the violation of §16-118(7)(b)(1) is in connection with the use of a motor vehicle in connection with the transporting of recyclables), §16-118(7)(b)(2), §16-118(7)(c), and §16-118(7)(d), rather than a range of dollar amounts. However, the Board is including these penalties in the Sanitation Penalty Schedule solely for the convenience of the public, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. By contrast, the penalties for §16-118(7)(b)(1), if the violation of §16-118(7)(b)(1) was not in connection with the use of a motor vehicle, and also the penalties for §16-118(7)(b)(3), do have a statutory range, set by §16-118(9). 4) The Board has also revised the note that is prefaced with three asterisks in the Sanitation Penalty Schedule to reflect the fact that (1) For §§10-119 and 10-120 and 16-308(g) and 16-308(h) and 16-404 and 16-405(a) and 16-405(b), and 16-118(7)(b)(2) and 16-118(7)(d), a repeat violation is a violation by the same respondent of the same section of law as the previous violation, where the previous violation has a date of occurrence within twelve months of the date of occurrence of the present violation; (2) Any person who violates §16-118(7)(b)(1) and/or §16-118(7)(c) while using or operating a motor vehicle, or owning said motor vehicle, is considered a repeat violator where the same respondent has violated either §16-118(7)(b)(1) or §16-118(7)(c) while using or operating a motor vehicle, or owning said motor vehicle, where the present violation has a date of occurrence within twelve months of the date of occurrence of the previous violation.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative

Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-116

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-116 Parks Rules Penalty Schedule.

PARKS RULES PENALTY SCHEDULE

A repeat violation is a violation is by the same respondent of the same Parks rule with a date of occurrence within 4 years of the date of occurrence of the previous violation.

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section/Rule Description Penalty Default

56 RCNY 1-03(a)(3) Unauthorized presence in park when closed to public 50 200

56 RCNY 1-03(b)(6) Failure to have/display/comply/with required permit 50 200

56 RCNY 1-03(c)(1), 3-19 Failure to comply with directives of officer/park employee 250 1,000

56 RCNY 1-03(c)(2) Failure to comply with directions/prohibitions on signs 50 200

56 RCNY 1-04(a) Injury/defacement/abuse of Department's property or equipment 500 2,000

56 RCNY 1-04(b)(1)(i) Intentional destruction/removal/permanent damage to tree 1,000 4,000

56 RCNY 1-04(b)(1)(ii) Destruction/defacement/abuse of park vegetation 250 1,000

56 RCNY 1-04(b)(2) Walking/permitting animal/child to walk on newly seeded grass 50 200

56 RCNY 1-04(b)(3) Unauthorized entry/allowing entry into fenced/restricted area 50 200

56 RCNY 1-04(b)(4) Unauthorized possession of gardening tool/plant 50 200

56 RCNY 1-04(c)(1), 3-08(e) Littering or unlawful use of park waste receptacle 100 300

56 RCNY 1-04(c)(2) Polluting waters within park 250 1,000

56 RCNY 1-04(c)(3) Unlawful dumping 1,000 4,000

56 RCNY 1-04(c)(4) Storing/leaving unattended personal belongings 50 200

56 RCNY 1-04(d) Possession of glass container in restricted area 50 200

56 RCNY 1-04(g)(1) Molest/kill/remove/possess animal/nest/egg, etc. 1,000 4,000

56 RCNY 1-04(g)(2) Unlawful feeding of animals 50 200

56 RCNY 1-04(i), 3-18(d) Unleashed or uncontrolled animals in park 100 200

56 RCNY 1-04(j)(1), 3-18(b) Fail to remove canine waste 250 250

56 RCNY 1-04(j)(2) Horse-carriage without horse hamper/control for horse waste 100 400

56 RCNY 1-04(k) Unlawful urination/defecation in park 50 300

56 RCNY 1-04(l)(1-3) Unlawful entry to or climbing on park property 50 200

56 RCNY 1-04(o) Obstruction of benches, sitting areas 50 200

56 RCNY 1-04(p) Unauthorized camping 250 1,000

56 RCNY 1-04(q) Spitting on park building/monument/structure 100 200

56 RCNY 1-04(r) Unlawful use of fountain/pool/water/for personal/ animal hygiene 50 200

56 RCNY 1-05(a)(1, 3) Unauthorized assembly/exhibition/parade, etc. w/o permit 250 1,000

56 RCNY 1-05(b) Unauthorized vending 250 1,000

56 RCNY 1-05(c) Unauthorized posting/display of notices/ signs/banners, etc 50 200

56 RCNY 1-05(d)(1) Unreasonable noise 350 875

56 RCNY 1-05(d)(2) Operating speaker device/sound amplifier without require permit 140 350

56 RCNY 1-05(d)(3) Playing instrument/radio, etc.during unauthorized hours 140 350

56 RCNY 1-05(d)(4) Unauthorized noise for advertising/commercial purposes 700 1,750

56 RCNY 1-05(e) Commercial cinematic production without permit 250 1,000

56 RCNY 1-05(f) Unauthorized consumption/possession of alcoholic beverage 25 100

56 RCNY 1-05(g) Failure to comply with bathing restrictions 50 200

56 RCNY 1-05(h) Failure to comply with fishing restrictions 50 200

56 RCNY 1-05(i) Failure to comply with bicycle riding restrictions 50 200

56 RCNY 1-05(j) Failure to comply with boating restrictions 50 200

56 RCNY 1-05(k) Failure to comply with ice skating restrictions 50 200

56 RCNY 1-05(l) Planting tree/flower/shrubbery/other vegetation without permit 50 200

56 RCNY 1-05(m)(1) Failure to comply with restriction re: fires 50 200

56 RCNY 1-05(m)(2) Unlawful disposal of flammable materials 50 200

56 RCNY 1-05(o) Unauthorized construction/storage of materials 1,000 4,000

56 RCNY 1-05(p) Unauthorized excavation 1,000 4,000

56 RCNY 1-05(q) Failure to comply with horseback riding restrictions 50 200

56 RCNY 1-05(r) Failure to comply with area use restrictions 50 200

56 RCNY 1-05(t) Unauthorized distribution or demonstration of products 100 400

56 RCNY 1-05(u) Failure to comply with rollerblading/skating restrictions 50 100

56 RCNY 3-05,4-03 Interference with emergency vessel boarding 100 400

56 RCNY 3-06(a), 3-17, 4-04(a) Failure to have/display/comply with required permit 50 200

56 RCNY 3-08(a), 4-06(a) Use of unauthorized toilets on vessel 250 1,000

56 RCNY 3-08(b), 4-06(b) Illegal discharge onto docks/water/walkways etc. 250 1,000

56 RCNY 3-08(d), 4-06(d) Unreasonable noise 350 875

56 RCNY 4-07(a),(b) Mooring fails to meet requirements 50 200

56 RCNY 3-10(a) Improper maintenance of vessel or equipment 50 200

56 RCNY 3-10(b) Unauthorized structural modification on vessel 500 2,000

56 RCNY 4-09 Excessive speed in mooring area 50 200

56 RCNY 3-12(a), 4-10 Failure to possess proper safety equipment on vessel 50 200

56 RCNY 3-13(a) Unauthorized interference with electrical supply in marina 250 1,000

56 RCNY 3-15, 4-11 Failure to remove sunken vessel 500 2,000

56 RCNY 3-16(b) Unauthorized launch or storage of kayak or canoe 50 200

56 RCNY 3-20, 4-14 Unlawful use of vessel 500 2,000

56 RCNY 1-04(i); 3-18(d) Unleashed or uncontrolled animal in Park-2nd offense 200 400

56 RCNY 1-04(i); 3-18(d) Unleashed or uncontrolled animal in Park-3rd offense 400 800

56 RCNY 1-04(i); 3-18(d) Unleashed or uncontrolled animal in Park-4th offense 700 1,400

56 RCNY 1-04(i); 3-18(d) Unleashed or uncontrolled animal in Park-5th offense 1,000 2,000

56 RCNY 1-04(b)(1)(i) Destruction of tree branch/pruning without permit/minor tree abuse 100 400

56 RCNY 1-04(b)(1)(i) Major damage to/accidental destruction of a tree 500 2,000

56 RCNY 1-04(b)(5) Unauthorized possession of metal detector 50 200

56 RCNY chapter 3 Miscellaneous violation of rules regarding 79 St. Marina 50 200

56 RCNY chapter 4 Miscellaneous violation of rules regarding moorings 50 200

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-116) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Second par amended City Record Nov. 25, 2008 §16, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Table 56 RCNY 1-04(b)(1)(i) "Major damage . . . tree" amended City Record Mar. 2, 2007 §9, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 56 RCNY 1-04(j)(1), 3-18(b) amended City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 14, 2009:

The Environmental Control Board (ECB) had a Public Hearing on April 15, 2009 on proposed revisions of the Parks Rules Penalty Schedule found in §3-116 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) to increase the penalty for the charge of §§1-04(j)(1) and 3-18(b) of Title 56 of the RCNY. Both sections charge failure to remove canine waste. One private citizen was present to offer testimony into the public record. No written comments were submitted. The Board has considered the testimony offered at the hearing.

Specifically, the Board has revised §1-04(j)(1) which provides that "No person shall allow any dog in his custody

or control to discharge any fecal matter in any park unless he promptly removes and disposes of same. This provision shall not apply to a guide dog accompanying a person with a disability." Section 3-18(b) provides that, in connection with the West 79th Street Boat Basin, the Sheepshead Bay Piers and the World's Fair Marina, "The owner or other person in charge or control of a pet shall expeditiously remove, clean or clear all feces or vomit deposited by the pet from the walkways and docks." The Board has increased the hearing penalty for these two Sections of law from $50 to $250, and has increased the default penalty for these two sections of law from $100 to $250.

The Board has increased these penalties in order to make the penalties for §§1-04(j)(1) and 3-18(b) equivalent to the penalty for a violation of the New York State Public Health Law §1310, commonly known as the "Pooper Scooper" law. Section 1310 has a hearing and default penalty of $250 and is also enforced at ECB. That charge is found in ECB's Public Health Law Penalty Schedule, 48 RCNY 3-117. The $250 penalty for §1310 is the result of an amendment to §1310 made by Chapter 153 of the Laws of 2008.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

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regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-117

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-117 Public Health Law Penalty Schedule.

PUBLIC HEALTH LAW PENALTY SCHEDULE

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section Description Penalty Default

NYS Public Health Law 1310 Failure to remove canine waste 100 100

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-117) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Opening par amended City Record Nov. 25, 2008 §17, eff. Nov. 25, 2008 per City Record notice.

[See T48 §3-12 Note 1]

Table NYS Public Health Law 1310 amended City Record Nov. 1, 2007 §4, eff. Dec. 1, 2007. [See

T48 §3-120 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 10, 2008:

The Environmental Control Board (ECB) had a Public Hearing on August 25, 2008 on proposed revisions of its Public Health Law Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above.

The Board has revised the Public Health Law Penalty Schedule found in §31-117 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York to increase the penalty for the charge of NYC Public Health Law Section 1310 (the "Pooper Scooper" law), "Failure to remove canine waste," from a penalty of $100 to a penalty of $250.

This is to take into account the new penalty amount for canine waste violations that is authorized by recent legislation that amended §1310 of the New York State Public Health Law. Governor David Paterson signed that legislation on July 7, 2008 as Chapter 153 of the Laws of 2008. That law becomes effective ninety (90) days after it was signed by the Governor.

Under the old law, persons who failed to remove canine waste were subject to a fine of one hundred dollars. The new law raises the maximum penalty associated with canine waste from the previous maximum of one hundred dollars to a new maximum of two hundred fifty dollars. In order to implement the statutory intent of this new legislation, the Board has increased the penalty for the charge of failing remove canine waste from the current one hundred dollar penalty to two hundred fifty dollars.

The Board has amended the Public Health Law Penalty Schedule to ensure that this penalty increase becomes effective as of the effective date of the law.

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the

statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective

on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-118

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-118 Public Pay Telephones Penalty Schedule.

PUBLIC PAY TELEPHONES PENALTY SCHEDULE

Unless otherwise indicated all citations are to the New York City Administrative Code.

* Pursuant to §3-81(b), a late admit fee of $30.00 will be added to the penalties for these charges for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section/Rule Description Penalty Default

23-402 Install/Operate/Maintain Public Pay Telephone without permit 900 1,000

23-402 Install/Operate/Maintain Public Pay Telephone in violation of permit terms 500 1,000

23-405 Impermissible advertising on Public Pay Telephone 900 1,000

23-408(b) Repeated failure to provide services for a sustained period 2,000 2,500

23-408(b) Failure to provide coinless 911 service 2,000 2,500

67 RCNY 6-24(c) False statement/info in a certification/registry 900 1,000

67 RCNY 6-26(a) Failure to remove Public Pay Telephone after failure to submit registry 900 1,000

67 RCNY 6-26(b) Failure to remove Public Pay Telephone per requirements of subsection 500 1,000

67 RCNY 6-41 Failure to adhere to siting/clearance/pedestrian passage requirements as per subsection 500 1,000

67 RCNY 6-05(a)* Failure to provide coinless access to 911 on a twenty-four hour daily basis 2,000 2,500

67 RCNY 6-05(b)* Failure to provide working Public Pay Telephone and operator services 2,000 2,500

67 RCNY 6-05(c)* Failure to clean/maintain Public Pay Telephone as per requirements of subsection 250 1,000

67 RCNY 6-05(d) Failure to correct, repair or restore broken, fractured, detached or displaced PPT within 72 hours period 900 1,000

67 RCNY 6-06* Impermissible display of advertising on Public Pay Telephone installation 900 1,000

67 RCNY 6-36(b)(1),(d)* Failure to remove Public Pay Telephone as per Commissioner's Order 500 1,000

67 RCNY 6-42* Required sign missing/impermissible as per requirements of subsection 250 1,000

67 RCNY 6-43* Failure to comply with installation/maintenance standards as per requirements of subsection 500 1,000

67 RCNY Chapter 6* Miscellaneous violation of rules pertaining to Public Pay Telephones 250 1,000

Title 23, Ch.4* Miscellaneous violation of code pertaining to Public Pay Telephones 250 1,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-118) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Second par amended City Record Nov. 25, 2008 §18, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Table 67 RCNY 6-05(d) added City Record Mar. 2, 2007 §6, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 67 RCNY 6-05(d)(3) deleted City Record Mar. 2, 2007 §7, eff. Apr. 1, 2007. [See §3-103 Note 2]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

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Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food

vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-119

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-119 Public Safety Graffiti Penalty Schedule.

PUBLIC SAFETY GRAFFITI PENALTY SCHEDULE

The following citations are to the NYC Administrative Code.

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section/Rule Description Penalty Default

A.C. 10-117(a) Unlawful defacement of property by graffiti (except with stickers or decals) 100 500

A.C. 10-117(b) Unlawful possession of aerosol spray paint can/indelible marker 100 500

A.C. 10-117(c) Offer/sale of aerosol spray paint can/indelible marker to minor 100 500

A.C. 10-117(d) Unlawful display of aerosol spray paint can/indelible marker 100 500

A.C. 10-117.3 Failure to remove graffiti 150 300

A.C. 27-4047(a) Use or discharge of fireworks without permit 750 750

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-119) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section aded City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Second par amended City Record Nov. 25, 2008 §19, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Table A.C. 10-117.3 added City Record Oct. 13, 2006 §7, eff. Nov. 12, 2006. [See T48 §3-103 Note 1]

Table A.C. 27-4047(a) added City Record Aug. 16, 2007 §2, eff. Sept. 15, 2007. [See §15-122 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-120

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-120 Recycling-Sanitation Collection Rules Penalty Schedule.

RECYCLING-SANITATION COLLECTION RULES PENALTY SCHEDULE

A repeat violation is a violation by the same respondent, at the same place of occurrence, of any of the recycling rules or provisions, having a date of occurrence within 12 months of the date of occurrence of the previous violation.

Persistent violator: As is set forth in §16-324 of the Administrative Code, a person committing a fourth and any subsequent violation within a period of six months shall be classified as a persistent violator and shall be liable for a civil penalty of five hundred dollars for each violation. For a persistent violation only, except where such violation occurws at a building of less than nine dwelling units, each container or bag containing solid waste that has not been source separated or placed out for collection in accordance with the regulations promulgated by the commissioner pursuant to this chapter shall constitute a separate violation, provided that no more than twenty separate violations are issued on a per bag or per container basis during any twenty-four hour period.

The default penalty for any each charge in this Penalty Schedule is the same as the penalty for that particular charge.

Section/Rule Description Penalty

Residential Premises

16 RCNY 1-08(e)(1),(2)AR01, AR12, AR23 Improper/misused curbside recycling container 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(e)(3)AR02, AR13, AR24 Improper/misused mechanized recycling container 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(f)(1)AR03, AR14, AR25 Failure to post notices/inform about recycling 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(f)(2)(i)AR04, AR15, AR26 No accessible recycling storage area 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(f)(2)(iii)AR05, AR16, AR27 Inadequate recycling containers in storage area 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(g)(1)AR06, AR17, AR28 Improper disposal of recyclables/misuse of container 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(g)(2)AR07, AR18, AR29 Failure to clean recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(g)(3)AR08, AR19, AR30 Failure to bundle newspapers/magazines/cardboard 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(h)(1)(2)AR09, AR20, AR31 Failure to properly put recyclables out for collection 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(h)(4)AR10, AR21, AR32 Non-recyclables left in recycling container for collection 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(h)(5)AR11, AR22, AR33 Recyclables placed for collection with non-recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY §1-08(i)AR1A, AR2A, AR3A(Persistent Violator: AR4A) Failure to comply with Commissioner's Order mandating the use of clear plastic bags for the disposal of refuse and recycling. 1st Violation:2nd Violation:3rd Violation: 2550100

PersistentViolator (fourth or subsequent violation within six months 500

Institutions/Agencies

16 RCNY 1-09(d)AR34, AR38, AR42 Failure to establish recycling program 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-09(g)(1)(i)AR35, AR39, AR43 Failure to notify employees about recycling program 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-09(g)(1)(iii)AR36, AR40, AR44 Recycling containers not provided/not labeled 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-09(h), (i), (j)AR37, AR41, AR45 Failure to source separate designated recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

Private Carter Collected Waste

16 RCNY 1-10(c)(1)AR46, AR63, AR80 Failure to source separate non-food/beverage recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(c)(2)AR47, AR64, AR81 Failure to source separate food/beverage recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(c)(3)AR48, AR65, AR82 Failure to source separate residential recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(d)(2)AR49, AR66, AR83 No agreement with carter for mixed materials 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(d)(3)AR50, AR67, AR84 Failure to post commingling notice 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(e)AR51, AR68, AR85 Failure to maintain source separation 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(f)(1)(i)AR52, AR69, AR86 No written recycling agreement 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(f)(1)(ii)AR53, AR70, AR87 No written recycling notice to tenants/employees 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(f)(1)(iii)AR54, AR71, AR88 Recycling notices not posted in maintenance area 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(f)(1)(iv)AR55, AR72, AR89 Recycling containers missing 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(f)(2)(i)AR56, AR73, AR90 Failure to source separate recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(f)(2)(ii),(iv)AR57, AR74, AR91 Failure to notify employees/post notices/label Containers 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(g)(1)AR58, AR75, AR92 Failure by Transfer Station to recycle 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(g)(2)AR59, AR76, AR93 Failure to maintain separation of paper (transfer stations) 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(g)(3)AR60, AR77, AR94 Failure to separate commingled metal, glass plastic (transfer stations) 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(g)(5)AR61, AR78, AR95 Failure to separate components of construction waste (transfer station) 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(g)(6),(7)AR62, AR79, AR96 Improper disposal of recyclables or commingled materials (transfer station) 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

NYC Admin. Codesec. 16-324(a)AR97 Persistent Violator, recycling PersistentViolator (fourth or subsequent violation within six months) 500

HISTORICAL NOTE

Section amended City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 2]

Section repealed and reissued (former T15 §31-120) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Residential Premises

16 RCNY 1-08(h)(4) so designated (former 16 RCNY 1-08(h)(3) City Record Jan. 28, 2008 §6, eff.

Feb. 27, 2008. [See T48 §3-103 Note 5]

16 RCNY 1-08(h)(5) so designated (former 16 RCNY 1-08(h)(4) City Record Jan. 28, 2008 §6, eff.

Feb. 27, 2008. [See T48 §3-103 Note 5]

16 RCNY 1-08(i) added City Record Nov. 1, 2007 §1, eff. Dec. 1, 2007. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 1, 2007:

The Environmental Control Board (ECB) had a Public Hearing on September 27, 2007, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above.

(1) The Board has revised the Recycling-Sanitation Collection Rules Penalty Schedule found in §3-120 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add one new charge in that Penalty Schedule for a violation of 16 RCNY 1-08(i), "Failure to comply with Commissioner's Order mandating the use of clear plastic bags for the disposal of refuse and recycling." This new charge is being added to ensure that the goals of the City's new twenty (20) year Solid Waste Management Plan are met.

The Department of Sanitation has been focusing its attention on apartment buildings (nine dwelling units or more) that place recyclables out for collection on a non-recycling collection day by mixing separated recyclables with regular refuse in black bags placed out for Department of Sanitation collection. The Department of Sanitation has sent letters to those buildings that have been engaging in this practice that they must address this matter immediately and place designated recyclables out for collection in clear plastic bags (or labeled containers) on the scheduled recycling collection day and store designated recyclables until the next designated recycling collection.

If recycling violations persist, a Department of Sanitation supervisor in charge of the collection area for apartment

buildings with nine dwelling units or more will issue a clear bag notice as authorized in 16 RCNY §1-08(i) directly to the building manager or superintendent requiring that after a specific date all refuse and recyclables from the building must be set out in clear plastic bags as a precondition for continued Department of Sanitation collection. After that date, materials set out for Department of Sanitation collection in anything other than a clear plastic bag will be issued a Notice of Violation by the Department of Sanitation, per bag, for improper set out. The purpose for requiring the use of clear plastic bags for all waste material is to enable the Department of Sanitation to monitor recycling compliance before Department of Sanitation collection. The clear bag requirement for all discarded waste will be imposed upon any building that the Department of Sanitation deems to be a persistent recycling violator under the law and will remain in effect for as long as necessary to ensure proper compliance with recycling regulations.

This new charge will allow the Department of Sanitation to enforce against those buildings that fail to comply with the Commissioner's Order mandating the use of clear plastic bags for the disposal of both refuse and recycling.

The law itself, in §16-324(a) of the New York City Administrative Code imposes flat penalties for each level of offense, rather than a range of dollar amounts. However, the Board is including these penalties in the Recycling-Sanitation Collection Rules Penalty Schedule solely for the convenience of the public, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive.

(2) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Title 48 of the Rules of the City of New York to add one new charge to the Buildings Penalty Schedule for a violation of §27-205 of the Administrative Code, "Failure to grant entry to premises to inspect work-HAZARDOUS." Addition of this charge to the penalty schedule will enable the enforcement of the provisions of §27-205, which provides that the Department of Buildings may enter at reasonable times any building, enclosure or premises, or signs or service equipment attached thereto, for the purpose of determining compliance with the provisions of the Building Code and other applicable laws. Unchecked, faulty construction could have serious ramifications to public safety and building infrastructure. Therefore, it is important to enable enforcement of this charge.

(3) The Board has revised the Noise Code Penalty Schedule found in §3-115 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add the following text at the top of the penalty schedule to read as follows: "*In connection with §24-231(a), a zero penalty may be imposed for admission for a first offense upon submission to DEP (within 30 days of NOV issuance unless extended by DEP) of acceptable certification of compliance as set forth in §24-231(b)(1)." This new text was already included in a prior published final rule that was published on May 4, 2007, in the City Record, which amended the Noise Code Penalty Schedule. However, in that prior published final rule, inadvertently this new text was not underscored so as to indicate that it was new material being added to the Noise Code Penalty Schedule. Accordingly, this text is being included in this final rule in order to clarify that this text is indeed additional material.

(4) The Board has revised the Public Health Law Penalty Schedule found in §3-117 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to increase the penalty for the charge of NYC Public Health Law §1310 (the "Pooper Scooper" law), "Failure to remove canine waste," from a penalty of $50 to a penalty of $100. This is to encourage New Yorkers to comply with §1310, which requires dog owners to pick up after their dogs. Canine waste is not only an unsightly nuisance, it can also pose a health hazard if it is not cleaned up. This penalty is being increased to serve as a more effective deterrent to those who do not pick up after their dogs as required by this law.

2. Statement of Basis and Purpose in City Record May 14, 2009: The Environmental Control Board (ECB) had a Public Hearing on April 15, 2009 on proposed revisions of the Recycling-Sanitation Collection Rules Penalty Schedule found in §3-120 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to (i) add a "Persistent Violator" penalty of $500 to each recycling charge in that Penalty Schedule that does not already have such a penalty, and (ii) to add the definition of "Persistent Violator" to a headnote at the beginning of that Penalty Schedule. One private citizen was present to offer testimony into the public record. No written comments were submitted. The Board has considered the testimony offered at the hearing. The Board has amended the Recycling-Sanitation Collection Rules

Penalty Schedule found in §3-120 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to (i) add a "Persistent Violator" penalty of $500 to each recycling charge in that Penalty Schedule that does not already have such a penalty, and (ii) to add the definition of "Persistent Violator" to a headnote at the beginning of that Penalty Schedule. The imposition of a $500 penalty for persistent violations is authorized by §16-324(a) of the NYC Administrative Code. Pursuant to §16-324(a), a persistent violator is a person who has committed four or more violations within six months of a section of law found in Chapter Three of the NYC Administrative Code or a rule or regulation promulgated pursuant to that Chapter. In some instances, each container or bag of solid waste may result in a separate "persistent violator" charge. Details are set forth in the excerpt from §16-324(a) below:

". . . . For a persistent violation only, except where such violation occurs at a building of less than nine dwelling units, each container or bag containing solid waste that has not been source separated or placed out for collection in accordance with the regulations promulgated by the commissioner pursuant to this chapter shall constitute a separate violation, provided that no more than twenty separate violations are issued on a per bag or per container basis during any twenty-four hour period. Before issuing any further notice of violations to a persistent violator after the fourth violation within a period of six months, the commissioner shall give such violator a reasonable opportunity to correct the condition constitution the violation."

The Penalty Schedule already includes a separate charge for §16-324(a) itself, "Persistent Violator, recycling." Adding the persistent violator penalty of $500 and the definition of persistent violator to each separate recycling charge will enhance the Department of Sanitation's efforts in issuing Notices of Violation to persistent violators. The Board has added the persistent-violator $500 penalty next to each entry in the Recycling-Sanitation Collection Rules Penalty Schedule and a description of the basis for that penalty, to read as follows: "Persistent Violator (fourth or subsequent violation within six months)." The Board also has added a more detailed definition of "persistent violator" to a headnote at the top of the Penalty Schedule, to read as follows: Persistent violator: As is set forth in §16-324 of the Administrative Code, a person committing a fourth and any subsequent violation within a period of six months shall be classified as a persistent violator and shall be liable for a civil penalty of five hundred dollars for each violation. For a persistent violation only, except where such violation occurs at a building of less than nine dwelling units, each container or bag containing solid waste that has not been source separated or placed out for collection in accordance with the regulations promulgated by the commissioner pursuant to this chapter shall constitute a separate violation, provided that no more than twenty separate violations are issued on a per bag or per container basis during any twenty-four hour period.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination

because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil

service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified

in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-121

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-121 Sanitation Asbestos Rules Penalty Schedule.

SANITATION ASBESTOS RULES PENALTY SCHEDULE

Worker Penalty: Where the Hearing Officer finds that the respondent is a worker (defined as an individual employee working under the direction of another whose job duties permit no exercise of judgment or discretion), the penalty will be $500.00.

Second offense is defined as a violation by the same respondent of any provision of the rules found in 16 RCNY Chapter 8, or of Section 16-117.1 of the NYC Administrative Code, where the date of occurrence of the current violation is within two years of the date of the prior violation.

All citations are to 16 RCNY Chapter 8.

Rules Description Penalty BasicPenalty Aggravating Circumstances Mitigation

VisibleEmissionor AdultExposure ChildExposure NoKnowledge SmallQuantity

PRESENT FOR STORAGE OF ASBESTOS WASTE:

8-03(a)(1) Not Wet 1st 4,000 8,000 9,000 -1,000 -500

2nd 5,000 10,000 11,000 N/A -1,000

8-03(a)(2) Uncontained, unsealed 1st 7,000 14,000 15,000 -2,000 N/A

2nd 8,000 16,000 18,000 N/A N/A

8-03(a)(2) Not 6 mil 1st 5,000 10,000 11,000 -2,000 -1,000

2nd 6,000 12,000 14,000 N/A -1,000

8-03(a)(2) No Warning Label 1st 1,000 N/A N/A -500 -200

2nd 1,500 N/A N/A N/A -500

8-03(a)(3) Mixed w/ other waste 1st 5,000 10,000 11,000 -2,000 -1,000

2nd 6,000 12,000 14,000 N/A -1,000

STORAGE OF ASBESTOS WASTE:

8-04(a)(1) Uncontained, unsealed 1st 12,000 24,000 25,000 -4,000 N/A

2nd 14,000 25,000 25,000 N/A N/A

8-04(a)(1) Not wet, not 6 mil 1st 10,000 20,000 22,000 -4,000 -2,000

2nd 11,000 22,000 24,000 N/A -2,000

8-04(a)(1) No warning label 1st 2,000 N/A N/A -1,000 -500

2nd 3,000 N/A N/A N/A -500

8-04(a)(2) No 24 hour inspection 1st 2,000 4,000 N/A -1,000 -500

2nd 3,000 6,000 N/A N/A -500

8-04(a)(3) Inadequate spare leak-tight containers 1st2nd 3,0004,000 N/AN/A N/AN/A -1,000N/A -500-500

8-04(a)(4) Inadequate water supply 1st2nd 3,0004,000 N/AN/A N/AN/A -1,000N/A -500-500

8-04(a)(5) Mixed with other waste 1st 7,000 14,000 15,000 -2,000 -1,000

2nd 8,000 16,000 18,000 N/A -1,000

8-04(a)(6) Unsecured area 1st 6,000 N/A N/A -2,000 -1,000

2nd 7,000 N/A N/A N/A -1,000

8-04(b) 50 cu. yds/no authorization 1st2nd 3,0004,000 N/AN/A N/AN/A -1,000N/A N/AN/A

8-04(b)(1)(i) 50 cu. yds/ noinspection records 1st2nd 2,0003,000 5,0006,000 N/AN/A -1,000N/A N/AN/A

PRESENT FOR TRANSPORT ASBESTOS WASTE:

8-05(a) Uncontained, unsealed 1st 14,000 25,000 25,000 -4,000 N/A

2nd 16,000 25,000 25,000 N/A N/A

8-05(a) Not wet, not 6 mil 1st 12,000 24,000 25,000 -4,000 -2,000

2nd 14,000 25,000 20,000 N/A -2,000

8-05(a) No warning label 1st 3,000 N/A N/A -1,000 -500

2nd 4,000 N/A N/A N/A -500

8-05(b) Without inspection 1st 3,000 6,000 7,000 -1,000 -500

2nd 4,000 8,000 9,000 N/A -500

8-05(c) Mixed with other waste 1st 8,000 16,000 18,000 -2,000 -1,000

2nd 9,000 18,000 20,000 N/A -2,000

8-05(d)(1) Transporter w/o DEC permit 1st2nd 3,0004,000 N/AN/A N/AN/A N/AN/A N/AN/A

8-05(d)(2) Transporter w/o DCA permit 1st2nd 3,0004,000 N/AN/A N/AN/A N/AN/A N/AN/A

TRANSPORT ASBESTOS WASTE:

8-06(a) Uncontained, unsealed 1st 16,000 25,000 25,000 -5,000 N/A

2nd 18,000 25,000 25,000 N/A N/A

8-06(a) Not wet, not 6 mil 1st 12,000 24,000 25,000 -4,000 -2,000

2nd 14,000 25,000 25,000 N/A -2,000

8-06(a) No warning label 1st 4,000 N/A N/A -1,000 -500

2nd 5,000 N/A N/A N/A -1,000

8-06(b) No examination, unsafe packaging 1st2nd 4,0005,000 8,00010,000 9,00011,000 -1,000N/A -500-1,000

8-06(c) Inadequate spare leak-tight containers 1st2nd 4,0005,000 N/AN/A N/AN/A -1,000N/A -500-1,000

8-06(d) Inadequate water supply 1st2nd 4,0005,000 N/AN/A N/AN/A -1,000N/A -500-1,000

8-06(e) Mixed with other waste 1st 9,000 18,000 20,000 -4,000 -2,000

2nd 10,000 20,000 22,000 N/A -2,000

8-06(f) Unprotected container 1st 9,000 18,000 20,000 -4,000 -2,000

2nd 10,000 20,000 22,000 N/A -2,000

8-06(g) Lacking DEC permit 1st 4,000 N/A N/A N/A N/A

2nd 5,000 N/A N/A N/A N/A

8-06(h) Lacking DCA permit 1st 4,000 N/A N/A N/A N/A

2nd 5,000 N/A N/A N/A N/A

PRESENT FOR DISPOSAL ASBESTOS WASTE

8-07(a) Unapproved site 1st 10,000 20,000 22,000 -4,000 -2,000

2nd 12,000 24,000 25,000 N/A -2,000

8-07(b) Non-compliance w/ order 1st2nd 9,00010,000 18,00020,000 20,00022,000 N/AN/A N/AN/A

8-07(c) Uncontained, unsealed 1st 18,000 25,000 25,000 -6,000 N/A

2nd 20,000 25,000 25,000 N/A N/A

8-07(c) Not wet, not 6 mil 1st 16,000 25,000 25,000 -5,000 -3,000

2nd 18,000 25,000 25,000 N/A -3,000

8-07(c) No warning label 1st 5,000 N/A N/A -2,000 -1,000

2nd 6,000 N/A N/A N/A -1,000

8-07(d) No examination, unsafe repackaging 1st2nd 5,0006,000 10,00012,000 11,00014,000 -2,000N/A -1,000-1,000

8-07(e) Mixed with other waste 1st 10,000 20,000 22,000 -4,000 -2,000

2nd 12,000 24,000 25,000 N/A -2,000

ABANDONMENT:

8-08 Abandonment ofAsbestos waste 1st2nd 20,00022,000 25,00025,000 25,00025,000 -6,000N/A -4,000-4,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-121) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and

(ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including

31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-122

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-122 Sanitation Penalty Schedule.

SANITATION PENALTY SCHEDULE

Unless otherwise indicated, all citations are to the New York City Administrative Code.

* For sections 16-118(2) and 16-122(b), a repeat violation requires 12 prior violations by the same respondent of either of these two provisions of law that have a date of occurrence within the 12 months preceding the date of occurrence of the current violation, where the violations have the same place of occurrence.

** For sections 16-118(1),(3),(4),(6), and 16-120(a),(b),(c),(d),(e), and 16-123, a second or third violation is a violation by the same respondent of the same provision of law as the previous violation with a date of occurrence within 12 months of the date of occurrence of the previous violation.

*** For §§10-119 and 10-120 and 16-308(g) and 16-308(h) and 16-404 and 16-405(a) and 16-405(b), and 16-118(7)(b)(2), and 16-118(7)(d), and 16-453(b), 16-453(c), 16-454(b), and 16-454(c), a repeat violation is a violation by the same respondent of the same section of law as the previous violation with a date of occurrence within twelve months of the date of occurrence of the previous violation.

Any person who violates §16-118(7)(b)(1) and/or §16-118(7)(c) while using or operating a motor vehicle, or

owning said motor vehicle, is considered a repeat violator where the same respondent has violated either §16-118(7)(b)(1) or §16-118(7)(c) while using or operating a motor vehicle, or owning said motor vehicle, where the present violation has a date of occurrence within twelve months of the date of occurrence of the previous violation.

Any person who violates §16-118(7)(f)(1)(i) by virtue of owning a motor vehicle that was used in violation of subparagraph one of paragraph b or paragraph c of §16-118(7) is considered a repeat violator where the same respondent has violated §16-118(7)(f)(1)(i) by virtue of owning a motor vehicle that was used in violation of subparagraph one of paragraph b or paragraph c of §16-118(7) where the present violation has a date of occurrence within twelve months of the date of occurrence of the previous violation.

**** For section 16-119, a repeat violation is a violation by the same respondent of the same section of law as the previous violation with a date of occurrence within 18 months of the date of occurrence of the previous violation.

***** For these transfer-station related sections, a repeat violation is a violation by the same respondent of the same subdivision of the same section of law or rule as the previous violation with a date of occurrence within 3 years of the date of occurrence of the previous violation.

****** For these medical-waste related sections, a repeat violation is a violation by the same respondent occurring within 18 months of the date of occurrence of the previous violation.

******* Per day penalties will begin to accrue from the date of the occurrence as set forth on the Notice of Violation. Such per day penalty will continue to accrue until the Respondent either can prove a date specific that the violation has been corrected or until the first scheduled hearing date, which will be set for sixty days from the date of occurrence. For each notice of violation issued, the per day penalty imposed shall not exceed sixty days.

With the exception of §10-119 (posting on a tree), and§16-119, and §16-422, §16-423, §16-426(a), §16-426(b), and §16-428(a), and sections 16-453(b); 16-453(c); 16-454(b), and 16-454(c), pursuant to §3-81(b) a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

******** For §16-130 (b) and 16 RCNY §4-44, a repeat violation is a second or subsequent violation by the owner of a premises or of equipment, vehicles or other personal property, committed in a period of three years by any person using or operating the same, in the business of such owner or otherwise, with permission, express or implied, of such owner. As used in this paragraph, "owner" means a person, other than a holder of a security interest, having the property in or title to premises or equipment, vehicles or other personal property, including but not limited to a person entitled to use and possession of premises or equipment, vehicles or other personal property subject to a security interest in another person and also including any lessee or bailee having exclusive use thereof.

Section/Rule Description Penalty Default

16-116(a) Removal of commercial waste 100 100

16-116(b) Posting of sign/permit 100 100

16-118(1)** Littering 1st 100 450

2nd 250 450

3rd 350 450

16-118(1)** Sweep out 1st 100 450

2nd 250 450

3rd 350 450

16-118(1)** Throw out 1st 100 450

2nd 250 450

3rd 350 450

16-118(2)(a)* Dirty sidewalk 100 300

16-118(2)(a)* Dirty area 100 300

16-118(2)(a)* Sidewalk obstruction 100 300

16-118(2)(a)* Failure to clean 18" into street 100 300

16-118(2)(b)* Dirty sidewalk (vacant lot) 100 300

16-118(2)(b)* Dirty area (vacant lot) 100 300

16-118(2)(b)* Sidewalk obstruction (vacant lot) 100 300

16-118(2)(b)* Failure to clean 18" into street (vacant lot) 100 300

16-118(3)** Dust or substances flying 1st 100 450

2nd 250 450

3rd 350 450

16-118(4)** Spilling from truck or receptacle 1st 100 450

2nd 250 450

3rd 350 450

16-118(6)** Noxious liquids 1st 100 450

2nd 250 450

3rd 350 450

16-118(7)(a) Interfering with DOS employee 100 300

16-118(7)(b)(1) Unauthorized disturbance or removal of recyclable materials (no motor vehicle used) 100 300

§16-118(7)(f)(1)(i)*** Unauthorized removal of recyclable materials from residential premises or vacant lots using a motor vehicle (Owner) 1st2nd 2,0005,000 2,0005,000

§16-118(7)(b)(1)*** Unauthorized removal of recyclable materials from residential premises or vacant lots using a motor vehicle (Operator) 1st2nd 2,0005,000 2,0005,000

§16-118(7)(b)(2)*** Failure to submit to DSNY a report indicating the amount, by weight, of recyclable materials removed from residential premises or vacant lots by February 1st or August 1st of every year 1st2nd 2,0005,000 2,0005,000

§16-118(7)(b)(2)*** Submission of report to DSNY stating the amount of recyclable materials removed from residential premises or vacant lots containing false or deceptive information 1st2nd 2,0005,000 2,0005,000

§16-118(7)(b)(3) Unauthorized disturbance or removal of solid waste 100 300

§16-118(7)(f)(1)(i)*** Unauthorized removal of recyclable materials from commercial premises by using a motor vehicle. (Owner) 1st2nd 2,0005,000 2,0005,000

§16-118(7)(c)*** Unauthorized removal of recyclable materials from commercial premises by using a motor vehicle (Operator) 1st2nd 2,0005,000 2,0005,000

§16-118(7)(d)*** Receipt of recyclable materials for storage, collection or processing that is collected by unauthorized personnel 1st2nd 2,0005,000 2,0005,000

16-119**** Illegal dumping (Operator of vehicle) 1st 1,500 10,000

16-119**** Illegal dumping (Operator of vehicle) 2nd 5,000 10,000

16-119**** Illegal dumping (Operator of vehicle) 3rd 10,000 20,000

16-119**** Illegal dumping (Operator of vehicle) 4th 15,000 20,000

16-119**** Illegal dumping (Operator of vehicle) 5th 20,000 20,000

16-119**** Illegal dumping (Owner of vehicle) 1st 1,500 10,000

16-119**** Illegal dumping (Owner of vehicle) 2nd 5,000 10,000

16-119**** Illegal dumping (Owner of vehicle) 3rd 10,000 20,000

16-119**** Illegal dumping (Owner of vehicle) 4th 15,000 20,000

16-119**** Illegal dumping (Owner of vehicle) 5th 20,000 20,000

16-120(a)** Maintaining receptacles 1st 100 300

2nd 100 300

3rd 200 300

16-120(b)** Separation and weight 1st 100 300

2nd 100 300

3rd 200 300

16-120(c)** Storage of receptacles 1st 100 300

2nd 100 300

3rd 200 300

16-120(d)** Loose rubbish 1st 100 300

2nd 100 300

3rd 200 300

16-120(e)** Improper use of DSNY litter basket 1st 100 300

2nd 250 350

3rd 350 400

16-123** Snow, ice & dirt removal 1st 100 350

2nd 150 350

3rd 250 350

16-127(a) Earth, rocks and rubbish 100 150

16-122(b)* Street obstruction 100 150

16-122(c) Disabled vehicle 100 150

16-118(2)* Failure to sweep 18" from curb 100 300

16-120.1****** Improper disposal of infectious/medical waste 1st 2,500 10,000

2nd 5,000 10,000

3rd 10,000 10,000

16-117.1 Improper transport/storage/disposal of asbestos waste 1,000 10,000

16-117.1 Hazardous transportation/storage disposal of asbestos waste 10,000 10,000

10-119*** Illegal posting of handbill/notice 1st 75 200

2nd 150 200

10-120*** Defacement of City handbill/notice 1st 75 200

2nd 150 200

10-119/120*** Illegal posting/defacement of handbill (2nd offense) 150 300

10-117(a) Illegal placement of stickers or decals on public or private property 150 500

10-119*** Posting on tree 1st 150 200

2nd 300 550

16-130(b)***** Operating a nonputrescible solid waste transfer station without a permit 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16 RCNY 4-04 etseq.***** Comm.'s transfer station Rule Re: nonputrescible waste 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16-130(b)***** Operating a putrescible waste transfer station without a permit. 1st2nd3rd 2,5005,00010,000

10,00010,00010,000

16 RCNY 4-11 etseq.***** Comm.'s transfer station Rule Re: putrescible waste 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16-130(b)***** Operating dump/fill without a permit 1st 2,500 10,000

2nd 5,000 10,000

3rd 10,000 10,000

16 RCNY3-02 et seq.***** Comm's Rule Re: Dump/fill operation 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16 RCNY4-32,33,34***** Violation of transfer station Rules re: siting/hours/reports/plans 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16-130(b)******** Operating an intermodal solid waste containerfacility without a registration 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY4-44(c)******** Failure to handle intermodal containers in a safe and sanitary manner. 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY4-44(g)******** Failure to maintain solid waste received at the facility for transports in intermodal containers. 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY4-44(h)******** Failure of intermodal containers to meet the specification requirements set forth in 16 RCNY 4-43. 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY4-44(i)******** Failure to maintain and/or provide records. 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY4-44(j)******** Failure to remove intermodal containers containing putrescible waste within 72 hours of receipt. 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY4-44(l)******** Failure to store equipment within the property lines. 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY 1-04 Improper disposal of regulated household waste 100 250

16 RCNY 5-06(a)(3) Vehicle Body-Improper color 250 500

16 RCNY 5-06 Misc. Violation of vehicle body specifications 250 500

16-120.1(d) Improper disposal of regulated household waste 50 250

16-120.1(e)****** Failure to file DEC medical waste plans 1st 2,500 10,000

2nd 5,000 10,000

3rd 10,000 10,000

16-120.1(f))****** Failure to file DEC medical waste plans/amended plans 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16-120.1(e) or(f) Late filing of medical waste plans or reports within 30 days as per 16-120.1(i)(6) 100 250

16 RCNY11-02(a)****** Failure to file DEC Medical Waste Plans 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16 RCNY11-02(b)****** Failure to File Medical Waste Plans/Amended Plans 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16-122(b)* Repeat violation 100 150

16-118(2)* Repeat violation 250 300

16 RCNY 11-02(a),(b) Late Filing of Medical Waste Plans or Reports Within 30 days as per 16 RCNY 11-02(c) 100 250

NYS General BusinessLaw §397-a Placement of unsolicited advertisements on private property in a manner contrary to sign authorized by General Business Law §397-a. 250 250

16-208(g)*** Improper receptacle for yard waste (Resident) 1st2nd3rd 2550100 2550100

Persistent Violator (fourth and any subsequentviolation within a period of six months from theissuance of the first violation): 500 500

16-308(h)*** Improper dispersal of yard waste (Business Generating Yard Waste) 1st2nd3rd 2501,0002,500 2501,0002,500

16-308(h)*** Improper disposal of yard waste (Business Generating Yard Waste) 1st2nd3rd 2501,0002,500 2501,0002,500

16-327(a) Failure to dispose of solid waste and recyclable materials properly $100 per violationMaximum: Up to $500 per day or $2,000 per street event. $100 per violationMaximum: Up to $500 per day or $2,000 per street event.

16-327(b)(1) Failure to provide sufficient number of refuse and recycling receptacles for street event $100 per violationMaximum: Up to $500 per day or $2,000 per street event. $100 per violationMaximum: Up to $500 per day or $2,000 per street event.

16-327(b)(2) Spillage condition from overflowing receptacle $100 per violationMaximum: Up to $500 per day or $2,000 per street event. $100 per violationMaximum: Up to $500 per day or $2,000 per street event.

16-327(b)(3) Failure to properly bag and/or bundle refuse and recyclables $100 per violationMaximum: Up to $500 per day or $2,000 per street event. $100 per violationMaximum: Up to $500 per day or $2,000 per street event.

16-327(b)(4) Failure to place bagged and/or bundled refuse and recyclables at predetermined location $100 per violationMaximum: Up to $500 per day or $2,000 per street event. $100 per violationMaximum: Up to $500 per day or $2,000 per street event.

16-404*** Improper Disposal of Rechargeable Battery 1st2nd3rd 50100200 50100200

16-405(a)*** Failure to Comply with Rechargeable Battery Recycling Program Requirements (Retailer) 1st2nd3rd 200400500 200400500

16-405(b)*** Failure to Comply with Rechargeable Battery Recycling Program Requirements (Battery Manufacturer) 1st2nd3rd 2,0004,0005,000 2,0004,0005,000

§16-422 Failure of manufactureer to accept covered electronic equipment or orphan waste pursuant to manufacturer's electronic waste management plan. $2,000 per piece of covered electronic equipment or orphan waste. $2,000 per piece of covered electronic equipment or orphan waste.

§16-423******* Failure of a manufacturer to submit initial electronic waste management plan to DSNY. $1,000 per day $60,000

§16-423******* Failure of manufacturer to submit a valid electronic waste management plan to DSNY after it has been disapproved by DSNY more than two times. $1,000 per day $60,000

§16-426(a) Improper disposal by person of electronic equipment as solid waste. $100 $100

§16-426(b) Improper disposal by manufacturer of electronic equipment as solid waste. $1,000 $1,000

§16-428(a)******* Failure of manufacturer to submit annual report by July 1st of each calendar year. $1,000 per day $60,000

§16-428(a) Submission of annual report by manufacturer that contains false or misleading information. $10,000 $10,000

16-453(a)(1) Providing plastic bags without recycling message 300 per day 9,000

16-453(a)(2) Failure to provide a bin for the collection of plastic 300 per day 9,000

16-453(a)(2) Failure to clearly mark a bin for the collection of plastic 300 per day 9,000

16-453(a)(3) Failure to recycle plastic bags and film plastic 300 per day 9,000

16-453(a)(5) Failure to sell reusable bags 300 per day 9,000

16-453(b)*** Failure to maintain plastic bag and film recycling records 1st2nd3rd 1007001,000 1007001,000

16-453(c)*** Failure to submit an annual report (Operator) 1st2nd3rd 1007001,000 1007001,000

16-454(a) Failure to make arrangements for the collection, transport and recycling 500 per day 15,000

16-454(b)*** Failure to submit an annual report (Manufacturer) 1st2nd3rd 1001,0001,500 1001,0001,500

16-454(c)*** Failure to provide educational materials 1st2nd3rd 1001,0001,500 1001,0001,500

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-122) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

*** For sections 10-119 . . . previous violation (fourth paragraph amended (inadvertently omitting part of City Record May 9, 2008 amendment) City Record Oct. 10, 2008 §3, eff. Nov. 9, 2008. [See Note 4]

*** For sections 10-119 . . . previous violation (fourth paragraph) amended, fifth paragraph amended City Record May 9, 2008 §1, eff. June 8, 2008. [See Note 2]

*** For sections 10-119 . . . previous violation (fourth paragraph) amended, fifth paragraph added City Record

Dec. 12, 2007 §4, eff. Jan. 11, 2008. [See T48 §3-115 Note 2]

***For sections 10-119 . . . previous violation (fourth paragraph) amended City Record Aug. 16, 2007 §3, eff. Sept. 15, 2007. [See Note 1]

Any person . . . previous violation (fifth paragraph) amended City Record Oct. 10, 2008 §3, eff. Nov. 9, 2008. [See Note 4]

Any person . . . previous violation (fifth paragraph) amended City Record May 9, 2008 §1, eff. June 8, 2008. [See Note 2]

Any person . . . previous violation (fifth paragraph) added City Record Dec. 12, 2007 §4, eff. Jan. 11, 2008. [See T48 §3-115 Note 2]

Any person . . . previous violation (sixth paragraph) added City Record Oct. 10, 2008 §3, eff. Nov. 9, 2008. [See Note 4]

*******Per day . . . sixty days (tenth paragraph) added City Record Oct. 10, 2008 §2, eff. Nov. 9, 2008. [See Note 5]

With the exception . . . respondent (eleventh paragraph) amended City Record Nov. 25, 2008 §20, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]. Note: This amendment omitted part of City Record Oct. 10, 2008 amendment.

With the exception . . . respondent (eleventh paragraph) amended City Record Oct. 10, 2008 §3, eff. Nov. 9, 2008. [See Note 5]. Note: This amendment inadvertently omitted part of City Record May 9, 2008 amendment.

With the exception . . . respondent (eleventh paragraph) amended City Record May 9, 2008 §2, eff. June 8, 2008. [See Note 2]

********For §16-130(b) . . . thereof (closing par) added City Record Dec. 23, 2009 §1, eff. Jan. 22, 2010. [See Note 6]

Table 16-130(b) added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16 RCNY 4-44(c) added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16 RCNY 4-44(g) added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16 RCNY 4-44(h) added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16 RCNY 4-44(i) added added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16 RCNY 4-44(j) added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16 RCNY 4-44(l) added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16-118(2) [three entries] amended to be 16-118(2)(a)(b) [six entries] City Record Oct. 13, 2006 §6, eff. Nov. 12, 2006. [See T48 §3-103 Note 1]

Table 16-118(2)(a) Dirty Sidewalk amended City Record Aug. 16, 2007 §4, eff. Sept. 15, 2007. [See Note 1]

Table 16-118(2)(a) Dirty Area amended City Record Aug. 16, 2007 §4, eff. Sept. 15, 2007. [See Note 1]

Table 16-118(2)(b) Dirty Sidewalk amendeed City Record Aug. 16, 2007 §5, eff. Sept. 15, 2007. [See Note 1]

Table 16-118(2)(b) Dirty Area amended City Record Aug. 16, 2007 §5, eff. Sept. 15, 2007. [See Note 1]

Table 16-118(7)(b) entries amended/added City Record Dec. 12, 2007 § 3, eff. Jan. 11, 2008. [See T48 §3-115 Note 2]

Table §16-118(7)(b)(1)*** amended City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See Note 4]

Table 16-118(c)*** added City Record Dec. 12, 2007 § 3, eff. Jan. 11, 2008. [See T48 §3-115

Note 2]

Table §16-118(7)(c)*** amended City Record Oct. 10, 2008 §2, eff. Nov. 9, 2008. [See Note 4]

Table 16-118(d)*** added City Record Dec. 12, 2007 § 3, eff. Jan. 11, 2008. [See T48 §3-115

Note 2]

Table 16-120(e) amended City Record Oct. 31, 2007 §1, eff. Nov. 30, 2007. [See T48 §3-124

Note 1]

Table NYS General Business Law §397-a added City Record July 2, 2008 §1, eff. Aug. 1, 2008. [See Note 3]

Table 16-208(g) amended City Record Aug. 16, 2007 §6, eff. Sept. 15, 2007. [See Note 1]

Table 16-308(h) amended City Record Aug. 16, 2007 §6, eff. Sept. 15, 2007. [See Note 1]

Table 16-308(h) amended City Record Aug. 16, 2007 §6, eff. Sept. 15, 2007. [See Note 1]

Table 16-327(a) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 6]

Table 16-327(b)(1) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 6]

Table 16-327(b)(2) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 6]

Table 16-327(b)(3) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 6]

Table 16-327(b)(4) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 6]

Table 16-404 amended City Record Aug. 16, 2007 §6, eff. Sept. 15, 2007. [See Note 1]

Table 16-405(a) amended City Record Aug. 16, 2007 §6, eff. Sept. 15, 2007. [See Note 1]

Table 16-405(b) amended City Record Aug. 16, 2007 §6, eff. Sept. 15, 2007. [See Note 1]

Table §16-422 added City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See Note 5]

Table §16-423******* (2 entries) added City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See

Note 5]

Table §16-426(a) added City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See Note 5]

Table §16-426(b) added City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See Note 5]

Table §16-428(a)******* added City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See Note 5]

Table §16-428(a) added City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See Note 5]

Table 16-453 entries (7) added City Record May 9, 2008 §3, eff. June 8, 2008. [See Note 2]

Table 16-454 entries (3) added City Record May 9, 2008 §3, eff. June 8, 2008. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 16, 2007:

The Environmental Control Board (ECB) had a Public Hearing on July 19, 2007, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB Penalty Schedules as set forth above.

(1) The Board has revised §3-100, "General," found in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to add new text at the end of that section clarifying the fact that some of the penalties in the ECB Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York are penalties that were set as flat penalties by law. Thus, for some of the penalties in the ECB Penalty Schedules, there is no range of penalties set forth in the Administrative Code or other applicable law. However, solely for the convenience of the public, ECB is including these flat penalties in the Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive.

(2) The Board has revised the Public Safety Graffiti Penalty Schedule found in §3-119 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add to that Penalty Schedule one new charge for Administrative Code §27-4047(a), "Use or discharge of fireworks without a permit." This charge is being added to enforce §27-4047(a), which provides that "It shall be unlawful to use or discharge any fireworks within the city without a permit." Pursuant to §27-4047.1, which was enacted by Local Law 69/2005, §27-4047(a) has a set statutory penalty of $750, rather than a range of penalties. However, the Board is including this penalty in the Public Safety Graffiti Penalty Schedule solely for the convenience of the public, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive.

(3) The Board has revised two entries and has added two entries to the Department of Sanitation's Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. This was done (i) in order to distinguish the enforcement of §16-118(2)(a) when that Section is used in connection with Notices of Violation that are issued for Dirty Sidewalk, as opposed to the enforcement of §16-118(2)(a) when that Section is used in connection with Notices of Violation that are issued for Dirty Area; (ii) in order to distinguish the enforcement of §16-118(2)(b) when that Section is used in connection with Notices of Violation that are issued for Dirty Sidewalk (Vacant Lot), as opposed to the enforcement of §16-118(2)(b) when that Section is used in connection with Notices of Violation that are issued for Dirty Area (Vacant Lot). This will allow more accurate tracking of enforcement of §§16-118(2)(a) and 16-118(2)(b).

(4) The Board has revised the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add three new entries in that Penalty Schedule for violation of Administrative Code §§16-308(g) and 16-308(h). These entries were added in light of the enactment of Local Law 40/2006, which pertains to the composting of yard waste. This law amended the New York City recycling law, found in Title 16, Chapter 3 of the New York City Administrative Code, by requiring residents to place yard waste out for Department of Sanitation (DSNY) collection in paper bags or loose in rigid containers. The law also prohibits both licensed and unlicensed landscapers and gardeners from placing yard waste at the curb for DSNY collection and from

dispersing such yard waste in or about the curb or street. As of October 2008, landscapers and gardeners must dispose of such yard waste at a permitted composting facility, provided that there is sufficient composting capacity in the City or at a facility within ten miles from the borough in which the yard waste was generated. If composting facilities with sufficient capacity do not exist, the yard waste may be disposed of at any appropriately permitted solid waste management facility. The provisions pertaining to residents found in §16-308(g) become effective on April 1, 2007, while the provisions pertaining to landscapers found in §16-308(h) became effective as of October 1, 2008. The law itself, in §16-324(a) of the New York City Administrative Code, imposes flat penalties for each level of offense, rather than a range of dollar amounts. However, the Board is including these penalties in the Sanitation Penalty Schedule solely for the convenience of the public, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. The Board has also revised the note that is prefaced with three asterisks in the Sanitation Penalty Schedule to reflect the fact that for Sections 16-308(g) and 16-308(h), the prior violations must have been within a twelve month period, to count as a prior violation.

(5) The Board has revised the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add three new entries in that Penalty Schedule for violation of Administrative Code §§16-404, 16-405(a) and 16-405(b). These entries have been added in light of the enactment of Local Law 97/2005, which pertains to a recycling program for all rechargeable batteries. The law added a new chapter four to Title 16 of the New York City Administrative Code. The law requires New York City businesses that sell rechargeable batteries (except food stores under 14,000 square feet) to accept from consumers used rechargeable batteries for proper disposal. The law also requires manufacturers to submit a plan to the Department of Sanitation (DSNY) identifying the methods by which the manufacturers will collect, transport and recycle rechargeable batteries collected by retailers. The law also prohibits any person from knowingly disposing of rechargeable batteries as solid waste in New York City. The law itself, in §16-406 of the New York City Administrative Code, imposes flat penalties for each level of offense, rather than a range of dollar amounts. However, the Board has included these penalties in the Sanitation Penalty Schedule solely for the convenience of the public, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. The Board has also revised the note that is prefaced with three asterisks in the Sanitation Penalty Schedule to reflect the fact that for §§16-404 and 16-405(a) and 16-405(b) the prior violations must have been within a twelve month period, to count as a prior violation.

(6) The Board has revised the Department of Transportation Penalty Schedule found in §3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the entry in the "Section/Rule" column of that Penalty Schedule that currently reads "34 RCNY 2-11(g)(2)(iii)," for "Failure to apply for permit within two business days of emergency work," to instead read "34 RCNY 2-11(g)(2)(viii)." The reason for this change is to reflect the proper citation for the charge of "Failure to apply for permit within two business days of emergency work."

2. Statement of Basis and Purpose in City Record May 9, 2008: The Environmental Control Board (ECB) had a Public Hearing on April 14, 2008, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above. 1) The Board has revised the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add ten new charges pertaining to new legal requirements regarding recycling programs for plastic bags and film plastic. Those new requirements regarding recycling programs for plastic bags and film plastic were established by Local Law No. 1 of 2008, which was signed into law on January 23, 2008. That Local Law creates a new Chapter 4-B within Title 16 of the NYC Administrative Code that requires that certain retailers in the City establish an in-store recycling collection program for plastic bags and film plastic such as dry cleaning bags and shrink wrap. The law also requires retailers to maintain records evidencing the weight of the plastic bags that they collect for recycling and to report this information annually to the Department of Sanitation. In addition, the law requires plastic bag manufacturers to provide for collection and recycling of used plastic bags from retailers; to annually report the weight of such bags to the retailer; and to provide retailers, upon request, with educational materials that encourage the reduction, reuse and recycling of plastic carryout bags. These ten new charges that the Board has added to the Sanitation Penalty Schedule implement these provisions of the law. In connection with these ten new

charges, the Board has also revised one of the headnotes that is in the Sanitation Penalty Schedule to order to indicate what constitutes a repeat violation for the purpose of imposing repeat-violation penalties under the new law. Additionally, the Board has revised another one of the headnotes that is set out in the Sanitation Penalty Schedule in order to indicate the inapplicability of a thirty dollar late fee in connection with certain of these charges. 2) The Board has revised the Department of Transportation Penalty Schedule found in §3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the entry in the "Section/Rule" column of that Penalty Schedule for 34 RCNY 2-05(d)(16), which currently reads "failure to house cables/hoses 8 feet above ground," to instead read "fail to house overhead cables/hoses/wires with 14 feet minimum clearance." This revision was made to more accurately reflect the substantive provisions of 34 RCNY 2-05(d)(16), by specifying the requirement that all equipment hoses, cables or wires carried overhead across the sidewalk shall have fourteen feet minimum clearance. 3) The Board has revised the Department of Transportation Penalty Schedule found in §3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add fifteen new charges pertaining to newsrack requirements set forth in §2-08 of Title 34 of the Rules of the City of New York. These new charges are in addition to the current charges in the Penalty Schedule that pertain to newsracks, which cite to provisions of Title 19 of the NYC Administrative Code rather than to provisions of the Rules of the City of New York. These new charges have been added to that Penalty Schedule to enable the Department of Transportation to have the enforcement option of citing to the provisions of the Rules of the City of New York, which in some cases are more specific and detailed in their provisions than are the corresponding sections of the NYC Administrative Code.

3. Statement of Basis and Purpose in City Record July 2, 2008: The Environmental Control Board (ECB) and the Department of Sanitation (DSNY) had a joint Public Hearing on June 4, 2008. There were four individuals present to offer verbal comments into the public record. Two were private citizens, one was a representative from Councilman Vincent Gentile's Office, and one was Councilman Simcha Felder. The Board has revised the Sanitation Penalty Schedule found in §31-122 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York to add one charge, for a violation of NYS General Business Law §397-a, for placement of unsolicited advertisements on private property without the authorization of the property owner. This charge is being added in light of the fact that on January 28, 2008, Governor Spitzer signed into law Chapter 3 of the Laws of 2008, in relation to the distribution of unsolicited advertising on private property. This law amends §397-a of the General Business Law to prohibit persons or entities, in cities having a population of one million or more, from placing advertisements, circulars, etc. at private premises where the owner displays a conspicuous sign, at least 5 inches by 7 inches in size, stating "Do Not Place Unauthorized Materials On This Property." Mayor Bloomberg has designated the NYC Department of Sanitation to enforce this law. Accordingly, a new charge, corresponding to the provisions of the new law, has been added to the Sanitation Penalty Schedule to enforce against violations thereof.

4. Statement of Basis and Purpose in City Record Oct. 10, 2008: The Environmental Control Board (ECB) had a Public Hearing on August 25, 2008, on proposed revisions of its Sanitation Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above. The Board has revised the charge codes associated with two charges in the Sanitation Penalty Schedule found in §31-122 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York. Those two charge codes pertain to the theft of recyclables and solid waste. Specifically, for the charge description that currently reads "Unauthorized Removal of Recyclable Materials from residential premises or vacant lots using a motor vehicle (Owner)," the charging section has been changed from §16-118(7)(b)(1) to §16-118(7)(f)(1)(i). Also, for the charge description that currently reads, "Unauthorized Removal of recyclable materials from commercial premises by using a motor vehicle. (Owner)," the charging section has been changed from §16-118(7)(c) to §16-118(7)(f)(1)(i). This is because §16-118(7)(f)(1)(i) better corresponds to these substantive charges. The penalties associated with these violations remain unchanged. The Board has also revised the note in the Sanitation Penalty Schedule found in §31-122 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York that is prefaced with three asterisks (***) to reflect the fact that for §16-118(7)(f)(1)(i), any person who violates §16-118(7)(f)(1)(i) by virtue of owning a motor vehicle that was used in violation of subparagraph one of paragraph b or paragraph c of §16-118(7) is considered a repeat violator where the same respondent has violated §16-118(7)(f)(1)(i) by virtue of owning a motor vehicle that

was used in violation of subparagraph one of paragraph b or paragraph c of §16-118(7) where the present violation has a date of occurrence within twelve months of the date of occurrence of the previous violation. This revision to the note in the Sanitation Penalty Schedule gives effect to the statutory language of §16-118(7)(f)(1)(i), which sets forth these repeat-violator provisions.

5. Statement of Basis and Purpose in City Record The Environmental Control Board (ECB) had a Public Hearing on August 25, 2008 on proposed revisions of its Sanitation Penalty Schedule found in §31-122 of Subchapter G of Title 31 of the Rules of the City of New York. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedule as set forth above. The Board has added seven new charges to the Department of Sanitation's Penalty Schedule pursuant to the enactment of Local Law 13 of 2008. Local Law 13 amends the Administrative Code of the City of New York in relation to the collection for recycling, reuse and safe handling of electronic equipment in the City of New York. The intention is to establish a system to provide for the collection, handling, recycling or reuse of electronic equipment in the City. Specifically, the Local Law creates a new Chapter 4-A within Title 16 of the Administrative Code of the City of New York that requires manufacturers of certain electronic equipment-such as computers, monitors and televisions-to collect their products offered for return by any person in the City, and to ensure that the equipment is properly disposed of in accordance with existing laws and EPA guidelines. Also, manufacturers are required to submit an electronic waste management plan to the New York City Department of Sanitation ("DSNY"), describing in detail how they would implement the requirements of the law. This law also makes it unlawful for manufacturers and others to dispose of electronic waste in the City's solid waste stream. As a result, the Board is adding these new charges to the Penalty Schedule. The effective dates of the various Sections of Law set forth in these new charges vary, and are set forth in Local Law 13. Specifically, for §16-423 ("failure of a manufacturer to submit initial electronic waste management plan to DSNY" & "failure of manufacturer to submit a valid electronic waste management plan to DSNY after it has been disapproved by DSNY more than two times") the effective date is September 1, 2008; for §16-422 (failure of manufacturer to accept covered electronic equipment or orphan waste pursuant to manufacturer's electronic waste management plan), and for 16-426(b) (improper disposal by manufacturer of electronic equipment as solid waste), and for 16-428(a) ("failure of manufacturer to submit annual report by July 1st of each calendar year" & "submission of annual report by manufacturer that contains false or misleading information") the effective date is July 1, 2009; and for §16-426(a) ("improper disposal by person of electronic equipment as solid waste") the effective date is July 1, 2010. Three of the charges (both §16-423 charges, and also one of the §428(a) charges, regarding the failure of a manufacturer to submit an annual report by July 1, of each calendar year) have per-day penalties of $1000 per day. These per day penalties are mandated by §16-427(d), established by Local Law 13 of 2008. This per-day penalty will run from the date of occurrence for a maximum of 60 days, the anticipated first scheduled ECB hearing date. Specifically, such per day penalty will continue to accrue until the Respondent either can prove a date specific that the violation has been corrected or for sixty days, whichever comes first.

6. Statement of Basis and Purpose in City Record Oct. 2, 2009: The Environmental Control Board (ECB) held a Public Hearing on August 6, 2009 on revisions to the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York in light of the enactment of Local Law No. 13 of 2009 that amended Chapter 3 of Title 16 of the Administrative Code of the City of New York by adding a new subchapter 8 entitled SOLID WASTE AND RECYCLABLE MATERIALS AT STREET EVENTS. Neither written comments nor oral testimony were presented. Local Law No. 13 amends the Administrative Code of the City of New York in relation to street cleaning and the collection and removal of solid waste and recyclable materials at street events. The Board has added five new charges set forth above to the Sanitation Penalty Schedule in accordance with this local law. Local Law No. 13, effective February 13, 2009, implements a change to the New York City Administrative Code by ensuring that all designated recyclable materials generated at multi-day, multi-block street events are properly source separated for recycling, and that whatever cannot be recycled is discarded properly. Local Law 13 holds event organizers responsible for providing separate receptacles for solid waste and recyclables at each intersection of the street event, and monitoring those receptacles to ensure that they do not overflow and cause littered street conditions. Event organizers must also arrange for proper collection of these materials at the end of the night. The purpose of this law is to increase recycling

awareness and participation among all New Yorkers and tourists alike who attend the City's many street events. The definition of &#34§reet event" excludes the typical residential block party if it occupies no more than one block, for no more than one day and where no licensed vendor participates. It should be noted that a violation of ;st16-327(a), "Failure to Dispose of Solid Waste and Recyclable Materials Properly," occurs when a sponsor or production manager fails to arrange for removal of solid waste and recyclable materials at street events by private carter or by the New York City Department of Sanitation. The Penalty provisions in Local Law No. 13 for street cleaning and the collection and removal of solid waste and recyclable materials at street events are set forth in §16-328 of the Administrative Code of the City of New York. Local Law No. 13 contains only a flat penalty and not a range. For each of these five new charges, 16-327(a), 16-327(b)(1), 16-327(b)(2), 16-327(b)(3) and 16-327(b)(4), the penalties are $100 per violation, up to $500 per day or $2,000 per street event. Solely for the convenience of the public, ECB is including the five new charges in its penalty schedule as set forth in subchapter G of Title 3 of Chapter 48 of the Rules of the City of New York to ensure that ECB's Penalty Schedules are as comprehensive as possible.

7. Statement of Basis and Purpose in City Record Dec. 23, 2009: The Environmental Control Board (ECB) held a Public Hearing on November 19, 2009 on various amendments to the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented. The Board has revised the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to include violations pertaining to the regulation of intermodal solid waste container facilities ("intermodal facilities"). An intermodal solid waste container facility is a facility or premises that is served by rail or vessel at which intermodal containers of solid waste are transferred from one transport vehicle to another for shipment by rail or vessel to an authorized disposal or treatment facility, where the contents of each container remain in the same closed container during the transfer between transport vehicles, and storage remains incidental to transport at the location where the containers are consolidated. Section 16-130 of the Administrative Code of the City of New York prohibits the operation of any solid waste facility without proper authorization from the New York City Department of Sanitation (DSNY). DSNY published final rules relating to the registration and operational requirements for intermodal facilities in 2004. These rules can be found in Subchapter D of Chapter 4 of Title 16 of the Rules of the City of New York. The registration requirements for an intermodal facility, as set forth in the rules, are authorized pursuant to §16-130(b) of the New York City Administrative Code. That section allows DSNY to establish by rulemaking one or more classes of permits. A registration for an intermodal facility is considered a class of permit under §16-130(b). The other rules found in Subchapter D set forth operation and maintenance requirements for an intermodal facility, including, but not limited to, the following: (1) the intermodal facility must be maintained in a safe and sanitary manner; (2) all solid waste received at the facility must be in intermodal containers at all times, including during receipt, storage and removal and (3) the intermodal facility must keep detailed records regarding the type and volume of solid waste received at the facility, the name of the solid waste management facility where the solid waste was loaded into the intermodal containers, and the destination of the solid waste. Penalties for violating these rules are set forth in §16-133(a) (2) of the Administrative Code, which allows for the imposition of a civil penalty of "not less than $2500 nor more than $10,000 for the first violation, not less than $5000 nor more than $10,000 for the second violation committed within a period of three years, and $10,000 for the third and any subsequent violation committed within such period." The default penalty for each offense is $10,000. The Board has added a head note to the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. The head note is prefaced with eight asterisks (********) and reflects the definition of repeat violator contained in §16-133 (a) (2) of the New York City Administrative Code.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further

provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of

the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-123

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-123 Sewer Control Rules Penalty Schedule.

SEWER CONTROL RULES PENALTY SCHEDULE

The name "Division of Pollution Control and Monitoring" is abbreviated as "DPCM."

The term "Not Applicable" is abbreviated as "N/A."

The term "Notice of Violation" is abbreviated as "NOV."

Citations preceded by "A.C." are to the NYC Administrative Code.

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

For purposes of this Penalty Schedule, the term "serious" in the charge for A.C. Title 24, Ch. 5/15 RCNY Ch. 19, for "any serious Admin. Code Rule violation" is defined as "any violation resulting in injury to human, animal, or aquatic life, harm to public health or the environment, or damage to the publicly owned treatment works or its collection system."

A second, third and/or subsequent violation shall be based on the following criteria: (1) an offense by the same respondent; (2) the prior NOV(s) is for the same subsection and paragraph of the same regulation as the current NOV; (3) the offense does not have to involve the same premises, equipment and/or vehicle; (4) the prior NOV(s) was concluded by a finding of violation or an admission or a default and has a date of offense within 1 year of the date of offense of the current NOV; and (5) if NOV(s) with different dates of offense are adjudicated at the same hearing, each NOV shall serve as a prior violation for all subsequently issued NOV's.

The default penalty for all charges in this Penalty Schedule is $10,000.

Mitigation, if applicable, shall be determined as per notes 1 through 9 below, and as indicated in the mitigation penalty column ("MIT. PENALTY") of this Penalty Schedule, and also as per "Compliance Incentives Policy Mitigation" set out below.

1 19-03(a)(9)19-04(a)-(c) Mitigation DPCM has received the results of sampling conducted by the respondent subsequent to the date of offense which are in compliance with applicable limits and deemed acceptable by DPCM. Such results must be received by DPCM within 30 calendar days from the date of service of the NOV. The burden of proving compliance shall be upon the respondent.

2 24-524(f) Mitigationfailureto comply DPCM has received proof deemed acceptable by DPCM that the Commissioner of Environmental Protection's order or permit has been fully complied with, within 30 calendar days from the due date for compliance with said order, or report due date.

3 19-03(a)(4)-(8)19-03(a)(10)-(11)19-03(a)(15) Mitigation DPCM has received proof deemed acceptable by DPCM that the spill/discharge was accidental, that the respondent has properly reported the spill/discharge to DPCM, has taken adequate measures to minimize the extent of the spill/discharge, and has properly cleaned the spill/discharge.

4 24-524(f) Mitigationfailure tocomply DPCM has received proof deemed acceptable by DPCM that the Commissioner of Environmental Protection's order or permit has been fully complied with, within 30 calendar days from the due date for compliance with said order, or report due date. Alternatively, a prior NOV exists for the same commissioner of environmental protection's order or permit reporting requirement (i.e. same report was due) and has a date of offense within 1 year of the date of offense of the current NOV and DPCM has received proof deemed acceptable by DPCM that the commissioner of environmental protection's order or permit has been fully complied with within 30 calendar days from the date of service of the current NOV.

5 19-02(a), (d)19-05(e)19-06(b) Mitigation DPCM has received proof deemed acceptable by DPCM that the violation has been corrected within 30 calendar days from the date of service of the NOV.

6 19-03(a)(12) Mitigationdischargeburdensometo plant DPCM has received proof deemed acceptable by DPCM that the respondent has immediately ceased the unauthorized discharge, performed a proper cleanup, if applicable, and taken adequate measures to prevent future unauthorized discharges.

7 24-509(c) Mitigationfailure toconnectto publicsewer Respondent has DEP house connection permit by first scheduled hearing date and connects within three weeks of the first scheduled hearing date.

8 24-509(c) Mitigationfailure toconnectto publicsewer Respondent files plumbing repair application with department of buildings by first scheduled hearing date and completes connection within five weeks of the first scheduled hearing date.

9 24-509(c) Mitigationfailure toconnectto publicsewer Respondent fails to initiate the connection process by first scheduled hearing date but completes connection within seven weeks of the first scheduled hearing date.

COMPLIANCE INCENTIVES POLICY MITIGATION

IF RECOMMENDED BY DPCM, PENALTIES MAY BE ASSESSED UNDER THE TERMS OF THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S POLICY ON INCENTIVES FOR BUSINESSES TO COMPLY WITH REGULATIONS GOVERNING DISCHARGES TO PUBLIC SEWERS, ALSO KNOWN AS THE COMPLIANCE INCENTIVES POLICY (CIP). A COPY OF THE CIP CAN BE OBTAINED FROM THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION BUREAU OF WASTEWATER TREATMENT, DIVISION OF POLLUTION CONTROL AND MONITORING. THE ACTUAL TEXT OF THE CIP SHALL BE DETERMINATIVE OF THE REQUIREMENTS FOR MITIGATION UNDER THE CIP.

SEE BELOW FOR A BRIEF SUMMARY OF THE CIP. SEE ALSO THE CIP PENALTY REDUCTION TABLE, BELOW.

Summary of CIP

(See actual CIP for further details)

Qualifying violations will be: 1) violations discovered through a voluntary on-site compliance assistance program, as per the terms of the CIP; 2) violations discovered through an environmental self-audit, as per the terms of the CIP; 3) violations discovered through special testing, sampling, or monitoring performed by a business for the purpose of evaluating or upgrading its equipment or processes, as per the terms of the CIP.

The disclosure of the violation must occur within the time frames required by the CIP, and before the violation was otherwise discovered by, or reported to DPCM, and cannot be a result of legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement.

As described in the CIP, businesses must correct the violations within the shortest practicable period of time, not to exceed 90 days following detection of the violation, unless an additional 90 day period is approved by DPCM, only if necessary to allow the business to correct the violation by implementing pollution prevention measures.

Additional requirements include, but are not limited to (see actual CIP for all requirements, and for further details);

a) the business immediately corrects threats to the public's health, safety or the environment; and

b) the business has not intentionally, knowingly, recklessly, or with criminal or gross negligence caused harm to public health, safety or the environment; and

c) the violation does not involve criminal conduct; and

d) the violation does not cause the publicly-owned treatment works facility, which treats the related NYC sewer discharge where the violation occurred, to exceed its effluent limitations; and

e) the business has not received any NOVs, for the same subsection and paragraph of the same regulation as the current NOV, with a date of offense within two years prior to the date of offense of the current NOV, or alternatively, at DPCM's discretion, the business either funds an environmentally beneficial project that contributes to the betterment of the NYC wastewater collection and treatment system (or other related or non-related Department of Environmental Protection concerns), or attends a mandatory user-paid environmental education program.

CIP Penalty Reduction Table

If Respondent also qualifies for a non-CIP mitigated penalty, the CIP percentage penalty reduction shall be applied to the mitigated penalty amount.

Determining Factors For Reduction in Penalty Percent Reduction In Penalty

All CIP requirements satisfied, and violation corrected within 90 days following detection of the violation, and no prior NOV for the same subsection and paragraph as current NOV within 2 years, and no harm to public health, safety or the environment. 100%

All CIP requirements satisfied, and violation corrected within 180 days (with DPCM approval). Instead of 90 days following detection of the violation, and no prior NOV for the same subsection and pragraph as current NOV within 2 years, and no harm to public health, safety or the environment. 90%

All CIP requirements satisfied, and violation corrected within 90 days following detection of the violation, and NOV exists for same subsection and paragraph within 2 years, but environmentally beneficial project funded or environmental education program attended, and no harm to public health, safety or the environment. 80%

All CIP requirements satisfied, and violation corrected within 180 days (with DPCM approval), instead of 90 days following detection of the violation, and NOV for the same subsection and paragraph within 2 years but environmentally beneficial project funded or environmental education program attended, and no harm to public health, safety or the environment. 70%

All CIP requirements satisfied, and violation corrected within 90 days following detection of the violation, and no prior NOV for the same subsection and paragraph as current NOV within 2 years, and harm to public health, safety or the environment, but not intentionally, knowingly, recklessly, or with criminal or gross negligence. 60%

All CIP requirements satisfied, and violation corrected within 180 days (with DPCM approval) instead of 90 days following detection of the violation, and no prior NOV for the same subsection and paragraph as current NOV within 2 years, and harm to public health, safety or the environment, but not intentionally, knowingly, recklessly, or with criminal or gross negligence. 50%

All CIP requirements satisfied, and violation corrected within 90 days following detection of the violation, and NOV exists for same subsection and paragraph within 2 years, but environmentally beneficial project funded or environmental education program attended, and harm to public health, safety, or the environment, but not intentionally, knowingly, recklessly, or with criminal or gross negligence. 40%

All CIP requirements satisfied, and violation corrected within 180 days (with DPCM approval) of the violation, and NOV exists for same subsection and paragraph within 2 years, but environmentally beneficial project funded or environmental education program attended, and harm to public health, safety or the environment, but not intentionally, knowingly, recklessly, or with criminal or gross negligence. 30%

Regulation Description First Violation Second Violation Third Viol. Subs Viol.

15 RCNY 19-02(a), (d) Unauthorized connection to public sewer/Interceptor 300 200[5] 500 NO 1000 2500

15 RCNY 19-02(b), (c), (e) Unauthorized discharge to catch basin/storm/sanitary sewer 250 NO 500 NO 1000 2500

15 RCNY 19-02(f) Discharge of Groundwater without permit 250 NO 500 NO 1000 2500

15 RCNY19-03(a)(1) Discharge of obstructive substance or Other Interference 350 NO 500 NO 1000 2500

15 RCNY19-03(a)(2) Discharge of snow and ice at Unauthorized Location 100 NO 200 NO 500 1000

15 RCNY19-03(a)(3) Discharge of steam/waste water over 150°F 350 NO 500 NO 1000 2000

15 RCNY19-03(a)(4) Discharge of flammable or explosive Substance 1000 250[3] 2000 NO 4000 10,000

15 RCNY19-03(a)(5) Discharge of oil0-5 qts from changing oil in privately owned Automobile 500 NO 800 NO 1000 2000

15 RCNY19-03(a)(5)-(8) Discharge of oil sludge/non-polar material/coal tar/paints 1000 500[3] 2000 800[3] 4000MIT.Penalty1000[3] 7500

15 RCNY 19-03(a)(9) Discharge of wastewater outside of applicable ph limits 400 250[1] 800 400[1] 1000 2000

15 RCNY 19-03(a) (10)-(11) Discharge of toxics 1000 250[3] 2000 NO 4000 10000

15 RCNY 19-03 (a)(12) Discharge of pollutant burdensome to sewage treatment plant 2500 1500[6] 5000 NO 7500 10000

15 RCNY 19-03 (a)(13)-(14) Discharge of noxious malodorous or discoloring substance 350 NO 800 NO 1000 2000

15 RCNY 19-03 (a)(15) Discharge of dry cleaning wastes 1000 250[3] 2000 NO 4000 5000

15 RCNY 19-03(b) Discharge of unshredded garbage 350 NO 1000 NO 2000 5000

15 RCNY 19-03 (d)(1) Failure to Protect against accidental discharge 350 NO 1000 NO 2500 5000

15 RCNY 19-03 (d)(2) Failure to immediately notify DEP of accidental discharge 500 NO 1000 NO 2500 5000

15 RCNY 19-03 (d)(3) Failure to post accidental discharge procedures 250 NO 500 NO 1000 2500

15 RCNY 19-03 (d)(4) Failure to mitigate discharge and commence clean-up 500 NO 1000 NO 2500 5000

15 RCNY 19-03(e) Failure to control sewer odor arising in premise 350 NO 500 NO 1000 2500

15 RCNY 19-03(f) Failure to install or maintain pretreatment equipment (grease) 100 NO 400 NO 800 1500

15 RCNY 19-03(g) Unlawful discharge of radioactive material 2500 NO 5000 NO 7500 10000

15 RCNY 19-04(a) Discharge of cyanide amenable in excess of local limit, w/exceedance less than 25x the limit 400 250[1] 800 400[1] 1000 2000

15 RCNY 19-04(a) Discharge of cyanide amendable in excess of local limit, w/exceedance 25x the limit or greater 750 NO 1000 NO 2000 5000

15 RCNY 19-04 (a)-(c) Discharge in excess of local/categorical limits/limits set by commissioner w/exceedance less than 10x the limit (not applicable to cn amenable under 19-04(a)) 400 250[1] 800 400[1] 1000 2000

15 RCNY 19-04 (a)-(c) Discharge in excess of local/categorical limits/limits set by commissioner w/exceedance 10x the limit or greater (not applicable to cn amenable under 19-04(a)) 750 NO 1000 NO 2000 5000

15 RCNY 19-04(d) Failure to Maintain/properly operate pretreatment equipment (categorical) 350 NO 500 NO 1000 2500

15 RCNY 19-04(e) Unlawful dilution of wastewater 500 NO 1000 NO 2500 5000

15 RCNY 19-05(a)(1)-(2) Discharge of wastewater w/o permit or equivalent control mechanism 300 NO 500 NO 1000 2500

15 RCNY 19-05(c) Refusal to provide information or permit inspection (pretreatment) 500 NO 1000 NO 2500 5000

15 RCNY 19-05(d) Failure to install measurement/sampling equipment as required 350 NO 500 NO 1000 2500

15 RCNY 19-05(e) New connection to public sewer, without permit 500 250^{5} 1000 NO 2500 5000

15 RCNY 19-06 (a)(1) Discharge of scavenger waste without scavenger waste permit 1000 NO 2500 NO 5000 7500

15 RCNY 19-06(a)(1)-(2) Discharge of scavenger waste in violation of terms of permit/discharge of scavenger waste from outside NYC 500 NO 1000 NO 2500 5000

15 RCNY 19-06 (a)(3) Discharge of non-sanitary Wastes 1000 NO 2500 NO 5000 7500

15 RCNY 19-06 (a)(4) Discharge of scavenger wastes at non-designated Manhole 500 NO 1000 NO 2500 5000

15 RCNY 19-06(b) Discharge of Scavenger wastes in unclean manner/failure to produce permit 400 100^{5} 1000 2505 2500 5000

15 RCNY 19-06(d) Unlawful transport of other wastes in scavenger Truck 1000 NO 2500 NO 5000 7500

15 RCNY 19-06(e) Impermissible discharge of waste from Grease interceptor, separator, or Trap 1000 NO 2500 NO 5000 7500

15 RCNY 19-07(a), (i) Failure to prepare/Implement silver halide bmpp 350 NO 500 NO 1000 2500

15 RCNY 19-07(b), (f) Failure to install, operate, and maintain proper Pretreatment Equipment 350 NO 500 NO 1000 2500

15 RCNY 19-07(c) Failure to follow off-site recovery req. for silver Halide records and measurements, or vendor Certification 350 NO 500 NO 1000 2500

15 RCNY 19-07(d), (h) Failure to maintain and make available all required records and measurements, or vendor Certification 350 NO 500 NO 1000 2500

15 RCNY 19-10(b)(1)-(2) Unauthorized entry into or damage to sewer system 2500 NO 5000 NO 7500 10000

15 RCNY 19-10(c) Interference with DEP personnel/Equipment 1000 NO 2500 NO 5000 10000

15 RCNY 19-10(d) Refusal to allow entry/tampering with sampling or testing device 1000 NO 2500 NO 5000 10000

15 RCNY 19-10(e) Failure to Provide Required Information/refusal to Cooperate 500 NO 1500 NO 5000 7500

15 RCNY 19-12(a), (c) Failure to install/maintain pretreatment equipment (dry cleaners) 350 NO 500 NO 1000 2500

15 RCNY 19-12(b) Discharge of dry cleaning waste (perc) 500 NO 1000 NO 2500 5000

15 RCNY 19-12(d) Failure to protect against accidental spill (dry cleaner waste) 350 NO 500 NO 1000 2500

15 RCNY 19-12(e) Failure to maintain records (dry cleaners) 350 NO 500 NO 1000 2500

24-509(c) Failure to connect to public sewer w/i 6 months of notification 3000 500[7] 750[8] 1000[9] N/A N/A N/A N/A

24-523(c)(2) Failure to maintain/submit required record/Report 350 NO 500 NO 1000 2500

24-523(c)(2) Failure to maintain monitoring equipment/methods 350 NO 500 NO 1000 2500

24-523(c)(2) Failure to Provide Required information 500 NO 1500 NO 5000 7500

24-523(c)(3) Refusal to allow inspection of monitoring equipment/method or sampling 1000 NO 2500 NO 5000 10000

24-523(c)(4) Providing false or misleading information 1000 NO 2500 NO 5000 10000

24-523(f)/24-524(f) Failure to comply with Comm. request for information/terms of permit other than reporting requirements 500 NO 1000 NO 2500 5000

24-524(f) Failure to comply with Comm.s Order 400 125[2] 600 250[4] 800MIT.Penalty400[4] 1000

24-524(f) Failure to comply with terms of permit reporting requirements 250 125[2] 500 250[4] 800 1000

A.C. Title 24,Ch. 5/15 RCNY Ch. 19 Miscellaneous Administrative Code/rule violation 500 NO 1000 NO 2500 5000

A.C. Title 24,Ch. 5/15 RCNY Ch. 19 Any serious Administrative Code/rule violation 2500 NO 5000 NO 7500 10000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-123) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section repealed and added City Record June 20, 2005 §14, eff. July 20, 2005. [See T48 §3-101

Note 1]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Fifth unnumbered par amended City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 14, 2009:

As a result of a previous amendment to ECB rules, all ECB rules have now been transferred into Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) from Chapter 31 of Title 15 of the RCNY. This transfer of ECB rules into Chapter 3 of Title 48 was due to the fact that, pursuant to the mandate of Local Law 35 of 2008, ECB was consolidated with the Office of Administrative Trials and Hearings as of November 23, 2008. As a result of the transfer of ECB rules into Chapter 3 of Title 48, ECB also previously re-numbered the section numbers of all ECB rules so that every section number previously prefaced with a "31-" (for "Chapter 31" of 15 RCNY) is now prefaced with a "3-" (for Chapter 3 of 48 RCNY). No written comments were received on this proposed rule.

Various sections of ECB's rules include cross-references to other sections of ECB's rules. Accordingly, the Board also previously amended the various cross-references within ECB's rules so that the cross-references now correctly refer

to the other sections of ECB's rules as being prefaced with a "3-" rather than with a "31-".

However, due to a ministerial oversight, ECB did not amend a few of these section number references. Accordingly, ECB has corrected that ministerial oversight. Specifically, in preliminary paragraphs at the beginning of §§3-123 through 3-126 of Title 48, ECB has amended the cross-references in those paragraphs. The citation in those paragraphs that previously read "section 31-81(b)" now reads "3-81(b)", and the citation in those paragraphs that previously read "section 31-32" now reads "3-32."

No public hearing regarding the proposed rule was held, pursuant to New York City Charter §1043(d)(ii), because such a public hearing would serve no public purpose. This is in view of the fact that this rule merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed

regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-124

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-124 Department of Transportation Penalty Schedule.

DEPARTMENT OF TRANSPORTATION PENALTY SCHEDULE

A repeat violation is a violation by the same respondent of the same provision of law, with a date of occurrence within 6 months of the date of occurrence of the previous violation.

All citations are to the NYC Administrative Code or to Title 34 of the Rules of the City of New York.

With the exception of Sections 19-136, 34 RCNY 2-02(a)(1)(ii), 34 RCNY 2-09(f)(4)(v), 34 RCNY 2-11(e)(10)(v), pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section/Rule Description Penalty Default

Admin. Code 19-102(i) Use/opening of street w/o permit 800 2,400

Admin. Code 19-102(i) Use/opening of protected street w/o permit 1,400 4,200

Admin. Code 19-107 Street closing without permit 1,200 3,600

Admin. Code 19-108 Failure to have permit on site or in field office 50 150

Admin. Code 19-109(a) Failure to provide adequate protection at worksite 400 1,200

Admin. Code 19-109(b) Identifying signs improperly displayed or missing 100 300

Admin. Code 19-117(a) Constructing vault w/o license or revocable consent 500 1,500

Admin. Code 19-119 Vault opening without proper protection 250 750

Admin. Code 19-121(a) Construction materials/equipment stored on street w/o permit 750 2,250

Section/Rule Description Penalty Default

Admin. Code 19-121(b)(2) Debris/constr. Materials obstructing gutters/sidewalk, etc. 250 750

Admin. Code 19-121(b)(3) Construction material/equipment w/o proper reflective markings 250 750

Admin. Code 19-121(b)(4) Material/equipment without name & address of owner 100 300

Admin. Code 19-121(b)(5) Construction material/equipment w/in 5 ft. of surface RR track 500 1,500

Admin. Code 19-121(b)(6) No street protection under construction material/equipment 250 750

Admin. Code 19-121(b)(7) Obstruction of fire hydrant or bus stop 500 1,500

Admin. Code 19-122 Sand/dirt/rubbish/debris not removed from site within 7 days 250 750

Admin. Code 19-123 No street protection under commercial refuse container 250 750

Admin. Code 19-124(a) Canopy without permit 100 300

Admin. Code 19-125 Post/pole/flagpole socket/lamppost w/o permit/consent 100 300

Admin. Code 19-126 Use/movement/removal of crane/building/structure w/o permit 1,000 3,000

Admin. Code 19-128(a) Installation/maintenance of public phone booth w/o license 150 450

Admin. Code 19-102(ii) Failure to comply with terms and conditions of DOT permit 1,200 3,600

Admin. Code 19-138(b) Defacement of roadway or sidewalk 50 150

Admin. Code 19-176(b) Unlawful bicycle riding 50 100

Admin. Code 19-102(i) Working w/o permit on controlled access highway 4,000 5,000

Admin. Code 19-102(ii) Fail to comply with terms of permit (controlled access highway) 4,000 5,000

Admin. Code 19-150 Fail to comply with Comm. Order re: illegal encroachment/projection 250 400

Admin. Code 19-136 Goods/wares/merchandise obstructing sidewalk 150 500

Admin. Code 19-150 Fail to comply with Comm. Order re: illegal encroachment/projection 250 400

34 RCNY 2-02(a)(1)(ii) Failed to provide name and tel no. of emergency contact 250 500

34 RCNY 2-07(a)(5) Toolcart stored on sidewalk failed to provide a 5 foot minimum walkway 250 750

34 RCNY 2-07(a)(5) Toolcart stored on roadway without a permit 250 750

34 RCNY 2-07(a)(5) Toolcart stored on sidewalk obstructing hydrant, bus stop, or driveway 500 1,500

34 RCNY 2-02(m) Illegally working on a street during an embargo period 1,200 3,600

34 RCNY 2-07(b)(2) Failure to repair defective street condition found within an area extending 12 inches outward from the perimeter of the cover/grating 250 750

34 RCNY 2-09(f)(4)(v) Failed to install expansion joints as per subsection 250 750

34 RCNY 2-09(f)(4)(v) Failed to seal expansion joints as per subsection 250 750

34 RCNY 2-09 (f)(4)(viii) Failure to fully replace defective sidewalk flag 250 500

34 RCNY 2-09 (f)(4)(xiv) Failure to install pedestrian ramp as per DOT drawings 400 1000

34 RCNY 2-09 (f)(4)(xvi)(A) Failure to repair distinctive sidewalk in kind 250 500

34 RCNY 2-11(e)(10)(v) No Raised Plow sign/Steel plates or fail to countersink plates flush with rd'wy 250 750

34 RCNY 2-07(c)(4)(i) Opening of manhole w/o an authorization number 1,000 3,000

34 RCNY 2-11(f)(4)(i) No notice to DOT before start phase of work on protected street 250 750

34 RCNY 2-11(c)(1) Failure to notify Public Service Corp. prior to excavation 250 750

34 RCNY 2-11(e)(1) Failure to notify City 24 hrs before street work 250 750

34 RCNY 2-11(e)(9)(i) Temporary pavement not flush with surrounding area 500 1,500

34 RCNY 2-11(e)(12)(ii) Wearing course not flush with surrounding area 750 2,250

34 RCNY 2-11(e)(8)(vi) Temporary restoration sunken more than 2 inches 500 1,000

34 RCNY 2-07(c)(1) Doing non-emergency work on a critical roadway during restricted hours 1,000 3,000

34 RCNY 2-07(b)(3) Utililty cover/street hardware not flush with surrounding area 1,000 3,000

34 RCNY 2-05(d)(12) Mixing mortar on roadway w/o protection 250 750

34 RCNY 2-05(d)(10) Failure to provide space for loading & unloading of materials 250 750

34 RCNY 2-05(i)(1) Crossing s/w with a motorized vehicle w/o permit 250 750

34 RCNY 2-05(d)(16) Fail to house overhead cables/hoses/wires with 14 feet minimum clearance 250 750

34 RCNY 2-05(h)(1) Construction shanty/trailer/w/o a permit 150 450

34 RCNY 2-05(h)(4) Failure to remove shanties/trailers from roadway/sidewalk 250 750

34 RCNY 2-05(f)(1)(i) Failure to install curb separate from sidewalk 250 750

34 RCNY 2-11(e)(5) Failure to maintain a 5ft pedestrian walkway on sidewalk 250 750

34 RCNY 2-11(e)(12)(vii) Failure to restore pavement/curb/gutter/s/w in kind 250 750

34 RCNY 2-11(e)(16)(i)(a) Failure to submit a sketch at the completion of the job 50 150

34 RCNY 2-11(e)(3)(ii) Tunneling/jacking without a permit 400 1,200

34 RCNY 2-11(e)(3)(i) Excavation down 5 feet or greater w/o shoring 1,500 4,500

34 RCNY 2-14(b)(1) Banners w/o permit 150 450

34 RCNY 2-11(e)(8)(i) Unsuitable backfill material used 250 750

34 RCNY 2-11(e)(10) Failure to pin and/or ramp steel plates 1,200 3,600

34 RCNY 2-11(e)(12)(x) Failure to permanently restore cut within required time 800 2,400

34 RCNY 2-11(e)(10)(vi) Failure to use skid resistant plating and/or decking on roadway 1,000 5,000

34 RCNY 2-11(e)(12)(viii) Failure to seal street opening joints 100 300

34 RCNY 2-11(e)(12)(ix) Failure to restore lane markings 750 2,250

34 RCNY 2-11(e)(14)(i) Failure to apply color code identifying permittee 50 150

34 RCNY 2-02(c)(2) Failure to display required signs at work site 250 350

34 RCNY 2-11(e)(4)(v) Failure to post flagperson at worksite to give directions 800 2,400

34 RCNY 2-11(e)(16)(iii) Failure to comply with DOT Standard Specifications 400 1,200

34 RCNY 2-04(f)(1) Canopy erected/maintained on a restricted street 150 450

A.C. 19-136(b) Vehicle(s) on sidewalk 50 300

34 RCNY 2-11(g)(1)(i) Working without a valid emergency number 1,000 3,000

34 RCNY 2-11(g)(1)(ii) Doing non-emergency work with an emergency authorization number 1,000 3,000

34 RCNY 2-11(g)(2)(i) Failure to begin emergency work within 2 hrs after authorization 500 1,500

34 RCNY 2-11(g)(2)(ii) Failure to perform emergency work around the clock 1,000 3,000

34 RCNY 2-11(g)(2)(viii) Failure to apply for permit within two business days of emergency work 250 750

34 RCNY 2-07(a)(3) Restricting more than 11ft of roadway by opening covers/gratings 500 1,600

34 RCNY 2-07(a)(4) Opening more than two consecutive covers/gratings 500 1,600

34 RCNY 2-07(c)(4)(iv) Fail to perform emergency work around the clock(covers/gratings) 1,000 3,000

34 RCNY 2-07(c)(4)(v) Fail to notify DOT of completion of emergency work(covers/gratings) 250 750

34 RCNY 2-11(e)(4)(ii) Failure to plate excavation in driving lane or intersection 1,200 3,600

34 RCNY 2-11(e)(2) Use of Ram Hoe/truck mounted pavement breaker to precut pavement 250 400

34 RCNY 2-11 (e)(11)(iv) Failure to use correct ratio of asphalt binder 400 1200

34 RCNY 2-11 (e)(11)(v) Failure to restore concrete base at same grade as existing base 400 1200

34 RCNY 2-11 (e)(11)(vi) Installing asphalt other than binder as a base course 400 1200

34 RCNY 2-11 (e)(11)(vii) Installation of shallow conduit without department approval 250 500

34 RCNY 2-11 (e)(12)(iii) Failure to provide minimum thickness of wearing course on full depth asphalt restoration 400 1200

34 RCNY 2-11 (e)(12)(v) Failure to restore entire pavement between street opening and curb 400 1200

34 RCNY 2-11 (e)(12)(vi) Failure to restore street in kind (non-historic district) 750 2250

34 RCNY 2-11 (e)(12)(ix) Installing Construction Signs w/o a Permit 150 450

34 RCNY 2-11 (e)(13)(ii) Failure to restore concrete pavement at the same depth, strength and finish as original pavement 400 1200

34 RCNY 2-11 (e)(13)(v) Installing asphalt on a concrete street or concrete bus stop area 700 2100

34 RCNY 2-11 (e)(14)(iii) Failure to install a color coding marker at the end of the restoration 50 150

34 RCNY 2-13(l)(2) Failure to repair sidewalk covering a vault 250 400

34 RCNY 2-14(e)(2)(v) Failure to maintain and/or replace weatherproof receptacles as necessary for holiday/temp. lighting. 150 300

34 RCNY 2-14(e)(2)(viii) Failure to obtain and maintain the required insurance for holiday/temp. lighting. 250 500

34 RCNY 2-14(e)(2)(ix) Failure to obtain a DOT permit prior to commencing work for holiday/temp. lighting. 250 500

34 RCNY 2-14(e)(2)(x) Failure to remove temporary lighting and related equipment when required for holiday/temp. lighting. 250 500

34 RCNY 2-14(e)(2)(xiii) Use of electrical service exceeding 120 volts and/or fused larger than 15 amperes for holiday/temp. lighting. 250 500

34 RCNY 2-14(e)(2)(xiv) Failure to comply with minimum height clearances for holiday/temp. lighting. 250 500

34 RCNY 2-14(e)(2)(xv) Supporting or securing holiday/temp. lighting to a fire escape or drainpipe; failure to insulate temporary lighting. 250 500

34 RCNY 2-14(e)(2)(xviii) Failure to obtain DOT approval for adjustments to work on holiday/temp. lighting. 200 400

34 RCNY 2-14(e)(2)(xix) Failure to perform changes mandated by the Department on holiday/temp. lighting. 150 300

34 RCNY 2-14(e)(2)(xxi) Failure to certify work for holiday/temp. lighting. 150 300

34 RCNY 2-14 (f)(4)(i) Commercial refuse cont. stored/placed in "No Stopping," "No Standing," or "No Parking Anytime" area 250 750

34 RCNY 2-14 (f)(4)(ii) Commercial refuse container stored/placed within fifteen feet of a hydrant 250 750

34 RCNY 2-14 (f)(6) Improperly labeled commercial refuse container 250 750

34 RCNY 2-14 (f)(9) Commercial refuse container w/o proper reflective markings on all four sides 250 750

34 RCNY 2-14 (f)(11) Commercial refuse container/debris obstructing sidewalks, gutters, crosswalks or driveway 250 750

Admin. Code 19-176(c) Riding bicycle on sidewalk in manner which endangers any person or property-FIRST OFFENSE 150 300

Admin. Code 19-176(c) Riding bicycle on sidewalk in manner which endangers any person or property-SECOND OFFENSE 300 600

Admin. Code 19-176(c) Riding bicycle on sidewalk in manner which endangers any person or property and causes physical contact with a person-FIRST OFFENSE 250 500

Admin. Code 19-176(c) Riding bicycle on sidewalk in manner which endangers any person or property and causes physical contact with a person-SECOND OFFENSE 500 1,000

19-128.1(b)(1) Newsrack exceeds size limits 100 500

19-128.1(b)(2) Newsrack used for impermissible advertising/promotional purposes 100 500

19-128.1(b)(3) Failure to keep coin return mechanism in good working order 100 500

19-128.1(b)(4) Failed to affix correct name/address/tel. no. to newsrack as per subsection 100 500

19-128.1(b)(5),(6) Newsrack placed/installed/maintained in improper location 250 500

19-128.1(b)(7) Failed to place/install newsrack in a manner so that it cannot be tipped over 250 500

19-128.1(c)(1) Failed to notify DOT of newsrack info and compliance as per subsection 3,000 4,000

19-128.1(c)(2) Failed to notify DOT of required newsrack information for 1-99 racks 375 500

19-128.1(c)(2) Failed to notify DOT of required newsrack information for 100-249 racks 550 750

19-128.1(c)(2) Failed to notify DOT of required newsrack information for 250-499 racks 1,100 1,500

19-128.1(c)(2) Failed to notify DOT of required newsrack information for 500-749 racks 1,700 2,250

19-128.1(c)(2) Failed to notify DOT of required newsrack information for 750-999 racks 2,300 3,000

19-128.1(c)(2) Failed to notify DOT of required newsrack information for 1,000 racks 3,000 4,000

19-128.1(d) Failed to maintain/provide req'd indem/ins., info for 1-99 racks. 375 500

19-128.1(d) Failed to maintain/provide req'd indem/ins., info for 100-249 racks. 550 750

19-128.1(d) Failed to maintain/provide req'd indem/ins., info for 250-499 racks. 1,100 1,500

19-128.1(d) Failed to maintain/provide req'd indem/ins., info for 500-749 racks. 1,700 2,250

19-128.1(d) Failed to maintain/provide req'd indem/ins., info for 750-999 racks. 2,300 3,000

19-128.1(d) Failed to maintain/provide req'd indem/ins., info for 1000 racks 3,000 4,000

19-128.1(e)(1) Failed to/inaccurately certified graffiti-removal info for 1-99 racks 375 500

19-128.1(e)(1) Failed to/inaccurately certified graffiti-removal info for 100-249 rks 550 750

19-128.1(e)(1) Failed to/inaccurately certified graffiti-removal info for 250-499 rks 1,100 1,500

19-128.1(e)(1) Failed to/inaccurately certified graffiti-removal info for 500-749 rks 1,700 2,250

19-128.1(e)(1) Failed to/inaccurately certified graffiti-removal info for 750-999 rks 2,300 3,000

19-128.1(e)(1) Failed to/inaccurately certified graffiti-removal info for 1000 rks 3,000 4,000

19-128.1(e)(1) Failed to maintain accurate logs/records as per subsec for 1-99 racks 375 500

19-128.1(e)(1) Failed to maintain accurate logs/records as per subsec for 100-249 rks 550 750

19-128.1(e)(1) Failed to maintain accurate logs/records as per subsec for 250-499 rks 1,100 1,500

19-128.1(e)(1) Failed to maintain accurate logs/records as per subsec for 500-749 rks 1,700 2,250

19-128.1(e)(1) Failed to maintain accurate logs/records as per subsec for 750-999 rks 2,300 3,000

19-128.1(e)(1) Failed to maintain accurate logs/records as per subsec for 1000 rks 3,000 4,000

19-128.1(e)(1) Failed to provide maint., logs/records as per subsec for 1-99 racks 375 500

19-128.1(e)(1) Failed to provide maint., logs/records as per subsec for 100-249 rks 550 750

19-128.1(e)(1) Failed to provide maint., logs/records as per subsec for 250-499 rks 1,100 1,500

19-128.1(e)(1) Failed to provide maint., logs/records as per subsec for 500-749 rks 1,700 2,250

19-128.1(e)(1) Failed to provide maint., logs/records as per subsec for 750-999 rks 2,300 3,000

19-128.1(e)(1) Failed to provide maint., logs/records as per subsec for 1000 rks 3,000 4,000

19-128.1(e)(2) Failed to remove refuse from newsrack as per subsection 100 500

19-128.1(e)(3) Newsrack empty/unsecured door for impermissible time 100 500

19-128.1(e)(4) Failed to correct newsrack damaged/in need of repair as per subsection 100 500

19-128.1(e)(5) Failed to repair damage to City property/sidewalk caused by newsrack 100 500

34 RCNY 2-08(e)(3) Failed to remove refuse from newsrack as per paragraph 100 500

34 RCNY 2-08(e)(5) Newsrack empty/unsecured door for impermissible time 100 500

34 RCNY 2-08(e)(4) Failed to correct newsrack damaged/in need of repair as per paragraph 100 500

34 RCNY 2-08(b)(3) Failed to repair damage to City property/sidewalk caused by newsrack 100 500

34 RCNY 2-08(d)(2) Failed to affix correct name/address/tel. no. to newsrack as per paragraph 100 500

34 RCNY 2-08(d)(1) Newsrack exceeds size limits 100 500

34 RCNY 2-08(d)(3) Newsrack used for impermissible advertising/promotional purposes 100 500

34 RCNY 2-08(c) Newsrack placed/installed/maintained in improper location 250 500

34 RCNY 2-08(b)(1) Failed to place/install newsrack in a manner so that it cannot be tipped over 250 500

34 RCNY 2-08(b)(4) Failed to notify DOT of newsrack info and compliance as per paragraph 3,000 4,000

34 RCNY 2-08(e)(1) Failed to certify/inaccurately certified graffiti removal as per DOT requirements

1-99 racks 375 500

100-249 racks 550 750

250-499 racks 1,100 1,500

500-749 racks 1,700 2,250

750-999 racks 2,300 3,000

1,000 or more racks 3,000 4,000

34 RCNY 2-08(e)(2) Failed to maintain accurate logs/records per DOT requirements

1-99 racks 375 500

100-249 racks 550 750

250-499 racks 1,100 1,500

500-749 racks 1,700 2,250

750-999 racks 2,300 3,000

1,000 or more racks 3,000 4,000

34 RCNY 2-08(e)(2) Failed to provide maintenance logs/records to DOT on request

1-99 racks 375 500

100-249 racks 550 750

250-499 racks 1,100 1,500

500-749 racks 1,700 2,250

750-999 racks 2,300 3,000

1,000 or more racks 3,000 4,000

34 RCNY 2-08(b)(4) Failed to notify DOT of newsrack info in accordance with rule requirements

1-99 racks 375 500

100-249 racks 550 750

250-499 racks 1,100 1,500

500-749 racks 1,700 2,250

750-999 racks 2,300 3,000

1,000 or more racks 3,000 4,000

34 RCNY 2-08(f) Failed to maintain/provide proper indemnification/insurance info

1-99 racks 375 500

100-249 racks 550 750

250-499 racks 1,100 1,500

500-749 racks 1,700 2,250

750-999 racks 2,300 3,000

1,000 or more racks 3,000 4,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-124) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Third unnumbered par amended City Record May 14, 2009 §2, eff. June 13, 2009. [See T48 §3-123 Note 1]

Table 34 RCNY 2-05(d)(16) amended City Record May 9, 2008 §4, eff. June 8, 2008. [See T48 §3-122 Note 2]

Table 19-147(d) "Failure . . . castings" added City Record Nov. 14, 2005 §2, eff. Dec. 14, 2005. [See T48 §3-114 Note 1]

Table 34 RCNY 2-02(m) "Illegal . . . period" added City Record Nov. 14, 2005 §2, eff. Dec. 14, 2005. [See T48 §3-114 Note 1]

Table 34 RCNY 2-07(a)(5) "Toolcart . . . walkway" added City Record Nov. 14, 2005 §2, eff. Dec. 14, 2005. [See T48 §3-114 Note 1]

Table 34 RCNY 2-07(a)(5) "Toolcart . . . permit" added City Record Nov. 14, 2005 §2, eff. Dec. 14, 2005. [See T48 §3-114 Note 1]

Table 34 RCNY 2-07(a)(5) "Toolcart . . . driveway" added City Record Nov. 14, 2005 §2, eff. Dec. 14, 2005. [See T48 §3-114 Note 1]

Table 34 RCNY 2-07(b)(2) "Failure . . . cover/grating" added City Record Nov. 14, 2005 §2, eff. Dec. 14, 2005. [See T48 §3-114 Note 1]

Table 34 RCNY 2-09(f)(4)(viii) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-09(f)(4)(xiv) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-09(f)(4)(xvi)(A) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(11)(iv) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(11)(v) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(11)(vi) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(11)(vii) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(12)(iii) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(12)(v) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(12)(vi) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(12)(ix) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(12)(x) amended (former 2-11(e)(12)(xi)) City Record Dec. 9, 2008 §1, eff. Jan. 8, 2009. [See Note 2]

Table 34 RCNY 2-11(e)(12)(viii) amended (former 2-11(e)(12)(ix)) City Record Dec. 9, 2008 §2, eff. Jan. 8, 2009. [See Note 2]

Table 34 RCNY 2-11(e)(12)(ix) amended (former 2-11(e)(12)(x)) City Record Dec. 9, 2008 §3, eff. Jan. 8, 2009. [See Note 2]

Table 34 RCNY 2-11(e)(13)(ii) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(13)(v) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(14)(iii) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(g)(2)(viii) Failure to apply . . . emergency work amended City Record Aug. 16, 2007 §7, eff. Sept. 15, 2007. [See T48 §3-122 Note 1]

Table 34 RCNY 2-14(e)(2)(v) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See

Note 1]

Table 34 RCNY 2-14(e)(2)(viii) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See

Note 1]

Table 34 RCNY 2-14(e)(2)(ix) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See

Note 1]

Table 34 RCNY 2-14(e)(2)(x) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(e)(2)(xiii) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(e)(2)(xiv) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(e)(2)(xv) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(e)(2)(xviii) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(e)(2)(xix) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(e)(2)(xxi) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(f)(4)(i) added City Record Oct. 2, 2009 §3, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-14(f)(4)(ii) added City Record Oct. 2, 2009 §3, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-14(f)(6) added City Record Oct. 2, 2009 §3, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-14(f)(9) added City Record Oct. 2, 2009 §3, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-14(f)(11) added City Record Oct. 2, 2009 §3, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-08 entries (last 15 entries) added City Record May 9, 2008 §5, eff. June 8, 2008. [See T48 §3-122 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 31, 2007:

The Environmental Control Board (ECB) had a Public Hearing on October 22, 2007, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above.

(1) The Board has amended the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to increase the penalties for second and third offenses of subdivision (e) of §16-120 of the New York City Administrative Code. These entries are being added in light of the enactment of Local Law 42 of 2007. The Local Law amends subdivisions (e) and (f) of §16-120 of the New York City Administrative Code. This section currently authorizes DSNY to issue violations to persons who deposit household or commercial

refuse or liquid waste in public litter baskets. The Local Law amends subdivision (e) of §16-120 of the Administrative Code by creating a rebuttable presumption that the person whose name, or other identifying information, appears on any household or commercial refuse or liquid wastes deposited in such public litter basket violated that subdivision.

This Local Law also amends §16-120(f) in relation to increasing penalties for dumping household and commercial refuse into public litter baskets. Specifically, it creates a separate repeat violator scheme for those who violate subdivision (e) of §16-120 by improperly using public litter baskets. Accordingly, the Board is amending the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of The Rules of the City of New York to reflect the higher penalty ranges set out in the Local Law for repeat violations of subdivision (e).

(2) The Board has amended the Department of Transportation Penalty Schedule found in §3-124 of Subchapter G of Chapter 3 of Title 48 of The Rules of the City of New York to add ten new charges for violations of §2-14 of Chapter 2 of Title 34 of The Rules of the City of New York (the "Highway Rules") pertaining to Temporary Festoon/Holiday Lighting and/or other Temporary Lighting.

The establishment of these new charges and associated penalties will effectuate the enforcement of §2-14. Enforcement of these provisions will aid in minimizing electrical hazards on the City streets and sidewalks and will also make contractors more consistent in their work and provide increased public safety. These new charges and penalties will also serve as a deterrent to those who may disregard and violate §2-14, thereby potentially endangering public safety by creating a potential for stray voltage conditions and/or obstructing the function and visibility of traffic control devices.

These ten new charges are as follows: (a) Failure to maintain and/or replace weatherproof receptacle as necessary for holiday/temp. lighting; (b) Failure to obtain and maintain the required insurance for holiday/temp. lighting; (c) Failure to obtain a DOT permit prior to commencing work for holiday/temp. lighting; (d) Failure to remove temporary lighting and related equipment when required for holiday/temp. lighting; (e) Use of electrical services exceeding 120 volts and/or fused larger than 15 amperes for holiday/temp. lighting; (f) Failure to comply with minimum height clearances for holiday/temp. lighting; (g) Supporting or secured holiday/temp. lighting to a fire escape or drainpipe; failure to insulate temporary lighting; (h) Failure to obtain DOT approval for adjustments to work on holiday/temp. lighting; (i) Failure to perform changes mandated by the Department on holiday/temp. lighting and (j) Failure to certify work for holiday/temp. lighting.

2. Statement of Basis and Purpose in City Record Dec. 9, 2008: The Environmental Control Board (ECB) had a Public Hearing on November 6, 2008 on proposed revisions of its Department of Transportation Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above. The Board has amended the Department of Transportation Penalty Schedule found in §31-124 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York to change the numbering of three sections to reflect the re-numbering of those sections that was effected by a Final Rule promulgated by the New York City Department of Transportation on June 7 of 2007. Specifically, §34 RCNY 2-11(e)(12)(xi) is renumbered 34 RCNY 2-11(e)(12)(x); §34 RCNY 2-11(e)(12)(ix) is renumbered 34 RCNY 2-11(e)(12)(viii); and §34 RCNY 2-11(e)(12)(x) is renumbered 34 RCNY 2-11(e)(12)(ix). The descriptions and penalties for these charges remain the same.

3. Statement of Basis and Purpose in City Record Oct. 2, 2009: The Environmental Control Board (ECB) held a Public Hearing on August 6, 2009 on the addition of nineteen new charges for violations of Chapter 2 of Title 34 of the Rules of the City of New York (RCNY) (the "Highway Rules) to the Department of Transportation (DOT) Penalty Schedule found in §3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented. In Section 1, ECB has added three charges alleging violations of §34 RCNY 2-09 (f)(4). With regard to 34 RCNY 2-09 (f)(4)(viii), "Failure to fully replace defective sidewalk flag," DOT rules require that sidewalk flags shall be 5'x 5' where feasible and that all flags containing substantial defects (as defined in §19-152 of the New York City Administrative Code) be fully replaced. In general, sidewalk flags that are

patched or not installed/repaired fully fail to withstand yearly freeze and thaw cycles and cause a weakening of the surrounding area. With regard to 34 RCNY 2-09 (f)(4)(xiv), "Failure to install pedestrian ramp as per DOT drawings," DOT rules state that any person constructing, reconstructing or repairing a corner shall install pedestrian ramps in accordance with the specifications and in accordance with the latest revision of Standard Drawing H-1011. With regard to 34 RCNY 2-09 (f)(4)(xvi)(A), "Failure to repair distinctive sidewalk in kind," DOT rules require that sidewalks of a distinctive design or material may be permitted and shall harmonize with the architecture of the abutting building and/or area. In areas where various community boards or Business Improvement Districts have restored areas to landmark status or installed distinctive designs, the restorations must conform to the specifications established and match the surrounding area. In section 2, ECB has added eleven charges alleging violations of §34 RCNY 2-11(e). With regard to 34 RCNY 2-11(e)(11)(iv), "Failure to use correct ratio of asphalt binder," DOT rules allow that on a non-protected or resurfaced street, asphalt binder base may replace concrete, at a thickness ratio of one and one half inch of asphalt for every inch of concrete. This new charge will encourage contractors to be consistent in their work and foster public safety. With regard to 34 RCNY 2-11(e)(11)(v), "Failure to restore concrete base at same grade as existing base," DOT rules require that the concrete base shall be restored at the same grade as the existing base; at no time may it be brought up to the asphalt course unless authorization has been granted by the commissioner. Installing concrete into the asphalt course causes major damage to milling machines, causing delays and costly repairs. With regard to 34 RCNY 2-11(e)(11)(vi), "Installing asphalt other than binder as a base course," DOT rules require that binder base shall be restored to the existing base. At no time will asphalt other than binder be permitted as a base course, unless otherwise authorized by the Commissioner. Binder and wearing course are identified by the permittee's designs. Binder is used as a base material typically containing larger stones to form a mixture suitable to create a stable base. Wearing course is designed to contain smaller stones to produce a smooth surface; its use is strictly reserved as a riding surface. Establishment of a penalty for violation of this provision will foster improvement in the quality of paving and restoration work performed on the streets of New York City. With regard to 34 RCNY 2-11(e)(11)(vii), "Installation of shallow conduit without department approval," DOT rules state that if conduits in the roadway are installed less than 18 inches below the roadway surface or not below the base, the permittee must file a written request and receive written approval from the department. This rule will assist DOT in maintaining a database indicating where contractors have installed shallow conduits thus enabling the DOT to notify the utilities that have placed shallow conduits that DOT will be working in those areas. Establishment of a penalty for violation of this provision will foster protection of the existing infrastructure. With regard to 34 RCNY 2-11(e)(12)(iii), "Failure to provide minimum thickness of wearing course on full depth asphalt restoration," DOT rules require that the minimum thickness of the wearing course on full depth asphalt restoration shall be two inches (2"). Failure to apply the minimum requirement of asphalt greatly reduces the longevity of the riding surface, and can promote rapid decay of the riding surface. 2" is the absolute minimum required thickness. With regard to 34 RCNY 2-11(e)(12)(v), "Failure to restore entire pavement between street opening and curb," DOT Rules require that when a street opening is twelve inches or less from the curb, the entire pavement between the opening and the curb shall be excavated and replaced in kind. Failure to restore this area will promote cracking of the street surface and increase the possibility of water penetration. Restoring the roadway as a cohesive unit greatly reduces this risk. With regard to 34 RCNY 2-11 (e)(12)(vi), "Failure to restore street in kind (non-historic district)," DOT rules require that whenever any street is excavated, the permittee shall restore such street in kind as to material type, color, finish or distinctive design. It is necessary to restore the roadway to its prior condition so as to not disrupt the overall design and integrity of the existing pavements. With regard to 34 RCNY 2-11(e)(12)(ix), "Installing Construction Signs w/o a Permit, " DOT rules require contractors to obtain permits whenever they change or remove the existing parking regulations signs. Establishing a penalty for violation of this provision will facilitate the return of parking spaces to public use when construction is completed. With regard to 34 RCNY 2-11(e)(13)(ii), "Failure to restore concrete pavement at the same depth, strength and finish as original pavement," DOT rules require that the concrete restoration shall have the same depth, strength, and finish as the original pavement. Failure to meet any of these criteria will cause the concrete to break creating a defective restoration. Establishment of a penalty for violation of this provision will foster improvement in the quality of paving and restoration work performed on the streets of New York City. With regard to 34 RCNY 2-11(e)(13)(v), "Installing asphalt on a concrete street or concrete bus stop area," DOT rules state that asphalt restorations will not be permitted in concrete streets or concrete bus stop areas. Concrete roadways are designed to maintain a riding surface for many years, as well as to carry the additional weight of surface

traffic. Cutting into the roadway laterally or horizontally through individual concrete panels or expansion joints weakens the riding surface and surrounding joints. Asphalt fails to bond adequately with the existing concrete, thus allowing water penetration and movement of the riding surface. With regard to 34 RCNY 2-11(e)(14)(iii), "Failure to install a color coding marker at the end of the restoration," DOT rules require permittees to place color codes or tags at job sites when they complete final restorations. This facilitates identification of the responsible party in the event a street restoration fails. In §3, the Board has added five charges alleging violations of §34 RCNY 2-14(f). With regard to 34 RCNY 2-14(f)(4)(i), "Commercial refuse cont. stored/placed in `No Stopping,' `No Standing,' or `No Parking Anytime' area," since the introduction of 311, there has been an increase in the number of complaints involving non-construction containers placed on City streets. The addition of this charge to the penalty table will help with enforcement designed to maintain traffic flow in accordance with existing parking regulations. With regard to 34 RCNY 2-14(f)(4)(ii), "Commercial refuse container stored/placed within fifteen feet of a hydrant," the addition of this charge to the penalty table will help with enforcement designed to maintain traffic flow in accordance with existing parking regulations and allow easy access to the hydrant in case of an emergency. With regard to 34 RCNY 2-14(f)(6), "Improperly labeled commercial refuse container, " DOT rules require container owners to properly label their containers. This facilitates identification of the container owner in the event of a problem with the container. With regard to 34 RCNY 2-14(f)(9), "Commercial refuse container w/o proper reflective markings on all four sides," DOT rules require that containers have proper reflective markings so that they are visible to drivers, bicyclists and pedestrians at night. With regard to 34 RCNY 2-14(f)(11), "Commercial refuse container/debris obstructing sidewalks, gutters, crosswalks or driveway," DOT rules require sidewalks, gutters, crosswalks and driveways to be kept clear and unobstructed at all times and that all dirt, debris and rubbish be promptly removed therefrom. Establishment of a penalty for violation of this provision will help to maintain traffic flow and proper drainage.

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-125

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-125 Vehicle and Traffic Law Penalty Schedule.

VEHICLE AND TRAFFIC LAW PENALTY SCHEDULE

All Citations are to the NY State Vehicle and Traffic Law.

* Pursuant to §3-81(b), a late admit fee of $30.00 will be added to the penalty for this charge for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing of the default order issued against respondent.

A repeat violation is a violation by the same respondent occurring within 18 months of the date of occurrence of the previous violation. The previous violation may have been for the placement of a handbill on any motor vehicle.

Section/Rule Description Penalty Default

1224(7)* Abandoning a vehicle 250 1,000

375(1)(b) Illegal placement of handbills on windshields or underwindshield wipers of motor vehicles. 75 100

2nd Offense 150 200

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-125) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Second unnumbered par amended City Record May 14, 2009 §3, eff. June 13, 2009. [See T48 §3-123 Note 1]

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of

Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been

delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-126

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-126 Water Penalty Schedule.

WATER PENALTY SCHEDULE

All citations preceded by "A.C." are to the New York City Administrative Code. All other citations are to Title 48 of the Rules of the City of New York.

* If a respondent charged with a violation of 20-04(e) submits the annual test report by the first hearing date, the penalty shall be mitigated from $350 to $0 (zero). The possibility of such mitigation exists only in connection with the first NOV issued to a given respondent for 20-04(e) charge.

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section Description Penalty Default

Stage I Drought Emergency

A.C. 24-337 Waste of city water (commercial or industrial) 400 1,000

A.C. 24-337 Waste of city water (residential) 250 1,000

21-06 Failure to post "Save Water" signs 100 1,000

21-07 Failure to post Water-Conserving Irrigation System sign 100 1,000

21-08 Improper use of well water 250 1,000

21-09(a) Allowing leak or waste of water from faucets, valves, pipes etc. 250 1,000

21-09(b) Using public water to wash vehicles. 250 1,000

21-09(c) Using water to spray or wash sidewalk, street 250 1,000

21-09(d) Using any water for ornamental purposes 250 1,000

21-09(e) Using water for lawns, golf course, plants, trees 250 1,000

21-09(f) Illegal use of fire hydrants 750 1,000

21-09(g) Serving water without request 250 1,000

21-09(h) Use of public water for pools 250 1,000

21-09(i) Use of noncompliant showerhead 250 1,000

Stage II Drought Emergency

A.C. 24-337 Waste of city water (commercial or industrial) 500 1,000

A.C. 24-337 Waste of city water (residential) 350 1,000

21-06 Failure to post "Save Water" signs 200 1,000

21-07 Failure to post Water-Conserving Irrigation System sign 200 1,000

21-08 Improper use of well water 350 1,000

21-10(a) Allowing leak or waste of water from faucets, valves, pipes etc. 350 1,000

21-10(b) Using public water to wash vehicles 350 1,000

21-10(c) Using water to spray or wash sidewalk, street 350 1,000

21-10(d) Using any water for ornamental purposes 350 1,000

21-10(e) Using water for lawns, golf course, plants, trees 350 1,000

21-10(f) Illegal use of fire hydrants 750 1,000

21-10(g) Serving water without request 350 1,000

21-10(h) Use of public water for pools 350 1,000

21-10(i) Use of noncompliant showerhead 350 1,000

Stage III Drought Emergency

A.C. 24-337 Waste of city water (commercial or industrial) 600 1,000

A.C. 24-337 Waste of city water (residential) 450 1,000

21-06 Failure to post "Save Water" signs 300 1,000

21-07 Failure to post Water-Conserving Irrigation System sign 400 1,000

21-08 Improper use of well water 550 1,000

21-11(a) Allowing leak or waste of water from faucets, valves, pipes etc. 550 1,000

21-11(b) Using public water to wash vehicles 550 1,000

21-11(c) Using water to spray or wash sidewalk, street 550 1,000

21-11(d) Using any water for ornamental purposes 550 1,000

21-11(e) Using water for lawns, golf course, plants, trees 550 1,000

21-11(f) Illegal use of fire hydrants 750 1,000

21-11(g) Serving water without request 550 1,000

21-11(h) Use of public water for pools 950 1,000

21-11(i) Use of noncompliant showerhead 450 1,000

21-11(j) Use of non-air cooled air conditioning system using public water with temperature below 79 F. 550 1,000

Other Water Regulations

AC 24-308 Illegal Use of Hydrant(s) 750 1,000

AC 24-337 Illegal waste of water (Residential) 250 1,000

AC 24-339 Distribution/Sale/Import/Installation of water wasting plumbing fixtures 475 1,000

A.C. 24-346(b) Failed to comply with Commissioner's Order 750 1,000

20-01(b)(1) Plumbing work w/o permit 250 1,000

20-01(e) Failed to produce permit on demand 150 1,000

20-01(f) Failed to obtain/return emergency permit 250 1,000

20-02(b) Unlawful connection to City main 700 1,000

20-04(d) Failed to install a backflow preventer 700 1,000

20-04(e) Failed to submit an annual test report for a backflow preventer 500 ormitigationpen. of $0* 1,000

20-05(a) No meter in place 250 1,000

20-05(b)(1) Meter repair/removal w/o permit 350 1,000

20-05(b)(2) Failed to return meter permit 350 1,000

20-05(d)(5) No reading receptacle for remote pad 250 1,000

20-05(g) Improper size/type of meter 250 1,000

20-05(i)(1) Meter not readily accessible 250 1,000

20-05(i)(2-12) Improper setting of meter 250 1,000

20-05(j) Prohibited meter bypass 500 1,000

20-05(k) Improper meter pit/box/vault construction 350 1,000

20-05(n) Breaking seal on equipment w/o permit 500 1,000

20-05(p) Inadequate protection of meter/remote receptacle/AMR Transmitter/wiring 250 1,000

20-06 A.C./refrigeration violation 350 1,000

20-07(c) Failed to submit self-certification of domestic water service pipe installation 250 1,000

20-08(a)(6) Lawn/garden watering prohibited time/manner 150 1,000

20-08(a)(7) Sidewalk flushing prohibited time/manner 150 1,000

20-08(a)(9) Prohibited use of water for car washing 150 1,000

15 RCNY Chap. 20 Violation of miscellaneous rules regarding use and supply of water 150 1,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record May 4, 2007 §2, eff. June 3, 2007. [See T48 §3-115 Note 1]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Third unnumbered par amended City Record May 14, 2009 §4, eff. June 13, 2009. [See T48 §3-123 Note 1]

Other Water Regulations

A.C. 24-346(b) added City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010. [See Note 1]

20-04(e) added City Record Dec. 24, 2009 §2, eff. Jan. 23, 2010. [See Note 1]

20-05(i)(1) amended City Record Dec. 24, 2009 §3, eff. Jan. 23, 2010. [See Note 1]

20-05(i)(2-12) amended City Record Dec. 24, 2009 §3, eff. Jan. 23, 2010. [See Note 1]

20-05(p) amended City Record Dec. 24, 2009 §4, eff. Jan. 23, 2010. [See Note 1]

20-07(c) added City Record Dec. 24, 2009 §5, eff. Jan. 23, 2010. [See Note 1]

20-08(a)(6) amended City Record Dec. 24, 2009 §6, eff. Jan. 23, 2010. [See Note 1]

20-08(a)(7) amended City Record Dec. 24, 2009 §6, eff. Jan. 23, 2010. [See Note 1]

20-08(a)(9) amended City Record Dec. 24, 2009 §6, eff. Jan. 23, 2010. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 24, 2009:

The Environmental Control Board (ECB) held a Public Hearing on November 19, 2009 on various amendments to the Water Penalty Schedule found in §3-126 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented.

The Department of Environmental Protection (DEP) recently promulgated amendments to 15 RCNY Chapter 20, Rules Governing and Restricting the Use and Supply of Water. These amendments were promulgated in order to reflect changes in technology related to metering, water service and connections and permit tracking. As a result, ECB's Water Penalty Schedule, found in §3-126 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York has been revised. Other changes, reflecting current DEP rules and operations are included in this final rule.

In §1 of the final rule, the Board has added a new charge for Failure to Comply with Commissioner's Orders. The Bureau of Water & Sewer Operations routinely issues Commissioner's Orders related to compliance with backflow prevention and other requirements. The addition of a penalty for this section to ECB's Water Penalty Schedule will enable DEP to better protect the City's water supply.

In §2 of the final rule, the Board has increased the penalty for §15 RCNY 20-04(e), "Failed to submit an annual test report for a backflow preventer" from $350 to $500. This change is needed because the lower penalty of $350 was an insufficient incentive to achieve compliance by building owners because the cost of the test was more than the penalty.

In §§3, 4 and 6 of the final rule, the Board has renumbered certain sections to conform to changes in DEP's amended rules.

In §5 of the final rule, the Board has added a new charge for a violation of §15 RCNY20-07(c), "Failure to submit self-certification of domestic water service pipe installation." This section provides that if DEP waives its right to conduct a non-mandatory inspection of domestic water service pipe installation, the Licensed Master Plumber must submit the tap location with certification that all work was performed in accordance with the water rules and all other applicable rules.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules

contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for

implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

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48 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 4 FITNESS AND DISCIPLINE HEARINGS FOR OATH EMPLOYEES*1

§4-01 Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings.

The chief administrative law judge or, upon his or her designation, an administrative law judge, shall conduct administrative hearings regarding OATH employees' fitness and discipline pursuant to N.Y. Civil Service Law, §§71-75, and pursuant to Charter, §1049(1). If such a hearing is conducted by an administrative law judge other than the chief administrative law judge, the administrative law judge shall make written proposed findings of fact and a recommended decision. The chief administrative law judge shall review the proposed findings and recommendations of the administrative law judge and shall make the final findings of fact and decision in the matter being adjudicated.

HISTORICAL NOTE

Section renumbered (former §3-01) City Record Nov. 24, 2008 §2, eff. Nov. 24, 2008 per City Record notice. [See T48 Chapter 1 footnote]

Section amended City Record Oct. 19, 2005 §4, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter 4 renumbered (former Chapter 3) City Record Nov. 24, 2008 §2, eff. Nov. 24, 2008 per City Record notice. [See T48 Chapter 1 footnote]

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48 RCNY 4 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

Preamble
§100 Terminology.
§101 A City Administrative Law Judge Shall Uphold the Integrity of the Tribunal on Which He or She Sits.
§102 A City Administrative Law Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of His or Her Activities.
§103 A City Administrative Law Judge Shall Perform His or Her Judicial Duties Impartially and Diligently.
§104 A City Administrative Law Judge Shall Conduct His or Her Extra-Judicial Activities so as to Minimize the Risk of Conflict With Judicial Obligations.
§105 A City Administrative Law Judge Shall Refrain From Inappropriate Political Activity.
§106 Misconduct.
§107 Advisory Opinions; Advisory Committee.

Preamble

Pursuant to §13-a of the City Charter, these Rules are promulgated by the Mayor and the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings to establish a code of conduct governing the activities of all administrative law judges and hearing officers in City tribunals.

Administrative law judges and hearing officers (collectively referred to as "City administrative law judges" in

these Rules) and the tribunals on which they serve play a vital role in our City. City tribunals are responsible for the fair enforcement of laws that, among other things, maintain the quality of life in the City, combat discrimination, allow taxpayers to challenge their assessments and ensure that certain government programs and benefits are not wrongly denied to those entitled to them. An appearance before a City tribunal may be one of the most significant occasions on which a City resident directly encounters government authority.

The Rules that follow are based on the Code of Judicial Conduct, particularly as set forth in the Rules of the Chief Administrator of the Courts for the State of New York at 22 N.Y.C.R.R. §100 et seq. (2006). The position of City administrative law judge has much in common with that of any other judge in the State Courts. In certain important respects, however, the position of City administrative law judge is different, which is why the Code of Judicial Conduct has been adapted in these Rules rather than applied generally. Some City tribunals are independent entities, but most often a City tribunal is legally and organizationally part of a City agency. The City tribunals covered by the Rules employ administrative law judges in various ways. For example, in some City tribunals administrative law judges are regular, salaried City employees; in other tribunals, administrative law judges are per diem employees whose work for the City may be part-time. In some tribunals, the administrative law judge has great autonomy to manage and decide each matter that comes before him or her. In other tribunals, the scope of the administrative law judge's assignment may be narrower. But it is always critical, of course, that the process of adjudication be fair, impartial and free of improper influences.

HISTORICAL NOTE

Preamble added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

1

[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

As amended in 2005, the New York City Charter in §13-a requires that the Mayor and the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings jointly promulgate rules of conduct for administrative law judges and hearing officers in City tribunals (collectively, "City administrative law judges"). Section 1049, subd. 2(b), specifically authorizes the Chief Administrative Law Judge to promulgate such rules in conjunction with the Mayor.

The purpose of the final rule is to fulfill the Charter mandate by establishing a uniform set of ethical standards applicable to all City administrative law judges. The standards will enhance the professionalism of adjudication in the City, protecting the rights of those who appear before tribunals and yielding a fairer and more effective system of administrative justice.

The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct

is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

The final rule that is being promulgated responds to public comment in various respects. The most significant respects in which the final rule responds to public comment are the following:

(1) The final rule restricts a City administrative law judge from testifying voluntarily as a character witness in a proceeding before a City tribunal on which he or she serves.

(2) The final rule provides that a City administrative law judge is required to take appropriate action if, in the course of performing judicial duties, he or she receives information indicating a substantial likelihood that a lawyer appearing before him or her has committed a substantial violation of the Code of Professional Responsibility.

(3) The final rule does not include a proposed restriction on fiduciary activities by City administrative law judges primarily employed by the City.

(4) The final rule provides that a City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office; it also provides that a City administrative law judge who is a candidate for elective judicial office shall comply with State rules governing candidates for elective judicial office and that a violation of those rules by a City administrative law judge is misconduct that may subject a City administrative law judge to discipline under the final rule.

(5) The final rule provides that a City administrative law judge who engages in partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves or be in violation of Chapter 68 of the City Charter or any other applicable law.

(6) The final rule provides that a complaint concerning the head of a tribunal located within an agency may be referred by the Chief Administrative Law Judge of OATH and the Administrative Justice Coordinator to the head of the agency within which the tribunal is located and that a complaint concerning the head of a tribunal not located within an agency may be referred by the Administrative Justice Coordinator to the Mayor or the Mayor's designee.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§100 Terminology

Terms used in these Rules are defined as follows:

(A) A "candidate" is a person seeking selection for or retention in public office by any public election, including primary and general elections and including partisan and nonpartisan elections. A person becomes a candidate for public office as soon as he or she makes a public announcement of candidacy or authorizes solicitation or acceptance of contributions.

(B) A "City administrative law judge" is an administrative law judge, hearing examiner, hearing officer or any other person who conducts or participates in the decision of adjudicative proceedings within a City tribunal. The term "City administrative law judge" does not include members of boards or commissions. The term "City administrative law judge" also does not include the head of an agency, unless the agency is a City tribunal.

(C) A "City tribunal" is any City agency or any unit within a City agency that is authorized or charged by law with responsibility for conducting adjudicative proceedings. "City tribunals" to which these Rules are applicable include the tribunals constituting or within the Department of Consumer Affairs, the Department of Finance, the Department of Health and Mental Hygiene, the Environmental Control Board, the Office of Administrative Trials and Hearings, the Police Department, the Tax Appeals Tribunal, the Taxi and Limousine Commission and any similar agencies or units.

(D) "Closely related" means that the relationship between one person and another is that of parent and child; siblings; grandparent and grandchild; great-grandparent and great-grandchild; first cousins; or aunt/uncle and

niece/nephew.

(E) A "domestic partner" is a member of a domestic partnership registered pursuant to Administrative Code §3-240 or in accordance with Executive Order 123 of 1989 or Executive Order 48 of 1993 or a member of a marriage that is not recognized by the State of New York or of any domestic partnership or civil union entered into in another jurisdiction.

(F) "Economic interest" means ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, provided that:

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities or in the manager of such fund unless the City administrative law judge participates in the management of the fund or a proceeding pending or impending before the City administrative law judge could substantially affect the value of the interest;

(2) service as an officer, director, advisor or other active participant in an educational, religious, charitable, cultural, fraternal or civic organization, or service by a spouse, domestic partner or child as an officer, director, advisor or other active participant in any such organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization, unless a proceeding pending or impending before the City administrative law judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the City administrative law judge could substantially affect the value of the securities;

(5) a "de minimis" interest is one so insignificant that it could not raise reasonable questions as to a City administrative law judge's impartiality.

(G) An "ex parte communication" is a communication that concerns a pending or impending proceeding before a City administrative law judge and occurs between the City administrative law judge and a party, or a representative of a party, to the proceeding without notice to and outside the presence of one or more other parties to the proceeding.

(H) "Fiduciary" includes such relationships as executor, administrator, trustee and guardian.

(I) "Impartial" means without bias or prejudice in favor of, or against, particular parties or classes of parties, and with an open mind in considering issues that may come before the City administrative law judge.

(J) An "impending proceeding" is one that has not yet been commenced but is reasonably foreseeable and not merely hypothetical.

(K) "Integrity" denotes probity, fairness, honesty, uprightness and soundness of character; it also denotes a firm adherence to these Rules and their standard of values.

(L) To "know" is to have actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(M) A "member of the City administrative law judge's family" is a spouse, domestic partner, child, grandchild, parent, grandparent, sibling or any other person with whom the City administrative law judge maintains a comparable relationship.

(N) "Nonpublic information" is confidential information of which a City administrative law judge becomes aware

as a result of his or her judicial duties and which is not otherwise available to the public.

(O) A "pending proceeding" is one that has begun but not yet reached its final disposition.

(P) A "political organization" is a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

(Q) "Primarily employed by the City" means employed on a full-time basis or the equivalent or regularly scheduled to work the equivalent of 20 hours per week at one or more City tribunals.

(R) "Require." Where these Rules prescribe that a City administrative law judge "require" certain conduct of others, the term "require" means that a City administrative law judge is to exercise reasonable direction and control over the conduct of those persons subject to his or her direction and control.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

1

[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

As amended in 2005, the New York City Charter in §13-a requires that the Mayor and the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings jointly promulgate rules of conduct for administrative law judges and hearing officers in City tribunals (collectively, "City administrative law judges"). Section 1049, subd. 2(b), specifically authorizes the Chief Administrative Law Judge to promulgate such rules in conjunction with the Mayor.

The purpose of the final rule is to fulfill the Charter mandate by establishing a uniform set of ethical standards applicable to all City administrative law judges. The standards will enhance the professionalism of adjudication in the City, protecting the rights of those who appear before tribunals and yielding a fairer and more effective system of administrative justice.

The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

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significant respects in which the final rule responds to public comment are the following:

(1) The final rule restricts a City administrative law judge from testifying voluntarily as a character witness in a proceeding before a City tribunal on which he or she serves.

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(3) The final rule does not include a proposed restriction on fiduciary activities by City administrative law judges primarily employed by the City.

(4) The final rule provides that a City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office; it also provides that a City administrative law judge who is a candidate for elective judicial office shall comply with State rules governing candidates for elective judicial office and that a violation of those rules by a City administrative law judge is misconduct that may subject a City administrative law judge to discipline under the final rule.

(5) The final rule provides that a City administrative law judge who engages in partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves or be in violation of Chapter 68 of the City Charter or any other applicable law.

(6) The final rule provides that a complaint concerning the head of a tribunal located within an agency may be referred by the Chief Administrative Law Judge of OATH and the Administrative Justice Coordinator to the head of the agency within which the tribunal is located and that a complaint concerning the head of a tribunal not located within an agency may be referred by the Administrative Justice Coordinator to the Mayor or the Mayor's designee.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 101

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§101 A City Administrative Law Judge Shall Uphold the Integrity of the Tribunal on Which He or She Serves.

The administration of justice in our City depends on tribunals that adjudicate fairly, without partiality, prejudgment or impropriety. A City administrative law judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity of the tribunal on which he or she serves will be preserved. The provisions of these Rules are to be construed and applied to further that objective. Persons covered by these Rules remain subject to Chapter 68 of the City Charter and the rules and opinions issued by the Conflicts of Interest Board interpreting those provisions. To the extent that these Rules conflict with the provisions of Chapter 68 or the rules or opinions of the Conflicts of Interest Board, the provisions of Chapter 68 and the rules and opinions of the Conflicts of Interest Board shall take precedence unless these Rules are more restrictive. Persons covered by these Rules remain subject to Executive Order 16 of 1978 and amendments thereto, and to all other applicable City rules and executive orders. Nothing in these Rules shall limit the duty of City administrative law judges to comply with Chapter 68, the rules and opinions of the Conflicts of Interest Board, Executive Order 16 of 1978 and amendments thereto, and any additional obligations imposed by rules, guidelines or directives issued by agencies or tribunals, or the duty of administrative law judges in the Office of Administrative Trials and Hearings ("OATH") to comply with the Code of Judicial Conduct as set forth in the Rules of the Chief Administrative Judge of the Courts for the State of New York, 22 N.Y.C.R.R. §100 et seq.

HISTORICAL NOTE

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The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

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(3) The final rule does not include a proposed restriction on fiduciary activities by City administrative law judges primarily employed by the City.

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law judge to discipline under the final rule.

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48 RCNY 102

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§102 A City Administrative Law Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of His or Her Activities.

(A) A City administrative law judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of City tribunals.

(B) A City administrative law judge shall not allow family, social, political or other relationships to influence his or her judicial conduct or judgment.

(C) A City administrative law judge shall not lend the prestige of judicial office to advance the private interests of the City administrative law judge or others; nor shall a City administrative law judge convey to others, or permit others to convey, the impression that they are in a special position to influence him or her.

(D) A City administrative law judge shall not testify voluntarily as a character witness before a City tribunal on which he or she serves.

(E) A City administrative law judge shall not hold membership in any organization that practices invidious discrimination on the basis of actual or perceived age, race, creed, color, gender (including gender identity), sexual orientation, religion, national origin, disability, marital status, domestic partnership status, alienage or citizenship status, military status, or any other protected status enumerated in the City Human Rights Law, Administrative Code §8-101, or the State Human Rights Law, Executive Law §291. This provision does not prohibit a City administrative law judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other

values of legitimate common interest to its members.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

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[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

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The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 103

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§103 A City Administrative Law Judge Shall Perform His or Her Judicial Duties Impartially and Diligently.

(A) Adjudicative responsibilities.

(1) A City administrative law judge shall be faithful to the law and maintain professional competence in it. A City administrative law judge shall not be swayed by partisan interests, public clamor or fear of public criticism.

(2) A City administrative law judge shall require order and decorum in proceedings before him or her.

(3) A City administrative law judge shall be patient, dignified and courteous to the parties, representatives, witnesses and others with whom the City administrative law judge deals in an official capacity and shall require similar conduct of others subject to his or her direction and control.

(4) A City administrative law judge shall accord to every party to a proceeding, or to that party's representative, the right to be heard according to law.

(5) A City administrative law judge shall perform judicial duties with impartiality. A City administrative law judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon actual or perceived age, race, creed, color, gender (including gender identity), sexual orientation, religion, national origin, disability, marital status, domestic partnership status, alienage or citizenship status, military status or any other protected status enumerated in the City Human Rights Law, Administrative Code §8-101, or the State Human Rights Law, Executive Law §291, or socioeconomic status, and shall require City tribunal staff and

others subject to the City administrative law judge's direction and control to refrain from such words or conduct.

(6) A City administrative law judge shall require the parties and their representatives in proceedings before him or her to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others based upon actual or perceived age, race, creed, color, gender (including gender identity), sexual orientation, religion, national origin, disability, marital status, domestic partnership status, alienage or citizenship status, military status or any other protected status enumerated in the City Human Rights Law, Administrative Code §8-101, or the State Human Rights Law, Executive Law §291, or socioeconomic status. This provision does not preclude legitimate advocacy when age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, domestic partnership status, alienage or citizenship status, military status, socioeconomic status or any other similar factor is an issue in the proceeding.

(7) A City administrative law judge shall not initiate, permit or consider ex parte communications, except:

(a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, if the City administrative law judge (i) reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and (ii) insofar as practical and appropriate, provides for prompt notification of other parties or their representatives of the substance of the ex parte communication and allows an opportunity to respond.

(b) A City administrative law judge, with the consent of the parties, may confer separately with the parties and their representatives on agreed-upon matters.

(c) A City administrative law judge may initiate or consider any ex parte communications when authorized by law to do so.

(8) A City administrative law judge shall take appropriate steps to ensure that any party not represented by an attorney or other relevant professional has the opportunity to have his or her case fully heard on all relevant points.

(a) Among the practices that a City administrative law judge may appropriately follow and may find helpful in advancing the ability of a litigant not represented by an attorney or other relevant professional to be fully heard are the following: (i) liberally construing and allowing amendment of papers that a party not represented by an attorney has prepared; (ii) providing brief information about the nature of the hearing, who else is participating in the hearing and how the hearing will be conducted; (iii) providing brief information about what types of evidence may be presented; (iv) being attentive to language barriers that may affect parties or witnesses; (v) questioning witnesses to elicit general information and to obtain clarification; (vi) modifying the traditional order of taking evidence; (vii) minimizing the use of complex legal terms; (viii) explaining the basis for a ruling when made during the hearing or when made after the hearing in writing; (ix) making referrals to resources that may be available to assist the party in the preparation of the case.

(b) A City administrative law judge shall ensure that any steps taken in fulfillment of the obligations of this paragraph are reflected in the record of the proceeding. A communication between a City administrative law judge and a litigant made in fulfillment of the obligations of this paragraph remains subject to the restrictions on ex parte communications contained in the preceding paragraph.

(9) A City administrative law judge shall dispose of all judicial matters promptly, efficiently and fairly.

(10) A City administrative law judge shall not make any public comment about a pending or impending proceeding in any City tribunal. This paragraph does not prohibit a City administrative law judge from making authorized public statements in the course of his or her official duties or from explaining for public information the procedures of the tribunal. This paragraph does not apply to proceedings in which the City administrative law judge is a litigant or a representative of a litigant.

(11) A City administrative law judge shall not:

(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(b) with respect to cases, controversies or issues that are likely to come before the tribunal, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(12) A City administrative law judge shall not disclose, or use for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(B) Administrative responsibilities.

(1) A City administrative law judge shall diligently discharge his or her administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration and cooperate with other City administrative law judges and tribunal staff in the administration of judicial business.

(2) A City administrative law judge shall require tribunal staff subject to his or her direction and control to observe the standards of fidelity and diligence that apply to the City administrative law judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(C) Disciplinary responsibilities.

(1) A City administrative law judge who receives information indicating a substantial likelihood that another City administrative law judge has committed a substantial violation of these Rules shall promptly report such information to the head of the tribunal, the Administrative Justice Coordinator in the Office of the Mayor or the Chief Judge of OATH, or, as applicable, to the official occupying any successor position. In addition, a City administrative law judge must comply with any agency rules requiring the reporting of such information within the agency or tribunal.

(2) If, in the course of performing judicial duties, a City administrative law judge receives information indicating a substantial likelihood that a lawyer appearing before him or her has committed a substantial violation of the Code of Professional Responsibility the City administrative law judge shall take appropriate action.

(3) Acts of a City administrative law judge in the discharge of disciplinary responsibilities are part of his or her judicial duties.

(D) Disqualification.

(1) A City administrative law judge shall disqualify himself or herself in a proceeding in which the City administrative law judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the City administrative law judge has a personal bias or prejudice concerning a party; or (ii) the City administrative law judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) (i) the City administrative law judge, while in private practice, is serving or has served as a lawyer in the matter in controversy; (ii) the City administrative law judge knows that a lawyer with whom he or she was associated in private practice served during that association as a lawyer in the matter in controversy; (iii) the City administrative law judge knows that a lawyer with whom he or she is associated in private practice is serving as a lawyer in the matter in controversy; or (iv) the City administrative law judge knows that he or she or a lawyer with whom he or she was or is associated in private practice has been or will be a material witness in the matter in controversy;

(c) the City administrative law judge has served in governmental employment and in such capacity participated as counsel, advisor or material witness in the matter in controversy;

(d) the City administrative law judge knows that he or she, individually or as a fiduciary, or the City administrative law judge's spouse or domestic partner, or a person known by the City administrative law judge to be closely related to either of them, or the spouse of such person: (i) is a party to the proceeding; (ii) is an officer, director or trustee of a party; (iii) has an economic interest in the subject matter in controversy; or (iv) has any other interest that could be substantially affected by the proceeding;

(e) the City administrative law judge knows that the City administrative law judge or his or her spouse, domestic partner or a person known by the City administrative law judge to be closely related to either of them, or the spouse or domestic partner of such a person, is acting as a lawyer in the proceeding or is likely to be a material witness in the proceeding;

(f) the City administrative law judge has made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or has made a public statement not in the City administrative law judge's adjudicative capacity that commits the City administrative law judge with respect to (i) an issue in the proceeding, or (ii) the parties or controversy in the proceeding;

(g) notwithstanding the provisions of subparagraph (d) above, if a City administrative law judge would be disqualified because of the appearance or discovery, after the matter was assigned to the City administrative law judge, that the City administrative law judge, individually or as fiduciary, or the City administrative law judge's spouse or domestic partner or a person known by the City administrative law judge to be closely related to either of them, or the spouse of such person, has an economic interest in the subject matter in controversy, disqualification is not required if the City administrative law judge, spouse, domestic partner or other relevant person, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(2) A City administrative law judge shall keep informed about his or her personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of his or her spouse or domestic partner and minor children residing in the City administrative law judge's household.

(E) Remittal of disqualification.

(1) A City administrative law judge disqualified by the terms of subdivision (D) above may disclose on the record the basis for his or her disqualification. Thereafter, subject to paragraph (2) below, if the parties who have appeared and not defaulted and their representatives, without participation by the City administrative law judge, all agree that the City administrative law judge should not be disqualified, and the City administrative law judge believes that he or she will be impartial and is willing to participate, the City administrative law judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

(2) Notwithstanding paragraph (1) above, disqualification of a City administrative law judge shall not be remitted if participation in the proceeding by the City administrative law judge would violate Chapter 68 of the Charter or if the basis for disqualification is that:

(a) the City administrative law judge has a personal bias or prejudice concerning a party;

(b) the City administrative law judge, while in private practice, served as a lawyer in the matter in controversy;

(c) the City administrative law judge has been or will be a material witness concerning the matter in controversy; or

(d) the City administrative law judge or his or her spouse or domestic partner is a party to the proceeding or is an officer, director or trustee of a party to the proceeding.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. License revocation hearing was adjourned to give respondent, a for hire driver, an opportunity to secure counsel. Section 103(A)(8) of the Rules of Conduct for Administrative Law Judges directs judges take steps to ensure that unrepresented parties have the opportunity to have his or her case fully heard. Among the steps the judge took was giving respondent time to secure counsel, obtaining a translator for the hearing, and permitting continued cross-examination of the complaining witness after respondent hired an attorney. **Taxi & Limousine Comm'n v. Martinez**, OATH Index No. 1183/07 (Apr. 11, 2007).

FOOTNOTES

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Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§104 A City Administrative Law Judge Shall Conduct His or Her Extra-Judicial Activities so as to Minimize the Risk of Conflict with Judicial Obligations.

(A) Extra-judicial activities in general. A City administrative law judge shall conduct all of his or her extra-judicial activities so that they:

(1) do not cast reasonable doubt on the City administrative law judge's capacity to act impartially as a City administrative law judge;

(2) do not detract from the dignity of judicial office;

(3) do not interfere with the proper performance of judicial duties; and

(4) are not incompatible with judicial office.

(B) Governmental, civic or charitable activities.

(1) A City administrative law judge shall not appear at a public hearing before an executive or legislative body or official if doing so would cast doubt on his or her ability to decide impartially regarding any issue or party that with reasonable foreseeability might come before him or her unless the issue or party is one with respect to which the City administrative law judge would in any event be disqualified under these Rules or any other provision of law.

(2) In connection with civic or charitable activities, a City administrative law judge may participate in fund-raising

or solicitation for membership if:

(a) the City administrative law judge does not use or permit use of the prestige of judicial office for fund-raising or solicitation for membership;

(b) the fund-raising or solicitation for membership is not directed at persons who have appeared, are appearing or are foreseeably likely to appear before the City administrative law judge;

(c) the City administrative law judge's participation in the fund-raising or solicitation for membership would not detract from the dignity of judicial office or interfere with the proper performance of judicial duties or be incompatible with judicial office;

(d) the fund-raising or solicitation for membership is not prohibited by Chapter 68 of the City Charter or any other provision of law.

(3) A City administrative law judge shall not accept:

(a) appointment to a governmental committee or commission or other governmental position if his or her activity in such capacity would cast doubt on his or her ability to decide impartially regarding any issue or party that with reasonable foreseeability might come before him or her; or

(b) appointment or employment as a peace officer or police officer, as those terms are defined in Criminal Procedure Law §1.20, unless he or she is a member of the uniformed force of the police department exercising adjudicative duties.

(4) If not otherwise prohibited by Chapter 68 of the Charter or any other provision of law, a City administrative law judge may be a member or serve as an officer, director, trustee or advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of these rules.

(a) A City administrative law judge shall not serve as an officer, director, trustee or advisor if it is likely that (i) the organization will be engaged in proceedings that ordinarily would come before the City administrative law judge or (ii) such service will involve the City administrative law judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the City tribunal on which the City administrative law judge serves.

(b) A City administrative law judge may be listed as an officer, director, trustee or advisor of such an organization, provided that such listing on letterhead or elsewhere does not include the City administrative law judge's judicial designation unless comparable designations are listed for other persons.

(C) Financial activities.

(1) A City administrative law judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to reflect adversely on the City administrative law judge's impartiality or exploit his or her judicial position;

(b) involve the City administrative law judge with any business, organization or activity that ordinarily would come before him or her; or

(c) involve the City administrative law judge in frequent transactions or continuing business relationships with those lawyers or other persons who regularly come before the tribunal on which the City administrative law judge serves.

(2) A City administrative law judge shall manage his or her investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as he or she can do so without serious financial detriment, the City administrative law judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(3) A City administrative law judge shall not accept, and shall urge members of his or her family residing in the City administrative law judge's household not to accept, a gift, bequest, favor or loan from anyone, unless such gift, bequest, favor or loan is permitted by Chapter 68 of the Charter and any other applicable provision of law and is:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the City administrative law judge and his or her guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse, domestic partner or other family member of a City administrative law judge residing in the City administrative law judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the City administrative law judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the City administrative law judge in the performance of judicial duties;

(c) a gift which is customary on family and social occasions;

(d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or friend whose appearance or interest in a case would in any event require disqualification under §103(D) of these Rules;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not City administrative law judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to any other applicants; or

(h) any other gift, bequest, favor or loan, unless the donor is a party or other person who has come or is likely to come before the City administrative law judge or the City administrative law judge knows the donor is or intends to become engaged in business dealings with the City. Any gift received under this subparagraph that exceeds $1,000.00 must be reported to the Administrative Justice Coordinator in the Office of the Mayor or, as applicable, to the official occupying any successor position.

(D) Fiduciary activities. The same restrictions on financial activities that apply to a City administrative law judge personally also apply to the City administrative law judge while acting in a fiduciary capacity.

(E) Service as arbitrator or mediator. A City administrative law judge may act as an arbitrator or mediator, consistent with Chapter 68 of the Charter and the rules and opinions issued by the Conflicts of Interest Board interpreting those provisions and any applicable agency or tribunal rules, as long as such activity affects neither the independent professional judgment of the City administrative law judge nor the conduct of his or her official duties.

(F) Practice of law.

(1) Consistent with all other provisions of these Rules, with Chapter 68 of the Charter and the rules and opinions of the Conflicts of Interest Board, any applicable agency or tribunal rules and with all other provisions of law, a City

administrative law judge may practice law, as long as such activity affects neither the independent professional judgment of the City administrative law judge nor the conduct of his or her official duties.

(2) A City administrative law judge shall not represent or appear on behalf of private interests before the City tribunal on which he or she serves.

(3) A City administrative law judge primarily employed by the City shall not represent or appear on behalf of private interests before any City tribunal or agency.

(4) A City administrative law judge shall not be associated or affiliated with any firm, company or organization that regularly represents or appears on behalf of private interests before the City tribunal on which he or she serves.

(G) Compensation and reimbursement. A City administrative law judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by these Rules, if the source of such payments does not give the appearance of influencing the City administrative law judge's performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(1) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a City administrative law judge would receive for the same activity.

(2) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the City administrative law judge and, where appropriate to the occasion, by the City administrative law judge's spouse, domestic partner or guest. Any payment in excess of such an amount is compensation.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

1

[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

As amended in 2005, the New York City Charter in §13-a requires that the Mayor and the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings jointly promulgate rules of conduct for administrative law judges and hearing officers in City tribunals (collectively, "City administrative law judges"). Section 1049, subd. 2(b), specifically authorizes the Chief Administrative Law Judge to promulgate such rules in conjunction with the Mayor.

The purpose of the final rule is to fulfill the Charter mandate by establishing a uniform set of ethical standards applicable to all City administrative law judges. The standards will enhance the professionalism of adjudication in the City, protecting the rights of those who appear before tribunals and yielding a fairer and more effective system of administrative justice.

The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in

determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

The final rule that is being promulgated responds to public comment in various respects. The most significant respects in which the final rule responds to public comment are the following:

(1) The final rule restricts a City administrative law judge from testifying voluntarily as a character witness in a proceeding before a City tribunal on which he or she serves.

(2) The final rule provides that a City administrative law judge is required to take appropriate action if, in the course of performing judicial duties, he or she receives information indicating a substantial likelihood that a lawyer appearing before him or her has committed a substantial violation of the Code of Professional Responsibility.

(3) The final rule does not include a proposed restriction on fiduciary activities by City administrative law judges primarily employed by the City.

(4) The final rule provides that a City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office; it also provides that a City administrative law judge who is a candidate for elective judicial office shall comply with State rules governing candidates for elective judicial office and that a violation of those rules by a City administrative law judge is misconduct that may subject a City administrative law judge to discipline under the final rule.

(5) The final rule provides that a City administrative law judge who engages in partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves or be in violation of Chapter 68 of the City Charter or any other applicable law.

(6) The final rule provides that a complaint concerning the head of a tribunal located within an agency may be referred by the Chief Administrative Law Judge of OATH and the Administrative Justice Coordinator to the head of the agency within which the tribunal is located and that a complaint concerning the head of a tribunal not located within an agency may be referred by the Administrative Justice Coordinator to the Mayor or the Mayor's designee.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 105

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§105 A City Administrative Law Judge Shall Refrain From Inappropriate Political Activity.

(A) A City administrative law judge shall not act as a leader or hold an office in a political organization.

(B) A City administrative law judge shall not solicit funds for a political organization or candidate.

(C) A City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office, except that he or she may continue to hold office while being a candidate for election to or serving as a delegate in a State constitutional convention, if otherwise permitted by law to do so.

(D) A City administrative law judge who is a candidate for elective judicial office shall comply with the Rules of the Chief Administrator of the Courts for the State of New York governing the conduct of such candidates, 22 N.Y.C.R.R. §100.5. A determination by the State Commission on Judicial Conduct, a court of the State of New York or any other authorized entity that a City administrative law judge has violated those Rules shall constitute misconduct and may subject a City administrative law judge to discipline hereunder.

(E) A City administrative law judge who engages in any other partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves nor be in violation of Chapter 68 of the City Charter or any other applicable law.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

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[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

As amended in 2005, the New York City Charter in §13-a requires that the Mayor and the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings jointly promulgate rules of conduct for administrative law judges and hearing officers in City tribunals (collectively, "City administrative law judges"). Section 1049, subd. 2(b), specifically authorizes the Chief Administrative Law Judge to promulgate such rules in conjunction with the Mayor.

The purpose of the final rule is to fulfill the Charter mandate by establishing a uniform set of ethical standards applicable to all City administrative law judges. The standards will enhance the professionalism of adjudication in the City, protecting the rights of those who appear before tribunals and yielding a fairer and more effective system of administrative justice.

The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

The final rule that is being promulgated responds to public comment in various respects. The most significant respects in which the final rule responds to public comment are the following:

(1) The final rule restricts a City administrative law judge from testifying voluntarily as a character witness in a proceeding before a City tribunal on which he or she serves.

(2) The final rule provides that a City administrative law judge is required to take appropriate action if, in the course of performing judicial duties, he or she receives information indicating a substantial likelihood that a lawyer appearing before him or her has committed a substantial violation of the Code of Professional Responsibility.

(3) The final rule does not include a proposed restriction on fiduciary activities by City administrative law judges primarily employed by the City.

(4) The final rule provides that a City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office; it also provides that a City administrative law judge who is a candidate

for elective judicial office shall comply with State rules governing candidates for elective judicial office and that a violation of those rules by a City administrative law judge is misconduct that may subject a City administrative law judge to discipline under the final rule.

(5) The final rule provides that a City administrative law judge who engages in partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves or be in violation of Chapter 68 of the City Charter or any other applicable law.

(6) The final rule provides that a complaint concerning the head of a tribunal located within an agency may be referred by the Chief Administrative Law Judge of OATH and the Administrative Justice Coordinator to the head of the agency within which the tribunal is located and that a complaint concerning the head of a tribunal not located within an agency may be referred by the Administrative Justice Coordinator to the Mayor or the Mayor's designee.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 106

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§106 Misconduct.

(A) A violation of these Rules may constitute misconduct and may subject a City administrative law judge to discipline.

(B) A complaint alleging that a City administrative law judge has violated these Rules may be made to the head of the City tribunal on which the City administrative law judge serves or served or to the Administrative Justice Coordinator in the Office of the Mayor or the Chief Judge of OATH or, as applicable, to the official occupying any successor position. For purposes of this and the succeeding paragraphs of this section, a "complaint" shall include a report made pursuant to §103(C)(1) of these Rules.

(C) If the head of a City tribunal receives a complaint, he or she shall so advise the Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, the official occupying any successor position.

(D) A complaint received by the Administrative Justice Coordinator in the Office of the Mayor or the Chief Judge of OATH or, as applicable, the official occupying any successor position, shall be referred, after consultation and as appropriate, to the head of the City tribunal on which the City administrative law judge serves or served, to the Conflicts of Interest Board and/or to the Department of Investigation. A complaint concerning the head of a tribunal located within a City agency may also be referred, after consultation and as appropriate, to the head of such agency. A complaint concerning the head of a tribunal not located within a City agency may be referred by the Administrative Justice Coordinator in the Office of the Mayor or the official occupying any successor position, to the Mayor or the

Mayor's designee.

(E) The head of each City tribunal shall report to the Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, to the official occupying any successor position, the disposition of each complaint alleging a violation of these Rules that has been received by or referred to the head of the tribunal.

(F) The Chief Judge of OATH or, as applicable, the official occupying any successor position, shall maintain a record of every complaint of a violation of these Rules made under this section and of the disposition of each complaint, which record shall be confidential consistent with applicable law. The Chief Judge of OATH or, as applicable, the official occupying any successor position, shall maintain an index of all City administrative law judges found to have violated these Rules and of the discipline imposed in each such case, which index shall be made available for public inspection and copying.

(G) Notwithstanding the foregoing, with respect to a tribunal in any City agency having an internal investigation division, a complaint alleging that an administrative law judge serving on such a tribunal has violated these Rules shall be made to the head of that agency.

(H) Nothing contained herein shall prohibit the head of a tribunal or other officer responsible for employing or appointing a City administrative law judge from refusing further employment to, terminating the employment of or otherwise disciplining the City administrative law judge, if the head of the tribunal or other officer is otherwise authorized to do so.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

1

[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

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The purpose of the final rule is to fulfill the Charter mandate by establishing a uniform set of ethical standards applicable to all City administrative law judges. The standards will enhance the professionalism of adjudication in the City, protecting the rights of those who appear before tribunals and yielding a fairer and more effective system of administrative justice.

The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may

subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

The final rule that is being promulgated responds to public comment in various respects. The most significant respects in which the final rule responds to public comment are the following:

(1) The final rule restricts a City administrative law judge from testifying voluntarily as a character witness in a proceeding before a City tribunal on which he or she serves.

(2) The final rule provides that a City administrative law judge is required to take appropriate action if, in the course of performing judicial duties, he or she receives information indicating a substantial likelihood that a lawyer appearing before him or her has committed a substantial violation of the Code of Professional Responsibility.

(3) The final rule does not include a proposed restriction on fiduciary activities by City administrative law judges primarily employed by the City.

(4) The final rule provides that a City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office; it also provides that a City administrative law judge who is a candidate for elective judicial office shall comply with State rules governing candidates for elective judicial office and that a violation of those rules by a City administrative law judge is misconduct that may subject a City administrative law judge to discipline under the final rule.

(5) The final rule provides that a City administrative law judge who engages in partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves or be in violation of Chapter 68 of the City Charter or any other applicable law.

(6) The final rule provides that a complaint concerning the head of a tribunal located within an agency may be referred by the Chief Administrative Law Judge of OATH and the Administrative Justice Coordinator to the head of the agency within which the tribunal is located and that a complaint concerning the head of a tribunal not located within an agency may be referred by the Administrative Justice Coordinator to the Mayor or the Mayor's designee.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 107

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§107 Advisory Opinions; Advisory Committee.

(A) Advisory opinions. Advisory opinions with respect to these Rules may be issued jointly by the Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, by the official occupying any successor position, after consultation with each other. A request for an advisory opinion may be made by a City administrative law judge, including the supervisor of a City administrative law judge or the head of a City tribunal, or by the head of a City agency. A request may be addressed to the Chief Judge of OATH, or, as applicable, to the official occupying any successor position, who shall provide a copy of it to the Administrative Justice Coordinator in the Office of the Mayor, or, as applicable, to the official occupying any successor position, and who shall maintain a record of all such requests for advisory opinions and of all opinions issued in response thereto. An advisory opinion issued under these Rules shall be based on such facts as are presented in the request or subsequently submitted in a written, signed document. Advisory opinions shall be issued only with respect to proposed future conduct or action by a City administrative law judge. A City administrative law judge whose conduct or action is the subject of an advisory opinion shall not be subject to sanction by virtue of acting or failing to act due to a reasonable reliance on the opinion unless material facts were omitted or misstated in the request. A previously issued opinion may be amended, upon notice to the subject City administrative law judge, but the amendment shall apply only to future conduct or action by the City administrative law judge. Advisory opinions shall be made public with such deletions as may be necessary to prevent disclosure of the identity of the subject City administrative law judge or any other involved party.

(B) Advisory committee. The Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, the official occupying any successor position may jointly appoint an advisory committee

and may consult that committee in the preparation of advisory opinions. Advisory committee members shall be members of the bar especially knowledgeable about matters of ethics, administrative law or the operations of City tribunals. Upon request, the committee shall advise the Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, the official occupying any successor position, with respect to any question concerning application of these Rules as to which the committee's advice is sought.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

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[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

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The purpose of the final rule is to fulfill the Charter mandate by establishing a uniform set of ethical standards applicable to all City administrative law judges. The standards will enhance the professionalism of adjudication in the City, protecting the rights of those who appear before tribunals and yielding a fairer and more effective system of administrative justice.

The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

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Responsibility.

(3) The final rule does not include a proposed restriction on fiduciary activities by City administrative law judges primarily employed by the City.

(4) The final rule provides that a City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office; it also provides that a City administrative law judge who is a candidate for elective judicial office shall comply with State rules governing candidates for elective judicial office and that a violation of those rules by a City administrative law judge is misconduct that may subject a City administrative law judge to discipline under the final rule.

(5) The final rule provides that a City administrative law judge who engages in partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves or be in violation of Chapter 68 of the City Charter or any other applicable law.

(6) The final rule provides that a complaint concerning the head of a tribunal located within an agency may be referred by the Chief Administrative Law Judge of OATH and the Administrative Justice Coordinator to the head of the agency within which the tribunal is located and that a complaint concerning the head of a tribunal not located within an agency may be referred by the Administrative Justice Coordinator to the Mayor or the Mayor's designee.

Rules of the City of New York

***** Current through December 2009 ****

49 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-01 Scope.

These Rules and Regulations shall govern the procedure by which agency records no longer necessary for the conduct of business or for purposes of audit or litigation may be disposed of. No records shall be disposed of unless permission has been obtained from the Department and the corporation counsel in accordance with the provisions of these Rules and Regulations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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49 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-02 Definitions.

As used in these Rules and Regulations the following terms shall have the following meanings:

Department. "Department" means the department of records and information ser- vices.

Records. "Records" means any document, book, paper, photograph, sound recording, machine readable material or any other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official city business. Library and museum materials made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference and stocks of publications are not included within the definition of records as used in these Rules and Regulations.

Records disposal. "Records disposal" means:

(1) the removal by a city agency, as provided herein, of records no longer necessary for the conduct of business or for purposes of audit or litigation. Methods of disposal include, but shall not be limited to:

(i) the disposal of records by destruction or donation;

(ii) the transfer of records to the Department;

(iii) the transfer of records to the Department determined to have historical or other sufficient value to warrant continued preservation;

(2) the transfer of records from one city agency to another city agency.

Records disposal schedule. "Records disposal schedule" means any list of records promulgated by the Department for an agency which lists the records maintained by that agency by title and defines the exact length of time for which the records shall be kept.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

49 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-03 Interim Records Disposal Schedules.

Pending the establishment of records disposal schedules pursuant to §1-04, all directions for the destruction of records issued by the Board of Estimate in the period of January 1, 1976 through December 31, 1978 which have been filed with the Department shall be deemed to constitute interim records disposal schedules unless the status of the records has changed. Agencies which presently maintain records of a type destroyed pursuant to such directions may request permission to dispose of any such records which have since become eligible for disposal. Eligibility for disposal shall be determined by reference to the schedules used by the Board of Estimate in issuing such directions. Requests to dispose of records pursuant to an interim disposal schedule will be made pursuant to §1-05.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

49 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-04 Procedure for Making Requests to Establish a Records Disposal Schedule.

(a) Agency requests for the establishment of a records disposal schedule shall be made to the Department on such forms as may be prescribed by the Department.

(b) Upon receipt of a request for the establishment of a records disposal schedule, the Department shall make a formal survey of records maintained by the agency. Based on the findings for such survey, a records disposal schedule shall be established by the Department and approved by the corporation counsel and the Office of the Comptroller. Each agency shall provide the Department, the corporation counsel and the comptroller with its full cooperation and shall provide any information necessary to evaluate the request. If the Department or the corporation counsel deems it necessary, the agency shall provide access to the records in question and, if requested, shall forward such records to the Department or corporation counsel for examination.

(c) The records disposal schedule for these records shall remain in force until the status of the records contained in the schedule changes.

(d) Upon change in status of records or at any time an agency determines that records not within its records disposal schedule are no longer necessary for the conduct of business or for purposes of audit or litigation, the agency may request the Department to make appropriate amendments to its records disposal schedule.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

49 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-05 Procedure for Annual Records Disposal.

Following promulgation of an approved records disposal schedule pursuant to §1-04, the agency will certify to the validity and currency of their schedule annually on forms provided by the Department on a date agreed upon by each city agency and the Department. The agency will also indicate the intention to destroy scheduled records 90 days after issuance of such certification and include a listing of those records, if any, which are to be held beyond the specified periods. The certification will list those retained records by title and date and state the reason for retention.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

49 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-06 Responses to Annual Certification.

(a) The Department and the corporation counsel will review the certification to ensure that it is valid. The Department or corporation counsel may disapprove the destruction of any other record on the schedule, but must indicate the title and date of such records and state the reason for retention.

(b) If the Department disapproves the destruction of records, it shall notify the agency and the corporation counsel prior to the expiration of the 90-day period provided in §1-05.

(c) If the corporation counsel disapproves the destruction of records, he shall notify the agency and the Department prior to the expiration of the 90-day period provided in §1-05.

(d) In no case shall any agency proceed with the destruction of records until the agency certification form is returned by both the Department and the corporation counsel indicating both have received and reviewed it. The returned receipted form will constitute authorization for an agency to proceed with their annual disposal of records.

(e) Following notice that disposal of records has been authorized, the agency shall dispose of such records forthwith. Each agency must certify to the Department that the records have been disposed of within 60 days of such notice.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

49 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-07 Historical Records.

No request for disposal of records shall be granted if in the judgment of the Department such records should be retained for historical or research purposes. Upon request of the Department an agency in possession of records which are no longer necessary for the conduct of business or for purposes of audit or litigation and which are deemed to be of historical or research value shall transfer such records to the municipal archives for permanent custody.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

49 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-01 Vital Records.

$ 15.00	Search of birth, death or marriage record in one year and one City/Borough for one name and issuance of results, i.e. one certified copy of the record, or a "not found" statement.
$ 2.00	Per additional year to be searched in one City/ Borough for the same name.
$ 2.00	Per additional City/Borough to be searched in one year for the same name.
$ 10.00	Per additional certified copy of birth, death or marriage record.
$ 6.00	Certified copy or transcript of birth, death, or marriage record, requested over-the-counter at 31 Chambers Street, when certificate number is provided.
$ 5.00	Use of microfilm reader machine, per day, or part thereof, for consultation of birth, death or marriage records or indexes.
$ 5.00	Exemplification of a birth, death, or marriage record.

HISTORICAL NOTE

Section amended City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See Note 1]

Section amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

Section amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. [See T49 Chap. 2 footnote]

Section amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. [See T49 Chap.

2 footnote]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Jan. 14, 2009:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for some of these services. The administrative cost of providing vital record copies, photocopies, certain digital products, and exhibition loan services, now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

The fees for vital record services have not been changed since 1990. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increase will recoup only part of the cost of providing the service.

Digital reproductions and conservation services are new services provided by the Municipal Archives. A new fee will be charged for items loaned for exhibition, in conformity with the standard practice of museums and other repositories. Publication and license fees will be increased in an amount depending on the use to which the item is put, again in conformity with the standard practice of museums and other repositories.

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***** Current through December 2009 ****

49 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-02 Digital Services.

$ 40.00 Per high resolution scan, color, of item up to 11" × 14".

$ 2.00 Per low resolution scan of item up to 11" × 14" (this service not available for photographs).

$ 5.00 Additional fee for delivery of scanned items on disk.

$ 30.00 Per copy of disk containing archival material previously digitized (except photographic images).

HISTORICAL NOTE

Section amended City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See T49 §2-01 Note 1]

Section amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

Section amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. [See T49 Chap. 2 footnote]

Section repealed and added City Record June 3, 2003 eff. July 7, 2003 per City Record notice. [See T49 Chap. 2 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

The fees for vital record services have not been changed since 1990. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increase will recoup only part of the cost of providing the service.

Digital reproductions and conservation services are new services provided by the Municipal Archives. A new fee will be charged for items loaned for exhibition, in conformity with the standard practice of museums and other repositories. Publication and license fees will be increased in an amount depending on the use to which the item is put, again in conformity with the standard practice of museums and other repositories.

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***** Current through December 2009 ****

49 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-03 Photocopying.

$ .25 Per copy, up to 11" × 14" (self-service).

$ .50 Per copy, 11" × 17" (self service).

$ .25 Per copy, from microfilm (self-service microfilm reader/printer; not available for vital records).

$ .50 Per copy, from microfilm of a "tax" photograph.

HISTORICAL NOTE

Section amended City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See T49 §2-01 Note 1]

Section amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

Section amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. [See T49 Chap. 2 footnote]

Section amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. [See T49 Chap. 2 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

The fees for vital record services have not been changed since 1990. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increase will recoup only part of the cost of providing the service.

Digital reproductions and conservation services are new services provided by the Municipal Archives. A new fee will be charged for items loaned for exhibition, in conformity with the standard practice of museums and other repositories. Publication and license fees will be increased in an amount depending on the use to which the item is put, again in conformity with the standard practice of museums and other repositories.

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49 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-04 Photographic Reproduction (still photography).

$ 45.00 Per print (b&w or color 8" × 10" or smaller) on resin-coated paper or digital equivalent, except 1939/40 "tax" photographs.

$ 35.00 Per print (b&w 8" × 10" or smaller) on resin-coated paper, 1939/40 "tax" photograph.

$ 80.00 Per print (b&w 8" × 10" or smaller) on fiber paper.

$ 60.00 Per print (b&w or color 11" × 14") on resin-coated paper or digital equivalent, except 1939/40 "tax" photographs.

$ 50.00 Per print (b&w 11" × 14") on resin-coated paper, 1939/40 "tax" photograph.

$110.00 Per print (b&w 11" × 14") on fiber paper.

$120.00 Per print (b&w or color 16" × 20") on resin-coated paper or digital equivalent.

$175.00 Per print (b&w 16" × 20") on fiber paper.

$ 60.00 Per 4" × 5" color transparency ($15.00 surcharge for objects larger than 16" × 20").

$ 35.00 Set-up fee for 35mm color transparency (for the first object).

$ 5.00 Per additional 35mm color transparency.

100% Rush Surcharge (48 hours, or less; not available for all photographic services).

Additional charges for oversize, cropping, or other services and products.

HISTORICAL NOTE

Section amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

Section amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. [See T49 Chap. 2 footnote]

Section amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. [See T49 Chap. 2 footnote]

Section amended City Record Dec. 24, 1992 eff. Jan. 23, 1993.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

The fees for vital record services have not been changed since 1990. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increase will recoup only part of the cost of providing the service.

Digital reproductions and conservation services are new services provided by the Municipal Archives. A new fee will be charged for items loaned for exhibition, in conformity with the standard practice of museums and other repositories. Publication and license fees will be increased in an amount depending on the use to which the item is put, again in conformity with the standard practice of museums and other repositories.

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49 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-05 Photographic Reproduction.

$ 75.00 Per hour, preservation and access fee to view original tape footage for which no intermediary exists.

$ 75.00 and up For the first ten seconds (or less) tape copy on Betacam SP. Fee includes permission for use and will be determined based on the type of production (commercial, or non-profit), distribution (North America only or world wide), and the type of license (e.g. one-time broadcast, broadcast with home video/DVD, broadcast with all media). Additional charges for theatrical and other exhibition.

$ 20.00 Per additional second tape copy on Betacam SP (commercial use).

$ 15.00 Per additional second tape copy on Betacam SP (non-profit use).

$ 25.00 Per duplicate time-coded viewing copy.

HISTORICAL NOTE

Section added City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

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***** Current through December 2009 ****

49 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-06 Microfilm Reproduction.

$30.00 Per roll, 35mm or 16mm diazo microfilm.

HISTORICAL NOTE

Section renumbered and amended (former §2-05) City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008.

[See T49 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

The fees for vital record services have not been changed since 1990. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increase will recoup only part of the cost of providing the service.

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***** Current through December 2009 ****

49 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-07 Other Fees.

$ 15.00and up	Publication or license fee, per item (except moving images) reproduced. Publication or license fees will range from $15.00 for editorial use in a scholarly publication, up to $75.00, or more, for any use of a reproduction of a still image, document, or other archival item in any type of product or media including post-card, poster, book, magazine, newspaper, newsletter, film, video, television, or web-site, based on the type of proposed use.
$ 1.00	Certification of record other than birth, death or marriage record.
$200.00	Exhibition loan fee, per item.
$ 75.00	Per hour, for conservation services, not including materials.

HISTORICAL NOTE

Section amended City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See T49 §2-01 Note 1]

Section renumbered and amended (former §2-06) City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008.

[See T49 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

The fees for vital record services have not been changed since 1990. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increase will recoup only part of the cost of providing the service.

Digital reproductions and conservation services are new services provided by the Municipal Archives. A new fee will be charged for items loaned for exhibition, in conformity with the standard practice of museums and other repositories. Publication and license fees will be increased in an amount depending on the use to which the item is put, again in conformity with the standard practice of museums and other repositories.

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***** Current through December 2009 ****

49 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 3 MUNICIPAL ARCHIVES GUIDELINES REGARDING ACCESS TO ARCHIVAL MATERIAL*1

§3-01 Municipal Archives Regulations Governing Use of Archival Material.

The New York City Municipal Archives, a division of the Department of Records and Information Services, is open to all qualified persons subject to the following regulations:

A. ACCESS TO MATERIALS.

(1) Researchers must provide acceptable identification upon request.

(2) All researchers must sign the register daily.

(3) Researchers using collections other than vital records must fill out and sign a registration form (MA-18) indicating name, affiliation, if any, and specifying the subject and purpose of the research.

(4) Archival material may not be removed from the Municipal Archives without written permission from the Director.

(5) Special access restrictions and procedures apply to New York County District Attorney closed case files, and Board of Education "anti-Communist" case files.

B. REFERENCE ROOM RULES.

(1) Researchers may bring only those materials needed for research to the document research area.

(2) Coats, bags, briefcases, and other personal articles are not permitted in the document research area.

(3) Archives staff reserve the right to inspect all research materials, briefcases, bags and other personal articles before a researcher leaves the Reference Room.

(4) Food and beverages are not permitted in the Reference Room.

(5) All notes must be taken with pencil, typewriter, word processor, or tape recorder. Ink pens may not be used.

(6) Researchers may not photograph or scan archival material.

(7) Archival material is fragile. Researchers may not write upon, lean upon, mark or otherwise mishandle material. Researchers should report any damaged material to staff immediately.

(8) Researchers must preserve the existing order of material and notify staff if any material is discovered to be not in order.

C. REPRODUCTION AND PUBLICATION OF MATERIALS.

The Municipal Archives recognizes its responsibility to facilitate access to its collections by permitting the reproduction, reprinting, publishing, or other use of archival material, subject to the following conditions:

(1) The physical condition of an item may prohibit reproduction.

(2) Reproductions are provided for the researcher's personal use. They may not be reduplicated or transferred to another individual or institution.

(3) Researchers may use the self-service photocopy machines available in the Reference Room.

(4) Researchers must ask for staff assistance when copying fragile or oversize material.

(5) Permission to publish, reprint, broadcast, re-duplicate, or make other use of archival material may be granted subject to the conditions indicated in the Publish/Use Contract form (MA-45), and may be subject to licensing or use fees. The Director shall decide when and to what degree these restrictions shall apply.

D. CITATION.

(1) Proper acknowledgment or credit must be given to the Municipal Archives for all material used.

(2) The citation should be written as follows (after identification of the item and title of the collection): NYC Department of Records/Municipal Archives.

(3) The Municipal Archives would appreciate receiving copies of any research results.

Any violation of these rules governing the use of Municipal Archives material may be considered sufficient cause for denial of future access.

HISTORICAL NOTE

Section added City Record Feb. 25, 2008 §2, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Feb. 25, 2008 §3, eff. Mar. 26, 2008. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for some of these services. The cost of providing photographic reproductions (still and moving images) now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

The Municipal Archives recognizes its responsibility to facilitate access to its collections, including series that may contain confidential information. The rule will enable public access to this material while at the same time protecting the privacy rights of individuals who may be named in such files.

The Department received a communication relating to Chapter 3, paragraph C, (2) Reproductions are provided for the researcher's personal use. They may not be re-duplicated or transferred to another individual or institution. The communication inquired whether this wording could be understood to prohibit a patron from working on behalf of an employer, friend, or other family member, or from providing copies to the employer, etc. This is not the intent of the rule. However, patrons of the Municipal Archives who are working on behalf of others should inform the recipients of their work that reproductions are for personal use only and cannot be further reproduced without permission.

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***** Current through December 2009 ****

49 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 3 MUNICIPAL ARCHIVES GUIDELINES REGARDING ACCESS TO ARCHIVAL MATERIAL*1

§3-02 Municipal Archives Guidelines for Archival Use of Board of Education "Anti-Communist" Case Files.

A. The Municipal Archives preserves and makes available for research historical records of the New York City Board of Education ("the Board"). This collection includes several records series (nos. 590, 591, 593, 594, 595, 596 and 597) that pertain to the "anti-Communist" activities of the Board from the 1930s through the 1960s. They contain personal and confidential information relating to teachers and other school personnel investigated and/or questioned by the Board for alleged support of or association with the Communist Party. The individuals who are the subject of these files have a privacy right regarding information of a personal nature contained in them; this includes a privacy right regarding the fact that the subject case file exists.

B. The regulations governing public access to all archival material are set forth in §3-01 of this chapter. In addition to those regulations, public access to the "anti-Communist" case file series is governed by the following additional regulations and/or procedures:

(1) Researchers who request access to a specific file for the purpose of researching the views or activities of the individual who is the subject of that file or of another individual named in that file must obtain permission for such access from the subject individual and from the named individual, as applicable. If the subject or named individual is deceased or unable to give or deny permission, such permission must be obtained from the individual's legal heirs or custodians, as specified in forms MA-101A, MA-101B, and MA-101C.

(2) Researchers engaged in more general research not limited to a particular individual or individuals may access files in the restricted series upon certifying that they will neither record nor use any names or personally identifiable material obtained from such files, form (MA-101D).

(3) When a researcher accesses a file with permission from the individual who is the subject of that file, the Archives will redact the names of other individuals in the file whose permission has not been obtained.

(4) Self-service photocopying is not available for anti-Communist case file documents. All photocopies will be redacted to remove information identifying any individual whose permission has not been obtained.

(5) Published materials and materials created for general distribution, such as newspaper clippings and press releases, are not subject to the restrictions set forth in this section.

HISTORICAL NOTE

Section added City Record Feb. 25, 2008 §2, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Feb. 25, 2008 §3, eff. Mar. 26, 2008. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for some of these services. The cost of providing photographic reproductions (still and moving images) now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

The Municipal Archives recognizes its responsibility to facilitate access to its collections, including series that may contain confidential information. The rule will enable public access to this material while at the same time protecting the privacy rights of individuals who may be named in such files.

The Department received a communication relating to Chapter 3, paragraph C, (2) Reproductions are provided for the researcher's personal use. They may not be re-duplicated or transferred to another individual or institution. The communication inquired whether this wording could be understood to prohibit a patron from working on behalf of an employer, friend, or other family member, or from providing copies to the employer, etc. This is not the intent of the rule. However, patrons of the Municipal Archives who are working on behalf of others should inform the recipients of their work that reproductions are for personal use only and cannot be further reproduced without permission.

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49 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 3 MUNICIPAL ARCHIVES GUIDELINES REGARDING ACCESS TO ARCHIVAL MATERIAL*1

§3-03 Municipal Archives Guidelines for Archival Use of District Attorney Records.

A. The Municipal Archives preserves and makes available for research the closed case files of the New York County District Attorney ("DANY"). The case files date back to 1896, and constitute one of the most important series in the Archives' extensive collection of records pertaining to the administration of criminal justice.

In accordance with the duly promulgated record retention schedule for this series, the closed case files are transferred to the Municipal Archives for permanent preservation twenty-five years after the date (year) of indictment.

B. The regulation governing public access to all archival material are set forth in §3-01 of this chapter. In addition to those regulations, public access to District Attorney case files that are less than fifty years old (from the year of indictment) are governed by the following additional regulations and/or procedures:

(1) For requests to examine records in case files that are less than fifty years old (from the year of indictment), the Municipal Archives Director, or an authorized staff member, will submit to DANY the following information: name of researcher and affiliation, if any, subject and purpose of research, case file number(s) and name(s) of defendant(s). The Municipal Archives will submit this information to DANY prior to granting the researcher access to the requested records. DANY will be permitted to examine the material in the requested file(s) and separate any items as to which (a) public disclosure is prohibited by statute or court order (e.g. minutes of Grand Jury proceedings); or (b) disclosure would threaten the life or safety of any person, such as information about confidential informants or undercover law enforcement personnel. The Municipal Archives will not permit access to any items separated by DANY from other items in the file. The DANY will have five business days (from the date of notification that the case file is available) in which to conduct a case file review.

(2) For all case files regardless of age, the Municipal Archives will not permit access to minutes of Grand Jury proceedings or any other records as to which disclosure is prohibited by statute or court order. The Municipal Archives will also consider requests by DANY to maintain the confidentiality of records whose age is greater than 50 years when exceptional circumstances warrant granting such request.

HISTORICAL NOTE

Section added City Record Feb. 25, 2008 §2, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Feb. 25, 2008 §3, eff. Mar. 26, 2008. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for some of these services. The cost of providing photographic reproductions (still and moving images) now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

The Municipal Archives recognizes its responsibility to facilitate access to its collections, including series that may contain confidential information. The rule will enable public access to this material while at the same time protecting the privacy rights of individuals who may be named in such files.

The Department received a communication relating to Chapter 3, paragraph C, (2) Reproductions are provided for the researcher's personal use. They may not be re-duplicated or transferred to another individual or institution. The communication inquired whether this wording could be understood to prohibit a patron from working on behalf of an employer, friend, or other family member, or from providing copies to the employer, etc. This is not the intent of the rule. However, patrons of the Municipal Archives who are working on behalf of others should inform the recipients of their work that reproductions are for personal use only and cannot be further reproduced without permission.

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50 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-01 Applicability and Definitions.

(a) These rules shall apply to all applications for street activity permits.

(b) For purposes of this chapter, the following terms shall have the following meanings:

Business improvement district. "Business improvement district" shall mean an entity established pursuant to article nine of the general municipal law.

Block party. "Block party" shall mean a community sponsored street activity requiring the closure of a single block of a street, or a portion thereof, for a single day.

Commercial or promotional events. "Commercial or promotional events" shall mean street activities that promote, advertise or introduce a product, corporation, company or other commercial entity or the goods or services of a corporation, company or other commercial entity to either the general public or to a portion of the general public. Commercial or promotional events do not include charitable or cultural events.

Community sponsor. "Community sponsor" shall mean a community-based, not-for-profit organization, association, corporation or the like that has an indigenous relationship to the specific street or community where the event is proposed.

Large events. "Large events" shall mean street activities that have an extensive impact on the surrounding community and vehicular and/or pedestrian traffic in that they include obstructions or structures such as any temporary

platforms, bleachers, reviewing stands, outdoor bandstands and similar structures that cover an area of 120 square feet or more and over 2 feet in height, or any tent or canopy that is more than 400 gross square feet or will be in place for more than 30 days that requires a Department of Building permit; require substantial coordination between SAPO and City agency staff, including the Police Department, Department of Transportation and the Executive Director of Office of Citywide Event Coordination and Management; or use of Military Island or full closure of a street and/or sidewalk with an emergency vehicle lane or meets all other large event criteria and is held at a pedestrian plaza.

Medium-sized events. "Medium-sized events" shall mean street activities that impact pedestrian and/or vehicular traffic in that they require significant set up on a sidewalk and curb lane, or pedestrian plaza, including parking for event-related vehicles or similar set up; or include an obstruction such as a tent, canopy, stage platform, bleacher, reviewing stand, outdoor bandstand or similar structure that covers an area of 120 square feet or more and over 2 feet in height, or any structure that is more than 400 gross square feet or will be in place for more than 30 days that requires a Department of Building permit; and requires coordination between SAPO and City agency staff, including the Police Department, Department of Transportation and the Executive Director of the Office of Citywide Event Coordination and Management.

Pedestrian island. "Pedestrian island" shall mean any public space abutting or separating a roadway or roadways that can accommodate pedestrians.

Pedestrian plaza. "Pedestrian plaza" shall mean an area designed by the New York City Department of Transportation for use by pedestrians located fully within the bed of a roadway, which may vary in size and shape; may abut a sidewalk; may be at the same level as the roadway or raised above the level the roadway; may be physically separated from the roadway by curbing, bollards or other barrier; may be treated with special markings and materials; and may contain benches, tables or other facilities for pedestrian use.

Pedestrian island or plaza event. "Pedestrian island or plaza event" shall mean street activities that occur on a pedestrian island or plaza and may also include the abutting sidewalk, provided that the event does not have a significant impact on surrounding pedestrian or vehicular traffic.

Small events. "Small events" shall mean street activities that occur for a short period of time with low or minimum impact on pedestrian or vehicular traffic normally encountered at the location; require little coordination between SAPO, the Executive Director of the Office of Citywide Event Coordination and Management and the event sponsor; and where the curb lane of a street is used for parking of a promotional vehicle or a vehicle associated with the event or the sidewalk or pedestrian plaza is used for promotional set up or props no larger than a 10 by 10 foot open-sided canopy and allows five feet of unobstructed passage on the sidewalk or pedestrian plaza and remains open for pedestrian use during the event.

Extra small events. "Extra small events" shall mean street activities that occur for a short period of time without significant impact on pedestrian and vehicular traffic and are not designed to draw the attention of passers by; require little coordination between SAPO, the Director of the Office of Citywide Event Coordination and Management and the event sponsor; and where the curb lane of a street is used only for a generator, short-term parking or passenger drop off and the loading or unloading of a vehicle associated with the event or the sidewalk is used for a red carpet and rope or stanchions, banner and a structure no larger than a 10 by 10 feet and where the activity allows at least five feet of unobstructed passage on the sidewalk is available for pedestrian use during the event.

Street activity. "Street activity" shall mean any activity on a public street, street curb lane, sidewalk or pedestrian island or plaza where the activity will interfere with or obstruct the regular use of the location by pedestrian or vehicular traffic, including but not limited to street fairs, block parties and commercial or promotional activities, but shall not include activities conducted pursuant to a valid film permit, demonstrations or parades.

Street fair or festival. "Street fair or festival" shall mean a community sponsored street activity requiring a

multi-day and/or multi-block street closure.

HISTORICAL NOTE

Section amended City Record May 11, 2009 §1, eff. June 10, 2009. [See Note 1]

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record May 11, 2009:

The Office of Citywide Event Coordination and Management (CECM), Street Activity Permit Office (SAPO) is charged with administration of the permit system for street activities, block parties and fairs. Under §1-02 of the current rules, the director of SAPO is authorized to impose conditions upon the issuance of any street activity permit that are necessary to protect the interests of the City, the community and the general public.

A fee scale is needed in order to grant street permits for commercial activities based on the costs the City incurs to process the permit application and ensure the safety of the event. Applications will be assessed fees, that correlate to the size of the event. The fee scale was created by analyzing the administrative and manpower costs incurred by City agencies to review, evaluate and approve or deny an application, as well as provide oversight and security for the event. The agencies involved in these various processes include CECM, SAPO, NYPD, FDNY, DOT and DOB.

In response to comments received, the rules have been clarified to indicate the nature of the types of events subject to the fee scale and to expressly exempt charitable and cultural events. In addition, the fee scale has been adjusted for events held at pedestrian plazas and islands on Broadway in the midtown area in order to address the increased administrative, security and operational costs associated with special events in these locations.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

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***** Current through December 2009 ****

50 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-02 Street Activity Permit Office.

The Commissioner of the Community Assistance Unit (hereinafter referred to as "CAU") hereby establishes within CAU a Street Activity Permit Office (hereinafter referred to as "SAPO") and the position of director of the Street Activity Permit Office. The function of SAPO will be to administer the procedures set forth in these rules. The director of SAPO shall, consistent with these rules, have the authority to approve or deny any application for a street activity permit, to revoke any street activity permit, or to impose upon the issuance of any street activity permit any conditions necessary to protect the interests of the City, the community and the general public.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31,

1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

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RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-03 Processing of Applications by Community Boards.

(a) A street activity permit shall be required to conduct any street activity, including, but not limited to, a street fair, block party, festival, green market or farmers market, religious ceremony, block cleanup, recreation program or other such activity on a public street or sidewalk when such activity may interfere with or obstruct the normal use by pedestrian or vehicular traffic of such street or sidewalk.

(b) Street activity permits for such events shall be issued to a sponsor, which shall take responsibility for the conduct of the event. A sponsor shall be a community-based, not-for-profit organization, association, or the like, which has an indigenous relationship to the specific street or community or both, for which the event is proposed and which demonstrates that it has the support of the community and is willing to take full responsibility for the conduct of the event. Street activity permits for business celebrations or the like may, at the discretion of the Director of SAPO, be issued to individuals or commercial entities. All applications for street activity permits must be completed, endorsed and submitted by the applicant, who shall be a natural person authorized to act on behalf of the sponsor in connection with the application.

(c) All applications for street activity permits shall be submitted on forms prescribed by the director of SAPO. Applications for street activity permits for single block and/or single day events shall be obtained at, and filed with, the office of the Community Board for the community district which encompasses the area or areas in which the proposed street activity is to take place in accordance with the procedures of such board. Notwithstanding the foregoing, if applications for such permits cannot be so obtained, then applications shall be obtained at, and filed with, SAPO. SAPO will forward copies of applications for single block and/or single day events that are filed directly with SAPO to the community board(s) for the community district(s) which encompass(es) the area(s) in which the proposed single block

or single day event is to take place.

All applications for multi-block and/or multi-day street events shall be obtained at the office of the Community Board or SAPO and must be filed directly with SAPO no later than December 31st of the calendar year preceding the calendar year of such event; provided, however, that where an earlier date for filing is required by the procedures of the affected community board, filing at SAPO by such earlier date is required. All applications for street activity permits shall be processed as hereinafter provided.

(d) Upon the filing of an application with the office of the community board (or boards) for the community district (or districts) which encompasses the area or areas in which the proposed street activity is to take place, the community board, in accordance with its procedures, shall recommend the approval or denial of the application, or it may so qualify such recommendation with conditions the community board deems to be in the best interest of the area of the proposed street activity or of the community district. Applications for multi-block and/or multi-day events must be returned by the specific community board to SAPO with comments and recommendations no later than March 1st of the calendar year of such multi-block and/or multi-day event. Community boards shall forward to SAPO single block and/or single day applications no later than sixty days prior to the first day of the proposed street activity, except that applications for street clean-ups shall be received no later than thirty days prior to the first day of the proposed activity. In all cases, as provided in §1-04 of these rules, such applications shall be forwarded with such community board's recommendation for either approval, approval with conditions or denial.

(e) There shall be a processing fee of fifteen dollars in the form of a certified check or money order made payable to the "New York City Department of Finance" which shall accompany each application for a street activity permit, except that no processing fee shall be required for applications for street clean-ups. Such fee shall be non-refundable.

(f) No application for a raindate or other form of make-up date will be accepted on any application for a multi-block and/or multi-day street event.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health,

sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

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50 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-04 Recommendations by Community Boards.

The community board shall forward its recommendation for approval, approval with conditions or denial of a street activity permit application to SAPO for further processing, and shall notify the applicant in writing of such recommendation. If the community board has recommended approval with conditions or denial of a street activity permit application, it shall also notify the applicant of the applicant's opportunity to comment on such recommendation to SAPO in accordance with §1-05 of these rules.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

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RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-05 Comments on Recommendations of Community Boards.

(a) In the event that the community board recommends approval with conditions or denial of the permit application, an applicant shall have five business days from the receipt of the notification by the community board of its recommendation to file written comments with SAPO. If the board recommends denial and the applicant fails to file comments within the time provided, then the application shall be deemed denied. If the board gives an approval with conditions, failure to file comments by the applicant shall be deemed acceptance of such conditions by the applicant and sponsor.

(b) Within five business days of receipt of comments from an applicant challenging the recommendation of the community board, the director of SAPO, or a designee, shall review the recommendation of the community board and either hold a conference with, or receive solicited written statements from, the interested parties. Such interested parties shall include the community board and the applicant and may also include any other parties the Director deems appropriate. The applicant and the community board shall be notified in writing of the director's determination within a reasonable time following such conference or the receipt of such written statements.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

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RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-06 Processing of Applications by the Street Activity Permit Office.

Upon receipt of an application which has been recommended for approval by a community board or after a review of such recommendation by SAPO has resulted in a determination of preliminary approval, SAPO shall forward for review copies of such application to the Police Department, the Fire Department, the Department of Sanitation and the Department of Transportation. Additional copies may also be sent to other agencies, including, but not limited to, the Department of Health, the Department of Consumer Affairs, the New York City Transit Authority, the Department of Social Services, the Department of Finance, the Department of Investigation, the New York State Department of Taxation and Finance, or any other appropriate agency. SAPO shall consider comments, if any, forwarded by any agencies if such comments are forwarded to SAPO by such agencies within fifteen days of such agencies' receipt of such appli- cations.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

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Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-07 Approval or Denial of Applications by the Street Activity Permit Office.

(a) The Director of SAPO shall take into consideration any recommendations or comments received from community boards or City or other government agencies in determining whether to approve, approve with conditions, or deny a street activity permit application. At any time during the review of an application for a street activity permit, the Director of SAPO or Commissioner of the CAU may require the submission by the applicant or sponsor of such additional information which he or she deems necessary to evaluate the application or the qualifications of the sponsor or to implement the requirements of these rules.

(b) The director shall have the authority to deny an application, to condition the approval of an application, or to revoke a street activity permit, based on the past or present failure of the applicant or sponsor:

(1) to make payment of the processing fee; or

(2) to make payment to, or reach satisfactory agreement with, the Department of Sanitation regarding a clean-up deposit; or

(3) to present proof that all necessary and proper licenses, permits, insurance or authorizations have been received; or

(4) to make payment to, or reach satisfactory agreement with, SAPO regarding a street activity fee; or

(5) to comply with applicable laws or rules; or

(6) to comply with a condition imposed on a permit issued previously to the applicant or sponsor; or

(7) to provide the Director or Commissioner with any additional information which he or she has determined to be necessary to evaluate the application or the qualifications of the sponsor.

(c) In addition to the provisions of subdivision (b) of this section, the director shall have the authority to deny an application, condition the approval of an application or revoke a street activity permit on any or all of the following grounds:

(1) The Police Department, the Fire Department, the Department of Sanitation, the Department of Transportation, the Department of Health, the Department of Consumer Affairs, the New York City Transit Authority, the Department of Social Services, the Department of Finance, the Department of Investigation, the New York State Department of Taxation and Finance, or any other appropriate agency which was forwarded a copy of a street activity permit application for comment, has notified the director of SAPO of its disapproval and the reasons therefor; or

(2) the proposed activity, when considered in conjunction with other proposed activities, would produce an excessive burden on the community, City services or City personnel; or

(3) the information provided on the application or forms or documentation required to be submitted is false, misleading, incomplete or inaccurate; or

(4) approval of the application is not in the best interest of the community, City or general public for reasons that may include, but are not limited to, lack of good character, honesty, integrity or financial responsibility of the sponsor. If the Director determines that the application shall be denied on the grounds that the sponsor lacks good character, honesty, integrity or financial responsibility, the Director shall notify the applicant that the application has been denied and shall specify the reason for such denial. The applicant and/or sponsor may thereafter respond to the Director's determination and appeal such denial pursuant to the provisions of §1-08 of these rules.

(d) The Director shall have the authority to issue a "Notice of Permit in Process" at the request of the applicant to assist the applicant in obtaining related permits, licenses or authorizations required pursuant to provisions of law.

(e) Any application filed with a community board or SAPO which is similar in all material aspects except for the date, location or time of a street activity proposed in a prior application for the same calendar year which has been denied shall be accompanied by a processing fee of fifteen dollars. The director of SAPO shall have the authority to reduce or waive the required filing period for such applications.

(f) For a period of one (1) year following the effective date of this amendment to these rules, the director shall deny applications for street activity permits for multi-block or multi-day street fairs/festivals not held in the calendar year preceding the effective date of this amendment to these rules, except for multi-block street fairs/festivals that do not include vendors or rides.

(g) As used in this section, the term "sponsor" shall include the sponsoring organization or entity named in the application, all the principals and agents of such sponsoring entity, including the applicant, and any other organization or entity affiliated with such sponsoring entity or controlled by a principal or agent thereof; any person or entity which produces, organizes, or manages the street activity; and any person or entity which provides services relating to the conduct of the street activity to either the sponsor or to any producer, organizer or manager of the street activity.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

Subd. (b) par (3) amended City Record Feb. 23, 2004 §1, eff. Mar. 24, 2004. [See T50 §1-10 Note 1]

Subd. (f) added City Record Feb. 6, 2004 eff. Mar. 7, 2004. [See Note 1]

Subd. (g) relettered (by Law Department per Charter §1045(b)), former subd. (f), because of addition of subd. (f) above.

DERIVATION

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Feb. 6, 2004

The Community Assistance Unit (CAU) Street Activity Permit Office (SAPO) is charged with administration of the permit system for street activities, block parties and fairs. Under §1-02 of the current rules, the director of SAPO is authorized to impose upon the issuance of any street activity permit conditions necessary to protect the interests of the City, the community and the general public.

Nearly four hundred SAPO-permitted street events occur annually within the City. Many of these events involve permits for the use of multiple blocks over several days, the erection of structures, the vending of food, apparel and other goods and the use of amplified sound and the performance of music. Such events require additional police presence and increase overtime expenditure by the City. In order to effectively deploy police resources, the New York City Police Department has requested that CAU exercise its discretion temporarily to deny permits for additional events that place an excessive burden on police resources and divert uniformed personnel from core crime fighting, public safety and counter terrorism duties. Based on written comments and oral comments received at public hearing, CAU has determined that denial of new permits for additional events should be limited to new events that occupy more than one street block or more than one day, or those that occupy more than one block and include vendors or rides, since multi-day events and multi-block events including vendors and rides disproportionately burden police resources.

In the interests of protecting the City and its inhabitants, these rules require SAPO to deny permits to multi-block, multi-day events not held prior to their effective date.

2. Provisions in City Record Oct. 30, 2007: It is hereby extended, for an additional one-year period, the authority of the director, set forth in §1-07 of Chapter 1 of Title 50 of the Rules of the City of New York, to deny applications for street activity permits for events not held in the preceding calendar year. Statement of Basis and Purpose The Office of Citywide Events Coordination and Management (OCECM), Street Activity Permit Office (SAPO) is charged with administration of the permit system for street activities, block parties and fairs. Under §1-02 of the current rules, the director of SAPO is authorized to impose upon the issuance of any street activity permit conditions necessary to protect the interests of the City, the community and the general public. Nearly three hundred SAPO-permitted street events occur annually within the City. Almost all of these events involve permits for the use of multiple blocks over several days, the erection of structures, the vending of food, apparel and other goods and the use of amplified sound and the performance of music. Such events require additional police presence and increase overtime expenditure by the City. In order to effectively deploy police resources, the New York City Police Department requested for the calendar year 2008 that SAPO exercise its discretion temporarily to deny permits for additional events that place an excessive burden on police resources and divert uniformed personnel from core crime fighting, public safety and counter terrorism duties. In the interests of protecting the City and its inhabitants, these rules authorize SAPO to deny permits to events for an additional year if the event was not held prior to the new effective date. A Statement of Substantial Need for Earlier Implementation was signed by the Mayor and included with the publication of the notice of preliminary rulemaking for these rules. Accordingly, the moratorium extension will be effective as of the date of publication in the City Record. Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043(e)(1)(c) of the New York City Charter, that there is a substantial need for the implementation, immediately upon its final publication in the City

Record, of a rule to extend for an additional one-year period, the authority of the Executive Director of the Office of Citywide Events Coordination and Management (CECM) by way of the Director of Street Activities Permit Office (SAPO), set forth in §1-07 of Chapter 1 of Title 50 of the Rules of the City of New York, to deny applications for street activity permits for events not held in the preceding calendar year. Nearly three hundred SAPO-permitted street events occur annually within the City. Many of these events involve permits for the use of multiple blocks over several days, the erection of structures, the vending of food, apparel and other goods and the use of amplified sound and the performance of music. Such events require additional police presence and increase overtime expenditure by the City. In order to effectively deploy police resources, the New York City Police Department has requested for the calendar year 2008 that CECM exercise its discretion temporarily to deny permits for additional events that place an excessive burden on police resources and divert uniformed personnel from core crime fighting, public safety and counter terrorism duties. In the interests of protecting the City and its inhabitants, these rules will authorize SAPO to deny permits to events for an additional year if the event was not held prior to the new effective date.

Executive Director Office of Citywide Events Coordination and Management

Michael Bloomberg, Mayor

3. Statement of Basis and Purpose in City Record Dec. 29, 2008: It is hereby extended, for an additional one-year period, the authority of the director, set forth in §1-07 of Chapter 1 of Title 50 of the Rules of the City of New York, to deny applications for street activity permits for events not held in the preceding calendar year. The Office of Citywide Events Coordination and Management (OCECM), Street Activity Permit Office (SAPO) is charged with administration of the permit system for street activities, block parties and fairs. Nearly three hundred SAPO-permitted street fairs and over 5,000 events occur annually within the City. Almost all of these events involve permits for the use of multiple blocks over several days, the erection of structures, the vending of food, apparel and other goods and the use of amplified sound and the performance of music. Such events require additional police presence and increase overtime expenditure by the City. In order to effectively deploy police resources, the New York City Police Department has requested for the calendar year 2009 that SAPO exercise its discretion temporarily to deny permits for additional events that place an excessive burden on police resources and divert uniformed personnel from core crime fighting, public safety and counter terrorism duties. In the interests of protecting the City and its inhabitants, these rules will authorize SAPO to deny permits to events for an additional year if the event was not held prior to the new effective date. Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043(e)(1)(c) of the City Charter, that there is a substantial need for the implementation, immediately upon its final publication in the **City Record,** of a rule to extend for an additional one-year period, the authority of the Executive Director of the Office of Citywide Events Coordination and Management (CECM) by way of the Director of Street Activities Permit Office (SAPO), set forth in §1-07 of Chapter 1 of Title 50 of the Rules of the City of New York, to deny applications for street activity permits for events not held in the proceding calendar year. Nearly three hundred SAPO-permitted street events occur annually within the City. Many of these events involve permits for the use of multiple blocks over several days, the erection of structures, the vending of food, apparel and other goods and the use of amplified sound and the performance of music. Such events require additional police presence and increase overtime expenditure by the City. In order to effectively deploy police resources, the New York City Police Department has requested for the calendar year 2009 that CECM exercise its discretion temporarily to deny permits for additional events that place an excessive burden on police resources and divert uniformed personnel from core crime fighting, public safety and counter terrorism duties. In the interests of protecting the City and its inhabitants, these rules will authorize SAPO to deny permits to events for an additional year if the event was not held prior to the new effective date.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

Rules of the City of New York

***** Current through December 2009 ****

50 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-08 Appeals from Determinations of the Director of the Street Activity Permit Office.

(a) An applicant shall have five business days from receipt of the notification of a denial, of an approval with conditions, or a denial of a waiver of the insurance requirement imposed by section 1-10(e) by the Director of SAPO to file a written appeal with the Commissioner of CAU. If an applicant fails to appeal a denial of a permit or a waiver of the insurance requirement within the time provided, then the application process shall be terminated. If the Director approves the application with conditions and the applicant fails to appeal, the applicant and sponsor shall be deemed to have accepted such conditions.

(b) Following the receipt of a written request by an applicant to appeal the determination of the Director of SAPO, the Commissioner of CAU, or a designee, shall review that determination and may hold an appeal conference with, or receive solicited written statements from, the interested parties. Such interested parties shall include the director of SAPO and the applicant and may also include any other parties the Commissioner of CAU deems appropriate. The applicant shall be notified in writing of the determination of the Commissioner of CAU within a reasonable time following the receipt by the Commissioner of CAU of such request.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

Subd. (a) amended City Record Feb. 23, 2004 §2, eff. Mar. 24, 2004. [See T50 §1-10 Note 1]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

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***** Current through December 2009 ****

50 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-09 Amendments to Applications for Permits.

(a) Any applicant who proposes to amend the date, location or time or make any other material change on an application that has been filed or a permit that has been granted shall file such proposal with SAPO no later than ten business days prior to first day of the proposed activity. The director of SAPO shall consider the recommendations and comments of the community board and City agencies, if any, prior to his or her approval or denial of the proposed amendment.

(b) If a proposed amendment is approved by SAPO, then SAPO shall indicate such approval by either issuing an amended application or permit or noting the amendment on the application or permit.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

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Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

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***** Current through December 2009 ****

50 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-10 Street Activity Fees.

(a) In addition to the application processing fee, the following street activity fees are hereby imposed upon holders of permits for street activities:

(1) for street activities which occupy one block for one day, no fee shall be charged;

(2) for street activities which occupy one block for more than one day, a fee of thirty-five dollars shall be charged for each day after the first day;

(3) for street activities which occupy more than one block, a fee equal to twenty percent of the total fees paid by the vendors to participate in such events shall be charged, except that such total fees shall not include the fees paid by those organizations which the director of SAPO has determined constitute community-based, not-for-profit organizations.

(b) The Director of SAPO shall have the authority to assess a reasonable street activity fee for a street activity for which a permit has been granted in an instance where either no reasonable fee has been paid by vendors to participate in the street activity or where the street activity has been financed in whole or in substantial part by other than participating vendors. In such instance, the street activity fee shall be imposed pursuant to section 1-12 of this chapter.

(c) An applicant who has received a permit to conduct a street activity shall provide the Director of SAPO with all requested information pertaining to the vendors participating in the activity and the fees paid by such vendors.

(d) The Director of SAPO shall have the authority to require that full or partial payment of the street use fee be made prior to the date of the street activity and to require that any amounts remaining owed to the City be paid within a specified period of time following the date of such activity.

(e)(1) Applicants or sponsors of street activities other than not-for-profit entities that occupy no more than one block for no more than one day without a commercial producer for the activity shall be required to obtain general liability insurance for the street activity in the amount of one million dollars ($1,000,000) per occurrence and an endorsement naming the City of New York as an additional insured on such policy. The applicant or sponsor shall provide proof of such coverage prior to the issuance of the permit.

(2) The director of SAPO shall have the authority to waive the insurance required by subdivision (e) of this section where the applicant or sponsor is able to demonstrate that such insurance cannot be obtained without imposing an unreasonable hardship on the applicant or sponsor. Any request for a waiver of the insurance required by subdivision (e) of this section shall be included by the applicant or sponsor in the application submitted to SAPO uner section 1-03. The burden of demonstrating unreasonable hardship shall be on the applicant or sponsor, and may be demonstrated by a showing that the cost of obtaining insurance for the street activity exceeds twenty-five percent (25%) of the applicant's or sponsor's anticipated revenue from the proposed street activity. If the applicant or sponsor has held the street activity in the preceding three (3) years, the anticipated revenue from the proposed street activity shall be presumed to equal or exceed the average of the revenue obtained by the applicant or sponsor in the preceding three (3) years. If the applicant or sponsor has held the street activity for fewer than three (3) years, the anticipated revenue from the proposed street activity shall be presumed to equal or exceed the average of the revenue obtained by the applicant or sponsor in any preceding years in which the street activity was held. If the applicant or sponsor has not previously held the proposed street activity, the director of SAPO shall take into consideration the applicant's or sponsor's projections of anticipated revenue and the prior revenue of comparable street activities of similar size and duration in determining whether the cost of obtaining insurance exceeds twenty-five percent (25%) of anticipated revenue. In the event that the director denies a waiver of the insurance requirement, the applicant and/or sponsor may thereafter respond to the director's denial and appeal such denial pursuant to the provisions of section 1-08 of these rules.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

Subd. (b) amended City Record May 11, 2009 §2, eff. June 10, 2009. [See T50 §1-01 Note 1]

Subd. (e) added City Record Feb. 23, 2004 §3, eff. Mar. 24, 2004. [See Note 1]

DERIVATION

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Feb. 23, 2004

The Community Assistance Unit (CAU) Street Activity Permit Office (SAPO) is charged with administration of the permit system for street activities, block parties and fairs. Under §1-02 of the current rules, the director of SAPO is authorized to impose upon the issuance of any street activity permit conditions necessary to protect the interests of the City, the community and the general public.

Nearly forty-four hundred SAPO-permitted street events occur annually within the City. Nearly four hundred of these events involve permits for the use of multiple blocks over several days, known as street festivals and/or street fairs, which may include the erection of structures, the vending of food, apparel and other goods and the use of

amplified sound and the performance of music. Nearly one thousand of the annual SAPO permitted events are issued for commercial events. In the few past years, a number of persons have been injured during SAPO-permitted street activities, which which resulted in claims against applicants, sponsors and the City of New York.

In the interest of protecting the City and its inhabitants, these rules will authorize SAPO to require that event applicants provide evidence of liability coverage for the event and for the City in order to ensure that those who attend these events are adequately protected in the event of injury. In response to comments received, the rules will not impose an insurance requirement on events that occupy only one block for a single day where the applicant or sponsor is a not-for-profit entity. These events are smaller in scale and therefore pose less of a risk to the public.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

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***** Current through December 2009 ****

50 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-11 Applications for Street Activity Permits for Street Activities Held On or After the Effective Date of Rules.

Except as otherwise provided in these rules, all applications for street activity permits for street activities held on or after the effective date of these rules and all applications pending at such date, shall be valid only if processed in accordance with the rules provided herein.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the

authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

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***** Current through December 2009 ****

50 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-12 Street Activity Fees for Commercial or Promotional Events.

(a) In addition to the application processing fee set forth in subdivision a of section 1-10 of this chapter, the Director of SAPO shall assess the street activity fees set forth in subdivision c of this section for commercial or promotional events. The fee provided for in this section shall not apply to charitable or other events not encompassed within the definition of commercial or promotional events.

(b) Fees under this section, with the exception of extra small events, shall be assessed on a daily basis. Extra small events shall be assessed on a daily basis for a maximum of $861.

(c) The Director of SAPO shall charge an applicant a fee in accordance with the following schedule, which shall be in addition to any bonding requirement imposed by the Director or the Department of Sanitation under any other section of this chapter or any other amount or fee imposed by any City agency:

Type of Event 2009 2009 for Pedestrian Islands or Plazas on Broadway between 42nd and 47th Streets, Pedestrian Islands or Plazas on Broadway between 33rd and 36th Streets and Military Island

Extra Small Event (use of sidewalk or curb lane only) $220 NA

Extra Small Event (use of sidewalk and curb lane) $550 NA

Small Event $2,600 $8,950

Medium Sized Event $6,500 $20,250

Large Event $38,500 $38,500

(d) Reserved.

(e) This schedule does not apply to the following:

(1) sites or events covered by a license, lease or agreement with a third party, unless otherwise provided by a rule issued by the licensor, leasing or contracting agency;

(2) City agency facilities or departmental or administrative offices;

(3) block parties or street fairs covered by section 10-110(a) of this chapter;

(4) demonstrations or other political activity;

(5) parades; or

(6) events of a business improvement district or a non-profit entity operating a pedestrian island or plaza pursuant to a contract or concession from the City if (i) such entity is the sponsor and permittee for the event; and (ii) the event furthers civic, cultural or charitable purposes or the marketing and promotion of local businesses or a neighborhood within the business improvement district but does not promote a single entity or business within the business improvement district.

HISTORICAL NOTE

Section added City Record May 11, 2009 §3, eff. June 10, 2009. [See T50 §1-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

Rules of the City of New York

***** Current through December 2009 ****

50 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 2 SALE OF ALCOHOLIC BEVERAGES AT EVENTS AUTHORIZED BY A STREET ACTIVITY PERMIT*1

§2-01 Sale of Alcoholic Beverages Prohibited.

No sponsor who has received a permit to conduct a street activity from the Street Activity Permit Office (SAPO) shall sell or otherwise distribute alcoholic beverages to any person during the course of such street activity, nor shall such sponsor allow any vendor or any other person or entity that participates in such street activity to sell or otherwise distribute alcoholic beverages to any person during the course of such street activity.

HISTORICAL NOTE

Section added City Record May 1, 2001 eff. May 1, 2001. [See T50 Chapter 2 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 1, 2001 eff. May 1, 2001, note further provisions:

This rule is being adopted to ensure that all street events are conducted in an orderly manner and without interference with the rights of both the participants in street activities and the businesses and residents who operate or reside in the areas near or adjacent to the permitted street activities. The effect of the sale of alcoholic

beverages can create disorder and disruptive behavior at street events which are dangerous to the participants and organizers of the event.

Rules of the City of New York

***** Current through December 2009 ****

50 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 2 SALE OF ALCOHOLIC BEVERAGES AT EVENTS AUTHORIZED BY A STREET ACTIVITY PERMIT*1

§2-02 Enforcement.

The director of SAPO shall have the authority to deny an application for a street activity permit, to condition the approval of an application for a street activity permit, or to revoke a street activity permit, based on the past or present failure of the applicant or sponsor to comply with the provisions of this chapter.

HISTORICAL NOTE

Section added City Record May 1, 2001 eff. May 1, 2001. [See T50 Chapter 2 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 1, 2001 eff. May 1, 2001, note further provisions:

This rule is being adopted to ensure that all street events are conducted in an orderly manner and without interference with the rights of both the participants in street activities and the businesses and residents who operate or reside in the areas near or adjacent to the permitted street activities. The effect of the sale of alcoholic beverages can create disorder and disruptive behavior at street events which are dangerous to the participants

and organizers of the event.

Rules of the City of New York

***** Current through December 2009 ****

50 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 2 SALE OF ALCOHOLIC BEVERAGES AT EVENTS AUTHORIZED BY A STREET ACTIVITY PERMIT*1

§2-03 Exception.

This prohibition shall not apply to entities or persons licensed by the New York state liquor authority to sell alcoholic beverages at retail to be consumed on the premises where sold, including those licensees who operate a sidewalk cafe pursuant to a license issued by the commissioner of consumer affairs.

HISTORICAL NOTE

Section added City Record May 1, 2001 eff. May 1, 2001. [See T50 Chapter 2 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 1, 2001 eff. May 1, 2001, note further provisions:

This rule is being adopted to ensure that all street events are conducted in an orderly manner and without interference with the rights of both the participants in street activities and the businesses and residents who operate or reside in the areas near or adjacent to the permitted street activities. The effect of the sale of alcoholic beverages can create disorder and disruptive behavior at street events which are dangerous to the participants

and organizers of the event.

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***** Current through December 2009 ****

51 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-01 Advisory Opinions on Questions Relating to Lobbying.

(a) The City Clerk will issue advisory opinions on questions relating to lobbying on a case-by-case basis in response to written requests from persons subject to the jurisdiction of the City Clerk, or who reasonably believe they may be subject to such juris- diction.

(b) Such written requests shall set forth in a clear and concise manner the question raised and shall set forth a statement of the actual facts prompting such inquiry.

(c) The City Clerk will not issue an advisory opinion based upon a hypothetical set of facts. Inquiries may be directed to:

Lobbyist Registrations

Office of the City Clerk

Municipal Building

Room 265

New York, New York 10007

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-02 Fees for Lobbyist Registration.

Each statement of registration required to be filed pursuant to Administrative Code §3-213, shall be accompanied by a fee of $150 for the first client registered and a fee of $50 for each additional client registered.

HISTORICAL NOTE

Section amended City Record Dec. 8, 2006 §1, eff. Dec. 10, 2006 per City Record notice. [See

Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 8, 2006:

The rules and rule amendments promulgated herein implement the provisions of Local Law 15 of 2006, which amends the City's Lobbying Law with regard to public access to information filed by lobbyists with the City Clerk and penalties for failure to comply with the law's requirements. These changes to the Rules increase existing penalties and impose new penalties on lobbyists and clients, amend the filing dates for lobbyists' filings and provide procedures to govern complaints against lobbyists and clients.

Specifically, the fines for the following violations of the Lobbying Law are being increased: failure to file,

violation of a cease-and-desist order of the City Clerk or violation against the prohibition against contingency agreements and any violation of the Lobbying Law the penalty for which is not specifically addressed in the Lobbying Law. In addition, new fines for late filings are being imposed. Certain procedures for filing complaints and commencing formal proceedings are also outlined. The Rules are also being updated to reflect certain previously enacted fee increases. In light of the change in law to permit electronic filing and the general trend to a paperless filing, new rules governing public viewing of lobbyist data are being implemented. The Rules regarding complaints are intended to implement the new auditing and investigative powers mandated by Local Law 15 of 2006. The final rule changes the proposed rule in three ways. First, the final rule clarifies that all reports and registrations filed for calendar year 2006 and prior years will be kept for five years in the City Clerk's Office. In contrast, reports and registrations filed for calendar year 2007 and later will be kept in electronic form in the City Clerk's Office and will be posted on the internet as soon as practicable. Second, the final rule indicates that the bi-monthly reporting periods will commence on January 1, 2008, rather than on January 1, 2007. Third, the final rule adds a definition of the term 'unemancipated child'.

Statement of Substantial Need For Earlier Implementation of Rule

I hereby find, pursuant to §1043(e)(1)(c) of the New York City Charter, that there is a substantial need for the implementation immediately upon its final publication in the City Record, of the rule amending chapter 1 of Title 51 of the Rules of the City of New York in relation to administration and enforcement of the Lobbying Law. This rule implements amendments to the Lobbying Law made by Local Law 15 of 2006.

The earlier implementation of such rule is necessary because certain provisions of Local Law 15 of 2006 take effect on December 10, 2006. Local Law 15 provided that relevant city agencies take all steps, including the promulgation of rules, to ensure its implementation on its effective date. The proposed rule was published in the City Record on October 11, 2006 and a public hearing was held on November 15, 2006. Implementing the rule upon publication is necessary to ensure that the law's amendments can take effect in a timely manner.

Michael Bloomberg

Mayor, City of New York

Victor L. Robles City Clerk, City of New York Clerk of the Council

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-03 Enforcement of the Lobbying Law.

(a) **Violation of the Lobbying Law.** (1) **General.** Any lobbyist or client who violates any provision of the Lobbying Law or these Rules, shall be subject to the penalties available under §3-223 of the Lobbying Law and subdivision b of this section.

(2) **Examples of violations.** Lobbyists and, where applicable, clients are subject to penalty for violations of the Lobbying Law that include, but are not limited to, the following:

(i) Failure of a lobbyist to register, or failure of a lobbyist to register a client;

(ii) failure to submit any required disclosure report (Registration, Periodic Report, Lobbyist Annual Report, Client Annual Report, Fundraising Report, Political Consulting Report);

(iii) late filing of any registration or report;

(iv) failure to complete any section or portion of a report;

(v) failure to supply correct information in any report;

(vi) failure to pay any required fee;

(vii) failure to pay a penalty in a stated period of time may result in payment of an additional penalty if the initial penalty so provides.

(3) **Extensions.** A lobbyist or client requesting an extension in the filing of lobbyist or client reports should request such an extension prior to the filing deadline.

(i) Extensions are a courtesy and will be granted only for good cause and within the discretion of the City Clerk;

(ii) a request for an extension shall be in writing;

(iii) an extension should be requested no later than two business days before the date of deadline;

(4) **Incomplete and incorrect reports.** Where a lobbyist or client submits any report or registration that is incorrect or incomplete, the City Clerk may take the following action: The lobbyist or client shall be notified by certified mail of any incorrect or incomplete report, which may be returned to the lobbyist or client at the discretion of the City Clerk.

The lobbyist or client shall have 14 business days from the date of mailing of the notification to cure said defective report. Failure to cure within 14 business days shall result in the lobbyist or client being deemed in default as to the submission of said report.

(5) **Notification and opportunity to cure.** Pursuant to the Administrative Code, §§3-223 (c), (d) and (e), where a lobbyist or client fails to comply with any section of the Lobbying Law, the City Clerk shall, by certified mail, notify them of the nature of their noncompliance and notify them that compliance must be made within 14 business days of mailing of such notice.

(6) **Recipient of notification.** The Principal Officer or other person duly designated by a lobbyist on the registration form shall be deemed an appropriate recipient of any mailed notice of communication from the City Clerk pursuant to the Lobbying Law. A lobbyist's registration form shall also identify the Principal Officer of the client or other person duly designated by a client to receive any mailed notice of communication from the City Clerk pursuant to the Lobbying Law and such Principal Officer or person shall be deemed an appropriate recipient of any such notice.

(b) **Penalties.** (1) **Penalties available under the Lobbying Law.** A person or organization who violates the Lobbying Law is subject to the penalties available under subdivisions (a), (b), (c), and (d) of §3-223 of the Administrative Code.

(i) Pursuant to Administrative Code §3-223(a), except as provided in §3-223(b), any person or organization who knowingly or willfully violates any provision of the Lobbying Law shall be guilty of a class A misdemeanor. In addition to such criminal penalties, said person or organization shall be subject to a civil penalty, in an amount not to exceed thirty thousand dollars, to be assessed by the City Clerk, or an order to cease all lobbying activities subject to the jurisdiction of the City Clerk for a period of time as determined by said Clerk not to exceed sixty days, or both such civil penalty and order;

(ii) Pursuant to Administrative Code §3-223(b), any person or organization who violates a cease and desist order of the City Clerk issued under subdivision (a) of this section or enters into a contingency agreement or accepts or pays any contingency fees as proscribed in Administrative Code §3-218, shall be guilty of a class A misdemeanor. In addition to such criminal penalties, said person or organization shall be subject to a civil penalty, in an amount not to exceed thirty thousand dollars, to be assessed by the City Clerk;

(iii) Pursuant to Administrative Code §3-223(c), following a failure to make and file any statement or report required by the Lobbying Law, the City Clerk shall notify the person or organization of such fact by certified mail that such filing must be made within fourteen business days of the date of mailing of such notice. The failure to file any statement or report within such time shall constitute a class A misdemeanor. In addition to such criminal penalties, said person or organization shall be subject to a civil penalty, in an amount not to exceed twenty thousand dollars, to be assessed by the City Clerk;

(iv) In addition to any other penalties prescribed in the Lobbying Law and these Rules, any lobbyist or client who fails to file in a timely manner any statement or report required by the Lobbying Law or these Rules, shall be subject to late filing penalties as follows:

(A) Any person or organization who has never previously filed a statement or registration or any other filing required pursuant to the Lobbying Law and these Rules and is filing for the first time shall be charged a late filing fee of $10 per day for each day the required filing is late. If more than one filing is due the total late filing fee shall be equal to the sum of $10 per day multiplied by the number of such late filings.

(B) Any other person or organization shall be charged a late filing fee of $25 per day for each day the required filing is late. If more than one filing is due the total late filing fee shall be equal to the sum of $25 per day multiplied by the number of such late filings.

(C) Such late filing shall be treated as an incorrect or incomplete report pursuant to §1-03(a)(4) of these Rules.

(D) For the purposes of the imposition of a late filing fee, all filings must be received by the due date for such filing. If such due date falls on a Saturday, Sunday or city holiday, the filing must be received by the next city business day.

(v) Pursuant to Administrative Code §3-223(d), any person or organization who violates any provision of the Lobbying Law not punishable by subdivisions (a), (b), or (c) of §3-223 shall be subject to a civil penalty, in an amount not to exceed twenty thousand dollars, to be assessed by the City Clerk.

(2) **Guidelines for penalties.** Penalties may reflect the frequency and extent of a lobbyist's or client's record of violations. Mitigating or aggravating factors may be considered. Penalties shall be assessed by the City Clerk after a hearing on a case-by-case basis.

(c) **The Hearing.** (1) Pursuant to the Administrative Code §3-223(f), only after a hearing shall the City Clerk assess the amount of a civil penalty or duration of an order to cease and desist.

(2) **Designation of OATH.** Pursuant to Charter §1048(a), City Clerk designates the Office of Administrative Trials and Hearings (OATH) to conduct on its behalf all hearings involving violations of the Lobbying Law.

(3) **The hearing officer.** The hearing shall be conducted by an Administrative Law Judge (ALJ) employed by OATH for that purpose. The ALJ shall have all the powers conferred by law to administer oaths, issue subpoenas, require the attendance of witnesses and production of records, rule upon requests for adjournment, rule upon evidentiary matters and to otherwise regulate the hearing, observe the requirements of due process and effectuate the purposes and provisions of applicable law.

(4) The ALJ shall preside over the hearing, make all procedural rulings, and make a statement on the record describing the nature of the proceedings, the issues, and the manner in which the hearing will be conducted.

(5) All testimony shall be given under oath or affirmation administered by the ALJ.

(6) The person or organization charged shall be entitled to be represented, to have witnesses give testimony and to otherwise present relevant and material evidence on behalf of such person or organization, to cross examine witnesses and to examine any document or other item offered into evidence.

(7) A typed or recorded copy of the record of the hearing shall be prepared by OATH; a copy shall be provided upon request for a reasonable cost.

(8) At the discretion of the ALJ, the hearing may be adjourned for good cause upon the request of either party or upon the ALJ's own motion and with notice to the parties.

(9) The hearing shall be conducted in conformity with procedural requirements of applicable law and the rules of procedure adopted by OATH which are not inconsistent with these Rules.

(10) After the conclusion of the hearing, the presiding ALJ shall prepare a report and recommendation.

(11) The report of an ALJ shall summarize the evidence presented and contain an analysis of the legal and factual issues, with recommended findings of fact and recommended disposition.

(12) The report shall be sent to the City Clerk for a final determination of the facts and a final disposition.

(13) A copy of the report shall also be delivered or mailed to the person or organization charged.

(d) **Decision after the hearing.** (1) The hearing decision shall be made and issued by the City Clerk and shall be based exclusively on the record and transcript of the hearing. In reaching a decision, the City Clerk may review the memoranda of law of the parties, if any. The City Clerk shall not be bound by the ALJ's recommendation, in whole or in part, as may be appropriate. The decision shall be in writing and shall state reasons for the determinations and, when appropriate, direct specific action.

(2) A copy of such decision shall be mailed by the City Clerk to the person or organization charged and the attorney or representative of such person or organization, if any.

(3) In the event that a decision is adverse to the person or organization charged, in whole or in part, the person or organization has the right to judicial review in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (1) amended City Record Dec. 8, 2006 §2, eff. Dec. 10, 2006 per City Record notice.

[See T51 §1-02 Note 1]

Subd. (a) par (2) subpar (ii) amended City Record Dec. 8, 2006 §3, eff. Dec. 10, 2006 per City Record

notice. [See T51 §1-02 Note 1]

Subd. (a) par (6) amended City Record Dec. 8, 2006 §4, eff. Dec. 10, 2006 per City Record notice.

[See T51 §1-02 Note 1]

Subd. (b) par (1) amended City Record Dec. 8, 2006 §5, eff. Dec. 10, 2006 per City Record notice.

[See T51 §1-02 Note 1]

Subd. (b) par (2) amended City Record Dec. 8, 2006 §6, eff. Dec. 10, 2006 per City Record notice.

[See T51 §1-02 Note 1]

CASE NOTES

¶ 1. Unlike civil penalty, late fees are automatic and begin to accrue once lobbyist or client misses filing deadline. Late fees of $420 assessed against client of lobbyist who filed annual report 42 days after the filing deadline. **Office of the City Clerk v. Bayrock Group, LLC,** OATH Index No. 432/08 (Oct. 22, 2007).

¶ 2. Absent proof (not presented here) that client had previously registered or made a filing required by the Lobbying Law, client could not be assessed late fees at the enhanced rate of $25 per day but instead would be assessed late fees at the rate applicable to first time filers of $10 per day under this section. **Office of the City Clerk v. Bayrock Group, LLC,** OATH Index No. 432/08 (Oct. 22, 2007).

¶ 3. Late fees are automatic and start accumulating once a client misses a filing deadline. Since petitioner proved lobbyist's client had previously filed an annual report, client was assessed late fees at the enhanced rate of $25 per day under this section. Late fees of $6350 assessed where client filed its report 254 days late. **Office of the City Clerk v. Allied Waste Industries**, OATH Index No. 503/08 (Oct. 29, 2007).

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Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-04 Lobbyist Registration Unit-Requests to View Documents.

All reports and registrations filed pursuant to the Lobbying Law for calendar year 2006 and before shall be kept for five years in the Office of the City Clerk and shall be open to public inspection. All reports and registrations filed pursuant to the Lobbying Law for calendar year 2007 and thereafter shall be kept in electronic form in the Office of the City Clerk, shall be available for public inspection and shall be posted on the internet as soon as practicable. Such inspection is subject to the following regulations:

(a) Requests to view reports or registrations will be accepted by the Office of the City Clerk, 1 Centre Street-Room 265, New York, New York, or any subsequent address, during regular business hours. Requests that cannot be fulfilled on the day of request may be held over until the following business day;

(b) All properly submitted, valid requests will be honored in as timely a manner as the scope of the request and the availability of staff and equipment will allow;

(c) Members of the public may purchase copies of reports and registrations upon the payment of a sum equal to 25 cents per page.

HISTORICAL NOTE

Section amended City Record Dec. 8, 2006 §7, eff. Dec. 10, 2006 per City Record notice. [See T51

§1-02 Note 1]

Section in original publication July 1, 1991.

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51 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-05 Lobbyist Reporting Periods.

(a) Pursuant to Administrative Code §3-216(a)(1), commencing on January 1, 2008 the six bi-monthly reporting periods are:

January 1 through the last day of February-due by March 15th;

March 1 through April 30-due by May 15th;

May 1 through June 30-due by July 15th;

July 1 through August 31-due by September 15th;

September 1 through October 31-due by November 15th;

November 1 through December 31-due by January 15th.

HISTORICAL NOTE

Section added City Record Dec. 8, 2006 §8, eff. Dec. 10, 2006 per City Record notice. [See T51

§1-02 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-06 Complaints, Commencement of Formal Proceedings and Pleadings.

(a) **Notice.** If the City Clerk makes an initial determination, based on a complaint, investigation, or other information available to the City Clerk, that there is probable cause to believe that a lobbyist or client has violated a provision of the Lobbying Law or these Rules, the City Clerk shall notify the lobbyist or client of its determination in a written notice. The notice shall contain a statement of the facts upon which the City Clerk relied for its determination of probable cause and a statement of the provisions of the Lobbying Law or these Rules allegedly violated. The notice shall afford the lobbyist or client an opportunity, either orally or in writing, to respond to, explain, rebut, or provide information concerning the allegations in such notice within fifteen days of service of the notice. The notice shall also inform the lobbyist or client of his or her right to be represented by counsel or any other person.

(b) **Lobbyist's and client's duty to cooperate; City Clerk's duty to report to Department of Investigation.** (1) Where the City Clerk conducts an investigation, the lobbyist or client shall cooperate with the representatives of the City Clerk. In any case where the City Clerk refers a complaint and/or other information available to the City Clerk to the Department of Investigation, the lobbyist or client shall cooperate with representatives of the Department of Investigation.

(2) If the City Clerk determines, on the basis of a complaint, investigation, or other information available to the City Clerk, that a willful violation of the Lobbying Law has been or may have been committed, then the City Clerk shall expeditiously report such determination, and any information relating thereto, to the Department of Investigation.

(3) Where the City Clerk receives a report that a criminal violation of law, including but not limited to a violation of Chapter 68 of the New York City Charter, and excluding a violation of the Lobbying Law, has been or may have

been committed, the City Clerk shall report any information relating thereto to the Department of Investigation within five days of receipt thereof.

(4) Where the City Clerk suspects, on the basis of a complaint, investigation, or other information available to the City Clerk, that a criminal violation of law, including but not limited to a violation of Chapter 68 of the New York City Charter, and excluding a violation of the Lobbying Law, has been or may have been committed, the City Clerk shall expeditiously report such suspected violation, and any information relating thereto, to the Department of Investigation.

(c) **Request for a Stay.** In response to the City Clerk's notice, the lobbyist or client may apply to the City Clerk for a stay of the proceedings, for good cause shown. The City Clerk may grant or deny such request in its sole discretion.

(d) **Admission of Facts.** If, in response to the City Clerk's notice, the lobbyist or client admits to the facts contained therein or to a violation of the provisions of the Lobbying Law or these Rules and elects to forgo a hearing, the City Clerk may, notwithstanding §1-03(c)(1) of these Rules, issue an order finding a violation and imposing the penalties it deems appropriate under the Lobbying Law or these Rules.

(e) **No Probable Cause Finding.** If, after receipt of the lobbyist's or client's response, the City Clerk determines that there is no probable cause to believe that a violation has occurred, the City Clerk shall dismiss the matter and inform the lobbyist or client and the complainant, if any, in writing of its decision.

(f) **Determination of Probable Cause.** If, after consideration of the lobbyist's or client's response, the City Clerk determines that there remains probable cause to believe that a violation of the provisions of the Lobbying Law or these Rules has occurred, and the lobbyist or client has not elected to forgo the hearing, the City Clerk shall direct a hearing to be held in accordance with the procedures set forth in §1-03(c) of these Rules.

(g) **Petition.** The City Clerk shall institute formal proceedings by serving a petition on the lobbyist or client. A copy of the petition shall also be sent to OATH at the time the lobbyist or client is served with the petition. The petition shall set forth the facts which, if proved, would constitute a violation of Lobbying Law or these Rules, as well as the applicable provisions thereof which are alleged to have been violated. The petition shall also advise the lobbyist or client of the lobbyist's or client's rights to file an answer, to a hearing, to be represented at such hearing by counsel or any other person, and to cross-examine witnesses and present evidence.

(h) **Answer.** (1) **General Rule.** The lobbyist or client shall answer the petition by serving an answer on the City Clerk within eight days after service of the petition, unless a different time is fixed by the City Clerk. A copy of the answer shall also be sent to OATH at the time the City Clerk is served with the answer. The lobbyist or client shall serve the answer personally or by certified or registered mail, return receipt requested. Upon written request of the lobbyist or client stating the specific reason for such request, submitted no later than five days prior to the due date for such answer, the City Clerk may for good cause grant an extension of time for the lobbyist or client to submit the same.

(2) **Form and Contents of Answer.** The answer shall be in writing and shall contain specific responses, by admission, denial, or otherwise, to each allegation of the petition and shall assert all affirmative defenses, if any. The lobbyist or client may include in the answer matters in mitigation. The answer shall be signed and shall contain the full name, address, and telephone number of the lobbyist or client. If the lobbyist or client is represented, the representative's name, address, and telephone number shall also appear on the answer, which shall be signed by either the lobbyist or client or by his or her representative.

(3) **Effect of Failure to Answer.** If the lobbyist or client fails to serve an answer, all allegations of the petition shall be deemed admitted and OATH shall proceed to hold a hearing in which prosecuting counsel shall submit for the record an offer of proof establishing the factual basis on which the Administrative Law Judge conducting the hearing may issue an order. If the lobbyist or client fails to respond specifically to any allegation or charge in the petition, such allegation or charge shall be deemed admitted.

(i) **Amendment of Pleadings.** Pleadings shall be amended as promptly as possible upon conditions just to all parties. If a pleading is to be amended less than twenty-five days before the commencement of the hearing, the amendment may be made only on consent of the parties or by leave of the Administrative Law Judge conducting the hearing.

HISTORICAL NOTE

Section added City Record Dec. 8, 2006 §9, eff. Dec. 10, 2006 per City Record notice. [See T51

§1-02 Note 1]

CASE NOTES

¶ 1. Although subsection (h) of this section provides that the failure to answer the petition is deemed an admission of all of the allegations in the petition, petitioner must still submit proof establishing the factual basis for the determination it seeks. Client's failure to file an answer to the petition did not establish, by itself, that the client was not a first time filer and therefore petitioner was not entitled to the enhanced late fee rate of $25 per day. **Office of the City Clerk v. Bayrock Group, LLC,** OATH Index No. 432/08 (Oct. 22, 2007).

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-07 Certification.

The certification of statements and reports required by Administrative Code §3-222 must be performed by a Principal Officer.

HISTORICAL NOTE

Section added City Record Dec. 8, 2006 §10, eff. Dec. 10, 2006 per City Record notice. [See T51 §1-02 Note 1]

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Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-08 Definitions.

"Lobbying Law" shall mean subchapter 2 of chapter 2 of title 3 of the Administrative Code of the City of New York.

"Rules" shall mean chapter 1 of title 51 of the Rules of the City of New York.

"Principal Officer" shall mean the chief administrative officer (the person who has the legal capacity to enter into a contract on behalf of the organization) of the lobbyist or client if either is an organization or the lobbyist or client if either is a person.

"Unemancipated child" shall mean any son, daughter, stepson, or stepdaughter who is under age eighteen at the time of reporting, unmarried, and living in the household of the reporting individual.

HISTORICAL NOTE

Section added City Record Dec. 8, 2006 §11, eff. Dec. 10, 2006 per City Record notice. [See T51

§1-02 Note 1]

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Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-01 Qualifications.

To become a Commissioner of Deeds, an individual:

(a) must be a citizen of the United States of America;

(b) must be a resident of the City of New York, or be an attorney who maintains a law office within the City of New York (such attorneys are deemed residents of the City by NYS Executive Law §§140(5) and (5-a) for the purpose of becoming a Commissioner of Deeds);

(c) must be at least 18 years of age;

(d) must not have been removed from the Office of Notary Public or Commissioner of Deeds;

(e) must be an attorney, an attorney's employee, someone serving a clerkship in a law office, or someone who has qualified for a Certificate of Fitness from the Office of the City Clerk. After the oath or affirmation is administered, the Commissioner of Deeds should place the appropriate one of the following statements (called a "jurat") after the person's signature: "Sworn to before me this _____ day of _____, 19 ____." The jurat must be followed by the signature and other information of the Commissioner of Deeds as described above.

(1) **Acknowledgements.** For the purpose of a Commissioner of Deeds, an acknowledgement is a declaration by a person that he is in fact the person who is described in a particular document and that he has executed (signed) that particular document. There is no particular form that must be used in taking an acknowledgement. For an

acknowledgement to be valid, the Commissioner of Deeds must ask the person making the acknowledgement:

(i) to identify himself to the satisfaction of the commissioner of deeds;

(ii) whether he is the person described in the document; and

(iii) whether it is in fact his signature on the document.

(It is not essential for the person to sign the document in the presence of the Commissioner of Deeds.)

After taking an acknowledgement, the Commissioner of Deeds must place a statement on the document or attach a statement to the document as evidence of her taking the acknowledgment. Whatever form used, the statement must recite all the matters that were required to be done, known or proved on the taking of the acknowledgement, together with the name and substance of the declaration of the person making the acknowledgement. An acceptable form of such a statement is: "On this _____ day of _____, 19 ____, before me came (person's name), to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same." This must be followed by the Commissioner's signature and other information as described above.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-02 Certificates of Fitness-Qualifications.

To qualify for a Certificate of Fitness from the Office of the City Clerk, an applicant for the office of Commissioner of Deeds:

(a) must not have any outstanding tax bills or any unpaid traffic tickets; and

(b) must not have been convicted of:

(1) any felony; or

(2) illegally using, carrying or possessing a pistol or other dangerous weapon; or

(3) making or possessing burglar's tools; or

(4) buying or receiving or criminally possessing stolen property; or

(5) unlawful entry of a building; or

(6) aiding escape from prison; or

(7) unlawfully possessing or distributing habit-forming narcotic drugs; or

(8) practicing or appearing as attorney-at-law without being admitted and registered (Judiciary Law §478; former

Penal Law §270); or

(9) soliciting legal business on behalf of an attorney (Jud. Law §479; former Penal Law §270-a); or

(10) entering a hospital to negotiate a settlement or obtain a release statement from a patient (Jud. §480; former Penal Law §270-b); or

(11) being an employee or another attached to a hospital, police department, prison, court, or bail bond institution, who assisted or abetted the solicitation of persons or the procurement of a retainer for or on behalf of an attorney (Jud. Law §481; former Penal Law §270-c); or

(12) unlawfully practicing law (Jud. Law §484; former Penal Law §271); or

(13) purchasing claims for the purpose of commencing a lawsuit (Jud. Law §489; former Penal Law §275); or

(14) as an attorney, sharing legal fees with a non-attorney (Jud. Law §491; former Penal Law §271); or

(15) "jostling," i.e., taking certain actions designed to aid or commit pickpocketing (Penal Law §165.30; former Penal Law §722); or

(16) fraudulent accosting (Penal Law §165.30; former Penal Law §722); or

(17) aggravated harassment in the second degree via electronic, print, or other medium (Penal Law §240.30(1); former Penal Law §722); or

(18) loitering for the purpose of engaging another in deviate sexual intercourse or other deviate sexual behavior (Penal Law §240.35(3); former Penal Law §722); or

(19) violation of §§550; 551, or 551-a of the former Penal Law; or

(20) vagrancy or prostitution.

(c) must, if applying on or after January 1, 1990, have earned a grade of at least 65 percent on a written examination to be administered by the Office of the City Clerk in accordance with §2-03 of these Rules.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-03 Certificates of Fitness-Application and Examination.

(a) Commencing January 1, 1990, the City Clerk will not issue a Certificate of Fitness to any applicant for the Office of Commissioner of Deeds until and unless the applicant has earned a grade of at least 65 percent on a written examination administered by the Office of the City Clerk.

(b) Applicants shall take the examination prior to submitting their application and fees. An application shall not be considered complete unless the applicant has earned a grade of at least 65 percent on the written examination prior to the submission of the application form.

(c) The written examination shall be administered by the Office of the City Clerk in accordance with a schedule and in such places as shall be set and announced from time to time by the City Clerk.

(d) The written examination shall be of a format type as shall be set and announced by the City Clerk from time to time. Examples of formats include, but are not limited to, short answer, essay question, multiple choice, true/false, or any combination thereof; open book; or closed book.

(e) The examination shall be based solely on information contained in the City Clerk's rules for the Office of Commissioner of Deeds.

(f) All earned grades shall be final. Applicants who do not earn a passing grade shall be free to try again to earn a passing grade at any and all future, regular test administrations by the Office of the City Clerk.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-04 Applications.

(a) Obtain and complete the appropriate application form as per the instructions.

(b) Have the application notarized.

(c) Applicants serving clerkships in the offices of attorneys, and whose clerkship certificates are on file with the proper officials, shall submit an affidavit to that effect. (First-time applicants only.)

(d) Other employees of attorneys shall submit an affidavit, sworn to by a member of the law firm, stating that the applicant is a proper and competent person to perform the duties of a Commissioner of Deeds. (First-time applicants only.)

(e) Submit a certified check or money order for the appropriate amount. Upon being notified of appointment, the applicant must appear in person at the Office of the City Clerk and take an oath of office. In so doing, the applicant must swear or affirm that: he is a citizen of the United States, and a resident of the State of New York, the City of New York and the county of (name of the county); that he will support the constitutions of the State of New York and of the United States, and that he will faithfully discharge the duties of the Office of Commissioner of Deeds.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-05 Term of Office.

The term of office for a Commissioner of Deeds is two years, commencing from the date of appointment.

(a) For individuals who are residents of the City of New York: Any Commissioner of Deeds who ceases to be a resident of New York City automatically gives up his or her office of Commissioner of Deeds. When any Commissioner of Deeds ceases to be a resident of New York City he or she must immediately notify the Office of the City Clerk.

(b) For attorneys who are deemed "residents" of the City of New York by virtue of having law offices within City: Any Commissioner of Deeds who ceases to maintain a law office within New York City automatically gives up his or her office of Commissioner of Deeds. When any Commissioner of Deeds ceases to maintain a law office within New York City he or she must immediately notify the Office of the City Clerk.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-06 Procedures for Exercising the Powers of a Commissioner of Deeds.

(a) **Required information.** On each document sworn to, acknowledged, or proved before him, a Commissioner of Deeds must affix, in black ink,

(1) his signature;

(2) his printed, typewritten, or stamped name;

(3) his office title;

(4) his official number; and

(5) the date when his term expires.

An example of the form to be followed is:

(signature)

Jane Sample

Commissioner of Deeds, New York City

123456789

Term Expires: (date)

A Commissioner of Deeds must sign the name under which she was appointed; she may use no other. When a Commissioner of Deeds marries during the term of office, the Commissioner must continue to use any pre-marriage surname when signing as a Commissioner of Deeds. However, if the Commissioner wishes to include a new, marriage surname, the Commissioner must use the pre-marriage surname in the Commissioner's signature and printed name, and then add the marriage surname in parentheses after the signature. When the term of office expires, the Commissioner's renewal application may be made either under the pre-marriage or the marriage surname. When the renewal is granted the Commissioner must perform all functions solely under the name used on the renewal application.

A Commissioner of Deeds must immediately notify the Office of the City Clerk concerning any changes of address.

It is optional to have an official stamp or seal.

A Commissioner of Deeds appointed in the City of New York may administer oaths and take acknowledgements or proofs of deeds and other documents in any part of the City of New York.

(b) **Administering oaths and taking acknowledgement or proofs.**

(1) Oaths. For the purpose of a Commissioner of Deeds, an oath is a person's verbal pledge that her statements contained in a document are true. An affirmation is the equivalent of an oath and may be administered to anyone who objects to taking an oath as a matter of principle. Oaths and affirmations must be administered in legally acceptable forms. An acceptable form for administering an oath is: "Do you solemnly swear that the contents of the statement made and subscribed by you are true and correct?" An acceptable form for administering an affirmation is: "Do you solemnly, sincerely, and truly, declare and affirm that the statements made and subscribed by you are true and correct?" When an oath or affirmation is administered, the person swearing or affirming must express assent to the oath or affirmation by the words "I do" or words of like meaning. For an oath or affirmation to be valid, whatever form is used, it is necessary that:

(i) the person swearing or affirming be personally present before the Commissioner of Deeds;

(ii) the person unequivocally swears or affirms that what she states is true;

(iii) the person swears or affirms as of that moment; and

(iv) the person consciously and conscientiously takes upon herself the obligation of an oath or affirmation.

(2) **Proofs.**

(i) A proof is used in place of an acknowledgement on certain instruments. A proof is a formal declaration by a person who witnessed the signing of an instrument and who himself signed as a subscribing witness, which declaration sets forth:

(A) the witness' place of residence;

(B) that the witness knew the individual who is described in and who executed (signed) the instrument; and

(C) that the witness actually saw the individual sign the instrument.

(ii) As with acknowledgements, there is no prescribed form for taking a proof. For a proof to be valid, the commissioner of deeds must be satisfied that:

(A) the witness is who she claims to be;

(B) the witness is stating her correct place of residence;

(C) the witness does in fact personally know the individual who executed the instrument; and

(D) the witness actually saw the individual execute the instrument. When a proof is taken, the Commissioner of Deeds must place a statement on the document or attached thereto as evidence of her having taken the proof. Whatever form is used, the statement must recite all the matters that were required to be done, known, or proved on the taking of the proof, together with the name, place of residence, and substance of the declaration of the person giving proof. An acceptable form of the statement is:

"On this _____ day of _____, 19 ____, before me came (person's name), to me known to be the individual who subscribed as witness the foregoing instrument and declared that she resides at (house and street), (town or city), (state), that she knows personally (person's name), that she knows the person to be the individual described in and who executed the foregoing instrument, and that (the person) executed the foregoing instrument in her presence."

This statement must be followed by the Commissioner's signature and other information described above.

(3) **Fee.** The fee for administering an oath or taking an acknowledgement or proof is twenty-five cents.

(c) **Authentication.** "Authentication" in this case involves a County Clerk affirming the genuineness of a certificate of acknowledgement, proof, or oath taken before a Commissioner of Deeds.

The significance of authentication is as follows:

When an instrument or paper is sworn to, proved, or acknowledged before a Commissioner of Deeds within the City of New York, it can be recorded and read in evidence in any office of any County Clerk within the City of New York or in the Office of the Register of the City of New York without the need for further proof. However, for such an instrument to be read into evidence, without the need for further proof, anywhere in New York outside the five boroughs of the City, it is necessary that the instrument first be authenticated by one of the County Clerks in the City of New York.

To permit people to have instruments authenticated, a Commissioner of Deeds may file his autograph signature and certificate of appointment in the office of any County Clerk in New York City. Certificates of appointment may be obtained from the Office of the City Clerk.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-07 Restrictions.

(a) A Commissioner of Deeds must be and remain a resident of New York City. If a Commissioner of Deeds ceases to be a New York City resident he vacates his office and must immediately notify the City Clerk.

(b) A Commissioner of Deeds appointed within the City of New York cannot perform official functions anywhere except within the five boroughs of the City of New York.

(c) A Commissioner cannot certify any document to a transaction in which the Commissioner has an interest (financial) or to which the Commissioner of Deeds is a party.

(d) A Commissioner of Deeds cannot charge a fee for administering oaths of office to: a member of the legislature; any military officer; an inspector of election; a clerk of the poll; or any other public officer or public employee.

(e) The powers of a Commissioner of Deeds are personal and cannot be delegated to anyone.

(f) A Commissioner of Deeds who is an employee or stockholder of a corporation may take the acknowledgement or proof of any party to a written instrument executed by the corporation, or may administer an oath to any other officer, employee, or stockholder of the corporation, except when the Commissioner of Deeds himself is one of the parties executing the instrument either as individual or as a representative of the corporation.

(g) A Commissioner of Deeds has no power to protest a negotiable instrument (e.g., a promissory note or bill of exchange).

(h) A Commissioner of Deeds cannot take an acknowledgement or proof of the execution of a will.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-08 Professional Conduct.

(a) **General.** A Commissioner of Deeds is a public officer, and is so regarded under the laws of the State of New York. As such, a high standard of professional conduct is required and expected of each individual having an appointment as a Commissioner of Deeds. Moreover, the care with which a Commissioner of Deeds performs her duties can often be the only thing that ensures the integrity of a particular document. In performing the functions of his or her office, a Commissioner of Deeds must:

(1) take an acknowledgement or proof, or administer an oath, only when the individual is personally present (taking proofs or acknowledgements, or administering oaths, over the telephone or otherwise is absolutely illegal);

(2) always satisfy himself as to the true identity of the individual giving the acknowledgement or taking an oath; and

(3) always follow the appropriate forms when administering oaths, issuing certificates, etc. In addition to the prohibition against the careless performance of the duties of the office of Commissioner of Deeds, there are strict legal proscriptions against the deliberate abuse of the office:

(b) **Official misconduct.** A public servant is guilty of official misconduct when, with intent to obtain a benefit or to injure or deprive another person of a benefit:

(1) he commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

(2) he knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a Class A misdemeanor.

(NYS Penal Law §195.00.)

(c) **Issuing a false certificate. (Falsely stating that someone took an oath or gave an acknowledgement of proof.)** A person is guilty of issuing a false certificate when, being a public servant authorized by law to make or issue official certificates or other official written instruments, and with intent to defraud, deceive or injure another person, he issues such an instrument, or makes the same with intent that it be issued, knowing that it contains a false statement or false information.

Issuing a false certificate is a Class E felony.

(NYS Penal Law §175.40.)

(d) **Forgery in the second degree.** A person is guilty of forgery in the second degree when, with intent to defraud, deceive, or injure another, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

(1) a deed, will codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate or otherwise effect a legal right, interest, obligation or status; or

(2) a public record, or an instrument filed or required or authorized by law to be filed in or with a public office or public servant; or

(3) a written instrument officially issued or created by a public office, public servant or governmental instrumentality.

Forgery in the second degree is a Class D felony.

(NYS Penal Law §170.10.)

(e) **Fees.** A public officer or other person who charges a fee for his service which is greater than the amount allowed by statute, or which charges a fee for services that were not actually rendered, is liable, in addition to the punishment prescribed by law for the criminal offense, to an action on behalf of the person aggrieved, in which the plaintiff is entitled to treble damages. (Outline of NYS Pub. Off. Law §§67(2), (3), (4).)

(f) **Fraud in office.** A Commissioner of Deeds who, in the exercise of the powers, or in the performance of the duties of such office, shall practice any fraud or deceit, the punishment for which is not otherwise provided for by this act, shall be guilty of a misdemeanor. (NYS Exec. Law §135-a(2).)

(g) **Acting without authority.** Anyone who holds himself out to the public as being entitled to act as a Commissioner of Deeds or conveys the impression that he is a Commissioner of Deeds, without having been appointed a Commissioner of Deeds, is guilty of a misdemeanor. (NYS Exec. Law §135-a(1).)

(h) **Penalties.** In addition to the criminal and civil penalties outlined above, any kind of misconduct in office by a Commissioner of Deeds is punishable by removal from office. Section 140 of the New York State Executive Law vests the Office of the Mayor with the power to remove a Commissioner of Deeds from office for cause shown. Commissioners have the right to answer charges brought against them. (NYS Exec. Law §140(12).) Removal from office as a Commissioner of Deeds of the City of New York disqualifies an individual from ever again being appointed to that office. In addition, that individual is disqualified from becoming a Notary Public. Anyone removed from office

as a Commissioner of Deeds who, after learning of such removal, continues to perform the functions of that office, shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 3 MARRIAGES

§3-01 Marriage License Application Forms.

(a) Both parties must be present in order to obtain a blank marriage license application. The prospective bride and prospective groom must fill out the application in the City Clerk's office and present it for processing.

(b) Under no circumstances shall a clerk give out a blank application for a marriage license unless both the prospective bride and prospective groom are personally present before that clerk, except that where, for religious or health reasons or, in the sole discretion of the City Clerk, by reason of other exigent circumstances, both parties to the marriage cannot be present at the same time, the City Clerk may waive the requirement imposed by subdivision (a) of this section.

(c) The foregoing do not apply to cases where City Clerk personnel must issue a marriage license in a prison or a hospital or where the parties have submitted the application for a marriage license by electronic means.

HISTORICAL NOTE

Section amended City Records July 3/7, 2008 §1, eff. Aug. 2, 2008. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record July 3, 2008:

These amendments to the Rules of the City Clerk provide for several changes that modernize and otherwise facilitate the procedure for applying for marriage licenses in New York City. First, the two parties applying for a marriage license will be allowed to do so individually and at different times in certain circumstances. The Office of the City Clerk has encountered instances where for religious reasons both bride-to-be and groom-to-be cannot be present in the same place at the same time. This rule change permits an application to be made under such circumstances, as well as under other exigent circumstances as the City Clerk deems appropriate. A further change enables applicants for a marriage license to submit their application via the Internet, shortening the time needed to process applications and improving the performance of the Office of the City Clerk and its ability to satisfy applicants. Finally, the Office of the City Clerk is reducing the registration fee for domestic partnership by one dollar, making it equal to the total cost of a marriage license and the initial marriage certificate.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 3 MARRIAGES

§3-02 Issuing Licenses Outside of the Office.

Marriage licenses may be issued only at the Marriage Bureau in the ordinary course of the business day. There are only two exceptions to this section: cases where an individual is confined to a hospital, and cases where an individual is confined in prison. Such issuance is strictly a courtesy, and is therefore entirely subject to the availability of personnel and the schedule of the office.

(a) In a hospital case, there are three requirements that must be met before a license may be issued:

(1) the parties must present a statement from the doctor indicating that the sick party is seriously ill, that he or she will be confined to the hospital for a very long period of time, that there is a possibility that the sick person will not survive the illness, and that the sick person is mentally competent to apply for the marriage license; and

(2) the parties must call ahead of time or make arrangements for the license to be issued; and

(3) the parties must be willing to furnish our clerk with transportation to and from the hospital, and must arrange on their own for someone to return to the office to pick up the marriage license after it has been prepared.

(b) In a prison case, the requirements are as follows:

(1) the parties must present a written statement from the social worker, warden, or other authorized person granting consent for the issuing of the marriage license in the prison; and

(2) the parties must contact the office ahead of time to request the license to be issued and to make all necessary

preparations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 3 MARRIAGES

§3-03 Hearings Pursuant to Domestic Relations Law §15.

(a) **Production of witnesses or notarized affidavits to establish identity.** If in the opinion of the issuing clerk there appears to be some question as to the identity of one or both of the parties, the City Clerk, pursuant to the provisions of §15 of the New York State Domestic Relations Law, may compel the production of witnesses, certified official records or notarized affidavits to establish the identity of the parties.

(b) **Request for review of City Clerk's preliminary denial of marriage license.**

(1) Applicants who have been preliminarily denied a marriage license by the City Clerk may request a review of such determination by paying a $25 fee and filing a request for a review on such form as may be provided by the City Clerk no later than 30 days after such preliminary denial. The City Clerk may waive this fee upon a showing of financial hardship.

(2) **Duty of the City Clerk.** Within fifteen days of receipt of a request for review the City Clerk shall forward to the Office of Administrative Trials and Hearings (OATH) such request for review, a written statement outlining the reason for the preliminary denial of the marriage license and the documentary evidence supporting the preliminary denial, all of which documentation with the exception of the request for review shall constitute the petition. A copy of the petition shall be mailed contemporaneously to the applicant via certified mail return receipt requested.

(3) **Notice to spouse of record.** Where the marriage license was denied because of the existence in the records of the City Clerk of a prior non-terminated marriage, the City Clerk shall exert its best efforts to notify the spouse of record of the impending action. The spouse of record shall be given twenty-one days from the date of mailing to

respond to such notification. In such response, the spouse of record may request an opportunity to be heard on the issue, either in writing or at the hearing, if OATH decides a hearing is warranted. Upon request contained in such response, the City Clerk shall forward to the spouse of record all documentation exchanged among OATH, the City Clerk and the applicant.

(4) **Applicant's duty to respond.** Applicant shall, no later than thirty days after he or she receives the petition, submit in duplicate an answer to the City Clerk including therein any documentary evidence or other proof which may include notarized affidavits in support of his or her claim. Upon written request of the applicant stating the specific reason for such request, submitted no later than five days prior to the due date for such answer, the City Clerk may for good cause grant an extension of time for applicant to submit the same. Upon receipt of the answer the City Clerk shall forward a copy thereof to OATH. Applicant's failure to respond by the deadline set forth herein, including any extension granted by the City Clerk pursuant to this sub-paragraph, shall be deemed a withdrawal of the applicant's challenge to the City Clerk's preliminary decision and such preliminary decision shall thereafter be deemed final.

(5) **Designation of OATH.** Pursuant to Charter §1048, the City Clerk designates OATH to conduct on its behalf all the reviews and hearings referred to herein.

(6) **The reviewing officer.** An administrative law judge ("ALJ") employed by OATH shall review the petition and the answer no later than fifteen days after the date of receipt of both the petition and the answer as well as any documentation presented by the spouse of record, if any. If upon such review the ALJ shall conclude that such evidence is sufficient to form a conclusion then the ALJ shall prepare no later than thirty days after receipt of all of the documents referred to in the first sentence of this paragraph a report summarizing the evidence presented, an analysis of the legal and factual issues, recommended findings of fact and recommended disposition. Such report shall be sent to the City Clerk for a final determination of the facts and a final disposition. Alternatively, if the ALJ shall conclude that the evidence presented is insufficient to form a conclusion, the ALJ shall convene a hearing at a date to be determined in such ALJ's sole discretion but no later than sixty days from the date of such initial review. Upon notification thereof by such ALJ, which notification may be electronic, the City Clerk, not later than five days after the date of such notification, shall notify the applicant as well as his or her attorney or other representative, if any, and the spouse of record, if any, of the date of the hearing by certified mail, return receipt requested. Such notification shall be post-marked no later than thirty days prior to the date of such hearing.

(7) **Use of expert witness.** It shall be the obligation of any party intending to present the testimony of expert witness or witnesses at the hearing to notify the ALJ and the opposing parties of such intention no later than fifteen days prior to the date of the hearing and to submit to both the ALJ and the opposing parties no later than seven days prior to the date of the hearing copies of any reports, filings or any other documentation produced by such expert witness or witnesses which such party intends to use at the hearing. The ALJ may grant an extension of time to the parties.

(8) **The hearing.** The ALJ shall preside over the hearing, make all procedural rulings, and make a statement on the record describing the nature of the proceedings, the issues, and the manner in which the hearing will be conducted. The ALJ shall have all the requisite powers conferred by law to administer oaths, issue subpoenas, require the attendance of witnesses and production of records, rule upon requests for adjournment, rule upon evidentiary matters and to otherwise regulate the hearing, observe the requirements of due process and effectuate the purposes and provisions of applicable law. All testimony shall be given under oath or affirmation administered by the ALJ. The City Clerk shall have the burden of demonstrating by a preponderance of the evidence that the applicant should not be granted a marriage license.

(9) The applicant and the spouse of record, if any, may be represented by an attorney or other representative of his or her choice.

(10) The applicant as well as the City Clerk and the spouse of record, if any, may have witnesses, may give testimony and may otherwise present relevant and material evidence on his or her behalf, may cross-examine witnesses and may examine any document or other item offered into evidence.

(11) A recorded copy of the record of the hearing shall be prepared by OATH; upon request a compact disc audio recording of the hearing, at no cost, or a transcript of the hearing, at a cost to be determined by OATH, may be provided.

(12) At the discretion of the ALJ, the hearing may be adjourned for good cause upon the request of any of the parties or upon the ALJ's own motion and with notice to the parties.

(13) The hearing shall be conducted in conformity with procedural requirements of applicable law and the rules of procedure adopted by OATH which are not inconsistent with these rules. In the event of any conflict of laws, the rules of this section shall be determinative and controlling.

(14) After the conclusion of the hearing, the ALJ shall prepare a report summarizing the evidence presented, an analysis of the legal and factual issues, recommended findings of fact and a recommended disposition. Such report shall be sent to the City Clerk for a final determination of the facts and a final disposition.

(15) **Final decision.** (i) The City Clerk's final decision shall be in writing and shall state reasons for the determinations and, when appropriate, direct specific action. Notwithstanding the foregoing, such final decision need not be a separate formal document and a report submitted to the City Clerk pursuant to paragraph b(6) or b(14) hereof together with a letter from the City Clerk concurring with the recommended findings of fact and recommended disposition shall constitute a final decision. In reaching such final decision, the City Clerk may review the petition and answer and memoranda of law of the parties, if any, and any record of the hearing. The City Clerk shall not be bound by the ALJ's recommendation.

(ii) A copy of such final decision shall be mailed by the City Clerk to the applicant and his or her attorney or representative, if any, and the spouse of record, if any.

(iii) Any of the aggrieved parties have the right to judicial review in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.

HISTORICAL NOTE

Section amended City Record Sept. 20, 2006 §1, eff. Oct. 20, 2006. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Sept. 20, 2006:

The Amendment to the Rules would provide applicants who are denied a marriage license or registration as a domestic partnership an administrative redress. Specifically, it allows the aggrieved party to challenge within thirty days and upon payment of a nominal fee any denial of a marriage license or domestic partner registration by the City Clerk. Currently persons who at the time of application have a marriage or domestic partnership listed on the records of the City Clerk and cannot prove the dissolution of such marriage or domestic partnership are denied a marriage license or domestic partnership registration, respectively, by the Office of the City Clerk pursuant to law. (This has no effect on a domestic partner seeking a marriage license since by law marriage automatically terminates the domestic partnership.) The aggrieved party's sole recourse is to bring an Article 78 proceeding. For low-income and indigent persons who cannot afford the costs of retaining an attorney, the unintended consequence of this policy is to effectively deny such applicant the right to marry or register a domestic partnership. The effect can be especially onerous given the alarming increase in identify theft. The Amendment to the Rules would offer an affordable alternative to challenge a City Clerk refusal without interfering with the current legal recourse. It would also require the spouse or domestic partner of record to be notified of the proceeding. The other changes are necessary to update the Rules of the City of New York. The

provision in the current Rules of the City of New York with respect to spouses or prospective spouses obtaining information with respect to their spouse or prospective spouse is inadequate. In many instances spouses want to know if their present spouse has fraudulently obtained a marriage certificate with a party other than the inquiring spouse subsequent to their marriage and the current rule does not permit the Office of the City Clerk to disclose such information. The Amendment to the Rules is meant to remove that restriction. Due to case law persons ordained by the Universal Life Church are not permitted to officiate marriage ceremonies under the current Rules of the City of New York. Currently persons who are ordained by many other internet-based religious organizations are allowed to register while persons who are ordained by Universal Life Church are not. The Amendment to the Rules would remove this disparity. In addition, there is no provision in the Rules of the City of New York to permit chaplains to register and the Amendment to the Rules would provide such a mechanism. The Amendment to the Rules also corrects a citation error in §3-04(b) of Title 51 of the Rules of the City of New York. Finally notarization of third-party consents would safeguard the process and consequently enhance the integrity of the marriage database which, by law, is confidential. The Office of the City Clerk wishes to ensure that the party writing the consent is indeed an authorized party and consequently avoid fraud. The City Clerk of the City of New York has re-evaluated the proposed fee based on a current cost analysis and has determined that the fee is warranted.

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51 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 3 MARRIAGES

§3-04 Marriage Chapel.

(a) The Office of the City Clerk performs civil marriage ceremonies only. No references to religion or deity are made.

(b) Where the personal presence of "both parents" at the wedding ceremony is required by §11-a(c) of the Domestic Relations Law, the Office of the City Clerk shall deem the requirement met when the party or parties whose consent was required for the issuance of the license is/are personally present at the wedding ceremony. All such parties must have proper identification with them showing their signature. In addition, custodial parents must present a divorce decree or death certificate; guardians must present guardianship papers.

(c) Every couple must have at least one witness who must be at least 18 years of age.

(d) Food and drink are not allowed in any City Clerk's Office chapel or chapel waiting room. The throwing of rice or other objects is also prohibited.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record Sept. 20, 2006 §2, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 3 MARRIAGES

§3-05 Release of Marriage Records.

(a) In the ordinary course of business, marriage records shall be released only:

(1) to the parties to the marriage;

(2) to individuals presenting written authorization from one of the parties to the marriage (the authorization must be notarized); or

(3) to attorneys in cases where such records are required as evidence in a legal proceeding.

The following restrictions do not apply to records that are at least 50 years old, or to records where both parties to the marriage are deceased.

(b) Where a party to the marriage sends a third party to obtain their marriage record without a letter of authorization, that third party may make the request and pay the fee if that third party consents to having the record mailed directly to the party to the marriage. The record will not be released directly to the unauthorized third party.

(c) If a person requires information regarding a current or prospective spouse's marital history, the Office of the City Clerk will, upon the payment of the appropriate search fee, the furnishing of an approximate marriage date, and sufficient information to search under at least one party's name, confirm only the fact of a prior marriage or a subsequent fraudulent acquisition of a marriage certificate with a party other than the inquiring spouse subsequent to their marriage by a "yes" or "no" answer. Under no circumstances will a copy of the record be provided. Nothing in this

rule shall be construed to permit a divorced person to obtain the information described in this sub-paragraph with respect to his or her former spouse.

(d) Any requestors whose requests are refused by the Records Division pursuant to the above subdivisions, but who feel nevertheless that their requests are for a statutorily proper purpose, may send their requests in writing for review by the City Clerk, at 1 Centre Street-Room 265, New York, New York, 10007. Requests may be approved or denied in whole or in part. All approvals shall be in writing.

(e) All over-the-counter requestors must present identification when applying to obtain a marriage record.

(f) Over-the-counter requests may be honored only when accompanied by payment in the form of a money order or certified check.

(g) A person making an over-the-counter record request involving a multi-year search pre-dating 1973 will be asked to return for the results another day, or can have the record mailed to them if they prefer.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record Sept. 20, 2006 §3, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Subd. (c) amended City Record Sept. 20, 2006 §4, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 3 MARRIAGES

§3-06 Marriage Officiant Registration.

Pursuant to §11-B of the Domestic Relations Law, the Office of the City Clerk will accept the registration of officiants to perform wedding ceremonies within the City of New York upon presentation of documentary proof of authority as outlined below.

(a) In the case of clergy, the person wishing to register (hereafter "the registrant") must comply with one of the following:

(1) In cases where the denomination publishes a directory of its clergy, the registrant may show that he or she is listed in that directory. If the registrant's name does not yet appear in the denominational directory, the registrant claiming membership in that denomination may instead present written confirmation for that membership from the body that puts out the directory. Such confirmation can also consist of a certificate or letter showing that the registrant graduated from the seminary or theological school pertaining to the denomination.

(2) In cases where the denomination does not have such a directory, the registrant must show several pieces of documentary proof of authority. First, the registrant must present an ordination certificate accompanied, if necessary, by an English translation thereof. In lieu of an ordination certificate, the registrant must present a "license to minister" or a letter of appointment from his or her religious body, i.e., from its hierarch or its board of trustees. Second, the registrant must present a letter from his or her local congregation verifying that he or she is the pastor or associate pastor of that congregation, and that the congregation therefore consents to the registering of that individual. Lastly, if the church is incorporated, the registrant must present a copy of the articles or incorporation. If the church is not incorporated, the registrant must submit a statement as to the location of the house of worship, the reason for its founding, the number of

trustees, the approximate size of its congregation, and how often it meets.

(3) In cases where the registrant belongs to a denomination that does not have a directory and does not grant certificates of ordination or license to minister, the registrant must present a letter stating that he or she is the recognized spiritual leader of a congregation, and that the congregation therefore consents to the registering of that individual. The registrant must also submit a statement as to the location of the house of worship, the reason for its founding, the number of trustees, the approximate size of its congregation, and how often it meets.

(b) In the case of judges, registrants must present identification that shows them to be members of the judiciary of the Unified Court System of the State of New York. In the case of retired judges, registrants must also present proof that they have been certified pursuant to Paragraph (j) of Subdivision two of §212 of the Judiciary Law.

(c) In the case of all other civil officials authorized to solemnize weddings, registrants must present documentary evidence identifying themselves as holders of their respective offices.

(d) In the case of chaplains of the armed forces of the United States, registrants must present active military identification that indicates their occupation.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record Sept. 20, 2006 §5, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Subd. (d) added City Record Sept. 20, 2006 §6, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-01 Domestic Partner Affidavit Form.

(a) Both parties must be present at the time of submitting their affidavit to register as domestic partners at the City Clerk's office. Parties must provide acceptable identification as specified in §4-03 of these Rules, and register during regular business hours.

(b) Both partners must sign the affidavit in the presence of a Notary Public or Commissioner of Deeds who will then sign and notarize the document before the affidavit is submitted for registration in the City Clerk's office.

(c) The foregoing do not apply to cases where City Clerk personnel are processing a domestic partnership registration in a prison or a hospital, pursuant to §4-02 of these Rules.

HISTORICAL NOTE

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-02 Accepting Registration Outside of the Office.

Domestic partners may register at the office of the City Clerk during regular business hours. Exceptions to this provision will be made only in those cases where an individual is confined to a hospital and in cases where an individual is confined in prison. The acceptance of prison or hospital registration is a courtesy, and is therefore entirely subject to the availability of personnel and the schedule in the office,

(a) In a hospital case, the following requirements must be satisfied before registration will occur:

(1) The parties must present a statement from the doctor or hospital indicating that the sick party is seriously ill, that the party will be confined to the hospital for a very long period of time, that there is a possibility that the sick person will not survive the illness, and that the sick person is mentally competent to apply for registration of a domestic partnership;

(2) The parties must call ahead of time or make arrangements for the registration application to be completed; and

(3) The parties must be willing to furnish City Clerk personnel with transportation to and from the hospital and must arrange on their own for someone to return to the City Clerk office to pick up the domestic partner registration certificate and pay any registration filing fee.

(b) In a prison case, the requirements are as follows:

(1) The parties must present a written statement from the social worker, warden or other authorized person

granting consent for the processsing of the domestic partner registration in the prison; and

(2) The parties must contract the City Clerk's office ahead of time to request that a domestic partner affidavit be registered and to make all necessary preparations.

HISTORICAL NOTE

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-03 Identification to Register.

1. **Acceptable forms of identification.** At the time of submitting an application to register a domestic partnership, each party must present identification. Identification documents acceptable for registration purposes are:

(a) valid drivers license, learner's permit or identification card issued by the department of motor vehicles of a state or territory of the United States;

(b) original birth certificate;

(c) valid passport;

(d) school records;

(e) immigration card;

(f) employee identification card; and

(g) such form of identification deemed acceptable by the City Clerk.

All documents that are not written in English must be translated into English with an affidavit attesting to the accuracy of the translation.

2. **Production of witnesses or notarized affidavits to establish identity for persons who do not possess forms**

of identification pursuant to subdivision 1 above. If in the opinion of the issuing clerk there appears to be some question as to the identity of one or both of the parties to the prospective domestic partnership, the City Clerk may compel the production of witnesses, certified official records or notarized affidavits to establish the identity of the parties.

3. **Request for review of City Clerk's preliminary denial of domestic partnership.**

(a) Applicants who have been preliminarily denied a domestic partnership by the City Clerk may request a review of such determination by paying a $25 fee and filing a request for a review on such form as may be provided by the City Clerk no later than 30 days after such preliminary denial. The City Clerk may waive this fee upon a showing of financial hardship.

(b) **Duty of the City Clerk.** Within fifteen days of receipt of a request for review the City Clerk shall forward to the Office of Administrative Trials and Hearings (OATH) such request for review, a written statement outlining the reason for the preliminary denial of the domestic partnership and the documentary evidence supporting the preliminary denial all of which documentation with the exception of the request for review shall constitute the petition. A copy of the petition shall be mailed contemporaneously to the applicant via certified mail return receipt requested.

(c) **Notice to domestic partner or spouse of record.** Where the domestic partnership registration was denied because of the existence in the records of the City Clerk of a prior non-terminated domestic partnership registration or marriage, the City Clerk shall exert its best efforts to notify the domestic partner or spouse of record of the impending action. The domestic partner or spouse of record shall be given twenty-one days from the date of mailing to respond to such notification. In such response, the domestic partner or spouse of record may request an opportunity to be heard on the issue, either in writing or at the hearing, if OATH decides a hearing is warranted. Upon request contained in such response, the City Clerk shall forward to the domestic partner or spouse of record all documentation exchanged among OATH, the City Clerk and the applicant.

(d) **Applicant's duty to respond.** Applicant shall, no later than thirty days after he or she receives the petition, submit in duplicate an answer to the City Clerk including therein any documentary evidence or other proof which may include notarized affidavits in support of his or her claim. Upon written request of the applicant stating the specific reason for such request submitted no later than five days prior to the due date for such answer, the City Clerk may for good cause grant an extension of time for applicant to submit the same. Upon receipt of the answer the City Clerk shall forward a copy thereof to OATH. Applicant's failure to respond by the deadline set forth herein, including any extension granted by the City Clerk pursuant to this paragraph, shall be deemed a withdrawal of the applicant's challenge to the City Clerk's preliminary decision and such preliminary decision shall thereafter be deemed final.

(e) **Designation of OATH.** Pursuant to Charter §1048, the City Clerk designates OATH to conduct on its behalf all the reviews and hearings referred to herein.

(f) **The reviewing officer.** An ALJ employed by OATH shall review the petition and the answer no later than fifteen days after the date of receipt of both the petition and the answer as well as any documentation presented by the domestic partner or spouse of record, if any. If upon such review the ALJ shall conclude that such evidence is sufficient to form a conclusion then the ALJ shall prepare no later than thirty days after receipt of all of the documents referred to in the first sentence of this paragraph a report summarizing the evidence presented, an analysis of the legal and factual issues, recommended findings of fact and recommended disposition. Such report shall be sent to the City Clerk for a final determination of the facts and a final disposition. Alternatively, if the ALJ shall conclude that the evidence presented is insufficient to form a conclusion, the ALJ shall convene a hearing at a date to be determined in such ALJ's sole discretion but no later than sixty days from the date of such initial review. Upon notification thereof by such ALJ, which notification may be electronic, the City Clerk, not later than five days after the date of such notification, shall notify the applicant as well as his or her attorney or other representative, if any, and the domestic partner or spouse of record, if any, of the date of the hearing by certified mail return receipt requested. Such notification shall be

post-marked no later than thirty days prior to the date of such hearing.

(g) **Use of expert witness.** It shall be the obligation of any party intending to present the testimony of expert witness or witnesses at the hearing to notify the ALJ and the opposing parties of such intention no later than fifteen days prior to the date of the hearing and to submit to both the ALJ and the opposing parties no later than seven days prior to the date of the hearing copies of any reports, filings or any other documentation produced by such expert witness or witnesses which such party intends to use at the hearing. The ALJ may grant an extension of time to the parties.

(h) **The hearing.** The ALJ shall preside over the hearing, make all procedural rulings, and make a statement on the record describing the nature of the proceedings, the issues, and the manner in which the hearing will be conducted. The ALJ shall have all the requisite powers conferred by law to administer oaths, issue subpoenas, require the attendance of witnesses and production of records, rule upon requests for adjournment, rule upon evidentiary matters and to otherwise regulate the hearing, observe the requirements of due process and effectuate the purposes and provisions of applicable law. All testimony shall be given under oath or affirmation administered by the ALJ. The City Clerk shall have the burden of demonstrating by a preponderance of the evidence that the applicant should not be granted a domestic partnership.

(i) The applicant and the domestic partner or spouse of record, if any, may be represented by an attorney or other representative of his or her choice.

(j) The applicant as well as the City Clerk and the domestic partner or spouse of record, if any, may have witnesses, may give testimony and may otherwise present relevant and material evidence on his or her behalf, may cross-examine witnesses and may examine any document or other item offered into evidence.

(k) A recorded copy of the record of the hearing shall be prepared by OATH; upon request a compact disc audio recording of the hearing, at no cost, or a transcript of the hearing, at a cost to be determined by OATH, may be provided.

(l) At the discretion of the ALJ, the hearing may be adjourned for good cause upon the request of any of the parties or upon the ALJ's own motion and with notice to the parties.

(m) The hearing shall be conducted in conformity with procedural requirements of applicable law and the rules of procedure adopted by OATH which are not inconsistent with these rules. In the event of any conflict of laws, the rules of this section shall be determinative and controlling.

(n) After the conclusion of the hearing, the ALJ shall prepare a report summarizing the evidence presented, an analysis of the legal and factual issues, recommended findings of fact and a recommended disposition. Such report shall be sent to the City Clerk for a final determination of the facts and a final disposition.

(o) **Final decision.** (i) The City Clerk's final decision shall be in writing and shall state reasons for the determinations and, when appropriate, direct specific action. Notwithstanding the foregoing, such final decision need not be a separate formal document and a report submitted to the City Clerk pursuant to paragraph 3(f) or 3(n) hereof together with a letter from the City Clerk concurring with the recommended findings of fact and recommended disposition shall constitute a final decision. In reaching such final decision, the City Clerk may review the petition and answer and memoranda of law of the parties, if any, and any record of the hearing. The City Clerk shall not be bound by the ALJ's recommendation.

(ii) A copy of such final decision shall be mailed by the City Clerk to the applicant and his or her attorney or representative, if any, and the domestic partner or spouse of record, if any.

(iii) Any of the aggrieved parties have the right to judicial review in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.

HISTORICAL NOTE

Section amended City Record Sept. 20, 2006 §7, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-04 Domestic Partner Registration Certificate.

Upon completion of the application process, the City Clerk will issue a domestic partnership registration certificate to the registered partners.

HISTORICAL NOTE

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-05 Release of Domestic Partners Registration Records.

Domestic Partner Registration information and documents shall not be subject to public inspection or disclosure. In the ordinary course of business, domestic partner records only shall be released to either of the parties to the registration in person, after proper identification has been submitted to the City Clerk staff. No requests shall be accepted through the mail or over the telephone. Further, domestic partnership information released pursuant to written authorization from one of the parties to the domestic partnership, shall only be released if such written authorization is notarized.

HISTORICAL NOTE

Section amended City Record Sept. 20, 2006 §8, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 4-06

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-06 Modification of Domestic Partner Registration.

After a domestic partnership has been registered by the City Clerk, such record will only be modified or amended upon the filing of a written request for amendment form and offering adequate evidence to justify the proposed change of the record.

HISTORICAL NOTE

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 4-07

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-07 Termination of Domestic Partnership.

(a) Either or both of the parties to a registered domestic partnership, may file a termination statement with the City Clerk.

(b) If the termination statement is not signed by both, then the party who has not signed the termination must be given notice of such termination by registered mail, return receipt requested.

(c) The City Clerk will provide written notice of the filing of a termination to both parties of the registered partnership.

(d) The termination statement must be filed in person except that in circumstances where in-person filing is impossible or such filing would create a hardship, the City Clerk may permit such filing by certified mail.

HISTORICAL NOTE

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Subd. (d) added City Record Sept. 20, 2006 §9, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

51 RCNY 4-08

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-08 Registration Fees.

(a) The registration fee for filing a domestic partnership is thirty-five dollars.

(b) The fee for filing a termination of a domestic partnership is twenty-seven dollars.

(c) The fee for obtaining a second or subsequent certificate for a registered domestic partnership is nine dollars per certificate.

(d) The fee for amending a domestic partnership registration is twenty-seven dollars

(e) All fees required under this section are to be only paid in cash.

HISTORICAL NOTE

Section amended City Record Aug. 15, 2003 eff. Sept. 14, 2003. Note: Subd. (e) was inadvertently

omitted from layout and is included here. [See Note 1]

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Subd. (a) amended City Records July 3/7, 2008 §1, eff. Aug. 2, 2008. [See T51 §3-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 15, 2003:

This rule is promulgated pursuant to the authority of City Clerk of the City of New York's Rules set forth in §§48 and 1043 of the New York City Charter. This rule will increase certain fees relating to domestic partnership. Specifically, the rule increases the fees for domestic partnership registration, termination or amendment of domestic partnership, and second or subsequent certificates. The City Clerk of the City of New York has re-evaluated these fees based on a current cost analysis and has determined that a fee increase is warranted.

By increasing these fees imposed by the City Clerk's Office, New York City will be able to recoup the costs of providing these services to the public.

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-01 Scope of Rules.

Chapters 1 through 9 are the requirements applicable to candidates seeking nomination for election or election to the office of mayor, comptroller, public advocate, borough president, or member of the City Council.

Chapter 10 pertains to the Voter Guide and applies to all candidates seeking to have statements included in the Voter Guide.

Chapter 11 contains the requirements for transition and inauguration activities, which apply to all elected candidates.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See Note 1]

Section amended City Record July 20, 1999 §1, eff. Aug. 19, 1999.

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Feb. 11, 2005

The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York.

The amendments effect the following specific changes, and will take effect thirty days after publication in **The City Record,** except that (i) the removal of Rule 1-08(j) and (ii) the amendments to Rules 1-08(a), (b), and (d)(1), (2), insofar as the amendments refer to Rule 1-08(j), will take effect January 1, 2006.

Changes to the following rules conform the Board's Rules to recent amendments to the New York City Campaign Finance Act (Administrative Code §§3-701, et seq.) (the "Act") contained in Local Laws Nos. 58, 59, and 60: [of 2004] 1-01 (Scope of Rules); 1-02 (definitions of "Authorized committee," "Candidate," "Certification," "Disclosure statement," "Domestic partner," "Fundraising agent," "Participant," "Receipts," "Rule" and "Treasurer"); 1-03(a) (restrictions on use of receipts); 1-03(b) (exceptions to restrictions on use of receipts); 1-04(a) (receipt of contributions); 1-04(b) (deposit of contributions); 1-04(c) (return of contributions); 1-04(e) (contributions from corporations); 1-04(f) (attributing a contribution to an election); 1-04(g) (in-kind contributions); 1-04(j) (earmarked contributions); 1-04(l) (tickets for fund-raising events); 1-04(n) (solicitation of contributions for elections not subject to the Act); 1-04(o) (court-ordered rerun elections); 1-04(p) (joint fundraising; endorsements); 1-04(q) (anticipated runoff primary or runoff special elections); 1-04(r) (contributions by minors); 1-05(d) (third party repays loans); 1-05(h) (attributing a loan to an election); 1-06 (special elections); 1-07(a) (use of funds); 1-07(b) (surplus funds); 1-07(c) (contribution limit; prohibited contributions); 1-07(d) (related expenditures); 1-08(a) (expenditures); 1-08(b) (making an expenditure); 1-08(c) (attributing an expenditure to an election); 1-08(d) (expenditure limits); 1-08(f) (independent expenditures); 1-08(g) (spending public funds); 1-08(h) (joint expenditures; endorsements); 1-08(i) (expenditures by check); 1-08(j) (initial expenditures); 1-08(l) (expenditure limit compliance); 1-08(m) (fundraising for more than one election); 1-08(n) (fundraising solicitations); 1-08(o) (expenditure limit compliance for transfers); 1-09(a) (date received); 1-11 (filer registration); 2-01(a) (contents); 2-01(b) (legal effect); 2-01(d) (amendments); 2-01(e) (petition for extraordinary circumstances); 2-02 (breach of certification); 2-06(a) (deposit of receipts); 2-06(b) (separate accounts for different elections); 2-06(c) (runoff primary and runoff special elections); 2-06(e) (personal and business funds); 2-08(a) (notice); 2-08(b) (disclosure obligations); 2-08(c) (ineligibility for public funds); 2-08(d) (inclusion in voter guide); 2-09(a) (No "Opting-Out"); 2-09(b) ("off the ballot" termination); 2-09(c) ("ceased campaigning" termination); 2-09(d) (termination by Board); 2-10 (limited participation); 2-11 (non-participation); 3-01 (disclosure statements); 3-02(a) (first disclosure statement); 3-02(b) (semi-annual disclosure statements); 3-02(c) (pre-election disclosure statements); 3-02(d) (post-election disclosure statements); 3-02(e) (post-election disclosure statements); 3-02(f) (exceptions); 3-02(i) (prospective participants); 3-03(a) (reporting period); 3-03(c) (contributions and other receipts); 3-03(e) (expenditures); 3-04(a) (threshold; back-up documentation); 3-04(e) (disclosure statement review); 3-04(f) (omitted); 3-06 (forms and disclosure statements); 3-07 (insufficient disclosure statements); 3-08 (verification); 3-09 (supplemental documents); 3-11(a) (proof of filing with the conflicts of interest board; payment of penalties); 4-01(a) (generally); 4-01(b) (receipts); 4-01(c) (in-kind contributions); 4-01(d) (bills); 4-01(e) (disbursements); 4-01(f) (bank records); 4-01(g) (loans); 4-01(h) (subcontracted goods and services); 4-01(i) (fundraisers); 4-01(j) (campaign offices); 4-01(k) (political advertisements and literature); 4-01(l) (vendors); 4-01(m) (advances); 4-03(a) (six-year retention priod); 4-03(b) (custodian and location); 4-04 (assistance to candidates; records); 4-05(a) (audits); 4-06 (prospective participants); 5-01(a)(3) (Board determines eligibility); 5-01(d) (validity of matchable contribution claims and projected rate of invalid claims); 5-01(e) (withholding of public funds); 5-01(f) (basis for ineligibility determination); 7-01(a) (initiation of proceeding); 7-01(c) (contents of complaint); 7-01(f) (investigation); 7-02(a) (determination that complaint lacks merit); 7-02(c) (notice and opportunity to contest); 7-02(d) (conciliation); 7-02(f) (hearings); 7-03(a) (determination of eligibility); 7-03(b) (generally); 7-03(c) (facial determinations); 7-03(d) (petitions); 7-03(f) (notice of petition); 7-03(g) (response to the petition); 7-03(h) (hearing); 7-03(i) (notice of determination); 7-03(k) (reconsideration); 7-04 (advisory opinions); 7-05 (contribution and expenditure limit adjustments); 9-02(a) (exceptions); 9-02(b) (enhancements); 9-03(a) (verification); 9-03(b) (deficient submission; legibility); 10-02 (general information); 10-02(b) (Voter Guide); 11-03(c)(3), 11-04, 11-05(e), (f), and (g) (Transition and Inauguration Entities).

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Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-02 Definitions.

Act. "Act" means the New York City Campaign Finance Act, codified in Chapter 7 of Title 3 of the Code (§3-701, **et seq.**).

"Advance" means a payment for goods or services on behalf of a campaign made with the expectation that the payment will be reimbursed by the campaign. An advance is considered to be an in-kind contribution from the person making the advance until it has been reimbursed by the campaign, and a campaign may not accept an advance from a prohibited source.

Authorized committee. "Authorized committee" means an authorized committee as defined in the Act. Except as otherwise specified, the requirements of these Rules do not apply to committees that are not involved in an election in which the candidate is a participant, limited participant or non-participant as defined in these Rules. An authorized committee is "not involved in an election in which the candidate is a participant, limited participant or non-participant as defined in these Rules" only if the committee does not, at any time, accept contributions, loans, or other receipts, or make expenditures, including expenditures of surplus funds, in that election, or aid or otherwise take part in that election.

Board. "Board" means the Campaign Finance Board established pursuant to §3-708 of the Code.

Business dealings with the city. "Business dealings with the city" means business dealings with the city as defined in the Act.

Candidate. "Candidate" means a candidate as defined in New York Election Law Article 14. Except as otherwise provided in these Rules, a "candidate" includes every authorized committee of the candidate, the treasurer of each such committee, and any other agent of the candidate.

Certification. "Certification" means the certification filed by participants or limited participants to indicate that they have chosen to join the Program.

"Charter" means the New York City Charter.

Code. "Code" means the Administrative Code of the City of New York.

Contribution. "Contribution" means a contribution as defined in the Act.

Disclosure statement. "Disclosure statement" means the campaign finance disclosure statement filed with the Board under Chapter 3 of these rules.

Doing business database. "Doing business database" means the doing business database as defined in the Act.

Domestic partner. "Domestic partner"means a domestic partner as defined in §1-112(21) of the Code.

Election. "Election" means any primary, runoff primary, special, runoff special, or general election for nomination or election.

Entity. "Entity" means any organization of one or more individuals, and includes any parent, subsidiary, branch, division, department, or local unit thereof.

Federal Form. "Federal Form" means a report of receipts and disbursements required to be filed by a candidate or political committee with the Federal Election Commission.

Fund. "Fund" means the New York City Election Campaign Finance Fund established by the Act.

"Fundraising agent" means any of the following persons or entities that have accepted or may accept contributions on behalf of the candidate:

(1) paid or volunteer full-time campaign workers; or

(2) commercial fundraising firms retained by the candidate and the agents thereof.

In-kind contribution.

(a) "In-kind contribution" means:

(1) a gift, subscription, loan, advance of, or payment for, any thing of value (other than money) made to or for any candidate or authorized committee; and

(2) the payment by any person other than an authorized committee of compensation for the personal services of another person which are rendered to the candidate or authorized committee without charge.

(b) "In-kind contribution" does not include personal services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or authorized committee.

Intermediary. "Intermediary" means an intermediary as defined in the Act.

Labor organization. "Labor organization" means a labor organization as defined in the Act.

Matchable contribution. "Matchable contribution" means a matchable contribution as defined in the Act.

Multicandidate committee. "Multicandidate committee" means a political committee authorized to support more than one candidate, and includes any committee subject to §14-114(4) of the New York Election Law and any party or constituted committee.

Parent corporation. [Repealed]

Participant. "Participant" means a candidate for nomination or election to the office of mayor, public advocate, comptroller, borough president, or member of the City Council who has chosen to join the Program for an election by filing a written certification pursuant to §3-703(1)(c) of the Code. "Limited participant" means a candidate who has chosen to join the Program for an election by filing a written certification pursuant to §3-718(1)(iii) of the Code. "Non-participant" means a candidate for such office who has not filed either certification. Except as otherwise provided in these Rules, a "participant" includes the candidate, the principal committee authorized by the candidate pursuant to §3-703(1)(e) of the Code, the treasurer of such committee, and any other agent of the candidate. Except as otherwise provided in these Rules, a "limited participant" includes the candidate, the principal committee authorized by the candidate pursuant to §3-718(1)(iv) of the Code, the treasurer of such committee, and any other agent of the candidate. Except as otherwise provided in these Rules, a "non-participant" includes the candidate, every political committee authorized by the candidate for the covered election, the treasurer of each such committee, and any other agent of the candidate.

Political committee. "Political committee" means a political committee as defined in the Act.

Principal committee. "Principal committee" means the principal committee as defined in the Act.

Program. "Program" means the New York City Campaign Finance Program established by the Act.

Public funds. "Public funds" means monies disbursed from the Fund.

Receipts. "Receipts" include monetary and in-kind contributions, loans, and any other payment received by a candidate. "Other receipts" are payments that are not contributions or loans, such as interest, dividends, expenditure refunds, proceeds from sales or leases of assets, and any other sources of income.

Reporting period. "Reporting period" means a time period covered by a disclosure statement, as described in §3-03.

Rule. "Rule" means a rule issued by the Board. The phrase "these Rules" means any and all rules adopted by the Board.

State form. "State form" means a statement of campaign receipts and expenditures required to be filed by a candidate or political committee with the New York State or City Board of Elections.

Transfer. "Transfer" means any exchange of funds or any other thing of value between political committees, other than multicandidate committees, authorized by the same candidate pursuant to §14-112 of the New York Election Law. In §2-06 the term "transfer" refers to funds exchanged between different bank or other depository accounts.

Treasurer. "Treasurer" means the treasurer of any authorized committee involved in a covered election, except as otherwise provided in these Rules.

Unspent campaign funds. "Unspent campaign funds" means, for a participant who received public funds, the amount to be repaid to the Board under §3-710(2)(c) of the Code. This amount equals:

(1) monetary contributions; plus

(2) other receipts; plus

(3) public funds; plus

(4) loans; accepted in all elections in which the candidate was a participant held in a single calendar year or a special election; minus

(5) all disbursements, including loan repayments and contribution refunds, and all outstanding debt incurred by the participant in all reporting periods for those elections, but excluding any disbursements determined by the Board not to have been made in furtherance of a political campaign for a covered election such as disbursements listed in §3-702(21)(b) of the Code and any disbursements for which the presumption set forth in subparagraphs one through eleven of §3-702(21)(a) of the Code has been rebutted. The amount of unspent campaign funds may not exceed the total public funds accepted by the participant. Funds received and disbursements made after the date of the issuance of the participant's final audit report shall not be included in the participant's unspent funds calculation.

HISTORICAL NOTE

Section amended City Record Sept. 5, 1991 eff. Oct. 5, 1991.

Section in original publication July 1, 1991.

Advance added City Record May 15, 2008 §1, eff. June 14, 2008. [See Note 7]

Affiliated committee definition repealed City Record July 20, 1999 §2, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]

Affiliated corporation definition repealed City Record July 20, 1999 §2, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]

Authorized committee amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01

Note 1]

Business dealings with the city added City Record Oct. 26, 2007 §1, eff. Nov. 25, 2007. [See Note 6]

Candidate amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Certification amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Charter definition added City Record July 20, 1999 §2, eff. Aug. 19, 1999. [See Note 2]

Disclosure statement amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Doing business database added City Record Oct. 26, 2007 §1, eff. Nov. 25, 2007. [See Note 6]

Domestic partner amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Election amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Fundraising agent amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Labor organization added City Record Oct. 26, 2007 §1, eff. Nov. 25, 2007. [See Note 6]

On the Ballot definition added City Record Aug. 7, 2002 Part A, eff. Sept. 6, 2002. [See Note 1]

Parent corporation definition repealed City Record July 20, 1999 §2, eff. Aug. 19, 1999. [See T52

§1-04 Note 1]

Participant amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Principal committee amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Receipts amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rule amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Stateform amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subsidiary corporation definition repealed City Record July 20, 1999 §2, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]

Surplus funds repealed City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Surplus public funds amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Transfer treasurer amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Treasurer amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Unspent campaign funds amended City Record Oct. 23, 2008 §1, eff. Nov. 22, 2008. [See Note 8]

DERIVATION

Authorized committee amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Authorized committee amended City Record May 19, 1994 eff. June 18, 1994.

Authorized committee amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Disclosure statement amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Domestic partner amended City Record May 5, 2003 eff. June 4, 2003. [This was a technical amendment.]

Domestic partner definition added City Record Oct. 9, 1998 eff. Nov. 8, 1998. [See Note 3]

Fundraising agent definition amended City Record Aug. 7, 2002 Part A, eff. Sept. 6, 2002. [See Note 1]

Fundraising agent definition added City Record July 20, 1999 §2, eff. Aug. 19, 1999. [See Note 2]

Participant amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Participant definition amended City Record Aug. 7, 2002 Part D Subpart 1 eff. Sept. 6, 2002.

Participant amended City Record Oct. 10, 1995 §1, eff. Nov. 9, 1995. [See Note 4]

Participant amended City Record May 19, 1994 eff. June 18, 1994.

Participant amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Principal committee amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Principal committee designation repealed City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Rule amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Treasurer amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 7, 2002:

Definitions

1. **Definition of Fundraising Agent** (§1-02)

The rule amends §1-02 to eliminate from the definition of "fundraising agent" certain individuals engaged in fundraising on behalf of candidates. During the 2001 elections, some candidates received significant fundraising assistance from individuals who were classified as fundraising agents under §1-02. As a result, such candidates were not required to report contributions connected with specific fundraising agents as they would for intermediaries. Both during the elections and at the Board's post-election public hearings, a number of individuals and organizations suggested that the Board amend §1-02 to require such disclosure in future elections. The amended rule requires such disclosure.

2. **Definition of "On the Ballot"** (§1-02)

Pursuant to §3-703(1)(a) of the Administrative Code of the City of New York (the "Code"), a participant in the Campaign Finance Program is eligible to receive public funds only if he or she is "on the ballot." The amendment to §1-02 inserts the definition of "on the ballot" into the definitions section of the Board rules to clarify that a candidate may be considered "on the ballot" only if he or she is on the ballot as defined in state law (**i.e.,** only if he or she is listed among the candidates on the voting machine used for the election).

2. Statement of Basis and Purpose in City Record July 20, 1999: **Technical Changes** In addition to various other technical changes, amendments to shorten and/or simplify the rules, without substantive change, are made in Rules 1-02, 1-04(h) (other than the deletion of references to contributions by corporations, described above), (i), and (j), 1-08(d), (j), and (l), 1-09(a)(1), 1-11, 3-03(b) and (c), 3-07, 3-09, 4-01(a), and 5-01(b).

3. Statement of Basis and Purpose in City Record Oct. 9, 1998: **Explanation, Basis, and Purpose** Campaign Finance Board rules are codified in Title 52 of the Official Compilation of the Rules of the City of New York. The new rules implement changes in the New York City Campaign Finance Act adopted in Local Law No. 27 of 1998, which was signed into law by the Mayor on July 7, 1998. The new law treats domestic partners, registered in accordance with its provisions, in the same manner as spouses as follows:

· An exception is added to the definition of "intermediary" for the delivery of a contribution by the contributor's domestic partner. Administrative Code §3-702(12).

· Candidates joining the Campaign Finance Program may not use for a covered election the personal funds or property of a domestic partner in an amount that exceeds the Program's contribution limits. Administrative Code §3-703(1)(h).

· Public funds paid to a candidate joining the Program may not be used for payments to the candidate's domestic

partner. Administrative Code §3-704(2)(b).

The new rules codify and implement these changes in the law.

4. Statement of Basis and Purpose in City Record Oct. 10, 1995: Disclosure **Other** (R. 1-02; 3-03(c)(3), (e)(3); 3-07; 4-01(m); 9-02(b)) The rules exempt prospective participants from stating when the threshold is met, because they may not yet have determined the office they will be seeking, and prohibit the amendment or resubmission of disclosure statements unless expressly authorized or requested by the Board. The rules reduce disclosure requirements for advances by providing for disclosure of aggregate information and record keeping to document the details of these transactiaons. Following State Board of Elections rules, participating candidates are permitted to defer disclosure of subcontracts over $5,000 until the first post-election disclosure statement. In addition, for a special election, the deadline for requesting approval of an alternate disclosure statement format is changed from four weeks to three business days before the filing is due.

5. Statement of Basis and Purpose in City Record May 5, 2003: Changes to the following rules conform the Board's Rules to recent amendments to the New York City Campaign Finance Act (Administrative Code §§3-701, **et seq.)** (the "Act") contained in Local Law No. 12 of 2003: 1-02 (definitions of "authorized committee," "disclosure statement," "election," "participant," "principal committee," and "treasurer"); 1-03(a) (restrictions on use of receipts); 1-04(b) (deposit of contributions); 1-04(c) (restrictions on return); 1-04(r) (contributions by minors); 1-08(d) (expenditure limits); 1-08(g)(1) (spending public funds); 1-08(g)(2)(x) (qualified campaign expenditures); 1-08(h) (joint expenditures; endorsements); 1-08(j)(1)(ii) (initial expenditures); 1-08(l) (expenditure limit compliance); 1-09(a)(3)(iv) (disclosure statements); 1-11 (prospective participants); 2-01(a) (certification); 2-06(e) (personal and business funds); 3-02(f)(5) (authorized committees other than the principal committee); 3-02(i) (prospective participants); 3-03(a)(2) (first disclosure statement); 3-03(c)(1) (disclosure statement basic contents); 3-03(d) (loans); 3-08 (electronic format); 4-01(b)(2), 4-01(b)(3) (receipts); 4-01(i) (fundraisers); 4-01(m) (advances); 5-01(d)(1), 5-01(d)(2), 5-01(d)(21), 5-01(d)(27) (validity of matchable contribution claims); 5-01(i)(1) (first payments for an election); 5-03(f) (other reasons for repayment); 7-04 (advisory opinions); and 9-02(a)(1) (non-electronic document submission). Additional amendments are described below.

6. Statement of Basis and Purpose in City Record Oct. 26, 2007: Explanation, Basis, and Purpose The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The subject matter of this rulemaking was described in the Board's regulatory agenda for fiscal year 2008, published in The City Record on April 23, 2007. The amendments effect the following specific changes, and will take effect thirty days after final publication in The City Record; provided, however, that pursuant to section thirty-eight of Local Law 34 of 2007, amendments to Rule 5-01(a)(5) and (d)(3) will take effect thirty days after the Board has certified to the Mayor and City Council one component of the "doing business database" pursuant to section thirty-seven of Local Law 34 of 2007, and, pursuant to section forty-one of Local Law 34 of 2007, amendments to Rules 1-04(d), (e), (g), and (i), 1-05(c), 1-08(d), (g), and (l), 2-01(b) and (f), 2-11(a) and (b)(3), 2-12, 3-03(c)(8), 4-05(a) and (b), 5-01(a)(4), 5-01(i), 5-02(a), 5-03(c), (d), (e), (f), and (g), 7-02(b), (c), and (f), 7-03(a), 7-05(a) and (b), 9-01(a) and (b), and 11-04(b) and (c) will take effect on January 1, 2008, and will apply only to elections held on or after that date. Amendments to the following rules conform the Board's Rules to recent amendments to the New York City Campaign Finance Act (Administrative Code §3-701, et seq.) (the "Act") contained in Local Law Nos. 105 of 2005 and 34 of 2007: 1-02 (definitions of "Doing business database," "Business dealings with the city," and "Labor organization"); 1-04(d) (contributions from political committees); 1-04(e) (contributions from corporations, limited liability companies, and partnerships); 1-04(g)(4) (in-kind contributions); 1-04(h) (contributions from a single source); 1-04(i) (contributions from partnerships and limited liability corporations); 1-05 (loans); 1-08(d) (expenditure limits); 1-08(g) (spending public funds); 1-08(l) (expenditure limit compliance); 2-01(b) (certification); 2-01(f) (rescission); 2-11(a) and (b) (non-participation); 2-12 (mandatory training); 3-03(c)(1) (contributions and other receipts); 3-03(c)(8) (partnerships); 4-01 (records to be kept); 4-05 (audits); 5-01(a) (payment procedure); 5-01(d) (validity of matching contribution claims and projected rate of invalid claims); 5-01(i) (pre-election payments); 5-02(a) (post-election written petitions for review); 5-03(c) (excess public fund payments); 5-03(d) (improper use of public funds); 5-03(e) (unspent campaign funds); 5-03(f) (other

reasons for repayment); 5-03(g) (repayment determinations); 7-02(b) (participant not eligible for public funds); 7-02(c) (notice and opportunity to contest); 7-02(f) (adjudications in accordance with section 1046 of the Charter); 7-03(a) (determination of eligibility); 7-05(a) (adjustment of contribution limits); 7-05(b) (adjustment of expenditure limits); 9-01(a) (electronic submission generally); 9-01(b) (C-SMART); and 11-04 (restrictions).

7. Statement of Basis and Purpose in City Record May 15, 2008: The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The subject matter of this rulemaking was described in the Board's regulatory agenda for fiscal year 2008, published in **The City Record** on April 23, 2007. The amendments effect the following specific changes and will take effect thirty days after final publication in **The City Record**: Changes to the following rules conform the Board's Rules to recent amendments to the New York City Campaign Finance Act (Administrative Code §§3-701, **et seq**.) (the "Act") contained in Local Law Nos. 34 and 67 of 2007: 1-04(c) (returning receipts); 2-12 (mandatory training); 3-03(c) (disclosure statement contents; 4-01(b)(5) (intermediary contribution statements); 4-05(b) (audit training); 5-01(a) (payment procedure); 5-01(d) (validity of matchable contribution claims and projected rate of invalid claims); 7-02(c) (notice and opportunity to contest). Ten additional amendments are described below: Definitions (Rule 1-02) The new rule defines the term "advance." Contributions from Political Committees (Rule 1-04(d)) The amendments clarify that participants may only accept contributions from political committees that have registered with the Board for the current election. Contribution Limit; Prohibited Contributions (Rule 1-07(c)) The amendments clarify that the requirement that candidates demonstrate that any transferred funds derive solely from contributions for which the candidate has obtained records demonstrating the contributors' intent to designate the contributions for the covered election applies only to participants. Filer Registration (Rule 1-11) The amendments clarify the requirements for the filer registration. Certification (Rule 2-01) The amendments clarify the requirements for the certification. Breach of Certification (Rule 2-02) The amendment clarifies that the submission of substantial false information or documentation to the Board in order to avoid a finding of violation or a repayment determination will be considered a breach of certification. First Disclosure Statement (Rule 3-02(a)(2)) The amendments clarify the filing requirements for the first disclosure statement for a special election. Deposit Slips (Rule 4-01(b)(1)) The amendments clarify that the candidate must create a record of each deposit if the candidate's bank or depository does not provide itemized deposit slips. Custodian and Location of Records (Rule 4-03(b)) The amendments clarify certain requirements related to candidate records. Payment by Electronic Funds Transfer (Rule 5-01(u)) The new rule requires all candidates to be paid by electronic funds transfer unless the Board determines to make payment using an alternative method.

8. Statement of Basis and Purpose in City Record Oct. 23, 2008: The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The subject matter of this rulemaking was described in the Board's regulatory agenda for fiscal year 2008, published in **The City Record** on April 23, 2007. The amendments effect the following specific changes and will take effect thirty days after final publication in **The City Record.** Changes to the following rules conform the Board's Rules to recent amendments to the New York City Campaign Finance Act (Administrative Code §§3-701, **et seq.)** (the "Act") contained in Local Laws Nos. 34 and 67 of 2007: 1-04(e) (contributions from LLCs and partnerships), 1-04(h) (multiple contributions from a single source), 5-01(f) (basis for determination of ineligibility to receive public funds), and 5-01(r) (reduction in maximum public funds payable). Amendments to eight additional rules are described below: Definitions (Rule 1-02) The amendment clarifies that expenditures that are not made in furtherance of a political campaign are not included as disbursements in the unspent funds calculation. In addition, the amendment excludes contributions and disbursements received or incurred after the date of the issuance of the final audit report from the participant's unspent funds calculation. Attributing an Expenditure to an Election (Rule 1-08(c)) The new rule clarifies the timing and evidentiary requirements for demonstrating to the Board that a candidate "reasonably anticipated" a primary election. Independent Expenditures (Rule 1-08(f)) The new rule clarifies that one factor in determining whether an expenditure is independent is whether the candidate or the candidate's political committee shared or rented space with or from the person or entity making the expenditure. Records to be Kept (Rule 4-01) The amendments permit the submission of duplicate or modified expenditure records in instances where the original record is missing or incomplete, clarify the recordkeeping requirements for credit card contributions, and describe the information that must be kept for in-kind contributions,

disbursements to vendors, and travel expenses. Assistance to Candidates; Records (Rule 4-04) The amendment clarifies that a campaign's failure to keep or produce records as required by the Board may result in a determination that the campaign made unqualified expenditures or that the campaign must return excess funds to the Board. Pre-election Payments (Rule 5-01(i)) The amendments clarify that a candidate petitioning the Board for reconsideration of a pre-election non-payment determination may submit documentation to the Board that was not submitted prior to a non-payment determination only upon a showing of good cause, and that if the Board is unable to convene within five business days the Board may delegate authority to make a determination regarding such petition to the Chair of the Board or his or her designee. Repaying Public Funds (Rule 5-03(e)) The amendments provide that a participant who received public funds and who has outstanding liabilities after the election may engage in fundraising and that fundraising expenditures incurred and contributions received will be included in the participant's unspent funds calculation unless such expenditures and contributions were incurred or received after the date the participant's final audit report was issued. Determination of Eligibility (Rule 7-03(a)) The amendments provide that the Board may presume that a nonparticipating or limited participating candidate has the ability to self finance when supporting documentation indicates that the candidate has in excess of one-fifth of the applicable expenditure limit in readily available funds and the candidate reasonably can be expected to spend the funds for his or her nomination or election.

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Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-03 Restrictions on Use of Receipts.

(a) **Restriction on use.** In addition to the restriction set forth in Rule 5-03(e)(2) and, except as otherwise provided in subdivision (b):

(1) the candidate may expend, transfer, or use receipts, including receipts resulting from a sale, lease, or other transfer of assets, only to pay expenses incurred in that election; no receipts, including receipts accepted for another election, if any, deposited in a separate account as provided in Rule 2-06(b), may be expended, transferred, or used for any other purpose until any required repayments to the Fund have been made and any fines or civil penalties assessed pursuant to the Act have been paid;

(2) receipts deposited in an account shall not be used for any purpose other than the election for which that account was established, pursuant to Rule 2-06(b), except as otherwise provided in Rule 2-06(c) for runoff primary election or runoff special election accounts;

(3) after the participant first receives public funds for an election, the principal committee for that election may not make a transfer to a political committee not involved in that election until all unspent campaign funds from that election have been repaid;

(4) after the participant first receives public funds for an election, the principal committee for that election may not make expenditures to pay expenses or debt from a previous election (other than a primary election held in the same calendar year).

(b) **Exception.** After the first January 11 after an election, a candidate involved in that election may expend, transfer, or use receipts accepted for another election, provided that the receipts have been deposited in and are disbursed from a separate account, as provided in §2-06(b). Funds accepted and separately deposited for the previous election may be transferred to this account only after any required repayments to the Fund have been made and any fines or civil penalties assessed pursuant to the Act have been paid. Contributions and loans accepted for the previous election after such election are subject to §§1-04(m) and 1-05(g).

HISTORICAL NOTE

Section amended City Record Oct. 10, 1995 §2, eff. Nov. 9, 1995. [See Note 1]

Subd. (a) amended City Record May 5, 2003. [See T52 §1-02 Note 5]

Subd. (a) par (1) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section in original publication July 1, 1991.

Subd. (a) par (3) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 2]

Subd. (a) par (4) added City Record Oct. 18, 1996 §2, eff. Jan. 1, 1997. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 10, 1995:

Restrictions on Use (R. 1-03)

The use of campaign funds has been restricted to expenditures in the election subject to Program requirements, until the participating candidate makes all required repayments and pays any penalties to the Board. The new rules: (1) recodify requirements restricting the use of funds deposited in separate bank accounts established for different elections; (2) recodify the restriction on making transfers to a committee not involved in the current election, once the participating candidate has received public funds for that election; and (3) clarify that, after January 11, the committee involved in the previous election may use funds received for a new election, if these funds are disbursed from a separate account set up for the new election. This committee could not make transfers from its previous election account to its new election account, however, until the participating candidate makes all required repayments and pays any penalties to the Board.

2. Statement of Basis and Purpose in City Record Oct. 18, 1996: **Restrictions on Use of Receipts** (R. 1-03(a)(4)) The rules codify Advisory Opinion No. 1993-2 (February 17, 1993), which stated that after receiving public funds for an election, committees may not make payments for expenses or debt from a previous election (other than the primary election held in the same calendar year).

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-04 Contributions.

(a) **Receipt.** A monetary contribution is received on the date it is delivered. An in-kind contribution is received on the date the goods or services are received or rendered. Candidates must report the date of receipt of each contribution that is accepted and deposited on disclosure statements filed with the Board.

(b) **Deposit.** All monetary contributions must be accepted and deposited, or rejected and returned to a contributor, within 10 business days after receipt; provided, however, that contributions made in the form of checks received by an authorized committee of a candidate for the office of City Council more than one year before the first covered election for which such candidate is seeking nomination or election may be accepted and deposited, or rejected and returned to a contributor, within 20 business days after receipt. All contributions that are accepted and deposited are subject to the Act's contribution limits and prohibitions and must be reported to the Board. If a candidate returns a contribution after its deposit, the return must be reported to the Board.

(c) **Returning receipts.** (1) **Excess and prohibited contributions.** When a candidate knows or has reason to know that he or she has accepted a contribution, contributions, or aggregate contributions from a single source in excess of the applicable contribution limit, including a contribution or contributions from a contributor having business dealings with the city, or from a source prohibited by the Act or the Charter, the candidate shall promptly return the excess portion or prohibited contribution, as the case may be, by bank check or certified check made out to the contributor; provided, however, that in the case of a contribution from a contributor having business dealings with the city in excess of the applicable limitation set forth in §3-703(1-a) of the Code, the candidate shall return the excess portion of such contribution within 20 days of receipt of notice from the Board that the contribution exceeds such limitation. Alternatively, if return of the contribution to the contributor is impracticable, the candidate may pay to the

Fund an amount equal to the amount of the prohibited contribution or the excess portion, as the case may be. Remedial actions taken pursuant to this rule will not, however, preclude imposition of a penalty under the Act; provided, however, that no violation shall issue and no penalty shall be imposed where the excess portion of a contribution from a contributor having business dealings with the city is postmarked or delivered within 20 days of receipt of notification from the Board. The Board shall provide such notification to the candidate within 20 days of the reporting of the contribution, or, in the case of a contribution reported during the six weeks preceding the candidate's next covered election, the Board shall provide such notification within 3 business days; provided, however, that if such twentieth day is a Saturday, Sunday, or legal holiday, notification by the Board by 5 p.m. on the next business day shall be considered timely. If the candidate demonstrates to the Board, within 20 days of receipt of such notice, that the contributor identified by the Board as having business dealings with the city has applied to the Mayor's Office of Contract Services or the City Clerk for removal from the doing business database and that such application is pending, the candidate may retain contribution(s) received from such contributor until the Board notifies the candidate that the Mayor's Office of Contract Services or the City Clerk has denied the application for removal, in which case the candidate shall have 20 days from receipt of such second notice to return the excess portion of the contribution(s). Contributions from contributors who have applied for removal from the doing business database shall not be considered matchable contributions unless and until the contributor is removed from the doing business database by the Mayor's Office of Contract Services or the City Clerk. A candidate may not accept any contributions in excess of the applicable contribution limits or from sources prohibited by the Act or the Charter.

(2) **Restrictions on return.** Because participants must repay to the Board unspent campaign funds after an election, participants receiving public funds must accept and deposit all monetary receipts received for an election. A participant may not reject or return any contributions received before the first January 12 after the election once he or she has received public funds, except if the contribution: (i) exceeds the contribution limit, including the limit applicable to contributors having business dealings with the city, (ii) is otherwise illegal, (iii) is returned because of the particular source involved, or (iv) was deposited in a separate account pursuant to Rule 2-06(c) for a runoff election that is not held.

(d) **Contributions from political committees.**

(1) Pursuant to §3-703(1)(k) of the Code, a participant may not accept a contribution from a political committee, unless the political committee has registered with the Board pursuant to §3-707 of the Code for the period that includes the participant's next covered election or so registers within ten days of receipt of the contribution. The registration shall be submitted in such form and manner as shall be determined by the Board and shall include such information as may be required by the Board, including:

(i) the name and address of the committee, and the name, address, and employer of the chairperson, treasurer, and liaison of the committee;

(ii) an indication whether the committee is a political action committee, a candidate committee (and if so, identification of the candidate(s) supported by the committee), or another kind of political committee;

(iii) identification of the governmental agency or agencies with which the committee files its financial disclosure statements;

(iv) an indication whether the committee makes monetary contributions, in-kind contributions, and/or independent expenditures, and the name, address and employer of each person with the authority to determine the candidates for whom the committee makes contributions and/or independent expenditures; and

(v) an indication whether the committee accepts contributions from corporations, limited liability companies, or partnerships and undertakes not to use funds from such entities for contributions to participants.

(2) The registration shall remain in effect through the January 11 following the next regularly scheduled citywide

election, unless there has been a material change in the information included in the registration. In the event of a material change, an amendment to the registration shall be filed in order to keep the registration in effect. The Board shall establish a procedure for renewing a previous registration for the next election cycle.

(3) It is the responsibility of the participant to determine whether a contribution from a political committee may be accepted. Participants have the burden to check the cumulative list of registered political committees, published by the Board on a daily basis on its Web site, to ensure that each political committee contribution accepted is from a political committee that registered with the Board previously or within ten days after the acceptance of the contribution. The participant has the burden of demonstrating why a contribution from a political committee that had not registered in a timely manner has been retained.

(e) **Corporations, limited liability companies, and partnerships.** Candidates may not accept, directly, indirectly, or by transfer, contributions, loans, guarantees or other security for a loan from a corporation, limited liability company, or partnership, including a limited liability partnership or professional corporation. This prohibition does not apply to loans made in the regular course of business, regardless of the lender's form of business entity; but does prohibit the acceptance of a guarantee or other security for such a loan from a corporation, limited liability company, or partnership. This prohibition does not apply to contributions by political committees that are corporations, limited liability companies, or partnerships.

(f) **Attributing a contribution to an election.** A contribution is presumed to be accepted for the first election in which the participant, limited participant, or non-participant is a candidate following the day that it is received, except:

(1) as otherwise provided in §§1-04(c)(2), 1-04(m), and 1-07;

(2) in the case of a State or local election, contributions received before the first January 12 after an election will also be presumed to be accepted for that election; and

(3) in the case of a federal election contributions received before the first January 1 after the election will also be presumed to be accepted for that election, except as may otherwise be provided under federal law and regulations.

(g) **In-kind contributions.** (1) **As expenditures.** An in-kind contribution to a candidate is also an expenditure made by the candidate. The date an in-kind contribution is received is also the date of its expenditure. If a debt, other than a loan, incurred by a candidate is forgiven, the act of forgiving is an in-kind contribution to but not an expenditure by the candidate.

(2) **Valuation.** The candidate shall use a reasonable estimate of fair market value in determining the monetary value of an in-kind contribution and shall maintain a receipt or other written record supporting the valuation. "Fair market value" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time the goods are received. "Fair market value" for services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

(3) **Goods and services provided at a price below fair market value.** If goods or services are provided at less than fair market value, the amount of the resulting in-kind contribution is the difference between the fair market value of the goods or services at the time the goods or services are received and the amount charged to the candidate.

(4) **Extensions of credit.**

(i) **Generally.** A creditor who extends credit to a candidate for a period beyond 90 days, has made a contribution equal in value to the credit extended, unless the creditor has made a commercially reasonable attempt to collect the debt.

(ii) **Corporate, limited liability company, and partnership vendors.** Notwithstanding subparagraph (i), if a

candidate demonstrates that a creditor that is a corporation, limited liability company, or partnership did not intend to make a contribution, the extension of credit will not result by itself in the candidate being deemed to have accepted a contribution from a corporation, limited liability company, or partnership, as prohibited by law.

(iii) **Loans.** This paragraph does not apply to loans.

(5) **Debts forgiven.** A debt owed by a candidate which is forgiven or settled for less than the amount owed is a contribution, unless the debt was forgiven or settled by a creditor who has treated the outstanding debt in a commercially reasonable manner.

(6) **Commercially reasonable treatment of debts.** The Board will consider as evidence of commercially reasonable treatment that:

(i) all commercially reasonable efforts have been taken to satisfy the outstanding debt; and

(ii) the creditor has pursued its remedies in the same manner as that employed by creditors of other debtors, including the institution of lawsuits.

(7) **Failure to report liability.** Notwithstanding any implication of paragraph (4) to the contrary, a candidate's failure to report an outstanding liability in a contemporaneous manner is a violation of §3-703(6) of the Code. Such a liability will be deemed an in-kind contribution.

(h) **Multiple contributions from a single source.** If a candidate accepts more than one contribution from a single source, the contributions shall be totaled to determine the candidate's compliance with the applicable contribution limit. A "single source" includes any person, persons in combination, or entity who or which establishes, maintains, or controls another entity and every entity so established, maintained, or controlled, including every political committee established, maintained, or controlled by the same person, persons in combination, or entity. If a candidate accepts multiple contributions from a single source consisting of at least one contribution from a person having business dealings with the city and one or more contributions from an entity established, maintained, or controlled by that person, the applicable contribution limit shall be the limit applicable to persons having business dealings with the city pursuant to §3-703(1-a) of the Code.

(1) **General factors.** Factors for determining whether a person, persons in combination, or an entity establishes, maintains, or controls another entity include, but are not limited to:

(i) whether the person or entity makes decisions or establishes policy for the other entity, including determinations of the recipients of its contributions and the purposes of its expenditures;

(ii) whether the person or entity has the authority to hire, appoint, discipline, discharge, demote, remove, or otherwise influence other persons who make decisions or establish policies for the other entity;

(iii) whether contributions made by the person or entity and the other entity reflect a similar pattern; and

(iv) whether the person or entity knows of and has acquiesced in public representations by the other entity that it is acting on its behalf or under its direction.

(2) **Labor organizations.** Notwithstanding paragraph (1), different labor organizations shall not be considered to be a single source for the purpose of compliance with the applicable contribution limit if the candidate demonstrates that the contributors satisfy the four criteria below:

(i) the labor organizations do not share a majority of members of their governing boards;

(ii) the labor organizations do not share a majority of the officers of their governing boards;

(iii) the labor organizations maintain separate accounts with different signatories; and

(iv) the labor organizations make contributions from separate accounts.

(3) It is the responsibility of the candidate to determine whether a contribution exceeds the applicable contribution limit. To ensure that the candidate does not accept a contribution exceeding the applicable limit, the candidate must review the relationship between affiliated contributors before the candidate accepts and deposits their contributions or rejects and returns the contributions under Rule 1-04(b) and (c). The candidate has the burden of demonstrating why the candidate has retained an over-the-limit contribution from contributors who or which constitute a single source.

(i) Reserved.

(j) **Earmarked contributions.** If a candidate accepts from a political committee a contribution that had been given to the committee by a contributor who limits the political committee's choice or directs the selection of the recipient, the contribution shall be considered to be from both the original contributor and from the political committee. This rule does not apply to political committees acting solely as intermediaries and not exercising any discretion over the selection of the ultimate recipient, or to political committees making contributions from funds that have not been earmarked by the contributors. Nothing in this subdivision shall be construed to modify the requirements of New York Election Law §14-120.

(k) **Joint contributions.**

(1) Except as otherwise provided for in subdivisions (i) or (j), no contribution shall be considered to be made by more than one person or entity, unless the check or other monetary instrument representing the contribution includes the signature of each person making the contribution (or authorized person in the case of an entity making a contribution).

(2) If a check or other monetary instrument representing a joint contribution does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor.

(l) **Tickets for fund-raising events.** The entire amount paid to attend a fund-raising event and the entire amount paid as the purchase price for a fund-raising item sold by a candidate are contributions.

(m) **Post-election contributions.** Contributions accepted after an election may be used to pay liabilities incurred in that election subject to the applicable contribution limit and prohibitions, only if deposited in and disbursed from an account established and maintained for that election, as provided in §2-06(b).

(n) **Solicitation of contributions for elections not subject to the Act.** If a candidate makes a solicitation for a contribution for an election not subject to the requirements of the Act, the solicitation must specify that the contribution is being solicited for an election that is not subject to the requirements of the Act.

(o) **Court-ordered rerun elections.** Candidates may not accept additional contributions permitted for a court-ordered rerun election pursuant to §3-703(1)(f) of the Code before the canvass of returns in, or conduct of, the preceding election is contested in a court of competent jurisdiction. If a rerun election is ordered by a court but subsequently cancelled, a candidate who would have been on the ballot has the burden of demonstrating that any portion of contributions in excess of the limit applicable under §3-703(1)(f) of the Code may be reasonably attributed to expenses incurred for the rerun election before its cancellation.

(p) **Joint fundraising; endorsements.**

(1) If a candidate makes expenditures in connection with, or otherwise cooperates in, raising contributions for any other candidate or political committee:

(i) the expenditures incurred and in-kind contributions received in connection with such fundraising, including in

the form of endorsements, shall be allocated in accordance with Rule 1-08(h); and

(ii) if any of the contributions so raised is:

(A) in an amount that exceeds the amount of the contribution limit applicable to the candidate under §3-703(1)(f) of the Code (including when aggregated with contributions the candidate receives from the same source); or

(B) from a source that would be prohibited to the candidate by the Act or the Charter; the candidate shall have the burden of demonstrating that the contribution was not used in a manner that directly or indirectly assisted or benefitted the candidate in violation of the applicable limit or prohibition.

This paragraph shall not be construed to prohibit a candidate from making a monetary contribution to any other candidate or political committee, provided, however, that such contributions may result in reduced public funds payments pursuant to §5-01(n).

(2) To ensure compliance with the contribution limits of §3-703(1)(f) of the Code, candidates who run together as a "ticket," and make joint expenditures to raise contributions, shall additionally abide by the requirements of this subdivision.

(i) When paying his or her share of joint expenditures (by direct payment or reimbursement), the payor shall have the burden of demonstrating that the amount disbursed does not derive from contributions that would exceed the other candidate's contribution limit, if those contributions were aggregated with contributions previously received by the other candidate.

(ii) Therefore, no disbursement for joint expenditures shall be made before the candidate is able to account fully for the disbursement with contributions that would not exceed the other candidate's contribution limit, if so aggregated. Failure to make reimbursement within 30 days of the expenditure, however, will result in a deduction in public funds payments otherwise due to the candidate to be reimbursed, pursuant to §5-01(n)(1), and failure to make reimbursement within 90 days will result in treatment of the expenditure as an in-kind contribution to the candidate failing to make reimbursement, pursuant to §1-04(g)(4).

(q) **Anticipated runoff primary or runoff special elections.** A candidate seeking the nomination of a political party or seeking election in a special election may not accept contributions for a runoff primary election or runoff special election, unless the candidate has previously demonstrated to the Board that a runoff election is reasonably anticipated. Runoff election contributions may not be accepted once it is no longer reasonable to anticipate such a runoff election. To the extent permitted by this subdivision, the candidate (and each opposing candidate seeking the same party nomination or seeking election in the same special election, as the case may be) may solicit and accept additional contributions for the anticipated runoff election, up to the amount permitted for the runoff election by §3-703(1)(f) of the Code, under the following conditions:

(1) every runoff election contribution shall be deposited in a separate account and subject to restrictions on use, as provided in Rule 2-06(c);

(2) until a primary or special election is held that results in a runoff election, each solicitation of runoff election contributions shall expressly state that such contributions are being solicited only for a runoff election that may not occur;

(3) no single contribution check shall be accepted in an amount that exceeds the limit applicable for the primary and general election, or special election, under §3-703(1)(f) or (h) of the Code; and

(4) each disclosure statement submitted by the candidate shall include a copy of the most recent bank statement for its runoff election account.

(r) **Contributions by minors.** (1) A participant or non-participant may accept a contribution from a minor child (individual under 18 years of age) only if: (i) the decision to contribute was made knowingly and voluntarily by the minor child; (ii) the funds, goods, or services contributed were owned and controlled exclusively by the minor child, such as income earned by the child, or a bank account opened and maintained exclusively in the child's name; and (iii) the contribution was not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed.

(2) Contributions by individuals under 18 years of age shall not be matchable.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record May 15, 2008 §2, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) par (1) amended City Record Feb. 20, 2009 §1, eff. Mar. 22, 2009. [See Note 10]

Subd. (d) added City Record July 20, 1999 §4, eff. Aug. 19, 1999. [See Note 1]

Subd. (d) par (1) amended City Record May 15, 2008 §3, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (d) par (1) amended City Record Oct. 26, 2007 §2, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) par (1) amended City Record Aug. 7, 2002 Part H Subpart 1 §1, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (e) amended City Record Oct. 23, 2008 §2, eff. Nov. 22, 2008. [See

T52 §1-02 Note 8]

Subd. (e) amended City Record Oct. 26, 2007 §3, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (e) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) par (4) amended City Record Oct. 26, 2007 §4, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (h) amended City Record Oct. 26, 2007 §5, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (h) amended City Record Feb. 18, 2005 eff. Mar. 20, 2005. [See Note 9]

Subd. (h) open par amended City Record Oct. 23, 2008 §3, eff. Nov. 22,

2008. [See T52 §1-02 Note 8]

Subd. (i) repealed City Record Oct. 26, 2007 §6, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (i) amended City Record Feb. 18, 2005 eff. Mar. 20, 2005. [See Note 9]

Subd. (j) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (k) amended City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See Note 3]

Subd. (l) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (m) amended City Record July 20, 1999 §9, eff. Aug. 19, 1999. [See Note 1]

Subd. (n) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (o) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (p) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (q) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (r) amended (par (2) inadvertently omitted in amendment) City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Subd. (b) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (b) amended City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See Note 3]

Subd. (c) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (c) par (1) amended City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See Note 3]

Subd. (c) par (1) amended City Record July 20, 1999 §3, eff. Aug. 19, 1999. [See Note 1]

Subd. (c) par (1) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 5]

Subd. (c) par (2) amended City Record Oct. 10, 1995 §3, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) par (2) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (d) repealed City Record Oct. 10, 1995 §4, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (e) amended City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See Note 3]

Subd. (e) added City Record July 20, 1999 §4, eff. Aug. 19, 1999. [See Note 1]

Subd. (e) repealed City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) amended City Record Feb. 29, 2000 §1, eff. Mar. 30, 2000. [See Note 7]

Subd. (f) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (f) par (2) amended City Record Oct. 10, 1995 §5, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (g) par (1) amended City Record Oct. 10, 1995 §6, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (g) par (4) amended City Record July 20, 1999 §5, eff. Aug. 19, 1999. [See Note 1]

Subd. (g) par (7) added City Record Feb. 29, 2000 §2, eff. Mar. 30, 2000. [See Note 2]

Subd. (g) par (7) repealed City Record Oct. 10, 1995 §7, eff. Nov. 9, 1995. [See T52 §3-02 Note 3]

Subd. (g) par (7) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (h) amended City Record July 20, 1999 §6, eff. Aug. 19, 1999. [See Note 1]

Subd. (h) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (i) amended City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See Note 3]

Subd. (i) amended City Record July 20, 1999 §7, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (i) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (j) amended City Record July 20, 1999 §8, eff. Aug. 19, 1999. [See T52 1-02 Note 2]

Subd. (j) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (j) amended City Record Sept. 5, 1991 eff. Oct. 5, 1991.

Subd. (m) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (n) became unnumbered par (formerly (1)) City Record Nov. 19, 1996 eff. Dec. 19, 1996. [See Note 6]

Subd. (n) par (2) repealed City Record Nov. 19, 1996 eff. Dec. 19, 1996. [See Note 6]

Subd. (n) par (2) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (o) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (p) added City Record July 20, 1999 §10, eff. Aug. 19, 1999. [See Note 1]

Subd. (p) heading, par (1) amended City Record Jan. 15, 2003 eff. Feb. 14, 2003. [See Note 4]

Subd. (p) par (2) subpar (ii) amended City Record May 5, 2003 eff. June 4, 2003. [This was a technical amendment.]

Subd. (q) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 8]

Subd. (q) added City Record July 20, 1999 §10, eff. Aug. 19, 1999. [See Note 1]

Subd. (r) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (r) added City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See Note 3]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Prohibited Contributions

Under recent amendments to the New York City Campaign Finance Act and the New York City Charter, candidates participating in the voluntary Campaign Finance Program may not accept contributions from corporations. Participating candidates ("participants") also may not accept contributions from political committees unless those committees have registered with the Campaign Finance Board. Charter §1052(a)(12); Administrative Code §§3-703(1)(a); 3-703(1)(k); 3-707.

The following amendments implement these new prohibitions:

· Rules aggregating contributions from corporations and their affiliates are repealed. Sections 1-02; 1-04(h). The repealed rules continue to apply, however, to contributions accepted from corporations before the new prohibitions took effect on October 22, 1998 and January 1, 1999.

· The requirement that over-the-limit contributions be returned promptly also applies to prohibited contributions. Section 1-04(c).

· A new rule provides for political committee registration. Section 1-04(d).

· A new rule clarifies that the new law permits the acceptance of a loan made by a bank in the regular course of business even if the bank is incorporated. Sections 1-04(e); 1-05(c).

· To implement the new prohibitions on corporate contributions, the Board has reconciled the Charter and Administrative Code provisions to permit participants to accept contributions from political committees that are incorporated, provided that the committees have registered with the Board. Section 1-04(e).

· For an extension of credit by a corporation, if a participant shows that a corporate creditor did not intend to make a contribution, the extension of credit will not by itself be deemed a contribution by the corporation. Section 1-04(g)(4).

· Like the contribution limits, the new contribution prohibitions apply to post-election contributions. Section 1-04(m).

· Similarly, the new contribution prohibitions apply to surplus funds from previous elections and to transfers from committees not otherwise involved in elections covered by the Program. Section 1-07(c), codifying Advisory Opinion No. 1999-3 (January 7, 1999).

Fundraising for Multiple Candidates, Anticipated Runoff Primaries, and Different Offices

Beginning on January 1, 2000, if a participating candidate cooperates in raising contributions for another recipient (other than by making monetary contributions):

· the participant will have accepted an in-kind contribution equal to the full cost of the fundraising if the recipient of the contributions makes expenditures benefitting the participant; and

· the participant must demonstrate that contributions raised for the recipient that are over the limit or from a prohibited source were not used in a manner that benefitted the participant.

Section 1-04(p)(1), implementing new Charter §1052(a)(11)(b).

Participants who run together as a "ticket" may make joint expenditures to raise contributions. When a participant pays his or her share, the amount disbursed must not derive from contributors who have given the maximum permitted to the other candidate. The payor must have enough contributions that would not exceed the other candidate's limit to account for his or her disbursement. Section 1-04(p)(2), codifying Advisory Opinion No. 1997-9 (September 10, 1997).

Participants for citywide office may solicit and accept additional contributions for an anticipated runoff primary

election, if they first demonstrate to the Board that a runoff primary is reasonably anticipated. The new rule reiterates these requirements:

· Runoff contributions must be deposited in a separate account and are subject to restrictions on use.

· Until a runoff actually occurs, each solicitation of runoff contributions must expressly state that the contributions are for a runoff that may not occur.

· No single contribution check may be accepted in an amount that exceeds the primary/general election contribution limit.

· Each disclosure statement must include a copy of the most recent runoff bank account statement.

Sections 1-04(q) and 2-06(c), codifying Advisory Opinion No. 1999-1 (January 7, 1999).

New rules also codify how fundraising expenditures will be treated when a candidate is raising funds for two different elections. The full amount of these expenditures would be subject to the City limits and prohibitions, if the first election is covered by the Program. If it is the second election that is covered by the program, these expenditures would be subject to the City limits and prohibitions in the same proportion that the total funds raised for the second election bears to the total funds raised for both elections by the same activity or, alternatively, up to the expense of raising funds for one election that are then used in a different election. Section 1-08(m).

2. Statement of Basis and Purpose in City Record Feb. 29, 2000: **Failure to Report Outstanding Liabilities** The rules would make clear that failure to report an outstanding liability in a contemporaneous manner is a violation of the Campaign Finance Act and an in-kind contribution, and also will not be considered a qualified campaign expenditure. If vendors submit (and participants report) bills in a regular and timely manner, reporting by the date of the bill would satisfy the contemporaneous reporting requirement. If, however, vendors do not submit bills in a regular and timely manner, these rules make clear that participants are obligated to report the liability at the time it is incurred regardless whether a bill has been received. Rules 1-04(g)(7); 1-08(g)(4).

3. Statement of Basis and Purpose in City Record Aug. 7, 2002: Contributions 1. **Deposit of Contributions** (§1-04(b)) The amendment clarifies that contributions accepted and deposited are subject to the Act's corporate contribution ban, unregistered political committee ban, and other prohibitions, as well as the Act's contribution limits. 2. **Return of Prohibited Contributions to the Public Fund** (§1-04(c)(1)) The amendment allows candidates to pay prohibited contributions to the Public Fund when return of the contribution to the contributor is impracticable. Under the current rules, participants may not keep such contributions and must return them to the contributor. However, participants sometimes find themselves unable to return contributions-for example, when they are unable to locate the contributor or when a corporate contributor has gone out of business. Currently, only contributions from unregistered political committees can be paid to the Public Fund, and the amendment would permit candidates to pay other prohibited contributions to the Public Fund. 3. **Treat Limited Liability Company Contributions like Partnership Contributions** (§§1-04(e), (i), (k), 3-03(c)(8)) The amendments treat limited liability company contributions the way partnership contributions currently are treated, **i.e.,** by attributing contributions greater than $2,500 to both the limited liability company and its members. Partnerships and limited liability companies have similar structures and are often treated identically for tax purposes. They also implicate similar concerns of undue organizational influence over elected officials. Additionally, the absence of attribution for limited liability companies permits corporate members of limited liability companies to make contributions, and permits limited liability company members to contribute in excess of the contribution limit, by contributing both through the limited liability company and individually. The amendment also clarifies that professional corporations are included in the corporate contribution ban. During the 2001 elections, many candidates asserted that they were unaware that a contribution from a professional corporation, or "p.c.," was included in the ban on corporate contributions. This amendment does not make any substantive changes to the Rule or the corporate contribution ban, but merely confirms that professional corporations are included in the corporate contribution

ban. 4. **Contributions from Minors** (§1-04(r)) The Board has concluded that contributions from minors (children under the age of 18) require special regulation because it has found that contributions from adults may be misreported in the names of children in order to circumvent the $1,000 limit on matching funds per contribution ($500 for special elections) and the Program's contribution limits. In response, the Board is promulgating a new §1-04(r) to make explicit a participant's responsibility to ensure that contributions from minors do not violate the Act, Rules, or state law. The new rule requires participants to verify that: (1) a contribution reported in the name of a minor was made knowingly and voluntarily by the minor; (2) the funds provided were owned and controlled exclusively by the minor; and (3) the funds do not derive from a gift to the minor that was made for the purpose of funding the minor's contribution.

4. Statement of Basis and Purpose in City Record Jan. 15, 2003: Political Activity (Rules 1-04(p)(1), 1-08(h)) The Board has received comments from the public that the current rules on attributing contributions and expenditures for coordinated political activity are burdensome on candidates. Specifically, participants have indicated that contributions and expenditures attributed to a participant from the communication of their endorsements and other statements of support for other candidates should be limited where the benefit to the participant is limited. The Board has adopted certain amendments to its coordinated political activity rules in an attempt to respond to these concerns. These amendments are intended to make Program requirements in this area less onerous, permit candidates to undertake certain types of routine, limited political activity without significant impact to their campaigns, and ensure that the Program provides guideposts to the treatment of this activity. Current Rule 1-04(p)(1), promulgated pursuant to a New York City Charter §1052(a)(11)(b) requirement to regulate soft money contributions, provides that if a participant is cooperating in raising contributions for another candidate, the participant is presumed to have accepted an in-kind contribution equal to the full cost of the fundraising that was not paid for by the participant. Because of a concern that this rule may not reflect the benefits each participant receives from the fundraising activity, the amendments to Rule 1-04(p)(1) provide that each coordinating participant be deemed to have received in-kind contributions, and to have made expenditures, only commensurate with the benefit to him or her from the fundraising activity. In the past, the Board has not considered the act alone of endorsing a candidate to trigger an in-kind contribution or expenditure. To codify this practice in its rules, the amendments to Rule 1-08(h) confirm that an endorsement alone will not be considered an in-kind contribution from the endorser to the endorsee or an expenditure by the endorsee on behalf of the endorser. The costs of the communication of an endorsement, however, may be considered to be an in-kind contribution and expenditure, which, to the extent that the communication is directed to an audience of the endorser's constituents, should be controlled because of the potential for abuse. The amendments add factors to be considered by the Board in determining whether the endorser received any benefit that is disproportionate to any expenditures made by the endorser for the material or activity. Because such endorsements may be incidental to the overall communication, however, the amendments provide that the Board may determine that the benefit is de minimis to the participant, based upon information it has in its possession, including information presented to the Board by the participant or other individuals or entities. Finally, the amendments to Rule 1-08(h) presume that regular or routine communications-but not special mailings-from a political club to its own membership, signed by a participating candidate who is already a member of the club, will not trigger an in-kind contribution or expenditure to a participant. This exception is limited to political clubs with fewer than 500 members and does not include communications soliciting funds for or otherwise supporting the participant's campaign. The amendments are an attempt to respond to concerns that participants' routine political club communications should not be attributed to the club member's campaign. For other treatment of coordinated political activity, see Campaign Finance Act §3-716 and the Board's Rules, including Rules 1-08(f) and 1-08(h). The amendments are not intended to alter the Program's longstanding treatment of coordinated political activities as in-kind contributions and expenditures. Indeed, disclosure and regulation of coordinated political activity has always been, and will continue to be, subject to review and administrative determinations by the Board. Rather, the amendments are intended to reduce the burdens on candidates by clarifying the manner in which particular activities will be treated and to create a potential exemption for certain incidental activities. This is consistent with the rules of other jurisdictions, which routinely treat coordinated political activity, including the communication of endorsements, as in-kind contributions and expenditures, but which may provide limited exemptions for minor activities.

5. Statement of Basis and Purpose in City Record Oct. 18, 1996: Contributions **Returning Excessive**

Contributions (R. 1-04(c)) The rules require that if any contributions exceeding the limit which have been returned to the contributors are not deposited or cashed within 60 days, the participant may make a voluntary contribution to the New York City Election Campaign Finance Fund.

6. Statement of Basis and Purpose in City Record Nov. 19, 1996: Fundraising Activities **Fundraising for Elections not Subject to the Act** (R. 1-04(n)(2), 3-03(c)(10)) The new rules repeal the rule prohibiting candidates participating in the Campaign Finance Program from soliciting or accepting contributions at a single event both for elections subject and not subject to the Campaign Finance Act. The new rules instead require that participants report in a cover letter submitted with the disclosure statement a list of all contributions reported in that disclosure statement that were accepted at an event at which contributions were solicited or accepted both for elections subject to and not subject to the Act.

7. Statement of Basis and Purpose in City Record Feb. 29, 2000: Technical Changes These amendments also include technical changes, amendments to correct errors and omissions, without substantive change. Rules 1-04(f), 1-08(f)(iii) and (iv), 2-01(e)(3), 3-02(f)(1) and (2), 1-08(g)(2)(xiii), 11-03, and 11-04(b)(2).

8. Statement of Basis and Purpose in City Record May 5, 2003: Contributions 3. **Anticipated Runoff Special Elections** (§1-04(q)) A New York City Charter revision approved by voters in 2002 provides, among other things, that if no candidate in a special election for mayor receives at least 40% of the vote, a runoff special election will held between the top two candidates. Local Law No. 12 of 2003 amended the Act to account for the possibility of a runoff special election for mayor in which a candidate is a participant in the New York City Campaign Finance Program (the "Program"). The amendments to §1-04(q) establish rules for anticipated runoff special election fundraising that conform to the Board's Rules applicable to anticipated runoff primary elections for mayor and other citywide offices. Thus, candidates may not commence fundraising for a runoff special election for mayor until the Board has determined that such an election is reasonably anticipated; contributions accepted for a runoff special election for mayor must be deposited into a separate bank account; until the special election is held, solicitations for runoff election contributions must expressly state that the contributions are solicited only for a runoff election that may not occur; each disclosure statement submitted by a participant shall include a copy of the most recent bank statement for its runoff election account; no single contribution check may be accepted in an amount in excess of applicable contribution limits; and if a runoff special election for mayor is no longer reasonably anticipated, fundraising for that election must cease.

9. Statement of Basis and Purpose in City Record Feb. 18, 2005: The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The amendments effect the following specific changes, take effect thirty days after final publication in **The City Record,** and apply to contributions accepted at any time during the 2005 election cycle, as well as prospectively. Contributions from a Single Source (Rule 1-04(h) and (i)) Pursuant to Rule 1-04(h), contributions from a single source are totaled for the purposes of compliance with the contribution limits. The policy rationale of the rule is to prevent circumvention of the contribution limits by ensuring that all entities are treated as a single source when a common decisionmaker determines whether to contribute on behalf of the entities making the contributions. A **rebuttable** presumption is articulated for limited liability companies, partnerships (together "limited liability entities"), and certain labor organizations. Concerns of undue influence attendant on contributions from limited liability entities and labor organizations made the single-source rule a salient issue in the 2003 election cycle (as contributions from corporations were in past years, before corporate contributions were banned). These contributions represented the majority of all organizational contributions to Campaign Finance Program participants.[1]1 In the course of its audits, the Board has acquired experience raising questions about affiliated entities with campaigns and has corresponded with campaigns and entities about potential single-source rule violations. The Board's experience has revealed that a number of contribution limit violations have been comprised of contributions from affiliated labor organizations and limited liability entities constituting single sources. For example in the 2003 election cycle, several campaigns accepted over-the-limit contributions from the political committees of two affiliated unions (a parent and subordinate union) that designated the same person as the decisionmaking authority for contributing to city candidates, and from a district level union and local unions whose decisionmaking was controlled by the district level union. The Board believes the single-source rule will be improved with clarification to describe in

greater detail the types of entities that will be presumed to be single sources (in the absence of evidence demonstrating the contrary) and to provide clearer guidance to candidates about the factors relevant to overcoming the rebuttable presumption. The new rule supplements the factors currently contained in the rule and provides a **rebuttable** presumption that certain limited liability entities and labor organizations will, in the absence of evidence demonstrating the contrary, be treated as single sources for the purposes of compliance with the contribution limits. For entities not covered by these more detailed considerations, the general factors in Rule 1-04(h)(1) will continue to apply. The rule amendments arise out of a long-standing Board practice that has been in effect for all organizational contributions to ensure that single sources do not make over-the-limit contributions. In the audit process, the Board routinely questions campaigns about apparent contribution limit violations stemming from the contributions of affiliated and apparently affiliated entities, whether by limited liability entities, labor organizations, or, in the past, corporations. As always, the burden rests on the campaign to show compliance by demonstrating that affiliated entities do not constitute a single source for purposes of the contribution limits. Campaigns have responded to the questions in the audit process either by not contesting the affiliation or, in some cases, with evidence that the entities do not constitute a single source for purposes of the contribution limits. Before the law was amended to prohibit candidates from accepting corporate contributions,[2]2 the Board rules contained similar provisions that subjected contributions from corporate parents, affiliates, subsidiaries, and controlling persons to a single contribution limit. **See** Board Rules, Appendix B, **Former Rules on Affiliated Contributions.** Under the former rules, if an entity or individual owned, held, or could vote a class of stock representing over fifty percent of a corporation's voting power, the Board considered this relationship to be conclusive evidence of control, and thus considered the corporation to be a single source with the controlling entity or individual. Where corporate ownership was less clear, however, the Board merely presumed that affiliated corporations were subject to common control. Acknowledging a range in levels of control among these affiliated entities, the Board permitted candidates the opportunity to rebut the presumption. The former rules on affiliated corporations included a list of general factors, substantially similar to the current Rule 1-04(h)(1), to assist candidates with the rebuttal in cases where ownership was less clear. The Board's practice, now largely irrelevant to corporate contributions, underlies the rule amendments which share the same objective as the former rules on affiliated corporations-to ensure that all single sources, in this case limited liability entities and labor organizations, are similarly treated. Although the rule amendments arise out of Board practice, they provide more detailed guidance than did the former corporate rules to candidates concerning the specific kinds of documentation that may be offered to rebut the presumption. They also provide more detailed guidance than was provided in the proposed rules as adopted by the Board for public comment. In response to public comments on the proposed rules, the rules now provide a detailed list of documentation germane to limited liability entities and labor organizations in particular. In demonstrating that affiliated limited liability entities and labor organizations are distinct sources, the campaign may provide documentation of as many items on the list, and others not on the list, as it believes may be relevant to the contributions at issue, and the Board will look at the evidence as a whole to determine whether the campaign has shown that one entity does not control the decisions of another entity with respect to campaign contributions, and thus has overcome the presumption. There is no requirement that a candidate provide documentation relating to all items or any particular item on the list. The rule improves the candidate's ability to comply with and the Board's ability to enforce the single source rule, because the rule explicitly confirms the kinds of considerations that will enable candidates to meet the burden of demonstrating that entities are distinct sources. This burden lies, as it always has, with the candidate, the party best situated to acquire the information from the entities supporting the candidate with contributions. The candidate always has the burden to demonstrate compliance with the applicable contribution limits, but the former Rule 1-04(h) gave no detailed description of the precise factors which the candidate should rely upon to demonstrate to the Board that one affiliated contributor did not "establish, maintain, or control" another affiliated union or limited liability entity contributor. **See** former Rule 1-04(h). The information needed to evaluate this is more readily in the hands of the candidate and contributor than in the hands of the Board. Paragraph (2) of the rule clarifies that a labor organization is presumed (in the absence of evidence demonstrating the contrary) to have established, maintained, or controlled all of its subordinate organizations and that contributions from a labor organization and its subordinate organizations therefore would be considered to issue from a single source for purposes of compliance with the contribution limits. The Board looked to federal campaign finance law for guidance in constructing the rule. In 1976, Congress made a finding that large corporations and unions were circumventing the contribution limits of the Federal Election Campaign Finance Act, 2 U.S.C.A. §431 **et seq.,**

("FECA"), by creating hundreds of new political action committees through their subsidiaries and locals.[3]3 To stem the vertical proliferation of contributors, Congress amended FECA to include a single-source provision, §441a(a)(5).[4]4 The Board's rule adapts the language of the single-source regulations of the Federal Election Commission ("FEC"), enacted pursuant to the FECA's single source provision. **See** 11 C.F.R. §§100.5(g) and 110.3(a). Where the FEC enacted a **per se** rule, however, the amended Board rule merely enacts a **rebuttable presumption** that the following are single sources: a union and its political committees; a parent union, such as an international/national union and all of its regional, state, intrastate, and local unions; and an organization of international/national unions, such as the AFL-CIO, and all of its regional, state, intrastate, and local bodies.[5]5 Thus, under the rule, the Board will presume (in the absence of evidence demonstrating the contrary) that contributions from different New York City local unions that share a parent union constitute a single source. (As is the case for other entities controlled by a common decisionmaker, there need not be a contribution from a parent union in order for the Board to aggregate contributions from its subordinate unions. **See also** 11 C.F.R. §§100.5(g) and 110.3(a). The Board may aggregate contributions from subordinate entities controlled by a common decisionmaker regardless whether the common decisionmaker contributes.) Parent unions often exercise significant control, both formally and informally, over the decisions, activities, and structure of their subordinate unions. The legislative history of FECA, the opinions of the federal courts, union constitutions, the Board's experience acquired through its audit process, and the experience of union members, support this conclusion. In its discussion of FECA's aggregation provision, a controlling Circuit Court decision concurred with the assessment of Congress and the FEC that a typical parent union exercises considerable control over its locals. **See Sailors' Union,** 828 F.2d at 506-9 (citing constitution of the United Steelworkers' union as support for position that traditional international unions exercise "highly intrusive authority" over their locals). The siphoning of autonomy from local unions to parent unions has been criticized by union members and labor advocates.[6]6 Because there is a range in the levels of control parent unions exercise over their subordinate unions, however, the Board is adopting a rebuttable presumption and not a **per se** rule. While the Board's experience supports a rebuttable presumption that a parent union and its subordinate unions are a single source, it does not support codifying a rebuttable presumption that an **organization** of unions, like a federation, and its affiliated member unions are a single source. The Board recognizes that whereas parent unions may exercise substantial control over their subordinate unions, organizations of international and national unions tend to function as umbrella groups with little authority over the decisions of their loosely affiliated member unions. (The Board does presume that subordinate umbrella groups constitute a single source with their parent umbrella groups. For instance, the national AFL-CIO and the New York State AFL-CIO would be covered by the rule, but a member union of the AFL-CIO would fall outside of the rule with respect to its relationship with the national AFL-CIO or New York State AFL-CIO.) The amendments thus parallel the treatment federal campaign finance law affords umbrella groups. **See** FECA, 2 U.S.C.A. §441a(a)(5); 11 C.F.R. §§100.5(g) and 110.3(a); **Sailors' Union,** 828 F.2d 502; **see also** 54 FR 34,098-01, 34,099 (Aug. 17, 1989). The rule amendments do not change the Board's authority to continue to aggregate contributions from an umbrella group and its affiliated unions when appropriate, on a case-by-case basis, by applying the factors in Rule 1-04(h)(1). The Board received comments following the adoption of the proposed rebuttable presumption for public comment. Several labor unions commented that they were not controlled by their parent unions and made decisions about political contributions independently of their parent unions. As noted **supra,** the Board recognizes this range in the relationships among affiliated labor organizations and therefore is not adopting a **per se** rule, but rather a rebuttable presumption. The rebuttable presumption is a desirable means of effectuating the Act's contribution limits, because (a) the Board has encountered numerous cases in which affiliated labor organizations did not contribute to candidates independently, and (b) candidates, who always have the burden to demonstrate compliance with the Act, are in a far better position that the Board to ascertain the independence of their contributors. Codifying Advisory Opinion No. 2001-6 (June 14, 2001), paragraph (3) of the rule provides that separate partnerships and limited liability companies that have a common general partner or a common managing member are presumed to be a single source for purposes of compliance with the contribution limits. (Where appropriate, such as when a limited liability company's managing member is also the general partner of a partnership, the rebuttable presumption aggregates contributions from the limited liability company and the partnership.) Consistent with the Advisory Opinion, registered limited liability partnerships established pursuant to Article l8-B of the New York State Partnership Law, which are not governed in the same manner as other partnerships, are not covered by the rebuttable presumption. Paragraph (4) of Rule 1-04(h) makes it clear that candidates will be able to obtain documentation from contributors to overcome the

rebuttable presumption of affiliation. The Board will provide notice to a candidate if he or she accepts an over-the-limit contribution from entities presumed to be a single-source, and the candidate will then have the opportunity to show that the entities are distinct sources.[7]7 As a practical matter, candidates will be well advised to take additional steps when they accept contributions to verify that contributions from limited liability entities and labor organizations do not violate the applicable contribution limits. It is anticipated that the 2005 Campaign Finance Handbook would be supplemented to provide examples of documentation candidates can request from contributors and questions candidates can ask contributors to help rebut the presumption. Applying Rules 1-04(h) and (i) to the entire 2005 election cycle will not create a departure from Board practice, because, as emphasized above, the rule amendments are based upon existing Board practice. Candidates who have accepted contributions from limited liability entities and labor organizations during the 2005 election cycle preceding the effective date of this rule have time to review their contributions to verify whether the rebuttable presumptions apply, and if so, to return the over-the-limit portion of the contributions or to collect documentation to overcome the rebuttable presumption. The Board has adopted minor changes to Rules 1-04(h) and (i) to conform them to legislation passed by the City Council on December 15, 2004.

10. Statement of Basis and Purpose in City Record Feb. 20, 2009: I. Explanation, Basis, and Purpose The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The subject matter of this rulemaking was described in the Board's regulatory agenda for fiscal year 2009, published in **The City Record** on April 14, 2008. The amendments effect the following specific changes and will take effect thirty days after final publication in **The City Record**. Returning receipts (§1-04(c)(1)) Candidates must return contributions in excess of the "doing business" contribution limits within 20 days of notification from the Board that the contributor is considered to be doing business with the City. **See** Admin. Code §3-703(1-b). The new rule clarifies that a candidate may retain apparent "doing business" contributions if the candidate demonstrates, within 20 days of notification from the Board, that an application for removal from the doing business database is pending before the Mayor's Office of Contract Services (MOCS) or the City Clerk. The candidate may retain the contribution until notified by the Board that MOCS or the City Clerk had denied the application for removal, in which case the campaign has 20 days following such second notification to return the contribution. Contributions retained pursuant to the new rule are not eligible to be matched with public funds unless and until the Board notifies the campaign that the contributor was removed from the doing business database. Spending public funds (§1-08(g)) The amendment clarifies that public funds may not be used for services that are never received, including legal services paid in advance pursuant to a retainer agreement to the extent such advance payments exceed the value of the services ultimately rendered by the attorney or law firm. Filer Registration; Certification (§§1-11 and 2-01) The amendments clarify that candidates must amend their Filer Registration or Certification forms if any of the information required to be listed on those forms changes. Candidates must submit the amended form by the deadline for their next disclosure statement, or, in the case of changes that occur after the deadline for the last disclosure statement for an election, within 30 days of the change. Candidates need not amend the forms after the issuance of the Final Audit Report unless they have outstanding liabilities from the covered election, including penalties or public funds repayments owed to the Board. Filing dates (§3-02(b)) The amendment provides that if the first semi-annual disclosure statement following the date of a special election is due less than 30 days after the 27 day post-election statement, the last disclosure statement required to be filed by candidates in a special election is the second semi-annual statement after the date of the special election. Credit Card Contributions (§4-01(b)(6)) The amendment clarifies that candidates must maintain copies of their unique merchant account agreements. Record Retention (§4-03) The amendment requires candidates to notify the Board of any changes to the contact information for the custodian of their records by the deadline for their next disclosure statement, or, in the case of changes that occur after the deadline for the last disclosure statement for an election, within 30 days of the change. This requirement remains in effect for six years following the date of the election to which the campaign records pertain. Petitions for review of payment determinations (§§(5-01(i), 5-02(a)) The amendments provide that a participant may only petition the Board for review of public funds determinations prior to the election, unless the participant submits information and/or documentation that was not available to the Board previously and is material to the payment or non-payment determination, and shows good cause for the previous failure to provide such information and/or documentation. As a result of a change to the Campaign Finance Act added by Local Law 34 of 2007, participants now have the opportunity to challenge public funds determinations prior to the issuance of the final audit report in a hearing

before the Board or before an independent hearing officer. Deductions from payments (§5-01(n)) The amendment clarifies that funds deposited into, and disbursements made from a segregated bank account established and maintained in compliance with §5-01(n) for the purpose of repaying debt from a previous election will not be considered raised or spent for the current covered election for purposes of the participant's expenditure limit and unspent campaign funds calculations.

FOOTNOTES

1

[Footnote 1]: [1] Although the single-source restriction is not in itself concerned with aggregates, it is of interest that approximately 13% of all contributions to Program participants and 50-55% of all organizational contributions in the 2003 election cycle were from labor organizations and political committees established by labor organizations. Political committees established by labor organizations represented approximately 60% of all political committee contributions in the 2003 election cycle. (Approximately 30% of political committee contributions in the 2003 election cycle were from candidate committees, subject to other regulations under the Act and Rules.) Contributions from limited liability entities and political committees established by limited liability entities represented approximately 5-6% of contributions in the 2003 election cycle and approximately 20% of all organizational contributions.

2

[Footnote 2]: [2] New York City Charter §1052(a)(12); New York City Administrative Code §3-703(1)(l).

3

[Footnote 3]: [3] See FEC v. Sailors' Union of the Pacific Political Fund, 828 F.2d 502, 504 (9th Cir. 1987) (citing 122 Cong. Rec. 6710-23 (1976)).

4

[Footnote 4]: [4] See id. at 504-5 (citing H.R. Conf. Rep. No. 94-1057 (1976) reprinted in 1976 U.S.C.C.A.N. 929, 946, 973).

5

[Footnote 5]: [5] Following the Board's adoption of the rebuttable presumption for public comment, Bob Master, political director of the Communication Workers of America District 1, commented that the proposed Board rule looked similar to the federal rule, and "[w]e've lived comfortably under the federal rule. . . ." Dan Janison, Limiting union spending, Newsday, October 22, 2004 at A17.

7

[Footnote 7]: [7] It remains the candidate's responsibility to make this inquiry in the first instance, whether or not the candidate is questioned by the Board in the audit process.

Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-05 Loans.

(a) **Repayment by next election.** A loan, must be repaid by the date of the next election, or else the loan, guarantee, or other security for a loan will be considered a contribution subject to the Act's contribution limits.

(b) **Loans not made in regular course of business.** A loan not made in the regular course of the lender's business shall be deemed, to the extent not repaid to the lender by the date of the next election, a contribution by the lender.

(c) **Loans made in regular course of business.** A loan made in the regular course of the lender's business shall be deemed, to the extent not repaid by the date of the next election, a contribution by the obligor on the loan and by any other person endorsing, cosigning, guaranteeing, collaterizing, or otherwise providing security for the loan. Neither the Act nor the Charter prohibits receipt of a loan made in the regular course of the lender's business, regardless whether the lender is a corporation, limited liability company, or partnership.

(d) **Third party repays loan.** If any portion of a loan is repaid by a person or entity other than the participant or non-participant receiving the loan, the portion thus repaid shall be a contribution by that person or entity.

(e) [Reserved]

(f) [Reserved]

(g) **Post-election loans.** Loans received after an election that are used for that election are considered contributions for that election, and must be deposited in and disbursed from an account established and maintained for that election,

as provided in §2-06(b), except that a loan made by the candidate after the election for the purpose of (i) paying penalties pursuant to the Act or (ii) making required repayments to the Fund is not subject to the contribution limit.

(h) **Attributing a loan to an election.** A loan is presumed to be accepted for the first election in which the participant or non-participant is a candidate following the day that the loan is received, except:

(1) as otherwise provided in §1-05(g);

(2) in the case of a State or local election, loans received before the first January 12 after an election will also be presumed to be accepted for that election; and

(3) in the case of a Federal election, loans received before the first January 1 after the election will also be presumed to be accepted for that election, except as may otherwise be provided under Federal law and regulations.

(i) **Deposit.** All loans must be accepted and deposited, or rejected and returned, within 10 business days after receipt.

(j) **Loans forgiven.** Any portion of a loan that is forgiven is a monetary contribution.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) amended City Record Oct. 26, 2007 §7, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (c) amended City Record Oct. 26, 2007 §7, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (c) amended City Record July 20, 1999 §11, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (e) repealed City Record Oct. 10, 1995 §8, eff. Nov. 9, 1995. [See Note 2]

Subd. (f) repealed City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See Note 1]

Subd. (g) amended City Record Oct. 18, 1996 §6, eff. Jan. 1, 1997. [See Note 3]

Subd. (h) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (i) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (j) added City Record Oct. 10, 1995 §10, eff. Nov. 9, 1995. [See Note 2]

DERIVATION

Subd. (g) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (h) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (h) par (2) amended City Record Oct. 10, 1995 §9, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 19, 2002:

Loans (§1-05(f))

Under New York State Election Law §14-114(6), New York City Administrative Code §3-702(8), and §1-05(a), a loan to a campaign that is not repaid by the date of the next election is considered to be a contribution. If a loan that remained unpaid on the date of the election were not considered a contribution, the loan would provide the lender with a vehicle to supply campaign funds far in excess of the amount he or she could give by way of contribution, which would circumvent the contribution limits of the Campaign Finance Program.

In Advisory Opinion No. 1989-42, the Board created a narrow exception to the law that allowed participants receiving matchable contributions shortly before the election to take out a "bridge loan" in anticipation of a post-election public funds payment, provided that the participant used the post-election public funds to repay the loan. In 1991, the bridge loan exception was codified in §1-05(f).

This amendment will eliminate the bridge loan exception by deleting §1-05(f). The bridge loan exception is inconsistent with State Election Law §14-114(6), under which a loan not repaid by the date of the election is deemed to be a contribution. See **In Re Cook v. Unger,** No. 5576-02 (Sup. Ct., Albany Cty. Oct. 29, 2002). Changes in the Program's matching formula and schedule for disclosure statements have effectively eliminated the justification for bridge loans insofar as there is no longer any pre-election filing submitted to the Board that cannot be paid upon by the date of the election for administrative reasons. The Board will, however, evaluate on a case-by-case basis, as part of its post-election audit of every campaign, the circumstances surrounding any loan, including the timing of the loan, whether it has been repaid, and whether in fact public funds are due to a campaign, in order to determine the appropriate penalties, if any, for over-the-limit contribution violations resulting from loans outstanding on the date of the election.

2. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Loans** (R. 1-05(e), (j); 3-03(d); 3-04(d)) The rules eliminate the reporting of outstanding principal from the loan disclosure requirements. The rules also make clear that loans forgiven are not matchable contributions under the Campaign Finance Act. The presumption that excessive loans are knowing violations of the contribution limit if not paid back by the day of the election is repealed. Loans forgiven are treated as monetary contributions, not in-kind contributions in conformance with State Board of Elections disclosure requirements.

3. Statement of Basis and Purpose in City Record Oct. 18, 1996: Loans **Post-election Loans** (R. 1-05(g)) Loans received after an election that are used for that election are considered contributions. Under the rules, two limited exceptions are permitted: when a candidate makes a loan from his or her own personal funds after the election, for the purpose of paying penalties imposed by the Board or returning public funds due to the Board, the post-election loan would not be considered a contribution.

Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-06 Special Elections.

If a special election to fill a vacancy is declared, the Board may provide for the following special requirements and procedures for candidates in the special election, after considering the date of the election and any other relevant factors:

(a) a standard by which contributions, loans, and/or expenditures are presumed to be accepted or made for the special election, notwithstanding §§1-04(f), l-05(h), and 1-08(c)(1);

(b) a standard for determining the total amount of surplus funds from previous elections and

(c) such other requirements and procedures as the Board may deem necessary to implement the provisions of the Act in the special election fully and effectively.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (b) amended City Record Oct. 10, 1995 §11, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) amended City Record Oct. 10, 1995 §11, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-07 Funds Originally Received for Other Elections.

(a) **Use.** Funds originally received by a committee not otherwise involved in a covered election may be used in a covered election subject to the requirements of this rule, but may not be claimed as matchable contributions for that election.

(b) **Surplus funds.** The Board deems the cash balance reported in the candidate's first semi-annual form or Board disclosure statement at the beginning of the first reporting period for an election to be the total amount of surplus funds the committee had from a previous election; except that the amount deemed to be surplus funds may be reduced by the following:

(1) the total amount of debts and obligations outstanding at the beginning of the reporting period;

(2) the total amount subsequently transferred to a political committee that is not involved in a covered election; and

(3) if the candidate was a participant in the previous election, the total amount of public funds subsequently repaid.

When requested by the Board, candidates shall provide additional information regarding totals and transactions reported in State forms or Board disclosure statements.

(c) **Contribution limit; prohibited contributions.** Candidates have the burden of demonstrating that surplus funds and transfers of funds from committees not otherwise involved in the covered election do not derive from: (1) contributions in excess of the Act's contribution limits, including contributions that would exceed the Act's contribution

limits when aggregated with other contributions accepted from the same source; or (2) contributions from sources prohibited by the Act or the Charter. In addition, participants have the burden of demonstrating that funds transferred from a committee, other than another principal committee of the same candidate, derive solely from contributions for which records demonstrating the contributors' intent to designate the contributions for the covered election have been submitted and maintained as required pursuant to Rules 3-03(c)(2) and 4-01(b)(8), respectively.

For purposes of enforcing the contribution limit and contribution prohibitions, the Board shall attribute surplus funds and such transfers to the last monetary contributions, loans, and other receipts received by: (1) the candidate on or before the date of the cash balance described in subdivision (b) in the case of surplus funds; or (2) the transferor committee before making the transfer. The candidate shall either promptly return the portion of any contribution that exceeds the Act's contribution limit or violates a prohibition of the Act or the Charter, as provided in §1-04(c)(1), or deposit the excess portion or amount of the prohibited contribution, as the case may be, into a separate account not to be used in a covered election.

(d) **Related expenditures.** Expenditures made in connection with raising or administering funds transferred from a committee not otherwise involved in a covered election are subject to the expenditure limits of the Act and shall be reported as provided in §3-03(c)(2). As provided for in §1-08(o), the participant shall have the burden of demonstrating that any expenditures incurred by the transferor committee are not subject to the expenditure limits of the Act.

HISTORICAL NOTE

Section amended (individually by subdivision) City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) open par amended City Record May 15, 2008 §4, eff. June 14, 2008. [See T52 §1-02 Note 7]

DERIVATION

Section amended City Record Oct. 10, 1995 §12, eff. Nov. 9, 1995. [See Note 1]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) par (1) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (c) amended City Record July 20, 1999 §12, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]. Certain internal designations made by the Law Department per Charter §1045(b).

Subd. (g) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (h) added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 10, 1995:

Contributions and Other Receipts

Funds Originally Received for Other Elections (R. 1-07; 3-03(c)(2), (3))

The rules repeal the requirement that disclosure statements contain an attribution of surplus funds from previous elections and of transfers received from committees not involved in the current election. Instead, the rules consolidate the treatment of these funds as "funds originally received for other elections" and set forth the attribution principles as those that the Board will continue to apply when determining whether the use of the funds would violate the contribution limit in the current election. Participating candidates have the burden of showing that expenditures related to raising and administering these funds are not subject to the Act's expenditure limits.

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-08 Expenditures.

(a) **Expenditures.** Expenditures include all disbursements made, liabilities incurred, and contributions received by a candidate, except disbursements to return contributions, repay loans, return public funds, and transfers. Some expenditures are subject to the expenditure limits of the Act and other expenditures are exempt.

(b) **Making an expenditure.** As provided and described in §3-706 (1) and (2) of the Code, an expenditure for goods or services is made when the goods or services are received, used, or rendered, regardless when payment is made. Expenditures for goods or services received, used, or rendered in more than one year shall be attributed in a reasonable manner to the expenditure limits of §3-706(1) or (2) of the Code, as appropriate.

(c) **Attributing an expenditure to an election.** (1) An expenditure is presumed to be made for the first election (in which the participant, limited participant or non-participant is a candidate) following the day it is made, except: (i) in the case of a State or local election, expenditures made before the first January 12 after an election will also be presumed to be made for that election; (ii) in the case of a federal election, expenditures made before the first January 1 after the election will also be presumed to be made for that election, except as may otherwise be provided under federal law and regulations.

(2) (i) If there is no contested primary election for an office, expenditures made by a participant or limited participant seeking that office are subject to the general election expenditure limit of §3-706(1) of the Code.

(ii) If there is a contested or write-in primary election in any party for an office, every participant or limited participant seeking that office, regardless whether the participant or limited participant is in the primary election, may

make expenditures subject to the primary election expenditure limit of §3-706(1) of the Code, provided the participant or limited participant files the three pre-primary and 10 day post-primary election disclosure statements and daily disclosures pursuant to Rule 3-02(c), (d), and (e) in a timely manner. In this case, the general election expenditure limit will first apply after the date of the primary election.

(iii) Notwithstanding subparagraph (i), if a participant or limited participant demonstrates to the Board that for a period preceding the primary election the participant or limited participant had reasonably anticipated a primary election in any party for the office the participant or limited participant seeks, the participant or limited participant may attribute expenditures made before and during that period to the primary election expenditure limit of §3-706(1) of the Code, provided the participant or limited participant files the three pre-primary and 10 day post-primary election disclosure statements and daily disclosures pursuant to Rule 3-02(c), (d), and (e) in a timely manner. In this case, the general election expenditure limit will first apply after that period. In order to demonstrate to the Board that for a period preceding the primary election the participant or limited participant had reasonably anticipated a primary election, the participant or limited participant must file a petition, consisting of an affidavit with supporting documentation, with the Board no later than ten business days following the date the last remaining candidate other than the participant or limited participant was finally disqualified from the ballot as set forth in Rule 5-02(b). The affidavit must specify the period of time during which it was reasonable to anticipate that a primary election would be held, identify the prospective candidate(s), and provide a factual basis for the participant's or limited participant's belief that a primary election was reasonably anticipated during the specified period of time. The supporting documentation must demonstrate that the prospective candidate(s) engaged in activities that would lead a reasonable person to believe that such candidate(s) would participate in the primary election. Such activities may include: (i) raising or spending funds for the primary election; (ii) authorizing a political committee with the Board of Elections for the primary election; (iii) filing a filer registration and/or certification form with the Board; (iv) engaging in petitioning activity, including the filing of petitions with the Board of Elections; (v) producing and/or distributing campaign literature; and (vi) campaigning for office or otherwise publicly declaring an intent to participate in the primary election.

(iv) Once it is determined by petition litigation or otherwise that no primary election will be held for nomination to an office, expenditures made by participants or limited participant seeking that office are subject to the general election expenditure limit of §3-706(1) of the Code.

(v) Expenditures made before the primary election by a participant or limited participant who is a candidate in a contested primary election are subject to the primary election expenditure limits of §3-706(1) of the Code, regardless whether the participant or limited participant has also received the nomination of another party without a primary election.

(3) Candidates have the burden of demonstrating that expenditures made by committees reported not to be involved in the election in which the candidate is currently a participant or limited participant were not made in connection with such election. Failure to meet this burden will result in the application of all Program requirements to these committees for such election.

(4) **Special elections.** An expenditure is presumed to be subject to the special election expenditure limit on and after the date a special election was first reasonably anticipated, as determined by the Board. Participants or limited participants may present evidence to the Board demonstrating the date a special election was first reasonably anticipated.

(d) **Expenditure limits.** (1) All expenditures made by a participant or limited participant for the purpose of promoting or facilitating his or her nomination or election, including expenditures made for the purpose of promoting or facilitating the defeat of an opponent or prospective opponent, are subject to the expenditure limit applicable under the Act. All expenditures made by the participant or limited participant and his or her principal committee shall be totaled to determine the participant's or limited participant's compliance with the applicable expenditure limit. Expenditures made after the last election in an election year in which the participant or limited participant is a candidate, or a special

election, are not subject to the expenditure limits for that election.

(2) A participant or limited participant is permitted to make expenditures in excess of the limits of §3-706(2) of the Code, but not in excess of the limits of §3-706(1) of the Code. The limits of §3-706(2) are the minimum amounts that a participant or limited participant must spend during the three calendar years before the election year in order to spend the total aggregate amount the Act and these Rules permit during those years and the time period encompassed by the expenditure limit that first applies to the candidate in the election year, pursuant to §3-706(1) of the Code.

(3) All expenditures made by a participant or limited participant for the purpose of advocating a vote for or against a proposal on the ballot in an election that is also a covered election, regardless whether the expenditures were also made to promote or facilitate the participant's nomination or election, shall be subject to the expenditure limits applicable in such covered election.

(4) The following shall not be subject to the expenditure limits: (i) expenses made for the purpose of bringing or responding to any action, proceeding, claim or suit before any court or arbitrator or administrative agency to determine a candidate's or political committee's compliance with the requirements of this chapter, including eligibility for public funds payments, or pursuant to or with respect to election law or other law or regulation governing candidate or political committee activity or ballot status; (ii) expenses to challenge or defend the validity of petitions of designation or nomination or certificates of nomination, acceptance, authorization, declination or substitution, and expenses related to the canvassing or re-canvassing of election results; and (iii) expenses related to the post-election audit.

(e) Reserved.

(f) **Independent expenditures.** (1) Factors for determining whether an expenditure is independent include, but are not limited to:

(i) whether the person, political committee, or other entity making the expenditure is also an agent of a candidate;

(ii) whether the treasurer of, or other person authorized to accept receipts or make expenditures for, the person, political committee, or other entity making the expenditure is also an agent of a candidate;

(iii) whether a candidate has authorized, requested, suggested, fostered, or otherwise cooperated in any way in the formation or operation of the person, political committee, or other entity making the expenditure;

(iv) whether the person, political committee, or other entity making the expenditure has been established, financed, maintained, or controlled by any of the same persons, political committees, or other entities as those which have established, financed, maintained, or controlled a political committee authorized by the candidate;

(v) whether the person, political committee, or other entity making the expenditure and the candidates have each retained, consulted, or otherwise been in communication with the same third party or parties, if the candidate knew or should have known that the candidate's communication or relationship to the third party or parties would inform or result in expenditures to benefit the candidate; and

(vi) whether the candidate, any agent of the candidate, or any political committee authorized by the candidate shares or rents space for a campaign-related purpose with or from the person, political committee, or other entity making the expenditure.

(2) Financing the dissemination, distribution, or republication of any broadcast or any written, graphic, or other form of campaign materials prepared by a candidate is a contribution to, and an expenditure by, the candidate, unless this activity was not in any way undertaken, authorized, requested, suggested, fostered, or otherwise cooperated in by the candidate.

(3) An expenditure for the purpose of promoting or facilitating the nomination or election of a candidate, which is determined not to be an independent expenditure, is a contribution to, and an expenditure by, the candidate.

(4) (i) Communication between, or common agents shared by, parties and their nominees will not require a conclusion that all spending by the party's constituted committees and party committees in an election is an in-kind contribution to the nominee. The following expenditures made by party committees or constituted committees are not considered in-kind contributions to a candidate unless it is demonstrated that the candidate in some way cooperated in the expenditure and that the expenditure was intended to benefit that candidate:

(A) materials or activities that promote the party, or oppose another party, by name, platform, principles, history, theme, slogans, issues, or philosophy, without reference to particular candidates in an upcoming election subject to the requirements of the Act.

(B) materials or activities in connection with candidates and elections not subject to the requirements of the Act.

(C) training, compensating, or providing materials for poll watchers appointed by the party pursuant to New York Election Law §8-500.

(D) promoting party enrollment or voter turnout without reference to particular candidates in an upcoming election subject to Program requirements, including research, polling, recruitment of party employees and volunteers, and development and maintenance of voter and contributor lists.

(E) raising funds for the party without reference to particular candidates in an upcoming election subject to the requirements of the Act.

(F) mailing of absentee ballot applications in a special or general election in which an office not subject to the requirements of the Act is on the ballot.

(ii) The Board may require a candidate to demonstrate in any proceeding before the Board that any of the following expenditures that are made by a party committee or constituted committee are not in-kind contributions to the candidate:

(A) expenditures for materials or activity that include an electioneering message about a clearly identified candidate for a covered election.

(B) expenditures for advertisements, broadcasting, mailings, or electronic media for a candidate or against his or her opponent, including a home page on the Internet.

(C) expenditures for which the candidate has, without making public disclosure of an outstanding liability in a timely manner, promised or made reimbursement or other payment to the party committee or constituted committee. These expenditures will be considered in-kind contributions during the time preceding the reimbursement or other payment by the candidate.

(5) If candidates announce they are running together as a "ticket" for which they have chosen to join together in a broad spectrum of activities to promote each other's election, the Board will presume that expenditures made by one candidate's campaign for materials or activities that clearly identify the other candidate are in-kind contributions to the second candidate. The following factors would increase the burden a candidate would have in overcoming this presumption: (i) the campaigns have staff, consultants, office space, or telephone lines in common; (ii) other in-kind contributions, expenditure refunds, advances, or joint expenditures have been made between these campaigns. If the expenditures are in-kind contributions, the expenditures are subject to the apportionment requirements of Rule 1-08(h).

(g) **Spending public funds.**

(1) Public funds may be used only for expenditures by a participant's principal committee to further the participant's nomination or election either in a special election to fill a vacancy or during the calendar year in which the election in which the candidate is a participant is held.

(2) Public funds may not be used for:

(i) an expenditure for any purpose other than the furtherance of the participant's nomination or election;

(ii) an expenditure not incurred during the calendar year of the election;

(iii) an expenditure in violation of any law;

(iv) payments made to the participant or a spouse, domestic partner, child, grandchild, parent, grandparent, brother, or sister of the participant or spouse or domestic partner of such child, grandchild, parent, grandparent, brother, or sister, or to a business entity in which the participant or any such person has a 10 percent or greater ownership interest;

(v) payments in excess of the fair market value of services, materials, facilities, or other things of value received;

(vi)(A) any expenditure made after the participant has been finally disqualified or had his or her petitions finally declared invalid by the New York City Board of Elections or a court of competent jurisdiction, except that such expenditures may be made (1) as otherwise permitted pursuant to §3-709(7) of the Code, or (2) for a different election (other than a special election to fill a vacancy) held later in the same calendar year in which the candidate seeks election for the same office;

(B) any expenditure made after the only remaining opponent of the participant has been finally disqualified or had his or her petitions declared invalid by the New York City Board of Elections or a court of competent jurisdiction, except that such expenditures may be made for a different election (other than a special election to fill a vacancy) held later in the same calendar year in which the participant seeks election for the same office;

(C) any other election, if the public funds were originally received for a special election to fill a vacancy.

(vii) payments in cash;

(viii) any contribution, transfer, or loan made to another candidate or political committee;

(ix) gifts, except brochures, buttons, signs and other printed campaign material;

(x) any expenditures to challenge or defend the validity of petitions of designation, or nomination, or certificates of nomination, acceptance, authorization, declination, or substitution, and expenses related to the canvassing of election results;

(xi) any expenditure for which records required by §4-01 are not maintained or obtained by the participant;

(xii) any expenditure that is not itemized in a disclosure statement submitted pursuant to §3-03;

(xiii) any payment that is not made or reimbursed from an account disclosed by the participant pursuant to §1-11(d) or 2-01(a);

(xiv) reimbursement for advances, except in the case of individual purchases in excess of $250;

(xv) expenditures made in connection with any action, claim or suit before any court or arbitrator;

(xvi) expenditures made primarily for the purpose of expressly advocating a vote for or against a ballot proposal, other than expenditures made also to further the participating candidate's nomination for election or election;

(xvii) payment of any penalty or fine imposed pursuant to federal, state or local law; or

(xviii) payments for services that were never received, including payments for legal services pursuant to a retainer agreement to the extent payments for such services exceed the value of the services rendered.

(3) It is presumed that the following bills for goods and services are not qualified campaign expenditures:

(i) bills for an election that are first reported in a disclosure statement submitted later than the 10 day or 27 day post-election disclosure statement applicable to that election; and

(ii) bills first reported in an amendment to or resubmission of a disclosure statement that is made after the last election in an election year in which the participant is a candidate, or after a special election.

(4) A liability that is not reported in a contemporaneous manner is a violation of §3-703(6) of the Code and will not be considered a qualified campaign expenditure.

(h) **Joint expenditures; endorsements.**

(1) In accordance with the Act, nothing in these Rules shall be construed to restrict a candidate from authorizing expenditures for joint campaign materials and other joint campaign activities, including fundraising and campaign communications such as mailings and telephone and other communications, if the benefit the candidate derives from the material or activity is proportionally equivalent to the candidate's expenditures for the material or activity. To the extent a candidate derives a disproportionate benefit, the candidate is considered to have received a contribution and made an expenditure. Among the factors the Board will consider in determining whether the benefit is "proportionally equivalent," are:

(i) the focus of the material or activity,

(ii) the geographic distribution or location of the material or activity;

(iii) the subject matter of the communication;

(iv) the references to the candidate or the candidate's appearances therein;

(v) the relative prominence of a candidate's references or appearances in the communication, including the size and location of references to the candidate and any photographs of the candidate;

(vi) the timing of the communication; and

(vii) other circumstances surrounding the communication. The amount spent by the candidate for these purposes is subject to the expenditure limit applicable under the Act, unless it is otherwise exempt.

(2) Notwithstanding the provisions of paragraph (1) above, the following activities in support of another candidates by a participant, limited participant or non-participant shall not be considered contributions to or expenditures by such participant, limited participant or non-participant, except to the extent that such activities are paid for by the participant, limited participant or non-participant for a covered election:

(i) the act alone of endorsing or appearing with another candidate for public office, party nomination or party position;

(ii) the insubstantial communication of such endorsement or appearance described in subparagraph (i), such as where the candidate's name is one of several names appearing on the communication and is of equivalent prominence as the other names;

(iii) fundraising assistance to another candidate in the form of written communications that do not promote the participant, limited participant or non-participant such as the appearance of the participant's, limited participant's or non-participant's, name or signature on a letter soliciting funds for another candidate or the appearance of the participant's, limited participant's or non-participant's name on fundraising material where the participant's, limited participant's or non-participant's name appears alone or with other names and is of equivalent prominence as the other names; and

(iv) a typical communication by a political club to its members, which includes the name of a candidate, provided that the candidate is already a member of the political club, the political club has fewer than 500 members, and the communication does not solicit funds on behalf of or otherwise promote the participant's, limited participant's or non-participant's campaign for a covered election.

(3)(i) The Board may, in its discretion, determine that the benefit to a candidate from references to or appearances of that candidate contained in another candidate's communication, such as campaign literature or an automated telephone call, is of de minimis value to the candidate based on the factors listed in paragraph (1) or other factors.

(ii) Candidates and other individuals or entities may present information to the Board establishing such a de minimis benefit pursuant to §7-01, or in such other manner as the Board may determine, or the candidate may present such information during the post-election audit process.

(i) **Expenditures by check.** No candidate may expend an amount in excess of $100 except by check drawn on a reported depository and signed by the candidate or person authorized to sign checks by the candidate.

(j) Reserved.

(k) **Volunteer services.** After receiving public funds for an election, participants shall not pay volunteers for services already performed on a voluntary basis for that election, but may hire them as employees or retain them as consultants for future services.

(l) **Expenditure limit compliance.** (1) Participants and limited participants shall monitor whether their total expenditures exceed the limit of §3-706(1) of the Code or, if applicable, the limit of §3-706(3)(a)(i) of the Code. The amount of the expenditure limit that applies to the participant or limited participant in the calendar year of the election, pursuant to §3-706(1) of the Code, shall be reduced by the amount by which the initial expenditure limit pursuant to §3-706(2) of the Code is exceeded. Participants and limited participants have the burden of demonstrating that expenditures are exempt pursuant to §3-706(4) of the Code. A participant or limited participant shall meet this burden by maintaining contemporaneous, detailed records that demonstrate that each individual expenditure claimed as exempt is exempt in accordance with §3-706(4) of the Code and submitting such documentation as required under paragraph (3) below.

(2) Reserved.

(3) If a participant or limited participant fails to submit documentation sufficient to substantiate an exempt expenditure claim, the expenditure subject to such claim shall not be considered exempt from the expenditure limit applicable to the participant or limited participant under §3-706(1) or §3-706(3)(a)(i) of the Code.

(4) For purposes of this subdivision, in determining whether a participant's or limited participant's total expenditures exceed the amount of the limit applicable under §3-706(1) or §3-706(3)(a)(i) of the Code, the following expenditures shall be excluded: (i) expenditures made in the first three years of the election cycle, to the extent such expenditures do not exceed the limit applicable under §3-706(2) of the Code; and (ii) in the case of the general election expenditure limit, expenditures made not later than the closing date of the 10 day post-primary election disclosure statement, provided that the participant or limited participant was subject to a primary election expenditure limit.

(5) Notwithstanding anything otherwise provided for in this subdivision, the reimbursement of an advance shall not be considered an exempt expenditure.

(m) **Fundraising for more than one election.** When a candidate makes expenditures for a single event or other activity to raise funds for more than one office sought, and the first election that will be held is:

(1) a covered election, the full amount of such expenditures is subject to the expenditure limits, the contribution limits, and the contribution prohibitions of the Act and the Charter.

(2) not a covered election, a portion of such expenditures will be subject to the expenditure limits, the contribution limits, and the contribution prohibitions of the Act and the Charter in such proportion as the total funds raised in connection with such event or other fundraising activity for the second election bears to the total such funds raised for both elections by such event or activity. Alternatively, the candidate may demonstrate to the Board that a different apportionment is applicable in accordance with §1-07(d).

(n) **Fundraising solicitations.** Each written solicitation of contributions by or on behalf of a candidate, whether in paper or electronic format, shall include the following statement, written in a conspicuous and clearly recognizable manner: "State law prohibits making a contribution in someone else's name, reimbursing someone for a contribution made in your name, being reimbursed for a contribution made in your name, or claiming to have made a contribution when a loan is made."

(o) **Expenditure limit compliance for transfers.** In the case of a transfer of funds from a committee not otherwise involved in the covered election, other than another principal committee of the same candidate, the participant must allocate to the transferred contributions any expenditures incurred by the transferor committee during the covered election cycle in connection with raising or administering transferred contributions, and any expenditures incurred by the transferor committee prior to the covered election cycle in connection with raising the transferred contributions. In such a case, the participant has the burden of demonstrating, for the purpose of compliance with the expenditure limits of the Act, what expenditures incurred by the transferor committee were not made in connection with raising or administering the transferred contributions. At the Board's request, the participant shall provide documentation related to any such expenditures, including copies of Federal forms or disclosure statements filed with the New York State or City Board of Elections on behalf of the transferor committee. Expenditures will be applied towards the expenditure limit in effect at the time of the transfer; provided, however, that in the case of transfers made prior to the covered election cycle, expenditures will be applied towards the expenditure limits of §3-706(2).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005 with internal reference provision eff.

Jan. 1, 2006. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Jan. 1, 2006. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) par 1 amended City Record Oct. 23, 2008 §4, eff. Nov. 22, 2008.

[See T52 §1-02 Note 8]

Subd. (c) par (2) subpars (i), (ii), (iii) amended City Record Oct. 23, 2008 §4, eff. Nov. 22, 2008. [See

T52 §1-02 Note 8]

Subd. (d) amended City Record Oct. 26, 2007 §8, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005 with internal reference provision eff. Jan. 1, 2006. [See T52 §1-01 Note 1]

Subd. (e) repealed City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 8]

Subd. (f) amended City Record Oct. 23, 2008 §5, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (f) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See Note 11 and T52 §1-01 Note 1]

Subd. (g) par (2) subpar (xiv) amended City Record Oct. 26, 2007 §9, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (g) par (2) subpar (xv) amended City Record Oct. 26, 2007 §9, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (g) par (2) subpars (xvi), (xvii) amended City Record Feb. 20, 2009 §2, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (g) par (2) subpar (xvi) amended City Record Oct. 26, 2007 §9, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (g) par (2) subpar (xvii) added City Record Oct. 26, 2007 §9, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (g) par (2) subpar (xviii) added City Record Feb. 20, 2009 §2, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (h) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (i) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (j) repealed City Record Feb. 11, 2005 eff. Jan. 1, 2006. [See T52 §1-01 Note 1]

Subd. (k) added City Record Oct. 10, 1995 §17, eff. Nov. 9, 1995. [See Note 7]

Subd. (l) amended City Record Oct. 26, 2007 §10, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (l) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See Note 12 and T52 §1-01 Note 1]

Subd. (m) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (n) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (o) amended City Record June 18, 2009 §1, eff. July 18, 2009. [See Note 13]

Subd. (o) added City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Subd. (a) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (a) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (b) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (c) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (c) par (1) subpar (i) amended City Record Oct. 10, 1995 §13, eff. Nov. 9, 1995. [See Note 6]

Subd. (c) par (2) subpar (ii) amended City Record Oct. 10, 1995 §14, eff. Nov. 9, 1995. [See Note 6]

Subd. (c) par (2) subpar (iii) amended City Record Oct. 10, 1995 §14, eff. Nov. 9, 1995. [See Note 6]

Subd. (c) par (3) added City Record Oct. 10, 1995 §15, eff. Nov. 9, 1995. [See Note 6]

Subd. (c) par (4) added City Record Oct. 10, 1995 §15, eff. Nov. 9, 1995. [See Note 6]

Subd. (d) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (d) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (d) par (1) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 8]

Subd. (d) par (2) amended City Record July 20, 1999 §13, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (d) par (2) subpar (ii) amended City Record Sept. 29, 1997 eff. 46 days after approval of City Council. [See Note 9]

Subd. (d) par (2) subpar (iii) amended City Record Sept. 29, 1997 eff. 46 days after approval of City Council. [See Note 9]

Subd. (d) par (2) subpar (iv) added City Record Sept. 29, 1997 eff. 46 days after approval of City Council. [See Note 9]

Subd. (e) par (5) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) par (6) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) par (1) subpars (iii), (iv) amended City Record Feb. 29, 2000 §3, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

Subd. (f) par (1) subpar (v) added City Record Feb. 29, 2000 §3, eff. Mar. 30, 2000. [See Note 1]

Subd. (f) par (4) added City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 8]

Subd. (f) par (4) subpar (ii) clause (C) added City Record Feb. 29, 2000 §4, eff. Mar. 30, 2000. [See Note 1]

Subd. (f) par (5) added City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 8]

Subd. (g) amended City Record Jan. 15, 2003 eff. Feb. 14, 2003. [See Note 5]

Subd. (g) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (g) par (1) amended City Record July 20, 1999 §14, eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

Subd. (g) par (2) subpar (iv) amended City Record Oct. 9, 1998 eff. Nov. 8, 1998. [See T52 §1-02 Note 3]

Subd. (g) par (2) subpars (vi), (vii), (x) amended City Record July 20, 1999 §15, eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

Subd. (g) par (2) subpar (x) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (g) par (2) subpar (x) amended City Record July 20, 1999 §15, eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

Subd. (g) par (2) subpars (xi), (xii) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (g) par (2) subpar (xiii) amended City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See T52 §5-01 Note 7]

Subd. (g) par (2) subpar (xiii) amended City Record Feb. 29, 2000 §5, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

Subd. (g) par (2) subpar (xiii) amended City Record Oct. 10, 1995 §16, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (g) par (2) subpar (xiii) added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (g) par (2) subpar (xiv) amended City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See T52 §5-01 Note 7]

Subd. (g) par (2) subpar (xv) added City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See T52 §5-01

Note 7]

Subd. (g) par (3) added City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 8]

Subd. (g) par (4) added City Record Feb. 29, 2000 §6, eff. Mar. 30, 2000. [See T52 §1-04 Note 2]

Subd. (h) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (h) amended City Record Jan. 15, 2003 eff. Feb. 14, 2003. [See T52 §1-04 Note 4]

Subd. (i) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (j) amended City Record Jan. 15, 2003 eff. Feb. 14, 2003. [See Note 5]

Subd. (j) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (j) par (1) amended City Record Sept. 29, 1997 eff. 46 days after approval of City Council. [See Note 9]

Subd. (j) par (2) subpar (ii) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (j) par (3) amended City Record Sept. 29, 1997 eff. 46 days after approval of City Council. [See Note 9]

Subd. (j) par (4) repealed City Record July 20, 1999 §16, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (l) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (l) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See Note 3]

Subd. (l) amended City Record July 20, 1999 §17, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (l) added City Record Oct. 10, 1995 §17, eff. Nov. 9, 1995. [See Note 6]

Subd. (l) par (1) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 2]

Subd. (l) par (2) subpar (i) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 2] Note subpar (i) bracketed out of law in 2007 amendment.

Subd. (l) par (6) added City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See Note 10] Note par (6) became par (5) in 2007 amendment.

Subd. (m) added City Record July 20, 1999 §18, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]

Subd. (n) added City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 29, 2000:

In-Kind Contributions

An amendment to the Charter adopted by the electorate on November 3, 1998 requires the Board to adopt rules to attribute expenditures that indirectly assist or benefit a candidate participating in the voluntary system of campaign finance reform, **i.e.,** soft money, as in-kind contributions to such candidate. Charter §1052(a)(11)(b). The following amendments address this issue:

· An additional factor for determining whether an expenditure is independent would be whether the participant (defined in the Rule 1-02 to include "the candidate and every political committee authorized by the candidate, the treasurer of each such committee, and any agent of the candidate") and the person making the expenditure have each retained, consulted or otherwise have been in communication with the same third party or parties, if the participant knew or should have known that the participant's communication or relationship to the third party or parties would inform or result in expenditures to benefit the participant. Rule 1-08(f)(1)(v).

· If a party committee or constituted committee of the party nominating the participant ("party") makes expenditures which the participant has promised to repay or has reimbursed without the timely disclosure of an outstanding liability to the party, the participant may be required to demonstrate that these expenditures are not in-kind contributions. If the candidate fails to make the required demonstration, these expenditures would be considered in-kind contributions for the period before the reimbursement. Rule 1-08(f)(4)(ii)(C).

2. Statement of Basis and Purpose in City Record Mar. 27, 2001: Expenditures **Required Documentation for Exempt Expenditures** (Rule 1-08(l)(1) and (2)(i)) The amendment clarifies the current requirements for demonstrating that an expenditure is exempt in accordance with §3-306(4) of the New York City Administrative Code. The rule eliminates the provision under the current exempt expenditure section directing that a participant may request an advisory opinion regarding whether an expenditure is exempt under the Act, because, pursuant to Board Rule 7-04, a participant may request an advisory opinion regarding any matter, including whether an expenditure is exempt.

3. Statement of Basis and Purpose in City Record Nov. 19, 2002: **Documentation and Reporting of Exempt Expenditures** (§1-08(l)) This amendment is intended to simplify candidate reporting and Board auditing of exempt expenditures. Prior to the amendment, in addition to maintaining the books and records required generally for all expenditures, candidates seeking to establish exempt expenditures had to do so either by maintaining substantiating records that demonstrated each individual exempt expenditure claim or by establishing a methodology to account for exempt expenditures. The amendment replaces the methodology provisions with an option to limit aggregate exempt expenditures to an amount not greater than 5% of the applicable expenditure limit. Candidates choosing the latter option will be required to maintain only the records generally required for all expenditures, as long as the expenditures claimed as exempt fall into acceptable categories. This 5% limit is based on Board staff's review of the aggregate average exempt expenditure claims made by those 2001 participants who made exempt expenditure claims, adjusting for participants who claimed more than 50% in exempt expenditures. It is not designed to enable all candidates with claims for exempt expenditures to choose the 5% option, but rather to enable the average candidate to do so. The rule is intended to maintain the requirement that those candidates who anticipate having a high percentage of exempt expenditures must substantiate that amount through detailed documentation. Participants choosing to limit their exempt claims to 5% of the applicable expenditure limit nonetheless will be required to restrict their exempt claims to those expenditures which are permitted as exempt under the Act. The Board will not accept exempt claims which appear from the nature of the underlying expenditures not to be permitted under the Act. For example, exempt claims for television advertisements, fundraising, food, or entertainment will not be permitted, but an exempt claim for overhead or computers may be permitted. Other questionable exempt claims, such as for print ads or campaign mailings, would not be permitted, unless the participant were able to establish a valid exempt purpose for the expense through documentation. Participants choosing to substantiate all exempt claims through detailed documentation will have to submit these records to the Board upon request. The records required will be the same records required of participants who did not choose the methodology option under the prior version of the rule. The Board staff will be providing more detailed guidance and examples of what kinds of expenditures may be counted under the 5% option. The Board will

also provide examples of documentation needed by those not choosing the 5% option to establish exempt expenditure claims. The Board intends to provide this guidance and these examples in the Campaign Finance Handbook. The Board anticipates that the rule will simplify candidate recordkeeping and reporting and Board auditing of exempt expenditures. This amendment also provides specific treatment for ballot petition litigation expenses. These expenditures can often equal more than 5% of a participant's expenditure limit and are difficult to predict. Thus, to treat ballot litigation expenses in the same manner as other exempt claims would effectively force participants to choose the documentation option described above. Participants who chose to limit exempt claims to 5% of their expenditure limit would run the risk of violating that limit solely through any ballot petition legal fees. Therefore, the amendment provides that exempt claims for ballot petition litigation expenditures must be established through documentation, but that participants may still choose either the 5% limit or the detailed documentation of exempt expenditures. Ballot petition litigation expenses would not count against the 5% documentation limit.

4. Statement of Basis and Purpose in City Record Nov. 19, 2002: **Accounting and Auditing** 1. **Contribution Cards** (§§1-08(n), 4-01(b)(3),(7), 1-09(c), 3-04, 5-01(d)(18)) Section 4-01(b)(3) requires participants to maintain contribution cards for cash and money order contributions. The Board has found this contribution card requirement very useful in its audit review for invalid or fraudulent matchable contribution claims. Indeed, during the 2001 elections, Board staff uncovered multiple instances of improper or even apparently fraudulent matchable contribution claims through review of the contribution cards submitted by participants with their matching claims. These amendments require the affirmation included in cash and money order contribution cards to include a statement that State law requires that contributions be in the name of the contributor and be from the contributor's own funds. They further require participants to include a similar statement in all written contribution solicitation materials, including electronic solicitations made over the Internet. The amendments arose out of conversations and experience working with local prosecutors. The Board believes that many contributors may not know that it is illegal to reimburse any individual for a contribution or to receive reimbursement for a contribution. The proposed amendments had provided that the signed affirmation include language referring to the New York State Penal Law, and had extended the contribution card requirement to include check and credit card contributions. However, the Board received comments that including such language could deter people from making contributions, and that extending the contribution card requirement to check and credit card contributions would be burdensome. The final text of these amendments is intended to strike a balance between the concerns of participants and the concerns of the Board regarding improper or fraudulent contributions. The new rules require contribution cards for cash and money order contributions to include a statement that "I understand that State law requires that a contribution be in my name and be from my own funds," and require candidates, in their materials soliciting contributions, to remind potential contributors of these requirements. This notification has now become routine, for example, in federal campaigns, even where no public funds are available to match private contributions. Similarly, federal law requires that candidates' materials soliciting contributions note that contributions are not tax-deductible under federal law. These rules will become effective for contributions received after January 11, 2003.

5. Statement of Basis and Purpose in City Record Jan. 15, 2003: **Use of Public Funds** (Rule1-08(g)) It has been longstanding Board policy to treat reimbursements of advances as non-qualified expenditures. Advances are purchases not made by the campaign committee, and not with campaign funds. The amendment to Rule 1-08(g) confirms the Board's current practice that reimbursements of advances are not qualified and thus that public funds may not be used for their reimbursement. The amendment is not intended to prevent participants from making advance reimbursements, but such reimbursements cannot be paid for with public funds. The amendment is also not intended to reach arms-length sub-contracted services. **Expenditure Limits** (Rule 1-08(j)) Current Rule 1-08(j) provides an expenditure limit applicable to candidates for the office of City Council member of $24,000 for the 24-month period constituted by the third and fourth years prior to the year of an election. When this limit was adopted by the Board in 1997, the Board stated that it was "providing for expenditure limits for expenditures made in the first two calendar years of the four year election cycle for election to the office of City Council." The Board did not intend to apply such a large expenditure limit in two-year election cycles, when participants also have expenditure limits for the prior election, and it is not in keeping with the intent of the expenditure limits provisions of the Campaign Finance Act. Accordingly, the amendments

subject all expenditures made by candidates for the office of City Council member during the 24-month period prior to the year before the election year in a two-year election cycle to an expenditure limit of $3,000, except to the extent that, pursuant to Rule 1-08(c), any such expenditures are presumed to be made in furtherance of another election. Thus, for example, expenditures made prior to January 12, 2004 by participants who were also candidates in the 2003 elections will be presumed to be made in furtherance of the 2003 election.

6. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Expenditure Limits** (R. 1-08(c), (l); 3-02(f)(1)) The rules make clear that participating candidates have the burden of showing that committees making expenditures in the current election cycle are not involved in the covered election. Failure to carry this burden will result in the committee being subject to all Program requirements. In addition, the three pre- and one post-primary disclosure statements, and daily disclosures in the week before the primary election, are no longer required on behalf of any candidate not in a primary election, unless the candidate seeks to attribute expenditures to a primary election spending limit. The rules also codify that a participant may claim a primary election expenditure limit for expenditures incurred in reasonable anticipation of a parimary in another party, following Advisory Opinion No. 1993-3 (June 9, 1993), and that a special election spending limit begins when the special election is first reasonably anticipated, following Advisory Opinions Nos. 1992-3 (December 16, 1992) and 1994-1 (February 23, 1994). The rules also establish a new procedure for monitoring expenditure limit compliance. Participating candidates may demonstrate that their expenditure exemption claims, including those claimed to be for compliance costs, and supporting documentation, conform with a methodology that may be prescribed by the Board (under development). Alternatively, they may request advisory opinions on whether particular spending is exempt and what documentation is sufficient to substantiate the particular exemption claim. Under the new rules, when a participating candidate's total spending exceeds the amount of the spending limit, or when otherwise requested by the Board, the candidate's disclosure statements must also include documentation substantiating sufficient exempt expenditure claims to demonstrate compliance with the expenditure limit. Failure to make a sufficient exempt expenditures submission would give rise to a presumption that the candidate has violated the spending limit.

7. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Voluntary Services** (R. 1-08(k)) The rules make clear that, after receiving public funds, participating candidates may not compensate volunteers for previous campaign services. The candidate is not, however, restricted from hiring or retaining former volunteers and paying them for future services.

8. Statement of Basis and Purpose in City Record Oct. 18, 1996: Expenditures **Expenditures Exempt from Limits** (R. 1-08(d)(1), (e)) The rules repeal the exempt expenditure section in its entirety, because the exemptions are already enumerated in the Act. **See** Admin. Code §3-706(4) (compliance costs and petition litigation); Admin. Code §3-702(8) (independent expenditures); Admin. Code §3-712 (expenditures for non-covered elections). The repeal of R. 1-08(e) does not override certain previous advisory opinions interpreting the Act's exemptions, specifically Advisory Opinion No. 1991-3 (June 11, 1991) (circulating petitions). Advisory Opinion No. 1991-7 (October 9, 1991) (challenging election results), and Advisory Opinion No. 1996-1 (April 4, 1996) (compliance costs). Because the exemptions for expenditures under Administrative Code §§3-706(4) and 3-712 are limited, the new rules reflect the Board's conclusion that its prior statutory interpretation finding exemptions for constituent services (R. 1-08(e)(5)) and ballot proposal advocacy (Advisory Opinion No. 1989-53) (October 26, 1989) is not warranted under current law. The effect of the rules is to eliminate such exemptions prospectively. The exemptions for transition, inaugural, and wind-up costs are subsumed within an amendment to R. 1-08(d)(1) that states that spending for post-election goods and services are post-election expenditures and not subject to the expenditure limits. **Expenditures by Political Parties and Candidates Running as a Ticket** (R. 1-08(f)(4), (5)) The rules create a framework for evaluating political party spending on behalf of candidates who are participating in the Campaign Finance Program. The rules modify the conclusions reached by the Board in Advisory Opinion No. 1991-5 (August 8, 1991) and are based on recommendations made by the Board in a January 1995 report to the Mayor and City Council, **Party Favors** and public comments the Board received on that report. The Board also reviewed a recent U.S. Supreme Court decision, **Colorado Republican Federal Campaign Committee v. Federal Election Commission,** No. 95-489, 1996 WL 345766 (U.S. June 26, 1996)

that addressed political party spending in the context of federal campaign finance law. These rules are grounded in the following considerations: (1) the First Amendment safeguards the speech and association rights of political parties; (2) the Campaign Finance Board is not authorized to regulate the content or objectives of political party spending; and (3) the stake that parties and their nominees share in a general election campaign makes it extremely unlikely that either the party or its nominees would readily accept or adhere to a standard that forbids communication between them or the sharing of common agents. Under New York State Election Law, a political party committee may give an unlimited amount to a candidate. Election Law §14-114(9)(2), (10). Party spending on behalf of a candidate is not subject to the per candidate limits applicable to other contributors. Election Law §14-114(3). Moreover, contributors may now give $69,900 per year to each political party committee. **See** Election Law §14-114(10). In light of these considerations, the rules implement the Campaign Finance Act's limits on the amount of financial support participating candidates have agreed to accept from politcal party committees. Administrative Code §§3-702(8); 3-703(1)(f). "Generic" and other party expenditures that are enumerated in the rules are not considered in-kind contributions to a participant nominated by the party, and thus are not subject to the contribution and spending limits to which the participant has agreed, unless it is shown that the participant cooperated in the expenditure and that the expenditure was intended to benefit the participant. A participant continues to have the burden of showing that candidate-specific spending by the party after the participant or his or her opponent has been nominated is not an in-kind contribution. The rules also codify Campaign Finance Board Advisory Opinion No. 1993-10 (September 23, 1993), which concluded that certain joint activities by two candidates running as a "ticket" give rise to a presumption that the first candidate's expenditure is not independent of, and thus is an in-kind contribution to, the second candidate. **Spending Public Funds** (R. 1-08(g)(3)) The rules add a presumption that bills first reported after the first post-election disclosure statement are not qualified campaign expenditures. This rules is intended to provide more complete contemporaneous information for the Board's audit and for public disclosure in a timely manner.

9. Statement of Basis and Purpose in City Record Sept. 29, 1997: Expenditure Limits **Expenditure Limits for Election to the Office of City Council** (R. 1-08(j)(1)) Currently candidates who join the New York City Campaign Finance Program and run for the offices of Mayor, Public Advocate, Comptroller and Borough President have the following expenditure limits for the first two calendar years of the four year election cycle: Mayor, Public Advocate, Comptroller: $90,000; Borough President: $60,000. The rule provides an expenditure limit as well for the first two calendar years for participating candidates seeking election to the office of City Council. Specifically, the rule would limit the expenditures for City Council candidates to $24,000 for the years 1998 and 1999 (the first two calendar years of the cycle for the elections to be held in 2001). Subject to mandatory cost of living adjustments calculated beginning in March (N.Y.C. Administrative Code §3-706(1)(e)), the total pre-primary spending limit for city council candidates would be $188,000, and the general election limit would be $124,000. These rules were published for public comment in **The City Record,** August 1, 1997. A public hearing regarding these rules was held on September 10, 1997. A record of this hearing is available upon request. The Board adopted these final rules at a public meeting on September 18, 1997. Pursuant to Administrative Code §3-706(5), the City Council may, within 45 days after its first stated meeting following the receipt of a copy of the adopted rules, approve or disapprove the rules by the adoption of an appropriate resolution. If the Council does not approve or disapprove the adopted rules within this 45 day peeriod, the rules will be deemed to be approved and effective on the forty-sixth day after such stated meeting.

10. Statement of Basis and Purpose in City Record Aug. 20, 2004: Advances 1. **Reimbursement of an Advance is Not an Exempt Expenditure** (Rule 1-08(l)) When a person, including the participating candidate, makes purchases on behalf of the Committee with the expectation of being reimbursed by the Committee, he or she makes an advance to the Committee. Notably, one making an advance is seeking only reimbursement of the purchase price, not any profit or additional payment in excess of the amount advanced. **Cf.** Rule 3-03(c)(3). Currently, reimbursement of advances may be considered exempt from the expenditure limits if the goods or services purchases through the underlying advance have an exempt purpose. Administrative Code §3-706(4), Rule 1-08(l). The Board has encountered obstacles in assessing whether such underlying advances have exempt purposes. The funds used to make an advance do not pass through the bank account of the participant's principal committee, thus interrupting the audit trail between a participant and the vendor from whom the goods or services are actually purchases. This interruption makes it difficult for the

Board to confirm that an expenditure claimed as the reimbursement of an exempt advance actually was used to reimburse such advance, or that the advance itself properly had an exempt purpose, or even that the advance had a proper campaign purpose. The concerns associated with these difficulties are magnified because with advances-as opposed to other forms of expenditures which do not pass directly through a principal committee bank account, such as subcontracted goods or services-the relationship between the candidate and the advancer generally is not arm's length or contractual. These concerns do not apply to a loan and loan repayment, for example, because the funds used for the loan and loan repayment pass through the bank account of the participant's principal committee, and there is no interruption in the audit trail. Advances and their reimbursement provide too great an opportunity for the failure of good recordkeeping, the inability to track the flow of campaign funds, and fraud and misuse of public funds. Public confidence in the Program rests heavily on a full and verifiable accounting of campaign activities from each candidate. Accordingly, the rule provides that the reimbursement of an advance is not an exempt expediture, regardless of the purpose of the underlying advance. Notably, it is the form of the expenditure that underlies the proposed rule, and not the substance of the expense. The rule does not alter the list of currently permitted exempt purposes.

11. Statement of Basis and Purpose in City Record Feb. 11, 2005: Expenditures of Public Funds in Connection With Ballot Proposals (Rule 1-08(g)(2)) These amendments confirm that public funds may not be used to pay expenditures made in connection with ballot proposals unless such expenditures are in the context of and incidental to promoting the candidate's candidacy. **See** Advisory Opinion No. 2003-2 (July 14, 2003). Participating candidates should not be able to subsidize ballot proposal expenditures with public funds, and ballot proposal expenses are not qualified campaign expenditures. The new rule will ensure that public funds, which are distributed for a specific public purpose and public benefit, are not spent for purposes other than those defined in the law.

12. Statement of Basis and Purpose in City Record Feb. 11, 2005: Exempt Expenditures (Rule 1-08(l)) Participants are permitted to establish exempt expenditures either by limiting their aggregate exempt expenditure claims to an amount not greater than 7.5% of the applicable expenditure limit, or by maintaining records that demonstrate that each individual exempt expenditure claim is valid under the Act and the Rules. The amendment requires participants to elect one of these two methods for substantiating exempt expenditure claims by January 15 of the year following the election. Participants are required to file a semi-annual disclosure statement on Janury 15 in the year following the election, pursuant to Rule 3-02(b) (the "January 15 deadline"). The Board will determine which method a participant has chosen for substantiating exempt expenditure claims, based on the amount of the participant's aggregate exempt expenditure claims as of the January 15 deadline, up to and including any exempt expenditure claims made in the semi-annual disclosure statement filed on that date. (In the event of a special election, the Board would make this determination as of the deadline for filing the last required disclosure statement, pursuant to Rule 3-02(b)(2)). Participants whose aggregate exempt expenditures exceed 7.5% of the applicable expenditure limit as of the January 15 deadline will no longer be permitted to amend their disclosure statements and subsequently withdraw exempt expenditure claims in order to qualify for the 7.5% safe harbor. The amendment will prevent participants from withdrawing exempt expenditure claims in order to qualify for the safe harbor, after learning that they have failed to substantiate their exempt expenditure claims through detailed documentation. The Board anticipates that the amendment will simplify Board auditing of exempt expenditures and reduce the potential for the submission of false or erroneous exempt expenditure claims. Further, participants whose aggregate exempt expenditures are less than 7.5% of the spending limit as of the January 15 deadline, and who subsequently amend their disclosure statements to report additional exempt expenditure claims, are required to provide contemporaneous, detailed documentation for all their exempt expenditures, if their aggregate exempt expenditures exceed 7.5% of the applicable spending limit. The amendment clarifies that participants who qualify for the 7.5% safe harbor provision as of January 15, and then amend their disclosure statements to report new exempt expenditure claims, will have to demonstrate that all exempt expenditures are exempt by providing contemporaneous, detailed documentation, pursuant to Rule 1-08(l)(1)(ii). The amendment will also reinforce the requirement that the underlying documentation for demonstrating exempt expenditures must be made and maintained contemporaneously with the exempt expenditures made or incurred. Participants are currently required to create and maintain contemporaneous records for all transactions under Rule 4-01. The amendment will re-emphasize that this requirement applies to documenting exempt expenditure claims as well as other kinds of record-keeping. The Board

anticipates that this contemporaneousness requirement will reduce the potential for fraud, and participants would still be required to comply with the other recordkeeping requirements of the Act and the Rules.

13. Statement of Basis and Purpose in City Record June 18, 2009: Explanation, Basis, and Purpose The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The subject matter of this rulemaking was described in the Board's regulatory agenda for fiscal year 2009, published in **The City Record** on April 14, 2008. The amendments effect the following specific changes and will take effect thirty days after final publication in **The City Record:** Application of expenditure limits for expenditures related to transfers (Rules 1-08(o)) The amendments clarify that in the case of transfers from a committee that was not another principal committee, participants must allocate to transferred contributions not only expenditures incurred by the transferor committee during the covered election cycle in connection with raising or administering transferred contributions, but also any expenditures incurred by the transferor committee prior to the covered election in connection with raising the transferred contributions. The amendments also clarify that such expenditures will be applied towards the expenditure limit in effect at the time of the transfer. Reporting of expenditures related to transfers (Rule 3-03(c)) The amendments clarify that, in the case of a transfer from a committee that was not another principal committee, the participant must report not only all expenditures made by the transferor committee during the election cycle of the covered election, but also all expenditures made by the transferor committee prior to the election cycle of the covered election in connection with raising such contributions. The amendments also clarify that expenditures incurred during the election cycle of the covered election not made in connection with raising or administering the transferred contributions need not be disclosed in disclosure statements but rather may be disclosed to the Board by providing copies of disclosure statements filed by the transferor committee with the City or State Boards of Elections or the Federal Elections Commission. Training (Rule 2-12) The amendments clarify that campaigns are required to attend pre-election training covering Program requirements and the use of Program software in accordance with a schedule of trainings to be issued by the Board. The amendments also provide the deadlines by which campaigns must complete post-election audit training in order to receive their final audit reports within the shorter time frames provided pursuant to §3-710(1) of the Code. Written petitions for review of public funds determinations (Rule 5-02(a)) The amendments clarify that a petition for review of a post-election public funds determination must be submitted within 30 days of the issuance of the final audit report.

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-09 Documents Submitted to the Board.

(a) **Date received.**

(1) **Generally.** Documents submitted to the Board, whether in an electronic manner or otherwise, will be deemed to have been submitted upon receipt by the Board. The Board receives hand-delivered documents at its offices, weekdays between 9 a.m. and 5 p.m., unless otherwise provided by the Board.

(2) **Postmark date.** Except as otherwise provided in paragraph (3) for disclosure statements, a document submitted by non-electronic mail will be deemed to have been received by the Board on the date the document is postmarked. Documents delivered by non-electronic common carriers other than the United States Post Office will be deemed to have been received by the Board on the date the common carrier received the document. Candidates have the burden of demonstrating the date the common carrier received such document, including by means of the common carrier's time stamp or payment receipt.

(3) **Disclosure statements.** (i) Candidates who submit disclosure statements through non-electronic mail with the United States Post Office or by other non-electronic common carrier shall obtain a receipt or date stamp confirming the date on which the carrier received the disclosure statement. Such disclosure statements that are delivered by the Post Office or common carrier to the Board without a postmark or similar mark will be presumed to have been mailed three days earlier unless evidence presented to the Board, such as a post office receipt, establishes otherwise.

(ii) A complete disclosure statement, submitted in an electronic manner or otherwise, actually received by the Board no later than close of business on the due date for that disclosure statement applicable under §3-02 will be

considered to be submitted in a timely manner and to permit the Board to make a payment determination based on matchable contributions claimed therein when the Board next makes payment determinations. In order to make possible payment within four business days after receipt of disclosure statements, or as soon thereafter as is practicable, pursuant to §3-705(4) of the Code, the Board may not review disclosure statements for possible payment if they are not actually received by the Board by the specified due date, although the Board may review such disclosure statements when making payment determinations at a later date.

(iii) A complete disclosure statement, not actually received by the Board by the due date applicable under §3-02, that is delivered by non-electronic mail with a postmark date that is on or before the due date, or received by another non-electronic common carrier on or before the due date, nonetheless will be considered to be submitted in a timely manner. This submission, however, may not be sufficiently timely to permit the Board to make a payment determination when the Board next makes payment determinations so the Board shall make a determination on such a disclosure statement at such time as it is practicable and the Board is considering making payments based on matchable contributions claimed in disclosure statements actually received on or before a subsequent applicable due date.

(iv) A candidate who fails to deliver a complete disclosure statement in a timely manner is in violation of the Act and subject to penalty under §§3-710.5 and 3-711(1) of the Code.

(4) **Documents submitted electronically.** Candidates and others submitting documents to the Board electronically shall submit such documents in such electronic manner as shall be provided by the Board.

(b) **Legibility; Readability.** The Board will not accept any electronic disclosure statement or other document, or any part thereof, that is infected with a virus, damaged, blank, improperly formatted, or otherwise unreadable by the Board, or if the disclosure statement or other document, or any part thereof, is in a non-electronic format, is illegible.

(c) **Documentation.** Disclosure statements will not be deemed complete unless submitted with the records required by §§3-04(a) and 4-01(b)(2), (3), and (6) for each matchable contribution claimed in the disclosure statement.

(d) Date issued or provided. Documents sent by mail, including any report or notice, shall be considered issued or provided by the Board on the date the document is postmarked. Documents sent by a common carrier shall be considered issued or provided by the Board on the date that the documents were received by the common carrier. Documents sent by electronic mail to an e-mail address provided to the Board shall be considered issued or provided upon transmission, unless the Board is informed that the transmission did not reach the intended recipient.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Section heading amended City Record July 31, 2009 §1, eff. Aug. 30, 2009. [See Note 3]

Subd. (a) amended City Record Aug. 7, 2002 Part D Subpart 1, eff. Sept. 6, 2002. [See Note 1]

Subd. (a) par (2) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (a) par (3) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Aug. 7, 2002 Part D Subpart 1, eff. Sept. 6, 2002. [See Note 1]

Subd. (c) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See T52 §1-08 Note 4]

DERIVATION

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (a) par (1) amended City Record July 20, 1999 §19, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (a) par (2) amended City Record Oct. 18, 1996 §13, eff. Jan. 1, 1997. [See Note 2]

Subd. (a) par (3) subpar (iv) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (a) par (3) subpar (iii) amended (as subpar (ii)) City Record July 20, 1999 §20, eff. Aug. 19, 1999. [See T52 §3-02 Note 1]

Subd. (a) par (3) subpar (ii) amended City Record Oct. 18, 1996 §13, eff. Jan. 1, 1997. [See Note 2]

Subd. (a) par (3) subpar (iv) repealed City Record July 20, 1999 §20, eff. Aug. 19, 1999. [See T52 §3-02 Note 1]

Subd. (c) added City Record Aug. 7, 2002 Part D Subpart 2, eff. Sept. 6, 2002. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 7, 2002:

1. **Timely Submission of Disclosure Statements; Electronic Document Submission** (§1-09(a), (b), 1-02)

The amendments: (1) confirm that the Board will not make payments within four business days, pursuant to §3-705(4) of the Code, based on submissions that are not filed in a timely manner; and (2) create a presumption that disclosure statements not submitted to the Board in an electronic manner and received by the Board from the U.S. Postal Service without postmarks were mailed three days prior to receipt by the Board. In addition, the amendment to §1-09(a) requires participants to obtain documentary proof of the date on which the statement was mailed. The amendments also provide for submission of documents to the Board in an electronic manner.

2. **Required Back-up Documentation for Disclosure Statements** (§1-09(c))

The amendment confirms that disclosure statements are not considered complete unless submitted along with all required back-up documentation. This amendment serves a number of important goals: it is needed as part of a verification process to ensure that documentation submitted is proper; it promotes fairness to all participants by ensuring that all of them must submit complete back-up documentation and on the same schedule; the submission of timely back-up documentation facilitates the Board's review process; and timely review by Board staff benefits participants by enabling them to receive prompt payment.

2. Statement of Basis and Purpose in City Record Oct. 18, 1996: **Documents Submitted to the Board** (R. 1-09(a)(2) and (3)(ii)) The rules provide that the equivalent of postmark date for documents delivered by common carriers other than the United States Post Office is the date the document is deemed to be received by the Board.

3. Statement of Basis and Purpose in City Record July 31, 2009: Explanation, Basis, and Purpose The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The subject matter of this rulemaking was described in the Board's regulatory agenda for fiscal year 2010, published in **The City Record** on April 8, 2009. The amendments effect the following specific changes and will take effect thirty days after final publication in **The City Record**: Documents Submitted to and Issued by the Board (§1-09) The Campaign Finance

Board Rules do not currently provide a standard for determining the date on which a communication from the Board to a candidate is considered to have been sent. The amendments to §1-09 provide that a communication from the Board is considered to be "issued or provided by the Board" on the date that it was postmarked, received by a common carrier, or transmitted by email. Public Access to Information (§6-01) The amendments to §6-01 conform the Rules to recent amendments to the New York State Freedom of Information Law ("FOIL") (Public Officers Law §§ 84 **et seq.**). Board Determinations (§7-02) Local Laws Nos. 34 and 67 of 2007 provided that for elections after January 1, 2008, candidates have the option to have penalty matters and repayment obligations considered by adjudication under the City Administrative Procedure Act ("CAPA"). As a result, candidates may either appear before the Board for a hearing that is similar to the Board's prior practice or may appear before an administrative law judge for a formal hearing at the Office of Administrative Trials and Hearings ("OATH") or elsewhere. The Board has separately asked OATH to adopt proposed rules of procedure specific to hearings at OATH that involve the Board ("OATH Rules"). The Board amends §7-02(c) and (f) to conform them to the OATH Rules. Amendments to §7-02(c) allow the Board to issue documents to a campaign in writing by any medium, and make minor clarifying changes in the rule. Amendments to §7-02(f): permit the Board to send notices to campaigns by first-class mail or e-mail; set forth what materials may be included in a candidate's response to the Board's notice of proposed penalties and public funds repayments; permit Board staff and the campaign to submit written comments to the Board regarding the administrative law judge's report and recommendation before the Board makes its final determination; and provide that the Board issue its written determination within 30 days of the conclusion of the written comments period. These amendments closely reflect the proposed rules of procedure specific to hearings at OATH that involve the Board and will allow the Board to effectuate the OATH Rules so as to comply with CAPA.

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-10 Severability.

If any rule or portion thereof is adjudged invalid by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of these Rules. If the application of any rule or portion thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such determination shall not affect or impair the application thereof to other persons and circumstances.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-11 Filer Registration.

Not later than the day that a candidate files the first disclosure statement for an election, the candidate shall submit a filer registration form. The filer registration form shall include:

(a) the candidate's name, address information and telephone numbers, e-mail address, and employment information;

(b) the name and mailing address, and treasurer name, treasurer address information and telephone numbers, treasurer e-mail address, and treasurer employment information, of every political committee authorized by the candidate that has not been terminated, and, in the case of a participant or limited participant, an indication of which such committee is the principal committee;

(c) the name, mailing address, e-mail address, and telephone number of any person designated by the candidate to act as liaison with the Board for each committee filing disclosure statements;

(d) identification of all bank accounts and other depository accounts, including merchant accounts, into which receipts have been, or will be, deposited, and all bank accounts used for the purpose of repaying debt from a previous election; and

(e) other information as required by the Board.

The candidate shall notify the Board of any material change, including any new, or any change to any required

information concerning any political committee, bank account, unique merchant account, candidate or treasurer employment, address, telephone number, or e-mail address, in the filer registration form in such manner as may be provided by the Board. The candidate shall notify the Board of any such changes no later than the next deadline for filing a disclosure statement, or, in the case of changes that occur after the deadline for the last disclosure statement required to be filed, no later than 30 days after the date of the change; provided, however, that if the candidate has extinguished all outstanding liabilities resulting from the election to which the filer registration relates, including payment of any penalties and/or repayment of public funds owed to the Board, the candidate need not notify the Board of any material change to the filer registration information after the date the candidate's final audit report is issued, except as provided in §4-03(b).

(f) **Applicable requirements.** Because the requirements of the Act and these Rules apply to financial transactions that take place before a participant or limited participant joins the Program, the Board advises candidates to comply with all applicable requirements set forth in the Act and these Rules, in anticipation of joining the program.

(g) **Construction.** The submission of a filer registration form, or an amendment thereto, shall not be construed as a statement of intent to become a candidate, to run for any particular office, or to join the Program.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Open par, subds. (a)-(e) amended City Record Feb. 20, 2009 §3, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Open par, subds. (a)-(e) amended City Record May 15, 2008 §5, eff. June 14, 2008. [See T52 §1-02 Note 7]

DERIVATION

Section amended City Record May 5, 2003 eff. June 4, 2003 except that the amendments to the third sentence of subd. (a) and subd. (c) (misidentified as subd. (b)) take effect Dec. 31, 2003. [See T52 §1-02 Note 5]

Section added City Record May 19, 1994 eff. June 18, 1994.

Subd. (a) amended City Record Aug. 7, 2002 Part F Subpart 2, eff. Sept. 6, 2002. [See §5-01 Note 2]

Subd. (a) so designated (formerly Subd. (b)) and amended City Record July 20, 1999 §21, eff. Aug. 19, 1999. [See T52 §1-02 Note 2] Former Subd. (a) repealed. Former Subd. (a) was amended City Record Oct. 10, 1995 §18, eff. Nov. 9, 1995. [See Note 1]

Subd. (a) amended (as Subd. (b)) City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (a) amened (as Subd. (b)) City Record Oct. 24, 1994 eff. Nov. 23, 1994.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 10, 1995:

Disclosure

June 1 Filing (R. 1-11(a); 3-02(a); 3-03(a))

The rules make clear that the filing due on June 1 in the election year, which contains non-contemporaneous information not previously filed with the Campaign Finance Board in a semi-annual disclosure statement, will be submitted either as a single statement or in the form of separate semi-annual statements, as determined by the Board.

Rules of the City of New York

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52 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-01 Deadlines for Joining the Program. [Repealed]

HISTORICAL NOTE

Section repealed City Record July 20, 1999 §22, eff. Aug. 19, 1999. [See T52 §2-01 Note 1]

Section amended City Record Oct. 10, 1995 §19, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Section amended in part City Record Sept. 2, 1992 eff. Oct. 2, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-01 Certification.

(a) **Contents.** The candidate shall specify in the certification whether he or she is joining the Program as a participant pursuant to §3-703 of the Code or as a limited participant pursuant to §3-718 of the Code. The certification shall include all filer registration information required by Rule 1-11 and such other information as required by the Board, including all information necessary to receive payment by electronic funds transfer. In the certification, the participant or limited participant shall designate a principal committee. A candidate filing the certification as a limited participant shall affirm that he or she has a sufficient amount of personal funds to fund his or her own campaign. A candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

(b) **Legal effect.** The participant shall comply fully with Program requirements in all elections for which the certification is submitted, regardless of the office sought and regardless whether the participant: (1) meets all the requirements of law to have his or her name on the ballot in the election; or (2) meets the Act's threshold for eligibility for public funds; or (3) accepts public funds; or (4) is otherwise not eligible to receive public funds in the election. The limited participant shall comply fully with the Program requirements in all elections for which the certification is submitted, regardless of the office sought and regardless whether the limited participant meets all the requirements of law to have his or her name on the ballot in the election. A candidate who does not file a timely certification or who rescinds his or her certification in a timely manner shall be deemed to be a non-participant pursuant to §3-719 of the Code. The certification applies to all elections for an office covered by the Act that are held in the same calendar year or to a special election to fill a vacancy in an office covered by the Act.

(c) **Signatures.** The certification shall contain any signatures and notarizations as may be required by the Board;

provided, however, that to the extent the Board permits a candidate to submit a certification in a non-electronic format, such certification will only be accepted by the Board if it contains an original notarized signature from both the candidate and the principal committee treasurer.

(d) **Amendments.** The participant or limited participant shall notify the Board of any material change in the information submitted pursuant to this rule, including, but not limited to any new, or any change to any required information concerning any political committee, bank account, unique merchant account, candidate or treasurer employment, address, telephone number, or e-mail address, included in the filer registration information required by §1-11, in such manner as may be provided by the Board and no later than the next deadline for filing a disclosure statement or, in the case of changes that occur after the deadline for the last disclosure statement required to be filed, no later than 30 days after the date of the change, provided, however, that if the participant or limited participant has extinguished all outstanding liabilities resulting from the election to which the certification relates, including payment of any penalties and/or repayment of public funds owed to the Board, the candidate need not notify the Board of any material change to the information required by §1-11 after issuance of the candidate's final audit report, except as provided in §4-03(b). If, based upon a reasonable belief that there has been a material change in the information submitted, the Board requests an amendment, the participant or limited participant shall submit promptly any amendment necessary in such manner as may be provided by the Board. Notification of any change to the candidate's or treasurer's information included in the certification must be made to the Board for six (6) years after the date of the last election to which the certification relates.

(e) **Petition for extraordinary circumstances.**

(1) Pursuant to §3-703(1)(c) of the Code, a certification may be accepted no later than the seventh day after the occurrence of an extraordinary circumstance in an election, if: (i) prior to, or together with, the certification, a written petition is submitted to the Board, sworn to or affirmed by a candidate in such election seeking to join the Program as a participant or limited participant, which sets forth the facts alleged to present an extraordinary circumstance; and (ii) following review of the petition, the Board declares that an extraordinary circumstance has occurred in the election which permits or permitted the acceptance of additional certifications, as provided in §3-703(1)(c). The Board shall provide written notice to each participant and limited participant in an election of its declaration of an extraordinary circumstance in the election, which shall include the names of any additional candidates who have filed certifications in a timely manner in light of the extraordinary circumstance.

(2) Nothing in this rule shall be construed to: (i) require the Board to make a declaration of an extraordinary circumstance within seven days of its occurrence; or (ii) extend the deadline for joining the Program, in the event the Board does not declare that an extraordinary circumstance has occurred until more than seven days after its occurrence; or (iii) prohibit the acceptance of a certification filed by a candidate in an election within seven days after the occurrence of an extraordinary circumstance in that election, if the candidate did not file a petition under subparagraph (1)(i), provided that another candidate in such election has filed such a petition and the Board makes the declaration under subparagraph (1)(ii).

(3) An "extraordinary circumstance" includes: (i) the death of a candidate in an election, (ii) the resignation or removal of the person holding the office sought, and (iii) the submission to the Board of a written declaration, sworn to or affirmed by the holder of the office sought, terminating his or her campaign for reelection (which may be submitted together with a petition under subparagraph (1)(i)).

(f) **Rescission.** A participant or limited participant may rescind his or her certification prior to the certification deadline by filing a certification rescission form.

HISTORICAL NOTE

Section renumbered (formerly §2-02) and amended City Record July 20, 1999 §22, eff. Aug. 19, 1999.

[See Note 1]

Subd. (a) amended City Record May 15, 2008 §6, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Oct. 26, 2007 §11, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Aug. 7, 2002 Part H Subpart 1 §2, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (d) amended City Record Feb. 20, 2009 §4, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (d) amended City Record May 15, 2008 §6, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (e) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) added City Record Oct. 26, 2007 §12, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

DERIVATION

Section amended in part City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section heading amended City Record Oct. 10, 1995 §20, eff. Nov. 9, 1995. [See Note 2]

Section in original publication July 1, 1991.

Subd. (a) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (b) par (3) amended City Record Oct. 9, 1998 eff. Nov. 8, 1998. [See T52 §1-02 Note 3] (Note: this subd. (b) was eliminated in City Record July 20, 1999 amendment)

Subd. (c) amended City Record Oct. 10, 1995 §21, eff. Nov. 9, 1995. [See Note 2]

Subd. (e) amended City Record Oct. 10, 1995 §21, eff. Nov. 9, 1995. [See Note 2]

Subd. (e) par (3) amended City Record Feb. 29, 2000 §7, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

Subd. (f) added City Record Oct. 10, 1995 §22, eff. Nov. 9, 1995. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Joining the Program

The deadlines for joining the program have been changed. Local Law No. 48 of 1998, amending Administrative Code §3-703(1)(c). To implement the later deadline of June 1 in the election year, amendments will:

· delete the former deadlines. Rule 2-01.

· consolidate the separate certification and campaign information form into a single submission. Rule 2-01, as renumbered.

· create a procedure for candidates to join the Program after June 1, if permitted by the Board after the filing of both a certification and a written petition within seven days after an alleged extraordinary circumstance. Rule 2-01(e).

2. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Joining the Program** (R. 2-01 to 2-05; 3-03(c)(7); 4-01(j), (l); 5-01(b)(1) The rules eliminate the campaign information form, fundraising agent schedule, and campaign office schedule. Committee and bank account information must be submitted (except in special elections) not later than 30 days after the candidate joins the Program as a supplement to the certification. Fundraising agent and campaign office information must be kept as records. Fundraising agents must be reported in disclosure statements. A list of campaign offices must be submitted to the Board when requested. Rule 2-05 ("Authorized Committees") is repealed because it is redundant with the Act.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

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52 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-02 Breach of Certification.

The Board considers each of the following activities to be a fundamental breach of the obligations affirmed and accepted by the participant or limited participant in the certification:

(a) submission of a disclosure statement which the participant knew or should have known includes substantial fraudulent matchable contribution claims;

(b) use of public funds to make or reimburse substantial campaign expenditures which the participant knew or should have known were fraudulent;

(c) cooperation in alleged independent expenditures, whereby material or activity that directly or indirectly assists or benefits a participant's or limited participant's nomination or election, which is purported to be paid by independent expenditures, was in fact authorized, requested, suggested, fostered, or cooperated in by the participant or limited participant; and

(d) use of a political committee or other entity over which a participant or limited participant exercises authority to conceal from the Board expenditures that directly or indirectly assist or benefit the participant's or limited participant's nomination or election.

In the event of a fundamental breach, the participant will be deemed by the Board to be ineligible for public funds and to have forfeited all public funds previously received for the elections covered by the certification, and the participant or limited participant will be subject to such civil and criminal sanctions as are applicable under §3-711 of

the Code and other applicable law. This rule is not intended to be an enumeration of all circumstances that may constitute a fundamental breach of obligations, as may be determined by the Board.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record Aug. 7, 2002 Part C, eff. Sept. 6, 2002. [See Note 2]

Section added City Record Feb. 29, 2000 §8, eff. Mar. 30, 2000. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 29, 2000:

Fundamental Breach of Certification

A new Rule 2-02 sets forth those breaches of a participant's certification the Board considers fundamental, such that participant will be deemed to be ineligible for public funds and to have forfeited all public funds previously received. A fundamental breach would include, but not be limited to:

· the submission of fraudulent matchable contribution claims,

· the use of public funds for fraudulent campaign expenditures,

· alleged independent expenditures that were in fact cooperated in by the participant, and

· the use of a political committee or other entity over which the participant exercises control to conceal from the Board expenditures that benefit the participant's nomination or election.

Pursuant to NYC Admin. Code §3-703(1), to be eligible for public funds, a participant must comply with all the requirements of the Campaign Finance Act. The certification is, in effect, a contractual memorialization of this obligation. While breaching that contract could result in a finding that a participant is ineligible for public funds (including the forfeiture of all public funds previously paid for the election), the new rule reflects the Board's sense that such a severe consequence should be applied only for the most egregious violations. The Rule is intended to deter severe abuses of Program obligations.

2. Statement of Basis and Purpose in City Record Aug. 7, 2002: **Candidate Participation** 1. **Breach of Certification** (§2-02) The amendments to the first two subsections of §2-02 clarify that a participant has committed a breach of certification if he or she has made substantial fraudulent matchable contribution claims or used public funds for substantial fraudulent campaign expenditures. 2. **Write-In Candidates' Participation in Campaign Finance Program** (§2-08) Write-in candidates are not required to file designating or nominating petitions with the New York City Board of Elections, so they are more difficult to monitor than candidates seeking nomination or election through a position on an election ballot. Section 2-08 requires candidates participating in the Program to notify the Board if they are running a write-in candidacy. The rule also confirms that write-in candidates must file all disclosure statements for the election, and that they are ineligible to receive public funds or to be included in the voter guide for that election. 3. **Terminating a Candidacy** (§§2-09, 3-02(f)(8)) The amendment to §2-09 clarifies the circumstances under which a participant whose campaign has ended may discontinue filing disclosure statements with the Board. In a significant change from the current practice, a participant who has not received public funds may discontinue filing disclosure statements with the Board after filing a verified statement that he or she has ceased all campaign activity, even if the participant continues to be on the ballot for that election.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

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52 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-03 Campaign Information. [Repealed]

HISTORICAL NOTE

Section repealed City Record Oct. 10, 1995 §23, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Section amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

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52 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-04 Additional Documents. [Repealed]

HISTORICAL NOTE

Section repealed City Record Oct. 10, 1995 §23, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Section amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-05 Authorized Committees. [Repealed]

HISTORICAL NOTE

Section repealed City Record Oct. 10, 1995 §23, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

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52 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-06 Bank Accounts.

(a) **Deposit of receipts.** All contributions, loans, and other receipts shall be deposited into the account(s) listed on the candidate's filer registration and/or certification and in disclosure statements filed with the Board. Candidates opening accounts shall maintain at least one account with check writing privileges.

(b) **Separate accounts for different elections.** Receipts accepted for one election shall not be commingled in any account with receipts accepted for any other election, except that receipts for a primary and general election for the same office in the same calendar year may be deposited in the same account. Notwithstanding the foregoing, a candidate seeking election both to an office subject to the Act and to a federal office may maintain a separate allocation account for shared expenses in accordance with Advisory Opinion No. 1996-2 (July 18, 1996).

(c) **Runoff primary and runoff special elections.** A candidate may accept contributions for an anticipated runoff primary or anticipated runoff special election pursuant to §1-04(q).

(1)(i) If a candidate accepts receipts for a runoff election, they shall be deposited into an account from which no disbursements, withdrawals, or transfers are made prior to the day of the preceding primary or special election, as the case may be, except that such contributions may be returned to contributors until the candidate first receives public funds for the runoff election.

(ii) Receipts accepted for a runoff primary shall not be (i) commingled in any account with any receipts accepted for any other election; or (ii) used for a primary or general election held in the year that the runoff primary is held or anticipated.

(iii) Receipts accepted for a runoff special election shall not be commingled in any account with any receipts accepted for any other election or used for any other election until the runoff special election is actually held; provided, however, that funds may be transferred from a special election account to a runoff special election account after the special election so that the funds transferred may be spent in the runoff special election. Receipts accepted for an anticipated runoff special election that is not held may not be spent or otherwise transferred until the earlier of (A) the first January 12 after the date of the special election for which the runoff special election was anticipated or (B) the date upon which all the candidate's liabilities from the special election have been ex- tinguished.

(2) Notwithstanding any provision of subdivision (b) or paragraph (c)(1) to the contrary, funds may be exchanged between an account maintained for a primary and/or the general election and an account maintained for a runoff primary for the following reasons only:

(i) transfers from a primary and/or general election account to a runoff primary account made after the primary election so that the funds transferred may be spent in the runoff primary; and

(ii) transfers from a runoff primary account to a primary and/or general election account made after the runoff primary is held so that the funds transferred may be spent in the general election.

(d) **Special elections.** Receipts accepted for a special election shall not be commingled in any account with any receipts accepted for any other election, except that receipts accepted for a special election may be deposited into an account established for a runoff special election pursuant to §1-04(q) in accordance with paragraph (c) above.

(e) **Personal and business funds.** The personal or business funds of a candidate, his or her agent, or any other person or entity may not be commingled with campaign funds. This rule does not restrict the deposit of contributions or loans into an account maintained by an authorized committee.

(f) **Court-ordered rerun elections.** Public funds received for a court-ordered rerun election shall not be commingled in any account with any other funds.

(g) **Segregated Bank Accounts for §5-01(n) Disbursements.** Contributions received pursuant to §5-01(n)(2) shall be deposited into a segregated bank account established pursuant to such Rule.

HISTORICAL NOTE

Section amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 4]

Subd. (e) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) added City Record Aug. 7, 2002 Part F Subpart 6, eff. Sept. 6, 2002. [See T52 §5-01

Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 20, 1999 §23, eff. Aug. 19, 1999. [See Note 1]

Subd. (b) amended City Record Oct. 18, 1996 §16, eff. Jan. 1, 1997. [See Note 3]

Subd. (b) amended City Record Oct. 10, 1995 §24, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 4]

Subd. (c) amended City Record July 20, 1999 §23, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]

Subd. (c) par (1) open par amended City Record Oct. 10, 1995 §25, eff. Nov. 9, 1995. [See Note 2]

Subd. (e) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Technical Changes

Participants shall maintain at least one bank account for the campaign with check writing privileges. Rule 2-06(a).

2. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Contribution Limits** (2-06(c)(1)) Following Advisory Opinion No. 1993-8 (July 20, 1993), the rules codify that contributions received for a runoff election that is not held may be returned to contributors.

3. Statement of Basis and Purpose in City Record Oct. 18, 1996: Bank Accounts **Separate Accounts for Different Elections** (R. 2-06(b)) The rule amends the restriction prohibiting the commingling of receipts in more than one account for two different elections. Under the rule, where one candidate sets up an allocation account to pay shared expenses for two elections, the receipts received for one election may be commingled with receipts received for another election in accordance with Advisory Opinion No. 1996-2 (July 18, 1996).

4. Statement of Basis and Purpose in City Record May 5, 2003: Candidate Participation 2. **Bank Accounts for Runoff Special Elections** (§2-06(c), (d)) The amendments to §2-06(c) and (d) establish rules for bank accounts established for anticipated runoff special elections similar to the Board's Rules applicable to bank accounts for anticipated runoff primary elections for citywide offices. Thus, no disbursements, withdrawals, or transfers may be made prior to the date of the preceding special election, except that contributions may be returned to contributors until the participant first receives public funds for the runoff election; and receipts accepted for a runoff special election shall not be commingled in any account with receipts accepted for any other election or used for any other election until after the runoff election is held, except that receipts from a special election account may be transferred to an account established for a runoff special election for use in that runoff election after the special election is held. As with runoff primary elections, funds deposited into an account established for an anticipated runoff special election that is not held will be frozen until the earlier of the first January 12 following the special election for which the runoff was anticipated or the date upon which the participant's last liability from the special election is extinguished.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-07 Participant's Disqualification from Ballot.

(a) **Public fund eligibility.** A participant must qualify to be on the ballot, and be opposed on the ballot, to be eligible for public funds.

(b) **Notice of disqualification.** If a participant or the participant's only remaining opponent in an election is disqualified from the ballot by the New York City Board of Elections or a court of competent jurisdiction, the participant shall immediately inform the Board, by a hand-delivered memorandum, facsimile transmission, telegram, or other method of equivalent speed. If the disqualification by a court of competent jurisdiction was on the grounds that fraudulent acts were committed in order to obtain a place on the ballot, the notice shall so state.

(c) **Remedies for disqualification.** The participant shall notify the Board immediately, in writing, if the disqualified candidate is seeking to appeal or otherwise remedy a disqualification. This notice shall indicate whether a judicial appeal is being taken as of right or by permission and the specific nature of any other judicial remedy sought.

(d) **Disqualification reversed.** The participant shall immediately inform the Board, in writing, if the disqualification of the participant or the opponent is reversed by a court of competent jurisdiction.

HISTORICAL NOTE

Section amended City Record July 20, 1999 §24, eff. Aug. 19, 1999. [See Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (c) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (d) relettered (sub. c) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Technical Changes

Participants must provide notice whether an opponent who has been disqualified from the ballot is appealing the disqualification. Rule 2-07.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-08 Write-in Candidates.

(a) **Notice.** Any candidate who is seeking nomination or election to a covered office as a write-in candidate must promptly so notify the Board in writing.

(b) **Disclosure obligations.** Any candidate who is seeking nomination or election as a write-in candidate must file all disclosure statements for the election as required by §3-02.

(c) **Ineligibility for public funds.** A participant who is seeking nomination or election exclusively as a write-in candidate and who is not on the ballot for the election is ineligible to receive public funds. A participant who is on the ballot for a covered election and who is opposed in such election solely by one or more candidates seeking nomination or election exclusively as write-in candidates and who are not on the ballot is ineligible to receive public funds.

(d) **Inclusion in Voter Guide.** A candidate who is seeking nomination or election exclusively as a write-in candidate and who is not on the ballot for the election shall not be included in the voter guide for that election.

HISTORICAL NOTE

Section added City Record Aug. 7, 2002 Part C, eff. Sept. 6, 2002. [See T52 §2-02 Note 2]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) added City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section repealed City Record July 20, 1999 §25, eff. Aug. 19, 1999. Former §2-08 Opposing Candidate's Disqualification from Ballot.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-09 Terminating a Candidacy.

(a) **No "Opting-Out".** A candidate may discontinue filing disclosure statements after filing a verified statement that his or her candidacy is terminated in accordance with subsections (b) or (c) of this rule, or if the Board has deemed the candidacy terminated pursuant to subsection (d) of this rule. Terminating a candidacy does not relieve the candidate of other Program obligations, such as maintaining records required by these Rules, submitting documentation or information in response to requests by the Board, and paying penalties for violations of the requirements of the Act and these Rules.

(b) **"Off the ballot" termination.** (1) A participant may submit to the Board a verification that he or she is not a candidate for that election if the participant: (i) is not on the ballot for that election; (ii) is not seeking nomination or election as a write-in candidate; (iii) has not received public funds; and (iv) has not submitted and does not intend to submit a petition for payment after final disqualification from the ballot, pursuant to §5-02(b). The verification shall be in such form and manner as shall be provided by the Board, and shall contain such signatures as may be required by the Board.

(2) A limited participant or non-participant may submit to the Board a verification that he or she is not a candidate for that election if the candidate: (i) is not on the ballot for that election; and (ii) is not seeking nomination or election as a write-in candidate. The verification shall be in such form and manner as shall be provided by the Board, and shall contain such signatures as may be required by the Board.

(c) **"Ceased campaigning" termination.** A particiant may submit to the Board a verification that he or she is not a candidate for that election if the participant: (1) has ceased all campaign activity for that election;

(2) has not received public funds; and (3) has not submitted and does not intend to submit a petition for payment after final disqualification from the ballot, pursuant to §5-02(b). A limited participant or non-participant may submit to the Board a verification that he or she is not a candidate for that election if the candidate has ceased all campaign activity for that election. The verification shall be in such form and manner as shall be provided by the Board, and shall contain such signatures as may be required by the Board.

(d) **Termination by Board.** The Board may send a notice to a participant that his or her candidacy has been deemed terminated if the participant: (1) is not on the ballot for that election; (2) has not received public funds; and (3) has not submitted a petition for payment after final disqualification from the ballot, pursuant to §5-02(b). The Board may send a notice to a limited participant or non-participant that his or her candidacy has been deemed terminated if the candidate is not on the ballot for that election. If the candidate is continuing to seek nomination or election as a write-in candidate, or, in the case of a participant, intends to submit a petition for public funds pursuant to §5-02(b), the candidate must so notify the Board within 10 days after receiving the notice of termination, in which case the Board will reverse the termination and the candidate must continue to submit disclosure statements. In any event, the termination will be reversed and disclosure obligations resumed if the candidate remains a candidate in the election.

HISTORICAL NOTE

Section repealed & added City Record Aug. 7, 2002 Part C, eff. Sept. 6, 2002. [See T52 §2-02

Note 2]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record July 20, 1999 §26, eff. Aug. 19, 1999. [See Note 1]

Section amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section in original publication July 1, 1991.

Subd. (c) amended City Record Oct. 10, 1995 §26, eff. Nov. 9, 1995. [See T52 §7-05 Note 1] [Note

that this subd. (c) was bracketed out of law in City Record July 20, 1999 amendment]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Technical Changes

Participants who have submitted ballot petitions, but were then disqualified by the Board of Elections, may terminate their candidacies in accordance with Board procedures. These procedures do not apply to candidates disqualified by a court, regardless whether the candidate was previously disqualified by the Board of Elections. Rule 2-09.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

52 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-10 Limited Participation.

(a) **Generally.** A limited participant shall not be eligible to receive public funds pursuant to §3-705 of the Code. A limited participant is not subject to the contribution limits pursuant to §3-703(f) of the Code; provided, however, that a limited participant shall not accept, at any time before or after the filing of a certification with the Board, either directly, indirectly, or by transfer, any monetary or in-kind contribution, or any loan, guarantee, or other security for such loan made in connection with such candidate's nomination for election or election, except for monetary contributions from the candidate to his or her principal committee made out of the candidate's personal funds or property, in-kind contributions made by the candidate to his or her principal committee, and advances received. A candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

(b) **Program compliance.** Except as otherwise specified in these Rules, the limited participant shall comply fully with Program requirements, including the following:

(1) **Campaign finance disclosure statements.** The limited participant shall file all disclosure statements as required pursuant to Chapter 3 of these Rules.

(2) **Accounting and auditing.** The limited participant shall be subject to all Program accounting and auditing requirements as set forth in Chapter 4 of these Rules.

(3) **Expenditure limitations.** The limited participant shall not make expenditures which in the aggregate exceed the expenditure limitations set forth in the Act.

(c) **Penalties.** The limited participant shall be subject to penalties pursuant to §§3-710.5 and 3-711 of the Code for violations of the Act or these Rules.

HISTORICAL NOTE

Section added City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

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52 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-11 Non-Participation.

(a) **Generally.** A candidate who does not file a certification pursuant to either §3-703 or §3-718 of the Code, or who rescinds his or her certification prior to the certification deadline by filing a certification rescission form, shall be deemed to be a non-participant pursuant to §3-719 of the Code. A non-participant shall not be eligible to receive public funds pursuant to §3-705 of the Code and shall not be subject to the expenditure limitations provided in §3-706 of the Code. A non-participant may accept contributions from political committees notwithstanding the restrictions on such contributions contained in §3-703(k) of the Code.

(b) **Compliance.** Except as otherwise specified in these Rules, the non-participant shall comply fully with the requirements of the Act:

(1) **Campaign finance disclosure statements.** The non-participant shall file all disclosure statements as required pursuant to Chapter 3 of these Rules.

(2) **Accounting and auditing.** The non-participant shall be subject to all accounting and auditing requirements as set forth in Chapter 4 of these Rules.

(3) **Corporate, limited liability company, and partnership contributions.** The non-participant shall not accept, either directly or indirectly, any contribution, loan, guarantee, or other security for such loan from any corporation, limited liability company, or partnership, including a limited liability partnership, other than a corporation, limited liability company, or partnership that is a political committee as defined in the Act. This prohibition does not apply to loans made in the regular course of business, regardless what form of business entity the lender assumes; but does

prohibit the acceptance of a guarantee or other security for such a loan from a corporation, limited liability company, or partnership.

(4) **Contribution limitations.** The non-participant shall not accept, either directly, indirectly, or by transfer, any contribution or contributions from any one individual, political committee, labor organization or other entity for all covered elections held in the same calendar year in which he or she is a candidate which in the aggregate exceed the contribution limitations set forth in §3-703(1)(f) and (1-a) of the Code; provided, however, that a non-participant may make contributions to his or her own authorized committees with his or her personal funds or property and may make advances or loans with his or her personal funds or property, without regard to any contribution limitations provided in §3-703(1)(f) or (h) or (1-a) of the Code. A candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

(5) **Contributors having business dealings with the city.** The non-participant shall inquire of every individual or entity making a contribution, loan, guarantee or other security for such loan in excess of the amounts set forth in §3-703(1-a) of the Code whether such contributor has business dealings with the city, as that term is defined in the Act.

(c) **Penalties.** A non-participant shall be subject to penalties pursuant to §§3-710.5 and 3-711 of the Code for violations of the Act or these Rules.

HISTORICAL NOTE

Section added City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (a) amended City Record Oct. 26, 2007 §13, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (b) amended City Record Oct. 26, 2007 §13, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-12 Mandatory Training.

(a) **Mandatory pre-election training.** Participating candidates, their campaign managers, treasurers or persons with significant managerial control over a campaign shall be required to attend a training provided by the Board concerning compliance with the requirements of the Program and use of the Program software. For purposes of determining compliance with this rule, "persons with significant managerial control" shall not include campaign consultants, and the individual attending the training must be listed on the candidate's filer registration. Such training shall be completed in accordance with a schedule to be published by the Board.

(b) **Optional Post-Election Training.** In order to prepare campaigns to respond effectively to issues raised in the draft audit report, the Act encourages candidates and their staffs to attend post-election audit trainings. Pursuant to §3-710(1) of the Code, where the candidate, the campaign manager, or the treasurer has attended a post-election audit training provided by the Board, the Board will issue final audit reports within fourteen months after the deadline for submission of the final disclosure report for the covered election, in the case of city council and borough-wide races, and within sixteen months after the deadline for submission of the final disclosure report for the covered election in the case of citywide races. The deadlines for attendance at such trainings shall be:

(1) For city council and borough-wide races, the earlier of twenty days following issuance of the draft audit report or eight months after the deadline for submission of the final disclosure report for the covered election;

(2) For citywide races, the earlier of twenty days following issuance of the draft audit report or ten months after the deadline for submission of the final disclosure report for the covered election.

HISTORICAL NOTE

Section amended City Record June 18, 2009 §3, eff. July 18, 2009. Note: Language inadvertently omitted in this amendment was included in text. [See T52 §1-08 Note 13]

Section amended City Record May 15, 2008 §8, eff. June 14, 2008. [See T52 §1-02 Note 7]

Section added City Record Oct. 26, 2007 §14, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-01 Explanation.

Disclosure statements serve several different purposes:

(a) they provide comprehensive disclosure of candidates' campaign finances for prompt examination by the voting public and permit integration into the Board's computerized Campaign Finance Information System for purposes of additional disclosure, monitoring of campaign finances, and analysis mandated by the Act;

(b) they enable the Board to monitor candidate compliance with Program requirements; and

(c) they enable participants to make claims for public funds.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Rules of the City of New York

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52 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-02 Filing Dates.

(a) **First disclosure statement.**

(1) A candidate's first disclosure statement shall be the first disclosure statement during the applicable election cycle covering the date on which the candidate first raises or spends funds in furtherance of his or her campaign for election for an office covered by the Act unless otherwise provided by New York Election Law.

(2) In a special election held to fill a vacancy, a candidate's first disclosure statement is due 32 days before the election unless otherwise provided by New York Election Law. As provided pursuant to New York Election Law, if the first disclosure statement for a special election is otherwise due within a period of five days of a required semi-annual disclosure statement, the candidate may file a single combined statement on the date on which the latter of the two separate statements is required to be filed.

(b) **Semi-annual disclosure statements.** (1) Semi-annual disclosure statements are due on January 15 and July 15 in each year of the election cycle and on January 15 in the year after the election.

(2) Notwithstanding paragraph (1) above, (i) for candidates in a special election who continue to raise or spend funds for the following primary or general election, the 27 day post-election disclosure statement described in subdivision (d) shall be the last statement required for the special election; provided, however, that in the event that there is a runoff special election, the semi-annual disclosure statement described in subdivision (d) shall be the last disclosure statement required for all candidates in the special election who continue to raise or spend funds for the following primary or general election, regardless whether they were candidates in the runoff special election; and (ii) for

candidates in a special election who do not continue to raise or spend funds for the following primary or general election, the first semi-annual disclosure statement due following the date of the special election shall be the last statement required for the special election, provided, however, that if the first semi-annual disclosure statement following the date of the special election is due less than 30 days after the deadline for filing the 27 day post-election disclosure statement, then the second semi-annual disclosure statement after the date of the special election shall be the last statement required for the special election.

(3) Following submission of the last disclosure statement for an election, the candidate remains, in any case, with respect to the previous election, subject to all other Program requirements and shall submit such information and proof of compliance as may be requested by the Board, including copies of State forms, bank records, and records demonstrating payment of outstanding liabilities.

(c) **Pre-election disclosure statements:** 32 and 11 days before the election and March 15 and May 15 in the year of the election. In a runoff election, the only pre-election statement is due 4 days before the election.

(d) **Post-election disclosure statements:** 27 days after the election, except in the case of a primary or runoff primary election, the disclosure statement is due 10 days after the election, and in the case of a runoff special election, disclosure statements are due both 27 days after the election and on the first January 15 or July 15 following the date of the runoff special election. Candidates in the special election must file both post-runoff special election disclosure statements regardless whether they were on the ballot in the runoff special election.

(e) **Daily disclosures during two weeks preceding the election.** If a candidate: (1) accepts a contribution or contributions from a single source or loan in excess of $1,000; or (2) makes an expenditure in excess of $20,000; during the 14 days preceding an election, the candidate shall report such contributions, loans and expenditures to the Board in a disclosure, received by the Board within 24 hours after it is accepted or made. These disclosures shall be submitted in such form and manner as shall be provided by the Board and shall include any signatures or notarizations required by the Board. Information reported in these daily disclosures must also be reported in the candidate's next disclosure statement.

(f) **Exceptions.** (1) **Not in primary election.** A candidate need not submit the two pre-primary and the 10 day post-primary election disclosure statements if the candidate is not a candidate in a primary election unless the candidate is a participant or limited participant claiming that expenditures are subject to a primary election spending limit, pursuant to §1-08(c)(2)(ii) or (iii). If the candidate is not a candidate in the primary, daily disclosures during the two weeks preceding the primary need not be submitted.

(2) **Not in general election.** A candidate need not submit the two pre-general election and 27 day post-general election disclosure statements or daily disclosures during the two weeks preceding the general election, if the candidate is not a candidate in the general election.

(3) **Deferred filing.** A candidate need not submit a full disclosure statement, if the candidate has accepted less than $2,000 in contributions and loans since the candidate last submitted a disclosure statement and has not made expenditures exceeding forty-five percent of the applicable expenditure limit. This paragraph does not apply to semi-annual disclosure statements. On each disclosure statement filing date for which an exception is not provided pursuant to paragraph (1) or (2), the treasurer shall verify, in a manner provided by the Board, that a full disclosure statement is not required to be submitted pursuant to this paragraph.

(4) **Small campaigns.** A candidate need not submit full disclosure statements if neither the total cumulative receipts nor the total cumulative expenditures of the candidate exceeds an amount equal to three times the contribution limit applicable under the Act. On each disclosure statement filing date for which an exception is not provided pursuant to paragraph (1) or (2), the treasurer shall verify, in a manner provided by the Board, that full disclosure statements are not required to be submitted pursuant to this paragraph.

(5) **Other political committees.** Political committees that are not involved in a covered election shall not file disclosure statements, or State or Federal forms, except as requested by the Board. Notwithstanding the foregoing, the financial records of any committees of a candidate are subject to Board review for purposes of monitoring the candidate's compliance with the requirements of the Act and these Rules and shall be made available to the Board upon its request.

(6) **Next disclosure statement.** Information which would otherwise be included in a disclosure statement for which an exception is provided pursuant to paragraph (1), (2), (3), or (4) shall be included in the next disclosure statement required to be submitted to the Board.

(7) **Board requests.** Notwithstanding any deferral or exception provided by this subdivision, candidates must submit such disclosure statements or other documents as may be requested by the Board.

(8) **Terminated candidacy.** A candidate need not submit any disclosure statements if his or her candidacy has been terminated, as described in §2-09(b), (c), and (d), and the termination is not reversed pursuant to §2-09(d).

(9) **Terminated committee.** If a committee terminates activities (by complete payment of all liabilities and expenditure of all funds in its possession) before the last disclosure statement for an election is due, the committee shall file its last disclosure statement for the election upon its termination, together with a cover letter stating that it has terminated its activities.

(g) Reserved.

(h) **Weekends and holidays.** If a disclosure statement is due to be submitted on a Saturday, Sunday, or legal holiday, the submission of the disclosure statement by 5 p.m. on the next business day shall be considered timely.

(i) Reserved.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record May 15, 2008 §9, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) par (2) amended City Record Feb. 20, 2009 §5, eff. Mar. 22, 2009. [See T52 §1-04

Note 10]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (e) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) repealed City Record Oct. 10, 1995 §29, eff. Nov. 9, 1995. [See Note 3]

Subd. (i) repealed City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Subd. (a) amended City Record May 5, 2003 eff. June 4, 2003 except that the amendment to par (2)

takes effect Dec. 31, 2003. [See Note 5]

Subd. (a) amended City Record July 20, 1999 §27, eff. Aug. 19, 1999 and applying to elections held on and after Jan. 1, 2000. [See Note 1]

Subd. (a) amended City Record Oct. 10, 1995 §27, eff. Nov. 9, 1995. [See T52 §1-11 Note 1]

Subd. (a) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Subd. (b) amended City Record Oct. 10, 1995 §27, eff. Nov. 9, 1995. [See Note 3]

Subd. (b) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (b) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) par (2) amended City Record May 21, 2004 eff. June 20, 2004. [See Note 6]

Subd. (c) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Subd. (c) amended City Record July 20, 1999 §28, eff. Aug. 19, 1999 and applying to elections held on and after Jan. 1, 2000. [See Note 1]

Subd. (d) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Subd. (d) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) amended City Record Aug. 7, 2002 Part H Subpart 1 §3, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (e) amended City Record July 20, 1999 §29, eff. Aug. 19, 1999 and applying to elections held on and after Jan. 1, 2000. [See Note 1]

Subd. (e) amended City Record Oct. 18, 1996 eff. §16, Jan. 1, 1997. [See Note 4]

Subd. (e) relettered and amended (former subd. (f)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) relettered and amended (formerly subd. (e)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) par (1) amended City Record Feb. 29, 2000 §9, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

Subd. (f) par (1) amended City Record Oct. 18, 1996 §17, eff. Jan. 1, 1997. [See Note 4]

Subd. (f) par (1) amended City Record Oct. 10, 1995 §28, eff. Nov. 9, 1995. [See T52 §1-08 Note 6]

Subd. (f) par (2) amended City Record Feb. 29, 2000 §9, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

Subd. (f) par (4) amended City Record July 20, 1999 §30, eff. Aug. 19, 1999 and applying to elections held on and after Jan. 1, 2000. [See Note 1]

Subd. (f) par (3)-(4) amended City Record Oct. 18, 1996 §18, 19, eff. Jan. 1, 1997. [See Note 4]

Subd. (f) par (5) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (f) par (5) amended City Record Oct. 10, 1995 §28, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (f) par (6) amended City Record July 20, 1999 §30, eff. Aug. 19, 1999 and applying to elections held on and after Jan. 1, 2000. [See Note 1]

Subd. (f) par (8) amended City Record Aug. 7, 2002 Part C, eff. Sept. 6, 2002. [See T52 §2-02 Note 2]

Subd. (f) pars (8), (9) added City Record July 20, 1999 §31, eff. Aug. 19, 1999. [See Note 1]

Subd. (g) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (g) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (g) par (2) added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (i) amended City Record May 5, 2003 eff. June 4, 2003 except that the amendments to pars. (2), (3) and (4) take effect Dec. 31, 2003. [See T52 §1-02 Note 5]

Subd. (i) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (i) par (1) amended City Record May 21, 2004 eff. June 20, 2004. [See Note 6]

Subd. (i) par (2) amended City Record Aug. 7, 2002 Part D Subpart 3, eff. Sept. 6, 2002. [See Note 2]

Subd. (i) par (2) amended City Record July 20, 1999 §32, eff. Aug. 19, 1999. [See Note 1]

Subd. (i) par (2) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (i) par (2) amended City Record Oct. 24, 1994 eff. Nov. 23, 1994.

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Disclosure

Participants who did not file semi-annual disclosure statements with the Board before joining the Program (covering the period through January 11 of the election year) will have to file by June 21, instead of on June 1. Public funds claims included in disclosure statements submitted by the previous January 15 will be reviewed first, however, after which the Board will review subsequent claims as soon as is practicable. Rules 3-02(b); 3-03(a)(2); 5-01(d)(24).

The requirement of a disclosure statement four days before an election will be repealed. Rules 3-02(c); 1-09(a)(3)(4). As a result, daily disclosures will be required in the two weeks before the election for contributions over $1,000 and for loans; for expenditures the daily disclosure trigger will be raised from greater than $5,000 to greater than $20,000. Rule 3-02(e). These changes conform with State law requirements.

New exceptions to the regular filing of disclosure statements are:

· The filing exception for small campaigns will cover committees for which neither total receipts nor total expenditures exceed three times the contribution limit ($13,500 for Citywide office; $10,500 for Borough President; $7,500 for City Council). Rule 3-02(f)(4).

· As under State law, a disclosure statement will be due when a committee terminates its activities (by complete payment of liabilities and expenditure of all funds). Rules 3-02(f)(9); 3-03(a)(1).

The amendments to Rules 3-02 and 3-03(a) will not take effect until January 1, 2000.

With each disclosure statement, copies of contributor checks and cash contribution cards will have to be submitted for each matchable contribution claim, until the Board confirms that the candidate has met the threshold for public financing. Rules 3-04(a) and 4-06.

Disclosure statements may be completed in black or blue ink. Rule 3-06(d). As an alternative to the treasurer, a candidate may sign disclosure statements. Rule 3-08.

Committees formed to support or oppose ballot proposals may voluntarily file disclosure statements with the Campaign Finance Board. Rule 3-10.

2. Statement of Basis and Purpose in City Record Aug. 7, 2002: 3. **Additional Disclosure Statements** (§3-02(i)(2)) The amendment, which will become effective in 2005, provides for additional voluntary pre-certification disclosure statements to be due on March 15 and May 15 in the year of an election. These new disclosure statements will provide valuable public disclosure. Further, by dividing up the current six-month reporting period into three disclosure periods, the proposed amendment reduces the burden on participants and Board staff of creating and reviewing the July 15 disclosure statement. Finally, because most candidates do not have any significant activity until after the January 15 disclosure statement, the Board currently has no ability to provide these candidates with feedback on their compliance and reporting prior to certification. The additional disclosure statements will enable Board staff to provide feedback to participants on pre-certification disclosure statements on two additional occasions. Because these disclosure statements are filed prior to the deadline for the certification, candidates who have not yet joined the Campaign Finance Program will not be obligated to file them, although candidates who do not file them or the January 15 disclosure statement will not receive any pre-certification feedback from Board staff. The amendment also makes a technical change to conform a cite reference to a change to §5-01(d) contained elsewhere herein. That change shall be effective 30 days from the date of publication in **The City Record.**

3. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Last Disclosure Statement** (R. 3-02(b), (g); 1-04(g)(7)) The rules eliminate the July 15 disclosure statement due after the election, making January 15 the last deadline for a Campaign Finance Program disclosure statement for an election. For special elections, the rules codify that the 27 day post-election filing is the last special election filing for a committee that goes on to raise funds for the primary or general election, following Advisory Opinions Nos. 1992-3 (December 16, 1992) and 1994-1 (February 23, l1994). The rules also repeal language tying the last filing deadline to the day the participant pays off the last liability for the election and the rule deeming debt outstanding as of the last disclosure statement to be a contribution from a single source. Because participating candidates remain subject to Program requirements for the previous election, even after submitting their last disclosure statement, candidates must continue to submit, upon Board request, proof of ongoing compliance, such as copies of Board of Elections filings, bank records, and records demonstrating payment of outstanding liabilities.

4. Statement of Basis and Purpose in City Record Oct. 18, 1996: Disclosure **Daily Disclosures During Week Preceding the Election** (R. 3-02(e)) Under the rules, a participant is required to file a daily report for any expenditure made in excess of $5,000 in the week before an election, not $1,000 as is the case under the current rules. In addition, the rules repeal the requirement that participants file disclosure statements in the week preceding the election regarding

loans received or guarantees or other security for loans received. **Exceptions** (R. 3-02(f)(1), (4)) The rules simplify the filing requirements for those participants not in a primary election. These campaigns need not file daily disclosure statements in the week preceding the primary election. The rules also increase the total receipts or expenditures under which candidates can qualify for the small campaign exception to filing disclosure statements.

5. Statement of Basis and Purpose in City Record May 5, 2003: Disclosure Statements 1. **Filing Dates** (§3-02(a)) The amendments confirm that the first disclosure statement filed by a participant in a special election is due 32 days before the election, unless otherwise provided by New York State Election Law. New York State Election Law §14-108 and New York State Board of Elections Regulation §6200.2 provide that political committees must file disclosure statements on July 15 and January 15 in a calendar year. Consequently, a participant's special election principal committee may be required to file a disclosure statement with the Board of Elections on January 15 or July 15, regardless when the special election is held. New York City Charter §1052(a)(8) provides that the Campaign Finance Board's disclosure statement filing schedule "shall be in accordance with the schedule specified by the state board of elections." The amendment confirms that to the extent a participant's special election principal committee is required to file a disclosure statement with the Board of Elections on a January 15 or July 15 prior to the election, the participant must also file a disclosure statement with the Campaign Finance Board. 2. **Special Election Disclosure Statements** (§3-02(b), (c), (d)) The amendments establish disclosure statement due dates for runoff special elections. As with runoff primary elections, the only pre-runoff special election disclosure statement will be due 4 days before the election. However, since the post-runoff primary election disclosure statement is designed to coincide with a pre-general election disclosure statement due date, and there is no corresponding election held following a runoff special election, the post-runoff special election disclosure statement due dates will not follow the runoff primary election schedule. Rather, post-runoff special election disclosure statements will be due both 27 days after the runoff special election and on the first semi-annual disclosure statement filing date following the date of the runoff special election. These post-runoff special election disclosure statements will be filed by all participants in the special election, regardless whether they were candidates in the runoff special election.

6. Statement of Basis and Purpose in City Record May 21, 2004: Special Election Disclosure Statements (Rule 3-02(b)(2)) Participants in a regularly scheduled election must file semi-annual disclosure statements on July 15 in the year of the election and on January 15 in the year after the election. Rule 3-02(b)(1). Special elections occur at various times during the year, and often are held more than six months before one of these semi-annual disclosure statement due dates. For example, a special election held in February is almost one year from the January 15 disclosure statement deadline. Because special elections generally are short elections with limited campaign activity, there is little need for a disclosure statement filing so many months after the election. The rule confirms that participants in a special election who do not continue to raise or spend funds for the following primary or general election only need to file the first semi-annual disclosure statement due after the date of the election, and not both the July 15 and January 15 disclosure statements. Prospective Participant's First Disclosure Statement (Rule 3-02(i)(1)) Local Law No. 12 of 2003 authorized the Board to provide prospective participants with additional due dates for filing optional pre-certification disclosure statements, beyond those disclosure statement due dates already provided for by the Board of Elections. **See** Administrative Code §3-703(6), as amended by Local Law No. 12 of 2003. The rule incorporates the additional dates authorized by the local law, by confirming that prospective participants may also file pre-certification disclosure statements on March 15 or May 15 of the election year for the office sought by the prospective participant. Prospective participants may begin to file optional pre-certification disclosure statements on any start date provided in the rule. However, under the current law, if a prospective participant does not file any one of these disclosure statements in a complete and timely manner, any matchable contribution claims he or she makes that could or should have been reported in that statement will be deemed invalid. **See** Board Rule 5-01(d)(21); **see also** Board Rule 3-02(i)(2).

Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-03 Contents.

(a) **Reporting period.**

(1) **Generally.** The reporting period for each disclosure statement shall:

(i) except for the first disclosure statement for an election, begin on the third day before the deadline for the submission of the candidate's preceding disclosure statement; and

(ii) conclude on and include the fourth day before the deadline for the submission of that disclosure statement (except as otherwise provided in §3-02(f)(9)).

(2) **First disclosure statement.** The reporting period for a candidate's first disclosure statement for an election shall begin on the day the candidate first raises or spends funds in furtherance of his or her election for an office covered by the Act. Submissions required by §3-02(a)(2) shall cover the reporting periods of the missing disclosure.

(3) **Special elections.** In the case of a special election the reporting period for the first disclosure shall conclude on the thirty-sixth day before the election, unless otherwise provided pursuant to New York Election Law.

(b) **Summary information.** Each disclosure statement shall include the following information about the committee involved in the election:

(1) the cash balance at the beginning and end of the reporting period;

(2) total itemized and unitemized contributions, loans, and other receipts accepted during the reporting period; and

(3) total itemized and unitemized expenditures made during the reporting period.

A separate disclosure statement shall be submitted for each committee involved in the election. All data reported in disclosure statements, amendments, and resubmissions shall be accurate as of the last day of the reporting period.

(c) **Contributions and other receipts.** (1) **Basic contents.** Each disclosure statement shall include the following information about receipts accepted by the committee during the reporting period:

(i) for each contribution accepted, the contributor's and intermediary's (if any) full name, residential address, occupation, employer, and business address;

(ii) the date of receipt and amount of each contribution accepted or other receipt;

(iii) whether a contribution was made in cash;

(iv) the number of any check or money order used to make the contribution;

(v) the date and amount of each contribution returned to a contributor;

(vi) each previously reported contribution for which the check was returned unpaid; (vii) in the case of contributions in excess of the amounts set forth in §3-703(1-a) of the Code, whether the contributor indicated that the contributor has business dealings with the City as defined in the Act, and if so, the name of the agency or entity with which such business dealings are or were carried on and the appropriate type or category of such business dealings; and

(viii) such other information as the Board may require.

(2) **Transfers.** The candidate shall report contemporaneously the aggregate amount of each transfer and each contribution to which it is attributed. In addition, the participant shall report, in the case of a transfer from a committee not otherwise involved in the covered election, other than another principal committee of the same candidate: (i) all expenditures made by the transferor committee during the election cycle of the covered election; and (ii) all expenditures made by the transferor committee prior to the covered election cycle in connection with raising such contributions. Such reporting of expenditures shall be made in the same disclosure statement in which the transfer is reported, except that expenditures incurred during the covered election cycle for purposes other than raising or administering the transferred contributions need not be reported in disclosure statements to be filed with the Board but rather may be disclosed to the Board by providing copies of the transferor committee's New York City or New York State Boards of Elections or Federal disclosure statements. Further, the candidate shall submit contemporaneously the records required to be maintained pursuant to §4-01(b)(8).

(3) **Advances and reimbursements.** The candidate shall report in each disclosure statement:

(i) the name and address of each person, including the candidate, who has made purchases on behalf of the committee during the reporting period with the expectation of being reimbursed by the committee;

(ii) the date and amount of each such purchase;

(iii) the name and address of the person or entity from whom the purchase has been made;

(iv) the form of the purchase;

(v) the purpose of the purchase;

(vi) the name of each person, including the candidate, whom the committee reimbursed for purchases made on behalf of the Committee during the reporting period, each purchase being reimbursed, and the amount and form of each reimbursement; and

(vii) such other information as the Board may require.

(4) **Contributions totalling $99 or less from a single source.**

(i) Contributions totaling $99 or less from a single source need not be separately itemized in a disclosure statement. Contributions that are not itemized are not matchable.

(ii) Candidates shall include the total amount of unitemized contributions delivered or solicited by an intermediary when reporting the total amount of all contributions the intermediary has delivered or solicited.

(5) **Unitemized contributions totalling more than $99 from a single source.** If a candidate has accepted unitemized contributions totalling more than $99 from a single source, the contribution causing the total to exceed $99 shall be itemized and the total of previously unitemized contributions shall be reported in the same disclosure statement. All subsequent contributions from that single source must be itemized.

(6) **Employment information.**

(i) The candidate need not report the occupation, employer, or business address of any contributor making contributions totaling $99 or less.

(ii) Notwithstanding subdivision (i), the participant shall report the occupation, employer, and business address of any contributor making contributions totaling $99 or less if such contributor is an employee of the candidate or an employee of the spouse or domestic partner of such candidate or an employee of a business entity in which such candidate, spouse or domestic partner has an ownership interest of ten percent or more or in which such candidate, spouse or domestic partner holds a management position, such as the position of officer, director or trustee.

(iii) Matchable contribution claims on contributions totaling more than $99 shall be invalid unless the participant has reported the contributor's occupation, employer, and business address. Matchable contribution claims on contributions totaling less than $99 shall be invalid unless the participant has reported the contributor's occupation, employer, and business address when such information is required pursuant to subdivision (ii).

(7) **Intermediary requirements.**

(i) **Exceptions.** (A) The candidate need not report an intermediary for aggregate contributions of $500 or less collected from a contributor in connection with a party or other candidate-related event held at the residence of the person delivering the contribution, unless the expenses of such events at such residence for such candidate exceed $500 for an election. (B) The candidate need not report an intermediary for contributions collected at a campaign sponsored fundraising event paid for in whole or in part by the campaign. In the case of contributions collected at a non-campaign sponsored fundraising event where there are multiple hosts, the hosts shall designate one host who shall be reported by the candidate as the intermediary for all such contributions. For the purposes of this rule, "campaign sponsored fundraising event" shall mean an event organized by a candidate's authorized committee to raise funds for such candidate.

(ii) **Contributions delivered to fundraising agents.** The candidate shall report any intermediary delivering a contribution to a fundraising agent and shall not report the fundraising agent as an intermediary in a disclosure statement. The candidate shall also report each fundraising agent not reported in a previous disclosure statement for the election.

(iii) **Contributions delivered by an intermediary's agent.** The candidate shall report as the intermediary a person who solicits contribution(s) and directs his or her agent to deliver them to the candidate or fundraising agent. The candidate shall not report the agent as an intermediary.

(8) Reserved.

(9) **Affiliated contributors.** Affiliated contributors considered to be a "single source" under §1-04(h) must be identified on a schedule provided by the Board.

(10) **Joint fundraising events.** The candidate shall report in a cover letter submitted with the disclosure statement a list of all contributions reported in that disclosure statement that were accepted at an event at which contributions were solicited or accepted both for elections subject to and not subject to the Act.

(d) **Loans.**

Each disclosure statement shall include the following information about loans accepted or repaid by the committee during the reporting period:

(1) for each loan accepted, the lender's, guarantor's or other obligor's full name, residential address, occupation, employer, and business address;

(2) the date and amount of each loan, guarantee, or other security for a loan accepted; (3) the date and amount of each loan payment made;

(4) the amount of any portion of a loan which has been forgiven; and

(5) such other information as the Board may require.

(e) **Expenditures.** (1) Each disclosure statement shall include the following information about expenditures (disbursements and unpaid liabilities) made by the candidate during the reporting period:

(i) the date, amount, name and address of the payee, purpose, and check and account number of each disbursement;

(ii) the date, amount, name and address of the obligee, and purpose of each unpaid obligation incurred;

(iii) the reason why any expenditure is exempt; and

(iv) such other information as the Board may require.

(2) Expenditures of less than $50 need not be separately itemized in a disclosure statement. Public funds may not be used to pay for unitemized expenditures.

(3) **Subcontracted goods and services.** If the candidate makes an expenditure to a consultant or other person or entity who or which subcontracts for finished goods or services on behalf of the candidate, the disclosure statement shall include: (i) expenditures made by the candidate to the consultant or other person or entity during the reporting period; and (ii) if the cost of the subcontracted goods or services provided by a single person or entity exceeds $5,000 in a campaign, the name and address of that person or entity, the amount(s) expended to that person or entity for subcontracted goods or services, and the purpose(s) of those goods or services; provided that this disclosure shall be made in the manner provided by the Board, either beginning in the reporting period in which the candidate knows or has reason to believe that such cost first exceeds $5,000 or in the first post-election disclosure statement for the election to which the expenditure relates.

(4) **Credit card and charge card purchases.** The candidate shall report the actual vendor and purchase price

incurred for any goods purchased with a credit card or charge card, in the manner provided by the Board. Disbursements to credit card and charge card accounts shall not be itemized as such.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record July 20, 1999 §34, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) par (1) amended City Record Oct. 26, 2007 §15, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (c) par (2) amended City Record June 18, 2009 §2, eff. July 18, 2009. [See T52 §1-08 Note 13]

Subd. (c) par (4) amended City Record May 15, 2008 §10, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (c) par (7) subpar (i) amended City Record May 15, 2008 §10, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (c) par (8) repealed City Record Oct. 26, 2007 §16, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (e) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) repealed City Record Oct. 10, 1995 §38, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

DERIVATION

Subd. (a) par (2) amended City Record May 5, 2003 eff. June 4, 2003 except that the amendments to §3-03(a)(2) will not be effective for a principal committee in the 2003 elections that was in existence as of December 1, 2002 as an authorized committee of the participant, pursuant to Section 16 of Local Law No. 12 of 2003. [See T52 §1-02 Note 5]

Subd. (a) amended (par (3) inadvertently omitted in amendment) City Record July 20, 1999 §33, eff. Aug. 19, 1999 and applying to elections held on and after Jan. 1, 2000. [See T52 §3-02 Note 1]

Subd. (a) amended City Record Oct. 10, 1995 §30, eff. Nov. 9, 1995. [See T52 §1-11 Note 1]

Subd. (a) amended City Record May 19, 1994 eff. June 19, 1994.

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (a) amended City Record Sept. 5, 1991 eff. Oct. 1, 1991.

Subd. (b) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (c) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (c) par (1) amended City Record Aug. 7, 2002 Part D Subpart 4, eff. Sept. 6, 2002. [See Note 1]

Subd. (c) pars (1), (2) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (c) par (2) amended Oct. 10, 1995 §31, eff. Nov. 9, 1995. [See T52 §1-07 Note 1]

Subd. (c) par (2) subpar (v) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (c) par (3) amended City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See Note 4]

Subd. (c) par (3) repealed and added City Record Oct. 10, 1995 §32, eff. Nov. 9, 1995. [See T52 §1-07 Note 1 and T52 §1-02 Note 4]

Subd. (c) par (3) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (c) par (3) subpar (iii) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (c) par (4) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (c) par (6) amended City Record Dec. 23, 2004 eff. Jan. 22, 2005. [See Note 5]

Subd. (c) par (6) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 3]

Subd. (c) par (6) amended City Record Aug. 7, 2002 Part D Subpart 5, eff. Sept. 6, 2002. [See Note 1]

Subd. (c) par (6) amended City Record Oct. 10, 1995 §33, eff. Nov. 9, 1995. [See Note 2]

Subd. (c) par (7) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (c) par (7) subpar (ii) amended City Record July 20, 1999 §35, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (c) par (7) subpar (ii) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (c) par (7) subpar (ii) amended City Record Oct. 10, 1995 §34, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Subd. (c) par (7) subpar (iii) amended City Record Oct 10, 1995 §34, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Subd. (c) par (8) amended City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See T52 §1-04 Note 3]

Subd. (c) par (8) added City Record Oct. 10, 1995 §35, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) par (9) amended City Record July 20, 1999 §36, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (c) par (9) added City Record Oct. 10, 1995 §35, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) par (10) added City Record Nov. 19, 1996 eff. Dec. 19, 1996. [See T52 §1-04 Note 6]

Subd. (d) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (d) amended City Record Oct. 10, 1995 §36, eff. Nov. 9, 1995. [See T52 §1-05 Note 2]

Subd. (d) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) par (3) subpar (ii) amended City Record Oct. 10, 1995 §37, eff. Nov. 9, 1995. [See T52 §1-02 Note 4]

Subd. (f) amended City Record Sept. 2, 1992 eff. oct. 2, 1992.

NOTE

1. Statement of Basis and Purpose in City Record Aug. 7, 2002:

4. **Disclosure of Check Numbers and Serial Numbers of Money Orders** (§3-03(c)(1))

The Board's C-SMART software requests that campaigns report the check numbers for contributions made by check, but this disclosure is not explicitly required by the Board's Rules. The amendment of §3-03(c)(1) formalizes this requirement, and additionally requires the disclosure of serial numbers for money order contributions.

5. **Clarify Treatment of Reporting Requirements** (§§3-03(c)(6), 4-02, 11-05)

The amendments conform provisions in the Rules regarding the efforts required to comply with the Program's reporting requirements to the provisions of Campaign Finance Act §3-703(6).

2. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Matchable Contributions** (R. 3-03(c)(6); 5-01(d)(12), (26), (27)) The rules codify the following additional reasons for invalidating matchable contribution claims: funds received for other elections (surplus funds and transfers-in from committees not involved in the current election); contributions made by money order exceeding $100, unless the disclosure statement included a copy of the money order and money order contribution card; contributions of $1,000 or more when the disclosure statement omitted contributor employment information and a record was not submitted with the disclosure statement otherwise showing that a good faith effort was made to obtain employment information.

3. Statement of Basis and Purpose in City Record May 5, 2003: 7. **Reporting Employment Information** (§3-03(c)(6)) Local Law No. 12 of 2003 amended the standard for reporting contribution and expenditure information to the Board from an obligation to report such information to the best of one's knowledge to an absolute requirement. **See** Administrative Code §3-703(6), as amended by Local Law No. 12 of 2003. Currently, §3-03(c)(6) provides that matchable contribution claims on contributions of $500 or more for which employer information has not been reported are invalid unless the participant submits a record detailing his or her best efforts to obtain the information. The amendment amends §3-03(c)(6) to eliminate the best efforts concept for reporting employment information.

4. Statement of Basis and Purpose in City Record Aug. 20, 2004: 2. **Advances Must be Itemized in Disclosure**

Statements (Rule 3-03(c)(3)) Under the Board's current rules, advances and their reimbursement are disclosed in a lump-sum manner, and the Board and the public have no way of determining the ultimate payee or purpose for any advance, or the amount of any individual purchase. The rule provides that each individual advance must be itemized in a disclosure statement. The disclosure must include the name and address of the advancer and the party from whom the goods or services are purchased; the date, amount, form, and purpose of the purchase; whether the advancer has been reimbursed by the campaign; and the form of any reimbursements. The Board anticipates that the rule will improve disclosure for the benefit of the public and oversight for the Board. The auditing concerns discussed above, in **"Reimbursement of an Advance is Not an Exempt Expenditure,"** strongly counsel against treating advances and their reimbursement as qualified expenditures for which public funds may be used. Therefore, the rule does not alter the status of reimbursements of advances as expenditures that are not qualified.

5. Statement of Basis and Purpose in City Record Dec. 23, 2004: Reporting Employment Information of Contributors (Rules 3-03(c)(6) and 5-01(d)(11)) Administrative Code §3-703(6) provides that disclosure statements must include employment information for any contributor who contributes more than $99 to a candidate. However, former Rules 3-03(c)(6) and 5-01(d)(11) allowed the Board to match contributions of between $99 and $500 without such employment information. The rule amendment conforms provisions of the Rules (**see** Rules 3-03(c)(6) and 5-01(d)(11)) to the plain language requirements of the law by providing that contributions in excess of $99 will not be matchable if employment information is not reported.

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RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-04 Claiming Matchable Contributions.

(a) **Threshold; back-up documentation.** A participant's disclosure statement shall indicate whether he or she has met the Act's threshold for eligibility for public funds. Participants shall submit with each disclosure statement a copy of the records required to be maintained pursuant to §4-01(b)(2), (3), and (6) for each matchable contribution claimed in the disclosure statement. A matchable contribution claim will be invalidated unless the records that are required to be maintained pursuant to §4-01(b)(2), (3), and (6) are submitted with the disclosure statement in which the contribution is reported. Matchable contribution claims determined by the Board to be invalid pursuant to the Act and these Rules shall not be counted toward a participant's threshold for eligibility for public financing. This rule applies to candidates seeking to preserve matchable contribution claims received prior to filing a certification with the Board pursuant to §3-703(12)(a) of the Code.

(b) **Matchable contributions.** The disclosure statement shall state the total amount of matchable contributions claimed in a reporting period and whether the participant seeks public funds for these matchable contributions. Contributions received in violation of any law, including but not limited to cash contributions from any one contributor greater than $100, are not matchable.

(c) **Returned contributions are not matchable.** A matchable contribution may not be claimed for any portion of a contribution that is returned to or not paid by the contributor. A particiant must rescind claims for matchable contributions that are returned or not paid, in the manner provided by the Board, and the participant's public fund payments will be reduced by the matchable contribution amounts returned.

(d) **Loans and loans forgiven are not matchable.** Pursuant to §3-702(3) of the Code, a matchable contribution

may not be claimed for a loan or a loan that is forgiven.

(e) Reserved.

(f) Reserved.

HISTORICAL NOTE

Section amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See T52 §1-08 Note 4]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) amended City Record May 5, 2003 eff. June 4, 2003. [This was a technical amendment]

Subd. (e) repealed City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1] This repeal was already accomplished in City Record Nov. 19, 2002.

Subd. (f) repealed City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1] This repeal was already accomplished in City Record Nov. 19, 2002.

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 7, 2002 Part D subpart 6, eff. Sept. 6, 2002. [See Note 1]

Subd. (a) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 2]

Subd. (a) amended City Record July 20, 1999 §37, eff. Aug. 19, 1999. [See T52 §3-02 Note 1]

Subd. (d) amended City Record Oct. 10, 1995 §39, eff. Nov. 9, 1995. [See T52 §1-05 Note 2]

Subd. (d) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) amended City Record Aug. 7, 2002 Part D Subpart 7, eff. Sept. 6, 2002. [See Note 1]

Subd. (e) added City Record Oct. 10, 1995 §40, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (f) added City Record Aug. 7, 2002 Part E, eff. Sept. 6, 2002. [See T52 §4-01 Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 7, 2002:

6. **Claiming Matchable Contributions** (§3-04(a))

The current rule permits participants to discontinue the submission of back-up documentation for check contributions after the participant has met the threshold requirement. The amendments require the submission of back-up documentation even after the participant has met the threshold, in order to assist the Board in verifying that public funds are disbursed in the correct amount. Back-up documentation is needed from participants even after they have reached threshold to monitor compliance with the Act and Rules. In addition, the current rule is a source of confusion because participants often do not understand when they can stop submitting back-up documentation.

The amendments also clarify that the Board will consider only valid matchable contribution claims toward the threshold for eligibility for public financing, except that claims invalidated under §5-01(d)(3) solely because they would yield more than the maximum in public funds may be counted toward the threshold amount up to $1,000 per matchable contribution. This change codifies Advisory Opinion No. 2001-9.

7. **Copies of Money Orders and Contribution Cards Must be Submitted for All Money Order Contributions** (§3-04(e))

Current §3-04(e) states that the Board will not match a money order contribution greater than $100 with public funds unless the participant submits photocopies of the money order and a signed contribution card as is required to be maintained by §4-01(b)(3). In order to guard against the disbursement of public funds on the basis of misreported contributions, the amendment extends the requirement to submit such back-up documentation to all money order contributions, including those in the amount of $100 and less.

2. Statement of Basis and Purpose in City Record Mar. 27, 2001: Campaign Finance Disclosure Statements **Required Documentation for Matchable Contributions** (Rule 3-04(a)) The amendment codifies the Board's current practice of requiring that, except in the case of contributions made by check signed by the contributor, participants or potential participants must continue to provide with each disclosure statement the documentation required pursuant to Rule 3-04 for each matchable contribution claimed, even after the Board confirms that the participant or potential participant has met the threshold. This does not obviate the requirement to maintain said records or produce them at the Board's request.

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§3-05 Segregated Bank Account Statements, Contribution Cards, and Checks.

Participants seeking to comply with the exception to §5-01(n)(1) contained in paragraph (2) of that Rule must submit copies of segregated bank account statements, contribution cards, and checks to the Board in the manner and to the extent provided by the Rule.

HISTORICAL NOTE

Section added City Record Aug. 7, 2002 Part F Subpart 6, eff. Sept. 6, 2002. [See §5-01 Note 2]

DERIVATION

Section repealed City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section in original publication July 1, 1991.

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CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-06 Forms for Disclosure Statements.

Candidates shall submit disclosure statements in such form and manner as shall be provided by the Board and in accordance with Chapter 9 of these Rules.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record Aug. 7, 2002 Part H Subpart 1 §4, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Section in original publication July 1, 1991.

Subds. (c), (d) amended City Record July 20, 1999 §38, eff. Aug. 19, 1999. [See T52 §9-01 Note 1]

[Note, subds. (c), (d) were bracketed out of rule by City Record Aug. 7, 2002]

Subd. (c) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

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CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-07 Insufficient Disclosure Statements.

Disclosure statements that fail to comply substantially with disclosure requirements of the Act or these Rules will not be accepted by the Board. Amendments to or resubmissions of disclosure statements are prohibited unless expressly authorized or requested by the Board.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record July 20, 1999 §39, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Section repealed and added City Record Oct. 10, 1995 §41, eff. Nov. 9, 1995. [See T52 §1-02

Note 4]

Section in original publication July 1, 1991.

Subds. (a), (b) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (c) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

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§3-08 Verification.

The candidate or treasurer shall verify that the disclosure statement is true and complete to the best of his or her knowledge, information, and belief. The disclosure statement shall contain such signatures as may be required by the Board; provided, that to the extent a candidate is permitted to submit a disclosure statement in a non-electronic format pursuant to Chapter 9 of these Rules, such disclosure statement will only be accepted by the Board if it contains an original signature from the candidate or the treasurer.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended (heading inadvertently omitted) City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Section amended City Record Aug. 7, 2002 Part H Subpart 1 §5, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Section amended City Record July 20, 1999 §40, eff. Aug. 19, 1999. [See T52 §3-02 Note 1]

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CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-09 Supplemental Documents.

The Board may, in its discretion, include in its public disclosure file any document submitted with a disclosure statement, or requested by the Board, including but not limited to copies of records required by Chapter 4, State form filings, and submissions made by candidates after an election cycle.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record July 20, 1999 §41, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Section added City Record Oct. 10, 1995 §42, eff. Nov. 9, 1995. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 10, 1995:

Additional Documents in Public Disclosure File (R. 3-09)

When the following documents are received by the Board, the Board may, in its discretion, include them in the public file together with the participating candidate's disclosure statements: summaries of balances and other

information received regarding runoff primary election accounts; loan documentation; list of campaign offices; records required for advances; political advertisements and literature; documents regarding the source of funds originally received for other elections that are used by committees involved in the current election; and such Board of Elections filings and records demonstrating payment of outstanding liabilities as may be submitted by participating candidates after their last Campaign Finance Board disclosure statement.

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§3-10 Ballot Proposal Committees.

A political committee making expenditures in support of or in opposition to a ballot proposal may voluntarily file disclosure statements on disclosure forms provided by the Board and in accordance with the schedule for making these filings at the Board of Elections. These filings may not be accepted unless the committee meets all disclosure requirements of Code §3-703(6) for expenditures, contributions, loans, and other receipts. The Board will enter the information it accepts into its public computer system. These filings shall be available for public inspection and copying at the offices of the Board. A voluntary submission pursuant to this rule is not subject to the audit process or the contribution and expenditure limits of the Program.

HISTORICAL NOTE

Section amended (inadvertently omitting heading) City Record May 5, 2003 eff. June 4, 2003. [This

was a technical correction.]

DERIVATION

Section amended City Record July 20, 1999 §42, eff. Aug. 19, 1999. [See T52 §3-02 Note 1]

Section added City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 18, 1996:

Transition/Inaugural Activities

[Note: The City Record July 20, 1999 amendment changed the purpose of this section]

Filing of Transition and Inaugural Activities (R. 3-10)

The rules mandate that if a candidate voluntarily chooses to file disclosure forms with the Campaign Finance Board for an entity making transition into office and/or inauguration expenses, the candidate must use forms issued by the Board. Any such disclosure statements will be entered into the Board's database for public use.

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CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-11 Proof of Filing with the Conflicts of Interest Board; Payment of Penalties.

(a) **Requirements.** Participants shall file a copy of a receipt indicating proof of compliance with §12-110 of the Code, including payment of any penalties assessed by the conflicts of interest board. A receipt that is not filed timely may result in a delay of any payment by the Board until the Board next makes payment determinations following the submission of the next disclosure statement such participant is required to file with the Board pursuant to §3-02(b), (c) or (d).

(1) **Due dates.** The receipt shall be considered timely filed if it is filed with the Board on or prior to the last business day of July in the year of the covered election, except as provided by paragraph (2).

(2) **Special election due dates.** In the case of a special election, if the deadline for filing financial disclosure reports with the conflicts of interest board is before the due date for the first disclosure statement required to be filed with the Board pursuant to §3-02(a)(2), the receipt shall be considered timely filed if it is filed with the Board on or prior to the due date for filing this disclosure statement with the Board. If the deadline for filing financial disclosure reports with the conflicts of interest board is on or after the due date for the first disclosure statement required to be filed with the Board pursuant to §3-02(a)(2), the receipt shall be considered timely filed if it is filed with the Board no later than one business day after the last day for filing disclosure reports with the conflicts on interest board.

(b) **Date submitted.** §1-09 shall be applicable for the purpose of determining the date of receipt by the Board of documents submitted pursuant to this section.

HISTORICAL NOTE

Section added City Record May 21, 2004 eff. June 20, 2004. [See Note 1]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 21, 2004:

The Act recently was amended to provide that candidates participating in the Campaign Finance Program shall not be eligible to receive public funds unless financial disclosure reports required pursuant to Administrative Code §12-110 have been filed with the Conflicts of Interest Board (the "COIB") and any penalties assessed by the COIB have been paid. **See** Administrative Code §3-703(1)(m), as added by Local Law No. 43 of 2003. The rules conform to the changes to the Act contained in Local Law No. 43, and provide that a candidate otherwise eligible to receive public funds must file with the Board the COIB receipt evidencing compliance with Administrative Code §12-110 to be eligible for public funds. To ensure timely receipt of public funds, a participant must file the COIB receipt no later than July 15 of the election year, unless the deadline for filing financial disclosure reports with the COIB is also on or after July 15, in which case a participant must file the COIB receipt no later than one day after the last day for filing disclosure reports with the COIB.

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CHAPTER 4 ACCOUNTING AND AUDITING

§4-01 Records to be Kept.

(a) **Generally.** Candidates must keep records that enable the Board to verify the accuracy of disclosure statements, substantiate that expenditures were made in furtherance of the campaign, were qualified expenditures, or were permissible post-election expenditures, and confirm any matchable contributions claimed. Candidates must maintain and may be required to produce originals and copies of checks, bills, or other documentation to verify contributions, expenditures, or other transactions reported in their disclosure statements. Candidates shall maintain clear and accurate records sufficient to show an audit trail that demonstrates compliance with the Act and these Rules. The records shall be made and maintained contemporaneously with the transactions recorded, and maintained and organized in a manner that facilitates expeditious review by the Board. Nothing in this chapter shall be construed to modify the requirements of New York Election Law §14-118. The records maintained for each campaign finance transaction, whether maintained on paper and/or electronically, shall be accurate and, if necessary, modified promptly to ensure continuing accuracy. Records that are contemporaneous and complete, as described in this Rule, including records using forms supplied by the Board, shall be presumed to be sufficient to demonstrate financial activity. If at any time a candidate becomes aware that a record of an expenditure, whether maintained on paper or electronically or both, is missing or incomplete, the candidate may create a new record or modify an existing record, provided that the record so created or modified is clearly identified by the candidate as such, and provided, further, that if the missing or incomplete record is an invoice from a vendor, the candidate must in the first instance attempt to get a duplicate or more complete record directly from such vendor prior to creating a new record or modifying an existing record. In addition, the candidate must create a further record, in the form of a signed, dated, and notarized statement by the candidate and/or treasurer and/or other campaign representative having first-hand knowledge of the matter, explaining the reasons for and the circumstances surrounding the creation or modification of a record. The Board reserves the right not to accept a noncontemporaneous

record created or modified pursuant to this paragraph if, after review of the timing and other circumstances, it determines that the record is not sufficient to document the actual transaction.

(b) **Receipts.** (1) **Deposit slips.** Candidates shall maintain copies of all deposit slips. The deposit slips shall be grouped together with the monetary instruments representing the receipts deposited into the bank or other depository accounts held by the candidate for an election, unless the candidate maintains other records that show, in a manner that similarly facilitates expeditious review, when these receipts were deposited. Where the bank or depository does not provide itemized deposit slips, candidates shall make a contemporaneous written record of each deposit. Such written record shall indicate the date of the deposit, the source and amount of each item deposited, whether each item deposited was a check, a money order, or cash, the name and title of the individual who made the deposit, and the total amount deposited.

(2) **Photocopies of checks and other monetary instruments.** Candidates shall maintain a photocopy of each check or other monetary instrument representing a contribution or other monetary receipt. In order for a contribution in the form of a check signed by an authorized agent of the contributor to be matchable, participants must maintain:

(a) a copy of the check upon which is printed the name of the actual contributor; and

(b) a document, signed by the contributor, which indicates:

(i) that the person signing the check is authorized to do so;

(ii) the date and amount of the contribution; and

(iii) the principal committee's name.

(3) **Cash and money order contribution cards.** (i) For each cash and money order contribution received, participants and non-participants shall maintain a separate written record containing:

(A) the contributor's name;

(B) the contributor's residential address;

(C) the amount of the contribution; and

(D) the authorized committee's name.

(ii) This record shall be signed by the contributor or, if the contributor is unable to sign his or her name, marked with an "X" and signed by a witness to the contribution. Adjacent to the signature, the contributor shall write the date on which he or she signed or marked the contribution card. The following statement shall be placed above the line for the contributor's signature: "I understand that State law requires that a contribution be in my name and be from my own funds. I hereby affirm that this contribution is being made from my personal funds, is not being reimbursed in any manner, and is not being made as a loan."

(iii) A contribution card which contains any additional information and signatures required by §5-01(n)(2) shall also satisfy the requirements of that Rule.

(4) **Omitted.**

(5) **Intermediary contribution statements.** For each instance in which a candidate accepts contributions from an intermediary, including any contributions delivered to a fundraising agent, or receives contributions solicited by an intermediary where such solicitation is known to the candidate, the candidate shall maintain a separate written record of the intermediary's name, residential address, employer and business address as well as the names of the contributors and

the amounts contributed. This record shall contain the statement: "I hereby affirm that I did not, nor to my knowledge did anyone else, reimburse any contributor in any manner for his or her contribution and none of the submitted contributions was made by the contributor as a loan." This record shall be signed by the intermediary, or if the intermediary is unable to sign his or her name, marked with an "X" and signed by a witness. In addition, the record shall contain the following statement: "The making of false statements in this document is punishable as a class E felony pursuant to section 175.35 of the Penal Law and/or a Class A misdemeanor pursuant to section 210.45 of the Penal Law."

(6) **Credit card contributions.** For each instance in which a candidate accepts contributions by credit card, including contributions received over the Internet, the candidate shall maintain a copy of the unique merchant account agreement as well as copies of all merchant account statements, credit card processing company statements and correspondence, transaction reports or other records demonstrating that the credit card used to process the transaction is that of the individual contributor (including proof of approval by the credit card processor for each contribution and proof of real time address verification), and a separate written record of the contributor's name, residential address, credit card account type, credit card account number, and credit card expiration date. This record shall contain the statement: "I understand that State law requires that a contribution be in my name and be from my own funds. I hereby affirm that this contribution is being made from my personal credit card account, billed to and paid by me for my personal use, and having no corporate or business affiliation, and is not being made as a loan." This record shall be signed by the contributor, or if the contributor is unable to sign his or her name, marked with an "X" and signed by a witness. Adjacent to the signature or mark, the contributor or witness shall write the date on which he or she signed the record. The Board shall provide a specimen of this card. Notwithstanding the requirements of this paragraph, in the case of credit card contributions made over the Internet, authorization cards need not be signed by the contributor. In addition, if the candidate accepts credit card contributions over the Internet, the candidate shall maintain a copy of all website content concerning the solicitation and processing of credit card contributions.

(7) **Segregated Account Contribution Cards.** Participants shall maintain a written record of the contributor's name, residential address, contribution amount, and date for each contribution which the participant deposits into a segregated bank account pursuant to Rule 5-01(n)(2). The record shall be signed by the contributor or, if the contributor is unable to sign his or her name, marked with an "X" and signed by a witness to the contribution, and the following statement shall be placed above the signature line: "I understand that this entire contribution will be used only (i) to pay expenses or debt from a previous election; (ii) by the candidate for an election other than the election for which this contribution is made; or (iii) to support candidates other than the candidate to whose campaign this contribution is made, political party committees, or political clubs. I further understand that this contribution will not be matched with public funds. I understand that State law requires that a contribution be in my name and be from my own funds. I hereby affirm that this contribution is being made from my personal funds, is not being reimbursed in any manner, and is not being made as a loan." Adjacent to the signature or mark, the contributor or witness shall write the date on which he or she signed the record. The Board shall provide a specimen of this card.

(8) **Transfers.** Candidates shall obtain and maintain all records specified by the Board regarding transfers, including, but not limited to, in the case of transfers from a committee not otherwise involved in the covered election, other than another principal committee of the same candidate, a record, obtained prior to receipt of the transfer, demonstrating, for each contribution to be transferred to a participant's authorized committee, the contributor's intent to designate the contribution for the covered election. This record shall contain the statements: "I understand that this contribution will be used by the candidate for an election other than that for which the contribution was originally made. I further understand that the law requires that a contribution be in my name and be from my own funds. I hereby affirm that this contribution was made from my personal funds, is not being reimbursed in any manner, and is not being made as a loan." This record shall be signed by the contributor, or if the contributor is unable to sign his or her own name, marked with an "X" and signed by a witness. Adjacent to the signature or mark, the contributor or witness shall write the date on which he or she signed the record.

(c) **In-kind contributions.** For each in-kind contribution, candidates shall maintain a receipt or other written

record that provides the date(s) the in-kind contribution was made, the name and address of the contributor, a detailed description of the goods or services provided, and such further information and/or documentation necessary to show how the value of the contribution was determined.

(d) **Bills.** Candidates shall retain a copy of each bill for goods or services provided. Candidates shall maintain written documentation showing that a bill has been forgiven. Documentation for goods or services must be contemporaneous and must provide the date the vendor was retained or the date the goods or services were provided, the vendor's name and address, the amount of the expenditures, and a detailed description of the goods and services provided. If the invoice supplied by the vendor does not meet these requirements, the candidate must create an additional contemporaneous record containing the necessary information, and such record must be signed by the vendor and the campaign treasurer or other representative of the campaign. In the case of services that were subcontracted by the vendor, candidates must obtain documentation meeting the above requirements for the subcontracted services from the vendor. For wages, salaries, and consulting fees, candidates must maintain a contemporaneous record, signed by the employee or consultant and the campaign, and dated, providing the name and address of the employee or consultant, a detailed description of the services, the amount of the wages, salary or consulting fees, the date(s) on which the work was performed, the period for which the individual was retained, and a detailed breakdown of the number of hours worked. The Board shall provide specimens of records for employees and consultants, including daily timesheets for election day workers and consultant agreements.

(e) **Disbursements.** (1) **By check.** A candidate shall make all disbursements by check, except for petty cash. The date, payee name, purpose, and number of each check, as well as all inter-account transfers, any other debits, and any additional information as determined by the Board, shall be recorded in a checkbook register.

(2) **Petty cash.** Candidates may maintain a petty cash fund of no more than $500 out of which they may make disbursements not in excess of $100 to any person or entity per purchase or transaction. If a petty cash fund is maintained, the candidate shall maintain a petty cash journal including the name of every person or entity to whom any disbursement is made, as well as the date, amount, and purpose of the disbursement.

(3) **Credit card and charge card purchases.** Candidates shall maintain a monthly billing statement or customer receipt for each disbursement from a credit card or charge card account showing vendors underlying the disbursement.

(4) **Reimbursement of advances.** Candidates shall obtain vouchers for any reimbursements they make to persons, including the candidate, for purchases made on behalf of the committee. The voucher shall be presented by the person making the purchase and shall include his or her name, the date and amount of the purchase, the vendor's name, and the manner of payment, including check number, credit card name, and cash. A receipt, bill, or invoice from the vendor shall be attached to the voucher.

(f) **Bank records.** Candidates shall maintain the following records received from banks and other depositories relating to accounts:

(1) all periodic bank or other depository statements in chronological order, maintained with any other related correspondence received with those statements, such as credit and debit memos and contribution checks returned because of insufficient funds and

(2) all returned and cancelled disbursement checks, including substitute checks which may be returned by the bank in lieu of cancelled checks.

(g) **Loans.** The candidate shall obtain, maintain, and make available to the Board upon its request written documentation:

(1) for each loan received, including loans made by the candidate;

(2) for each loan repayment; and

(3) that shows that a loan has been forgiven. The loan agreement shall be contemporaneous and in writing, shall be signed and dated by both parties, and shall provide all terms and conditions of the loan, including the amount and term of the loan. The candidate shall retain copies of loan checks and records of electronic transfers.

(h) **Subcontracted goods and services.** Candidates required to itemize the cost of subcontracted goods and services pursuant to Rule 3-03(e)(3)(ii) shall obtain and maintain documentation from the consultant or other person who or which subcontracts, containing all information required to be disclosed pursuant to that rule.

(i) **Fundraisers.** Candidates shall maintain records for all fund-raising events, including all house parties, which shall contain: the date and location of the event; the person(s) and/or organization(s), other than the candidate's authorized committee, hosting the event; an itemized listing of all expenses incurred in connection with the event, including all expenses whether or not paid or incurred by the authorized committee; and the contributor name and amount of each contribution received at or in connection with the event. This subdivision does not apply to activities on an individual's residential premises, including house parties, to the extent that the cost of those activities do not exceed $500 and are not contributions pursuant to §3-702(8)(ii) of the Code.

(j) **Campaign offices.** Candidates shall maintain a list identifying the address of each campaign office.

(k) **Political advertisements and literature.** Pursuant to New York Election Law §14-106, candidates shall maintain copies of all advertisements, pamphlets, circulars, flyers, brochures, letterheads, and other printed matter or electronic media purchased or produced and a schedule of all radio or television time purchased and scripts used therein.

(l) **Vendors.** In addition to obtaining and keeping contemporaneous documentation (such as bills) for all goods and services provided by vendors, including campaign consultants and attorneys, and employees, when a candidate retains or otherwise authorizes a person or entity (including an employee) to provide goods and/or services to the candidate, and the candidate knows or has reason to believe that the goods and/or services to be provided directly or indirectly by this vendor will exceed $1,000 in value during the campaign, the candidate shall:

(1) keep a copy of the contemporaneously written contract with the vendor, which shall, at a minimum, provide the name and address of the vendor, be signed and dated by both parties, state the terms of the contract including the terms of payment and a detailed description of the goods and/or services to be provided, and shall include, if the contract was at any time amended, a contemporaneously written contract amendment, signed and dated by both parties and describing in detail the changes to the terms and conditions of the contract, or

(2) if no contemporaneously written contract has been entered into, keep a contemporaneously written record that includes the date the vendor is retained or otherwise authorized by the candidate, the name and address of the vendor, and the terms of the agreement or understanding between the candidate and the vendor including the terms of payment and a detailed description of the goods and/or services the vendor is expected to provide. If the agreement or understanding was at any time amended, the candidate shall create and maintain a contemporaneously written record describing in detail the changes to the terms and conditions of the agreement or understanding.

In addition to the records to be kept pursuant to subparagraphs (1) or (2) above, the candidate shall keep evidence sufficient to demonstrate that the work described in the contract was in fact performed and completed. Such evidence may include samples or copies of work product, emails, time records, phone records, and photographs or other documentary evidence. Where such evidence is nonexistent or unavailable, the candidate shall maintain affidavits signed by the vendor and either the candidate, treasurer, or other campaign representative having first-hand knowledge, describing the goods or services provided and the reason(s) why documentary evidence is nonexistent or unavailable.

(m) **Advances.** In such form as may be prescribed by the Board, candidates shall maintain records of advances which shall include the name and address of each person who made an advance on behalf of the authorized committee,

the amount so advanced, the name and address of each payee to whom advanced funds were paid, the amount paid, and the purpose of each payment.

(n) **Business dealings with the City.** For each individual or entity making a contribution, loan, guarantee or other security for such loan in excess of the amounts set forth in §3-703(1-a) of the Code, candidates shall obtain and maintain all records specified by the Board regarding any response, or any failure to respond, concerning whether such individual or entity has business dealings with the City. Such record, at a minimum, shall request that the contributor provide the name of the agency or entity with which such business dealings are or were carried on and the appropriate type or category of such business dealings.

(o) **Travel.** Candidates shall obtain and maintain originals and copies of all checks, bills, or other documentation to verify campaign-related travel transactions reported in disclosure statements. In addition to the above, for all travel, with the exception of travel by public transportation within New York City, candidates shall create and maintain a contemporaneous record describing the campaign-related purpose of the travel, the complete travel itinerary, the dates of the travel, and the names of all individuals who participated in the travel. For travel by private car, candidates must create and maintain a contemporaneous travel log providing, for each trip and each vehicle, the names of the driver and passengers, the date(s) and purpose of each trip, the itinerary, including all the locations of any campaign events and other stops, the beginning and ending mileage, and the total mileage. Travel between two stops is considered an individual trip for logging purposes even if the stops are part of a multi-stop itinerary. For the purposes of reporting and reimbursing campaign expenditures, candidates shall calculate expenditures for travel by private car based on mileage according to the provisions of directive six of the New York City Comptroller.

HISTORICAL NOTE

Section amended City Record Oct. 23, 2008 §6, eff. Nov. 22, 2008. This amendment inadvertently omitted section heading, and (b)(3)(ii) & (iii). [See T52 §1-02 Note 8]

Subd. (b) par (6) amended City Record Feb. 20, 2009 §6, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

DERIVATION

Section amended (individually by subdivision) City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Oct. 26, 2007 §17, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (b) par (1) amended City Record May 15, 2008 §11, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (a) amended City Record July 20, 1999 §43, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (a) amended City Record Oct. 10, 1995 §43, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (a) amended City Record Feb. 4, 1993 eff. Mar. 2, 1993.

Subd. (a) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (b) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) par (1) amended City Record July 20, 1999 §44, eff. Aug. 19, 1999. [See Note 5]

Subd. (b) par (1) amended City Record Oct. 18, 1996 §24, eff. Jan. 1, 1997. [See Note 8]

Subd. (b) par (1) amended City Record Oct. 10, 1995 eff. Nov. 9, 1995. [See Note 6]

Subd. (b) par (2) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (b) par (2) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 2]

Subd. (b) par (2) amended City Record Oct. 10, 1995 eff. Nov. 9, 1995. [See Note 6]

Subd. (b) par (3) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (b) par (3) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See T52 §1-08 Note 4]

Subd. (b) par (3) amended City Record Aug. 7, 2002 Part E, eff. Sept. 6, 2002. [See Note 4]

Subd. (b) par (3) amended City Record Mar. 27, 2001 eff. July 12, 2001. [See Note 3]

Subd. (b) par (3) amended City Record Oct. 18, 1996 §25, eff. Jan. 1, 1997. [See Note 7]

Subd. (b) par (3) amended City Record Oct. 10, 1995 eff. Nov. 9, 1995. [See Note 6]

Subd. (b) par (4) repealed City Record May 5, 2003 eff. June 4, 2003. [See Note 9]

Subd. (b) par (5) amended City Record May 15, 2008 §11, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (b) par (5) amended City Record May 15, 2008 §11, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (b) par (5) added City Record Mar. 27, 2001 eff. July 12, 2001. [See Note 3]

Subd. (b) par (6) amended City Record Jan. 15, 2003 eff. Feb. 14, 2003. [See Note 5]

Subd. (b) par (6) added City Record Aug. 7, 2002 Part E, eff. Sept. 6, 2002. [See Note 4]

Subd. (b) par (7) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See T52 §1-08 Note 4]

Subd. (b) par (7) added City Record Aug. 7, 2002 Part F Subpart 6, eff. Sept. 6, 2002. [See §5-01 Note 2]

Subd. (d) amended City Record Oct. 26, 2007 §17, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) amended City Record July 20, 1999 §45, eff. Aug. 19, 1999. [See Note 5]

Subd. (d) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) pars (1), (3), (4) amended City Record July 20, 1999 §46, eff. Aug. 19, 1999.

Subd. (e) pars (2), (3) amended Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) par (4) added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (f) amended City Record Oct. 18, 1996 §26, eff. Jan. 1, 1997. [See Note 8]

Subd. (f) par (2) amended City Record July 20, 1999 §47, eff. Aug. 19, 1999. [See Note 5]

Subd. (g) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (h) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (i) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (i) amended City Record July 20, 1999 §48, eff. Aug. 19, 1999. [See Note 5]

Subd. (i) added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (j) added City Record Oct. 10, 1995 §44, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Subd. (k) added City Record Oct. 10, 1995 §44, eff. Nov. 9, 1995. [See Note 6]

Subd. (l) added City Record Feb. 29, 2000 §10, eff. Mar. 30, 2000. [See Note 1]

Subd. (l) repealed City Record July 20, 1999 §49, eff. Aug. 19, 1999. [See Note 5]

Subd. (l) added City Record Oct. 10, 1995 §44, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Subd. (m) amended City Record May 5, 2003 eff. June 4 2003. [See T52 §1-02 Note 5]

Subd. (m) added City Record Oct. 10, 1995 §44, eff. Nov. 9, 1995. [See T52 §1-02 Note 4]

Subd. (n) added City Record Oct. 26, 2007 §17, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 29, 2000:

Recordkeeping

When a participant knows or has reason to believe that goods and/or services to be provided will exceed $1000 in value, a new rule requires the participant to keep a copy of the written contract or a written record that includes the name and address of the vendor and a description of the goods or services the vendor is expected to provide. Rule 4-01(1).

2. Statement of Basis and Purpose in City Record Mar. 27, 2001: Accounting and Auditing 1. **Records to be Kept for Checks Signed by an Authorized Agent of the Contributor** (Rule 4-01(b); 5-01(d)(19)) The rule codifies Advisory Opinion No. 2000-3 (September 14, 2000) which established the additional documentation a participating candidate must provide the Board for each contribution in the form of a check signed by the contributor's authorized agent, rather than by the contributor, for which public matching funds are claimed. Under the rule, matching funds may only be claimed for contributions in the form of a check signed by an authorized agent of the contributor if the candidate provides a copy of the check upon which is printed the name of the actual contributor; and a document, signed by the contributor which indicates: (1) that the person signing the check is authorized to do so; (2) the date and amount of the contribution; and (3) the committee's name.

3. Statement of Basis and Purpose in City Record Mar. 27, 2001: 2. **Cash and Money Order Contribution Cards (Rule 4-01(b)(3))** The rule amends the requirements for cash and money order contribution cards. Under the rule, contribution cards would be required to include the statement "I hereby affirm that this contribution is being made from my personal funds, is not being reimbursed in any manner, and is not being made as a loan." The statement is required to appear above the entry for the contributor's signature. 3. **Intermediated Contributions** (Rule 4-01(b)(5)) The rule is intended to assist the Campaign Finance Board in auditing contributions made to candidates through intermediaries. Under the rule, in each instance in which a candidate accepts a set of contributions from an intermediary, for those contributions to be valid, the candidate must maintain a written record, or "intermediary statement," setting forth the intermediary's name, address, employer and business address as well as the names of the contributors and the amounts contributed. The record must include the statement: "I hereby affirm that I did not, nor to my knowledge, did anyone else, reimburse any contributor in any manner for his or her contribution, and none of the submitted contributions was made by the contributor as a loan" and must be signed by the intermediary. In addition, the rule mandates that the intermediary card contain the following statement: "The making of false statements in this document is punishable as a class E felony pursuant to §175.35 of the Penal Law and/or a Class A misdemeanor pursuant to §210.45 of the Penal Law."

4. Statement of Basis and Purpose in City Record Aug. 7, 2002: 1. **Requirements for Contribution Card for Cash and Money Order Contributions** (§4-01(b)(3)) The amendment to §4-01(b)(3) clarifies the required elements of the contribution card that must be filed for each cash and money order contribution received. It also requires the contributor to indicate the date on which he or she signed the card, and provides that participants may use a single card to satisfy the requirements of both §4-01(b)(3) and the amendments to §5-01(n) described below. This change to require the date on which the card is signed is made in response to instances in past elections where the Board has received contribution cards where signatures and dates have appeared inconsistent, giving rise to inferences of fraud. The Board believes that this increased contemporaneous recordkeeping requirement will assist the Board's efforts to police against fraud. 2. **Documenting Credit Card Contributions** (§§4-01(b)(6), 3-04(f)) Advisory Opinion No. 1994-2 and a 2000 Board publication entitled "Claiming Matching Funds for Credit Card Contributions" require participants who wish to accept contributions made through credit cards to maintain and submit to the Board certain documents, including an "authorization card" for each contribution that is signed by the contributor. New §4-01(b)(6) codifies this record-keeping requirement, and new §3-04(f) requires the submission to the Board of the authorization cards and other specified records for any credit card contribution claimed to be matchable with public funds. These rules do not create any new obligations.

5. Statement of Basis and Purpose in City Record July 20, 1999: Recordkeeping Recordkeeping requirements for bills, deposit slips, checks, fundraising events, and advances are simplified. Rule 4-01. The requirement for fundraising agent records is repealed as redundant. Rule 4-01(l). A matchable contribution claim will be invalidated if the participant fails to provide a record for the contribution when requested by the Board. Rule 5-01(d)(15).

6. Statement of Basis and Purpose in City Record Oct. 10, 1995: Record keeping (R. 4-01(b), (k)) Participating candidates are no longer required to group monetary instruments with associated deposit slips if they have an alternative method that shows, in a manner that similarly facilitates expenditious review, when the receipts were deposited. The rules require participating candidates to keep signed contributor cards for contributions made by money order and copies of campaign advertisements and literature (following a State law requirement). Record keeping requirements for fund raising agents, campaign offices, and advances are described elsewhere in this summary.

7. Statement of Basis and Purpose in City Record Oct. 18, 1996: **Receipts** (R. 4-01(b)(3)) The rules mandate that cash and money order contribution records have separate lines for the contributor's name, the contributor's signature, and the committee's name.

8. Statement of Basis and Purpose in City Record Oct. 18, 1996: Recordkeeping **Bank Records** (R. 4-01(b)(1) and R. 4-01(f)) The rules move the requirement that deposit slips be kept in chronological order from R. 4-01(f)(3) to R. 4-01(b)(1).

9. Statement of Basis and Purpose in City Record May 5, 2003: Auditing and Accounting 2. **"Best Efforts" for Unreported Contributor Information** (§4-01(b)(4)) The amendment repeals §4-01(b)(4) to eliminate the requirement that participants maintain a record of efforts made to obtain missing contributor information.

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 4 ACCOUNTING AND AUDITING

§4-02 Participant's Record keeping Duties. [Repealed]

HISTORICAL NOTE

Section repealed City Record May 5, 2003 eff. June 4, 2003. [See Note 1]

Section amended City Record Aug. 7, 2002 Part D Subpart 5, eff. Sept. 6, 2002. [See T52 §3-03 Note 1]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

NOTE

1. Statement of Basis and Purpose in City Record May 5, 2003:

Recordkeeping Duties (§4-02)

The amendment repeals §4-02 which provides the standard for demonstrating best efforts to obtain missing disclosure information, in light of the change in the reporting standard contained in Local Law No. 12 of 2003.

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 4 ACCOUNTING AND AUDITING

§4-03 Record Retention.

(a) **Six-year retention period.** The candidate shall retain all records and documents required to be kept under §4-01 for 6 years after the date of the last election to which the records or documents relate.

(b) **Custodian and location of Records.** At the time of the filing of the filer registration form and/or certification, the candidate shall notify the Board, in writing, of the name, address, e-mail address, and telephone number of the person who is the custodian for the candidate's records and documents for an election and the location of those records and documents. Thereafter, for 6 years after the date of the last election to which the records or documents relate, the candidate shall notify the Board, in writing, of any change of custodian, of the custodian's address, e-mail address, or telephone number, and of the location of the candidate's records and documents, no later than the deadline for filing the next disclosure statement, or, in the case of changes that occur after the deadline for the last disclosure statement required to be filed, no later than 30 days after the date of the change.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 20, 2009 §7, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (b) amended City Record May 15, 2008 §12, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Subd. (b) amended City Record Aug. 7, 2002 Part E, eff. Sept. 6, 2002. [See Note 1]

Subd. (b) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

NOTE

1. Statement of Basis and Purpose in City Record Aug. 7, 2002:

3. **Record Retention** (§4-03(b))

The amendment requires each participant to notify the Board in writing, upon certification and on an ongoing basis, of the location of the participant's records and documents for an election and the name, address, and telephone number of the person who is the custodian of such records and documents, whether the custodian is the treasurer or some other person. Under the current rule, no notification is required if the custodian is the treasurer.

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 4 ACCOUNTING AND AUDITING

§4-04 Assistance to Candidates; Records.

In order to promote compliance with the requirements of the Act and these Rules, the Board's staff shall offer assistance to candidates in developing campaign procedures for gathering campaign finance information and keeping records and shall, to the extent feasible, provide model recordkeeping journals and forms. A participant's failure to keep records required by this Chapter, or provide to the Board, upon its request or as required by these Rules, records or other information, may result in a determination that matchable contribution claims are invalid pursuant to §5-01(d)(17); a determination pursuant to §3-710(2)(b) of the Code that the participant made expenditures for purposes other than qualified campaign expenditures, including a determination whether the participating candidate shall be required to personally repay such expenditures to the Board; a determination pursuant to §3-710(2)(c) of the Code that the participant must return excess funds to the Board due to the failure to demonstrate that the participant made expenditures in furtherance of his or her nomination or election equal to or greater than the total of contributions, other receipts, and payments from the fund received; the withholding of public funds pursuant to §5-01(e); and the assessment of penalties pursuant to §§3-710.5 and 3-711 of the Code.

HISTORICAL NOTE

Section amended City Record Oct. 23, 2008 §7, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 4 ACCOUNTING AND AUDITING

§4-05 Audits.

(a) The Board shall conduct desk and field audits of participants, limited participants, and non-participants, regardless whether the candidates receive public funds. Field audits may be conducted before or after an election, as the Board deems appropriate. In conducting audits, the Board may use random sampling of data and other analytic techniques, as appropriate. The Board shall conduct campaign audits in accordance with generally accepted government auditing standards.

(b) The Board shall issue all draft and final audit reports in accordance with the deadlines provided in §3-710(1)(a) and (b) of the Code subject to any applicable exceptions to those deadlines provided in §3-710(1)(d), (e), and (f) of the Code; provided, however, that the Board shall not be required to provide the candidate a final audit report within fourteen months after the deadline for submission of the final disclosure report for the covered election for city council races and borough-wide races, or within sixteen months after the deadline for submission of the final disclosure report for the covered election for citywide races, unless the candidate or the candidate's treasurer or campaign manager completed an audit training provided by the Board prior to the applicable deadline provided in Rule 2-12(b).

HISTORICAL NOTE

Section amended City Record Oct. 26, 2007 §18, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Section amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See Note 1]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record June 18, 2009 §4, eff. July 18, 2009. [See T52 §1-08 Note 13]

Subd. (b) amended City Record May 15, 2008 §13, eff. June 14, 2008. [See T52 §1-02 Note 7]

DERIVATION

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Nov. 19, 2002:

2. **Auditing** (§4-05)

This amendment provides that the Board shall issue all draft audit reports before the end of the year following an election, to the extent practicable. After the 2001 elections, some participants questioned Board staff about the length of the post-election audit process. Although the Board staff already has issued more than half of all draft audits for the 2001 elections, despite losing several months of time due to the staff's displacement as a result of the September 11 attacks on the World Trade Center, the Board believes this amendment will better inform participants about the timing of the audit process.

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 4-06

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 4 ACCOUNTING AND AUDITING

§4-06 Prospective Participants. [Repealed]

HISTORICAL NOTE

Section repealed City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Section amended City Record Aug. 7, 2002 Part F Subpart 2, eff. Sept. 6, 2002. [See §5-01 Note 2]

Section amended City Record July 20, 1999 §50, eff. Aug. 19, 1999. [See T52 §3-02 Note 1]

Section added City Record May 19, 1994 eff. June 18, 1994.

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 5 PUBLIC FUNDS

§5-01 Payment Procedure.

(a)(1) **Board determines eligibility.** No payments from the Fund shall be made to a participant unless the Board has determined that a candidate has met all eligibility requirements of the Act and these rules. The Board shall notify the participant of a determination of ineligibility.

(2) **Public funds cap.** (i) The Board shall determine, pursuant to §3-705(7)(a) of the Code, whether a participant is opposed by another candidate who has spent or contracted or obligated to spend, or received in loans or contributions, or both, an amount which in the aggregate exceeds one-fifth of the expenditure limit applicable to the participant. Such determination shall be made pursuant to Rule 7-03.

(ii) Participants seeking additional public funds pursuant to §3-705(7)(b) of the Code must file a signed statement with the Board pursuant to §3-705(7)(b) no later than the due date for the disclosure statement immediately preceding the public funds payment for which the participant is seeking to receive the additional public funds; provided, however, that participants seeking to receive the additional public funds on the first date payments are made by the Board for a primary election, must file the signed statement with the Board no later than the day before the first date the Board of Elections conducts hearings on any ballot petition filed by any candidate seeking nomination for election in any primary occurring in the same election cycle for which the candidate is seeking nomination for election, without regard to whether such hearings are related to a petition filed by an opponent of the participant.

(3) **Small primaries.** (i) A participant on the ballot in one or more primary election(s) in which the number of persons eligible to vote for party nominees in each such election totals fewer than one thousand shall not receive public funds in excess of five thousand dollars for qualified campaign expenditures in such election or elections; provided,

however, that the foregoing limitation shall not apply to such participant if he or she is opposed in a primary election by (A) a participant who is not subject to such limitation or (B) a limited participant or non-participant who has spent or contracted or obligated to spend in excess of ten thousand dollars for such primary election. The Board shall determine whether a non-participant has exceeded such ten thousand dollar level pursuant to §7-03.

(ii) For the purposes of subparagraph (i), the number of persons eligible to vote for party nominees in a primary election shall be as determined by the Board of Elections for the calendar year of the primary election pursuant to §5-604 of the New York Election Law. If such determination for any primary election is not available from the Board of Elections as of the day before the due date for filing a certification pursuant to §3-703(1)(c) of the Code, the most recent determination by the Board of Elections of the persons eligible to vote for party nominees for the office for which such primary election is held shall be relied upon.

(4) **Non-competitive campaigns.** (i) Pursuant to §3-705(9) of the Code, a participating candidate who endorses or otherwise publicly supports his or her opponent for election shall not be eligible for public funds.

(ii) Pursuant to §3-705(10) of the Code, a participating candidate who loses the primary election but remains on the ballot for the general election shall be ineligible to receive public funds unless the candidate certifies to the Board that he or she will actively campaign for office, by measures including but not limited to raising and spending funds, seeking endorsements, and broadly soliciting votes.

(5) **Bonus determinations.** (i) Pursuant to §3-706(3)(a) of the Code, where the Board has determined that a non-participating candidate has spent or contracted or has obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds half the applicable expenditure limit pursuant to §3-706(1)(a) of the Code, then:

(ii) such expenditure limit applicable to participating candidates and limited participating candidates in such election for such office shall be increased to one hundred fifty percent of such limit; and

(iii) the principal committees of such participating candidates shall receive payment for qualified campaign expenditures of approximately seven dollars and fourteen cents for each dollar of matchable contributions, up to one thousand two hundred fifty dollars in public funds per contributor (or approximately $7.18 for each dollar of matchable contributions, up to six hundred twenty-five dollars in public funds per contributor in the case of a special election); provided, however, that (A) participating candidates in a run off election shall receive public funds for such election pursuant to subdivision five of §3-705 and shall not receive any additional public funds pursuant to this section, and (B) in no case shall a principal committee receive in public funds an amount exceeding two-thirds of the expenditure limitation provided for such office in §3-706(1)(a) of the Code.

(iv) Pursuant to §3-706(3)(b) of the Code, where the Board has determined that a non-participating candidate has spent or contracted or has obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds three times the applicable expenditure limit pursuant to §3-706(1)(b) of the Code, then:

(v) such expenditure limit shall no longer apply to participating candidates and limited participating candidates in such election for such office; and

(vi) the principal committees of such participating candidates shall receive payment for qualified campaign expenditures of approximately eight dollars and fifty-seven cents for each dollar of matchable contributions, up to one thousand five hundred dollars in public funds per contributor (or approximately $8.62 for each dollar of matchable contributions, up to seven hundred fifty dollars in public funds per contributor in the case of a special election); provided, however, that (A) participating candidates in a run off election shall receive public funds for such election pursuant to subdivision five of §3-705 and shall not receive any additional public funds pursuant to this section, and (B) in no case shall a principal committee receive in public funds an amount exceeding one hundred twenty-five percent of the expenditure limitation provided for such office in §3-706(1)(a) of the Code.

(b) **Preliminary review of disclosure statements.** (i) In order to make possible payment within four business days after receipt of disclosure statements, or as soon thereafter as is practicable, pursuant to §3-705(4) of the Code, the Board shall conduct a preliminary review of all disclosure statements filed and all receipts filed indicating proof of compliance with §12-110 of the Code. This preliminary review may be delayed if the participant fails to submit a disclosure statement, a receipt indicating compliance with §12-110 of the Code or information requested by the Board, or fails to submit a disclosure statement, a receipt indicating compliance with §12-110 of the Code or information requested by the Board by the date required by the Board, or submits a disclosure statement that fails to comply substantially with the requirements of the Act or these rules. A preliminary review may also be delayed for other reasons, including, but not limited to, consideration of whether a basis exists for an ineligibility determination, as described in subdivision (f). A delayed preliminary review may result in a delay in a payment determination, until such time as it is practicable and the Board is considering making payments based on matchable contributions claimed in disclosure statements actually received on or before a subsequent applicable due date.

(ii) After a participant has been informed that a matchable contribution claim has been deemed invalid or that the participant is ineligible for public funds, the participant shall not include in any petition or request to the Board any documentation or factual information not submitted to the Board prior to the determination under review unless the participating candidate can demonstrate good cause for the previous failure to submit such documentation or information and for any failures to communicate on a timely basis with the Board.

(c) **Basis for payments.** The amount paid to a participant shall be based upon the Board's review and audit of matchable contributions claimed and qualified campaign expenditures.

(d) **Validity of matchable contribution claims and projected rate of invalid claims.** The Board shall not make payment for any matchable contribution claim it determines or projects to be invalid. The Board shall consider the following factors in determining that matchable contribution claims are invalid and in projecting a rate of invalid matchable contribution claims:

(1) cash contributions from any one contributor that are greater than $100 in the aggregate, in violation of New York Election Law §14-118(2), or money order contributions from any one contributor that are greater than $100 in the aggregate;

(2) contributors who are individuals under the age of eighteen years or that are entities other than individuals;

(3) matchable contribution claims that would yield more than $1,050 in public funds per contributor (or $522 in the case of a special election);

(4) contributions that exceed the contribution limit applicable under the Act;

(5) contributor addresses that are not residential addresses within New York City;

(6) contributions for which information is omitted from or illegible in a disclosure statement;

(7) contributions made later than December 31 of the election year;

(8) contributions originally received for elections other than the election in which the candidate is currently a participant, as described in Rule 1-07;

(9) matchable contribution claims that exceed the gross amount of the contribution;

(10) contributions that were not received within the reporting period or that were made by post-dated check;

(11) (i) contributions totaling more than $99 for which a participant has not reported the contributor's occupation, employer, and business address;

(ii) contributions totaling less than $99 for which a participant is required to report the contributor's occupation, employer, and business address, pursuant to §3-03(c)(6)(ii), but has failed to do so;

(12) contributions that were returned to or not paid by the contributor;

(13) checks drawn by a person other than the contributor except checks signed by a contributor's authorized agent where the documentation required under §4-01(b)(2) has been maintained and provided;

(14) contributions that are otherwise not matchable contributions within the meaning of the Act;

(15) any information that suggests that a contribution has not been processed or reported in accordance with Program requirements;

(16) any other information that suggests that matchable contribution claims may be invalid;

(17) contributions for which a record required under Chapter 4 was not kept or provided upon request;

(18) contributions for which complete supporting documentation required by §3-04(a) has not been submitted;

(19) check or money order contributions made payable to entities other than the committee that has reported receiving the contribution;

(20) contributions that were made or accepted in violation of any federal, state, or local law;

(21) contributions received before May 12 in the year of the election that were not contemporaneously reported as matchable in disclosure statements or were reported in such statements that were not filed in a complete and timely manner;

(22) contribution checks drawn on business accounts, or accounts that bear indicia of being business accounts, such as the contributor's professional title;

(23) contributions purportedly from different contributors that were made by money orders bearing consecutive serial numbers or other markings indicating that they were purchased simultaneously;

(24) arithmetical errors in totals reported;

(25) contributions that were not itemized in a disclosure statement;

(26) transfers made to a political committee that is not authorized for an election in which the candidate is currently a participant, as described in §5-01(n)(1); and

(27) contributions required to be deposited into an account established for a run-off election, as provided in Rule 2-06(c);

(28) contributions from individuals, other than employees of the candidate's principal committee, who are vendors to the participant or individuals who have an interest in a vendor to the participant, unless the expenditure to the vendor is reimbursement for an advance. For the purposes of this rule, "individuals who have an interest in a vendor" shall mean individuals having an ownership interest of ten percent or more in a vendor or control over the vendor. An individual shall be deemed to have control over the vendor firm if the individual holds a management position, such as the position of officer, director or trustee; and

(29) contributions from individuals having business dealings with the city, as defined in §3-702(18) of the Code, and contributions from lobbyists as defined in §3-211 of the Code.

(e) **Withholding of public funds.** The Board shall withhold five percent of the amount of public funds payable to a participant until the final pre-election payment for any election in which the participant is eligible to receive public funds. In addition, the Board, in its discretion, may withhold a reasonable portion of the amount of public funds payable to a participant based upon:

(1) a projection of the rate(s) of invalid matchable contribution claims; and

(2) the participant's failure to provide to the Board, upon its request, documents or records required by Chapter 4 of these rules, or other information.

(f) **Basis for ineligibility determination.** The Board shall determine whether public funds shall not be paid to a participant for reasons that include, but are not limited to:

(1) if there is reason to believe that the participant has committed a violation of the Act or these Rules;

(2) if the participant has failed to meet one of the eligibility criteria of the Act or these Rules;

(3) if the participant is required to repay public funds previously received, as described in Rule 5-03, or if the participant has failed to pay any outstanding claim of the Board for the payment of civil penalties or the repayment of public funds against such participant or his or her principal committee or a principal committee of such participant from a prior covered election, provided that the participant has received written notice of the potential payment obligation and potential ineligibility determination in advance of the certification deadline for the current covered election or an opportunity to present reasons for his or her eligibility for public funds to the Board;

(4) if the participant fails to submit a disclosure statement required by these rules;

(5) if the participant fails to provide to the Board, upon its request, documents or records required by Chapter 4 of these rules, or other information that verifies campaign activity;

(6) if previous public fund payments to the participant for the election equal the maximum permitted by the Act;

(7) if the participant or an agent of the participant has been found by the Board to have committed fraud in the course of Program participation or to be in breach of certification pursuant to Rule 2-02;

(8) if the participant fails to file the receipt indicating compliance with §12-110 of the Code, as required pursuant to §3-703(1)(m) of the Code and Rule 3-11;

(9) if the participant endorses or publicly supports his or her opponent for election pursuant to §3-705(9) of the Code; or

(10) if the participant loses in the primary election but remains on the ballot for the general election and fails to certify to the Board, as required by §3-705(10) of the Code, that he or she will actively campaign for office in the general election, or if the participant certifies to the Board that he or she will actively campaign for office in the general election but thereafter fails to engage in campaign activity that shall include but not be limited to, raising and spending funds, seeking endorsements, and broadly soliciting votes.

(g) **Payment is not final determination.** Payments of public funds pursuant to this Rule shall not constitute the Board's final determination of the amount, if any, for which the participant qualifies. The Board shall provide specific notice of any such final determination.

(h) **Notice to participants.** The Board shall notify participants of any difference between the amount claimed and amount paid. Subsequent payments may be, adjusted upward or downward to reflect further review and auditing of previous matchable contribution claims.

(i) **Pre-election payments.** (1) Pursuant to §3-709(5) and (6) of the Code: (i) no public funds shall be paid to participants in a primary election any earlier than two weeks after the last day to file designating petitions for such primary election; (ii) no public funds shall be paid to participants in a runoff primary election or general election any earlier than the day after the day of the primary election held to nominate candidates for such election; and (iii) no public funds shall be paid to participants in a runoff special election held to fill a vacancy any earlier than the day after the day of the special election for which such runoff special election is held.

(2) Pursuant to §3-703(1)(a) and (5) of the Code, public funds are not payable to a participant who has not met the legal requirements to have his or her name on the ballot or who is unopposed. To enable the Board to ascertain whether a candidate has met the legal requirements to be on the ballot and is opposed, the Board shall first make payments in an election after the Board of Elections conducts hearings on the ballot petitions filed in that election except if the Board determines that delays in Board of Elections proceedings or determinations warrant first making payments earlier.

(3) The Board shall schedule at least three payment dates in the thirty days prior to a covered election, and the Board shall provide each participant a written determination specifying the basis for any payment or non-payment. As provided in §5-02(a), the participant may petition the Board in writing for a reconsideration of any such payment or non-payment determination, prior to the election, and such reconsideration shall occur within five business days of the filing of such petition.

(j) **Flat grants in special circumstances.** Pursuant to §3-705(5)(a) of the Code, the Board shall pay to a participant in a runoff primary election or runoff special election an amount equal to twenty-five cents for each one dollar of public funds paid to the participant for the preceding election. The amount paid pursuant to this subdivision may be adjusted to reflect further review and auditing of matchable contribution claims for the preceding election. The Board shall make payments pursuant to this subdivision within four business days after the date of the preceding election or as soon thereafter as practicable.

(k) **Post-payment audits.** All determinations by the Board of eligibility and payment are subject to post-payment audit and final readjustment.

(l) **Characterization of payments as for the primary or general election.**

(1) If a participant is on the ballot and has an opponent on the ballot in both a primary and the general elections, payments made after the primary election will be characterized initially as follows:

(i) As a primary election payment, if the payment is made on the basis of contribution and expenditure information reported in or before the disclosure statement due 10 days after the primary election, except as otherwise provided in subparagraph (ii).

(ii) As a general election payment, to the extent that any further primary election payments would exceed a maximum applicable in the primary election pursuant to the Act.

(iii) As a general election payment, if the payment is made on the basis of contribution and expenditure information reported in disclosure statements due later than 10 days after the primary election.

(2) If the Board determines that payments characterized initially as either primary or general election payments were, in fact, used for qualified campaign expenditures incurred in the other election, the payments will be recharacterized accordingly, and additional payments may be made or repayments required, if appropriate. The total public funds used for qualified campaign expenditures in a single election may not exceed the maximum applicable pursuant to §3-705(2) of the Code.

(m) **Post-election payments.** After an election the Board may defer payment determinations for a participant until the completion of its audit of the participant. The Board shall not make payments based upon disclosure statement

amendments or resubmissions filed (i) after December 31 in an election year, including but not limited to amendments or resubmissions of the disclosure statement due the first January 15 after the election, or (ii) after the final disclosure statement in the case of a special election; provided however, that the Board may make payments based upon such amendments or resubmissions solely if they are made in response to invalid matching claims reports to which the Board has requested a response after December 31 in an election year or after the final special election disclosure statement, as the case may be.

(n) **Deductions from payments.**

(1) The following will be deemed to consist entirely of contributions claimed to be matchable:

(i) transfers and other disbursements from a political committee that is involved in an election in which the candidate is currently a participant to a political committee that is not involved in that election;

(ii) expenditures made to pay expenses for or debt from a previous election, including repayments of public funds owed to the Board for a previous election;

(iii) contributions to other political committees that do not meet the requirements provided in §3-705(8) of the Code for contributions that shall not be a basis for reducing public funds payments; and

(iv) loans to or spending for other candidates (including joint expenditures to the extent such expenditures benefit another candidate, and independent expenditures) and loans to or spending for political party committees and political clubs, that are not reimbursed within 30 days, provided that if the participant demonstrates that the expenditure was for a tangible item that directly promotes the participant's election, such as an advertisement in a fundraising journal, this subdivision shall not apply to the fair market value of that item. An amount equal to the amount of public funds the participant is otherwise eligible to receive for such matchable contribution claims shall be deducted from the public funds paid to the participant.

(2) Notwithstanding paragraph (1) above, disbursements otherwise subject to a deduction pursuant to paragraph (1) shall not be subject to such deduction if:

(i) such disbursements are made out of a segregated bank account;

(ii) at no time does such segregated bank account contain any funds other than contributions received by the participant and deposited directly into such account pursuant to this Rule, and bank interest paid thereon;

(iii) funds deposited into the segregated bank account are not used for any purpose other than (I) disbursements governed by paragraph (1) above or (II) payment of bank fees associated with the segregated bank account;

(iv) contributors whose contributions are deposited into such segregated bank account have confirmed in writing, pursuant to §4-01(b)(7), that they understand that these contributions will only be used for such disbursements and will not be matched with public funds;

(v) copies of such written confirmations are submitted to the Board by the due date for the disclosure statement in which such contributions are required to be reported pursuant to these Rules;

(vi) copies of checks for each disbursement out of such segregated bank account are submitted to the Board by the due date for the disclosure statement in which such disbursements are required to be reported pursuant to these Rules;

(vii) a copy of each bank statement for such segregated bank account is submitted to the Board as soon as reasonably practicable after it is available to the campaign from the bank; and

(viii) for each individual contribution deposited into a segregated bank account, and each disbursement out of such

account, the participant has complied with all other applicable provisions of the Act and these Rules, including but not limited to the record keeping and reporting provisions.

(3) Section 1-09 shall be applicable for the purposes of determining the date of receipt by the Board of documents submitted pursuant to this Rule.

(4) Participants may not deposit a portion of a particular contribution into the segregated bank account provided for in paragraph (2), but must rather deposit the entire contribution into the account.

(5) Contributions deposited into a segregated bank account pursuant to this Rule will not be matched with public funds.

(6) A participant who establishes a segregated bank account pursuant to this Rule but fails to comply with any provision of paragraph (2) or (4) above shall no longer be entitled to the exception from paragraph (1) contained in paragraph (2) above.

(7) Funds deposited into, and disbursements made from a segregated bank account established and maintained in compliance with this Rule for the purpose of making expenditures to pay expenses for or debt from a previous election, including repayments of public funds owed to the Board, will not be considered to be raised or spent for the current covered election for purposes of the participant's expenditure limit and unspent campaign funds calculation.

(o) **Use of final payment.** Before the Board makes final payment, the participant shall submit to the Board bills or other documentation of outstanding debt for which the final public funds payment will be used. Within 60 days after the final public funds payment, the participant must demonstrate that the public funds were used to pay such outstanding debt or shall repay the public funds to the Board.

(p) **Responding to invalid matching claims reports.** In the event that the Board concludes that one or more of a participant's matchable contribution claims are invalid, a participant responding to the Board's report shall do so by the March 15 following the election or 60 days after receiving the report, whichever is later. In the case of a special election, a participant shall respond to an invalid matching claims report no later than 60 days after receiving the report.

(q) **Ballot disqualification by Board of Elections; candidate not opposed on the ballot.** The Board will not make payment to any participant disqualified from the ballot by the Board of Elections or by a court, or to any participant for an election in which all other candidates have been disqualified from the ballot by the Board of Elections or by a court, until after such participant or other candidate, as the case may be, is restored to the ballot by a subsequent determination by a court of competent jurisdiction. A participant who appears as the only candidate on the ballot in an election shall not be eligible to receive public funds, notwithstanding any write-in candidates in that election, except as otherwise provided in Rule 5-02(b).

(r) **Reduction in maximum public funds payable.** Pursuant to §3-705 of the Act, the maximum amount of public funds a participant may otherwise be eligible to receive will be reduced by the sum of the following:

(1) any public funds retained by the Board in lieu of civil penalties;

(2) any public funds retained by the Board in lieu of funds the participant is required to pay back to the Fund pursuant to the Act;

(3) any public funds withheld pursuant to Rule 5-01(e)(2); and

(4) pursuant to §3-703(1-b) of the Code, an amount equal to the total unreturned contributions in excess of the limitations applicable to persons having business dealings with the city.

(s) **Approval by Board subject to correction of limited, isolated, and easily corrected compliance issues.** The

Board, in its discretion, may approve a public funds payment to a participant, notwithstanding that the participant has been determined by the Board to be ineligible to receive public funds because of limited, isolated, and easily corrected compliance issues. Such approval of public funds disbursement shall be conditioned upon a satisfactory demonstration by the participant that it has taken action, as specified by the Board and within a period of time specified by the Board, to comply with the Act and these rules. The participant shall have the burden of demonstrating to the Board that it has fully complied with the Board's requirements.

(t) **Payment of expenditures made in connection with litigation with public funds.** A participating candidate and his or her principal committee may not use public funds to pay expenditures made in connection with any action, claim, or suit before any court or arbitrator.

(u) **Payment by Electronic Funds Transfer.** All payments of public funds shall be by electronic funds transfer unless the Board determines, in its sole discretion, to use an alternative payment method. In order to receive prompt payment, the participating candidate shall provide the Board with a voided check and such additional information as shall be required by the Board.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 6]

Subd. (a) par (2) amended City Record May 15, 2008 §14, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (a) par (3) subpar (i) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (a) par (4) amended City Record May 15, 2008 §14, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (a) par (4) added City Record Oct. 26, 2007 §19, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (a) par (5) amended City Record May 15, 2008 §14, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (a) par (5) added City Record Oct. 26, 2007 §19, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (b) amended City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See Note 7] This amendment inadvertently omitted the amendment to subd. (b) by City Record May 21, 2004.

Subd. (b) par (i) amended City Record May 21, 2004 eff. June 20, 2004. [See T52 §3-11 Note 1]

Subd. (c) relettered and amended (former subd. (d)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (d) repealed & added City Record Aug. 7, 2002 Part F Subpart 2, eff. Sept. 6, 2002. [See Note 2]

Subd. (d) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (d) par (2) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (d) par (3) amended City Record May 15, 2008 §15, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (d) par (3) amended City Record Oct. 26, 2007 §20, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) par (11) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) par (18) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See T52 §1-08 Note 4]

Subd. (d) par (21) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) par (27) amended City Record Oct. 26, 2007 §20, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) par (28) amended City Record Oct. 26, 2007 §20, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) par (29) amended City Record May 15, 2008 §15, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (d) par (29) added City Record Oct. 26, 2007 §20, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (e) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) amended City Record Oct. 23, 2008 §8, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (f) amended City Record May 21, 2004 eff. June 20, 2004. [See T52 §3-11 Note 1]

Subd. (f) pars (1), (2), (3) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) relettered (former subd. (f)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (h) relettered (former subd. (g)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (i) amended City Record Feb. 20, 2009 §8, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (i) amended City Record Oct. 23, 2008 §9, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (i) amended City Record Oct. 26, 2007 §21, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (j) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 6]

Subd. (l) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (m) amended City Record Aug. 7, 2002 Part F Subpart 5, eff. Sept. 6, 2002. [See Note 2]

Subd. (n) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 6]

Subd. (n) par (7) added City Record Feb. 20, 2009 §10, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (o) amended City Record July 20, 1999 §55, eff. Aug. 19, 1999. [See Note 1]

Subd. (p) added City Record Oct. 18, 1996 §29, eff. Jan. 1, 1997. [See Note 5]

Subd. (q) amended City Record Aug. 7, 2002 Part F Subpart 7, eff. Sept. 6, 2002. [See Note 2]

Subd. (r) amended City Record Oct. 23, 2008 §10, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (r) added City Record Aug. 7, 2002 Part F Subpart 8, eff. Sept. 6, 2002. [See Note 2]

Subd. (t) added City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See Note 7]

Subd. (u) added City Record May 15, 2008 §16, eff. June 14, 2008. [See T52 §1-02 Note 7]

DERIVATION

Subd. (b) amended City Record Aug. 7, 2002 Part F Subpart 1, eff. Sept. 6, 2002. [See Note 2]

Subd. (b) amended City Record July 20, 1999 §51, eff. Aug. 19, 1999. [See Note 1]

Subd. (b) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) par (1) amended City Record Oct. 10, 1995 §45, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Subd. (d) relettered and amended (former subd. (c)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (d) par (11) amended City Record Dec. 23, 2004 eff. Jan. 22, 2005. [See T52 §3-03 Note 5]

Subd. (d) par (11) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 6]

Subd. (d) par (12) amended City Record Oct. 10, 1995 §46, eff. Nov. 9, 1995. [See T52 §3-03 Note 2]

Subd. (d) par (15) [This par was repealed by City Record Aug. 7, 2002 amendment] amended City Record July 20, 1999 §52, eff. Aug. 19, 1999. [See T52 §4-01 Note 5]

Subd. (d) par (17) amended City Record Oct. 10, 1995 §46, eff. Nov. 9, 1995. [See Note 4]

Subd. (d) par (19) [This par was repealed by City Record Aug. 7, 2002 amendment] amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See §4-01 Note 2]

Subd. (d) par (21) amended City Record May 5, 2003 eff. Dec. 31, 2003. [See T52 §1-02 Note 5]

Subd. (d) par (21) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (d) par (22) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (d) par (23) amended City Record Oct. 24, 1994 eff. Nov. 23, 1994.

Subd. (d) par (23) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (d) par (24) [This par was repealed by City Record Aug. 7, 2002 amendment] amended City Record July 20, 1999 §52, eff. Aug. 19, 1999. [See Note 1]

Subd. (d) par (24) amended City Record Oct. 10, 1995 §46, eff. Nov. 9, 1995. [See T52 §7-05

Note 1]

Subd. (d) par (24) amended City Record Oct. 24, 1994 eff. Nov. 23, 1994.

Subd. (d) par (24) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (d) par (25) amended City Record Oct. 10, 1995 §46, eff. Nov. 9, 1995. [See T52 §7-05

Note 1]

Subd. (d) par (25) amended City Record Oct. 24, 1994 eff. Nov. 23, 1994.

Subd. (d) par (25) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (d) par (26) added City Record Oct. 10, 1995 §46, eff. Nov. 9, 1995. [See T52 §3-03 Note 2]

Subd. (d) par (27) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (d) par (27) added City Record Oct. 10, 1995 §46, eff. Nov. 9, 1995. [See T52 §3-03 Note 2]

Subd. (d) par (28) added City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (e) amended City Record Aug. 7, 2002 Part F Subpart 3, eff. Sept. 6, 2002. [See Note 2]

Subd. (e) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) amended City Record Aug. 7, 2002 Part F Subpart 4, eff. Sept. 6, 2002. [See Note 2]

Subd. (f) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) undesignated final par repealed and added City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (f) undesignated final par amended City Record Oct. 10, 1995 §47, eff. Nov. 9, 1995.

Subd. (i) amended City Record July 20, 1999 §53, eff. Aug. 19, 1999. [See Note 1]

Subd. (i) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (m) amended City Record Oct. 18, 1996 §28, eff. Jan. 1, 1997. [See Note 5]

Subd. (m) added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (n) amended City Record Aug. 7, 2002 Part F Subpart 6, eff. Sept. 6, 2002. [See Note 2]

Subd. (n) amended City Record July 20, 1999 §54, eff. Aug. 19, 1999. [See Note 1]

Subd. (n) added City Record Oct. 10, 1995 §48, eff. Nov. 9, 1995. [See Note 4]

Subd. (o) added City Record Oct. 10, 1995 §48, eff. Nov. 9, 1995. [See Note 4]

Subd. (q) added City Record July 20, 1999 §56, eff. Aug. 19, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Public Funds

New use restrictions are codified. Rule 1-08(g), following Local Law No. 48 of 1998 amendments to Administrative Code §3-704.

To receive public funds, participants must meet the legal requirements to be on the ballot and be opposed. Thus:

· The Board will first make public funds payments after the Board of Elections conducts hearings on ballot petitions, except if the Board determines that delays in Board of Elections proceedings warrant making first payments earlier. Section 5-01(i).

· Public funds payments will not be made to a participant disqualified from the ballot by the Board of Elections, or all of whose opponents are disqualified by the Board of Elections, until the participant or opponent is restored to the ballot by a court. Section 5-01(q).

· Payments will not be made for a primary election held because of an opportunity to ballot petition in which the participant is the only candidate on the ballot (Advisory Opinion No. 1999-9). Section 5-01(q).

· A participant temporarily on the ballot or opposed due to a Board of Elections or court determination, but ultimately disqualified from the ballot or unopposed, may submit a petition to the Board for payment (codifying Advisory Opinion No. 1997-4 (June 12, 1997)). The petition is due within 30 days after the final disqualification. Section 5-02(b).

Deductions from public funds payments will not be made for expenditures to other candidates or committees for the fair market value of a tangible item directly promoting the participant's election, such as an advertisement in a journal. Advisory Opinion No. 1997-12 (October 9, 1997). When a disbursement is presumed to consist of matchable contributions, however, the amount to be deducted is equal to the amount of public funds otherwise due to the participant for such matchable contribution claims (at the 4:1 or 5:1 payment rate, whichever is applicable). Section 5-01(n).

Before the Board makes a final public funds payment for an election, the participant will have to submit bills or other documentation of the outstanding debt for which the payment will be used. Documentation of the final use would be due within 60 days after final payment. Section 5-01(o).

Unspent campaign funds will be due to be paid to the Board on the closing date of the final disclosure statement. Section 5-03(e), reflecting amendments to Administrative Code §3-710(2)(c).

Before repaying unspent campaign funds, participants will be permitted to make certain post-election expenditures for routine, nominal wind-up costs. Section 5-03(e)(2)(ii), codifying Advisory Opinions Nos. 1989-56 (December 19, 1989); 1992-1 (January 21, 1992); 1997-13 (November 25, 1997); and 1997-14 (December 9, 1997).

The Board will take certain steps to safeguard the administration of the special Public Fund and assure candidates that sufficient public funds will be available to make all payments required by the Campaign Finance Act and guaranteed by the City Charter. Section 5-04.

2. Statement of Basis and Purpose in City Record Aug. 7, 2002: Public Funds 1. **Submission of Documentation to Board Regarding Payment of Public Funds** (§5-01(b)) In the 2001 election cycle, some participants attempted to submit documents to the Board regarding their eligibility to receive public funds or the validity of their matchable contribution claims, even though they had not previously submitted such documents to the staff of the Board for review. The amendment to §5-01(b) prohibits a participant from submitting a document to the Board relating to a payment issue unless the document was previously submitted to the staff or was previously unavailable. The amendment also confirms that the Board will not make payments within four business days, pursuant to §3-705(4) of the Code, based on submissions that are not filed in a timely manner. 2. **Invalid Matching Claims** (§§5-01(d), 1-11, 4-06) The amendment to §5-01(d) updates the rule to reflect the factors considered by the Board in determining whether to invalidate claims for matching funds. The amendment also reorders the reasons for invalidating matching claims to correspond to the list of invalid claim codes in the invalid matching claims report mailed to candidates. Paragraphs (18), (19), and (23) are new and confirm that: (1) matchable contribution claims submitted without documentation are invalid; (2) contributions made payable to entities other than the committee that has reported receiving the contribution are not matchable; and (3) money orders having consecutive serial numbers will be invalidated for matching purposes. Paragraph (22) is amended to clarify that the Board may consider a contribution check drawn on an account that bears indicia of being a business account, as a factor in determining that a matching contribution claim is invalid. This change does not create any new obligations for participants, but merely clarifies that the burden is on the participant to establish that checks appearing to come from businesses in fact come from individuals. Nonetheless, the Board staff anticipates issuing guidance to participants in the 2003 elections as to how to properly claim matching funds for checks bearing indicia of business accounts that are actually from individuals. Paragraph (3) is amended to clarify that matchable claims may be invalidated pursuant to the subsection if they would yield more than $1,000 in public funds; a corresponding amendment is also made to §3-04(a) (see Reporting Requirements paragraph 6 above). The remaining paragraphs are renumbered and redrafted to eliminate redundancies and clarify language. 3. **Withholding a Portion of Public Funds** (§5-01(e)) The amendment to §5-01(e) clarifies the reasons for which the Board may withhold portions of public funds payments, and distinguishes this subdivision from §5-01(f), which addresses a participant's ineligibility to receive public funds. 4. **Ineligibility for Public Funds** (§5-01(f)) The amendment to §5-01(f) confirms that the Board may determine a candidate to be ineligible to receive public funds because, among other reasons, the participant has failed to file a disclosure statement or supporting document that is required under the rules, or has failed to provide any other information requested by the Board to verify campaign activity that has been reported in disclosure statements. The amendment also deletes from §5-01(f) the final sentence of the rule that addresses a possible reduction in the maximum amount of public funds, and moves this provision to a new §5-01(r). 5. **Post-Election Payments** (§5-01(m)) The amendment clarifies that invalid matching claims reports received after December 31 of an election year are not covered by the prohibition on making payments on certain disclosure statement filings received after that date. 6. **Deductions from Payments** (§§5-01(n), 2-06, 3-05, 4-01(b)) Disbursements governed by §5-01(n) are hybrid cash flows, actions that the Board recognizes are routinely made by participants but that do not necessarily directly benefit their election. The Board does not want to prevent participants from making these disbursements, but at the same time the Board does not want these disbursements made with or subsidized by public funds. Consequently, the amendment to §5-01(n) has the following purposes: to provide a safe harbor from the deductions contained in §5-01(n); to protect the Public Fund from subsidizing these disbursements; to prevent commingling of funds used for these disbursements with other funds; and to lay to rest any misconception regarding the applicability of the deduction contained in the Rule. Thus, the amendment permits participants to avoid the deduction by segregating certain contributions in a separate account. Funds from this account will not be matched with public funds and will only be used for disbursements that would otherwise be subject to a §5-01(n) deduction. The contributor must confirm in writing that he or she knows that the participant will use the contribution in this manner. The amendment also includes contributions from participants to political clubs within the ambit of §5-01(n). The Rule currently only includes contributions to candidates and to political party committees (defined in Advisory Opinion No. 1997-12 (October 7, 1997) as party committees and constituted committees, each as defined in the New York State Election Law). However, contributions to political clubs implicate the same concerns. 7. **Ineligibility for Payment Due to Opponent's Disqualification by Courts** (§5-01(q)) Pursuant to §3-703(1)(a) and (5) of the Code, a participant in the Campaign Finance Program is eligible to receive public funds only if he or she is on the election ballot and is opposed in that election by another candidate. The current version of

§5-01(q) provides that a participant who is disqualified from the ballot by the New York City Board of Elections ("BOE"), or whose opponents on the ballot are disqualified by the BOE, is ineligible for payment. The amendment confirms that, in addition, a participant who has been disqualified from the ballot by a court, or whose opponents have been disqualified from the ballot by a court, is not eligible for public funds. The amendment clarifies that the opposition requirement extends to both primary and general election candidates. 8. **Reduction in Maximum Public Funds Payable** (§5-01(r)) The final sentence of §5-01(f), providing for a possible reduction in the maximum amount of public funds payable, is deleted and moved to a new §5-01(r).

3. Statement of Basis and Purpose in City Record Jan. 15, 2003: **Approval of Public Funds Payments Subject to Correction of Limited, Isolated, and Easily Corrected Compliance Issues** (Rule 5-01(s)) During the 2001 election cycle, the Board on several occasions approved public funds payments to campaigns subject to resolution of limited, isolated, and easily corrected compliance issues. Once the campaigns had demonstrated to the Board that they were in compliance, the public funds were released. New Rule 5-01(s) codifies the Board's current practice.

4. Statement of Basis and Purpose in City Record Oct. 10, 1995: Public Funds **Reasons for Reduced Payments** (R. 5-01(d)(17), (n)) The rules codify or recodify the following reasons for reducing public funds payments to participating candidates: transfers to a committee not involved in the current election (from R. 3-03(c)(2)(iii)); expenditures to pay expenses from a previous election (from Advisory Opinion No. 1993-2 (February 17, 1993)); and contributions or loans to or expenditures for other candidates or political party committees that are not refunded within 30 days. **Final Payment** (R. 5-01(o)) Under the new rules, within 30 days after the final public funds payment to a participating candidate for an election, the participating candidate must demonstrate that the payment was used to pay previously reported outstanding debt. Otherwise, the final payment must be returned to the Board.

5. Statement of Basis and Purpose in City Record Oct. 18, 1996: Public Funds Payments **Responding to Invalid Matching Claims Reports** (R. 5-01(p)) Under the rules, a participant responding to an invalid matching claim report is required to respond by the March 15 following the election or 60 days after receiving the report, whichever is later. **Post-election Payments** (R. 5-01(m) and R. 1-08(g)) Under the rules, a deadline is established which prohibits payment of public matching funds based upon amendments to and resubmissions of a disclosure statement after a certain date. Specifically, payments cannot be based upon any disclosure statement amendments or resubmissions that are filed after December 31 after the election. Furthermore, participants are prohibited from receiving any public matching funds based upon amendments to and resubmissions of the January 15 filing following an election. The new rules make clear that the maximum amount of public funds a participant may receive will be reduced by any civil penalties imposed pursuant to the Act, any money the participant is required to pay back to the Board pursuant to the Act, and any public funds withheld based upon the participant's failure to file with the Board required or requested information.

6. Statement of Basis and Purpose in City Record May 5, 2003: Public Funds 1. **Eligibility to Receive Public Funds** (§5-01(a)) Local Law No. 12 of 2003 provides that the amount of public funds payable to a participant shall be limited to 25% of the maximum public funds payment otherwise payable under Administrative Code §3-705(2) unless the participant: (i) is opposed by another participant who has qualified to receive public funds; (ii) is opposed by a candidate who has spent or contracted or obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds one-fifth of the applicable expenditure limit; or (iii) submits a signed statement attesting to the need and stating the reason for additional public funds, which statement the Board shall publish at the time the additional public funds are paid, including on its Web site. **See** Administrative Code §3-705(7). With the exception of the first public funds payment in an election, pre-election public funds payments generally are made four business days after a disclosure statement filing deadline. The amendments provide that participants who seek to obtain additional public funds on these public funds payment dates by submitting a signed statement, must submit such statement to the Board by the disclosure statement filing deadline immediately preceding the public funds payment for which the participant is seeking to receive the additional public funds. Pursuant to Administrative Code §3-709(5) the first public funds payment in a primary election is made no earlier than two weeks after the last day to file designating petitions with the Board of Elections. The Campaign Finance Board, however, does not make public funds payments until after the Board of Elections conducts hearings on these petitions, unless this would cause undue delay. Section

5-01(i). These hearings are typically held beginning in late July. Because there is no disclosure statement due immediately preceding this first payment, the amendments provide that participants who seek to obtain additional public funds on the first payment date by submitting a signed statement must submit such statement to the Campaign Finance Board by the day before the first date the Board of Elections conducts hearings on any ballot petition filed by any candidate seeking nomination for election in any primary occurring in the same election cycle in which the participant is seeking nomination for election (as opposed to hearings on a ballot petition filed in the particular election for which the candidate is seeking nomination for election). Local Law No. 12 of 2003 also provides that the Board may adopt rules limiting the amount of public funds available to participants on the ballot in one or more primaries where the number of persons eligible to vote for party nominees is small. **See** Administrative Code §3-705(6). It further provides that this public funds limitation is not applicable if a participant is opposed by a participant who is not subject to the limitation or by a non-participant who has spent more than a specified amount. The local law permits the Board to define a small primary, to determine the limit on public funds payments, and to establish the level of spending required by a non-participant to lift the limitation. The amendments define a small primary as one in which the number of persons eligible to vote for party nominees totals fewer than one thousand; limit public funds payments to persons in small primaries to $5,000; and provide that spending by a non-participant in that primary in excess of $10,000 will lift the public funds limitation. The Board will rely upon the determination of the Board of Elections for the calendar year of the primary election pursuant to §5-604 of the New York Election Law as to the number of persons eligible to vote in such primary election. If a determination for a primary election for any covered office is not available by the day before the certification deadline, however, the most recent available Board of Elections determination for such office shall be relied upon. These amendments are intended to protect the Public Fund when the number of voters to whom a candidate must appeal is very limited. For example, during the 2001 elections, a candidate running on the Green Party line in Council District 20 (Queens-Flushing), Paul Graziano, received more than $26,000 in public funds for running in a primary in which the total number of eligible voters was 111, and the total number of votes cast for the two candidates who ran was 36. For the general election, as the Green Party nominee, Mr. Graziano received an additional $936. The amendments also provide that the phrase "makes expenditures" contained in Administrative Code §3-705(6) means "spent or contracted or obligated to spend," the phrase used in determining aggregate spending in Administrative Code §3-705(7) and the bonus provision contained in Administrative Code §3-706(3). Administrative Code §3-705(6) is intended, in part, to limit public funds available to participants who are in small primaries, but it is not intended to impede their ability to wage a competitive campaign against a high-spending opponent. Therefore, a candidate's financial activity-including activity funded on credit-is more relevant to such a determination than an evaluation of the opponent's actual level of expenditures. Thus, the amendments use the standard provided for in Administrative Code §§3-706(3) and 3-705(7), rather than a standard that only measures expenditures. Finally, the amendments provide that Board determinations pursuant to Administrative Code §3-705(6) and (7) regarding the level of a candidate's spending shall be made in accordance with §7-03, which establishes the procedures for determining whether a non-participant's financial activity triggers the bonus provision contained in Administrative Code §3-706(3). 2. **Validity of Matchable Contribution Claims** (§5-01(d)(11)) The amendment conforms §5-01(d)(11) to Local Law No. 12 of 2003 so that matchable contribution claims on contributions of $500 or more will be invalid unless full employer and occupation information is provided. 4. **Flat Grants in Special Circumstances** (§5-01(j)) The amendment provides for flat grants to participants in a runoff special election in the same manner as the Board provides to participants in a runoff primary election. 5. **Deductions from Payments** (§5-01(n)) Local Law No. 12 of 2003 provides that contributions by participants to other political committees shall not be a basis for reducing public funds payments, provided, among other things, that the aggregate contributions made do not exceed certain limits. **See** Administrative Code §3-705(8). The amendment to §5-01(n), which provides that disbursements not provided for in §3-705(8) will continue to reduce public funds payments unless made out of a segregated bank account in accordance with §5-01(n)(2), reflects the "safe harbor" amounts in contributions now provided for by law.

7. Statement of Basis and Purpose in City Record Aug. 20, 2004: Public Funds 1. **Expenditures in Connection With Litigation** (Rules 5-01, 1-08(g)(2)) The amendments confirm that public funds may not be used to pay expenditures made in connection with any action, claim or suit before any court or arbitrator. Participating candidates should not be able to subsidize litigation with public funds, and litigation expenses are not qualified campaign

expenditures. The rule ensures that public funds, which are distributed for a specific public purpose and public benefit, are not spent for purposes other than those defined in the law, or for private use or private gain. 2. **Petition for Review of Eligibility, Payment and Repayment Determinations** (Rules 5-01(b), 5-02(a)) By adopting Rule 5-02(a), the Board in its discretion offers candidates an opportunity to seek Board review of a payment determination prior to seeking court relief. In the 2001 and 2003 elections, however, rather than treating the Rule 5-02(a) process as an opportunity to obtain reconsideration of a prior determination, a number of candidates sought to use the rule to submit documentation or information not submitted to the Board prior to the determination sought to be reviewed. In this manner, candidates have sought to employ the rule to obtain an additional opportunity to present new facts despite repeated requests and opportunities to submit the information, up to and including issuance of the final audit report. They have thus sought to avoid the consequences of failing to submit documentation of campaign records and related information in a timely manner and to obtain Board review of a late submission despite missed deadlines. The rule is intended to discourage poor record-keeping and creation or dating of records after the fact, and to re-enforce the importance of timely submission of documentation in response to deadlines set by the Board. Also, the rule should help maintain an even playing field among candidates. Unfairness results to candidates who abide by Program requirements when other candidates fail to meet record-keeping requirements and deadlines. The rule will also improve the efficiency of the payment and audit processes and streamline Board meetings, to the benefit of both candidates and the operation of the Board. The rule provides that candidates may not include in a Rule 5-02(a) petition documentation or facts not submitted prior to the determination which the candidates seek to have reviewed. There is a narrow exception for good cause so that the Board, in its discretion, may allow a candidate to provide new documentation or information where unusual circumstances merit the action.

Rules of the City of New York

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52 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 5 PUBLIC FUNDS

§5-02 Review of Eligibility, Payment, and Repayment Determinations.

(a) **Written petitions for review.**

(1) After the Board provides a participant a written determination specifying the basis for payment or non-payment of public funds prior to the election, the participant may petition the Board in writing for reconsideration of such determination. Such petition must state the grounds for reconsideration and may include a request to appear before the Board concerning the subject of such petition. Before the election, the Board shall review the determination that is the subject of the petition for review within five business days of the filing of such petition. In the event the Board is unable to convene within five business days, the Board may delegate to the Chair of the Board or his or her designee authority to make a determination regarding the petition. The Board shall timely issue a written determination on the subject of the petition. If the petition is denied, the Board's notice shall inform the participant of the right to appeal the Board's determination pursuant to Article 78 of the Civil Practice Law and Rules.

(2) The participating candidate and his or her principal committee shall not include in any such petition any documentation or factual information not submitted to the Board prior to the determination under review unless the participating candidate can demonstrate good cause for the previous failure to submit such documentation or information and for any failures to communicate on a timely basis with the Board.

(3) The participating candidate may submit a petition for review of a payment or non-payment determination after the issuance of the participant's final audit report within thirty days of issuance of the final audit report and only upon submission of information and/or documentation that was unavailable to the Board previously and is material to such determination, and a showing that the participant had good cause for the previous failure to provide such information

and/or documentation.

(b) **Final disqualification from the ballot.** The Board will consider a candidate to be finally disqualified from the ballot on the earlier of the date of an administrative or judicial determination disqualifying the candidate for which there is no appeal as of right (unless the disqualification is reversed on appeal or otherwise) or of the election. Payment may be made to a participant who was temporarily on the ballot or opposed in an election, pursuant to a determination of the Board of Elections or a court of competent jurisdiction, but then ultimately disqualified from the ballot or unopposed in that election, only when the Board's audit of the participant's campaign has been completed and only if the participant has, within 30 days after the date of the final disqualification, as provided herein, filed a written petition, sworn to or affirmed, and supporting documentation that demonstrates that:

(1) liabilities in qualified campaign expenditures incurred before the date of final disqualification remain unpaid;

(2) the total amount of cash on hand is insufficient to pay these liabilities;

(3) hardship will exist if public funds are not paid;

(4) any and all expenditures made and liabilities incurred after the final disqualification were reasonable and necessary; and

(5) the campaign was otherwise eligible and in compliance with all other Program requirements as of the date of final disqualification and has remained in compliance at all times since that date.

The petition shall also include an undertaking to use any public funds paid for extinguishing the liabilities enumerated pursuant to paragraph (1).

HISTORICAL NOTE

Section amended City Record Oct. 10, 1995 §49, eff. Nov. 9, 1995. [See Note 2]

Subd. (a) amended City Record June 18, 2009 §5, eff. July 18, 2009. [See T52 §1-08 Note 13]

Subd. (a) amended City Record Feb. 20, 2009 §9, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (a) amended City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See T52 §5-01 Note 7]

Subd. (a) heading amended City Record Oct. 26, 2007 §22, eff. Nov. 25, 2007. [See T52 §1-02

Note 6]

Subd. (a) par (1) amended City Record Oct. 26, 2007 §22, eff. Nov. 25, 2007. [See T52 §1-02

Note 6]

Subd. (b) amended City Record July 20, 1999 §57, eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record Jan. 15, 2003 eff. Feb. 14, 2003. [See Note 1]

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) added (as subd. (j)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) added (This subd. (e) was repealed in Oct. 10, 1995 amendment) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) relettered and amended (former subd. (e)) City Record Sept. 2, 1992 eff. Oct. 2, 1992. (This subd. (f) was repealed in Oct. 10, 1995 amendment).

Subd. (g)-(i) relettered (former subds. (f)-(h)) City Record Sept. 2, 1992 eff. Oct. 2, 1992. (These subds. were repealed in Oct. 10, 1995 amendment).

NOTE

1. Statement of Basis and Purpose in City Record Jan. 15, 2003:

Review of Eligibility, Payment, and Repayment Determination (Rule 5-02(a))

The amendments to Rule 5-02(a) provide that, to the extent practicable, the Board shall make determinations upon written petitions for review of payment determinations within 30 days of receipt of the written petition, or within 10 business days of receipt if the petition is received less than 30 days before a covered election. The amendments further provide that the Board's written notice of its determination shall include the reason(s) for the determination. The Board has received comments from some candidates that current Rule 5-02(a) does not require the Board to review a petition for payment determinations within a specified time period, and does not require the Board to explain the rationale for a determination on a petition. The Board's practice has been to review such petitions as soon as practicable, and to issue a written notice of the Board's determination, including an explanation of the determination. The amendments codify these practices. The amendments do not require the Board to make a determination within a prescribed time period, because some petitions may raise difficult issues for the Board, require voluminous document review, or require additional information from the petitioner.

2. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Procedures for Appeal** (R. 5-02) The rules shorten and simplify the procedure for appealing the Board's payment and repayment determinations.

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***** Current through December 2009 ****

52 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 5 PUBLIC FUNDS

§5-03 Repaying Public Funds.

(a) **Participants returning public funds.** Participants returning public funds shall make a check payable or endorse the public fund check to the "New York City Election Campaign Finance Fund." Participants may not reclaim public funds they have returned.

(b) **Participant is disqualified from the ballot.** (1) Pursuant to §3-709(7) of the Code, a participant who has been finally disqualified or whose designating or nominating petitions have been finally declared invalid by the New York City Board of Elections or a court of competent jurisdiction, may not thereafter spend public funds for any purpose other than the payment of previous liabilities incurred in qualified campaign expenditures. All public funds in excess of such liabilities previously incurred shall be promptly repaid to the Board; the amount to be repaid shall be determined in accordance with §3-710(2)(b) of the Code and subdivision (d). A repayment made pursuant to §3-709(7) shall not preclude a determination that an additional repayment is required pursuant to that or any other provision of the Act.

(2) Pursuant to §3-710(3) of the Code, a participant who has been disqualified by a court of competent jurisdiction on the grounds that he or she committed fraudulent acts in order to obtain a place on the ballot, and such decision is not reversed, shall pay to the Board an amount equal to the total public funds paid to the participant. Payments required pursuant to this paragraph shall be made promptly upon such final deter- mination.

(c) **Excess public fund payments.** Pursuant to §3-710(2)(a) of the Code, the Board shall notify a participant in writing if public funds paid to the participant were in excess of the aggregate amount for which the participant qualified, and such participant shall pay to the Board an amount equal to the amount of the excess payments.

(d) **Improper use of public funds.** Pursuant to §3-710(2)(b) of the Code, the Board shall notify a participant in writing if it finds that public funds paid to the participant were used for purposes other than qualified campaign expenditures and the participant shall repay to the Board any improperly used public funds; provided, however, that in considering whether or not a participating candidate shall be required to pay to the Board such amount or an amount less than the entire amount to be repaid, the Board shall act in accordance with the following: (i) where credible documentation supporting each qualified campaign expenditure exists but is incomplete, the Board shall not impose such liability for such expenditure; (ii) where there is an absence of credible documentation for each qualified campaign expenditure, the Board may impose liability upon a showing that such absence of credible documentation for such expenditure arose from a lack of adequate controls including, but not limited to trained staff, internal procedures to follow published Board guidelines and procedures to follow standard financial controls.

(e) **Unspent campaign funds.** (1) Pursuant to §3-710(2)(c) of the Code, the Board shall notify a participant in writing if it finds that the participant owes unspent campaign funds to the Board. The participant shall promptly pay to the Board unspent campaign funds from an election; provided, however, that all unspent campaign funds for a participant shall be immediately due and payable to the Board upon a determination by the Board that the participant has delayed the post-election audit process. The participant shall promptly pay to the Board any additional unspent campaign funds based upon a determination made by the Board at a subsequent date. Unspent campaign funds determinations made by the Board shall be based on the participant's receipts and expenditures (including any outstanding bills). The Board may also consider information revealed in the course of an audit or investigation in making an unspent campaign funds determination, including, but not limited to, the fact that campaign expenditures were made in violation of law, that expenditures were made for any purpose other than the furtherance of the participant's nomination or election, or that the participant has not maintained or provided requested documentation.

(2) (i) A participant may not use receipts for any purpose other than disbursements in the preceding election until all unspent campaign funds have been repaid, except as otherwise provided in Rule 1-03(b). Notwithstanding the presumption of Rule 1-08(c)(1), a participant has the burden of demonstrating that a post-election expenditure is for the preceding election.

(ii) Before repaying unspent campaign funds, a participant may make post-election expenditures only for routine activities involving nominal cost associated with winding up a campaign and responding to the post-election audit. Such expenditures may include: payment of utility bills and rent; reasonable staff salaries and consultancy fees for responding to a post-election audit; reasonable staff salaries and legal fees incurred prior to the date of the issuance of the participant's final audit report and associated with defending against a claim that public funds must be repaid; a post-election event for staff, volunteers, and/or supporters held within thirty days of the election; reasonable moving expenses related to closing the campaign office; a holiday card mailing to contributors, campaign volunteers, and staff; thank you notes for contributors, campaign volunteers, and staff; payment of taxes and other reasonable expenses for compliance with applicable tax laws; and interest expense. Routine post-election expenditures that may be paid for with unspent campaign funds do not include such items as post-election mailings other than as specifically provided for in this subparagraph; making contributions; or making bonus payments or gifts to staff or volunteers. Unspent campaign funds may not be used for transition and inauguration activities.

(iii) Notwithstanding the restriction on the use of receipts provided in subdivision (2)(i), a participant who has outstanding liabilities from the election, including a participant who owes public funds or penalties to the Board, may make post-election expenditures for the purpose of raising funds to repay such debt, provided, however, that such expenditures and any contributions received shall be included in the participant's unspent funds calculation unless such expenditures and contributions are incurred or received after the date of the issuance of the participant's final audit report.

(f) **Other reasons for repayment.** The Board shall notify a participant of any amount of public funds to be repaid because:

(i) the participant has not maintained copies of checks or contribution cards that document matchable contributions; or

(ii) the public funds paid were based on contributions that have been returned or contribution checks that have not been paid; or

(iii) the participant has failed to demonstrate eligibility for the public funds paid or compliance with Program requirements, or both; or

(iv) a determination pursuant to §3-705(6), (7), or §3-706(3) of the Code is reversed following reconsideration pursuant to Rule 7-03(k).

(g) Repayment determinations. The participant shall promptly repay public funds upon any determination made by the Board that a repayment is required pursuant to the Act and this rule. Any claim for the repayment of public funds shall be based on a final determination issued by the Board following an adjudication pursuant to Rule 7-02(f), unless such adjudication is waived by the candidate or principal committee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 20, 1999 §58 eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

Subd. (b) par (1) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (c) amended City Record Oct. 26, 2007 §23, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) amended City Record Oct. 26, 2007 §23, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (e) amended City Record Oct. 23, 2008 §11, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (e) amended City Record Oct. 26, 2007 §23, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (f) amended City Record Oct. 26, 2007 §23, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (g) designated and amended (former (f)(2)) City Record Oct. 26, 2007 §23, eff. Nov. 25, 2007.

[See T52 §1-02 Note 6]

DERIVATION

Subd. (a) amended City Record Oct. 10, 1995 §49, eff. Nov. 9, 1995.

Subd. (d) amended City Record Aug. 7, 2002 Part I, eff. Sept. 6, 2002. [See Note 4]

Subd. (d) par (1) amended, par (2) repealed City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See

Note 3]

Subd. (e) amended City Record July 20, 1999 §59 eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

Subd. (e) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) par (1) amended City Record Aug. 7, 2002 Part F Subpart 9, eff. Sept. 6, 2002. [See

Note 2]

Subd. (e) par (1) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 3]

Subd. (e) par (1) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (e) par (2) subpar (ii) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See Note 1]

Subd. (e) par (2) subpar (ii) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 3]

Subd. (f) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5] Note par (1) designation bracketed out of law in 2007 amendment.

Subd. (f) par (1) subpars (iii), (iv) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992. Note par (1) designation bracketed out of law in 2007 amendment.

NOTE

1. Statement of Basis and Purpose in City Record Nov. 19, 2002:

3. **Winding Up Expenditures** (§5-03(e)(2)(ii))

Section 5-03(e)(2)(ii) provides examples of permitted and prohibited winding up expenditures. During the 2001 elections, some participants had legitimate winding up expenses not identified in the section, and some participants expressed confusion over what constituted a legitimate winding up expense. Based on the Board's experiences with the 2001 elections, the amendment adds additional examples of legitimate winding up expenditures, including utility bills, rent, and payment of taxes and other reasonable expenses for compliance with applicable tax laws, and responding to the post-election audit. This amendment is intended to aid participants by providing them with additional guidance as to permitted and prohibited winding up expenditures.

2. Statement of Basis and Purpose in City Record Aug. 7, 2002: 9. **Deadline for Repayment of Unspent Campaign Funds** (§5-03(e)(1)) Section 3-710(2)(c) of the Code requires participating campaigns that have received public funds to pay to the Board any unspent campaign funds that they have following their election. The reimbursement must be made "not later than ten days after all liabilities have been paid and in any event, not later than either the closing date of the final disclosure report, or the day on which the campaign finance board issues its final audit report for such participating committee." Currently, §5-03(e)(1) requires participants to return these unspent campaign funds to the Board within 10 days after they have paid their liabilities for the previous election, but no later than the closing date of the final disclosure statement for the election, which currently falls in early January after the election. The amendment to the rule makes this deadline the date on which the Board issues the final audit report for the committee, to give candidates a more reasonable period of time to pay all liabilities and close out their campaigns' affairs, but provides that the unspent campaign funds would be due immediately if the candidate is found to have delayed the audit process.

3. Statement of Basis and Purpose in City Record Mar. 27, 2001: Improper Use of Public Funds Board Rule 5-03(d)(1) provides that a participant must promptly repay to the Board any public funds that the Board finds the participant used for purposes other than qualified campaign expenditures. Under Rule 5-03(d)(2), a participant may recover such repaid public funds if the participant can demonstrate that the participant's total qualified campaign expenditures made in an election equal or exceed the total public funds paid to the participant. However, Board Rule 5-03(a) prohibits participants from reclaiming any public funds that they have returned to the Board. The amendment to Rule 5-03(d) clarifies the interaction between Rule 5-03(d)(2) and 5-03(a). It provides participants the opportunity to demonstrate before they must repay public funds that the total qualified campaign expenditures made in the election

equal or exceed the public funds that have been paid to the participant. Participants unable to make such a showing are required to repay improperly used public funds and will not be able later to reclaim funds that have been repaid. Repayment of Public Funds 1. **Calculating Unspent Campaign Funds** (Rule 5-03(e)(1)) Following an election, the Board calculates unspent campaign funds by subtracting a particpant's campaign expenditures, including any outstanding bills, from a participant's receipts. The amendment makes clear that for purposes of making such a calculation, the Board may consider other information revealed in the course of an audit or investigation in making an unspent campaign funds determination. 2. **Post-election Expenditures for Winding-up Activities** (Rule 5-03(e)(2)(ii)) The past rule allowed campaigns to make post-election expenditures for meals that were of reasonable cost to thank campaign workers. It was difficult and time consuming for the Board to review such party expenditures to determine if they were, in fact, of reasonable cost. Therefore, the rule prohibits post-election expenditures of unspent campaign funds for any post-election event, including meals or parties. The rule also prohibits post-election expenditures for gifts or salary bonuses to thank campaign staff or volunteers for their efforts, which are not considered by the Campaign Finance Board to be routine activities associated with winding-up a campaign. As amended, this rule overrules Advisory Opinion Nos. 1997-14 (December 9, 1997) and 1997-13 (November 25, 1997).

4. Statement of Basis and Purpose in City Record Aug. 7, 2002: Technical Corrections The amendments correct certain typographical errors in Campaign Finance Board Rules 5-03(d) and 7-05.

CASE NOTES

¶ 1. Legal expenditures do not qualify as a "routine activity" for the purpose of post-election expenditures that can be deducted before repaying unspent campaign funds. Eisland v. New York City Campaign Finance Board, 31 A.D.3d 259, 818 N.Y.S.2d 501 (1st Dept. 2006).

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CHAPTER 5 PUBLIC FUNDS

§5-04 Fund Administration.

To safeguard the administration of the Fund and assure candidates that sufficient public funds will be available to make all payments required by the Act in upcoming elections, as guaranteed to participants by Charter §1052(a)(10), the Board shall:

(a) make budget requests for the Fund sufficient to cover all anticipated Fund obligations in the upcoming fiscal year and to maintain a reserve for contingencies;

(b) when it has determined that monies in the Fund are insufficient or likely to be insufficient for payments to participants, report this determination to the Commissioner of Finance and provide its estimate of the additional amount which will be necessary to make such payments pursuant to the Act (together with a detailed statement of the assumptions and methodologies on which the estimate is based), as required by Charter §1052(a)(10), not more than four days after which the Commissioner of Finance is required by Charter §1052(a)(10) to transfer an amount equal to the Board's estimate from the City's general fund to the Fund;

(c) take steps to ensure that the Fund is maintained in a separate account, credited with all sums appropriated therefor and all earnings accruing thereon, in the custody of the comptroller on behalf of the Board, as required by Charter §1052(a)(10);

(d) take steps to ensure that the Fund and its administration are insulated from the risk of improper action by any City official or agency or any agent or contractor thereof; (e) subject the Fund to periodic audits by independent outside auditors; and

(f) take such other actions as are necessary and proper to insure the integrity of the Fund.

HISTORICAL NOTE

Section added City Record July 20, 1999 §60, eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

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CHAPTER 6 PUBLIC ACCESS TO INFORMATION

§6-01 Generally.

(a) **Records access officer.** The Board's Director of Administrative Services or the Executive Director's designee is its records access officer. The records access officer is responsible for ensuring appropriate agency response to public requests for access to records. The records access officer shall ensure that Board staff:

(1) upon receipt of a written request to inspect records:

(i) make the records available for inspection; or

(ii) deny access to the records in whole or in part and explain in writing the reason for the denial;

(2) upon written request for copies of records:

(i) make a copy available upon payment or offer to pay fees, if any, in accordance with this Rule; or

(ii) deny the request for copies of records in whole or in part and explain in writing the reasons for the denial;

(3) upon written request, certify that a record is a true copy; and

(4) upon failure to locate records pursuant to a written request, certify that:

(i) the Board is not the custodian for such records; or

(ii) the records of which the Board is a custodian cannot be found after diligent search.

(b) **Record location, availability, and use.** Records shall be available for public inspection and copying at the offices of the Board. Requests for public access to records shall be accepted and records produced during the hours of 10 a.m.-4 p.m., Monday through Friday. The records access officer, or his or her designee, shall have the discretion to limit the number of records a requester may receive at any one time. No marks of any kind shall be made by a requester on any record provided for inspection. Inspection or copying of records shall be permitted only in the area designated by the records access officer for such purpose.

(c) **Requests for access.** Board staff may require a written request for access to records, but oral requests may be accepted when records are readily available. A response shall be given regarding any written request reasonably describing records sought within 5 business days of receipt of the request. A request shall reasonably describe the records sought. Whenever possible, a requester shall supply information regarding dates, file designations, or other information that may describe the records sought and enable the efficient location of the records. If the records access officer does not grant or deny access to records sought within 5 business days of receipt of a written request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date on which the request will be granted or denied. If circumstances prevent disclosure to the requester within 20 business days from the date of the acknowledgment of the receipt of the request, the Board shall state in writing the reason for the inability to grant the request within 20 business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted.

(d) **Denial of access.** Denial of access to records shall be made in writing stating the reason for the denial and advising the requester of the right to appeal. The Board's Executive Director or the Executive Director's designee shall hear appeals from denial of access to records. The time for deciding an appeal shall commence upon receipt of a dated written appeal, including:

(1) the date of the denial of access; and

(2) the name and return address of the requester.

The Executive Director or the Executive Director's designee shall transmit to the Committee on Open Government copies of all appeals upon receipt. The Executive Director or the Executive Director's designee shall inform the requester and the Committee on Open Government of a decision on the appeal, in writing, within 10 business days of receipt of an appeal.

(e) **Fees.** The Board may charge 25 cents per page for photocopies not exceeding 9 inches by 14 inches or the actual cost of reproducing any other record. In determining the actual cost, the Board may include: (i) an amount equal to the hourly salary attributed to the lowest paid Board employee who has the necessary skill required to prepare a copy of the requested record, except that no fee shall be charged for staff time if less than two hours is needed to prepare a copy of the requested record; (ii) the actual cost of storage devices or media provided to the requester in complying with the request; and (iii) the actual cost to the Board of engaging an outside professional service to prepare a copy of a record, where the Board's information technology equipment is inadequate to prepare a copy.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) open par amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 1]

Subd. (c) amended City Record July 31, 2009 §1, eff. Aug. 30, 2009. [See T52 §1-09 Note 3]

Subd. (d) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 1]

Subd. (d) open par amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (e) amended City Record July 31, 2009 §1, eff. Aug. 30, 2009. [See T52 §1-09 Note 3]

Subd. (e) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 27, 2001:

Public Access to Information

Records Access Officer (Rule 6-01(a))

This amendment replaces the Deputy Executive Director with the Director of Administrative Services or the Executive Director's designee as the Board's records access officer.

Denial of Access (Rule 6-01(d))

Under the rule, either the Executive Director or the Executive Director's designee hear appeals from a denial by the Board of a request for access to records.

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CHAPTER 7 CAMPAIGN FINANCE BOARD

§7-01 Complaints and Investigations.

(a) **Initiation of proceeding.** (i) A proceeding under subdivision four of §1136.1 of the Charter or under the Act may be commenced when:

(1) the Board receives a written complaint sworn to or affirmed, alleging the commission or omission of acts in violation of the Charter, Act or these Rules, or

(2) the Board, on its own initiative, undertakes an investigation of a possible violation of the Charter, Act or these Rules.

(ii) The following violations shall constitute infractions:

(1) a limited and non-repetitive failure, not to exceed a total of three such failures, to comply with the contribution limitations or prohibitions contained in §§3-703(1)(f), (h), (k), and (l) of the Code, provided such contribution is promptly returned to the contributor upon notice from the Board of the acceptance of the contribution; and

(2) a failure to file a complete and timely disclosure statement in a form and manner acceptable to the Board, provided such disclosure statement is promptly refiled in a form and manner acceptable to the Board, and provided, further, that this shall apply to only one disclosure statement per election cycle.

(b) **Service of complaints.** A complaint shall be filed by mailing it to, or by personally serving it on, the New York City Campaign Finance Board, 40 Rector Street, 7th Floor, New York, New York 10006.

(c) **Contents of complaint.** A complaint shall specify times, places, and names of witnesses to the acts charged as violations of the Charter, Act or these Rules to the extent known. A complaint shall be based on personal knowledge, if possible. If a complaint is based on information and belief, the complainant shall state the source of that information and belief. Copies of all documentary evidence available to the complainant shall be attached to the complaint.

(d) **Initial complaint processing.** (1) Upon receipt of a complaint, the Board will review the complaint for substantial compliance with the requirements of subdivision (c), and if the complaint complies with those requirements, the Board shall within 10 days after receipt mail to each respondent notification that the complaint has been filed, and enclose a copy of the complaint.

(2) If a complaint does not comply with the requirements of subdivision (c), or the Board deems it to be facially lacking in merit, the Board shall dismiss the complaint and shall so notify the complainant.

(e) **Opportunity to respond to complaint.** Within 20 days from mailing by the Board of a copy of the complaint to a respondent, or within such lesser time as may be specified by the Board for complaints received less than 40 days before the election, the respondent may submit a verified answer, which may set forth reasons why the Board should dismiss the complaint. If, based upon its review of the complaint and any answer filed, the Board determines the complaint to be lacking in merit, the Board shall dismiss the complaint.

(f) **Investigation.** Following receipt of a complaint, or at any time, if acting on its own initiative, the Board may conduct an investigation into possible violations of the Charter, Act or these Rules. In its investigation, the Board may use its investigative powers pursuant to §§3-708(5) and 3-710(1) of the Code. An investigation may include, but is not limited to, field investigations, desk and field audits, the issuance of subpoenas, the taking of sworn testimony, the issuance of document requests and interrogatories, and other methods of information gathering.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Oct. 18, 1996 §32, eff. Jan. 1, 1997.

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (e) amended City Record July 20, 1999 §61, eff. Aug. 19, 1999. [See T52 §7-03 Note 1]

Subd. (f) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Subd. (a) amended City Record May 5, 2003 eff. June 4, 2003 and will be effective commencing with

the regularly scheduled 2003 elections. [See Note 2]

Subd. (c) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) amended City Record Oct. 18, 1996 §33, eff. Jan. 1, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 18, 1996:

Complaints and Investigations (R. 7-01(e))

Under the rules, the Board may set a shorter time for a respondent to file an answer to a complaint.

2. Statement of Basis and Purpose in City Record May 5, 2003: Campaign Finance Board 1. **Infractions** (§7-01(a)) Local Law No. 12 of 2003 directs the Board to promulgate rules defining "infractions," and further provides that such definition "shall include, but not be limited to, failures to comply with the provisions [of the Act or the rules] that are limited and non-repetitive." Prior to enactment of the local law, the Board had adopted penalty assessment guidelines for the 2003 elections, which it published on its Web site. These guidelines provide that certain limited infringements of the contribution limits or prohibitions, or a limited failure to timely file a disclosure statement, will be considered infractions. As provided in the guidelines, infractions include a participant's acceptance of up to a **total** of three impermissible contributions. The amendments to §7-01(a) define an infraction based on these guidelines, and provide that the following violations of the Act constitute infractions: (1) a limited and non-repetitive failure to comply with the program's contribution limitations or prohibitions, provided that the contribution promptly is returned to the contributor upon notice from the Board of the acceptance of the contribution; and (2) the limited and non-repetitive failure to file one complete and timely disclosure statement in a form and manner acceptable to the Board, provided such disclosure statement is promptly refiled in a form and manner acceptable to the Board.

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CHAPTER 7 CAMPAIGN FINANCE BOARD

§7-02 Board Determinations.

(a) **Determination that complaint lacks merit.** Following an investigation, the Board may determine that a complaint is lacking in merit or that violations of the Charter, Act and these Rules have not been substantiated and dismiss the complaint or terminate the investigation.

(b) **Participant not eligible for public funds.** Following an investigation, the Board may make a determination that a participant is ineligible to receive public funds. In the event of a determination of ineligibility, the Board will send written notification to the participant and the participant may request reconsideration of such determination pursuant to Rule 5-02(a).

(c) **Notice and opportunity to contest.**

(1) If the Board has reason to believe that a violation of a law or rule over which the Board has jurisdiction has occurred, and/or that a participant must repay public funds to the Board, the Board shall notify the candidate and treasurer in writing of the alleged violation and proposed civil penalty and/or of the amount of the alleged public funds repayment obligation. Such notice shall:

(i) set forth in detail the legal basis for the Board's reason to believe there is a violation of a law or rule over which the Board has jurisdiction and/or a repayment obligation;

(ii) notify the candidate and treasurer of the opportunity to submit information and documentation for the Board's consideration within a reasonable time period to be specified in such notice; and

(iii) notify the candidate and treasurer of the opportunity to appear before the Board or its designee at a hearing to contest the alleged violation and proposed civil penalty and/or the alleged public funds repayment obligation.

(2) Unless specifically notified to the contrary by the Board, the opportunity to submit information and documentation described in the notice shall be the only such opportunity, and any information and documentation that is not timely received by the Board may, at the Board's sole discretion, be disregarded.

(3) The notice shall inform the candidate and treasurer that hearings are conducted in accordance with the requirements for adjudications contained in section 1046 of the Charter unless such procedures are waived by the candidate or principal committee.

(4) Following this opportunity to submit information and documentation, consideration of any information and documentation submitted, and consideration of any appearance before the Board or its designee, the Board may determine the amount of civil penalties for any violations it determines to have occurred and/or the amount of public funds repayment obligation, and shall provide notice setting forth in detail the legal basis of the Board's determination. If these amounts, as determined by the Board, are not paid by the payment deadline set forth in the notice, they may be sought through appropriate enforcement action or, in the case of civil penalties, by deduction from any public funds otherwise due for any election.

(d) **Conciliation.** (1) Upon review of a respondent's submission, or if the Board otherwise has reason to believe that a violation of a law or rule over which the Board has jurisdiction has occurred, the Board may initiate conciliation procedures. For this purpose the Board may conduct a conciliation conference. Notice of the conference shall be served on those parties whose attendance the Board considers necessary.

(2) If terms of conciliation which are satisfactory to the parties are reached, a conciliation agreement shall be signed by the parties subject to its terms and by the Board's Executive Director, on the Board's behalf. This agreement may require payment of appropriate civil penalties for violations as determined by the Board. If the amounts to be paid as provided for in the agreement are not paid, they may be sought through appropriate enforcement action or by deduction from any public funds otherwise due for any election. Upon execution of such an agreement, the Board shall administratively close the case. Conciliation agreements shall be binding on all parties. In the event the Board has reason to believe that terms and conditions of the agreement have not been complied with, or if new facts are brought to the Board's attention, the Board may, in its discretion, re-open the case and/or bring an appropriate enforcement proceeding.

(3) Conciliation procedures are not part of the Board's standard practices, but may be appropriate to address novel issues and are conducted solely at the discretion of the Board.

(f) **Adjudications in accordance with §1046 of the Charter.**

(1) Adjudications pursuant to this rule shall be conducted by one or more hearing officers. The Board, at its sole discretion, may designate one or more members of the Board and/or an administrative law judge to act as hearing officers. One or more members of the Board's staff may provide legal and procedural advice to the hearing officer and to the Board, subject to the direction of the hearing officer(s).

(2) The Board shall commence an adjudication pursuant to this rule by serving a notice containing a statement of the nature of the proceeding, the legal authority and jurisdiction under which the hearing is to be held, and a short and plain statement of the matters to be adjudicated, including reference to the particular sections of the Charter, Act, and these Rules involved.

(3) The Board shall provide written notice of the time and place of the hearing to the candidate and treasurer.

(4) The candidate and treasurer must provide to the hearing officer(s) and Board staff a substantive written

response to the notice stating the defense to the notice at least two weeks prior to the date of the hearing. The written response to the notice may include affidavits or affirmations, documentary exhibits, or other evidentiary material in rebuttal of the notice, and may also be accompanied by a memorandum of law.

(5) The names and contact information of all persons wishing to present testimony on the law or the facts at the hearing, including any witnesses to be examined, must be provided to the hearing officer(s) and Board staff at least five business days prior to the date of the hearing.

(6) The hearing officer(s) shall administer oaths, subpoena and examine witnesses, receive written and oral testimony, rule on the admissibility of evidence, and decide all other aspects of the conduct of the hearing. Findings of fact shall be based exclusively on the record of the proceeding as a whole. The hearing officer(s) shall make findings of fact and conclusions of law and shall forward a recommended final determination to the Board along with the record of the adjudication upon which the recommended determination is based. The Board may adopt, reject or modify any recommended determination.

(7) The candidate and treasurer shall be afforded due process of law, including the opportunity to be represented by counsel, to request that a subpoena be issued, to call witnesses, to cross-examine opposing witnesses and to present oral and written arguments on the law and facts. All witnesses shall testify under oath. Adherence to formal rules of evidence is not required.

(8) Testimony and argument on the law and facts shall be presented in the following order: Board staff, witnesses called by Board staff, if any, cross-examination, the candidate and/or treasurer and/or their counsel, witnesses called by the candidate and/or treasurer and/or their counsel, and cross-examination. Each party shall be afforded an opportunity to present rebuttal testimony, if deemed appropriate by the hearing officer.

(9) No ex parte communications relating to other than ministerial matters regarding a hearing shall be received by a hearing officer, including internal agency directives not published as rules.

(10) Testimony shall be transcribed and/or recorded, and a copy of the transcript and/or recording, or any part thereof, shall be made available to any party to the hearing upon request for a reasonable price.

(11) Affidavits or affirmations submitted as evidence must be signed and under penalties of perjury. Failure of the respondent to produce at a hearing any document either requested by the Board or required to be maintained by the Board pursuant to the Act and these Rules shall lead to a rebuttable presumption that the document, if produced, would have been adverse to the respondent.

(12) Once the hearing officer has issued the recommended final determination, each party shall have twenty days to submit written comments to the Board. The comments should raise any objections to the recommended determination, and objections not raised in the comments will be deemed waived in any further proceedings. Comments shall be limited to the record of the adjudicatory proceeding. Comments shall be served upon all other parties, and shall be served upon the Board by the Office of the General Counsel. Upon application filed with the Office of the General Counsel, the Chair may shorten or extend the time for comments for good cause shown. No personal appearances shall be made before the Board unless the Board specifically requests that the parties appear.

(13) The Board shall provide a written determination within 30 days of the conclusion of the hearing if conducted by the full Board, or within 30 days of the conclusion of the written comments period if the hearing is conducted before (a) hearing officer(s), stating the basis for any assessed penalty or repayment obligation, including any findings of fact and conclusions of law, and shall notify the candidate of the commencement of the four-month period during which a special proceeding may be brought to challenge the Board's determination pursuant to Article 78 of the Civil Practice Law and Rules. Determinations made by the Board pursuant to this rule may not be appealed to the Board unless the Board specifically provides otherwise in its determination.

(g) **Penalties for Disclosure Statement and Contribution Violations.** The Board shall publicize staff guidelines for presumptive penalties to be recommended for the late submission of a disclosure statement, the failure to file a disclosure statement, and the acceptance of an over-the-limit or a prohibited contribution, subject to consideration of aggravating and mitigating factors that will be considered in determining the appropriate penalty assessment for the violation.

HISTORICAL NOTE

Section amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Section heading amended City Record July 20, 1999 §62, eff. Aug. 19, 1999. [See T52 §7-03 Note 1]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Oct. 26, 2007 §24, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (c) amended City Record July 31, 2009 §3, eff. Aug. 30, 2009. [See T52 §1-09 Note 3]

Subd. (c) amended City Record May 15, 2008 §17, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (c) amended City Record Oct. 26, 2007 §24, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (f) amended City Record July 31, 2009 §3, eff. Aug. 30, 2009. [See T52 §1-09 Note 3]

Subd. (f) repealed and added City Record Oct. 26, 2007 §24, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (g) added City Record Aug. 7, 2002 Part G, eff. Sept. 6, 2002. [See Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (c) amended City Record May 22, 2007 §1, eff. June 21, 2007. [See Note 3]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See Note 2]

Subd. (c) amended City Record July 20, 1999 §63, eff. Aug. 19, 1999. [See T52 §7-03 Note 1]

Subd. (d) amended City Record May 22, 2007 §1, eff. June 21, 2007. [See Note 3]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) amended (including designating subd. (e) as par (2)) City Record July 20, 1999 §64, eff. Aug. 19, 1999. [See T52 §7-03 Note 1]

Subd. (f) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) amended City Record July 20, 1999 §65, eff. Aug. 19, 1999. [See T52 §7-03 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 7, 2002:

Civil Penalties (Part G)

1. **Publication of Staff Guidelines for Proposed Penalties for Late or No Filing of Disclosure Statements, and for Contribution Violations** (§7-02(g))

To alert campaigns to the range of likely penalties for late submission of financial disclosure statements, failure to submit disclosure statements, and acceptance of over-the-limit or prohibited contributions, new subsection (g) of §7-02 requires the Board to publicize staff guidelines for presumptive penalties to be recommended to the Board for these violations, subject to aggravating and mitigating factors that will be considered in determining the penalty assessments.

2. Statement of Basis and Purpose in City Record Aug. 20, 2004: Opportunity to be Heard by the Board (Rule 7-02(c)) Administrative Code §3-710.5, added by Local Law No. 12 of 2003, provides that "[t]he board shall give written notice and the opportunity to appear before the board to any participating candidate, his or her principal committee, principal committee treasurer or any other agent of a participating candidate, if the board has reason to believe that such has committed a violation or infraction, before assessing any penalty for such action." This provision confirmed the Board practice of offering candidates the opportunity to contest proposed findings of violation and penalties. Candidates are informed of these proposals in a Notie of Recommended Penalties issued to candidates in advance of the meeting, informing them of the violations and penalties, as well as detailing the conditions for appearance. The amendment clarifies the rule's current requirement that the Board offer notice to candidates "by mail," confirming that although candidates must receive written notice, the Board may transmit such written notice by facsimile, electronic mail, or via the postal system.

3. Statement of Basis and Purpose in City Record May 22, 2007: Penalty Procedures (Rule 7-02) The amendments clarify and codify the Board's existing procedures for providing notice and opportunity to appear before the Board concerning complaints and other allegations of violations. In addition, the amendments clarify when the Board would find conciliation procedures to be appropriate.

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CHAPTER 7 CAMPAIGN FINANCE BOARD

§7-03 Review of Non-Participant's Contributions and Expenditures.

(a) **Determination of eligibility.** (1) Pursuant to §3-705(6) of the Code, the Board shall determine whether a limited participant or a non-participant has spent or contracted or become obligated to spend an amount which, in the aggregate, exceeds ten thousand dollars; (2) pursuant to §3-705(7)(a) of the Code, the Board shall determine whether a candidate has spent or contracted or become obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds one-fifth of the applicable expenditure limit for such office as provided by §3-706(1) of the Code; (3) pursuant to §3-706(3)(a) of the Code, the Board shall determine whether a non-participant has spent or contracted or become obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds one-half the expenditure limit applicable to the participant(s) and/or limited participant(s) opposing that candidate; (4) pursuant to §3-706(3)(b) of the Code, the Board shall determine whether a non-participant has spent or contracted or become obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds three times the expenditure limit applicable to the participant(s) and/or limited participant(s) opposing that candidate; and (5) the Board shall verify the truthfulness of any certified signed statement submitted pursuant to §3-705(7)(b) of the Code and the Board shall determine whether supporting documentation submitted pursuant to §3-705(7)(b) of the Code demonstrates the existence of the condition or conditions described in such statement. For the purposes of making a determination pursuant to §3-705(7)(b)(1) of the Code, a non-participating or a limited participating candidate shall be presumed to have the ability to self finance when it is demonstrated through supporting documentation that such candidate has readily available funds in excess of one-fifth of the applicable expenditure limit and that such candidate can reasonably be expected to spend such funds for his or her nomination or election.

(b) **Generally.** To permit the Board to make these determinations in a timely, fair, and efficient manner, pursuant to the Act, it is expected that participants, limited participants, and non-participants will cooperate fully with Board requests for information and adhere to the procedures set forth in this rule and the requirements of New York Election Law Article 14 and State Board of Elections regulations.

(c) **Facial determinations.** The Board may find that a candidate's forms submitted to the Campaign Finance Board or to the Board of Elections provide on their face a sufficient basis for a determination pursuant to paragraph (a) above. The Board will presume that contributions and loans are accepted, disbursements are made, and liabilities are incurred by a candidate for his or her next following election. In the absence of evidence indicating otherwise, the Board will rely upon the date of contributions, loans, disbursements, and liabilities as they appear on forms submitted to the Campaign Finance Board or the Board of Elections. In addition, the Board will presume that cash on hand after an election consists of contributions that are available for expenditure in the next election.

(d) **Petitions.** The Board may make a determination pursuant to paragraph (a) above following the submission of a written pebtition, as provided in this rule. The written petition shall:

(1) be sworn to or affirmed;

(2) indicate the participant or limited participant on whose behalf it is submitted, if any;

(3) specify the particular information contained in forms submitted to the Campaign Finance Board or the Board of Elections on behalf of the respondent that is alleged to be inaccurate, if any, and the particular information alleged to be omitted from those forms, if any (in the absence of these allegations, the Board will presume that any forms on file at the Campaign Finance Board or the Board of Elections at the time the petition is submitted are true and complete for the applicable reporting periods);

(4) identify specific fund-raising and/or spending activities on behalf of the respondent that are alleged to have taken place after the close of the reporting period covered by the last such forms submitted on behalf of the respondent, if any;

(5) include all relevant names, dates, and amounts pertaining to monetary and in-kind contributions, and vendors providing goods and services to the respondent or to a third party on behalf of the respondent, including information concerning the fair market value of services, materials, facilities, advertising, or other things of value reported to have been received or expended on his or her behalf; and

(6) contain information about statements reported to have been made by the respondent, his or her agents, or authorized representatives, and any other relevant infor- mation.

The Board will not consider petitions submitted after the due date for the last disclosure statement required to be filed with the Campaign Finance Board by any candidate in the election for which the petition is filed.

(e) **Petitioner's burden.** The petitioner shall submit with the petition evidence that supports the allegations made in the petition, including but not limited to the information described in paragraph (d)(5). The petitioner has the burden of demonstrating a sufficient basis for a determination pursuant to paragraph (a). Failure by the respondent to file required disclosure forms may be a sufficient basis, and must be addressed in the respondent's response to the petition.

(f) **Notice of petition.** The Board shall send a copy of the petition to the respondent, any opposing participants, and, in the case of a determination pursuant to §3-706(a) or (b) of the Code, any opposing limited participants. The notice shall specify:

(1) the deadline for the respondent to submit a response, pursuant to subdivision (g); (2) the deadline for opposing participants or limited participants other than a respondent to submit petitions for consideration at any hearing referred

to in the notice; and

(3) the date and time at which the Board will conduct a hearing on the petition, if any, pursuant to subdivision (h).

(g) **Response to the petition**. The respondent shall submit a response in such manner as may be provided by the Board. The response shall:

(1) be sworn to or affirmed;

(2) either:

(i) acknowledge that fund-raising or spending on behalf of the respondent is sufficient to permit the Board to make a determination pursuant to paragraph (a), regardless of the merit of the petitioning participant's or limited participant's particular allegations; or

(ii) contend that a determination pursuant to paragraph (a) would be inappropriate and specify the allegations in the petition that are denied and those that are admitted;

(3) explain any failure to file any forms required in the election year; and

(4) be signed by the respondent or his or her treasurer. The respondent shall submit with the response evidence that supports the response, including, but not limited to, all relevant names, dates, and amounts pertaining to monetary and in-kind contributions, and vendors providing goods and services to the respondent or to a third party on his or her behalf, including information concerning the fair market value of services, materials, facilities, advertising, or other things of value reported to have been received or expended on behalf of the respondent. A failure to submit a response may be deemed an admission that there is a sufficient basis for a determination pursuant to paragraph (a).

(h) **Hearing.**

(1) The petitioner, the respondent, or an opposing participant or limited participant other than a respondent may request the Board to conduct a hearing on the petition.

(2) If the Board determines to conduct a hearing, as requested or on its own initiative, the hearing date will be no earlier than 10 days after the petition is received, except:

(i) for good cause shown; or

(ii) for petitions received less than 30 days before the election, in which case the hearing date will be no earlier than 3 days after the petition is received.

(3) The respondent and each opposing participant or limited participant shall notify the Board no less than one day in advance whether they will be represented at the hearing and, if the petitioner or the respondent will not be represented, the reason for the absence. Representation of a party at a hearing must be by a person with knowledge of the facts at issue.

(4) At the hearing, testimony given may be under oath, recorded, and in the following order:

(i) the petitioner;

(ii) opposing participants and/or limited participants other than a respondent;

(iii) the respondent;

(iv) Board staff, if appropriate; and

(v) an opportunity for each party to rebut, if deemed appropriate by the Board.

(i) **Notice of determination.** Following the review of disclosure forms, the submission of a petition and an opportunity for a response, and/or a hearing, the Board will decide whether there is a sufficient basis for a determination pursuant to paragraph (a). The Board shall provide written notice to the respondent, all opposing participants and limited participants other than a respondent, and the petitioner, if any, of a determination pursuant to paragraph (a) or a decision not to make such a determination, as requested by a petition, and the basis therefor.

(j) **New petitions.** A decision not to make a determination pursuant to paragraph (a) shall not be construed to preclude the subsequent submission of any petition for a determination respecting that candidate.

(k) **Reconsideration.** The petitioner, the respondent, or an opposing participant or limited participant other than a respondent may request that the Board reconsider the determination pursuant to paragraph (a) or the decision not to make such a determination. This request shall be made in writing no later than 10 days after the determination or decision. A request for reconsideration from a respondent must also include: (1) an affidavit of the respondent or his or her treasurer affirming that neither fundraising nor spending on behalf of the respondent that has taken place after the close of the most recent reporting period is sufficient to permit the Board to make a determination pursuant to paragraph (a); and (2) an undertaking by the respondent or treasurer to notify the Board immediately in writing if and when either fund-raising or spending on behalf of the respondent becomes sufficient to permit the Board to make a determination pursuant to paragraph (a). The Board may consider a respondent's failure to respond to the petition, or the failure of the party requesting reconsideration to be represented at a hearing on the petition, to be a sufficient basis for denying a request for reconsideration. The Board shall notify the respondent, all opposing participants, and, in the case of a determination pursuant to §3-706(a) or (b) of the Code, all opposing limited participants, and the petitioner on whether it will reconsider the determination pursuant to paragraph (a) or decide not to make such a determination, as the case may be. If the Board grants reconsideration and determines to conduct a hearing, the hearing shall be conducted in the manner described in paragraph (h)(4).

(l) **Submission of false information.** If the Board has reason to believe that a candidate or any other person has knowingly submitted false information or fabricated evidence or has knowingly withheld or concealed information, relevant to a determination under paragraph (a), the Board shall refer the matter to the appropriate agency for criminal prosecution and may commence a civil action to recover public funds and/or civil penalties, if appropriate.

HISTORICAL NOTE

Section amended City Record May 5, 2003 eff. June 4, 2003. [See Note 2]

Section heading amended City Record Oct. 23, 2008 §12, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (a) amended City Record Oct. 23, 2008 §12, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (a) amended City Record Oct. 26, 2007 §25, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) par (2) subpar (i) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (h) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §2-01 Note 1]

Subd. (i) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §2-01 Note 1]

Subd. (k) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §2-01 Note 1]

DERIVATION

Section amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section in original publication July 1, 1991.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (a) amended City Record July 20, 1999 §66, eff. Aug. 19, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Technical Changes

Additional benefits for participants opposed by well-financed non-participants are reflected. Rule 7-03(a), following Administrative Code §3-706(3). Various technical changes and clarifications are made in Board procedures for complaints and findings of violation. Rules 7-01 and 7-02.

2. Statement of Basis and Purpose in City Record May 5, 2003: **Review of Contributions and Expenditures.** (§7-03) Prior to Local Law No. 12 of 2003, the Act provided that the Board would determine whether a non-participant had spent or contracted to spend more than 50% of the expenditure limit applicable to the participant opposing that candidate, in which case the participant would be eligible to receive additional "bonus" public funds pursuant to Administrative Code §3-706(3). Local Law No. 12 of 2003 provides for two additional instances in which the Board must determine the level of a candidate's financial activity. New Administrative Code §3-705(6), which establishes a limit on public funds payments to participants in small primaries, provides that such limit shall not apply if, among other things, a non-participant "makes expenditures in excess of a specified amount . . . as determined by the Board." An amendment to §5-01(a) (**see** above) provides that spending by a non-participant in excess of $10,000 will lift this public funds cap. New Administrative Code §3-705(7), which establishes limits on public funds payments to participants generally, provides that such limits shall not apply if, among other things, the participant is opposed by a "candidate [who has] spent or contracted or [has] obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds one-fifth of the applicable expenditure limit for such office." The amendments to §7-03 apply the procedures applicable to a Board determination pursuant to Administrative Code §3-706(3) to the new determinations provided for in Administrative Code §3-705(6) and (7). In addition, to account for determinations in elections which do not occur in the fall of the calendar year, the amendment changes the deadline for submitting a petition. Currently the rule provides that a petition must be filed by January 15 following the election for which the petition is filed. The amendment provides that a petition must be filed by the due date for the last disclosure statement required to be filed during an election cycle by a participant who is a candidate in the election for which the petition is filed.

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Title 52 Campaign Finance Board

CHAPTER 7 CAMPAIGN FINANCE BOARD

§7-04 Advisory Opinions.

Upon the written request of a candidate or any other person, the Board shall issue advisory opinions interpreting the Act and these rules, or otherwise respond in writing to the request, within thirty days of receipt of such request, or within ten business days of receipt if such request is received less than thirty days before a covered election, to the extent practicable. The Board shall make public its advisory opinions and the questions of interpretation for which advisory opinions will be considered by the Board, including by publication on its Web site.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Section amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 19, 2002:

Advisory Opinions (§7-04)

This amendment provides that the Board shall issue advisory opinions or otherwise respond in writing within thirty days of a written request, or within ten business days of receipt of a written request received less than thirty days before a covered election, to the extent practicable. Although the Board virtually always responds to advisory opinion requests within the time period proposed, there are instances when new and complex issues may require a considerable amount of time to resolve. This amendment is designed to give candidates a sense of what their expectations might be for the timing of a response to an advisory opinion request, while recognizing that new and complex issues may take the Board more time to resolve.

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Title 52 Campaign Finance Board

CHAPTER 7 CAMPAIGN FINANCE BOARD

§7-05 Contribution and Expenditure Limit Adjustments.

(a) Adjustment of Contribution Limits. Pursuant to §3-703(7) of the Code, not later than the first day of March in the year 2018, and every fourth year thereafter, the Board shall adjust the contribution limits in accordance with changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States Bureau of Labor Statistics. The adjustments shall be based on the difference between the average consumer price index over the twelve months preceding the calendar year of such adjustment, and either (a) the calendar year preceding the year of the last such adjustment or (b) such other calendar year as may be appropriate pursuant to any amendment to the Act.

(b) Adjustment of Expenditure Limits. Pursuant to §3-706(1)(e) of the Code, not later than the first day of March in the year 2010, and every fourth year thereafter, the Board shall adjust the expenditure limits applicable pursuant to §3-706(1) and (2) in accordance with changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States Bureau of Labor Statistics. The adjustments shall be based on the difference between the average consumer price index over the twelve months preceding the calendar year of such adjustment, and either (a) the calendar year preceding the year of the last such adjustment or (b) such other calendar year as may be appropriate pursuant to any amendment to the Act.

HISTORICAL NOTE

Section amended (without laying out heading) City Record Oct. 26, 2007 §26, eff. Nov. 25, 2007. [See

T52 §1-02 Note 6]

DERIVATION

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Section amended City Record Aug. 7, 2002 Part I, eff. Sept. 6, 2002. [See T52 §5-03 Note 4]

Section repealed and added City Record Oct. 10, 1995 §50, eff. Nov. 9, 1995. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 10, 1995:

Other (R. 7-05 and other provisions)

The rules also:

· repeal a provision regarding reports the Board generates for candidate review;

· codify a 1994 Corporation Counsel opinion on the base year for determining changes in the Consumer Price Index (CPI) for the purpose of adjusting contribution and spending limits, as provided in the Act; and

· make other technical clarifications, including eliminating redundancies, repealing transitional language from previous elections, and substituting the term "public advocate" for "City Council president".

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Title 52 Campaign Finance Board

CHAPTER 7 CAMPAIGN FINANCE BOARD

§7-06 Ethical Guidelines.

The Board has determined that the conduct of its members and staff should be guided by Ethical Guidelines. The Board recognizes that some of its members and staff may be subject to additional professional codes, such as the Lawyer's Code of Professional Responsibility. In addition, the standards set forth in the Act and Charter Chapters 46 and 68 are applicable to all Board members and staff. The purpose of these Guidelines is to state standards of behavior that go beyond legal and professional obligations in order to ensure the highest degree of public confidence in the work of the Board.

HISTORICAL NOTE

Section added City Record July 20, 1999 §67, eff. Aug. 19, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Ethical Guidelines

The rules take note of the Board's longstanding Ethical Guidelines, which are signed by and apply to Board members and Board staff. Rule 7-06.

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RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 8 PUBLIC PETITIONS FOR RULEMAKING

§8-01 Procedures for Submitting Petitions.

(a) Any person or entity may petition the Board to consider the adoption of a rule. The request must be sent to the Executive Director and contain the following information:

(1) the Rule to be considered, with proposed language for adoption;

(2) a statement of the Board's authority to promulgate the Rule and its purpose;

(3) argument(s) in support of adoption of the Rule;

(4) the period of time the Rule should be in effect;

(5) the name, address, telephone number, and signature of the petitioner or his or her authorized representative.

(b) Any change in the information provided pursuant to subdivision (a) paragraph (5) must be communicated promptly in writing to the Executive Director.

(c) All requests should be typewritten, if possible, but handwritten petitions will be accepted, provided they are legible.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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52 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 8 PUBLIC PETITIONS FOR RULEMAKING

§8-02 Responses to Petitions.

Within 60 days from the date the petition was received, the Board shall either deny such petition in a written statement containing the reasons for denial, or shall state in writing the Board's intention to grant the petition and to initiate rulemaking by a specified date. In proceeding with such rulemaking, the Board shall not be bound by the language proposed by petitioner, but may amend or modify such proposed language at the Board's discretion. The Board's decision to grant or deny a petition is final.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 9 DISCLOSURE STATEMENTS INCLUDING SUBMISSIONS IN ELECTRONIC MEDIA

§9-01 Submission in Electronic Medium.

(a) **Electronic Submission Generally.** Except as specifically permitted pursuant to Rule 9-02, disclosure statements shall be generated by using Candidate Software for Managing and Reporting Transactions (C-SMART) and submitted in such form and manner as shall be provided by the Board. Documentation, whether electronically scanned or in hard copy form, shall be submitted in a form and manner as prescribed by the Board.

(b) **C-SMART.** (1) C-SMART shall be developed and issued by the Board, and may be issued in one or more stages; successive enhancements may modify and/or expand its uses. C-SMART may not be used, copied, or transferred except as authorized by the Board. Any version of C-SMART issued by the Board after January 1, 2008 shall enable candidates to meet their disclosure obligations under Article 14 of the Election Law, as amended by chapter 405 of the laws of 2005.

(2) The term "C-SMART" does not include campaign finance data stored on C-SMART by its users.

(3) C-SMART is a copyright of the New York City Campaign Finance Board.

HISTORICAL NOTE

Section amended City Record Aug. 7, 2002 Part H Subpart 1 §6, eff. Sept. 6, 2002. [See Note 2]

Subd. (a) amended City Record Oct. 26, 2007 §27, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (b) par (1) amended City Record Oct. 26, 2007 §27, eff. Nov. 25, 2007. [See T52 §1-02

Note 6]

DERIVATION

Section amended City Record Oct. 18, 1996 §34, eff. Oct. 18, 1996. [See Note 3]

Section added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (a) [This part of rule was bracketed out of rule by Aug. 7, 2002 amendment] amended City

Record July 20, 1999 §68, eff. Aug. 19, 1999. [See Note 1]

Subd. (b) amended City Record Oct. 10, 1995 §51, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) added City Record Feb. 4, 1993 eff. Mar. 2, 1993.

Subd. (c) par (4) [This part of rule was bracketed out of rule by Aug. 7, 2002 amendment] amended

City Record July 20, 1999 §68, eff. Aug. 19, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Electronic Filings

An amendment clarifies that all disclosure statements containing computer-generated data shall be made by electronic submission. Section 3-06(c). Electronic submissions must be accompanied by paper only if also required by the Board. Section 9-01(a), (c)(4).

Special election campaigns will have to submit written requests for approval to make an electronic submission, in a format other than C-SMART;cw, as soon as possible but not later than seven days before the disclosure statement is due. Section 9-02(b).

The deposit required for obtaining C-SMART;cw, the one copy per campaign limit, and use restrictions, are repealed. Section 9-02(c); 9-04.

2. Statement of Basis and Purpose in City Record Aug. 7, 2002: Electronic Document Submission **Submission of Documents to the Board in an Electronic Manner** (Rules 1-04(d), 2-01, 3-02, 3-06, 3-08, 9-01, 9-02, 9-03, 10-01, 10-02(b)(4), 10-02(d), 11-02, 11-03(b), 11-03(c)(5)) The amendments provide for and govern the submission of documents to the Board in an electronic manner.

3. Statement of Basis and Purpose in City Record Oct. 18, 1996: Computer Filings **Disclosure Statement Submission Requirements** (R. 9-01; 9-02(b), (c)(2); 9-03) The rules modify the requirements for electronic submissions. The requirement that disks and paper forms correspond is eliminated. Rather, disk submissions should include a paper form backup that will be available in the public disclosure file until it is superseded when the disks are successfully uploaded. The rules also specify requirements for electronic submissions covering only a portion of a disclosure statement and require immediate resubmission of disks that are rejected for reasons such as a virus or damage. The rules further state that the Board may provide in the future, by advisory opinion, for electronic submissions by means other than disk, if fea- sible. This amendment accounts for future technological developments, although no specific change in filing medium is being developed at this time.

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Title 52 Campaign Finance Board

CHAPTER 9 DISCLOSURE STATEMENTS INCLUDING SUBMISSIONS IN ELECTRONIC MEDIA

§9-02 [Submitting Disclosure Statements; Format; Authorization]*2

(a) **Exceptions.** (1) Any candidate who seeks to submit disclosure statements, or a portion thereof, in any format or manner other than permitted by Rule 9-01 above, including but not limited to non-electronic formats and electronic formats not generated by C-SMART, shall submit a written request for authorization to the Board no later than four weeks before the filing date for the first disclosure statement for which the candidate desires an exception from Rule 9-01, or in the case of a special election, as soon as possible but no later than seven days before such disclosure statement filing date. Such written request shall be in a form and manner as prescribed by the Board. Small campaigns, as defined in Rule 3-02(f)(4), and other candidates who demonstrate that submission of disclosure statements in an electronic format would pose a substantial hardship, shall be permitted, upon request, to submit disclosure statements to the Board in non-electronic formats. Board authorization shall be in writing and shall apply only to the candidate, paper forms, and/or electronic submission form and manner specified therein. The authorization shall indicate whether it applies to one or more disclosure statements.

(2) State and Federal forms may not be submitted to the Board unless they are specifically permitted pursuant to subsection (1) above or §3-703(8) of the Code.

(b) **Enhancements.** The Board may, from time to time, provide enhancements, builds, patches, and/or upgrades to C-SMART and/or its user instructions. The Board shall provide candidates with as much advance notice of such enhancements as is reasonably possible. Following any such additions, candidates using C-SMART shall also use the most recent addition for any subsequent disclosure statement.

HISTORICAL NOTE

Section amended City Record Aug. 7, 2002 Part H Subpart 1 §6, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (a) par (1) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (a) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (a) par (1) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002.

Subd. (a) par (1) [This part of rule was bracketed out of rule by City Record Aug. 7, 2002 amendment] amended City Record July 20, 1999 §69, eff. Aug. 19, 1999. [See T52 §9-01 Note 1]

Subd. (b) [This part of rule was bracketed out of rule by City Record Aug. 7, 2002 amendment] amended City Record July 20, 1999 §70, eff. Aug. 19, 1999. [See T52 §9-01 Note 1]

Subd. (b) amended City Record Oct. 18, 1996 §35, eff. Oct. 18, 1996. [See T52 §9-01 Note 3]

Subd. (b) amended City Record Feb. 4, 1993 eff. Mar. 2, 1993.

Subd. (b) open par amended City Record Oct. 10, 1995 §52, eff. Nov. 9, 1995. [See T52 §1-02 Note 4]

Subd. (c) [This part of rule was bracketed out of rule by City Record Aug. 7, 2002 amendment] amended City Record July 20, 1999 §70, eff. Aug. 19, 1999. [See Note after §9-01]

Subd. (c) par (2) amended City Record Oct. 18, 1996 §36, eff. Oct. 18, 1996. [See T52 §9-01 Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 19, 2002:

C-SMART (§9-02(b))

From time to time during an election cycle it may be necessary to issue enhancements to C-SMART, or "patches." The Board makes every attempt to avoid issuing these patches, but has done so when it was necessary to facilitate payments to candidates or the proper disclosure of campaign finance information to the Board. The amendment confirms that the Board will provide participants with as much advance notice of such patches as is reasonably possible.

FOOTNOTES

2

[Footnote 2]: * Section heading supplied by Editor.

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Title 52 Campaign Finance Board

CHAPTER 9 DISCLOSURE STATEMENTS INCLUDING SUBMISSIONS IN ELECTRONIC MEDIA

§9-03 Disclosure Statement Submission Requirements.

(a) **Verification.** The treasurer or candidate shall verify that the electronic submission is true and complete, to the best of his or her knowledge, information, and belief.

(b) **Deficient submissions; legibility.** A submission is deficient and not in compliance with the disclosure requirements of the Act and these Rules if:

(1) the submission is not submitted in a form or manner authorized by the Board.

(2) the submission, or any part thereof, is in an electronic format that is infected with a virus, damaged, blank, improperly formatted, or otherwise unreadable by the Board; or

(3) the submission, or any part thereof, is in a non-electronic format that is illegible, or not in blue or black ink.

(c) **Supplemental paper submissions.** Unless otherwise required by the Board, a submission made in an electronic format, whether generated using C-SMART or otherwise, shall be accompanied by a printed version of the electronic submission. The electronic submission shall be the official submission. Any printed version of the electronic submission shall be provided solely for informational purposes and shall be placed in the public file until the electronic submission accepted by the Board is available to the public.

HISTORICAL NOTE

Section amended City Record Aug. 7, 2002 Part H Subpart 1 §6, eff. Sept. 6, 2002. [See T52 §9-01

Note 2]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) open par amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section repealed and added City Record Oct. 18, 1996 §37, eff. Oct. 18, 1996. [See T52 §9-01

Note 3]

Section added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (c)-(d) repealed City Record Oct. 10, 1995 §53, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) amended City Record Feb. 4, 1993 eff. Mar. 2, 1993.

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52 RCNY 9-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 9 DISCLOSURE STATEMENTS INCLUDING SUBMISSIONS IN ELECTRONIC MEDIA

§9-04 Prospective Participants. [Repealed]

HISTORICAL NOTE

Section repealed City Record July 20, 1999 §71, eff. Aug. 19, 1999. [See T52 §9-01 Note 1]

Section added City Record May 19, 1994 eff. June 18, 1994.

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 10-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 10 VOTER GUIDE

§10-01 Definitions.

Except as otherwise provided, the definitions set forth in §1-02 apply in this chapter. In addition, the following terms shall have the following meanings:

Ballot proposal. "Ballot proposal" shall mean any proposition, referendum, or other question submitted to the voters pursuant to the Charter or to voters in New York City only pursuant to the New York Municipal Home Rule Law or any other law.

Candidate Voter Guide statement. "Candidate Voter Guide statement" shall mean the form filed by a candidate pursuant to §10-02(b), containing biographical and other information, a candidate statement, and a photograph of the candidate for inclusion in the primary or general election Voter Guide if the candidate is on the ballot in the election.

Election. "Election" shall mean any primary or general election, other than a special election or runoff special election held to fill a vacancy, runoff primary, or election held pursuant to court order, for the office of mayor, public advocate, comptroller, borough president, or member of the City Council, or a general election in which a ballot proposal is on the ballot.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Ballot proposal definition amended City Record July 20, 1999 §72, eff. Aug. 19, 1999. [See Note 1]

Candidate Voter Guide statement definition amended City Record Aug. 7, 2002 Part H Subpart 1 §7, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Election amended City Record May 5, 2003 eff. June 4, 2003. [See Note 3]

DERIVATION

Candidate Voter Guide statement amended City Record Oct. 18, 1996 §38, eff. Jan. 1, 1997. [See Note 2]

Election amended City Record Oct. 18, 1996 §39, eff. Jan. 1, 1997. [See Note 2]

Election amended City Record Oct. 10, 1995 §54, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Election amended City Record Feb. 4, 1993 eff. Mar. 2, 1993.

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Voter Guide

The definition of "ballot proposal" is clarified to cover all proposals submitted to voters in New York City only, pursuant to any law. Section 10-01. There will be no requirement that candidate photographs submitted for inclusion in the Voter Guide must be in black and white. Section 10-02(b)(3)(ii).

If feasible, the Board will solicit and accept for possible publication "pro" and "con" statements for ballot proposals. The time period for submitting these statements is left to the Board's discretion. Section 10-02(d)(3).

2. Statement of Basis and Purpose in City Record Oct. 18, 1996: **Voter Guide Definitions** (R. 10-01) The rules clarify that the Voter Guide will not include statements from write-in candidates.

3. Statement of Basis and Purpose in City Record May 5, 2003: The amendment specifies that the Board shall not be required to publish a Voter Guide for a runoff special election. The Board's Rules already provide that the Board shall not be required to publish a Voter Guide for a runoff primary election or any special election, since these elections usually are held on extremely short notice. The same concern applies to runoff special elections.

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52 RCNY 10-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 10 VOTER GUIDE

§10-02 Contents.

(a) **General Information.** In addition to any information that the Board determines to be useful for promoting public awareness of the voting process, City government, and the candidates and ballot proposals in an election, the Voter Guide for an election shall contain:

(1) the date of the election;

(2) the hours during which the polls are open;

(3) an explanation of the voter registration process;

(4) an explanation of how to obtain and use an absentee ballot;

(5) an explanation of how to cast a vote, including write-in votes;

(6) maps outlining the boundaries of City Council districts; and

(7) such tables of contents, graphics, and other materials which the Board determines will make the Voter Guide easier to understand or more useful for the average voter.

(b) **Candidates.** (1) The Voter Guide for an election shall contain biographical and other information for each candidate in the election who has submitted, in a timely manner, a candidate Voter Guide statement as provided in this subdivision. The following biographical information shall be included:

(i) the name of the candidate;

(ii) the political party in which the candidate is enrolled;

(iii) the previous and current public offices held by the candidate;

(iv) the current occupation and employer of the candidate;

(v) prior employment and positions held by the candidate;

(vi) the experience the candidate has had in public service;

(vii) the educational background of the candidate;

(viii) a list of the candidate's major organizational affiliations;

(ix) such other biographical and other information as may be determined by the Board and requested on the candidate Voter Guide statement.

(2) The Voter Guide shall contain concise statements on the candidate's principles, platform, or views, for each candidate in the election who has submitted, in a timely manner, a candidate Voter Guide statement which meets the requirements of this chapter. The information submitted in the candidate Voter Guide statement shall be in English and shall be translated by a translation service under contract to the Board.

(3) Any photograph of a candidate submitted in a candidate Voter Guide statement shall meet the following requirements:

(i) it is a recent photograph;

(ii) it is a photograph with a plain background;

(iii) it shows the face or the head, neck, and shoulders of the candidate;

(iv) it does not include the hands or anything held in the hands of the candidate;

(v) it does not show the candidate wearing any distinctive uniform, including but not limited to a judicial robe, or a military, police, or fraternal uniform; and

(vi) it is within such size requirements as may be determined and required by the Board.

(4)(i) A candidate Voter Guide statement shall be included in the primary election Voter Guide for each candidate named in designating petitions filed with the Board of Elections who submits a statement to the Campaign Finance Board which meets the other requirements of this chapter not later than 12 weeks prior to the primary election or such other time as prescribed by the Campaign Finance Board. Notwithstanding the foregoing, a candidate Voter Guide statement shall not be included in the primary election Voter Guide if no contested primary election for the nomination sought by that candidate will be held based on designating petitions filed with the Board of Elections. The Campaign Finance Board shall determine whether a contested primary election will be held based on information available at the time the primary election Voter Guide is sent to press.

(ii) In the case of general election candidates not named in designating petitions filed with the Board of Elections, a candidate Voter Guide statement shall be included in the general election Voter Guide for each such general election candidate who submits a statement to the Campaign Finance Board which meets the requirements of this chapter not later than 12 weeks prior to the general election or such other time as prescribed by the Campaign Finance Board. In the

case of candidates for whom a candidate Voter Guide statement was submitted for the primary election Voter Guide, that statement shall be included in the general election Voter Guide, regardless whether it was included in the primary election Voter Guide, and no additional statement or modifications to a statement or other information shall be accepted from such candidates for the general election Voter Guide.

(iii) The Board shall not accept a candidate Voter Guide statement unless it is submitted in a manner provided by the Board, includes any signatures or notarizations required by the Board, and the candidate has verified that the contents of the form are true to the best of his or her knowledge. The Board may, in its discretion, reject any Voter Guide statement, or portions thereof, it deems to contain matter that is obscene, libelous, defamatory or otherwise objectionable.

(5) Information contained in the candidate Voter Guide statement shall not exceed the length and space limitations provided by the Board. The Board may, in its discretion, require that candidate Voter Guide statements follow a consistent format, and edit statements to achieve uniformity of presentation, conformance with length and space limitations, and consistency with existing law.

(6) The candidate Voter Guide statement is a written instrument which, when filed, becomes part of the Board's records. Knowingly filing a written instrument that contains a false statement or false information is a Class A misdemeanor under New York State Penal Law §175.30. A candidate may not include any false information in his or her candidate Voter Guide statement. The candidate shall verify that his or her candidate Voter Guide statement is true, to the best of his or her knowledge.

(7) Together with a candidate Voter Guide statement, the Board shall publish one of the following notices:

(i) In the case of a participant: "Participant in the Campaign Finance Program" or language to like effect.

(ii) In the case of a limited participant: "Limited participant in the Campaign Finance Program" or language to like effect.

(iii) In the case of a non-participant: "Not a participant in the Campaign Finance Program" or language to like effect.

(c) Reserved.

(d) **Ballot proposals.** The Voter Guide for the general election shall contain:

(1) the form of each ballot proposal, as it will appear on the ballot, in the general election;

(2) an abstract of each ballot proposal; and

(3) to the extent feasible, a statement of the major arguments for and against the passage of each ballot proposal, clearly labeled as such. If feasible, the Board shall solicit and accept for possible inclusion in the Voter Guide for a general election statements of arguments for and against passage. A statement shall not be accepted by the Board unless the statement:

(i) is submitted in a form and manner provided by the Board and includes any signatures required by the Board;

(ii) conforms to the length and space limitations provided by the Board;

(iii) identifies the organization, if any, on whose behalf the statement is made. No person may submit more than one statement per ballot proposal pursuant to this paragraph.

(e) **Board determines whether to publish statements for and against ballot proposals.** With respect to

statements of arguments for and against ballot proposals, the Board, in its discretion, may determine:

(1) not to publish any such statements;

(2) not to publish any statements submitted pursuant to paragraph (d)(3);

(3) to publish all or any portion of a statement submitted pursuant to paragraph (d)(3);

(4) to edit any statement submitted pursuant to paragraph (d)(3) and publish the edited statement; and

(5) to compose and publish such statements of arguments for and against passage of ballot proposals as it deems appropriate, or to designate one or more persons to compose such statements.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (5) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (a) par (6) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) par (1) subpar (ix) repealed City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) par (3) subpar (ii) amended City Record July 20, 1999 §73, eff. Aug. 19, 1999. [See T52 §10-01 Note 1]

Subd. (b) par (4) amended City Record Aug. 7, 2002 Part H Subpart 1 §8, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (b) par (4) subpar (iii) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See Note 1]

Subd. (b) par (5) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See Note 1]

Subd. (b) par (6) amended City Record July 20, 1999 §74, eff. Aug. 19, 1999. [See T52 §10-01 Note 1]

Subd. (b) par (7) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) repealed City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (d) amended City Record Aug. 7, 2002 Part H Subpart 1 §9, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (e) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

DERIVATION

Subd. (b) par (6) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (d) par (3) amended City Record July 20, 1999 §75, eff. Aug. 19, 1999. [See T52 §10-01

Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 11, 2005:

Voter Guide (Rules 10-02(b)(4)(iii) and 10-02(b)(5))

The amendments confirm that the Board, may, in its discretion: (i) reject any statement submitted for publication in the Voter Guide containing matter that the Board deems obscene, libelous, defamatory or otherwise objectionable; and (ii) require that candidate Voter Guide statements follow a consistent format.

Rules of the City of New York

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52 RCNY 10-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 10 VOTER GUIDE

§10-03 Publication and Distribution.

The Voter Guide shall be published in English and Spanish, and in such other languages as the Board may determine to be necessary and appropriate. The Voter Guide shall be distributed to each household in which there is at least one registered voter eligible to vote in the primary or general election, as the case may be, in the City. In its discretion the Board may provide for the publication and distribution of a different Voter Guide in each borough or other subdivision of New York City.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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52 RCNY 10-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 10 VOTER GUIDE

§10-04 Elections Not Held as Scheduled.

Notwithstanding any other provision of this chapter, the Board shall take such actions as are practicable to prepare, publish, and distribute a Voter Guide in a timely manner for an election that is not held as initially scheduled.

HISTORICAL NOTE

Section amended City Record Oct. 18, 1996 §40, eff. Jan. 1, 1997.

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

52 RCNY 11-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 11 TRANSITION AND INAUGURATION ACTIVITIES*1

§11-01 Scope.

This chapter applies to every candidate elected to the office of mayor, public advocate, comptroller, borough president, and member of the City Council, regardless whether the elected candidate is a participant in the voluntary Campaign Finance Program. "Elected candidate" shall mean each such candidate. Except as otherwise provided, the definitions set forth in §1-02 apply in this chapter.

HISTORICAL NOTE

Section added City Record July 20, 1999 §76, eff. Aug. 19, 1999. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Provisions of City Record July 20, 1999 Explanation, Basis and Purpose:

Transition and Inauguration Activities

These rules apply to all candidates elected to the office of mayor, public advocate, comptroller, borough president, and City Council member, regardless whether the candidate is a participant in the voluntary Campaign Finance Program. Before any private funds are raised or spent for transition or inauguration into office, the

elected candidate is required to register each entity authorized to engage in financial activity for a transition and/or inauguration into office. Section 11-02. These entities would file bimonthly disclosure reports on the fifth business day in January, March, May, July, September, and November, until the entity terminates. Section 11-03.

An elected candidate may not use a political committee or pre-existing entity for transition or inauguration activities, and a transition/inauguration entity may not:

· continue in existence after it has paid all liabilities for transition and inauguration into office;

· accept funds from any political committee authorized by the elected candidate;

· accept donations from a political committee that has not registered with the Board;

· accept donations in excess of legal limits (including the single source standards);

· incur liabilities or make expenditures for purposes other than transition or inauguration into office; or

· accept any donation in cash that exceeds $10.

Section 11-04.

Recordkeeping requirements are similar to those for campaigns participating in the voluntary Campaign Finance Program. Section 11-05.

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***** Current through December 2009 ****

52 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 11 TRANSITION AND INAUGURATION ACTIVITIES*1

§11-02 Registration.

(a) Before any private funds are raised or spent for transition or inauguration into office, the elected candidate shall register each entity created and authorized to accept donations and loans, and make expenditures, for transition and/or inauguration into office on behalf of the elected candidate. The failure to make this registration in a timely manner is a violation of §3-802 of the Code, and subject to penalty thereunder.

(b) The registration shall be submitted in such form and manner as shall be provided by the Board and shall contain all information required by the Board, including:

(i) the name and address of the elected candidate and of the entity, and the date the entity was created;

(ii) the name, address, and employer of the treasurer (or other officer authorized to sign the registration) and of the liaison of the entity;

(iii) information about the entity's bank accounts; and

(iv) any signatures and notarizations as may be required by the Board; provided, however, that, to the extent that the Board permits an elected candidate to submit the registration in a non-electronic format, such registration will only be accepted by the Board if it contains an original notarized signature from both the elected candidate and the treasurer or other officer of the entity designated to sign the periodic disclosure reports required by §11-03.

(c) The elected candidate shall file a separate registration for each separate entity authorized by the elected

candidate to raise and spend private funds for transition or inauguration into office.

HISTORICAL NOTE

Section added City Record July 20, 1999 §76, eff. Aug. 19, 1999. [See Chapter 11 footnote]

Subd. (b) amended City Record Aug. 7, 2002 Part H Subpart 1 §10, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Provisions of City Record July 20, 1999 Explanation, Basis and Purpose:

Transition and Inauguration Activities

These rules apply to all candidates elected to the office of mayor, public advocate, comptroller, borough president, and City Council member, regardless whether the candidate is a participant in the voluntary Campaign Finance Program. Before any private funds are raised or spent for transition or inauguration into office, the elected candidate is required to register each entity authorized to engage in financial activity for a transition and/or inauguration into office. Section 11-02. These entities would file bimonthly disclosure reports on the fifth business day in January, March, May, July, September, and November, until the entity terminates. Section 11-03.

An elected candidate may not use a political committee or pre-existing entity for transition or inauguration activities, and a transition/inauguration entity may not:

· continue in existence after it has paid all liabilities for transition and inauguration into office;

· accept funds from any political committee authorized by the elected candidate;

· accept donations from a political committee that has not registered with the Board;

· accept donations in excess of legal limits (including the single source standards);

· incur liabilities or make expenditures for purposes other than transition or inauguration into office; or

· accept any donation in cash that exceeds $10.

Section 11-04.

Recordkeeping requirements are similar to those for campaigns participating in the voluntary Campaign Finance Program. Section 11-05.

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RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 11 TRANSITION AND INAUGURATION ACTIVITIES*1

§11-03 Periodic Disclosure Reports.

(a) **Forms.** The Board shall provide forms and instructions for the submission of periodic disclosure reports by entities registered under §11-02. Except as otherwise provided in subdivision (b), disclosure reports shall be submitted on the forms provided by the Board and shall contain all information for the reporting period required by the Board, including:

(1) the cash balance at the beginning and end of the reporting period;

(2) total itemized and unitemized donations, loans, and other receipts accepted during the reporting period;

(3) total itemized and unitemized expenditures made during the reporting period;

(4) for each donation accepted, the contributor's and intermediary's (if any) full name, residential address, occupation, employer, and business address, to the best of the elected candidate's, treasurer's, and entity's knowledge;

(5) the date of receipt and amount of each donation accepted or other receipt;

(6) whether a donation was made in cash;

(7) the date and amount of each donation returned to a donor;

(8) each previously reported donation for which the check was returned unpaid;

(9) for each loan accepted, the lender's, guarantor's or other obligor's full name, residential address, occupation, employer, and business address, to the best of the elected candidate's, treasurer's, and entity's knowledge;

(10) the date and amount of each loan, guarantee, or other security for a loan accepted;

(11) the date and amount of each loan payment made;

(12) the amount of any portion of a loan which has been forgiven;

(13) the date, amount, name and address of the payee, purpose, and check and account number of each disbursement;

(14) the date, amount, name and address of the obligee, and purpose of each unpaid obligation incurred; and

(15) such other information as the Board may require.

All data reported in disclosure reports, amendments, and resubmissions shall be accurate as of the last day of the reporting period.

(b) **Electronic submissions.** Disclosure report submissions shall follow the submission standards applicable to participants under Chapter 9 of these rules.

(c) **Bimonthly reports.**

(1) The first report is due on the fifth business day of January, March, May, July, September, or November, whichever occurs first after the election, provided that the closing date of the first report shall not be less than six weeks after the entity was registered.

(2) The first report shall cover a period of not less than six weeks from the day the entity was registered through the last day of the calendar month immediately preceding the month in which the report is due. Each subsequent report shall cover the next two calendar months, and shall be due on the fifth business day after the close of the later month.

(3) The final report shall cover the period from the day after the conclusion of the preceding report through the day the entity terminates its activities (by complete payment of all liabilities and complete disposition of funds), and shall include such information about the disposition of any funds remaining after all liabilities are paid as shall be required by the Board. The final report is due on the fifth business day after the entity terminates its activities.

(4) Disclosure reports that fail to comply substantially with the disclosure requirements described in the Code or these rules will not be accepted by the Board. Amendments to or resubmissions of disclosure reports are prohibited unless expressly authorized or requested by the Board.

(5) The disclosure report shall contain a verification from the elected candidate, treasurer, or other officer designated in the registration that the disclosure report is true and complete to the best of his or her knowledge, information, and belief, and shall contain such signatures as may be required by the Board; provided, however, that, to the extent the Board permits a candidate to submit a disclosure report in a non-electronic format pursuant to §11-03(b) and Chapter 9 of these rules, such disclosure report will only be accepted by the Board if it contains an original signature from either the elected candidate, the treasurer, or another officer designated in the registration to sign the periodic disclosure reports required by this §11-03.

HISTORICAL NOTE

Section added City Record July 20, 1999 §76, eff. Aug. 19, 1999. [See Chapter 11 footnote]

Subd. (a) open par amended City Record Feb. 29, 2000 §11, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

Subd. (b) amended City Record Aug. 7, 2002 Part H Subpart 1 §11, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (c) par (3) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) par (4) amended City Record May 5, 2003 eff. June 4, 2003. [This was a technical amendment.]

Subd. (c) par (5) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) par (5) amended City Record Aug. 7, 2002 Part H Subpart 1 §12, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Provisions of City Record July 20, 1999 Explanation, Basis and Purpose:

Transition and Inauguration Activities

These rules apply to all candidates elected to the office of mayor, public advocate, comptroller, borough president, and City Council member, regardless whether the candidate is a participant in the voluntary Campaign Finance Program. Before any private funds are raised or spent for transition or inauguration into office, the elected candidate is required to register each entity authorized to engage in financial activity for a transition and/or inauguration into office. Section 11-02. These entities would file bimonthly disclosure reports on the fifth business day in January, March, May, July, September, and November, until the entity terminates. Section 11-03.

An elected candidate may not use a political committee or pre-existing entity for transition or inauguration activities, and a transition/inauguration entity may not:

· continue in existence after it has paid all liabilities for transition and inauguration into office;

· accept funds from any political committee authorized by the elected candidate;

· accept donations from a political committee that has not registered with the Board;

· accept donations in excess of legal limits (including the single source standards);

· incur liabilities or make expenditures for purposes other than transition or inauguration into office; or

· accept any donation in cash that exceeds $10.

Section 11-04.

Recordkeeping requirements are similar to those for campaigns participating in the voluntary Campaign Finance Program. Section 11-05.

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RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 11 TRANSITION AND INAUGURATION ACTIVITIES*1

§11-04 Restrictions.

The following restrictions apply pursuant to §3-801 of the Code.

(a) An elected candidate shall not:

(1) authorize or register a political committee to raise or spend funds for transition or inauguration into office;

(2) use funds accepted by a political committee authorized by the candidate for transition or inauguration into office;

(3) authorize or register a previously existing entity to raise or spend funds for transition or inauguration into office;

(4) continue in existence an entity registered under §11-02 after it has paid all liabilities it incurred for transition and inauguration into office and otherwise has disposed of all funds pursuant to paragraph (f) below.

(b) An entity authorized by an elected candidate to raise or spend funds for transition or inauguration into office shall not:

(1) accept donations or other receipts from any political committee authorized by the elected candidate;

(2) accept donations from a political committee that has not registered with the Board under §3-801(3) of the Code on a form that includes the information set forth in Rule 1-04(d)(1) (political committees registered for an election cycle

pursuant to §3-707 of the Code shall be deemed registered for purposes of §3-801(3) of the Code with respect to transition and inauguration expenditures immediately following an election held in that cycle);

(3) accept donations in excess of the donation limits set forth in §3-801(2)(b) of the Code;

(4) incur liabilities or make expenditures for purposes other than transition or inauguration into office;

(5) accept any donation in cash that exceeds $100 from a single donor;

(6) incur liabilities or make expenditures after January thirty-first in the year following the election, except for (i) expenditures made to satisfy liabilities incurred prior to January thirty-first and (ii) routine and nominal expenditures associated with and necessary to satisfying such liabilities and terminating the entity, such as routine and nominal overhead costs, bank fees, taxes, and other reasonable expenses for compliance with applicable tax laws;

(7) accept any donations after all liabilities are paid; or

(8) accept any donations from any corporation, limited liability company, limited liability partnership or partnership not permitted to contribute pursuant to §3-703(1)(l) of the Code or from any person whose name appears in the doing business database as of the date of such donation; provided, however, that this limitation on donations shall not apply to any donation made by a natural person who has business dealings with the city to a transition or inaugural committee where such donation is from the candidate-elect, or from the candidate-elect's parent, spouse, domestic partner, sibling, child, grandchild, aunt, uncle, cousin, niece or nephew by blood or by marriage.

(c) In determining compliance with the donation limits of §§3-801(2)(b) and (d) of the Code, the Board shall total all donations from a single source to all transition and inauguration entities authorized by an elected candidate, using the standards for determining whether donations are from a single source that apply to contributions from a single source under Rule 1-04(h).

(d) Loans are deemed to be donations, subject to the limits and restrictions of the Code, to the extent the loan is not repaid by the date of the elected candidate's inauguration into office.

(e)(i) Unless permitted by paragraphs (b)(6) and (7) above, any expenditure, liability, or other disbursement, and any donation, loan, or other receipt, made, incurred, or received after January thirty-first in the year following the date of a regularly scheduled general election (or after 30 days following the date of the elected candidate's inauguration, in the case of a special election), by an entity authorized pursuant to §3-801 of the Code, shall be presumed to be made, incurred, or received for the first election in which the elected candidate is a candidate following the day that it is made, incurred, or received and not made, incurred, or received for the purposes of transition or in- auguration.

(ii) Incumbent elected candidates shall be presumed to have no transition expenses.

(f) If the entity has funds remaining after all liabilities have been paid, it shall return such funds to one or more of its donors, or if that is impracticable, to the Fund.

(g) An elected candidate and his or her authorized entities may choose not to accept any monetary or in-kind donation, or any loan, guarantee, or other security for such loan, and may accept only monetary donations and advances from the elected candidate to his or her entities made out of the elected candidate's personal funds and in-kind donations made by the elected candidate to the entities; such elected candidate may donate to his or her entities with his or her personal funds or property, make in-kind donations to his or her entities with his or her personal funds or property, and make advances to his or her entities with his or her personal funds or property, without regard to the donation limits of §3-801(2)(b) of the Code. An elected candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

HISTORICAL NOTE

Section amended (inadvertently omitting section heading) City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Oct. 26, 2007 §28, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (c) amended City Record Oct. 26, 2007 §28, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (e) added City Record Aug. 21, 2003 eff. Sept. 20, 2003. [See Note 2]

DERIVATION

Section added City Record July 20, 1999 §76, eff. Aug. 19, 1999. [See Chapter 11 footnote]

Subd. (b) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 1]

Subd. (b) amended City Record Feb. 29, 2000 §12, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 27, 2001:

Technical Correction

This amendment corrects a typographical error so that the Rule will prohibit a Transition and Inaugural entity from accepting any donation in cash that exceeds $100 from a single donor, as opposed to prohibiting donations exceeding $10.

2. Statement of Basis and Purpose in City Record Aug. 21, 2003: Transition and Inauguration Activities (§11-04(e)) The 2001 elections were the first elections in which the Board's transition and inauguration requirements were fully implemented. Following those elections, a number of elected candidates continued to report transition and inauguration activity well after the date of their inauguration into office. The Board is concerned that some or all of this activity was actually campaign activity. Not only does the use of a transition and inauguration entity for campaign purposes violate Administrative Code §3-801, but it also improperly insulates such activity from the reach of the New York City Campaign Finance Act and unfairly benefits incumbents, who are the only individuals permitted to establish transition and inauguration entities. The rule provides that activity undertaken through a transition and inauguration entity after January thirty-first in the year following the elected candidate's election to office (or after 30 days following the date of the elected candidate's inauguration, in the case of a special election) is presumed to be undertaken for the first election in which the elected candidate is a candidate following the date of the activity, and is not for the purposes of transition or inauguration. Additionally, the rule makes clear that in the future incumbent elected candidates, who already have government offices and staff, may not seek to use a transition and inauguration entity to fund expenses, such as office furniture, which properly should be made out of their government office budgets (although some such expenditures could be a legitimate transition expense for newly elected candidates). As a result, the rule also provides that incumbent elected candidates shall be presumed to have no transition expenses.

FOOTNOTES

1

[Footnote 1]: * Provisions of City Record July 20, 1999 Explanation, Basis and Purpose:

Transition and Inauguration Activities

These rules apply to all candidates elected to the office of mayor, public advocate, comptroller, borough president, and City Council member, regardless whether the candidate is a participant in the voluntary Campaign Finance Program. Before any private funds are raised or spent for transition or inauguration into office, the elected candidate is required to register each entity authorized to engage in financial activity for a transition and/or inauguration into office. Section 11-02. These entities would file bimonthly disclosure reports on the fifth business day in January, March, May, July, September, and November, until the entity terminates. Section 11-03.

An elected candidate may not use a political committee or pre-existing entity for transition or inauguration activities, and a transition/inauguration entity may not:

· continue in existence after it has paid all liabilities for transition and inauguration into office;

· accept funds from any political committee authorized by the elected candidate;

· accept donations from a political committee that has not registered with the Board;

· accept donations in excess of legal limits (including the single source standards);

· incur liabilities or make expenditures for purposes other than transition or inauguration into office; or

· accept any donation in cash that exceeds $10.

Section 11-04.

Recordkeeping requirements are similar to those for campaigns participating in the voluntary Campaign Finance Program. Section 11-05.

Rules of the City of New York

***** Current through December 2009 ****

52 RCNY 11-05

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 11 TRANSITION AND INAUGURATION ACTIVITIES*1

§11-05 Records and Audit.

(a) Each entity required to be registered under §11-02 must exercise reasonable care to keep records that enable the Board to verify the accuracy of disclosure reports and compliance with all requirements of §3-801 of the Code and this chapter. The records kept shall be clear, accurate, and sufficient to show an audit trail that demonstrates compliance. The records shall be made and maintained contemporaneously with the transactions recorded, and maintained and organized in a manner that facilitates expeditious review by the Board.

(b) The records to be kept shall include:

(1) Copies of all deposit slips.

(2) A photocopy of each check or other monetary instrument representing a donation or other monetary receipt.

(3) A record of all efforts made to ascertain each donor's residential address, employer, business address, and occupation and to identify fully the intermediary, if any, for each donation.

(4) For each in-kind donation, a receipt or other written record showing how the value of the donation was determined.

(5) Each bill for goods or services provided.

(6) Written documentation for each loan received, loan repayment, and loan forgiven.

(7) A monthly billing statement or customer receipt for each disbursement to a credit card or charge card account showing vendors underlying the disbursement.

(8) The following from banks and other depositories relating to accounts:

(i) all periodic bank or other depository statements in chronological order, maintained with any other related correspondence received with those statements, such as credit and debit memos and contribution checks returned because of insufficient funds; and

(ii) all returned and cancelled disbursement checks.

(c) All of the entity's records are subject to Board review and shall be made available to the Board upon its request, within such time as shall be specified by the Board.

(d) The entity may maintain a petty cash fund of no more than $500 out of which they may make disbursements not in excess of $100 to any person or entity per purchase or transaction. If a petty cash fund is maintained, the entity shall maintain a petty cash journal including the name of every person or entity to whom any disbursement is made, as well as the date, amount, and purpose of the disbursement.

(e) The entity shall retain all records and documents required to be kept for six years after the date of its registration.

(f) Reserved.

HISTORICAL NOTE

Section added City Record July 20, 1999 §76, eff. Aug. 19, 1999. [See Chapter 11 footnote]

Subd. (e) relettered (formerly subd. (g)) City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) repealed City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Subd. (e) repealed City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (e) amended City Record Aug. 7, 2002 Part D Subpart 5, eff. Sept. 6, 2002. [See T52 §3-03 Note 1]

Subd. (f) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002.

Subd. (f) amended City Record Aug. 7, 2002 Part D Subpart 5, eff. Sept. 6, 2002. [See T52 §3-03 Note 1]

FOOTNOTES

1

[Footnote 1]: * Provisions of City Record July 20, 1999 Explanation, Basis and Purpose:

Transition and Inauguration Activities

These rules apply to all candidates elected to the office of mayor, public advocate, comptroller, borough president, and City Council member, regardless whether the candidate is a participant in the voluntary Campaign Finance Program. Before any private funds are raised or spent for transition or inauguration into office, the elected candidate is required to register each entity authorized to engage in financial activity for a transition and/or inauguration into office. Section 11-02. These entities would file bimonthly disclosure reports on the fifth business day in January, March, May, July, September, and November, until the entity terminates. Section 11-03.

An elected candidate may not use a political committee or pre-existing entity for transition or inauguration activities, and a transition/inauguration entity may not:

· continue in existence after it has paid all liabilities for transition and inauguration into office;

· accept funds from any political committee authorized by the elected candidate;

· accept donations from a political committee that has not registered with the Board;

· accept donations in excess of legal limits (including the single source standards);

· incur liabilities or make expenditures for purposes other than transition or inauguration into office; or

· accept any donation in cash that exceeds $10.

Section 11-04.

Recordkeeping requirements are similar to those for campaigns participating in the voluntary Campaign Finance Program. Section 11-05.

Rules of the City of New York

***** Current through December 2009 ****

53 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-01 Valuable Gifts.

(a) For the purposes of Charter §2604(b)(5), a "valuable gift" means any gift to a public servant which has a value of $50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. Two or more gifts to a public servant shall be deemed to be a single gift for purposes of this subdivision and Charter §2604(b)(5) if they are given to the public servant within a twelve-month period under one or more of the following circumstances: (1) they are given by the same person; and/or (2) they are given by persons who the public servant knows or should know are (i) relatives or domestic partners of one another; or (ii) are directors, trustees, or employees of the same firm or affiliated firms.

(b) As used in subdivision (a) of this section, (1) "relative" shall mean a spouse, child, grandchild, parent, sibling, and grandparent; a parent, domestic partner, child, or sibling of a spouse or domestic partner; and a spouse or domestic partner of a parent, child, or sibling; (2) firms are "affiliated" if one is a subsidiary of the other or if they have a parent firm in common or if they have a stockholder in common that owns at least 25 percent of the shares of each firm; (3) "firm," "spouse," and "ownership interest" shall have the meaning ascribed to those terms in §2601 of the Charter; (4) "domestic partner" means a domestic partner as defined in New York City Administrative Code §1-112(21).

(c) For the purposes of Charter §2604(b)(5), a public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend who the public servant knows is or intends to become engaged in business dealings with the City, when:

(1) it can be shown under all relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and

(2) the public servant's receipt of the gift would not result in or create the appearance of:

(i) using his or her office for private gain;

(ii) giving preferential treatment to any person or entity;

(iii) losing independence or impartiality; or

(iv) accepting gifts or favors for performing official duties.

(d) For the purposes of Charter §2604(b)(5), a public servant may accept awards, plaques and other similar items which are publicly presented in recognition of public service, provided that the item or items have no substantial resale value.

(e) For the purposes of Charter §2604(b)(5), a public servant may accept free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances:

(1) when offered during a meeting which the public servant is attending for official reasons;

(2) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;

(3) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and a refusal to participate and/or individual payment would be impractical;

(4) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical; and

(5) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City.

(f) For the purposes of Charter §2604(b)(5), a public servant may:

(1) accept meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;

(2) be present at a professional or educational program as a guest of the sponsoring organization;

(3) be a guest at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;

(4) attend a public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization, provided that this exception does not apply when the invitation is from an organization which has business dealings, as defined in Charter §2601(8), with, or a matter before, the public servant's agency;

(5) be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee's agency head or by a deputy mayor if the public servant is an agency head.

(g) For the purposes of Charter §2604(b)(5), a public servant who is an elected official or a member of the elected official's staff authorized by the elected official may attend a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature,

when invited by the sponsoring organization. For the purpose of this subdivision, the authorizing elected official for the central staff of the council is the speaker of the council.

(h) (1) For the purposes of Charter §2604(b)(5), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:

(i) the trip is for a City purpose and therefore could properly be paid for with City funds;

(ii) the travel arrangements are appropriate to that purpose; and

(iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.

(2) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor.

(i) A public servant should not accept a "valuable gift," as defined herein, from any person or entity engaged in business dealings with the City. If the public servant receives such valuable gift, he or she should return the gift to the donor. If that is not practical, the public servant should report the receipt of a valuable gift to the inspector general of the public servant's agency, who shall determine the appropriate disposition of the gift. Nothing in this section shall be deemed to authorize a public servant to act in violation of any applicable laws, including the criminal law, City agency rules, or Mayoral Executive Orders (including, but not limited to, Executive Order No. 16 of 1978 (as amended)), which may impose additional requirements to report gifts and offers of gifts to the agency's inspector general, whether or not a gift is accepted or returned.

(j) City agencies are encouraged to establish rules concerning gifts for their own employees which may not be less restrictive than as set forth in Charter §2604(b)(5) as interpreted by this section.

(k) (1) Nothing in this section shall be deemed to authorize a public servant to accept a gift of any value in violation of any other applicable federal, state or local law, rule or regulation, including but not limited to the New York State Penal Law.

(2) The provisions of this section shall be read in conjunction with the provisions of Charter §2604(b)(2) and §1-13 of the Rules of the Board (prohibiting certain conduct that conflicts with the proper discharge of a public servant's official duties); §2604(b)(3) of the Charter (prohibiting the use or attempted use of one's City position for private gain); and §2604(b)(13) of the Charter (prohibiting receipt by public servants of compensation except from the City for performing any official duty and prohibiting receipt of gratuities).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Section added City Record July 13, 1990. [See Note 5]

Subd. (a) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (b) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (c) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (d) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (e) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (f) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (g) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (h) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (i) amended City Record June 9, 2000 eff. July 9, 2000. [See Note 1]

Subd. (j) relettered (former subd. (i)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (k) added City Record June 9, 2000 eff. July 9, 2000. [See Note 1]

DERIVATION

Subd. (a) amended City Record Oct. 8, 1997 eff. Nov. 7, 1997. [See Note 3]

Subd. (b) added City Record Oct. 8, 1997 eff. Nov. 7, 1997. [See Note 3]

Subd. (b) par (4) amended City Record Dec. 30, 1998 eff. Jan. 29, 1999. [See Note 4]

Subd. (c) relettered (former subd. (b)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (d) relettered (former subd. (c)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (e) relettered (former subd. (d)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (f) amended City Record Dec. 15, 2000 eff. Jan. 14, 2001. [See Note 2]

Subd. (f) relettered (former subd. (e)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (g) amended City Record Dec. 15, 2000 eff. Jan. 14, 2001. [See Note 2]

Subd. (g) relettered (former subd. (f)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (h) relettered (former subd. (g)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (i) relettered (former subd. (h)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

NOTE

1. Statement of Basis and Purpose in City Record June 9, 2000:

Statutory Authority: Sections 2603(a) and 2604(b)(5) of the New York City Charter.

Statement of Basis and Purpose of the Amendment: Charter §2604(b)(5) provides:

No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

The purpose of the amendment to §1-01(i) is to alert public servants to their reporting and other obligations with respect to gifts. The current rule, §1-01(i), provides that public servants should return valuable gifts to the donor, and report such gifts to the inspector general ("IG") of the public servant's agency if it is not practical to return the gifts. This provision has allowed situations where an employee of a mayoral agency could receive and return a gift and report nothing to the IG, thereby complying with the Board's Valuable Gift Rule, but violating his or her reporting obligations

under Executive Order No. 16 (1978), which imposes on public servants in mayoral agencies an affirmative obligation to report to the IG's of their respective agencies, the offer and/or receipt of all gifts that may involve corrupt or other criminal activity or conflict of interest, directly and without undue delay, whether or not the gift is returned to the donor. The amendment corrects this anomaly, helps City employees to comply with their various reporting obligations by highlighting those other obligations, and eliminates possible confusion among public servants. The purpose of the amendment adding a new subdivision (k) of the Board's Valuable Gift Rule is to inform public servants that the receipt and acceptance of gifts or gratuities may give rise to liability under other provisions of Chapter 68 of the City Charter as well as other sources of law, such as the criminal law. This proposed change would serve to reinforce for public servants their obligation to exercise caution before accepting any gift of any value because, whether or not the gift meets the $50 "valuable gift" definition in subdivision (a), acceptance may constitute a violation of other provisions of law. For example, a public servant should never accept any gift in exchange for taking any official action, even though the gift may be worth less than $50 and would not be deemed a "valuable gift" under subdivision (a) (assuming no other gifts to be aggregated for a twelve-month period), because this conduct would constitute a violation of Charter §2604(b)(13), which prohibits public servants from receiving compensation except from the City in exchange for performing any official duty, and could also violate the criminal law. **See, e.g.,** New York State Penal Law §200.10. In addition, accepting a gift of any value can violate Charter §2604(b)(3), which prohibits public servants from using or even attempting to use their official positions to obtain a financial gain or other privilege or private or personal advantage for themselves or those associated with them. In response to the public hearing notice on the proposed rule, the Board received comments from the Comptroller's Office and the City Council. While the comments from the Comptroller's office were insightful, the Board and the Comptroller's Office agreed that their suggestions did not pertain to the thrust of the instant rule change. The Board was persuaded by the City Council's comment that the inclusion of the phrase "the Department of Investigation assigned to" after "the inspector general of" in subparagraph (i) of the rule, as initially proposed by the Board, raised questions regarding the separation of powers among the various branches of government and was unnecessary. Therefore, the Board left the pertinent language of that subparagraph intact. See Appendix A for illustrative examples of provisions of law that may apply to gifts. Appendix A Illustrative Examples of Provisions of Law That May Apply to Gifts I. Chapter 68 of the New York City Charter §2604(b)(2) No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties. §2604(b)(3) No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant. §2604(b)(5) No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions. §2604(b)(13) No public servant shall receive compensation except from the city for performing any official duty or accept or receive any gratuity from any person whose interests may be affected by the public servant's official action. Violation of any of the foregoing provisions is a misdemeanor. **See** Charter §2606. II. Conflicts of Interest Rules of the Board §1-13 Conduct Prohibited by City Charter §2604(b)(2) (a) Except as provided in subdivision (c) of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City. (b) Except as provided in subdivision (c) of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose. (c)(1) A public servant may pursue a personal and private activity during normal business hours and may use City equipment, resources, personnel, and supplies, but not City letterhead, if (i) the type of activity has been previously approved for employees of the public servant's agency by the Conflicts of Interest Board upon application by the agency head and upon a determination by the Board that the activity furthers the purposes and interests of the City; and (ii) the public servant shall have received approval to pursue such activity from the head of his or her agency. (2) In any instance where a particular activity may potentially directly affect another City agency, the employee must obtain approval from his or her agency head to participate in such particular activity. The agency head shall provide written notice to the head of the potentially affected agency at least 10 days prior to approving such activity. (d) It shall be a violation of City Charter §2604(b)(2) for any public servant to intentionally or knowingly induce or cause another public servant to

engage in conduct that violates any provision of City Charter §2604. (e) Nothing contained in this section shall preclude the Conflicts of Interest Board from finding that conduct other than that proscribed by subdivisions (a) through (d) of this section violates City Charter §2604(b)(2), although the Board may impose a fine for a violation of City Charter §2604(b)(2) only if the conduct violates subdivisions (a), (b), (c), or (d) of this section. The Board may not impose a fine for violation of subdivision (d) where the public servant induced or caused another public servant to engage in conduct that violates City Charter §2604(b)(2), unless such other public servant violated subdivisions (a), (b), or (c) of this section. III. Penal Law Provisions 200.10 Bribe receiving in the third degree A public servant is guilty of bribe receiving in the third degree when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced. Bribe receiving in the third degree is a class D felony. 200.25 Receiving reward for official misconduct in the second degree A public servant is guilty of receiving reward for official misconduct in the second degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant. Receiving reward for official misconduct in the second degree is a class E felony. 200.35 Receiving unlawful gratuities A public servant is guilty of receiving unlawful gratuities when he solicits, accepts or agrees to accept any benefit for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation. Receiving unlawful gratuities is a class A misdemeanor. 200.50 Bribe receiving for public office A public servant or a party officer is guilty of bribe receiving for public office when he solicits, accepts or agrees to accept any money or other property from another person upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office. Bribe receiving for public office is a class D felony. 195.00 Official misconduct A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor.

IV. Executive Order No. 16 (1978)

§4(d)

Every officer and employee of the City shall have the affirmative obligation to report, directly and without undue delay, to the Commissioner or an Inspector General any and all information concerning conduct which they know or should reasonably know to involve corrupt or other criminal activity or conflict of interest, (i) by another City officer or employee, which concerns his or her office or employment, or (ii) by persons dealing with the City, which concerns their dealings with the City. The knowing failure of any officer or employee to report as required above shall constitute cause for removal from office or employment or other appropriate penalty.

2. Statement of Basis and Purpose in City Record Dec. 15, 2000: Charter §2604(b)(5) provides: No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions. As provided for by Charter §2604(b)(5), the Board has promulgated Rules §1-01, which, **inter alia,** delineates circumstances under which the receipt of gifts by public servants will and will not violate Chapter 68. Section 1-01(f) is, in the main, particularly concerned with ceremonies, functions, programs, and other occasions for which an admission fee is charged, and addresses when a public servant may accept a "ticket" at no charge. Section 1-01(f)(4) addresses the annual public affair of a business association or a charitable organization, and permits the attendance at such event when the free ticket comes from the sponsoring organization, unless the sponsoring organization is a charitable organization which has a

contract with the public servant's agency. By this amendment to §1-01(f)(4), the Board intends to narrow the range of permitted gifts, because a public servant's agency may have many dealings with a private organization beyond a contractual relationship. For example, a community board may well have highly controversial matters before it involving for-profit and not-for-profit applicants; or the Finance Department may be considering the application from a charitable organization for an exemption from a real property tax. For a public servant at the involved community board, or at the Finance Department, to accept a free ticket to the annual affair of such an organization raises the appearance of impropriety. To limit the rule's proviso simply to the case of a contractual relationship is, the Board believes, insufficient. The amended rule therefore would prohibit the acceptance of such free tickets from an organization which has dealings with the public servant's agency, not merely from those organizations with a contract with his or her agency. The language chosen to define those dealings, namely, "business dealings . . . with, or a matter before," are terms contained in Chapter 68. "Business dealing" is indeed defined in Charter §2601(8). "Matter before" is a term used in Charter §2604(a)(1)(a), 2604(b)(1)(a), and 2604(b)(1)(b). Finally, it should be noted that the amendment would not change the substance of Rules §1-01(f)(5) and §1-01(g), whose texts are also set forth above. Those sections permit, respectively, attendance at functions when the public servant's agency head so approves in writing and attendance by elected officials at the annual public events of certain organizations, when invited by the sponsoring organization. Thus, if the application of the amendment to a particular case would not permit acceptance of the gift ticket, these provisions would, in all likelihood, permit attendance in those instances when the attendance is indeed in the interests of the City. In response to the notice of opportunity to comment on the proposed rule, the City Council asked two related questions: the Board's interpretation, as applied to the activities of the Council, of the terms "business dealings" and "matters before"; and, for attendance no longer permitted under the proposed amendment to §1-01(f)(4), the identity, for the central staff of the Council, of the "authorizing" elected official within the meaning of §1-01(g). With respect to the first, the Board means no change in its historic interpretation of the Charter phrases "business dealings" and "matters before." In that regard, it should be noted that individuals who, and organizations which, merely lobby or advocate positions before the Council do not have "business dealings with" or "matters before" the Council. In contrast, individuals and organizations with Council business dealings or with matters before the Council include vendors to the Council; owners of property which is before the Council pursuant to the Charter's land use review process (**see** Charter §197-d); and organizations which receive direct appropriations from the Council (e.g., line item appropriations or discretionary funding as described in Title 9, Rules of the City of New York, §1-01(e)). With regard to the identity of the authorizing official, for the central staff of the Council the proper authorizing elected official for the purpose of §1-01(g) is the Speaker, and the Board adds a sentence to the rule to that effect. For the aides to the individual Council members, the authorizing official is that Council member. Reason the proposed rule was not anticipated and included in the regulatory agenda: The Board did not consider this matter until well into the current fiscal year.

3. Statement of Basis and Purpose in City Record Oct. 8, 1997: Charter §2604(b)(5) provides:

No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

The Board's current gift rule defined "valuable gift" to mean any gift to a public servant, in whatever form, that has a value of $50 or more. Board Rules §1-01(a). The rule also requires that the public servant must report to his or her agency head gifts from a single source within a calendar year which individually are less than $50 but which together exceed $50. Id. The Board has consistently interpreted this rule to mean that individual gifts from a single donor within a twelve-month period must be aggregated for purposes of determining whether the threshold amount was exceeded. However, the Board believes that this interpretation should be made explicit in the text of the rule itself to prevent any misunderstandings by public servants or by persons or firms doing business with the City. In addition, the Board has determined that the disclosure requirement in the rule should be eliminated because it has proven ineffective. Agencies may, if they wish, impose more stringent requirements. For example, some agencies prohibit their employees from accepting gifts of any size from persons doing business with the City. Accordingly, the amendment (1) makes explicit

that, for purposes of the Charter's prohibition on receipt of valuable gifts from persons doing business with the City, individual gifts from a single donor or related donors within a twelve month period shall be aggregated, and (2) deletes the requirement that recipients of gifts disclose them to their agency head, and (3) recharacterizes the year-long period for determining a "single gift" as "twelve-month period," rather than "calendar year." Related donors include the immediate family of the donor (spouse, children, grandchildren, parents, grandparents, brothers, sisters, and in-laws) and officials or employees of the same firm or of firms that stand in a parent-subsidiary relationship or that are subsidiaries of the same parent or that have a controlling shareholder in common. However, gifts of related donors are only aggregated if the public servant-recipient knows or should know of the relationship. This requirement will avoid inadvertent violations of the rule. The amendment employs the phrase "twelve month period" rather than "calendar year" to prevent, for example, the acceptance of a $49 gift on December 31 and another on January 1.

4. Statement of Basis and Purpose in City Record Dec. 30, 1998: The amendments are required in order to bring the Board's rules into conformity with Local Law No. 27 of 1998, which extended to domestic partners the various provisions applicable to spouses in the New York City Charter and the Administrative Code of the City of New York.

5. Statement of Basis and Purpose in City Record July 13, 1990: Pursuant to the authority vested in the Conflicts of Interest Board by §2604(b)(5) of the New York City Charter and in accordance with the requirements of §1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a valuable gift. For the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law, New York City Charter §2604(b)(5) provides that no public servant shall accept any valuable gift from any person or firm which such public servant knows is or intends to become engaged in business dealings with the City.

6. Statement of Basis and Purpose in City Record Dec. 27, 2006: On June 13, 2006, Mayor Michael Bloomberg signed into law Local Law No. 16 of 2006. This law amends the New York City Administrative Code in relation to gifts by lobbyists. See Ad. Code §3-225, as added by Local Law No. 16 of 2006, effective December 10, 2006. The newly added §3-225 of the Administrative Code provides that "No person required to be listed on a statement of registration pursuant to §3-213(c)(1) of subchapter 2 of this chapter shall offer or give a gift to any public servant." **Id.** Section 3-228 of the Code further provides that: The conflicts of interest board, in consultation with the clerk, shall adopt such rules as necessary to ensure the implementation of this subchapter, including rules defining prohibited gifts and exceptions including **de minimis** gifts, such as pens and mugs, gifts that public servant may accept as gifts to the city and gifts from family members and close personal friends on family or social occasions, and to the extent practicable, such rules shall be promulgated in a manner consistent with the rules and advisory opinions of such board governing the receipt of valuable gifts by public servants. Ad. Code §3-228, as added by Local Law No. 16 of 2006, effective December 10, 2006. The Board was, therefore, required to adopt rules defining prohibited gifts from lobbyists and exceptions including **de minimis** gifts, gifts that public servants may accept as gifts to the City, and gifts from family members and close personal friends on family or social occasions within the meaning of §3-225 of the Administrative Code. In addition, §3-228, quoted above, directed that, to the extent practicable, these rules be consistent with the Board's rules and opinions concerning the receipt of gifts by public servants. In its consideration of the new rules for gifts from lobbyists, the Board accordingly examined its existing rule on gifts to public servants, its Valuable Gift Rule, §1-01 of Chapter 1 of Title 53 of the Rules of the City of New York. In examining §1-01, the Board identified a few provisions which the Board concluded should be amended. The instant rulemaking therefore includes both these few amendments to §1-01, the existing Valuable Gift Rule governing **receipt** of gifts by public servants, and the new §1-16 governing the **giving** of gifts by lobbyists, and, as mandated by Local Law 16, aims to conform these provisions to the extent practicable. Amendments to Existing Board Rule §1-01 The Board adopts four amendments to §1-01: · Section 1-01(d) currently permits the acceptance of publicly presented awards and plaques for public service when the award or plaque is valued at less than $150.00. This subdivision is amended by dropping any reference to dollar amount and instead providing that the award, plaque, or other similar item has no substantial resale value. This amendment is intended to make clear that, for example, an engraved item costing a few hundred dollars would typically be permissible, while a cash gift of $100.00 would not fall within the exception. · The prior §1-01(e)(5) is repealed. That

paragraph provided, in summary, that when it is customary business practice to hold a meeting over a meal, and customary business practice for one party to pay for the other, and payment by the public servant would be "inappropriate," the acceptance of the meal by the public servant is permissible. In reviewing this provision, the Board concluded that it is difficult to identify circumstances where payment by the public servant would be inappropriate, and indeed can much more readily contemplate circumstances where payment by a City vendor, for example, would not be appropriate. The Board has no record of having approved the acceptance of a meal pursuant to this provision and concluded that retaining the paragraph does not serve a City purpose. · Section 1-01(f)(4) is amended by deleting the word "annual" from the description of the public events or functions for which, under the described conditions, a public servant might accept free admission. Over the years the Board has observed that some organizations have significant public events more frequently than annually and that not infrequently these are events where attendance by certain public servants would advance the interests of the City. · Section 1-01(f)(4) is further amended by correcting what appears to have been a small, unintended drafting error. That provision, as previously written, permitted the attendance at annual public events of an organization composed of representatives of "business, labor, professions, news media or organizations of a civic, charitable or community nature," when the public servant is invited by the sponsoring organization, **except when** the invitation was from a "civic, charitable or community" organization that has business with or matters before the public servant's agency. There does not appear to be any reason for this limiting proviso to have included only "civic, charitable or community" organizations, and not, for example, to have included the other types of inviting organizations, which also might have business with a public servant's agency. The amendment accordingly makes clear that the exception which this subdivision offers is not be available when the inviting organization is **any** organization with dealings with the public servant's agency. Section 1-16 The remainder of this rulemaking consists of the Board's response to Local Law 16 of 2006, that is, to give clear guidance regarding the prohibition of gifts by lobbyists to public servants and the exceptions to that prohibition. This is embodied in a new Rule 1-16 of Chapter 1 of Title 53 of the Rules of the City of New York, whose text is set forth above, and which in summary provides the following: Section 1-16(a): This subdivision incorporates provisions of the newly enacted prohibition against persons required by Ad. Code §3-213(c) to be listed on a lobbying registration statement offering or giving a gift to a public servant. Section 1-16(b)(1): This paragraph reiterates the categories of individuals required by Ad. Code §3-213(c) to be listed on a lobbyist registration statement. Section 1-16(b)(2): This paragraph defines "lobbyist" to have the same meaning as used in Ad. Code §3-211, the definitions section of the City's lobbying law. Section 1-16(b)(3): This paragraph defines the term "offer" to mean the attempt or offer to give a gift, or the attempt or offer to arrange for the making of a gift. Section 1-16(b)(4): This paragraph defines "give" to mean the tender of a gift, acting as an agent in the making of a gift, or arranging the making of a gift. This language tracks the lobbyist gift ban set forth in California Government Code §86203. This explicit prohibition against acting as an agent in the making of a gift would, for example, make clear that it would not be a successful defense to a charge of making an impermissible gift that a lobbyist was being reimbursed by his or her firm or client and therefore was not the true gift giver. Section 1-16(b)(5): This paragraph defines "gift." It repeats the language of Board Rules §1-01(a), but replaces that provision's reference to a value of $50.00 or more with a prohibition against gifts of "any value whatsoever." Section 1-16(c): This subdivision identifies those gifts that will not violate the prohibition of §3-225. In particular, as required by §3-228, it lists the exceptions for **de minimis** gifts, for gifts from family and close friends, and for gifts to the City, in each case attempting whenever practicable to be consistent with Board Rules §1-01 governing what gifts public servants may receive. Section 1-16(c)(1): This paragraph defines permissible **de minimis** gifts to be promotional items, including mugs, t-shirts, and similar items, with no substantial resale value and bearing an organization's name, logo, or message. Section 1102(22)(a) of Title 42 of the Louisiana Revised Statutes provides a similar exception for "promotional items having no substantial resale value." Section 1-16(c)(2): This paragraph on permissible gifts from a family member or a close personal friend takes its language from Board Rules §1-01(c) and is intended to be consistent with that rule. Section 1-16(c)(3): This paragraph, regarding acceptable awards, plaques, and other similar items, mirrors the above proposed amended Board Rules §1-01(d). Section 1-16(c)(4): This paragraph on gifts to a public servant of free meals and refreshment when the public servant is conducting City business mirrors the above amended Board Rules §1-01(e). Section 1-16(c)(5): This paragraph mirrors the language of Board Rules §1-01(f)(1). Section 1-16(c)(6): This paragraph tracks the language of Board Rules §1-01(f)(2). Section 1-16(c)(7): This paragraph tracks Board Rules §1-01(f)(3). Section 1-16(c)(8): This paragraph, concerning attendance at annual event of various types of organizations at the

invitation of the sponsoring organization, tracks-with one significant exception-the above amendment to Board Rules §1-01(f)(4). This provision differs from §1-01(f)(4) in that it does not include the limiting condition that the sponsoring organization may not have business with the public servant's agency. The Board deletes this limiting condition from §1-16(c)(8) because many not-for-profit organizations, for example, wish to invite leadership of the City agency supporting their work to their annual fundraising event, and agency leadership may in general permissibly attend such public events pursuant to the provisions of Board Rules §1-01(f)(5), which permits such attendance on the written certification of an agency head or deputy mayor that the attendance is in the interests of the City. To forbid lobbyists to extend such invitations may, however, in some cases severely restrict, if not effectively prevent, any such invitation, because in some smaller organizations in particular many if not most of the organization's executive staff are named in the organization's lobbyist registration statement. Thus, to say that the invitation must, as §1-01(f)(4) provides, come from the sponsoring organization but to forbid the leadership of the organization to extend such invitations appears contrary to the legislation's directive that, whenever practicable, the "receiving" provisions of Chapter 68 and the "giving" provisions of this newly enacted legislation be synchronized. Section 1-16(c)(9): This paragraph, regarding the attendance by elected officials and their designated staff at certain public events when invited by the sponsoring organization, tracks the language Board Rules §1-01(g). The Board notes that, with the above described deletion from §1-16(c)(8) of the limiting condition against gifts from those with matters before a public servant's agency, §1-16(c)(9) might appear redundant. The Board indeed does not suggest any substantial difference exists between the affairs or functions described in these two provisions, but nevertheless has determined to retain both provisions in deference to the legislative directive that to the extent practicable these restrictions on gift giving synchronize with the Board's existing rules on receipt of gifts by public servants. Section 1-16(c)(10): This paragraph, regarding permissible gifts of travel related expenses for City business purposes, tracks Board Rules §1-01(h)(1). Section 1-16(d): This subdivision is simply a caution that conduct not prohibited by Local Law 16 of 2006 may nevertheless be prohibited by other legislation, most notably by the New York State Lobbying Act. It should be noted that the Board has not included in §1-16 an analog to Board Rules §1-01(f)(5), which permits attendance at events or functions where the agency head or deputy mayor provides written certification that attendance is in the interests of the City. The Board does not view the extension to lobbyists of that exception to the gift ban to be consistent with the legislative intent to restrict gifts from lobbyists. Moreover, as a practical matter, the agency head certification of §1-01(f)(5) would provide little aid to the lobbyist/donor, since the prospective donor typically could not know whether the agency head would indeed certify that the public servant's attendance would be in the City's interests. The Board conducted a public hearing on December 8, 2006, at which time it heard testimony from the Executive Director of Citizens Union and from the Ethics and Employment Counsel to the City Council. Their testimony, which tracked written submissions they also presented, were generally supportive of the Board's proposal. Citizens Union noted a concern that these rules be interpreted to permit the continued presence of elected and appointed officials at annual events, receptions, educational breakfasts, and the like hosted by civic groups and non-profits that are registered as lobbyists, stating that such events, where food and beverages are often served, provide an important venue for the exchange of ideas and information among those committed to making New York a better city. It is the Board's view that Rules §§1-16(c)(4) through (c)(9) will permit the offer of invitations to such events in all appropriate cases and that the analogs to these provisions in Rules §1-01 will permit public servants to receive these invitations in all appropriate cases. The Board also received a joint written comment from the Human Services Council of New York, the Lawyers Alliance for New York, and the Nonprofit Coordinating Committee of New York. That comment makes two specific requests: first, that the Board clarify precisely who is covered by the gift ban, and, second, that the gift ban permit the offer of "goody bags" or "gift bags" at charitable events in cases where the bags contain more than the promotional items permitted under Rules §1-16(c)(1). In each case the Board appreciates the concerns raised, but believes that in each case the question is better dealt with through advisory opinion than through rulemaking. In the case of further identifying those persons required to be listed in a registration statement, an advisory opinion might be sought from the Office of the Clerk, or from the Board, and in either case these agencies will likely consult with each other in any response. In the case of the offer of "goody bags," the Board notes that it addressed the question of a public servant's **receipt** of gift bags by advisory opinion (**see** Board Opinion No. 2006-2).

Rules of the City of New York

***** Current through December 2009 ****

53 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-02 Public Servants Charged with Substantial Policy Discretion.

(a) For purposes of Charter §2604(b)(12) and §2604(b)(15), a public servant is deemed to have substantial policy discretion if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters. Public servants with substantial policy discretion include, but are not limited to: agency heads, deputy agency heads, assistant agency heads, members of boards and commissions, and public servants in charge of any major office, division, bureau or unit of an agency. Agency heads shall:

(1) designate by title, or position, and name the public servants in their agencies who have substantial policy discretion as defined by this section;

(2) file annually with the Conflicts of Interest Board, no later than February 28 of each year, a list of such titles or positions and the names of the public servants holding them; and

(3) notify these public servants in writing of the restrictions set forth in Charter §2604(b)(12) and §2604(b)(15) to which they are subject.

If the Conflicts of Interest Board determines that the title, position, or name of any public servant should be added to or deleted from the list supplied by an agency, the Board shall notify the head of the agency involved of that addition or deletion; the agency shall in turn promptly notify the affected public servant of the change.

(b) Each agency may make available for public inspection a copy of the most recent list filed by the agency, with any additions or deletions made by the Board pursuant to subdivision (a) of this section.

HISTORICAL NOTE

Section amended City Record May 30, 2001 eff. June 29, 2001. [See Note 1]

Subd. (a) amended City Record Jan. 30, 2004 eff. Feb. 29, 2004. [See Note 3]

DERIVATION

Section added City Record July 13, 1990. [See Note 4]

Section amended City Record Sept. 23, 1997 eff. Oct. 23, 1997. [See Note 2]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record May 30, 2001:

Section 2604(b) of the New York City Charter contains two provisions imposing restrictions on political fundraising and the holding of political party office by certain high-level public servants. Included within the restriction are enumerated officials as well as those public servants who are charged with "substantial policy discretion as defined by rule of the board." Specifically, §2604(b)(12) provides:

12. No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the board, shall directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the city or for any elected official who is a candidate for any elective office; provided that nothing contained in this paragraph shall be construed to prohibit such public servant from speaking on behalf of any such candidate or elected official at an occasion where a request for a political assessment, subscription or contribution may be made by others.

Section 2604(b)(15) provides:

15. No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of an agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.

Pursuant to those Charter provisions, the Board adopted §1-02 of Title 53 of the Rules of the City of New York, set forth above, defining "substantial policy discretion" and requiring each agency head to designate the public servants within the agency having such discretion, to file annually with the Board a list of those public servants, and to notify them of the restrictions set forth in Charter §§2604(b)(12) and 2604(b)(15). The rule further provides that the list supplied by the agency to the Board is subject to review and modification by the Board.

Although, as reflected in the Board's rule, the Charter vests in the Board the ultimate authority to determine whether any particular public servant is in fact charged with substantial policy discretion within the meaning of Chapter 68, prudent use of the Board's limited resources dictates that the Board not expend the enormous amount of staff time that would be required to review the actual duties of all higher level public servants throughout City service to determine whether the lists submitted by the agencies are accurate and complete. Instead, the Board currently reviews each list to determine whether it appears to include the types of positions required by the rule and then relies upon the public, the media, and other public servants to apprise the Board of possible errors in the lists submitted by agencies.

Thus, for example, if the media reports that a public servant, whose name does not appear on his or her agency's list, has hosted a fundraiser for a candidate for elective City office, the Board may investigate whether the duties and responsibilities of that public servant are such that he or she in fact possesses substantial policy discretion. Similarly, the Board sometimes receives a complaint that a public servant listed by his or her agency as having substantial policy discretion has acted in violation of Charter §2604(b)(12) or §2604(b)(15) but, upon investigation, determines that the public servant in fact possesses no such discretion and should be deleted from the agency's list.

Accordingly, in policing compliance with the requirements of Charter §§2604(b)(12) and 2604(b)(15), the Board must depend largely upon inquiries, reports, and complaints from the public, the media, and other public servants. Those communications, however, can prove meaningful only if the contents of the agencies' lists are available for public inspection. Therefore, the Board is amending its substantial policy discretion rule to provide for such public availability.

2. Statement of Basis and Purpose in City Record Sept. 23, 1997: Charter §2604(b)(12) prohibits certain public servants, including those charged with "substantial policy discretion as defined by rule of the board," from soliciting political contributions for candidates for elective City office or for City elected officials who are running for any elective office. Charter §2604(b)(15) prohibits certain public servants, including those charged with "substantial policy discretion as defined by rule of the board," from holding certain political party positions. Section 1-02 of the Board's rules sets forth the Board's definition of "substantial policy discretion" for purposes of those Charter provisions. While that rule has worked reasonably well in practice, one aspect of the rule has proven impractical and unnecessarily burdensome on agency heads: the requirement that agency heads update their list of substantial policy discretion titles or positions within 30 days of any change in the list. The Board has thus decided to require only an annual update. In addition, the Board has consistently interpreted its substantial policy discretion rule (1) to apply to members of boards and commissions, (2) to require that the agency's list include not only the titles or positions but also the names of the employees who, in the opinion of the agency head, fall within the rule, and (3) to recognize that the Charter vests in the Board the ultimate authority to determine whether any particular title, position, or person is in fact charged with substantial policy discretion within the meaning of Chapter 68. The Board, however, believes that these interpretations of the substantial policy discretion rule should be made explicit in the text of the rule itself to prevent any misunderstandings by public servants or political party leaders. In regard to the inclusion of members of boards and committees, it should be noted that the rule does not apply to unpaid members of advisory committees-that is, to members of advisory committees who are not entitled to receive per diem or other compensation-since such members are not subject to Chapter 68. See Charter §§2601(1), (19).

3. Statement of Basis and Purpose in City Record Jan. 30, 2004: Statutory Authority: Sections 2603(a), 2604(b)(12), and 2604(b)(15) of the New York City Charter. Statement of Basis of Purpose of the Amendment: Local Law 43 of 2003 amended the City's Financial Disclosure Law, Section 12-110 of the Administrative Code, to, among other things, add to the list of required filers those City employees holding a "policymaking position . . ., as defined by rule of the conflicts of interest board. . . ." Ad. Code §12-110(b)(3)(a)(3). The Board had adopted a rule, Section 1-14 of Title 53 of the Rules of the City of New York, stating that a public servant shall be deemed to hold a policymaking position, within the meaning of the Financial Disclosure Law, if the public servant is charged with substantial policy discretion within the meaning of Section 1-02 of Title 53 of the Rules of the City of New York. Section 1-02 requires that City agencies file with the Board by September 30 each year their annual statement of the names and positions, or titles, of those employees within the agency who have substantial policy discretion. That September 30 deadline does not mesh with the collection cycle for financial disclosure reports, as agencies must identify their financial disclosure filers by the end of February each year in order to enable distribution of the financial disclosure forms to filers in time for the May 1 filing deadline. Thus, the amendment would change the September 30 deadline to February 28.

4. Statement of Basis and Purpose in City Record July 13, 1990: Pursuant to the authority vested in the Conflicts of Interest Board by §2604(b)(12) and §2604(b)(15) of the New York City Charter and in accordance with the requirements of §1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a public servant charged with substantial policy discretion. For the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law, New York

City Charter §2604(b)(12) provides that a public servant who is charged with substantial policy discretion shall not directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the City or for any elected official who is a candidate for any elective office. New York City Charter §2604(b)(15) provides that a public servant charged with substantial policy discretion may not be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party.

Rules of the City of New York

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53 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-03 Definition of Lesser Political Office Than That of Assembly District Leader Which May be Held by Members of the City Council.

For purposes of Charter §2604(b)(15), the definition of a political office which is a "lesser political office" than that of assembly district leader includes:

(a) membership on a county committee;

(b) membership on a county executive committee;

(c) membership on a state committee; and

(d) membership on a national committee.

HISTORICAL NOTE

Section amended City Record July 16, 1999 eff. Aug. 15, 1999. [See Note 1]

DERIVATION

Section in original publication July 1, 1991.

Section added City Record Apr. 27, 1990. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record July 16, 1999:

Charter §2604(b)(15) provides:

No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of an agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.

Section 1-03, the Board's rule defining "lesser political office", currently identifies three "lesser" offices which members of the City Council may hold: (a) member of a county committee; (b) member of a county executive committee; and, (c) member of a state committee. An examination of the history of Charter §2604(b)(15), which was adopted following the 1989 Charter revision process, and of the Rules §1-03, which was promulgated on the heels of the Charter revision, reveals no consideration of the national committees of political parties in the discussion of what "lesser political offices" members of the City Council might be permitted to hold. The Board thus now considers, for the first time, whether membership in a national committee of a political party is, within the meaning of §2604(b)(15), a lesser political office than district leader. Section 2604(b)(15) was enacted following the municipal corruption scandals of the 1980s, and had, in limiting certain high-ranking officials from holding high party office, two primary purposes: to prevent dual loyalty, and to prevent the undue concentration of power. For further discussion of its history, see **Golden v. Clark,** 76 N.Y.2d 618, 563 N.Y.S.2d 1 (1990), where the Court of Appeals rejected a constitutional challenge to §2604(b)(15). In examining the question, therefore, of whether a national committee member is a lesser position than district leader, the Board looks to the evils sought to be prevented, and in particular to what real power a national committee member exercises in New York City government or politics. In fact, in New York City, while district leaders elect the powerful county leaders, and while state committee members provide access to the primary ballot, otherwise available only through the petition process, national committee members exercise little if any local political power. The national committees (whose members number in the low hundreds) are charged with running the affairs of their party between national conventions and also fill, in the unlikely event that a vacancy occurs, a vacated nomination for president or vice-president. These duties, however, give the members of the national committee of a political party little, if any, significant political power in New York City, and in any event less power than the already permitted positions of district leader, county committee member, county executive committee member, or state committee member. The Board accordingly amends §1-03 to add membership on a national committee of a political party to the list of those party positions which a member of the City Council may hold.

2. Statement of Basis and Purpose in City Record Apr. 27, 1990: Pursuant to the authority vested in the Conflicts of Interest Board by §2604(b)(15) of the New York City Charter and in accordance with the requirements of §1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a "lesser political office" than that of assembly district leader which may be held by members of the City Council, for the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law. New York City Charter §2604(b)(15) provides that a member of the council may serve as an assembly district leader or hold any lesser political office. The requirement that this regulation not become effective until thirty days after publication shall not apply because, pursuant to Charter §1043(e)(1)(c), the Conflicts of Interest Board has found in writing that substantial need exists for earlier implementation due to the January 1, 1990 effective date of certain provisions of the revised Chapter 68 of the Charter and the Mayor has approved the Board's finding by letter dated December 4, 1989.

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53 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-04 Definition of a Firm Whose Shares are Publicly Traded.

For purposes of Charter §2604(a)(1)(b), "a firm whose shares are publicly traded" means a firm which offers or sells its shares to the public and is listed and registered with the Securities Exchange Commission for public trading on national securities exchanges or over-the-counter markets.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Section added City Record Sept. 21, 1990. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 21, 1990:

Pursuant to the authority vested in the Conflicts of Interest Board by §2604(a)(1)(b) of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a firm whose shares are publicly traded, for the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law. New York City Charter §2604(a)(1)(b) provides that no regular employee of the City shall have an interest in a firm which such regular employee knows is engaged in business dealings with the City, except if such interest is in a firm whose shares are publicly traded.

Rules of the City of New York

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53 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-05 Definition of Blind Trust.

(a) For purposes of Charter §2601(6), the term "blind trust" means a trust in which a public servant, or the public servant's spouse, domestic partner, as defined in New York City Administrative Code §1-112(21), or unemancipated child, has a beneficial interest, the holdings and sources of income of which the public servant, the public servant's spouse, domestic partner, as defined in New York City Administrative Code §1-112(21), and unemancipated child have no knowledge, and which meets the following requirements:

(1) The trust is under the management and control of a trustee who is a bank or trust company authorized to exercise fiduciary powers, a licensed attorney, a certified public accountant, a broker or an investment advisor, who is:

(i) independent of any interested party;

(ii) is not or has not been an employee of any interested party or any firm in which any interested party has a substantial investment, and is not a partner of, or involved in any joint venture or other investment with any interested party; and

(iii) is not a relative of any party.

(2) The trust instrument provides that:

(i) the trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust tax return shall be prepared by the trustee or his or her designee and such return and any information relating thereto (except as such information may be needed by an interested party in order to complete a personal tax return) shall not be disclosed to any interested party;

(iii) no interested party shall receive any report on the holdings and sources of income of the trust, except periodic reports with respect to the total cash value of the trust or the net income or loss of the trust;

(iv) there shall be no communications, direct or indirect, between the trustee and an interested party with respect to the trust unless such communication is in writing. Except as provided elsewhere in this subdivision, such written communications shall be limited to the general financial interest and needs of the interested party, including requests for distribution of cash or other unspecified assets of the trust;

(v) the interested parties shall make no effort to obtain, and shall take appropriate action to avoid, receiving information with respect to the holdings and the sources of income of the trust including obtaining a copy of any trust tax return file or any information relating thereto except as such information may be needed by an interested party in order to complete a personal tax return.

(3) For purposes of this subdivision, the term "interested party" means a public servant, or the public servant's spouse, domestic partner, as defined in New York City Administrative Code §1-112(21), or unemancipated child.

(b) **Existing trusts.** (1) Any trust existing as of the effective date of these Regulations shall be deemed a blind trust for purposes of these Regulations if the trust instrument is amended to comply with the requirements of paragraph 2 of subdivision (a) of this section and the trustee of the trust meets the requirements of subdivision (a) of such section, or, in the case of a trust instrument which does not by its terms permit amendment, if the trustee and the trust beneficiary (or, if the trust beneficiary is a dependent child, any other interested party) agree in writing that the trust shall be administered in accordance with the requirements of paragraph 2 of subdivision (a) of this section and the trustee of the trust meets the requirement of paragraph 1 of subdivision (a) of this section.

(c) **Establishment and dissolution of blind trust.** (1) The preparer of a blind trust instrument, or agreement entered into pursuant to subdivision (a) of this section shall, within thirty days of the establishment of such trust or agreement, file an affidavit with the Conflicts of Interest Board stating that the blind trust instrument or trust as agreed to be administered pursuant to agreement, as the case may be, conforms to the requirements set forth in paragraph 2 of subdivision (a) of this section and that the trustee meets the requirements of subdivision (a) of such section.

(2) Within thirty days of the dissolution of blind trust, the beneficiary of such trust or other interested party shall file an affidavit with the Conflicts of Interest Board stating that such blind trust has been dissolved and identifying the date of such dissolution.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) open par, par (3) amended City Record Dec. 30, 1998 §§2, 3 eff. Jan. 29, 1999. [See T53

§1-01 Note 4]

DERIVATION

Section added City Record Sept. 21, 1990. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 21, 1990:

Pursuant to the authority vested in the Conflicts of Interest Board by §2601(6) of the New York City Charter and in accordance with the requirements of §1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a blind trust, for the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law. New York City Charter §2604(a)(1)(a) provides that no public servant shall have a position or an ownership interest in a firm which such public servant is engaged in business dealings with the agency served by such public servant. New York City Charter §2604(a)(1)(b) provides that no regular employee of the City shall have a position or an ownership interest in a firm which such regular employee knows is engaged in business dealings with the City. New York City Charter §2604(16) provides that an ownership interest which is held or acquired by a blind trust shall not be included in the definition of ownership interest.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 1 CONFLICTS OF INTEREST

§1-06 Definition of Primary Employment with the City.

(a) For purposes of Charter §2601(20), "primary employment with the City" means the employment of those public servants who receive compensation from the City and are employed on a full-time basis or the equivalent or who are regularly scheduled to work the equivalent of 20 or more hours per week.

(b) "Primary employment with the City" shall not mean employment of: (i) members of the City Planning Commission, except for the Chair; (ii) interns employed in connection with a program at an educational institution or full-time students; (iii) persons employed for a period not to exceed six consecutive months; or (iv) persons employed on special projects, investigations or programs, in excess of six months but of limited duration, as the Board shall determine.

(c) For purposes of Charter §2601(20), the term "compensation" shall not mean reimbursement for expenses or per diem payments to members of commissions and boards.

HISTORICAL NOTE

Section added City Record Dec. 9, 1991 eff. Jan. 8, 1992. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 9, 1991:

Pursuant to the authority vested in the Conflicts of Interest Board (the "Board") by §1043 and §2601(20) of the

New York City Charter, the Board is authorized to promulgate a rule establishing when a public servant's primary employment is with the City, for the purpose of Charter §2601(20), which defines the term "regular employee." Comments have been received on the rule published for comment in the City Record on September 17, 1991. Based on such comments, subdivision (b) of proposed §1-06 has been amended to include members of the City Planning Commission, except for the Chair, because pursuant to Charter §192(b), such persons are not considered regular employees of the City for purposes of Chapter 68. The rule herein sets forth such definition.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 1 CONFLICTS OF INTEREST

§1-07 Definition of Agency Served by a Former Public Servant.

For the purposes of Charter §2604(d)(2), when a former public servant has served more than one agency within one year prior to the termination of such person's service with the City, the former public servant shall not appear before each such City agency for a period of one year after the termination of service from each such agency.

HISTORICAL NOTE

Section added City Record Nov. 6, 1991 eff. Dec. 6, 1991. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 6, 1991:

Pursuant to the authority vested in the Conflicts of Interest Board (the "Board") by §1043 and §2603(a) of the New York City Charter, the Board is authorized to promulgate rules as are necessary to implement and interpret the provisions of Chapter 68.

The purpose of this proposed rule is to ensure compliance by public servants with Charter §2604(d)(2) which provides that no former public servant shall, within one year after termination of such person's service with the City, appear before the city agency served by such public servant.

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CHAPTER 1 CONFLICTS OF INTEREST

§1-08 Procedures for Obtaining an Extension of Time Within Which to File a Financial Disclosure Report.

(a) **Bases for obtaining an extension of time to file.** (1) A person required to file a financial disclosure report with the Conflicts of Interest Board (the "Board") pursuant to §12-110 of the Administrative Code of the City of New York (the "Administrative Code") may be granted an extension of time within which to file a report or portion thereof upon a showing of justifiable cause or undue hardship.

(2) A finding of justifiable cause or undue hardship shall not be based on periods of annual leave, attendance at conferences or meetings, or other pre-scheduled or voluntary absences from work.

(b) **General procedures.** (1) A request for an extension of time within which to file a financial disclosure report or portions thereof which is due by May first shall be postmarked, or delivery made to the Board, no later than April fifteenth of the year in which such report is to be filed. Where Administrative Code §12-110 requires the filing of such report at a time other than on or before May first, a request for extension of time within which to file shall be postmarked, or delivery made to the Board, no later than fifteen days prior to such filing deadline.

(2) The request for an extension of time shall be mailed to the Board by certified mail or shall be delivered by hand and, upon request, a receipt may be issued upon acceptance of such delivery.

(3) The request for an extension of time within which to file a financial disclosure report or portions thereof due to justifiable cause or undue hardship shall contain the following information:

(i) The name of the person making such request and his or her home address and work address;

(ii) The title of the position or job classification and name of the agency by which he or she is employed;

(iii) Explanation of justifiable cause or undue hardship in the form of a written statement with copies of any necessary supporting documents such person wishes the Board to consider;

(iv) Where the filer is seeking an extension to answer a portion of the report on the grounds that certain information is not yet available, the request shall state what information is not available. Documentation, if available, shall be provided in support of such request (for example, a copy of an application to the Internal Revenue Service for an automatic extension of time within which to file one's income tax return); and

(v) The additional time requested and the date by which such person intends to comply with the filing requirements.

(c) **Time limitations upon extensions.** (1) The Board shall not grant an extension of time to file a financial disclosure report or portions thereof due to justifiable cause or undue hardship for a period greater than four months from the original date the report was due.

(2) An individual who is seeking an extension of time to answer a portion of the financial disclosure report shall nevertheless file his or her report on or before May first, or at such other time required by Administrative Code §12-110, containing all the information required by such report, except for that information which is not available. A supplemental statement providing information not previously available shall be filed on the date set by the Board. Failure to file such supplemental statement, or the filing of an incomplete or deficient supplemental statement, shall subject the reporting person to the penalties set forth in Administrative Code §12-110(h).

(d) **Board action.** (1) Upon receipt of a timely request for an extension of time within which to file a financial disclosure report or portions thereof, the Board shall review the material filed to determine whether an extension is appropriate.

(2) The Board may in its discretion request, in writing, additional information from the person making the request. Such additional information shall be submitted to the Board within ten business days of the date of the Board's request. In the event the Board does not receive the additional information within ten business days, it may make a determination on the basis of the information it has available.

(3) The Board shall give written notice of its determination to the person making the request.

(i) In the event the request for an extension of time within which to file a financial disclosure report or portions thereof is approved, such report shall be filed on or before the date indicated by the Board in its determination.

(ii) In the event the request for an extension of time within which to file a financial disclosure report or portions thereof is denied, such report shall be filed before or on the due date set forth in Administrative Code §12-110 or such date as may thereafter be established by the Board in its determination.

(4) The Board may delegate to its executive director the authority to act pursuant to this Rule.

HISTORICAL NOTE

Section added City Record Feb. 26, 1992 eff. Mar. 24, 1992. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 26, 1992:

Pursuant to Charter §2603(d), the Board administers the City's financial disclosure law, contained in §12-110 of

the Administrative Code. The rule, which is promulgated pursuant to such statutory authority, and in accordance with Charter §1043, sets forth procedures to be followed to obtain an extension of time within which to file a financial disclosure report, pursuant to Charter §2604(d)(3) and §12-110 of the Administrative Code.

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CHAPTER 1 CONFLICTS OF INTEREST

§1-09 Prohibited Appearances Before City Agencies by City Planning Commis- sioners.

(a) **Definitions.**

Appear. "Appear" in accordance with Charter Section 2601(4), means to make any communication, for compensation, other than those involving ministerial matters.

Indirect Appearance. "Indirect Appearance" shall mean a member of the commission will be deemed to "appear indirectly" before a city agency concerning a particular matter if he or she communicates indirectly with such agency, by, for example, having another person, including but not limited to a member of the Commissioner's firm, represent to the agency orally or in writing what the Commissioner's views are on such matter. An indirect appearance will not include, in and of itself and without more, the presentation of project plans or documents bearing the Commissioner's name or seal.

Ministerial. A "ministerial" matter, in accordance with Charter Section 2601(15), shall mean an administrative act, including the issuance of a license, permit or other permission by the city which is carried out in a prescribed manner and which does not involve substantial personal discretion.

(b) **Prohibited Appearances.**

(1) For the purposes of Charter Section 192(b), no member of the City Planning Commission (the Commission) while serving as a member, shall appear directly or indirectly before: the Mayor and Deputy Mayors and their staffs; the Mayor's Office of Planning and Coordination; the offices of the Borough Presidents; the City Council; Community

Boards; the Art Commission; the Office of Environmental Coordination; the Landmarks Preservation Commission; and the Hardship Appeals Panel to which certain determinations of the Landmarks Preservation Commission may be appealed.

(2) For the purposes of Charter Section 192(b), no member of the Commission, while serving as a member, shall appear directly or indirectly:

(i) before the Department of Buildings on any matter involving zoning or land use, provided that a member of the Commission shall not be barred from filing plans with the Department of Buildings or from making appearances related to the filing of such plans, except that appearances in reconsideration proceedings before a Borough Supervisor or the Commissioner of the Department of Buildings shall be prohibited;

(ii) before the Board of Standards and Appeals on any matter involving zoning or land use;

(iii) before the Department of Consumer Affairs with respect to licenses and permits which involve land use;

(iv) before the Department of Business Services (DBS), and any local development corporation that has entered into a contract with the City to perform services on behalf of DBS, on any matter involving zoning or land use;

(v) before any City agency with respect to planning, environmental, financial or other aspects of a project that can reasonably be expected to come before the Commission for a statutory approval or other formal action, including, but not limited to action on major concessions, franchises, the acquisition, use or disposition of City-owned land, an application for a zoning change or special permit, or any action before the Commission pursuant to the Uniform Land Use Review Procedure.

HISTORICAL NOTE

Section added City Record June 18, 1992 eff. July 18, 1992. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 18, 1992:

Pursuant to the authority vested in the Conflicts of Interest Board (the "Board") by §2603(a) and §192(b) of the New York City Charter, the Board is required to determine by rule when an appearance of a member of the City Planning Commission (the "Commission") before a City agency other than the Department of City Planning (the "Department") or the City Planning Commission creates a conflict of interest with the duties and responsibilities of the member.

Charter §192(b) provides that:

"Members [of the City Planning Commission], except for the chair, shall not be considered regular employees of the city for purposes of chapter sixty-eight." The agency served by the members of the commission shall for purposes of chapter sixty-eight be deemed to be both the commission and the department of city planning. No member, while serving as a member, shall appear directly or indirectly before the department, the commission, **or any other city agency for which the conflicts of interest board shall, by rule, determine such appearance creates a conflict of interest with the duties and responsibilities of the member.** No firm in which a member has an interest may appear directly or indirectly before the department or commission. For purposes of this section, the terms "agency," "appear," "firm," and "interest" shall be defined as provided in chapter sixty-eight. (Emphasis added)

For the purposes of the conflicts of interest provisions contained in Chapter 68 of the New York City Charter, members of the City Planning Commission are "public servants," a term which includes all officials, officers and employees of the City. **See** Charter §2601(19). As provided in Charter §192(b), however, they are not "regular

employees," **i.e.,** public servants whose primary employment is with the City, as defined by rule of the Board. **See** Charter §2601(20). The Board's rule defining "primary employment with the City" excludes, among others, members of the City Planning Commission. The following rule delineates the appropriate scope of appearances by members of the Commission before City agencies, **e.g.,** their compensated communications before such agencies involving non-ministerial matters. **See** Charter §2601(4). It is intended to reconcile important, but quite different, policies. First, it is desirable that the Commission be made up of people knowledgeable and experienced in a variety of disciplines and in civic affairs. As a result, more members of the Commission may be involved in ongoing projects which may involve City agencies. **See** Charter Revision Commission**, Minutes of Public Meeting**. August 1, 1989, at 45-46. Second, the protective provisions of Chapter 68 must be enforced to avoid conflicts of interest which might affect a Commissioner's judgment or actions and to avoid situations which might create an appearance of such a conflict. **See** Charter §2604(b)(2), which provides that no public servant shall engage in any transaction which is in conflict with the proper discharge of his or her official duties. **See also** Charter §2604(b)(3), which provides that no public servant shall use or attempt to use his or her position as a public servant to obtain any personal advantage. The Charter Revision Commission headed by Richard Ravitch proposed that members of the Commission could appear before any City agency, except for the Commission itself. This issue was reconsidered by the Charter Revision Commission headed by Frederick A. O. Schwarz Jr., following public hearings at which deep concern was expressed concerning this issue. The Commission then concluded that a stricter rule was appropriate, which should be fashioned by the Board. **See** Charter Revision Commission. An uncompensated communication by a City Planning Commissioner on behalf of a private interest before a City agency would not be an "appearance," as defined in Charter §2601(4), and thus would not be covered by this rule. Under some circumstances, however, such communication could be in violation of Chapter 68. **See i.e.** Charter §2604(b)(2), which provides that no public servant shall have a private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties. Commissioners are significant members of the City government, who are involved in the capital planning of every city agency and in the policy and programs of many. As a result, many public servants may feel influenced to act favorably upon matters involving a Commissioner even though these matters do not arise out of his or her official duties. This perception may exist whether or not a Commissioner puts improper pressure upon the City employee. **Minutes of Public Meeting,** August 1, 1989, at pages 22-23, 42. The rule set forth below thus seeks to balance the need to attract the best qualified persons to serve on the Commission, including those who have active practices either solo or in large firms, with the need to prevent appearances by Commissioners before City agencies other than the Department and Commission that would either involve real conflicts of interest or have the appearance of involving such conflicts. The rule does not create a blanket prohibition against appearances. Rather, it adopts an agency-by-agency analysis, prohibiting only those appearances before City agencies which have a reasonable likelihood of creating either an actual conflict or the appearance of a conflict.

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CHAPTER 1 CONFLICTS OF INTEREST

§1-10 Retention of Financial Disclosure Reports.

(a) **Definitions.** As used in this Rule, the following terms shall have the respective meanings set forth below:

(1) "Administrative Code" shall mean the Administrative Code of the City of New York.

(2) "Board" shall mean the New York City Conflicts of Interest Board, established pursuant to §2602 of the New York City Charter.

(3) "Financial disclosure report" shall mean any financial disclosure report filed or on file with the Board pursuant to §12-110 of the Aministrative Code, including reports previously filed with the Office of the City Clerk and transferred to the Board's custody.

(4) "Prior disclosure report" shall mean any Financial Disclosure Report which, as of the effective date of this Rule, has been retained by the Board for a period in excess of six years from December 31 of the calendar year to which such report relates.

(b) **Retention of financial disclosure reports.** (1) Whenever a Financial Disclosure Report is filed with the Board, it shall be retained by the Board for a period commencing on the date such report was filed with the Board and expiring on the sixth anniversary of December 31 of the calendar year to which such report relates. The period during which the Board is required to retain a Financial Disclosure Report, pursuant to this paragraph (1), is hereinafter referred to as the "Required Retention Period" for such report.

(2) (i) Except as provided in subparagraphs (ii) and (iii) below, upon expiration of the Required Retention Period for a Financial Disclosure Report, pursuant to paragraph (1) above, the Board shall either (i) destroy such report, or (ii) if requested by the individual who filed such report, return such report to such individual. Any request that the Board return such report must be made in writing to the Board not later than 10 days prior to the expiration of such period.

(ii) Notwithstanding the provisions of subparagraph (i), if a law enforcement agency requests that the Board retain a Financial Disclosure Report for an additional period of time beyond the expiration of its required retention period, for purposes of an ongoing investigation, the Board shall retain such report for such additional period, provided the request is made in writing and is submitted to the Board not later than 10 days prior to the expiration of such required retention period. Upon expiration of such additional period of time, the Board shall either (i) destroy such report, or (ii) if requested by the individual who filed such report, return such report to such individual. Any such request must be made in accordance with the provision of subparagraph (i) above.

(iii) Notwithstanding the provisions of subparagraph (i), all reports shall be retained by the Board for a period of not less than one year from the date such report was filed with the Board.

(3) In accordance with the provisions of subdivision (e) of Administrative Code §12-110, as amended by Local Law No. 93 of 1992, the retention period established in paragraph (1) is intended to supersede, and shall be observed by the Board in lieu of, the retention periods set forth in such sudivision (e).

(4) Notwithstanding any other provision of this section, the Board shall be entitled, upon the effective date of the Rule, to destroy immediately all Prior Financial Disclosure Reports then in its possession.

HISTORICAL NOTE

Section added City Record July 14, 1994 eff. Aug. 13, 1994. [See Note 2]

Subd. (b) par (2) amended City Record Mar. 28, 2001 eff. Apr. 27, 2001. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 28, 2001:

Section 1-10(b)(1) of Title 53 of the Rules of the City of New York provides:

Whenever a Financial Disclosure Report is filed with the Board, it shall be retained by the Board for a period commencing on the date such report was filed with the Board and expiring on the sixth anniversary of December 31 of the calendar year to which such report relates. The period during which the Board is required to retain a Financial Disclosure Report, pursuant to this paragraph (l), is hereinafter referred to as the "Required Retention Period" for such report.

The amendment addresses the situation where a report is filed less than a year before it is scheduled to be destroyed pursuant to §1-10(b)(1). Although infrequent, such situations have occurred where the public servant's obligation to file, or his or her failure to file, must be litigated. If, for example, a report for calendar year 1994 is not filed until December 20, 2000, the retention rule would require the report to be destroyed less than two weeks after it was filed. Destroying a report almost immediately upon filing makes little sense and undermines the purpose of financial disclosure. The amendment requires that every financial disclosure report be maintained on file by the Board for at least one year.

2. Statement of Basis and Purpose in City Record July 14, 1994: In 1975, the City of New York (the "City") adopted a financial disclosure law, requiring that certain public servants file detailed reports concerning their incomes, investments, outside positions, and other assets and liabilities. The law has been amended several times and is currently

codified at §12-110 of the Administrative Code. Prior to 1990, the financial disclosure law was administered by the City Clerk. Since 1990, it has been administered by the Conflicts of Interest Board (the "Board"). The Board currently collects approximately 12,000 financial disclosure reports each year from the following categories of individuals required to file: (a) holders of Citywide elective offices (Mayor, Comptroller, City Council President, Borough Presidents, and Members of the City Council); (b) holders of political party office, as defined in the law; (c) candidates for Citywide elective office or political party office; (d) agency heads, deputy agency heads, assistant agency heads, members of City boards or commissions (other than members serving without compensation), and City employees who are members of the City's management pay plan or whose salary on April 30 of the year in which a report is to be filed is $42,300 or more; and (e) City employees, whose duties directly involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits. **See** §§12-110(a)(1) through (3) of the Administrative Code. The Board has a total of over 140,000 reports on file including reports collected by the City Clerk during the period 1978 through 1988. Financial disclosure reports are utilized by the Board to detect actual or potential conflicts between a public servant's official duties and his or her private interests or affiliations. In addition, reports are utilized by the City's Department of Investigation to facilitate inquiries into actual or potential cases of fraud, waste and abuse or other wrongful conduct on the part of City officials or employees. Until December 7, 1992, the financial disclosure law required that the Board retain all reports filed with it by public servant until the expiration of two years after that public servant has separated from City service or, in the case of reports filed by any unsuccessful candidate for office, until the expiration of two years from the date of the election at which the candidate was defeated. After the two year period has elapsed the Board is obligated to destroy the reports or, in the alternative, return them to the individual who filed the report. The two-year retention period, tied to separation from City service, has posed both administrative and legal difficulties for the board. In any given year, large numbers of City employees transfer to different agencies or leave City service entirely. The City's records are sometimes outdated or inaccurate and it is often difficult to obtain precise information on the status of a City employee. As a result of these uncertainties the Board for all practical purposes has been forced to retain many reports for an indefinite period of time. This, in turn, has required ever increasing amounts of storage space, filing cabinets, supplies and staff time to insure that all files are properly arranged and maintained. Indeed, because of the number of reports already on hand, the Board has been forced to store a portion of its financial disclosure files off-site, making access and security arrangements far more difficult. In addition, the Board receives approximately 900 requests each year for copies of financial disclosure reports. Such requests are made by the media, law enforcement agencies and members of the public. Because of the uncertainties surrounding the exact date of separation for many former City employees, and the resulting retention of many reports for indefinite periods of time (see above), the Board runs the risk of inadvertently disclosing the contents of a report to a third party, after the date on which the report should have been destroyed. This risk was highlighted in an Article 78 proceeding brought against the Board in the Fall of 1992, in which the Board was informed, long after the fact but just prior to the release of a report, that the individual who filed the report had retired from City service more than two years previously. Effective December 7, 1992, the financial disclosure law was amended to allow the Board, in consultation with the Department of Records and Information Services ("DORIS") and the Department of Investigation ("DOI"), to establish by rule a different period or periods for the retention of financial disclosure reports taking into account the need for efficient records management and the need to retain such reports for a reasonable period for investigatory and other purposes. **See** Local Law No. 93 of 1982, amending §12-110(e) of the Administrative Code. The rule set forth above establishes a uniform retention period for all financial disclosure reports. Each report is to be retained for a fixed period commencing on the date it is filed and expiring on the sixth anniversary of December 31 of the calendar year to which it relates. Since most reports are due on May 1, and cover the preceding calendar year, this rule will insure that the vast majority of reports which are filed with the Board will be retained for at least five full years. This rule was developed in consultation with DORIS, DOI, and the Office of the Corporation Counsel, and seeks to carefully balance the following considerations: (1) the statute of limitations for misconduct in public office (**See** Criminal Procedure Law, §10.10(3)(b)); (2) the need to retain financial disclosure reports for a reasonable period of time, in order to facilitate an inquiry into allegations of conflict of interest or other wrongful conduct; (3) the desire to conform any rule to existing City record retention policies to the extent possible; and (4) the practical benefits of a fixed retention period tied to a date certain, allowing the Board to manage its space requirements more efficiently and avoid the risk of inadvertently disclosing reports that should have been destroyed or returned.

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CHAPTER 1 CONFLICTS OF INTEREST

§1-11 Adjustment of Dollar Amount in Definition of "Ownership Interest".

Effective as of January 1, 2006, the dollar amount in the definition of "Ownership Interest" in subdivision (16) of §2601 of the New York City Charter shall be adjusted from $35,000 to $40,000.

HISTORICAL NOTE

Section amended City Record Mar. 14, 2006 eff. Apr. 13, 2006. [See Note 4]

Section amended City Record Jan. 28, 2003 eff. Feb. 27, 2003. [See Note 1]

Section amended City Record June 11, 1998 eff. July 11, 1998. [See Note 2]

Section added City Record Oct. 28, 1994 eff. Nov. 27, 1994. [See Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 28, 2003:

Subject to certain exceptions, the conflicts of interest provisions of Chapter 68 of the New York City Charter prohibit New York City public servants from having "interests" in firms engaged in business dealings with the City or from taking actions as a public servant particularly affecting the public servant's interest in a firm. **See** Charter Sections 2604(a) and 2604(b)(1). An interest may be either an ownership interest in a firm or a position with a firm. **See** Charter §2601(12). "Ownership interest" is, in turn, defined in Charter §2601(16) as

an interest in a firm held by a public servant, or the public servant's spouse or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse or unemancipated child, or in any blind trust which holds or acquires an ownership interest. **The amount of twenty-five thousand dollars specified herein shall be modified by the board pursuant to subdivision a of section twenty-six hundred three.** (emphasis added)

Charter §2603(a) requires the Conflicts of Interest Board, by rule amendment, once every four years to adjust the $25,000 amount established in §2601(16) to reflect changes in the Consumer Price Index for the metropolitan New York-New Jersey region as published by the United States Bureau of Labor Statistics. The forgoing provision became effective on January 1, 1990. Pursuant to Charter §2603(a), Board Rule §1-11 was first adopted in 1994 to reflect the change in the Consumer Price Index from 135.1 in January 1990, to 156.0 in January 1994, or an increase of 15.5%, and to raise the original $25,000 Charter amount in a like percentage to $29,000, rounded to the nearest $1,000. In 1998, Board Rule §1-11 was amended, effective January 1998, to reflect the change in the Consumer Price Index from 135.1 in January 1990, to 172.1 in January 1998, reflecting a total of a 27.4% increase in the original $25,000 Charter amount, raising the threshold to $32,000, rounded to the nearest $1,000. According to the United States Department of Commerce, Bureau of Labor Statistics, for the twelve-year period from January 1990, to January 2002, the Consumer Price Index for the metropolitan area increased from 135.1 to 188.5, reflecting a total increase of 39.5%. Thus, the $25,000 Charter amount should be adjusted to $35,000, reflecting a 39.5% increase in the $25,000 Charter amount, rounded to the nearest $1,000. Pursuant to Charter §1042, this proposed amendment to Board Rule Section 1-11 was published in the Board's Fiscal Year 2003 regulatory agenda.

2. Statement of Basis and Purpose in City Record June 11, 1998: Subject to certain exceptions, the conflicts of interest provisions of Chapter 68 of the New York City Charter prohibit New York City public servants from having "interests" in firms engaged in business dealings with the City or from taking actions as a public servant particularly affecting the public servant's interest in a firm. **See** Charter §§2604(a) and 2604(b)(1). An interest may be either an ownership interest in a firm or a position with a firm. **See** Charter §2601(12). "Ownership interest" is, in turn, defined in Charter §2601(16) as

an interest in a firm held by a public servant, or the public servant's spouse or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse or unemancipated child, or in any blind trust which holds or acquires an ownership interest. **The amount of twenty-five thousand dollars specified herein shall be modified by the board pursuant to subdivision a of section twenty-six hundred three.** (Emphasis added.)

Charter §2603(a) requires the Conflicts of Interest Board, by amendment, once every four years to adjust the $25,000 dollar amount established in section 2601(16) to reflect changes in the Consumer Price Index for the metropolitan New York-New Jersey region published by the United States Bureau of Labor Statistics. The foregoing provision became effective on January 1, 1990. The Rule was adopted in 1994 to reflect the change in the Consumer Price Index from 135.1 in January 1990 to 156.0 in January 1994, or an increase of 15.5%. Thus, the $25,000 dollar amount was adjusted to $29,000, reflecting an increase in the $25,000 dollar amount rounded to the nearest $1,000. According to the United States Department of Commerce, Bureau of Labor Statistics, for the eight-year period from January 1990 to January 1998, the Consumer Price Index for the metropolitan area increased from 135.1 to 172.1, or 27.4%. Thus, the $25,000 amount should be adjusted to $32,000; reflecting a 27.4% increase in the $25,000 Charter

amount, rounded to the nearest $1,000.

3. Statement of Basis and Purpose in City Record Oct. 28, 1994: Subject to certain exceptions, the conflicts of interest provisions of chapter 68 of the New York City Charter prohibit New York City public servants from having "interests" in firms engaged in business dealings with the City or from taking actions as a public servant particularly affecting the public servant's interest in a firm. **See** Charter §2604(a) and §2604(b)(1). An interest may be either an ownership interest in a firm or a position with a firm. **See** Charter §2601(12).

"Ownership interest" is, in turn, defined in Charter §2601(16) as an interest in a firm held by a public servant, or the public servant's spouse or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse or unemancipated child, or in any blind trust which holds or acquires an ownership interest. **The amount of twenty-five thousand dollars specified herein shall be modified by the Board pursuant to subdivision a of section twenty-six hundred three.** (Emphasis added.)

Charter §2603(a) requires the Conflicts of Interest Board, by rule, once every four years to adjust the $25,000 amount established in §2601(14) to reflect changes in the Consumer Price Index for the metropolitan New York-New Jersey region published by the United States Bureau of Labor Statistics. The foregoing provision became effective on January 1, 1990. Accordingly, the Board must adopt a rule adjusting the $25,000 amount to reflect changes in the Consumer Price Index. According to the United States Department of Commerce, Bureau of Labor Statistics, for the four year period from January 1990 to January 1994, the Consumer Price Index for the metropolitan area increased from 135.1 to 156.0 or 15.5%. Thus, the $25,000 amount should be adjusted to $29,000, reflecting a 15.5% increase in the $25,000 Charter amount, rounded to the nearest $1,000.

4. Statement of Basis and Purpose in City Record Mar. 14, 2006: Subject to certain exceptions, the conflicts of interest provisions of Chapter 68 of the New York City Charter prohibit New York City public servants from having "interests" in firms engaged in business dealings with the City or from taking actions as a public servant particularly affecting the public servant's interest in a firm. **See** Charter §§2604(a) and 2604(b)(1). An interest may be either an ownership interest in a firm or a position with a firm. **See** Charter §2601(12). "Ownership interest" is, in turn, defined in Charter §2601(16) as

an interest in a firm held by a public servant, or the public servant's spouse or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse or unemancipated child, or in any blind trust which holds or acquires an ownership interest. **The amount of twenty-five thousand dollars specified herein shall be modified by the board pursuant to subdivision a of section twenty-six hundred three.** (emphasis added)

Charter §2603(a) requires the Conflicts of Interest Board, by rule amendment, once every four years to adjust the $25,000 amount established in §2601(16) to reflect changes in the Consumer Price Index for the metropolitan New York-New Jersey region as published by the United States Bureau of Labor Statistics. The forgoing provision became effective on January 1, 1990. Pursuant to Charter §2603(a), Board Rule §1-11 was adopted in 1994 to reflect the change in the Consumer Price Index from 135.1 in January 1990, to 156.0 in January 1994, or an increase of 15.5%, and to raise the original $25,000 Charter amount in a like percentage to $29,000, rounded to the nearest $1,000. In 1998, Board

Rule §1-11 was amended, effective January 1998, to reflect the change in the Consumer Price Index from 135.1 in January 1990, to 172.1 in January 1998, reflecting a total of a 27.4% increase from the original $25,000 Charter amount, raising the threshold to $32,000, rounded to the nearest $1,000. In 2002, Board Rule §1-11 was amended, effective January 2002, to reflect the change in the Consumer Price Index from 135.1 in January 1990, to 188.5 in January 2002, reflecting a total of a 39.5% increase from the original $25,000 Charter amount, raising the threshold to $35,000, rounded to the nearest $1,000. According to the United States Department of Commerce, Bureau of Labor Statistics, for the fifteen-year period from January 1990, to October 2005, the Consumer Price Index for the metropolitan area increased from 135.1 to 216.6, reflecting a total increase of 60.3%. Thus, the $25,000 Charter amount should be adjusted to $40,000, reflecting a 60% increase from the $25,000 Charter amount, rounded to the nearest $1,000.

Rules of the City of New York

***** Current through December 2009 ****

53 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-12 Definition of "Particular Matter" for Tax Commissioners and Certain Other Public Servants in the Tax Commission, Department of Finance, Comptroller's Office, and Law Department in Relation to Real Estate Tax Assessments.

(a) Pursuant to City Charter §2604(d)(4), no former public servant who has served on or been employed by the Tax Commission, the Department of Finance, the Comptroller's Office, or the Law Department shall appear, whether paid or unpaid, before the City, or receive compensation for any services rendered, in relation to a proceeding involving a tax year or the immediately subsequent tax year for a given parcel of property with respect to which the public servant engaged in one or more of the activities described in subdivision (b).

(b) Subdivision (a) shall apply with respect to a parcel and tax year about which the former public servant: (1) heard an application for correction of assessment for taxation ("protest") from any real estate tax assessment; or (2) reviewed any proposal to settle or offer to reduce the assessment with respect to any such protest; or (3) participated personally and substantially in (i) the preparation or review of an appraisal, (ii) the review, analysis, or recommendation of a real estate tax assessment, or (iii) the conducting of a tax certiorari proceeding, which shall include but not be limited to its negotiation, settlement, trial, or review.

HISTORICAL NOTE

Section added City Record June 4, 1997 eff. July 4, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 4, 1997:

Charter §2604(d)(4) permanently bars a former public servant from appearing, whether paid or unpaid, before the City, or from receiving compensation for any services rendered, in relation to any "particular matter" involving the same party or parties with respect to which particular matter the former public servant participated personally and substantially as a public servant through decision, approval, recommendation, investigation, or the like.

This permanent bar as to particular matters has created a quandary for those involved in real property tax assessments. If "particular matter" is defined as the particular parcel, then assessors and tax commissioners, who consider thousands of parcels during their City careers, would, upon leaving City service, find themselves permanently barred from working on any assessments involving those parcels. That result, while a literal reading of the Charter, may appear unduly harsh and, some might argue, may discourage public service in this area.

On the other hand, limiting "particular matter" in this context to the matters pertaining to the assessment of a parcel in a single tax year would permit an assessor or tax commissioner to determine an assessment one day, leave City service the next, and within months represent individuals contesting their assessment for the following tax year and, in that regard, rely upon evidence and knowledge gained in City service about that very piece of property a few months earlier. Although each tax year may be separate and distinct for tax purposes (**see People ex rel. Hilton v. Fahrenkopf,** 279 N.Y. 49 (1938)), that tax concept would seem to bear little relation to the purposes of the City conflicts of interest law, which is designed to protect integrity in City government. Furthermore, although under **Hilton** a determination in one tax year does not bind assessors in subsequent tax years, as a practical matter evidence found and determinations made in one tax year will tend to be replicated in the next tax year. The danger, or at least the perceived danger, that confidential information may be used by a former assessor or tax commissioner to promote the interests of his or her private clients over the interests of the City compounds these problems. Thus, interpreting the term "particular matter" to mean assessment-related activity for a parcel in a single tax year would appear ill-advised.

The new rule permits the former public servant to work on an assessment involving a parcel of property he or she worked on while a public servant, provided that (1) the former public servant does not appear before his or her former agency within one year after leaving City service (existing provisions of Charter §2604(d)(2)); (2) the former public servant does not disclose or use any confidential City information (existing provisions of Charter §2604(d)(5)); and (3) the former public servant does not work on matters pertaining to an assessment for the tax year he or she had worked on such assessment or for the subsequent tax year. The following example will help illustrate how the rule will work.

Example. In April 1996 a tax commissioner hears a protest from an assessment involving a parcel of property for tax year 1996-1997. During the fall of 1996, the tax commissioner is involved in a tax certiorari proceeding relating to that same piece of property for the tax year 1990-1991. The matter is before the Tax Commission for the year 1990-1991. The tax commissioner leaves City service on March 1, 1997. Under Charter §2604(d)(2), the tax commissioner could not appear before the Tax Commission on non-ministerial matters until March 1, 1998. In addition, he or she may not appear before the City, or work for compensation, in connection with the assessments for that parcel of property for the tax years 1990-1991, 1991-1992, 1996-1997, or 1997-1998.

Two final points with respect to the new rule should be noted. First, although primarily aimed at assessors and tax commissioners, the rule is not limited to those public servants but, rather, regulates any public servant in the Office of the Tax Commission, Comptroller's Office, Department of Finance, or Law Department who engages in the conduct specified in the rule. Secondly, the rule does not expressly require that a public servant (e.g., a tax commissioner) hearing a protest from an assessment or reviewing a proposal to settle such a protest be personally and substantially involved in those activities. The Conflicts Board has determined that any public servant who hears such a protest or reviews such a proposal is, of necessity, personally and substantially involved in those matters. If in a particular case a public servant believes that his or her involvement was not personal and substantial, he or she may seek a ruling to that effect from the Board.

The Board conducted a public hearing on February 18, 1997, during which time it received testimony from the president of the City union representing assessors, appraisers, and mortgage analysts (Local 1757 of District Council 37). The union is generally supportive of the rule proposed by the Board but suggested that with respect to tax certiorari proceedings the two-year proscription on appearing before the City be enlarged to a three-year ban. The Board has considered this and other comments and suggestions submitted by the local and has concluded that the uniform two-year ban applicable to all tax proceedings should be retained.

Rules of the City of New York

***** Current through December 2009 ****

53 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-13 Conduct Prohibited by City Charter §2604(b)(2).

(a) Except as provided in subdivision 3 of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City.

(b) Except as provided in subdivision 3 of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose.

(c) (1) A public servant may pursue a personal and private activity during normal business hours and may use City equipment, resources, personnel, and supplies, but not City letterhead, if, (i) the type of activity has been previously approved for employees of the public servant's agency by the Conflicts of Interest Board, upon application by the agency head and upon a determination by the Board that the activity furthers the purposes and interests of the City; and (ii) the public servant shall have received approval to pursue such activity from the head of his or her agency.

(2) In any instance where a particular activity may potentially directly affect another City agency, the employee must obtain approval from his or her agency head to participate in such particular activity. The agency head shall provide written notice to the head of the potentially affected agency at least 10 days prior to approving such activity.

(d) It shall be a violation of City Charter §2604(b)(2) for any public servant to intentionally or knowingly:

(1) solicit, request, command, importune, aid, induce or cause another public servant to engage in conduct that violates any provision of City Charter§2604; or

(2) agree with one or more persons to engage in or cause the performance of conduct that violates any provision of City Charter §2604.

(e) Nothing contained in this section shall preclude the Conflicts of Interest Board from finding that conduct other than that proscribed by subdivisions (a) through (d) of this section violates City Charter §2604(b)(2), although the Board may impose a fine for a violation of City Charter §2604(b)(2) only if the conduct violates subdivision (a), (b), (c), or (d) of this section. The Board may not impose a fine for violation of subdivision (d) where the public servant induced or caused another public servant to engage in conduct that violates City Charter §2604(b)(2), unless such other public servant violated subdivision (a), (b), or (c) of this section.

HISTORICAL NOTE

Section added City Record July 9, 1998 eff. Aug. 8, 1998, internal subdivisions and paragraphsp

redesignated by the Law Department per Charter §1045(b). [See Note 1]

Subd. (d) amended City Record Jan. 9, 2007 §1, eff. Feb. 8, 2007. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record July 9, 1998:

New York City Charter §2604(b)(2) provides:

No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

The Charter Revision Commission

retained this "catch-all" prohibition in recognition of the fact that the specific prohibitions set forth in the [Charter] chapter [68] cannot address all conflict of interest situations which may arise in the future and that the [Conflicts of Interest] board must retain the flexibility to handle new situations as they arise. However, fairness to public servants dictates that no punishment be imposed for actions not previously identified as prohibited. Volume II, **Report of the New York City Charter Revision Commission, December 1986-November 1988,** at p. 175.

Accordingly, Charter §2606(d) precludes the Conflicts of Interest Board (the "Board") from imposing penalties for a violation of Charter §2604(b)(2), "unless such violation involved conduct identified by rule of the board as prohibited by such paragraph." The purpose of the rule is to identify certain such conduct. As experience reveals additional conduct, the Board may amend the rule to add it. Since its establishment the Board has received hundreds of requests from public servants for advice as to whether the public servant may engage in various outside activities, such as volunteering for a non-profit organization or working for a private business. Often the Board finds that Chapter 68 permits the particular activity, provided that the public servant abides by certain restrictions. In that regard, the Board cites, among other provisions, Charter §2604(b)(2), cautioning the public servant that he or she must pursue the activity at times when he or she is not required to perform services for the City. So, too, in the enforcement context, the Board has observed on a number of occasions that a public servant has violated Charter §2604(b)(2) by performing an outside activity, particularly a compensated outside activity, on City time. The Board has also noted that from time to time public servants have, in violation of Charter §2604(b)(2), encouraged or caused another public servant to violate the provisions of Charter §2604 by, for example, inducing that second public servant to obtain from the City a financial benefit for a son or daughter, in violation of Charter §2604(b)(3). In addition, the Board has received complaints about City employees using City personnel, equipment, letterhead, resources, or supplies for non-City purposes. If such a use is to obtain a private or personal advantage for the employee, for a member of his or her immediate family, for a person with whom the employee has a business or other financial relationship, or for a firm with which the employee has a

present or potential position or ownership interest, then the use might be a violation of Charter §2604(b)(3). However, (b)(3) might not apply, for example, where a City employee writes a letter on City letterhead endorsing a political candidate or uses a City photocopier to make photocopies for a volunteer organization. Adoption of the rule will permit the Board to impose penalties for such violations of Charter §2604(b)(2), either alone or in combination with the imposition of penalties for violation of other provisions of Chapter 68. It is important to note, however, that certain public service activities, such as volunteering one's services for a professional organization, may in some instances further the City's interests. For example, a public servant's uncompensated participation on a bar association committee not only may help the public servant meet his or her obligations to the profession but also may reflect favorably upon the City and the public servant's agency, may assist in the professional development of the public servant, and may provide him or her with new insights into the performance of his or her City job, all to the City's benefit. For this reason, the rule, in subdivision (3), permits an agency head to apply to the Conflicts Board for permission for the employees of the agency to engage in such activities during normal working hours and to use City equipment, resources, personnel, and supplies-but not City letterhead-in connection with the activity. Thus, for example, the Corporation Counsel could seek approval of the Board for attorneys in the Law Department to attend bar association committee meetings during the day and even to type and photocopy a bar association report on City computers and photocopiers-but not to use Law Department letterhead. If, however, the work of the bar association committee has a direct impact upon another City agency, then the Corporation Counsel would have to give the head of that other agency at least 10 days written notice before approving the employee's request. Furthermore, once a type of activity has been approved by the Board for the employees of a particular agency under this provision, other employees of that agency who wish to engage in the same type of activity need obtain approval only from their agency head; additional approval from the Board is not required. Three additional points should be noted. First, as with any ethics law, the rule must be interpreted in light of reason, experience, and common sense. A brief telephone call to a friend or doctor would not constitute a violation of the rule. Running an outside business from one's City office would, as would spending an afternoon at the beach during City time. Second, as stated in subdivision (4) of the rule, conduct other than that identified in the rule may constitute a violation of Charter §2604(b)(2), although, under Charter §2606(d), the Board may not impose any penalties for such other conduct, unless it violates some other provision of Charter §2604. As noted by the Charter Revision Commission, "the board may in some situations adjudicate a public servant to be in violation of paragraph two [of section 2604(b)] without imposing any penalties." Volume II, **Report of the New York City Charter Revision Commission, December 1986-November 1988,** at pp. 175-176. The Board may in the future amend the rule to identify other conduct prohibited by section 2604(b)(2). Third, where a charitable or philanthropic activity, such as the annual toy collection drive or the Combined Municipal Campaign, is sanctioned by the Mayor as a City activity, neither Charter §2604(b)(2) nor this rule comes into play. Accordingly, City employees may use City time, letterhead, and resources in connection with that activity. In response to the public hearing notice on the proposed rule, the Board received detailed and persuasive comments from the City Council and the Comptroller's Office. In response to those comments, the Board changed the rule in several respects: to delete the requirement that a public servant may engage in an activity permitted under subdivision 3 only at times when the public servant is not required to perform services for the City; to remove the prohibition on using City personnel for an activity permitted under subdivision 3; to require that such an activity further the purposes and interests of the City (the same standard as that set forth in Charter §2604(c)(6)(b)); to replace with a notice requirement the requirement that permission for such an activity be obtained from every affected City agency; to add a mental state ("intentionally and knowingly") to subdivision 4; and to make certain technical changes in the rule.

2. Statement of Basis and Purpose in City Record Jan. 9, 2007: New York City Charter §2604(b)(2) provides:

No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties. Rule 1-13(d) currently provides: It shall be a violation of City Charter §2604(b)(2) for any public servant to intentionally or knowingly **induce or cause** another public servant to engage in conduct that violates any provision of City Charter §2604 (emphasis added).

The language "induce or cause" has proven to be too narrow in scope and does not capture all of the conduct that

could be subject to accessorial liability under the Penal Law. Accordingly, the amendment would modify the language of the rule to be parallel with that in §20.20 of the Penal Law, as specified in the proposed paragraph (1) above. In addition, the current rule does not provide for liability for those persons who engaged in a conspiracy with others to violate the conflicts of interest law. The proposed paragraph (2) would adopt the Penal Law definition of conspiracy in the sixth degree found in Penal Law §105.00 to specify additional conduct that would form the basis for liability for the acts of another under this provision.

A public hearing on these rules was held on November 28, 2006, pursuant to notice published in the **City Record** on October 19, 2006, and no one attended to provide testimony or comment, nor were comments received prior thereto.

CASE NOTES

¶ 1. Subsection (a) of this section prohibits the use of City resources for personal purposes when the use occurs during a time when the employee is required to perform City services. Subsection (b) prohibits the use of City resources for personal purposes regardless of whether the use occurs when the employee is on or off-duty. Therefore, employee's use of City van for personal purposes violated section (b), regardless of whether the use occurred on or off-duty; his personal use of the van violated subsection (a) only when the use occurred during work time-not when he used it on a vacation day. **Conflicts of Interest Bd. v. Allen**, Conflicts of Interest Bd. Case No. 06-411 (Sept. 11, 2007), **adopting**, OATH Index No. 1791/07 (June 12, 2007).

¶ 2. An assistant principal of a New York City public school violated 2604(b)(2) and (b)(3) of the New York City Charter when she failed to deposit $8,500 into a school account and instead used the funds from the account for her personal benefit and other non-city purposes, including purchasing intimate apparel and a handbag, and to pay a teacher's parking ticket. The ALJ rejected the assistant principal's unverified defense that she was only reimbursing herself for school related purchases as implausible. Further, even if she had been reimbursing herself, she failed to follow agency procedures and gave priority to her claims over those of vendors or other teachers, thereby using her position as custodian of the student fund for personal advantage. $7,500 fine recommended. **Conflicts of Interest Bd. v. Bryan**, OATH Index No. 1366/08 (Aug. 14, 2008), **adopted**, Chair's Dec. (Nov. 18, 2008).

¶ 3. In Molinari v. Bloomberg, 564 F.3d 587 (2d Cir. 2009), a group of elected officials and private citizens, including the current Comptroller, Public Advocate of NYC and several current members of the City Counsel, challenged the enactment of Local Law 51. The defendants included the leaders of the City Council, who pushed for the enactment of the law, and the Mayor, who signed it. The challenged law modified the two-term limit for certain public offices; it increased the limit to three terms for Mayor, Council Member, Public Advocate, Comptroller and Borough President. What the new law did was to change term limits by legislative enactment even though the term limits had originally been enacted in 1993 by City-wide referendum.

Plaintiffs claimed the following:

1) Defendants violated their First Amendment rights because the City voters will be less likely to engage in First Amendment speech if laws enacted by referenda can be amended by City Council legislation;

2) Defendants violated their substantive due process guaranteed by the Fourteenth Amendment of the U.S. Constitution because the sole purpose of Local Law 51 is to extend defendants own political careers by entrenching incumbents;

3) Defendants violated NY Municipal Home Rule Law Sec. 23(2)(b), which they contend requires a referendum to enact the provisions of Local Law 51;

4) Defendants violated the City Charter's conflict of interest provisions by enacting legislation conferring upon themselves a political benefit.

In upholding the law, the court rejected all four of the above arguments. At the outset, the court pointed out that the City Council and Mayor are given broad power to enact local laws, including amendments to the City Charter, so long as they relate to property, affairs or government and are not inconsistent with the New York State Constitution or general laws. See NY Mun. Home Rule Law Sec. 10(l)(i)-(ii). Sections 36 and 37 of the NY Municipal Home Rule Law allows voters to enact such laws directly by means of referendum. This can be directly initiated by voters through a voter initiative process. See Sec. 37. If voters who are qualified file with the City Clerk a petition containing a certain number of signatures requesting that a proposed local law amending the City Charter be put to referendum, the proposed local law will appear on the ballot at the next general election. A referendum proposing a local law amending the City Charter may also be initiated by a Charter Commission. See Section 36. Thus, a charter commission can be created either by a voter's petition, the City Council or the Mayor.This happened in 1993 where the City voters put a referendum on the ballot by voter initiative proposing term limits for certain elected officials. This was ultimately adopted by a vote of more than 59%.

Before the enactment of Local Law 51, City Charter 1137 stated that a mayor was limited to eight consecutive years (also includes public advocate, comptroller, borough president and council members so that elected representatives represent the citizens and can therefore be responsive to the needs of the people and are not career politicians. Moreover, before Local Law 51, Section 1138 stated that no person shall be eligible to be elected to or serve in the offices referenced above except if one full four year term has elapsed after the person has held office.

In October 2008, the Mayor announced that he was going to work with the Speaker of the City Counsel to introduce legislation to extend the City's term limits because it was his belief that experienced leadership in a time of deep financial crisis was needed. Bill 845-A was introduced and if signed into law, would amend the above sections of the City Charter to change the term limits for no more than two consecutive terms to no more than three consecutive terms. Plaintiffs claimed that the Mayor planned to initiate this change as early as 2007, but delayed this announcement so that voters could not put the issue of term limits on the ballot through a voter initiative prior to the November 2009 election. Under Sec. 37 of the NY Municipal Home Rule Law, if qualified voters were to have filed a petition following the introduction of the bill in October 2008 putting the term limits issue to a referendum, it would appear on the November 2009 election ballot at the earliest. See Municipal Home Rule Law Sec. 37(6)-(7). The bill was signed into law on Nov. 3, 2008 and is known as Local Law 51. The plaintiffs commenced suit a week later.

The court addressed each of plaintiffs arguments.

Argument #1-First Amendment. Court agreed with defendants and agreed with Appellee's that Local Law 51 does not implicate plaintiffs' First Amendment rights. The First Amendment was created for the exchange of ideas leading to political and social change, as desired by the people. Here, plaintiffs have not been restricted from engaging in First Amendment activity. Plaintiffs were free to exercise their First Amendment rights in connection with the prior referendums (1993 and 1996). Plaintiffs simply claim that their First Amendment rights have been violated by Local Law 51 because voters will be less likely in the future to engage in the referendum process if a law enacted by that process can be amended or repealed through City Council legislation. As noted in other circuit courts, plaintiff's First Amendment rights are not implicated by referendum schemes in and of themselves, but by the regulation of advocacy with this process (i.e. Petition circulating, discourse and other protected forms of advocacy). What is important is that the communication of ideas associated with the referendum process is not affected, even if plaintiffs are correct in their assumption that it will be more difficult for plaintiffs to organize voter initiatives and referenda in the future. The fact that a process may be difficult is insufficient to implicate the First Amendment, the court held.

Argument #2-Substantive Due Process. The appellants believe that the purpose of Local Law 51 was an "incumbency re-employment program" to allow "those in power to have the opportunity to remain in power." Appellants do not point to a fundamental right nor a suspect classification in connection with this legislation, and there is a rational relationship between the legislation and its purpose. The City's reason for enacting the law is to provide voters with an opportunity to elect experienced public officials in a time of financial crisis, which is rationally related to a legitimate objective. The fact that a politician wishes to remain in office is not consequential. Therefore, the

legislation stands. There is nothing unconstitutional per se about incumbents shaping the electoral process to their advantage, and is an aspect of the American political scene.

Argument #3-NYS Referendum Law. Plaintiffs argued before the District court that under Municipal Home Rule Law §23(2)(b)(e)(f), the substance of Local Law 51 could be enacted only by referendum. On appeal, the appellants have abandoned their arguments under (e) and (f), as well as NYC Charter §38. They argue here that Local Law 51 changes the membership of the legislative body pursuant to §23(2)(b). Section 10 of the Municipal Home Rule Law provides that city governments have the power to adopt and amend local laws relating to the powers, duties, qualifications, terms of office, compensation, welfare and safety of its officers and employees, among other considerations. Mun. Home Rule Law §10(l)(a)(l). Plaintiffs argued that Local Law 51 changes the composition of the City Council because it will result in re-electing incumbents who were not previously eligible to seek re-election under the previous term limit law. There is no case law interpreting §23(2)(b) although there is case law interpreting its predecessor, City Home Rule Law Sec. 15(l), which states that an act of the legislature is subject to a mandatory referendum except as otherwise noted or under authority. In any event, the NYS legislature did not intend to make a substantive change in the meaning of the provision, but wanted to establish uniformity among various governmental bodies. It was not intended to abolish or curtail any rights, privileges or powers. NY Municipal Home Rule Law Sec. 50(3). While Local Law 51 now uses the word "membership" where section 15(l) used the word "form" the law remains unchanged with respect to the types of local laws subject to referenda, and the restrictions and prohibitions have not changed. While the law can change the composition of a legislative body, this does not mean that it can change the form or composition of that body. Membership, as used in the revised Municipal Home Rule Law, §23(2)(b) refers to the structural characteristics of the legislative body. Local law affects only an incumbent's eligibility for re-election and does not alter the number of seats in the legislative body. Local Law 51 does not trigger Municipal Home Rule Law Sec. 23(2)(b) because it does not directly change the membership. (City Charter 22 provides that the size of the council may be increased by local law without approval by the voters in a referendum.)

Argument #4-Conflict of Interest. Plaintiffs allege that defendants violated conflict of interest provisions under Chapter 68 of the City Charter Sec. 2604(b)(2)(3) and Conflicts Board Rule 1-13(d) (Rule 1-13(d). Under Sec. 2604(b)(2)-no public servant shall engage in any business, transaction, private employment, or have a financial or private interest, whether direct or indirect, which conflicts with his or her official duties. Under Sec. 2604(b)(3)-No public servant shall use or attempt to use his or her position as a public servant to obtain financial gain, contract, license, privilege, either directly or indirectly, from a person or firm associated with the public servant. Prior to voting on Local Law 51, an advisory opinion was sought from the Conflict of Interest Board, who concluded that it is within the proper discharge of Council Members' official duties as legislators for them to vote upon and participate in the legislative process in connection with a bill that is lawfully pending before the council. While term limited elected officials may have a personal political interest in what happens, that interest does not fall under Chapter 68, and would not be disqualified from participating in the enactment of this legislation. Agreeing with the District Court, the Appeals Court gives considerable deference and validity to these advisory opinions, absent a clear showing to the contrary. There is no personal or private interest shown.

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Rules of the City of New York

***** Current through December 2009 ****

53 RCNY 1-14

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-14 City Employees Holding Policymaking Positions for Purposes of the Financial Disclosure Law.

For purposes of Administrative Code §12-110(b)(3)(a)(3), a City employee shall be deemed to hold a policymaking position, and therefore be required to file a financial disclosure report, if such employee is charged with substantial policy discretion within the meaning of §1-02 of Title 53 of the Rules of the City of New York.

HISTORICAL NOTE

Section added City Record Dec. 23, 2003 eff. Jan. 22, 2004. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 23, 2003:

Local Law 43 of 2003 amended the City's Financial Disclosure Law, Section 12-110 of the Administrative Code, to, among other things, add to the list of required filers those City employees holding a "policymaking position . . ., as defined by rule of the conflicts of interest board. . . ." Ad. Code §12-110(b)(3)(a)(3). In analogous provisions, the City's Conflicts of Interest Law (City Charter Chapter 68, §2600 **et seq.**) imposes restrictions on the political activity of certain public servants "charged with substantial policy discretion as defined by rule of the board. . . ." Charter §2604(b)(12) (prohibiting certain political fundraising by appointed public servants with substantial policy discretion) and §2604(b)(15) (prohibiting public servants with substantial policy discretion from holding certain political party offices). "Substantial policy discretion" is defined in Board Rules §1-02. Both the Financial Disclosure Law and the Conflicts of Interest Law thus impose certain additional responsibilities on City policymakers. No principled reason

exists for defining policymaker differently in these two laws. Furthermore, linking the policymaking position rule and the substantial policy discretion rule would ensure that all public servants with substantial policy discretion file financial disclosure reports. Such a linkage also provides a simple definition and avoids a multiplicity of rules, one for substantial policy discretion and one for policymaking position. In addition, adopting a single rule for both laws will reduce, by 50%, the burden on City agencies in identifying their employees who fall within the rules. Finally, the Board has had in place for some time a system for determining which public servants exercise substantial policy discretion, and that system has worked well.

Indeed, many ethics laws link financial disclosure filing status and restrictions on high-level public servants. For example, the New York State Ethics Commission, by rule, prohibits State officers and employees who hold "policymaking positions" from moonlighting without the approval of the Commission and ties the definition of "policymaking position" for that purpose to the definition of "policymaking position" in the State financial disclosure law. **See** 9 NYCRR §932.1(e) (defining "policymaking position" by cross-reference to the State financial disclosure law, NYC Pub. Off. Law §§73-a(1)(c)(ii) and 73-a(1)(c)(iii)) and §932.3(c) (imposing a moonlighting restriction on individuals serving in policymaking positions).

Similarly, Westchester County's Code of Ethics imposes post-employment restrictions on "reporting officers or employees," defined as those full-time County officers and employees required to file a financial disclosure statement. **See** Laws of Westchester County §§883.11(1), 883.21(h), 883.21(i)(3), 883.61.

It should be noted that this policymaker category of financial disclosure filers applies only to employees, not to officers, and thus not to members of boards and commissions. Such members must file financial disclosure reports under Ad. Code §12-110(b)(3)(a)(1), but only if they are entitled to compensation. If they serve without compensation, they do not file financial disclosure reports despite the fact that they exercise substantial policy discretion, as defined in 53 RCNY §1-02(a).

Rules of the City of New York

***** Current through December 2009 ****

53 RCNY 1-15

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-15 City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters.

(a) For purposes of Administrative Code §12-110(b)(3)(a)(4), a City employee shall be deemed to have duties that involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits if the employee performs any of the following duties:

(1) Determines the substantive content of a request for proposals or other bid request or change order;

(2) Makes a determination as to the responsiveness of a bid or the responsibility of a vendor or bidder;

(3) Evaluates a bid;

(4) Negotiates or determines the substantive content of a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order;

(5) Recommends or determines whether or to whom a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order should be awarded or granted;

(6) Approves a contract, lease, franchise, revocable consent, or concession or change order on behalf of the City or any agency subject to Administrative Code §12-110; or

(7) Determines the content of or promulgates City procurement policies, rules, or regulations.

(b) Clerical personnel and other public servants who, in relation to the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits, perform only ministerial tasks shall not be required to file a financial disclosure report pursuant to Administrative Code §12-110(b)(3)(a)(4). For example, public servants who are under the supervision of others and are without substantial personal discretion, and who perform only clerical tasks (such as typing, filing, or distributing contracts, leases, franchises, revocable consents, concessions, or zoning changes, variances, or special permits or calendaring meetings or who identify potential bidders or vendors) shall not, on the basis of such tasks alone, be required to file a financial disclosure report. Similarly, public servants who write a request for proposals, bid request, change order, contract, lease, franchise, revocable consent, concession or application for a zoning change, variance, or special permit or procurement policy, rule, or regulation under the direction of a superior but who do not determine the substantive content of the document shall not, on the basis of such tasks alone, be required to file a financial disclosure report.

HISTORICAL NOTE

Section added City Record Jan. 30, 2004 eff. Feb. 29, 2004. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 30, 2004:

Statutory Authority:

Sections 2603(a) of the New York City Charter and Section 12-110(b)(3)(a)(4) of the New York City Administrative Code.

Statement of Basis of Purpose of the Rule:

As mandated by New York State law, the City's Financial Disclosure Law requires the filing of an annual financial disclosure report by, among others,

Each city employee whose duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions and applications for zoning changes, variances and special permits, as defined by rule of the conflicts of interest board and as annually determined by his or her agency head, subject to review by the conflicts of interest board.

Ad. Code §12-110(b)(3)(a)(4), as amended by Local Law 43 of 2003, effective January 1, 2004. **See also** NYS Gen. Mun. Law §§811(1)(a), 813(9)(k). The Board must, therefore, adopt a rule defining these so-called "contract" filers. The Board must also adopt a separate rule regulating appeals by public servants who contest their designation as "contract" filers. **See** Ad. Code §12-110(c)(2), as amended by Local Law 43 of 2003. Historically, determination of such appeals by unionized employees has consumed considerable time of the filer's agency, which makes the initial determination as to whether the agency correctly identified the public servant as a "contract" filer and provides documentation in support of that initial determination; the filer's union, which prosecutes the appeal; the Office of Labor Relations, which currently defends the appeal; the Office of Collective Bargaining, which currently hears the appeal and makes a recommendation; the Department of Investigation, which currently makes the final determination of the public servant's filing status; and the Board, which currently provides technical and legal support throughout the appeal process. As of January 1, 2004, appeals will be determined by the Board. **See** Ad. Code §12-110(c)(2), as amended by Local Law 43 of 2003. Moreover, in the Board's experience, agencies differ widely in their interpretation of what constitutes the "negotiation, authorization or approval of contracts." Some agencies include everyone involved in purchasing, even clerical help; other agencies include only procurement officers. Little uniformity exists among agencies in interpreting this provision of law. As the Board has often stated, the purpose of the City's ethics laws, including its Financial Disclosure Law, lies in promoting both the reality and the perception of integrity in City

goverment by preventing conflicts of interest before they occur. The focus, therefore, lies on prevention, not punishment. Thus, financial disclosure focuses the official's attention at least once each year upon the Conflicts of Interest Law; alerts the public, the media, supervisors, vendors, and the filer to his or her possible conflicts of interest, thereby helping to avoid them; and provides a check on transactional disclosure and recusal by a public servant when a potential conflict actually arises. In light of the foregoing, the Board's intent in drafting the rule is threefold: (1) to limit financial disclosure filing to those public servants who are at risk of conflicts of interest; (2) to ensure that rules for determining who is a "contract" filer are uniform and uniformly applied throughout the City; and (3) to reduce the number of appeals by defining with some precision who should and should not be filing a financial disclosure report because of "contracting" duties.

Rules of the City of New York

***** Current through December 2009 ****

53 RCNY 1-16

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-16 Prohibited Gifts from Lobbyists and Exceptions Thereto.

(a) Pursuant to Administrative Code §3-225, no person required to be listed on a statement of registration pursuant to §3-213(c)(1) of the Administrative Code shall offer or give a gift to any public servant.

(b) For purposes of this section:

(1) the persons required to be listed on a statement of registration pursuant to §3-213(c)(1) of the Administrative Code include (i) the lobbyist, (ii) the spouse or domestic partner of the lobbyist, (iii) the unemancipated children of the lobbyist, and (iv) if the lobbyist is an organization, the officers or employees of such lobbyist who engage in any lobbying activities or who are employed in such lobbyist's division that engages in lobbying activities and the spouse or domestic partner and unemancipated children of such officers or employees;

(2) the term "lobbyist" shall have the same meaning as used in §3-211 of the Administrative Code;

(3) the term "offer" shall include every (i) attempt or offer to give a gift, or (ii) attempt or offer to arrange for the making of a gift;

(4) the term "give" shall include every (i) tender of a gift, or (ii) action as an agent in the making of a gift, or (iii) arrangement for the making of a gift;

(5) the term "gift" shall include any gift which has any value whatsoever, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form.

(c) For purposes of Administrative Code §3-225 and this section, the following gifts shall not be prohibited:

(1) de minimis promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause;

(2) gifts that are customary on family or social occasions from a family member or close personal friend, when it can be shown under all relevant circumstances that it is the family or personal relationship rather than the lobbying activity that is the controlling factor and the public servant's receipt of the gift would not result in or create the appearance of:

(i) using his or her office for private gain;

(ii) giving preferential treatment to any person or entity;

(iii) losing independence or impartiality; or

(iv) accepting gifts or favors for performing official duties;

(3) awards, plaques, and other similar items which are publicly presented in recognition of public service, provided that the item or items have no substantial resale value; (4) free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances:

(i) when offered during a meeting which the public servant is attending for official reasons;

(ii) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;

(iii) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and refusal to participate and/or individual payment would be impractical;

(iv) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical; or,

(v) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City;

(5) meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;

(6) invitation to attendance at professional or educational programs as a guest of the sponsoring organization;

(7) invitation to attendance at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;

(8) invitation to attendance at a public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization;

(9) invitation to attendance by a public servant who is an elected official, a member of the elected official's staff authorized by the elected official, or a member of the central staff for the council authorized by the speaker of the council at a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization;

(10) travel-related expenses from a private entity which is offered or given as a gift to the City rather than to the public servant, so long as: (i) the trip is for a City purpose and therefore could properly be paid for with City funds; (ii) the travel arrangements are appropriate for that purpose; and (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose;

(d) Nothing in this section shall be deemed to authorize a person required to be listed on a statement of registration pursuant to §3-213(c)(1) of the Administrative Code to offer or give a gift to any public servant in violation of any other applicable federal, state or local law, rule or regulation, including but not limited to the New York State Lobbying Act.

HISTORICAL NOTE

Section added City Record Dec. 27, 2006 §2, eff. Jan. 26, 2007. [See T53 §1-01 Note 6]

Rules of the City of New York

***** Current through December 2009 ****

53 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 2 PROCEDURAL RULES FOR HEARINGS*

§2-01 Initial Determination.

(a) **Notice.** If the Board makes an initial determination, based on a complaint, investigation, or other information available to the Board, that there is probable cause to believe that a public servant (which for purposes of Charter §2603(h) includes a former1 public servant) has violated a provision of Chapter 68 of the City Charter, the Board shall notify the public servant of its determination in writing. The notice shall contain a statement of the facts upon which the Board relied for its determination of probable cause and a statement of the provisions of law allegedly violated. The notice shall afford the public servant an opportunity, either orally or in writing, to respond to, explain, rebut, or provide information concerning the allegations in such notice within fifteen days of service of the notice. The notice shall also inform the public servant of his or her right to be represented by counsel or any other person, and shall include a copy of the Board's procedural rules. A notice of initial determination shall not be required in a proceeding brought pursuant to §12-110 of the Administrative Code.

(b) **Request for a Stay.** In response to the Board's notice, the public servant may apply to the Board for a stay of the proceedings, for good cause shown. The Board may grant or deny such request in its sole discretion.

(c) **Admission of Facts.** If, in response to the Board's notice, the public servant admits to the facts contained therein or to a violation of the provisions of Chapter 68 of the City Charter and elects to forgo a hearing, the Board may, after consulting with the head of the agency served or formerly served by the public servant, or, in the case of an agency head, after consulting with the Mayor, issue an order finding a violation and imposing the penalties it deems appropriate under Chapter 68 of the City Charter, provided, however, that pursuant to Charter §2603(h)(3), the Board shall not impose penalties against members of the City Council, or public servants employed by the City Council or by members of the City Council, but may recommend to the City Council such penalties as the Board deems appropriate. When a

penalty is recommended, the City Council shall report to the Board what action was taken.

(d) **No Probable Cause Finding.** If, after receipt of the public servant's response, the Board determines that there is no probable cause to believe that a violation has occurred, the Board shall dismiss the matter and inform the public servant in writing of its decision.

HISTORICAL NOTE

Section amended City Record Feb. 6, 1996 eff. Mar. 7, 1996. [See T53 Chapter 2 footnote]

Section added City Record Aug. 5, 1991 eff. Sept. 4, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A non-incumbent candidate for City Council is not a "public servant," and therefore service of adjudication notices on the candidate is governed not by this section but by OATH's rule, 48 RCNY §1-23(b). Conflicts of Interest Board v. Two City Council Candidates, OATH Index Nos. 902-03/93 (July 7, 1993).

FOOTNOTES

1

[Footnote 1]: * Chapter 2 added City Record Aug. 5, 1991 eff. Sept. 4, 1991. Note Statement of Basis and Purpose: Pursuant to the authority vested in the Conflicts of Interest Board (the Board) by §2603(h) of the New York City Charter, the Board is authorized to promulgate procedural rules for conducting adjudicatory hearings. Such hearings are to be held following the Board's determination that there is probable cause to believe that a public servant has violated a provision of the Conflicts of Interest Law (City Charter Chapter 68) or the financial disclosure law (Administrative Code §12-110). The rules proposed herein provide that the hearings shall be conducted by the Board or by the Office of Administrative Trials and Hearings, designated by the Board.

Chapter 2 amended City Record Feb. 6, 1996 eff. Mar. 7, 1996. Note further provisions:

Although the Conflicts of Interest Board's (the "Board's") procedural rules for hearings have worked well since their adoption in 1991, several problems have arisen with respect to those rules that need to be addressed, particularly in view of the Board's substantially increased enforcement efforts. The amendments address those problems.

The hearing process may be divided into four stages:

(1) The Board's initial determination of probable cause to believe that the respondent has violated the conflicts of interest law (Chapter 68 of the New York City Charter) or the financial disclosure law (Section 12-110 of the Administrative Code) and the respondent's response;

(2) Service of a petition, which commences the formal proceedings, and the respondent's answer;

(3) The hearing; and

(4) The decision and order of the Board.

The first four sections of the Board's hearing rules address each of these stages. The fifth section of the Board's hearing rules currently addresses only confidentiality but is amended to regulate miscellaneous matters

that are relevant throughout the hearing process, such as service of papers.

The amendments effect eight primary changes in the Board's hearing rules:

(1) Elimination of probable cause notices in financial disclosure litigation;

(2) Elimination of the requirement for certified mail service, except for petitions (the jurisdiction-obtaining document that commences an enforcement proceeding) when they are served by first class mail, and expansion of the methods for serving Board documents to allow all methods of service permitted by the CPLR;

(3) Clarification of which rules apply to hearings before OATH and which apply to hearings before the Board or before a Board member;

(4) Clarification of the requirement that only the hearing officer may issue subpoenas in Chapter 68 or Section 12-110 hearings;

(5) Clarification of the procedures for disposing of a case by agreement;

(6) Authorization of ex parte communications between the enforcement attorney and the Board in certain circumstances;

(7) Reorganization of the rules; and

(8) Certain technical amendments, such as measuring deadlines from time of service instead of from time of receipt.

Each of these changes is discussed below.

Probable cause notices. Through complaints, through referrals from the Department of Investigation and other City agencies, and through the Board's own initiatives, the Board becomes aware of conduct that might violate Chapter 68. If upon examining that conduct the Board makes an initial determination that there is probable cause to believe that the public servant has violated a provision of Chapter 68, the Board must notify the public servant of that determination in writing. The notice must contain a statement of the facts upon which the Board relied for its determination and a statement of the provisions of law allegedly violated. Charter §2603(h)(1); current Board rules §2-01(a).

The financial disclosure law contains no such requirement for probable cause notices in financial disclosure litigation. Indeed, such notices have little use in such litigation, where the sole issue is whether the official filed his or her financial disclosure report (or paid his or her late fine). In addition, as a result of the large number of financial disclosure cases, the requirement of a probable cause notice imposes a substantial and unnecessary burden upon the Board's staff. For these reasons, the amendments eliminate the requirement of probable cause notices in cases arising under the financial disclosure law. See amended Board rule §2-01.

Certified mail. The current Board rules require that the Board serve notices, petitions, orders, and other documents both by first class mail and either by personal service or by certified mail, return receipt requested, or by fax. Current Board rules §2-01(e). Except for petitions, which formally commence the enforcement proceeding, no reason exists for requiring that every Board document be served twice. Such a requirement is wasteful and, particularly in financial disclosure litigation, imposes a significant burden upon the Board's staff, which currently spends substantial time simply filling out forms for certified mail. Furthermore, any method of service permissible under the Civil Practice Law and Rules ("CPLR") in civil litigation should also be permissible in Board proceedings. Accordingly, the amended rule eliminates the dual service requirement, except for petitions served by mail rather than by other methods of service, and expands the methods of service

to include those permitted by the CPLR. For these purposes, the amended rule treats petitions like summonses and other Board documents like interlocutory papers. Amended Board rule §2-05(c), (d).

Applicable rules in hearings. The current Board rules are vague as to which rules apply to hearings conducted by the Board or a Board member and which apply to hearings conducted by the Office of Administrative Trials and Hearings ("OATH") at the Board's request. For example, the current provisions regulating dispositions by agreement, although set forth in the subdivision dealing with Board hearings, would appear also to apply to hearings held before OATH. See current Board rules §2-03(b)(3). The amendments clarify these matters and also clarify that hearings may be conducted by an individual Board member designated by the Board. See amended Board rule §2-03.

Subpoenas. The current Board rules provide that, where the Board hears the case, only the Board may issue a subpoena. The amended rules require that subpoenas be issued by a member of the Board, where the Board or a Board member is hearing the case, or by an administrative law judge, where OATH is hearing the case. See amended Board rule §2-03(b).

Dispositions by agreement. The amended rule clarifies a number of matters relating to the disposition of a proceeding by agreement between the responent and the Board. See amended Board rule §2-05(h). For example, the current rule suggests that a disposition by agreement must await service of a petition (which formally commences the proceeding), even in a Chapter 68 case, although in many instances the Board may be able favorably to dispose of a case by agreement after service of the probable cause notice. The current rule also suggests that an individual Board member may dispose of a case by agreement with the respondent, when in fact only the Board itself may dispose of a case.

The amended rule also introduces certain safeguards, based on OATH's rules, to prevent the appearance of bias as a result of settlement conferences, where the Board or a Board member is hearing the case. See amended Board rule §§2-03(d)(2), 2-05(h). The amended rule adopts the requirements of the OATH rules that offers of disposition are confidential and inadmissible at trial. Finally, the current rule appears to confuse a disposition by agreement and a determination by the Board that a violation of law has occurred. The Board may make such a determination of violation only after a hearing or respondent's default on a hearing or respondent's admission in response to the Board's notice of probable cause. See Charter §2603(h)(3). After consultation with the respondent's agency head, the Board then issues an order of violation imposing or recommending penalties. A disposition by agreement, on the other hand, is an agreement between the Board and the respondent and does not involve any hearing or any determination by the Board that a violation of law has occurred. These matters have been clarified in the amended rule.

Ex parte communications. Current Board rule §2-03(b)(5) prohibits ex parte communications between the prosecuting attorney and the Board once the Board "has determined that there is probable cause to believe that a violation of the provisions of Chapter 68 has occurred." That rule contains at least two defects. First, it is unclear whether "determined" refers to the initial determination of probable cause or the sustaining of probable cause. Second, the rule has proven unnecessarily cumbersome and an impediment to disposition of cases by agreement. The amended rule clarifies that the prohibition against ex parte communications comes into play once the petition is served, that the prohibition only applies to communications concerning the merits of the case, and that ex parte communications are permitted on ministerial matters, in an emergency, or with the consent of the respondent. Amended Board rule §2-05(g).

Reorganization of rules. The current Board hearing rules contain provisions of general application within rules governing specific matters. For example, the provisions on service of documents and computation of time are contained in the rule on the initial determination of probable cause. Current Board rule §2-01(e), (f). The provisions on disposition by agreement and ex parte communications are set out in the rule on hearings. Current Board rule §2-03(b)(3), (b)(5). The amended rule collects these provisions that address matters dealing with

Board proceedings generally into Board rule §2-05, which currently addresses only confidentiality. The rule on hearings is also reorganized. See amended rule §2-03. Specifically, that amended rule is divided into four subdivisions: conduct of hearings generally, subpoenas, conduct of hearings by OATH, and conduct of hearings by the Board or a Board member. The provisions of the current rule §2-03 are incorporated into the appropriate subdivision in the amended rule.

Technical amendments. The Board's rules are clarified by a number of technical amendments, including:

· Measuring time periods in all cases from the service of a document (amended rule §§2-01(a), 2-02(c)(1), 2-04(a));

· Setting out a provision, modelled on CPLR 2103(b)(2), for uniform extensions of time to serve documents in response to documents served by mail (amended Board rule §2-05(e));

· Clarifying that leave for permission to amend a pleading may be granted by the person or entity conducting the hearing (amended Board rule §2-02(d)) (this change was proposed by the Board during the commenting period);

· Deleting unnecessary cross-references to the OATH rules (current Board rule §§2-03(a)(1)-(3), (b)(1), (5));

· Clarifying that Board consultation with an agency head is not required in financial disclosure cases, only in Chapter 68 cases (amended Board rule §2-04(b));

· Establishing procedures, based on OATH's rules, for appearances and substitution of counsel (amended Board rule §2-05(a), (b));

· Changing "legal holiday" to "public holiday" to conform to General Construction Law §24 and changing the provision on extensions of time where a deadline falls on a non-business day to conform to General Construction Law §25-a (amended Board rule §2-05(e)); and

· Specifying that OATH's rules yield to a contrary Board rule (amended Board rule §2-05(i)).

The foregoing amendments to the Board hearing rules should streamline and substantially aid the Board in its enforcement efforts.

Rules of the City of New York

***** Current through December 2009 ****

53 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 2 PROCEDURAL RULES FOR HEARINGS*

§2-02 Commencement of Formal Proceedings and Pleadings.

(a) **Determination of Probable Cause.** If, after consideration of the public servant's response, the Board determines that there remains probable cause to believe that a violation of the provisions of Chapter 68 of the City Charter has occurred, and the public servant has not elected to forgo the hearing, the Board shall hold or direct a hearing to be held on the record to determine whether such violation has occurred.

If the public servant is subject to the jurisdiction of a state law provision or collective bargaining agreement which provides for the conduct of a disciplinary hearing by another body, the Board shall refer the matter to the appropriate entity. The hearing shall be conducted in accordance with the rules of that entity.

The Board may also refer a matter to the public servant's agency if the Board deems the violation to be minor or if other disciplinary charges are pending there against the public servant.

(b) **Petition.** The Board shall institute formal proceedings by serving a petition on the public servant. The petition shall set forth the facts which, if proved, would constitute a violation of Chapter 68 of the City Charter or Section 12-110 of the Administrative Code, as well as the applicable provisions thereof which are alleged to have been violated. The petition shall also advise the public servant of the public servant's rights to file an answer, to a hearing, to be represented at such hearing by counsel or any other person, and to cross-examine witnesses and present evidence.

(c) **Answer.** (1) **General Rule.** The public servant shall answer the petition by serving an answer on the Board within eight days after service of the petition, unless a different time is fixed by the Board. The public servant shall serve the answer personally or by certified or registered mail, return receipt requested.

(2) **Form and Contents of Answer.** The answer shall be in writing and shall contain specific responses, by admission, denial, or otherwise, to each allegation of the petition and shall assert all affirmative defenses, if any. The public servant may include in the answer matters in mitigation. The answer shall be signed and shall contain the full name, address, and telephone number of the public servant. If the public servant is represented, the representative's name, address, and telephone number shall also appear on the answer, which shall be signed by either the public servant or by his or her representative.

(3) **Effect of Failure to Answer.** If the public servant fails to serve an answer, all allegations of the petition shall be deemed admitted and the Board shall proceed to hold a hearing in which prosecuting counsel shall submit for the record an offer of proof establishing the factual basis on which the Board may issue an order. If the public servant fails to respond specifically to any allegation or charge in the petition, such allegation or charge shall be deemed admitted.

(d) **Amendment of Pleadings.** Pleadings shall be amended as promptly as possible upon conditions just to all parties. If a pleading is to be amended less than twenty-five days before the commencement of the hearing, the amendment may be made only on consent of the parties or by leave of the Board, if the Board is conducting the hearing, or by leave of a Board member or Administrative Law Judge, if the Board member or Administrative Law Judge is conducting the hearing.

HISTORICAL NOTE

Section amended City Record Feb. 6, 1996 eff. Mar. 7, 1996. [See T53 Chapter 2 footnote]

Section added City Record Aug. 5, 1991 eff. Sept. 4, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pursuant to paragraph (c) of this section, a respondent's failure to answer the petition constitutes an admission of all of the allegations of the petition. Conflicts of Interest Board v. Sixty-Two City Employees, OATH Index Nos. 593/94, et al. (Apr. 8, 1994).

¶ 2. Pursuant to paragraph (c)(3) of this section, a respondent's failure to answer the petition constitutes an admission of all of the allegations of the petition. **Conflicts of Interest Board v. Ten Public Servants,** OATH Index Nos. 1352/95, **et al.** (June 12, 1995).

¶ 3. Pursuant to this rule, if a public servant fails to answer a petition, the allegations of the petition shall be deemed to be admitted and the prosecuting attorney is only required to submit an offer of proof establishing the factual basis on which the Board may issue an order. **Conflicts of Interest Bd. v. Three Public Servants,** OATH Index Nos. 361, 366, 371/04 (Nov. 6, 2003).

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***** Current through December 2009 ****

53 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 2 PROCEDURAL RULES FOR HEARINGS*

§2-03 Hearing.

(a) **Conduct of Hearings Generally.** Hearings shall be conducted by the Board or, upon designation by the Board, by a member of the Board or the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings (OATH), or such administrative law judge (ALJ) as the Chief Administrative Law Judge shall assign.

(b) **Subpoenas.** Subpoenas requiring the attendance of a witness and subpoenas duces tecum requiring the production of books, papers, and other things may be issued only by (i) the Administrative Law Judge, where the hearing has been referred to OATH, or (ii) a member of the Board, where the hearing is conducted by the Board or by a member of the Board, upon application of a party or upon the Administrative Law Judge's or the Board member's own motion. In addition to or in lieu of these subpoenas, the Administrative Law Judge or the Board member may also issue an order directing the party or person under the control of a party to attend or produce.

(c) **Conduct of Hearings by OATH.** If the Board refers a hearing to OATH, a copy of the petition shall also be sent to OATH at the time the public servant is served with the petition. OATH shall conduct the hearing in accordance with its rules, as set forth in Title 48 of the Rules of the City of New York, except as otherwise provided by these rules.

(d) **Conduct of Hearings by the Board or by a Board Member.** (1) **Generally.** The Board may hear a case or may designate a member of the Board to hear a case, make findings of fact and conclusions of law, preside over pre-hearing matters and adjournments, and make recommendations to the Board for the proposed disposition of the proceeding. When a hearing is conducted by the Board, the hearing shall be presided over by the Board's Chair or by his or her designee. The Board or Board member shall conduct the hearing, including such pre-hearing matters as conferences, discovery, and motion practice, in conformance with the rules and procedures of OATH, as set forth in

Title 48 of the Rules of the City of New York, except as otherwise provided by these rules.

(2) **Disposition Conferences and Agreements.** If disposition of the proceeding is to be discussed at a conference, the Board shall designate an individual, other than a Board member participating in the hearing, to conduct the conference. During disposition discussions, upon notice to the parties, the person conducting the conference may confer with each party and/or representative separately. Board members shall not be called to testify in any proceeding concerning statements made at a disposition conference.

(3) **Order of Proceedings.** Prosecuting counsel shall have the burden of proof by the preponderance of the evidence, shall initiate the presentation of evidence, and may present rebuttal evidence. The public servant may introduce evidence after prosecuting counsel has completed his or her case. Opening statements, if any, shall be made first by prosecuting counsel. Closing statements, if any, shall be made first by the public servant. This order of proceedings may be modified at the discretion of the Board or Board member.

HISTORICAL NOTE

Section amended City Record Feb. 6, 1996 eff. Mar. 7, 1996. [See T53 Chapter 2 footnote]

Section added City Record Aug. 5, 1991 eff. Sept. 4, 1991.

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***** Current through December 2009 ****

53 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 2 PROCEDURAL RULES FOR HEARINGS*

§2-04 Decisions and Orders.

(a) **Report to the Board.** When a hearing has been conducted by either OATH or a member of the Board designated to hear the case, a report of recommended findings of fact and conclusions of law and recommendations for the disposition of the proceeding shall be issued and forwarded, along with the original transcript of the proceeding and all documents introduced into the record, to the Board for review and final action. The report shall not be made public. A copy of the report and recommendation shall be sent to all parties and their counsel or other representative in order to afford them the opportunity to comment before final action is taken by the Board. If prosecuting counsel or the public servant wishes to comment, he or she shall do so within ten days of service of the report and recommendation.

(b) **Finding of Violation.** If after the hearing and upon a consideration of all the evidence in the record of hearing, including comments, the Board finds that a public servant has engaged in conduct prohibited by Chapter 68 of the City Charter, the Board shall consult with the head of the agency served or formerly served by the public servant, or in the case of an agency head, consult with the Mayor. Where the Board finds a violation of Chapter 68 or Section 12-110 of the Administrative Code, the Board shall state its final findings of fact and conclusions of law and issue an order imposing any penalties it deems appropriate under either statute. The order shall include notice of the public servant's right to appeal to the New York State Supreme Court. Alternatively, in the case of a violation of Chapter 68, the Board may state its findings and conclusions and recommend a penalty, if any, to the head of the agency served by the public servant or former public servant or, in the case of an agency head or former agency head, to the Mayor. Pursuant to Charter §2604(h)(3), the Board shall not impose penalties against members of the City Council, or public servants employed by the City Council or by members of the City Council, but may state its findings and conclusions and recommend to the City Council such penalties as the Board deems appropriate. When a penalty is recommended, the

head of the agency, Mayor, or City Council shall report to the Board what action was taken.

(c) **Consultation by Agency.** In instances where the Board does not hold a hearing and instead refers a matter to the public servant's agency, that agency shall consult with the Board prior to issuing its final decision.

(d) **Dismissals.** If, after the hearing and upon consideration of the record, the Board finds that a public servant has not engaged in acts prohibited by Chapter 68 of the City Charter or Section 12-110 of the Administrative Code, the Board shall state its findings of facts and conclusions of law and shall issue an order dismissing the petition. The order shall not be made public.

HISTORICAL NOTE

Section amended City Record Feb. 6, 1996 eff. Mar. 7, 1996. [See T53 Chapter 2 footnote]

Section added City Record Aug. 5, 1991 eff. Sept. 4, 1991.

CASE NOTES

¶ 1. A post-hearing motion requesting the ALJ to increase a fine imposed on a City employee who filed a financial form and intentionally failed to pay the late filing fee was denied. Under 48 RCNY § 1-52, OATH does not have jurisdiction to consider post-hearing motions. Under section 2-04 of this title, counsel's arguments could be forwarded to the Conflict of Interest Board for consideration. **Conflicts of Interest Bd. v. Diaz-Irizarry,** OATH Index No. 2406/00, mem. dec. (June 15, 2001).

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***** Current through December 2009 ****

53 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 2 PROCEDURAL RULES FOR HEARINGS*

§2-05 General Matters.

(a) **Appearances before the Board.** (1) A party may appear before the Board in person, by an attorney, or by a duly authorized representative. The person appearing for the party shall file a notice of appearance with the Board. The filing of any papers by an attorney or other representative who has not previously appeared shall constitute the filing of a notice of appearance by that person and shall conform to the requirements of paragraphs (2) and (4) of this subdivision.

(2) The appearance of a member in good standing of the bar of a court of general jurisdiction of any state or territory of the United States shall be indicated by the suffix "Esq." and the designation "Attorney for (person represented)." The appearance of any other person shall be indicated by the designation "Representative for (person repre- sented)."

(3) Absent extraordinary circumstances, no application shall be made or argued by any attorney or other representative who has not filed a notice of appearance.

(4) A person may not file a notice of appearance on behalf of a party unless the person has been retained by that party to represent the party before the Board. Filing a notice of appearance constitutes a representation that the person appearing has been so retained.

(b) **Withdrawal and Substitution of Counsel.** (1) An attorney who has filed a notice of appearance shall not withdraw from representation without the permission of the Board, upon application. Withdrawals shall not be granted unless upon consent of the client or when other cause exists, as delineated in the applicable provisions of the Code of

Professional Responsibility.

(2) Notices of substitution of counsel served and filed more than twenty days prior to a hearing before the Board or before a member of the Board may be filed without leave of the Board or Board member. Notices of substitution of counsel served and filed less than twenty-one days prior to a hearing before the Board or before a member of the Board may be filed only with the permission of the Board or Board member, which permission shall be freely given, absent prejudice or substantial delay of the proceedings.

(c) **Service of Petition by Board.** A petition shall be served on the public servant (i) in the manner provided in §312-a, or subdivisions 1, 2, or 4 of §308, of the New York Civil Practice Law and Rules for service of a summons or (ii) by both certified mail, return receipt requested, and first class mail to the public servant's last known residence or actual place of business or (iii) in such manner as the Board directs, if service is impracticable under paragraphs (i) and (ii) of this subdivision, or (iv) in any manner agreed upon by counsel to the Board and the public servant or his or her representative.

(d) **Service of Other Documents by Board.** Notices, orders, and all other documents, except petitions and subpoenas, originating with the Board shall be served on the public servant (i) by personal delivery to the public servant or (ii) by first class mail to the public servant's last known residence or actual place of business or (iii) by overnight delivery service to the public servant's last known residence or actual place of business or (iv) by telephonic facsimile (FAX) or similar transmission or (v) by leaving the paper at the public servant's last known residence with a person of suitable age and discretion or (vi) in such manner as the Board directs, if service is impracticable under paragraphs (i), (ii), (iii), (iv), or (v) of this subdivision, or (vii) in any manner agreed upon by counsel to the Board and the public servant or his or her representative. Where the public servant has appeared by a representative, all papers served by the Board subsequent to that appearance shall be served upon the representative by one of the methods provided in paragraphs (i)-(vii) of this subdivision.

(e) **Computation of Time.** The computation of any time period referred to in these rules shall be calculated in calendar days, except that when the last day of the time period is a Saturday, Sunday, or public holiday, the period shall run until the end of the next following business day. Where a period of time prescribed by the rules set forth in this chapter is measured from the service of a paper and service of that paper is made in the manner provided by paragraph (ii) of subdivision (a) or paragraph (ii) of subdivision (b) of this section, five days shall be added to the prescribed period.

(f) **Confidentiality.** All matters relating to complaints submitted to or inquired into by the Board, or any action taken by the Board in connection therewith or hearings conducted by the Board or OATH, shall be kept confidential unless the public servant waives confidentiality and the Board determines that confidentiality is not otherwise required. Hearings conducted by the Board or by OATH shall be public if requested by the public servant. Final findings, conclusions, and orders issued upon a violation of Chapter 68 shall be made public.

(g) **Ex Parte Communications with Board.** (1) After service of the petition in a case, counsel conducting the prosecution of the case on behalf of the Board shall not communicate ex parte with any member of the Board concerning the merits of the case, except as provided in paragraph (2) of this subdivision.

(2) Counsel conducting the prosecution of a case on behalf of the Board may communicate ex parte with the Board, or any member thereof, with respect to ministerial matters involving the case or on consent of the respondent or respondent's counsel or in an emergency.

(h) **Disposition by Agreement.** At any time after the service of a notice of probable cause in a proceeding brought pursuant to Chapter 68 or at any time after service of a petition in a proceeding brought pursuant to §12-110 of the Administrative Code, the public servant and the Board may agree to dispose of the case by agreement. For this purpose, the Board or any Board member designated by the Board may conduct a disposition conference, provided that, when the

Board or a member of the Board conducts or is to conduct the hearing, the Board shall comply with the requirements of §2-03(d)(2). All offers of disposition, whether made at a conference, hearing, or otherwise, shall be confidential and shall be inadmissible at trial of any case. If a disposition by agreement is reached, it shall be reduced to writing and signed by the public servant or his or her representative and the Board or, in the discretion of the Board, placed on the record. When a disposition by agreement contains an acknowledgment that a public servant's conduct has violated a provision of Chapter 68 of the City Charter or §12-110 of the Administrative Code, that disposition by agreement shall be made public by the Board.

(i) **OATH Rules.** In the event of any inconsistency between these rules and the rules of the Office of Administrative Trials and Hearings, these rules shall govern.

HISTORICAL NOTE

Section amended City Record Feb. 6, 1996 eff. Mar. 7, 1996. [See T53 Chapter 2 footnote]

Section added City Record Aug. 5, 1991 eff. Sept. 4, 1991.

CASE NOTES

¶ 1. Failure to comply with subsection (c) of this section did not deprive the Board or OATH of jurisdiction where it was clear respondent had actual notice of the petition. **Conflicts of Interest Bd. v. Pentangelo**, Conflicts of Interest Bd. Case No. 99-026 (July 13, 2007), **adopting,** OATH Index No. 422/07 (Mar. 8, 2007).

¶ 2. Absent agreement by respondent's attorney to accept service of the petition on behalf of his/her client, subdivision (c) of this section does not permit the Board to serve the petition on respondent's attorney. Where, however, respondent received timely actual notice of the petition that was served upon his attorney, any irregularity in the manner of service was harmless and provided no basis to dismiss the petition. **Conflicts of Interest Bd. v. Pentangelo**, OATH Index No. 422/07 (Mar. 8, 2007), **adopted**, Conflicts of Interest Bd. Case No. 99-026 (July 13, 2007).

¶ 3. Provision in subdivision (d) for service of papers upon party's attorney after attorney has appeared in the case does not apply to service of the petition. **Conflicts of Interest Bd. v. Pentangelo**, OATH Index No. 422/07 (Mar. 8, 2007), **adopted**, Conflicts of Interest Bd. Case No. 99-026 (July 13, 2007).

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55 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-01 Scope and Enforcement.

These Rules and Regulations shall:

(a) Apply to all property under the control of the Division of Facilities Management and Construction Services.

(b) Be in addition to and supplement applicable City, State and Federal laws and regulations.

(c) Be enforced by the Division of Facilities Management and Construction Services and by each occupant agency.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

55 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-02 Definitions.

The following words and phrases as used in these Rules and Regulations shall have the following meaning:

Authorized individual. An "authorized individual" is any police officer, peace officer, special patrolman, city official or any individual designated by the Deputy Commissioner of the Division of Facilities Management and Construction Services or the head of an occupant agency to exercise authority in the management, operation and utilization of property.

Deputy Commissioner. The "Deputy Commissioner" is the Deputy Commissioner of the Division of Facilities Management and Construction Services.

Occupant agency. An "occupant agency" is any agency of the City of New York which occupies or possesses any part of property under the control of the Division of Facilities Management and Construction Services.

Property. "Property" is any real estate which is owned, leased or operated by the City of New York or any agency thereof, which is under the control of the Division of Facilities Management and Construction Services.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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55 RCNY 1-03

RULES OF THE CITY OF NEW YORK

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CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-03 Operating Hours; Emergencies; Packages.

(a) Except as otherwise ordered, property shall be closed to the public after normal working hours.

(b) Property may be closed to the public during emergencies and at such other times as may be necessary for the conduct of business.

(c) Anyone admitted on the property may be required to show identification and to sign a register.

(d) Persons carrying packages, briefcases and other types of containers shall be required to open them for inspection when so requested by an authorized individual as a condition of entering or leaving the property.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

55 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-04 Preservation of Property.

While on or about the property, no person shall:

(a) Dump, litter or throw any refuse, dirt or rubbish.

(b) Abandon a vehicle.

(c) Throw or project a stone or other missile.

(d) Climb upon the roof of any building or enter any area which is posted as being closed to the public.

(e) Destroy or damage any structure or remove any part thereof.

(f) Destroy, damage or remove any property found on or within any structure.

(g) Interfere with the operation of any utility system servicing the property.

(h) Injure, mutilate, deface, alter, change, displace, remove or destroy any posted sign or notice.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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55 RCNY 1-05

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CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-05 Conformity with Signs and Official Directions.

Persons on or about the property shall comply with official signs and obey directions given by authorized individuals.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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55 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-06 Gambling.

With the exception of those activities conducted by the Off-Track Betting Corporation, the operation of, or participation in, unauthorized lotteries, pools or games for money or something of value on or about the property is prohibited.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

55 RCNY 1-07

RULES OF THE CITY OF NEW YORK

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CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-07 Alcoholic Beverages, Drugs and Similar Substances.

(a) No person may enter upon property while his ability to function has been impaired by alcohol, drugs or any other substance.

(b) No person shall bring upon or use while on the property any substance capable of impairing normal human functioning.

(c) The above prohibition shall not apply to drugs prescribed by a physician or when permission has been obtained either from the Deputy Commissioner or head of the occupant agency.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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55 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-08 Soliciting, Vending and Debt Collection.

The soliciting of alms, subscriptions, contributions, commercial soliciting and vending of all kinds without the prior written approval of the Commissioner or his/her designee, and the collecting of private debts in or on the property is prohibited. This rule shall not apply to national and local drives for funds for charitable, educational or other such purposes sponsored or approved by the Commissioner or his/her designee, head of an occupant agency or elected city officials. Any person who violates this rule in any public building may be expelled from such building. Repeated violations of this rule may result in the violator being banned from the premises. Any person may appeal such ban in writing to the Commissioner.

HISTORICAL NOTE

Section amended City Record Mar. 3, 1998 eff. Apr. 2, 1998. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 3, 1998:

New York City Charter ("Charter") Section 811 authorizes the Commissioner of the Department of Citywide Administrative Services to perform all the functions and operations of the City relating to the maintenance and care of

public buildings and facilities. Pursuant to these powers, the Department has promulgated rules regulating behavior on City property under its control. This amendment allows the Department to expel and ban any person who violates the prohibition on private soliciting, vending and debt collection on such City property without the prior approval of the Department. The amendment facilitates the performance of the Department in its maintenance and operation of City property.

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55 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-09 Handbills.

(a) No person shall distribute any material such as pamphlets, handbills and flyers on the property unless the prior written approval of the Deputy Commissioner or head of the occupant agency has been obtained.

(b) No person shall place or cause to be placed upon or affixed to the property any words, characters, illustrations or devices as a notice of, or reference to any matter or event. This prohibition shall not apply to personal notices posted by employees on authorized bulletin boards, or when the prior written approval of the Deputy Commissioner has been obtained.

(c) The foregoing prohibitions shall not apply to notices or other materials posted or distributed pursuant to provisions made or contained in collective bargaining agreements.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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55 RCNY 1-10

RULES OF THE CITY OF NEW YORK

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CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-10 Animals.

Unless otherwise authorized, no person shall bring any animal, except properly harnessed seeing-eye dogs, onto the property.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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55 RCNY 1-11

RULES OF THE CITY OF NEW YORK

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§1-11 Vehicular Traffic.

(a) A person driving a vehicle upon the property shall operate it in a safe manner and comply with posted traffic signs and directions given by authorized individuals.

(b) A person driving a vehicle upon the property shall not:

(1) Park without a permit.

(2) Park in any area reserved for city vehicles or authorized individuals.

(3) Block entrances, driveways, walks, ramps, platforms or hydrants.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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55 RCNY 1-12

RULES OF THE CITY OF NEW YORK

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CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-12 Weapons and Explosives.

Unless otherwise ordered by law or regulation, no person shall carry any gun, firearm, explosives or deadly or dangerous weapon upon the property.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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55 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-13 Disturbances.

Any disorderly conduct or conduct on the property which creates loud and unusual noise or which obstructs the usual use of entrances, foyers, corridors, offices, elevators, stairways and parking lots or which otherwise tends to impede or disturb the public employees in the performance of their duties, or which impedes or disturbs the general public from obtaining the administrative services provided on the property, is prohibited.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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55 RCNY 1-14

RULES OF THE CITY OF NEW YORK

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CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-14 Photographs.

(a) Except for those holding permits from the Executive Director of the Office of Economic Development and members of the press who hold working press identification cards, no person shall take photographs or moving pictures within any structure located on the property.

(b) **Courtrooms.** The taking of photographs in a courtroom or the broadcasting or telecasting from a courtroom at any time or on any occasion is prohibited except where prior written permission has been obtained from the presiding justice of the Appellate Division of the Department wherein the courthouse is situated.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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55 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 3 FEES

§3-01 Fees.

(a) The fees charged by the Division of Real Property fall into the following categories:

(I) Lease application fee charged for the processing of lease applications.

(II) Title closing mortgage fees for preparation and processing of various documents used in connection with the auctioning and sale of real property by DRP.

(III) Test boring license fees.

(IV) Carnarsie cemetery fees for a certificate of burial right, perpetual care, annual care, foundation charges, interment and other services.

(V) Redemption of properties taken In Rem - management Fees.

(b) The fee schedule below lists each of these categories separately. All fees, unless otherwise specifically provided, shall be paid by certified cashier's check or postal order payable to the order of the Division of Real Property.

Category I-Lease application fee-$25

Category II-Title closings & mortgage fees for non-residential properties sold by City

Fee

(i)	Duplicate document (e.g. mortgage, deed)	$250
(ii)	Preparation of purchase Money mortgage and mortgage note Mortgage amount	
	Up to $40,000	$125
	$40,001-$100,000	$250
	Over $100,000	$500
(iii)	Preparation of other purchase money Mortgage related documents (assignments, satisfactions, subordinations and assumptions of the purchase money mortgage)	$150/per document
(iv)	Attendance of DRP employees at locations other than DRP office of execute transactions	$250 for each day or part thereof for each employee
(v)	Nonrefundable mortgage application fee	1% of maximum mortgage available, but not less than $300, nor more than $5,000
(vi)	Auctioneer's fee due from purchaser at the auction and payable by check drawn to order of auctioneer identified at time of sale,	

Purchase Price	Fee
$1,000 or less	$ 10
$1,001 to $5,000	$ 25
$5,001 to $7,500	$ 35
$7,501 to $25,000	$ 50
$25,001 to $50,000	$ 75
$50,001 to $75,000	$100
$75,001 to $100,000	$150
$100,001 to $200,000	$200
Above $200,000	.1% of the purchase price, but in no event greater than $500

(vii)	Assignment of purchaser's right Under memorandum of sale	$150.00
(viii)	Assignment of contract within 7 days of sale	$ 0
	Between 8 and 14 days from sale	$100.00
	After 14 days from sale	Not Allowed

Category III-Test Boring License fee

Public and Quasi Public Agencies	$ 1.00
All Other Applicants	$350.00

Category IV-Carnarsie Cemetery

Schedule of Prices Certificate of Burial Right

A certificate of burial right grants the privilege of interment or entombment in a specified grave or plot. Each grave measures 3 feet by 9 feet. Two interments may be in each grave in the traditional area and three in each grave in the park area. Each plot in the urn gardens measures 2 feet by 2 feet and permits the interment of several urns. Prices of certificates of burial rights are as follows:

[See tabular material in printed version]

Category V-Redemption of properties taken In Rem-Management fees

(i) Seven (7%) percent of all rents billed during the period of management by the City (from the date vesting through the date of release); or Twenty-Five ($25.00) Dollars per month, or fraction thereof, during the period of management by the City; whichever is greater.

(ii) Vacant property, deriving no income, is to be charged the minimum fee of Twenty-Five ($25.00) Dollars per month, or fraction thereof, during the period of management by the City.

Note: The Twenty-Five ($25.00) Dollar fee is to be applied to each lot within the "property"only if the lots are not contiguous.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subds. (a), (b) amended City Record May 15, 1992 eff. June 14, 1992.

Subd. (b) Category III deleted and added City Record Nov. 15, 1999 eff. Dec. 15, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 15, 1999:

New York City Charter, §824, authorizes the Commissioner of the Department of Citywide Administrative Services to manage and dispose of commercial real property of the City not used for public purposes. Such management and disposition entails a number of tasks including granting licenses to purchasers of such real property to enable them to enter upon the property to take test boring samples prior to closing of title. Previously DCAS has charged a flat rate of $350 to all applicants for test boring licenses. It has been determined that amending the fee schedule to charge a nominal fee of $1.00 to applicants which are public or quasi-public agencies would better serve public policy by not imposing an undue burden on publicly funded institutions engaged in acquisition of real property.

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CHAPTER 4 APPROVAL OF CONTRACT AWARDS

§4-01 Approving Awards of Contracts to Other Than the Lowest Responsible Bidder: (§313(b)(2) New York City Charter). [Repealed]

HISTORICAL NOTE

Section repealed City Record Apr. 14, 1999 eff. May 14, 1999. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record April 14, 1999:

After consultation with the Mayor's Office of Contracts, the Department of Citywide Administrative Services (DCAS) is proposing to repeal §4-01 of Chapter 4 of its rules, which describes the conditions under which DCAS will forward to the Mayor, for consideration for award to other than the lowest responsible bidder, contracts for certain goods manufactured by New York City based firms. The repeal of this rule reflects the decision to terminate the local preference program.

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55 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 5 DISPOSITION OF PERSONAL PROPERTY

§5-01 Disposition of Personal Property of the City.

(a) Personal property may be disposed of by the Division of Municipal Supplies by public or private sale or as otherwise authorized by law or regulation.

(1) The prior approval of the Comptroller is not required on a sale of personal property where such sale is to the highest responsible bidder at public auction or after receipt of sealed bids after advertisement in at least ten successive issues of The City Record. A bidder may be disqualified in accordance with applicable laws and regulations.

(2) If the estimated sales value of the personal property is $5,000 or less, the Division of Municipal Supply Services may make requests for offers, if possible, to at least three persons, firms or corporations separately engaged in the regular business of selling and buying materials of the class offered. All bids from other bidders shall be duly considered in making an award. Award of such informal sale, if any, must be made to the highest responsible bidder. However, no such award shall be valid without the prior approval of the comptroller. The total amount of such informal sales of the same class of materials shall not exceed $5,000 within a thirty-day period. The classification of materials of "the same class" shall be as determined by the commissioner and approved by the comptroller. Such classification shall be filed in the Division of Municipal Supply Services and the Office of the Comptroller and shall be effective upon publication in the City Record.

(3) When no bid or acceptable bid is received on an advertised sale, the Commissioner may waive the advertising requirements in an informal re-bid. Such sale on an informal re-bid shall be made only with the approval of the Comptroller. The Commissioner shall issue a certificate in writing that no acceptable bid was received when the proposal was originally advertised. Such certificate shall be filed in the Division of Municipal Supplies and with the

Comptroller.

(4) Personal property may be given to a vendor in part payment on a contract at public letting to furnish new personal property at the lowest net price.

(5) Personal property may be sold at private sale without public notice, at no less than the value fixed by the Division of Municipal Supplies subject to the approval of the Comptroller.

(6) Personal property may be transferred between the various City agencies by order of the Commissioner.

(7) All materials, supplies and equipment which the Commissioner considers of no sale value or use to the City may be destroyed or otherwise disposed of in the most advantageous manner under the direction of the Commissioner. This provision shall not apply to public records until their destruction or other disposition has been duly authorized in accordance with applicable law or regulation.

(8) Notwithstanding any of the foregoing, property classified by the commissioner as "memorabilia" may be disposed of in the best interests of the city by public, private, wholesale or retail sale under the direction of the commissioner without the prior approval of the comptroller. "Memorabilia" is defined as surplus or obsolete personal property, excluding aircraft, watercraft and land vehicles, not exceeding an estimated per-unit sale value of $5,000, which by reason of its use by the city has historic, aesthetic, novelty or sentimental value in excess of the property's salvage value. In addition to a wholesale or retail price not exceeding an estimated per-unit sale value of $5,000, the commissioner is authorized to negotiate in the best interests of the city to obtain additional income from the disposition of "memorabilia".

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record Nov. 21, 2003 eff. Dec. 21, 2003. [See Note 2]

Subd. (a) par (8) amended City Record Nov. 21, 2003 eff. Dec. 21, 2003. [SeeNote 2]

Subd. (a) par (8) added City Record May 4, 1999 eff. June 3, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 4, 1999:

New York City Charter Section 823 authorizes the Commissioner of the Department of Citywide Administrative Services to promulgate rules concerning the disposition of personal property. Current procedures for the disposition of surplus and obsolete property require the Department of Citywide Administrative Services to dispose of such property inefficiently and without maximizing the revenue received for surplus with historic, aesthetic, novelty or sentimental value greater than the property's salvage value. Adoption of this amendment facilitates the performance of the Department in the disposal of surplus property that has historic, aesthetic, novelty or sentimental value by allowing the Department to dispose of such property efficiently and in a manner which maximizes the revenue obtained from such disposal.

2. Statement of Basis and Purpose in City Record Nov. 21, 2003: New York City Charter Section 823 authorizes the commissioner of the Department of Citywide Administrative Services to promulgate rules concerning the disposition of personal property. Current rules allow for the disposition of personal property with an estimated sales value of $2,500 or less through an informal sale. Moreover, "memorabilia" is currently defined as surplus or obsolete personal property excluding aircraft, watercraft and land vehicles, not exceeding an estimated per-unit sale value of $2,500 which by reason of its use by the city has historic, aesthetic, novelty or sentimental value in excess of the

property's salvage value. This amendment increases the respective estimated sales values to not exceed $5,000 to expedite dispositions of personal property with relatively small value and, further, allows the Department to realize additional revenue from its disposition of "memorabilia".

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CHAPTER 6 "ORIGINAL EQUIPMENT MANUFACTURER AGREEMENTS" FOR PURPOSES OF THE CITY'S ANTI-APARTHEID LAW

§6-01 Definitions.

For purposes of the City's anti-apartheid rider, included in City contracts pursuant to Administrative Code Section 6-115*1 whenever the contractor has agreed to sign the rider, a company shall be deemed to be providing goods or services to South Africa pursuant to an "original equipment manufacturer agreement which provides for or authorizes the sale of equipment, alone or as part of a finished product, to a South African entity" in accordance with the following definitions:

(a) "Company #1" includes the company which seeks to enter a contract with a City agency, and is determining whether it is qualified to sign the City's anti-apartheid rider, and all "affiliates" of that company, as that term is defined in Administrative Code Section 6-115(a)(8).*

(b) "Sale" includes lease or rental of equipment.

(c) An "original equipment manufacturer agreement" ("O.E.M. agreement") is an agreement between a manufacturer (Company #1) and another manufacturer, a distributor, or a value-added reseller (Company #2), such that Company #1 provides products (which may include parts, components and/or subassemblies) and authorizes the sale of such products by Company #2 under any of the following circumstances:

(1) Company #1 makes a sale of its equipment to Company #2, which, with or without making minor modifications to the equipment, privately labels and sells it. An example would be an O.E.M. agreement whereby Company #2 purchases a copier from Company #1, and resells it as a copier under its own brand name, with or without

having first made minor modifications to the copier's packaging.

(2) Company #1 makes a sale of its equipment to Company #2, which provides substantial added value to Company #1's product before selling it. Company #2's added value may be major application software and/or special hardware integrated into the product. Examples include:

(i) an O.E.M. agreement whereby Company #2 adds banking application software to Company #1's personal computer, marketing the resulting product as a banking teller station under Company #2's brand name.

(ii) an O.E.M. agreement whereby Company #2 embeds a subassembly purchased from Company #1, such as a disk drive or a telecommunications multiplexor, into Company #2's computer system, and then sells that computer system under its own brand name.

(iii) Company #1 makes a sale to Company #2, which resells Company #1's product with Company #1's name still intact on the product. An example would be an O.E.M. agreement whereby Company #2 sells Company #1's word processor and licensed software as an authorized dealer (exclusive or non-exclusive) of Company #1.

(d) An O.E.M. agreement for equipment sold by a manufacturer of computers, copiers or telecommunications equipment is considered to "provide for or authorize the sale of such equipment, alone or as part of a finished product, to a South African entity" if any of the following conditions is met:

(1) The O.E.M. agreement states that Company #2 may sell equipment made by Company #1 (with or without modification by Company #2) in South Africa.

(2) The equipment covered by the agreement (as sold by Company #1 or after modification by Company #2, if any is made) falls under one of the designated classifications government by the Export Administration Act of 1979 (50 U.S.C. App. Section 2401) and the associated federal regulations for Electronics and Precision Instruments (15 C.F.R. Section 799.1, Supp. 1, Group 5), such that Company #1 knows of the resale or distribution of the equipment to South Africa by Company #2 and assists Company #2 in procuring required governmental authorizations for such resale or distribution.

(3) Company #1 has actual knowledge of resale or distribution of the equipment to South Africa by Company #2 and has not either terminated its contractual arrangement with Company #2 concerning such equipment or otherwise prohibited Company #2 from making further resale or distribution of Company #1's equipment to South Africa.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Administrative Code §6-115 was repealed by L.L. 75/1993 §4 eff. Sept. 24, 1993.

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55 RCNY 7-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-01 Definitions.

Annual Care. The term "Annual Care" means care provided by the cemetery on a year-by-year basis upon payment of an annual fee by or on behalf of a Plot Holder.

Burial Grounds. The term "Burial Grounds" means any burial ground which formerly was the public property of any town, village or city consolidated into and now a part of the City of New York.

Burial Right. The term "Burial Right" means only the privilege of interment or entombment in the cemetery. It does not convey an ownership of land or other interest in the grave, or plot to which it refers.

Care. The term "Care" means the cutting of the grass on plots at reasonable intervals, the raking and cleaning of the plots and the maintaining of the grade and turf of the plots; meaning and intending the general preservation of the plots to the end that said plots shall remain and be reasonably cared for as cemetery plots. The term "Care" shall in no case be construed to mean the maintenance, repair or replacement of any gravestones or monumental structures or flowers or ornamental plants; nor the maintenance or doing of any special or unusual work in the cemetery; nor does it mean the reconstruction of any marble, granite, bronze or concrete work on any section or plot, or any portion or portions thereof in the cemetery or buildings, or structures, caused by the elements, an act of God, common enemy, thieves, vandals, strikers, malicious mischief makers, explosions, unavoidable accidents, invasions, insurrections, riots or by order of the military authorities, whether the damage be direct or collateral, other than as herein provided.

Cemetery. The term "Cemetery" means the Canarsie Cemetery (Block 8038, Lot 1; Block 8038, Lot 10; Block 8039, Lot 1; Block 8041, Lot 1; and Block 8041, Lot 2: Borough of Brooklyn), a former town Burial Ground within the

meaning of §100.01 of these Rules and Regulations.

Certificate of Burial Right. The term "Certificate of Burial Right" means a document granting only the privilege of interment and entombment as defined above and not to be construed as a deed to the land itself.

Commissioner. The term "Commissioner" means the Deputy Commissioner of the Department of Citywide Administrative Services, Division of Real Estate Services, or authorized representative designated in writing by the Commissioner or his/her successor in office.

Domestic Partner. The term "Domestic Partner" means a person who has registered a domestic partnership in accordance with applicable law with the City Clerk, or has registered such a partnership with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the former City Department of Personnel are to be transferred to the City Clerk.)

Grave. The term "Grave" means a space of ground (approximately three feet by nine feet) in the Cemetery used or intended to be used for the burial of human remains.

Interment. The term "Interment" means the permanent disposition of the remains of a deceased person by entombment or burial.

Memorial. The term "Memorial" means a monument, marker, tombstone, tablet, headstone or private mausoleum or tomb for family or individual use.

Park Area. The term "Park Area" means a landscaped area and includes Sections 3, 4, 5, 11 and 12 of the cemetery.

Perpetual Care. The term "Perpetual Care" means care provided by the cemetery forever upon payment of a one-time fee by or on behalf of a plot holder.

Plot. The term "Plot" means a lot, plot, plat or part thereof or a grave in the Cemetery.

Plot Holder. The term "Plot Holder" means any person having a burial right in a plot in the cemetery.

Traditional Area. The term "Traditional Area" means Sections A, B, C, 1, 6, 7, 8, 9, 10 and 14 of the Cemetery.

Urn Gardens. The term "Urn Gardens" means that portion of the cemetery set aside for the burial of cremated remains.

Visitor. The term "Visitor" means any person who may enter the former town burial grounds or cemetery grounds and includes plot holders and workers of all kinds.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Domestic partner definition added City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 31, 1998:

Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the

office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City Housing Authority and the Department of Housing Preservation and Development. By the end of April, 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55 percent of those registered domestic partners who reported demographic information were heterosexual couples, and less than 45 percent were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

Consistent with the intent of such orders and the authority of the Commissioner of Citywide Administrative Services pursuant to New York City Charter §814(c) and Administrative Code §4-117, the Department is now acting to provide that rules applicable to spouses, as specified herein, should now be extended to domestic partners and/or children of domestic partners. These amendments will define domestic partner as a person who has registered a domestic partnership with the City Clerk; will grant the right to be buried with a domestic partner in the Canarsie Cemetery; and will allow eligibility for special examination or refund of fees for certain candidates for civil service and license examinations in the event of the death of a domestic partner and/or child of a domestic partner within one week prior to the date the test was originally held.

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55 RCNY 7-02

RULES OF THE CITY OF NEW YORK

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CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-02 Purchase of Burial Rights.

(a) All persons wishing to purchase burial rights in the cemetery must execute applications provided for that purpose.

(b) The Commissioner reserves the right to refuse to accept any application form which is either incomplete or improperly executed. The Commissioner further reserves the right not to honor an application when it is learned that the application has been fraudulently completed or if information found therein is found to be incorrect. The Commissioner reserves the right to limit the number of burial rights purchased by any individual, association or corporation.

(c) Acceptance of payment along with the application should not be deemed an automatic granting of Burial Rights. Burial rights do not vest until a fully executed certificate of burial right is issued to the applicant.

(d) The purchase after January 19, 1949 of burial rights includes perpetual care.

(e) It shall be the obligation of the plot holder to notify the cemetery of any change in his/her post office address. Notice sent to a plot holder by ordinary mail at the last address of record at the cemetery shall be considered sufficient and proper notification.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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55 RCNY 7-03

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CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-03 Interments.

(a) Interment privileges can be received only from the plot holders, and no persons can be recognized as plot holders unless their names appear as such upon the records of the cemetery.

(b) The Commissioner reserves the right to refuse Interments in any Plot and to refuse to open any burial space for any purpose, except by court order or on written application by the plot holder or by the person designated to represent the plot holder.

(c) All Interments, disinterments or removals, including all openings and closings of Graves shall be made only by cemetery personnel.

(d) All funerals, upon entering the cemetery grounds shall be under the charge of the superintendent and/or his/her assistant.

(e) Once a casket containing a body is within the confines of the cemetery grounds, no funeral director or his/her embalmer, assistant, employee or agent shall be permitted to open the casket or touch the body without the consent of a legal representative of the deceased, or without an order of a court of competent jurisdiction.

(f) The right is reserved by the Commissioner to insist upon at least 48 hours notice prior to any interment, and to at least one week's notice prior to any disinterment or removal.

(g) When instructions regarding the location of an interment space in a plot cannot be obtained, or are indefinite, or

when for any reason the interment space cannot be opened when specified, the superintendent of the cemetery may, in his/her discretion, open it in such a location in the plot as he/she deems best and proper, so as not to delay the funeral; and the cemetery shall not be liable in damages for such action or for any error so made; nor shall the cemetery be held responsible for any order given over the telephone, or for any mistake occurring from the lack of precise and proper instructions as to the particular plot space, size and location where interment is desired.

(h) The cemetery shall in no way be liable for any delay in the interment of a body where a protest to the interment has been made, or where the Rules and Regulations have not been complied with; and, further, the superintendent of the cemetery reserves the right, under such circumstances, to place the body in a City receiving vault until the full rights have been determined. The cemetery shall be under no duty to recognize any protests of Interments unless they are in writing and duly filed with the cemetery.

(i) The cemetery shall not be liable for the interment permit nor for the identity of the person sought to be interred; nor shall the cemetery be liable in any way for the embalming of the body.

(j) Where a plot is owned by a church, lodge or other society, interments shall be limited to those actually authorized by such church, lodge, etc.

(k) No interment shall be permitted in any plot so long as there are any outstanding charges due the cemetery with respect to that plot or any other plot head by the plot holder.

(l) There shall be no interments on weekends and legal holidays.

(m) No interments shall be begun after 3:30 p.m.

(n) No more than two interments shall be permitted in each grave in the traditional area and no more than three interments shall be permitted in each grave in the park area.

(o) No disinterment or removal shall be allowed except for a good reason and with the written permission of the Commissioner, the written authorization of the plot holder and nearest of kin, and all permits required by law.

(p) The cemetery shall exercise the utmost care in making a removal, but it shall assume no liability for damage to any casket, burial case or urn incurred in making the removal.

(q) The cemetery reserves the right to correct any errors that may be made by it either in making disinterments or removals, or in the description, transfer or sale and substituting and selling in lieu thereof another burial right of equal value and similar location as far as possible, or as may be selected by the cemetery, or in the sole discretion of the cemetery, in allowing for a request to the Comptroller of the City of New York for a refund of the money paid on account of said Burial Right purchase. The cemetery shall also have the right to correct any error made by placing an improper inscription, including an incorrect name or date on any memorial. The cemetery shall not be liable in damages for any such errors.

(r) The cemetery shall not be deemed in default nor shall it be liable for any failure of performance event or any damages resulting from an "unavoidable delay." An "unavoidable delay" shall mean (1) strikes, lockouts, or labor disputes; (2) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental actions, civil commotion, insurrection, revolution, sabotage or fire or other casualty or other conditions similar to those enumerated in this section.

HISTORICAL NOTE

Section in original publication July 1, 1991.

55 RCNY 7-04

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CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-04 Plot Usage and Maintenance.

(a) All plots shall be used as a place of burial for the dead or the remains of deceased persons and for no other purpose whatever.

(b) All grading, landscaping work and improvements of any kind shall be under the direction of and subject to the consent, satisfaction and approval of the Commissioner.

(c) Cemetery personnel may at any time enter upon a plot to keep it neat, to cut grass and to remove weeds, wilted flowers and debris, but nothing herein contained shall obligate the cemetery to render any such service without compensation therefor.

(d) Floral frames, when removed from a plot, unless specific instructions are given to the contrary by those lawfully entitled to them may be disposed of by the cemetery superintendent in any manner he/she sees fit.

(e) No plants, trees, shrubs or grave coverings, or other decorations may be introduced into any plot without the written consent of the Commissioner, and no plants, trees, shrubs or other covering growing within a plot or border shall be cut down or destroyed without the consent of the Commissioner.

(f) Mounds and shrubs are prohibited in the park area and in section 2 of the cemetery.

(g) Artificial flowers and plants are prohibited.

(h) In the event annual care charges have not been paid for five successive years, any empty graves or plots for

which these charges remain unpaid shall be deemed abandoned, all rights therein shall be deemed terminated, and burial rights therein may be granted by the cemetery to others.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-05 Memorials.

(a) No memorial shall be placed on any plot except by the plot holder or his/her authorized representative.

(b) Designs, plans and specifications for proposed memorials, or other improvements must be submitted on written application, signed by the plot holder. Written approval of the Commissioner is required before work can be begun. The foundation work is to be done at the expense of the plot holder or his/her representatives, heirs or assignees. Foundations shall be of concrete.

(c) Memorial dealers shall abide by these Rules and Regulations. Violations of any such Rule or Regulation by any producer or retail dealer may be cause for disapproval by the Commissioner of such producer or retailer.

(d) All memorials are to be constructed of natural stone. No artificial stone of any description is permitted.

(e) Should any memorial become unsightly, dilapidated or a menace to visitors, the superintendent of the cemetery shall have the right, at the expense of the plot holder, either to correct the condition or to remove the memorial, if after due notice to the plot holder, sent by registered mail, the plot holder fails to take proper steps to remedy the conditions, within a reasonable time, not exceeding thirty days.

(f) Enclosures, fences, copings, benches and vases are not permitted unless approved by the Commissioner.

(g) While a funeral or interment is being conducted, all work of any description which is near enough to disturb, either by noise or otherwise, shall cease. No work will be permitted on Saturdays, Sundays or legal holidays. All

deliveries shall be made at the cemetery prior to 4:00 p.m. on weekdays.

(h) No memorials are allowed in the park area and urn gardens, except for markers flush with the ground.

(i) Memorials in section 2 of the cemetery are limited to two feet wide, by two feet high, by one foot thick.

(j) No memorial or foundation shall be constructed on any plot so long as there are any outstanding charges due the cemetery with respect to that plot or any other plot held by the plot holder.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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55 RCNY 7-06

RULES OF THE CITY OF NEW YORK

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CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-06 Mausoleum.

(a) No mausoleum shall be constructed without prior written approval of the Commissioner. No such approval shall be granted until satisfactory design plans and construction contracts have been submitted to the Commissioner.

(b) The plot holder shall make, at his/her own expense, a survey; provide and pay for his/her own contractor to excavate and construct the mausoleum foundation; and have his/her contractor provide the cemetery with a guarantee that only first grade materials will be used; that it will be executed in first grade workmanship; and should fault develop within five years due to setting, treatment or handling, the required repairs or replacements will be made by the contractor without cost to the cemetery. Unless such guarantee in writing is furnished the Commissioner, approval for construction of a mausoleum cannot be had. Foundations must be at least six feet below grade.

(c) The plot holder must provide for perpetual care and maintenance of a mausoleum by payment to the cemetery of fifteen percent of the total cost of the structure within thirty days of completion of construction.

(d) Only substantially non-corrosive metals of approved permanency shall be permitted for mausoleum or memorial fixtures, such as doors, window grilles, statutary, etc.

(e) Care and maintenance of mausoleums shall include cleaning the interiors and stained glass; cleaning and oiling bronze work unless otherwise requested; repainting and cleaning the exterior stone where and when necessary; and repairing damage caused by wear and tear.

(f) In the event the mausoleum, due to any reason, is badly damaged in the opinion of the Commissioner, he/she

shall request the Estate of the deceased or the plot holder restore the mausoleum to a condition satisfactory to the Commissioner. If these repairs are not made within a reasonable time, not to exceed sixty days, the Commissioner reserves the right to remove the remaining mausoleum and inter the bodies in the plot over which the mausoleum had been constructed.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-07 Inheritance of Burial Right.

(a) In the event of the death of the owner of a burial right any and all privileges (rights) of the plot holder shall pass to the plot holder's family as set forth in the following sections.

(b) The surviving spouse or surviving domestic partner of the owner of the certificate of burial right of record has the right to be buried with his/her spouse or domestic partner. This right may be waived at any time but terminates with burial elsewhere.

(c) Where burial privileges in the grave or plot are held in the name of one person only:

(1) The rights of interment in the plot may be disposed of by specific bequest in a will, subject to the vested right of interment of the surviving spouse, but not by residuary clause. The specific bequest must mention the section, the lot and grave number of the plot.

(2) If the owner of the certificate of burial right shall have filed notarized instructions at the cemetery office as to which member or members of his/her family shall succeed to the privileges (rights) of the plot, said instructions shall be recognized by the Commissioner and will be followed if in the judgment of the Commissioner such instructions are definite, reasonable and practicable, subject, however, to a vested right of interment of the surviving spouse.

(3) If no valid or sufficient written instructions shall have been filed with the Commissioner, or if valid and sufficient instructions are in conflict with a later will, and the owner of the certificate of burial right has left instructions in said will, duly admitted to probate in a court having jurisdiction thereof, subject, however, to a vested right of

interment of a surviving spouse, such instructions shall control, provided they are not in conflict with cemetery rules and regulations then in force and providing the Commissioner has been furnished with a certified copy of the same.

(4) In the absence of valid and sufficient instructions filed with the commissioner by the owner of the certificate of burial right or a duly probated will, the privileges (rights) of interment shall devolve upon those entitled to succeed thereto by the intestate laws of the State of New York keeping in mind the vested right of interment of the surviving spouse or surviving domestic partner.

(d) Where the certificate of burial right is registered with the Commissioner in the name of more than one person the privileges (rights) of the interment follow as above for the deceased co-owners.

(e) When no one included in the classification set forth above is living, burial rights will have terminated.

(f) Any person acquiring the privileges (rights) of a plot holder by inheritance must also accept any and all liabilities associated with the plot, including, in the case of a plot covered by annual care, any arrearages and all future annual care charges.

(g) Notwithstanding the above provisions of this section, it shall be the obligation of the supervising spouse or surviving domestic partner and/or heirs to claim ownership of a burial right upon the death of a plot holder. In the event that the commissioner is not notified in writing of a claim to a burial right within five years of the death of the plot holder, such burial right shall terminate with respect to any empty grave covered by the deceased plot holder's certificate of burial.

(h) Any person(s) claiming inheritance of a burial right must furnish the Commissioner a copy of the will of the deceased plot holder duly certified by the court in which the will was admitted to probate. In the event that the deceased plot holder left no will, the claimant(s) must furnish to the Commissioner a notarized affidavit from the executor of the decedent's estate stating that the claimant(s) is (are) the beneficiary(ies) of the burial right or other proof of inheritance satisfactory to the Commissioner in his sole discretion. Additionally, all claims must be documented on the cemetery's official claim of inheritance of right of burial form.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01 Note 1]

Subd. (c) par (4) amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01 Note 1]

Subd. (g) amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01 Note 1]

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55 RCNY 7-08

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CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-08 Transfer of Burial Right.

(a) No burial right may be sold, transferred, exchanged, or otherwise disposed of without the written consent of the Commissioner on the cemetery's official transfer of right of burial form.

(b) No burial right with respect to a grave in which an interment has been made may be sold, transferred, exchanged, or otherwise disposed of, except to a family member.

(c) If a plot holder wishes to sell, transfer, exchange or otherwise dispose of to a person other than a family member a burial right with respect to an empty grave, the cemetery may, at the option of the Commissioner, repurchase the burial right for the price originally paid by the plot holder, less any outstanding charges due the cemetery by the plot holder.

(d) No burial right may be sold, transferred, exchanged or otherwise disposed of so long as there are any outstanding charges due the cemetery by the plot holder with respect to the burial right in question or any other burial right held by the plot holder.

(e) No sale, transfer, exchange, or other disposition of a burial right in a plot covered by annual care will be permitted unless the transferee purchases a perpetual care contract for the plot.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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55 RCNY 7-09

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CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-09 Visitors and Others.

(a) All persons disturbing the quiet and good order of the cemetery by noise or other improper conduct will be compelled instantly to leave the grounds. cemetery personnel will exclude from cemetery grounds any persons it deems improper and will disperse any improper assemblages in the cemetery.

(b) The cemetery gates will be open seven days a week from 8:30 a.m. to 4:00 p.m.

(c) No children under the age of 18 will be admitted unless accompanied by an adult.

(d) No truck, cart or business wagon will be allowed to enter the gates, unless on business.

(e) Admittance will not be granted to persons on bicycles.

(f) All persons are strictly forbidden to pluck or carry flowers, either wild or cultivated, out of the cemetery without written permit from the office.

(g) All solicitations of any kind whatever are strictly prohibited on the cemetery grounds.

(h) No money shall be paid to any person in the employ of the cemetery in reward for any personal service or attention.

(i) Motor vehicles shall be admitted only on permit from the cemetery office. The speed limit for vehicles within the cemetery grounds is fifteen miles per hour. Vehicles shall not park or come to a full stop in front of any open grave

unless they are in attendance at a funeral.

(j) Dogs brought into the cemetery must be kept on leash.

(k) No firearms or guns of any kind shall be brought into the cemetery except with the express permission of the superintendent.

(l) The superintendent reserves the right to compel any person or persons lawfully upon a plot, to temporarily withdraw from same whenever, in the judgment of the superintendent, their presence would interfere with the orderly conduct of funeral services upon a plot in the near vicinity.

(m) No person or persons, other than cemetery employees, shall be permitted to bring food or refreshments into the cemetery grounds.

(n) All workers while on the cemetery grounds shall be subject to the orders of the superintendent of the cemetery. They shall immediately cease work when he/she so orders them to do so, if, in his/her opinion, the carrying on of the work would interfere with the orderly conduct of a funeral service or an interment.

(o) Except when necessary to cross another plot to reach the plot being visited, all persons within the cemetery grounds shall use only the roads, avenues, walks and paths established and maintained by the cemetery.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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§7-10 Prices and Fees.

(a) The prices for burial rights and fees for services are listed in §3-01 of this title.

(b) All payments are to be made by check or money order payable to Canarsie Cemetery and sent to the Division of Real Estate Services, 1 Centre Street, Room 1900, New York, NY 10007.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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55 RCNY 7-11

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§7-11 Miscellaneous.

(a) The statements or representations of any employee of the cemetery shall not be binding on the cemetery except as such statements or representations coincide with the instrument granting burial right and with this chapter.

(b) This chapter shall apply to any grave, plot, memorial, or mausoleum now in existence or which may hereafter be erected in the cemetery.

(c) In all matters not specifically covered by these Rules and Regulations the Commissioner reserves the right to do anything which in his/her judgment is deemed reasonable under the circumstances and such decision shall be binding upon the plot holder and all parties concerned.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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§8-01 Purpose.

New York City's Recycling Law, which is codified as §16-301 et seq of the Administrative Code of the City of New York encourages the use of "secondary materials" in the manufacture of products purchased by DMSS for use by various city agencies and departments. A mechanism authorized by the Recycling Law to achieve the goal of purchasing products made from secondary materials is the authority to award a contract pursuant to a "price preference." Simply stated, the City is given the discretion to determine that the public interest will be served by awarding contracts for the purchase of specified products to other than the lowest responsive and responsible bidder provided that the product contains a mandated "minimum amount of secondary material" and that the price is within the specified percentage of the price bid by the lowest responsive and responsible bidder.

HISTORICAL NOTE

Section added City Record Oct. 23, 1992 eff. Nov. 22, 1992.

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55 RCNY 8-02

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§8-02 Definitions.

Aggregate product purchase. "Aggregate product purchase" shall mean a procurement of products by DMSS which consists of a group or groups of products which are related to each other in one of the following ways:

(1) The products are manufactured by a single manufacturer and are purchased in the form of a price list which is a listing of items and their prices;

(2) The products are contained in a published catalog which is offered to DMSS at prices listed in the catalog or at a discount therefrom; or

(3) The products have been combined in a class for award to a single vendor based upon fiscal, operational or pricing advantages.

Commissioner. "Commissioner" shall mean the Commissioner of the Department of Citywide Administrative Services of the City of New York, or his or her designee.

Contract. "Contract" means a procurement by DMSS to purchase goods, the total value of which is in excess of $10,000 (or such other amount as the Procurement Policy Board Rules may hereafter establish as the ceiling below which the procurement is treated as a small purchase).

DMSS. "DMSS" means the Division of Municipal Supply Services of the Department of Citywide Administrative Services.

Minimum amount of secondary material. "Minimum amount of secondary material" means the secondary material content level established by these Rules as the minimum percentage required for a product to potentially qualify for a price preference in accordance with Administrative Code §16-322.

Post-consumer material. "Post-consumer material" means only those products generated by a business or a consumer which have served their intended end uses, and which have been separated or diverted from solid waste for the purposes of collection, recycling and disposition.

Procurement Policy Board Rules. "Procurement Policy Board Rules" means the regulations originally effective September 1, 1990 governing contracting by city agencies which are promulgated by the Procurement Policy Board of the City of New York as those rules may, from time to time, be amended.

Secondary material. "Secondary material" means any material recovered from or otherwise destined for the waste stream, including but not limited to, post-consumer material, industrial scrap material and overstock or obsolete inventories from distributors, wholesalers and other companies, but such term does not include those materials and by-products generated from and commonly reused within an original manufacturing process.

USEPA. "USEPA" means the United States Environmental Protection Agency.

HISTORICAL NOTE

Section added City Record Oct. 23, 1992 eff. Nov. 22, 1992.

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55 RCNY 8-03

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§8-03 Minimum Content Standards and Applicability of Price Preference.

(a) **Applicability of price preference.** In general, on a contract let by DMSS for the purchase of a product, a bidder shall be eligible for the price preference set forth in §16-322 of the Administrative Code for such product only if such bidder offers to supply such product manufactured with the minimum content of secondary material specified in these Rules.

(b) **Minimum content standards incorporated.** DMSS shall utilize the minimum content standards for secondary materials contained in the tables in subdivision (g) of this section to determine eligibility for the price preference set forth in §16-322 of the Administrative Code, provided, however, that, except as provided in subdivision (c) of this section, DMSS shall utilize all minimum content standards for secondary materials subsequently promulgated or amended by either USEPA or the New York State Department of Environmental Conservation (DEC), and if there is a conflict between USEPA and DEC standards, DMSS shall utilize the highest standard that it is permitted to utilize by §16-322 of the Administrative Code.

(c) **Minimum content standards for aggregate product purchases, multi-material products, and metals.** Except as provided by §16-322, notwithstanding any other provision of this section, the minimum content standard for the following products shall be zero:

(1) any product which DMSS purchases by means of an aggregate product purchase, except where such aggregate product purchase consists solely of products that are substantially manufactured from the same material, and for which

the same minimum content standard applies or identical numerical minimum content standards apply;

(2) any product that is not substantially manufactured from a single material; and

(3) metal products.

(d) **Recycled product purchases.** DMSS may restrict bids solely to products composed of specified minimum secondary material content levels. If the minimum secondary material content level specified by DMSS for such a bid is less than the minimum secondary material content standard for such product set forth in these Rules, a bidder may be eligible for a price preference if such bidder offers to provide such product with a level of secondary material content that is equal to or greater than the minimum content standard specified in these Rules.

(e) **Market stimulus bids.** Except for products for which DMSS is required to utilize a USEPA minimum content standard for secondary materials pursuant to Administrative Code §16-322, DMSS may stipulate that for a specific bid a price preference shall only be applicable to products which satisfy additional minimum content standards or higher minimum content standards than those set forth in these Rules, provided that DMSS first finds that such additional or higher standards are intended to stimulate the market for secondary materials.

(f) **Packaging.** Notwithstanding any other provision of this section, this section does not apply to packaging incidental to the product being purchased.

(g) **Tables.**

[See tabular material in printed version]

1. This table has been taken from 40 CFR §250.21. All terms in this USEPA standard are as defined in the regulations heretofore adopted by the USEPA, pursuant to 42 USC §6901 for paper products. The definitions for such terms are found at 40 CFR §250.4.

2. Waste paper is defined in §250.4 and refers to specified postconsumer and other recovered materials.

3. [US]EPA found insufficient production of these papers with recycled content to assure adequate competition.

(2) Additional Standards for Paper

Product	Minimum Percentage by Weight of Secondary Material Content	Minimum Percentage by weight of Post- Consumer Material Content
Paper for High Speed Copiers	50 percent	10 percent
Form bond including computer paper and carbonless	50 percent	10 percent

(3) Printing Contracts

The price preference is applicable solely to the paper portion of any printing contract. For purposes of establishing the size of the price preference, the paper portion of printing contracts shall be deemed to be 50 percent of the bid price. The minimum content standard for preference eligibility for the paper shall be that established for the type of paper specified in the Request for Bids.

[See tabular material in printed version]

Lubricating Oils[5]

For engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils, the minimum re-refined oil content shall be not less than 25 percent re-refined oil.

Plastics[6]

Minimum Percentage by Weight of Secondary Material Content	Minimum Percentage by Weight of Post-Consumer Material Content
50 percent	15 percent

Note-The minimum content standards are based on the weight of material (not volume) in the insulating core only.

4. This Table has been taken from 40 CFR §248.21(a)(4). All terms used in this standard are as defined in the regulations heretofore adopted by the USEPA, pursuant to 42 USC §6901 for building insulation products. The definitions for such terms are found at 40 CFR §248.4.

5. The source for this standard is found at 40 CFR §252.21(a)(12). Definitions for same are located at 40 CFR §252.4.

6. These standards have been derived from Table 1 located at 6 NYCRR §368.4(a). The definitions for the terms used in these standards may be found at 6 NYCRR §368.2.

Glass[6]

Minimum Percentage by Weight of Secondary Material Content	Minimum Percentage by Weight of Post-Consumer Material Content
50 percent	35 percent

Rubber[6]

Minimum Percentage by Weight of Secondary Material Content	Minimum Percentage by Weight of Post-Consumer Material Content
50 percent	25 percent

Solvents[6]

Minimum Percentage by Weight of Secondary Material Content	Minimum Percentage by Weight of Post-Consumer Material Content
75 percent	75 percent

6. These standards have been derived from Table 1 located at 6 NYCRR §368.4(a). The definitions for the terms used in these standards may be found at 6 NYCRR §368.2.

HISTORICAL NOTE

Section added City Record Oct. 23, 1992 eff. Nov. 22, 1992.

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§8-04 Implementation Procedure.

(a) To be eligible for a price preference, bidders must submit with their bids a written certification of the secondary material and post-consumer material content of such product.

(b) In the event that a bidder offers a product which at the time of bid submission is authorized by DEC, pursuant to 6 NYCRR Part 368 **et seq,** to use the New York State "Recycled" emblem in connection with the sale of such product in New York State, then such product shall be deemed to meet the standards for minimum secondary material content pursuant to these Rules, and the bidder, in lieu of the certification required by §8-04(a) above, may submit with its bid a copy of the DEC letter to the manufacturer authorizing the use of the "Recycled" emblem in connection with the sale of the particular product.

HISTORICAL NOTE

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§8-05 Miscellaneous.

(a) DMSS' specifications will encourage:

(1) the offering of products made with secondary materials;

(2) the offering of products manufactured with remanufactured components;

(3) the offering of products which are capable of utilizing products made with secondary materials or components that are remanufactured.

(b) DMSS will work with other government agencies and purchase from their existing contracts for products made with secondary materials or join with them in the cooperative purchase of such products.

(c) Requests for bids for aggregate product purchases and multi-material products will require that vendors identify products which are made wholly or partially with secondary materials. As appropriate, based upon considerations which include the amount of secondary material content and the volume of purchases by the City, such products may be separately bid or bid as a recycled product purchase or as a market stimulus bid.

(d) DMSS will encourage agencies wherever practicable to purchase retreaded tires from the DMSS requirements contract for such retreaded tires.

(e) DMSS will encourage agencies wherever practicable to purchase products made from post-consumer and other secondary materials.

HISTORICAL NOTE

Section added City Record Oct. 23, 1992 eff. Nov. 22, 1992.

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§8-06 Separability.

If any provision or section of these Rules, or the application thereof to particular persons is held invalid, the remainder of these Rules, and their application to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

HISTORICAL NOTE

Section added City Record Oct. 23, 1992 eff. Nov. 22, 1992.

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CHAPTER 9*1 PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§9-01 [Application.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

Section amended City Record Jan. 19, 2000 §1, eff. Feb. 18, 2000. [See Chapter 9 footnote]

Section added City Record June 16, 1999 eff. July 16, 1999. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 9 repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. City Record Apr. 19, 2000 §1, eff. May 19, 2000. Chapter was replaced by new Chapter 10. Chapter 9 amended City Record Jan. 19, 2000 §1, eff. Feb. 18, 2000, See Note 2. Chapter 9 added City Record June 16, 1999 eff. July 16, 1999, See Note 1.

NOTE 1. Statement of Basis and Purpose in City Record June 16, 1999: City Hall is the site of many important government functions. People visit City Hall to call at the offices of their elected representatives, to observe and participate in public proceedings of the City Council, the City Planning Commission and other bodies, and to address their elected representatives. Officeholders and candidates for public office use the City Hall area for press conferences and similar events. City Hall is a significant historical site which draws visitors, and school children tour City Hall to learn about City government. In addition, people seek to express their views to elected officials and others by engaging in public assemblies or demonstrations in the City Hall area.

The use of the City Hall steps and sidewalk fronting City Hall for expressive activity must be considered in light of the significant governmental interest in providing for the safety and security of City Hall, the Mayor, other elected officials, people participating in public proceedings held at City Hall and other members of the public. Protecting the safety and security of the public and City Hall is the responsibility of the Police Department.

These procedures are intended to provide a framework for the Police Department to assure the safety and convenience of the public, the Mayor, members of the City Council and other elected officials.

After consideration of public and agency comments received and pursuant to §1043(d) of the Charter, the Department of Citywide Administrative Services has revised the rule to address comments which indicated confusion concerning the permit process for applications filed less than 2 business days prior to an event. To address such comments, subdivision b of §9-06 has been modified to indicate clearly that permit applications may be filed within 2 business days of a proposed event.

2. Statement of Basis and Purpose in City Record Jan. 19, 2000: City Hall is the site of many important government functions. People visit City Hall to call at the offices of their elected representatives, to observe and participate in public proceedings of the City Council, the City Planning Commission and other bodies, and to address their elected representatives. Officeholders and candidates for public office use the City Hall area for press conferences and similar events. City Hall is a significant historical site which draws visitors, and school children tour City Hall to learn about City government. In addition, people seek to express their views to elected officials and others by engaging in public assemblies or demonstrations in the City Hall area.

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§9-02 [Covered activities exceptions; monthly list of events.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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§9-03 [Conduct; maximum number; larger groups.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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CHAPTER 9*1 PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§9-04 [Alternative locations; covered activities not permitted.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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§9-05 [Disorderly conduct; conduct not permitted.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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§9-06 [Permit system; administration.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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§9-07 [Revocation of permit.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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§9-08 [Police Department powers not restricted; searches.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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§9-09 [Emergency; close area.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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§9-10 [Contents of permit.] [Repealed]

HISTORICAL NOTE

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CHAPTER 10* RULES FOR PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§10-01 [Application.]

These procedures apply to press conferences, demonstrations, picketing, speechmaking, vigils and like forms of expressive conduct by participants or onlookers ("covered activities") on the steps, sidewalk and plaza area fronting City Hall. The "plaza area" consists of the1 bluestone-paved area bordered on the north by the sidewalk fronting City Hall, on the south by City Hall Park and to the east and west by cobblestone parking areas.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-01.

CASE NOTES

¶ 1. A group provided housing services and advocacy on behalf of New York City residents who are HIV positive or have AIDS, challenged a permit which allowed it to stage a demonstration in City Hall Plaza but prohibited the use

of sound amplification devices. The court held that the City had statutory authority to ban sound amplification devices in demonstrations held in City Hall Plaza. However, the court held that the ban was unconstitutional under the First Amendment. The court said that in order to be valid, any regulation of speech had to be content neutral, and that the standards used for granting exceptions to the ban gave City officials impermissibly wide discretion, and thus were not content neutral. Housing Works v. Kerik, N.Y.L.J., Nov. 30, 2000, page 39, col. 1 (U.S. Dist. Ct, S.D.N.Y.).

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Note 2] Chapter added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Note 1]

NOTE 1.Statement of Basis and Purpose in City Record Apr. 19, 2000: This emergency rule is promulgated pursuant to the authority of the Commissioner of the Department of Citywide Administrative Services under §§1043, 811, 822(a) of the New York City Charter. City Hall is the site of many important government functions. People visit City Hall to call at the offices of their elected representatives, to observe and participate in public proceedings of the City Council, the City Planning Commission and other bodies, and to address their elected representatives. Officeholders and candidates for public office use the City Hall area for press conferences and similar events. City Hall is a significant historical site which draws visitors, and school children tour City Hall to learn about City government. In addition, people seek to express their views to elected officials and others by engaging in public assemblies or demonstrations in the City Hall area.

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FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules governing activities in the immediate vicinity of City Hall is necessary to prevent an immediate threat to health, safety and property, that is, to the security of City Hall, elected officials, persons participating at public proceedings held at City Hall and other members of the public. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

The protection of security at City Hall is of vital importance to the public, as City Hall is the seat of municipal government and houses the operations of the Mayor, the City Council and other public employees. Likewise, City Hall is a significant location for those who seek to exercise their First Amendment rights and to petition their elected representatives. A duly promulgated permitting system for expressive activity in the immediate vicinity of City Hall was recently stayed by order of the federal district court. In the absence of a permitting system, the Police Department is unduly hampered in its ability to adequately protect City Hall, elected officials, members of the public and those who seek to participate in expressive activity in the area of City Hall. Pending the adoption of new rules in accordance with standard procedures of the City Administrative Procedures Act, it is necessary that the Police Department have in place procedures so that it may accept and act on permit applications for the use of the steps, sidewalk and plaza of City Hall for First Amendment activities. Therefore, at the Police Department's request, adoption of these new emergency rules is necessary to ensure that

such procedures are in place, and to protect against immediate threat to the safety and security of the seat of municipal government.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule enabling the Police Department to adequately protect the safety and security of City Hall is necessary to address an immediate threat to health, safety and property. 2. Statement of Basis and Purpose in City Record July 13, 2000: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Citywide Administrative Services under §§1043, 811, 822(a) of the New York City Charter. City Hall is the site of many important government functions. People visit City Hall to call at the offices of their elected representatives, to observe and participate in public proceedings of the City Council, the City Planning Commission and other bodies, and to address their elected representatives. Officeholders and candidates for public office use the City Hall area for press conferences and similar events. City Hall is a significant historical site which draws visitors, and school children tour City Hall to learn about City government. In addition, people seek to express their views to elected officials and others by engaging in public assemblies or demonstrations in the City Hall area.

The use of the City Hall steps, sidewalk and plaza for expressive activity must be considered in light of the significant governmental interest in providing for the safety and security of City Hall, the Mayor, other elected officials, people participating in public proceedings held at City Hall and other members of the Public. Protecting the safety and security of the public and City Hall is the responsibility of the Police Department.

These procedures are intended to provide a framework for the Police Department to assure the safety and convenience of the public, the Mayor, members of the City Council and other elected officials.

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55 RCNY 10-02 [Activities

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§10-02 [Activities Not Covered.]

Covered activities shall not include the following public ceremonies and commemorations: (i) inaugurations; (ii) award ceremonies for city employees; and (iii) ceremonies held in conjunction with a City-sponsored ticker-tape parade.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-02.

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55 RCNY 10-03 [Conduct,

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§10-03 [Conduct, Maximum Number; Larger Groups.]

Covered activities shall be conducted in accordance with these requirements and under the terms of permits issued by the Police Department pursuant to §10-06 below. Covered activities shall be conducted in a manner which does not endanger the safety or security of public employees and members of the general public, impede ingress to or egress from City Hall, or interfere with the rights of other persons engaged in covered activities. A maximum of 300 persons in total shall be permitted on the City Hall steps, sidewalk and plaza fronting City Hall for a three-hour time period in an area selected by the Police Department which reasonably accommodates groups of 300 or less. Groups of over 300 persons or who seek to hold a covered activity that exceeds three hours in duration shall be directed to obtain a permit for the use of City Hall Park or other comparable area in accordance with the rules of the Department of Parks and Recreation.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-03.

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55 RCNY 10-04 [Alternative

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§10-04 [Alternative Locations; Covered Activities Not Permitted.]

Covered activities shall not be permitted when the Police Department determines that the covered activity would violate the provisions of §10-05, or under the circumstances set forth in subdivision c of §10-06. When areas of the steps, sidewalk or plaza area fronting City Hall are not available due to events enumerated in §10-02, anticipated security needs or the presence of other groups engaged in covered activities, groups shall be informed of alternative locations or times that are available for the covered activities.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-04.

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55 RCNY 10-05 [Disorderly

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§10-05 [Disorderly Conduct; Conduct Not Permitted.]

Disorderly conduct or conduct which obstructs the usual use of City Hall entrances, foyers, and the parking area, which otherwise impedes public employees in the performance of their official duties, vehicular and pedestrian traffic around City Hall, or the general public from obtaining government services or attending proceedings at City Hall is prohibited. Conduct shall not be permitted which (a) reasonably presents a clear and present danger to the public safety, good order or health; (b) interferes with ingress to or egress from City Hall; or (c) may result in bodily harm to any individual, damage to property, or imminent breach of the peace such that good order cannot otherwise be maintained.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-05.

55 RCNY 10-06 [Permit

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§10-06 [Permit System; Administration.]

These procedures shall be administered by the Police Department, on behalf of the Department of Citywide Administrative Services and the Department of Parks and Recreation. In administering these procedures, the following permit system will apply:

a. Applicants shall submit fully executed permit applications in a form prescribed by the Police Department to a designated office or division of the Police Department, which will process applications in the order they are received. In the event that multiple applications are received for the same time period, permits will be considered in the order of receipt of fully executed applications.

b. Applications shall be granted or denied within 10 business days of the Police Department's receipt of the application. Applications filed within 10 business days of a proposed covered activity shall be processed as expeditiously as possible. In the case of applications made two business days or less before the proposed covered activity and in the absence of exigent circumstances which prevented the applicant from earlier seeking a permit, the application may be denied where the size or nature of the activity reasonably requires an additional police presence and there is insufficient time to make such presence available. In this event, the applicant will be informed of alternative locations or times for the covered activity.

c. Permits may be denied on the following grounds:

(i) A permit has previously been granted to another applicant for a covered activity for the date and time requested.

(ii) It reasonably appears that the covered activity will present a clear and present danger to the public safety, good order or health.

(iii) The application proposes activities which would be in violation of law or regulation.

(iv) An event enumerated in §10-02 was previously calendared for the same date and time.

(v) The Police Department determines that the proposed covered activity conflicts with security needs anticipated for the time and place of the proposed activity.

In the event that a permit is denied under paragraphs (i), (iv) or (v), the applicant will be informed of alternative locations or times available for the covered activity.

d. Covered activities are subject to the following additional limitations:

(i) Applicants for permits that are issued in error because an event enumerated in §10-02 had previously been calendared or a permit had previously been granted for another covered activity will be notified and provided with a reasonable opportunity to conduct the covered activity at an alternative location or an alternative time.

(ii) No permit will authorize the erection or placement of structures.

(iii) Permits shall authorize only one covered activity by one permit holder at a time.

(iv) Permits shall extend for a period of not more than three hours.

e. Permits may be revoked prior to the scheduled covered activity under the following circumstances: (i) unanticipated security needs or other exigent circumstances; or (ii) information comes to the attention of the Police Department which indicates that the proposed activity reasonably presents a clear and present danger to the public safety, good order or health. Revocations of previously granted permits which occur at least 10 days prior to the covered activity shall be made in writing.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter

10 footnote]

DERIVATION

Section derived from former T55 §9-06.

55 RCNY 10-07 [Revocation of

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§10-07 [Revocation of Permit.]

During the conduct of covered activities, a permit may be revoked by the ranking on-site New York City police officer if the covered activity or other circumstances (i) present a clear and present danger to the public safety, good order or health; (ii) interfere with ingress to or egress from City Hall or otherwise violate the terms and conditions contained in the permit; or (iii) result in bodily harm to any individual, damage to property, or imminent breach of the peace such that good order cannot otherwise be maintained.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-07.

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55 RCNY 10-08 [Police

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§10-08 [Police Department Powers Not Restricted; Searches.]

Nothing in these procedures shall restrict the power and authority of the Police Department to preserve the public peace and safety in the vicinity of City Hall, including but not limited to using magnetometers or other security devices, submitting all persons, bags and packages to mechanical inspection or search.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter

10 footnote]

DERIVATION

Section derived from former T55 §9-08.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Even though the statute does not contain an express provision regarding sound amplification devices, the Police Department's broad statutory authority to preserve public peace and safety in the vicinity of City Hall gives it the authority to regulate sound amplification devices. The court agreed that City Hall was a public forum which has long

been devoted to assembly and debate. The First Amendment protects the free use of such a public place for rallies of the sort conducted by Housing Works. The protection afforded such use, however is not absolute, because expressive activity, even in a public forum may interfere with other important activities for which the property is used. Thus, even in a public forum, the government may impose reasonable restrictions on the time, place or manner of protected speech, so long as the restrictions are justified without reference to the content of the regulated speech, they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information. However, in order to avoid being struck down as giving government officials overly broad discretion, the regulations must contain narrow, objective and definite standards to guide the licensing authority. The policy here regarding amplified sound in City Hall Plaza, however, does not confer unfettered or unbridled discretion upon City officials. The policy provides that amplified sound may not be used in the City Hall Plaza except for those limited and celebratory occasions when City Hall is closed. The reason for the policy is that the noise level of amplified sound so close to City Hall is a distraction to the executive and legislative officials who work inside the building as well as to the members of the public who have business to transact there. The control of noise is a legitimate public concern. The court did not find the use of the special ticker tape parades, which have occurred only twelve times in the past 20 years, to be equivalent to content-based rules which have banned demonstrations or sound devices. They are designed to celebrate and recognize the kind of accomplishment and achievement that is recognized by all. Thus, the court held that the City's policy banning amplified sound in City Hall Plaza, except for the very occasional ticker-tape parades when City Hall is closed, provide on its face a sufficiently narrow, objective and definite standard to pass the "content neutral" requirement. It also said that the ban on sound devices advances the City's substantial interest in protecting its citizen from unwelcome noise. In terms of the "narrow tailoring" requirement, the evidence showed that only a complete ban would work and it was too difficult to try to regulate the decibel level once sound amp equipment was used. There were alternative areas of communication because there were many other areas in the City where sound amplification was permitted, including City Hall Park, adjacent to and south of the plaza. If Housing Works believes that it really has to be right in front of City Hall to convey its message, it can still do so, provided it does without sound amplification devices. Housing Works v. Kerik, 283 F.3d 471 (2d Cir. 2002).

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55 RCNY 10-09 [Emergency;

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§10-09 [Emergency; Close Area.]

The Police Department may order the closure of or limit access to the City Hall area in the event of an emergency or period of heightened security.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-09.

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§10-10 [Contents of Permit.]

All permits issued shall include the conditions set forth above.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-10.

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55 RCNY 11-01

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CHAPTER 11 PERSONNEL PRACTICE AND PROCEDURE

§11-01 General Examination Regulations.

(a) **General provisions.**

(1) These regulations shall be applicable to all examinations conducted by the New York City Department of Citywide Administrative Services for positions in the competitive, non-competitive and labor classes. Before applying to take an examination, applicants should consult the Notice of Examination for the specific position for which they are applying and these General Examination Regulations. Applicants are responsible for knowledge of the contents of those documents, which are binding on all applicants. In addition, the Civil Service Law and the personnel rules and regulations of the City of New York apply to all examinations.

(2) All information concerning an examination, including these regulations, notices of examination, filing dates, test dates, and key answers are posted in the Application Section of the Department of Citywide Administrative Services at 18 Washington Street, N.Y., N.Y. 10004.

(b) **Applications.**

(1) Completed application forms and required fee may be submitted by mail only to the Applications Section of the Department of Citywide Administrative Services, unless otherwise provided in the Notice of Examination. Application forms submitted by mail must be properly stamped and addressed to "Applications Section, New York City Department of Citywide Administrative Services, 18 Washington Street, New York, N.Y. 10004," and must be received by the last date for receipt of applications specified in the Notice of Examinations.

(2) Except on legal holidays and unless otherwise stated in the Notice of Examination, the Applications Section of the Department of Citywide Administrative Services, 18 Washington Street is open from Monday to Friday, from 9 a.m. to 5 p.m. Application forms can be obtained without charge at the Applications Section during the application period specified in the Notice of Examination.

(3) A late application in a promotion examination shall be accepted if submitted by the employing agency personnel office as early as practicable prior to the day of the first test thereof if such late application includes a signed statement from his or her personnel officer that he or she was absent from employment because of vacation, sick leave, military duty, or other reason acceptable to the Department of Citywide Administrative Services, for a period of not less than one-half of the application period.

(4) The Department of Citywide Administrative Services assumes no responsibility for applications where:

(i) errors or mistakes are made therein by the applicant;

(ii) they are filed by mail;

(iii) they are not filed with the Department of Citywide Administrative Services or other agency designated by the Commissioner of Citywide Administrative Services to accept applications; or

(iv) they are not received on a timely basis.

(c) **Application fees.**

(1) An application fee, as required in the notice of examination, must be paid at the time of submitting the application for any civil service appointment and for any application for appointment without competitive examination including provisional and labor class appointments and transfers. The application fee will be based upon the minimum of the salary range of the title being sought:

Salary Category	Fee
Under $30,000	$30
30,000-34,999	$35
35,000-39,999	$40
40,000-44,999	$45
$45,000-49,999	$50
$50,000 & above	$60

(2) An application fee is not required of a New York City resident receiving public assistance from the New York City Department of Social Services. To have the fee waived, such applicant must submit a photocopy of a current Medicaid identification card.

In addition, the application fee may be waived, in the discretion of the Commissioner of Citywide Administrative Services, upon a showing of compelling circumstances.

(3) Unless otherwise required in the Notice of Examination, payment must be made with a money order made payable to the order of the New York City Department of Citywide Administrative Services. Applicants must write their Social Security number and the examination number, for which the application is being submitted, on the money order. Cash or checks will not be accepted, unless specified in the Notice of Examination.

(4) An applicant who was unable to take or complete an examination may apply for refund of the application fee by submitting a written request therefor to the Fiscal Division of the Department of Citywide Administrative Services within 30 days of the date of the first test in the examination at which he or she was unable to appear with verification that such absence was due to:

(i) compulsory attendance before a court or other public body or official having the power to compel attendance;

(ii) hospitalization;

(iii) a clear error or mistake for which the Department of Citywide Administrative Services is responsible.

(5) An applicant who was unable to take the first test in an open competitive examination because of active military service with the armed forces of the United States may apply for refund of the filing fee by submitting written request therefor with verification of such service not later than 60 days from the termination of military duty.

(d) **Test date and admission cards.**

(1) The tentative date of the first assembled test in an examination is stated in the Notice of Examination. The official test date will be given in the admission card sent to the applicant. The City assumes no responsibility for mail delivery. Applicants who do not receive an admission card at least 4 days prior to the tentative test date must appear at the Examining Service Division of the Department of Citywide Administrative Services, 2 Washington Street, 17th Floor, during normal business hours on one of the 4 days preceding the test date to obtain an admission card.

(2) A candidate who is found to be not qualified or not eligible for an examination or for whom the Department of Citywide Administrative Services has no record of receiving an application will not have his/her test scored.

(e) **Change of address.**

(1) A candidate in an examination whose address changes after s/he submits the application but prior to mailing of the notice of results, must promptly notify the Examining Service Division of the Department of Citywide Administrative Services in writing in the manner described in paragraph (3) of this subdivision.

(2) A candidate in an examination whose address changes after mailing of the notice of results and during the life of an eligible list upon which the candidate's name appears shall promptly notify the Certification Section of the Department of Citywide Administrative Services in writing in the manner described in paragraph (3) of this subdivision.

(3) A separate notification of a change of address should be submitted for each examination in which the person is a candidate or an eligible. Each submission must include the candidate's name, Social Security number, complete new address, the title of the examination and the examination number, and place on the eligible list, if applicable. For promotion examinations, include the name of the city agency by which the candidate is employed. Failure to furnish notification of a change of address may result in the loss of opportunity to compete in tests or loss of opportunity to appear for appointment interviews.

(f) **Citizenship.** (1) Any citizenship requirement will be set forth in the Notice of Examination. When citizenship is not required, non-citizens must be able to establish at the time of appointment and throughout the period of their employment that they are legally permitted to work in the United States.

(2) Under the Immigration Reform and Control Act of 1986, each candidate must be able to prove his/her identity and his/her right to obtain employment in the United States prior to employment with the City of New York.

(g) **Age.** Persons who have not reached their eighteenth birthday shall obtain employment certificates as required by law before appointment.

(h) **Residency.** §§12-120 and 12-121 of the Administrative Code of the City of New York require that any person who enters City service on or after September 1, 1986 shall be a resident of the City within 90 days after the date he or she enters City service and shall thereafter maintain city residence as a condition of employment. The Commissioner of Citywide Administrative Services may waive this requirement for positions which are hard to fill. In addition, certain positions are exempted by law.

(i) **Language.** Candidates must be able to understand and be understood in English. A qualifying English language oral will be given by the Department of Citywide Administrative Services to all candidates who, in the opinion of the appointing officer, do not meet this requirement.

(j) **Special testing services for disabled applicants.** (1) Any applicant who is disabled to the extent that he or she requires special accommodations to take an examination shall submit a written request for such accommodations, together with proof of disability as described below, to the Examining Service Section of the Department of Citywide Administrative Services, 2 Washington Street, N.Y., N.Y. 10004, postmarked no later than 30 working days before the date of the examination. The written request must indicate the specific accommodation requested, and any alternative which would be equally acceptable. Where appropriate and practicable, the Department of Citywide Administrative Services will provide one or more forms of testing accommodations, such as providing an accessible or alternate examination site, additional time to complete the examination, special seating, full written instructions and special attention from the monitor to insure that the applicant has understood oral instructions, a reader or tape recorder for test questions, an amanuensis or tape recorder for test answers, and large print or braille.

(2) Where the disability involves vision, the applicant shall submit:

(i) proof of registration with the New York State Commission for the Blind and Visually Handicapped, or

(ii) proof that corrected total vision is less than 20/200 or that the applicant's field of vision is less than 20 degrees.

(3) Where the disability involves hearing, the applicant shall submit an audiogram taken within the past year by an audiologist licensed in New York State or board certified otologist, indicating registration number, and showing the level of hearing loss.

(4) Where the applicant's disability does not come within the categories described in paragraphs (2) or (3) of this subdivision and the applicant nevertheless requires special accommodations to take the examination because of his or her disability, the applicant shall submit either a doctor's note or proof of disability from an agency or organization which is recognized as one which specializes in serving persons with the applicant's type of disability. The substantiating document shall indicate the extent of the disability and the specific testing accommodations recommended for the applicant.

(5) For the purpose of these regulations, "an agency or organization which is recognized as one which specializes in serving persons with (certain disabilities)" means a government agency (such as the New York State Office of Vocational Rehabilitation) or a private organization or agency (such as United Cerebral Palsy) which is known to the Department of Citywide Administrative Services or the Mayor's Office for People with Disabilities for its work. The substantiating document must be on letterhead and must bear the signature and title of the person certifying the applicant's disability.

(6) Disabled applicants may take steps to personally accommodate their special testing needs in the following ways:

(i) Applicants may use their own impairment-related aids, such as magnifying glasses or talking calculators with ear plugs (where all other applicants are permitted to use calculators), during the examination.

(ii) An applicant who requires an amanuensis or reader with special skills or abilities not provided by the

Department of Citywide Administrative Services may submit proof of special need from an agency or organization which is recognized as one which specializes in serving persons with the candidate's type of disability and which further has volunteers available to perform the requested service. The agency or organization must notify the Department of Citywide Administrative Services no later than 15 work days before the test date that it will provide a volunteer. The Department of Citywide Administrative Services will not be responsible for providing a replacement amanuensis or reader in the event a volunteer fails to appear on the day of the examination.

(k) **Special examinations.** (1) An applicant who is unable, for any of the reasons listed below, to take the regular examination as scheduled may be given a special examination upon written request. Such applicant must submit a written request setting forth the reasons requiring the absence and providing documentary evidence which demonstrates to the satisfaction of the Commissioner of Citywide Administrative Services that the applicant was unable to take the regular examination as scheduled. Unless otherwise specified herein, such material must be submitted to the Examining Service Section either in person or by certified or registered mail no later than one week following close of the application period. If one of the following circumstances arises after that date, such documentation must be received within one week following the occurrence, but no later than one week before the special test.

(2) **Religious observance.** An applicant claiming to be unable to take an examination when originally scheduled because of his or her religious beliefs may request a special examination by submitting either in person or by certified or registered mail to the Examining Services Division of the Department of Citywide Administrative Services, a written request no later than 15 days before the scheduled date of the regular examination. The request must include a recent written statement on letterhead signed by the applicant's religious leader attesting to the applicant's religious beliefs and certifying that the applicant is a Sabbath observer and that it is contrary to the applicant's tenets to participate in an examination on the date the regular test is scheduled.

(3) **Military service.** (i) §243: An applicant who has taken the first test:

(A) in an open competitive examination but is unable to complete the remaining test because of military duty as defined in §243 of the New York Military Law must apply to the Control and Service Division of the Department of Citywide Administrative Services with his or her separation papers not later than 90 days from the termination of such military duty;

(B) in a promotion examination, who is unable to take or complete such examination because of military duty as defined in §243 of the New York Military Law, must apply to the Control and Service Division of the Department of Citywide Administrative Services with his or her separation papers not later than 60 days from the date of restoration to his or her City position.

(ii) §242: An applicant in a multiple choice promotion examination who is ordered to appear for military duty on the scheduled test date must notify the Examining Service Section in writing no later than one week from the close of the application period. To be admitted to the make-up test scheduled in the Notice of Examination, such applicant must provide by certified or registered mail, written documentation on letterhead signed by the commanding officer stating that such duty cannot be rescheduled to permit the applicant to participate in the test and setting forth the reasons why. Such documentation must be received by the Examining Service Section no later than 10 working days prior to the regular test date. Such applicants who do not follow the above procedures must apply for a special test under the procedures in paragraph (3)(i)(B) of this subdivision.

(4) **Other reasons:**

(i) a manifest error or mistake for which the Department of Citywide Administrative Services or the examining agency is responsible; or

(ii) compulsory attendance before a court or other public body or official having the power to compel attendance; or

(iii) physical disability incurred during the course of and within the scope of municipal employment where such applicant is an officer or employee of the City; or

(iv) absence from the test within one week after the date of death of a spouse, domestic partner, mother, father, sister, brother, child or child of a domestic partner of such applicant where such applicant is an officer or employee of the City; (For purposes of this subparagraph, a domestic partner shall mean a person who has registered a domestic partnership in accordance with applicable law with the City Clerk, or has registered such a partnership with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the former City Department of Personnel are to be transferred to the City Clerk.))

(l) **Education and experience credit.** (1) To be credited, the education and experience must be of the nature, duration and quality described in the notice of examination and must have occurred during the prescribed period of time. Unless otherwise specified in the Notice of Examination, all requirements must be met by the last date of the application period.

(2) All education and experience must be clearly specified on the experience paper in order to be credited or considered on appeal. Education and experience listed on the experience paper will receive credit only to the extent that it is described clearly and in detail. A maximum of one year of experience will be credited for each 12 month period. Part-time experience will be pro-rated and credited in lieu of, but not in addition to full time experience during the same period.

(3) If statements of material facts are found to be false, exaggerated or misleading, an applicant may be disqualified.

(4) Where experience is a qualifying test only, experience which falls short by up to one month shall be accepted as qualifying.

(m) **Physical tests.** To be permitted to participate in any physical test candidates must sign the prescribed release form.

(n) **Medical examination.** (1) Any impairment which will adversely affect ability to perform the duties of the position in a reasonable manner, or which may reasonably be expected to render the applicant unfit to continue to perform the duties of the position shall constitute grounds for disqualification.

(2) A candidate medically rejected for a condition which thereafter materially improves may apply for medical reexamination. However, no such candidate will be re-examined following expiration of the eligible list.

(o) **Test administration.** A candidate who fails to follow instructions at the test site will not have his/her test scored.

(p) **Impersonating and cheating.** (1) A person who impersonates another or who allows himself or herself to be impersonated or who otherwise cheats in an examination shall be barred from taking civil service examinations for positions with the City of New York or receiving appointments with the City of New York.

(2) A person barred from city employment pursuant to subdivision (p)(1) of this section may submit a written request to the Commissioner of Citywide Administrative Services for reconsideration of this action, setting forth reasons to substantiate the request.

(q) **Protests.** Candidates may file protests against proposed key answers in accordance with §50-a of the Civil Service Law. Protest procedures and time limits will be described at the time of the test.

(r) **Appeals.** (1) Except as may otherwise be provided by the Commissioner of Citywide Administrative Services and upon payment of applicable fees:

(i) Candidates who wish to appeal a computational error in rating shall file an appeal within 30 days from the date of the notice of results of the examination.

(ii) Candidates who wish to appeal the rating of oral, practical, or essay tests may request a breakdown of their scores and an appointment for review by submitting a written request to the Committee on Manifest Errors within one week following the date of the notice of results of the examination and shall file their completed appeals within 60 days from that date. An appointment for review, i.e. for playback of audio/video recording, inspection of work sample on practical test, or review of answer paper and the key or illustrative answers of essay tests, where available, will be granted prior to the end of the appeal period.

(2) For all oral, practical, or essay tests, such playback, inspection or review shall be limited in duration to a period equivalent to the duration of the test in question. A representative of the Department of Citywide Administrative Services must be present at all times.

(s) **Investigation.** (1) All applicants must be of satisfactory character and reputation and must meet all requirements set forth in the Notice of Examination for the position for which they are applying. Applicants may be summoned for the written test prior to investigation of their qualifications and background. Admission to the test does not mean that the applicant has met the qualifications for the position.

(2) A fee of $50 is required of each candidate to cover the cost of fingerprint processing. Payment shall be submitted to the appointing agency at the time of fingerprinting and shall be in the form of a Travelers Express, American Express or postal money order payable to the "New York State Division of Criminal Justice Services." Cash will not be accepted.

(t) **Probationary terms.** (1) Except as otherwise provided, all appointments and promotions shall be for a probationary term of one year.

(2) Upon showing to the satisfaction of the Commissioner that the services of a probationer have been unsatisfactory, an appointing officer may terminate the employment of such probationer at any time during the probationary term.

(u) **Fees for special services.**Fees for special services furnished upon request shall be as follows:

(1) duplicate result cards-$l per card

(2) breakdown of rating on examination-$5 per copy

(3) photocopies-$l per page

(4) play-back of audio recordings-$5 per play-back

(5) play-back of video recordings-$10 per play-back

(6) other-as may be provided

(v) **Correspondence and address.** All correspondence to the Department of Citywide Administrative Services, Division of Citywide Personnel Services, shall be sent to 2 Washington Street, N.Y., N.Y. 10004, unless otherwise specified.

(w) **Seniority and veterans' credit.** Where seniority or Veterans' Preference credit is claimed, the candidate must

achieve a passing score in order to be eligible for such credit.

HISTORICAL NOTE

Section renumbered formerly Title 59, §1-01 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

Subd. (c) par (1) amended City Record Aug. 23, 1996 eff. Sept. 22, 1996. [See Note 1]

Subd. (c) par (3) amended City Record Aug. 12, 1991 eff. Sept. 11, 1991.

Subd. (k) par (1) amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01 Note 1]

Subd. (k) par (4) open par amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01 Note 1]

Subd. (k) par (4) subpar (iv) amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 23, 1996:

The adopted amendments to the General Examination Regulations and License Examinations of the Department are based upon the City Personnel Director's authority to recruit personnel pursuant to Section 15 and Article IV of the New York State Civil Service Law and to schedule and conduct examinations for positions in the civil service pursuant to section 813a of the New York City Charter. The New York City Charter §1043 provides that each agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law.

The adopted amendments to Rule §1-01(c) and §1-02(c), providing for the Department to increase application fees to cover some of the expenses incurred for developing and administering civil service examinations and for increasing fees for license examinations, have become necessary due to increasing costs facing City government. The Department can no longer obtain the funds necessary to support many of the services required for the development, administration and rating of these examinations in its proposed budget. Many examinations require extraordinary services necessary to develop, administer and rate since they involve tens of thousands of candidates in different skill levels. Therefore, an increase in application fees is necessary to defray more of the cost of these services.

The additional fees will be used solely to cover some of the Department's costs of developing, administering and rating an examination. When applicable, they will be announced in the Notice of Examination or its amendments.

CASE NOTE FROM FORMER SECTION

¶ 1. Caponigro v. White, 636 N.Y.S.2d 307 (App.Div. 1st Dept. 1996). A challenge to that portion of this section which bars a person who cheats on a civil service examination from receiving appointments or taking future examinations, must be brought as an Article 78 proceeding rather than as a declaratory judgment action, since the rule in question is an administrative regulation rather than a statute. Hence, the four month Article 78 statute of limitations applies even though there is a challenge to the constitutionality of the regulation.

Rules of the City of New York

***** Current through December 2009 ****

55 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 11 PERSONNEL PRACTICE AND PROCEDURE

§11-02 License Examinations.

(a) **Applicability.** These regulations apply to the following licenses:

Climber or Tower Crane Rigger

High Pressure Boiler Operating Engineer

Hoisting Machine Operator

Hoisting Machine Operator (Endorsement)

Master Electrician

Master Fire Suppression Piping Contractor

Master Plumber

Master Rigger

Master Sign Hanger

Motion Picture Operator

Oil Burning Equipment Installer, Class A and Class B

Portable High Pressure Boiler Operating Engineer

Site Safety Manager

Special Electrician

Special Rigger

Special Sign Hanger

Welder

These regulations shall be applicable also to examinations conducted by the Department of Citywide Administrative Services for appointment by the Mayor as a City Surveyor.

These regulations shall not be applicable to examinations for licenses for Refrigerating Machine Operator (Unlimited Capacity) and To Install, Alter, Test and Repair Underground Storage Tanks, to Wit: Gasoline, Diesel Fuel Oil (Used for Operation of Motor Vehicles) and Other Volatile Inflammable Liquids. Such examinations shall be administered by the Fire Department in accordance with §9-01 of Title 3 of the Rules of the City of New York, and applicants who establish their qualifications for such licenses in accordance with the provisions of said section and New York City Administrative Code §§27-4002(8a) and 27-4194(d), as applicable, shall be so certified by the Department of Citywide Administrative Services.

(b) **Applications.** (1) An examination schedule of written tests indicating the last day to file is posted in the Applications Section of the Department of Citywide Administrative Services, Division of Citywide Personnel Services, 18 Washington Street, N.Y., N.Y. 10004.

(2) The Department of Citywide Administrative Services assumes no responsibility for applications where errors or mistakes are made therein by the applicant, or for applications not filed with the Department of Citywide Administrative Services, or for applications not received on a timely basis.

(3) Applications submitted must include the correct filing fee. Payment may be made in person or by mail and must be with a money order made payable to Department of Citywide Administrative Services. Applicants must write their social security number and the examination number, for which the application is being submitted, on the front of the money order.

(4) Except for the examination for license for welder, special rigger and special sign hanger, a practical test shall be given only to those candidates who have filed applications at least 20 days (excluding Saturdays, Sundays and legal holidays) before the first test date.

(c) **Filing fees.**

(1) Except as provided in paragraph (2) of this subdivision, the filing fees shall be:

[See tabular material in printed version]

(2) (i) Filing fees shall be waived for a New York City resident receiving public assistance who submits a clear photocopy of a current benefit identification card along with the application.

(ii) For the license examinations for Master Electrician, Master Plumber, Master Rigger, Special Electrician, and Special Rigger, filing fees shall be waived for employees of public agencies doing work solely for their agencies, where

the license is required for work performed in such agencies, and where the agencies request such waiver.

(3) An applicant who is marked not qualified before the date of the first test or who has not passed the required English language test will be refunded, upon application therefor, all but $40 of the filing fee.

(d) **Education, training and experience requirements.** (1) An applicant must possess the minimum education, training and/or experience requirements at the time of filing of the application and must be able to read and write the English language.

A qualifying examination will be given to determine if the applicant is able to read and write the English language for those licenses issued by the Department of Buildings and where the examination given by the Department of Citywide Administrative Services for the license does not contain a written part. Applicants who do not pass this examination will not be permitted to take any other part of the license examination.

Admission to an examination does not imply that the applicant possesses the minimum qualifications required. The burden of proving that the applicant meets the required qualifications shall be upon the applicant.

(2) For licenses other than Master Plumber, Master Rigger and High Pressure Boiler Operating Engineer, the Administrative Code provides that time spent on active duty in the armed forces of the United States during time of war, including service with said armed forces in the Korean or Vietnam conflict, shall be credited as experience on a year-for-year basis provided that:

(i) the applicant is at least 18 years of age, and that

(ii) the applicant has at least 1 year of required experience prior to entry into the armed forces, and that

(iii) such military duty interrupted the continuance of the experience, and

(iv) the applicant received an honorable discharge from the military service.

(3) For the license of High Pressure Boiler Operating Engineer, the Administrative Code provides that an applicant who has served on active duty in the armed forces of the United States during time of war including service with said armed forces in the Korean or Vietnam conflict, and has been honorably discharged shall be deemed to meet the experience requirements if during the 10 years immediately prior to filing the Application For License Examination, the applicant shall have had:

(i) at least 5 years of required experience, or

(ii) at least 1 year of required experience prior to entry into military service and while in such service either served as or performed duties equivalent to those performed by a boilermaker, engineer, fireman, oiler, machinist or water tender to make a total of at least 5 years of required experience.

(e) **Examinations.** (1) For examinations for licenses of special rigger, special sign hanger and welder, the tests shall be scheduled as the receipt of applications warrants. For license examinations other than special rigger, special sign hanger and welder, the test dates are posted in the Application Section.

(2) The official test date will be contained in the admission card sent to the applicant. For license examinations for which the test date has been previously posted in the application section, applicants who filed timely applications and who do not receive an admission card within 7 days prior to the test date must appear prior to the test date at the Examining Service Section of the Department of Citywide Administrative Services, Division of Citywide Personnel Services, during normal business hours to obtain an admission card to the examination.

(3) An applicant who was unable to take or complete an examination may apply to take or complete the

examination or request a refund by submitting written request therefor to the Examining Service Section of the Department of Citywide Administrative Services within 60 days of the first test in the license examination at which the applicant was unable to appear with verification that such absence was due to:

(i) compulsory attendance before a court or other body or official having the power to compel attendance; or

(ii) a manifest error or mistake for which the Department of Citywide Administrative Services is responsible; or

(iii) death of a spouse, domestic partner, mother, father, sister, brother, child, or child of a domestic partner of such candidate within one week before the test; (For purposes of this subparagraph, a domestic partner shall mean a person who has registered a domestic partnership in accordance with applicable law with the City Clerk, or has registered such a partnership with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the former City Department of personnel are to be transferred to the City Clerk.)) or

(iv) hospitalization or period of recuperation immediately following hospitalization; or

(v) active military service with the armed forces of the United States.

(4) License examinations may consist of a written test, practical test or oral test or a combination of any such tests.

The questions and answers in all tests for licenses shall not be released or made public.

(5) On a license examination for which there is a numerical rating, a candidate must attain a rating of not less than 70 percent in the examination or in any test, subtest or part thereof.

(6) Where a license examination other than for special rigger, special sign hanger and welder consists of both a written and a practical test, a candidate who has passed the written test but has been notified of failure to pass the practical test may request another practical test.

A total of not more than 3 practical tests shall be allowed a candidate in connection with the written test and a separate application must be made for each practical test requested.

Except as provided in paragraph (3) of this subdivision, applications for the second or third practical tests shall be filed in the Application Section of the Department of Citywide Administrative Services, Division of Citywide Personnel Services not later than 2 years from the date of the written test and shall be accompanied by the required fee. Where a candidate has already taken and passed a written test, the candidate will not be permitted to take a second written test until the candidate has completed all the practical tests to which the candidate is entitled.

(7) For license examinations for Site Safety Manager, Special Rigger, Special Sign Hanger and Welder, a candidate who fails any test or subtest in the examination shall be deemed to have failed the entire examination and no further test or subtest shall be either administered or rated, as the case may be.

However, for license of welder class 1 or welder class 1 restricted or welder class 3, a candidate who fails only one part in the practical test shall be qualified for license of welder class 2 or welder class 2 restricted or welder class 3 restricted, respectively.

(f) **Appeals.** (1) A candidate who has been notified of failure to pass the written or practical license examination may appeal such failure only if the candidate has failed by not more than 5 points. Such appeal must be in writing to the New York City Department of Citywide Administrative Services, 2 Washington Street, 17th Floor, New York, New York, 10004, ATTN: Examining Service Section, stating the title of the license examination, examination number, the application number, and the social security number, and be received not later than 30 days from the date of notification of failure to pass the license examination.

(2) A candidate who has failed the written test in a license examination by not more than 5 points may submit a written request to review the items scored as incorrect and the key answers thereto. Such request with the result card shall be mailed to the New York City Department of Citywide Administrative Services, 2 Washington Street, New York, New York 10004, ATTN: License Examinations, and it must be received no later than 15 days from the date of notification of failure to pass the test.

(g) **Impersonating and cheating.** (1) A person who impersonates another or who allows himself or herself to be impersonated or who otherwise cheats in a license examination shall be disqualified from receiving a license issued by the City of New York or from holding any position with the City of New York.

(2) A person disqualified pursuant to paragraph (1) of this subdivision may submit a written request to the Commissioner of Citywide Administrative Services for reconsideration of this action, setting forth reasons to substantiate the request.

(h) **Investigation.** (1) The Department of Citywide Administrative Services, Division of Citywide Personnel Services or the investigating agency, as the case may be, shall conduct an investigation of each candidate to determine the candidate's fitness and qualification for the license, and may refuse to certify a candidate who does not meet the requirements therefor.

(2) Successful candidates in the examination shall be summoned for investigation by the appropriate investigating agency. Candidates shall be disqualified for the license or certification of qualification if they do not appear for investigation within 4 months of the date for which originally summoned. Such candidates shall then be required to file for and pass a new license examination in order to obtain the license or certification of qualification.

(3) Investigation of candidates shall be conducted by the Department of Citywide Administrative Services except for those licenses where investigation shall be conducted by the agency responsible for the issuance of licenses as indicated below:

(i) **Department of Consumer Affairs**

(i) Motion Picture Operator

(ii) **Department of Buildings**

(ii) Master Electrician

(ii) Special Electrician

The names of successful candidates in the license examinations listed above will be submitted to the appropriate agency by the Department of Citywide Administrative Services.

(4) The names of candidates who have been found qualified after investigation will be transmitted by the Department of Citywide Administrative Services to the agency responsible for the issuance of licenses as indicated below:

Department of Buildings

Climber or Tower Crane Rigger

High Pressure Boiler Operating Engineer

Hoisting Machine Operator

Master Fire Suppression Piping Contractor

Master Plumber

Master Rigger

Master Sign Hanger*1

Oil Burning Equipment Installer

Portable High Pressure Boiler Operating Engineer

Site Safety Manager

Special Rigger

Special Sign Hanger*

Welder

(i) **Change of address.** A candidate in a license examination shall promptly notify the Department of Citywide Administrative Services in writing of any address change which occurs after filing the application for license examination.

A separate notification shall be submitted for each examination for which the person is a candidate. The notification shall include the candidate's name, complete new address, social security number, the title of the license examination, and license examination number.

Failure to furnish such notification shall be at the sole risk of such person and may result in the loss of opportunity to compete in any tests or subtests of the license examination not already held.

HISTORICAL NOTE

Section renumbered formerly Title 59, §1-02 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

Subd. (a) amended City Record Jan. 14, 2000 eff. Feb. 15, 2000 per City Record notice. [See Note 1]

Subd. (b) par (3) amended City Record Aug. 12, 1991 eff. Sept. 11, 1991.

Subd. (c) amended City Record Jan. 14, 2000 eff. Feb. 15, 2000 per City Record notice. [See Note 1]

Subd. (c) par (1) amended City Record Aug. 23, 1996 eff. Sept. 22, 1996. [See T55 §11-01 Note 1]

Subd. (d) amended City Record Jan. 14, 2000 eff. Feb. 15, 2000 per City Record notice. [See Note 1]

Subd. (e) par (3) subpar (iii) amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01

Note 1]

Subd. (h) amended City Record Jan. 14, 2000 eff. Feb. 15, 2000 per City Record notice. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan 14, 2000:

The Department of Citywide Administrative Services has administered the Refrigerating Machine Operator and Underground Tank Installer examinations in connection with the licensing of these activities by the New York City Fire Department, notwithstanding the fact that the Fire Department administers all of its other licensing examinations and is capable of administering these two examinations. Both departments agree that it would be a more efficient use of resources for the Fire Department to assume administration of the examinations. Such an arrangement would also benefit the affected industries because, among other reasons, the Fire Department could administer the examinations more frequently.

This rulemaking is being conducted in conjunction with the Fire Department's amendment of 3 RCNY §9-01 to (in part) address the administration of these two examinations. The Department of Citywide Administrative Services will continue to certify the results of the Underground Tank Installer examination pending the March 21, 2000 effective date of Local Law No. 68 of 1999, which authorized the Fire Department to administer such examinations. The Department of Citywide Administrative Services will continue to certify the results of the Refrigerating Machine Operator examination pending the enactment of legislation similarly granting such authority to the Fire Department.

FOOTNOTES

1

[Footnote 1]: * Applicants for license examination for Master Sign Hanger and Special Sign Hanger may in the discretion of the Commissioner of Buildings be qualified without taking a license examination but such applicants shall be required to qualify in the investigation.

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55 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 11 PERSONNEL PRACTICE AND PROCEDURE

§11-03 Adjudications of the Department of Citywide Administrative Services.

(a) Pursuant to the New York City Charter §§1041, 1046-1048, and by designation by the Mayor, the Department of Citywide Administrative Services has determined that adjudications held pursuant to Section 210.2(g) of the Civil Service Law Article 14 ("The Taylor Law") to determine whether an employee has violated the Taylor Law shall be conducted by the Department or a designee of the Commissioner of Citywide Administrative Services. Such designee shall be a Hearing Officer who is authorized in writing by the Commissioner of Citywide Administrative Services to conduct hearings pursuant to the Taylor Law. Administrative Law Judges from the Office of Administrative Trials and Hearings ("OATH") may be designated as Hearing Officers authorized by the Commissioner of Citywide Administrative Services to conduct hearings pursuant to the Taylor Law.

(b) Disciplinary hearings and disability hearings conducted pursuant to Civil Service Law §§72 and 75 shall be conducted by OATH. In all adjudications conducted by OATH, pursuant to Civil Service Law §§71, 72, 73 and 75, the Administrative Law Judge shall make written proposed findings of fact, conclusions of law, a recommended decision and, where appropriate, a proposed penalty. The Commissioner of Citywide Administrative Services may adopt, reject, or modify any such recommendations.

HISTORICAL NOTE

Section renumbered formerly Title 59, §1-03 LL 59/1996 eff. Aug. 8, 1996.

Section amended City Record Sept. 28, 1992 eff. Oct. 28, 1992.

Section in original publication July 1, 1991.

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55 RCNY 11-04

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 11 PERSONNEL PRACTICE AND PROCEDURE

§11-04 Taylor Law Hearings.

(a) All hearings conducted pursuant to §210.2(g) of the New York Civil Service Law shall be subject to the following rules.

(b) **Notice.** All persons who are entitled to a Taylor Law Hearing shall receive a notice that shall contain the following provisions:

(1) a statement of the legal and jurisdictional authority for a hearing;

(2) a statement of the pertinent legal and regulatory sections at issue;

(3) a statement of the employee's right to object to a determination of a Taylor Law violation;

(4) a statement of the nature of the proceeding and the particular matter to be adjudicated;

(5) a statement of the date(s) a Taylor Law violation was committed;

(6) a statement of potential penalties that may be assessed;

(7) a statement that the employee is entitled to representation by counsel or a union representative.

(c) The notice shall be served personally or by certified mail addressed to the last address the employee has filed with his or her agency's personnel office.

(d) Where a hearing is required pursuant to §210.2(g) of the New York Civil Service Law, the employee shall receive further notice of the time and place of the hearing.

(e) **Hearing.** Where an employee requests that a hearing pursuant to §210.2(g) of the New York Civil Service Law, be held, such a hearing shall be held within a reasonable time. The hearing shall be conducted by a Hearing Officer assigned exclusively to perform adjudicative and related duties for the Department of Citywide Administrative Services, or by a designee of the Department who is authorized in writing by the Commissioner of Citywide Administrative Services to conduct hearings pursuant to the Taylor Law. Administrative Law Judges from OATH may be designated as Hearing Officers authorized by the Commissioner of Citywide Administrative Services to conduct hearings pursuant to the Taylor Law.

(1) At the hearing, the employee shall be entitled to: be represented by counsel or union representative; call witnesses and cross-examine opposing witnesses; present oral and written arguments on the law and facts; issue subpoenas or request that a subpoena be issued, requiring attendance and the giving of testimony and/or the production of books, papers, documents, and other evidence. The issuance of subpoenas shall be governed by the New York Civil Practice Law and Rules.

(2) Adherence to the formal rules of evidence is not required. Objections may be made to evidence, including testimony, and shall be noted in the record.

(3) There shall be no ex parte communications between a party and the hearing officer.

(4) The hearing shall be transcribed or recorded. Upon request, a copy of the transcript or record, or any part thereof. shall be made available and a copy shall be provided at reasonable cost.

(f) **Burden of proof.** The employee shall bear the burden of proof at the hearing in accordance with Civil Service Law §210.2(g).

(g) **Findings of fact.** In all hearings conducted by the Department or a designee of the Commissioner of Citywide Administrative Services, the Hearing Officer shall make findings of fact and determine whether the employee has established that he or she did not violate Section 210 of the New York Civil Service Law. These findings and the determination shall be in writing and delivered to the Commissioner of Citywide Administrative Services within a reasonable time following the conclusion of the hearing. The Commissioner of Citywide Administrative Services shall then notify the employee of the Hearing Officer's findings and determination.

(h) **Appeals.** The determination of the hearing officer may be appealed by any party by bringing a proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules.

HISTORICAL NOTE

Section renumbered formerly Title 59, §1-04 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

Subd. (e) amended City Record Sept. 28, 1992 eff. Oct. 28, 1992.

Subd. (g) amended City Record Sept. 28, 1992 eff. Oct. 28, 1992.

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55 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-01 Definitions.

Annual solicitation campaign. "Annual solicitation campaign" shall mean the period of organized solicitation of municipal employees conducted annually by the Combined Municipal Campaign to obtain contributions with respect to the ensuing year of contributions.

Charitable non-profit organization. "Charitable non-profit organization" shall mean a private non-profit organization performing charitable services for human health and welfare or recreation, eligible for approval as a coordinating agency, or for membership in the combined Municipal Campaign in accordance with the provisions of these rules.

Combined municipal campaign. "Combined municipal campaign" shall mean the joint campaign of the coordinating agency with one or more other charitable non-profit organizations, based on their written agreement, approved by the Commissioner of Citywide Administrative Services pursuant to §12-06 of these rules, for the joint conduct and sharing in the result of annual solicitation campaign.

Commissioner. "Commissioner" shall mean the Commissioner of Citywide Administrative Services.

Coordinating agency. "Coordinating agency" shall mean a federated community campaign, as defined in section 93-b of the General Municipal Law, which is approved by the Commissioner of Citywide Administrative Services pursuant to §12-05 of these rules to serve as the agent for the Combined Municipal Campaign.

Year of contributions. Year of contributions. "Year of contributions" shall mean the calendar year or other period

designated by the Commissioner of Citywide Administrative Services for collection of the payroll deductions authorized by municipal employees pursuant to §93-b of the General Municipal Law on behalf of the Combined Municipal Campaign.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-01 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

Year of contributions amended City Record July 24, 1995 eff. Aug. 23, 1995. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 24, 1995:

The proposed amendments to the rules of the Department of Personnel and the Department of Finance are based upon the City Personnel Director's authority to administer personnel programs pursuant to Sections 813(a)(11) and (b)(7) of the New York City Charter and the authority granted the Commissioner of Finance by §93-b of the General Municipal Law. The New York City Charter §1043 provides that each agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law.

The proposed amendments to Rules §2-01, §2-06(e) and §2-09(c) of the Department of Personnel and the same amendments to §18-01, §18-06(e) and §18-09(c) of the rules of the Department of Finance, authorize payroll deductions for municipal employees' charitable contributions to continue beyond one year until such time as it is revoked or the employee leaves the agency of employment, whichever shall occur first. Although the Department of Personnel will continue to conduct annual solicitation campaigns, it is financially imprudent to have payroll deductions for municipal employees' charitable contributions terminate after each annual period. The necessity of the paperwork and processing of the annual authorizations for paycheck deductions is burdensome due to the large numbers involved. In addition, the work is redundant and can be avoided merely by adopting the proposed amendments. Finally, it permits many of the charitable organizations involved in the Combined Municipal Campaign to have more accurate and dependable sources of funds since the municipal employees' charitable contributions will not automatically terminate at the end of an annual period.

The proposed amendments will have no adverse effect on the rights of employees. The Combined Municipal Campaign is voluntary and the employee is always free to end any paryoll deductions or charitable contributions at any time by following the procedure already in existence (see Department of Personnel Rule §2-09(d); Department of Finance Rule §18-09(d)).

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

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55 RCNY 12-02

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-02 Coordinating Agency; Constituent Organizations.

The coordinating agency shall consist of the charitable non-profit organizations named as constituent members thereof upon the Commissioner of Citywide Administrative Services' approval of the coordinating agency, subject to changes by discontinuance of such participation or the addition of eligible charitable non-profit organizations. The coordinating agency shall give prompt written notice of any such changes to the Commissioner of Citywide Administrative Services.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-02 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

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55 RCNY 12-03

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-03 Charitable Non-Profit Organizations.

To be eligible as a constituent organization of the coordinating agency or as a participating organization in the Combined Municipal Campaign, a charitable non-profit organization must meet and maintain the following requirements:

(a) It shall be

(1) a private, non-profit corporation, association, or organization,

(2) incorporated or authorized to do business in New York, or a member of a federation of charitable organizations which is authorized to do business in New York, and

(3) organized to render voluntary charitable services for human health and welfare or recreation.

(b) It shall be and remain registered with the Secretary of State; in compliance with the requirements and provisions of article 7-A of the Executive Law of New York; and a tax exempt organization under the terms of Section 501(c)(3) of the U.S. Internal Revenue Code.

(c) It shall operate without discrimination in regard to all persons served by the campaign and comply with all requirements of law and regulations respecting nondiscrimination and equal employment opportunity with respect to its officers, staff, employees and volunteers.

(d) As its principal purpose, function and activity, it shall carry out a **bona fide** program of charitable services in

support and advancement of the health, welfare or recreation of a substantial number of persons in need of such services.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-03 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

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55 RCNY 12-04

RULES OF THE CITY OF NEW YORK

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CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-04 Coordinating Agency; Qualification Requirements.

To be eligible for approval as the coordinating agency, a charitable non-profit organization shall meet all of the conditions specified in §12-03 of these rules, and in addition, shall

(a) constitute a federation of a substantial number of charitable non-profit organizations;

(b) conduct a **bona fide** program for the provision of services for human health and welfare or recreation services for the aid, support and advancement of a substantial number of residents in the City; and

(c) agree to combine with other eligible charitable non-profit organizations and/or federations of such organizations to form a Combined Municipal Campaign, and serve as agent of the Combined Municipal Campaign as set forth in §12-06 of these rules.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-04 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

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55 RCNY 12-05

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CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-05 Approval of Coordinating Agency.

(a) To solicit contributions among municipal employees, a charitable non-profit organization eligible pursuant to the conditions specified in §12-04 of these rules may make written application to the Commissioner of Citywide Administrative Services for approval as the coordinating agency for the City.

(b) In December of every year there shall be made available at the offices of the Commissioner of Citywide Administrative Services a proposed calendar of events for the preceding years' Combined Municipal Campaign, if any. This schedule shall include a timetable for application.

(c) The application shall contain a detailed statement and furnish documentation evidencing the organization's compliance with all conditions of eligibility as a coordinating agency and shall provide the following:

(1) corporate or registered business name and address of the organization; name, titles and addresses of its directors or principals and executive officers; registration number obtained upon registration pursuant to article 7-A of the Executive Law;

(2) concise description of the organization's structure, origin, and history of its activities in the City; financial statements for its two immediately preceding years of operation, showing contributions and other revenues received, administrative and overhead expenses, costs of operations and other significant financial data; a specification of the extent its operations have been carried out by volunteers' services;

(3) statement of its plan and program for performing charitable services within the City over the next three-year

period, with particular description of projected benefits to employees' communities of residence;

(4) copies of charter or certificate of incorporation, bylaws, latest external audit by a certified public accountant and letter from the Internal Revenue Service certifying tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code;

(5) a listing, by corporate or registered business name, address, and name of the authorized principal representative, of each constituent charitable non-profit organization included in the coordinating agency; the applicant shall certify that it has examined and established compliance by all of its constituent organizations with the conditions and requirements of eligibility specified in §12-03 of these rules.

(d) The applicant shall furnish additional information and documentation as requested by the Commissioner of Citywide Administrative Services.

(e) The Commissioner's determination as to the approval or refusal of an application hereunder shall be conclusive and binding, and written notice thereof shall be given to the applicant.

(f) If it should become necessary to change the coordinating agency while the annual solicitation campaign or the year of contributions is in progress, the Commissioner shall substitute another charitable non-profit organization eligible to be coordinating agency pursuant to §12-04 of these rules.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-05 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

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55 RCNY 12-06

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-06 Combined Municipal Campaign; Structure and Operations.

(a) For the purposes of conducting a joint annual solicitation campaign and sharing in the contributions of municipal employees obtained therefrom, the coordinating agency shall contract with all other organizations approved pursuant to §§12-07 and 12-08 of these rules to form a Combined Municipal Campaign.

(b) Such contract shall be subject to approval by the Commissioner of Citywide Administrative Services and shall:

(1) identify each charitable non-profit organization participating with the coordinating agency by corporate or business name and address, and name its authorized representative;

(2) provide an annual budget of the campaign and specify the allocation among the coordinating agency and participating organizations of administrative expenses including publicity, central receipt, accounting and distribution of contributions, and loss of anticipated income to the campaign due to withdrawal of consent to contribution, termination of employment, or other discontinuation of payroll deduction;

(3) state the method of calculation of the share of total contributions to be received respectively by the coordinating agency and each participating organization, and the manner of payment to them;

(4) inform participants that the administrative expenses of the campaign shall be divided equally among each participating agency; for this purpose each participating constituent member of a federation of charitable non-profit organizations shall be counted as a separate participating agency.

(5) Contain such other terms and conditions as may be required by the Commissioner.

(c) The coordinating agency shall be the recipient in the first instance of all contributions made by employees to the campaign, including both contributions collected through payroll deductions and those made by check. The coordinating agency shall act in a fiduciary capacity with respect to its receipt and distribution of the contributions in accordance with the terms of the Combined Municipal Campaign contract.

(d) The annual solicitation campaign shall be conducted at such times and pursuant to such procedures as shall be approved by the Commissioner.

(e) The coordinating agency shall submit a report to the Commissioner at the end of each calendar year and at such other times as the Commissioner may request, stating the total amount of contributions collected through the Combined Municipal Campaign, the amount received by each participating agency, and such other information as the Director may request.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-06 LL 59/1996 eff. Aug. 8, 1996.

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Subd. (e) amended City Record July 24, 1995 eff. Aug. 23, 1995. [See T55 §12-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

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CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-07 Application for Participation in the Combined Municipal Campaign.

(a) A charitable non-profit organization seeking participation in the Combined Municipal Campaign shall make written application therefor to the Commissioner, who shall forward such application to the coordinating agency.

(b) Such application shall be made on the form prescribed by the Commissioner and shall be accompanied by all required documentation.

(c) The coordinating agency shall review the applications and approve the applications of all organizations qualified pursuant to §12-03 of these rules.

(d) The coordinating agency shall notify each applicant in writing whether or not it has been accepted as a participating organization in the Combined Municipal Campaign. If an applicant has not been accepted for participation, such notice shall state the reasons therefor, and shall state that the decision may be appealed to the Commissioner within fourteen days.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-07 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

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55 RCNY 12-08

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CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-08 Review of Non-Acceptance for Participation.

(a) An organization which has been notified of non-acceptance for participation in the Combined Municipal Campaign may, within fourteen days of the date notice was sent to the applicant by the coordinating agency, appeal in writing to the Commissioner for review of the determination of the coordinating agency. Copies of all material previously submitted to the coordinating agency shall be furnished to the Commissioner by the organization seeking review.

(b) The Commissioner, consistent with these rules, shall determine whether sufficient grounds existed for non-acceptance of the applicant or whether the coordinating agency's decision shall be reversed, in which case the Commissioner shall direct the coordinating agency to accept the applicant for participation in the Combined Municipal Campaign.

(c) The Commissioner's written determination shall be transmitted to the applicant and the coordinating agency, and shall be final and conclusive. Upon a determination directing the acceptance of the applicant, the coordinating agency shall forthwith arrange for the participation of the applicant in the Combined Municipal Campaign.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-08 LL 59/1996 eff. Aug. 8, 1996.

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FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

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CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-09 Conduct of Solicitation Among City Employees.

(a) Contributions by employees to any charitable non-profit organization shall be purely voluntary.

(b) No form of pressure or coercion shall be used at any time by any employee or charitable non-profit organization to persuade employees to contribute to any charitable non-profit organization.

(c) An employee who wishes to make a charitable contribution through the Combined Municipal Campaign shall do so by completing and signing the form furnished by the Director. The employee shall indicate on the form whether the contribution is to be given to a particular organization participating in the Combined Municipal Campaign, or to the Combined Municipal Campaign itself for distribution to all participating organizations in the manner set forth in this section. Contributions may be made by submitting a single check made out to the order of the Combined Municipal Campaign, or by consenting to payroll deduction of a specified amount per pay period. If the employee chooses to contribute to the Combined Municipal Campaign through payroll deduction, the year of contribution shall be deemed to be the period between the time the consent to the deduction is given and the time such consent is withdrawn or the employee leaves his/her agency of employment, whichever shall occur first. The deduction shall continue until the employee either withdraws his/her consent to the payroll deduction or the employee leaves his/her agency of employment, whichever shall occur first.

(d) Employees shall be allowed to withdraw their consent to payroll deduction for contribution to charitable non-profit organizations at any time, upon written notice to the Commissioner.

(e) Contributions received by the Combined Municipal Campaign which are not designated for receipt by a

particular participating organization shall be distributed among all participating organizations in the following manner: the total amount of such undesignated funds, less administrative expenses agreed upon as provided in §12-06 of these rules, shall be divided by the total number of participating agencies, and an amount equal to the dividend shall be received by each agency. For the purposes of this calculation, each constituent member of a federation of charitable non-profit organizations shall be counted as a separate participating agency, but the federation to which such member belongs shall receive that member's share of the undesignated funds, to be distributed in accordance with the federation's agreement with its members.

(f) When an employee's paycheck is refunded by the employee's agency to the Department of Finance, any charitable contribution deducted for the period covered by such paycheck shall be returned to the City by the coordinating agency, or recovered by the City from the Combined Municipal Campaign by deduction from subsequent payments.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-09 LL 59/1996 eff. Aug. 8, 1996.

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FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

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55 RCNY 12 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

APPENDIX A PERSONNEL RULES AND REGULATIONS OF THE CITY OF NEW YORK*1

APPENDIX A PERSONNEL RULES AND REGULATIONS OF THE CITY OF NEW YORK*1

RULE I-DEFINITIONS

Agency. Agency is any department, administration, board, body or authority possessing separate and independent powers and functions and recognized as such by the department of personnel.

Agency Head. Agency head is the head of an agency.

Announcement. Announcement is the official notice of examination.

Appointing Officer. Appointing officer is the officer, commission, board, body or authority having the power of appointment to subordinate positions.

Certifying Agency. Certifying agency is an agency which administers and certifies eligible lists for classes of positions unique to such agency.

Civil Service of New York City or Civil Service. Civil Service of New York City or Civil Service includes all offices and positions in the definitions hereinafter set forth of "classified service" and "unclassified service".

Class of Positions. Class of positions means a group of positions substantially similar with respect to duties, responsibilities, qualifications and examination requirements to the extent that the same title may be used to designate such positions and the same salary grade may be equally applied thereto.

Classified Service. Classified service means all offices or positions in the civil service of New York City, classified under one of the four jurisdictional classes: exempt; competitive; non-competitive; labor; including such offices and positions in the New York City housing authority, triborough bridge and tunnel authority, New York City transit authority, New York City board of education, and the offices of all district attorneys and all public administrators within the City of New York.

Commission. Commission means the New York City civil service commission.

Compensation. Compensation is the annual salary attaching to a position or its equivalent if stated by the day, week, month, hour or other unit. Maintenance in the form of board and lodging or its monetary equivalent as duly fixed may also be included therein.

Day. Day is each day of the week; provided, however, if the last day for completing action on any matter is a Saturday, Sunday or holiday, it shall be the next business day.

The Department of Citywide Administrative Services. The Department of Citywide Administrative Services is the department established by chapter thirty-five of the New York City charter.

Examination. Examination is the process by which the department of personnel or other examining agency ascertains the fitness of candidates for entrance into the classified service or promotion therein.

Examining Agency. Examining agency is an agency which schedules and conducts non-written promotion examinations for positions in that agency.

Grade or Salary Grade. Grade or salary grade is the order or standing of a position with reference to the full-time annual compensation attaching to it or, if compensation be paid on other than a full-time per annum rate, then the equivalent of such rate as determined by the commissioner of citywide administrative services.

Jurisdictional Classification. Jurisdictional classification is the assignment of positions in the classified service to the exempt, non-competitive, labor or competitive classes.

Period of Service. In computing the length of a period of service in order to attain a prescribed eligibility requirement, whenever the first working day is immediately preceded by a Saturday, Sunday or public holiday, or a combination thereof, such "period of service" shall be deemed to commence on the day following the last work day preceding the Saturday, Sunday or public holiday, or combination thereof.

Position. Position means a particular office or employment in the civil service.

Position Classification. Position classification is a grouping together under common or descriptive titles of positions that are substantially similar in the essential character and scope of their duties and responsibilities and in the qualification requirements thereof.

Position Reclassification. Position reclassification is the reassignment of a position or positions from one class of positions to a different class of positions.

Publish. The term "publish" means making a public announcement by advising the public or making known of something to the public or bringing before the public either by posting publicly and conspicuously in the office of the department of personnel or other appropriate agency or printing or causing to be printed and to issue from a newspaper, or such other distribution or circulation as the commissioner of citywide administrative services deems appropriate.

Regulation. Regulation is a resolution of the commissioner of citywide administrative services setting forth policy or procedures for the effectuation of the provisions of the civil service law of the State of New York and the rules of the commissioner of citywide administrative services, which shall not be inconsistent with or supersede the civil service

law or the rules.

Salary Grade Allocation. Salary grade allocation is the assignment of a class of positions to one of the salary grades set forth in the classification rules.

Salary Grade Reallocation. Salary grade reallocation is the reassignment of a class of positions from one salary grade to another salary grade.

Service Rating, Performance Rating, or Performance Evaluation. Service rating, performance rating, or performance evaluation means a rating or evaluation of an employee for performance in a position as defined in the rules or regulations of the commissioner of citywide administrative services.

Subject. Subject is a subdivision of a test.

Terminal Date. If the "terminal date" of a prescribed period in which to accomplish an act of duty occurs on a Saturday, Sunday or public holiday, or a combination thereof, such date shall be deemed to be the first working day following thereupon.

Test. Test is a major subdivision of an examination.

Title. Title is the designation of a position based upon its duties and functions.

Unclassified Service. Unclassified service means all offices or positions in the civil service of New York City as described in section thirty-five of the civil service law.

RULE II-APPLICABILITY AND ADMINISTRATION

SECTION I-PERSONNEL ADMINISTRATION

2.1. (a) The commissioner of citywide administrative services shall have the power to promulgate rules and regulations relating to the personnel policies, programs and activities of city government in furtherance of and consistent with state civil service law and chapter thirty-five of the New York City charter.

(b) The commissioner of citywide administrative services shall have all the powers and duties of a municipal civil service commission provided in the civil service law or in any other statute or local law other than such powers and duties as are by chapter thirty-five of the New York City charter assigned to the mayor, the city civil service commission or the heads of agencies.

(c) The heads of agencies shall have the powers and duties of personnel management as provided for in chapter thirty-five of the New York City charter.

SECTION II-RULES

2.2. These rules shall have the force and effect of law.

SECTION III-REGULATIONS

2.3. The commissioner of citywide administrative services shall have power to adopt suitable regulations to carry out the provisions of the civil service law, the New York City charter and the rules.

SECTION IV-GENERAL ADMINISTRATION AND

ENFORCEMENT

2.4. (a) The commissioner of citywide administrative services shall have the authority and responsibility in the administration and enforcement of the rules and regulations prescribed thereunder and shall possess the powers and duties assigned to the commissioner of citywide administrative services pursuant to the provisions of chapter thirty-five of the New York City charter.

(b) The commissioner of citywide administrative services shall prescribe directives and orders for the instruction of the staff of the department of citywide administrative services and for the execution of the rules and regulations and wherever practicable, shall prescribe forms for all applications, certifications, reports, records and returns required thereunder.

SECTION V-APPLICABILITY

2.5. These rules shall apply to all offices and positions in the classified service of the city including offices and positions in the New York City housing authority, New York City transit authority, triborough bridge and tunnel authority, New York City board of education, and the offices of all district attorneys and all public administrators within the City of New York.

SECTION VI-RULE CHANGES; CALENDAR

2.6. (a) No proposed amendment, modification or addition to the rules shall be acted upon until public notice thereof shall be given in a designated newspaper for not less than three days prior to a public hearing thereon. Such notice shall set forth the proposal; but notice and public hearing shall not be necessary where the purpose of the proposed amendment, modification or addition is to conform with a change in a statute.

(b) Certified copies of all duly adopted amendments, modifications or changes of rules shall be transmitted to the offices of the secretary of state, the corporation counsel, the city clerk and to said designated newspaper for publication. Certified copies of all duly adopted regulations shall be transmitted to all of the foregoing except the office of the secretary of state.

(c) The commissioner of citywide administrative services shall cause to be published in said designated newspaper, as the city personnel director may determine, those minutes of general interest or broad application appearing as items in the calendar. Copies of the entire calendar shall be maintained for public inspection at the office of the department of citywide administrative services.

(d) If one year after the date of the public hearing held to consider approval of a change of a rule of the commissioner of citywide administrative services (as provided for by section 20 of the New York State civil service law) either the commissioner of citywide administrative services or the mayor of the City of New York or the state civil service commission has not acted upon the matter, the resolution shall automatically be deemed withdrawn unless the period of consideration is extended by an official action of the commissioner of citywide administrative services.

SECTION VII-NON-DISCRIMINATION; EQUAL OPPORTUNITY

2.7. (a) There shall be no unlawful discrimination in city employment on the basis of race, sex, age, religion, national origin or handicap, and equal opportunity in employment shall be ensured and promoted in the administration of personnel.

SECTION VIII-CONTINUITY AND PRESERVATION

2.8. Any resolutions, equivalency tables, terminal dates, restrictions, terms and conditions, and regulations in connection with the rules of classification in force and effect immediately prior to the effective date of these rules, shall continue to be in force and effect to the extent theretofore provided under the provisions of these rules, unless otherwise provided herein.

RULE III-JURISDICTIONAL CLASSIFICATION

SECTION I-THE EXEMPT CLASS

3.1.1. Definition. The exempt class shall include all offices and positions in the classified service enumerated in section forty-one of the civil service law and all other subordinate offices or positions for the filling of which competitive or non-competitive examination shall be found by the commissioner of citywide administrative services to be not practicable.

3.1.2. Application to Classify. An application by an agency to classify in the exempt class a position not specifically thus classified by law shall not be considered unless it is accompanied by a statement setting forth the reasons why examination, competitive or non-competitive, is impracticable.

3.1.3. Number of Positions; Classification by Rule. Not more than one appointment shall be made to or under the title of any office or position placed in the exempt class unless a different number is specifically prescribed in the classification rules. No office or position shall be deemed to be in the exempt class unless it is specifically named in such class in the rules.

3.1.4. Agency Certificate. Appointments to positions in the exempt class may be made without examination; but the agency head shall in each case submit to the department of personnel, in such form as it shall prescribe, a certificate which shall include:

(a) the title of the position;

(b) the full name and residence of the appointee;

(c) the place of the appointee's residence for five years immediately preceding appointment;

(d) the appointee's previous appointments to and periods of service, if any, in the public service;

(e) the appointee's qualifications for the office or position to be filled.

3.1.5. Evaluation Upon Vacancy. (a) Upon the occurrence of a vacancy in any position in the exempt class, the commissioner of citywide administrative services shall study and evaluate such positions and, within four months after the occurrence of such vacancy shall determine whether such position, as then constituted, is properly classified in the exempt class. Pending such determination, such position shall not be filled, except on a temporary basis.

(b) If the commissioner of citywide administrative services shall determine that such position is properly classified in the exempt class, such appointment shall be deemed effective as exempt as of the original date of appointment. The determination of the commissioner of citywide administrative services thereon shall be recorded.

SECTION II-THE NON-COMPETITIVE CLASS

3.2.1. Definition. The non-competitive class shall include all positions that are not in the exempt or labor class and for which it is found by the commissioner of citywide administrative services not to be practicable to ascertain the merit and fitness of applicants by competitive examination.

3.2.2. Application to Classify. An application by an agency to classify in the non-competitive class a position not specifically thus classified by law shall not be considered unless it is accompanied by a statement setting forth the reasons why competitive examination is impracticable.

3.2.3. Classification by Rule. (a) Not more than one appointment shall be made to or under the title of any office or position placed in the non-competitive class, unless a different or unlimited number is specifically prescribed in the

classification rules. No office or position shall be deemed to be in the non-competitive class unless it is specifically named in such class in the rules.

(b) The commissioner of citywide administrative services shall designate among positions in the non-competitive class those positions which are confidential or require the performance of functions influencing policy.

3.2.4. Examination. Appointments to positions in the non-competitive class shall be made after such non-competitive examination as is hereinafter prescribed and all such examinations shall be subject to the control of the commissioner of citywide administrative services.

3.2.5. Agency Examiners. (a) In each agency there shall be a board of examiners for non-competitive positions, consisting of three members who are officers or employees of the agency designated by the agency head subject to the approval of the commissioner of citywide administrative services.

(b) In each institution of an agency there may be an institutional examiner who shall be designated by the agency head subject to the approval of the commissioner of citywide administrative services.

(c) Members of the agency board of examiners and the institutional examiners shall, insofar as practicable, be persons in the competitive class.

3.2.6. Scope of Examination. Such examinations shall be conducted so as to show that the candidate

(a) is free from any physical or medical disability which will interfere with the proper discharge of the candidate's duties;

(b) is a person of satisfactory character and reputation;

(c) possesses the requisite knowledge and ability;

(d) is qualified by experience or training to discharge the duties of the position efficiently.

3.2.7. Examination Reports; Action of Commissioner of Citywide Administrative Services. The reports of the character, scope and results of the examination of each candidate for a non-competitive position conducted by an agency board of examiners or by an institutional examiner, as the case may be, shall be transmitted to the commissioner of citywide administrative services or appropriate forms, when approved by such board at the end of each month or as otherwise prescribed in the regulations by the commissioner of citywide administrative services. If such reports are disapproved in whole or in part by the commissioner of citywide administrative services, the employees therein disapproved shall have their appointments terminated.

3.2.8. Compensation. Except as otherwise provided, the maximum compensation for positions in the non-competitive class shall be stated on a without maintenance basis. However, appointments may be made with or without maintenance. Where appointments are made with maintenance, the cash compensation for persons receiving maintenance shall be determined by subtracting the value of maintenance from the stated salary. A schedule showing allowable maintenance shall be prepared.

3.2.9. [Deleted 6/30/86]

3.2.10. Positions for the Physically or Mentally Disabled. (a) The commissioner of citywide administrative services may determine a prescribed number of positions, not to exceed the maximum set by state law, with limited duties which can be performed by physically or mentally disabled persons who are found qualified, in the manner prescribed by law, to perform such duties.

(b) Upon such a determination, such positions shall be classified in the non-competitive class, and shall be filled by

persons who shall have been certified by either the commission for the blind and visually handicapped in the state department of social services as physically disabled by blindness or by the state education department as otherwise physically or mentally disabled and, in any event, qualified to perform satisfactorily the duties of any such position. At least three hundred of such positions shall be filled by persons who have been certified as physically disabled. If no qualified physically disabled persons have applied for such positions, the commissioner of citywide administrative services may determine to fill those unfilled positions with qualified mentally disabled persons.

(c) The commissioner of citywide administrative services shall issue procedures for approval of appointments of physically or mentally disabled persons to such non-competitive positions as are established pursuant to this rule.

3.2.11. Service Outside the City of New York. The commissioner of citywide administrative services may except from competitive examination any qualified person who is to render services in a locality outside the city and who is a resident of such locality, where competitive examination is not practicable. No such person shall be eligible for transfer or assignment to work within the city.

SECTION III-THE LABOR CLASS

3.3.1. Definition; Clssification; Requirements. (a) The labor class shall comprise all unskilled laborers in the classified service as are not classified in the competitive or non-competitive class.

(b) The commissioner of citywide administrative services shall prescribe the requirements and tests to be held for positions in the labor class.

3.3.2. Termination. Upon the termination of an employment in the labor class, the agency head shall certify to the department of citywide administrative services the reasons therefor.

SECTION IV-THE COMPETITIVE CLASS

3.4.1. Definition. The competitive class shall include all positions for which it is practicable to determine the merit and fitness of applicants by competitive examination and shall include all positions now existing or hereafter created, of whatever functions, designations, or compensation, except such positions as are in the exempt class, the non-competitive class or the labor class.

3.4.2. Application to Otherwise Classify. An application by an agency to classify in the exempt, non-competitive or labor class, a position not specifically thus classified by law shall not be considered unless it is accompanied by a statement setting forth the reasons why competitive examination is impracticable.

3.4.3. Examination. The merit and fitness of applicants for positions which are classified in the competitive class shall be ascertained by such examinations as may be prescribed by the commissioner of citywide administrative services and as provided for in these rules.

3.4.4. Jurisdictional Reclassification. Whenever a position in the exempt, non-competitive or labor class is reclassified into the competitive class, the permanent incumbent of such position, if there be any at the time of such reclassification, shall continue to hold the position with all the rights and status of a competitive employee.

RULE IV-EXAMINATION PROCEDURES, VETERANS

PREFERENCE, ELIGIBLE LISTS AND CERTIFICATION

SECTION I-GENERAL EXAMINATION PROCEDURES

4.1.1. General Provisions; Applicability. (a) The commissioner of citywide administrative services shall conduct examinations for such positions as may be necessary to anticipate the needs of the city service.

(b) The head of an examining agency shall conduct non-written promotion examinations for such positions in the agency as may be necessary to anticipate the needs of the agency.

(c) The provisions of this section shall apply to examinations conducted by the department of citywide administrative services and by examining agencies.

4.1.2. Scheduling of Examinations. The department of citywide administrative services shall maintain the general schedule of all examinations for positions in the city service.

4.1.3. Examining Agency Examination Plans. Agency examination plans for non-written promotion examinations shall contain such material as set forth in these rules or provided in the regulations. Such plans shall be submitted to the commissioner of citywide administrative services for approval prior to the holding of such examination.

4.1.4. Job Analysis. (a) A job analysis shall be conducted for each examination.

(b) Agencies shall assist the department of citywide administrative services in the preparation of job analyses for examinations conducted by the department of citywide administrative services.

(c) Job analyses conducted by examining agencies for non-written promotion examinations shall be submitted to the department of citywide administrative services by the examining agency.

4.1.5. Examination Experts. The commissioner of citywide administrative services may secure outside expert assistance in examinations or may approve an agency examination plan providing for such assistance in such cases as the commissioner of citywide administrative services deems appropriate and necessary.

4.1.6. Responsibility for Examination. (a) Every examination shall be under the direction of the assistant commissioner for examinations or designated officer of the examining agency, who shall consult with agency heads concerning the qualifications for the position for which an examination is to be held.

(b) Such examination shall be free from the influence or participation of the agency head or subordinates, except those who may be assigned to assist such assistant commissioner for examinations or designated officer of the examining agency who shall have the sole direction and control of such individuals during the period of such assignments.

4.1.7. Test and Weight. The tests comprising an examination and the relative weight given to each shall be fixed prior to each examination by the assistant commissioner for examinations in charge or in the examining agency's examination plan subject to the approval of the citywide administration services.

4.1.8. Preparation of Examinations. (a) The assistant commissioner for examinations or designated officer of the examining agency shall assign examiners for a particular examination.

(b) All written questions prepared by such examiner shall be placed in safe compartments provided by such assistant commissioner for examinations or designated agency officer. Such questions shall be printed from type or other process under the immediate supervision of such assistant commissioner for examinations or designated agency officer or a designated subordinate.

(c) The assistant commissioner for examinations or designated agency officer shall be responsible for the safekeeping of such questions unless relieved by the commissioner of citywide administrative services or agency head, as the case may be. So far as practicable, such printing shall be done immediately prior to the date of the examination.

4.1.9. Announcement. (a) In advance of an examination, the commissioner of citywide administrative services shall prepare and publish an announcement setting forth the title of the position, the minimum qualifications required, the tests of the examination, and such other information as the commissioner of citywide administrative services may

deem necessary.

(b) Where an agency is conducting a non-written promotion examination such announcement shall be included in the agency's examination plan and upon approval by the commissioner of citywide administrative services the announcement shall be published by such agency.

4.1.10. Publication. Such announcement shall be published daily throughout the entire filing period. Where the announcement does not specify a closing date, a filing period shall not be closed without at least three days' notice by publication. Such announcement and list of examinations for which applications are being received shall be posted conspicuously in the office of the department of citywide administrative services or of the examining agency, as the case may be. The provisions of paragraph 4.1.9 of this section relative to the publication of announcements shall not be applicable where a nomination for promotion is made pursuant to paragraph 5.3.7 of these rules.

4.1.11. Modification. The commissioner of citywide administrative services may, after the announcement has been published, subdivide the several tests into subjects or parts, or approve such action by an examining agency. Notice of such action must be given at the time such tests are held.

4.1.12. Limitation. Eligibility may be limited to one sex where the duties of the position involve the institutional or other custody or care of persons of the same sex, or visitation, inspection or work of any kind the nature of which constitutes a bona fide occupational qualification requiring sex selection.

SECTION II-APPLICATIONS AND RECRUITMENT

4.2.1. Application Forms and Completion. (a) The standard application forms for examinations shall be furnished by the commissioner of citywide administrative services or examining agency without charge to all persons requesting the same.

(b) An applicant shall state upon the prescribed form such information as is required including the applicant's background, experience and qualification for the position sought and merit and fitness for the public service. Applications shall be subscribed by the applicant and shall contain a declaration that the statements are made subject to the penalties of perjury.

(c) The personal history form or other prescribed form provided in connection with the investigation of an applicant shall be deemed a part of the application.

4.2.2. Filing Period. Unless otherwise provided in the announcement of the examination, the commissioner of citywide administrative services shall fix the period, or shall approve the period fixed by the examining agency, to be not less than two weeks, during which applications shall be received. There shall be not less than ten days between the last day for the receipt of applications as originally publicly announced and the date of the first test in an examination unless otherwise provided in the announcement of the examination.

4.2.3. Filing Fees. Filing fees shall be accepted by the department of citywide administrative services for all examinations including those conducted by an examining agency. The amounts of such fees and the terms and conditions for receipt and acceptance and any waivers shall be set forth in the regulations.

4.2.4. Non-Return of Applications. All applications shall be dated. An accepted application shall not be returned to the applicant or the applicant's agent, as the case may be.

4.2.5. Defective Application. An application found to be defective shall be suspended. Where an application is found to be incomplete or defective or not accompanied by the proper fee, if any, such application shall not be accepted unless the defect or omission has been corrected by the applicant and returned within seven days from the date of notification to the applicant of the required corrections.

4.2.6. Recruitment. Recruitment of persons for positions in the city service shall be conducted by the department of citywide administrative services and by agencies. Recruitment procedures shall include those set forth in the regulations or otherwise prescribed by the commissioner of citywide administrative services.

SECTION III-DISQUALIFICATION OF APPLICANTS

OR ELIGIBLES

4.3.1. General Provisions. (a) The commissioner of citywide administrative services, upon investigation of applicants for positions in the civil service or review of their qualifications, may refuse to examine an applicant or after examination refuse to certify or refuse to permit the certification of an eligible for reasons and in the manner prescribed by law or these rules.

(b) Investigation of the qualifications and background of an eligible may be made after appointment and, upon finding facts which, if known prior to appointment, would have warranted disqualification, or upon a finding of illegality, irregularity or fraud of a substantial nature in the eligible's application, examination or appointment, the certification of such eligible may be revoked by the commissioner of citywide administrative services and the employment directed to be terminated, provided, however, that no such certification shall be revoked or appointment terminated more than three years after it is made, except in the case of fraud.

(c) No person shall be disqualified by the commissioner of citywide administrative services unless such person has been given a written statement by the commissioner of citywide administrative services of the reasons therefor and afforded an opportunity to make an explanation and to submit facts in opposition to such disqualification. An examining agency's determination of eligibility of candidates for such agency's non-written promotion examination shall be subject to the provisions of 8.2.2 and 8.2.3 of these rules.

(d) Agencies shall assist the department of citywide administrative services in investigations in the manner prescribed by the commissioner of citywide administrative services.

4.3.2. General Requirements. (a) An applicant or eligible must possess the established minimum requirements and qualifications for admission to an examination or for appointment to a position.

(b) Satisfactory character and reputation shall be deemed a part of the established minimum requirements and qualifications for admission to an examination or for appointment to a position.

(c) A person convicted of petit larceny may in the discretion of the commissioner of citywide administrative services be examined or certified as a police officer or fire fighter. A person dishonorably discharged from the armed forces of the United States shall not be examined, certified or appointed as a police officer or fire fighter.

(d) Except as provided in subdivisions (e) and (f) hereof, any physical or mental disability, disease, injury, abnormality, or defect which renders a person unfit for the performance in a reasonable manner of the duties of the position the person seeks or the failure to meet the required medical or physical standards of a position, shall constitute grounds for the disqualification of such person.

(e) In the case of blind or otherwise physically handicapped persons as described in section fifty-five of the civil service law, who do not qualify under subdivision (d) hereof, due consideration shall be given to such findings as may be submitted by the state commission for the visually handicapped or the state education department, as the case may be, and such persons, if otherwise qualified, may be certified to positions from eligible lists upon which their names appear either generally or upon limited terms and conditions, as provided by regulations and procedures adopted by the commissioner of citywide administrative services.

(f) Where a person on an eligible list does not qualify under subdivision (d) hereof for the position for which the

list was established, and where such list is declared appropriate for a position requiring lesser medical and physical standards than those required for the original position, such person shall, upon application during the life of the list, if he or she meets such lesser standards, be qualified for the latter position and shall be certified thereto in his or her regular order on such list.

4.3.3. Burden. The burden of establishing the required qualifications shall be upon the applicant or eligible.

SECTION IV-ADMINISTRATION AND RATING

OF EXAMINATIONS

4.4.1. Applicability. The provisions of this section shall apply to examinations conducted by the department of citywide administrative services and by examining agencies.

4.4.2. Admission to Examination; Identification. A candidate shall not be admitted to an examination or any test thereof whose application therefor has not been presented and accepted in accordance with the rules. The name of a candidate who has not been fingerprinted at the time of examination shall not be placed on the eligible list.

4.4.3. Processing of Examination Papers. On the day of the examination, the admission cards of the candidates shall be enclosed in an envelope and sealed. In an examination in which the papers are rated in whole or in part by examiners, the identity of each candidate shall remain concealed until the ratings are completed. In an examination in which all procedures from the rating of tests to the production of the list are accomplished entirely by machine, the seal may be broken prior to rating solely to permit verification of mark-sensed application numbers.

4.4.4. Oral Tests. Oral tests, wherever practicable, shall be recorded by a suitable method to provide a reviewable record.

4.4.5. Second or Special Examinations. Except as provided in paragraph 4.4.6 hereof, or as provided in the military law of the State of New York, no candidate shall be given a second or special competitive test in connection with an examination held, unless it be shown to the satisfaction of the commissioner of citywide administrative services or the head of the examining agency that the candidate's failure to take or complete such test was due to:

(a) a manifest error or mistake for which the department of citywide administrative services or the examining agency is responsible, the nature of which shall be recorded;

(b) compulsory attendance before a court or other public body or official having the power to compel attendance;

(c) physical disability incurred during the course of and within the scope of the municipal employment of such candidate where such candidate is an officer or employee of the city; or

(d) absence from the test within a period of one week after the date of death of a spouse, mother or father, sister or brother, or child of such candidate where such candidate is an officer or employee of the city.

No such claim shall be granted unless it is submitted in writing to the department of citywide administrative services or the examining agency either in person or by certified or registered mail within two months following the date of the regular examination.

4.4.6. Sabbath Observers. A candidate claiming to be unable to participate in an examination when originally scheduled because of the candidate's religious beliefs may seek consideration as a sabbath observer by requesting a special examination by submitting to the department of citywide administrative services or examining agency such request in writing either in person or by certified or registered mail no later than five days prior to the date of the examination. A written statement signed by the candidate's religious leader attesting to the candidate's religious beliefs and certifying that the candidate is a sabbath observer and that it is contrary to the candidate's tenets to participate in an

examination during the sabbath must accompany said written request.

4.4.7. General Rating Procedures. Except when otherwise specified by the assistant commissioner for examinations or by the designated officer of the examining agency, each test, subject or part of an examination shall be rated by not less than two examiners. They, or employees designated by the assistant commissioner for examinations or by the designated officer of the examining agency, shall then affix to each paper or record a rating expressing the average of their judgment attested by their respective signatures or initials.

4.4.8. General Rating Standards. The rating shall be comparative and in accordance with such standards as the needs of the service may require.

4.4.9. Passing Rating. (a) Unless otherwise specified by resolution or regulation of the commissioner of citywide administrative services, or by the announcement of examination, candidates must attain a final examination rating of not less than seventy percent in an examination in order to be placed upon an eligible list for certification and appointment.

(b) The required passing rating in any test, subject or part of an examination shall be fixed not later than the time of the holding thereof or as soon as practicable thereafter by the assistant commissioner for examinations in charge or by the designated officer of the examining agency.

(c) Where it is anticipated that the number of eligibles will not meet the needs of the service, the commissioner of citywide administrative services or the head of an examining agency, as the case may be, may, in order to provide an eligible list to meet the needs of the service, authorize the use of any type or combination of types of conversion methods or a mathematical formula of penalties for incorrect answers on the basis of test difficulty and other relevant factors involved in the rating of any test.

(d) The commissioner of citywide administrative services or the head of an examining agency may prescribe that the passing mark shall be the lowest grade received among a certain fixed number of candidates graded highest in the examination or in any subject or part thereof.

(e) In the case of an examining agency, any action proposed to be taken pursuant to subparagraphs (b), (c) or (d) hereof which was not provided for in the agency plan for examination approved by the commissioner of citywide administrative services shall be submitted for such approval prior to any such action.

4.4.10. Finality of Rating. Except as otherwise provided by paragraph 4.4.13 hereof or by resolution or regulation of the commissioner of citywide administrative services, no final rating of a test, subject or part of an examination shall be subject to alteration or re-rating.

4.4.11. Candidates With Same Final Examination Rating. Whenever two or more candidates in an examination receive the same final examination ratings, their respective place on the resulting eligible list shall be determined for administrative reasons only by a sequence of the number derived from the last five and then the first four positions of their social security numbers.

4.4.12. Certification and Use of Eligible List Where Paragraph 4.4.11 Has Been Applied. (a) If the name of any eligible whose place on the eligible list has been determined in accordance with the procedures set forth in paragraph 4.4.11 is included in the certification for appointment the names of all other eligibles on the list having the same final examination rating as such eligible shall likewise be included in such certification.

(b) Appointments and promotions then may be made by the selection of any such eligible whose final examination rating is equal to or higher than the final examination rating of the third highest standing eligible qualified and willing to accept appointment or promotion.

4.4.13. Correction of Manifest Error or Mistake. The commissioner of citywide administrative services, at any time

prior to the establishment or during the existence of an eligible list, may correct any manifest error or mistake made in connection with an examination, on the initiative of the commissioner of citywide administrative services or that of the head of an examining agency, or in the granting of a claim of manifest error or mistake. Such action shall be taken in accordance with the procedures set forth in rule VIII of these rules and may result in a higher or lower rating. The nature of such manifest error or mistake shall be recorded.

SECTION V-ADDITIONAL CREDIT ON COMPETITIVE

EXAMINATIONS FOR VETERANS AND DISABLED VETERANS

4.5.1. Application for Additional Credit. (a) A veteran or disabled veteran who elects to claim additional credit as provided in the civil service law, shall so notify the commissioner of citywide administrative services and establish by appropriate documentary evidence eligibility for such additional credit.

(b) No such claim shall be accepted as approved which has not been filed prior to the establishment of the eligible list. However, such timely claim may, prior to appointment, be amended to reflect the disabled or non-disabled veteran status recognized by the veterans administration at the time the list was established.

4.5.2. General Procedures. (a) Prior to appointment or promotion, as the case may be, a veteran or disabled veteran reached for appointment or promotion on an eligible list by virtue of such additional credits, shall subscribe a statement on a form provided by the commissioner of citywide administrative services that no permanent original appointment or permanent promotion to a position in the civil service of the state or any civil division or city thereof had previously been obtained as a result of the additional credits prescribed in the civil service law.

(b) The agency head shall at the time of appointment require a person appointed by virtue of such additional credits to execute an instrument on a form prescribed by the commissioner of citywide administrative services, setting forth such person's public employment since January 1, 1951.

4.5.3. Use of Additional Credit. (a) A person who has received a permanent original appointment or permanent promotion to a position in the civil service of the state or any of its civil divisions as a result of additional credit shall not thereafter be entitled to additional credit, either as a veteran or disabled veteran, in any competitive examination for original appointment or promotion to any position in the civil service of the state or any civil division thereof.

(b) The appointment or promotion of a veteran or disabled veteran as a result of additional credits shall be void if such veteran or disabled veteran, prior to such appointment or promotion, had received a permanent original appointment or permanent promotion to a position in the civil service of the state or any of its civil divisions as a result of additional credits.

4.5.4. Exhaustion of Credits; Exceptions. When a veteran or disabled veteran accepts a permanent position from an eligible list by virtue of such additional credits, such person shall be deemed to have exhausted those credits unless:

(a) prior to the expiration of the probationary term, such veteran or disabled veteran resigns from the position; or

(b) the services of such veteran or disabled veteran are terminated at the end of or during the probationary term; or

(c) at the time of establishment of an eligible list, the position of a veteran or disabled veteran on such list has not been affected by the addition of credits; or

(d) at the time of appointment from an eligible list, a veteran or disabled veteran is in the same relative standing among the eligibles who are willing to accept appointment as if the veteran or disabled veteran had not been granted additional credits.

4.5.5. Withdrawal of Application; Election to Relinquish. (a) An application for additional credits may be

withdrawn by the applicant in writing at any time prior to the establishment of an eligible list or during its existence and prior to appointment or promotion therefrom. In such case, the election shall be irrevocable and the applicant's place on the eligible list shall be revised accordingly.

(b) Where such election is made in connection with certification to a position for which the list has been declared appropriate other than to the position for which the examination was held, it shall not affect the applicant's standing on the list in respect to the latter position.

4.5.6. Roster. There shall be established in the department of citywide administrative services a roster of all veterans and disabled veterans appointed or promoted as a result of the additional credits granted pursuant to the civil service law.

4.5.7. Disabled Veteran's Records. All certificates and other documents, memoranda, reports and information furnished by the United States veterans administration to the department of citywide administrative services in connection with claims for disabled veterans' preference shall be deemed confidential unless the commissioner of citywide administrative services determines that the withholding thereof is contrary to the public interest.

SECTION VI-ELIGIBLE LISTS

4.6.1. Establishment of Lists. (a) The provisions of this section shall apply to examinations conducted by the department of citywide administrative services and by examining agencies.

(b) The results of each examination shall be reported by the assistant commissioner for civil service or by the head of the examining agency, as the case may be, to the commissioner of citywide administrative services and the names of the candidates passing such examination shall be listed in the order of their respective final examination ratings. The names of disabled and non-disabled veterans who have duly established claims to additional credits shall be reported in the manner prescribed by law.

(c) The list thus reported shall be officially established only by order of the commissioner of citywide administrative services. The date prescribed in such order shall be the date of such establishment.

4.6.2. Terms and Conditions. An eligible list may be established subject to the conduct of such medical, physical, or other appropriate non-competitive qualifying tests, investigations and conditions as may be deemed appropriate by the commissioner of citywide administrative services.

4.6.3. Publication of Established Lists. An established eligible list shall be published as soon as practicable after establishment. Upon the establishment of an open competitive eligible list notification thereof shall be published as soon as practicable thereafter stating the title of the examination, the examination number, the number of passing candidates, the date of establishment, and such other information as the commissioner of citywide administrative services shall prescribe.

4.6.4. Notification to Candidates. Unless otherwise provided for in the notice of examination with respect to a continuing eligible list, the commissioner of citywide administrative services, upon the establishment of an eligible list, shall notify each candidate of the candidate's ratings and, if the candidate has received a passing final examination rating, of the numerical place on such list. Any candidate rejected for reasons other than failure to attain a passing final examination rating shall be advised of such reasons.

4.6.5. Inspection of Examination Papers. Except as otherwise provided by the commissioner of citywide administrative services, candidates may personally inspect their examination papers at the offices of the department of citywide administrative services, or the examining agency, as the case may be, at specified times in the presence of employees designated by the city personnel director or by the head of the examining agency.

4.6.6. Duration of Eligible Lists. (a) The duration of either an open competitive or promotion eligible list shall be not less than one nor more than four years from the date of establishment.

(b) Unless otherwise provided, an eligible list which has been in existence for one year or more shall terminate upon the establishment of an appropriate subsequent like list for the same title.

(c) Where the duration of an eligible list is fixed in the announcement of examination at less than four years, the commissioner of citywide administrative services may by resolution prior to the expiration date of such list extend the duration of such list up to the maximum limitation of four years, provided that such announcement of examination states that such extension may be made.

(d) The commissioner of citywide administrative services may also by resolution prior to the expiration date of an eligible list extend the duration of such list as provided for in section fifty-six of the civil service law, as amended by section one of chapter four hundred and forty-three of the laws of nineteen hundred and seventy-six.

SECTION VII-CERTIFICATION OF ELIGIBLE LISTS AND

SELECTION THEREFROM

4.7.1. General Provisions. (a) The provisions of this section shall apply to the certification of eligible lists by the commissioner of citywide administrative services or, in the case of classes of positions unique to an agency, the certification of eligible lists for such classes by the agency head.

(b) Appointments or promotions shall be made from the established list most nearly appropriate for the position to be filled, as determined by the commissioner of citywide administrative services.

(c) Appointment or promotion from an established eligible list to a position in the competitive class shall be made by the selection of one of the three persons certified by the commissioner of citywide administrative services or the head of the certifying agency, as the case may be, as standing highest on such established list who are qualified and willing to accept such appointment or promotion. Where applicable, such selection shall be made as provided for in paragraph 4.4.12 of these rules.

(d) The rating of each eligible shall be stated in the certification.

(e) The agency head may review the examination application and records of each certified eligible at the office of the department of citywide administrative services.

4.7.2. Existing Eligible Lists. (a) When an eligible list has been in existence for less than one year and contains the names of less than three eligibles willing to accept appointment, and a new list for the same position or group of positions is established, the names of the eligibles remaining on the old list shall have preference in certification over the new list until such old list is one year old. During such period such names shall be certified along with enough names from the new list to provide a sufficient number of eligibles from which selection may be made.

(b) Where an old list which has been in existence for one year or more is continued upon the establishment of a new list which contains less than three names, the commissioner of citywide administrative services may certify or may authorize the head of the certifying agency to certify the names on the old list along with enough names from the new list to provide a sufficient number of eligibles from which selection may be made.

(c) Agency and city-wide promotion eligible lists shall not be certified for an agency until after the promotion unit eligible lists for that agency, if any, have been exhausted.

4.7.3. Additions to Certification. (a) If there be more than one position to be filled, or if the commissioner of citywide administrative services or certifying agency head has reason to anticipate declinations, or where the

certification is to be completed as set forth in this paragraph, the commissioner of citywide administrative services or certifying agency head shall supplement the certification for the selection by the addition of the names of those next in order on the established list. However, selection shall be made singly and in each case from the three highest names remaining qualified and eligible and willing to accept appointment or promotion, or from among those eligibles as provided for in paragraph 4.4.12 of these rules, as the case may be.

(b) On notification from an agency head that one or more eligibles have declined appointment and on receipt by the department of citywide administrative services from such officer of any such declination in writing, or of evidence of the failure of any such eligible to respond to a notice properly sent, such certification shall be completed by the addition of the name or names of the eligibles next in order of standing on the list.

(c) Upon receipt by the head of a certifying agency of a written declination of appointment by one or more eligibles named in a certification or of evidence of the failure of any such eligible to respond to a notice properly sent, such certification shall be completed by the addition of the name or names of the eligibles next in order of standing on the list.

(d) Where objection to the certification of one or more eligibles has been duly made by an agency head and the commissioner of citywide administrative services sustains such objection, the certification shall be completed by the addition of the name or names of the eligibles next in order of standing on the eligible list.

4.7.4. Limitation on Certifications. No name shall be certified more than three times to the same agency head for the same or similar position unless at such officer's request. However, only those who have been actually entitled to consideration for selection shall be charged with certification. For appointment to the position of police officer in the police, transit police, or housing police services, no name certified three times to one agency head shall be certified to another unless at such agency head's request.

4.7.5. Duration of Certification. A certification shall not remain in force and effect for a period longer than thirty days nor beyond the existence of the eligible list from which certification was made. Until such certification has been exhausted or terminated, no new certification shall be made for the same position in the same agency.

4.7.6. Revocation of Individual Certification or Appointment. Whenever a person not entitled to certification is certified, such certification and appointment, if any, shall be revoked by the commissioner of citywide administrative services.

4.7.7. Ineligibility for Further Certification. An eligible who has been appointed to a permanent position for which the list was established or to a similar position in the same or higher grade, shall no longer be eligible for certification from such list.

4.7.8. Conditional Certification. (a) Upon the initiative of the commissioner of citywide administrative services or upon request of the agency head, the commissioner of citywide administrative services may certify eligibles subject to investigation, medical test or other qualifying test or requirement, where such conditions were not provided for at the time an eligible list was established. Upon approval by the commissioner of citywide administrative services, such conditional certification may be made by the head of a certifying agency.

(b) Written notice of such conditional certification pursuant to this paragraph shall be given to eligibles at the time of appointment or promotion, as the case may be.

(c) Whenever, upon subsequent investigation, medical test or other qualifying test or requirement, an eligible thus certified is found to be not qualified, such certification shall be revoked by the commissioner of citywide administrative services and the employment, if any, of such eligible terminated, provided, however, that no such certification shall be revoked or appointment terminated more than three years after it is made except in the case of fraud.

4.7.9. Certification by Sex. The commissioner of citywide administrative services may authorize the limitation of certification from an eligible list to one sex when the duties of the position involve institutional or other custody or care of persons of the same sex, or the visitation, inspection, or work of any kind the nature of which is a bona fide occupational qualification requiring sex selection.

4.7.10. Selective Certification. (a) Selective certification may be made from an eligible list to fill similar or related positions which require additional or special qualifications not tested for specifically in the prescribed requirements or tests of an examination, in the manner provided in this paragraph.

(b) Upon the initiative of the commissioner of citywide administrative services or at the request of the head of an agency, the commissioner of citywide administrative services may selectively certify from an eligible list where the announcement of examination originally contained a specific provision for such selective certification.

(c) With respect to certifying agencies, the agency head may so selectively certify, where the announcement of examination originally contained a specific provision for such selective certification, upon approval by the commissioner of citywide administrative services.

(d) Selective certification shall be made only upon due notice to all affected eligibles on such list.

(e) Eligibles on such list who possess the additional or special qualifications required as evidenced by experience, appropriate licensure, possession of essential tools, equipment and facilities, or who pass an appropriate qualifying test shall be qualified for selective certification and shall be certified to such similar or related positions in the order of standing on the original list.

(f) Where the announcement of examination did not originally contain a provision for such selective certification, it shall not be made or authorized until intention to make such certification has been duly advertised in a designated newspaper and a public hearing thereon held by the commissioner of citywide administrative services in the same manner as is required for the adoption or amendment of a rule.

4.7.11. Certification Pools. Certification pools may be conducted at the discretion of the commissioner of citywide administrative services for the purpose of filling positions more expeditiously. Such certification pools shall be conducted pursuant to appropriate terms and conditions not inconsistent with the civil service law or these rules.

4.7.12. Continuing Eligible Lists. (a) The commissioner of citywide administrative services may establish continuing eligible lists for such classes of positions where the needs of the service require. Such continuing eligible lists shall consist of the names of candidates successful in tests which may be conducted from time to time and which shall be so constructed and rated so as to be as nearly equivalent as possible in coverage and difficulty.

(b) The name of any candidate who passes any such test and who is otherwise qualified shall be placed on such eligible list in the rank corresponding to the candidate's final rating on such test.

(c) The period of eligibility of successful candidates for certification and appointment from such continuing eligible lists shall be one year following the date on which such candidates first became eligible for certification.

(d) A candidate may take more than one test provided, however, that no such candidate shall be certified simultaneously with more than one rank on the continuing eligible list.

SECTION VIII-DECLINATION OF APPOINTMENT

4.8.1. Applicability. The provisions of this section shall apply to appointments from established eligible lists certified by the commissioner of citywide administrative services or by the head of a certifying agency.

4.8.2. Effect of Declination; Failure to Respond; Failure to Report. Except as otherwise provided in this section,

the name of an eligible who has been certified for employment in and offered an appointment to a position, whether or not the list was expressly established therefor, shall be withheld from certification for any position upon the occurrence of one of the following:

(a) declination by the eligible of an offer of appointment to any such position;

(b) failure of the eligible to respond to an offer of appointment within the period fixed by the agency head, provided that such period is not less than four days after the date of such offer;

(c) failure of the eligible to report for duty after accepting such position.

4.8.3. Exceptions for Declinations. (a) Notwithstanding the provisions of paragraph 4.8.2, declination by an eligible of an offer of appointment to a position, whether or not the list was expressly established therefor, shall result only in withholding such eligible's name from certification to a like position if the declination is for one of the following reasons:

(1) temporary inability to accept the position;

(2) in the case of original appointment the location in which the duties are to be performed. However, if the location is within the city of New York, such declination shall apply to the entire city, and if outside the city of New York, such declination shall apply to the entire county;

(3) in the case of a promotion, where the certification is from a citywide promotion list and the position offered is in an agency other than the agency where the eligible is employed;

(4) in the case of a promotion, location on the basis of borough or county in which the duties are to be performed.

(b) Where the offer of appointment is to a position other than that for which the list was expressly established and is declined by an eligible for that reason, such declination shall result only in withholding such eligible's name from further certification to any such other like position.

(c) Where the eligible declines appointment to a specific position for which the list has not been expressly established, because of the objectionable nature of the duties of such position, and the commissioner of citywide administrative services finds the duties to be of such nature, such eligible's name shall be withheld only for certification to a like specific position. However, where the list has been expressly established for such specific position, such person's name shall be withheld from certification upon declination of appointment for such reason.

(d) If a list established for permanent appointment is certified for temporary, seasonal or part-time employment, declination of an offer of appointment shall result only in withholding such eligible's name from certification for a position of a like duration of employment. However, where the eligible list has been expressly established for a position of a temporary, seasonal or part-time duration, declination of appointment to such position shall result in withholding the eligible's name from further certification.

4.8.4. Effect of Withholding from Certification on Certification to a Like Position. A person whose name has been withheld from certification shall not be eligible for like certification until all eligibles on the eligible list upon which such person's name appears have been reached for like certification unless such person submits an explanation satisfactory to the commissioner of citywide administrative services for the declination or failure to reply or to accept appointment. Such explanation must be filed in writing with the department of citywide administrative services at any time prior to the expiration date of the eligible list.

4.8.5. Conditions for Restoration. (a) The name of an eligible for an original appointment which has been withheld from certification shall not be restored to such list for certification, except upon written request therefor by such

eligible. No more than a total of three restorations shall be permitted.

(b) The name of an eligible for promotion to a higher position, which has been withheld from certification shall automatically be restored to the bottom of such list for certification. No more than a total of three restorations shall be permitted.

(c) The commissioner of citywide administrative services may, if the needs of the service require, restore names of eligibles covered by this paragraph 4.8.5 to a list without their written request. Such restorations shall not be included in the total of three restorations permitted.

4.8.6. Declination for Insufficiency of Compensation. When declination for insufficiency of compensation offered results in the selection of an eligible lower on the eligible list than the person who thus declined, the compensation of the person selected shall not be increased within one year after such selection beyond the amount declined, unless each eligible originally declining has received or declined appointment or promotion at the increased amount. However, at the discretion of the commissioner of citywide administrative services, for reasons to be recorded, this limitation may be waived.

4.8.7. Different Compensation. Notwithstanding the provisions of paragraph 4.8.6, upon the written request of an agency head setting forth the reasons therefor, the commissioner of citywide administrative services may certify to specified agencies, eligibles having specified additional qualifications at a rate of compensation above that offered to other persons on the same eligible list.

RULE V-APPOINTMENTS AND PROMOTIONS

SECTION I-APPOINTMENTS AND PROMOTIONS GENERALLY

5.1.1. Prohibition Against Out-of-Title Work. No person shall be appointed, promoted or employed under any title not appropriate to the duties to be performed and, except upon assignment by proper authority during the continuance of a temporary emergency situation, no person shall be assigned to perform the duties of any position unless duly appointed, promoted, transferred or reinstated to such position in accordance with the law and rules prescribed therefor. No credit shall be granted in a promotion examination for out-of-title work.

5.1.2. Procedures for Identification and Oath. (a) Upon appointment or promotion an eligible shall be fingerprinted and shall execute in the presence of the agency head or representative the prescribed identification form.

(b) An eligible shall likewise take and file such oath or affirmation as may be required by law. Such oath shall not be required from an employee in the labor class and shall be required only in other cases upon original appointment or upon a new appointment following an interruption of continuous service and shall not be required upon promotion, demotion, transfer or other change of title during the continued service of the employee, or upon the reinstatement pursuant to law or rules of an employee whose services have been terminated and whose last executed oath is on file.

(c) The duly executed identification form of the eligible or employee, together with the notice of appointment or promotion, shall be transmitted to the department of citywide administrative services.

5.1.3. Appointment Subsequent to Qualification. Whenever a person has been declared qualified after investigation, medical or other qualifying tests or requirements, and is certified either by the commissioner of citywide administrative services or the head of a certifying agency for appointment after such qualification, such person upon appointment shall execute a supplemental statement, as the commissioner of citywide administrative services may prescribe, pertaining to such investigation, medical or other qualifying tests or requirements.

SECTION II-PROBATIONARY TERMS

5.2.1. Probationary Term. (a) Every appointment and promotion to a position in the competitive or labor class shall be for a probationary period of one year unless otherwise set forth in the terms and conditions of the certification for appointment or promotion as determined by the commissioner of citywide administrative services. Appointees shall be informed of the applicable probationary period.

(b) Every original appointment to a position in the non-competitive or exempt class shall be for a probationary period of six months unless otherwise set forth in the terms and conditions for appointment as determined by the commissioner of citywide administrative services. Appointees shall be informed of the applicable probationary period. However, such probationary period may be terminated by the commissioner of citywide administrative services or by the agency head before the end of the probationary period, and the appointment shall thereupon be deemed revoked. Nothing herein shall be deemed to grant permanent tenure to any non-competitive or exempt class employee.

5.2.2. Effect of Certain Prior Service and Military Law. (a) Notwithstanding anything to the contrary contained in paragraph 5.2.1, if a permanent employee has served in a promotional title and particular job assignment on a provisional or temporary basis for a continuous period equal to or greater than the probationary period for that title immediately prior to a permanent promotion to such title or, as determined by the commissioner of citywide administrative services, in a title in a similar grade and in such particular job assignment or similar job assignment in the same agency, the promotee shall not be required to serve a probationary period upon such promotion.

(b) Subject to the provisions of the military law of the state of New York, the computation of the probationary period shall be based on the time during which the employee is on the job in a pay status.

5.2.3. Status of Former Position Upon Promotion. Upon promotion, the position formerly held by the person promoted shall be held open for the promotee, and shall not be filled, except on a temporary basis, pending completion of the probationary term.

CASE NOTES

¶ 1. The rule provides that when a permanent employee is promoted to a position where he or she is required to serve a probationary term, the position vacated may not be permanently filled during the term of probation, and that during the probationary term, the employee has the right to return to the previous position at his or her own choice. The purpose of the rule is to provide some job security to a permanent employee who is promoted or transferred to a position in which he or she is required to serve a probationary term. Petitioner was a Contract Specialist within the Community Development Agency (CDA). He took an examination for a position of Staff Analyst with the CDA. The examination was open to all persons, whether or not they were current City employees. After passing the examination, petitioner received an appointment to Staff Analyst and was given a leave of absence from her Contract Specialist position. Before the probationary period was over, the CDA later terminated petitioner from her Staff Analyst position, allegedly because of insubordination. She then sought reinstatement to her position as Contract Specialist and brought an Article 78 petition after her request was denied. The court held that where petitioner had obtained her position through an open competitive examination rather than a promotional examination limited to persons in specified City employee titles, the regulation did not permit her to obtain reinstatement as of right to her former position. Bethel v. McGrath-McKechnie, 95 N.Y.2d 7, 709 N.Y.S.2d 888 (2000).

5.2.4. Waiver Upon Promotion. Upon promotion, the agency may waive the requirement of satisfactory completion of the probationary term at any time during such term.

5.2.5. Leave of Absence During Probationary Term. Whenever a probationer who has not completed a probationary term has been granted a leave of absence to accept appointment on a provisional, temporary, emergency or exceptional basis to another position in the city service or to accept permanent appointment to a position in another jurisdictional classification, the period of service in such position or positions may, in the discretion of the agency head who appointed such person as a probationer, be counted as satisfactory probationary service in determining the

completion of such probationary term.

5.2.6. Restoration After Separation From Service; Conditions. A probationer separated from the service for any reason other than fault or delinquency may be restored by, and at the discretion of, the commissioner of citywide administrative services to the eligible list from which selected, if it be in existence, with the same relative standing thereon for general certification therefrom or for certification to agencies other than the one from which the probationer was separated provided that:

(a) the time during which such person has actually served shall be deducted from the probationary term if such person be again selected by the same agency head;

(b) if selected by another agency head, such person shall be required to serve a full probationary term unless such agency head elects to credit such person with the time theretofore served.

5.2.7. Termination. (a) At the end of the probationary term, the agency head may terminate the employment of any unsatisfactory probationer by notice to such probationer and to the commissioner of citywide administrative services.

(b) Notwithstanding the provisions of paragraph 5.2.1, whenever any agency has with the approval of the commissioner of citywide administrative services established a prescribed formal course of study or training for all probationary employees in a given title or titles, the agency head may, at the close of such course of study or training, terminate the employment of any probationer who fails to complete successfully such course of study or training, as the case may be.

(c) Notwithstanding the provisions of paragraphs 5.2.1 and 5.2.7(a) the agency head may terminate the employment of any probationer whose conduct and performance is not satisfactory after the completion of a minimum period of probationary service and before the completion of the maximum period of probationary service by notice to the said probationer and to the commissioner of citywide administrative services. The specified minimum period of probationary service, unless otherwise set forth in the terms and conditions of the certification for appointment or promotion as determined by the commissioner of citywide administrative services, shall be:

(1) two months for every appointment to a position in the competitive or labor class and

(2) four months for every promotion to a position in the competitive or labor class.

5.2.8. Extension of Probationary Period. (a) Notwithstanding the provisions of paragraph 5.2.1, upon the written request of the agency head setting forth the reasons therefor and with the written consent of the probationer, the commissioner of citywide administrative services may authorize the extension of the probationary term for one or more additional periods not exceeding in the aggregate six months; provided, however, that the agency head may terminate the employment of the probationer at any time during any such additional period or periods.

(b) Notwithstanding the provisions of paragraphs 5.2.1, 5.2.2 and 5.2.8(a), the probationary term is extended by the number of days when the probationer does not perform the duties of the position, for example: limited duty status, annual leave, sick leave, leave without pay, or use of compensatory time earned in a different job title; provided, however, that the agency head may terminate the employment of the probationer at any time during any such additional period.

CASE NOTES

¶ 1. A probationary police officer was placed on modified duty pending internal investigation into alleged misconduct on her part relating to a homicide at a nightclub. Petitioner's employment was later terminated without a hearing. In an Article 78 proceeding, petitioner argued that, counting the time on modified duty, she had reached the threshold time of two years since her initial appointment, so that she could not be terminated without charges and a

hearing. The court, however, held that under Rule 5.2.8, the probationary period was extended by the time that petitioner spent on modified duty, so that she had not reached the two year threshold and was not protected from termination of employment. The court noted that under the rule, the probationary period was extended "by the number of days when the probationer does not perform the duties of the position." Although the rule gives such items as limited duty and sick leave as examples of acts giving rise to extenstions or probation, the list is not exhaustive. In this case, an officer on modified duty had to surrender his or her shield, firearm and identification card and could not engage in law enforcement. To the extent that the officer was thus restricted, he or she was not performing the duties of the position. Therefore, if petitioner's construction of the law were adopted, the appointing officer would be denied the very purpose of the probationary period, which is to ascertain the fitness of the probationer and give him or her a reasonable oppotunity to demonstrate the ability to perform the duties of the office. Garcia v. Bratton, N.Y.L.J., Oct. 29, 1997, page 28, col. 2 (New York Court of Appeals).

5.2.9. Restoration After Termination. Where the services of a probationer have been terminated, the commissioner of citywide administrative services has the discretion to and may restore the name of such probationer to the eligible list, if it be in existence. Such probationer's name shall be duly certified to other agency heads or to the same agency head if the latter so requests.

5.2.10. Continued Employment Pending Appeal. Whenever a probationer who has been declared not qualified by the commissioner of citywide administrative services for the position held by the probationer files an appeal with the commission, upon the written request of the agency head setting forth the reasons therefor, the probationer's continued employment may be authorized at the discretion of the commissioner of citywide administrative services pending final decision of such appeal; provided, however, that the period of service between such declaration of disqualification and the disposition of the appeal shall not be counted in determining the completion of such probationary term.

5.2.11. Reports to Commissioner of Citywide Administrative Services. The commissioner of citywide administrative services may require an agency head to report in writing on the quality of the performance of any probationer.

SECTION III-PROMOTIONS

5.3.1. General Provisions. (a) Except as otherwise provided, promotion examinations and promotions shall be governed by the rules relating to original appointments.

(b) The provisions of this section shall apply to promotion examinations conducted by the department of citywide administrative services and to non-written promotion examinations conducted by examining agencies.

5.3.2. Limitations On Promotion. (a) No promotion shall be made from one position or title to another position or title unless specifically authorized by the commissioner of citywide administrative services, nor shall a person be promoted to a position or title for which there is required an examination involving essential tests or qualifications different from or higher than those required for the position or title held by such person unless the person has passed the examination and is eligible for appointment to such higher position or title.

(b) An increase in the salary or other compensation of any person holding an office or position in the competitive class beyond the limit fixed for the grade of such position in the classification rules or an advancement from one rank to a higher rank shall be deemed a promotion except as provided otherwise in a labor contract, a labor relations order or personnel order and be subject to the prohibition of this paragraph.

5.3.3. Filling Vacancies by Promotion. (a) Except as provided in paragraph 5.3.5, vacancies in positions in the competitive class shall be filled, so far as practicable, by promotion from among persons holding competitive class positions in a lower grade in the agency in which the vacancy exists, provided that such lower grade positions are in the direct line of promotion, as determined by the commissioner of citywide administrative services.

(b) Where the commissioner of citywide administrative services determines that it is impracticable or against the public interest to limit eligibility for promotion to persons holding lower grade positions in the direct line of promotion, the commissioner of citywide administrative services may extend eligibility for promotion to persons holding:

(1) competitive class positions in lower grades which are determined by the commissioner of citywide administrative services to be in related or collateral lines of promotion; or

(2) comparable positions in any other unit or units of governmental service and may prescribe minimum training and experience qualifications for eligibility for such promotion.

(c) The commissioner of citywide administrative services may open promotion examinations to eligibles, otherwise qualified, in two or more grades who shall have served for the required period in any or all of such grades to which such examination is open. The commissioner of citywide administrative services also may extend eligibility in a promotion examination to persons holding positions of a corresponding character in the same grade as that of the position for which the examination is held. Eligibility shall be limited to persons who meet the requirements prescribed in the announcement of examination.

(d) Agency requests for any extension of eligibility provided for in this paragraph shall be made in accordance with the regulations of the commissioner of citywide administrative services.

5.3.4. Promotion Units. Promotion examinations may be held for such subdivisions of an agency as the commissioner of citywide administrative services may determine to be an appropriate promotion unit. Where promotion examinations are held for a promotion unit in an agency there shall be no certification of agency and citywide promotion eligible lists until after the promotion unit eligible lists for that agency have been exhausted.

5.3.5. Filling Vacancies by Open Competitive Examination. (a) Upon the initiative of the commissioner of citywide administrative services or upon the written request of an agency head stating the reasons therefor the commissioner of citywide administrative services may determine to conduct an open competitive examination for filling a vacancy or vacancies instead of a promotion examination.

(b) An agency head may determine that an open competitive examination should be conducted for filling a vacancy or vacancies in positions within the agency, instead of a promotion examination, subject to the provisions of this paragraph.

(c) Prior to any determination under paragraph 5.3.5(a) or (b) a determination shall be made by the commissioner of citywide administrative services :

(1) whether there are less than three persons eligible for promotion in the promotion unit where the vacancy exists or in the agency, if such vacancy is not in a separate promotion unit; or

(2) whether, in consultation with the agency head, an open competitive and promotion examination should be held simultaneously for vacancies in such positions.

If an affirmative determination is made under this subparagraph (c), the notice provisions of this paragraph shall not apply.

(d) A notice of intention to conduct such open competitive examination or a copy of the agency head's request for an open competitive examination, as the case may be, shall be publicly and conspicuously posted in the offices of both the agency and the department of citywide administrative services, where such determination is made by the commissioner of citywide administrative services under the provisions of 5.3.5(a). The determination or request shall not be acted upon until said notice has been so posted for a period of not less than fifteen days.

(e) A notice of intention to conduct such open competitive examination shall be publicly and conspicuously posted in the offices of the agency, where such determination is made by the agency head under the provisions of 5.3.5(b). Said notice shall be so posted for a period of not less than fifteen days. The agency head's determination and the reasons therefor, in writing, shall have been sent to the commissioner of citywide administrative services simultaneously with such posting.

(f) Any employee who believes that a promotion examination should be held for filling such vacancy, may submit to the commissioner of citywide administrative services and the agency head a request in writing, for a promotion examination rather than an open competitive examination, stating the reasons why such employee believes it to be practicable and in the public interest to fill the vacancy by promotion examination.

(g) The commissioner of citywide administrative services shall decide whether to disapprove an agency determination pursuant to 5.3.5(b) within thirty days of its receipt.

5.3.6. Citywide Lists. The commissioner of citywide administrative services may establish citywide promotion lists which shall not be certified to an agency until after the promotion eligible list for that agency has been exhausted.

5.3.7. Promotion by Non-Competitive Examination. Whenever there are no more than three persons eligible for examination for promotion to a vacant competitive class position, or whenever no more than three persons file applications for examination for promotion to such position, the agency head may nominate one of such persons and such nominee, upon passing an examination appropriate to the duties and responsibilities of the position may be promoted, but no examination shall be required for such promotion where such nominee has already qualified in an examination appropriate to the duties and responsibilities of the position.

5.3.8. Factors in Promotion. Promotion shall be based on merit and fitness as determined by examination. Seniority, previous training and experience of candidates, and performance based on performance evaluation may be considered and given due weight as factors in determining the relative merit and fitness of candidates for promotion.

5.3.9. Credit for Provisional Service. No credit in a promotion examination shall be granted to any person for any time served as a provisional appointee in the position to which promotion is sought or in any similar position, provided, however, such provisional appointee by reason of such provisional appointment shall receive credit in the permanent position from which promotion is sought for such time served in such provisional appointment.

5.3.10. [Deleted 10/19/81]

5.3.11. [Deleted 10/19/81]

5.3.12. Eligibility to Compete in a Promotion Examination: Preferred List or Leave of Absence Status. An employee who has been suspended from a position through no fault of the employee and whose name is on a preferred list, and any employee on leave of absence from a position shall be allowed to compete in a promotion examination for which such employee would otherwise be eligible on the basis of actual service before suspension or leave of absence.

5.3.13. [Deleted 10/19/81]

5.3.14. Eligibility for Certification from a Promotion List. Eligibility for certification by the commissioner of citywide administrative services or head of a certifying agency from a promotion list shall be limited to permanent employees whose names appear on such list who have successfully completed their probationary periods in the eligible title from which promotion is being made.

5.3.15. Eligible List Status of Employees Involuntarily Transferred, Reinstated From a Preferred List or Transferred to Avoid Layoff. Whenever a permanent employee is involuntarily transferred from one agency to another due to a transfer of personnel upon a transfer of functions or whenever such employee is reinstated from a preferred list

to an agency other than the one from which the employee was separated:

(a) If both the examination for the agency to which the employee is being transferred and the examination for the agency from which the employee was transferred were not given simultaneously nor are they identical, the employee shall be entitled, upon written application, to have his or her name transferred from such agency promotion list upon which it may appear in the first agency and entered upon a corresponding special promotion list for the agency to which such employee was reinstated from the preferred list or was involuntarily transferred. However, such corresponding special promotion list shall not be certified for promotion to such agency until any existing corresponding agency and unit promotion list or lists shall have been exhausted or terminated;

(b) If both the examination for the agency to which the employee is being transferred and the examination for the agency from which the employee was transferred were given simultaneously and are identical, the said employee shall be entitled upon written application to have his or her name transferred from such agency promotion list upon which it may appear and entered upon the appropriate eligible list in the agency to which such employee was reinstated from the preferred list or was involuntarily transferred based upon the final adjusted mark of such employee;

(c) If both the examination for the agency to which the employee is being transferred and the examination for the agency from which the employee was transferred were given simultaneously and although not identical the commissioner of citywide administrative services has determined that said examinations are comparable, the said employee shall be entitled upon written application to have his or her name transferred from such agency promotion list upon which it may appear and to have his or her name entered upon the appropriate eligible list in the agency to which such employee was reinstated from the preferred list or was involuntarily transferred based upon the final adjusted mark of such employee.

(d) The provisions of this section shall apply to a permanent employee who is transferred either voluntarily or involuntarily to avoid imminent suspension or demotion of employees within an agency due to an abolition or reduction of positions. The determination that suspensions or demotions are imminent shall be made by the commissioner of citywide administrative services.

(e) Where employees in the second agency, in the same title as the transferred employees provided for in this section, would have been eligible to participate in a promotion examination given at the same time as the one given to such transferred employees, but no such promotion examination was given, the provisions of this section shall not apply to such transferred employees.

5.3.16. Provisions for Promotion in the Correction, Fire, Housing Police, Police, Rapid Transit Railroad and Transit Police Services. (a) The provisions of paragraph 5.3.14 shall not be applicable in the case of promotion examinations and promotions in the correction, fire, police, and rapid transit railroad services.

(b) Eligibility to compete promotion examinations for positions in the rapid transit railroad service shall be limited to employees, otherwise qualified, who have served permanently in the eligible title or titles for a period of not less than one year if the examination is for a position in group II or for a period of not less than six months if the examination is for a position in group I, except as otherwise provided by law or rule or fixed in the notice of examination.

(c) In examinations for promotion to positions in the police, fire, rapid transit railroad, transit police, housing police and correction services, the method of rating seniority and performance and the terms and conditions of eligibility for competition and promotion therefor shall be set forth in the announcement of examination.

SECTION IV-TEMPORARY APPOINTMENTS

5.4.1. Temporary Appointments from Eligible Lists. (a) A temporary appointment for a period not exceeding three months, where the need therefor is important and urgent, may be made without regard to existing eligible lists.

(b) A temporary appointment for a period exceeding three months but not exceeding six months may be made by the selection of a person from an appropriate eligible list, if available, without regard to the relative standing of such person on such list.

(c) Any further temporary appointment beyond such six-month period or any temporary appointment originally made for a period exceeding six months shall be made by the selection of an appointee from among those graded highest on an appropriate eligible list, if available, upon certification thereof by the commissioner of citywide administrative services to the agency head in the manner prescribed in the rules for certification and appointment from eligible lists, provided however, that:

(1) such appointee may be withheld from certification at the request of the agency head for a period of four months or for the duration of such employment, whichever period is shorter.

(2) This limitation, however, shall not apply during the last four months of the life of such eligible list.

(d) The head of a certifying agency shall certify eligible lists for classes of positions unique to the agency pursuant to the provisions of this section and shall report thereon as prescribed by the commissioner of citywide administrative services.

5.4.2. Temporary Appointments Exceeding One Month Duration. (a) Temporary appointment may be made to a position when an employee is on leave of absence from such position for a period not exceeding the duly authorized duration of such leave of absence.

(b) Temporary appointment may be made for a period not exceeding six months when the commissioner of citywide administrative services shall find, upon due inquiry, that the position to which such appointment is proposed will not continue in existence for a longer period; provided, however, that where such appointment is made and it subsequently develops that such position will remain in existence beyond such six-month period such temporary appointment may be extended with the approval of the commissioner of citywide administrative services for a further period not to exceed an additional six months.

5.4.3. Successive Temporary Appointments. Except as otherwise provided, successive temporary appointments pursuant to paragraphs 5.4.1 or 5.4.2 shall not be made to the same position after the expiration of the authorized period of the original temporary appointment to such position.

5.4.4. Effect of Temporary Appointment on Promotion Eligibility. Any employee who is appointed or promoted to a position left temporarily vacant by the leave of absence of the permanent incumbent thereof(pursuant to rule 5.4.2) after having qualified therefor in the same manner as required for permanent appointment or promotion thereto, shall have all the rights and benefits with respect to promotion eligibility of permanent status.

SECTION V-PROVISIONAL APPOINTMENTS

5.5.1. Appointment Requirements. Whenever there is no appropriate eligible list available for filling a vacancy in the competitive class, the agency head may nominate a person to the commissioner of citywide administrative services for non-competitive examination, and:

(a) if such nominee shall be certified by the commissioner of citywide administrative services as qualified after such non-competitive examination, the nominee may be appointed provisionally to fill such vacancy until a selection and appointment can be made after competitive examination;

(b) such non-competitive examination may consist of a review and evaluation of the training, experience and other qualifications of the nominee without written, oral or other performance tests.

5.5.2. Duration. A provisional appointment shall not continue for a period in excess of nine months.

5.5.3. Termination. A provisional appointment to any position shall be terminated within two months following the establishment of an appropriate eligible list for filling vacancies in such positions; provided, however, that:

(a) when there is a large number of provisional appointees in any agency to be replaced by permanent appointees from a newly established eligible list and the agency head deems that the termination of the employment of all such provisional appointees within two months following the establishment of such list would disrupt or impair essential public services, evidence thereof may be presented to the commissioner of citywide administrative services; and

(b) after due inquiry, and upon finding that it is in the best interests of the public service, the commissioner of citywide administrative services may thereupon waive the provision of this paragraph requiring the termination of the employment of provisional appointees within two months following the establishment of an appropriate eligible list and authorize the termination of the employment of various numbers of such provisional appointees at prescribed stated intervals;

(c) in no case however shall the employment of such provisional appointee be continued longer than four months following the establishment of such eligible list.

5.5.4. Successive Provisional Appointments. (a) Successive provisional appointments shall not be made to the same position after the expiration of the authorized period of the original provisional appointment to such position except as provided in this paragraph.

(b) Where an examination for a position or group of positions fails to produce a list adequate to fill all positions then held on a provisional basis, or where such list is exhausted immediately following its establishment, a new provisional appointment may be made to any such position remaining untilled by permanent appointment. Such new provisional appointment may, in the discretion of the agency head, be given to a current or former provisional appointee in such position, except that a current or former provisional appointee who becomes eligible for permanent appointment to any such position shall, if he is then to be continued in or appointed to any such position be afforded permanent appointment to such position.

5.5.5. Credit for Provisional Service. The commissioner of citywide administrative services may, by regulation, provide a suitable method for the computation of experience credit for provisional service in open competitive or labor class examinations.

5.5.6. Review of Provisional Appointments. The commissioner of citywide administrative services shall review any appointments of persons as provisional employees within sixty days after appointment to assure compliance with the New York City charter, the civil service law and other applicable law and the rules and regulations of the commissioner of citywide administrative services.

SECTION VI-SEASONAL APPOINTMENTS

5.6.1. Seasonal Appointments Authorized. All positions in the competitive class, where the nature of the service is such that it is not continuous throughout the year, but recurs in each successive calendar year, may be designated by the commissioner of citywide administrative services as seasonal positions and appointments thereto shall be designated as seasonal appointments.

5.6.2. Seasonal Re-employment Roster. (a) At the end of an employment season, the names of all persons employed during such season or major portion thereof shall be entered upon a seasonal re-employment roster in the order of their first appointment to the title vacated by them on the expiration of such employment season provided that:

(1) the services rendered by such persons shall have been certified as satisfactory during such season or major

portion thereof by the agency head; and

(2) they are otherwise still qualified.

(b) The names of the persons appearing on such roster shall be certified in numerical order during the next succeeding season to an agency head upon that official's request for seasonal re-employment in the positions previously held by such persons or similar positions.

(c) The qualifications of any such person may be further reviewed by the commissioner of citywide administrative services with respect to such person's continuing fitness to perform the required duties and such person may be disqualified for re-employment in the same manner and for any of the reasons applicable to disqualification for permanent employment.

5.6.3. Effect Upon Status. Such seasonal re-employment roster shall in no event be deemed to be a preferred eligible list and persons employed in seasonal positions shall acquire no civil service status or right or privilege other than is set forth in this section.

SECTION VII-EXCEPTIONAL APPOINTMENTS

5.7.1. Temporary Appointments Without Examination in Exceptional Cases. (a) The commissioner of citywide administrative services may authorize a temporary appointment, without examination, when the person appointed will render professional, scientific, technical or other expert services:

(1) on an occasional basis; or

(2) on a full-time or regular part-time basis in a temporary position established to conduct a special study or project for a period not exceeding eighteen months.

(b) Such appointment may be authorized only in a case where because of the nature of the services to be rendered and the temporary or occasional character of such services it would not be practicable to hold an examination of any kind.

5.7.2. [Deleted 7/8/80]

5.7.3. Records. All exceptions made pursuant to this section shall be recorded by the commissioner of citywide administrative services.

5.7.4. Effect Upon Status. Persons engaged for employment pursuant to this section shall acquire no civil service status or right or privilege of tenure other than those set forth herein.

5.7.5. City Services Aides. Appointments to positions in the title city services aide title code no. 91405 which are paid on a per diem basis entirely from state and/or federal funds and are designed for the purpose of training individuals for specific skills and/or providing work opportunity in accordance with the provisions of an agreement between the City of New York or one of its agencies or authorities and the New York State or federal agency involved, shall be designated as exceptional appointments. Such appointments shall be made after authorization by the commissioner of citywide administrative services and in accordance with the terms and conditions of the appropriate agreement and for a period not to exceed eighteen months.

Appointments to positions in the title city services aide title code no. 91405 which are needed to perform or directly supervise the performance of general work requiring little or no experience or education and which result from a natural or humankind emergency that has been declared by the mayor, shall also be designated as exceptional appointments. Such per diem appointments shall be made after authorization by the commissioner of citywide administrative services and shall exist for the duration of the emergency, not to exceed a total of six months.

SECTION VIII-TRAINEE OR AIDE APPOINTMENTS

5.8.1. Trainee or Aide Appointments Authorized; Conditions. The commissioner of citywide administrative services may require that permanent appointments to designated positions in the competitive class shall be conditioned upon the satisfactory completion of a period of service as a trainee or aide in an appropriate lower, trainee or aide position in such class and/or, where required, the completion of specified formal courses of training.

(a) The period of such trainee or aide service shall be prescribed and set forth in the announcement of examination.

(b) Upon the satisfactory completion of such trainee or aide service and/or of specified formal courses of training, as the case may be, an appointee shall attain permanent status in the designated position.

(c) Any trainee or aide appointment shall be subject to such probationary term as is prescribed in the rules.

(d) The employment of such trainee or aide may be terminated at the end of the period of the trainee or aide service, or at any time within such period, if the trainee's or aide's conduct, capacity or fitness is not satisfactory or if such person fails to pursue or to continue satisfactorily such formal courses as may be required, provided, however, that the announcement of examination shall set forth appropriate information relative to such termination.

5.8.2. Effect of Service in a Trainee Title Upon Probationary Period in the Permanent Title. If, in the opinion of the agency head, an appointee conclusively demonstrates during service in a trainee title ability and fitness to perform the duties of the permanent title to which the appointee is thereafter assigned, completion of service in the trainee title, in the discretion of the agency head, may be deemed to be satisfactory completion of the probationary period in the permanent title, provided that the agency head files a written statement to that effect with the department of citywide administrative services at the time of such assignment to the permanent title.

RULE VI-PERSONNEL CHANGES

SECTION I-TRANSFERS

6.1.1. General Provisions. Except as provided in paragraph 6.1.9 of this section, an employee shall not be transferred to a position for which there is required an examination involving essential tests or qualifications different from or higher than those required for the position held by such employee.

6.1.2. Functional Transfers. Upon the transfer of a function from one agency to another agency, the permanent employees in the competitive or labor class so transferred shall be transferred without further examination or qualification and shall retain their respective civil service classification and status as employees in such new agency in accordance with the provisions of law governing functional transfers.

6.1.3. General Requirements. Every transfer, other than a functional transfer, shall require the consent, in writing, of the proposed transferee and of the respective heads of the agencies concerned therewith and the approval of the commissioner of citywide administrative services.

6.1.4. Existing Eligible Lists, Restriction. A transfer, other than a functional transfer, shall not be approved to a position for which an adequate appropriate preferred or agency promotion list exists, except as provided for in paragraph 6.1.5 of this section.

6.1.5. Special Transfer Lists. Whenever it is determined to the satisfaction of the commissioner of citywide administrative services that the abolition of a permanent position in the competitive class is imminent:

(a) the head of the agency in which such position exists shall furnish forthwith to the commissioner of citywide administrative services the name, title, date of original appointment and the salary of the employee expected to be suspended; and

(b) the commissioner of citywide administrative services shall thereupon establish a special transfer list for such title and shall place the name of such employee thereon in the order of original appointment as though suspended in accordance with section eighty of the civil service law; and

(c) for a period not exceeding six months prior to the prospective abolition of such position, an employee whose name appears on such special transfer list shall be eligible for the filling of vacancies in the same or similar position before certification is made from any open competitive or promotion list; and

(d) the name of any employee appearing on such special transfer list who is not so transferred prior to the abolition of such employee's position shall be placed on an appropriate preferred list pursuant to section eighty-one of the civil service law.

6.1.6. Eligibility of Probationers for Transfer. An employee on probation shall be eligible for transfer; provided however, that:

(a) if such transfer is voluntary such employee shall serve the entire period of probation on the job in a pay status in the new position in the same manner and subject to the same conditions as required upon such employee's employment in the position from which transfer is made, and in accordance with the provisions of paragraph 5.2.1;

(b) if such employee is involuntarily transferred from one agency to another due to a transfer of personnel upon a transfer of function, or if such employee transfers voluntarily to avoid layoff resulting from a reduction in force, then, in either of such events, such employee shall receive credit for the period of time already served on probation.

CASE NOTES

¶ 1. An employee of the Sanitation Department serving a one-year disciplinary probation period and faced with a layoff for economic reasons opts to transfer to Triborough Bridge and Tunnel Authority employment. Petitioner was notified that his transfer was subject to City Personnel Director's rules governing transfers which provides that a probationary employee voluntarily agreeing to a transfer to avoid a layoff is subject to the employee completing any probationary period then being served, 13 RCNY, title 59, Appendix A, rule 6.1.6. In this case the employee had nine months probationary service left and when he incurred further disciplinary measures during that time he was properly dismissed. Jackson v. Triborough Bridge, 155 Misc. 2d 715 [1993].

6.1.7. Assignment During Period of Disability. An employee who has incurred a disability which prevents the employee from performing the normal duties of the position may be assigned during the period of such disability to other appropriate duties for which the employee is deemed duly qualified as determined by the commissioner of citywide administrative services.

6.1.8. Transfers: Other Jurisdictions. Transfers between positions subject to the jurisdiction of the commissioner of citywide administrative services and positions subject to the jurisdiction of the state civil service commission, the administrative board of the judicial conference or any other municipal civil service commission in the state may be approved by the commissioner of citywide administrative services, provided that the state civil service commission, the administrative board of the judicial conference or other municipal civil service commission has adopted reciprocal rules therefor and approves such transfers.

6.1.9. Transfer and Change of Title. Notwithstanding the provisions paragraph 6.1.1 of this section or any other provision of law, any permanent employee in the competitive class who meets all of the requirements for a competitive examination, and is otherwise qualified as determined by the commissioner of citywide administrative services, shall be eligible for participation in a non-competitive examination in a different position classification provided, however, that such employee is holding a position in a similar grade.

SECTION II-REINSTATEMENTS

6.2.1. General Provisions. (a) An employee who has completed a probationary term in a permanent position in the competitive or labor class, and who has resigned or retired therefrom may be reinstated with the approval of the commissioner of citywide administrative services to:

(1) the position from which the employee has resigned or retired, if vacant, or to any similar vacant position in the agency in which the employee was employed; or

(2) to a position in another agency to which the employee would have been eligible for transfer.

(b) Such reinstatement may be made only if the separation from employment was without fault or delinquency on the employee's part and the head of the agency to whom the employee has applied for such reinstatement is willing to reinstate the employee.

6.2.2. General Conditions. (a) Such reinstatement shall be subject to the provisions of this section and shall be made without further examination except that the employee reinstated under this section may be subject to such probationary period, investigation, medical or other qualifying tests or requirements as the commissioner of citywide administrative services shall determine.

(b) The head of the agency wherein such reinstatement occurs may elect to waive the requirement of satisfactory completion of the probationary term at any time during such term.

6.2.3. Period of Eligibility for Reinstatement. (a) Such reinstatement must be accomplished within a period of time equivalent to the time the employee has actually served in the civil service of New York City, but in no event shall such period for reinstatement be less than one year nor more than four years from the date of resignation or retirement provided, however, that:

(1) the commissioner of citywide administrative services may fix a period equal to or twice the period actually served, but in no event less than one year nor more than four years within which an employee may be reinstated for designated classes of positions, where the commissioner of citywide administrative services determines that there is a lack of a sufficient number of qualified persons available for recruitment; and

(2) the commissioner of citywide administrative services shall annually re-examine the reason for establishing such period for reinstatement and shall revoke the prior determination upon a finding that there is a sufficient number of qualified persons available for recruitment.

(b) In computing the aforementioned time limitation, any time subsequent to separation spent in active service in the armed forces of the United States or of the State of New York resulting in discharge under honorable conditions and any time spent subsequent to separation in another position in the civil service of the city shall not be considered.

(c) Notwithstanding the foregoing provisions of this paragraph, with respect to members of the uniformed forces of the police and fire departments, the uniformed force of the New York City transit authority police department, and the uniformed force of the police department of the New York City housing authority, such reinstatement must be applied for by the former employee within a period of one year from the date of resignation or retirement.

6.2.4. Effect on Continuous Service. Any such reinstatement effected more than one year after such separation shall not constitute continuous service.

6.2.5. Reinstatement After Separation for Disability. (a) Where an employee has been separated from the service by reason of a disability resulting from occupational injury or disease as defined in the workers' compensation law, such employee shall be entitled to a leave of absence for at least one year unless the disability is of such a nature as to permanently incapacitate the employee from the performance of the duties of the position.

(b) Such employee may, within one year after the termination of such disability, make application to the commissioner of citywide administrative services for a medical examination to be conducted by a medical examiner selected by the commissioner of citywide administrative services. If, upon such examination, such examiner shall certify that such person is physically and mentally fit to perform the duties of the former position, such person shall be reinstated to it, if vacant, or to a vacancy in a similar or lower position in the same occupational field or to a vacant position for which such person was eligible for transfer.

(c) If no appropriate vacancy shall exist to which reinstatement may be made, or if the work load does not warrant the filling of such vacancy, the name of such person shall be placed upon a preferred list for the person's former or similar position, and such person shall be eligible for reinstatement therefrom for a period of four years from the date of medical and physical qualification. In the event that such person is reinstated to a position in a lower grade, the person's name shall likewise be placed on a preferred list.

(d) This paragraph shall not be deemed to modify or supersede any other provisions of law applicable to the re-employment of persons retired from the public service on account of disability.

6.2.6. Reinstatement of Dismissed Employee. (a) An agency under the jurisdiction of the commissioner of citywide administrative services, upon written application for reinstatement by a person who was dismissed from a permanent competitive or labor class position in such agency, which sets forth the reasons for requesting an opportunity of making a further explanation, may consider such application.

(b) If the agency shall determine that such application and explanation are meritorious, it may, in its discretion and with the approval of the commissioner of citywide administrative services, reinstate such person; provided however, that:

(1) such person shall be eligible for reinstatement for a period of one year only from the date of dismissal; and

(2) such person shall execute a prescribed waiver, in writing, with respect to claims for back pay, civil service rights and status for the period of the dismissal.

6.2.7. Other City Service. A permanent competitive class employee, separated from a position by appointment or promotion to another position in the unclassified or classified service of the city and who has served continuously therein, shall be eligible for instatement to the competitive class position formerly held by the employee or to another similar position or lower position in the same or similar occupational group or service.

CASE NOTES

¶ 1. This rule states that permanent City employees who are appointed or promoted to another position, and who have served continuously, are eligible for reinstatement to the former position. This provision merely gives the City agency discretion to reinstate the employee, and absent an abuse of discretion, the court will not interfere with the agency's decision to deny reinstatement. Bethel v. McGrath-McKechnie, 95 N.Y.2d 7, 709 N.Y.S.2d 888 (2000).

SECTION III-VOLUNTARY DEMOTIONS

6.3.1. General Provisions. No permanent competitive class employee shall be demoted unless such employee consents thereto in writing. The agency head concerned shall transmit to the commissioner of citywide administrative services such consent together with a statement of the reasons therefor. This paragraph shall not be applicable to penalties of demotion resulting from disciplinary proceedings.

6.3.2. Restoration. A person who has been demoted may, upon written request by the agency head concerned, be restored to such person's former position or a similar position, with the approval of the commissioner of citywide administrative services.

SECTION IV-REMOVAL AND OTHER DISCIPLINARY ACTION

6.4.1. Removal Notification to Department of Citywide Administrative Services. Where a person has been removed from a position for cause, a copy of the reasons therefor together with a copy of the proceedings thereon shall be transmitted to the department of citywide administrative services.

6.4.2. Service of Charges and Determination. (a) Where the employee is a resident of the city, a copy of charges preferred in a disciplinary action pursuant to sections seventy-five and seventy-six of the civil service law shall be served in person upon the employee thus charged.

(b) Where personal service cannot be made or where the employee is not a resident of the city, it shall be sufficient for the agency head to serve such charges by registered mail to the last known address of such person. Where service is made by registered mail such person shall be allowed an additional three days in which to answer or otherwise appear.

(c) Service by the agency head of written notice of determination to be reviewed pursuant to sections seventy-five and seventy-six of the civil service law shall be sufficient if such written notice is delivered personally or by registered mail to the last known address of such person and when notice is given by registered mail such person shall be allowed an additional three days in which to file such appeal.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A single unsuccessful attempt at 8:05 a.m. on a Friday to serve the petition personally on the respondent employee at her residence in the city does not demonstrate that personal service cannot be made, as required by paragraph (b) of this rule. Human Resources Administration v. Rice, OATH Index No. 455/93 (Mar. 1, 1993).

¶ 2. Failure to comply with the service requirements of this rule is not fatal where the employee received actual notice of the disciplinary charges. Board of Education v. Earl, OATH Index No. 494/95 (Nov. 28, 1994).

¶ 3. Where an employee deliberately evaded attempts to serve him personally with disciplinary charges, the employee was estopped from asserting that personal service was not made pursuant to paragraph (a) of this rule. In any event, service by Federal Express delivery and by regular and certified mail, after the unsuccessful attempts at personal service, were sufficient under paragraph (b) of this rule. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 4. Administrative law judge found service at a foreign address where respondent instructed the agency to send his mail was sufficient to give respondent actual notice of the proceeding. **Dep't of Environmental Protection v. Zaza,** OATH Index No. 516/99 (Oct. 16, 1998).

¶ 5. Service of petition and notice of trial by certified mail sent to respondent's address of record is sufficient for non-city resident. **Dep't of Homeless Services v. Edwards,** OATH Index No. 1688/98 (June 26, 1998).

¶ 6. Respondent was properly served with charges where they were handed to him at the workplace by a secretary, where he took them, and looked at them without reading them and placed them on the secretary's desk. **Human Resources Admin. v. Morris,** OATH Index No. 1683/95 (May 6, 1998).

¶ 7. Evidence showed that respondent actually received the notice of hearing, when he opened it, saw it was meant for him, but treated it as a nullity and returned it to the Department because it incorrectly listed his personnel captain as the addressee. Administrative law judge found that respondent was properly served where Department complied with Personnel Director's rules for service in disciplinary proceedings by attempting personal service at respondent's last known address and thereafter mailing a copy of the charges and notice of hearing to that address. **Dep't of Correction v. Winkfield**, OATH Index No. 2219/99 (Sept. 21, 1999).

¶ 8. Indication on personnel papers that respondent's absence was originally due to "incarceration" raised question of whether proper service of charges was made. Evidence showed that personal service on admitted relative of respondent at last known address was accomplished prior to hearing. Administrative law judge determined that service was sufficient to afford respondent opportunity to communicate with counsel or the agency prior to date of hearing. **Human Resources Admin. v. Hartley,** OATH Index No. 1829/99 (June 9, 1999).

¶ 9. Agency served a new charge by electronic facsimile upon the employee's attorney, without serving the employee himself. Although Personnel Director's Rule 6.4.2 requires personal service of disciplinary charges on the employee, the rule has not been held to require personal service of amendments to charges, made after the employee has already been personally served with the initial charges and the attorney has appeared in the case. Under these circumstances, the administrative law judge found that there was no prejudice to respondent, that he had a fair opportunity to litigate the issue of the bribe, and that the motion to amend should therefore be granted. **Dep't of Sanitation v. Vaughan,** OATH Index No. 2234/99 (Feb. 15, 2000), **aff'd,** NYC Civ. Serv. Comm'n Item No. CD00-100-SA (Nov. 15, 2000).

¶ 10. Motion to dismiss complaints granted where administrative law judge found that complaints were not left with employee who refused to sign statement acknowledging their receipt. **Dep't of Sanitation v. Yovino**, OATH Index No. 992/04, mem. dec. (Aug. 11, 2004).

¶ 11. Attempted personal service of charges at respondent's home address held to comply with the City Personnel Director's rule, notwithstanding that petitioner's employees were aware of respondent's temporary absence from residence due to an in-patient rehabilitation program. **Fire Dep't v. Rinehard**, OATH Index No. 647/05 (Oct. 21, 2004).

6.4.3. Absence Without Leave. (a) When an employee is absent without leave and fails to communicate with the department in which employed in the manner prescribed by that department for a period of twenty consecutive work days, such absence shall be deemed to constitute a resignation effective on the date of its commencement unless the appointing officer, at the discretion of that officer, accepts an explanation for such unauthorized absence.

(b) In the case of an employee covered by the provisions of section seventy-five of the civil service law such absence shall constitute a cause for action against such employee under and subject to the provisions of that section.

SECTION V-ABOLITION OF POSITION, SUSPENSION,

DEMOTION, PREFERRED LISTS

6.5.1. Suspension or Demotion. The suspension or demotion of competitive class employees upon the abolition or reduction of positions shall be governed by the provisions of section eighty of the civil service law.

6.5.2. Units for Suspension or Demotion. (a) The commissioner of citywide administrative services may, by rule, designate as separate units for suspension or demotion under this section, any institution or any division of any agency.

(b) There are hereby designated within the department of health the following separate units for suspension or demotion:

(1) urine testing laboratory of the methadone maintenance treatment program;

(2) Williamsburg methadone maintenance clinic of the methadone maintenance treatment program;

(3) evaluation and control unit of the methadone maintenance treatment program.

(c) There are hereby designated within the department of mental health, mental retardation and alcoholism services the following separate units for suspension and demotion:

(1) criminal and supreme court mental health program;

(2) family court mental health program.

(d) There are hereby designated within the department of citywide administrative services the following separate units for suspension or demotion:

(1) executive offices, which shall include the commissioner's office, office of the general counsel, office of technology and information services, office of fleet administration and transportation and office of external affairs and communications;

(2) offices of the chief financial officer and the chief administrative officer;

(3) office of administrative trials and hearings;

(4) division of facilities management and construction services;

(5) division of municipal supply services;

(6) division of real estate services;

(7) division of citywide personnel services.

(e) There are hereby designated within the department of housing preservation and development the following units for suspension or demotion:

(1) office of property management;

(2) office of development;

(3) office of rent and housing maintenance;

(4) office of central administration.

(f) There are hereby designated within the Department of Finance the following units for suspension or demotion:

(1) Department of Finance;

(2) Tax Appeals Tribunal.

6.5.3. Preferred Lists; Certification and Reinstatement. In the event of suspension or demotion, preferred lists and certification and reinstatement therefrom shall be governed by the provisions of section eighty-one of the civil service law.

6.5.4. Effect of Failure or Refusal to Accept Reinstatement. (a) The failure or refusal of a person on a preferred list to accept reinstatement therefrom to the person's former position, or any comparable position in a comparable salary or salary range for which such list is certified, shall be deemed to be relinquishment of eligibility for reinstatement, and such person's name shall thereupon be stricken from such preferred list.

(b) The name of such person may be restored to such preferred list, and certified to fill such appropriate vacancies as may thereafter occur, only upon the written request of such person containing a submission of reasons satisfactory to the commissioner of citywide administrative services for the previous failure or refusal to accept reinstatement.

6.5.5. Labor Class. Whenever in any agency a position in the labor class is abolished or made unnecessary in any

manner, or whenever the number of such positions is reduced, the permanent employee in such position shall be deemed suspended without pay and such employee's name shall be placed upon a preferred list for certification to appropriate vacancies for a period of one year from the date of suspension in the same manner as provided by sections eighty and eighty-one of the civil service law for the competitive class.

SECTION VI-EDUCATIONAL LEAVE OF ABSENCE

UNDER THE MILITARY LAW

6.6.1. Certification. In the event an employee on an educational leave of absence pursuant to the military law is on an eligible list and is certified but passed over for appointment from such a list during the period of absence, such employee shall not be charged with the certification.

6.6.2. Seniority. The seniority of an employee on educational leave of absence pursuant to the military law shall accrue for purpose of suspension pursuant to section eighty of the civil service law during the period of such absence and the employee may in the same manner as all regular candidates file for and compete in any scheduled promotion examination held during the period of absence for which the employee meets the eligibility requirements, but inability to file or to appear for the examination at the regularly scheduled time and place because of such absence shall not be sufficient grounds for granting a special examination.

6.6.3. Probation. Whenever an employee shall have been granted an educational leave of absence pursuant to the military law prior to the completion of the probationary term prescribed by these rules, such probationary term shall not continue to run during the period of absence, but the employee shall be required to serve the remainder of such prescribed term upon return to active duty in pay status in city service before the employment shall be considered permanent.

6.6.4. Performance Rating or Evaluation. No performance rating or evaluation shall be assignable to an employee on an educational leave of absence pursuant to the military law unless such employee shall have served at least three months on active duty in pay status in city service during a rating or evaluation period as prescribed by the rules or regulations governing performance ratings or evaluation.

RULE VII-GENERAL PERSONNEL ADMINISTRATION

SECTION I-MAINTENANCE OF ROSTERS, ADDRESSES

AND RECORDS

7.1.1. Roster. The department of citywide administrative services shall maintain an official roster of the classified service, setting forth in detail the employment listing of each employee and each change of status from the time the employee enters service until separation therefrom.

7.1.2. Address. (a) Each officer or employee in the classified service shall, upon appointment or promotion, notify the agency head of his or her address. Such officer or employee shall likewise inform the agency head of any change of address during the period of employment.

(b) A candidate for examination or an eligible on a list shall promptly notify the department of personnel and the examining or certifying agency, as the case may be, of any change of address which occurs between the time of filing the application and the expiration of the eligible list upon which such person's name appears.

(c) Any communication or service to the last address thus furnished shall be deemed a valid and sufficient communication of service upon such person.

7.1.3. Records. Personnel records created and maintained by each agency shall include such records as prescribed

by the commissioner of citywide administrative services to be maintained by the agency or submitted to the department of citywide administrative services.

SECTION II-CERTIFICATION OF PAYROLLS

7.2.1. Certification. Payrolls shall not be certified except upon declaration by the agency submitting them to the commissioner of citywide administrative services that the persons named therein are employed in their respective positions in accordance with law and the rules and regulations adopted pursuant thereto. The payroll of any person whose employment is in contravention of the foregoing provision shall not be certified by the commissioner of citywide administrative services.

7.2.2. Notification. Notification prior to each action or decision of an agency pursuant to chapter thirty-five of the New York City charter which changes the status of an individual employee, a position or a class of positions shall be provided by the agency to the commissioner of citywide administrative services.

7.2.3. Additional Employment. Except as otherwise provided by law, no person receiving remuneration from employment in a position in the classified service shall be eligible to receive remuneration for employment in any additional position or positions in the civil service of the city or in the civil service of any other governmental agency or jurisdiction unless the agency head or heads concerned shall certify that such additional employment or employments are not in violation of any law, rule or regulation and that such additional employment or employments are not incompatible with the position held by such person.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Respondent found to have violated rule 7.2.3 by not filing a dual employment request form where respondent simultaneously worked for the Board of Education and the Department of Homeless Services. **Dep't of Homeless Services v. Perry,** OATH Index No. 2221/00 (Sept. 11, 2000).

SECTION III-POSITION CLASSIFICATION AND ALLOCATION

7.3.1. Position Classification. (a) The commissioner of citywide administrative services shall, in accordance with the law and rules, duly classify and reclassify positions in the city service and shall prescribe regulations and procedures therefor.

(b) Agencies shall participate, in accordance with the provisions of this paragraph, with the department of citywide administrative services in job analyses for classification of positions and shall assist in setting the minimum requirements therefor.

7.3.2. Position Allocation: Existing Titles. (a) Any new or existing positions which are allocated by an agency to a title of an existing class of positions shall be appropriate to the duties and responsibilities of such title and conform to the class specifications therefor.

(b) Agency allocations of such positions shall be made in accordance with these rules and with the standards set forth in the regulations or otherwise prescribed by the commissioner of citywide administrative services.

7.3.3. Position Allocation: New Class of Positions. (a) If a new position is to be allocated by an agency to a new class of positions, the agency head shall request of the commissioner of citywide administrative services, and the commissioner of citywide administrative services shall furnish to the agency head and the commissioner of finance, a certificate stating:

(1) the appropriate civil service title for the proposed position;

(2) the range of salary of comparable civil service positions;

(3) a statement of required class specifications and line of promotion, if any, into which such new position shall be placed.

(b) Any such new position shall be created only with the title approved by the commissioner of citywide administrative services and in accordance with the rules.

SECTION IV-MANAGEMENT SERVICE (RESERVED)

SECTION V-PERFORMANCE EVALUATION FOR

SUB-MANAGERIAL EMPLOYEES

7.5.1. Agency Performance Evaluation Programs. Each agency shall establish and administer a performance evaluation program for sub-managerial employees in accordance with these rules or as prescribed by the commissioner of citywide administrative services in the regulations or procedures. Such programs shall be subject to approval by the commissioner of citywide administrative services.

7.5.2. Definition. The performance evaluations of all sub-managerial employees, other than members of the uniformed forces of the police, fire, transit police, housing police, correction services and operating staff of the independent authorities, shall be based upon evidence of the work actually performed by such employees as compared with pre-established performance standards.

7.5.3. Use. Performance evaluations of sub-managerial employees shall be used by agencies during the probationary period and for promotions, assignments, incentives and training.

7.5.4. General Administration. (a) Each agency shall establish and maintain an employee service board to oversee the operation and effectiveness of the agency's sub-managerial performance evaluation program.

(b) Rating criteria in the form of performance standards shall be developed through a process of job analysis that will include consultation with employees to be evaluated.

(c) Sub-managerial employees shall be rated by supervisors who directly observe and/or review their work. All such evaluations shall be reviewed by a superior who is at least one level above that of the evaluator.

(d) Final evaluations shall be issued by the agency's employee service board subject to review by the agency head.

(e) Sub-managerial employees shall receive at least one performance evaluation a year and shall be informed in writing at the beginning of the evaluation period of the performance standards that are to be used as the basis for evaluation. All such employees shall be shown their evaluation reports.

7.5.5. Appeals. (a) Each agency shall establish and maintain an appeals board which shall determine appeals by permanent sub-managerial employees of their performance evaluations.

(b) The determination of the appeals board may be appealed by such permanent employee to the head of the agency.

(c) Procedures for such appeals shall be contained in the sub-managerial performance evaluation program submitted by the agency to the commissioner of citywide administrative services.

7.5.6. Sub-Managerial Performance Evaluations for Probationary Employees. (a) Interim evaluations shall be made for sub-managerial probationary employees at least every three months and a final report shall be made at the end of the probationary period. Each interim evaluation shall contain a recommendation that the probationary employee either be retained for an additional three-month period or terminated from the position.

(b) Such probationary employee shall not have the right to appeal a performance evaluation but any unsatisfactory interim reports and all final probationary reports shall be reviewed by the agency's employee service board.

7.5.7. Notices. Each agency shall publicize in a timely fashion any salary increases, other monetary rewards or assignments which result from sub-managerial performance evaluations. The names of employees who receive overall ratings above satisfactory shall also be made public.

SECTION VI-PERSONNEL PROGRAMS FOR

EMPLOYEE INCENTIVES AND RECOGNITION,

TRAINING AND SAFETY

7.6.1. Employee Incentives and Recognition. (a) The commissioner of citywide administrative services shall administer citywide employee incentive and recognition programs.

(b) Agency plans and programs for agency employee incentive and recognition shall be prepared and submitted to the commissioner of citywide administrative services for approval in accordance with the regulations or as otherwise prescribed by the commissioner of citywide administrative services.

7.6.2. Employee Training and Development. Employee training and development programs shall be conducted on a citywide basis by the department of citywide administrative services and on an individual agency basis by agencies.

7.6.3. Employee Safety. Employee safety programs shall be administered on a citywide basis by the department of citywide administrative services and on an individual agency basis by agencies.

7.6.4. General Provisions. (a) Standards for the personnel programs described in this section shall be as prescribed by the commissioner of citywide administrative services.

(b) Personnel programs which are of a citywide nature or which are such that administration by separate agencies would be impracticable and uneconomical shall be administered by the commissioner of citywide administrative services.

SECTION VII-EQUAL EMPLOYMENT OPPORTUNITY

7.7.1. Equal Employment Opportunity. Equal employment opportunity programs administered by the department of citywide administrative services and by agencies shall ensure and promote equal opportunity in employment.

RULE VIII-APPEALS

SECTION I-DEPARTMENT OF CITYWIDE

ADMINISTRATIVE SERVICES ACTIONS

8.1.1. Procedures for Claim of Manifest Error or Mistake-Examinations. (a) Except as otherwise provided by resolution or regulation of the commissioner of citywide administrative services, whenever a claim of manifest error or mistake is made, such claim shall be referred to a committee on manifest errors. This committee shall consist of three qualified persons designated as members thereof by the commissioner of citywide administrative services, which committee shall either have as a member or consult with an expert in the subject matter with which such claim is concerned. A claim of manifest error or mistake shall open for review the candidate's answers to all the questions in the examination. Such review may result in a higher or lower final rating.

(b) Such committee shall inquire into the merits of each claim and shall submit the signed determination of each

member as to whether or not there has been a manifest error or mistake together with such correction or remedy, if any, as may be recom- mended.

(c) Except as hereafter provided, such claim of manifest error or mistake must be made in writing by the candidate within one month from the date of notice to the candidate of the results of such examination, tests, subjects or parts thereof.

(d) Whenever a claim of manifest error or mistake is made in connection with the rejection of a candidate because the candidate has failed to meet the preliminary requirements of such examination, such claim must be made in writing by the candidate within two weeks following the date upon which notice was transmitted to the candidate of such rejection.

(e) Whenever a claim of manifest error or mistake is made by a person on an eligible list who has been rejected after investigation because such person has failed to meet the preliminary requirements of such examination, such claim must be made in writing by the person within two weeks following the date upon which notice was transmitted to the person of such rejection.

(f) Any correction of manifest error or mistake shall be without prejudice to the status of any person previously appointed from the eligible list resulting from such examination. However, if, as a result of any correction of manifest error or mistake, an eligible on a list or any person appointed from such list is found to have failed the examination, any such eligibility or appointment shall be cancelled and revoked forthwith, and notice of such action shall be sent to the eligible or appointee. The right to cancel and revoke for the reasons set forth herein shall not apply where an appointee has served satisfactorily for a period of at least one year after appointment to such position.

SECTION II-AGENCY ACTIONS-APPEALS TO THE

COMMISSIONER OF CITYWIDE ADMINISTRATIVE SERVICES

8.2.1. General Provisions. (a) A person aggrieved by the following agency actions or determinations may submit an appeal to the commissioner of citywide administrative services:

(1) the allocation of an individual position to an existing civil service title with respect to whether the duties and responsibilities of the individual position so allocated are in conformance with the duties and responsibilities of such title;

(2) the administration and certification of eligible lists for classes of positions unique to the agency by a certifying agency;

(3) except as otherwise provided in paragraph 8.2.3 of this section, the scheduling and conduct of non-written promotion examinations by an examining agency.

8.2.2. General Procedures. (a) An appeal to the commissioner of citywide administrative services pursuant to the provisions of paragraph 8.2.1 shall be made in writing within thirty calendar days of the final agency action or determination.

(b) Where a candidate has been disqualified by an examining agency on the grounds that the candidate was found to lack any of the established requirements for admission to the examination, such appeal must be made in writing within two weeks after the date of notification of such agency action.

8.2.3. Claims of Manifest Error or Mistake. The procedures set forth in section 8.1.1 of these rules shall apply to claims of manifest error or mistake on non-written promotion examinations conducted by an examining agency.

SECTION III-CITY PERSONNEL DIRECTOR OR

AGENCY ACTIONS-APPEALS TO THE

CITY CIVIL SERVICE COMMISSION

[Deleted 10/30/81]

8.3.1. [Deleted 10/30/81]

8.3.2. [Deleted 10/30/81]

8.3.3. [Deleted 10/30/81]

8.3.4. [Deleted 10/30/81]

RULE IX- AUDITS AND INVESTIGATION

SECTION I-AUDITS

9.1.1. Audit Function. The commissioner of citywide administrative services shall audit the performance by agencies of their personnel management functions, and may reverse or rescind any agency personnel action or decision taken pursuant to an assignment or delegation of authority under chapter thirty-five of the New York City charter, upon a finding of abuse, after notification to the agency and an opportunity to be heard.

9.1.2. General Audit Procedures. Such audits shall be conducted in accordance with the provisions of this section and the regulations of the commissioner of citywide administrative services.

(a) The agency personnel and budget officer or the designated representative of such officer shall coordinate the agency preparation for department of citywide administrative services audits and assist the auditors during the period of the audit.

(b) The audit report and recommendations shall be transmitted to the agency head who, within two weeks of receipt thereof, shall make a response to the commissioner of citywide administrative services.

9.1.3. Reports. The commissioner of citywide administrative services shall report to the mayor on the performance by agencies of their personnel management functions.

SECTION II-INVESTIGATION

9.2.1. Investigation Function. The commissioner of citywide administrative services shall have the power to make investigations concerning all matters touching the enforcement and effect of the provisions of civil service law pursuant to and in the manner provided by law.

RULE X-CLASSIFICATION OF POSITIONS NOT INCLUDED

IN THE CAREER AND SALARY PLAN OR IN THE

NEW YORK CITY HOUSING AUTHORITY

CLASSIFICATION PLAN

SECTION I-POSITIONS IN THE EXEMPT CLASS

10.1.1. Number of Positions. Not more than one appointment shall be made to or under the title of any office or position in the exempt class unless a different number is specifically prescribed hereafter.

10.1.2. Classification and Compensation Schedule E. The titles and number of positions authorized for each title in the exempt class subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule E.

SECTION II-POSITIONS IN THE NON-COMPETITVE CLASS

10.2.1. Number of Positions. Unless a different or an unlimited number is specifically prescribed hereafter, only one appointment may be made to or under the title of any offices or positions in the non-competitive class listed under this rule.

10.2.2. Classification and Compensation Schedule N. (a) The titles, part numbers, number of positions authorized, and limitations on tenure, if any, for each title in the noncompetitive class subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule N, under their respective departments, under the caption positions subject to rule X.

(b) The maximum salaries appearing in this schedule are not part of this rule, but are part of the classification of the classified service of the City of New York.

SECTION III-POSITIONS IN THE LABOR CLASS

10.3.1. Classification and Compensation Schedule L-10. (a) The titles and grades, if graded, of positions in the class subject to this rule shall not be deemed to form part of these rules. The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule L-10.

(b) No part of this schedule is part of this rule. The schedule is, however, part of the classification of the classified service of the City of New York.

HISTORICAL NOTE

Section amended City Record Sept. 13, 1994 eff. Oct. 13, 1994.

SECTION IV-POSITIONS IN THE COMPETITIVE CLASS

10.4.1. Classification and Compensation Schedule C-10. (a) The services, titles and grades, if graded, of positions in the competitive class subject to this rule shall not be deemed to form part of these rules. The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule C-10.

(b) No part of this schedule is part of this rule. The schedule is, however, part of the classification of the classified service of the City of New York.

RULE XI-CLASSIFICATION AND COMPENSATION OF

CAREER AND SALARY PLAN POSITIONS

SECTION I-SALARY GRADES

11.1.1. Career and Salary Plan. The salary grade for positions which are now or may hereafter be made subject to the career and salary plan hereinafter provided, is as follows:

Salary Grade	Salary Grade Minimum	Salary Grade Maximum
32	13,100	Unlimited

SECTION II-CLASSIFICATION OF POSITIONS

11.2.1. Commissioner of Citywide Administrative Services. The commissioner of citywide administrative services shall, in the manner provided by law, duly classify and reclassify positions which are now or which may hereafter be made subject to the classification and compensation plan.

SECTION III-IMPLEMENTATION OF THE

CAREER AND SALARY PLAN

11.3.1. Functions and Procedures. In order to implement the career and salary plan, each position or class of positions subject thereto shall be classified under a standard title and allocated to an appropriate salary grade as soon as practicable following the adoption of this rule, and, upon such position classification and salary grade allocation, the commissioner of citywide administrative services shall establish schedules of equivalent titles indicating in each case the former title of each position and the standard title and salary grade to which such position is classified and allocated. Such original position classifications and salary grade allocations shall be made, in the case of each position or class of positions, on the basis of the duties, responsibilities and examination qualifications naturally and properly pertaining to the present title of such position or class of positions, without regard to out-of-title work performed by any incumbent thereof. Thereafter, the reclassification and salary grade reallocation of positions shall be made on the basis of the actual duties and responsibilities thereof and the examination requirements based on such duties and responsibilities as determined by the department of citywide administrative services.

SECTION IV-EFFECTIVE DATE OF POSITION

CLASSIFICATION AND POSITION RECLASSIFICATION

11.4.1. Prior to July 1, 1955. Any position classification or position reclassification made hereunder prior to July 1, 1955 shall become effective as of July 1, 1954.

SECTION V-CREATION OF NEW POSITIONS

11.5.1. Requirements. A new position or class of positions shall be established hereunder only under the title and salary grade determined therefor in accordance with this rule, the provisions of the New York City charter and the provisions of the resolution of the board of estimate adopted July 9, 1954, calendar no. 1, establishing the pay plan not inconsistent with such charter.

SECTION VI-RIGHTS AND STATUS OF NEW

INCUMBENTS AND ELIGIBLES ON LISTS

11.6.1. Existing Rights and Status. The rights and status of the permanent incumbent of any position subject to the career and salary plan, including rights and status of employees provided for under the provisions of previous resolutions of classification or reclassification, shall not be adversely affected or impaired by the provisions of this rule or any position classification, position reclassification, salary grade allocation, or salary grade reallocation adopted in accordance therewith. Any permanent employee entitled to an unlimited salary grade prior to the classification or reclassification of such employee's position pursuant to the provisions of this rule shall continue to have such fight and shall not be subject to a maximum salary, notwithstanding the fact that the position held by such employee may be classified or allocated to a salary grade having a maximum.

11.6.2. Eligible List Status. The status of any person whose name appears upon an eligible list in existence on July first, nineteen hundred and fifty-four, or whose name appears on an eligible list established as a result of an examination in process on such date, shall not be adversely affected or impaired by the provisions of this rule or any position

classification, position reclassification, salary grade allocation, or salary grade reallocation adopted in accordance therewith.

SECTION VII-RATES OF COMPENSATION OF POSITIONS

NOT COMPENSABLE ON AN ANNUAL BASIS

11.7.1. Commissioner of Citywide Administrative Services; Procedures. In order to effectuate the allocation or reallocation of positions paid at other than a per annum rate, the commissioner of citywide administrative services shall duly establish, in the manner provided by law, formulae for the purpose of computing the salaries of such positions on a per annum basis.

SECTION VIII-REGULATIONS AND PROCEDURES

11.8.1. Commissioner of Citywide Administrative Services. The commissioner of citywide administrative services may prescribe such regulations and procedures as the commissioner of citywide administrative services may deem necessary or advisable to carry out the provisions of this rule.

SECTION IX-APPLICABILITY

11.9.1. Applicability and Effect of Rule XI. The provisions of this rule shall be applicable only to positions covered by the career and salary plan and shall supersede any provisions of other rules and regulations of the commissioner of citywide administrative services inconsistent therewith.

SECTION X-POSITIONS IN THE NON-COMPETITIVE CLASS

11.10.1. Number of Positions. Unless a different or unlimited number is specifically prescribed hereafter, only one appointment may be made to or under the title of any offices or positions in the non-competitive class listed under this rule.

11.10.2. Classification and Compensation Schedule N. (a) The titles, part numbers, number of positions authorized, and limitations on tenure, if any, for each title in the non-competitive class subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule N, under their respective agencies, under the caption "positions subject to rule XI".

(b) The salary grades or maximum salaries appearing in this schedule are not part of this rule, but are part of the classification of the classified service of the City of New York.

SECTION XI-POSITIONS IN THE LABOR CLASS

11.11.1. Classification and Compensation Schedule L-11. (a) The titles and salary grades or grades of position in the labor class subject to this rule shall not be deemed to form part of these rules. The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule L-11.

(b) The salary grades appearing in this schedule are not part of this rule, but are part of the classification of the classified service of the City of New York.

DERIVATION

Section amended City Record Sept. 13, 1994 eff. Oct. 13, 1994.

SECTION XII-POSITIONS IN THE COMPETITIVE CLASS

11.12.1. Classification and Compensation Schedule C-11. (a) The occupational groups, titles, and salary grades or grades of positions in the competitive class subject to this rule shall not be deemed to form part of these rules. The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule C-11.

(b) No part of this schedule is part of this rule. The schedule is, however, part of the classification of the classified service of the City of New York.

RULE XII-CLASSIFICATION OF POSITIONS IN THE

NEW YORK CITY HOUSING AUTHORITY

CLASSIFIED PURSUANT TO AND SUBJECT TO

RULE XI PRIOR TO JULY 1, 1958

SECTION I-GENERAL PROVISIONS

12.1.1. Deletion from Rule XI. Effective July 1, 1958, the positions and classes of positions in the New York City housing authority heretofore classified under and subject to rule XI and the resolutions of classification and reclassification adopted pursuant thereto are hereby deleted from rule XI.

12.1.2. Coverage Under Rule XII. All such positions and classes of positions are hereby made subject to the provisions of rule XII as herein set forth.

12.1.3. Continuity and Preservation. All occupational groups, titles, classes of positions, salary grades, tables of equivalencies, rights, status, and privileges accorded heretofore under rule XI and the classifications and reclassifications adopted pursuant thereto, and in respect to classifications and reclassifications hereafter adopted pursuant to rule XII are hereby continued undiminished and unimpaired with respect to incumbents, eligibles, positions, and classes of positions in the New York City housing authority and shall not be adversely affected by reason of the adoption of this rule XII or by reason of the adoption of any classification, reclassification, allocation or reallocation hereafter adopted.

12.1.4. Applicability of Rule XII. The provisions of this rule shall be applicable only to positions in the New York City housing authority subject to rule XI prior to July 1, 1958 and such other classes of positions as may be hereafter established in the New York City housing authority pursuant to the provisions of this rule, any other rule or classification to the contrary notwithstanding.

SECTION II-POSITIONS IN THE NON-COMPETITIVE CLASS

12.2.1. Number of Positions. Unless a different or unlimited number is specifically prescribed hereafter, only one appointment may be made to or under the title of any offices or positions in the non-competitive class listed under this rule.

12.2.2. Classification and Compensation Schedule N. (a) The titles, part numbers, number of positions authorized, and limitations on tenure, if any, for each title in the non- competitive class subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule N, under the heading "New York City housing authority" and under the caption "positions subject to rule XII".

(b) The salary grade appearing in this schedule is not part of this rule, but is part of the classification of the classified service of the City of New York.

SECTION III-POSITIONS IN THE LABOR CLASS

12.3.1. Classification and Compensation Schedule L-12. (a) The titles and salary grades or grades of positions in the labor class subject to this rule shall not be deemed to form part of these rules. The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule L-12.

(b) No part of this schedule L-12 is part of this rule. The schedule is, however, part of the classification of the classified service of the City of New York.

DERIVATION

Section amended City Record Sept. 13, 1994 eff. Oct. 13, 1994.

SECTION IV-POSITIONS IN THE COMPETITIVE CLASS

12.4.1. Positions in the Competitive Class. (a) The titles and salary grades or grades of positions in the competitive class subject to this rule shall not be deemed to form part of these rules. The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule C-12.

(b) No part of this schedule C-12 is part of this rule. The schedule is, however, part of the classification of the classified service of the City of New York.

DERIVATION

Section added City Record Sept. 13, 1994 eff. Oct. 13, 1994.

EXPLANATION

The following basic resolution is included as part of the history of this Department's rules.

Whereas, By virtue of the provisions of Chapter 35 of the revised New York City Charter as adopted by the electors of The City of New York on November 4, 1975, certain changes in personnel administration were adopted and the related rule making power and certain other powers of the New York City Civil Service Commission were vested in the personnel director of the New York City Department of Personnel; and

Whereas, By virtue of the provisions of Section 1142 of such revised Charter, such powers and duties heretofore exercised by the New York City Civil Service Commission have been exercised by the Personnel Director of the New York City Department of Personnel in continuation of their exercise by such Commission, and the provisions of the rules and regulations of such Commission have been applicable to such Personnel Director insofar as not inconsistent with such Chapter and Charter; now, therefore, be it

Resolved, Effective January 1, 1977, in order to conform with the provisions of such Chapter and Charter, all rules of the New York City Civil Commission in force and effect on December 31, 1976 be and the same are hereby declared be the rules of the Personnel Director of the New York City Department of Personnel insofar as such rules are not in conflict with such Chapter or Charter; and be it further

Resolved, In order to conform with certain of the provisions of such Chapter and Charter, the rules of the Personnel Director of the New York City Department of Personnel so declared be and the same are hereby amended at this time in the manner and form as hereinafter set forth; and be it further

Resolved, Effective January 1, 1977, in order to conform with the provisions of such Chapter and Charter, all regulations of the New York City Civil Service Commission in force and effect on December 31, 1976 be and the same are hereby declared to be the regulations of the Personnel Director of the New York City Department of Personnel insofar as such regulations are not in conflict with such Chapter or Charter or the rules are hereby amended, pending a general revision of such regulations.

FOOTNOTES

1

[Footnote 1]: * Rules of the Commissioner of Citywide Administrative Services are adopted pursuant to the procedures specified in the Civil Service Law, §20, subdivision 2 and are printed here for the information and convenience of the public. Formerly Title 59 Appendix A.

Rules of the City of New York

***** Current through December 2009 ****

55 RCNY 13-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-01 Scope.

These rules shall be applicable to all film and photography shoots and related activities conducted on properties and within facilities under the jurisdiction of, and with permission from, the Department of Citywide Administrative Services that shall be authorized by a permit issued by the Mayor's Office of Film, Theatre and Broadcasting. Nothing contained herein shall preclude the requirement to comply with any other applicable law, rule or case law governing such activities.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 23, 2009:

The Department of Citywide Administrative Services and its predecessor City agencies have for more than twenty years allowed and supported film production activities on properties and within facilities under the jurisdiction of the agency. Given the frequency and complexity of filming activities by both amateurs and professionals, it has become necessary to codify the process that has been followed over time. Such codification is also consistent with the City Charter requirement that agencies whose procedures or requirements affect the general public shall promulgate rules governing such activities. The purpose of these rules is thus to provide clear guidance to the persons and entities who wish to engage in film and photography shoots on properties and within facilities under the jurisdiction of DCAS,

activities which require that they obtain permits from the Mayor's Office of Film, Theatre and Broadcasting. This proposal would be encompassed in a new Chapter 13 of Title 55 of the Rules of the City of New York.

DCAS published proposed rules in The City Record on August 25, 2009 and published an amended notice superseding the original notice, with respect to the public hearing date, in The City Record on August 27, 2009. On October 2, 2009, DCAS held a public hearing regarding the rules and received extensive comments through that date.

The adopted rules that are set forth herein include changes made as a result of the comments submitted prior to and during the comment period and public hearing from the members of the public, filming industry representatives and City agency officials. DCAS has made particular changes to the rules, as explained below. Moreover, revisions have been made that reflect a decision regarding the order in which applicants obtain permission from DCAS and MOFTB: the two agencies have determined that it is most efficient for applicants to first obtain DCAS approval prior to obtaining a Required Permit from MOFTB.

The following sections have been added, renumbered or revised:

In §13-02 ("Definitions") two new subdivisions have been added: subdivision (h) sets forth a new definition of "permittee" and subdivision (j) sets forth a new definition of "Required Permit." These definitions have been added to differentiate between a holder of an MOFTB scouting permit and a holder of an MOFTB Required Permit. In addition, the definition of "shooting" (subdivision (m)) has been revised to more accurately reflect the current practice of DCAS regarding the scope of activities that would be subject to the permit process.

A new §13-03 ("Pre-Production Scouting") has been added to clarify the initial steps to be taken prior to proceeding with a project and submitting required documentation to DCAS for requisite approval.

A new §13-04 ("Required Documentation and Approvals from DCAS") has been added to provide more detail regarding this intermediary step, which entails the submission of required documents to obtain requisite DCAS approval. DCAS and MOFTB have considered comments received-including those from filming industry representatives-and subdivision (a) now incorporates a reduction in the minimum time frame for the submission of required documents to DCAS from one week to four business days prior to the commencement of prepping or rigging for a production. Subdivision (a) also provides that the Commissioner or his or her designee may approve an exception to the four business day minimum time frame, if the activity to be undertaken supports such a request.

A new §13-05 ("Application for Required Permit from MOFTB") has been added to clarify both the role of MOFTB and the circumstances under which a Required Permit from MOFTB shall be applied for and issued. Further detail is also provided regarding when the fee shall be imposed.

A new §13-06 ("Indemnification and Insurance Requirements") has been added to provide more detail concerning indemnification and insurance required prior to the commencement of prepping or rigging for a production. In addition, subdivision (a) provides that a copy of insurance documentation and a copy of the MOFTB Required Permit shall be submitted to the DCAS Film Office in order to obtain final DCAS authorization for such production.

In §13-07 ("Production Requirements") subdivision (a) has been revised, taking into consideration comments received from filming industry representatives in particular, to provide that the Commissioner or his or her designee shall approve holding on properties and within facilities under the jurisdiction of DCAS.

In §13-08 ("Post-Production Requirements") subdivision (b) has been revised, considering comments received particularly from filming industry representatives, to provide that any fixtures, furniture, books, doors, windows, walls, and other structures and/or objects shall be returned to their original position and/or restored to their original condition by the permittee during the de-rigging, unless the permittee has obtained prior approval from the Commissioner or his or her designee. Subdivision (c) has also been revised to recognize the reality that when a production related activity is scheduled, arrangements for making DCAS personnel available to staff such activity have implicit costs, and therefore

cancellations twenty-four hours or less prior to such activity are a cost burden to the agency which shall be reimbursed by the permittee.

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

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55 RCNY 13-02

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-02 Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

(a) **Commissioner.** "Commissioner" shall mean the Commissioner of the Department of Citywide Administrative Services ("DCAS").

(b) **Court properties or facilities.** "Court properties or facilities" shall mean the interiors and exteriors of buildings under the jurisdiction of the New York State Unified Court System that are managed by DCAS, and shall include the property adjacent to such buildings that is under the jurisdiction of DCAS.

(c) **DCAS Film Office.** "DCAS Film Office" shall mean the unit of DCAS that oversees the filming, photography and related activities that are conducted on properties and within facilities under the jurisdiction of DCAS.

(d) **Equipment.** "Equipment" shall include, but not be limited to, television, photographic, film or videocameras or transmitting television equipment, including radio remotes, props, sets, lights, electric and grip equipment, dolly tracks, screens, or microphone devices, and any and all production related materials. "Equipment" shall not include (1) "hand-held devices," as defined in §9-02 of the Mayor's Office of Film, Theatre and Broadcasting Film Permit Rules, and (2) vehicles, as defined in section one hundred fifty-nine of the New York Vehicle and Traffic Law, that are used solely to transport a person or persons while engaged in the activity of filming or photography from within such vehicle, operated in compliance with relevant traffic laws and rules.

(e) **Filming.** "Filming" shall mean the taking of motion pictures, the taking of still photography or the use and

operation of television cameras or transmitting television equipment, including radio remotes and any preparatory activity associated therewith, and shall include events that include, but are not limited to, the making of feature or documentary films, television serials, webcasts, simulcasts or specials.

(f) **Holding.** "Holding" shall mean the temporary accommodation of cast or crew members and other individuals associated with a production in a space in which filming is not taking place. "Holding" may include the space in which an independent company provides meals or catering services to cast or crew members and other individuals associated with a production.

(g) **MOFTB Film Permit Rules.** "MOFTB Film Permit Rules" shall mean the rules promulgated by the Mayor's Office of Film, Theatre and Broadcasting ("MOFTB"), codified as Chapter 9 of Title 43 of the Rules of the City of New York, as amended from time to time.

(h) **Permittee.** "Permittee" shall mean the holder of a Required Permit issued by the Mayor's Office of Film, Theatre and Broadcasting in accordance with §9-01 of the MOFTB Film Permit Rules.

(i) **Photography.** "Photography" shall mean the taking of moving or still images.

(j) **Required Permit.** "Required Permit" shall mean the permit for filming or photography issued by MOFTB in accordance with §9-01 of the MOFTB Film Permit Rules.

(k) **Rigging/de-rigging.** "Rigging/de-rigging" shall mean the loading in or loading out, loading or unloading, of any shooting or production related equipment, including, but not limited to, props, sets, electric and grip equipment, at any location, time and date where film or production is not occurring. Such term shall have the same meaning as the commonly used term "prepping/wrapping."

(l) **Scouting.** "Scouting" shall mean the act of viewing, assessing and photographing locations for filming or photography during pre-production or production for, including, but not limited to, still photography, feature films, television series, mini-series or specials.

(m) **Shooting.** "Shooting" shall mean filming on properties, in the interiors or on exteriors of buildings or facilities under the jurisdiction of DCAS.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

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***** Current through December 2009 ****

55 RCNY 13-03

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-03 Pre-Production Scouting.

(a) Prior to conducting any scouting related activities on properties or within facilities under the jurisdiction of DCAS, a scouting permit shall be obtained from MOFTB.

(b) After a scouting permit is obtained from MOFTB, an appointment shall be scheduled with the DCAS Film Office to make arrangements for such scouting activities.

(c) If after conducting scouting related activities it is determined that a filming or photography project or production will be pursued, the scouting permit holder shall submit the documentation and resolve production issues described in §13-04 of this chapter.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

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***** Current through December 2009 ****

55 RCNY 13-04

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-04 Required Documentation and Approvals from DCAS.

(a) The following forms and documents, which are required for DCAS review and approval prior to obtaining a Required Permit from MOFTB, shall be submitted to the DCAS Film Office no later than four (4) business days prior to the date on which the prepping or rigging for film and/or photography shoots is sought to commence:

(1) Completed "Properties and Facilities Under DCAS Jurisdiction Activity Approval Form" signed by the applicant;

(2) DCAS "Letter of Intent" signed by the applicant;

(3) "Prohibited Conduct" Memorandum signed by the applicant;

(4) Accurate and updated information concerning an applicant's forwarding postal address and, if available, an e-mail address, telephone number and facsimile number for purposes of receiving reimbursement notification from DCAS; and

(5) Any other documents, including, but not limited to, equipment specifications and architectural renderings, that may be required by the DCAS Film Office.

The Commissioner or his or her designee may approve an exception to the four (4) business day minimum time frame referenced in subdivision (a) of this section if the nature and scope of the activity to be undertaken support a request that a shorter time within which to submit requisite forms and documents be granted.

(b) In addition to reviewing the documentation required by subdivision (a) of this section, DCAS shall review and issue determinations concerning the following types of issues prior to completing the approvals necessary for MOFTB's Required Permit:

(1) Structural conditions, landmark status issues, equipment specifics, weight, load and other similar considerations.

(2) The use of smoke, pyrotechnics, firearms, weapons, animals and other special effects or unusual scenes, which shall also be subject to all applicable laws, rules and other governmental policies regarding such activities.

(c) Where appropriate, an applicant may be required to attend a security meeting with DCAS staff, depending on the nature and location of the activity to be undertaken.

(d) Determinations about all DCAS staffing matters, including decisions regarding the scope, type, number or level of staff required, shall be made by DCAS.

(e) The DCAS Film Office shall review the documentation provided in accordance with subdivision (a) of this section, and shall attempt to accommodate particular technical needs and any other special circumstances, including approvals from City agency tenants and DCAS engineers or other personnel, that may be presented by the applicant.

(f) Where the DCAS Film Office has approved an application, it shall notify MOFTB about such approval. DCAS shall also notify the applicant that they can proceed by submitting the documentation to MOFTB necessary for obtaining a Required Permit.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

55 RCNY 13-05

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-05 Application for Required Permit from MOFTB.

(a) A Required Permit shall be applied for and issued in accordance with the provisions of §9-02 of the MOFTB Film Permit Rules after the requisite DCAS documentation has been completed by the applicant and reviewed by DCAS; production issues have been resolved with DCAS; and DCAS approval has been received.

(b) A non-refundable fee of $3,200.00 shall accompany any application submitted to MOFTB for a Required Permit. Such fee shall be in the form of a certified bank check or money order, payable to the New York City Department of Finance.

(c) The fee required by this section shall be imposed for each instance in which prepping or rigging commences, is followed by shooting and/or photography for such production, and then is concluded by wrapping, de-rigging and/or related activities.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

55 RCNY 13-06

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-06 Indemnification and Insurance Requirements.

(a) Prior to the commencement of prepping or rigging for film and/or photography shoots on properties or within facilities under the jurisdiction of DCAS, a permittee shall provide to the DCAS Film Office a copy of insurance documentation and a copy of the Required Permit in order to obtain final DCAS authorization for such production.

(b) By obtaining a Required Permit from MOFTB, a permittee who is authorized to conduct film shoot and/or photography shoot activities on properties or within facilities under the jurisdiction of DCAS agrees to protect all persons and property from damage, loss or injury arising from any of the operations performed by or on behalf of such permittee, and to indemnify and hold harmless the City of New York, to the fullest extent permitted by law, from all claims, losses and expenses, including attorneys' fees, that may result therefrom.

(c) A permittee who has been authorized by DCAS to conduct film shoot and/or photography shoot activities on properties or within facilities under the jurisdiction of DCAS, and has obtained a Required Permit from MOFTB, shall maintain, during the entire course of its operations, a liability insurance policy with a limit of not less than one million dollars ($1,000,000) per occurrence. Such policy shall name the City of New York as an additional insured with coverage at least as broad as provided by Insurance Services Office (ISO) form CG 20 12 (07/98 ed.). The permittee shall provide to MOFTB the original certificate of insurance signed in ink to which a copy of the required endorsement is attached. For currently enrolled film students, proof of insurance obtained through their school and proof of the student's current attendance shall satisfy this requirement.

(d) If it is determined, in light of the activity for which a Required Permit has been sought, that such activity may increase the potential for injury to individuals and/or damage to property, and that the minimum limit of insurance

should be higher than one million dollars ($1,000,000) per occurrence referenced in subdivision (c) of this section, it shall be determined what higher minimum limit is to be required and the permittee shall be advised of such higher limit. Factors to be considered shall include, but shall not be limited to, the number of people involved, the location of the activity and the nature of the activity. The permittee shall thereafter provide proof of such insurance in accordance with this section. Such determination may be appealed by written request to the Commissioner, who may reverse, affirm or modify the determination and provide a written explanation of his or her decision.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

55 RCNY 13-07

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-07 Production Requirements.

(a) Holding on properties and within facilities under the jurisdiction of DCAS is available only for those productions taking place on or within such properties or facilities, upon the approval of the Commissioner or his or her designee.

(b) DCAS shall provide security personnel to protect City property under its jurisdiction during production activities at non-court properties and facilities, the cost of which shall be reimbursed by the permittee.

(c) All individuals affiliated with the permittee and the production shall be required to present a valid, government-issued photo identification card to receive security clearance to have access to properties and facilities under the jurisdiction of DCAS where the production and related activities are taking place.

(d) All individuals affiliated with the permittee and the production shall wear a laminated identification card on non-court properties and within non-court facilities under the jurisdiction of DCAS. The identification cards shall be similar in form and include the name of the production. Failure to display such identification cards at all times may lead to ejection from such properties and facilities.

(e) All production equipment and props brought to properties and facilities under the jurisdiction of DCAS shall be subject to inspection at any time prior to or during the production.

(f) DCAS shall not be responsible for any injury to persons and/or damage or loss to any property on properties and within facilities under the jurisdiction of DCAS arising from any of the operations performed by or on behalf of the

permittee.

(g) In addition to the fee referenced in §13-05 and any other costs identified in §13-08, a permittee requesting use of properties and facilities under the jurisdiction of DCAS for twenty-eight (28) days or longer shall be required to enter into an agreement providing for the payment of renting or leasing such space in an amount not to exceed $5,000.00 per month, in accordance with Administrative Code §4-203(b).

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

55 RCNY 13-08

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-08 Post-Production Requirements.

(a) A permittee is responsible for cleaning and restoring the properties and facilities under the jurisdiction of DCAS after the rigging, shooting and/or holding. The cost of any DCAS employee time incurred due to a permittee failing to clean and/or restore such properties and facilities following the rigging, shooting and/or holding shall be borne by the permittee and reimbursed to DCAS.

(b) Any fixtures, furniture, books, doors, windows, walls, and other structures and/or objects shall be returned to their original position and/or restored to their original condition by the permittee during the de-rigging, unless the permittee has obtained prior approval from the Commissioner or his or her designee. The permittee shall immediately remove any props used during the production from properties and facilities under the jurisdiction of DCAS. The permittee shall reimburse DCAS for any property and facility damage arising from such production activities.

(c) At the conclusion of all film and photography shoots, the permittee shall reimburse DCAS for all production related costs including, but not limited to, DCAS personnel costs contemplated by §13-04(d) and subdivision (a) of this section, and reimbursement for any property or facility damage in accordance with subdivision (b) of this section. If the permittee cancels any of its production related activities twenty-four (24) hours or less prior to the scheduled commencement of such activities on properties or within facilities under the jurisdiction of DCAS, the permittee may be subject to the reimbursement of costs for DCAS personnel assigned to staff such production.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

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***** Current through December 2009 ****

56 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-01 Construction and Scope of Rules; Variances.

(a) **Construction.** These Rules shall be construed as follows:

(1) any term in the singular includes the plural;

(2) any term in the masculine includes the feminine and neuter;

(3) any Rule or Regulation relating to any act covers: the causing, procuring, aiding or abetting, directly or indirectly, of that act; and allowing a minor child to do that act;

(4) no provision herein shall make unlawful any act necessarily performed by any officer or employee of the Department in the line of duty or work, or by any person, his agents or employees, in the proper and necessary execution of the terms of any agreement with the Department;

(5) these Rules are in addition to and supplement all municipal, state and federal laws and ordinances.

(b) **Territorial scope.** The Rules shall be effective within and upon all areas under the jurisdiction of the Commissioner, as defined in Chapter 21 of New York City Charter.

(c) **Variance.** Any act or activity prohibited solely by these Rules shall be lawful if performed in strict compliance with the terms and conditions of a variance issued by the Department. The Department may issue a variance where there are significant practical difficulties, or unnecessary hardships, not created or caused by the applicant, in the way of carrying out the Rules, or where the beauty and utility of property within the jurisdiction of the Department would be

preserved by compliance with the terms and conditions of such variance.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-02 Definitions.

Authorized bathing beaches. "Authorized bathing beaches" are those designated as such by the Department after approval by the Health authorities.

Bathing area. "Bathing area" means any area maintained for the use of bathers, including the water area and lands under water adjacent to and within one thousand feet of the bathing beaches on the ocean, bays or rivers along the shores of New York City under the jurisdiction of the Commissioner.

Bicycle. "Bicycle" means every two- or three-wheeled device upon which a person or persons may ride, propelled by human power through a belt, a chain or gears, with such wheels in a tandem or tricycle, except that it shall not include such a device having solid tires and intended for use only on a sidewalk by pre-teenage children.

Boardwalk. "Boardwalk" means any waterfront promenade maintained for pedestrians.

Commissioner. "Commissioner" means the Commissioner of the Department of Parks and Recreation or the chief executive officer of any successor agency.

Demonstration. "Demonstration" means a group activity including but not limited to, a meeting, assembly, protest, rally, march or vigil which involves the expression of views or grievances, involving more than 20 people or a group activity involving less than 20 people for which specific space is requested to be reserved.

Department. "Department" refers to the Department of Parks and Recreation of the City of New York or all

successor agencies.

Dumping. "Dumping" refers to the unauthorized disposal of refuse in an amount totaling one cubic yard or more.

Event. "Event" refers to both Demonstrations and Special Events.

Littering. "Littering" refers to the unauthorized disposal of refuse in an amount totaling less than one cubic yard.

Motor vehicle. "Motor vehicle" refers to any automobile, motorcycle, moped, or other vehicle propelled by a motor.

Owner. "Owner" refers to any person owning, operating, or having the use or control of an animal, a vehicle or any other personal property.

Park. "Park" signifies public parks, beaches, waters and land under water, pools, boardwalks, playgrounds, recreation centers and all other property, equipment, buildings and facilities now or hereafter under the jurisdiction, charge or control of the Department.

Park path. "Park path" means any road, path or trail through or within a park that is not used for vehicular traffic, except for possible use by emergency motor vehicles or Department motor vehicles, provided that it shall not include a path designated by the Commissioner as a bikepath.

Park road. "Park road" means any road through or within a park, and is used for vehicular traffic.

Park sign. "Park sign" means any placard, notice or sign duly posted by the Depart- ment.

Park-street. "Park-street" means the full width of all streets abutting any park.

Pedicab. "Pedicab" means a bicycle as defined in this section or other device that is designed and constructed to transport or carry passengers, that is solely propelled by human power, and that is operated to transport passengers for hire.

Permit. "Permit" unless otherwise specified, means any written authorization issued by or under the authority of the Commissioner for a specified privilege, permitting the performance of a specified act or acts in any park or on any park-street.

Person. "Person" means any natural person, corporation, society, organization, company, association, firm, partnership, or other entity.

Police officer. "Police officer" refers to any member of the Police Department of the City of New York and any other city employee who is a Special Patrolman appointed and sworn in by the Police Commissioner and assigned to the Commissioner.

Rules. "Rules" unless otherwise specified, refers to any Rule established pursuant to §533(a) of Chapter 21 of the New York City Charter and promulgated in compliance with the notice, publication and filing requirements of Chapter 45 of the New York City Charter.

Sexual activity. "Sexual activity" means any activity by a person that reasonably appears to be intended to sexually arouse that person or another person, and in which such person exposes his or her buttock or genitalia, or the area of the female breast below the top of the areola.

Sound reproduction device. "Sound reproduction device" includes, but is not limited to, any radio receiver, phonograph, television receiver, musical instrument, tape recorder, cassette or disc player, speaker device or system and

any sound amplifier.

Special Event. "Special Event" means a group activity including, but not limited to, a performance, meeting, assembly, contest, exhibit, ceremony, parade, athletic competition, reading, or picnic involving more than 20 people or a group activity involving less than 20 people for which specific space is requested to be reserved. Special Event shall not include casual park use by visitors or tourists.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

Section in original publication July 1, 1991.

Bicycle added City Record Dec. 22, 2009 §1, eff. Jan. 21, 2010. [See Note 2]

Demonstration definition amended City Record Oct. 30, 2003 eff. Nov. 29, 2003. [See T56 §2-10

Note 2]

Demonstration definition added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See Note 1]

Event definition added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See Note 1]

Park path added City Record Dec. 22, 2009 §1, eff. Jan. 21, 2010. [See Note 2]

Pedicab added City Record Dec. 22, 2009 §1, eff. Jan. 21, 2010. [See Note 2]

Sexual Activity definition amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See Note 1]

Special Event definition added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 29, 1999:

The Commissioner of Parks and Recreation has the authority pursuant to Section 533(9) of the New York City Charter and Section 10(3) of the Statute of Local Governments to establish and enforce rules and regulations for the use, government and protection of public parks and of all property under the charge or control of the department. The Commissioner has amended Chapters 1 and 2 of Title 56 of the Rules of the City of New York to (a) clarify permit application procedures; (b) establish clear standards for fixing bond amounts, (c) prevent advertising of special events until permits are issued, (d) conform existing rules to changed operational practices and legal standards, (e) revise certain permit fees; and (f) revise sports permit rules.

2. Statement of Basis and Purpose in City Record Dec. 22, 2009: These Rules are promulgated pursuant to the authority of the Commissioner (the "Commissioner") of the Department of Parks and Recreation (the "Department") under §§389(b), 533(a)(9) and 1043 of the New York City Charter and under §20-265 of the New York City Administrative Code. The Commissioner is authorized to establish and enforce rules for the use, governance and protection of public parks and of all property under the charge or control of the Department. After publishing the proposed Rules in the City Record, comments were received from the public. The Rules have been modified to reflect some of the recommendations received. In particular, as the prohibition on the operation of pedicabs on park paths includes areas that would be covered by the prohibition on the operation of pedicabs on greenways under the jurisdiction of the Department, the prohibition on operating pedicabs in any Department greenway has been deleted. Technical changes have also been made to the Rules. The Rules address the operation of pedicabs within City parks so

as to promote safety, preserve aesthetic values and provide a balanced interaction with other park users, while still permitting pedicab drivers to continue to ply their trade.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A group planning a protest demonstration during the Republican National Convention sought a permit for a 75,000 person event to be held on the Great Lawn of Central Park. After the Department of Parks denied the application, petitioners brought an action alleging, among other things, that the licensing scheme violated the First Amendment. The court refused to grant an injunction against enforcement of the regulations, holding that they were content neutral and narrowly tailored to further an important governmental interest (maintenance of parks). The statute required the department to work with event organizers to locate suitable alternative sites, and the department had in fact offered to do so. The court rejected the claim that the permit scheme gave the department the unfettered discretion to grant or deny permits based on the content of the message. The permit scheme factors, such as environmental conditions, scheduling conflicts and the potential for interference with the use and enjoyment of the park by others, did not leave the decision to the whim of the administrators. **National Council of Arab Americans v. City of New York,** 331 F.Supp.2d 258 (S.D.N.Y. 2004).

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-03 General Provisions.

(a) **Hours of operation.** (1) Persons may enter and use the parks from 6:00 a.m. until 1:00 a.m. unless other open hours are posted at any park.

(2) Whenever a threat to public health or safety exists in any park resulting from any natural cause, explosion, accident or any other cause, or by riot or unlawful assembly or activity, the Commissioner may close the park or any part thereof to the public for such duration as he deems necessary to ensure the safety and well-being of the public.

(3) No person shall enter or remain in any park without the permission of the Commissioner when such park is closed to the public.

(b) **Permits.** (1) When any provision of these Rules requires a permit as a condition to the performance of an act or activity, no such act or activity shall be implemented or commenced prior to the receipt of written authorization from the Commissioner or from his authorized representative.

(2) A permit may be granted upon such terms and conditions as the Commissioner shall reasonably impose, and shall authorize the permitted acts or activities only insofar as they are performed in strict accordance with the terms and conditions thereof.

(3) Permits shall be applied for on forms prepared and provided by the Department, which forms shall require such information as the Department may deem appropriate for the review and evaluation of the permit application. Procedures for issuance of special event and demonstration permits are governed by §2-08 of the Department's rules.

The Commissioner may require a fee for the issuance of a permit.

(4) The Commissioner may require the permittee to post a bond in an amount sufficient to ensure full compliance with the terms and conditions of the permit. The decision of whether to require a bond will be based on the following factors:

(a) The location of the event and such location's vulnerability to damage;

(b) Whether the event or any activities associated with the event present a high risk of property damage;

(c) The number of people expected to be in attendance;

(d) The type of equipment to be brought onto the site;

(e) The number of days the permittee will occupy the site;

(f) The season in which the event will take place.

(5) The Commissioner may require the permittee to obtain personal liability insurance for the event, naming the Department and the City of New York as additional insureds. The decision on whether to require insurance will be based on the following factors:

(a) Whether the special event or any activities included as part of the special event present a risk of personal injury or property damage.

(b) Whether the special event involves the sale of food.

(c) Whether the special event involves over 2,000 participants, or a large number of participants relative to the size of the site.

(d) Whether the special event involves transportation and installation of heavy equipment, or the installation of a stage or other temporary structure.

(6) No person shall conduct any activity for which a permit is required unless (a) such permit has been issued; (b) all terms and conditions of such permit have been or are being complied with; and (c) the permit is kept on hand at the event, so as to be available for inspection by Police or Department employees.

(7) Failure to comply with the terms and conditions of any permit shall be a violation of these rules. If, upon expiration or termination of the permit, it is determined that a permittee has not complied with the terms and conditions of the permit, or has violated any law, ordinance, statute or rule, then the following rules shall apply:

(i) any bond provided as security for a permittee's performance with the Department shall be forfeited and retained by the City to the extent necessary to remedy, or compensate the City for, the damages caused by such acts, omissions, or violations;

(ii) the permittee, together with his or her agents and employees who violated such terms and conditions or provisions of law, ordinance, statute or rule, shall be jointly and severally liable for any additional sum necessary to correct or compensate the City for such damages; and

(iii) neither forfeiture of any security nor payment nor recovery for such damages shall in any way relieve the permittee of civil or criminal liability arising from the violation of any law, ordinance or rule.

(c) **Failure to Comply with Directions of Police Officers, Urban Park Rangers, Parks Enforcement Patrol**

Officers, or Other Department Employees, or Park Signs. (1) No person shall fail, neglect or refuse to comply with the lawful direction or command of any Police Officer, Urban Park Ranger, Parks Enforcement Patrol Officer or other Department employee, indicated verbally, by gesture or otherwise.

(2) No person shall fail to comply with or obey any instruction, direction, regulation, warning, or prohibition, written or printed, displayed or appearing on any park sign, except such sign may be disregarded upon order by a Police Officer or designated Department employee.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

Subd. (b) pars (2), (3) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (b) par (4) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (b) par (7) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (b) par (4) amended City Record Dec. 21, 1995 eff. Jan. 20, 1996. [See Note 1]

Subd. (b) par (5) added City Record Dec. 21, 1995 eff. Jan. 20, 1996. [See Note 1]

Subd. (b) par (6) designated (Note: This par (6) became par (7) in later amendment) City Record Dec. 21, 1995 eff. Jan. 20, 1996. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 21, 1995:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that the non-commercial distribution of products and materials in the parks is carried out in accordance with standards consistent with the use and enjoyment of the parks by the public.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The ordinance requires people to obey signs placed on park property, unless either a police officer or a Parks Department employee states that the sign be disregarded. In one case, the information charged defendant with being present in a park at 2 a.m., in violation of a sign that stated that the park closed at 9 p.m. The court held that the information was sufficient, and that it was not necessary to allege specifically that no police officer or Parks Department employee had given directing that the sign be disregarded. People v. Davis, 2008 N.Y. Slip Op. 5127U, 19 Misc.3d 145A, 2008 N.Y. Misc. Lexis 3187 (App.Term 2d Dept. 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-04 Prohibited Uses.

(a) **Destruction or abuse of property and equipment.** No person shall injure, deface, alter, write upon, destroy, remove or tamper with in any way, any real or personal property or equipment owned by or under the jurisdiction or control of the Department.

(b) **Destruction or abuse of trees, plants, flowers, shrubs and grass.**

(1) (i) No person shall deface, write upon, injure, sever, mutilate, kill or remove from the ground any trees under the jurisdiction of the Department without permission of the Commissioner.

(ii) No person shall deface, write upon, sever, mutilate, kill or remove from the ground any plants, flowers, shrubs or other vegetation under the jurisdiction of the Department without permission of the Commissioner.

(2) No person shall go upon or allow any animal or child in his custody to go upon any newly-seeded lawn or grass plot.

(3) No person shall go upon or allow any animal or child in his custody to go upon any area enclosed by fencing, temporary or permanent, where such fencing or signs posted thereon reasonably indicate that entry into such area is forbidden.

(4) No person shall possess any tools commonly used for gardening, or any plant, tree, shrub or other vegetation, in any park except where such possession is specifically designated to be permissible by the Commissioner.

(5) No person shall use a metal detector in any park, except in unvegetated beach areas. Use of metal detectors in other park areas will be permitted if the prior written consent of the Commissioner is obtained.

(c) **Littering, polluting, dumping, and unattended property.** (1) No person shall litter in any park. All persons shall use receptacles provided for the disposal of refuse. No person shall deposit household or commercial refuse in any park receptacle.

(2) No person shall throw, drop, allow to fall, or discharge into or leave in the waters within any park (including pools and bathing areas), or any tributary, brook, stream, sewer or drain flowing into said waters, any substance, liquid or solid, which may or will result in the pollution of said waters.

(3) No person shall engage in dumping in any park.

(4) No person shall, within or adjacent to any park, store or leave unattended personal belongings.

(d) **Restrictions on glass.** The Commissioner may, in his discretion, designate certain parks, or portions thereof, as restricted areas wherein no glass bottles or other glass containers will be permitted. Failure to comply with such restrictions shall constitute a violation of these rules. This subdivision (d) shall not apply to glass bottles or containers used in the care and feeding of infant children.

(e) **Aviation.** No person shall voluntarily bring, land or cause to alight within or upon any park, any airplane, balloon, parachute, hang glider, or other aerial device, except that certain areas may be designated appropriate landing places for medical evacuation helicopters. For the purposes of this subdivision (e), voluntarily shall mean anything other than a forced landing caused by mechanical or structural failure of the aircraft or other aerial device.

(f) No person, except a police officer or peace officer while on duty, shall bring into or have in his or her possession in any park, any firearms, slingshots, firecrackers, missile propelling instruments or explosives, including any substance, compound, or mixture having properties of such a character that alone or in combination with other substances, compounds or mixtures, propel missiles, explode or decompose to produce flames, combustion, noise, or noxious or dangerous odors. Nothing in this subdivision (f) shall be construed to prohibit the proper use of cigarette lighters, matches or of charcoal lighter fluid in proper containers in picnic grills where permissible pursuant to the provisions of these Rules.

(g) **Abuse of park animals.** (1) No person shall within any park (including any zoo area) molest, chase, wound, trap, hunt, shoot, throw missiles at, kill or remove any animal, any nest, or the eggs of any amphibian, reptile or bird; or knowingly buy, receive, have in his or her possession, sell or give away any such animal or egg taken from or killed within any park (including any zoo area).

(2) No person shall feed animals in any park (including any zoo area) except unconfined squirrels and birds, and where specifically authorized by the Commissioner. The Commissioner may also designate certain areas where all feeding of animals is prohibited. It shall be a violation of these rules to feed animals in any area where such feeding is prohibited.

(h) **Marijuana; controlled substances.** No person shall bring, possess, distribute, sell, solicit or consume marijuana or any controlled substance, as defined in §220.00 of the New York State Penal Law, in any park, playground, beach, swimming pool, or other park property or facility.

(i) **Failure to control animals.** (1) Except as specified in §1-05(s)(3) or in paragraph two of this subdivision, no person owning, possessing or controlling any animal shall cause or allow such animal to be unleashed or unrestrained in any park unless permitted by the Commissioner in accordance with these rules. No person owning, possessing or controlling any animal shall cause or allow such animal to be out of control in any park under any circumstances. Animals that are unleashed or unrestrained, except as permitted by these rules, or out of control may be seized and

impounded. Properly licensed dogs, wearing a license tag and vaccinated against rabies pursuant to the laws of the State of New York and City of New York and restrained by a leash or other restraint not exceeding six feet in length, may be brought into a park, except in no event shall dogs or other animals be allowed to enter any playground, zoo, swimming pool and swimming pool facility, bathing area and adjacent bathing beach (unless otherwise permitted by the Commissioner and not during the designated bathing season), bridle path (unless leashed dogs are permitted therein by the Commissioner), fountain, ballfield, basketball court, handball court, tennis court, or other area prohibited by the Commissioner. Nothing in this subdivision (i) shall be construed to prohibit persons with disabilities from bringing seeing eye dogs, or other service dogs trained to assist such persons into these areas. Nothing herein shall prohibit horses from entering or being within a park as provided in §1-05(q).

(2) Unless specifically prohibited herein or by the Department of Health and Mental Hygiene ("DOHMH"), properly licensed dogs wearing a license tag and vaccinated against rabies pursuant to the laws of the State of New York and City of New York may be unleashed within a designated park or designated portions of a park between the hours of 9:00 p.m. and 9:00 a.m. under the following conditions: (i) such dogs shall, except for being unleashed, be kept under the control of their owner and shall not at any time harass or injure any park patron and/or, harass, injure, damage, sever, mutilate, or kill any animal, tree, planting, flower, shrub or other vegetation; (ii) such dogs shall not at any time enter any playground, zoo, swimming pool and swimming pool facility, bathing area and adjacent bathing beach (unless otherwise permitted by the Commissioner and not during the designated bathing season), bridle path (unless leashed dogs are permitted therein by the Commissioner), fountain, ballfield, basketball court, handball court, tennis court, or other area prohibited by the Commissioner; (iii) such dogs shall be immediately leashed by their owners upon any direction or command of any Police Officer, Urban Park Ranger, Parks Enforcement Patrol Officer or other Department employee or employee of the DOHMH, the refusal of which direction or command shall constitute a violation of §1-03(c); (iv) owners of such dogs shall provide proof of current vaccination against rabies and proof of current licensing upon the request of any Police Officer, Urban Park Ranger, Parks Enforcement Patrol Officer or other Department employee or employee of the DOHMH, the refusal of which shall constitute a violation of §1-03(c), §1-05(s)(3) and of this subdivision.

(j) **Control and removal of animal waste.** (1) No person shall allow any dog in his custody or control to discharge any fecal matter in any park unless he promptly removes and disposes of same. This provision shall not apply to a guide dog accompanying a person with a disability.

(2) Anyone who drives a horse-drawn carriage into or within a park is required to equip it with horse hampers, horse diapers or some other similar manure catching device which is effective in preventing manure from being deposited on any park street, road or way.

(k) **Urination and defecation in parks.** No person shall urinate or defecate in any Park, or in or upon any park building, monument or structure, except in a facility which is specifically designed for such purpose.

(l) **Disorderly behavior.** It shall be a violation of these rules to engage in disorderly behavior in a park. A person in any park shall be guilty of disorderly behavior who:

(1) enters or leaves any park except by designated entrance ways or exits, or enters or attempts to enter any facility, area or building sealed, locked or otherwise restricted from public access; or

(2) climbs upon any wall, fence, shelter, tree, shrub, fountain or other vegetation, or any structure or statue not specifically intended for climbing purposes; or

(3) gains or attempts to gain admittance to the facilities in any park for the use of which charge is made without paying such charge; or

(4) engages in any form of gambling or game of chance for money, or tells fortunes for money; or

(5) interferes with, encumbers, obstructs or renders dangerous any part of a park or park road; obstructs vehicular or pedestrian traffic; or

(6) engages in fighting or assaults any person; or

(7) engages in a course of conduct or commits acts that unreasonably alarm or seriously annoy another person; or

(8) engages in any form or sexual activity; or

(9) engages in a course of conduct or commits acts that endanger the safety of others.

(m) **Loitering for illegal purposes.** It shall be a violation of these rules to engage in loitering for illegal purposes in a park. Any person in any park shall be guilty of loitering for illegal purposes who:

(1) loiters or remains in a park for the purpose of engaging, or soliciting another person to engage, in sexual activity for money; or

(2) loiters or remains in any park with one or more persons for the purpose of unlawfully using, possessing, purchasing, distributing, selling or soliciting marijuana, alcohol or any controlled substance, as defined in §220.00 of the New York State Penal Law.

(n) **Unlawful exposure.** It shall be a violation of these rules to appear in public on property under the jurisdiction of the Department in such a manner that one's genitalia are unclothed or exposed.

(o) **Obstruction of sitting areas.** No person shall use a bench or other sitting area so as to interfere with its use by other persons, including storing any materials thereon.

(p) **Unlawful camping.** No person shall engage in camping, or erect or maintain a tent, shelter, or camp in any park without a permit.

(q) **Unlawful spitting.** It shall be unlawful for any person to spit or expectorate in or upon any park building, monument or structure.

(r) **Unhygienic use of fountains, pools, and water.** No person shall use, or permit any animal under his or her control to use, any water fountain, drinking fountain, pool, sprinklers, reservoir, lake or any other water contained in the park for the purpose of washing or cleaning himself or herself, his or her clothing or other personal belongings. This subdivision shall not apply to those areas within the parks which are specifically designated for personal hygiene purposes (i.e., bathroom, shower room, etc.), provided, however, that no person shall wash his or her clothes or personal belongings in such areas.

(s) **Unlawful solicitation.** (1) No person shall engage in any commercial activity or commercial speech in any park, except pursuant to a permit issued under §1-03(b) and/or §2-08 of these Rules.

(2) No person shall solicit money or other property from persons not known to such person in any park, unless such person possesses a permit for noncommercial solicitation issued by the Commissioner.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

Subd. (b) par (4) amended City Record Aug. 15, 1997 eff. Sept. 14, 1997. (Note that this was final

publication of an adopted rule, not a proposed rule change as indicated.) [See Note 1]

Subd. (b) par (5) added City Record Aug. 15, 1997 eff. Sept. 14, 1997. (Note that this was final publication of an adopted rule, not a proposed rule change as indicated.) [See Note 1]

Subd. (g) par (2) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (i) amended City Record Apr. 10, 2007 §1, eff. May 10, 2007. [See Note 3]

Subd. (n) added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (o) relettered and amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. (Formerly Subd. (n)) [See T56 §1-02 Note 1]

Subd. (p) relettered and amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. (Formerly Subd. (o)) [See T56 §1-02 Note 1]

Subd. (q) relettered and amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. (Formerly Subd. (p)) [See T56 §1-02 Note 1]

Subd. (r) relettered and amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. (Formerly Subd. (q)) [See T56 §1-02 Note 1]

Subd. (s) relettered and amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. (Formerly Subd. (r)) [See T56 §1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (i) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (k) added (as subd. (t)) City Record May 11, 1995 eff. June 10, 1995. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 15, 1997:

Due to comment received at the hearing on the proposed rules and written comments received by the Department, Parks has determined that it is not necessary at this time to regulate the use of metal detectors on parkland through the issuance of permits. Instead, these final rule amendments restrict the use of metal detectors to unvegetated beach areas, and require that persons obtain the written permission of the Commissioner to use metal detectors on other parkland.

2. Statement of Basis and Purpose in City Record May 11, 1995: The Commissioneer of Parks and Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules set forth above to ensure the health and safety of the public in the parks.

3. Statement of Basis and Purpose in City Record Apr. 10, 2007: This amendment is promulgated pursuant to the authority of the Commissioner of Parks (the "Commissioner") under §§389(b), 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of all property under the charge or control of Parks. Parks strives to accommodate the interests of all its patrons, including both dog owners and other visitors. Because dog owners have few places to exercise their dogs off-leash in the City's urban environment, and dogs tend to become better socialized when they are allowed to recreate off-leash, Parks has been following a limited policy for the last twenty (20) years that allows dogs to be unleashed in certain portions of

parks between 9:00 p.m. and 9:00 a.m. ("Courtesy Hours"). The proposed amendment to §1-04(i) will codify the Courtesy Hours by converting this policy into a rule. To more effectively safeguard public health, the amended rule will also require all dogs that use the park to be licensed and for persons owning or in control of such dogs to have proof that they have been vaccinated against rabies, as required by New York State and City law. Parks is also amending §1-05(s)(3), which allows unleashed dogs within discrete and enclosed areas ("Dog Runs"). The proposed amendment will simply ensure that Parks rules and regulations mesh neatly with the rules and requirements of other state and local agencies regarding dogs. Public comments submitted to Parks indicated that further changes were necessary both to avoid any public confusion regarding the off-leash rules and to ensure the proper administration of such rules. The prohibition against dogs in handball courts was made explicit as it may be unclear to some whether or not such courts come under the definition of "playground". The term "disturb" has been eliminated from the proposed amendment due to its ambiguity. The term "beach" was changed to "bathing area and adjacent bathing beach" so as not to exclude dogs from certain water bodies that exist within the parks system. The same concern prompted Parks to change the term "bathing facility" to "swimming pool facility". Moreover, in recognition of the fact that dogs have in the past been allowed to enter certain beach areas during the fall and winter months, Parks inserted language that will give the Commissioner the power to permit dogs therein if such action is deemed appropriate and if the beach area in question is closed to swimmers. Finally, in recognition of the fact that dogs have in the past been allowed to enter certain bridle paths, Parks inserted language that will give the Commissioner the power to permit leashed dogs therein if such action is deemed appropriate. Before the amended rules go into effect, Parks will begin to notify the public of their provisions and where they will apply. For further information, please visit our website at www.nyc.gov/parks.

CASE AND ADMINISTRATIVE NOTES

¶ 1. See Juniper Park Civic Assn., Inc. v. City of New York, 14 Misc.3d 1203(A), 2006 WL 3628018 (Sup. Ct. Queens Co.), discussed in Note 1 to 24 R.C.N.Y. 161.05

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-05 Regulated Uses.

(a) **Assemblies, meetings, exhibitions.** (1) No person shall hold or sponsor any special event or demonstration without a permit.

(2) Reserved.

(3) No person shall erect any structure, stand, booth, platform, or exhibit in connection with any assembly, meeting, exhibition or other event without approval of the Commissioner or his designated representative.

(b) **Unlawful vending.** No person in any park, or street adjacent to or abutting a park (including all public sidewalks of such abutting streets) shall sell, offer for sale, hire, lease or let anything whatsoever, except under and within the terms of a permit, or except as otherwise provided by law.

(c) **Unlawful posting of notices or signs.** (1) No person shall post, display, affix, construct or carry any placard, flag, banner, sign or model or display any such item by means of aircraft, kite, balloon or other aerial device, in, on, or above the surface of any park for any purpose whatsoever without a permit issued by the Commissioner. Each separate item placed in violation of this section shall constitute a separate violation.

(2) Notwithstanding paragraph (1) of this subdivision (c), any person may carry any item described in paragraph (1) of this subdivision (c), without the aid of any aircraft, kite, balloon or other aerial device, where the space on which the message of such item is contained has a height no greater than two feet and a length no longer than three feet, and that such item takes up a total area of no more than six square feet.

(3) Any person who posts or displays a sign upon park property, including the perimeters of any park, whether or not pursuant to a permit issued under this subdivision (c), shall be responsible for removal of such sign pursuant to the conditions in such permit, or immediately if no such permit has been issued. Failure to remove any sign that is posted or displayed on such property, or that remains on such property, other than in compliance with such permit, shall constitute a violation of these Rules and Regulations.

(4) In the event that a notice or sign is, in violation of this subdivision (c), posted or displayed on any property, including the perimeters of any park, there shall be a rebuttable presumption that any person whose name, telephone number, or other identifying information appears on such notice or sign has violated this subdivision by either (i) pasting, posting, painting, printing or nailing such notice or sign, or (ii) directing, suffering or permitting a servant, agent, employee or other individual under such person's control to engage in such activity; provided, however, that such rebuttable presumption shall not apply with respect to criminal prosecutions brought pursuant to this paragraph (4).

(d) **Noise; musical instruments; sound reproduction devices.** (1) No person shall make, or cause or allow to be made, unreasonable noise in any park so as to cause public inconvenience, annoyance or harm. Unreasonable noise means any excessive or unusually loud sound that disturbs the peace, comfort or repose of a reasonable person of normal sensitivity or injures or endangers the health or safety of a reasonable person of normal sensitivity, or which causes injury to plant or animal life, or damage to property or business.

(2) No person shall play or operate any sound reproduction device, as defined in §1-02 of these Rules, in any park without a permit from the Department of Parks and Recreation and any other City agency or agencies with pertinent jurisdiction. This paragraph (2) shall not apply to the regular and customary use of portable radios, record players, compact disc players, or television receivers, or tape recorders played or operated in full accordance with these Rules so as not unreasonably to disturb other persons in their permitted uses of the park, except that in areas designated by the Commissioner as "quiet zones," such regular and customary use of sound reproduction devices shall be prohibited. Signs shall be posted in all quiet zones advising the public of such prohibition. Use of radios and other sound reproduction devices listened to solely by headphones or earphones, and inaudible to others, is permitted in all areas of the parks.

(3) No person shall play or operate any musical instrument or drum, radio, tape recorder or other device for producing sound in any park between the hours of 10:00 p.m. and 8:00 a.m. except under the express terms of a permit. The Commissioner may, in his or her discretion, further restrict such hours in specific parks where such operation would disturb or damage the comfort, peace, health or safety of persons or businesses.

(4) No person shall play or operate any musical instrument or drum or cause any noise for advertising or commercial purposes except under the express terms of a permit.

(e)(1) Filming or photography requiring a permit. Any person or entity engaged in filming or photography in a park, where such activity is subject to the permit requirements of the Mayor's Office of Film, Theatre & Broadcasting ("MOFTB") (Chapter 9 of Title 43 of the Rules of the City of New York) may engage in such activity only upon obtaining such a permit from that Office. Such permittee shall comply with the requirements of §9-02(c) of such rules ("Responsibility of Holders of Required and Optional permits") including, but not limited to, the obligation to clean and restore any Department property altered in connection with the exercise of such permit. (2) Filming or photography not requiring a permit. Any person or entity engaging in filming or photography in a park, where such activity does not require a permit under the permit requirement rules of MOFTB, may engage in such activity without obtaining a permit from that Office. In addition, any person or entity engaging in filming or photography involving only the use of handheld devices (as defined in paragraph (3) of subdivision (a) of §9-02 of the MOFTB permit rules) that takes place in an area under the Department's jurisdiction that is not a sidewalk, pathway, street, or walkway of a bridge need not obtain a MOFTB permit. Nothing herein shall be deemed to relieve such person or entity of the obligation to obtain a permit from the Department if such activity involves conduct otherwise requiring a permit pursuant to any other rule of the Department.

(f) **Alcoholic beverages.** (1) Except where specifically permitted by the Commissioner, no person shall consume any alcoholic beverage in any park, playground, beach, swimming pool or other park property or facility, nor shall any person possess any alcoholic beverage with intent to consume or facilitate consumption by others of same in any park, playground, beach, swimming pool, or other park property or facility.

(2) It shall be a violation of these rules for any person to appear in any park under the influence of alcohol, to the degree that he may endanger himself or herself, other persons or property, or unreasonably annoy persons in his or her vicinity.

(g) **Beaches, boardwalks and pools.** (1) Bathing in waters adjacent to property under the jurisdiction of the Department shall be permitted only at authorized bathing beaches and only during the bathing season designated by the Commissioner. The Commissioner may limit or expand the extent of bathing beaches or shorten or extend the bathing season with due regard for weather conditions and the safety of the public. It shall be a violation of these rules to bathe at any time in unauthorized areas.

(2) Except where permitted by the Commissioner, no person shall bring into or use in any pool under the jurisdiction of the Department, artificial floats, masks, spears, fins, snorkels, air or gas tanks, or other apparatus used for skin or scuba diving. No person shall bring into or use in any other water under the jurisdiction of the Department, artificial floats, spears, fins, snorkels, air or gas tanks, or other apparatus used for scuba diving.

(3) Except in locations designated for such purpose, no person shall engage in any athletic game or conduct himself in such a way upon a bathing beach or in the water as to jeopardize the safety of himself or others. Surfboards are allowed only at areas expressly designated for such use.

(4) No person having, or apparently having any infectious disease shall be admitted to a bathing beach or bath house, or shall be permitted in the water.

(5) No person shall change clothes except in bath houses or other authorized places. No person shall be nude at any bathing area, beach or pool under the jurisdiction of the Department.

(6) No person shall disobey the reasonable direction of a lifeguard, nor shall any person carry on unnecessary conversation with a lifeguard, or falsely call for help or assistance, or stand, sit upon, or cling to lifeguard perches, or cling to or go into a lifeguard boat except in an emergency.

(7) Persons using swimming pools under the jurisdiction of the Department may only do so if dressed in bathing suits, and only after showering at the park immediately prior to entering such pools.

(8) Bathing and swimming in park swimming pools shall be allowed only on such days and at such times as are designated by the Commissioner and posted at each facility.

(9) No person shall dive into water under the jurisdiction of the department except where specifically authorized by posted signs.

(h) **Fishing.** (1) Fishing shall be permitted from locations under the jurisdiction of the Department, except in open swimming areas or where specifically prohibited. Any person who engages in fishing shall obey all posted guidelines, and comply with all applicable City, State and Federal laws and regulations, including Title 6 of the New York State Environmental Conservation Law.

(2) The use of lead fishing weights in waters under the jurisdiction of the Department shall be a violation of these rules.

(3) Failure to remove fishing line fragments and hooks from land and waters under the jurisdiction of the

Department shall be a violation of these rules.

(4) All fish caught in fresh water areas shall be immediately released. The use of barbed hooks in such areas shall be a violation of these rules.

(5) The use of traps to catch fish and/or crustaceans in areas under the jurisdiction of the Department shall be prohibited.

(i) **Bicycling and operating Pedicabs.**

(1) Any person bringing a bicycle or a pedicab into any park shall obey all park signs pertaining to the use of such bicycles or pedicabs. Only pedicabs that carry a registration plate as required by §20-255 of the New York City Administrative Code and are operated by, or are authorized to be operated by, a pedicab business that possesses a valid pedicab business license, as defined by §20-249 of the New York City Administrative Code, may be operated within property under the jurisdiction of the Department. Only a pedicab driver as defined by §20-249 of the New York City Administrative Code who has a valid pedicab driver's license as defined by §20-249 of the New York City Administrative Code may operate a pedicab within property under the jurisdiction of the Department.

(2) No bicycle or pedicab shall be ridden or otherwise operated in vegetated areas or on any bridle path, pedestrian way, park path, sitting or play area, playground, or in any other area so designated. Bicycles may be ridden and operated on park roads, bikepaths, and other areas specifically designated by the Commissioner. Pedicabs may only be operated on park roads designated by the Commissioner and may not be operated or stopped in (i) any recreation lane designated by the Commissioner for use by pedestrians or bicyclists; or (ii) any bikepath designated by the Commissioner.

(3) No person shall operate a bicycle or a pedicab in a reckless manner. Any person operating a bicycle or pedicab shall ride in the direction of traffic and obey all traffic lights and road signs. Persons operating pedicabs may not ride adjacent to another pedicab, bicycle or vehicle, except when using the left lane to pass another pedicab, bicycle or motor vehicle.

(4) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped, except children may be carried in seats securely attached to a bicycle. No person riding a bicycle shall attach himself or herself or his/her bicycle to the outside of any vehicle being operated upon a roadway.

(5) Any person operating a bicycle shall yield the right of way to pedestrians, in-line skaters, and horse drawn carriages. Any person operating a pedicab shall yield the right of way to pedestrians, bicyclists, in-line skaters, and horse drawn carriages.

(6) On the park roads in Central Park, all pedicabs shall remain in the far right lane, except when passing another pedicab, bicycle, or vehicle, in which case the pedicab may use the next lane to the left to pass.

(7) No person shall operate a pedicab adorned with commercial advertising in any park, or at any other location under the jurisdiction of the Department, unless the pedicab is on a park road during a time when private motor vehicles are allowed to operate on such park road.

(8) No person operating a pedicab in any park, or at any other location under the jurisdiction of the Department, shall solicit, pick up or release passengers except at areas specifically designated by the Commissioner, subject to any limitation imposed by the Commissioner as to the number of pedicabs that may solicit, pick up or release passengers in such designated areas at any given time. Signs shall be posted informing the public of the designation of such areas for solicitation, pick up or release of pedicab passengers.

(9) No person operating a pedicab shall occupy an area reserved solely for buses, taxicabs, horse drawn carriages or other vehicles or motor vehicles.

(10) In addition to complying with the provisions of this subdivision (i) of §1-05, pedicab drivers shall operate pedicabs in compliance with the provisions of §20-259 of the New York City Administrative Code.

(11) If there are exceptional circumstances, the Commissioner, in consultation with the Commissioners of the Police, Transportation and Consumer Affairs Departments, shall be authorized, upon notice, to restrict or prohibit any pedicab driver, as defined by §20-249 of the New York City Administrative Code, from operating his or her pedicab on any park road otherwise designated for pedicab use, for a consecutive period of time, not to exceed fourteen days, or on one or more particular days. For purposes of this paragraph, exceptional circumstances shall include, but not be limited to, unusually heavy pedestrian or bicycle traffic, existence of any obstructions on Department property, a parade, demonstration, special event, or other such similar event or occurrence at or near such location. Notwithstanding the preceding provisions of this paragraph, the Commissioner may restrict or prohibit the operation of pedicabs within property under the jurisdiction of the Department for periods of time in excess of fourteen days when such restrictions apply to bicycles or other types of vehicles.

(j) **Boating.** No person shall land a boat of any kind other than a human-powered boat, such as a kayak, canoe, rowboat or pedal boat, on any park shore except at designated landing areas or in case of an emergency. No person shall operate a boat of any kind, including jet-skis, upon any waters under the jurisdiction of the Commissioner in a reckless manner so as to endanger the life, limb or reasonable comfort of his or her passengers or other persons. Boating in any authorized bathing area is prohibited.

(k) **Unlawful ice activity.** (1) Ice skating is permitted at rinks maintained by the Department for such use, at such times, and subject to the Rules and Regulations prescribed and posted at each facility.

(2) No person shall go upon the ice of any lake or pond in any park except at such places and at such times as may be designated by the Commissioner.

(l) **Planting.** No tree, plant, flower, shrubbery or other vegetation shall be planted in any area under the jurisdiction of the Department without a permit. No such planting shall be undertaken on any street or avenue without a permit for the necessary excavation from the Department of Transportation. Trees planted pursuant to permits shall become the property of the City after a guarantee period of one year has been satisfactorily completed.

(m) **Unlawful fires.** (1) No person shall kindle, build, maintain, or use a fire in any place, portable receptacle, or grill except in places provided by the Department and so designated by sign or by special permit. In no event shall open or ground camp fires be allowed in any park. Any fire authorized by this subdivision (m) shall be contained in a portable receptacle grill or other similar device, and continuously under the care and direction of a competent person over 18 years of age, from the time it is kindled until it is extinguished. No fire shall be within ten feet of any building, tree, or underbrush or beneath the branches of any tree.

(2) No person shall leave, throw away or toss any lighted match, cigar, or cigarette, hot coals, or other flammable material within, on, near, or against any tree, building, structure, boat, vehicle or enclosure, or in any open area.

(n) **Unlawful operation and parking of motor vehicles.** (1) Motor vehicles may not be brought into or operated in any area of a park except on park roads or designated parking areas. Park roads may be closed to motor vehicles at such times and in such places designated by the Commissioner.

(2) A person shall not park any motor vehicle in any park except in areas designated by the Commissioner for parking, and only during the hours of operation of such park.

(3) No person shall use any area of a park, including designated parking areas, for the purpose of performing non-emergency automotive work, including, but not limited to, vehicle maintenance, repairs, or cleaning.

(o) **Unauthorized construction on park property.** No person shall perform or cause to be performed construction

work of any kind or any work incidental thereto, including storage of materials, in any park except pursuant to a permit issued by the Construction Division of the Department.

(p) **Unauthorized dumping, excavations.** No person shall perform, cause, suffer or allow to be performed any excavations within or adjacent to any park property without a permit.

(q) **Horse riding.** (1) No person may ride a horse in any park, except on bridle paths designated by the Department.

(2) It shall be a violation of these Rules to ride a horse into or within a park in a reckless manner; to allow the horse to be left unbridled or unattended; or to allow the horse to cause any damage to any tree, plant, flower, shrubbery or other vegetation under the jurisdiction of the Department.

(r) **Failure to comply with area use restrictions.** (1) No person shall throw, catch, kick or strike any baseball, football, basketball, soccer, golf or tennis ball, or similar object, nor shall any person engage in any sport, game or other competition except in areas designated and maintained therefore. No such use will be allowed at any time if the desired area has previously been allotted by permit issued pursuant to the provisions of these Rules.

(2) No person shall engage in any toy or model aviation, kite-flying, model boating or model automobiling except at such times and at such places designated or maintained therefore.

(3) No person shall roller skate, ski, skateboard, sled or coast on any kind of vehicle except in areas designated and maintained for such use.

(s) **Exclusive areas.** Areas within the parks designated by the Commissioner for exclusive use shall include:

(1) Exclusive children playgrounds: Adults allowed in playground areas only when accompanied by a child under the age of twelve (12).

(2) Exclusive senior citizens areas: Certain areas of any park may be set aside for citizens aged 65 and older, for their quiet enjoyment and safety.

(3) Dog Runs: Certain fenced park areas may be designated by the Commissioner as dog runs, and persons owning or possessing dogs that are wearing a license tag and vaccinated against rabies pursuant to the laws of the State of New York and City of New York are permitted to allow such animals to remain unleashed in these areas. Users of dog runs shall obey posted rules. Users of such dog runs shall provide proof of current vaccination against rabies and proof of current licensing upon the request of any Police Officer, Urban Park Ranger, Parks Enforcement Patrol Officer or other Department employee or employee of the DOHMH, the refusal of which shall constitute a violation of §1-03(c), §1-04(i) and of this paragraph.

All exclusive areas will be specifically designated as such and signs will be posted informing the public of this designation.

(t) **Unlawful distribution of products and materials.** No person shall engage in the non-commercial distribution of products and/or material (other than printed or similarly expressive material) without a permit issued by the Commissioner. A permit shall be issued only upon the Commissioner's determination that said distribution will be conducted in a manner consistent with the public's use and enjoyment of the park or facility in question. In making this determination, the Commissioner will consider the nature of the product or material, whether the product or material is compatible with customary park uses, whether the product or material is intended to be used in the park or facility, the age of the targeted audience for the product or material, and whether the area in the park or facility where the distribution will take place is appropriate for such distribution, considering, e.g., its proximity to areas designed for children, quiet zones or other areas designed for activities not compatible with such distribution. In connection with the

foregoing, the Commissioner may consult with parental groups which are involved with the park or facility where a permit for distribution is requested. The Commissioner may also impose conditions upon the distribution of products and materials consistent with the concerns reflected by the factors listed above. Products and/or materials may be distributed only upon an indication of interest by the recipient, and only from a fixed location specified in the permit.

(u) **Rollerblades.** Any person using rollerblades or roller skates in any park shall obey all park signs pertaining to the use of same. No person shall use rollerblades in any park except for park drives or areas designated for such use by the Department, and at times designated for such use. No person shall use rollerblades in a reckless manner, or so as to endanger persons or property.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

Subd. (a) par (1) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (a) par (2) deleted City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (a) par (4) deleted City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (a) par (5) deleted City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (c) par (4) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (e) amended City Record July 1, 2009 §1, eff. July 31, 2009. [See Note 1]

Subd. (e) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (g) par (2) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (g) par (9) added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (h) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (i) amended City Record Dec. 22, 2009 §2, eff. Jan. 21, 2010. [See T56 §1-02 Note 2]

Subd. (i) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (j) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (n) par (3) added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (s) par (3) added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (s) par (3) open par amended City Record Apr. 10, 2007 §2, eff. May 10, 2007. [See T56 §1-04 Note 3]

Subd. (t) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (f) par (1) amended City Record May 11, 1995 eff. June 10, 1995. [See T56 §1-04 Note 2]

Subd. (t) added City Record Dec. 21, 1995 eff. Jan. 20, 1996. [See T56 §1-03 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. The New York City Department of Parks and Recreation Regulations, 56 RCNY Sec. 1-05(b), and 1-03(c)(1) are not enforceable against general vendors who exclusively trade in written matter. The Parks Dept. permit system directly contravenes the provisions of 20-473, which explicitly and unambiguously exempts general vendors who exclusively vend written matter from compliance with the written authorization or permit requirements contained elsewhere in the Administrative Code. While Sec. 20-473 confers upon the Department the authority to "regulate the vending of written matter in a manner consistent with the purpose of the parks and the declared legislative intent of this subchapter," that grant of authority may not be read so broadly as to allow the Department to criminalize through administrative fiat that which the City Council has expressly authorized. An administrative agency cannot by its regulations effect its vision of societal public choices and may adopt only rules and regulations which are in harmony with the statutory responsibilities it has been given to administer. In other words, the agency cannot make unlawful that which the legislature still has on its books as lawful. People v. Balmuth, 178 Misc.2d 958, 681 N.Y.S.2d 439 (Crim.Ct. New York Co. 1998), aff'd 189 Misc.2d 243, 731 N.Y.S.2d 314 (App.Term 1st Dept.), leave to appeal denied, 97 N.Y.2d 678, 738 N.Y.S.2d 293 (2001).

¶ 2. A group of activists known as "Cures Not Wars," which is dedicated to the legalization of marijuana for medicinal purposes, has challenged several portions of the regulation, charging that it gives unbridled discretion in the parks commissioner, and failed to provide for prompt appeals from denials of permits. The court declined to grant a preliminary injunction against the city's enforcement of the regulations and said that the plaintiffs had not shown a clear probability of success. The Second Circuit Court of Appeals remanded the case to the District Court, which will determine the validity of the regulation after conducting a hearing. In its opinion, the Circuit Court set forth some of the constitutional standards to be considered, and said: A city the size of New York cannot allow rallies or demonstrations to take place in city parks at the whim of promoters. Competing uses create scheduling problems, and others using parks for recreation have legitimate interests that must be protected. Some regulation is necessary. The challenged regulations plausibly exist for public rather than private goals and pursuant to a regulatory scheme (184 F.3d at 123). The court recognized that the regulations were a form of prior restraint on speech, because they give public officials the power to deny use of a forum in advance of actual expression. A regulation may constitute a prior restraint even though it is not content-based. These are the most serious and least tolerable type of infringement on First Amendment rights. Nevertheless, the court said, this type of content-neutral regulation could be upheld if it is narrowly tailored to serve a significant governmental interest, leave open ample alternatives for communication and does not delegate overly broad licensing discretion to government officials. Beal v. Stern, 184 F.3d 117 (2d Cir. 1999).

¶ 3. A group of visual artists, who displayed and sold their artwork on the streets of New York City, including the area in front of the Metropolitan Museum of Art (the "Met"), challenged 56 RCNY Sec. 1-05, which prohibited them from selling art either within the parks or on territory which was under the jurisdiction of the Parks Department. The court first analyzed the statutory scheme. Admin. Code Sec. 20-453 requires all vendors in New York City to obtain a license, but exempts book vendors. Admin. Code 20-465 prohibits general vendors from vending within the geographical area under the jurisdiction of the Department of Parks and Recreation except within a permit, but this permit requirement is also subject to an exemption for vendors of written material, as described in Section 26-473. 56 RCNY is valid as enforced against most vendors, who deal in neither books nor art. However, the court held, the enforcement of 56 RCNY 1-05(b) against art vendors contravenes Admin. Code 20-473. Lederman v. Giuliani, 2001 WL 902591 (U.S. Dist. Ct. S.D.N.Y.)

¶ 4. See Juniper Park Civic Assn., Inc. v. City of New York, 14 Misc.3d 1203(A), 2006 WL 3628018 (Sup. Ct. Queens Co.), discussed in Note 1 to 24 R.C.N.Y. 161.05

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-06 Fees.

The Commissioner from time to time shall establish fees for use by the public of specialized park facilities. Fee schedules for such facilities shall be published and posted at the subject facility.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the

Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-07 Penalties.

(a) Any violation of these Rules other than Rule 1-04(b)(1)(a) shall constitute a misdemeanor triable by the Criminal Court of the City of New York and punishable by not more than ninety days imprisonment or by a fine of not more than $1,000, or by both, in accordance with §533(a)(9) of Chapter 21 of the New York City Charter.

(b) Any violation of Rule 1-04(b)(1)(a) shall constitute a misdemeanor triable by the Criminal Court of the City of New York and punishable by not more than one year imprisonment or by a fine of not more than $15,000, or both.

(c) Any violation of these Rules shall also constitute a violation triable by the Environmental Control Board and punishable by a civil penalty of not more than $10,000, in accordance with §533(a)(9) of Chapter 21 of the New York City Charter.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-08 Severability.

If any of these Rules, or application thereof to any person or circumstances, is held invalid, the remainder of the Rules and application of such provision to other persons or circumstances shall remain in full force and effect.

HISTORICAL NOTE

Section laid out City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the

Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-01 Tennis.

Each tennis player must have a valid tennis permit or single-play tennis ticket to play on tennis courts under the jurisdiction of the Department.

(a) **Tennis permits.** (1) Tennis permits are available for purchase at the Arsenal and at locations in each of the five boroughs.

(2) Tennis permits are issued on an annual basis, and may be used for unlimited play during the year for which they were issued in one hour increments.

(3) In the event a tennis permit is lost, a duplicate permit may be obtained for a fee pursuant to §2-09(a).

(4) Tennis permits may not be transferred or resold.

(b) **Single-play tennis tickets.** (1) Single-play tennis tickets are available for purchase at the Arsenal and at locations in each of the five boroughs.

(2) A single-play tennis ticket may be used during the year in which it was purchased in lieu of a tennis permit to play tennis for one hour during the year during which it was purchased on tennis courts under the jurisdiction of the Department.

(c) **Reservation tickets.** (1) Reservation tickets are available for purchase at the Arsenal and at locations in each of the five boroughs.

(2) A reservation ticket may be used during the year in which it was purchased by a tennis permit-holder to reserve one hour of court time up to eight days in advance of scheduled play.

(3) If tennis courts are closed due to rain, reservation tickets may be exchanged at the location where the reservation was made for a "rain check." The rain check shall be valid for one year from the date of issuance.

(d) **Use of Tennis courts.** (1) Tennis courts are open daily, weather permitting, except when under construction or repair, or when reserved for tournaments or special events.

(2) Players must wear smooth-soled, heelless footwear on clay or composition courts. Suction soled shoes and running shoes are prohibited on all surfaces on Department tennis courts.

(3) Reservation tickets shall be presented to the tennis attendant at the time the reservation is made. The tennis attendant will reserve the court for one hour. If players are more than five minutes late, the reservation shall be forfeited without compensation.

(4) Tennis permits or single-play tickets shall be presented to the attendant in charge of the tennis courts, who will make court assignments.

(5) Reservation ticket holders. Permit holders and single play ticket holders will be given their choice of court assignments in the order of their registration.

(6) Reservations shall be made on the hour.

(7) A maximum of six (6) balls may be used on each court.

(8) All disputes, including but not limited to disputes concerning court reservations, permit ownership, and suitability of court conditions for play, shall be settled by the tennis attendant.

(9) Locker-room and shower privileges are not included with tennis permit privi- leges.

(10) Anyone who fails to comply with these rules or the instructions of the tennis attendant or other Parks employee will be ordered to leave. Failure to leave when ordered to do so shall be treated as a violation of §103(c)(1).

HISTORICAL NOTE

Section repealed and added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-02 Croquet.

(a) Each player must be the holder of a permit.

(b) Permits are strictly personal and not transferable.

(c) A duplicate permit will not be issued unless another fee is paid.

(d) Croquet Fields, when not under repair or reserved for tournaments conducted by the Department of Parks and Recreation, are open daily, weather permitting.

(e) Permit holders are required to show their permits to the representative of the Department of Parks and Recreation upon request.

(f) Order of play is determined by order of arrival at Croquet Field.

(g) Players are required to furnish their own equipment.

(h) Rules of the game should be observed and courtesy extended to all permit holders.

(i) Violation of any of these Rules will result in the cancellation of Croquet Permits.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-03 Lawn Bowling.

(a) Each player must be the holder of a permit.

(b) Permits are strictly personal and not transferable.

(c) A duplicate permit will not be issued unless another fee is paid.

(d) Bowling Greens, when not under repair or reserved for tournaments conducted by the Dept. of Parks and Recreation, are open daily, weather permitting.

(e) Permit holders are required to show their permits to the representative of the Dept. of Parks and Recreation upon request.

(f) Order of play is determined by order of arrival at Bowling Green.

(g) Players are required to furnish their own equipment.

(h) Rules of the game should be observed and courtesy extended to all permit holders.

(i) Violation of any of these Rules will result in the cancellation of Lawn Bowling Permits.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-04 Recreational Lockers.

(a) Season Locker Permits are strictly personal and not transferable.

(b) Permit holders are required to show their permits to the representative of the N.Y.C. Department of Parks and Recreation upon request.

(c) Applicants for season locker privileges must state the name of the Tennis-House in which they desire accommodations.

(d) Only one person will be assigned to each locker.

(e) A permit holder may store his or her personal property in the locker.

(f) Lockers must be kept in a sanitary condition. The cooperation of the permit holder is requested.

(g) Lockers must be vacated at the close of the season, date of which will be posted in all Tennis-Houses and at the Department of Parks offices in the respective Boroughs.

(h) The Department of Parks and Recreation assumes no responsibility for loss of property.

(i) Violation of any of these Rules will result in the cancellation of Locker Permits.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-05 Model Yacht Storage.

(a) Boats must be placed in locations in the boat-house assigned to the Permittee.

(b) Boats must be numbered to correspond with the number on the permit.

(c) The Department assumes no responsibility for the loss of any boat or property.

(d) All boats must be removed from the boat-house at the close of the season, the date of which will be posted in all boat-houses and at the Department office in the respective Boroughs.

(e) In the event of a Sail Boat Contest conducted by the Department, the permit holder may sail his or her boat only at the specified time.

(f) Only one permit is allowed to any one person.

(g) Sail boats exceeding 72 inches in length will not be permitted on the Conservatory Lake or in the Boathouse, Central Park.

(h) The use of power boats by adults is prohibited on Conservatory Lake, Central Park.

(i) Violation of any of these rules will result in the cancellation of the Model Yacht Storage Permit.

HISTORICAL NOTE

Section amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-06 Kayaks and Canoes.

(a) A permit allows a permittee and his or her guests to use the City's access facilities for a kayak or canoe. A permittee may have more than one boat listed on his or her permit, but each kayak or canoe on the water must carry a permittee.

(b) The permittee is responsible for the safety of all those in his or her craft. Operation of the kayak or canoe under a permit is solely at the operator's own risk.

(c) Permittees and guests should be strong, experienced swimmers. It is recommended that permittees be able to sustain themselves fully clothed for ten minutes in deep water; swim two body-lengths underwater at a depth of six feet; and tow a "victim" fifteen feet.

(d) Permittees must be familiar with and obey all federal, state and local boating rules and regulations.

(e) Permittees must be aware that environmental conditions such as rip tides and other strong currents can overwhelm even the most adept swimmers. They should know the water and weather conditions before going out.

(f) Because the waters can be polluted, boaters should avoid water contact to the greatest degree possible. Swimming, water skiing, windsurfing, scuba diving or practicing immersion escape techniques in the waters to which the launch site give access are prohibited.

(g) No wildlife or natural land features may be disturbed.

(h) Kayaks and/or canoes may be launched only at launch sites designated for this purpose. No person shall launch any boat or water vehicle that requires the use of a boat trailer or other such trailer for its land transportation. A person shall not launch a motor powered vessel, or use either an inboard or outboard motor on any vessel once underway. No person shall launch rafts or other inflatables, sailboats, rowboats, "wind surfers" or sailboats of any kind.

(i) All persons using a kayak or canoe must wear a Personal Flotation Device.

(j) No person launching a boat from a kayak and/or canoe launch may begin a boating trip before sunrise or complete a boating trip after sunset. The launch sites will be open from April 1 to December 1.

(k) No person shall enter a launch site, or operate or ride as a passenger in a canoe or kayak, under the influence of drugs or alcohol.

(l) No person shall use any boat-launching site or any adjacent waters within 100 feet from the shore of a launch area, including offshore and inshore approaches, for any purpose other than launching boats or removing boats from the water, unless a written permit is obtained from the department.

HISTORICAL NOTE

Section amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-07 Golf.

(a) All golf courses under the jurisdiction of the Department are operated by concessionaires. Fees for use are set by the concessionaire, subject to the approval of the Department.

(b) **Identification cards.** Golf course operators are authorized to issue identification cards for discounts on greens fees in the following categories: New York City Resident, Senior, and Junior.

(c) **Inclement Weather.** Golf courses may be closed if there is lightning in the area, or if rain is heavy.

(d) **Rain checks.** In the event a golf course manager determines that a course is unplayable, rain checks may be issued. If four holes or less are completed, players will be issued rain checks for full credit. If between four and twelve holes are completed, players will be issued a credit for nine holes. If thirteen or more holes are completed, no credit will be given.

(e) **Reservations.** Reservations are accepted up to seven days in advance of the day of play. Players will be given their choice of tee time in the order of their registration.

(1) **Cancellation of weekday reservations.** Players will receive a full refund if they cancel weekday reservations up to 24 hours in advance of scheduled play. If players cancel weekday reservations less than 24 hours in advance, players will forfeit reservation fees.

(2) **Cancellation of weekend/holiday reservations.** Players will receive a rain check in an amount equal to the

greens fees if they cancel weekend/holiday reservations up to 24 hours in advance, but will forfeit reservation fees. If players cancel weekend/holiday reservations less than 24 hours in advance, players will be charged for greens fees and reservation fees.

HISTORICAL NOTE

Section repealed and added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-08 Special Events and Demonstrations.

(a) For purposes of this subdivision, the following terms shall have the following meanings:

(1) Same date. "Same date" shall mean the same actual calendar date (numerical date and month) or the same day of the same week in a given month, as relevant. For example, "same date" shall encompass the date July 11 as well as the second Sunday in the month of July, as relevant.

(2) Same location. "Same location" shall mean the location identified in the special event or demonstration permit or the special event or demonstration permit application.

(b) **Applications.** (1) Applications for special event permits must be received at least twenty-one days prior to the requested date for the special event.

(2) Applications for demonstration permits must be received at least five days prior to the requested date for the demonstration. Notwithstanding this requirement, the department will accept all applications for demonstrations involving the expression of viewpoints on topical issues whenever submitted and process such applications as soon as it is feasible to do so, considering the magnitude of the event and the resources of the department.

(3) Applications for special event and demonstration permits will be accepted beginning on the first Monday in November in the calendar year immediately preceding the calendar year for which such permits are sought.

(4) Permit applications received between the first Monday in November and December 1 in the calendar year

immediately preceding the calendar year for which such permits are sought will be processed as follows:

(A) if two or more permit applicants request the same date and the same location, the application from the applicant who held a permit for such date and such location in the calendar year immediately preceding the calendar year for which such permit is now sought, shall be eligible for approval; provided, however, that if more than one of such applicants held a permit for such date and such location in the calendar year immediately preceding the calendar year for which such permit is now sought, the permit application from the applicant that was received first shall be eligible for approval.

(B) if two or more permit applicants request the same date and the same location and none of these applicants held a permit for such date and such location in the calendar year immediately preceding the calendar year for which such permit is now sought, the permit application that was received first shall be eligible for approval.

(5) All permit applications received after December 1 in the calendar year immediately preceding the calendar year for which the permit is sought will be processed on a "first come, first serve" basis.

(6) The provisions contained in paragraphs (1) and (2) of this subdivision shall be subject to the following:

(A) For permit applications received between the first Monday in November and December 1 in the calendar year immediately preceding the calendar year for which such permits are sought, the Department shall respond to the applicant no later than the third Monday in December of the calendar year immediately preceding the calendar year for which such permit is sought with one of the following responses:

(i) written notification that the permit application has been denied and a statement of the reason or reasons pursuant to paragraph (c) of this subdivision for such denial;

(ii) written notification that more information is needed before the Department can make a determination as to a particular permit application; or

(iii) issuance of the permit.

(B) For permit applications received after December 1 in the calendar year immediately preceding the calendar year for which such permits are sought, the Department shall respond to the applicant with one of the responses enumerated in clauses (i) through (iii) of subparagraph (A) of this paragraph in accordance with the following schedule:

(i) for applications filed 45 days or more prior to the date for which such permit is sought, the Department shall respond no later than thirty days after the receipt of such applications;

(ii) for applications filed less than 45 days but more than 15 days prior to the date for which such permit is sought, the Department shall respond no later than ten days after the receipt of such applications; or

(iii) for applications filed 15 days or less prior to the date for which such permit is sought, the Department shall respond as soon as is reasonably practicable.

(7) Applications for special event and demonstration permits for events to take place on the Great Lawn in Central Park must be received no less than two (2) or more than nine (9) months before the date of the proposed event. However, applications for a demonstration made less than two (2) months before the proposed event where exigent circumstances prevented timely application shall be still accepted, provided that the limitation on the number of events on the Great Lawn in subdivision (t) of this section has not already been reached. Applications must be submitted in writing either by mail or by completing the online form on the Department's website and will be considered in the order in which they are received as shown by the postmark date and time or by the timestamp, respectively.

(c) Upon application, the Commissioner may deny a permit if:

(1) the location sought is not suitable because of landscaping, planting, or other environmental conditions reasonably likely to be harmed by the proposed event;

(2) the location sought is not suitable because it is a specialized area including, but not limited to, a zoo, swimming pool, or skating rink, or because the proposed event is of such nature or duration that it cannot reasonably be accommodated in that location;

(3) the date and time requested have previously been allotted by permit;

(4) within the preceding two years, the applicant has been granted a permit and did, on that prior occasion, knowingly violate a material term or condition of the permit, or any law, ordinance, statute or regulation relating to use of the parks;

(5) the event would interfere unreasonably with the enjoyment of the park by other users; or

(6) with respect to events on the Great Lawn, the conditions for events contained in subdivision (t) of this section are not complied with.

(d) If the permit has been denied pursuant to subdivision (c) of this section, the Department shall employ reasonable efforts to offer the applicant suitable alternative locations and/or times and/or dates for the proposed event.

(e) After a permit application is denied, the applicant may appeal the determination by written request filed with the designated appeals officer who may reverse, affirm, or modify the original determination and provide a written explanation of his or her finding.

(1) If a permit application is denied more than 30 days prior to the proposed event, the applicant shall have 10 days from the date that such denial is mailed or otherwise delivered to the applicant to appeal such denial. The Department shall render a decision on such appeal within 10 days of receipt of such appeal.

(2) If a permit application is denied more than 10 days and 30 days or less prior to the proposed event, the applicant shall have 5 days from the date such denial is mailed or otherwise delivered to the applicant to appeal such denial. The Department shall render a decision on such appeal within 5 days of receipt of such appeal.

(3) If a permit application is denied 10 days or less prior to the proposed event, the applicant shall have 1 day from the date such denial is mailed or otherwise delivered to the applicant to appeal such denial. The Department shall render a decision on such appeal as soon as is reasonably practicable.

(f) Permittees are subject to the rules of the Department, the specific terms and conditions of the permit, and to all applicable City, State, and Federal laws.

(g) Permittees must have the permit in their possession at the time and site of the event, as well as any other permits for the event required by the Department or any other governmental agency.

(h) After notice and opportunity to be heard, the Commissioner may alter or add terms and conditions to a permit, or revoke a permit, based upon the criteria set forth in subdivision (c) of this section.

(i) If the Commissioner revokes a permit prior to the date of the event, the permittee may appeal the revocation, subject to the time limitations set forth in subdivision (e) of this section.

(j) Permittees must confine their activities to the locations and times specified on their permit. The Commissioner may establish specific guidelines for certain designated parks or park locations.

(k) During the course of an event, the Commissioner may suspend a permit where exigent circumstances exist in

the vicinity of the location for which such permit has been issued.

(l) The granting of a permit does not give the permittee the right to sell or offer for sale any articles, tickets, or refreshments within or adjacent to any park area. To do this requires a separate Temporary Use Authorization issued by the Department.

(m) Permits are not transferable.

(n) If a permittee intends to drive vehicles (e.g., buses, cars, trucks, and vans) into a park for deliveries to an event site or for any other legitimate purpose, the permittee must obtain a separate written permit for each such vehicle, specifying the date, time, route, and parking privilege.

(o) Permit applications must indicate whether electrical energy is required for the event. Permittees shall be responsible for the procurement of and payment for any electrical energy used during the event.

(p) Permittees are responsible for cleaning and restoring the site after the event. The cost of any employee overtime incurred because of a permittee's failure to clean and/or restore the site following the event will be borne by the permittee.

(q) Permittees shall be held liable for any and all damages or injuries to persons or property that may occur or be caused by the use of the permit. By accepting a permit, permittees agree to indemnify and hold harmless the City and the Department from any and all claims whatsoever that may result from such use.

(r) Should there be any injuries, accidents, or other health incidents at an event, permittee must notify the Department immediately by calling the Department's hotline, 1-800-201-PARK.

(s) It shall be a violation of these rules to advertise the location of any event requiring a permit under these rules via posting, print media, radio, television, or the internet when the location is under the jurisdiction of the Department and the person who is responsible for placing the advertisement has been informed either that the Department does not intend to issue such permit, or that the Department has already issued another permit for that time and location. There shall be a rebuttable presumption that any person or organization whose name, telephone number or other identifying information appears on any advertisement and who has been informed of the Department's intent to deny an application for such permit or of the Department's issuance of another permit for that time and location has violated this subdivision by either (1) illegally advertising an event, or (2) directing, suffering, or permitting a servant, agent, employee or other individual under such person's or organization's control to engage in such activity; provided, however, that such rebuttable presumption shall not apply with respect to criminal prosecutions brought pursuant to this subdivision (s).

(t) The following conditions apply to applications for permits for special events and demonstrations on the Great Lawn:

(1) In any calendar year there will be a maximum of six permits granted for large events on the Great Lawn. For purposes of this subdivision, a large event is a special event or demonstration with anticipated attendance between 5,000 and 50,000 participants, which requires the use of the ballfields on the Great Lawn.

(2) Small events on the Great Lawn are not subject to the limitation contained in paragraph (1) of this subsection. For purposes of this subdivision, a small event is a special event or demonstration with anticipated attendance of less than 5,000 participants, which does not require the use of any of the Great Lawn ballfields during the hours that the Department permits the ballfields for athletic uses, and does not displace any athletic use on the Great Law. Small events are subject to paragraphs (5), (6), (7), and (8) of this subsection and permits for special events or demonstrations will not be granted for any ballfields when the ballfields are otherwise closed to all uses.

(3) Attendance at large events may not exceed 50,000 persons.

(4) Large events may take place only during the months of June and July and during the period from the third week of August through the second week of September. A maximum of two events may take place during each of the following time periods: the month of June, the month of July, and the period from the third week of August through the second week of September.

(5) Large and small events are subject to cancellation by the Commissioner at any time in the event wet conditions exist that will increase the likelihood of damage to the park landscape.

(6) The load-in plan for all events must be approved by the Commissioner in order to assure that (A) the flow of persons through park landscapes on appropriately designated paths for that purpose shall be orderly; and (B) the attendees will not damage adjacent landscapes. In addition, in the case of larger events, the load-in plan must be approved by the Commissioner to assure that maximum number of persons attending does not exceed 50,000. In approving an applicant's load-in plan, the Commissioner shall take into consideration any evidence that the applicant has a proven track record of successfully executing event productions and audience management.

(7) An applicant seeking to hold a large or small event shall post a bond in an amount sufficient to pay for any anticipated damage to the Great Lawn in connection with the scheduled event and made payable to the Department. The amount of the bond will be determined by the Commissioner based upon the following factors: (A) the length of the event; (B) the time of year of the event; (C) the nature of the event, including but not limited to, the type of equipment that will need to be brought onto the Great Lawn, the location of such equipment, and the use of any vehicles on the Great Lawn; (D) the number of people attending the event; (E) experience regarding any prior events of the same or a similar nature; and (F) whether the event or any activities associated with the event present a high risk of property damage. However, the Commissioner shall have the authority to waive the bond required by this subdivision where the applicant is able to demonstrate that such bond cannot be obtained without imposing an unreasonable hardship on the applicant. Any request for a waiver of the bond required by this subdivision shall be included by the applicant in their application submitted under this section. The burden of demonstrating unreasonable hardship shall be on the applicant and may be demonstrated by a showing that the cost of obtaining the bond for the event exceeds twenty-five percent (25%) of the applicant's budget for the event. The budget for the event must include not only cash, but also the actual value of any materials and services to be used by the applicant for the event.

(8) A written acknowledgment by the applicant stating, where applicable, how the applicant will comply with the foregoing provisions must be fully executed no less than 10 days prior to the scheduled event's initial load in. However, for a special event application involving a demonstration that is made less than ten days before the proposed event, where exigent circumstances prevented timely application, the written acknowledgment must be executed as soon as practicable before the event's initial load-in.

(u) The East Meadow in Central Park and the paved areas south of the Bethesda Terrace, including the Literary Walk and the Bandshell areas, are available for large special events or demonstrations. The Department will allow up to two (2) events per month that occupy the East Meadow for twenty-four hours or more. The time that an event occupies the East Meadow starts at the occurrence of the initial load-in of equipment and any other materials for the event and concludes when the load-out of the event, including the removal from the park of all equipment and any other materials for the event, is completed.

(v) The Sheep Meadow is reserved solely for passive recreation and the North Meadow and the Heckscher Ballfields are reserved solely for athletic events with permits and passive recreation. The Department does not grant any permits for special events or demonstrations on the Sheep Meadow, the North Meadow or the Heckscher Ballfields in Central Park.

HISTORICAL NOTE

Section amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Section in original publication July 1, 1991.

Subd. (b) par (7) added City Record Dec. 30, 2005 §1, eff. Jan. 29, 2006. [See Note 1]

Subd. (c) pars (4), (5) amended City Record Dec. 30, 2005 §2, eff. Jan. 29, 2006. [See Note 1]

Subd. (c) par (6) added City Record Dec. 30, 2005 §2, eff. Jan. 29, 2006. [See Note 1]

Subd. (t) added City Record Dec. 30, 2005 §3, eff. Jan. 29, 2006. [See Note 1]

Subd. (u) added City Record Dec. 30, 2005 §3, eff. Jan. 29, 2006. [See Note 1]

Subd. (v) added City Record Dec. 30, 2005 §3, eff. Jan. 29, 2006. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 30, 2005:

These regulations are proposed to establish the use of certain restored landscapes within Central Park in accordance with sound horticulture practice so as to maintain those areas in a healthy condition. The preservation of these lawns and landscapes makes possible a full range of active and passive recreational use to the benefit of the City's residents and visitors, and assures the greater availability of such preserved lawns and landscapes for use by the public.

As a result of many years of overuse and limited resources for maintenance, the condition of Central Park had deteriorated to the point where many lawns were barren landscapes devoid of plants and shrubs. Through a combination of public funds and private philanthropy in excess of 24 million dollars, a long-term restoration project was undertaken which resulted in the restoration of the Sheep Meadow by 1980, the North Meadow by 1999 (which includes twelve ballfields), and the Great Lawn (which includes eight ballfields) between 1995 and 1997. In the case of the Great Lawn, restoration included the installation of an advanced irrigation and drainage system.

These regulations codify what has been a successful program of regulated use and planned maintenance since the restoration, and provide a clear set of rules for permitted uses in the restored areas of the Park. They seek to foster enjoyment of the park by millions of annual users, including those who participate in athletic leagues, sunbathe, picnic and attend special events. Healthy landscapes are an integral component of an enjoyable experience in the City's parks. Damage to the grass requires that a lawn be closed for repair, displacing both regularly scheduled and spontaneous use. These regulations seek to minimize damage while balancing a variety of competing functions so that the landscapes can provide maximum use and enjoyment for all.

The prevention of lawn damage requires management informed by principles of good horticulture. The regulations permit a variety of uses consistent with accepted horticulture principles for lawn and landscape management. The regulations reflect scientifically based horticulture needs, including seasonal cycles, and the impact of various uses on the grass and surrounding landscapes. Limitations on all use in wet conditions, limitations on some use during certain months and at certain locations, the requirement of appropriate load-in plans for, and control of attendance at, large special events are examples of provisions designed to minimize damage to the lawns and landscapes.

The Great Lawn

The history of use on the Great Lawn has been fairly consistent over several decades prior to its restoration. Free concerts by the Metropolitan Opera and the New York Philharmonic have taken place on the Great Lawn for approximately the last 25 years, and have continued after the restoration. These concerts, which can be cancelled in the event of wet conditions, are relatively low impact events that cause little, if any, damage. Most other large special events that have taken place on the Great Lawn pre-date the restoration to a time when the lawn was in a seriously degraded condition. The stage and heavy equipment used at those events created ruts in the bare ground and, along with

large number of participants, seriously compacted the soil. In addition, the unregulated entry of participants into the event site frequently allowed plantings and landscapes to be overrun and destroyed. Since the restoration, there have been few requests for large special events, and the few that have taken place have demonstrated the need for the restrictions on use contained in these regulations. The schedule for athletic events on the Great Lawn takes into account the seasonal requirements for seeding and nurturing of the grass and causes no damage other than normal wear and tear that is addressed through regular maintenance. Finally, there has always been scheduled athletic use on the ballfields of the Great Lawn. Since restoration those activities have continued.

As a result of this prior experience with use and its effects, the regulations for the Great Lawn codify the number and size of events that can take place there and the time of year during which they can occur. In addition, they mandate an approved load-in plan for equipment and crowds to avoid damage to both the lawns and surrounding landscapes, as well as a prohibition on use when the lawn is wet. A bond is required to cover the potential damage with a waiver provision for when the bond would pose a financial hardship. Hardship is determined by reference to the budget for the event, a provision designed to insure an equitable and realistic assessment of financial ability to post a bond for the event.

In response to comments received since publication of the proposed rules, the rules now clarify that up to six permits will be granted for large events (those with an anticipated attendance of five thousand to fifty thousand, which are held on any of the Great Lawn's ballfields). Small events (those with an anticipated attendance of less than five thousand) on the Great Lawn will not be counted against the limit of six permits. However, such smaller events cannot require the use of any of the Great Lawn ballfields during the hours that the Department permits athletic events on the Great Lawn's ballfields or otherwise displace athletic events on the ballfields and they must also meet all other applicable conditions for special events on the Great Lawn. The primary purpose of the Great Lawn's ballfields is for athletic events and allowing small events in addition to the possible six large events to displace athletic events is antithetical to the purpose of the Great Lawn's ballfields. Moreover, there are many venues within Central Park that can host events with an attendance smaller than five thousand people without disrupting or displacing other activities for which permits have been granted.

Also in response to comments received, the proposed rules were modified so as to treat the annual free concerts by the Metropolitan Opera and the New York Philharmonic in the same manner as other proposed large events on the Great Lawn. As before, the Metropolitan Opera and the Philharmonic continue to be subject to all conditions applicable to large special events on the Great Lawn. Finally, in response to comments, the Department also modified the methodology for determining when an application is received by the Department to ensure that only objective criteria would be used to determine the timing of receipt.

Sheep Meadow and North Meadow

The Sheep Meadow and the North Meadow do not have an advanced irrigation or drainage system similar to that of the Great Lawn. Consequently, they are particularly prone to soil compaction, which could result from special events drawing large crowds. Special events permits are no longer granted for Sheep Meadow. The North Meadow is reserved for athletic and passive recreational activity and has not been the host for non-athletic events since its restoration.

Heckscher Ballfields

Since their initial restoration in the early 1980s the Heckscher Ballfields have been used only for softball and passive recreation, except for early 2005, when they were available to host special events prior to further restoration work beginning in fall 2005. After this further restoration, the Heckscher Ballfields will again be limited to softball and passive recreation.

The East Meadow

The East Meadow remains open to special events. In addition, any future restoration will be such as to ensure that

the East Meadow may continue to host special events as will other suitable areas in the park, such as the paved areas south of the Bethesda Terrace, including the Literary Walk and the Bandshell, and Rumsey Playfield. The use restrictions contained in these regulations with respect to the East Meadow are minimal and ensure that there will be an area in the park for special events on an ongoing basis.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-09 Fee Schedules.

(a) **All boroughs.**

Permit	Fee
TENNIS	
Adult (18 years to 62 years)	$100.00
Senior	$ 20.00
Junior	$ 10.00
Adult Duplicate	$ 15.00
Junior Duplicate	$ 6.00
Single Play	$ 7.00
Reservation Ticket	$ 7.00
Lockers	$ 20.00
LAWN BOWLING	$ 30.00
CROQUET	$ 30.00
MODEL YACHT STORAGE	$ 20.00
KAYAK/CANOE	$ 15.00
POOL PERMITS (Groups of 10 or more supervisedindividuals)	$25.00 plus $1.00 for each individual in in group
SPECIAL EVENT PERMIT	$25.00

USE OF BOARDWALK SPACE BY RESTAURANTS

Self-serve Restaurants	$ 55.00/linear foot
Table Service Restaurants	$110.00/linear foot

(b) **Borough-wide fees.**

Brooklyn.

Kate Wollman Rink

Children and Seniors	$3.00
Adults	$5.00

(c) **Schedule of Permit Fees.**

Field Lights (18 yrs. & over)	$32.00/session
Cricket, football, lacrosse, rugby, soccer and ultimate Frisbeefields (18 yrs. & over)	$20.00/session
Baseball, softball and volleyball, Turf/Soft surface fields(18 yrs. & over)	$16.00/session
Baseball, softball, roller hockey and volleyball, Hardtopplaying surfaces (18 yrs. & over)	$10.00/session

A session is defined as 2 hours, with the exception of week days after 4 p.m. on Manhattan fields, when session length is 90 minutes due to the high demand for fields.

(d) **Ages.**

Day Camp Programs-Age 6-13	$100 per child (Public Assistance Familiesare exempt)

HISTORICAL NOTE

Section amended City Record Feb. 19, 2003 eff. Mar. 21, 2003. [See Note 2]

Subd. (a) Tennis amended City Record Dec. 31, 2003 eff. Jan. 30, 2004. [See T56 §2-10 Note 1]

Subd. (b) par (2) amended City Record Oct. 30 2003 eff. Nov. 29, 2003. [See Note 3]

DERIVATION

Section amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1] Note: The NYLP editor has included several inadvertent omissions made when this amendment was laid out in City Record Nov. 29, 1999 per clarification with the Parks Department.

Section amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See Note 1]

Section amended City Record June 18, 1991 eff. July 18, 1991.

Subd. (a) amended City Record Mar. 4, 1994 eff. Apr. 3, 1994.

Subd. (a) amended City Record Feb. 28, 1992 eff. Mar. 26, 1992.

Subd. (a) amended City Record Sept. 16, 1991 eff. Oct. 16, 1991.

Subd. (b) par (1) amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Subd. (b) par (1) amended City Record Sept. 16, 1991 eff. Oct. 16, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Nov. 22, 1996:

The Commissioner of Parks & Recreation has the authority pursuant to Section 533(b)(1) and (2) of the New York City Charter and Section 10(3) of the Statute of Local Governments to establish and operate self-supporting, self-sustaining, or revenue producing recreational facilities on park lands.

The Commissioner hereby adopts the above-referenced fees for hardtop softball field and basketball court permits to defray the increased administrative and maintenance costs attendant to the use of the Department's hardtop facilities by the public.

The Commissioner hereby adopts the aforementioned rules to establish a uniform fee for Special Events Permit Applications across the five boroughs. This will simplify the application process as well as the record keeping of the borough offices. Furthermore, as the Special Events Permit Application Fee is administrative, there is little reason for it to vary from borough to borough.

The Commissioner hereby adopts the above rules governing the fees charged at the 79th Street Boat Basin. These fee increases are intended to defray the increased costs associated with managing and maintaining the Boat Basin.

The Commissioner hereby adopts the above-mentioned fees to be charged to businesses that abut boardwalks in all five boroughs. This fee is directed at restaurants that utilize the boardwalk to augment patronage of their establishments.

The Commissioner hereby adopts the amended fees to be charged at the Kate Wollman Skating Rink. These fees are intended to offset the administrative and maintenance costs attendant to Kate Wollman Rink.

2. Statement of Basis and Purpose in City Record Feb. 19, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. The amended section incorporates changes in the fees for tennis and ballfield permits, as well as the fees for other permitted recreational activities. The increased fees are intended to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels, improve facility administration and help ensure the continued enjoyment of our athletic fields and outdoor facilities for recreational purposes. The fees for the Cottage Marionette Theatre are deleted because the program is administered by the City Parks Foundation.

3. Statement of Basis and Purpose in City Record Oct. 30, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. The proper funding of Kate Wollman Rink is essential to ensure the continued usage and enjoyment of the ice skating rink for recreational purposes.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-10 Special Event Concessions.

(a) For purposes of this section, the following terms shall have the following meanings:

Athletic Charitable Events. "Athletic Charitable Events" shall mean recreational or sporting events that are directly associated with fundraising for an entity which is established as a not-for-profit corporation and which has been granted Federal tax-exempt status. The concession schedule does not apply to Athletic Charitable events under 500 people; however, these events are subject to the regulations set forth in §2-08 of this chapter.

Athletic Non-Charitable Events. "Athletic Non-Charitable Events" shall mean those recreational or sporting events designed for public participation which are not directly associated with charitable fundraising for an entity which is established as a not-for-profit corporation and has been granted Federal tax-exempt status.

Designated Area. "Designated Area" shall mean a specific and/or distinct section or area within the following Parks that can host a special event subject to this schedule without excluding other uses and events in other distinctive sections or areas of the same Park: Battery Park, Central Park, Prospect Park, Randall's Island, Union Square, Carl Schurz Park, Inwood Hill Park, East River Park, Fort Tryon Park, Marcus Garvey, Morningside Park, Riverside Park, Van Cortlandt Park, Pelham Bay Park, Coney Island, Marine Park, Cunningham Park, Flushing Meadows Corona Park, Forest Park, Rockaway and South Beach. (For example, the North Plaza of Union Square Park, the East Meadow of Central Park, the Festival Grounds at Flushing Meadows Corona Park or the Parade Grounds at Van Cortlandt Park.) For all other Parks, designated areas shall mean the entire Park.

Display Vehicles. "Display Vehicles" shall mean vehicles that are designed, decorated or detailed for event

promotion, logo placement, product display and/or sampling of products and services. Mid-size vehicles are those vehicles with two axles. Oversize vehicles, trailers and buses are those vehicles with three or more axles or require a driver's license other than a NYS Class D license.

Event Time. "Event Time" shall mean the time between set-up and break-down of an event and applies to all events that require 18 or more hours.

General Events. "General Events" include, but are not limited to, dance recitals, music, or other artistic or cultural performances, which involve over 500 people, are open to the public and otherwise do not constitute Promotional/Commercial events or Athletic Charitable/Non-charitable events as defined by this section. General Events with less than 500 people are only subject to the regulations set forth in §2-08 of this chapter.

Inflatables. "Inflatables" shall mean balloons or displays that are expanded with air or gas and used for event promotion, logo placement, product display or recreational purposes. Blimps are not considered Inflatables for purposes of this section.

Level A Parks. "Level A Parks" shall mean Father Duffy Square.

Level B Parks. "Level B Parks" shall include the following Parks sites: Battery Park, Central Park, City Hall Park, Madison Square Park, Prospect Park, Randall's Island and Union Square.

Level C Parks. "Level C Parks" shall include the following Parks sites:

(1) Manhattan: Bowling Green, Carl Schurz Park, Dag Hammarskjold Plaza, Damrosch Park, Dewitt Clinton Park, Inwood Hill Park, East River Park, Foley Square Park, Fort Tryon Park, Marcus Garvey, Morningside Park, Passannante Ballfield, Riverside Park, Holcombe Rucker Playground, Washington Square Park, West 4th Street.

(2) Bronx: Harris Field, Van Cortlandt Park, Pelham Bay Park.

(3) Brooklyn: Coney Island, Marine Park.

(4) Queens: Cunningham Park, Flushing Meadows Corona Park, Forest Park, Rockaway Beach.

(5) Staten Island: South Beach.

Level D Parks. "Level D Parks" shall mean all other Parks sites not listed in Level A, Level B, Level C or explicitly excluded from the concession schedule in this section.

Private Events. "Private Events" are those that restrict the general public's access to a Parks site, by either physical barriers or by personnel, or events that are permitted to erect such barriers, or otherwise restrict the general public.

Promotional/Commercial Events. "Promotional/Commercial Events" shall mean those events that seek to promote, advertise, or introduce a product, corporation, company or other commercial entity to either the general public or to a portion of the general public.

Sampling. "Sampling" shall mean the direct distribution of a commercial product or service to the public for the purpose of promoting that product.

(b) A permit pursuant to §2-08 of this chapter shall not issue until the permittee has paid the concession fee required by the Department under this section, unless otherwise exempted by this section. The Commissioner shall charge an applicant a concession fee in accordance with the following schedule. The concession fee shall be charged in addition to any bonding requirement imposed by the Commissioner pursuant to §1-03(b)(4) of this title or any other amount or fee imposed by any other City agency or agencies.

Concession Fee Schedule

Basic Event Fee Level A Parks Level B Parks Level C Parks Level D Parks

Promotional/Commercial, Private

Under 25% of Designated Area N/A $12,000 $7,200 $2,400

25%-50% of Designated Area N/A $20,000 $12,000 $4,000

Over 50% of Designated Area $35,000 $22,000 $13,200 $4,400

Athletic

Athletic Non-Charitable Event

Under 25% of Designated Area N/A $8,000 $4,800 $1,600

25%-50% of Designated Area N/A $16,000 $9,600 $3,200

Over 50% of Designated Area N/A $18,000 $10,800 $3,600

Athletic Charitable Event

Under 25% of Designated Area N/A $1,000 $600 $200

25%-50% of Designated Area N/A $2,000 $1,200 $400

Over 50% of Designated Area N/A $3,000 $1,800 $600

General Event

Under 25% of Designated Area N/A $3,000 $1,800 $600

25%-50% of Designated Area N/A $11,000 $6,600 $2,200

Over 50% of Designated Area $18,200 $13,000 $7,800 $2,600

Subtotal:

Fixed-Rate Charges* Level A Parks Level B Parks Level C Parks Level D Parks

Amplified Sound $2,100 $1,500 $900 $300

Sampling $2,100 $1,500 $900 $300

Tent

801 sq. ft.-6,400 sq. ft. $4,200 $3,000 $1,800 $600

6,401 sq. ft.-10,000 sq. ft. N/A $6,400 $3,840 $1,280

10,001 sq. ft and Above N/A $10,000 $6,000 $2,000

Stage

1,000 cubic ft.-2,500 cubic ft. $2,100 $1,500 $900 $300

2,501 cubic ft.-10,000 cubic ft. $7,000 $5,000 $3,000 $1,000

10,001 cubic ft. and Above $14,000 $10,000 $6,000 $2,000

Back Drop

6 ft.-20 ft. $7,000 $5,000 $3,000 $1,000

21 ft. and Over $14,000 $10,000 $6,000 $2,000

Inflatables**

15 cubic feet-50 cubic feet $7,000 $5,000 $3,000 $1,000

51 cubic feet-100 cubic feet $14,000 $10,000 $6,000 $2,000

Display Vehicles***

Mid-size $10,000 $7,500 $3,000 $1,000

Oversize/Trailers/Buses $12,500 $10,000 $7,500 $3,000

Event Time

18 Hours-48 Hours $7,000 $5,000 $3,000 $1,000

49 Hours-96 Hours $14,000 $10,000 $6,000 $2,000

97 Hours-168 Hours $28,000 $20,000 $12,000 $4,000

169 Hours and More priced bynegotiation

Subtotal:

Total:

***These fixed-rate charges are in addition to the basic event fee.

***A fee will be imposed for each individual Inflatable as defined by this section.

***A fee will be imposed for each individual Display Vehicle as defined by this section.

(c) This schedule does not apply to the following:

(1) blimps;

(2) sites covered by a license, lease or agreement with a third party;

(3) Department facilities, such as recreation centers or Department administrative offices;

(4) demonstrations, which are governed by the guidelines set forth in §2-08 of this chapter; or

(5) concerts with 8,000 or more attendees. In determining the concession fee for such concerts, the following

factors shall be taken into consideration:

(i) the length of time, time of day and the time of year of the concert;

(ii) the nature of use, including but not limited to, the location of the concert and such location's vulnerability to damage, whether the concert or any activities associated with the concert present a high risk of property damage, the type of equipment to be brought into the Park and the displacement of any other Park uses caused by the concert or the concert's set-up and take-down;

(iii) the number of persons expected to attend the concert;

(iv) whether the applicant will impose an admission charge or otherwise limit attendance, or whether attendance will be free and open to the public;

(v) the size and type of the concert, including the size of the stage and other structures;

(vi) the nature of the proposed Park site (e.g. Level A, Level B, Level C or Level D);

(vii) the type and extent of public resources required to stage the concert; and

(viii) except for hand-held signs, the size of each sign and the quantity of signs displayed in the Park in connection with the concert.

HISTORICAL NOTE

Section amended City Record Oct. 30, 2003 eff. Nov. 29, 2003. [See Note 2]

Section added City Record Apr. 20, 2001 eff. May 20, 2001. [See Note 1] Former §2-10 Fees for

Playschool (Preschool) Programs-Age 4 years was repealed City Record Nov. 29, 1999 eff. Dec.

29, 1999.

NOTE

1. Statement of Basis and Purpose in City Record Apr. 20, 2001:

This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under §§389, 533(a)(9), 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. Certain types of special events substantially increase traffic and usage of various park venues and require a disproportionate deployment of public resources. The proper regulation of such events is essential to ensure the protection of parks property and the continued enjoyment by the people of public parks.

These procedures are intended to provide a framework for the Department of Parks and Recreation to assure the safety of parks property and the continued public usage of parks property for recreational purposes, to preserve public resources associated with the maintenance and upkeep of parks property and to inform persons who wish to use the parks for special events of the amounts that may be charged for such events.

2. Statement of Basis and Purpose in City Record Oct. 30, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use,

government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. This amended rule is designed to clarify the Department's fee structure for special events on parkland. Site fees are intended to compensate the public for the unavailability of City-owned parkland and are applied in part to continue park maintenance and programming. To reflect the physical impact of an event and the displacement of competing normal public use, special event concession fees are weighted by the size and duration of the planned event and the type of park, as well as other elements that impact park users such as amplified sound, sampling, tents, stages, back drops, and display vehicles. The concession fee schedule does not apply to concerts attended by over 8,000 people, blimps, sites covered by a license, lease or agreement with a third party, or any Department facility such as recreation centers or administrative offices. Events at such locations are difficult to price in advance and/or are subject to different regulations and interests or already established contractual relations. The amended rule also does not apply to demonstrations, which are covered by the guidelines set forth in section 2-08 of this chapter.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-11 Seizure of Vehicles Operated on Beaches Pursuant to Administrative Code §18-108.1.

(a) **Seizure of vehicles.** Pursuant to Administrative Code §18-108.1, any motorcycle, all terrain vehicle, snowmobile, or motor vehicle which is operated by an unauthorized person on a beach that is under the Commissioner's jurisdiction may be seized by an authorized designee of the Commissioner or a member of the Police Department.

(b) **Notice.** At the time of such seizure, the operator will be given a written notice explaining the procedures for obtaining release of the vehicle. The notice shall include a brief description of the vehicle, the location where the vehicle may be claimed, and the applicable charges for removal and storage. If the operator is not the owner of the vehicle, notice to the operator is deemed to be notice to the owner, but if the vehicle is registered pursuant to the Vehicle and Traffic Law, the notice shall be mailed to the registered owner as well. If the operator is less than eighteen years old, the notice shall either be personally delivered to the operator's parent or guardian or shall be mailed to the parent or guardian, if the name and address of that person is reasonably ascertainable.

(c) **Procedure for obtaining release of vehicle.** (1) A vehicle seized pursuant to Administrative Code §18-108.1 shall not be released to the owner or other person lawfully entitled to possession unless:

(i) the owner or operator submits documentation that he or she paid all applicable fines or penalties imposed for the violation, and pays all removal and storage charges as set forth below; or

(ii) if there is a proceeding pending before a court or the Environmental Control board of the City of New York (ECB), the owner or operator posts a bond or other form of security in the amount of three thousand dollars ($3,000.00) which will secure the payment of such fines, penalties, and charges, or

(iii) a court or the ECB adjudicates the violation and finds in favor of the operator or owner. If there is such a finding in favor of the operator or owner, any amount previously paid for release of the vehicle shall be refunded.

(2) The owner of a vehicle seized pursuant to Administrative Code §18-108.1 will be given the opportunity to receive a hearing before the ECB with respect to the seizure within five business days of the seizure, in accordance with its rules and procedures.

(3) The owner or operator may request the release of the vehicle by appearing during regular business hours at the location where the vehicle may be claimed, and presenting all of the following documentation:

(i) Current registration certificate if the vehicle is registered, or satisfactory proof of ownership if the vehicle is not registered; and

(ii) Satisfactory government-issued photo identification of the person requesting the release of the vehicle; and

(iii) If a representative of the owner is requesting the release, a notarized letter signed by the owner expressly authorizing the representative to claim the vehicle; and

(iv) Satisfactory documentation as required by subdivision (c) (1) of this section of one of the following: the payment of all fines, penalties, and charges; or the posting of a bond; or an adjudication in favor of the operator or owner by a court or the ECB.

(d) **Abandoned vehicles.** Any vehicle seized pursuant to Administrative Code §18-108.1, which is not released and removed from City property pursuant to subdivision (c) of this section within 10 days following the making of a request by the representative of the Commissioner or the Police Commissioner to remove it, shall be deemed to be an abandoned vehicle. Such request shall be sent by certified or registered mail, return receipt requested, to the registered owner of the vehicle, or if the vehicle is not registered, to the operator of the vehicle. If the operator is less than eighteen years old, the request shall be sent by certified or registered mail, return receipt requested, to the operator's parent or guardian, if the name and address of that person is reasonably ascertainable. If the vehicle is deemed abandoned, it shall be disposed of in conformance with the procedures set forth in New York State Vehicle and Traffic Law §1224, including but not limited to conversion for use by the Department.

(e) **Removal and storage charges.** The charge for removal of a vehicle pursuant to this section shall be twenty-five dollars ($25.00). The storage charge for storing a vehicle pursuant to this section shall be five dollars ($5.00) per day or fraction thereof, computed from the day the vehicle arrives at the storage facility. All charges must be paid in cash, by certified check, or by money order payable to the City of New York.

HISTORICAL NOTE

Section added City Record Nov. 21, 1995 eff. Dec. 21, 1995. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 21, 1995:

The Commissioner of the Department of Parks & Recreation is authorized and directed to establish and enforce rules and regulations for the use, government and protection of public parks and of all property under the charge and control of the Parks Department pursuant to Section 533(a)(9) of the Charter of the City of New York. Each year extensive and costly damage is inflicted upon the City's public beaches by the operation of vehicles by unauthorized individuals. Consequently, the New York City government adopted legislation banning vehicles (including motorcycles, all terrain vehicles, and snowmobiles) from beach areas, effective August 12, 1995. Local Law 42 authorizes law enforcement officials to confiscate such vehicles upon issuing a summons to the offender. Parks is required to

promulgate rules providing for the seizure and return of such vehicles.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-12 Basketball, Baseball, Softball, Cricket, Roller Hockey and Volleyball.

(a) **Permit applications.** (1) Those who wish to reserve a court, rink or ballfield ("sports facility") under the jurisdiction or management of the Department for the sports of basketball, baseball, softball, cricket, roller hockey, and volleyball must obtain a written permit from the Department. If an individual is applying for a permit on behalf of a group or athletic league, he or she must so designate on the permit. Only one individual may apply for a permit per group or athletic league.

(2) The completed application must be received by the Department no later than March 1 of each year. Later applications will be filled on a space available basis.

(3) The completed application must include a list of all sports facilities requested.

(4) The Department reserves the right to require a clean up bond and/or personal liability insurance for the event/game, naming the City of New York as co-insured. The factors to be considered in requiring a bond and/or insurance are: (i) estimated number of spectators to attend sessions, (ii) involvement of vendors (where permitted by the Department), (iii) past history of league/event.

(5) Admission tickets, refreshments or any other articles may not be sold or offered for sale within or adjacent to any park area without the prior written authorization of the Department.

(b) **Permits.** (1) The permittee must confine sports activities to the locations and times specified on the permit.

(2) The permittee shall remain subject to the Rules of the Department, the specific terms of the permit, and to all rules, regulations and laws of all City, State and Federal departments insofar as applicable.

(3) The permittee must clean and restore the premises after each session.

(4) Pamphlets, handbills, or advertising material of any kind may not be posted, placed or distributed at the courts or ballfields, unless written permission is granted by the Department.

(5) The permittee must have in his/her possession at the time and site of the reserved session the permit for the use of the sports facility and any other permits or documents required by the Department or any other City agency for proposed activities at the session.

(6) The permittee is liable for all damage or injury to property or persons that may occur or be caused by the use of the permit, and by accepting the permit the permittee agrees to save the City of New York and the Department harmless from any claim whatsoever which may result from such use.

(7) Any transfer of permits requires the approval of the athletic permit coordinator of the borough in which the sports facilities are located. Such transfer, if approved, must take place in the office of the athletic permit coordinator of the relevant borough with both transferor and transferee present. The permit is not otherwise transferable.

(8) The permit is revocable at any time at the discretion of the Commissioner, or his or her representative. The reasons for revocation include, but are not limited to, (i) providing incorrect information on an application form, (ii) failure to adhere to the rules of the Department or the conditions of the permit, and (iii) the use of a permit issued to a youth organization by adults. If a reserved session is cancelled by the Department for administrative reasons, the session may be rescheduled where feasible. The permittee has the right to appeal the revocation of a permit to the Chairperson of the Department's Ballfield Task Force within 10 days immediately following the mailing of notice of revocation by the Department. Such appeal must be in writing. The decision of the Chairperson of the Ballfield Task Force shall be final.

(9) The maximum number of reserved sessions that any adult single permit-holder or league may control is limited to sixteen sessions per week, per park. The maximum length of any permit is six months. Exceptions may be made by the Commissioner or his or her representative. Youth leagues shall not be subject to the 16 session per week, per park limit.

(10) The Department may review the practices of all leagues and tournaments to determine whether the permittee should receive the requested number of reserved sessions. If the Department determines that sports facility space is in high demand and that the permittee does not reasonably need all of the session time requested, the Department may approve the permit in part, granting to the permittee some fraction of the field or court time applied for.

(11) The Department may inspect the site to determine if the permittee is utilizing all of the reserved time requested. In the event that the Department determines that the permittee is not using all of the time requested, the Department may reduce the number of permitted sessions.

(12) Due to space limitations, the Department will not allow the reservation of sports facility space for practice sessions.

HISTORICAL NOTE

Section amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Section added City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 22, 1996:

The Commissioner of the Department of Parks and Recreation has the authority pursuant to Section 533(b)(2) of the New York City Charter to plan, develop, conduct and supervise recreation programs. The Commissioner hereby establishes a set of rules regulating the application procedure for and use of the Department's basketball courts and baseball/softball fields. These rules will increase the availability of court and field space, eliminate conflicts over competing rights to a court or field, establish uniformity throughout the five boroughs in permit procedures, and increase the general safety and organization of sporting events.

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***** Current through December 2009 ****

56 RCNY 2-13

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-13 Football, Lacrosse, Rugby, Ultimate Frisbee and Soccer.

(a) **Permit applications.** (1) Anyone who wishes to reserve a field under the jurisdiction or management of the Department for the sports of football, lacrosse, rugby, ultimate frisbee, and soccer must obtain a written permit from the Department. If an individual is applying for a permit on behalf of a group or athletic league, he or she must so designate on the permit. Only one individual may apply for a permit per athletic league.

(2) The completed application must be received by the Department no later than March 1 of each year for spring and summer reservations, and no later than July 1 for fall reservations. Later applications will be filled on a space available basis.

(3) The completed application must include a list of all fields requested.

(4) The Department reserves the right to require a clean up bond and/or personal liability insurance for the event/game, naming the City of New York as co-insured. The factors to be considered in requiring a bond and/or insurance are: (i) estimated number of spectators to attend sessions, (ii) involvement of vendors (where permitted by the Department), (iii) past history of league/event.

(5) Admission tickets, refreshments or any other articles may not be sold or offered for sale within or adjacent to any park area without the prior written authorization of the Department.

(b) **Permits.** (1) The permittee must confine sports activities to the locations and times specified on the permit.

(2) The permittee shall remain subject to the Rules of the Department, the specific terms of the permit, and to all rules, regulations and laws of all City, State and Federal departments insofar as applicable.

(3) The permittee must clean and restore the premises after each session.

(4) Pamphlets, handbills, or advertising material of any kind may not be posted, placed or distributed at the fields, unless written permission is granted by the Department.

(5) The permittee must have in his/her possession at the time and site of the reserved session the permit for the use of the field and any other permits or documents required by the Department or any other City agency for proposed activities at the session.

(6) The permittee is liable for all damage or injury to property or persons that may occur or be caused by the use of the permit, and by accepting the permit the permittee agrees to save the City of New York and the Department harmless from any claim whatsoever which may result from such use.

(7) Any transfer of permits requires the approval of the athletic permit coordinator of the borough in which the fields are located. Such transfer, if approved, must take place in the office of the athletic permit coordinator of the relevant borough with both transferor and transferee present. With this exception, the permit is not transferable.

(8) The permit is revocable at any time at the discretion of the Commissioner, or his or her representative. The reasons for revocation include, but are not limited to, (i) providing incorrect information on an application form, (ii) failure to adhere to the rules of the Department or the conditions of the permit, and (iii) the use of a permit issued to a youth organization by adults. If a reserved session is cancelled by the Department, the session may be rescheduled where feasible. The permittee has the right to appeal the revocation of a permit to the Chairperson of the Department's Ballfield Task Force within 10 days immediately following the mailing of notice of revocation by the Department. Such appeal must be in writing. The decision of the Chairperson of the Ballfield Task Force shall be final.

(9) The maximum number of reserved sessions that any adult single permit-holder or league may control is limited to sixteen sessions per week, per park. The maximum length of any permit is six months. Exceptions may be made by the Commissioner or his or her representative. Youth leagues shall not be subject to the 16 session per week per park limit.

(10) The Department may review the practices of all leagues and tournaments to determine whether the permittee should receive the requested number of reserved sessions. If the Department determines that field space is in high demand and that the permittee does not reasonably need all of the session time requested, the Department may approve the permit in part, granting to the permittee some fraction of the field time applied for.

(11) The Department may inspect the site to determine if the permittee is utilizing all of the reserved time requested. In the event that the Department determines that the permittee is not using all of the time requested, the Department may reduce the number of permitted sessions.

(12) Due to space limitations, the Department will not allow the reservation of field space for practice sessions.

HISTORICAL NOTE

Section added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

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56 RCNY 2-14

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-14 Recreation Center Membership Fees.

(a) For purposes of this section, the following terms shall have the following meanings:

Recreation Center. "Recreation Center" shall mean a building or structure located within property under the jurisdiction of the Department, with the primary purpose of providing recreational programming and other community activities.

Adult Membership Fee. "Adult Membership Fee" shall mean the membership fee for use of recreation centers in a particular class (i.e. Recreation Center With an Indoor Pool, Recreation Center Without Indoor Pool, CD Recreation Center) for all patrons between eighteen (18) and fifty-four (54) years of age, not including session fees. Membership includes, but is not limited to, use of fitness equipment, indoor pools and computer resource centers.

Senior Citizen Membership Fee. "Senior Citizen Membership Fee" shall mean the membership fee for use of recreation centers in a particular class (i.e. Recreation Center With an Indoor Pool, Recreation Center Without Indoor Pool, CD Recreation Center) for all patrons fifty-five (55) years of age and over, not including session fees. Membership includes, but is not limited to, use of fitness equipment, indoor pools and computer resource centers.

Child Membership Fee. "Child Membership Fee" shall mean the membership fee for use of recreation centers in a particular class (i.e. Recreation Center With an Indoor Pool, Recreation Center Without Indoor Pool, CD Recreation Center) for all patrons under eighteen (18) years of age, not including session fees. Membership includes, but is not limited to, use of fitness equipment, indoor pools and computer resource centers.

Recreation Center Without Indoor Pool. "Recreation Center Without Indoor Pool" shall include all recreation centers without indoor pools, including, but not limited to the following recreation centers: Hunts Point Recreation Center, Hamilton Fish Recreation Center, Thomas Jefferson Recreation Center, Von King Recreation Center, Sunset Recreation Center, Red Hook Recreation Center, J.H. Wright Recreation Center, Jackie Robinson Recreation Center, Al Smith Recreation Center, Pelham Fritz Recreation Center, Lost Battalion Hall Recreation Center, Sorrentino Recreation Center, Cromwell Recreation Center, Williamsbridge Oval Recreation Center, St. James Recreation Center, and Owen Dolan Recreation Center.

Recreation Center With Indoor Pool. "Recreation Center With Indoor Pool" shall include all recreation centers with indoor pools, including, but not limited to the following recreation centers: St. Mary's Recreation Center, Brownsville Recreation Center, Metropolitan Pool Recreation Center, St. John's Recreation Center, Asser Levy Recreation Center, Chelsea Recreation Center, Hansborough Recreation Center, Recreation Center 54, Recreation Center 59, Tony Dapolito Recreation Center, and Roy Wilkins Recreation Center.

Session Fees. "Session Fees" shall mean all fees associated with specific instructor-led courses including, but not limited to the following activities: aerobic classes, martial arts instruction, music lessons, and yoga classes.

(b) No person shall use any recreation center and/or participate in activities requiring the payment of a session fee as defined in this section unless such person has paid the applicable annual membership fee set forth in subdivision (c) of this section]*4 in addition to any applicable session fees.

(c) **Recreation center membership fee schedules.** The Commissioner shall charge all patrons at recreation centers subject to these provisions the amount set forth in the following schedule for an annual membership. Such annual membership does not include session fees.

Type ofRecreationCenter ChildMembershipFee AdultMembershipFee Senior CitizenMembershipFee

Recreation Centerwith Indoor Pool $0 $100 $10

Recreation Centerwithout IndoorPool $0 $75 $10

(d)(1) Session fees will be set pursuant to the following schedule:

Type of Recreation Center Session Fee (Maximum)

Recreation Center withIndoor Pool $10-$100

Recreation Center withoutIndoor Pool $10-$100

(2) **Factors for determination of session fees.** In determining the amount of the session fees pursuant to the schedule above, the following factors shall be taken into consideration:

(i) the length of the course

(ii) the number of scheduled classes

(iii) the skill required for the instructor

(iv) the expected number of participants

(v) such other information as the Commissioner shall deem relevant.

HISTORICAL NOTE

Section amended City Record May 26, 2006 eff. June 25, 2006. [See Note 3]

DERIVATION

Section amended City Record May 29, 2003 eff. June 28, 2003. [See Note 2] The opening paragraph of subd. (c) was amended without [ ] and italics to change "all patrons at recreation centers" to be "a recreation center member".

Section added City Record June 3, 2002 eff. July 3, 2002. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 3, 2002:

This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under section 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. In 2001, over 3.2 million patrons used the City's recreation centers. The current voluntary membership fee of twenty-five dollars ($25) has failed to provide sufficient funding to operate and to staff these centers.

The proper funding of the City's recreation centers is essential to ensure the continued usage and enjoyment of park facilities for recreational purposes. The increased mandatory membership fees are intended to provide funding for the Department of Parks and Recreation to purchase and maintain new fitness equipment, sustain appropriate staffing levels, and continue Center and community programming. Moreover, children are not required to pay membership fees, while seniors only are required to pay a nominal membership fee. In addition, these fees are in line with recreation centers in other municipalities and are far below the fees charged by recreation centers operated by not-for-profit institutions.

2. Statement of Basis and Purpose in City Record May 29, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under section 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. In 2002, over 3.4 million patrons used the City's recreation centers. The current membership fees have failed to provide sufficient funding to operate and the staff these centers. The proper funding of the City's recreation centers is essential to ensure the continued usage and enjoyment of park facilities for recreational purposes. The increased membership fees are intended to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels and continue Center and community programming. Moreover, children are not required to pay membership fees, while seniors only are required to pay a nominal membership fee. In addition, these fees are in line with recreation centers in other municipalities and are far below the fees charged by recreation centers operated by not-for-profit institutions.

3. Statement of Basis and Purpose in City Record May 26, 2006: This amendment is promulgated pursuant to the authority of the Commissioner of Parks (the "Commissioner") under §§389(b), 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of all property under the charge or control of Parks. The amendment provides an updated and consistent fee schedule for all recreation centers. The new fees ensure the continued usage and enjoyment of all recreation centers and provide adequate funding for Parks to sustain appropriate staffing levels and improve facility administration therein. Moreover, it has recently been determined that Parks may charge membership fees for recreation centers funded by Community Development Block Grants that are consistent with all other recreation centers. With this amendment, the only relevant

factor that affects recreation center membership fees is whether or not a recreation center has a pool dedicated for public use, which increases the operation costs of such centers.

FOOTNOTES

4

[Footnote 4]: * Erroneous closing bracket.

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56 RCNY 2-15

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-15 Miscellanous Fees.

Capital Projects Bid Document Fees (payable by all persons receiving bid documents from the Department in a capital project procurement):

Less than 100 pages $25.00 (refunds will be issued for documents returned in good condition within 30 days of receiving documents and accompanied by the original transaction receipt)

More than 100 pages $100.00 (refunds will be issued for documents returned in good condition within 30 days of receiving documents and accompanied by the original transaction receipt)

HISTORICAL NOTE

Section added City Record Dec. 31, 2003 §2, eff. Jan. 30, 2004. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 31, 2003:

This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

Section 2-09 incorporates changes in the fees for tennis permits and section 2-15 establishes fees for bid documents. The increased tennis fees are essential to ensure the continued usage and enjoyment of the Department's tennis courts. In addition the establishment of bid document fees will allow the Department to better manage its resources by reducing material and staff time spent in printing bid documents.

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56 RCNY 2-16 [Automated

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-16 [Automated External Defibrillators]*3

The Department will place automated external defibrillators in the following locations:

(a) **Bronx:**

(1) Van Cortlandt Park Visitor Center: Broadway at West 242 St., Bronx, NY 10471.

(2) Owen Dolen Golden Age Center: 1400 Westchester Square, Bronx, NY 10461.

(3) St. James Recreation Center: East 192nd St. & Jerome Ave., Bronx, NY 10468.

(4) St. Mary's Recreation Center: East 145th St. & St. Ann's Ave., Bronx, NY 10455.

(5) Williamsbridge Oval Play Center: East 208th St. & Bainbridge Ave., Bronx, NY 10461.

(6) Hunt's Point Recreation Center: Manida St. & Lafayette, Bronx, NY 10474.

(b) **Queens:**

(1) Roy Wilkins Recreation Center: 177th St. & Baisley Blvd., St. Albans, NY 11434.

(2) Sorrentino Recreation Center: 18-48 Cornaga Ave., Far Rockaway, NY 11691.

(3) Lost Battalion Hall: 93-29 Queens Blvd., Rego Park, NY 11374.

(4) Passerelle Building: Flushing Meadows-Corona Park, Flushing, NY 11368.

(5) Olmsted Center: Flushing Meadows-Corona Park, Flushing, NY 11368.

(6) Overlook: 80-30 Park Lane, Kew Gardens, NY 11415.

(c) **Staten Island:**

(1) Cromwell Recreation Center: Pier 6 at Bay and Hannah St., Staten Island, NY 10301.

(2) Stonehenge: 1150 Clove Road, Staten Island, NY 10301.

(3) Conference House: 7455 Hylan Blvd., Staten Island, NY 10307.

(4) Sailor's Snug Harbor: 1000 Richmond Terrace, Staten Island, NY 10301.

(5) High Rock Park: 200 Nevada Ave., Staten Island, NY 10306.

(6) Greenbelt Nature Center: 700 Rockland Ave., Staten Island, NY 10306.

(d) **Brooklyn:**

(1) Herbert Von King Recreation Center: 670 Lafayette Ave., Brooklyn, NY 11216.

(2) Metropolitan Pool: 261 Bedford Ave. (at Metropolitan Ave.), Brooklyn, NY 11211.

(3) Sunset Park Recreation Center: 44th St. at 7th Ave., Brooklyn, NY 11220.

(4) Red Hook Recreation Center: 155 Bay St., Brooklyn, NY 11231.

(5) Litchfield Villa: 95 Prospect Park West, Brooklyn, NY 11215.

(6) Brownsville Recreation Center: 1555 Linden Blvd., Brooklyn, NY 11212.

(7) Salt Marsh Recreation Center: 3302 Avenue U, Brooklyn, NY 11234.

(e) **Manhattan:**

(1) The Arsenal: 830 Fifth Ave., New York, NY 10021.

(2) Alfred E. Smith Recreation Center: 80 Catherine St., New York, NY 10038.

(3) Asser Levy Recreation Center: East 23rd St. at FDR Drive, New York, NY 10010.

(4) Carmine Pool: Clarkson St. & Seventh Ave. South, New York, NY 10014.

(5) Hamilton Fish Recreation Center: 128 Pitt St., New York, NY 10002.

(6) Hansborough Recreation Center: 35 W. 134th St., New York, NY 10037.

HISTORICAL NOTE

Section added (as §2-14) City Record Sept. 19, 2005 eff. Oct. 19, 2005. Note section and internal

renumbering by Law Department per Charter §1045(b). [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 19, 2005:

This rule is required to be promulgated pursuant to §17-188 of the Administrative Code, specifically subsection (e) and is necessary for the law's proper implementation and enforcement. The general purpose of §17-188 of the Administrative Code is to make "Automated External Defibrillators" available and "readily accessible for use during medical emergencies" in accordance with §3000-b of the New York state public health law. Available in "publicly accessible areas" including "parks under the jurisdiction of the department of parks and recreation" will encourage persons to "voluntarily and without expectation of monetary compensation" provide first aid or emergency treatment using an automated defibrillator that has been made available pursuant to this section, to a person who is "unconscious, ill or injured." In response to comments received, an additional location, that of the Salt Marsh Nature Center in Marine Park, was added.

FOOTNOTES

3

[Footnote 3]: * Heading supplied by editor.

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***** Current through December 2009 ****

56 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-01 Application.

These rules apply to the permissible use of the West 79th Street Boat Basin which is located in Riverside Park on the east bank of the Hudson River at West 79th Street in Manhattan. They also govern the Sheepshead Bay Piers adjacent to Emmons Avenue in Brooklyn, the World's Fair Marina in Flushing Bay which is located in Flushing Meadows Corona Park, Queens, and any other marina acquired by the department and which is not covered by a concession agreement with the department. These special rules supplement the general rules which govern the use of city parkland set forth in chapters one and two of this title. To the extent that they are not inconsistent herewith, the rules set forth in chapters one and two of this title apply to the use of the marina, piers and boat basin.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

NOTE 1. Statement of Basis and Purpose in City Record Apr. 1, 1997: The new rules establish the process for obtaining permits to dock vessels at the 79th Street Marina, establish standards to be met by applicants to obtain such permits and set forth the duties and responsibilities of permittees, guests and members of the public who use the marina. These rules inform permittees and other users of the marina of the regulations governing the management of the marina and the standards of conduct applicable to the actions of all marina users. The department expects that the rules will result in increased public use of the marina. 2. Statement of Basis and Purpose in City Record Apr. 14, 2000: The Department of Parks & Recreation ("Parks") has amended chapter 3 of its rules to incorporate the Sheepshead Bay Piers ("Piers") and the World's Fair Marina ("Marina"). The Piers were transferred to Parks from the Department of Business Services, and permits for vessel operators are now issued by Parks' Revenue Division. The Marina was formerly a Parks concession, but after the default of the former concessionaire in October 1999, Parks' Revenue Division also began issuing permits directly to vessel operators. These changes were not included in Parks' regulatory agenda because the premature termination of the concessionaire was not expected. 3. Statement of Basis and Purpose in City Record Feb. 12, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

The amended chapters incorporate the establishment of Parks' Marine Division which is responsible for managing, operating and maintaining division facilities and enforcing Park Rules & Regulations at such facilities. The revisions improve security, safety and operational efficiency at the facilities. A formal appeals process has been included allowing permittees to appeal dockmaster determinations to revoke, terminate or refuse to renew any permit pursuant to these chapters. The rules also provide an updated fee schedule through the 2003 winter and summer seasons. The increased fees are essential to ensure the continued usage and enjoyment of marina facilities for recreational purposes and are intended to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels and improve facility administration. Moreover, these fees are in line with other municipalities and are far below the fees charged by marinas operated by for-profit establishments.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-02 Definitions.

"Boat Basin." The West 79th Street Boat Basin located in Riverside Park on the east bank of the Hudson River at West 79th Street in Manhattan.

"Boat Launch." Any location designated by the commissioner for the launching of vessels of any kind via the use of an automobile or other motorized vehicle down a fixed ramp.

"Chief Dockmaster." Chief of the Department of Parks & Recreation Marine Division. The person appointed by the commissioner that is responsible for the overall administration of division facilities and enforcement of department policies and rules.

"Commercial Permit." A permit to store, dock or launch a vessel used for commercial operations.

"Commissioner." The commissioner of Parks and Recreation.

"Department." The department of Parks and Recreation.

"Dinghy." A tender with a total length of twelve feet or less.

"Dockmaster." The person who administers, manages or maintains the marina, piers and boat basin at the direction of the supervisory or chief dockmaster.

"Emergency." Any situation which the dockmaster determines threatens imminent personal injury, property damage or environmental damage.

"Facility." Any or all of the boat basin, marina and piers.

"Garage." The underground parking garage at the rotunda in the boat basin.

"Guest." A person who enters the marina, piers or boat basin at the invitation of a permittee to board the permittee's vessel.

"Houseboat." Any vessel which is regularly used as a dwelling place and is unable to operate in open water when subject to moderate winds and strong currents.

"Marina." The World's Fair Marina in Flushing Bay, located in Flushing Meadows Corona Park, Queens.

"Marine Division." Department of Parks and Recreation division responsible for managing, operating and maintaining recreational and commercial vessel usage at, but not limited, to the division facilities and mooring fields.

"Parking Permit." Dated written permission to park at the marina parking lot or boat basin garage.

"Permit." A permit to store, dock, moor or launch a vessel at the marina, piers or boat basin. Such term includes, but is not limited to, seasonal dockage permits issued for the 6 month summer season or 12 month terms, transient dockage permits issued on a daily basis, permits to launch kayaks or canoes at the marina, piers or boat basin, permits for commercial vessel operations and special permits for educational research events and special events. Such term does not include parking permits.

"Permittee." The person whose name appears on a permit.

"Permittee Family." Members of a permittee's immediate family, which is restricted to husband, wife, son, daughter or domestic partner, listed on the front page of the permit application. Permittee family members are not designated as guests and do not have any interest in the permit.

"Personal Watercraft." Any mechanically propelled vessel which carries one or more individuals.

"Piers." The piers located on the northern side of Sheepshead Bay, adjacent to Emmons Avenue in Brooklyn.

"Supervisory Dockmaster." Deputy Chief of the NYC Department of Parks & Recreation Marine Division. Responsible for the administration of marine division facilities and enforcement of department policies and rules under the direction of the chief dockmaster.

"Vessel." A floating craft of any kind, including but not limited to a boat, sailboat, motorboat, dinghies, canoe and kayak.

"Waiting list." A list maintained by the department of persons interested in obtaining seasonal dockage permits and mooring permits at the boat basin. This list is the sole method of obtaining a dockage or mooring permit at the boat basin.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

Houseboat added City Record May 4, 2007 §1, eff. June 3, 2007. [See T56 §3-23 Note 2]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

NOTE 1. Statement of Basis and Purpose in City Record Apr. 1, 1997: The new rules establish the process for obtaining permits to dock vessels at the 79th Street Marina, establish standards to be met by applicants to obtain such permits and set forth the duties and responsibilities of permittees, guests and members of the public who use the marina. These rules inform permittees and other users of the marina of the regulations governing the management of the marina and the standards of conduct applicable to the actions of all marina users. The department expects that the rules will result in increased public use of the marina. 2. Statement of Basis and Purpose in City Record Apr. 14, 2000: The Department of Parks & Recreation ("Parks") has amended chapter 3 of its rules to incorporate the Sheepshead Bay Piers ("Piers") and the World's Fair Marina ("Marina"). The Piers were transferred to Parks from the Department of Business Services, and permits for vessel operators are now issued by Parks' Revenue Division. The Marina was formerly a Parks concession, but after the default of the former concessionaire in October 1999, Parks' Revenue Division also began issuing permits directly to vessel operators. These changes were not included in Parks' regulatory agenda because the premature termination of the concessionaire was not expected. 3. Statement of Basis and Purpose in City Record Feb. 12, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

The amended chapters incorporate the establishment of Parks' Marine Division which is responsible for managing, operating and maintaining division facilities and enforcing Park Rules & Regulations at such facilities. The revisions improve security, safety and operational efficiency at the facilities. A formal appeals process has been included allowing permittees to appeal dockmaster determinations to revoke, terminate or refuse to renew any permit pursuant to these chapters. The rules also provide an updated fee schedule through the 2003 winter and summer seasons. The increased fees are essential to ensure the continued usage and enjoyment of marina facilities for recreational purposes and are intended to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels and improve facility administration. Moreover, these fees are in line with other municipalities and are far below the fees charged by marinas operated by for-profit establishments.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-03 Access.

The marina, piers and boat basin are open to permittees, a permittee's family, their guests, contractors and other persons who have obtained the permission of the dockmaster or department to enter. All private contractors must be properly licensed and insured, proof of which shall be registered with the marine division. In addition, the dockmaster shall establish and post regular hours during which the public shall have access to specified portions of the marina and boat basin.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-04 Guests.

Access to the marina, piers and boat basin by guests is subject to the following conditions:

(a) All guests and members of a permittee's family must comply with these rules. Anyone who fails to comply with such rules may be expelled from the facility. Anyone who repeatedly fails to comply with the rules may be permanently barred from the facility. Permittees are responsible for the conduct of their guests and family members. Violations of these rules by guests and/or a permittee's family can be grounds for termination of the permittee's permit in accordance with §3-06(g) of this chapter.

(b) In the interest of safety, the dockmaster may limit the number of guests on a vessel. In no cases shall the number of persons on board a vessel exceed the manufacturer's builders plate.

(c) A permittee must notify the dockmaster in writing of any person who will be boarding his or her vessel when the permittee is not in the marina or boat basin. Guests may not stay overnight on a vessel when the permittee is not on board without a guest pass issued by the dockmaster. The dockmaster may refuse or terminate such permission where he or she has reason to believe that there has been a transfer of the right to occupy the vessel by the permittee to the guest.

(d) If a permittee intends to have a guest remain overnight on his or her vessel while the permittee is not on board, a guest pass must be obtained from the dockmaster. This pass may be issued for up to one month. No guest may remain in the marina or boat basin for longer than one month while the permittee is absent, although the dockmaster has

discretion to extend this limit for good cause. Any guest who has not been authorized to remain overnight in the marina or boat basin will be denied access.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-05 Inspections.

All vessels in the marina, piers and boat basin may be boarded by authorized officers and employees of the department or of other City, State and Federal agencies if necessary to respond to an emergency or urgent health or safety hazard, as part of a general health or safety inspection or as otherwise permitted by applicable law. It shall be a violation of these rules for a permittee to refuse to allow, prevent or interfere with such boarding.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

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Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-06 Permits.

(a) No person shall dock, store or launch a vessel at a facility without an appropriate permit from the department and without payment of all required fees.

(b) A permit shall not be issued for a vessel which is unsafe or likely to cause injury to people or damage to property as determined by the dockmaster.

(c)(i) Dockage permits shall only be issued for vessels that the chief dockmaster determines are capable of operating in open water. All vessels (transient, seasonal, mooring or year round) must be and remain in safe operational condition. Any existing permittee with an operational and seaworthy vessel must continuously maintain an operational and seaworthy vessel. All vessels that are brought to any department facility must be seaworthy and must meet operational requirements to the original manufacturer's specifications. The chief dockmaster shall require a demonstration of a vessel's seaworthiness and compliance with the manufacturer's specifications, and shall require that any modifications to the vessel be approved by a certified naval architect to ensure compliance with original manufacturer's specifications. Before issuing a permit and otherwise upon reasonable notice, the chief dockmaster may inspect a vessel and/or require a demonstration of the vessel's operational capability in open water.

(ii) Paragraph (i) of this subdivision shall not apply to the renewal of 12 month dockage permits for vessels that were docked in the boat basin prior to May 1, 1997, unless they are sold or otherwise transferred. However, if a vessel that is covered by this exemption leaves the boat basin for any reason, then it will lose this exemption and it must return capable of operating to the original manufacturer's operating standards. Vessels that lose this exemption must be

maintained as an operating vessel for the term of any permit. In addition, on and after May 1, 2009, no exemptions will apply to any vessels, year round or otherwise, at the boat basin and all vessels must be and remain operational for the life of the permit.

(iii) For the boat basin only, the department may offer up to 52 winter season permits at any time (less any existing winter permits) first, to existing summer season permit holders in seniority order and second, to individuals on the waiting list in list order, creating 12 month or year-round dockage permits. The location of winter season slips will be determined by the chief dockmaster and allocated by seniority order. However, the chief dockmaster may change the location and/or number of these slips as necessary to ensure the safety of vessels and the boat basin. Except for vessels covered by the temporary exemption in paragraph (ii) of this subdivision, no permit, summer or winter, shall be issued to a houseboat.

(d) Dockage permits shall not be issued unless the applicant presents evidence of hull and liability insurance, either New York State registration or documentation by the U.S. Coast Guard and successful completion of a U.S. Coast Guard boating safety course or sufficient nautical experience as determined by the dockmaster. In addition, the vessel for which the permit is to be issued must be well maintained and seaworthy.

(e) A permit shall be issued to the named permittee for a particular vessel and is not transferable. If a permittee replaces a vessel, the dockmaster may only approve the new vessel after a suitable slip has been found before it may be docked pursuant to the permit. The dockmaster shall reject a replacement vessel which is not capable of operating in open water, not properly insured or which is neither New York State registered nor documented by the U.S. Coast Guard. The dockmaster may inspect and/or require a demonstration of the replacement vessel's operational capability in open water.

(f) All completed permit applications shall be submitted to the department. All outstanding fees, charges, fines and civil penalties must be paid before a renewal application will be considered.

(g) The supervisory dockmaster may revoke, terminate or refuse to renew any permit issued pursuant to this section:

(i) where the permittee or applicant for renewal has been found liable in a proceeding before the environmental control board or in a court of three or more violations of these rules or the rules set forth in chapters one and two of this title

(ii) where the applicant for renewal or permittee has failed to pay any outstanding fees, charges, fines or civil penalties within 15 days of the date of mailing of a written notice of such outstanding amount

(iii) where the permittee or applicant for renewal has been found liable in a proceeding before the environmental control board or in a court of engaging in disorderly behavior as defined in §1-04(i), paragraphs (6), (7) and (9) of chapter one of this title or (iv) as provided in subdivision i of this section, in accordance with the needs or requirements of the department or the interests of the city as determined by the supervisory dockmaster.

The supervisory dockmaster shall mail or hand deliver notice of the intention to revoke, refuse to renew or terminate a permit and the reasons therefor. In the event that a mailing address is unknown or mail is returned undelivered, such notice may, in lieu of mailing or hand delivery, be posted in a conspicuous place on the vessel.

(h) (i) A permittee or applicant for renewal may file written objections with the chief dockmaster within 10 days from the date of such mailing, delivery or posting. The objections must set forth the reasons why the permit should not be terminated or revoked or should be renewed, and include any evidence supporting the objection. The filing of objections will not prevent the chief dockmaster from barring the permittee from the facility if the chief dockmaster specifically finds that it is in the public interest to do so. After considering any objections raised by the applicant or permittee, the chief dockmaster shall make a determination whether to revoke, refuse to renew or terminate the permit

and shall provide notice of such determination to the permittee or applicant for renewal in the above manner.

(ii) A permittee or applicant for renewal may file written objections with the commissioner within 10 days from the date of the written decision of the chief dockmaster. The objections must set forth the reasons why the permit should not be terminated or revoked or should be renewed, and include any evidence supporting the objection. After considering any objections raised by the applicant or permittee, the commissioner shall make a final determination whether to affirm or reverse the chief dockmaster's determination to revoke, refuse to renew or terminate the permit and shall provide notice of such determination to the permittee or applicant for renewal in the above manner.

(i) Nothing in this chapter shall be construed to create a property right in any permit. All permits issued by the department are by their nature terminable at will by the commissioner in accordance with the needs or requirements of the department or in the interest of the city as determined by the commissioner.

(j) An applicant for renewal or a former permittee who has been found liable in a proceeding before the Environmental Control Board or in a court of violating any provision of these rules or the rules set forth in chapters one and two of this title or who has a delinquent payment record may be required to make a deposit before a renewal application will be considered.

(k) All permittees must maintain hull and liability insurance policies naming the City as an additional insured on the policy for docked vessels and provide the dockmaster with a copy of the insurance certificate. Proof of such insurance must be submitted to the dockmaster by May 1 of each year. The insurance must be valid for the length of the permit and any lapse in coverage will be considered automatic grounds for termination of the permit.

(l) The dockmaster may impose other reasonable conditions on the issuance or renewal of a permit to protect public safety or to safeguard the interests of the city.

(m) (i) Where a permit expires or is revoked, terminated or not renewed, the vessel must be removed from the facility within 10 days after written notice by the supervisory dockmaster to remove it is mailed or hand-delivered to the applicant or permittee. In the event that a mailing address is unknown or mail is returned undelivered, such notice may in lieu of such mailing be posted in a conspicuous place on the vessel. Where the vessel is not removed within 10 days, the department may remove the vessel or cause the vessel to be removed from the facility. Except where a vessel enters the facility due to an emergency, the dockmaster may immediately and without notice remove any vessel which enters or remains in the facility without an appropriate permit.

(ii) The permittee or owner shall be liable for the costs of removal and storage of the vessel, payable prior to release of the vessel. Any vessel removed from the facility which is not claimed within 30 days shall be deemed to be abandoned and shall be treated in accordance with applicable law.

(n) Every applicant and permittee must provide the dockmaster with an address in writing at which he or she may receive notice required by these rules or other applicable law. Any change in address must be reported in writing to the dockmaster within 10 days.

(o) A permittee may choose to postpone keeping a vessel at the boat basin for any particular season only once in the life of the permit. Permittees must submit a letter to the chief dockmaster at least 90 days prior to the start of the season in question stating that they will be opting to keep the vessel out of the boat basin.

(p) Permits will be immediately revoked for any of the following reasons:

(i) Conduct endangering the safety of any person.

(ii) Fire aboard a vessel that is determined to be caused by the improper upkeep of a vessel.

(iii) The improper use of heating equipment, including the storing of kerosene, installation or repair of electrical equipment by other than a qualified electrician.

(iv) A violation of §3-13.

(v) Trespassing aboard another vessel docked or moored at a marine division facility.

(vi) Violation of this subdivision by guests or immediate family members of a permit holder.

(vii) Renting or subletting of permits.

(viii) Any other action which interferes with the safe operation of division facilities, including but not limited to violations of §3-08.

(q) Any person who docks or abandons a vessel at the boat basin, marina or piers without authorization and who refuses to remove the vessel immediately upon written notice, will not be eligible to request or receive a permit or berth of any type for any facility for a minimum of 24 months. Objections to the denial of permit eligibility shall be available under subdivision h of §3-06 of this chapter.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

Subd. (c) amended City Record May 4, 2007 §2, eff. June 3, 2007. [See T56 §3-23 Note 2]

Subd. (q) added City Record May 4, 2007 §3, eff. June 3, 2007. [See T56 §3-23 Note 2]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

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Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-07 Waiting List.

The department shall maintain and utilize a waiting list for the issuance of seasonal dockage permits and mooring permits, which shall be available upon request from the department. Applications for the waiting list must be mailed to the Department of Parks & Recreation, Legal Office, The Arsenal, 830 5th Avenue, NY, NY 10021 att: Boat Basin Waiting List via return receipt U.S. mail on forms supplied by the department and accompanied by a processing fee of $25.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter

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Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 3-08

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-08 Conduct.

(a) No person shall urinate or defecate into the water or along the docks and walkways of the facility. No person shall use a toilet in the facility which discharges into the water without marine sanitation devices approved by the New York State Department of Environmental Conservation. Composting toilet systems are not permitted. All vessels with waste holding tanks must discharge waste through the pump out station or by other methods approved by the New York State Department of Environmental Conser- vation.

(b) No person shall discharge into the water or on the docks and walkways any oil, spirits, drift, debris, inflammable liquids, rubbish or refuse.

(c) No person shall bring or park a motor vehicle on the promenade or docks without the prior written approval of the dockmaster.

(d) No person shall make or cause or allow to be made unreasonable noise in the facility so as to cause public inconvenience, annoyance, or harm. Unreasonable noise means any excessive or unusually loud sound that disturbs the peace, comfort, or repose of a reasonable person of normal sensitivity or injures or endangers the health or safety of a reasonable person of normal sensitivity. The dockmaster may restrict the outdoor use of radios, record players, compact disc players, television receivers, tape recorders and other sound reproduction devices after 10 p.m. Sunday through Thursday and after midnight on Friday and Saturday.

(e) Garbage shall be placed in plastic bags and deposited in designated receptacles.

(f) No person shall make an open flame or operate a barbecue grill in the facility, on the docks or walkways or on any vessel.

(g) No person shall store or use any machinery or equipment for welding or burning where such storage or use is prohibited by the fire code or other law or rule.

(h) No person shall ride or store a bicycle or other vehicle on the walkways and docks.

(i) Any person who engages in disorderly behavior as defined in §1-04(i), paragraphs (6), (7) and (9) of chapter 1 of this title may, in addition to any other applicable penalties, be expelled immediately from the marina facility.

(j) No running or skating on the dock.

(k) No advertising from the vessel while docked or moored at a division facility.

(l) No person may offer or provide any form of tip, money, gift or any other gratuity to any City employee at any facility. No person may procure any services from department staff except as specifically allowed under these rules. Violations of this provision will result in termination of any permit and will bar the violator from any department facility for a minimum of 24 months. Objections to termination of a permit or denial of permit eligibility shall be available under subdivision h of §3-06 of this chapter.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

Subd. (l) added City Record May 4, 2007 §4, eff. June 3, 2007. [See T56 §3-23 Note 2]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

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***** Current through December 2009 ****

56 RCNY 3-09

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-09 Docking of Vessels.

(a) Vessels must be docked at slips designated by the dockmaster. Slips will be assigned using an appropriate ratio of slip length, width, depth of water and strength of docks to a vessel's length, beam, draft and tonnage. If two vessels of equal characteristics are vying for the same slip, seniority will be the determining factor. Seniority is established by holding a valid permit and being in good standing for the longest period of time. Good standing means that all accounts with the department are paid in full. Slips may not be changed or exchanged without the prior written approval of the dockmaster. Inoperable vessels will not be assigned to slips that are designated by the Department for running vessels.

(b) All vessels shall be adequately tied to the dock and shall have sufficient fenders and dock lines to secure the vessel in all wind and weather conditions. The dockmaster may require the replacement of dock lines which he or she finds to be inadequate or, where necessary, may in his or her discretion replace the dock lines and charge the cost to the permittee or owner of the vessel.

(c) Vessels may be temporarily relocated within or outside the facility in an emergency or to accommodate construction work at the facility. When a vessel must be moved to accommodate construction work the dockmaster will give the permittee or owner 48 hours written notice to move the vessel. If the vessel is not moved within the required time the dockmaster may move the vessel or cause the vessel to be moved and charge all costs associated with moving or storage to the permittee or owner.

(d) Vessels which are improperly secured in an unassigned slip or area may be towed to the assigned slip by the Dockmaster or Marine Division staff, and the appropriate Labor Rate shall be charged to the owner of such vessel.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

Subd. (d) added City Record Mar. 10, 2004 §1, eff. Apr. 9, 2004. [See T56 §3-23 Note 1]

FOOTNOTES

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56 RCNY 3-10

RULES OF THE CITY OF NEW YORK

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CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-10 Condition of Vessels.

(a) All vessels in the facility and all equipment thereon shall be maintained in good order and free of any hazard to persons, vessels or facility structures. In addition, all vessels docked at the piers or the marina must be seaworthy.

(b) No structural modifications may be made to the superstructure of a vessel docked at the facility and/or permitted to use the facility. No modifications shall be made which will in any way limit the movement of the vessel, change the center of gravity to the extent that the vessel is unseaworthy, restrict the navigation by removal of the helm station, inhibit the line of sight forward from the helm, increase the height of the vessel or extend the vessel over water beyond the existing hull, or increase the load beyond the manufacturer's hull design capacity.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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56 RCNY 3-11

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-11 Operation of Vessels.

(a) All vessels entering, leaving or moving within the facility shall be operated under mechanical power except in an emergency. All vessels in the facility shall be operated at speeds so as not to create a wake.

(b) A permittee holding a seasonal dockage permit must notify the dockmaster in writing prior to removing a vessel from the facility for more than 48 hours. In order to maximize access to the marina or boat basin, the dockmaster may issue a transient dockage permit for the permittee's assigned slip during such absence. A permittee who fails to notify the dockmaster of his or her scheduled return time or who returns before his or her scheduled return time may be required to remain outside the marina or boat basin until a vacant slip is available.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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56 RCNY 3-12

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-12 Required Safety Equipment.

All vessels docked in the facility shall have on board at all times all equipment required by the Coast Guard, as well as for vessels longer than 25 feet:

(a) Two 10-pound CO_2 canister fire extinguishers or two dry chemical 20 pound ABC fire extinguishers approved for marine use and stored at opposite ends of the vessel.

(b) No fewer than two operable automatic smoke alarms.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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56 RCNY 3-13

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-13 Utilities.

(a) Vessels docked at the marina and boat basin may only be supplied with electricity through the metered electrical hook up at its assigned slip. All electrical or utility connections must be free of defects. No person shall tamper or interfere with an electric meter. A permittee must pay all metered charges for electricity. Electrical lines shall not be rigged or positioned so as to obstruct walkways or docks.

(b) Electricity shall not be used for heating a vessel. The dockmaster may issue orders limiting or restricting the installation and use of appliances which he or she determines require quantities of electricity that may disrupt electrical service at the marina or boat basin.

(c) At those times when the department does not supply fresh water to vessels docked at the marina or boat basin, permittees may fill on-board tanks from a water line at the head of the dock. Hoses shall not be rigged or positioned so as to obstruct walkways and docks, or to cause leakage or ice accumulation.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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56 RCNY 3-14

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-14 Maintenance and Use of Docks.

(a) Except as hereinafter provided, personal property shall not be stored on piers, docks or walkways. Personal property may be stored by a permittee in a dock box no larger than 30 cubic feet and no higher than 30 inches located on a fixed pier. At the marina, personal property may also be stored in dock boxes on floating docks if permission is granted by the dockmaster. The name of the permittee shall be clearly posted on the dock box. The dock box shall be positioned so as not to obstruct the walkway or impede access to the vessel. The location of the dock box shall be subject to the approval of the dockmaster. No dock boxes shall be permitted on floating piers at the boat basin.

(b) Personal property left unattended on a pier in violation of this provision, including noncomplying dock boxes, shall be subject to removal by the dockmaster. The dockmaster shall give notice to the owner of the property prior to such removal if the identity of and an address for such person are reasonably ascertainable or to the permittee of the vessel docked in the slip adjacent to the place from which the property was removed. The cost of the removal and storage of such property shall be charged to the owner or permittee and shall be payable prior to release of the property. Any personal property which is unclaimed after thirty days shall be deemed to be abandoned and shall be turned over to the police property clerk for disposal pursuant to law.

(c) It shall be unlawful to construct, reconstruct, alter, add to, extend or physically alter in any manner any slip, dock or pilings without the prior written approval of the dockmaster. Permittees may utilize boarding steps approved by the dockmaster.

(d) A permittee shall keep the dock adjacent to his or her vessel, including the finger pier, free of refuse, rubbish

and litter at all times.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

NOTE 1. Statement of Basis and Purpose in City Record Apr. 1, 1997: The new rules establish the process for obtaining permits to dock vessels at the 79th Street Marina, establish standards to be met by applicants to obtain such permits and set forth the duties and responsibilities of permittees, guests and members of the public who use the marina. These rules inform permittees and other users of the marina of the regulations governing the management of the marina and the standards of conduct applicable to the actions of all marina users. The department expects that the rules will result in increased public use of the marina. 2. Statement of Basis and Purpose in City Record Apr. 14, 2000: The Department of Parks & Recreation ("Parks") has amended chapter 3 of its rules to incorporate the Sheepshead Bay Piers ("Piers") and the World's Fair Marina ("Marina"). The Piers were transferred to Parks from the Department of Business Services, and permits for vessel operators are now issued by Parks' Revenue Division. The Marina was formerly a Parks concession, but after the default of the former concessionaire in October 1999, Parks' Revenue Division also began issuing permits directly to vessel operators. These changes were not included in Parks' regulatory agenda because the premature termination of the concessionaire was not expected. 3. Statement of Basis and Purpose in City Record Feb. 12, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

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***** Current through December 2009 ****

56 RCNY 3-15

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CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-15 Removal of Sunken Vessel.

The dockmaster may require that any vessel which sinks be removed from the facility until appropriate repairs are made. A sunken vessel shall be removed from the facility within 48 hours after oral or written notice by the dockmaster to remove the vessel. Upon request of the permittee or owner, the dockmaster may in writing extend the time for removal of the vessel. If the vessel is not removed within the allowed time, the dockmaster may remove the vessel or cause it to be removed and may recover the cost of the removal and of storage or disposal of the vessel from the permittee or owner of the vessel. If the dockmaster determines that a sunken vessel is discharging pollutants into the water or causing any other kind of emergency, the department may take action to stop the cause of pollution and may remove or cause the vessel to be removed, without prior notice to the permittee or owner of the vessel, and recover all costs associated with removal and storage or disposal of the vessel from the permittee or owner of the vessel.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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56 RCNY 3-16

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CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-16 Dinghies, Kayaks and Canoes.

(a)(i) Any dinghy over 14 feet in length must be stored on the vessel with a valid permit from the department. Any dinghy over 14 feet in length and stored in water will be considered a separate vessel and require an independent transient permit. Any dinghy 14 feet or less must be stored on the vessel or in a designated dinghy area as determined by the department. Only one dinghy shall be permitted per vessel.

(ii) Kayaks and canoes may either be stored on the vessel with a valid permit from the department, or in the areas specifically designed by the department for such storage.

(b) Boat Launches: A department permit is required to launch a vessel operated by a motor at a department managed boat launch. The department will set and post specific rules at each agency managed boat launch. Failure to comply with posted rules will result in loss of access to the launch.

(c) Boating or use of a personal watercraft adjacent to any authorized bathing beach is prohibited. Use of personal watercraft is prohibited upon any waters under the jurisdiction of the department, unless the commissioner specifically authorizes use of personal watercraft in such area.

HISTORICAL NOTE

Section repealed and added City Record May 4, 2007 §5, eff. June 3, 2007. [See T56 §3-23 Note 2]

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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56 RCNY 3-17

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CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-17 Parking of Motor Vehicles.

(a) No person shall park at the garage at the boat basin or the marina parking lot without a parking permit issued by the dockmaster. Parking permits shall be issued to permittees who hold dockage, mooring or kayak permits for vessels and shall expire at the same time as that permit. If there are more permittees than available spaces, the department shall maintain a waiting list of permittees eligible for parking permits, which shall be available upon request. Parking permits are issued to the person named on the permit and are valid only for the registered vehicle identified on the permit. Parking permits are not transferable. Any assignment or attempted assignment of a garage parking permit shall result in the cancellation of such permit.

(b) No person shall remain overnight in the garage or parking lot or in a vehicle parked in the garage or parking lot. The department may remove or cause to be removed any vehicle which is parked in the garage or parking lot without a current parking permit or without payment of all required fees. The cost of towing and storage of the vehicle shall be charged to the permittee or owner of the vehicle and shall be payable prior to release of the vehicle. Any vehicle which is unclaimed after thirty days shall be deemed to be an abandoned vehicle and shall be disposed of pursuant to the procedures set forth in §1224 of the Vehicle and Traffic Law.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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56 RCNY 3-18

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Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-18 Pets.

(a) It is a violation of these rules to keep an animal as a pet at the facility where the keeping of such animal is prohibited by the New York City Health Code or any other law or rule.

(b) The owner or other person in charge or control of a pet shall expeditiously remove, clean or clear all feces or vomit deposited by the pet from the walkways and docks.

(c) The dockmaster may order the removal of a pet from the facility where the owner or other person in charge or control of the pet has failed or refused to prevent the pet from harassing or harming other persons or has failed or refused repeatedly to remove, clear or clean feces or vomit deposited by the pet on the walkways or docks.

(d) All dogs, cats and other pets must be kept on a leash, or in appropriate carrying cases or cages, when not confined aboard a vessel.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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56 RCNY 3-19

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CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-19 Orders.

In addition to the orders specifically referred to in these rules, the department may issue any other orders which may be necessary or appropriate to enforce compliance with these rules or the rules set forth in chapters one and two of this title or to safeguard persons or property at the facility. It shall be a violation of these rules to fail or refuse to comply with such orders.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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56 RCNY 3-20

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§3-20 Unlawful Use of Slip or Vessel.

No person shall permit or cause any slip or vessel or any portion thereof to be used or occupied for an illegal purpose.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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§3-21 Penalties.

In addition to any penalties provided for in the chapter, violations of these rules shall be punishable as provided in §1-07 of chapter one of this title.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-22 Commercial Permits.

Commercial permits may be issued at the boat basin and marina to operators of commercial vessels upon terms to be determined by the department. The chief dockmaster is authorized to exempt holders of these commercial permits from certain rules set forth in this chapter 3.

Vessels docked under non-commercial permits may not engage in commercial activity without the express written approval of the department. This approval must be attained on an annual basis. Complete commercial plans must be provided to the department and no advertising may take place at the marina or boat basin. Commercial trips must involve 6 passengers or less and must pay the commercial pickup fee (6 passengers or less) for each trip in addition to regular dockage. Any vessel planning commercial trips involving more than 6 passengers must apply for a commercial permit and may not operate under a non-commercial permit. Operators must comply with all other department rules and regulations and other applicable rules and regulations for such vessels.

The Sheepshead Bay Piers are managed for recreational charter boat and related purposes. Only commercial vessels involved in recreational charter boat, entertainment cruise, recreational fishing or related recreational services will be offered dockage permits.

HISTORICAL NOTE

Section amended City Record May 4, 2007 §6, eff. June 3, 2007. [See T56 §3-23 Note 2]

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section added City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

NOTE 1. Statement of Basis and Purpose in City Record Apr. 1, 1997: The new rules establish the process for obtaining permits to dock vessels at the 79th Street Marina, establish standards to be met by applicants to obtain such permits and set forth the duties and responsibilities of permittees, guests and members of the public who use the marina. These rules inform permittees and other users of the marina of the regulations governing the management of the marina and the standards of conduct applicable to the actions of all marina users. The department expects that the rules will result in increased public use of the marina. 2. Statement of Basis and Purpose in City Record Apr. 14, 2000: The Department of Parks & Recreation ("Parks") has amended chapter 3 of its rules to incorporate the Sheepshead Bay Piers ("Piers") and the World's Fair Marina ("Marina"). The Piers were transferred to Parks from the Department of Business Services, and permits for vessel operators are now issued by Parks' Revenue Division. The Marina was formerly a Parks concession, but after the default of the former concessionaire in October 1999, Parks' Revenue Division also began issuing permits directly to vessel operators. These changes were not included in Parks' regulatory agenda because the premature termination of the concessionaire was not expected. 3. Statement of Basis and Purpose in City Record Feb. 12, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

The amended chapters incorporate the establishment of Parks' Marine Division which is responsible for managing, operating and maintaining division facilities and enforcing Park Rules & Regulations at such facilities. The revisions improve security, safety and operational efficiency at the facilities. A formal appeals process has been included allowing permittees to appeal dockmaster determinations to revoke, terminate or refuse to renew any permit pursuant to these chapters. The rules also provide an updated fee schedule through the 2003 winter and summer seasons. The increased fees are essential to ensure the continued usage and enjoyment of marina facilities for recreational purposes and are intended to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels and improve facility administration. Moreover, these fees are in line with other municipalities and are far below the fees charged by marinas operated by for-profit establishments.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 3-23

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-23 Fees.

(a) West 79th Street Boat Basin*

May 2004 May 2005 and 2006 May 2007 May 2008 andthereafter

Seasonal Dockage** Summer (May 1-October 31) $100/linear foot or $2500, whichever shall be greater. $100/linear foot or $2500, whichever shall be greater. $104/linear foot or $2,600, whichever shall be greater. $108/linear foot or $2,700, whichever shall be greater.

Winter(November 1-April 30) Current Winter Permittees' only $75/linear foot $75/linear foot $82/linear foot or $2,050, whichever shall be greater. $88/linear foot or $2,200 whichever shall be greater.

Dock & Dine (4 hour maximum) 25 feet or less $25 $25 $25 $25

26 feet or more $30 $30 $32 $32

Transient Dockage Non-commercial boats only $2.50/linear foot/day(24 hours) $2.50/linear foot/day (24 hours) $2.75/linear foot/day (24 hours) $2.75/linear foot/day (24 hours)

Kayak/canoe Storage $250/every six months $250/every six months $350 per year $350 per year

Dinghy/motor storage (Nov 1-April 30 only) Dingy must be clear of barnicles and sea growth. Engine must be

drained of fuel. No auxiliary fuel tanks allowed. $175 per winter $175 per winter

Parking Rotunda Parking Garage; Permit holders only $250/month $250/month $250/month $250/month

Slip Dockage Waiting List Application $60 $60 $75 $75

Commercial Landing Fee 30 minute maximum for loading and 30 minutes for unloading $4/linear foot $4/linear foot $4/linear foot $4/linear foot

Commercial Pickups 6 passengers or less $32 per trip $32 per trip

Sanitation WasteSystem Pump Out Commercial vessels only $75 plus labor $75 plus labor $80 plus labor $80 plus labor

Water Pump Out Per pump provided, plus labor $65 $65 $65 $65

Labor Rate $75/hour $75/hour $75/hour $75/hour

Transient Electric 30 amp $10/day $10/day $10/day $10/day

50 amp100 amp $20/day$35/day $20/day$35/day $20/day$35/day $20/day$35/day

Electricity For permit holders only $0.20/kilowatt hour $0.20/kilowatt hour $0.20/kilowatt hour $0.20/kilowatt hour

Parking Pass Daily $10 $10 $10 $10

Towing OutsideMarina Non commercial boats only $150/hour $150/hour $150/hour $150/hour

PassengerPickup/Dropoff Non-commercialboats only50 feet or less $10 $10 $10 $10

51 feet or more $25 $25 $25 $25

Key Deposit or replacement $10.00 $10.00

Team Canoe Storage Summer only; competition canoes $750.00 per boat $750.00 per boat $750.00 per boat $750.00 per boat

* No cash will be accepted for transactions. All boat basin transactions must take place in the marina dockhouse. No financial transaction may take place on the piers or in a private boat.

** Depending on weather, summer dockage customers may be allowed, at their request, to extend their stay into November or to arrive early in April. Extensions will be approved and billed on a weekly basis and the pro-rated bill will be based on the summer dockage six month permit. Extensions are solely at the discretion of the department.

(b) World's Fair Marina***

May 2004 May 2005 May 2006 May 2007 andthereafter

Summer Dockage** 20 feet or less21 to 26 feet27 to 35 feet36 to 45 feet46 to 65 feet66 feet or greater $1250$65/linear foot$68/linear foot$72/linear foot$88/linear foot$110/linear foot $1300$68/linear foot$71/linear foot$76/linear foot$93/linear foot$115/linear foot $1300$68/linear foot$71/linear foot$76/linear foot$93/linear foot$115/linear foot $1325$70/linear foot$73/linear foot$78/linear foot$95/linear foot$118/linear foot

Commercial Charter Boat May 1 to October 31November 1 to April 30 $120/linear foot$40/linear foot $130/linear foot$50/linear foot $130/linear foot$50/linear foot $135/linear foot$52/linear foot

Winter Storage Water $28/linear foot $35/linear foot $35/linear foot $35/linear foot or $700 whichever shall be greater

Land Spots to be determined by seniority $36/linear foot $43/linear foot $43/linear foot $46/linear foot or $920 whichever shall be greater

Dock & Dine (4 hour maximum) 25 feet or less26 feet or more $20$25 $20$25 $20$25 $20$25

Transient Dockage Non-commercial boats only $2/linear foot/day $2/linear foot/day $2/linear foot/day $2/linear foot/day

Sporting Events/Concerts in park (event duration only) $1/linear foot $1/linear foot $1/linear foot $1/linear foot

Transient Electricity 30 amp50 amp100 amp $7/day$12/day$40/day $7/day$12/day$40/day $7/day$12/day$40/day $7/day$12/day$40/day

Electricity For permit holders only $0.20/kilowatt hour $0.20/kilowatt hour $0.20/kilowatt hour $0.20/kilowatt hour

Commercial Landing Fee 30 minute maximum for loading and 30 minutes for unloading $3/linear foot $3/linear foot $3/linear foot $3/linear foot

Passenger Pickup/Drop-off 25 feet or less26 to 50 feet51 feet or more $5$10$25 $5$10$25 $5$10$25 $5$10$25

SanitationSystem Pump Out (commercial vessels only) $60 plus labor $75 plus labor $75 plus labor $80 plus labor

Water Pump Out Per pump provided $40 plus labor $40 plus labor $40 plus labor $45 plus labor

Labor Rate $65/hour $75/hour $75/hour $75/hour

Parts Boat repair, maintenance Sold at Manufacturer Suggested Retail Price (MSRP) Sold at Manufacturer Suggested Retail Price (MSRP) Sold at Manufacturer Suggested Retail Price (MSRP) Sold at Manufacturer Suggested Retail Price (MSRP)

Crane ServiceTravel LiftForkliftHaul Out $100/hour$100/hour$90/hour$2.50/linear foot $100/hour$100/hour$90/hour$2.50/linear foot $100/hour$100/hour$90/hour$2.50/linear foot $100/hour$100/hour$90/hour$2.50/linear foot

Launch Using travel lift $2.50/linear foot $2.50/linear foot $2.50/linear foot $2.50/linear foot

Move One Away $2.50/linear foot $2.50/linear foot $2.50/linear foot $2.50/linear foot

Block $2.50/linear foot $2.50/linear foot $2.50/linear foot $2.50/linear foot

Load on Trailer Using travel lift $2.50/linear foot $2.50/linear foot $2.50/linear foot $2.50/linear foot

Pressure Wash Bottom $2.50/linear foot $2.50/linear foot $2.50/linear foot $2.50/linear foot

Step or Unstep Mast $5/linear foot $5/linear foot $5/linear foot $5/linear foot

Towing Inside Marina $65/hour $75/hour $75/hour $75/hour

Towing OutsideMarina $150.00/hour $150.00/hour $150.00/hour $150.00/hour

BottomPainting 30 feet or less31 feet or more $13.75/linear foot$14.75/linear foot $13.75/linear foot$14.75/linear foot $13.75/linear foot$14.75/linear foot $13.75/linear foot$14.75/linear foot

Team Canoe Storage Summer $500.00 per boat $500.00 per boat $500.00 per boat $500.00 per boat

Winter $250.00 per boat $250.00 per boat $250.00 per boat $250.00 per boat

Key Deposit or replacement $10.00 $10.00 $10.00 $10.00

** Depending on weather, summer dockage customers may be allowed, at their request, to extend their stay into November. Extensions will be approved and billed on a weekly basis and the pro-rated bill will be based on the summer dockage six month permit. Extensions are solely the discretion of department.

***No cash will be accepted for transactions.

(c) Sheepshead Bay Piers

Yearly Dockage $120.00/linear foot on or before May 2007;

$125.00/linear foot on and after May 2007

Transient Rate**** Non-commercial vessels: $2 foot per day: up to 24 hours$20: 4 hours dock and dine

Commercial Vessels: Loading and unloading$3 per foot: 30 minutes maximum loading and unloading$3 per foot for each hour beyond 30 minutes loading/unloading

Commercial Vessels: Daily Transient Dockage Rate$2 foot per day: up to 24 hours

**** There will be no cash transactions.

HISTORICAL NOTE

Section amended City Record May 4, 2007 §7, eff. June 3, 2007. [See Note 2]

Section amended City Record Mar. 10, 2004 §2, eff. Apr. 9, 2004. [See Note 1]

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section added City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 10, 2004:

These rules are promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

The rules provide an updated fee schedule through the 2005 winter and summer seasons. The increased fees are essential to ensure the continued usage and enjoyment of marina facilities for recreational purposes and are intended in part to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels and improve

facility administration.

2. Statement of Basis and Purpose in City Record May 4, 2007: These rules are promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under §§389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. The rules provide an updated fee schedule. The increased fees are essential to ensure the continued usage and enjoyment of marina facilities for recreational purposes and are intended in part to provide funding for the Department to sustain appropriate staffing levels and improve facility administration. In addition, the rules provide for additional winter permits at the Boat Basin to address demand for such permits and prohibit houseboats starting in 2009 to improve safety and to increase recreational use at the Boat Basin.

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

NOTE 1. Statement of Basis and Purpose in City Record Apr. 1, 1997: The new rules establish the process for obtaining permits to dock vessels at the 79th Street Marina, establish standards to be met by applicants to obtain such permits and set forth the duties and responsibilities of permittees, guests and members of the public who use the marina. These rules inform permittees and other users of the marina of the regulations governing the management of the marina and the standards of conduct applicable to the actions of all marina users. The department expects that the rules will result in increased public use of the marina. 2. Statement of Basis and Purpose in City Record Apr. 14, 2000: The Department of Parks & Recreation ("Parks") has amended chapter 3 of its rules to incorporate the Sheepshead Bay Piers ("Piers") and the World's Fair Marina ("Marina"). The Piers were transferred to Parks from the Department of Business Services, and permits for vessel operators are now issued by Parks' Revenue Division. The Marina was formerly a Parks concession, but after the default of the former concessionaire in October 1999, Parks' Revenue Division also began issuing permits directly to vessel operators. These changes were not included in Parks' regulatory agenda because the premature termination of the concessionaire was not expected. 3. Statement of Basis and Purpose in City Record Feb. 12, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

The amended chapters incorporate the establishment of Parks' Marine Division which is responsible for managing, operating and maintaining division facilities and enforcing Park Rules & Regulations at such facilities. The revisions improve security, safety and operational efficiency at the facilities. A formal appeals process has been included allowing permittees to appeal dockmaster determinations to revoke, terminate or refuse to renew any permit pursuant to these chapters. The rules also provide an updated fee schedule through the 2003 winter and summer seasons. The increased fees are essential to ensure the continued usage and enjoyment of marina facilities for recreational purposes and are intended to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels and improve facility administration. Moreover, these fees are in line with other municipalities and are far below the fees charged by marinas operated by for-profit establishments.

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-01 Application.

These rules apply to the permissible use of mooring fields in Sheepshead Bay, Great Kills Harbor and adjacent to the West 79th Street Boat Basin that are under jurisdiction of the department. These rules supplement the general rules which govern the use of city park land set forth in chapters one and two of this title. To the extent that they are not inconsistent herewith, the rules set forth in chapters one, two and three of this title apply to the use of the mooring fields.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Section added City Record Apr. 16, 1997 eff. May 16, 1997. [See Chapter 4 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. See footnote to T56 Chapter 3. Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000. See footnote to T56 Chapter 3.

Chapter added City Record Apr. 16, 1997 eff. May 16, 1997; Note other provisions of City Record Apr. 16, 1997:

Recently, the U.S. Coast Guard announced its intention to cease issuing permits for moorings in the Special Anchorage Areas in Great Kills Harbor and Sheepshead Bay. The Department of Parks & Recreation has assumed jurisdiction over these areas, and effective immediately will begin issuing permits in these areas. Consequently, the Department must establish rules to govern the issuance of permits for these moorings, as well as to regulate conduct in the mooring fields. These rules are based on the rules utilized by the U.S. Coast Guard. These rules will also apply to anchorage areas north and south of the 79th Street Marina.

City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

FINDING OF SUBSTANTIAL NEED FOR IMMEDIATE EFFECTIVENESS OF RULE I hereby find, pursuant to §1043(e)(1)(c) of the City Charter, that there is a substantial need for the implementation of rules, upon publication, for the regulation of mooring fields in Sheepshead Bay and Great Kills Harbor, special anchorage areas that were administered by the United States Coast Guard until this year. These rules will also apply to the mooring fields at the 79th Street Marina in Manhattan.

Expedited implementation is necessary because the Department of Parks & Recreation needs to begin processing applications and issuing permits immediately so that permittees will be able to retain their boats in the mooring fields when their Coast Guard permits expire on May 1. Given the tight deadline that the Department faces, immediate implementation of the mooring field rules will enhance our ability to serve the public and especially the boating community.

Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-02 Definitions.

"Boat Basin." The West 79th Street Boat Basin located in Riverside Park on the east bank of the Hudson River at West 79th Street in Manhattan.

"Chief Dockmaster." Chief of the NYC Department of Parks & Recreation Marine Division. The person appointed by the commissioner that is responsible for the overall administration of division facilities and enforcement of department policies and rules.

"Commercial Permit." A permit to store, dock or launch a vessel used for commercial operations.

"Commissioner." The Commissioner of Parks and Recreation.

"Department." The department of Parks and Recreation.

"Dockmaster." The person who administers, manages or maintains the marina, piers and boat basin at the direction of the supervisory or chief dockmaster.

"Emergency." Any situation which the department determines threatens imminent personal injury or property damage.

"Marina." The World's Fair Marina in Flushing Bay, located in Flushing Meadows Corona Park, Queens.

"Marine Division." Department of Parks and Recreation division responsible for managing, operating and

maintaining recreational and commercial vessels usage at, but not limited, to division facilities and mooring fields.

"Mooring fields." Areas that are designated by the United States Coast Guard as Special Anchorage Areas and are under the jurisdiction of the department in Sheepshead Bay and Great Kills Harbor and the mooring fields adjacent to the 79th Street Boat Basin.

"Permit." A permit to moor a vessel at a designated position in a mooring field.

"Permittee." The person whose name appears on a permit.

"Piers." The piers located on the northern side of Sheepshead Bay, adjacent to Emmons Avenue in Brooklyn.

"Supervisory Dockmaster." Deputy Chief of the NYC Department of Parks & Recreation Marine Division. Responsible for the administration of division facilities and enforcement of department policies and rules under the direction of the chief dockmaster.

"Vessel." A floating craft of any kind including but not limited to a boat, sailboat, motor boat, dinghy, canoe and kayak.

"Waiting list." A list of persons interested in obtaining permits, which shall be maintained by the department.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Section added City Record Apr. 16, 1997 eff. May 16, 1997. [See Chapter 4 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. See footnote to T56 Chapter 3. Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000. See footnote to T56 Chapter 3. Chapter added City Record Apr. 16, 1997 eff. May 16, 1997; Note other provisions of City Record Apr. 16, 1997:

Recently, the U.S. Coast Guard announced its intention to cease issuing permits for moorings in the Special Anchorage Areas in Great Kills Harbor and Sheepshead Bay. The Department of Parks & Recreation has assumed jurisdiction over these areas, and effective immediately will begin issuing permits in these areas. Consequently, the Department must establish rules to govern the issuance of permits for these moorings, as well as to regulate conduct in the mooring fields. These rules are based on the rules utilized by the U.S. Coast Guard. These rules will also apply to anchorage areas north and south of the 79th Street Marina.

City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

FINDING OF SUBSTANTIAL NEED FOR IMMEDIATE EFFECTIVENESS OF RULE I hereby find, pursuant to §1043(e)(1)(c) of the City Charter, that there is a substantial need for the implementation of rules, upon publication, for the regulation of mooring fields in Sheepshead Bay and Great Kills Harbor, special

anchorage areas that were administered by the United States Coast Guard until this year. These rules will also apply to the mooring fields at the 79th Street Marina in Manhattan.

Expedited implementation is necessary because the Department of Parks & Recreation needs to begin processing applications and issuing permits immediately so that permittees will be able to retain their boats in the mooring fields when their Coast Guard permits expire on May 1. Given the tight deadline that the Department faces, immediate implementation of the mooring field rules will enhance our ability to serve the public and especially the boating community.

Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-03 Inspections.

All vessels moored in the mooring field may be boarded by authorized officers of the department or of other city, state and federal agencies if necessary to respond to an emergency, or as otherwise permitted by applicable law. It shall be a violation of these rules for a permittee to refuse to allow, prevent or interfere with such boarding.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Section reentitled by Law Department per Charter §1045(b), originally titled "Boarding of Vessels".

Section added City Record Apr. 16, 1997 eff. May 16, 1997. [See Chapter 4 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. See footnote to T56 Chapter 3. Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000. See footnote to T56 Chapter 3.

Chapter added City Record Apr. 16, 1997 eff. May 16, 1997; Note other provisions of City Record Apr. 16, 1997:

Recently, the U.S. Coast Guard announced its intention to cease issuing permits for moorings in the Special Anchorage Areas in Great Kills Harbor and Sheepshead Bay. The Department of Parks & Recreation has assumed jurisdiction over these areas, and effective immediately will begin issuing permits in these areas. Consequently, the Department must establish rules to govern the issuance of permits for these moorings, as well as to regulate conduct in the mooring fields. These rules are based on the rules utilized by the U.S. Coast Guard. These rules will also apply to anchorage areas north and south of the 79th Street Marina.

City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

FINDING OF SUBSTANTIAL NEED FOR IMMEDIATE EFFECTIVENESS OF RULE I hereby find, pursuant to §1043(e)(1)(c) of the City Charter, that there is a substantial need for the implementation of rules, upon publication, for the regulation of mooring fields in Sheepshead Bay and Great Kills Harbor, special anchorage areas that were administered by the United States Coast Guard until this year. These rules will also apply to the mooring fields at the 79th Street Marina in Manhattan.

Expedited implementation is necessary because the Department of Parks & Recreation needs to begin processing applications and issuing permits immediately so that permittees will be able to retain their boats in the mooring fields when their Coast Guard permits expire on May 1. Given the tight deadline that the Department faces, immediate implementation of the mooring field rules will enhance our ability to serve the public and especially the boating community.

Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-04 Permits.

(a) No person shall place a mooring or moor a vessel in a mooring field without a permit from the department.

(b) A permit shall authorize the use of a mooring that meets the requirements of subdivision (a) of §4-07 of this chapter, the location of a mooring at a particular position in the mooring field, and the mooring of a particular vessel identified by size, type and registration number.

(c) A permit shall be issued to the permittee named thereon and is not transferable.

(d) A permit shall not be issued for a vessel which is likely to cause injury to people or damage to property as determined by the department or for a vessel which exceeds 65 feet in length.

(e) A permit will not be issued to an applicant who has any outstanding fees, charges, fines or civil penalties due the department.

(f) The applicant for a permit must be the owner or lessee of the vessel. A permit shall not be issued unless the applicant presents evidence that the vessel is (1) registered with the New York State Department of Motor Vehicles, or (2) registered with the appropriate agency of another state or (3) documented by the U.S. Coast Guard, or (4) the applicant has established vessel ownership and participation in the Boat Anti-Theft Program administered by the Police Department of the City of New York. If the applicant is not the registered or documented owner of the vessel, the applicant must present evidence that he or she is the lessee of the vessel. If a permittee intends to replace a vessel, he or she must notify the department in advance so the department can determine whether the existing location and mooring

are acceptable for the new vessel. The new vessel may not be moored until the department grants a new permit. The department shall reject a replacement vessel that is not registered with the Department of Motor Vehicles or registered with the appropriate agency of another state or documented by the U.S. Coast Guard, or where the applicant has not established vessel ownership and participation in the Boat Anti-Theft Program of the Police Department of the City of New York.

(g) An applicant who owns or leases more than one vessel may apply for more than one permit; applications for additional permits will be placed on the department's waiting list until the department determines that the number of vacant mooring positions exceeds the number of applications.

(h) Notwithstanding the provisions of subdivisions (f) and (g) of this section, the department may reserve a limited number of permits for moorings and issue them to (i) persons for use in connection with special events or other activities that promote the enjoyment by the public of the water for educational, recreational or entertainment purposes, or (ii) yacht clubs and marinas having water frontage in Sheepshead Bay or Great Kills Harbor for the accommodations of guest vessels of such yacht clubs and marinas. No vessel shall be moored at such moorings for the accommodation of guest vessels of such yacht clubs or marinas for more than 15 consecutive days. Any such person, yacht club or marina that is issued a permit pursuant to this subdivision shall be subject to the provisions of this chapter to the same extent and in the same manner as the owner or lessee of a vessel who is issued a permit pursuant to this chapter.

(i) The term of a permit issued for the Sheepshead Bay or Great Kills Harbor mooring fields is for one year commencing May 1. The term of a permit issued for the West 79th Street Boat Basin mooring fields is for six months commencing May 1. The department may also issue transient permits for a term of one week or one day.

(j) Permittees must submit a written application for the renewal of permits issued for a term of one year no earlier than 90 days and no later than 30 days prior to the expiration of an existing permit. If a permittee does not use the mooring for at least four of the months of May through October, he or she will not be given priority for a renewal unless written notification of extended absence is given to the department prior to July 1. All outstanding fees, charges, fines and civil penalties due the department must be paid before a renewal application will be considered.

(k) The chief dockmaster may revoke, terminate or refuse to renew any permit issued pursuant to this chapter (1) where the applicant for renewal or permittee has been found liable in a proceeding before the Environmental Control Board or in a court of violating any provisions of these rules or the rules set forth in chapters one and two and, in the case of vessels moored adjacent to the boat basin and piers, chapter three of this title, (2) where the applicant for renewal or permittee has failed to pay any fees, charges, fines or civil penalties within ten days of receipt of written notice from the department or (3) as provided in subdivision 1 of this section, in accordance with the needs or requirements of the department or the interests of the city as determined by the commissioner. The department shall send by certified mail notice of the intention to revoke, terminate, or refuse to renew a permit and the reasons therefore. In the event that a mailing address is unknown or mail is returned undelivered, such notice may, in lieu of mailing, be posted in a conspicuous place on the vessel. A permittee or applicant for renewal may file written objections with the commissioner within 15 days from the date of such mailing or posting, whichever is later. After considering any objections raised by the applicant or permittee, the commissioner shall make a final determination whether to affirm or reverse the chief dockmaster's determination to revoke, terminate or refuse to renew the permit and shall provide notice of such determination to the permittee or applicant in the manner provided herein.

(l) Nothing in this chapter shall be construed to create a property right in any permit. All permits issued by the department are by their nature terminable at will by the commissioner in accordance with the needs or requirements of the department or in the interests of the city as determined by the commissioner.

(m) The department may impose reasonable conditions on the issuance of a permit to protect public safety and to safeguard the interests of the city, including but not limited to a requirement that the permittee or applicant have his or her mooring inspected or obtain appropriate insurance and submit satisfactory evidence of having complied with such

conditions.

(n) Where a permit is revoked, terminated or not renewed, the vessel and all parts of the mooring, including anchors, chains and buoys, must be removed from the mooring field within 30 days after notice by the department to remove the same is sent by certified mail to the applicant or permittee. In the event that a mailing address is unknown or mail is returned undelivered, such notice may, in lieu of such mailing or hand delivery, be posted in a conspicuous place on the vessel. Where the vessel and mooring are not removed within 30 days after the mailing or posting of such notice, whichever is later, the department may remove the vessel and mooring or cause the same to be removed from the mooring field. The permittee or owner shall be liable for the costs of removal and storage of the vessel and mooring, payable prior to release of the same. Any vessel or mooring removed from the mooring field that is not claimed within 30 days may be deemed to be abandoned and may be turned over to the police property clerk for disposal in accordance with applicable law.

(o) Every applicant and permittee must provide the department with an address in writing at which he or she may receive notice required by these rules or other applicable law. Any changes in address must be reported in writing to the department within 10 days.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

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City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

FINDING OF SUBSTANTIAL NEED FOR IMMEDIATE EFFECTIVENESS OF RULE I hereby find, pursuant to §1043(e)(1)(c) of the City Charter, that there is a substantial need for the implementation of rules, upon publication, for the regulation of mooring fields in Sheepshead Bay and Great Kills Harbor, special anchorage areas that were administered by the United States Coast Guard until this year. These rules will also apply to the mooring fields at the 79th Street Marina in Manhattan.

Expedited implementation is necessary because the Department of Parks & Recreation needs to begin processing applications and issuing permits immediately so that permittees will be able to retain their boats in the mooring fields when their Coast Guard permits expire on May 1. Given the tight deadline that the Department faces, immediate implementation of the mooring field rules will enhance our ability to serve the public and especially the boating community.

Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-05 Waiting List.

The department shall maintain a waiting list for the issuance of permits, which shall be available upon request from the department.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

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City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

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56 RCNY 4-06

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-06 Conduct.

(a) No person at the Sheepshead Bay or Great Kills Harbor mooring fields shall use a toilet that discharges into the water without marine sanitation devices approved by the New York State Department of Environmental Conservation. No person at the boat basin mooring fields shall use a toilet that discharges into the water. Use of composting toilet systems are not permitted in the mooring fields. All vessels at the boat basin must have waste holding tanks and discharge waste through the pump out station.

(b) No person shall discharge into the water any oil, spirits, drift, debris, inflammable liquids, rubbish, refuse or untreated human waste.

(c) Any person who engages in disorderly behavior as defined in paragraph 6, 7 or 9 of subdivision 1 of §1-04 of chapter 1 of this title may, in addition to any other applicable penalties, be expelled from the mooring fields.

(d) No person shall make or cause or allow to be made unreasonable noise in the mooring field so as to cause public inconvenience, annoyance or harm. Unreasonable noise means any excessive or unusually loud sound that disturbs the peace, comfort or repose of a reasonable person of normal sensitivity or injures or endangers the health or safety of a reasonable person of normal sensitivity. The department may restrict the outdoor use of radios, record players, compact disc players, television receivers, tape recorders and other sound reproduction devices after 11 p.m. Sunday through Thursday and after 12 p.m. on Friday and Saturday.

(e) No person shall make an open fire on any vessel while alongside any dock or within the confines of the boat basin. Vessels that are fitted with a device specifically designated for use on a vessel may be used in accordance with

the manufacturer's instructions for cooking on deck but only in the mooring field.

(f) No advertising shall be displayed from the vessel in the mooring field.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

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City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 4-07

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-07 Mooring of Vessels.

(a) All vessels moored at the boat basin shall be secured to the mooring provided by not less than two mooring bridles. All vessels at the Sheepshead Bay or Great Kills Harbor mooring fields shall be secured by moorings meeting the following requirements:

(1) The anchor, chain and pendant of all moorings shall meet the following requirements:

(A) the anchor scope shall be at least three times the distance from the land under the water of the harbor to mean high water;

(B) the pendant safe working load shall be at least four times the anchor weight;

(C) the anchor type shall be either mushroom or navy;

(D) (i) if the vessel length is 15 feet or less, each anchor shall weigh at least 100 pounds and be connected to a buoy by a metal chain no less than $^{5}/_{16}$ inches in diameter, and the pendant shall be at least 4 feet in length; (ii) the vessel length is greater than 15 feet but not greater than 21 feet, each anchor shall weigh at least 150 pounds and be connected to a buoy by a metal chain no less than $^{3}/_{8}$ inches in diameter, and the pendant shall be at least 8 feet in length; (iii) if the vessel length is greater than 21 feet but not greater than 26 feet, each anchor shall weigh at least 200 pounds and be connected to a buoy by a metal chain no less than $^{3}/_{8}$ inches in diameter, and the pendant shall be at least 10 feet in length; (iv) if the vessel length is greater than 26 feet but less than or equal to 65 feet, each anchor shall weigh no less than 10 pounds per foot of vessel length and be connected to a buoy by a metal chain no less than $^{1}/_{2}$ inch in

diameter for each anchor weighing no more than 400 pounds, or not less than $^{5}/_{8}$ inches in diameter for each anchor weighing more than 400 pounds, and the pendant shall be at least 10 feet in length.

(2) Moorings in the special anchorage area in Sheepshead Bay shall be secured by two anchors which shall be placed as indicated in figure 1. Moorings in all other mooring fields shall be secured by one anchor, provided, however, that the department may require the use of two anchors in any mooring field in order to provide additional positions at which moorings may be located or to enhance the safety of existing mooring locations.

(3) Mooring buoys shall be of a buoyant material sufficient to make at least one foot of the buoy visible above the water line.

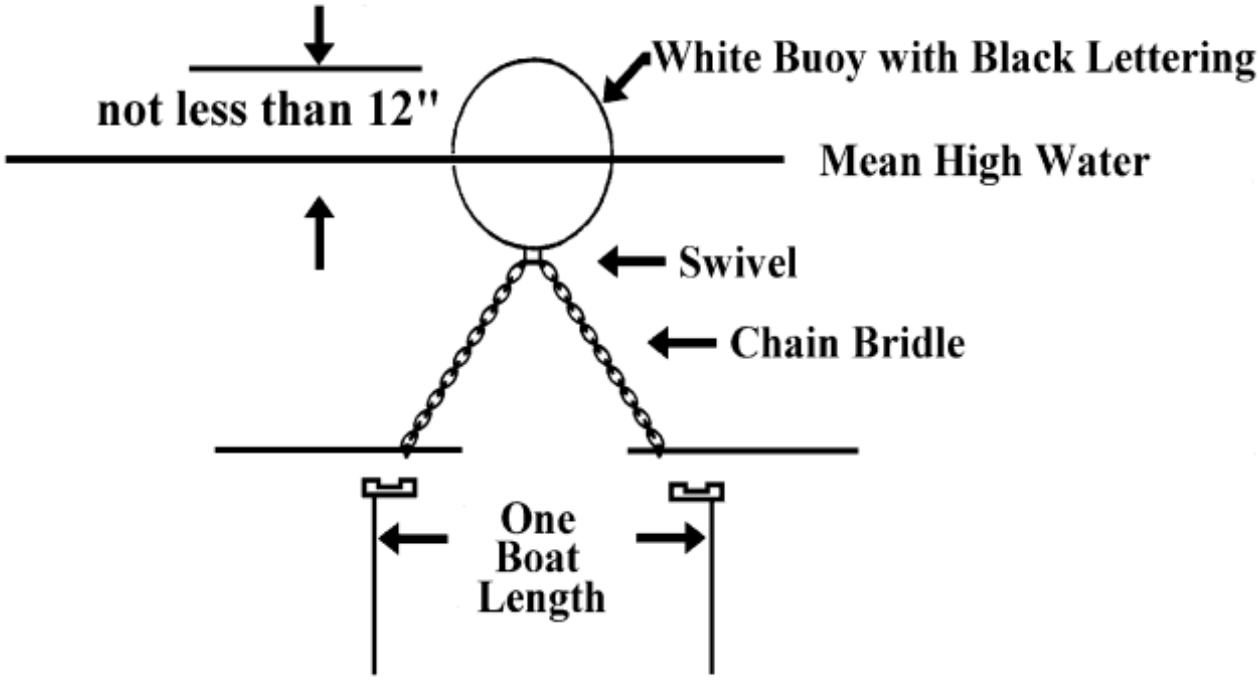

Figure 1.

(4) Buoys shall be painted with the permit number and the mooring location in black block letters no less than three inches high.

(5) Fixed mooring piles or stakes are not permitted.

(b) Vessels must be moored at locations designated by the department. The location assigned to the permittee shall be determined by the department based on vessel size, type, water depth and safety considerations. No vessel shall be moored in such a manner as to interfere with the use of a duly authorized mooring location or regular traffic channel. Mooring locations may not be changed or exchanged without the prior written approval of the department.

(c) All vessels shall be adequately tied to their moorings and shall have sufficient lines to secure the vessel in all

wind and weather conditions. The department may affix additional lines as necessary to ensure the safety of people or property.

(d) All parts of the mooring, including the buoys, anchors and chains, shall be supplied and installed by the permittee and shall remain the property of the permittee at the mooring fields at Sheepshead Bay and Great Kills Harbor.

(e) Moorings shall be inspected for deterioration at least every two years and repaired or replaced if necessary. The department may require, as a condition of renewing a permit, evidence that an inspection has been made, including a description by the person who made the inspection of the condition of the mooring and the qualifications of such person to make such inspection.

(f) Vessels and moorings may be temporarily relocated in an emergency or to accommodate dredging or other work in the mooring field. When a vessel or mooring must be removed to accommodate such work, the department will give the permittee or owner 45 days written notice to remove the vessel or mooring. If the vessel or mooring is not removed within 45 days, the department may remove the vessel and mooring, or cause the vessel or mooring to be removed and recover all costs associated with moving and storage from the permittee or owner.

(g) Vessels which are improperly secured to the wrong mooring or area may be towed to the assigned mooring by the Dockmaster or Marine Division staff and the appropriate Labor Rate shall be charged to the owner of such vessel.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Section added City Record Apr. 16, 1997 eff. May 16, 1997. [See Chapter 4 footnote]

Subd. (g) added City Record Mar. 10, 2004 §3, eff. Apr. 9, 2004. [See T56 §3-23 Note 1]

FOOTNOTES

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City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

FINDING OF SUBSTANTIAL NEED FOR IMMEDIATE EFFECTIVENESS OF RULE I hereby find,

pursuant to §1043(e)(1)(c) of the City Charter, that there is a substantial need for the implementation of rules, upon publication, for the regulation of mooring fields in Sheepshead Bay and Great Kills Harbor, special anchorage areas that were administered by the United States Coast Guard until this year. These rules will also apply to the mooring fields at the 79th Street Marina in Manhattan.

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 4-08

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-08 Condition of Vessels.

All vessels in the mooring field and all equipment thereon must be maintained in good order and free of any hazard to persons or vessels. All vessels in the mooring field shall comply with all federal, state and local laws, rules and regulations concerning the condition of vessels and equipment.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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56 RCNY 4-09

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-09 Operation of Vessels.

No vessel within a mooring field may be navigated at a speed in excess of 5 miles per hour. Any person operating a vessel in a mooring field shall comply with all federal, state and local laws, rules and regulations concerning the safe operation of vessels, including the Inland Navigational Rules (33 U.S.C. §2000 et seq.).

HISTORICAL NOTE

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

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56 RCNY 4-10

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-10 Required Safety Equipment.

All vessels in the mooring fields must have on board at all times all equipment required by the Coast Guard or by any other federal, state or local law, rule or regulation.

HISTORICAL NOTE

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APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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56 RCNY 4-11

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-11 Removal of Sunken Vessels.

A sunken vessel shall be removed from the mooring fields within 48 hours after oral or written notice by the department to remove the vessel. Upon request of the permittee or the owner of the vessel, the department may, in writing, extend the time for removal of the vessel. If the vessel is not removed within the allowed time, the department may remove the vessel or cause it to be removed and may recover the cost associated with removal and of storage or disposal of the vessel from the permittee or owner of the vessel. If the department determines that a sunken vessel is discharging pollutants into the water or causing any other kind of an emergency, the department may take action to stop the cause of pollution and may remove or cause the vessel to be removed, without prior notice to the permittee or owner of the vessel, and recover all costs associated with removal and storage or disposal of the vessel from the permittee or owner of the vessel.

HISTORICAL NOTE

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Expedited implementation is necessary because the Department of Parks & Recreation needs to begin processing applications and issuing permits immediately so that permittees will be able to retain their boats in the mooring fields when their Coast Guard permits expire on May 1. Given the tight deadline that the Department faces, immediate implementation of the mooring field rules will enhance our ability to serve the public and especially the boating community.

Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 4-12

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-12 Dinghies, Kayaks and Canoes.

A permittee may store one dinghy, kayak or canoe under 14 feet in length on or alongside the permitted vessel without obtaining a separate permit for such dinghy, kayak or canoe. In all other cases, including but not limited to personal watercraft, a separate permit must be obtained for each vessel.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Section added City Record Apr. 16, 1997 eff. May 16, 1997. [See Chapter 4 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. See footnote to T56 Chapter 3. Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000. See footnote to T56 Chapter 3. Chapter added City Record Apr. 16, 1997 eff. May 16, 1997; Note other provisions of City Record Apr. 16, 1997:

Recently, the U.S. Coast Guard announced its intention to cease issuing permits for moorings in the Special Anchorage Areas in Great Kills Harbor and Sheepshead Bay. The Department of Parks & Recreation has assumed jurisdiction over these areas, and effective immediately will begin issuing permits in these areas. Consequently, the Department must establish rules to govern the issuance of permits for these moorings, as well as to regulate conduct in the mooring fields. These rules are based on the rules utilized by the U.S. Coast Guard. These rules will also apply to anchorage areas north and south of the 79th Street Marina.

City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 4-13

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-13 Orders.

The department may issue any orders which may be necessary or appropriate to enforce compliance with these rules or the rules set forth in chapters one and two and, in the case of vessels moored adjacent to the marina, piers or boat basin, chapter three of this title. It shall be a violation of these rules to fail or refuse to comply with such orders.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 4-14

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-14 Unlawful Use of Vessel.

No person shall permit or cause any vessel or any portion thereof to be used or occupied for an illegal purpose.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

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Anchorage Areas in Great Kills Harbor and Sheepshead Bay. The Department of Parks & Recreation has assumed jurisdiction over these areas, and effective immediately will begin issuing permits in these areas. Consequently, the Department must establish rules to govern the issuance of permits for these moorings, as well as to regulate conduct in the mooring fields. These rules are based on the rules utilized by the U.S. Coast Guard. These rules will also apply to anchorage areas north and south of the 79th Street Marina.

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 4-15

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-15 Penalties.

In addition to any penalties provided for in this chapter, violations of these rules shall be punishable as provided in §1-07 of chapter one of this title.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. See footnote to T56 Chapter 3. Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000. See footnote to T56 Chapter 3. Chapter added City Record Apr. 16, 1997 eff. May 16, 1997; Note other provisions of City Record Apr. 16, 1997:

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

***** Current through December 2009 ****

56 RCNY 4-16

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-16 Commercial Mooring Permits; Fees.

(a) **Commercial Mooring Permits.** Commercial mooring permits may be issued at the boat basin to operators of commercial vessels upon terms to be determined by the commissioner. The commissioner is authorized to exempt holders of these commercial permits from the rules set forth in chapter 3 and chapter 4.

(b) **Fees.**

As of May 1, 2004 As of May 1, 2005 As of May 1, 2006 As of May 1, 2007 and thereafter

Mooring at West 79th Street Boat Basin $30/day$180/week$1500/season $30/day$180/week$1500/season $30/day$180/week$1500/season $30/day$180/week$1550/season

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section added City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Subd. (b) amended City Record May 4, 2007 §8, eff. June 3, 2007. [See T56 §3-23 Note 2]

Subd. (b) amended City Record Mar. 10, 2004 §4, eff. Apr. 9, 2004. [See T56 §3-23 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. See footnote to T56 Chapter 3. Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000. See footnote to T56 Chapter 3. Chapter added City Record Apr. 16, 1997 eff. May 16, 1997; Note other provisions of City Record Apr. 16, 1997:

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-01 Meetings.

Regular meetings of the Art Commission shall be held on the second Monday of each month, except August, at 12:30 P.M., unless otherwise published in the City Record. Special meetings may be called by the President or Executive Director at any time, and may be called on request of three or more members of the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-02 Notice of Meetings to Commission Members.

Written notice of all regular meetings shall be mailed to members of the Commission at least four days in advance of such meetings. Notice of special meetings shall be given as long in advance as the President or Executive Director may find practicable.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-03 Quorum.

Six Commissioners shall constitute a quorum.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-04 Calendar of Submissions.

The calendar of submissions shall be closed two weeks in advance of the monthly meeting date. Submissions may be referred to a committee appointed by the Executive Director. No submission shall be acted on that is not included in the calendar.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-05 Hearings on Pending Submissions by a Special Committee.

Hearings on pending submissions may be held by a special committee in charge of the submission. In such cases hearings will be subsequently held by the Commission at the request of such committee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-06 Referral of Matters Presented Between Meetings to a Committee.

Any matter presented between meetings may be referred by the President or Executive Director to a Committee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-07 Notice of Committee Appointment.

A written notice of appointment shall be sent to each member of every committee appointed.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-08 Calendar of Committees.

A calendar of all committees shall be kept and called for at every regular meeting of the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-09 Submission of Matters for Preliminary Approval.

Every matter required by the City Charter to be submitted to the Art Commission shall be presented first for preliminary approval, but the Commission in its discretion may give final approval to any matter submitted. Every matter shall be submitted on one of the forms furnished by the Commission, and shall include such materials as set forth in the Review Guidelines and Gift Guidelines.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-10 Additional Materials Required.

For every submission, the Executive Director shall decide whether the sketches, plans, etc., are provisionally sufficient. However, the Commission may subsequently require materials in addition to those specified under §1-10. The Executive Director shall procure or provide such additional matter as deemed necessary for the record and proper certification of the Commission's action.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-11 Records Kept in the Office of the Commission.

The original of every letter, communication, document, photograph, plan, sketch, print, etc., addressed to the Commission, or relating to matters before it, shall be kept in the office of the Commission. When it is necessary to duplicate or lend such materials, any sketch, plan, or other document may be removed for such purpose with the approval of the Executive Director or designee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-12 Records Kept of Submissions and Certificates.

For every matter submitted to the Commission for approval, the Commission shall retain the original submission (including one set of plans and other materials) and a copy of the certificate which records the Commission's action. The Commission certifies such action by returning to the applicant a duplicate set of submitted materials and the original certificate. In case materials that are not picked up in 30 days will be disposed of at the Executive Director's discretion.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-13 Review and Approval of Minutes; Sending of Certificates.

The minutes of each meeting shall be reviewed for possible correction by the Executive Director, and approved by the Commissioners at the next scheduled monthly meeting. Certificates are sent to the departments or other interested applicants.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-14

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-14 Notice of Meetings to City Officials Having Jurisdiction.

In each case where the matter submitted comes within the jurisdiction of the head of a city department or agency, notice shall be given to such official or his or her designee so that he or she will be able to attend the meeting at the time of consideration.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-15

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-15 Approval of Official Having Jurisdiction.

No submission shall be approved by the Art Commission unless it shall have been signed by the head of the department, corporation, or person having jurisdiction and official charge of the matter, or unless the authority of any other person or persons making such submission shall have been evidenced by the submission of a written statement of the head of such department or of such corporation.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-16

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-16 Submission of Samples of Materials to be Used.

For final approval, samples of materials which it is proposed to use on the exterior (or elsewhere if called for) of structures to be erected from approved designs, shall be submitted to the Commission, and no work shall be done until such samples have been approved in writing. Samples of materials intended for use shall be submitted showing proposed surface treatment, color and texture and such samples shall be returned to the submitting department after approval, as noted in §1-12.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-17

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-17 Certification for Final Payment.

A request from any department for certification for final payment by the Art Commission under Chapter 37 of the New York City Charter should be made only after the conditions prescribed in the resolution of approval are complied with, and such request shall be made in writing accompanied by 8 × 10 inch photographs, preferably black-and-white, of the structure or work of art for which the certificate is desired. Any certification of a project for final payment shall be first approved in writing by the Executive Director or President of the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

158 of 158 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

57 RCNY 1-18

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-18 Amendment of Rules.

A motion to amend these Rules may be voted on at any regular meeting of the Commission only after the Executive Director has sent a copy of the proposed amendment to each Commissioner prior to the meeting of the Commission. An amendment may be passed by a simple majority vote.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

58 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-01 Applicability.

These Regulations shall apply to all applications for artist's certification submitted to the Department of Cultural Affairs (the "Department") for purposes of occupancy of joint living-work quarters for artists in zoning districts M1-5A and 5B.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

58 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-02 Artist's Certification Committee and Appeals Board.

(a) **Qualifications, powers and duties.** (1) **The Committee.** The Commissioner of the Department of Cultural Affairs (the "Commissioner") shall appoint an Artist's Certification Committee (the "Committee"), the members of which shall review and make recommendations regarding the disposition of applications for certification. Such committee shall consist of up to 18 members, none of whom shall be a member of the staff of the Department. There shall be, if feasible, at least one member appointed from each of the following disciplines: painting, sculpture, crafts, photography, film/video, dance, music, writing and performance/theater. The remaining members of the Committee may be arts educators, arts administrators or representatives of arts or other community organizations. Unless otherwise waived by the Commissioner, all members shall reside or work in New York City.

(2) **The Appeals Board.** In the event that pursuant to §1-06(b), an appeal is taken of the Commissioner's denial of a particular application, the Commissioner shall appoint an Artist's Certification Appeals Board (the "Appeals Board") to make the initial recommendation with regard to such appeal. The Appeals Board shall consist of at least 6 members, selected from a list prepared on a yearly basis of individuals

(i) engaged in the disciplines referred to in §1-02(a)(1) or

(ii) otherwise engaged in the arts as arts educators, arts administrators or representatives of arts or other community organizations, none of whom shall have been members of the Committee at the time such application was initially reviewed. Such Appeals Board shall contain if possible at least 3 members engaged in the disciplines referred to in §1-02(a)(1), and in particular, 1 to 2 members engaged in the art form for which the applicant has applied, and one member of the staff of the Department other than the Artist's Certification Coordinator referred to in §1-03. Unless

otherwise waived by the Commissioner, any person appointed by the Commissioner to be a member of any Appeals Board shall reside or work in New York City.

(b) **Term.** (1) **Length.** The members of the Committee shall serve for a three year term and shall be divided into three classes consisting of not more than six members each.

(2) **New appointments.** Each year in June, the Commissioner shall appoint members to fill the places of the class whose term expires in that year, and such newly appointed members shall serve for a term which begins on September 1 of that year and expires on August 31, three years hence. Members may be re-appointed for one additional 3-year term but no member who has served two consecutive three-year terms may serve an additional term until at least one year after the expiration of his or her second term.

(3) **Filling vacancies for an unexpired term.** The Commissioner may at any time fill any vacancy among the members of the Committee for the unexpired term of such vacant position, but such appointment shall be subject to the requirement set forth in §1-02(a)(1) as to representation of each of the media referred to in such section.

(4) **Resignations and leaves.** A member may resign at any time prior to the expiration of his or her term by delivering a letter of resignation to the Commissioner, and such resignation shall be effective as of the date specified in such letter. A leave of absence not to exceed one year may be taken by any member.

(5) **Removal of Committee members.** The Commissioner may, after consultation with the Committee, remove a member from the Committee whenever the Commissioner concludes, in the reasonable exercise of his or her discretion, that service by that member is no longer appropriate. Grounds for removal shall include, but not be limited to, the fact that such member

(i) no longer resides or works in New York City or

(ii) has incurred three or more unexcused absences from regularly scheduled monthly meetings of the Committee in any one year period beginning September 1.

(c) **Meetings.** The Committee shall meet during the first week of each month except July and August and at such other times as may be scheduled by the Department. A record shall be kept of each regularly scheduled meeting and shall include, among other matters, a listing of each applicant whose application is considered at such meeting and the recommendation or other action taken with regard to such application.

HISTORICAL NOTE

Section in original publication July 1, 1991.

3 of 9 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

58 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-03 Artist's Certification Coordinator.

The Commissioner shall appoint an Artist's Certification Coordinator (the "Coordinator") who shall be a member of the staff of the Department and who shall be responsible for the administration of the artist's certification procedure. Among other matters, the Coordinator shall review applications, maintain files pertaining to artist's certification, answer inquiries from the public, schedule meetings of the Committee, and prepare the agenda for and the record of each such meeting.

HISTORICAL NOTE

Section in original publication July 1, 1991.

4 of 9 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

58 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-04 Application Procedures.

(a) **Submission of application.** An application form for artist's certification may be picked up or requested by mail from the Department's offices located at 2 Columbus Circle, New York, New York 10019. The completed application shall be returned to the Department, together with the required documentation, addressed to the attention of the Artist's Certification Coordinator. The Coordinator shall then review such application for completeness. With regard to any application which is considered to be incomplete, the Coordinator shall attempt to contact and advise the applicant as to what additional material should be submitted. The applicant may then either submit additional material or request that the application be considered as originally submitted, in which case the Coordinator shall bring such application before the Committee pursuant to §1-04(c).

(b) **Required elements.** (1) **Basic information.** To be complete, an application for artist's certification must ordinarily include the following:

(i) A description of the applicant's art form or art occupation.

(ii) An explanation as to

(A) why occupancy of a joint living-work quarters for artists is important to the applicant in carrying out his or her art form or art occupation,

(B) how such space is or will be used for such purpose, and

(C) if the applicant currently lives and works in the same space, a diagram and/or photographs of such space.

(iii) A professional resume indicating, with reference to the applicant's particular art form or art occupation, professional experience (or a combination of professional training and experience) sufficient to demonstrate a serious, consistent commitment to such art form or occupation-such resume shall also include other information as to the applicant's educational background and professional training and the public dissemination of his or her work, e.g., exhibitions, performances, publications and the like, all such information to include relevant dates.

(iv) Documentation appropriate to the applicant's field evidencing his or her work and its dissemination to the public, e.g.,

Visual Artists-15 to 20 slides and/or photographs of work Set and Costume Designers-photographs of work Choreographers-photographs and/or video tapes or films of work, notated dance scores Composers-scores, tapes and/or recordings of compositions Filmmakers and Video Artists-films and/or videotapes Writers-samples of published work such as books, magazines, anthologies, broadsides, audio- and/or video or phonograph recordings of readings and performances All applicants-documentation of performances, publications, readings or showing of work to public such as programs, films, announcements or reviews.

(v) Additional material which demonstrates outside recognition of his or her standing as a professional in his or her art form or art occupation, e.g., reviews, written proof of grants, awards or fellowships, or relevant union or guild memberships.

(vi) The names, addresses and telephone numbers of two people recognized in the applicant's field who may be contacted as to the applicant's professional involvement as an artist.

(2) **Supplemental data.** In addition to the material referred to in §1-04(b)(1), the applicant may submit such other information as the applicant believes may support his or her request for artist's certification. The applicant may also be asked to submit further material relevant to his or her art form or art occupation in the event that:

(i) the Coordinator determines that the application is incomplete or

(ii) the Committee believes that it needs such additional material in order to make its recommendation. In such instances and in the case of an application being reconsidered pursuant to §1-06(a), the applicant may request that a studio visit be made to his or her studio or work place. Provided such space is located in New York City, the Coordinator, accompanied by another member of the Committee, shall use best efforts to comply with such request.

(c) **Review of application.** (1) At each regularly scheduled meeting of the Committee, subject to Paragraph (2) of this subdivision, all those applications considered complete by the Coordinator shall be presented to the Committee for review. The Coordinator shall first separate the applications into different categories according to art form or occupation and shall then assign each category of applications to a two member panel of the Committee, at least one member of which, if possible, should be engaged in the same or a related art form or occupation. Each panel shall then review the applications in its category and shall recommend to the Coordinator the action to be taken by the Commissioner with regard to each such application. The Coordinator may, in his or her discretion, present any application to the full Committee for discussion.

(2) The Coordinator shall have the discretion not to assign a particular application for review by a panel in the event that, after consultation with the Committee, where feasible, the Coordinator determines that such application clearly demonstrates that the applicant is entitled to certification. The Coordinator shall present any such application to the Commissioner at such time as those applications reviewed by the Committee are presented to the Commissioner for action.

(3) In the event any panel should be of the opinion that a particular application is incomplete, the panel shall advise

the Coordinator of the information such panel believes is necessary to complete the application. Such applications shall be marked tabled and shall be presented to the Committee again at such time as the missing information is supplied or the applicant requests that the application be considered as originally submitted.

(4) Following each meeting, the Coordinator shall gather the recommendations from each panel and shall present the applications, the recommendations and other pertinent information to the Commissioner, together with a written statement in the case of each application as to the reasons for the recommendations made with regard to the application. At this time, the Coordinator shall also notify all individuals whose applications have been tabled and shall advise them of the additional information requested by the Committee.

(5) The Commissioner shall make the actual determination with regard to each application. After action by the Commissioner, the Coordinator shall issue artist's certification to those individuals whose applications have been granted and shall notify those individuals whose applications have been denied of the reasons for such denial, and of their right to reconsideration and appeal thereof.

(6) If a particular applicant for artist's certification demonstrates in his or her application that he or she works in a heavy or bulky medium, pursuant to §42-141(b)(ii) of the New York City Zoning Resolution, the certification form issued such applicant may, at the applicant's request, carry a notation to that effect.

(7) Following the determination by the Commissioner or the withdrawal of any application for artist's certification, the Coordinator shall return to the applicant the materials listed in §1-04(b)(l)(iv) submitted in support of such application provided that he or she has submitted a self-addressed, stamped envelope for the return of such materials. Alternatively, these materials may be picked up by the applicant at the offices of the Department during regular business hours. Supporting materials which have not been picked up within four months of the date of the Commissioner's determination of the relevant application may be disposed of at the discretion of the Coordinator, except that the Coordinator shall retain possession of materials submitted in support of an application being reconsidered or on appeal until such time as a determination is reached with regard to reconsideration or appeal.

(8) In the event that an applicant whose application has either been tabled or is being held for reconsideration has not submitted the additional material requested by the Coordinator within four months after the date on which such application was either tabled or initially denied, the Coordinator may in his or her discretion consider such application withdrawn. In such instance, the Coordinator may dispose of supporting materials in accordance with §1-04(c)(7).

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

58 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-05 Criteria for Granting Artist's Certification.

(a) **Statutory basis.** In determining whether to grant an application for artist's certification, the Department shall follow those criteria contained in the definition of an "artist" set forth in Section 276 of Article 7B of the New York State Multiple Dwelling Law, namely that those granted artist's certification be "regularly engaged in the fine arts . . . on a professional basis." Specifically, each applicant granted artist's certification must demonstrate that he or she meets the following criteria:

(1) **Regularly engaged.** The applicant is currently engaged in and demonstrates a serious consistent commitment to his or her art form or art occupation.

(2) **Fine arts.** The applicant is engaged in an art form or art occupation which

(i) can be considered and

(ii) is pursued by the applicant as a "fine art".

To demonstrate pursuit of such art form or occupation as a fine art, the application should evidence a substantial element of independent esthetic judgment and self-directed work by the applicant in pursuing such art form or occupation, i.e., the production of work solely on a commercial, industrial or work-for-hire basis without evidence of the foregoing elements is not sufficient to demonstrate pursuit of a particular art form or occupation as a fine art.

(3) **Professional basis.** The application should warrant a finding that the applicant is committed to the art form or

occupation as his or her primary vocation and that others in the field recognize the applicant as a professional with regard to his or her art form or occupation. The word "professional" in this context does not necessarily refer to the amount of financial renumeration earned therefrom.

(b) **Intent to use joint living-work quarters.** Consistent with the designation of zoning districts M1-5A and M1-5B as manufacturing districts pursuant to the New York City Zoning Resolution, to obtain artist's certification, an applicant must demonstrate an intent to use joint living-work quarters for the purpose of carrying out his or her art form or occupation.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

58 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-06 Right to Reconsideration or Appeal.

(a) **Reconsideration.** (1) In the event an applicant is denied artist's certification by the Commissioner, the applicant shall have the opportunity either to

(i) withdraw the application,

(ii) request that it be reconsidered, in which case the applicant shall submit additional material in support of the application, or

(iii) request an immediate appeal of the Commissioner's denial of certification. If within 30 days of the date notice of such denial is given, the Artist's Certification Coordinator has not been notified that the applicant requests either reconsideration or appeal, then the application shall be considered withdrawn. An applicant denied certification whose application has been withdrawn after the initial determination by the Commissioner may submit a new application for certification at any time.

(2) Should an applicant who has been denied certification request reconsideration of his or her application, after the Artist's Certification Coordinator determines that all relevant additional information has been submitted, such application shall be presented to the Committee for reconsideration at the next regularly scheduled meeting. Reconsideration of an application shall be governed by the same procedures set forth herein as to the initial submission of an application.

(b) **Appeal.** (1) In the event that an application is reconsidered and again denied, or the applicant elects not to

submit additional information and have his or her application reconsidered by the Committee, the applicant may take an appeal to the Appeals Board. Upon receipt of a request for an appeal, the Coordinator shall schedule a special meeting of the Appeals Board to consider the appeal. At the meeting, the Coordinator shall present the application, following which the Coordinator shall seek the opinion of each Appeals Board member as to whether the appeal should be granted and the reasons for such opinion. The Coordinator shall then forward a statement of these opinions to the Commissioner who shall then determine whether the appeal should be granted. Following the Commissioner's decision with regard to the appeal, the applicant shall be promptly notified of such decision. In the event the Commissioner determines that the appeal should be granted, the Coordinator shall issue an artist's certification to the applicant.

(2) In the event that the Commissioner determines that the appeal should be denied, then the applicant may submit a new application for artist's certification after a period of one year has elapsed from the date of such determination.

(3) Following determination of the appeal, the Coordinator shall return the materials submitted in support of the application to the applicant in accordance with the procedures set forth in §1-04(c)(7). Supporting materials which have not been picked up within four months of the date of the Commissioner's determination of the appeal may be disposed of at the discretion of the Coordinator.

(4) The decision of the Commissioner with reference to a particular appeal shall be considered to be the final determination of the relevant application for purposes of Article 78 of the New York Civil Practice Law and Rules.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

58 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-07 Effect of Artist's Certification.

(a) **Validity.** (1) Artist's certification shall be valid for so long as the artist so certified resides at the address contained on the certification form. An artist granted artist's certification may apply to the Department for a change in the address indicated on the certification form provided that

(i) such artist returns his or her original certification form and submits adequate proof, such as a signed lease, that he or she now resides at the new address, and

(ii) no more than one year has elapsed since the date certification was granted. The Department will then issue a new certification form containing the new address.

(2) The Department will not accept a request for a change in the address contained on a certification form in the event that such request is made more than one year after the date of such certification. In such instances, the person previously certified shall submit a new application for artist's certification, but unless otherwise requested by the Coordinator, such applicant need only submit information and supporting documentation relevant to that period of time which has elapsed since the date of his or her previous certification. Applications for re-certification shall be governed by the same procedures as set forth herein for the review of initial applications.

(b) **Legal significance.** The legal significance of a certification form issued by the Department is to evidence that the person named therein meets the legislative criteria regarding artist's certification and is therefore eligible to live in joint living-work quarters, in an area and dwelling unit where such use is permitted by law pursuant to the terms of the city's Zoning Resolution and New York State Multiple Dwelling Law. Artist's certification does not represent a

determination by the Department that joint living-work quarters in a particular building is lawful under the Zoning Resolution or any other applicable law or regulation, nor that such space meets the relevant specifications of the Buildings Department Code.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

58 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-08 Nontransferability.

Each artist's certification form is valid only for the person named therein and may not be transferred.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

58 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-09 Submission of False or Fraudulent Information.

The submission of any information in connection with an application for artist's certification which the applicant knows to be false will result in the denial of the application or the revocation of any artist's certification based on such application.

HISTORICAL NOTE

Section in original publication July 1, 1991.

1 of 3 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

60 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 60 Civil Service Commission

CHAPTER 1 ADJUDICATIONS OF THE NEW YORK CITY CIVIL SERVICE COMMISSION

§1-01 Adjudication of Fitness and Discipline of Commission Employees.

New York City Civil Service Commission adjudications regarding the fitness and discipline of Commission employees will be conducted by the Office of Administrative Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Commission.

HISTORICAL NOTE

Section added City Record Apr. 17, 1991 eff. May 17, 1991.

2 of 3 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

60 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 60 Civil Service Commission

CHAPTER 2 DETERMINATIONS OF THE NEW YORK CITY CIVIL SERVICE COMMISSION

§2-01 Appeals from Disciplinary Determinations.

(a) Any person entitled under §76 of the Civil Service Law to take an appeal from a finding of guilt and/or a penalty of punishment in a disciplinary proceeding conducted pursuant to §75 of the Civil Service Law, shall duly make such appeal by sending by ordinary, registered or certified mail or by delivering personally, a written notice of appeal to the Commission and by sending a copy thereof by the same means to appellant's employer agency. All notices of appeal shall be mailed or delivered within twenty (20) days after the date of service of a written notice of the determination to be reviewed. Such additional time in which to appeal as provided in CSL Sec. 76 shall be allowed where service of the determinations was by mail. The agency head concerned (or his/her designee) shall transmit to the Commission within ninety (90) days after receipt of the notice of appeal the entire record of the disciplinary proceeding including the written transcript of the hearing. Proof of service of the notice of determination to be reviewed shall be submitted where the agency moves to dismiss the notice of appeal as untimely. Motions for dismissal on jurisdictional grounds may be made prior to submission of the record below.

(b) Where a hearing officer other than the agency head is designated in writing to hear the charges preferred, the record furnished the Commission shall contain such written designation of a copy thereof unless such designation is on file with the Commission or provided for in the City Charter and/or published agency rules.

(c) Where an appeal is taken, the Commission shall review the record below and shall afford appellant and the employing agency the opportunity to make an oral presentation and/or to submit written statements to the Commission. Oral arguments may be heard by one or more members of the Commission, or any person duly designated pursuant to §76(2) of the Civil Service Law. When an appellant declines to make an oral argument, the appeal shall be deemed submitted to the Commission. The agency may elect to reset on the record adduced at the disciplinary proceeding.

(d) Oral argument shall be scheduled within ninety (90) days of receipt of the record below or as soon thereafter as practicable. The determination of the Commission shall be rendered within ninety (90) days after the record on appeal has been submitted for decision or as soon thereafter as practicable.

(e) When the Commission reviews determinations regarding the fitness and discipline of agency employees after hearings conducted pursuant to Civil Service Law §75, the Commission may affirm, reverse or modify the findings of fact, conclusions of law and penalties imposed below.

(f) Where the Commission upon appeal modifies a determination of dismissal by permitting or requiring the transfer of an appellant to a vacancy in a similar position in another division or department;

(1) the appellant shall be transferred to another division of department provided the head of such division or department consents thereto;

(2) such transferee, prior to the approval of such transfer, shall execute all appropriate documents to record his transfer, including, if required by the Commission, a waiver of back pay and civil service rights and status during the period of dismissal;

(3) such transferee shall be required to service the same probationary term as required for original appointments.

HISTORICAL NOTE

Section in original publication July 1, 1991.

3 of 3 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

60 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 60 Civil Service Commission

CHAPTER 2 DETERMINATIONS OF THE NEW YORK CITY CIVIL SERVICE COMMISSION

§2-02 Appeals from Determinations of the City Personnel Director.

(a) An appeal to the Commission by any person aggrieved by an action or determination by the City Personnel Director or his or her designee on accordance with his or her powers as specified in §2-02(b) herein, shall be made by application in writing to the Commission within thirty (30) days of the date of the action or determination appealed from. Such action or determination shall be deemed to be effective upon notice to the appellant. If notice of the action or determination is by mail, there shall be a rebuttable presumption that notice occurred as of five calendar days after the date of the mailing of the action or determination.

(b) An appeal to the Commission shall lie only where the action or determination appealed from is made pursuant to the City Personnel Director's powers and duties as enumerated in paragraphs 3, 4, 5, 6, 7, and 8 of §813(a) of the City Charter and paragraph 5 of §813(b) of the City Charter.

(c) The Commission may affirm, modify, reverse or remand such action or deter- mination.

(d) The Commission shall decide appeals from determinations of the City Personnel Director or his or her designee on the basis of written submissions by the parties. Such submissions shall include the record support in the determination of the City Personnel Director or appropriate motions to dismiss the notice of appeal. The Commission, however, may hear oral argument to afford appellant an opportunity to make an explanation and to submit facts in opposition to the action or determination of the City Personnel Director. At such proceedings, the City Personnel Director will be permitted to defend his/her action or determination.

(e) The appellant shall be entitled to a transcript of the Commission's proceedings upon payment of a reasonable

cost for the production of same.

(f) All appeals to the Commission which result from medical disqualifications by the City Personnel Director and/or his or her designee pursuant to §813(6) of the City Charter shall be supported by medical documentation which shall be received by the Commission within sixty (60) days of the filing of the appeal.

(g) All appeals to the Commission which result from a psychological disqualification by the City Personnel Director and/or his or her designee pursuant to §813(6) of the City Charter shall be supported by medical documentation which shall be received by the Commission within sixty (60) days of the filing of the appeal.

(h) Extension of the time periods set forth in §§2-02(f) and 2-02(g) may be granted for good cause shown.

(i) When the Commission deems that oral argument is required as set forth in §2-02(d), such proceeding shall be scheduled within ninety (90) days of receipt of the complete record or as soon thereafter as practicable.

(j) The Commission shall in all appeals from actions or determinations of the City Personnel Director render a written determination within ninety (90) days of the date such appeal is reveiwed or as soon thereafter as practicable.

(k) The Commission may, in its discretion, take whatever measures it deems appropriate to ensure review of pending appeals prior to the expiration of the pertinent eligible list.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

61 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-01 Definitions.

Terms defined in the statute. The terms "Director," "Board of Collective Bargaining," "Board of Certification," "municipal agency," "municipal employees," "mayoral agency," "public employer," "public employees," "municipal employee organization," "public employee organization," "Municipal Labor Committee," "certified employee organization," "matters within the scope of collective bargaining," "executive order," "grievance," "labor member," "city member," "impartial member," "designated representative," and "designated employee organization" shall have the meanings set forth in §12-303 of the statute.

Deputy Director. The term "Deputy Director" shall mean a deputy appointed by the Director pursuant to §1170 of the New York City Charter.

Director of Representation. The term "Director of Representation" shall mean the person appointed by the Director to administer and oversee the processing of all representation cases and all other duties as assigned by the Director.

Executive Secretary. The term "Executive Secretary" shall mean the person appointed by the Director to carry out the responsibilities defined by §1-07(c)(2) of these rules.

Improper practices. The term "improper practices" shall have the meaning set forth in §12-306 of the statute; the term "improper practices proceeding" shall mean a proceeding conducted, pursuant to §12-309(a)(4) of the statute, to investigate and determine charges of improper practices and, when appropriate, to issue orders for the purpose of remedying such improper practices.

Representation proceeding. The term "representation proceeding" shall mean a proceeding under §12-309(b) of the statute to investigate and determine a question or controversy concerning the representation of public employees for the purposes of collective bargaining.

Rules. These rules shall be cited as the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1).

Statute. The term "statute" shall mean the New York City Collective Bargaining Law, Chapter 3 of Title 12 of the Administrative Code of the City of New York, as amended.

Trial examiner. The term "trial examiner" shall mean any authorized person conducting a hearing and may include a member of either Board, a Deputy Director, or any other agent designated by the Director to conduct a hearing.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

Rules of the City of New York

***** Current through December 2009 ****

61 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-02 Representation Proceedings.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Certification.

(b) **Petition-filing.** A petition for the investigation of a question or controversy concerning the representation of public employees may be filed by a public employer, public employees, or their representatives. The petition shall be filed on a form prescribed by the Office of Collective Bargaining and shall be in writing and signed. The original and three copies thereof shall be filed with the Board.

(c) **Petition by public employees or their representatives-contents; proof of interest.**

(1) A petition filed by public employees or their representatives shall contain:

(i) The name, address, telephone and fax numbers of petitioner;

(ii) The name, address, telephone and fax numbers of the public employer;

(iii) The classes of titles of employees in the units claimed to be appropriate and the approximate number of employees therein;

(iv) An allegation that a question or controversy exists concerning representation and a concise statement of the nature thereof;

(v) The names, addresses, telephone and fax numbers of any other public employee organizations, known to

petitioner, which claim to represent employees in the alleged appropriate bargaining units, and the expiration date of any existing collective bargaining agreement;

(vi) A request that the Board certify or designate the petitioner as the exclusive bargaining representative of the employees in the appropriate units or for other appropriate action.

(2) Simultaneously with the filing of the petition petitioner shall:

(i) In the case of a petition for certification, submit to the Board evidence that at least 30 percent of the employees in the appropriate unit, or in each appropriate unit, desire petitioner to represent them for the purposes of collective bargaining;

(ii) In the case of a petition for designation as the collective bargaining representative of a unit for the purposes specified in paragraphs two, three or five of §12-307(a) of the statute, submit evidence that it is the certified representative of a bargaining unit which includes more than 50 percent of the employees in the unit for which designation is sought.

(3) If such evidence is not timely submitted, the Board may dismiss the petition forthwith. Sufficiency of interest shall not be litigated.

(d) **Petition by public employer-contents.** The petition shall contain:

(1) The name, address, telephone and fax numbers of the petitioner;

(2) A general description of petitioner's function and the number of its employees;

(3) The classes of titles of employees in the units claimed to be appropriate and the approximate number of employees therein;

(4) An allegation that a question or controversy exists concerning representation and a concise statement setting forth the nature thereof, and, in any case when a public employer entertains a good faith doubt concerning the continued majority status of a certified union, an allegation to that effect with a concise statement of the facts upon which the doubt is based;

(5) The names, addresses, telephone and fax numbers of the public employee organizations which claim to represent the employees in the alleged unit(s);

(6) A request that the Board investigate the alleged question or controversy.

(e) **Decertification petition-contents; proof of interest.**

(1) A petition alleging that a certified or designated employee organization is no longer the representative of the public employees in an appropriate bargaining unit may be filed by a public employee or group of public employees or their representative. The petition shall be in writing and signed and shall contain:

(i) The name, address, telephone and fax numbers of petitioner;

(ii) The name, address, telephone and fax numbers of the certified or designated employee organization;

(iii) A description of the bargaining unit(s) involved and the number of employees therein;

(iv) The expiration date of any contract covering employees in the unit(s);

(v) An allegation that the certified or designated employee organization no longer is the representative of the

employees in the appropriate unit(s), and any other relevant and material facts.

(2) (i) Simultaneously with the filing of a decertification petition, the petitioner shall submit to the Board evidence that at least 30 percent of the employees in each unit do not desire to be represented by the certified employee organization;

(ii) Simultaneously with the filing of a petition for revocation of a designation as collective bargaining representative of a unit for the purposes specified in paragraphs two, three or five of §12-307(a) of the statute, the petitioner shall submit to the Board evidence that the designated representative is not the certified representative of the bargaining unit or units which include more than 50 percent of the employees in the unit which it has been designated to represent;

(iii) If such evidence is not timely submitted, the Board may dismiss the petition forthwith. Sufficiency of interest shall not be litigated.

(f) **Proof of interest-current.** Designation and authorization cards and petitions, submitted as proof of interest under §§1-02(c)(2), 1-02(e)(2) or 1-02(1) of these rules, must be dated and signed by the employees not more than seven months prior to the commencement of the proceeding before the Board. Proof of interest shall be based on the payroll immediately preceding the date of filing of the petition, unless the Board deems such period to be unrepresentative.

(g) **Petitions-contract bar; time to file.** A valid contract between a public employer and a public employee organization will bar the processing of any petition filed outside of the window periods described below. The time period for filing a petition for certification, designation, decertification or revocation of designation pursuant to §1-02(c), (d), or (e) of these rules shall be: for a contract of no more than three years' duration, a petition can be filed not less than 150 or more than 180 calendar days before the contract's expiration date; for a contract of more than three years' duration, a petition can be filed not less than 150 or more than 180 calendar days before the contract's expiration date, or not less than 150 or more than 180 calendar days before the end of the third year of that contract. No petition for certification, decertification or investigation of a question or controversy concerning representation may be filed after the expiration of a contract. However, in the event that a public employer and a public employee organization sign a successor contract after that contract has expired, then a petition for certification, decertification or question or controversy concerning representation may be filed in the 30-day period following the date the successor contract is signed by all parties. Moreover, if the Board finds that unusual or extraordinary circumstances exist, such as when there is reason to believe that a recognized or certified employee organization is defunct or has abandoned representation of the employees in the unit for which it was recognized or certified, the Board may process a petition otherwise barred by this rule.

(h) **Petitions-notice of filing.** Upon the filing of a petition pursuant to the provisions of §1-02 of these rules, notice thereof shall be posted on the public docket maintained by the Board and shall be published in the City Record. The notice shall include the date the petition was filed, the name and address of the petitioner, the name and address of the public employer, and a statement of the action sought. A notice containing the same information will be prepared by the Board and delivered to the employer, which shall post it on the bulletin board customarily used for the posting of notices for employees for a minimum of ten business days.

(i) **Responses-time to file.** For petitions filed pursuant to §1-02(c), (d), or (e) of these rules the public employer or an employee organization certified to represent the existing bargaining unit shall file with the Director within 30 business days after service of the notice of filing of a petition pursuant to §1-02 of these rules, an original and three copies of its written submission, with proof of service upon all other parties, setting forth its position on the petition. As circumstances require, the request of the public employer or employee organization for an extension of time to file its written submission, on notice to all parties, shall not be unreasonably denied. When it is the public employer's position that any of the petitioned-for titles and employees are managerial or confidential, in its written submission the employer

shall comply with the requirements of §1-02(v) of these rules insofar as they require a statement of the factual basis of the allegation that the affected titles and employees are managerial or confidential, as the case may be. In the absence of any response from the public employer or an employee organization certified to represent the existing bargaining unit within the time specified above, the Board shall proceed with processing the petition. For petitions filed pursuant to §1-02(c) and (e) of these rules, responses filed by an employer must contain an alphabetized list of all the employees in the unit(s) sought.

(j) **Investigation.** (1) In its investigation of a question or controversy concerning representation, the Board may conduct informal conferences or hearings, may direct an election or elections, or use any other suitable method to resolve the question concerning representation.

(2) If, after a petition or motion has been filed pursuant to section §1-02 of these rules and at any time prior to the close of the record, it appears to the Director of Representation that no further proceedings are warranted because the petition or motion does not raise a question concerning representation or is otherwise insufficient due to untimeliness, contract or certification bar or lack of a sufficient showing of interest, the Director of Representation may dismiss the petition or deny the motion by administrative action, and will so advise the parties in writing, setting forth the grounds for dismissal. Within 10 business days after service of a letter dismissing a motion or petition, the petitioner may obtain review of the dismissal by filing with the Board an original and three copies of a statement in writing setting forth the reasons for the appeal together with proof of service thereof upon all other parties.

(k) **Appropriate units-determination.** In determining appropriate bargaining units, the Board will consider, among other factors:

(1) Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the statute and the applicable executive order;

(2) The community of interest of the employees;

(3) The history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;

(4) The effect of the unit on the efficient operation of the public service and sound labor relations;

(5) Whether the officials of government at the level of the unit have the power to agree or make effective recommendations to other administrative authority or the legislative body with respect to the terms and conditions of employment which are the subject of collective bargaining;

(6) Whether the unit is consistent with the decisions and policies of the Board.

(l) **Determination of representatives on consent.** Subject to the approval of the Director of Representation, the parties to a representation proceeding may waive a hearing and agree in writing on the method by which the Board shall determine the question of representation.

(m) **Voluntary recognition-notification.** (1) **Filing of notification.** When the public employer proposes voluntarily to recognize a public employee organization for the representation of public employees pursuant to §12-303(l)(2) of the statute, the employer shall file an original and three copies of a signed written notification with the Board.

(2) **Notification of proposed recognition by public employer-contents.** The notification shall contain:

(i) The name, address, telephone and fax numbers of the public employer;

(ii) A general description of the public employer's function and the number of its employees;

(iii) The classes of titles of employees in the units which have been recognized and the approximate number of employees therein;

(iv) A statement that no question or controversy is known to exist concerning representation thereof;

(v) The names, addresses, telephone and fax numbers of the public employee organization(s) which has (have) been recognized to represent the employees in the units;

(vi) A request that the certification held by the public employee organization(s) be amended, if applicable, to reflect the voluntary recognition.

(3) **Notification of proposed recognition-notice of filing.** Upon the filing of a notification of proposed recognition pursuant to the provisions of §1-02 of these rules, notice thereof shall be posted on the public docket maintained by the Board and shall be published in the City Record. The notice shall include the date the notification of recognition was filed, the name and address of the public employer, the name and address of the public employee organization, and a statement of the action sought. A notice containing the same information will be prepared by the Board and delivered to the employer, which shall post it on bulletin boards customarily used for the posting of notices for employees for a minimum of 10 business days. Within 21 calendar days of service of the notice, the public employer shall provide the Board with a signed certification that the notice has been posted.

(4) **Objection to proposed recognition.** An employee, a group of employees, or a public employee organization may file a statement with the Board objecting to the proposed recognition and alleging that a question or controversy exists regarding representation. Such a statement of objection, if filed in a timely manner within the period of objection, will preclude a proposed recognition from becoming effective. In the event an objection is timely filed, the notice of voluntary recognition will be deemed a petition pursuant to §1-02(d) of these rules and will be processed accordingly.

(5) **Period of objection.** A public employee or employee organization objecting to the recognition shall file an original and three copies of its statement of objection, with proof of service on the public employer and public employee organization, setting forth the basis for its opposition within 20 calendar days of publication of the notice of filing in the City Record.

(n) **Elections-participation; eligibility.** (1) If the Board determines, as part of its investigation, to conduct an election, it shall determine who may participate in the election and appear on the ballot, the form of the ballot, the employees eligible to vote in the election, and the rules governing the election. An intervening public employee organization, other than a certified public employee organization, shall not be entitled to appear on the ballot except upon a showing of interest, satisfactory to the Board, of at least 10 percent of the employees in the unit found to be appropriate.

(2) When a public employer objects to the addition of supervisory or professional employees to a unit which contains non-supervisory employees or non-professional employees pursuant to §12-309(b)(1) of the statute, an election shall be held to determine whether a majority of supervisory or professional employees voting in an election are in favor of such a unit. The electorate of such an election shall consist solely of such supervisory or professional employees sought to be added to such a unit. When there is a dispute as to the eligibility of the employees in question or the appropriateness of the proposed unit, those issues shall be resolved by the Board prior to the holding of an election under this subdivision.

(3) No election shall be conducted in any bargaining unit or any subdivision thereof within which, in the preceding 12-month period, a valid election shall have been held except upon the consent of the parties.

(o) **Elections-notice.** Prior to the election, the Board will prepare a notice of election which will specify the time and place of the election, the hours the polls will be open, the classes of titles of employees in the appropriate unit in which the election is to be conducted, rules concerning eligibility to vote, the form and content of the ballot, and such

additional information and instructions as the Board may determine. Copies of the notice will be delivered to the public employer, who shall post them on the employees' bulletin boards and in other appropriate places, until the election has been concluded.

(p) **Elections.** (1) **Conduct.** All elections shall be by secret ballot and shall be conducted under the supervision of an agent of the Board at such time and place as the agent may direct.

(2) **Observers.** Each party may be represented by observers selected in accordance with such limitations and conditions as the Board may prescribe.

(3) **Challenges.** An observer or the Board's agent conducting the election may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending Board decision thereon.

(4) **Count of ballots.** After the polls have been closed, the ballots shall be counted by the Board's agent in the presence of the observers.

(5) **Report of count.** Upon the conclusion of the election, the Board or its agent shall prepare and serve upon the parties a report showing the results of the election.

(q) **Inconclusive elections; run-off.** In any election in which three or more choices (including "no representative") appear on the ballot, if no choice receives a majority of the valid ballots cast, and the valid ballots cast for "no representative" total less than 50 percent of the valid ballots cast, the Board may conduct a run-off election in which only the two public employee organizations which received the largest number of valid votes shall appear on the ballot, and the choice of "no representative" shall be omitted therefrom.

(r) **Post-election procedure-objections; challenges.** Within seven business days after service of the report of count, any party may serve on all other parties and file with the Board (with proof of service) an original and three copies of objections to the election, to conduct affecting the results of the election, or to the report of count. The objections shall be verified, and shall contain a concise statement of the facts constituting the grounds of objections. The Board may direct oral argument before it, or direct a hearing, or otherwise investigate and make its determination with respect to the objections or any challenged ballots.

(s) **Certification-determination of majority; no strike affirmation; disqualification.** (1) Upon completion of its investigation of any petition or motion filed pursuant to §1-02 of these rules, the Board shall certify to the parties the name of the representative, if any, which has been designated as their representative by a majority of the employees in the appropriate bargaining unit, or, if an election is held, which has been selected by the majority of the employees casting valid ballots in the election, or make other disposition of the matter. Notice of certifications issued by the Board shall be published in the City Record.

(2) No public employee organization shall be certified as an exclusive bargaining representative unless it has filed with the Board a no-strike affirmation as required by the New York State Public Employees Fair Employment Act.

(3) An employee organization shall not be eligible for certification as an exclusive bargaining representative if it:

(i) discriminates with regard to the terms and conditions of membership because of race, color, creed, sex or national origin, or

(ii) engages in or advocates the violent overthrow of the government of the United States or any state or any political subdivision thereof.

(t) **Certification; designation-life; modification.** When a representative has been certified by the Board, such certification shall remain in effect for one year from the date thereof and until such time thereafter as it shall be made to

appear to the Board, through a secret ballot election conducted in a proceeding under §§1-02(c), (d), or (e) of these rules, that the certified employee organization no longer represents a majority of the employees in the appropriate unit. When a representative has been designated by the Board to represent a unit for the purposes specified in paragraphs two, three or five of §12-307(a) of the statute, such designation shall remain in effect for one year from the date thereof and until such time as it shall be made to appear to the Board that the designated employee organization no longer represents a majority of the employees in the appropriate unit. Notwithstanding the above bar on challenging a certification within one year of its issuance, in any case when unusual or extraordinary circumstances require, such as when there is reason to believe that a recognized or certified employee organization is defunct or has abandoned representation of the employees in the unit for which it was recognized or certified, the Board may modify or suspend, or may shorten or extend the life of the certification or designation.

(u) **Amendments of certifications-motion; affidavit; notice of filing; answering affidavit; disposition by the Board.** (1) A public employer or the certified bargaining representative of a unit may make a motion requesting amendment of a certification to include classes of titles (positions), the names of which are changed, or new specialty designations, or a new class of titles (positions), and/or to delete obsolete titles (positions) or designations. The motion shall be in writing and supported by the affidavit of an officer of or attorney for the moving party. The original and three copies thereof shall be filed with the Board together with proof of service on any other parties.

(2) A motion for amendment of certification pursuant to this subdivision shall be based upon an affidavit which shall contain:

(i) The name, address, telephone number and fax numbers of the certified bargaining representative of the unit(s) involved;

(ii) A description of the bargaining unit(s) involved and the date of certification of the bargaining representative;

(iii) All names of the classes of titles (positions) and designations involved and the date(s) on which any change of name or creation of new name or designation was effected;

(iv) A request that the bargaining representative's certification be amended to reflect the changes recited in the petition.

(3) Upon the filing of a motion pursuant to this subdivision, notice thereof shall be posted on the public docket maintained for such motions by the Board and shall be published in the City Record. The notice shall include the date the motion was filed, the names and addresses of the parties and the changes covered by the motion. A notice containing the same information shall be prepared by the Board and delivered to the employer, which shall post it on the bulletin board customarily used for the posting of notices for employees for a minimum of 10 business days. Within 21 calendar days of service of the notice, the public employer shall provide the Board with a signed certification that the notice has been posted.

(4) A public employer or employee organization opposing the motion shall file an original and three copies of its answering affidavit, with proof of service on the other parties, setting forth the basis for its opposition within 10 business days of publication of the notice of filing in the City Record.

(5) In the absence of answering affidavits filed by a public employer or employee organization opposing the motion or in the absence of defects revealed by the Board's investigation, the Board shall issue the amendment forthwith.

(6) When a motion filed under this subdivision is contested, the Board may conduct informal conferences or hearings, may direct an election or elections, or use any other suitable method to resolve the question concerning representation.

(v) **Petition for designation of persons as managerial or confidential employees-contents; time to file; notice; intervention; investigation; determination.**

(1) A petition for the designation of certain of its employees as managerial or confidential may be filed by a public employer or its representative. The petition shall be in writing and signed. The original and three copies thereof shall be filed with the Board together with proof of service on any other parties. The petition shall contain:

(i) The name, address, telephone and fax numbers of petitioner;

(ii) A general description of petitioner's function;

(iii) The titles of employees covered by the petition and the number of employees in each;

(iv) A statement as to whether any of the titles affected by the petition has ever been included in a collective bargaining unit for purposes of negotiation with petitioner; whether any of them has been represented at any time by a certified employee organization; and the current collective bargaining status of each such title;

(v) The expiration date of any current collective bargaining agreement covering employees affected by the petition;

(vi) A statement that the titles and employees affected by the petition be designated either managerial, confidential, or both, as the case may be;

(vii) A statement of the basis of the allegation that the titles and employees affected by the petition are managerial and/or confidential;

(viii) The name, address, telephone and fax numbers of any certified employee organization which represents persons affected by the petition;

(ix) A statement that notice of the filing of the petition has been mailed to any certified employee organization which represents employees in such titles.

(2) A petition for the designation of employees as managerial or confidential may be filed:

(i) Not less than five or more than six months before the expiration date of the contract covering the employees sought to be designated managerial or confidential; or

(ii) During the pendency of a representation proceeding in which the petitioned for unit includes the employees sought to be designated managerial or confidential; or

(iii) In the discretion of the Board when unusual circumstances are involved.

(3) Any employee affected by the petition may apply to the Board for permission to intervene in the proceeding following the general procedures prescribed in §1-12(k) of these rules within 20 calendar days of publication of the notice prescribed in §1-02(h) of these rules. Such application shall be made by a motion addressed to the Board and supported by an affidavit stating the basis for the request for permission to intervene, including a statement as to whether intervenor appears in support of or in opposition to the petition and a recital of the facts upon which intervenor bases such support or opposition.

(4) In its investigation of a question as to the managerial or confidential status of employees, the Board may conduct informal conferences or hearings or use any other suitable method of resolving the matter.

(5) Upon completion of its investigation, the Board shall determine whether or not the titles affected by the petition or any of the persons employed in any such title are managerial or confidential and shall communicate its determination

to the parties. Notice of such determination shall also be published in the City Record.

(6) A determination by the Board made pursuant to this subdivision regarding the managerial or confidential status of a title shall be final and binding and, subject to §1-02(v)(2)(iii) of these rules, such determination shall preclude a petition to represent the title and employees or a petition to designate the title and employees managerial or confidential for a period of two years or until the period specified in §1-02(v)(2)(i) above, whichever is later. A petition filed pursuant to this subdivision shall include a statement of facts demonstrating such a material change in circumstances subsequent to the Board's prior determination as to warrant reconsideration of the managerial or confidential status of the title or employee.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (c) par (1) subpar (i) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (e) par (1) subpar (i) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (g) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (i) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (j) relettered (formerly (i)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (k) relettered (formerly (j)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (l) relettered (formerly (k)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (m) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (n) relettered (formerly (l)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (n) par (2) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (n) par (3) renumbered (formerly (2)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (o) relettered (formerly (m)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (p) relettered (formerly (n)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (q) relettered (formerly (o)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (r) relettered (formerly (p)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (s) relettered (formerly (q)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (t) relettered (formerly (r)) and amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (u) relettered (formerly (s)) and amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (u) par (2) subpar (i) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (u) par (5) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (v) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1] This subd. (v) repealed in 12/3/03 amendment (w) relettered to be (v).

Subd. (w) relettered (formerly (t)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (w) par (1) subpar (i) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 6, 1997:

The Board of Collective Bargaining and the Board of Certification of the New York City Office of Collective Bargaining are authorized to adopt rules and regulations for the conduct of their business and the carrying out of powers and duties conferred upon them by law, pursuant to Section 12-309(a)(7) and Section 12-309(b)(5) of the New York City Administrative Code. The purpose of these amendments is, generally, to update and/or revise previously adopted rules of procedure and, specifically, to bring existing rules into conformity with the current state of applicable federal and State law, to clarify existing rules, or to set forth new procedures.

The proposed rule amendments are the work-product of the Tripartite Committee to Revise the New York City Collective Bargaining Law and Rules of the Office of Collective Bargaining. Membership in the Tripartite Committee was open to all of the municipal unions as well as the City and related public employers. Representatives of several unions, the Mayor's Office of Labor Relations, the Health and Hospitals Corporation, and staff of the Office of Collective Bargaining participated. The proposed rule amendments represent only those changes which have the unanimous support of the Tripartite Committee.

GENERAL CHANGES

The following rule amendments reflect recent advances in law office technology:

Sections 1-02(c), 1-02(e), 1-02(u)(2)(i), 1-02(w)(3)(i), 1-03(b)(1), 1-07(e)(1), 1-13(c)(1).

The following rule amendments achieve gender neutrality in language:

Sections 1-04(b), 1-05(e), 1-05(l)(3), 1-05(n), 1-07(i), 1-10(c), 1-10(g), 1-10(h), 1-10(k), 1-11(a), 1-13(f).

The following rule amendments correct grammatical or typographical errors:

Sections 1-02(u)(5), 1-14(c).

The following rule amendments clarify that, in the following sections, the reference to days is to "business" days rather than to "calendar" days:

Sections 1-06(e), 1-07(h), 1-07(i), 1-12(d)(1), 1-12(d)(2), 1-13(k).

The following rules are renumbered to accommodate the insertion of new sections:

Sections 1-02(j)-(l), 1-02(n)(1), 1-02(n)(3), 1-02(t), 1-02(u), 1-02(w), 1-05(g)-(n), 1-07(c)(1), 1-07(f)(1), 1-13(c)(3).

SUBSTANTIVE CHANGES

Section 1-02(g) provides that the period for filing a representation petition is a certain number of calendar days rather than months prior to the expiration date of the contract.

Section 1-02(i) provides that interested parties in a representation proceeding who wish to submit a written statement of position with respect to a petition must do so by a specified date.

Section 1-02(m)(1)-(5) sets forth the procedure to be followed when a public employer voluntarily recognizes a public employee organization pursuant to Section 12-303(1)(2) of the New York City Administrative Code.

Section 1-02(n)(2) sets forth the procedure for an election held in the event the employer objects to the certification or designation of a mixed unit of supervisory and non-supervisory or professional and non-professional employees pursuant to Section 12-309(b)(1) of the New York City Administrative Code.

Section 1-02(t) provides that the Board's authority to modify, suspend or shorten the life of a certification or designation in the event of unusual or extraordinary circumstances is limited to the first year of certification or designation; and further clarifies the situations that are contemplated by the phrase "unusual or extraordinary circumstances".

Section 1-02(v) sets forth the procedure for processing a motion to amend a certification to include a newly created title having identical or substantially the same job duties as a previously certified title when the motion is uncontested.

Section 1-03(b)(4) modifies the existing rule to require certain additional information be included in bargaining notices.

Section 1-05(g) sets forth the procedure for the filing and processing of a scope of collective bargaining petition during the pendency of an impasse proceeding.

Section 1-05(i) provides that in the selection of an impasse panel, a list containing no less than seven names is submitted to the parties; and further conforms the rule to existing law, wherein, pursuant to expiration of Section 5408(3) of the Unconsolidated Laws (New York State Financial Emergency Act for the City of New York), notice of the appointment of an impasse panel on the Financial Control Board is no longer required.

Section 1-06(e) allows the parties ten business days to agree upon an arbitrator; and further provides that when there is no agreement, a list containing no less than seven names is submitted to the parties.

Section 1-07(c)(2) cross-references the new procedure for filing a scope of collective bargaining petition during the pendency of an impasse proceeding.

Section 1-07(e)(3) requires more specificity in petitions filed pursuant to these rules.

Section 1-07(f)(2) conforms the rule to existing law, which provides for joinder of the employer in improper practice proceedings in which it is alleged that a union has breached its duty of fair representation pursuant to Article 14, Section 209-a(3) of the Civil Service Law.

Section 1-07(h) modifies the existing rule to require a respondent to file an answer to an improper practice petition within ten business days of service, rather than receipt, of the Executive Secretary's determination.

Section 1-11(d) clarifies that the Civil Practice Law and Rules will govern when the amount payable as witness

fees is in dispute.

Section 1-12(e) provides that the grant of a request for oral argument before the Board is discretionary.

Section 1-13(a) sets forth the procedure for correcting certain defective pleadings.

Section 1-13(c)(2) defines who must be served in order for service to be complete.

Section 1-13(e) adopts the period specified in the Civil Practice Law and Rules as it relates to the measurement of time when service is by mail.

Section 1-13(j) provides that a trial examiner has discretion to evaluate a motion made orally at the hearing and to direct that a motion be submitted, in writing, to the Board.

Section 1-13(k) allows for the filing of reply affidavits.

Section 1-14(b)(2) empowers trial examiners to deal with discovery issues arising in cases before them.

Section 1-15(b) conforms the rule to the New York City Charter as it relates to the City Administrative Procedure Act.

2. Statement of Basis and Purpose in City Record Dec. 3, 2003: The Board of Collective Bargaining and the Board of Certification of the New York City Office of Collective Bargaining are authorized to adopt rules and regulations for the conduct of their business and the carrying out of powers and duties conferred upon them by law, Section 12-309(a)(7) and Section 12-309(b)(5) of the New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) ("NYCCBL"). The purpose of these amendments is, generally, to update and/or correct previously adopted rules and, specifically, to bring existing rules into conformity with the current state of applicable federal and State law, to codify existing practices within the agency, to clarify existing rules, or to set forth new procedures. General Changes Throughout the rules, the following terms were capitalized: "Board", "Director", "Deputy Director" and "City Record". Definitions for the following Board agents were added in Section 1-01: "Director of Representation" and "Executive Secretary". Section 1-01 was amended to provide the manner in which to cite the OCB's rules. Throughout the rules, "New York" was added to the following statutes: the Civil Practices Law and Rules, the Civil Service Law, and the City Charter. Throughout Section 1-02 the term "Director" was clarified to mean the Director of Representation. Throughout Section 1-03, the term "Director" was clarified to mean the Deputy Director. Throughout Section 1-06, the term "Director" was clarified to mean the Deputy Director. Throughout the rules, the numbers one through nine were written out and the numbers 10 and above were changed to numerals. The definition of "Board" was rewritten to use the same wording in the following rules: Sections 1-02, 1-03, 1-04, 1-05, 1-06, 1-07, 1-08, 1-09, 1-10, 1-11, 1-12, 1-13. The request for the name, address, telephone and fax number of a party was rewritten to use the same wording in the following rules: Sections 1-02(c), 1-02(d), 1-02(e), 1-02(m), 1-02(u), 1-02(v), 1-03(b), 1-04(a), 1-05(b), 1-07(c), 1-07(d), 1-08(c), 1-08(d). The phrase "unit or units" was amended to "unit(s)" in the following rules: Sections 1-02(c), 1-02(d), 1-02(e), 1-02(m), 1-02(u), 1-02(v), 1-03(b)(4). The phrase "the classes of positions (titles) of employees" was amended to "the classes of titles (positions) of employees" in the following rules: Sections 1-02(c), 1-02(d), 1-02(e), 1-02(m), 1-02(o), 1-02(u), 1-02(v). The following sections include corrections of grammatical or typographical errors: Sections 1-01, 1-02(d)(3), 1-02(e)(2)(iii), 1-02(j), 1-02(k), 1-02(m), 1-02(n)(2), 1-02(r), 1-02(t), 1-04(b), 1-05(b)(6), 1-05(c), 1-05(d), 1-05(e), 1-05(g), 1-05(i), 1-05(j), 1-05(m)(2), 1-06(e), 1-08(d), 1-08(i), 1-09(b)(2), 1-09(c), 1-11(e), 1-12(b), 1-12(c), 1-12(g), 1-12(h), 1-14(a), 1-14(b). Section 1-03(d) was amended to allow for advances in technology. The following sections were clarified to state that the reference to days is either "business" or "calendar" days: Sections 1-02(g), 1-02(h), 1-02(m), 1-02(r), 1-02(u), 1-02(v), 1-03(b), 1-03(c), 1-03(d), 1-04(b), 1-05(g), 1-05(i), 1-05(l), 1-05(m), 1-06(h), 1-07(c), 1-07(d), 1-08(f), 1-08(h), 1-10(b). The following sections were renumbered or re-lettered to accommodate for new sections or to conform to the reformatting of the document: Sections 1-02(c), 1-05(m), 1-07, 1-09(b), 1-10(h)-(m), 1-11. Section 1-05(n) was deleted as duplicative of Section 1-12(h). Section 1-12 was deleted as obsolete and the subsequent sections were renumbered accordingly. Specific Changes

Section 1-02(g) clarifies the time frame for filing a petition for certification, designation, decertification or revocation of designation pursuant to the rules and specifically incorporates wording from former §1-02(t), which defines the circumstances in which the Board may find an exception to the filing rules. Section 1-02(i) clarifies the time to file a response to petitions filed pursuant to §1-02(c), (d) or (e) of the rules, and requires that the employer provide an alphabetized list of all employees in the unit(s) sought. Section 1-02(j)(2) provides for the administrative dismissal of petitions filed pursuant to §1-02 which are insufficient or untimely. Section 1-02(m)(3) provides that within 21 days of service of a notice of proposed recognition, the employer must provide the Board with a signed certification that the notice has been posted. Section 1-02(m)(4) provides that in the event there is timely objection to a proposed recognition regarding representation, the notice of voluntary recognition will be deemed a petition pursuant to §1-02(d) of the rules. The following obsolete provision was deleted from Section 1-02(t): "The provisions of this section shall apply to certifications issued by the New York City Department of Labor prior to the effective date of the statute, or issued in a case or matter which was pending on such effective date and in which an election had been held." Section 1-02(u) is a consolidation of former §1-02(u) and (v) and sets forth the procedures for amendments to certifications. Section 1-02(v), formerly §1-02(w), sets forth the procedures for petitions for designation of persons as managerial or confidential employees. Section 1-03(c) provides that the Director or the Director's designee shall notify the parties in writing whether their request for an extension of time to commence bargaining has been granted or denied. Section 1-04 has been amended to provide for mediation assistance by the Deputy Director at the request of the parties. The last sentence in Section 1-05(g), providing for an extension of time for filing a scope petition pending the enactment of the former rules, was omitted as obsolete. Section 1-05(i) provides that the Director may approve an alternate procedure for selecting members of an impasse panel. Section 1-05(m), which sets forth the procedures for appealing a report and recommendation of an impasse panel, was amended to provide that the record of proceedings, before the impasse panel shall be filed simultaneously with the filing of the petition. Section 1-06(b) clarifies the procedures for requesting arbitration and sets forth the documents which are required for the processing of the request. Section 1-06(c) clarifies the time for serving and filing petitions challenging arbitrability. Sections 1-06(d) and 1-12(m)(2) provide for the consolidation of arbitration proceedings. Section 1-06(e) was amended to provide that at the parties' request, the Deputy Director can approve an alternate procedure for the selection of arbitrators. Section 1-06(g) was amended to clarify the procedures for the taking of stenographic records during arbitrations. Section 1-07 was repealed and reenacted in a reorganized form with different numbering to accommodate the following significant changes: · Section 1-07(b) provides for the filing of a combined scope of bargaining and improper practice petition, when appropriate, in a single petition. The combined petition must be properly titled, contain separately-labeled sections for each proceeding, and comply with the pleading requirements set forth in the rules. · Section 1-07(c), a consolidation of former §1-07(e) and (f), clarifies the requirements for pleadings and the contents thereof in proceedings brought before the Board. · Section 1-07(c)(2), formerly part of Section 1-07(d), was amended to allow the Executive Secretary to send deficiency letters when it is determined that an improper practice petition, on its face, does not contain facts sufficient as a matter of law to constitute a violation as provided in the NYCCBL. The petitioner may serve and file an amended petition, withdraw the charge, or file objections to the deficiency letter. If the petitioner does not timely file an amendment or otherwise respond, the charge will be deemed withdrawn and the matter closed. Upon review of the amended petition or written objection filed by the petitioner, the Executive Secretary may issue either a notice that the petition is not on its face untimely or insufficient or a written decision, as was the case under the former rule, dismissing the improper practice petition. · Section 1-07(c)(6) formalizes the practice of case conferencing and mediation. · Section 1-07(c)(7) provides for amendments to pleadings, after a hearing and upon good cause shown, to amend a pleading to conform to the evidence. The request to amend shall be on notice to all parties. This subsection also provides that a petitioner may withdraw a petition before the Board at any time upon notice to all parties and that the case will be closed without consideration or review of any of the issues raised in the pleadings. · Section 1-07(d), formerly Section 1-07(l), clarifies the standard and procedures for applications for injunctive relief in improper practice cases. Notably, the amendment requires that petitions for injunctive relief be supported by affidavit(s) stating: (1) those facts personally known to the deponent that constitute the alleged improper practice, the date of the alleged improper practice, the alleged injury, loss, or damage arising from it, and the date when the alleged injury, loss, or damage occurred or will occur; and (2) those facts demonstrating why the alleged injury, loss, or damage is immediate and irreparable, and will render a resulting judgment on the merits of the improper practice charge ineffectual if injunctive relief is not granted, and indicating why

there is a need to maintain or return to the status quo in order for the Board to provide meaningful relief. · Section 1-07(d)(5), formerly Section 1-07(q), has been amended to provide the respondent with three business days to serve and file an answer to an injunctive relief petition. · Section 1-07(d)(6), formerly Section 1-07(r), has been amended to provide the petitioner until noon on the fourth business day to serve and file a reply in an injunctive relief proceeding. · Section 1-07(d)(3), (5), and (6) were amended to require that electronic copies of injunctive relief pleadings be filed with the Board in the manner prescribed by the Office of Collective Bargaining. Section 1-08(j) was amended to provide that a hearing may be held by a staff attorney or a Board agent. Section 1-10(b) was amended to provide that the parties are to be given at least seven business days notice of a hearing. Section 1-10(c) clarifies the duties of the trial examiners. Section 1-10(g) provides for sanctions for contemptuous conduct during hearings. Section 1-10(h) clarifies the procedures for concluding a hearing. Section 1-10(i) clarifies the procedures for a variance between pleadings and proof. Section 1-10(j) clarifies a hearing officer's authority to decide motions and objections during a hearing. Section 1-10(k) clarifies the appeal process of a hearing officer's ruling. Section 1-10(l) clarifies the procedures for re-opening of a hearing. Section 1-11(c) clarifies the procedures for issuing subpoenas. Section 1-11(d) clarifies the procedures when a party fails to testify or comply with a subpoena and deletes the unnecessary reference to the taking of depositions. Section 1-12(e) clarifies the procedures for filing papers with the Office of Collective Bargaining. Section 1-12(f) clarifies the manner to compute a time period set forth in these rules. Section 1-12(g) was amended to provide that an additional five calendar days is granted when service is by mail and that service is complete upon mailing; it was alwso amended to clarify the definitions of calendar and business days. Section 1-12(i) allows for the Director or the Director's designee to permit the withdrawal of a petition upon notice to all parties. Section 1-12(j) allows for the Director or the Director's designee to decide a motion for joinder of parties. Section 1-12(l) provides the caveat that "except as otherwise provided by these rules" and clarifies the type of responding papers to be submitted. Section 1-12(m) allows for the Director or the Director's designee to consolidate or severe two or more proceedings. Section 1-12(n), formerly §1-12(e), sets forth the procedures for requesting oral argument before the Board. Section 1-13(b) clarifies the powers and duties of the Deputy Directors. Section 1-13(c) clarifies the powers and duties of the Staff Attorneys and Board Agents. Section 1-14(a), formerly §1-15, provides for the construction of these rules.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

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61 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-03 Collective Bargaining.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Collective Bargaining.

(b) **Bargaining notice-contents.** A bargaining notice, served and filed pursuant to §12-311(a) of the statute, shall be on a form prescribed by the Office of Collective Bargaining and shall contain:

(1) The name, address, telephone and fax numbers of the party serving the notice;

(2) The name, address, telephone and fax numbers of the party to whom the notice is directed;

(3) The expiration date of the current collective bargaining agreement and the date specified therein, if any, for service of a notice of intention to negotiate new contract terms, or a statement that there is no collective bargaining agreement in effect;

(4) A description of the appropriate bargaining unit, including the certification number or numbers of the units covered and the approximate number of employees in the units covered by the request for negotiation;

(5) A request that negotiations begin within 10 business days after service of the notice.

(c) **Extension of time-request.** A request for an extension of time to commence bargaining negotiations shall be in writing and shall be filed with the Director. A copy thereof shall be served upon the other party to the proposed negotiations. The request shall be filed at least three business days before the time when negotiations should start and shall state the reasons for the requested extension of time. The other party may serve and file its written consent or

objections to the requested extension, and its reasons therefor. The Director or the Director's designee shall notify the parties in writing whether the request is denied or granted.

(d) **Filing contracts.** Every public employer entering into a written collective bargaining agreement with a public employee organization shall file copies thereof that are in written and electronic formats with the Board within 15 calendar days after the execution of the agreement. Contracts filed with the Board shall be public records and available for inspection at reasonable times.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (b) par (1) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (b) par (4) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

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RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-04 Mediation.

(a) **Request for mediation-contents.** Unless waived by the Deputy Director, a request for the appointment of a mediation panel or mediation assistance by the Deputy Director shall be in writing, and upon notice to all parties. The request shall be filed on a form prescribed by the Office of Collective Bargaining and shall contain:

(1) The name, address, telephone and fax numbers of the other party to the collective bargaining negotiations;

(2) The date negotiations started;

(3) The termination date of the collective bargaining agreement between the parties, if any;

(4) A statement that the parties have been unable to agree on the terms of a collective bargaining agreement, and that collective bargaining will be aided by the appointment of a mediation panel or the assistance of the Deputy Director;

(5) If the request is for the appointment of a mediation panel, then the number of persons to constitute the panel, if the parties have agreed thereon;

(6) If the request is for the appointment of a mediation panel, then the names of persons who are listed on the Office of Collective Bargaining's mediation register who are to constitute the panel, if the parties have agreed thereon.

(b) **Appointment of panel.** If the Deputy Director determines that the parties have been unable to reach agreement and that collective bargaining would be aided by the appointment of a mediation panel, the Deputy Director shall

appoint a panel from the mediation register. The panel shall be of the size and shall consist of the persons agreed upon by the parties, if those persons are available. In the absence of agreement thereon, the Deputy Director shall determine the size and/or membership of the panel. No panel shall be appointed within 30 calendar days of the commencement of negotiations except upon the written request of both parties.

(c) **Panel-functions.** It shall be the duty of the panel to assist the parties to reach a voluntary and satisfactory agreement. The panel may hold separate or joint meetings with the parties or their representatives, and such meetings shall be non-public unless otherwise agreed upon by the parties, the panel and the Deputy Director.

(d) **Panel-guidance by Deputy Director.** The panel shall perform its duties under the general guidance and direction of the Deputy Director, to whom it shall report the progress of the mediation and terms of any settlement reached. If the panel is of the opinion that further mediation efforts would be unavailing, it shall so report to the Deputy Director in writing unless waived by the Deputy Director.

(e) **Confidential disclosures.** Subject to the provisions of §1-04(d) of these rules, any information disclosed by the parties to the mediation panel, and all records, reports and documents prepared or received by the panel in the performance of its duties shall be deemed confidential and shall not be disclosed.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (b) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

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61 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-05 Impasse Panels.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Collective Bargaining.

(b) **Request for impasse panel-contents.** A request for the appointment of an impasse panel may be made jointly by the public employer and the certified or designated employee organization, or singly by either party. Unless waived by the Director, the request shall be in writing and signed by the public employer and the certified or designated employee organization or by any of them, if made singly. If the request is by a single party, a copy shall be served on the other party. The request shall be filed with the Board on a form prescribed by the Office of Collective Bargaining and shall contain:

(1) The names, addresses, telephone and fax numbers of the parties;

(2) The date when negotiations began and the date of the last meeting;

(3) The nature of the matters in dispute and any other relevant facts, including a list of the specific employer and/or employee organization demands upon which impasse has been reached;

(4) A statement that collective bargaining (with or without mediation) has been exhausted and that conditions are appropriate for the creation of an impasse panel;

(5) The size of the panel to be appointed, if the parties have agreed thereon;

(6) The names of the persons who are listed on the Office of Collective Bargaining's impasse panel register and

who are to constitute the panel, if the parties have agreed thereon.

(c) **Investigation by Director upon request.** Upon receipt of the request for an impasse panel, the Director may conduct or cause to be conducted an investigation to ascertain if the conditions for an impasse panel have been met, namely, that the collective bargaining negotiations have been exhausted and that the conditions are appropriate for the creation of an impasse panel.

(d) **Investigation by Director without request.** The Director may cause such investigation or hearing to be conducted without receipt of a request for the appointment of an impasse panel from either or both of the parties.

(e) **Director's recommendation.** If the Director concludes that collective bargaining negotiations have been exhausted and that conditions are appropriate for the creation of an impasse panel, the Director shall convey such conclusion either orally or in writing to the Board, with such information as to the nature of the dispute as the Board may require. The parties shall be notified, either orally or in writing, of the Director's recommendation. If the initial request was not a joint request, the party or parties not requesting the creation of an impasse panel shall have an opportunity to object to the recommendation, in writing, within three days after service of notice of the recommendation.

(f) **Authorization of panel.** If the Board determines that collective bargaining negotiations (with or without mediation) have been exhausted and that conditions are appropriate for the creation of an impasse panel, it shall instruct the Director to appoint such panel. In reaching its determination, the Board may conduct or direct such additional investigation, conferences or hearings as it deems advisable and proper. The Director may appoint an impasse panel, without prior consultation with the Board, upon request of both parties.

(g) **Scope of collective bargaining.** When the appointment of an impasse panel has been authorized in accordance with §1-05(f) of these rules, a petition seeking a determination whether a particular demand is within the scope of collective bargaining must be filed within 30 calendar days of the notification of such authorization. In the event a scope petition is filed during the pendency of an impasse proceeding, the matter shall be accorded expedited treatment; the impasse proceeding shall not commence until a final determination thereof by the Board or withdrawal of such petition.

(h) **Size of panel.** An impasse panel shall consist of such number of persons listed on the Board's impasse panel register as the parties may have agreed upon. In the absence of agreement, the Director shall fix the size of the panel.

(i) **Selection of panel.** If the parties have not agreed on the persons to serve on the panel, each of the parties shall receive an identical list of at least seven names chosen by the Director from the impasse panel register. Each party shall have five business days within which to number at least five of the names in order of preference, and return the list to the Director. Failure to return the list within the specified time shall be deemed approval of all persons named therein. The Director shall appoint the panel from those persons who have been approved by both parties, with due consideration for the designated orders of preference. If one or more of those approved decline or are unable to serve, the Director, to the extent necessary, shall appoint the panel members without the submission of additional lists. At the parties' request, the Director may approve an alternative procedure for selecting the members of an impasse panel.

(j) **Panel-powers and duties.** An impasse panel shall have the powers and duties set forth in §12-311(c)(3)(a) through (d) of the statute.

(k) **Hearing; record.** (1) Hearings before impasse panels shall be stenographically reported and transcribed. The parties shall share the cost thereof. Hearings shall not be public unless agreed to by the parties and the panel and approved by the Director.

(2) The record shall consist of all pleadings, exhibits and other documents submitted by the parties to the panel, the transcript of testimony taken in hearings before the panel, any statements of positions as to the issues submitted by the parties prior to, during or after the hearing, the report and recommendations issued by the panel and any other

documents which the Board, in its discretion, deems necessary and pertinent.

(l) **Panel reports-publication, acceptance or rejection.** (1) **Report and recommendations.** An impasse panel shall submit its report and recommendations to the Director, to each of the parties, and to any body, agency or official whose action is required to implement the panel's recommendations.

(2) **Publication.** The report and recommendations shall be released for publication not later than seven calendar days after its submission or, upon written agreement of the parties, filed with and approved by the Director, not later than 30 calendar days after its submission, provided that if the parties conclude a collective bargaining agreement prior to the date on which the report and recommendations is to be released, it shall not be released except upon consent of the parties communicated to the Director.

(3) **Acceptance or rejection.** Within 10 business days after submission of the panel's report and recommendations, or such additional time (not exceeding 30 calendar days from the submission of the panel report) as the Director may permit, each party shall notify the other party and the Director, in writing, of its acceptance or rejection, in whole or in part, of the panel's report and recommendations. Failure to so notify shall be deemed acceptance of the recommendations. The Director may release the acceptances and/or rejections for publication at such time as the Director may deem advisable.

(4) **Confidentiality.** The report and recommendations of the impasse panel and the acceptances and/or rejections of the parties shall be confidential records until released for publication by the Director.

(m) **Review of panel report and recommendations.** (1) **Appeal of impasse panel report and recommendations.** A party who rejects in whole or in part the report and recommendations of an impasse panel pursuant to §12-311(c)(3)(e) of the statute may appeal to the Board for review of the report and recommendations. All appeals pursuant to this subdivision must be initiated by notice of appeal and petition and may not be raised as part of an answer to the petition of another party. The record of proceedings before the impasse panel shall be filed simultaneously with the filing of the petition.

(2) **Petition.**

(i) **Contents.** A petition filed pursuant to §1-05(m) of these rules shall be signed and shall specify:

(A) The ground upon which the appeal is taken;

(B) The alleged errors of fact and/or judgment of the panel precisely identifying those parts and portions of the report and recommendations allegedly in error;

(C) Any part of the testimony and evidence relating to the report and recommendations or the grounds upon which the appeal is taken, to support the allegations of the petition;

(D) The modifications requested;

(E) Such additional matters as may be relevant and material.

(ii) **Service and filing.** The petition pursuant to §1-05(m) of these rules shall be served upon all parties, and the original and three copies thereof, with proof of service, shall be filed with the Board within 10 business days of the rejection of the report and recommendations.

(3) **Answer.**

(i) **Contents.** Respondent's answer to the petition shall be signed and shall contain:

(A) Admissions or denials of the allegations of the petition;

(B) A statement of the nature of the disagreement;

(C) Any additional facts which are relevant and material;

(D) Such other affirmative matters or defenses as may be appropriate. The answer shall be addressed solely to the petition and shall not contain any matter relating to any objections which respondent may have to the report and recommendations.

(ii) **Service and filing.** Within 10 business days after service of the petition, respondent shall serve its answer upon petitioner and any other party respondent, and the original and three copies thereof, with proof of service, shall be filed with the Board.

(4) **Briefs; service and filing.** Petitioner's brief, if any, shall be served and filed simultaneously with its petition. Respondent's answering brief, if any, shall be served and filed simultaneously with its answer. An original and three copies of each brief, with proof of service, shall be filed with the Board.

(5) **Oral argument; hearing.** The Board, in its discretion, may grant the request of a party for oral argument or, in a case involving allegations of any of the grounds set forth in subparagraphs (i), (ii), or (iii) of §7511(b) of the New York Civil Practice Law and Rules, may grant and direct a hearing; such request shall be filed within 10 business days after issue has been joined. The Board may direct that such oral argument or hearing be held without a request from either party where it finds that to do so will contribute to a determination of the matter.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (e) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (g) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (h) relettered (formerly (g)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (i) relettered (formerly (h)) and amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (j) relettered (formerly (i)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (k) relettered (formerly (j)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (l) relettered (formerly (k)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02

Note 1]

Subd. (l) par (3) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (m) relettered (formerly (l)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (n) relettered (formerly (m)) and amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1] This (n) repealed in 12/3/03 amendment.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

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RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-06 Arbitration.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Collective Bargaining.

(b) **Request for arbitration-service and filing; waiver; contents.**

(1) A public employer or certified or designated public employee organization which desires to arbitrate a grievance shall:

(i) file a request for arbitration on a form and in a manner prescribed by the Office of Collective Bargaining which shall contain a plain and concise statement of the grievance to be arbitrated;

(ii) serve the request for arbitration upon all parties to the agreement under which the request is being made;

(iii) when the party requesting arbitration is a public employee organization, file a waiver, signed by the grievant(s) and the public employee organization, waiving any rights to submit the underlying dispute to any other administrative or judicial tribunal except for the purpose of enforcing the arbitrator's award.

(2) The request for arbitration should have appended thereto copies of:

(i) The written grievance, if any;

(ii) The Step II and Step III decisions, if any;

(iii) The contract provision and/or the rule or regulation that was allegedly violated.

(c) **Service and filing of petition challenging arbitrability.**

(1) A petition for a final determination by the Board as to whether the grievance is a proper subject for arbitration shall be served and filed within 10 business days after service of the request for arbitration and the waiver upon the other party to the grievance, or the party so served shall be precluded thereafter from contesting in any forum the arbitrability of the grievance.

(2) Copies of the request for arbitration and all documents set forth in §1-06(b)(2) of these rules should be attached to a petition challenging arbitrability.

(d) **Consolidation of arbitration proceedings.** A public employer or a public employee organization may request the consolidation of arbitration cases involving the same grievant(s), identical issues or similar facts. Following such a request, cases may be consolidated at the discretion of the Deputy Director, after notice and an opportunity to be heard has been given to the other party. Except when a consolidation request is jointly made by a public employer and a public employee organization, consolidation of arbitration cases may not take place after arbitrators have been appointed in more than one of the cases proposed for consolidation. The Deputy Director's determination shall be made in writing.

(e) **Appointment of arbitrator.** If no petition pursuant to §1-06(c)(1) of these rules has been timely filed, or if the Board, after such a petition, has determined that the grievance is a proper subject for arbitration, the public employer and the public employee organization shall have 10 business days to agree upon the arbitrator. If the parties fail to do so, the Deputy Director shall submit to each party an identical list of at least seven names chosen from the arbitration register. Each party shall have seven business days in which to number at least five of the names in order of preference, and to return the list to the Deputy Director. Failure to return the list within the specified time shall be deemed approval of all the persons named therein. The Deputy Director shall appoint the arbitrator with due consideration for the designated orders of preference. If one or more of those approved decline or are unable to serve, the Deputy Director, to the extent necessary, shall appoint the arbitrators without the submission of additional lists. At the parties' request, the Deputy Director may approve an alternative procedure for the selection of an arbitrator.

(f) **Hearing-powers of arbitrator.** The arbitration shall be conducted in the manner, and the arbitrator shall have all the powers, specified in §§7505, 7506, 7507 and 7509 of the New York Civil Practice Law and Rules, so far as those sections may be applicable. Arbitration hearings shall not be public unless agreed to by the parties and the arbitrator, and approved by the Deputy Director.

(g) **Hearing-stenographic record; cost.** A stenographic record of testimony shall be made upon the request of all parties or at the discretion of the arbitrator following a request by a party. The party or parties wishing a stenographic record shall make arrangements through the Office of Collective Bargaining. The requesting party or parties shall pay the cost thereof and provide a copy to the arbitrator. If the parties agree or the arbitrator determines that the transcript is the official record of the proceedings, it must be made available to a non-requesting party for inspection at a time and place to be determined by the arbitrator.

(h) **Arbitration awards-form of award; time; publication.** (1) The award shall be in writing, signed and acknowledged by the arbitrator, and shall be delivered to the parties and filed with the Deputy Director within 30 calendar days after the close of the hearing or the filing of briefs, whichever is later, unless the time is extended by the parties.

(2) The Board, in its discretion, may publish arbitration awards.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (e) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

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RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-07 Proceedings Before the Board of Collective Bargaining.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Collective Bargaining.

(b) **Types of proceedings before the Board.** A party may file a petition commencing a proceeding pursuant to paragraphs (1) through (4) of this subsection. When appropriate, a party may combine proceedings brought pursuant to paragraphs (2) and (4) in a single petition. The combined petition shall be properly titled, it shall contain separately-labeled sections for each proceeding, and each section shall comply with the requirements set forth in §1-07(c) of these rules.

(1) **Interpretation of and compliance with statute.** A public employer or public employee organization which is a party to a disagreement as to the application or interpretation of the statute may petition the Board to consider such disagreement and report its conclusions to the parties and the public.

(2) **Scope of collective bargaining.**

(i) A public employer or certified or designated public employee organization which is party to a disagreement as to whether a matter is within the scope of collective bargaining, including a claim of practical impact under §12-307(b) of the statute, or under an applicable executive order, or pursuant to a collective bargaining agreement, may petition the Board for a final determination thereof.

(ii) A scope of collective bargaining petition filed after the appointment of an impasse panel has been authorized in accordance with §1-05(f) of these rules shall be filed within the time provided in §1-05(g) of these rules.

(3) **Grievance arbitration.** A public employer or certified or designated public employee organization which is party to a disagreement as to whether a matter is a proper subject for the grievance and arbitration procedure established pursuant to §12-312 of the statute or under an applicable executive order or pursuant to a collective bargaining agreement may petition the Board for a final determination thereof. The petition shall be filed within the time provided in §1-06(c) of these rules.

(4) **Improper practices.** One or more public employees or any public employee organization acting on their behalf or a public employer may file a petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of §12-306 of the statute and requesting that the Board issue a determination and remedial order. The petition must be filed within four months of the alleged violation and shall be on a form prescribed by the Office of Collective Bargaining.

(c) **Pleadings, Procedures and Determinations.**

(1) **Petition-contents; service and filing.**

(i) A petition filed pursuant to §1-07(b) of these rules shall be verified and shall contain:

(A) The name, address, telephone and fax numbers of the petitioner;

(B) The name, address, telephone and fax numbers of the respondent;

(C) The specific sections of the statute alleged to have been violated;

(D) A clear and concise statement, in numbered paragraphs, of the facts constituting the claim under §1-07(b) of these rules. The statement shall include the nature of the controversy and specify any provisions of the contract, executive order, or collective bargaining agreement involved; a copy of such provisions should be provided. If the controversy involves an alleged improper practice, the statement shall include but not be limited to the names of the individuals involved in the particular act specifically alleged and the date, time, and place of occurrence of each particular act alleged. Such statement may be supported by affidavits, documents, and other evidence that may be relevant and material but may not consist solely of such attachments, and any attachments or exhibits shall be specifically identified and referred to in the petition;

(E) An argument with citations to legal authority in support of the claims asserted. The argument may be included either in the petition or in a separate memorandum of law;

(F) A statement of the relief requested.

(ii) A copy of the petition shall be served upon each respondent, and the original and three copies thereof, with proof of service, shall be filed with the Board.

(iii) The public employer shall be made a party to any improper practice charge pursuant to §12-306(d) of the statute and shall file responsive pleadings in accordance with §1-07(c)(3) of these rules.

(iv) A petition filed pursuant to §1-07(b) of these rules against a public employer or a public employee organization shall be served upon the designated agent of the public employer or public employee organization. A listing of designated agents shall be maintained at the Office of Collective Bargaining.

(2) **Executive Secretary Review of Improper Practice Petitions.**

(i) Within 10 business days after a petition alleging improper practice is filed, the Executive Secretary shall review the petition to determine whether the facts as alleged may constitute an improper practice as set forth in §12-306 of the statute. If, upon such review, the Executive Secretary determines that the petition is not, on its face, untimely or

insufficient, notice of such determination shall be served upon the parties by mail. Such determination shall not constitute a bar to defenses of untimeliness or insufficiency which are supported by probative evidence available to the respondent. If it is determined that the petition, on its face, does not contain facts sufficient as a matter of law to constitute a violation, or that the alleged violation occurred more than four months prior to the filing of the charge, the Executive Secretary may issue a decision dismissing the petition or send a deficiency letter. Copies of such decision or deficiency letter shall be served upon the parties by certified mail.

(ii) Within 10 business days after service of a decision of the Executive Secretary dismissing an improper practice petition as provided in this subdivision, the petitioner may file with the Board an original and three copies of a written statement setting forth an appeal from the decision with proof of service thereof upon all other parties. The statement shall set forth the reasons for the appeal.

(iii) Within 10 business days after service of a deficiency letter from the Executive Secretary as provided in this subdivision, the petitioner may serve an amended petition upon each respondent and file the original and three copies thereof, with proof of service, with the Board. The amended petition shall be deemed filed from the date of the original petition. The petitioner may also withdraw the charge. If the petitioner does not seek to amend or withdraw the charge, but instead wishes to file objections to the deficiency letter, the petitioner may file with the Executive Secretary an original and three copies of a written statement setting forth the basis for the objection with proof of service thereof upon all other parties. If the petitioner does not timely file an amendment or otherwise respond, the charge will be deemed withdrawn and the matter closed. Upon review of the amended petition or written objection filed by the petitioner, the Executive Secretary shall issue either a notice that the petition is not on its face untimely or insufficient or a written decision dismissing the improper practice petition.

(3) **Answer-contents; service and filing.**

(i) Respondent's answer to the petition shall be verified and shall contain:

(A) Specific admissions or denials of the allegations in the petition in numbered paragraphs which correspond with those in the petition;

(B) A statement of facts with numbered paragraphs setting forth the nature of the controversy. Such statement may be supported by affidavits, documents, and other evidence that may be relevant and material but may not consist solely of such attachments, and any attachments or exhibits shall be specifically identified and referred to in the answer;

(C) Such defenses as may be appropriate;

(D) An argument with citations to legal authority in support of the defenses raised. The argument may be included either in the answer or in a separate memorandum of law.

(ii) Within 10 business days after service of the petition, or, if the petition contains allegations of improper practice, within 10 business days of the service of the notice of finding by the Executive Secretary, pursuant to §1-07(c)(2)(i) or (iii) of these rules, that the petition is not, on its face, untimely or insufficient, respondent shall serve its answer upon petitioner and any other party respondent. The original and three copies thereof, with proof of service, shall be filed with the Board. When special circumstances that warrant an expedited determination exist, it shall be within the discretion of the Director or the Director's designee to order respondent to serve and file an answer within less than 10 business days.

(4) **Reply-contents; service and filing.** Within 10 business days after service of respondent's answer, petitioner may serve and file a verified reply which shall contain admissions and denials of any facts alleged in the answer. Additional facts or new matter alleged in the answer shall be deemed admitted unless denied in the reply. The reply should be limited to a response to specific facts or arguments alleged in the answer, and the Board may disregard new facts or new arguments raised therein. When special circumstances that warrant an expedited determination exist, the

Director or the Director's designee may order petitioner to serve and file its reply within less than 10 business days. A copy of the reply shall be served on each respondent, and the original and three copies thereof, with proof of service, shall be filed with the Board.

(5) **Briefs-service and filing.** If the parties serve separate briefs with their pleadings, the original and three copies thereof, with proof of service, shall be filed with the Board.

(6) **Case conferences and mediation.**

(i) At any time after a petition has been served and filed pursuant to §1-07(b) of these rules, the Director's designee may, on notice, schedule a case conference to discuss factual, substantive, or procedural matters. Unless special circumstances that warrant an expedited case conference exist, the conference shall not be held prior to the filing of all pleadings or less than 10 business days from the date of scheduling. Absent good cause shown, the failure of a party to appear at a case conference may constitute grounds for dismissal of the absent party's pleading.

(ii) In any proceeding commenced pursuant to §1-07(b) of these rules, the Deputy Director may require the parties to attend one mediation session to explore the possibility of a voluntary resolution of their disputes. After the first mediation session, subject to the parties' agreement or joint request, additional mediation sessions may be scheduled. The scheduling of a mediation session may not by itself toll any time limitations under these rules or require the adjournment of the filing of a pleading, a hearing, or other proceeding.

(7) **Amendments and withdrawals.** After a hearing and upon good cause shown, the trial examiner may permit a party to amend a pleading to conform to the evidence. The request to amend shall be on notice to all parties.

(8) **Determination-decision.** After issue has been joined, the Board may decide the dispute on the papers filed, may direct that oral argument be held before it, may direct a hearing before a trial examiner, or may make such other disposition of the matter as it deems appropriate and proper.

(d) **Injunctive relief for a claim of improper practice.** (1) **Applications for injunctive relief.** A party filing an improper practice petition pursuant to §1-07(b)(4) of these rules may further petition the Board to obtain or to authorize the application for injunctive relief in the Supreme Court, New York County, in accordance with the provisions of §209-a(5) of the New York Civil Service Law.

(2) **Petition-contents.** A petition for injunctive relief filed pursuant to §1-07(d)(1) of these rules shall be verified and shall contain:

(i) The name, address, telephone and fax numbers of the petitioner;

(ii) The name, address, telephone and fax numbers of the respondent;

(iii) The specific sections of the statute alleged to have been violated;

(iv) A clear and concise statement, in numbered paragraphs, of the facts demonstrating that: (1) there is reasonable cause to believe an improper practice has occurred; and (2) immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual and necessitating the maintenance of, or return to, the status quo in order to provide meaningful relief. The statement shall include but not be limited to the names of the individuals involved in the particular act specifically alleged and the date, time, and place of occurrence of each particular act alleged. Such statement may be supported by documents and other evidence that may be relevant and material but may not consist solely of such attachments, and any attachments or exhibits shall be specifically identified and referred to in the petition;

(v) Affidavit(s) stating, in a clear and concise manner: (1) those facts personally known to the deponent that

constitute the alleged improper practice, the date of the alleged improper practice, the alleged injury, loss, or damage arising from it, and the date when the alleged injury, loss, or damage occurred or will occur; and (2) those facts demonstrating why the alleged injury, loss, or damage is immediate and irreparable, and will render a resulting judgment on the merits of the improper practice charge ineffectual if injunctive relief is not granted, and indicating why there is a need to maintain or return to the status quo in order for the Board to provide meaningful relief;

(vi) An argument with citations to legal authority on the issues underlying the claims of improper practice and irreparable harm to support the application for injunctive relief. The argument may be included either in the petition or in a separate memorandum of law;

(vii) A statement of the relief requested;

(viii) A copy of the underlying improper practice petition.

(3) **Petition-service and filing.** Due to the expedited nature of a proceeding seeking injunctive relief, service by mail shall not be permitted. A copy of the petition for injunctive relief shall be served personally upon the respondent at or after the time the improper practice petition is served. When the respondent is a public employer, a copy of the petition for injunctive relief shall also be served personally on the Mayor's Office of Labor Relations. No petition for injunctive relief shall be accepted for filing unless it appears that both the improper practice petition and the petition for injunctive relief have been served personally on the designated agent of the respondent. The original and three copies of each petition, with proof of personal service, shall be filed with the Board. A copy in electronic format shall also be filed with the Board in a manner prescribed by the Office of Collective Bargaining.

(4) **Answer-contents.** Respondent's answer to the injunctive relief petition shall be verified and shall contain:

(i) Specific admissions or denials of the allegations of the petition in numbered paragraphs which correspond with those in the petition;

(ii) A statement of facts with numbered paragraphs setting forth the nature of the controversy. Such statement may be supported by affidavits, documents, and other evidence that may be relevant and material but may not consist solely of such attachments, and any attachments or exhibits shall be specifically identified and referred to in the answer;

(iii) Any defenses, including defenses that could be rightfully raised in answer to the underlying improper practice petition. The failure to assert a defense in the answer to the petition for injunctive relief shall not preclude the respondent from asserting any defenses to the underlying improper practice petition;

(iv) An argument with citations to legal authority in support of the answer to the application for injunctive relief. The argument may be included either in the answer or in a separate memorandum of law.

(5) **Answer-service and filing.** Within three business days after service of an injunctive relief petition, the respondent shall serve its answer upon petitioner and any other party respondent, and shall file the original and three copies of the answer, with proof of service thereof, with the Board. This section shall not be construed to shorten the respondent's time to answer the underlying improper practice petition. The answer may be served and filed, with proof of service thereof, by personal delivery or by fax. A copy in electronic format shall also be filed with the Board in a manner prescribed by the Office of Collective Bargaining. When service and filing are made by fax, a copy of the pleading must be mailed to all parties, and the original and three copies must be mailed to the Board the same day.

(6) **Reply-service and filing.** A reply is not required; any new facts alleged in the response will be deemed denied by the petitioner. If a reply is filed, it shall be verified and shall contain admissions and denials of any facts alleged in the answer. The reply should be limited to a response to specific facts or arguments alleged in the answer, and the Board may disregard new facts or new arguments raised therein. The reply shall be served and filed, with proof of service thereof, before 12:00 noon on the fourth business day after filing of the injunctive relief petition. The reply may be

served and filed by personal delivery or by fax. A copy in electronic format shall also be filed with the Board in a manner prescribed by the Office of Collective Bargaining. When service and filing are made by fax, a copy of the pleading must be mailed to all parties, and the original and three copies must be mailed to the Board the same day.

(7) **Review and determination by the Board-meetings by telephone.** Upon receipt of a properly served and filed petition for injunctive relief, the Director shall notify the Board and propose a time and date for a special meeting to consider the petition. Within 10 business days after a petition is filed, the Board shall determine whether the charging party has made a sufficient showing in accordance with the provisions of §209-a(5) of the New York Civil Service Law. The special meeting may be conducted by telephone, provided that all members who are available by telephone are joined as parties to the call. The quorum and voting requirements for any meeting by conference call shall be as provided in §12-310 of the statute. After appropriate deliberation, the Board shall vote and issue a determination as to whether the charging party has made a sufficient showing that a petition for injunctive relief to the court is warranted. Such determination shall be served on the parties by fax and by certified mail.

(8) **Petition in the Supreme Court in New York.** If the Board determines that the charging party has made a sufficient showing in accordance with the provisions of §209-a(5) of the New York Civil Service Law, the Board may petition the Supreme Court, New York County, upon notice to all parties, for the necessary injunctive relief, or, in the alternative, issue an order permitting the charging party to seek injunctive relief in the court, in which case the Board must be joined as a necessary party.

(9) **Expedited scheduling, hearing, and disposition of the underlying improper practice petition.** In conformity with the mandates of §209-a(5) of the New York Civil Service Law, any improper practice case in which the Supreme Court has granted injunctive relief shall be given preference in scheduling, hearing and disposition over all other types of matters pending before the Board. The Board shall conclude the hearing process and issue a decision on the merits within the time prescribed by §209-a(5) of the New York Civil Service Law. In order to effectuate this statutory preference and time limitation, unless the parties stipulate in writing to waive the statutory period within which the Board must render its decision on the merits, the following procedures will be enforced: (i) The time provisions set forth in §1-07 of these rules for the filing of pleadings and briefs will be strictly enforced. Under no circumstances will requests for extensions of time to serve and file pleadings and/or briefs, or requests to adjourn scheduled hearing dates, be granted;

(ii) When, in the judgment of the Office of Collective Bargaining, material questions of fact are raised, a hearing will be scheduled to commence no later than 14 calendar days after service of a copy of the order of the court with notice of entry;

(iii) Once a hearing is commenced, it shall continue on consecutive business days until it is concluded; but in no event shall the hearing continue beyond a date 21 calendar days after service of a copy of the order of the court with notice of entry;

(iv) Post-hearing briefs shall be served and filed no later than 14 calendar days after the last hearing date;

(v) After the record is closed, the trial examiner shall prepare a report and/or draft decision which shall be submitted to the Board for its consideration. The Director may call for a special meeting by telephone conference call, in accordance with the procedures set forth in §1-07(d)(7) of these rules, whenever necessary for the Board to render a decision within the time prescribed by §209-a(5) of the New York Civil Service Law. Copies of such decision shall be served on the parties by certified mail.

(10) **Notification to the court.** The Board shall promptly forward notice of its determination, together with a copy of the decision of the Board, to the court which issued the order granting injunctive relief.

HISTORICAL NOTE

Section repealed and added City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (c) par (1) numbered City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (c) par (2) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (e) par (1) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (e) par (3) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (f) par (1) numbered City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (f) par (2) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (h) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (i) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subds. (l)-(u) added City Record Dec. 1, 1994 eff. Dec. 31, 1994.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

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RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-08 Municipal Labor Committee.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Collective Bargaining.

(b) **Allocation of costs.** The costs of the salary, fees and expenses of the impartial members to be paid by members of the Municipal Labor Committee, pursuant to §1174(a) of the New York City Charter, shall be allocated among such members as provided in Article 7 of the Rules of the Municipal Labor Committee adopted October 13, 1967, or as duly amended thereafter, provided that any member of the Municipal Labor Committee may petition the Board for reallocation of said costs as herein provided.

(c) **Petition to reallocate costs-contents.** Any member of the Municipal Labor Committee may petition the Board to reallocate the costs of the salary, fees and expenses of the impartial members. The petition shall be verified and shall contain:

(1) The name, address, telephone and fax numbers of the petitioner;

(2) An allegation that petitioner is a member of the Municipal Labor Committee required to share the costs of the salary, fees and expenses of the impartial members;

(3) A statement of the facts on which petitioner bases its contention that the current method of allocation of said costs is improper, inequitable, discriminatory or arbitrary;

(4) The proposed method of allocation of said costs which petitioner asserts should be adopted.

(d) **Petition to abrogate rule-contents.** A certified employee organization may petition the Board to abrogate a rule of the Municipal Labor Committee, which relates to voting or eligibility for membership and which is alleged to be arbitrary or discriminatory or to have been applied in an arbitrary or discriminatory manner. The petition shall be verified and shall contain:

(1) The name, address, telephone and fax numbers of the petitioner;

(2) Specification of the rule or rules involved;

(3) A statement of the facts on which petitioner bases its contention that the rule is arbitrary or discriminatory or has been applied in an arbitrary or discriminatory manner.

(e) **Petition-service and filing.** A petition pursuant to §1-08(b) or (c) of these rules shall be served on the Municipal Labor Committee, and the original and three copies thereof, with proof of service, shall be filed with the Board.

(f) **Answer-service and filing.** Within 10 business days after service of the petition, the Municipal Labor Committee shall serve a copy of its answer upon the petitioner and file an original and three copies thereof, with proof of service with the Board.

(g) **Answer-contents.** The answer shall be verified and shall contain:

(1) Admissions or denials of the allegations of the petition;

(2) Such additional facts and affirmative matter as may be relevant, material and appropriate.

(h) **Reply-service; contents.** Within 10 business days after service of the answer, petitioner may serve and file a verified reply which shall contain admissions and denials of any additional facts or new matter alleged in the answer. Additional facts or new matter alleged in the answer shall be deemed admitted unless denied in the reply. A copy of the reply shall be served on the respondent, and an original and three copies thereof, with proof of service, shall be filed with the Board.

(i) **Briefs-service and filing.** Briefs, if any, may be served and filed as provided in §1-07(c)(5) of these rules.

(j) **Determination-decision.** After issue has been joined, the Board may decide the matter on the papers and briefs filed, may direct that oral argument be held before it, may direct a hearing before a trial examiner, or may make such other disposition of the matter as it deems appropriate and proper.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

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RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-09 Panel Register-Fees and Expenses.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Collective Bargaining.

(b) **Registers.**

(1) As deemed necessary by the Director, separate registers shall be maintained of impartial and qualified persons experienced in:

(i) mediation;

(ii) impasse resolution;

(iii) arbitration.

(2) To be listed on a register, a person shall be approved by the Board as required by the statute. A person may be listed on more than one register. All mediation and impasse panels shall consist of, and all arbitrators shall be, persons listed on the applicable register except when the parties agree otherwise. A resume of the background, experience and qualifications of each person on a register shall be maintained and shall be available for inspection.

(c) **Fees and expenses.** (1) Members of mediation and impasse panels and arbitrators shall be paid a per diem fee to be determined by the Board unless the parties to the dispute shall have agreed to a different fee, and shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. The public employer and public employee organization which are parties to the particular negotiation or grievance shall each pay 50 percent of

such fees and expenses and related expenses incidental to the handling of deadlocked negotiations and unresolved grievances.

(2) Panel members, arbitrators, reporting services and any other persons providing services, accommodations, or materials relating to the work of the panel or arbitrators shall bill the parties directly for their compensation and expenses, and shall file a copy thereof with the Board.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

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RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-10 Hearings.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean either the Board of Collective Bargaining or the Board of Certification.

(b) **Notice of hearing.** Except where otherwise provided by law or these rules, the Board shall give all parties at least seven business days notice of hearings, provided that a shorter period may be stipulated by the parties or may be prescribed by the Director or the Director's designee when the circumstances so require.

(c) **Conduct of hearings.** Hearings shall be conducted by a trial examiner. At any time, a trial examiner may be designated to take the place of the trial examiner previously designated to conduct a hearing. Except as otherwise provided, all hearings shall be open to the public. During the course of any hearing, the trial examiner, shall have full authority to control the conduct and procedure of the hearing and the record thereof, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. It shall be the duty of the trial examiner to see that a full inquiry is made into all the facts in issue and to obtain a complete record of all facts necessary for a fair determination. The trial examiner shall have the right to call and examine witnesses, to issue subpoenas as permitted by law, to direct the production of evidence and to introduce evidence into the record, except as may otherwise be limited herein.

(d) **Rights of parties.** In any hearing, all parties shall have the right to call, examine and cross-examine witnesses, and to introduce documentary or other evidence, subject to the rulings of the trial examiner, except as otherwise provided in these rules.

(e) **Stipulations.** At a hearing, stipulations may be introduced in evidence with respect to any issue, if such

stipulation has been joined in by all the relevant parties.

(f) **Adjournments-continuation.** The trial examiner may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing or by other appropriate notice.

(g) **Contemptuous conduct.** The refusal of a witness to answer any question which has been ruled to be proper shall, at the discretion of the trial examiner, be grounds for striking testimony previously given by such witness. Misconduct at any hearing conducted under these rules shall be grounds for summary exclusion from the hearing. Such misconduct, if of an aggravating character and engaged in by an attorney or other representative of a party, shall be grounds for suspension or disbarment from further practice before the Board or its agents after due notice and opportunity to be heard.

(h) **Conclusion of proceedings.** The trial examiner may permit or direct the parties to present closing statements and/or to file briefs or memoranda in a proceeding brought under §1-02, §1-07 or §1-08 of these rules. The time for closing statements or filing briefs or memoranda shall be fixed by the trial examiner. An original and three copies of the briefs or memoranda, with proof of service, shall be filed.

(i) **Variance between pleadings and proof.** A variance between an allegation in a pleading and the proof shall not be deemed material unless it is so substantial as to be misleading. If a variance is not material, the trial examiner may admit such proof and the facts may be found accordingly. A party may move to amend a pleading to conform to the evidence in accordance with §1-07(c)(7) of these rules.

(j) **Motions and objections during the hearing.** The trial examiner shall have the discretion to decide all motions and objections made at the hearing and to decide whether an oral motion should be reduced to writing and submitted to the Board. All such motions and objections and the rulings and orders thereon shall be made part of the record.

(k) **Appeal of trial examiner's rulings.** Unless expressly authorized by the Director, the Board shall not entertain appeals from a trial examiner's rulings prior to the Board's consideration of the entire record for decision. Appeals from a trial examiner's rulings shall be made in writing upon notice to the other parties after the close of the hearing and may be included in post-hearing briefs, if so filed.

(l) **Reopening of hearing prior to issuance of Board decision.** Motions for leave to reopen a hearing because of newly discovered evidence shall be promptly made. The Board, in its discretion or on its own motion, may reopen a hearing and take further testimony.

(m) **Objections-waiver.** An objection not duly made at a hearing shall be deemed waived unless the failure to raise such objection should be excused because of extraordinary circumstances.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (c) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (g) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (h) par (1) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1] This

(h) repealed in 12/3/03 amendment.

Subd. (k) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

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RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-11 Witnesses and Subpoenas.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean either the Board of Collective Bargaining or the Board of Certification.

(b) **Witnesses-examination; depositions.** Witnesses at all hearings shall be examined orally under oath or affirmation, and a record of the proceeding shall be made and kept. If any witness resides outside the State of New York or through illness or other cause is unable to testify at the hearing, that witness's testimony or deposition may be taken in such form as may be directed by the trial examiner. All applications for taking such testimony or deposition shall be made by motion.

(c) **Subpoenas-issuance.** A member of the Board, a Deputy Director, or a trial examiner may issue subpoenas at any time, except as limited by law, requiring persons, parties, or witnesses to attend and be examined or give testimony, or to produce any document or thing that relates to any matter under investigation or any question before the Board or trial examiner conducting a hearing. Pursuant to CPLR §2302, attorneys admitted to the practice of law in New York State may also issue subpoenas in accordance with applicable law.

(d) **Subpoenas-parties; failure to obey or testify.** If a witness, party, or agent thereof refuses or fails, without reasonable excuse, to answer any question which has been ruled pertinent or proper, or obey any subpoena duces tecum, the trial examiner may strike from the record the pleading and/or all testimony and evidence offered on behalf of such party at the hearing, or may strike all or a portion of the testimony or evidence offered by or through the uncooperative party or witness, or strike those portions of the pleading which are related to the matter(s) called for in the subpoena, or which are based solely on testimony or evidence offered by or through the uncooperative party or witness.

(e) **Witness fees.** When determined by the trial examiner to be appropriate, witness fees and mileage in amounts allowable under the New York Civil Practice Law and Rules shall be paid by the party at whose instance the witnesses appear, or by the Office of Collective Bargaining if the witnesses appear at the request of the Board.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1] Became (b) in 12/3/03 amendment.

Subd. (d) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1] Became (e) in 12/3/03 amendment.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

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RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-12 Decision after Hearing; Trial Examiner's Intermediate Report; Exceptions; Oral Argument; Briefs. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (d) par (1) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (d) par (2) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (e) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

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Rules of the City of New York

***** Current through December 2009 ****

61 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-12 General Provisions.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean either the Board of Collective Bargaining or the Board of Certification.

(b) **Form of documents-docket number.** All petitions, pleadings, motions, briefs and other formal papers shall bear the title of the proceeding and the docket number. Any document other than the initial petition which does not bear the docket number may be returned to the sender. However, failure to include a docket number which is promptly corrected will not be a bar to an otherwise timely filed pleading.

(c) **Service of papers-Board.** Notices of hearings and other process of the Board, their members, deputies and agents, may be served personally or by mail. Subpoenas issued by the Board shall be served personally.

(d) **Service of papers-party.** (1) Except as provided for herein, bargaining notices, requests for arbitration, petitions and other papers served on behalf of a party shall be served personally or by mail. A signed written statement that service has been effected, stating the name and the address of the party served and the date and manner of service, shall constitute prima facie proof of service. Subpoenas issued by a party shall be served personally.

(2) Service of papers by fax or other electronically formatted means, followed by mail, shall be permitted, provided that a telephone number or other station is designated by the receiving party for that purpose. The designation of a telephone number or other station for service by electronic means in the address block subscribed on paper served or filed in the course of a proceeding shall constitute consent to service by electronic means in accordance with this subdivision. A party may change or rescind a number or address designated for service of documents by serving a

notice on the other parties.

(3) Any petition required by these rules to be served on a public employer or a public employee organization shall be served upon the designated agent of the public employer or public employee organization. A listing of designated agents shall be maintained at the Office of Collective Bargaining.

(4) If a party appears in a proceeding by attorney, all papers in such proceeding shall thereafter be served on such attorney unless the party requests otherwise.

(e) **Filing of papers.** Unless otherwise provided in these rules, all petitions, pleadings, motions, briefs and other formal papers may be filed with the Office of Collective Bargaining by mail or personally between the hours of 9:00 a.m. and 5:30 p.m. Except as otherwise provided in these rules, the filing of papers with the Board by fax or other electronic means shall be permitted only when prior approval has been granted by the Board or its designee and upon such conditions as that approval may be based.

(f) **Time-computation.** In computing any period of time prescribed or allowed by these rules, or by order or direction, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it falls on a Saturday, Sunday or legal holiday, in which event the period shall run to the next business day. Unless otherwise provided in these rules, when any period of time prescribed or allowed is 10 days or fewer, they shall be considered business days, and intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. Unless otherwise provided in these rules, when the period of time prescribed or allowed is greater than 10 days, they shall be considered calendar days and intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(g) **Time-service by mail.** When a period of time is measured from the service of a paper, and service is by mail, five calendar days shall be added to the prescribed period. Service by mail is complete upon mailing.

(h) **Time-Board action.** Except as prescribed by statute, the Director or a Deputy Director acting in his/her absence, for good cause shown, may extend or shorten any time limit prescribed or allowed in these rules. When good cause exists, the Director or Deputy Director acting in his/her absence, acting with the approval of the Board, may shorten time limits and invoke expedited procedures in bringing disputes to mediation, arbitration or to impasse proceedings. Approval of such action by the Board shall require the concurrence of at least one labor member and one city member. In the exercise of such extraordinary powers, the Director or Deputy Director acting in his/her absence shall be authorized to prescribe such times and conditions for the service of notices, filing of pleadings and appearances of parties as the circumstances require and as considerations of due process permit.

(i) **Petition-withdrawal.** At the request of the petitioner, upon notice to all other parties, the Director or the Director's designee may permit the withdrawal of a petition. The case will be closed without consideration or review of any of the issues raised in the pleadings.

(j) **Parties-non-joinder and misjoinder.** No proceeding will be dismissed because of non-joinder or misjoinder of parties. Upon motion of any party, parties may be added, dropped or substituted at any stage of the proceedings, upon such terms as may be deemed proper by the Director or the Director's designee.

(k) **Intervention-procedure; contents; filing; service.** A person, public employer or public employee organization desiring to intervene in any proceeding shall file a verified written application and three copies thereof, setting forth the facts upon which such person, employer or organization claims an interest in the proceeding. Such application must be timely made, served on all parties and filed with proof of service. Failure to serve or file such application as above provided shall be deemed sufficient cause for the denial thereof, unless good and sufficient reason exists why it was not served or filed as herein provided.

(l) **All other motions.** Except as otherwise provided by these rules, all motions, other than those made during a

hearing, shall be made in writing, shall briefly state the relief sought and shall be accompanied by affidavits setting forth the grounds for such motion. The moving party shall serve copies of all motion papers on all other parties and shall within 10 business days thereafter file the original and three copies thereof, with proof of service. Answering papers, if any, shall be served on all parties and the original and three copies thereof, with proof of service, shall be filed within 10 business days after service of the moving papers. Reply papers, if any, shall be served on all parties and the original and three copies thereof, with proof of service, shall be filed within 10 business days after service of the answering papers. All motions shall be decided upon the papers unless oral argument, or the taking of testimony, is directed, in which event the parties will be notified thereof and of the time and place for such argument or for the taking of such testimony.

(m) **Consolidation or severance.** (1) Two or more proceedings may be consolidated or severed by the Director or the Director's designee on notice stating the reasons therefor, with an opportunity to the parties to make known their positions. For purposes of this subdivision the term "proceedings" shall include but not be limited to representation, mediation, impasse, arbitrability, improper practice, and scope of bargaining pro- ceedings.

(2) Two or more arbitration proceedings may be consolidated at the discretion of the Deputy Director following a request by a public employer or a public employee organization pursuant to §1-06(d) of these rules.

(n) **Oral argument before the Board.** In a proceeding brought under §§1-02, 1-07 or 1-08 of these rules, request for oral argument before the Board must be submitted in writing to the Director with proof of service on all parties not less than five business days prior to the Board meeting for which the case has been placed on the agenda. The granting or denial of permission to argue orally before the Board shall be within the discretion of the Board. At the discretion of the Board, oral argument may be stenographically recorded.

HISTORICAL NOTE

Section renumbered and amended (former §1-13] City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Former §1-13 in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (c) par (1) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (c) par (2) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (c) par (3) renumbered (formerly (2)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (e) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (f) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (j) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (k) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

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RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-13 Designation, Powers, and Duties of Deputies and Trial Examiners.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean either the Board of Collective Bargaining or the Board of Certification.

(b) **Deputy Directors.** Deputy directors, in addition to all other powers conferred upon them by these rules and in addition to the powers of trial examiners, are authorized and empowered to sign and issue notices and reports, certify copies of papers and documents, direct trial examiners, and designate the members of mediation, impasse and arbitration panels in accordance with the provisions of the statute and these rules.

(c) **Trial Examiners.** All trial examiners duly designated by the Director, in addition to all powers otherwise conferred upon them, are hereby authorized and empowered to:

(1) Conduct conferences, investigations and hearings, resolve discovery disputes limited to the production of documents, grant extensions of time, administer oaths and affirmations, issue or apply for subpoenas, review and copy evidence, examine witnesses, and receive evidence;

(2) Investigate concerning the representation of employees;

(3) Appear for and represent the Board and/or the Office of Collective Bargaining in court;

(4) Do any and all things necessary and proper to effectuate the policies of the statute and these rules.

HISTORICAL NOTE

Section renumbered and amended (former §1-14) City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Former §1-14 in original publication July 1, 1991.

Subd. (b) par (2) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (c) open par amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

61 RCNY 1-14

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-14 Construction and Amendment of Rules.

(a) **Construction.** (1) These rules shall be liberally construed and shall not be deemed to limit any powers conferred by the statute, nor to limit the power of any impartial member or Deputy Director to serve as a member of a mediation or impasse panel or as an arbitrator in matters pending at the Office of Collective Bargaining, provided, however, that no full-time employees authorized to perform such service shall receive additional compensation for the performance of any such service.

(2) Words in the singular shall include the plural and words in the plural shall include the singular.

(b) **Amendments.** Any rule may be amended or rescinded at any time in accordance with the City Administrative Procedure Act, Chapter 45 of the New York City Charter.

HISTORICAL NOTE

Section renumbered and amended (formerly §1-15) City Record Dec. 3, 2003 eff. Jan 2, 2004. [See

T61 §1-02 Note 2]

DERIVATION

Former §1-15 in original publication July 1, 1991.

Subd. (b) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

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62 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 1 PRACTICE AND PROCEDURE OF CITY PLANNING COMMISSION

§1-01 General Rules.

(a) The regular public hearings of the City Planning Commission shall be held twice monthly on Wednesday at 10 a.m. in City Hall, unless otherwise ordered by the Chair. Other regular public meetings of the City Planning Commission, also known as Review Sessions, shall be held twice monthly on Monday at 22 Reade Street, Spector Hall unless otherwise ordered by the Chair. The time and location of any meeting may be confirmed by contacting the Office of the Calendar Officer at the Department of City Planning.

(b) Special meetings of the City Planning Commission may be called by the Chair or by seven members.

(c) A quorum shall consist of seven members.

(d) Final action by the Commission shall be by the affirmative vote of not less than seven members at a meeting open to the public.

(e) Except by unanimous consent, matters upon which public hearings are required by law shall lie over until the next meeting following the public hearing.

(f) The order of business at regular public hearings shall be as follows unless otherwise ordered by the Chair.

(1) Roll call.

(2) Approval of minutes of previous meetings.

(3) Scheduling dates for future hearings.

(4) Public Hearings.

(5) Reports on previously heard items.

(g) Matters not on the calendar shall be considered only by unanimous consent.

(h) The Chair shall direct a roll call upon every proposition to be acted upon pursuant to §§195, 197-a, 197-c, 200 and 201 of the Charter of the City of New York (the Charter). Votes shall be taken by the ayes and nays.

(i) The vote upon every proposition voted upon shall be recorded in the minutes.

(j) The Chair shall establish the order in which speakers are heard at public hearings. Speakers shall be limited to no more than three minutes to present testimony unless more time is permitted by the Chair.

(k) City employees designated by the Chair shall be the only persons allowed within the guard rail of the dais during public meetings.

(1) All reports of the Commission or its members pertaining to matters acted on by the Commission shall be incorporated in the record.

(m) All proposals scheduled for public hearings shall be duly advertised in accordance with Charter provisions and all applicable laws.

(n) The public may attend all meetings of the Commission, including public hearings, except that the Commission may close such a meeting to the public only as provided in the New York State Open Meetings Law (Public Officers Law, §§100-111).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (b) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (f) open par amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (f) par (4) repealed and added City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (f) par (5) repealed and added City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (h) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (j) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (k) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (l) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (m) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (n) added City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 10, 1997:

Chapter 1 and Chapter 2 of Title 62 of the Rules of the City of New York are being amended for several reasons: to clarify the practices and procedures of the City Planning Commission and to bring these rules into conformance with the actual practice of the Commission and its staff; to effectuate cost savings with respect to transcripts of hearings; to repeal various provisions that have been rendered obsolete or superseded by amendments to the City's Zoning Resolution or amendments to the City Charter; and finally, to make technical and typographical corrections to the rules.

Rules of the City of New York

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62 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 1 PRACTICE AND PROCEDURE OF CITY PLANNING COMMISSION

§1-02 The Calendar Officer: Notices, Calendars, Minutes, Record, and Commu- nications.

(a) Notices of all special meetings shall be given to each member by the Calendar Officer.

(b) The Calendar Officer shall prepare a calendar of the business to be presented and considered at each public meeting. The matters thereon shall be arranged in the order prescribed by §1-01(f), and shall be properly classified. The Calendar Officer shall also keep a record of undetermined matters which have been laid over.

(c) **Record.** The record of a public meeting, including a public hearing, shall consist of either a tape recording or verbatim stenographic record of the proceedings; a list of speakers' names and affiliations, if any; a notation of each speaker's own indication, on a form provided for that purpose, of support or opposition to the proposal; and any exhibits or written statements offered by speakers. The record shall be available at the Calendar Office, City Planning Commission, Room 2E, 22 Reade Street, New York, New York 10007-1216. The Department of City Planning shall make available for public inspection, at the above location, a complete transcript of all public hearings of the Commission within sixty (60) days of such hearing.

(d) The Calendar Officer shall maintain the minutes of each public meeting, and shall make them available for examination by the public in the Office of the Calendar Officer.

(e) Minutes and a record of votes shall be taken at any executive session to the extent required by §106 of the Public Officers Law.

(f) All communications, petitions and reports intended for consideration shall be addressed to the Commission and

delivered at or mailed to the Calendar Office and shall consist of an original accompanied by seventeen copies.

(g) The Calendar Officer shall transmit to the City Council and other city departments affected thereby true copies of all reports and resolutions adopted.

HISTORICAL NOTE

Section amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Section in original publication July 1, 1991.

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62 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 1 PRACTICE AND PROCEDURE OF CITY PLANNING COMMISSION

§1-03 Suspension of Rules.

The suspension of any of the rules of Practice and Procedure of the City Planning Commission may be ordered by unanimous vote.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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62 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 1 PRACTICE AND PROCEDURE OF CITY PLANNING COMMISSION

§1-04 Natural Feature Restoration Fee. [Repealed]

HISTORICAL NOTE

Section repealed City Record May 29, 2007 §1, eff. June 28, 2007. Language transferred to T62 §3-08.

Section renumbered (formerly §1-07) City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1] Former §1-04 Petitions Requesting a Change of Zone Pursuant to §201 of the Charter from original publication was repealed City Record Nov. 10, 1997 eff. Dec. 10, 1997.

Section in original publication July 1, 1991.

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62 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 1 PRACTICE AND PROCEDURE OF CITY PLANNING COMMISSION

§1-05 Applications for Approval of Projects in the Lincoln Square Special District. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Section in original publication July 1, 1991.

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62 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 1 PRACTICE AND PROCEDURE OF CITY PLANNING COMMISSION

§1-06 Renewal of Authorization or Special Permit. [Repealed]

HISTORICAL NOTE

Section repealed City Record Aug. 17, 1995 eff. Sept. 16, 1995. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Aug. 17, 1995:

The repeal to the City Planning Commission's Rule removes a discrepancy that now exists between the Rule and the newly adopted text amendments to Section 11-42, 11-43, 74-99, 78-07, and 79-44 pertaining to the lapse provisions for authorizations and special permits in the Zoning Resolution. These text amendments now replace the Rule repealed.

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62 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-01 Actions Subject to Procedure.

The land use review procedure which is set out herein shall govern the following actions:

(a) changes in the City Map pursuant to Charter §§198 and 199;

(b) approval of a map of a subdivision or the platting of land into streets, avenues or public places pursuant to Charter §202;

(c) designations of zoning districts under the Zoning Resolution, including conversion from one land use to another land use pursuant to Charter §§200 and 201;

(d) adoption of special permits within the jurisdiction of the City Planning Commission (hereafter: "the Commission") under the Zoning Resolution pursuant to Charter §§200 and 201;

(e) selection of sites for capital projects pursuant to Charter §218;

(f) granting of revocable consents pursuant to Charter §364, requests for proposals and other solicitations for franchise pursuant to Charter §363 and major concessions as defined pursuant to Charter §374;

(g) authorization of improvements in real property, the costs of which are payable other than by the City pursuant to Charter §220;

(h) approval of housing or urban renewal plans and projects pursuant to City, State or Federal laws;

(i) approval of sanitary or waterfront landfills pursuant to applicable Charter provisions or other provisions of law;

(j) approval of sale, lease (other than lease of space for office uses), exchange or other disposition of real property of the City and, sale or lease of land under water pursuant to Charter §1602, Chapter 15 or other applicable provisions of law;

(k) acquisitions by the city of real property (other than acquisition of office space for office use or a building for office use), including acquisition by purchase, condemnation, exchange or lease and including the acquisition of land under water pursuant to Charter §1602, Chapter 15, or other applicable provisions of law;

(1) for purposes of review by a community board or, where appropriate, by community boards and a borough board, the granting by the Board of Standards and Appeals of a variance of the Zoning Resolution pursuant to Charter §668(2);

(m) for purposes of review by a community board or, where appropriate, by community boards and a borough board, the granting by the Board of Standards and Appeals of a special permit assigned to its jurisdiction under the Zoning Resolution pursuant to Charter §668(2);

(n) such other matters involving the use, development or improvement of property as proposed by the Commission and enacted by the City Council pursuant to local law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

62 RCNY 2-01.1

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-01.1 Zoning Resolution Amendments Adopted Pursuant to City Charter §200 or §201.

Applications to amend the Zoning Resolution pursuant to City Charter §201 and actions to amend the Zoning Resolution initiated by the Commission pursuant to Charter §200, which concern revisions to the text of the Zoning Resolution, shall be subject to the provisions of subdivisions (b), (c), (d) and (g) of §2-06 and subdivision (c) of §2-02 of these rules.

HISTORICAL NOTE

Section added City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

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62 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-02 Applications.

(a) **Applications: general provisions.** (1) **Presentation of application.** A request for any action shall be submitted to the Department of City Planning, Central Intake Room. The application must be submitted upon the proper forms for the action as provided by the Department, including forms requesting information required for the "doing business database" established by Local Law 34 for the year 2007, and must be accompanied by all of the information and documents required by such forms in the appropriate number of copies specified thereon. For purposes of the acquisition of property by the City, pursuant to §§2-01(e) and 2-01(k) of these rules, the applicant shall be the requesting agency and the Department of Citywide Administrative Services. For purposes of the approval of housing or urban renewal plans and projects or amendments thereof pursuant to City, State or Federal laws in accordance with §2-01(h) of these rules, the applicant shall be the New York City Department of Housing Preservation and Development or the New York City Housing Authority, as appropriate, or their designees.

When presented at Central Intake, the application shall be accompanied by payment of the required fee, if any. Central Intake will not accept incomplete applications or applications without the required fee.

(2) **Initial Review.** The Department of City Planning shall, within five (5) days, review each application to insure that all required forms, documents and other exhibits supplied have been submitted and prepared in the manner required by the instructions. If any of the documentation is missing or has been improperly prepared, the application will be returned with a listing of its deficiencies. If the documentation is in order, the Department shall assign a docket number and shall send a Notice of Receipts of the application to all the appropriate Department divisions and other agencies which review such application, and to the community board(s), Borough Presidents, borough board (when appropriate), the City Council and the applicant in accordance with §2-02(b). Such Notice of Receipt, when sent to the community

board(s), Borough President(s), borough boards and City Council shall include a copy of the application form and all documents and exhibits attached thereto.

(3) **Substantive Review.** The application form, documents and other exhibits shall be subject to review by the appropriate divisions of the Department in order to insure that the requirements for completeness in §2-02(a)(5) have been met prior to certification of the application into ULURP. The Department may request any additional documents, maps, plans, drawings or information necessary to complete or organize the submission, or to clarify its substance and the land use issues attendant to it. The Department of City Planning shall refer such additional application documents or amendments within five (5) days to each affected borough president, community board or borough board, and to the City Council.

Not later than sixty (60) days after the Notice of Receipt has been sent, the Department of City Planning shall notify the applicant of any deficiencies or errors in the application, documents and other exhibits, and shall make any requests for revised or supplementary documents and exhibits. The applicant is expected to respond within a reasonable time. Upon receipt of the corrected, revised or supplementary material, the Department of City Planning shall review it within a period of not more than sixty (60) days and make any additional request for further corrections or supplements if needed.

If the applicant fails to respond within sixty (60) days after the receipt of a request for revisions, corrections or supplement, the Department of City Planning shall give notice to the applicant that the application will be deemed withdrawn.

(4) **Appeal for Certification.** At any time after one hundred and eighty (180) days have elapsed from the date of the Notice of Receipt of any application, the applicant may appeal in writing to the Commission to certify the application as complete. The affected Borough President may also appeal in writing if the Borough President finds that the application is consistent with the land use policy or strategic policy statement of the borough formulated pursuant to §82, subsection 14 of the Charter. Upon receipt of such an appeal, the Commission shall refer it to the Department of City Planning and the Office of Environmental Coordination or lead agency for an evaluation of the completeness of the application, which shall include an identification of all material requested by the Department of City Planning and the environmental review staff or lead agency not yet provided by the applicant. If the Commission determines that all pertinent information has been supplied in accordance with the criteria of §2-02(a)(5) below, it shall certify the application as complete. If the Commission determines that pertinent information has not been supplied, such information shall be listed by the Department of City Planning and the environmental review staff and sent by the Commission to the applicant within thirty (30) days of receipt of the appeal. When the applicant has responded, either by supplying all the information so requested, or by explaining why such information should not be required in order to certify the application, the Commission shall consider the evaluation and the applicant's response and either certify the application as complete in accordance with §2-02(a)(5) or deny the appeal. A denial by the Commission shall state the information that must still be supplied or clearly state the reason for denial. Such determination shall be made not later than sixty (60) days from the date the appeal is received. If the appeal is one which has been made by the affected Borough President, and the land use proposed in the application is consistent with the land use policy or strategic policy statement of the affected Borough President, then a vote of five members shall be sufficient to certify the application as complete in accordance with §2-02(a)(5) below. In all other instances, a majority vote of the Commission is necessary to certify an application.

A denial of the appeal shall mean that the application remains incomplete, and the Department of City Planning and the environmental review staff shall continue with timely review of the application until all the information required for completeness has been provided at which time certification shall take place. If such review continues for an additional one hundred and eighty (180) days or more beyond the denial, the applicant may again appeal to the Commission under the procedure outlined above to certify the application.

(5) **Certification of Completeness.** The Department or the Commission shall certify the application as complete

when compliance has been achieved with all of the following:

(i) The standard application form, including for any application certified on or after April 14, 2008, forms requesting information required for the "doing business database" established pursuant to Local Law 34 for the year 2007, has been filled out in its entirety with all requested information presented in clear language.

(ii) All accompanying documents, maps, plans, drawings and other information, are properly organized and presented in clear language and understandable graphic form.

(iii) The information supplied on the application form and accompanying documents is fully sufficient to address all issues of jurisdiction and substance which are required to be addressed for the category of action as defined in the Charter, statutes, Zoning Resolution, Administrative Code or other law or regulation.

(iv) All reviews by necessary and related agencies of the State and City have been completed and any required reports, certifications, sign-offs or other such agency actions required by law or regulation prior to ULURP have been secured or written waiver of the agency presented. If any such agency does not respond within sixty (60) days, it will be deemed to have waived its review and action as applicable law permits.

(v) A determination has been made whether the action is subject to City or State Environmental Quality Review, and if so subject, the lead agency has issued either:

(A) a Negative or Conditional Negative Declaration; or

(B) a Notice of Acceptance of a Draft Environmental Impact Statement.

(vi) Notification of any proposed (E) designation has been submitted to the Department of City Planning as required pursuant to §2-02(e) hereof.

(b) **Referrals: general provisions.** Except as provided in §2-02(c) hereof, within nine (9) calendar days after the certification by the Department of City Planning (or the Commission if certification occurs pursuant to §2-02(a)(4) above) that a submission is a complete application, the Department of City Planning shall make the following referrals:

(1) any application relating to a proposal which occupies or would occupy land located in only one community district shall be referred to the community board for such district;

(2) any application relating to a proposal which occupies or would occupy land located in two or more community districts shall be referred to the community board for each such district and to the borough board for the appropriate borough;

(3) any application relating to a proposal which occupies or would occupy land located in a joint interest area not included within a community district shall be referred to the community board for each community district bounding such area and to the borough board for the appropriate borough;

(4) all applications shall be referred to the Borough President of the borough in question;

(5) all applications shall be referred to the City Council.

(c) **Charter §201 applications.** A request for an amendment to the Zoning Map or the text of the Zoning Resolution by a taxpayer, community board, borough board, Borough President, the Mayor or the Land Use Committee of the Council pursuant to Charter §201, shall be filed with the Department. Applications for special permits pursuant to §201 may be filed by any person or agency. Such requests shall be subject to the application and certification procedure of §2-02(a) hereof and shall be referred pursuant to §2-02(b) hereof.

(d) **Withdrawals.** An applicant may at any time file with the Commission a statement that its application is withdrawn. If withdrawal occurs after filings have occurred pursuant to §2-06(h)(4) of this chapter, the applicant shall also file a statement of withdrawal with the City Council. Upon the filing of such a statement, the application in question shall be void and no further processing of such application under this uniform land use review procedure shall be undertaken by a community board, Borough President, borough board or the Commission. The Commission shall promptly give notice of such withdrawal to the board or boards, to the Borough President to which the application was referred pursuant to §2-02(b) and to the Council, if filings pursuant to §2-06(h)(4) of this chapter have not occurred. The request to which the application relates may thereafter be advanced only in connection with a new application certified as complete pursuant to §2-02(a) herein and processed according to this uniform land use review procedure.

(e) **Notification of proposed (E) designation.**

(1) In the event that an application for an amendment to the Zoning Map pursuant to Charter §197-c and §200 or §201 includes an (E) designation for potential hazardous material contamination on any tax lot or zoning lot pursuant to §11-15 of the Zoning Resolution of the City of New York, at the time the application is referred pursuant to §2-02(b) hereof the owner or owners of any such tax lot or zoning lot shall be notified of the proposed (E) designation. Such notification shall be by the lead agency, as defined in 6 New York Code of Rules and Regulations, Part 617, as amended, and 62 Rules of the City of New York §5-02, as amended. In the event the lead agency is other than the Commission, no application for an amendment to the Zoning Map shall be certified as complete pursuant to §2-02(a)(5) hereof until such other lead agency shall have submitted any notification of a proposed (E) designation, in the form and addressed to the parties required by this Section to the Department of City Planning, who shall send such notification in the manner provided by this Section.

(2) Such notification shall be by first-class mail and shall be made to the person(s) or entity(ies) identified in the official records of the City of New York as the fee owners of such tax lot or zoning lot and shall be sent to the address or addresses indicated in such records.

(3) The notification shall:

(i) describe the existing zoning and the proposed rezoning for the properties that will include the (E) designation;

(ii) inform the property owner of the right to attend and testify at any public hearing relating to the proposed Zoning Map amendment;

(iii) provide the phone numbers for a contact person at the lead agency, or if the lead agency is the Commission, a contact person or persons at the Department of City Planning;

(iv) be accompanied by a copy of §11-15 of the Zoning Resolution of the City of New York.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (1) amended City Record Mar. 13, 2008 §1, eff. Apr. 12, 2008. [See Note 2]

Subd. (a) par (1) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (a) par (5) subpar (i) amended City Record Mar. 13, 2008 §2, eff. Apr. 12, 2008. [See Note 2]

Subd. (a) par (5) subpar (vi) added City Record Jan. 22, 1996 eff. Feb. 21, 1996. [See Note 1]

Subd. (e) added City Record Jan. 22, 1996 eff. Feb. 21, 1996. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 22, 1996:

Section 11-15(d) of the Zoning Resolution of the City of New York requires that the City Planning Commission adopt rules "to provide notification of a proposed (E) designation to the owner(s) of the property to be so designated not less than 60 days prior to such designation." This rule provides the standards for providing such notification.

2. Statement of Basis and Purpose in City Record Mar. 13, 2008: This rule is promulgated pursuant to the authority of the City Planning Commission, under §§192, 197-c and 1043 of the New York City Charter, and pursuant to the authority of the Department of City Planning pursuant to §1043 of the New York City Charter and §3-702(18) of the Administrative Code of the City of New York. In accordance with Local Law 34 of 2007, City agencies must cooperate in the creation of a database (the "Doing Business Database"), the purpose of which is to keep a unified record of all entities and persons who are doing business with the City and to facilitate compliance with the New York City Campaign Finance Act. This rule will require that applications presented to City Planning include all forms necessary for the Doing Business Database. This rule is also proposed to clarify that the applicant with respect to applications for approval of housing or urban renewal plans and projects pursuant to City, State or Federal laws in accordance with Chapter 2 of Title 62, §2-01(h) of the Rules of the City of New York, is the housing agency of jurisdiction.

CASE NOTES

¶ 1. Charter §197-c has no legal requirement for a superseding restrictive declaration to be included in order for a land use application to be complete. Charter §197-c(a), (b), (c), (i) and the implementing regulations, 62 RCNY 2-02(a)(5)(iv), (v) do not make the filing of a superseding restrictive declaration a prerequisite to deeming an application complete for ULURP notification and processing purposes. Coalition against Lincoln W. v. City of New York, 208 AD2d 472 affirmed, 86 NY2d 123 [1995].

62 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-03 Community Board Actions.

(a) **General provisions.** (1) Except as provided below, within sixty (60) calendar days after a community board's receipt of a complete application referred by the Department of City Planning, the Board of Standards and Appeals or the Commission as the case may be, the community board shall hold a public hearing and adopt and submit as provided herein a written recommendation concerning such application. For purposes of this paragraph (1), a community board shall be deemed to have received an application nine (9) calendar days after the date of certification. The Department of City Planning shall insure delivery of a certified application by either mailing to the community board within five (5) days of the date of certification or by hand delivery within eight (8) days from the date of certification.

(2) Where the negative vote of the community board was adopted without a public hearing, without a quorum or at a meeting conducted after its 60-day period for review, such non-complying negative vote shall not serve the purpose of Charter §197-d(b)(2). The Commission may note the noncompliance and any other deficiency in compliance with this chapter in its report.

(b) **Waivers of hearings and recommendations.** (1) **Leases.** In the case of a proposed lease of property of the City which in the judgment of the community board does not involve a substantial land use interest, such board may waive the holding of a public hearing and preparation of a written recommendation. In such case the community board shall submit to the Department a written waiver of its right to hold a public hearing and to submit recommendations to the City Planning Commission and affected Borough President. When a written waiver of the community board's right to hold a hearing and submit a recommendation is received by the Department of City Planning the community board's period of review shall be deemed ended and the Borough President's time period begun.

(2) **Franchises.** In the case of Request for Proposal or other solicitation for a franchise which in the judgment of the community board does not involve a substantial land use interest, such community board may submit a written waiver to the Commission of the right to hold a public hearing and the preparation of a written recommendation.

(c) **Notice of hearing.** Notice of the time, place and subject of a public hearing to be held by a community board on an application shall be given as follows:

(1) by publication in The City Record for the five (5) days of publication immediately preceding and including the date of the public hearing;

(2) by publication in the Comprehensive City Planning Calendar distributed not less than five (5) calendar days prior to the date of public hearing;

(3) to the applicant ten (10) days prior to the date of hearing (with a copy of such notice also forwarded to the Department of City Planning);

(4) for all actions that result in acquisition of property by the City, other than by lease, whether by condemnation or otherwise, the applicant shall notify the owner or owners of the property in question by mail to the last known address of such owner or owners, as shown on the City's tax records, not later than five (5) days prior to the date of hearing. An affidavit attesting to the mailing and a copy of the notice shall be submitted to the Department of City Planning prior to the Commission's public hearing;

(5) Community boards are also encouraged to publicize hearings by publication in local newspapers, posting notices in prominent locations, and other appropriate means.

(d) **Conduct of public hearing.** (1) **Location.** A community board public hearing shall be held at a convenient place of public assembly chosen by the board and located within its community district. If in the community board's judgment there is no suitable and convenient place within the community district, the hearing shall be held at a centrally located place of public assembly within the borough.*1

(2) **General character.** Hearings shall be legislative type hearings, without sworn testimony or strict rules of evidence. Only members of a community board and persons expressly authorized by the chairperson may question a speaker. All persons appearing and wishing to speak shall be given the opportunity to speak. A community board hearing shall be conducted in accordance with by-laws adopted by the community board.

(3) **Quorum.** A public hearing shall require a quorum of 20% of the appointed members of the community board, but in no event fewer than seven such members. The minutes of a meeting at which a public hearing was held shall include a record of the individual members present.

(4) **Record.** The record of a public hearing shall consist of but not be limited to a list of speaker's names and affiliations (if any), a notation of each speaker's own indication, on a form provided for that purpose, of support or opposition to the application, and any exhibits or written statements offered by speakers.

(e) **Public attendance at meetings of a community board or its committees.** The public may attend all meetings of a community board or its committee at which an application for an action subject to this Chapter is to be considered or acted upon in a preliminary or final manner. A community board may close a meeting or committee meeting to the public only as provided in the New York State Open Meetings Law (Public Officers Law, §§100-111).

(f) **Recommendations and waivers.** (1) **Quorum.** The adoption of a community board recommendation, or the waiver of a public hearing and recommendation by a community board, shall require a quorum of a majority of the appointed members of the board. The minutes of a meeting at which a recommendation or waiver was adopted shall record the individual members present.

(2) **Vote.** The adoption of a community board recommendation or the waiver of a public hearing and recommendation shall be by a public vote which results in approval by a majority of the appointed members present during the presence of a quorum, at a duly called meeting. The vote shall be taken in accordance with the by-laws of the community board.

(3) **Content.** A community board recommendation shall be in writing on a form provided by the Department of City Planning and shall include a description of the application, the time and place of the public hearing on the application, the time and place of the meeting at which the recommendation was adopted and the vote by which the recommendation was adopted. The community board may include in its submission the reasons for the vote and any conditions attached to its vote. The community board may state that its conditional approval shall be considered a negative recommendation for purposes of Charter §197-d(b)(2) if conditions that it considers essential to minimize land use or environmental impacts are not adopted by the Commission. The City Planning Commission shall give consideration only to those conditions which are related to land use and environmental aspects of the application.

(4) **Submission.** A community board shall submit its recommendation or waiver promptly after adoption, to the Commission, to the Borough President, to the applicant and, in the case of an application referred to two or more community boards and a borough board, to such borough board. If a community board fails to act within the time limits for review the application shall be deemed referred to the next level of review at the completion of the community board's time period.

(g) **Requests for review of action not in a community district.** A community board or borough board may request a copy of the application and supporting documents for any action subject to ULURP which is not located within the district boundaries of the community board, or the borough board, making the request. The request must be made in writing to the Calendar Office of the Commission and it shall state the basis for the board's judgment that the application may significantly affect the welfare of the district or borough served by such board. If such request is made, the Department of City Planning shall forward the information described above to said board. Thereafter, the community board or borough board may schedule a public hearing on the application, such hearing and notice thereof to be in conformance with §§2-03(c), 2-03(d), 2-05(c) and 2-05(d) of this chapter and may submit a written recommendation to the Commission. The Commission may receive such recommendation at any time prior to its final action on the application; however, it shall have no authority to extend the review period defined in Charter §197-c, nor shall a review by a second community board pursuant to this subparagraph (g) require that the application be reviewed by the borough board. A Borough President may similarly request a copy of an application and supporting documents for any action subject to ULURP which is not located within the boundaries of the borough.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (e) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * This provision is not intended to affect the requirement of Charter §2800(h) stating a community board's obligation to meet at least monthly (except during July and August) within its district.

Rules of the City of New York

***** Current through December 2009 ****

62 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-04 Borough President Actions.

A Borough President may submit a written recommendation on an application, or waive the right to submit a recommendation to the City Planning Commission. Such recommendation or waiver shall be submitted on the form provided not later than 30 days after the receipt of a recommendation or waiver by the City Planning Commission and the Borough President from an affected community board, by the latest to respond of all affected community boards or if any affected community board shall fail to act within the time period, thirty (30) days after the expiration of the time allowed for such community board(s) to act.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

62 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-05 Borough Board Actions.

(a) **General provisions.** Except as provided below in §2-05(b), an affected borough board may conduct a public hearing on an application and submit a written recommendation to the Commission. Such recommendation or waiver shall be submitted on the form provided not later than thirty (30) days after the filing of a recommendation or waiver with the Borough President by the last to respond of all affected community boards, or if any affected community board shall fail to act within the time period, thirty (30) days after the expiration of the time allowed for such community boards to act.

(b) **Notice of hearing.** Notice of the time, place and subject of a public hearing to be held by a borough board for all applications subject to this land use review procedure shall be given as follows:

(1) by publication in The City Record for the five (5) days of publication immediately preceding and including the date of the public hearing;

(2) by publication in the Comprehensive City Planning Calendar distributed not less than five (5) calendar days prior to the date of hearing;

(3) to the applicant ten (10) days prior to the date of hearing;

(4) for all actions resulting in acquisition of property by the City, other than by lease, whether by condemnation or otherwise, the applicant shall notify the owner or owners of the property in question by mail to the last known address of such owner or owners, as shown on the City's tax records, not later than five (5) days prior to the date of hearing. An

affidavit attesting to the mailing and a copy of the notice shall be submitted to the Department of City Planning prior to the Commission's public hearing.

(c) **Conduct of hearing.** (1) **Location.** A borough board public hearing shall be held at a convenient place of public assembly chosen by the board and located within the borough.

(2) **General character.** Hearings shall be legislative type hearings, without sworn testimony or strict rules of evidence. Only members of a borough board or persons expressly authorized by the chairperson may question a speaker. All persons appearing and wishing to speak shall be given the opportunity to speak. A borough board's hearing shall be conducted in accordance with by-laws adopted by such borough board.

(3) **Quorum.** A public hearing shall require a quorum of a majority of the borough board's members who are entitled to vote on the application in question. Pursuant to Charter §85, community board members of the borough board may only vote on issues that directly affect the comunity district represented by such members. The minutes of the meeting at which a public hearing was held shall record the individual members present.

(4) **Record.** The record of a public hearing shall consist of a list of speakers' names and affiliations if any, a notation of each speaker's own indication, on a form provided for that purpose, of support or opposition to the application and any exhibits or written statements offered by speakers.

(d) **Public attendance at meetings.** The public may attend all meetings of a borough board at which an application for an action subject to this Chapter is to be considered or acted upon in a preliminary or final manner. A borough board may close a meeting to the public only as provided in the New York State Open Meetings Law (Public Officers Law, §§100-111).

(e) **Recommendations and waivers.** (1) **Quorum.** The adoption of a borough board recommendation or the waiver of a public hearing and recommendation by a borough board shall require a quorum of a majority of the borough board's members entitled to vote on the application in question. Pursuant to Charter §85, community board members of the borough board may only vote on issues that directly affect the community district represented by such member. The minutes of a meeting at which a recommendation or waiver was adopted shall record the individual members present.

(2) **Vote.** Adoption of a recommendation shall be by a public roll call vote which results in approval by a majority of the members entitled to vote on the application in question present during the presence of a quorum, at a duly called meeting. Pursuant to Charter §85, community board members of the borough board may only vote on issues that directly affect the community district represented by such member.

(3) **Content.** A borough board recommendation shall be in writing on a form provided by the Department of City Planning and shall include a description of the application, the time and place of public hearing, the time and place of the meeting at which the recommendation was adopted and the votes of individual borough board members. The borough board may include in its submission the reasons for its vote and any conditions to the vote.

(4) **Submission.** A borough board shall submit its recommendation or waiver on the form promptly after adoption to the Commission and to the applicant.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (d) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

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***** Current through December 2009 ****

62 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-06 City Planning Commission Actions.

(a) **General provisions.** The Commission shall hold a public hearing on all applications made pursuant to §197-c of the Charter not later than sixty (60) calendar days after the expiration of the time allowed for the filing of a recommendation or waiver with it by an affected Borough President. Following its hearing and within its applicable sixty (60) day period, the Commission shall approve, approve with modifications or disapprove such application and file its decision pursuant to §2-05(h)(4) below.

(b) **Zoning text amendments pursuant to Charter §200 or §201.** The Commission shall hold a public hearing on an application for a zoning text amendment pursuant to Charter §200 or §201. Such hearing shall be conducted in accordance with §2-06(f) of this Chapter.

(c) **Modification of application.** (1) The Commission may propose a modification of an application, including an application for a zoning text amendment pursuant to Charter §200 or §201, which meets the criteria of §2-06(g) below. Such proposed modification may be based upon a recommendation from an applicant, community board, borough board, Borough President or other source. Where a modification is proposed, the Commission shall hold a public hearing on the application as referred to a community board or boards and on the proposed modification. Promptly upon its decision to schedule a proposed modification for public hearing, the Commission shall refer the proposed modification to the community board or community boards, borough board, and the affected Borough President to which the application was earlier referred, for such action as such board or boards or Borough President deem appropriate.

(2) The above provision shall not limit the Commission's ability to make a minor modification of an application.

(d) **Notice of hearing.** Notice of the time, place and subject of a public hearing by the Commission for all applications subject to this uniform land use review procedure, including applications for zoning text amendments pursuant to Charter §200 and §201 and modified applications pursuant to §2-06(c)(1), of this chapter, shall be given as follows:

(1) by publication in The City Record beginning not less than ten (10) calendar days immediately prior to the date of hearing and continuing until the day prior to the hearing;

(2) by publication in the Comprehensive City Planning Calendar distributed not less than ten (10) calendar days prior to the date of hearing;

(3) by mailing notice to the concerned community board or community boards Borough President and borough board and to the applicant not less than ten (10) calendar days prior to the date of hearing;

(4) for all actions that result in acquisition of property by the City, other than by lease, whether by condemnation or otherwise, the applicant shall notify the owner or owners of the property in question by mail to the last known address of such owner or owners, as shown on the City's tax records, not later than five (5) days prior to the date of hearing. An affidavit attesting to the mailing and a copy of the notice shall be submitted to the Department of City Planning prior to the Commission's public hearing.

(e) **Posting of notices for hearings on the disposition of occupied city-owned residential buildings.** For any application involving disposition of a city-owned residential building, which at the time of application is occupied by tenants, the applicant shall post notice of the Commission public hearing in the manner discussed below:

(1) at least eight (8) days prior to the Commission public hearing a notice, on a form provided by the Department of City Planning, shall be posted by the applicant in the building subject to the application, informing the tenants of the proposed action and the right of the public to appear at the Commission hearing and testify; and

(2) such notice shall be posted in common public space on the ground floor of the building accessible to all building tenants; and

(3) the applicant will file with the Department of City Planning an affidavit attesting to the posting of the notice and date and specific location where the notice was posted. The affidavit shall be signed by the person posting the notice.

(f) **Conduct of hearing.** (1) **Location.** Commission public hearings shall be held in City Hall, unless otherwise ordered by the Chair.

(2) **General Character.** Hearings shall be legislative type hearings, without sworn testimony, strict rules of evidence or opportunity for speakers to cross-examine one another. Only members of the Commission may question a speaker (except at a joint Commission/CEQR hearing at which officers of the lead agency and the office of Environmental Coordination may also ask questions). All persons filling out an appearance form shall be given the opportunity to speak. The chairperson may prescribe a uniform limited time for each speaker.

(3) **Quorum.** A public hearing shall require a quorum of a majority of the members of the Commission.

(g) **Commission actions.** (1) **Scope of action.** The Commission shall approve, approve with modifications or disapprove each application.

(2) **Vote.** The Commission shall act by the affirmative roll call vote of at least seven (7) members at a public meeting, except that pursuant to Charter §197-c, subsection h, approval or approval with modifications of an application relating to a new city facility for site selection for capital projects, the sale, lease (other than the lease of office space),

exchange or other disposition of the real property of the City, including sale or lease of land under water pursuant to §1602, Chapter 15 of the Charter or other applicable provisions of law; or acquisitions by the City of real property (other than the acquisition of office space for office use or a building for office use), including acquisition by purchase, condemnation, exchange or lease and including the acquisition of land under water pursuant to §1602, Chapter 15 and other applicable provisions of law, shall require the affirmative vote of nine members of the Commission if the affected Borough President:

(i) recommends against approval of such application pursuant to subdivision g of Charter §197-c; and

(ii) has proposed an alternative location in the same borough for such new facility pursuant to subdivision f or g of Charter §204.

(3) **Commission report.** A report of the Commission shall be written with respect to each application subject to this procedure on which a vote has been taken. The report shall include:

(i) a description of the certified application;

(ii) a summary of testimony at all Commission public hearings held on the application;

(iii) a copy of all community board, Borough President or borough board written recommendations concerning the application;

(iv) the consideration leading to the Commission's action, including reasons for approval and any modification of the application and reasons for rejection by the Commission of community board, Borough President or borough board recommendations;

(v) any findings and consideration with respect to environmental impacts as required by the State Environmental Quality Review Act and regulations;

(vi) the action of the Commission, including any modification of the application;

(vii) the votes of individual Commissioners;

(viii) any dissenting opinions.

(4) **Filing of decisions of the Commission.** The City Planning Commission shall file copies of its decision with the affected Borough President and with the City Council. All filings with the Council shall include all associated community board, Borough President or borough board recommendations. The Commission shall mail a copy of any decision to the applicant and to the community board or community boards, and borough board to which the application was referred. Filings with the City Council and Borough President shall be completed within the Commission's sixty (60) day time period.

(5) **Review of Council modifications.** The Commission shall receive from the City Council during its fifty (50) day period for review copies of the text of any proposed modification to the Commission's prior approval of an action. Upon receipt the Commission shall have fifteen (15) days to review and to determine:

(i) in consultation with the Office of Environmental Coordination and lead agency as necessary, whether the modification may result in any significant adverse environmental effects which were not previously addressed; and

(ii) whether the modification requires the initiation of a new application. In making this determination, the Commission shall consider whether the proposed modification:

(A) increases the height, bulk, envelope or floor area of any building or buildings, decreases open space, or alters

conditions or major elements of a site plan in actions (such as a zoning special permit) which require the approval or limitation of these elements;

(B) increases the lot size or geographic area to be covered by the action;

(C) makes necessary additional waivers, permits, approvals, authorizations or certifications under sections of the Zoning Resolution, or other laws or regulations not previously acted upon in the application; or

(D) adds new regulations or deletes or reduces existing regulations or zoning restrictions that were not part of the subject matter of the earlier hearings at the community board or Commission.

If the Commission has determined that no additional review is necessary and that, either, no significant environmental impacts will result or that possible environmental impacts can be addressed in the time remaining for Commission and Council review, it shall so report to the Council. The Commission may also transmit any comment or recommendation with respect to the substance of the modification, and any proposed further amendment to the modification which it deems as necessary or appropriate.

If the Commission has determined that the proposed modification will require a supplementary environmental review or the initiation of a new application, it shall so advise the Council in a written statement which includes the reasons for its determination.

(6) **Zoning Resolution text amendments pursuant to Charter §§200 and 201.** Applications for amendments to the text of the Zoning Resolution pursuant to Charter §200 or §201 shall be subject to the provisions of this paragraph (g).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (b) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (c) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (d) open par amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (f) repealed City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (f) relettered (formerly (g)) City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (f) par (1) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (f) par (4) repealed City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) relettered (formerly (h)) City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) par (5) open par amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) par (5) subpar (i) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) par (5) subpar (ii) open par amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) par (5) final paragraph amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) par (6) added City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

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***** Current through December 2009 ****

62 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-07 Borough President Initiation of City Council Review.

In the case of an application not subject to mandatory council review pursuant to Charter §197-d(b)(1), which receives an unfavorable recommendation by both an affected community board and affected Borough President and either a favorable vote or favorable vote with modification by the Commission, such application shall be subject to council review and action if the affected Borough President shall file, within five (5) days of receiving the report of the Commission, a written objection to the Commission's vote with the Council and the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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62 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-08 Board of Standards and Appeals.

(a) **Variance and special permit applications.** (1) **Filing and referral.** An application for a variance of the Zoning Resolution or for a special permit which under the Zoning Resolution is within the jurisdiction of the Board of Standards and Appeals shall be filed with the Board of Standards and Appeals. In accordance with the rules of Practice and Procedures [Chapter 1 of the Board of Standards and Appeals rules], the Board of Standards and Appeals shall refer the application to the community board within which district the site is located or, in the case of an application involving a site located within two or more community districts, to the community boards for such districts and to the borough board for the appropriate borough. The Commission, as a party to a proceeding to vary the Zoning Resolution, shall be served with all papers in such proceeding by the Board of Standards and Appeals. Upon the filing with a community board, or with two or more community boards and a borough board, of an application for a variance or a special permit under the jurisdiction of the Board of Standards and Appeals, such community board or community boards and borough board shall review such application pursuant to §§2-03 and 2-05 herein.

(2) **Community board waiver or recommendation.** In the case of an application to vary the Zoning Resolution or for a special permit under the jurisdiction of the Board of Standards and Appeals, a community board may waive in writing the holding of a public hearing and the adoption of a written recommendation. The community board recommendation or waiver shall be referred to the Board of Standards and Appeals, the Commission and, in the case of an application which was referred to two or more community boards and a borough board, to such borough board. Upon action by or expiration of time to act on an application for each concerned community board and when appropriate, action by or expiration of time to act for an affected borough board, the Board of Standards and Appeals may proceed to review the application and to make a decision.

(3) **Borough board review.** In the case of an application to vary the Zoning Resolution or for a special permit pursuant to the Zoning Resolution under the jurisdiction of the Board of Standards and Appeals, a borough board may waive in writing the holding of a public hearing and the adoption of a written recommendation. After action by or expiration of time to act for all affected community boards if subject to borough board review, and upon receipt of a waiver or recommendation from a borough board or expiration of the thirty (30) day time limit for borough board review, the Board of Standards and Appeals may proceed to review the application and to make a decision.

(b) **City Planning Commission review.** Appearance in Variance Proceeding- In the case of an application to the Board of Standards and Appeals for a variance of the Zoning Resolution, the Commission may appear before the Board of Standards and Appeals and be heard as a party in the variance proceeding if, in the Commission's judgment, granting the relief requested in such application would violate the requirements of the Zoning Resolution which relate to the granting of variances.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-09 Administrative Provisions.

(a) **Referrals and filings.** Unless otherwise provided herein, any referrals and filings required under this chapter shall be made by hand delivery or first class mail as follows:

(1) if to the Commission, then to the Land Use Review Division, Department of City Planning, Room 2E, 22 Reade Street, New York, New York 10007-1216;

(2) if to a community board, then to the chairperson of such community board at its office or, if there is no office or if no office address is provided to the Land Use Review Division, Department of City Planning, then to such board c/o the Borough President of the borough in question;

(3) if to a borough board, then to such borough board c/o the Borough President of the borough in question;

(4) if to the Board of Standards and Appeals, then to the Secretary of the Board of Standards and Appeals, 11th Floor, 161 Avenue of the Americas, New York, New York 10013;

(5) if to the City Council then to the Office of the Speaker City Council, City Hall, New York, New York.

(b) **Time provisions.** (1) **Expiration dates**. Where the expiration of a time period set forth herein falls on a Saturday, Sunday or legal holiday, the expiration date shall be deemed extended until the next working day.

(2) **Determination.** All time periods specified in these regulations shall be calendar days. The commencement and end of time periods shall be recorded and officially calculated and determined by the Director of City Planning.

(c) **Transition.** Any application which has been voted upon by the community board and borough board, if required, and the recommendation concerning which has been received by the Department of City Planning prior to May 2, 1990 shall not be subject to these provisions, but shall rather be subject to the procedures in effect prior to May 2, 1990, which procedures shall remain in effect for that category of actions until June 30, 1990. In accordance with §1152d(6)(b) of the Charter the time period for receiving any application referred to a Borough President in the month of May, 1990 shall be extended until June 30, 1990, at which time it shall be transmitted to the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-10 Interpretation and Amendment of Regulations.

(a) **Interpretation.** This chapter shall be interpreted in accordance with the ordinary meaning of the language herein, and any ambiguities arising herefrom shall be referred to and definitively interpreted in written opinions by the Director of City Planning.

(b) **Amendments.** The Commission from time to time may amend these regulations, in accordance with the City Administrative Procedure Act, Chapter 45 of the Charter.

(c) **Commission Rules of Procedure.** These regulations shall supplement and, where there is inconsistency, supersede the rules of Practice and Procedure of the City Planning Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

62 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER A CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) (DEPARTMENT OF CITY PLANNING AND DEPARTMENT OF ENVIRONMENTAL PROTECTION)

§3-01 Fee for CEQR Applications.

Except as specifically provided in this section, every application made pursuant to Executive Order 91 and Chapter 5 of these rules shall include a non-refundable fee which shall be submitted to the lead agency for the action or to an agency that could be the lead agency pursuant to §5-03 of the rules of the Commission, and shall be in the form of a check or money order made out to the "City of New York". The fee for an application shall be as prescribed in the following Schedule of Charges, §3-02 of these rules. The fee for modification for an action, which modification is not subject to §197-c of the New York City Charter shall be twenty percent of the amount prescribed in the Schedule of Charges for an initial application. The fee for any modification for an action, which is subject to §197-c of the New York City Charter shall be the amount set forth in the Schedule of Charges (§3-02) as if the modification were an initial application for the action. Where the fee for an application is set pursuant to §3-02(a), and the square footage of the proposed modification is different from the square footage of the original action, the fee for an application for the modification shall be based upon the square footage of the modified action or as set forth in §3-02(b), as determined by the lead agency.

Agencies of the federal, state or city governments shall not be required to pay fees, nor shall a neighborhood, community or similar association consisting of local residents or homeowners organized on a non-profit basis be required to pay fees, if the proposed action for purposes of CEQR review consists of a zoning map amendment for an area of at least two blocks in size, in which one or more of its members or constituents reside. Fees shall be paid when

the application is filed, and these fees may not be combined in one check or money order with fees required pursuant to other land use applications submitted to the Department of City Planning or the City Planning Commission. No application shall be processed by the lead agency until the fee has been paid and twenty-five copies of the application have been filed with the lead agency.

HISTORICAL NOTE

Section amended City Record July 10, 2009 §1, eff. Aug. 9, 2009. [See Note 4]

Section amended City Record May 29, 2007 §2, eff. June 28, 2007. [See Note 3]

Section amended City Record Oct. 7, 2002 eff. Nov. 6, 2002. [See Note 1]

Section amended City Record June 28, 1995 eff. July 28, 1995. [See Note 2]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 7, 2002:

The proposed Amendment to the City Planning Commission's Rule would modify the existing Fee Schedule for filing applications pursuant to CEQR in order to reflect the cumulative rate of inflation and the increased cost of professional staff time in reviewing applications since the fees were last increased in 1995.

2. Statement of Basis and Purpose in City Record June 28, 1995: The proposed Amendment to the City Planning Commission Rule governing fees charged for filing CEQR applications would modify the existing Schedule of Charges in order to cover the City's increased costs associated with the CEQR process. The rule also makes a clarifying change to §5-08.

3. Statement of Basis and Purpose in City Record May 29, 2007: The City Planning Commission is amending its rules pursuant to its authority under §§192 and 1043 of the New York City Charter. Amendments to Chapter 3 of Title 62 of the Rules of the City of New York increase fees for City Environmental Quality (CEQR) review by 15% to reflect cost of living increases and increased labor costs, except that for Type II applications the current fee of $75 will be increased by 33%. The amendments also increase fees for the processing and review of most land use applications by 40% in order to reflect agency costs of processing and review. The CEQR fee increase is less than the land use application fee increase current because CEQR fees capture more of the current costs. The CEQR fee increase will also increase fees for such review by the Board of Standards and Appeals. Fees for non-profit organizations will no longer be waived. Exceptions will be made for neighborhood, community or similar associations consisting of local residents or homeowners organized on a non-profit basis filing area-wide rezoning applications. The fee for an application which requests a modification of a previously approved application, where the new application is not subject to §197-c of the New York City Charter, will be increased from one-quarter of the current fee for an initial application to one-half of such fee. Payment of a fee will be required for the Department's issuance of written zoning verifications, a service for which no fee has previously been charged. A fee for certification for public school space pursuant to §107-123 of Article X, Chapter 7 (Special South Richmond Development District) of the Zoning Resolution, which was previously erroneously deleted from the §3-07, has been reinserted. In addition to the changes described above, §3-07 has been reorganized for clarity and ease of use. Complex language is simplified, and outdated provisions are eliminated.

4. Statement of Basis and Purpose in City Record July 10, 2009: The City Planning Commission is amending its rules pursuant to its authority under Sections 192 and 1043 of the New York City Charter. Amendments to Chapter 3 of Title 62 of the Rules of the City of New York would increase fees for the processing and review of City Environmental Quality Review (CEQR) applications and of land use applications by 8% to reflect increased labor costs. Supplemental

land use application fees would be established for large projects of over of 500,000 square feet of floor area. A supplemental CEQR fee would also be required for projects for which a restrictive declaration to ensure compliance with project components related to the environment and/or mitigation of significant adverse impacts will be executed. The supplemental fees would capture the costs of the additional work that is required of Department staff in connection with large projects, and projects for which a restrictive declaration to ensure compliance with project components related to the environment and mitigation measures will be executed. In addition to the changes described above, Section 3-07 of the land use fee rule has been clarified to establish that for certain authorizations, the fee for a project with non-residential uses is the same as the fee for a project with open uses. The lower fee for certain residential uses is not applicable if the project also contains a commercial or community facility use.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

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RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER A CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) (DEPARTMENT OF CITY PLANNING AND DEPARTMENT OF ENVIRONMENTAL PROTECTION)

§3-02 Schedule of Charges.

(a) Projects measurable in square feet

[See tabular material in printed version]

(c) Supplemental Fee for Environmental Mitigation.

In addition to all other applicable fees as set forth above, a supplemental fee of $8,000 shall be required for CEQR applications filed on or after July 1, 2009, for which a restrictive declaration to ensure compliance with project components related to the environment and/or mitigation of significant adverse impacts will be executed.

HISTORICAL NOTE

Section amended City Record July 10, 2009 §2, eff. Aug. 9, 2009. [See T62 §3-01 Note 4]

Section amended City Record May 29, 2007 §3, eff. June 28, 2007. [See T62 §3-01 Note 3]

Section amended City Record Oct. 7, 2002 eff. Nov. 6, 2002. [See Note after T62 §3-01]

Section amended City Record June 28, 1995 eff. July 28, 1995. [See T62 §3-01 Note 2]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

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***** Current through December 2009 ****

62 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER B UNIFORM LAND USE REVIEW (ULURP)

§3-06 Fees for Applications Pursuant to City Charter §197-c and Other Appli- cations.

Except as specifically provided in this section, every type of application listed in Section 3.07, Schedule of Charges, shall include a non-returnable fee which shall be paid by check or money order made out to the City of New York.

The fee for an initial application, or for a modification, renewal or follow-up action, shall be as prescribed in the following Schedule of Charges, provided that if an applicant simultaneously submits applications for several actions relating to the same project, the maximum fee imposed shall be two hundred percent of the single highest fee, provided that such maximum fee limitation shall not apply to supplemental fees. An additional fee shall be charged for any applications later filed in relation to the same project, while such project is pending review and determination.

Agencies of the federal, state or city governments shall not be required to pay fees nor shall any fees be charged if a neighborhood, community or similar association consisting of local residents or homeowners organized on a non-profit basis applies for a zoning map amendment for an area of at least two blocks in size, in which one or more of its members or constituents reside.

HISTORICAL NOTE

Section amended City Record July 10, 2009 §3, eff. Aug. 9, 2009. [See T62 §3-01 Note 4]

Section amended City Record May 29, 2007 §4, eff. June 28, 2007. [See T62 §3-01 Note 3]

Section amended City Record Oct. 7, 2002 eff. Nov. 6, 2002. [See Note 1]

Section amended City Record June 28, 1995 eff. July 28, 1995. [See Note 2]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 7, 2002:

The proposed Amendment to the City Planning Commission's Rule would modify the existing Fee Schedule for filing applications pursuant to §197-c of the New York City Charter and other applications in order to reflect the cumulative rate of inflation and the increased cost of professional staff time in reviewing applications since the fees were last increased in 1995.

2. Statement of Basis and Purpose in City Record June 28, 1995: The proposed Amendment to the City Planning Commission's Rule would modify the existing fee Schedule for filing applications pursuant to §197-c of the New York City Charter and other applications in order to cover the City's increased costs associated with such filings.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

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RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER B UNIFORM LAND USE REVIEW (ULURP)

§3-07 Schedule of Charges.

(a) **Applications for Special Permits and Zoning Map amendments pursuant to §197-c of the City Charter:**

(1) Applications for special permits:

[See tabular material in printed version]

[See tabular material in printed version]

(b)

Applications for changes to the City Map, Landfills:

Except for applications to eliminate a mapped but unimproved street from the property of an owner-occupied, one- or two-family residence, for which no fee shall be charged, fees are as follows:

Elimination of a mapped but unimproved street

$1,740

Establishment of a landfill

$3,400

Any other change in the City Map

$5,445

(c) **Applications for franchises and revocable consents:**

(1) Applications pursuant to §197-c of the City Charter-$3,400

(2) Enclosed sidewalk cafes pursuant to New York City Administrative Code §20-225: $55 per seat/minimum of $1,360

(d) Applications for amendments to the text of the Zoning Resolution pursuant to §201 of the City Charter $5,445

(e) **Applications for zoning certifications and zoning authorizations:**

(1) For certification for public school space pursuant to §107-123 of Article X, Chapter 7 (Special South Richmond Development District) of the Zoning Resolution, the fee shall be $160.

(2) Pursuant to Article VI, Chapter 2 (Special Regulations Applying in The Waterfront Area), Article X, Chapter 5 (Natural Area District), Article X, Chapter 7 (Special South Richmond Development District) and Article XI, Chapter 9 (Special Hillsides Preservation District) of the Zoning Resolution.

Certifications

For an application for one zoning lot with no more than two existing or proposed dwelling units-$380

For all other applications the fee for each zoning lot shall be $430.

Authorizations

For an application for one zoning lot with no more than two existing or proposed dwelling units and no commercial or community facility use-$755

For all other applications with no commerical or community facility use, the fee shall be based upon the number of dwelling units being proposed, in the amount of $830 per dwelling unit, however, in cases of open uses, the fee shall be based upon the area of the zoning lot, and in cases of community facility or commercial uses, the fee shall be based upon the total amount of floor area, as follows:

Less than 10,000 square feet

$1,060

10,000 to 19,999 square feet

$1,590

20,000 to 39,999 square feet

$2,040

40,000 to 69,999 square feet

$2,645

70,000 to 99,999 square feet

$3,100

100,000 square feet and over

$3,400

(3) Pursuant to §95-04 (Transit Easements) of the Zoning Resolution-$ 270

(4) Pursuant to all other sections of the Zoning Resolution:

Total amount of floor area, or in the cases of open uses, area of the zoning lot as follows:

Less than 10,000 square feet

$1,060

10,000 to 19,999 square feet

$1,590

20,000 to 39,999 square feet

$2,040

40,000 to 69,999 square feet

$2,645

70,000 to 99,999 square feet

$3,100

100,000 square feet and over

$3,400

In the case of area transfer of development rights or floor area bonus, the fee shall be based upon the amount of floor area associated with such transfer or bonus.

(f) **Modifications, follow-up actions and renewals.**

(1) The fee for an application which requests a modification of a previously approved application, where the new application is subject to §197-c of the New York City Charter, shall be the same as the current fee for an initial application, as set forth in this Schedule of Charges.

(2) The fee for an application which requests a modification of a previously approved application, where the new application is not subject to §197-c of the New York City Charter, shall be one-half of the current fee for an initial application, as set forth in this Schedule of Charges.

(3) The fee for a follow up action under the Zoning Resolution, or a restrictive declaration or other legal instrument shall be one-quarter of the amount prescribed in this Schedule of Charges for an initial application.

(4) The fee for the renewal of a previously approved enclosed sidewalk cafe shall be one-half of the amount prescribed in this Schedule of Charges for an initial application.

(5) The fee for the renewal pursuant to §11-43 of the Zoning Resolution of a previously approved special permit or authorization which has not lapsed shall be one-half of the amount prescribed in this Schedule of Charges for an initial application.

(g) Supplemental Fee for Large Projects.

In addition to all applicable fees as set forth above, a supplemental fee shall be required for the following applications:

Applications that may result in the development of 500,000 to 999,999 square feet of floor area $ 80,000

Applications that may result in the development of 1,000,000 to 2,499,000 square feet of floor area $120,000

Applications that may result in the development of at least 2,500,000 square feet of floor area $160,000

HISTORICAL NOTE

Section amended City Record July 10, 2009 §4, eff. Aug. 9, 2009. [See T62 §3-01 Note 4]

Section amended City Record May 29, 2007 §5, eff. June 28, 2007. [See T62 §3-01 Note 3]

Section amended City Record Oct. 7, 2002 eff. Nov. 6, 2002. This amendment relettered several subdivisions. [See Note 1 after §3-06]

Section amended City Record June 28, 1995 eff. July 28, 1995. [See T62 §3-06 Note 2]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

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Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER B UNIFORM LAND USE REVIEW (ULURP)

§3-08 Natural Feature Restoration Fee.

In the event that an application, pursuant to §§105-45, 107-321, 107-65, and 119-40 of the Zoning Resolution, for the restoration of trees that have been removed or topography that has been altered without the prior approval of the City Planning Commission pursuant to §§105-40, 107-60, 119-10, 119-20, or 119-30 of the Zoning Resolution is filed, the fee for such application shall be $.10 per square foot, based upon the total area of the zoning lot, but in no case to exceed $18,900.00.

This section shall not apply to developments for which zoning applications have been approved by the City Planning Commission prior to January 6, 1983 and for which an application for a building permit has been filed prior to January 6, 1983.

HISTORICAL NOTE

Section amended City Record July 10, 2009 §5, eff. Aug. 9, 2009. [See T62 §3-01 Note 4]

Section added City Record May 29, 2007 §6, eff. June 28, 2007. [See T62 §3-01 Note 3]

DERIVATION

Formerly T62 §1-04

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

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Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER B UNIFORM LAND USE REVIEW (ULURP)

§3-09 Fee for Zoning Verification.

The fee for a request that the Department of City Planning verify in writing the zoning district(s) in which a property is located shall be $110 per request. Each zoning verification request shall be made in writing, and shall include the address, borough, tax block and lot(s) of the property. Each separate property shall be a separate request; however, a property comprised of multiple contiguous tax lots shall be treated as a single request.

HISTORICAL NOTE

Section amended City Record July 10, 2009 §5, eff. Aug. 9, 2009. [See T62 §3-01 Note 4]

Section added City Record May 29, 2007 §6, eff. June 28, 2007. [See T62 §3-01 Note 3]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

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RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER C CONTRIBUTIONS*2

§3-10 Contributions to Theater Subdistrict Fund Pursuant to §81-744 of the New York City Zoning Resolution.

Contributions to the Theater Subdistrict Fund pursuant to §81-744 of the New York City Zoning Resolution shall be made in an amount equal to $14.91 per square foot of floor area transferred.

HISTORICAL NOTE

Section renumbered (former §3-08) City Record May 29, 2007 §6, eff. June 28, 2007. [See T62 §3-01 Note 3]

Section added City Record Nov. 22, 2006 §2, eff. Dec. 22, 2006. [See Subchapter C footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

2

[Footnote 2]: * Subchapter C added City Record Nov. 22, 2006 §2, eff. Dec. 22, 2006. Note Statement of Basis and Purpose: These rules are promulgated pursuant to the authority of the City Planning Commission, under §§192 and 1043 of the New York City Charter, and pursuant to §81-744(a)(5) of the New York City Zoning Resolution. Under §81-744 of the Zoning Resolution, the City Planning Commission shall allow by certification or authorization the transfer of development rights from listed theaters in the Theater Subdistrict. Certification shall be granted, provided that, among other requirements, the appropriate legal documents are executed ensuring that a contribution in an amount, which is presently established under §81-744(a)(5) to be $10.00 per square foot of transferred floor area, is deposited in the Theater Subdistrict Fund. The City Planning Commission is required to periodically review the contribution amount and to adjust such amount to reflect any change in the assessed value of all properties on zoning lots wholly within the Theater Subdistrict.

In adopting §81-744 of the Zoning Resolution, City Planning Commission Report N980271ZRM, dated June 3, 1998 (the "Report"), established the original contribution amount at $10 per square foot, which was described as approximately twenty (20) percent of the value of land per square foot in the Theater Subdistrict. The Report further stated that this amount should be adjusted periodically based on changes in the assessed value of land in the district.

Consistent with the §81-744 and the 1998 Report, the proposed adjustment reflects the adjusted value of land per square foot for properties on zoning lots wholly within the Theater Subdistrict, taking into account changes in the assessed valuation since 1998.

There are three blocks west of Eighth Avenue which are bisected by the Theater Subdistrict boundary. Using zoning lot merger information for these blocks from 1998 to 2006, it was determined which of the zoning lots in these blocks are situated fully within the Theater Subdistrict. Based upon the assessed property values for the property included within these zoning lots, provided by the New York City Department of Finance ("DOF"), it has been determined that the assessed value for all properties situated wholly within the Theater Subdistrict has increased 49.06% per square foot from 1998 to 2006.

DOF data shows that in 1998, the total built floor area of the Theater Subdistrict was 63,871,931 square feet, and the total assessed value of such properties was $4,525,059,822. DOF data also show that in 2006, the total built floor area of the Theater Subdistrict was 81,642,687 square feet, and the total assessed value of such properties was $8,621,852,552.

Based upon the DOF data, the total assessed value per square foot was $70.85 in 1998 and was $105.60 in 2006. Given that the assessed value of all properties per square foot increased $34.76 or 49.06% from 1998 until 2006, the proposed rule would increase the required Theater Subdistrict Fund contribution from $10.00 per square foot to $14.91 per square foot of development rights transferred from the listed theaters.

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RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 4 CITY COASTAL COMMISSION PROCEDURES

§4-01 Procedures for Waterfront Revitalization Program Consistency Review of Local, State and Federal Actions.

(a) The review of waterfront-related actions by the CPC in its role as the City Coastal Commission (CCC) and by DCP is divided into two separate categories:

(1) local projects brought to the CPC via ULURP or 197-a or to the Department of City Planning via CEQR and BSA, and

(2) federal and state actions which are subject to WRP consistency review but not to any other local review processes.

(b) **Local actions.** Local actions subject to CEQR, ULURP or other CPC processes are reviewed for consistency by DCP staff (Waterfront and Open Space Division). In order to implement the CCC's mandate to review projects for consistency with WRP policies, WRP consistency, is incorporated into the CPC's review of actions and into its reports to the Board of Estimate (BOE). Within this framework, the CPC must hold a public hearing and approve, approve with modifications or disapprove the action. A recommendation is then forwarded to the Board of Estimate in the CPC's report. The reports will state that the CPC has determined, as CCC, the consistency with the WRP. For BSA actions subject to CEQR, WRP consistency is incorporated within the CEQR review.

(c) **Procedures.** All local WRP actions brought before the CPC through the ULURP or 197-a review process will follow the existing procedures established for these projects. In evaluating the project's effect on the city's waterfront, the City Coastal Commission will consider the policies set forth in the Waterfront Revitalization Program.

Where a ULURP or 197-a project is approved by the Commission, and the project has been found consistent with the policies and intent of the WRP, language will be added to the CPC report to the effect that: "The City Coastal Commission, having reviewed the waterfront aspects of this action, finds that the actions will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies."

Where the Commission approves a project which does not conform to existing waterfront policy, the report must reflect a CCC decision that that action has satisfied all four of the requirements set forth below:

(1) no reasonable alternatives exist which would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy;

(2) the action taken will minimize all adverse effects on such policies to the maximum extent practicable;

(3) the action will advance one or more of the other coastal policies; and

(4) the action will result in an overriding local or regional public benefit.

No special public notice requirements exist under WRP; these projects will be noticed pursuant to existing ULURP and 197-a procedures for public notice.

(d) **Federal and state actions.** The CPC, acting as the CCC, will review only certain federal and state actions-those that exceed one or more of the designated thresholds. The Waterfront and Open Space Division will review all others.

These thresholds are:

(1) actions that require the balancing of several different policies;

(2) actions that are significantly inconsistent with waterfront policies;

(3) actions that require a federal or state EIS; or

(4) actions that require policy interpretation.

The Waterfront and Open Space Division, as the coordinator of consistency review for federal and state actions, will ascertain which actions require consideration by the CCC.

(e) **Procedures.** Projects that do not exceed the thresholds by the Waterfront and Open Space Division.

A determination of consistency or inconsistency by the CCC or the Division will be forwarded to the affected agency within 30 days of receipt of the proposed project. When insufficient information is received, the Waterfront and Open Space Division will make a request of the applicant for additional information to ensure compliance with WRP regulations. The Division will notify the affected agency that until such information has been received and reviewed, the project is presumed inconsistent with WRP.

The Division will coordinate the intra- and interagency review of those actions that exceed the designated thresholds, acting as lead for WRP purposes throughout the review process. The projects will be reviewed prior to CCC consideration to finalize agency-wide coordination.

CCC consistency review of federal and state actions, whether by the Department or the CCC, does not require a public hearing or any public review. Public participation in these federal and state actions is coordinated by the permitting state or federal agency.

Findings of the CCC will be transmitted to the permitting agency by the Waterfront and Open Space Division. If the CCC determines that the action is consistent with the policies and intent of the WRP, then a letter to the appropriate state or federal agency would state that: "The City Coastal Commission, having reviewed the waterfront aspects of this action, finds that the actions will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies."

However, if the CCC determines that the project will hinder the achievement of the WRP, a letter from the CCC will be sent to the project applicant and the permitting agency, stating whether the action has satisfied the following requirements:

(1) no reasonable alternatives exist which would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy;

(2) the action taken will minimize all adverse effects on such policies to the maximum extent practicable;

(3) the action will advance one or more of the other coastal policies; and

(4) the action will result in an overriding local public benefit.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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62 RCNY 5-01

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CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-01 Source of Authority and Statement of Purpose.

Section 192(e) of the Charter provides that the City Planning Commission "shall oversee implementation of laws that require environmental reviews of actions taken by the city" and that the Commission "shall establish by rule procedures for environmental reviews of proposed actions by the city where such reviews are required by law." These rules are intended to exercise that mandate by redefining lead agencies within the city in accordance with law, prescribing the relationship of the new Office of Environmental Coordination with those agencies and regulating scoping. The organization and numbering of the various sections of these rules are not intended to correspond precisely to Executive Order 91. [43 RCNY Chapter 6, also, see Appendix A hereto]. Rather, these rules are an overlay on Executive Order 91. Where these rules conflict with Executive Order 91, these rules supersede the Executive Order.

In deciding upon the appropriate lead agency for certain classes of actions taken by the city, the City Planning Commission has selected the involved agency "principally responsible for carrying out, funding or approving" those actions. 6 NYCRR §617.2(v). For private ULURP applications, for §197-a plans and for all actions primarily involving a zoning map or text change, the City Planning Commission, responsible under the Charter "for the conduct of planning relating to the orderly growth, improvement and future development of the city" (Charter §192(d)), is the lead agency. For other ULURP applications, the city agency applicant, the agency that will generally be involved with ensuring programmatic implementation of the action, is the lead agency. Most of the remaining lead agency designations in the rules similarly address other approvals required by the Charter by designating the agency charged with ensuring programmatic implementation as the lead agency for those approvals. In appropriate cases, a lead agency designated by the rules may transfer its lead agency status to another involved agency.

The rules ensure that lead agencies have access to the technical and administrative expertise of the Office of

Environmental Coordination. Finally, the rules provide for involved and interested agencies, including the City Council, to participate in the environmental review process, and ensure a role for the public in scoping.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

CASE NOTES

¶ 1. Naumberg Bandshell in Central Park has been designated a scenic landmark as well as a national historic landmark and the demolition of the bandshell is subject to various approval procedures including review under the City Environmental Quality Review (CEQR) regulations (62 RCNY 5-01 et seq.) Matter of London v. Art Comm., 190 AD2d 557 [1993].

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62 RCNY 5-02

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§5-02 General Provisions.

(a) **Continuation of Executive Order No. 91 [43 RCNY §6-01 et. seq.] [See Appendix A to these rules].** Until the City Planning Commission promulgates further rules governing environmental review of actions taken by the city, Executive Order No. 91 of August 24, 1977, as amended (Executive Order 91), shall continue to govern environmental quality review in the city except where inconsistent with these rules, provided, however, that the following provisions of Executive Order 91 shall not apply: the definitions of "Agency", "Lead Agencies" and "Project data statement" defined in §6-02, subdivision (b) of §6-03, subdivision (a) of §6-05, the introductory paragraph of subdivision (b) of §6-05, paragraphs one and two of subdivision (a) of §6-12, §6-14, and subdivision (b) of the TYPE II part of §6-15.

(b) **Rules of Construction.** (1) All functions required by Executive Order 91 to be performed by the "lead agencies," as formerly defined in §6-02 of such Executive Order, shall be performed by the lead agency prescribed by or selected pursuant to these rules or by the Office of Environmental Coordination where authorized by these rules.

(2) Wherever Executive Order 91 explicitly or by implication refers to subdivision (b) of the Type II part of §6-15 of such Executive Order, such reference shall be deemed to be to §617.13(d) of the SEQRA Regulations.

(3) The reference to "a determination pursuant to §6-03(b) of this Executive Order" contained in Executive Order 91 §6-05(b)(1) shall be deemed to refer to selection of a lead agency pursuant to §5-03 of these rules.

(4) The Office of Environmental Coordination shall succeed to functions performed by the City Clerk pursuant to Executive Order 91 with respect to the receipt and filing of documents.

(5) References in these rules and in Executive Order 91 to specific agencies and provisions of law shall be deemed to apply to successor agencies and provisions of law.

(c) **Definitions.** (1) All definitions contained in Executive Order 91, other than the definitions of "agency" and "lead agencies", shall apply to these rules.

(2) "Action" as defined in §6-02 of Executive Order 91 includes all contemporaneous or subsequent actions that are included in a review pursuant to City Environmental Quality Review.

(3) The following additional definitions shall apply to these rules unless otherwise noted:

Agency. "Agency" shall mean any agency, administration, department, board, commission, council, governing body or other governmental entity of the city of New York, including but not limited to community boards, borough boards and the offices of the borough presidents, unless otherwise specifically referred to as a state or federal agency.

City Environmental Quality Review. "City Environmental Quality Review" (CEQR) shall mean the environmental quality review procedure established by Executive Order 91 as modified by these rules.

Determination of Significance. "Determination of significance" shall mean a negative declaration, conditional negative declaration or notice of determination (positive declaration).

Interested Agency. "Interested agency" shall mean an agency that lacks jurisdiction to fund, approve or directly undertake an action but requests or is requested to participate in the review process because of its specific concern or expertise about the proposed action.

Involved Agency. "Involved agency" shall mean any agency that has jurisdiction to fund, approve or directly undertake an action pursuant to any provision of law, including but not limited to the Charter or any local law or resolution. The City Council shall be an involved agency for all actions for which, as a component of the approval procedure for the action or a part thereof, the City Council has the power to approve or disapprove, regardless of whether the City Council chooses to exercise such power.

Lead Agency. "Lead agency" shall mean the agency principally responsible for environmental review pursuant to these rules.

Scoping. "Scoping" shall mean the process by which the lead agency identifies the significant issues related to the proposed action which are to be addressed in the draft environmental impact statement including, where possible, the content and level of detail of the analysis, the range of alternatives, the mitigation measures needed to minimize or eliminate adverse impacts, and the identification of non-relevant issues.

SEQRA Regulations. "SEQRA Regulations" shall mean Part 617 of Volume 6 of New York Codes, Rules and Regulations.

(d) **Applicability.** These rules and Executive Order 91 shall apply to environmental review by the city that is required by the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) and regulations of the State Department of Environmental Conservation thereunder and shall not be construed to require environmental quality review of an action where such review would not otherwise be required by such act and regulations, or to dispense with any such review where it is otherwise required.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

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CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-03 Establishment of Lead Agency.

(a) **General Rule.** Where only one agency is involved in an action, that agency shall be the lead agency.

(b) **Actions Subject to ULURP and Charter Sections 197-a, 200, 201, and 668.** (1) For actions subject to the Uniform Land Use Review Procedure of §197-c of the Charter (ULURP), and for which the applicant is not a city agency, the City Planning Commission shall be the lead agency.

(2) For actions that involve plans for the development, growth and improvement of the city, its boroughs and community districts (Charter §197-a), the City Planning Commission shall be the lead agency.

(3) For actions that involve zoning map or text changes (Charter §200 and/or 201), the following rules shall apply:

(i) If the only approval subject to ULURP or to Charter § 200 or 201 is a zoning map or text change, the City Planning Commission shall be the lead agency.

(ii) If the applicant for any action requiring a zoning map or text change is not a city agency, the City Planning Commission shall be the lead agency.

(iii) If the action involves a zoning map or text change, in addition to another approval under Charter §197-c (ULURP) for which there is a city agency applicant, then the city agency applicant shall be the lead agency, provided, however, that the City Planning Commission shall be the lead agency if:

(A) The action involves a zoning map or text change that covers or may apply to areas substantially larger than the

properties covered by the non-zoning approvals required under Charter §197-c; or

(B) The city agency applicant and the Chair of the City Planning Commission agree that the action involves a zoning map or text change that changes the uses permitted so as to substantially alter the area zoning pattern.

(4) For all other actions subject to §197-c of the Charter (ULURP) for which the applicant is a city agency, and for actions subject to §668 of the Charter for which the applicant is a city agency, the city agency applicant shall be the lead agency. Where there is more than one city agency applicant, the city agency applicants shall agree upon which of them will be the lead agency, using the selection procedure set forth in subdivision (h) of this section.

(5) Where no other provision of this section applies and an action involves a special permit or variance from the Board of Standards and Appeals (Charter §668) for which the applicant is not a city agency, the Board of Standards and Appeals shall be the lead agency.

(c) **Section 195 Acquisitions of Office Space or Existing Buildings for Office Use.** For actions involving acquisitions of office space or existing buildings for office use (Charter §195), the agency filing the notice of intent to acquire shall be the lead agency.

(d) **Local Laws.** The City Council and the Office of the Mayor shall be co-lead agencies for local laws. Either agency may at any time delegate to the other its lead agency status and act instead as an involved agency. In addition, after introduction of a proposed local law, the City Council may assume sole lead agency status after giving the Mayor five days notice.

(e) **Franchises, Revocable Consents, and Concessions.** For actions involving franchises, revocable consents and concessions, the responsible agency as defined in Charter §362(c) shall be the lead agency.

(f) **Leasing of Wharf Property for Waterfront Commerce or Navigation and Waterfront Plans.** For actions involving the leasing of wharf property belonging to the city primarily for purposes of waterfront commerce or in furtherance of navigation (Charter §1301(2)(f)), the Department of Business Services shall be the lead agency, provided that the Department of Transportation shall be the lead agency for such actions when it is acting pursuant to Charter §2903(c)(2). For actions involving determinations of the Commissioner of Business Services pursuant to Charter §1302 (waterfront plans), the Department of Ports and Trade shall be the lead agency.

(g) **Selection of Lead Agency in the Case of Multiple Involved Agencies.** (1) Subdivision (b) of this section, which governs lead agency designation for actions involving approvals pursuant to ULURP or §197-a, 200, 201 or 668 of the Charter, shall always govern determination of the lead agency regardless of whether the action involves additional approvals pursuant to other provisions of law.

(2) For any other action involving more than one agency, the agencies designated in subdivisions (c) through (f) of this section and any agencies involved in any required city approval, other than approvals described in such subdivisions, shall agree upon which of them will be the lead agency, using the selection procedure set forth in subdivision (h) of this section.

(h) **Procedure for Selection of Lead Agency.** In selecting a lead agency where agreement among agencies is required by this section, and in deciding whether transfer of lead agency status is appropriate, the agencies making the selection or decision shall determine which agency is most appropriate to act as lead agency for the particular action. In making such determination, such agencies shall consider, but shall not be limited to considering, the following criteria:

(1) The agency that will have the greater degree of responsibility for planning and implementing the action;

(2) The agency that will be involved for a longer duration;

(3) The agency that has the greater capability for providing the most thorough environmental assessment;

(4) The agency that has the more general governmental powers as compared to single or limited powers or purposes;

(5) The agency that will provide the greater level of funding for the action;

(6) The agency that will act earlier on the proposed action; and

(7) The agency that has the greater role in determining the policies resulting in or affecting the proposed action.

(i) **Transfer of Lead Agency Status.** Lead agency status may be transferred from the lead agency, at its discretion, to an involved agency that agrees to become the lead agency. In deciding whether a transfer of lead agency status is appropriate, agencies shall use the selection procedure set forth in subdivision (h) of this section. Notice of transfer of lead agency status must be given by the new lead agency to the applicant and all other involved and interested agencies within 10 days of the transfer. The Chair of the City Planning Commission may act on behalf of such Commission pursuant to this subdivision.

(j) **Selection of Lead Agency Where Actions Involve City and State Agencies.** Where an action involves both city and state agencies, the city agency prescribed by or selected pursuant to subdivisions (a) through (i) of this section shall, together with such state agencies, participate in selection of the lead agency pursuant to SEQRA, and such selection shall be binding upon the city. The criteria set forth in §617.6(e)(5) of the SEQRA Regulations shall be considered in deciding whether or not a city agency shall serve as lead agency. The Office of Environmental Coordination shall perform the functions set forth in subdivision (d) of §5-04 of these rules.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

CASE NOTES

¶ 1. Where the applicant is a city agency and multiple agencies are involved, the agencies can decide among themselves as to which agency would be the lead agency for purposes of land use review. Landmark West v. Burden, N.Y.L.J. Apr. 22, 2004 at 18, col. 1 (Sup.Ct. New York Co.).

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62 RCNY 5-04

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§5-04 The Office of Environmental Coordination.

(a) The Director of City Planning and the Commissioner of the Department of Environmental Protection shall designate persons from the staffs of the Departments of City Planning and Environmental Protection who shall comprise the Office of Environmental Coordination (OEC). The OEC shall provide assistance to all city agencies in fulfilling their environmental review responsibilities.

(b) The OEC shall perform any environmental review function assigned to it by a lead agency, except the OEC may not issue, amend or rescind a determination of significance, notice of completion of a draft or final environmental impact statement, written findings following issuance of a final environmental impact statement, or analogous statements, notices or findings for a supplemental environmental impact statement. In addition, the lead agency may not delegate to the OEC its responsibility to issue the final scope or to attend the scoping meeting; however, the lead agency may delegate to the OEC the power to chair the scoping meeting.

(c) In addition to any other functions the OEC may perform pursuant to these rules, the OEC shall:

(1) Work with appropriate city agencies to develop and maintain technical standards and methodologies for environmental review and, upon request, assist in the application by agencies of such standards and methodologies;

(2) Work with appropriate city agencies to develop and maintain a technical database that may be utilized by applicants and city agencies in completing the standardized environmental assessment statement described in this subdivision and in preparation of draft and final environmental impact statements;

(3) Prepare and maintain a standardized environmental assessment statement, which shall provide guidance in determining whether the action may have a significant effect on the environment;

(4) At the request of a lead agency, coordinate the work of the technical staffs of interested agencies in order to complete environmental review, and expedite responses by interested agencies to requests of the lead agency;

(5) (i) Receive and maintain on file notifications of commencement of environmental review, determinations of significance (including completed environmental assessment statements), draft and final scopes issued pursuant to §5-07 of these rules, draft and final environmental impact statements, and significant supporting documentation comprising the official records of environmental reviews,

(ii) provide to the public upon request, or make available for inspection by the public during normal business hours, materials maintained on file pursuant to this paragraph,

(iii) publish a quarterly listing of all notifications of commencement, determinations of significance, draft and final scopes and draft and final environmental impact statements received and filed pursuant to this paragraph, and

(iv) in its discretion, advise lead agencies as to whether such documents are consistent with standards and methodologies developed pursuant to this subdivision and reflect proper use of the standardized environmental assessment statement;

(6) Provide to lead agencies staff training, management assistance, model procedures, coordination with other agencies, and other strategies intended to remedy any problems that arise with respect to consistency with standards and methodologies developed pursuant to this subdivision or proper use of the standardized environmental assessment statement;

(7) Provide to lead agencies a format for notices of public scoping meetings, assist lead agencies in ensuring that public scoping meetings are conducted in an effective manner, and, to the extent the OEC deems appropriate, comment on the draft scope and participate in such meetings;

(8) Prepare standardized forms for notifications of commencement of environmental review, determinations of significance, notices of completion of draft and final environmental impact statements, and, as may be appropriate, other environmental review documents; and

(9) Work with appropriate city agencies to develop and implement a tracking system to ensure that mitigation measures are implemented in a timely manner, and to evaluate and report on the effectiveness of mitigation measures.

(d) Any state agency that seeks a determination whether a city agency shall serve as the lead agency for an action that involves city and state agencies should initially communicate with the OEC. Upon receipt of such communication, the OEC shall ascertain the city agency which is designated as lead agency by or pursuant to these rules and shall notify such agency of such communication. Such designated agency may then act pursuant to subdivision (j) of §3 of these rules.

(e) Where an action or part thereof has been or will be reviewed by a federal agency, the OEC shall assist city agencies in coordinating review with the appropriate federal agency.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

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§5-05 Environmental Review Procedures.

(a) **Threshold Determination.** (1) In the case of any action for which a lead agency is prescribed by §5-03 of these rules, and thus for which no agreement among involved agencies is necessary, only such lead agency may determine that such action, considered in its entirety, requires environmental review, and such determination shall be binding upon the city. The OEC shall, upon the request of such agency, assist in such deter- mination.

(2) In the case of any action for which agreement among involved agencies is necessary for selection of a lead agency, if an agency that could be the lead agency for the particular action pursuant to subdivisions (b) through (g) of §5-03 of these rules determines that such action may require environmental review, then the lead agency shall be agreed upon as provided in §3 of these rules, and such lead agency shall determine whether such action, considered in its entirety, requires environmental review. Such determination shall be binding upon the city. The OEC shall assist in any determination made pursuant to this paragraph upon the request of the agency making such determination.

(3) Nothing contained in this subdivision shall be construed to require an affirmative determination, whether formal or informal, that an action is exempt from environmental review, or is a Type II action pursuant to the SEQRA Regulations, where such determination would not otherwise be required by law.

(b) **Other Determinations.** (1) After the determination that an action requires environmental review, the lead agency shall notify the OEC that it is commencing environmental review and complete or cause to be completed the standardized environmental assessment statement provided by the OEC. Such statement shall provide guidance in determining whether the action may have a significant effect on the environment. The OEC and interested and involved agencies shall, upon the request of the lead agency, assist the lead agency in completing such statement.

(2) The OEC and interested and involved agencies shall, upon the request of the lead agency, assist such lead agency with respect to any aspect of a determination of significance and/or a draft, final and/or supplemental environmental impact statement.

(3) Whenever, in the preparation of a draft environmental impact statement, the lead agency identifies a potential significant impact, the lead agency shall consult with any agency that has primary jurisdiction to carry out possible mitigations, and with any city agency that has primary regulatory jurisdiction over the subject matter of such impact.

(4) Lead agencies shall send copies of the following to the OEC upon issuance: notifications of commencement of environmental review, determinations of significance (including completed environmental assessment statements), draft and final scopes, draft and final environmental impact statements. In addition, lead agencies shall forward to the OEC significant supporting documentation comprising the official records of environmental reviews.

HISTORICAL NOTE

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§5-06 Involved and Interested Agencies; Required Circulation.

(a) The lead agency and the OEC shall make every reasonable effort to keep involved and interested agencies informed during the environmental review process and to facilitate their participation in such process. If the City Council is involved in an action, staff of the lead agency and/or staff of the OEC shall be made available to explain determinations made by the lead agency to the City Council or the appropriate City Council committee or staff.

(b) Any written information submitted by an applicant for purposes of a determination by the lead agency whether an environmental impact statement will be required by law, and documents or records intended to define or substantially redefine the overall scope of issues to be addressed in any draft environmental impact statement required by law, shall be circulated to all affected community or borough boards, where such circulation is required by the Charter.

(c) If the City Council is involved in an action, any written information, documents or records that are required to be circulated to involved agencies or to affected community boards or borough boards shall be circulated to the City Council.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

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§5-07 Scoping.

Following the issuance of a notice of determination (positive declaration), the lead agency shall coordinate the scoping process, which shall ensure that all interested and involved agencies (including the City Council where it is interested or involved), the applicant, the OEC, community and borough boards, borough presidents and the public are able to participate. The scoping process shall include a public scoping meeting and take place in accordance with the following procedure:

(a) **Draft Scope.** Within fifteen days after issuance of a notice of determination (positive declaration), the lead agency shall issue a draft scope, which may be prepared by the applicant but must be approved by the lead agency. The lead agency may consult with the OEC and other agencies prior to issuance of the draft scope.

(b) **Public Notice and Comment.** Upon issuance of the draft scope and not less than thirty nor more than forty-five days prior to the holding of the public scoping meeting, the lead agency shall publish in the City Record a notice indicating that a draft environmental impact statement will be prepared for the proposed action and requesting public comment with respect to the identification of issues to be addressed in the draft environmental impact statement. Such notice shall be in a format provided by the OEC and shall state that the draft scope and the environmental assessment statement may be obtained by any member of the public from the lead agency and/or the OEC. Such notice shall also contain the date, time and place of the public scoping meeting, shall provide that written comments will be accepted by the lead agency through the tenth day following such meeting, and shall set forth guidelines for public participation in such meeting.

(c) **Agency Notice and Comment.** Upon issuance of the draft scope and not less than thirty nor more than

forty-five days prior to the holding of the public scoping meeting, the lead agency shall circulate the draft scope and the environmental assessment statement to all interested and involved agencies (including the City Council where it is interested or involved), to the applicant, to the OEC and to agencies entitled to send representatives to the public scoping meeting pursuant to §197-c(d) or 668(a)(7) of the Charter. Together with the draft scope and the environmental assessment statement, a letter shall be circulated indicating the date, time and place of the public scoping meeting, and stating that comments will be accepted by the lead agency through the tenth day following such meeting. The lead agency may consult with other agencies regarding their comments, and shall forward any written comments received pursuant to this subdivision to the OEC.

(d) **Public Scoping Meeting.** The lead agency shall chair the public scoping meeting. In addition to the lead agency, all other interested and involved agencies that choose to send representatives (including the City Council where it is interested or involved), the applicant, the OEC, and agencies entitled to send representatives pursuant to §197-c(d) or 668(a)(7) of the Charter may participate. The meeting shall include an opportunity for the public to observe discussion among interested and involved agencies, agencies entitled to send representatives, the applicant and the OEC. Reasonable time shall be provided for the public to comment with respect to the identification of issues to be addressed in the draft environmental impact statement. The OEC shall assist the lead agency in ensuring that the public scoping meeting is conducted in an effective manner.

(e) **Final Scope.** Within thirty days after the public scoping meeting, the lead agency shall issue a final scope, which may be prepared by the applicant and approved by the lead agency. The lead agency may consult further with the OEC and other agencies prior to issuance of the final scope. Where a lead agency receives substantial new information after issuance of a final scope, it may amend the final scope to reflect such information.

(f) **Scoping of City Agency Actions.** For actions which do not involve private applications, nothing contained in these rules shall be construed to prevent a lead agency, where deemed necessary for complex actions, from extending the time frames for scoping set forth in this section, or from adding additional elements to the scoping process.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

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62 RCNY 5-08

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§5-08 Applications and Fees.

(a) **Applications.** Applications submitted for City Environmental Quality Review for actions that require such review shall be submitted to the lead agency prescribed by these rules, or to an agency that could be the lead agency for the particular action pursuant to §5-03 of these rules. Such applications shall include information required to be obtained from applicants in order for the lead agency to complete or cause to be completed the standardized environmental assessment statement, and such other documents and additional information as the lead agency may require to make a determination of significance. In addition, except as otherwise provided in these rules, such applications shall conform to the requirements of Executive Order 91. Applicants shall file twenty-five copies of each application.

(b) **Fees.** Except as otherwise provided by this section, fees in effect on the effective date of these rules pursuant to Executive Order 91 and codified as §3-02 of these rules shall continue to govern City Environmental Quality Review applications, unless the City Planning Commission shall by rule modify such fees. Such fees shall be submitted to the lead agency prescribed by these rules, or to an agency that could be the lead agency for the particular action pursuant to §5-03 of these rules, and shall be in the form of a check or money order made out to the "City of New York."

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

Subd. (b) amended City Record June 28, 1995 eff. July 28, 1995. [See T62 §3-01 Note 2]

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§5-09 Transition Section.

(a) An action shall not be subject to these rules, but shall comply with Executive Order 91, as in effect prior to the effective date of these rules, where:

(1) a classification as exempt, excluded or Type II has been made prior to the effective date of these rules;

(2) a project data statement has been completed more than thirty days prior to the effective date of these rules and a determination of significance has not been made prior to the effective date of these rules;

(3) a negative declaration or a conditional negative declaration has been issued prior to the effective date of these rules; or

(4) a notice of determination (positive declaration) has been issued more than thirty days prior to the effective date of these rules; provided, however, that if a negative declaration or conditional negative declaration is rescinded, or if a classification as exempt, excluded or Type II is no longer applicable, or if a supplemental environmental impact statement is required, or if a notice of determination (positive declaration) has been issued less than thirty days prior to the effective date of these rules or is issued on or after the effective date of these rules, these rules shall apply, and the lead agency prescribed by or selected pursuant to these rules shall thereupon assume lead agency status at the earliest time practicable.

(b) Except as provided in subdivision (a) of this section, the lead agency prescribed by or selected pursuant to these rules shall assume lead agency status at the earliest time practicable. If a determination of significance has not been

made and such lead agency determines that the action requires environmental review, it shall notify the OEC that it is commencing environmental review and shall complete or cause to be completed the standardized environmental assessment statement provided by the OEC, regardless of whether a project data statement has been completed. However, such lead agency shall not be required to engage in scoping pursuant to §5-07 of these rules if a final scope has already been prepared. Until the lead agency prescribed by or selected pursuant to these rules assumes lead agency status, the action shall be subject to Executive Order 91 as in effect prior to the effective date of these rules; however, after the effective date of these rules, the prior lead agency or agencies shall not issue a determination of significance or notice of completion of a draft or final environmental impact statement, classify an action as exempt, excluded or Type II, convene a scoping meeting or conduct a public hearing pursuant to CEQR.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

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§5-10 Severability.

The provisions of these rules shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of these rules, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of these rules and the application thereof shall not be affected thereby.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

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Title 62 City Planning

CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-11 Effective Date.

These rules shall take effect on October 1, 1991.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

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62 RCNY 5 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-01 Applicability.[See Footnote 2]
§6-02 Definitions.
§6-03 Actions Involving Federal or State Participation.
§6-04 Exempt Actions.
§6-05 Determination of Significant Effect-Applications.
§6-06 Determination of Significant Effect-Criteria.
§6-07 Determination of Significant Effect-Notification.
§6-08 Draft Environmental Impact Statements-Responsibility for Preparation.
§6-09 Environmental Impact Statements-Content.
§6-10 Draft Environmental Impact Statements-Procedures.
§6-11 Final Environmental Impact Statements-Procedures.
§6-12 Agency Decision Making.
§6-13 Programmatic Environmental Impact Statements.
§6-14 Rules and Regulations.
§6-15 Lists of Actions.

[Supplemented by new statement of authority and purpose, Rules §5-01 (new CEQR rule)[62 RCNY Chapter 5]] WHEREAS, the improvement of our urban environment is critically important to the overall welfare of the people of the City; and

WHEREAS, the development and growth of the City can and should be reconciled with the improvement of our urban environment; and

WHEREAS, it is the continuing policy of the City that environmental, social and economic factors be considered before governmental approval is given to proposed activities that may significantly affect our urban environment; and

WHEREAS, subdivision (3) of §8-0113 of Article 8 of the New York State Environmental Conservation Law (State Environmental Quality Review Act, or "SEQRA") and the regulations promulgated thereunder (6 NYCRR 617) authorizes local governments to adopt rules, procedures, criteria and guidelines for incorporating environmental quality review procedures into existing planning and decision making processes; and

WHEREAS, the procedures formulated in the Executive Order are intended to be integrated into existing agency procedures, including the Uniform Land Use Review procedure contained in §197-c of Chapter 8 of the City Charter, in order to avoid delay and to encourage a one-stop review process; and

WHEREAS, §8-0117 of SEQRA, as amended, provides that only actions or classes of actions identified by the State Department of Environmental Conservation as likely to require preparation of an environmental impact statement shall be subject to this Executive Order until November 1, 1978, after which date non-exempt actions will be fully subject to this Executive Order; and

WHEREAS, the implementation of SEQRA in the City by this Executive Order will accomplish the purposes for which Executive Order No. 87 of October 18, 1973 ("Environmental Review of Major Projects") was promulgated and will continue the policy established therein.

[Exec. Order 91 continued except as otherwise provided, see Rules §5-02(a). See new Rules of Construction, Rules §5-02(b).] NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, Executive Order No. 87 of October 18, 1973 is, in accordance with the provisions of §§16 and 18 hereunder, hereby replaced by this Executive Order as follows:

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

2

[Footnote 2]: * Section is part of Appendix A to Chapter 5.

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***** Current through December 2009 ****

62 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-01 Applicability.3

[Except as modified by City Planning Rules, §502(a) and (d).] No final decision to carry out or approve any action which may have a significant effect on the environment shall be made by any agency until there has been full compliance with the provisions of this chapter.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

3

[Footnote 3]: * Section is part of Appendix A to Chapter 5.

Rules of the City of New York

***** Current through December 2009 ****

62 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-02 Definitions.

[Additional definitions, City Planning Rules §5-02(c).] As used herein, the following terms shall have the indicated meanings unless noted otherwise:

Action. **[Modified by City Planning Rules §5-02(c)(2).]** "Action" means any activity of an agency, other than an exempt action enumerated in §6-04 of this chapter, including but not limited to the following:

(1) non-ministerial decisions on physical activities such as construction or other activities which change the use or appearance of any natural resource or structure;

(2) non-ministerial decisions on funding activities such as the proposing, approval or disapproval of contracts, grants, subsidies, loans, tax abatements or exemptions or other forms of direct or indirect financial assistance, other than expense budget funding activities;

(3) planning activities such as site selection for other activities and the proposing, approval or disapproval of master or long range plans, zoning or other land use maps, ordinances or regulations, development plans or other plans designed to provide a program for future activities;

(4) policy making activities such as the making, modification or establishment of rules, regulations, procedures, policies and guidelines;

(5) non-ministerial decisions on licensing activities, such as the proposing, approval or disapproval of a lease, permit, license, certificate or other entitlement for use or permission to act.

Agency. **[Inapplicable. See City Planning Rules §5-02(a), §5-02(c)(3)(i).]**"Agency" means any agency, administration, department, board, commission, council, governing body or any other governmental entity of the City of New York, unless otherwise specifically referred to as a state or federal agency.

Applicant. "Applicant" means any person required to file an application pursuant to this chapter.

Conditional negative declaration. "Conditional negative declaration" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action and accepted by the applicant in writing, which announces that the lead agencies have determined that the action will not have a significant effect on the environment if the action is modified in accordance with conditions or alternative designed to avoid adverse environmental impacts.

DEC. "DEC" means the New York State Department of Environmental Conservation.

Environment. "Environment" means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution or growth, and existing community or neighborhood character.

Environmental analysis. "Environmental analysis" means the lead agencies' evaluation of the short and long term, primary and secondary environmental effects of an action, with particular attention to the same areas of environmental impacts as would be contained in an EIS. It is the means by which the lead agencies determine whether an action under consideration may or will not have a significant effect on the environment.

Environmental assessment form. **[Retitled Environmental Assessment Statement; see City Planning Rules §5-04(c)(3).]** "Environmental assessment form" means a written form completed by the lead agencies, designed to assist their evaluation of actions to determine whether an action under consideration may or will not have a significant effect on the environment.

Environmental impact statement (EIS). "Environmental impact statement (EIS)" means any written document prepared in accordance with §§6-08, 6-10, 6-12 and 6-13 of this chapter. An EIS may either be in a draft or a final form.

Environmental report. "Environmental report" means a report to be submitted to the lead agencies by a non-agency applicant when the lead agencies prepare or cause to be prepared a draft EIS for an action involving such an applicant. An environmental report shall contain an analysis of the environmental factors specified in §6-10 of this chapter as they relate to the applicant's proposed action and such other information as may be necessary for compliance with this chapter, including the preparation of an EIS.

Lead agencies. **[Inapplicable, City Planning Rules §5-02(a). Superseded by City Planning Rules §5-02(b)(1) and §5-02(c)(3)(vi); also see City Planning Rules §5-03 for choice of lead agency.]**

Ministerial action. "Ministerial action" means an action performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the action, although such law may require, in some degree, a construction of its language or intent.

Negative declaration. "Negative declaration" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the action will not have a significant effect on the environment.

Notice of determination. **[See also City Planning Rules §5-02(c)(3)(iii).]** "Notice of determination" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which

announces that the lead agencies have determined that the action may have a significant effect on the environment, thus requiring the preparation of an EIS.

NYCRR. **[See also City Planning Rules §5-02(c)(3)(viii).]** "NYCRR" means the New York Code of Rules and Regulations.

Person. "Person" means an agency, individual, corporation, governmental entity, partnership, association, trustee or other legal entity.

Project data statement. **[Inapplicable, City Planning Rules §5-02(a). Superseded by Environmental Assessment Statement, see City Planning Rules §5-04(c)(3). See also City Planning Rules §5-05(b)(1) and §5-08(a).]**

SEQRA. "SEQRA" means the State Environmental Quality Review Act (Article 8 of the New York State Environmental Conservation Law).

Typically associated environmental effect. "Typically associated environmental effect" means changes in one or more natural resources which usually occur because of impacts on other such resources as a result of natural interrelationships or cycles.

ULURP. "ULURP" means the Uniform Land Use Review Procedure (§197-c of Chapter 8 of the New York City Charter).

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

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62 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-03 Actions Involving Federal or State Participation.4

(a) **[See also City Planning Rules §5-04(e)]** If an action under consideration by an agency may involve a "major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969," then the following procedures shall apply:

(1) in the case of an action for which there has been duly prepared both a draft EIS and a final EIS, no agency shall have an obligation to prepare an EIS or to make findings pursuant to §6-12 of this chapter.

(2) in the case of an action for which there has been prepared a Negative Declaration or other written threshold determination that the action will not require a federal impact statement under the National Environmental Policy Act of 1969, the lead agencies shall determine whether or not the action may have a significant effect on the environment pursuant to this chapter, and the action shall be fully subject to the same.

(b) **[Inapplicable, City Planning Rules §5-02(a). Entire subdivision (b) superseded by City Planning Rules §5-03(j)]) and §5-04(d).]**

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.
4

[Footnote 4]: * Section is part of Appendix A to Chapter 5.

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62 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-04 Exempt Actions.

[See also City Planning Rules §5-02(d).] The following actions shall not be subject to the provisions of this chapter:

(a) projects or activities classified as Type I pursuant to §6-15 of this chapter directly undertaken or funded by an agency prior to June 1, 1977 except that if such action is sought to be modified after June 1, 1977, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this chapter;

(1) such actions include, but are not limited to, those actions defined in §6-02 "Action" (1), (2), (3) and (4) of this chapter;

(2) an action shall be deemed to be undertaken at the point that:

(i) the agency is irreversibly bound or committed to the ultimate completion of a specifically designed activity or project; or

(ii) in the case of construction activities, a contract for substantial construction has been entered into or if a continuous program of on-site construction or modification has been engaged in; or

(iii) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant, subsidy, loan

or other form of financial assistance; or

(iv) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.

(b) projects or activities classified as Type I pursuant to §6-15 of this chapter approved by an agency prior to September 1, 1977 except that if such action is sought to be modified after September 1, 1977, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this chapter;

(1) such actions include, but are not limited to, those actions defined in §6-02 "Action" (2) and (5) of this chapter;

(2) an action shall be deemed to be approved at the point that:

(i) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant, subsidy, loan or other form of financial assistance; or

(ii) the agency gives final approval for the issuance to an applicant of a discretionary lease, permit, license, certificate or other entitlement for use or permission to act; or

(iii) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.

(c) projects or activities not otherwise classified as Type I pursuant to §6-15 of this chapter directly undertaken, funded or approved by an agency prior to November 1, 1978 except that if such action is sought to be modified after November 1, 1978, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this chapter;

(1) such actions include, but are not limited to, those actions defined in §6-02 "Action" of this chapter;

(2) an action shall be deemed to be undertaken as provided in paragraphs (a)(2) and (b)(2) of this section, as applicable.

(d) enforcement or criminal proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;

(e) **[See City Planning Rules §5-02(d).]** ministerial actions, which shall appear on a list compiled, certified and made available for public inspection by the lead agencies, except as provided in §6-15(a), Type I, of this chapter, relating to critical areas and historic resources;

(f) maintenance or repair involving no substantial changes in existing structures or facilities;

(g) actions subject to the provisions requiring a certificate of environmental compatibility and public need in Article 7 and 8 of the Public Service Law;

(h) actions which are immediately necessary on a limited emergency basis for the protection or preservation of life, health, property or natural resources; and

(i) actions of the Legislature of the State of New York or of any court.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

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RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-05 Determination5 of Significant Effect-Applications.

(a) **[Inapplicable, City Planning Rules §5-02(a). Superseded by City Planning Rules §5-05(a). See also City Planning Rules §5-02(b)(2) and §5-02(d).]**

(b) **[Introductory paragraph inapplicable, City Planning Rules §5-02(a). Paragraph (b) superseded by City Planning Rules §5-08.]** The applicant initiating the proposed action, other than an exempt or Type II action pursuant to §6-04 of this chapter, shall file an application with the lead agencies, which application shall include a Project Data Statement and such other documents and additional information as the lead agencies may require to conduct an environmental analysis to determine whether the action may or will not have a significant effect on the environment. Where possible existing City applications shall be modified to incorporate this procedure and a one-stop review process developed;

(1) within 20 calendar days of receipt of a determination pursuant to §6-03(b) of this chapter, if applicable, the lead agencies shall notify the applicant, in writing, whether the application is complete or whether additional information is required;

(2) **[Determination pursuant to §5-03(b) deemed to refer to lead agency selection pursuant to City Planning Rules §5-03. See City Planning Rules §5-02(b)(3).]** when all required information has been received, the lead agencies shall notify the applicant, in writing, that the application is complete.

(c) Each application shall include an identification of those agencies, including federal or state agencies, which to

the best knowledge of the applicant, have jurisdiction by law over the action or any portion thereof.

(d) Where appropriate, the application documents may include a concise statement or reasons why, in the judgment of the applicant, the proposed action is one which will not require the preparation of an EIS pursuant to this chapter.

(e) Initiating applicants shall consider the environmental impacts of proposed actions and alternatives at the earliest possible point in their planning processes, and shall develop wherever possible, measures to mitigate or avoid adverse environmental impacts. A statement discussing such considerations, alternatives and mitigating measures shall be included in the application documents.

(f) Nothing in this section shall be deemed to prohibit an applicant from submitting a preliminary application in the early stages of a project or activity for review and comment by the lead agencies.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

5

[Footnote 5]: * Section is part of Appendix A to Chapter 5.

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62 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-06 Determination6 of Significant Effect-Criteria.

(a) An action may have a significant effect on the environment if it can reasonably be expected to lead to one of the following consequences:

(1) a substantial adverse change to ambient air or water quality or noise levels or in solid waste production, drainage, erosion or flooding;

(2) the removal or destruction of large quantities of vegetation or fauna, the substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on critical habitat areas, or the substantial affecting of a rare or endangered species of animal or plant or the habitat of such a species;

(3) the encouraging or attracting of a large number of people to a place or places for more than a few days relative to the number of people who would come to such a place absent the action;

(4) the creation of a material conflict with a community's existing plans or goals as officially approved or adopted;

(5) the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources (including the demolition or alteration of a structure which is eligible for inclusion in an official inventory of such resources), or of existing community or neighborhood character;

(6) a major change in the use of either the quantity or type of energy;

(7) the creation of a hazard to human health or safety;

(8) a substantial change in the use or intensity of use of land or other natural resources or in their capacity to support existing uses, except where such a change has been included, referred to, or implicit in a broad "programmatic" EIS prepared pursuant to §6-13 of this chapter.

(9) the creation of a material demand for other actions which would result in one of the above consequences;

(10) changes in two or more elements of the environment, no one of which is substantial, but taken together result in a material change to the environment.

(b) **[Reference to §6-15 Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** For the purpose of determining whether an action will cause one of the foregoing consequences, the action shall be deemed to include other contemporaneous or subsequent actions which are included in any long-range comprehensive integrated plan of which the action under consideration is a part, which are likely to be undertaken as a result thereof, or which are dependent thereon. The significance of a likely consequence (i.e. where it is material, substantial, large, important, etc.) should be assessed in connection with its setting, its probability of occurring, its duration, its irreversibility, its controllability, its geographic scope and its magnitude (i.e. degree of change or its absolute size). Section 6-15 of this chapter refers to lists of actions which are likely to have a significant effect on the environment and contains lists of actions found not to have a significant effect on the environment.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

6

[Footnote 6]: * Section is part of Appendix A to Chapter 5.

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62 RCNY 6-07

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-07 Determination7 of Significant Effect-Notification.

(a) **[Error. Reference to §6-05(a) should be to §6-05(b).]** The lead agencies shall determine within 15 calendar days following notification of completion of the application pursuant to §6-05(a) of this chapter whether the proposed action may have a significant effect on the environment;

(1) **[Reference to §6-15(b) Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** In making their determination, the lead agencies shall employ the Environmental Assessment Form, apply the criteria contained in §6-06 and consider the lists of actions contained in §6-15 of this chapter;

(2) The lead agencies may consult with, and shall receive the cooperation of any other agency before making their determination pursuant to this subdivision (a).

(b) The lead agencies shall provide written notification to the applicant immediately upon determination of whether the action may or will not have a significant effect on the environment. Such determination shall be in one of the following forms:

(1) **Negative Declaration. [Reference to §6-15, Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13 See Rules §5-02(b)(2).]** If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§6-04 and 6-15 of this chapter, respectively, and that the action will not have a significant effect on the environment, they shall issue a Negative Declaration which shall contain the following information:

(i) an action identifying number;

(ii) a brief description of the action;

(iii) the proposed location of the action;

(iv) a statement that the lead agencies have determined that the action will not have a significant effect on the environment;

(v) a statement setting forth the reasons supporting the lead agencies' determination.

(2) **Conditional Negative Declaration. [Reference to §6-15, Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§6-04 and 6-15 of this chapter, respectively, and that the action will not have a significant effect on the environment if the applicant modifies its proposed action in accordance with conditions or alternatives designed to avoid adverse environmental impacts, they shall issue a Conditional Negative Declaration which shall contain the following information (in addition to the information required for a Negative Declaration pursuant to paragraph (1) of this subdivision):

(i) a list of conditions, modifications or alternatives to the proposed action which supports the determination;

(ii) the signature of the applicant or its authorized representative, accepting the conditions, modifications or alternatives to the proposed action;

(iii) a statement that if such conditions, modifications or alternatives are not fully incorporated into the proposed action, such Conditional Negative Declaration shall become null and void. In such event, a Notice of Determination shall be immediately issued pursuant to paragraph (3) of this subdivision.

(3) **Notice of Determination. [Reference to §6-15 Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§6-04 and 6-15 of this chapter, respectively, and that the action may have a significant effect on the environment, they shall issue a Notice of Determination which shall contain the following information:

(i) an action description number;

(ii) a brief description of the action;

(iii) the proposed location of the action;

(iv) a brief description of the possible significant effects on the environment of the action;

(v) a request that the applicant prepare or cause to be prepared, at its option, a draft EIS in accordance with §§6-08 and 6-12 of this chapter.

(c) **[See additional circulation provisions, City Planning Rules §5-06(b) and §5-06(c). City Clerk function transferred to Office of Environ. Coord., City Planning Rules §5-02(b)(4).]** The lead agencies shall make available for public inspection the Negative Declaration, Conditional Negative Declaration or the Notice of Determination, as the case may be, and circulate copies of the same to the applicant, the regional director of the DEC, the commissioner of DEC, the appropriate Community Planning Board(s), the City Clerk, and all other agencies, including federal and state agencies, which may be involved in the proposed action.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

7

[Footnote 7]: * Section is part of Appendix A to Chapter 5.

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Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-08 Draft8 Environmental Impact Statements-Responsibility for Preparation.

(a) **Non-agency applicants.**

(1) **[Rules add formal scoping, City Planning Rules §5-07. Interested and involved agencies assist with DEIS on request. See City Planning Rules §5-05(b)(2).]** After receipt of a Notice of Determination pursuant to §6-07(c)(3) of this chapter, a non-agency applicant shall notify the lead agencies in writing as to whether it will exercise its option to prepare or cause to be prepared a draft EIS, and as to whom it has designated to prepare the draft EIS, provided that no person so designated shall have an investment or employment interest in the ultimate realization of the proposed action;

(2) **[See also City Planning Rules §5-05(b)(3) for requirements of lead consultation on mitigations.]** the lead agencies may prepare or cause to be prepared a draft EIS for an action involving a non-agency applicant. In such event, the applicant shall provide, upon request, an environmental report to assist the lead agencies in preparing or causing to be prepared the draft EIS and such other information as may be necessary. All agencies shall fully cooperate with the lead agencies in all matters relating to the preparation of the draft EIS.

(3) if the non-agency applicant does not exercise its option to prepare or cause to be prepared a draft EIS, and the lead agencies do not prepare or cause to be prepared such draft EIS, then the proposed action and review thereof shall terminate.

(b) **Agency applicants.** (1) When an action which may have a significant effect on the environment is initiated by

an agency, the initiating agency shall be directly responsible for the preparation of a draft EIS. However, preparation of the draft EIS may be coordinated through the lead agencies.

(2) **[See City Planning Rules §5-05(b)(3)for requirements of lead consultation on mitigations.]** All agencies, whether or not they may be involved in the proposed action, shall fully cooperate with the lead agencies and the applicant agency in all matters relating to the coordination of the preparation of the draft EIS.

(c) Notwithstanding the provisions contained in subdivisions (a) and (b) of this section, when a draft EIS is prepared, the lead agencies shall make their own independent judgment of the scope, contents and adequacy of such draft EIS.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

8

[Footnote 8]: * Section is part of Appendix A to Chapter 5.

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62 RCNY 6-09

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-09 Environmental9 Impact Statements-Content.

(a) **[Lead to be guided by technical standards and methodologies developed by Office of Environ. Coord., City Planning Rules §5-04(c).]** Environmental impact statements should be clearly written in a brief and concise manner capable of being read and understood by the public. Within the framework presented in subdivision (d) of this section, such statements should deal only with the specific significant environmental impacts which can be reasonably anticipated. They should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts.

(b) All draft and final EIS's shall be preceded by a cover sheet stating:

(1) whether it is a draft or a final;

(2) the name or other descriptive title of the action;

(3) the location of the action;

(4) the name and address of the lead agencies and the name and telephone number of a person at the lead agencies to be contacted for further information;

(5) identification of individuals or organizations which prepared any portion of the statement; and

(6) the date of its completion.

(c) If a draft or final EIS exceeds ten pages in length, it shall have a table of contents following the cover sheet.

(d) The body of all draft and final EIS's shall contain at least the following:

(1) a description of the proposed action and its environmental setting;

(2) a statement of the environmental impacts of the proposed action, including its short-term and long-term effects, and typically associated environmental effects;

(3) an identification of any adverse environmental effects which cannot be avoided if the proposed action is implemented;

(4) a discussion of the social and economic impacts of the proposed action;

(5) a discussion of alternatives to the proposed action and the comparable impacts and effects of such alternatives;

(6) an identification of any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(7) a description of mitigation measures proposed to minimize adverse environmental impacts;

(8) a description of any growth-inducing aspects of the proposed action, where applicable and significant;

(9) a discussion of the effects of the proposed action on the use and conservation of energy, where applicable and significant;

(10) a list of underlying studies, reports or other information obtained and considered in preparing the statement; and

(11) (for the final EIS only) copies or a summary of the substantive comments received in response to the draft EIS and the applicant's response to such comments.

(e) An EIS may incorporate by reference all or portions of other documents which contain information relevant to the statement. The referenced documents shall be made available to the public in the same places where copies of the statement are made available. When a statement uses incorporation by reference, the referenced document shall be briefly described and its date of preparation provided.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

9

[Footnote 9]: * Section is part of Appendix A to Chapter 5.

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RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-10 Draft Environmental10 Impact Statements-Procedures.

(a) **Notice of Completion.** Upon the satisfactory completion of a draft EIS, the lead agencies shall immediately prepare, file and make available for public inspection a Notice of Completion as provided in paragraphs (1), (2) and (3) of this subdivision. Where a proposed action is simultaneously subject to the Uniform Land Use Review Procedure ("ULURP"), the City Planning Commission shall not certify an application pursuant to ULURP until a Notice of Completion has been filed as provided in paragraph (3) of this subdivision.

(1) **Contents of Notice of Completion.** All Notices of Completion shall contain the following:

(i) an action identifying number;

(ii) a brief description of the action;

(iii) the location of the action and its potential impacts and effects; and

(iv) a statement that comments on the draft EIS are requested and will be received and considered by the lead agencies at their offices. The Notice shall specify the public review and comment period on the draft EIS, which shall be for not less than 30 calendar days from the date of filing and circulation of the notice, or not less than 10 calendar days following the close of a public hearing on the draft EIS, whichever last occurs.

(2) **Circulating Notice of Completion.** All Notices of Completion shall be circulated to the following:

(i) all other agencies, including federal and state agencies, involved in the proposed action;

(ii) all persons who have requested it;

(iii) the editor of the State Bulletin;

(iv) the State clearinghouse;

(v) the appropriate regional clearinghouse designated under the Federal Office of Management and Budget Circular A-95.

(3) **Filing Notice of Completion.** All Notices of Completion shall be filed with and made available for public inspection by the following:

(i) the Commissioner of DEC;

(ii) the regional director of DEC;

(iii) the agency applicant, where applicable;

(iv) the appropriate Community Planning Board(s);

(v) the City Clerk;

(vi) the lead agencies.

(b) **Filing and availability of draft EIS. [City clerk function transferred to OEC, City Planning Rules §5-02(b)(4).]** All draft EIS's shall be filed with and made available for public inspection by the same persons and agencies with whom Notices of Completion must be filed pursuant to paragraph (a)(3) of this section.

(c) **Public hearings on draft EIS.** (1) Upon completion of a draft EIS, the lead agencies shall conduct a public hearing on the draft EIS.

(2) The hearing shall commence no less than 15 calendar days or more than 60 calendar days after the filing of a draft EIS pursuant to subdivision (b) of this section, except where a different hearing date is required as appropriate under another law or regulation.

(3) Notice of the public hearing may be contained in the Notice of Completion or, if not so contained, shall be given in the same manner in which the Notice of Completion is circulated and filed pursuant to subdivision (a) of this section. In either case, the notice of hearing shall also be published at least 10 calendar days in advance of the public hearing in a newspaper of general circulation in the area of the potential impact and effect of the proposed action.

(4) Where a proposed action is simultaneously subject to ULURP, a public hearing conducted by the appropriate community or borough board and/or the City Planning Commission pursuant to ULURP shall satisfy the hearing requirement of this section. Where more than one hearing is conducted by the aforementioned bodies, whichever hearing last occurs shall be deemed the hearing for purposes of this chapter.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62

RCNY Chapter 5 is intended by this Appendix.
10

[Footnote 10]: * Section is part of Appendix A to Chapter 5.

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***** Current through December 2009 ****

62 RCNY 6-11

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-11 Final11 Environmental Impact Statements-Procedures.

(a) **[Interested and involved agencies assist with FEIS on request, City Planning Rules §5-05(b)(2).]** Except as provided in paragraph (1) of this subdivision, the lead agencies shall prepare or cause to be prepared a final EIS within 30 calendar days after the close of a public hearing.

(1) If the proposed action has been withdrawn or if, on the basis of the draft EIS and the hearing, the lead agencies have determined that the action will not have a significant effect on the environment, no final EIS shall be prepared. In such cases, the lead agencies shall prepare, file and circulate a Negative Declaration as prescribed in §6-07 of this chapter.

(2) The final EIS shall reflect a revision and updating of the matters contained in the draft EIS in light of further review by the lead agencies, comments received and the record of the public hearing.

(b) Immediately upon the completion of a final EIS, the lead agencies shall prepare, file, circulate and make available for public inspection a Notice of Completion of a final EIS in a manner specified in §6-11(a) of this chapter, provided, however, that the Notice shall not contain the statement described in subparagraph (a)(1)(iv) of such section.

(c) Immediately upon completion of a final EIS, copies shall be filed and made available for public inspection in the same manner as the draft EIS pursuant to §6-1l(b) of this chapter.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

11

[Footnote 11]: * Section is part of Appendix A to Chapter 5.

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***** Current through December 2009 ****

62 RCNY 6-12

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-12 Agency Decision Making.

(a) No final decision to carry out or approve an action which may have a significant effect on the environment shall be made until after the filing and consideration of a final EIS.

(1) **[Inapplicable, City Planning Rules, §5-02(a).]**

(2) **[Inapplicable, City Planning Rules, §5-02(a).]**

(b) When an agency decides to carry out or approve an action which may have a significant effect on the environment, it shall make the following findings in a written decision:

(1) consistent with social, economic and other essential considerations of state and city policy, from among the reasonable alternatives thereto, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects to the maximum extent possible, including the effects disclosed in the relevant environmental impact statement;

(2) consistent with social, economic and other essential considerations of state and city policy, all practicable means will be taken in carrying out or approving the action to minimize or avoid adverse environmental effects.

(c) For public information purposes, a copy of the Decision shall be filed in the same manner as the draft EIS pursuant to §6-11(b) of this chapter.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

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APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-13 Programmatic12 Environmental Impact Statements.

(a) Whenever possible, agencies shall identify programs or categories of actions, particularly projects or plans which are wide in scope or implemented over a long time frame, which would most appropriately serve as the subject of a single EIS. Broad program statements, master or area wide statements, or statements for comprehensive plans are often appropriate to assess the environmental effects of the following:

(1) a number of separate actions in a given geographic area;

(2) a chain of contemplated actions;

(3) separate actions having generic or common impacts;

(4) programs or plans having wide application or restricting the range of future alternative policies or projects.

(b) No further EIS's need be prepared for actions which are included in a programmatic EIS prepared pursuant to subdivision (a) of this section. However:

(1) a programmatic EIS shall be amended or supplemented to reflect impacts which are not addressed or adequately analyzed in the EIS as originally prepared; and

(2) actions which significantly modify a plan or program which has been the subject of an EIS shall require a supplementary EIS;

(3) programmatic EIS's requiring amendment and actions requiring supplementary EIS's pursuant to this section shall be processed in full compliance with the requirements of this chapter.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

12

[Footnote 12]: * Section is part of Appendix A to Chapter 5.

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***** Current through December 2009 ****

62 RCNY 6-14

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-14 Rules and Regulations.

[Inapplicable, City Planning Rules §5-02(a).]

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

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RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-15 Lists of Actions.

(a) **Type I. [See City Planning Rules §5-02(d).]** Type I actions enumerated in §617.12 of 6 NYCRR 617 are likely to, but will not necessarily, require the preparation of an EIS because they will in almost every instance significantly affect the environment. However, ministerial actions never require the preparation of an EIS except where such actions may directly affect a critical area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of §617.12. In addition, for the purpose of defining paragraph (2) of said subdivision and section, the following thresholds shall apply:

(1) relating to public institutions:

(i) new correction or detention centers with an inmate capacity of at least 200 inmates; (ii) new sanitation facilities, including:

(A) incinerators of at least 250 tons per day capacity;

(B) garages with a capacity of more than 50 vehicles;

(C) marine transfer stations;

(iii) new hospital or health related facilities containing at least 100,000 sq. ft. of floor area;

(iv) new schools with seating capacity of at least 1,500 seats;

(v) any new community or public facility not otherwise specified herein, containing at least 100,000 sq. ft. of floor area, or the expansion of an existing facility by more than 50 percent of size or capacity, where the total size of an expanded facility exceeds 100,000 sq. ft. of floor area.

(2) relating to major office centers: any new office structure which has a minimum of 200,000 sq. ft. of floor area and exceeds permitted floor area under existing zoning by more than 20 percent, or the expansion of an existing facility by more than 50 percent of floor area, where the total size of an expanded facility exceeds 240,000 sq. ft. of floor area.

(b) **Type II.** (1) **[See City Planning Rules §5-02(d).]** Type II actions will never require the preparation of an EIS because they are determined not to have a significant effect on the environment, except where such actions may directly affect a critical area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of §617.12 of 6 NYCRR 617.

(2) **[Inapplicable. Replaced by State Type II list 6 NYCRR Part 617.13. See City Planning Rules §5-02(a) and §5-02(b)(2).]**

Effective Date. **[See new City Planning transition rules §5-08 and §5-11. New Rules effective Oct. 1, 1991.]**

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

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62 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-01 Purpose and Authority.

(a) **Authority.** These rules of procedure and minimum standards are established for the review of plans for the development, growth and improvement of the city, its boroughs and communities. Such plans may be sponsored by the Mayor, the City Planning Commission (the "Commission"), the Department of City Planning (the "Department"), and any Borough President, borough board or community board, (which agencies shall be referred to as the "sponsor" herein) pursuant to §197-a(b) of the New York City Charter.

(b) **Policy Guidance.** An adopted plan shall serve as a policy to guide subsequent actions by city agencies. The Commission shall consider pertinent such consideration as is consistent with the City Charter and general law. Agencies are urged to consider adopted 197-a plans as guidance for pertinent actions, whether or not such actions are subject to Commission review.

The existence of an adopted 197-a plan shall not preclude the sponsor or any other city agency from developing other plans or taking actions not contemplated by the 197-a plan that may affect the same geographic area or subject matter.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

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***** Current through December 2009 ****

62 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-02 Plan Submission.

(a) **Notification of Intent.** To assist the Department in anticipating the need for technical assistance for the preparation of plans in the efficient scheduling of their review, the sponsor of a plan shall notify the Department of its intent to prepare and submit a plan. This notice shall be given not less than ninety (90) days prior to the submission of a proposed plan. Periodically, the Department shall report to the Commission on the notices received and on the progress of 197-a plans underway.

(b) **Submission.** Thirty (30) copies of all proposed plans shall be submitted to the Department of City Planning, Intake Office, 22 Reade Street, New York, N.Y. 10007. If a plan has been initiated by a community board, borough board or Borough President, this initial submission shall include a summary record of the public hearing held by the board or Borough President. The submission shall also include the name(s) and address(es) of the person(s) designated by the sponsor to be its representative(s) in any discussions of the plan.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

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62 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-03 Threshold Review and Determination.

(a) **Department Review.** Each proposed plan shall be reviewed by the Department staff who shall report to the Commission not later than 90 days after the plan's submission as to whether the plan appears to meet the standards for form and content and for consistency with sound planning, as set forth in §6-04 of these rules. Prior to making the report, the staff shall inform the sponsor of all deficiencies with respect to form and content and any changes, additions or deletions which, in the opinion of the staff, may correct such deficiencies. The sponsor may, thereupon, indicate its willingness to make such changes, additions or deletions in which case the Department will defer its report to the Commission until the changes have been made. The sponsor may, instead, request that the plan be presented without change to the Commission for its threshold findings of form and content and sound planning policy.

At the time of any Department report on a proposed plan, the Commission may receive a similar report from representatives of the sponsor.

(b) **City Planning Commission Determination.** Within 30 days after its presentation by the Department staff, the Commission shall determine, when required by the Charter and in accordance with the standards set forth in §6-04 of these rules, whether the proposed plan is of appropriate form and sufficient content, and whether it is in accordance with sound planning policy.

If the Commission has determined that a proposed plan does not meet the standards for form or content or for sound planning policy, it shall direct the plan back to the sponsor with a statement explaining its deficiencies.

When the Commission has determined that a proposed plan is of appropriate form and content and is in accordance

with sound planning policy, it shall direct the Department to undertake the necessary environmental review if the plan has been sponsored by a community board in accordance with Article 5 of these rules. If the plan has been sponsored by an agency other than a community board the Commission shall determine whether a Type II declaration*1 , a negative declaration, or a notice of completion of a draft EIS has been issued, and if so, it shall direct the Department to distribute the plan in accordance with §6-06 of these rules.

(c) **Coordination of Plan Review.** The Commission may determine that, despite its finding of appropriate form and content and sound planning policy, a proposed plan should not immediately proceed because there are other planning efforts, ULURP reviews or environmental studies underway which should be coordinated with the plan. In such a case, the Commission may direct the Department to work with the sponsor and any other interested agencies in developing an appropriate timetable and strategy for the plan, and to report back to the Commission.

(d) **Progress Report.** When 180 days has elapsed following a threshold determination pursuant to subdivision (b), if a proposed plan has not been distributed for review either because the environmental review remains incomplete, or because the plan has been delayed pursuant to subdivision (c), the sponsoring agency may make a written request to the Commission to expedite the plan's distribution. The Commission shall direct the Department to report in writing within a fixed period of time the progress of the plan, including any outstanding aspects of the environmental review, or any continuing problems of coordination delaying its review. Upon receipt of the report, the Commission may direct the Department to complete the review within a reasonable period of time.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

FOOTNOTES

1

[Footnote 1]: * The Type II declaration is a declaration that the action is excused from environmental quality review.

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62 RCNY 6-04

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Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-04 Standards.

(a) **[Plan Form and Content].** The form and content of all proposed plans shall be consistent with the following:

(1) A plan may take the form of a comprehensive or master plan for a neighborhood, community district, borough or other broad geographic area of the city. Such a plan would combine elements related to housing, industrial and commercial uses, transportation, land use regulation, open space, recreation, community facilities and other infrastructure and service improvements which promote the orderly growth, improvement and future development of the community, borough or city.

(2) A plan may take the form of a targeted plan which considers one or a small number of elements of neighborhood, community districts, borough or citywide problems or needs. Such a plan shall have as its focus issues that are related to the use, development and improvement of land within the sponsor's geographic jurisdiction and may give consideration to the provision of various city services necessary to support orderly growth, development and improvement of that area.

(3) A plan shall not be limited to a single zoning lot or a specific parcel in private ownership. A plan shall cover an identifiable, cohesive geographic area or neighborhood.

(4) Plans shall be presented in clear language and coherent form with elements, chapters or sections that are organized in logical sequence.

(5) Plans shall state their goals, objectives or purposes clearly and succinctly. Policy statements or

recommendations shall contain documentation and explanation of the data, analysis or rationale underlying each. Plans shall demonstrate a serious attempt to analyze and propose policies that address the problems they identify.

(6) A plan shall contain, as appropriate, inventories or description and analysis of existing conditions, problems or needs; projections of future conditions, problems or needs; and recommended goals and strategies to address those conditions, problems or needs. The level of detail and analysis shall be appropriate to the goals and recommendations presented in the plan. The information and analysis relied upon to support its recommendations shall be sufficiently identified so that when the plan is later under review, the accuracy and validity of the information and analysis may be understood. Supporting information may be contained in the form of narrative, maps, charts, tables, technical appendices or the like.

(7) Plans shall be accompanied by documentation of the public participation in their formulation and preparation, such as workshops, hearings or technical advisory committees.

(b) **Sound Planning Policy.** (1) All plans, no matter what their form and content, shall include discussion of their long-range consequences, their impact on economic and housing opportunity for all persons (particularly those of low and moderate income), their provision of future growth and development opportunities, their ability to improve the physical environment and their effect on the fair geographic distribution of city facilities. In determining whether a proposed plan contains sufficient discussion of these issues, the Commission shall not evaluate the merits of the plan.

(2) A plan shall set forth goals, objectives, purposes, policies or recommendations that are within the legal authority of the city to undertake.

(3) A plan which considers issues which are under the jurisdiction of specific city or state agencies shall contain evidence that such agencies have been consulted and shall disclose any comments of such agencies.

(4) A plan shall show consideration of its relationship to applicable policy documents including the Ten Year Capital Strategy, the Zoning and Planning report, the borough and mayoral Strategic Policy Statements and any 197-a plan of a neighboring or superior jurisdiction.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

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62 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-05 Environmental Review.

(a) **Lead Agency.** The City Planning Commission shall be the lead agency for all 197-a plans in accordance with the City Environmental Quality Review Regulations. For a plan sponsored by the mayor, the Commission may transfer the lead status to another city agency if it determines that the proposed plan is part of a broader set of actions for which the sponsoring agency is principally responsible.

(b) **Community Board Plans** The Department of City Planning, together with the Office of Environmental Coordination, shall conduct or cause to be conducted the required environmental review of any plan submitted by a community board.

(c) **Other Agency Plans.** The Department, on behalf of the Commission as lead agency, shall determine in consultation with any sponsor of a proposed plan which is not a community board, the appropriate scheduling and division of responsibilities for environmental review.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

62 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-06 Plan Distribution and Review.

(a) **Plan Distribution.** When pursuant to §6-03(b) of these rules, the Commission directs the Department to distribute a proposed plan, the Department shall transmit copies of the plan simultaneously to all affected community boards, Borough Presidents and borough boards, as defined in Charter §§196 and 197-a(c). The Commission may also direct its distribution to other agencies whose interests may be affected including neighboring community boards and Borough Presidents, and any city and state agency with jurisdiction over elements of the plan.

(b) **Community Board Review.** Each community board which has received from the Department of City Planning a proposed plan affecting land in its district shall conduct a public hearing on the plan except when a single borough-wide hearing is to be held on a borough plan. Notice of the public hearing shall be given and the hearing conducted in accordance with the ULURP rules for community board public hearings. Subsequent to the public hearing and within a period of sixty (60) days following its receipt of the plan, the community board shall transmit its written recommendation to the City Planning Commission with copies to the Borough President, City Council and the sponsor.

The Community board which is the sponsor of a plan and which held a hearing on it prior to filing with the Department, need not hold a second hearing.

(c) **Borough president review.** The Borough President shall have one hundred twenty (120) days following the receipt of a proposed plan in which to review the plan and submit written recommendation to the City Planning Commission with copies to the City Council and sponsor. The Borough President may choose to conduct a public hearing on the plan.

(d) **Borough board review.** Each borough board which has received from the Department of City Planning a proposed plan affecting land in two or more community districts in its borough shall conduct a public hearing on the plan. Such public hearing shall take place and the report of the borough board shall be transmitted within one hundred twenty (120) days following its receipt of the plan. In the case of a plan affecting the entire borough, a single borough-wide public hearing may be held in lieu of separate hearings by the community boards.

Notice of the public hearing shall be given and the hearing conducted in accordance with the ULURP rules governing borough board hearings. The borough board shall transmit its written recommendation to the City Planning Commission with copies to the City Council and the sponsor.

(e) **Request for review.** Any community board or borough board may make a written request to the Department to receive and review a copy of a proposed plan which does not involve land within its district or borough. In its request the Community board or borough board shall state the reason why the plan significantly affects the welfare of its district or borough. Upon receipt of the plan, the community board or borough board may conduct a public hearing and may make any recommendation to the City Planning Commission with copies to the City Council and sponsor. When it transmits such a plan, the Department shall notify the community board or borough board of the remaining time period during which it may review and comment on the plan.

(f) **Other requests.** A borough president may make a written request to the Department to receive and review a copy of a proposed plan for a district or area outside the borough. Any other interested party may similarly request a copy. Such request may be made to either the Department or the sponsor.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

62 RCNY 6-07

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-07 City Planning Commission Review.

(a) **Schedule for Review.**

When the affected community board(s), Borough President(s) and/or borough boards shall have completed their review of any proposed plan involving land in their respective districts, the City Planning Commission shall commence its review and schedule a public hearing. Such hearing shall take place within a period of sixty (60) days following receipt of the last affected community board's, borough board's or Borough President's recommendation, or the final day of the time period provided for their respective review(s), whichever is earlier.

(b) **Public hearing.** Notice of the public hearing shall be given and the hearing conducted in accordance with the ULURP rules governing Commission hearings.

(c) **Commission resolution.** The Commission shall vote by resolution to approve, approve with modifications or disapprove the plan. Such vote shall be taken within 60 days following the public hearing; however, if the Commission finds that it is unable to vote within that time period it shall give a written statement of explanation to the sponsor. In its review of the substance of the plan, the Commission shall give consideration to the community, borough and citywide impacts and to the long-term efforts that could result from the actions or policies recommended by the plan. It shall consider the impact of the plan on economic and housing opportunity, on future growth and development, and on the physical environment. Such consideration shall include the consistency of the plan with other Charter-defined plans and reports such as the mayoral and borough Strategic Policy Statements, the Ten-Year Capital Strategy, the Report on Social Indicators, the Zoning and Planning Report, and any other pertinent adopted 197-a plans. It shall also consider the fair share criteria adopted pursuant to §203 of the City Charter in weighing any recommendation with respect to

proposed city facilities.

(d) **Commission Report.** The Commission shall accompany its resolution with a report which sets forth its considerations and any explanation for its determination. The report may identify any environmental issues which may arise in conjunction with any actions recommended by the Plan, it may set forth proposals for additional study and consideration that the Commission deems necessary to carry out any recommendations made by the plan and it may include recommendations for the implementation of plan elements. The report and resolution shall be transmitted to the Mayor, the affected community board(s) and Borough President(s), the City Council and the sponsor.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

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RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-08 Modifications.

(a) If the City Council, acting pursuant to the City Charter §197-d(d) has transmitted to the Commission a proposed modification of a plan, the Commission shall, within fifteen (15) days, review the proposed modification and transmit back to the Council its findings and recommendations. In determining whether the modification must be subject to additional environmental review, the Commission may consult appropriate staff or the Office of Environmental Coordination, and it must consult the lead agency if the lead has not been the Commission itself.

In determining whether the modification requires a new process of community, borough and Commission review, the Commission shall consider whether the proposed modification:

(1) would incorporate new elements*2 that were not a part of and are not related to the plan as it was previously reviewed.

(2) would delete entire elements or remove from the plan consideration of significant long-range consequences, impacts on economic and housing opportunity for all persons, provision of future opportunities for growth and development, ability to improve the physical environment, or effects on the fair geographic distribution of city facilities.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

FOOTNOTES

2

[Footnote 2]: * For purposes of these rules the term "elements" shall mean a chapter or section of a plan that comprises a full discussion or analysis of subject matter.

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***** Current through December 2009 ****

62 RCNY 6-09

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-09 Filing, Review and Revision.

(a) **Filing.** Upon final adoption of a plan by the City Council, the plan shall be filed and indexed by the Calendar Officer of the Department. The Department shall make copies of the plan available for review by the public and shall transmit the plan to all affected agencies for their use.

(b) **Revision of Plans.** A plan may be periodically reviewed and revised by its sponsor or the Commission may initiate such review. Any such revision may be presented for adoption as an amendment to the plan in accordance with the procedures set forth in these rules.

(c) **Summary of Plans.** In each Zoning and Planning Report adopted pursuant to Charter §192(b), the Commission shall include a summary of all 197-a plans adopted during the preceding four years.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

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62 RCNY 6 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO TITLE 62 CRITERIA FOR THE LOCATION OF CITY FACILITIES*1

APPENDIX A TO TITLE 62 CRITERIA FOR THE LOCATION OF CITY FACILITIES*1

Preface

Article 1. Authority.

Article 2. Purpose and Goals.

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Article 5. Criteria for Siting or Expanding Local/Neighborhood Facilities.

Article 6. Criteria for Siting or Expanding Regional/Citywide Facilities.

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Attachment A Listing of Local/Neighborhood Facilities

Attachment B Listing of Regional/Citywide Facilities, Transportation and Waste Management Facilities and Residential Facilities

Attachment C Types of Residential Facilities

Preface

These criteria are intended to guide the siting of city facilities, as provided by Section 203 of the City Charter. The fair distribution of city facilities will depend on balancing a number of factors, such as community needs for services, efficient and cost effective delivery of those services, effects on community stability and revitalization, and broad geographic distribution of facilities. Furthermore, these factors can be weighed more effectively, and siting decisions can be accepted more readily, when communities have been meaningfully informed and consulted early in the siting process. The intent of these guidelines is to improve, not to obstruct, the process of siting facilities.

Under the provisions of Section 204 of the Charter, the Mayor will prepare an annual Statement of Needs in accordance with these criteria. The Statement of Needs will provide early notice of facility proposals to Borough Presidents, Community Boards, and the public at large. It will be accompanied by a map and text indicating the location and current use of all city properties and of state and federal facilities, as designated by the Charter. This will allow the public and city agencies to assess the existing distribution of facilities and analyze factors of compatibility and concentration. Section 204 also provides procedures for public review and comment on the Statement of Needs, permits Borough Presidents to propose locations for city facilities, and requires city agencies to consider the statements that ensue from that review. Those provisions, together with these criteria, should provide a more open and systematic process for the consideration of facility sites.

The criteria will have several applications in the Section 204 proceedings. The Mayor and city agencies will use them in formulating plans for facilities. Community Boards will refer to them in commenting on the Statement of Needs, and Borough Presidents will employ them in recommending specific sites for facilities. The City Planning Commission will consider them in acting on site selection and acquisition proposals subject to the Uniform Land Use Review Procedure (ULURP) and in the review of city office sites pursuant to Section 195 of the Charter. Sponsoring agencies will also observe them in actions that do not proceed through ULURP such as city contracts, facility reductions, and closings. Although recognizing that non-city agencies are not subject to these criteria, the Commission encourages all such agencies to consider the factors identified in these criteria when they are siting facilities in this city.

Since the principles and procedures contained in these guidelines are new and untested, it is important to monitor and evaluate their effects. The Department of City Planning will undertake this evaluation and report its findings to the Commission and the Mayor within twenty-four months of adoption and periodically thereafter.

CASE NOTES

¶ 1. City defendands did not violate The New York City Fair Share Criteria for the Location of City Facilities, 62 RCNY Appendix A, by not informing and consulting with the community about a project financed by NYCHPD. Facility cannot be defined a "city facility" even though the City defendants were involved in planning and siting. The facility is operated by the staff of a nonprofit organization, programs at the facility are not pursuant to a written agreement and the monies given by the City do not comprise "funding" in a sense of financial assistance. Planning Bd. No. 4 v. Homes, 158 Misc. 2d 184 [1993], 600 NYS2d 619.

Article 1 Authority.

Pursuant to Section 203 of the New York City Charter, the City Planning Commission is authorized to establish criteria for the location of new city facilities, the significant expansion of existing facilities, and the closing or significant reduction in size or service capacity of existing facilities.

Article 2 Purpose and Goals.

The purpose of these criteria is to foster neighborhood stability and revitalization by furthering the fair distribution among communities of city facilities. Toward this end, the city shall seek to:

a) Site facilities equitably by balancing the considerations of community needs for services, efficient and cost-effective service delivery, and the social, economic, and environmental impacts of city facilities upon surrounding areas;

b) Base its siting and service allocation proposals on the city's long-range policies and strategies, sound planning, zoning, budgetary principles, and local and citywide land use and service delivery plans;

c) Expand public participation by creating an open and systematic planning process in which communities are fully informed, early in the process, of the city's specific criteria for determining the need for a given facility and its proposed location, the consequences of not taking the proposed action, and the alternatives for satisfying the identified need;

d) Foster consensus building to avoid undue delay or conflict in siting facilities providing essential city services;

e) Plan for the fair distribution among communities of facilities providing local or neighborhood services in accordance with relative needs among communities for those services;

f) Lessen disparities among communities in the level of responsibility each bears for facilities serving citywide or regional needs;

g) Preserve the social fabric of the city's diverse neighborhoods by avoiding undue concentrations of institutional uses in residential areas; and

h) Promote government accountability by fully considering all potential negative effects, mitigating them as much as possible, and monitoring neighborhood impacts of facilities once they are built.

Article 3 Definitions.

For purposes of these rules, the following definitions apply.

a) City facility:[1]2 A facility providing city services whose location, expansion, closing or reduction in size is subject to control and supervision by a city agency[2]3 , and which is: (i) operated by the city on property owned or leased by the city which is greater than 750 square feet in total floor area; or

(ii) used primarily for a program or programs operated pursuant to a written agreement on behalf of the city which derives at least 50 percent and at least $50,000 of its annual funding from the city[3]4 .

b) New facility: A city facility newly established as a result of an acquisition, lease, construction, or contractual action or the substantial change in use of an existing facility[4]5 .

c) Residential facility: A city facility with sleeping accommodations which provides temporary or transitional housing, provides for pre-trial detention or custody of sentenced inmates, or provides a significant amount of on-site support services for residents with special needs for supervision, care, or treatment[5]6 .

d) Local or neighborhood facility: A city facility serving an area no larger than a community district or local service delivery district (pursuant to Section 2704 of the Charter), in which the majority of persons served by the facility live or work (see Attachment A).

e) Regional or citywide facility: A facility which serves two or more community districts or local service delivery

districts, an entire borough, or the city as a whole and which may be located in any of several different areas consistent with the specific criteria for that facility as described in the Citywide Statement of Needs pursuant to Section 204 of the Charter (see Attachment B).

f) Significant expansion: An addition of real property by purchase, lease or interagency transfer, or construction of an enlargement, which would expand the lot area, floor area or capacity of a city facility by 25 percent or more and by at least 500 square feet. An expansion of less that 25 percent shall be deemed significant if it, together with expansions made in the prior three-year period, would expand the facility by 25 percent or more and by at least 500 square feet.

g) Significant reduction: A surrender or discontinuance of the use of real property that would reduce the size or capacity to deliver service of a city facility by 25 percent or more. A reduction of less than 25 percent shall be deemed significant if it, together with reductions made in the prior three-year period, would reduce the facility by 25 percent or more.

Article 4 Criteria for Siting or Expanding Facilities.

The following criteria and procedures apply to the siting of all new facilities other than administrative offices and data processing facilities ar.d the significant expansion of such facilities.

4.1 The sponsoring agency and, for actions subject to the Uniform Land Use Review Procedure (ULURP) or review pursuant to Section 195 of the Charter, the City Planning Commission, shall consider the following criteria:

a) Compatibility of the facility with existing facilities and programs, both city and non-city, in the immediate vicinity of the site.

b) Extent to which neighborhood character would be adversely affected by a concentration of city and/or non-city facilities.

c) Suitability of the site to provide cost-effective delivery of the intended services. Consideration of sites shall include properties not under city ownership, unless the agency provides a written explanation of why it is not reasonable to do so in this instance.

d) Consistency with the locational and other specific criteria for the facility identified in the Statement of Needs or, if the facility is not listed in the Statement, in a subsequent submission to a Borough President.

e) Consistency with any plan adopted pursuant to Section 197-a of the Charter.

CASE NOTES

¶ 1. City of New York violated Fair Share Criteria for locating City facilities, Charter §203, 62 RCNY ch 6, Appendix A, 4.1(c) by siting a multiagency garage and fueling facility on Piers 35 and 36 on the East River without conducting the required meaningful alternative site analysis, respondents having identified six alternative City owned sites and only one privately owned site. Silver v. Dinkins, 158 Misc. 2d 550 [1994].

4.2 **Procedures for Consultation** In formulating its facility proposals, the sponsoring agency shall:

a) Consider the Mayor's and Borough President's strategic policy statements, the Community Board's Statement of District Needs and Budget Priorities, and any published Department of City Planning land use plan for the area.

b) Consider any comments received from the Community Boards or Borough Presidents and any alternative sites proposed by a Borough President pursuant to Section 204(f) of the Charter, as well as any comments or recommendations received in any meetings, consultations or communications with the Community Boards or Borough Presidents. If the Statement of Needs has identified the community district where a proposed facility would be sited,

then, upon the written request of the affected Community Board, the sponsoring agency should attend the Board's hearing on the Statement. If the community district is later identified, then the sponsoring agency shall at that point notify the Community Board and offer to meet with the board or its designee to discuss the proposed program.

Article 5 Criteria for Siting or Expanding Local/Neighborhood Facilities.

In addition to the criteria and procedures stated in Article 4, the following criteria and procedures apply to the siting of new local or neighborhood facilities other than administrative offices and data processing facilities, and the significant expansion of such facilities (see Attachment A).

5.1 The sponsoring agency and, for actions subject to ULURP or review pursuant to Section 195 of the Charter, the City Planning Commission, shall consider the following criteria:

a) Need for the facility or expansion in the community or local service delivery district. The sponsoring agency should prepare an analysis which identifies the conditions or characteristics that indicate need within a local area (e.g., infant mortality rates, facility utilization rates, emergency response time, parkland/population ratios) and which assesses relative needs among communities for the service provided by the facility. New or expanded facilities should, wherever possible, be located in areas with low ratios of service supply to service demand.

b) Accessibility of the site to those it is intended to serve.

5.2 A Community Board may choose to designate or establish a committee to monitor selected local facilities after siting approval pursuant to these criteria. Following site selection and approval for such a facility, the sponsoring agency and Community Board shall jointly establish a mutually acceptable procedure by which the agency periodically reports to the committee regarding the plans and procedures that may affect the compatibility of the facility with the surrounding community and responds to community concerns.

Article 6 Criteria for Siting or Expanding Regional/Citywide Facilities.

In addition to the criteria and procedures stated in Article 4, the following criteria and procedures apply to the siting of new regional and citywide facilities other than administrative offices and data processing facilities, and the significant expansion of such facilities (see Attachment B).

6.1 The sponsoring agency and, for actions subject to ULURP or review pursuant to Section 195 of the Charter, the City Planning Commission, shall consider the following criteria:

a) Need for the facility or expansion. Need shall be established in a citywide or borough-wide service plan or, as applicable, by inclusion in the city's ten-year capital strategy, four-year capital program, or other analyses of service needs.

b) Distribution of similar facilities throughout the city. To promote the fair geographic distribution of facilities, the sponsoring agency should examine the distribution among the boroughs of existing and proposed facilities, both city and non-city, that provide similar services, in addition to the availability of appropriately zoned sites.

c) Size of the facility. To lessen local impacts and increase broad distribution of facilities, the new facility or expansion should not exceed the minimum size necessary to achieve efficient and cost-effective delivery of services to meet existing and projected needs.

d) Adequacy of the streets and transit to handle the volume and frequency of traffic generated by the facility.

6.2 Where practicable, the Mayor may initiate and sponsor a consensus building process to determine the location of a proposed regional facility. A Borough President may submit a written request for such a process if the request is made within 90 days of publication of the Statement of Needs or, if the facility is not listed in the Statement, within 30

days of a subsequent submission to the Borough President.

In the consensus building process, representatives of affected interests will convene to assess potential sites in accordance with these criteria and the specific criteria set forth in the Statement of Needs. The participants may include but need not be limited to representatives of the Mayor, the sponsoring agency, the Borough President(s), and the affected Community Board(s). The participants may review any issue relevant to site selection under these criteria. The process shall be completed within a reasonable time period to be determined by the Mayor. If location of the facility is subject to ULURP, the process shall be completed prior to submission of a ULURP application. If the participants (including the sponsoring agency) reach consensus, the agency will submit whatever agreements were reached regarding the facility and site to the City Planning Commission as part of its ULURP application for the site. If no such consensus is reached, the sponsoring agency may initiate ULURP, if applicable, for its proposed site.

6.3 Upon the request of the Borough President and/or Community Board, a sponsoring agency and Community Board shall establish a facility monitoring committee, or designate an existing Community Board committee, to monitor a facility following selection and approval of its site. The agency shall inform the committee of plans and procedures that may affect the compatibility of the facility with the surrounding community. Once the facility is constructed, the sponsoring agency shall meet with the committee according to a schedule established by the committee and agency to report on the status of those plans and procedures and to respond to community concerns. The committee may also submit reports to the agency head addressing outstanding issues. The agency head shall respond to the committee's report within 45 days and shall identify the actions, if any, that the agency plans in response to such concerns.

6.4 Transportation and Waste Management Facilities.

Transportation and waste management facilities (see Attachment B) are subject to the following criteria in addition to those stated in Article 4 and Sections 6.1, 6.2, and 6.3.

6.41 The proposed site should be optimally located to promote effective service delivery in that any alternative site actively considered by the sponsoring agency or identified pursuant to Section 204(f) of the Charter would add significantly to the cost of constructing or operating the facility or would significantly impair effective service delivery.

6.42 In order to avoid aggregate noise, odor, or air quality impacts on adjacent residential areas, the sponsoring agency and the City Planning Commission, in its review of the proposal, shall take into consideration the number and proximity of existing city and non-city facilities, situated within approximately a one-half mile radius of the proposed site, which have similar environmental impacts.

6.5 Residential Facilities.

Regional or citywide residential facilities (see Attachment B) are subject to the following criteria in addition to those stated in Article 4 and Sections 6.1, 6.2, and 6.3.

6.51 Undue concentration or clustering of city and non-city facilities providing similar services or serving a similar population should be avoided in residential areas.

6.52 Necessary support services for the facility and its residents should be available or provided.

6.53 In community districts with a high ratio*7 of residential facility beds to population, the proposed siting shall be subject to the following additional considerations:

a) Whether the facility, in combination with other similar city and non-city facilities within a defined area surrounding the site (approximately a half-mile radius, adjusted for significant physical boundaries), would have a significant cumulative negative impact on neighborhood character.

b) Whether the site is well located for efficient service delivery.

c) Whether any alternative sites actively considered by the sponsoring agency or identified pursuant to Section 204(f) of the Charter which are in community districts with lower ratios of residential facility beds to population than the citywide average would add significantly to the cost of constructing or operating the facility or would impair service delivery.

To facilitate this evaluation, the Department of City Planning will publish annually an index of the number of beds per thousand population, by type of residential facility (as set forth in Appendix C) and overall, in each community district. The index will be based upon the number of beds in all city, state, federal, and private facilities in operation or approved for operation.

Article 7 Criteria for Siting or Expanding Administrative Offices and Data Processing Facilities.

The following criteria apply to the siting of new city administrative offices and data processing facilities and the significant expansion of such facilities, pursuant to Section 195 of the City Charter.

7.1 The sponsoring agency and the City Planning Commission shall consider the following criteria:

a) Suitability of the site to provide cost-effective operations.

b) Suitability of the site for operational efficiency, taking into consideration its accessibility to staff, the public and/or other sectors of city government.

c) Consistency with the locational and other specific criteria for the facility stated in the Statement of Needs.

d) Whether the facility can be located so as to support development and revitalization of the city's regional business districts without constraining operational efficiency.

Article 8 Criteria for Closing or Reducing Facilities.

The following criteria and procedures apply to the closing of existing facilities and the significant reduction in size or capacity to deliver service of existing facilities.

8.1 The sponsoring agency shall consider the following criteria:

a) The extent to which the closing or reduction would create or significantly increase any existing imbalance among communities of service levels relative to need. Wherever possible, such actions should be proposed for areas with high ratios of service supply to service demand.

b) Consistency with the specific criteria for selecting the facility for closure or reduction as identified in the Statement of Needs.

8.2 In proposing facility closings or reductions, the sponsoring agency shall consult with the affected Community Board(s) and Borough President about the alternatives within the district or borough, if any, for achieving the planned reduction and the measures to be taken to ensure adequate levels of service.

Article 9 Actions not Subject to the Uniform Land Use Review Procedure or Section 195.

9.1 Whenever an agency takes an action with respect to a city facility that is subject to these criteria but is not subject to ULURP or to Charter Section 195 review, the agency shall submit a statement to the Mayor, with copies to the affected Community Board(s), Borough President, and Department of City Planning, which describes the agency's consideration and application of the relevant sections of these criteria, and states the reasons for any inconsistencies.

Attachment A

Local/Neighborhood Facilities*

Branch libraries

Community cultural programs

Community health/mental health services

Community-based social programs

Day care centers

Drop-off recycling centers

Employment centers

Fire stations

Local, non-residential drug prevention and/or treatment centers Local parks

Parking lots/garages

Police precincts

Sanitation garages

Senior centers

* List is illustrative and should not be considered to include all such facilities.

Attachment B

Regional/Citywide Facilities*

Administrative offices

Courts

Data processing facilities

Department of Health centers

Income maintenance centers

Maintenance/storage facilities

Museums, zoos, performance centers, galleries and gardens

Regional, non-residential drug prevention and/or treatment centers

Regional parks

Transportation and Waste Management Facilities:

Airports, heliports

Ferry terminals

Sewage treatment plants

Sludge management and transfer facilities

Solid waste transfer and recycling facilities

Solid waste landfills

Solid waste incinerators, resource recovery plants

Residential Facilities:

Group homes/halfway houses

Hospices

Nursing homes/health-related facilities

Prisons, jails, detention, remand facilities

Residential facilities for children

Residential substance abuse facilities

Secure and non-secure detention facilities for children

Supported housing for people with mental health or physical problems

Temporary housing

Transitional housing

* List is illustrative and should not be considered to include all such facilities.

Attachment C

Types of Residential Facilities (as referenced in Section 6.53)*

a) Correctional facilities, including prisons, jails, detention and remand facilities, and secure detention for children

b) Nursing homes and health-related facilities, including hospices

c) Small residential care facilities and temporary housing facilities, serving no more than 25 people, including group homes, halfway houses, residential facilities for children, residential substance abuse and mental health/retardation facilities, supported housing, shelters, temporary and transitional housing, non-secure detention for children

d) Large temporary and transitional housing facilities, providing shelter or transitional housing for more than 25 people

e) Large residential care facilities, serving more than 25 people, including halfway houses, residential facilities for

children, homes for adults, residential substance abuse and mental health/retardation facilities, supported housing, psychiatric centers

* Lists by type are illustrative and should not be considered to include all such facilities.

FOOTNOTES

1

[Footnote 1]: * Adopted by the City Planning Commission on December 3, 1990 is the Criteria for the Location of City Facilities. Set forth herein for the sake of convenient public access to such materials and in order to increase public familiarity and awareness of such rules, adoption of the Rules is not governed by the City Administrative Procedure Act.

2

[Footnote 2]: 1 Only city facilities are susceptible to these criteria. However, the sponsoring agency and the City Planning Commission will take into consideration the number and proximity of all other facilities-whether private, city, state, or federal-in proposing or evaluating the location of a city facility.

3

[Footnote 3]: 2 As a substance of law, the criteria do not relate to siting of facilities by private entities, state or federal agencies, or various entities operating within the City of New York which have been initiated by or pursuant to state law (e.g., the School Construction Authority, the Health and Hospitals Corporation, the Housing Authority, the New York City Transit Authority, and the City University of New York). To the extent that federal, state or city laws controlling the siting of such facilities provide for approvals or recommendations by the City Planning Commission, the Commission will keep in consideration these criteria in making their approvals or recommendations.

4

[Footnote 4]: 3 Any state, federal, or private funding which enters the city's treasury will be considered city funding for this purpose unless other law, regulations, conditions, or restrictions upon the funding, reserve to non-city agencies authority over facility siting.

5

[Footnote 5]: 4 Contract or lease renewals that do not notably change the use, size or capacity of a city facility are not governed by these criteria since they do not result in the creation of a new facility or the significant growth or reduction of an existing facility.

6

[Footnote 6]: 5 Employment of these criteria for the siting of residential facilities shall be consistent with the federal Fair Housing Act and any other specifications of federal and state law.

7

[Footnote 7]: * In general, the twenty community districts with the greatest ratios of facility beds to population, by type of residential facility, will be deemed to have a high ratio for that type.

Rules of the City of New York

***** Current through December 2009 ****

62 RCNY 7-01 [Concession

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 7 RULES FOR THE DEFINITION OF MAJOR CONCESSIONS*1

§7-01 [Concession Subject to ULURP and Council Review.]

A concession shall be considered a major concession and therefore subject to §§197-c and 197-d of the Charter only if:

(a) it has been determined pursuant to City Environmental Quality Review to require an Environmental Impact Statement, or

(b) except as provided in §7-03, the concession will cause one or more of the thresholds set forth in §7-02 to be exceeded.

HISTORICAL NOTE

Section added City Record Jan. 4, 1999 eff. Feb. 3, 1999. [See Chapter 7 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 4, 1999. Note: Statement of Basis and Purpose of Major Concession Rule. Section 374 of the New York City Charter requires the City Planning Commission to adopt rules that "either list major concessions or establish a procedure for determining whether a concession is a major

concession." This rule provides standards for determining major concessions based upon their land use impacts or implications.

64 of 65 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

62 RCNY 7-02 [Major

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 7 RULES FOR THE DEFINITION OF MAJOR CONCESSIONS*1

§7-02 [Major Concession Defined; Specific Uses, Thresholds e.g. Marinas, Spectator Sport Use, Parks.]

A concession shall be considered a major concession if it will cause one or more of the thresholds given for the specific uses listed below to be exceeded:

(a) marinas with over 200 slips;

(b) a permanent performance or spectator sport use with over 2,500 seats;

(c) for parklands in or adjacent to Community Districts subject to the comprehensive off-street parking regulations, contained in Article I, Chapter 3 of the Zoning Resolution of the City of New York, accessory parking lots with over 150 spaces and, for all other areas, accessory parking lots with over 250 parking spaces on parklands;

(d) a use for which a new building of over 20,000 square feet of gross floor area will be constructed when such building will be located on property other than parkland;

(e) a use for which a new building of more than 15,000 square feet of gross floor area will be constructed when such building will be located on parkland;

(f) an open use which occupies more than 42,000 square feet of open space other than parkland;

(g) an open use which occupies over 30,000 square feet of a separate parcel of parkland;

(h) a use which in total occupies more than 2,500 square feet of floor area or open space and more than 15 percent

of the total square footage of a separate parcel of land that is improved for park purposes, including passive and active recreational use, or that was improved for such purposes at any time during the preceding year; or

(i) a concession comprised of two or more components, no one of which exceeds thresholds set forth in paragraphs (a) through (h) above, where at least two of such elements each exceed 85 percent of any applicable threshold set forth in such paragraphs.

HISTORICAL NOTE

Section added City Record Jan. 4, 1999 eff. Feb. 3, 1999. [See Chapter 7 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 4, 1999. Note: Statement of Basis and Purpose of Major Concession Rule. Section 374 of the New York City Charter requires the City Planning Commission to adopt rules that "either list major concessions or establish a procedure for determining whether a concession is a major concession." This rule provides standards for determining major concessions based upon their land use impacts or implications.

65 of 65 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

62 RCNY 7-03 [Concessions

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 7 RULES FOR THE DEFINITION OF MAJOR CONCESSIONS*1

§7-03 [Concessions That are not Major Concessions.]

Notwithstanding any other provision of these rules the following shall not be considered major concessions unless an EIS is required:

(a) A concession for any use which will be operated for 30 days or less;

(b) A concession which is or directly furthers an active recreational use and would be available to the general public on a non-discriminatory basis, with or without a fee, including but not limited to the following:

(1) a seasonal covering of recreational facilities,

(2) a carousel, or

(3) a use intended for active participation sports including playing fields or sports courts (e.g., tennis, volleyball, handball, softball), skating rinks, playgrounds, and practice facilities (e.g., batting cages, golf driving ranges, miniature golf);

provided that the area occupied by such recreational use does not exceed both 15 acres and 50 percent of a separate parcel of land;

(c) Reuse of former amusement park lands for amusement or recreational purposes;

(d) Any renewal, reissuance, extension, amendment of an existing concession or issuance of a new concession

which continues a currently existing use or which permits a use which existed lawfully on the property at any point in the preceding two years, whether operated by a private or public entity, provided that any extension or amendment or the cumulative effect of any amendments or extensions made over any five year period does not include modifications which when added to the existing concession, cause any threshold of §7-02 to be exceeded and increase the size of an existing concession by ten percent or more;

(e) A concession for which authorization to use a different procedure was granted or obtained, or which is operated under an agreement executed, prior to the effective date of this major concession rule;

(f) A concession for lines, cables, conduits or underground pipes not used for the transport of people;

(g) A concession on wharf property or waterfront property primarily for purposes of "waterfront commerce" or in "furtherance of navigation" as such terms are defined in the New York City Charter;

(h) A concession on wharf property for purposes other than "waterfront commerce" or in "furtherance of navigation" which is granted pursuant to §1301.2(h) of the City Charter; or

(i) A concession for an open air market which operates two (2) or fewer days per week, or, if a green market, three (3) or fewer days per week.

HISTORICAL NOTE

Section added City Record Jan. 4, 1999 eff. Feb. 3, 1999. [See Chapter 7 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 4, 1999. Note: Statement of Basis and Purpose of Major Concession Rule. Section 374 of the New York City Charter requires the City Planning Commission to adopt rules that "either list major concessions or establish a procedure for determining whether a concession is a major concession." This rule provides standards for determining major concessions based upon their land use impacts or implications.

63 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 1 PRACTICE AND PROCEDURE-PUBLIC HEARINGS AND MEETINGS OF THE COMMISSION

§1-01 Quorum.

A quorum of the Landmarks Preservation Commission shall consist of six Commissioners. Public hearings and public meetings may be conducted without a quorum.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 1 PRACTICE AND PROCEDURE-PUBLIC HEARINGS AND MEETINGS OF THE COMMISSION

§1-02 Calendaring.

The Landmarks Preservation Commission may, upon the adoption of a motion, calendar an item to be considered for landmark designation. A motion to calendar must be approved by the majority of the Commissioners present in order to be adopted. The date of the public hearing on the proposed designation may be set by the motion to calendar or it may be set at some later time by the Chairman, acting at his or her discretion.

HISTORICAL NOTE

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The Landmarks Preservation Commission was not required to hold a public hearing before declining the calendar a request for a property's designation as a landmark. **Landmarks West v. Burden,** 15 A.D.3d 308 790 N.Y.S.2d 107 (1st Dept. 2005).

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 1 PRACTICE AND PROCEDURE-PUBLIC HEARINGS AND MEETINGS OF THE COMMISSION

§1-03 Withdrawing and Laying Over Certificate of Appropriateness Items.

Once an application has been included on a Certificate of Appropriateness public hearing calendar, it may be withdrawn or laid-over as follows:

(a) **Lay-Overs (requests prior to being heard).** If an application has been included on a Certificate of Appropriateness calendar and the hearing has not yet occurred, the applicant may request that the application be laid-over to a subsequent public hearing. The applicant must send the Landmarks Preservation Commission a letter indicating that he or she would prefer to be heard on a subsequent hearing and stating that the Commission's time to act on the matter is being extended for an equivalent length of time. Upon receipt of this request staff will withdraw the item and hold it for the following month's hearing. Where the application concerns, in whole or in part, the legalization or curing of a violation, the applicant shall be allowed to lay over the item only once as of right. If the applicant requests a subsequent lay-over, the Chair may at his or her own discretion consider the request a request for withdrawal and may withdraw the item pursuant to the procedure set forth in subsection (b)(1) of this section, or, if the application seeks to legalize a violation, the Chair may keep the item on the calendar and the Commission may act on it at the public hearing. Withdrawal of an application to legalize or cure a violation, in whole or in part, shall be deemed a dissapproval for purposes of service of a second or subsequent notice of violation pursuant to Administrative Code §25-317.1b(4)(a)(ii).

(b) **Withdrawals (requests prior to being heard).** If an application has been included on a Certificate of Appropriateness public hearing calendar and the hearing has not yet occurred, the application may be withdrawn from the calendar as follows:

(1) by the applicant if the applicant sends a letter to the Landmarks Preservation Commission indicating that he or she wishes to abandon the application as proposed. Staff withdraws the item and generates the "Withdrawn at Staff Level" number from "Permit Application Tracking System", a withdrawal letter is sent to the applicant and the application is closed.

(2) by the staff if new information or design modifications are provided that enable the staff to issue a staff-level permit. Staff withdraws the item from the calendar and issues a staff permit to close the application.

(3) by the staff at the direction of the Director of Preservation if the status of the application changes with respect to scope and completeness.

(c) **Withdrawals from calendar (after having been heard).** If an application has been included on a Certificate of Appropriateness public hearing calendar and the hearing has taken place, the application can only be withdrawn by the applicant if he or she sends a letter to the Landmarks Preservation Commission indicating that the application is being abandoned as proposed. Upon receipt of this request staff will withdraw the item from the calendar, generate a "Withdrawn at Staff Level" number from "Permit Application Tracing System" and send the applicant a withdrawal letter to close the application. Where the application concerns, in whole or in part, the legalization of a violation, the Chair may, at his or her own discretion, reject the applicant's request to withdraw and the Commission may continue to consider and act on the application as submitted. Withdrawal of an application to legalize or cure a violation, in whole or in part, shall be deemed a dissapproval for purposes of service of a second or subsequent notice of violation pursuant to Administrative Code §25-317.1b(4)(a)(ii).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 6, 1998 eff. Aug. 5, 1998. [See T63 Chapter 11 footnote]

Subd. (c) amended City Record July 6, 1998 eff. Aug. 5, 1998. [See T63 Chapter 11 footnote]

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Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 1 PRACTICE AND PROCEDURE-PUBLIC HEARINGS AND MEETINGS OF THE COMMISSION

§1-04 Final Actions.

No final determination or action will be made or taken except by concurring vote of at least six Commissioners.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 1 PRACTICE AND PROCEDURE-PUBLIC HEARINGS AND MEETINGS OF THE COMMISSION

§1-05 Submissions to the Record.

The Commission may, upon the adoption of a motion, close the hearing and leave the Record open on a particular item until a stated date to allow for the submission of additional written information. Submissions received after the stated date will be included in the Record provided they are received prior to the Commission's determination or action on the item.

The Commission will neither make a final determination nor take any final action on an item while the Record is open on that item.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER A APPLICATION PROCEDURE

§2-01 Application Signatures Necessary for Work Permits.

All application forms to perform any work on a designated landmark or on a property in a designated historic district must be signed by the owner of the property. An application for work on or in a cooperative building must be signed by the President or other appropriate officer of the Co-op Board. The signature of the managing agent of the cooperative building is not sufficient. An application for work on or in the areas and portions of a condominium building in common ownership must be signed by the President or other appropriate officer of the Condominium Association. An application for work on or in an individual condominium unit must be signed by the owner of that unit.

HISTORICAL NOTE

Section in original publication July 1, 1991.

63 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER A APPLICATION PROCEDURE

§2-02 Master Plans and Authorizations to Proceed.

An owner of a designated property may apply for approval of a master plan when the proposal involves repetitive alteration of architectural features (such as windows, through-wall air conditioning installations, storefronts, etc.) and when those alterations are not planned to occur all at once, but rather in increments through time. A master plan can be approved by a Certificate of Appropriateness or by a Permit for Minor Work depending on the work which it covers.

In both cases the master plan sets a standard for future changes involving the architectural features in question and specifically identifies drawings and other documents which contain the approved design in detail. Once a master plan is approved and the owner wishes to move forward with a portion of the work covered by the master plan, a completed application form is filed with the Commission describing the scope of work (for example: 8 front windows on the 12th floor) and stating that the work will conform to the approved master plan drawings and other documents on file with the Landmarks Preservation Commission. The staff of the Preservation Department will review the application to ascertain that all proposed work is covered by a master plan, and will send the owner an "Authorization to Proceed" letter allowing the work to proceed. The Authorization to Proceed is sent prior to the commencement of the work and is contingent on adherence to the approved master plan drawings.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER A APPLICATION PROCEDURE

§2-03 Process for Completing Application: Staff Withdrawal of the Application.

(a) All applications for work on designated properties received by the Landmarks Preservation Commission are assigned to a professional staff member in the Preservation Department who will handle the project. The staff person will review the proposal to ascertain whether the materials submitted are sufficient for a determination to be made. If the materials are sufficient, staff will certify the application as complete and issue the appropriate permit or take other action. If the completed application requires a Certificate of Appropriateness, staff will arrange for the item to be included in the next scheduled Certificate of Appropriateness public hearing calendar.

If the application requires further clarification and/or additional documentary materials, staff will contact the owner and/or applicant by telephone to discuss the proposal and, if necessary, arrange a meeting or site visit. Staff will follow the conversation up by providing a materials checklist calling out those supplementary materials required to certify the application as complete. If contact has been limited to a telephone conversation, the checklist will be mailed to the applicant. If a meeting is set up, the checklist may be supplied during the course of the meeting.

As soon as all the materials requested have been received, staff will certify the application as complete and process the application. However, if the required materials have not been received 60 working days from the date on the materials checklist, staff will send a follow-up letter to the applicant reminding him/her that the application is still incomplete and informing him/her that unless the materials required are received within the next 30 working days the application will be deemed withdrawn. A copy of the most recent materials checklist will be included with the letter. If

the applicant does not submit sufficient material within 90 days of the date on the materials checklist, staff should withdraw the application by sending a staff withdrawal letter including the docket number of the application and a "Withdrawn at Staff Level" number generated by "Permit Application Training System". The application will then be closed. The staff withdrawal letter will be sent to the owner and applicant with copies forwarded to the file, supervisor, and the Director of Preservation. Along with the withdrawal letter a blank "Application for Work on Designated Properties" will be included for the use of the applicant should he or she wish to re-apply.

(b) Notwithstanding the time periods set forth in subdivision (a), where an application seeks to legalize or cure a violation, an applicant must submit all materials required by the materials checklist within 20 working days of the date of the materials checklist. If the materials are not submitted, the staff shall send a follow-up letter that shall inform the applicant that the application may be withdrawn by the staff unless all required materials are submitted within 15 working days of the date of the follow-up letter. If the applicant fails to submit all required materials within 55 working days of the date of the first materials checklist, the staff may withdraw the application as set forth in subdivision (a). Withdrawal of an application to legalize or cure a violation, in whole or in part, shall be deemed a disapproval for purposes of service of a second or subsequent notice of violation pursuant to Administrative Code §25-317.1b(4)(a)(ii).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) designated City Record July 6, 1998 eff. Aug. 5, 1998. [See T63 Chapter 11 footnote]

Subd. (b) added City Record July 6, 1998 eff. Aug. 5, 1998. [See T63 Chapter 11 footnote]

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER A APPLICATION PROCEDURE

§2-04 Notices of Violation-New Applications.

The Landmarks Preservation Commission will not process an application for work on a designated property when an Landmarks Preservation Commission Notice of Violation is in effect against that property. A Notice of Violation in effect against that property indicates non-compliance with the Landmarks Law.

(a) Upon receipt of an application, staff must verify that no Notice of Violation is in effect against the property. In the event that a Notice of Violation is in effect, staff should proceed as follows:

Obtain copies of all Notices of Violation and Notices to Stop Work for the file.

Contact the owner/applicant to inform them that because a Notice(s) of Violation is (are) in effect staff cannot process an application for new work until the Notice(s) has (have) been rescinded.

Send a letter to the applicant explaining that staff cannot process the new application because a Notice(s) of Violation is(are) in effect against the property, that processing can only commence upon rescission of the Notice(s) or when the applicant begins to address the Notice(s). Along with the letter send copies of the Notice(s), an application form, and instructions for filing. Send copies of the letter to the Director of Preservation, Supervisor, and the Director of Enforcement.

(b) **Exceptions to this procedure.** Staff may issue permits for new work when a Notice of Violation is in effect in the following instances:

(1) The proposed work will correct a hazardous condition.

(2) The proposed work addresses the prevention of deterioration affecting the building, and the work will clearly further the continuing preservation of the building.

(3) A permit has been issued to correct work cited in a Notice of Violation, and an escrow agreement or other acceptable form of assurance has been established to provide a mechanism, acceptable to the Landmarks Preservation Commission, that ensures that the work approved under the permit to correct the Notice of Violation will be completed within a specified time period.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-11 Installation of Heating, Ventilating and Air Conditioning Equipment.

(a) **Introduction.** These rules are issued to assist the public in applying to the Landmarks Preservation Commission for approval of the installation of heating, ventilation and air conditioning equipment in buildings which are designated landmarks or are within designated historic districts. These rules enunciate Commission policy with respect to such installation and also explain the procedures required to apply for a permit.

The visual character of the exterior wall cladding, the pattern of window openings on the facades, and the ornamental elements used to articulate the exterior walls are important and integral parts of the design of buildings. In most historic buildings, these three elements were carefully combined to help define the style and character of the building. It is important to retain the visual integrity of the exterior walls, the regular pattern of the window bays, and the ornamental elements.

Therefore, the Commission, in making a determination on proposed installations of window, through-wall or roof- or yard-mounted HVAC equipment, evaluates the effect of the proposal on the aesthetic, historical and architectural values and significance of the landmark or of the building in an historic district. The Commission considers, among other matters, the architectural style of the building and the design, finish, material, method of installation and color of the proposed work.

These rules are based on the following principles:

(1) The distinguishing historical qualities or character of a building's structure or site and its environment should not be destroyed. The removal or alteration of any distinguishing architectural feature should be avoided.

(2) The visual integrity of the building's exterior walls should be maintained.

The goal of these rules is to facilitate the approval of appropriate HVAC installations in landmarked buildings. Certain installations can be approved at staff level in conformance with the procedures and criteria set forth in these rules. Proposed installations that do not conform to these rules require a Certificate of Appropriateness review by the full Commission in accordance with the Landmarks Law. Applicants are strongly encouraged to develop building master plans for the installation of HVAC equipment.

(b) **Definitions.**

Authorization to Proceed (ATP). The term "Authorization to Proceed (ATP)" shall mean a letter from LPC notifying an applicant that the proposed HVAC installations have been found to be in conformance with the provisions of an approved Master Plan.

Decorative masonry. The term "decorative masonry" shall mean terra cotta, cast-stone or natural stone (such as limestone, marble, brownstone or granite) facade areas and/or any ornamental feature which is a component of the facade such as belt courses, banding, water tables, cornices, corbelled brick work, medallions, enframements, and surrounds, and ornamental bonding patterns, e.g. tapestry brick or diaper patterns.

HVAC equipment. The term "HVAC equipment" shall mean window, through-wall, and yard mounted heating, ventilation, and air conditioning equipment, including window louvers, wall-mounted grilles and stove, bathroom and/or dryer vents.

Landmarks law. The term "landmarks law" shall refer to Section 3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

LPC staff. The term "LPC staff" shall mean the staff of the Landmarks Preservation Commission acting in the Commission's agency capacity.

Primary facade. The term "primary facade" shall mean a facade facing a street or a public thoroughfare that is not necessarily a municipally dedicated space, such as a mews or court.

Secondary facade. The term "secondary facade" shall mean a facade that does not face a public thoroughfare or mews or court.

Segmental or Curved Head Window. The term "segmental or curved head window" shall mean a window with a non-rectilinear sash or frame as illustrated and defined as a special window in Appendices A and C of Chapter 3 of these rules.

Significant feature. The term "significant feature" shall mean an exterior architectural component of a building that contributes to its special historic, cultural, and/or aesthetic character, or in the case of an historic district, that reinforces the special characteristics for which the historic district was designated.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Installations of HVAC equipment within window openings.** (1) No permit is required for installations of HVAC equipment which require only raising the lower sash of a double-hung window, or which require only opening a casement leaf, transom, hopper or awning window.

(2) A permit is required for all other types of HVAC equipment installations within windows in individual

landmarks and buildings in historic districts.

(i) Installations of HVAC equipment within window openings on primary facades of individual landmarks and building in historic districts.

(A) Residential buildings, including buildings originally designed as residences which were subsequently converted to other uses:

(a) Rowhouses, detached houses, carriage houses, small apartment buildings, tenements, and hotels: In buildings originally constructed as private residences or carriage houses, as well as small apartment houses and other types of multiple dwellings which are six stories or less in height and with a street frontage of forty (40) feet or less, the small scale, limited areas of plain masonry and potential for affecting the significant architectural and historic character of the buildings require the proposals for installations on primary facades be reviewed for a Certificate of Appropriateness ("COFA").

(b) Large apartment buildings and hotels: In large apartment buildings, hotels and other types of multiple dwellings which either have a street frontage of forty-one (41) feet or greater or which are seven or more stories in height, a Permit for Minor Work ("PMW") or Certificate of No Effect ("CNE") may be issued for permanent installations of HVAC equipment, louvers and vents in window openings if the proposal meets the following criteria:

(i) the window is not a special window as defined in Chapter 3, Appendix C of these rules except for segmental or curved head windows which do not possess any other characteristics of a special window; and

(ii) the installation involves only removing glazing from one of the double-hung sash or one portion of a casement window or removing the window sash and retaining the window frame; and

(iii) the location of the unit forms part of a regular pattern of installations within window bays on the facade; and

(iv) the louver or vent will be mounted flush with the sash or directly behind the sash; and

(v) the louver or vent is finished to blend into the fenestration pattern; and

(vi) no significant architectural feature of the building will be affected by the installation.

(B) **Commercial and loft buildings:** In commercial and loft buildings originally designed to serve commercial/retail/warehouse uses, including cast-iron fronted buildings, department stores, banks and office buildings, a PMW or CNE may be issued for the permanent installation of HVAC equipment, louvers or vents if the proposal meets the following criteria:

(a) the window is not a special window as defined in Chapter 3, Appendix C of these rules except for segmental or curved head windows which do not possess any other characteristics of a special window; and

(b) the proposal involves removing the glazing from all or part of the sash, or removing the window sash and retaining the window frame; and

(c) the location of the unit forms part of a regular pattern of installations in window bays on the facade; and

(d) the louver or vent will be mounted flush with the sash directly behind the sash; and

(e) the louver or vent will be finished to blend into the fenestration pattern; and

(f) no significant architectural feature of the building will be affected by the installation.

(ii) Installations of HVAC equipment within window openings on secondary facades in individual landmarks and buildings within historic districts. A PMW or CNE will be issued for the installation of HVAC equipment if the proposal meets the following criteria:

(A) the unit will be installed within an existing opening; and

(B) the window is not a special window as defined in Chapter 3, Appendix C of these rules except for segmental or curved head windows which do not possess any other characteristics of a special window; and

(C) the louver or vent will be finished to blend into the fenestration pattern; and

(D) no significant architectural feature of the building will be affected by the installation.

(d) **Installations of through-wall HVAC equipment.** (1) Through-wall installation of HVAC equipment on primary masonry facades.

(i) **Individual landmarks.** Proposals for installations on primary facades must be reviewed for a COFA.

(ii) **Buildings within Historic Districts.**

(A) Residential buildings, including buildings originally designed as residences which were subsequently converted to other uses:

(a) **Rowhouses, detached houses, carriage houses, small apartment buildings, tenements, and hotels.** In buildings originally constructed as private residences or carriage houses, as well as small apartment houses and other types of multiple dwellings which are six stories or less in height and with a street frontage of forty (40) feet or less, the small scale, limited areas of plain masonry and potential for affecting the significant architectural and historic character of the buildings require that proposals for installations on primary facades be reviewed for a COFA.

(b) **Large apartment buildings and hotels.** In large apartment buildings, hotels and other types of multiple dwellings which either have a street frontage of forty-one (41) feet or greater or which are seven or more stories in height, a PMW or CNE may be issued for installation of through-wall HVAC equipment if the proposal meets the following criteria:

(1) the proposed installation will be centered beneath the window opening, or, if the window opening is wide enough to accommodate more than one set of sashes, is placed to conform to the predominant existing pattern of installations; and

(2) the exterior grille will be a rimless type architectural grille; and

(3) the exterior grille will be mounted flush with the surrounding masonry; and

(4) the exterior grille will have a painted finish or a factory applied enameled finish which matches the color of the surrounding masonry; and

(5) the proposed location corresponds to an established regular pattern of installations; and

(6) the proposal calls for only the installation of one unit per room except for corner rooms in which the installation of one unit per facade will be permitted; and

(7) no decorative masonry or other significant architectural feature of the building will be affected by the installation.

(B) **Manufacturing and loft buildings.** Because of the architectural character of buildings of these types, installations proposed for primary facades of loft buildings originally designed to serve commercial/retail/warehouse uses, including cast-iron fronted buildings, department stores, and banks, must be reviewed for a COFA.

(C) **Other buildings.** For other buildings that do not fall into any of the previously described categories, the finding of appropriateness of through-wall HVAC installations on primary facades will be made on a case-by-case basis. Variations in design of these specialized buildings preclude the applicability of rules. Such specialized building types include churches and synagogues, hospitals, schools, and libraries.

(2) **Installations of through-wall HVAC equipment on visible secondary masonry facades.** A PMW or CNE may be issued for installation of through-wall HVAC equipment on a secondary facade of an individual landmark or of a building within an historic district if the proposal meets the following criteria:

(i) the unit will be (A) centered beneath or above a window opening if the vent or louver exceeds 144 square inches in surface area, or (B) installed below, above, or to the side of a window opening if the vent or louver is 144 square inches or less in surface area; or (C) installed in a uniform pattern on portions of secondary facades devoid of windows (variations from the predominant existing pattern on the building may be permitted if the applicant does not have interior space which would permit such installation in conformance with such pattern); and

(ii) the exterior grille will be mounted flush with the exterior wall except that if the vent or unit is 25 square inches or less in surface area, a projection forward of not more than 5 inches may be permitted if the projection does not have an adverse effect on the secondary facade; and

(iii) the exterior grille will be finished in a manner which approximates the color of the surrounding masonry; and

(iv) no decorative masonry or other significant architectural feature of the building will be affected by the installation.

(3) **Installation of HVAC equipment on non-visible secondary masonry facades.** A PMW or CNE may be issued for installation of through wall HVAC equipment on a secondary facade if the proposal meets the following criteria:

(i) the installation will not be visible from any public thoroughfare; and

(ii) the grille will be set flush with the masonry wall except that if the vent or unit is 25 square inches or less in surface area, a projection forward of not more than 5 inches may be permitted if the projection does not have an adverse effect on the secondary facade; and

(iii) no decorative masonry or other significant architectural feature of the building will be affected by the installation.

(4) A Certificate of Appropriateness is required for installation of through-wall HVAC equipment on facades made of materials other than masonry.

(e) **Installation of HVAC equipment in yards and areaways of landmarks and buildings in historic districts.** (1) A PMW or CNE may be issued for the installation of HVAC equipment in a location in the side or rear yard if the proposal meets the following criteria:

(i) the installation will not be visible from any public thoroughfare; and

(ii) the installation will not affect any significant architectural feature of the landmark or of a building in an historic district.

(2) Proposals for installations of HVAC equipment in front yards or in a location in a side or rear yard which is visible from a public thoroughfare require review for a COFA.

(f) **Master plans.** (1) A master plan for the installation of HVAC equipment over a period of time can be approved under a PMW if the plan is in conformance with these rules. After the permit is issued, proposed installations will require applications requesting an Authorization to Proceed (ATP).

(2) The master plan shall set forth standards for future changes and shall specifically identify such standards by drawings, including large scale details of installation specifications, specific unit locations and installation types.

HISTORICAL NOTE

Section amended City Record July 14, 1997 eff. Aug. 13, 1997. [See Note 1]

Section repealed and added City Record June 30, 1994 eff. July 30, 1994.

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record July 14, 1997:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work on landmarks and buildings in historic districts and to permit Commission staff to issue permits for heating, ventilation, and air conditioning work that is in accordance with the proposed rules.

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63 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-12 Rules for Installation of Awnings.

(a) **Introduction.** These rules are issued to assist building owners in applying to the Landmarks Preservation Commission ("Commission") for approval to install or repair awnings. The rules set forth Commission policy with respect to such installation and repair and explain the procedures and criteria required to apply for and receive a permit from the staff of the Commission. The goal of these rules is to facilitate the approval of appropriate awnings for designated buildings. Certain awning repairs and installations can be approved at staff level in conformance with the procedures and criteria set forth in these rules. Proposed installations or alterations that do not conform to these rules require a certificate of appropriateness review by the full Commission in accordance with the procedures and criteria set forth in §§25-305, 25-307 and 25-308 of the New York City Administrative Code.

These rules are based on the following principles:

(1) Awnings were historically employed for weather protection above residential windows and doors and for advertising as well as weather protection above storefronts.

(2) The location of awnings historically corresponded to the size and shape of the openings they covered, and awnings were installed directly above the wall openings they covered.

(3) Removal or damage of any significant feature is to be avoided in connection with the installation of awnings.

Applicants are encouraged to submit applications for master plans, pursuant to §2-02 of Title 63 of these Rules, for commercial portions of buildings with multiple storefronts or for residential buildings, which will permit the installation of awnings over a period of time in a single building or building complex.

(b) **Definitions.** As used in these Rules, the following terms shall have the following meanings:

Awning. "Awning" shall mean a metal frame clad with fabric attached over a window, door, porch opening or storefront to provide protection from the weather.

Facade. "Facade" shall mean an entire exterior face of a building.

Fixed awning. "Fixed awning" shall mean an awning with a nonretractable metal frame clad with fabric.

Historic fabric. "Historic fabric" shall mean a building's original or significant historic facade construction material or ornament, or fragments thereof.

Landmarks Law. "Landmarks Law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

Lintel. "Lintel" shall mean the horizontal member or element above a door or window opening.

LPC staff. "LPC staff" shall mean the staff of the Landmarks Preservation Commission acting in the Commission's agency capacity.

Primary facade. "Primary facade" shall mean a facade facing a street or a public thoroughfare that is not necessarily a municipally dedicated space, such as a mews or court.

Residential awning. "Residential awning" shall mean any awning on a residential building and any awning on a commercial or mixed-use building except for storefront awnings.

Retractable awning. "Retractable awning" shall mean an awning attached to a frame which allows it to be extended out or folded or rolled back tight against the building facade.

Significant feature. "Significant feature" shall mean an exterior architectural component of a building that contributes to its special historic, cultural, and/or aesthetic character, or in the case of an historic district, that reinforces the special characteristics for which the historic district was designated.

Skirt. "Skirt" shall mean a bottom finishing piece of fabric that hangs from the lower edge of an awning.

Storefront. "Storefront" shall mean the first story area of the facade that provides access or natural illumination into a space used for retail or other commercial purposes.

Storefront opening. "Storefront opening" shall mean the first story area of the facade that is framed by piers or walls on the sides and a lintel or arch above, and that contains a storefront.

Transom. "Transom" shall mean the glazed area above a display window or door separated from the main window area or door by a transom bar.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Routine maintenance.** A permit is not required to undertake the following types of ordinary repair and maintenance work:

(1) Seasonal removal and installation of LPC approved window awnings.

(2) Fabric patching in a matching material.

(3) Minor repairs or adjustments to the rolling or folding arm mechanism of an awning's frame.

(4) Cleaning of awning material.

Ordinary repair and maintenance does not include replacement of, or repairs to, significantly damaged or deteriorated awning frames and armatures.

(d) **Recladding and retention of existing awnings.**

(1) LPC staff shall issue a certificate of no effect or a permit for minor work for recladding of existing awnings if the proposed recladding meets both of the following criteria: (i) The awning to be reclad was present at the time of designation or was previously approved by an LPC permit; and

(ii) The existing frame will be reclad in a material and finish that conforms to the criteria set forth in §2-12(e)(7)-(9) or 2-12(f)(9)-(11) of these rules.

(2) In the event a new storefront is being installed, an existing storefront awning in noncompliance with the criteria set forth in subsection (f) below cannot be retained unless the applicant can demonstrate to LPC staff that the new storefront installation will not require even the temporary removal of the existing awning or awnings.

(e) **Installation of new awnings on residential windows, doors and porches.** LPC staff shall issue a certificate of no effect or a permit for minor work for new awnings on residential windows, doors and porches if the proposed awning meets all of the following criteria applicable for such installation:

(1) Awnings installed on residential windows, doors and porches shall be retractable awnings.

(2) Awnings shall be installed at or below the lintel and shall conform to the size and shape of the window or door opening.

(3) The attachment of the awning will not cause the loss of, damage to, or hide or obscure any significant feature.

(4) Awnings shall project at an angle and be of a length, size and slope which are proportional to the size and height of the window or door.

(5) Awnings at terraces and architectural setbacks may extend over more than one opening, so long as the overall length of the awning is proportional to the size and length of the terrace or setback and the depth does not exceed the depth of the terrace or setback.

(6) Awnings on porches shall conform to the bay structure and proportions of the porch.

(7) All awnings on a residential building or on the residential portions of a mixed-use building must match in terms of fabric color and pattern if installed on primary or visible secondary facades.

(8) Awnings shall be clad only with water repellant canvas with a matte finish or other fabric of a similar appearance.

(9) Awning fabric shall consist of a solid color or vertical stripes that harmonize with the historic color palette of the building. No lettering or signage is permitted on residential awnings except for an address number on an awning over an entrance, and the numbers of such address shall be no greater than six inches in height.

(f) **Installation of new awnings on storefronts.** LPC staff shall issue a certificate of no effect or a permit for

minor work for new awnings on ground story storefronts, display windows and doorways if the proposed work meets all of the following criteria applicable for such installation:

(1) The awning must be retractable on Individual Landmarks, on storefront restorations approved by a restorative certificate of no effect (Title 63 §2-17(c)), and on buildings which were designed with integral retractable awning housings as part of the storefronts. In all other cases, the awning may be either retractable or fixed. If fixed, the awning shall have a straight slope and be open at the sides. If retractable, the awning shall have a straight or curved slope and may or may not have side panels. Retractable awnings may follow the curved configuration of the window or door openings over which they are installed. If a display window or doorway opening has an arched or segmental head, the awning must be retractable if it is installed at the head of the window, but may be fixed if it is installed at the rectilinear transom bar. Both retractable and fixed awnings may or may not have a skirt. Awning skirts must be unframed. The skirt height shall be proportional to the height and size of the awning.

(2) The attachment of the awning will not cause the loss of, damage to, or hide or obscure any significant feature.

(3) The awning shall be installed at or directly below the lintel or transom bar, except that the awning may be attached up to eight inches above the lintel where:

(i) a roll-down security gate that either was present at the time of designation or was previously approved by the Commission makes it impossible to install the awning at the lintel or transom bar; or

(ii) installing the awning at the lintel or transom bar will result in the lowest framed portion of the awning being less than eight feet above the sidewalk.

Where the awning is installed above the lintel, the awning encroachment above the lintel shall be the minimum required to accommodate the conditions described above in subparagraphs (i) and (ii) and in no instance shall exceed eight inches.

(4) In cases where the storefront itself projects from the facade, the awning must be attached to the projecting storefront below the storefront cornice or cap.

(5) The length of the awning shall not exceed the length of the storefront opening or the associated window opening, and the edges of the awning shall be aligned as closely as possible with the inside face of the principal piers of the storefront, or the window opening.

(6) The underside of the awning shall be open.

(7) The lowest framed portion of the awning shall be at least 8 feet above the sidewalk. The lowest unframed portion shall be at least 7 feet above the sidewalk.

(8) The awning shall project at an angle and be of a length, size and slope which are proportional to the size and height of the window or door.

(9) The awning shall be clad only with water repellant canvas with a matte finish or other fabric of a similar appearance.

(10) Signs, such as lettering or graphics, are permitted to be painted on the awning skirt only; no lettering or graphics shall be permitted on the sloped portion of the awning. The size of lettering shall be proportional to the height of the awning skirt.

(11) Awning fabric shall consist of a solid color or vertical stripes that harmonize with the historic color palette of the building.

(g) **Applicability.** The provisions of this section shall not apply to proposals to install awnings:

(1) On buildings subject to a building or district master plan, or other special rule approved by the Commission, governing the installation and characteristics of an awning; and

(2) On buildings, including historic modifications thereof, that did not originally or historically have awnings, including without limitation thereof public and institutional buildings such as houses of worship, schools, post offices and fire houses. Where the LPC staff reasonably believes that a building did not originally or historically have an awning, the LPC staff shall, at the applicant's request, calendar the proposal for a certificate of appropriateness public hearing. The applicant may request a meeting with the Director of Preservation or, in his or her absence, the Deputy Director, to discuss the LPC staff's interpretation of these rules.

HISTORICAL NOTE

Section repealed and added City Record Mar. 26, 1999 eff. Apr. 25, 1999. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 26, 1999:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rule is to assist the public in applying to the Landmarks Preservation Commission for approval of awnings on landmarks and buildings in historic districts and to permit Commission staff to issue permits for work that is in accordance with the rule.

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§2-13 Removal of Fire Escapes.

The following will clarify instances in which staff may issue a Certificate of No Effect (CNE) for the removal of fire escapes from designated buildings.

The removal of a fire escape requires either a CNE or a Certificate of Appropriateness (C of A). If the fire escape is a significant protected feature, then a C of A is required to approve its removal. However, staff may issue a CNE for a fire escape removal if it determines:

(a) that the fire escape is not a significant protected feature on the building based on the finding that:

(1) the fire escape is not original to the building, and

(2) the fire escape does not have architectural merit in itself, and

(3) the fire escape is not mentioned in the LPC designation report, and

(4) the building with the fire escape is not located within an historic district in which fire escapes are significant architectural elements that contribute to the special architectural and historic character for which that historic district was designated.

(b) That any damage to the facade will be repaired to match the adjacent fabric (patching any holes would be invisible enough to have "no effect" on the significant protected feature of the building);

(c) that the removal of the fire escape will not leave gaps, holes, or unsightly conditions on the facade. Occasionally, the installation of a fire escape requires the removal of architectural elements or portions of architectural elements (e.g. cornices). If the applicant is not prepared to remedy these conditions in connection with the removal of the fire escape, staff will have to make a judgment as to whether or not it would be desirable to allow the removal. If the applicant is willing to make restorative repairs, staff will have to decide whether these would require a Permit for Minor Work (PMW) or a C of A. It would be inappropriate to include these restorative repairs on a CNE since obviously they would have an effect on the significant protected features of the building. If the level of restoration requires a C of A, a CNE should not be issued for the removal, but rather the removal should be calendared for a public hearing with the restoration.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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§2-14 Sandstone Restoration and Replacement.

The staff may issue a Permit for Minor Work for the restoration or replacement of sandstone/ brownstone elements and the following guidelines should be used in evaluating such proposals.

(a) For buildings that have especially fine ornament or distinctive or unique carvings where damage is minimal, the staff may issue a Permit for Minor Work for an application to consolidate the original significant fabric.

(b) For buildings where the decorative features are simple, not necessarily unique, stoops with damage to the treads or other kinds of damage to the facade, the staff may issue a Permit for Minor Work for an application to remove the original sandstone surfaces and replace them with a cementitious mix. In reviewing the application, the staff should find that:

(1) documentation or site inspection reveals that the existing brownstone surface is exfoliating, damaged or otherwise unsound;

(2) the proposal calls for the replication of the original texture, color, profiles and details;

(3) the proposal calls for damaged stone to be cut back to sound stone and the new surface be keyed into the sound stone and built up in successive layers using a cementitious mix with the top layer tinted and finished to match the

original sandstone texture and color. In some cases a sample patch should be requested for inspection and approval. The use of wire lath is never acceptable;

(4) the methods and materials proposed by contractors have been provided in the form of specifications, copies of contracts, or written in a letter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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§2-15 New Window Openings.

Staff is authorized to issue a Certificate of No Effect for new window openings and sash when the following conditions are met:

(a) Visible window openings on secondary facades:

(1) the new window opening(s) and sash retain the same general shape and pattern as existing windows on the same facade, or, where there are no existing window openings, the new window opening will be located in a place and be of a size and shape where it can form the basis for a regular and consistent pattern, and the new sash does not detract from the sash on the primary facade;

(2) the location of new window openings is consistent and regular; and

(3) new window opening and sash do not detract from the significant architectural features of the building or adjacent buildings by virtue of their proximity to such features.

(b) For nonvisible or minimally visible window openings on secondary facades:

(1) the proposed window opening does not alter or destroy other protected features, nor does the proposed window opening or sash detract from such protected features by their proximity to such features.

(2) For purposes of this subsection (b), a new window opening shall mean (i) a window opening where none previously existed or (ii) a combination of two or more horizontally adjacent windows, provided such adjacent windows are, or will be once all of the approved work is complete, located in the same room. In addition to being combined, such horizontally adjacent windows may be enlarged in height by up to 10 percent of the height of the largest existing window opening being combined.

(3) For purposes of §2-15(b), the term "minimally visible" shall mean that the proposed window opening and sash are only partially visible from a public thoroughfare and that the window opening and sash are visible from such an angle and/or such a distance that they do not call attention to themselves and do not detract from the significant architectural features of the building or historic district.

(c) For purposes of this §2-15, the term "secondary facade" shall mean a facade that does not face a public thoroughfare or mews or court and that does not possess significant architectural features.

HISTORICAL NOTE

Section repealed and added City Record Jan. 5, 2000 §1, eff. Feb. 4, 2000. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Jan. 5, 2000:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310.

The purpose of the adopted rules is to amend §§2-15, 3-01, 3-02 and 3-04 of title 63 of the Rules of the City of New York to allow the staff to issue certificates of no effect and permits for minor work for certain changes to existing window openings on secondary facades and the installation of new window sash and frames.

These amendments were included in the Regulatory Agenda.

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§2-16 Rear Yard Additions or Enlargements.

Standards for issuing staff level Certificates of No Effect (CNE) for rear yard additions or enlargements:

(a) Application is not for an addition that would extend to the rear lot line or substantially eliminate the presence of a rear yard.

(b) Rear of building has no significant architectural features which would be lost or damaged as a result of the construction of the addition.

(c) Proposed addition is not visible from a public thoroughfare or right of way.

(d) Other rear yard incursions exist within the block (in the case of buildings in Historic Districts).

(e) In the case of a rowhouse, the rear of the building (or buildings) involved retains the scale and character of an individual rowhouse.

(f) Proposed work complies with the Zoning Resolution and will not require special permit for a variance.

(g) In buildings with rear cornices, corbeled brickwork on the parapet, or other distinctive roof silhouettes, the rear addition does not rise to the full height of the building.

(h) The rear facade will not be removed from the entire width of the building, instead, existing openings are being modified to provide access into the addition. This approach retains original fabric and lessens structural intervention.

If all the above standards are met, a CNE may be issued; otherwise, consult with the Director of Preservation. Calendaring for a Certificate of Appropriateness public hearing may be required.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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§2-17 Restoration of a Building and Building Facade Features.

(a) **Introduction.** These rules are issued to assist building owners in applying to the Landmarks Preservation Commission for approval of applications to undertake the restoration of a building element or group of building elements on a designated property. The rules set out Commission policy with respect to such work. The goal of these rules is to facilitate and expedite the approval of restoration work proposed for designated properties. Proposed restoration work that does not conform to these rules requires a Certificate of Appropriateness review by the full Commission in accordance with the Landmarks Law.

(b) **Definitions.** As used in these Rules, the following terms have the following meanings:

"Facade" shall mean an entire exterior face of a building.

"Historic appearance" shall mean the visual appearance of a structure or site at a specific point in time after it has undergone alterations or additions which enhance or contribute to the building or site's special architectural, aesthetic, cultural or historic character.

"Historic fabric" shall mean a building's original or significant historic facade construction material or ornament, or fragments thereof.

"Landmarks Law" shall refer to Section 3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

"LPC staff" shall mean the staff of the Landmarks Preservation Commission acting in the Commission's agency capacity.

"Original appearance" shall mean the visual appearance of a structure or site at approximately the time of its completed initial construction.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Restoration work.** The LPC staff will issue a Certificate of No Effect or a Permit for Minor Work for the restoration of building facade(s) or individual facade element(s) (including but not limited to roofs and cornices, stoops, storefronts, window and door openings, window and door enframements, ironwork, porches and siding) to their original or historic appearance if the staff determines that the proposed restorative work satisfies the following conditions:

(1) The basis for the design of the proposed restoration's authenticity is documented by:

(i) photographic evidence, or

(ii) physical evidence on the building, or

(iii) original or historic drawings or documents, or

(iv) matching buildings.

If there is no available documentary evidence as set forth in subsections (i)-(iv) and the applicant certifies that he or she (or a designated representative) has searched for historic drawings, documents or photographs at the resources listed in Appendix A of Chapter 2, the design may be based on that found in buildings of similar age and style that contain stylistic elements that follow a set pattern or type.

(2) The restoration would not cause the removal of significant historic fabric (such as Victorian period features on an earlier structure) that may have been added over time and that are evidence of the history and development of a building, structure, or site.

HISTORICAL NOTE

Section repealed and added City Record July 14, 1997 eff. Aug. 13, 1997. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record July 14, 1997:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to assist the public in applying to the Landmarks Preservation Commission for approval of restoration work on landmarks and buildings in historic districts and to permit Commission staff to issue permits for

work that is in accordance with the proposed rules.

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§2-18 Temporary Installations.

Staff of the Landmarks Preservation Commission is authorized to issue a Certificate of No Effect (CNE) for proposals calling for the temporary installation of signs, banners or other temporary installations such as various forms of artwork or kiosks, if the following criteria are met:

(a) "Temporary Installation" is defined as an installation for sixty (60) days or less for signs and banners or one (1) calendar year or less for other temporary installations. The duration of any temporary installation authorized under this rule shall be specified in the CNE and shall be for a single period not to exceed sixty days for signs and banners or one year for other temporary installations; and

(b) the installation will cause no damage to protected architectural features of the property; and

(c) an acceptable plan and time schedule for the dismantling of the property has been submitted to the Commission as a component of the application. In the case of artwork, the applicant is also required to submit a written instrument signed by the artist and the building owner that evidences the owner's authority to remove the artwork when the temporary installation permit expires and that waives any protection under applicable federal or state law afforded to the artist or artwork that would prevent such removal at the expiration of the temporary permit, including but not limited to, the Visual Artists Rights Act of 1990, 17 U.S.C. 101 et seq. and Article 14 of the New York State Law on Arts and Cultural Affairs; and

(d) if the applicant is not a public or quasi-public agency, an escrow agreement or other adequate assurance acceptable to the Commission is provided to establish that a mechanism is available for the removal of the installation upon expiration of the permit should the applicant fail to remove the installation.

HISTORICAL NOTE

Section amended City Record Dec. 24, 1997 eff. Jan. 23, 1998. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 24, 1997:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the amended rule is to assist the public in applying to the Landmarks Preservation Commission for approval of temporary installations on landmarks and in historic districts and to permit Commission staff to issue permits for certain temporary installations in accordance with the amended rules.

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§2-19 Proposed Construction of Rooftop Additions.

(a) **Definitions.** As used in this section, the following terms shall have the following meanings:

Demolition. "Demolition" shall mean dismantling or razing of all or part of an existing improvement.

Improvement. "Improvement" shall mean any building, structure, place, work of art or other object constituting a physical betterment of real property, or any part of such betterment.

Landmarks Law. "Landmarks Law" shall refer to New York City Charter §3020 and chapter 3 of title 25 of the Administrative Code of the City of New York.

Landmarks Preservation Commission. "Landmarks Preservation Commission" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Mechanical equipment. "Mechanical Equipment" shall include, but not be limited to, heating, venting and air conditioning equipment, watertanks and their supporting structures, satellite dishes, stair and elevator bulkheads, screens, dunnages, baffles and other accessory installations but shall not include telecommunication equipment and conventional television antennas. For the purpose of this rule, mechanical equipment shall also include unenclosed decks, garden trellises, or associated railings.

Minimally visible. "Minimally visible" shall refer to any rooftop addition which when viewed from any public thoroughfare, projects into the maximum line of sight from such public thoroughfare by not more than 12 inches in height, or, due to its placement and size does not call attention to itself nor detract from any significant architectural features.

Occupiable space. "Occupiable space" shall mean a room or enclosure and accessory installations thereof, which are intended for human occupancy or habitation.

Permit. "Permit" shall mean any permit other than a notice to proceed issued by the Landmarks Preservation Commission in accordance with the Landmarks Law:

(a) "PMW" shall mean Permit for Minor Work as defined by §25-310 of the Landmarks Law.

(b) "CNE" shall mean Certificate of No Effect as defined by §25-306 of the Landmarks Law.

(c) "CofA" shall mean Certificate of Appropriateness as defined by §25-307 of the Landmarks Law.

Public thoroughfare. "Public thoroughfare" shall mean any publicly accessible right of way including, but not limited to a street, sidewalk, public park, and path.

Rooftop addition. "Rooftop addition" shall mean a construction or an installation of mechanical equipment and/or occupiable space situated on any structure's roof.

Significant architectural feature. "Significant architectural feature" shall mean an architectural component of a building that contributes to its special historic, cultural and aesthetic character, or that in the case of an historic district reinforces the special characteristics for which the district was designated.

Terms not otherwise defined in this section shall have the meaning given them in the Landmarks Law.

(b) **Applications for proposed work.** Each application filed with the Landmarks Preservation Commission for proposed construction of a rooftop addition shall be accompanied by:

(1) documentation, including photographs, which accurately depicts the site of a proposed rooftop addition; and

(2) sight line studies for the purpose of determining the visibility of the rooftop addition from a public thoroughfare including the point of maximum visibility (see supplementary instructions for filing for rooftop additions); and

(3) mechanical equipment with respect to any application for rooftop additions for occupiable space, a current objections sheet from the Department of Buildings.

(c) **Mechanical equipment rooftop additions to be constructed on a structure which is an individual landmark.**

(1) The Landmarks Preservation Commission shall issue a CNE for any rooftop addition to be constructed on a structure which is an individual landmark of six stories or less in height which:

(i) consists solely of mechanical equipment; and

(ii) does not result in damage to, or demolition of, a significant architectural feature of the roof of the structure on which such rooftop addition is to be constructed; and

(iii) is not visible from a public thoroughfare.

(2) The Landmarks Preservation Commission shall issue a CNE for any rooftop addition to be constructed on a structure which is an individual landmark of seven stories or greater in height which:

(i) consists solely of mechanical equipment; and

(ii) does not result in damage to, or demolition of, a significant architectural feature of the roof of the structure on which such rooftop addition is to be constructed; and

(iii) is either not visible from a public thoroughfare or is only minimally visible from a public thoroughfare.

(d) **Occupiable space rooftop additions to be constructed on a structure which is an individual landmark.**

(1) The Landmarks Preservation Commission shall issue a CNE for any rooftop addition to be constructed on a structure which is an individual landmark which:

(i) consists of occupiable space; and

(ii) does not result in damage to, or demolition of, a significant architectural feature of the roof of the structure on which such rooftop addition is to be constructed; and

(iii) is not visible from a public thoroughfare; and

(iv) has no outstanding objection for use or bulk listed on the objections sheet for such structure.

(e) **Rooftop additions to be constructed on any structure within a designated historic district, other than an individual landmark.**

(1) The Landmarks Preservation Commission shall issue a CNE for any rooftop addition to be constructed on any structure within a designated historic district, other than an individual landmark, which:

(i) consists solely of mechanical equipment; and

(ii) does not result in damage to, or demolition of, a significant architectural feature of the roof of the structure on which the rooftop addition or installation is to be constructed; and

(iii) is either not visible from a public thoroughfare or is only minimally visible from a public thoroughfare.

(iv) does not adversely affect significant architectural features of adjacent improve- ments.

(2) The Landmarks Preservation Commission shall issue a CNE for any rooftop addition to be constructed on any structure within a designated historic district, other than an individual landmark, which:

(i) consists of occupiable space; and

(ii) does not result in any damage to, or demolition of, a significant architectural feature of the roof of the structure on which it is constructed; and

(iii) is not visible from a public thoroughfare; and

(iv) does not adversely affect significant architectural features of adjacent improvements; and

(v) has no outstanding objection for use or bulk listed on the objections sheet for such structure.

(f) The Landmarks Preservation Commission shall consider any application for a proposed rooftop addition that

does not meet the criteria for a CNE set forth above as a request for a CofA and shall hold a public hearing on such application.

(g) **Applicability.** (1) This rule shall not be construed to apply to telecommunications equipment or conventional television antennas.

(h) **Application Procedure.** (1) All applications received by the Landmarks Preservation Commission will be docketed and reviewed for completeness. The applicant will be notified if additional documentation is required.

(2) When the application is complete, a staff member will review the application for conformance with these rules. Upon determination that the criteria of the rules have been met, a CNE will be issued.

(3) If the criteria for a CNE have not been met, the applicant will be given the opportunity to pursue a Certificate of Appropriateness and may request a meeting with the director of preservation to discuss the interpretation of the rules. The applicant may also request a meeting and review by the chair of the commission.

(4) The decision of whether to approve an application for a Certificate of Appropriateness is made by an affirmative vote of at least six commissioners following a public hearing.

HISTORICAL NOTE

Section amended City Record Dec. 24, 1997 eff. Jan. 23, 1998. [See Note 1]

Section added City Record Aug. 27, 1993 eff. Sept. 26, 1993.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 24, 1997:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to assist the public in applying to the Landmarks Preservation Commission for approval of proposed rooftop additions on landmarks and buildings in historic districts and to permit Commission staff to issue permits for certain rooftop additions in accordance with the amended rules.

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§2-20 Bracket Signs in the Tribeca East, Tribeca West, Tribeca North, Tribeca South, SoHo Cast-Iron, NoHo, and Ladies' Mile Historic Districts.

(a) **Introduction.** The large commercial buildings that substantially define the character of the Tribeca East, Tribeca West, Tribeca North, Tribeca South, SoHo Cast-Iron, NoHo, and Ladies' Mile Historic Districts historically had a wide variety of signage, including rigid projecting signs. These signs, known as "bracket signs" extended out perpendicularly from the building face and typically had signage on both sides of the sign.

(b) **Definitions.** As used in this §2-20, the following words shall have the following meanings:

Armature. "Armature" shall mean a metal structural support for a rigid projecting sign. The armature may support the bracket sign by means of one or two projecting arms.

Bracket Sign. "Bracket Sign" shall mean a rigid outdoor sign, with two display faces, installed perpendicular to a building facade and hanging from an armature, used as an announcement for an establishment in the building, consisting of the rigid display faces and all letters, words, numerals, illustrations, decorations, trade marks, emblems, symbols or their figures or characters associated with the name of the establishment that are applied to the faces. In addition, a bracket sign may consist solely of an outline of a shape and/or letters intended to act as a symbol or sign for the establishment.

CNE. "CNE" shall mean a Certificate of No Effect as defined by §25-306 of the New York City Administrative Code.

Establishment. "Establishment" shall mean a manufacturing, commercial or retail business or profession.

Facade. "Facade" shall mean an entire exterior face of a building.

LPC. "LPC" shall mean the Landmarks Preservation Commission.

LPC staff "LPC staff" shall mean the staff of the Landmarks Preservation Commission acting in the Commission's agency capacity.

(c) **Installation of bracket signs.** The LPC staff shall issue a CNE for a bracket sign if the proposed work meets all of the following criteria:

(1) The armature shall be installed below the second story within the storefront opening or on the flat face of a plain masonry pier and shall be mechanically fastened into the storefront infill or into the mortar joints of a plain masonry pier, and such installation shall neither damage nor conceal any significant architectural features of the building.

(2) The armature shall be a dark finished metal and shall be simply designed.

(3) The display faces of the bracket sign may be made of wood or metal. If the bracket sign has display faces, the letters, words, numerals, illustrations or graphics, etc. may be painted or applied onto the display faces, and may be raised slightly from the surface. The overall width, as measured from face to face, shall not exceed 2 inches, and, if there are raised letters, illustrations, etc. the bracket sign shall not exceed a width of three inches as measured from the outside plane of such raised letters or illustrations. The display faces and the letters, words, numerals, illustrations or graphics, etc. shall be of a color or colors that do not detract from the significant architectural features of the building or neighboring buildings. No neon or other vividly bright colors shall be permitted.

(4) The bracket sign shall not be internally illuminated, nor shall such sign have neon or L.E.D. (Light Emitting Diode) lighting of any kind, nor shall any lighting fixture or mechanism be attached to the armature.

(5) The bracket sign may be fixed or may move freely from its points of attachment to the armature, but in no event shall the bracket sign be made to move by mechanized or controlled means.

(6) Number of bracket signs for ground floor establishments.

(i) Except for signs subject to subparagraph (iii) below, one bracket sign per ground floor establishment shall be permitted.

(ii) In buildings with more than one ground floor establishment, one sign per establishment may be installed, provided that there is no more than one sign per 25 feet of building facade fronting on a street, and further provided that the size, design, placement, materials and details of all of the armatures match. The placement of the bracket sign on the building shall be in close proximity to the establishment that is identified on the bracket sign.

(iii) A ground floor establishment with a corner storefront may have one bracket sign on each building facade with at least 25 feet of street frontage, provided that each facade has a primary entrance and each bracket sign is located in close proximity to an entrance, but in no event shall more than one bracket sign be located within 20 feet of the corner of the building.

(7) Bracket signs for upper story establishments. A single armature for a bracket sign for an upper story establishment or establishments may be installed adjacent to the building entrance for such upper story establishments.

This armature may hold one sign for each upper story establishment, provided such signs hang vertically underneath one another on the same armature, and further provided that in no event shall the total dimensions of such signs, taken together, exceed the size requirements specified in paragraph (8) below.

(8) The size of the bracket sign shall conform to the requirements of the Zoning Resolution, but in no event shall the size exceed 24 inches by 36 inches, oriented horizontally or vertically. Novelty shapes, such as circles, polygons and irregular shapes, may be permitted provided such shapes fall within the above dimensions.

(9) The projection of the bracket sign and armature beyond the property line shall conform to the requirements of the Zoning Resolution and Building Code, but in no event shall extend more than 40 inches from the facade.

(10) The bracket sign shall be installed so that the lowest portion of the sign is at least ten (10) feet above the sidewalk.

(11) The establishment seeking approval for a bracket sign shall not, for the same building, already be utilizing an LPC-approved, grandfathered or unapproved flagpole and banner, nor shall it have approval from the LPC for installing a new flagpole and banner on the same building.

(12) In approving an application for a bracket sign, the staff shall consider the overall amount of staff and Commission approved signage for the storefront. If the staff determines that the overall amount of signage with the proposed bracket sign is excessive and will detract from the architectural features of the building, the staff shall require that other types of existing or proposed staff approved or approvable signage, including but not limited to signs on awning skirts and signage applied to the storefront glazing, be eliminated or reduced.

(13) The application is to install the bracket sign on a building designed as a commercial or loft building and zoned for commercial use and located within the Tribeca East, Tribeca West, Tribeca North, Tribeca South, SoHo Cast-Iron, NoHo, and Ladies' Mile Historic Districts.

HISTORICAL NOTE

Section added City Record May 23, 2001 eff. June 22, 2001. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 23, 2001:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and §25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The purpose of these rules is to assist the public in applying to the Landmarks Preservation Commission for approval of bracket signs on landmarks and buildings in historic districts and to permit Commission staff to issue permits for work that is in accordance with these rules.

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***** Current through December 2009 ****

63 RCNY 2-21

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-21 Rules Relating to Installation of Public Pay Telephones.

(a) **Introduction.** Public pay telephones have been part of the city's street scape for half a century. First introduced in the 1950s pursuant to a franchise agreement with the city, legally permitted public pay telephones contribute to the urban experience as well as provide an important communication link for business, pleasure and public health and safety. These public pay telephones have traditionally had a quiet presence on the street scape that allowed for their identification without calling undue attention to themselves. The provisions set forth below are intended to ensure that public pay telephones installed in areas under the jurisdiction of the Landmarks Preservation Commission are installed in a manner that does not damage or destroy historic fabric and that the design and placement of such phones shall not call undue attention to themselves or detract from the significant architectural features of an improvement or a historic district or adversely affect a historic district's distinct sense of place.

(b) **Definitions.** As used in this section, the following terms shall have the following meanings:

(1) "Curbfront" shall mean the sidewalk curb that divides the sidewalk from the roadway.

(2) "Public pay telephone" or "PPT" shall be defined by §23-401(f) of the Administrative Code of the City of New York.

(3) "PPT Enclosure" shall be defined as any associated housing or enclosure that partially or fully surrounds a PPT,

and including an associated pedestal, which has been approved by the Art Commission.

(4) "PPT Franchise Agreement" shall mean a franchise granted by the City pursuant to the revised solicitation issued by the Department of Information Technology and Telecommunications ("DoITT") on June 9, 1997 pursuant to Resolution No. 2248 or any subsequent solicitation with a similar purpose whether or not such subsequent solicitation includes all or part of the components of the June 9, 1997 solicitation.

(c) **Approval of PPT Enclosure Design and Installation.**

(1) No application to the Commission, and no certificate, approval, permit or report shall be required for a proposal to install a PPT Enclosure if such proposal meets the following criteria:

(i) The PPT Enclosure is proposed to be installed no farther than 24 inches and no closer than 18 inches of the curbfront in an area zoned for commercial or manufacturing uses pursuant to the New York City Zoning Resolution;

(ii) Each PPT Enclosure shall be designed to be inconspicuous and to not call undue attention to itself, and shall have an exterior dimension no greater than 35" wide × 44" long × 90" high. A maximum of two PPTs may be installed in-line together, but in such instance the enclosure shall be no grerater than 35" wide × 88" long × 90" high. The height limitation shall include the height of a mast if one is installed. The PPT Enclosure may have clear glazing panels and shall be rectilinear if the PPT Enclosure is designed to have advertising panels;

(iii) The PPT Enclosure shall not be installed in or on, or in the mortar joints between, bluestone, granite, slate or brick paving material, nor shall such paving material be disturbed in any manner in connection with the installation of the PPT;

(iv) The PPT Enclosure shall not be installed in front of an improvement designated as a landmark;

(v) The telephone and power lines to and from such PPT Enclosure, or any conduit containing such lines, shall not be visible;

(vi) The nonglazed portion of the PPT Enclosure shall be a dark brown, dark green, black or dark grey color, or is uncolored stainless steel or clear-finished aluminum. If the PPT Enclosure is less than 15 inches by 36 inches, all portions of the PPT Enclosure shall be stainless steel or clear-finished aluminum;

(vii) If the PPT Enclosure has advertising panels, the advertising panels shall be limited to two side panels, each of which is not larger than 27" wide × 57" high. There shall be no advertising panel on the rear of the PPT Enclosure facing the street. The advertising panels shall not be illuminated in any fashion. Advertising shall be limited solely to the PPT Enclosure. No advertising shall be permitted on a PPT Enclosure that is smaller than 27" wide × 57" high. No PPT Enclosure shall have any light emitting diode (L.E.D.) lettering, design or advertising. In addition to the above, a PPT Enclosure may identify the name or logo of the owner of the PPT and the fact that it is a public telephone. Where such identification is illuminated, it shall be illuminated internally from behind the lens, be limited to the top two inches of the PPT Enclosure, and may occur on all sides of the PPT Enclosure; and

(viii) The proposed PPT installation meets all applicable terms, conditions and requirements of the PPT Franchise Agreement, and all applicable distance, clearance and other siting requirements set forth in Title 67 of the Rules of the City of New York.

(2)(i) All other proposals to install a PPT Enclosure shall be reviewed and approved by the Landmarks Preservation Commission by a certificate of appropriateness public hearing, report, permit for minor work or certificate of no effect, as appropriate.

(ii) Application Procedures for proposals to install a PPT Enclosure requiring a certificate, permit or report. An

application form shall be filed for each proposed PPT Enclosure. Notwithstanding the requirements of §2-01 of Title 63 of the Rules of the City of New York, the application form for the installation of a PPT Enclosure shall be signed by the person who owns the PPT or the agent or principal of such person, or any other person authorized to apply for a permit to install a PPT pursuant to the PPT Franchise Agreement or Title 67 of the Rules of the City of New York. No advertising shall be permitted on non-curbside PPTs or PPT Enclosure.

(3) Nothing in this rule shall be interpreted to obviate the need to obtain all necessary approvals from the Department of Information Technology and Telecommunications for all installations of PPT Enclosures.

HISTORICAL NOTE

Section added City Record Apr. 21, 2005 eff. May 21, 2005. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 21, 2005:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and improvements located within historic districts. The Commission issues approvals for work on such designated landmarks and within such districts which, following procedures stated in §§25-305, 25-306, 25-307, 25-308, 25-310 and 25-318 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307, 25-310, 25-318.

The purpose of the proposed rule is to set forth the Landmarks Preservation Commission's regulatory policies regarding the installation of public pay telephones.

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***** Current through December 2009 ****

63 RCNY 2-31

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER C EXPEDITED REVIEW OF CERTAIN APPLICATIONS FOR CERTIFICATES OF NO EFFECT

§2-31 Definitions.

As used in these Rules, the following terms shall have the following meanings:

Architect. "Architect" shall mean individual, partnership, corporation or other legal entity licensed to practice the profession of architecture under the education law of the State of New York.

CNE. "CNE" shall mean Certificate of No Effect as defined by §25-306 of the Landmarks Law.

Day. "Day" shall mean any day other than a Saturday or Sunday or legal holiday.

Engineer. "Engineer" shall mean any individual, partnership, corporation or other legal entity licensed to practice the profession of engineering under the education law of the State of New York.

Landmarks Law. "Landmarks Law" shall refer to New York City Charter §3020 and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

Landmarks Preservation Commission. "Landmarks Preservation Commission" shall mean the Commission acting in its agency capacity to implement the Landmarks Law.

Notice of Violation. "Notice of Violation" shall mean a notice from the Landmarks Preservation Commission that

work on a landmark site or within an historic district was performed without a permit or was not performed in accordance with a permit issued by the Landmarks Preservation Commission.

Story. "Story" shall be defined as a habitable floor level, including a basement but not including a cellar.

Terms not otherwise defined in these rules shall have the meaning given them in the Landmarks Law.

HISTORICAL NOTE

Section added City Record Jan. 17, 1992 eff. Feb. 16, 1992.

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63 RCNY 2-32

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER C EXPEDITED REVIEW OF CERTAIN APPLICATIONS FOR CERTIFICATES OF NO EFFECT

§2-32 Expedited Review Procedures.

(a) **General.** An applicant may request that an application for interior work above the second story on any landmark or building within an Historic District, other than an application for interior work on a part of the building which has been designated an interior landmark, be reviewed on an expedited basis. Expedited review is predicated upon the statements and representations of the architect or engineer and the owner and upon the satisfaction of certain terms and conditions, all as set forth in this §2-32.

(b) **Work eligible for expedited review.** Interior work which is to be performed above the second story and which does not involve any change to, replacement of, or penetration of, an exterior wall, window, skylight or roof, including but not limited to penetrations, replacements or changes for ducts, grilles, exhaust intakes, vents or pipes, may qualify for an expedited review.

(c) **Conditions to expedited review.** Each of the following conditions must be satisfied in order to obtain an expedited review:

(1) The work shall be eligible work as described in §2-32(b) above.

(2) The application for which an expedited review is requested shall be accompanied by a completed Landmarks Preservation Commission expedited review form which shall include:

(i) a statement signed and sealed by the architect or engineer that:

(A) the architect or engineer has prepared, or supervised the preparation of, the plans and specifications submitted with the application;

(B) all work shown on such plans and specifications is:

(a) interior work only,

(b) to be performed only above the second story,

(c) not to be performed on any portion of a space designated as an Interior Landmark,

(d) does not involve any change to, replacement of, or penetration of, a window, skylight, exterior wall or roof or any portion thereof;

(e) for floors 3-6 does not involve a dropped ceiling or a partition which is less than a minimum of 1'-0" back from interior window sill or frame whichever is further from the glass.

(C) that where there are associate architects or engineers, that they likewise join in the request for an expedited review of the application;

(D) that the architect or engineer and associate architects or engineers, if any, are aware that the Landmarks Preservation Commission will rely upon the truth and accuracy of the statements contained in the application made by them, and any amendments submitted in connection therewith, as to compliance with the provisions of the Landmarks Law and these rules;

(ii) a sworn statement executed by the owner of the property that:

(A) the proposed work described is of the type described in §2-32(b);

(B) no change to, or modification of, the proposed work shall be undertaken by the owner, his or her architect or engineer or any other agent of the owner without the prior approval of the Landmarks Preservation Commission; and

(C) the necessary remedial measures to obtain compliance will be taken, if the same becomes necessary;

(3) No "Notice of Violation" from the Landmarks Preservation Commission shall be in effect against the property which is the subject of the proposed work for which an expedited review is requested; and

(4) The application is complete in all other respects.

(5) The architect or engineer and associate architects or engineers, if applicable, have not been excluded by:

(i) the Chair of the Landmarks Preservation Commission from the procedures for expedited review pursuant to §2-34 of these rules; or

(ii) the Commissioner of the Department of Buildings from the Department's procedures for limited supervisory check of applications and plans set forth in 1 RCNY §21-02.

(d) **Issuance of permit.** If all conditions to an expedited review have been satisfied, the Landmarks Preservation Commission shall:

(1) issue a CNE to the applicant; and

(2) shall perforate all drawings accompanying such application to indicate approval thereof.

HISTORICAL NOTE

Section added City Record Jan. 17, 1992 eff. Feb. 16, 1992.

Subds. (a), (b) amended City Record Dec. 29, 1993 eff. Jan. 28, 1994.

Subd. (c) par 2 amended City Record Dec. 29, 1993 eff. Jan. 28, 1994.

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CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER C EXPEDITED REVIEW OF CERTAIN APPLICATIONS FOR CERTIFICATES OF NO EFFECT

§2-33 Effect of Failure to Meet Conditions for an Expedited Review.

The Landmarks Preservation Commission shall notify any applicant who has requested an expedited review of his or her application under these rules of the reason for their failure to satisfy the conditions for expedited review.

HISTORICAL NOTE

Section added City Record Jan. 17, 1992 eff. Feb. 16, 1992.

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63 RCNY 2-34

RULES OF THE CITY OF NEW YORK

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CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER C EXPEDITED REVIEW OF CERTAIN APPLICATIONS FOR CERTIFICATES OF NO EFFECT

§2-34 Remedies for False Statements and Procedures for Action.

(a) **Grounds for action.** (1) The Chair of the Landmarks Preservation Commission may exclude any architect or engineer from the procedures for expedited review of applications if the Chair of the Landmarks Preservation Commission finds that:

(i) In connection with the Landmarks Preservation Commission expedited review form described in §2-32(c)(1) of these rules the architect or engineer has:

(A) knowingly or negligently made any false or misleading statement; or

(B) knowingly or negligently omitted a statement or failed to state a material fact; or

(C) knowingly or negligently falsified or allowed to be falsified any fact; or

(D) willfully induced another person to do any of the above; or

(ii) A "Notice of Violation" or "Notice to Stop Work" has been issued by the Landmarks Preservation Commission against work performed pursuant to any plans, prepared by or under the supervision of such architect or engineer, and such architect or engineer knew, or had reason to know, that the work performed pursuant to such application, plan, certification, or report was not carried out in accordance with approved plans or exceeded the scope of such approved

plans and such architect or engineer failed to act to stop such work and/or correct such work.

(2) The powers, rights and remedies of the Landmarks Preservation Commission set forth in this §2-34(a) are non-exclusive and shall not be deemed to limit or supersede any other power, right or remedy of the Landmarks Preservation Commission.

(b) **Procedures.** (1) Written notice of a preliminary determination, together with the basis for such action to exclude from expedited review shall be served on the Architect or Engineer of record pursuant to the provisions of New York State Civil Practice Law and Rules §308.

(2) The Architect or Engineer notified under §2-34(b)(1) shall be entitled to, and scheduled for, a hearing on the preliminary determination in accordance with §2-34(c) if written objection to the preliminary determination and the grounds for such objection are submitted to the Chair of the Landmarks Preservation Commission within fifteen (15) Days after the date that the notice of preliminary determination is served.

(3) If no hearing is requested pursuant to §2-34(b)(2) above, the preliminary determination of the Chair of the Landmarks Preservation Commission shall be deemed confirmed and shall become final and effective on the sixteenth (16) Day after the preliminary notice of determination is served.

(4) If after a hearing in accordance with §2-34(c), the Chair of the Landmarks Preservation Commission confirms the preliminary determination, the Chair shall notify the Architect or Engineer of such decision and such notice shall include a written statement indicating the reason for his or her determination.

(5) On or after the effective date of the final determination to exclude an Architect or Engineer from participation in expedited review procedures all of the plans prepared by or under the supervision of such Architect or Engineer shall be subject to full review by the Landmarks Preservation Commission.

(c) **Hearing.** (1) Any hearing described in §2-34(b)(2) will be held at, and conducted by the Office of Administrative Trials and Hearings in accordance with their rules and procedures.

(2) The Architect or Engineer may be represented by counsel and may present evidence in his or her behalf. A transcribed or tape-recorded record shall be kept of the hearing.

(3) The Chair of the Landmarks Preservation Commission shall notify the respondent of the final determination within ten (10) Days after the receipt of the findings of fact from the Office of Administrative Trials and Hearings on such matters. The determination of the Landmarks Preservation Commission shall be supported by substantial evidence.

(d) **Review of Determination.** At the expiration of two (2) years from the date of the initial determination to exclude an Architect or Engineer from participation in the procedures for expedited review of applications, and at intervals of no more than six months thereafter, upon request of the Architect or Engineer, the Chair of the Landmarks Preservation Commission shall reexamine such determination. If the Architect or Engineer has not committed any of the acts described in clause (2) of §2-34(a) above during such period, the Chair of the Landmarks Preservation Commission may rescind such determination.

HISTORICAL NOTE

Section added City Record Jan. 17, 1992 eff. Feb. 16, 1992.

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Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER C EXPEDITED REVIEW OF CERTAIN APPLICATIONS FOR CERTIFICATES OF NO EFFECT

§2-35 Miscellaneous.

Any application submitted on or after the effective date hereof shall be subject to these Rules.

HISTORICAL NOTE

Section added City Record Jan. 17, 1992 eff. Feb. 16, 1992.

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63 RCNY 2 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

APPENDIX A RESOURCES FOR HISTORIC PHOTOGRAPHS & DRAWINGS

APPENDIX A RESOURCES FOR HISTORIC PHOTOGRAPHS & DRAWINGS

ADDRESS:_____

Borough:_____ Block:_____ Lot:_____

ALL APPLICANTS (OR THEIR DESIGNATED REPRESENTATIVES) MUST CHECK FOR HISTORIC PHOTOGRAPHS & DRAWINGS AT THE MUNICIPAL ARCHIVES, 31 CHAMBERS STREET, SUITE 103, (212) 788-8580.

Date checked _____

IN ADDITION, APPLICANTS MUST CHECK THE OTHER RESOURCES LISTED FOR THE APPLICABLE BOROUGH BELOW:

Brooklyn

Department of Buildings-Municipal Building, 208-42 Joralemon Street, 8th Floor (718) 802-3675

Date checked _____

New York Public Library-5th Avenue & 42nd Street (212) 930-0800

Date checked _____

Brooklyn Historical Society-128 Pierrepont Street (718) 624-0890

Date checked _____

Bronx

Department of Buildings-1932 Arthur Avenue, 8th Floor (718) 579-6982

Date checked _____

New York Historical Society-170 Central Park West, Manhattan (212) 873-3400

Date checked _____

Manhattan

Department of Buildings-60 Hudson Street, 5th Floor (212) 312-8990

Date checked _____

New York Historical Society-170 Central Park West (212) 873-3400

Date checked _____

New York Public Library-5th Avenue & 42nd Street (212) 930-0800

Date checked _____

Queens

Department of Buildings-126-06 Queens Boulevard, Kew Gardens (718) 520-3415

Date checked _____

Queens Borough Public Library, 89-11 Merrick Blvd., Jamaica (718) 990-0770

Date checked _____

Staten Island

Department of Buildings-Borough Hall, 10 Richmond Terrace (718) 816-2312

Date checked _____

Staten Island Institute of Arts & Sciences-75 Stuyvesant Place (718) 727-1135

Date checked _____

I certify that I have searched for historic photographs and/or drawings of the subject premises at the resources which are relevant to the subject premises, and that I was unable to locate any historic photographs or drawings of the premises.

APPLICANT:_____ SIGNATURE:_____

HISTORICAL NOTE

Appendix added City Record July 14, 1997 eff. Aug. 13, 1997.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-01 Introduction.

(a) These rules are issued to assist the public in applying to the Landmarks Preservation Commission for approval of repair, rehabilitation, restoration or replacement of windows in buildings that are designated landmarks or are within designated historic districts. These rules, which hereinafter will be referred to as "guidelines," enunciate Commission policy with respect to such repair, rehabilitation, restoration or replacement and also explain the procedures required to apply for a permit.

(b) Windows are an important and integral part of the design of most buildings. They typically comprise 30% to 40% of the surface area of a building's principal facade. In most historic buildings the window sash, window framing, and the architectural detail surrounding windows were carefully designed as an integral component of the style, scale and character of the building. It is important to retain the configuration, operation, details, material and finish of the original window as well as to maintain the size of openings, sills, decorative moldings, and the sash itself.

(c) Therefore, the Commission, in making a determination on proposed repair, rehabilitation, restoration or replacement of windows, evaluates the effect of the proposal on the aesthetic, historical and architectural values and significance of the landmark or of the building in an historic district. The Commission considers, among other matters, the architectural style of the building and the design, texture, material and color of the proposed work.

(d) These window guidelines are based on the following principles:

(1) The distinguishing original qualities or character of a building's structure, or site and its environment, should

not be destroyed. The removal or alteration of any distinctive architectural feature should be avoided whenever possible.

(2) Deteriorated architectural features including windows should be repaired rather than replaced whenever possible.

(3) If replacement is necessary, the new window should match the original or historic window in design and other visual qualities.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (d) par (3) amended City Record Jan. 5, 2000 §6, eff. Feb. 4, 2000. [See T63 §2-15 Note 1].

63 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-02 Repairs, Rehabilitation and Restoration.

(a) **Repairs.** Deteriorated windows can often be repaired and made sound and fully operational. A permit is not required to undertake ordinary repairs including:

(1) Replacement of broken glass, together with replacement of associated moldings, muntins and glazing compound with material of matching characteristics.

(2) Scraping, priming and repainting of window sash and/or frame to recoat with same color and finish that exist at the time such work is undertaken.

(3) Caulking around frames and sill.

(4) Repair and replacement of window hardware, including pulley chains.

(5) Installation of weatherstripping.

(6) Straightening of metal window members.

(7) Rebuilding of portions of sills, sash and other window members, using the same material and to the same configuration, size and shape, limited to the following:

(i) up to 100% for sills, bottom sash rails and parting strips;

(ii) up to 40%, measured separately, for trim, moldings and other sash members.

(8) Consolidating wood members.

(b) **Rehabilitation and restoration.** A permit is required for:

(1) work that does not meet the requirements of subsection (a) above;

(2) changes in configuration; or

(3) any change in the shape or size of any member.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (8) amended City Record Jan. 5, 2000 §4, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

Subd. (b) amended City Record Jan. 5, 2000 §5, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

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63 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-03 Storm Windows.

(a) The installation of secondary glazing units ("storm windows"), either interior or exterior, will be allowed under the following conditions:

(1) A permit is not required for installation of interior storm windows provided that:

(i) The installation has no mullions, muntins or wide frames that are visible from the exterior of the building; and

(ii) The glazing consists of clear glass or other transparent material. If these conditions are not met a permit will be required.

(2) A permit is required for installation of exterior storm windows.

(b) Exterior storm windows shall fit tightly within window openings without the need for subframe or panning around the perimeter. The color of frames of exterior storm windows shall match the color of the primary window frame. Clear glass only will be permitted. The storm sash shall be set as far back from the plane of the exterior wall surface as practicable. Muntins shall not be permitted. Meeting rails may be used only in conjunction with doublehung windows and shall be placed in the same relative location as in the primary sash.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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63 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-04 Replacement of Sash and Frames.

If the windows have deteriorated to a condition that warrants replacement, new windows will be permitted under the following conditions:

(a) A permit is required for the installation of new sash in existing frames. In cases where the sash is deteriorated to a point precluding reasonable repair, rehabilitation or restoration, replacement sash may be installed subject to the issuance of a permit. In determining whether sash cannot be repaired, the Landmarks Preservation Commission will consider the percentage of the window that is deteriorated, the practicality of repair, trade practice and such other factors as the LPC may deem appropriate. The new sash shall match the existing sash in dimensions, configuration, operation, details, material, and finish except as provided below. If the rehabilitation of frames is required in conjunction with an application for new sash, that work shall be part of the application.

(b) A permit is required for the installation of new sash and frames in landmarks and buildings in historic districts.

(c) **New sash and frames in primary facades:**

(1) **Individual landmarks:**

(i) If historic windows have deteriorated to a point precluding reasonable repair, rehabilitation or restoration, based on a condition report submitted by the applicant, or a field inspection by the staff, or other evidence, including the percentage of the window that is deteriorated, the practicality of repair, trade practice and other factors, replacement

windows may be approved if they match the historic windows in terms of:

(A) configuration,

(B) operation,

(C) details,

(D) material, and

(E) finish.

(ii) Variations in details will be permitted if such variations do not significantly affect the visual characteristics of the window, including the shadow effect of muntins and sash on the glazing. In evaluating "significant" effect, factors to be considered shall be the age of the building and its architectural quality, as well as the extent of diminution in the total glazed area of sash. For wood windows less than 15 inches wide, the diminution shall be limited to 10%; for wood windows 15 inches or wider, the diminution shall be limited to 6%; for metal windows (of any size) the diminution shall be limited to 10%.

(iii) With respect to matching of materials, the following shall be understood: a wood historic window shall be replaced in wood, but not necessarily of the same species. A metal historic window shall be replaced with metal but not necessarily of the same metal.

(2) **Buildings in historic districts.**

(i) Rowhouses, town houses, mansions, detached and semi-detached houses and carriage houses:

(A) If historic windows have deteriorated to a point precluding reasonable repair, rehabilitation or restoration, based on a condition report submitted by the applicant, or a field inspection by the staff, or other evidence, including the percentage of the window that is deteriorated, the practicability of repair, trade practice and other factors, replacement windows may be approved if they match the historic windows in terms of:

(a) configuration,

(b) operation,

(c) details,

(d) material, and

(e) finish,

except that straight-headed, double-hung, one-over-one sash may be replaced by sash with a different material, provided the historic brickmolds are preserved, restored or, if necessary, replicated in the historic material, the new sash is installed in same plane as the historic sash, and the sash and brickmolds have a matching finish that replicates the historic finish.

(B) Variations in details will be permitted if such variations do not significantly affect the visual characteristics of the window, including the shadow effect of muntins and sash on the glazing. In evaluating "significant" effect, factors to be considered shall be the age of the building and its architectural quality, as well as the extent of diminution in the total glazed area of sash. For wood windows less than 15 inches wide, the diminution shall be limited to 10%; for wood windows 15 inches or wider, the diminution shall be limited to 6%; for metal windows (of any size) the diminution shall be limited to 10%.

(C) With respect to matching of materials, the following shall be understood: a wood historic window shall be replaced in wood, but not necessarily of the same species. A metal historic window shall be replaced with metal but not necessarily of the same metal.

(ii) Small apartment buildings, tenements and hotels:

(A) In small apartment buildings and other types of multiple dwellings, originally built as such, which are six stories or less in height, and with a street frontage of forty (40) feet or less, replacement windows may be approved if they match the historic windows in terms of:

(a) configuration,

(b) operation,

(c) details,

(d) material, and

(e) finish,

except that straight-headed, double-hung, one-over-one sash may be replaced by sash with a different material, provided the historic brickmolds are preserved, restored or, if necessary, replicated in the historic material, the new sash is installed in same plane as the historic sash, and the sash and brickmolds have a matching finish that replicates the historic finish.

(B) Variations in details will be permitted if such variations do not significantly affect the visual characteristics of the window, including the shadow effect of muntins and sash on the glazing. In evaluating "significant" effect, factors to be considered shall be the age of the building and its architectural quality, as well as the extent of diminution in the total glazed area of sash. For wood windows less than 15 inches wide, the diminution shall be limited to 10%; for wood windows 15 inches or wider, the diminution shall be limited to 6%; for metal windows (of any size) the diminution shall be limited to 10%.

(C) With respect to matching of materials, the following shall be understood: a wood historic window shall be replaced in wood, but not necessarily of the same species. A metal historic window shall be replaced with metal but not necessarily of the same metal.

(iii) Large apartment buildings and hotels:

(A) In large apartment buildings and other types of multiple dwellings, which either have a street frontage of forty-one (41) feet or greater, or which are seven or more stories in height, replacement windows may be approved if they match the historic windows in terms of:

(a) configuration,

(b) operation,

(c) details, and

(d) finish.

(B) Variations in details will be permitted if such variations do not significantly affect the visual characteristics of the window, including the shadow effect of muntins and sash on the glazing. In evaluating "significant" effect, factors to be considered shall be the age of the building and its architectural quality, as well as the extent of diminution in the total

glazed area of sash. For wood windows less than 15 inches wide, the diminution shall be limited to 10%; for wood windows 15 inches or wider, the diminution shall be limited to 6%; for metal windows (of any size) the diminution shall be limited to 10%.

(C) Where the historic windows possess special architectural value, including "special" windows (as defined in the definitions (3-01) and illustrated in Appendix A), replacement windows shall match the material of the historic windows.

(iv) Small commercial and loft buildings including cast-iron fronted buildings, department stores, banks and office buildings.

(A) In commercial and loft buildings that are six stories or less in height, and with a street frontage of 40 feet or less, replacement windows may be approved if they match the historic windows in terms of:

(a) configuration,

(b) operation,

(c) details,

(d) material, and

(e) finish,

except that straight-headed, double-hung, one-over-one sash may be replaced by sash with a different material, provided the historic brickmolds are preserved, restored or, if necessary, replicated in the historic material, the new sash is installed in same plane as the historic sash, and the sash and brickmolds have a matching finish that replicates the historic finish.

(B) Variations in details will be permitted if such variations do not significantly affect the visual characteristics of the window, including the shadow effect of muntins and sash on the glazing. In evaluating "significant" effect, factors to be considered shall be the age of the building and its architectural quality, as well as the extent of diminution in the total glazed area of sash. For wood windows less than 15 inches wide, the diminution shall be limited to 10%; for wood windows 15 inches or wider, the diminution shall be limited to 6%; for metal windows (of any size) the diminution shall be limited to 10%.

(C) With respect to matching of materials, the following shall be understood: a wood historic window shall be replaced in wood, but not necessarily of the same species. A metal historic window shall be replaced with metal but not necessarily of the same metal.

(v) Large commercial and loft buildings, including cast-iron fronted buildings, department stores, banks and office buildings.

(A) In commercial and loft buildings that are seven or more stories in height, or with a street frontage of 41 feet or greater, replacement windows may be approved if they match the historic windows in terms of:

(a) configuration,

(b) operation,

(c) details, and

(d) finish.

(B) Variations in details will be permitted if such variations do not significantly affect the visual characteristics of the window, including the shadow effect of muntins and sash on the glazing. In evaluating "significant" effect, factors to be considered shall be the age of the building and its architectural quality, as well as the extent of diminution in the total glazed area of sash. For wood windows less than 15 inches wide, the diminution shall be limited to 10%; for wood windows 15 inches or wider, the diminution shall be limited to 6%; for metal windows (of any size) the diminution shall be limited to 10%.

(C) Where the historic windows possess special architectural value, including "special" windows (as defined in the definitions (§3-01) and illustrated in Appendix A), replacement windows shall match the material of the historic windows.

(3) **Other buildings:**

For buildings that do not fall into any of the previously described categories, the finding of appropriateness of window replacements will be made on a case-by-case basis. Variations in design of these specialized buildings preclude the applicability of guidelines.

Such special building types include churches and synagogues, hospitals, schools, libraries and the one- or two-story commercial building known as a "taxpayer." Also included in this category are buildings which, unless specifically noted in the text of these guidelines, have been converted from their original use.

(d) **New sash and frames in secondary facades.** (1) If existing windows are visible from a public thoroughfare, replacement windows may be approved if they match the historic windows in terms of:

(i) configuration and

(ii) finish.

(2) If existing windows are not visible from a public thoroughfare, replacement windows may be approved if:

(i) they are to be installed in existing window openings or existing openings that are to be enlarged in height or width, and such enlargement does not alter or destroy protected features, or

(ii) they are to be installed in existing window openings that are to be reduced in height or width; and

(iii) they do not replace "special" windows as defined in the definitions (§3-01) and illustrated in Appendix A.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 2, 2002 §1, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (1) subpar (i) amended City Record July 2, 2002 §2, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (1) subpar (ii) amended City Record Jan. 5, 2000 §7, eff. Feb. 4, 2000. [See T63 §2-15

Note 1]

Subd. (c) par (1) subpar (iii) amended City Record July 2, 2002 §3, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) open par amended City Record July 2, 2002 §4, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (i) open par amended City Record July 2, 2002 §5, eff. Aug. 1, 2002. [See

Note 1]

Subd. (c) par (2) subpar (i) clause (A) amended City Record July 2, 2002 §6, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (i) clause (B) amended City Record Jan. 5, 2000 §8, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

Subd. (c) par (2) subpar (i) clause (C) amended City Record July 2, 2002 §7, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (ii) clause (A) amended City Record July 2, 2002 §8, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (ii) clause (B) amended City Record Jan. 5, 2000 §9, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

Subd. (c) par (2) subpar (ii) clause (C) amended City Record July 2, 2002 §9, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (ii) clause (D) repealed City Record July 2, 2002 §10, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (iii) amended City Record Jan. 5, 2000 §10, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

Subd. (c) par (2) subpar (iii) clause (C) amended City Record July 2, 2002 §11, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (iv) repealed and added City Record July 2, 2002 §12, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (iv) amended City Record Jan. 5, 2000 §3, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

Subd. (c) par (2) subpar (v) added City Record July 2, 2002 §13, eff. Aug. 1, 2002. [See Note 1]

Subd. (d) par (2) amended City Record Jan. 5, 2000 §2, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 2, 2002:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection,

preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310.

Section 3-04 of Title 63 of the Rules of the City of New York sets forth the rules for the staff of the LPC to approve replacement windows and sash in designated buildings. The purpose of the proposed amendment to section 3-04 is to assist the public in applying to the Landmarks Preservation Commission for approval of replacement windows.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-05 Master Plans.

(a) A master plan for the repair and/or replacement of windows over a period of time can be approved under a PMW if the plan is in conformance with these guidelines. After the permit is issued, proposed window replacement will require applications requesting an Authorization to Proceed (ATP).

(b) The master plan shall set forth standards for future changes and shall specifically identify such standards by drawings, including large scale details of existing and proposed conditions, plus fenestration and location of proposed changes.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-06 Application Procedure.

(a) **Application.** (1) **Application form.** An application consists of a completed application form and supporting documentation. The form, "For Work on Designated Properties," must be signed by the owner of the property although the applicant may be the lessee or owner's agent. An application from a cooperative or condominium building must be signed by a properly authorized official of the corporation. The form also requires the name of the occupant, lessee or shareholder who is proposing the alteration as well as the name of the person filing the application (if not the owner).

The application form, "For Work on Designated Properties," is available at the Commission's office at 225 Broadway, New York, N.Y., 10007 by mail or by calling (212) 553-1100.

(2) **Supporting documentation.** An application must include photographs, drawings and descriptive material of the existing conditions of the windows and the building. For buildings located in historic districts, photographs of adjacent buildings should also be submitted. In addition, a description of the proposed work, manufacturers' catalogue cuts or drawings with comparative dimensions, details of construction, configuration, color and finish are required. Proposals for metal replacement windows should include material samples.

(b) **Procedure.** (1) All applications received by the Landmarks Preservation Commission will be docketed and reviewed for completeness. The applicant will be notified if additional documentation is required.

(2) When the application is complete, a staff member will review the application for conformance with these guidelines. Upon determination that the criteria of the guidelines have been met, a PMW will be issued.

(3) If the criteria have not been met, the applicant will be given a notice of the proposed denial of the application and an opportunity to request a meeting with the Director of the Preservation Department, or in the absence of the Director with a Deputy Director, to discuss the interpretation of these guidelines. The applicant may also request a meeting and review by the Chairman.

(4) If the application is denied, the applicant shall be informed of his or her right to file for a Certificate of Appropriateness pursuant to law. The decision of whether to approve an application for a Certificate of Appropriateness is made by an affirmative vote of at least six commissioners following a public hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-07 Pre-Qualified Open Market Manufactured Windows.

The Landmarks Preservation Commission may from time to time, by additional rule, identify as meeting the requirements of these guidelines various manufactured windows which are available on the open market.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

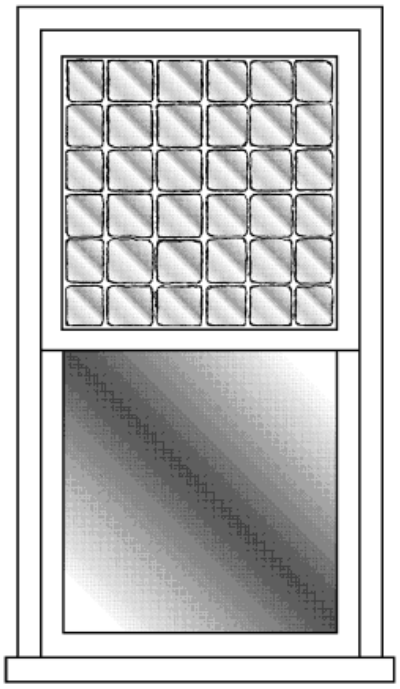
63 RCNY 3 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

APPENDIX A ILLUSTRATIONS OF WINDOWS

APPENDIX A ILLUSTRATIONS OF WINDOWS



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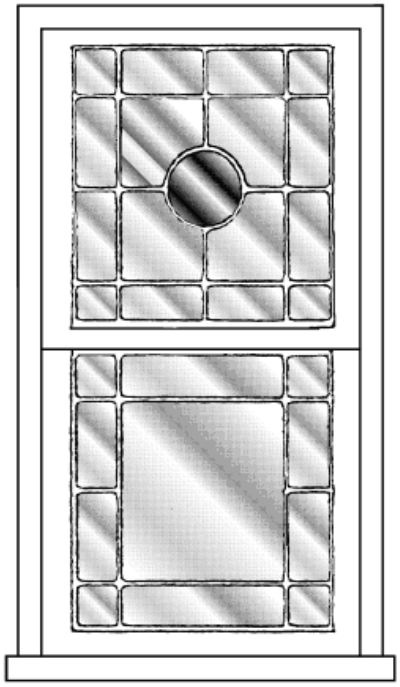

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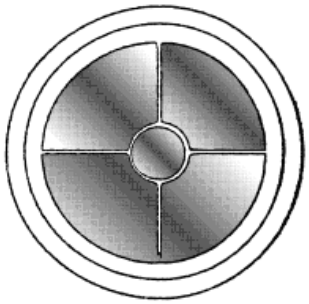

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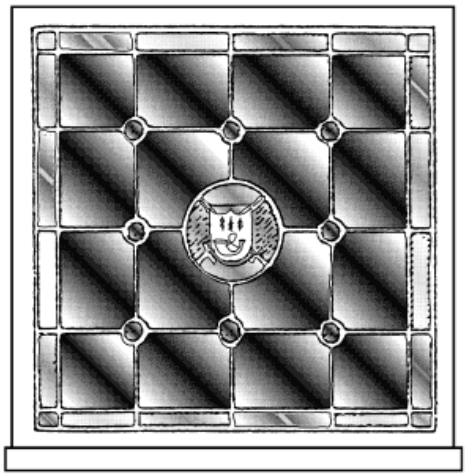
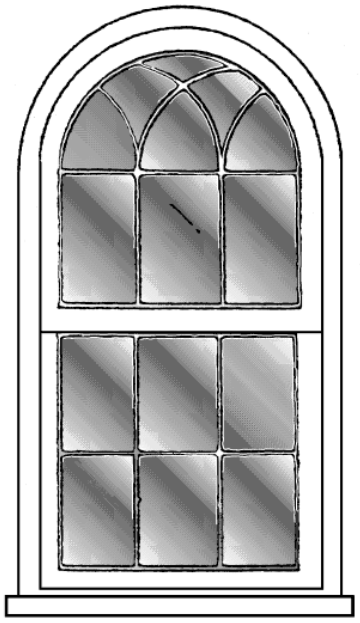
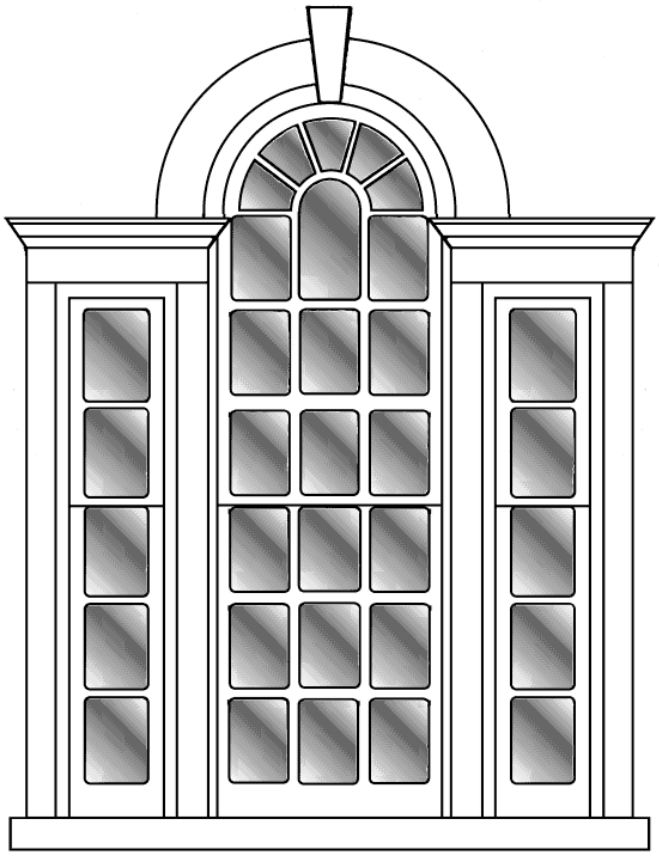


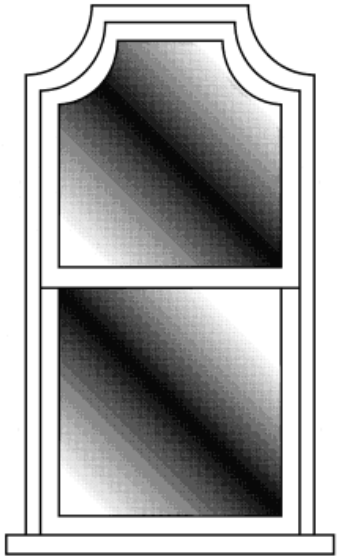
Stained



Curved Muntins



Palladian



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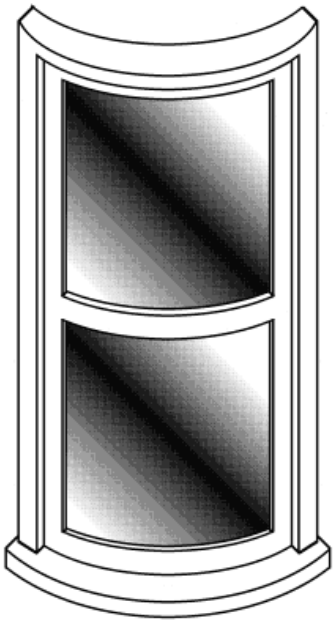

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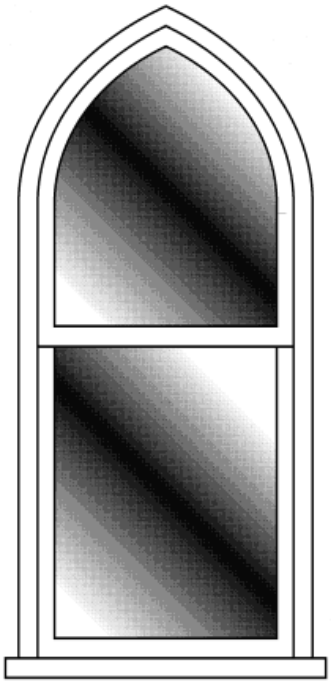

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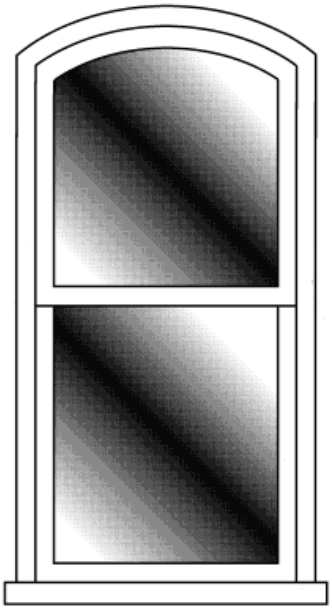

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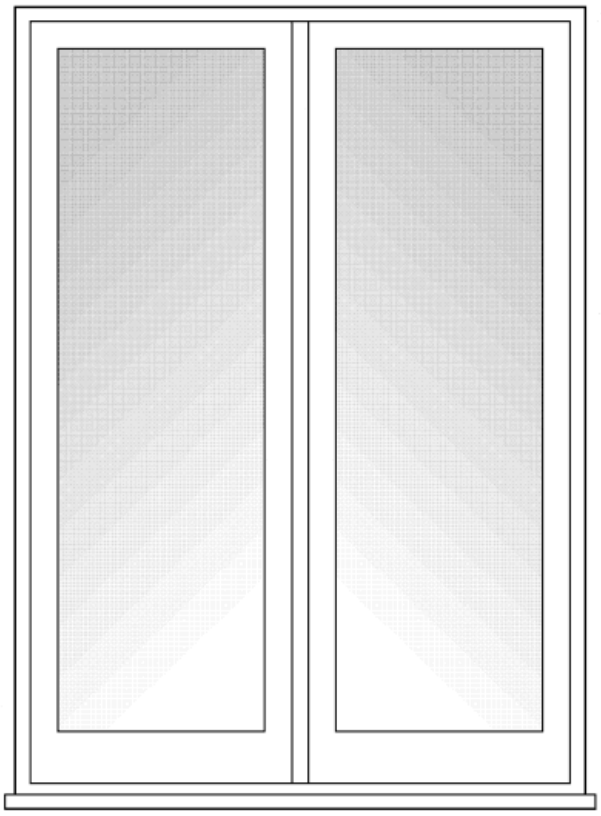
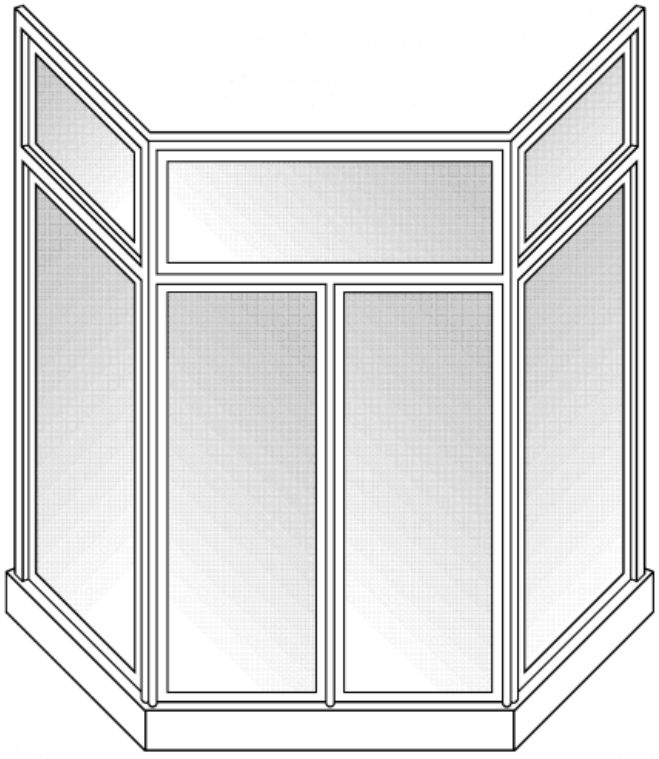
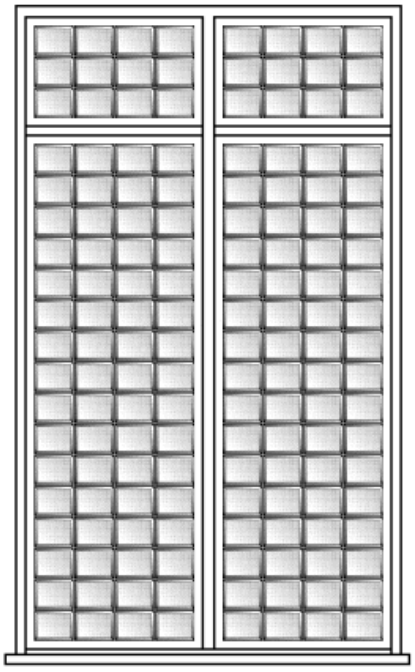


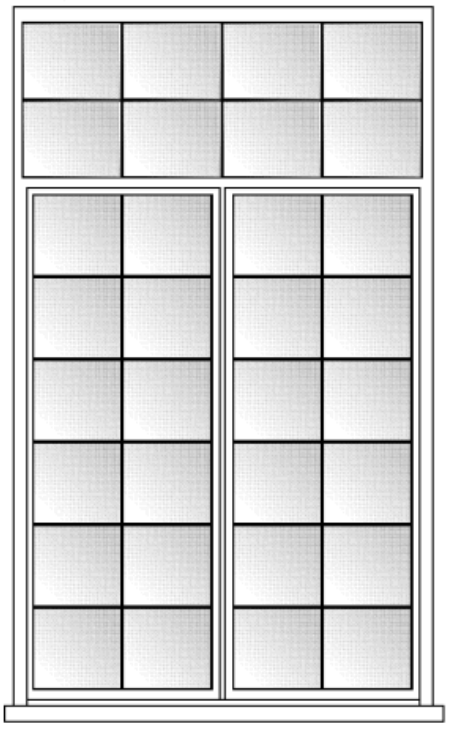
French Doors



Casement Bays



Leaded



Multi-light

Rules of the City of New York

***** Current through December 2009 ****

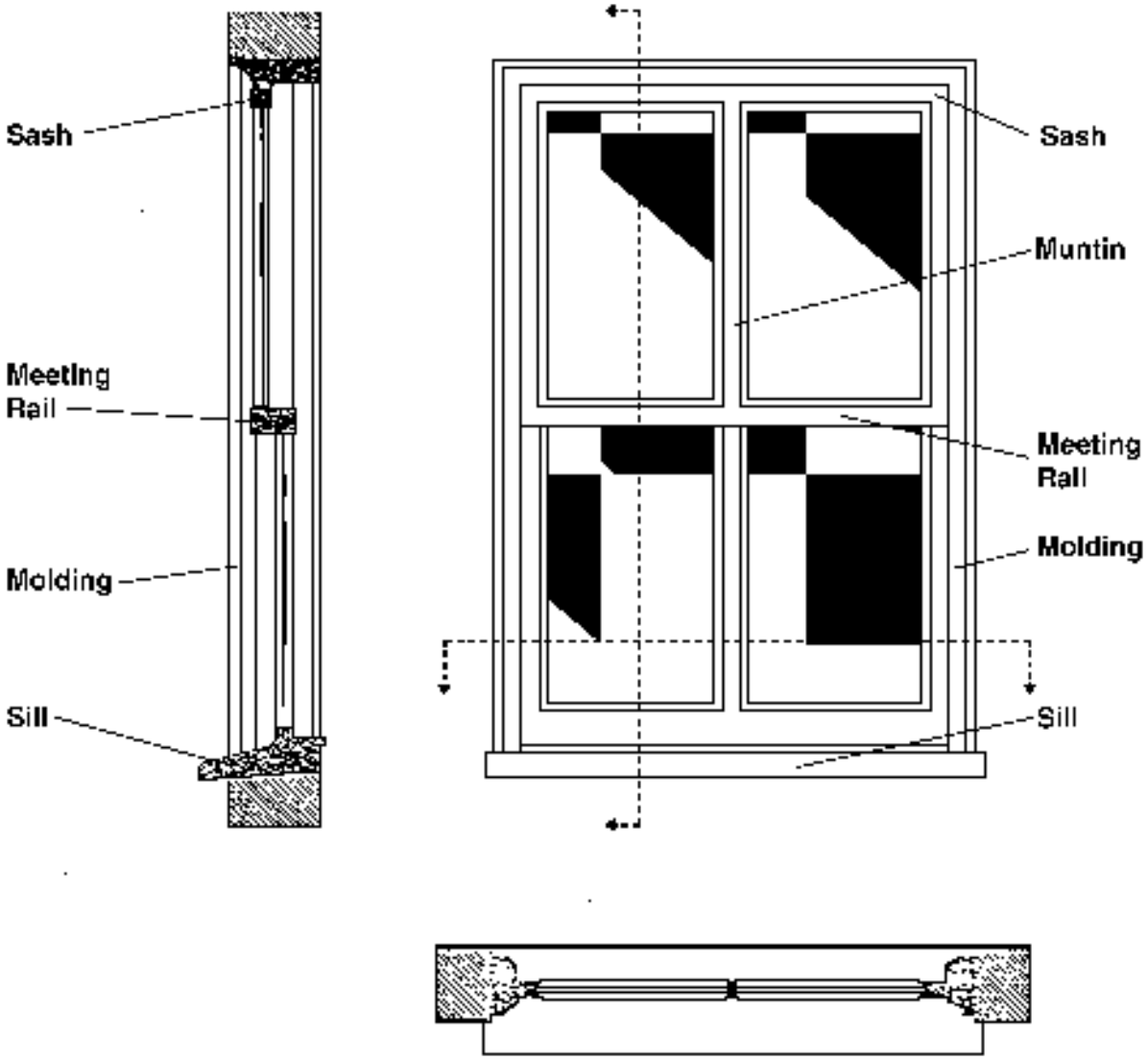
63 RCNY 3 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

APPENDIX B PARTS OF A DOUBLE-HUNG WINDOW

APPENDIX B PARTS OF A DOUBLE-HUNG WINDOW


Sash
Meeting
Rail
Molding
Sill
Sash
Muntin
Meeting
Rail
Molding
Sill

Rules of the City of New York

63 RCNY 3 - APPENDIX C

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

APPENDIX C WINDOW GUIDELINES-DEFINITIONS

APPENDIX C WINDOW GUIDELINES-DEFINITIONS

Color. "Color" shall mean the sensible perception of hue, value and saturation characteristics of surfaces of window components. In the event of disagreement, the Munsell system of color identification shall govern.

Commission. "Commission" shall mean the Landmarks Preservation Commission as established by §3020 of the New York City Charter.

Commissioners. "Commissioners" shall mean the eleven Commissioners, including the Chairman, as established by §3020 of the Charter.

Configuration. "Configuration" shall mean the number, shape, organization and relationship of panes (lights) of glass, sash, frame, muntins, or tracery.

Details. "Details" shall mean the dimensions and contours of both the stationary and moveable portions of a window, and moldings. Details are shown in graphic form in Appendix B.

Existing windows. "Existing windows" shall mean the windows existing at the time of designation or windows which have been changed subsequent to designation pursuant to a permit issued by the Commission.

Fenestration. "Fenestration" shall mean the arrangement, proportioning and design of windows in a building.

Finish. "Finish" shall mean the visual characteristics, including color, texture and reflectivity of all exterior materials.

Frame. "Frame" shall mean the stationary portion of a window unit that is affixed to the facade and holds the sash or other operable portions of the windows.

Glazing. "Glazing" shall mean the material, usually glass, that fills spaces between sash members (rails, stiles and muntins), commonly referred to as panes or lights.

Head. "Head" shall mean the upper horizontal part of a window frame or window frame or window opening.

Historic windows. "Historic windows" shall mean:

(1) windows installed at time of construction of the building; or

(2) windows of a type installed at time of construction of similar buildings in similar periods and styles; or

(3) windows installed at time of major facade alterations 30 or more years ago.

Jamb. "Jamb" shall mean the side parts of a window frame or window opening, as distinct from head and sill.

Landmarks law. "Landmarks law" shall be understood to refer to Title 25, Chapter 3 of the Administrative Code of the City of New York.

Light. "Light" shall mean a pane of glass; a window, or a compartment of a window.

LPC. "LPC" shall mean the Commission acting in its agency capacity to implement the landmarks law.

Match. "Match" shall mean either an exact or an approximate replication. If not an exact replication, the approximate replication shall be so designed as to achieve a suitable, harmonious and balanced result.

Materials. "Materials" shall mean the substances used to fabricate windows.

Meeting rail. "Meeting rail" shall mean a sash rail in a double-hung window designed to interlock with an adjacent sash rail.

Member. "Member" shall mean a component part of a window.

Molding. "Molding" shall mean a piece of trim that introduces varieties of outline or curved contours in edges or surfaces as on window jambs and heads. Moldings are generally divided into 3 categories: rectilinear, curved and composite-curved.

Mullion. "Mullion" shall mean a vertical primary framing member that separates paired or multiple windows within a single opening.

Muntin. "Muntin" shall mean the tertiary framing member that subdivides the sash into individual panes, lights or panels; lead "cames" are often used in stained glass windows.

Note: Grids placed between two sheets of glass are not considered muntins.

Operation. "Operation" shall mean the manner in which a window unit opens, closes, locks, or functions; e.g., casement, double-hung, e.g., If non-operable, a window unit (such as a side light) is identified as "fixed."

Panning. "Panning" shall mean an applied material, usually metal, that covers the front (exterior) surface of an existing window frame or mullion.

Parting strip. "Parting strip" shall mean the small member, usually wood and usually removable, that separates the

upper and lower sash pockets in the jamb of a double-hung window.

Permit. "Permit" shall mean any permit issued by the Landmarks Commission, in accordance with the provisions of the landmarks law:

(1) "PMW" to mean Permit for Minor Work as defined by §25-310 of the landmarks law.

(2) "CNE" to mean Certificate of No Effect as defined by §25-306 of the landmarks law.

(3) "C of A" to mean Certificate of Appropriateness as defined by §25-307 of the landmarks law.

Principal facade. "Principal facade" shall mean

(1) a facade facing a street or a public thoroughfare that is not necessarily a municipally dedicated space, such as a mews or court; or

(2) a facade that does not face a street or mews or court but that possesses significant architectural features.

Rail. "Rail" shall mean a horizontal sash member.

Rehabilitation. "Rehabilitation" shall mean any repair work that requires a permit. (See §3-02 below.)

Repair. "Repair" shall mean any work done on any window to correct any deterioration or decay of or damage to a window or any part thereof and to restore same, as closely as may be practicable, to its condition prior to the occurrence of such deterioration, decay or damage. The term "ordinary repair" shall refer to work that does not require a permit. (See §3-02 below.)

Restoration. "Restoration" shall mean the process of returning, as nearly as possible, a building or any of its parts to its original form and condition.

Sash. "Sash" shall mean the secondary part of a window which holds the glazing in place; may be operable or fixed; usually constructed of horizontal and vertical members; sash may be subdivided with muntins.

Secondary facade. "Secondary facade" shall mean a facade that does not face a public thoroughfare or mews or court and that does not possess significant architectural features.

Significant architectural feature. "Significant architectural feature" shall mean an architectural component of a building that contributes to its special historic, cultural and aesthetic character, or that in the case of an historic district reinforces the special characteristics for which the district was designated.

Sill. "Sill" shall mean the lower horizontal part of a window frame or window opening; also the accessory member which extends as a weather barrier from frame to outside face of wall.

Special windows. "Special windows" shall mean:

(1) those windows in which the complexity of the muntin pattern or the molding profiles is one of the characteristics of the style and age of the building; or

(2) windows having one or more of the following or similar attributes, including but not limited to:

(i) Bay or oriel window

(ii) Curved glass

(iii) Multi-pane sash, i.e., 12 or more panes in a single sash in which a typical pane does not exceed 30 square inches of open (glazed) area

(iv) Stained or otherwise crafted glazing for artistic effect

(v) Highly decorated (carved or otherwise embellished) sash or frame

(vi) Non-rectilinear sash or frame.

See Appendix A for illustrations of these and other types of "Special Windows."

Stile. "Stile" shall mean a vertical sash member.

Story. "Story" shall be defined as a habitable floor level, including a basement but not including a cellar.

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***** Current through December 2009 ****

63 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 4 DESIGNATED BROADWAY THEATERS

§4-01 Treatment of Designated Broadway Theater Interiors (Theater Interior Guidelines).

(a) **Preface.** Work may be done on designated interior portions of theaters either without application to the Commission, or with a Certificate of No Effect on Protected Architectural Features (CNE) if the proposed work is in accordance with the following guidelines:

(1) For production-related work, no application to Landmarks Preservation Commission is needed if the guidelines set forth in §4-01(b)(1) below are followed, but owner must submit a written description to the Landmarks Preservation Commission (LPC), prior to undertaking the work, clearly delineating the scope of the proposed work. This description should also include steps to be taken after the end of the production to return the interior to its prior condition if significant architectural features are proposed to be altered, unless further changes are mandated by an incoming production, in which case the interior would be returned to its prior condition following the latter production.

(2) For permanent alterations, application to LPC is necessary and a CNE will be issued by staff if in accordance with the guidelines set forth in §4-01(b)(2) below.

(3) Applications for work not in accordance with the guidelines will be subject to the usual landmark review procedure as set forth in Chapter 3 of Title 25 of the Administrative Code.

Note: The guidelines are keyed to underlined portions of the Description Section of the Designation Reports, which identify architecturally significant features requiring protection.

(b) **Guidelines.** (1) **Production-related changes.** No permit needed for work, if the following conditions are met:

(i) Interior configuration of the theater is maintained.

(ii) Any alteration to architectural features underlined in the Description Section of the Designation Report is reversible. (It should be noted that alterations to certain architectural features may not be reversible; for example, murals or heavily three-dimensional decorative features such as putti.)

(iii) Following a production in which a theater interior is to be painted in a non-contrasting color scheme, the theater interior will be painted in contrasting colors, unless some other color scheme is mandated by the incoming production, in which case the interior would be painted in contrasting colors following the latter production. (A contrasting color scheme is one in which the ornamental architectural details are painted a different color or a different value or hue of the same color than the background.)

(iv) If the Buildings Department requires a permit for the work, a CNE will be issued by staff within five working days of the receipt of a completed application.

(2) **Permanent changes.** A CNE will be issued by the staff within five working days of receipt of a completed application for alterations to the theater if the following conditions are met:

(i) Interior configuration is maintained.

(ii) Staff has determined that the alteration would not affect significant architectural features underlined in the Description Section of the Designation Report. In theaters which are only designated on the interior, such alterations could include exterior build-overs.

(iii) Any installation of state-of-the-art changes, as certified by the owner, such as light bridges, sound booths, and balcony rail light housings, provided that staff finds that

(A) their installation will have no effect on the physical fabric of the significant architectural features of the interior, or

(B) that such effect is reversible and that adequate steps will be taken to assure that affected features can be replaced in the future.

HISTORICAL NOTE

Section in original publication July 1, 1991.

63 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 4 DESIGNATED BROADWAY THEATERS

§4-02 Treatment of Designated Broadway Theater Exteriors (Theater Exterior Guidelines).

(a) **Preface.** Work may be done on designated exterior portions of theaters either without application to the Commission, or with a Certificate of No Effect on Protected Architectural Features (CNE) if the proposed work is in accordance with the following guidelines:

(1) For production-related work, no application to LPC is needed if the guidelines set forth in §4-02(b)(1) below are followed, but the owner must submit a written description to the LPC, prior to undertaking the work, clearly delineating the scope of the proposed work. This description should also include steps to be taken after the end of the production to return the exterior to its prior condition if significant architectural features are proposed to be altered.

(2) For permanent alterations, application to LPC is necessary and a CNE will be issued by staff if in accordance with the guidelines set forth in §4-02(b)(2) below.

(3) Applications for work not in accordance with the guidelines will be subject to the usual landmark review procedure as set forth in Chapter 3 of Title 25 of the Administrative Code.

Note: The guidelines are keyed to underlined portions of the Description Section of the Designation Reports, which identify architecturally significant features requiring protection.

(b) **Guidelines.** (1) **Production-related changes.** No permit is needed for the following work, if the stated conditions are met:

(i) The installation of new signage or alteration of existing signage, lighting, or other advertisement, provided that anchorages do not physically affect architectural features underlined in the designation report description. (Changing of light box fillers, posters, photos, etc. would not require review or notice to the Commission.)

(ii) Painting of exterior surfaces, if they were previously painted.

(iii) Alterations or additions to any undeveloped portions of the theatre exterior, provided that the protected features of a designated interior are not affected.

(iv) Any alterations to underlined exterior architectural features in the report that are reversible. (A reversible alteration is one in which the altered feature can be returned to its appearance prior to the alteration.)

(v) Removal of any feature which has not been identified in the Description Section of the Designation Report of the theater.

(vi) For theaters in which the exterior is designated only for cultural and historical significance, any alteration to the facade may be made provided that:

(A) Lighted signage and advertisements for productions are utilized.

(B) Continuous entrance doors are maintained between the lobby and the street and the auditorium and the street, where they presently exist.

(C) A marquee is utilized to shelter the sidewalk adjacent to the entrance doors referred to in §4-02(b)(1)(vi)(B).

(2) **Permanent changes.** A CNE will be issued by the staff within five working days of receipt of completed application for the following work, if the stated conditions are met.

(i) The installation of new signage or alteration of existing signage, lighting, awnings, marquees or other advertisements, provided that anchorages do not physically affect architectural features underlined in the Description Section of the Designation Report and that the signage, lighting, or awning of marquee is not architecturally significant in itself.

(ii) Any alteration or additions to any portion of the theater exterior not visible from the public way, provided that the protected features of the exterior of any designated interior are not affected.

(iii) Removal of any feature which has not been identified and underlined in the Description Section of the Designation Report of the theater.

(iv) For theaters in which exterior is designated only for cultural or historical significance, any alterations to the exterior of the theater may be made provided that:

(A) Lighted signage and advertisements for productions are utilized.

(B) Continuous entrance doors are maintained between the lobby and the street and the auditorium exit and the street, where they presently exist.

(C) A marquee is utilized to shelter the sidewalk adjacent to the entrance doors referred to in §4-02(b)(2)(iv)(B).

(D) The existing proportions of the facade (width to height) are not altered.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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63 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 5*1 HISTORIC PRESERVATION GRANT PROGRAM

§5-01 Introduction.

The Historic Preservation Grant Program provides grants to eligible nonprofit organizations and homeowners for the preservation of designated landmark properties through restoration, repair and rehabilitation work. All grants must meet the guidelines laid out for historic preservation activities under the federal Community Block Grant program regulations. 24 CFR Sec. 570.202(d).

HISTORICAL NOTE

Section amended City Record Aug. 21, 2001 eff. Sept. 20, 2001.

Section repealed and added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 5 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Aug. 21, 2001 eff. Sept. 20, 2001; Chapter repealed and added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of the Final Rules in City Record July 14, 1997: The Landmarks Preservation Commission is authorized to promulgate regulations

governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission administers a Historic Preservation Grant Program to assist certain owners and nonprofit organizations in the repair and restoration of landmark buildings. The Historic Grant program is funded by federal Community Development Grant Program funds established under Title 1 of the Housing and Community Development Act of 1974 as amended.

The purpose of the rules is to assist the public in applying to the Landmarks Preservation Commission for grants under the Historic Preservation Grant Program and to establish the eligibility criteria and application process for the historic grant program.

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63 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 5*1 HISTORIC PRESERVATION GRANT PROGRAM

§5-02 General Eligibility Requirements.

In addition to any applicable federal regulations regarding the Community Block Grant Program, grant applicants shall also meet the following criteria:

(a) **Eligible structures.** Structures which are designated or calendared individual landmarks, are located in designated historic districts, or contain interior landmarks. Eligible structures may also include those improvements located in New York City that are listed or eligible for listing on the National Register. The premises cannot be in arrears for unpaid real estate taxes, water/sewage charges, or have any unrescinded notice of violations issued by the Landmarks Preservation Commission or the Department of Buildings.

(b) **Eligible repairs.** Grants shall be made for the following work:

(1) to repair and restore exterior features of an eligible structure;

(2) to address structural damage or severe deterioration that threatens to undermine the integrity of an eligible structure;

(3) to repair and restore eligible interiors.

(c) **Ownership/occupancy.** (1) **Homeowners.** Owners of eligible residential properties may receive grant funds if the owner and/or occupants meet §8 income limits as they appear in the federal Community Block Grant Program regulations. 24 CFR §570.208(a)(2)(i)(B) and (C).

(2) **Nonprofit organizations.**

(i) Nonprofit organizations applying for grant funds must either own or hold a long term lease on the property for which funds are sought.

(ii) To be eligible for consideration as a nonprofit organization, the applicant must be a charitable, cultural, educational, scientific, literary, or other entity organized under §501(c)(3) of the Internal Revenue Code.

(d) **Grant beneficiaries.** All grant-funded work must (1) principally benefit low and moderate income persons or (2) address slum and blight conditions as set forth in and defined under the federal Community Block Grant Program regulations. 24 CFR §570.208.

HISTORICAL NOTE

Section amended City Record Aug. 21, 2001 eff. Sept. 20, 2001.

Section repealed and added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 5 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Aug. 21, 2001 eff. Sept. 20, 2001; Chapter repealed and added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of the Final Rules in City Record July 14, 1997: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission administers a Historic Preservation Grant Program to assist certain owners and nonprofit organizations in the repair and restoration of landmark buildings. The Historic Grant program is funded by federal Community Development Grant Program funds established under Title 1 of the Housing and Community Development Act of 1974 as amended.

The purpose of the rules is to assist the public in applying to the Landmarks Preservation Commission for grants under the Historic Preservation Grant Program and to establish the eligibility criteria and application process for the historic grant program.

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***** Current through December 2009 ****

63 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 5*1 HISTORIC PRESERVATION GRANT PROGRAM

§5-03 Application Requirements and Selection Criteria.

(a) Grant applications will be evaluated and funds will be awarded by a board composed of the director of the Historic Preservation Grant Program and other staff members of the Landmarks Preservation Commission as the Chairman shall in his or her discretion appoint.

(b) In awarding grants, the Historic Preservation Grant Program board will give preference to properties designated or calendared by the Landmarks Preservation Commission and will consider the following factors, among others:

(1) the architectural and historical importance of the building; and

(2) the condition of the building and the degree to which the proposed work will materially address the building's condition; and

(3) the applicant's financial resources; and

(4) the effect the grant will have on improving the building and/or the district.

(c) Application forms and fact sheets for the Historic Preservation Grant Program may be obtained by contacting the Commission's Director of the Historic Preservation Grant Program.

HISTORICAL NOTE

Section amended City Record Aug. 21, 2001 eff. Sept. 20, 2001.

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Aug. 21, 2001 eff. Sept. 20, 2001; Chapter repealed and added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of the Final Rules in City Record July 14, 1997: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission administers a Historic Preservation Grant Program to assist certain owners and nonprofit organizations in the repair and restoration of landmark buildings. The Historic Grant program is funded by federal Community Development Grant Program funds established under Title 1 of the Housing and Community Development Act of 1974 as amended.

The purpose of the rules is to assist the public in applying to the Landmarks Preservation Commission for grants under the Historic Preservation Grant Program and to establish the eligibility criteria and application process for the historic grant program.

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63 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 6 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STRUCTURES AND LANDSCAPES IN THE RIVERDALE HISTORIC DISTRICT

§6-01 Introduction.

The purpose of these rules is to establish the Landmarks Preservation Commission's regulatory policy in the Riverdale Historic District.

The Riverdale Historic District which was developed as an early railroad suburb is characterized as a distinct area of the city by its dramatic and verdant topography and its fine examples of nineteenth and early twentieth century dwellings and carriage houses. The houses and other buildings in the district are harmoniously sited within the landscape and are separated from each other by landscape Improvements.

Landscaping in the Riverdale Historic District provides the picturesque setting which is a defining element of a romantic style suburb of the nineteenth century. Landscape Improvements such as trees, stone walls and hedges, used to define property lines, and additional plantings within the expansive gardens and alongside the houses, add to the special character of the Historic District.

The district contains 34 buildings of varied type and age. The development of the Riverdale Historic District is important in understanding the district's historic character. Originally, the area was comprised of only seven estates which were served by a common carriage alley (Sycamore Avenue). All of the estates were developed in the 1850s. Several early estate houses remain, as well as stables and carriage houses (later converted for residential use). The configuration of these estates remained intact until 1935, when the original parcels began to be subdivided for development. Four new houses were built between 1935 and 1938. No new buildings were built thereafter until 1950. From 1950 to 1980 twelve new structures were constructed. These newer structures are stylistically diverse but are

generally compatible with the older buildings in terms of their placement, height, materials and finish.

HISTORICAL NOTE

Section added City Record Nov. 27, 1991 eff. Dec. 27, 1991.

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***** Current through December 2009 ****

63 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 6 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STRUCTURES AND LANDSCAPES IN THE RIVERDALE HISTORIC DISTRICT

§6-02 Definitions.

As used in these Rules the following terms shall have the following meanings:

Addition. "Addition" shall mean an extension or increase in the floor area or height of a building that increases its external dimensions.

Commission. "Commission" shall mean the New York City landmarks Preservation Commission as established by §3020 of the New York City Charter.

Demolition. "Demolition" shall mean the dismantling or razing of all or part of an existing Improvement or significant Landscape Improvement.

Improvement. "Improvement" shall mean any building, structure, place, work of art or other object constituting a physical betterment of real property, or any part of such betterment other than a Landscape Improvement.

Landscape improvement. "Landscape improvement" shall mean a physical betterment of real property or any part thereof, consisting of natural or artificial landscaping, including but not limited to grade, terrace, body of water, stream, rock, hedge, plant, shrub, mature tree, path, walkway, road, plaza, wall, fence, step, fountain, or sculpture.

Landmarks law. "Landmarks law" shall refer to New York City Charter §3020 and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

Landmarks preservation commission. "Landmarks preservation commission" shall mean the Commission acting in its agency capacity to implement the Landmarks law.

Mature tree. "Mature tree" shall mean any tree with a trunk diameter of 12" or greater.

Modification. "Modification" shall mean any work to an existing improvement or landscape improvement other than (a) ordinary maintenance or repair; or (b) any Addition.

Permit. "Permit" shall mean any permit other than a notice to proceed issued by the Landmarks Preservation Commission in accordance with the provisions of the Landmarks Law:

(a) "PMW" shall mean permit for minor work as defined by §25-310 of the Landmarks Law.

(b) "CNE" shall mean certificate of no effect as defined by §25-306 of the Landmarks Law.

(c) "CofA" shall mean certificate of appropriateness as defined by §25-307 of the Landmarks Law.

Pre-l940 building. "Pre-1940 building" shall mean any building in the Riverdale Historic District built, in whole or in part, prior to January 1, 1940 including buildings which have undergone subsequent remodeling and alterations.

Post-1939 building. "Post-1939 building" shall mean any building in the Riverdale Historic District built on or after January 1, 1940.

Public Thoroughfare. "Public Thoroughfare" shall mean any publicly accessible right of way including, but not limited to a street, sidewalk, public park, and path.

Significant architectural feature. "Significant architectural feature" shall mean any character-defining external component of a building including, but not limited to, the kind, color and texture of the building material and the type and style of any window, door, light, sign and other fixture appurtenant to any Improvement.

Significant landscape improvement. "Significant landscape improvement" shall mean any landscape improvement which is a character-defining element in its historic district, contributing to the special aesthetic and historic character for which the district was designated, and including but not limited to those Landscape Improvements identified as landscape features in the Designation Report.

Special natural area district. "Special natural area district" shall refer to a special purpose district designated by the New York City Planning Commission pursuant to Article X, Chapter 5 of the New York City Zoning Resolution which is mapped in areas where outstanding natural features or areas of natural beauty are to be protected.

HISTORICAL NOTE

Section added City Record Nov. 27, 1991 eff. Dec. 27, 1991.

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63 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 6 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STRUCTURES AND LANDSCAPES IN THE RIVERDALE HISTORIC DISTRICT

§6-03 Statement of Regulatory Policy.

(a) In regulating modifications and additions to any existing improvement and construction of any new structures or any work affecting landscape improvements in the Riverdale Historic District, the Landmarks Preservation Commission seeks to preserve the Riverdale Historic District's important landscape qualities and special architectural and historic character.

(b) In the Riverdale Historic District, the Landmarks Preservation Commission finds that the houses and other structures which make an important and significant architectural contribution to the Riverdale Historic District are those built, in whole or in part, before 1940.

(c) In assessing whether proposed work is compatible with the special characteristics of the Riverdale Historic District in terms of the placement, style, size, material and finish of such work, the Landmarks Preservation Commission shall consider such work's proximity to any significant landscape improvement or pre-1940 building and how it may physically or visually impact the building or landscape improvement. The Landmarks Preservation Commission shall also consider the extent of the proposal's visibility from a public thoroughfare.

HISTORICAL NOTE

Section added City Record Nov. 27, 1991 eff. Dec. 27, 1991.

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***** Current through December 2009 ****

63 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 6 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STRUCTURES AND LANDSCAPES IN THE RIVERDALE HISTORIC DISTRICT

§6-04 Modifications of and Additions to Existing Buildings.

(a) **Applications for proposed work.** An application shall be filed for any proposed modification or addition to any existing improvement or the construction of any new structure within the Riverdale Historic District for review by the Landmarks Preservation Commission and no work shall commence until the Landmarks Preservation Commission has issued a permit approving such work.

(b) **Pre-1940 buildings.** (1) The Landmarks Preservation Commission shall issue a CNE or a PMW for the following:

(i) Any addition to an existing structure which does not result in damage to or cause the demolition of a significant landscape improvement and which is to be situated in such a way as not to be visible from a public thoroughfare.

(ii) Any modification to an existing structure which:

(A) does not result in damage to or cause the demolition of a significant architectural feature or significant landscape improvement; and

(B) which is compatible with the existing structure's special architectural characteristics in terms of the placement, style, size, materials and finish of such modification.

(2) The Landmarks Preservation Commission shall consider an application for any of the following types of work

as a request for a certificate of appropriateness and shall hold a public hearing on such application:

(i) Any addition which is visible from a public thoroughfare.

(ii) Any modification or addition which does not meet the criteria for issuance of a PMW or CNE set forth in Subsection 6-04(b)(1) above, including any modification or addition which would result in damage to or cause the demolition of a significant architectural feature or significant landscape improvement.

(c) **Post-1939 buildings.**

(1) The Landmarks Preservation Commission shall issue a CNE or a PMW for the following:

(i) Any addition to an existing structure which does not result in damage to or cause the demolition of a significant landscape improvement and which is to be situated in such a way as to not be visible from a public thoroughfare.

(ii) Any addition to an existing structure which:

(A) although visible from a public thoroughfare does not result in damage to or demolition of a significant landscape improvement; and

(B) is compatible with the special characteristics of the Riverdale Historic District in terms of placement, height, roof line, materials and finish of such addition.

(iii) Any modification to an existing structure which:

(A) does not result in damage to or cause the demolition of a significant landscape improvement; and

(B) is compatible with the special characteristics of the Riverdale Historic District in terms of its materials and finish.

(2) The Landmarks Preservation Commission shall consider an application for any of the following types of work as a request for a certificate of appropriateness and shall hold a public hearing on such application:

(i) Any addition or modification which results in damage to or causes the demolition of a significant landscape improvement.

(ii) Any addition or modification which does not meet the criteria for the issuance of a PMW or CNE set forth above in subsection 6-04(c)(1).

HISTORICAL NOTE

Section added City Record Nov. 27, 1991 eff. Dec. 27, 1991.

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***** Current through December 2009 ****

63 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 6 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STRUCTURES AND LANDSCAPES IN THE RIVERDALE HISTORIC DISTRICT

§6-05 Regulation of Landscape Improvements.

(a) **Actions not Subject to Regulation.** (1) The landmarks preservation commission shall not regulate ordinary and beneficial landscaping activities which are in accordance with accepted horticultural practice such as pruning, planting of seasonal flower beds or vegetable gardens, or planting of ornamental shrubs or trees.

(2) The landmarks preservation commission shall not regulate the placement of portable garden furniture nor the installation of any temporary enclosure such as a tent for a party or reception.

(b) **Modification of landscape improvements.** (1) the boundaries of the Riverdale Historic District lie entirely with the Riverdale Special Natural Area District. These rules are intended to work with and complement the Riverdale special natural area district zoning.

(2) The Landmarks Preservation Commission shall regulate any modification to the landscape of the Riverdale Historic District which involves the installation of any permanent fixture or the construction of any structure or paved area or which would cause the demolition of, or have an impact on, any significant landscape improvement. Such work shall include:

(i) modification to or construction of any wall, step, path, drive, railing, fence, gate and gate post, permanent garden structure and pavilion, sidewalk and street gutter;

(ii) any change which affects or impacts upon a hedge or Mature Tree as well as any excavation or fill in a slope

exceeding 15 percent; and

(iii) the installation of a new paved area, patio or deck.

(3) The Landmarks Preservation Commission shall issue a CNE or a PMW for the following landscape modifications:

(i) Work which does not result in damage to or demolition of any Significant landscape Improvement.

(ii) Work which in terms of placement, style, size, material and finish is compatible with the special characteristics of the Riverdale Historic District.

(4) The Landmarks Preservation Commission shall consider any application for a proposed landscape modification which does not meet the criteria for a CNE or PMW set forth above in subsection 6-05(b)(3) as a request for a certificate of appropriateness and shall hold a public hearing on such application.

(c) **Applications for proposed work.** An application shall be filed for any proposed work having an effect on any landscape improvement within the Riverdale Historic District for review by the Landmarks Preservation Commission and no work shall commence until the Landmarks Preservation Commission has issued a permit approving such work.

HISTORICAL NOTE

Section added City Record Nov. 27, 1991 eff. Dec. 27, 1991.

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63 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 6 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STRUCTURES AND LANDSCAPES IN THE RIVERDALE HISTORIC DISTRICT

§6-06 Construction of New Structures.

Any application for a new structure shall be considered as a request for a certificate of appropriateness and shall be reviewed at a public hearing. In determining the appropriateness of any new structure the Landmarks Preservation Commission shall take into consideration such new structure's location, its proximity to and impact on any Pre-1940 building or any significant landscape improvement, its placement into the landscape and its compatibility with the visual and architectural character of the Riverdale Historic District. Additional considerations shall include the new structure's proximity to a public thoroughfare and the extent of its visibility from a public thoroughfare.

HISTORICAL NOTE

Section added City Record Nov. 27, 1991 eff. Dec. 27, 1991.

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***** Current through December 2009 ****

63 RCNY 7-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 7 PERMIT EXPIRATION AND RENEWAL

§7-01 Definitions.

As used in these Rules the following terms shall have the following meanings: Commission. "Commission" shall mean the New York City Landmarks Preservation Commission as established by §3020 of the New York City Charter.

Day. "Day" shall mean any day other than a Saturday or Sunday or legal holiday.

Landmarks law. "Landmarks law" shall be understood to refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

Landmarks preservation commission. "Landmarks preservation commission" shall mean the commission acting in its agency capacity to implement the landmarks law.

Permit. "Permit" shall mean any permit other than a notice to proceed, issued by the Landmarks Preservation Commission, in accordance with the provisions of the Landmarks law:

(1) "PMW" shall mean permit for minor work as defined by §25-310 of the Landmarks law.

(2) "CNE" shall mean certificate of no effect as defined by §25-306 of the Landmarks law.

(3) "CofA" shall mean certificate of appropriateness as defined by §25-307 of the Landmarks law and shall not refer to a certificate of appropriateness as defined by §25-309.

HISTORICAL NOTE

Section added City Record Oct. 7, 1992 eff. Nov. 6, 1992.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 7-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 7 PERMIT EXPIRATION AND RENEWAL

§7-02 Duration of Permits.

(a) (1) All permits shall be of limited duration as provided in these rules.

(2) Each permit shall clearly state the expiration date of such permit on the permit.

(b) The following permits shall have the following durations:

(1) Each PMW shall be valid for four (4) years from the date of such PMW.

(2) Each CNE shall be valid for four (4) years from the date of such CNE.

(3) Each CofA shall be valid for six (6) years from the date of a commission vote on such CofA.

(4) Any PMW, CNE or CofA issued for a master plan shall be valid indefinitely.

(c) Without limiting the time periods for permit duration set forth in subsection 7-02(b), where a permit or certificate has been issued to cure a violation, the Commission may require by the terms of such permit or certificate that the work be performed within a specified time period. The failure to perform the work and cure the violation within the specified time period shall mean that the Chair may serve a warning letter, a first, second or subsequent NOV in accordance with the provisions of §§25-317.1b and 25-317.2 of the Administrative Code.

HISTORICAL NOTE

Section added City Record Oct. 7, 1992 eff. Nov. 6, 1992.

Subd. (c) added City Record July 6, 1998 eff. Aug. 5, 1998. [See T63 Chapter 11 footnote]

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 7-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 7 PERMIT EXPIRATION AND RENEWAL

§7-03 Renewal of Permits.

(a) The landmarks preservation commission may issue a renewal of a permit only upon the satisfaction of all of the following conditions:

(1) An application requesting a renewal shall be filed with the landmarks preservation commission no later than sixty (60) days prior to the expiration date shown on such permit.

(2) The application requesting a renewal shall include (i) a copy of a signed contract which is binding on the parties thereto for the work which is the subject of the permit then expiring and which specifies that work thereunder is to be commenced by a date which is at least sixty (60) days prior to the expiration date of such permit and (ii) if a building permit is required for the work which is the subject of the expiring permit, a copy of a valid building permit based on the landmarks commission's permit for the work which is the subject of the permit then expiring.

(3) No "Notice of Violation" from the landmarks preservation commission shall be in effect against the property subject to the permit for which a renewal is requested; provided, however, that if the landmarks preservation commission shall find that (i) the work which is the subject of the permit for which a renewal is requested (A) will correct a hazardous condition or (B) prevent deterioration affecting the building; or (ii) an escrow agreement, or other acceptable form of assurance, has been established to provide a mechanism, acceptable to the landmarks preservation commission, to ensure that work approved to correct the notice of violation will be completed within a specified time period, then this subsection (3) shall not apply.

(b) If all conditions to the renewal of a permit have been met on or before the expiration date of such permit, the

landmarks preservation commission shall issue a renewal permit to the applicant which shall be valid for (i) two (2) years from the date of the expiration of the original permit if the permit renewed in either a PMW or a CNE or (ii) three (3) years from the date of the expiration of the original permit if the permit renewed is a CofA.

(c) (1) Notwithstanding the foregoing provisions, the chair of the landmarks preservation commission shall have the discretion, based on extraordinary circumstances, to allow the renewal of any permit. Such circumstances may include, but shall not be limited to, (i) delays resulting from the inability to obtain other governmental approvals, licenses or permits or (ii) an inability to complete construction of a project for which work has begun and is continuing with due diligence.

(2) Request for any such discretionary extension shall be made in writing no later than sixty (60) days prior to the expiration date of the permit or within ten (10) days after receipt of notice that the permit will not be renewed, and may include supporting documentation. The chair shall respond to such request within twenty (20) days of receipt of the request. If the chair of the landmarks preservation commission determines that a renewal of the permit should be allowed, the landmarks preservation commission shall renew the permit for a stated term of years.

(3) In allowing the renewal, the chair may set reasonable conditions including clearing up any outstanding violations within a reasonable stated time.

(d) The expiration of any permit shall be tolled if judicial proceedings to review the decision to grant the permit, or any other governmental approval, license, permit or similar action applied for, or granted in connection with, the project have been instituted until the date of the entry of a final order in such proceedings, including all appeals.

(e) Any person who has been notified by the commission that a permit will not be renewed because a "notice of violation" from the landmarks commission is in effect against the property may request that the chair of the commission review whether the notice of violation is properly in effect against the property. Such request shall be made in writing within ten (10) days from the date of the notification that the permit will not be renewed and may include supporting documentation. The chair of the landmarks preservation commission shall respond to such request within twenty (20) days of receipt of the request. If the chair determines that a notice of violation was not properly in effect against the property, the landmarks preservation commission shall issue a renewed permit if it finds that all other conditions set forth in these rules have been met.

HISTORICAL NOTE

Section added City Record Oct. 7, 1992 eff. Nov. 6, 1992.

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***** Current through December 2009 ****

63 RCNY 7-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 7 PERMIT EXPIRATION AND RENEWAL

§7-04 Effect of Expiration of Permits.

(a) Upon expiration of any permit, such permit shall terminate and be of no further effect.

(b) An applicant may apply for a new permit for work which is the subject of an expired permit. The landmarks preservation commission shall treat such application for a renewal which does not meet the condition for the renewal of permits as a new application in all respects subject to all applicable procedures, rules and guidelines in effect at the time of such application for renewal.

HISTORICAL NOTE

Section added City Record Oct. 7, 1992 eff. Nov. 6, 1992.

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63 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 7 PERMIT EXPIRATION AND RENEWAL

§7-05 Miscellaneous.

Any permit (i) which is either a PMW or a CNE issued after the effective date hereof or (ii) which is a CofA which the commission approves by a vote taken after the effective date hereof shall be subject to these rules.

HISTORICAL NOTE

Section added City Record Oct. 7, 1992 eff. Nov. 6, 1992.

Rules of the City of New York

63 RCNY 8-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 8*14 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STOREFRONTS IN THE JACKSON HEIGHTS HISTORIC DISTRICT

§8-01 Introduction.

These Rules are issued to assist the public in applying to the Landmarks Preservation Commission (the "Commission") for approval for the restoration, rehabilitation, alteration, or replacement of storefronts and associated fixtures in existing buildings within the Jackson Heights Historic District. These Rules enunciate the Commission's policy with respect to such work, and allow the staff of the Commission ("LPC staff") to issue permits for work conforming to these Rules. These Rules will ensure that new storefronts will be consistent with the architectural features that establish the aesthetic, historical, and architectural value and significance of the Jackson Heights Historic District.

The Jackson Heights Historic District represents one of the first areas in the city in which the commercial thoroughfares were designed to complement and integrate with the residential buildings through the use of the same architectural styles and features of adjoining residential buildings. The majority of buildings within the Jackson Heights Historic District were built between 1910 and the 1950s. The styles found in both the residential and commercial buildings of the Jackson Heights Historic District include the neo-Tudor (e.g., English Gables at 37-12 to 37-34 82nd Street), the neo-Romanesque (e.g., Ravenna Court at 80-01 to 80-29 37th Avenue), the neo-Georgian (e.g., Georgian Hall at 83-01 to 83-27 37th Avenue), and the Moderne (e.g., 78-01 to 78-15 37th Avenue).

HISTORICAL NOTE

Section added City Record July 25, 1996 eff. Aug. 24, 1996.

FOOTNOTES

14

[Footnote 14]: * Chapter added City Record July 25, 1996 eff. Aug. 24, 1996. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to staff permits for storefront alterations in the Jackson Heights Historic District and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review for staff-level permits of applications to construct or alter storefronts in the Jackson Heights Historic District. Applicants with proposals that vary from these rules may seek Certificates of Appropriateness.

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***** Current through December 2009 ****

63 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 8*14 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STOREFRONTS IN THE JACKSON HEIGHTS HISTORIC DISTRICT

§8-02 Definitions.

As used in the Jackson Heights Historic District Storefront Rules, the following terms shall have the following meanings:

Awning. "Awning" shall mean a metal frame clad with fabric attached over a storefront, door or window, to provide protection from the sun or rain.

Bulkhead. "Bulkhead" shall mean the part of a storefront that forms a base for one or more display windows (see Appendix A).

Building Streetwall. "Building Streetwall" shall mean the predominant plane of the building facade at the level of the storefront.

Canopy. "Canopy" shall mean a metal frame clad with fabric that projects from a building entrance over the sidewalk to the curb, where it is supported on vertical posts.

The Commission. "The Commission" shall mean the Commissioners of the Landmarks Preservation Commission, including the Chairman, as established by Section 3020 of the New York City Charter.

Cornice. "Cornice" shall mean a horizontal molded projection that completes the top of a wall, facade, building or storefront (see Appendix A).

Display window. "Display window" shall mean the large glazed portion of the storefront, and the associated framing, above the bulkhead and below the transom, extending from pier to pier. The display window is typically used for the display of goods and to provide daylight and visibility into the commercial space (see Appendix A).

Entrance recess. "Entrance recess" shall mean the recessed opening in the facade leading up to the doorway of a storefront or building entrance (see Appendix A).

Facade. "Facade" shall mean an entire exterior face of a building.

Fixture. "Fixture" shall mean an appliance or device attached to the facade (e.g., awning, sign, lighting fixture, conduit, or security gate).

Historic fabric. "Historic fabric" shall mean a building's original or significant historic facade construction material or ornament, or fragments thereof.

Landmarks Law. "Landmarks Law" shall refer to Section 3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

Lighting. "Lighting" shall mean the method or equipment for providing artificial illumination.

Lintel. "Lintel" shall mean the horizontal member or element above a door or window opening (see Appendix A).

LPC staff. "LPC staff" shall mean the staff of the Landmarks Preservation Commission acting in the Commission's agency capacity.

Permit. "Permit" shall mean any permit other than a Notice to Proceed, issued by the Landmarks Preservation Commission, in accordance with the provisions of the Landmarks Law:

(a) "PMW" shall mean a Permit for Minor Work as defined by Section 25-310 of the Landmarks Law.

(b) "CNE" shall mean a Certificate of No Effect as defined by Section 25-306 of the Landmarks Law.

(c) "CofA" shall mean Certificate of Appropriateness as defined by Section 25-307 of the Landmarks Law and shall not refer to a Certificate of Appropriateness as defined by Section 25-309.

Pier. "Pier" shall mean a vertical supporting member or element (usually of brick, stone, or metal) placed at intervals along a wall, which typically separate each storefront opening from the adjacent storefront opening (see Appendix A).

Roll-down gate. "Roll-down gate" shall mean a security gate with a mechanism that allows it to roll up and down.

Rules. "Rules" shall mean the rules governing the practice and procedure of the Commission as promulgated in Title 63 of the Rules of the City of New York.

Scissor gate. "Scissor gate" shall mean a security gate with a sideways retractable mechanism.

Security gate. "Security gate" shall mean a movable metal fixture installed in front of a storefront or inside the display window or door to protect the store from theft or vandalism when the store is closed. A security gate can be either the roll-down or scissor variety.

Security gate housing. "Security gate housing" or "housing," shall mean the container that houses the rolling mechanism of a roll-down security gate.

Security gate tracks. "Security gate tracks" shall mean the interior or exterior tracks along the sides of the

storefront (for roll-down gates) or along the top and bottom of the storefront (for scissor gates) that hold the edges of the gates.

Sign. "Sign" shall mean a fixture or area containing lettering or logos used to advertise a store, goods, or services (see Appendix A).

Signage. "Signage" shall mean any lettering or logos in general, used to advertise a store, goods, or services.

Sign band. "Sign band" shall mean the flat, horizontal area on the facade usually located immediately above the storefront and below the second story window sill where signs were historically attached. A sign band may also occur within a decorative bandcourse above a storefront (see Appendix A).

Significant architectural feature. "Significant architectural feature" shall mean an exterior architectural component of a building that contributes to its special historic, cultural, and aesthetic character, or reinforces the special characteristics for which the Jackson Heights Historic District was designated.

Sill. "Sill" shall mean the bottom horizontal member or element of a window or door (see Appendix A).

Skirt. "Skirt" shall mean the bottom finishing piece that hangs from the lower edge of an awning.

Soffit. "Soffit" shall mean the underside of a structural component such as a beam, arch, or recessed area.

Spandrel area. "Spandrel area" shall mean the portion of the facade below the sill of an upper story window and above the lintel of the window or display window directly below it or above the lintel of a window or display window and the building cornice or top of buildings (see Appendix A).

Storefront bay. "Storefront bay" shall mean the area of the storefront defined by and the spanning the two piers.

Storefront infill. "Storefront infill" shall mean the framing, glazing, and cladding contained within a storefront opening in the facade.

Storefront opening. "Storefront opening" shall mean the area of the facade framed by the piers and lintel, which contains storefront infill (see Appendix A).

Transom. "Transom" shall mean a glazed area above a display window or door separated from the display window or door by a transom bar. A transom can be fixed or hinged (see Appendix A).

HISTORICAL NOTE

Section added City Record July 25, 1996 eff. Aug. 24, 1996.

FOOTNOTES

14

[Footnote 14]: * Chapter added City Record July 25, 1996 eff. Aug. 24, 1996. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections

25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to staff permits for storefront alterations in the Jackson Heights Historic District and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review for staff-level permits of applications to construct or alter storefronts in the Jackson Heights Historic District. Applicants with proposals that vary from these rules may seek Certificates of Appropriateness.

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63 RCNY 8-03

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Title 63 Landmarks Preservation Commission

CHAPTER 8*14 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STOREFRONTS IN THE JACKSON HEIGHTS HISTORIC DISTRICT

§8-03 Routine Maintenance.

A permit is not required to undertake minor ordinary repairs and cleaning such as:

(a) **Window repair.** Ordinary repair and restoration of windows in accordance with the criteria set forth in Section 3-02 (a) of these Rules ("Window Guidelines").

(b) **Painting.** Scraping, priming, and repainting of storefronts to recoat with the same color and finish, provided that such color and finish either existed at the time of designation or was subsequently applied pursuant to a Commission permit.

(c) **Cleaning.** Routine cleaning, including polishing of metal storefronts and routine removal of small amounts of graffiti. Routine cleaning does not include sandblasting and chemical cleaning.

(d) **Repair or replacement of door or window hardware.** Repair or replacement of door or window hardware, excluding security gate replacement.

HISTORICAL NOTE

Section added City Record July 25, 1996 eff. Aug. 24, 1996.

FOOTNOTES

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[Footnote 14]: * Chapter added City Record July 25, 1996 eff. Aug. 24, 1996. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

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63 RCNY 8-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 8*14 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STOREFRONTS IN THE JACKSON HEIGHTS HISTORIC DISTRICT

§8-04 Storefront Alterations.

LPC staff will issue a CNE or a PMW (if the work does not require a permit from the Department of Buildings) for storefront alterations and replacement provided the work meets all of the following criteria:

(a) **Retention of historic storefronts.** All existing original or significant historic storefronts shall be retained or repaired if feasible, or if repair is not feasible, replaced in kind.

(b) **Permitted storefront alterations.** (1) **Retention of significant protected features.** All alterations to storefront openings, infill, and fixtures shall preserve all significant original and historic architectural components of the existing storefront, including those presently concealed by non-original materials. Such components shall be retained or repaired if feasible, or if repair is not feasible, replaced in kind.

(2) **Storefront openings.**

(i) **Size and placement.** Storefront infill shall fit within the opening established by the original building piers and lintels.

(ii) **Separation between storefronts and upper floors.** A storefront shall be visually separated from the upper floors or the top of the building by a horizontal architectural component, such as a cornice or sign band.

(3) **Storefront infill.** The design of storefront infill shall be based on:

(i) **Evidence of the original storefront.** An original storefront design shall be determined through references to historic photographs, remnants of historic fabric, or other historic storefronts in the building or similar type of building. (Note: LPC staff can assist you in locating historic photographs.) All such evidence shall be submitted to the Commission with the application; and/or

(ii) **General Jackson Heights storefront infill criteria.** These criteria, set forth below, reflect the typical historic configuration of storefronts in the Jackson Heights Historic District, which were comprised of three horizontal parts: solid bulkhead, display window, and transom.

(A) **Bulkhead.** A storefront shall have a bulkhead. The bulkhead shall be between 12 inches and 24 inches in height. The bulkhead shall be built of or clad with one of the following materials:

(a) brick that matches the existing building facade brick;

(b) stone or cast stone;

(c) panelled wood with molded details; or

(d) metal with molded detail. Corrugated metal shall not be permitted.

(B) **Display window.** A storefront shall have one or more display windows. Display windows shall be framed with wood or metal and shall be glazed with clear glass. Any blocking of the transparency of the glass of portions of the storefront shall be reversible and maintain the exterior surface of the glass. Back-painting or the installation of removable opaque panels behind the glass shall be permitted. The installation of tinted or mirrored glass shall not be permitted.

(C) **Transom.** A storefront shall have a transom above the door(s) if there is sufficient clearance within the existing masonry opening. Transoms are also required above display windows unless it is determined through physical or pictoral evidence that no transom existed originally or if there is not sufficient clearance within the existing masonry opening. Transoms shall be between 12 and 36 inches in height. Transom framing shall match the material and finish of the display window framing. Transoms shall be glazed with clear glass. Back-painted glass or the installation of a solid panel behind the glass shall be permitted when necessary to conceal a dropped ceiling if such ceiling falls below the top of the transom.

(D) **Building streetwall.** The overall placement of the bulkhead, display window and display window transom shall conform to the original building streetwall. A new display window, bulkhead, and door that incorporate external roll-down gates, with a recessed housing that complies with the criteria set forth below in 8-04(b)(6)(ii), may be recessed up to four inches to accommodate the width of the gate tracks.

(E) **Entrance.** A storefront with out-swinging doors shall have an entrance recessed a minimum of 18 inches from the building streetwall. The sides of the entrance recess shall be splayed or angled outward toward the street, unless restricted by the property line. Recessing is optional if a storefront has in-swinging doors.

(F) **Door.** A door shall have at least 75% of its surface area glazed with clear glass and shall be framed in wood or metal. Solid, flat (unpaneled) doors are not permitted.

(G) **Finish.** Non-glazed portions of the storefront infill shall be manufactured in, factory finished with paint or enamel in, or painted on site with one of the following colors or finishes:

(a) Black

(b) Brown

(c) Dark gray

(d) Tan

(e) Dark green

(f) Maroon (dark brownish red)

(g) Silver (stainless steel, clear-finished, or brush-finished aluminum). This finish shall be permitted only for metal storefronts in buildings specified in the Jackson Heights Historic District Designation Report as Art Deco or Modern Style.

(h) Anodized finished on aluminum shall be black or silver only. Bronze anodized aluminum shall not be permitted.

(4) **Signage.**

(i) **Types of signs permitted on the ground story.**

(A) Back-painted signs on glass doors, display windows or transoms not exceeding 50% of the glazed area. No LPC permit is needed for this type of sign.

(B) Letters and logos pin-mounted or painted on a wood, metal, or opaque glass panel that is mounted flat within the sign band or spandrel. Such signs may be illuminated with a shielded or concealed source of light, or with "goose-neck" type fixtures. Such "goose-neck" fixtures shall be placed above the sign and shall not exceed one fixture for every 3 linear feet of sign.

(C) Neon signs installed in the display window behind the glass, provided that the perimeter of the window is not outlined with neon, the transparency of the display window is not materially reduced, and the size of the sign does not exceed 2 feet by 2 feet per display window.

(D) Individual pin-mounted opaque letters and logos illuminated from behind, each glowing with a halo of light, or individual letters with exposed neon tubes (no lenses). The letters or logos may be mounted on a flat metal or wood panel, or affixed to a base measuring no more than 4 inches deep by 4 inches high that houses the electrical conduit.

(E) Signs painted on awnings (if permitted under the awning rules, set forth below in 8-04(b)(5)).

(F) Small identification signs for second story tenants are permitted near the entrance to the second story premises.

(ii) **Types of signs permitted on the second story.**

(A) Back-painted signs on glass windows or transoms not exceeding 50% of the glazed area. No LPC permit is needed for this type of sign.

(B) Letters and logos pin-mounted or painted on a wood, metal or opaque glass panel, which is mounted flat on an area of plain masonry.

(C) Neon signs, installed in the second floor window behind the glass, provided that the perimeter of the window is not outlined with neon, the transparency of the second floor window is not materially reduced, and the size of the sign does not exceed 18 inches by 18 inches per window.

(D) Signs painted on awnings (if permitted under the awning rules, set forth below in 8-04(b)(5)).

(iii) **Types of signs not permitted.**

(A) Projecting banners and flagpoles.

(B) Internally illuminated box signs with plastic or glass lenses.

(C) Internally illuminated fabric signs or awnings.

(D) Flashing signs, moving signs, or strobe-lights.

(E) Neon border outline around perimeter of a window.

(F) Signs or advertising added to bulkheads.

(iv) **General criteria for sign installation.** Installation of the sign shall not damage or obscure significant architectural features of the building and/or the storefront.

(v) **Criteria for sign installation at ground story.**

(A) Ground story signs shall be installed in the sign band, spandrel, display window, transom, or door.

(B) The height of the sign shall not exceed the height of the sign band, or, if there is sign band, the spandrel area above the storefront.

(C) The length of the sign shall not exceed the length of the frontage of the storefront opening.

(vi) **Criteria for sign installation at the second story.**

(A) A second story sign shall relate to the commercial premises located at the second story.

(B) A second story sign may be placed on the building facade either in the spandrel area above the second story windows or centered between second story windows. The placement of second story signage shall be consistent for a single building.

(C) A sign located above a second story window shall not exceed 20 inches in height or the lesser of 6 feet in length or the width of the window(s) for the commercial premises.

(D) A sign placed between windows on the second story shall not exceed 30 inches in height or 3 feet in length.

(E) Second story signs on the facade shall not be externally or internally illuminated, except for neon signs that comply with the criteria set forth above in 8-04(b)(4)(ii)(C).

(5) **Storefront awnings.** These rules apply to the installation of awnings above ground story storefronts and above upper story windows. For storefronts in the Jackson Heights Historic District, the following criteria apply in lieu of the general awning rule set forth in Section 2-12 of the Rules. If a new storefront is being installed and an awning is desired, the storefront shall incorporate an awning in compliance with the criteria set forth below. Existing awnings in non-compliance with these criteria cannot be maintained unless the applicant can demonstrate to LPC staff that the new storefront installation will not require the removal of the existing awning.

(i) **General awning criteria.**

(A) An awning may be retractable or fixed. If fixed, the awning shall have a straight slope, be open on the sides, and have an unframed, flexible skirt. The awning skirt shall not exceed 10 inches in height. If retractable, the awning shall have a straight slope.

(B) The awning shall be attached to the facade at the lintel or transom bar, except that the awning may be attached

above the lintel and below or within the lower portion of the sign band where:

(a) an existing or permitted roll-down security gate makes it impossible to install the awning at the lintel or transom bar; or

(b) installing the awning at the lintel or transom bar will result in the lowest portion of the awning being less than eight feet above the sidewalk.

Where the awning is installed above the lintel but below or in the lower portion of the sign band, the awning encroachment on the area above the lintel shall be the minimum required to accommodate the conditions described above in subparagraphs (a) and (b).

(C) The length of the awning shall not exceed the length of the storefront opening or the associated window opening and the edges of the awning shall be aligned with the inside face of the principal piers of the storefront, or the window opening.

(D) The underside of the awning shall be open.

(E) The lowest portion of awning shall be at least 8 feet above the sidewalk.

(F) The awning shall project between three feet and six feet from the building street wall.

(G) The awning shall be clad only with water repellant canvas with a matte finish or other fabric of a similar appearance.

(H) A sign may be painted on the awning skirt. Such sign shall not exceed 8 inches in height.

(I) A sign may not be painted on the sloped portion of the awning unless the building has no sign band or spandrel area above the ground floor storefront. Such signs shall be proportionate with the size of the awning, but in no event shall such signs exceed 6 square feet in area per awning.

(ii) **Types of awnings not permitted.** The following types of awnings are not permitted:

(A) Fixed box awnings.

(B) Fixed waterfall or curved awnings.

(C) Novelty awnings.

(D) Translucent or transparent awnings illuminated from within or beneath.

(iii) **Canopies.** Canopies are not permitted.

(6) **Security gates.**

(i) **General requirements.** A security gate shall not obscure or detract from the design and details of an existing storefront and shall be architecturally integrated with the design and construction of a new storefront.

(ii) **Security gates for new storefronts.** If security gates are required, the new storefront shall be constructed with an internally-housed or completely internal security gate system or scissor gates. Subsequent to a new storefront installation, LPC staff will not approve a security gate in noncompliance with the criteria set forth below.

(A) **Roll-down gates.** All roll-down security gates installed pursuant to these rules shall be composed entirely of open mesh or have a solid metal panel at the base that does not exceed the height of the bulkhead it covers.

(B) **Internal gates.** A roll-down security gate may be mounted on the interior of the storefront. An internally mounted gate is required if an externally mounted gate cannot be installed in compliance with the criteria for external gates set forth below in subsection (C).

(C) **External gates.** A roll-down security gate may be mounted on the exterior of the storefront if it (1) does not affect, obscure, or damage historic fabric, (2) the security gate housing is located on the interior of the storefront, or the outer face of the security gate housing is set so as not to protrude beyond the building streetwall, and (3) the security gate tracks are recessed or set into reveals along the sides of the storefront.

(D) **Scissor gates.** Scissor gates are permitted if their installation does not obscure or damage any significant architectural feature.

(iii) **Security gates for existing storefronts.**

(A) An internal gate, scissor gate, or external gate may be installed if the installation is in compliance with the relevant criteria set forth above in 8-04(b)(6)(ii)(A-D).

(B) A replacement external gate that is not in compliance with the criteria set forth above in 8-04(b)(6)(ii)(C) may be mounted on the exterior of the storefront if the following criteria are met:

(a) the existing storefront is not being replaced and the storefront had an exterior roll-down gate at the time of the designation of the Jackson Heights Historic District;

(b) the installation of the new security gate shall not obscure or damage any significant architectural features; and

(c) the security gate housing and tracks shall be finished in a color to match or harmonize with the storefront and the security gate housing will be completely covered by an awning that is installed and maintained in compliance with the awning rules set forth above in subsection 8-04(b)(5); and

(d) the security gate shall be composed entirely of open mesh or shall have a solid metal panel at the base that does not exceed the height of the bulkhead it covers.

(7) **Lighting.**

(i) The installation of lighting conduits and fixtures shall not obscure or damage any significant architectural feature.

(ii) Lighting conduits shall be internal or not visible.

(iii) External light fixtures shall illuminate only the storefront and/or ground story signs.

(iv) The number and size of light fixtures shall be in keeping with the scale of the storefront.

(v) The design of light fixtures shall be utilitarian or shall complement the architectural style and detail of the building.

(vi) Fluorescent and high intensity light shall be permitted only if the source of light is concealed and shielded.

(vii) Recessed light fixtures shall be mounted within the soffits of recessed storefront entrances.

(viii) No separate light fixture shall illuminate any sign with internal illumination.

(8) **Air conditioners/louvers.** Temporary, seasonal air conditioning units shall be installed in transoms over doors. Louvers for built-in air conditioning, heating or ventilation units may be installed at the door or window transoms.

Louvers shall be mounted flush with the plane of the transom, and painted to match the color of the surrounding storefront elements.

HISTORICAL NOTE

Section added City Record July 25, 1996 eff. Aug. 24, 1996.

FOOTNOTES

14

[Footnote 14]: * Chapter added City Record July 25, 1996 eff. Aug. 24, 1996. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to staff permits for storefront alterations in the Jackson Heights Historic District and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review for staff-level permits of applications to construct or alter storefronts in the Jackson Heights Historic District. Applicants with proposals that vary from these rules may seek Certificates of Appropriateness.

63 RCNY 8-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 8*14 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STOREFRONTS IN THE JACKSON HEIGHTS HISTORIC DISTRICT

§8-05 Procedure.

(a) **Submission of application.** The rules for making an application are set forth in Chapter 2, Subchapter A ("Application Procedure") of these Rules. The illustrations included in Appendix B provide hypothetical examples of the types of storefronts and storefront installations which are permitted under these rules.

(b) **Review of application.** (1) When the application is complete, a staff member will review the application for conformance with the criteria set forth in this Chapter 8. Upon determination that the criteria of the guidelines have been met, a permit will be issued within 20 business days for a PMW or 30 business days for a CNE, as measured from the day the staff determines that the application is complete.

(2) If the criteria have not been met, the applicant will be given a notice of the proposed denial of the application and an opportunity to meet with the Director of the Preservation Department, or, when the Director is not available, with a Deputy Director, to discuss the interpretation of these rules. The applicant must request such a meeting in writing within 10 business days from the date of the notice of proposed denial.

(3) If an application for work is denied a PMW or CNE under these Rules, the applicant shall be informed of his or her right to file for a CofA pursuant to Title 25, Chapter 3 of the Administrative Code of New York City.

(c) **Illustrations.** Drawings are the most effective way to illustrate the proposed work in a clear and precise fashion. The drawings contained in Appendix B of this Chapter 8 are examples of the types of drawings an applicant will be required to submit to the LPC as components of a complete application. As examples, these drawings have been

simplified to generalize and illustrate many of the definitions and the requirements enunciated in the rules above. Submissions to the Commission must be specifically tailored to individual proposals. Drawings must be made to scale, and include all pertinent dimensions. Applications also may be supplemented, as necessary, with photographs of existing conditions, construction details, materials samples, specifications, and maps, to best explain the proposed work.

HISTORICAL NOTE

Section added City Record July 25, 1996 eff. Aug. 24, 1996.

FOOTNOTES

14

[Footnote 14]: * Chapter added City Record July 25, 1996 eff. Aug. 24, 1996. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to staff permits for storefront alterations in the Jackson Heights Historic District and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review for staff-level permits of applications to construct or alter storefronts in the Jackson Heights Historic District. Applicants with proposals that vary from these rules may seek Certificates of Appropriateness.

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63 RCNY 8 - APPENDIX A

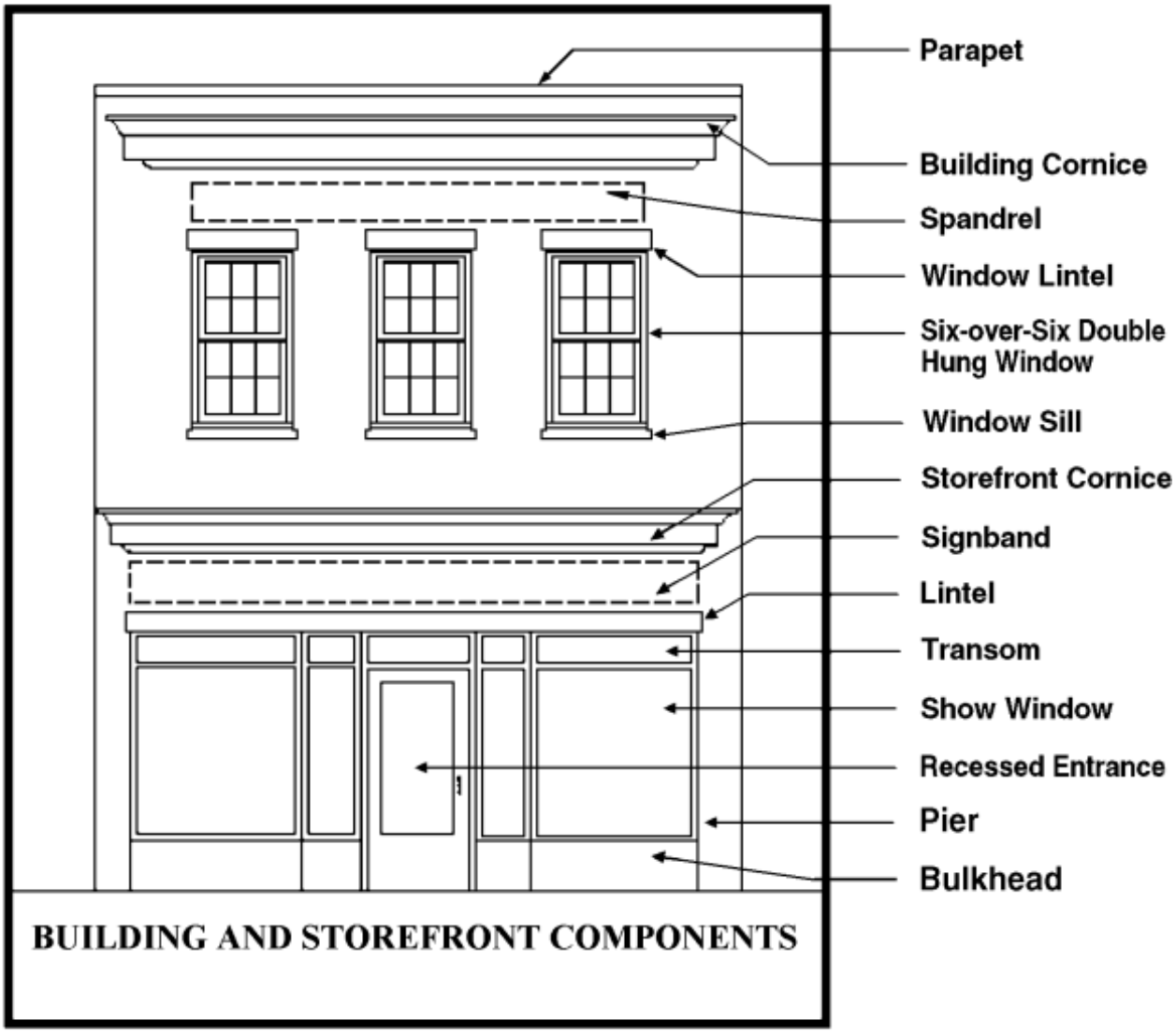
RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

APPENDIX A ILLUSTRATIONS OF DEFINITIONS OF ARCHITECTURAL ELEMENT

APPENDIX A ILLUSTRATIONS OF DEFINITIONS OF ARCHITECTURAL ELEMENT

JACKSON HEIGHTS STOREFRONT RULES



BUILDING AND STOREFRONT COMPONENTS

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63 RCNY 8 - APPENDIX B

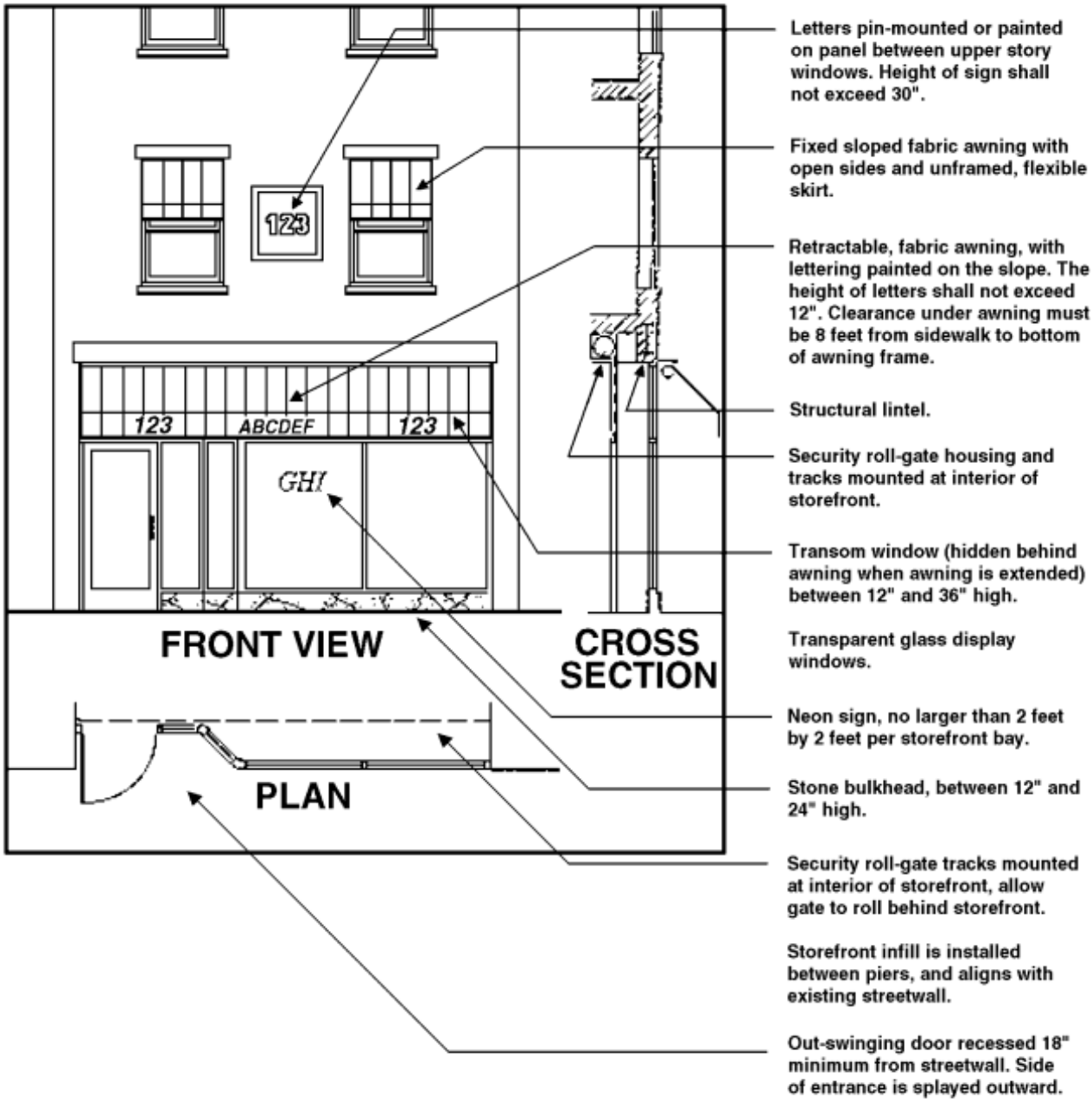
RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

APPENDIX B APPLICATION DRAWINGS

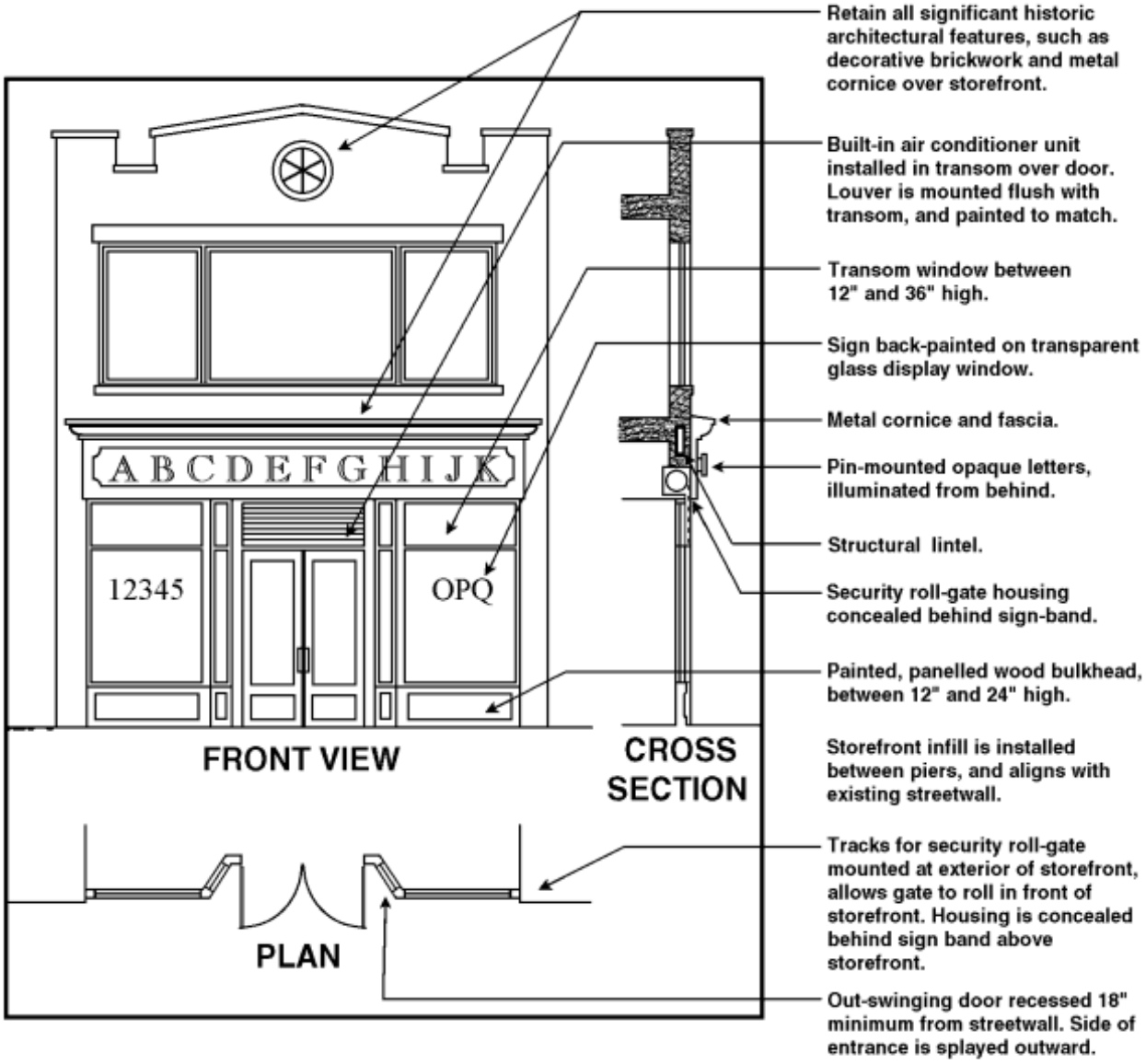
APPENDIX B APPLICATION DRAWINGS

JACKSON HEIGHTS STOREFRONT RULES



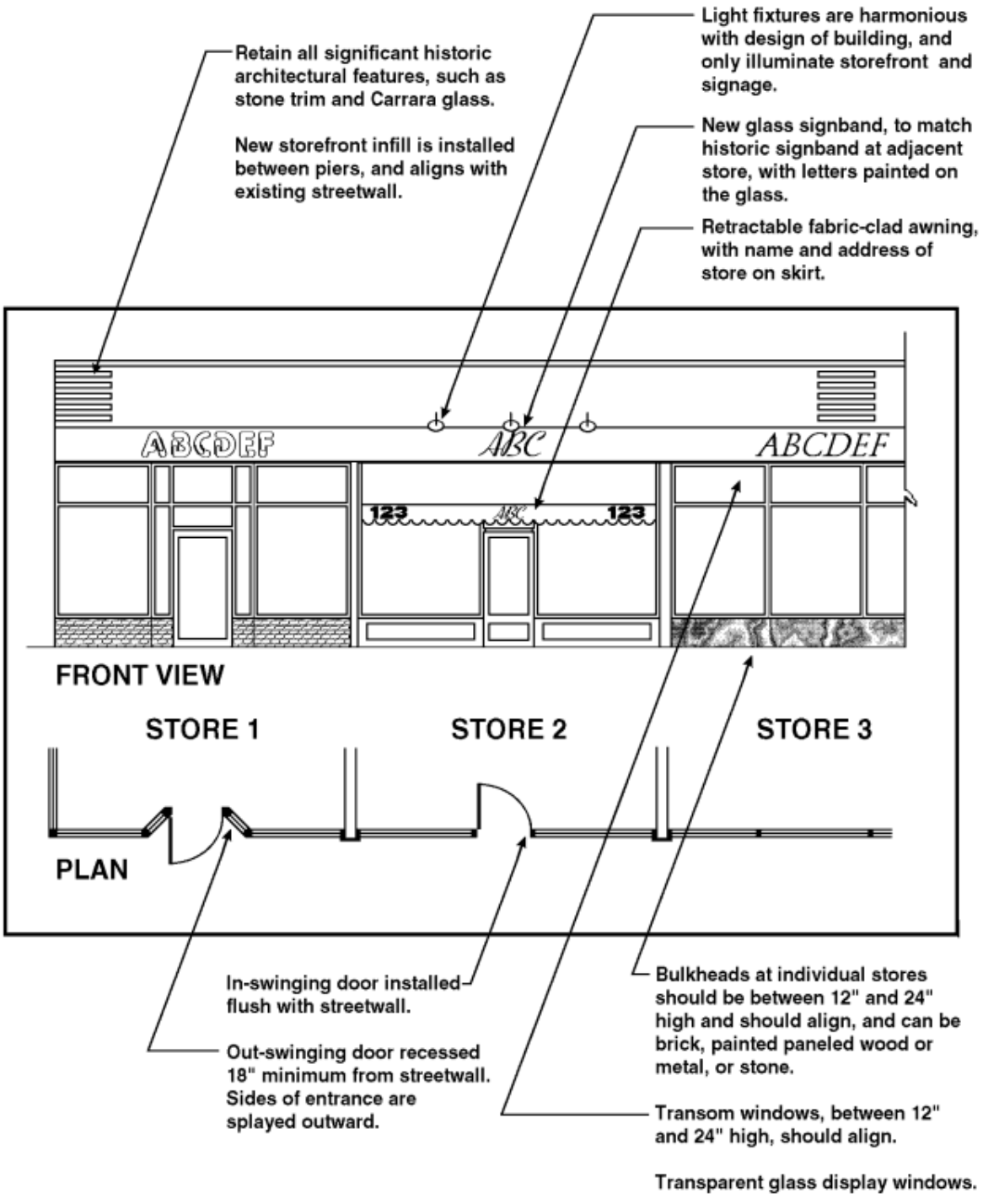
EXAMPLE ONE-STOREFRONT WITH SIDE ENTRANCE

JACKSON HEIGHTS STOREFRONT RULES



EXAMPLE TWO-STOREFRONT WITH CENTER ENTRANCE

JACKSON HEIGHTS STOREFRONT RULES



EXAMPLE THREE-BUILDING WITH MULTIPLE STOREFRONTS

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 9-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-01 Introduction.

(a) These rules are issued to assist building owners in applying to the Landmarks Preservation Commission (LPC) for approval of applications to undertake repair, rehabilitation, replacement of, or alterations to interior architectural features within designated bank interiors. The rules set forth Commission policy with respect to such repair, rehabilitation, replacement, or alteration and explain the procedures required to apply for a permit. The goal of these rules is to facilitate and encourage the continued historic use of these interiors as banking floors and to facilitate the adaptive reuse of the interior if it ceases to be used as a banking floor.

(b) These rules are based on the following principles:

(1) The significant original visual qualities or character of a designated interior should not be destroyed. The removal or alteration of any significant architectural feature should be avoided whenever possible.

(2) Significant but deteriorated architectural features should be repaired rather than replaced whenever possible.

(3) Certain interior alterations can be approved at staff level in conformance with the procedures set forth in these rules. Other interior alterations require review by the full Commission in accordance with its usual review procedures.

(c) These rules are keyed to underlined portions of the Description section of the Designation Reports for these interior landmarks, which identify significant architectural features requiring protection.

(d) Applicants are encouraged to submit applications for Master Plans which will govern the approval of routine

and continuing alterations such as installation of mechanical and electrical equipment.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 9-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-02 Definitions.

As used in these Rules, the following terms shall have the following meanings:

Banking interior. The term "banking interior" shall mean the area of the designated interior historically used for banking operations and any associated interior spaces including, without limitation, entrance vestibules or mezzanines identified in the designation report as part of the designated interior.

Commission. The term "commission" shall mean the eleven Commissioners, including the Chairman, as established by §3020 of the New York City Charter.

Interior architectural features. The term "interior architectural features" shall have the meaning established in §25-302 of the Administrative Code of the City of New York.

Landmarks Law. The term "landmarks law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

LPC. The term "LPC" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Non-significant features. The term "non-significant features" shall mean the interior architectural features of the designated interior that the LPC has determined do not contribute to the special historic, cultural, and/or aesthetic character for which the interior was designated. These features comprise all of the interior architectural features of the

interior with the exception of those features that are underscored in the designation report.

Significant features. The term "significant features" shall mean the interior architectural features of the designated interior that the LPC has determined contribute to the special historic, cultural, and/or aesthetic character for which the interior was designated, and therefore require protection under these rules. These features are identified in the designation reports and indicated by underscoring.

Reversible alteration. The term "reversible alteration" shall mean an alteration in which the altered feature can be readily returned to its appearance prior to the alter- ation.

State-of-the-art banking change. The term "state-of-the-art banking change" shall mean a physical alteration to the bank interior that the applicant has determined to be necessary to accommodate changes in technology and/or banking practice. When submitting an application to make such an alteration, the applicant must enclose a verified statement executed by the manager of the bank stating that the bank's ability to perform its banking functions would be impaired if it were unable to make such an alteration.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 9-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-03 Eligible Interiors & Significant Features.

(a) The following interior landmarks are subject to these rules:

(1) Former Emigrant Industrial Savings Bank, 51 Chambers Street, Manhattan

(2) Former New York Bank for Savings, 81 Eighth Avenue, Manhattan

(3) Former Greenwich Savings Bank, 1352-1362 Broadway, Manhattan

(4) Former Central Savings Bank, 2100-2114 Broadway, Manhattan

(5) Former Dollar Savings Bank, 2516-2530 Grand Concourse, Bronx

(6) Dime Savings Bank, 9 DeKalb Avenue, Brooklyn

(7) Former Bowery Savings Bank, 130 Bowery, Manhattan

(8) Former Bowery Savings Bank, 110 East 42nd Street, Manhattan

(9) Williamsburgh Savings Bank, 1 Hanson Place, Brooklyn

(10) Williamsburgh Savings Bank, 175 Broadway, Brooklyn

(11) Brooklyn Trust Company, 177 Montague Street, Brooklyn

In addition, any interior landmark or portion thereof which the Commission designates subsequent to the enactment of these rules and which is described as a banking interior in the designation report shall be subject to these rules.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 9-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-04 Changes to Non-significant Features.

(a) The LPC staff will issue a Certificate of No Effect on Protected Architectural Features (CNE) or a Permit for Minor Work (PMW) (if the work does not require a permit from the Department of Buildings) within five working days of receipt of a completed application for any proposed work to a non-significant feature if the following conditions are met:

(1) The visible volume and configuration of the banking interior is maintained; and

(2) The staff determines that the alteration will not adversely affect any significant architectural feature and will not detract from the overall visual character of the banking interior.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing

the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

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Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 9-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-05 State-of-the-Art Banking Changes.

(a) The LPC staff will issue a CNE or PMW within fifteen working days of receipt of a completed application for a state-of-the-art banking change, if all of the following conditions are met:

(1) the visible volume and configuration of the banking interior is maintained; and

(2) the proposed alteration is the least intrusive means available to achieve a state-of-the-art banking change, such as the installation of ATMs or security devices; and

(3) that (i) the proposed alteration will have no effect on the physical fabric of the significant features or (ii) such effect is reversible, and that the applicant will ensure that the physical fabric of the significant feature will be replaced or restored after the proposed alteration is no longer required to achieve a state-of-the-art banking change.

(b) Any proposed alteration that includes the partial or complete removal or relocation of the teller counter or the removal of a significant portion of its fittings or fixtures requires a Certificate of Appropriateness (CofA) from the Commission in accordance with the procedures and criteria set forth in the Landmarks Law if the teller counter and/or such fittings or fixtures is a significant feature.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

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***** Current through December 2009 ****

63 RCNY 9-06

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-06 Applications for Partial or Complete Removal of Teller Counters.

(a) Any CofA application that includes the partial or complete removal of the teller counter or the complete or partial removal of the teller counter and its associated fixtures may include a written statement setting forth the reasons why such removal is appropriate.

(b) In its consideration of the appropriateness of the proposed removal the Commission may consider, among other things, whether the partial or complete removal of the teller counter or its fittings or fixtures would damage any other significant architectural feature and the extent to which the proposed alterations would restore the affected portions of the banking floor and/or exposed counter-end to an appropriate condition. In addition, the Commission, in its discretion, may, if the applicant is not a public or quasi-public agency, require the applicant to establish an escrow account or other adequate assurance to provide for the disassembly, removal, secure storage, and replacement of the teller counter and/or its fittings and fixtures for such time and under such conditions as the Commission shall determine and describe in the CofA.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

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63 RCNY 9-07

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-07 Application Procedures.

(a) **Submission of Application.** See Chapter 2, Subchapter A ("Application Procedure") of these Rules.

(b) **Review Procedure.** (1) When the application is complete, staff will review the application for conformance with these rules. Upon determination that the criteria of the rules have been met, a PMW or CNE will be issued.

(2) If the criteria set forth in these rules for a CNE or PMW have not been met, the applicant will be given a notice of the proposed denial of the application pursuant to these rules and an opportunity to meet with the Director of the Preservation Department, or, in the absence of the Director, with a Deputy Director, to discuss the interpretation of these rules. After this meeting has taken place, if the applicant would like to discuss the matter further, he or she will be given an opportunity to meet with the Chairman for additional discussion of the application.

(3) Applications for work which does not qualify for the issuance of a CNE or PMW in accordance with these rules shall be subject to the LPC's usual review procedure as set forth in the Landmarks Law.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 10-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 10*1 NOTIFICATION TO LESSEES OF LANDMARKS DESIGNATION AND PERMIT REQUIREMENTS

§10-01 Introduction.

These rules are issued to assist the owners and other persons in charge of improvements or property that is a landmark, interior landmark or located on a landmark site or in a historic district in complying with the nonresidential tenant notification requirements set forth in §25-322 of the Administrative Code of the City of New York.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 10 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate rules governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. Under Section 25-322 of the Administrative Code of the City of New York, an owner or person in charge of a property that is a landmark, interior landmark or is located on a landmark site or within a historic district is required to inform nonresidential tenants, either by sending a written notice or including a statement

within the lease or lease renewal, that permits must be obtained from the Landmarks Preservation Commission before commencing certain work on the property.

The purpose of the rule is to provide the public with notification language that will satisfy the requirements of Section 25-322. The proposed rule was not included in the Regulatory Agenda because it is predicated on the enactment of Section 25-322 which became effective on December 13, 1996.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 10-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 10*1 NOTIFICATION TO LESSEES OF LANDMARKS DESIGNATION AND PERMIT REQUIREMENTS

§10-02 Notice to Tenant of Landmarks Designation.

The language set forth below shall satisfy the notification requirements set forth in §25-322 of the Landmarks Law.

"The tenant [lessee] is hereby notified that the leased premises are subject to the jurisdiction of the Landmarks Preservation Commission. In accordance with §§25-305, 25-306, 25-309 and 25-310 of the Administrative Code of the City of New York and the rules set forth in Title 63 of the Rules of the City of New York, any demolition, construction, reconstruction, alteration or minor work as described in such sections and such rules may not be commenced within or at the leased premises without the prior written approval of the Landmarks Preservation Commission. Tenant is notified that such demolition, construction, reconstruction, alterations or minor work includes, but is not limited to, (a) work to the exterior of the leased premises involving windows, signs, awnings, flagpoles, banners and storefront alterations and (b) interior work to the leased premises that (i) requires a permit from the Department of Buildings or (ii) changes, destroys or affects an interior architectural feature of an interior landmark or an exterior architectural feature of an improvement that is a landmark or located on a landmark site or in a historic district."

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 10 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate rules governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. Under Section 25-322 of the Administrative Code of the City of New York, an owner or person in charge of a property that is a landmark, interior landmark or is located on a landmark site or within a historic district is required to inform nonresidential tenants, either by sending a written notice or including a statement within the lease or lease renewal, that permits must be obtained from the Landmarks Preservation Commission before commencing certain work on the property.

The purpose of the rule is to provide the public with notification language that will satisfy the requirements of Section 25-322. The proposed rule was not included in the Regulatory Agenda because it is predicated on the enactment of Section 25-322 which became effective on December 13, 1996.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 10-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 10*1 NOTIFICATION TO LESSEES OF LANDMARKS DESIGNATION AND PERMIT REQUIREMENTS

§10-03 Notification.

(a) **Lease Notification:** Any nonresidential lease or sublease (including any renewal thereof) executed after December 13, 1996 for property or an improvement that is a landmark, interior landmark or located on a landmark site or in a historic district shall include the notice set forth in §10-02 above. Such notification shall be highlighted in bold or underscored or otherwise highlighted so that it is conspicuously set forth.

(b) **Letter Notification:** If an improvement or property is designated as a landmark or an interior landmark or included as part of a landmark site or historic district during the term of a nonresidential lease or a sublease of all or a portion of such improvement or property, the lessor of such lease or sublease shall within 30 days after being notified of such designation by the Landmarks Preservation Commission or person in charge, send the written notice set forth in §10-02 to the nonresidential lessee or sublessee. Such notice shall be highlighted in bold or underscored or otherwise highlighted so that it is conspicuously set forth. Such notice shall be sent by certified or registered mail, return receipt requested to all nonresidential lessees on the first two floors (excluding the basement or cellar) and shall be sent to all other nonresidential lessees by any means reasonably designed to ensure that notice is given.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 10 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate rules governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. Under Section 25-322 of the Administrative Code of the City of New York, an owner or person in charge of a property that is a landmark, interior landmark or is located on a landmark site or within a historic district is required to inform nonresidential tenants, either by sending a written notice or including a statement within the lease or lease renewal, that permits must be obtained from the Landmarks Preservation Commission before commencing certain work on the property.

The purpose of the rule is to provide the public with notification language that will satisfy the requirements of Section 25-322. The proposed rule was not included in the Regulatory Agenda because it is predicated on the enactment of Section 25-322 which became effective on December 13, 1996.

63 RCNY 11-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 11*1 ADMINISTRATIVE ENFORCEMENT

§11-01 Definitions.

The following definitions shall apply to this chapter:

(a) The term "Landmarks Law" shall mean chapter 3 of title 25 of the Administrative Code of the City of New York.

(b) The term "respondent" shall mean a person who is alleged to have violated the Landmarks Law by creating, authorizing, performing or maintaining work on a landmarks site, within the boundaries of a historic district or to any part of an interior landmark without, or in violation of, a permit from the Landmarks Preservation Commission ("Commission").

(c) The term "stop work order" shall mean an order, issued pursuant to section 25-317.2 of the Administrative Code.

(d) A violation is "corrected" by removing the illegal condition, only where such condition can be easily removed without damage to underlying building material and where such removal does not require a permit from the Commission. For example, a violation for the installation of a sign or awning without a permit may be corrected by removing the sign or awning, if such removal does not result in damage to the underlying building material. Correcting a violation does not include or otherwise permit the reinstallation of a preexisting condition or the installation of a substitute condition. For example, a violation for the installation of a sign or awning without a permit, where such installation involved the removal of a preexisting sign or awning, may not be corrected by reinstalling the prior sign or awning, or installing a different sign or awning. A violation is not corrected for purposes of section 25-317.1b(6) of the

Landmarks Law if the same or a similar illegal condition is installed within 180 days of the respondent's representation to the Commission that the violation has been corrected.

(e) A violation is "legalized" when the Commission issues a permit approving and authorizing the work that was done without a permit.

(f) A violation is "cured" where the Commission issues a permit authorizing modifications to the illegal condition to make it appropriate, or where the Commission authorizes work to replace the illegal work, and the modification or replacement work is completed and the Commission has issued a Notice of Compliance.

(g) For purposes of sections 11-03, 11-04 and 11-06, the term "mail," "mailed" and "mailing" shall mean first class United States mail or express or overnight delivery to a respondent as follows:

(1) Where the respondent is an owner, the warning letter, notice of violation or stop work order shall be mailed to the owner's address as contained in the records of the Department of Finance for purposes of the assessment or collection of real estate taxes or as contained in the records of the Commission for purposes of the implementation or enforcement of the relevant portions of the charter or administrative code.

(2) Where the respondent is a tenant or occupant of the premises where the violation occurred, the warning letter, notice of violation or stop work order shall be mailed to the address where the violation occurred.

(3) Where the respondent is a contractor or other person who performed or was in charge of overseeing the work that was done without, or in violation of, a permit, the warning letter, notice of violation or stop work order shall be mailed to the contractor's or person's business address as generally advertised or represented to the public, unless such contractor or other person is the owner, tenant or occupant.

(4) Where the respondent is any other person in charge of a designated improvement or improvement parcel, the warning letter, notice of violation or stop work order shall be mailed to such person's business address, as generally advertised or represented to the public, or as such address is contained in the records of the Department of Finance for purposes of the assessment or collection of real estate taxes or as contained in the records of the Commission for purposes of the implementation or enforcement of the relevant portions of the charter or administrative code.

HISTORICAL NOTE

Section added City Record July 6, 1998 eff. Aug. 5, 1998. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 6, 1998 eff. Aug. 5, 1998. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission ("Commission") is authorized to Section 25-319 of the Administrative Code of the City of New York (hereafter the "Administrative Code") to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310. The Commission is also authorized to enforce the provisions of Title 25, Chapter 3 of the Administrative Code through civil and criminal fines and penalties pursuant to the procedures stated in Sections 25-317.1 and 25-317.2.

The purpose of the proposed rules is to implement the administrative enforcement program authorized by Sections 25-317.1 and 25-317.2. In addition to a new Chapter 11 of the Rules of the City of New York, amendments are proposed to Chapter 1, 2 and 7, which concern the manner in which applications are processed and permit duration.

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***** Current through December 2009 ****

63 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 11*1 ADMINISTRATIVE ENFORCEMENT

§11-02 Enforcement of Notices of Violation.

All first Notices of Violation ("NOV") issued after July 5, 1998 for a Type A or Type B Violation shall be heard at the Environmental Control Board ("ECB") or its successor. For Type A Violations, all second and subsequent NOVs for the same condition shall be heard at the Office of Administrative Trials and Hearings ("OATH") or its successor. For purposes of this subchapter, OATH shall be authorized to issue final, binding decisions. For Type B Violations, second and subsequent NOVs shall be heard at the ECB. Notices of violation for violating a stop work order may be heard at either ECB or OATH.

HISTORICAL NOTE

Section added City Record July 6, 1998 eff. Aug. 5, 1998. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 6, 1998 eff. Aug. 5, 1998. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission ("Commission") is authorized to Section 25-319 of the Administrative Code of the City of New York (hereafter the "Administrative Code") to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior

landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310. The Commission is also authorized to enforce the provisions of Title 25, Chapter 3 of the Administrative Code through civil and criminal fines and penalties pursuant to the procedures stated in Sections 25-317.1 and 25-317.2.

The purpose of the proposed rules is to implement the administrative enforcement program authorized by Sections 25-317.1 and 25-317.2. In addition to a new Chapter 11 of the Rules of the City of New York, amendments are proposed to Chapter 1, 2 and 7, which concern the manner in which applications are processed and permit duration.

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Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 11*1 ADMINISTRATIVE ENFORCEMENT

§11-03 Service of Notice of Violation.

In addition to the service requirements of the court or tribunal at which a NOV is to be heard, a NOV may be served by mailing such notice of violation to a respondent.

HISTORICAL NOTE

Section added City Record July 6, 1998 eff. Aug. 5, 1998. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 6, 1998 eff. Aug. 5, 1998. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission ("Commission") is authorized to Section 25-319 of the Administrative Code of the City of New York (hereafter the "Administrative Code") to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310. The Commission is also authorized to enforce the

provisions of Title 25, Chapter 3 of the Administrative Code through civil and criminal fines and penalties pursuant to the procedures stated in Sections 25-317.1 and 25-317.2.

The purpose of the proposed rules is to implement the administrative enforcement program authorized by Sections 25-317.1 and 25-317.2. In addition to a new Chapter 11 of the Rules of the City of New York, amendments are proposed to Chapter 1, 2 and 7, which concern the manner in which applications are processed and permit duration.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 11-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 11*1 ADMINISTRATIVE ENFORCEMENT

§11-04 Warning Letter.

Subject to the exceptions set forth in section 25-317.1b(1) of the Administrative Code, the LPC shall mail a warning letter to a respondent prior to the issuance of a NOV. The warning letter shall inform the respondent that the LPC believes a violation of the Landmarks Law has occurred at the subject premises and shall also: (1) describe the violation in general detail; (2) warn the respondent that the law authorizes civil and criminal penalties for violations; (3) notify the respondent that a NOV may be served unless, within 20 working days of the date of the warning letter, the violation is corrected or an application to legalize or cure the violation is received by the Commission.

HISTORICAL NOTE

Section added City Record July 6, 1998 eff. Aug. 5, 1998. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 6, 1998 eff. Aug. 5, 1998. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission ("Commission") is authorized to Section 25-319 of the Administrative Code of the City of New York (hereafter the "Administrative Code") to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior

landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310. The Commission is also authorized to enforce the provisions of Title 25, Chapter 3 of the Administrative Code through civil and criminal fines and penalties pursuant to the procedures stated in Sections 25-317.1 and 25-317.2.

The purpose of the proposed rules is to implement the administrative enforcement program authorized by Sections 25-317.1 and 25-317.2. In addition to a new Chapter 11 of the Rules of the City of New York, amendments are proposed to Chapter 1, 2 and 7, which concern the manner in which applications are processed and permit duration.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 11-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 11*1 ADMINISTRATIVE ENFORCEMENT

§11-05 Notice of Violation; Grace Period.

(a) A respondent shall qualify for the grace period set forth in section 25-317.1b(6) of the Administrative Code by delivering, at least 14 days prior to the hearing date set forth in the NOV, the following to the Commission:

(1) Admission of liability, and

(2) proof, satisfactory to the Commission, that the violation has been corrected, or

(3) an application to legalize or cure the violation.

(b) For purposes of subsection (2), "proof" shall mean the submission of an affidavit or other sworn statement describing the violation and the work performed to correct the violation. The affidavit or sworn statement shall be supplemented by photographs and any other supporting material that demonstrates that the illegal condition has been corrected. The Commission may reject the proof submitted if it does not unequivocally demonstrate that the illegal condition has been corrected.

HISTORICAL NOTE

Section added City Record July 6, 1998 eff. Aug. 5, 1998. [See Chapter 11 footnote]

Subd. (a) amended City Record June 1, 1999 eff. July 1, 1999.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 6, 1998 eff. Aug. 5, 1998. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission ("Commission") is authorized to Section 25-319 of the Administrative Code of the City of New York (hereafter the "Administrative Code") to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310. The Commission is also authorized to enforce the provisions of Title 25, Chapter 3 of the Administrative Code through civil and criminal fines and penalties pursuant to the procedures stated in Sections 25-317.1 and 25-317.2.

The purpose of the proposed rules is to implement the administrative enforcement program authorized by Sections 25-317.1 and 25-317.2. In addition to a new Chapter 11 of the Rules of the City of New York, amendments are proposed to Chapter 1, 2 and 7, which concern the manner in which applications are processed and permit duration.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 11-06

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 11*1 ADMINISTRATIVE ENFORCEMENT

§11-06 Stop Work Order.

Service. A stop work order may be served: (1) by mailing the stop work order to the respondent; (2) by affixing the stop work order to the place where the violation is occurring. Where the stop work order is affixed, a copy of the order shall also be mailed to the respondent; (3) or orally. Where the stop work order is given orally, the Commission shall within 48 hours thereof mail a copy of the stop work order to the respondent.

HISTORICAL NOTE

Section added City Record July 6, 1998 eff. Aug. 5, 1998. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 6, 1998 eff. Aug. 5, 1998. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission ("Commission") is authorized to Section 25-319 of the Administrative Code of the City of New York (hereafter the "Administrative Code") to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and

25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310. The Commission is also authorized to enforce the provisions of Title 25, Chapter 3 of the Administrative Code through civil and criminal fines and penalties pursuant to the procedures stated in Sections 25-317.1 and 25-317.2.

The purpose of the proposed rules is to implement the administrative enforcement program authorized by Sections 25-317.1 and 25-317.2. In addition to a new Chapter 11 of the Rules of the City of New York, amendments are proposed to Chapter 1, 2 and 7, which concern the manner in which applications are processed and permit duration.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 12*1 HISTORIC DISTRICT MASTER PLANS

§12-01 District Master Plans and Authorizations to Proceed.

(a) **Introduction.** The Commission may develop master plans for the historic district, specific types of buildings within a historic district, distinctive areas within the historic district or for landmark sites containing multiple buildings. A district master plan may address common design issues such as storefront design, signage, sidewalk and areaway alterations as well as set forth specific alterations for individual buildings in an historic district or on a landmark site in a comprehensive manner that respects the significant architectural features and particular history of the historic district with allowances for specific building conditions. A district master plan may serve as a research tool or design guide for owners or tenants who wish to make alterations to their buildings. Upon the adoption of implementation rules as set forth in this rule, Commission staff can also issue authorizations to proceed for certain types of alterations or work set forth in the district master plan. A District Master Plan does not preclude the Commission's consideration and approval of applications for proposed work that is not in compliance with the District Master Plan.

(b) **District Master Plans.** Upon its own motion, the Commission may consider a master plan for alterations in a specific historic district, an individual landmark site containing multiple buildings or with respect to certain types of buildings or types of work in a specific historic district ("District Master Plan"). A District Master Plan may be approved by a Certificate of Appropriateness, a Certificate of No Effect on Protected Architectural Features, or a Permit for Minor Work, depending on the work covered by the plan.

(c) **Calendaring.** A District Master Plan will not be scheduled for the Commission's consideration unless the Commission, in its discretion and upon the adoption of a motion, votes to calendar the District Master Plan for a public hearing. A motion to calendar a proposed District Master Plan for further consideration must be approved by the majority of Commissioners present in order to be adopted. The date of the public hearing on the proposed District

Master Plan may be set by the motion to calendar or may be set at some later time by the Chairman, acting at his or her discretion.

(d) **Public Hearing.** If the Commission votes to calendar a District Master Plan for further consideration, a public hearing will be held in accordance with §25-308 of the Administrative Code of New York City and the provisions of Chapter One of these Rules.

(e) **Approval and Implementation.** Following the public hearing, the Commission may vote to approve, approve with modifications, or disapprove the District Master Plan. If the District Master Plan is approved or approved with modifications, the District Master Plan may be implemented by the enactment of Rules in accordance with the City Administrative Procedure Act that specifically reference the District Master Plan ("Implementation Rules"). The Implementation Rules shall establish the scope and applicability of the District Master Plan and shall set forth the application procedures and the criteria for issuance of Authorizations to Proceed ("ATP's", see subsection 12-01(f) below) pursuant to the District Master Plan. Any work permitted under the Implementation Rules pursuant to an ATP must be described with reasonable specificity as to design and materials in the District Master Plan. The public hearing for the proposed District Master Plan may be held concurrently with the public hearing for the Implementation Rules. However, the Commission must vote to approve the District Master Plan before it votes to approve the Implementation Rules and the District Master Plan shall have no force and effect until the Implementation Rules are adopted in accordance with the City Administrative Procedure Act.

(f) **Authorizations to Proceed.** All applications for work pursuant to the District Master Plan must be signed by the building owner in accordance with §2-01 of these Rules and must state that the application is being filed pursuant to the District Master Plan. Each application shall include drawings, specifications and other materials which describe the proposed work in detail. Commission staff will review the application to ascertain whether the proposed work is in accordance with the District Master Plan and the Implementation Rules. If Commission staff determines that the work is in compliance with the District Master Plan and the Implementation Rules, the staff will send the applicant an "Authorization to Proceed" letter ("ATP") allowing the work to commence. The ATP must be obtained prior to the commencement of work and posted on the building while work is in progress. Each ATP shall be valid for four (4) years from the date of such ATP and may be renewed upon application provided that Commission staff determines that the work authorized under the original ATP remains in compliance with the District Master Plan and the Implementation Rules in effect on the date of such renewal. Issuance or renewal of a District Master Plan ATP is contingent upon the work's adherence to the District Master Plan and the materials and plans submitted and approved by Commission staff in connection with the ATP.

(g) **Amendment and Rescission.** Upon its own motion, the Commission may amend or rescind a District Master Plan at any time, provided the Commission first holds a public hearing on the proposed amendment or rescission. In its discretion, the Commission shall calendar a public hearing with respect to such proposed amendment or rescission in accordance with the provisions of §12-01(b) of these Rules. Any Commission action to amend or rescind a District Master Plan shall be in accordance with the provisions of §1-04 of these Rules.

HISTORICAL NOTE

Section renumbered City Record Dec. 6, 1999 eff. Jan. 5, 2000. [Formerly T63 §2-05]

Section added (as §2-05) City Record May 27, 1998 eff. June 26, 1998. [See Note 1]

Subds. (e), (g) amended City Record Dec. 6, 1999 eff. Jan. 5, 2000.

NOTE

1. Statement of Basis and Purpose in City Record May 27, 1998:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310.

The purpose of the final rule is to enable the Landmarks Preservation Commission to approve master plans for work in historic districts, specific types of buildings in historic districts, distinctive areas within historic districts or landmarks sites containing multiple buildings. Upon the adoption of implementation rules as set forth in this final rule, Commission staff could also issue authorizations to proceed for certain types of alterations or work set forth in the district master plan.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Dec. 6, 1999 eff. Jan. 5, 2000. Note Statement of Basis and Purpose of Proposed Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted rules have the following purposes: (1) to create a new Chapter 12 of Title 63, which will contain the District Master Plan rule, currently found at §2-05 of Subchapter A of Chapter 2 of Title 63 of the Rules of the City of New York, and subsequent district master plan implementation rules adopted pursuant to the District Master Plan rule, and (2) to adopt the Stone Street Historic District Master Plan Implementation Rules to assist owners in applying to the Landmarks Preservation Commission for approval of certain work within the Stone Street Historic District. These rules will permit Commission staff to issue permits for work that is in accordance with the Stone Street Master Plan, which was approved by the Commission at a Certificate of Appropriateness public hearing on November 30, 1999 and in accordance with Title 63, existing §2-05, of the Rules of the City of New York.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 12-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 12*1 HISTORIC DISTRICT MASTER PLANS

§12-02 Stone Street Historic District Master Plan Implementation Rules.

(a) **Introduction.** The Stone Street Historic District is a low-scale cluster of early nineteenth-century commercial structures, complemented by several picturesque early twentieth-century buildings designed by prominent architects. The Stone Street Historic District is a distinct enclave amidst the surrounding twentieth-century skyscrapers and is sited on narrow winding streets originally laid out by Dutch Colonists.

The Stone Street Historic District Master Plan Implementation Rules ("Rules") are promulgated to assist building owners who own buildings located within the Stone Street Historic District in applying to the Landmarks Preservation Commission ("LPC") for approval of applications to undertake repair, rehabilitation, replacement, or alterations to storefronts (including but not limited to storefront infill, lighting, signage, security gates) and cellar entrances, and to make such buildings accessible to persons with disabilities, that are in accordance with the Stone Street Master Plan approved by the Commission. The Stone Street Master Plan is a master plan governing work to storefronts and cellar entrances, as well as alterations to make buildings within the historic district accessible to persons with disabilities. The Stone Street Master Plan will be the subject of a Certificate of Appropriateness determination at the same public hearing as these Rules.

The Rules set forth herein will permit the LPC staff to issue Authorization to Proceed letters ("ATP") for work that complies with the approved Stone Street Master Plan. The goal of these Rules is to encourage appropriate repair, rehabilitation, replacement and alterations in the Stone Street Historic District by expediting the process of obtaining permits to perform such work. Work that is not in accordance with the Stone Street Master Plan will be reviewed by the Commission in accordance with its usual review procedures as set forth in the Landmarks Law.

(b) **Definitions.** As used in these Rules, the following terms shall have the following meanings:

Authorization to Proceed and ATP. "Authorization to Proceed" and "ATP" shall mean an authorization to proceed as described in §12-01(f) of these Rules.

Commission. "Commission" shall mean the eleven Commissioners, including the Chairman, as established by §3020 of the New York City Charter.

District Master Plan. "District Master Plan" shall have the meaning set forth in §12-01 of these Rules.

Landmarks Law. "Landmarks Law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

LPC. "LPC" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Stone Street Master Plan. "Stone Street Master Plan" shall mean the District Master Plan for the Stone Street Historic District and approved by the Commission as a Certificate of Appropriateness. Copies of the Stone Street Master Plan may be obtained by contacting the Commission's Public Information Specialist at (212) 487-6782 or by writing to the same at 100 Old Slip, New York, New York 10005.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Eligible buildings.** The buildings located within the Stone Street Historic District are subject to these Rules.

(d) **Permitted alterations pursuant to the Stone Street Master Plan.** The LPC staff shall issue an ATP for work on eligible buildings within the Stone Street Historic District if the staff determines that: (1) the proposed work meets the criteria set forth in the Stone Street Master Plan; and (2) the staff determines that the proposed work will not adversely affect any significant exterior architectural feature of the eligible building or the Stone Street Historic District.

(e) **Application procedures.** (1) **Submission of Application.** See Chapter 2, Subchapter A ("Application Procedure") and Chapter 12 of these Rules.

(2) **Application Materials.** The applicant must submit adequate materials that clearly set forth the scope and details of the proposed work. At a minimum, the applicant must submit detailed drawings that specifically show the proposed work and all other materials required by the LPC staff. Drawings must be made to scale, and include all pertinent dimensions. LPC staff may require applicants to submit other materials, including but not limited to photographs of existing conditions, construction details, material samples, specifications, or maps as necessary to clearly explain the proposed work. LPC staff may also require probes or other investigations to determine the existing conditions and critical dimensions peculiar to each eligible building.

(f) **Review Procedure.** (1) The application will be deemed complete when the LPC staff determines that adequate materials have been submitted that clearly set forth the scope and details of the proposed work.

(2) When the application is complete, LPC staff will review the application for conformity with these Rules. Upon determination that the criteria of the Rules have been met, an ATP will be issued pursuant to §12-01(f). A determination that an ATP should be issued shall mean that the proposed work satisfies the criteria set forth in the Stone Street Master Plan and that the work is appropriate to or will have no effect on protected architectural features of the specific eligible building in question and is otherwise appropriate to the Stone Street Historic District.

(3) If the criteria set forth in these rules for an ATP have not been met, the LPC staff shall provide the applicant with a notice of the proposed denial of the application. The applicant may request a meeting with the Director of the Preservation Department, or, in the absence of the Director, with a Deputy Director, to discuss the interpretation of

these Rules.

(4) Applications for work that do not qualify for the issuance of an ATP in accordance with these Rules shall be subject to the LPC's usual review procedure as set forth in the Landmarks Law.

HISTORICAL NOTE

Section added City Record Dec. 6, 1999 eff. Jan. 5, 2000. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Dec. 6, 1999 eff. Jan. 5, 2000. Note Statement of Basis and Purpose of Proposed Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted rules have the following purposes: (1) to create a new Chapter 12 of Title 63, which will contain the District Master Plan rule, currently found at §2-05 of Subchapter A of Chapter 2 of Title 63 of the Rules of the City of New York, and subsequent district master plan implementation rules adopted pursuant to the District Master Plan rule, and (2) to adopt the Stone Street Historic District Master Plan Implementation Rules to assist owners in applying to the Landmarks Preservation Commission for approval of certain work within the Stone Street Historic District. These rules will permit Commission staff to issue permits for work that is in accordance with the Stone Street Master Plan, which was approved by the Commission at a Certificate of Appropriateness public hearing on November 30, 1999 and in accordance with Title 63, existing §2-05, of the Rules of the City of New York.

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63 RCNY 12-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 12*1 HISTORIC DISTRICT MASTER PLANS

§12-03 Implementation Rules for the District Master Plan for Storefronts on Madison Avenue in the Upper East Side Historic District.

(a) **Introduction.** The implementation rules ("Rules") for the District Master Plan for Storefronts on Madison Avenue in the Upper East Side Historic District ("District Master Plan") are promulgated to assist building owners in applying to the Landmarks Preservation Commission ("LPC") for approval of applications to undertake repair, rehabilitation, replacement, or alterations to storefronts (including but not limited to storefront infill, lighting, signage, security gates, windows and doors) along Madison Avenue within the Upper East Side Historic District that are in accordance with the District Master Plan approved by the Commission. The rules set forth herein permit the LPC staff to issue Authorizations to Proceed letters ("ATP") for work that complies with the approved District Master Plan. Work that is not in accordance with the requirements of the District Master Plan will be reviewed by the Commission in accordance with its usual review procedures under the Landmarks Law.

The objective of the District Master Plan is to provide owners, architects and store tenants with design criteria which will allow timely review of storefront alterations while protecting the architecturally and historically significant features of the buildings. The District Master Plan will cover buildings on Madison Avenue that fall within the Upper East Side Historic District. Additionally, at corner buildings the District Master Plan will cover the building facades facing both Madison Avenue and the side streets.

(b) **Definitions.** As used in these Rules, the following terms shall have the following meanings:

Authorization to Proceed and ATP. "Authorization to Proceed" and "ATP" shall mean an authorization to proceed as described in §12-01(f) of these Rules.

Commission. "Commission" shall mean the eleven Commissioners, including the Chairman, as established by §3020 of the New York City Charter.

District Master Plan. "District Master Plan" shall mean the District Master Plan for Storefronts on Madison Avenue in the Upper East Side Historic District and approved by the Commission as a Certificate of Appropriateness. A copy of the District Master Plan may be reviewed at the offices of the Commission by appointment.

Landmarks Law. "Landmarks Law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

LPC. "LPC" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Eligible buildings.** As specifically set forth and described in the District Master Plan, these Rules shall cover buildings facing Madison Avenue and located within the Upper East Side Historic District, including the commercial portions of a building facing onto both Madison Avenue and a side street.

(d) **Permitted alterations pursuant to the District Master Plan.** The LPC staff shall issue an ATP for work on storefronts in eligible buildings along Madison Avenue if the staff determines that:

(1) The proposed work meets the design criteria for storefront alterations as set forth in the District Master Plan; and

(2) The staff determines that the proposed work would not adversely affect any significant architectural feature of the building.

(e) **Application procedures.**

(1) **Submission of application.** See Chapter 2, Subchapter A ("Application Procedure") and Chapter 12 of these Rules.

(2) **Application materials.** The applicant shall submit adequate materials that clearly set forth the scope and details of the proposed work. At a minimum, the applicant shall submit detailed drawings that specifically show the proposed work and all other materials required by the LPC staff. Drawings shall be made to scale, and include all pertinent dimensions. LPC staff may require applicants to submit other materials, including but not limited to photographs of existing conditions, construction details, material samples, specifications, or maps as necessary to clearly explain the proposed work. LPC staff may also require probes or other investigations to determine the existing conditions and critical dimensions peculiar to each eligible building storefront.

(3) **Review procedure.**

(i) The application will be deemed complete when the LPC staff determines that adequate materials have been submitted that clearly set forth the scope and details of the proposed work.

(ii) When the application is complete, LPC staff will review the application for conformity with these Rules. Upon determination that the criteria of the Rules have been met, an ATP will be issued pursuant to §12-01(f). A determination that an ATP should be issued shall mean that the proposed work satisfies the criteria of the District Master Plan and that the work is appropriate to or will have no effect on protected architectural features of the specific eligible building in question and is otherwise appropriate to the Upper East Side Historic District.

(iii) If the LPC staff determines that the criteria set forth in these Rules have not been met, the LPC staff shall

provide the applicant with a notice of the proposed denial of the application. The applicant may request a meeting with the Director of the Preservation Department, or, in the absence of the Director, with a Deputy Director, to discuss the determination.

(iv) Applications for work that do not qualify for the issuance of an ATP in accordance with these Rules shall be subject to the LPC's usual review procedure as set forth in the Landmarks Law.

HISTORICAL NOTE

Section added City Record Nov. 29, 2000 eff. Dec. 29, 2000. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 29, 2000:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted Implementation Rules will assist owners in applying to the Landmarks Preservation Commission for approval of storefront work along Madison Avenue within the Upper East Side Historic District that complies with the criteria in the District Master Plan for Storefronts on Madison Avenue in the Upper East Side Historic District ("District Master Plan"). The District Master Plan also was approved at the Public Meeting of November 14, 2000, and in accordance with the requirements of Title 63, §12-01 of the Rules of the City of New York.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Dec. 6, 1999 eff. Jan. 5, 2000. Note Statement of Basis and Purpose of Proposed Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted rules have the following purposes: (1) to create a new Chapter 12 of Title 63, which will contain the District Master Plan rule, currently found at §2-05 of Subchapter A of Chapter 2 of Title 63 of the Rules of the City of New York, and subsequent district master plan implementation rules adopted pursuant to the District Master Plan rule, and (2) to adopt the Stone Street Historic District Master Plan Implementation Rules to assist owners in applying to the Landmarks Preservation Commission for approval of certain work within the Stone Street Historic District. These rules will permit Commission staff to issue permits for work that is in accordance with the Stone Street Master Plan, which was approved by the Commission at a Certificate of Appropriateness public hearing on November 30, 1999 and in accordance with Title 63, existing §2-05, of the Rules of the City of New York.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 12-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 12*1 HISTORIC DISTRICT MASTER PLANS

§12-04 Implementation Rules for the District Master Plan for Storefronts on Madison Avenue in the Metropolitan Museum Historic District.

(a) **Introduction.** The implementation rules ("Rules") for the District Master Plan for Storefronts on Madison Avenue in the Metropolitan Museum Historic District ("District Master Plan") are promulgated to assist building owners in applying to the Landmarks Preservation Commission ("LPC") for approval of applications to undertake repair, rehabilitation, replacement, or alterations to storefronts (including but not limited to storefront infill, lighting, signage, security gates, windows and doors) along Madison Avenue within the Metropolitan Museum Historic District that are in accordance with the District Master Plan approved by the Commission. The rules set forth herein permit the LPC staff to issue Authorizations to Proceed letters ("ATP") for work that complies with the approved District Master Plan. Work that is not in accordance with the requirements of the District Master Plan will be reviewed by the Commission in accordance with its usual review procedures under the Landmarks Law.

The objective of the District Master Plan is to provide owners, architects and store tenants with design criteria which will allow timely review of storefront alterations while protecting the architecturally and historically significant features of the buildings. The District Master Plan will cover buildings on Madison Avenue that fall within the Metropolitan Museum Historic District. Additionally, at corner buildings the District Master Plan will cover the building facades facing both Madison Avenue and the side streets.

(b) **Definitions.** As used in these Rules, the following terms shall have the following meanings:

Authorization to Proceed and ATP. "Authorization to Proceed" and "ATP" shall mean an authorization to proceed as described in §12-01(f) of these Rules.

Commission. "Commission" shall mean the eleven Commissioners, including the Chairman, as established by §3020 of the New York City Charter.

District Master Plan. "District Master Plan" shall mean the District Master Plan for Storefronts on Madison Avenue in the Metropolitan Museum Historic District and approved by the Commission as a Certificate of Appropriateness. A copy of the District Master Plan may be reviewed at the offices of the Commission by appointment.

Landmarks Law. "Landmarks Law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

LPC. "LPC" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Eligible buildings.** As specifically set forth and described in the District Master Plan, these Rules shall cover buildings facing Madison Avenue and located within the Metropolitan Museum Historic District, including the commercial portions of a building facing onto both Madison Avenue and a side street.

(d) **Permitted alterations pursuant to the District Master Plan.** The LPC staff shall issue an ATP for work on storefronts in eligible buildings along Madison Avenue if the staff determines that:

(1) The proposed work meets the design criteria for storefront alterations as set forth in the District Master Plan; and

(2) The staff determines that the proposed work would not adversely affect any significant architectural feature of the building.

(e) **Application procedures.**

(1) **Submission of application.** See Chapter 2, Subchapter A ("Application Procedure") and Chapter 12 of these Rules.

(2) **Application materials.** The applicant shall submit adequate materials that clearly set forth the scope and details of the proposed work. At a minimum, the applicant shall submit detailed drawings that specifically show the proposed work and all other materials required by the LPC staff. Drawings shall be made to scale, and include all pertinent dimensions. LPC staff may require applicants to submit other materials, including but not limited to photographs of existing conditions, construction details, material samples, specifications, or maps as necessary to clearly explain the proposed work. LPC staff may also require probes or other investigations to determine the existing conditions and critical dimensions peculiar to each eligible building storefront.

(3) **Review procedure.**

(i) The application will be deemed complete when the LPC staff determines that adequate materials have been submitted that clearly set forth the scope and details of the proposed work.

(ii) When the application is complete, LPC staff will review the application for conformity with these Rules. Upon determination that the criteria of the Rules have been met, an ATP will be issued pursuant to §12-01(f). A determination that an ATP should be issued shall mean that the proposed work satisfies the criteria of the District Master Plan and that the work is appropriate to or will have no effect on protected architectural features of the specific eligible building in question and is otherwise appropriate to the Metropolitan Museum Historic District.

(iii) If the LPC staff determines that the criteria set forth in these Rules have not been met, the LPC staff shall

provide the applicant with a notice of the proposed denial of the application. The applicant may request a meeting with the Director of the Preservation Department, or, in the absence of the Director, with a Deputy Director, to discuss the determination.

(iv) Applications for work that do not qualify for the issuance of an ATP in accordance with these Rules shall be subject to the LPC's usual review procedure as set forth in the Landmarks Law.

HISTORICAL NOTE

Section added City Record Nov. 29, 2000 eff. Dec. 29, 2000. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 29, 2000:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted Implementation Rules will assist owners in applying to the Landmarks Preservation Commission for approval of storefront work along Madison Avenue within the Metropolitan Museum Historic District that complies with the criteria in the District Master Plan for Storefronts on Madison Avenue in the Metropolitan Museum Historic District ("District Master Plan"). The District Master Plan also was approved at the Public Meeting of November 14, 2000, and in accordance with the requirements of Title 63, §12-01 of the Rules of the City of New York.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Dec. 6, 1999 eff. Jan. 5, 2000. Note Statement of Basis and Purpose of Proposed Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted rules have the following purposes: (1) to create a new Chapter 12 of Title 63, which will contain the District Master Plan rule, currently found at §2-05 of Subchapter A of Chapter 2 of Title 63 of the Rules of the City of New York, and subsequent district master plan implementation rules adopted pursuant to the District Master Plan rule, and (2) to adopt the Stone Street Historic District Master Plan Implementation Rules to assist owners in applying to the Landmarks Preservation Commission for approval of certain work within the Stone Street Historic District. These rules will permit Commission staff to issue permits for work that is in accordance with the Stone Street Master Plan, which was approved by the Commission at a Certificate of Appropriateness public hearing on November 30, 1999 and in accordance with Title 63, existing §2-05, of the Rules of the City of New York.

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***** Current through December 2009 ****

63 RCNY 12-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 12*1 HISTORIC DISTRICT MASTER PLANS

§12-05 Implementation Rules for the District Master Plan for Storefronts on Madison Avenue in the Carnegie Hill (and Extension) Historic District.

(a) **Introduction.** The implementation rules ("Rules") for the District Master Plan for Storefronts on Madison Avenue in the Carnegie Hill (and Extension) Historic District ("District Master Plan") are promulgated to passist building owners in applying to the Landmarks Preservation Commission ("LPC") for approval of applications to undertake repair, rehabilitation, replacement, or alterations to storefronts (including but not limited to storefront infill, lighting, signage, security gates, windows and doors) along Madison Avenue within the Carnegie Hill (and Extension) Historic District that are in accordance with the District Master Plan approved by the Commission. The rules set forth herein permit the LPC staff to issue Authorizations to Proceed letters ("ATP") for work that complies with the approved District Master Plan. Work that is not in accordance with the requirements of the District Master Plan will be reviewed by the Commission in accordance with its usual review procedures under the Landmarks Law.

The objective of the District Master Plan is to provide owners, architects and store tenants with design criteria which will allow timely review of storefront alterations while protecting the architecturally and historically significant features of the buildings. The District Master Plan will cover buildings on Madison Avenue that fall within the Carnegie Hill (and Extension) Historic District. Additionally, at corner buildings the District Master Plan will cover the building facades facing both Madison Avenue and the side streets.

(b) **Definitions.** As used in these Rules, the following terms shall have the following meanings:

Authorization to Proceed and ATP. "Authorization to Proceed" and "ATP" shall mean an authorization to proceed as described in §12-01(f) of these Rules.

Commission. "Commission" shall mean the eleven Commissioners, including the Chairman, as established by §3020 of the New York City Charter.

District Master Plan. "District Master Plan" shall mean the District Master Plan for Storefronts on Madison Avenue in the Carnegie Hill (and Extension) Historic District and approved by the Commission as a Certificate of Appropriateness. A copy of the District Master Plan may be reviewed at the offices of the Commission by appointment.

Landmarks Law. "Landmarks Law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

LPC. "LPC" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Eligible buildings.** As specifically set forth and described in the District Master Plan, these Rules shall cover buildings facing Madison Avenue and located within the Carnegie Hill (and Extension) Historic District, including the commercial portions of a building facing onto both Madison Avenue and a side street.

(d) **Permitted alterations pursuant to the District Master Plan.** The LPC staff shall issue an ATP for work on storefronts in eligible buildings along Madison Avenue if the staff determines that:

(1) The proposed work meets the design criteria for storefront alterations as set forth in the District Master Plan; and

(2) The staff determines that the proposed work would not adversely affect any significant architectural feature of the building.

(e) **Application procedures.**

(1) **Submission of application.** See Chapter 2, Subchapter A ("Application Procedure") and Chapter 12 of these Rules.

(2) **Application materials.** The applicant shall submit adequate materials that clearly set forth the scope and details of the proposed work. At a minimum, the applicant shall submit detailed drawings that specifically show the proposed work and all other materials required by the LPC staff. Drawings shall be made to scale, and include all pertinent dimensions. LPC staff may require applicants to submit other materials, including but not limited to photographs of existing conditions, construction details, material samples, specifications, or maps as necessary to clearly explain the proposed work. LPC staff may also require probes or other investigations to determine the existing conditions and critical dimensions peculiar to each eligible building storefront.

(3) **Review procedure.**

(i) The application will be deemed complete when the LPC staff determines that adequate materials have been submitted that clearly set forth the scope and details of the proposed work.

(ii) When the application is complete, LPC staff will review the application for conformity with these Rules. Upon determination that the criteria of the Rules have been met, an ATP will be issued pursuant to §12-01(f). A determination that an ATP should be issued shall mean that the proposed work satisfies the criteria of the District Master Plan and that the work is appropriate to or will have no effect on protected architectural features of the specific eligible building in question and is otherwise appropriate to the Carnegie Hill (and Extension) Historic District.

(iii) If the LPC staff determines that the criteria set forth in these Rules have not been met, the LPC staff shall

provide the applicant with a notice of the proposed denial of the application. The applicant may request a meeting with the Director of the Preservation Department, or, in the absence of the Director, with a Deputy Director, to discuss the determination.

(iv) Applications for work that do not qualify for the issuance of an ATP in accordance with these Rules shall be subject to the LPC's usual review procedure as set forth in the Landmarks Law.

HISTORICAL NOTE

Section added City Record Nov. 29, 2000 eff. Dec. 29, 2000. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 29, 2000:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted Implementation Rules will assist owners in applying to the Landmarks Preservation Commission for approval of storefront work along Madison Avenue within the Carnegie Hill (and Extension) Historic District that complies with the criteria in the District Master Plan for Storefronts on Madison Avenue in the Carnegie Hill (and Extension) Historic District ("District Master Plan"). The District Master Plan also was approved at the Public Meeting of November 14, 2000, and in accordance with the requirements of Title 63, §12-01 of the Rules of the City of New York.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Dec. 6, 1999 eff. Jan. 5, 2000. Note Statement of Basis and Purpose of Proposed Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted rules have the following purposes: (1) to create a new Chapter 12 of Title 63, which will contain the District Master Plan rule, currently found at §2-05 of Subchapter A of Chapter 2 of Title 63 of the Rules of the City of New York, and subsequent district master plan implementation rules adopted pursuant to the District Master Plan rule, and (2) to adopt the Stone Street Historic District Master Plan Implementation Rules to assist owners in applying to the Landmarks Preservation Commission for approval of certain work within the Stone Street Historic District. These rules will permit Commission staff to issue permits for work that is in accordance with the Stone Street Master Plan, which was approved by the Commission at a Certificate of Appropriateness public hearing on November 30, 1999 and in accordance with Title 63, existing §2-05, of the Rules of the City of New York.

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***** Current through December 2009 ****

63 RCNY 12-06

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 12*1 HISTORIC DISTRICT MASTER PLANS

§12-06 Implementation Rules for the District Master Plan for the Douglaston Historic District.

(a) **Introduction.** The implementation rules ("Rules") for The District Master Plan for the Douglaston Historic District ("District Master Plan") are promulgated to assist building owners in applying to the Landmarks Preservation Commission ("LPC") for approval of applications to undertake various types of work on properties located within the Douglaston Historic District, including additions, outbuildings, window replacement, heating, venting and air conditioning, and work on or affecting significant landscape improvements. The rules set forth herein permit the LPC staff to issue Authorizations to Proceed ("ATP") for work that complies with the approved District Master Plan. Work that is not in accordance with the requirements of the District Master Plan will be reviewed by the Commission in accordance with its usual review procedures under the Landmarks Law.

The objective of the District Master Plan is to provide owners, architects and store tenants with design criteria which will allow timely review of proposed alterations while protecting the architecturally and historically significant features of the buildings and historic district's sense of place. The District Master Plan will cover all buildings in the Douglaston Historic District.

(b) **Definitions.** As used in these Rules, the following terms shall have the following meanings:

Authorization to Proceed and ATP. "Authorization to Proceed" and "ATP" shall mean an authorization to proceed as described in §12-01(f) of these Rules.

Commission. "Commission" shall mean the appointed Commissioners, including the Chairman, acting as the Landmarks Preservation Commission as established by §3020 of the New York City Charter.

District Master Plan. "District Master Plan" shall mean the District Master Plan for the Douglaston Historic District approved by the Commission as a Certificate of Appropriateness. A copy of the District Master Plan may be reviewed at the offices of the Commission by appointment.

Landmarks Law. "Landmarks Law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

Landscape Improvement. "Landscape Improvement" shall mean a physical betterment of real property or any part thereof, consisting of natural or artificial landscape, including but not limited to grade, body of water, hedge, mature tree, walkway, road, plaza, wall, fence, step, fountain, or sculpture.

LPC. "LPC" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Eligible buildings.** All buildings in the Douglaston Historic District are subject to the District Master Plan*.2

(d) **Permitted alterations.** The LPC staff shall issue an ATP if the staff determines that:

(1) The proposed work meets the criteria set forth in the District Master Plan; and

(2) The proposed work will not adversely affect any significant architectural feature of the building or significant Landscape Improvement, not otherwise permitted by the District Master Plan or other LPC approval.

(e) **Application procedures.** (1) **Submission of application.** See Chapter 2, Subchapter A ("Application Procedure") and Chapter 12 of these Rules.

(2) **Application materials.** The applicant shall submit adequate materials that clearly set forth the scope and details of the proposed work. At a minimum, the applicant shall submit detailed drawings that specifically show the proposed work and all other materials required by the LPC staff. Drawings shall be made to scale, and include all pertinent dimensions. LPC staff may require applicants to submit other materials, including but not limited to photographs of existing conditions, construction details, material samples, specifications, or maps as necessary to clearly explain the proposed work. LPC staff may also require mockups of proposed additions or outbuildings to determine the visibility of such additions or outbuildings, and probes or other investigations to determine existing conditions.

(3) **Review procedure.**

(i) The application will be deemed complete when the LPC staff determines that the materials submitted adequately and clearly set forth the scope and details of the proposed work.

(ii) When the application is complete, LPC staff will review the application for conformity with these Rules. Upon determination that the criteria of the Rules have been met, an ATP will be issued pursuant to §12-01(f). A determination that an ATP should be issued shall mean that the proposed work satisfies the criteria of the District Master Plan and that the work is appropriate to or will have no effect on protected architectural features of the specific building in question and is otherwise appropriate to the Douglaston Historic District.

(iii) If the LPC staff determines that the criteria set forth in these Rules have not been met, the LPC staff shall provide the applicant with a notice of the proposed denial of the application. The applicant may request a meeting with the Director of the Preservation Department, or, in the absence of the Director, with a Deputy Director, to discuss the determination.

(iv) Applications for work that do not qualify for the issuance of an ATP in accordance with these Rules shall be subject to the LPC's usual review procedure as set forth in the Landmarks Law.

HISTORICAL NOTE

Section added City Record June 24, 2003 eff. July 24, 2003. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 24, 2003:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Dec. 6, 1999 eff. Jan. 5, 2000. Note Statement of Basis and Purpose of Proposed Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted rules have the following purposes: (1) to create a new Chapter 12 of Title 63, which will contain the District Master Plan rule, currently found at §2-05 of Subchapter A of Chapter 2 of Title 63 of the Rules of the City of New York, and subsequent district master plan implementation rules adopted pursuant to the District Master Plan rule, and (2) to adopt the Stone Street Historic District Master Plan Implementation Rules to assist owners in applying to the Landmarks Preservation Commission for approval of certain work within the Stone Street Historic District. These rules will permit Commission staff to issue permits for work that is in accordance with the Stone Street Master Plan, which was approved by the Commission at a Certificate of Appropriateness public hearing on November 30, 1999 and in accordance with Title 63, existing §2-05, of the Rules of the City of New York.

2

[Footnote 2]: * "Plan" supplied by editor.

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63 RCNY 13-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 13*1 FEES

§13-01 Requirement of Fee.

All applicants for a certificate of appropriateness or a certificate of no effect shall pay a fee, as established in accordance with the provisions of this Chapter, except that no fees shall be payable by an owner of the designated building or property affected if the owner is a corporation or association organized and operated exclusively for religious, charitable or educational purposes, or for one or more such purposes, no part of the earnings of which enures to the benefit of any private shareholder or individual, and provided that the property affected is used exclusively by such corporation or association for one or more of such purposes.

HISTORICAL NOTE

Section added City Record May 20, 2004 eff. June 19, 2004 with special

provisions of §13-05. [See T63 Chapter 13 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added City Record May 20, 2004 eff. June 19, 2004. Note Statement of Basis and Purpose of Proposed Rule. The Landmarks Preservation Commission is authorized, pursuant to §25-319 of

the Administrative Code of the City of New York, to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310. In order to maintain its permit issuance services the Commission needs to impose fees to cover the cost of the issuance of permits.

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***** Current through December 2009 ****

63 RCNY 13-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 13*1 FEES

§13-02 Fee for Approval and Consideration of Applications.

The fees required to be paid under this Chapter are for filing and processing of aplications for certificates of appropriateness and certificates of no effect. The total fee for such work shall be paid by or on behalf of the owner or lessee of the designated building or property before the Department of Buildings issues a work permit or other approval for such work approved in the certificate of appropriateness or certificate of no effect. The fees required to be paid under this Chapter shall be payable each time the owner or lessee of the designated building or property shall apply for a permit or approval from the Department of Buildings for work approved in a certificate of appropriateness or certificate of no effect.

HISTORICAL NOTE

Section added City Record May 20, 2004 eff. June 19, 2004 with special

provisions of §13-05. [See T63 Chapter 13 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added City Record May 20, 2004 eff. June 19, 2004. Note Statement of Basis

and Purpose of Proposed Rule. The Landmarks Preservation Commission is authorized, pursuant to §25-319 of the Administrative Code of the City of New York, to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310. In order to maintain its permit issuance services the Commission needs to impose fees to cover the cost of the issuance of permits.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 13-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 13*1 FEES

§13-03 Definitions.

"Administrative Code" shall mean the Administrative Code of the City of New York.

"Designated building or property" shall mean an improvement designated as a landmark, interior landmark or as part of a historic district, and the landmark site(s) associated with such designation, pursuant to §25-303 of the Administrative Code.

HISTORICAL NOTE

Section added City Record May 20, 2004 eff. June 19, 2004 with special

provisions of §13-05. [See T63 Chapter 13 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added City Record May 20, 2004 eff. June 19, 2004. Note Statement of Basis and Purpose of Proposed Rule. The Landmarks Preservation Commission is authorized, pursuant to §25-319 of the Administrative Code of the City of New York, to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic

districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310. In order to maintain its permit issuance services the Commission needs to impose fees to cover the cost of the issuance of permits.

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63 RCNY 13-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 13*1 FEES

§13-04 Computation of Fees.

Fees shall be computed as hereinafter provided:

(a) **New buildings.** The fees for permits to construct new buildings shall be computed as follows:

(1) a fee of twenty cents per square foot or fraction thereof, but not less than one hundred dollars per structure, for work subject to a fee payable to the Department of Buildings pursuant to §26-212(1)(a) of the Administrative Code.

(2) a fee of ten cents per square foot, or fraction thereof, but not less than one hundred dollars per structure, for work subject to a fee payable to the Department of Buildings pursuant to §26-212(1)(b) of the Administrative Code.

(b) **Building alterations.** A fee of fifty dollars for the first twenty-five thousand dollars, or fraction thereof, of the cost of the work and four dollars for each additional one thousand dollars, or fraction thereof, of cost over twenty-five thousand dollars for work subject to a fee payable to the Department of Buildings pursuant to §§26-212(2)(a), 212(2)(b), 212(5)(a)(1) and 212(5)(a)(2) of the Administrative Code.

(c) **Demolition and removal.** A fee computed by multiplying the street frontage in feet by the number of stories of the building times one dollar, but not less than one hundred dollars, shall be paid for work subject to a fee payable to the Department of Buildings pursuant to §26-212(4) of the Administrative Code.

(d) **Signs.** A fee of one hundred dollars to erect, install or alter a sign shall be paid for each sign subject to a fee payable to the Department of Buildings pursuant to §26-212(6)(a). An additional fee shall be payable for signs as

follows:

(1) A fee of fifty dollars shall be paid for each ground sign subject to a fee pursuant to §26-212(6)(a)(1) of the Administrative Code.

(2) A fee of fifty dollars shall be paid for each roof sign having a tight, closed or solid surface, where such sign is subject to a fee pursuant to §26-212(6)(a)(2) of the Administrative Code.

(3) A fee of fifty dollars shall be paid for each roof sign that does not have a tight, closed or solid surface and where such sign does not extend beyond thirty-one feet above the roof level, where such sign is subject to a fee pursuant to §26-212(6)(a)(3) of the Administrative Code. A fee of one hundred shall be paid for each roof sign that exceeds thirty-one feet above the roof level.

HISTORICAL NOTE

Section added City Record May 20, 2004 eff. June 19, 2004 with special

provisions of §13-05. [See T63 Chapter 13 footnote]

Subd. (a), (b) amended City Record Sept. 23, 2009 §1, eff. Oct. 23, 2009. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 23, 2009:

The Landmarks Preservation Commission is authorized, pursuant to §25-319 of the Administrative Code of the City of New York, to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310. The Commission needs to increase some fees to cover more of the costs associated with issuing permits.

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added City Record May 20, 2004 eff. June 19, 2004. Note Statement of Basis and Purpose of Proposed Rule. The Landmarks Preservation Commission is authorized, pursuant to §25-319 of the Administrative Code of the City of New York, to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310. In order to maintain its permit issuance services the Commission needs to impose fees to cover the cost of the issuance of permits.

Rules of the City of New York

***** Current through December 2009 ****

63 RCNY 13-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 13*1 FEES

§13-05 Effective Date.

The fees required pursuant to this Chapter shall apply to certificates of appropriateness and certificates of no effect issued on or after July 1, 2004.

HISTORICAL NOTE

Section added City Record May 20, 2004 eff. June 19, 2004 with special

provisions of §13-05. [See T63 Chapter 13 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added City Record May 20, 2004 eff. June 19, 2004. Note Statement of Basis and Purpose of Proposed Rule. The Landmarks Preservation Commission is authorized, pursuant to §25-319 of the Administrative Code of the City of New York, to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to

be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310. In order to maintain its permit issuance services the Commission needs to impose fees to cover the cost of the issuance of permits.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-01 Definitions.

Unless otherwise expressly stated, whenever used in this chapter, the following terms shall respectively mean and include each of the meanings set forth:

City. "City" means the City of New York.

Commissioner. "Commissioner" means the Commissioner of the Department of Business Services.

Department. "Department" means the Department of Business Services.

Farmer. "Farmer" means any person growing agricultural products, on a farm registered with the Department, for sale or consumption within the City.

Market. "Market" means any building, structure or place owned by the City or located on property owned by the City or under lease to or in the possession of the City or any part of a street, avenue, parkway, plaza, square or other public place designated by law, ordinance or by the Commissioner to be used or intended to be used as a public market for the buying, selling or keeping for sale of food, flowers or ornamental plants.

Merchandise. "Merchandise" means any commodity, fluid, cargo, goods, equipment, material or container.

Person. "Person" means any natural person, corporation, partnership, society, organization of persons, company, association, cooperative, joint stock company or firm.

Tenant. "Tenant" means any lessee, licensee, permittee or occupant of any Market.

Vehicle. "Vehicle" means any automobile, truck, bus, motorcycle, cart, wagon or other driven conveyance, bicycle or trailer.

HISTORICAL NOTE

Commissioner amended City Record Oct. 7, 1996 eff. Nov. 6, 1996.

Department amended City Record Oct. 7, 1996 eff. Nov. 6, 1996.

Tenant amended City Record Oct. 7, 1996 eff. Nov. 6, 1996.

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***** Current through December 2009 ****

66 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-02 Scope and Construction of Rules and Regulations.

(a) **Scope.** This chapter shall be applicable to all markets and shall regulate the use thereof by all persons.

(b) **Construction.** This chapter shall be construed as follows:

(1) Any prohibited act shall extend to and include the permitting, allowing, causing, procuring, aiding or abetting, directly or indirectly of such act;

(2) No provision hereof shall make unlawful the act of any employee of the department in the performance of his official duties;

(3) Any act prohibited by this chapter provided it is not otherwise prohibited by law, ordinance, rule or regulation shall be lawful if performed under, by virtue of and strictly in compliance with the written authorization of the Commissioner.

(c) **Other requirements.** This chapter is in addition to and supplements all laws, ordinances, rules and regulations of the City, New York State and Federal Government and all terms and obligations set forth in any lease, license or permit.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-03 Administration.

(a) **Use, occupancy or doing business.** Use, occupancy or doing business in any market for any purpose is prohibited except by written lease, license or permit of the Department.

(b) **Sale of merchandise.** The sale of merchandise other than that authorized by the Commissioner is prohibited.

(c) **Hours of operation.** Hours of operation of any market may be regulated by the Commissioner.

(d) **Assignment or transfer of lease, license or permit.** Unless otherwise provided for therein, no lease, license or permit shall be assigned or transferred.

(e) **Employees.** Each tenant shall be responsible for the acts and omissions of his employees in connection with the conduct of the tenant's business.

(f) **Entry.** Entry into any Market may be regulated by the Commissioner. No fee shall be charged for entry into a Market or for parking therein, nor shall any existing fee be increased, unless the Commissioner shall have first approved the amount of such fee. The Commissioner may establish or authorize the establishment of an identification card and pass system as a requisite for entry of any persons into any Market.

(g) **Information to be furnished to the Commissioner.** Each tenant shall furnish to the Commissioner such

information as the Commissioner may require concerning the business conducted by the tenant in any market, including but not limited to his business books, ledgers, payroll records, lists of employees and suppliers. Each tenant shall permit the Commissioner, or any person designated by the Commissioner, to enter his premises whenever in the sole discretion of the Commissioner such entry is necessary. Each tenant whose main office is located at any market shall furnish the Commissioner with two recent passport size photographs of tenant's operating principals.

(h) **Replacement of light bulbs.** Each tenant at his sole expense shall replace all defective and missing light bulbs within the premises occupied by him and any adjacent loading platforms or the Department may replace same at the sole expense of the tenant.

(i) **Condition of premises.** Each tenant shall put, keep and maintain the premises described in his lease, license or permit or any other space occupied by him and all equipment therein in good repair and condition, including painting, but shall not be required to make structural additions or repairs, unless expressly provided for in the lease, license or permit.

(j) **Surrender of premises.** At the expiration or sooner termination of a lease, license or permit, the tenant shall quit and surrender the premises described therein in good order and condition and well and sufficiently painted and repaired. Upon the removal of a tenant from the space occupied by him the Commissioner in his sole discretion may, without notice to the tenant, take possession of or cause removal therefrom of any and all alterations, additions, improvements, fixtures, equipment and other material left by the tenant and the tenant shall pay the cost of any such removal or restoration of the premises.

HISTORICAL NOTE

Subd. (f) amended City Record Oct. 7, 1996 eff. Nov. 6, 1996.

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***** Current through December 2009 ****

66 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-04 Farmers' Markets.

(a) **Carrier license required.** No carrier shall offer, tender or render any service in any farmers' market unless licensed by the Department.

(b) **License plates and badges.** License plates, permits and badges shall be conspicuously displayed at all times.

(c) **Charges.** Each farmer shall pay additional charges as specified by the Commissioner for each additional load in any one day, commonly termed a "drop load."

(d) **Markings.** All bags, crates or other containers used in the sale or display of farm products in any farmers' market shall be plainly marked with the name and address of the farmer and with the quantity of the contents in terms of weight, measure or numerical count.

(e) **Area condition.** The markets shall be cleared of all vehicles, produce and refuse at closing time, daily and whenever ordered by the Commissioner.

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66 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-05 Prohibitions and Restrictions.

(a) **Property and equipment.** No person shall damage, remove or destroy any property or equipment.

(b) **Litter, rubbish and refuse.** No person shall take into, carry through, leave in, throw, or discharge into or on any market any rubbish, litter or refuse.

(c) **Pollution of water.** No person shall discharge into or leave in tidal water, sewage or drainage which may result in the pollution of water.

(d) **Drains and sewers.** No person shall perform any act which may tend to damage, choke, or clog drains or sewers.

(e) **Conduct.** No person shall:

(1) Disobey any order of any employee of the Department or other employee of the City or disobey or violate any notice, prohibition, instruction or direction of the Department or of any other City agency;

(2) Solicit or beg alms, subscriptions for any purpose;

(3) Annoy or harass any person;

(4) Interfere with, encumber, obstruct or render dangerous any part thereof;

(5) Do any act tending to or amounting to a breach of peace;

(6) Refuse or attempt to avoid any charge, toll, price or fee fixed by the Commissioner;

(7) Refuse to surrender any manifest, bill of loading, delivery slip or ticket to any employee of the Department;

(8) Engage in, instigate or encourage a fight or other disturbance;

(9) Do any act injurious to any person, animal or property.

(f) **Explosives, firearms and weapons.** (1) No person shall bring into any market or have in his possession any firearms, illegal knives, hatchets, machetes, slingshots, fireworks or other dangerous instruments or explosives.

(2) Firearms carried by any person under a permit issued by the Police Commissioner of the City shall be registered with the Commissioner.

(g) **Gambling.** No person shall play any game of chance, participate in the conduct of an illegal lottery, or use any slot machine, gaming table or instrument or have in his possession any implements or devices commonly used, or intended to be used, for gambling purposes.

(h) **Photographs.** No person shall take moving pictures or photographs for advertising, commercial or publicity purposes or buy, sell or publish negatives or prints or exhibit such negatives or prints in public, or use pictures or photographs of any market area or building, except by prior written permission of the City.

(i) **Peddling.** Peddling and hawking is prohibited. Possession of objects or material in quantities, packages or containers customarily associated with peddling shall be deemed to be prima facie evidence of exhibiting or offering for sale.

(j) **Fires.** No person shall kindle, build, maintain or use an open fire or smudge pot.

(k) **Boating.** No boat or vessel shall be laid up, stored, repaired or placed for any purpose in any market.

(l) **Construction work.** No person or agency shall perform construction work or repairs of any kind or work incidental thereto, or install in or remove equipment from any market except with the prior written authorization of the Commissioner.

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***** Current through December 2009 ****

66 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-06 Vehicles and Traffic.

(a) **Traffic control.** (1) A rate of speed exceeding twenty-five miles per hour is prohibited.

(2) All persons using any market lane, street or avenue shall obey and comply with any traffic direction of any police officer or employee of the Department indicated by gesture or otherwise and with any direction on any parking or traffic sign posted by the Department or by any other City agency along such routes.

(3) All vehicles shall be driven carefully and under control at all times and no person shall permit a vehicle to be driven or propelled recklessly or negligently or in such manner as to endanger or injure persons or property.

(b) **Obstruction of traffic.** No person shall obstruct the movement of traffic or stop, stand or park a vehicle, freight car or other conveyance except at designated and posted places.

(c) **Disabled vehicles.** All disabled vehicles must be promptly removed from paved roadways and removed from the market within three hours. If not removed, such vehicles will be removed by City personnel or licensed tow operators at the expense of the owners and neither the City nor such licensed tow operators shall be liable for any damage caused to such vehicles.

(d) **Repairs to vehicles.** No person shall grease, lubricate or make repairs, except of a minor and emergency

nature, to any vehicle.

(e) **Vehicle and Traffic Law and Department of Transportation Regulations.** The New York State Vehicle and Traffic Law and the Traffic Rules and Regulations of the City Department of Transportation are hereby established as rules and regulations of the Commissioner and shall be in effect in all markets as though set forth herein in full and the Traffic Rules and Regulations set forth herein are in addition to the same.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-07 Misrepresentation.

There shall be no misrepresentation of any kind with respect to merchandise offered for sale nor the taking of any unfair advantage of a purchaser nor any attempt to take such unfair advantage. Only scales tested and approved by the City shall be used to weigh merchandise offered for sale.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-08 Market Conditions and Practices.

(a) **Pest control.** Each tenant shall provide, at his sole expense, exterminator service against rodent and insect infestation within the premises used or occupied.

(b) **Signs.** No signs of any description shall be displayed except with prior written permission of the Commissioner.

(c) **Sanitary condition.** All buildings, stores, house trailers, spaces and sidewalks adjacent hereto and all tools and fixtures used in connection therewith shall be kept in a clean and sanitary condition and shall at all times be subject to inspection. Each tenant shall provide approved containers for the collection of dirt, rubbish and refuse and shall not obstruct any sidewalk, aisle, lane, street or avenue.

(d) **Manifests and delivery slips.** Where terminal charges are in effect, it shall be the tenant's responsibility to insure that true manifests has been surrendered to the toll collectors for all delivery merchandise unless such charges have been paid upon the entry of the merchandise into the market.

(e) **Use of sidewalk areas and loading platform.** Storage and display of material on sidewalks or loading platforms shall be confined to designated areas. Pedestrian walks shall be kept clear at all times except during normal loading and unloading operations.

(f) **Termination or revocation of lease, license or permit.** Notwithstanding any provision set forth therein, any lease, license or permit for use or occupancy in any market may be terminated or revoked by the Commissioner, on written notice to the tenant, for the violation of any of this chapter.

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66 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-09 Penalties.

(a) Any person who violates any of this chapter shall be liable to forfeit and pay a civil penalty in the sum of not more than $100 for each violation.

(b) Any person who violates any of this chapter shall be guilty of an offense triable by a judge of the New York City Criminal Court, and punishable by a fine of not less than $25 and not more than $250 for each offense or by imprisonment not exceeding ten (10) days, or by both.

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66 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-10 Saving Clause.

For the purpose of determining the effect of any provision of a rule or regulation heretofore promulgated and repealed and repromulgated by this chapter such provision shall not be considered a new promulgation but shall be construed to be a continuation of the provision so repealed and repromulgated.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-11 Scope.

This subchapter shall be applicable to each public wholesale market under Chapter 1-B of Title 22 of the Administrative Code of the City of New York, provided, however, that enforcement of this subchapter shall be stayed, except as to the New York Terminal Produce Market, and any area adjacent to such market as identified by the Commissioner pursuant to subdivision h of §22-251 of the Administrative Code of the City of New York, until thirty days after the Commissioner has published in the City Record notice that enforcement will commence, in whole or in part, with respect to a particular market or adjacent area.

HISTORICAL NOTE

Section amended City Record Feb. 20, 1998 eff. Mar. 22, 1998. [See

Note 1]

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

NOTE

1. Statement of Basis and Purpose in City Record Feb. 20, 1998:

Section 22-251(h) of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to identify by rule areas in the vicinity of a designated wholesale public market where one or more wholesale businesses or market businesses, operate. These rules are being amended to identify such an area in the vicinity of the New York Terminal Produce Market, and to require wholesalers and market businesses operating in this area to comply with the registration and other requirements set forth in Local Law 28 of 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-12 Definitions.

For the purposes of this subchapter, the following terms shall have the following meanings:

Applicant. The term "applicant" shall mean, if a business entity submitting a registration application, the entity itself and all the principals thereof; if an individual submitting an application for a photo identification card, such individual.

Code. The term "Code" shall mean the Administrative Code of the City of New York.

Commissioner. The term "Commissioner" shall mean the Commissioner of Business Services.

Department. The term "Department" shall mean the New York City Department of Business Services.

Labor union. The terms "labor union" or "labor organization" refers to unions or organizations which represent or seek to represent, for purposes of collective bargaining, employees directly involved in the movement, handling or sale of goods in the markets. Notwithstanding the foregoing, such terms shall not include: (i) a labor union that represents or seeks to represent fewer than two hundred employees in any public wholesale market or combination of public wholesale markets in the City of New York; (ii) a labor union representing or seeking to represent clerical or other office workers, construction or electrical workers, or any other workers temporarily or permanently employed in a

public wholesale market for a purpose not directly related to the movement, handling or sale of goods in such market; (iii) affiliated national or international labor unions of local labor unions required to register pursuant to this provision.

Market business. The term "market business" shall have the meaning provided in §22-251(e) of the Code.

Market manager. The term "market manager" shall mean a person designated by the Commissioner to supervise operations in a public wholesale market. Such supervision shall include, without limitation: implementation of these rules and the authority to enforce violations of any provision of Chapter 1-B of Title 22 of the Administrative Code or these rules; supervision of Department staff employed in the markets; response to complaints relating to the operation of businesses in the markets; examination of documents required to be maintained by a registrant pursuant to this subchapter; referrals, where appropriate, to any law enforcement, adjudicatory, investigative or prosecutorial agency of matters occurring within the markets; and such other functions and duties as the Commissioner may assign consistent with the provisions of this subchapter.

Officer. The term "officer" shall mean any person holding an elected position or any other position involving participation in the management or control of a wholesale trade association or of a labor union or labor organization required to register pursuant to §1-20.2 or §1-20.4 of this subchapter.

"Public wholesale market" or "market" shall mean any building, structure or place owned by the City or located on property owned by the City or under lease to or in the possession of the City or any part of a street, avenue, parkway, plaza, square or other public place that has been designated as a public market by resolution of the former Board of Estimate of the City or a local law enacted by the City Council to be used or intended to be used for the wholesale buying, selling or keeping of food, flowers or ornamental plants; except that the term "public wholesale market" shall not, unless otherwise set forth in this subchapter, include any building, structure or place within the Fulton Fish Market Distribution Area or other seafood distribution area as defined in §22-202 of the Administrative Code of the City of New York. For purposes of this subchapter, the term "public wholesale market" shall also include the area adjacent to the New York Terminal Produce Market beginning at the point where the westerly street line of Garrison Avenue intersects the northerly street line of Lafayette Avenue; thence easterly along the northerly street line of Lafayette Avenue to the easterly street line of Halleck Street; thence southerly along the easterly street line of Halleck Street to the southerly street line of Ryawa Avenue; thence westerly along the southerly street line of Ryawa Avenue to the westerly street line of Manida Street; thence northerly along the westerly street line of Manida Street to the southerly street line of Viele Avenue; thence westerly along the southerly street line of Viele Avenue to the westerly street line of Tiffany Street; thence northerly along the westerly street line of Tiffany Street to the southerly street line of Oak Point Avenue; thence westerly along the southerly street line of Oak Point Avenue to the westerly street line of Barry Street; thence northerly along the westerly street line of Barry Street to the southerly street line of Leggett Avenue; thence westerly along the southerly street line of Leggett Avenue to the westerly street line of Garrison Avenue; thence northerly along the westerly street line of Garrison Avenue the point of beginning, and the premises known as 240 Food Center Drive.

Principal. The term "principal" shall mean, of a sole proprietorship, the proprietor; of a corporation, every officer, director and stockholder holding ten percent or more of the outstanding shares of the corporation; of a partnership, all the partners; of another type of business entity, the chief operating officer or chief executive officer, irrespective of organizational title, and all persons or entities having an ownership interest of ten percent or more; and with respect to all business entities, all other persons participating directly or indirectly in the control of such business entity. Where a partner or stockholder holding ten percent or more of the outstanding shares of a corporation is itself a partnership or a corporation, a "principal" shall also include the partners of such partnership or the officers, directors and stockholders holding ten percent or more of the outstanding shares of such corporation, as is appropriate. For the purposes of this subchapter (i) an individual shall be considered to hold stock in a corporation where such stock is owned directly or indirectly by or for (a) such individual, (b) the spouse of such individual (other than a spouse who is legally separated from such individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled), (c) the children, grandchildren and parents of such individual, (d) a partnership in which such

individual is a partner, in proportion to the partnership interest of such individual, and (e) a corporation in which any of such individual, the spouse, children, grandchildren and parents of such individual own fifty percent or more in value of the stock; (ii) a partnership shall be considered to own stock in a corporation where such stock is owned, directly or indirectly, by or for a partner in such partnership; and (iii) a corporation shall be considered to hold stock in a corporation that is an applicant as defined in this section where such corporation holds fifty percent or more in value of the stock of a third corporation that holds stock in the applicant corporation.

Registration. The term "registration" shall mean:

(a) wholesaler registration or Market business registration as required pursuant to §22-253 of the Code and §2-03 of this subchapter;

(b) labor union or labor organization registration as required pursuant to §22-264 of the Code and §2-12 of this subchapter;

(c) wholesale trade association registration as required pursuant to §22-265 of the Code and §2-14 of this subchapter.

Wholesale trade association. The term "wholesale trade association" shall have the meaning provided in §22-251(k) of the Code.

Wholesaler. The terms "wholesaler" or "wholesale business" shall have the meaning provided in §22-251(j) of the Code.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

Public Wholesale Market definition amended City Record Feb. 20, 1998

eff. Mar. 22, 1998. [See Note 1 after T66 §1-11]

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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***** Current through December 2009 ****

66 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-13 Wholesale Business and Market Business Registration Re- quired.

(a) On or after fifteen days following the effective date of this subchapter, no Wholesale business or Market business shall operate in a Public Wholesale Market unless such business has been registered with the Commissioner and received a registration number from the Market Manager.

(b) Notwithstanding subdivision a of this section, a Wholesale business or Market business which has been operating in a Public Wholesale Market as of the effective date of Local Law 28 of 1997, and which has filed a registration application with the Commissioner within fifteen days of the effective date of this subchapter, may continue to operate in the Market Area beyond fifteen days following the effective date of this subchapter unless and until (1) the Commissioner has denied the application for registration of such business, or (2) in cases where the Commissioner has required any or all of the principals of such businesses to be fingerprinted, submit background information and appear for an interview pursuant to §§22-253(b) and 22-259(a) of the Code, such principal has failed, within the time period prescribed by the Commissioner, to submit to such fingerprinting, or to submit the required information, or to appear for an interview, or to submit the fees for a background investigation in accordance with §1-25 of subchapter 1-B of this title. For the purposes of this subdivision, the terms "Wholesale business" and "Market business" shall mean the business entity, and all the principals thereof.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Nov. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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66 RCNY 1-14

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-14 Issuance of Registration.

(a) A person wishing to register a Wholesale business or Market business shall provide the information requested in the registration application form provided by the Department, which form shall be signed by all principals of such business, and accompanied by the certification form provided by the Department, fully executed by all principals of such business.

(b) Wholesale businesses and Market businesses are required to notify the Commissioner of any change in the ownership composition of the business, any changes regarding persons employed by the business, the arrest or criminal conviction of any principal of the business, or any other material change in the information submitted pursuant to subdivision a of this section during the term of its registration, and shall notify the Commissioner, in writing, of any such change within ten calendar days thereof.

(c) In the event that a registrant notifies the Commissioner of the proposed addition of a new principal (other than a person or entity that becomes a principal through the acquisition of outstanding shares of a business whose equity securities are registered under Federal and State securities laws and publicly traded on a national or regional stock or security exchange) as required by subdivision b of this section, the registrant shall simultaneously submit the registration application form provided by the Department completed, signed and certified by such prospective principal. Except where the Commissioner determines within 15 days, based upon information available to him or her, that the addition of such new principal may have a result inimical to the purposes of this subchapter, the registrant may add such

new principal pending the completion of review by the Commissioner. The Commissioner may waive or shorten such 15 day period upon a showing that there exists a **bona fide** business requirement therefor. The registrant shall be afforded an opportunity to demonstrate to the Commissioner that the addition of such new principal pending completion of such review would not have a result inimical to the purposes of this subchapter. If upon the completion of such review, the Commissioner determines that such principal lacks good character, honesty and integrity, the registration shall cease to be valid unless such principal divests his or her interest, or discontinues his or her involvement in the business of such licensee, as the case may be, within the time period prescribed by the Commissioner.

(d) Notification pursuant to this section shall be signed and sworn to before a notary public.

(e) Notwithstanding any provision of this subchapter:

(1) the Commissioner may, when the Commissioner determines that there is reasonable cause to believe that any or all of the principals of an applicant for registration, or a registrant, lack[s] good character, honesty or integrity, require that such principal[s] (i) be fingerprinted in accordance with §22-259(a)(i) of the Code; (ii) provide to the Commissioner the information requested in the background investigation form provided by the Department within 15 days of such request; (iii) appear to be interviewed by the department of investigation or the Department; and (iv) pay the fee for a background investigation in accordance with §1-25 of subchapter B of this chapter.

(2) The Commissioner may refuse to register a Wholesale business or Market business for the reasons set forth in subparagraphs b, c, d and e of §22-259 of the Code, or may defer a decision whether to register such Market business when an indictment or a criminal or civil action is pending as provided in subparagraph (b)(ii) of such section.

(f) A wholesale business or market business denied registration for lack of good character, honesty or integrity pursuant to §22-259(b) of the Code shall be given notice of the reasons for such denial, and may respond in writing to the Commissioner within ten days of mailing of such notice. The Commissioner shall review such response and make a final determination.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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§1-15 Photo Identification Cards Required.

(a) As of fifteen days following the effective date of this subchapter, no person who is an officer, principal, employee or agent of any Wholesale business or Market business operating in a Public Wholesale Market who performs any function directly related to the provision of goods or services to wholesalers or retail purchasers in such market shall perform such function without having been issued a photo identification card issued by the Commissioner pursuant to the provisions of this section and §22-252 of the Code. Notwithstanding the foregoing, officers, principals, employees or agents of any Wholesale businesses or Market businesses required to have photo identification cards, and who have filed applications therefor within fifteen days of the effective date of this subchapter and obtained temporary photo identification cards, may continue to perform such functions fifteen days after the effective date of this subchapter unless and until (1) the application of such person for a photo identification card has been denied, or (2) the temporary photo identification card of such person has been revoked, or (3) in cases where the Commissioner has required such person to be fingerprinted, submit background information and appear for an interview pursuant to §22-259(a) of the Code, such person has failed, within the time period prescribed by the Commissioner, to submit to such fingerprinting or to submit the required information, or to appear for an interview. This section does not apply to officers, principals, employees or agents of Wholesale businesses to which customers do not regularly come to pick up purchases and that does not deal from such location primarily in perishable products.

(b) Photo identification cards shall be in the possession of principals and employees of Wholesale businesses and Market businesses at all times when such persons are in the market, and shall be produced upon demand by an

authorized employee or agent of the Department, the department of investigation or the police department.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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§1-16 Temporary Photo Identification Cards and Visitors Passes.

(a) The Hunts Point Terminal Produce Cooperative Association, Inc. is designated by the Commissioner to issue temporary photo identification cards to all officers, principals, employees and agents of Wholesale businesses and Market businesses, and to seasonal employees of Market businesses at the New York Terminal Produce Market, who have made timely applications and tendered the requisite fee payments in accordance with this subchapter. The duties of the Hunts Point Terminal Produce Cooperative Association, Inc. under such designation are to be performed pursuant to such terms and conditions as the Commissioner may impose by written agreement.

(b) Such temporary identification cards shall be valid for a period of one year unless and until the Commissioner has (i) issued or denied a permanent identification card, or (ii) such temporary card has previously been revoked in accordance with the procedures set forth in §1-20 of this subchapter.

(c) The Hunts Point Terminal Produce Cooperative Association, Inc. is designated by the Commissioner to issue visitor passes at the New York Terminal Produce Market.

(d) The Hunts Point Terminal Produce Cooperative Association, Inc. may impose fees and set amounts for such fees for the performance of the functions set forth in this section with the prior written permission of the Commissioner. No change in a fee or amount of such fee imposed pursuant to this section shall be made without prior written permission of the Commissioner.

HISTORICAL NOTE

Section amended City Record Oct. 24, 1997 eff. Nov. 23, 1997. [See

Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 24, :

Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing issuance of photo identification cards and visitors passes and registration of labor unions and labor organizations. These rules are being promulgated to further the Department's ability to implement and enforce these requirements. The rules as finally promulgated reflect changes made in response to public comments.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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§1-17 Issuance of Photo Identification Cards.

(a) A person wishing to apply for a photo identification card shall provide the information required in the application form provided by the Department, which form shall be signed and certified under penalty of perjury by the applicant.

(b) Persons required to have photo identification cards shall notify the Commissioner of any material change in the information submitted pursuant to subdivision a of this section, including without limitation, any change in employment, as well as any arrests or criminal convictions, and shall notify the Commissioner, in a signed and notarized writing, of any such change within ten calendar days thereof.

(c) Notwithstanding any provision of this subchapter (1) the Commissioner may, where he or she has reasonable cause to believe that an applicant for or the holder of a photo identification card lacks good character, honesty or integrity, require that such person: (i) be fingerprinted, (ii) provide, within the time required by the Commissioner, the background information required in paragraph (ii) of subdivision a of §22-259 of the Code, and as requested in the background investigation form provided by the Department, (iii) appear to be interviewed by the department of investigation or the Department, and (iv) tender the requisite fees therefor in accordance with §1-23(d)(i)(cc) of subchapter 1-B of this title.

(2) The Commissioner may refuse to issue a photo identification card for the reasons set forth in subparagraphs b,

d and e of §22-259 of the Code, or may defer a decision whether to issue such card when there is an indictment or a criminal or civil action pending against or involving the applicant as provided in subparagraph (b)(ii) of such section.

(d) A person whose application for a photo identification card has been denied by the Commissioner for lack of good character, honesty or integrity pursuant to §22-259(b) of the Code, shall be given notice of the reasons for such denial and may respond in writing to the Commissioner within ten days of mailing of such notice. The Commissioner shall review such response and make a final determination.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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§1-18 Terms and Fees.

(a) A registration issued pursuant to this subchapter shall be valid for three years, and may be renewed for three-year periods thereafter.

(b) The fee for registration of a Wholesale business or Market business shall be three hundred dollars ($300), and the fee for renewal of such registration shall be two hundred and fifty dollars ($250).

(c) The fee for permanent photo identification cards issued by the Department shall be twenty dollars ($20), and the fee for the replacement of a photo identification card that has been lost or stolen shall be fifteen dollars ($15). A Wholesale Business or a Market business shall be responsible for the payment of any fee imposed by this section with respect to an employee of such business or any person seeking to become an employee of such business.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

Subd. (c) amended City Record Oct. 24, 1997 eff. Nov. 23, 1997. [See Note

1 after T66 §1-16]

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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§1-19 Wholesale Business and Market Business Operations.

(a) (1) Wholesale businesses and Market businesses shall not transfer their registration numbers as part of the sale of such businesses.

(2) Wholesale businesses and Market businesses shall not allow the use by any other person of the registration number or the name of the business to which such registration number has been issued. In the event that a Wholesale business or Market business seeks to sublease or otherwise allow the use of its premises, or any portion thereof, for the operation of a Wholesale business or Market business by another person, where such sublease is permitted under the terms of the lease, the Commissioner may, upon application and payment of the required fee by the prospective sublessee pursuant to the provisions of these rules, issue a registration number to such sublessee. Absent such registration number no Wholesale business or Market business may permit a sublessee to operate a Wholesale business or Market business on such premises.

(b) **Furnishing and display of registration numbers.** The name and registration number of a Wholesale business and Market business shall be affixed and prominently displayed on all premises and vehicles from which such business is conducted.

(c) **Record keeping.** Wholesale businesses and Market businesses shall retain copies of all invoices and other documents reflecting deliveries or payments from or to suppliers and customers. Such books and records shall

accurately reflect the amount of goods or services involved in each transaction, and shall, along with all other records produced or received in the normal course of business, be retained for a minimum of thirty-six months, and shall be made available for immediate inspection and/or copying upon request by the Market Manager or a designee of the Market Manager.

(d) **Workers' Compensation Insurance.** Wholesale businesses and Market businesses shall submit proof that they have obtained the required workers' compensation and disability benefits coverage, or that they are exempt from §57 of the Worker's Compensation Law, and §220(8) of the Disability Benefits Law. Proof of coverage can be established by submitting the following Workers' Compensation Board forms:

C-105.2 Application for Certificate of Workers' Compensation Insurance;

DB-120.1 Employer's Application for Certificate of Compliance with Disability Benefits Law;

S1-12 Affidavit certifying that compensation has been secured.

Proof that no coverage is required can be provided by submitting the following Workers' Compensation Board form:

C-105.21 Statement that applicant does not require Workers' Compensation or Disability Benefits Coverage.

(e) **Liability insurance.** Wholesale businesses and Market businesses shall procure and shall maintain throughout the term of the registration the following types of insurance against claims for injuries to persons or damage to property which may arise from or in connection with the business:

(1) Commercial General Liability Insurance with liability limits of no less than one million dollars ($1,000,000.00) combined single limit per occurrence for bodily injury, personal and property damage. The maximum deductible for such insurance shall be no more than twenty-five thousand dollars ($25,000.00).

(2) Business Automobile Liability Insurance covering every vehicle operated by the Wholesale business or Market business, whether or not owned by the business, and every vehicle hired by the applicant with liability limits of no less than one million dollars ($1,000,000) combined single limit per accident for bodily injury and property damage.

(iii) Employers' Liability Insurance with limits of one million dollars ($1,000,000) per accident.

(f) The policy or policies of insurance required by this rule shall name the City of New York and the Department of Business Services and any other agency or entity of the City as may be required as parties insured thereunder, and shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except upon sixty days prior written notice to the Commissioner. Failure to maintain continuous insurance coverage meeting the requirements of these rules may result in revocation or suspension of registration. Such policy or policies of insurance shall be obtained from a company, or companies, duly authorized to do business in the State of New York with a Best's rating of no less than A:X unless specific approval has been granted by the Mayor's Office of Operations to accept a company with a lower rating. Two certificates of insurance effecting the required coverage and signed by a person authorized by the insurer to bind coverage on its behalf, must be delivered to the Commissioner prior to the effective date of the registration.

(g) Wholesale businesses and Market businesses shall be jointly and severally liable for any violation of this subchapter by any of their employees or agents.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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§1-20 Revocation or Suspension of Registration or Photo Identification Cards.

(a) The Commissioner may revoke a temporary photo identification card, and after notice and hearing, revoke or suspend (1) the registration of a Wholesale business or Market business or (2) a photo identification card for any of the reasons set forth in §22-260 of the Code, or for violation of any rule promulgated pursuant to §22-266 of the Code, including without limitation §1-20.7 of this subchapter. Notice shall be provided in accordance with the provisions of §1-39 of subchapter 1-B of this title. Hearings shall be afforded in accordance with the provisions of §1-38 of subchapter 1-B of this title.

(b) Revocation or suspension of registration shall require the immediate surrender to the Market Manager of all photo identification cards issued to the principals, employees and/or agents of the registrant. If a registration has been suspended, violation of the provisions of this subdivision may result in immediate revocation of a suspended registration and/or the imposition of penalties as provided in §22-258 of the Code.

(c) Revocation or suspension of photo identification cards (including temporary photo identification cards) shall require the immediate surrender of such cards to the Market Manager.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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§1-20.1 Emergency Suspension of Registration or Photo Identification Cards.

Notwithstanding the foregoing provisions, the Market Manager may, if he or she determines that the operation of a Wholesale business or Market business or the presence of any person in the market creates an imminent danger to life or property, immediately suspend the registration of such business or the photo identification card of such person, as applicable, without a prior hearing, provided that, such suspension may be appealed to a Deputy Commissioner of the Department, and if the Deputy Commissioner upholds the suspension imposed by the Market Manager, an opportunity for a hearing pursuant to the provisions of §1-38 of subchapter B of this title shall be provided on an expedited basis within a period not to exceed four business days, and the Commissioner shall issue a final determination no later than four business days following the conclusion of such hearing; and provided further that the Commissioner may, upon application by a Wholesale business or Market business whose registration has been suspended without a prior hearing, permit such business to remain in the market for such time as is necessary to allow for the expeditious sale, consignment or removal of a perishable product if, in the Commissioner's judgment, such permission is consistent with the safety of the public and the market.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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§1-20.2 Labor Union and Labor Organization Registration Required.

(a) Labor unions and labor organizations and officers of labor unions and labor organizations shall register with the Commissioner within fifteen days following the effective date of this subchapter.

(b) A registration issued pursuant to this chapter shall be valid for three years, and may be renewed for three-year periods thereafter.

(c) The fee for registration of a labor union or labor organization or officer of a labor union shall be three hundred dollars ($300) and the fee for renewal of such registration shall be two hundred and fifty dollars ($250).

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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§1-20.3 Registration Procedure.

(a) A labor union or labor organization shall provide the information requested in the registration application form provided by the Department, which form shall be signed by an officer and certified under penalty of perjury, including (i) the information required by §22-264(a) of the Code, (ii) all criminal convictions, in any jurisdiction, of such labor union or labor organization, (iii) any criminal or civil investigation of such labor union or labor organization by a federal, state or local prosecutorial agency, investigative agency or regulatory agency in the five year period preceding the date of registration pursuant to §1-20.2 of this subchapter, (iv) all civil or administrative proceedings to which such labor union or labor organization has been a party involving allegations of racketeering, including but not limited to offenses listed in subdivision nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organization statute (18 U.S.C. §1961 **et seq.**) or of an offense listed in subdivision one of §460.10 of the penal law, as such statutes may be amended from time to time, (v) all judicial or administrative consent decrees entered into by such labor union or labor organization in the five year period preceding the date of registration pursuant to §1-20.2 of this subchapter, and (vi) the appointment of an independent auditor or monitor or receiver or administrator or trustee over such labor union or labor organization in the five year period preceding the date of registration pursuant to §1-20.2 of this subchapter. Notwithstanding the foregoing, no labor union or labor organization shall be required to furnish information pursuant to this subdivision which is already included in a report filed by the labor union or labor organization headed by such officer with the Secretary of Labor pursuant to 29 U.S.C. §431 **et seq.** or §1001 **et seq.** if a copy of such report, or of the portion thereof containing such information, is furnished to the Commissioner.

(b) An officer of a labor union or labor organization required to be registered with the Commissioner pursuant to §22-264(b) of the Code shall provide the information requested in the registration application form provided by the Department, which form shall be signed by such officer under penalty of perjury.

(c) Any material change in the information submitted pursuant to subdivision a or b of this section shall be reported to the Commissioner by such officer, in a signed and notarized writing, within ten calendar days thereof.

(d) Notwithstanding any provision of this subchapter the Commissioner may, if he or she has reasonable cause to believe that any of such officers lack good character, honesty or integrity, require that such officer(s) be fingerprinted on ten days' written notice in accordance with §22-264 of the Code, and pay the requisite fees therefor in accordance with §1-25 of subchapter 1-B of this title.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

Subd. (a) amended City Record Oct. 24, 1997 eff. Nov. 23, 1997. [See

Note 1 after T66 §1-16]

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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§1-20.4 Wholesale Trade Association Registration Required.

(a) Wholesale trade associations and officers of wholesale trade associations shall register with the Commissioner within fifteen days following the effective date of this subchapter.

(b) A registration issued pursuant to this chapter shall be valid for three years, and may be renewed for three-year periods thereafter.

(c) The fee for registration of a wholesale trade association and officers of wholesale trade associations shall be three hundred ($300), and the fee for renewal of such registration shall be two hundred and fifty dollars ($250).

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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§1-20.5 Registration Procedure.

(a) Wholesale trade associations shall provide the information requested in the registration application form provided by the Department, including the names of all members of such association and of all persons holding office in such association, together with such identifying information as the Commissioner shall request, which form shall be signed by an officer, and certified under penalty of perjury.

(b) Officers of wholesale trade associations required to be registered pursuant to §22-265(b) of the Code shall provide the information requested in the registration application form provided by the Department, which form shall be signed by such officers, and certified under penalty of perjury.

(c) Any material change in the information submitted pursuant to subdivision a or b of this section shall be reported to the Commissioner, in a notarized writing, within ten calendar days thereof.

(d) Notwithstanding any provision of this subchapter the Commissioner may, if he or she has reasonable cause to believe that any or all of such officers lack good character, honesty or integrity, require that such officer(s) be fingerprinted on ten days' written notice in accordance with §22-264 of the Code, and pay the requisite fees therefor in accordance with §1-25 of subchapter B.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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§1-20.6 Record Keeping.

(a) Wholesale trade associations shall retain copies of all invoices and records of payment to and from wholesalers and Market businesses, leases, sub-leases, union contracts, as well as all other records produced or maintained in the normal course of business for a period of three years.

(b) Such books and records shall be made available promptly for immediate inspection and/or copying upon request by the Market Manager or his or her designee.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the

Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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§1-20.7 Prohibited Acts.

(a) No person shall (1) interfere, or attempt to interfere, with the Market Manager, his or her staff or the employees of the department of investigation in the discharge of their functions or interfere with or otherwise obstruct the orderly functioning of the market; and (2) interfere, or attempt to interfere with, or otherwise obstruct any operations or property of any registrants in the market.

(b) In addition to the foregoing, the following rules also apply to principals, employees and agents of wholesalers, Market businesses, officers of labor unions and labor organizations, and officers of wholesale trade associations. Such persons shall not:

(1) authorize another person to use the name of the Wholesale business or Market business to which a registration number has been issued for such Market business;

(2) authorize another person to conduct a Wholesale business or Market business with the registration number that has been issued to such market business; (3) conduct a Wholesale business or Market business under any name other than the name under which such business has been registered with the Market Manager;

(4) violate applicable federal, state or city laws and regulations;

(5) in the case of a Wholesale business or Market business fail to notify the Market Manager and the Commissioner of any change in the information provided pursuant to §1-14 of this subchapter with respect to the composition or ownership of the Wholesale business or Market business, and any changes in personnel;

(6) associate with a person whom such person knows or should know is a member or associate of an organized crime group (a person who has been identified by a federal, state, or local law enforcement agency as a member or associate of an organized crime group shall be presumed to be a member or associate of an organized crime group);

(7) make a false or misleading statement to the Department or the department of investigation, or make, file or submit a false statement to a government agency or employee;

(8) threaten or attempt to intimidate a customer or prospective customer;

(9) retaliate against a customer or prospective customer, or a principal, employee or agent of any Market business or wholesaler that has made a complaint to the Department, the department of investigation or the police department, or any other governmental entity;

(10) falsify any business record;

(11) in the case of a Wholesale business or Market business, continue to employ a person who has not received a valid photo identification card in accordance with the provisions of this subchapter, or whose photo identification card has been revoked, or whose photo identification card has been suspended during the period of suspension;

(12) utilize any motor vehicle in connection with the operation of such business which is not properly registered with the New York State Department of Motor Vehicles and insured in accordance with §1-19 of this subchapter;

(13) engage in any unfair labor practice under federal and state labor laws as applicable.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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66 RCNY 1-20.8

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SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-20.8 Fines and Penalties.

(a) The Market Manager may issue a notice of violation to a wholesaler, Market business, labor union or labor organization, or wholesale trade association, or any of their principals, employees, agents or officers for the violation of any provision of Chapter 1-B of Title 22 of the Code, this subchapter or of subchapter A of this chapter. Any person who violates any provision of this subchapter shall be liable for a civil penalty not to exceed ten thousand dollars for each such violation, which may be recovered in a civil action, or in a proceeding before the Environmental Control Board.

(b) A wholesaler or a Market Business shall be jointly and severally liable for any violation of Chapter 1-B of Title 22 of the Code and of this subchapter committed by any of its officers, employees and/or agents acting within the scope of their employment.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

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66 RCNY 1-21

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CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-21 Scope.

This subchapter shall govern the licensing, registration and other requirements relating to: the unloading of seafood for delivery to wholesalers in the Fulton Fish Market distribution area; services related to the loading of seafood that has been delivered to purchasers by wholesalers in such market area; conduct of wholesale seafood businesses and the placement of seafood on the street by wholesalers for sale within such market area; the delivery of seafood from wholesalers in such market area by truck or other vehicle to retail establishments in the city of New York or other locations outside the market area; the conduct of other business and activities related to the distribution of seafood in the market area; and traffic, safety and sanitary conditions in the market area.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-22 Definitions.

For the purposes of this subchapter, the following terms shall have the following meanings:

Applicant. "Applicant" shall mean, if a business entity submitting a response to a request for licensing proposals, an application for a temporary license or a registration application, the entity itself and all the principals thereof; if an individual submitting an application for a photo identification card, such individual.

Business related to seafood distribution. "Business related to seafood distribution" shall mean any business located in the market area, other than an unloading, loading, wholesaler or seafood delivery business, that provides or maintains items or services necessary to seafood distribution, including, but not limited to, the provision or maintenance of ice or other equipment or supplies;

Business entity. "Business entity" shall mean a sole proprietorship, partnership, corporation, or other entity established under law and authorized to conduct business within the state of New York.

Commissioner. "Commissioner" shall mean the Commissioner of Business Services.

Department. "Department" shall mean the New York City Department of Business Services.

Designated waiting area. "Designated waiting area" shall mean that area set aside by the Market Manager during

regular unloading hours in which trucks shall wait until unloaders are assigned to them.

Fulton Fish Market distribution area. "Fulton Fish Market distribution area" or "Market Area" shall mean the area beginning at the point where the westerly street line of Water Street intersects the southerly street line of Maiden Lane; thence easterly along the southerly street line of Maiden Lane as extended to the East River U.S. Pierhead Line; thence northerly along the East River U.S. Pierhead Line to the northerly street line of Robert Wagner Sr. Place as extended; thence westerly along the northerly street line of Robert Wagner Sr. Place to the prolongation of the westerly street line of Pearl Street; thence southerly along the westerly street line of Pearl Street to the southerly street line of Fulton Street; thence easterly along the southerly street line of Fulton Street to the westerly street line of Water Street; thence southerly along the westerly street line of Water Street to the point of beginning.

Hearing officer. "Hearing officer" shall mean a person appointed or designated to conduct hearings pursuant to the procedures set forth in §1-38 of this subchapter relating to the suspension and revocation of a license or the suspension, revocation and refusal to renew a registration pursuant to §§22-209, 22-217 and 22-218 of the Administrative Code and the provisions of this subchapter.

Loader. "Loader" shall mean an individual who performs loading services.

Loading business. "Loading business" shall mean any business entity that, for a payment, provides loading services.

Loading services. "Loading services" shall mean services performed by a loader and provided by a loading business for a purchaser of seafood, including parking such purchaser's vehicle, moving such vehicle when necessary for traffic control, loading seafood onto such vehicle, and ensuring the security of such vehicle and the seafood loaded thereon; provided, however, that the term shall not mean the loading of seafood onto the vehicle of a purchaser when such loading is performed by an employee of a wholesaler delivering seafood from such wholesaler to the vehicle of the purchaser thereof or by a purchaser or an employee of such purchaser.

License. "License" shall mean an unloading business license or a loading business license issued by the commissioner authorizing the conduct of such business in the market area.

Market hours. "Market hours" shall mean the hours of operation of the market area as designated by the Market Manager for purposes of the requirement in §22-203 of the Administrative Code that persons required to possess photo identification cards must display such cards while in the market area. Such hours shall be posted in appropriate locations throughout the market area.

Market manager. "Market manager" shall mean a person designated by the Commissioner to supervise operations in the market area. Such supervision shall include, without limitation: implementation of these rules and the authority to enforce violations of any provision of Chapter 1-A of Title 22 of the Administrative Code or these rules; supervision of Department staff employed in the market area; response to complaints relating to the operation of businesses in the market area; examination of documents required to be maintained by a licensee or registrant pursuant to this chapter; referrals, where appropriate, to any law enforcement, adjudicatory, investigative or prosecutorial agency of matters occurring within the market area; and such other functions and duties as the commissioner may assign consistent with the provisions of this subchapter.

Principal. "Principal" shall mean, of a sole proprietorship, the proprietor; of a corporation, every officer, director and stockholder holding ten percent or more of the outstanding shares of the corporation; of a partnership, all the partners; of another type of business entity, the chief operating officer or chief executive officer, irrespective of organizational title, and all persons or entities having an ownership interest of ten percent or more; and with respect to all business entities, all other persons participating directly or indirectly in the control of such business entity. Where a partner or stockholder holding ten percent or more of the outstanding shares of a corporation is itself a partnership or a corporation, a "principal" shall also include the partners of such partnership or the officers, directors and stockholders

holding ten percent or more of the outstanding shares of such corporation, as is appropriate. For the purposes of this subchapter (i) an individual shall be considered to hold stock in a corporation where such stock is owned directly or indirectly by or for (a) such individual, (b) the spouse of such individual (other than a spouse who is legally separated from such individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled), (c) the children, grandchildren and parents of such individual, (d) a partnership in which such individual is a partner, in proportion to the partnership interest of such individual, and (e) a corporation in which any of such individual, the spouse, children, grandchildren and parents of such individual own fifty percent or more in value of the stock; (ii) a partnership shall be considered to own stock in a corporation where such stock is owned, directly or indirectly, by or for a partner in such partnership; and (iii) a corporation shall be considered to hold stock in a corporation that is an applicant as defined in this section where such corporation holds fifty percent or more in value of the stock of a third corporation that holds stock in the applicant corporation.

Registration. "Registration" shall mean wholesaler registration or seafood deliverer registration as required pursuant to §22-209 of the Administrative Code and §1-31 of this subchapter.

Regular loading hours. "Regular loading hours" shall mean the hours designated by the Market Manager for the loading of seafood. Notice of such designation and of any changes thereto shall be posted in appropriate locations.

Regular unloading hours. "Regular unloading hours" shall mean the hours designated by the Market Manager for the unloading of seafood from trucks. Notice of such designation and of any changes thereto shall be posted in appropriate locations.

Seafood. "Seafood" shall mean fish, seafood or consumables derived therefrom.

Seafood delivery business. "Seafood delivery business" or "seafood deliverer" shall mean any business entity, that, for payment, delivers seafood from wholesalers in the market area by truck or other vehicle to retail establishments or other wholesalers in the city of New York or other locations outside the market area.

Stand permit. "Stand permit" shall mean an occupancy permit granted by the commissioner subject to such conditions as the commissioner shall prescribe authorizing use of city property by a wholesaler for the placement of seafood in an area extending into a city street.

Unloader. "Unloader" shall mean an individual who performs unloading services.

Unloading area. "Unloading area" shall mean a location, approved or designated by the Market Manager, in which seafood may be unloaded from trucks for delivery to wholesalers or for transfer and distribution to other locations. Notice of such designations and of any changes thereto shall be posted in appropriate locations.

Unloading business. "Unloading business" shall mean any business entity that, for a payment, provides unloading services.

Unloading Dispatcher. "Unloading Dispatcher" shall mean any person designated by the Market Manager to supervise the unloading procedure.

Unloading services. "Unloading services" shall mean the unloading of seafood from a truck or other vehicle that has transported such seafood from suppliers and the delivery thereof to wholesalers or the transfer thereof to other trucks or vehicles for transport to other locations.

Wholesaler. "Wholesaler" or "wholesale seafood business" shall mean any business entity which sells or offers to sell seafood for resale to the public, whether or not such business entity also sells or offers to sell seafood directly to the public; except that "wholesaler" shall not include any such entity that is primarily engaged in the sale of seafood that has been processed and packaged by another business for sale to consumers in such packaged form.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-23 Photo Identification Cards.

(a) **Identification Cards Required.** (1) No person who is an officer, principal, employee or agent of any unloader, loader, wholesaler, seafood deliverer, or other business related to the distribution of seafood in the Market Area who performs any function in the Market Area directly related to the distribution of seafood shall perform such function without a photo identification card issued by the Commissioner pursuant to the provisions of this section and §22-203 of the Administrative Code; except that no enforcement of this provision shall take place against a person who has been working in such a capacity in the Market Area as of the effective date of Local Law No. 50 for the Year 1995 unless and until, with respect to a person required to possess a Class A photo identification card, (a) such person has failed, within the time period prescribed by the Commissioner, to submit to fingerprinting or to submit the information required pursuant to §22-216 of the Administrative Code or (b) the application of such person for a photo identification card has been denied by the Commissioner; and except that, with respect to such a person required to possess a Class B photo identification card, no enforcement shall take for fifteen days following the effective date of this subchapter, provided that, with respect to such a person whom the Commissioner has required to submit to fingerprinting and disclosure requirements, no enforcement shall take place unless and until (a) such person has failed, within the time period prescribed by the Commissioner, to submit to fingerprinting or to submit the information required pursuant to §22-216 of the Administrative Code or (b) the application of such person for a photo identification card has been denied.

(2) Such identification card shall be displayed so as to be readily visible to others at all times during market hours.

(3) The Market Manager may, where appropriate, issue a provisional identification card to an employee who has submitted the information and fee required by this subchapter. Such provisional identification card shall be valid until the Commissioner has either issued or denied a permanent identification card, unless such provisional card has been revoked or suspended prior thereto in accordance with the procedures set forth in this subchapter. The Market Manager may also, in his or her discretion, make provision for temporary photo identification cards, which shall be valid for a period not to exceed six weeks, to be issued to persons employed by unloaders, wholesalers, loaders, seafood deliverers, or other businesses related to seafood distribution on a seasonal or otherwise temporary basis, subject to the provisions of this section. The Market Manager may also provide for a business to arrange to prequalify for photo identification cards potential employees whom the business may hire on a seasonal or other temporary basis.

(4) The fee for a photo identification card shall be twenty dollars ($20) and for the replacement of a photo identification card that has been lost or stolen shall be fifteen dollars ($15).

(b) **Class A Photo Identification Cards.** A person who performs any function in the Market Area directly related to the handling and transportation of seafood within or from the Market Area and who is a principal, employee or agent of an unloader or a loader subject to the licensing requirement of Chapter 1-A of Title 22 of the Administrative Code must obtain a Class A photo identification card issued by the Commissioner from the Market Manager. Issuance of Class A photo identification cards shall be subject to the provisions of §22-216 of such code.

(1) The photo identification card of a principal, employee or agent of an unloader shall contain such information as the Commissioner deems appropriate, including the name of such person, the number of the license issued to such business under §22-204 of the Administrative Code and §1-27 of these rules and shall specify the position held by such person in the business.

(2) The photo identification card of an employee or agent of a loading business shall contain such information as the Commissioner deems appropriate the name of such person, the number of the license issued to such business under §22-206 of the Administrative Code and §1-27 of this subchapter and shall indicate the designated or approved locations in which the person may work and whether he or she is a supervisor or staff employee of the loading business.

(d) **Suspension, Revocation and Refusal to Issue Class A Photo Identification Card.** (1) In order to apply for a photo identification card pursuant to this section, the applicant shall first: (aa) be fingerprinted; (bb) provide in full the background information required pursuant to subdivision (a) of §22-216 of the Administrative Code in both parts of the form attached as Appendix A of this subchapter; and (cc) shall pay a fee of sixty dollars ($60) for such fingerprinting and a fee of one hundred and fifty dollars ($150) for investigation of such background information.

(2) The Commissioner may refuse to issue a Class A photo identification card for the reasons set forth in subdivision (b) of §22-216 of the Administrative Code or may defer the decision whether to issue such card for reasons of a pending indictment or criminal or civil action as provided in paragraph (2) of such subdivision. When a Class A photo identification card is denied for lack of good character, honesty and integrity, or when the decision to issue such card is deferred, the applicant shall be given notice of the reasons for such denial or decision to defer and may respond in writing to the Commissioner within five days of receipt of such notice. The Commissioner shall review such response and make a final determination whether to issue a Class A photo identification card to the applicant.

(3) The Commissioner may, after notice and the opportunity for a hearing, revoke or suspend a Class A photo identification card pursuant to the provisions of §22-217 and §22-218 of the Administrative Code.

(e) **Class B photo identification cards.** A person who will perform any function directly related to the distribution of seafood in the Market Area and who is a principal, employee or agent of a wholesaler, seafood deliverer or other business conducting activities related to the distribution of seafood in the Market Area must obtain a Class B photo identification card from the Market Manager.

(1) The photo identification card of a principal of a wholesaler and of the employees and agents of such wholesaler

shall contain such information as the Commissioner deems appropriate, including the name of the person, the registration number issued to such wholesaler pursuant to §22-209 of the Administrative Code and §1-32 of this subchapter, the location in the Market Area of such wholesale seafood business and whether the person is an owner, employee or agent of the wholesale seafood business.

(2) The photo identification card of a principal, employee or agent of a seafood deliverer or other business related to seafood distribution shall contain such information as the Commissioner deems appropriate, including the name of the person, the registration number of such business where registration of such business is required pursuant to the provisions of Chapter 1-A of Title 22 of the Administrative Code, the name of such business, and the location in the Market Area where such business is normally conducted.

(3) The photo identification card of a person who is a principal, employee or agent of more than one wholesale seafood business or seafood delivery business shall reflect the multiple affiliations of such person.

(f) **Refusal to Issue Class B Photo Identification Card or Deferral of Decision to Issue Class B Photo Identification Card.** Notwithstanding any provision of this subchapter:

(1) the Commissioner may, for the reasons set forth in paragraph (ii) of subdivision (b) of §22-203 of the Administrative Code, require that an applicant for a Class B photo identification card shall, within ten days: (aa) be fingerprinted, (bb) provide the background information required by §22-216 of the Administrative Code as set forth in both parts of the form constituting Appendix A of this subchapter, and (cc) pay a fee of sixty dollars ($60) for such fingerprinting and a fee of one hundred and fifty dollars ($150) for such background investigation;

(2) Where the provisions of paragraph (i) of this subdivision apply, the Commissioner may refuse to issue a Class B photo identification card for any of the reasons set forth in subdivision b of §22-216 of the Administrative Code or may defer the decision whether to issue such card for reasons of a pending indictment, or civil or criminal action as provided in paragraph (ii) of such subdivision. When a Class B photo identification card is denied for lack of good character, honesty or integrity or when the decision whether to issue such card is deferred, the applicant shall be given notice of the reasons for such denial and may respond in writing within five days of receipt of such denial or decision to defer. The Commissioner shall review such response and make a final determination whether to issue the Class B photo identification card.

(g) **Suspension and Revocation of Class B Photo Identification Card.** (1) The Commissioner may, after notice and the opportunity for a hearing, suspend or revoke a Class B photo identification card for any of the actions set forth in subdivision (c) of §22-217 of the Administrative Code or the reasons set forth in §22-218 of such Code.

(2) In addition to the reasons set forth in paragraph (i) of this subdivision, if, at any time subsequent to the issuance of a Class B photo identification card, the Commissioner has reasonable cause to believe that a person who possesses such card lacks good character, honesty and integrity, the Commissioner may require that such person be fingerprinted, provide the additional background information required by subdivision (a) of §22-216 of the Administrative Code as set forth in Part II of the form constituting Appendix B of this subchapter and pay the fees prescribed therefor in paragraph (1) of subdivision (d) of this section. The Commissioner may, after notice and the opportunity for a hearing, revoke the photo identification card of such person for the reasons set forth in subdivision (b) of §22-216 of the Administrative Code.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

CASE AND ADMINISTRATIVE NOTES

¶ 1. For the respondent's interference with the orderly function of the Fulton Fish Market, by initiating a fight

during which the respondent struck one market inspector and injured a second who came to the aid of the first, the respondent's class B photo ID was suspended for 180 calendar days pursuant to paragraph (g) of this section. Department of Business Services v. Fiore, OATH Index No. 722/97 (Apr. 22, 1997), aff'd, _____ AD2d _____, 667 NYS2d 244 (1st Dept. 1998).

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-24 Unloading and Loading Licenses Required.

(a) **Unloading Licenses.** No person shall operate an unloading business in the Market Area without a license to conduct such business issued by the Commissioner pursuant to this subchapter on and after the date that unloading licenses have been issued pursuant to this subchapter, except that no enforcement of this provision shall take place against a person who has been operating an unloading business in the Market Area as of the effective date of Local Law No. 50 for the Year 1995 unless and until (aa) the principals of such business have failed to submit to fingerprinting or to submit the information required pursuant to §22-216 of the Administrative Code within the time period prescribed by the Commissioner, (bb) such business has failed to respond to a request for unloading licensing proposals by the date specified by the Commissioner and in the form and containing the information required by the Commissioner, or (cc) such license has been denied by the Commissioner.

(b) **Loading Licenses.** No person shall operate a loading business in the Market Area without a license to conduct such business issued by the Commissioner pursuant to this subchapter on and after the date that loading licenses have been issued pursuant to this subchapter, except that no enforcement of this provision shall take place against a person who has been operating a loading business in the Market Area as of the effective date of Local Law No. 50 for the Year 1995 unless and until (aa) the principals of such business have failed to submit to fingerprinting or to submit the information required pursuant to §22-216 of the Administrative Code within the time period prescribed by the Commissioner, (bb) such business has failed to respond to a request for loading licensing proposals by the date specified by the Commissioner and in the form and containing the information required by the Commissioner, or (cc)

such license has been denied by the Commissioner.

(c) **Penalties for Unlicensed Activity.** Any person who violates the provisions of this section shall, upon conviction thereof, be subject to criminal and civil penalties as provided in subdivision (b) of §22-215 of the Administrative Code and subdivision (bb) of §1-36 of this subchapter.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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SUBCHAPTER B*3 FULTON FISH MARKET

§1-25 Application for License.

(a) **Procedure.** (1) A person operating or wishing to operate an unloading business or a loading business in the Market Area shall submit an application for a license and a response to a request for licensing proposal issued by the Commissioner pursuant to §22-204 or §22-206 of the Administrative Code no later than the dates specified in such request for proposal.

(2) Notice of the availability of requests for licensing proposals to conduct an unloading business or a loading business in the Market Area, and the date or dates by which such proposals must be submitted, shall be posted in locations within the Market Area and published in **The City Record** and any other locations and publications as the Commissioner may determine are appropriate.

(b) **License Fee.** The fee for a license shall be one thousand dollars ($1000) and the fee for extension of such license for an additional year shall be five hundred dollars ($500). The fee for a temporary license shall be prorated to a two-year term.

(c) **Term of License.** Each license shall be valid for two years and may be extended for an additional year at the discretion of the Commissioner. A temporary license shall be valid for a period not to exceed one year, provided that such license shall not extend beyond the term of the original license.

(d) **License Non-Transferable; Notification Requirements for Addition of Principal.** (1) A license shall not be transferable.

(2) A licensee shall provide the Commissioner with advance notice of at least ten (10) business days of the proposed addition of a new principal to the business of the licensee. Such notification shall include a complete response to the applicable disclosure form required of applicants for licenses by the Commissioner pursuant to subdivision (a) of §22-216 of the Administrative Code, as attached as Appendix B of this subchapter, payment of the fee for the investigation of the information submitted therein, and the fingerprinting of the new principal in the manner set forth in subdivision (a) of §22-216 of the Administrative Code. The Commissioner may waive or shorten such period upon a showing that there exists a bona fide business requirement therefor.

(3) Except where the Commissioner determines within such 10 day period, based on information available to him or her, that the addition of such new principal may have a result inimical to the purposes of Chapter 1-A of Title 22 of the Administrative Code, the licensee may add such new principal pending the completion of review under §22-216 of the Administrative Code. In the event of such determination, the licensee shall be afforded an opportunity to demonstrate to the Commissioner that the addition of such new principal pending completion of review under §22-216 of the Administrative Code would not have a result inimical to the purposes of Chapter 1-A of Title 22 of the Administrative Code. If upon the completion of such review, the Commissioner determines that such principal lacks good character, honesty and integrity, the license shall cease to be valid unless such principal divests his or her interest, or discontinues his or her involvement in the business of such licensee, as the case may be, within the time period prescribed by the Commissioner.

(e) **Fingerprinting.** All applicants submitting responses to requests for licensing proposals shall be fingerprinted. The fee for the processing of fingerprints shall be sixty ($60) dollars per set.

(f) **Information Required on Application.** The application accompanying the response to the request for licensing proposal shall include, but not be limited to the following information:

(1) The name and address of the applicant submitting such response and the social security numbers of the principals of the applicant business.

(i) If such applicant is a corporation, a copy of the certificate of incorporation and the names and addresses of all officers and directors.

(ii) If such applicant is a partnership, a copy of partnership papers, certified by the County Clerk.

(A) If the applicant is doing business under an assumed name, a Certificate of Assumed Name, certified by the County Clerk.

(B) Complete responses by the applicant business and by all of the principals of the business to the applicable disclosure form required by the Commissioner pursuant to subdivision (a) of §22-216 of the Administrative Code as attached as Appendix B of this subchapter. The fee for the investigation of the information submitted therein shall be three hundred dollars ($300).

(2) The names and addresses and dates of birth of all employees and/or agents of the applicant who will perform work directly or indirectly related to loading or unloading, as the case may be, whether inside or outside the Market Area; drivers' license numbers, with the class and expiration date, or other required operators' licenses, of all employees and/or agents who will operate vehicles within the Market Area; and completed disclosure forms, as required pursuant to §22-216 of the Administrative Code and set forth as the form constituting Appendix A of this subchapter, for each current or identified employee and/or agent who will be required to possess a Class A photo identification card.

(3) A business telephone number and a business address within the City of New York where notices may be

delivered and legal process may be served, and where records required by these rules shall be maintained, and the name of a person of suitable age and discretion who shall be designated as agent for the service of legal process.

(4) A tax identification number.

(5) A statement of financial responsibility in the form prescribed by the Commissioner demonstrating the capacity to conduct the business for which the license is sought and setting forth the amounts and sources of funds used or intended to be used in the operation of the business. Proof of such financial capacity shall include, at a minimum, a demonstration of the current financial ability to pay all monthly expenses relating to required equipment, insurance, personnel, and other items for a period of at least three months.

(g) **Proof of Insurance Required.** Before a license is issued, an applicant shall submit proof that the following insurance policies have been secured: (1) The required workers' compensation and disability benefits coverage, or that the applicant is exempt from the Worker's Compensation Law, §57, and the Disability Benefits Law, §220, subdivision (8). Proof of coverage can be established by submitting the following Workers' Compensation Board forms:

C-105.2 **Application for Certificate of Workers' Compensation Insurance;**

DB-120.1 **Employer's Application for Certificate of Compliance with Disability Benefits Law;**

S1-12 **Affidavit certifying that compensation has been secured.**

Proof that no coverage is required can be provided by submitting the following Worker's Compensation Board form:

C-105.21 **Statement that applicant does not require Workers' Compensation or Disability Benefits Coverage.**

(2) Liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the licensee's business pursuant to the license. The licensee may purchase such policies in connection with one or more other licensees, provided that the coverages described in this subdivision are maintained.

(i) Commercial General Liability Insurance with liability limits of, for unloading businesses no less than one million dollars ($1,000,000.00) and for loading businesses no less than five hundred thousand dollars ($500,000) combined single limit per occurrence for bodily injury, personal and property damage. The maximum deductible for such insurance shall be no more than twenty-five thousand dollars ($25,000.00).

(A) Business Automobile Liability Insurance covering every vehicle operated by the licensee in his or her business, whether or not owned by the applicant, and every vehicle hired by the licensee with liability limits of no less than one million dollars ($1,000,000) combined single limit per accident for bodily injury and property damage.

(B) Employers' Liability Insurance with limits of one million dollars per accident.

(3) A performance bond or other security, if the Commissioner in his or her discretion so requires, in an amount, if any, determined by the Commissioner that will secure the City for the provision of unloading services or loading services, as the case may be, in the event of a default of a licensee as provided by §22-204 or §22-206 of the Administrative Code.

The policy or policies of insurance required by these rules shall name the City of New York and the Department of Business Services and any other agency or entity of the City as may be required by the Commissioner as parties insured thereunder, and shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except upon sixty days prior written notice to the Commissioner. Failure to maintain continuous insurance coverage meeting the requirements of these rules will result in automatic cancellation of the license. Such policy or

policies of insurance shall be obtained from a company, or companies, duly authorized to do business in the State of New York with a Best's rating of no less than A:X unless specific approval has been granted by the Mayor's Office of Operations to accept a company with a lower rating. Two certificates of insurance affecting the required coverage and signed by a person authorized by the insurer to bind coverage on its behalf, must be delivered to the Commissioner prior to the effective date of the license.

(h) **Requirements for Proposals.** Responses to requests for proposals shall be in the form prescribed by the Commissioner and shall contain the proposal information concerning the services to be performed and the conduct of the business described in subdivision (b) of §22-204 of the Administrative Code with respect to unloading licenses and in subdivision (b) of §22-206 of such Code with respect to loading licenses. The proposal shall be signed by all the principals of the applicant and certified under penalty of perjury.

(i) **Examination of Records.** The Commissioner may require an applicant to produce for inspection such business records as the Commissioner deems necessary to verify the truth and accuracy of information submitted pursuant to subdivision (f) of this section.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-26 License Conditions.

A license to conduct an unloading business in the Market Area shall be subject to conditions specifying rates, insurance and bonding, performance standards and customer service, and any other requirements as may be set forth as conditions of such license pursuant to subdivision (d) of §22-204 of the Administrative Code. A license to conduct a loading business shall be subject to conditions specifying rates, insurance and bonding, performance standards and customer service, and any other requirements set forth as conditions of such license pursuant to subdivision (d) of §22-206 of the Administrative Code. In addition, a license to conduct an unloading business and a license to conduct a loading business shall be subject to the following conditions.

(a) **Maintenance of Insurance.** A licensee shall demonstrate that he, she or it has secured the insurance coverage required pursuant to §1-25 of this subchapter, and shall maintain such required insurance coverage throughout the term of the license.

(b) **Notification of Material Change in Information.** (1) The licensee must notify the Market Manager, within ten calendar days, of any material changes in the information submitted pursuant to subdivision (f) of §1-25 of this subchapter, as identified on the form constituting Appendix B to this subchapter, as such Appendix may be amended from time to time in accordance with applicable requirements. Such notification shall be notarized and shall be signed by the licensee if an individual, or, if the licensee is a corporation, by an officer of the corporation, or if the licensee is a partnership, by a partner.

(2) **A license shall not be altered by a licensee.** Any license that is altered by the licensee shall be null and void.

(c) **Notification of Arrest or Conviction.** A licensee must notify the Commissioner of the arrest or criminal conviction of any principal of the licensee, or of the arrest or criminal conviction of any employee and/or agent of the licensee of which the licensee had knowledge or should have known.

(d) **Liability for Violations.** A licensee shall be liable for violation of the provisions of this subchapter by his, her or its employees or agents.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-27 License Issuance.

(a) Following review of proposals submitted in response to a request for licensing proposals issued pursuant to §22-204 or §22-206 of the Administrative Code, as the case may be, the Commissioner may, at his or her discretion, issue one or more licenses to conduct an unloading business or a loading business in the Market Area to the business entity or entities the Commissioner has determined are most qualified to provide such services in a safe, orderly and cost-efficient manner.

(b) The Commissioner may refuse to consider a proposal from or to issue a license pursuant to the provisions set forth in subdivision (b) of §22-216 of the Administrative Code or may defer a decision on whether to consider such proposal or issue such license when there is a pending indictment or a criminal or civil action as provided in paragraph (ii) of such subdivision.

(c) When a license or consideration of a proposal is denied for lack of good character, honesty and integrity or when the decision to issue such license or to consider such proposal is deferred, the applicant shall be given notice of the reasons for such denial or deferral and may respond in writing within five days of receipt of such notice. The Commissioner shall review such response and shall make a final determination whether to issue the license or consider the proposal.

(d) Notwithstanding any other provision of this section, the Commissioner may, for the reasons set forth in the

Administrative Code, determine not to issue a license or licenses to conduct unloading or loading businesses in the Market Area, as the case may be, and instead arrange for the Department, a designee of the Department or an entity under contract to the Department to provide such services.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-28 Revocation or Suspension of a License.

(a) The Commissioner may, after due notice, which shall be served by first class mail addressed to the business address of the unloader or the loader, and the opportunity for a hearing, in addition to any other penalties provided in this chapter, suspend or revoke a license upon the occurrence of any one or more of the following conditions:

(1) A licensee and/or any of the principals, employees and/or agents of the business has been found to be in violation of any provision of Chapter 1-A of Title 22 of the Administrative Code or of this subchapter.

(2) A licensee and/or any of the principals, employees or agents has repeatedly failed to obey the orders of the Market Manager or of his or her staff.

(3) A licensee has failed to pay any fines imposed pursuant to Chapter 1-A of Title 22 of the Administrative Code or this subchapter.

(4) A licensee has been found in violation of any laws prohibiting deceptive, unfair, or unconscionable trade practices, or has been found in persistent or substantial violation of any City, State or Federal law, rule or regulation regarding the handling of seafood. For purposes of this provision:

(i) "persistent" shall mean three or more violations within a six month period; and

(ii) "substantial violation" shall mean a violation which has a bearing on the continued fitness of a licensee to operate a business in the market area.

(5) A licensee or any of the principals of such business has been convicted of a crime which, under Article Twenty-three-a of the Correction Law, would provide a basis for the Market Manager to suspend or revoke, such license.

(6) Whenever the Commissioner determines, after consideration of the factors set forth in subdivision b of §22-216 of the Administrative Code, that the licensee or any of its principals lacks good character, honesty, or integrity.

(7) Whenever there has been any false statement or any misrepresentation as to a material fact in the application or accompanying papers upon which the issuance of the license was based.

(8) Whenever the licensee has failed to notify the Market Manager as required by subdivision (b) of §1-26 of this subchapter and the conditions of its license of a material change in the information on the application for such license or of the arrest or criminal conviction of the licensee or of any of its principals, or of the arrest or criminal conviction of any of its employees and/or agents of which the licensee had knowledge or should have known.

(b) An order of suspension pursuant to this section shall state the period of time such suspension shall remain in effect; such period shall be reasonable in relationship to the violation(s) underlying the suspension.

(c) Notwithstanding any other provision of this subchapter, the Market Manager may, if he or she determines that the operation of an unloading or a loading business creates an imminent danger to life or property, immediately suspend a license without a prior hearing, provided that the licensee may immediately appeal such suspension to a Deputy Commissioner of the Department. In the event that the Deputy Commissioner upholds the suspension imposed by the Market Manager, an opportunity for a hearing shall be provided on an expedited basis, within a period not to exceed four business days and the Commissioner shall issue a final determination no later than four business days following the conclusion of such hearing.

(d) Suspension or revocation of a license shall require the immediate surrender of the license and all photo identification cards issued for principals, employees and/or agents of the licensee. Violation of the provisions of this subdivision may result in revocation of the suspended license or the imposition of civil or criminal penalties as provided in subdivision b of §22-215 of the Administrative Code, or both.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in

the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-29 Unloading Operations.

An unloading business shall comply with the conditions for conducting unloading operations that are contained in the license issued to such unloading business pursuant to §22-204 of the Administrative Code. In addition, an unloading business shall be subject to the provisions of this section.

(a) **Order of Unloading.** (1) Upon arrival, trucks shall be directed to the designated waiting area. The unloading dispatcher designated by the market manager shall record relevant information, including the license number and time of arrival and shall inspect and make a copy of the manifest for seafood to be delivered by each truck that enters a designated waiting area.

(2) Trucks shall remain in the designated waiting area until directed by the unloading dispatcher to proceed to a designated unloading area.

(3) Except as otherwise provided in paragraph four of this subdivision, unloaders shall unload trucks in order of their arrival at the designated waiting area, based on the time of arrival recorded by the unloading dispatcher.

(4) Notwithstanding paragraph three of this subdivision, the unloading dispatcher may permit the unloader to unload out of order of arrival if the truck is delivering fewer than three pallets of seafood; if the truck contains live seafood; if the seafood requires special handling or equipment which only a particular unloader can provide; or for other

reasons which the unloading dispatcher determines justify expedited unloading.

(b) **Unloading Assignments and Hours.** (1) An unloading business shall not conduct unloading in an area unless the Market Manager has approved the use of such area by such unloading business or has assigned such unloading business to such area. The Market Manager may rotate such assignments. The Market Manager may also designate an unloading area or areas on property owned or controlled by the city in which all unloading of seafood for the Market Area shall take place, and the Commissioner may require payment of a fee for the use by unloading businesses of such area or areas. A business entity that conducts an unloading business on private property shall demonstrate to the Market Manager that he or she possesses a deed, lease or other permission allowing the right to use such property during regular unloading hours.

(2) (i) Except as provided in subparagraph (b) of this paragraph, an unloading business licensed pursuant to this subchapter shall be available throughout the regular unloading hours to unload trucks directed to such business by the unloading dispatcher.

(ii) If, toward the end of the regular unloading hours, the Market Manager determines that the presence of an unloading business is not required because of the small number of trucks awaiting unloading or expected to unload, he or she may allow such unloading business to leave. Where more than one unloading business is operating pursuant to an unloading license issued by the Commissioner, the Market Manager shall arrange for the rotation of such businesses required to remain present during such periods.

(iii) The Market Manager shall provide that an unloading business be on call to unload any truck that may arrive after the regular unloading hours and shall designate such unloading business. Where more than one unloading business is operating pursuant to an unloading license issued by the Commissioner, the Market Manager shall rotate the responsibility to unload trucks after regular unloading hours on a periodic basis. Each unloading business shall provide for an unloading crew and a supervisor of such unloading crew to be on duty during the hours that such business is on call. Such unloader may, where authorized in the conditions of his or her unloading license, charge a surcharge not to exceed the amount specified in such conditions for unloading after the regular unloading hours. Such surcharge shall be posted with the unloading rates as required in subdivision c of this section.

(3) An unloading business and an unloader shall at all times unload trucks in the order directed by the unloading dispatcher.

(4) An unloading business and an unloader shall not refuse to unload any truck directed to his, her or its approved or assigned unloading area by the unloading dispatcher.

(c) **Rates, Billing Procedures and Record Keeping.** (1) An unloading business may charge no more than those rates for unloading that are specified in the conditions of the unloading license issued pursuant to §22-204 of the Administrative Code and the provisions of this subchapter, and shall post such rates in such appropriate locations within the Market Area as the Market Manager shall specify.

(2) An unloading business shall direct the unloader to verify that the information on the bill of lading conforms to the seafood he or she delivers to the wholesaler, and to sign and legibly record the license number of the unloading business on the bill of lading and obtain a signature thereon from the wholesaler or a person authorized by the wholesaler to sign for such delivery acknowledging receipt of the seafood indicated thereon, noting any discrepancies.

(3) Except as otherwise authorized in writing by the Market Manager, an unloading business shall provide for the weekly billing of wholesalers for seafood delivered, shall retain copies of all such bills and of all other records produced in the normal course of business for thirty-six months and shall make all such records available for immediate inspection and/or copying upon request by the Market Manager or a designee of the Market Manager. Each bill shall specify for each delivery the shipper, the date and time of delivery to the wholesaler, the quantity and type of seafood delivered and amount charged for the delivery.

(4) The provisions of this subdivision shall not apply where the Department, a designee of the Department or an entity under contract to the Department performs unloading services pursuant to paragraph (ii) of subdivision (g) of §22-204 or §22-208 of the Administrative Code.

(d) **Prohibited Acts.** (1) An unloading business or an unloader shall not engage in any other business or perform any other service in the Market Area that would interfere with the ability of the unloading business adequately and effectively to perform unloading activities under this subchapter.

(2) An unloading business or an unloader shall not interfere with the Market Manager or his or her staff in the discharge of his or her functions or interfere with or obstruct the orderly functioning of the unloading process by threats, intimidation or coercion, or by unloading any truck out of order or soliciting any other unloading business or unloader to unload any truck out of order, or by refusing to unload or soliciting any other unloading business or unloader to refuse to unload any truck directed to him, her or it by the unloading dispatcher.

(3) An unloading business or an unloader shall not charge any fees in addition to the fees for unloading specified in the conditions of the unloading license issued by the Commissioner, nor shall an unloading business or an unloader request or accept other fees or gratuities relating to unloading from wholesalers or truckers.

(4) An unloading business or an unloader shall not violate applicable Federal, State and City regulations regarding the handling of seafood.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-30 Loading Operations.

A loader shall comply with the conditions for conducting a loading business that are contained in the license issued to such loading business pursuant to §22-206 of the Administrative Code. In addition, a loading business shall be conducted subject to the provisions of this section.

(a) **Loading Charges and Vouchers.** (1) A loading business shall post copies of the schedule of the rates set forth in the conditions of his, her or its license to be charged for the parking of vehicles and for the services performed by such loading business in appropriate areas within the market area as determined by the market manager. The market manager may issue vouchers for sale to persons who wish to park and use loading services in the market area. Where the market manager has issued such vouchers, persons parking and using loading services in the market area shall pay loaders for such parking and loading services only with vouchers purchased from the market manager.

(2) A loading business or a loader shall not charge more than the rates that are contained in the conditions of the loading license and are shown on a schedule posted pursuant to paragraph (1) of this subdivision. Where the market manager has issued vouchers pursuant to this subdivision, loaders shall accept payment for parking and loading services only in voucher form and shall not charge, request or accept any cash payment or other fees or gratuities in connection with loading. Where such vouchers have been issued, the market manager shall redeem those vouchers presented to him or her by a loading business for payment.

(b) **Loading Assignments and Hours.** (1) A loading business shall provide loading services only in locations designated or approved by the Market Manager for such purpose.

(2) A loading business that is conducted on private property shall demonstrate to the Market Manager that such business possesses a deed to such property or a lease or other permission to use such property during regular loading hours. A lease or an occupancy permit from the Commissioner is required for the use of City property for a loading business.

(3) All loading and services related to loading shall take place during the regular loading hours designated by the Market Manager.

(c) **Prohibited acts.** (1) Where the market manager has issued vouchers pursuant to subdivision (a) of this section, a loading business or a loader shall accept payment for parking and loading services only in voucher form. A loading business or a loader shall not charge other than the fees contained in the conditions of the loading license and shown in the schedule of rates posted pursuant to subdivision (a) of this section nor shall a loading business or a loader solicit or accept gratuities from purchasers of seafood or fees other than for the services specified on such schedule.

(2) A loading business or a loader shall not attempt to force any person to park his or her vehicle in the location designated or approved by the Market Manager for the use of such loading business.

(3) A loading business or a loader shall not refuse to perform loading or services related to loading for any person when space is available for such person's vehicle in the location designated or approved by the Market Manager for the use of the loading business.

(4) A loading business or a loader shall not, by threats, intimidation or any other action, force any person to agree to use the services of such business or prevent any person from using the services of any other loading business. A loading business or a loader shall not solicit, threaten, or enter into agreement with another loader to refuse loading services to any person.

(5) A loading business or a loader shall not move or otherwise interfere with any vehicle, except that a loader may move a vehicle for the purposes of facilitating traffic flow or loading operations when the owner of such vehicle has entrusted the loader with the keys to the vehicle.

(6) A loading business or a loader shall not violate applicable federal, state or city regulations regarding the proper handling of seafood.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on

June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-31 Wholesaler and Seafood Deliverer Registration Required.

(a) As of fifteen days following the effective date of this subchapter, no wholesaler or seafood deliverer shall operate a wholesale seafood business, place seafood on the street, or operate a seafood delivery business in the Market Area unless such business has been registered with the Commissioner and received a registration number and a stand permit where such permit is required. A registration and stand permit issued pursuant to this chapter shall be valid for two years, and may be renewed for two year periods thereafter.

(b) Notwithstanding subdivision (a) of this section, a wholesaler or seafood deliverer who has been operating a wholesale seafood business or a seafood delivery business in the Market Area as of the effective date of Local Law No. 50 for the Year 1995 and who has been required by the Commissioner to submit to fingerprinting and to submit background information pursuant to §22-209 of the Administrative Code may continue to operate such wholesale or seafood delivery business beyond fifteen days following the effective date of this subchapter unless and until (aa) such wholesaler or seafood deliverer has failed, within the time period prescribed by the Commissioner, to submit to fingerprinting or to submit the required information or (bb) the Commissioner has denied the application for registration of such business. For the purposes of this subdivision, the terms "wholesaler" and "seafood deliverer" shall mean the wholesale seafood or seafood delivery business entity, as the case may be, and all the principals thereof.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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SUBCHAPTER B*3 FULTON FISH MARKET

§1-32 Issuance and Revocation of Registration Numbers and Stand Permits.

(a) A person wishing to operate a wholesale seafood business or a seafood delivery business shall register such business and receive a registration number from the Market Manager. A wholesaler wishing to place seafood on the street in the Market Area shall indicate how much space on the street is required, at the time that such wholesaler registers with the Commissioner, and the Commissioner shall grant a stand permit or permits to such wholesaler on the basis of the physical availability of street space and upon the payment of a fee as provided in subdivision c of this section. Where the street space to be occupied by a wholesaler under a stand permit is described under the terms of a lease for adjacent premises and a payment is provided for under the terms of such agreement, the Commissioner shall issue a stand permit consistent therewith without requiring payment of an additional fee.

(b) A person wishing to register a wholesale business or a seafood delivery business shall provide the information required by Part I of the form constituting Appendix B of this subchapter, which form shall be signed by all the principals of such business and certified under penalty of perjury.

(c) The fee for registration of a wholesale business or a seafood delivery business shall be three hundred dollars ($300) and the fee for renewal of such registration shall be two hundred and fifty dollars ($250). The charge for a stand permit shall be based on the square footage of the area encompassed by the stand permit.

(d) A wholesaler and a seafood deliverer shall notify the Commissioner within ten calendar days of any changes in

the information indicated to be material information supplied on the registration form submitted pursuant to subdivision (b) of this section and shall be responsible for notifying the Commissioner of any such change throughout the term of the registration.

(e) Notwithstanding any provision of this subchapter: (1) the Commissioner may, when the Commissioner determines that there is reasonable cause to believe that a wholesaler or a seafood deliverer in the Market Area or an employee or an agent of such wholesaler or seafood deliverer lacks good character, honesty and integrity, require that such wholesaler or seafood deliverer:

(i) be fingerprinted;

(ii) provide to the Commissioner the information set forth in subdivision (a) of §22-216 of the Administrative Code as required in the Part II of the form attached as Appendix B of this subchapter; and

(iii) pay the fees set forth in §1-25 of this subchapter for such fingerprinting and background investigation.

(2) The Commissioner may refuse to register such wholesaler or seafood deliverer for the reasons set forth in subdivision (c) of §22-216 of the Administrative Code or may defer a decision whether to register such wholesaler or seafood deliverer when there is an indictment or a criminal or civil action as provided in paragraph (ii) of such subdivision. A wholesaler or seafood deliverer denied registration for lack of good character, honesty and integrity, or whose registration has been deferred, shall be given notice of the reasons for such denial or deferral and may respond in writing to the Commissioner within five days of receipt of such notice. The Commissioner shall review such response and make a final determination whether to issue registration.

(f) (1) The Commissioner may, after notice and the opportunity for a hearing, revoke the registration of a wholesaler or seafood deliverer for any of the actions set forth in subdivision (b) of §22-217 of the Administrative Code or for the reasons set forth in §22-218 of such Code or any rule promulgated thereunder. Notwithstanding the foregoing provisions, the Market Manager may, if he or she determines that the operation of a wholesale seafood business or a seafood delivery business creates an imminent danger to life or property, immediately suspend the registration of such business without a prior hearing, provided that, the registrant may appeal such suspension to a Deputy Commissioner of the Department, and if the Deputy Commissioner upholds the suspension imposed by the Market Manager, an opportunity for a hearing shall be provided on an expedited basis within a period not to exceed four business days and the Commissioner shall issue a final determination no later than four days following the conclusion of such hearing; and provided further that the Commissioner may, upon application by a wholesaler or seafood deliverer whose registration has been suspended without a prior hearing, permit such wholesaler or seafood deliverer to remain in the market area for such time as is necessary to allow for the expeditious sale, consignment or removal of a perishable product if, in the Commissioner's best judgment, such permission is consistent with the safety of the public and the market area.

(2) In addition to the reasons set forth in paragraph (i) of this subdivision, if at any time subsequent to the registration of a wholesaler or seafood deliverer the Commissioner has reasonable cause to believe that such wholesaler or seafood deliverer is not of good character, honesty and integrity, the Commissioner may require such wholesaler or seafood deliverer to be fingerprinted, provide the background information set forth in §22-216 of the Administrative Code as required by the Part II of the form attached as Appendix B of this subchapter and pay the fees therefor set forth in subdivisions (e) and (f) of §1-25 of this subchapter. Upon a determination, after consideration of the factors set forth in subdivision (b) of §22-216 of the Administrative Code, that a wholesaler or seafood deliverer lacks good character, honesty and integrity, the Commissioner may, after notice and the opportunity for a hearing, revoke the registration of such wholesaler or seafood deliverer.

(g) Suspension or revocation of a registration shall require the immediate surrender of all photo identification cards issued to the principals, employees and/or agents of the registrant. Violation of the provisions of this subdivision may result in revocation of a suspended registration or the imposition of penalties as provided in §22-215 of the

Administrative Code.

(h) For the purposes of this section, wholesaler or seafood deliverer shall mean the wholesale seafood or seafood delivery business entity, as the case may be, and all the principals thereof.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-33 Wholesale Operations.

(a) **Restrictions on use of Registration Number and Stand Permit.** (1) A wholesaler shall not transfer his or her registration number or stand permit as part of the sale of such wholesale business.

(2) A wholesaler shall not allow the use by any other person of the registration number or the name of the business to which such registration number has been issued. In the event that a wholesaler seeks to sublease or otherwise allow the use of its premises, or any portion thereof, for the operation of a wholesale business by another person, where such sublease is permitted under the terms of the lease, the Commissioner may, upon application and payment of the required fee by the prospective sublessee pursuant to the provisions of these rules, issue a wholesaler registration number to such sublessee. Absent such registration number no wholesaler may permit a sublessee to operate a wholesale seafood business on such premises.

(3) A wholesaler shall not allow any other person to place seafood in the space for which a stand permit has been issued to such wholesaler, except that a wholesaler may, as provided in subdivision (d) of §22-209 of the Administrative Code, permit the use of such space by another registered wholesaler who has received a shipment of seafood that cannot be accommodated in the space from which such registered wholesaler operates. No fee may be charged for such temporary use and any such use must be reported, with details specifying the dates, times and extent of such use, as soon as practicable. A wholesaler may also, as set forth in subdivision e of §22-209 of the Administrative Code and pursuant to the provisions regarding approval of the commissioner and limitations upon the charging of fees set forth in

such subdivision, allow the use by no more than one other registered wholesaler on other than a temporary basis of no more than forty-nine percent of the space for which a stand permit has been issued.

(b) **Furnishing and Display of Registration Numbers.** (1) A wholesaler shall furnish, by telephone or in writing, to each supplier, distributor or other person from whom the wholesaler orders or agrees to receive seafood the registration number and the name of the business to which such registration number has been issued.

(2) The name and registration number of a wholesale seafood business shall be affixed and prominently displayed on all premises from which such wholesale seafood business is conducted.

(c) **List of Registrants.** The Market Manager shall maintain and publish a list of all wholesalers who possess wholesaler registration numbers and stand permits. The Market Manager shall make such list available to suppliers, shippers and truckers and shall, upon request, verify to suppliers, shippers and truckers whether a person or entity possesses a wholesaler registration number and stand permit.

(d) **Record Keeping.** Wholesalers shall retain copies of all bills from and records of payments to unloaders, suppliers and shippers of seafood and payment from retailers. Such bills and records shall accurately reflect the amount of seafood involved in each transaction and shall, along with all other records produced in the normal course of business, be retained for a minimum of thirty-six months, and shall be made available for immediate inspection and/or copying upon request by the Market Manager or a designee of the Market Manager.

(e) **Workers' Compensation Insurance.** A wholesaler shall submit proof that he, she or it has obtained the required workers' compensation and disability benefits coverage, or that he or she is exempt from the Worker's Compensation Law, §57, and the Disability Benefits Law, §220, subdivision 8. Proof of coverage can be established by submitting the following Workers' Compensation Board forms:

C-105.2 **Application for Certificate of Workers' Compensation Insurance;**

DB-120.1 **Employer's Application for Certificate of Compliance with Disability Benefits Law;**

S1-12 **Affidavit certifying that compensation has been secured.**

Proof that no coverage is required can be provided by submitting the following Workers' Compensation Board form;

C-105.21 **Statement that applicant does not require Workers' Compensation or Disability Benefits Coverage.**

(f) **Liability Insurance.** A wholesaler shall procure and shall maintain throughout the term of the permit, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the wholesale business pursuant to a permit. The wholesaler may purchase such policies in conjunction with one or more other wholesalers, provided that the coverages described in this subdivision are maintained with respect to each wholesaler.

(1) Commercial General Liability Insurance with liability limits of no less than one million dollars ($1,000,000.00) combined single limit per occurrence for bodily injury, personal and property damage. The maximum deductible for such insurance shall be no more than twenty-five thousand dollars ($25,000.00).

(2) Business Automobile Liability Insurance covering every vehicle operated by the wholesaler, whether or not owned by the wholesaler, and every vehicle hired by the applicant with liability limits of no less than one million dollars ($1,000,000) combined single limit per accident for bodily injury and property damage.

(3) Employers' Liability Insurance with limits of one million dollars per accident.

The policy or policies of insurance required by these rules shall name the City of New York and the Department of Business Services and any other agency or entity of the City as may be required as parties insured thereunder, and shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except upon sixty days prior written notice to the Commissioner. Failure to maintain continuous insurance coverage meeting the requirements of these rules will result in automatic cancellation of the permit. Such policy or policies of insurance shall be obtained from a company, or companies, duly authorized to do business in the State of New York with a Best's rating of no less than A:X unless specific approval has been granted by the Mayor's Office of Operations to accept a company with a lower rating. Two certificates of insurance affecting the required coverage and signed by a person authorized by the insurer to bind coverage on its behalf, must be delivered to the Commissioner prior to the effective date of the registration.

(g) **Payment Bond.** A wholesaler shall, in the discretion of the Commissioner, procure and maintain a payment bond or other security ensuring payment to suppliers of such wholesaler in an amount, if any, to be determined by the Commissioner taking into account such factors as the wholesaler's volume of business and credit worthiness.

(h) **Liability for Violations.** A wholesaler shall be jointly and severally liable for any violation of Chapter 1-A of Title 22 of the Administrative Code or of this subchapter by any of his or her employees or agents.

(i) **Prohibited Acts.** (1) A wholesaler and its employees and agents shall not solicit an unloader to unload a truck out of order.

(2) A wholesaler and its employees and agents shall not interfere with the Market Manager in the discharge of his or her functions or interfere with or otherwise obstruct the orderly functioning of the Market.

(3) A wholesaler and its employees and agents shall not authorize another person to use the name of the business to which a registration number has been issued for such wholesale seafood business.

(4) A wholesaler and its employees and agents shall not authorize another person to conduct a wholesale seafood business with the registration number that has been issued to such wholesaler.

(5) A wholesaler and its employees and agents shall not sublease or otherwise allow the use of his or her premises by a person who does not possess a registration number issued by the Commissioner pursuant to this subchapter.

(6) A wholesaler and its employees and agents shall not authorize another person to use his or her stand permit to place seafood upon the street, except as provided in paragraph (3) of subdivision (a) of this section.

(7) A wholesaler and its employees and agents shall not conduct a wholesale seafood business under any name other than the name under which such business has been registered with the Market Manager.

(8) A wholesaler and its employees and agents shall not discard seafood unless such seafood has been rendered unfit for human consumption by chemical treatment, sealed in a tamper-proof container, or otherwise treated in a manner approved by the Market Manager and shall comply with other sanitary procedures specified by the Market Manager.

(9) A wholesaler and its employees and agents shall not violate applicable federal, state and city regulations regarding the proper handling of seafood.

(10) A wholesaler and its employees and agents shall not fail to notify the Market Manager of any change in the information provided pursuant to §1-32 of this subchapter with respect to the composition or ownership of the wholesale business, or of any change in the employment status of its employees.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

Subd. (h) amended City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See

T66 Chap 1 Subchap D footnote]

Subd. (i) par (1)-(10) amended City Record Aug. 18, 1997 eff. Sept.

17, 1997. [See T66 Chap 1 Subchap D footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Initiation of a fight by the respondent, an employee of a seafood wholesaler at the Fulton Fish Market, during which the respondent struck one market inspector and injured a second who came to the aid of the first, constituted interference with the orderly functioning of the market pursuant to subparagraph (i)(2) of this section. Department of Business Services v. Fiore, OATH Index No. 722/97 (Apr. 22, 1997), aff'd, _____ AD2d _____, 667 NYS2d 244 (1st Dept. 1998).

¶ 2. By accepting and selling seafood erroneously delivered to him instead of to another wholesaler, attempting to impede recovery of the seafood, and attempting to bribe an undercover investigator who he believed to be a potential witness, the president of a registered seafood wholesaler violated subparagraph (i)(2) of this section, requiring the revocation of the wholesaler's registration number pursuant to §1-32(f) of this chapter, and the surrender of the photo ID cards of the wholesaler's principals, employees and agents pursuant to §1-32(g) of this chapter. Department of Business Services v. A & S Seafood, OATH Index No. 1268/96 (Apr. 2, 1996).

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-34 Seafood Delivery Operations.

A seafood deliverer shall be subject to the requirements for conducting a seafood delivery business that are contained in this section.

(a) The Market Manager may designate an area or areas within the Market Area where Seafood Deliverers shall park while picking up seafood from wholesalers for delivery.

(b) (1) Seafood deliverers shall possess a valid driver's license as required by §501 of the Vehicle and Traffic Law.

(2) All vehicles employed in a seafood delivery business shall possess: proper vehicle registration as required by §401 of the Vehicle and Traffic Law; a valid inspection sticker obtained pursuant to the provisions of Article 5 of the Vehicle and Traffic Law; and insurance coverage as required by Article 6 of the Vehicle and Traffic Law.

(3) All vehicles employed in a seafood delivery business shall display a sticker or decal issued by the Market Manager in a location to be designated by the Market Manager.

(c) A seafood deliverer shall not offer seafood for sale within the Market Area for resale to the public unless the seafood deliverer is also registered as a wholesaler.

(d) Seafood deliverers shall comply at all times with all applicable Federal, State and City regulations regarding

the proper handling of seafood.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-35 Regulation for Safety, Order and Health in the Market Area.

In order to ensure safe, orderly and healthful conditions in the Market Area, the Market Manager may take measures, including but not limited to the following: designate areas in which activities not otherwise regulated by the provisions of this subchapter and related to the distribution of seafood in the Market Area may be conducted; prohibit any activity that may present a threat of (i) intimidation or disruption of businesses in the Market Area, (ii) traffic congestion or (iii) unsafe, unlawful or unsanitary conditions, and exclude from the Market Area any person or business conducting such activity; regulate the movement of traffic throughout the Market Area; and prescribe methods for the sanitary disposal of waste in the Market Area. Where any provision of this subchapter is inconsistent with a provision of Chapter 1 of this title, the provisions of this subchapter shall apply.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-36 Fines and Penalties.

(a) The Market Manager may issue a notice of violation to an unloader, a loader, wholesaler, seafood deliverer or any other person engaged in an activity related to the distribution of seafood in the Market Area for the violation of any provision of Chapter 1-A of Title 22 of the Administrative Code or of this subchapter. Except as otherwise provided in subdivision (b) of this section, any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed ten thousand dollars for each such violation which may be recovered in a civil action or in a proceeding before the Environmental Control Board.

(b) (1) Any person who operates without a license in violation of subdivision (a) of §22-204, subdivision (a) of §22-206, subdivision (c) of §22-208 or §22-219 of the Administrative Code shall be guilty of a misdemeanor and, upon conviction thereof, be punished for each violation by a criminal fine of not more than ten thousand dollars or imprisonment not to exceed six months, or both and; and any such person shall also be subject to a civil penalty of not more than five thousand dollars for each such violation to be recovered in a civil action or administrative proceeding before the environmental control board. The corporation counsel is authorized to commence a civil action on behalf of the city for injunctive relief to restrain or enjoin any violation of such subdivisions and for civil penalties.

(2) Any person who interferes or attempts to interfere with the conduct of, or who intentionally or without the permission of the owner or other person lawfully in possession of such property destroys or damages property or equipment associated with, loading or unloading authorized pursuant to Chapter 1-A of Title 22 of the Administrative

Code and this subchapter, shall be guilty of a misdemeanor and, upon conviction thereof, be punished for each violation by a criminal fine of not more than ten thousand dollars or by imprisonment not exceeding six months, or both; and any such person shall also be subject to a civil penalty of not more than five thousand dollars to be recovered in a civil action or administrative proceeding before the Environmental Control Board for each day that the violation continues.

(3) An unloading business, a loading business, a wholesale seafood business and a seafood delivery business shall be liable for any violation of Chapter 1-A of Title 22 of the Administrative Code and of this subchapter committed by an employee or agent of such business entity.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-37 Seizure and Forfeiture.

Any police officer or authorized officer or employee of the department may, upon service of a notice of violation upon the owner or operator of a vehicle or other property or equipment, seize such vehicle or other property or equipment which such police officer or authorized officer or employee has reasonable cause to believe is being used in connection with an act constituting a violation of subdivision (a) of §22-204, subdivision (a) of §22-206, subdivision (c) of §22-208 or §22-219 of the Administrative Code. In addition to any other fines and penalties, a vehicle or other property or equipment which has been seized pursuant to this section and all rights, title and interest therein shall be subject to forfeiture upon notice and judicial determination thereof if the owner of such vehicle or other property or equipment has been found liable by a court or in a proceeding before the Environmental Control Board on one or more prior occasions for using such vehicle or such other property or equipment in connection with an act constituting a violation of subdivision (a) of §22-204, subdivision (a) of §22-206, subdivision (c) of §22-208 or §22-219 of the Administrative Code. Seizure and forfeiture pursuant to this section shall be conducted in accordance with the requirements and procedures governing such seizure and forfeiture pursuant to §22-220 of the Administrative Code.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-38 Hearings.

(a) Where a hearing is conducted in relation to the suspension or revocation of a photo identification card, license or registration pursuant to the provisions of §§1-23, 1-28 or 1-32 of this subchapter, the hearing officer shall set a time and place for such hearing and the Department shall provide the respondent with notice of such time and place no less than ten days prior to the date of the hearing, except that in the case of an immediate suspension requiring an expedited hearing pursuant to subdivision (c) of §1-28 or subdivision (f) of §1-32 of this subchapter, such notice shall be provided no later than one business day following such suspension.

(b) All parties shall be afforded due process of law, including the opportunity to be represented by counsel, to issue subpoenas or request that a subpoena be issued, to call witnesses, to cross-examine opposing witnesses and to present arguments on the law and facts. Relevant material and reliable evidence shall be admitted without regard to technical or formal rules or laws of evidence.

(c) All persons giving testimony as witnesses shall be placed under oath.

(d) The hearing officer shall preside over the hearing and shall have all powers necessary to conduct fair and impartial hearings, to avoid delay in the disposition of proceedings, and to maintain order, including but not limited to the following: to compel the attendance of witnesses and the production of documents; to issue orders for discovery upon motion for good cause shown; to rule upon offers of proof and receive evidence; to regulate the course of the

hearing and the conduct of the parties and their counsel therein; to hold conferences for the purposes of settlement or any other proper purpose; to interrogate witnesses; to make recommended findings of fact and recommended decisions.

(e) The Market Manager shall have the burden of proof in establishing that the respondent has committed or caused the violation charged in the notice, but the proponent of any factual position shall be required to sustain the burden of proof with respect thereto. The notice of violation shall constitute **prima facie** evidence of the facts stated therein.

(f) The hearing officer shall provide or arrange for either a stenographically reported or mechanically recorded verbatim transcript of the hearing. Such transcript and all exhibits received in evidence shall constitute the hearing record.

(g) As soon as possible after the hearing, the hearing officer shall present recommended findings of fact and a recommended decision to the Commissioner. The Commissioner shall make a final determination and notify the respondent, by first class mail addressed to the business address of such respondent, of such determination. Where the respondent is an employee of a business required to be licensed or registered pursuant to Chapter 1-A of the Administrative Code and this subchapter, notice of the final determination shall be by first class mail to the address provided for such employee pursuant to §§1-25 and 1-32 of this subchapter.

(h) Failure of a respondent to make a timely written response, appear or proceed as required by the hearing officer shall constitute a default. Upon default, the hearing officer shall make such recommended findings and recommended decision as is appropriate under the pleadings and such evidence as he or she shall have received. The Commissioner shall make a final determination and shall notify the respondent, by first class mail addressed to the place of business of such respondent, of such determination. Where the respondent is an employee of a business required to be licensed or registered pursuant to Chapter 1-A of the Administrative Code and this subchapter, notice of the final determination shall be by first class mail to the address provided for such employee pursuant to §§1-25 and 1-32 of this subchapter.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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§1-39 Notice.

Notice required pursuant to this chapter may be served by first class mail addressed to the business address of an unloader, a loader, a wholesaler or a seafood deliverer as provided by such business pursuant to §§1-25 and 1-32 of this subchapter, and all notice served upon an employee or an agent of such business may be served by first class mail to the address listed for such employee or agent in the information provided pursuant to such section or §1-12 of this chapter. Notice may also be served by personal service or in any other manner reasonable calculated to achieve actual notice, including but not limited to any method authorized in the Civil Practice Law and Rules.

HISTORICAL NOTE

Section amended City Record May 3, 1996 eff. June 2, 1996. [See Note 1]

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

NOTE

1. Statement of Basis and Purpose in City Record May 3, 1996:

Local Law Number 50 for the Year 1995 authorizes the Commissioner of the Department of Business Services to promulgate rules for the implementation of the requirements of Local Law 50, including procedures for issuing notices

of violation and notices of proceedings for suspensiions and revocations of licenses, registrations and photo identification cards. This rule is being amended to provide flexibility in the manner of services. This rule was not included in the Agency's Regulatory Agenda because it was not anticipated at the time the Regulatory Agenda was published.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-40 Applicability When Department Performs Unloading or Loading Services.

Sections 1-24 through 1-28 of this subchapter, relating to licensing requirements and conditions for unloading and loading businesses shall not apply where the Commissioner determines, pursuant to paragraph (ii) of subdivision (g) of §22-204, paragraph (ii) of subdivision (g) of §22-206 or §22-208 of the Administrative Code, that the Department, a designee of the Department, an entity under contract to the Department, or a combination thereof shall provide unloading services or loading services in the Market Area.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets

by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-41 Separability.

If any provision of this subchapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the provision thereof directly involved.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market

Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

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CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-51 Scope.

This subchapter shall govern the registration of wholesale seafood businesses outside the Fulton Fish Market Distribution Area, and the licensing, registration and other requirements applicable in a Seafood Distribution Area declared by the Commissioner pursuant to §22-222(b) of the Administrative Code.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

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CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-52 Definitions.

Unless otherwise provided in this subchapter, the terms used herein shall have the meanings provided for such terms in §1-22 of subchapter B of this chapter.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

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CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-53 Wholesaler Registration Required.

(a) As of thirty days following the effective date of this subchapter, no wholesaler shall conduct a wholesale seafood business in the City of New York unless such business has been registered with the Commissioner and received a registration number from the Commissioner.

(b) A person wishing to register a wholesale seafood business shall provide such information as the Commissioner shall require on Part I of the form prescribed by the Commissioner, attached as Appendix B of this subchapter, which form shall be signed by all the principals of such business and certified under penalty of perjury. The fee for registration of a wholesale business shall be three hundred dollars ($300).

(c) A wholesaler shall notify the Commissioner within ten calendar days of any changes in the ownership composition of the wholesale seafood business and any material change in the other information supplied on the registration form submitted pursuant to subdivision b of this section and shall be responsible for notifying the Commissioner of any such change throughout the term of the registration.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

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CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-54 Restrictions on Use of Registration Number.

A wholesaler shall not transfer his or her registration number as part of the sale of such wholesale seafood business, nor shall a wholesaler allow the use by any other person of the registration number or the name of the business to which the registration number has been issued.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

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CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-55 List of Registrants.

The Market Manager shall maintain and publish a list of all wholesalers who possess wholesaler registration numbers issued pursuant to this subchapter. The Market Manager shall make such list available to suppliers, shippers and truckers and shall, upon request, verify to suppliers, shippers and truckers whether a person or an entity possesses a wholesaler registration number.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

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CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-56 Registration Requirements in a Seafood Distribution Area.

Notwithstanding any provision of this subchapter, where the Commissioner, pursuant to §22-222 of the Administrative Code, declares an area where one or more wholesale seafood businesses have been established to be a Seafood Distribution Area, the provisions governing wholesaler registration set forth in Subchapter B of this Chapter and in Chapter 1-A of Title 22 of the Administrative Code shall apply. When such provisions are applied to a Seafood Distribution Area, the terms "Fulton Fish Market distribution area" and "market area" as contained therein shall be deemed to include such Seafood Distribution Area.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B

footnote.

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CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-57 Licensing and Seafood Delivery Business Registration Requirements in a Seafood Distribution Area.

Where the Commissioner, pursuant to §22-222 of the Administrative Code, declares an area where one or more wholesale seafood businesses have been established to be a Seafood Distribution Area, all unloading businesses, loading businesses, and seafood delivery businesses which operate within such area, and the employees and/or agents of such businesses, shall be subject to all the provisions governing unloading businesses, loading businesses, and seafood delivery businesses, and the employees and/or agents of such businesses, set forth in subchapter B of this Chapter and Chapter 1-A of Title 22 of the Administrative Code, except as may be otherwise determined by the Commissioner pursuant to §22-222(c) of the Administrative Code. When such provisions are applied to a Seafood Distribution Area, the terms "Fulton Fish Market distribution area" and "market area" as contained therein shall be deemed to include such Seafood Distribution Area.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

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CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-58 The Seafood Distribution Area at Hunts Point.

(a) The following area is declared to be a Seafood Distribution Area pursuant to §22-222 of the Administrative Code:

(1) the area in Hunts Point in the Borough of the Bronx, which includes the structure known as the New Fulton Fish Market at Hunts Point and all parking and other areas adjacent thereto, beginning at the intersection of the bulkhead line in the East River and the easterly street line of Halleck Street extended, thence northwesterly to the intersection of the easterly street line of Halleck Street extended and the southerly street line of Food Center Drive, thence easterly along the southerly street line of Food Center Drive to the intersection of the southerly street line of Food Center Drive and the southerly street line of Farragut Street, thence easterly along the southerly street line of Farragut Street continuing to its easterly terminus, thence easterly to the intersection of Farragut Street extended and the bulkhead line in the East River, thence westerly along said bulkhead line to the place of beginning, but excluding (i) the southern portion of the above-described area that is under the jurisdiction of the Department of Correction and includes a prison barge and adjacent parking lot and other facilities and areas controlled by the Department of Correction, and (ii) the eastern portion of the above-described area that is under the jurisdiction of the Department of Sanitation and includes a marine transfer station and other facilities and areas controlled by the Department of Sanitation; and

(2) the parking lot for use by persons employed at the New Fulton Fish Market at Hunts Point, including the pathway connecting such parking lot with Food Center Drive and the driveway connecting such parking lot with

Halleck Street, that lies northwest of the area described in paragraph (1) of this subdivision, northeast of Halleck Street, southeast of the northerly street line of Viele Street extended, and southwest of the Hunts Point Meat Market.

The aerial photograph constituting Appendix A of this subchapter illustrates the Seafood Distribution Area at Hunts Point described above. Appendix A is for illustration purposes only, and the area indicated therein is not necessarily to scale. If there is a conflict between the description set forth in this subdivision and the area illustrated by such photograph, the description set forth in this subdivision shall prevail.

(b) The following provisions relating to licenses, photo identification cards and stand permits shall apply with respect to the Seafood Distribution Area described in subdivision (a) of this section.

(1) Loading and unloading licenses issued for the Fulton Fish Market distribution area shall not be valid for use in the Seafood Distribution Area described in subdivision (a) of this section unless specifically so amended. If amended, such licenses shall be valid for the duration of their terms, unless suspended or revoked in accordance with §1-28 of this chapter, and may be renewed in accordance with §1-25(c) of this chapter.

(2) As of the date seafood distribution activities commence in the Seafood Distribution Area described in subdivision (a) of this section, photo identification cards issued for the Fulton Fish Market distribution area shall be valid for use in such area described in subdivision (a), unless suspended or revoked in accordance with §1-23(d) or §1-23(g) of this chapter.

(3) Stand permits issued for the Fulton Fish Market distribution area shall not be valid for the Seafood Distribution Area described in subdivision (a) of this section.

(c) Loading and unloading licenses, photo identification cards, seafood delivery business registrations and stand permits issued for the Fulton Fish Market distribution area shall not be valid for use in such area as of the date seafood distribution activities commence in the Seafood Distribution Area described in subdivision (a) of this section.

(d) Wholesale seafood business registrations shall be valid for the duration of their terms, unless revoked in accordance with §1-32 of this chapter, and may be renewed in accordance with §1-31 of this chapter.

(e) Enforcement action may be taken against any person or entity required to be registered with or licensed by the Business Integrity Commission or possess a class A or B photo identification card.

HISTORICAL NOTE

Section added City Record Oct. 5, 2005 §1, eff. Nov. 4, 2005. [See Note 2]

Section added City Record July 13, 2005 eff. July 13, 2005 until Sept. 11, 2005 per Charter §1043(h)(2).

[See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 13, 2005:

This emergency rulemaking establishes the City's full regulatory authority over the New Fulton Fish Market at Hunts Point and related areas by applying thereto the provisions of Local Law 50, as amended, and Subchapters B and C of Chapter 1 of Title 66 of the Rules of the City of New York.

The rule further provides that previously issued loading and unloading licenses will not be valid for the new seafood distribution area at Hunts Point unless the Business Integrity Commission determines that such licenses should be valid for the new facilities and the licenses are amended accordingly. Wholesaler and seafood delivery business

registrations and classes A and B photo identification cards issued during the period of operation of the old Fulton Fish Market will continue to be valid for the new market until they expire or are suspended or revoked. Any licenses and registrations that will be valid for the new market may be renewed in accordance with applicable law. Stand permits will no longer be valid in the New Fulton Fish Market.

Finally, the rule provides that enforcement action may be taken as of the effective date of the rule against anyone required to be registered with or licensed by the Business Integrity Commission or possess a class A or B photo identification card.

Finding of Imminent Threat to Necessary Service

I hereby make the following finding of an imminent threat to a necessary service to establish that an emergency rulemaking relating to the New Fulton Fish Market at Hunts Point is necessary and proper.

The New Fulton Fish Market at Hunts Point currently is scheduled to begin operations in late July 2005. It will be the largest centralized wholesale seafood distribution center in the United States. The City Council previously found that organized crime had long exercised a corrupting influence over aspects of the seafood distribution industry in the City, including unloading and loading functions, and "that the conditions which have given rise to corruption in the market area can exist in other areas where there are wholesale seafood businesses or concentrations of such businesses." Administrative Code §22-201. In declaring the propriety of establishing the New Fulton Fish Market at Hunts Point and related areas as a seafood distribution area pursuant to §22-222(b) of the Administrative Code, I found that there is reasonable cause to believe that there exists the potential for corrupt, deceptive or unconscionable business practices in such area and that the regulatory apparatus that eliminated organized crime from the Fulton Fish Market is needed to ensure that any organized crime or other corrupt activity does not infiltrate and disrupt the new market. Furthermore, established wholesale markets such as the New Fulton Fish Market at Hunts Point constitute a necessary service within the City.

THEREFORE, I find that the immediate effectiveness of a rule relating to the boundaries of a seafood distribution area that includes the New Fulton Fish Market at Hunts Point and related areas and the status of licenses, registrations, photo identification cards and stand permits issued pursuant to Chapter 1-A of Title 22 of the Administrative Code of the City of New York and Subchapter B of Chapter 1 of Title 66 of the Rules of the City of New York is necessary to address an imminent threat to a necessary service.

Dated: July 8, 2005

Thomas McCormack, Chair Business Integrity Commission Approved: Michael R. Bloomberg Mayor

2. Statement of Basis and Purpose in City Record Oct. 5, 2005: This rule adopts on a permanent basis an emergency rule published on June 13, 2005 that establishes the City's full regulatory authority over the New Fulton Fish Market at Hunts Point and related areas by applying thereto the provisions of Local Law 50 for the year 1995, as amended, and Subchapters B and C of Chapter 1 of Title 66 of the Rules of the City of New York. The rule also provides that previously issued loading and unloading licenses will not be valid for the new seafood distribution area at Hunts Point unless the Business Integrity Commission determines that such licenses should be valid for the new facilities and the licenses are amended accordingly. Wholesaler and seafood delivery business registrations and classes A and B photo identification cards issued during the period of operation of the old Fulton Fish Market will continue to be valid for the new market until they expire or are suspended or revoked. Any licenses and registrations that will be valid for the new market may be renewed in accordance with applicable law. Stand permits will no longer be valid in the New Fulton Fish Market. Finally, the rule provides that enforcement action may be taken as of the effective date of the rule against anyone required to be registered with or licensed by the Business Integrity Commission or possess a class A or B photo identification card.

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

APPENDIX A

HISTORICAL NOTE

Appendix A added City Record Oct. 5, 2005 eff. Nov. 4, 2005. [See T66 §1-58 Note 2]

Appendix A added City Record July 13, 2005 eff. July 13, 2005 until Sept. 11, 2005 per Charter §1043(h)(2). [See T66 §1-58 Note 1]

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RULES OF THE CITY OF NEW YORK

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APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-61 Scope.

This subchapter shall govern the registration of and other requirements relating to (a) Market businesses located and operating within the fulton fish market distribution area or other seafood distribution areas, (b) labor unions and labor organizations representing or seeking to represent employees directly involved in the movement, handling or sale of goods sold in the fulton fish market distribution area or other seafood distribution areas, and (c) wholesale trade associations representing wholesalers located and operating within the fulton fish market distribution area or other seafood distribution areas.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis

and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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RULES OF THE CITY OF NEW YORK

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APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-62 Definitions.

For the purposes of this subchapter, the following terms shall have the following meanings:

Market business. The term "market business" shall mean any business located or operating within the fulton fish market distribution area or other seafood distribution areas that is engaged in providing goods or services to wholesalers or retail purchasers in such distribution area that are related to the conduct of a wholesale business or the purchase of seafood products by retailers or others, or that receives such goods within such distribution area for delivery, forwarding, transfer or further distribution outside such distribution area. "Market business" shall include, but not be limited to, the supply of ice or refrigeration services, security, and transfer or distribution of seafood, and shall exclude suppliers of seafood.

Labor union. The terms "labor union" or "labor organization" refers to a union or other organization that represents or seeks to represent, employees directly involved in the movement, handling or sale of goods in the Market Area. Notwithstanding the foregoing, such terms shall not include: (i) a labor union that represents or seeks to represent fewer than two hundred employees in the Market Area, any other seafood distribution areas, or any other public wholesale market, or any combination thereof; (ii) a labor union representing or seeking to represent clerical or other office workers, construction or electrical workers, or any other workers temporarily or permanently employed in a public wholesale market for a purpose not directly related to the movement, handling or sale of goods in such market; (iii) affiliated national or international labor unions of local labor unions required to register pursuant to this provision.

Code. The term "Code" shall mean the Administrative Code of the City of New York.

Officer. The term "officer" shall mean any person holding an elected position or any other position involving participation in the management or control of a wholesale trade association or of a labor union or labor organization required to register pursuant to §1-72 or §1-74 of this subchapter.

Wholesale trade association. The term "wholesale trade association" shall mean an entity, the majority of whose members are wholesale businesses and/or market businesses, having as a primary purpose the promotion, management or self-regulation of the fulton fish market distribution area or other seafood distribution areas or the facilities utilized by such businesses, and shall include, but not be limited to a corporation, cooperative, unincorporated association, partnership, trust or limited liability partnership or company, whether or not such entity is organized for profit, not-for-profit, business or non-business purposes.

Unless otherwise provided in this subchapter, all other terms used herein shall have the meanings provided for such terms in §1-22 of subchapter B of this chapter.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-63 Market Business Registration Required.

(a) As of fifteen days following the effective date of this subchapter, no Market business shall operate in the Market Area unless such business has been registered with the Commissioner and received a registration number from the Market Manager.

(b) Notwithstanding subdivision (a) of this section, a Market business that has been operating in the Market Area on or before the effective date of Local Law 28 of 1997, and which has filed a registration application with the Commissioner within fifteen days of the effective date of this subchapter, may continue to operate in the Market Area beyond fifteen days following the effective date of this subchapter unless and until (1) the Commissioner has denied the application for registration of such business, or (2) in cases where the Commissioner has required any or all of the principals of such Market business to be fingerprinted, submit background information and appear for an interview pursuant to §§22-253(b) and 22-259(a) of the Code, such principal has failed, within the time period prescribed by the Commissioner, to submit to such fingerprinting, or to submit the required information, or to appear for an interview, or to submit the fees for a background investigation in accordance with §1-25 of subchapter B of this chapter. For the purposes of this subdivision, the term "Market business" shall mean the Market business entity, and all the principals thereof.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-64 Issuance of Registration.

(a) A person wishing to register a Market business shall provide the information requested in the registration application form provided by the Department, which form shall be signed by all principals of such business, and accompanied by the certification form provided by the Department, fully executed by all principals of such business.

(b) A Market business is required to notify the Commissioner of any change in the ownership composition of the business, any changes regarding persons employed by the business, the arrest or criminal conviction of any principal of the business, or any other material change in the information submitted pursuant to subdivision (a) of this section during the term of its registration, and shall notify the Commissioner, in writing, of any such change within ten calendar days thereof.

(c). In the event that a registrant notifies the Commissioner of the proposed addition of a new principal (other than a person or entity that becomes a principal through the acquisition of outstanding shares of a business whose equity securities are registered under Federal and State securities laws and publicly traded on a national or regional stock or security exchange) as required by subdivision b of this section, the registrant shall simultaneously submit the registration application form provided by the Department completed, signed and certified by such prospective principal. Except where the Commissioner determines within 15 days, based upon information available to him or her, that the addition of such new principal may have a result inimical to the purposes of Chapter 1-B of Title 22 of the Code, the registrant may add such new principal pending the completion of review by the Commissioner. The Commissioner may

waive or shorten such 15 day period upon a showing that there exists a **bona fide** business requirement therefor. The registrant shall be afforded an opportunity to demonstrate to the Commissioner that the addition of such new principal pending completion of such review would not have a result inimical to the purposes of Chapter 1-B of Title 22 of the Code. If upon the completion of such review, the Commissioner determines that such principal lacks good character, honesty and integrity, the registration shall cease to be valid unless such principal divests his or her interest, or discontinues his or her involvement in the business of such licensee, as the case may be, within the time period prescribed by the Commissioner.

(d) Notification pursuant to this section shall be signed and sworn to before a notary public.

(e) Notwithstanding any provision of this subchapter: (1) the Commissioner may, when the Commissioner determines that there is reasonable cause to believe that any or all of the principals of an applicant for registration, or a registrant, lack(s) good character, honesty or integrity, require that such principal(s) (i) be fingerprinted in accordance with §22-259(a)(i) of the Code; (ii) provide to the Commissioner the information requested in the background investigation form provided by the Department within 15 days of such request; (iii) appear to be interviewed by the department of investigation or the Department; and (iv) pay the fee for a background investigation in accordance with §1-25 of subchapter B of this chapter.

(2) The Commissioner may refuse to register a Market business for the reasons set forth in subparagraphs b, c, d and e of §22-259 of the Code, or may defer a decision whether to register such Market business when an indictment or a criminal or civil action is pending as provided in subparagraph (b)(ii) of such section.

(f) A Market business denied registration for lack of good character, honesty or integrity pursuant to §22-259(b) of the Code shall be given notice of the reasons for such denial, and may respond in writing to the Commissioner within ten days of the mailing of such notice. The Commissioner shall review such response and make a final deter- mination.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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§1-65 Photo Identification Cards Required.

(a) On or after the fifteenth day following the effective date of this subchapter, no person who is an officer, principal, employee or agent of any Market business operating in the fulton fish market distribution area or other seafood distribution area who performs any function directly related to the provision of goods or services to wholesalers or retail purchasers in such area shall perform such function without having been issued a photo identification card issued by the Commissioner pursuant to the provisions of this section and §22-252 of the Code. Notwithstanding the foregoing, officers, principals, employees or agents of any Market business required to have photo identification cards, and who have filed applications therefor within fifteen days of the effective date of this subchapter and obtained temporary photo identification cards, may continue to perform such functions fifteen days after the effective date of this subchapter unless and until (1) the application of such person for a photo identification card has been denied, or (2) the temporary photo identification card of such person has been revoked, or (3) in cases where the Commissioner has required such person to be fingerprinted, submit background information and appear for an interview pursuant to §22-259(a) of the Code, such person has failed, within the time period prescribed by the Commissioner, to submit to such fingerprinting or to submit the required information, or to appear for an interview.

(b) Photo identification cards shall be in the possession of principals and employees of Market businesses at all times when such persons are in the Market Area, and shall be produced upon demand by an authorized employee or agent of the Department, the department of investigation or the police department.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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§1-66 Temporary Photo Identification Cards.

The Market Manager may issue temporary photo identification cards to all officers, principals, employees and agents of Market businesses, and to seasonal employees of Market businesses, who have made timely applications and tendered the requisite fee payments in accordance with this subchapter. Such temporary identification cards shall be valid unless and until the Commissioner has (a) issued or denied a permanent identification card, or (b) such temporary card has previously been revoked in accordance with the procedures set forth in §1-70 of this subchapter.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the

Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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§1-67 Issuance of Photo Identification Cards.

(a) A person wishing to apply for a photo identification card shall provide the information required in the application form provided by the Department, which form shall be signed and certified under penalty of perjury by the applicant.

(b) Persons required to have photo identification cards shall notify the Commissioner of any material change in the information submitted pursuant to subdivision (a) of this section, including without limitation, any change in employment, as well as any arrests or criminal convictions, and shall notify the Commissioner, in a signed and notarized writing, of any such change within ten calendar days thereof.

(c) Notwithstanding any provision of this subchapter (1) the Commissioner may, where he or she has reasonable cause to believe that an applicant for or the holder of a photo identification card lacks good character, honesty or integrity, require that such person: (i) be fingerprinted, (ii) provide, within the time required by the Commissioner, the background information required in paragraph (ii) of subdivision (a) of §22-259 of the Code, and as requested in the background investigation form provided by the Department, (iii) appear to be interviewed by the department of investigation or the Department, and (iv) tender the requisite fees therefor in accordance with §1-25 of subchapter B of this chapter.

(2) The Commissioner may refuse to issue a photo identification card for the reasons set forth in subparagraphs b,

d and e of §22-259 of the Code, or may defer a decision whether to issue such card when there is an indictment or a criminal or civil action pending against or involving the applicant as provided in subparagraph (b)(ii) of such section.

(d) A person whose application for a photo identification card has been denied by the Commissioner for lack of good character, honesty or integrity pursuant to §22-259(b) of the Code, shall be given notice of the reasons for such denial and may respond in writing to the Commissioner within ten days of the mailing of such notice. The Commissioner shall review such response and make a final determination.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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§1-68 Terms and Fees.

(a) A registration issued pursuant to this subchapter shall be valid for three years, and may be renewed for three-year periods thereafter.

(b) The fee for registration of a Market business shall be three hundred dollars ($300), and the fee for renewal of such registration shall be two hundred and fifty dollars ($250).

(c) The fee for photo identification cards and temporary photo identification cards shall be twenty dollars ($20).

(d) The fee for the replacement of any photo identification card that has been lost or stolen shall be fifteen dollars ($15).

(e) A Market Business shall be responsible for the payment of any fee imposed by this section with respect to an employee of such business or any person seeking to become an employee of such business.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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§1-69 Market Business Operations.

(a) (1) A Market business shall not transfer its registration number as part of the sale of such Market business.

(2) A Market business shall not allow the use by any other person of the registration number or the name of the business to which such registration number has been issued. In the event that a Market business seeks to sublease or otherwise allow the use of its premises, or any portion thereof, for the operation of a Market business by another person, where such sublease is permitted under the terms of the lease, the Commissioner may, upon application and payment of the required fee by the prospective sublessee pursuant to the provisions of these rules, issue a registration number to such sublessee. Absent such registration number no Market business may permit a sublessee to operate a Market business on such premises.

(b) **Furnishing and Display of Registration Numbers.** The name and registration number of a Market business shall be affixed and prominently displayed on all premises and vehicles from which such Market business is conducted.

(c) **Record Keeping.** Market businesses shall retain copies of all invoices and other documents reflecting deliveries or payments from or to suppliers and customers. Such books and records shall accurately reflect the amount of goods or services involved in each transaction, and shall, along with all other records produced or received in the normal course of business, be retained for a minimum of thirty-six months, and shall be made available for immediate inspection and/or copying upon request by the Market Manager or a designee of the Market Manager.

(d) **Workers' Compensation Insurance.** A Market business shall submit proof that it has obtained the required workers' compensation and disability benefits coverage, or that it is exempt from §57 of the Worker's Compensation Law, and §220(8) of the Disability Benefits Law. Proof of coverage can be established by submitting the following Workers' Compensation Board forms:

C-105.2 Application for Certificate of Workers' Compensation Insurance;

DB-120.1 Employer's Application for Certificate of Compliance with Disability Benefits Law;

S1-12 Affidavit certifying that compensation has been secured.

Proof that no coverage is required can be provided by submitting the following Worker's Compensation Board form:

C-105.21 Statement that applicant does not require Workers' Compensation or Disability Benefits Coverage.

(e) **Liability Insurance.** A Market business shall procure and shall maintain throughout the term of the registration the following types of insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Market business:

(1) Commercial General Liability Insurance with liability limits of no less than one million dollars ($1,000,000.00) combined single limit per occurrence for bodily injury, personal and property damage. The maximum deductible for such insurance shall be no more than twenty-five thousand dollars ($25,000.00).

(2) Business Automobile Liability Insurance covering every vehicle operated by the Market business, whether or not owned by the Market business, and every vehicle hired by the applicant with liability limits of no less than one million dollars ($1,000,000) combined single limit per accident for bodily injury and property damage.

(3) Employers' Liability Insurance with limits of one million dollars ($1,000,000) per accident.

(f) The policy or policies of insurance required by this rule shall name the City of New York and the Department of Business Services and any other agency or entity of the City as may be required as parties insured thereunder, and shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except upon sixty days prior written notice to the Commissioner. Failure to maintain continuous insurance coverage meeting the requirements of these rules may result in revocation or suspension of registration. Such policy or policies of insurance shall be obtained from a company, or companies, duly authorized to do business in the State of New York with a Best's rating of no less than A:X unless specific approval has been granted by the Mayor's Office of Operations to accept a company with a lower rating. Two certificates of Insurance effecting the required coverage and signed by a person authorized by the insurer to bind coverage on its behalf, must be delivered to the Commissioner prior to the effective date of the registration.

(g) A Market business shall be jointly and severally liable for any violation of this subchapter by any of its employees or agents.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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§1-70 Revocation or Suspension of Registration or Photo Identification Cards.

(a) The Commissioner may revoke a temporary photo identification card, and after notice and hearing, revoke or suspend (1) the registration of a Market business or (2) a photo identification card for any of the reasons set forth in §22-260 of the Code, or for violation of any rule promulgated pursuant to §22-266 of the Code, including without limitation §1-69(f) and §1-77 of this subchapter. Notice shall be provided in accordance with the provisions of §1-39 of subchapter 1-B of this chapter. Hearings shall be afforded in accordance with the provisions of §1-38 of subchapter 1-B of this chapter.

(b) Revocation or suspension of registration shall require the immediate surrender to the Market Manager of all photo identification cards issued to the principals, employees and/or agents of the registrant. If a registration has been suspended, violation of the provisions of this subdivision may result in immediate revocation of a registration and/or the imposition of penalties as provided in §22-258 of the Code.

(c) Revocation or suspension of photo identification cards (including temporary photo identification cards) shall require the immediate surrender of such cards to the Market Manager.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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§1-71 Emergency Suspension of Registration or Photo Identification Cards.

Notwithstanding the foregoing provisions, the Market Manager may, if he or she determines that the operation of a Market business or the presence of any person in the Market Area creates an imminent danger to life or property, immediately suspend the registration of such business or the photo identification card of such person, as applicable, without a prior hearing, provided that, such suspension may be appealed to a Deputy Commissioner of the Department, and if the Deputy Commissioner upholds the suspension imposed by the Market Manager, an opportunity for a hearing pursuant to the provisions of §1-38 of subchapter B of this chapter shall be provided on an expedited basis within a period not to exceed four business days, and the Commissioner shall issue a final determination no later than four business days following the conclusion of such hearing; and provided further that the Commissioner may, upon application by a Market business whose registration has been suspended without a prior hearing, permit such Market business to remain in the Market Area for such time as is necessary to allow for the expeditious sale, consignment or removal of a perishable product if, in the Commissioner's judgment, such permission is consistent with the safety of the public and the Market Area.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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§1-72 Labor Union and Labor Organization Registration Required.

(a) Labor unions and labor organizations and officers of labor unions and labor organizations shall register with the Commissioner within fifteen days following the effective date of this subchapter.

(b) A registration issued pursuant to this chapter shall be valid for three years, and may be renewed for three-year periods thereafter.

(c) The fee for registration of a labor union or labor organization and officers of trade associations shall be three hundred dollars ($300) and the fee for renewal of such registration shall be two hundred and fifty dollars ($250).

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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§1-73 Registration Procedure.

(a) A labor union or labor organization shall provide the information requested in the registration application form provided by the Department, which form shall be signed by an officer and certified under penalty of perjury, including (i) the information required by §22-264(a) of the Code, (ii) all criminal convictions, in any jurisdiction, of such labor union or labor organization, (iii) any criminal or civil investigation of such labor union or labor organization by a federal, state or local prosecutorial agency, investigative agency or regulatory agency, in the five year period preceding the date of registration pursuant to §1-20.2 of this subchapter, (iv) all civil or administrative proceedings to which such labor union or labor organization has been a party involving allegations of racketeering, including but not limited to offenses listed in subdivision nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organization statute (18 U.S.C. §1961 **et seq.**) or of an offense listed in subdivision one of §460.10 of the penal law, as such statutes may be amended from time to time, (v) all judicial or administrative consent decrees entered into by such labor union or labor organization in the five year period preceding the date of registration pursuant to §1-20.2 of this subchapter, and (vi) the appointment of an independent auditor or monitor or receiver or administrator or trustee over such labor union or labor organization in the five year period preceding the date of registration pursuant to §1-20.2 of this subchapter. Notwithstanding the foregoing, no labor union or labor organization shall be required to furnish information pursuant to this subdivision which is already included in a report filed by the labor union or labor organization headed by such officer with the Secretary of Labor pursuant to 29 U.S.C. §431 **et seq.** or §1001 **et seq.** if a copy of such report, or of the portion thereof containing such information, is furnished to the Commissioner.

(b) An officer of a labor union or labor organization required to be registered with the Commissioner pursuant to §22-264(b) of the Code shall provide the information requested in the registration application form provided by the Department, which form shall be signed by such officer under penalty of perjury.

(c) Any material change in the information submitted pursuant to subdivision (a) or (b) of this section shall be reported to the Commissioner by such union or officer, in a signed and notarized writing, within ten calendar days thereof.

(d) Notwithstanding any provision of this subchapter the Commissioner may, if he or she has reasonable cause to believe that any of such officers lack good character, honesty or integrity, require that such officer(s) be fingerprinted on ten days' written notice in accordance with §22-264 of the Code, and pay the requisite fees therefor in accordance with §1-25 of subchapter B.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

Subd. (a) amended City Record Oct. 24, 1997 eff. Nov. 23, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 24, 1997:

Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing registration of labor unions and labor organizations. These rules are being promulgated to further the Department's ability to implement and enforce these requirements. The rules as finally promulgated reflect changes made in response to public comments.

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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§1-74 Wholesale Trade Association Registration Required.

(a) Wholesale trade associations and officers of wholesale trade associations shall register with the Commissioner within fifteen days following the effective date of this subchapter.

(b) A registration issued pursuant to this chapter shall be valid for three years, and may be renewed for three-year periods thereafter.

(c) The fee for registration of a wholesale trade association and officers of wholesale trade associations shall be three hundred dollars ($300), and the fee for renewal of such registration shall be two hundred and fifty dollars ($250).

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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§1-75 Registration Procedure.

(a) Wholesale trade associations shall provide the information requested in the registration application form provided by the Department, including the names of all members of such association and of all persons holding office in such association, together with such identifying information as the Commissioner shall request, which form shall be signed by an officer, and certified under penalty of perjury.

(b). Officers of wholesale trade associations required to be registered pursuant to §22-265(b) of the Code shall provide the information requested in the registration application form provided by the Department, which form shall be signed by such officers, and certified under penalty of perjury.

(c) Any material change in the information submitted pursuant to subdivision (a) or (b) of this section shall be reported to the Commissioner, in a notarized writing, within ten calendar days thereof.

(d) Notwithstanding any provision of this subchapter the Commissioner may, if he or she has reasonable cause to believe that any or all of such officers lack good character, honesty or integrity, require that such officer(s) be fingerprinted on ten days' written notice in accordance with §22-264 of the Code, and pay the requisite fees therefor in accordance with §1-25 of subchapter B.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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§1-76 Record Keeping.

(a) Wholesale trade associations shall retain copies of all invoices and records of payment to and from wholesalers and Market businesses, leases, sub-leases, union contracts, as well as all other records produced or maintained in the normal course of business for a period of three years.

(b) Such books and records shall be made available promptly for immediate inspection and/or copying upon request by the Market Manager or his or her designee.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the

Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

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§1-77 Prohibited Acts.

(a) No person shall (1) interfere, or attempt to interfere, with the Market Manager, his staff or the employees of the department of investigation or New York Police Department or any other person authorized to enforce the provisions of Chapters 1-A and 1-B of Title 22 of the Code in the discharge of their functions or interfere with or otherwise obstruct the orderly functioning of the Market Area; and (2) interfere, or attempt to interfere with, or otherwise obstruct any operations or property of any licensees or registrants in the Market Area.

(b) In addition to the foregoing, the following rules also apply to principals, employees and agents of Market businesses, officers of labor unions and labor organizations, and officers of wholesale trade associations. Such persons shall not:

(1) interfere, or attempt to interfere, with the Market Manager, his staff or the employees of the department of investigation in the discharge of their functions or interfere with or otherwise obstruct the orderly functioning of the Market;

(2) authorize another person to use the name of the business to which a registration number has been issued for such market business;

(3) authorize another person to conduct a market business with the registration number that has been issued to such

market business;

(4) conduct a market business under any name other than the name under which such business has been registered with the Market Manager;

(5) violate applicable federal, state or city laws and regulations;

(6) in the case of a Market business, fail to notify the Market Manager and the Commissioner of any change in the information provided pursuant to §1-64 of this subchapter with respect to the composition or ownership of the Market business, and any changes in personnel;

(7) associate with a person whom such person knows or should know is a member or associate of an organized crime group (a person who has been identified by a federal, state, or local law enforcement agency as a member or associate of an organized crime group shall be presumed to be a member or associate of an organized crime group);

(8) make a false or misleading statement to the Department or the department of investigation, or make, file or submit a false statement to a government agency or employee;

(9) threaten or attempt to intimidate a customer or prospective customer;

(10) retaliate against a customer or prospective customer, or a principal, employee or agent of any Market business, wholesaler, loader or unloader that has made a complaint to the Department, the department of investigation or the police department, or any other governmental entity;

(11) falsify any business record;

(12) in the case of a market business, continue to employ a person who has not received a valid photo identification card in accordance with the provisions of this subchapter, or whose photo identification card has been revoked, or whose photo identification card has been suspended during the period of suspension;

(13) utilize any motor vehicle in connection with the operation of such business which is not properly registered with the New York State Department of Motor Vehicles and insured in accordance with §1-69 of this subchapter;

(14) engage in any unfair labor practice under federal or state labor laws as applicable.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 1-78

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-78 Fines and Penalties.

(a) The Market Manager may issue a notice of violation to a Market business, labor union or labor organization, or wholesale trade association, or any of their principals, employees, agents or officers for the violation of any provision of Chapter 1-B of Title 22 of the Code, this subchapter, or subchapter A of this chapter. Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed ten thousand dollars for each such violation which may be recovered in a civil action or in a proceeding before the Environmental Control Board.

(b) A Market Business shall be jointly and severally liable for any violation of Chapter 1-B of Title 22 of the Code and of this subchapter committed by any of its officers, employees and/or agents acting within the scope of their employment.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 1 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A APPLICATION FOR CLASS A OR B PHOTO I.D. CARD

APPENDIX A APPLICATION FOR CLASS A OR B PHOTO I.D. CARD

THE CITY OF NEW YORK

DEPARTMENT OF BUSINESS SERVICES

110 WILLIAM STREET

NEW YORK, NEW YORK 10038

Application for Class A or B Photo Identification Card

----------OFFICE USE ONLY----------

Application #: _____ Date Received: _____

Approved: _____ Date: _____ Initials: _____ Denied: _____ Date: _____ Initials: _____ Photo Id #: _____ Date Issued: _____

PLEASE READ THE INSTRUCTIONS ACCOMPANYING THIS APPLICATION CAREFULLY BEFORE COMPLETING IT. APPLICATIONS WHICH HAVE NOT BEEN COMPLETED PROPERLY WILL BE RETURNED TO THE APPLICANT.

APPLICANTS FOR A CLASS A PHOTO IDENTIFICATION CARD NEED ANSWER ONLY THE QUESTIONS ON PARTS I AND II OF THIS APPLICATION.

APPLICANTS FOR A CLASS B PHOTO IDENTIFICATION CARD NEED ANSWER ONLY THE QUESTIONS IN PART I OF THIS APPLICATION.

PLEASE NOTE THAT THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS SERVICES ("COMMISSIONER") MAY, IN CERTAIN CIRCUMSTANCES, REQUIRE AN APPLICANT FOR A CLASS B PHOTO IDENTIFICATION CARD TO COMPLETE BOTH PARTS OF THIS APPLICATION.

APPLICANTS REQUIRING ADDITIONAL SPACE TO COMPLETE ANY ANSWER MAY ATTACH ADDITIONAL PAGES. EACH PAGE MUST CONTAIN IN THE LOWER LEFT HAND CORNER THE APPLICANT'S SOCIAL SECURITY NUMBER AND MUST BE NUMBERED SEQUENTIALLY AS "Page _____ of _____ pages."

ANY CHANGES IN THE INFORMATION RESPONSIVE TO QUESTIONS MARKED WITH AN ASTERISK (*) MUST BE BROUGHT TO THE ATTENTION OF THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS SERVICES, IN WRITING, WITHIN 10 DAYS AFTER THE CHANGE OCCURS. (SEE ACCOMPANYING INSTRUCTIONS).

SSN: ____ - ____ - ____

Page ____ of ____ pages

PART I

QUESTIONS TO BE ANSWERED BY

APPLICANTS FOR A CLASS A OR CLASS B

PHOTO IDENTIFICATION CARD

1. Application for

Class A Photo ID (Loaders/Unloaders)

Class B Photo ID (Wholesalers/SeafoodDeliverers/Others)

2. Name: _____

*2. Name: (Last) (First) (Middle)

3. Have you ever used or been known by any other name, including a maiden name?

__ No __ Yes

3. If "yes," provide the information requested below:

Name Dates Used Reason

*4. Applicant's Social Security Number[1]: _____

5. Date of Birth: _____

5. Date of Birth: (Month) (Day) (Year)

6. Place of Birth: _____

6. Place of Birth: (City) (State) (Country)

[1] Section 1-24 of Subchapter 1-B of Title 66 of the Rules of the City of New York requires that responses to requests for licensing proposals include the social security numbers of the applicant. These social security numbers may be used to locate information concerning the applicant. Refusal to provide these numbers is not a ground for refusal to issue a license.

SSN: ____ - ____ - ____

Page ____ of ____ pages

7. Marital status please check one:

7. Single____ Married____ Separated____ Divorced____ Widowed____

7. If other than single, provide name(s) of any current or former spouse(s), including full maiden name(s) where applicable:

7. _____

8. For the past five years, state your residence address(es) and telephone number(s), including fax, cellular phone and beeper numbers.

Residence Address Telephone Number(s) Dates of Residence

9. Do you have a driver's license? __ No __ Yes

9. If "yes," identify all licenses below:

Drivers License Number Class of License Address on License

10. Do you or your spouse currently have any motor vehicles registered in your name?

__ No __ Yes

10. If your answer is "yes," for each such motor vehicle, state the following:

Make Year License Plate # Address at which Registered

SSN: ____ - ____ - ____

Page ____ of ____ pages

PART II

ADDITIONAL QUESTIONS FOR APPLICANTS FOR CLASS A PHOTO IDENTIFICATION CARD 11. Have you had a driver's license revoked or suspended in the last ten (10) years?

__ No __ Yes

11. If your answer is "yes," provide the information requested below:

Date of Event Jurisdiction Reason

12. Identify below any other residence(s) you currently maintain. If a residence is a weekend or vacation home, please state such. If none, state "None."

Address Telephone Number Purpose of Residence Date Purchased

13. Identify below your places of employment for the past ten years.

Name, Address and Telephone Number of Employer Name and Telephone Number of Supervisor Dates of Employment

SSN: ____ - ____ - ____

Page ____ of ____ pages

14. Have you ever been fired, asked to resign, or terminated for cause by any employer?

__ No __ Yes

14. If so, provide the information requested below:

Employer Date of Action Action Taken Reason

*15. To the best of your knowledge, during the past five years have you:

*15. a. been the subject or target of any investigation involving any alleged violation of criminal law?

__ No __ Yes

*15. b. been the subject or target of any investigation of any other investigation regarding an alleged violation of federal, state or local statute?

__ No __ Yes

*15. c. been cited for contempt of any court, legislative, civil or criminal investigative body or grand jury?

__ No __ Yes

*15. d. entered a plea of nolo contendere to any felony or misdemeanor charge?

__ No __ Yes

*15. e. entered into a consent decree or been the subject of a default decree?

__ No __ Yes

*15. f. been granted immunity from prosecution for any conduct constituting a crime under state or federal law?

__ No __ Yes

*15. g. had an injunction obtained against you in any judicial action or proceeding?

__ No __ Yes

SSN: ____ - ____ - ____

Page ____ of ____ pages

*15. h. received a subpoena requiring the production of documents in connection with a federal, state or local investigation:

__ No __ Yes

*15. h. If your answer is "yes" to any portion of this question, supply details below.

Agency or Court Nature of Action Person or Entity Involved Date of Investigation, and Date Charges Brought and Resolved Status or Outcome

*16. Have you ever been convicted of any misdemeanor or felony:

__ No __ Yes

*16. If "yes," provide the information requested below:

Date of Arrest Date of Conviction Conviction Charge(s) and Sentence Court and Jurisdiction (County/City)

*17. a. Are there any felony or misdemeanor charges pending against you?

__ No __ Yes

*17. b. Are there any other charges, including, but not limited to, administrative charges by municipal, state or federal agencies, such as the Department of Consumer Affairs, the Department or Board of Health, the Department of Sanitation, the Department of Environmental Protection or the Occupational Safety and Health Administration, presently pending against you?

__ No __ Yes

SSN: ____ - ____ - ____

Page ____ of ____ pages

*17. b. If you answer "yes" to either portion of this question, provide details below. Do not include information relating exclusively to traffic violations.

Agency or Court Nature of the Investigation/Charges Status

*18. To the best of your knowledge, during the past five years have you been the subject of any investigation by a municipal, state or federal agency of any alleged violation of civil law?

__ No __ Yes

*18. If "yes," provide details below.

Agency or Court Nature of the Investigation/Charges Status

*19. During the past ten years have you engaged in any of the following practices:

*19. a. filed with a government agency or submitted to a government employee a written instrument which you knew contained a false statement or false infor- mation?

__ No __ Yes

*19. b. falsified business records?

__ No __ Yes

SSN: ____ - ____ - ____

Page ____ of ____ pages

*17. c. given, or offered to give, money or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decisions as a labor official?

__ No __ Yes

*17. d. given, or offered to give, money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?

__ No __ Yes

*17. e. agreed with another not to submit competitive bids in another's territory established either by geography or customers?

__ No __ Yes

*17. e. If the answer is "yes" to any portion of this question, explain below:

*17. a. _____

*17. a. _____

*17. a. _____

20. Have you ever:

20. a. held a license or permit or been connected with any individual or firm which currently or previously has held a license or permit issued by the Department of Business Services?

__ No __ Yes

20. b. had ANY type of license held by you denied, suspended or revoked?

__ No __ Yes

20. b If your answer is "yes" to either portion of this question, explain below and attach all pertinent documents:

20 b. _____

20. b. _____

20. b. _____

SSN: ____ - ____ - ____

Page ____ of ____ pages

21. List below each interest in real property (other than your primary residence) that you or your spouse hold, including, but not limited to, any ownership, leasehold or other direct or indirect interest. If none, state "None."

Address Person or Entity from Whom Acquired Co-Owners Approximate Purchase or Rental Cost Approximate Current Value

22. List below all loans made or notes held by you or your spouse in excess of $5,000 which are currently outstanding. (This refers to monies that people owe to you or your spouse.) If none, state "None."

Name and Address of Debtor Original Amount and Date of Loan Terms of Loan and Security, if Any Balance Outstanding

SSN: ____ - ____ - ____

Page ____ of ____ pages

23. List each creditor to whom either you or your spouse currently are indebted in an amount of $5,000 or more. Debts to be listed include real estate mortgages, car loans and any other secured or unsecured debts or obligations made, guaranteed or co-signed by either you or your spouse. If none, state "None."

Name and Address of Creditor Debtor or Spouse Account No. Amount of Indebtedness Maturity Date Terms of Repayment

24. Identify all persons or entities from whom you or your spouse have received gifts valued at $1,000 or more during the past three years. If none, state "None."

Source of Gift Relationship to Applicant Nature and Amount of Gift Date of Gift

SSN: ____ - ____ - ____

Page ____ of ____ pages

25. Identify all persons or entities to whom you or your spouse have given gifts valued at $1,000 or more during the past three years. If none, state "None."

Recipient Relationship of Recipient to Applicant Nature and Amount of Gift Date of Gift

26. List below any civil judgments entered against you or your spouse in any court which remain unsatisfied, in whole or in part. If none, state "None."

Date and Court in Which Entered Name of Judgment Creditor Original Amount of Judgment Approximate Amount Outstanding

27. Have you filed all required federal, state income tax returns by the due date or within a properly obtained extension period for each of the past three years?

__ No __ Yes

27. If "no," provide the following information:

27. a. The year(s) in which you did not file by the due date or with a properly obtained extension and whether you are referring to Federal or New York State income tax returns, or both.

27. a. _____

SSN: ____ - ____ - ____

Page ____ of ____ pages

27. b. Your residence for the year(s) in question;

27. b. _____

27. c. The date(s) when you filed the late return(s);

27. c. _____

27. d. The reason(s) for late or non-filing;

27. d. _____

27. e. Any penalty assessed for the year(s) in question;

27. e. _____

28. Have you paid all federal, state and local income taxes for which you are liable for the three tax years preceding the date this application is submitted?

__ No __ Yes

28. If no, explain why not. (If you are contesting such taxes in a pending judicial or administrative proceeding, please attach the relevant documentation.)

28. _____

28. _____

28. _____

28. _____

SSN: ____ - ____ - ____

Page ____ of ____ pages

29. List below any tax liens entered against you or your spouse by any tax authority. If none, state "None."

Date Entered Name of Tax Authority Original Amount Amount Outstanding

*30.

Do you have a license to carry a firearm? __ No __ Yes

*30. If "yes," provide the information requested below:

Issuing Body Permit Number Date of Issuance and Expiration

*31. Have you ever been refused a bond or surety?

__ No __ Yes

*31. If "YES," provide the information requested below:

Agency Date Reason

SSN: ____ - ____ - ____

Page ____ of ____ pages

CERTIFICATION

This certification must be completed before a notary public by the Applicant. Certifications must be notarized when signed.

A MATERIAL FALSE STATEMENT KNOWINGLY OR INTENTIONALLY MADE IN CONNECTION WITH THIS APPLICATION MAY RESULT IN FORFEITURE OF ANY PHOTO IDENTIFICATION CARD GRANTED TO YOU AND, IN ADDITION, MAY SUBJECT YOU TO CRIMINAL CHARGES.

I, _____, being duly sworn, state that I have read and understand all the items contained in the foregoing _____ pages of this application, including _____ pages, which I have appended thereto; that I have supplied full and complete information in answer to each item therein to the best of my knowledge, information and belief; and that all the information supplied by me is full, complete and truthful.

I acknowledge that the New York City Department of Business Services and the New York City Department of Investigation may, by means it deems appropriate, determine the accuracy and truth of the statements made in this application.

I recognize that all the information submitted is for the express purpose of inducing the Department of Business Services to issue to me either a Class A or a Class B photo identification card.

I authorize the Department of Business Services and the Department of Investigation to contact any person or entity named in the application for purposes of verifying the information supplied by me.

Signature of Applicant

Sworn to before me

this ____ day of _____, 19 ____.

Notary Public

SSN: ____ - ____ - ____

Page ____ of ____ pages

HISTORICAL NOTE

Appendix A added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

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Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 1 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX B APPLICATION FOR A LOADING OR UNLOADING LICENSE OR REGISTRATION AS A WHOLESALER OR SEAFOOD DELIVERER

APPENDIX B APPLICATION FOR A LOADING OR UNLOADING LICENSE OR REGISTRATION AS A WHOLESALER OR SEAFOOD DELIVERER

THE CITY OF NEW YORK

DEPARTMENT OF BUSINESS SERVICES

110 WILLIAM STREET

NEW YORK, NEW YORK 10038

Application for a Loading or Unloading License or

Registration as a Wholesaler or Seafood Deliverer

----------OFFICE USE ONLY----------

Application #: _____ Date Received: _____

Approved: _____ Date: _____ Initials: _____ Denied: _____ Date: _____ Initials: _____ Registration or License #: _____ Date Issued: _____

PLEASE READ THE INSTRUCTIONS ACCOMPANYING THIS APPLICATION CAREFULLY BEFORE COMPLETING IT. APPLICATIONS WHICH HAVE NOT BEEN COMPLETED PROPERLY WILL BE RETURNED TO THE APPLICANT WITHOUT BEING PROCESSED.

APPLICANTS SEEKING TO REGISTER AS A WHOLESALER OR SEAFOOD DISTRIBUTOR MUST ANSWER ALL QUESTIONS IN PART I OF THIS APPLICATION.

APPLICANTS SEEKING A LOADING OR UNLOADING LICENSE MUST ANSWER ALL QUESTIONS IN BOTH PART I AND PART II OF THIS APPLICATION.

PLEASE NOTE THAT THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS SERVICES ("COMMISSIONER") MAY, IN CERTAIN CIRCUMSTANCES, REQUIRE A WHOLESALER OR SEAFOOD DELIVERER TO COMPLETE BOTH PARTS OF THIS APPLICATION.

APPLICANTS REQUIRING ADDITIONAL SPACE TO COMPLETE ANY ANSWER MAY ATTACH ADDITIONAL PAGES TO THIS APPLICATION. EACH PAGE MUST CONTAIN IN THE LOWER LEFT HAND CORNER THE APPLICANT'S SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER AND MUST BE NUMBERED SEQUENTIALLY AS "Page _____ of _____ pages."

ANY CHANGES IN THE INFORMATION RESPONSIVE TO QUESTIONS MARKED WITH AN ASTERISK (*) MUST BE BROUGHT TO THE ATTENTION OF THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS SERVICES, IN WRITING, WITHIN 10 DAYS AFTER THE CHANGE OCCURS. (SEE ACCOMPANYING INSTRUCTIONS).

Tax ID or SSN: _____

Page ____ of ____ pages

PART I

QUESTIONS TO BE ANSWERED

BY ALL APPLICANTS

1. Application for:

1. a. Loading License ____

1. b. Unloading License ____

1. c. Registration as Wholesaler ____

1. d. Registration as Seafood Deliverer ____

*2. Name of Applicant: _____

*3. Applicant's Business Address: _____

*3. _____

4. a. If Applicant is applying for registration as a wholesaler or seafood deliverer, does Applicant wish to be considered for a stand permit?

__ No __ Yes

4. b. If Applicant seeks a stand permit, describe the location, dimensions and proposed use of the stand:

4. _____

4. _____

4. _____

*5. Any other Office Address(es) of Applicant: _____

*5. _____

*5. _____

*6. Mailing Address(es) of Applicant: _____

*6. _____

Tax ID or SSN: _____

Page ____ of ____ pages

7. Name and address of person of suitable age and discretion who shall be designated as Applicant's agent for service of process:

7. _____

7. _____

*8. Telephone Number(s) of Applicant, including all cellular, fax and beeper phone number(s): _____

*8. _____

*8. _____

*9. Form of Organization (check one):

*9. a. _____ Sole proprietorship (i.e., company is not incorporated and does business under the name of a person having ownership interest)

*9. a. i. Home and any other residence address(es) of principal:

*9. a. _____

*9. a. _____

*9. a. ii. Residence Phone Number(s): _____

*9. a. _____

*9. a. _____

*9. a. iii. Residence Fax, Cellular Phone and Beeper Number(s):

*9. a. _____

*9. a. _____

*9. b. _____ Partnership (Check one and attach copy of current partnership agreement and certificate of partnership, certified by the County Clerk).

*9. b. _____ General

*9. b. _____ Limited

*9. b. _____ Limited Liability

Tax ID or SSN: _____

Page ____ of ____ pages

*9. b. i. State where and when certificate of partnership was filed:

*9. b. _____

*9. c. _____ Corporation (Attach a copy of certificate of incorporation and current by-laws):

*9. c. i.i State of Incorporation: _____

*9. c. ii. Date of Incorporation: _____

*9. d. _____ Other:

*9. d. i. Describe the Applicant's form of organization:

*9. d. _____

*9. d. _____

*9. d. _____

*9. d. _____

*10. Applicant's Tax Identification Number(s) and/or, for sole proprietorship, principal's social security number(s):1

*10. _____

11. Other names used by Applicant during last ten years, including, but not limited to, trade names (D/B/As) and aliases. If none, state "None."

11. _____

11. _____

11. _____

11. (Attach copies of current Certificate(s) of Assumed Name, certified by the County Clerk).

[1] Section 1-24 of Subchapter 1-B of Title 66 of the Rules of the City of New York requires that responses to requests for licensing proposals include the social security numbers of the applicant. These social security numbers may be used to locate information concerning the applicant. Refusal to provide these numbers is not a ground for refusal to issue a license.

Tax ID or SSN: _____

Page ____ of ____ pages

12. Was Applicant purchased as an existing business by its present owner(s)?

12. __ No __ Yes (If yes, provide information below)

12. a. DATE PURCHASED: __ __ / __ __ / __ __

12. b. SELLER(S) NAME(S):

12. b. _____

12. b. _____

12. c. NAME(S) USED BY SELLER(S) WHEN SELLER(S) OPERATED BUSINESS:
_____

*13. Does the Applicant share office space, staff, or equipment (including, but not limited to, telephone lines) with any other business or organization?

__ No __ Yes

*13. If "yes," provide details:

Tax ID No. of Other Business or Organization Name of Other Business or Organization Principals of Other Business or Organization[2] Nature of Shared Facilities

14. a. Has the Applicant changed address(es) in the past five years?

__ No __ Yes

[2] The principals of a business or organization include:

a) in the case of a sole proprietorship, the proprietor;

b) in the case of a partnership, all the partners;

c) in the case of a corporation, every officer, director and/or shareholder holding 10% or more of its outstanding shares; and

d) in the case of any other business entity, all persons participating directly or indirectly in the control of the entity.

For purposes of determining who is the principal of a business or organization:

a) an individual shall be considered to hold stock in a corporation when the stock is owned directly or indirectly by

or for (i) the spouse of such individual (other than a spouse who is legally separated from the individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled), (ii) the children, grandchildren and parents of such individual, (iii) a partnership in which such individual is a partner, in proportion to the partnership interest of such individual, and (iv) a corporation in which such individual owns 50% or more in value of the stock; b) a partnership shall be considered to own stock in a corporation where such stock is owned, directly or indirectly by or for a partner in such partnership; and c) a corporation shall be considered to hold stock in a corporation where such corporation holds 50% or more in value of the stock of a third corporation that holds stock in the corporation under consideration.

Tax ID or SSN: _____

Page ____ of ____ pages

14. b. Has the Applicant operated under any other name(s) in the past five years?

__ No __ Yes

14. b. If the answer to either portion of this question is "yes," provide details below.

Name Address From (Mo./Yr.) To (Mo./Yr.)

15. If the Applicant conducts business in any form other than as a sole proprietorship, identify all principals[3] of Applicant for the past ten years on the attached Schedule A:

[3] The principals of an Applicant include:

a) in the case of a partnership, all the partners;

b) in the case of a corporation, every officer, director and/or stockholder holding 10% or more of its outstanding shares; and

c) in the case of any other business entity, all persons participating directly or indirectly in the control of the entity.

When a partner or a stockholder holding 10% or more of the outstanding shares of a corporation is itself a partnership or a corporation, the "principals" of the corporation also include the partners of such partnership or the officers, directors and stockholders holding 10% or more of the outstanding shares of such corporation.

For purposes of determining who is the principal of an Applicant:

(a) an individual shall be considered to hold stock in a corporation when the stock is owned directly or indirectly by or for (i) the spouse of such individual (other than a spouse who is legally separated from the individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled), (ii) the children, grandchildren and parents of such individual, (iii) a partnership in which such individual is a partner, in proportion to the partnership interest of such individual, and (iv) a corporation in which such individual owns 50% or more in value of the stock; b) a partnership shall be considered to own stock in a corporation where such stock is owned, directly or indirectly by or for a partner in such partnership; and c) a corporation shall be considered to hold stock in a corporation that is an applicant where such corporation holds 50% or more in value of the stock of a third corporation that holds stock in the applicant corporation.

Tax ID or SSN: _____

Page ____ of ____ pages

*16. Identify any other persons having a beneficial interest in the Applicant. If none, state "None."

Name Person #1 Person #2 Person #3 Person #4

HomeAddress(es)and PhoneNumber(s)

BusinessAddress(es)and PhoneNumber(s)

Nature ofInterest

WhenInterest WasAcquiredand FromWhom

17. How many individuals (not including principals of the Applicant) does Applicant currently employ. If none, state "None."

_____

Tax ID or SSN: _____

Page ____ of ____ pages

*18. At present or during the past five years has the Applicant or any principal of the Applicant listed in this application served as a principal or owned 10% or more of any other business (whether currently active or not) other than the securities of a publicly traded company? 4

__ No __ Yes

*18. If "yes," provide details below:

Name of Principal or Applicant Tax ID # of Other Business Name and Address of Other Business Position Held % Owned

*19. To the best of the Applicant's knowledge, during the past five years has the Applicant or any current or past principal of the Applicant listed in this application:

*19. a. been the subject or target of any investigation involving any alleged violation of criminal law?

__ No __ Yes

*19. b. been the subject or target of any investigation of any other investigation regarding an alleged violation of federal, state or local statute?

__ No __ Yes

*19. c. been cited for contempt of any court, legislative, civil or criminal investigative body or grand jury?

__ No __ Yes

*19. d. entered a plea of **nolo contendere to any felony or misdemeanor charge?**

__ No __ Yes

*19. e. entered into a consent decree or been the subject of a default decree?

__ No __ Yes

[4] See footnotes 2 and 3 for the definition of the terms "principal" and "principal of applicant."

Tax ID or SSN: _____

Page ____ of ____ pages

*19. f. been granted immunity from prosecution for any conduct constituting a crime under state or federal law?

__ No __ Yes

*19. g. had an injunction obtained against it in any judicial action or proceeding?

__ No __ Yes

*19. h. received a subpoena requiring the production of documents in connection with a federal, state or local investigation:

__ No __ Yes

*19. h. If the answer to either portion of this question is "yes," supply details below:

Agency or Court Nature of Action Person or Entity Involved Date of Investigation, and Date Charges Brought and Resolved Status or Outcome

Tax ID or SSN: _____

Page ____ of ____ pages

*20. Has the Applicant or any current or past principal of the Applicant listed in this application ever been convicted of any misdemeanor or felony?

__ No __ Yes

*20. If "yes," provide the information requested below:

Date of Arrest Date of Conviction Conviction Charge(s) and Sentence Court and Jurisdiction (County/City)

*21. a. Are there any felony or misdemeanor charges pending against the Applicant or any current or past principal of the Applicant listed in this application?

__ No __ Yes

*21. b. Are there any other charges, including, but not limited to, administrative charges by municipal, state or federal agencies, such as the Department of Consumer Affairs, the Department or Board of Health, the Department of Sanitation, the Department of Environmental Protection or the Occupational Safety and Health Administration, presently pending against the Applicant or any current or past principal of the Applicant listed in this application?

__ No __ Yes

Tax ID or SSN: _____

Page ____ of ____ pages

*21. b. If "yes," provide details below. Do not include information relating exclusively to traffic violations.

Agency or Court Nature of the Investigation/Charges Status

*22. To the best of the Applicant's knowledge, during the past five years has the Applicant or any current or past principal of the Applicant listed in this application been the subject of any investigation by a municipal, state or federal agency of any alleged violation of civil law?

__ No __ Yes

*22. If "yes," provide details below.

Agency or Court Nature of the Investigation/Charges Status

Tax ID or SSN: _____

Page ____ of ____ pages

*23. To the best of the Applicant's knowledge, during the past ten years has the Applicant or any current or past principal of the Applicant listed in this application engaged in any of the following practices:

*23. a. filed with a government agency or submitted to a government employee a written instrument which the Applicant or any of its principals knew contained a false statement or false information?

__ No __ Yes

*23. b. falsified business records?

__ No __ Yes

*23. c. given, or offered to give, money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?

__ No __ Yes

*23. d. given, or offered to give, money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?

__ No __ Yes

*23. e. agreed with another not to submit competitive bids in another's territory established either by geography or customers?

__ No __ Yes

*23. e. If the answer is "yes" to any portion of this question, explain below:

*17. a. _____

*17. a. _____

*17. a. _____

24. Has any individual or firm whose name appears on this application ever:

24. a. held a license or permit or been connected with any individual or firm which currently or previously has held

a license or permit issued by the Department of Business Services?

__ No __ Yes

Tax ID or SSN: _____

Page ____ of ____ pages

24. b. had ANY type of license held by the Applicant or any of its principals denied, suspended or revoked?

__ No __ Yes

24. b If the answer to either portion of this question is "yes," explain below and attach all pertinent documents:

20. b. _____

20. b. _____

20. b. _____

20. b. _____

*25. List the names, residence addresses, phone numbers, dates of birth, positions, planned work hours per day and social security numbers of all employees Applicant presently believes will be employed by the Applicant in its business:

(Print) Last Name, First Residence Address DOB Phone # Position Hrs. Worked Per Week SSN

Tax ID or SSN: _____

Page ____ of ____ pages

*26. For each employee who will operate a vehicle during the conduct of the Applicant's business, provide the operator's name, driver's license number(s), class(es), and expiration date(s).

(Print) Last Name, First Drivers License Numbers Class(es) Exp. Date(s)

Tax ID or SSN: _____

Page ____ of ____ pages

*27. List vehicle identification numbers, registration numbers and license plate numbers for all vehicles, including, but not limited to, "hi-los," which will be used during the conduct of Applicant's business. If none, state "None."

Type of Vehicle Manufacturer and Year of Manufacture VIN Number Registration Number License Plate Number

Tax ID or SSN: _____

Page ____ of ____ pages

PART II

ADDITIONAL QUESTIONS TO BE COMPLETED BY APPLICANTS FOR A LOADING OR UNLOADING LICENSE *28. For each financial account used by the Applicant during the past five years, including, but not limited to, accounts maintained at banks, credit unions, brokerage firms or other financial institutions, provide the following:

Type of Account Name/Address of Institution Account No. Name/Phone No. of Account Officer Names and Addresses of All Persons Authorized to Sign on Behalf of the Applicant

29. List below each direct or indirect interest in real property (other than a primary residence) held by Applicant. If none, state "None."

Address Person or Entity from Whom Acquired Co-Owners Approximate Purchase or Rental Cost Approximate Current Value

Tax ID or SSN: _____

Page ____ of ____ pages

30. List below all loans made or notes held by Applicant in excess of $5,000 which are currently outstanding. (This refers to monies that are owed to the Applicant.) If none, state "None."

Name and Address of Debtor Original Amount and Date of Loan Terms of Loan and Security, if Any Approximate Balance Outstanding

31. Does the Applicant or do any principals of the Applicant listed in this application have any indebtedness, including, but not limited to, loans, lines of credit and mortgages on real property (other than a primary residence), in excess of $5,000?

__ No __ Yes

31. If "yes," provide details below:

Name and Address of Creditor Account No. Amount of Indebtedness Maturity Date Terms of Repayment Name and Phone # of Loan Officer

Tax ID or SSN: _____

Page ____ of ____ pages

*32. Has the Applicant filed all required tax returns (including, but not limited to, income and business, unincorporated business, commercial rent, and unemployment insurance returns) by the due date or within a properly obtained extension period for each of the past three years?

__ No __ Yes

*32. If "no," provide the following information:

*32. a. the year(s) in which the Applicant did not file by the due date or with a properly obtained extension, the type of return involved, and, where applicable, whether the delayed filing relates to Federal or New York State tax returns, or both.

*32. a. _____

*32. a. _____

*32. a. _____

*32. b. Applicant's residence during the year(s) in question;

*32. b. _____

*32. c. The date(s) when Applicant filed the late return(s);

*32. c. _____

*32. d. The reason(s) for the late or non-filing;

*32. d. _____

*32. e. **Any** penalty assessed for the year(s) in question;

*32. e. _____

33. Has the Applicant paid all federal, state and local income taxes for which the Applicant is liable for the three tax years preceding the date this application is submitted?

__ No __ Yes

33. If no, explain why not. (If Applicant is contesting such taxes in a pending judicial or administrative proceeding, please attach the relevant documentation.)

33. _____

33. _____

33. _____

33. _____

Tax ID or SSN: _____

Page ____ of ____ pages

34. List below any tax liens entered against the Applicant by any tax authority. If none, state "None."

Date Entered Name of Tax Authority Original Amount Amount Outstanding

*35. State below any monies currently owed by the Applicant to tax authorities other than those tax debts for which liens have been entered against the Applicant. Indicate the status of the matter (e.g., the date by which Applicant will make payment, whether the tax authorities have instituted proceedings against the Applicant, etc.). If none, state "None."

Date Name of Tax Authority Amount Status

Tax ID or SSN: _____

Page ____ of ____ pages

*36. During the past ten years, has the Applicant or any of its predecessors in interest been a party to a bankruptcy or reorganization proceeding?

__ No __ Yes

*36. If "yes," provide details below.

Caption Date Docket # Court County Status

37. Identify all persons or entities from whom the Applicant has received gifts valued at $1,000 or more during the past three years. If none, state "None."

Source of Gift Relationship to Applicant Nature and Amount of Gift Date of Gift

38. Identify all persons or entities to which Applicant has given gifts valued at $1,000 or more during the past three years. If none, state "None."

Recipient Relationship of Recipient to Applicant Nature and Amount of Gift Date of Gift

Tax ID or SSN: _____

Page ____ of ____ pages

SCHEDULE A-PRINCIPALS

OF APPLICANT

Principal #1 Principal #2 Principal #3 Principal #4

Name & HomeAddress(es)

HomeTelephoneNumbers

FAXNumber(s)

Date of Birth

SocialSecurityNumber(s)

BusinessAddress(es)

BusinessTelephoneNumbers

Title(s)

From (Date)

To (Date)

% OfOwnership

Number ofShares

How OwnershipInterest WasAcquired

Tax ID or SSN: _____

Page ____ of ____ pages

CERTIFICATION

This certification must be completed before a notary public by the Applicant and each current principal of the

Applicant. Certifications must be notarized when signed.

A MATERIAL FALSE STATEMENT KNOWINGLY OR INTENTIONALLY MADE IN CONNECTION WITH THE APPLICATION MAY RESULT IN FORFEITURE OF ANY PHOTO IDENTIFICATION CARD GRANTED TO YOU AND, IN ADDITION, MAY SUBJECT YOU TO CRIMINAL CHARGES.

I, _____ (full name), being duly sworn, state that I am _____ (title) of _____ (Applicant), and that I have read and understand the questions contained in the attached application and its attachments, which consists of _____ pages.

I certify that to the best of my knowledge the information given in response to each question and in the attachments is full, complete and truthful.

I acknowledge that the New York City Department of Business Services and the New York City Department of Investigation may, by means it deems appropriate, determine the accuracy and truth of the statements made in this application.

I recognize that all the information submitted is for the express purpose of inducing the Department of Business Services to issue to me either a Class A or a Class B photo identification card.

I authorize the Department of Business Services and the Department of Investigation to contact any person or entity named in the application for purposes of verifying the information supplied by me.

(Signature of Applicant)

Sworn to me

this ____ day of _____, 19 ____.

Notary Public

Tax ID or SSN: _____

Page ____ of ____ pages

HISTORICAL NOTE

Appendix B added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-01 Definitions.

The following definitions are applicable to this chapter:

Barge. "Barge" means any vessel or other craft without propulsion power and designed chiefly for present use to transport cargo of any sort. A barge may or may not have a superstructure.

Commissioner. "Commissioner" means the Commissioner of the Department of Business Services.

Converted craft. "Converted craft" means any barge, vessel, houseboat or other craft, that is used or is designed for use as a theater, repair shop, for recreation, a residence, restaurant, studio, museum, training school, club, storage area or commercial business, or for any non-maritime activity.

Debris. "Debris" means any substance or material, whether on land or water, which is liable to become drift.

Discharge. "Discharge" means any spilling, leaking, dumping, pouring, emitting or emptying of drift or debris.

Drift. "Drift" means any substance or material, floatable or otherwise- including, but not limited to oil, sludge and oil refuse, gasoline, gas, offal, piles, lumber, timber, driftwood, dirt, ashes, cinders, mud, sand, dredged material, acid, chemicals, or any refuse-which may cause damage to any vessel or craft or which may obstruct the waters of the port of The City of New York, or which may be a hazard to any person, property or marine life.

Furtherance of navigation. "Furtherance of navigation" means the activity on waterfront property which involves ship building, ship repairing, boating, dry-dock facilities and similar uses.

Houseboat. "Houseboat" means any vessel or other craft with or without propulsion power and having a superstructure or substructure designed to be used principally for residential purposes. A houseboat may or may not have toilet, cooking, heating, lighting and/or bathing facilities.

Marginal street. "Marginal street" means any street, road, place, area or way adjoining or adjacent to any waterfront property and designated as a marginal street, wharf or place on a plan or map adopted pursuant to law.

Person. "Person" means any individual, party, trustee, firm, partnership, corporation, joint stock association, company, society, government agency, public authority, or other entity.

The port of the City of New York. "The port of the City of New York" shall include all the waters of the North River, the East River and the Harlem River, and all the tidal waters embraced within or adjacent to or opposite the shores of The City of New York.

Waterfront commerce. "Waterfront commerce" means the activity on waterfront property which encompasses the receipt of cargo or goods at the wharves, piers, docks or bulkheads from ships and their delivery to points inland, or the receipt of such cargo or goods at such wharves, piers, docks or bulkheads from points inland for shipment by ships, and shall include the temporary storage of such cargo or goods in the sheds or warehouses on such property pending their delivery or shipment.

Waterfront property. "Waterfront property" means all property whether owned by The City of New York or privately owned, fronting on all the tidal waters in the port of The City of New York and including all upland extending inshore to the property line of the first adverse owner and shall include such land under water extending outshore to the pierhead line or the property line, whichever extends furthest outshore. This term includes all property defined as "wharf property" below.

Wharf property. "Wharf property" means wharves, piers, docks and bulkheads and structures thereon and slips and basins, the land beneath any of the foregoing, and all rights, privileges and easements appurtenant thereto and land under water in the port of The City of New York, and such upland or made land adjacent thereto owned by The City of New York as is vested in or may be assigned to the Department of Ports and Trade.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-02 Use and Occupancy of Property Subject to Commissioner's Permission.

No person shall use or occupy any wharf property or any marginal street for any commercial enterprise, soliciting, recreation, peddling, drag racing, selling or offering for sale services, merchandise or commodities of any kind, or the holding of any public meeting, without the prior written permission of the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-03 Improvement and Alteration of Property and Marginal Streets.

(a) No person shall erect, place or maintain any building, platform, sign, advertising device or any construction or obstacle of any kind on or about any wharf property or marginal street without first obtaining a written permit from the Commissioner. Such a permit shall also be required for the erection, placing or maintaining any of such signs, structures or devices on any waterfront property when such signs, structures or devices are used in conjunction with, or in furtherance of, waterfront commerce and/or navigation.

(b) No person shall drive any piles or fill in or make any removal, dredging or demolitions of any kind on or about any waterfront property or marginal street without first obtaining a written permit from the Commissioner.

(c) No person unless otherwise authorized by law shall make any repairs, installations or alterations upon, make any opening in, or close any opening in a marginal street for any purpose without first obtaining a written permit from the Commissioner.

(d) Whenever there is any construction, alteration or demolition in progress for which a permit is required by this chapter or otherwise, a permit card bearing the permit number, plan number, description of work, and the location of the premises for which issued, shall be posted in a conspicuous location on the exterior of the structure or premises where the work is in progress so as to be visible for public inspection. Any permit card relating to any work on or about any marginal street shall be posted in a conspicuous location within a reasonable distance of the construction area so as to be visible for public inspection.

(e) No person shall display a permit card at any location or for any work other than that for which said permit card

was issued.

(f) Any permit may be suspended or revoked upon expiration of any workman's compensation or other required insurance, or at the discretion of the Commissioner. A permit shall normally be revoked whenever the Commissioner shall have determined that an unreasonable delay has occurred in the completion of the work authorized by such permit.

(g) Any permit issued by the Commissioner under which no work has begun within one year from the date thereof shall be revoked unless otherwise directed by the Commissioner. Whenever a permit is revoked for any reason, no work for which a permit is required by this §2-03 shall proceed unless any application for a new permit shall have been approved and a new permit issued.

(h) Any application for a permit which has been disapproved entirely or in part and upon which no further action has been taken by the applicant within one year after the notice of disapproval was given shall be cancelled unless otherwise directed by the Commissioner. An application once so cancelled may be reinstated at the discretion of the Commissioner, provided such application complies with all provisions of the law in effect at the time reinstatement is granted.

(i) No person shall perform any work pursuant to a permit without complying with all conditions of the permit and without obtaining, in a form satisfactory to the Commissioner, the authorization and approval of any other governmental agencies concerned, as specified in the permit.

(j) No person shall use or occupy any structure, land, fill area, facility, or any area on or about waterfront property where work has been done or is underway, for which a permit is required, unless a certificate or letter of completion is issued by the Commissioner, or unless otherwise authorized in writing by the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-04 Maintenance, Repair, Reconstruction or Demolition and Removal of Privately Owned Waterfront Property and Deepening of Adjoining Water.

(a) No person owning, leasing, using or occupying any marginal street or waterfront property, or any wharves, piers, docks, bulkheads or structures wholly or partly thereon, shall knowingly maintain all or any portion thereof in an unsafe condition, or not in good repair, or in a condition which impedes or endangers any person or property. No person owning, leasing, using or occupying any other structure in the port of the City of New York used in conjunction with and in furtherance of waterfront commerce and/or navigation shall knowingly maintain all or any portion of the same in an unsafe condition, or not in good repair, or in a condition which impedes or endangers any person or property.

(b) Any person owning, leasing, using or occupying any waterfront property or marginal street, or any wharves, piers, docks, bulkheads or structures wholly or partly thereon, shall comply forthwith with all orders of the Commissioner to repair, reconstruct, maintain, fill in, demolish or remove all or any part of such property or anything therein or thereon to correct any condition determined by the Commissioner to be unsafe or not in good repair, or which impedes or endangers any person or property. Any person owning, leasing, using or occupying any other structure in the port of The City of New York used in conjunction with and in furtherance of waterfront commerce and/or navigation shall comply forthwith with all orders of the Commissioner to repair, reconstruct, maintain, fill in, demolish or remove all or any part of such structure or anything therein, to correct any condition determined by the Commissioner to be unsafe, or not in good repair, or which impedes or endangers any person or property.

(c) Any person owning, leasing, using or occupying waterfront property, or any wharves, piers, docks, bulkheads or structures wholly or partly thereon, shall comply forthwith with all orders of the Commissioner directing that the water near or adjoining such property be deepened, or that obstacles in the water be removed, by excavating or

removing such obstacles or earth, mud, dirt or sand therefrom in such places, quantities and at such times as the Commissioner may determine as necessary to insure safety to any person or property.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-05 Dumping, Polluting or Obstructing Waters.

(a) No person shall dump snow or ice into the waters of the port of The City of New York, except at places designated in writing by the Commissioner.

(b) No person shall place, discharge or deposit by any process or in any manner on or about any waterfront property, marginal street or the waters of the port of The City of New York any drift or debris, except under the supervision of the United States Supervisor of the Harbor and with the prior written permission of the Commissioner.

(c) No person shall discharge or permit to be discharged into the port of The City of New York from any ship, steamer, vessel or craft, any drift or debris except at places and using devices authorized by law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-06 Obstructing Waterfront Property.

(a) No person shall impede, encumber or obstruct in any manner the free access to, egress from, or use of any wharf property or marginal street with any merchandise, cargo, goods, refuse or other material, or with a vehicle or vessel of any type.

(b) Any person owning, chartering, operating, occupying or using any vessel, craft, barge, ship, floating structure or aircraft that sinks or is in danger of sinking or stranding on or about any waterfront property shall remove the same, together with any cargo, without delay.

(c) Whenever any waterfront property or marginal street shall be encumbered or obstructed in its free use or for navigation by merchandise or material not affixed to such waterfront property or marginal street, or by any automobile, wagon, truck or cart, or by any floating, stranded or sunken vessel or craft, and the owner, consignee or person in charge thereof shall fail to remove the same when directed by an order issued by the Commissioner, the Commissioner may employ such labor and equipment as may be necessary to carry out such order. The Commissioner may store such merchandise, material, automobile, wagon, truck, cart, vessel or craft in a warehouse or other suitable place at the expense of the owner. Such owner, consignee, or person in charge of the merchandise, material, or automobile, wagon, truck, cart, vessel or craft so removed or stored may redeem the same upon payment to the Commissioner of the amount of all expenses actually and necessarily incurred in effecting such removal together with any charges for storage, pursuant to §22-109 of the Administrative Code.

(d) No person shall place any vessel, craft or structure which is sinking, or is in such condition that there is a danger of it sinking or stranding, at any waterfront property.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-07 Loading and Storage in Area Adjacent to Bulkhead.

No person shall load, unload, place, store or keep any cargo, goods, merchandise, materials, vehicles or equipment upon any waterfront property or marginal street except at places designated in writing by the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-08 Overloading.

No person shall move, transport, load, unload, place, store or keep any vehicle, equipment, cargo, goods, merchandise or material upon any waterfront property or marginal street in excess of the load limit fixed for such waterfront property or marginal street by the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-09 Time Limit for Goods on Wharf Property.

(a) No person occupying, leasing or using any wharf property or marginal street shall place, store or keep any cargo, goods, merchandise or material of any kind upon such property for more than ten (10) days, except with the prior written permission of the Commissioner.

(b) No person shall place, store or keep any cargo, goods, merchandise or material of any kind upon wharf property set aside by the Commissioner for general wharfage purposes for more than twenty-four (24) hours from the time it was loaded, unloaded, placed, stored or kept, except with the prior written permission of the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-10 Parking or Storing of Vehicles on Marginal Streets or Wharf Property.

(a) No person shall park, place, store or keep any motor vehicle, truck, cart, wagon, cargo, container, trailer or vehicle of any type on or about any marginal street or wharf property, except at places designated in writing by the Commissioner.

(b) The New York State vehicle and traffic law and the traffic rules and regulations of the City Department of Transportation are hereby established as rules and regulations of the Commissioner as though set forth herein in full, and shall be in effect on wharf property and on marginal streets.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-11 Hazardous, Flammable or Explosive Substances.

(a) No person shall load, unload, discharge, place, store or keep any material, fluid, gas or substance of any explosive, flammable, radioactive or hazardous nature upon any waterfront property or marginal street, except at locations designated in writing by the Commissioner, and upon complying with applicable rules and regulations of the United States Coast Guard, the Fire Department and the Department of Health of The City of New York, or any other Federal, State or City agency.

(b) No person shall drain, remove or discharge gasoline, oil or any explosive, flammable or hazardous liquid, gas or substance from any vehicle upon any waterfront property or marginal street, except at locations designated in writing by the Commissioner and upon complying with applicable rules and regulations of the United States Coast Guard, Fire Department and the Department of Health of The City of New York, or of any other Federal, State or City agency.

(c) No person shall load, unload, place, store or keep upon any waterfront property or marginal street any vehicle which is in the course of shipment containing gasoline or other flammable material unless the Commissioner and the Fire Commissioner of The City of New York grant prior written permission.

(d) No person shall load, unload, discharge, place, store or keep sisal, jute, hemp, flax, coir, kapok or any similar vegetable or synthetic fiber upon any waterfront property or marginal street without giving advance notice in writing thereof to the Commissioner and without complying with the rules and regulations of the United States Coast Guard and the Fire Department of The City of New York.

(e) All persons shall comply forthwith with all orders of the Commissioner concerning the loading, unloading,

discharge, placing, storing or keeping of the hazardous, radioactive or flammable materials, fluids, gases, or substances mentioned in this section.

(f) No person shall load, unload, discharge, place, store or keep sisal, jute, hemp, flax, coir, kapok or any similar vegetable or synthetic fiber upon any waterfront property unless the shed or superstructure is equipped with an automatic sprinkler system approved by the Commissioner and the Fire Commissioner and the substructure is protected according to the rules and regulations of the Fire Department of The City of New York.

(g) Any person who is the owner, lessee or user of any equipment fueled by liquified petroleum gas or gasoline, and used to handle sisal, jute, hemp, flax, coir, kapok or similar vegetable or synthetic fiber, shall equip such equipment with exhaust spark arrestors and carburetor traps.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-12 Berthing and Moving of Vessels.

(a) No person shall tie, anchor, or make fast any vessel, barge, ship, aircraft or floating structure at or about any wharf property or marginal street without the prior written permission of the Commissioner.

(b) Any person who is the owner, operator, master, charterer or person in charge of any vessel, barge, ship, aircraft or floating structure tied, anchored or made fast at or about any wharf property or marginal street shall move the same forthwith when so ordered by the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-13

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-13 Wharfage and Other Fees and Charges.

No person shall fail or refuse to pay upon demand to the Commissioner the rates established by the Commissioner for wharfage, cranage or dockage.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-14

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-14 Taxicabs and Porters.

(a) Any person who is a permittee, lessee, licensee, user or occupant of any wharf property or marginal street shall accord equal rights and privileges in the use of such property to all duly licensed taxicab operators and all duly licensed porters, subject to subdivision (b) of this section.

(b) The Commissioner may prescribe from time to time the terms and conditions upon which taxicabs or similar vehicles may, or may not, utilize or enter wharf property or marginal streets.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-15

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-15 Loading or Discharging Passengers.

(a) No passengers shall be taken aboard or discharged from a ship, barge, vessel, craft, floating structure or aircraft at or about any wharf property or marginal street except by prior written permission of the Commissioner.

(b) No passengers shall be taken aboard or discharged from a ship, barge, vessel, craft, aircraft or floating structure at or about any wharf property or marginal street occupied under lease or permit except by permission of such lessee or permittee, and in conformance with such lease or permit.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-16

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-16 Repairs to Vessels or Aircraft; Burning and Welding Equipment.

(a) No person shall make or cause to be made any repairs, except voyage repairs, on or for any vessel, craft, barge, ship, aircraft or floating structure on or about any waterfront property or marginal street without the prior written permission of the Com- missioner.

(b) No person shall use or cause to be used, or place, store or keep on or about any waterfront property or marginal street, or use or cause to be used on any vessel, craft, barge, ship, aircraft or floating structure berthed at or about such property any machinery, equipment or appliance used for welding or burning without the prior written permission of the Commissioner and without complying with the applicable rules and regulations of The United States Coast Guard and the Fire Department of The City of New York.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-17

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-17 Smoking and Lighted Material.

No person shall smoke, possess or throw away any lighted match, cigar, pipe, cigarette or other lighted material while in or about any structure located on waterfront property (except a private dwelling as defined in §4 of the Multiple Dwelling Law); or while on or about any vessel or other craft which carries as cargo any of the flammable or explosive substances or materials mentioned in §2-11 above, and which is tied, anchored or made fast at or about any waterfront property or marginal street; provided that the Commissioner and/or the Fire Commissioner of The City of New York may in writing from time to time designate portions of any of the aforementioned structures, locations, vessels or crafts where smoking may be permitted and may prescribe the types and locations of containers or receptacles into which such lighted material and such lighted matches, cigars or cigarettes shall be deposited.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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66 RCNY 2-18

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Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-18 Converted Craft and Houseboats.

(a) No person shall tie, anchor or make fast on or about waterfront property, a marginal street or the waters of the port of The City of New York any houseboat or converted craft for any period of time without the prior written permission of the Commissioner. Such written permission shall not be granted without satisfying the Com- missioner that all of the following requirements have been met:

(1) All provisions of the Building Code deemed applicable by the Commissioner shall be complied with. By way of example, and not limitation, such provisions may relate to heating, power, sewage, plumbing public assembly and general construction;

(2) All provisions of laws, rules and regulations of any governmental agency deemed applicable by the Commissioner to insure safety of persons or property shall be complied with. By way of example, and not limitation, such provisions may relate to air or water pollution, construction materials, sewage or waste disposal, sanitation, health, fire, safety, etc.;

(3) All applicable labor laws, rules and regulations shall be complied with, where work is to be performed on or about a houseboat or converted craft;

(4) All fire protection measures and equipment shall be as approved and authorized by the Fire Department of The City of New York;

(5) All provisions for tying, anchoring or making fast such houseboat or converted craft, or for providing

gangplanks, heat or electrical connections, plumbing or any attachments from one houseboat or converted craft to any other vessel or to any point on waterfront property or a marginal street shall be adequate to insure safety to person and property; and

(6) Granting such permission shall be determined by the Commissioner to be consistent with the public interest and not in conflict with any plan or program for waterfront development.

(b) Any written permission granted under this section may be suspended or revoked by the Commissioner at his discretion whenever any of the conditions enumerated in paragraphs one through six of §2-18(a) above, are no longer satisfied, or whenever necessary to insure safety to persons or property.

(c) No person owning, chartering, occupying or using a houseboat or converted craft tied, anchored or made fast on or about waterfront property, a marginal street, or the waters of the port of The City of New York shall knowingly maintain such houseboat or converted craft, or any of its appurtenances or facilities, in an unsafe condition, or not in good repair, or in a condition which may endanger any person, or which impedes, encumbers or obstructs waterfront property or a marginal street in its free use or for navigation. Such persons shall comply forthwith with all orders of the Commissioner or the Fire Department of The City of New York directing that any such conditions be corrected or abated, or that such houseboat or converted craft be removed, pursuant to §2-06, or other applicable provisions of law.

(d) No person shall make any repairs, construction, installations, or alterations on or about any houseboat or converted craft, tied, anchored or made fast on or about waterfront property, a margin street or the waters of the port of The City of New York without first obtaining the written permission of the Commissioner, pursuant to §2-03 above. All such persons shall likewise obtain and exhibit upon demand the Certificate of Completion mentioned in §2-03 above, which is hereby made applicable in all respects to such work on such houseboats and converted crafts.

HISTORICAL NOTE

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***** Current through December 2009 ****

66 RCNY 2-19

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-19 Hindering or Impeding Inspections.

No person shall hinder or impede any authorized representatives of the commissioner from entering, for the purpose of making an inspection, any waterfront property or marginal street, or any vessel, barge, ship, or other craft tied, anchored, or made fast thereto, or upon the waters of the Port of The City of New York.

HISTORICAL NOTE

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***** Current through December 2009 ****

66 RCNY 2-20

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-20 Responsibility of Owners, Lessors and Charterers of Vessels and Waterfront Property.

Any owner or lessor of waterfront property or any owner, lessor or charterer of any houseboat, barge, converted craft, vessel, ship or craft, shall be responsible for the acts or omissions of any lessee, licensee, or employee thereon.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 2-21

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-21 Compliance with Laws, Rules and Regulations.

Any person while on or about any waterfront property or marginal street, or any owner, lessee, permittee, licensee, operator, user or occupant of such property, shall comply with all applicable laws, rules, and regulations of all departments, bureaus, agencies, boards or commissions of the United States of America, the State of New York and The City of New York.

HISTORICAL NOTE

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Rules of the City of New York

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66 RCNY 2-22

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-22 Penalties.

Any person violating or failing to comply with any of the foregoing rules and regulations shall be triable pursuant to §704(K) of the New York City Charter before a judge of the Criminal Court of The City of New York and punishable by not more than thirty (30) days imprisonment or by a fine of not less than $100 nor more than $500, or both; or in the case of parking violations, before the Parking Violations Bureau, where required by law. Penalties for violations of these rules shall not be imposed in lieu of, but in addition to those fixed by other applicable provisions of law.

HISTORICAL NOTE

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66 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-01 Definitions.

The following words and phrases when used in this chapter shall for the purpose of this chapter have the meanings respectively ascribed to them as follows:

Aircraft. "Aircraft" shall mean and include any and all contrivances or devices that are used or intended to be used for the navigation of or flight in air or space, including but not limited to airplanes, helicopters, lighter-than-air craft, gliders, seaplanes and amphibians.

Airport. "Airport" shall mean any area of land or water, except John F. Kennedy International Airport and LaGuardia Airport which are under the jurisdiction of the Port Authority of New York and New Jersey, that is used or intended to be used for the landing and takeoff of aircraft, and includes any buildings and facilities.

Applicant. "Applicant" shall mean any individual, entity, party, firm, partnership, co-partnership, corporation, association or company (including any assignee, receiver, trustee or similar representative thereof), society, government agency, public authority, or any state or political subdivision thereof.

Armed Forces. "Armed Forces" shall mean the Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States of America including their regular and reserve components and members.

Auto-rotation. "Auto-rotation" shall mean a rotorcraft flight condition in which the lifting rotor is driven entirely by action of the air when the rotorcraft is in motion.

Balloon. "Balloon" shall mean a lighter-than-air aircraft that is not engine driven.

Commissioner. "Commissioner" shall mean the Commissioner of the New York City Department of Business Services or his duly authorized representative.

Department. "Department" shall mean the New York City Department of Business Services.

External load. "External load" shall mean a load that is carried, or extends outside of, the aircraft fuselage.

Fixed base operation. "Fixed base operation" shall mean an operation conducted by a person having the right to furnish services including, but not limited to, storage and/or tiedown of aircraft, repair and/or maintenance of aircraft, aircraft charter, rental and/or lease and the sale of aviation fuels and other petroleum products.

Glider. "Glider" shall mean a heavier-than-air aircraft, that is supported in flight by the dynamic reaction of the air against its lifting surfaces and whose free flight does not depend principally on an engine.

Helicopter. "Helicopter" shall mean a rotorcraft that, for its horizontal motion, depends principally on its engine-driven rotors.

Heliport. "Heliport" shall mean an area of land, water, or structure used, or intended to be used, for the landing and take off of helicopters.

Jet aircraft. "Jet aircraft" shall mean and include any and all craft which are not propeller driven and which accomplish motion entirely as a direct reaction of the thrust of any engine.

Kite. "Kite" shall mean a framework, covered with paper, cloth, metal, or other material, intended to be flown at the end of a rope or cable, and having as its only support the force of the wind moving past its surfaces.

Parachute. "Parachute" shall mean a device used or intended to be used to retard the fall of a body or object through the air.

Person. "Person" shall mean any individual, party, trustee, firm, partnership, corporation, joint stock association, company, society, government agency, public authority, or any state or political subdivision thereof.

Rotorcraft. "Rotorcraft" shall mean a heavier-than-air aircraft that depends principally for its support in flight on the lift generated by one or more rotors.

Seaplane. "Seaplane" shall mean any aircraft designed to maneuver on water, and shall include amphibious aircraft.

Seaplane base. "Seaplane base" shall mean any waterfront property which provides, or is intended to provide, docking and/or ramp facilities for seaplanes, and shall include any additional appurtenances thereto.

Staging area. "Staging area" shall mean that geographic location which may be used for the storage, assemblage or gathering of any item of equipment which is intended to be lifted by helicopter.

Vehicle. "Vehicle" shall mean and include automobiles, trucks, buses, motorcycles, limited use vehicles, bicycles, horse drawn vehicles and any other device in or upon which any person or property is or may be transported, carried or drawn upon land, except aircraft.

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66 RCNY 3-02

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Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-02 Use and Occupancy of Airports, Aircraft Landing Sites, Seaplane Bases, Heliports and Marginal Streets.

Use or occupancy, for any purpose, including the conduct, operation or maintenance of any commercial business, soliciting, peddling, selling or offering for sale merchandise or commodities of any kind, or services, or the holding of any public meeting, on any airport, aircraft landing site, seaplane base, heliport, or marginal street, owned by the City of New York is prohibited except by written permission of the Commissioner.

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***** Current through December 2009 ****

66 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-03 Smoking.

Smoking, possessing or throwing away lighted material or tobacco is prohibited. No person shall smoke, possess or throw away any lighted material or a lighted match, cigar or cigarette while in or upon any airport, aircraft landing site, seaplane base, or heliport or any building or appurtenance thereto, whether owned by the City of New York or privately owned, or while on board any aircraft berthed, moored or located at any such airport, aircraft landing site, seaplane base or heliport; except that the Commissioner and the Fire Commissioner of the City of New York may designate portions of any of the aforementioned structures or locations where smoking may be permitted and may prescribe the types and locations of containers or receptacles into which lighted material and a lighted match, cigar or cigarette shall be deposited.

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66 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-04 Airports.

(a) No airport located within the limits of the City of New York, whether for public or private use, shall be maintained or operated unless the owner or operator shall have procured from the Department a license or permit allowing such maintenance and operation.

(b) Any person seeking to maintain or operate an airport shall file an application with the Department at its office, 110 William Street, 3rd floor, New York, N.Y. 10038. Such application shall be in writing and sworn to by or on behalf of the owner or operator.

(c) The application shall be subject to investigation and report by the Director of Aviation of the Department.

(d) The application for a license or permit must show:

(1) The elevation, location, dimensions and exterior boundaries of the proposed airport, the location, dimensions and height of any and all structures or vertical projections above the general contour of the proposed airport, all as contained in a survey, as of the date of the application, by a licensed City surveyor.

(2) The location, nature and height of any structure or vertical projection within two miles from such exterior boundaries, the presence of which would constitute an obstruction to safe aerial ingress to or egress from the airport.

(3) That the surface of the airport intended for the takeoff, landing and taxiing of aircraft is firm and suitable.

(4) The markings, each constructed and painted so as to be readily discernible from the air at a minimum height of

3000 feet, to be in conformity with Federal Aviation Administration standards.

(5) That the location of the proposed airport, and the volume, character and direction of the traffic thereat will not endanger the lives and property of persons operating aircraft on or near existing airports and of occupants of land in their vicinity, nor tend to destroy or impair the utility of such airports and the investment therein; and that, in relation to existing airports, the proposed airport conforms to all spacing requirements and safety standards of applicable Federal and State laws and regulations.

(6) An application for a license or permit covering night maintenance and operation must show the number, location, type and power of lights in conformity with Federal Aviation Administration standards.

(e) The applicant must have in force upon the granting of a license or permit, liability insurance in an amount to be set by the Commissioner with the City of New York as an additional insured.

(f) The Commissioner may issue a license or permit to operate the proposed airport if, in addition to the items specified in subdivision (d) above, such airport will not be detrimental to the public safety and will be in the public interest. Such license may be limited by appropriate conditions as to type of aircraft, time and method of operation, standards of maintenance, keeping of records and safety and security precautions and such other terms and conditions as may be necessary or desirable to insure the public safety and interest and the safety of those engaging in aeronautical activities.

(g) Such license or permit shall be effective for one year from the date of issuance thereof, unless sooner revoked or suspended by the Commissioner for cause shown.

(h) No license or permit shall be revoked by the Commissioner except after a hearing upon 48 hours notice to the licensee. The Commissioner shall have the power in his discretion, to suspend such license or permit pending such hearing and determination.

(i) Each license or permit issued hereunder may be renewed annually upon application by the licensee or permittee. Such application must set forth that the airport and the operation thereof conforms to the minimum requirements set forth in the original application for the license or permit granted and complies with the regulations promulgated by the Commissioner subsequent to the date of the original license or permit.

(j) The fee for the issuance of such annual license or permit shall be $250.00, and the fee for the renewal thereof shall be $150.00.

(k) Any change in the airport or operation thereof which would affect the safe operation thereof, shall be reported immediately by the licensee or permittee in writing to the Commissioner.

(l) The failure on the part of the licensee or permittee to comply with any of the rules set forth in this chapter or hereafter adopted by the Commissioner, shall constitute sufficient cause for revocation of such license or permit. Licensee or permittee must keep accurate written records of all landings and departures, report of which must be made on a monthly basis to the Department.

(m) The City, by or through its employees, agents, representatives, or contractors, shall have the right at all times to enter upon the airport for the purpose of inspecting and/or observing the performance by the licensee or permittee of his obligations and duties.

(n) No heliport in the City of New York shall conduct operations between the hours of 11 p.m. and 7 a.m. unless a waiver has been obtained from the Commissioner or the Commissioner's designee. In granting such a waiver, the Commissioner shall take into account the health, safety and welfare of the community.

HISTORICAL NOTE

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66 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-05 Seaplane Noise Control.

In order to afford better relief and protection to the public from unnecessary seaplane noise, all seaplanes must taxi to a point at least 700 feet from the nearest shoreline before beginning a takeoff run or applying power in excess of that required for safe taxiing.

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***** Current through December 2009 ****

66 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-06 Helicopter External Load Operations.

(a) It shall be unlawful for any person, firm, or corporation to use or permit the use of any helicopter or other aircraft within the confines of the City in connection with the construction, alteration, or installation of service equipment or material in or upon any building or structure or to conduct any other external load operation within the City of New York, without first obtaining a permit from the Department.

(b) Before an application for a permit will be approved by the Commissioner, applicant must meet the following requirements:

(1) The staging area must:

(i) Be of sufficient size and location as to permit helicopter landings and takeoffs without unduly creating an annoyance or safety hazard to persons or property in the area.

(ii) Permit freedom of movement for cargo, equipment, helicopter, support personnel and vehicles within the confines of that area.

(iii) Be capable of being sealed off from spectators, vehicles and pedestrians, without creating an attractive nuisance.

(iv) Be free of obstructions to helicopter flight and be capable of providing reasonable control over dust and debris which may be generated by helicopter downwash. All operations and support personnel shall be provided with suitable

protective garments, such as hearing protectors, construction helmets and goggles, as required by the Commissioner.

(v) Provide safe approach and departure paths so that in case of an emergency, an autorotational landing may be made without endangering persons or property.

(2) The discharge point must:

(i) Meet all requirements of the Department of Buildings for the installation of service equipment.

(ii) Comply with all Fire Department rules and regulations.

(iii) Comply with all Bureau of Highway Operations rules and regulations concerning the closing of streets and highways which border the operation area.

(iv) The top floors of the building structure intended as the discharge point must be evacuated of all non-essential personnel, except operations personnel, by order of the Commissioner, and all entrances and exits to the building or structure must be blocked or guarded in such a manner as to prevent their use by unauthorized personnel when the rotorcraft load combination is overhead.

(v) The flight path of the rotorcraft with the external load combination may not pass over any structures, buildings or vehicles which are occupied by any persons not connected with the operation, except that the Commissioner shall in all instances, have the power to determine all safety requirements.

(c) Applicant shall conduct test flights with the various loads to be carried to determine:

(1) That the weight of the rotorcraft load combination and location of center of gravity are within approved limits.

(2) That the load is securely fastened and does not interfere with any emergency release devices.

(3) That while hovering or on forward flight the load does not oscillate and is controllable during all phases of the operation.

(4) Each flight operation must be conducted in such a manner that in an emergency, will allow the external load to be released and the aircraft landed without hazard to persons or property.

(d) **Permit requirements:** (1) The Commissioner shall in all instances be the final authority on all matters relating to the issuance of permits. Any permits granted under this subdivision (d) may be ordered modified, suspended or revoked by the Commissioner at his discretion for any good cause.

(2) All provisions of laws and rules or regulations of any government agency may be deemed applicable by the Commissioner to insure the safety of persons or property in the air or on the ground in which case they must be complied with.

(3) All applicable labor laws, rules and regulations shall be complied with for any operation.

(4) Operations shall only be conducted during VFR conditions in the daytime. No operation will be approved during adverse or inclement weather, or if the wind exceeds 30 miles per hour or with a gust spread of no more than 15 miles per hour.

(5) Each applicant must hold a valid Rotorcraft External Load Operator Certificate, or equivalent, issued by the FAA under Part 133, as amended or superseded by applicable Federal Aviation Regulations.

(6) A violation of any rule or regulation of the FAA or any other Federal or State agency having jurisdiction over

the subject matter of the operation shall be a violation of this chapter.

(7) Each applicant must file his request on a form and in such manner as may be prescribed by the Commissioner.

(8) Upon satisfactory fulfillment of all requirements, the Commissioner may issue a permit together with any restrictions or conditions he deems necessary.

(9) Each applicant must have in force liability insurance in an amount to be determined by the Commissioner with the City of New York included as an additional insured.

(e) Applicant must permit any authorized representative of the Commissioner to conduct inspections or examinations in order to determine whether there has been sufficient compliance with applicable laws, rules and regulations.

(f) Each applicant shall prepare for the Commissioner's approval a detailed diagram of the operations area and depict thereon

(1) Optimum route of flight to the staging area for the purpose of noise abatement and avoidance of obstruction hazards.

(2) Emergency landing area within autorotational range of any and approximate point of descent to landing.

(3) Staging areas, pick-up and discharge points.

(4) Streets, highways, and building exits and entrances which must be closed.

(g) No helicopter having fewer than two engines shall be permitted to conduct external load operations in the City.

(h) **Safety.** (1) Each applicant shall provide adequate fire protection during the operation which complies with Fire Department regulations and such other requirements as are set forth herein.

(2) Each applicant shall provide adequate control communications and procedures for the operation.

(3) Each applicant shall obtain all necessary approvals and permits as required by law.

(i) **Permit fee.** The fee for the issuance of a permit for the takeoff and landing of aircraft used for the external transportation of material or equipment at a non airport location shall be $300.00.

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66 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-07 Helicopter Noise and Safety.

(a) To prevent unnecessary noise all takeoffs and landings at public use heliports in the City shall be made over water.

(b) Except where necessary for takeoff or landing or under Air Traffic Control clearance while operating in the New York Terminal Control Area, no person may operate a helicopter in the City of New York below the following altitudes:

(1) An altitude allowing, if a power unit fails, an emergency landing in the waterways of the City.

(2) An altitude of 1000 feet above the highest obstacle or within a horizontal radius of 1000 feet of the aircraft, except over open water.

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***** Current through December 2009 ****

66 RCNY 3-08

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-08 Landing and Takeoff at Other Than Licensed Heliports, Airports and Seaplane Bases.

(a) No aircraft shall land or takeoff within the limits of the City of New York except at licensed airports unless a permit allowing such operation has been obtained from the Commissioner.

(b) Any person may file an application in writing with the Department at its office, 110 William Street, 3rd floor, New York, New York, 10038.

(c) The application shall be subject to investigation and report by the Commissioner or his duly authorized representative.

(d) The application for a permit must show:

(1) A plot map showing the location of the proposed operation.

(2) Make, model and registration numbers of aircraft.

(3) Name and qualifications of the pilot-in-command.

(4) Permission of the property owner for the proposed operation.

(5) Purpose of the operation.

(e) The applicant must have in force upon the granting of the permit, liability insurance in such amounts and upon

such terms as deemed appropriate by the Commissioner and with the City of New York as additional insured.

(f) No materials or equipment shall be transported outside of the aircraft.

(g) The Commissioner may issue a permit for the proposed operation if, in the Commissioner's judgment, the conduct of such operation will be in the public interest and not detrimental to public safety.

(h) The fee for the issuance of such permit shall be $200.00 and the fee for the renewal thereof shall be $135.00.

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***** Current through December 2009 ****

66 RCNY 3-09

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-09 Lighter-Than-Air and Glider Operation.

(a) No airship, balloon in free flight, or tethered balloon flight shall land or takeoff within the limits of the City unless a permit allowing such operation has been obtained from the Commissioner.

(b) No glider shall takeoff or land within the limits of the City unless a permit allowing such operation has been obtained from the Commissioner. No engine powered aircraft shall tow a glider into the air within the limits of the City unless such a permit allowing such operation has been obtained from the Commissioner.

(c) Any person seeking such a permit shall file an application with the Department at its office, 110 William Street, 3rd floor, New York, N.Y. 10038. Such application shall be in writing.

(d) The application shall be subject to investigation and report by the Director of Aviation of the Department.

(e) The application for a permit must show:

(1) A plot map showing the location for the proposed operation.

(2) Make, model and registration number of aircraft.

(3) Name and qualifications of the pilot-in-command.

(4) Permission of the property owner for the proposed operation.

(5) Purpose of the operation.

(f) The applicant must have in force upon granting of the permit liability insurance in an amount to be set by the Commissioner with the City of New York included as an additional insured.

(g) The Commissioner may issue a permit for the proposed operation if, in such Commissioner's judgment, the conduct of such operation will not be detrimental to the public safety and will be in the public interest.

(h) The fee for the issuance of such permit shall be $200.00, and the fee for the renewal thereof shall be $135.00.

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66 RCNY 3-10

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-10 Unauthorized Takeoffs and/or Landings.

(a) It shall be unlawful for any person navigating an aircraft to take-off or land at any place within the limits of the City other than at places designated for this purpose by the Commissioner.

(b) The provisions provided for herein shall not apply to any aircraft which is operated under emergency conditions, nor are they intended to supplant the decisions of the pilot-in-command when such decisions relate directly to acts intended to safeguard the pilot, aircraft, or its passengers.

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66 RCNY 3-11

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-11 Reports.

The owner or operator of any aircraft involved in an accident or incident within the limits of the City must, in addition to any Federal or State reporting requirements, file a report with the Commissioner within 24 hours of such occurrence.

HISTORICAL NOTE

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***** Current through December 2009 ****

66 RCNY 3-12

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-12 Penalties.

The failure on the part of the licensee or permittee to comply with any of the rules set forth in this chapter or hereafter adopted by the Commissioner, shall constitute sufficient cause for revocation of such license or permit.

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66 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 4 FEES

§4-01 Work Notice and Work Permit Fees.

(a) The six categories of fees charged by the Department of Business Services in connection with the issuance of work notices and work permits are:

(1) **New building fee.** New building fee based on square footage;

(2) **Open area fee.** Open area fee such as lumber yard container terminal, storage, etc., based upon square footage;

(3) **Miscellaneous fee.** Miscellaneous fee for such work as plumbing, electrical, demolition, bulkheads, etc., based on cost;

(4) **Amendment fee.** Amendment fee for any change or revision of a previously issued permit;

(5) **Fee for Change of Use.** Fee for Change of Use involving no physical work; and

(6) **Special fees.** Special fees for notarization of documents and photocopies.

(b) The fee schedule below lists each of these categories separately. One hundred percent of the fee is due at the time of filing a permit application and fees are not refundable. All applications must be accompanied by the full fee in order to be processed. A fee computation should be included with each application.

[See tabular material in printed version]

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66 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 4 FEES

§4-02 Contract Bid Fees.

Contract documents may be obtained at the Department of Business Services, 110 William Street, 3rd floor, New York, N.Y. 10038 at a cost of $45.00 each, which will not be refunded.

Only cash (exact change only) or certified check, payable to the Comptroller of the City of New York will be accepted for the payment of each document.

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***** Current through December 2009 ****

66 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-01 Authority; Purpose.

(a) These rules are promulgated pursuant to Local Law 54 of the Laws of 1985 of the City of New York, as amended, as authorized by Chapter 551 of the Laws of 1985 of the State of New York, as amended, to effectuate the purposes of the New York City Energy Cost Savings Program (the "Program").

(b) The purpose of the Program is to encourage industrial and commercial development, by encouraging businesses to relocate to targeted areas of the City and providing incentives to business already located in such areas to expand or improve their industrial and commercial space. The Program provides a reduction of certain energy costs related to the transmission and distribution of electricity and natural gas for a period of twelve (12) years, including reductions in the cost of energy services purchased from the New York City Public Utility Service.

(c) These rules set forth the requirements for applications, the standards and criteria to determine eligibility for reduced energy costs and the amount available for**2 reductions in energy costs, as well as procedures for review of determinations made in connection with the Program.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

Subd. (b) amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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[Footnote 2]: ** "for" added by Editor.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-02 Definitions.

As used in these rules, the following terms shall have the respective meanings set forth below:

Act. "Act means Chapter 6 of Title 22 of the Administrative Code of the City of New York, as enacted by Local Law 54 of the Laws of 1985 of the City of New York, as amended by Local Law 56 of the Laws of 1989 of the City of New York, Chapters 256 and 257 of the Laws of 1991, Chapter 154 of the Laws of 1999, Chapters 103 and 472 of the Laws of 2000, and Chapter 107 of the Laws of 2003 of the State of New York, as authorized by Chapter 551 of the Laws of 1985 of the State of New York, as amended by Chapters 59 and 825 of the Laws of 1986, Chapter 760 of the Laws of 1988, Chapters 256 and 257 of the Laws of 1991, Chapter 154 of the Laws of 1999, Chapters 103 and 472 of the Laws of 2000, and Chapter 107 of the Laws of 2003 of the State of New York.

Applicant. "Applicant" means any person applying individually or jointly for benefits under ECSP, or a holding company, parent corporation, or subsidiary or affiliated corporation so applying on behalf of any of the foregoing.

Application. "Application" means the application for a certificate of eligibility and shall include all supporting exhibits submitted, and statements made, by an applicant to the commissioner for the purpose of determining such applicant's eligibility for benefits under ECSP.

Assessed value. "Assessed value" means the assessed value of the real property and buildings thereon as assessed

for tax purposes during the tax year in which improvements to such real property and buildings thereon commenced, as required by and referred to in the Act and these rules.

Average monthly consumption. "Average monthly consumption" means, for each natural gas account, the average number of therms of natural gas consumed per month during the preceding twelve billing monthly or six bimonthly billing cycles.

Average monthly load factor. "Average monthly load factor" means, for each electric account, the average monthly load factor for the preceding 12-month period, determined once annually using the most recently available twelve months of load factor data.

Benefit period. "Benefit period" means the number of months a recipient is eligible to receive a special rebate, which period shall not exceed one hundred and forty-four (144) consecutive months, beginning on the effective date of the recipient's certificate of eligibility.

Building. "Building" means articles, structures, substructures and superstructures erected upon, under, or above real property, or affixed thereto, and fixtures (other than trade fixtures) and other improvements erected or situated thereon.

Building permit. "Building permit" means a permit approving proposed construction work issued by the New York City Department of Buildings, DBS or other agency of the City authorized by law to receive and approve plans for construction work. A building permit shall include permits or a new building, alteration, foundation, plumbing, sign or equipment work and may, at the option of the applicant, include a permit for partial demolition or earthwork.

Category I on-site cogenerator. "Category I on-site cogenerator" shall mean an on-site cogenerator that produces electricity for an eligible energy user that was certified before July 1st, 2003.

Category II on-site cogenerator. "Category II on-site cogenerator" shall mean an on-site cogenerator, other than a clean on-site cogenerator, that was certified after June 30, 2003.

Certificate of eligibility. "Certificate of eligibility" means the document or documents issued by the commissioner evidencing the eligibility and qualification of an applicant to receive a special rebate. The certificate of eligibility shall include such information as is required pursuant to §5-42(b) of these rules.

Charter. "Charter" means the New York City Charter, as amended.

City. "City" means The City of New York.

Clean on-site cogenerator. "Clean on-site cogenerator" shall mean an on-site cogenerator, the electricity generating facility of which has an emission rate for nitrous oxides of no more than three tenths of one pound per megawatthour. For purposes of determining the emissions of such electricity generating facility, the emissions for such facility shall be reduced by the amount of any nitrous oxide emissions by boiler plants and/or other generators located on the same site as the on-site cogenerator that were or will be avoided by virtue of the electricity generating facility's production of thermal products used by an eligible energy user(s) for productive purposes.

Code. "Code" means the Administrative Code of the City of New York, as amended.

Commercial development pressure area. "Commercial development pressure area" means those areas of the City as set forth in subdivision (a) of §22-601 of the code.

Commissioner. "Commissioner" means the Commissioner of DBS or his or her designee or his or her successor in function.

Competitive transition charge. "Competitive transition charge" means a charge that is regulated by the PSC, associated with charges for transmission and distribution, and designed to enable a utility to mitigate or recover its above-market costs of generating electricity.

Con Edison. "Con Edison" means the Consolidated Edison Company of New York, Inc.

DBS or DSBS. "DBS" or "DSBS" shall mean the New York City Department of Small Business Services, formerly known as the Department of Business Services, or its successor in function.

DOF. "DOF" means the New York City Department of Finance or its successor in function.

Discount. "Discount" means the amount of a reduction in a bill for energy services rendered to a vendor or NYCPUS by a utility, or to a vendor by NYCPUS, in accordance with the requirements of §5-15 of these rules, equal to the special rebates made by such vendor or NYCPUS to eligible energy users, eligible owners or qualified eligible energy users.

ECSP or Program. "ECSP" or the "Program" means the Program described in the Act and these rules.

Effective date. "Effective date" means the effective date of a certificate of eligibility, which date is the first day of the first billing cycle after a certificate of eligibility is issued.

Eligible charges. "Eligible charges" mean charges for energy services, system benefits charges and competitive transition charges, including service discounts, by a utility determined in accordance with §5-13(a) of these rules, to which charges the applicable percentages in §5-16 or §5-18 of these rules are applied to determine the amount of a special rebate.

Eligible energy user. "Eligible energy user" means any non-residential user of energy services, that purchases such energy services directly from a utility, a vendor, NYCPUS or an on-site cogenerator, and that satisfies the applicable criteria set forth in Subchapter B of these rules.

Eligible move-in area. "Eligible move-in area" means:

(1) with respect to an applicant that relocates from (i) areas lying south of the center line of 96th Street in the Borough of Manhattan, or (ii) all areas outside of the City, to replacement premises, all areas within the City, except those areas lying south of the center line of 96th Street in the Borough of Manhattan;

(2) with respect to an applicant that relocates from premises within a commercial development pressure area to replacement premises, all areas within the City except (i) those areas lying south of the center line of 96th Street in the Borough of Manhattan and (ii) commercial development pressure areas;

(3) with respect to an applicant that occupies premises that meet the criteria of §5-12(b) (specially eligible premises) of these rules, all areas within the City except those areas lying south of the center line of 96th Street in the Borough of Manhattan; and

(4) with respect to an applicant that occupies premises that meet the criteria of §5-12(c) (manufacturing) of these rules, those areas lying south of the center line of 96th Street in the Borough of Manhattan.

Eligible move-out area. "Eligible move-out area" means with respect to an applicant that relocates and occupies replacement premises:

(1) areas lying south of the center line of 96th Street in the Borough of Manhattan;

(2) all areas outside of the City; or

(3) a commercial development pressure area.

Eligible on-site cogenerator charges. "Eligible on-site cogenerator charges" shall mean charges for energy services purchases from a utility related to the delivery of natural gas to a category II on-site cogenerator determined in accordance with §5-13(d).

Eligible owner. "Eligible owner" means an owner, manager or operator of a specially eligible premises that satisfies the applicable criteria of Subchapter B of these rules.

Eligible premises. "Eligible premises" mean those premises that are: (1) replacement premises; or (2) specially eligible premises.

Eligible public utility service charges. "Eligible public utility service charges" mean charges for energy services purchased from NYCPUS, determined in accordance with §5-13(b) of these rules, to which the applicable percentage in §5-16 or §5-18 of these rules are applied to determine the amount of a special rebate.

Employee. "Employee" shall mean any full-time or part-time employee (as provided herein) of an eligible energy user, an affiliate of an eligible energy user, and any contractor working exclusively at an eligible site for operations of an eligible energy user (or an affiliate of an eligible energy user) eligible to receive special rebates. The number of part-time employees and contractors shall be calculated by dividing (i) the number of hours worked by employees, other than full-time employees, and contractors at the eligible energy user's eligible premises, during the applicable period; by (ii) the number of weeks in the applicable period; and then by (iii) 35 person-hours.

Energy conservation measures. "Energy conservation measures" shall have the meaning set forth in subdivision (p) of §22-601 of the code.

Energy services. "Energy services" shall mean (i) the transportation of electric or natural gas commodity within the franchised service territory of a utility through such utility's local transmission or distribution assets, (ii) metering of a user's consumption, including meter reading, and (iii) billing services related to the preparation and collection of the user's utility bill. Energy services shall not include the provision of gas or electric commodity, transmission-related functions for which charges are rendered by the New York Independent System Operator, nor shall they include transportation of gas or electric commodity to a utility system, except that gas pipeline services shall be considered energy services for purposes of calculating rebates for users eligible to receive rebates under §5-18(b)(5) of these rules. Energy services shall not include transportation of natural gas to the extent the gas transported is used by a category I on-site cogenerator or a clean on-site cogenerator in the production of electricity that is eligible for special rebates under §5-14(f).

Energy services bill. "Energy services bill" means the statement of charges for energy services rendered to a recipient by: (i) a utility; (ii) a vendor; or (iii) NYCPUS.

FERC. "FERC" shall mean the Federal Energy Regulatory Commission.

Hotel. "Hotel" means a building or portion thereof that is regularly used and kept open as such for the lodging of guests including an apartment hotel, a motel, boarding house or club or any other facility whose principal use is residential accommodation, whether or not meals are served.

ICIP. "ICIP" means the New York City Industrial and Commercial Incentive Program as codified in Title 11, Chapter 247, Part 3 of the Code, as amended.

IDA. "IDA" means the New York City Industrial Development Agency established pursuant to §850 of the General Municipal Law of the State of New York, as amended.

Keyspan. "Keyspan" means the Keyspan Energy Delivery New York.

LIPA. "LIPA" shall mean the Long Island Power Authority, or its subsidiary.

Manufacturing activity. "Manufacturing activity" means an activity involving the assembly of goods to create a different article or the processing, fabrication, or packaging of goods.

Monthly load factor. "Monthly load factor" means, for each electric account, the number determined by dividing (a) the account's energy consumption, measured in kilowatt hours, for a monthly billing period, by (b) the peak electric demand, measured in kilowatts, for such billing period multiplied by the number of billing days in the period multiplied by 24 hours.

NYCPUS. "NYCPUS" means the New York City Public Utility Service established by Local Law No. 78 of 1982, codified in part as Title 22, Chapter 3 of the Code.

On-site cogenerator. A person, other than a utility, that owns an electric generating facility that simultaneously or sequentially produces electricity and useful thermal energy, provided that substantially all of such electricity shall be used by one or more eligible energy users that occupy the same site as such generating facility. An on-site cogenerator may be the same or a separate person as such eligible energy user.

Person. "Person" means any individual, partnership, association, corporation, limited liability company, estate or trust, and any combination of the foregoing.

Premises. "Premises" mean any building or portion thereof that, for purposes of these rules is, or has been, occupied in whole or in part by an applicant pursuant to a deed, contract of sale, lease or otherwise.

Public Service Commission or PSC. "Public Service Commission" or "PSC" means the Public Service Commission of the State of New York, created by and defined in §2 of the Public Service Law of the State of New York.

Qualified eligible energy user. "Qualified eligible energy user" shall have the meaning ascribed to such term in subdivision (r) of §22-601 of the code.

Real property. "Real property" means land and articles, structures, substructures and superstructures erected upon, under or above the land or affixed thereto and articles of equipment, as described by, and subject to assessment for taxation pursuant to subdivision (a), (b), (f) or (i) of §102(12) of the Real Property Tax Law of the State of New York, but not including any incorporeal right, franchise or special franchise.

Recipient. "Recipient" means an applicant that has satisfied the eligibility criteria of Subchapter B of these rules and has been certified by the commissioner as: (1) an eligible energy user; (2) an eligible owner; (3) a qualified eligible energy user; or (4) a category I on-site cogenerator, a category II on-site cogenerator, or a clean on-site cogenerator.

Replacement premises. "Replacement premises" mean premises occupied by an applicant in replacement of previously occupied premises from which the applicant has relocated, provided the premises satisfy the criteria set forth in §5-12(a) of these rules.

Retail vendor. "Retail vendor" means any applicant that:

(1) is predominantly engaged in the sale, as defined in §1101(b)(4) of the Tax Law of the State of New York, other than through the mail or by the telephone or other means of electronic communication, of tangible personal property to any person, for any purpose unrelated to the trade or business of such person; or

(2) is predominantly engaged in selling services to persons which services generally involve the physical, mental

and/or spiritual care of such persons for any purpose unrelated to the trade or business of such persons; or

(3) is predominantly engaged in selling services to persons for any purpose which services generally involve the physical care of the personal property of such persons for any purpose unrelated to the trade or business of such persons; provided, however, where such sale of tangible personal property or services described herein is performed by only one or more operating units, divisions or subdivisions of the applicant, or at only one or more locations, only such operating units, divisions, or subdivisions, or such locations, shall come within the definition contained herein.

Service classification. "Service classification" means the classification used by a utility in its rate schedule that sets forth the particular rates charged for energy services that are applicable to particular kinds of customers.

Site visit. "Site visit" means an on-site inspection performed by or at the direction of DBS to determine the use of energy services or occupancy of certain buildings, real property or any portion of such building or real property.

Special rebate. "Special rebate" means the amount of reduction in an energy services bill rendered by a utility, a vendor or NYCPUS for energy services to an eligible energy user, a qualified eligible energy user, an eligible owner, or an agent of any of these, or a category I, II or clean on-site cogenerator, and calculated in accordance with the provisions set forth in §5-14 of these rules.

Specially eligible premises. "Specially eligible premises" means non-residential premises that meet the requirements set forth in subdivision (i) of §22-601 of the code and §5-12(b) of these rules.

Survey. "Survey" means a study or report based on on-site field inspections, professional surveys by a licensed professional engineer, data collection or meter readings or other actions to determine the use, consumption and application of energy services or the occupancy of certain buildings or real property, or portions thereof.

Systems benefit charge. "Systems benefit charge" means a charge that is regulated by the PSC and that a utility is required to collect from its customers for the purposes of funding public benefit programs.

Targeted eligible premises. "Targeted eligible premises" shall have the meaning set forth in subdivision (s) of §22-601 of the code.

UDC. "UDC" means the New York State Urban Development Corporation or any subsidiary thereof created and defined by §6254 of the Unconsolidated Laws of the State of New York.

Utility. "Utility" means any provider of energy services within the City that is subject both to the jurisdiction and general supervision of the PSC and to a tax imposed pursuant to chapter 11 of title 11 of the code, and for purposes of this chapter 5, shall include LIPA, or its subsidiary, to the extent that LIPA provides energy services within the City of New York and makes payment to such City that is equivalent to the tax imposed on utilities pursuant to chapter 11 of title 11 of the code.

Utility credit. "Utility credit" means a credit to which a utility is entitled, in accordance with the rules promulgated by DOF, against the tax imposed under Chapter 11 of Title 11 of the code, and equal to the aggregate amount of all special rebates and/or discounts granted by such utility in accordance with the requirements of the Act and these rules.

Vendor. "Vendor" means a vendor of energy services, as defined in subdivision (k) of §22-601 of the code, including any person, corporation or other entity not subject to the jurisdiction and general supervision of the PSC, that furnishes or sells energy services to an eligible energy user, eligible owner, qualified eligible energy user or an on-site cogenerator that is submetered as an incident to leasing, subleasing, licensing or otherwise permitting such user to rent or occupy premises of such vendor.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

Act amended City Record June 25, 2004 §1, eff. July 25, 2004. This definition supersedes the previous definition which was not repealed. [See Note 1]

Average monthly consumption added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Average monthly load factor added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Category I on-site cogenerator added City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Category II on-site cogenerator added City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Clean on-site cogenerator added City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Con Edison added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

DBS or DSBS amended City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Eligible charges amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Eligible charges amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Eligible on-site cogenerator charges added City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Eligible public utility service charges amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Eligible public utility service charges amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Employee added City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Energy services amended City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Energy services amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Energy services amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Keyspan added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

LIPA added City Record June 25, 2004 §1, eff. July 25, 2004. This definition supersedes the previous definition which was not repealed. [See Note 1]

LIPA added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Monthly load factor added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

On-site cogenerator added City Record June 25, 2004 §1, eff. July 25, 2004. This definition supersedes the previous definition which was not repealed. [See Note 1]

Recipient amended City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Service classification added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Special rebate amended City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Utility amended City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 25, 2004:

The new rules implement programmatic changes to the Energy Cost Savings Program ("ECSP") and the Lower Manhattan Energy Program ("LMEP") required and authorized under Chapter 107 of the Laws of 2003.

The following programmatic changes to the ECSP and LMEP are required by Chapter 107 of the Laws of 2003: (i) a revised ECSP rebate formula and eligibility criteria for on-site cogenerators certified after June 30, 2003, (ii) a limit on ECSP benefits for all applicants equal to $10,000 per employee annually, (iii) the provision of ECSP rebates on charges for energy services provided to eligible New York City businesses by the Long Island Power Authority, and (iv) the extension of the sunset date for new applications of both programs to June 30, 2005. The proposed amendments would conform the rules for ECSP and LMEP to these legislative changes.

The rules would also implement a transition period for on-site cogenerators that apply after June 30, 2003, to serve eligible energy users certified before July 1, 2003. Under existing rules, certifications of on-site cogenerators for participation in the ECSP have been made as of the date that the eligible energy user was certified. In the future, such certifications will be made separately from that of the eligible energy user, but for an interim period ending June 30, 2005, on-site cogenerators serving eligible energy users that were certified before July 1, 2003, will be eligible as "Category I" on-site cogenerators to receive special rebates under the formula in the law that is based on 4.44 cents per kilowatt hour. The benefit period of such cogenerators will coincide with that of the eligible energy user served by the cogenerator.

Further, where a cogenerator is able to demonstrate that, as of June 30, 2003, it met all of the eligibility criteria of a Category I on-site cogenerator in substance, but verification of the minimum required expenditure had not been provided by the Industrial and Commercial Incentive Program, it will be treated as a Category I on-site cogenerator.

Chapter 107 of the Laws of 2003 authorizes the Commissioner to set appropriate application fees for the ECSP to defray program administrative costs, which currently exceed program fee revenue. The new rules contain a new fee schedule for ECSP applicants. The fee schedule for the LMEP has also been revised to defray administrative costs, under existing statutory authority.

The new rules also include four administrative changes to clarify and streamline the existing rules. First, they revise Schedule D-1 of Chapter 5 to conform it to other provisions of applicable law and rules. The strict application of the percentages for the higher levels of use of natural gas in Schedule D-1 would yield, in some cases, a rebate greater than 100% of energy services charges, a result that conflicts with other provisions, clearly stated in the law and rules, that no program participant may receive greater than a 100% rebate on its energy services charges. Further, the rebate levels permitted under the original Schedule D-1, when prorated in the last four years of the benefits term, could result in an uneven phase-out of benefits. The revised schedule D-1 cures these inconsistencies.

Second, the new rules have been revised to state that the applications of applicants that make no substantial

progress toward obtaining certification within five years of submission of their applications shall be considered invalid. Applicants will be given the opportunity to "renew" their application by updating information provided on the form and paying a new application fee. This change will close a loophole in the program rules that would allow firms to claim favorable treatment by relying on applications submitted before November 1, 2000 in anticipation of relocation and/or renovation projects that were never completed.

Third, the new rules explicitly state that ECSP benefits may be terminated if a firm fails to confirm its continued occupation of eligible premises or submit other information requested on the continuing use. Without such information, DSBS cannot be certain that ECSP rebates are being provided to eligible firms.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-03 Law Governing Applications.

Applications pending as of the effective date of these rules and applications filed subsequently shall be governed by these rules. Persons that have been certified as eligible for special rebates or discounts under provisions of law in effect before November 1, 2000, are not required to reapply in order to receive benefits under provisions of Chapter 472 of the Laws of 2000.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §2, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy

program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 5-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-04 Rules of Construction.

(a) These rules shall be interpreted and enforced in accordance with the General Construction Law of the State of New York except where the context otherwise requires or a different rule is provided by these rules.

(b) These rules shall be construed consistently with the applicable state and local law cited in this Subchapter of these rules including any amendments thereto.

(c) Provisions of these rules that restate the Act and that do not provide rules or procedures for the exercise of regulatory authority shall not be construed as increasing or diminishing any rights or duties created by the Act, but may be used to assist in the interpretation of the Act.

(d) When the interpretation or application of a provision of these rules in a particular case is uncertain, the description of the purpose and objectives of ECSP set forth in §5-01 of these rules shall be used to assist in the interpretation and application of such provision.

(e) Reference to particular provisions of law in these rules shall be deemed to refer to such provisions as interpreted by the applicable decisions of Federal and New York State courts.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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66 RCNY 5-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-05 Material Misrepresentations, Misstatements and Omissions.

(a) An applicant's or recipient's refusal to provide factual information or to cooperate with the commissioner or his or her staff in the review of the facts and circumstances upon which a determination of eligibility or of continued eligibility is to be based shall constitute grounds for denial of an applicant's eligibility, or for suspension or revocation of a recipient's certificate of eligibility.

(b) The commissioner may deny an application for a certificate of eligibility if the application is found to contain material misrepresentations, misstatements or omissions.

(c) The commissioner may suspend or revoke a certificate of eligibility if a recipient is found to have made material misrepresentations or misstatements or omissions concerning the prior, current or future status of its continued eligibility under ECSP.

(d) Denial of an application for a certificate of eligibility or the suspension or revocation of a certificate of eligibility pursuant to the provisions of this Subchapter shall be subject to an opportunity to be heard pursuant to §§5-45, 5-46 and 5-47 of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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SUBCHAPTER A GENERAL PROVISIONS

§5-06 Actions of City Employees.

Employees and agents of the City whose duties require them to take actions in connection with ECSP shall perform such duties, subject to the lawful direction of their supervisors and appropriate public officers, in accordance with these rules. However, noncompliance by such employees or agents with the requirements of these rules shall not be deemed to void any obligation of, or to waive any requirement imposed on, an applicant or recipient, or to excuse any noncompliance by an applicant or recipient with the provisions hereof or of any law. Such noncompliance shall not create any right of relief from the City or its employees or agents in favor of any person adversely affected thereby.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and

Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-07 Separability.

If any provision of these rules or their application shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remaining provisions of these rules, but shall be confined in its operation to the provision thereof directly involved.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by

the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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SUBCHAPTER A GENERAL PROVISIONS

§5-08 Effective Date of Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Section amended City Record June 18, 2001 eff. July 18, 2001.

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to

be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-11 Energy Users.

(a) Only eligible energy users, eligible owners, qualified eligible energy users and on-site cogenerators, as described in, and to the extent permitted by, the Act and these rules are eligible for special rebates under ECSP.

(b) Eligible energy users, eligible owners, qualified eligible energy users and on-site cogenerators shall not include the following users of electricity and/or natural gas:

(1) residential users;

(2) government agencies;

(3) public benefit corporations, or instrumentalities thereof;

(4) hotels; and

(5) retail vendors.

(c) An eligible energy user is an applicant or recipient that meets the criteria in paragraph (1) of this subdivision or is an eligible owner that meets the criteria in paragraph (2) of this subdivision:

(1) Such applicant or recipient: (i) purchases energy services from a utility, vendor or NYCPUS; (ii) relocates to and occupies premises that qualify as replacement premises or occupies premises that are specially eligible premises or a portion of such premises; and (iii) otherwise complies with all requirements of the Act and these rules applicable to an eligible energy user or

(2) Such applicant or recipient, referred to as an eligible owner, (i) purchases energy services from a utility or NYCPUS; (ii) owns, operates or manages real property and/or a building, which building and/or real property qualifies as a specially eligible premises; and (iii) otherwise complies with all requirements of the Act and these rules applicable to an eligible owner.

(3) An applicant or recipient may, if all requirements are met, qualify as both (i) an eligible owner and (ii) an eligible energy user and/or qualified eligible energy user. In such cases, the applicant or recipient may be an eligible owner with respect to the specially eligible premises as a whole and therefore may be entitled to a special rebate applied against certain eligible charges with respect to common areas and/or equipment, as provided in §5-13(c) of these rules. Such an applicant or recipient may also be an eligible energy user or qualified eligible energy user with respect to the premises it occupies within such specially eligible premises or targeted eligible premises, as the case may be, and therefore may be entitled to a special rebate applied against certain other eligible charges or eligible public utility charges with respect to such premises, as provided in these rules. Provided, however, that no portion of energy services used by such an applicant or recipient shall be the basis for more than one special rebate.

(d) A qualified eligible energy user is a recipient that: (i) has been certified as a qualified eligible energy user in accordance with the Act prior to November 1, 2000; (ii) purchases energy services from NYCPUS or a vendor that purchases such services from NYCPUS; and (iii) otherwise complies with all requirements of the Act and these rules applicable to a qualified eligible energy user.

(e)(1) An on-site cogenerator is an applicant or recipient that: (i) meets the definition of a category I or category II on-site cogenerator or a clean on-site cogenerator in §5-02 of these rules; (ii) purchases energy services relating to natural gas from a utility; (iii) otherwise complies with all requirements of the Act and these rules applicable to a category I or category II on-site cogenerator or a clean on-site cogenerator, respectively, and (iv) sells substantially all its electricity output to eligible energy users on the same site.

(2) A category I or clean on-site cogenerator may, if all requirements are met, qualify as an eligible energy user with respect to charges for energy services that are not used in the production of electricity, including charges for the production of thermal product, provided, however, that no portion of energy services, or natural gas energy services in the case of a category I on-site cogenerator or a clean on-site cogenerator, used by such on-site cogenerator shall be the basis for more than one special rebate.

(f) Notwithstanding the foregoing provisions of this section, an occupant of replacement premises, specially eligible premises, or targeted eligible premises shall not be an eligible energy user or qualified eligible energy user unless:

(i) the energy services used and electricity and natural gas consumed by such occupant at such premises are individually and accurately metered or submetered and billed so as to enable a determination of the occupant's usage of and charges for energy services, natural gas and electricity; and

(ii) for any occupant purchasing energy services, natural gas or electricity from a vendor, the price charged by such vendor shall be no higher than the price that the occupant would have been charged directly by a utility for energy services pursuant to the applicable tariffs of the PSC or FERC, provided that an additional fee, not exceeding 12% may be charged by such vendor; and

(iii) such vendor shall separately state in each bill for such services, electricity and natural gas the price, charges and fees (if any) that are included in such bill and the amount of the special rebate made to such occupant or that no

special rebate has been made.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §3, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

3

[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-12 Premises.

(a) **Criteria for replacement premises.** (1) In order for an applicant's premises to qualify as replacement premises:

(i) the applicant must take occupancy of such premises after May 3, 1985;

(ii) the applicant must continue such occupancy while a special rebate is received;

(iii) the premises must:

(A) be non-residential;

(B) be premises for which an applicant has entered into a written agreement to buy and/or lease after May 3, 1985;

(C) be located in an eligible move-in area;

(D) except as otherwise provided in subparagraph (E) of this paragraph, be premises with provisions to receive energy services either: (I) from a utility; (II) a vendor; or (III) NYCPUS; and

(E) if such premises receive electricity from an on-site cogenerator, such on-site cogenerator shall occupy the same

site as such premises;

(iv) the premises such applicant previously occupied must have been located in an eligible move-out area, and the applicant must have occupied such premises for a continuous period of twenty-four (24) months during the thirty (30) month period immediately preceding the applicant taking occupancy of its new premises.

(2) An applicant's new premises shall not be considered replacement premises if the new premises are occupied as the result of a merger of the applicant with or into any other person, firm or entity, or the acquisition, by the applicant, of all or substantially all of the capital stock or assets and properties of any other person, firm or entity, unless:

(i) the new premises were formerly occupied by such other person, firm or entity;

(ii) such other person, firm or entity: (i) had substantially ceased business operations at the new premises prior to occupancy by the applicant; and (ii) had either: (A) filed or acquiesced in the filing against it of a petition for any relief under any bankruptcy or similar law for the protection of debtors, prior to occupancy by the applicant; or (B) applied for or acquiesced in the appointment of a trustee or receiver for all or a substantial portion of its assets and properties, prior to occupancy by the applicant;

(iii) the applicant transfers or relocates, from its previously occupied premises to the new premises, a substantial amount of personnel, and/or machinery or equipment, and/or other tangible assets, and/or executory contracts (contracts not yet performed in whole or in part, and which will be performed at the new premises); and

(iv) the applicant conducts, at the new premises, the same type of business conducted at its previously occupied premises and/or a type of business reasonably related thereto or constituting a reasonable expansion or growth therefrom.

(b) **Criteria for specially eligible premises.** (1) Specially eligible premises shall meet the applicable requirements of subdivision (i) of §22-601 of the code and:

(i) the real property and/or building in which such premises are located shall be substantially improved by construction or renovation as described or identified in either:

(A) an ICIP pre-application or application filed by the owner, manager or operator of the real property and/or building; or

(B) an IDA application filed by such owner, operator or manager; or

(C) a lease for the real property submitted for approval to UDC or to the City in accordance with the applicable Charter provisions (provided that such lease need not describe or identify buildings located or to be located on such real property), whichever is applicable;

(ii) the expenditures for such construction or renovation required by subdivision (i) of §22-601 of the code shall occur either:

(A) subsequent to the filing of such final application or preliminary application with ICIP, and the issuance of a building permit, if required, for such construction or renovation; or

(B) subsequent to the receipt of an inducement resolution from IDA for the project described in such IDA application; or

(C) subsequent to the approval of the lease described in subparagraph (4) or (5) of subdivision (i) of §22-601 of the code by UDC or by the City in accordance with the applicable Charter provisions;

(iii) for applications made after the effective date of these rules, the expenditures made for such construction or renovation described in paragraph (1) of this subdivision (b) of this §5-12, must be in excess of ten percent (10%) of the assessed value of the real property and building in the tax year in which such construction or renovation commenced;

(iv) the real property and building are located in an eligible move-in area;

(v) the premises have provisions to receive energy services either: (I) directly from a utility; or (II) from a vendor; or (III) from NYCPUS;

(vi) the applicant must take occupancy of such premises and continue in such occupancy while benefits are received;

(vii) if such premises receive electricity from an on-site cogenerator, such on-site cogenerator shall occupy the same site as such premises; and

(viii) if the applicant's premises are contained in a newly constructed building, such building must meet the requirements of the New York State Energy Conservation Construction.

(2) Notwithstanding the provisions set forth in subparagraph (A), paragraph (1) of this subdivision (b), an applicant that occupies premises within a building that would otherwise qualify as eligible to receive benefits under ICIP except that the real property on which such building is located is exempt from real property taxation, may be eligible as an occupant of premises within specially eligible premises, if all other applicable requirements of eligibility of this Subchapter B are met and such applicant receives a certification from DOF stating that the premises are within a building for which expenditures for improvements have been made in compliance with the applicable provisions of subdivision (i) of §22-601 of the code and this paragraph (b).

(c) **Special criteria applicable to manufacturing premises located in Manhattan below 96th Street.** Non-residential premises contained in real property located in the area lying south of the center line of 96th Street in the Borough of Manhattan may qualify as specially eligible premises if the criteria in paragraph (4) of subdivision (i) of §22-601 of the code and the provisions of subdivision (b) of this §5-12 for specially eligible premises are otherwise satisfied where such premises are used primarily for manufacturing activities, provided such premises shall be improved as a result of expenditures in an amount in excess of ten per centum of the assessed value of such real property attributable to such premises at which such real property was assessed for tax purposes for the tax year in which such improvements commenced.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain

the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.
3

[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

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CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-13 Charges.

(a) **Eligible charges.** (1) Eligible charges are charges for energy services purchased by an eligible energy user, an eligible owner, or a qualified eligible energy user from a utility or from a vendor at a rate or rates established pursuant to an order or rule of the PSC or FERC, other than charges for the purchase of the commodity of natural gas or electricity, and shall include applicable rate reductions for economic development or similar purposes, and all taxes payable thereon and shall exclude charges in accordance with paragraph (2) of this subdivision (a).

(2) Eligible charges shall not include the following charges:

(i) any special charges on such bills relating to energy services, including, but not limited to, collection charges, late payment charges, excess distribution charges, or any additional fee charged by a vendor to an eligible energy user for energy services, as authorized by paragraph §5-11(f)(ii) of these rules;

(ii) charges for energy services that are resold; and

(iii) charges for energy services used in the production of electricity or for heating the premises.

(b) **Eligible public utility service charges.** (1) Eligible public utility service charges are actual charges for energy services provided by a public utility service, including charges for public utility service administrative services, and

shall include all taxes payable thereon, and shall exclude charges in accordance with paragraph (2) of this subdivision (b).

(2) Eligible public utility service charges shall not include the following charges:

(i) any special charges on such bills relating to energy services, including, but not limited to, collection charges, late payment charges, excess distribution charges, or any additional fee charged by a vendor to an eligible energy user or qualified eligible energy user for energy services, as authorized by paragraph §5-11(f)(ii) of these rules;

(ii) charges for such energy services that are resold; and

(iii) charges for energy services used in the production of electricity or for heating the premises.

(c) **Eligible charges for common areas in specially eligible premises.** (1) With respect to an eligible owner that owns, operates or manages specially eligible premises or targeted eligible premises in which at least fifty percent (50%) of the square footage of such specially eligible premises is occupied by recipients, eligible charges or eligible public utility service charges shall include the following:

(i) eligible charges or eligible public utility charges for any common areas within the specially eligible premises, including but not limited to, the elevators, roof, parking garages, lobby, and vestibules; and

(ii) eligible charges or eligible public utility charges for the office space that is reasonably required for use by the eligible owner for the operation or management of the specially eligible premises, as determined by the commissioner, if applicable.

(d) **Eligible on-site cogenerator charges.** (1) Eligible on-site cogenerator charges are charges for energy services purchased by a category II on-site cogenerator from a utility related to the delivery of natural gas to such co-generator at rates established pursuant to an order or rule of the PSC or the FERC, and shall include applicable rate reductions for economic development or similar purposes, and all taxes payable thereon and shall exclude charges in accordance with paragraph (2) of this subdivision.

(2) Eligible on-site cogenerator charges shall not include the following charges:

(i) any special charges on such bills relating to energy services, including, but not limited to, collection charges, late payment charges, excess distribution charges, or any additional fee charged by a vendor to an eligible energy user for energy services, as authorized by paragraph §5-11(f)(ii) of these rules;

(ii) charges for energy services that are resold;

(iii) charges for energy services used for heating the premises; and

(iv) any charges that qualify as eligible charges and for which special rebates are provided under other provisions of ECSP.

(e) **Determination of eligible charges, eligible public utility service charges, and eligible on-site cogenerator charges by the commissioner.** (1) The commissioner shall base his or her determination of which charges are eligible charges, eligible public utility charges, or eligible on-site cogenerator charges based upon:

(i) representations and/or certifications made by the applicant in its application to ECSP;

(ii) a review of the applicant's prior energy services bills;

(iii) a site visit; and/or

(iv) any other relevant factors relating to use and occupancy that is deemed by the commissioner to be relevant in making such a determination.

(2) An eligible energy user, qualified eligible energy user, or category II on-site co-generator has the burden of demonstrating to the commissioner that charges for energy services are eligible charges, eligible public utility service charges, or eligible on-site cogenerator charges, respectively. If a determination of eligible charges, eligible public utility service charges, or eligible on-site cogenerator charges cannot be ascertained by the commissioner without a survey or the eligible energy user, qualified eligible energy user, or category II on-site cogenerator is not satisfied with the commissioner's determination of such charges, such user may request that the commissioner cause a survey to be conducted by a licensed professional engineer satisfactory to DSBS at such user's expense, of the applicant's usage of energy services. Upon completion of the survey, the professional who prepares such survey shall submit the report, together with a certification as to the amount of eligible charges or eligible public utility service charges to the commissioner for his or her review.

(3) The commissioner, after reviewing all relevant documentation submitted by the applicant, shall, in his or her sole discretion, determine those charges that constitute the eligible energy user's, qualified eligible energy user's, or category II on-site cogenerator's eligible charges, eligible public utility service charges, or eligible on-site cogenerator charges to which a special rebate may be applied. If such user disagrees with the commissioner's findings, such user may request an opportunity to be heard in accordance with §§5-45, 5-46 and 5-47 of these rules.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §4, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

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SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-14 Special Rebates.

(a)(1) A utility that sells energy services to an eligible energy user or eligible owner that applied for ECSP benefits after October 31, 2000, shall be required to make a special rebate to such user equal to the product of the applicable percentage specified for special rebates in the schedule contained in §5-16 of these rules and the eligible charges for such energy services.

(2) A utility other than LIPA that sells energy services to an eligible energy user or eligible owner that applied for ECSP benefits prior to November 1, 2000 shall be required to make a special rebate to such user equal to the product of the applicable percentage specified for special rebates in the schedule contained in §5-18 of these rules and the eligible charges for such energy services.

(3) A utility that sells energy services to a category II on-site cogenerator shall be required to make a special rebate to such cogenerator equal to the product of the applicable percentage specified for special rebates in the schedule contained in §5-16 of these rules and the eligible on-site cogenerator charges for such energy services.

(b) Where, pursuant to a written agreement between NYCPUS and the power authority of the state of New York, NYCPUS sells energy services to an eligible energy user or eligible owner that has been individually approved by such power authority and certified as an eligible energy user or eligible owner pursuant to §22-602(c) of the Code prior to November 1, 2000, NYCPUS shall make such special rebate to such user in the amount or amounts derived by

calculating the full amount of the special rebate to which such eligible energy user or eligible owner would have been entitled pursuant to the schedule contained in §5-18 of these rules for eligible charges relating to the purchase of such energy services had such user purchased such energy services directly from the utility, and subtracting from such full amount the difference between the eligible charges relating to the purchase of such energy services had such eligible energy user or eligible owner purchased the energy services directly from the utility and the eligible public utility service charges relating to the purchase of such energy services actually charged to such eligible energy user by NYCPUS for actual purchases of energy services from NYCPUS; except that (i) in no event shall the amount of such special rebate exceed the amount of the special rebate to which such eligible energy user would have been entitled pursuant to the schedule contained in §5-18 of these rules had such eligible energy user or eligible owner purchased the energy services directly from the utility at the price charged by such utility, and (ii) for any monthly billing period where the calculation of such special rebate results in a negative number, the amount of such special rebate shall be deemed to be zero.

(c)(1) Where, pursuant to a written agreement between NYCPUS and the power authority of the state of New York, NYCPUS sells energy services to an eligible energy user or eligible owner that has been individually approved by such power authority, has applied for ECSP benefits after October 31, 2000, NYCPUS shall make such special rebate in the amount of the product of the applicable percentage for special rebates specified in the schedule contained in §5-16 of these rules and the eligible public utility service charges for such energy services.

(2) Where, pursuant to such an agreement, NYCPUS sells energy services to a qualified eligible energy user that has been individually approved by such power authority, applied for ECSP benefits prior to November 1, 2000, regardless of the date of certification, NYCPUS shall make such special rebate in the amount of the product of the applicable percentage for special rebates specified in the schedule contained in §5-18 of these rules and the eligible public utility service charges for such energy services.

(3) A user or owner that applied for ECSP benefits as a qualified eligible energy user before November 1, 2000, but was not certified pursuant to §5-36 of these rules as such prior to such date, may be certified as an eligible energy user after such date and the special rebates to which such user or owner is eligible shall be determined pursuant to §5-18 in accordance with these rules.

(d)(1) A vendor that sells energy services provided by a utility to an eligible energy user, eligible owner, or on-site cogenerator that applied for ECSP benefits after October 31, 2000, may elect to provide a special rebate that shall be the product of the applicable percentage for special rebates specified in the schedule contained in §5-16 of these rules and the eligible charges or eligible on-site cogenerator charges for such sales of energy services made by such vendor.

(2) A vendor that sells energy services provided by a utility to an eligible energy user, eligible owner, or on-site cogenerator that applied for ECSP benefits prior to November 1, 2000, may elect to provide a special rebate that shall be the product of the applicable percentage for special rebates specified in the schedule contained in §5-18 of these rules and the eligible charges or eligible on-site cogenerator charges for such sales of energy services made by such vendor.

(e)(1) A vendor that sells energy services provided by NYCPUS to an eligible energy user or eligible owner that applied for ECSP benefits after October 31, 2000, may elect to provide a special rebate that shall be the product of the applicable percentage specified for special rebates in the schedule contained in §5-16 of these rules and the eligible public utility service charges for sales of energy services made by such vendor.

(2) A vendor that sells energy services provided by NYCPUS to a qualified eligible energy user that was certified pursuant to §22-602(c) of the Code prior to November 1, 2000, or to an eligible energy user or eligible owner that applied for ECSP benefits prior to November 1, 2000 and was certified pursuant to §5-36 of these rules after October 31, 2000 may elect to provide a special rebate that shall be the product of the applicable percentage specified for special rebates in the schedule contained in §5-18 of these rules and the eligible public utility service charges for sales of energy services made by such vendor.

(f)(1) A utility that delivers natural gas to a category I on-site cogenerator that produces electricity for an eligible energy user or eligible owner certified before July 1, 2003, and a utility that delivers natural gas to a clean on-site cogenerator that produces electricity for an eligible energy user and is certified after June 30, 2003, shall be required to make special rebates against the energy bill rendered to such on-site cogenerator by such utility for the sale or delivery, or both, of such gas in the amount or amounts derived by taking the product of 4.44 cents multiplied by an eligibility factor, multiplied by the number of kilowatt hours of electricity produced by such on-site cogenerator and used by such eligible energy user or eligible owner during the billing period, excluding the charges for electricity used for heating any premises, any special charges on such bill, including but not limited to, collection charges, late payment charges, or excess distribution charges, and charges for energy that is resold; where the eligibility factor shall equal 100 percent during the first eight years after initial certification as an eligible energy user, 80 percent during the 9th such year, 60 percent during the 10th such year, 40 percent during the 11th such year and 20 percent during the 12th and final such year, such years to be calculated in accordance with the provisions of §5-19 of these rules. Provided, however, that the number of kilowatt hours of electricity on which the total of the special rebates payable to a clean on-site cogenerator is based in any calendar or fiscal year as specified by the commissioner pursuant to the formula set forth in this paragraph shall not exceed 13,140,000.

(2)(i) A category I on-site cogenerator and a clean on-site cogenerator may be eligible to receive special rebates based on eligible charges for transportation of natural gas that is not used in the production of electricity. If eligible, such special rebate for a category I cogenerator providing electricity to an eligible energy user that applied before November 1, 2000, shall be equal to the product of such eligible charges and the rebate percentage determined in accordance with §5-18. If eligible, such special rebate for a clean on-site cogenerator or a category I on-site cogenerator providing electricity to an eligible energy user that applied after October 31, 2000, shall be equal to the product of such eligible charges and the rebate percentage determined in accordance with §5-16.

(g) Determination of special rebates payable to category I on-site cogenerators and clean on-site cogenerators by the commissioner. (1) The commissioner shall have the authority to determine the information he or she requires to review and determine appropriate special rebates payable under this section. He or she may require electric and/or thermal production to be metered in a reliable manner and that site visits be made to verify meter readings.

(2) A category I on-site co-generator or clean on-site cogenerator has the burden of demonstrating to the commissioner the amount of electricity generated by the cogenerator and the purposes for which such electricity is used. If a determination of such amount or use cannot be made by the commissioner without a survey or such cogenerator is not satisfied with the commissioner's determination, the commissioner may require, or such user may request, that a survey of the applicant's production and usage of energy services be conducted by a person with experience in conducting such surveys satisfactory to DSBS at such user's expense. Upon completion of the survey, the person who prepares such survey shall submit his or her report, together with a certification as to the amount electricity produced and its use to the commissioner for his or her review.

(3) A clean on-site cogenerator shall have the burden of demonstrating to the commissioner that its nitrous oxide emissions will not exceed the emissions threshold described herein. If a determination of such amount or use cannot be made by the commissioner without a survey or such cogenerator is not satisfied with the commissioner's determination, the commissioner may require, or such user may request, that a survey of the applicant's production and usage of energy services be conducted by a person with experience in conducting such surveys satisfactory to DSBS at such user's expense. Upon completion of the survey, the person who prepares such survey shall submit his or her report, together with a certification as to the plant's emissions.

(4) The commissioner, after reviewing all relevant documentation submitted by the applicant, shall, in his or her sole discretion, determine the special rebate to which such category I cogenerator or clean on-site cogenerator is entitled. If such user disagrees or with the commissioner's findings, such user may request an opportunity to be heard in accordance with §§5-45, 5-46 and 5-47 of these rules.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §5, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

Subds. (a)-(e) amended City Record Mar. 28, 2003 eff. Apr. 27, 2003. [See Note 1]

Subds. (a)-(e) amended City Record June 18, 2001 eff. July 18, 2001. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 28, 2003:

The new rules implement the Energy Cost Savings Program ("ECSP") and the Lower Manhattan Energy Program ("LMEP"). Chapter 472 of the Laws of 2000 revised the ECSP and LMEP so that the special rebate on eligible charges for gas and electricity would be based on "energy services" which include the charges for transmission and distribution of electricity and gas ("delivery costs") and exclude the costs of the commodities of electricity and gas. Prior to the amendments made by Chapter 472, the special rebate was based on "bundled services" which included the costs of both the commodity and delivery. Chapter 472 increased the percentages by which the special rebate is calculated to 45% of eligible charges for energy services related to the delivery of electricity and 35% of eligible charges for energy services related to the delivery of gas and directed that base to which the percentages would apply be reduced to "energy services", **i.e.**; delivery costs.

In July 2001, the rules were revised as follows: Applicants for ECSP and LMEP applying after October 31, 2000, would receive special rebates pursuant to the statutory rates. Applicants that applied before the effective date of Chapter 472 would be divided into two groups, those that qualified before July 1, 2001, and those that qualified after June 30, 2001. The increased percentages for these two groups would be implemented beginning with the first billing cycle after June 1, 2001. For the group that qualified before July 1, 2001, the rules would implement increases that would be equivalent to an increase effective as of November 1, 2000. Thus, the amendments will provide separate schedules of higher rebate percentages that would apply to participants in ECSP and LMEP that were qualified to participate during part or all of the period from the effective date of Chapter 472 to June 30, 2001. Those that applied before the effective date but did not qualify until after June 30, 2001, would be subject to another set of lower percentages that would approximate equivalency with historic levels of program benefits but would not implement a retroactive adjustment to the effective date of Chapter 472.

The revision herein will further the statutory goals of these programs by: (1) revising the percentages for those companies that applied prior to November 1, 2000 to reflect currently projected energy costs so that their benefits will be approximately equivalent with the historic levels of program benefits; and (2) eliminating the higher rebate percentages that were made applicable to companies that applied prior to November 1, 2000 and were qualified prior to July 1, 2001 because those companies have now received benefits that fully compensate them, **viz.**, the benefits they have received are equivalent to what they would have received if the July 1, 2001 increases had been implemented as of November 1, 2000.

One change has been made since these rules were proposed. During preparation of the revised rules, the base rebate percentages applicable to gas consumers served under KeySpan's service classification 6 (rates 1 and 2) were miscalculated as a result of a typographical error. The intent was to calculate the base rebate percentage for these customers by determining the rebate on transportation charges that would have approximated a 20% discount on combined commodity and transportation charges, based on transportation and commodity prices in effect for the 12 months preceding the 2002/3 heating season. The actual calculations inadvertently overstated the pre-2002/3 heating season commodity prices by failing to deduct the transportation charges from the full-service rate (i.e., combined commodity and transportation charges) to determine commodity prices. Using the correct commodity prices reduces the

applicable base rebate percentages for service classification 6 customers served under rate 1 from 71% to 51% and those served under rate 2 from 72% to 52%.

2. Statement of Basis and Purpose in City Record June 18, 2001: Chapter 472 of the Laws of 2000 revised the Energy Cost Savings Program ("ECSP") and the Lower Manhattan Energy Program ("LMEP") to that the special rebate on eligible charges for gas and electricity would be based on "energy services" which include the charges for transmission and distribution of electricity and gas and exclude the costs of the commodities of electricity and gas. Prior to the amendments made by Chapter 472, the special rebate was based on "bundled services" which included the costs of both the commodity and delivery. Chapter 472 increased the percentages by which the special rebate is calculated to 45% of eligible charges for energy services related to the delivery of electricity and 35% of eligible charges for energy services related to the delivery of gas and directed that base to which the percentages would apply be reduced to "energy services", from which the commodity costs are excluded. Applicants for ECSP and LMEP applying after October 31, 2000 would receive special rebates pursuant to the statutory rates. Applicants that applied before the effective date of Chapter 472 would be divided into two groups, those that qualified before July 1, 2001, and those that qualified after June 30, 2001. The increased percentages for these two groups would be implemented beginning with the first billing cycle after June 1, 2001. For the group that qualified before July 1, 2001, the rules would implement increases that would be equivalent to an increase effective as of November 1, 2000. Thus, the proposed amendments would provide separate schedules of higher rebate percentages that would apply to participants in ECSP and LMEP that were qualified to participate during part or all of the period from the effective date of Chapter 472 to June 30, 2001. Those that applied before the effective date but did not qualify until after June 30, 2001, would be subject to another set of lower percentages that would approximate equivalency with historic levels of program benefits but would not implement a retroactive adjustment to the effective date of Chapter 472.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

3

[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

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§5-15 Discounts.

(a) A utility that sells energy services to a vendor of energy services shall be required to make a discount to such vendor in an amount equal to the sum of the special rebates certified to such utility by such vendor as having been made by such vendor to eligible energy users and eligible owners in accordance with §5-14 of these rules.

(b) A utility that sells energy services to a public utility service shall be required to make a discount to such public utility service in an amount equal to the sum of the special rebates and discounts certified to such utility by such public utility service as having been made by such public utility service in accordance with §5-14 of these rules.

(c) NYCPUS shall be required to make a discount to a vendor to which it sells energy services equal to the sum of the special rebates certified to NYCPUS by such vendor as having been made by such vendor to eligible energy users, eligible owners or qualified eligible energy users to which such vendor of energy services has resold such energy.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

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§5-16 Table of Percentages Applicable to the Calculation of Special Rebates for Users that Applied for ECSP Benefits After October 31, 2000.

Schedule of Special Rebates

Months During Benefit Period	Applicable % for Natural Gas	Applicable % for Electricity
First through ninety-sixty	35%	45%
Ninety-seventh through one hundred eighth	28%	36%
One hundred ninth through one hundred twentieth	21%	27%
One hundred twenty-first through one hundred thirty-second	14%	18%
One hundred thirty-third through one hundred forty-fourth	7%	9%

HISTORICAL NOTE

Section amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

3

[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

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§5-17 Special Rebates for Those that Applied for ECSP Benefits Prior to November 1, 2000 and are Certified Prior to July 1, 2001. [Repealed]

HISTORICAL NOTE

Section repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Section added City Record June 18, 2001 eff. July 18, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to

be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.
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[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

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§5-18 Special Rebates for Those that Applied for ECSP Benefits Prior to November 1, 2000.

(a) Paragraph (4) of subdivision (a) of §22-602 of the code states that the commissioner may increase the applicable percentages set forth in §5-16 of these rules "in order to maintain the special rebate at levels comparable to those historically provided under the program, pursuant to rules that are generally applicable to distinct classes of energy users." In accordance with this provision, the percentages set forth in §5-18(b) of these rules shall be applicable to the calculations of special rebates for all eligible energy users, eligible owners, and qualified eligible energy users that applied for ECSP benefits prior to November 1, 2000. These percentages shall be in place from the first billing cycle beginning on or after April 30, 2003.

(b) For all billing cycles prior to the ninety-seventh month of each of the above-noted eligible energy user's, eligible owner's and qualified eligible energy user's benefit period occurring during the period beginning on or after April 30, 2003, each such user shall receive rebates on eligible charges as specified in this paragraph; provided that the applicable rebate percentages shall not, for any affected electric or natural gas account, exceed 100% of the eligible charges or eligible public utility service charges charged in any billing cycle.

(1) The rebate percentage to be applied to eligible charges for electrical-related energy services provided by Con Edison pursuant to its "PSC No. 9-Electricity Rate Schedule" or "PSC No. 2-Retail Access Rate Schedule" shall equal the percentages specified in Attachment A of Appendix A to these rules, which shall vary depending on such user's average monthly load factor, applicable service classification and the applicable rate, and whether such user receives

discounts on service pursuant to a service rider. If, for any affected user, eligible charges for electrical-related energy services were rendered at more than one service classification and/or at more than one rate for a service classification, the rebate percentages specified in Attachment A of Appendix A to these rules shall apply to the extent that each applicable service classification and/or rate and/or service rider applies to such user. To the extent that any user is served under Con Edison's "PSC No. 9-Electricity Rate Schedule" its rebate percentages shall be determined as if such user were served under Con Edison's PSC No. 2-Retail Access Rate Schedule.

(2) The rebate percentage to be applied to eligible charges for natural gas-related energy services provided by Con Edison pursuant to its "PSC No. 9-Gas Rate Schedule" shall equal the percentages specified in Attachment C of Appendix A to these rules, which shall vary depending on such user's average monthly consumption, applicable service classification and the applicable rate, and whether such user receives discounts on energy services rates pursuant to a service rider or other tariff provision. If, for any affected user, eligible charges for natural gas-related energy services were rendered at more than one service classification and/or at more than one rate for a service classification or if discounted service was provided to part of the consumption rendered through an account pursuant to a service rider or tariff provision, the rebate percentages specified in Attachment C of Appendix A to these rules shall apply to the extent that each applicable service classification and/or rate and/or service rider applies to such user. To the extent that such user is served under "PSC No. 9-Gas Rate Schedule," its rebate percentages shall be determined as if such user were served under the corresponding full-service rate and service classification and rate.

(3)(A) Except as otherwise provided in subparagraph (B) of this paragraph (3), the rebate percentage to be applied to eligible charges for natural gas-related energy services provided by Keyspan pursuant to its "PSC No. 12-Gas Rate Schedule" shall equal the percentages specified in Attachment D of Appendix A to these rules, which shall vary depending on the user's average monthly consumption, the applicable service classification and the applicable rate, and whether the user receives discounts on energy services rates pursuant to a service rider or other tariff provisions. If, for any affected user, eligible charges for natural gas-related energy services were rendered at more than one service classification and/or at more than one rate for a service classification or if discounted service was provided to part of the consumption rendered through an account pursuant to a service rider or tariff provision, the rebate percentages specified in Attachment D of Appendix A to these rules shall apply to the extent that each applicable service classification and/or rate and/or service rider or other tariff discount applies to such user.

(B) The special rebate levels applicable, pursuant to this paragraph (3), to eligible charges for energy services procured by an eligible energy user from KeySpan pursuant to service classification 4A (High Load Factor service) of its "PSC No. 12-Natural Gas Rate Schedule" shall be increased during the period beginning on or after April 30, 2003 and ending no later than October 31, 2004, by the amounts set forth in Schedule D-1 of Appendix A of these rules, depending on the user's average monthly consumption, for all eligible energy users that applied for ECSP benefits prior to November 1, 2000 and were certified before February 1, 2001.

The special rebate levels applicable, pursuant to this paragraph (3), to eligible charges for energy services procured by an eligible energy user from KeySpan pursuant to service classification 4A (High Load Factor service) of its "PSC No. 12-Natural Gas Rate Schedule" shall be increased during the period beginning on April 30, 2003 and ending no later than October 31, 2004, by the amount equal to half the amount set forth in such Schedule D-1, depending on the user's average monthly consumption, for all eligible energy users that applied for ECSP benefits prior to November 1, 2000 and were certified during the period beginning on or after January 31, 2001 and ending on or before September 30, 2002.

(4) The rebate percentage to be applied to eligible public utility service charges for electrical-related energy services provided by NYCPUS pursuant to its "Service Tariff No. 4 Rate Schedule" shall equal the percentages specified in Attachment B of Appendix A to these rules, which shall vary depending on the user's average monthly load factor, the applicable service classification and the applicable rate, and whether the user receives discounts on service pursuant to a service rider. If, for any affected user, eligible public utility service charges for electrical-related energy services were rendered at more than one service classification and/or at more than one rate for a service classification,

the rebate percentages specified in Attachment B of Appendix A to these rules shall apply to the extent that each applicable service classification and/or rate and/or service rider applies to the user.

(5) The rebate percentage to be applied to eligible charges for natural gas-related energy services provided by a local distribution utility pursuant to an individually-negotiated natural gas sales contract entered into prior to November 1, 2001 and having a transportation price of less than $1.50 per dekatherm, shall be 100%.

(6) The rebate percentage to be applied to eligible charges for energy services provided by LIPA to an eligible energy user or eligible owner that applied for ECSP benefits before November 11, 2000 shall be 49% to the extent services are received through the Power for Jobs program and 57% to the extent energy services are provided by LIPA under its other commercial rates.

(c) For all billing cycles after the ninety-sixth month of each of the above-noted user's benefit period and thereafter during the period beginning with the first billing cycle following June 1, 2001, the applicable rebate percentages on eligible charges, determined as specified in §5-18(b) of these rules, shall be multiplied by an adjustment factor, depending on the month of the benefit period in which the energy services were rendered; provided that the applicable rebate percentages shall not, for any affected electric or natural gas account, exceed 100% of the eligible charges charged in any billing cycle. The adjustment factors are as follows:

Month of Benefit Period	Adjustment Factor
97 through 108	0.8
109 through 120	0.6
121 through 132	0.4
133 through 144	0.2
145 and thereafter	0.0

HISTORICAL NOTE

Section amended City Record Mar. 28, 2003 eff. Apr. 27, 2003. [See T66 §5-14 Note 1]

Section added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Subd. (b) par (6) added City Record June 25, 2004 §6, eff. July 25, 2004. [See T66 §5-02 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to

be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.
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[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

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SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-19 Benefit Period.

(a) Except as set forth in (b) of this §5-19, all recipients shall be eligible to receive a special rebate for a period not to exceed one hundred and forty-four (144) consecutive months commencing at the beginning of the month immediately following the effective date of their certificate of eligibility.

(b) A recipient that occupies premises within specially eligible premises after the effective date on which an initial certificate of eligibility of the first eligible energy user occupying such premises is eligible to receive a special rebate for the remaining portion of the benefit period prescribed in such certificate of eligibility for such premises.

HISTORICAL NOTE

Section designated and amended (former §5-18) City Record June 25, 2004 §7, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added (as §5-18) City Record Jan. 9, 2001 eff. Feb. 8, 2001. (Section redesignated by Law Department per Charter §1045(b)). [See Chapter 5 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

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SUBCHAPTER C METHOD OF GRANTING SPECIAL REBATES, UTILITY CREDITS AND/OR DISCOUNTS

§5-21 Granting of Special Rebates to Eligible Energy Users, Eligible Owners, Qualified Eligible Energy Users and On-Site Cogenerators.

(a)(1) A utility and NYCPUS shall reduce their monthly bills for energy services to eligible energy users, eligible owners, qualified eligible energy users and on-site cogenerators that are eligible to receive a special rebate pursuant to §5-14 of these rules during their respective benefit periods by the applicable special rebate calculated in accordance with such §5-14.

(2) A utility and NYCPUS shall commence reducing each such monthly bill in accordance with this subdivision (a) of this §5-21 within thirty (30) days of receipt of the executed certificate of eligibility, or upon the effective date of the certificate of eligibility, whichever is later. The special rebate provided by a utility or public utility service shall be separately stated and shown on each such bill.

(b)(1) A vendor that elects to provide an eligible energy user, eligible owner or qualified eligible energy user with special rebates pursuant to §5-14 of these rules shall provide such user or owner with a monthly bill for submetered energy services reduced during its benefit period by the applicable special rebate calculated in accordance with such §5-14.

(2) Such vendor shall commence reducing each such monthly submetered bill for energy services upon the effective date of the certificate of eligibility by the full amount of the special rebate that is calculated in accordance with

the applicable provisions of §5-14 of these rules. The special rebate shall be provided to such eligible energy user, eligible owner or qualified eligible energy user by the vendor on a monthly basis during the benefit period and such amount shall be separately stated and shown on each bill.

(3) Such eligible energy user, eligible owner or qualified eligible energy user, upon receipt of its reduced bill from the vendor, must remit payment in accordance with the written agreement between such user or owner and such vendor together with an executed remittance form, in accordance with §5-22 of these rules, setting forth the dollar amount of the special rebate such user or owner has received from its vendor for the applicable monthly billing cycle.

(4) The vendor shall execute and forward the remittance form to the utility or NYCPUS, whichever entity supplied such vendor with energy services, together with payment for the balance of the bill for such energy services in order to receive a discount from the utility or NYCPUS. The amount on such remittance form shall be credited on its bill for the monthly billing cycle during which the special rebate was made to the eligible energy user, eligible owner or qualified eligible energy user, or for such subsequent monthly billing cycle where payment by the vendor to the utility or NYCPUS was not timely made.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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§5-22 Remittance Form.

(a) Where special rebates are provided by a vendor of energy services, a remittance form, which shall be a form approved by the commissioner, shall be signed by the recipient and the vendor, submitted to the utility or NYCPUS, and the commissioner, and shall include, but not be limited to, the following information:

(1) the name of the recipient who receives submetered energy services;

(2) the vendor's utility or NYCPUS customer account name;

(3) the vendor's utility or NYCPUS customer account number;

(4) the amount of the special rebate granted by the vendor to a recipient for the billing period covered by the remittance form;

(5) the amount of the recipient's eligible charges for the applicable billing period;

(6) the billing period for which the recipient has received a special rebate from a vendor;

(7) the recipient's certificate of eligibility number and effective date;

(8) the schedule of special rebates the recipient may receive for the benefit period pursuant to Subchapter B of these rules;

(9) the amount of any additional fee charged by the vendor pursuant to paragraph 5-11(f)(ii) of these rules;

(10) such other information as may be requested by the commissioner.

(b) Remittance forms submitted in accordance with subdivision (a) of this section must be submitted to the commissioner within ninety (90) days of the closing meter reading date for which special rebates are sought. The commissioner may decline to approve a discount to a vendor of energy services based on submissions received after the expiration of such period.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §8, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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§5-22.1 Cogenerator Credit Form.

(a) A cogenerator credit form shall consist of a form approved by the commissioner.

(b) A category I or clean on-site cogenerator shall submit a cogenerator credit form to the commissioner and to the utility within ninety (90) days of the end of the billing period for which special rebates are sought.

HISTORICAL NOTE

Section added City Record June 25, 2004 §9, eff. July 25, 2004. [See T66 §5-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by

the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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§5-23 Granting of Discount to Vendors.

(a) Vendors that have granted special rebates to eligible energy user or eligible owners in accordance with §5-14 of these rules, shall submit executed remittance forms to the utility or NYCPUS, as applicable. Each remittance form shall be limited to a single monthly billing cycle.

(b) A utility or NYCPUS shall grant a discount to a vendor equal to the monthly aggregate amount of all remittance forms reflecting special rebates granted by a vendor to eligible energy user, eligible owners or qualified eligible energy users in accordance with §5-15 of these rules, provided, however, that the discount granted by the utility or NYCPUS shall not exceed the bill(s) for the energy services supplied to such vendor by such utility or NYCPUS, respectively. At no time shall a utility or NYCPUS be required to carry forward on its books and records any discounts not fully made to a vendor to reduce bills for subsequent billing cycles.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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§5-24 Granting of Discounts to NYCPUS.

(a) A utility shall provide NYCPUS with a discount against its monthly bill upon proper and timely submission of executed remittance forms to the utility. Each remittance form shall be limited to a single monthly billing cycle.

(b) The utility shall grant a discount to NYCPUS equal to the monthly aggregate amount of all remittance forms reflecting special rebates granted by NYCPUS to eligible energy users, eligible owners or qualified eligible energy users in accordance with §5-15 of these rules and discounts granted to vendors that, in turn, granted special rebates to eligible energy users, eligible owners or qualified eligible energy users in accordance with §5-14 of these rules, provided, however, that the discount granted by the utility shall not be in an amount that exceeds the bill(s) for energy services supplied to NYCPUS by such utility. At no time shall a utility be required to carry forward on its books and records any discounts not fully made to NYCPUS to reduce bills for subsequent billing cycles.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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§5-25 Granting of Utility Credit to Utilities; Audit.

(a) Utilities that have granted special rebates to eligible energy users, eligible owners or on-site cogenerators in accordance with §5-14 of these rules or discounts to vendors or NYCPUS in accordance with §5-15 of these rules shall be entitled to a utility credit equal to the aggregate amount of all such special rebates and discounts it has provided to eligible energy users, eligible owners, qualified eligible energy users, on-site cogenerators, vendors and/or NYCPUS, whichever is applicable.

(b) Such utility credit may be taken only as provided for in the code, these rules and the rules promulgated by the commissioner of DOF, for the purpose of permitting utilities a deduction against certain taxes.

(c) The utility credit to which utility is entitled under ECSP will be provided by DOF in accordance with rules promulgated by the commissioner of DOF.

(d) DOF may audit, among other things, the utility credit taken by a utility to offset the special rebates and discounts such utility granted under ECSP to recipients, vendors and NYCPUS.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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SUBCHAPTER D APPLICATIONS

§5-31 Forms and Filing of Application.

(a) All application forms may be obtained from DBS and, upon completion, shall be submitted to DBS. Only completed applications shall be considered by DBS in determining the applicant's eligibility, or ineligibility, under the Act and these rules.

(b) A check for the non-refundable application filing fee specified in §5-34 of these rules shall be submitted by the applicant to the commissioner together with an executed original copy of the application.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy

program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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§5-32 Submission of an Application.

(a) An applicant that applies after the effective date of these rules must comply with the following application procedures to be considered for eligibility under ECSP:

(1) An applicant that is relocating to premises that may qualify as replacement premises must file an application prior to taking occupancy of such premises or the signing of a lease or contract of sale for such premises, whichever is earlier (except in the case of a contract of sale entered into subject to the approval of public or private financing).

(2) An applicant that owns and occupies, manages or operates real property or a building that may qualify as specially eligible premises must file an application within the following time constraints, whichever is applicable:

(i) prior to the approval of an inducement resolution by IDA to finance in whole or in part an applicant's IDA project; or

(ii) prior to the signing of a lease approved by UDC or by the City in accordance with the applicable Charter provisions for premises contained on or within real property owned by the City or UDC; or

(iii) after the filing of a preliminary application or final application with DOF for construction or renovation in connection with an ICIP project eligible to obtain ICIP benefits from DOF.

(3) An applicant that is occupying premises within a building that it does not own, operate or manage and which building is the subject of an application for an initial certificate of eligibility as specially eligible premises must file an application within one hundred twenty (120) days of the effective date of the initial certificate of eligibility for such building to obtain a certificate of eligibility for such premises.

(4) An applicant that takes occupancy of premises within a building that has previously qualified as specially eligible premises must file an application within one hundred twenty (120) days of taking occupancy of such premises, or of the signing of a lease or contract of sale for such premises, whichever is earlier.

(5) No applicant shall be certified as eligible more than 5 years after the initial submission by such applicant pursuant to paragraphs (1) or (2) of subdivision (a) of this section, except where the approval of the application has been delayed by the actions or inactions of the City of New York and/or the applicant demonstrates to the commissioner that it has made substantial progress toward obtaining certification. An applicant that cannot make such demonstration will be given the opportunity to renew its application by updating its application with current information and by paying a new application fee according to the fee schedule currently in effect.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §10, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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SUBCHAPTER D APPLICATIONS

§5-33 Contents of Application.

(a) The applicant shall have the affirmative burden of proving its eligibility to the satisfaction of the commissioner as to each and every fact contained in the application. The applicant shall provide DSBS with all information required in the application and deemed necessary or useful for the administration of ECSP, including but not limited to, the following:

(1) applicant's name; telephone number; address at its current and previously occupied premises, where applicable; employer identification number; name of utility and utility customer number at the eligible premises, if available, and for the previously occupied premises, where applicable; number of present employees to be relocated or located at the eligible premises; length of time at the previously occupied premises, where applicable; names and addresses of any parent, subsidiaries, or affiliated companies; and the name and title of an individual authorized to complete the application on behalf of the applicant; and

(2) a lease, contract of sale or deed for the eligible premises, whichever is applicable; copies of utility bills for the previously occupied premises and the eligible premises, where applicable; federal and state tax returns, as may be requested by the commissioner to verify among other things, occupancy at the eligible premises and the previously occupied premises, where applicable;

(3) any other information, documentary or otherwise, including, but not limited to, sworn statements and other

data, that the commissioner deems relevant to evaluate the applicant's application; and

(4) a sworn statement agreeing to return all special rebates in excess of $10,000 per employee received during any calendar year, with interest calculated at the prime rate as specified in The New York Times published on the last day of that calendar year, compounded monthly.

(b) In addition to the requirements of subdivision (a) of this §5-33, an applicant that purchases energy services from a vendor shall submit as part of its application in form and substance satisfactory to the commissioner, the following:

(1) a written contract or lease agreement between the applicant and the vendor setting forth an agreement by such vendor to provide individual and accurate submetering of the applicant's premises, and stating as conditions for the sale of energy services from such vendor to the applicant that:

(i) the applicant will be separately billed for its usage of energy services; and

(ii) the price charged by such vendor for such energy services, electricity and/or natural gas, shall not exceed the limits set forth in §5-11(f)(ii) of these rules; and

(2) a written confirmation by such applicant's vendor to the commissioner stating the vendor's agreement to participate in ECSP by providing a special rebate to the applicant and by complying with the terms of the agreement referred to in paragraph (b)(1) of this §5-33. Pursuant to such written confirmation, the vendor shall agree to provide separate monthly bills to the applicant itemizing all charges for energy services consumed and separately state the applicable ECSP benefit.

(c) In addition to the requirements of subdivision (a) and (b) of this section, an applicant seeking to be certified as a clean on-sight cogenerator shall provide evidence, acceptable to the commissioner, that the electricity generating facility seeking certification has an emission rate for nitrous oxides required of clean on-site cogenerators.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §11, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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SUBCHAPTER D APPLICATIONS

§5-34 Application Filing Fee.

(a) For commercial buildings seeking designation as a specially eligible premises and commercial firms qualifying for ECSP by virtue of a relocation, the application fee shall be determined as set forth below:

Gross Square Footage of Applicant's Premises	Fee
Less than 10,000 square feet	$500
10,001 to 25,000 square feet	$1,000
25,001 to 50,000 square feet	$1,250
50,001 to 100,000 square feet	$1,500
100,001 to 250,000 square feet	$2,500
Over 250,000 square feet	$5,000

In the case of an eligible owner (for example, a landlord) applying for ECSP benefits for a building, gross square footage for purposes of the filing fee is limited to square footage that is not or will not be occupied by tenants (i.e., common areas, equipment rooms etc.).

(b) In addition to the filing fee, an applicant shall pay for all costs incurred as a result of any survey conducted by or at the request of the commissioner to develop or verify any factual matters relating to the application.

(c) All fees shall be made payable by check or money order to the "New York City Department of Small Business

Services".

HISTORICAL NOTE

Section amended City Record June 25, 2004 §12, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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SUBCHAPTER D APPLICATIONS

§5-35 Representations and Warranties.

(a) As part of the application and reports required by the Act or these rules, the applicant shall certify and make such representations and warranties as may, from time to time, be deemed necessary to ensure compliance with the provisions of all applicable laws and these rules, including, but not limited to, the following:

(1) that all statements made by or on behalf of the applicant in connection with the application are made by a person authorized by the applicant to make such statements and having actual knowledge or documentary information sufficient to make informed and accurate statements, and that such person believes all such statements to be true;

(2) that the applicant and its employees and agents will comply with and be in compliance with all provisions of federal, state and local laws, all local rules and executive orders, and these rules;

(3) that the applicant is applying for a special rebate only to the extent described in the application and permitted by the Act and these rules;

(4) That the applicant represents, acknowledges, covenants and agrees that it bears sole responsibility for paying the full amount of energy services costs to the appropriate utility, vendor or NYCPUS until such time as the special rebate (if any) granted to the applicant under ECSP is reflected on the applicant's bill;

(5) that the applicant agrees to permit or cause permission to be granted to the City and its agents to inspect its premises and, in the case of an applicant relocating to replacement premises, the premises from which such applicant is relocating, upon notice during regular business hours; and

(6) any other representations or warranties as may be required in the application or requested by the commissioner.

(b) In addition to the requirements of subdivision (a) of this §5-35, the applicant shall covenant and agree to repay with interest at the prime rate, as reported in The New York Times (or similar periodical selected by the commissioner), on the effective date of its certificate of eligibility accrued from the date of receipt, the full amount of any special rebate that the applicant has received if subsequently it is determined by the commissioner that the applicant was ineligible to receive a special rebate for any reason.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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SUBCHAPTER D APPLICATIONS

§5-36 Commissioner's Review; Certification of Eligibility Procedure.

(a) The commissioner shall review the application and grant or deny an applicant's application for a certificate of eligibility.

(b) The commissioner shall consider the application submitted with supporting documentation, and any surveys conducted, and any other information pertaining to the application.

(c) The commissioner shall execute and provide a certificate of eligibility to eligible applicants in accordance with Subchapter E of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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SUBCHAPTER E NOTIFICATION OF ELIGIBILITY, COMMENCEMENT OF ELIGIBILITY AND OPPORTUNITIES TO BE HEARD

§5-41 Notification to Applicant.

If the commissioner grants an applicant's application for a certificate of eligibility, his or her staff shall forward an executed certificate of eligibility to the applicant. If the commissioner denies an applicant's application for a certificate of eligibility, the commissioner shall promptly notify the applicant in writing, of the reason for such denial.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General

City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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SUBCHAPTER E NOTIFICATION OF ELIGIBILITY, COMMENCEMENT OF ELIGIBILITY AND OPPORTUNITIES TO BE HEARD

§5-42 Certificate of Eligibility.

(a) The commissioner's staff will coordinate with the recipient, the utility, the vendor, NYCPUS and DOF, where applicable, to establish the effective date of the certificate of eligibility, which shall in no event be on or after July 1, 2005.

(b) The certificate of eligibility shall include the following information:

(1) the benefit period the recipient is qualified for;

(2) the special rebate a recipient is qualified for;

(3) its date of issuance;

(4) its effective date; and

(5) its termination date.

(c) An applicant must execute the certificate of eligibility and return it to the commissioner within six (6) months of the issuance date stated on the certificate of eligibility or before July 1, 2005, whichever is earlier. Failure of the

applicant to comply with this subsection may result in a revocation of the certificate of eligibility.

(d) Subsequent to establishing the effective date of the certificate of eligibility, the commissioner's staff shall affix such date to the applicant's certificate of eligibility and forward a copy of the fully completed and executed certificate of eligibility to the applicant and any other necessary party.

(e) The effective date of a certificate of eligibility issued by the commissioner after June 30, 2003, and before July 1, 2005, to an on-site cogenerator serving an eligible energy user that was certified before July 1, 2003 shall be the effective date of the first certificate of eligibility issued to such eligible energy user.

(f) The commissioner is authorized to certify an applicant as an on-site cogenerator as of a date prior to July 1, 2003, regardless of the date of such applicant's application for certification, provided the applicant demonstrates to the satisfaction of the commissioner that the applicant had fulfilled all eligibility and filing requirements prior to July 1, 2003, and was not certified prior to such date due to the actions or inaction of the City.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §13, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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§5-43 Notification to Utilities, Vendors and/or NYCPUS.

(a) DBS shall notify the utility, the vendor, and/or NYCPUS, whichever is appropriate, of an applicant's eligibility to receive a special rebate by forwarding to them a certified copy of an applicant's certificate of eligibility executed in accordance with §5-52 of these rules.

(b) DBS shall notify, in writing, the utility, the vendor and/or NYCPUS, whichever is appropriate, of any changes in an applicant's certificate of eligibility.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and

Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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§5-44 Reporting and Inspection Requirements.

(a) During the term of the benefit period, a recipient shall promptly notify the commissioner of any material changes that may affect a recipient's eligibility under ECSP, including but not limited to changes in: (1) the use or type of operations conducted at the eligible premises; (2) recipient's energy usage; (3) the type of metering or method of billing for energy usage at the eligible premises; (4) the occupancy and/or ownership of the eligible premises including, without limitation, the entering into of any leases or subleases at such eligible premises; (5) the number of employees performing work for the recipient and its affiliates or other persons at the premises during each month of the preceding twelve month period.

(b) During the term of the benefit period, a recipient shall annually submit to the commissioner a reporting form, within thirty (30) days of the end of each calendar year, to document the current status of the recipient's continued eligibility under ECSP. Failure of a recipient to submit the annual reporting form may result in the commissioner's discontinuance of the recipient's special rebate.

(c) The commissioner may require a recipient to submit such supporting documentation, including payroll, unemployment insurance filings and the like, as may be needed to verify the accuracy of the submissions of recipients in accordance with subdivision (a) of this section and carry out the purpose and functions of ECSP.

(d) Information received by the commissioner pursuant to this section or otherwise may be used by him or her to determine that a recipient does not satisfy the applicable eligibility criteria in the act or these rules. The commissioner may, among other things, suspend a recipient's certificate of eligibility until a final determination of eligibility can be made, or revise, terminate or revoke such recipient's certificate of eligibility, on the basis of such information or failure to submit requested information.

(e) During the term of the benefit period, a clean on-site cogenerator shall annually submit to the commissioner a report of its nitrous oxide emissions, thermal output used productively, and electric output used by eligible energy users, on a form approved by the commissioner, within thirty (30) days of the end of each calendar year, to document such cogenerator's continued eligibility under ECSP as a clean on-site cogenerators. Failure of an on-site cogenerator to submit such annual emissions reporting form may result in the discontinuance or reduction by the commissioner of the recipient's special rebate. In addition, users shall repay any special rebates received in excess of $10,000 per employee in any calendar year, within ninety (90) days of receiving a written request from the commissioner.

(f) The commissioner and his or her designated agents shall have the right to inspect any premises and operations for which an applicant claims special rebates to verify compliance with the statutes and rules governing the Energy Cost Savings Program, including emissions and space heating restrictions.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §14, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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SUBCHAPTER E NOTIFICATION OF ELIGIBILITY, COMMENCEMENT OF ELIGIBILITY AND OPPORTUNITIES TO BE HEARD

§5-45 Requests for an Opportunity to be Heard.

Within thirty (30) days after the mailing of a written determination by the commissioner or his or her designee pursuant to the Act or these rules, an applicant or recipient that wants to contest such determination may submit documentation supporting its position to the commissioner or his or her designee and may request an opportunity to be heard.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy

program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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SUBCHAPTER E NOTIFICATION OF ELIGIBILITY, COMMENCEMENT OF ELIGIBILITY AND OPPORTUNITIES TO BE HEARD

§5-46 Opportunity to be Heard.

If an opportunity to be heard is requested in accordance with §5-45 of these rules, the commissioner or his or her designee shall, within a reasonable period of time, review the application, all supporting documentation relating to the application and the documentation submitted by the applicant or recipient relating to the determination and schedule a date for a meeting with such applicant or recipient. At such meeting the applicant or recipient may present its arguments and discuss its supporting documentation with the commissioner or his or her representative.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and

Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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§5-47 Final Determination; Notification.

(a) After review of the documentation and arguments submitted by the applicant or recipient the commissioner or his or her designee shall make a final agency deter- mination.

(b) The commissioner or his or her designee shall notify the applicant or recipient in writing within a reasonable period of time of his or her final determination on the issue or issues presented by such applicant or recipient pursuant to §5-46 of these rules.

(c) The commissioner or his or her designee shall notify the applicant or recipient, the appropriate utility, NYCPUS, the vendor and DOF, whichever is applicable, of a final determination to issue, deny, revise, suspend or revoke a certificate of eligibility.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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66 RCNY 5 - APPENDIX A

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CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

APPENDIX A RATE SCHEDULES

APPENDIX A RATE SCHEDULES

ATTACHMENT A

CON EDISON ELECTRIC SERVICE

PSC No. 2 Retail Access Rate Schedule and PSC No. 9 Electric Rate Schedule

	Low Tension Service													
	SC2 and SC2-RA				SC4, SC9, SC4-RA and SC9-RA								Power for Jobs (Rider Q)	
	Rate I		Rate II		Rate I				Rate II			Rate III	Rate I	Rate II
	Standard Rate	Rider I Area Devel Rate	Standard Rate	Rider I Area Devel Rate	Standard Rate	Rider J Business Incentive Rate	Rider I Area Devel Rate	Rider L Empire Zones Rate	Standard Rate	Rider J Business Incentive Rate	Rider S Industrial Employ Growth	Standard Rate		
Average Monthly Load Factor														
Less than 20%	60%	63%	72%	76%	60%	88%	66%	66%	57%	75%	81%	53%	66%	66%
20% to 30%	60%	63%	72%	76%	65%	94%	71%	71%	62%	84%	91%	58%	73%	73%
31% to 40%	60%	63%	72%	76%	68%	99%	74%	74%	67%	92%	99%	63%	79%	79%
41% to 50%	60%	63%	72%	76%	71%	100%	77%	77%	71%	99%	100%	68%	85%	85%
51% to 60%	60%	63%	72%	76%	73%	100%	79%	79%	76%	100%	100%	72%	92%	91%
61% to 70%	60%	63%	72%	76%	75%	100%	81%	81%	80%	100%	100%	76%	98%	98%
Greater than 70%	60%	63%	72%	76%	77%	100%	82%	82%	84%	100%	100%	79%	100%	100%

	High Tension Service									
	SC4, SC9, SC4-RA and SC9-RA								Power for Jobs (Rider Q)	
	Rate I				Rate II			Rate III	Rate I	Rate II
	Standard Rate	Rider J Business Incentive Rate	Rider I Area Devel Rate	Rider N Empire Zones Rate	Standard Rate	Rider J Business Incentive Rate	Rider S Industrial Employ Growth	Standard Rate		
Average Monthly Load Factor										
Less than 20%	68%	97%	75%	75%	70%	91%	97%	64%	72%	91%
20% to 30%	73%	100%	79%	79%	77%	100%	100%	71%	79%	100%
31% to 40%	76%	100%	82%	82%	83%	100%	100%	77%	86%	100%
41% to 50%	79%	100%	85%	85%	89%	100%	100%	82%	93%	100%
51% to 60%	81%	100%	87%	87%	95%	100%	100%	88%	100%	100%
61% to 70%	83%	100%	88%	88%	99%	100%	100%	92%	100%	100%
Greater than 70%	85%	100%	90%	90%	100%	100%	100%	97%	100%	100%

HISTORICAL NOTE

Attachment repealed and added City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT B

NEW YORK CITY PUBLIC UTILITY SERVICE

ELECTRIC SERVICE

Service Tariff No. 4

	Low Tension						High Tension					
	Rate I			Rate II			Rate I			Rate II		
	Standard Rate	Option 3 Discount	Option 5 Discount	Standard Rate	Option 3 Discount	Option 5 Discount	Standard Rate	Option 3 Discount	Option 5 Discount	Standard Rate	Option 3 Discount	Option 5 Discount
Average Monthly Load Factor												
Less than 20%	59%	57%	57%	58%	56%	56%	62%	60%	60%	79%	76%	76%
20% to 30%	63%	60%	60%	62%	60%	60%	66%	64%	64%	86%	82%	82%
31% to 40%	67%	64%	64%	66%	63%	63%	70%	67%	67%	92%	88%	88%
41% to 50%	70%	67%	67%	69%	66%	66%	74%	71%	71%	98%	93%	93%
51% to 60%	74%	71%	71%	73%	70%	70%	79%	75%	75%	100%	99%	99%
61% to 70%	78%	74%	74%	76%	73%	73%	83%	79%	79%	100%	100%	100%
Greater than 70%	81%	78%	78%	80%	76%	76%	87%	82%	82%	100%	100%	100%

HISTORICAL NOTE

Attachment added City Record Mar. 28, 2003 eff. Apr. 27, 2003.

ATTACHMENT C

CON EDISON NATURAL GAS SERVICE

PSC No. 9 Gas Rate Schedule

	Firm Service							Interruptible Service				
	SC2 (and SC9) [1]							SC12 (and SC9) [2]				
	Rate I			Rate II			A/C Rate	Priority AB	Priority C	Priority D	Priority E	Off-Peak Firm
	Standard Rate	Rider E Area Development Rate	Rider F Business Incentive Rate	Standard Rate	Rider E Area Development Rate	Rider F Business Incentive Rate						
Average Monthly Consumption												
100 therms or less	36%	36%	36%	36%	36%	36%	66%	37%	44%	56%	57%	93%
101 to 500	45%	49%	49%	43%	47%	47%	66%	37%	44%	56%	57%	93%
501 to 1,000	46%	54%	54%	44%	52%	52%	66%	37%	44%	56%	57%	93%
1,001 to 2,250	48%	59%	59%	45%	55%	55%	69%	37%	44%	56%	57%	93%
2,251 to 5,000	52%	71%	71%	49%	66%	66%	72%	37%	44%	56%	57%	93%
5,001 to 10,000	57%	83%	83%	53%	78%	78%	73%	37%	44%	56%	57%	93%
10,001 to 20,000	59%	93%	93%	56%	86%	86%	73%	37%	44%	56%	57%	93%
20,000 to 50,000	61%	100%	100%	58%	93%	93%	74%	37%	44%	56%	57%	93%
50,001 to 100,000	62%	100%	100%	58%	95%	95%	74%	37%	44%	56%	57%	93%
100,000 to 1,000,000	62%	100%	100%	59%	97%	97%	74%	37%	44%	56%	57%	93%
Greater than 1,000,000	62%	100%	100%	59%	97%	97%	74%	37%	44%	56%	57%	93%

Note:

1. Service Classification no. 2 customers and customers that would be classified as service classification no. 2, but are purchasing only transportation services pursuant to service classification no. 9 rates.

2. Service Classification no. 12 (temperature controlled) customers and customers that would be classified as service classification no. 12, but are purchasing transportation services only pursuant to service classification no. 9.

HISTORICAL NOTE

Attachment repealed and added City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT D

KEYSPAN NATURAL GAS SERVICE

PSC No. 12 Gas Rate Schedule

	Firm Service								Interruptible Service		
	SC2						SC4A	SC4B	SC7	SC6	
	Rate Schedule 1			Rate Schedule 2			High Load Factor	A/C Rate		RS1	RS2
	Standard Rate	Business Incentive Rate	Area Development Rate	Standard Rate	Business Incentive Rate	Area Development Rate					
Average Monthly Consumption											
100 therms or less	36%	36%	36%	38%	41%	40%	35%	35%	35%	51% ~~71%~~	52% ~~72%~~
101 to 500	40%	51%	47%	48%	57%	52%	42%	37%	41%	51% ~~71%~~	52% ~~72%~~
501 to 1,000	42%	59%	52%	50%	68%	59%	49%	39%	43%	51% ~~71%~~	52% ~~72%~~
1,001 to 2,250	46%	70%	60%	51%	76%	65%	55%	41%	44%	51% ~~71%~~	52% ~~72%~~
2,251 to 5,000	49%	76%	64%	52%	81%	67%	58%	42%	45%	51% ~~71%~~	52% ~~72%~~
5,001 to 10,000	50%	79%	66%	52%	83%	69%	60%	42%	45%	51% ~~71%~~	52% ~~72%~~
10,001 to 20,000	50%	80%	67%	52%	84%	69%	61%	43%	45%	51% ~~71%~~	52% ~~72%~~
20,000 to 50,000	51%	81%	67%	52%	85%	70%	61%	43%	45%	51% ~~71%~~	52% ~~72%~~
50,001 to 100,000	51%	82%	67%	52%	85%	70%	61%	43%	45%	51% ~~71%~~	52% ~~72%~~
100,000 to 1,000,000	51%	82%	68%	53%	85%	70%	61%	43%	45%	51% ~~71%~~	52% ~~72%~~
Greater than 1,000,000	51%	82%	68%	53%	85%	70%	61%	43%	45%	51% ~~71%~~	52% ~~72%~~

HISTORICAL NOTE

Attachment repealed and added City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

SCHEDULE D-1

KEYSPAN NATURAL GAS SERVICE

PSC No. 12 Gas Rate Schedule

Temporary Additional Benefit for Keyspan SC4A

(High Load Factor) Charges

Average Monthly Consumption	
100 therms or less	0%
101 to 500	9%
501 to 1,000	25%
1,001 to 2,250	38%
2,251 to 5,000	42%
5,001 to 10,000	40%
10,001 to 20,000	39%
20,000 to 50,000	39%
50,001 to 100,000	39%
100,000 to 1,000,000	39%
Greater than 1,000,000	39%

HISTORICAL NOTE

Attachment D-1 amended City Record June 25, 2004 §15, eff. July 25, 2004. [See T66 §5-02 Note 1]

Attachment added City Record Mar. 28, 2003 eff. Apr. 27, 2003

ATTACHMENT E

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT F

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT H

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT I

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT J

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that

are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-51 Authority; Purpose.

(a) These rules are promulgated pursuant to Chapter 4 of the Laws of 1995 of the State of New York, as amended, to effectuate the purposes of the New York City Lower Manhattan Energy Program (the "Program").

(b) The purpose of the Program is to encourage commercial development, through construction, expansion or improvement of commercial space in a defined area of Lower Manhattan, by providing a reduction of certain electricity costs related to the transmission and distribution of electricity for a period of twelve (12) years or, in specified cases involving landmark sites, thirteen (13) years, including reductions in the cost of energy services purchased from the New York City Public Utility Service.

(c) These rules set forth the standards and criteria used to determine eligibility and the available reductions in energy costs, as well as requirements for applications and procedures for review of determinations made in connection with the Program.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Subd. (b) amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

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CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-52 Definitions.

As used in these rules, the following terms shall have the respective meanings set forth below:

Act. "Act" means Article 2-I of the General City Law of the State of New York, as added by Chapter 4 of the Laws of 1995 of the State of New York, as amended by Chapter 154 of the Laws of 1999 and Chapters 103 and 472 of the Laws of 2000.

Applicant. "Applicant" means any person applying individually or jointly as an owner or lessee of a building, or a portion thereof, or an agent of such owner or lessee, for a certificate of eligibility as an eligible redistributor of energy or a qualified eligible redistributor of energy, or a holding company, parent corporation, or subsidiary or affiliated corporation so applying on behalf of any of the foregoing.

Application. "Application" means the application for a certificate of eligibility and shall include the preapplication and all supporting exhibits submitted and statements made by an applicant to the commissioner for the purpose of determining such applicant's initial eligibility for benefits as an eligible redistributor of energy or as a qualified eligible redistributor of energy under LMEP, and shall include the information required by §5-82 of these rules.

Assessed value. "Assessed value" means the assessed value of the real property and buildings thereon for tax purposes during the tax year in which improvements to such real property and buildings thereon commenced, as

required by and referred to in these rules.

Average monthly load factor. "Average monthly load factor" means, for each electric account, the average monthly load factor for the preceding 12-month period, determined once annually using the most recently available twelve months of load factor data.

Benefit period. "Benefit period" means the number of months a recipient is eligible to receive a special rebate, which period shall not exceed one hundred and forty-four (144) consecutive months, beginning on the effective date of the recipient's certificate of eligibility, unless such building is a landmark site, in which case the benefit period shall not exceed one hundred and fifty-six (156) consecutive months, beginning on the effective date of the recipient's certificate of eligibility.

Building. "Building" means articles, structures, substructures and superstructures erected upon, under, or above real property, or affixed thereto, and fixtures (other than trade fixtures) and other improvements erected or situated thereon.

Building permit. "Building permit" means a permit approving proposed construction work issued by the New York City Department of Buildings, DBS or other agency of the City authorized by law to receive and approve plans for construction work. A building permit shall include a permit to construct a new building, an alteration, foundation, plumbing, sign or equipment work permit and may, at the option of the applicant, include a permit for partial demolition or earthwork.

Certificate of eligibility. "Certificate of eligibility" means the document or documents issued by the commissioner evidencing the eligibility of an applicant to receive a special rebate as an eligible redistributor of energy or a qualified eligible redistributor of energy. The certificate of eligibility shall include such information as is required pursuant to §5-87 of these rules.

Charter. "Charter" means the New York City Charter of New York, as amended.

City. "City" means The City of New York.

Code. "Code" means the Administrative Code of the City of New York, as amended.

Commissioner. "Commissioner" means the Commissioner of DBS or his or her designee or his or her successor in function.

Common areas, systems and facilities. "Common areas, systems and facilities" mean those areas, systems and facilities of a building that are shared by tenants and building owners, including, but not limited to: heating; ventilation and cooling systems; public, light and power; facilities, machinery and support hardware of a building, including, but not limited to, shafts, enclosing walls, corridors and lobbies, and loading docks of a building.

Contiguous square footage. "Contiguous square footage" means gross square footage that is in actual contact or touching along a boundary or at a point, and shall include space on two (2) or more floors that are directly above or below each other.

DBS. "DBS" means the New York City Department of Business Services or its successor in function.

DOF. "DOF" means the New York City Department of Finance or its successor in function.

Directly metered eligible revitalization area energy user. "Directly metered eligible revitalization area energy user" means an eligible revitalization area energy user that is directly metered by a utility.

Effective date. "Effective date" means the effective date of a certificate of eligibility, which date is the first day of

the first billing cycle after a certificate of eligibility is issued.

Eligible building. "Eligible building" means a building or structure that meets the criteria set forth in §25-aa(a) of the Act and §5-61 of these rules.

Eligible charges. "Eligible charges" mean charges for energy services, system benefits charges and competitive transition charges, including service discounts, by a utility determined in accordance with §25-aa(b) of the Act and the applicable provisions of §5-64 of these rules, to which charges the applicable percentages in §5-65 or §5-67 of these rules are applied to determine the amount of a special rebate.

Eligible public utility service charges. "Eligible public utility service charges" mean charges for energy services purchased from NYCPUS, determined in accordance with §25-aa(b) of the Act and the applicable provisions of §5-64 of these rules.

Eligible redistributor of energy. "Eligible redistributor of energy" means a person that meets the criteria set forth in §25-aa(c) of the Act and §5-62 of these rules.

Eligible revitalization area. "Eligible revitalization area" means the area of the City defined in §25-aa(d) of the Act, namely the area of the City in the borough of Manhattan bounded by Murray Street on the north starting at the intersection of West Street and Murray Street; running easterly along the center line of Murray Street; connecting through City Hall Park with the center line of Frankfort Street and running easterly along the center lines of Frankfort and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit Plaza; connecting through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street. Any tax lot which is partly located inside the eligible revitalization area shall be deemed to be entirely located inside such area.

Eligible revitalization area energy user. "Eligible revitalization area energy user" means any person that meets the criteria set forth in §25-aa(e) of the Act and §5-63 of these rules.

Energy services. "Energy services" mean (i) the transportation of electric commodity within the franchised service territory of a utility through such utility's local transmission or distribution assets, (ii) metering of a user's consumption, including meter reading, and (iii) billing services related to the preparation and collection of the user's utility bill. Energy services shall not include the provision of electric commodity, transmission-related functions for which charges are rendered by the New York Independent System Operator, nor shall they include transportation of electric commodity to a utility system.

Energy services bill. "Energy services bill" means a statement of charges for energy services rendered by a utility, NYCPUS, an eligible redistributor of energy or qualified eligible redistributor of energy and shall include a bill for rent or similar charges for the occupancy of premises where such rent or similar charges include the use of energy services.

FERC. "FERC" shall mean the Federal Energy Regulatory Commission.

Floor area. "Floor area" means either the gross area or the rental area of the eligible building. The gross area means all of the area within the exterior walls of the building. The rentable area means the square footage leased to a particular tenant for its exclusive use as reflected in the lease agreement. An applicant may select either of these meanings, but must be consistent in the application of the meaning.

Hospital. "Hospital" means a hospital as defined in §2801 of the Public Health Law of the State of New York.

Hotel. "Hotel" means a building or portion thereof, that is regularly used and kept open as such for the lodging of

guests, including, but not limited to, an apartment hotel, a motel, a boarding house or club or any other facility whose principal use is residential accommodation, whether or not meals are served.

ICIP. "ICIP" means the New York City Industrial and Commercial Incentive Program as set forth in Title 11, Chapter 247, Part 3 of the Code, as amended.

IDA. "IDA" means the New York City Industrial Development Agency established pursuant to §850 of the General Municipal Law of the State of New York, as amended.

Landmark site. "Landmark site" means a building or any part thereof that has been designated as a landmark pursuant to the provisions set forth in Chapter 3 of Title 25 of the code.

LMEP or Program. "LMEP" or "Program" means the New York City Lower Manhattan Energy Program described in the Act and Subchapter A of these rules.

Manufacturing activity. "Manufacturing activity" means an activity involving the assembly of goods to create a different article or the processing, fabrication, or packaging of goods.

Mixed-use property. "Mixed-use property" means mixed-use property as defined in Title 2-E of Article 4 of the Real Property Tax Law of the State of New York.

Monthly load factor. "Monthly load factor" means, for each electric account, the number determined by dividing (a) the account's energy consumption, measured in kilowatt hours, for a monthly billing period, by (b) the peak electric demand, measured in kilowatts, for such monthly billing period multiplied by the number of billing days in the period multiplied by 24 hours.

NYCPUS. "NYCPUS" means the New York City Public Utility Service established by Local Law No. 78 of 1982, codified in Title 22, Chapter 3 of the code.

Person. "Person" means any individual, partnership, association, corporation, limited liability company, estate or trust, and any combination of the foregoing.

Preapplication. "Preapplication" means the initial filing in the process of applying for a certificate of eligibility and shall contain the information required by §5-82(a) of these rules.

Public Service Commission or PSC. "Public Service Commission" or "PSC" means the Public Service Commission of the State of New York, created by and defined in §2 of the Public Service Law of the State of New York.

Qualified eligible redistributor of energy. "Qualified eligible redistributor of energy" shall have the meaning ascribed to such term in §25-aa(m) of the Act.

Real property. "Real property" means land and articles, structures, substructures and superstructures erected upon, under or above the land or affixed thereto and articles of equipment, as described by, and subject to assessment for taxation pursuant to subdivision (a), (b), (f) or (i) of §102(12) of the Real Property Tax Law of the State of New York, but not including any incorporeal right, franchise or special franchise.

Recipient. "Recipient" means an applicant that has satisfied the eligibility criteria of Subchapter B of these rules and has been certified by the commissioner as either an eligible redistributor of energy or a qualified eligible redistributor of energy.

Retail space. "Retail space" means space used by an applicant that: (a) is predominantly engaged in the sale of tangible personal property to any person, for any purpose unrelated to the trade or business of such person; or (b) is

predominantly engaged in selling services to persons for any purpose unrelated to the trade or business of such persons; provided however, where such sale of tangible personal property or services described herein is performed by only one (1) or more operating units, divisions or subdivisions of the applicant, or at only one (1) or more locations, only such operating units, divisions, or subdivisions, or such locations, shall come within the definition contained herein, and provided, further, that retail space shall not include space occupied by bankers, insurance brokers, real estate brokers, stock brokers, doctors, lawyers or accountants.

Service classification. "Service classification" means the classification used by a utility in its rate schedule that sets forth the particular rates charged for energy services that are applicable to particular kinds of customers.

Site visit. "Site visit" means an on-site inspection performed by or at the direction of DBS to determine the use of energy services, size, or occupancy of certain buildings, real property or any portion of such building or real property.

Special rebate. "Special rebate" shall mean the amount of reduction in an energy services bill rendered by a utility or NYCPUS for energy services to an eligible redistributor of energy or a qualified eligible redistributor of energy or directly metered eligible revitalization energy user, or an agent of any of these, and shall be calculated as a percentage of eligible charges in accordance with the provisions of §5-65 or §5-67 of these rules.

Submeter. "Submeter" means a meter that individually and accurately meters an occupant's usage of energy services.

Survey. "Survey" means a study or report based on on-site field inspections, professional surveys by a licensed professional engineer, data collection or meter readings or other actions related to determining the size, use, energy services consumption, or occupancy of certain buildings or real property, or portions thereof.

Systems benefit charge. "Systems benefit charge" means a charge that is regulated by the PSC and that a utility is required to collect from its customers for the purposes of funding public benefit programs.

Targeted eligible building. "Targeted eligible building" means a building or structure which meets the criteria set forth §25-aa(q) of the Act.

UDC. "UDC" means the New York State Urban Development Corporation or any subsidiary or any successor in function thereof created and defined by §6254 of the Unconsolidated Laws of the State of New York.

Utility. "Utility" shall mean any provider of energy services within the eligible revitalization area that is subject both to the jurisdiction and general supervision of the PSC and to a tax imposed pursuant to Chapter 11 of Title 11 of the code.

Utility credit. "Utility credit" means a credit to which a utility is entitled, in accordance with the rules promulgated by DOF, against the tax imposed under Chapter 11 of Title 11 of the code, and equal to the aggregate amount of all special rebates granted by such utility in accordance with the requirements of the Act and these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

Average monthly load factor added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Eligible charges amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Eligible charges amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Energy services amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Monthly load factor added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Service classification added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Special rebate amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Special rebate amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

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§5-53 Law Governing Applications.

Applications pending as of the effective date of these rules and applications filed subsequently shall be governed by these rules. Persons that have been certified as eligible for special rebates under provisions of law in effect before November 1, 2000, are not required to reapply in order to receive benefits under provision of Chapter 472 of the Laws of 2000.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER A GENERAL PROVISIONS

§5-54 Rules of Construction.

(a) These rules shall be interpreted and enforced in accordance with the General Construction Law of the State of New York except where the context otherwise requires or a different rule is provided by these rules.

(b) These rules shall be construed consistently with the provisions of the Act, including any amendments thereto.

(c) Provisions of these rules that restate the Act and that do not provide rules or procedures for the exercise of regulatory authority shall not be construed as increasing or diminishing any rights or duties created by the Act, but may be used to assist in the interpretation of the Act.

(d) When the interpretation or application of a provision of these rules in a particular case is uncertain, the description of the purpose and objectives of LMEP set forth in §5-51 of these rules shall be used to assist in the interpretation and application of such provision.

(e) Reference to particular provisions of law in these rules shall be deemed to refer to such provisions, as interpreted by the applicable decisions of Federal and New York State Courts.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER A GENERAL PROVISIONS

§5-55 Material Misrepresentations, Misstatements and Omissions.

(a) An applicant's or recipient's refusal to provide factual information or to cooperate with the commissioner or the staff of DBS in the review of the facts and circumstances upon which a determination of eligibility or of continued eligibility is to be based shall constitute grounds for denial of an applicant's eligibility, or for suspension or revocation of a recipient's certificate of eligibility.

(b) The commissioner may deny an application for a certificate of eligibility or suspend, terminate or revoke a certificate of eligibility issued pursuant to the program whenever:

(1) a recipient fails to comply with the requirements set forth in the Act or these rules; (2) an application, certificate, amendment, supplement or other document submitted by an applicant pursuant to the Act or these rules contains a false or misleading statement as to a material fact or omits to state any material fact necessary in order to make the statements therein not false or misleading;

(3) any real property tax or water or sewer charge due and payable with respect to an eligible building or targeted eligible building shall remain unpaid for at least one (1) year following the date upon which such tax or charge became due and payable, unless within thirty (30) days from the mailing of a notice of termination by DBS satisfactory proof is presented to DBS that any and all delinquent taxes and charges owing with respect to such building as of the date of such notice have been paid in full or are currently being paid in timely installments pursuant to a written agreement with

the appropriate City agency; or

(4) any payment in lieu of taxes payable with respect to such buildings shall remain unpaid for at least one (1) year following the date upon which such payment became due and payable, unless within thirty (30) days from the mailing of a notice of termination by DBS satisfactory proof is presented to DBS that any and all delinquent payments in lieu of taxes with respect to such building as of the date of such notice have been paid in full or are currently being paid in timely installments pursuant to a written agreement with the appropriate City agency.

(d) DBS shall revoke a certificate of eligibility in the event a recipient fails at any time within the first five (5) years of the benefit period to submeter any portion of a building as required by the Act or in accordance with the requirements set forth in paragraph §5-63(d)(1) of these rules. The City may maintain a civil action or proceeding to recover an amount equal to any benefits improperly obtained.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER A GENERAL PROVISIONS

§5-56 Actions of Employees.

Employees and agents of the City whose duties require them to take actions in connection with ECSP shall perform such duties, subject to the lawful direction of their supervisors and appropriate public officers, in accordance with these rules. However, noncompliance by such employees or agents with the requirements of these rules shall not be deemed to void any obligation of, or to waive any requirement imposed on, an applicant or recipient, or to excuse any noncompliance by an applicant or recipient with the provisions hereof or of any law. Such noncompliance shall not create any right of relief from the City or its employees or agents in favor of any person adversely affected thereby.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER A GENERAL PROVISIONS

§5-57 Separability.

If any provision of these rules or its application shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remaining provisions of these rules, but shall be confined in its operation to the provision thereof directly involved.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER A GENERAL PROVISIONS

§5-58 Effective Date of Rules.

The effective date of these rules shall be November 1, 2000, and they shall apply to persons certified as eligible to receive special rebates under the laws and rules applicable to LMEP prior to such effective date as well as to applicants certified as eligible for such special rebates after such effective date, provided that where bills for sales of energy services are rendered on a monthly billing cycle, the calculation of special rebates shall, for each eligible revitalization area energy user, eligible redistributor of energy or qualified eligible redistributor of energy, be based on the applicable percentages and eligible charges under the provisions of the Act and these rules beginning with the first billing cycle beginning after November 1, 2000, and the calculation of such rebates prior to such time shall be based on the applicable percentages and eligible charges in effect on or before November 1, 2000, and provided, further, that special rebates shall be calculated pursuant to §5-66 or §5-67, if applicable, beginning with the first billing cycle beginning after June 1, 2001, and the calculation of such rebates prior to such time shall be based on the applicable percentages and eligible charges in effect on or before June 1, 2001.

HISTORICAL NOTE

Section amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-61 Eligible Building.

To qualify as an eligible building, a building shall be located in an eligible revitalization area and:

(a) shall meet the criteria set forth in paragraphs (1), (2), (3) or (4) below:

(1) such building is eligible to obtain benefits under Title 2-D of Article 4 of the Real Property Tax Law, or would be eligible to receive benefits under such title except that such property is exempt from real property taxation and the requirements of paragraph (b) of subdivision seven of section four hundred eighty-nine-dddd of such law have not been satisfied, provided that application for such benefits was made after June 30, 1995, and before July 1, 2005, that construction or renovation of such building or structure was described in such application, that such building or structure has been substantially improved by such construction or renovation, and that the minimum required expenditure as defined in such title has been made within such period of time established by the applicable provisions of Title 2-D of Article 4 of the Real Property Tax Law for the construction of a new building or structure; or

(2) such building is the subject of an IDA inducement resolution adopted by the IDA after June 30, 1995 and before July 1, 2005, to receive financing by IDA, provided that IDA financing has been used in whole or in part to substantially improve the building by construction or renovation, that expenditures made for improvements to the building have been made in excess of twenty percent (20%) of the assessed value of the real property and buildings, and that such expenditures have been made within thirty-six (36) months after the earlier of: (A) the issuance by IDA of

bonds for such financing; or (B) the conveyance of title to such building to IDA; or

(3) such building is owned by the City or UDC, and is subject to a lease that was approved in accordance with the applicable provisions of the Charter or by UDC's board of directors, as the case may be, and such approval was obtained after June 30, 1995, and before July 1, 2005, provided that expenditures have been made for improvements to such real property in excess of twenty percent (20%) of the assessed value of the real property and buildings, and that such expenditures have been made within thirty-six (36) months after the effective date of such lease; or

(4) is eligible to obtain benefits as mixed-use property, or would be eligible to obtain benefits as mixed-use property except that such building is exempt from real property taxation and the requirements of paragraph (b) of subdivision ten of section four hundred eighty-nine-ccccc of the Real Property Tax Law of the State of New York have not been satisfied, provided that application was made after June 30, 1995, and before July 1, 2000, that such building has been substantially improved by such renovation, and that the minimum required expenditure as defined in such title has been made;

(b) such construction or renovation described in subdivision (a) of this section shall occur subsequent to filing for a building permit for such construction or renovation. In the case where a building permit is not required for renovation or construction (e.g., installation of machinery), an application shall be filed prior to beginning any work on the building the expenditures for which are described in subdivision (a) of this section. Such fact must be documented by a written statement by a licensed professional architect or licensed professional engineer sworn to or affirmed under penalties of perjury;

(c) such building or portion thereof shall have provisions to receive electricity either: (i) directly from a utility; or (ii) from NYCPUS; and

(d) such building or portion thereof is metered or submetered in accordance with the provisions set forth in paragraph §5-63(d)(1) of these rules.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §16, eff. July 25, 2004. [See

T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-62 Eligible Redistributor of Energy.

(a) Only eligible redistributors of energy and qualified eligible redistributors of energy, as described in, and to the extent permitted by, the Act and these rules, are eligible for special rebates under LMEP.

(b) To qualify for benefits as an eligible redistributor of energy, an applicant must own or lease an eligible building, or a portion thereof, and purchase energy services on a metered basis from a utility or NYCPUS, and:

(1)(i) resell or otherwise redistribute such energy services to one or more eligible revitalization area energy users that occupy such eligible building; or

(ii) consume or use such energy services itself and qualify as an eligible revitalization area energy user; and

(2) individually and accurately meter or submeter the energy services it redistributes in accordance with the provisions set forth in paragraph §5-63(d)(1) of these rules.

(c) A person that owns or leases any portion of an eligible building containing mixed-use property shall not be an eligible redistributor of energy unless that portion of such mixed-use property used for commercial purposes is metered by a utility or NYCPUS directly and separately from other portions of such mixed-use property.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-63 Eligible Revitalization Area Energy Users.

(a) To qualify for benefits as an eligible revitalization area energy user, a person shall: (1) purchase or otherwise receive energy services for its own use either directly from a utility or NYCPUS or from an eligible redistributor of energy or a qualified eligible redistributor of energy;

(2) occupy, operate or manage premises in an eligible building or a targeted eligible building; and

(3) be metered or submetered in accordance with the provisions set forth in subdivision (d) of this §5-63.

(b) A person shall not qualify as an eligible revitalization area energy user if such person engages in any of the following activities or uses in an eligible building or targeted eligible building:

(1) occupying residential space;

(2) engaging primarily in manufacturing activity;

(3) operating a hospital;

(4) operating a hotel; or

(5) occupying retail space.

(c) An eligible redistributor of energy shall be an eligible revitalization area energy user with respect to:

(1) vacant premises within an eligible building which have been constructed or renovated by such eligible redistributor of energy for occupancy by an eligible revitalization area energy user other than such eligible redistributor of energy; and

(2) common areas, systems and facilities to the extent such common areas, systems and facilities are used by eligible revitalization area energy users and such usage is not billed to such users, except that a person shall not be an eligible revitalization area energy user of common areas, systems and facilities located in mixed-use buildings unless such common areas, systems and facilities are separate from the common areas, systems and facilities that serve that portion of the mixed-use property used for residential purposes and serve only that portion of such mixed-use property used for commercial purposes.

(d) A person shall not qualify as an eligible revitalization area energy user if the premises occupied, operated or managed by such person:

(1) exceed the lesser of ten thousand (10,000) contiguous square feet in area or the entire floor of an eligible building or targeted eligible building and are not individually and accurately metered or submetered to determine the occupant's usage of energy services. A person that occupies more than one (1) floor of an eligible building or targeted eligible building or more than ten thousand (10,000) contiguous square feet, is required to have only one (1) meter or submeter for its premises; or

(2) are located in that portion of mixed-use property used for commercial purposes, and such portion is not metered by a utility or NYCPUS directly and separately from other portions of such mixed-use property.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-64 Eligible Charges and Eligible Public Utility Service Charges.

(a) **Eligible charges.** (1) Eligible charges are charges for energy services purchased from a utility at a rate or rates established pursuant to an order or rule of the PSC or FERC, other than charges for the purchase of the commodity of electricity, and shall include applicable rate reductions for economic development or similar purposes, and all taxes payable thereon and shall exclude charges in accordance with paragraph (2) of this subdivision (a).

(2) Eligible charges shall not include the following charges:

(i) charges for energy services used by persons that are not eligible revitalization area energy users;

(ii) any special charges on bills relating to such energy services, including, but not limited to, collection charges, late payment charges or excess distribution charges, or any additional fee charged by an eligible redistributor of energy for energy services, as authorized by subdivision §5-71(g) of these rules; and

(iii) charges for energy services used for common areas, systems and facilities to the extent such services are excluded pursuant to subparagraph (3)(ii) of this section.

(3)(i) Except as set forth in subparagraph (ii) of this subdivision, eligible charges shall include charges for energy services used for common areas, systems and facilities of an eligible building meeting the criteria set forth in paragraphs

(1), (2) or (3) of subdivision §5-61(a) of these rules to the extent such common areas, systems and facilities are used by eligible revitalization area energy users, except that charges attributable to other users, if minor and incidental, may be included in eligible charges for such common areas, systems and facilities.

(ii) Eligible charges shall not include charges for energy services used for common areas, systems and facilities of an eligible building meeting the criteria set forth in paragraph §5-61(a)(4) of these rules, unless such common areas, systems and facilities are separate from the common areas, systems and facilities that serve that portion of the mixed-use property used for residential purposes and serve only that portion of such mixed-use property used for commercial purposes.

(b) **Eligible public utility service charges.** (1) Eligible public utility service charges are actual charges for energy services provided by a public utility service, including charges for public utility administrative services, and shall include all taxes payable thereon, and shall exclude charges in accordance with paragraph (2) of this subdivision (b).

(2) Eligible public utility service charges shall not include the following charges:

(i) charges for energy services used by persons that are not eligible revitalization area energy users;

(ii) any special charges on such bills relating to energy services, including, but not limited to, collection charges, late payment charges or excess distribution charges, or any additional fee charged by an eligible redistributor of energy or qualified eligible redistributor of energy for energy services, as authorized by subdivision §5-71(g) of these rules; and

(iii) charges for energy services used for common areas, systems and facilities to the extent such energy services are excluded pursuant to paragraph (3)(ii) of this section.

(3)(i) Except as set forth in subparagraph (ii) of this subdivision, eligible public utility charges shall include charges for energy services used for common areas, systems and facilities of an eligible building meeting the criteria set forth in paragraphs (1), (2) or (3) of subdivision §5-61(a) of these rules or a targeted eligible building meeting the criteria set forth in paragraph (1), (2) or (3) of subdivision (q) of §25-aa of the Act to the extent such common areas, systems and facilities are used by eligible revitalization area energy users, except that charges attributable to other users, if minor and incidental, may be included in eligible charges for such common areas, systems and facilities.

(ii) Eligible public utility service charges shall not include charges for energy services used for common areas, systems and facilities of an eligible building meeting the criteria set forth in paragraph §5-61(a)(4) of these rules or a targeted eligible building meeting the criteria set forth in paragraph (4) of subdivision (q) of §25-aa of the Act, unless such common areas, systems and facilities are separate from the common areas, systems and facilities that serve that portion of the mixed-use property used for residential purposes and serve only that portion of such mixed-use property used for commercial purposes.

(c)(1) An eligible redistributor of energy or qualified eligible redistributor of energy has the burden of demonstrating to the commissioner that charges for energy services are eligible charges or eligible public utility service charges. If a determination of such charges cannot be ascertained by the commissioner without a survey or such redistributor is not satisfied with the commissioner's determination of such redistributor's eligible charges or eligible public utility service charges, such redistributor may request that the commissioner cause a survey to be conducted by a licensed professional engineer satisfactory to DBS at such redistributor's expense. Upon completion of the survey, the professional who prepares such survey shall submit the report, together with a certification as to the amount of eligible charges or eligible public utility service charges, to the commissioner for his or her review.

(2) The commissioner, after reviewing all relevant documentation submitted by the applicant, shall, in his or her sole discretion, determine the amount of charges that constitute the eligible redistributor's or qualified eligible redistributor's eligible charges or eligible public utility service charges to which a special rebate may be applied. If such redistributor disagrees with the commissioner's findings, such redistributor may request an opportunity to be heard in

accordance with the procedures set forth in §§5-45, 5-46 and 5-47 of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

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CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-65 Special Rebates for Users and Redistributors that Applied for LMEP Benefits After October 31, 2000.

(a) Except as otherwise provided in subdivision (b) of this section, a utility that sells energy services to either an eligible redistributor of energy that applied for LMEP benefits after October 31, 2000, or a directly metered eligible revitalization area energy user that applied for LMEP benefits after October 31, 2000, shall make a special rebate to such redistributor or such user, as the case may be, equal to the following percentages of eligible charges:

Months During Benefit Period Special Rebate for Energy Services

first through ninety-sixth 45%

ninety-seventh through one hundred eighth 36%

one hundred ninth through one hundred twentieth 27%

one hundred twenty-first through one hundred thirty-second 18%

one hundred thirty-third through one hundred forty-fourth 9%

(b) A utility that sells energy services to either an eligible redistributor of energy that applied for LMEP benefits after October 31, 2000 and that owns or leases an eligible building that has been designated as a landmark site before

the issuance of a certificate of eligibility to such redistributor, or to a directly metered eligible revitalization area energy user occupying premises in such building that applied for LMEP benefits after October 31, 2000, shall make a special rebate to such redistributor or such user, as the case may be, equal to the following percentages of eligible charges:

Months During Benefit Period Special Rebate for Energy Services

first through one hundred eighth 45%

one hundred ninth through one hundred twentieth 36%

one hundred twenty-first through one hundred thirty-second 27%

one hundred thirty-third through one hundred forty-fourth 18%

one hundred forty-fifth through one hundred fifty-sixth 9%

(c) Where, pursuant to a written agreement between NYCPUS and the power authority of the state of New York, NYCPUS sells energy services to an eligible redistributor of energy or a directly metered eligible revitalization area energy user that applied for and was certified as such after October 31, 2000, such utility shall make a discount to NYCPUS and NYCPUS shall make a special rebate to such eligible redistributor of energy or such directly metered eligible revitalization area energy user, which discount and special rebate shall be the product of the eligible charges to such eligible redistributor of energy or such directly metered eligible revitalization area energy user and the applicable percentage for a special rebate for energy services in the applicable schedule contained in subdivision (a) or (b) of this section.

HISTORICAL NOTE

Section amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-66 Special Rebates for Redistributors and Users that Applied for LMEP Benefits Prior to November 1, 2000 and Were Certified Prior to July 1, 2001. [Repealed]

HISTORICAL NOTE

Section repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Section added City Record June 18, 2001 eff. July 18, 2001.

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CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-67 Special Rebates for Redistributors and Users that Applied for LMEP Benefits Prior to November 1, 2000.

(a) Paragraph (1) of subdivision (a) of §25-bb of the general city law states that the "that the department of business services of a city having a population of one million or more may increase the percentages set forth in §5-65 of these rules at its discretion in order to maintain the special rebate at levels comparable to those historically provided under the program, pursuant to rules that are generally applicable to distinct classes of energy users." In accordance with this provision, the percentages set forth in this section of the rules shall be applicable to the calculations of special rebates for all eligible redistributors of energy or directly metered eligible revitalization energy users that applied for LMEP benefits prior to November 1, 2000 and for qualified eligible energy redistributors of energy that were certified before November 1, 2000. These percentages shall be in place from the first billing cycle beginning on or after April 30, 2003.

(b) Except as set forth in subdivision (d) of this section, for all billing cycles prior to the ninety-seventh month of each eligible redistributor of energy's or directly metered eligible revitalization energy user's benefit period occurring during the period beginning June 1, 2001, each redistributor or user shall receive rebates on eligible charges as specified in this paragraph; provided that the applicable rebate percentages shall not, for any affected electric account, exceed 100% of the eligible charges charged in any billing cycle.

(1) The rebate percentage to be applied to eligible charges for energy services provided by a utility pursuant to its "PSC No. 9-Electricity Rate Schedule" or "PSC No. 2-Retail Access Rate Schedule" shall equal the percentages

specified in Attachment A of Appendix A of these rules, which shall vary depending on such redistributor's or user's average monthly load factor, applicable service classification and the applicable rate, and whether such redistributor or user receives discounts on service pursuant to a service rider. If, for any affected redistributor or user, eligible charges for energy services were rendered at more than one service classification and/or at more than one rate for a service classification, the rebate percentages specified in Attachment A of Appendix A of these rules shall apply to the extent that each applicable service classification and/or rate and/or service rider applies to such redistributor or user. To the extent that such redistributor or user is served under the utility's "PSC No. 9-Electrical Rate Schedule" its rebate percentages shall be determined as if such redistributor or user was served under the utility's "PSC No. 2-Retail Access Rate Schedule."

(2) The rebate percentage to be applied to eligible public utility service charges for energy services provided by NYCPUS pursuant to its "Service Tariff No. 4 Rate Schedule" shall equal the percentages specified in Attachment B of Appendix A of these rules, which shall vary depending on such redistributor's or user's average monthly load factor, the applicable service classification and the applicable rate, and whether such redistributor or user receives discounts on service pursuant to a service rider or other tariff provisions. If, for any affected redistributor or user, eligible public utility service charges for energy services were rendered at more than one service classification and/or at more than one rate for a service classification or if discounted service was provided to part of the consumption rendered through an account pursuant to a service rider or tariff provision, the rebate percentages specified in Attachment B of Appendix A of these rules shall apply to the extent that each applicable service classification and/or rate and/or service rider or other tariff discount applies to such redistributor or user.

(c) Except as otherwise provided in subdivision (d) of this section, for all billing cycles after the ninety-sixth month of the benefit period and thereafter, the applicable rebate percentages on eligible charges, determined as specified in §5-67(b) or (e) of these rules, shall be multiplied by an adjustment factor, depending on the month of the benefit period in which the energy services were rendered; provided that the applicable rebate percentages shall not, for any affected eligible redistributor of energy or directly metered eligible revitalization energy user, exceed 100% of the eligible charges charged in any billing cycle. The adjustment factors are as follows:

Month of Benefit Period Adjustment Factor

97 through 108 0.8

109 through 120 0.6

121 through 132 0.4

133 through 144 0.2

145 and thereafter 0.0

(d) Where a utility that sells energy services to an eligible redistributor of energy that owns or leases an eligible building that has been designated as a landmark site before the issuance of a certificate of eligibility to such redistributor, or to a directly metered eligible revitalization area energy user occupying premises in such building that applied for LMEP benefits prior to November 1, 2000, all billing cycles in the one hundred and ninth month of each of the above-noted benefit periods and thereafter shall have the applicable rebate percentages on eligible charges, determined as specified in §5-67(b) or (e) of these rules, multiplied by an adjustment factor, depending on the month of the benefit period in which the energy services were rendered; provided that the applicable rebate percentages shall not, for any affected electric account, exceed 100% of the eligible charges charged in any billing cycle. The adjustment factors are as follows:

Month of Benefit Period Adjustment Factor

109 through 120 0.8

121 through 132 0.6

133 through 144 0.4

145 through 156 0.2

157 and thereafter 0.0

(e) Where, pursuant to a written agreement between NYCPUS and the power authority of the state of New York, NYCPUS sells energy services to a qualified eligible redistributors of energy that has been individually approved by such power authority and certified prior to November 1, 2000, or to an eligible redistributor of energy or directly metered eligible revitalization area energy user that applied for benefits prior to November 1, 2000 and was certified as a redistributor or user after October 31, 2000, such utility shall make a discount to NYCPUS and NYCPUS shall make a special rebate to such qualified eligible redistributors or such eligible redistributor or user, which discount and special rebate shall be the product of the eligible public utility service charges to such qualified eligible redistributor of energy or such eligible revitalization area energy user and the applicable percentage for a special rebate for energy services in the applicable schedule contained in Attachment B of Appendix A of these rules.

HISTORICAL NOTE

Section amended City Record Mar. 28, 2003 eff. Apr. 27, 2003. [See T66 §5-14 Note 1]

Section added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

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CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER C IMPLEMENTATION

§5-71 Implementation by Eligible Redistributor of Energy or Qualified Eligible Redistributor of Energy.

(a) An eligible redistributor of energy or qualified eligible redistributor of energy shall reduce the energy services bills rendered to eligible revitalization area energy users that are not directly metered and that occupy, operate or manage premises in eligible buildings owned or leased by such redistributor by an amount equal, in the aggregate, to one hundred percent (100%) of each special rebate received by such redistributor.

(b) An eligible redistributor of energy or qualified eligible redistributor of energy shall individually and accurately meter or submeter the energy services sold or otherwise redistributed by such redistributor to each such eligible revitalization area energy user or other occupant of eligible buildings so as to enable a determination of each such user's or occupant's usage of energy services, provided such user or occupant occupies, operates or manages premises that equal or exceed the lesser of ten thousand (10,000) contiguous square feet in area or the entire floor of a building.

(c) In order to establish the usage of energy services attributable to the tenants occupying an eligible building, an eligible redistributor of energy or qualified eligible redistributor of energy shall have a load study performed by a licensed professional engineer on all non-eligible users that are not individually metered or submetered. In addition, such redistributor shall have all of the submeters attributable to non-eligible users read by a licensed professional engineer.

(d) If an eligible redistributor of energy or qualified eligible redistributor of energy charges amounts to eligible

revitalization area energy users and other users that vary annually or more frequently with the costs incurred by such redistributor for the operation of common areas, systems and facilities, such redistributor shall reduce such charges by the portion of the special rebates attributable thereto.

(e) An eligible redistributor of energy or qualified eligible redistributor of energy shall allocate the reductions required by subdivision (a) of this §5-71 in direct proportion to each such eligible revitalization area energy user's use of energy services. Such reductions shall be determined as follows:

(1) The total amount of such redistributor's energy services bill shall be divided by the total amount of kilowatt hours used by the eligible building to determine the cost per kilowatt hour charge for the eligible building;

(2) If the premises of such eligible revitalization area energy user or other user are submetered, such reduction shall be established by multiplying: (A) the amount of energy services use determined by such submeter; by (B) the dollar per kilowatt charge determined in (1) above; by (C) the amount of the special rebate set forth in §5-65 or §5-67 of these rules;

(3) If two or more eligible revitalization area energy users or other users share a submeter, the amount of the reduction to be shared by the eligible revitalization area energy users shall be determined in accordance with (2) above. This amount shall then be allocated among such users in direct proportion to the floor area of the premises occupied, operated or managed by each such user;

(4) If the premises of such eligible revitalization area energy user is not required to be submetered by these rules, such discount shall be determined as follows:

(A) Divide the portion of the special rebate received by all submetered eligible revitalization area energy users by their total square footage to determine the special rebate per square footage amount; and

(B) Multiply the special rebate per square footage amount determined in (A) above by the square footage of each non-submetered eligible revitalization area energy user to determine the amount of the special rebate each such non-submetered eligible revitalization area energy user is entitled to;

(5) The special rebate to be applied to common areas, systems and facilities shall be the total rebate received by the eligible building less: (A) the total special rebate received by each submetered eligible revitalization area energy user as determined in (2) above; and (B) the total special rebate received by each submetered eligible revitalization area energy user sharing a submeter as determined in (3) above; and (C) the total special rebate received by all non-submetered eligible revitalization area energy users as determined in (4) above.

(f) If the premises of an eligible revitalization area energy user are directly metered, such discount shall be determined by such meter.

(g) An eligible redistributor of energy or qualified eligible redistributor of energy shall limit charges to those eligible revitalization area energy users that are submetered in accordance with this section to a price for the purchase of energy services that shall be no higher than the price paid by such redistributor, provided that an additional fee, not exceeding twelve percent (12%) of such sales price, may be charged by such redistributor for energy services sold to such eligible revitalization area energy users.

(h) An eligible redistributor of energy or a qualified eligible redistributor of energy shall separately state in all energy bills rendered by such redistributor to an eligible revitalization area energy user for sales of energy services the amount of the reduction in charges for such services representing the share of the special rebate allocated to such user, or that no reduction has been made, and shall state the following: "You may be entitled to share a rebate which your landlord has received for charges for energy services pursuant to the revitalization area energy rebate program. The amount is separately stated and identified in this bill." Any deviation from this language must be approved in advance

by DBS.

(i) An eligible redistributor of energy or qualified eligible redistributor of energy shall keep records verifying compliance with the requirements of LMEP, and allow DBS access to such records.

(j) An eligible redistributor of energy or qualified eligible redistributor of energy shall provide access to eligible buildings or targeted eligible buildings to DBS for the purpose of inspecting meters, submeters and other equipment and verifying the accuracy of any application or supplement thereto filed with DBS and DOF.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Subd. (e) amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Subd. (e) par (2) amended City Record Mar. 28, 2003 eff. Apr. 27, 2003. [See T66 §5-14 Note 1]

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SUBCHAPTER C IMPLEMENTATION

§5-72 Implementation by a Utility and NYCPUS.

(a) Where a utility or NYCPUS is required to make a special rebate pursuant to §5-65 or §5-67 of these rules, they shall reduce each energy services bill for each eligible redistributor of energy or qualified eligible redistributor of energy or directly metered eligible revitalization area energy user by the full amount of the special rebate that shall have accrued for the period covered by each such energy services bill. A utility or NYCPUS shall cease to make such reductions in such energy services bills upon receipt of notification from DBS that the certification of eligibility has been suspended or terminated, and a utility or NYCPUS shall change the amount of such reduction in accordance with notification from DBS.

(b) A utility shall not be required to make a special rebate to such eligible redistributor of energy or qualified eligible redistributor of energy in excess of the charges for energy services.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Subd. (a) amended City Record Mar. 28, 2003 eff. Apr. 27, 2003. [See T66 §5-14 Note 1]

Subd. (a) amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

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CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER C IMPLEMENTATION

§5-73 Granting of Utility Credit to a Utility.

(a) Where a utility has granted special rebates to recipients in accordance with the provisions set forth in §5-65 or §5-67 of these rules, it shall be entitled to a utility credit equal to the aggregate amount of all such special rebates it has provided to recipients.

(b) Such utility credit may be taken only as provided for in the code, these rules and rules promulgated by the commissioner of DOF, for the purpose of permitting utilities a deduction against certain taxes.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

Subd. (a) amended City Record Mar. 28, 2003 eff. Apr. 27, 2003. [See T66 §5-14 Note 1]

Subd. (a) amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

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CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-81 Forms and Filing of Application and Preapplication.

(a) All preapplication and application forms may be obtained from DBS, 110 William Street, 3rd Floor, New York, New York 10038, and, upon completion, forms shall be submitted to DBS at the above address. Only completed applications shall be considered by DBS in determining the applicant's eligibility, or ineligibility, under the Act and these rules.

(b) An applicant for benefits under LMEP shall file an application after June 30, 1995 and prior to the issuance of the first building permit for the construction or renovation required pursuant to §5-61 of these rules, but not later than June 30, 2005. For the purposes of these rules, the first building permit shall be the building permit which would, in the ordinary course, allow construction to proceed, even though: (i) such permit was granted before submission of completed plans and specifications for the entire building; (ii) such permit, or the application, plans or specifications upon which it was granted, are later amended; (iii) such permit shall have expired by limitation of time or otherwise become invalid; or (iv) another permit is issued for the same project on the basis of the same or similar plans.

(c) In the case where a building permit is not required for renovation or construction, an application must be filed prior to beginning any work on the building the expenditures for which would be the basis for the determination of whether an applicant has reached the eligibility requirements set forth in §5-61 of these rules. All preapplications must be filed not later than June 30, 2005.

(d) An applicant that purchases or leases an eligible building or a targeted eligible building or a portion thereof, the owner or lessor of which building or portion thereof has been receiving LMEP benefits, must file a preapplication to receive benefits within ninety (90) days of taking occupancy or signing a contract of sale or lease for such building, whichever is earlier.

(e) An applicant applying for benefits under §5-65(c) or §5-67(e) of these rules, must receive approval from NYCPUS prior to submitting its preapplication to DBS and provide evidence of such approval as part of such application.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Subds. (b), (c) amended City Record June 25, 2004 §17, eff. July 25, 2004.

[See T66 §5-02 Note 1]

Subd. (e) amended City Record June 18, 2001 eff. July 18, 2001.

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SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-82 Contents of Preapplication and Application.

(a) The applicant shall provide DBS with all information required in the preapplication form, including the following: the applicant's name; name and title of a contact person; telephone number; street address of the building site; block and lot number of the building site; Internal Revenue Service tax identification number; if applicable, the ICIP application number for the building site, and such other information as the commissioner deems necessary or useful for a preliminary determination that an applicant may be eligible to participate in LMEP.

(b) The applicant shall provide DBS with all information required in the application form and deemed necessary or useful for the administration of LMEP, including, but not limited to, the following:

(1) assessed value of the real property and building(s) for which the application has been submitted; total square footage of the building floor area; names and addresses of any parent, subsidiaries or affiliated companies; and the name and title of an individual authorized to complete the application on behalf of the applicant;

(2) estimated commencement date and completion date for construction or renovations;

(3) a certified copy of the deed for the eligible building, or portion thereof, and any lease to the applicant as lessee of the building or any portion thereof;

(4) a listing of all electricity account numbers serving the building or any portion thereof, and a copy of one (1) year's energy bills for each account number directly metered by a utility servicing the building or a sworn statement by the applicant if the applicant has not received one (1) year's bill;

(5) building floor plans;

(6) a list of every tenant or other person occupying, operating or managing premises in the building, including both eligible revitalization area energy users and other users, and the following information relating to such person: the business activity engaged in by such person; the square footage of the premises occupied, operated or managed by such person; contact person; telephone number; location in building identified on the building floor plans referred to in paragraph (v) of this subdivision; a list of the meter(s) or submeter(s) utilized by such person including meter identification numbers if submetered by the landlord or an eligible redistributor of energy or qualified eligible redistributor of energy; account number if directly metered by the utility or NYCPUS; a schematic or other description of the linkage between each such person's consumption of electricity or energy services and the appropriate direct utility meter; and number of employees;

(7) an applicant applying under the provisions set forth in subdivisions (a)(2), (3) or (4) of §5-61 of these rules, shall submit evidence that the expenditures required by such provisions have been made within the time period specified therein;

(8) copy of the relevant building permit issued by the Department of Buildings, if applicable;

(9) relevant documents evidencing the authority of the City, the IDA, UDC or other lessor to lease a building or premises to the applicant, including a copy of the inducement resolution issued by IDA to the applicant, the IDA lease or financing agreement, if applicable; and

(10) any other information, documentary or otherwise, including but not limited to, sworn statements and other data, that the commissioner deems relevant to evaluate the applicant's application.

(c) In addition to the requirements of subdivisions (a) and (b) of this §5-82, an applicant that purchases energy services from NYCPUS shall submit as part of its application, a written contract between the applicant and NYCPUS setting forth the agreement by NYCPUS to provide energy services to the applicant, and stating the conditions for the sale of such energy services.

(d) The applicant shall have the affirmative burden of proving its eligibility to the satisfaction of the commissioner as to each and every fact contained in its application.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-83 Application Filing Fee.

(a) The applicant shall submit to the commissioner with its preapplication a check for a non-refundable application fee in the following amount:

Square Footage of Building Fee

Less than 10,000 square feet $500

10,001 to 25,000 square feet $1,000

25,001 to 50,000 square feet $1,250

50,001 to 100,000 square feet $1,500

100,001 to 250,000 square feet $2,500

Over 250,000 square feet $5,000

(b) In addition to the filing fee, an applicant shall pay the costs of any survey conducted by or at the request of the

commissioner, to develop or verify any factual matters relating to the application.

(c) All fees shall be made payable by check or money order to the "New York City Department of Small Business Services."

HISTORICAL NOTE

Section amended City Record June 25, 2004 §18, eff. July 25, 2004. [See

T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-84 Representations and Warranties.

(a) As part of the preapplication, application, periodic reports and other reports required by the Act or these rules, the applicant shall certify and make such representations and warranties as may, from time to time, be necessary or appropriate to ensure compliance with the provisions of all applicable laws and these rules, including, but not limited to, the following:

(1) that all statements made by or on behalf of the applicant in connection with such applications and reports are made by any person authorized by the applicant to make such statements and having actual knowledge or documentary information sufficient to make informed and accurate statements, and that such person believes all such statements to be true;

(2) that the applicant has paid all of the real property taxes or water or sewer charges or payments in lieu of taxes or has paid timely installments of such taxes or payments in lieu of taxes in accordance with an agreement with a city agency with respect to an eligible building or targeted eligible building;

(3) that the applicant represents, acknowledges, covenants and agrees that it bears sole responsibility for paying the full amount of energy services costs to a utility and/or NYCPUS for which it is directly metered until such time as the special rebate (if any) granted to applicant under LMEP is reflected on the applicant's bill;

(4) that the applicant agrees to permit or cause permission to be granted to the City and its agents to inspect its building and real property upon notice during regular business hours; and

(5) any other representations or warranties as may be required in such applications or reports or requested by the commissioner.

(b) In addition to the requirements of subdivision (a) of this §5-84, the applicant shall covenant and agree to repay with interest at the prime rate, as reported in The New York Times (or similar periodical selected by the commissioner) on the effective date of its certificate of eligibility accrued from the date of receipt, the full amount of any benefits which the applicant has received if subsequently it is determined by the commissioner that the applicant was ineligible to receive those benefits for any reason.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-85 Approval of an Application.

(a) Approval by the commissioner of an application shall be based on a review of the following information:

(1) representations and/or certifications made by the applicant in its application;

(2) a review of the applicant's prior energy bills;

(3) a site visit performed by DBS; and

(4) any other relevant factors relating to use and occupancy which is deemed to be relevant in making such a determination.

(b) The commissioner, after reviewing all relevant information and documentation submitted, shall, in his or her sole discretion, determine what constitutes the applicant's or recipient's eligible charges. If the applicant or recipient disagrees or is unsatisfied with the commissioner's findings, the applicant or recipient may request an opportunity to be heard in accordance with the procedures set forth in Subchapter E of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

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CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-86 Notification to Applicant.

(a) If the commissioner grants an applicant's application for a certificate of eligibility, DBS shall forward a certificate of eligibility executed by the commissioner to the applicant.

(b) If the commissioner denies an applicant's application for a certificate of eligibility, the commissioner shall notify the applicant in writing, of the reason for such denial. The applicant may request an opportunity to be heard in accordance with the provisions set forth in Subchapter E of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-87 Certificate of Eligibility.

(a) An applicant shall execute the certificate of eligibility and return it to the commissioner within thirty (30) days of the issuance date stated on the certificate of eligibility. Failure of the applicant to comply with this subsection may result in a revocation of the certificate of eligibility.

(b) The certificate of eligibility shall evidence:

(1) the eligibility and qualification of an applicant as an eligible redistributor of energy or a qualified eligible redistributor of energy or as a directly metered eligible revitalization area energy user;

(2) the benefit period the eligible premises or targeted eligible premises is qualified for;

(3) the benefit an eligible redistributor of energy or a qualified eligible redistributor of energy or a directly metered eligible revitalization area energy user is qualified to receive; and

(4) the date of issuance.

(c) DBS shall coordinate with the recipient, a utility and/or NYCPUS and DOF, where applicable, to establish the benefit period of the certificate of eligibility, which shall be within two (2) months of execution by the applicant of the

certificate of eligibility.

(d) Subsequent to establishing the effective date of the certificate of eligibility, DBS shall affix such date to the applicant's certificate of eligibility and forward a copy of the fully completed and executed certificate of eligibility to the applicant and any other necessary party.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-88 Notification to a Utility and/or NYCPUS.

(a) DBS shall notify a utility and/or NYCPUS whichever is appropriate, in writing, of an applicant's eligibility to receive a special rebate by forwarding to them a certified copy of an applicant's certificate of eligibility executed in accordance with §5-87 of these rules.

(b) DBS shall notify a utility and/or NYCPUS, whichever is appropriate, in writing, of any changes in an applicant's certificate of eligibility as set forth in §5-87 of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-89 Periodic and Other Reports to DBS.

(a) During the benefit period, a recipient shall promptly notify the commissioner of any material changes which may affect a recipient's eligibility or the amount of the special rebate under LMEP, including but not limited to, changes in:

(1) sources of energy services;

(2) ownership of the eligible building or the targeted eligible building;

(3) establishment of new direct accounts;

(4) landlord's or directly metered tenant's usage of energy services;

(5) the type of metering or method of billing for usage of energy services at the eligible building or targeted eligible building;

(6) a change in the ratio between floor space occupied by eligible revitalization are energy users and that occupied by other occupants; and

(7) the new tenancy of a noneligible revitalization area energy user.

(b) During the benefit period, DBS must be immediately notified of any additional utility accounts acquired or changes in utility account numbers in the eligible building or targeted eligible building.

(c) When it appears that the percentage of non-eligible use in the eligible building or targeted eligible building changes so that the special rebate for the eligible building or targeted eligible building appears to change, a new load study shall be performed in order to ascertain the new special rebate for the eligible building or targeted eligible building.

(d) During the benefit period, a recipient shall submit to the commissioner a reporting form on September 30th, December 31st, March 31st and June 30th of each year, to document the current status of the recipient's continued eligibility under LMEP. Such reporting form shall include, but shall not be limited to, the following information:

(1) the use or type of operations conducted at the eligible building or targeted eligible building;

(2) any changes in the eligible building's breakdown of eligible versus non-eligible uses;

(3) a summary of building metering or submetering and utility accounts;

(4) architectural rendering of building floor plans showing any changes, including changes in floor space, type of common areas, systems and facilities;

(5) tenant list including, but not limited to, the following: square footage; contact person; telephone number; location in building; meter number if submetered by landlord or account number if directly metered by a utility; and number of employees;

(6) change in the size of tenants' premises;

(7) any additions to or changes in the linkage between an eligible revitalization area energy user's metering scheme and the utility's main direct meter; and

(8) such other information as the commissioner may request to determine eligible charges, eligibility and amount of special rebate.

(e) A qualified eligible redistributor of energy shall submit to DBS on an annual basis proof that the heating and cooling systems within the targeted eligible building continue to meet the performance standards specified in §7813.21 of the State conservation code, or if applicable, a municipal code authorized pursuant to such article, or such predecessor section to which such targeted eligible building, when constructed or substantially renovated, was subject.

(f) All such information may be used by the commissioner for the purpose of determining whether the recipient's certificate of eligibility should be suspended until a final determination of eligibility can be made and/or whether it shall be revoked or revised.

(g) Information received by the commissioner pursuant to this section or otherwise may be used by him or her to determine that a recipient does not satisfy the applicable eligibility criteria in the Act or these rules, and the commissioner may, among other things, suspend such recipient's certificate of eligibility until a final determination of eligibility can be made, or revise, terminate or revoke such recipient's certificate of eligibility.

(h) The commissioner shall notify the recipient, a utility and/or NYCPUS in writing of the determination to revise, suspend, terminate or revoke the recipient's certificate of eligibility. A utility and/or NYCPUS must modify its bills to such recipient to reflect the change in benefits which such revision, suspension, termination or revocation to a recipient's certificate of eligibility is intended to effect within thirty (30) days of receipt of written notice from the

commissioner of such action.

(i) A recipient may request an opportunity to be heard in accordance with Subchapter E of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

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CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER E OPPORTUNITIES TO BE HEARD

§5-91 Requests for an Opportunity to be Heard.

Within thirty (30) days after the mailing of a written determination by the commissioner or his or her designee pursuant to the Act or these rules, an applicant or recipient that wants to contest such determination may submit documentation supporting its position to the commissioner or his or her designee and may request an opportunity to be heard.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

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CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER E OPPORTUNITIES TO BE HEARD

§5-92 Opportunity to be Heard.

If an opportunity to be heard is requested in accordance with §5-91 of these rules, the commissioner or his or her designee shall, within a reasonable period of time, review the application, all supporting documentation relating to the application and the documentation submitted by the applicant or recipient relating to the determination and schedule a date for a meeting with such applicant or recipient. At such meeting the applicant or recipient may present its arguments and discuss its supporting documentation with the commissioner or his or her representative.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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SUBCHAPTER E OPPORTUNITIES TO BE HEARD

§5-93 Final Determination; Notification.

(a) After review of the documentation and arguments submitted by the applicant or recipient the commissioner or his or her designee shall make a final agency deter- mination.

(b) The commissioner or his or her designee shall notify the applicant or recipient in writing within a reasonable period of time of his or her final determination on the issue or issues presented by such applicant or recipient pursuant to §5-92 of these rules.

(c) The commissioner or his or her designee shall notify the applicant or recipient, the appropriate utility, NYCPUS, the vendor and DOF, whichever is applicable, of a final determination to issue, deny, revise, suspend or revoke a certificate of eligibility.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

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CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

APPENDIX A RATE SCHEDULES

APPENDIX A RATE SCHEDULES

ATTACHMENT A

CON EDISON ELECTRIC SERVICE

PSC No. 2 Retail Access Rate Schedule and PSC No. 9

Electric Rate Schedule

	Low Tension Service													
	SC2 and SC2-RA				SC4, SC9, SC4-RA and SC9-RA								Power for Jobs (Rider Q)	
	Rate I		Rate II		Rate I				Rate II			Rate III	Rate I	Rate II
	Standard Rate	Rider I Area Devel Rate	Standard Rate	Rider I Area Devel Rate	Standard Rate	Rider J Business Incentive Rate	Rider I Area Devel Rate	Rider L Empire Zones Rate	Standard Rate	Rider J Business Incentive Rate	Rider S Industrial Employ Growth	Standard Rate		
Average Monthly Load Factor														
Less than 20%	60%	63%	72%	76%	60%	88%	66%	66%	57%	75%	81%	53%	66%	66%
20% to 30%	60%	63%	72%	76%	65%	94%	71%	71%	62%	84%	91%	58%	73%	73%
31% to 40%	60%	63%	72%	76%	68%	99%	74%	74%	67%	92%	99%	63%	79%	79%
41% to 50%	60%	63%	72%	76%	71%	100%	77%	77%	71%	99%	100%	68%	85%	85%
51% to 60%	60%	63%	72%	76%	73%	100%	79%	79%	76%	100%	100%	72%	92%	91%
61% to 70%	60%	63%	72%	76%	75%	100%	81%	81%	80%	100%	100%	76%	98%	98%
Greater than 70%	60%	63%	72%	76%	77%	100%	82%	82%	84%	100%	100%	79%	100%	100%

	High Tension Service									
	SC4, SC9, SC4-RA and SC9-RA								Power for Jobs (Rider Q)	
	Rate I				Rate II			Rate III	Rate I	Rate II
	Standard Rate	Rider J Business Incentive Rate	Rider I Area Devel Rate	Rider N Empire Zones Rate	Standard Rate	Rider J Business Incentive Rate	Rider S Industrial Employ Growth	Standard Rate		
Average Monthly Load Factor										
Less than 20%	68%	97%	75%	75%	70%	91%	97%	64%	72%	91%
20% to 30%	73%	100%	79%	79%	77%	100%	100%	71%	79%	100%
31% to 40%	76%	100%	82%	82%	83%	100%	100%	77%	86%	100%
41% to 50%	79%	100%	85%	85%	89%	100%	100%	82%	93%	100%
51% to 60%	81%	100%	87%	87%	95%	100%	100%	88%	100%	100%
61% to 70%	83%	100%	88%	88%	99%	100%	100%	92%	100%	100%
Greater than 70%	85%	100%	90%	90%	100%	100%	100%	97%	100%	100%

HISTORICAL NOTE

Attachment repealed and added City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT B

NEW YORK CITY PUBLIC UTILITY SERVICE

ELECTRIC SERVICE

Service Tariff No. 4

	Low Tension						High Tension					
	Rate I			Rate II			Rate I			Rate II		
	Standard Rate	Option 3 Discount	Option 5 Discount	Standard Rate	Option 3 Discount	Option 5 Discount	Standard Rate	Option 3 Discount	Option 5 Discount	Standard Rate	Option 3 Discount	Option 5 Discount
Average Monthly Load Factor												
Less than 20%	59%	57%	57%	58%	56%	56%	62%	60%	60%	79%	76%	76%
20% to 30%	63%	60%	60%	62%	60%	60%	66%	64%	64%	86%	82%	82%
31% to 40%	67%	64%	64%	66%	63%	63%	70%	67%	67%	92%	88%	88%
41% to 50%	70%	67%	67%	69%	66%	66%	74%	71%	71%	98%	93%	93%
51% to 60%	74%	71%	71%	73%	70%	70%	79%	75%	75%	100%	99%	99%
61% to 70%	78%	74%	74%	76%	73%	73%	83%	79%	79%	100%	100%	100%
Greater than 70%	81%	78%	78%	80%	76%	76%	87%	82%	82%	100%	100%	100%

HISTORICAL NOTE

Attachment repealed and added City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT C

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT D

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

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CHAPTER 6 INDUSTRY OWNERSHIP PROGRAM

§6-01 Definitions.

Application package. An "Application package" is a completed package of documents containing all of the information required by the Department of Business Services, pursuant to §6-03(a) of the Rules.

Application Review Committee. "Application Review Committee" shall mean the committee at the Department of Business Services which will review and consider each completed application for a grant submitted pursuant to §6-03 of the Rules. The Committee shall be comprised of: the deputy commissioner; the assistant commissioner for industry relations; the general counsel of the Department of Business Services; and the director of the real estate assistance unit of the Department of Business Services .

BEP. The "BEP" is the Business Expansion Program unit of the Department of Business Services.

Commissioner. The "Commissioner" is the Commissioner of the Department of Business Services.

Department. "Department" means the New York City Department of Business Ser- vices.

Eligible expenses. "Eligible expenses" are expenses for which funds awarded under a grant pursuant to IOP may be used, as specified in §6-06(e) of the Rules.

Grant. A "Grant" is the funds awarded to successful Industry Groups pursuant to IOP.

Industry center. An "Industry center" is a building which has been identified by an applicant Industry Group as the potential site for purchase or long-term lease by the Industry Group, and for which the Industry Group is seeking a grant

of funds under the IOP.

Industry group. An "Industry group" is a legal entity which consists of a group of at least five (5) distinctly owned and controlled commercial and for-profit firms, as determined by the criteria outlined in §6-04(c) of the Rules, or of at least three (3) distinctly owned and controlled firms, as determined by the criteria outlined in §6-04(c) of the Rules, which employ sixty per cent (60%), or more, of the New York City work force in the industry of such applicant Industry Group, as defined by the New York State Department of Labor's four-digit SIC code statistics.

Industry Ownership Program, or IOP. An "Industry Ownership Program, or IOP" shall mean the program under which an Industry Group shall receive a grant to pay for Eligible Expenses in acquiring and renovating a building.

Long-term lease. A "Long-term lease" is a lease with a minimum term of seven (7) years.

Qualification rating sheet. The "Qualification rating sheet" is the rating system to be employed by the Application Review Committee to rate Application Packages, as specified in §6-05 of the Rules.

Rules. "Rules" shall mean the Rules Governing the Industry Ownership Program setting forth the requirements for Industry Groups seeking to obtain a grant under the Industry Ownership Program.

SIC. "SIC" shall mean the New York State Department of Labor's four-digit Standard Industry Code.

Study. "Study" shall mean the preliminary architectural and engineering study of a building under consideration for purchase or Long-Term Lease by an Industry Group applicant to determine such building's suitability for occupancy by the Industry Group, to be made pursuant to §6-04(e) of the Rules.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 64, §3-01.

Section in original publication July 1, 1991.

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Title 66 Department of Business Services

CHAPTER 6 INDUSTRY OWNERSHIP PROGRAM

§6-02 Marketing Plan.

The Department shall market the IOP to attract Industry Group applicants for this program. The Department shall market the program by performing activities which shall include, but shall not be limited to, the following:

(a) The Department shall publish and distribute an IOP promotional brochure to trade associations, firms and real estate brokers.

(b) The Department, through its industry relations specialists, shall conduct consultations with individual firms and industry-wide seminars.

(c) The Department shall publicize the IOP through local development and other not-for-profit corporations, the real estate community and the borough presidents' offices.

(d) The Department shall advertise the IOP in the City Record.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 64, §3-02.

Section in original publication July 1, 1991.

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CHAPTER 6 INDUSTRY OWNERSHIP PROGRAM

§6-03 Application Procedure.

(a) To apply for a grant under the IOP, an industry group must complete and submit an application package to the Department, by the close of business on April 28, 1989; provided, however, that the Commissioner may, in his discretion, extend the application deadline or establish a second round application period by publishing notice of such action in The City Record. Such application package shall include:

(1) a completed application form for the industry group applicant;

(2) a completed application form for each individual firm within the industry group applicant;

(3) a management plan for the expenditure of the grant;

(4) a copy of the certificate of incorporation for the industry group, or such other evidence of the industry group's legal status as the commissioner shall request;

(5) a completed project plan, which shall include the following information:

(i) reasonable assumptions about project costs;

(ii) realistic projections about project feasibility;

(iii) a statement of objectives;

(iv) a financial feasibility analysis, including a projection of income and expenses of the project;

(v) a plan of action should any firm drop out;

(vi) an indication that the industry group applicant has provided an equity contribution of at least ten percent (10%) of the total project costs;

(vii) a statement which identifies and profiles the designated leader of the industry group applicant, including a discussion of the prior work done by such leader, and an estimation of the amount of time such leader expects to commit to the project on a monthly basis;

(viii) an architect's or engineer's report, which shall supply, at a minimum, acceptable uses of the site, ranking those uses in order of acceptability from the most acceptable to least acceptable, with recommendations for the "highest and best" use of the site; and

(ix) a statement of the economic contribution of the proposed project on the community; the local industries which are served; and the contribution of the proposed project on the community's and City's economy to the extent the effect on the industry is positive for other local industries.

(6) such other information as the Department shall request.

(b) Upon receipt of the application package, a BEP project manager shall review the material for completeness. Such project manager shall return incomplete application packages to the industry group applicant.

(c) If an application package is accepted as complete, BEP shall send an acknowledgment letter to the industry group.

(d) Should the project manager determine that an industry group is ineligible for a grant, a rejection letter, stating the reasons for rejection, shall be sent to the industry group.

(e) At such date as the commissioner shall specify, the application review committee shall convene to review all of the application packages received.

(f) In reviewing the application packages, the application review committee shall use the evaluation criteria stated in §6-05.

(g) The application review committee shall determine which industry group applicants are best qualified to receive an IOP grant. The application review committee's determination shall be final.

(h) After the Application Review Committee has approved the grants, approval letters, explaining the requirements for IOP disbursements, shall be sent to the successful Industry Group(s).

(i) If, after the Application Review Committee has reviewed all of the Application Packages, and has approved or denied the grants, there still remains grant money, the Commissioner may specify a second date by which Application Packages may be submitted to the Department and will be considered by the Application Review Committee.

(j) Each Industry Group applicant awarded a grant, and each of the firms which comprise such Industry Group, will be required to comply with all applicable the Department contracting procedures, including, but not limited to, the submission of information necessary for the performance of background investigations.

HISTORICAL NOTE

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Title 66 Department of Business Services

CHAPTER 6 INDUSTRY OWNERSHIP PROGRAM

§6-04 Qualifications for Eligibility.

(a) Eligibility shall be limited to established Industry Groups.

(b) An Industry Group must be comprised of either:

(1) at least five (5) distinctly owned and controlled commercial, for-profit firms; or

(2) at least three (3) distinctly owned and controlled firms employing sixty per cent (60%), or more, of the New York City work force in the industry of such applicant Industry Group, as defined by the New York State Department of Labor four-digit SIC code statistics.

(c) A distinctly owned and controlled firm is one which meets the following criteria:

(1) a firm will not be considered a distinctly owned and/or controlled firm, if it is owned or controlled by a person or firm in the same or similar line of work, and such other person or firm is a part of the industry group applicant;

(2) a firm will not be considered a distinctly owned or controlled firm if the firm's officers, directors, or employees shall serve in like capacities with another firm in the same or similar line of work, and such other firm is a part of the industry group applicant;

(3) a firm will not be considered a distinctly owned or controlled firm if its shareholders own a controlling interest in another firm in the same or similar line of work, and such other firm is a part of the Industry Group applicant; and

(4) two or more firms owned and/or controlled by the same individual or firm shall be considered as one firm for the purpose of meeting the criteria of this section.

(d) An industry group must have identified a building which shall be considered as a potential site for an industry center. The industry group shall have, at the minimum, entered into a letter of intent to lease or purchase the building, and shall supply the Department with a copy of such letter.

(e) An industry group must have conducted the study of the building to determine its suitability for occupancy by the industry group. The study shall, at the least, include a description of the following:

(1) the existing conditions of the building;

(2) a building code analysis;

(3) a zoning resolution analysis; and

(4) the present floor plans.

(f) An industry group must agree to enter a contract with the Department on terms specified by the Department.

(g) In a joint ownership situation, an executed contract of sale which evidences a commitment by the industry group applicant to purchase the building.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 64, §3-04.

Section in original publication July 1, 1991.

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CHAPTER 6 INDUSTRY OWNERSHIP PROGRAM

§6-05 Evaluation Criteria.

The application review committee shall consider whether the industry group is eligible for an IOP grant, pursuant to the criteria outlined in §6-04 above, and whether the industry group is best qualified to receive an IOP grant, based on the eligibility determinations, to be made on the basis of a review of the application packages, using a qualification rating sheet, as outlined below.

The application review committee shall use a qualification rating sheet, which shall rate seven (7) standards on a scale of zero (0) (lowest value) to ten (10) (highest value), using the criteria specified below, in order to rank industry group applicants. These standards and criteria shall include:

(a) **Job retention and creation.** The number of jobs that shall be created and/or retained. Preference shall generally be given to a project which anticipates a net gain in jobs. The industry group's score shall be based on the percentage net gain in jobs. Manufacturing jobs shall be given a preference over commercial jobs.

(b) **Local economic impact.** The application review committee shall consider the positive economic contribution of the proposed project on the community; the extent that local industries are served by the industry group; and the contribution of the industry group on the community's and city's economy.

If the industry group demonstrates a positive economic contribution, it shall receive five (5) points. The greater the economic contribution provided, the higher the score the industry group shall receive.

(c) **Financial feasibility.** An industry group which demonstrates the financial capability of carrying out the project

shall earn a minimum score of five (5) points.

An industry group showing a greater need for the grant shall receive a higher score, while an industry group showing a lesser need shall receive a lower score.

(d) **Equity contribution.** The industry group must contribute equity of at least ten percent (10%) of the total project costs. An industry group which contributes the minimum ten percent (10%) equity shall receive five (5) points; the industry group shall receive one (1) point for each additional two percent (2%) equity it contributes, up to ten (10) points for twenty percent (20%) equity contributed by the applicant.

(e) **Length of lease or joint ownership.** In a lease situation, a seven (7) year lease shall earn a score of five (5) points. Each additional five (5) years of lease term shall earn one (1) additional point, up to a maximum of eight (8) points. In addition, if the proposed lease arrangement includes an option to purchase the premises, the industry group score shall be increased by one (1) point. Industry groups which propose to purchase their premises shall earn a score of ten (10) points.

(f) **Leadership.** The leader of the industry group should, at a minimum, demonstrate that s/he is willing to make the necessary time commitment to make the project work. A minimum score of five (5) points shall be awarded if the industry group has a designated leader who shall provide the necessary time commitment to make the project work. The more time the designated leader plans to spend, the more points the application receives. The more experience the designated leader has with similar projects, the more points the application receives.

(g) **Highest and best use.** The industry group, in its architect's or engineer's report, must evaluate the development potential of a site and identify the "highest and best use" development objective for a building.

An industry group shall receive a score of ten (10) points if the project use is listed as the only acceptable use in the architect's or engineer's report. If such report describes two (2), or more, uses, the industry group shall receive ten (10) points for a project described as the "highest" use of the site, and shall receive a lower score for a project described as a "lower" use; provided, however, that an industry group shall not receive fewer than five (5) points for a project listed in the architect's or engineer's report as an acceptable use.

Each member of the application review committee shall rate each standard. The scores of the members on each standard shall be averaged. The minimum acceptable average score for each standard shall be a five (5). The average scores of all the standards shall be totaled. A minimum acceptable total score for all seven standards shall be thirty-five (35). The qualifying industry groups with the highest scores shall be awarded an IOP grant to the extent funds are available.

HISTORICAL NOTE

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CHAPTER 6 INDUSTRY OWNERSHIP PROGRAM

§6-06 Disbursements and Eligible Expenses.

(a) A qualified industry group shall be eligible to obtain a grant for eligible expenses, as defined in §6-06(e) below, with a grant to a selected industry group limited to a total of $30,000.

(b) All disbursements shall be made pursuant to a grant agreement executed between the Department and the selected industry group applicant(s).

(c) All disbursements shall be used solely for eligible expenses, as specified in §6-06(e) below.

(d) Disbursements shall be made to an industry group on a reimbursement basis. The industry group shall submit to the Department a request for payment, along with paid invoice(s) from each contractor who performed work for which the industry group is seeking reimbursement.

(e) Eligible expenses shall include services directly relating to the necessary technical work to prepare development or financing plans for establishing an industry center, including, but not limited to:

(1) in-depth architectural and/or engineering studies actually and directly related to the development of an individual site, such as floor plans and wiring;

(2) legal assistance associated with establishing or negotiating terms of purchase or long-term lease;

(3) environmental impact studies or other work necessary to comply with regulatory procedures; and

(4) such other costs as approved by the Department and UDC.

(f) Funds must be spent within six (6) months of the award; however, the Department may extend this time limit if, for good cause shown, the funds have not been spent within such six (6) month period.

(g) The selection of each and every contractor identified by an industry group to perform work for the industry group under a grant agreement between the industry group and the Department shall be subject to the approval of the Department.

HISTORICAL NOTE

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Title 66 Department of Business Services

CHAPTER 7 INDUSTRIAL SECURITY GRANT PROGRAM

§7-01 Definitions.

Applicant. "Applicant" means any individual, corporation, partnership, sole proprietor, association, agent, trust or estate, applying individually or jointly for benefits under the program, or a holding company, parent corporation, or subsidiary or affiliated corporation so applying on behalf of any of the foregoing.

Application. "Application" means the written document and all supporting documentation submitted by an applicant to the Department for the purpose of determining such applicant's eligibility for an industrial security grant.

City. "City" means the City of New York.

Commissioner. "Commissioner" means the commissioner of the New York City Department of Business Services or his or her designee.

Department. "Department" shall mean the Department of Business Services.

Grant Commitment Contract. "Grant commitment contract" shall have the meaning ascribed thereto in §7-06 hereof.

Industrial Security Grant or Grant. "Industrial Security Grant" or "Grant" means a grant from the program for the costs of purchasing and/or installing approved security-related equipment and/or improvements.

Industrial Security Grant Program or Program. "Industrial Security Grant Program" or "Program" means the program of the Department for the purpose of supplying grants to eligible industrial businesses for security equipment.

NYPD. "NYPD" means the New York City Police Department.

Premises. "Premises" mean the property of a business upon which the security equipment is to be installed.

Program Director. "Program Director" means the director of the program, as so designated by the commissioner of the Department.

Purchase. "Purchase" means a purchase or a lease with a term of 3 or more years.

Rules. "Rules" means the rules governing the operation of the industrial security grant program.

Security Equipment. "Security Equipment" means the security related equipment, improvements and/or construction recommended by the security survey report.

Security Survey. "Security Survey" shall have the meaning ascribed thereto in §7-05 of the rules.

Security Survey Report. "Security Survey Report" shall have the meaning ascribed thereto in §7-05 hereof.

HISTORICAL NOTE

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CHAPTER 7 INDUSTRIAL SECURITY GRANT PROGRAM

§7-02 Eligibility for Industrial Security Grants.

(a) Any applicant which:

(1) employs 10 or more full-time employees or an equivalent number of part-time employees; and

(2) meets the criteria outlined in these rules may be eligible to receive an industrial security grant, which funds shall partially reimburse the applicant for the costs of purchase and/or installation of security equipment, provided, however, that the applicant's eligibility to receive such an industrial security grant shall be subject to the availability of funds for this program.

(b) A business may be eligible for a grant under the program if the commissioner determines that it meets the following criteria:

(1) the premises are located in New York City; and

(2) it employs a minimum of 10 full time employees or an equivalent number of part-time employees; and

(3) with respect to property that is owned by the applicant upon which security equipment is to be installed, it has paid all real estate taxes due, or if in arrears in its payment, has executed a binding repayment agreement with the city; and

(4) it has submitted sufficient proof of its interest in the premises including, but not limited to, evidence of ownership of property or a copy of the lease; and

(5) it operates a business which is classified by standard industrial codes 20 through 39; or

(6) it is an industrial/manufacturing firm, as determined by the Department, located in a Manufacturing ("M") or Commercial 8 ("C8") zone.

(c) The following criteria shall be used by the Department to calculate the number of employees of an applicant for the purposes of determining the eligibility of the applicant and the amount of the grant:

(1) 2 part-time employees are equivalent to 1 full-time employee;

(2) a part-time employee is one who works less than 30 hours per week;

(3) the average number of employees of the applicant over the quarter annual period prior to the application shall be used by the Department to determine the number of employees; and

(4) in the event that an applicant is relocating its business, then the number of employees of the applicant shall be determined after the relocation and at the time the Department conducts its compliance inspection to ensure that the security equipment and installation complies with the Security Survey Report.

(d) An applicant which is determined by the Commissioner to be a retail, commercial or professional service firm, is not eligible to participate in this program.

HISTORICAL NOTE

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§7-03 Material Misrepresentations, Misstatements and Omissions.

(a) An applicant's refusal to provide factual information or to cooperate in the review of the facts and circumstances upon which a determination of the applicant's eligibility or continued eligibility to participate in the program is based shall constitute grounds for a denial of a grant.

(b) The program director may deny a grant if an application is found to contain material misrepresentations, misstatements or omissions.

HISTORICAL NOTE

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CHAPTER 7 INDUSTRIAL SECURITY GRANT PROGRAM

§7-04 Application Process.

An applicant must complete an application for an industrial security grant and forward the completed application to the Department. Application forms may be obtained at the Department, Security Service Unit: 17 John Street, 14th floor, New York, New York 10038.

The application shall be reviewed and all information verified by the Department. After such verification, if all program criteria are met, the applicant shall receive a security survey and may be determined to be eligible to receive a grant reimbursing it for security equipment purchased in accordance with the procedures outlined in these rules.

HISTORICAL NOTE

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66 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 7 INDUSTRIAL SECURITY GRANT PROGRAM

§7-05 Security Survey.

The eligible applicant shall be scheduled by the Department for a security survey of its premises, which shall be performed by either NYPD or by the Department's Security Office, at the option of the Department. Thereafter, the security survey report shall be issued outlining security needs and recommending appropriate security equipment for premises of the applicant. All security survey reports are held confidential by the Department to the extent permitted by law.

HISTORICAL NOTE

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66 RCNY 7-06

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CHAPTER 7 INDUSTRIAL SECURITY GRANT PROGRAM

§7-06 Work Procurement Process and the Grant Commitment Contract.

In order to obtain reimbursement for security equipment, upon receipt of the security survey report, the applicant shall obtain a minimum of 3 estimates from 3 contractors for the purchase and installation of security equipment, and shall forward them to the Department. Provided that, with the Department's approval, the applicant may obtain only 1 estimate for the purchase and installation of security equipment under the following circumstances:the applicant intends to upgrade its existing security systems and intends to purchase the security equipment from the original supplier and such equipment and/or improvements are integrated into the existing security system. Thereafter, in order to obtain reimbursement for security equipment installed, such estimate shall be forwarded to the Department.

The Department shall review the estimate or estimates and if the Department determines that an applicant is eligible for the grant, the Department may approve payment in an amount not to exceed the lowest responsive estimate and may approve the specifications and bid proposal for the purchase and installation of the security equipment. The applicant may use any of the contractors which provided estimates submitted to the Department to perform the work, but the security equipment to be installed must conform with the specifications as approved by the Department and the amount of the grant shall also be based upon the price approved by the Department, subject to modification with the approval of the commissioner. If the Department determines that none of the estimates it receives is responsive, the Department shall request that the applicant obtain and submit additional estimates.

The Department shall determine if a contractor or applicant appears on the city "Vendex" consolidated caution list, which list identifies organizations with which the City either cannot do business or which have had substantial problems with one or more City agencies. If a contractor or an applicant appears on such list, the Department reserves the right not to make a grant to an applicant. The Department shall prepare a grant commitment contract to be executed by the

eligible applicant and the Department, which shall provide that the applicant may be reimbursed for security equipment installed upon the applicant's premises, in accordance with the terms noticed in the grant commitment contract, provided that the applicant has complied with the terms and conditions of these rules, the grant commitment contract and any amendment thereof. The commissioner shall have the right to refuse, in his or her sole discretion, to make a grant to an applicant.

HISTORICAL NOTE

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66 RCNY 7-07

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CHAPTER 7 INDUSTRIAL SECURITY GRANT PROGRAM

§7-07 Reimbursements.

Upon receipt of all documents required by the Department, the Department may issue a grant to the applicant subject to verification by the Department that applicant is in compliance with these rules. The amount of the grant shall be the lesser of:

(a) $187.50 per each of the applicant's full-time employees (or equivalent of part-time employees), up to a maximum of 40 employees; or

(b) 50% of the cost approved by the Department of the security equipment, provided that the maximum amount to be paid under (a) or (b) shall not exceed $7,500 per applicant.

Such reimbursement shall not include reimbursement for sales tax.

HISTORICAL NOTE

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66 RCNY 8-01

RULES OF THE CITY OF NEW YORK

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CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-01 Purpose.

The commercial security program is part of New York City's commercial business retention effort. The program is designed to enable groups of commercial businesses in selected low and moderate income neighborhoods located in designated areas to obtain technical assistance provided by the Department and NYPD for proven, cost effective crime prevention techniques to reduce burglary, robbery, pilferage, and other threats to property and personal safety within the premises of participating merchants and in areas where participating merchants and other commercial businesses are located. Grants may be awarded to eligible participating merchants to partially offset the cost of purchasing and installing security equipment. Grant monies may be applied solely for those security improvements that are specifically recommended by NYPD or the Department.

HISTORICAL NOTE

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Title 66 Department of Business Services

CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-02 Definitions.

Applicant. "Applicant" means any individual, corporation, partnership, sole proprietor, association, agent, trust or estate, which is located in New York City and which is applying individually or jointly for grants on behalf of participating merchants that are located in a designated area.

Application. "Application" means a written request in a form satisfactory to the Department, with any supporting documents, made by an applicant to the Department for the purpose of determining the eligibility of participating merchants for commercial security grants.

Application review committee. "Application review committee" means a committee comprised of three persons selected by the Commissioner.

Business improvement district or BID. "Business improvement district" or "BID" means an area of the city which has been established and operated pursuant to §25-401 et seq. of the New York City Administrative Code and is administered by a district management association in accordance with the requirements of law.

City. "City" means the City of New York.

Commercial business. "Commercial business" means a storefront business predominantly involved in the sale of goods and/or services directly to the public.

Commercial revitalization area(s) or CR area(s). "Commercial revitalization area(s)" or "CR area(s)", mean(s) the

designated streets of the City described as the target area(s) in any CR contract(s) and amendment(s) thereto, including CR contract(s) no longer in effect.

Commercial revitalization contract(s) or CR contract(s). "Commercial revitalization contract(s)" or "CR contract(s)" mean(s) any contract(s) for services under the CR program.

Commercial revitalization program or CR program. "Commercial revitalization program" or "CR program" means a program of the City administered by the Department in which not-for-profit corporations contract with the Department for funds to provide services and assistance to targeted commercial areas including, but not limited to, capital assistance, merchant liaison services and employment services, and, for the purpose of these rules only, shall not include contracts solely for research studies.

Commercial security grant or grant. "Commercial security grant" or "grant" means a grant from the program to be used to reimburse the participating merchants for the costs of purchasing and/or installing security equipment.

Commercial security program or program. "Commercial security program" or "program" means the program of the Department for the purpose of supplying grants to eligible commercial businesses.

Commissioner. "Commissioner" means the commissioner of the New York City Office of Business Services or his or her designee or successor in function.

Community development block grant. "Community development block grant" means funds provided by the United States Department of Housing and Urban Development ("HUD") pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301, et seq.), as amended.

Department. "Department" means the New York City Department of Business Services.

Designated area or area. "Designated area" or "area" means an area of the City which is eligible to receive community development block grant funds and is located in either: (1) a BID or SAD; or, (2) a commercial revitalization area.

District management association. "District management association" means an association established pursuant to §25-413 of the New York City Administrative Code.

Fiscal year. "Fiscal year" means the time period commencing on July 1st of one year and ending on June 30th of the next successive year.

Grant commitment agreement. "Grant commitment agreement" shall have the meaning ascribed thereto in §8-08 hereof.

Industrial/manufacturing firm. "Industrial/manufacturing firm" means a predominantly industrial business which is classified by standard industrial codes 20 through 39, or a predominantly industrial business which is located in a manufacturing (M) or commercial 8 ("C8") zone.

NYPD. "NYPD" means the New York City Police Department.

Participating merchant or merchant. "Participating merchant" or "merchant" means a commercial business on whose behalf an applicant has sought benefits under the program.

Premises. "Premises" means the property of a participating merchant upon which the security equipment is to be installed.

Program director. "Program director" means the director of the program, as designated by the Commissioner of the

Department.

Purchase. "Purchase" means a purchase or a lease with a term of three or more years.

Rules. "Rules" means the rules covering the operation of the commercial security grant program.

Security equipment or equipment. "Security equipment" or "equipment" means the security-related equipment, improvements and/or construction recommended by the security survey report.

Security survey. "Security survey" shall have the meaning ascribed thereto in §8-07 of the regulations.

Security survey report. "Security survey report" shall have the meaning ascribed thereto in §8-07 hereof.

Special assessment district or SAD. "Special assessment district" or "SAD" means the Jamaica Center Mall special assessment district in the borough of Queens established pursuant to Chapter 665 of the Laws of New York of 1978, as amended by Chapter 466 of the Laws of New York of 1984; or the Fulton Mall special assessment district in the borough of Brooklyn established pursuant to Chapter 911 of the Laws of New York of 1976, as amended by Chapter 17 of the Laws of New York of 1981; or the Nassau Street Mall special assessment district in the borough of Manhattan established pursuant to Chapter 806 of the Laws of New York of 1977, as amended by Chapter 828 of the Laws of New York of 1980 and Chapter 636 of the Laws of New York of 1986; or the 165th Street Mall special assessment district in the borough of Queens established pursuant to Chapter 910 of the Laws of New York of 1976.

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§8-03 Security Education.

All commercial businesses and merchants, whether or not such merchants are eligible for other benefits under these rules, are eligible to receive special security training for their employees, provided they are located in a designated area. Instruction is provided by the Department and NYPD. Lectures, seminars, and an instructional training program on specialized topics include, but are not limited to, security systems design and general assets protection.

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CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-04 Eligibility for Commercial Security Grants.

(a) A participating merchant may be eligible to receive a grant if it is located in a designated area. A participating merchant which is eligible for a grant must meet the other requirements set forth in these rules in order to receive reimbursement for the expenses of purchasing and installing security equipment, provided that, each participating merchant's eligibility to receive a grant shall be subject to the availability of funds.

(b) Industrial/merchant firms are not eligible to participate in this program.

HISTORICAL NOTE

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66 RCNY 8-05

RULES OF THE CITY OF NEW YORK

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§8-05 Material Misrepresentations, Misstatements and Omissions.

(a) An applicant's or participating merchant's refusal to provide factual information or to cooperate in the review of the facts and circumstances upon which a determination of the applicant's or participating merchant's eligibility or continued eligibility to participate in the program is based shall constitute grounds for a denial of a grant or return of a grant which has been disbursed by the Department.

(b) The application review committee may deny a grant or obtain the return of a grant if an application or any documents in support of a request for a grant are found to contain material misrepresentations, misstatements or omissions.

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66 RCNY 8-06

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CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-06 Application Process.

(a) An applicant must take an application for a commercial security grant on behalf of at least 6, but not more than 20 participating merchants, all of which must be located in the same designated area, except that, with the approval of the Commissioner, the number of participating merchants may be increased. An applicant must submit letters of intent from the participating merchants, in a form satisfactory to the application review committee, that indicate their desire to participate in the program. The participating merchants must promptly forward any required documentation to the Department. Information, application forms, and sample letters of intent may be obtained at the Department, Security Service Unit, 17 John Street, 14th floor, New York, New York 10038.

(b) The application review committee shall review all information and may verify the information provided. After such review or verification, if all program criteria are met, each participating merchant shall receive a security survey and may be determined by the application review committee to be eligible to receive a grant in accordance with the procedures outlined in these rules.

HISTORICAL NOTE

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§8-07 Security Survey.

Each participating merchant may be scheduled by the program director for a security survey of its premises, which shall be performed by either the NYPD or by the Department's security services office, at the option of the Department. Thereafter, the security survey report shall be issued outlining security needs and recommending appropriate security equipment for the premises. All security survey reports are held confidential by the Department to the extent permitted by law.

HISTORICAL NOTE

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§8-08 Work Procurement Process and the Grant Commitment Agreement.

(a) In order to obtain a reimbursement for security equipment, after the participation merchant receives a copy of the security survey report, the participating merchant shall obtain a minimum of three estimates for each of the items of security equipment from three contractors for the purchase and installation of the security equipment, unless the applicant agrees to coordinate the purchase and installation of the security equipment on behalf of the merchants as described in subdivision (b) below. The participating merchant may select any of the contractors which provided estimates submitted to the Department to perform the work. With the program director's approval, the participating merchant or the applicant may obtain only one estimate for the purchase and installation of the security equipment under the following circumstances:

(1) the participating merchant intends to upgrade the existing security equipment and wants to purchase the security equipment from the original supplier and such equipment is integrated into the existing security system; or

(2) when the cost for the purchase and installation of the security equipment does not exceed $500. If the participating merchant obtains only one estimate, then the participating merchant or the applicant shall forward the estimate to the Department subject to the program director's approval of the reasonableness of the expense.

(b) In the event that the participating merchants on whose behalf the applicant has applied have each received security survey reports that indicate the need for the same or similar kinds of security equipment and if such participating merchants have agreed, then the applicant may coordinate the purchase and installation of the security equipment for such merchants. The application shall obtain a minimum of three estimates for each of the items of security equipment from three contractors for the purchase and installation of the security equipment for each

participating merchant included in the same application and the applicant shall forward the estimates to the Department. With the program director's approval, the applicant may obtain only one estimate for the purchase and installation of the security equipment pursuant to the circumstances indicated in subdivision (a) above. The applicant for the participating merchants may select any of the contractors which provided estimates which were submitted to the Department to perform the work.

(c) The estimate or estimates, specifications and bid proposals for purchase and installation of security equipment shall be subject to the approval of the Department. The security equipment must conform with the specifications approved by the Department and the amount of the grant shall be based upon the lowest responsive estimate as approved by the Department, subject to modification with approval of the program director.

(d) If the Department determines that less than the required number of estimates it has received from the participating merchant or applicant is responsive, the program director shall request that the applicant or participating merchant obtain and submit to the Department additional estimates, which shall be subject to the Department's approval.

(e) The participating merchant is responsible to take all steps necessary to ensure prompt completion of the application and to obtain an estimate or estimates or cause an estimate or estimates for the security equipment to be obtained by the applicant within a reasonable time after the completion of the security survey reports. If the Department determines that the applicant and/or any of the participating merchants have failed to timely take all necessary action required to purchase and install the security equipment in accordance with these rules and the grant commitment agreement, then the Department may deem the merchants included in such application ineligible for the grants.

(f) The program director shall determine if an applicant, contractor or participating merchant appears on the city "Vendex" consolidated caution list, which list identifies organizations with which the city either cannot do business or which have had substantial problems with one or more city agencies. If a contractor, participating merchant, or an applicant appear on such list, the Department reserves the right not to make a grant.

(g) The Department shall prepare a grant commitment agreement to be executed by the eligible participating merchant and the Department, which shall provide that the eligible participating merchant may be reimbursed for security equipment installed upon the eligible participating merchant's premises in accordance with the terms noticed in the grant commitment agreement, so long as the eligible participating merchant has complied with the terms and conditions of these rules, the grant commitment agreement and any amendment thereof. The application review committee shall have the right to refuse, in its sole discretion, to make a grant to an eligible participating merchant.

HISTORICAL NOTE

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§8-09 Reimbursements.

Upon the installation and purchase of the Security Equipment and upon receipt of all documents required by the Department, the Department may issue, subject to verification by the Department that the eligible participating merchant is in compliance with these rules and the grant commitment agreement, a grant payment to the participating merchant which shall be up to a maximum of 50% of the approved estimate of the cost of the security equipment, up to a maximum of $1,000 per participating merchant. The matching funds for the remaining 50% or more of the cost of the security equipment must be provided by the participating merchant and shall not be derived from capital assistant funds under the CR program or any other public funds. In order to increase the number of designated areas in the City that may benefit from grants under the program, the maximum total amount of grant benefitting participating merchants on whose behalf an application has been made, which are located in the same designated area, shall be $15,000 within a fiscal year, except with the approval of the Commissioner.

HISTORICAL NOTE

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§8-10 Appeals.

A participating merchant that is denied a grant shall be given written notice of such denial and an opportunity to appeal such denial in writing to the Commissioner. Such appeal must be received by the Commissioner not more than ten business days after receipt by such merchant of the notice denying it a grant. Such appeal shall include, at a minimum, a description of the reason(s) why the merchant believes the denial of a grant was in error and any evidence in support of its appeal that the participating merchant wishes the Commission to consider. Such participating merchant shall provide the Commissioner with any documents or other information requested by the Commissioner. The decision of the Commissioner granting or denying such appeal shall constitute the final agency determination.

HISTORICAL NOTE

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§9-01 Purpose.

Nothing contained herein shall supersede or modify any rules or regulations, interpretive rulings, advisory opinions or directives of the Department of Finance of the City of New York.

HISTORICAL NOTE

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§9-02 Definitions.

As used in these rules and regulations the following terms shall have the following meanings:

Benefit. "Benefit" means any cost savings achieved by an electricity redistributor, in connection with the sale or resale and/or redistribution of electricity to a non-residential energy user, as are provided pursuant to Chapter 331 of the 1987 Laws of the State of New York and Local Law No. 49 of the 1987 Laws of the City of New York, including, without limitation, any rebates or discounts received by such electricity redistributor thereunder.

City. "City" means the City of New York.

Commissioner. "Commissioner" means the Commissioner of the New York City Department of Business Services or his or her successor or designee.

Department. "Department" means the New York City Department of Business Ser- vices.

Electricity redistributor. "Electricity redistributor" means any landlord, tenant or agent thereof, who purchases electricity from a utility or any other person, corporation or other entity and on a metered or unmetered basis, resells or otherwise redistributes for any consideration such electricity to a non-residential energy user.

Non-residential energy user. "Non-residential energy user" means any non-residential user of electricity, except a

government agency or instrumentality thereof, public benefit corporation, or any entity that is exempt from the sales tax imposed pursuant to section eleven hundred seven of the tax law, provided that the term "non-residential energy user" shall not include an owner or operator of residential income producing property, except a hotel.

Utility. "Utility" means any electric corporation, gas corporation or steam corporation subject to the jurisdiction and general supervision of the Public Service Commission of the State of New York.

HISTORICAL NOTE

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§9-03 Certification Requirements.

(a) **General requirements.** A certification of eligibility shall be granted to an electricity redistributor, and remain in effect, only if:

(1) the electricity redistributor does not charge any non-residential energy user in the building for which the certification is granted, for electricity furnished to such energy user's premises, on a metered or unmetered basis, more than one hundred twelve percent (112%) of the rate for electricity resold or redistributed, that is or would be charged by the utility providing electricity service in the service area where the electricity redistributor's building is located which rate shall only include demand, energy, fuel adjustment charges, and any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner.

(2) the electricity redistributor promptly passes on to any and all nonresidential energy users their proportionate share of the benefits, as specified hereunder; and

(3) the electricity redistributor complies with all the provisions and requirements of these rules and regulations.

(b) **Lease provisions.** No certification of eligibility shall be granted to an electricity redistributor that identifies electricity charges to its non-residential energy users unless such electricity redistributor, in the leases or other arrangements, as provided in §9-05(d), between such electricity redistributor and its non-residential energy users for the

demised premises within the building premises, shall provide that:

(1) where the electricity redistributor furnishes electricity to the premises leased or occupied by the non-residential energy user on a metered basis, then such energy user shall be billed for the actual electricity used, as measured by a properly installed and operating meter, at the actual rate that is or would be charged by the utility providing electricity service for resale or redistribution in the service area where the electricity redistributor's building is located, which rate shall only include demand, energy, fuel adjustment charges, any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner, plus a mark-up for administrative and operating costs equal to no more than twelve percent (12%) of such electricity rate, and further provide that (i) where there is no demand meter to measure such energy user's individual demand, then the electricity redistributor shall convert the total demand charge for the building to an average kilowatt hour (kwh) charge which shall be charged to such energy user, and (ii) if applicable, where such electricity rate includes a time-of-day rate and there is no time-of-day meter to measure such energy user's peak usage, then the electricity redistributor shall average the on-peak and off-peak demand and energy costs for the building and charge all non-residential energy users in the entire building premises at a rate equal to such electricity redistributor's average demand and energy costs per kw and/or kwh, as appropriate;

(2) (i) where the electricity redistributor furnishes electricity to the premises leased or occupied by the non-residential energy user on a non-metered basis, then such energy user shall be charged for electricity used in accordance with the provisions set forth in subparagraph (i)(A), (i)(B) or (i)(C) of this paragraph (2). The non-residential energy user's electricity charges or costs shall be determined by:

(A) a charge for electricity based upon a survey conducted by the electricity redistributor of the estimated electricity use by the non-residential energy user in the demised premises, at the rate that is or would be charged by the utility providing electricity service for resale or redistribution in the service area where the electricity redistributor's building is located, which rate shall only include demand, energy, fuel adjustment charges, any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner, plus a mark-up for administrative and operating costs equal to no more than twelve percent (12%) of such electricity rate, such survey shall be conducted by a technically qualified representative of the electricity redistributor within ninety (90) days of non-residential energy user's use or occupancy of the demised premises or the date of certification of eligibility under these rules and regulations for a pre-existing occupancy, the cost of which survey shall be paid for by the electricity redistributor;

(B) a charge for electricity based upon such energy users' prorata share of the actual cost of electricity for the entire building premises, which cost shall only include charges for demand, energy, fuel adjustment charges, any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner, as determined by a survey conducted by the electricity redistributor of the energy users' square foot area in the demised premises which shall not include any public, common and service areas, which square footage shall be measured by a recognized real estate standard consistently applied to all such energy users in the entire building premises, as a proportion of the square foot area in the entire building premises, plus a mark-up for administrative and operating costs equal to no more than twelve percent (12%) of such electricity cost, provided, however, that the non-residential energy user upon 60 days prior written notice, at its option and expense may, at any time, demand a change from prorating electricity charges in accordance with this sub-paragraph to determining such charges in accordance with a survey as described in subparagraph (i)(A) of this paragraph (2); or

(C) any other method which may be approved by the Commissioner and which otherwise complies with the requirements of these rules and regulations;

(ii) where the electricity redistributor uses a survey as described in §9-03(b)(2)(i)(A), either the electricity redistributor or the non-residential energy user may, upon forty five (45) days prior written notice, request subsequent surveys to be conducted as described therein, at any time because of material changes in conditions, which result from the addition or removal of equipment, machinery, or other electrical devices and which would reasonably result in a

change in electricity usage of greater than five (5) percent in the prior survey results, and where the electricity redistributor uses a survey as described in §9-03(b)(2)(i)(A) or (B), either the electricity redistributor or the non-residential energy user may, upon forty-five (45) days prior written notice, request subsequent surveys to be conducted as described therein, not more than once every year because of a disagreement with a prior survey, provided, however, that the party requesting any such survey shall pay the costs thereof, and if such parties do not agree on the results of the said subsequent survey, then, within fifteen (15) days after the receipt of the results of the aforementioned survey, the parties' respective representatives shall choose an independent representative, whose cost shall be shared equally by said parties, to make such determination which shall be controlling, and provided further that if the parties' respective representatives cannot agree on an independent representative within such fifteen (15) day period, then either party may apply to the Supreme Court of the State of New York in the judicial district where the demised premises is located for such appointment; and

(iii) where an electricity redistributor prorates electricity charges on the basis of: (A) a consumption survey, vacant space (i.e. tenant premises which are leased and occupied) shall be allocated to the electricity redistributor, or (B) square footage, vacant space (i.e. tenant premises which are not leased and occupied) shall not be included in the total square footage of the entire building premises, provided, however, public, common, and service area shall not be considered vacant space;

(3) electricity charges shall be clearly stated and shall be separately provided on bills or statements to non-residential energy users, and shall set forth the charge per-kwh and per-kw, if applicable, and the number of billing units used to compute such bills or statements;

(4) bills or statements for electricity charges to non-residential energy users shall be furnished at least bi-monthly;

(5) no charge for electricity used or consumed in any public, common or service area of the building premises shall be included in the electric bills or statements to non-residential energy users, but nothing herein prohibits electricity redistributors from otherwise recovering costs for electricity used or consumed in such areas;

(6) a copy of the applicable rate charges in the tariff of the utility providing service, or which otherwise would be providing service, to the electricity redistributor for resale or redistribution shall be provided to each non-residential energy user covered by these rules and regulations upon certification, and to each new non-residential energy user upon occupancy, and to each such user whenever the New York State Public Service Commission approves any changes thereto;

(7) any non-residential energy user, once each calendar year, upon ten days prior written notice, may inspect, during regular business hours, the electricity redistributor's records regarding the calculation of such energy user's electricity charges and the electricity consumption for the entire building premises, and, except where the electricity redistributor purchases electricity from an entity other than a utility, the electric bills rendered to the electricity redistributor for the entire building premises, for no less than the three preceding calendar years; and

(8) except in the case of surveys performed in accordance with §9-03(b)(2)(i)(A) or (B), any controversy relating to the measurement of electricity consumption, the calculation of electricity charges, and the billing of any electricity charges shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and any award rendered by the arbitrator(s) may assess the expenses and fees of the arbitrator, together with costs and other reasonable expenses and fees, including attorney's fees, against the losing party. Judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof, provided that the non-residential energy user shall pay to the electricity redistributor any sums or amounts in dispute subject to a refund with interest, payable at the rate of interest then authorized by the New York State Public Service Commission for utility customer deposits, as specified in Section 90.3 of Title 16 of the New York Code of Rules and Regulations, or any successor index published by the New York State Public Service Commission or Department of Public Service in connection with interest on utility customer deposits.

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§9-04 Model Lease Rider.

Attached as Appendix A of this subchapter A is a model lease rider which complies with the requirements contained herein. In order to qualify for certification, an electricity redistributor which on a metered or on a non-metered basis identifies electricity charges to its non-residential energy users, shall incorporate the model lease rider, in any existing leases as provided in §9-05(d), and any new leases, or any extensions and renewals of leases or other arrangements, unless a waiver has been granted by the Commissioner. A waiver may be granted only if the lease or any lease extension or renewal or other arrangement substantially complies with the requirements of these rules and regulations. All the other terms, conditions and provisions of any lease between the electricity redistributor and the non-residential energy user, pertaining to the resale or redistribution of electricity or otherwise, which are not inconsistent with the model lease rider, shall be effective and controlling between the parties.

HISTORICAL NOTE

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§9-05 Application Procedures.

Applications may be obtained from the Electricity Redistributor Certification Program, New York City Economic Development Corporation, 110 William Street, New York, NY, 10038. Complete applications must be submitted to the above address. All electricity redistributors which resell or redistribute electricity, must apply for and be certified under these rules and regulations in order to receive the benefits conferred under Local Law No. 49 of 1987. Where an electricity redistributor which does not identify electricity charges is issued a certification of eligibility and if such electricity redistributor commences to identify electricity charges on any bill or statement rendered to a non-residential energy user, then upon the happening of such event, the certification of eligibility shall be revoked, unless a new application for eligibility has been made and approval of the Commissioner has been obtained. At least 90 days prior to any such change in billing method, the electricity redistributor shall provide notice thereof to the Commissioner in writing by certified, first-class mail. Where an electricity redistributor is issued a certification of eligibility and if such electricity redistributor intends to sell or otherwise transfer its ownership interest in the building premises to another person, the certification of eligibility shall terminate upon the happening of such event, unless a new application for eligibility has been made and approval of the Commissioner has been obtained. Applications for certification shall be in the format prescribed by the Commissioner, which format, from time to time, may be modified or amended. An electricity redistributor shall submit a separate application for each building or more than one building covered by a single utility account, except as otherwise approved by the Commissioner. Any electricity redistributor applying for certification of eligibility hereunder shall submit to the Commissioner with each application a non-refundable

application fee of one hundred and fifty dollars ($150) by check or money order, payable to the order of the City Collector. An application shall not be processed unless complete and accompanied by the required fee. An electricity redistributor applying for a certification of eligibility shall provide such information deemed necessary or useful by the Commissioner and the application shall, without limitation, contain the following:

(a) where an electricity redistributor furnishes electricity on a metered basis, the technical specifications for the metering system installed in the demised premises and a certification that at least every five (5) years, each meter shall be calibrated for reliability and accuracy by a technically qualified testing service;

(b) an explanation of the method and basis for calculating charges to non-residential energy users, which shall include a provision preventing charges to such energy users from exceeding the maximum mark-up allowed hereunder;

(c) where the electricity redistributor on a metered or on a non-metered basis identifies electricity charges, a representation and warranty that the model lease rider or any substantially equivalent lease clause or provision as may be approved by the Commissioner is contained in leases or other arrangements for the use and occupancy of premises within the building premises, in accordance with the "Minimum Percentage Needed for Initial Certification" set forth in the schedule in §9-05(d), and that the electricity redistributor and any successor electricity redistributor shall continue to use the model lease rider or such previously approved lease clause or provision in such leases and any new leases, or renewals or extensions of leases, or any other arrangements for the use and occupancy of all non-residential premises within the building premises;

(d) where the electricity redistributor on a metered or on a non-metered basis identifies electricity charges, a certification that, at the time of the application, at least the minimum percentage of the square feet contained in the entire building premises, excluding the public, common or service areas, as measured by a recognized real estate standard consistently applied, is subject to the terms, conditions and provisions contained in the rider or any previously approved lease clause or provision, as set forth in the following schedule:

Fiscal Year	Minimum Percentage July 1-June 30 Needed for Initial Certification
1987/88	50%
1988/89	60%
1989/90	70%
1990/91	80%
1991/beyond	85%

(e) notwithstanding §9-05(d), a certification that the benefits shall be promptly passed on to all non-residential energy users according to their proportionate share of electricity consumed in the building premises and a description of how such benefits shall be passed on to each such non-residential energy user;

(f) where an electricity redistributor uses a combination of methods to determine electricity charges or electricity used within the same building premises, then the electricity redistributor shall demonstrate that the allocation of such charges or use among energy users in the same building premises is fair and equitable to non-residential energy users and the electricity redistributor charges no more than the applicable rate or charges as provided in §§9-03(b)(1) or (a);

(g) a list of the names and addresses of all non-residential energy users and a list of the commencement dates of the leases, renewals or extensions of leases, or other arrangements for the use and occupancy by such energy users and the expiration dates thereof; and

(h) a certification that the electricity redistributor at all times following the submission of its application for

certification and after the receipt of a certificate of eligibility, shall notify the Commissioner in writing of any material changes in the information provided in the application, which notification shall be provided by the electricity redistributor to the Commissioner by first-class, certified mail within five (5) days of any such material change.

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§9-06 Notice of Certification or Revocation.

After a certification of eligibility is issued to an electricity redistributor, the Commissioner shall send a written notice of the certification to the utility supplying energy or delivery services to such electricity redistributor, the electricity redistributor and the Department of Finance of the City of New York. Within ten (10) days of receipt of such notice, the electricity redistributor shall mail or deliver a copy of the notice of certification to each of the certified electricity redistributor's nonresidential energy users and shall obtain a written receipt therefor. Where a certification of eligibility is denied, revoked or revised, the Commissioner shall specify the grounds therefor in writing. Prior to such revocation, the electricity redistributor shall be given an opportunity to be heard. In the case of revocation, revision, or termination as set forth in §9-05, the Commissioner shall send written notice thereof to the utility, the electricity redistributor and the Department of Finance of the City of New York. Within ten (10) days of receipt of such notice, the electricity redistributor shall mail or deliver a copy of such notice to each of the non-residential energy users affected and shall obtain a written receipt therefor.

HISTORICAL NOTE

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§9-07 Books and Records.

(a) An electricity redistributor which receives certification under these rules and regulations shall maintain, for a period of six (6) years, copies of all records pertaining to (1) the distribution of the City utility tax and sales tax benefits conferred by Local Law No. 49 of 1987 to non-residential energy users, (2) copies of all leases, renewals, extensions or other arrangements for the use and occupancy of all non-residential premises within the building premises, (3) copies of bills or statements rendered to each non-residential energy user for electricity sold to such user, (4) the results of any and all meter readings and meter tests, and (5) copies of any and all records, books, ledgers, and accounts pertaining to the purchase of electricity by such electricity redistributor and resale to non-residential energy users and other tenants in a building for which the electricity redistributor has been certified hereunder and proof of the notification required under §9-06.

(b) The Commissioner, or his/her designee, and the New York City Finance Department shall have the right to inspect any and all records described in subdivision (a) of this section, and the electricity redistributor shall provide access thereto upon request, for the purpose of making audits, copies, or transcriptions.

HISTORICAL NOTE

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§9-08 Additional Penalties.

In addition to any other civil or criminal penalties provided in the relevant provisions of the General Corporation Tax, Unincorporated Business Income Tax, Financial Corporation Tax and Utility Tax, any knowing false statement made in an application for a Certificate of Eligibility is a misdemeanor under Section 210.45 of the Penal Law.

HISTORICAL NOTE

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§9-09 Repayment of Improperly Obtained Benefits.

The Corporation Counsel of the City of New York may maintain an action in any court of competent jurisdiction to recover an amount equal to any benefits provided pursuant to Local Law No. 49 of 1987 and the provisions of these rules and regulations which are improperly obtained.

HISTORICAL NOTE

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§9-10 Material Misrepresentation, Misstatements and Omissions.

(a) An electricity redistributor's refusal to provide factual information or to cooperate with the Commissioner in the review of the facts and circumstances upon which a determination of eligibility, or of continued eligibility, for certification hereunder is to be based may constitute grounds for denial of an electricity redistributor's eligibility for certification, or revocation of a previously approved certification, under these rules and regulations.

(b) The Commissioner may deny issuance of a certificate of eligibility, under these rules and regulations, if an application is found to contain material misrepresentations, misstatements or omissions.

(c) The Commissioner may suspend or revoke a certificate of eligibility if an electricity redistributor is found to have made material misrepresentations or misstatements or omissions concerning the prior, current or future status of its continued eligibility for certification under these rules and regulations.

HISTORICAL NOTE

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§9-11 Actions of City Employees.

Employees and agents of the City whose duties require them to take action in connection with these rules and regulations shall perform such duties, subject to the lawful direction of their supervisors and appropriate public officers, in accordance with these rules and regulations. However, noncompliance by such employees or agents with the requirements of these rules and regulations shall not be deemed to void any obligation of, or to waive any requirement imposed on an electricity redistributor or to excuse any noncompliance by an electricity redistributor with the provisions hereof or of any law. Such noncompliance shall not create any right of relief from the City or its employees or agents in favor of any person adversely affected thereby.

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APPENDIX A*1 MODEL LEASE RIDER

APPENDIX A*1 MODEL LEASE RIDER

Landlord shall furnish electricity to Tenant on a "non-metered" or on a "metered" basis, as follows:

(a) **Metered.** If and so long as Landlord provides electricity to the demised premises on a metered basis, then Tenant shall pay to Landlord, as additional rent hereunder, for the actual electricity used, as measured by a properly installed and operating meter, at the rate that would be charged by the utility providing electricity service for resale or redistribution in the service area where the building premises is located, which rate shall only include demand, energy, fuel adjustment charges, any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner of Business Services, plus a mark-up for administrative and operating costs equal to ____ percent (not to exceed 12 percent) of such electricity rate. If there is no demand meter to measure tenant's demand, then Landlord shall convert the total demand charge for the building to an average kilowatt hour (kwh) charge to Tenant, and, if applicable, where such electricity rate includes a time-of-day rate and there is no time-of-day meter to measure Tenant's peak usage, then Landlord shall average the on-peak and off-peak energy and demand costs for the entire building, and charge all the tenants in the entire building premises (except residential tenants) only Landlord's average energy and demand costs per kilowatt and/or kilowatt hour, as appropriate.

(b) **Non-metered.** If and so long as Landlord provides electricity to the demised premises on a non-metered basis and Landlord bills Tenant for specific electricity charges, then Tenant shall pay to Landlord, as additional rent hereunder, for electricity used as determined in accordance with the provisions set forth in paragraph (1)(i) or (ii) of this

subdivision (b):

(1) (i) Landlord shall charge Tenant for electricity based upon a survey of the estimated electricity use by Tenant in the demised premises which shall not include electricity consumed in any public, common and service areas, at the rate that is or would be charged by the utility providing electricity service for resale or redistribution in the service area where Landlord's building is located, which rate shall only include demand, energy, fuel adjustment charges, any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner of the New York City Department of Business Services, plus a mark-up for administrative and operating costs equal to ____ percent (not to exceed 12 percent) of such electricity rate; or

(ii) Landlord shall charge Tenant for electricity based upon a survey of Tenant's pro rata share of the actual cost of electricity for the entire building premises, which cost shall only include charges for demand, energy, fuel adjustment charges, any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner of the New York City Department of Telecommunications and Energy, as determined by Tenant's square foot area in the demised premises which shall not include any public, common and service areas, which square footage shall be measured by a recognized real estate standard consistently applied to all tenants in the entire building premises, as a proportion of the square foot area in the entire building premises, plus a mark-up for administrative and operating costs equal to ____ percent (not to exceed 12 percent) of such electricity cost prorated to Tenant.

(2) If a survey is used to determine the estimated electricity use by Tenant for the demised premises, then a survey shall be conducted by a technically qualified representative of Landlord, within ninety (90) days of Tenant's use or occupancy of the demised premises, or the date of issuance of a Certificate of Eligibility for the New York City utility tax and sales tax benefits conferred by Local Law No. 49 of 1987 for pre-existing occupancy, the cost of which survey shall be paid for by Landlord.

(3) If a survey is used to determine Tenant's prorata share of electricity charges or costs based upon Tenant's square foot area in the demised premises, excluding any public, common and service areas, then Landlord may rely on an existing area survey.

(4) Tenant, upon sixty (60) days prior written notice served on Landlord, at Tenant's option and expense and at any time, may demand a change from prorating electricity charges in accordance with subparagraph (b)(1)(ii) of this rider to determining such charges in accordance with a survey as described in subparagraph (b)(1)(i) of this rider.

(5) Where Landlord uses a survey as described in subparagraph (b)(1)(i) of this rider, either Landlord or Tenant, upon forty five (45) days prior written notice, may request subsequent surveys to be conducted as described herein, at any time because of material changes in conditions, and where Landlord uses a survey as described in subparagraph (b)(1)(i) or (ii) of this rider, either Landlord or Tenant, upon forty five (45) days prior written notice, may request subsequent surveys to be conducted as described herein, not more than once annually because of a disagreement with a prior survey. The party requesting any such survey shall pay the costs thereof. If Landlord and Tenant do not agree on the results of the said subsequent survey, then, within fifteen (15) days after the receipt of the results of the written survey report, the parties respective representatives shall choose an independent representative, whose cost shall be shared equally by the parties, to make such determination which shall be controlling. If the parties' respective representatives cannot agree on an independent representative within such fifteen (15) day period, then either party may apply to the Supreme Court of the State of New York in the judicial district where the demised premises is located for such appointment. For the purposes of this subparagraph, the term "material changes in conditions" shall mean changes in Tenant's electricity consumption: (i) which result from the addition or removal of equipment, machinery, or other electrical devices, and (ii) which would reasonably result in a change in electricity usage of greater than five (5) percent in the results of a prior survey.

(6) If Landlord prorates electricity charges on the basis of: (i) a use survey, vacant space (i.e. tenant premises which are not leased and occupied) shall be allocated to Landlord; or (ii) square footage, vacant space (i.e. tenant

premises which are not leased and occupied) shall not be included in the total square footage of the entire building premises, provided, however, public, common, and service areas shall not be considered vacant space.

(c) **General conditions.** If Landlord furnishes electricity to Tenant, Landlord shall continue to furnish electricity during the entire term of this Lease and any extensions or renewals thereof, provided Tenant is not in default of payment for electricity charges hereunder.

Except for the surveys described in subparagraphs (b)(1)(i) and (ii) and (2) of this rider, if Landlord and Tenant do not agree on any matter relating to the measurement of electricity consumption, the calculation of the electricity charges or the billing of any electricity charges to Tenant, the controversy shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided Tenant shall pay to Landlord any sums or amounts in dispute subject to a refund by Landlord with interest payable at the rate specified in Section 90.3 of Title 16 of the New York Code of Rules and Regulations (New York State Department of Public Service; Customer Deposits-Electric Corporations), or any successor index published by the New York State Public Service Commission or Department of Public Service in connection with interest on utility customer deposits. Any award rendered by the arbitrator(s) may assess the arbitrator's expenses and fees, together with the costs and other reasonable expenses and fees, including attorney's fees, against the losing party. Judgment upon the award rendered by arbitrator(s) may be entered in any court having jurisdiction thereof.

Landlord shall clearly and separately state electricity charges for the demised premises, excluding any public, common or service area of the building premises, on bills or statements to Tenant, including the charge per kilowatt hour and per kilowatt, if applicable, and the number of billing units used to calculate such bill or statement. Such bills or statements shall be in writing and furnished to Tenant at least bi-monthly. Upon the execution of this Lease, Landlord shall furnish to Tenant a copy of the applicable rate charges in the tariff of the utility providing electric service to the building premises and any revisions or modifications thereto, as approved by the New York State Public Service Commission. Tenant, once each calendar year, upon ten (10) days prior written notice, may inspect, during regular business hours, at Landlord's office, Landlord's records regarding the calculation of Tenant's electricity charges and the electricity consumption for the entire building premises, and the electric bills rendered to Landlord for the entire building premises, for no less than the three (3) preceding calendar years.

FOOTNOTES

1

[Footnote 1]: * Formerly Appendix A to Chapter 1 of Title 67. Renamed as Title 66 Appendix A to Chapter 9, Subchapter A, LL 61/1991 eff. July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER B RATES AND CHARGES

§9-21 Definitions.

City. "City" means the City of New York.

City's Consumers. "City's consumers" means any retail consumer of NYCPUS receiving electric service pursuant to NYCPUS Service Tariff.

Con Edison. "Con Edison" means Consolidated Edison Company of New York, Inc.

Distribution Agent or Delivery Agent. "Distribution Agent" or "Delivery Agent" means Con Edison.

EDPAB. "EDPAB" means New York State Economic Development Power Allocation Board.

Fitzpatrick Delivery Agreement. "Fitzpatrick Delivery Agreement" means the agreement between the City of New York and Consolidated Edison Company of New York, Inc., governing the delivery of Fitzpatrick economic development power, dated October 23, 1987, as amended, and any renewals or amendments thereof.

Industrial Economic Development Consumer. "Industrial Economic Development Consumer" means a City's Consumer who (1) applies to, and is approved by, NYCPUS for service; (2) meets the criteria established herein, including the Lease and Operating Agreement or the Fitzpatrick Delivery Agreement, whichever is applicable; and (3) is approved by EDPAB and NYPA, as may be required, pursuant to 21 NYCRR Part 370 and Part 460.

Lease and Operating Agreement. "Lease and Operating Agreement" is between the City of New York and Consolidated Edison Company of New York, Inc., governing the delivery of Niagara/St. Lawrence hydropower, dated July 1, 1985, and any renewals or amendments thereof.

NYPA. "NYPA" means the Power Authority of the State of New York (also known as the New York Power Authority).

NYCPUS. "NYCPUS" means the New York City Public Utility Service.

NYCRR. "NYCRR" means the Official Compilation of Codes, Rules and Regulations of the State of New York.

HISTORICAL NOTE

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER B RATES AND CHARGES

§9-22 General Terms and Conditions.

The following terms and conditions shall apply to electric service rendered by the New York City Public Utility Service:

(a) **Applicable criteria.** Electricity service shall be supplied to City's Consumers in accordance with the following, as such may be amended from time to time, and to the extent of availability of power and energy from NYPA and access to necessary transmission and distribution facilities:

(1) the applicable service tariffs;

(2) the City's Application for Electric Service to NYPA, executed by the City on August 12, 1985, and the accompanying NYPA Service Tariffs, as amended;

(3) the Lease and Operating Agreements and Fitzpatrick Delivery Agreement;

(4) Chapter IX and X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, 21 NYCRR Parts 370 and 460; and

(5) any and all other applicable laws, rules, regulations, tariffs, rulings, orders, directives, and guidelines.

(b) **Rendition of service.** (1) **Industrial Economic Development Consumers.** Potential Industrial Economic Development Consumers desiring to receive service from NYCPUS will make an application for service to NYCPUS in such form and at such times as prescribed by NYCPUS. Applications will be processed and approved by NYCPUS in accordance with the requirements described herein and, to the extent applicable, 21 NYCRR Part 370 and 460, the applicable NYCPUS service tariff, and any regulations or guidelines adopted by NYCPUS. All allocations of industrial economic development power shall be subject to approval by EDPAB and/or NYPA as required by law. Industrial Economic Development Consumers shall be required to enter into a power service agreement with NYCPUS and shall provide such information as may be required, from time to time, by NYCPUS and its Delivery Agent. Such City's Consumers shall be required to adhere to any and all applicable terms and conditions of the City's Delivery Agent.

(2) **Other City's Consumers.** NYCPUS shall specify the service classifications eligible to receive power and energy under applicable tariffs, in accordance with the requirements established by NYPA. Such City's Consumers shall be required to adhere to any and all applicable terms and conditions of the City's Distribution Agent.

(c) **Load shapes and load factors.** (1) Deliveries of power and energy to City's Consumers, except for Industrial Economic Development Consumers, shall conform to the load shape of the class of City's Consumers being served. Such power and energy which does not so conform may, at the City's option, be reflected as adjustments in future deliveries or be subject to rejection by the Distribution Agent.

(2) Industrial Economic Development Consumers which purchase electricity from both the City and the City's Delivery Agent shall be supplied by both the City and the Delivery Agent at the same load factor.

(d) **Liability.** (1) The City and NYCPUS shall not be liable in the event that the supply of electric service under any of the following tariffs is interrupted or irregular or defective or fails from causes beyond their control or through ordinary negligence of their employees or agents. The City and NYCPUS shall not be liable for any injury, casualty or damage resulting in any way from the supply or use of electricity or from the presence or operation of any structures, equipment, wires, pipes, appliances or devices on the premises of City's Consumers or otherwise from any failure of the generation, transmission, or distribution system, except injuries or damages resulting from gross negligence on the part of NYCPUS.

(2) NYCPUS will endeavor to furnish electric service continuously except:

(i) for interruptions or reductions due to uncontrollable forces;

(ii) for temporary interruptions or reductions which, in the opinion of NYCPUS, or its suppliers and agents, are required for power system protection or for providing temporary emergency assistance to interconnecting systems; and

(iii) for temporary interruptions or reductions, which, in the opinion of NYCPUS, or its suppliers or agents, are necessary or desirable for the purpose of maintenance, repairs, replacements, installation of equipment, or investigation and inspection. NYCPUS, except in case of emergency as determined by it, will give City's Consumers, to the extent practicable, reasonable advance notice of such temporary interruptions or reductions and will exercise due diligence to remove the cause thereof.

(e) **Distribution and customer billing.** (1) **Distribution Agent.** All City's Consumers shall be customers of NYCPUS, not the Distribution Agent, with respect to the power and energy supplied under the following service tariffs. The Distribution Agent shall be responsible only for the local transmission and distribution of power and energy to City's Consumers, and such metering, billing and/or collection functions as described herein and in the Lease and Operating Agreement or the Fitzpatrick Delivery Agreement, whichever is applicable.

(2) **Rates and charges.** In addition to the rates and charges specified in the applicable tariffs, City's Consumers shall be required to pay, or reimburse the City, for any and all metering costs and any and all charges incurred by NYCPUS as a direct result of interconnecting City's Consumers' facilities with those of Delivery Agent and supplying

electricity to said City's Consumers.

(3) **Deposits.** Thirty days prior to the initiation of service, Industrial Economic Development Consumers shall be required to pay NYCPUS a deposit equal to two months estimated billings, pursuant to 21 NYCRR section 451.1. The deposit shall be held by NYCPUS for a period of two years. If, after a two year period, City's Consumers are not delinquent in the payment of bills, the deposit shall be refunded promptly, no later than the next bill for service after such two year period, without prejudice to NYCPUS' right to require a future deposit if deemed necessary. Interest shall be paid on the amount deposited at a rate prescribed annually by NYPA.

(4) **Payment of bills and late payment charges.** (i) On or about the tenth day of each month, Industrial Economic Consumers shall receive an estimated bill statement for the monthly billing period, indicating the number of kilowatts and kilowatt hours estimated to be supplied by NYCPUS during the billing period and the rates and costs therefor. For each subsequent bill, NYCPUS will reconcile the estimated usage with the actual usage for the prior billing period and the reconciliation amount shall be reflected in the estimated bill for the current month. Upon termination of service, a final reconciliation of any amounts owed by City's Consumers or to be paid by NYCPUS shall be made. NYCPUS may also make such reconciliation or adjustments to its rates and charges as are authorized hereunder or in the applicable NYCPUS Service Tariff. Where an Industrial Economic Development Consumer is a retail customer of both NYCPUS and its Distribution Agent, it shall receive separate bill statements with regard to each supplier.

(ii) City's Consumer (other than Industrial Economic Development Customers) shall be billed each month by the City, through its Distribution Agent. Bills rendered by NYCPUS, through its Distribution Agent, shall be payable to said agent in accordance with all applicable rules and regulations of the Distribution Agent.

(iii) Payment for bill statements rendered by NYCPUS to Industrial Economic Development Consumers is due on presentation, if hand delivered, or three days after the mailing of the bill and is payable by mail, to any duly authorized collector thereof, or otherwise as may be specified in the bill statement. A late payment charge at the rate of one and one half percent (1 1/2%) per monthly billing period, or such other rate as approved by NYPA, may be applied to the account of any Industrial Economic Development Consumer which is delinquent in the payment of its bills to NYCPUS. The charge will be applied to all amounts billed, including arrears, and unpaid late payment charge amounts applied to previous bills, which are not received on or before a date specified on the bill. This includes any additional amounts in cases where NYCPUS has underbilled, or failed to bill, because the City's Consumer was receiving service through tampered equipment. The date so specified shall not be less than 20 days after the date due. The late payment charge will apply to the amounts found to be owed for each monthly billing period, including any previous late payment charges. The late payment charge will not be applied to the account of any customer who can demonstrate neither responsibility for the tampering, nor knowledge that service was received through tampered equipment.

(5) **Discontinuance of service.** (i) NYCPUS may assign to its Distribution Agent the right to discontinue service or bring any legal action, as specified in this subparagraph, and the Distribution Agent may take any such action on behalf of NYCPUS, consistent with the distribution agreement between the City and said agent. Notwithstanding the foregoing, NYCPUS reserves the right to discontinue service and/or to take any other action permitted by law, consistent with the applicable Lease and Operating Agreement or City's Consumer who fails to make full and timely payments of all amounts due, including amounts due for late payment charges hereunder. In the event that NYCPUS, or its Distribution Agent, discovers tampering with equipment or meters, NYCPUS reserves the right to discontinue service to any City's Consumer and/or bring any legal action consistent with said Lease and Operating Agreement or Fitzpatrick Delivery Agreement, to recover damages, including reasonable attorneys fees and costs, or to take such other action as may be permitted by law.

(ii) NYCPUS may discontinue service to an Industrial Economic Development Consumer for failure to pay any and all amounts due within thirty-five (35) days after payment was due. Termination will not occur until at least fifteen (15) days after written notice has been personally served upon the Industrial Economic Development Consumer or at least fifteen (15) days after NYCPUS mails written notice by registered or certified letter to such customer at the

address at which service is received. If an Industrial Economic Development Consumer has requested in writing to NYCPUS to have an alternate address for billing purposes, written notice shall be sent both to the alternate address and to the premises where service is received. Failure to exercise any of these termination conditions by NYCPUS shall not constitute a waiver of any rights and powers set forth herein.

(6) **Determination of demand.** Demand shall be determined in accordance with the applicable provisions of the Delivery Agent's service tariffs and any contract between NYCPUS and its customers.

HISTORICAL NOTE

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Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER B RATES AND CHARGES

§9-23 Firm Industrial Economic Development Nuclear Service (Service Tariff No. 4).

(a) **Availability.** This rate shall be available to specific industrial economic development consumers designated by NYCPUS and approved by NYPA or EDPAB, as required by law. (See Terms and Conditions.)

(b) **Character of service.** Alternating current, sixty hertz, voltage as available.

(c) **Monthly rate.** (1) **Non-time-of-day service.** To customers with maximum monthly billing demands of less than 1500 KW. Customers billed under this rate whose monthly maximum demands are 1500 KW or greater for two consecutive months shall thereafter be billed under Time-of-Day Service.

[See tabular material in printed version]

(ii) Energy charge

(A) High Tension Service 21.55 mills per KWh

(B) Low Tension Service 23.29 mills per Kwh

(2) **Time-of-day service.** To customers with maximum monthly billing demands of 1500 KW or greater. Customers billed under this rate whose monthly maximum demands do not exceed 900 KW for 12 consecutive months

shall thereafter be billed under Non-Time-of-Day Service.

[See tabular material in printed version]

(ii) Energy charge.

(A) High Tension Service 21.55 mills per KWh

(B) Low Tension Service 23.29 mills per KWh

(d) **Provisions applicable to rate.** (1) **Purchased power adjustment factor.** The rate under this tariff shall be adjusted by any changes in the delivered cost of purchased power, pursuant to 21 NYCRR Section 452.4.

(2) **Billing demand.** Billing demand shall be the greater of:

(i) such consumer's maximum 30-minute integrated demand established during the billing period; or

(ii) 75 percent of such consumer's contract demand. Contract demand shall be the maximum amount of power contracted for in the power service agreement between a City's consumer and NYCPUS.

(3) **Taxes.** The rates and charges under this Rate Schedule shall be increased by the applicable rate of gross receipts taxes, sales taxes and such other taxes as NYCPUS may be required to collect by law.

HISTORICAL NOTE

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CHAPTER 9 ENERGY SERVICES

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§9-24 Firm Hydroelectric Service (Service Tariff No. 33).

(a) **Availability.** This rate shall be available to residential consumers or such other retail consumers as may be designated by NYCPUS and approved by PASNY.

(b) **Character of service.** Alternating current, sixty hertz, voltage as available.

(c) **Monthly rate.** (1) **Energy charge:** $.007861 per kwh

(2) **Distribution charge:** The distribution charge as provided in the Lease and Operating Agreement between the City and its Distribution Agent.

(d) **Provisions applicable to rate.** Purchased power adjustment factor. The rate under this tariff shall be adjusted by any changes in the delivered cost of purchased power, pursuant to 21 NYCRR §452.4.

HISTORICAL NOTE

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CHAPTER 9 ENERGY SERVICES

SUBCHAPTER B RATES AND CHARGES

§9-25 Firm Industrial Economic Development Hydroelectric Service (Service Tariff No. 34).

(a) **Availability.** This rate shall be available to specific industrial economic development consumers designated by NYCPUS and approved by PASNY. See Terms and Conditions.

(b) **Character of service.** Alternating current, sixty hertz, voltage as available.

(c) **Monthly rate.** (1) **Contract demand charge:** $2.81 per kw

(2) **Energy charge:** $.00243 per kwh

(3) **Distribution charge:** The distribution charge as provided in the applicable delivery tariff on file with, and approved by, the New York State Public Service Commission and Federal Energy Regulatory Commission.

(d) **Provisions applicable to rate.** (1) **Purchased power adjustment factor.** The rate under this tariff shall be adjusted by any changes in the delivered cost of purchased power, pursuant to 21 NYCRR §452.4.

(2) **Contract demand.** The maximum kilowatts contracted for in the contract between a City's Consumer and NYCPUS.

HISTORICAL NOTE

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CHAPTER 9 ENERGY SERVICES

SUBCHAPTER B RATES AND CHARGES

§9-26 Interruptible Hydroelectric Service (Service Tariff No. 36).

(a) **Availability.** This rate shall be available to residential consumers or such other retail consumers as may be designated by NYCPUS and approved by PASNY.

(b) **Character of service.** Alternating current, sixty hertz, voltage as available. Interruptible energy will be subject to its availability from PASNY's power sources. Transmission of interruptible energy will be subject to availability of transmission capacity in the systems of PASNY and its wheeling agents.

(c) **Monthly rate.** (1) **Energy charge:** $.00926 per kw.*2

(2) **Distribution charge:** The distribution charge as provided in the Lease and Operating Agreement between the City and its Distribution Agent.

(d) **Provisions applicable to rate.** Purchased Power Adjustment Factor. The rate under this tariff shall be adjusted by any changes in the delivered cost of purchased power, pursuant to 21 NYCRR §452.4.

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FOOTNOTES

2

[Footnote 2]: * Includes a component of $.00473/kwh to regain start-up and administrative costs of $1,569,000 for the NYCPUS for fiscal year ending June 30, 1986 (FY86). The $.00926/kwh rate shall be effective until the entire $1,569,000 has been billed to retail customers. If the entire $1,569,000 is billed to customers previous to July 1, 1986, the $.00926/kwh rate shall become $.00453/kwh ($.00926-$.00473) and such $.00453/kwh rate shall remain in effect for all lingering retail billings to be collected before July 1, 1986. Starting on the later of (a) the first billing date after which the full $1,569.00 of FY86 start-up and administrative cost has been billed to customers or (b) the first billings in the month of May 1986, the monthly energy rate shall become $.00488/kwh. The relevant monthly energy rate shall be subject to adjustment to reconcile amounts billed in prior months for start-up and administrative costs to the extent that NYCPUS has overcollected such start-up and administrative costs.

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Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-01 Applicability.

These regulations apply to all contracts let by the City, as provided herein.

HISTORICAL NOTE

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66 RCNY 10-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-02 Definitions.

Whenever used in these regulations, the following terms shall have the following meanings:

Age discrimination. "Age discrimination" means discrimination in employment related decisions because an individual is between the ages of 18 and 70.

Agency head. "Agency head" means the Commissioner, Chair or Director of any contracting agency.

Applicant. "Applicant" means an applicant for or recipient of City assistance for a construction project or other participant in a program related to City assistance for a construction project.

Citizenship status. "Citizenship status" means the citizenship of any person, or the immigration status of any person lawfully residing in the United States who is not a citizen or national of the United States.

City. "City" means the City of New York.

City assistance. "City assistance" means any financial assistance involving a construction project in the form of a grant, loan, contract, insurance or guarantee, or any other arrangement by which the City provides or otherwise makes available assistance in the form of:

(1) funds;

(2) services of city personnel;

(3) tax exemptions and tax abatements; or

(4) real or personal property or any interest in the use of such property, including:

(i) transfers or leases of such property for less than fair market value or for a reduced consideration; and

(ii) proceeds from a subsequent transfer or lease of such property if the City's share of its fair market value is not returned to the City.

Compliance. "Compliance" means a contractor having acted in accordance with the requirements of E.O. 50 (§10-14) and these regulations.

Commissioner. "Commissioner" means the Commissioner of the Department of Business Services.

Construction project. "Construction project" means any construction, reconstruction, rehabilitation, alteration, conversion, extension, improvement, repair or demolition of real property contracted by the City, except contracts for architectural, engineering or drafting services.

Contract. "Contract" means any written agreement, purchase order or instrument in which the City is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing:

(1) Unless otherwise required by law, the term "contract" shall include any City grant, loan, guarantee or other City assistance for a construction project.*1

(2) The term "contract" shall not include:

(i) contracts for financial or other assistance between the City and a government or government agency;

(ii) contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, and sale of bonds, certificates of indebtedness, notes, or other fiscal obligations of the City, or consisting thereof; or

(iii) employment by the City of its officers and employees which is subject to the equal employment opportunity requirements of applicable law.

Contracting agency. "Contracting agency" means any administration, board, bureau, commission, department, or other governmental agency of the City, or any official thereof, authorized on behalf of the City to provide for, enter into, award, or administer contracts.

Contractor. "Contractor" means a person, including a vendor or applicant, who is a party or a proposed party to a contract with a contracting agency, first-level subcontractors of supply and service contractors, and all levels of subcontractors of construction contractors and applicants.

Director. "Director" means the Director of the Office.

Division. "Division" means the Division of Labor Services.

Economically disadvantaged person. "Economically disadvantaged person" means a person who at the time of application for entrance into a training program is either:

(1) a resident of a single person household who receives

(i) wages not in excess of 70 percent of the lower-level "urban family budget" for the City as determined by the U.S. Department of Labor, Bureau of Labor Statistics, or

(ii) receives cash welfare payments under a Federal, State, or local welfare program; or

(2) a member of a family which

(i) receives a family income less than 70 percent of the lower-level "urban family budget" for the City as determined by the U.S. Department of Labor, Bureau of Labor Statistics, or

(ii) receives cash welfare payments under a Federal, State, or local welfare program; or

(3) a Vietnam-era veteran as defined by applicable Federal law who has been unable to obtain non-government subsidized employment since discharge from the armed services; or

(4) a displaced homemaker who has not been in the labor force for 5 years but has during those years worked in the home providing unpaid services for family members and was

(i) dependent on public assistance or the income of another family member but is no longer supported by that income, or

(ii) receiving public assistance for dependent children in the home and that assistance will soon be terminated.

Employment report. "Employment report" means a report filed by a contractor containing information concerning its workforce composition, employment and salary practices, policies, programs, collective bargaining agreements, and pending lawsuits or consent decrees or court orders. The contractor may at its option submit as part of its employment report self-evaluation and transition plans written pursuant to §504 of the Rehabilitation Act of 1973 or its affirmative action plan in lieu of those sections of the employment report which request information contained in said plan.

Employment update report. "Employment update report" means a periodic report required to be filed by a contractor when the Office identifies underutilization in a job group or employment policies and practices which mitigate against equal employment opportunity.

Equal employment opportunity. "Equal employment opportunity" means the treatment of all employees and applicants for employment without unlawful discrimination as to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, lay-off and termination, and all other terms and conditions of employment except as provided by law.

Handicapped individual. "Handicapped individual" means any person who has or had a physical or mental impairment that substantially limits one or more major life activities, and has a record of such an impairment.

(1) The term "physical or mental impairment" means a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin, and endocrine; or a mental or psychological disorder, such as mental retardation, developmental disability, organic brain syndrome, emotional or mental illness and specific learning disabilities. It includes, but is not limited to, such diseases and conditions as orthopedic, visual speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, alcoholism, substance abuse, and drug addiction.

(2) The term "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(3) The term "has a record of such an impairment" means has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The term "otherwise qualified" means a handicapped person, who, with reasonable accommodation can satisfy the essential requisites of the job or benefit in question, and in the case of alcoholism, substance abuse and drug addiction, is recovering and currently free of abuse of same.

(5) The term "reasonable accommodation" means such accommodation to an employee's or prospective employee's physical or mental impairment as shall not cause undue hardship in the conduct of the contractor's business. The contractor shall have the burden of demonstrating such hardship.

Job group(s). "Job group(s)" means a group of jobs having similar content, wage rates, and opportunities;

Minorities. "Minorities" means Blacks, Hispanics (non-European), Asians, and Native Americans (American Indians, Eskimos, Aleuts);

Noncompliance. "Noncompliance" means a contractor having failed to act in accordance with E.O. 50 (§10-14) and these regulations;

Person. "Person" means any natural person, corporation, partnership, sole proprietorship, or unincorporated agency;

Prime contractor. "Prime contractor" means any person who is a party or proposed party to a contract with a contracting agency;

Subcontractor. "Subcontractor" means any person having an agreement or arrangement or proposed agreement or arrangement with a contractor in which any portion of the contractor's duty to perform work is undertaken or assumed by such person; provided that a supplier of unfinished products to a supply and service contractor needed to produce the item contracted for shall not be considered a subcontractor;

Trainee. "Trainee" means an economically disadvantaged person who qualifies for and receives training in one of the construction trades pursuant to a program, other than an apprenticeship program, approved by the Division and, where required by law, the New York State Department of Labor and the United States Department of Labor, Office of Apprenticeship and Training;

Underutilization. "Underutilization" means a statistically significant disparity between the employment of members of a racial, ethnic, or sexual group and their availability as determined by the Office's utilization analysis.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 10, §1-02.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Enforcement of provisions pertaining to City assistance is deferred pending the examination by the Office of the Corporation Counsel of the legal issues concerning applicability of Executive Order #50 (1980)(§10-14) and these regulations to numerous programs receiving City assistance.

Rules of the City of New York

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66 RCNY 10-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-03 Covered Contracts.

(a) **General.** (1) All contractors doing business with the City without regard to the dollar amount or source of funding of the contract must be equal employment opportunity employers.

(2) Contractors whose contracts are funded in whole or in part by federal or state funds must also meet the standards and applicable legal requirements of the funding source. To the extent that federal or state requirements are different from the requirements of E.O. 50 (§10-14) and these regulations, the requirements of E.O. 50 (§10-14) and these regulations shall apply, except in those circumstances where application of the City's requirements would make it impossible for the contractor to meet the program requirements of the funding source.

(b) **Submission requirements.** (1) Except as provided herein, no contracting agency shall enter into a contract with any contractor unless such contractor's Employment Report is first submitted to the Division for its review.

(i) Before the contract may be awarded, each proposed supply and service contractor for a contract in excess of the small purchase limit established by rule of the Procurement Policy Board for procurement for goods and services who employs 50 or more employees is required to submit to the Division an Employment Report for the facility or establishment where the contract will be performed and where the Division deems necessary for a full review, the principle place of business or corporate headquarters;

(ii) Before the contract may be awarded, each proposed construction contractor for a contract in excess of $1 million is required to submit to the Division an Employment Report for its principal place of business or headquarters, the construction site where the contract will be performed and other non-City funded construction sites of the contractor within the City;

(iii) A contracting agency may award a requirements contract or an open market purchase agreement covered by these regulations prior to review by the Division of the contractor's Employment Report but may not make a purchase order against such contract or agreement until it has first transmitted such contractor's Employment Report to the Division and the Division has completed its review.

(2) Unless otherwise provided by federal or state law, an Employment Report shall not be required for

(i) a construction contract in the amount of $1 million or less or construction subcontract in the amount of $750,000 or less; or

(ii) a supply and service contract or subcontract in the amount of the small purchase limit established by rule of the Procurement Policy Board for procurement for goods and services or less or where the contractor employs less than 50 employees. In such cases the contracting agency shall promptly notify the Office in writing prior to the award of such a contract. To determine the applicability of this paragraph (2) to a City-assisted construction contract, the amount or value of the City assistance shall govern; or

(iii) a contract for a procurement of information technology that is within the small purchase limits established by rule of the Procurement Policy Board.

(3) Unless otherwise provided by law, an Employment Report shall not be required on a preaward basis for an emergency contract awarded pursuant to Executive Order No. 2 (2nd) (1970), as amended, the City Charter §315 or the General Municipal Law §103(4). In such cases, the contracting agency shall promptly notify the Office of the award of such a contract by submission of a copy of the documentation submitted to the Law Department. In the event of an emergency not covered under the foregoing provisions, the contracting agency head will notify the Director in writing requesting a waiver of the preaward submission requirements. Said request must contain a statement of reason for such waiver request.

(4) Unless otherwise required by law, an Employment Report shall not be required for a covered supply and service contract with a contractor who has received a valid certificate of compliance with the equal employment requirement of applicable law as follows:

(i) where a contractor has received a Certificate of Equal Employment Compliance issued after a desk audit by an appropriate federal or state agency in the preceding 12 months, the proposed contractor shall complete and submit the general information section of the Employment Report with a copy of such certificate of compliance to the Division;

(ii) where a contractor has been desk audited by an appropriate government agency and found to have deficiencies with respect to equal employment compliance and has agreed, within the preceding 12 months, to correct these deficiencies, the contractor may submit the general information section of the Employment Report with documentation regarding the finding of deficiencies and corrective measures taken. The Division may thereafter, in its discretion, require the submission of all reports concerning implementation of corrective measures or a completed Employment Report; and

(iii) where a contractor has been reviewed by the Division and issued a certificate of compliance in the preceding 12 months, the contractor shall complete and submit the general information section of the Employment Report with a copy of such certificate of compliance to the Division.

(5) Unless otherwise required by law, the Division may in its discretion waive the submission of an Employment

Report where the contractor is in the process of being desk audited by an appropriate government agency and grant the contractor a conditional approval. Upon completion of the audit, the contractor must advise the Bureau of the results of the audit. The Division may thereafter in its discretion, require the submission of all reports concerning implementation of corrective measures or a completed Employment Report.

(6) The contractor may at its option submit its existing Affirmative Action Plan ("Plan") in lieu of parts of the Employment Report, provided that the Plan contains essentially the same information as those portions of the Employment Report.

(7) The contractor may at its option submit copies of its self-evaluation and transition plans written pursuant to §504 of the Rehabilitation Act of 1973.

(8) The Director may, on the written request of the contracting agency head, waive the submission requirements of E.O. 50 (§10-14) and these regulations where the agency head certifies that:

(i) the contracting agency has been unable to secure the submission of an employment report after making diligent efforts; and

(ii) the proposed contractor is the sole provider of a unique service, supply or labor; or

(iii) because of the unique circumstances of the contract it would not be in the public interest to require submission of an Employment Report prior to the award of the contract.

(9) Failure to file timely, complete and accurate reports as required by E.O. 50 (§10-14) and these regulations constitutes noncompliance with E.O. 50 (§10-14) and these regulations. The Director may direct the contracting agency head to impose sanctions authorized by E.O. 50 (§10-14) and these regulations in connection with such noncompliance. The Division shall notify the contracting agency in writing of any such failure as soon as practicable.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 10, §1-03.

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Subd. (b) par (1) subpar (i) amended City Record Nov. 17, 2004 §1, eff. Dec. 17, 2004. [See Note 2]

Subd. (b) par (1) subpar (ii) amended City Record Nov. 17, 2004 §2, eff. Dec. 17, 2004. [See Note 2]

Subd. (b) par (2) subpar (i) amended City Record Nov. 17, 2004 §3, eff. Dec. 17, 2004. [See Note 2]

Subd. (b) par (2) subpar (ii) amended City Record Nov. 17, 2004 §4, eff. Dec. 17, 2004. [See Note 2]

Subd. (b) par (3) amended City Record Nov. 17, 2004 §5, eff. Dec. 17, 2004. [See Note 2]

DERIVATION

Subd. (b) par (2) subpar (ii) amended City Record Oct. 15, 1997 eff. Nov. 14, 1997. [See Note 1]

Subd. (b) par (2) subpar (iii) added City Record Oct. 15, 1997 eff. Nov. 14, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 15, 1997:

The Department of Business Services, acting pursuant to authority granted by section 1305 of the City Charter, is amending the rules of its Division of Labor Services to provide that contracts for procurements of information technology that come within small purchase limits established by the Procurement Policy Board in July of 1997 are exempt from those provisions of section 1-14 which require the filing of employment reports. The procurement rules were changed primarily to enable agencies to obtain contractors to assist in correcting flaws in the City's computer systems associated with the beginning of a new century in the year 2000 as quickly as possible.

2. Statement of Basis and Purpose in City Record Nov. 17, 2004: This amendment to the rules governing the Division of Labor Servicrs ("DLS") increases the minimum supply and service contract amount under which the submission of an Employment Report to DLS is required. This amendment raises the current $50,000 threshold amount to an amount that corresponds to the small purchase limit established by rule of the Procurement Policy Board. The amendment also exempts contractors who employ fewer than 50 employees from the requirement to submit an Employment Report. The current exemption is limited to contractors who employ fewer than 25 employees. Adjustments to the minimum threshold for DLS review of supply and service contracts that correspond to the small purchase limit are consistent with objectives of the procurement process to reduce administrative requirements for purchases below a limit established by the Procurement Policy Board and the City Council. After public hearing and pursuant to comments raised by the New York City Law Department, revisions to the proposed amendments to the rule were made. First, the amendments increase the exemption threshold for construction contracts from $50,000 to $1 million in §§10-03 and 10-04 of the rule in order to conform the thresholds set forth in these sections to the existing threshold for construction contracts set forth in §10-14. In addition, an outdated reference to Charter §342(b) has been replaced by the correct citation. Also, the amendment regarding required contract language was revised to reflect that the contract language set forth in the rule is required in all contracts in excess of the small purchase limit established by rule of the Procurement Policy Board. Finally, the rule's reference to a board of responsibility convened pursuant to the rules and regulations of the Board of Estimate in the rule was omitted because the Board of Estimate no longer exists.

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-04 Responsibilities of Contracting Agencies.

(a) **Contract language-all contracts.** Each contracting agency shall incorporate into every contract in excess of the small purchase limit established by rule of the Procurement Policy Board to which it becomes a party the following language:

"This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980) (§10-14) ("E.O. 50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the contractor agrees that it:

(1) will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

(2) will not discriminate in the selection of subcontractors on the basis of the owner's, partners' or shareholders' race, color, creed, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status;

(3) will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status or is an equal employment opportunity employer;

(4) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 (§10-14) and the rules and regulations promulgated thereunder;

(5) will furnish before the contract is awarded all information and reports including an Employment Report which are required by E.O. 50 (§10-14) the rules and regulations promulgated thereunder, and orders of the Director of the Office of Labor Services ("Division"). Copies of all required reports are available upon request from the contracting agency; and

(6) will permit the Division to have access to all relevant books, records and accounts by the Division for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Division, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

(i) disapproval of the contractor;

(ii) suspension or termination of the contract;

(iii) declaring the contractor in default; or

(iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Division may recommend to the contracting agency head that a contractor who has repeatedly failed to comply with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder be determined to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of the small purchase limit established by rule of the Procurement Policy Board to which it becomes a party unless exempted by E.O. 50 (§10-14) and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Division of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 (§10-14) and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 (§10-14) and the rules and regulations promulgated thereunder."

(b) **Special provisions for construction contracts.** In addition to the contractual provisions required in §l0-04(a), each contracting agency shall incorporate into every contract for a construction project in excess of $125,000 to which it becomes a party the following language:

"The contractor further agrees that it shall employ trainees for training level jobs and it shall participate in on-the-job training programs other than apprenticeship programs which are approved by the Division and where required by law, the U.S. Department of Labor, Bureau of Apprenticeship Training or the New York State Department

of Labor.

The contractor shall make a good faith effort to achieve the ratio of one (1) trainee to four (4) journey-level employees of each trade on each construction project; provided, that the trainee requirement shall not apply to contracts in the amount of $125,000 or less.

"Trainee" means an economically disadvantaged person who qualifies for and receives training in one of the construction trades pursuant to a program, other than an apprenticeship program, approved by the Division and, where required by law, the New York State Department of Labor and the United States Department of Labor, Bureau of Apprenticeship and Training.

The contractor shall be considered to employ 4 journey-level employees in a particular trade when he or she employs any number of journey-level employees in that craft whose aggregate work hours equal the number of hours 4 full-time journey-level employees would have worked in a work week as defined by the prevailing practice in the industry for the particular craft, i.e., 40 hours, 37 1/2 hours, 35 hours, etc. For example, in a craft where there is a forty-hour work week, the employment of 4 journey-level employees results in 160 hours of employment (4 × 40). Hence, any number of journey-level employees which results in 160 hours of work is considered for purposes of the training program to equal 4 journey-level employees, i.e., 3 journey-level employees who work 53 1/3 hours (3 × 53 1/3 = 160).

The training requirement shall not apply to any trade in which the employment of four or more journey-level employees and the trainee shall be for less than 4 consecutive weeks; provided, that 4 weeks shall mean 4 weeks of full-time work as defined by the prevailing practice in the industry for the particular craft, i.e., 160 hours (4 weeks × 40 hours), 150 hours (4 weeks × 37 1/2 hours), 140 hours (4 weeks × 35 hours), etc.

The contractor shall attempt to provide continuous employment for trainees after the completion of the contract to enable them to complete their course of training.

Union contractors shall refer, recommend and sponsor for union membership any of their trainees who can perform the duties of a qualified journey-level employee or who have satisfactorily completed the training program. Such former trainee shall be paid full journey-level wages and fringe benefits, whether or not union membership is granted after such referral, recommendation or sponsorship, and the contractor shall attempt to continue the employment of such persons.

In the event of a failure to provide training to the required number of trainees for the required number of weeks, the contractor's compensation shall be decreased by an amount equal to the difference between the wages and fringe benefits paid by the contractor to the trainees and the wages and fringe benefits which would have been paid to the trainees had the number and duration of the positions been as required unless the contractor can demonstrate that it made a good faith effort to provide training and was unsuccessful. The wages and fringes deducted will be whatever a first term trainee would have received under the prevailing wage schedule in effect at the time the trainees should have been employed.

A good faith effort includes at least:

(i) documented efforts to secure trainees from approved training programs; and

(ii) documented outreach efforts to New York State Employment Service, Department of Employment, TAP Centers, community and civil rights groups to identify candidates for training positions and sponsorship of those persons by the contractor for entrance into an approved training program; and

(iii) written notification to the Division that the contractor has been unable to secure trainees pursuant to paragraphs (1) and (2) above and requesting the Division's assistance in securing trainees; provided, that neither the provisions of any collective bargaining agreement nor the refusal by a union with whom the contractor has a collective

bargaining agreement to recognize the validity of the training program shall excuse the contractor's obligation to provide training pursuant to E.O. 50 (§10-14) and these reg- ulations.

To demonstrate its good faith effort, the contractor may at its option supply documentation concerning its employment of trainees on all its construction sites, both City and non-City funded. The Division will review this documentation as part of its analysis to determine whether the contractor made a good faith effort.

The contractor will also include the training provisions of this section in every subcontract in excess of $125,000 to which it becomes a party unless exempted by E.O. 50 (§10-14) and the rules and regulations promulgated thereunder so that such provisions will be binding upon each subcontractor. The contractor will take such action with respect to any subcontract as the Division may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The contractor further agrees that it will assist and cooperate with the Division in obtaining the compliance of subcontractors with the requirements of E.O. 50 (§10-14) and the rules and regulations promulgated thereunder, and it will furnish the Division with information necessary for supervision of such compliance."

(c) **Special provisions for city-assisted contracts.** (Reserved).

(d) **Preaward compliance generally.** (1) No contracting agency shall enter into a construction contract in excess of $1 million, or a supply and service contract in excess of the small purchase limit established by rule of the Procurement Policy Board for procurement for goods and services when the contractor employs 50 or more employees, unless the contractor's Employment Report is first submitted to the Division for its review and approval.

(2) The contracting agency, at the time a proposed covered contractor is identified, either through low bid or negotiation, shall notify the Division in writing of the name of the proposed contractor, the contract in question and dollar amount.

(3) The contracting agency shall transmit a completed Employment Report to the Division within ten business days after the identification of a proposed covered contractor.

(4) The contracting agency may thereafter award a contract, unless the Division gives prior written notice to the contracting agency and the contractor as follows:

(i) If the Division notifies the contracting agency and the contractor within five business days after the receipt by the Division of the Employment Report that the contractor has failed to submit a complete report, the Director may require the contracting agency to disapprove the contractor unless such deficiency is corrected in a timely manner; and

(ii) If the Division notifies the contracting agency and the contractor within fifteen business days of the receipt by the Division of the completed Employment Report that the Division's analysis of the contractor's workforce indicates underutilization and therefore the Division has reason to believe that the contractor is not in substantial compliance with applicable legal requirements and the provisions of E.O. 50 (§10-14) and these regulations, the Division shall promptly take such action as may be necessary to remedy the contractor's noncompliance. These time limits shall apply to the review of all Employment Reports submitted by subcontractors or contractors who are a party to a requirements contract or an open market purchase agreement.

(iii) The time limits for this subdivision (d) begin to run on the business day following receipt of the Employment Report.

(5) The contracting agency shall notify the Division in writing of the award of a covered contract.

(6) With respect to covered supply and service contracts, the contracting agency shall also:

(i) notify the Division upon the submission of the prime contractor's Employment Report of any subcontracts in

excess of the small purchase limit established by rule of the Procurement Policy Board for procurements for goods and services where the subcontractor employs 50 or more employees; and

(ii) transmit the subcontractor's completed Employment Report to the Division for review and approval.

(7) With respect to covered construction contracts, the contracting agency shall in addition:

(i) notify the Division in writing of its commencement to work order;

(ii) notify the Division in writing of the contractor's application for approval of subcontractors and transmit to the Division the subcontractors' completed Employment Reports for review and approval before allowing the contractor to subcontract any work; and

(iii) notify the Division in writing when the contract is 98 percent complete.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 10, §1-04.

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Subd. (a) amended City Record Nov. 17, 2004 §6, eff. Dec. 17, 2004. [See T66 §10-03 Note 2]

Subd. (d) par (1) amended City Record Nov. 17, 2004 §7, eff. Dec. 17, 2004. [See T66 §10-03 Note 2]

Subd. (d) par (6) subpar (i) amended City Record Nov. 17, 2004 §8, eff. Dec. 17, 2004. [See T66 §10-03 Note 2]

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-05 Responsibilities of the Division of Labor Services.

(a) **Division review-generally.** (1) It shall be the responsibility of the Division to implement, monitor compliance with, and enforce E.O. 50 (§10-14), these regulations and programs established pursuant to City, State and Federal law requiring contractors to provide equal employment opportunity.

(2) The Division shall conduct a preaward compliance review to determine whether the contractor maintains nondiscriminatory hiring and employment practices and is taking steps to insure that applicants are employed and that employees are placed, trained, upgraded, promoted, paid, and otherwise treated during employment without regard to race, creed, color, sex, national origin, age, handicap, marital status, sexual orientation or citizenship status.

(3) The Division's preaward compliance review shall proceed in the following manner:

(i) The Division shall analyze the contractor's Employment Report, with special attention directed to the composition of the work force and the contractor's employment policies, practices and procedures, including the following: recruitment, outreach, interviewing practices, pre-employment physical exams, employee evaluations, supervisor accountability, EEO training, promotional and transfer practices, training programs, employee counseling, job descriptions, architectural and other barriers, salaries and wage plans, fringe benefits, work environment, changing facilities, and collective bargaining agreements;

(ii) If the Division deems it appropriate as part of its compliance review, or if the Office finds that the material submitted is incomplete or raises questions concerning the contractor's efforts to meet the requirements of E.O. 50 (§10-14) and these regulations, the Division may:

(A) hold a conference with the contractor to gain information necessary to complete the compliance review and, where necessary, to develop an Employment Program; and

(B) perform an on site review of those matters which were not fully or satisfactorily addressed in the Employment Report or at the conference.

(iii) The Division will take into consideration consent decrees, court and administrative orders and conciliation agreements when analyzing a contractor's compliance with E.O. 50 (§10-14) and these regulations. The Division will not impose requirements which are inconsistent with the foregoing.

(b) **Division review- supply and services contracts.** (1) After the Division has completed its preaward compliance review and has determined that a proposed covered contractor is in compliance with the requirements of E.O. 50 (§10-14) and these regulations, it shall issue a certificate of compliance which shall be valid for 12 months.

(2) After the Division has completed its preaward compliance review and has identified underutilization or employment policies and practices which mitigate against equal employment opportunity, it may negotiate an Employment Program or approve the proposed covered contractor with reservations and monitor the compliance of the contractor with E.O. 50 (§10-14) and these regulations during the term of the contract. The monitoring shall consist of:

(i) an analysis of Employment Update Reports which the contractor is required to submit on a periodic basis; and

(ii) where necessary, conferences and on site reviews.

(c) **Division review- construction contracts.** (1) During the preaward compliance review, the Division shall hold a preaward conference for contracts in excess of $1,000,000. At the conference, the Division will review the contents of the Employment Report in detail with the contractor to insure compliance with applicable Federal, State, and City equal employment opportunity and training requirements.

(2) During the term of the contract, the Division shall monitor the compliance of the contractor with the requirements of E.O. 50 (§10-14) and these regulations. The monitoring shall consist of:

(i) an analysis of the payroll records or other workforce data tables on City and non-City funded sites which the contractor is required to submit on a periodic basis; and

(ii) field visits to City and non-City funded construction sites of the contractor within the City.

(3) Upon completion of the contract and prior to final payment, the Division shall complete the audit of the contractor's payroll records and any other information submitted concerning compliance with the training requirements of E.O. 50 (§10-14) and these regulations to determine whether the contractor has made a good faith effort to comply with these requirements and whether the contractor's compensation should be reduced for failure to provide the required training. The contractor and the contracting agency shall be given notice if the Division's audit reveals that the contractor failed to provide training for the required number of trainees for the required number of weeks, or that the contractor has acted to circumvent the training requirements. In such case, unless the contractor can demonstrate that it made a good faith effort to provide the training, the contractor's compensation will be reduced. The Division shall evaluate all information submitted by the contractor concerning its good faith effort and consult with the contracting agency before a decision is made as to whether a training violation has occurred. The Division shall notify the contractor and contracting agency of its determination.

(d) **(Reserved).**

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 10, §1-05.

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-06 Criteria for Compliance-Generally.

The Division shall determine the contractor's compliance status after analysis of the composition of its work force and its employment policies and practices using the criteria enumerated in this section. In the event the analysis reveals that the contractor has not met the requirements of E.O. 50 (§10-14) and these regulations, the Division may with the contractor develop an Employment Program to correct any underutilization or employment policies and practices which mitigate against equal employment-opportunity. The Employment Program shall consist of mandated actions based upon the criteria set forth in this section.

(a) **Equal employment opportunity policy statement.** (1) All covered contractors must have a written equal employment opportunity policy which indicates the chief executive Divisionr's commitment to equal employment opportunity, assigns overall responsibility for implementation and provides for a reporting and monitoring procedure.

(2) The contractor shall disseminate its equal employment opportunity policy internally as follows:

(i) Include the policy in employee and supervisor manuals;

(ii) Publicize the policy and company achievements in equal employment in company newspapers, magazines, annual reports, and other company publications;

(iii) Discuss and explain the policy in training sessions and other meetings with employees, executive, management, and supervisory personnel, indicating individual responsibility for effective implementation;

(iv) Meet with union officials to inform them of the policy, review all contractual provisions to insure they are nondiscriminatory, and bargain with respect to the inclusion of nondiscrimination clauses in all union agreements; and

(v) Post the policy on company bulletin boards.

(3) The contractor shall disseminate its equal employment opportunity policy externally as follows:

(i) Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer members of all protected groups for all positions;

(ii) Incorporate the equal employment opportunity policy into all purchase orders, contracts, etc., covered by E.O. 50 (§10-14) and these regulations; and

(iii) Communicate the policy in all solicitations or advertisements for employees placed by or on behalf of the contractor.

(4) An executive of the contractor shall be appointed as director or manager of company equal employment programs with sufficient resources to carry out the responsibility. His or her identity should appear on all internal and external communications on the company's equal employment policy and programs. His or her responsibilities should include:

(i) Developing policy statements, equal employment programs, internal and external communication techniques and programs;

(ii) Assisting in the identification of problem areas;

(iii) Assisting line management in arriving at solutions to problems;

(iv) Designing and implementing audit and reporting systems that will

(A) Measure effectiveness of the contractor's policy and implementing programs including supervisors' and management's adherence to the equal employment opportunity policy;

(B) Indicate need for remedial action;

(C) Determine the degree to which the contractor's equal employment objectives have been met;

(v) Serve as liaison between the contractor and enforcement agencies;

(vi) Serve as liaison between the contractor and minority organizations, women's organizations, advocate organizations for other protected groups and community action groups concerned with equal employment opportunity.

(b) **Workforce analysis and identification of problem areas.** (1) All covered contractors must complete and submit an Employment Report. The Employment Report must contain specific information concerning the composition of the contractor's current and projected workforce.

(2) The Division shall analyze the data on minorities and women submitted by the contractor with respect to all job groups. In determining whether minorities or women are being underutilized in any job group, the Division may consider the following factors:

(i) The minority or female population of the labor area surrounding the facility or the construction site;

(ii) The size of the minority or female unemployed work force in the labor or recruitment area surrounding the facility or the construction site;

(iii) The percentage of the minority or female workforce as compared with the total workforce in the immediate labor area;

(iv) The general availability of minorities or females having requisite skills in the immediate labor area;

(v) The availability of minorities or women having requisite skills in an area in which the contractor can reasonably recruit;

(vi) The availability of promotable and transferable minorities or women within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities or females.

(3) In the event the Division's analysis reveals underutilization of minorities or women it shall:

(i) request an explanation of the apparent underutilization; and

(ii) consider the anticipated expansion, contraction and turnover in the workforce before developing with the contractor an Employment Program or determining if it has reasonable cause to believe that the contractor is not in compliance with E.O. 50 (§10-14) and these regulations.

(4) The statistical criteria for evaluating the composition of the contractor's workforce will be the following:

(i) the term "underutilization" means a statistically significant disparity between the employment of members of a racial, ethnic, or sexual group and their availability as determined by the Division's utilization analysis; and

(ii) the term "utilization analysis" will mean an analysis of the contractor's workforce using standard statistical techniques to test a null hypothesis that utilization of a given protected group is within acceptable limits, given its availability.

For the purpose of these regulations, the null hypothesis will be rejected (i.e., underutilization will be assumed) whenever there is reason to believe that the utilization rate is below the availability rate at the 80 percent level of significance.

(c) **Analysis of policies and practices-identification of problem areas.**

The Division shall analyze the following policies, practices and procedures of the contractor to insure that individuals are not discriminated against on the basis of their race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status:

(1) The composition of applicant flow;

(2) The total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, pre-employment physical exams, inquiries with respect to disabilities, test administration, test validity, referral procedures, final selection process and similar factors;

(3) Transfer and promotion practices;

(4) Wage rates, salaries, fringe benefits and other forms of compensation;

(5) Facilities including architectural and other barriers to the employment of handicapped persons, company sponsored recreation and social events, and special programs such as educational assistance;

(6) Seniority practices and seniority provisions of union contracts;

(7) Apprenticeship programs;

(8) All company training programs, formal and informal;

(9) Working atmosphere; and

(10) Technical phases of compliance, such as notification to labor unions, retention of applications, notification to subcontractors, etc.

(d) **Special provisions concerning compliance.** (1) A contractor shall not be in violation of E.O. 50 (§10-14) and these regulations if the contractor hires, employs, trains employees or otherwise discriminates on the basis of employees' creed, sex or national origin in those certain instances where creed, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor's business. The contractor shall have the burden of demonstrating that it has complied with the requirements of this paragraph.

(2) A contractor shall not be in violation of E.O. 50 (§10-14) and these regulations with respect to age discrimination where it terminates the employment of any person who is physically unable to perform his or her duties or acts pursuant to a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of E.O. 50 (§10-14) and these regulations. The contractor shall have the burden of demonstrating that it has complied with the requirements of this paragraph.

(3) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer employees without regard to their race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status shall excuse the contractor's obligations under E.O. 50 (§10-14) and these regulations.

(4) A contractor shall not be in violation of E.O. 50 (§10-14) and these regulations if it applies different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority system.

(e) **Establishment of an employment program.** If any of the following items are found by the Division in its analysis and the contractor fails to demonstrate that the item does not have a discriminatory effect, an Employment Program may be developed by the Division and the contractor containing special corrective action:

(1) Underutilization of minorities or women in specific job groups;

(2) Lateral or vertical movement of minority, female, handicapped or older employees occurring at a proportionately lesser rate than that of other employees;

(3) Selection procedures which eliminate a significantly higher percentage of minorities, women, handicapped or older employees as compared to other employees;

(4) Application and related pre-employment forms which do not comply with applicable equal employment standards;

(5) Disparity in the wages, salaries, fringe benefits and other forms of compensation paid to minorities, women, handicapped or older employees as compared to other employees;

(6) Position descriptions which are inaccurate in relation to actual functions and duties performed;

(7) Formal or scored selection procedures not validated as required by applicable equal employment standards;

(8) Tests not validated as required by applicable equal employment standards;

(9) Discriminatory rejection of applicants for employment;

(10) Minorities, women, handicapped, or older employees are excluded from or are not participating in company-sponsored activities or programs;

(11) De facto segregation exists at some of the contractor's facilities;

(12) Architectural barriers to the employment and promotion of handicapped persons;

(13) Seniority provisions which are discriminatory and not bona fide;

(14) Failure by managers, supervisors or employees to support company EEO policy;

(15) Minorities, women, handicapped or older employees are significantly underrepresented in training or career improvement programs;

(16) No formal techniques established for evaluating effectiveness of equal employment opportunity programs;

(17) No formal techniques established for evaluating supervisor adherence to equal employment opportunity programs;

(18) Labor unions and subcontractors not notified of their responsibilities; or

(19) Purchase orders not containing equal employment opportunity clause.

(f) **Contents of an employment program.** An Employment Program is a unique program developed to meet the needs of each contractor. The following illustrate the types of corrective actions which may be implemented in specific circumstances.

(1) To encourage the flow of minority, female and handicapped applicants for employment it may be appropriate to direct:

(i) Outreach to advocate organizations and referral sources for minority, female and handicapped persons;

(ii) Encouragement of employment referrals by minority, female and handicapped employees;

(iii) Inclusion of minorities, women and handicapped employees on the personnel relations staff;

(iv) Participation by minority, female and handicapped employees in career days, job fairs, youth motivation programs, and related activities in their communities;

(v) Recruitment at vocational schools, secondary schools, junior colleges, and colleges with predominantly minority, female or handicapped enrollments; and

(vi) Help-wanted advertising in news media directed at minorities, women and handicapped persons in addition to the usual news media utilized.

(2) To insure that all employees are given equal opportunity for promotion it may be appropriate to direct:

(i) Posting and publicizing promotional opportunities and providing opportunities for self-nomination;

(ii) An inventory of current minority, female, handicapped and older employees made to determine academic, skill and experience levels of individual employees and to establish a skills bank;

(iii) Remedial, job training and work-study programs;

(iv) Formal employee evaluation programs;

(v) Requiring supervisory personnel to submit written justification for denying promotions to apparently qualified minority, female, handicapped or older employees;

(vi) Formal career counseling programs which include attitude development, education aid, job rotation, buddy system and similar programs; and

(vii) Training programs.

(3) To insure that qualified handicapped applicants or employees are not excluded from employment or denied promotional opportunities, it may be appropriate to direct a contractor to make reasonable accommodations to the physical or mental limitations of employees and job applicants. The contractor shall have the burden of proving any claim it may make that directions from the Office under this paragraph (3) would impose an undue hardship in the conduct of the employer's business.

(4) To maintain a discrimination free environment and prevent harassment of employees placed through equal employment efforts it may be appropriate to direct:

(i) special training programs for supervisors;

(ii) evaluation of supervisors' equal employment activities in their performance evaluation; and

(iii) other appropriate measures.

(5) Contractors should maintain adequate employment data with reference to minority status and sexual status, including progression line charts, seniority rosters, applicant flow data, applicant rejection ratios, referrals, placements, promotions and terminations, indicating minority and sex.

HISTORICAL NOTE

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SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-07 Noncompliance.

(a) **Division determination- failure to file documents.**

(1) Whenever the Director finds that a covered contractor has failed to file an Employment Report or a complete Employment Report, or has filed an Employment Report with substantial misrepresentations, the Director shall send a notice in writing by certified mail, return receipt requested, to the contractor with a copy to the contracting agency describing:

(i) the noncompliance;

(ii) the corrective action necessary to remedy the noncompliance; and

(iii) a suggested date for a conciliation conference before sanctions will be imposed.

(2) If the contractor fails to take corrective action by filing a complete Employment Report, the Director may make a determination as to the sanctions to be imposed.

(3) The contractor shall have a period of seven business days to remedy the noncompliance and pursue conciliation efforts.

(i) If conciliation is successful, a conciliation agreement shall be signed by the Director and the contractor.

(ii) If conciliation is unsuccessful, the Director may find the contractor to be in noncompliance and direct sanctions to be imposed.

(b) **Division determination-EEO compliance.** (1) Whenever the Director has reasonable cause to believe that a contractor is in noncompliance, the Director shall send a notice promptly and in writing by certified mail, return receipt requested, to the contractor with a copy to the contracting agency, describing:

(i) the noncompliance;

(ii) the corrective actions necessary to remedy the noncompliance; and

(iii) a suggested date for a conciliation conference before sanctions will be imposed.

(2) The contractor shall have seven business days to show cause why it should not be found in noncompliance with E.O. 50 (§10-14), and these regulations.

(3) The Director shall offer the contractor an opportunity to conciliate. The Director shall pursue conciliation efforts for a period of seven business days. At the Director's discretion, the conciliation period may be extended.

(i) If conciliation is successful, a conciliation agreement shall be signed by the Director and the contractor.

(ii) If conciliation is unsuccessful, a complaint shall be served on the contractor and a copy shall be served on the contracting agency and filed with the Division of Administrative Trials and Hearings or the hearing officer designated by the Commissioner.

(4) The hearing shall be held in accordance with the rules of procedure adopted by the Division.

(c) **Report and recommendations.** (1) After the close of the hearing, the hearing officer shall render a report containing findings of fact, conclusions of law, and recommen- dations.

(2) Findings of fact shall be based exclusively upon the evidence of record and on matters officially noticed. Findings must be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their serious affairs; even if such evidence would be inadmissible in a civil trial. The hearing officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.

(3) The report and recommendations pursuant to this subdivision (c) shall be rendered in writing within ninety days after the conclusion of the hearing, or within ninety days after submission of proposed findings of fact, conclusions of law or briefs, if submitted pursuant to the Division's rules of hearing procedure, unless this period is waived or extended by the hearing officer with the written consent of all parties, or for good cause shown on notice to all parties.

(4) The hearing officer shall cause copies of the report and recommendations to be delivered or mailed to the Director, the parties and the contracting agency head.

(d) **Exceptions to report and recommendations.** Within ten days after receipt of the report and recommendations, any party may submit exceptions to said report or to any recommendation contained therein. These exceptions may be responded to by other parties within seven business days of their receipt by said parties. All exceptions and responses shall be filed with the Director. Service of exceptions and responses shall be made simultaneously on all parties to the proceeding and upon the hearing officer. Requests to the Director for additional time in which to file exceptions and responses shall be in writing and copies shall be served simultaneously on all other parties. Requests for extensions must be received no later than three business days before the exceptions are due.

(e) **Record and final determination.** After the expiration of the time for filing exception, the Director shall make a final determination on the basis of the record, which shall be the final Administrative Order. The record shall consist of the record of the enforcement proceeding, the rulings, report and recommendations of the hearing officer and the exceptions filed subsequent to the hearing officer's decision. A copy of the determination of the Director shall be provided to the parties, the hearing officer, the contracting agency, the Corporation Counsel and the Comptroller.

(f) **Sanctions.** (1) The Director shall, based upon the findings of fact and recommendations of the hearing officer and the record as a whole, determine whether the contractor is complying with applicable legal requirements and the provisions of E.O. 50 (§10-14) and these regulations.

(2) If the Director makes a determination of noncompliance, the Director may direct the contracting agency head that the following sanctions be imposed:

(i) disapproval of a proposed contractor;

(ii) suspension or termination of a contract;

(iii) declaring the contractor to be in default; or

(iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

(3) The Director shall notify the contracting agency head in writing of the determination made and sanctions to be imposed.

(i) The contracting agency head may file written objection to the sanctions imposed within 5 business days of the issuance of the determination by the Director.

(ii) The contracting agency head must specify in writing his or her reasons for objecting to the sanctions imposed by the Director.

(iii) In the event such objections are filed, the Director and the agency head shall jointly determine the sanctions to be imposed.

(4) The Director of the Division may recommend to the contracting agency head that pursuant to the rules and regulations of the Board of Estimate a board of responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 (§10-14) and these regulations to be nonresponsible.

(g) **Complaints.** (1) Any person who believes a violation of E.O. 50 (§10-14) and these regulations has occurred may file a complaint, in writing, signed and dated, with the Office during the term of a contract.

(2) The complaint shall include the name, address, and telephone number of the complainant, the name and address of the contractor committing the alleged violation of E.O. 50 (§10-14) and these regulations, a description of the acts considered to be the violation, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant or his or her authorized representative. Complaints alleging class-type violations which do not identify the alleged discriminatee or discriminatees will be accepted, provided the other requirements of this paragraph are met.

(3) The Division may refer complaints to the appropriate City, State and Federal agencies for processing rather than processing under E.O. 50 (§10-14) and these regulations. Upon referring complaints to another agency, the Division shall promptly notify the complainant and the contractor of such referral.

(4) A prompt investigation shall be made by the Division.

(5) The contractor involved shall cooperate fully with any investigation. Failure or refusal to furnish information or to cooperate in the investigation is a violation of E.O. 50 (§10-14) and these regulations and may result in the imposition of sanctions.

(6) Upon completion of the investigation, the complaining party and the contractor involved shall be informed of the results of the investigation in writing. If the Director has reasonable cause to believe that the contractor is in noncompliance with E.O. 50 (§10-14) and these regulations, then enforcement proceedings shall be commenced.

(7) It is a violation of E.O. 50 (§10-14) and these regulations for a contractor, subcontractor, or other person to intimidate, threaten, coerce, or discriminate against any individual or business for the purpose of interfering with any right or privilege secured by E.O. 50 (§10-14) and these regulations or because a complaint was filed, or a person testified, assisted or participated in any manner in an investigation, proceeding, or hearing under these regulations.

(8) The identity of the complaining party shall be kept confidential on request only during the conduct of an investigation under these regulations. If such confidentiality hinders the investigation, the complaining party shall be so advised for the purpose of obtaining a waiver of confidentiality. The complaining party shall be further advised that failure to waive confidentiality may result in a determination based upon information already provided.

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§10-08 Referral to Other Agencies on Suspicion of Violations.

When it has reason to believe that federal, state or local law has been violated, the Division shall notify the appropriate enforcement agency concerning its findings.

HISTORICAL NOTE

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§10-09 Existing Contracts and Subcontracts.

All contracts and subcontracts in effect prior to April 25, 1980 which are not subsequently modified shall be administered in accordance with the equal employment and training provisions of any prior applicable Executive Orders. Any contract or subcontract modified on or after April 25, 1980 shall be subject to E.O. 50 (§10-14).

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§10-10 Confidentiality.

To the extent permitted by law and consistent with the proper discharge of the Division's responsibilities under E.O. 50 (§10-14) and these regulations, all information provided by a contractor to the Division shall be confidential.

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§10-11 Delegation of Authority by the Director.

The Director is authorized to delegate the authority given to him or her by these regulations. The authority delegated by the Director pursuant to these regulations shall be exercised under his or her supervision.

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§10-12 Separability.

If any provision of these regulations or the application thereof is held invalid, the remainder of these regulations and the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

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§10-13 Effectiveness and Applicability.

The rules contained in this chapter shall become effective 30 days after final publication in the City Record and apply to all contracts, solicitations, invitations for bids, or requests for proposals which were made by the City or an applicant on or after said effective date, and to all negotiated contracts which have not been executed as of said effective date.

HISTORICAL NOTE

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SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-14 Executive Order No. 50.

(April 25, 1980) By the power vested in me as Mayor of the City of New York, it is hereby ordered:

(a) **Purpose.** It is the purpose of this Order to ensure equal employment opportunity in City contracting.

(b) **Division Continued.** The Division of Labor Services shall continue to serve such purposes and to have such responsibilities as restated by this Order.

(c) **Definitions.** Whenever used in this Executive Order, the following terms shall have the following meanings:

Citizenship status. "Citizenship status" means:

(1) the citizenship of any person, or

(2) the immigration status of any person lawfully resident in the United States who is not a citizen or a national of the United States.

Commissioner. "Commissioner" means the Commissioner of the New York City Department of Business Services.

Construction project. "Construction project" means any construction, reconstruction, rehabilitation, alteration, conversion, extension, improvement, repair or demolition of real property contracted by the City;

Contract. "Contract" means any written agreement, purchase order or instrument whereby the City is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing:

(1) Unless otherwise required by law, the term "contract" shall include any City grant, loan, guarantee or other City assistance for a construction project.

(2) The term "contract" shall not include:

(i) contracts for financial or other assistance between the City and a government or government agency;

(ii) contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, and sale of bonds, certificates of indebtedness, notes, or other fiscal obligations of the City, or consisting thereof; or

(iii) employment by the City of its officers and employees which is subject to the equal employment opportunity requirements of applicable law.

Contracting agency. "Contracting agency" means any administration, board, bureau, commission, department, or other governmental agency of the City of New York, or any official thereof, authorized on behalf of the City to provide for, enter into, award, or administer contracts.

Contractor. "Contractor" means a person, including a vendor, who is a party or a proposed party to a contract with a contracting agency, first-level subcontractors of supply and service contractors, and all levels of subcontractors of construction;

Department. "Department" means the Department of Business Services.

Division. "Division" means the Division of Labor Services.

Economically disadvantaged person. "Economically disadvantaged person" means a person who, or a member of a family which, is considered economically disadvantaged under applicable law;

Employment report. "Employment report" means a report filed by a contractor containing information as to the employment practices, policies, programs, employment statistics and collective bargaining agreements, if any, of the contractor in such form as the Office may direct by regulation;

Equal employment opportunity. "Equal employment opportunity" means the treatment of all employees and applicants for employment without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, lay-off and termination, and all other terms and conditions of employment;

Trainee. "Trainee" means an economically disadvantaged person who qualifies for and receives training in one of the construction trades pursuant to a program other than apprenticeship programs, approved by the Office and, where required by law, the State Department of Labor and the United States Department of Labor, Office of Apprenticeship and Training;

(d) **Responsibilities of Division.** The responsibilities of the Division shall be as follows:

(1) To implement, monitor compliance with, and enforce this Order and programs established pursuant to City, State and Federal law requiring contractors to provide equal employment opportunity;

(2) To implement, monitor compliance with, and enforce on-the-job training requirements on construction projects;

(3) To monitor compliance by contractors with State and Federal prevailing wage requirements where required;

(4) To advise and assist contractors and labor unions with respect to their obligations to provide equal employment opportunity;

(5) To advise and assist persons in the private sector with respect to employment problems;

(6) To establish advisory committees, including representatives of employers, labor unions, community organizations and others concerned with the enforcement of this Order; and

(7) To serve as the City's principal liaison to Federal, State and local contract compliance agencies.

(e) **Contract Provisions.** (1) **Equal employment opportunity.** A contracting agency shall include in every contract to which it becomes a party such provisions requiring the contractor to ensure equal employment opportunity as the Division may direct, consistent with this Order.

(2) **On-the-job training.** A contracting agency shall include in every contract concerning a construction project to which it becomes a party such provisions requiring the contractor to provide on-the-job training for economically disadvantaged persons as the Division may direct by regulation.

(3) **Subcontractors.** A contracting agency shall include in every contract to which it becomes a party such provisions requiring the contractor not to discriminate unlawfully in the selection of subcontractors as the Division may direct by regulation.

(f) **Employment reports.** (1) **Submission requirements.** No contracting agency shall enter into a contract with any contractor unless such contractors' employment report is first submitted to the Division for its review. Unless otherwise required by law, an employment report shall not be required for the following:

(i) A construction contract in the amount of less than $1 million; a construction subcontract in the amount of less than $750,000; or a supply and service contract in the amount of the small purchase limit established by rule of the Procurement Policy Board for procurements for goods and services or less or of more than the small purchase limit established by rule of the Procurement Policy Board for such procurements in which the contractor employs fewer than 50 employees at the facility or facilities involved in the contract;

(ii) an emergency contract or other exempt contract except as the Division may direct by regulation; and

(iii) a contract with a contractor who has received a certificate of compliance with the equal employment opportunity requirements of applicable law from the Division within the preceding twenty-four months, or an appropriate agency of the State of New York or of the United States within the preceding twelve months, except as the Division may direct by regulation;

(iv) a contract for a procurement of information technology that is within the small purchase limits established by rule of the procurement Policy Board.

(2) **Division review.** The Division shall review all employment reports to determine whether contractors are in compliance with the equal employment opportunity requirements of City, State and Federal law and the provisions of this Order. The contracting agency shall transmit the employment report to the Division within ten business days after the selection of a proposed contractor. A contracting agency may thereafter award a contract unless the Division gives

prior written notice to the contracting agency and the contractor as follows:

(i) If the Division notifies the contracting agency and the contractor within five business days after the receipt by the Division of the employment report that the contractor has failed to submit a complete employment report, the Director may require the contracting agency to disapprove the contractor unless such deficiency is corrected in a timely manner;

(ii) If the Division notifies the contracting agency and the contractor within fifteen business days of the receipt by the Division of the completed employment report that the Division has found reason to believe that the contractor is not in substantial compliance with applicable legal requirements and the provisions of this Order, the Division shall promptly take such action as may be necessary to remedy the contractor's noncompliance as provided by this Order.

Provided that a contracting agency may award a requirements contract or an open market purchase agreement prior to review by the Division of the contractor's employment report, but may not make a purchase order against such contract or agreement until it has first transmitted such contractor's employment report to the Division and the Division has completed its review in the manner provided by this section.

(3) **Employment program.** The Division may require a contractor to adopt and adhere to a program designed to ensure equal employment opportunity.

(4) **Periodic reports.** Contractors shall file periodic employment reports after the award of a contract in such form and frequency as the Division may direct by regulation to determine whether such contractors are in compliance with applicable legal requirements and the provisions of this Order.

(g) **Training programs.** The Division shall monitor the recruitment, training and placement of economically disadvantaged persons in on-the-job training programs on construction projects. Contracting agencies shall require contractors to make a good faith effort to achieve the ratio of one trainee to four journey-level employees of each craft on each construction project.

(1) The Division shall determine the number of trainees and hours of training required by each contractor or subcontractor for each construction project.

(2) In the event that a contractor fails to make a good faith effort to train the required number of individuals for the required amount of hours, the Division, after consultation with the contracting agency, shall direct such agency to reduce the contractor's compensation by an amount equal to the amount of wages and fringe benefits which the contractor failed to pay to trainees.

(3) On-the-job training of economically disadvantaged persons shall be required on all construction contracts covered by the submission requirements of this Order.

(h) **Compliance investigations and hearings.** The Division shall conduct such investigations and hold such hearings as may be necessary to determine whether contractors are in compliance with the equal employment opportunity requirements of City, State and Federal law and the provisions of this Order.

(1) **Voluntary compliance.** The Division shall seek to obtain the voluntary compliance of contractors and labor unions with applicable legal requirements and the provisions of this Order.

(2) **Noncompliance.** Upon receiving a complaint or at its own instance, the Division shall determine whether there is reason to believe a contractor is not in compliance with applicable legal requirements and the provisions of this Order.

(3) **Hearings.** The Division shall hold a hearing on prior written notice to a contractor and the contracting agency

before any adverse determination is made with respect to such contractor's employment practices or imposing any sanction or remedy for noncompliance with applicable legal requirements and the provisions of this Order. The hearing shall be held before a City hearing officer, or such other person designated by the Commissioner, who shall submit a report containing findings of fact and recommendations to the Commissioner. Based on the record as a whole, the Commissioner shall determine whether a contractor has failed to comply with applicable legal requirements or the provisions of this Order and the appropriate sanctions for noncompliance.

(4) **Notices.** The Division shall give prior notice of any hearing and shall provide a copy of any hearing report and determination of the Commissioner under paragraph (c) of this section to the contracting agency, the Corporation Counsel and the Comptroller. The Division shall notify appropriate City, State and Federal agencies of violations of law and may, with the approval of the Corporation Counsel, initiate proceedings in such agencies.

(i) **Sanctions and remedies.** After making a determination that a contractor is not complying with applicable legal requirements and the provisions of this Order, the Commissioner may direct that such sanctions as may be permitted by law or contractual provisions be imposed, including the disapproval; of a proposed contractor, the suspension or termination of a contract and the reduction of a contractor's compensation, except as follows:

(1) Within five business days of the issuance of a determination by the Commissioner under §8(c), a contracting agency head may file with the Commissioner written objections to the sanctions to be imposed. Where such objections have been filed, the Commissioner and the contracting agency head shall jointly determine the appropriate sanctions to be imposed.

(2) In lieu of any of the foregoing sanctions, the Commissioner may require a contractor to adopt and adhere to a program to ensure equal employment opportunity.

(j) **Public agencies.** Any administration, board, bureau, commission, department or other public agency, not subject to this Order, which imposes by rule, regulation or order equal employment opportunity requirements, may, with the consent of the Mayor, delegate such responsibilities to the Division as may be consistent with this Order.

(k) **Confidentiality.** To the extent permitted by law and consistent with the proper discharge of the Division's responsibilities under this Order, all information provided by a contractor to the Division shall be confidential.

(l) **Regulations.** The Division shall promulgate such regulations, subject to the approval of the Mayor, as may be necessary to discharge its responsibilities under this Order, including regulations increasing the dollar amounts and number of employees referred to in this Order. Any regulations of the Division establishing terms and conditions for contractors shall be approved as to form by the Corporation Counsel.

Nothing contained herein shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained. The regulations shall set forth this exemption for religiously-sponsored organizations and provide for the discharge of the Division's responsibilities in a manner consistent with such exemption.

(m) **Annual report.** The Division shall submit an annual report to the Mayor concerning its responsibilities under this Order.

(n) **Separability.** If any provision of this Order or the application thereof is held invalid, the remainder of this Order and the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

(o) **Revocation of prior orders.** Executive Orders No. 71 (1968), No. 20 (1970), No. 23 (1970), No. 27 (1970), No. 31 (1971), No. 74 (1973), No. 7 (1974), and No. 80 (1977) are hereby revoked and the first paragraph of Section 2 of Executive Order No. 4 (1978) is hereby deleted. Nothing in this Order shall be deemed to relieve any person of any obligation not inconsistent with this Order assumed or imposed pursuant to an Order superseded by this Order.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 10, §1-14.

Section in original publication July 1, 1991.

Subd. (f) par (1) subpar (i) amended City Record Nov. 17, 2004 §9, eff. Dec. 17, 2004. [See T66 §10-03 Note 2]

DERIVATION

Subd. (f) par (1) subpar (ii) amended City Record Oct. 15, 1997 eff. Nov. 14, 1997. [See T66 §10-03 Note 1]

Subd. (f) par (1) subpar (iii) amended City Record Oct. 15, 1997 eff. Nov. 14, 1997. [See T66 §10-03 Note 1]

Subd. (f) par (1) subpar (iv) added City Record Oct. 15, 1997 eff. Nov. 14, 1997. [See T66 §10-03 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-01 Applicability.

These regulations apply to all construction contracts let by contracting agencies except

(a) those contracts funded in whole or in part by the federal or state government which are subject to different and conflicting small business or other requirements, such as minority business enterprise and woman business enterprise requirements, and

(b) contracts which include a contractor utilization plan for participation of certified minority-owned business enterprises and/or woman-owned business enterprises pursuant to Subchapter C of this Chapter.

HISTORICAL NOTE

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the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §1-01.

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66 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-02 Definitions.

As used in these regulations, the listed terms are defined as follows:

Agency head. "Agency head" means the commissioner, chair or director of any contracting agency.

Building construction. "Building construction" means work, other than heavy construction, consisting of construction activities normally located in or on buildings including work directly supporting these activities and landscaping around these buildings.

Certification documents. "Certification documents" means documents which must be filed by a business seeking certification as a locally based enterprise ("LBE") including but not limited to: sworn affidavits by an authorized official of the business; financial and management disclosure forms for the business; financial disclosure forms for any employees it claims are economically disadvantaged; economic development area profiles indicating where construction work was performed and the dollar amount of such work; verification of gross receipts by a certified public accountant or a licensed professional accountant; and signed release forms granting the City the right to request financial information from any government agency.

Commissioner. "Commissioner" means the Commissioner of the New York City Department of Business Services.

Compliance. "Compliance" means a contractor or subcontractor has acted in accordance with the requirements of Administrative Code, §6-108.1 and these regulations.

Construction business. "Construction business" means a firm that performs heavy or building construction work.

Construction project. "Construction project" means any construction, reconstruction, rehabilitation, alteration, conversion, extension, improvement, repair or demolition of real property contracted by a contracting agency.

Contract. "Contract" means any written agreement whereby the City is committed to expend or does expend funds in connection with any construction project, except the term "contract" shall not include:

(1) contracts for financial or other assistance between the City and a government or governmental agency;

(2) contracts, resolutions, indentures, declarations of trust, or the instruments authorizing or relating to the authorization, issuance, award, and sale of bonds, certificates of indebtedness, notes, or other fiscal obligations of the City;

(3) contracts for architectural, engineering or drafting services;

(4) emergency contracts; or

(5) contracts funded by the state or federal government which are subject to small business or other requirements which differ and conflict with the requirements of Administrative Code, §6-108.1 and these regulations.

Contracting agency. "Contracting agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

Contractor. "Contractor" means a person who is a party or a proposed party to a construction contract with a contracting agency.

Department. "Department" means the Department of Business Services.

Division. "Division" means the Division of Economic and Financial Opportunity.

Economic development area. "Economic development area" means those areas of the City designated as eligible for participation in the Community Development Block Grant Program of the United States Department of Housing and Urban Development. See Appendices A and B for a listing of areas and maps of areas which meet this definition.

Economically disadvantaged person. "Economically disadvantaged person" means a person who, at the time of hiring by a locally based enterprise if such hiring occurred not more than three tax years prior to the time of such business' application for certification or at the time of such application is a self-employed owner of such business, is:

(1) a resident in a single person household who receives

(i) wages not in excess of seventy percent of the lower-level "urban family budget" for the City as determined by the United States Department of Labor, Bureau of Labor Statistics (See Appendix C); or

(ii) cash welfare payments under a federal, state or local welfare program; or

(2) a member of a family which

(i) has a family income less than seventy percent of the lower-level "urban family budget" for the City as determined by the United States Department of Labor, Bureau of Labor Statistics (See Appendix C), or

(ii) receives cash welfare payments under a federal, state or local welfare program; or

(3) a Vietnam era veteran as defined by applicable federal law who has been unable to obtain non-government subsidized employment since discharge from the armed services; or

(4) a displaced homemaker who has not been in the labor force for five years but has during those years worked in the home providing unpaid services for family members and

(i) was dependent on public assistance or the income of another family member but is no longer supported by that income, or

(ii) is receiving public assistance for dependent children in the home which will soon be terminated.

Gross receipts. "Gross receipts" means the total gross income received by an LBE from any source during the applicable period.

Heavy construction. "Heavy construction" means work, on other than a building superstructure, consisting of construction activities located on or below the earth's surface including excavation, building foundation, construction projects requiring the use of earth moving machinery or equipment (power shovels, bulldozers, scrapers), and any work associated with bridges.

Locally based enterprise or LBE. "Locally based enterprise" or "LBE" means a business which:

(1) At the time of application for certification, has been in the building or heavy construction business and:

(i) has received gross receipts in the last three or fewer tax years averaging $2 million or less on an annual basis; or

(ii) has been in business for less than one tax year and has received gross receipts equal to or less than $2 million; and

(2) in the tax year preceding the date of application has:

(i) earned at least 25 percent of its gross receipts from work performed on construction projects located in economic development areas; or

(ii) employed a work force of which at least 25 percent were economically disadvantaged persons.

Minority business enterprise. "Minority business enterprise" or "MBE" means an enterprise approved pursuant to federal or state law for participation in contracts subject to a minority business enterprise requirement.

Minority business enterprise requirement. "Minority business enterprise requirement" means any provision of federal or state law requiring public contractors to employ subcontractors owned by minorities, women or disadvantaged persons.

Noncompliance. "Noncompliance" means a contractor or subcontractor has failed to act in accordance with Administrative Code, §6-108.1 and these regulations.

Person. "Person" means any natural person, corporation, partnership, sole proprietorship or unincorporated association.

Subcontractor. "Subcontractor" means any person having an agreement or arrangement or proposed agreement or arrangement with a contractor (where the parties do not stand in the relationship of an employer and employee) in which any portion of the contractor's duty to perform work is undertaken or assumed by such person.

Woman business enterprise. "Woman business enterprise" or "WBE" means an enterprise approved pursuant to federal or state law for participation in contracts subject to a woman business enterprise requirement.

Woman business enterprise requirement. "Woman business enterprise requirement" means any provision of federal or state law requiring public contractors to hire subcontractors owned by women.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

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Section in original publication July 1, 1991.

Locally based enterprise on LBE amended City Record Mar. 4, 2004 eff. Apr.

3, 2004. Internal redesignation by the Law Department per Charter §1045(b). [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 4, 2004:

The Division of Economic and Financial Opportunity (DEFO) of the Department of Small Business Services administers the LBE Program. Pursuant to the program, prime contractors for City funded construction projects are required to provide 10% of subcontracting dollars to certified LBEs when work is subcontracted. Companies are certified as LBEs by DEFO pursuant to an application process that includes reviewing the average gross receipts for the prior three tax years for the applicant.

As the gross receipts limitations of the rules have not been increased for a substantial period of time, DEFO determined that the gross receipts limitations for LBE certification be raised. This increase will increase the pool of available certified LBEs by permitting the certification of firms that are financially stable and capable of performing subcontracting work.

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-03 Certification of LBE's.

(a) **Application for certification.** (1) A contractor or subcontractor seeking certification as an LBE is responsible for submission of true and accurate certification documents demonstrating that it meets all eligibility criteria. Falsification of any documents submitted in connection with the LBE program may lead to the imposition of civil and criminal penalties as provided by law and contract and disqualification from the LBE program.

(2) A contractor or subcontractor seeking certification as an LBE when no contract is pending shall submit its certification documents directly to the Division.

(3) A contractor seeking certification as an LBE when bidding on a particular contract shall submit its certification documents to the contracting agency with its bid.

(4) A subcontractor which has been proposed as an LBE subcontractor by a contractor bidding on a contract but has not been certified as an LBE shall have its certification documents submitted by the bidder in the sealed envelope to the contracting agency within 10 days after notification of low bid.

(5) A subcontractor which has been proposed as an LBE subcontractor by a contractor subsequent to contract award but has not been certified as an LBE shall have its certification documents submitted by the contractor in a sealed

envelope to the contracting agency within 10 business days from the date that the proposed LBE subcontractor is identified.

(6) The contracting agency shall immediately transmit certification documents it receives to OEFO.

(7) A contractor or subcontractor shall submit such additional information as may be required by OEFO in connection with its certifications as an LBE. Failure to submit such information within 10 business days of the date of a written request may result in the denial or revocation of certification as an LBE.

(8) Consistent with the requirements of Federal, State and City law, neither OEFO nor any contracting agency shall disclose to unauthorized persons confidential business information submitted by contractors and subcontractors.

(b) **Eligibility requirements.** (1) A contractor or subcontractor shall be certified as an LBE upon a determination by OEFO that it has met the eligibility requirements set forth in the Administrative Code, §6-108.1 and these regulations. The initial certification shall be effective for three years and shall expire at the end of such period, except as provided in §§11-03(b)(2) and (b)(9) of this section. An LBE may apply to have certification renewed after this three year period, as set forth in §11-03(b)(4) of this section.

(2) A business which has been in existence for less than one year prior to the date of application for certification and which would otherwise qualify as an LBE except that it does not meet the criteria set forth in §11-02 "Locally based enterprise" (2) of these regulations, may nevertheless be certified as an LBE, provided that such certification shall expire one year after it is granted unless the business meets the criteria set forth in such paragraph within one year of the date of its certification.

(3) An LBE seeking continuance of certification granted according to subdivision (b)(2) of this section must submit certification documents before two months prior to the one year anniversary of such certification. If after this one year period, the business meets all the criteria for LBE eligibility as set forth in §11-02 "Locally based enterprise," certification shall be granted for two more years. This business may apply to have certification renewed after this two year period as set forth in §11-03(b)(4).

(4) An LBE may seek to have its certification renewed for successive one year periods by submitting certification documents before two months prior to the expiration date of its certification demonstrating that it continues to meet the eligibility requirements set forth in Administrative Code, §6-108.1 and these regulations.

(5) Failure to submit certification documents before two months prior to the applicable certification anniversary date, as set forth in §§11-03(b)(3) or (b)(4) of this section, may result in the expiration of the LBE certification on the anniversary date.

(6) If the certification of an LBE expires or if the LBE is determined to be ineligible for re-certification, the LBE may submit another set of certification documents six months after the date its original certification expired or six months after the date it was determined to be ineligible for re-certification.

(7) If an LBE submits certification documents before two months prior to the applicable certification anniversary date, as set forth in §11-03(b)(3) or (b)(4) of this section, and the Division is unable to make a determination before the anniversary date, the LBE will be notified that certification will continue until the Division makes a determination as to the LBE's status. If an LBE submits certification documents within the second month prior to the anniversary date, the Division may not be able to review the documents to determine their completeness and the LBE's certification will expire. If the Division is able to review the documents, it may notify the LBE that its certification will continue beyond the anniversary date. If an LBE submits certification documents within the month prior to the anniversary date, its certification will expire on the anniversary date unless it is re-certified.

(8) A business which was certified as an LBE prior to the effective date of these regulations shall be deemed to

have been certified as an LBE on the date of such certification, provided however that any business which was less than one year old at the time of such certification and did not meet all the criteria of eligibility set forth in §11-03 "Locally based enterprise" of these regulations, shall be deemed to have been certified according to §11-03(b)(2) and such certification shall expire on the one year anniversary of the certification date. Such business may seek continuance of its certification as provided in §11-03(b)(3).

(9) Any LBE which has been certified prior to the effective date of these regulations, for a period longer than specified in §§11-03(b)(1) and (b)(2), must submit certification documents within two months after the effective date of these regulations, unless re-certification has been granted prior to the effective date of these regulations.

(10) It is the intent of these regulations to qualify businesses as LBEs only if the ownership, management and operations of the business are conducted by persons who do not own, manage or operate other similar businesses which would otherwise be ineligible. Any business applying for LBE certification that does not conform to this intent shall be deemed ineligible as an LBE.

(11) An LBE must be an independent business. A business that is a separate entity for tax or corporate purposes shall not necessarily be deemed to be an independent business. In determining whether a business is an independent business, the Division shall consider all relevant factors, including but not limited to the date the business was established, the identity of the principals, the sources of financing and the major shareholders, if any, of the business.

(12) The owner of an LBE must possess the ability to manage the business and to make necessary management and policy decisions. The business must not be subject to any extraordinary formal or informal restrictions which limit the discretion of the owners.

(13) The following types of ownership, control, or circumstances concerning a business seeking certification as an LBE shall render it ineligible for participation in the program:

(i) ownership of the business by a non-LBE construction business;

(ii) whole or partial ownership of the business by a person who is an owner in whole or in part of another construction business when the sum of the gross receipts of these businesses exceeds the limits as provided for in §11-22 "Locally based enterprise" of these regulations;

(iii) whole or partial ownership of a business, formed within three years of application, by a person who is an owner in whole or in part of another construction business not eligible for the program;

(iv) control of the business by another construction business through substantial funding arrangements or;

(v) organization of a firm in existence for less than one year whose officers, directors, principal stockholders, or employees serve as the officers, directors, principal stockholders, or employees, of another construction business and one concern is furnishing, or will furnish the other concern with subcontracts, financial or technical assistance, or other facilities, whether for a fee or otherwise.

(14) If, after submitting certification documents, a business is found to not meet the requirements for LBE certification as set forth in §11-02 "Locally based enterprise" is otherwise ineligible, it may submit other certification documents for certification six months after the date it was declared ineligible.

(15) A joint venture consisting of an LBE and a non-LBE business may participate in the LBE program as a contractor or subcontractor if both joint venturers' contract work is defined clearly. However, only the LBE's share of the contract work shall be credited towards the LBE goal.

(16) An LBE shall notify the Division within 30 days after any change in its ownership or control. In addition,

each LBE shall submit a report to the Division by December 30 of each year describing its present ownership and control. The Division shall review any changes made since an LBE's certification to determine whether it remains eligible as an LBE.

(17) A business certified prior to the effective date of these regulations, whose ownership or control has changed shall notify the Division within 30 days of the effective date of these regulations of such change.

(18) Newly formed businesses and businesses whose ownership or control has changed since the date of issuance of these regulations shall be scrutinized by the Division to determine the reasons for the formation, change in the ownership or control of the business.

(19) Once a business is certified as an LBE, it must satisfactorily complete any contracts it is awarded. If an LBE does not satisfactorily complete a contract, it will be required to participate in and successfully complete a technical assistance program through the Department. If the LBE fails to successfully complete or does not participate in the technical assistance program it will be de-certified as an LBE. An LBE will be given an opportunity to respond to any allegations that it has not performed satisfactorily on a contract or that it has not successfully completed or participated in the technical assistance program pursuant to the procedure in §11-03(c)(8). If an LBE is de-certified, such business may re-apply for certification after six months from the date of de-certification. It must demonstrate at that time that it has improved its work performance.

(c) **Certification responsibilities of the Division.** (1) Division shall have the power to certify, re-certify and de-certify a contractor or a subcontractor as an LBE upon a determination that the contractor or subcontractor has met or failed to meet the eligibility requirements and conditions set forth in Administrative Code §6-108.1 and these regulations.

(2) The determination by the Division as to a contractor's or subcontractor's eligibility for certification as an LBE shall be final.

(3) the Division shall be the central repository for all documentation filed by contractors and subcontractors involving their status as an LBE.

(4) the Division shall maintain and provide to all contracting agencies a list of all certified LBEs. the Division shall maintain and provide to all contracting agencies a list by borough of all contractors and subcontractors who perform work in such borough to qualify as LBEs.

(5) When there is a contract pending award and a contractor has submitted incomplete certification documents, the Division shall notify the contractor either by telephone or letter within five business days of actual receipt of the documents that they are incomplete. The contractor shall have 10 business days from the date of the telephone call or from the date of the letter to complete the certification documents. If the contractor fails to submit the additional information within the time allowed, the contractor shall be so notified by the Division by letter on the next business day following the 10 day response period. Copies of this notification letter shall be sent to the prime contractor and the agency.

(6) If complete certification documents have been submitted by a proposed LBE subcontractor for a particular contract waiting award, the Division within one business day after determining that the documents are complete, shall notify the contracting agency that the contract may be awarded.

(7) The Division shall notify the proposed LBE contractor (and the prime contractor and the contracting agency where applicable) of its certification determination within 15 business days of the receipt of complete certification documents.

(8) If the Division has reason to believe that an LBE is in violation of Administrative Code §6-108.1 or these

regulations, the Division shall provide notice to the LBE by certified mail, return receipt requested, of the alleged violation. Within twenty-five calendar days of the receipt of such notice the LBE may respond to the allegation in writing or request an opportunity to appear before the Commissioner or the Commissioner's designee to respond to the allegation. The Commissioner or the designee, after considering the evidence of the alleged violation and any material submitted by the LBE, shall determine whether the LBE shall be de-certified. The Commissioner or the designee may determine that a contractor or subcontractor who has been de-certified shall be ineligible for certification for a period of up to three years after such de-certification.

(9) If at any time the Division has reason to believe that a contractor or subcontractor has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to its Inspector General for investigation. The Inspector General shall investigate the matter in accordance with applicable rules and procedures, and, where appropriate, refer or report the matter to the Department of Investigation. Falsification of any document by a contractor or subcontractor may lead to the imposition of civil and criminal penalties as provided by law and contract, disqualification from the LBE program and debarment from City contracts.

(10) The Division shall conduct audits of LBEs to verify information provided by them.

(11) The Division shall determine the effectiveness of Administrative Code §6-108.1 by conducting surveys or other studies it deems appropriate.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-04 Responsibilities of Contracting Agencies.

(a) **Overall goals.** (1) Each agency head shall, consistent with the requirements of applicable Federal, State and City law, including applicable competitive bidding requirements, seek to ensure that not less than 10 percent of the total dollar amount of all contracts awarded for construction projects during each fiscal year are awarded to LBEs.

(2) Each agency head shall, consistent with the requirements for applicable Federal, State and City law, require that if any portion of a construction contract is subcontracted, not less than 10 percent of the total dollar amount of the contract shall be awarded to LBEs; except that where less than ten percent of the total dollar amount of the contract is subcontracted, such lesser percentage shall be so awarded.

(b) **Contract language.** Each contracting agency shall incorporate into each construction contract subject to these regulations to which it becomes a party the following language: Locally Based Enterprise Program

(1) This contract is subject to the requirements of Administrative Code §6-108.1 and the regulations promulgated thereunder. No contract shall be awarded unless and until these requirements have been complied with in their entirety.

(2) Unless specifically waived by the agency head with the approval of the Division, if any portion of the contract is subcontracted, not less than 10 percent of the total dollar amount of the contract shall be awarded to locally based

enterprise ("LBEs"); except that where less than ten percent of the total dollar amount of the contract is subcontracted, such lesser percentage shall be so awarded.

(3) The prime contractor shall not require performance and payment bonds from LBE subcontractors.

(4) If the contractor has indicated prior to award that no work will be subcontracted, no work shall be subcontracted without the prior approval of the agency head, which shall be granted only if the contractor makes a good faith effort beginning at least six weeks before the work is to be performed to obtain LBE subcontractors to perform the work.

(5) If the contractor has not identified sufficient LBE subcontractors prior to award, it shall sign a letter of compliance stating that it complies with Administrative Code §6-108.1, recognizes that achieving the LBE requirement is a condition of its contract, and shall submit documentation demonstrating its good faith efforts to obtain LBEs. After award, the contractor shall begin to solicit LBEs to perform subcontracted work at least six weeks before the date such work is to be performed and shall demonstrate that a good faith effort has been made to obtain LBEs on each subcontract until it meets the required percentage.

(6) Failure of the contractor to comply with the requirements of Administrative Code §6-108.1 and the regulations promulgated thereunder shall constitute a material breach of contract. Remedy for such breach of contract may include the imposition of any or all of the following sanctions:

(i) reducing a contractor's compensation by an amount equal to the dollar value of the percentage of the LBE subcontracting requirement not complied with;

(ii) declaring the contractor in default;

(iii) where non-compliance is by an LBE, de-certifying and declaring the LBE ineligible to participate in the LBE program for a period of up to three years."

(c) **Information to bidders.** Each contracting agency shall incorporate into all information provided to bidders on construction contracts subject to these regulations the following language:

"This contract is subject to the requirements of Administrative Code §6-108.1 and the regulations promulgated thereunder. No construction contract will be awarded unless and until these requirements have been complied with in their entirety.

Be advised that:

(1) If any portion of the contract is subcontracted, not less than 10 percent of the total dollar amount of the contract shall be awarded to locally based enterprises ("LBEs"); except, where less than 10 percent of the total dollar amount of the contract is subcontracted, such lesser percentage shall be so awarded.

(2) No contractor shall require performance and payment bonds from LBE subcontractors.

(3) No contract shall be awarded unless the contractor first identifies in its bid:

(i) the percentage, dollar amount and type of work to be subcontracted; and

(ii) the percentage, dollar amount and type of work to be subcontracted to LBEs.

(4) Within 10 calendar days after notification of low bid, the apparent low bidder shall submit an "LBE Participation Schedule" to the contracting agency. If such schedule does not identify sufficient LBE subcontractors to meet the requirements of Administrative Code §6-108.1, the apparent low bidder shall submit documentation of its good

faith efforts to meet such requirements.

(i) The "LBE Participation Schedule" shall include:

(A) the name and address of each LBE that will be given a subcontract,

(B) the percentage, dollar amount and type of work to be subcontracted to LBE, and

(C) the dates when the LBE subcontract work will commence and end.

(ii) The following documents shall be attached to the "LBE Participation Schedule":

(A) verification letters from each subcontractor listed in the "LBE Participation Schedule" stating that the LBE will enter into a formal agreement for work,

(B) certification documents of any proposed LBE subcontractor which is not on the LBE certified list, and

(C) copies of the certification letter of any proposed subcontractor which is an LBE.

(iii) Documentation of good faith efforts to achieve the required LBE percentage shall include as appropriate but not be limited to the following:

(A) attendance at pre-bid meetings, when scheduled by the agency, to advise bidders of contract requirements;

(B) advertisement where appropriate in general circulation media, trade association publications, and small business media of the specific subcontracts that would be at least equal to the percentage goal for LBE utilization specified by the contractor;

(C) written notification to associations of small, minority and women contractors soliciting specific subcontracts;

(D) written notification by certified mail to LBE firms that their interest in the contract is solicited for specific work items and their estimated values;

(E) demonstration of efforts made to select portions of the work for performance by LBE firms in order to increase the likelihood of achieving the stated goals;

(F) documented efforts to negotiate with LBE firms for specific subcontracts including at a minimum:

(a) The names, addresses and telephone numbers of LBE firms that were contacted,

(b) A description of the information provided to LBE firms regarding the plans and specifications for portions of the work to be performed,

(c) Documentation showing that no reasonable price can be obtained from LBE firms,

(d) A statement of why agreements with LBE firms were not reached;

(G) a statement of the reason for rejecting any LBE firm which the contractor deemed to be unqualified; and

(H) documentation of efforts made to assist the LBE firms contacted that needed assistance in obtaining required insurance.

(5) Unless otherwise waived by the agency head with the approval of the Division, failure of a proposed contractor to provide the information required by paragraphs (3) and (4) above may render the bid non-responsive and the contract

may not be awarded to the bidder. If the contractor states that it will subcontract a specific portion of the work, but can demonstrate that despite good faith efforts it cannot achieve its required LBE percentage for subcontracted work until after award of contract, the contract may be awarded subject to a letter of compliance from the contractor stating that it will comply with Administrative Code §6-108.1 and subject to approval by the agency head. If the contractor has not met its required LBE percentage prior to award, the contractor shall demonstrate that a good faith effort has been made subsequent to award to obtain LBEs on each subcontract until it meets the required percentage.

(6) When a bidder indicates prior to award that no work will be subcontracted, no work may be subcontracted without the prior approval of the agency head, which shall be granted only if the contractor in good faith seeks LBE subcontractors at least six weeks prior to the start of work.

(7) The contractor may not substitute or change any LBE which was identified prior to award of the contract without the permission of the agency head. The contractor shall make a written application to the contracting agency head for permission to make such substitution or change, explaining why the contractor needs to change its LBE subcontractor and how the contractor will meet its LBE subcontracting requirement. Copies of such application must be served on the originally identified LBE by certified mail return receipt requested as well as the proposed substitute LBE. The agency head shall determine whether or not to grant the contractor's request for substitution."

(d) **Implementation-general.** (1) Each contracting agency shall seek to reach its overall ten percent LBE goal by vigorously encouraging LBE prime participation and enforcing the ten percent (or less if applicable) LBE subcontracting requirement on all contracts where subcontracting will occur. The contracting agencies shall follow the activities outlined below to implement this requirement.

(2) Each agency head shall designate one experienced contract manager to be its LBE liaison officer whose duties shall include directing, coordinating and overseeing agency staff with regard to implementing the procedures set forth in these regulations on a day-to-day basis. The officer's responsibilities shall include:

(i) Examining projects to determine which invitations to bid are to be designated for the LBE prime contractor outreach procedure set forth in §11-04(e);

(ii) Preparing and forwarding bid notices of potential LBE prime contracts and subcontracts to LBEs;

(iii) Verifying a bidder's LBE Participation Schedule and indicating, in writing, whether the contract can be awarded;

(iv) Aiding contractors to locate potential LBE subcontractors for various contract services;

(v) Assisting LBEs in complying with procedures for bidding on agency contracts;

(vi) Coordinating and overseeing investigations of contractor compliance;

(vii) Preparing and submitting the required status reports to the Division.

(3) Each contracting agency shall utilize the list of certified LBEs provided by the Division to identify potential LBE contractors and subcontractors.

(4) LBE participation shall be determined and applied toward meeting the requirements of Administrative Code §6-108.1 on the basis of work actually performed in the following manner:

(i) the total dollar value of a contract awarded to an LBE contractor shall be applied toward the LBE goal of the contracting agency;

(ii) the total dollar value of a subcontract let to an LBE subcontractor and performed by the LBE subcontractor

shall be applied toward the contractor's LBE requirement and the LBE goal of the contracting agency (work further subcontracted by an LBE subcontractor to a non-LBE subcontractor shall not be so applied); and

(iii) the portion of the total dollar value of a contract with a joint venture of an LBE and non-LBE business eligible under these regulations equal to the percentage of the contract work of the LBE partner in the joint venture shall be applied toward the contractor's LBE requirement and the LBE goal of the contracting agency.

(5) When an LBE contractor or subcontractor is used, it must perform the actual work and may not subcontract the work to another firm without agency approval. Credit may be denied to a prime contractor for an LBE subcontractor's participation where an LBE does none of the actual subcontracted work.

(6) The contracting agency shall transmit to the Division certification documents submitted to it within two business days after their receipt.

(7) If at any time a contracting agency has reason to believe that a contractor or subcontractor has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to both its Inspector General and to the Division. Falsification of any document by a contractor or subcontractor may lead to the imposition of civil and criminal penalties as provided by law and contract, disqualification from the LBE program and debarment.

(8) Each contracting agency shall submit quarterly reports, on or before the fifteenth day of January, April, July and October of each year to the Director describing activities undertaken during the previous quarter toward meeting the requirements of Administrative Code §6-108.1 and these regulations. Quarterly reports of each contracting agency shall contain the following information:

(i) The name and telephone number of the agency's LBE liaison officer;

(ii) A summary report including but not limited to:

(A) the total number of contracts subject to LBE requirements which are registered during the quarter and during the fiscal year to date,

(B) the total value of such contracts,

(C) the total number and dollar value of LBE prime contracts registered,

(D) the total number and dollar value of LBE subcontracts,

(E) the total number and dollar value of contracts registered which are subject to MBE/WBE requirements;

(iii) A list of LBEs receiving prime contracts or subcontracts including:

(A) the nature of their work, and

(B) the number and dollar value of prime contracts and subcontracts committed;

(iv) A list of all contracts registered during the quarter including:

(A) a description of each contract, its budget line and registration date,

(B) the dollar amount of the contract,

(C) whether the contract is subject to an MBE/WBE requirement,

(D) the contractor awarded the contract,

(E) whether the contract was awarded to an LBE or MBE/WBE,

(F) whether any part of the contract was subcontracted, and

(G) if the answer to (F) above, is yes, then:

(a) the subcontractor's name,

(b) the subcontractor's LBE or MBE/WBE status,

(c) a description of each subcontract (i.e., type of work),

(d) the dollar amount of each subcontract, and

(e) waivers that have been granted during the quarter, if any;

(v) The status of any default hearings or other actions the agency is taking with regard to failure of a contractor or LBE to comply with Administrative Code §6-108.1 and these regulations; and

(vi) A list of all prime contractors who have submitted letters of compliance during the quarter.

(e) **Implementation- LBE prime contractor participation.**

(1) Contracting agencies shall identify all possible opportunities for LBE prime contractors. They shall divide projects wherever possible into work suitable for bidding by LBE contractors.

(2) The contracting agency shall, on the basis of contract size, type of work, and LBE technical and capitalization capabilities, identify classes of contracts which are attractive for bidding by LBE prime contractors. The following procedures shall apply when the agency is letting such contracts:

(i) The contracting agency shall notify LBEs in a timely fashion when suitable prime contracts will be bid;

(ii) The contracting agency shall monitor the requests for bid documents and conduct further solicitation for LBE bidders, if LBEs have not requested the documents. The agency shall maintain a log of LBE solicitations;

(iii) The contracting agency shall prepare upon request by the Division an analysis of the number of LBE bidders per project and the number of LBE low bidders.

(3) Whenever possible, the contracting agency shall invite LBEs to bid on open market orders (OMOs).

(4) Whenever a contracting agency seeks bidders for an OMO by mailing bid documents to the potential bidders the agency shall when needed:

(i) telephone any LBEs to which the package has been sent to notify them of such fact; and

(ii) contact LBEs which fail to respond to the request for bids.

(5) Wherever an LBE which has not previously contracted with the agency is the low bidder, the contracting agency shall discuss insurance needs, contract requirements, references, and provide other appropriate assistance to the LBE.

(f) **Implementation- LBE subcontractor participation.** (1) The contracting agency shall design contracts to maximize opportunities for LBE subcontracting.

(2) For each contract it bids, the contracting agency shall determine the percentage of work suitable for subcontracting.

(3) Contract specifications shall identify which items of the contract, if any, are suitable for LBE subcontracting, and the estimated value of each such item.

(4) Contracting agencies shall include in the Information to Bidders and the contract provisions for LBE subcontracting as set forth in §§11-04(b) and (c).

(5) When a contracting agency advertises a contract which contains items suitable for subcontracting, it shall apply the following procedures:

(i) The agency shall prepare a bid notice, to be published in the City Record and sent to LBEs and business development organizations, indicating that the project contains items suitable for subcontracting;

(ii) The agency may telephone LBEs in the appropriate work category to inform them that the bid notice has been sent and to recommend that they purchase or review the plans and specifications;

(iii) The agency shall post, at the location where bid materials are available, all bid notices currently advertised. Such bid notices shall include a list of items suitable for performance by subcontractors and their estimated value;

(iv) The agency shall supply with all bid documents a list of certified LBEs;

(v) Upon request, the agency shall provide LBEs a list of names, addresses and telephone numbers of prime contractors who pick up bid documents for projects containing items suitable for subcontracting;

(vi) The agency shall emphasize the LBE program in its agenda for pre-bid and pre-construction conferences.

(g) **Requirements for contract award.** No construction contract subject to LBE requirements shall be awarded unless and until the following requirements have been complied with in their entirety:

(1) If any portion of the contract is subcontracted, not less than ten percent of the total dollar amount of the contract shall be awarded to LBEs, except where less than ten percent of the total dollar amount is subcontracted, such lesser percentage shall be so awarded.

(2) No contractor shall require performance and payment bonds from LBE sub- contractors.

(3) The bidder shall identify in the bid proposal:

(i) the percentage, dollar amount and type of work to be subcontracted; and

(ii) the percentage, dollar amount and type of work to be subcontracted to LBEs.

(4) Within 10 calendar days after notification of low bid, the apparent low bidder shall submit an "LBE Participation Schedule". If such schedule does not identify enough LBE subcontractors to meet the requirements of Administrative Code §6-108.1 the apparent low bidder shall also submit documentation of its good faith efforts to meet such requirements.

(i) The "LBE Participation Schedule" shall include:

(A) the name and address of each LBE that will be given a subcontract,

(B) the percentage, dollar amount and type of work to be subcontracted to the LBE, and

(C) the dates when the LBE subcontract work will commence and end.

(ii) The following documents shall be attached to the "LBE Participation Schedule":

(A) verification letters from each subcontractor listed in the "LBE Participation Schedule" stating that the LBE will enter into a formal agreement for work,

(B) certification documents of any proposed LBE subcontractor which is not on the LBE certified lists, and

(C) copies of the certification letter of any proposed subcontractor which is an LBE.

(iii) Documentation of good faith efforts to achieve the required LBE percentage shall include but not be limited to the following:

(A) attendance at pre-bid meetings, when scheduled by the agency, to advise bidders of contract requirements;

(B) advertisement where appropriate in general circulation media, trade association publications, and small business media for specific subcontracts that would be at least equal to the percentage goal for LBE utilization specified by the contractor;

(C) notification to small, minority and woman contractor associations in writing, for solicitation of specific subcontracts;

(D) written notification by certified mail to LBE firms that their interest in the contract is solicited;

(E) demonstration of efforts made to select portions of the work proposed to be performed by LBE firms in order to increase the likelihood of achieving the stated goals;

(F) documented efforts to negotiate with LBE firms for specific subcontracts including at a minimum:

(a) The names, addresses and telephone numbers of LBE firms that were contacted;

(b) A description of the information provided to LBE firms regarding the plans and specifications for portions of the work to be performed;

(c) Documentation that no reasonable price can be obtained from LBE firms;

(d) A statement of why agreements with LBE firms were not reached;

(G) a statement of the reason for rejecting any LBE firm which the contractor deemed to be unqualified; and

(H) documentation of efforts made to assist the LBE firms contacted that needed assistance in obtaining required insurance.

(5) Failure of the apparent low bidder to provide the information required in §§11-04(g)(3) and (g)(4) of this section within the allotted time may render the bid non-responsive and the contract may not be awarded to the bidder, except:

If the contractor states that it will subcontract a specific portion of the work, but can demonstrate that despite good faith efforts it cannot achieve its required LBE percentage for subcontracted work until after award of contract, the contract may be awarded subject to a letter of compliance from the contractor stating that it will comply with Administrative Code §6-108.1 and subject to approval by the agency head.

(6) If the contractor has not met its required LBE percentage prior to award, the contractor shall demonstrate that a

good faith effort has been made subsequent to award to obtain LBEs on each subcontract until it meets the required percentage.

(7) If a contractor submits certification documents for a subcontractor it wishes to use towards its LBE required percentage, the contracting agency may not award the contract until the Division has notified it that such certification documents are complete. After the Division has notified the agency that the proposed subcontractor's certification documents are complete, the contract may be awarded. However, no firm may be counted toward the contractor's LBE obligation unless it has been certified as an LBE. The Division shall notify the prime contractor that the certification documents of its proposed subcontractor are complete and that its certification is pending and is subject to review. It shall inform the prime contractor that if the proposed subcontractor is denied certification, the prime contractor must propose another LBE.

(8) If a contractor states prior to award that it will not subcontract work under the contract, the contractor may not subcontract any work without prior approval by the contracting agency. Such a contractor shall notify the agency at least six weeks prior to the start of work by any subcontractor that subcontracting is proposed. During such six-week period the contractor shall seek LBEs to do the work. No subcontracting by such a contractor shall be approved unless the required percentage of subcontracting work is awarded to an LBE, or unless the agency grants a waiver from such requirement upon a finding that a good faith effort has been made to find an LBE.

(9) The contractor may not substitute or change any LBE which was identified prior to award of the contract without the permission of the agency head. The contractor shall make a written application to the contracting agency head for permission to make such substitution or change, explaining why the contractor needs to change its LBE subcontractor and how the contractor will meet its LBE subcontracting requirement. Copies of such application must be served on the originally identified LBE by certified mail return receipt requested as well as the proposed substitute LBE. The agency head shall determine whether or not to grant the contractor's request for substitution.

(10) If the contractor contends that the LBE requirement cannot be met either before or after contract award and can demonstrate a good faith effort to obtain an LBE, a waiver may be granted by the agency head upon approval by the Division.

(h) **Subcontractor waivers.** (1) Subject to approval by the Division, an agency head may waive the subcontracting requirements of Administrative Code §6-108.1 and these regulations upon a finding that:

(i) there is no identifiable LBE subcontractor reasonably available, willing and qualified to perform subcontracted work, provided that

(A) the contractor has been unable to identify an LBE subcontractor after good faith efforts as set forth in §11-04(g)(4)(iii) and

(B) the contracting agency has been unable to locate an LBE after a search of the LBE list; or

(ii) the contract involves an emergency requiring immediate attention because the public health, safety, or welfare is threatened; or

(iii) for other good cause.

Such finding shall be made in writing, state the reasons therefore, and be submitted to the Division if a waiver is requested.

(2) The Division may direct an agency head to submit further evidence concerning the necessity for a waiver.

(3) Upon the approval of an agency head's waiver decision, the Division shall send written notification of such

waiver to the Vice Chairman of the City Council.

(i) **Verification of contractor compliance.** The contracting agency shall perform the following procedures with regard to auditing contractor compliance:

(1) The LBE liaison officer described in §11-04(d)(2) of these regulations shall distribute to the resident engineer a list of LBE subcontractors that have been identified by the prime contractor for use on the project. The resident engineer shall notify the LBE liaison officer of all subcontractors working on the site.

(2) As the work progresses, the LBE liaison officer shall periodically telephone all LBEs identified by the prime contractor to verify that they are on the site and performing specified LBE work.

(3) Each contracting agency shall conduct on-site reviews of the contractor's compliance with the LBE requirements. Such review may include interviews, visits to the actual construction site, and an inspection of any records relevant to the contractor's performance.

(4) The contractor shall cooperate fully with these reviews. Failure or refusal to furnish information or to cooperate may be deemed a breach of contract and a violation of these regulations which may result in the imposition of sanctions as provided in §11-04(j).

(5) The LBE liaison officer shall audit contractor payments to LBE subcontractors by obtaining payment compliance reports every month from both the contractor and the LBE subcontractor. The agency shall investigate all significant report variances.

(6) The LBE liaison officer shall review total payments of prime contractors to LBE subcontractors to insure that the amount equals the LBE percentage required by the contract. If the sum of LBE subcontractor payments is less than the required amount, the contractor may be found in breach of contract and sanctions may be applied in an amount commensurate with the magnitude of noncompliance.

(7) The LBE liaison officer shall maintain an LBE file for each project whether or not it is subject to LBE requirements. When the contracting agency determines that the program does not apply to a project or any part of it, the reasons for that decision shall be placed in the file.

(8) After review of the contractor's performance, the contracting agency shall make one of the following determinations with respect to the contractor's compliance with the LBE requirements:

(i) the contractor is in compliance; or

(ii) there is reasonable cause to believe that the contractor is in noncompliance.

(9) Whenever a contracting agency has reasonable cause to believe that a contractor is in noncompliance, it shall send a notice promptly by certified mail, return receipt requested, to the contractor describing the noncompliance and requiring the contractor to show cause within five days why it should not be found in noncompliance. If the agency determines that there is noncompliance, it shall offer the contractor a 15-day period from the date of notification of the determination an opportunity to conciliate.

(i) If conciliation is successful, a conciliation agreement shall be signed by the agency and the contractor and filed with the Division.

(ii) If conciliation is not successful, the agency shall determine whether sanctions should be imposed.

(10) The contracting agency shall notify the Division of any determination of noncompliance and the imposition of any sanctions. The Division shall notify all other contracting agencies of the determination and the sanctions imposed.

(j) **Sanctions.** (1) When a contracting agency determines that a prime contractor has failed to comply with the requirements of Administrative Code §6-108.1 or these regulations, the agency may impose any or all of the following sanctions:

(i) Reducing of a contractor's compensation by an amount equal to the dollar value of the LBE required percentage not complied with;

(ii) Declaring the contractor in default.

(2) In addition, where the prime contractor is an LBE, the agency shall refer the matter to the Division for further action including the review of the LBE's continued eligibility for certification.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §1-04.

Section in original publication July 1, 1991.

Rules of the City of New York

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CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-05 Complaints.

(a) Any person who believes a violation of Administrative Code §6-108.1 and these regulations has occurred may file a complaint, in writing, signed and dated, with the contracting agency when a contract is involved or, if no specific contract is involved, with OEFO.

(b) A prompt investigation shall be made by the contracting agency's LBE liaison officer if the agency receives the complaint, or by the Division if it receives the complaint.

(c) Any complaint alleging fraud, or other criminal behavior, concerning the requirements of Administrative Code §6-108.1 and these regulations on the part of a contractor or subcontractor shall be referred by the contracting agency or the Division to their respective Inspector Generals.

(d) The contractor or subcontractor involved shall cooperate fully with any investigation. Failure or refusal to furnish information or to cooperate in the investigation is a violation of Administrative Code §6-108.1 and these regulations and may result in the imposition of sanctions as provided in §11-04(j).

(e) Upon completion of the investigation, the complaining party and the contractor or subcontractor involved shall be informed of the results of the investigation in writing. If the contracting agency or the Division has reasonable cause

to believe that the contractor or subcontractor is in noncompliance with Administrative Code §6-108.1 or these regulations, then the procedures set forth in §§11-04(i)(9) and (10) shall be commenced.

(f) No contractor, subcontractor, or other person shall intimidate, threaten, coerce, or discriminate against any individual or business for the purpose of interfering with any right or privilege secured by Administrative Code §6-108.1 and these regulations or because a complaint was filed, or a person testified, assisted or participated in any manner in an investigation, proceeding, or hearing under these regulations.

(g) The identity of the complaining party shall be kept confidential only on request. If such confidentiality hinders the investigation, the complaining party shall be so advised for the purpose of obtaining a waiver of confidentiality. The complaining party shall be further advised that failure to waive confidentiality may result in a determination based upon information already provided.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §1-05.

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SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-06 Responsibilities of the Division of Economic and Financial Opportunity.

Implementation.

(a) The Division shall enforce and audit the compliance with and the administration of Administrative Code §6-108.1 and these rules and regulations.

(b) The Division may amend these rules and regulations when necessary to ensure the implementation of Administrative Code §6-108.1.

(c) The Division shall develop such forms and documents as may be necessary for the administration of Administrative Code §6-108.1 and these regulations.

(d) The Division shall adjust as necessary the lower-level "urban family budget" for the City, as most recently defined by the U.S. Department of Labor, Bureau of Labor Statistics by reflecting the variation in the "Urban Wage Earners and Clerical Workers Consumer Price Index."

(e) The Division shall submit on or before April 1 of each year an annual report to the City Council, concerning the administration of the program.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §1-06.

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SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-07 Separability and Applicability.

(a) **Separability.** If any provision of these regulations, or the application thereof is held invalid, the remainder of these rules and regulations, and the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

(b) **Contracts covered.** All contracts being advertised on or after the effective date of these regulations must comply therewith.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §1-07.

Section in original publication July 1, 1991.

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CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER B MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE CERTIFICATION PROGRAM

§11-21 Definitions.

As used in these rules, the following terms shall have the following meanings:

Applicant. "Applicant" means a business enterprise which has applied for certification as an MBE and/or WBE.

Audit. "Audit" means an examination of a business enterprise to determine whether the business enterprise is eligible for certification as an MBE and/or WBE, and may include an examination of books, records, physical facilities and interviews of applicants.

Business enterprise. "Business enterprise" means any entity, including a sole proprietorship, partnership or corporation which is authorized to and engages in lawful business transactions in accordance with the laws of New York State.

Certified business. "Certified business" means a business enterprise which has been approved for certification as an MBE or WBE in accordance with the procedures set forth in §11-22 of these rules, subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members as defined in §11-21 of these rules, or women.

Certification letter. "Certification letter" means the letter sent by DSBS to an applicant notifying it of its

certification as an MBE or WBE.

City. "City" means the City of New York.

Commissioner. "Commissioner" means the Commissioner of the New York City Department of Small Business Services or his or her designee or his or her successor in function.

Day. "Day" means a calendar day unless otherwise specified.

Denial or denied. "Denial" or "denied" means a determination by DSBS that a business enterprise is not eligible for certification as an MBE or WBE because it does not meet the criteria for certification.

Division. "Division" means the division of economic and financial opportunity within the department of small business services.

DSBS. "DSBS" means the New York City Department of Small Business Services or its successor in function.

Director. "Director" means the Director of the Minority- and Women-Owned Business Enterprise Program or his or her designee or his or her successor in function.

Geographic Market. "Geographic market of the City" means the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Putnam, Rockland, Suffolk and Westchester within the State of New York; and Bergen, Hudson, and Passaic within the State of New Jersey.

Graduate MBE or graduate WBE. "Graduate MBE or "graduate WBE" means an MBE or WBE which shall have been awarded prime contracts by one or more agencies within the past three years where the total city funding from the expense and capital budgets for such contracts was equal to or greater than fifteen million dollars.

Minority group member. "Minority group member" means a United States citizen or permanent resident alien who is, and can demonstrate membership in, one of the following groups:

(1) Black persons having origins in any of the Black African racial groups;

(2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; or

(3) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or the Pacific Islands.

Minority-owned business enterprise or MBE. "Minority-owned business enterprise" or "MBE" means a minority-owned business enterprise that is certified in accordance with §1304 of the charter.

Minority- and women-owned business enterprise certification application or certification application. "Minority- and women-owned business enterprise certification application" or "certification application" means the form that DBS*1 requires an applicant to submit for purposes of applying for certification as an MBE or WBE.

Principal office or place of business. "Principal office or place of business" shall mean where the main office and regular meeting place of the board of directors that manages, conducts, and directs the business is located.

Rejected or rejection. "Rejected" or "rejection" means the refusal by DBS* to certify a business enterprise as an MBE or WBE due to an insufficiency in documentation submitted by the applicant.

Women-owned business enterprise or WBE. "Women-owned business enterprise" or "WBE" means a

woman-owned business enterprise that is certified pursuant to §1304 of the charter.

HISTORICAL NOTE

Section amended City Record Sept. 20, 2006 §1, eff. Oct. 20, 2006.

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §2-01.

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FOOTNOTES

1

[Footnote 1]: * Should be "DSBS".

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CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER B MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE CERTIFICATION PROGRAM

§11-22 Eligibility Criteria.

The following standards shall be used to determine whether a business enterprise is eligible for certification as an MBE or WBE.

(a) **Nexus.** In order to be eligible for certification as an MBE or WBE, a business enterprise must have a real and substantial business presence in the geographic market for the city of New York. An MBE or WBE which meets one of the following conditions shall be deemed to have a real and substantial business presence in the geographic market for the city of New York:

(1) the business enterprise's principal office or place of business or headquarters is located within the City; or

(2) the business enterprise maintains full-time employees in one or more of the business enterprise's offices within the City to conduct or solicit business in the City the majority of their working time; or

(3) the business enterprise's principal office or place of business or headquarters is located within the geographic market of the City, and

(i) has transacted business more than once in the City within the last three (3) years, or

(ii) has sought to transact business more than once in the City within the last three (3) years; or

(4) twenty-five percent (25%) of the business enterprise's annual gross receipts for the last three (3) years were derived from transacting business in the City; or

(5) the business enterprise's principal office or place of business or headquarters is not located within the geographic market of the City but the business enterprise has demonstrated two or more of the following indicia of a real and substantial presence in the market for the City of New York:

(i) the business enterprise has maintained a bank account or engaged in other banking transactions in the City;

(ii) the business enterprise, or at least one of its owners, possesses a license issued by an agency of the City to do business in the City;

(iii) the business enterprise has transacted or sought to transact business in or with the City more than once in the past three years.

(b) **Ownership.** For the purposes of determining whether an applicant should be certified as an MBE or WBE, or whether such certification should be revoked, the following rules concerning ownership shall be applied:

(1) The equity interest of minority group member(s) or women owners must be proportionate to the contribution of the minority group member(s) or women owners as demonstrated by, but not limited to, contributions of money, property, equipment or expertise;

(2) A sole proprietorship must be owned by a minority group member or woman;

(3) A partnership must demonstrate that minority group members or women have a fifty-one (51%) percent or greater share of the partnership; and

(4) A corporation must have issued at least fifty-one (51%) percent of its issued and authorized voting and all other stock to minority group members or women share- holders.

(c) **Control.** Determinations as to whether minority group members or women control the business enterprise will be made according to the following criteria:

(1) Decisions pertaining to the operations of the business enterprise must be made by minority group members or women claiming ownership of that business enterprise. The following will be considered in determining whether the minority group members or women are making such decisions:

(i) whether minority group members or women have experience and technical competence in the business enterprise seeking certification;

(ii) whether minority group members or women demonstrate the working knowledge and ability needed to operate the business enterprise; and

(iii) whether minority group members or women show that they devote time on an ongoing basis to the daily operation of the business enterprise.

(2) Articles of incorporation, corporate by-laws, partnership agreements, business certificates, corporate tax returns, unincorporated business tax returns, partnership tax returns and other agreements, including, but not limited to, loan agreements, lease agreements, supply agreements, credit agreements or other agreements must permit minority group members or women who claim ownership of the business enterprise to make those decisions pertaining to operations of the business enterprise without restrictions.

(3) Minority group members or women must demonstrate control of negotiations, signature authority for payroll,

leases, letters of credit, insurance bonds, banking services and contracts, and other business transactions through production of relevant docu- ments.

(d) **Additional eligibility provisions.** The following provisions apply to all applicants seeking certification as an MBE or WBE:

(1) Documentation may be required to substantiate the claim of membership in a minority group. This documentation may include, but is not limited to, birth certificates, foreign passports, naturalization papers, registration on Native American tribal rolls and nonresident visas;

(2) Where the actual management of the business enterprise is contracted out to individuals other than minority group members or women, minority group members and women must demonstrate that they have the ultimate power to hire and fire these managers, that they exercise this power and make other substantial decisions which reflect control of the business enterprise;

(3) Documentation of one (1) year's business activity shall be required in order to provide sufficient information upon which certification can be reasonably made. The commissioner, in his or her discretion, may permit documentation for a lesser period;

(4) DSBS may grant eligible status to any business enterprise eligible under §11-22 of these rules, and (A) certified as an MBE or WBE by the New York State Department of Economic Development, Division of Minority and Women's Business Development pursuant to Article 15-A of the New York State Executive Law and any rules or regulations promulgated thereunder, or (B) certified as an MBE or WBE by another governmental or other certifying entity whose minority- and women-owned business enterprise certification criteria are determined by the commissioner to be consistent with the certification criteria set forth in these rules. Unless otherwise determined by the commissioner, the maximum period for which any certification granted by DSBS pursuant to this subdivision is valid shall be the period during which the business enterprise is certified as an MBE and/or WBE with the original certifying entity;

(5) Any business enterprise that satisfies the eligibility criteria as set forth in §11-22 of these rules, is presumptively eligible for certification under these rules; provided that the commissioner may decline to certify, or revoke the certification of, any business enterprise on the ground that there is not a firm basis for believing that there is a compelling state interest to justify certification of that business enterprise under these rules.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §2-02.

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 20, 2006 §2, eff. Oct. 20, 2006.

Subd. (d) par (4) amended City Record Sept. 20, 2006 §3, eff. Oct. 20, 2006.

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§11-23 Application Intake and Verification.

(a) Minority- and women-owned business enterprise certification applications may be obtained from, and must be returned to DBS. DBS shall date stamp the date of receipt of a certification application upon receiving it.

(b) An applicant shall submit such information or documentation as may be required by DSBS in connection with its certification as an MBE or WBE. Failure to submit such information or documentation may result in the rejection or revocation of such certification.

(c) If a certification application is received by DSBS and required documents are missing, questions are unanswered or the certification application is not properly notarized, DSBS shall send to the applicant, within 45 days of the initial date stamped on the certification application, a notice of status and deficiency (the "Notice"), stating any deficiency arising from missing documents, unfinished questions or deficiencies in notarization. An applicant may cure the noticed deficiency by providing DSBS with documents or information requested in the Notice, within 30 days of the date of the Notice.

(d) When the applicant cures a noticed deficiency, pursuant to procedures set forth in §11-23(c) of these rules, DSBS shall have an additional forty-five (45) days to advise the applicant of any further deficiency which may be cured in accordance with §11-23(c) of these rules.

(e) If the applicant does not cure a noticed deficiency, pursuant to procedures set forth in §11-23(c) of these rules, and the certification application remains incomplete for at least forty-two (42) days of the date of the Notice, unless such time is extended by the director, the applicant shall be sent a notice stating that its certification application has been rejected and will not be processed, together with its rejected certification appli- cation.

(f) An applicant whose certification as an MBE or WBE is rejected, may not reapply for certification for at least one hundred and twenty (120) days of the date of the notice of rejection of its application.

(g) Applicants may be required to consent to inquiries of their bonding companies, banking institutions, credit agencies, contractors, affiliates, clients and other entities to ascertain the applicant's eligibility for certification. Refusal to permit such inquiries shall be grounds for rejection of a certification application.

(h) All applicants and certified businesses shall be subject to an audit at any time. An applicant's or certified business' refusal to facilitate an audit shall be grounds for denial of its certification application or revocation of its certification.

(i) A certification application may be withdrawn by an applicant without prejudice at any time prior to an audit. Following the withdrawal of a certification application, the applicant may not reapply for certification for a period of at least one hundred and twenty (120) days from the date of withdrawal of the application.

(j) All applicants and certified businesses may be required to provide documentation to substantiate that the business has the skill and expertise to perform in the particular area of work for which it is requesting listing or is listed on the M/WBE Directory.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §2-03.

Section in original publication July 1, 1991.

Subd. (b) amended City Record Sept. 20, 2006 §4, eff. Oct. 20, 2006.

Subd. (c) amended City Record Sept. 20, 2006 §5, eff. Oct. 20, 2006.

Subd. (d) amended City Record Sept. 20, 2006 §6, eff. Oct. 20, 2006.

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§11-24 Notice of Determination and Right to Appeal.

(a) The director shall provide the applicant with written notice of a determination approving or denying certification.

(b) In the event certification is approved by the director, the applicant will be sent a certification letter and will be certified as an MBE or WBE for five years from the date of the certification letter or until notified of the need to reapply at the director's request, whichever is earlier, so long as the applicant submits to the Division an affidavit of no material change in ownership or control annually.

(c) In the event certification is denied by the director, a written notice of such determination shall be provided to the applicant stating the reason(s) for such denial. Such notice shall also state the procedures for filing an appeal.

(d) The applicant may appeal the determination within thirty (30) days after the date of the notice denying the business enterprise's certification. In the event that a request for an appeal is not made within the thirty (30) day period, the director's determination shall be deemed final and the applicant may not reapply for certification for two (2) years from the date of the written notice denying certification, provided, however, that if the facts and circumstances forming the basis of the denial decision have changed significantly, the applicant, at the discretion of the director, may be granted permission to reapply sooner.

(e) The request for an appeal shall state the grounds upon which the denial of certification is being appealed.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §2-04.

Section in original publication July 1, 1991.

Subd. (b) amended City Record Sept. 20, 2006 §7, eff. Oct. 20, 2006.

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§11-25 Appeals.

A business entity denied certification or re-certification as an MBE or WBE shall be given written notice by DSBS of the grounds for such denial and an opportunity to appeal such denial in writing to the commissioner. Such appeal or a request for an extension to file an appeal must be received by the commissioner no later than thirty (30) days after the date of the notice denying the business enterprise's certification or re-certification. The commissioner may extend the period in which to initiate an appeal for good cause shown. Such appeal shall include, at a minimum, a description of the reasons why the decision to deny certification or re-certification is in error and provide evidence to support its appeal. Such person shall provide such other documentation or information as is requested by the commissioner, in his or her sole discretion. The commissioner shall render a written determination no later than sixty days after receipt of the appeal, unless the time to render a determination has been extended upon agreement of the commissioner and the business enterprise. If the commissioner's determination is not made within the prescribed sixty days after receipt of the appeal or within the agreed upon extended time period, then the appeal is deemed denied. The decision of the commissioner granting or denying such appeal shall constitute the final agency deter- mination.

HISTORICAL NOTE

Section amended City Record Sept. 20, 2006 §8, eff. Oct. 20, 2006.

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §2-05. Section in original publication July 1, 1991.

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§11-26 Revocation of Minority- or Women-Owned Business Enterprise Status.

(a) A certified business must notify DSBS within forty-five (45) days of any material change in the information contained in the certification application. A material change may include, but is not limited to, a change in any of the following: ownership; address; officers; or services provided by the certified business. If a material change occurs, a review may be conducted by DSBS and certification may be revoked. If an MBE's or WBE's certification is revoked, such business enterprise may reapply for certification at any time following revocation. If a certified business fails to notify the director of such material change, the director may in his or her discretion, revoke the certification of an MBE or WBE for a period of up to five years.

(b) DSBS, upon having reason to believe or upon receiving allegations indicating that a certified business enterprise is not eligible for certification as an MBE or WBE, may meet with minority group members or women claiming ownership and control of the certified business and/or conduct an audit of such business enterprise, and shall take the following actions:

(1) Determine whether the allegation can be substantiated;

(2) Obtain in writing, if possible, the basis of any allegation from the person or persons making the allegation;

(3) Notify a certified business in writing that its certification as an MBE or WBE is under review by the director

and may be revoked. This notice shall specify the bases for such review and any facts specifically at issue; and

(4) Provide the certified business with an opportunity to respond in writing to any allegations set forth in any notices questioning the certification status of a certified business, within twenty-eight (28) days of the date of such notice, by personal service or certified mail, return receipt requested.

(c) If the minority group members or women claiming ownership of the certified business fail to respond timely in writing to the notice of certification status review, or fail to meet with a DBS representative or agree to an audit, the certification of the MBE or WBE may be revoked by the director.

(d) The director shall notify, in writing, a certified business of the revocation of its certification as an MBE or WBE within fourteen (14) days of revoking such certification. The minority group members or women claiming ownership and control of a business enterprise which has had its certification as an MBE or WBE revoked, may request an appeal of this decision within thirty (30) days of the date of the notice of revocation. Such appeal shall be conducted in accordance with procedures set forth in §11-25 of these rules. If a request for an appeal is not made within the thirty (30) day period, the director's determination shall be final and the business enterprise may not reapply for certification for two (2) years from the date of the notice of revocation provided, however, that if the facts and circumstances forming the basis of the revocation decision have changed significantly, the business enterprise may, at the discretion of the director, be granted permission to reapply sooner.

(e) If at any time DSBS has reason to believe that an applicant or certified business has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to the Department of Investigation for investigation. Falsification of any document by an applicant or a certified business may lead to the imposition of civil and criminal penalties as provided by law and contract, de-certification as an MBE or WBE and debarment from City contracts.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §2-06.

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 20, 2006 §9, eff. Oct. 20, 2006.

Subd. (b) open par amended City Record Sept. 20, 2006 §10, eff. Oct. 20, 2006.

Subd. (e) amended City Record Sept. 20, 2006 §11, eff. Oct. 20, 2006.

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SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-60 Definitions.

As used in this subchapter, the following terms shall have the following meanings:

(1) "Agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(2) "Agency chief contracting officer" means the person to whom an agency head has delegated authority to organize and supervise the agency's procurement activity.

(3) "Availability rate" means the percentage of business enterprises within an industry classification that are owned by minorities, women or persons who are socially and economically disadvantaged willing and able to perform agency contracts.

(4) "Bidder" means any person submitting a bid or proposal in response to a solicitation for such bid or proposal from an agency.

(5) "Bidders list" or "proposers list" means a list maintained by an agency that includes persons from whom bids or

proposals can be solicited.

(6) "City" means the city of New York.

(7) "City chief procurement officer" means the person to whom the mayor has delegated authority to coordinate and oversee the procurement activity of mayoral agency staff, including the agency chief contracting officers and any offices that have oversight responsibility for procurement.

(8) "Commercially useful function" means a real and actual service that is a distinct and verifiable element of the work called for in a contract. In determining whether an MBE, WBE or EBE is performing a commercially useful function, factors including but not limited to the following shall be considered:

(i) whether it has the skill and expertise to perform the work for which it is being utilized, and possesses all necessary licenses;

(ii) whether it is in the business of performing, managing or supervising the work for which it has been certified and is being utilized; and

(iii) whether it purchases goods and/or services from another business and whether its participation in the contract would have the principal effect of allowing it to act as a middle person or broker in which case it may not be considered to be performing a commercially useful function for purposes of this section.

(9) "Commissioner" shall mean the commissioner of small business services or his or her designee or his or her successor in function.

(10) "Construction contract" means any agreement with an agency for or in connection with the construction, reconstruction, demolition, excavation, renovation, alteration, improvement, rehabilitation, or repair of any building, facility, physical structure of any kind. Construction contracts shall not include contracts for professional services.

(11) "Contract" means any agreement, purchase order or other instrument whereby the city is committed to expend or does expend funds in return for goods, professional services, standard services, architectural and engineering services, or construction.

(12) "Contractor" means a person who has been awarded a contract.

(13) "Directory" means a list prepared by the division of firms certified pursuant to §1304 of the charter.

(14) "Division" shall mean the division of economic and financial opportunity within the department of small business services.

(15) "EBE" means an emerging business enterprise certified in accordance with §1304 of the charter.

(16) "Geographic market of the city" means the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Putnam, Rockland, Suffolk and Westchester within the state of New York; and Bergen, Hudson, and Passaic within the state of New Jersey.

(17) "Goal" means a numerical target.

(18) "Graduate MBE", "graduate WBE" or "graduate EBE" means an MBE, WBE or EBE which shall have been awarded prime contracts by one or more agencies within the past three years where the total city funding from the expense and capital budgets for such contracts was equal to or greater than fifteen million dollars.

(19) "Industry classification" means one of the following classifications:

(i) construction;

(ii) professional services;

(iii) standard services; and

(iv) goods.

(20) "Joint venture" means an association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits of the venture in reasonable proportion to the economic value of its contribution.

(21) "MBE" means a minority-owned business enterprise certified in accordance with §1304 of the charter.

(22) "Minority group" means Black Americans; Asian Americans, and Hispanic Americans, provided that the commissioner shall be authorized to add additional groups to this definition upon a finding that there is statistically significant disparity between the availability of firms owned by persons in such a group and the utilization of such firms in city procurement.

(23) "Person" means any business, individual, partnership, corporation, firm, company, or other form of doing business.

(24) "Professional services" means services that require specialized skills and the exercise of judgment, including but not limited to accountants, lawyers, doctors, computer programmers and consultants, architectural and engineering services, design services and construction management services.

(25) "Qualified joint venture agreement" means a joint venture between one or more MBEs, WBEs or EBEs and another person, in which the percentage of profit to which the certified firm or firms is entitled for participation in the contract, as set forth in the joint venture agreement, is at least 25% of the total profit.

(26) "Scope of work" means specific tasks required in a contract and/or services or goods that must be provided to perform specific tasks required in a contract.

(27) "Socially and economically disadvantaged" refers to a person who has experienced social disadvantage in American society as a result of causes not common to persons who are not socially disadvantaged, and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business.

(28) "Standard services" means services other than professional services or services procured under a construction contract.

(29) "Subcontractor" means a person who has entered into an agreement with a contractor to provide something that is required pursuant to a contract.

(30) "Utilization rate" means the percentage of total contract expenditures expended on contracts or subcontracts with firms that are owned by women, minorities or socially and economically disadvantaged persons, respectively, in one or more industry classifications.

(31) "WBE" means a women-owned business enterprise certified in accordance with §1304 of the charter.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-32. Section in original publication July 1, 1991. Renumbered by Law Department per Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

2

[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

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SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-61 Citywide Goals.

(1) The citywide contracting participation goals for MBEs, WBEs and EBEs shall be as follows:

For construction contracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 12.63% of total annual agency expenditures on such contracts

Hispanic Americans 9.06% of total annual agency expenditures on such contracts

Emerging 6% of total annual agency expenditures on such contracts

For professional services contracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 9% of total annual agency expenditures on such contracts

Hispanic Americans 5% of total annual agency expenditures on such contracts

Caucasian females 16.5% of total annual agency expenditures on such contracts

Emerging 6% of total annual agency expenditures on such contracts

For standard services contracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 9.23% of total annual agency expenditures on such contracts

Hispanic Americans 5.14% of total annual agency expenditures on such contracts

Caucasian females 10.45% of total annual agency expenditures on such contracts

Emerging 6% of total annual agency expenditures on such contracts

For goods contracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 7.47% of total annual agency expenditures on such contracts

Asian Americans 5.19% of total annual agency expenditures on such contracts

Hispanic Americans 4.99% of total annual agency expenditures on such contracts

Caucasian females 17.87% of total annual agency expenditures on such contracts

Emerging 6% of total annual agency expenditures on such contracts

For construction subcontracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 12.63% of total annual agency expenditures on such subcontracts

Asian Americans 9.47% of total annual agency expenditures on such subcontracts

Hispanic Americans 9.06% of total annual agency expenditures on such subcontracts

Emerging 6% of total annual agency expenditures on such contracts

For professional services subcontracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 9% of total annual agency expenditures on such subcontracts

Hispanic Americans 5% of total annual agency expenditures on such contracts

Caucasian females 16.5% of total annual agency expenditures on such subcontracts

Emerging 6% of total annual agency expenditures on such contracts

(2) Agencies shall develop agency utilization plans pursuant to §11-64 of this subchapter. Agencies shall seek to ensure substantial progress toward the attainment of these goals in as short a time as practicable.

(3) The citywide goals shall not be summarily adopted as goals for individual procurements; rather, as set forth in §11-66 of this subchapter, goals for such procurements may be set at levels higher, lower, or the same as the citywide goals.

(4)(A) Beginning January 29, 2007 and every two years thereafter, the commissioner, in consultation with the city chief procurement officer, shall, for each industry classification and each minority group, review and compare the availability rates of firms owned by minorities and women to the utilization rates of such firms in agency contracts and subcontracts, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this section. In making such revision, the commissioner shall consider the extent to which discrimination continues to have an impact on the ability of minorities and women to compete for city contracts and subcontracts. The commissioner shall submit the results of such review and any proposed revisions to the participation goals to the speaker of the council at least sixty days prior to publishing a proposed rule that would revise participation goals.

(B) Beginning May 23, 2007 and every two years thereafter, the commissioner shall review information collected by the department to determine the availability and utilization of EBEs, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this section. Such revised goals shall be set at a level intended to assist in overcoming the impact of discrimination on such businesses.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-33. Section in original publication July 1, 1991. Renumbered by Law Department per

Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

2

[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the

Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

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§11-62 Responsibilities of the Division.

(1) The division shall create and maintain and periodically update directories by industry classification of MBEs, WBEs and EBEs which it shall supply to all agencies, post on its website and on other relevant city websites and make available for dissemination and/or public inspection at its offices and other locations within each borough.

(2) The division shall make its resources available to assist agencies and contractors in (i) determining the availability of MBEs, WBEs and EBEs to participate in their contracts as prime contractors and/or subcontractors; and (ii) identifying opportunities appropriate for participation by MBEs, WBEs and EBEs in contracts.

(3) The division shall develop and maintain relationships with organizations representing contractors, including MBEs, WBEs and EBEs, and solicit their support and assistance in efforts to increase participation of MBEs, WBEs and EBEs in city procurement.

(4) The division shall coordinate with city and state entities that maintain databases of MBEs, WBEs and EBEs and work to enhance city availability data and directories.

(5) The division shall keep agency M/WBE officers informed of conferences, contractor fairs, and other services that are available to assist them in pursuing the objectives of this section.

(6) The division shall conduct, coordinate and facilitate technical assistance and educational programs for MBEs, WBEs and EBEs and other contractors designed to enhance participation of MBEs, WBEs and EBEs in city procurement. The division shall further develop a clearinghouse of information on programs and services available to MBEs, WBEs and EBEs.

(7) The division shall develop standardized forms and reporting documents for agencies and contractors to facilitate the reporting requirements of this section.

(8) The division shall direct and assist agencies in their efforts to increase participation by MBEs, WBEs and EBEs in any city-operated financial, technical, and management assistance program.

(9) The division shall study and recommend to the commissioner methods to streamline the M/WBE and EBE certification process.

(10) Each fiscal year the division, in consultation with the city chief procurement officer, shall audit at least 5% of all contracts for which utilization plans are established in accordance with §11-66 of this subchapter and 5% of all contracts awarded to MBEs, WBEs and EBEs to assess compliance with this subchapter. All solicitations for contracts for which utilization plans are to be established shall include notice of potential audit.

(11) The division shall assist agencies in identifying and seeking ways to reduce or eliminate practices such as bonding requirements or delays in payment by prime contractors that may present barriers to competition by MBEs, WBEs and EBEs.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

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Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

2

[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program

established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

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§11-63 Responsibilities of Agency M/WBE Officers.

Each agency head shall designate a deputy commissioner or other executive officer to act as the agency M/WBE officer who shall be directly accountable to the agency head concerning the activities of the agency in carrying out its responsibilities pursuant to this section. The duties of the M/WBE officer shall include, but not be limited to:

(i) creating the agency's utilization plan in accordance with §11-64 of this subchapter; (ii) acting as the agency's liaison with the division;

(iii) acting as a liaison with organizations and/or associations of MBEs, WBEs and EBEs, informing such organizations and/or associations of the agency's procurement procedures, and advising them of future procurement opportunities;

(iv) ensuring that agency bid solicitations and requests for proposals are sent to MBEs, WBEs and EBEs in a timely manner, consistent with this section and rules of the procurement policy board;

(v) referring MBEs, WBEs and EBEs to technical assistance services available from agencies and other organizations;

(vi) reviewing requests for waivers of target subcontracting percentages and/or modifications of participation goals and contractor utilization plans in accordance with §11-66 of this subchapter;

(vii) working with the division and city chief procurement officer in creating directories of certified MBEs, WBEs and EBEs. In fulfilling this duty, the agency M/WBE officer shall track and record each contractor that is an MBE, WBE or EBE and each subcontractor hired pursuant to such officer's agency contracts that is an MBE, WBE or EBE, and shall share such information with the commissioner and the city chief procurement officer;

(viii) for contracts for which utilization goals have been established pursuant to §11-66 of this subchapter, monitoring each contractor's compliance with its utilization plan by appropriate means, which shall include, but need not be limited to, job site inspections, contacting MBEs, WBEs and EBEs identified in the plan to confirm their participation, and auditing the contractor's books and records;

(ix) monitoring the agency's procurement activities to ensure compliance with its agency utilization plan and progress towards the participation goals as established in such plan; and

(x) providing to the city chief procurement officer information for the reports required in §11-69 of this subchapter and providing any other plans and/or reports required pursuant to this subchapter or requested by the city chief procurement officer.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

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FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

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§11-64 Agency Utilization Plans.

(1) Beginning May 15, 2006, and on April 1 of each year thereafter, each agency which has made procurements in excess of five million dollars during the fiscal year which ended on June 30 of the preceding calendar year shall submit an agency utilization plan for the fiscal year commencing in July of the year when such plan is to be submitted to the commissioner. Upon approval by the commissioner such plan shall be submitted to the speaker of the council. Each such plan shall, at a minimum, include the following:

(i) the agency's participation goals for MBEs, WBEs and EBEs for the year;

(ii) an explanation for any agency goal that is different than the participation goal for the relevant group and industry classification as determined pursuant to §11-61 of this subchapter;

(iii) a list of the names and titles of agency personnel responsible for implementation of the agency utilization plan;

(iv) methods and relevant activities proposed for achieving the agency's participation goals; and

(v) any other information which the agency or the commissioner deems relevant or necessary.

(2) An agency utilization plan may be amended from time to time, in consultation with the division to reflect

changes in the agency's projected expenditures or other relevant circumstances and resulting changes in such agency's participation goals. Such amendments shall be submitted to the commissioner, the city chief procurement officer and the speaker of the council at least thirty days prior to implementation.

(3) In planning its procurement activities over the course of the fiscal year, each agency subject to this section shall consider how it will achieve the goals set forth in its approved agency utilization plan. This determination should be guided by the agency's knowledge of the market involved in the procurement, and the level of progress it has made during the fiscal year toward meeting its goal for the relevant category of procurement.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

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FOOTNOTES

2

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§11-65 Achieving Agency Participation Goals.

(1) Each agency head shall be directly accountable for the goals set forth in his or her agency's utilization plan.

(2) Each agency shall make all reasonable efforts to meet the participation goals established in its agency utilization plan. Agencies shall, at a minimum, use the following methods to achieve participation goals:

(i) Agencies shall engage in outreach activities to encourage MBEs, WBEs and EBEs to compete for all facets of their procurement activities, including contracts awarded by negotiated acquisition, emergency and sole source contracts, and each agency shall seek to utilize MBEs, WBEs and/or EBEs for all types of goods, services and construction they procure.

(ii) Agencies shall encourage eligible businesses to apply for certification as MBEs, WBEs and EBEs and inclusion in the directories of MBEs, WBEs and EBEs. Agencies shall also encourage MBEs, WBEs and EBEs to have their names included on their bidders lists, seek pre-qualification where applicable, and compete for city business as contractors and subcontractors. Agencies are encouraged to advertise procurement opportunities in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations, and send written notice of specific procurement opportunities to minority and women's business organizations.

(iii) All agency solicitations for bids or proposals shall include information referring potential bidders or proposers to the directories of MBEs, WBEs and EBEs prepared by the division.

(iv) In planning procurements, agencies shall consider the effect of the scope, specifications and size of a contract on opportunities for participation by MBEs, WBEs and EBEs.

(v) For construction contracts, agencies shall consider whether to enter into separate prime contracts for construction support services including, but not limited to, trucking, landscaping, demolition, site clearing, surveying and site security.

(vi) Prior to soliciting bids or proposals for contracts valued at over ten million dollars, an agency shall submit the bid or proposal to the city chief procurement officer for a determination whether it is practicable to divide the proposed contract into smaller contracts and whether doing so will enhance competition for such contracts among MBEs, WBEs and EBEs and other potential bidders or proposers. The agency shall follow the instructions of the city chief procurement officer in cases where he or she determines that it is both practicable and advantageous in light of cost and other relevant factors to divide such contracts into smaller contracts.

(vii) Agencies shall examine their internal procurement policies, procedures and practices and, where practicable, address those elements, if any, that may negatively affect participation of MBEs, WBEs and EBEs in city procurement.

(viii) Agency M/WBE officers shall, in accordance with guidelines established by the city chief procurement officer, establish a process for quarterly meetings with MBEs, WBEs and EBEs to discuss what the agency looks for in evaluating bids and proposals.

(ix) Agencies shall encourage prime contractors to enter joint venture agreements with MBEs, WBEs and EBEs.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

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FOOTNOTES

2

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Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

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§11-66 Participation Goals for Construction and Professional Services Contracts.

(1) Prior to issuing the solicitation of bids or proposals for individual construction and professional services contracts, agencies shall establish a target subcontracting percentage for the contract and participation goals for MBEs, WBEs and EBEs. The "target subcontracting percentage" for the contract shall represent the percentage of the total contract which the agency anticipates a typical prime contractor in the relevant industry would in the normal course of business award to one or more subcontractors for amounts under one million dollars. The participation goals established for a contract shall represent a percentage of the total dollar value of all subcontracts for amounts under one million dollars pursuant to the award. Such goals may be greater than, less than or the same as the relevant citywide goal or goals established pursuant to §11-61 of this subchapter. In determining the participation goals for a particular contract, an agency shall consider the following factors:

(i) the scope of work;

(ii) the availability of MBEs, WBEs and EBEs able to perform the particular tasks required in the contract;

(iii) the extent to which the type of work involved in the contract presents subcontracting opportunities for amounts under one million dollars;

(iv) the agency's progress to date toward meeting its annual participation goals through race-neutral, gender-neutral and other means, and the agency's expectations as to the effect such methods will have on participation of MBEs, WBEs and EBEs in the agency's future contracts; and

(v) any other factors the contracting agency deems relevant.

(2) A contracting agency shall not be required to establish participation goals

(i) for procurements described in §11-74 of this subchapter; or

(ii) when the agency has already attained the relevant goal in its annual utilization plan, or expects that it will attain such goal without the use of such participation goals.

(3) For each contract in which a contracting agency has established participation goals, such agency shall state in the solicitation for such contract that bidders and/or proposers shall be required to agree as a material term of the contract that, with respect to the total amount of the contract to be awarded to one or more subcontractors pursuant to subcontracts for amounts under one million dollars, the contractor shall be subject to participation goals unless such goals are modified by the agency in accordance with this section.

(4) For each contract in which participation goals are established, the agency shall include in its solicitation and/or bidding materials, a referral to the directories prepared by the division pursuant to §11-62 of this subchapter.

(5) For each contract for which participation goals are established the contractor shall be required to submit with its bid or proposal, a utilization plan indicating the percentage of the work it intends to subcontract, and the percentage of work it intends to award to subcontractors for amounts under one million dollars, and, in cases where the contractor intends to award subcontracts for amounts under one million dollars, a description of the type and dollar value of work designated for participation by MBEs, WBEs and/or EBEs, and the time frames in which such work is scheduled to begin and end. When the utilization plan indicates that the bidder or proposer does not intend to award the target subcontracting percentage, the bid or proposal shall not be deemed responsive unless the agency has granted a pre-award waiver pursuant to subdivision 12 of this section.

(6) For each contract for which a utilization plan has been submitted, a material term of the contract shall be that, with respect to the total amount of the contract to be awarded to one or more subcontractors pursuant to subcontracts for amounts under one million dollars, the contractor shall be subject to participation goals unless such goals are modified by the agency in accordance with this section.

(7) For each contract for which a utilization plan has been submitted, the contracting agency shall require that within thirty days of the issuance of notice to proceed, the contractor submit a list of persons to which it intends to award subcontracts within the next twelve months, and a written confirmation that the contractor has notified each MBE, WBE or EBE included in such list. For multi-year contracts, the contractor shall submit such a list of persons and written confirmation of notification to the agency annually. In the event that a contracting agency disapproves a contractor's selection of a subcontractor or subcontractors, the contracting agency shall allow such contractor a reasonable time to propose alternate subcontractors.

(8) For each contract for which a utilization plan has been submitted, the contractor shall, with each voucher for payment, and/or periodically as the agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount paid to subcontractors (including subcontractors that are not MBEs, WBEs or EBEs); the names, addresses and contact numbers of each MBE, WBE or EBE hired as a subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE, WBEs or EBEs. The contractor shall also submit, along with its voucher for final payment, the total amount paid to subcontractors (including subcontractors that are not MBEs, WBEs or EBEs); and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE, WBE or EBE hired pursuant to such plan, the

work performed by, and the dates and amounts paid to each.

(9) If payments made to, or work performed by, MBEs, WBEs or EBEs are less than the amount specified in the contractor's utilization plan, the agency shall take appropriate action in accordance with §11-72 of this subchapter, unless the contractor has obtained a modification.

(10) When advertising a solicitation for bids or proposals for a contract for which a participation goal has been established, agencies shall include in the advertisement a general statement that the contract will be subject to participation goals for MBEs, WBEs and/or EBEs.

(11) In the event that a contractor with a contract that includes a utilization plan submits a request for a change order the value of which exceeds ten percent of such contract, the agency shall establish participation goals as if for a new contract for the work to be performed pursuant to such change order.

(12) Pre-award waiver. If the level of subcontracting set forth in a utilization plan is less than the target subcontracting percentage, the bidder or proposer shall submit a request to the contracting agency, prior to the deadline for such requests established by the contracting agency as indicated in the invitation to bid or propose, for a full or partial waiver of the targeted subcontracting percentage. Such request shall include documentation to support the bidder's or proposer's capacity to perform the contract without any subcontracting, or to perform the contract without awarding the amount of subcontracts for under one million dollars represented by the targeted subcontracting percentage.

(i) Subject to paragraph (ii) of this subdivision, the contracting agency may grant a full or partial waiver of the target subcontracting percentage to a bidder or proposer who demonstrates that it has legitimate business reasons for proposing the level of subcontracting in its utilization plan. The contracting agency shall make its determination in light of factors which shall include, but not be limited to, whether the bidder or proposer has the capacity and the bona fide intention to perform the contract without any subcontracting, or to perform the contract without awarding the amount of subcontracts for under one million dollars represented by the target subcontracting percentage. In making such determination, the agency may consider whether the utilization plan is consistent with past subcontracting practices of the bidder or proposer, and whether the bidder or proposer has made good faith efforts to identify portions of the contract that it intends to subcontract.

The administrative code provides that within thirty days of the registration of a contract, the city chief contracting officer shall notify the council of any such waiver granted with respect to the contract.

(ii) The administrative code provides that the agency M/WBE officer shall provide written notice of requests for a full or partial waiver of the target subcontracting percentage to the division and the city chief procurement officer and shall not approve any such request without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The administrative code provides that the city chief procurement officer shall notify the speaker of the council and the division in writing within thirty days of the registration of the contract for a full or partial waiver of a target subcontracting percentage, provided that where an agency has been authorized to grant waivers without approval of the chief procurement officer, such notice shall be provided to the speaker of the council and the division by the agency. Such notification shall include, but not be limited to, the name of contractor, the original target subcontracting percentage, the waiver request, including all documentation, and an explanation for the approval of such request.

(13) Modification of utilization plans. (i) A contractor may request modification of its utilization plan after the award of a contract. Subject to paragraph (ii) of this subdivision, an agency may grant such request if it determines that such contractor has established, with appropriate documentary and other evidence, that it made all reasonable, good

faith efforts to meet the goals set by the agency for the contract. Prior to granting such request, an agency shall consult with the division. In making such determination, the agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(A) The contractor advertised opportunities to participate in the contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

(B) The contractor provided notice of specific opportunities to participate in the contract, in a timely manner, to minority and women's business organizations;

(C) The contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs, WBEs and EBEs that their interest in the contract was solicited;

(D) The contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs, WBEs and/or EBEs in the contractor utilization plan, and for which the contractor claims an inability to retain MBEs or WBEs or EBEs;

(E) The contractor held meetings with MBEs, WBEs and/or EBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited. Documentation of such meetings shall include the dates, times, and locations of such meetings, meeting announcements and invitations, meeting agendas, documents distributed at such meetings, and attendance lists;

(F) The contractor made efforts to negotiate with MBEs, WBEs and/or EBEs as relevant to perform specific subcontracts, or act as suppliers or service providers. Documentation of such negotiation shall include the names, addresses, and telephone numbers of MBEs, WBEs and/or EBEs that were solicited; the date of each such solicitation; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to the reasons that agreements could not be reached with MBEs, WBEs and/or EBEs to perform the work.

(G) Timely written requests for assistance made by the contractor to the agency M/WBE officer and to the division, as well as documented requests for assistance made by the contractor to organizations that provide assistance in the recruitment and placement of MBEs, WBEs and/or EBEs, including but not limited to, minority and/or women community organizations, minority and/or women contractors' groups; local, state and federal business assistance offices;

(H) Description of how recommendations made by the division, the contracting agency, and other organizations described in subparagraph (G) of this paragraph were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs, WBEs and/or EBEs.

(I) The contractor rejected bids by MBEs, WBEs and/or EBEs for sound reasons based upon a thorough investigation of their capabilities. The MBE's or WBE's or EBE's political or social affiliations or lack thereof shall not be a legitimate reason for rejecting or not soliciting bids to meet the goals.

(J) The contractor designated portions of the work to be performed by MBEs, WBEs and/or EBEs in order to increase the likelihood that the goals will be met, including but not limited to, breaking out the work under the contract into feasible units to facilitate MBE, WBE and/or EBE participation.

(K) The contractor made efforts to assist interested MBEs, WBEs and/or EBEs in obtaining bonding, lines of credit, or insurance as required by the City or the contractor.

(L) The contractor made efforts to assist interested MBEs, WBEs and/or EBEs in obtaining necessary equipment,

supplies, materials, or related assistance or services.

(ii) The administrative code provides that the agency M/WBE officer shall provide written notice of requests for such modifications to the division and the city chief procurement officer and shall not approve any such request for modification without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The administrative code provides that the city chief procurement officer, shall notify the speaker of the council and the division in writing within seven days of the approval of a request for modification of a utilization plan, provided that where an agency has been authorized to grant modifications without approval of the chief procurement officer, such notice shall be provided to the speaker of the council and the division by the agency. Such notification shall include, but not be limited to, the name of the contractor, the original utilization plan, the modification request, including all documentation, and an explanation for the approval of such request.

(iii) The agency M/WBE officer shall provide written notice to the contractor of its determination that shall include the reasons for such determination.

(14) Substitution of the MBE, WBE and/or EBE subcontractor whose participation was necessary to achieve a participation goal shall be permitted only with approval of the contracting agency, and only in the following circumstances:

(A) Unavailability after receipt of reasonable notice to proceed;

(B) Poor performance;

(C) Financial incapacity;

(D) Refusal by the subcontractor to honor the bid or proposal price or scope;

(E) Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;

(F) Failure of the subcontractor to meet insurance, licensing, or bonding requirements;

(G) The subcontractor's withdrawal of its bid or proposal;

(H) Decertification of the subcontractor as an MBE, WBE or EBE;

(I) The contractor becomes aware of information negatively reflecting on the subcontractor's business integrity;

(J) Other circumstances allowed by the agency after consultation with the division.

Where the contractor has established the basis for substitution to the satisfaction of the contract compliance officer, it shall make good faith efforts to substitute with a subcontractor which can be counted toward achievement of the relevant goal. If the contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the compliance plan, the contractor shall obtain approval of the agency M/WBE officer and must make good faith efforts to ensure that MBEs, WBEs and/or EBEs have a reasonable opportunity to bid on the new scope of work.

(15) For each contract in which a contracting agency has established participation goals, the agency shall evaluate and assess the contractor's performance in meeting each such goal. Such evaluation and assessment shall be a part of the contractor's overall contract performance evaluation required pursuant to §333 of the charter.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

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FOOTNOTES

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§11-67 Determining Credit for MBE, WBE and EBE Participation.

(1) An agency's achievement of its annual goals shall be calculated as follows:

(i) The total dollar amount that an agency has paid or is obligated to pay to a prime contractor which is an MBE, WBE or EBE may be credited toward the relevant goal.

(ii) The total dollar amount that a prime contractor has paid or is obligated to pay to a subcontractor which is an MBE, WBE or EBE may be credited toward the relevant goal.

(iii) For requirements contracts, credit may be given for the actual dollar amount paid under the contract.

(iv) Where one or more MBEs, WBEs or EBEs is participating in a qualified joint venture, the dollar amount of the percentage of total profit to which MBEs, WBEs or EBEs are entitled pursuant to the joint venture agreement shall be credited toward the relevant goal.

(v) No credit shall be given for participation in a contract by an MBE, WBE or EBE that does not perform a commercially useful function.

(vi) No credit shall be given for the participation in a contract by any company that has not been certified as an

MBE, WBE or EBE in accordance with §1304 of the charter.

(vii) In the case of a contract for which the contractor is paid on a commission basis, the dollar amount of the contract may be determined on the basis of the commission earned or reasonably anticipated to be earned under the contract.

(viii) No credit shall be given to a contractor for participation in a contract by a graduate MBE, WBE or EBE.

(ix) The participation of a certified company shall not be credited toward more than one participation goal.

(2) A contractor's achievement of each goal established in its utilization plan shall be calculated in the same manner as described for calculating the achievement of agency utilization goals as described in subdivision (1) of this section; provided that no credit shall be given to the contractor for the participation of a company that is not certified in accordance with §1304 of the charter before the date that the agency approves the subcontractor.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-34. Section in original publication July 1, 1991. Renumbered by Law Department per

Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

2

[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

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§11-68 Small Purchases.

(1) Each agency shall, consistent with the participation goals established in §11-61 of this subchapter and such agency's utilization plan, establish goals for purchases valued at or below five thousand dollars which shall be made from MBEs, WBEs and/or EBEs.

(2) Whenever an agency solicits bids or proposals for small purchases pursuant to section three hundred fourteen of the charter, the agency shall maintain records identifying the MBEs, WBEs and EBEs it solicited, which shall become part of the contract file.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-42. Section in original publication July 1, 1991. Renumbered by Law Department per

Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

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§11-69 Compliance Reporting.

(1) The administrative code provides that the city chief procurement officer, in consultation with the division shall prepare and submit semiannual reports to the speaker of the council as described in this section. A preliminary report containing information for the fiscal year in progress shall be submitted to the speaker of the council by April 1, 2007, and annually thereafter, and a final report containing information for the preceding fiscal year shall be submitted to the speaker of the council by October 1, 2007 and annually thereafter. The reports, which shall also be posted on the division's website, shall contain the following information, disaggregated by agency:

(i) the number and total dollar value of contracts awarded, disaggregated by industry classification, provided that contracts for amounts under five thousand dollars need not be disaggregated by industry;

(ii) the number and total dollar value of contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification, provided that contracts for amounts under five thousand dollars need not be disaggregated by industry;

(iii) the total number and total dollar value of contracts awarded valued at less than five thousand dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group;

(iv) the total number and total dollar value of contracts awarded valued at between five thousand and one hundred thousand dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(v) the total number and total dollar value of contracts awarded valued at between one hundred thousand dollars and one million dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(vi) the total number and total dollar value of contracts awarded valued at over one million dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(vii) for those contracts for which an agency set participation goals in accordance with §11-66 of this subchapter:

A. the number and total dollar amount of such contracts disaggregated by industry classification;

B. the number and total dollar value of such contracts that were awarded to qualified joint ventures and the total dollar amount attributed to the MBE, WBE or EBE joint venture partners, disaggregated by minority and gender group and industry classification;

C. the number and total dollar value of subcontracts entered into pursuant to such contracts and the number and total dollar amount of such subcontracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

D. a list of the full or partial waivers of target subcontracting percentages granted for such contracts pursuant to paragraph 12 of §11-66 of this subchapter, and the number and dollar amount of those contracts for which such waivers were granted, disaggregated by industry classifications; and

E. a list of the requests for modification of participation requirements for such contracts made pursuant to subdivision 13 of §11-66 of this subchapter and the determinations made with respect to such requests, and the number and dollar amount of those contracts for which such modifications were granted, disaggregated by industry classification;

(viii) a detailed list of each complaint received pursuant to subdivision 1 of §11-72 of this subchapter which shall, at a minimum, include the nature of each complaint and the action taken in investigating and addressing such complaint including whether and in what manner the enforcement provisions of §11-72 of this subchapter were invoked and the remedies applied;

(ix) a detailed list of all non-compliance findings made pursuant to subdivision 4 of §11-72 of this subchapter and actions taken in response to such findings;

(x) the number of firms certified or recertified in accordance with §1304 of the charter during the six months immediately preceding such report;

(xi) the number and percentage of contracts audited pursuant to subdivision 10 of §11-62 of this subchapter and a summary of the results of each audit;

(xii) a summary of efforts to reduce or eliminate barriers to competition as required pursuant to paragraph 11 of §11-62 of this subchapter;

(xiii) a list of all solicitations submitted to the city chief procurement officer pursuant to paragraph vi of subdivision 2 of §11-65 of this subchapter and a summary of the determination made regarding each such submission; and

(xiv) any other information as may be required by the commissioner.

(2) The annual reports submitted in October shall, in addition, contain a determination made by the commissioner, as to whether each agency has made substantial progress toward achieving its utilization goals and whether the city has made substantial progress toward achieving the citywide goals established pursuant to §11-61 of this subchapter. The first three annual reports shall also include detailed information about steps that agencies have taken to initiate and ramp up their efforts to comply with the requirements of this section, including but not limited to, demonstrating specific efforts made to comply with §11-63 of this subchapter.

(3) The data that provide the basis for the reports required by this section shall be made available electronically to the council at the time the reports are submitted.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-45. Section in original publication July 1, 1991. Renumbered by Law Department per

Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

2

[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

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§11-70 Agency Compliance.

(1) The agency shall submit to the commissioner and the city chief procurement officer such information as is necessary for the city chief procurement officer to complete his or her report as required in §11-69 of this subchapter. The administrative code provides that the commissioner and the city procurement officer shall review each agency's submissions and whenever it has been determined that an agency is not making adequate progress toward the goals established in its agency utilization plan, the commissioner and the city chief procurement officer shall act to improve such agency's performance, and may take any of the following actions:

(i) require the agency to submit more frequent reports about its procurement activity; (ii) require the agency to notify the commissioner and the city chief procurement officer, prior to solicitation of bids or proposals for, and/or prior to award of, contracts in any category where the agency has not made adequate progress toward achieving its utilization goals;

(iii) reduce or rescind contract processing authority delegated by the mayor pursuant to §§317 and 318 of the charter; and

(iv) any other action the city chief procurement officer or the commissioner deem appropriate.

(2) Noncompliance. The administrative code provides that whenever the city chief procurement officer or the commissioner finds that an agency has failed to comply with its duties under this section, he or she shall attempt to resolve such noncompliance informally with the agency head. It further provides that in the event that the agency fails to remedy its noncompliance after such informal efforts, the city chief procurement officer shall submit such findings in writing to the mayor and the speaker of the council, and the mayor shall take appropriate measures to ensure compliance.

(3) Failure by an agency to submit information required by the division or the city chief procurement officer, in accordance with this section, including but not limited to the utilization plan required pursuant to §11-64 of this subchapter, shall be deemed noncompliance.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

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§11-71 Pre-Qualification.

An agency establishing a list of pre-qualified bidders or proposers may deny pre-qualification to prospective contractors who fail to demonstrate in their application for pre-qualification that they have complied with applicable federal, state and local requirements for participation of MBEs, WBEs and EBEs in procurements. A denial of pre-qualification may be appealed pursuant to applicable procurement policy board rules.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-49. Section in original publication July 1, 1991. Renumbered by Law Department per

Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

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§11-72 Enforcement.

(1) Any person who believes that a violation of the requirements of §6-129 of the administrative code of the city of New York or these rules, or any provision of a contract that implements §6-129 of the administrative code of the city of New York or these rules, including, but not limited to, any contractor utilization plan, has occurred may submit a complaint in writing to the division, the city chief procurement officer and the comptroller. Such complaint shall be signed and dated. The division shall promptly investigate such complaint and determine whether there has been a violation.

(2) Any complaint alleging fraud, corruption or other criminal behavior on the part of a bidder, proposer, contractor, subcontractor or supplier shall be referred to the commissioner of the department of investigation.

(3) Contract award. (i) When an agency receives a protest from a bidder or proposer regarding a contracting action that is related to §6-129 of the administrative code of the city of New York or these rules, the agency shall send copies of the protest and any appeal thereof, and any decisions made on the protest or such appeal, to the division and the comptroller.

(ii) Whenever a contracting agency has determined that a bidder or proposer has violated §6-129 of the administrative code of the city of New York, or these rules, the agency may disqualify such bidder or proposer from

competing for such contract and the agency may revoke such bidder's or proposer's prequalification status.

(4) Contract administration. (i) Whenever an agency believes that a contractor or a subcontractor is not in compliance with §6-129 of the administrative code of the city of New York, these rules, or any provision of a contract that implements §6-129 of the administrative code of the city of New York or these rules, including, but not limited to any contractor utilization plan, the agency shall send a written notice to the city chief procurement officer, the division and the contractor describing the alleged noncompliance and offering an opportunity to be heard. The agency shall then conduct an investigation to determine whether such contractor or subcontractor is in compliance.

(ii) In the event that a contractor has been found to have violated §6-129 of the administrative code of the city of New York, these rules, or any provision of a contract that implements §6-129 of the administrative code of the city of New York or these rules, including, but not limited to any contractor utilization plan, the contracting agency shall, after consulting with the city chief procurement officer and the division, determine whether any of the following actions should be taken:

(A) enter an agreement with the contractor allowing the contractor to cure the violation;

(B) revoke the contractor's pre-qualification to bid or make proposals for future contracts;

(C) make a finding that the contractor is in default of the contract;

(D) terminate the contract;

(E) declare the contractor to be in breach of contract;

(F) withhold payment or reimbursement;

(G) determine not to renew the contract;

(H) assess actual and consequential damages;

(I) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by this section, or in meeting the purposes of the contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the contract;

(J) exercise rights under the contract to procure goods, services or construction from another contractor and charge the cost of such contract to the contractor that has been found to be in noncompliance; or

(K) take any other appropriate remedy.

(5) To the extent available pursuant to rules of the procurement policy board, a contractor may seek resolution of a dispute regarding a contract related to §6-129 of the administrative code of the city of New York or these rules. The contracting agency shall submit a copy of such submission to the division.

(6) Whenever an agency has reason to believe that an MBE, WBE or EBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function, or has violated any provision of §6-129 of the administrative code of the city of New York or these rules, the agency shall notify the commissioner who shall determine whether the certification of such business enterprise should be revoked.

(7) Statements made in any instrument submitted to a contracting agency pursuant to these rules shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE, WBE

or EBE in any instrument submitted pursuant to these rules shall, in addition, be grounds for revocation of its certification.

(8) A contractor's record in implementing its contractor utilization plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a contractor utilization plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.

(9) Any complaint alleging fraud, corruption or other criminal behavior on the part of a bidder, proposer, contractor, subcontractor or supplier shall in addition be referred to the department of investigation.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-51, 11-52. Section in original publication July 1, 1991. Renumbered by Law Department per Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

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§11-73 Procurements by Elected Officials and the Council.

(1) In the case of procurements by independently elected city officials other than the mayor, where these rules provide for any action to be taken by the city chief procurement officer, such action shall instead be taken by such elected officials.

(2) In the case of procurements by the council, where these rules provide for any action to be taken by the city chief procurement officer, such action shall instead be taken by the speaker of the council.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-54. Section in original publication July 1, 1991. Renumbered by Law Department per

Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

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§11-74 Applicability.

Agencies shall not be required to apply participation requirements to the following types of contracts:

(i) those subject to federal or state funding requirements which preclude the city from imposing the requirements of this subchapter;

(ii) those subject to federal or state law participation requirements for MBEs, WBEs and/or EBEs;

(iii) contracts between agencies;

(iv) procurements made through the United States general services administration or another federal agency, or through the New York state office of general services or another state agency, or any other governmental agency.

(v) emergency procurements pursuant to section three hundred fifteen of the charter; (vi) sole source procurements pursuant to section three hundred twenty-one of the charter;

(vii) small purchases as defined pursuant to section three hundred fourteen of the charter; and

(viii) contracts awarded to not-for-profit organizations.

HISTORICAL NOTE

Section so designated (formerly §11-73(q)) and amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-55. Section in original publication July 1, 1991. Renumbered by Law Department per Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

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§11-75 Comptroller.

The comptroller shall randomly examine contracts for which contractor utilization plans are established to assess compliance with such plans. All solicitations for contracts for which contractor utilization plans are to be established shall include notice of potential comptroller examinations.

HISTORICAL NOTE

Section renumbered (formerly §11-74) and amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007.

[See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

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SUBCHAPTER E EMERGING BUSINESS ENTERPRISE CERTIFICATION PROGRAM*3

§11-81 Definitions.

As used in these rules, the following terms shall have the following meanings:

Applicant. "Applicant" means a business enterprise which has applied for certification as an EBE.

Audit. "Audit" means an examination of a business enterprise to determine whether the business enterprise is eligible for certification as an EBE, and may include an examination of books, records, physical facilities and interviews of applicants.

Business enterprise. "Business enterprise" means any entity, including a sole proprietorship, partnership or corporation, which is authorized to and engages in lawful business transactions in accordance with the laws of New York State.

Certified business. "Certified business" means a business enterprise which has been approved for certification as an EBE in accordance with the procedures set forth in §11-82 of these rules, subsequent to verification that the business enterprise is owned, operated, and controlled by socially and economically disadvantaged persons as defined in §11-82 of these rules.

Certification letter. "Certification letter" means the letter sent by DSBS to an applicant notifying it of its

certification as an EBE.

City. "City" means the City of New York.

Commissioner. "Commissioner" means the commissioner of the New York City Department of Small Business Services or his or her designee or his or her successor in function.

Day. "Day" means a calendar day unless otherwise specified.

Denial or denied. "Denial" or "denied" means a determination by DSBS that a business enterprise is not eligible for certification as an EBE because it does not meet the criteria for certification.

Division. "Division" means the division of economic and financial opportunity within the department of small business services.

DSBS. "DSBS" means the New York City Department of Small Business Services or its successor in function.

Director of Certification. "Director of Certification" means the director of the emerging business enterprise certification program or his or her designee or his or her successor in function.

Economically disadvantaged. "Economically disadvantaged" refers to a socially disadvantaged person whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

Emerging business enterprise or EBE. "Emerging business enterprise" or "EBE" means a business enterprise that is certified in accordance with §1304 of the charter, in which:

(i) at least fifty-one (51%) percent of the ownership interest is held by United States citizens or permanent resident aliens;

(ii) the ownership interest of such persons is real, substantial and continuing;

(iii) such persons have and exercise the authority to control independently, the day-to-day business decisions of the enterprise; and

(iv) such persons have demonstrated, in accordance with regulations promulgated by the commissioner, that they are socially and economically disadvantaged.

Emerging business enterprise certification application. "Emerging business enterprise certification application" means the form that DSBS requires an applicant to submit for purposes of applying for certification as an EBE.

Geographic Market. "Geographic market" of the city means the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Putnam, Rockland, Suffolk and Westchester within the State of New York; and Bergen, Hudson, and Passaic within the state of New Jersey.

Graduate EBE. "Graduate EBE" means an EBE which shall have been awarded prime contracts by one or more agencies within the past three years where the total city funding from the expense and capital budgets for such contracts was equal to or greater than fifteen million dollars.

Immediate family. "Immediate family" means a spouse, domestic partner, unemancipated child (including children of a domestic partner), and if they live with the individual claiming disadvantage, parent or sibling.

Principal office or place of business. "Principal office" or "place of business" shall mean where the main office and

regular meeting place of the board of directors that manages, conducts, and directs the business is located.

Rejected or rejection. "Rejected" or "rejection" means the refusal by DSBS to certify a business enterprise as an EBE due to an insufficiency in documentation submitted by the applicant.

Socially and economically disadvantaged. "Socially and economically disadvantaged" refers to a person who has experienced social disadvantage in American society as a result of causes not common to persons who are not socially disadvantaged, and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. A person's race, national origin, or gender, by itself, does not qualify the person as "socially disadvantaged" and the net worth of persons claiming to be "economically disadvantaged" must be less than one million dollars. In determining such net worth, the department shall exclude the ownership interest in the business enterprise and the equity in the primary personal residence.

HISTORICAL NOTE

Section added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

FOOTNOTES

3

[Footnote 3]: * Subchapter E added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

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CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER E EMERGING BUSINESS ENTERPRISE CERTIFICATION PROGRAM*3

§11-82 Eligibility Criteria.

The following standards shall be used to determine whether a business enterprise is eligible for certification as an EBE. (a) **Nexus.** In order to be eligible for certification as an EBE, a business enterprise must have a real and substantial business presence in the geographic market for the city of New York. An EBE which meets one of the following conditions shall be deemed to have a real and substantial business presence in the geographic market for the city of New York:

(1) the business enterprise's principal office or place of business or headquarters is located within the City; or

(2) the business enterprise maintains full-time emloyees in one or more of the business enterprise's offices within the City to conduct or solicit business in the City the majority of their working time; or

(3) the business enterprise's principal office or place of business or headquarters is located within the geographic market of the City, and

(i) has transacted business more than once in the City within the last three (3) years, or

(ii) has sought to transact business more than once in the City within the last three (3) years; or

(4) twenty-five percent (25%) of the business enterprise's annual gross receipts for the last three (3) years were

derived from transacting business in the City; or

(5) the business enterprise's principal office or place of business or headquarters is not located within the geographic market of the City but the business enterprise has demonstrated two or more of the following indicia of a real and substantial presence in the market for the City of New York:

(i) the business enterprise has maintained a bank account or engaged in other banking transactions in the City;

(ii) the business enterprise, or at least one of its owners, possesses a license issued by an agency of the City to do business in the City;

(iii) the business enterprise has transacted or sought to transact business in or with the City more than once in the past three years.

(b) **Ownership.** For the purposes of determining whether an applicant should be certified as an EBE, or whether such certification should be revoked, the following rules concerning ownership shall be applied:

(1) The equity interest of socially and economically disadvantaged persons must be proportionate to the contribution of the socially and economically disadvantaged persons as demonstrated by, but not limited to, contributions of money, property, equipment or expertise;

(2) A sole proprietorship must be owned by a socially and economically disadvantaged person;

(3) A partnership must demonstrate that socially and economically disadvantaged persons have a fifty-one (51%) percent or greater share of the partnership; and

(4) A corporation must have issued at least fifty-one (51%) percent of its issued and authorized voting and all other stock to socially and economically disadvantaged persons.

(c) **Control.** Determinations as to whether socially and economically disadvantaged persons control the business enterprise will be made according to the following criteria: (1) Decisions pertaining to the operations of the business enterprise must be made by socially and economically disadvantaged persons claiming ownership of that business enterprise. The following will be considered in determining whether the socially and economically disadvantaged persons are making such decisions:

(i) whether socially and economically disadvantaged persons have experience and technical competence in the business enterprise seeking certification;

(ii) whether socially and economically disadvantaged persons demonstrate the working knowledge and ability needed to operate the business enterprise; and

(iii) whether socially and economically disadvantaged persons show that they devote time on an ongoing basis to the daily operation of the business enterprise.

(2) Articles of incorporation, corporate by-laws, partnership agreements, business certificates, corporate tax returns, unincorporated business tax returns, partnership tax returns and other agreements, including, but not limited to, loan agreements, lease agreements, supply agreements, credit agreements or other agreements must permit socially and economically disadvantaged persons who claim ownership of the business enterprise to make those decisions pertaining to operations of the business enterprise without restrictions.

(3) Socially and economically disadvantaged persons must demonstrate control of negotiations, signature authority for payroll, leases, letters of credit, insurance bonds, banking services and contracts, and other business transactions through production of relevant documents.

(d) **Additional eligibility provisions.** The following provisions apply to all applicants seeking certification as an EBE:

(1) Where the actual management of the business enterprise is contracted out to individuals other than socially and disadvantaged persons, socially and economically disadvantaged persons must demonstrate that they have the ultimate power to hire and fire these managers, that they exercise this power and make other substantial decisions which reflect control of the business enterprise;

(2) Documentation of one (1) year's business activity shall be required in order to provide sufficient information upon which certification can be reasonably made. The commissioner, in his or her discretion, may permit documentation for a lesser period;

(3) DSBS may grant eligible status to any business enterprise eligible under §11-82 of these rules, and certified as an EBE or disadvantaged business enterprise by another governmental or other certifying entity whose emerging business enterprise or disadvantaged business enterprise certification criteria are determined by the commissioner to be consistent with the certification criteria set forth in these rules. Unless otherwise determined by the commissioner, the maximum period for which any certification granted by DSBS pursuant to this subdivision is valid shall be the period during which the business enterprise is certified as an EBE or disadvantaged business enterprise with the original certifying entity;

(4) Any business enterprise that satisfies the eligibility criteria as set forth in §11-82 of these rules is presumptively eligible for certification under these rules; provided that the commissioner may decline to certify, or revoke the certification of, any business enterprise on the ground that there is not a firm basis for believing that there is a compelling state interest to justify certification of that business enterprise under these rules.

(e) **Evidence of social and economic disadvantage.** (1)(A) Evidence of individual social disadvantage must include the following elements: (i) At least one objective distinguishing feature that has contributed to social disadvantage, such as physical or mental disability, long-term residence in an environment isolated from the mainstream of United States society, or other similar causes not common to individuals who are not socially disadvantaged;

(ii) Personal experiences of substantial and chronic social disadvantage in United States society, not in other countries; and

(iii) Negative impact on entry into or advancement in the business world because of the social disadvantage. DSBS will consider any relevant evidence in assessing this element. In every case, however, DSBS will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(B) **Education.** DSBS will consider such factors as denial of equal access to institutions of higher education, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(C) **Employment.** DSBS will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer; and social patterns or pressures which have channeled the individual into nonprofessional or non-business fields.

(D) **Business history.** DSBS will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

(2) Evidence of individual economic disadvantage must include the following elements: (A) Submission of narrative and financial information. (i) Each individual claiming economic disadvantage must describe it in a narrative statement, and must submit personal financial information supporting the assertions contained in the narrative statement.

(ii) An individual claiming economic disadvantage who is married or a member of a domestic partnership must submit separate financial information for his or her spouse or domestic partner, provided that such financial information shall not be required where the individual and the spouse are legally separated.

(B) **DSBS evaluation of diminished capital and credit opportunities.** DSBS will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. DSBS will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that DSBS compares will include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(C) **Transfers within two years.** (1) Except as set forth in §11-82(e)(2)(C)(2), DSBS will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a business enterprise's application for participation in the EBE program or within two years of a participant's annual renewal, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) DSBS will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, DSBS may consider any assets that the individual transferred within such two-year period described by §11-82(e)(2)(C)(1), that DSBS does not consider in evaluating the individual's assets and net worth (e.g., transfers to charities).

(b)* **Net worth.**4 For EBE eligibility, the net worth of an individual claiming disadvantage must be less than one million dollars. In determining such net worth, DSBS will exclude the ownership interest in the applicant and the applicant's equity in the primary personal residence (except any portion of such equity which is attributable to excessive withdrawals from the applicant). Exclusions for purposes of determining net worth are not exclusions for asset valuation or access to capital and credit purposes. A contingent liability does not reduce an individual's net worth.

HISTORICAL NOTE

Section added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

FOOTNOTES

3

[Footnote 3]: * Subchapter E added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

4

[Footnote 4]: * (b) should be (f).

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SUBCHAPTER E EMERGING BUSINESS ENTERPRISE CERTIFICATION PROGRAM*3

§11-83 Application Intake and Verification.

(a) Emerging business enterprise certification applications may be obtained from, and must be returned to DSBS. DSBS shall date stamp the date of receipt of a certification application upon receiving it.

(b) An applicant shall submit such information or documentation as may be required by DSBS in connection with its certification as an EBE. Failure to submit such information or documentation may result in the rejection or revocation of such certification.

(c) If a certification application is received by DSBS and required documents are missing, questions are unanswered or the certification application is not properly notarized, DSBS shall send to the applicant, within forty-five (45) days of the initial date stamped on the certification application, a notice of status and deficiency (the "Notice"), stating any deficiency arising from missing documents, unfinished questions or deficiencies in notarization. An applicant may cure the noticed deficiency by providing DSBS with documents or information requested in the Notice, within thirty (30) days of the date of the Notice.

(d) When the applicant cures a noticed deficiency, pursuant to procedures set forth in §11-83(c) of these rules, DSBS has an additional forty-five (45) days to advise the applicant of any further deficiency which may be cured in accordance with §11-83(c) of these rules.

(e) If the applicant does not cure a noticed deficiency, pursuant to procedures set forth in §11-83(c) of these rules, and the certification application remains incomplete for at least forty-five (45) days of the date of the Notice, unless such time is extended by the director of EBE, the applicant shall be sent a notice stating that its certification application has been rejected and will not be processed, together with its rejected certification application.

(f) An applicant whose certification as an EBE is rejected may not reapply for certification for at least one hundred and twenty (120) days of the date of the notice of rejection of its application.

(g) Applicants may be required to consent to inquiries of their bonding companies, banking institutions, credit agencies, contractors, affiliates, clients and other entities to ascertain the applicant's eligibility for certification. Refusal to permit such inquiries shall be grounds for rejection of a certification application.

(h) All applicants and certified businesses shall be subject to an audit at any time. An applicant's or certified business' refusal to facilitate an audit shall be grounds for denial of its certification application or revocation of its certification.

(i) A certification application may be withdrawn by an applicant without prejudice at any time prior to an audit. Following the withdrawal of a certification application, the applicant may not reapply for certification for a period of at least one hundred and twenty (120) days from the date of withdrawal of the application.

(j) All applicants and certified businesses may be required to provide documentation to substantiate that the business has the skill and expertise to perform in the particular area of work for which it is requesting listing or is listed on the EBE Directory.

HISTORICAL NOTE

Section added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

FOOTNOTES

3

[Footnote 3]: * Subchapter E added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

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SUBCHAPTER E EMERGING BUSINESS ENTERPRISE CERTIFICATION PROGRAM*3

§11-84 Notice of Determination and Right to Appeal.

(a) The director of certification shall provide the applicant with written notice of a determination approving or denying certification.

(b) In the event certification is approved by the director of certification, the applicant will be sent a certification letter and will be certified as an EBE for five (5) years from the date of the certification letter or until notified for the need to reapply at the director of certification's request, whichever is earlier.

(c) In the event certification is denied by the director of EBE, a written notice of such determination shall be provided to the applicant stating the reason(s) for such denial. Such notice shall also state the procedures for filing an appeal.

(d) The applicant may appeal the determination within thirty (30) days after the date of the notice denying the business enterprise's certification. In the event that a request for an appeal is not made within the thirty (30) day period, the director of certification's determination shall be deemed final and the applicant may not reapply for certification for two (2) years from the date of the written notice denying certification, provided, however, that if the facts and circumstances forming the basis of the denial decision have changed significantly, the applicant, at the discretion of the director of certification, may be granted permission to reapply sooner.

(e) The request for an appeal shall state the grounds upon which the denial of certification is being appealed.

HISTORICAL NOTE

Section added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

FOOTNOTES

3

[Footnote 3]: * Subchapter E added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

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§11-85 Appeals.

A business entity denied certification or re-certification as an EBE shall be given written notice by DSBS of the grounds for such denial and an opportunity to appeal such denial in writing to the commissioner. Such appeal or a request for an extension to file an appeal, must be received by the commissioner no later than thirty (30) days after the date of the notice denying the business enterprise's certification or re-certification. The commissioner may extend the period in which to initiate an appeal for good cause shown. Such appeal shall include, at a minimum, a description of the reasons why the decision to deny certification or re-certification is in error and provide evidence to support its appeal. Such person shall provide such other documentation or information as is requested by the commissioner, in his or her sole discretion. The commissioner shall render a written determination no later than sixty days after receipt of the appeal, unless the time to render a determination has been extended upon agreement of the commissioner and the business enterprise. If the commissioner's determination is not made within the prescribed sixty days after receipt of the appeal or within the agreed upon extended time period, then the appeal is deemed denied. The decision of the commissioner granting or denying such appeal shall constitute the final agency determination.

HISTORICAL NOTE

Section added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

FOOTNOTES

3

[Footnote 3]: * Subchapter E added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

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SUBCHAPTER E EMERGING BUSINESS ENTERPRISE CERTIFICATION PROGRAM*3

§11-86 Revocation of Emerging Business Enterprise Status.

(a) A certified business must notify DSBS within forty-five (45) days of any material change in the information contained in the original certification application. A material change may include, but is not limited to, a change in any of the following: ownership; address; officers; or services provided by the certified business. If a material change occurs, a review may be conducted by DSBS and certification may be revoked. If an EBE's certification is revoked, such business enterprise may reapply for certification at any time following revocation. If a certified business fails to notify the director of EBE of such material change, the director of EBE may in his or her discretion, revoke the certification of an EBE for a period of up to five (5) years.

(b) DSBS, upon having reason to believe or upon receiving allegations indicating that a certified business enterprise is not eligible for certification as an EBE, may meet with socially and economically disadvantaged persons claiming ownership and control of the certified business and/or conduct an audit of such business enterprise, and shall take the following actions:

(1) Determine whether the allegation can be substantiated;

(2) Obtain in writing, if possible, the basis of any allegation from the person or persons making the allegation;

(3) Notify a certified business in writing that its certification as an EBE is under review by the director of EBE and

may be revoked. This notice shall specify the bases for such review and any facts specifically at issue; and

(4) Provide the certified business with an opportunity to respond in writing to any allegations set forth in any notices questioning the certification status of a certified business, within thirty (30) days of the date of such notice, by personal service or certified mail, return receipt requested.

(c) If the socially and economically disadvantaged persons claiming ownership of the certified business fail to respond timely in writing to the notice of certification status review, or fail to meet with a DSBS representative or agree to an audit, the certification of the EBE may be revoked by the director of certification.

(d) The director of certification shall notify, in writing, a certified business of the revocation of its certification as an EBE within fourteen (14) days of revoking such certification. The socially and economically disadvantaged persons claiming ownership and control of a business enterprise which has had its certification as an EBE revoked may request an appeal of this decision within thirty (30) days of the date of the notice of revocation. Such appeal shall be conducted in accordance with procedures set forth in §11-84 of these rules. If a request for an appeal is not made within the thirty (30) day period, the director of certification's determination shall be final and the business enterprise may not reapply for certification for two (2) years from the date of the notice of revocation provided, however, that if the facts and circumstances forming the basis of the revocation decision have changed significantly, the business enterprise may, at the discretion of the director of certification, be granted permission to reapply sooner.

(e) If at any time DSBS has reason to believe that an applicant or certified business has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to the Department of Investigation for investigation. Falsification of any document by an applicant or a certified business may lead to the imposition of civil and criminal penalties as provided by law and contract, de-certification as an EBE and the inclusion of an advice of caution in the City Vendor Information Exchange System ("VENDEX") database.

HISTORICAL NOTE

Section added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

FOOTNOTES

3

[Footnote 3]: * Subchapter E added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

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APPENDIX A*1 ECONOMIC DEVELOPMENT AREAS

APPENDIX A*1 ECONOMIC DEVELOPMENT AREAS

The following are eligible Community Development areas:

Manhattan

Inwood-Census Tracts 291, 293, excluding 289, 295, 301, 303, 307

North Washington Heights-Census Tracts 269, 271, 277, 279, 285, excluding 267, 273, 275, 281, 283, 287

South Washington Heights-Census Tracts 239, 241, 243.01, 245, 247, 249, 251, 253, 255, 261, 263, 265

Hamilton Heights-Census Tracts 231.01, 233, 235.01, 237

Polo Gardens-Census Tracts 235.02, 243.02

Harlem River Houses-Census Tracts 231.02, 234 excluding 236

Manhattanville-Census Tracts 213.01, 217.01, 219, 221.01, 223, 225, 227.01, 229

St. Nicholas-Census Tracts 213.02, 217.02, 221.02, 224, 226, 227.02, 228, 230, 232

Harlem River Drive-Census Tracts 210, 212, excluding 214

Morningside Heights-Census Tracts 197.01, 209.01, 211, excluding 199, 201.01, 203, 205, 207.01

West Harlem-Census Tracts 197.02, 201.02, 207.02, 209.02

Millbank-Frawley-Census Tracts 186, 190, 200, 216, 218, 220, 222

Upper West Side-Census Tracts 189, 193, 195, excluding 187, 191

West Side-Census Tracts 183, excluding 161, 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 185

Lincoln Square-Census Tracts 147, 151, excluding 145, 149, 153, 155, 157, 159

Clinton-Census Tracts 115, 117, 121, 127, 129, 133, 135, excluding 139

Chelsea-Census Tracts 83, 89, 99, 103, 111, excluding 81, 87, 91, 93, 97

Midtown-Census Tracts 84, 102, 109, 113, 119, 125, excluding 92, 94, 96, 100, 104, 131

Union-Herald-Census Tracts 56, 58, 76, 95, 101, excluding 52, 54, 74

Gramercy-Census Tracts 68, excluding 44, 48, 50, 60, 64, 66

East Village-Census Tracts 20, 24, 26.01, 26.02, 28, 32, 34, 38, 40, excluding 42

West Village-Census Tracts 53, 69, excluding 51, 55.01, 57, 59, 61, 63, 65, 67, 71, 73, 75, 77, 79

Soho/Noho/Tribeca-Census Tracts 55.02, excluding 33, 47, 49

Battery Park-Census Tracts 21, 39, 317, excluding 13

Lower Manhattan-Census Tracts 7, 9, 31, excluding 15.01, 15.02, 319

Chinatown-Little Italy-Census Tracts 27, 29, 41, 43, 45

Lower East Side-Census Tracts 12, 14.02, 16, 18, 22.01, 22.02, 30.01, 30.02, 36.01, 36.02, excluding 14.01

Two Bridges-Census Tracts 2.01, 2.02, 6, 8, 10.02, 25, excluding 10.01

Yorkville-Census Tracts 154, 156.01, 158.02, excluding 135, 138, 140, 142, 144.01, 144.02, 146.01, 148.01, 148.02, 150.01, 150.02, 152, 158.01, 160.01, 160.02

Lower East Harlem-Census Tracts 156.02, 162, 164, 166, 168, 170, 172.01, 172.02, 174.01, 174.02

Upper East Side-Census Tracts 178, 180, 182, 184, 188, 192, 194, 196, 198, 202, 204, 206, 208

Brooklyn

The following are eligible Community Development areas:

Fort Hamilton-Dyker Beach-Census Tracts 164, excluding 154

Bush Terminal-Census Tract 018

Greenpoint Industrial Area-Census Tracts 465, 581, 483, 577, 579, excluding 455, 473, 589

Brighton Beach-Census Tracts 360.01, 360.02, 362, 366, 610.01, excluding 364, 610.02

Coney Island-Census Tract 325, 328, 330, 342, 348.01, 352, excluding 340

West Brighton-Census Tract 348.02, excluding 350, 354, 356

Sheepshead Bay-Census Tract 590, excluding 570, 572, 576, 578, 580, 586, 592, 594.01, 594.02, 596, 598, 600, 608, 626

Homecrest-Census Tract 582, excluding 370, 374, 388, 390, 392, 394, 396, 414.01, 414.02, 416, 418, 554, 556, 584, 588, 606

Gravesend-Census Tract 582, excluding 370, 374, 388, 390, 392, 394, 396, 414.01, 414.02, 416, 418, 554, 556, 584, 588, 606

Bath Beach-Census Tract 292, excluding 168, 174, 176, 280, 282, 286

Bensonhurst-Census Tracts 178, 276, excluding 170, 172, 180, 182, 184, 186, 188, 190, 256, 258, 260, 262, 264, 266, 268, 270, 274, 278, 284, 288, 290, 294, 296, 298, 300, 302, 304

Dyker Heights-Census Tract 120, excluding 128.01, 132, 140, 144, 146, 148, 150, 156, 158, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212

Sunset Park-Census Tracts 002, 020, 022, 072, 074, 076, 078, 080, 082, 084, 088, 090, 092, 096, 098, 100, 101, 102, 106, 118, 122, 143, 145, 147, excluding 086, 104, 108

Red Hook-Census Tracts 055, 057, 059, 085

Columbia Street-Census Tracts 047, 051

Cobble Hill-Census Tract 049, excluding 045

Carroll Gardens-Census Tracts 075, 077, excluding 063, 065, 067

Gowanus-Census Tracts 069, 070, 117, 121, 123, 125, 127

Boerum Hill-Census Tracts 039, 041, 043

Park Slope-Census Tracts 129.01, 129.02, 131, 133, 135, 137, 139, 141, 149, 151, 159, 167, 173, excluding 153, 155, 157, 165, 169, 171, 502.01, 502.02

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Farragut-Census Tract 942, excluding 780, 782, 830, 832, 834, 836, 838, 840, 842, 844, 846

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FOOTNOTES

1

[Footnote 1]: * Appendix redesignated by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, Appendix A to Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

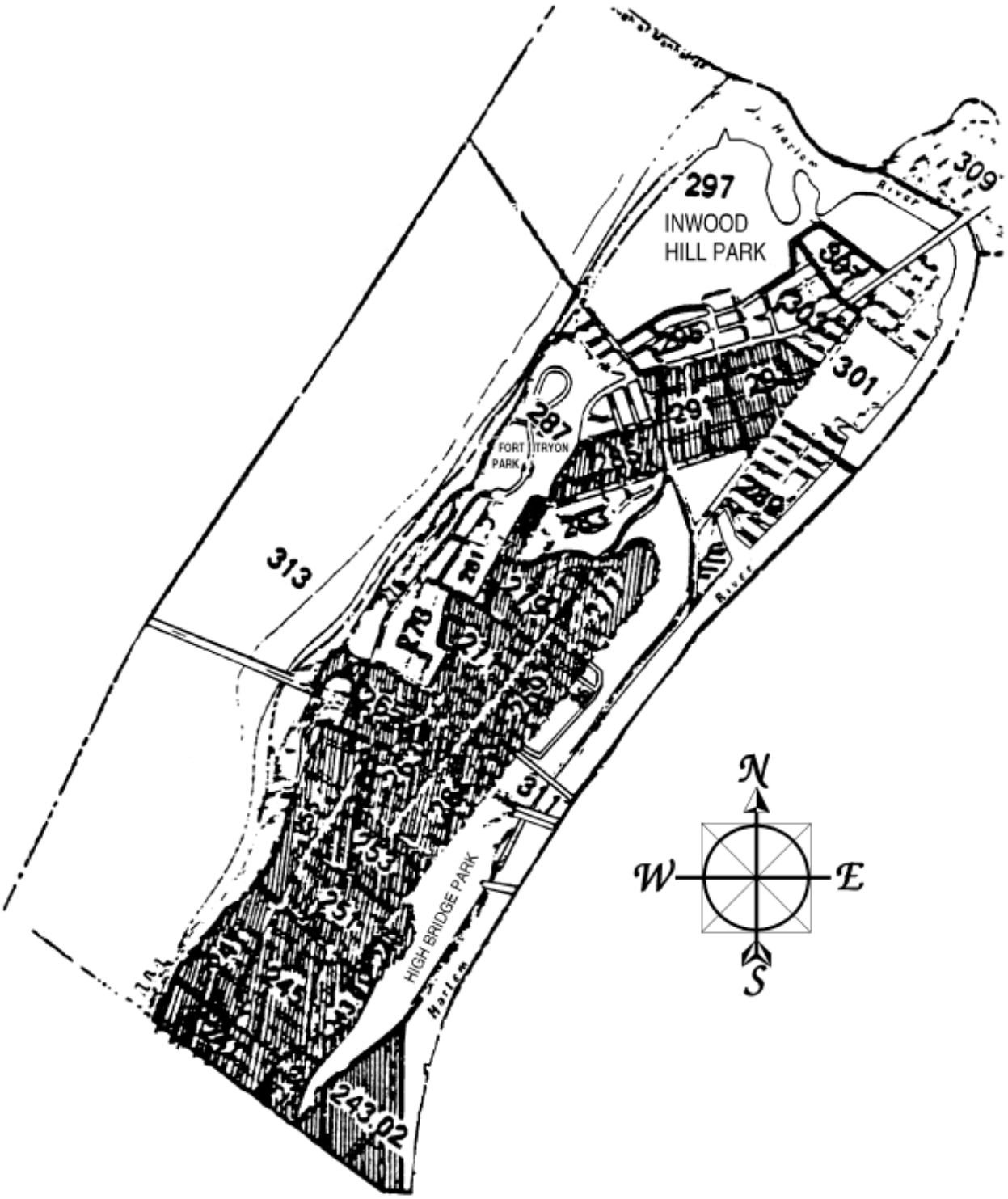
66 RCNY 11 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX B*1 MAPS OF ECONOMIC DEVELOPMENT AREA

APPENDIX B*1 MAPS OF ECONOMIC DEVELOPMENT AREA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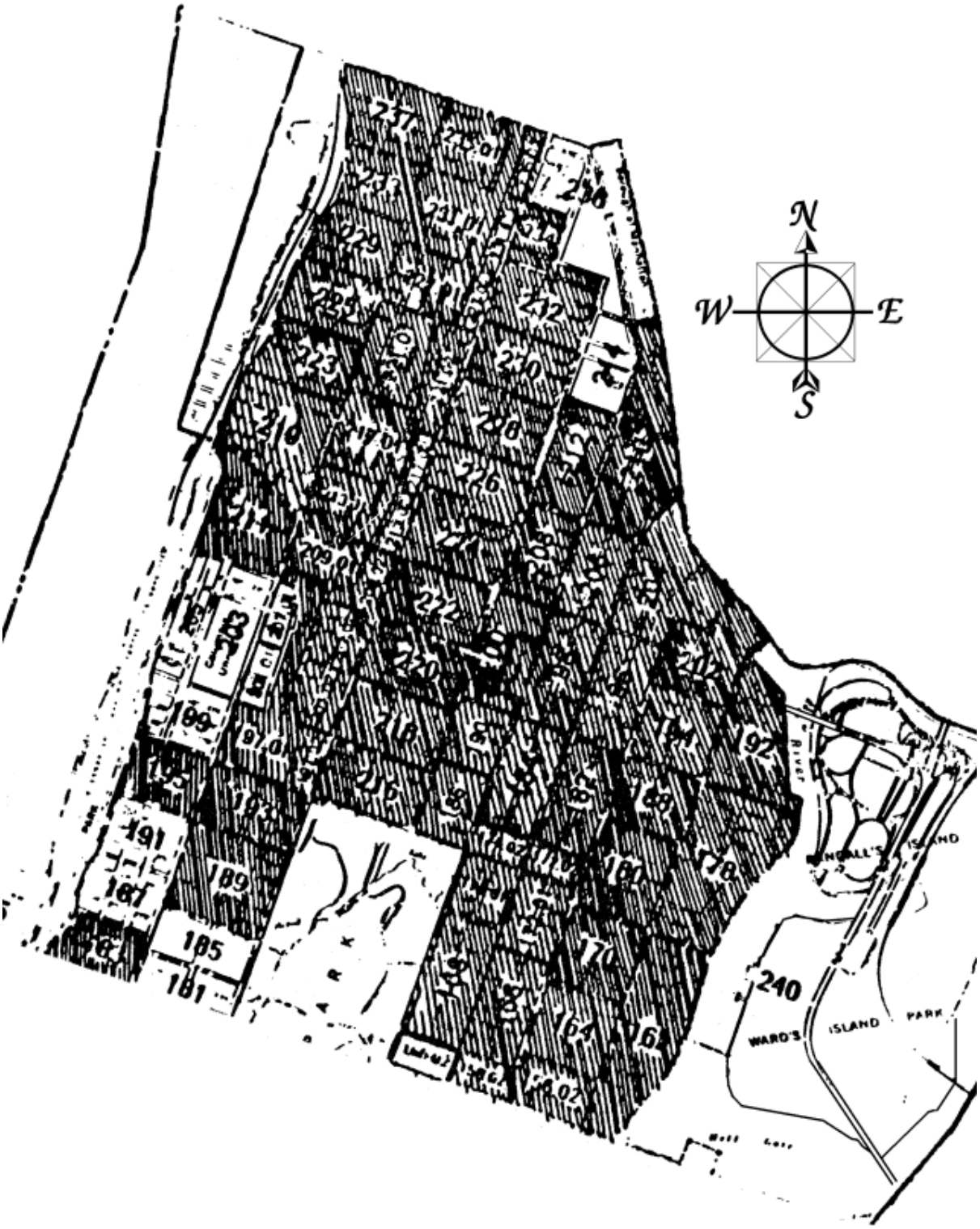
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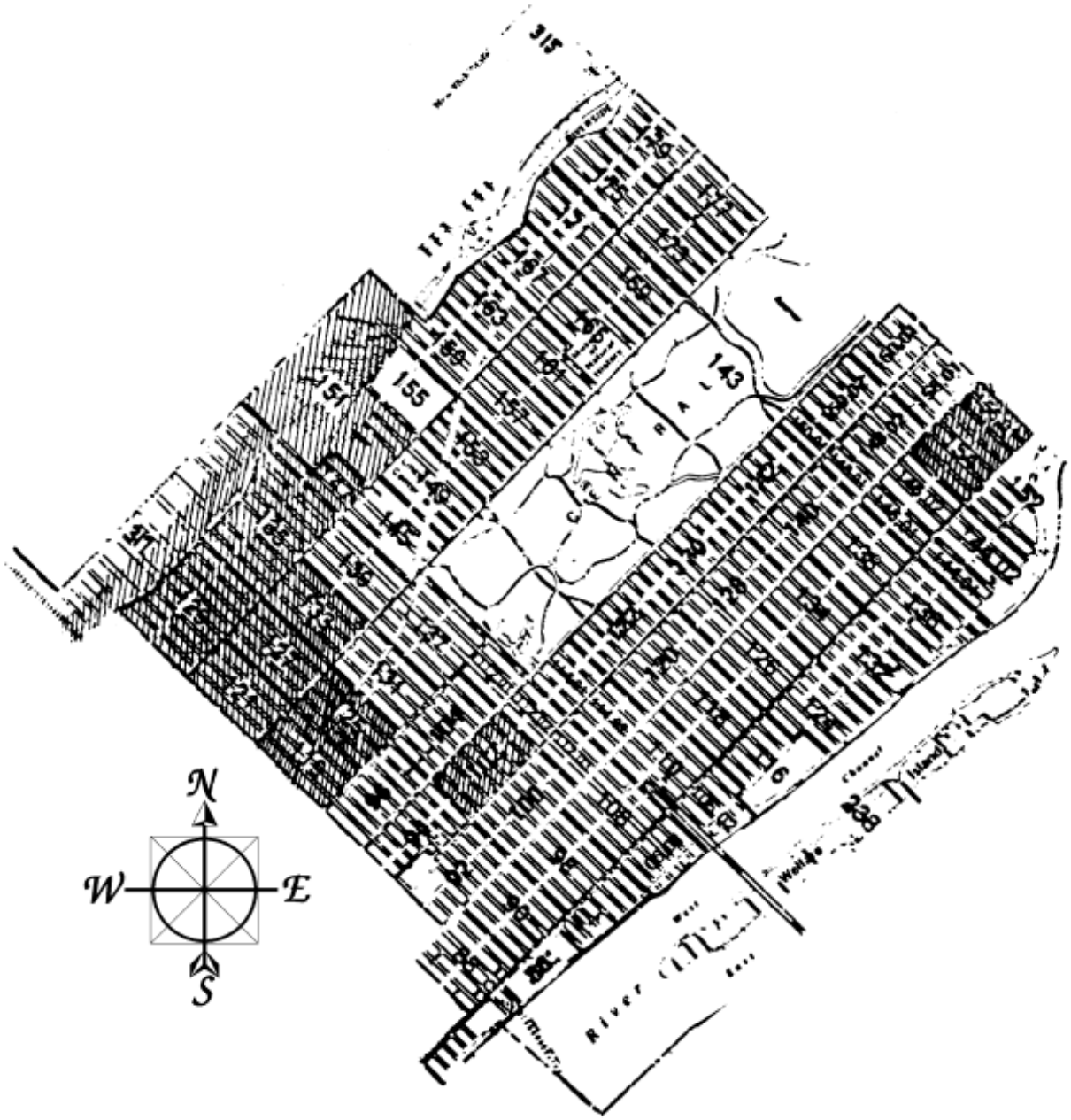

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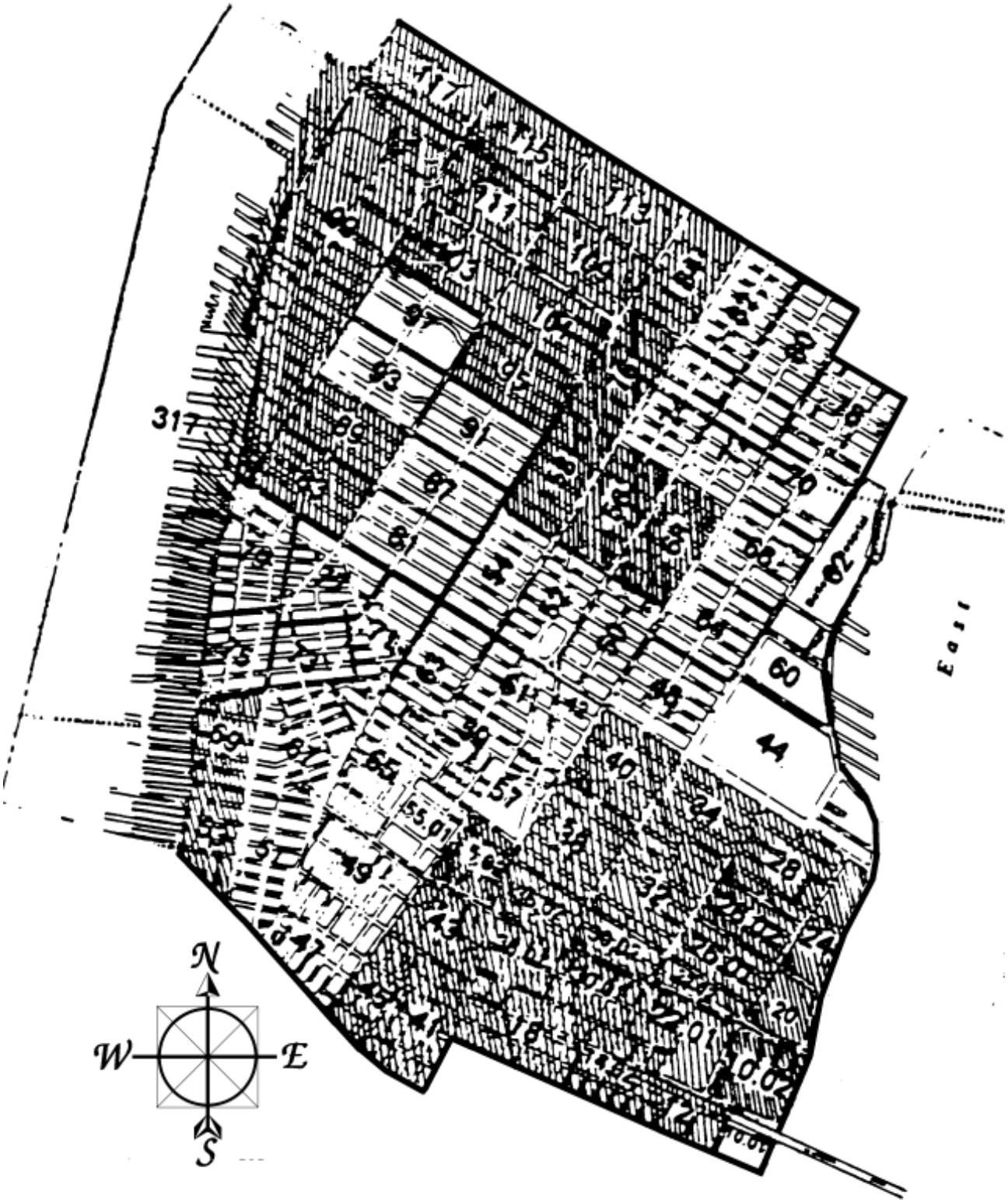
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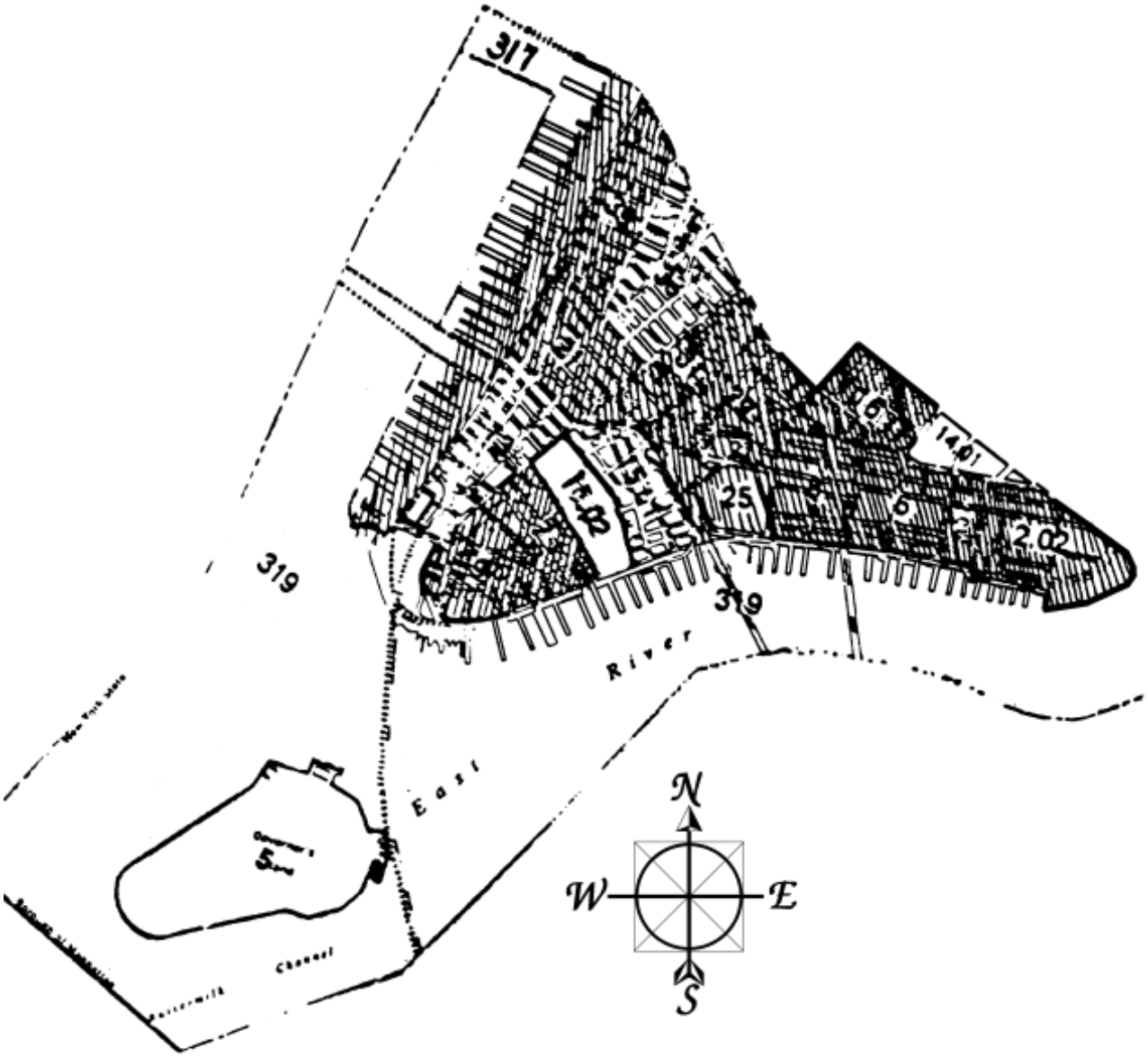

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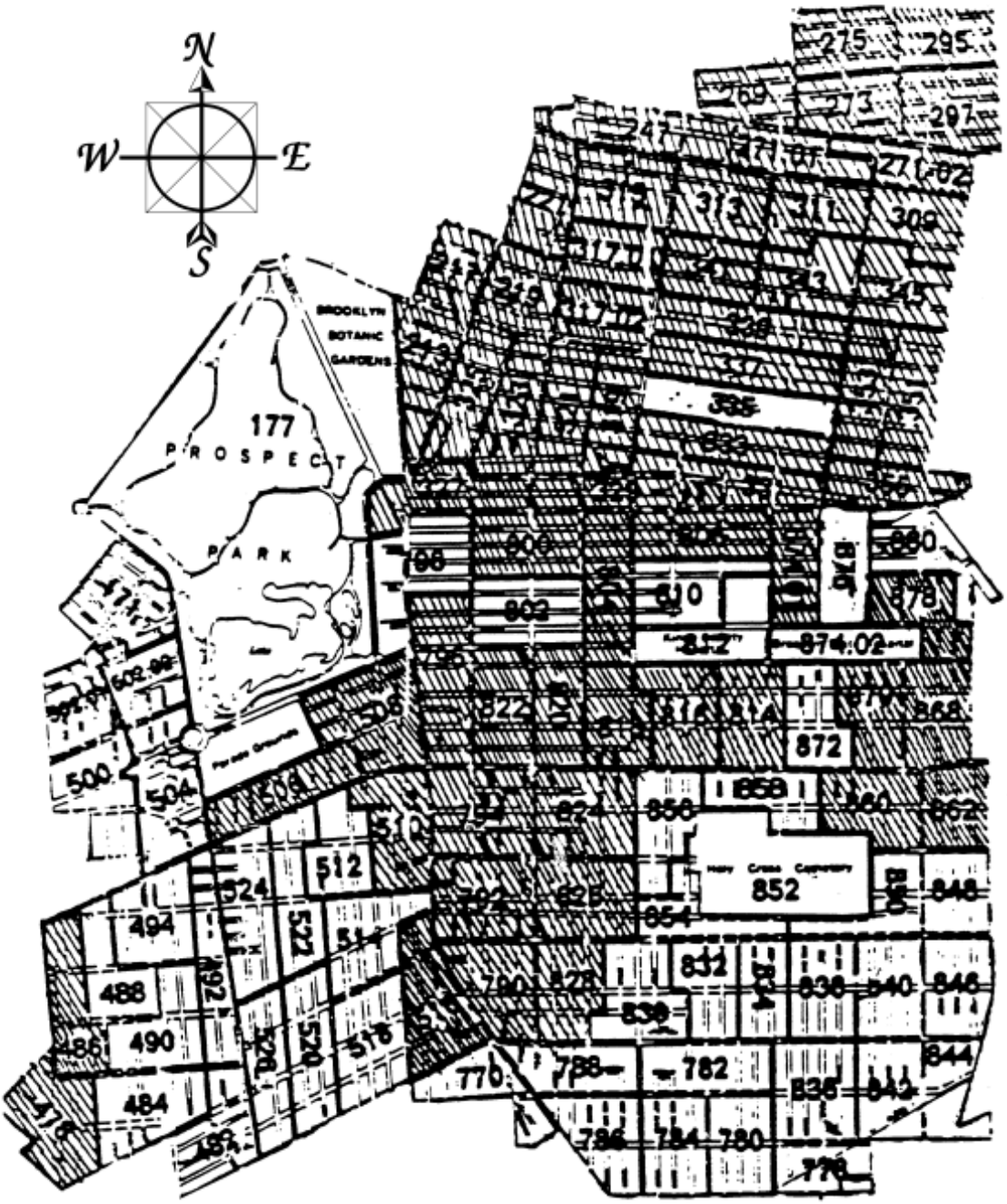
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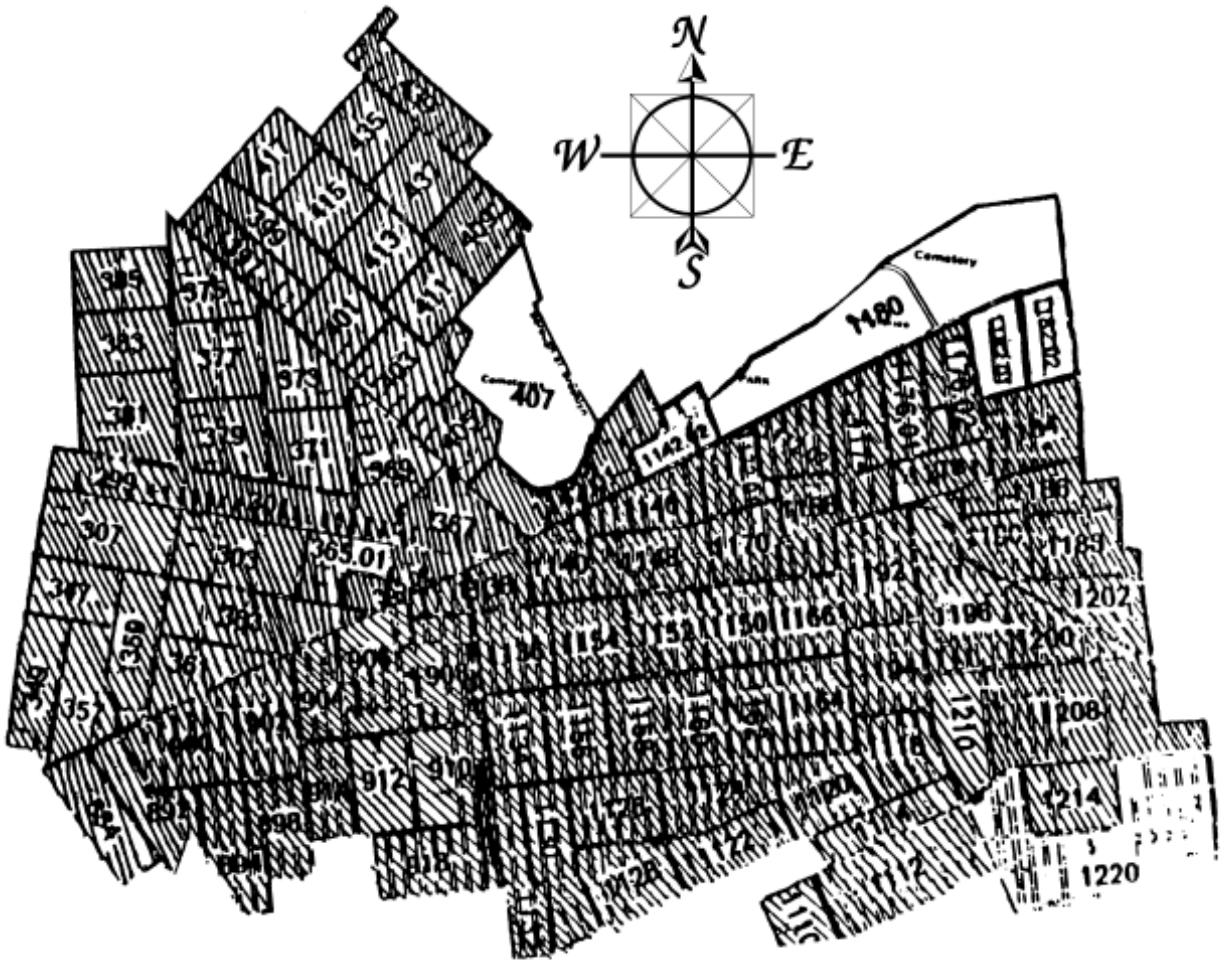
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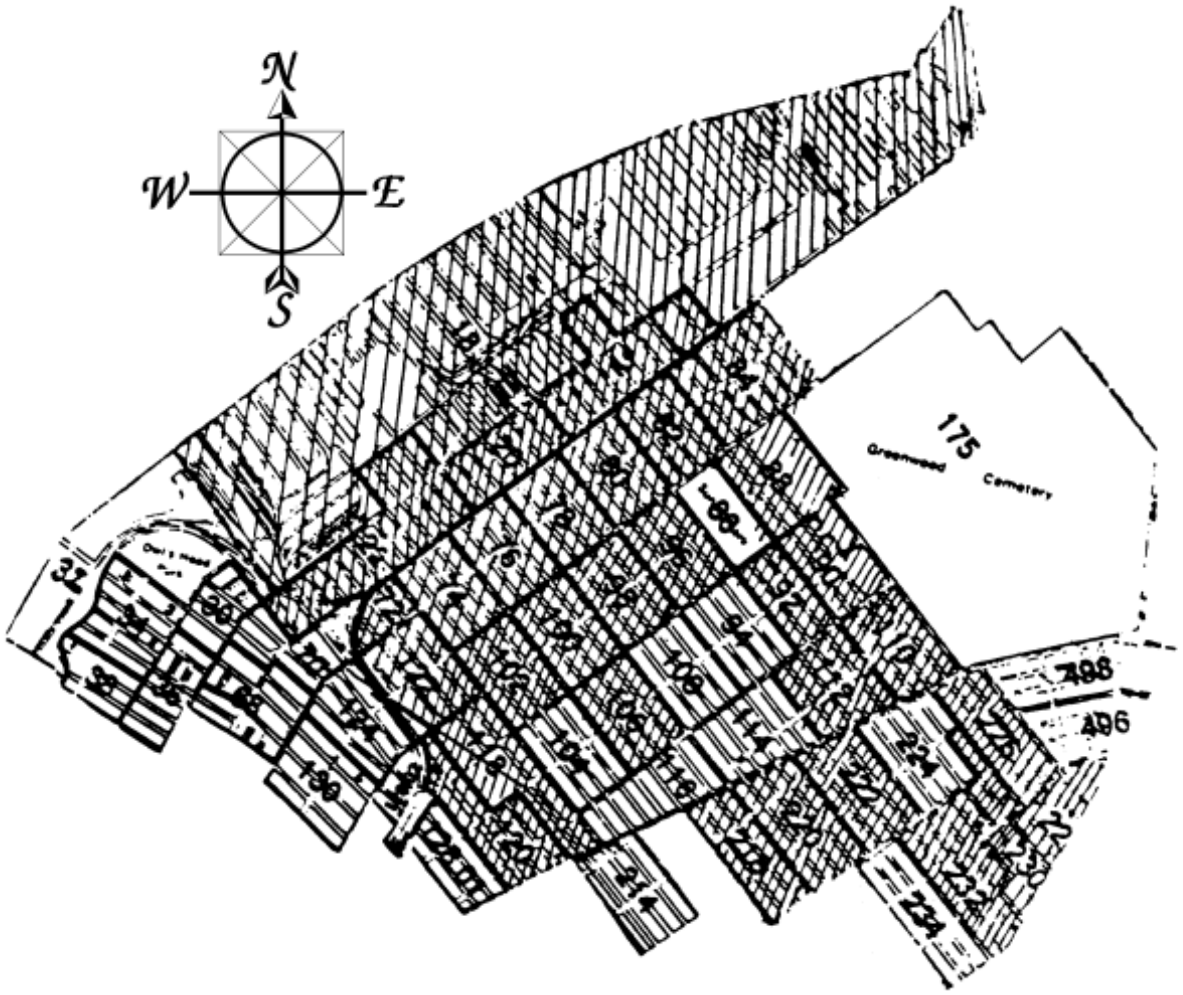
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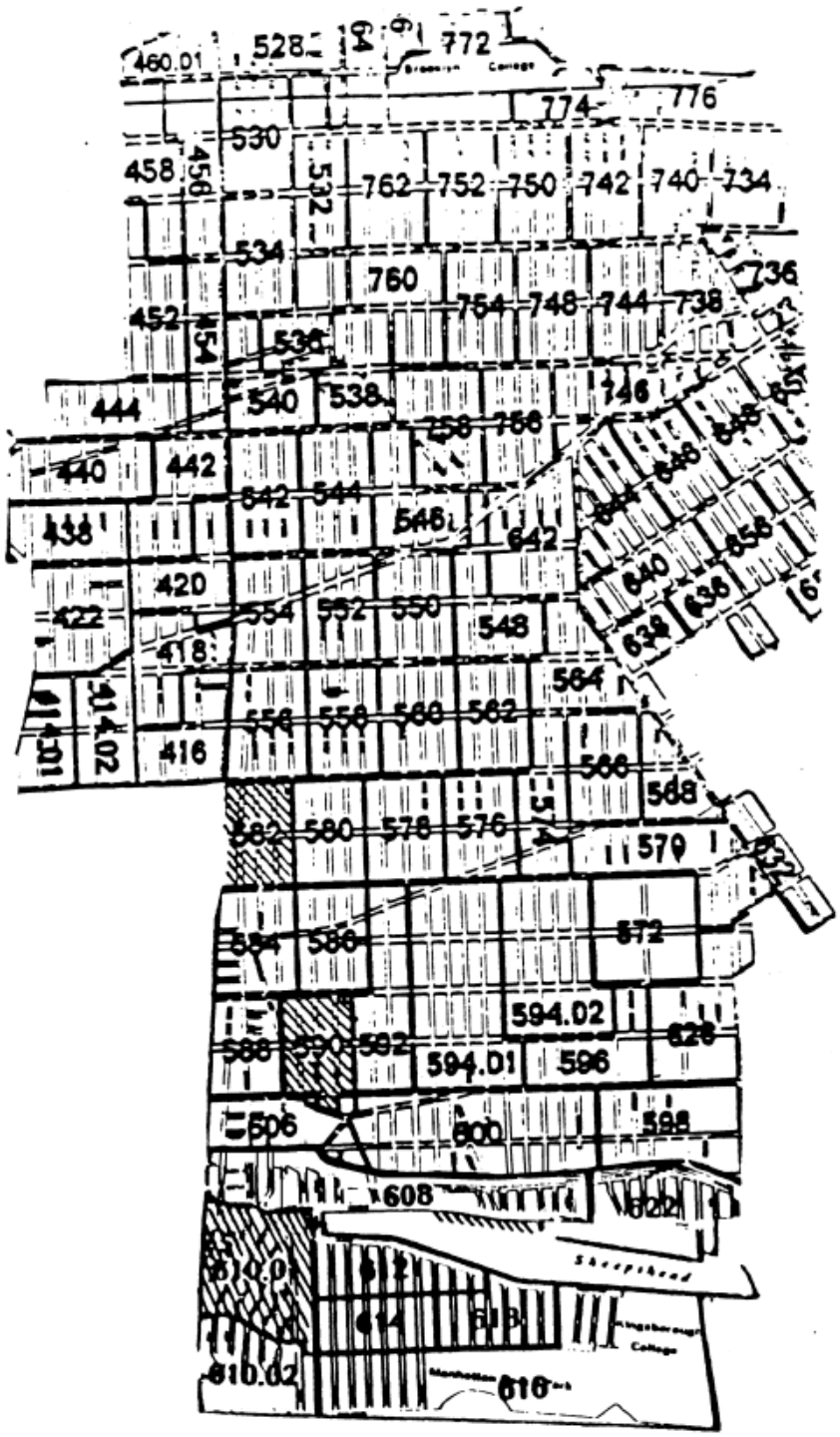
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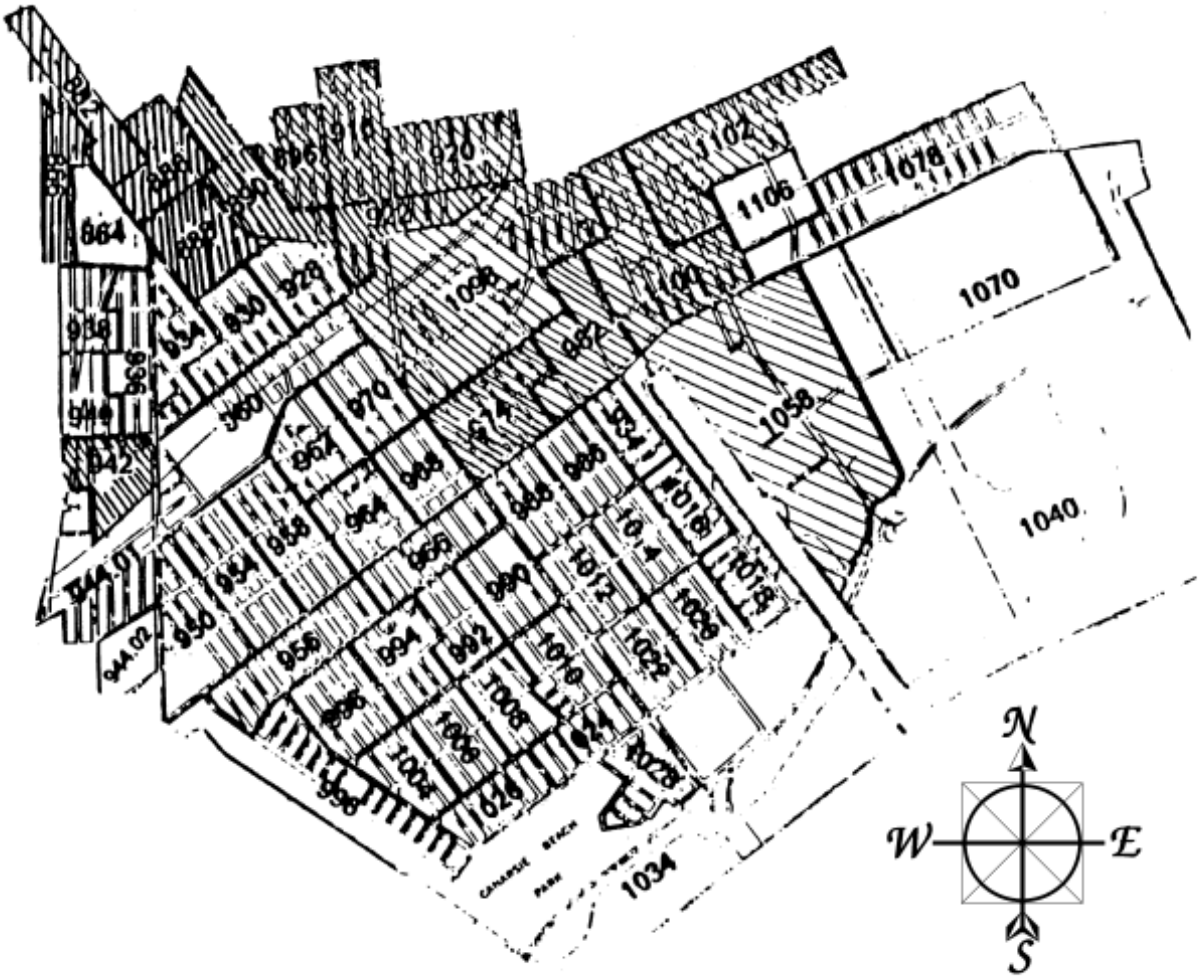

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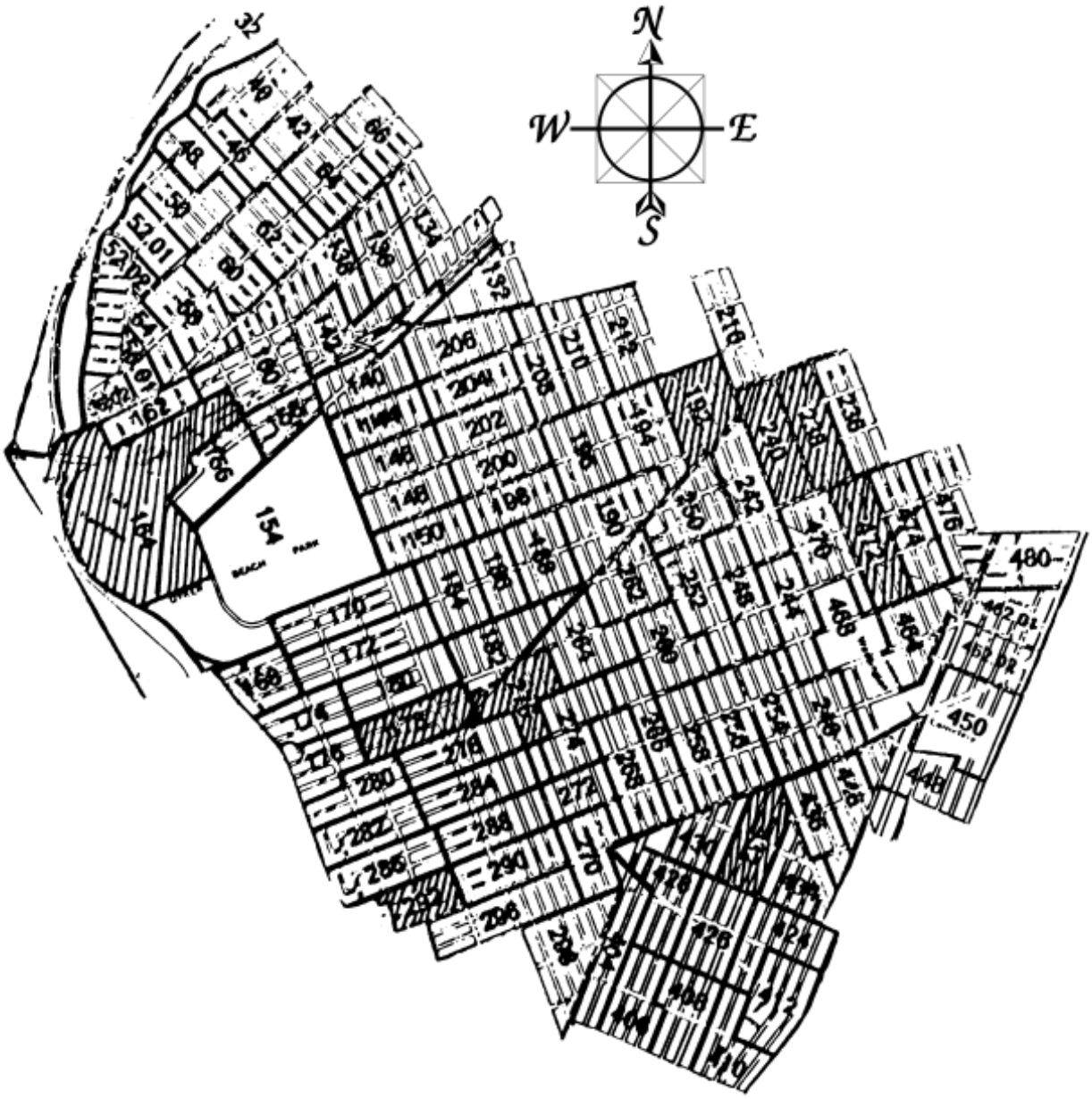
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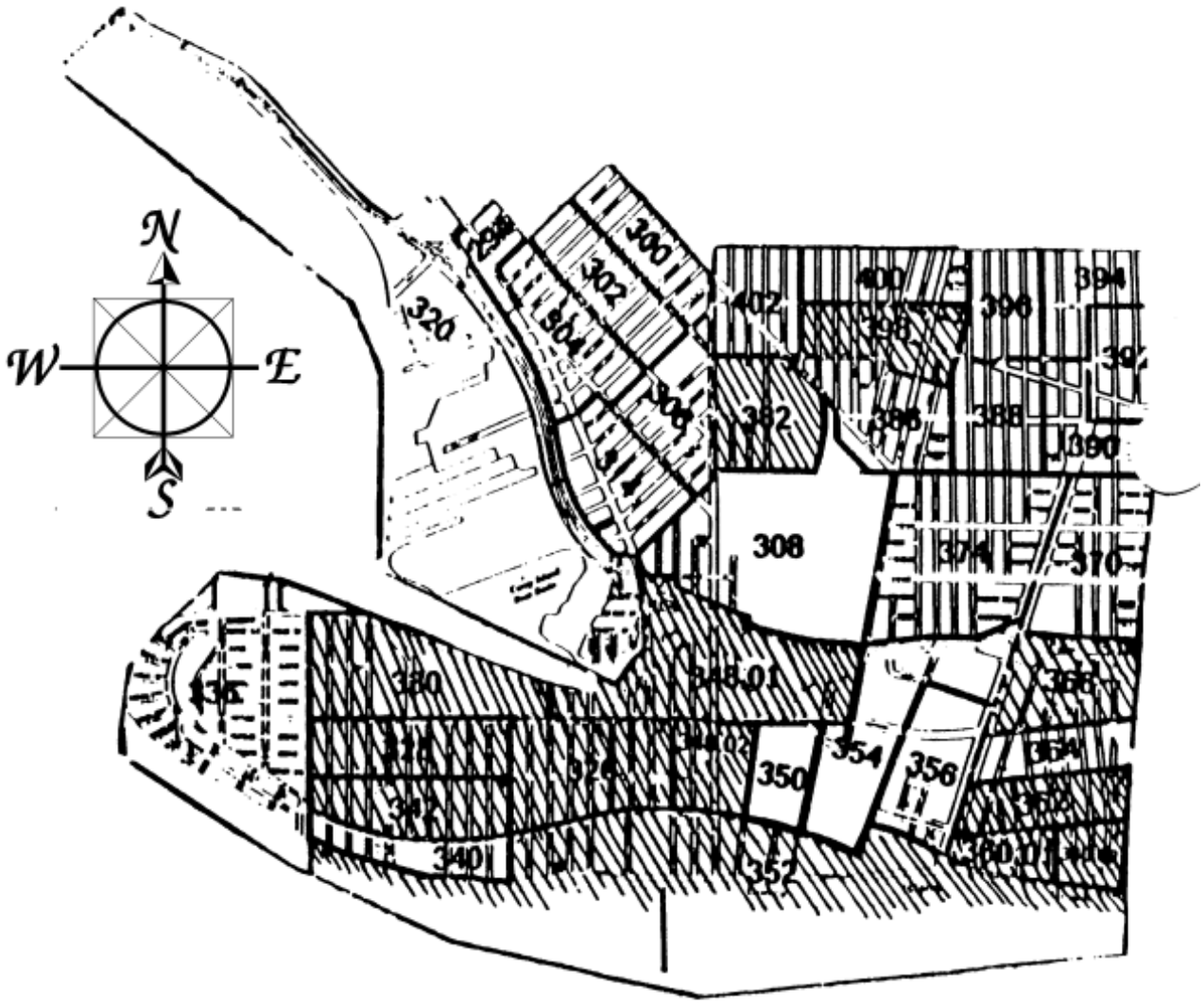
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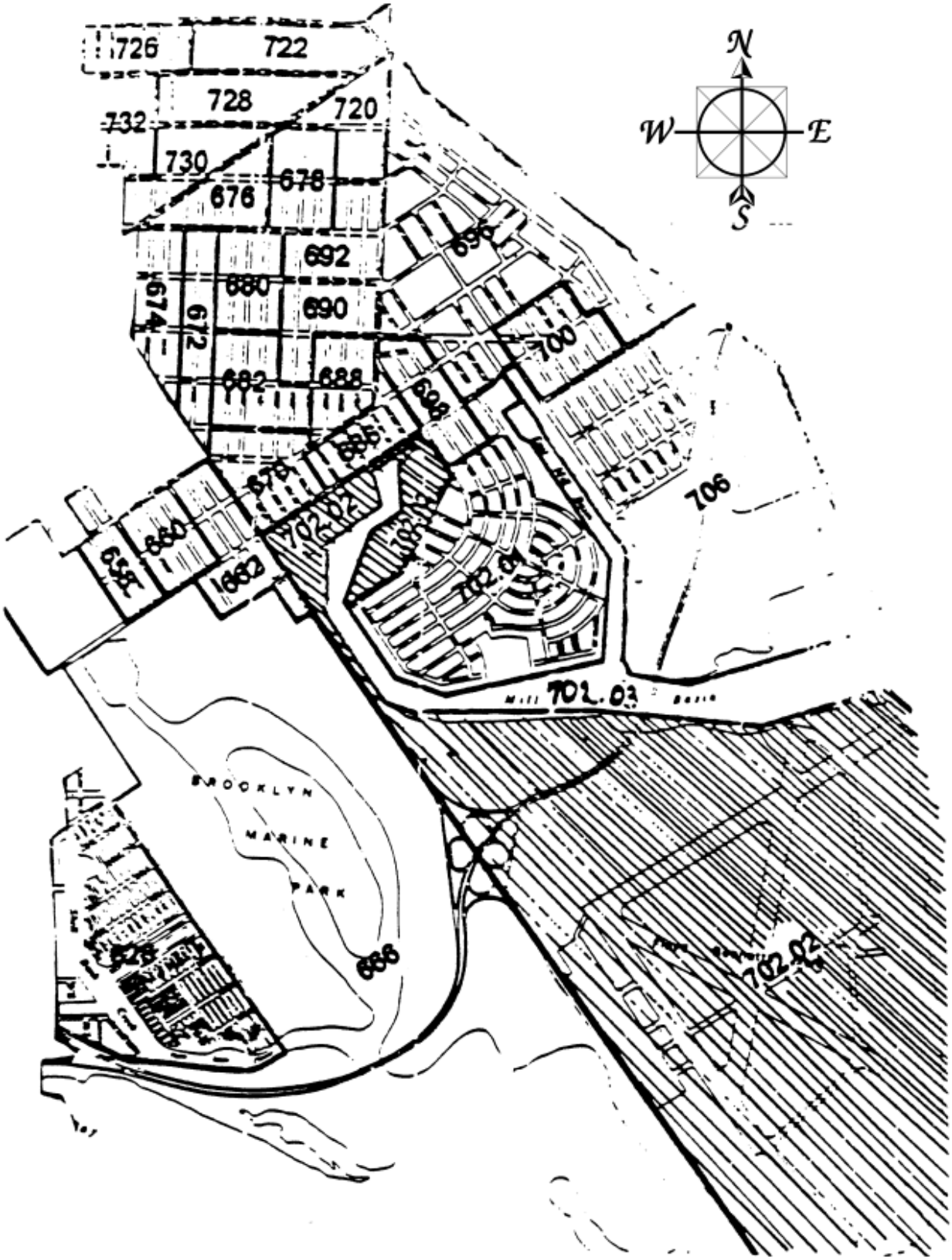
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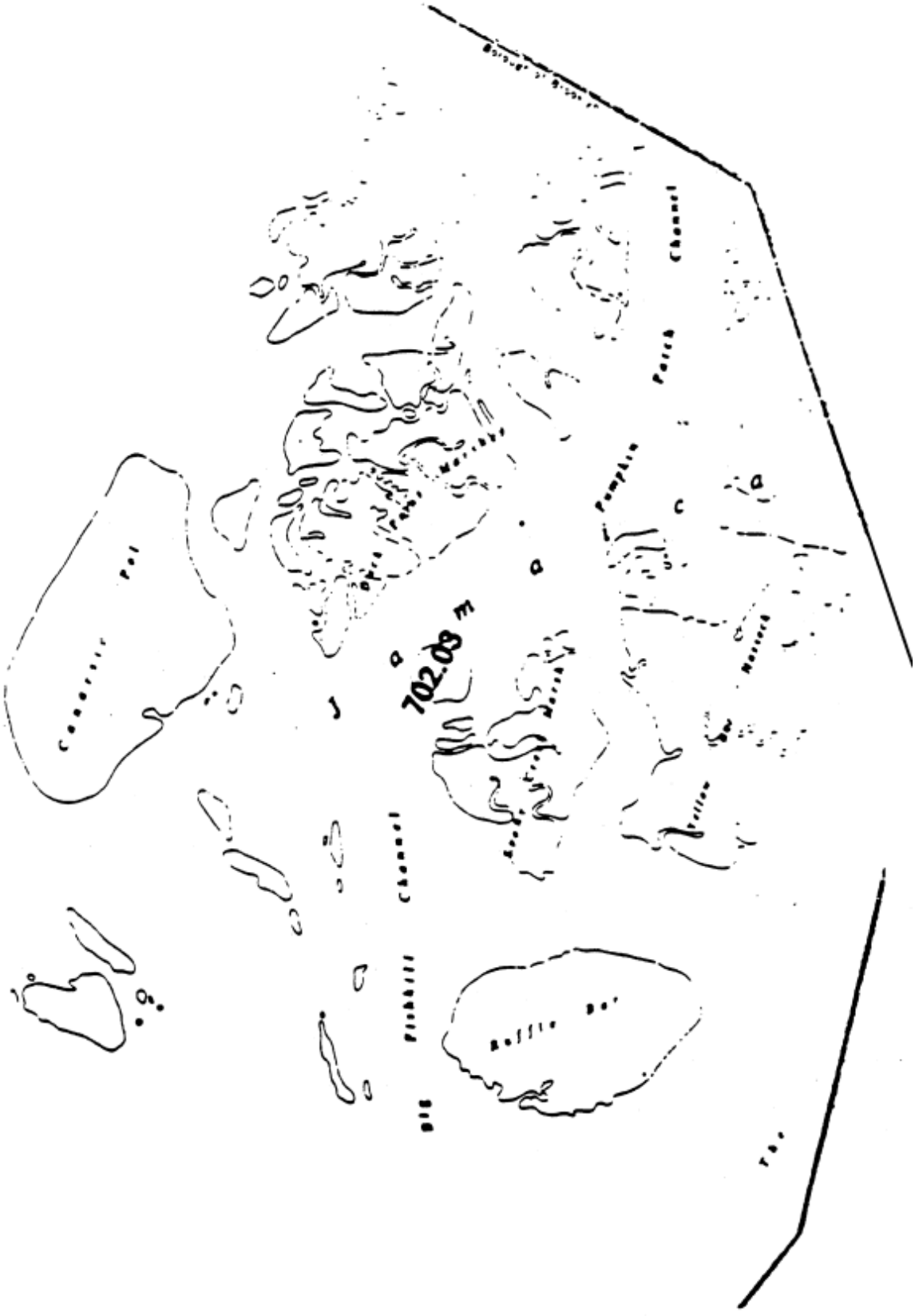
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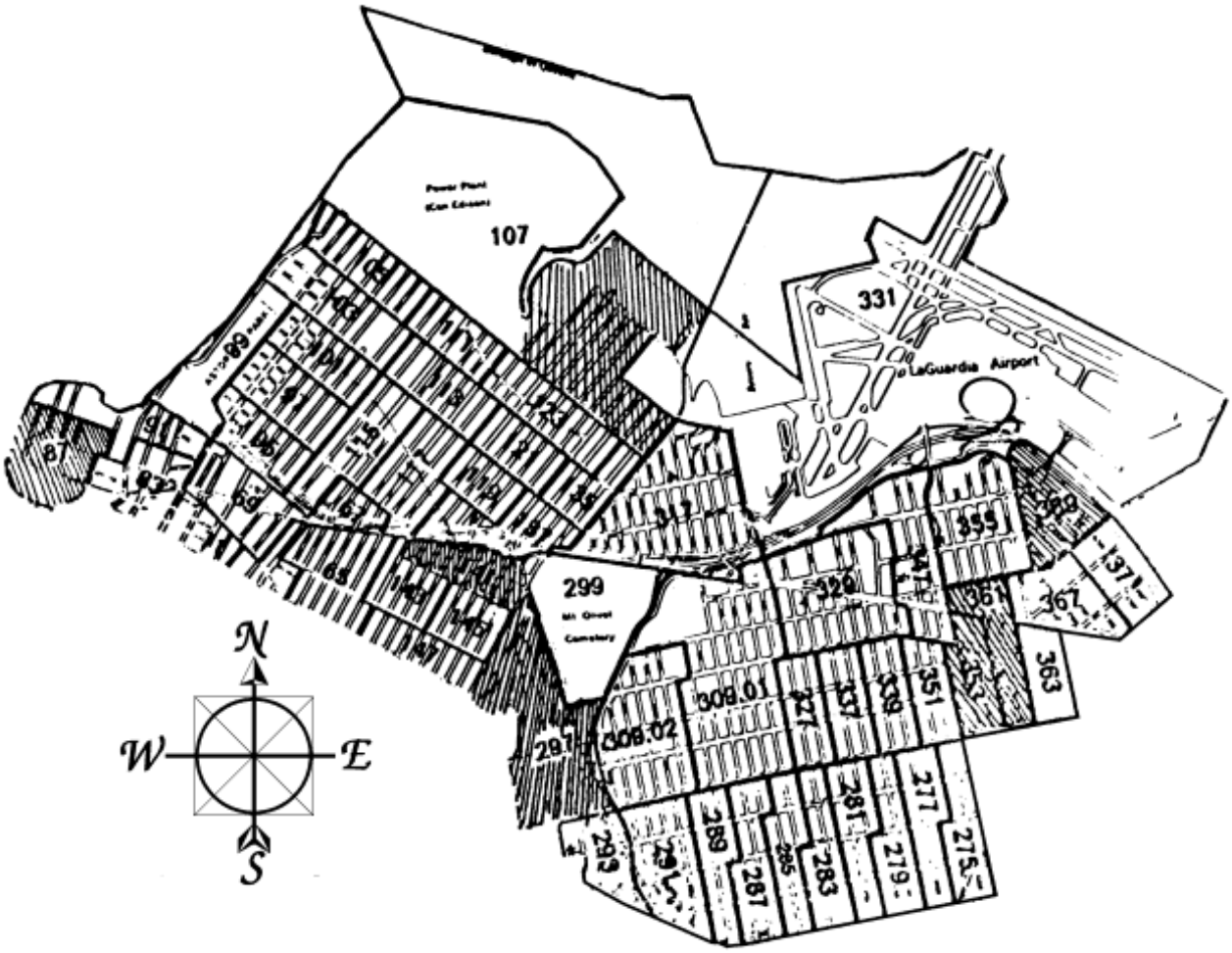

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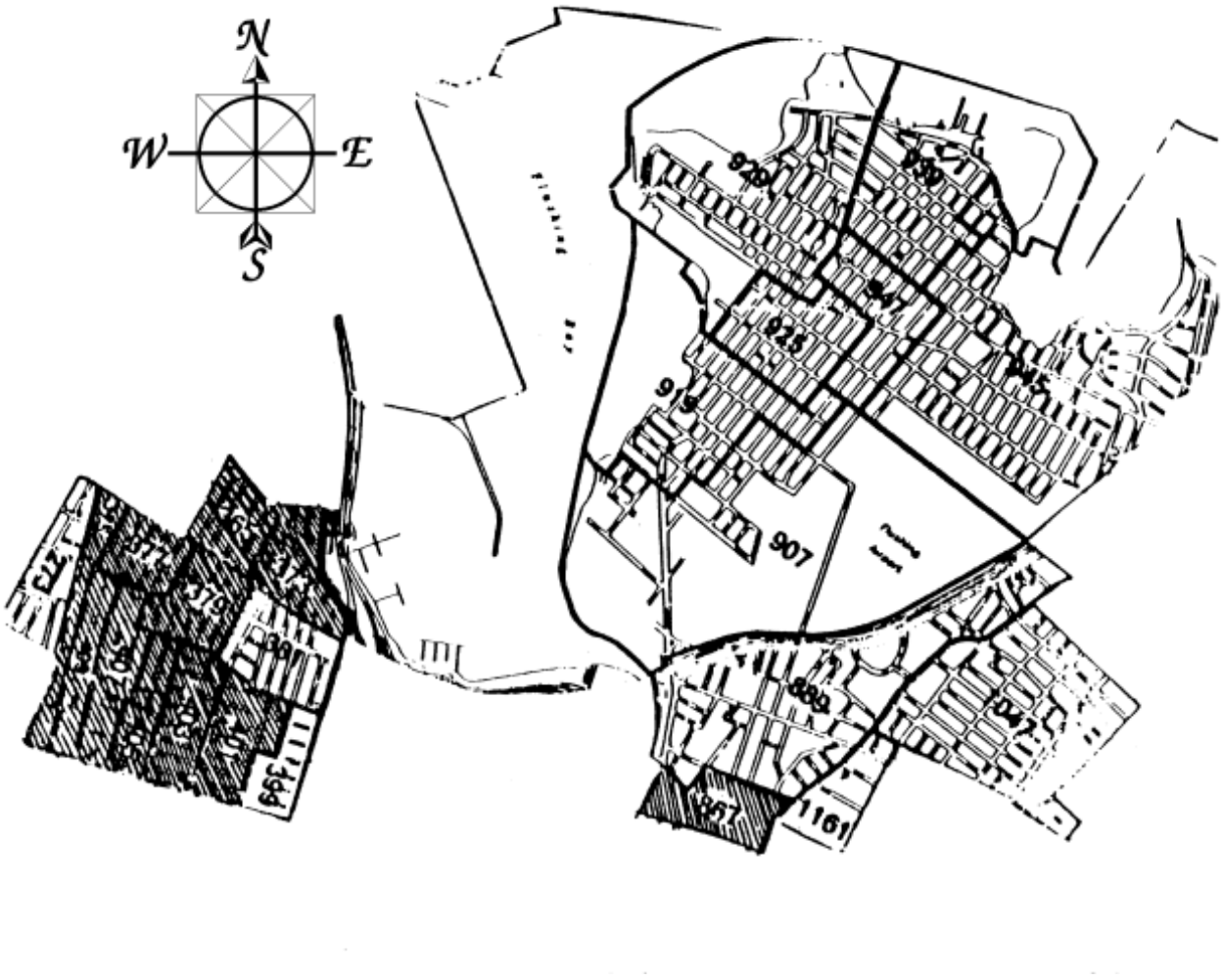

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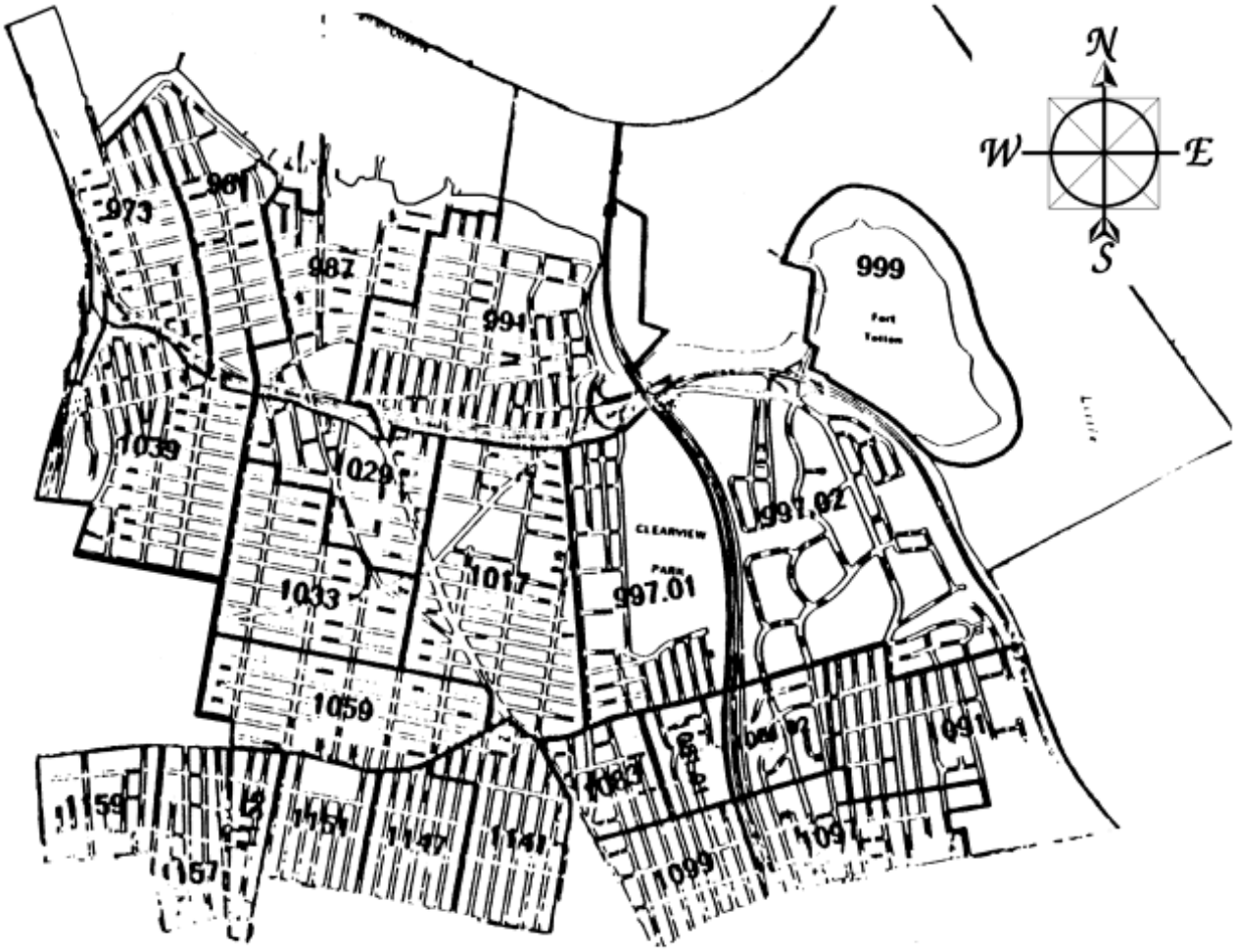
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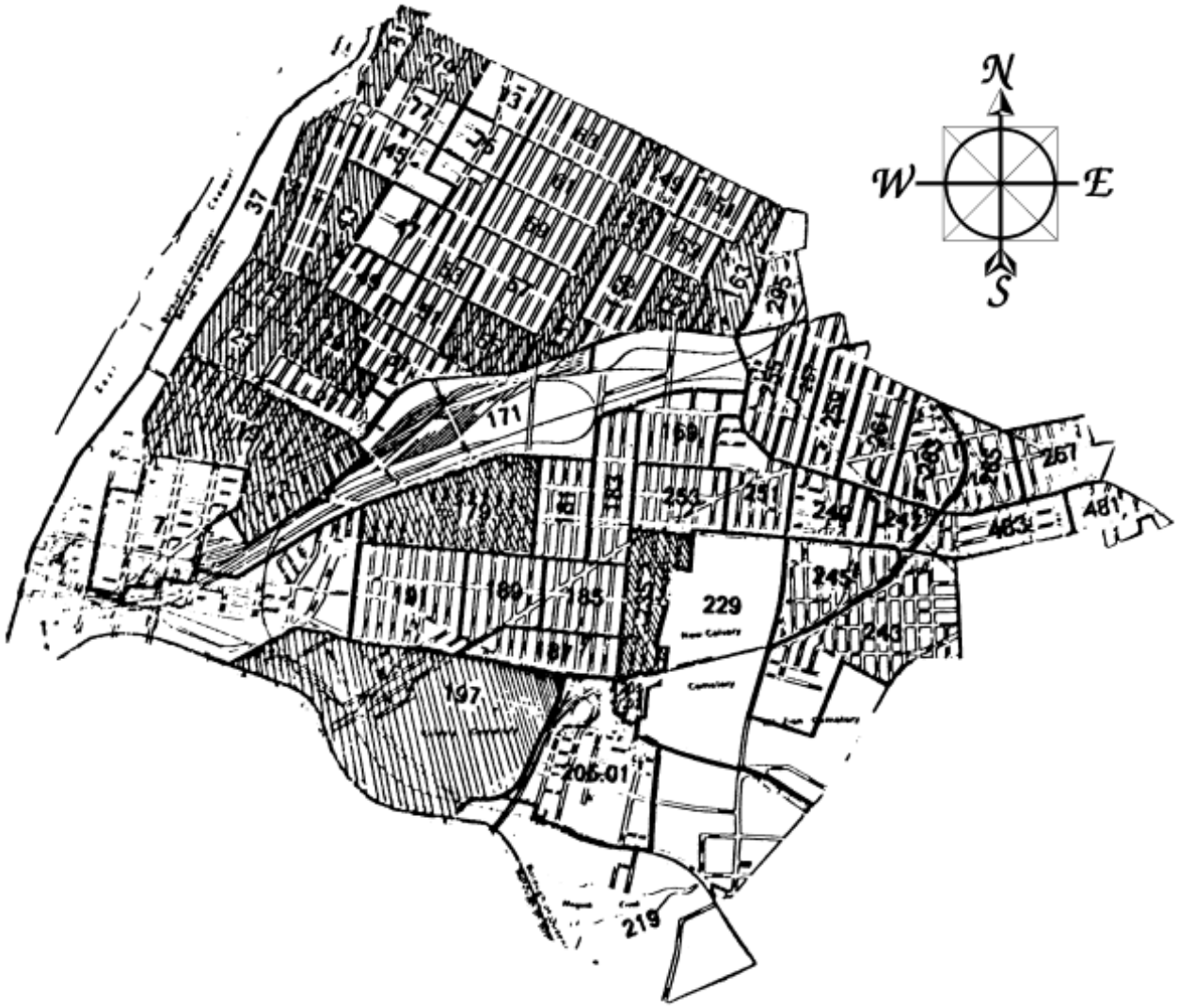
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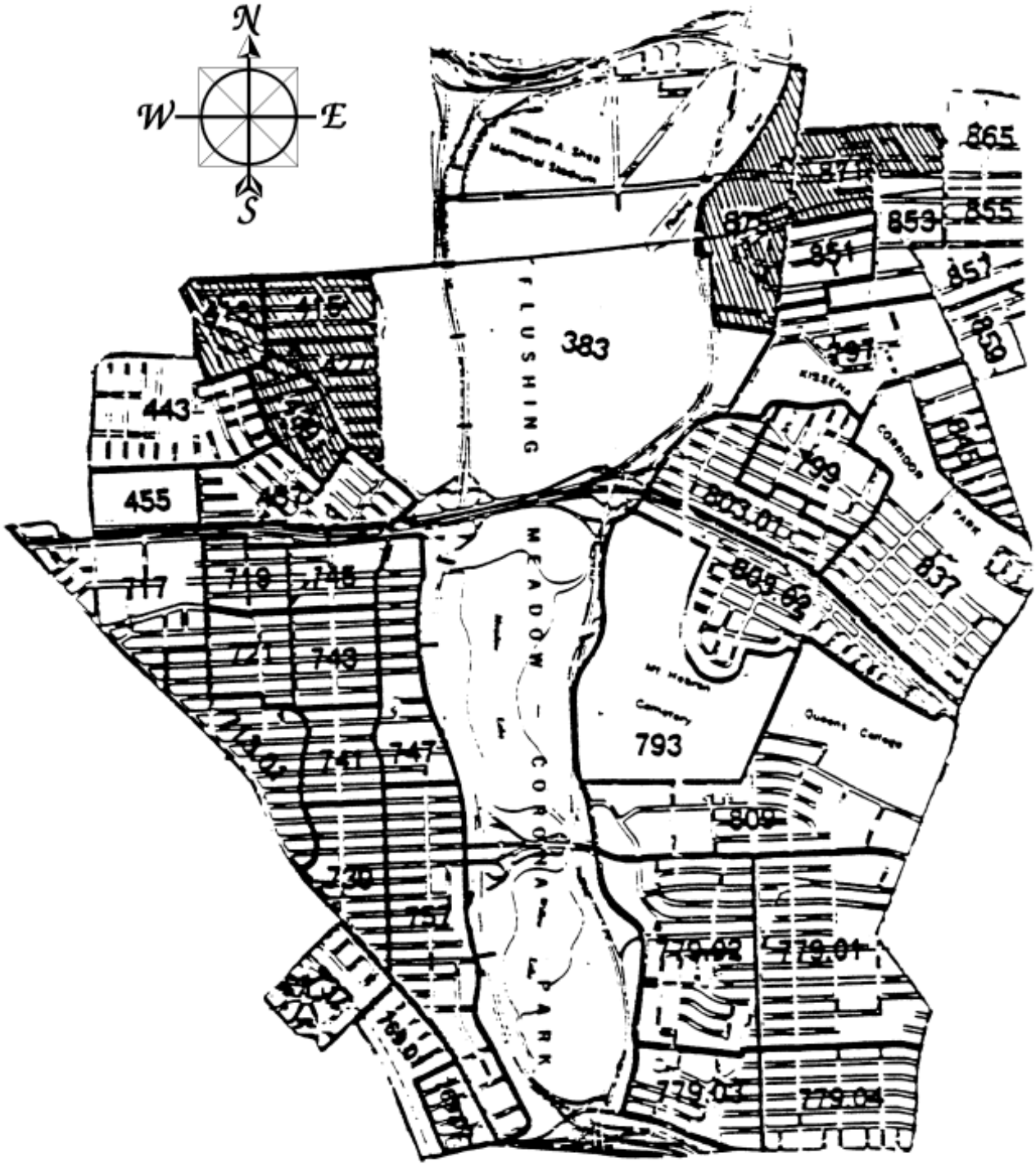
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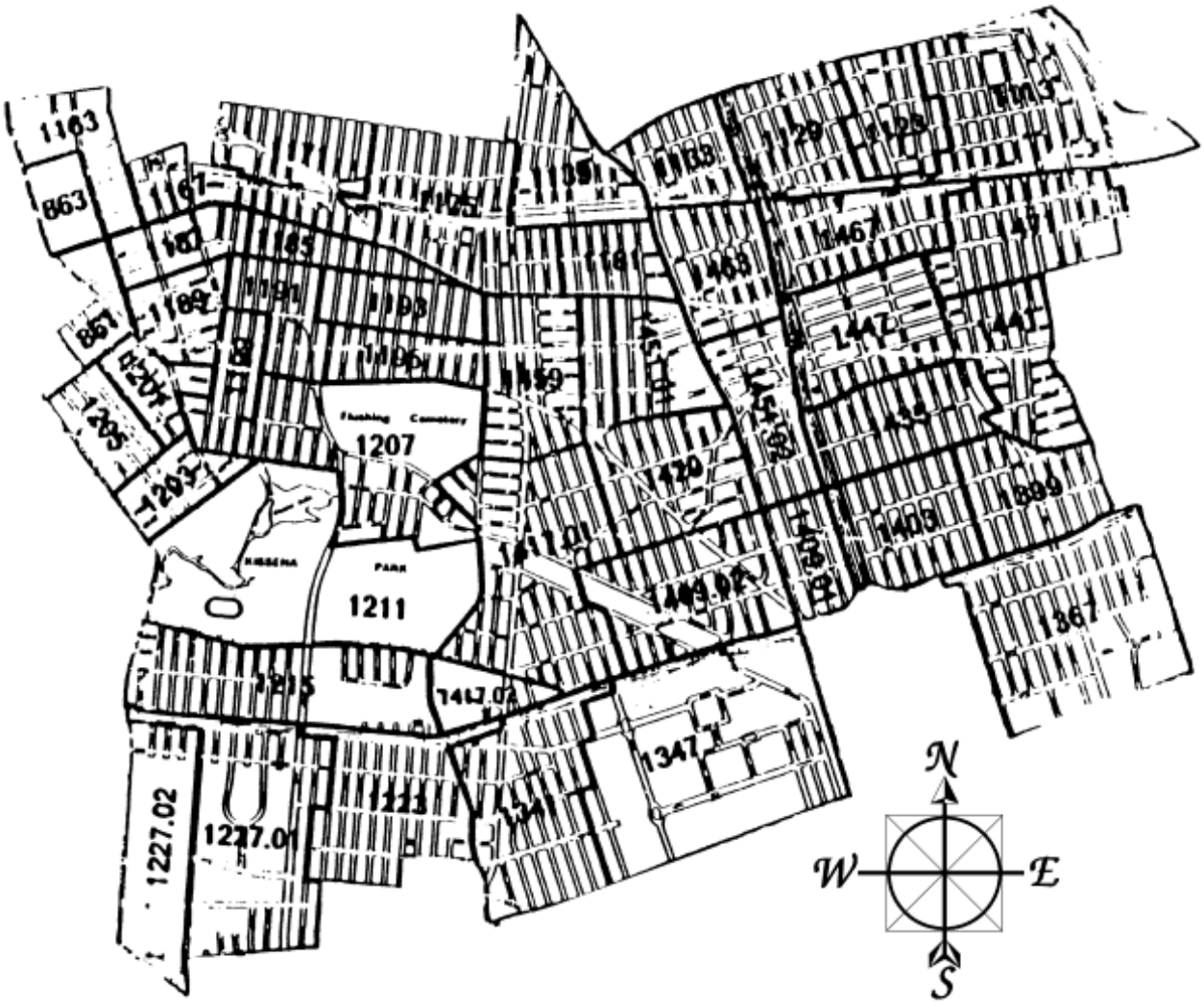
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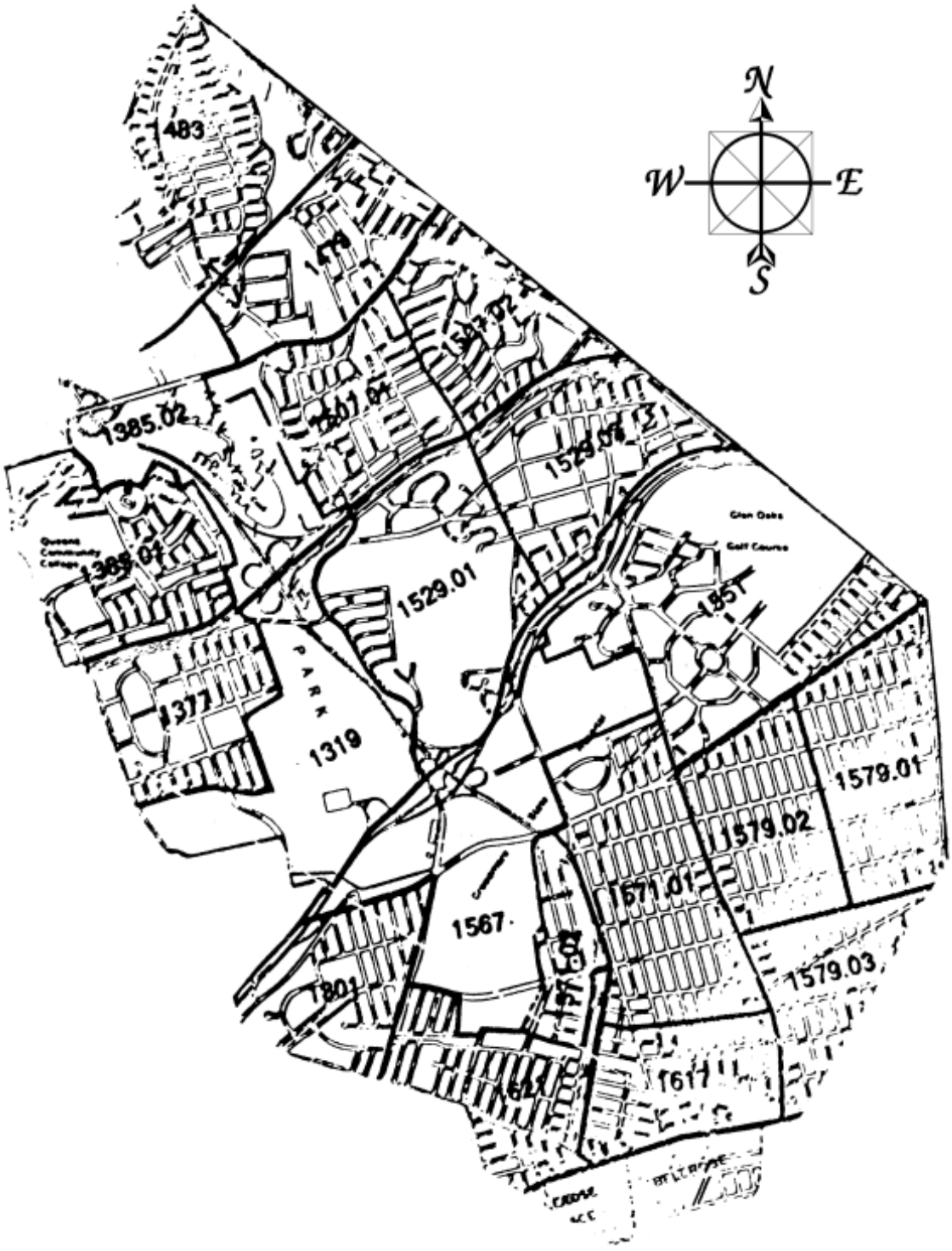
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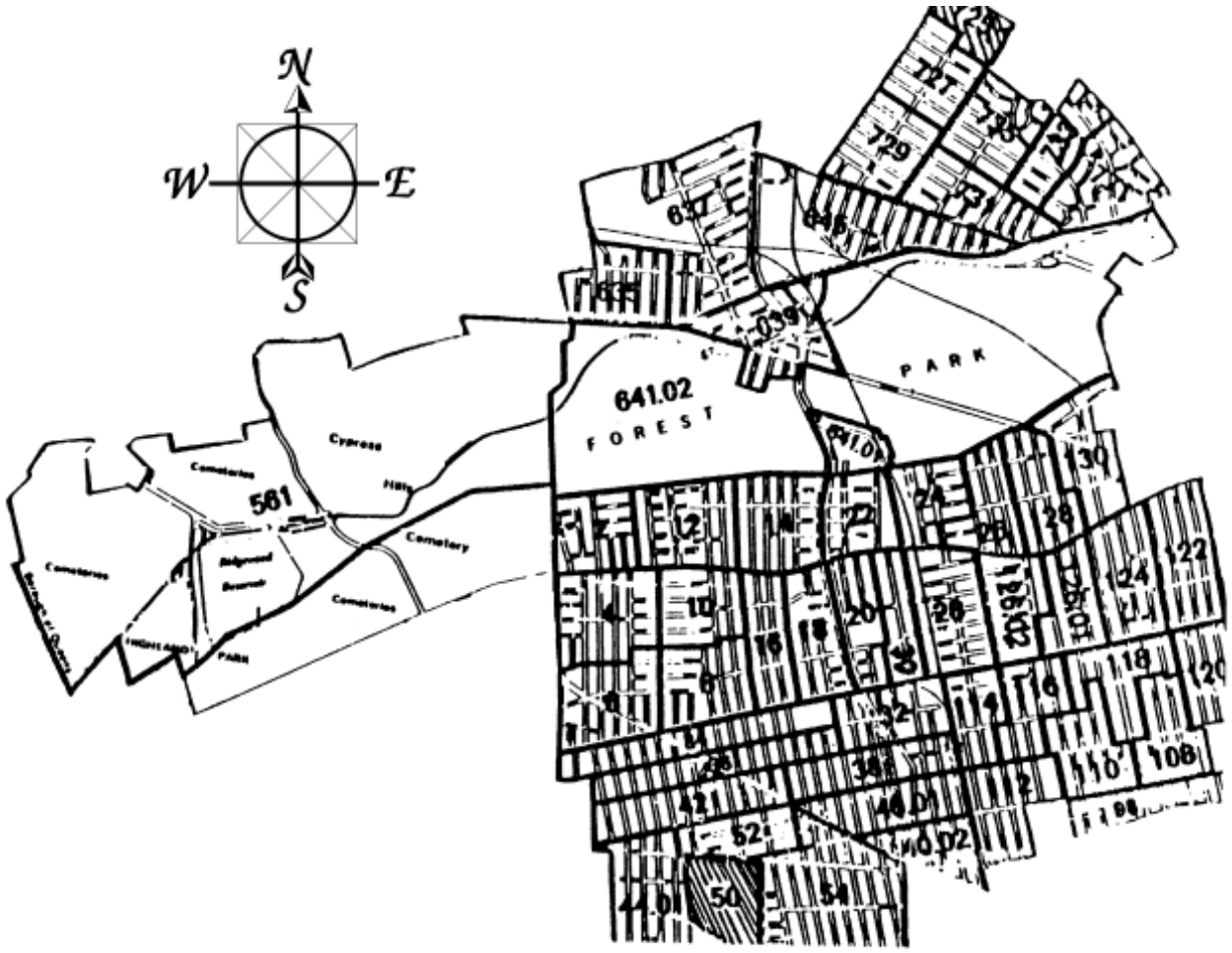
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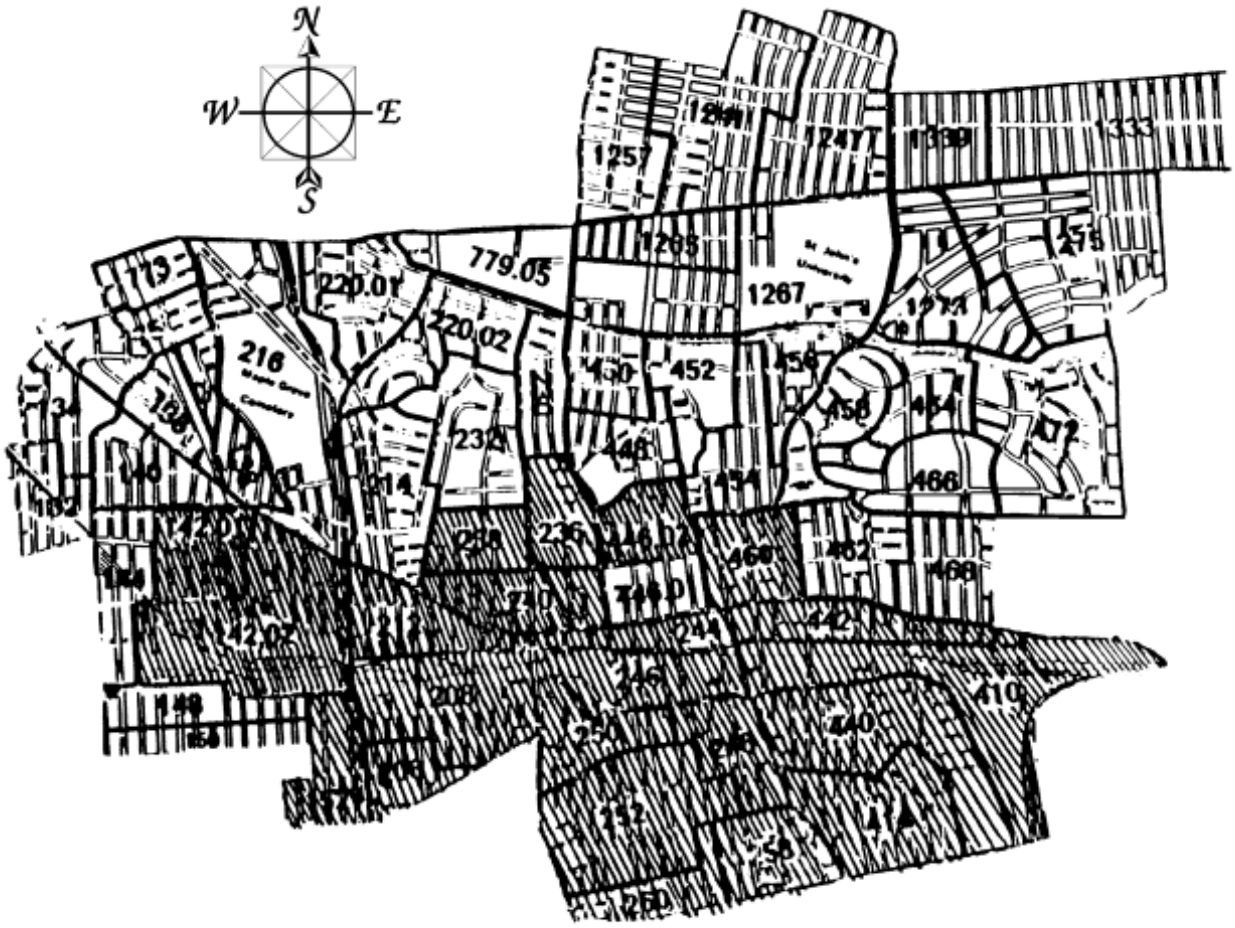
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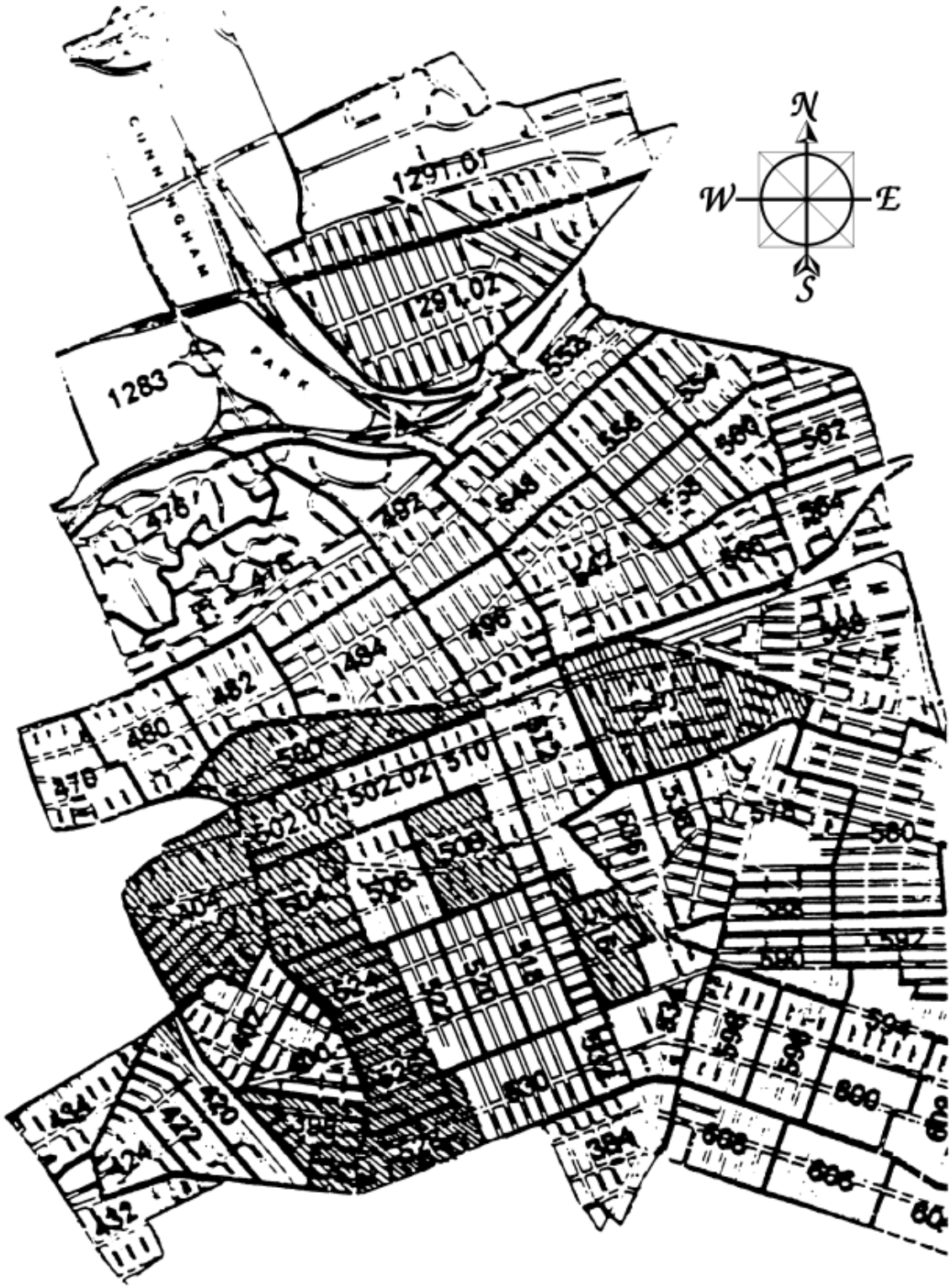
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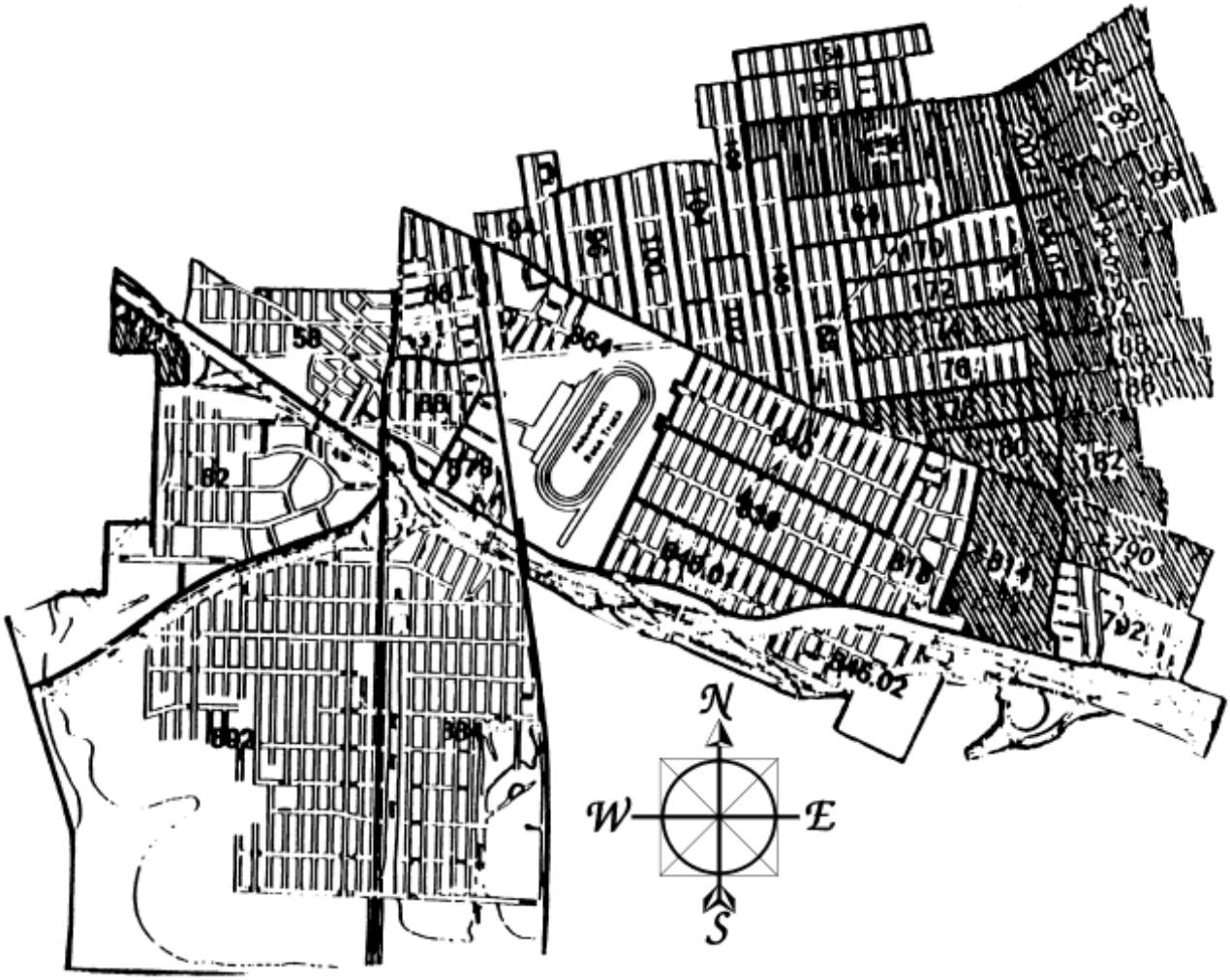
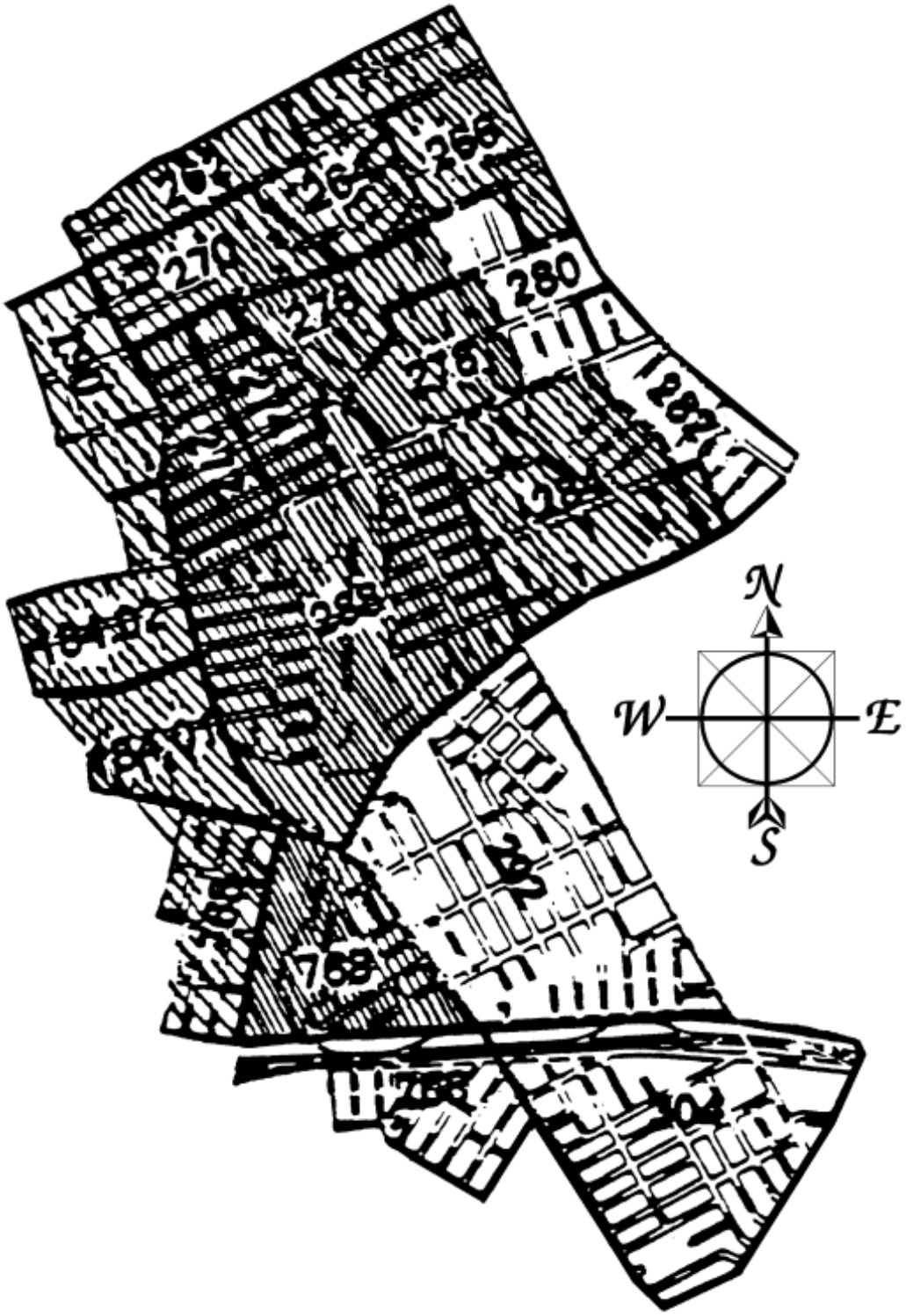
Queens Economic Development 11 of 17



Queens Economic Development 12 of 17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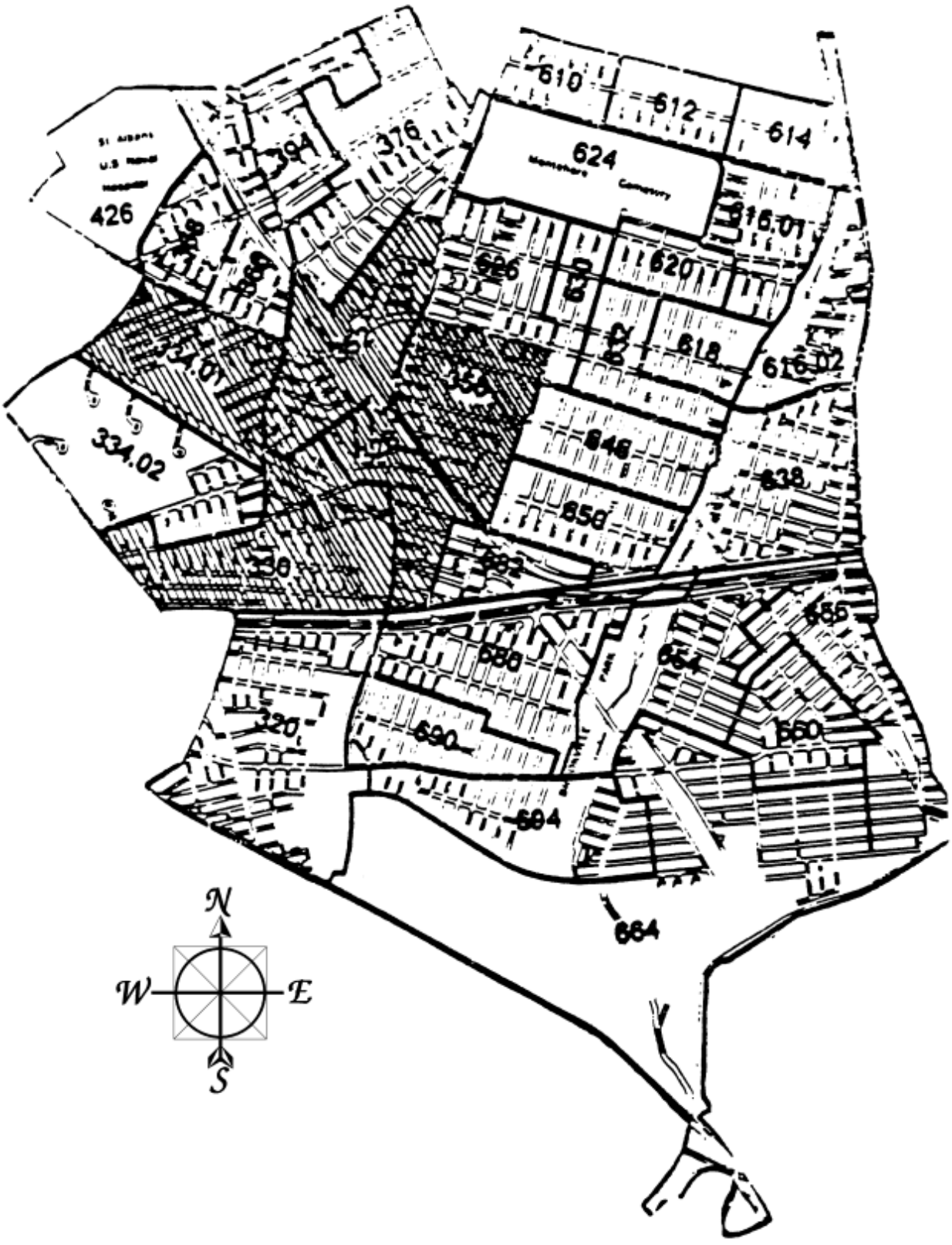
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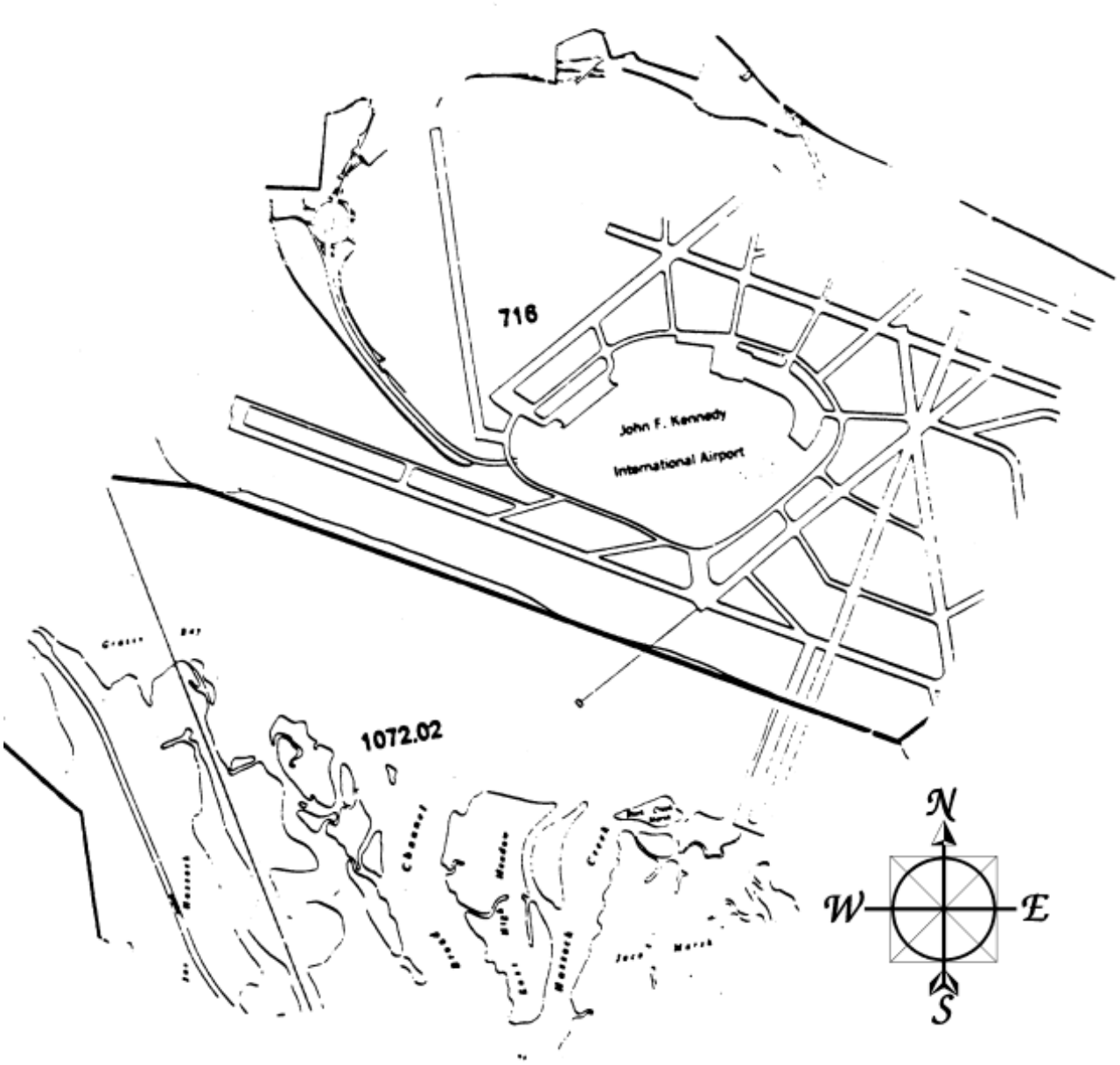
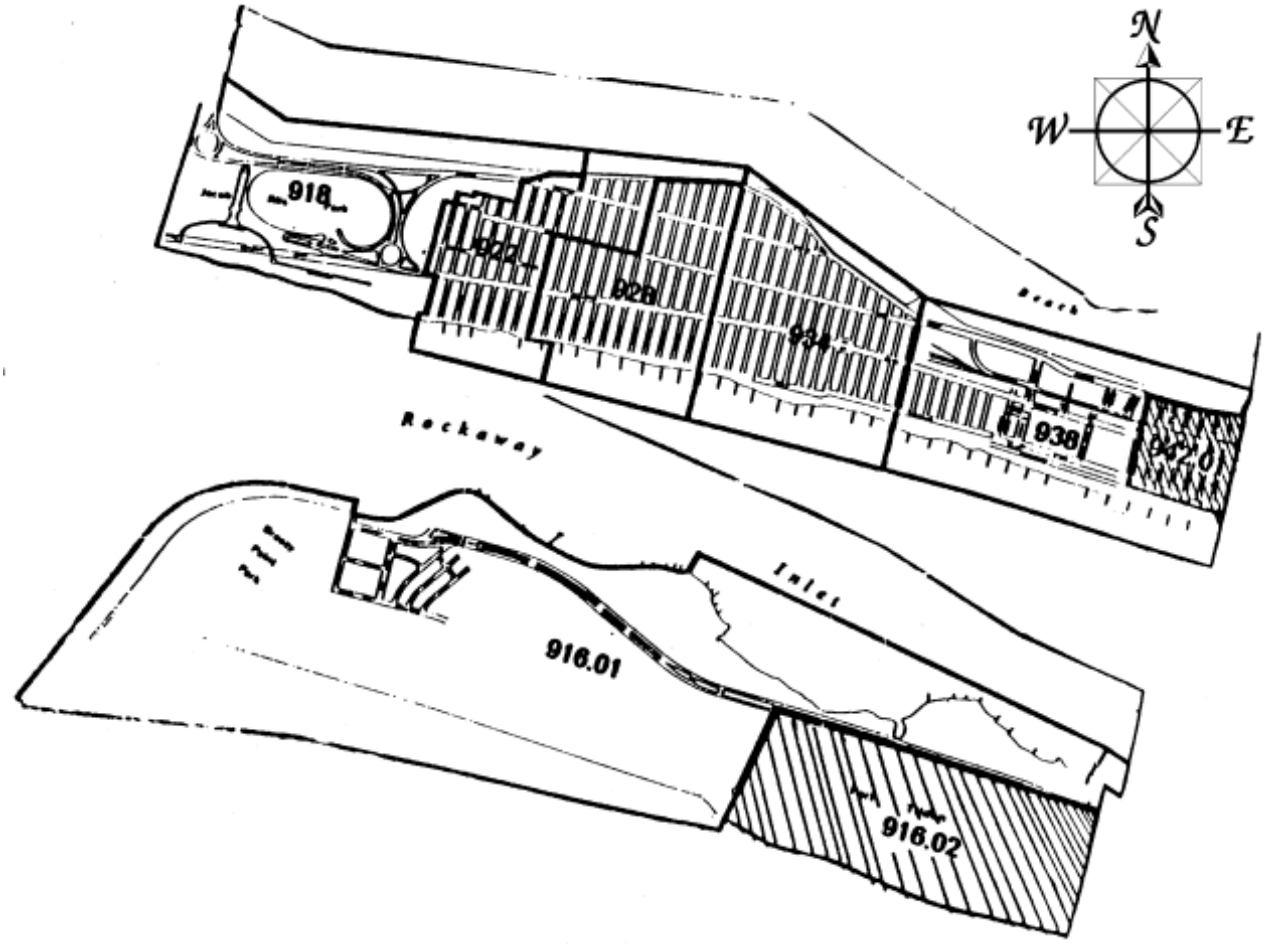
Queens Economic Development 14 of 17



Queens Economic Development 15 of 17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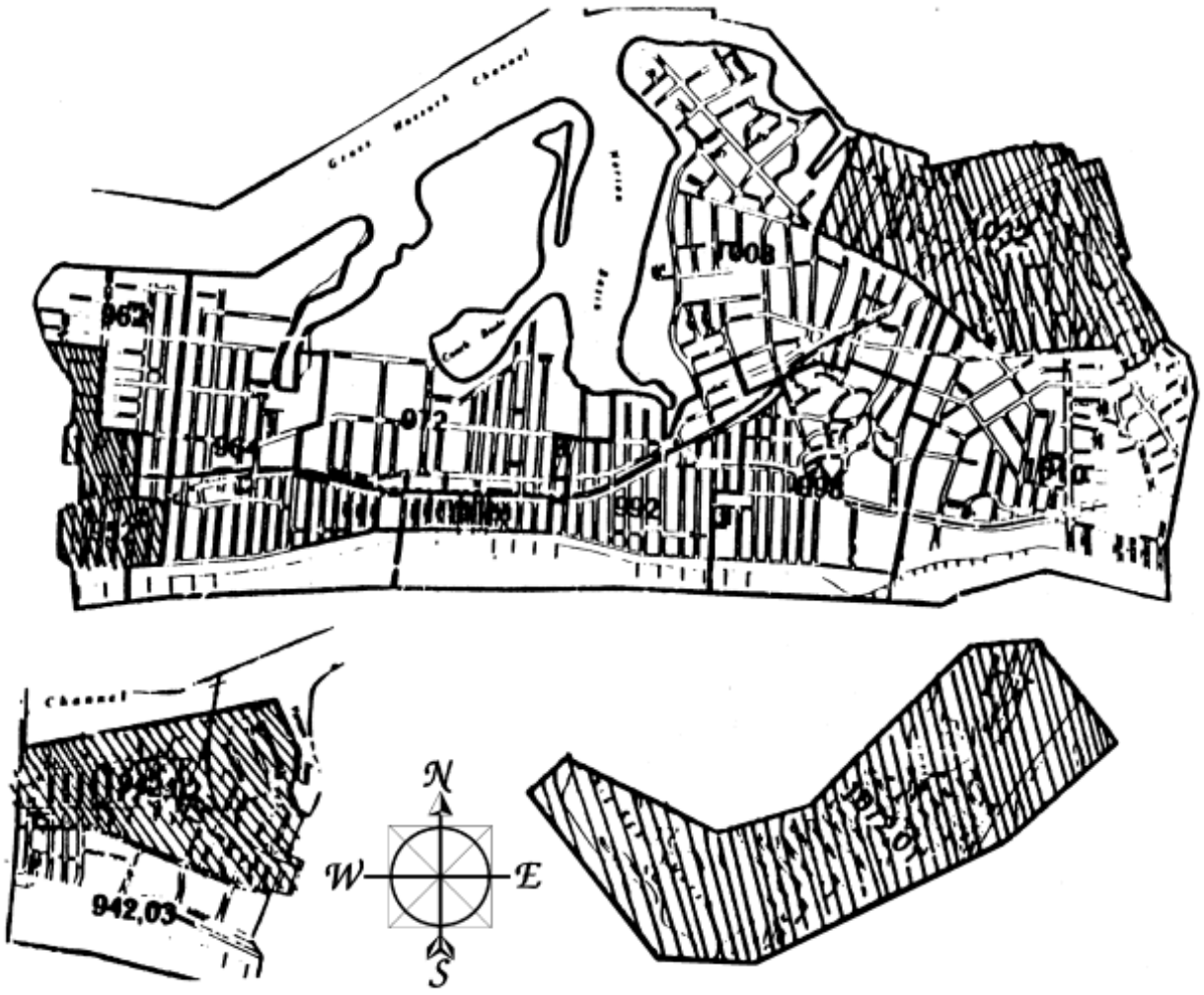
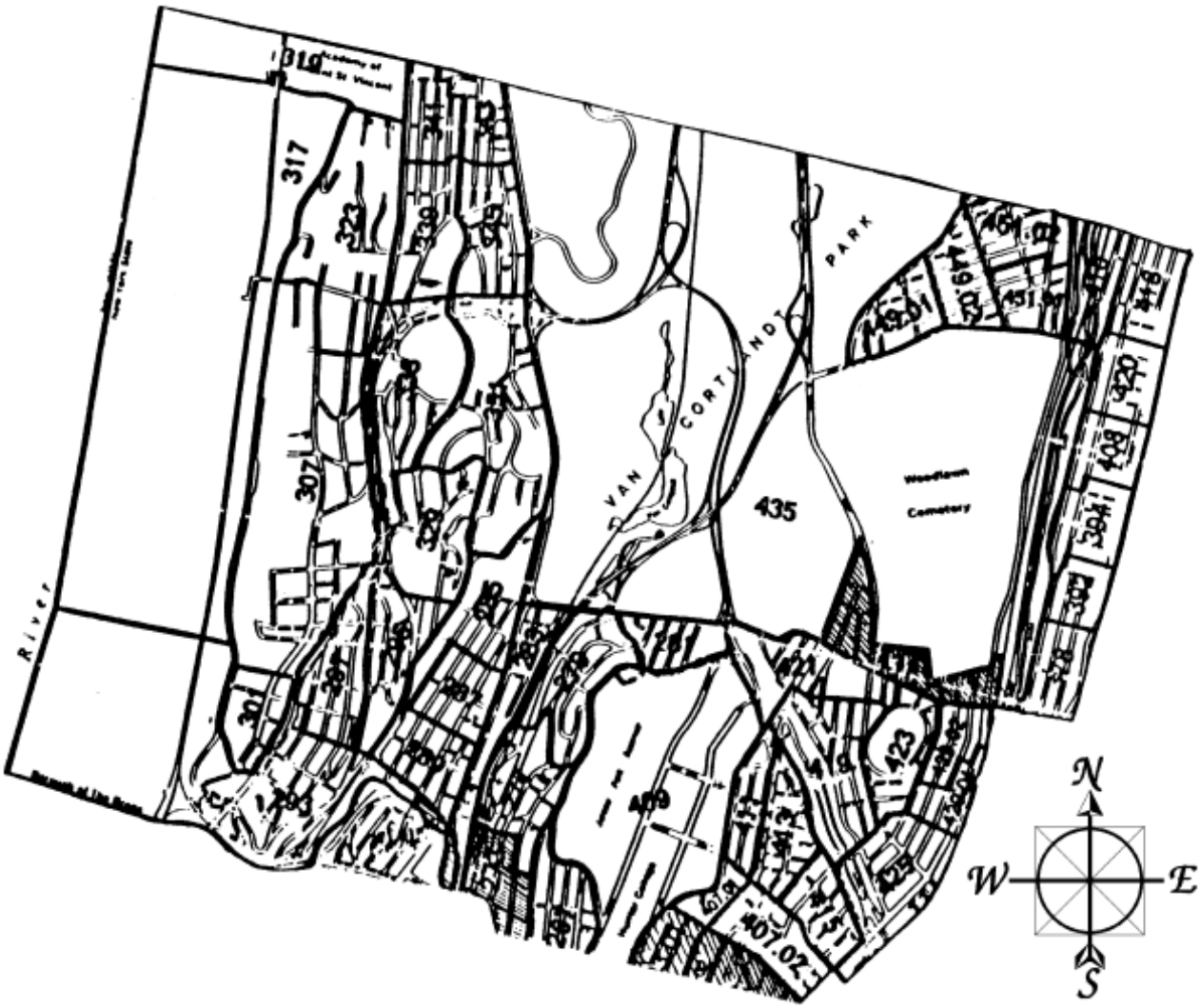


Queens Economic Development 17 of 17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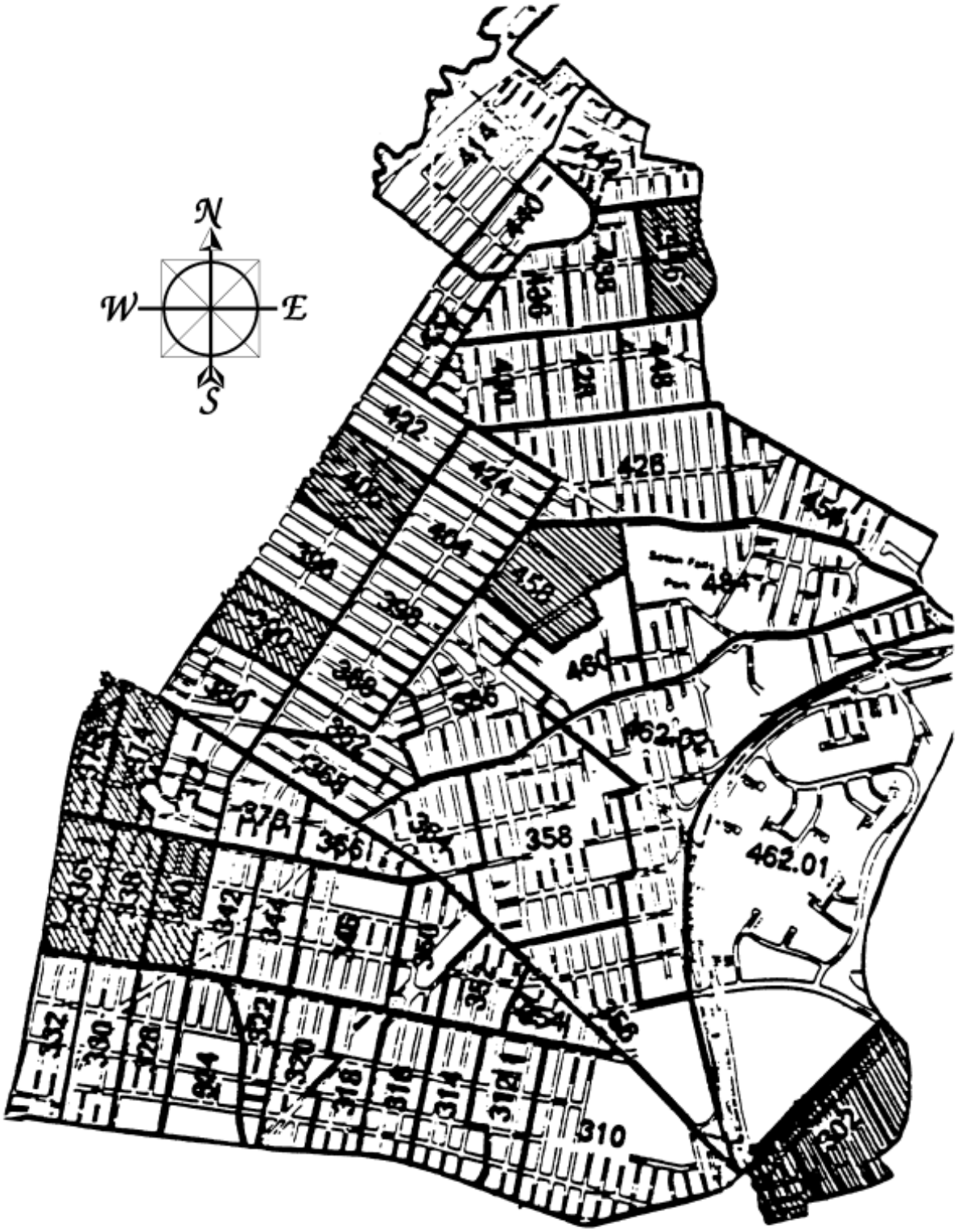
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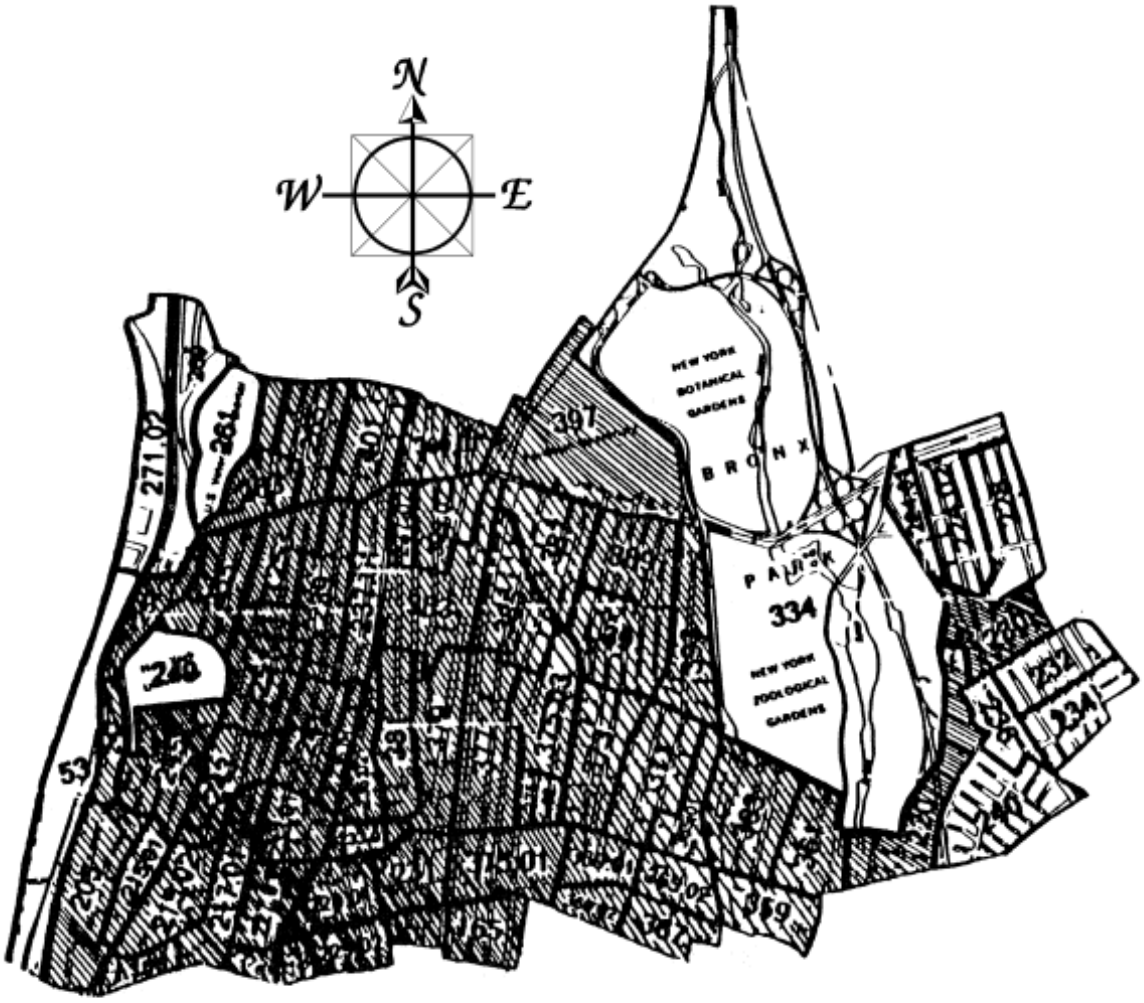
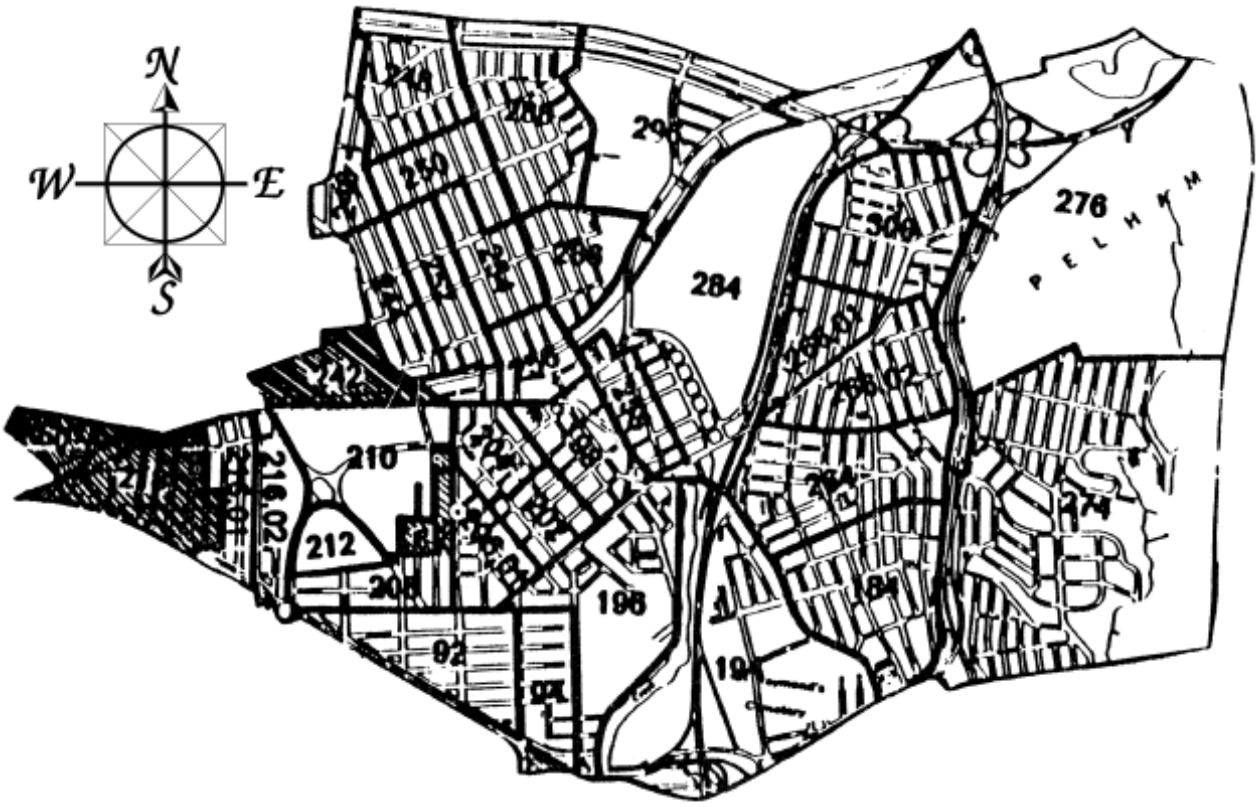
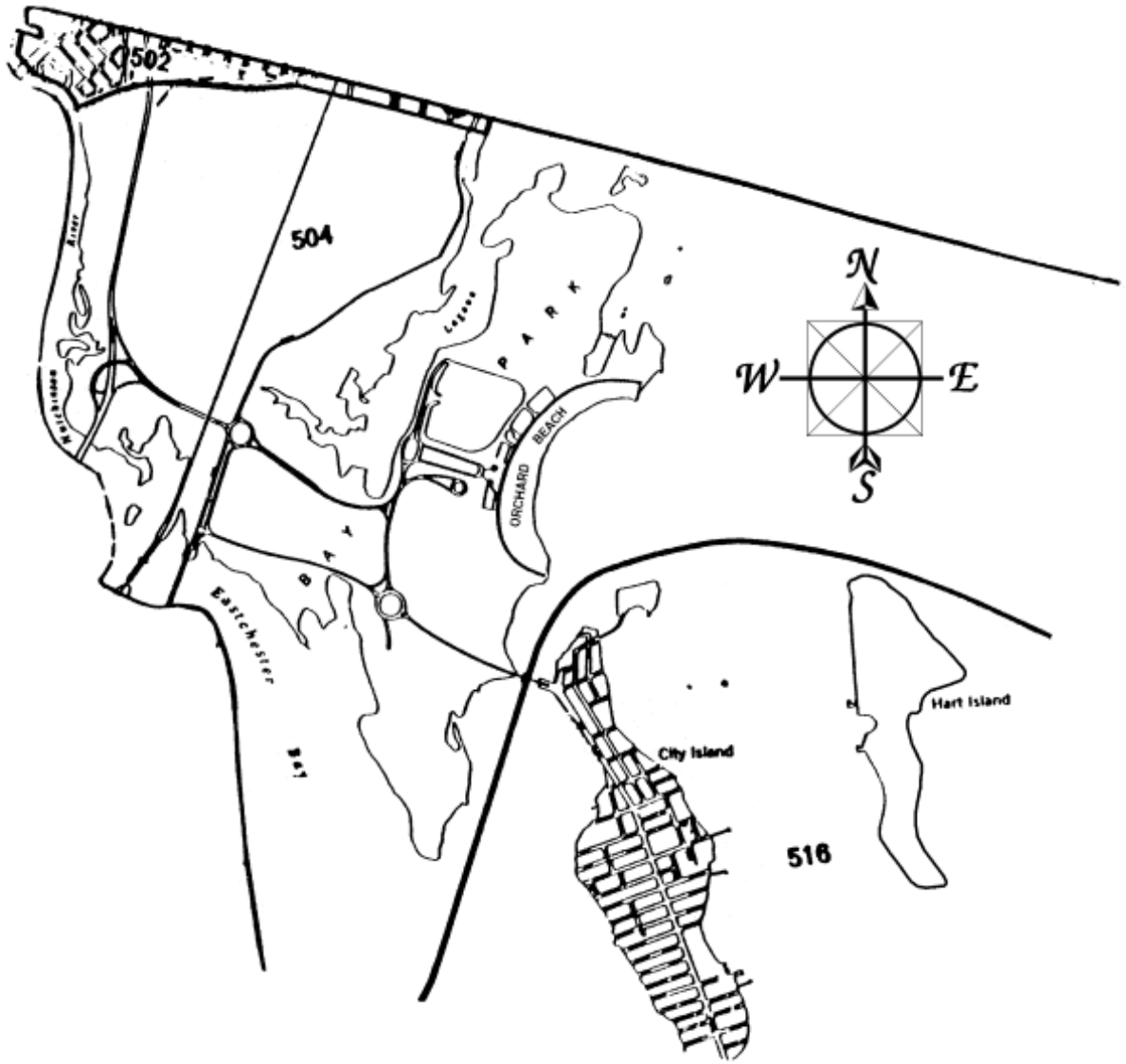
Bronx Economic Development 2 of 8



Bronx Economic Development 3 of 8



Bronx Economic Development 4 of 8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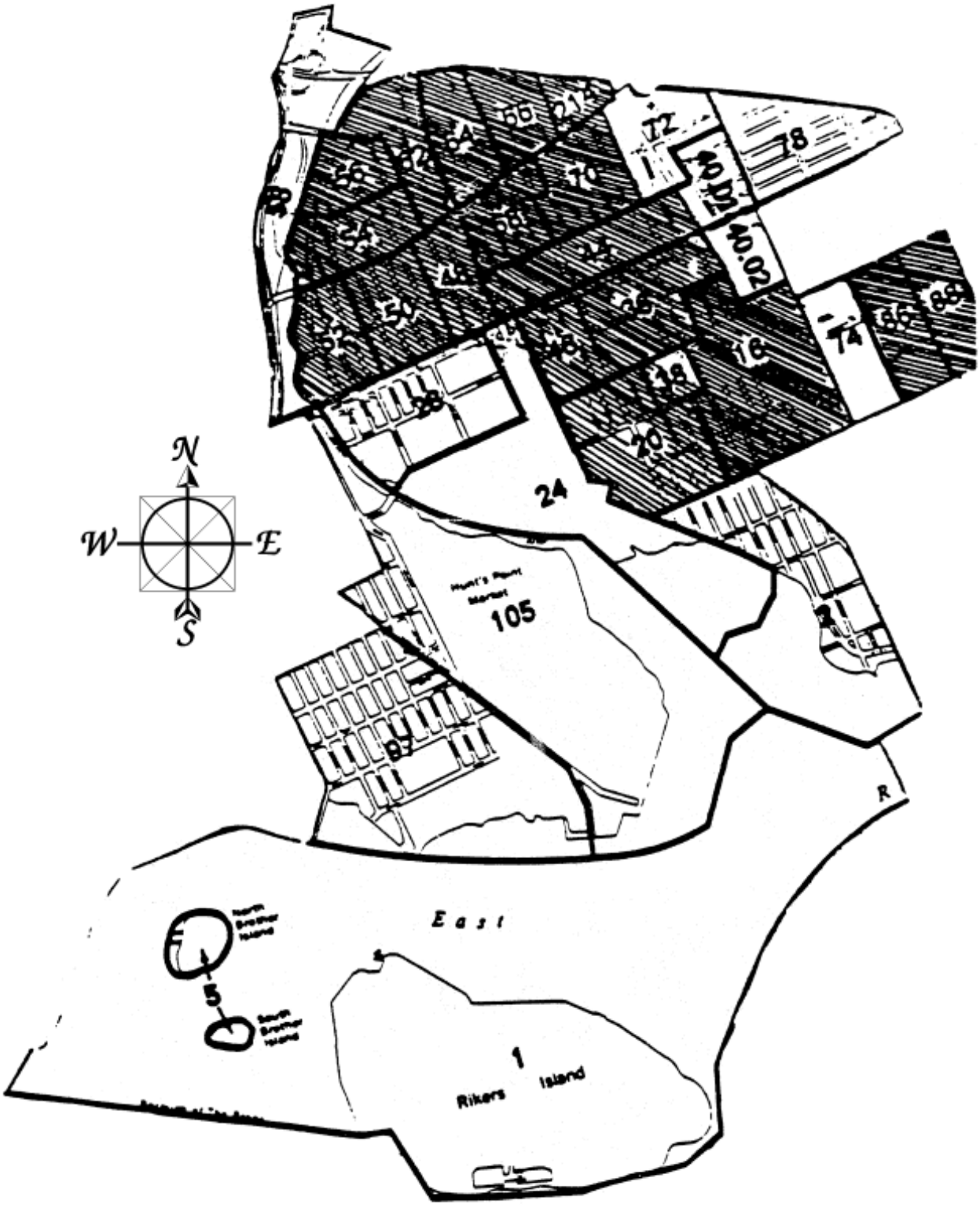
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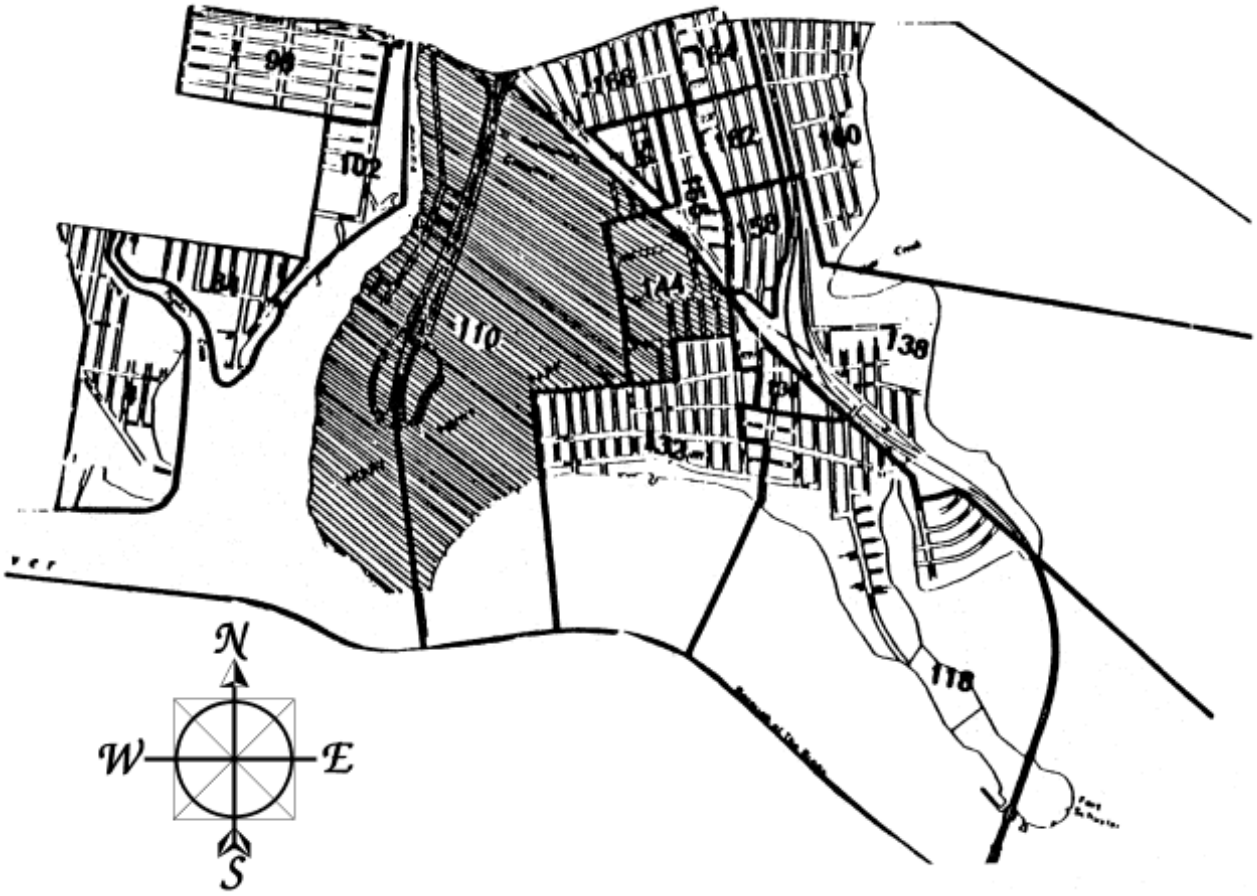
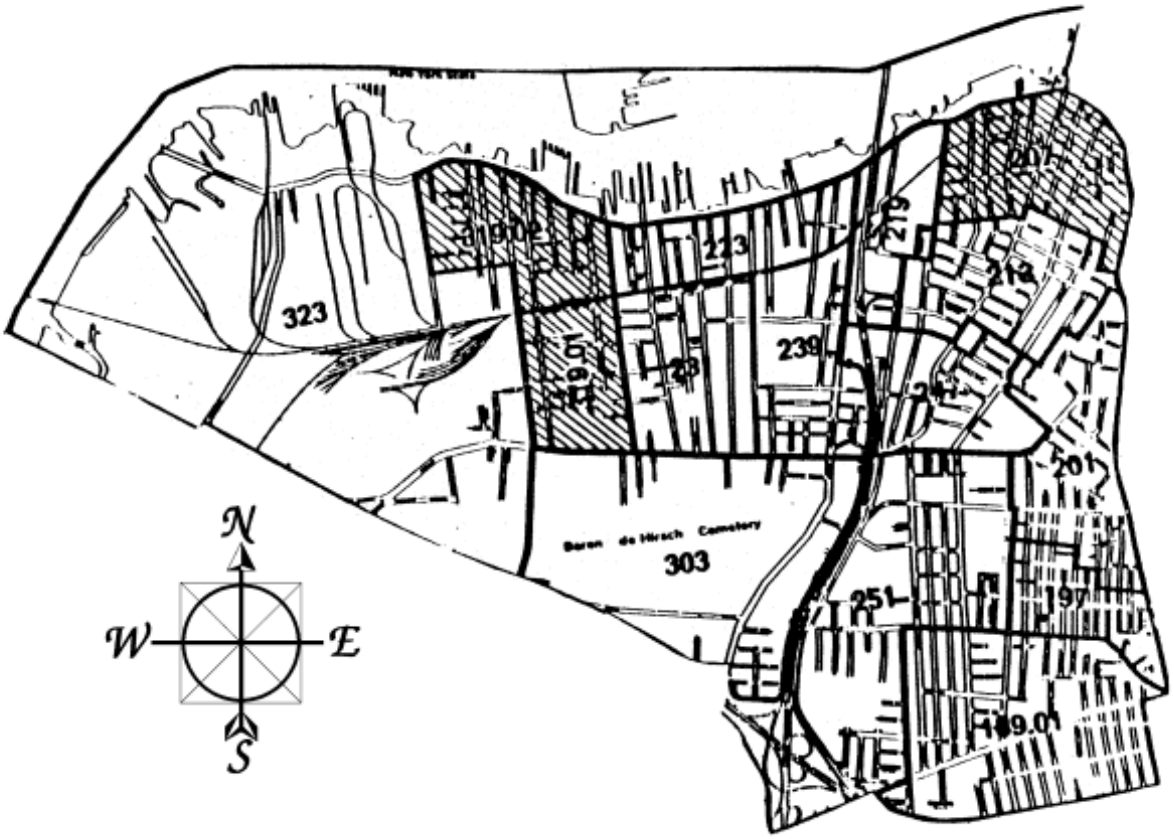
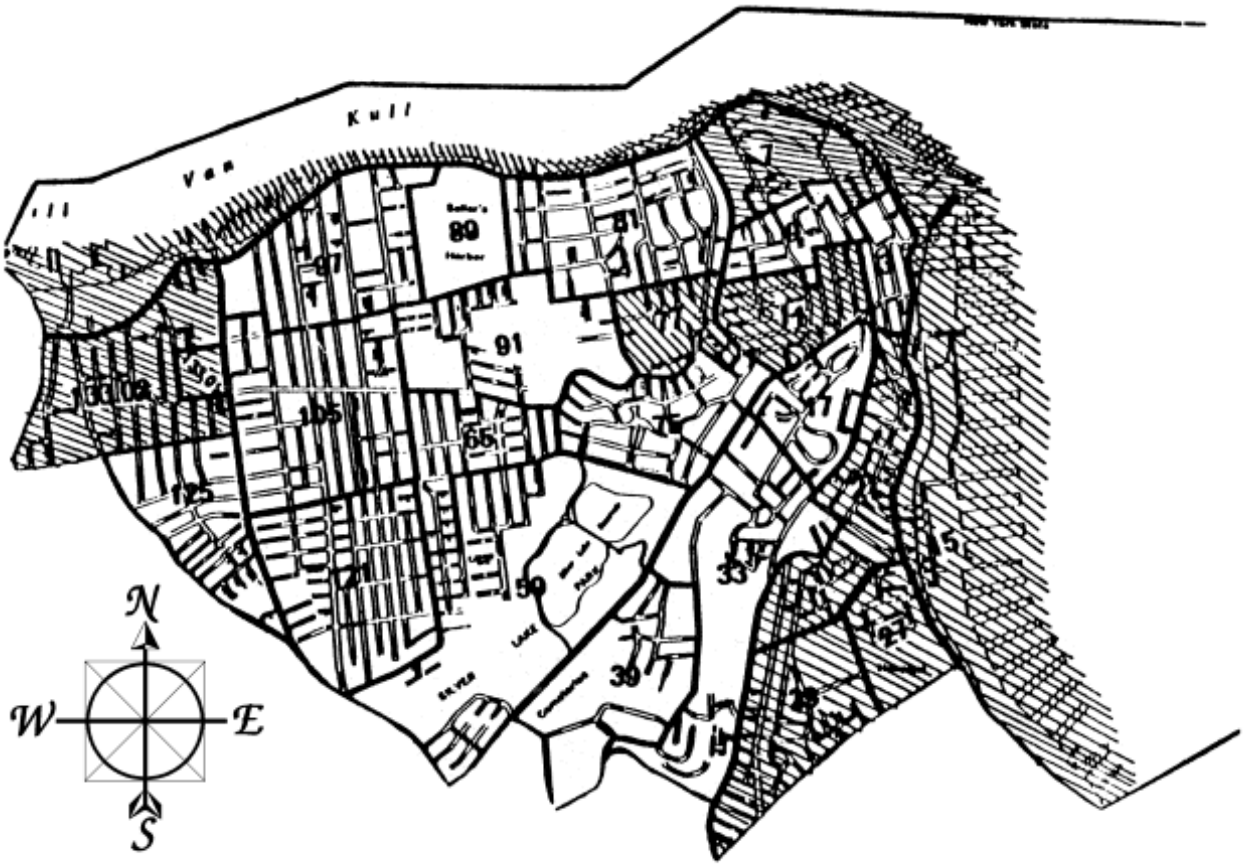
Bronx Economic Development 7 of 8



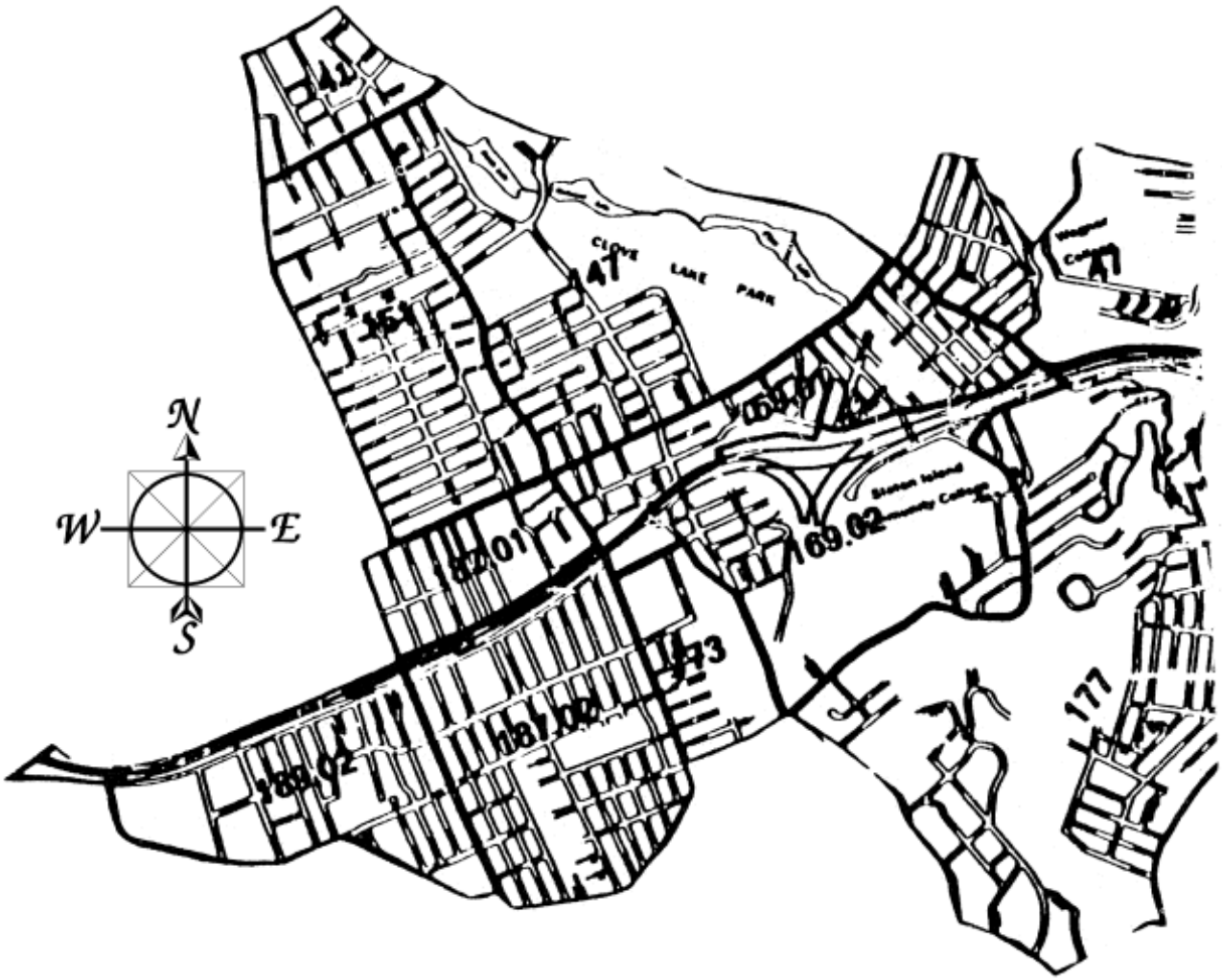
Bronx Economic Development 8 of 8



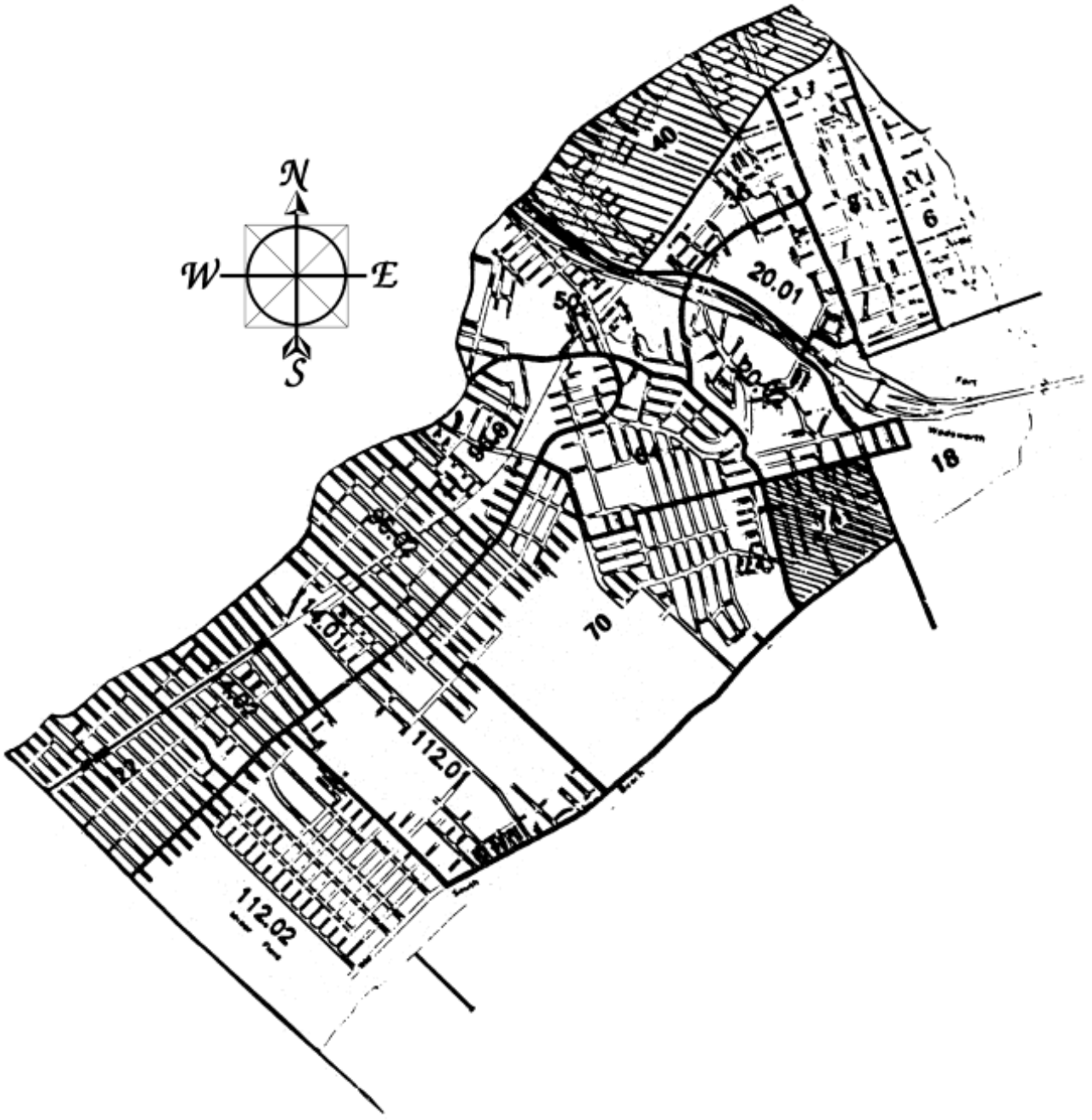
Staten Island 1 of 9



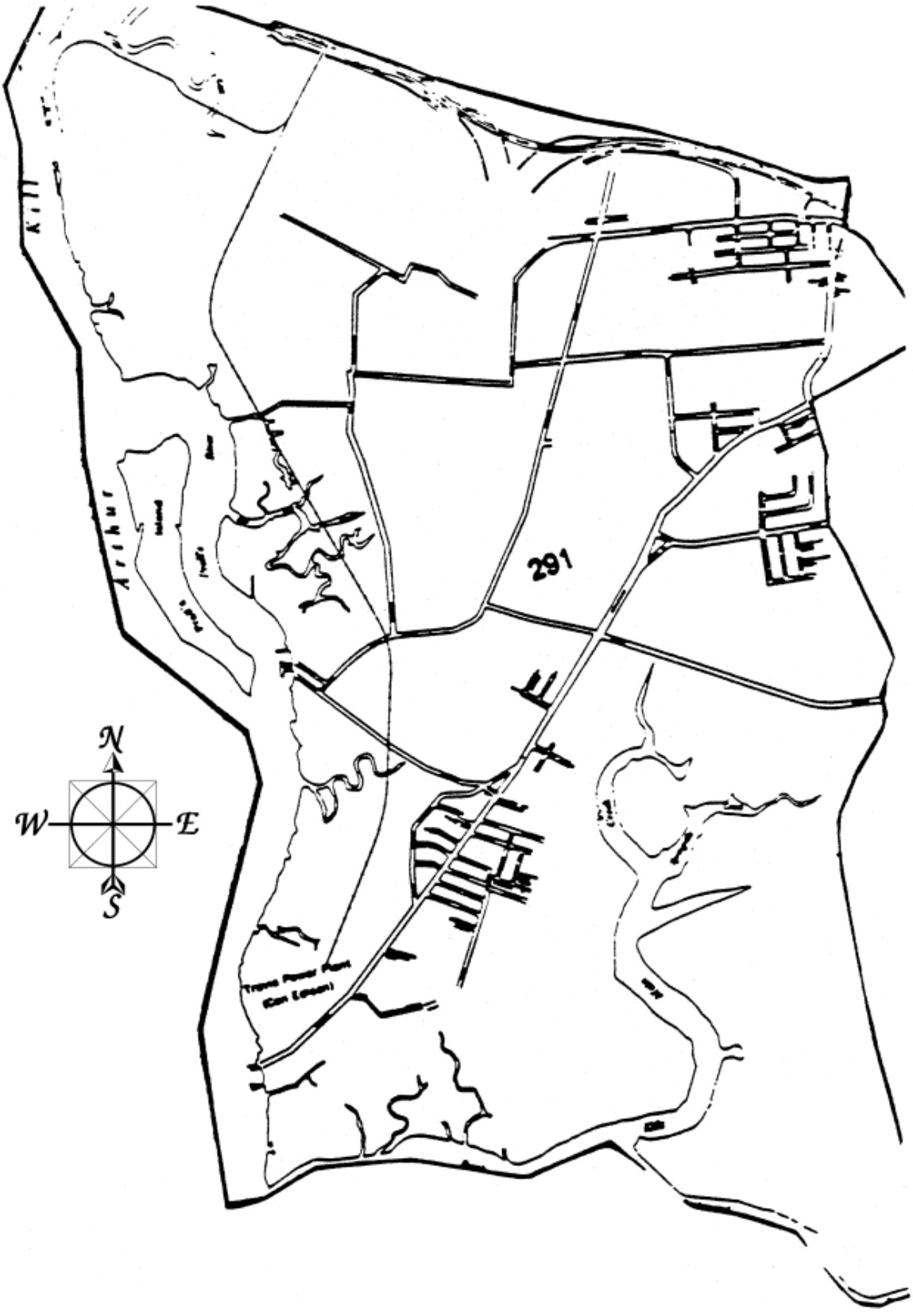
Staten Island 2 of 9



Staten Island 3 of 9



Staten Island 4 of 9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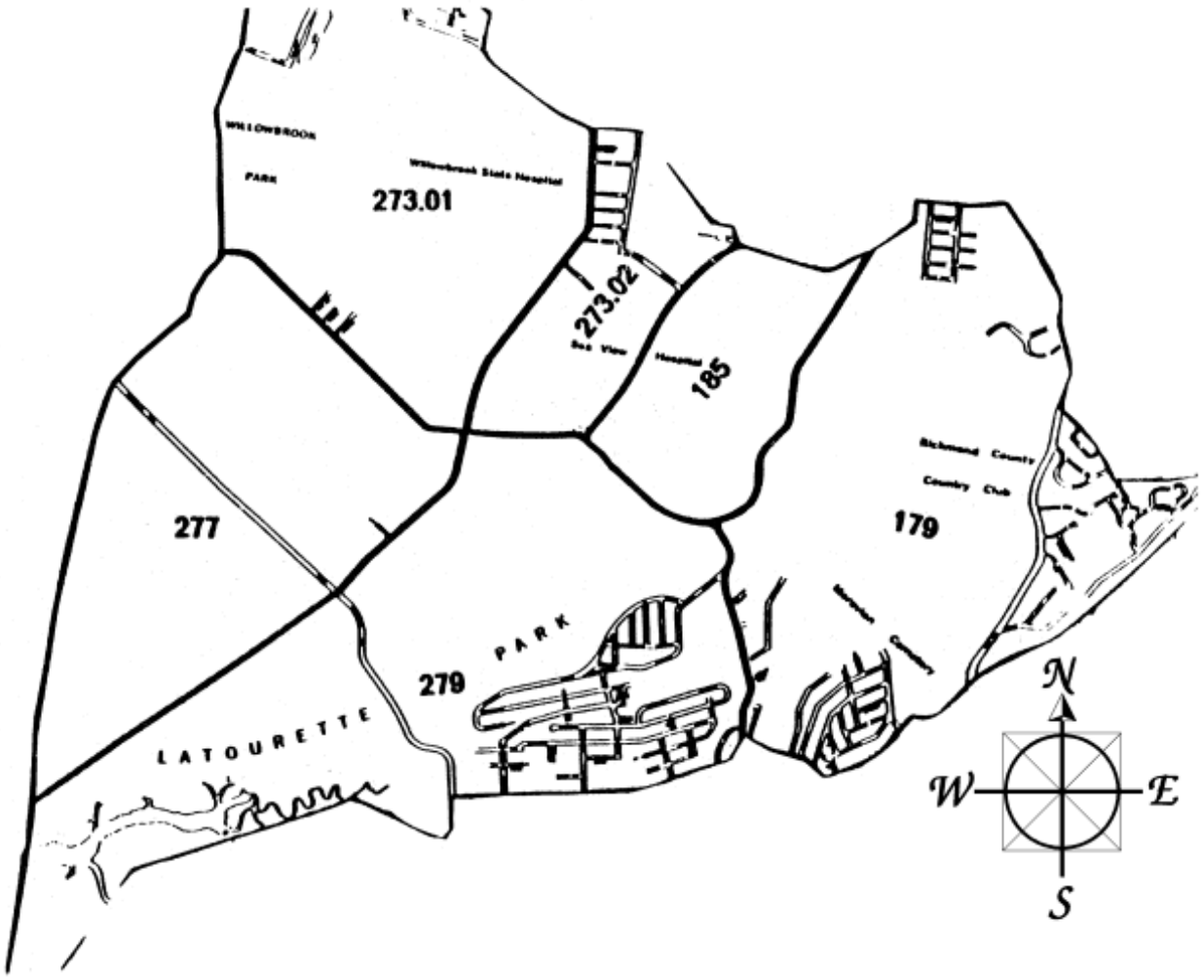
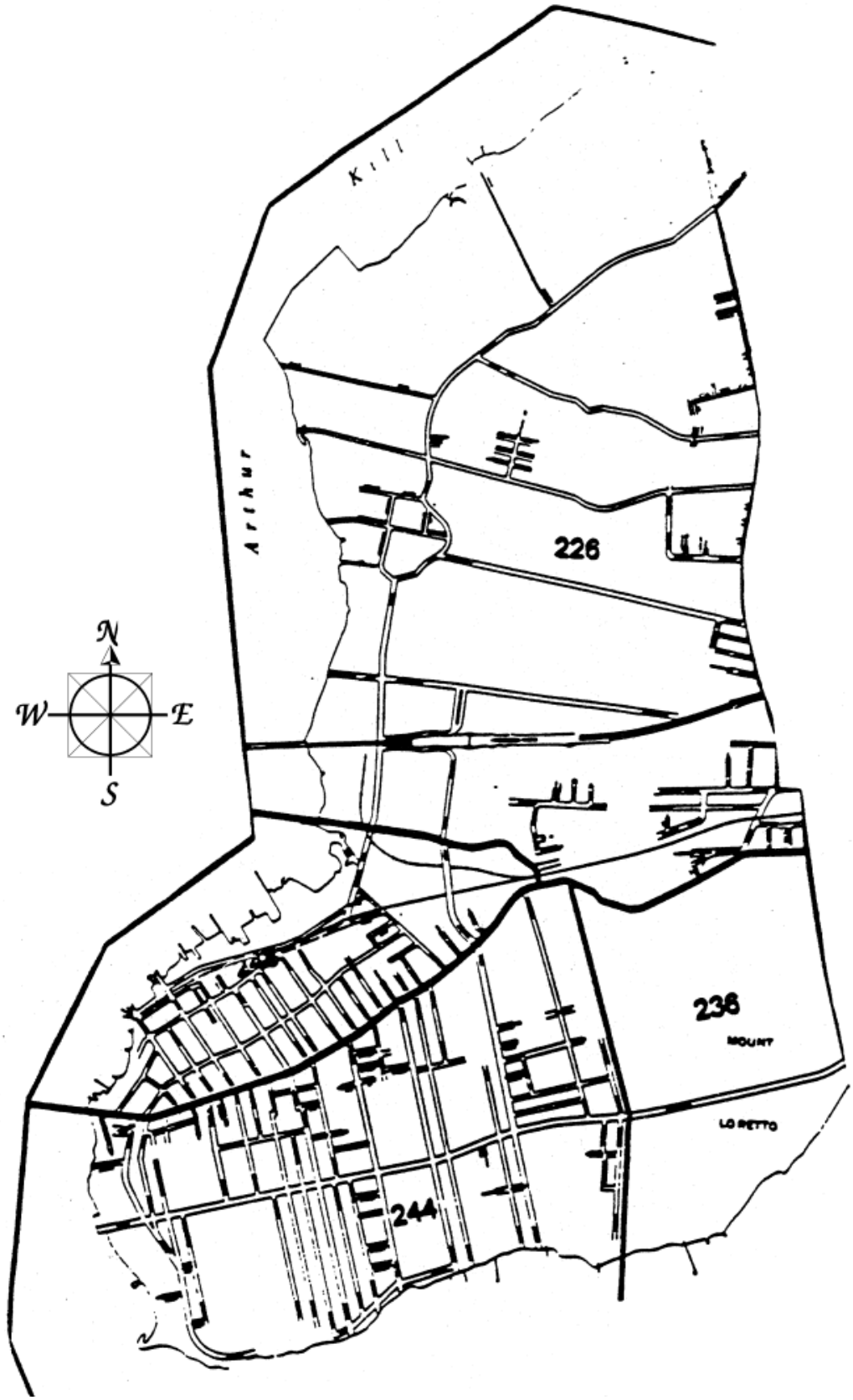
Staten Island 5 of 9



Staten Island 6 of 9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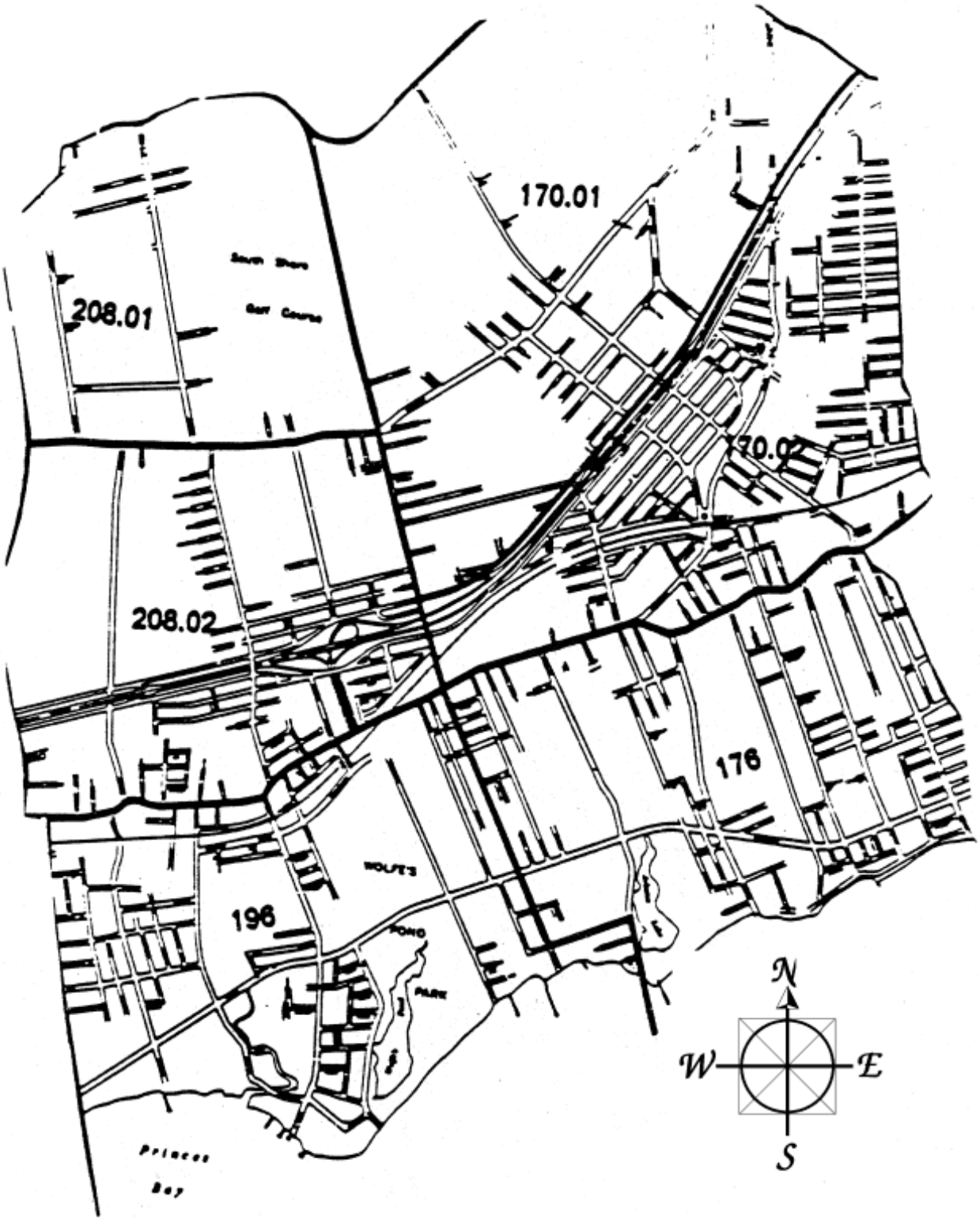
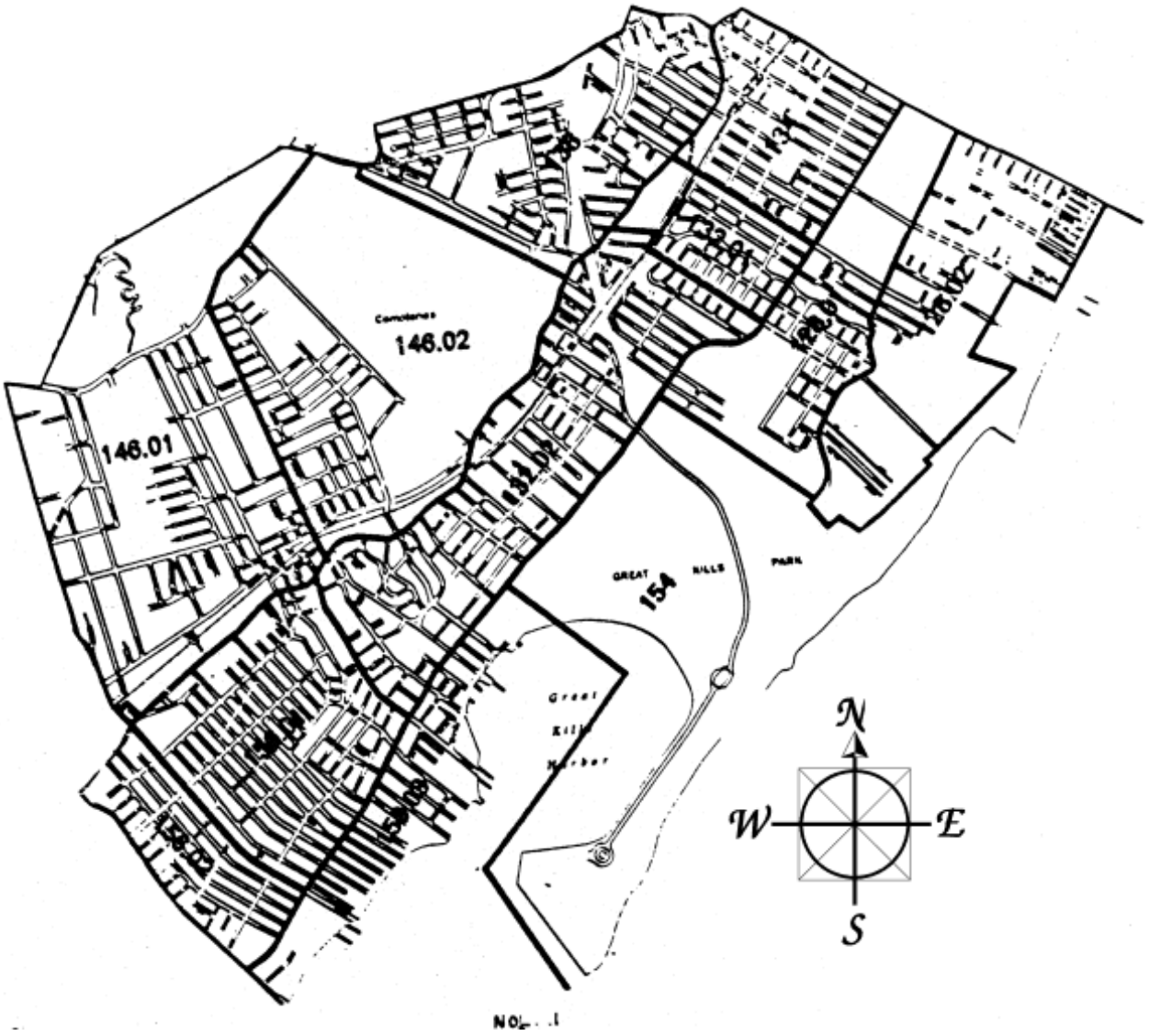
Staten Island 7 of 9



Staten Island 8 of 9



Staten Island 9 of 9

FOOTNOTES

1

[Footnote 1]: * Appendix redesignated by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, Appendix B to Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 11 - APPENDIX C

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX C*1 1989 LOWER LIVING STANDARD INCOME LEVEL TABLE

APPENDIX C*1 1989 LOWER LIVING STANDARD INCOME LEVEL TABLE

Family Size	Non- Metropolitan Areas1	Metropolitan Areas2	Buffalo MSA3	New York City MSA4
1	5,160	5,250	4,780	5,410
2	8,450	8,600	7,870	8,870
3	11,610	11,800	10,750	12,180
4	14,330	14,570	13,270	15,040
5	16,910	17,190	15,660	17,750
65	19,780	20,110	18,310	20,760

1 Non-Metro SDAs:	Clinton-Essex-Franklin-Hamilton; St. Lawrence, Jefferson-Lewis; Ulster; Sullivan; Chenango-Delaware-Otsego; Cayuga-Cortland-Tomkinsa;Allegheny-Cattaraugus-Chautauqua
2 Metro SDAs:	Albany-Rensselaer-Schenectady; Columbia-Greene; Saratoga-Warren-Washington; Fulton- Montgomery-Schoharie; Oneida-Herkimer-Madison; Oswego; City of Syracuse; Balance of Onondaga; Broome-Tioga-Tompkinsa; Chemung-Schuyler-Steuben; Ontario-Wayne-Seneca-Yates; Genesee-Livingston-Orleans-Wyoming; Monroe
3 Buffalo MSA SDAs:	Erie; Niagara
4 NYC MSA SDAs:	Hempstead-Long Beach; Oyster Bay; Suffolk; New York City; City of Yonkers, Balance of Westchester; Rockland; Dutchess-Putnam; Orange
5	For families larger than six persons, an amount equal to the difference between the six and the five person family income levels should be added to the six person family in-

come level for each additional in the family.

Note: UDSOL Has Indicated That These Tables Are Only Valid for the Purpose of Determining Eligibility for Applicable JTPA and TJTC Programs.

Effective: May 4, 1989

a Effective July 1, 1989, Tompkins will merge with Broome-Tioga to form the Broome-Tioga-Tompkins SDA. Until June 30, 1989, Tompkins must use the non-metro area income guidelines. As of July 1, 1989, the metro income guidelines are to be used by Tompkins intake staff.

1989 POVERTY INCOME GUIDELINES

Size of Family Unit	Poverty Guidelines
1	$ 5,980
2	$ 8,020
3	$10,060
4	$12,100
5	$14,140
6	$16,180
7	$18,220
8	$20,260

For family units with more than 8 members, add $2,040 for each additional member.

Effective Date: February 16, 1989

FOOTNOTES

1

[Footnote 1]: * Formerly Title 11, Appendix C to Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

66 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 12 ADJUDICATIONS

§12-01 Adjudications of the Department of Business Services.

New York City Department of Business Services adjudications regarding the fitness and discipline of department employees will be conducted by the Office of Administrative Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Commissioner.

HISTORICAL NOTE

Section renumbered formerly Title 65, §1-01 LL 61/1991 eff. July 1, 1991.

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 3 CABLE TELEVISION NETWORK OF THE CITY OF NEW YORK

§3-01 Definitions.

(a) "Commissioner" shall mean the Commissioner of the Department of Telecommunications and Energy.

(b) "Crosswalks" shall mean the cable television network of the City of New York.

(c) "Department" shall mean the Department of Telecommunications and Energy of the City of New York.

(d) "Production and Editing Facilities and Services" shall mean all facilities and services available for use by or under the control of Crosswalks as set forth in Chapter 3.

HISTORICAL NOTE

Section added City Record Feb. 18, 1993 eff. Mar. 20, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 3 CABLE TELEVISION NETWORK OF THE CITY OF NEW YORK

§3-02 Payment of Fees for Use of Production and Editing Facilities and Services.

Fees shall be paid directly to Crosswalks in accordance with the rate schedule set forth in §3-03.

HISTORICAL NOTE

Section added City Record Feb. 18, 1993 eff. Mar. 20, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 3 CABLE TELEVISION NETWORK OF THE CITY OF NEW YORK

§3-03 Schedule of Rates for Use of Production and Editing Facilities and Services.

Studio Facilities:

30 x 50 studio includes 3 Hitachi industrial grade color cameras, M II video record capability, Grass Valley 200 switcher with chroma key, Dubner character generator, lighting facilities and TAC Bullet audio board with 28 inputs and 4 submasters.

Studio Productions:	Rates
One Production	
Half day (4 hours or less)	$150.00
Full day (more than 4 hours)	$225.00
PSAs (per hour)	$ 75.00
Overtime (per hour)	$ 20.00
2-6 Productions-per production	
Half day (4 hours or less)	$135.00
Full day (more than 4 hours)	$205.00
PSAs (per hour)	$ 70.00
Overtime (per hour)	$ 20.00
Over 6 Productions-per production	
Half day (4 hours or less)	$125.00

Full day (more than 4 hours)	$190.00

Studio Productions **(continued)**

PSAs (per hour)	$ 65.00
Overtime (per hour)	$ 20.00
Studio Audience (set up and break-down)	$ 25.00
Telephone (live call-in)	$ 25.00

Field Production System

Using Complete Hi-8 field package(s) Crosswalks has the capability of producing one-camera or two-camera remote productions.

Remote Productions

One Camera Production

One Production

Half day (4 hours or less)	$175.00
Full day (more than 4 hours)	$300.00
Overtime (per hour)	$ 20.00

2-6 Productions-per production

Half day (4 hours or less)	$140.00
Full day (more than 4 hours)	$240.00
Overtime (per hour)	$ 20.00

Over 6 Productions-per production

Half day (4 hours or less)	$115.00
Full day (more than 4 hours)	$200.00
Overtime (per hour)	$ 20.00

Two Cameras

One Production

Half day (4 hours or less)	$250.00
Full day (more than 4 hours)	$375.00
Overtime (per hour)	$ 40.00

2-6 Productions-per production

Half day (4 hours or less)	$200.00
Full day (more than 4 hours)	$300.00
Overtime (per Hour)	$ 40.00

Over 6 Productions-per production

Half day (4 hours or less)	$165.00
Full day (more than 4 hours)	$250.00
Overtime (per hour)	$ 40.00

Editing/Post production

Off-Line Facilities:

Straight cuts 3/4" system using a Sony 450 editing control system; 3/4" SP editing system with super micron editing controller and video toaster generated titles and transitions. Hi-8 to Hi-8 all-in-one editing system with built-in titling.

Off-Line Editing Services:

	Crosswalks Editor	User Operated
3/4"	$30.00 per hour	$15.00 per hour
Hi-8 to 3/4"	$30.00 per hour	$15.00 per hour
Hi-8 to Hi-8	$30.00 per hour	$15.00 per hour

On-Line Facilities

State-of-the art M II A/B roll facility with full titling and special effects capabilities. A/B roll system utilizing either 3/4" SP or Hi-8 source decks (2 of each) and one 3/4" SP editing deck. Titling and special effects will be provided by the Newtek Video Toaster.

On-Line Editing Services:

M II	$65.00 per hour
3/4" SP	$55.00 per hour
Hi-8 to 3/4" SP	$55.00 per hour

Video Duplication (Crosswalks Tape Stock Only)

Copies of Programs (1/2" VHS, Hi-8 tapes):

30 minutes or less	$ 15.00
30 to 60 minutes	$ 19.00

Copies of Programs (3/4" tapes):

30 minutes or less	$ 19.00
30 to 60 minutes	$ 29.00

Copies of Programs (M II):

30 minutes or less	$ 35.00
30 to 60 minutes	$ 50.00

Screening Facility:

Screening Video Tapes/Logging	$ 5.00 per hour
Screening Video Tapes for Presentation	$15.00 per hour

Special Packages:

A special package consisting of a field shoot, studio, production and editing is available, which cost shall be no greater than the aggregate of the amounts listed in Section 3 for each category of facilities and services.

Cancellation Policy:

Cancellation within forty-eight (48) hours of a scheduled studio or field production will result in a fifty percent (50%) cancellation charge.

HISTORICAL NOTE

Section added City Record Feb. 18, 1993 eff. Mar. 20, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 3 CABLE TELEVISION NETWORK OF THE CITY OF NEW YORK

§3-04 Applicability.

Crosswalks' production and editing facilities and services are available only in connection with programming eligible for cablecast on the city's cable access channels.

HISTORICAL NOTE

Section added City Record Feb. 18, 1993 eff. Mar. 20, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 4 ELECTRICAL USAGE BY CABLE TELEVISION COMPANIES

§4-01 Definitions.

Authorized agent. "Authorized agent" shall mean any person or entity which is authorized by lease, contract or other agreement to act on behalf of a premises owner with respect to the matters covered by this rule.

Cable television. "Cable television company" shall mean any person, firm, partnership, or corporation which provides one-way transmission to subscribers of video programming or other programming services.

Commissioner. "Commissioner" shall mean the Commissioner of the Department of Telecommunications and Energy.

Department. "Department" shall mean the Department of Telecommunications and Energy of the City of New York.

Direct billing. "Direct billing" shall mean a system by which the user is billed directly by the utility for either (1) actual use of electricity, as measured by a properly installed and operating meter or (2) estimated use of electricity, as agreed to by the cable television company and the utility. Direct billing shall include only electrical usage which is independent of the premises owner's metering.

Electricity. "Electricity" shall mean electrical current or service as provided by a utility other than electricity used to operate equipment placed within individual subscriber units for the purpose of receiving cable television service.

Utility. "Utility" shall mean any person, firm, partnership or corporation authorized to provide electricity to

commercial and residential users and subject to the jurisdiction and general supervision of the Public Service Commission of the State of New York.

HISTORICAL NOTE

Section added City Record Dec. 1, 1993 eff. Dec. 31, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 4 ELECTRICAL USAGE BY CABLE TELEVISION COMPANIES

§4-02 Applicability.

(a) This chapter applies to all cable television companies authorized by New York City by means of a franchise or other municipal authorization to construct, operate, maintain, or manage a cable television system in New York City.

HISTORICAL NOTE

Section added City Record Dec. 1, 1993 eff. Dec. 31, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 4 ELECTRICAL USAGE BY CABLE TELEVISION COMPANIES

§4-03 Electricity Usage.

(a) All electricity used by a cable television company shall be directly billed to the cable television company by a utility pursuant to the utility's applicable service tariffs, including all electricity used by a cable television company to operate equipment situated on premises owned, operated or leased by an entity other than the cable company, unless the cable television company and the premises owner have entered into a resale arrangement.

(b) To the extent allowable by applicable law and tariff, a cable television company may enter into a resale arrangement for use of electricity to operate equipment situated on premises not owned, operated or leased by the cable television company only upon prior written approval of the affected premises owner or authorized agent.

HISTORICAL NOTE

Section added City Record Dec. 1, 1993 eff. Dec. 31, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 4 ELECTRICAL USAGE BY CABLE TELEVISION COMPANIES

§4-04 Notice.

(a) The cable television company shall give each premises owner or authorized agent not less than fifteen (15) days written notice of its intention to locate equipment upon any premises not owned, operated or leased by the cable television company which may require the use of electricity.

(b) The cable television company shall contact the utility providing the electricity and arrange for direct billing for the use of electricity on premises not owned, operated or leased by the cable television company not less than fifteen (15) days prior to the installation of said equipment.

(c) The cable television company shall notify each affected premises owner or authorized agent when it has completed arrangements for direct billing when the utility providing electricity and the start date for such electricity usage.

(d) For electricity usage to operate equipment owned by the cable television company already situated on premises owned, operated or leased by an entity other than the cable television company as of the effective date of this rule, the cable television company shall contact the utility providing the electricity and arrange for direct billing for the use of electricity to operate such equipment on such premises. The cable television company shall submit a plan for the implementation of the requirements of this chapter for such electricity usage within thirty (30) days of the effective date of this chapter. Such plan shall be subject to the approval of the Commissioner.

(e) The cable television company shall submit to DTE quarterly reports with respect to any resale arrangement for use of electricity to operate equipment situated on premises not owned, operated or leased by the cable television

company in a form and containing such information as the Commissioner may reasonably specify. Upon request of the Commissioner, the cable television company shall promptly submit to the Commissioner additional information in an appropriate format to verify and supplement the information contained in the report required by this subdivision. The Commissioner may waive the submission of such records as the Commissioner deems appropriate.

(f) The cable television company shall submit to DTE summary quarterly reports containing information on each notice sent out pursuant to the requirements of subparagraphs a, b, and c of this section in a form and containing such information as the Commissioner may reasonably specify. Upon request of the Commissioner, the cable television company shall promptly submit to the Commissioner additional information in an appropriate format to verify and supplement the information contained in the report required by this subdivision. The Commissioner may waive the submission of such records as the Commissioner deems appropriate.

HISTORICAL NOTE

Section added City Record Dec. 1, 1993 eff. Dec. 31, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 5 CABLE TELEVISION RATES

§5-01 Definitions.

Cable System. "Cable System" shall have the meaning set forth at 47 U.S.C. §522.

Basic Service Tier. "Basic Service Tier" shall have the meaning set forth at 47 U.S.C. §543(b)(7).

HISTORICAL NOTE

Section added City Record Aug. 5, 1993 eff. Sept. 4, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 5 CABLE TELEVISION RATES

§5-02 Applicability.

Rates charged by Cable Systems in the City of New York for the Basic Service Tier and associated equipment, installation, services and charges shall be subject to regulation by the City of New York consistent with regulations adopted by the Federal Communications Commission pursuant to 47 U.S.C. §543(b).

HISTORICAL NOTE

Section added City Record Aug. 5, 1993 eff. Sept. 4, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 5 CABLE TELEVISION RATES

§5-03 Public Hearing.

Rate regulation proceedings pursuant to §5-02 above shall be conducted so as to provide a reasonable opportunity for consideration of the views of interested parties.

HISTORICAL NOTE

Section added City Record Aug. 5, 1993 eff. Sept. 4, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER A**3 GENERAL PROVISIONS

§6-01 Definitions.

For the purposes of this Chapter, the following terms shall have the following meanings:

Code. "Code" shall mean the Administrative Code of the City of New York.

Commissioner. "Commissioner" shall mean the Commissioner of the Department of Information Technology and Telecommunications or any successor agency.

Department. "Department" shall mean the Department of Information Technology and Telecommunications or any successor agency.

Interim Eligible Public Pay Telephone. "Interim Eligible Public Pay Telephone" shall mean a public pay telephone that: (i) was not licensed pursuant to former §§19-131 and 19-128 of the Code; and (ii) was installed and activated prior to March 1, 1996.

Interim Occupancy Fee. "Interim Occupancy Fee" shall mean the annual fee of seventy-five dollars ($75) for each interim eligible public pay telephone listed on a registry.

Owner. "Owner" shall mean a natural person or business entity that owns, leases, or is otherwise responsible for the installation, operation and maintenance of a public pay telephone.

Public Nuisance. "Public Nuisance" shall mean a public pay telephone which the Commissioner has reasonable cause to believe is used on a regular basis in furtherance of unlawful activity.

Public Pay Telephone. "Public Pay Telephone" shall mean a telephone and associated equipment, from which calls can be paid for at the time they are made by a coin, credit card, prepaid debit card or in any other manner which is available for use by the public and provides access to the switched telephone network for the purpose of voice or data communications. The term "Public Pay Telephone" shall include any pedestal or telephone bank supporting one or more such telephones, associated enclosures, signage, and other associated equipment.

Public Pay Telephone Installation. A "Public Pay Telephone Installation" shall mean an installation, including the telephone, pedestal and housing of such telephone, with one or more public pay telephones on a pedestal, one or more public pay telephones in an in-line configuration, or a public pay telephone attached to another structure.

Registry. "Registry" shall mean a list submitted by an owner of interim eligible public pay telephones identifying each such telephone.

Street. "Street" shall have the meaning ascribed thereto in subdivision thirteen of §1-112 of the Code.

Substantial Common Ownership. "Substantial Common Ownership" shall mean that:

(i) one or more chains of business entities (a business entity shall include but not be limited to corporations, partnerships or limited liability companies) are connected through stock ownership with a common parent business entity, and the common parent business entity owns at least 50 percent (50%) of the total value of shares of all classes of stock in at least one of the other business entities, or stock possessing at least 50 percent (50%) of the combined voting power of all classes of stock in each of the business entities is owned by one or more of the other business entities; or

(ii) two or more business entities are owned by 5 or fewer persons who are individuals, estates or trusts, and those persons own at least 50 percent (50%) of the total value of shares of all classes of stock in all of the business entities, or stock possessing at least 50 percent (50%) of the combined voting power of all classes of stock in all of the business entities; or

(iii) there are three or more business entities, each of which is a member of a group of business entities described in subparagraph (i) or (ii), and one of which is a common parent business entity included in a group of business entities described in subparagraph (i) and subparagraph (ii).

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

Public Pay Telephone Installation amended City Record Feb. 16, 2006 §1, eff. Mar. 18, 2006. [See

T67 §6-02 Note 2]

Substantial Common Ownership amended City Record Feb. 16, 2006 §1, eff. Mar. 18, 2006. [See T67

§6-02 Note 2]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.

3

[Footnote 3]: ** Subchapter added City Record January 30, 1996 effective February 29, 1996.

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER A**3 GENERAL PROVISIONS

§6-02 Penalties.

(a) In addition to the civil penalties provided in subdivisions (c) and (d) of this section, an owner who maintains or operates a public pay telephone without a permit issued pursuant to this chapter, except for an owner all of whose public pay telephones are eligible for, and are in the process of, conversion to permit status under §6-38.1 of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars ($10,000) and imprisonment of not more than thirty days, or both such fine and imprisonment.

(b) Notwithstanding any other provision of this section:

(1) an owner who fails on two occasions within any three month period to provide phone service from a public pay telephone for any period of time exceeding twenty-four continuous hours or who fails to provide coinless twenty-four hour 911 service from such public pay telephone in compliance with the provisions of subdivision (a) or subdivision (b) of §6-05 of this chapter, as the case may be, shall be in violation of such subdivision(s) and shall be liable for a civil penalty of not more than two thousand five hundred dollars ($2,500) for each violation which may be recovered in a civil action or in a proceeding before the Environmental Control Board. In the case of a violation exceeding twenty-four hours, each day's continuance shall be a separate and distinct occasion in which an offense has occurred. An owner of a public pay telephone shall not be considered to have failed to provide the service required in this subdivision where such owner has posted and maintained a written notification on the public pay telephone within seventy-two hours of the occurrence and provided written notification to the Department, within twenty-four hours, of the occurrence of an

event or a condition beyond his or her control, such as a power failure or an inability of the telephone company to provide access to the switched telephone network, that has rendered such telephone unable to provide such service. However, in the event that service is not restored to the public pay telephone within ninety (90) days of the date the loss of service began, the owner of the public pay telephone shall again be considered to have failed to provide the service required in this subchapter unless the owner temporarily removes the public pay telephone installation and informs the Department of such temporary removal, which may not exceed six (6) months. If the temporary removal exceeds 6 months, the permit or other authorization for the public pay telephone shall be revoked and the public pay telephone must be removed. Notwithstanding the above, if the temporary removal exceeds six (6) months and either: (i) the public pay telephone site is inaccessible to the public; or, (ii) there is litigation pending concerning the failure of the provider to provide service to the subject public pay telephone, the six (6) month period may be extended in three (3) month intervals, subject to approval by DoITT, for each three (3) month extension.

(2) an owner who fails on at least two occasions, each such occasion lasting for a duration of forty-eight (48) hours, or on one occasion that lasts for a duration of seventy-two (72) hours to maintain a public pay telephone in compliance with the provisions of subdivision (c) of §6-05 of this chapter shall be in violation of such subdivision and shall be liable for a civil penalty of not more than one thousand dollars ($1,000) for each such violation.

(c) Notwithstanding any other provision of §6-02, violation of any provision of this chapter, including failure to comply with the requirements of subchapter B of this chapter with regard to an interim eligible public pay telephone, shall be punishable by a civil penalty of not more than one thousand dollars ($1,000) for each such violation, recoverable in a civil action or in a proceeding before the Environmental Control Board. In the case of a continuing violation, each day's continuance shall be a separate and distinct offense.

(d) An owner who is liable for a civil penalty for a violation pursuant to subdivision (c) of this section shall also be liable in the amount of the expense, if any, incurred by the city in the rendering inoperable, removal, storage and/or disposal of the public pay telephone and the performance of related repair and restoration work.

(e) An owner who violates any provision of Chapter 4 of Title 23 of the Code, or any term or condition of a permit issued pursuant thereto, or any rule promulgated by the Commissioner pursuant thereto shall be liable for a civil penalty of not more than one thousand dollars ($1,000) for each violation, which may be recovered in a civil action or in a proceeding before the Environmental Control Board. In the case of a continuing violation, each day's continuance shall be a separate and distinct offense.

(f) If the Commissioner reasonably believes that an owner, or any employee, agent or independent contractor of such owner, has violated any provision of Chapter 4 of Title 23 of the Code, or any provision of this chapter or any term or condition of a franchise agreement or permit issued pursuant thereto, the Commissioner may, pursuant to §23-408(i)(1)(dd) of the Code, suspend review of all applications for the issuance of permits filed by such owner. Prior to any such suspension, the Commissioner shall notify the owner of the violation or unsatisfactory condition identified by the Commissioner and specify the action that must be taken to correct the condition in such manner and within such period of time as shall be set forth in such notice. Upon receipt of said notice the owner may contest the Commissioner's decision by responding in writing within five (5) business days of receipt of the notification from the Commissioner. A final determination will be made by the Commissioner and the owner will be notified of the determination. If the owner's appeal is rejected, the owner will have five (5) days to correct the specified condition or violation, or said suspension will go into effect. Such suspension may continue until either the Commissioner no longer reasonably believes that a violation has occurred, or the violation has been corrected to the satisfaction of the Commissioner and payment has been made of all fines or civil penalties imposed for the violation, any costs incurred by the City in the rendering inoperable, removal, storage, and/or disposal of the public pay telephone and related repair or restoration work, and any fees for any administrative expense or expense of additional inspections incurred by the City as a result of such violation.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

Subd. (a) amended City Record Feb. 16, 2006 §2, eff. Mar. 18, 2006. [See Note 2]

Subd. (b) amended City Record Dec. 17, 1996 eff. Jan. 16, 1997. [See T67 §6-05 Note 1]

Subd. (b) par (1) amended City Record Feb. 16, 2006 §2, eff. Mar. 18, 2006. [See Note 2, also note internal renumbering by Law Department per Charter §1045(b)]

Subd. (b) par (1) numbered City Record Dec. 17, 1996 eff. Jan. 16, 1997. [See T67 §6-05 Note 1]

Subd. (b) par (2) added City Record Dec. 17, 1996 eff. Jan. 16, 1997. [See T67 §6-05 Note 1]

Subd. (b) emergency rule extended until Jan. 17, 1997 (City Record Oct. 25, 1996).

Subd. (b) amended City Record Sept. 23, 1996 eff. Oct. 23, 1996. [See Note 1]

Subd. (d) amended City Record Feb. 16, 2006 §2, eff. Mar. 18, 2006. [See Note 2]

Subd. (e) added City Record Feb. 16, 2006 §2, eff. Mar. 18, 2006. [See Note 2]

Subd. (f) added City Record Feb. 16, 2006 §2, eff. Mar. 18, 2006. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 23, 1996:

This emergency rule is promulgated pursuant to the authority of the Commissioner of Information Technology and Telecommunications under Sections 1043 and 1072 of the New York City Charter and subdivision b of §23-402 of the Administrative Code of the City of New York. Section 23-408(b) of the Administrative Code sets forth penalties for an owner of a public pay telephone that fails to provide coinless 911 service. This emergency amendment to the present rule authorizes the Department to enforce the requirement for coinless 922 service against all public pay telephones.

Ralph A. Balzano, Commissioner, September 19, 1996

IN COMPLIANCE WITH SECTION 1043(h)(1) OF THE NEW YORK CITY CHARTER and exercising the authority vested in the Commissioner of the Department of Information Technology and Telecommunications by section 1072 of such Charter, I hereby make the following finding of immediate threat to a necessary public service necessary to establish that an emergency rulemaking is required in relation to enforcement of the requirement that public pay telephones provide continuous coinless 911 service.

FINDING OF IMMEDIATE THREAT

The availability of coinless 911 access from public pay telephones is critical to the ability of the City to respond to emergency situations which may endanger the health and safety of citizens. Local Law No. 68 of 1995 recognizes the importance of this service by making failure to provide coinless twenty-four hour 911 service from a public pay telephone a violation punishable by a civil penalty of up to two thousand five hundred dollars for each violation. However, the current rules implementing Local Law No. 68 unnecessarily limit the agency's ability to enforce this provision to telephones that have received permits from the Department. At this time, most public telephones on the streets of the City have not received permits from the Department, but are instead listed on the Department's interim registry or have been previously licensed by the Department of Transportation under former provisions of the

Administrative Code. It is critical that the rules by modified to provide immediate authority to enforce the provisions of Local Law No. 68 against all public pay telephones that do not provide coinless 911 service, regardless of the nature of the authority or permission under which they operate.

It is therefore hereby certified that the immediate effectiveness of a rule enabling the Department to issue notices of violation for failure to provide coinless 911 service against all public pay telephones not providing such service is necessary to address an immediate threat to a necessary public service. This emergency rule will remove language limiting the violation to telephones that have received a permit and will authorize the Department to enforce the requirement for coinless 911 service with regard to all public pay telephones.

2. Statement of Basis and Purpose in City Record Feb. 16, 2006: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. The amendments to Chapter 6 of Title 67 of the Rules of the City of New York proposed above are intended to: clarify the existing rules by fixing typographical, numbering and other technical errors; establish additional requirements for enforcement of service requirements; explicitly provide that a violation of the Chapter 4 of Title 23 of the Administrative Code is a violation of these Rules; empower the Commissioner to suspend the review of applications under certain circumstances; clarify the requirements of coinless 911 service; clarify the maintenance requirements of these Rules; clarify which public pay telephone is covered by an individual permit; clarify when an owner has persistently failed to maintain a public pay telephone installation; clarify when a permit may be transferred; clarify when a permit application fee is not necessary; clarify when a permit may be terminated; clarify the requirements and process for requesting permission to reinstall a public pay telephone installation; clarify the application process; conform to the rules promulgated by the Landmarks Preservation Commission for public pay telephone installations in historic districts; clarify the application review process; clarifying the permit revocation process; clarify the move to the curb process; clarify the process and requirements for public pay telephone installation removal; further explicate criteria for approving sites; clarify the sign requirements; explain the installation and service requirements; and, clarify wiring requirements. Reason proposed rules were not anticipated and included in Regulatory Agenda The Department of Information Technology and Telecommunications' experience in administering the earlier Rules made evident certain shortcomings that needed to be addressed. The enactment of rules by the Landmarks Preservation Commission pertaining to public pay telephones further necessitated amending the Rules of the Department of Information Technology.

FOOTNOTES

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[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.
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[Footnote 3]: ** Subchapter added City Record January 30, 1996 effective February 29, 1996.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER A**3 GENERAL PROVISIONS

§6-03 Liability for Violations.

An owner of a public pay telephone shall be liable for a violation by his or her employee, agent or independent contractor of the provisions of this subchapter made in the course of performing his or her duties.

HISTORICAL NOTE

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other

requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.
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[Footnote 3]: ** Subchapter added City Record January 30, 1996 effective February 29, 1996.

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67 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER A**3 GENERAL PROVISIONS

§6-04 Notice.

Except where otherwise required by law, notice by the Commissioner pursuant to this chapter shall be by first class mail addressed to the address for service submitted in writing to the Department by an owner of a public pay telephone or as set forth in a permit for such telephone. Where an owner has provided a facsimile number with such address or on an application for a permit, notice shall be by facsimile to such number. Notice may also be by such other electronic or non-electronic means as the Commissioner may prescribe. In the case of a public pay telephone that is not identified on a registry or does not possess a permit issued pursuant to this chapter, such notice shall be provided only where the name and address of the owner is shown on the public pay telephone or can be readily identified by the Commissioner by virtue of a trademark prominently displayed on the public telephone. Notice may also be served on a public pay telephone owner by personal service or in any other manner permitted under the terms of a franchise agreement entered into by such public pay telephone owner or in any other manner reasonably calculated to achieve actual notice, including but not limited to any method authorized in the Civil Practice Law and Rules.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See Note 2]

Section amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See Note 1]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 22, 1996:

Section 23-403 of the Administrative Code, as added by Local Law Number 68 for the Year 1996, authorizes the Commissioner of Information Technology and Telecommunications to promulgate rules to implement the provisions of that law, including rules on requirements for public pay telephones. These amendments to the Rules are intended to address difficulties encountered in regard to the service of notice on foreign businesses and concerns that have been brought to the attention of the Department regarding the location of public pay telephones, the consistency of siting and other requirements with City policies regarding street furniture, compliance with the American Disabilities Act, and maintenance of, and graffiti on, Interim Registered public pay telephones.

2. Statement of Basis and Purpose in City Record Aug. 17, 1998: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of section 23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. A proposed rule to amend existing rules on this subject was published in **The City Record** on June 26, 1998. The above amendments to Chapter 6 of Title 67 proposed above are intended to: provide that notice may be by electronic means; provide more efficient means for communication between the Department and other relevant City agencies and conform the provisions for notification to Community Boards with the new guidelines established with respect to franchised public pay telephones; and clarify and expand requirements for wiring, siting, and signage required of public pay telephones. A final rule regarding other aspects of the June 26, 1998 proposed rule will be published at a later date.

FOOTNOTES

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[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify

the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.
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[Footnote 3]: ** Subchapter added City Record January 30, 1996 effective February 29, 1996.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER A**3 GENERAL PROVISIONS

§6-05 Maintenance of Public Pay Telephones.

(a) **Coinless 911 service.** A public pay telephone shall provide twenty-four hour access to 911 service without use of a coin or other payment device. For purposes of this subdivision a violation of this requirement may be found where a public pay telephone lacks a dial tone, a clear and audible transmission and reception, a keyboard and handset in working order, or any other feature necessary to provide or obtain access to 911 service (such as, but not limited to, coinless access to an operator services provider).

(b) **Telephone service.**

(1) A public pay telephone shall be installed, operated and maintained in a condition to accept a coin, credit card, prepaid debit card or other appropriate payment device and the telephone must enable a call to be completed when the proper payment has been made;

(2) The return mechanism of a public pay telephone shall be in working order and provide customers with return of coins when calls are not completed;

(3) A public pay telephone shall provide access to operator service without use of a coin or other payment device.

(c) **Cleanliness.** A public pay telephone installation shall be maintained in accordance with the provisions of this

subdivision.

(1) A public pay telephone shall be maintained free of offensive odors, litter, debris and damage.

(2) A public pay telephone shall be maintained free of stickers and graffiti.

(3) A public pay telephone shall be maintained in a clean condition, free of grime and rust and clean to the touch.

(4) All lettering and signage on an installation shall be clean and legible at all times.

(5) All painted surfaces must be repainted at least once per year.

(d) **Safety.**

(1) A public pay telephone installation that has been displaced from its original installation configuration (e.g. motor vehicle collision) must be made safe within 24 hours of displacement and removed or restored to its original position within 72 hours of displacement.

(2) A public pay telephone installation, or any section or component thereof, that becomes broken in place, fractured or otherwise detached must be made safe within twenty-four hours and fully repaired within 72 hours.

(e) **Enforcement.**

(1) A notice of violation may be issued for a violation of a provision of subdivision (a) of this section when inspections on two occasions within a period no shorter than twenty-four hours have disclosed a violation of such provision.

(2) A notice of violation may be issued for violation of subdivision (b) of this section where inspections have disclosed that telephone service was unavailable on two occasions, each such occasion lasting for a duration of at least twenty-four (24) hours, within a period of ninety (90) calendar days. Each twenty-four hour period in which a failure to provide telephone service continues shall constitute a separate occasion on which an offense has occurred.

(3) A notice of violation for violation of a provision of subdivision (c) of this section may be issued where inspections disclose violation of such subdivision continuing at least forty-eight (48) hours on two separate occasions within a period of ninety (90) calendar days or a violation lasting at least seventy-two (72) hours on one occasion.

(4) A notice of violation for a violation of a provision of subdivision (d) of this section may be issued where two inspections at least seventy-two (72) hours apart disclose that a displaced public pay telephone has not been restored to its original position or that an installation or portion of an installation has been broken in place, fractured, detached or is otherwise unsafe and has not been repaired or made safe.

(5) A violation shall be considered to have continued throughout a period specified in this subdivision when a condition set forth in subdivisions (a), (b), (c) or (d) of this section has been identified upon at least two inspections that encompass such period within one hundred sixty-eight (168) hours; provided that, demonstration by an owner that the condition underlying such violation was corrected within such period shall be a defense to an action pursuant to §6-05.

(f) **Damage to streets.** An owner of a public pay telephone installation shall be responsible for all repairs to streets damaged due to the placement, installation, maintenance or removal of such public pay telephone installation.

HISTORICAL NOTE

Section amended City Record Feb. 16, 2006 §3, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Dec. 17, 1996 eff. Jan. 16, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 17, 1996:

Subdivision b of section 23-403 of the Administrative Code of the City of New York authorizes the Commissioner of the Department of Information Technology and Telecommunications to issue regulations governing the operation, cleaning and maintenance of public pay telephones.

The amendment to subdivision b of section 6-02 authorizes the Commissioner, in conformity with the provisions of section 23-408(b) of the Administrative Code, to enforce the requirements for coinless 911 service and other telephone maintenance against all public pay telephone owners. The amendment redefines a repeated failure to provide telephone service for a sustained period as failure to provide telephone service for a duration of twenty-four hours two times within a three month period and specifies that each twenty-four hour period in which telephone service is not provided shall constitute a separate instance in which a violation has occurred. In addition, the amendment provides that an owner shall be liable for a penalty of up to one thousand dollars ($1,000) for failure to clean telephones in accord with section 6-05(c) on two occasions lasting forty-eight hours each or on one occasion lasting seventy-two hours.

The new section 6-05 sets forth specific standards for operability and cleanliness of public pay telephones that applies to all such telephones on, over or under any street or other inalienable property of the City. Subdivision e of section 6-05 provides that the Department may enforce violations of the coinless 911 requirements after inspections that are at least twenty-four hours apart disclose a failure of service that was not restored within a day, and may enforce violations of the cleanliness requirements after inspections have disclosed two violations lasting at least forty-eight hours each or one violation lasting seventy-two hours. The Department has recognized the need to fulfill both its obligation to the public to enforce proper service and maintenance standards and to provide reasonable time for owners to correct violations. An owner will be able to meet the standards of section 6-05 by establishing an internal inspection program by which each phone's operability will be checked, either remotely through industry "smart phones" or daily inspections, and by providing for regular inspections for cleanliness and maintenance within a time frame consistent with the Department inspection cycle set forth in subdivision d.

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.
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[Footnote 3]: ** Subchapter added City Record January 30, 1996 effective February 29, 1996.

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67 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER A**3 GENERAL PROVISIONS

§6-06 Advertisements.

(a) A public pay telephone shall not display advertising material, unless in accordance with the provisions of a franchise. In no event shall advertising material be displayed on a newly erected public pay telephone installation until dial tone service from all public pay telephones installed within such installation has commenced. However, if:

(1) dial tone has not been established by a provider of same within thirty (30) days after the erection of the installation and the emplacement of all public pay telephones to be installed within such installation, and the request of the franchisee to the provider to establish such service; and

(2) said franchisee has provided the Department with (i) proof in a form acceptable to the Commissioner that said franchisee has installed the necessary conduit or duct and completed all necessary steps for ordering dial tone service, (ii) a copy of the Department of Transportation street opening permit for the installation, and (iii) proof in a form acceptable to the Commissioner that the conduit or duct has been properly installed; and

(3) said franchisee has placed and maintained a clear, legible and visible sign, placard or other form of announcement on the enclosure explaining the cause(s) of the failure after thirty (30) days to provide dial tone on any and all pay telephone(s) without dial tone; then

(4) said franchisee may display advertising at such installation unless the Department determines that the

franchisee has acted in bad faith regarding establishing dial tone at the pay telephones in such installation.

(b) Except as otherwise provided in subdivision (a) of this §6-06, in no event shall advertising material be displayed on any public pay telephone installation during any period in excess of the longer of either forty-eight (48) hours or two (2) business days, that a telephone has been removed from within such installation and not replaced by a functioning telephone, or any or all of the telephones with such installation are unable to provide dial tone, unless the franchisee has provided notice to the Department with respect to the circumstances underlying the loss of dial tone such as power failure or the inability of the dial tone provider to provide access to the public switched telephone network. The Department may require advertising material to be removed from said installation if the Commissioner determines that said franchisee could have avoided interruption of dial tone or re-established service within forty-eight (48) hours or two (2) business days.

(c) The display of advertising on any enclosure installed pursuant to a notice to proceed issued after December 4, 2004 shall be prohibited in the following Community Districts of Manhattan: 1, 2, 3, 4, 5, 6, 7, and 8.

(d) In locations where these Rules prohibit the display of advertising, the public pay telephone installation shall be the smallest design currently approved by the Art Commission.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Dec. 17, 1996 eff. Jan. 16, 1997. [See T67 §6-05 Note 1]

Subd. (a) amended City Record Feb. 16, 2006 §4, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (c) amended City Record Feb. 16, 2006 §4, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (c) added City Record Oct. 5, 2004 §1, eff. Dec. 4, 2004 per the Notice of Adoption. [See

Note 1]

Subd. (d) added City Record Feb. 16, 2006 §4, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 5, 2004:

The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones located on, over or under the streets or other inalienable property of the City of New York.

The amendments to Chapter 6 of Title 67 of the Rules of the City of New York are intended to: restrict the display of advertising on public pay telephones in certain areas of Manhattan; increase the fees for the processing of an application for a permit to install, operate and maintain a public pay telephone to cover a larger percentage of the actual costs to the City of processing such application; and establish a fee to process an application for an Extension to a Notice to Proceed to cover the actual costs to the City of processing such an application. The amounts set for fees in the above amendments reflect a percentage of the actual administrative costs incurred by the Department of Information Technology and Telecommunications in issuing the permits in question.

Comments received by DoITT on the proposed amendments are discussed and responded to in the Report referred to above, which is available on DoITT's website at the web address referred to above.

CASE NOTES

¶ 1. Under Admin. Code § 23-403 and City Charter § 1072, the agency had the power to enact regulations restricting advertising on public telephones. Moreover, the regulation does not violate the substantive due process clause of the New York State Constitution, Art. 1, Sec. 6. Coastal Communication Service, Inc. v. New York City Dept. of Information Technology and Communications, 12 Misc.3d 1179(A), 2006 WL 1879115 (Sup.Ct. New York Co.).

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

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[Footnote 3]: ** Subchapter added City Record January 30, 1996 effective February 29, 1996.

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67 RCNY 6-21

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-21 Maintenance and Operation of Interim Eligible Public Pay Telephone Without a Permit.

On and after March 31, 1996, no interim eligible public pay telephone may continue to be operated or maintained on, over or under any street or other inalienable property of the City unless such telephone is in compliance with the provisions of §6-22 of this subchapter, provided that an event described in §6-23 of this subchapter has not occurred. An owner who operates an interim eligible public pay telephone in violation of this section shall be in violation of the permit requirements of §23-402 of the Code and shall be subject to the penalties set forth in subdivisions (a), (c) and (d) of §6-02 of this chapter and removal of such telephone pursuant to §6-26 of this chapter.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

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[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

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67 RCNY 6-22

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-22 Conditions for Maintenance and Operation of Interim Eligible Public Pay Telephone; Registry of Interim Eligible Public Pay Telephones.

An interim eligible public pay telephone may continue to be maintained and operated on or after March 31, 1996 only if (i) the owner has identified such telephone on a registry of public pay telephones and submitted such registry and has paid the interim occupancy fee for such telephone as required by the provisions of §6-24 of this subchapter, and (ii) the Commissioner has not objected to the continued maintenance and operation of such telephone for a reason set forth in subdivision (a) of §6-25 of this subchapter or, if the Commissioner has objected, such objection has been cured or has been withdrawn.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.
4

[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

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***** Current through December 2009 ****

67 RCNY 6-23

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-23 Discontinuance of Interim Eligible Public Pay Telephones Identified in Registry.

The continued maintenance and operation of interim eligible public pay telephones identified in a registry of public pay telephones shall no longer be authorized if and when any of the following occurs: (i) the owner has declined to respond to the request for proposals or other solicitation of proposals issued by the Commissioner for the purpose of entering into franchise agreements for the installation, operation and maintenance of public pay telephones within the time period specified in such request for proposals or other solicitation of proposals and sixty days have elapsed following such failure to respond; (ii) the Commissioner has determined not to propose the award of a franchise to such owner to the Franchise and Concession Review Committee and sixty days have elapsed following notification to such owner of the Commissioner's determination; or (iii) the Franchise and Concession Review Committee has determined not to approve a proposed franchise agreement for such owner and sixty days have elapsed following notification to such owner of the Committee's determination. However, such public pay telephone may continue to be maintained and operated if, within any such sixty day period the owner enters into an agreement for the sale of such public pay telephone to another entity that, at the time such agreement is concluded, is either a potential franchisee or has been awarded a franchise, and ownership of such public pay telephone is transferred within ninety days after such agreement is concluded.

HISTORICAL NOTE

Section amended City Record Feb. 16, 2006 §5, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.

4

[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

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RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-24 Interim Registries.

(a) **Deadline for submission.** (1) An owner of an interim eligible public pay telephone shall submit a registry to the Commissioner at the office of the Department containing a list of all such interim eligible public pay telephones no later than March 15, 1996. An interim eligible public pay telephone not listed in a registry as of March 31, 1996 is in violation of the permit requirements of §23-402 of the Code and §6-20 of this chapter, and the owner thereof shall be subject to the penalties provided therein.

(2) An owner who has failed to submit a registry on or before March 15, 1996, or has failed to submit a complete registry on or before March 31, 1996, and who pays the civil penalties assessed for such violation and a fee of $75 for each telephone for the year ending March 14, 1997, may submit a registry or add to a registry between February 13, 1997 and March 14, 1997. In addition, an annual fee of $75 for each telephone shall be paid for each succeeding year in accordance with the provisions of subdivision (d) of this section.

(3) In no case shall a public pay telephone installed and activated subsequent to March 1, 1996 be included in a registry submitted or updated pursuant to this section. A registry that does not comply with the provisions of this section shall not be accepted by the Commissioner.

(b) **Form and contents.** (1) A registry shall be in the form prescribed by the Commissioner in Appendix A to this subchapter.

(2) A registry shall state:

(i) the name and address of the owner;

(ii) the geographic location of each public telephone identified on the registry and the type of mounting for each such telephone; and

(iii) the date of installation and activation of each public pay telephone identified on the registry, accompanied by documentation of the activation.

(c) **Certification.** A registry shall be accompanied by a notarized certification that the information on the registry is accurate and that each public telephone identified thereon provides (i) continuous twenty-four hour service, (ii) continuous twenty-four hour coinless 911 access and (iii) continuous New York State Public Service Commission approved operator services. Such certification shall be in the form prescribed by the Commissioner in Appendix B to this subchapter. In addition to any penalty provided pursuant to §6-02 of this chapter an owner who submits a certification pursuant to this subdivision knowing that such certification contains a false statement or false information shall be subject to prosecution under article one hundred seventy-five of the penal code and the telephones with respect to such certification shall be removed pursuant to §6-26 of this chapter.

(d) **Fee for interim eligible public pay telephones.**

(1) The fee for each public pay telephone identified in a registry shall be seventy-five ($75) dollars a year. Such fee may be paid in full upon submission of the registry or may be payable quarterly following the schedule set forth below. Each payment shall specify, in the form prescribed by the Commissioner, whether the amount submitted represents yearly or quarterly payments.

(2) Quarterly payments shall be submitted each year as follows:

First payment: March 15, except that the first payment in the year 1996 shall be due on March 31; Second payment: June 15; Third payment: September 15; Fourth payment: December 15.

(3) **Partial payments shall not be accepted.** An owner of interim eligible public pay telephones shall submit yearly payment in full in advance or quarterly payment in full in advance for each such telephone identified on the registry by the required date.

(4) In the event that the owner of an interim eligible public pay telephone identified on a registry and otherwise in compliance with the provisions of this subchapter is awarded a franchise prior to the expiration of a period for which payment for such telephone has been received by the Department, the amount of such payment shall be prorated to the time remaining in such period, and the remainder shall be applied to the fee for a permit pursuant to the franchise.

(5) In the event that the Commissioner determines not to recommend the award of a franchise prior to the expiration of a period for which payment for a public pay telephone has been received by the Department or in the event that the Franchise and Concession Review Committee determines not to award a franchise to such owner prior to the expiration of such period, the amount of such payment shall be prorated to the time that the Department receives certification that such telephone has been transferred or removed, and the remainder shall be reimbursed to the owner.

(6) In the event that the Commissioner objects to a public pay telephone and requires the removal of such telephone pursuant to this subchapter, the fee paid for the interim registry of such public pay telephone shall be prorated to the time such telephone was authorized to be operated and maintained and the remainder shall, upon certification by the owner that such telephone has been removed, be reimbursed to the owner.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

Subd. (a) amended City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See Note 1]

Subd. (b) amended City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See Note 1]

Subd. (d) par (3) amended City Record Feb. 16, 2006 §6, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 13, 1997:

Section 23-403 of the Administrative Code, as added by Local Law 68 for the Year 1996, authorizes the Commissioner of Information Technology and Telecommunications to promulgate rules to implement the provisions of that law, including rules on requirements for public pay telephones. These amendments to the Rules address difficulties encountered in regard to the Interim Registry, Public Nuisance Telephones and Siting and Clearance Requirements. PPTs not currently on the interim registry may be added to the registry between February 13, 1997 and March 14, 1997 upon payment of all fees and penalties. In order to register a PPT, owners will be required to pay in full the $75 interim registry fee for the year ending March 14, 1997 and a penalty for operating a PPT without a permit. Thereafter, an annual fee of $75 shall be paid for each PPT on a registry. The Environmental Control Board has agreed to assess a fine of $400 for violations of section 23-402 of the Rules for a PPT submitted for the registry during this period. Each PPT added to the registry incurs a separate penalty. In addition, proof that the PPT was installed and activated prior to March 1, 1996 will be required.

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify

the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.
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[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-25 Objection by the Commissioner.

(a) The Commissioner may object to the continued maintenance and operation of an interim eligible public pay telephone at the time a registry is submitted or any time thereafter. The Commissioner may make such objection upon the basis that the maintenance and operation of such public pay telephone: (i) poses a danger to life or property, including but not limited to the reasons that such telephone does not meet applicable standards in the Building Code (Title 27, Chapter 1 of the Code) or such telephone does not have twenty-four hour coinless 911 access or New York State Public Service Commission approved operator service; (ii) unreasonably interferes with the use of a street by the public; (iii) unreasonably interferes with the abutting property; (iv) is a public nuisance as such term is defined in §23-401 of the Code or §6-01 of this Chapter, when a complaint, including but not limited to a complaint by the Community Board in the Community District in which such telephone is located, that such public pay telephone constitutes a public nuisance as so defined has been verified by the police precinct in which such telephone is located; or (v) interferes with a street widening or other capital project.

(b) Where the Commissioner objects to a public pay telephone pursuant to subdivision (a) of this section, he or she shall notify the owner of such telephone in writing. Such notice shall state the basis on which the Commissioner objects to the continued maintenance and operation of such telephone and shall specify the condition or conditions underlying such objection. The Commissioner may, in his or her discretion, permit such telephone to be operated and maintained subject to such corrective conditions as the Commissioner shall prescribe.

(c) Within fifteen days of such notice of a Commissioner's objection, the owner may respond to the Commissioner in writing, and may (i) set forth any reason the owner believes the Commissioner's objection should be withdrawn or (ii) certify to the Commissioner, in a form prescribed by the Commissioner, that the condition underlying such objection has been corrected.

(d) The Commissioner shall review such response and may determine whether or not to withdraw the objection. Where the Commissioner determines not to withdraw an objection to a public pay telephone, he or she shall notify the owner of such determination and the reasons therefor and shall require that such telephone be removed immediately or, if appropriate, afford such owner an opportunity to cure the condition underlying the objection, as appropriate. Such notice shall specify the time by which certification must be received that such condition has been corrected.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

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4

[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

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Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-26 Removal.

(a) **Failure to Submit Registry.** An owner who fails to submit a registry pursuant to the provisions of this subchapter shall immediately remove all interim eligible public pay telephones.

(b) **Additional Grounds for Removal.** In addition, an owner of an interim eligible public pay telephone shall immediately remove such telephone:

(i) if such telephone has not been identified in the registry submitted pursuant to the provisions set forth in §6-22 of this subchapter;

(ii) upon the occurrence of an event described in §6-23 of this subchapter;

(iii) upon an objection by the Commissioner to such telephone pursuant to §6-24 of this subchapter, unless the condition underlying such objection could be cured without removing such telephone and such objection has been cured by the time required by the Commissioner or the Commissioner has withdrawn the objection;

(iv) if the fees for such telephone have not been paid by the required date;

(v) if the certification required pursuant to §6-24 of this subchapter has been determined to be false.

(c) **Removal by Department.** Upon failure of an owner to remove a public pay telephone as required by the provisions of this section, such telephone shall be subject to removal by the Department pursuant to paragraph (aa) of subdivision i of §23-408 of the Code. The Commissioner shall notify the owner that such telephone has been removed by the Department. Such notice shall inform the owner of the requirements for reclaiming such telephone. Where removal of a public pay telephone has been ordered by the Commissioner pursuant to the provisions of subdivision b of §23-404 of the Code due to a street widening or other capital project, or other improvement, and the owner of such public pay telephone does not choose to install such telephone at a different location, the fee for such telephone shall be prorated to the time such telephone was authorized to be operated and maintained and the remainder thereof refunded to the owner.

(d) **Failure by Owner to Remove.** Failure to remove a public pay telephone as required by the provisions of this section shall constitute a violation of this subchapter and shall subject the owner of such telephone to the penalties provided therefor in §6-02 of this chapter.

HISTORICAL NOTE

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

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[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

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Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-27 Requirement of Registry as Precondition for Permit.

An owner of an interim eligible public pay telephone who has been awarded a public pay telephone franchise shall be eligible to receive a permit pursuant to this chapter only if (i) the owner has identified such telephone on a registry of public pay telephones and submitted such registry and all interim occupancy fees for such telephone as required by the provisions of this subchapter, and (ii) the Commissioner has not objected to such telephone, or such objection has been withdrawn or the condition underlying such objection has been cured to the satisfaction of the Commissioner.

HISTORICAL NOTE

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year

1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

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4

[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

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67 RCNY 6 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX A*1 PUBLIC PAY TELEPHONE INTERIM REGISTRY SUBMISSION

APPENDIX A*1 PUBLIC PAY TELEPHONE INTERIM REGISTRY SUBMISSION

The following is instructional information on the process of submitting a Public Pay Telephone Interim Registry to the Department of Information Technology and Telecommunications. The Interim Registry information submission is done in 2 parts. The first part is a **single line** providing information about the company. There should only be one single line entry with information about the company.

The second part is made up of **multiple single line entries,** one line providing information on each of the individual Public Pay Telephones being submitted as part of the company's registry. Each Public Pay Telephone (PPT) being submitted as part of the Interim Registry must have a line in part 2. Samples of each acceptable submission entry types are included. You must fill out all fields. Interim Registry submissions should be sent to: The Department of Information Technology

and Telecommunications

11 MetroTech Center, Third Floor

11201

Att: PPT-IR Submission

Computer Compatible Format

ASCII Text-File Format

It is preferred that this information be supplied in computer compatible format, preferably in an ASCII text-file format submitted on a 3.5" diskette(s). Most spreadsheets, databases and word processor applications (for example LOTUS 1-2-3, DBASE, WORDPERFECT) provide for the conversion of their respective native files into an ASCII text-file format that allow for the transfer of data between applications.

If you cannot provide a converted ASCII text-file format from your computer's application please submit it in its native format following the same order of columns or fields as requested. **See Spreadsheet, Database and Word Processor Submissions.**

The ASCII Text-File information being requested is column dependent. That is, the number of characters in a column is preset and must not be altered. If the data requested does not fill up an entire designated column then the rest of the field should be filled with spaces until the total amount of characters for the designated columns is entered. For example, if your company name (columns 1-50) fills columns 1 through 35, then columns 36 through 50 should be filled with space characters. We have attempted to allow for a wide variety of entries. If the data requested does not fit in the column then use standard abbreviations. This should be followed for all columns. A breakout of the required fields and their respective column positions is described in Table I.

Spreadsheet, Database and Word Processor Submissions

If you are submitting a spreadsheet, database or word processor file then the respective columns or fields must follow the specified order and breakdown as those stated in the ASCII text-file format. The amount of information taken from any one column or field will be the same as that reflected in the ASCII text-file format. The company information columns/fields and the PPT information columns/fields should be the same width, conforming to whichever column/field is larger.

Handwritten/Typed Submissions

Handwritten or typed submissions must follow the same format as the computer compatible entered. They should either be typed or clearly printed. A blank form is appended that may be copied should more pages be required.

Interim Registry Payments

All payments must be made by check or money order payable to: The NYC Department of Finance

[Table 1]:

Sample I ASCII Text-File FormatFirst Part-Company Information

Blue Rock Communications, Inc. 1500 Bluebird St. Binghamton NY 113590110 9145648700 Jackie Q. Smith President 9145648720

1_____50 51_____100 101_____125 126-127 128_____136 137_____146 147_____196 197_____221 222_____231

Sample I Second Part-PPT Information

2125553210 MN 123-45 Queens Blvd* SE Broadway 44 St* 42 St. 8 Ave 7 Ave. E* Pedestal Small N 06/14/93 07/02/93 OSP PROS INC

1_____10 11-12 14_____23 24_____43 44-45 46_____65 66____85 86____105 106____125 126____145 146 147____156 157____166 167 168_____175 176_____183 184_____233

* Use only one method of providing PPT location per unit. Unused methods should contain all spaces.

Sample 2 Spreadsheet, Database and Word Processor Submissions

Blue Rock Communications, Inc.	1500 Bluebird St.	Binghamton	NY	113590110	9145648700	Jackie Q. Smith	President	9145648720

2125553210	MN	123-45	Queens Blvd*	SE	Broadway	44 St*	42 St	8 Ave

Sample 2 Spreadsheet, Database and Word Processor Submissions (continued)

7 Ave	E*	Pedestal	Small	N	06/14/93	07/02/93	OSP PROS INC

* Use only one method of providing PPT location per unit. Unused methods should contain all spaces.

Sample 3 Manual Entry Sheet for Public Pay Telephone Interim Registry Submission

Sample 3 First Part-Company Information

Company Name	Company StreetAddress	City	State	Zip Code + 4	CompanyTelephone Number	Contact	Contact Title	Fax Number
Blue RockCommunications, Inc.	1500 Bluebird St.	Binghamton	NY	113590110	9145648700	Jackie Q. Smith	President	9145648720

See guidelines in Table I Part 1.

Sample 3 Second Part-PPT Information

Telephone Number	Boro	PPT location 1.*		PPT location 2.*		PPT location 3.*		
2125553210	MN	123-45	Queens Blvd*	SE	Broadway	44 St*	42 St	8 Ave	7 Ave	E*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationDate	Operator Service Provider
Pedestal	Small	N	06/14/93	07/02/93	OSP PROS INC.

See guidelines in Table I Part 2. *Use only one method of providing PPT location per unit.

Table I

Part 1-Company information. One line for entire file, followed by Part 2.

ItemNumber	Columns	Description
1	1-50	Company NameInsert the name of the company as it would appear in any legally binding document, e.g. Blue Rock Communications, Inc.
2	51-100	Company Street Addresse.g. 1500 Bluebird St.
3	101-125	Citye.g. Binghamton
4	126-127	StateNote: 2 characters maximum, no periods, e.g. NY

5	128-136	Zip Code + 4Standard Zip Code plus 4 digit extension, if available, without dashes or blanks.e.g. 113590110
6	137-146	Company Telephone NumberArea Code and 7 digit number, without dashes or blanks.e.g. 9145648700
7	147-196	ContactPlace name of company contact person in First Name, Middle Initial, Last Name order. Do not include the commas.e.g. Jackie Q. Smith
8	197-221	Contact Titlee.g. President
9	222-231	Fax NumberArea Code and 7 digit number, without dashes or blanks.e.g. 9145648720

Table I

Part 2-PPT information. One line for each PPT entry.

ItemNumber	Columns	Description
1	1-10	Telephone numberArea Code and 7 digit number, without dashes or blanks.e.g. 2125553210
2	11-12	Boroughe.g. Manhattan=MN Bronx=BX Brooklyn=BK Staten Island=SI Queens=QN
3a	14-2324-43	PPT location 1.*Street address-This is the first, and most preferable, of three available methods to provide the physical location of a PPT. It is done in 2 sections. The first section (columns 14-23) should provide the street number, e.g. 123-45, the second section (columns 24-43) should provide the street name, e.g. Queens Blvd
3b	44-4546-6566-85	PPT location 2.*Corner installations-This method describes corner installations that are not tied to a street address. It is done in 3 sections. The first section (columns 44-45) should provide the compass direction of the PPT location at the intersection, i.e. Northwest=NW, Northeast=NE, Southwest=SW, Southeast=SE. The second section (columns 46-65) should provide the primary intersecting street, e.g. BroadwayThe third section (columns 66-85) should provide the secondary intersecting street, e.g. 44 St
3c	86-105106-125 126-145146	PPT location 3.*Mid block installations-This method describes mid block installations that are not tied to a street address. It is done in 4 sections.The first section (columns 86-105) should provide the street the PPT is located on.e.g. 42 StThe second section (columns 106-125) should provide the first bordering street, e.g. 8 AveThe third section (columns 126-145) should provide the second bordering street, e.g. 7 AveThe fourth section (column 146) should provide the compass direction of the side of the street the PPT is located on, i.e. North=N South=S East=E West=W
4	147-156	Mounting TypeDescribe the type of mounting supporting the PPT, e.g. Pedestal, Wall or if it is another type, describe.
5	157-166	Housing TypeDescribe the type of housing around the PPT, i.e. None, Small (i.e. Sardine Can), 3/4 Booth or if it is another type, describe.
6	167	Curbside installationIf PPT is installed at the curbside indicate by typing Y, if not type in N.

7	168-175	Installation DateNote the date original installation of the PPT. Format is MM/DD/YR, e.g. 06/14/93.
8	176-183	Activation DateNote the date of original activation of the PPT. Format is MM/DD/YR, e.g. 07/02/93.
9	184-233	Operator Service ProviderNote the name of the Operator Service Provider for the PPT, e.g. OSP PROS INC.

*Use only one method of providing PPT location per unit. Unused methods should contain all spaces.

[Table 2]:

Manual Entry Sheet for Public Pay Telephone Interim Registry Submission

Please type or print clearly

Sample 3 First Part-Company Information

Company Name	Company StreetAddress	City	State	Zip Code + 4	CompanyTele-phone Number	Con-tact	Contact Title	Fax Num-ber

See guidelines in Table I Part 1. This entry should be submitted only once.

Sample 3 Second Part-PPT Information

Telephone Number	Bor o	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

See guidelines in Table I Part 1. *Use only one method of providing PPT location per unit.

Sample 3 Second Part-PPT Information

Telephone Number	Bor o	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

Sample 3 Second Part-PPT Information

Telephone Number	Bor o	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

[Table 3]:

Please type or print clearly

Sample 3 Second Part-PPT Information

Telephone Number	Boro	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

Sample 3 Second Part-PPT Information

Telephone Number	Boro	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

Sample 3 Second Part-PPT Information

Telephone Number	Boro	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

Sample 3 Second Part-PPT Information

Telephone Number	Boro	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

FOOTNOTES

1

[Footnote 1]: * Appendix A added City Record January 30, 1996 effective February 29, 1996. [See Chapter 6 footnote]

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67 RCNY 6 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

APPENDIX B*8 CERTIFICATION

This certification must be completed before a notary public by the owner or authorized representative of the owner of the public pay telephones identified on the registry submitted herewith.

A MATERIAL FALSE STATEMENT OR OMISSION MADE IN THE INFORMATION SUBMITTED ON A DOCUMENT SUBMITTED IN CONNECTION WITH ANY PUBLIC PAY TELEPHONE IDENTIFIED ON THE REGISTRY OF PUBLIC PAY TELEPHONES AFFIXED HERETO IS SUFFICIENT CAUSE FOR REMOVAL OF SUCH TELEPHONE FROM THE REGISTRY, THEREBY REQUIRING THE REMOVAL OF SUCH TELEPHONE FROM ITS LOCATION AND PRECLUDING THE OWNER FROM OBTAINING A PERMIT FOR SUCH TELEPHONE PURSUANT TO LOCAL LAW 68 FOR THE YEAR 1996. IN ADDITION, SUCH FALSE SUBMISSION MAY SUBJECT THE OWNER AND/OR ENTITY MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

I _____ (full name), being the owner [or an authorized representative of the owner] of the public pay telephones identified on the registry submitted herewith. _____ (name of owner), and being duly sworn, do hereby certify that, to the best of my knowledge, the information presented in this and any accompanying document as noted below, including any form of computer diskette, is, to the best of my knowledge, truthful, accurate and complete.

I certify further that each public pay telephone identified on the registry submitted herewith provides twenty-four hour coinless 911 service and operator service in compliance with the requirements of the New York State Public Service Commission and is in compliance with the safety requirements contained in the Building Code (Administrative Code of the City of New York, Title 27, Chapter 1).

Accompanying documents (include any submission, such as computer diskette):

_____; _____;

_____; _____;

_____; _____;

_____; _____.

Company: _____Title: _____Print Name: _____Signature: _____

Sworn to me

this ____ day of ____, 199__

(Notary Public)

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RULES OF THE CITY OF NEW YORK

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APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-30 Permit Required.

(a) Except as provided in subchapter B of this chapter in regard to interim eligible public pay telephones and subdivision (a) of §5 of Local Law No. 68 for the Year 1995 in regard to telephones licensed pursuant to former §§19-131 or 19-128 of the Code, no public pay telephone shall be installed, operated or maintained on, over or under any street or other inalienable property of the City, or installed such that a user of such public pay telephone can only use such telephone while standing, in whole or in part, on the inalienable property of the City, unless the owner of such telephone has received a permit for such telephone from the Commissioner pursuant to the provisions of this subchapter. Pursuant to §7 of Local Law No. 68 for the Year 1995, the period of three years following the effective date of Local Law No. 68 for the Year 1995, provided for in subdivision (a) of §5 of such local law regarding the continuation in effect of the licenses previously issued to the telephone company, and the period of three years provided for in subdivision (c) of such section regarding the obligation of the telephone company to pay commissions, are extended until September 4, 1999, or until ninety days following such date as the telephone company may be granted a franchise to install, operate and maintain public pay telephones, whichever is earlier.

(b) A permit shall include such terms and conditions for the operation of a public pay telephone as the Commissioner deems necessary to protect the public safety and to safeguard the interests of the City, including but not limited to the requirements that such telephone be in compliance with the requirements set forth in subchapter D of this chapter.

(c) A permit issued pursuant to this subchapter is valid only for the public pay telephone installation at the location for which such permit was issued and may not be transferred to a person other than the owner to whom such permit was issued without the written approval of the Commissioner.

(d) Notwithstanding any other provision of this chapter, a permit for a public pay telephone shall not be issued, unless the owner of such telephone demonstrates that he or she has obtained all permissions required by applicable provisions of Federal, State and local law, as well as rules and regulations promulgated and agreements entered into pursuant thereto.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (a) amended City Record Feb. 16, 2006 §7, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (a) amended City Record Mar. 8, 1999 eff. Apr. 7, 1999. [See Note 1]

Subd. (c) amended City Record Feb. 16, 2006 §8, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 8, 1999:

The Commissioner of the Department of Information Technology and Telecommunications is authorized by §7 of Local Law No. 68 for the Year 1995 to extend any time period provided for in §5 of Local Law No. 68 for the Year 1995, based upon a determination that such extension would be in the best interests of the City. The Commissioner has determined that the extension of the period of three years to three and one-half years from the effective date of Local Law No. 68 for the Year 1995, for the telephone company to retain its licenses issued pursuant to former §§19-131 and 19-128 of the Administrative Code of the City of New York, in effect pursuant to §5(a) of Local Law No. 68, and for the telephone company to retain its obligation to pay commissions on revenues derived from public pay telephones, in effect pursuant to §5(c) of Local Law No. 68, is in the best interests of the City. This extension will allow the City to complete the process of franchising public pay telephones, as contemplated by Local Law No. 68, and provided for in City Council Authorizing Resolution No. 2248, dated March 25, 1997, and the Revised Request for Proposals for Franchises for Public Pay Telephones, released June 9, 1997.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043(e)(1)(c) of the New York City Charter, that there is a substantial need for the implementation, immediately upon its final publication in The City Record, of a rule to further extend the three-year extension of existing telephone company licenses and commission payments pursuant to section five of Local Law No. 68 for the Year 1995 ("Local Law 68") by six months, until September 4, 1999. The earlier implementation of such rule is necessary to provide regulatory continuity until the City has completed the process of franchising public pay telephones. Local Law 68 contemplated that the franchising process would be completed within three years of the effective date of the law. Section five of Local Law 68, therefore, extended existing public pay telephone licenses held by the telephone company, as well as the telephone company's obligation to pay commissions to the City on revenues derived from such licenses, for a period of three years from the effective date of the law (until March 4, 1999). However, Local Law 68 also recognized that an extension of this period might be needed, and provided that it could be extended by the DoITT Commissioner by rule, upon a determination that such extension would be in the best interests of the City (Local Law 68, §7). While DoITT has made substantial progress towards the award of franchises and anticipates making awards in the next several months, the process has been lengthier than anticipated for several reasons, including a modification by the City Council of the Authorizing Resolution governing such franchises which necessitated the issuance of a revised Request for Proposals. Immediate

implementation of the rule providing for an extension of the three-year period will prevent disruption of public pay telephone service and the fees paid to the City pursuant to existing agreements between the telephone company and the City during the period required for the completion of the franchising process.

FOOTNOTES

5

[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

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APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-31 Issuance and Transfer of Permits.

(a) The Commissioner may issue permits based upon a determination, at his or her discretion, that issuance of a permit would be in the best interests of the City.

(b) A permit shall not be issued:

(1) unless the applicant possesses a franchise to install, maintain and operate public pay telephones on, over and under the streets and other inalienable property of the City; (2) unless the applicant has, where required, obtained the consent of the owner or commercial lessee of a building as provided in §6-34 of this chapter;

(3) where a public pay telephone will unreasonably interfere with the use of a street by the public or where it will unreasonably interfere with the use of the abutting property.

(c) The Commissioner may determine not to issue a permit to an owner of public pay telephones listed in the interim registry submitted pursuant to subchapter B of this chapter where such owner has persistently failed to maintain such telephones free of graffiti or has otherwise failed to repair such telephones or maintain such telephones in a safe and clean condition. The Commissioner may determine that such persistent failure has occurred where an owner has, in excess of two times, failed to remove graffiti or correct any other condition related to the proper maintenance (including but not limited to the requirements in §6-05 and §6-43 of this chapter) of a public pay telephone identified in a

notification to such owner by the Department. The Commissioner shall not consider the prior issuance of a permit as relevant to any determination whether there has been a persistent failure to maintain public pay telephones as required by this subsection.

(d) A permit issued pursuant to this chapter may be transferred to an owner other than the owner to whom the permit was issued, provided that such transfer has the written approval of the Commissioner and provided further that the transferee is the holder of a public pay telephone franchise granted by the City, and on the condition that, as of the date of the proposed transfer, neither party is in arrears or in default of: franchise fees (as defined in §8 of the franchise agreement); interim registry fees; fines owed for notices of violation (assessed by the Environmental Control Board after either the entry of a guilty plea or the issuance of a decision in favor of the City after a hearing); or, any fees payable to the City associated with the installation, operation or maintenance of any public pay telephone installations owned or operated by either party. However, the Commissioner may waive in writing any portion of this subsection if the Commissioner determines that there is a public safety need for the public pay telephone.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See T67 §6-04 Note 1]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (b) amended City Record Feb. 16, 2006 §9, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (c) amended City Record Feb. 16, 2006 §9, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (d) amended City Record Feb. 16, 2006 §9, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

5

[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

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SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-32 Application and Fee for Permit.

(a) An application for a permit to install, operate and maintain a public pay telephone shall be in a form prescribed by the Commissioner and shall be accompanied by the permit fee of three hundred ninety-five dollars ($395), subject to any applicable reduction pursuant to paragraph (d)(4) of §6-24 of this chapter.

(b) Applications for a permit pending as of March 15, 2000 shall be denied unless the fee required pursuant to this §6-32 was received by the Department on or before June 30, 2000. Applications received after March 15, 2000 shall be denied if such fee is not included with the application.

(c) An application for an Extension to a Notice to Proceed shall be accompanied by a processing fee of thirty-five dollars ($35). Applications for an Extension to a Notice to Proceed received after the effective date of this §6-32 shall be denied unless accompanied by the fee required pursuant to this §6-32.

(d) Notwithstanding anything to the contrary in this §6-32, no permit application fee shall be required in connection with the installation of a public pay telephone at a particular location if the installing owner has been directed by the Commissioner to install such public pay telephone at such location after a determination by the Commissioner that (i) no application for such an installation at such location has been received by DoITT, and (ii) lack of a public pay telephone at such location may pose a risk to public health, safety or welfare.

HISTORICAL NOTE

Section amended City Record Feb. 16, 2006 §10, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Section amended City Record Oct. 5, 2004 §2, eff. Dec. 4, 2004 per the Notice of Adoption. [See T67 §6-06 Note 1]

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

5

[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

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SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-33 Term of Permit; Termination of Permit.

(a) **Term of permit.** A permit for a public pay telephone shall continue in effect, unless earlier revoked or suspended by the Commissioner pursuant to §6-37 of this subchapter or §23-404 of the Administrative Code, for the term of the franchise held by the owner of such telephone except:

(1) as provided in subdivision (a) of §6-38 of this chapter in regard to newly permitted telephones owned by the telephone company;

(2) as provided in subdivision (b) of this section;

(3) as provided in subdivision (b) of §6-38 of this chapter in regard to a public pay telephone the owner of which has not been awarded a franchise;

(4) as provided in §6-46 of this chapter;

(5) as provided in subdivision (c) of §6-31 of this chapter in regard to an owner of public pay telephones that has persistently failed to maintain such telephones free of graffiti or has otherwise failed to repair such telephones or maintain such telephones in a safe and clean condition; or

(6) if the Commissioner determines after grant of the permit that the permitted public pay telephone was located or

installed in violation of any applicable provision of subchapter D of this chapter.

(b) **Termination of permit.** (1) The Commissioner may terminate a permit and require the removal of a public pay phone upon a determination that (i) the public pay telephone unreasonably interferes with or, as a result of changed conditions, will unreasonably interfere with the use of a street by the public or constitutes a public nuisance; or (ii) that removal of the public pay telephone is required in connection with a street widening or other capital project.

(2) The Commissioner shall notify the permittee of his or her intention to terminate the permit and the reason for such proposed action. No later than five business days following such notification, the permittee may submit a letter to the Commissioner setting forth any reasons why such permit should not be terminated and such telephone removed. The Commissioner shall review the reasons set forth in such letter and shall determine whether to terminate the permit and require the removal of the telephone. The Commissioner shall notify the permittee of his or her final determination and the reasons therefor and shall, where applicable, specify in such notice the date by which the telephone shall be removed. In the event that the permittee fails to remove the public pay telephone by the date specified by the Commissioner, the Commissioner may remove or cause the removal of the public pay telephones and have repair and restoration work performed at the expense of the permittee, who shall be liable in a civil action for the amount expended by the City.

(3) (i) In the event that a public pay telephone is removed in connection with a street widening or capital project as provided in subparagraph (b)(1)(ii) or at the request of the Commissioner, the permittee may apply to the Commissioner for permission to reinstall the public pay telephone at another location (provided however that such installation shall be compliant with §6-41 of this chapter, unless such compliance is waived in writing by the Commissioner) or, following the completion of such street widening or capital project, at or near its original location. A fee will not be required.

(ii) Where such permission is granted, the permittee shall not be required to obtain a new permit for the public pay telephone and the permit previously issued for such public pay telephone shall continue in effect. In the event that the permittee elects not to install such public pay telephone at another location, the fee for such a permit shall be kept in reserve and may be applied to the next permit requested by the permittee.

(iii) If such public pay telephone is reinstalled at another location the permittee may apply to the Commissioner for a new permit to install another public pay telephone following the completion of such street widening or capital improvement at the same address as the original public pay telephone previously removed in connection therewith. The Commissioner, acting at his or her discretion, may award or deny such application based upon a determination that such action is in the best interests of the City.

(iv) If a pending application pursuant to paragraph (b)(2) of §6-35 would, if granted, render the location requested in the application under this subdivision (b) inconsistent with §6-41 of this chapter, then the application under this subdivision shall not be granted unless the pending application pursuant to paragraph (b)(2) of §6-35 shall be rejected. If the pending application pursuant to paragraph (b)(2) of §6-35 shall be granted, the application for relocation under this subdivision shall be denied.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (a) amended City Record Feb. 16, 2006 §11, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (b) par (1) subpar (i) amended City Record Feb. 16, 2006 §12, eff. Mar. 18, 2006. [See T67

§6-02 Note 2]

Subd. (b) par (3) amended City Record Feb. 16, 2006 §13, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

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SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-34 Consent of Building Owner/Commercial Lessee Required.

(a) **Opening, drilling or other physical alteration.** No permit for a public pay telephone shall be issued or renewed pursuant to this subchapter without the written consent of the owner of an affected building or other private property where the installation of such public pay telephone requires the opening, drilling or other physical alteration of a building facade or other private property or the affixing of such telephone to a building facade or other private property. Such consent shall be provided to DoITT in either of the following two forms:

(1) a photocopy of an effective and binding written agreement signed by the building owner which grants the owner of the applicable public pay telephone such rights to open, drill or otherwise physically alter (including, without limitation, affixing the telephone to) the building facade or private property as are necessary to install and operate such public pay telephone, which photocopy shall be accompanied by a sworn and notarized written certification from the public pay telephone owner certifying, under penalty of perjury, that the attached photocopy is a true and complete copy of a document signed by the building owner, or

(2) an alternative consent form to be prescribed by the Commissioner.

(b) **Access through conduit.** (1) Where the installation of a public pay telephone, if accomplished in a manner other than described in subdivision (a) of this section, requires access through an existing conduit or other opening on a building facade or other private property, or such installation is to be made within six feet of a building line, no permit

shall be issued or renewed without the written consent of either the building owner or the commercial lessee.

(i) If the consent is from the building owner, the form of such consent shall be provided to DoITT in either of the following two forms:

(A) a photocopy of an effective and binding written agreement signed by the building owner which grants the owner of the applicable public pay telephone any and all rights of access necessary to install and operate such public pay telephone (or, if no such access is required but the applicable installation is to be within six feet of the building line, granting the building owner's consent to such location) which photocopy shall be accompanied by a sworn and notarized written certification from the public pay telephone owner certifying, under penalty of perjury, that the attached photocopy is a true copy of a document signed by the building owner; or

(B) an alternative consent form to be prescribed by the Commissioner.

(ii) If the consent is from the commercial lessee, the requirements for the form of such consent shall be the same as that for consent from the building owner as set forth in the preceding subparagraph (i), except that references to "building owner" in subparagraph (A) of said subparagraph (i) above shall be deemed to refer to "commercial lessee" and except that in addition to the consent required under subdivision (i) above, there shall also be required a certification by the commercial lessee certifying that the building owner has authorized the commercial lessee to grant such consent and the commercial lessee has provided the building owner (or its authorized agent) with written notification (by certified mail) of such granting of consent (such written notification to include the name and address of the owner of the public pay telephone and the location of the public pay telephone in relation to the building). Such certification by the commercial lessee must be accompanied by proof of mailing of the notification to the building owner referred to in such certification.

(2) Within thirty (30) days of receipt by a building owner of a commercial lessee's consent pursuant to subdivision (1) of this subdivision (b), a building owner or an authorized agent of an owner may object to the installation of a public pay telephone by notifying the applicant for a permit or the permittee, with a copy to the Commissioner, by certified mail. Within ten days of receipt of a notice in compliance with the provisions of this paragraph, such applicant or permittee shall (if the public pay telephone objected to in such notice has been installed) remove such public pay telephone unless he or she responds to the Commissioner, with a copy of such response to the owner, stating why the applicant or permittee believes that the owner lacks authority to object to the installation.

(3) The provisions of paragraph (1) of this subdivision (b) shall not apply in regard to a public pay telephone installed and activated on or before August 1, 1994 that has been in continuous use since such activation date and for which application for a permit has been made within thirty days of the award of a franchise to the owner of such telephone.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

5

[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the

permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

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APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-35 Notification by Department to Agencies and Review of Application for Permits.

(a) **Notification.**

(1) The Department shall notify the Department of Transportation or any successor of such agency, on a periodic basis of the location of public pay telephones for which permits are being sought, except for the telephones identified in the application described in subdivision (a) of §6-38.1 of this subchapter. The Department of Transportation may review such locations and, within thirty (30) business days of such notification, submit comments to the Commissioner in regard to any such telephone or telephones.

(2) The Department shall also, on a periodic basis, notify the pertinent Borough Presidents, Council Members and Community Boards of the opportunity to review permit applications that have been received from franchisees for public pay telephones. A Borough President, Council Member, or Community Board may review any such application and, within thirty business days of such notification, submit comments in writing to the Commissioner in regard to such application. The Commissioner may extend such review period by an additional ninety days upon determining that an additional period is necessary for a full and complete review of such permit applications.

(3) If the Department determines that a proposed public pay telephone is located in an historic district, approval of such application will be contingent upon compliance with the rules of the Landmarks Preservation Commission concerning public pay telephone installations.

(b) **Review of comments and application.**

(1) **Review and conditions.**

(i) The Commissioner shall review the application for permits and any comments received from agencies, Borough Presidents, Council Members, Community Boards, and other members of the public prior to making a determination regarding such permits. The Commissioner shall notify the owner of any requirement that shall be a condition of the issuance of a permit. The owner may, within five (5) business days of such notice from the Commissioner, object in writing to the Commissioner to any such condition. The Commissioner shall review such objection and notify the owner of his or her determination and the reasons therefor.

(ii) Applications are not transferable by the owner who submits such applications. Upon approval of an application, a permit shall be granted only to the entity that submitted the application. If the entity that submitted the application is not eligible to receive a permit, the application will be denied.

(2) **Pending applications for permits.** If two or more applications for permits received by DoITT prior to November 23, 1998 constitute a pair or group of applications only one of which can be granted consistent with subdivisions (f) and (j) of §6-41 of this chapter, then of such pair or group the qualifying application (as defined in paragraph (b)(4) of this §6-35), if any, which was received first by DoITT shall be granted and the other applications in such pair or group shall be denied.

(3) **New applications for permits.**

(i) Applications (other than applications pursuant to paragraph (b)(2) of this §6-35 or to §6-38.1 of this chapter) for permits by franchisees will be accepted for review by the Department with respect to proposed locations in the boroughs of Queens, the Bronx, Brooklyn and Staten Island and in Manhattan north of 96th Street, commencing sixty days after the effective date of this paragraph (b)(3).

(ii) During a period commencing on the 60th day after the effective date of this paragraph and ending on the 150th day after the effective date of this paragraph, public pay telephone franchisees may submit applications. The Department shall review such applications in a first period of permit application review ("the First Review Period"). During the First Review Period, the maximum number of applications submitted by any franchisee may not exceed either the sum of fifty (50) applications plus five per cent (5%) of the franchisee's total number of licensed, permitted and registered public pay telephones as of December 31, 1999, or three hundred (300) applications, whichever is less. Franchisees that share substantial common ownership (as defined in §6-01 of Subchapter A) shall be treated as a single franchisee for purposes of §6-35(b)(3).

(iii) Each franchisee shall assign a priority number (the "Priority Number" or "Priority") to each application submitted during the First Review Period. The Department will conduct a lottery among all franchisees submitting one or more applications during the First Review Period to assign randomly the order in which each franchisee's applications will be reviewed (the "Order of Review Number" or "Order of Review"). The Department will first review (and determine whether to grant or deny) the highest Priority Number "Qualifying" application (as defined in paragraph (b)(4) of this §6-35) of the franchisee that received Order of Review Number 1. After determination of that application, the Department will review and determine the highest Priority Qualifying application of the franchisee with Order of Review Number 2. The Department will continue to review the highest Priority Qualifying applications submitted by each franchisee, according to the franchisees' Order of Review numbers, until all of the highest priority Qualifying applications have been reviewed and determined. Thereafter, the Department will review the application designated with the second highest Qualifying Priority Number, but beginning with the franchisee having the last Order of Review Number assigned in the lottery. Upon completion of all of the second highest Priority Qualifying applications, the Department will begin reviewing all third highest Priority Qualifying applications (and all subsequent odd-numbered Priority Qualifying applications) again beginning the review with the franchisee having Order of Review Number 1.

Fourth highest Priority Qualifying applications (and all subsequent even-numbered Priority Qualifying applications) will be reviewed beginning with the franchisee having the last Order of Review Number, until all applications received in the First Review Period have been determined.

(iv) An application for permit under this paragraph (b)(3) will not be granted during the pendency of any application for permit under paragraph (b)(2) of this §6-35 that would, if granted, permit the placement of a public pay telephone in a location that would render the location requested in the application under this paragraph (b)(3) inconsistent with §6-41 of this chapter. If such application under paragraph (b)(2) is approved and a permit granted, then such application under this paragraph (b)(3) will be denied.

(4) A "qualifying" application for a permit is defined as an application that would be granted under the provisions of this chapter if there were no competing application for permit.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (a) amended City Record Feb. 16, 2006 §14, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (a) amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (b) amended City Record Feb. 16, 2006 §14, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

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§6-35.1 New Applications for Permits.

The Commissioner may periodically identify areas where the installation of public pay telephones would be consistent with other uses of the City's rights of way. When the Commissioner identifies such an area, then an invitation to submit applications shall be sent to all franchisees. This invitation shall include any limitations deemed necessary at that time.

HISTORICAL NOTE

Section added City Record Feb. 16, 2006 §15, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of

Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

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§6-36 Revocation of Permits, Removing and Rendering Public Pay Telephones Inoperable.

(a) **Grounds for action by the Commissioner.** The Commissioner may take such action pursuant to this section that he or she deems necessary and appropriate where:

(1) there is reasonable cause to believe that an owner, or any employee, agent or independent contractor of such owner has violated the provisions of chapter 4 of title 23 of the Code or any provision of this chapter, or any of the terms or conditions contained in the permit for a public pay telephone issued pursuant to the provisions of subchapter C or the terms and conditions of the owner's franchise agreement;

(2) a public pay telephone unreasonably interferes with the use of a street by the public or the use of abutting private property or constitutes a danger to life or property or a public nuisance;

(3) a knowing material omission or false statement has been made in relation to any application or certification made pursuant to this chapter; or

(4) an owner of a public pay telephone has failed to pay any fines or penalties imposed in relation to such telephone.

(b) **Actions by the Commissioner.** In addition to any civil or criminal penalties provided by law, the

Commissioner may take one or more of the following actions upon the occurrence of an event described in subdivision (a) of this section.

(1) **Revocation of permit and removal of telephone.** The Commissioner may revoke a permit, and upon such revocation, may further order the removal of the public pay telephone for which such permit has been issued. In the event the permittee fails to remove the public pay telephone and to perform related repair and restoration work within the time period specified by such order, the Commissioner may remove or cause the removal of the public pay telephone and have repair and restoration work performed at the expense of the former permittee, who shall be liable for the amount expended by the City.

(2) **Rendering a telephone inoperable.** The Commissioner may render a public pay telephone inoperable except for the purpose of emergency telephone service through the 911 system or an operator. Such action may continue until the permittee has corrected the condition to the satisfaction of the Commissioner and payment has been made of all civil penalties imposed for the violation and any fees for any administrative expense or expense of additional inspections incurred by the City as a result of such condition. The Commissioner shall affix to any public pay telephone rendered inoperable pursuant to this paragraph a notice advising the public that the phone may be used only for emergency telephone service through the 911 system or an operator and setting forth the provisions of §23-408(i)(1)(cc) of the Code. Any device utilized by the Commissioner for the purpose of rendering a public pay telephone inoperable shall be designed so as to permit the unimpaired use of the public pay telephone upon the removal of the device.

(3) **Suspension of review of applications.** The Commissioner may suspend review of all applications for the issuance or renewal of permits filed by such owner pursuant to this chapter. Such suspension may continue until the condition has been corrected to the satisfaction of the Commissioner and payment has been made of all fines or civil penalties imposed for the violation, any costs incurred by the City for removal and related repair or restoration work, and any fees for any administrative expense or expense of additional inspections incurred by the City as a result of such condition.

(4) **City authority to operate.** The Commissioner may invoke the Department's authority pursuant to §6-47 of this chapter.

(c) **Notification to permittee and opportunity to contest Commissioner's action.** Except as provided in subdivision (e) of this section, before taking an action pursuant to this section, the Commissioner shall notify the owner of a public telephone with regard to which the action is proposed of the reason for such proposed action. Such notice shall specify the action, if any, that may be taken by the permittee to correct the condition and the manner and time period in which such condition must be corrected or in which, if the condition is not one that is capable of correction, the time by which the telephone shall be removed. Except as provided in subdivision (d) of this section the owner shall respond no later than five business days following such notice. Such response shall either: (i) certify to the Commissioner that such condition has been corrected in accordance with the manner specified by the Commissioner in such notice; or (ii) set forth the reasons why the Commissioner should not take the proposed action. Failure of an owner to timely respond to such notice by the Commissioner shall constitute default, and shall subject the owner to revocation of the permit and removal of the telephone pursuant to the provisions of subdivision (a) of this section. The Commissioner shall review the response of the permittee and notify the permittee of the final determination and the reasons therefor.

(d) **Expedited removal of public nuisance.** Notwithstanding any other provision of this section the Commissioner may, upon determination that a public pay telephone constitutes a public nuisance, notify the permittee of such determination and order that such telephone be removed within five (5) business days. A permittee may respond in writing to the Commissioner no later than five (5) business days following receipt of such notice setting forth any reasons why such telephone does not constitute a public nuisance. If, following review of such reasons, the Commissioner makes a final determination that such telephone constitutes a public nuisance, the Commissioner shall notify the permittee that such telephone must be removed forthwith. Failure to remove such telephone forthwith will

subject the telephone to removal by the Department and repair and restoration work shall be performed at the expense of the permittee, who shall be liable in a civil action for the amount expended by the City.

(e) **Emergency removal of telephone by Department.** (1) Notwithstanding any other provision of this section, if the Commissioner determines that an imminent threat to life or property exists, the Commissioner may remove or cause the removal of a public pay telephone and have repair and restoration work performed at the expense of the owner, without affording the owner an opportunity to be heard prior to such removal. The Commissioner may, if he or she determines that such telephone can be safely reinstalled and maintained, permit the owner to reinstall such telephone.

(2) No more than five (5) business days following the removal of a public pay telephone pursuant to paragraph (1) of this subdivision, an owner of such telephone who is a permittee shall be provided notice of such removal and the reasons therefor and may respond to the Commissioner in writing setting forth the reasons why such telephone should not have been removed. The Commissioner shall review such response and notify such owner within ten days of receipt of such response of his or her final determination and the reasons therefor.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (a) par (1) amended City Record Feb. 16, 2006 §16, eff. Mar. 18, 2006. [See T67 §6-02

Note 2]

Subd. (b) par (1) amended City Record Feb. 16, 2006 §17, eff. Mar. 18, 2006. [See T67 §6-02

Note 2]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

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§6-37 Determination of Public Nuisance.

For the purposes of this subchapter, "public nuisance" shall have the meaning set forth in §23-401 of the Code and §6-01 of subchapter A of this chapter. The Commissioner may determine that a public pay telephone constitutes a public nuisance when a written complaint is made, including, but not limited to a complaint by the Community Board in the Community District in which such telephone is located stating that such public pay telephone constitutes a public nuisance, as so defined. The complaint must also be verified by the police precinct in which such telephone is located.

HISTORICAL NOTE

Section amended City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See T67 §6-24 Note 1]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of

Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

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§6-38 Interim Issuance of Permits.

(a) **New telephones owned by the telephone company.** Notwithstanding the provisions of §6-31 of this subchapter which limit the issuance of permits to persons who possess a franchise to install, maintain or operate public pay telephones on, over or under any street or other inalienable property of the City, the telephone company may, if it is in compliance with the provisions of this chapter with respect to its public pay telephones installed and activated prior to March 1, 1996 and not licensed pursuant to former §19-131 or 19-128 of the Code, apply to the Commissioner on or after March 1, 1996 for the issuance of permits for the installation, operation and maintenance of new public pay telephones. A permit issued pursuant to this paragraph shall remain in effect until March 1, 1999 unless the telephone company is awarded a franchise, in which case such permit shall expire upon the expiration of such franchise.

(b) **Other telephones.** Notwithstanding the provisions of §6-31 of this subchapter which limit issuance of permits to persons who possess a franchise to install, operate or maintain public pay telephones on, over or under any street or other inalienable property of the City, an owner of public pay telephones other than the telephone company may apply to the Commissioner for the issuance of permits for the installation, operation or maintenance of new public pay telephones provided that:

(1) all public pay telephones of such owner installed and activated prior to March 1, 1996 are identified on a registry submitted to the Department by such owner and the owner has paid the occupancy fee for such telephones as provided in subchapter A of this chapter; and

(2) none of the following has occurred: (i) the owner has declined to respond to the request for proposals or other solicitation of proposals issued by the Department for the purpose of entering into franchise agreements for the installation, operation and maintenance of public pay telephones within the time period specified in such request for proposals or other solicitation of proposals; (ii) the Commissioner has determined not to propose the award of a franchise to such owner to the Franchise and Concession Review Committee or (iii) the Franchise and Concession Review Committee has determined not to approve the proposed franchise agreement for such owner. Permits issued pursuant to this subdivision shall expire upon the occurrence of any of the foregoing. In the event that the owner is granted a franchise to install, operate, and maintain public pay telephones, such permits shall continue in effect for the term of the franchise.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

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SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-38.1 Conversion of Licensed and Interim Registry Public Pay Telephones to Permit Status Following Franchise Award.

(a) **Previously licensed telephones owned by the telephone company.**

(1) In the event that the telephone company is awarded a franchise for the installation, operations and maintenance of public pay telephones, the telephone company may request the issuance of permits for any or all existing telephones owned by such company for which a license previously was issued pursuant to former §19-131 or 19-128 of the Code. Such application shall consist of a letter identifying the precise location and license number of each existing public pay telephone for which the telephone company seeks a permit. Notwithstanding any other provision of this subchapter, no fee shall be charged for a permit pursuant to this subdivision. Any existing public pay telephone for which the telephone company does not seek a permit shall be removed by the telephone company no later than sixty days following the award of such franchise and, if not so removed, shall be subject to removal pursuant to §23-408 of the Code. Failure to remove shall also be deemed a violation for purposes of subdivisions (a) and (c) of such section.

(2) The Commissioner shall issue permits requested pursuant to this subdivision no later than ninety days following the award of the franchise unless: (i) within sixty days following the award of the franchise, the Commissioner has objected to the continued maintenance and operation of an existing public pay telephone upon the basis that such continued maintenance and operation would be inconsistent with the provisions of Local Law Number 68 for the Year 1995, or would not be in compliance with the provisions of this chapter or of any Federal or State

regulatory authority having jurisdiction over the provision of public pay telephone service, and (ii) such conditions have not been cured within the time specified by the Commissioner. The telephone company shall remove all existing public pay telephones for which a permit has not been granted pursuant to this paragraph on or before the one hundred twentieth (120) day following the date the franchise is granted and, if not so removed, such telephones shall be subject to removal pursuant to §23-408 of the Code and shall be deemed a violation for purposes of subdivisions (a) and (c) of such section.

(b) **Telephones owned by companies other than the telephone company.**

(1) No later than thirty (30) days following the award of a franchise to an owner other than the telephone company, such owner may apply for the issuance of permits for those public pay telephones identified in a registry submitted pursuant to subchapter B of this chapter (i) for which the Commissioner made no objection or an objection was cured within the time required by the Commissioner, and (ii) which were not otherwise in violation of any provision of §6-41 of this chapter which is applicable to such public pay telephones under §6-40 of this chapter or of the wiring rules under §6-43 of this chapter; provided all the annual interim occupancy fees have been paid for the public pay telephones in such registry. Any such public pay telephone for which such owner does not apply for a permit shall be removed by the owner within sixty days following the award of the franchise, and if not so removed, shall be subject to removal pursuant to §23-408 of the Code and shall be deemed a violation for purposes of subdivisions (a) and (c) of such section.

(2) An owner who has submitted an application pursuant to paragraph (1) of this subdivision (b) shall not be required to remove the public pay telephone to which such application relates unless and until the earlier of the following has occurred; (i) the owner fails to timely cure a condition specified in a notification provided by the Commissioner or (ii) the application for a permit for such telephone is denied. Any such public pay telephone shall be removed within thirty days of an occurrence described in this paragraph and, if not so removed, shall be subject to removal pursuant to §23-408 of the Code and shall also be deemed a violation for purposes of subdivisions (a) and (c) of such section.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

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SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-38.2 Moves to the Curb.

(a) **Request for move to curb.** A holder of a public pay telephone permit which was granted pursuant to §6-38.1 of this chapter (or the owner of a public pay telephone registered pursuant to subchapter B of this chapter, if such owner holds a public pay telephone franchise from the City and a permit application pursuant to subdivision (b) of §6-38.1 of this chapter for such payphone has been submitted to DoITT and is pending, excluding such public pay telephones registered pursuant to paragraph (a)(2) of §6-24) may change the location of such public pay telephone, without applying for a new permit, provided that:

(1) the permittee submits a "Request for Move to Curb," in a form to be specified by the Commissioner, accompanied by a filing fee of three hundred ninety-five dollars ($395);

(2) the proposed new location will be along a straight line running from and perpendicular to the street nearest the existing location of such public pay telephone and ending at the existing location of such public pay telephone (the "Move to Curb Path") unless no other application is pending for the affected block-face, in which case the public pay telephone may apply for any curbside location, on the same block-face, in front of the same address;

(3) notice of such "Request for Move to Curb" is provided to the Department of Transportation, and the applicable Community Board, in the same manner as notice of an application for a new permit is to be provided under this chapter;

(4) after the proposed change the applicable public pay telephone will be in compliance with all of the provisions of subchapter D of this chapter, including without limitation those provisions (such as, for example, subdivisions (f) and (j) of §6-41) as would not be applicable to such public pay telephone if it were to remain at its original location or, if such proposed new location would not be in compliance with the provisions of subchapter D of this chapter, the proposed new location could be brought into compliance with subchapter D of this chapter by a six (6) inch lateral alteration of the proposed new curb side location along an axis perpendicular to the "Move to Curb Path" along which the public pay telephone installation is proposed to be moved; and

(5) the Commissioner, after reviewing any comments received from the entities described in the preceding paragraph (3), determines, in his or her discretion, that such change would be in the best interest of the City and confirms such determination by the issuance of a written approval of the Request for Move to Curb.

(b) **Consolidation option.** For valid applications or agreements pursuant to this section received prior to the effective date of this amendment, if a Request for Move to Curb would be subject to denial by reason of noncompliance with subdivision (j) of §6-41 of this chapter, then the owner of the telephone or telephones with respect to which a Request for Move to Curb is being submitted shall, in lieu of utilizing the location required under paragraph (a)(2) of this §6-38.2, have the option of:

(1) entering into an agreement with an owner (the "curb line owner"), of an existing curb line public pay telephone installation located on the same block as the applying owner, which installation contains less than the maximum number of public pay telephones permitted under this chapter. Pursuant to such an agreement, the applying owner and curb line owner would operate public pay telephones in a joint installation at the existing curb location (provided that the result of such consolidation would be compliance with subdivision (j) of §6-41 of this chapter, and that such joint installation would comply with all other conditions to, and requirements for, approval of a Request for Move to Curb (including, without limitation, submission of the appropriate form and fee and approval by the Commissioner)); or

(2) entering into an agreement with another owner who also seeks to move a public pay telephone installation on the same block to the curb line, pursuant to which agreement the two owners would operate public pay telephones in a joint installation in which each public pay telephone (and the overall installation) would be authorized under paragraph (a)(2) of §6-38.2 of this chapter (provided that the result of such consolidation would be compliance with subdivision (j) of §6-41 of this chapter, and that such joint installation would comply with all other conditions to, and requirements for, approval of a Request for Move to Curb (including, without limitation, submission of the appropriate form and fee and approval by the Commissioner)); or

(3) submitting to the Department Requests for Move to Curb for two or more of the applying company's public pay telephone installations located on the same block, pursuant to which the owner would operate such public pay telephones in a joint installation in which each public pay telephone (and the overall installation) would be authorized under paragraph (a)(2) of §6-38.2 of this chapter (provided that the result of such consolidation would be compliance with subdivision (j) of §6-41 of this chapter, and that such joint installation would comply with all other conditions to, and requirements for, approval of a Request for Move to Curb (including, without limitation, submission of the appropriate form and fee and approval by the Commissioner)).

(c) **Timetable.** (1) The Commissioner shall issue a form of "Request for Move to Curb" within ten (10) business days of the effective date of this §6-38.2, which form the Commissioner may amend from time to time.

(2) All Requests for Move to Curb properly and fully filled out and submitted within ninety (90) days of the effective date of this §6-38.2 ("Initial Requests") will be reviewed by the Department, and will be approved or denied within twelve months of the effective date of this §6-38.2, provided that such twelve month date shall be subject to extension by order of the Commissioner.

(3) The order in which the Department reviews Initial Requests will not be related to the order of submission of

such Initial Requests. All Requests for Move to Curb which do not qualify as Initial Requests under the preceding paragraph (2) shall be reviewed by DoITT after all Initial Requests have been reviewed.

HISTORICAL NOTE

Section added City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Subd. (a) par (1) amended City Record Feb. 16, 2006 §18, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (a) par (1) amended City Record Oct. 5, 2004 §3, eff. Dec. 4, 2004 per the Notice of Adoption. [See T67 §6-06 Note 1]

Subd. (a) par (2) amended City Record Feb. 16, 2006 §18, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (a) par (3) amended City Record Feb. 16, 2006 §18, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (b) open par amended City Record Feb. 16, 2006 §18, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

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SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-39 Removal of Telephones by the Department and Disposition of Removed Telephones.

(a) Any public pay telephones not removed by a permittee in compliance with an order of the Commissioner pursuant to this chapter shall be subject to removal pursuant to §23-408 of the Code, and failure to so remove shall also be deemed a violation of subdivisions (b) and (c) of such section.

(b) Any telephone removed pursuant to this chapter that is not claimed by its owner within thirty (30) days of removal shall be deemed abandoned pursuant to §23-408 of the Administrative Code. All abandoned public pay telephones may be sold at public auction after having been advertised in the City Record and the proceeds paid into the general fund or such abandoned telephones may be used or converted for use by the Department or by another City agency. A public pay telephone shall be released to the owner upon payment of the costs of removal, repair and restoration work, storage, and any fees for any administrative expense or expense of additional inspections incurred by the Department as a result of the violation, or, if any action or proceeding for the violation is pending in a court or before the Environmental Control Board, upon the posting of a bond or other form of security acceptable to the Commissioner in an amount which will secure the payment of such costs and any fines or civil penalties which may be imposed for the violation. If the owner does not claim a public pay telephone that has been removed, the owner shall still be liable for said costs.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (b) amended City Record Feb. 16, 2006 §19, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

5

[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX A*9 APPLICATION TO INSTALL AND MAINTAIN A PUBLIC PAY TELEPHONE (PPT)

APPENDIX A*9 APPLICATION TO INSTALL AND MAINTAIN A PUBLIC PAY TELEPHONE (PPT)

Application Type: New Site _____ Move-to-the-Curb _____ Add-On _____ Public Safety _____

A. Full Name of Company: _____

A. Company Address: _____

A. Company Telephone #: _____

A. Company FAX #: _____

A. Company Web-Site and/or E-mail address: _____

B. Location of Proposed PPT:

B. Street Address(1): _____

B. Street Address(1): Building # Street Name Borough

You must provide the actual building # of the on-street of proposed PPT.

B. Cross Street: _____ Cross Street 2

_____

B. Side of Street (N, S, E, or W) _____ Odd or Even Side _____

B. Curbside: _____ Building Line: _____

B. Medallion # (if applicable): _____

B. Mounting Type: Pedestal _____ Wall _____ Other _____

B. Enclosure Type:

B. None _____ Small _____ Small Booth _____ 3/4 Booth _____

B. Enclosure Model: _____

B. Operator Service Provider: _____

B. Do you intend to advertise?: Yes _____ No _____

B. If "Yes", Name of Media Representative: _____

B. Is the PPT located in a Historic District or on a sidewalk adjacent to a Landmark?

Yes: _____ No: _____

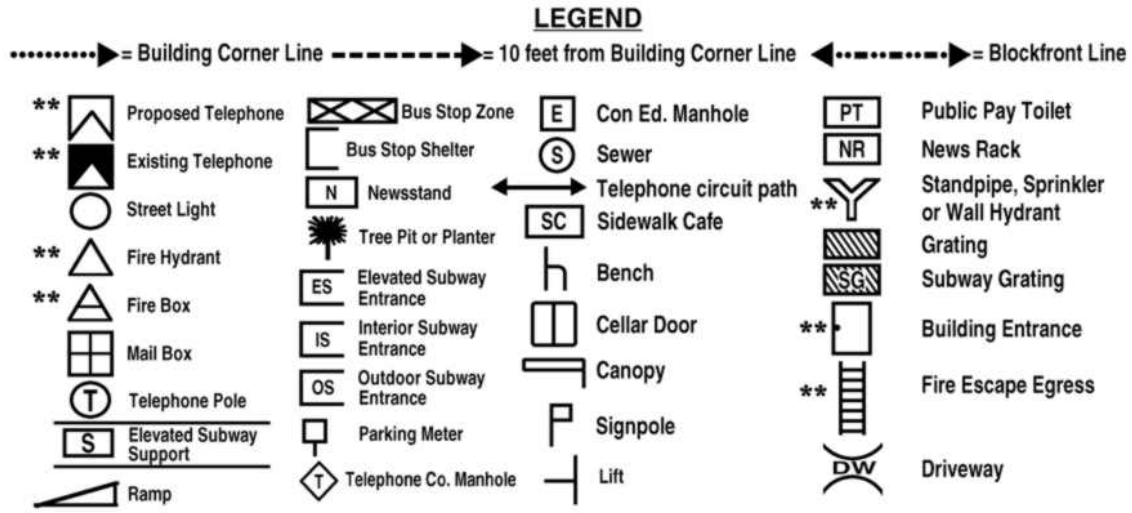
B. Is the PPT site located in a Special Assessment District (SAD) with public pay telephone user B. rights?

Yes: _____ No: _____

B. If Yes, Name and Telephone # of SAD: _____

C. PLEASE NOTE: A Street Opening Permit may be required from the City of New York, C. Department of Transportation

C. You must complete the diagram indicating the proposed PPT installation area using the icons provided on the legend below. You must also indicate distances from all street furniture on the building line or the curb line to the proposed Public Pay Telephone(s) including distance from curb for curbside installations. You must indicate the length of the entire blockfront.



Applicant Authorized Personnel Print Name and Title Applicant Authorized Personnel Signature Date

D. Applicants are advised that a Public Pay Telephone shall be installed, operated and maintained in compliance with all provisions of Federal, State and local law, rules and regulations.

Applicant must complete the attached locational diagram of this form indicating the proposed PPT installation area using the icons provided in the legend. Applicant must indicate the distances, in feet, from all street furniture on the block front of the proposed Public Pay Telephone.

The applicant shall maintain all required clearance from street furniture as set forth in Chapter 6 of Title 67 of the Rules of the City of New York (the "Payphone Rules") and clearance of water mains and their appurtenances required by the Bureau of Water Supply Standards, and shall comply with all applicable law, rules and regulations. The siting rules for Public Pay Telephones are located primarily at §6-41 of the Payphone Rules. The applicant agrees to assume the cost for removal of any and all of their facilities that would interfere with the repair, maintenance and/or replacement of underground facilities.

E. The Applicant agrees that any Permit issued hereunder is subject to all applicable laws and regulations of the City of New York. This permit shall be subject to revocation as provided in the Rules of the Commissioner of the Department of Information Technology and Telecommunications as set forth in the Payphone Rules, and as provided in all other applicable provisions of Federal, State and local law, rules and regulations.

F. In addition to the street diagram, you must submit a 17" × 14" enlargement of the block the blockfront is part of, clearly showing addresses, side streets, compass directions, and intersection corners for the blockfront in question. This enlargement should be made using a Sanborn Map from the Building and Property Atlas, 20th Edition 1999, or any definitive successor thereto, or any other authority the City may specify in the future.

G. If the blockfront is irregular and does not conform to a standard grid format (i.e. four corners per intersection) you must submit a scale diagram containing the information found on the standard diagram plus a Sanborn enlargement, or any definitive successor thereto, or any other authority the City may specify in the future.

H. All Sanborn enlargements, or any definitive successor thereto, or any other authority the City may specify in the future, must indicate the proposed PPT location(s), the location of all other PPT's on the blockfront, and all PPT's within

50 feet of the corner for all corners of the intersection relating to the blockfront in question.

Department of Information Technology and Telecommunications

75 Park Place, 9th Floor, New York, NY 10007

For Office Use Only: Application Number: Date:

PERMIT APPLICATION ADDENDUM

BLOCK LENGTH: _____ feet

NO (in violation) YES (in compliance) RULE/REGULATION

1 Sidewalk clearance of 8 ft. or $^1/_2$ the width (whichever is greater)

2 Installation will not obstruct crosswalk or curb cuts

3 Installation will not interfere with passage or vision of vehicular traffic

4 Installation will not interfere with operation of fire escape

5 Installation will not impede free use of any means of egress

6 Not less than 15 ft. from elevated or outdoor Subway entrance (unless at building-line)

7 Not less than 5 ft. from interior Subway entrance

8 Not less than 15 ft. radius from fire hydrant

9 Not less than 5 ft. radius from standpipe, siamese, connecting sprinkler, or wall hydrant

10 Not less than 3 ft. from Subway grate, grating or manhole at curbline

11 Not less than 15 feet from sidewalk cafe

12 Not less than 15 ft. from bus stop zone (unless at building-line)

13 Not less than 15 feet from news stand (unless attached or at building-line)

14 Not less than 15 ft. from a public pay toilet (unless attached or at building-line)

15 Not less than 5 feet from a bench at curbline

16 Not less than 10 feet from a driveway (unless at building-line)

17 Not less than 5 ft. from a canopy

18 Not less than 4 feet from mailbox at curbline

19 Not less than 4 ft. from traffic or street light

20 Not less than 4 ft. from parking meter

21 Not less than 3 ft. from fire box

22 Not less than 3 ft. from news rack or box at curbline (Unless attached)

23 Not less than 3 ft. from grating (cellar door), impedes the opening at building line, or directly across from building entrance or cellar door

24 Not less than 3 ft. from tree pit or planter at curbline

25 Not less than 50 ft. from another PPT

26 Not less than 10 ft. from extended building line at corner of intersecting streets

27 Not more than 1 PPT installation of one payphone on a sidewalk that is equal to or less than 100 ft.

28 Not more than 2 PPT installations (maximum of 4 PPT's) on a sidewalk that is more than 100 ft. and less than 300 ft.

29 Not more than 2 PPT installations (maximum of 6 PPT's) on a sidewalk that is more than 300 ft. and less than 600 ft.

30 Not more than 3 PPT installations (maximum of 9 PPT's) on a sidewalk that is 600 ft. or more

31 Not more than 1 installation of a PPT 50 ft. from corner boundary of any street corner at an intersection

32 Not less than 3 ft. from traffic sign or sign pole

33 Not less than 4 ft. from traffic or street light

34 Not less than 5 ft. from the entrance or end of a wheel chair ramp or lift

35 Not more than 4 PPT installations at intersection

36 Not installed on pavement other than concrete, or installed on concrete pavement with other than 4 x 4 or 5 x 5 flags

37 Not less than 10 ft. from corner (Within the Corner Quadrant)

38 Will not impede pedestrian traffic

39 Will not affect the structural integrity of vault or sewer

40 Not more than 3 PPT's installed on a single pedestal

NO (in violation) YES (in compliance) REQUIRED PHOTOS TO BE ENCLOSED

Proof that sidewalk is Not Distinctive Sidewalk

Proof that PPT is more than 50 ft. from another PPT installation

If within an intersection, a Photo(s) taken from a distance of more than 50 feet from every side and corner of the intersection showing the area covered by a 50 foot radius of the corner

Photos of entire sidewalk area of the proposed "move-to-the-curb" location from front-on, left, and right (total of 3 pictures)

Photo(s) of specific PPT(s) "Moving-to-the-Curb" (for Move-to-Curb Applications)

Additional Required Attachments

Attach a map if the proposed address/location is Protective Pavement as designated by the City of New York Department of Transportation. This information can be found at:

< http://www.ci.nyc.ny.us/html/dot/html/permits/stpermit.html>

Type of Zone of proposed address/location (i.e. commercial, residential, etc.):
_____

Attach a zoning map. This information can be found at: < http://www.ci.nyc.ny.us/html/dcp/html/zone.html>

Department of Information Technology and Telecommunications

75 Park Place, 9th Floor, New York, NY 10007

AFFIDAVIT

State of New York }

County of _____} ss:

_____, being duly sworn, deposes and says:

Insert Name of Affiant

1. That he or she is the _____ of _____, 1. That he or she is the Title of Affiant Name of Business Entity

1. a corporation, partnership, LLC, sole proprietorship or other business entity duly organized and 1. existing under and by virtue of the laws of the State of _____, and that he or she 1. makes this affidavit knowingly and understands the contents, data and facts requested herein.

2. That _____ is a franchise-candidate or has received a franchise 2. Name of Business Entity

2. to operate public pay telephones on, over and under the inalienable property of the City of New York.

3. That _____ will install this PPT at the exact location described in this application; 3. Name of Business Entity

4. That _____ will possess a valid permit or valid permits as required 4. Name of Business Entity

4. by the City's Department of Transportation ("DOT"), or any other applicable agency, prior to the 4. construction, installation and operation of this PPT;

5. That based upon knowledge and investigation, _____ did personally 5. Name of Business Entity

5. or via its agent inspect the site to determine that all DoITT siting requirements, including but not 5. limited to §6-41 of Title 67 of the Rules of the City of New York and the siting self-certification 5. form in this application, have been met;

6. That based upon knowledge and investigation, _____ did personally 6. Name of Business Entity

6. or via its agent check the zoning requirements for this PPT site and did truthfully reproduce them in 6. this move-to-the-curb application;

7. That based upon knowledge and investigation, _____ did personally 7. Name of Business Entity

7. or via its agent check that this PPT will not be installed on a distinctive sidewalk, as defined in 7. §2-02(f) of Title 34 of the Rules of the City of New York;

8. That based upon knowledge and investigation, _____ did personally 8. Name of Business Entity

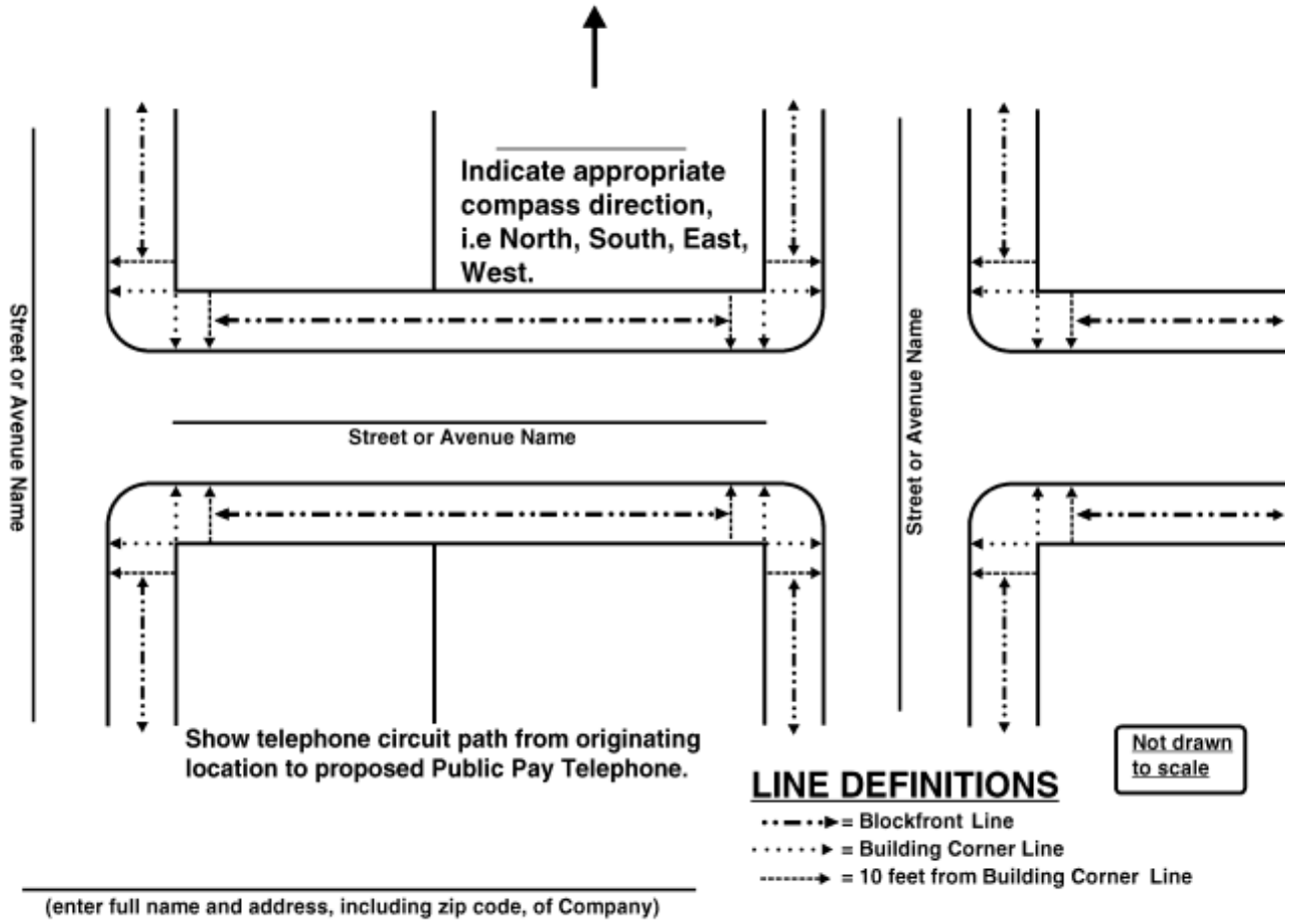
8. or via its agent truthfully and in good faith fill out this move-to-the-curb application;

Signature of Affiant

Subscribed and sworn before me this _____ day of _____, 2000.

Signature of Notary Public

Notarial Stamp/Seal



FOOTNOTES

9

[Footnote 9]: * Appendix A repealed and added City Record Feb. 16, 2006 §20, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

CONSENT FORM AND CERTIFICATION

I, _____ am a commercial lessee of the building (other property) located at _____ (address) and do hereby consent to permit _____ (name and address of company) to gain access via conduit or other opening (specify) at the position described below on the property identified herein and to enter onto such property for such purpose and for such inspection and maintenance of said telephone as shall thereafter be necessary, provided that: _____ (list any conditions, such as time period, etc.) I hereby certify that I am authorized by the owner or agent of such building or other property to grant permission for access via a conduit or other opening described herein. I further certify that on _____ (date), I notified said owner _____ (name of owner) or notified the agent of said owner _____ (name of agent) at _____ (address of owner or agent) of said consent via certified mail (receipt attached).

Describe each position on the building facade or other property of the conduit or other access for which access is granted.

Position on Property

1.

2.

3.

4.

5.

Signature Address: _____

Sworn before me this _____ day of _____, 19 ____

_____ .

Notary

FOOTNOTES

10

[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-40

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-40 Applicability.

(a) A public pay telephone shall comply with the requirements set forth in this subchapter provided, however, that the provisions of subdivision (d), subparagraphs (i), (ii), (vii), (viii) and (x) through (xxiv) of paragraph (e)(2), and subdivisions (f) through (n) of §6-41 of subchapter D shall not apply to the following:

(1) a public pay telephone permitted pursuant to this chapter that was previously licensed pursuant to former §19-131 or 19-128 of the Code; or

(2) a public pay telephone permitted pursuant to this chapter installed prior to March 1, 1996 that was listed on an interim registry pursuant to the provisions of subchapter B of this chapter and that has not been objected to by the Commissioner pursuant to §6-24 of this chapter.

(b) A public pay telephone for which an interim permit has been issued pursuant to subchapter C of this chapter shall comply with the requirements set forth in this subchapter provided, however, that the provisions of paragraph (j)(2) of §6-41 shall not apply to public pay telephones issued interim permits prior to June 26, 1998.

(c) A public pay telephone that is not in compliance with the provisions of this subchapter shall be in violation thereof and the owner of such telephone shall be subject to the penalties set forth in §6-02 of this chapter (and the grant by the Commissioner of a permit for a public pay telephone, whether under §6-38, §6-38.1, §6-31 or otherwise, shall

not be deemed to be a waiver of such required compliance or to immunize an owner from such penalties).

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (a) open par amended City Record Feb. 16, 2006 §21, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

10

[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

6

[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-41

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-41 Siting and Clearance Requirements.

(a) **Pedestrian passage.** Sidewalk clearance must be maintained so as to ensure a free unobstructed pedestrian passage of eight feet or one-half the width of the sidewalk, whichever is greater. For building line public pay telephones, sidewalk clearance shall be measured perpendicularly from the curb line to a point on the public pay telephone installation in closest proximity to the curb line. For curb line public pay telephones, sidewalk clearance shall be measured perpendicularly from the building line to a point on the public pay telephone installation in closest proximity to the building line.

(b) **Crosswalks and sight lines.** Pay telephone installations shall not obstruct or interfere in any manner with curb cuts or crosswalks and shall not interfere with free, unobstructed passage and unobstructed lines of sight for vehicular traffic.

(c) **Fire escapes and building access.** (1) A public pay telephone may not be located where it will interfere with the normal operations of a fire escape or where it will obstruct or impede the free use of any means of egress required by the Building Code.

(2) A public pay telephone shall not be located in a manner that prevents a cellar door from opening to its fullest extent.

(3) A public pay telephone installed subsequent to March 1, 1996 shall not be placed at the curb directly opposite a building entrance or cellar door.

(4) A public pay telephone installed subsequent to March 1, 1996 at the building line, shall not be installed within three feet of a building entrance or cellar door if such installation would result in users of such public pay telephone blocking such building entrance or standing on such cellar door.

(d) **Underground vaults and sewers.** A public pay telephone shall not be installed in such a manner so as to affect the structural integrity of an underground vault or sewer.

(e) **Distances required.**

(1)(i) A public pay telephone shall not be installed on or over the sidewalk or other inalienable property of the City immediately parallel to a landmark site, as such term is defined in §25-302 of the Code. If a public pay telephone was installed parallel to a landmark site prior to September 16, 1998, the owner may receive a permit but shall be subject to the rules of the Landmarks Preservation Commission regarding advertising in historic districts whether or not the landmark site is located in a historic district.

(ii) No permit under this chapter shall be granted for any site within an "Historic District", as that term is defined in §25-302 of the Code unless the permit application conforms to the Landmarks Preservation Commission rules concerning public pay telephones.

(2) Unless otherwise authorized by the Commissioner in writing, public pay telephones shall not be installed within:

(i) 3 feet of a traffic sign;

(ii) 4 feet of a traffic light;

(iii) 5 feet of the end of a ramp of an entrance to or an exit from a wheelchair lift;

(iv) 15 feet of the entrance way of an outdoor or elevated subway entrance, except where the public pay telephone is attached to, or is immediately adjacent to, the building and clear pedestrian passage is maintained;

(v) 5 feet from a subway station entrance;

(vi) 15 foot radius of a fire hydrant and, unless otherwise authorized by the Commissioner in writing, within 5 feet of a standpipe and/or sprinkler, siamese connection or wall hydrant;

(vii) 3 feet from a subway grate, utility hole cover, or transformer vault;

(viii) 15 feet of a sidewalk cafe;

(ix) 15 feet of a bus stop zone unless the public pay telephone is attached to a bus stop shelter within the zone or is installed at the building line and does not obstruct pedestrian passage on the sidewalk;

(x) 15 feet of a newsstand unless the public pay telephone is attached to such newsstand or is installed at the building line and does not obstruct pedestrian passage of the sidewalk;

(xi) 15 feet of a public pay toilet unless the public pay telephone is attached to such public pay toilet or is installed at the building line and does not obstruct pedestrian passage on the sidewalk;

(xii) 5 feet of a bench located at the curbline;

(xiii) 10 feet of a driveway unless the public pay telephone is attached to or immediately adjacent to a building immediately adjacent to such driveway;

(xiv) 5 feet of a canopy as defined in §19-124 of the Code;

(xv) 4 feet of a mailbox located at the curbline;

(xvi) 4 feet of the base of a street light;

(xvii) 4 feet of a parking meter;

(xviii) 3 feet of a fire box unless otherwise approved in writing by the Commissioner; (xix) 3 feet of a news rack located at the curbline unless the public pay telephone is attached to the newsrack;

(xx) 3 feet of a newsbox located at the curbline;

(xxi) 5 feet of a tree (without a tree pit);

(xxii) 3 feet of a grating if the public pay telephone is installed at the building line and does not cover the grating or in any way impede the opening of the grating;

(xxiii) 3 feet of a signpole;

(xxiv) 3 feet of the edge of a tree pit or planter located at the curbline.

(xxv) 4 feet from a "Pedestal Structure," (herein defined as any telecommunications utility box, cabinet, or enclosure and related construction, such as foundations, that is located, in whole or in part, above grade and within the public right-of-way of a public street and/or sidewalk, except when such structure is attached to a utility pole or other legal street furniture installation);

(xxvi) 8 feet from a bicycle rack; and

(xxvii) 4 feet of any sidewalk encumbrance not specifically enumerated herein.

(f) **Required distance from other public pay telephone.** A pedestal or other structure that holds a public pay telephone shall be located at least fifty (50) feet from any other such pedestal or structure on any one block face. For purposes of this subdivision "block face" shall mean that portion of the sidewalk on one side of a street which is between the building line and the curb and which is between the boundaries of the corner area at either end of the block. For purposes of this subdivision, "corner area" shall mean the area bounded by extending the intersecting building lines to the curb and the lines to the curb between the two extended building lines. Nothing in this section shall be construed to prohibit the placement of a public pay telephone at the building line within ten (10) feet of a corner, provided however that the placement of such public pay telephone on such building line leaves an adequate unobstructed passage for pedestrians.

(g) **Distance from corner and curb.** A public pay telephone installed after April 13, 1995 at the curbline shall not be located within the corner quadrant and the edge of such installation closest to the curb shall be at least 18 inches, but no more than 24 inches, from the curb. For purposes of this subdivision, "corner quadrant" shall mean the area from ten (10) feet on either side of the corner area in conformity with the definition of corner quadrant found in Executive Order No. 22 of 1995. For purposes of this subdivision, "corner area" shall have the same meaning as such term is defined in subdivision (f) of this section.

(h) **Location of public pay telephones in relation to other street furniture or street conditions.** No public pay telephone or public pay telephone pedestal shall be installed in a location: (1) where the City of New York or any

agency thereof has issued a permit for a location-specific street vending installation; (2) for which a revocable consent has previously been issued that would be inconsistent with installation of a public pay telephone or public pay telephone pedestal; or (3) where other street furniture that has been previously authorized is to be located, except that permitted public pay telephones may be affixed or attached to such authorized street furniture pursuant to an agreement between the public pay telephone service provider and the Department, any other City agency with jurisdiction over such street furniture, and the owner of such street furniture.

(i) **Measurements from enclosures.** If a public pay telephone is mounted in an enclosure, the distances set forth in subdivision (e) of this section shall be measured from the side of the enclosure nearest the object in question.

(j) **Number of public pay telephones at any location.** (1) There shall be no more than three (3) public pay telephones installed on a single pedestal or in an in-line configuration on a sidewalk between two street corners in the City. There shall be no more than one wall-mounted public pay telephone in any one location. There shall be a distance of fifty (50) feet between any two installations of public pay telephones. An in-line configuration shall not exceed a footprint of 35" × 120".

(2) There shall be no more than the following number of public pay telephones on any sidewalk between two street corners in the City;

(i) on any such sidewalk that is one hundred (100) feet or less, a maximum of: one public pay telephone installation that includes no more than one public pay telephone;

(ii) on any such sidewalk that is more than one hundred (100) feet and less than three hundred (300) feet, a maximum of: two public pay telephone installations that contain in the aggregate no more than four public pay telephones;

(iii) on any such sidewalk that is at least three hundred (300) feet but less than six hundred (600) feet, a maximum of: two public pay telephone installations that contain in the aggregate no more than six public pay telephones;

(iv) on any such sidewalk that is six hundred (600) feet or more, a maximum of: three public pay telephone installations that contain in the aggregate no more than nine public pay telephones.

(3) There shall be no more than one public pay telephone installation within fifty (50) feet of any corner area of any street corner. "Corner area" shall have the same meaning as set forth thereof in paragraph (f) of this section. Notwithstanding any other provision of this paragraph, in no event shall a public pay telephone be installed where such installation would result in more than four public pay telephone installations within fifty feet of the corner area at any intersection with any number of corner areas. This paragraph shall not apply to public pay telephones installed or issued a notice to proceed by the Department prior to June 26, 1998.

(4) Nothing in this subdivision shall be construed to (i) require the removal of a public pay telephone that has been registered with the Department pursuant to §6-21 of this chapter; or has been issued a permit by the Department prior to the effective date of these rules; or was operational pursuant to a license issued pursuant to the provisions of former §19-128 or 19-131 of the Administrative Code of the City of New York; or (ii) prohibit the installation of a public pay telephone where a notice to proceed has been issued by the Department prior to June 26, 1998.

(5) No permit or request for relocation is to be granted under this chapter if a permit or Request for Move to Curb, notice to proceed or conditional permit has previously been granted which would result in the installation of a public pay telephone that would render the installation sought impermissible under this subdivision (j) or subdivision (f) of this §6-41, unless a waiver is granted by the Commissioner under subdivision (n) of this §6-41 or unless such previously granted permit or Request for Move to Curb, notice to proceed or conditional permit has been terminated or revoked.

(k) **Dimensions of telephones with enclosures.** (1) If mounted in an enclosure, such enclosure should, in the case

of a telephone installed and activated prior to March 1, 1996, be no greater than 35" × 44", and for a public pay telephone installed and activated after March 1, 1996, such enclosure shall be no greater than 35" × 44" for one (1) telephone, no greater than 35" × 88" for an in-line installation of two (2) telephones, and no greater than 35" × 120" for an in-line installation of three (3) telephones.

(2) Except as otherwise waived in writing by the Commissioner, such enclosures shall not exceed 90" in height excluding a mast which shall not exceed 90" in height. (Unless waived in writing by the Commissioner, the total height of the combined public pay telephone and service mast shall not exceed 180"). At no time shall the overhead communications service wiring with a drip loop be less than ten (10) feet above the ground.

(l) **Sidewalks of a distinctive design.** A public pay telephone shall not be installed on, or result in the destruction, damage or removal of any part of, a sidewalk of a distinctive design. For purposes of this subdivision, "sidewalk of a distinctive design" shall include a pavement of granite, slate, bluestone or brick and a sidewalk constructed and approved pursuant to §2-02(f) of Title 34 of the Rules of the City of New York.

(m) A public pay telephone must be installed upon a paved surface, unless such telephone is attached to the facade of building or other structure.

(n) **Waiver by Commissioner.** If the Commissioner determines that a public pay telephone is necessary in a location in order to provide for public health and safety, and one or more provisions set forth in this chapter cannot be satisfied, he or she may waive such provisions of this chapter as may be necessary to permit the installation of a public pay telephone. In no case, however, shall a public pay telephone installation be placed within eighteen (18) inches of a curb or within ten (10) feet from a corner or constitute an impediment to pedestrian traffic or interfere with the function of fire escapes or the unimpeded passage of building inhabitants.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Section renamed City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See T67 §6-24 Note 1]

Subd. (d) amended City Record Jan. 13, 1997 eff. Feb. 12, 1997.

Subd. (e) par (1) amended City Record Feb. 16, 2006 §22, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (e) par (1) amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (e) par (2) amended City Record Jan. 13, 1997 eff. Feb. 12, 1997.

Subd. (e) par (2) subpar (v) amended City Record Feb. 16, 2006 §23, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (e) par (2) subpar (vii) amended City Record Feb. 16, 2006 §23, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (e) par (2) subpar (xvi) amended City Record Feb. 16, 2006 §23, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (e) par (2) subpar (xxv) added City Record Feb. 16, 2006 §23, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (e) par (2) subpar (xxvi) added City Record Feb. 16, 2006 §23, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (e) par (2) subpar (xxvii) added City Record Feb. 16, 2006 §23, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (f) amended City Record Feb. 16, 2006 §24, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (f) amended City Record Dec. 23, 1998 eff. Jan. 22, 1999.

Subd. (f) amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (f) amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See T67 §6-04 Note 1]

Subd. (g) amended City Record Feb. 16, 2006 §24, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (h) added City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (i) relettered (formerly (h)) City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See T67 §6-24 Note 1]

Subd. (j) amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2] (Note internal renumbering by Law Department per Charter §1045.)

Subd. (j) relettered (formerly (i)) City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See T67 §6-24 Note 1]

Subd. (j) amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See T67 §6-04 Note 1]

Subd. (j) par (3) amended City Record Feb. 16, 2006 §25, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (k) relettered (formerly (j)) City Record Jan. 13, 1997 eff. Feb. 12, 1997.

Subd. (l) amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (l) relettered and amended (formerly (k)) City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See T67 §6-24 Note 1]

Subd. (m) added City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (m) relettered (formerly (l)) City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See T67 §6-24 Note 1]

Subd. (n) amended City Record Feb. 16, 2006 §26, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (n) relettered (formerly subd. (m)) City Record Aug. 17, 1998 eff. Sept. 16, 1998.

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-42 Sign Required.

Each public pay telephone location, single or multiple, shall have a sign in a form prescribed by the Commissioner, and consistent with the Rules and Regulations promulgated by the New York State Public Service Commission, installed so that it is visible within the enclosures for such telephone. Such sign shall:

(a) be of dimensions no less than 2" by 5"

(b) include Americans with Disabilities Act ("ADA") symbols indicating that the telephone is equipped to assist hearing impaired persons;

(c) be in compliance with requirements of the ADA;

(d) clearly and legibly identify the owner of the public pay telephone;

(e) clearly and legibly identify the New York State Public Service Commission certified Operator Service Provider of such telephone in the same typeface and in a size that is no larger than that used to identify the owner of the telephone;

(f) contain the following statement: "To register a complaint with the City of New York, call 311."; and,

(g) clearly and legibly identify the public pay telephone using the PPT identification number issued by DoITT.

HISTORICAL NOTE

Section amended City Record Feb. 16, 2006 §27, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-43 Installation and Maintenance.

(a) **Workmanship.** (1) Materials, workmanship and wiring shall comply with all applicable provisions of Title 27 of the Administrative Code and the National Electrical Safety Code.

(2) Where the nature of any work to be done in connection with the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation requires that such work be done by an electrician, only a licensed electrician shall perform such work.

(b) **Materials.** Materials shall be of good and durable quality, in accord with all applicable codes, and all work shall be performed without unreasonable disruption of public streets.

(c) **Installation.**

(1) Every public pay telephone installation (as such is defined in §6-01 of this chapter) shall be maintained in a condition of good repair. All painted surfaces must receive a fresh coat of paint at least once a year.

(2) Broken or missing lights, broken or unattached or missing advertising panels or other components of a public pay telephone enclosure shall all be repaired or replaced, as applicable, within seventy-two hours, of being damaged, provided however that upon notice from the Department, such disrepair shall be remedied within forty-eight (48) hours.

(3) Dangling or protruding wires, whether originating from the enclosure or the pedestal or conduit of a public pay telephone installation, shall be repaired within forty-eight (48) hours of the commencement of such state, provided however that upon notice from the Department, such disrepair shall be remedied within twenty-four (24) hours.

(4) The pedestal(s) upon which a public pay telephone enclosure is mounted shall be kept free of holes or missing or unattached plates, or missing or unattached or broken mounting brackets, screws or bolts or other attachments, covers, panels or associated equipment, and upon notice of non-compliance with this subdivision (c), the pedestal(s) shall be repaired within forty-eight (48) hours.

(5) Notwithstanding the foregoing, any dangerous condition shall be fixed as soon as possible but no later than twenty-four hours. For the purposes of this subdivision (c), the definition of "dangerous condition" shall include, but not be limited to, a public pay telephone installation and associated equipment possessing jagged or sharp edges, improperly grounded or insulated or bare telephone or electrical wires carrying electrical current, and deteriorated or damaged sidewalk flags.

(d) **Telephone service.** A public pay telephone shall be maintained such that upon proper payment, a call can be completed. For example, a public pay telephone that could not complete a call to a location or instrument using "anonymous call rejection" on a caller ID or caller number identification device would be in violation of this subdivision (d) of §6-43 and of subdivision (b) of §6-05 of this chapter.

(e) **[Reserved]**

(f) **Wiring.** (1) Overhead communications wiring between the building line and the curb is prohibited.

(2) Overhead communications wiring that crosses the street is prohibited except where such wire is part of a common or existing wire path with other non-public pay telephone communication wire or other telephone communication wire.

(3) Overhead communications wiring of any kind is prohibited in the Borough of Manhattan. In all other Boroughs, except as otherwise waived in writing by the Commissioner, wiring for public pay telephones shall be installed underground wherever the City has required electric cables be installed underground. Existing ducts, conduits, or other facilities such as above ground terminal boxes on the sidewalk served by underground facilities or other facilities subject to any and all reciprocal agreements between the dial tone provider and another party shall be utilized. No property belonging to a party other than the dial tone provider may be used without the express written consent of such party and the Department.

(4) All aerial communication wiring must be at least 10 feet off the ground at all times.

(5) All overhead public pay telephone communication wires following an existing or common communication wire path will be transferred by the dial tone provider to an alternate means of dial tone connection when such existing communication wire path is discontinued or removed or when the City requires electrical cabling be installed underground at the public pay telephone installation location.

(6) Where overhead wiring is generally permissible, new overhead public pay telephone communication wires between a public pay telephone and a pole with existing facilities will be permitted if the distance between such telephone and pole is thirty-five (35) feet or less in a straight line, and telephone service in that location is provided via aerial means.

(7) Where overhead wiring is generally permissible and the distance between a public pay telephone and a pole with existing facilities is greater than thirty-five (35) feet, the dial tone connection may be underground to the pole.

(8) All underground communication wiring shall be installed through conduits except where underground ducts are

used.

(9) All aboveground communication wiring from a pedestal or wall mount to a source of dial tone located on private property shall be installed through weather resistant conduits using appropriate sealant.

HISTORICAL NOTE

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (a) amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See T67 §6-04 Note 1]

Subd. (c) added City Record Feb. 16, 2006 §28, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (c) repealed City Record Dec. 17, 1996 eff. Jan. 16, 1997.

Subd. (d) added City Record Feb. 16, 2006 §28, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (d) repealed City Record Dec. 17, 1996 eff. Jan. 16, 1997.

Subd. (e) repealed City Record Dec. 17, 1996 eff. Jan. 16, 1997.

Subd. (f) amended City Record Feb. 16, 2006 §29, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (f) amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (f) added City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See T67 §6-04 Note 1]

Subd. (f) par (iii) amended City Record Jan. 13, 1997 eff. Feb. 12, 1997.

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-44 Compliance with Americans with Disabilities Act.

A franchisee shall comply with the provisions of the Americans with Disabilities Act and the regulations promulgated thereunder, contained in Appendix A to 28 CFR Parts 35 and 36, and any additional applicable Federal, State and local laws relating to accessibility for persons with disabilities and any rules or regulations promulgated thereunder, as such laws, rules or regulations may from time to time be amended.

HISTORICAL NOTE

Section amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See T67 §6-04 Note 1]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-45 Compliance with Other Authority.

(a) As provided in subdivision (d) of §6-30 of this subchapter, notwithstanding any other provision of this chapter, a permit shall not be issued for a public pay telephone pursuant to this chapter unless the owner of such telephone demonstrates that he or she has obtained all permissions required by applicable provisions of Federal, State and local law, as well as rules and regulations promulgated and agreements entered into pursuant thereto.

(b) A public pay telephone shall be sited, installed, operated and maintained in compliance with all applicable provisions of Federal, State and local law, as well as rules and regulations promulgated and agreements entered into pursuant thereto.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-46 Timing of Installation.

A permit granted under this chapter shall be considered automatically revoked if a public pay telephone is not installed and activated within 90 days of the date such permit is granted, subject to extension of such date by the Commissioner, acting in his or her discretion, upon a showing by the permittee that despite good faith efforts to complete installation within such 90 day period, circumstances beyond the control of the permittee (not including the financial capacity of the permittee) are preventing completion of such installation.

HISTORICAL NOTE

Section added City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-47 City Authority to Operate.

If pursuant to any provision of this chapter, a public pay telephone, or group of public pay telephones, becomes subject to removal by the Department, and if the location of such payphone or group of payphones is consistent with the requirements of subchapter D of this chapter, then the Department shall have the authority to, in lieu of removal of such payphone or payphones, operate (directly or through a designee) such payphone or payphones for the account of the City and/or make such payphone or payphones available for purchase or lease from the City by holders of public pay telephone franchises granted by the City. The Department, or its designee, purchaser or lessee, shall be authorized to make any necessary or convenient modifications to such payphone or payphones to secure the service provided from such payphone or payphones and the revenues generated from such payphone or payphones.

HISTORICAL NOTE

Section added City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]
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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-48 Fee Nonrefundable.

The three hundred ninety five dollars ($395) fee required to accompany any permit application or Request for Move to Curb under this chapter and the thirty-five dollar ($35) fee required to accompany any application for an Extension to a Notice to Proceed shall be nonrefundable.

HISTORICAL NOTE

Section amended City Record Oct. 5, 2004 §4, eff. Dec. 4, 2004 per the Notice of Adoption. [See T67 §6-06 Note 1]

Section added City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C

footnote]
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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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68 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 1 GRANTING OF LICENSES FOR PUBLIC SOLICITATION

§1-01 Applications.

(a) All applications shall be made on Form W704A provided by the Department.

(b) **Content.** Every application made hereunder shall set forth, in addition to other information, the following:

(1) Name and address of organization.

(2) Names and addresses of the officers and directors of the organization.

(3) The method of solicitation.

(4) Specific dates for which permission is sought and localities and places of solicitation.

(5) Purpose or object of solicitation.

(6) The estimated expenses of the proposed solicitation.

(7) Whether or not any commissions, fees, wages or emoluments of any character are to be extended in connection with such solicitation and if so, the rates or amounts.

(8) A verified statement of all monies, donations or financial assistance of any kind collected during the previous fiscal or calendar year, the expenditures connected therewith, and all other disbursements thereof.

(9) Copy of any contract made in connection with the solicitation shall be attached to the application.

(c) **Certified resolution of authority to be filed.** Every organization, society, association or corporation applying for such license shall file with its application a copy of the resolution adopted by such organization, society, association or corporation authorizing the application, certified to as correct by the proper officer thereof.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 1 GRANTING OF LICENSES FOR PUBLIC SOLICITATION

§1-02 Eligibility.

(a) **In general.** Licenses will not be issued to individuals but only to non-profit groups, organizations, associations and corporations. All officers and directors of applicant organization must be of good character and bear a reputation in the community satisfactory to the Commissioner.

(b) **Veterans organizations.** Applications for public solicitation may not be submitted by posts, branches, garrisons or other units or subdivisions of organizations having county or state offices unless specifically authorized in writing by the State or County office. National offices of organizations may also apply.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 1 GRANTING OF LICENSES FOR PUBLIC SOLICITATION

§1-03 Licensee Prohibitions, Duties and Limitations.

(a) **Proceeds-certain uses prohibited.** No license shall be granted where any part of the proceeds collected insures to the benefit of any individual officer or member of the organization, society, association or corporation, directly or indirectly, except that reasonable compensation may be paid for services rendered.

(b) **Gambling and games of chance.** No gambling device, lottery, raffle, drawing or game of chance shall be permitted at or used in connection with any function for which a license to solicit has been granted.

(c) **Misstatements.** Any misstatement made in the application or to the Commissioner for the purpose of obtaining a license may be deemed sufficient cause for refusing such license or for revoking any license granted.

(d) **Terms of license to be fulfilled.** Licenses granted hereunder shall specify the period during which they shall remain in force, the name of the organization, society, association or corporation to which granted, the manner in which the solicitation shall be carried on, the location of the solicitation, and the purpose of the solicitation. Licensees and all solicitors, collectors or other representative of the licensees, shall be required to produce on demand, the original license or a photographic copy. The license shall not be valid unless it bears the signature of the Commissioner, Deputy Commissioner or Counsel to the Department of Social Services.

(e) **Commissioner's right to audit.** The Commissioner reserves the right to make or cause an audit to be made at any time of the accounts of any organization, society, association or corporation, to which a license has been issued at any time, and if such audit discloses any irregularity it shall be sufficient reason for the revocation of the license and for the denial of future licenses to the same group or its successors or affiliates. The Commissioner reserves the right to

examine books and records of applicants for licenses.

(f) **Non-transferability of license.** No license granted in accordance with these regulations shall be transferable.

(g) **Filing of statement of receipts and expenditures.** The holder of the license shall file with the Department of Social Services, within ten (10) days after the expiration of the period for which it was granted, a statement of the receipts and expenditures in detail, sworn to by a proper officer.

(h) **Ten day rule.** Completed application form for solicitation of funds must be filed with the Department of Social Services at least ten (10) days before the effective date of the requested solicitation.

(i) **Sale of tickets or advertising.** (1) License issuance limited to three month period prior to activity. In connection with the sale of tickets or advertising for fund-raising purposes a license will not be issued earlier than three months before the scheduled date of the proposed affair.

(2) **Submissions of samples.** It is required that organizations licensed by the Department of Social Services who conduct campaigns for contributions and by sale of tickets must furnish the Department with samples of letterheads, appeal letters and literature to be used in connection with such campaign and where the sale of tickets is licensed, the Department must be furnished with samples of the tickets in the different price denominations.

(j) **Proof of consent to use of private property.** Within the discretion of the Commissioner, he may require applicant for license to furnish proof of consent to solicitation on any privately-owned property.

(k) **Prohibition against soliciting while in military uniform.** No licensees, or representatives of a licensee, shall wear the uniform or any part thereof, of the Army, Navy, Coast Guard or Marine Corps of the United States, or of the National Guard or State Guard of the State of New York, in connection with such solicitation of funds.

(l) **Removal of solicitation container at license expiration.** Where public solicitation is conducted by placement indoors of containers or receptacles, such solicitation must terminate upon the expiration date of the license. No container or receptacle may be displayed after such expiration date, and all containers and receptacles must be promptly removed by or returned to the licensee.

(m) **Street solicitation.**

(1) **Soliciting prohibited in certain places.** No license granted hereunder shall be construed to permit or allow the holder, thereof, to solicit contributions along the line of march of any parade or at any block party or street fair, unless such solicitation is specifically authorized by the license. No solicitation is to be conducted on any public conveyance, platform, stairway, station or any appurtenance of a subway or elevated railway.

(2) **Solicitation by children prohibited.** The use of children under eighteen (18) years of age in solicitation under authority of license issued by the Department of Social Services is prohibited.

(3) **Three-day limitation.** Licenses for street solicitation shall be limited to a period of three days within a six-month period. In instances involving inclement weather, a licensee may request and receive substitute days. The last week in May shall be reserved for veteran organizations only who will be permitted to conduct both indoor and outdoor solicitation by the sale of poppies during this time.

(4) **Distance required between solicitors.** There shall be at least the distance of one City block between persons soliciting funds on public streets under license from the Department of Social Services.

(5) **Manner of soliciting.** Solicitors shall approach pedestrians in a quiet, conversational tone. Solicitors shall not shout or otherwise conduct themselves in a manner offensive to passersby and shall not carry signs.

(6) **Solicitors shall not block entrances.** Solicitors shall not block the entrance to any dwelling, store or other place of business, nor impede in any way the free ingress to or egress from any dwelling, store or other place of business.

(7) **Solicit near the curb line.** Solicitors shall station themselves nearest the curb line.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 1 GRANTING OF LICENSES FOR PUBLIC SOLICITATION

§1-04 Violations.

Any violation of these regulations or of any ordinance or law may result in the revocation of the license and in denial of future licenses to the same organization, its successors or affiliates.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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68 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-01 General Statement.

(a) The laws of the state of New York require that New York City be responsible for the burial of poor people who reside here. New York City meets these requirements in two ways. For those deceased persons who do not have a friend or relative who is willing to arrange for burial, the deceased is interred in New York City's burial ground (known as "Potter's Field"). For those deceased persons who have a friend or relative who wishes to arrange for burial through a funeral director, New York City will help pay burial expenses if there is no legally responsible relative living with the deceased at the time of death or prior to the institutionalization of the deceased who is financially able to pay for the burial. These regulations explain when and how much New York City will pay for the burial expenses when the funeral was arranged by a friend or relative.

(b) Benefits will be provided in an amount not to exceed $800 if burial expenses do not exceed $1400. The only exclusions from this $1400 are the cost of the burial plot on behalf of the deceased and the grave opening or the cost of cremation and any costs required by the cemetery. All other costs will be included in determining the total costs of the burial expenses for purposes of determining the $1400 limitation set forth above. Where a burial follows a cremation, only the cost of the cremation shall be excludable. Applications for benefits must be made in person by the individual who authorized the funeral unless the application is made by an "organizational friend" as defined in §2-02 "Friend" (2). Reasonable proof of indigency of the deceased and the legally responsible relative must be supplied. Proof of burial expenses must be supplied in order for payment to be authorized. The details of these requirements are described in the following sections.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record June 26, 1995 eff. July 26, 1995. [See T68 §2-04 Note 1]

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68 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-02 Definitions.

Applicant. An applicant is a relative or friend of the indigent decedent who has authorized or provided for the burial of an indigent person, has signed the prescribed form seeking assistance for burial expenses, and has hand-delivered the signed application to personnel of the Burial Claims Unit. A legally responsible relative who resided with the deceased prior to the deceased's institutionalization or at the time of death must be the applicant, for that deceased individual. Except for Organizational Friends, as defined in §2-02 "Friend" (2), applicants or their authorized representatives must appear in person at the Burial Claims Unit of the Human Resources Administration to apply for benefits.

Application. An application is an action by which a person indicates his or her desire to receive a grant for burial expenses through signing and hand-delivering the prescribed form to personnel of the Burial Claims Unit.

Authorized representative. An authorized representative means the person designated by the friend or relative to make funeral arrangements and/or to apply on the applicant's behalf. Proof of representation shall consist of a statement signed by the applicant designating the person as the authorized representative.

Burial expenses. Burial expenses mean any cost related to the funeral or burial of the deceased which are enumerated in the written itemization statement or crematory/cemetery charge bill. The value of items or services donated by a funeral director, funeral home, or cemetery shall not be considered burial expense.

Friend. A friend may be either an (1) individual; or (2) a charitable and/or religious organization.

(1) **Individual friend.** A friend is any person who, prior to the decedent's death, maintained such regular contact with the deceased as to be familiar with the decedent's activities, health and religious beliefs. Such "friend" shall present a sworn, notarized statement stating the facts and circumstances upon which the claim that he is a "friend" is based. The following persons are not "friends" of the deceased for purposes of these regulations: Funeral directors and employees of the funeral home through whom funeral arrangements have or will be made; Public Administrators, acting in their official capacity; hospital administrators and hospital employees acting in their official capacity; administrators and employees of all facilities set forth in Article 28 of the Public Health Law acting in their official capacity.

(2) **Organizational friend.** A charitable and/or religious organization may qualify as an "organizational friend" if the New York City Department of Social Services gives advance approval of such status based on the organization's satisfactorily meeting the following criteria:

(i) The organization's history and purpose, as demonstrated by its articles of organization, are charitable and/or religious in nature;

(ii) Part of the organization's function is to bury indigent persons;

(iii) The organization's principal place of business is in New York City;

(iv) The organization is non-profit and tax-exempt pursuant to §501(c)(3) of the United States Internal Revenue Code;

(v) No board member or officer of the organization is a funeral home director with which the organization does business;

(vi) A substantial amount of the organization's funding for burial purposes comes from private sources; and

(vii) Annually, the organization makes its books and records available to the New York City Department of Social Services for inspection, review and audit, if necessary.

Funeral directing. Funeral directing means the care and disposal of the body of a deceased person and/or the preserving, "disinfecting and preparing by embalming or otherwise, the body of a deceased person for funeral services, transportation, burial or cremation; and/or funeral directing or embalming as present known, pursuant to §3400(d) of the Public Health Law or in accordance with the statutes of the funeral director's home state.

Funeral director. A funeral director is a person to whom a valid license as such has been duly issued, pursuant to §3400(a) of the Public Health Law or licensed in accordance with the statutes of the funeral director's home state.

Funeral establishment. A funeral establishment means a single physical location, address or premises devoted to or used for the care and preparation of a body of a deceased person for disposition and for mourning or funeral ceremonial purposes, pursuant to §3400(g) of the Public Health Law or licensed in accordance with the statutes of the funeral establishment's home state.

Funeral firm. A funeral firm means an individual, partnership, corporation or estate representative engaged in the business and practice of funeral directing, pursuant to §3400(j) of the Public Health Law or licensed in accordance with the statutes of the funeral firm's state.

Indigent. An indigent is an individual who was in receipt of public assistance or Supplemental Security Income ("SSI"); or if less than age 65 was eligible for public assistance; or if age 65 and over, was eligible for SSI.

Legally responsible relative. A legally responsible relative is legally obligated to furnish support for the following persons: a spouse; a son or daughter under the age of twenty-one years and a step-child under the age of twenty-one years. A person is not chargeable with the support of an adopted child of his or her spouse, if the child was adopted after

the adopting spouse is living separate and apart from the non-adopting spouse pursuant to a legally recognizable separation agreement or decree under the domestic relations law, and the spouses remain separate and apart after the adoption.

New York City. New York City means the Human Resources Administration of the City of New York, which is the local social services district for the City of New York.

The Burial Claims Unit. The Burial Claims Unit is the unit of the Human Resources Administration which accepts applications, processes applications, and authorizes grants for burial expenses based on applications for burial grants, including applications by relatives or friends for grants for a decedent who is a discharged member of the armed forces of the United States, a minor child or parent of any such member of the armed forces, or the spouse or unremarried surviving spouse of any such member of the armed forces. The decedent shall be a legal resident of New York City at the time of death. The Burial Claims Unit of the Office of Constituent and Community Affairs of the New York City Human Resources Administration is located at 151 Lawrence Street, 5th Floor, Brooklyn, New York 11201.

Public assistance. Public assistance means the receipt of Home Relief or Aid to Dependent Children. Payments of emergency assistance to families or emergency home relief shall not be considered public assistance.

Relative. Relative includes all relatives of the deceased through first cousin or the spouse of any such relative. Specifically included are the spouse, child, grandchild, parent, grandparent, brother, sister of the deceased and their spouses.

Supplemental Security Income. Supplemental Security Income, or SSI, means the receipt of SSI or additional state payments.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Applicant amended City Record Jan. 30, 2008 §1, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

Application amended City Record Jan. 30, 2008 §1, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

New York City amended City Record Jan. 30, 2008 §2, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

CASE NOTES

¶ 1. Charter §197-c has no legal requirement for a superseding restrictive declaration to be included in order for a land use application to be complete. Charter §197-c(a), (b), (c), (i) and the implementing regulations, 62 RCNY 2-02(a)(5)(iv), (v) do not make the filing of a superseding restrictive declaration a prerequisite to deeming an application complete for ULURP notification and processing purposes. Coalition against Lincoln W. v. City of New York, 208 AD2d 472 affirmed, 86 NY2d 123 [1995].

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Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-03 Application for Financial Assistance for Burial Expenses.

(a) An application shall be submitted to the Agency within sixty days of the date of death by the relative or friend of the deceased or an authorized representative.

(b) An application shall be made by personal appearance at the Burial Claims Unit.

(c) The applicant shall receive a prescribed application form. An applicant shall complete the application form before any assistance shall be authorized. All documents required to verify eligibility for and the amount of benefits must be submitted within sixty days of the application for benefits. Failure to provide such documents within the time set forth in this section shall result in a finding of ineligibility and a denial of the application except as stated in this subdivision (c). An applicant who cannot submit the documentation within sixty days of the date of application shall inform the Burial Claims Unit in writing of the delay and the reason therefor within the sixty-day period. Extensions of this period shall be granted at the discretion of the Burial Claims Unit.

(d) Applications on behalf of indigents who were in receipt of public assistance from the Human Resources Administration of New York City or Supplemental Security Assistance at the date of death may be made prior to burial and eligibility for a grant for burial expenses will be determined within two working days of application. If the applicant is a legally responsible relative, (s)he must also be a recipient of public assistance from the Human Resources Administration of New York City or Supplemental Security Assistance. If eligibility is found, the applicant shall be issued a pre-approval letter addressed to the funeral director acknowledging eligibility subject to the monetary and documentation requirements set forth in these regulations.

Authorization for payment of burial expenses shall be deferred until receipt of all documentation. Such documentation must be supplied within 60 days of application except as described in §2-03(c). The Burial Claims Unit will make every effort to authorize payment within two weeks of receipt of all necessary documentation in cases under this subdivision (d).

(e) Application on behalf of indigents who were not in receipt of public assistance from the Human Resources Administration of New York or Supplemental Security Assistance at the date of death are subject to further eligibility verification. The Burial Claims Unit will make every effort to make a final determination of eligibility for payment within thirty days of receipt of all necessary documentation required in this regulation.

Applicants who authorized the burial of public assistance or SSI recipients and who did not apply before burial as allowed in subdivision (d), are subject to this subdivision (e).

(f) Relatives and friends of a decedent who was a discharged member of the armed forces of the United States, a minor child or parent of any such member of the armed forces, or the spouse or unremarried surviving spouse of any such member of the armed forces shall apply to the Burial Claims Unit for a grant for burial expenses. The decedent shall be a legal resident of New York City at the time of death. The discharge status of the decedent shall be confirmed by the United State Department of Veterans Affairs.

HISTORICAL NOTE

Section amended City Record Jan. 30, 2008 §3, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. 68 RCNY 2-03, which prescribes a 60-day limitation period for filing an application for reimbursement of an indigent person's burial expenses pursuant to Social Services Law §141 and 18 NYCRR 352.7(N) is invalid because neither of these two sections provide for a 60-day limitation period for burial grant eligibility and an administrative agency cannot create a Statute of Limitations by regulation when not authorized by enabling legislation. Mtr. of Mayer v. Kaladjian, 161 Misc. 2d 883 [1994].

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***** Current through December 2009 ****

68 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-04 Eligibility of Applicants for a Grant for Burial Expenses.

(a) The Burial Claims Unit may authorize payment of a sum of up to $900 toward burial costs. No payments shall be authorized if the burial expenses, exclusive of the costs of cremation or of the burial plot and the grave opening, exceed $1700.

(b) The value of any resources or income which were available to the deceased shall be deducted from the $800 burial allowance in determining the amount the applicant shall receive.

(c) The value of any resources or income available to the legally responsible relative who resided with the deceased shall be deducted from the $800 burial allowance in determining the amount the applicant shall receive.

(d) A legally responsible relative who resided with the deceased shall be eligible for a burial allowance only if (s)he was financially eligible for public assistance if under age 65, or eligible for SSI if age 65 or over.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Jan. 30, 2008 §4, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

Subd. (a) amended City Record June 26, 1995 eff. July 26, 1995. [See Note 1]

Subd. (b) amended City Record June 26, 1995 eff. July 26, 1995. [See Note 1]

Subd. (c) amended City Record June 26, 1995 eff. July 26, 1995. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1995:

New York Social Services Law §141(3)(a) authorizes local social services districts to set the amount which they will reimburse the relatives or friends of a deceased indigent person for burial of the deceased person. The budget shortfall requires reducing the amount to $800 to achieve savings.

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***** Current through December 2009 ****

68 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-05 Verification.

Verification of data supplied on the application form which are pertinent to the determination of eligibility or the amount of the grant toward burial expenses, is an essential element of this investigation.

(a) Documents, personal and collateral interviews, correspondence and conferences are means of verification. The Burial Claims Unit may require verification of all assets and resources that were available to the deceased at the time of death.

(b) All applicants shall be required to provide the Burial Claims Unit with the following documentation:

(1) A Certificate of Death, which shall contain the name, date of death and place of death of the person to whom it relates and shall be properly certified by the local registrar, or a Certificate of Spontaneous Termination of Pregnancy. The Certificate of Spontaneous Termination of Pregnancy must be prepared in accordance with Article 203 of the New York City Health Code.

(2) Two itemized funeral bills, indicating funeral charges, services and merchandise provided. The funeral bills shall be signed by the funeral director before a notary public.

(3) A true copy of the written Itemization Statement required to be furnished in accordance with §78.1 of the regulations of the New York State Department of Health. Such statements shall include, but not be limited to, the price of the funeral together with the price of each item of service and merchandise actually furnished. True copies of the statement, pursuant to said regulations, shall be consecutively numbered and maintained in numerical order at the

funeral establishment. The itemization statement shall bear the dated signature of both the applicant and the funeral director.

(4) A cemetery charge bill, if any.

(5) Such other documentation as may be required by New York City, whether in the possession of the applicant, the funeral director, or the cemetery.

(c) The funeral director shall be required to complete a prescribed form affidavit, provided by the Burial Claims Unit, where payment was made directly to the funeral home. The form shall include, but not be limited to, the following provisions:

(1) An attestation that the funeral bill is ordinary and customary.

(2) A statement that the funeral director understands that (s)he shall be subject to the penalties set forth in §3450 **et seq.** of the Public Health Law, if he knowingly makes a false statement or misrepresentation, or practices fraud or deceit in his business or in the business of the funeral firm.

(3) A statement that the funeral bill has either been paid or is due and owing.

(4) A statement that the funeral director agrees that (s)he will furnish any additional documentation kept in the normal course of business which the Burial Claims Unit may require to evaluate eligibility for and amount of benefits.

(d) A personal interview may be required with the fiduciary of the estate of the decedent. New York City shall assess the availability of assets in the deceased's estate to pay the burial expenses. In the event that the executor fails or refuses to cooperate in providing information about the assets and resources available to the deceased at the time of death, eligibility for a grant for burial expenses shall be indeterminable and the application shall be denied. In the event that a lawsuit has been initiated by the fiduciary of the estate, documents shall be obtained to identify all available funds.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Jan. 30, 2008 §5, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

Subd. (b) open par amended City Record Jan. 30, 2008 §5, eff. Feb. 29, 2008. [See T68 §2-09

Note 1]

Subd. (c) amended City Record Jan. 30, 2008 §5, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

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68 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-06 Residence.

The decedent shall be a resident of New York City or a recipient of public assistance or medicaid from the Department of Social Services of New York City or the application shall be denied.

In the event an indigent person dies in New York City but resided in another county in New York State, an application for a grant for burial expenses shall be rejected. The applicant shall be advised to apply to the Department of Social Services in the county of decedent's residence for assistance.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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68 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-07 Continuing Liability of the Legally Responsible Relative.

In accordance with State law, the relatives who survive the deceased who would have been responsible for his/her support are responsible for the expenses of his/her burial to the extent they are able to pay. New York City may take appropriate action to enforce this obligation in order to reimburse any expenses incurred by New York City in accordance with these regulations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

68 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-08 Fair Hearing.

(a) Fair hearing is the procedure by which an applicant for a grant for burial expenses may appeal to the Commissioner from certain decisions or actions of the Burial Claims Unit and have a hearing thereon, in accordance with Section 22 of the Social Services Law and Title 18, Section 358.1 et seq. of the Official Compilation of the Codes, Rules and Regulations of the State of New York (N.Y.C.R.R.).

(b) An applicant for a grant for burial expenses shall be entitled to a fair hearing on the following grounds:

(1) denial of an application for a grant for burial expenses;

(2) failure to determine the applicant's eligibility;

(3) inadequacy in amount or manner of payment of burial expenses;

(4) any other grounds affecting the applicant's entitlement to a grant for burial expenses or the amount thereof.

(c) As set forth in Title 18, Section 358 of the N.Y.C.R.R., request for a hearing must be made within 60 days of the adverse action which is being appealed. Failure to appeal within this 60 day period will result in a denial of the Fair Hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Jan. 30, 2008 §6, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

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68 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-09 Application for Financial Assistance for Burial Expenses for Certain Veterans.

Notwithstanding any other provision of law or regulation to the contrary, where a discharged member of the armed forces of the United States, other than a member of the armed forces who was dishonorably discharged, and the discharge status of the decedent has been confirmed with the United States Department of Veterans Affairs, dies in the city of New York without leaving sufficient means to defray his or her funeral expenses and dies without a friend or relative to act as an applicant for the purpose of seeking assistance for burial expenses from the Human Resources Administration.

(a) A veteran's organization may act as an organizational friend for purposes of applying for burial expenses if such veteran's organization has been qualified as an organizational friend by the Human Resources Administration. Approval of such organization as an organizational friend is based on the organization's satisfactorily meeting the following criteria:

(i) The organization's history and purpose, as demonstrated by its articles of organization, are charitable and/or religious in nature;

(ii) Part of the organization's function is to bury indigent veterans;

(iii) The organization's principal place of business is in New York City;

(iv) The organization is non-profit and tax-exempt pursuant to §501(c)(3) or 501(c)(19) of the United States Revenue Code;

(v) No board member or officer of the organization is a funeral home director with which the organization does business;

(vi) A substantial amount of the organization's funding for burial purposes comes from private sources;

(vii) Annually, the organization makes its books and records available to the Human Resources Administration for inspection, review and audit, if necessary.

(b) The Burial Claims Unit may authorize payment of a sum of up to $900 toward burial costs, including the cost of transporting the remains of the veteran to the Calverton National Cemetery.

(i) No payments shall be authorized if the burial expenses, exclusive of the costs of cremation or the burial plot and the grave opening, exceed $1700.

(ii) No payments shall be authorized if the veteran is to be buried in a private cemetery other than in the Calverton National Cemetery.

(iii) The value of any resources or income which were available to the deceased shall be deducted from the $900 burial allowance in determining the amount the applicant shall receive.

HISTORICAL NOTE

Section added City Record Jan. 30, 2008 §7, eff. Feb. 29, 2008. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 30, 2008:

HRA furnishes public assistance to New York City residents and does so in accordance with State Law and implementing regulations. Pursuant to Social Services Law §141, HRA is authorized to pay a portion of the burial costs of an indigent deceased individual where the burial of such individual has been arranged for by the deceased's relatives or friends, and the payment is in accordance with local rules. Local rules currently appear at Chapter 2 of Title 68 of the Rules of the City of New York.

HRA now proposes to add a new rule and amend the existing rules. The purpose of the new rule and amendments is to authorize HRA's payment of certain burial expenses for discharged veterans, other than those dishonorably discharged, where funeral arrangements for such veterans are made by a veterans organization which qualifies as an "organizational friend." The proposed rule sets forth the requirements that a veterans organization must meet to qualify as an "organizational friend"; provides for payment of a sum up to $800 toward burial costs, including the cost of transporting remains to Calverton National Cemetery; and makes certain technical corrections to the existing rules.

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68 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 3*1 EMPLOYMENT TRAINING PROGRAMS FOR PUBLIC ASSISTANCE RECIPIENTS

§3-01 Purpose.

The purpose of these rules is to establish an evaluation procedure for employment training programs to ensure that training provided in such program shall:

(a) be sufficient to enhance substantially the participants' opportunity to secure unsubsidized employment, or

(b) when coupled with or provided in conjunction with other training or work activities represent part of a comprehensive approach to securing unsubsidized employment for the participants and attaining self-sufficiency.

HISTORICAL NOTE

Section repealed and added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

Subd. (b) amended City Record Apr. 18, 1997 eff. May 18, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that

each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

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68 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 3*1 EMPLOYMENT TRAINING PROGRAMS FOR PUBLIC ASSISTANCE RECIPIENTS

§3-02 Definitions.

As used in these rules, the following terms shall have the following meanings: Cohort. A group that includes all public assistance recipients who are or have been enrolled in an employment training program, whose scheduled date of completion of that program is within a specific one-year period, but does not include those recipients who withdrew or were otherwise removed from the program within thirty days of their date of enrollment in the program. Recipients whose original scheduled date of completion would place them within a cohort, but whose date of completion has been rescheduled with the approval of OES, shall not be included in that cohort.

Date of enrollment. The first date upon which a public assistance recipient is scheduled to attend a class at an employment training program.

Department of social services. The New York State Department of Social Services, or any successor agency which is responsible for functions described herein.

Employment training programs. Vocational training programs, literacy programs, job placement programs, and associate's degree or other post-secondary two-year degree granting programs.

OES. The Office of Employment Services of the New York City Human Resources Administration.

OES work-related activity. Any job search, work experience program, on-the-job training program, or other training in which OES requires a recipient to participate pursuant to applicable law and regulations.

Paid employment. Lawful employment for which a person is paid on an hourly, per diem, weekly, biweekly or monthly basis. Paid employment includes full-time employment and part-time employment.

HISTORICAL NOTE

Section repealed and added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

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68 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 3*1 EMPLOYMENT TRAINING PROGRAMS FOR PUBLIC ASSISTANCE RECIPIENTS

§3-03 Standards for Evaluating Employment Training Programs.

(a) To be approved as an employment training program for which a public assistance recipient may receive training-related expenses, or a full or partial exemption from requirements to participate in other OES work-related activities, a vocational training program must meet the following conditions:

(1) (i) It is licensed by the New York State Education Department, or is sponsored by a government agency, and

(ii) It is enrolled with and approved by the New York State Department of Social Services, in accordance with the requirements of that Department.

(2) It furnishes to OES documentation of enrollment, attendance, and satisfactory progress of each public assistance recipient enrolled in its program who is receiving training-related expenses or is receiving an exemption from other OES work-related activities. Such documentation shall be in a form satisfactory to OES.

(3) It shall establish, and report to OES, a scheduled date of completion for each public assistance recipient enrolled in its program. The completion date shall not be later than two years from the date of enrollment of any public assistance recipient, except as may otherwise be required pursuant to applicable law. This requirement shall apply with respect to public assistance recipients who enroll on or after May 1, 1996 and to recipients who have enrolled prior to such date and are continuing their studies in the program as of that date.

(4) If it has been subject to an employment placement rate review, as described in section 3-04 of these rules, it has a current Certificate of Approval Following Employment Placement Rate Review or a current Certificate of Conditional

Approval Following Employment Placement Rate Review.

(b) To be approved as an employment training program for which a public assistance recipient may receive training-related expenses, or a full or partial exemption from requirements to participate in other OES work-related activities, a literacy program must meet the following conditions:

(1) (i) It is licensed by the New York State Education Department, or is sponsored by a government agency, and

(ii) It is enrolled with and approved by the New York State Department of Social Services, in accordance with the requirements of that Department.

(2) It furnishes to OES documentation of enrollment, attendance, and satisfactory progress of each public assistance recipient enrolled in its program who is receiving training-related expenses or is receiving an exemption from other OES work-related activities. Such documentation shall be in a form satisfactory to OES.

(3) It shall establish, and report to OES, a scheduled date of completion for each public assistance recipient enrolled in its program. The completion date shall not be later than two years from the date of enrollment of any public assistance recipient, except as may otherwise be required pursuant to applicable law. This requirement shall apply with respect to public assistance recipients who enroll on or after May 1, 1996, and to recipients who have enrolled prior to such date and are continuing their studies in the program as of that date.

(4) If it has been subject to an employment placement rate review, as described in section 3-04 of these rules, it has a current Certificate of Approval Following Employment Placement Rate Review or a current Certificate of Conditional Approval Following Employment Placement Rate Review.

(c) To be approved as an employment training program for which a public assistance recipient may receive training-related expenses, or a full or partial exemption from requirements to participate in other OES work-related activities, a job placement program must meet the following conditions:

(1) (i) It is licensed by the New York State Education Department, or is sponsored by a government agency, and

(ii) It is enrolled with and approved by the New York State Department of Social Services, in accordance with the requirements of that Department.

(2) It furnishes to OES documentation of enrollment, attendance, and satisfactory progress of each public assistance recipient enrolled in its program who is receiving training-related expenses or is receiving an exemption from other OES work-related activities. Such documentation shall be in a form satisfactory to OES.

(3) It shall establish, and report to OES, a scheduled date of completion for each public assistance recipient enrolled in its program. The completion date shall not be later than two years from the date of enrollment of any public assistance recipient, except as may otherwise be required pursuant to applicable law. This requirement shall apply with respect to public assistance recipients who enroll on or after May 1, 1996, and to recipients who have enrolled prior to such date and are continuing their studies in the program as of that date.

(4) If it has been subject to an employment placement rate review, as described in section 3-04 of these rules, it has a current Certificate of Approval Following Employment Placement Rate Review or a current Certificate of Conditional Approval Following Employment Placement Rate Review.

(d) To be approved as an employment training program for which a public assistance recipient may receive training-related expenses, or a full or partial exemption from requirements to participate in other OES work-related activities, an associate's degree or other post-secondary two-year degree program must meet the following conditions:

(1) It is licensed by the New York State Education Department.

(2) It furnishes to OES documentation for public assistance recipient enrollees as to enrollment, attendance, and satisfactory progress and accumulation of credits, as defined by OES procedures.

(3) It furnishes to OES a copy of the school's calendar for the year, and a summary of credit acquisition requirements, on a semester basis, which full-time students must meet in order to obtain a degree within two years.

(4) It establishes, and reports to OES, a scheduled date of completion for each public assistance recipient enrollee. The completion date shall not be later than two years from the date of enrollment of any public assistance recipient, except as may otherwise be required pursuant to applicable law.

(5) If it has been subject to an employment placement rate review, as described in section 3-04 of these rules, it has a current Certificate of Approval Following Employment Placement Rate Review or a current Certificate of Conditional Approval Following Employment Placement Rate Review.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

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RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 3*1 EMPLOYMENT TRAINING PROGRAMS FOR PUBLIC ASSISTANCE RECIPIENTS

§3-04 Employment Placement Rate Review.

(a) Once every six months, an employment training program which has had sufficient public assistance recipient enrollees to form a cohort, as described herein, shall be subject to an employment placement rate review to determine its continued eligibility for approval, as follows:

(1) For vocational training programs, the minimum size of a cohort, as defined in section 3-02 of these rules, shall be 25. A vocational training program shall pass the employment placement rate review if 40% of persons in the cohort have secured paid employment at any time following their date of enrollment up to the date the employment placement rate review is completed.

(2) For literacy programs, the minimum size of a cohort, as defined in section 3-02 of these rules, shall be 50. A literacy program shall pass the employment placement rate review if the following percentage of persons in the cohort have secured paid employment at any time following their date of enrollment up to the date the employment placement rate review is completed:

(i) For a review conducted in 1996, 10%;

(ii) For a review conducted in 1997 or thereafter, 15%.

(3) For job placement programs, the minimum size of a cohort, as defined in section 3-02 of these rules, shall be 25. A job placement program shall pass the employment placement rate review if the following percentage of persons in the cohort have secured paid employment at any time following their date of enrollment up to the date the employment

placement rate review is completed:

(i) For a review conducted in 1996, 40%;

(ii) For a review conducted in 1997 or thereafter 50%.

(4) For associate's degree and other post-secondary two-year degree programs, the minimum size of a cohort, as defined in section 3-02 of these rules, shall be 25. An associate's degree program or other post-secondary two-year degree program shall pass the employment placement rate review if the following percentage of persons in the cohort have secured paid employment at any time following their date of enrollment up to the date the employment placement rate review is completed:

(i) For a review conducted in 1996, 25%;

(ii) For a review conducted in 1997 or thereafter, 30%.

(5) Where an institution provides more than one type of employment training program, such as a job placement program and a literacy program, OES shall review such programs separately to determine whether each program is subject to and passes the employment placement rate review standards for the relevant program.

(b) Documentation of placement rate: OES shall consider the following evidence to determine placement rate:

(1) Acceptable documentation of students engaged in paid employment provided to OES by an employment training program or any other person. Employment training programs shall submit such information by the applicable deadline for the cohort review. For each enrollee or former enrollee, such documentation must contain all of the following information:

(i) A recent pay stub, or an original of correspondence from the employer confirming the employment.

(ii) The public assistance recipient's name and social security number.

(iii) The employer's name, address and telephone number.

(iv) The job title, date on which employment started, date on which employment ended (if applicable), and salary, indicating whether it is on an hourly, per diem, weekly, biweekly, or monthly basis.

(2) Information obtained by matching enrollment lists with the New York State Welfare Management System database to identify persons whose cases have been closed or rebudgeted since the date of their enrollment in the employment training program.

(c) As evidence of an enrollee's completion, withdrawal or removal from an employment training program, OES shall accept only a copy of an "Attendance and Satisfactory Progress" roster report that was generated by the appropriate OES unit or office and completed by an appropriate officer of the employment training program.

(d) If, after performing the employment placement rate review, OES determines that an employment training program has not placed the required percentage of public assistance recipient enrollees, it shall send the program a "Notice of Intent to Disapprove." This notice shall include a list of those public assistance recipients whose scheduled date of completion was during the period relevant to the employment placement rate review, for whom OES has not received information confirming paid employment, or the closure or rebudgeting of their case.

(e) An employment training program shall have ten days from the date of the "Notice of Intent to Disapprove" to provide notice to OES that it intends to contest the dis- approval.

(f) An employment training program which has filed notice pursuant to paragraph (e) shall have thirty days from the date of the "Notice of Intent to Disapprove" to submit documentation of additional placements, documentation showing that persons who were included in the placement rate review should not have been included, and a written statement explaining any other reasons why it should not be disapproved. Documentation shall be submitted in accordance with the provisions of subdivisions (b) and (c) of this section.

(g) When the employment placement rate review is complete, and OES has considered any materials timely submitted by an employment training program following its receipt of a Notice of Intent to Disapprove, OES shall determine whether the program shall be approved or disapproved. It shall send a "Certificate of Approval Following Employment Placement Review" to those programs which have passed the review, in accordance with the requirements for passing set forth in subdivisions a through c of this section. It shall send a "Notice of Disapproval Following Employment Placement Review" to all other programs that have been reviewed.

(h) A Notice of Disapproval Following Employment Placement Review shall notify the employment training program that it may submit to OES a "Corrective Action Plan" specifying steps that the program will take to attain the required placement rate, as set forth in subdivision a of this section. If OES determines that the Corrective Action Plan is acceptable, it shall send the program a "Certificate of Conditional Approval". Such Certificate shall not take effect until 90 days after the date of Notice of Disapproval Following Job Placement Review. Until the Certificate of Conditional Approval takes effect, the program shall be suspended. Notwithstanding any provision of this paragraph, a program shall not be suspended based on the results of the first Employment Placement Review of the program following the effective date of these rules, if it has submitted a Corrective Action Plan which has been approved by OES.

(i) A Certificate of Conditional Approval shall remain in effect until the next time an employment training program has undergone an employment placement rate review. While a Certificate of Conditional Approval is in effect, OES shall limit the number of public assistance recipients for whom it approves training-related expenses to participate in the program. The maximum number shall be the greater of: (i) 25 recipients, or (ii) 10% of the number of public assistance recipients whose placement rate was evaluated during the employment placement rate review.

(j) A Certificate of Approval Following an Employment Placement Rate Review shall remain in effect until OES has completed a new employment placement rate review and issued a new Certificate of Approval or a Notice of Disapproval Following Employment Placement Rate Review.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

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§3-05 Disapproval for False or Fraudulent Documentation, Mismanagement, and Failure to Meet State Requirements.

(a) If any employment training program submits falsified or fraudulent documentation to OES, it shall be disapproved immediately.

(b) An employment training program to which the New York State Education Department has issued an Order to Show Cause shall be disapproved immediately.

(c) An employment training program subject to the jurisdiction of the New York State Department of Social Services that fails to maintain its eligibility for enrollment with that Department shall be disapproved immediately.

(d) OES may disapprove a program based on other evidence of fraud or misman- agement.

(e) OES shall provide a written notice to a program that is disapproved setting forth the grounds for disapproval.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

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§3-06 Disapproval for Failure to Submit Documentation of Attendance and Progress.

(a) An employment training program in which public assistance recipients are enrolled shall submit documentation of the attendance and progress of such enrollees to OES on a monthly basis.

(b) Any program that fails to submit such documentation for any month shall receive a Notice of Disapproval for Failure to Submit Documentation of Attendance.

(c) A program that has received such a notice shall not be approved until it has submitted to OES a Corrective Action Plan which has been approved by OES, and ninety days have passed since the date of the notice; provided that OES may waive the ninety day period.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that

each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

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§3-07 Standards for Approval of Enrollment and Requests for Training Related Expenses for Public Assistance Recipients.

(a) A public assistance recipient who wishes to enroll in an employment training program, and in connection therewith to receive training related expenses and/or be excused from other OES work-related requirements, shall submit to OES a "School Enrollment Form" that has been completed by an appropriate officer of the employment training program. A public assistance recipient who is enrolled in an associate's degree or other post-secondary two-year degree program shall submit a "School Enrollment Form" at the beginning of each semester.

(b) OES will review and make a determination of whether to approve the request of a public assistance recipient to participate in an employment training activity according to the following criteria and applicable State regulations:

(1) The employment training program must be approved as described in section 3-03, and must not be under suspension for failure to comply with any provision of these rules.

(2) In the case of an employment training program for which OES has granted a conditional approval, a public assistance recipient's request will be approved only if the number of public assistance recipients who have enrolled in the program since the date of issuance of the Certificate of Conditional Approval is below the maximum number allowed as set forth in subdivision i of section 3-04.

(3) If the public assistance recipient has already received training related expenses to attend a total of twenty-four months of training in one or more employment training programs (regardless of whether such twenty-four months were interrupted by any period of time during which the recipient was not enrolled in an employment training program), OES

may, at its discretion, and subject to applicable federal and State law and rules, allow the recipient to continue receiving training related expenses and/or exemption from other work-related activities on condition that the recipient continues to make satisfactory progress; withdraw approval for further training related expenses or a further exemption; or require that the recipient participate in other OES work-related activities while the recipient remains in the program and continues to receive training related expenses. Nothing herein shall be deemed to limit the ability of OES to assign a public assistance recipient to work-related activities, consistent with applicable law.

(4) In the case of a request to continue attendance in an associate's degree or other post-secondary two-year degree program, OES may deny approval to a student who has not accumulated sufficient credits to earn the degree in accordance with his or her scheduled date of completion.

(5) OES may withdraw approval for any recipient who is not attending at least 75% of the scheduled classes or is not making satisfactory progress in the employment training program.

(6) OES may withdraw or deny approval for any recipient to participate in an employment training program or limit the number of hours of participation for which approval will be given to meet state law requirements pertaining to work and employment training activities, including but not limited to participation rate requirements.

(c) Except as otherwise provided pursuant to federal and State law and rules for hardship cases or as a reasonable accommodation for a person with a disability, a public assistance recipient who enrolls in an associate's degree or other post-secondary two-year degree program must attend the program on a full time basis.

(d) Public assistance recipients who enroll in part time or evening employment training programs may be required to participate in concurrent employment related ac- tivities.

(e) [Reserved]

(f) When a public assistance recipient has been receiving training related expenses and/or an exemption from requirements to participate in other OES work-related activities because such recipient has been enrolled in an employment training program, and the recipient does not complete that program by the recipient's scheduled date of completion, OES may, at its discretion, subject to applicable federal and State law and rules, allow the recipient to continue receiving training related expenses and an exemption from other work-related activites on condition that the recipient continues to make satisfactory progress; withdraw approval for further training related expenses or a further exemption; or require that the recipient participate in other OES work-related activities while the recipient remains in the program and continues to receive training related expenses.

(g) When approval is denied or withdrawn pursuant to this section, the recipient shall receive such notice and hearing with respect to such actions as are required pursuant to the rules of the New York State Department of Social Services.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

Subd. (b) amended City Record Apr. 18, 1997 §1 eff. May 18, 1997. [See Note 1]

Subd. (d) relettered and amended (former subd. (e)) City Record Apr. 18, 1997 eff. May 18, 1997.

Former Subd. (d) repealed.

NOTE

1. Statement of Basis and Purpose in City Record Apr. 18, 1997:

The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirement, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment," or, "when coupled with or provided in conjunction with oher training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2). These amendments to the rules of the Human Resources Administration pertaining to employment training programs will clarify the agency's right to disapprove a request by a recipient to participate in an employment training activity and facilitate the agency's ability to require a recipient to engage in concurrent work activities. The amendments will better able the Human Resources Administration to satisfy work participation rates set forth in the Personal Responsibility and Work Opportunity Act of 1996.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

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§3-08 Fraudulent Application for Training Related Expenses.

OES shall not approve the application for training related expenses and/or an exemption from other OES work-related activities of a public assistance recipient who knowingly and willingly submits to OES a falsified or fraudulent School Enrollment Form or any other employment training or employment-related document. Such a recipient may be subject to restrictions on eligibility for future employment training activities, and may also be subject to additional sanctions and criminal prosecution. The recipient shall receive such notice and hearing with respect to such actions as are required pursuant to the rules of the New York State Department of Social Services.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards

for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

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§3-09 Consequences of Enrollment in a Program that Becomes Disapproved.

(a) In the event that an employment training program becomes disapproved for failure to pass the employment placement rate review, or for the reasons set forth in subdivisions b or c of section 3-05, a public assistance recipient who is already enrolled in the program at the time it is disapproved shall continue to receive training related expenses and/or be excused from other OES work-related activities until the earlier of the recipient's training completion date, or the date when the recipient withdraws from the program or OES withdraws approval pursuant to paragraph 5 of subdivision b of section 3-07.

(b) In the event that an employment training program becomes disapproved pursuant to subdivision a of section 3-05, a public assistance recipient enrolled in such program shall not receive further training related expenses or continue to be excused from other OES work-related activities. Such a recipient may immediately submit a School Enrollment Form for another employment training program.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

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CHAPTER 4 DISTRIBUTION OF FOOD AND ADMINISTRATIVE FUNDS TO EMERGENCY FOOD PROVIDERS*1

§4-01 Definitions.

EFAP. EFAP shall stand for the Emergency Food Assistance Program. The City-funded program aids emergency food providers by supplying them with food and administrative funds.

Food provider. A "food provider" shall mean a food pantry, soup kitchen or other similarly constituted non-profit food program which provides food to people based on their having inadequate income to meet their immediate need for food, and which has been certified by the Human Resources Administration to participate in EFAP.

Food pantry. A "food pantry" distributes food packages containing canned and other non-perishable food items which are to be prepared and eaten at home. More than one meal per individual is provided in the food package.

Soup kitchen. A "soup kitchen" serves meals to individuals in a congregate setting or through other direct distribution (i.e., van distribution of meals to homeless in parks and other public places). Typically, one meal per individual is served.

Cycle. A "cycle" is a six month period.

Administration. The "Administration" shall mean the Human Resources Admin- istration.

EFAP Advisory Group. The EFAP Advisory Group shall consist of persons active or concerned with the operation of emergency food programs. The group is chosen by the Administration for advice on the implementation of the

Emergency Food Assistance Program.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

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CHAPTER 4 DISTRIBUTION OF FOOD AND ADMINISTRATIVE FUNDS TO EMERGENCY FOOD PROVIDERS*1

§4-02 [Eligibility].

To be eligible to receive funds from EFAP, each food provider must meet the following eligibility criteria:

(a) no charges or fees may be assessed for the food provided through EFAP; (b) the provider must have sources of food other than the Administration;

(c) the provider must serve a minimum of 100 meals per month;

(d) EFAP food cannot be used to serve an organization's "institutional resident" population. (Residents of institutions are those individuals entitled to at least two meals per day as part of the institutions normal service. Examples: Homeless Shelters, Group Homes, Treatment/Rehabilitation Facilities, etc.);

(e) all EFAP food must be properly and securely stored; it cannot be stored, prepared or distributed from a private home, apartment or other personal residence;

(f) the provider must agree to submit a monthly service report which records the number of individuals served per month.

(g) EFAP food and/or funds cannot be used to supplant funds provided through any government contract to provide meals to a specific population (i.e.: Senior Centers or nonresidential treatment programs with government contracts to provide meals).

(h) the provider shall not require attendance at any religious service or other program activity as a prerequisite for receiving emergency food.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

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§4-03 [Certification Requirements].

A food provider must be certified by the Administration. Certification requirements include:

(a) completion of the EFAP Application Form;

(b) satisfaction of the requirements of §4-02 above;

(c) receipt of a site visit by an Administration employee. An Annual recertification visit is also required.

(d) signing an agreement to abide by all EFAP requirements.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

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§4-04 [Food Allocation and Administrative Funds, Biannual Review].

Each food provider's food allocation and administrative funds shall be determined two times per year.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

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§4-05 [Food Budget].

The EFAP food budget will consist of two components: a food supplement and a meal budget.

EFAP FoodSupplement	+	EFAP MealBudget	=	Total EFAP FoodBudget

Correspondingly each provider's food allocation may consist of two components: a food supplement (discretionary) and a meal budget.

Food Supplement(Discretionary)	+	Meal Budget	=	A Provider's FoodAllocation

(a) The EFAP food supplement per cycle shall be equal to no more than ten percent of the total EFAP Food Budget. A food supplement may be awarded to a provider based on the recommendations of the EFAP Advisory Group. These funds shall address needs that could not easily be factored into a set formula. It is envisioned that the funds shall be used to provide food money to: underserved communities by giving additional support to current EFAP providers to expand their service or to enable the Administration to recruit new service providers; programs providing services to special populations, e.g., immigrants and people with HIV; and, to fund special projects. The EFAP food supplement shall only be distributed to groups which meet the definition of "food provider" established in §4.01 and which meet the eligibility criteria established in §4.02.

(b) The EFAP meal budget wil be equal to the total EFAP food budget minus the EFAP food supplement.

Total EFAP FoodBudget	-	EFAP FoodSupplement	=	EFAP MealBudget

Each provider will receive a meal budget per cycle based on its number of funded meals. To arrive at a provider's

meal budget, a series of calculations will be made. First, the total number of funded meals for all programs will be calculated by determining the number of meals served per program; determining the number of funded meals per program through the application of the sliding scale, as specified in paragraph (2) of this subdivision; and then adding together the number of funded meals for all programs. The sum of the funded meals for all programs will be divided into the EFAP meal budget yielding the dollar value of each funded meal.

EFAP Meal-Budget ÷ Total Number ofFunded Meals forAll Providers = Dollar Value ofEach Funded Meal

Finally, the number of funded meals for a provider is multiplied by the dollar value of each funded meal providing the provider with its meal budget.

# of Funded Mealsfor Provider × Dollar Valueof EachFunded Meal = A Provider'sMeal Budget

(1) Food providers will continue to report the number of individuals served per month. The new formula will take into account that food pantries provide many meals per individual; while soup kitchens generally serve one meal per individual. The new formula will convert individuals served to meals served according to the following formulae:

The Total # of IndividualsServed in each Soup Kitchenfor Twelve Month Period = Total # of Meals Servedin each Soup Kitchen forTwelve Month Period

The Total # of IndividualsServed in Each Food-Pantry for Twelve MonthPeriod × 3 Meals perIn-dividualServed = Total # of MealsServed in Each Food-Pantry for TwelveMonth Period

(2) The number of meals served per provider will be weighted so that smaller providers receive more money per meal served, while at the same time the formula provides additional money for each meal served, albeit at a declining rate.

All providers will be ranked according to the number of meals served during a twelve month period. Seven meal categories with minimum and maximum number of meals served will be established. The meal categories will be set as follows. First all providers will be sorted according to the total number of meals served within the twelve month period. The smallest ten percent of the providers will set the first category (i.e., the number of meals served by the provider that falls at the tenth percentile will be the maximum number of meals in the first category). The second category will begin with one more meal than the maximum number of meals for the first category. The upper limit of this category will be set at the number of meals served by the provider that falls at the twentieth percentile. The remaining five meal catgories will be set according to similar guidelines with the maximum number of meals included in each category being set at 30%, 80%, 87%, 94% and 100% respectively.

The meals served by a provider are then multiplied by the appropriate meal factor for each category in order to determine the sum total of funded meals for each program.

The following chart lists the percentage of programs within each meal category and the meal factor to be using in calculating the funded meals in each category.

Meal Category	Percent of Programs within category	Meal Factor
1	10%	8
2	10%	4
3	10%	2
4	50%	1
5	7%	.5
6	7%	.25
7	6%	.125

For example if the first three meal categories were:

Meal Category	Meal Factor
0-2,799 meals	8
2,800-4,999 meals	4
5,000-6,699 meals	2

One would determine the total number of funded meals for a provider serving 6,000 meals per year as follows:

2,799 × 8 =	22,392
(4,999-2,800) × 4 =	8,796
(6,000-5,000) × 2 =	2,000
	33,188 funded meals

The total number of funded meals is then multiplied by the dollar value of each funded meal to determine a provider's meal budget.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

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§4-06 [Allocation of Administrative Funds].

Each food provider shall be eligible to receive administrative funds to be used to cover approved operating expenses. Administrative funds shall be allocated in a way that takes into account the fact that soup kitchens generally have greater operating expenses than food pantries.

Administrative funds for each food provider shall be allocated by using their dollars budgeted in the EFAP administrative line. Soup kitchens shall be eligible for twice as much administrative funding as food pantries due to significantly higher non-food costs associated with congregate meal preparation.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

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§4-07 [Modifications].

The amount of food and administrative funds allocated to each provider may be changed by the Human Resources Administration for any allocation period, regardless of the above formulae, based on various factors, including, but not limited to:

(a) failure to submit monthly service reports;

(b) submission of inaccurate monthly service reports;

(c) a change in the provider's status from active to on-hold or closed;

(d) a request from the provider that its allocation be reduced.

(e) other factors dictating the need to reallocate funds, including, but not limited to changing demographics or changed demographic projections, or geographic im- balances.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

Rules of the City of New York

68 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 5 BILL OF RIGHTS AND RESPONSIBILITIES FOR PERSONS WITH CLINICAL/SYMPTOMATIC HIV ILLNESS OR WITH AIDS

§5-01 Rights of Persons With Clinical/Symptomatic HIV Illness or with AIDS.

(a) **Rights of persons with clinical/symptomatic HIV illness or with AIDS.** All persons with clinical/symptomatic HIV illness or persons with AIDS shall have the right to apply for benefits and services as defined in §21-128(b) of the Administrative Code of the City of New York, and the right to apply for information, referral and assessment services from the Division of AIDS Services and Income Support ("DASIS"). In addition, such persons shall have the following rights:

(1) With certain exceptions provided pursuant to applicable federal, state or local law, regulation or rule, you have the right to confidentiality. Your medical condition cannot be revealed to anyone without your permission. Information you give to DASIS staff will not be released to any individual or organization without your permission except where required by law.

(2) You have the right to receive information about and to apply for a variety of benefits and services including, but not limited to, medically appropriate transitional and permanent housing; Medicaid and other health related services; home care and home health services; personal care services; homemaker services; Food Stamps; transportation and nutrition allowances; housing subsidies, including, but not limited to, enhanced rental assistance; financial benefits; and intensive case management. You shall have the right to receive the benefits and services for which you are found eligible.

(3) If you are homebound (i.e., with physical or mental disabilities, confirmed by medical providers or home care agencies, which prevent you, permanently or temporarily, from visiting the local DASIS service center), you have the

right to a home or hospital visit from a case manager. These visits may be to determine your eligibility for benefits and services, to assist you in applying for benefits and services, or to maintain eligibility for benefits and services.

(4) You have the right to refuse any service.

(5) You have the right to be referred to a community based organization for any service not provided by DASIS.

(6) You have the right to contact a DASIS staff member whenever you need services.

(7) You have the right to receive services from DASIS staff without the payment of gratuities in any form.

(8) You have the right to initiate complaints against DASIS staff.

(9) If you feel that you are being unlawfully discriminated against in any way, you have the right to file a complaint of discrimination with the New York State Division of Human Rights Bias Hotline at (212) 662-2427 or the New York City Commission on Human Rights AIDS Hotline at 1-800-523-AIDS.

(10) You have the right to be treated fairly and with respect and courtesy.

(b) **Additional rights and responsibilities of DASIS clients.** All persons who are deemed eligible pursuant to §21-128, subsection (a)(3) of the Administrative Code of the City of New York, have, in addition to all of the rights of persons with clinical/symptomatic HIV illness or with AIDS, the following additional rights and responsibilities [in subdivisions (c) and (d)]*1 :

(c) **DASIS client rights.** (1) You have the right to have benefits and services provided in a timely manner after your applications for specific benefits and services have been approved. Once applications for benefits and services are complete, the time frames for the delivery of benefits and services are determined by:

(i) Federal law or regulations;

(ii) New York State Social Services Law or regulations; or

(iii) Local Law and the Rules of the City of New York.

If none of the above apply, provision of the benefit or service will be no later than twenty (20) business days following submission of all information or documentation required to determine eligibility.

(2) If accepted for Public Assistance or Food Stamps, you have the right to review your budget. If accepted or rejected for Public Assistance, Food Stamps, Medicaid, home care, or homemaking service, you have a right to an agency conference and to a New York State Fair Hearing with respect to actions taken to deny, reduce, discontinue, or restrict your benefits. Please consult the back of the notice which advises you of the determination of the agency with respect to your request for benefits and please follow the guidelines on the back of the notice with respect to requesting an agency conference or New York State Fair Hearing.

(3) If you are a DASIS client with one or more children in your care or custody, you have the right to receive information and program referrals on child care options, custody planning, and transitional supports, including the availability of standby guardianship, and referral to legal assistance programs.

(4) You have the right to participate with DASIS staff in the development of a service plan.

(5) You have the right to be notified in writing of any change in your case status or in benefits or services provided to you.

(6) You have the right to review your DASIS case record and to dispute any information contained therein.

(7) You have the right to be treated fairly and with respect and courtesy.

(d) **DASIS client responsibilities.** (1) You have the responsibility to apply for all benefits for which you may qualify, including, but not limited to, Public Assistance, Medicaid, Food Stamps, Supplemental Security Income ("SSI"), and Social Security Disability ("SSD"), to provide documentation and information necessary to establish eligibility for such benefits, and to comply with application requirements.

(2) You have the responsibility to maintain your benefits by providing information for recertification, and by reporting changes in your income, address, household composition, or any other aspect of your status that may be a factor in determining your eligibility.

(3) If you have a Public Assistance budget that requires co-payment, you are personally responsible for paying such co-payment. For purposes of this paragraph, a co-payment means a responsibility from income or benefits other than Public Assistance for a certain portion of the cost of services (e.g., rent, utilities, Medicaid spend-down).

(4) You have the responsibility to keep all appointments with DASIS staff, including, without limitation, face-to-face recertification interviews, appointments to consider relocation to housing other than temporary housing, or to give notice of change or cancellation in those appointments.

(5) You have the responsibility to advise DASIS staff of any problems that you may have and to cooperate with DASIS staff to resolve these problems.

(6) Depending on whether or not you qualify for Temporary Housing Assistance and/or Public Assistance, Medicaid, Food Stamps and Services, you have to comply with additional responsibilities as set forth in writing on DSS/HRA form number W-897B (7/97) with respect to your application for Temporary Housing Assistance, and/or SDSS form number SDSS-2921 (Rev. 4/96) and SDSS publication number 4148A (Rev. 1/95) entitled "What You Should Know About Your Rights and Responsibilities" with respect to your application for Public Assistance, Medicaid, Food Stamps and Services.

(7) You have the responsibility to treat DASIS staff with respect and courtesy.

HISTORICAL NOTE

Section added City Record Nov. 7, 1997 eff. Dec. 7, 1997. (Note internal renumbering and designations

by the Law Department per Charter §1045(b)).

FOOTNOTES

1

[Footnote 1]: * Supplied by editor, internal renumbering by law department left this unclear.

69 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 69 Department for the Aging

CHAPTER 1 ADJUDICATIONS

§1-01 Conduct of Adjudicatory Hearings.

New York City Department for the Aging adjudications regarding the fitness and discipline of agency employees, and adjudications conducted pursuant to its Expanded In-Home Services for the Elderly Program, will be conducted by the Office of Administrative Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer in both types of hearings shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

70 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 70 In Rem Foreclosure Release Board

CHAPTER 1 RULES OF PROCEDURE*1

§1-01 Meetings.

(a) **Regular Meetings.** (1) The regular meetings of the Board shall be held twice each month at 10:00 a.m. in City Hall, or as otherwise directed by the Board. The Mayor's Office of Contracts, Public Hearings Unit shall prepare and distribute to Board members twice annually a schedule of meetings showing the dates and locations of the regular meetings of the Board for the first and second halves of the calendar year. The Mayor's Office of Contracts, Public Hearings Unit, shall provide Board members notice of any change in a date shown on a schedule at least thirty calendar days prior to the meeting to which the change relates.

(2) Applications for the release of property located in the boroughs of Manhattan, Queens and Staten Island shall be considered at the first regular meeting of each month. Applications for the release of property located in the boroughs of Brooklyn and The Bronx shall be considered at the second regular meeting of each month.

(3) In the event the Board directs that one regular meeting be held during a specified month, the Board shall at such meeting consider applications for the release of property located in all boroughs.

(b) **Special Meetings.** (1) Special meetings may be called by the Chair.

(2) Notice of a special meeting shall be sent to each member by the Mayor's Office of Contracts, Public Hearings Unit no later than seven calendar days prior to such meeting. The notice shall be accompanied by copies of all agency reports for the matters to be considered at the special meeting.

(c) **Chair.** The Mayor shall preside at all meetings as Chair.

(d) **Quorum.** Except as provided in subdivision (a) of §l-05, a majority of the members of the Board entitled to vote on a matter before the Board shall constitute a quorum for action on such matter, provided that a quorum shall be deemed present only where such majority includes at least one of either the Speaker or the affected Borough President.

(e) **Votes.** (1) Except as provided in subdivision (a) of §1-05, any action respecting a matter before the Board shall require the affirmative vote of a majority of the members of the Board entitled to vote on such matter.

(2) The Hearing Secretary shall conduct a roll call upon every matter to be acted upon and all votes shall be taken by the ayes and nays. A roll call shall be conducted at the request of the Chair, unless the matter is laid over pursuant to subdivision (k) of §1-01.

(3) The vote of any member abstaining shall be considered a negative vote.

(4) The vote upon every matter acted upon shall be recorded by the Hearing Secretary.

(5) Except as otherwise provided by law, all matters before the Board shall be voted upon at meetings open to the public.

(f) **Attendance.** Members, or their delegates, shall remain in attendance during a meeting of the Board unless excused by the Chair. A request to be excused shall be formally made and entered upon the record.

(g) **Disqualification.** A member shall be excused from voting upon any matter upon the member's statement of the reasons for disqualification. The vote of any member so disqualified shall not be considered a negative or an affirmative vote.

(h) **Recesses.** At any regular meeting of the Board, recesses shall not aggregate more than one hour and any recess called shall specify a time for the return of the members of the Board for the resumption of the meeting's business. Recesses shall be called by the Chair.

(i) **Order of Business.** The order of business before the Board shall be as follows:

(1) Roll call.

(2) Matters laid over for consideration by the Board.

(3) New matters for consideration by the Board.

(j) **Calendar Calls.** There shall be no more than three calendar calls by the Hearing Secretary at each regular meeting. At the conclusion of the third call, all matters shall have been either acted upon, laid over or withdrawn in accordance with these Rules.

(k) **Layovers.** (1) In the event a submitting agency recommends denial of an application for the release of property and the applicant fails to appear at the first meeting at which the resolution disapproving such application is calendared for consideration by the Board, the matter shall be automatically laid over to the next meeting at which applications for the release of property in that borough are to be considered. There shall be no further layovers by reason of the applicant's failure to appear at a meeting.

(2) At the request of any member of the Board entitled to vote on an application for the release of property, such application shall be laid over from the first or second meeting at which the resolution approving or disapproving the application is calendared for consideration by the Board to the next meeting at which applications for the release of property in that borough are to be considered. No layover may be made with respect to an application pursuant to this subdivision more than one time.

(3) Any layovers in addition to those provided for in paragraphs 1 or 2 of this section may be made only upon the affirmative vote of a majority of the members entitled to vote on the matter. No matter may be laid over more than three times.

(l) **Withdrawals.** A matter may be withdrawn from consideration by the Board at the request of the submitting agency. Any such request shall be passed upon by the Chair, who shall specify a date by which the matter shall be resubmitted for the Board's con- sideration.

(m) **Additions to the Calendar.** A matter not appearing on the Calendar for a meeting of the Board may be added to the Calendar for consideration at such meeting only upon the unanimous vote of the members entitled to vote upon such matter.

(n) **Miscellaneous.** (1) Members of the Board or their delegates and City employees designated by the Board shall be the only persons permitted within the guard rail of the dais during meetings of the Board.

(2) Members of the Board shall be addressed in the third person and by title only.

HISTORICAL NOTE

Section added City Record Sept. 16, 1991 eff. Oct. 16, 1991.

FOOTNOTES

1

[Footnote 1]: * Note: The Rules of Procedure were employed by the New York City In Rem Foreclosure Release Board on September 16, 1991. While adoption of the Rules is not controlled by the City Administrative Procedure Act, they are set forth herein for the purpose of convenient public access to such materials and in order to increase public familiarity and awareness of such rules.

70 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 70 In Rem Foreclosure Release Board

CHAPTER 1 RULES OF PROCEDURE*1

§1-02 Public Testimony at Regular Meetings.

(a) **Order of Testimony.** Speakers opposed to a resolution shall be heard first and then speakers in favor thereof, unless otherwise ordered by the Chair. Applicants and other members of the public may testify on their own behalf or may be represented by counsel.

(b) **Time Available.** The time available to each member of the public for speaking at a meeting of the Board shall be limited to three minutes. A speaker may be heard only once on a particular resolution.

(c) **Hearing Slips.** A member of the public who wishes to speak at a meeting of the Board shall first complete a hearing testimony slip indicating his or her name and address, the address of the property with respect to which he or she wishes to testify, and his or her affiliation, if any. Slips shall be available from the Clerk sitting by the speaker's microphone. A speaker shall state his or her name and affiliation, if any.

(d) **Written Statements.** A member of the public may submit a written statement in lieu of or in addition to oral testimony. An original and twelve copies of any such statement shall be submitted. All copies must bear the Calendar number for the matter and indicate the meeting date. Copies submitted prior to the meeting date shall be delivered to the Mayor's Office of Contracts, Public Hearing Unit, 51 Chambers St., Room 1202, Borough of Manhattan. Copies submitted upon the meeting date shall be delivered to the Hearing Secretary at City Hall no later than one-half hour prior to the meeting.

(e) **Agency Testimony.** Representatives of the submitting agency shall be available to testify with regard to a resolution at the time it is being considered by the Board.

HISTORICAL NOTE

Section added City Record Sept. 16, 1991 eff. Oct. 16, 1991.

FOOTNOTES

1

[Footnote 1]: * Note: The Rules of Procedure were employed by the New York City In Rem Foreclosure Release Board on September 16, 1991. While adoption of the Rules is not controlled by the City Administrative Procedure Act, they are set forth herein for the purpose of convenient public access to such materials and in order to increase public familiarity and awareness of such rules.

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Rules of the City of New York

***** Current through December 2009 ****

70 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 70 In Rem Foreclosure Release Board

CHAPTER 1 RULES OF PROCEDURE*1

§1-03 Calendars.

(a) **Preparation of Calendar.** The Mayor's Office of Contracts, Public Hearings Unit shall prepare and cause to be printed a Calendar including a description of all matters to be presented and considered at each meeting of the Board. The resolutions shall be arranged in the order prescribed in subdivision (i) of §1-01 of these Rules. The Mayor's Office of Contracts, Public Hearings Unit shall also keep a record of matters which have been laid over.

(b) **Calendar Closing Date.** The Mayor's Office of Contracts, Public Hearings Unit shall close the Calendar at 12 o'clock noon fifteen calendar days prior to a regular meeting of the Board.

(c) **Distribution of Calendar.** The Mayor's Office of Contracts, Public Hearings Unit, shall make Calendar page proofs of the Calendar for a regular meeting of the Board available to Board members seven calendar days prior to the meeting. Copies of the calendar for a regular meeting shall be available to the Board members and to members of public three calendar days prior to the meeting.

HISTORICAL NOTE

Section added City Record Sept. 16, 1991 eff. Oct. 16, 1991.

FOOTNOTES

1

[Footnote 1]: * Note: The Rules of Procedure were employed by the New York City In Rem Foreclosure Release Board on September 16, 1991. While adoption of the Rules is not controlled by the City Administrative Procedure Act, they are set forth herein for the purpose of convenient public access to such materials and in order to increase public familiarity and awareness of such rules.

Rules of the City of New York

***** Current through December 2009 ****

70 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 70 In Rem Foreclosure Release Board

CHAPTER 1 RULES OF PROCEDURE*1

§1-04 General Rules.

(a) **Submission of Agency Reports.** All agency reports intended for the Board's consideration at a regular meeting shall be addressed to the Board and delivered by the submitting agencies to the Mayor's Office of Contracts, Public Hearings Unit at least fifteen days before the meeting at which the matters to which they relate are to be considered. Such reports shall consist of an original accompanied by twelve copies thereof.

(b) **Availability of Agency Reports to Members.** The Mayor's Office of Contracts, Public Hearings Unit shall make copies of all agency reports intended for the Board's consideration at a regular meeting available to the members upon receipt of such copies from the submitting agencies pursuant to subdivision (a) of this section.

(c) **Transmittal of Resolutions.** The Mayor's Office of Contracts, Public Hearings Unit shall transmit to the submitting agencies certified copies of all resolutions adopted by the Board affecting such agencies.

(d) **Designation of Member Delegates.** Each Board member may, by written authority filed with the Hearing Secretary, designate any two officers or employees of such member to act as the delegates of such member at meetings of the Board. Either such officer or employee, so designated, may act in the place of the member at meetings of the Board, whenever such member is absent from such meetings. In the event that an officer or employee, so designated, is absent from a meeting of the Board, a Board member may, by written authority filed with the Hearing Secretary, designate another officer or employee of such member to act as the substitute delegate of such member at such meeting. A substitute delegate, so designated, shall not be replaced during the course of such meeting by the absent delegate.

HISTORICAL NOTE

Section added City Record Sept. 16, 1991 eff. Oct. 16, 1991.

FOOTNOTES

1

[Footnote 1]: * Note: The Rules of Procedure were employed by the New York City In Rem Foreclosure Release Board on September 16, 1991. While adoption of the Rules is not controlled by the City Administrative Procedure Act, they are set forth herein for the purpose of convenient public access to such materials and in order to increase public familiarity and awareness of such rules.

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Rules of the City of New York

***** Current through December 2009 ****

70 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 70 In Rem Foreclosure Release Board

CHAPTER 1 RULES OF PROCEDURE*1

§1-05 Amendment of Rules.

(a) **Vote Required.** The provisions of these Rules may be amended by a four-fifths vote of the members of the Board. The borough presidents shall designate one borough president to serve as a member of the Board for the purpose of voting upon any such amendment. For purposes of this section, a quorum shall consist of four members of the Board.

HISTORICAL NOTE

Section added City Record Sept. 16, 1991 eff. Oct. 16, 1991.

FOOTNOTES

1

[Footnote 1]: * Note: The Rules of Procedure were employed by the New York City In Rem Foreclosure Release Board on September 16, 1991. While adoption of the Rules is not controlled by the City Administrative Procedure Act, they are set forth herein for the purpose of convenient public access to such materials and in order to increase public familiarity and awareness of such rules.

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 1 PREPARATION OF VOTER ASSISTANCE PLANS

§1-01 Scope of Rules.

These rules establish content and format requirements for agencies to follow in preparing annual voter assistance plans specifying the resources, opportunities and locations the agency will provide for voter assistance.

HISTORICAL NOTE

Section added City Record Oct. 29, 1993 eff. Nov. 28, 1993.

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 1 PREPARATION OF VOTER ASSISTANCE PLANS

§1-02 Definitions.

Agency. "Agency" means a mayoral agency that has regular contact with the public in the daily administration of its business and shall include the Department of Aging, Department of Business Services, Department of Consumer Affairs, the Department of Correction, the Department of Employment, Department of Finance, the Department of Health, the Department of Homeless Services, the Department of Housing Preservation and Development, Department of Mental Health, the Department of Parks and Recreation, the Department of Personnel, the Police Department, the Department of Probation, the Human Resources Administration, the Department of Transportation, Department of Youth Services, and such other agencies as may be designated by the Coordinator of Voter Assistance after consultation with the agency.

Board of Elections. "Board of Elections" means the Board of Elections of the City of New York.

Charter. "Charter" means the New York City Charter.

Party. "Party" means any political organization meeting the definition of a "party" under §1-104 of the election law.

Plan. "Plan" means a voter assistance plan to be prepared annually by agencies specifying the resources, opportunities, and locations the agency will provide for voter assistance activities.

Registration form. "Registration form" means the application form to register to vote designed by the State Board of Elections pursuant to Election Law 5-210(5).

HISTORICAL NOTE

Section added City Record Oct. 29, 1993 eff. Nov. 28, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 1 PREPARATION OF VOTER ASSISTANCE PLANS

§1-03 Submission of Plan.

Pursuant to §1056 of the Charter, on or before January 15, 1994 and on or before January 15th of each succeeding year, each agency shall submit a plan to the Mayor and the Coordinator of Voter Assistance in accordance with these rules.

HISTORICAL NOTE

Section added City Record Oct. 29, 1993 eff. Nov. 28, 1993.

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 1 PREPARATION OF VOTER ASSISTANCE PLANS

§1-04 Registration Opportunities.

(a) Each plan shall specify the efforts the agency will make to provide opportunities to the public to register to vote.

(b) Each agency shall include in its plan:

(1) an amendment to the intake, application or other form it requires individuals to complete before receiving services at the earliest possible or next regularly scheduled printing of their forms, containing the following:

(i) the question,"IF YOU ARE NOT REGISTERED TO VOTE WHERE YOU LIVE NOW, WOULD YOU LIKE TO APPLY TO REGISTER TO VOTE HERE TODAY? YES __ NO __ " in prominent type;

(ii) the statement, "Applying, or declining to apply, to register to vote will not affect the amount of assistance that you will be provided by this agency".

(iii) the statement, "if you would like help in filling out the voter registration application form we will help you".

(2) Until such time as each agency amends its forms as set forth in paragraph (1) of this subdivision, each of the employees in such agency who deal directly with members of the public applying for services shall routinely ask the question and make the statements set forth in paragraph (1) to all such applicants.

(c) In cooperation with the Coordinator of Voter Assistance, each agency shall develop promotional materials in English, Spanish, and Chinese informing the public of the existence of voter registration materials and shall specify in

its plan the locations open to the public at which such materials shall be prominently displayed.

HISTORICAL NOTE

Section added City Record Oct. 29, 1993 eff. Nov. 28, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 1 PREPARATION OF VOTER ASSISTANCE PLANS

§1-05 Employees.

(a) Each agency, after consultation with the Department of Personnel, shall specify in its plan, that each of the agencies employees or other persons who have contact with the public will be assigned to voter assistance activities it undertakes and the job titles of such employees. Wherever possible, the employee who provides assistance should be the same person who gives assistance in the application process and in the regular services that the agency provides. Each employee assigned to voter registration activities shall provide to each applicant who registers to vote the same degree of assistance as with regard to the completion of its own forms.

(b) Each agency shall name in its plan a coordinator of voter assistance activities in that agency and a site coordinator for each agency office conducting voter assistance activities who shall be trained by the staff of the Voter Assistance Commission and who shall be responsible for the implementation and reporting of the agency's plan. The agency coordinator shall train all employees and other persons assigned by the agency to work on voter assistance activities how to fill out voter registration forms, or arrange for its employees to receive such training from the VAC or its designate, and shall provide such employees and other persons with instructional materials on voter registration to be supplied to each agency by the Voter Assistance Commission. Each agency shall provide ongoing training for the agency voter assistance program.

(c) Employees and other persons working on voter assistance activities for an agency shall not:

(1) directly or indirectly seek to influence an applicants political preference or party enrollment;

(2) make any statement to an applicant or take any action the purpose or effect of which is to discourage the

applicant from registering to vote; or

(3) make any such statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing in the availability of services or benefits.

(d) Employees and other persons working on voter assistance activities for an agency may not collect or mail registration forms filled out by members of the public but shall direct members of the public, to whom registration forms are distributed to the nearest mailbox.

HISTORICAL NOTE

Section added City Record Oct. 29, 1993 eff. Nov. 28, 1993.

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 1 PREPARATION OF VOTER ASSISTANCE PLANS

§1-06 Reporting.

Each plan shall require the agency coordinator of voter assistance to record the number of employees and other persons working on the voter assistance activities performed by the agency, list all the voter registration sites and locations, and the total number of voter registration forms distributed to the public. The agency coordinator shall report no later than the second Monday of each month to the City Coordinator of Voter Assistance the number of employees and other persons assigned each day to each voter assistance activity during the previous month and the total number of voter registration forms distributed during the previous calendar month. Agencies shall collect data on the number of voter registration applications completed and any additional statistical evidence deemed necessary for program evaluation. No information relating to a declination to vote in connection with an application made at an agency may be used for any purpose other than registration.

HISTORICAL NOTE

Section added City Record Oct. 29, 1993 eff. Nov. 28, 1993.

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Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-01 Video Voter Guide Generally.

The Video Voter Guide is a nonpartisan program to provide New York City voters enhanced access to information about candidates seeking to represent them and local referendum proposals (including proposals of charter revision commissions, local laws subject to referendum and ballot initiatives) to be voted on in city elections. The service leverages the production and distribution capabilities of the City of New York's must-carry PEG channels to share this information via cable television and the internet. Participation in the Video Voter Guide program is voluntary. The program will allow candidates in municipal elections seeking one of the following five offices to record messages for cablecast on NYC TV: Mayor, Public Advocate, Comptroller, Borough President, and City Council Member. The Coordinator of Voter Assistance ("Coordinator") shall administer this program for the benefit of voters citywide. The Coordinator also shall work with the NYC Media Group and NYC TV, a division of the New York City Department of Information Technology and Telecommunications, in implementing this program.

HISTORICAL NOTE

Section added City Record July 8, 2005 eff. Aug. 7, 2005. [See Chapter 2 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 2 added City Record July 8, 2005 eff. Aug. 7, 2005. Note further provisions of City Record July 8, 2005:

Statement of Basis and Purpose The addition of Chapter 2 of Title 71 of the RCNY is to establish the Video Voter Guide program and the requirements for participation in the program, and to establish the methods of production and cablecasting of the Video Voter Guide.

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-02 Definitions.

As used in this chapter:

Candidate. "Candidate" means an individual who seeks nomination or election to the office of Mayor, Public Advocate, Comptroller, Borough President or City Council Member, to be voted for at a primary or general election.

Official Ballot. "Official Ballot" means an official ballot as defined in New York Election Law Article 1.

HISTORICAL NOTE

Section added City Record July 8, 2005 eff. Aug. 7, 2005. [See Chapter 2 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 2 added City Record July 8, 2005 eff. Aug. 7, 2005. Note further provisions of City Record July 8, 2005:

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production and cablecasting of the Video Voter Guide.

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-03 General Information.

In addition to any information that the Coordinator determines to be useful for promoting civic participation, public awareness of the voting process and the functions of each office and the Video Voter Guide itself, the Video Voter Guide for an election shall provide the following information: (1) the date of the election; (2) the hours during which the polls are open; and (3) maps outlining the geographical boundaries of each office. The Coordinator shall also take steps as he or she deems appropriate to publicize and disseminate the program.

HISTORICAL NOTE

Section added City Record July 8, 2005 eff. Aug. 7, 2005. [See Chapter 2 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 2 added City Record July 8, 2005 eff. Aug. 7, 2005. Note further provisions of City Record July 8, 2005:

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production and cablecasting of the Video Voter Guide.

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***** Current through December 2009 ****

71 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-04 Candidate Eligibility and Participation.

(a) All candidates who have filed a valid designating or nominating petition with the Board of Elections, or who can otherwise demonstrate that they will lawfully appear on the official primary or general election ballot, shall be eligible to register to participate in the Video Voter Guide. Challenges to designating or nominating petitions shall not affect a candidate's opportunity to record a statement. However, statements made by candidates who are removed from the official ballot prior to program cablecast will not be aired.

(b) Participation in the Video Voter Guide is voluntary. There is no fee or charge for participating in the Video Voter Guide. To participate in the Video Voter Guide, eligible candidates shall:

(1) complete a certification form agreeing to comply with these rules and any other rules or procedures set forth in writing by the Coordinator;

(2) designate a Video Voter Guide liaison with whom the Coordinator shall communicate for the scheduling of recording appointments and any other purposes; and

(3) have one recording appointment of no more than thirty minutes at the location specified in §2-05(c), during which candidates shall record their messages for cablecast in accordance with these rules.

(c) The Coordinator shall have discretion to set times for recording candidate statements, provided that:

(1) recording begins at least one month prior to the primary election for candidates participating in the primary

election;

(2) recording begins at least one month prior to the general election for candidates participating only in the general election; and

(3) where unusual circumstances exist that make earlier recording impracticable, the Coordinator may in his or her discretion provide for recording to begin after the dates set forth in this subdivision.

(d) Candidates may register to participate in the Video Voter Guide at any time between the date of their submission of a designating or nominating petition to the Board of Elections, or the date that they qualify to lawfully appear on the official primary or general election ballot, and the date six weeks prior to the primary election for candidates participating in the primary election, or six weeks prior to the general election for candidates participating only in the general election. Where unusual circumstances exist that make earlier registration impracticable for a significant number of candidates, the Coordinator may in his or her discretion extend the deadline for registration to a date later than that set forth in this subdivision. Scheduling of recording sessions shall be done on a rolling basis.

(e) If a candidate fails to register by the date specified in subdivision (d) of this section, he or she may attempt to register during the period designated for recording of candidate statements by completing the requirements in paragraphs (1) and (2) of subdivision (c) of this section, and by contacting the Coordinator or his or her designee to attempt to schedule an appointment for recording pursuant to §2-05 of this chapter. The Coordinator or designee shall make every reasonable effort to schedule an appointment for such late candidates, but is not required to do so; provided, however, that the Coordinator shall give priority to those candidates who are added to the ballot after the recording period has commenced.

HISTORICAL NOTE

Section added City Record July 8, 2005 eff. Aug. 7, 2005. [See Chapter 2 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 2 added City Record July 8, 2005 eff. Aug. 7, 2005. Note further provisions of City Record July 8, 2005:

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§2-05 Scheduling Appointments for Recording.

(a) To schedule an appointment, a candidate's designated liaison must contact the Coordinator or his or her designee by telephone. Once an agreeable date is found, the candidate or his or her liaison shall send signed written confirmation of the agreed-upon appointment time and date to the Coordinator. This signed written confirmation may be faxed, hand-delivered or e-mailed as a .pdf attachment.

(1) An appointment time is only considered reserved once the Coordinator is in possession of a signed written confirmation. If the Coordinator does not receive a signed written confirmation within five days of the telephone call arranging the appointment, the appointment time shall be released and the candidate's liaison must contact the Coordinator or his or her designee by telephone to schedule an appointment.

(2) Reserved.

(b) If a candidate wishes to cancel an appointment, the candidate's designated liaison must e-mail or fax a request to the Coordinator at least twenty-four (24) hours prior to the scheduled appointment. The Coordinator or his or her designee shall call the liaison and make every reasonable effort to reschedule the appointment. The candidate shall have no more than one opportunity to reschedule his or her appointment and candidates who fail to appear at their scheduled time shall waive their participation in the program.

(c) Candidate statements shall be recorded at the NYC Media Group Studios located at 112 Tillary Street in Brooklyn, New York, or such other location as may be designated by the Coordinator.

HISTORICAL NOTE

Section added City Record July 8, 2005 eff. Aug. 7, 2005. [See Chapter 2 footnote]

FOOTNOTES

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§2-06 NYC Media Group and NYC TV.

NYC Media Group and NYC TV shall provide video production and cablecasting for the Video Voter Guide in accordance with these rules.

HISTORICAL NOTE

Section added City Record July 8, 2005 eff. Aug. 7, 2005. [See Chapter 2 footnote]

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§2-07 Recording Protocol.

(a) Each candidate shall have no more than thirty (30) minutes for taping his or her message. This time allotment includes set-up, rehearsal and taping time. Candidates should arrive no later than fifteen (15) minutes prior to their scheduled recording time. In the event of technical difficulties on the part of NYC TV, the Coordinator may, at his or her discretion, extend the thirty-minute time-limit to ensure fairness. Candidates are encouraged to rehearse prior to their appointments to ensure proper timing.

(b) Only candidates shall be recorded. Proxy speakers are not permitted to either speak or appear on camera.

(c) Each candidate shall be given no more than two opportunities to record a statement during that thirty minute session.

(1) Candidates shall be recorded while appearing in front of and speaking directly to a studio camera.

(2) Candidates may not hold anything in their hands except written notes; nor may they display any literature, graphs or props.

(3) If a candidate wishes to use a teleprompter, the candidate must arrive at least thirty (30) minutes prior to his or her scheduled taping with an electronic file of his or her statement for uploading into the teleprompter. Candidates will be encouraged but not obliged to e-mail their statements to the Coordinator at least twenty-four (24) hours prior to their scheduled recording. The Coordinator shall inform candidates in advance of the required electronic format for such file at the time of scheduling of the appointment for recording. If the file cannot be uploaded promptly, or if a candidate

does not arrive in sufficient time for uploading to occur, the teleprompter shall not be available for use.

(4) Statements shall be made continuously and unedited. Neither NYC TV nor a candidate shall edit a recorded statement in any way, except by adding lower-third information and adjusting the audio and video levels for on-air delivery. Candidates who exceed their allotted statement time, as set forth in §2-08 of this chapter, will be cut off at the time limit, and their statements will be aired as incomplete followed by a written statement on-screen, stating "Candidate Time Expired."

(d) Candidates will be shown a printed copy of their lower-third information as it will appear on the screen that will identify, in English, each candidate by name and party affiliation. In primary election races, lower-third information for candidates will also include the words "Primary Candidate" following the candidate's listed party affiliation. The candidate shall supply this information upon registering in the Video Voter Guide Program. This document, referred to as the Graphic Affidavit ("GA"), must be signed by the candidate or his or her liaison to certify that the graphic information has been proofread and accepted by the candidate as correct and valid. No adjustments can be made to this information once the GA is signed. NYC Media Group will also create an over-the-shoulder graphic to be displayed during candidate statements, showing the office sought and a map depicting its geographic boundaries. For City Council candidates, the number of the district which the candidate seeks to represent will also be shown.

(e) If a candidate makes two recordings of his or her statement, the candidate or his or her liaison shall, immediately following completion of the recording session, review the two recordings and select one for cablecast on NYC TV.

(f) Candidates are prohibited from viewing the statements of opposing candidates prior to the cablecast.

(g) Candidates will be allowed to sit on a stool/chair or stand while recording their statements. Special accommodations for candidates with special needs will be made at the sole discretion of the Coordinator or his or her designee.

(h) No special consideration shall be given to any incumbent candidate. No official insignia, pins or on-screen messages of any kind will be permitted.

(i) Candidate interaction with NYC Media Group and NYC TV is limited to recording and production in the presence of the Coordinator or a monitor designated by the Coordinator.

HISTORICAL NOTE

Section added City Record July 8, 2005 eff. Aug. 7, 2005. [See Chapter 2 footnote]

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§2-08 Candidate Statements.

(a) The length of candidate statements is as follows:

(1) candidates for citywide office (Mayor, Comptroller, Public Advocate) may make a statement of no more than four (4) minutes in duration;

(2) candidates for Borough President may make a statement of no more than three (3) minutes in duration; and

(3) candidates for City Council Member may make a statement of no more than two (2) minutes in duration.

(b) No exceptions shall be made to the candidate statement time limitations listed in subdivision (a) of this section.

(c) Candidates participating in the voluntary Video Voter Guide program may record any message, provided that they shall not:

(1) refer to any other candidate by name or description;

(2) use any visual aids (i.e. campaign buttons, posters, charts, graphs);

(3) wear clothing or insignias indicating that a candidate holds a public office;

(4) make statements that are profane, obscene, libelous, slanderous, or defamatory;

(5) engage in any commercial programming or advertising;

(6) display any obscene material or pornography;

(7) utilize inappropriate or obscene hand gestures or body movements or engage in nudity;

(8) engage in the unauthorized use of copyrighted material or invasion of privacy; or

(9) violate any city, state or federal law, including regulations of the New York State Public Service Commission and the Federal Communications Commission.

(d) Candidates who violate any of the provisions of subdivision (c) of this section shall not have their statements aired.

(e) Candidates may dress as they choose subject to the provisions of subdivision (c) of this section, and shall be responsible for their own clothing, make-up and hairdressing.

(f) Candidates may record statements in the language of their choice, provided, however, that candidates who record a statement in a language other than English, Spanish, Chinese or Korean shall provide any reasonably requested assistance to the Coordinator or his or her designee in translating the statement into English.

(g) The Coordinator shall arrange for the transcription of candidate statements, and translation of those statements into any applicable languages pursuant to the Voting Rights Act. Such transcripts and applicable translations of recorded statements shall be made available to the public beginning on the date of the first cablecast of the program, both on the web and in response to telephonic or written requests.

(h) Candidates who appear on the ballot for both the primary and general elections of a single election cycle shall only record a single statement to be aired in the Video Voter Guides for both the primary and general elections.

HISTORICAL NOTE

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§2-09 Cablecast Guidelines.

(a) NYC Media Group shall cablecast statements on NYC TV Channel 74. Content shall be simulcast via streaming media on a website designated by the Coordinator, and shall be accessible thereafter.

(1) Beginning at 8 P.M. on each weekday evening of the weeks immediately preceding both the primary and the general elections, NYC Media Group shall cablecast statements from all candidates for city elective office.

(2) At 9 A.M. on each day of the week immediately preceding both the primary and the general elections, beginning on the day following the first evening cablecast, the previous evening's cablecast shall be re-cablecast.

(i) The order of candidate statements cablecast each day of the week immediately preceding the elections shall rotate each evening so that each borough shall have one evening and one morning in which the statements of candidates for office in that borough are cablecast first. The order for borough cablecast shall be designated by a random lottery to be conducted by the Coordinator.

(ii) The order of candidate statements within each borough cablecast for both the primary and the general elections shall be as follows:

(A) candidates for City Council Member shall appear in alphabetical order within the City Council district they seek to represent, and City Council districts shall appear in numerical order by district;

(B) candidates for Borough President shall appear alphabetically.

(iii) Any City Council district falling geographically within more than one borough shall appear in the cablecast for each borough in which the district is located.

(iv) Statements from candidates for citywide office shall appear between the statements from each borough's candidates for Borough President and the statements from the subsequent borough's candidates for City Council Member.

(A) In both the primary and general election cablecasts, candidates for citywide office shall appear alphabetically by office in the following order:

(i) Mayor;

(ii) Public Advocate; and

(iii) Comptroller.

(B) Reserved.

(3) Following the 9 A.M. repeat cablecast of the final borough, NYC Media Group shall cablecast statements from all candidates for city elective office on a continuous loop through election day. Consistent with cablecast during the daytime hours of the weekdays in the week prior to the election, candidates will be cablecast by borough, in the order in which the boroughs appeared during the week.

(b) In general elections where local referendum proposals will appear on the ballot:

(1) The text of each local proposal that on the date of the cablecast has been certified to appear on the ballot shall be displayed on-screen in English for a period of at least one (1) minute.

(2) The proposals shall be displayed in the order they appear on the ballot following the statements from candidates for citywide office.

(3) Following the display of the final proposal, a statement shall appear on-screen in English and in each of the applicable Voting Rights Act languages to the effect that information on the referendum proposals, including summaries, appears in the printed Voter Guide, and contains information on how to obtain copies of the printed Voter Guide.

HISTORICAL NOTE

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§2-10 Conflict Resolution and Finality of Coordinator of Voter Assistance Decisions.

(a) Any conflicts related to the recording and/or cablecasting of candidate statements will be decided by the Coordinator or a monitor designated by the Coordinator.

(b) All decisions with respect to the Video Voter Guide, including resolution of conflicts, made by the Coordinator or his or her designee are final.

HISTORICAL NOTE

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